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Tuesday
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 93–028–2]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: This rule will allow the use of high temperature forced air treatments for grapefruit and mangoes imported from Mexico. The treatments will be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

DATES: This rule will be effective on May 2, 1994, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 31, 1994.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date and publish a proposed rule for public comment.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–028–2. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) of the Animal and Plant Health Inspection Service is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The PPQ Treatment Manual contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign plant quarantines and regulations. Unless we receive written adverse comments or written notice of intent to submit adverse comments, this document will amend 7 CFR 300.1 to show that the PPQ Treatment Manual has been revised to include high temperature forced air treatments as additional treatments for grapefruit and mangoes from Mexico.

Treatments

The high temperature forced air treatments described below were developed by the Agricultural Research Service of the U.S. Department of Agriculture as effective alternative treatments against the Mexican fruit fly in grapefruit imported from Mexico and against the Mexican, West Indian, and black fruit flies in mangoes imported from Mexico.

Both treatments are administered in sealed, insulated chambers. The air may be heated in the chambers or hot air may be introduced into the chambers.

Grapefruit

Size of grapefruit—9 to 9.5 inches
Weight of grapefruit—.5 to 1 pound
Initial pulp temperature of grapefruit—77 °F or above

These steps must occur in order:

(1) Place the grapefruit in a chamber and seal the chamber.

(2) Heat air in the chamber to 104 °F for 120 minutes.

(3) Heat air in the chamber to 122 °F for 90 minutes.

(4) Heat air in the chamber to 126 °F and maintain temperature until the grapefruit center reaches 118 °F.

Mangoes

Size of mangoes—3.15 to 5.5 inches (sizes 8 to 14)
Weight of mangoes—Must not exceed 1.5 pounds

These steps must occur in order:

(1) Probe several representative mangoes at the seed's surface. Insert the probes into the thickest portion of the mangoes' pulp.

(2) Place the mangoes in a chamber and seal the chamber.

(3) Record temperatures at least once every 2 minutes until the treatment is concluded.

(4) Heat air in the chamber to 122 °F.

(5) Conclude the treatment once the temperature at the seed's surface (based on the coolest part of the mango) reaches 118 °F.

Note: Treatment time will vary depending on the size of the mangoes and the number of boxes of mangoes treated.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date and publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days

following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule will provide an additional treatment option, high temperature forced air, for grapefruit and mangoes imported from Mexico. Because this new treatment will be optional, this rule should have no significant economic impact on entities using the currently prescribed hot water and vapor heat treatments.

Also, since high temperature forced air treatment provides for longer fruit shelf life than do hot water and vapor heat treatments, we anticipate that some private treatment enterprises will convert their facilities to employ this treatment. We believe, though, that any costs of facility conversion would be offset through the production of higher quality fruit. Therefore, we anticipate no significant change in the price or production of grapefruit and mangoes as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through June 1993, has been approved for incorporation by reference in this chapter by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4488 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation hereby issues additional regulations for provisions to insure figs. This action will add a second set of fig regulations, the Fig Crop Insurance Provisions, to the crop insurance regulations. The present regulations are based on the Marketing Order for Dried Figs that was in effect at the time the regulations were promulgated. This marketing order has since been amended which severely reduces the amount of indemnity to which the insured may otherwise have been entitled. These new regulations will provide quality adjustment provisions and reflect the lower prices received for figs based on the grades contained in the amended marketing order. The intended effect of this action is to offer insurance on figs with added coverage for quality adjustment that is not in the current Fig Endorsement.

DATES: This rule was effective on February 1, 1994. Comments, data, and opinions must be received by May 2, 1994.

ADDRESSES: Written comments on this rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866 and therefor has not been reviewed by the Office of Management and Budget.

This rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paper Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action requires no more of the reinsured company or sales and service contractor than is considered normal in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought. The rule is retroactive to February 1, 1994 so as to allow insureds the opportunity to purchase this policy prior to the sales closing date. Because the Corporation has publicized the policy and the

provisions of the rule to all companies and fig policyholders, those persons have actual notice of the contents of the rule and will not be adversely affected by the rule's retroactivity.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Expedited publication of this additional fig insurance policy is necessary in order for FCIC to be responsive to the effects that the amended California Marketing Order for Dry Figs has upon fig producers insured by FCIC. It is necessary to promulgate the new policy so that insureds will be fully compensated from any loss under the 1994 crop year policy, therefore, good cause is found to make this rule final upon publication.

Background

During the 1992 crop year the California Fig Advisory Board amended the State Marketing Order for Dried Figs. Prior to the amendment, figs were graded merchantable or substandard. The amended marketing order provides three grades: regular dried figs (previously merchantable); manufacturing grade (new grade added); and substandard.

The current fig endorsement contained in 7 CFR 401.125 specifies in subsection 7.(b) that the total production to be counted for a unit will include all harvested and appraised marketable figs as defined by the Marketing Order for Dried Figs, as amended. Paragraph 7.(b)(1) of the current fig endorsement further specifies that substandard production will not be counted as production if such production is inspected by the insurer and the insurer gives written consent to the insured to deliver the figs to the substandard pool. If substandard production is not inspected or written consent is not given prior to delivery to the substandard pool, all such production will be counted as marketable production.

Figs which now grade manufacturing under the new marketing order would have graded substandard under the previous marketing order and would not have counted as production if written consent was given prior to delivery to the substandard pool. However, due to the new marketing order, manufacturing grade figs are sold through normal marketing outlets and therefore, consistent with the current fig crop insurance regulations, are considered production to count. The price received for manufacturing grade figs is considerably lower than the price received for regular dried figs. In 1992, manufacturing grade figs sold for 35 cents a pound and regular dried figs sold for 82 cents per pound. Under the current figs endorsement, manufacturing grade and regular dried figs are counted equally as production to count. The new Fig Crop Insurance Provisions provide a method to allow an insured to sell his manufacturing grade figs while also providing the insurer with a method to include the sale as a part of the insured production.

This rule is being promulgated to provide for a quality adjustment on production to count in order to offset the lower price received for manufacturing grade figs resulting from an insurable cause of loss.

List of Subjects in 7 CFR Part 457

Crop insurance, Figs.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457) in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, § 457.110 Fig Crop Insurance Provisions, to read as follows:

§ 457.110 Fig Crop Insurance Provisions.

The Fig Crop Insurance Provisions for the 1994 and subsequent crop years are as follows:

United States Department of Agriculture—Federal Crop Insurance Corporation

Fig Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(b) *Harvest*—The picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

(c) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage for the insured crop.

(d) *Manufacturing grade production*—Production that meets the minimum grade standards and is defined as "manufacturing grade" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(e) *Marketable figs*—Figs that grade manufacturing grade or better in accordance with the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(f) *Noncontiguous land*—Land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(g) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(h) *Substandard production*—Production that does not meet minimum grade standards and is defined as "substandard" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

2. Unit Division

In addition to the provisions of subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), a unit will consist of all the insurable acreage of an insurable type of fig in the county. Unless limited by the Special Provisions, these units may be further divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), and (b) are met, or if we agree in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) The acreage of insured figs must be located on noncontiguous land. Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are recombined, the premium paid for electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for each fig type designated in the Special Provisions, and insured in the county under this policy.

4. Contract Changes

The contract change date is October 31 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

The cancellation and termination dates are February 28.

6. Report of Acreage

By applying for fig crop insurance, you authorize us to have access to and to determine or verify your production and acreage from records maintained by the California Fig Advisory Board and the fig packer.

7. Insured Crop

The crop insured will be all the commercially grown dried figs that are grown in the county on insurable acreage, and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as dried figs;

(c) That are irrigated;

(d) That have reached the seventh growing season after being set out; and

(e) For which acceptable production records for at least the previous crop year are provided;

(f) That are not figs:

(1) Grown on acreage with less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such figs;

(2) Which we inspect and consider not acceptable;

(3) Grown for the crop year the application is filed unless inspected and accepted by us; or

(4) Grown on acreage acquired for the crop year unless such acreage has been inspected and accepted by us.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends at the earliest of:

(a) Total destruction of the fig crop;

(b) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(c) Harvest of the figs;

(d) Final adjustment of a loss;

(e) Abandonment of the crop; or

(f) October 31 of the crop year.

9. Causes of Loss

(a) In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), any loss covered by this policy must occur within the insurance period. The specific causes of loss for figs are:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) Failure of the irrigation water supply.

(b) In addition to the causes of loss not insured against contained in section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include all harvested and appraised marketable figs.

(1) Figs, which due to insurable causes, grade manufacturing grade will be adjusted by:

(i) Dividing the value per pound of the manufacturing grade production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such manufacturing grade production.

(2) Figs, which due to insurable causes, grade substandard and are delivered to the substandard pool will not be considered production to count, provided all the insured's substandard production is inspected by us and we give written consent to such delivery prior to delivery. If we do not give written consent prior to the delivery to the substandard pool, all production will be counted as undamaged marketable production. Substandard production for which we give written consent to you prior to delivery to the substandard pool, which is not delivered to the substandard pool, and is sold by you, will be considered production to count and adjusted as follows:

(i) Dividing the value per pound received for such substandard production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such substandard production.

(3) Appraised production to be counted will include:

(i) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(ii) Not less than the production guarantee for the figs on any acreage:

(A) That is abandoned without our consent;

(B) Damaged solely by uninsured causes;

(c) If the figs are destroyed by you without our consent; or

(D) For which you fail to provide records of production that are acceptable to us;

(iii) Unharvested production which would be marketable if harvested; and

(iv) Potential production on insured acreage that you want to abandon and no longer care for if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. You must notify us within three days of the date harvest should have started if the crop is not harvested; or

(B) You may elect to continue to care for the crop. We will determine the amount of production to count for the acreage using the harvested production or our reappraisal if the crop is not harvested.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–4551 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–08–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–150–1]

Ports Designated for Exportation of Animals, Stockton, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by removing the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which is no longer operating. Also, we are removing Stockton, CA, as a port of embarkation. These actions will update the regulations.

DATES: This rule will be effective on May 2, 1994 unless we receive written

adverse comments or written notice of intent to submit adverse comments on or before March 31, 1994.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–150–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities.

This rule will amend § 91.14(a) in accordance with the procedures explained below under "Dates." The amendments will remove the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which has ceased operations. Also, because Stockton, CA, does not have any other export inspection facility, the amendments will remove Stockton, CA, as a port of embarkation.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed under Executive Order 12866.

Currently, the State of California is served by designated ports of embarkation in Los Angeles, San Francisco, and Stockton. This rule will remove Stockton as a port of embarkation for the State of California. Because this export inspection facility has already ceased operating as an animal export inspection facility, its deletion from the regulations will have no economic impact. Further, two ports of embarkation located in San Francisco, CA, approximately 60 miles west of Stockton, CA, are available to animal exporters who had used the Hemet Flying Service animal export inspection facility.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, paragraph (a)(1)(iii) is removed.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4591 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 91–165–2]

RIN 0579–AA56

Harry S Truman Animal Import Center (HSTAIC); Exclusive Use

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the use of the Harry S Truman Animal Import Center (HSTAIC): To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; to change the application and lottery dates; to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to

the Animal and Plant Health Inspection Service; and to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. These changes are necessary to discourage frivolous applications, to help ensure that there is adequate time to assemble necessary information prior to each lottery, and to minimize financial losses incurred by the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: This regulation is effective August 31, 1994. This rule will first apply to the lottery to be held in 1994 for importations during calendar year 1995, then to all subsequent lotteries.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Staff Veterinarian, Import Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, subparts D and E, govern the importation of animals into the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida. Under the regulations, the Animal and Plant Health Inspection Service (APHIS) holds an annual lottery to allocate space in HSTAIC for each calendar year. To participate in the lottery, prospective importers must submit an application for each importation.

On July 14, 1993, we published in the **Federal Register** (58 FR 37878–37884, Docket No. 91–165–1) a proposal to amend the regulations: (1) To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; (2) to change the application and lottery dates; (3) to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; (4) to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to APHIS; and (5) to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. We proposed to apply the changes to the regulations first to the lottery to be held in 1994 for importations during calendar year 1995.

We solicited comments concerning our proposal for a 60-day period ending September 13, 1993. We received one comment by that date, from an importer who expressed concerns regarding certain provisions of the proposed rule. We carefully considered this comment and discuss it below.

In our proposal, we proposed to require that applicants for the HSTAIC lottery deposit with APHIS $32,000 in the form of a certified check or money order payable in U.S. funds prior to the date of the lottery. This provision was proposed as a replacement for the existing requirement that an application for the lottery be accompanied by a deposit in the form of a $50,000 irrevocable letter of credit. We proposed the change to allow small businesses to compete more equitably with large importers, who can more easily obtain multiple letters of credit for multiple applications.

The commenter disagreed that the proposed change would benefit small importers. According to the commenter, under the requirement for a $50,000 letter of credit, a small importer would be most likely either to utilize his or her credit line with a bank, or to post the funds in a certificate of deposit and borrow against those funds for a letter of credit. According to the commenter, if the latter option were chosen, the applicant would pay the financial institution only the difference between the rate of return on the certificate of deposit and the lending rate. The commenter stated that the proposed change would make it more difficult for a small importer to submit multiple applications, by tying up the importer's funds with USDA for up to a year with no interest, and removing those funds from the bank, thereby reducing the importer's collateral.

We are making no changes based on the comment. While we agree that a $32,000 deposit represents more of a financial commitment than a $50,000 letter of credit, we disagree that the proposed change would be less advantageous to small importers than are the existing regulations. We continue to believe, as we stated in the proposal, that large importers, because of their stronger credit and deposit relationship with banks, can obtain letters of credit significantly more easily than can small importers. Our experience with the HSTAIC lottery has been that a number of these multiple applications have been frivolous, with the applicants having no intention of using their "winning" slots in the lottery to import animals. We expect that requiring a $32,000 deposit in the form of a check or money order will reduce the number of multiple applications received and will minimize frivolous applications.

Although we expect significantly fewer applications under the new regulations, we anticipate that the applications that are received will in most cases be from applicants actually intending to import animals through HSTAIC. With fewer applicants in the lottery, and with those that are chosen serious about importing animals, applicants will have a better idea than at present what their chances are of importing animals through HSTAIC in a given year. This will enable the applicants to decide whether it is worthwhile to leave their deposit with APHIS after the lottery results are announced. Those that have little chance of importing animals could choose to withdraw their money shortly after the lottery.

The commenter also expressed concern that the proposed requirement that the lottery winner pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers would put the winner of the lottery at a disadvantage compared to the applicants drawn later in the lottery. Under the provisions of the proposal, we would draw upon the $32,000 deposit of the winner of the lottery from the day the winner receives a cooperative-service agreement for the use of HSTAIC from us, and we would continue drawing on it either until we receive a signed cooperative-service agreement from the applicant or until the applicant provides written notification to us that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days.

The commenter stated that this provision would require the winner of the lottery to rush to put his or her import together, while the third or fourth applicants chosen would have extra time while we negotiate with the applicants chosen earlier in the lottery. According to the commenter, it is impossible for any importer to determine the feasibility of a high security animal import in less than 30 days.

We are making no changes based on this comment. The very purpose of the proposed change was to discourage applicants who are not seriously considering importing animals through HSTAIC, and therefore to minimize unnecessary "downtime" at HSTAIC. We believe that applicants seriously interested in importing animals through HSTAIC should already have closely examined the feasibility of a particular importation before submitting an application. Further, once the cooperative-service agreement is signed, the importer has 42 days to complete

arrangements with responsible officials in the country from which the animals are to be exported. We consider this a reasonable period of time to make such arrangements.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with only minor nonsubstantive changes.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In the past we have received approximately 230 applications to use HSTAIC during a particular calendar year. However, many of these applications were duplicative. Therefore, when the provisions in this rule become effective, we expect that number to drop significantly. Although we cannot determine precisely how many importers will submit applications, based on past experience we believe only approximately 5 percent will be small entities.

We expect that requiring a deposit of $32,000 in the form of a certified check or money order with each application will reduce the number of multiple applications by large importers and discourage applications from importers who are not sure whether they will use HSTAIC. We expect this final rule to have the ultimate effect of increasing the possibility that small entities will use HSTAIC.

The regulations prior to the effective date of this rule require that applicants for the importation of certain animals through HSTAIC deposit an irrevocable letter of credit for $50,000. Requiring a deposit in the form of a certified check or money order will have an impact on potential importers, in that earnings will be foregone on the deposit while it is held by APHIS. Under this rule, the deposit will have to be "received by APHIS at least 7 calendar days prior to the date of the lottery." Prospective importers can minimize the time their money is on deposit by submitting their deposit as close to this deadline as possible. We have calculated that, based on a rate of return of from 5–7 percent, the interest foregone on a deposit will be approximately $4.10 to $6.15 per day. The minimum amount of time applicants will forego interest will be for the week before the lottery and for at least one week following the lottery until notification of the lottery results. Therefore, all applicants will forego approximately $61.60 to $86.10 in interest. This compares with an average cost to import one animal through HSTAIC of $3,747.

Of the parties that will submit applications for importations through HSTAIC in 1995, most of whom will probably not be small entities, we expect that only approximately 5 will be picked high enough in the lottery to provide them a reasonable chance of bringing animals through HSTAIC. If these applicants choose to stay on the lottery list, they will lose interest for each day they remain on the list until their deposit is applied toward an importation, or until they choose to remove their name from the list. How long they remain on the list will be their decision, and we are unable to calculate at this time the interest they will forego.

Changing application and lottery dates will impose no financial burden on prospective importers. The current regulations require that importers wishing to import in the next calendar year submit their application no earlier than September 1 and no later than September 15 for the lottery held during the first seven days of October of the current calendar year. Shifting these dates to October and December, respectively, would likely shorten the waiting period between application and actual import dates.

Requiring the lottery winner to pay the costs of maintaining HSTAIC for periods when it is maintained in readiness for that importer, and not available to other importers, will shift the burden of operating costs from APHIS, and ultimately the taxpayer, to persons offered the right to use HSTAIC. According to the regulations prior to the effective date of this rule, a lottery winner has 30 days from the date of the receipt of the cooperative-service agreement to either accept or reject the cooperative-service agreement regarding the importation of animals. During that time, the facility is reserved, and APHIS prepares and maintains it in readiness for that importer's animals. Charging the importer for this time, on a daily basis, will increase the importer's costs by approximately $1,067 per day, up to a maximum of $32,000. This compares with an average total cost for an importation through HSTAIC of $857,000. The length of time that expires before the cooperative-service agreement is accepted or rejected will be up to the lottery winner.

Under this rule, APHIS will not accept applications from, or enter into HSTAIC cooperative-service agreements with, entities with outstanding debts to APHIS. If a prospective applicant has not paid outstanding debts, they will not be allowed to use HSTAIC. However, this provision will not necessarily impose a financial burden on prospective applicants because the decision whether to pay off debts will be entirely the prospective applicant's.

We are also eliminating the practice of giving certain types of animals, and animals from certain locations, priority in the lottery. This amendment, which will simplify the drawing for the lottery, will not affect a substantial number of importers. In the past we have received approximately 230 applications to use HSTAIC during a particular year. As stated above, we expect fewer applicants when this rule takes effect. Of the total number of applicants, only two to three will actually be able to use HSTAIC in any given year. Additionally, as we stated above, we expect the great majority of applicants to be other than small entities, so the chances are small that each of the two or three importers using HSTAIC will be small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule will be submitted for approval

to the Office of Management and Budget.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.430 [Amended]

2. Section 92.430 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears, and by adding "December" in its place; and by removing "September" where it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 12 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences, and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 13 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by adding "expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed, and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.430 Importation of ruminants through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed cooperative-service agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's

animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b)(1) and (2) of this section), and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

§ 92.522 [Amended]

3. Section 92.522 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears and adding "December" in their place; and by removing "September" both times it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 11 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 12 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by removing the word "Expenses" and adding in its place "expenses"; and by adding "Expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.522 Importation of swine through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day HSTAIC is not available to another importer, starting

on the date the cooperative-service agreement is delivered to the address listed on the HSTAIC application, and ending either with the day that APHIS receives a signed cooperative-service agreement from the applicant or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered, and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b) (1) and (2) of this section), and whose deposits have reached APHIS at least 7 days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check, a money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.)

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4593 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB49

Federal Agricultural Mortgage Corporation; Conflicts of Interest

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, adopts a new regulation relating to reporting and disclosure of conflicts of interest by directors, officers, and employees of the Federal Agricultural Mortgage Corporation (Corporation). The regulation is adopted in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992. Section 514 directs the FCA to ensure that its regulations require the disclosure of financial information and the reporting of potential conflicts of interest by directors, officers, and employees of all Farm Credit System (System) institutions and that such requirements are adequate to fulfill the purposes of the section.

The regulation requires the Corporation to adopt a conflict-of-interest policy that defines the types of relationships, transactions, or activities that might reasonably be expected to give rise to a potential conflict of interest. The regulation also requires the reporting of sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation about potential conflicts of interest. The regulation further requires disclosure to shareholders, investors, and potential investors of any unresolved conflicts of interest involving its directors, officers, and employees identified by the Corporation under the policy. Such disclosure is in addition to disclosures already required under the Federal securities laws.

EFFECTIVE DATE: The regulation shall become effective 180 days after publication in the **Federal Register** or on such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days after **Federal Register** publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Suzanne J. McCrory, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4280, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 14, 1993, the FCA published for comment conflict-of-interest regulations (58 FR 53161) for the Corporation. The regulations were proposed in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. 102–552, 106 Stat. 4102 (1992 Act). The 1992 Act directed the FCA to review its current regulations regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of System institutions to determine whether the regulations: (1) Are adequate to fulfill the purpose of section 514 and other purposes determined by the FCA to be necessary or appropriate, consistent with the Farm Credit Act of 1971, as amended (1971 Act); (2) require the disclosure of financial information and reporting of potential conflicts of interest by the directors, officers, and employees of all System institutions; and (3) require such disclosure of all of the appropriate directors, officers, or employees of System institutions. The 1992 Act further directed the FCA to amend its current financial disclosure and conflict-of-interest regulations to carry out the purpose of section 514, which is to ensure that FCA regulations require the disclosure of financial information and the reporting of potential conflicts of interest to provide sufficient information for: (1) Stockholders to make informed decisions regarding the operation of the institutions; (2) investors and potential investors to make informed investment decisions; and (3) the FCA to examine and regulate all System institutions effectively and efficiently.

The comment period closed on November 15, 1993. Comments were received from the Corporation and from

The Farm Credit Council (FCC), a trade association for the banks and associations of the System. The Farm Credit Bank of Baltimore submitted a letter endorsing the comments of the FCC.

The Corporation supported the regulatory approach to conflicts of interest, but made a number of substantive and clarifying comments. Most notably, the Corporation asserted that the definition of "employee" is broader than necessary to effectuate the stated purpose of the 1992 Act and will result in irrelevant or immaterial reporting by receptionists, secretaries, bookkeepers, clerks, and other employees without regard to their functions or duties at the Corporation. The Corporation noted that its existing policies also define "employee" broadly, but reporting requirements are tailored to screen out reporting by employees who are not in a position to influence activity with respect to their financial interests.

The Corporation suggested that the term "employee" be replaced with the term "key employee," defined to mean "any salaried manager or supervisor or part-time, full-time, or temporary salaried employee who is involved in any significant activity related to the processing, analysis, or guarantee of loan pools or other significant financial activity or who is engaged in any policy-making, managerial, supervisory, or professional function for the Corporation." This definition would apply only to employees other than officers and directors, who are already specifically referenced in the regulation.

The FCA is opposed to removing groups of employees from the regulation's applicability. Although the proposed regulation broadly defines potential conflicts of interest to apply to all employees, it requires the Corporation to define the types of specific transactions, relationships, and activities that reasonably could be expected to give rise to potential conflicts of interest and to require reporting of sufficient information to inform the Corporation of these potential conflicts of interest. The FCA believes that the regulation gives the Corporation sufficient latitude to tailor its reporting requirements based upon the function various employees perform for the Corporation. The FCA believes that each employee, no matter what his or her function, should be subject to a requirement to report any matter that might adversely affect impartiality in the performance of his or her duties. Accordingly, the FCA declines to replace the term "employee" with the term "key employee" in the definition of "potential conflict of interest." However, because officers are separately defined, the FCA has amended the definition of "employee" to exclude officers.

The Corporation and the FCC requested that the language of the regulation be amended to clarify that only material conflicts need to be resolved to avoid disclosure. The FCA confirms that this is the intended result and adopts minor language changes to the definition of "resolved" and to § 650.3 to make this point clearer.

The Corporation requested that the regulation be modified to provide a defined period of time for the development of the conflict-of-interest policy by the Corporation and suggested that a reasonable time period would be 180 days from the effective date of the final rule, noting that developing such a policy will involve issues that must be decided by the Corporation's Board (Board).

The FCA recognizes that the policy required by the regulation may be different from the Corporation's existing policy and that Board participation in its development is required. Indeed, in requiring the Corporation to adopt a conflict-of-interest policy, the FCA contemplated that the Corporation must act through its board of directors. The FCA views the request as a reasonable one, but believes that 180 days from the date of publication of the final rule should be a sufficient period to develop a policy. Consequently, the FCA has adopted a delayed effective date of 180 days after publication in the **Federal Register** or such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days during which either or both Houses of Congress are in session. In the interim, the FCA expects that employees of the Corporation and its subsidiaries will adhere to high standards of honesty, integrity, impartiality, loyalty, and care consistent with applicable law and regulation in furtherance of the Corporation's public purpose. The FCA further expects that the Corporation will be vigilant in monitoring and resolving potential conflicts of interest under its existing policy.

The Corporation also suggested adding a requirement to establish procedures for resolving material conflicts of interest and for maintaining adequate records of non-material conflicts of interest and resolutions of material conflicts of interest. The FCA believes that these requirements are fairly implied from the requirement to disclose unresolved conflicts of interest and the requirement to retain, for a period of 6 years, reports and statements on potential conflicts of interests and documentation of materiality determinations and resolutions of conflict of interests. However, an express requirement to develop procedures for resolving material conflicts of interest has been added as paragraph (e) of § 650.2 of the final regulation and succeeding paragraphs have been renumbered.

The FCC expressed general agreement with the rationale underlying the FCA's decision to treat the Corporation differently from System banks and associations, but expressed reservations about the extent of delegation granted to the Corporation to define its own conflict-of-interest policy, especially with regard to standards that may be established for members of the Board. In particular, the FCC asserted that the emphasis in the preamble on the fiduciary duties of directors to all of the shareholders ignores the representative character of the board of directors.[1] Although the FCC agrees that traditional concepts of fiduciary responsibility apply, it asserts that System and non-System directors are under no obligation to disregard the interests of the shareholders who elected them, and that to prohibit participation by System directors or non-System directors in board deliberations and voting on matters potentially affecting the interests of System institutions or non-System institutions would be contrary to congressional intention.

In addition, the FCC asserted that it would be inappropriate for the Corporation to adopt a policy that prohibits directors from discussing matters deemed confidential by Corporation management with anyone other than Board members and employees of the Corporation, as it would impede directors in the exercise of their independent business judgment if they were unable to disclose information to their own advisors. The FCC noted that "legitimately confidential" information would, of course, be disclosed to advisors on a confidential basis. In addition, the FCC asserted that System directors must be free to discuss information with a reasonable number of other individuals who represent System institutions, subject to strict guarantees of confidentiality.

The principles of statutory construction require that all of a statute's provisions be interpreted

[1] The Corporation's Board is composed of 15 directors—5 elected by class A shareholders (non-System financial institutions such as commercial banks and insurance companies), 5 elected by class B shareholders (System institutions), and 5 appointed by the President.

together. As the FCC has noted, the representative character of the Corporation's Board must be reconciled with its corporate structure and associated principles of corporate governance. In the FCA's opinion, such a reconciliation can be achieved by: (1) Interpreting "representative" to be a qualification for office; and (2) recognizing that directors owe fiduciary duties to the Corporation and all its shareholders (rather than to the electing class of shareholders exclusively or primarily). The FCA's interpretation of "representative" does not require elected directors to disregard the perspectives of the electing class. Rather, directors should share these perspectives with the Board at large so that each director can act in the best interests of the Corporation and all of its shareholders.

The FCA believes that the statutory term "representative" means that elected directors must have an official affiliation with a class A or class B institution in order to serve as a Corporation director. The FCA views an official affiliation as a substantial and visible connection such as serving as director, officer, or employee of a class A or class B institution. This interpretation of "representative" stems in part from the vacancy and continuation of membership provisions of sections 8.2(a)(4) and 8.2(b)(5)of the 1971 Act. Vacancy of an elected Board seat is filled by the permanent Board "from among persons eligible for election to the position for which the vacancy exists," suggesting that some objective eligibility criterion exists other than being elected by the shareholder class. The continuation provision has the effect of terminating the term of a director when he or she ceases to be "a representative." By contrast, were "representative" interpreted broadly to mean anyone who is selected by the institutions to act as a delegate, everybody would be eligible for election when a vacancy occurred and the automatic termination provisions would not work. Taken together, these provisions suggest that elected directors must have an official affiliation that is visible and substantial so that the presence and termination of this affiliation can be readily ascertained.

Although the Board is representative in nature, Congress chose a corporate structure to govern the operations of the Corporation. Common law corporate principles affirm the fiduciary duty of directors to act in the best interests of the Corporation and all of its shareholders. The FCA believes that the representative character of the Board does nothing to alter this fiduciary duty of directors.[2] That is, irrespective of the manner of appointment or election, each director has a duty to act in the best interests of the Corporation and all of its shareholders. The legislative history supports this interpretation by indicating, "There is to be no distinction between the three categories of directors in terms of their duties and responsibilities as directors to the Mortgage Corporation and all stockholders."[3]

When "representative" is interpreted as a qualification that directors must satisfy to be elected, directors can discharge their fiduciary duties in the context of a representative Board. Although directors may attain Board seats through different processes, each needs the same opportunity to understand the perspectives of different shareholders and secondary market participants on an issue to properly discharge his or her fiduciary duties to the Corporation. With an official affiliation, elected directors are authoritatively able to bring the perspectives of the class to the Board's deliberations. When the elected directors convey such perspectives to the Board at large, each director gets the information needed to discharge his or her fiduciary duties to the Corporation and all of its shareholders.

The FCA believes that "representative" should not be interpreted to mean a delegate elected solely to further the viewpoints of the electing class without regard to the impact on the Corporation and all its shareholders. Such an interpretation implies that directors need not consider the interests of any class of Corporation shareholders lacking authority to elect them—a result inconsistent with corporate common law principles of a director's fiduciary duties and congressional intent.

Specifically, the FCA responds to the FCC's comment by noting that the use of information gained in private consultations with class members about Corporation matters to inform only a director's personal judgments but not the Board deliberations would systematically prevent class A directors from learning the views of class B institutions and class B directors from learning the views of class A institutions. The "public directors" would have neither perspective. This withholding of information would likely lead to factional voting patterns because no director would be able to understand and weigh the many and different views of all shareholders. Because each director is obliged to act in the best interests of the Corporation and all of its shareholders, the FCA believes that withholding from Board deliberations useful perspectives and pertinent information gained from private consultations could undermine the ability of directors to carry out their fiduciary duties.

In light of its interpretation of the "representative" nature of the Corporation's Board, the FCA makes the following determinations about three amendments requested by the FCC related to the representative character of the Board.

First, the FCC requested that the definition of "potential conflict of interest" be modified to recognize that it is not a conflict of interest for Corporation directors to consider or act on matters that affect the financial interests of the class of shareholders that elected them if the matter is one of general applicability that affects all the shareholders in that class and does not have its effect exclusively or disproportionately on the particular shareholder with which that director is affiliated.

The FCA agrees that "potential conflict of interest" should not be so broadly defined as to make it impermissible for any of the 10 elected directors to participate in matters affecting the financial interests of the class or the institution with which he or she is affiliated. To regard participation by an elected director in such matters as impermissible would render the Board nonfunctional since such decisions are unavoidable and large blocs of directors would be disenfranchised on certain general questions being deliberated by the Board. However, the FCA believes that no change is needed to respond to the FCC's concerns because the regulation does not disqualify directors from participating in deliberations affecting the electing class of institutions.

The FCA believes that matters affecting class institutions as secondary market participants would not likely constitute potential conflicts of interests. Therefore, the regulatory definition of "potential conflict of interest" does not impute the interests of the class to the directors elected from

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[2] Some public companies have boards with representative features analogous though not identical to the Corporation's. For example, public companies may have seats designated to be elected by minority shareholders or seats designated to be filled by a union representative. However, the fiduciary responsibilities of directors are unchanged by the representational aspects of these boards, according to an official from the Securities and Exchange Commission with whom the FCA consulted. Each director owes fiduciary duties to the Corporation and its shareholders collectively.

[3] Senate Report 100–230, p. 52 (November 20, 1987).

that class. However, FCA notes that any Board action having differential effects on the class as shareholders may constitute a breach of fiduciary duties by directors. A director must act in the best interest of the Corporation and all of its shareholders.

Second, the FCC requested that the regulation be modified to provide that Corporation directors may discuss with representatives of the shareholder class that elected them the implications of a proposed action that has general applicability and that such activity not be considered a conflict of interest.

The regulation neither permits nor prohibits consultations by Corporation directors with outside parties. The appropriateness of such consultations depends on the facts and circumstances at hand. FCA declines to create a safe harbor for director consultations in order to avoid sanctioning consultations that might be inconsistent with a director's fiduciary duties.

While the FCA agrees with the FCC that directors have a duty to exercise informed independent judgment on Corporation matters, and may from time to time need to consult knowledgeable advisors, the FCA also recognizes the right of the Corporation's Board to maintain the confidentiality of the Corporation's business matters. Consequently, the consultation of advisors in order to make an independent judgment must be undertaken with due regard for the Corporation's interest in maintaining confidentiality. Any advisors consulted by a director on a confidential matter would be bound by the Board's confidentiality constraints and could, by virtue of the consultation, become insiders of the Corporation subject to the prohibitions of the Securities Exchange Act of 1934 and rules thereunder. The director should make every effort to ensure that the confidentiality of consultations can and will be maintained. Fiduciary duty to the Corporation requires the director to share with the Board any material information in his or her possession that is germane to Board decisions, regardless of its source.

Third, the FCC requested that the regulation be modified to recognize that the Corporation's directors are free to vigorously advance the interest of the institutions they represent, provided they make clear that they are not acting in their capacity as Corporation directors.

The FCA declines to modify its regulation as requested because it believes that such a modification might sanction actions inconsistent with a director's fiduciary duties. As the FCC's comment letter noted, inherent within the organizational framework of the Corporation's Board is the potential for perceived conflicts of interest. Elected directors typically have simultaneous responsibilities to the Corporation and to a competing class A or B institution.

The FCA agrees with the FCC's comment that such directors are not agents of the Corporation in all their doings and may also owe fiduciary duties to other institutions. However, the FCA believes a Corporation director who advances the interests of another institution must be mindful of his or her fiduciary duties to the Corporation and its shareholders, including System and non-System shareholders. Where directors have fiduciary duties to competing institutions, they must balance these duties to avoid harming either institution. To advance the interests of one corporation to which a director owes duties in a manner that injures another corporation to which he also owes fiduciary duties could heighten shareholder concern about the good faith and fair dealing of the director. The difficulty of balancing fiduciary duties to competing institutions has previously led the FCA to prohibit directors of Farm Credit banks and associations from serving as directors of competing institutions. While the FCA cannot prohibit such dual responsibilities, it is reluctant to sanction by regulation those actions by directors to advance the interests of one institution that are potentially at the expense of the Corporation's interests.

As in the previous matter, the FCA believes that the appropriateness of a director's action must be evaluated in light of the specific circumstances. In some cases, action might be considered improper; in others it might not. As a result, the FCA declines to exclude from the definition of "potential conflict of interest" those actions by the Corporation's directors to "advance vigorously the interests" of a competing institution. The effect of declining to make such a change will be to continue to subject such actions to scrutiny as potential conflicts of interest.

In addition to its general comments, the FCC made a number of specific suggestions regarding particular sections of the regulation.

The FCC suggested that the definition of "potential conflict of interest" be changed to parallel the definition of "conflict of interest" in the regulations proposed for System banks and associations. Specifically, the FCC recommended changing "might adversely affect or appear to adversely affect" to "actually affects or appears to affect."

The change proposod by the FCC would narrow the reportable conflicts to those that an individual believes would affect or would appear to affect the individual's impartiality. The FCA believes that it would be inappropriate to adopt the FCC's suggestion in light of the fact that the approach taken for Farm Credit banks and associations differs from the regulatory approach for the Corporation. Specifically, the FCA has prohibited certain activities for employees and directors of Farm Credit banks and associations. Because most conflicts are banned in the regulation, a narrower definition of reportable conflicts of interest seems appropriate. By contrast, Corporation directors, officers, and employees are not subject to similar regulatory prohibitions. In the absence of specific prohibitions, the FCA believes it important to have reporting requirements that establish the broadest possible net so that the actual existence of a conflict is determined by the Corporation rather than the reporting individual. The regulation allows the Corporation to review all potential conflicts of interest for materiality before determining that an actual conflict must be resolved or disclosed. Because the FCA believes the different regulatory approaches warrant different reporting requirements, the FCA declines to make the change requested by the FCC.

The FCC asserted that the regulation should be extended to agents in a manner similar to that currently in effect for agents of System banks and associations, especially since many of the various aspects of the Corporation's business are accomplished through agents, and recommended a definition similar to that used for banks and associations.

Although responding to the direction of the 1992 Act does not require that the regulation address conflicts of interest of agents, the FCA considered this suggestion in light of how the Corporation's business activities are structured. Since the statute permits the activities of the Corporation to be carried out through affiliates chartered under state law, the FCA concluded that the intention of section 514 could be subverted were the requirements of the regulation not applied to such affiliates. Accordingly, the final regulation clarifies that the Corporation policy required by the regulation must also apply to officers, directors, and employees of any affiliates the Corporation establishes to carry out its function. The clarification is accomplished by expanding the definition of "Corporation" to include

affiliates established under section 8.3(b)(13) of the 1971 Act.

Similarly, with respect to agents that are not affiliates, the final regulation would require the Corporation's policy to address potential conflicts of interest by agents. The FCA recognizes that the Corporation has less control over agents that are not affiliates. The FCA believes the regulation is sufficiently flexible to permit the Corporation to make reasonable distinctions. Definitions of "agent" and "affiliate" have been added in the final regulation.

The FCC suggested that the same basic due process and other protections set forth in the recently proposed System bank and association regulation be incorporated in the final regulation for the Corporation. The FCC deems this especially important in view of the fact that the penalties of part C of title V of the 1971 Act are available to enforce the policy. Specifically, the FCC suggested adding the following:

(1) A requirement that all directors and employees be informed of the regulatory and policy requirements;

(2) A requirement that the policy establish various criteria for business relationships and transactions to provide guidance to directors and employees;

(3) A requirement that there be a reasonable time during which directors and employees may terminate prohibited transactions;

(4) A requirement for recusal procedures;

(5) A requirement for a standards-of-conduct officer and documentation of his or her actions; and

(6) A requirement for appeal procedures.

The FCA has considered each of these suggestions in light of the different approaches taken in the proposed regulations for the Corporation and for System banks and associations. Because of the different approach, the FCA believes that the specific requirements outlined in the proposed bank and association regulation are appropriate in some cases but not others. Specifically:

(1) The FCA agrees that all directors and employees should be informed of the conflict-of-interest requirements and has added § 650.2(g) to accomplish this.

(2) Because § 650.2(a) already requires the Corporation to define the types of activities, transactions, and relationships that could give rise to potential conflicts of interests, criteria for permissible business relationships and transactions will be established, at least by exclusion. Consequently, the FCA finds changing the regulation unnecessary.

(3) The FCA agrees with the FCC that directors, officers, and employees should have an opportunity to bring themselves into compliance when the policy changes and has added language to that effect in § 650.2(g).

(4) In response to a Corporation comment, the FCA added a requirement that the Corporation's policy establish procedures for resolving and disclosing material conflicts of interest. The FCA has not specifically included a requirement that recusal procedures be established because recusal is just one way in which a conflict of interest can be resolved.

(5) The FCA finds it unnecessary to require a standards-of-conduct officer, although the Corporation is free to appoint one, and believes that documentation requirements are already fairly implied from the recordkeeping requirement.

(6) The Corporation may opt to establish appeals procedures as part of its resolution methods. However, the FCA declines to add such a requirement by regulation because procedures for conflict resolution are to be specified by the Corporation. The FCA believes that the appropriateness of appeal procedures can only be evaluated in light of the policy and procedures, which are yet to be developed. Finally, since the Corporation's policy must be adopted by the Board, directors will have an opportunity to address the concerns expressed in the FCC's letter as they deem appropriate.

At the request of the FCC, the FCA changed "highest standards" to "high standards" in § 650.4(a)(1) to achieve consistency with the regulation governing Farm Credit banks and associations. The FCA finds it unnecessary to define "director" as the FCC requested. The FCA previously eliminated the definition in its proposed rules for Farm Credit banks and associations, making both regulations consistent.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, Banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, a new part 650 of chapter VI, title 12 of the Code of Federal Regulations is added to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Subpart A—Conflicts of Interest

Sec.

650.1 Definitions.
650.2 Conflict-of-interest policy.
650.3 Implementation of policy.
650.4 Director, officer, employee, and agent responsibilities.

Subpart B—[Reserved]

Authority: Secs. 5.9, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2279aa–11; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—Conflicts of Interest

§ 650.1 Definitions.

(a) *Agent* means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

(b) *Affiliate* means any entity established under authority granted to the Corporation under section 8.3(b)(13) of the Farm Credit Act of 1971, as amended.

(c) *Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

(d) *Employee* means any salaried individual working part-time, full-time, or temporarily for the Corporation.

(e) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

(f) *Material*, when applied to a potential conflict of interest, means the conflicting interest is of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

(g) *Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

(h) *Person* means individual or entity.

(i) *Potential conflict of interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to

this regulation as if they were that person's own interests:

(1) Interests of that person's spouse;

(2) Interests of that person's minor child;

(3) Interests of that person's general partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning prospective employment.

(j) *Resolved,* when applied to a potential conflict of interest that the Corporation has determined is material, means that circumstances have been altered so that a reasonable observer with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

§ 650.2 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 650.3 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 650.4 Director, officer, employee, and agent responsibilities.

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart B—[Reserved]

Dated: February 23, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–4536 Filed 2–28–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–11]

Alteration of Class C Airspace; Bangor International Airport, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment and disposition of comments.

SUMMARY: This action amends the final rule published in the **Federal Register** on February 9, 1993, that established an airport radar service area (ARSA) (now, Class C airspace area) at Bangor International Airport, Bangor, ME. The final rule differed from the notice of proposed rulemaking (NPRM) wherein the final rule included the Brewer Airport within the surface area of the Bangor Class C airspace. Subsequently, the final rule was published and comments were solicited concerning the change to the surface area. This action represents the FAA's analysis of the comments and the final determination and rationale for modifying the Bangor Class C airspace area.

EFFECTIVE DATE: 0901 u.t.c., March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA (now, Class C airspace) at Bangor International Airport, ME (56 FR 6584). The NPRM stated that the Brewer Airport would be excluded from the surface area. The original cutout for Brewer Airport excluded that airspace below 700 feet mean sea level (MSL) and extended from the Bangor Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility 111° radial clockwise to the Bangor 141° radial. The final rule on this action was published on February 9, 1993, with an effective date of April 1, 1993 (58 FR 7738). The rule cited concerns for aircraft operating under visual flight rules (VFR) in close

proximity, in and out of the Brewer Airport, with instrument flight rules (IFR) traffic on approach to the Bangor International Airport. This concern prompted the FAA to remove the cutout for Brewer Airport, thereby placing the airport within the surface area of the Bangor Class C airspace area. To ascertain how changing the Bangor Class C airspace area would impact the airspace users, the FAA solicited comments on this issue. Fourteen comments were received during the comment period which closed on April 5, 1993.

Discussion of Comments

Most of the comments recommended that the FAA reconsider the design of the surface area for the Bangor Class C airspace to provide a cutout for the Brewer Airport as originally proposed.

Comments were received from the Brewer Airport Association (BAA) encouraging the FAA to reconsider the cutout, citing the meritorious history of safe aviation activity in the Bangor area. The association wrote that the Brewer Airport and the Bangor International Airport have co-existed without incident or near-incident for 50 years. BAA states that this unblemished track record for safety does not support the FAA's assertion that IFR operations at Bangor International Airport would be adversely affected by operations at Brewer Airport.

The Aircraft Owners and Pilots Association (AOPA) recommended that the FAA sign letters of agreement with the aircraft owners based at Brewer Airport and examine alternatives that would allow the Brewer Airport to be removed from the surface area.

Several of the commenters wrote to emphasize that operations under IFR are not common practice and not anticipated in the future at Brewer Airport.

Many of the commenters stated that they believe a 600-foot ceiling would allow for a 500-foot separation or buffer below the instrument landing system (ILS) glidepath on Runway 33 for approaches to Bangor. In the commenters' opinion, the 500-foot separation or buffer should be adequate to support operations at Bangor.

One commenter stated that he opposes a cutout for the Brewer Airport and does not believe it is in the best interest of the flying public or the residents of Brewer.

Each of the comments were fully considered. In response to these recommendations the FAA has reevaluated the Bangor Class C airspace area and reached the conclusion that the airspace can be safely modified to allow for a cutout to exclude the Brewer Airport from the surface area. The new cutout for the Brewer Airport is not the same as published in the NPRM. That NPRM proposed to exclude the airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport, from the Bangor VORTAC 111° radial clockwise to the Bangor VORTAC 141° radial. The new cutout area for Brewer Airport is slightly smaller in size than the original proposal, but only excludes that airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport extending between the Bangor VORTAC 122° radial to the Bangor VORTAC 142° radial.

While the Bangor Class C airspace will be modified to exclude the Brewer Airport from the surface area, the remainder of the Class C airspace area will not change.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace area at the Bangor International Airport, Bangor, ME. Bangor International Airport is a public airport with an operating control tower serviced by a Level II Radar Approach Control Facility.

During the rulemaking process and review, changes were made to include the Brewer Airport in the surface area for the Bangor Class C airspace area. The FAA had concluded that excluding Brewer Airport as proposed in the NPRM could adversely effect IFR traffic at Bangor International Airport. The rule stated that the potential for an unsafe condition existed because of the runway orientation at Brewer Airport in association with operations at Bangor Airport. This condition was intensified because aircraft would have been allowed to operate in and out of Brewer Airport without communications with the Bangor Air Traffic Control Tower (ATCT). The potential impact from the change affecting the Brewer Airport was recognized during the final review process and comments were solicited in the final rule. In reaching a final determination on this issue, the FAA reevaluated the airspace in the Bangor Class C airspace area, all of the user comments and, in particular, the changes affecting the Brewer Airport. The conclusion reached is that the Bangor Class C surface area can be safely modified to accommodate a cutout for the Brewer Airport without impacting operations or safety at the Bangor International Airport yet still meeting the needs of the users at the Brewer Airport. In addition, this modified cutout was aligned along prominent geographical landmarks to help pilots operate and navigate safely and easily within the boundaries of the cutout. These changes will allow aircraft to operate into, at, and out of the Brewer Airport, under VFR, below 700 feet MSL. This modified cutout closely mirrors the previous operating airspace at the Brewer Airport without impacting the approaches into the Bangor International Airport. This airspace, and the associated operations, has existed accident and incident free as noted by the Brewer Airport Association. Aircraft on an instrument approach to the Bangor International Airport pass directly over the top of, and perpendicular to, the Brewer Airport, well above the 700 foot ceiling imposed by the cutout, while aircraft operating at the Brewer Airport would be approaching or departing the airport perpendicular to, and below, the approach path of the large aircraft going into Bangor. Aircraft flying in the pattern at Brewer would be restricted to remain under 700 feet MSL, and would be remaining south of the Brewer Airport, further away from the Bangor International Airport, which further increases the altitude separation between them and any arriving aircraft on a descent going into the Bangor International Airport. Removing Brewer Airport from the Class C surface area also allows aircraft to operate at the Brewer Airport without communicating with the Bangor ATCT, particularly those local based aircraft without radio capabilities.

Although this airspace design differs from the NPRM and the final rule, the FAA believes that the changes to the Bangor Class C airspace area can, and will, accommodate all of the airspace user's needs and not compromise safe operations at either Bangor International, the primary airport, or the Brewer Airport. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9A date June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class C airspace designation listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant rulemaking action" as defined by Executive Order 12866 (Regulatory Planning and Review) and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The anticipated costs and benefits associated

with this action are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation contained in the docket for this action.)

Costs

The potential costs of amending the final rule that established the Bangor Class C airspace area could be the revision of aeronautical charts. However, the FAA has determined that these airspace revisions will not impose any costs. The FAA's rationale for this determination are discussed below.

Revising Aeronautical Charts

Modifying the Bangor Class C airspace area will make it necessary to revise the Bangor sectional chart to incorporate the modified Class C airspace boundaries. The FAA currently revises this sectional every six months. Changes of the type required to depict Class C airspace areas are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of modifying the Bangor Class C airspace area. Pilots should not incur any additional costs obtaining current charts depicting Class C airspace because they should be using current charts.

Benefits

The benefits of providing a cutout in the Bangor Class C airspace surface area will be the added convenience and increased operational efficiency. The cutout for the Brewer Airport will generate added convenience for pilots by providing airspace in which they can land and depart from that airport without having to participate in Bangor Class C airspace procedures.

This amendment will increase the operational efficiency for air traffic controllers at Bangor International Airport. Controllers will not have to maintain radio contact with aircraft operating at Brewer Airport in order to provide separation from other aircraft operating in the Bangor Class C airspace area.

Conclusion

Amending the final rule that established the Bangor Class C airspace area will not result in any charting costs. The amendment will provide an added convenience to pilots and increased operational efficiency to air traffic controllers. Thus, the FAA has determined that amending the final rule that established the Bangor Class C airspace area would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA contends that amending the Bangor Class C airspace area final rule will not result in a significant economic impact on a substantial number of small entities. This determination is based on the fact that the amendment will not impose any costs and on the fact that the benefits of added convenience are qualitative in nature.

International Trade Impact Assessment

The amendment will only affect U.S. terminal airspace operating procedures at and in the vicinity of Bangor, ME. The amendment will not impose a competitive trade advantage or disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANE ME C Bangor, ME [Revised]
Bangor International Airport, ME
(lat. 44°48′27″ N., long. 68°49′41″ W.)
Bangor (BGR) VORTAC
(lat. 44°50′31″ N., long. 68°52′26″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport, excluding that airspace below 700 feet MSL from the intersection of the 122° radial of the BGR VORTAC and 5-mile radius of the airport, to lat. 44°47′08″ N., long. 68°44′57″ W.; to lat. 44°46′43″ N., long. 68°46′07″ W.; to lat. 44°46′19″ N, long. 68°46′19″ W; to the intersection of the 142° radial of the BGR VORTAC and the 5-mile radius of the airport, thence counterclockwise on the 5-mile radius of the airport to the point of origin; that airspace extending upward from 2,000 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 111° radial of the BGR VORTAC clockwise to the 232° radial of the BGR VORTAC; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 232° radial of the BGR VORTAC clockwise to the 111° radial of the BGR VORTAC.

* * * * *

Issued in Washington, DC, on February 18, 1994.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

Note: This appendix will not appear in the Code of Federal Regulations.

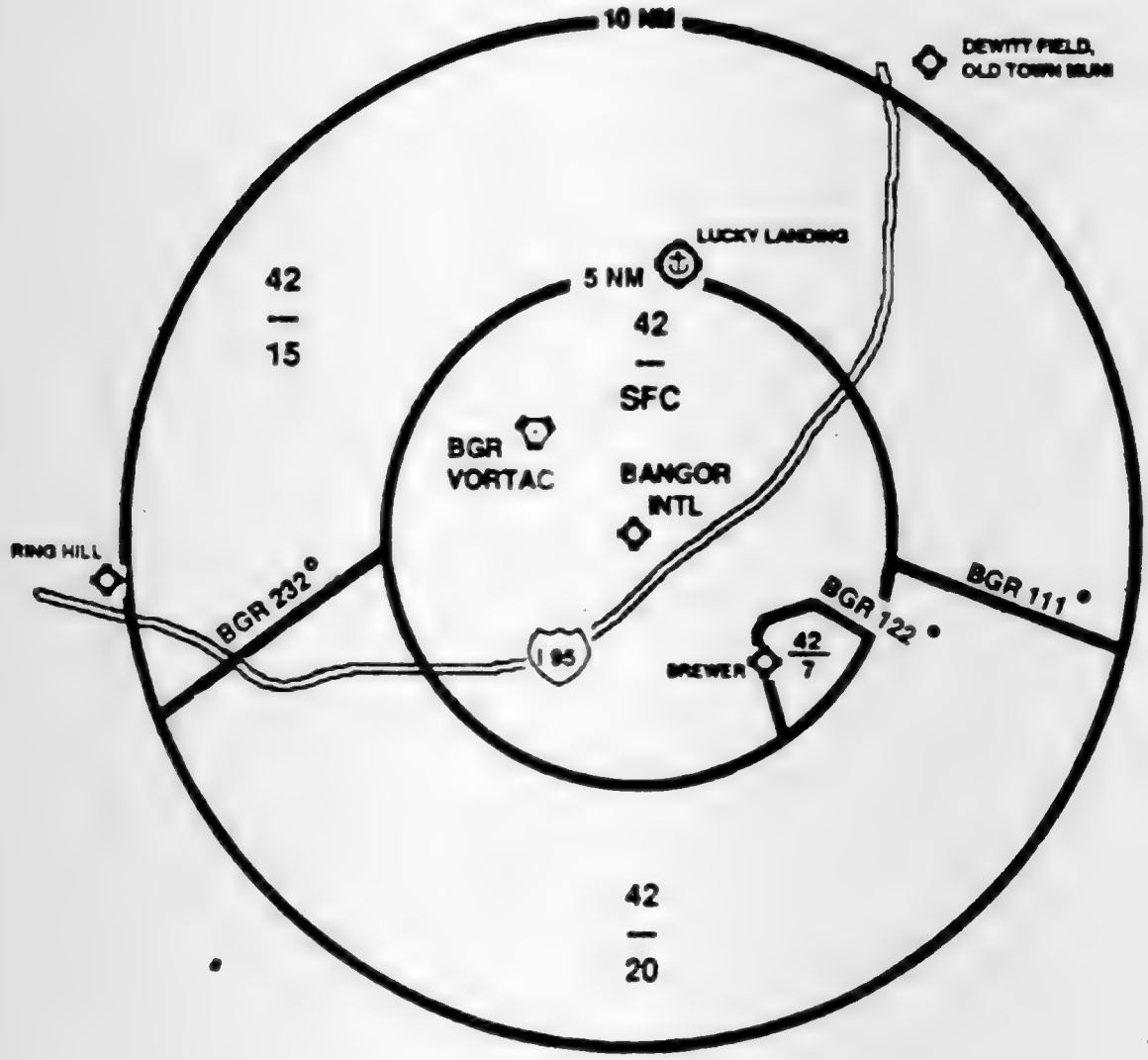
Appendix to Preamble—Bangor, Maine, Class C Airspace

BILLING CODE 4910–13–M

BANGOR, MAINE
CLASS C AIRSPACE

BANGOR INTERNATIONAL AIRPORT
FIELD ELEVATION - 192 FEET

(Not to be used for navigation)



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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Futures Trading Practices Act of 1992, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment a notice of proposed rulemaking setting forth new regulations (the "Class Action Proposal"),[1] to implement class action suits against registered persons. The Commission also invited the public to respond to specific questions. Upon consideration of the comments received and the Commission's own review of the proposed rule, it has determined not to adopt the Class Action Proposal.

In order to update and streamline Commission procedures in light of its experience, the Commission published for comment a notice of proposed rulemaking to amend and correct its rules relating to reparation proceedings (the "Reparation Rules Proposal").[2] This notice sets forth the regulations in final form.

Additionally, the Commission has received inquiries about punitive damages which suggest that the current regulations need to be clarified. Consequently, the Commission clarified the regulations to reflect Section 222 of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: The effective date of the regulations is May 2, 1994 and the revised regulations apply only to cases filed on and after that date. The Commission will consider comments from the public about the revisions of the regulations concerning punitive damages until the effective date.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

[1] 58 FR 17369 (April 2, 1993).

[2] 58 FR 44623 (August 24, 1993).

SUPPLEMENTARY INFORMATION:

I. Background

In reviewing the reparations proposals, the Commission carefully considered all of the comments and the pertinent regulatory and legislative history. In addition, the Commission evaluated the proposals in light of the National Performance Review ("NPR"), which among other things, requires government agencies to develop a clear sense of mission, inject competition into the conduct of government business, and to measure success by customer satisfaction. To further the goals of NPR, the Commission has engaged in an effort to streamline its bureaucracy, to cut costs, and serve the public in the best way possible. As a part of this effort, the Commission identified the reparations program as one area of review. With the promulgation of these rules, the Commission's purpose is to improve the rules so as to facilitate efficient and just deliberations of reparations complaints in accordance with the Commission's regulatory mission to protect the public and the markets from price manipulation and fraud.

A. The Class Action Proposal

1. Proposed Rules

Section 224 of the Futures Trading Practices Act of 1992 (102 Cong., 2d Sess., Pub. L. 102–546) authorizes an action in reparations to be brought by any one or more persons for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

The Futures Trading Practices Act does not mandate that the Commission adopt final rules providing for class actions unless the Commission decides such a rule should be permitted after considering "the potential impact of such actions on resources available to the reparations system * * * and the relative merits of bringing such actions in Federal court." Because the Commission was unsure of the desirability and need for class action suits in reparations it sought comments on the Class Action Proposal and raised several questions to which it requested responses.

2. Comments Received

The Commission received six written comments in response to the Class Action Proposal. The commenters included futures industry associations, bar associations, a law firm, and a futures commission merchant. None of the participants favor the implementation of class action suits in reparations, although their reasons differ.

Overall, the commenters agree that given the ability to pursue class actions in federal court, there would be no benefit to the public by the adoption of procedures to implement class actions before the Commission. While the parties agree that the Commission has more expertise in administering the Commodity Exchange Act than do federal courts, this advantage is considered insignificant compared to the resources and procedural advantages available in the federal courts.

Some parties point out that the highly individualized, fact-intensive cases in reparations are the type of case which courts have often refused to certify for class actions. One commenter notes that because class action suits settle only liability issues and individual hearings would still be required for each class member, judicial economy would not be furthered. Other participants contend that the procedural and administrative requirements of class action suits would increase both the costs to the Commission and the time necessary for resolution of such cases. The parties consider class actions out of place in the reparation forum because it was designed for quick and inexpensive resolution of disputes whereas class action litigation must be conducted with formality and strict attention to procedural issues and is often lengthy.

3. Disposition

The Commission has carefully considered all the comments received in response to the Class Action Proposal and the issues involved. The Commission finds that it should not implement class action suits in reparations at this time because its resources would be used more effectively elsewhere and because the Commission cannot offer a useful alternative to the federal courts. Further, this result is consistent with the NPR because it appears that class actions would not improve service to futures customers and would result in unnecessary spending by the Commission and litigants. Accordingly, the Commission has decided not to adopt the proposed rules implementing class action suits against registered persons.

B. The Reparation Rules Proposal

1. Introduction

In light of the passage of the Futures Trading Practices Act of 1992 and its experience with the reparation rules since they were last amended in 1984, the Commission reexamined the

regulations governing reparation proceedings and found a need for certain corrections. Some references are outdated and need to be deleted or updated. Commission practice has disclosed that certain time limits can be compressed and procedures streamlined. Additionally, the Commission considered raising jurisdictional and fee levels and whether the voluntary decisional procedure should be retained. The Commission's notice of proposed rulemaking set forth the needed corrections and revisions and requested public comment.

2. Comments Received

The Commission received 14 written comments in response to the Reparation Rules Proposal. Commenters included futures industry associations, an investor protection organization, two Commission Administrative Law Judges, a Commission Judgment Officer, a professor of law, attorneys representing both claimants and registrants in reparation cases, and registrants which have participated in reparation actions as respondents. The Commission has reviewed each of these comments and, based upon that review, is adopting the rules as proposed with certain modifications.

The Commission is also modifying its rules to clarify any questions arising from implementation of section 222 of the Futures Trading Practices Act of 1992. That section amended Section 14 of the Commodity Exchange Act to provide for punitive damages in a limited class of reparation cases.

II. Reparation Rules

A. Corrections to Regulations

The current regulations became applicable to matters filed on or after April 23, 1984. Since there are no matters pending before the Commission which date back to April 23, 1984, the date reference is unnecessary and is being deleted.

The definitional section was not in alphabetical order. The Commission believes that re-ordering the definitions alphabetically will make it easier for the user and facilitate adding or deleting definitions in the future. Consequently, the definitional section is re-ordered alphabetically.

The Office of Government Ethics established uniform standards of ethical conduct for officers and employees of the Federal Government (57 FR 35006, Aug. 7, 1992). These were published as new government-wide regulations superseding certain individual agency regulations. Consequently, the reference in § 12.7 to 17 CFR 140.735–3(b)(3) is updated to 5 CFR 2635.101(b).

Additionally, the current regulations refer to the "Chief of the Opinions Section." There is no longer an "Opinions Section." Consequently, references to the "Chief of the Opinions Section" are changed to the "Deputy General Counsel for Opinions" and references to "Opinions Section" have been changed to "Office of the General Counsel."

There were no comments regarding the proposed corrections. Accordingly, the Commission is making the corrections as indicated in its prior notice. Typographical errors also have been corrected.

B. Revision of Rules

1. Response to Complaint

Rule 12.16 affords a respondent 45 days to respond to a reparation complaint and permits the Director of the Office of Proceedings to extend the filing deadline for an additional 15 days. In providing such a lengthy period, the Commission had expected parties to pursue early settlement discussions. Unfortunately, this has not been the case.[3]

In contrast to the 45 day period in the Commission rule, Rule 12(a) of the Federal Rules of Civil Procedure requires that an answer to a complaint be filed within 20 days after service of the summons and complaint. The Commission reviewed the relative generosity of the length of time for filing a response in its rules, and found that adjudicating reparation claims could be expedited. Thus, to further the express purpose of the reparation procedures "to provide a just, speedy and inexpensive determination of the issues" (§ 12.1(a)), the Commission proposed to reduce the time for filing the response to the complaint set forth in § 12.16 to 25 days, and the additional time that the Director of the Office of Proceedings could extend that deadline to ten days. The Commission believed that this would reduce the amount of total time in which to file a response from a maximum of 60 days to about half that time without infringing on the ability of the parties to present their cases. Moreover, this reduction also would shorten the total time for adjudicating claims. The Commission proposed to revise § 12.16 to compress the filing deadlines accordingly.

a. *Comments received.* Only two parties commented on this issue. They disagree as to whether reducing the time for response to a complaint afforded by Rule 12.16 would infringe upon a respondent's ability to defend an action.

b. *Disposition.* The Commission has considered the comments and has determined that since defendants in federal court are required to respond in 20 days, affording respondents in reparations 25 days to respond is not onerous, especially since an extension of ten days is available. Consequently, for the reasons set forth in the Reparation Rules Proposal, and because it should improve service by compressing overall time for adjudicating complaints, the Commission has decided to adopt the time frame proposed.

2. Discovery

Section 12.30(d) provides that all discovery notices and requests be served within 40 days after the Proceedings Clerk notifies the parties of the commencement of a proceeding. Because the Commission believes that the disposition of proceedings can be expedited by compressing the discovery period, it proposed to amend § 12.30(d) to reduce the time for serving discovery notices and requests to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding.

a. *Comments received.* Only three persons expressed an opinion. One contends that the present rules do not cause significant delays and another points out that extra time is needed when respondents and their attorneys reside in different states and rely on the postal system. The parties point out that defendants, who do not know beforehand that a complaint will be filed, will be disadvantaged if there is too little time to prepare discovery requests. The third commenter argues that the reduction in time is too drastic and would invite an increase in motions for extensions of time and untimely discovery requests. It suggests reducing the time for serving discovery notices and requests to 30 days.

b. *Disposition.* The Commission has reconsidered its proposal to reduce the time for serving discovery requests from 40 days to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding and has decided to amend Rule 12.30(d) to reduce that period to 30 days. The Commission believes that this compromise responds to the needs of the public as expressed in the comments and will reduce the total time to adjudicate a significant number of cases without inviting an increase in the number of motions for extensions of time.

[3] See 41 FR 3994, 3995 (January 27, 1976).

3. The Voluntary Decisional Procedure

At the time it was instituted, the voluntary procedure was seen as meeting the desires of customers for an arbitration style forum. In the Reparation Rules Proposal, the Commission discussed the voluntary procedure at length. It pointed out the advantages of the voluntary procedure and compared it to the arbitration programs of NFA, the exchanges, and other private forums. At the same time, the Commission questioned the continuing need for the voluntary procedure and sought public comment as to its usefulness.

The public was encouraged to focus attention on the general nature of the reparation program as one of the significant antifraud tools and customer protections created by Congress in the Commodity Exchange Act. The Commission also invited comment on whether the elimination of voluntary proceedings as an option in reparations would shift cases away from the public record to private decisionmakers, and if so, what the impact would be on the benefits and costs of these proceedings.

a. *Comments received.* Virtually all of the parties addressed this issue: about half favor retention of the voluntary procedure and half are opposed. Several of the parties who favor elimination of the voluntary procedure also question the continuing need for the entire reparations program.

Those who favor retention of the program are primarily those who use it. A respondent with experience in several voluntary proceedings asserts that proceedings before Judgment Officers compare favorably to private arbitrations. The parties who favor retention of the program contend that the voluntary procedure is vital to preserving the confidence of small investors who harbor doubts about the fairness of industry-sponsored arbitration. Others note that reparation proceedings in general as well as voluntary proceedings are an effective tool for monitoring registrants' behavior and keeping complaints about the industry in the public eye.

Several parties contend that industry sponsored arbitration is fair and at least as efficient as the voluntary procedure. These parties assert that the Commission resources invested in the voluntary procedure could be put to better use without harming customers. They point to statistics which, they argue, show that complainants have as good a chance, if not better, of prevailing before industry arbitration as before the Commission. These parties also suggest that the Commission evaluate the continuing need for the entire reparations program in light of the alternative fora available to customers.

b. *Disposition.* The Commission reviewed all the comments carefully and has decided to retain the voluntary procedure. In the Commission's view retention of the program is consistent with the goals of NPR. Members of the public who use the voluntary procedure appear pleased with it and are not in favor of being forced to rely on the private sector for redress of their complaints. Thus, the goal of customer satisfaction would be furthered by retention of the voluntary procedure.

In addition, the Commission's Mission Statement includes oversight of the commodity futures industry and protection of the public and the markets from price manipulation and fraud. The reparation program and the voluntary procedure specifically address fraud committed upon futures customers. Consequently, retention of the program is important to carry out this mandate. Moreover, industry proceedings are confidential whereas complaints brought before the Commission and its decisions are on the public record. Accordingly, the Commission is able to influence industry behavior and thereby further its mandate to oversee the industry. For all of these reasons, the Commission has determined to retain the voluntary procedure.

4. Filing Fees

Filing fees of $25 for the voluntary decisional procedure, $100 for the summary decisional procedure, and $200 for the formal decisional procedure were set in 1984 (49 FR 6602, February 22, 1984). In the Reparation Rules Proposal, the Commission proposed raising the filing fees for the voluntary decisional procedure to $50, for the summary decisional procedure to $125, and to $250 for the formal decisional procedure and to amend § 12.25 accordingly. Additionally, the Commission proposed to amend § 12.106 to authorize Judgment Officers to assess the cost of the filing fee as part of the damage award in voluntary proceedings.

a. *Comments received.* Only a few parties addressed this proposal. These parties contend that the fees should be raised even higher in order to discourage frivolous claims. One party urges the Commission to adopt fees more commensurate with the cost of administering the reparation program.

b. *Disposition.* The purpose of the reparation program is to provide a service to commodity futures customers and, at the same time, to exercise oversight of the industry. Thus, it is in the Commission's interest to assess fees which reimburse costs to some extent. However, the Commission recognizes that if fees are too high they may discourage customers from seeking redress with the Commission, thereby impeding its important oversight mission. The Commission believes that the proposed fee structure will address its twin goals of service and oversight. Accordingly, the Commission is adopting the fees as proposed.

5. Summary Decisional Procedure

The summary decisional procedure was created by the Commission based upon the belief that parties with smaller claims should be entitled to a less expensive, more expeditious procedure which offers a greater likelihood of an early damage award and recovery. The Reparation Rules Proposal sets forth a brief history of the ceiling for damage claims eligible for summary proceedings. In short, the ceiling was originally $2,500, was raised to $5,000, and is now $10,000.

Upon examination of the workload of the Office of Proceedings, the Commission proposed raising the ceiling from $10,000 to $30,000 in order to increase the efficiency of that office. In its notice, the Commission stated: "Allowing Judgment Officers to hear a greater number of cases will free the Administrative Law Judges to concentrate on enforcement proceedings and cases in which the damages claimed are greater than $30,000. Should the Judgment Officers become overburdened, ALJ's can be assigned cases below $30,000." 58 FR 44623, 44625.

Cases under the summary decisional procedure are usually decided based upon the written submissions of the parties. The current rules allow a Judgment Officer to order a hearing only upon motion of a party. The Commission proposed modifying the rules to authorize Judgment Officers to order oral hearings on their own motion. Hearings are conducted by telephone unless the parties agree to a hearing in Washington, DC.

Currently, the rules require that the parties be given 60 days notice prior to a hearing. The proposed rules require that the Judgment Officers schedule the hearing with consideration for the convenience of the parties and allow for 15 days notice for telephonic hearings and 30 days notice for in-person hearings. The proposed rules also make it clear that failure to appear at telephonic and in-person hearings or to provide correct telephone numbers is

subject to sanctions, including possible default or dismissal.

a. *Comments received.* Only the proposal to raise the ceiling from $10,000 to $30,000 inspired comments. Both Administrative Law Judges object. One party even suggests lowering the ceiling to $2,500.

Some parties express the opinion that raising the ceiling will have a significant detrimental impact on the ability of a respondent to adequately defend an action. They argue that parties to a proceeding are entitled to the greatest procedural protection which includes an in-person hearing.

On the other hand, one commenter contends that it is unlikely that there will be any significant negative impact on affected claimants and respondents because the continued availability of an oral hearing will safeguard against any infringement on a fair fact-finding process.

b. *Disposition.* Since there were no objections to the proposal to improve telephonic hearings under the summary decisional procedure by authorizing Judgment Officers to order a telephonic hearing on their own motion, compressing the notice period, and providing for sanctions, these modifications are adopted as proposed. As explained in the Reparation Rules Proposal, the modifications will give the Judgment Officers needed flexibility and accelerate the disposition of proceedings. Because the new rules provide for telephonic hearings upon the initiation of the Judgment Officer, the Commission believes that summary proceedings will provide due process more efficiently than in the past. The Commission anticipates some cost savings from this. Further, telephonic hearings save money for the litigants since no one has to travel to the hearing site. Thus, consistent with NPR, the Judgment Officers are given enhanced powers, customers are better served, and efficiency is promoted.

The parties which oppose raising the ceiling do not address the matter directly. Rather, they generally call into question the adequacy of the procedural protections available in a summary decisional proceeding. The Commission determined that telephonic hearings are consistent with the requirements of fundamental fairness when it instituted this procedure in 1984. See 49 FR 6602, 6614 (February 22, 1984). As the Commission explained in adopting this regulation (*id.*):

> * * * The Commission is confident that a Judgment Officer will be able to assess the demeanor of witnesses from listening to their voices. Because the Judgment Officer can be expected to hold doubts about the credibility of any telephone witness whose testimony does not sound genuine, because he has the authority to conduct his own examination of such witnesses to confirm or dispel those doubts, and because telephone assertions can be measured against the documentary evidence of record, the Commission does not believe that the potential for the coaching of witnesses will have any effect on the Judgment Officer's ability to discern the truth.

The Commission recognizes that fundamental fairness requires a process that safeguards the reliability of the fact-finding process. Telephonic hearings include representation by counsel and cross-examination. Frequently the presiding officers clarify the factual record through their examination of witnesses. The Commission's experience has shown that telephonic hearings provide for fair and reliable fact-finding and an adequate and appropriate basis for a credibility determination. *Compare, Sterling* v. *District of Columbia Department of Social Services*, 513 A. 2d 253, 255 (D.C. 1986) ("[W]e believe that telephone hearings are a reasonable means of conserving fiscal and administrative resources."). See also, *Casey* v. *O'Bannon*, 536 F. Supp. 350, 353 (E.D. Pa. 1982) (refusing to enjoin a telephonic hearing program on due process grounds and holding that "hearing officers can effectively judge credibility over the phone by noting voice responses, pauses, levels of irritation and other factors").

As the Commission said in 1984 (49 FR 6602, 6614 *supra*):

> * * * [T]he Commission believes that its Judgment Officers will possess the ability to comprehend the often complex factual contexts of commodity-related disputes, to recognize critical issues of fact and law in the proceeding, to evaluate oral testimony and to conduct oral examination, and to render a well-considered initial decision in the proceeding. Accordingly, the Commission believes that there is no basis for precluding Judgment Officers from exercising any functions performed by Administrative Law Judges.

Since the Judgment Officers have demonstrated their competence to decide cases from the time the summary procedure was instituted, neither the Commission nor the parties should be deprived of the savings in both cost and time which will inure to their benefit by raising the ceiling from $10,000 to $30,000.

Accordingly, in order to increase the efficiency of the Office of Proceedings, the Commission is raising the ceiling from $10,000 to $30,000.

C. Clarification

Section 222 of the Futures Trading Practices Act of 1992 amended Section 14 of the Commodity Exchange Act to provide for punitive damages in reparation cases. Section 14 of the Commodity Exchange Act, as amended, provides that any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

On its face, this statutory provision appears to be self-executing. However, some questions have arisen regarding its implementation. Consequently, the Commission has determined that it should clarify its regulations in order to notify the public as to how it intends to administer this provision.[4]

The first question is whether punitive damages will affect the type of proceeding accorded under the regulations. For example, in a case with claimed actual damages of $20,000 and claimed punitive damages of $40,000,

[4] In this connection, the Commission wishes to make clear that it does not view this provision as requiring actual execution of an order before punitive damages may be awarded.

which level of proceeding would be instituted? The Commission has determined that the governing factor in all cases should be total damages claimed; therefore, in the example above, the case would be assigned to the formal decisional procedure. Sections 12.2, 12.13, 12.18, 12.25, 12.204, 12.210, and 12.314 have been revised accordingly.

Second, in order to put a claimant on notice as to the prerequisites for such an award, and assure that respondents have requisite notice to defend claims for punitive damages, the Commission has revised sections 12.2 and 12.13. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate. Claimants will thus be on notice as to the requirements; respondents will have requisite notice to defend claims for punitive damages.

The Administrative Procedure Act, 5 U.S.C. 553(b) requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations or changes to existing regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The Commission has determined that these revisions to its reparation rules to clarify its interpretation of the punitive damage provision of the Act constitute rules of agency practice or procedure and, accordingly, that notice and comment procedures are not required.

III. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously determined that part 12 reparation rules are not subject to the provisions of RFA because they relate solely to agency organization, procedure, and practice.[5] Nevertheless, because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because the corrections and amendments will expedite and improve the reparation procedures, the Commission does not expect the rule to have a significant economic impact on a substantial number of small business entities.

[5] 49 FR 6602, 6621 (February 22, 1984).

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Commission received no comments concerning its determination in this regard.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations

PART 12—RULES RELATING TO REPARATIONS

Part 12 of chapter I of title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12(a)(5), and 18.

§ 12.1 [Corrected]

2. In the first sentence of § 12.1(c) the comma after "complaints" is removed; the comma after "thereto" is removed and a period is added in its place. The rest of the paragraph is removed.

3. Section 12.2 is revised to read as follows:

§ 12.2 Definitions.

For purposes of this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*;

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Commission means the Commodity Futures Trading Commission;

Commission decisional employee means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process in any proceeding, including, but not limited to: A Judgment Officer; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Judgment Officers; members of the Office of the General Counsel; members of the staff of the Office of Proceedings; and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

Complainant means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term "complainant" under these rules applies equally to two or more persons who have applied jointly for a reparation award;

Complaint means any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such;

Counterclaim means an application for a reparation award by a respondent against a complainant which satisfies the requirements of § 12.19. A counterclaim does not mean a cross claim or other type of third party claim;

Director of the Office of Proceedings means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that these part 12 Reparation Rules are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerks. The Director shall have the authority to delegate his duties to administer §§ 12.15, 12.24, 12.26 and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerks;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules; or

(3) Requests made to the Office of Proceedings or the Office of the General Counsel for interpretation of these rules.

Formal decisional procedure means, where the amount of total damages claimed exceeds $30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E;

Hearing means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

Interested person means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

Judgment Officer means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

Office of the General Counsel refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

Office of Proceedings means that Office within the Commission comprised of the Administrative Law Judges, Judgment Officers, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these part 12 Reparation Rules, other than the rules authorizing direct review by the Commission;

Order means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, or the Proceedings Clerk;

Party means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

Person means any individual, association, partnership, corporation or trust;

Pleading means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

Proceeding means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to § 12.26;

Proceedings Clerk means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

Punitive damages means damages awarded (no more than two times the amount of actual damages) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market. An order does not have to be actually executed to render a violation subject to punitive damages. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate;

Registrant means any person who—

(1) Was registered under the Act at the time of the alleged violation;

(2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or

(3) Is otherwise subject to reparation proceedings under the Act;

Reparation award means the amount of monetary damages a party may be ordered to pay;

Respondent means any person or persons against whom a complainant seeks a reparation award pursuant to section 14(a) of the Act;

Summary decisional procedure means, where the amount of total damages claimed does not exceed $30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by § 12.208. A summary decisional proceeding is governed by subpart D;

Voluntary decisional procedure means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of these rules.

§ 12.6 [Corrected]

4. In § 12.6(b) the word "the" is added between "expiration of" and "time".

§ 12.7 [Corrected]

5. In § 12.7(b) introductory text, the phrase "communication prohibited by paragraph (b)" is revised to read "communication prohibited by paragraph (a)".

6. In § 12.7(c)(3) the reference to "17 CFR 140.735–3(b)(3)." is revised to read "5 CFR 2635.101(b).".

§ 12.10 [Corrected]

7. In § 12.10(a)(1) add "a" between "course of" and "proceeding".

8. In § 12.10(a)(3) the phrase "Chief of the Opinions Section" is revised to read "Deputy General Counsel for Opinions".

§ 12.13 [Corrected and Amended]

9. In § 12.13(a) the phrase "(as defined in § 12.2(y))" is revised to read "(as defined in § 12.2)".

10. § 12.13(b)(1)(v) and (viii) are revised to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(1) * * *

(v) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed, the amount of punitive damages (no more than two times the amount of such actual damages) the complainant claims, if any, and how complainant plans to demonstrate that punitive damages are appropriate;

* * * * *

(viii) An election of a decisional procedure pursuant to subpart C, D, or E. (A procedure pursuant to subpart D may be elected only if the total amount of damages claimed, exclusive of interest and costs, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the total amount claimed as damages, exclusive of interest and costs, exceeds $30,000); and

* * * * *

11. In § 12.13(b)(2) the phrase "believes that" is revised to read "believes the".

12. § 12.16 is revised to read as follows:

§ 12.16 Response to complaint.

Within 25 days after the complaint has been served by the Office of Proceedings on the registrant, or within such additional time (not to exceed 10 days absent extraordinary circumstances) as the Director of the Office of Proceedings, or his/her delegee may grant, for good cause shown, each registrant shall either—

(a) Satisfy the complaint in accordance with § 12.17 of these rules; or

(b) Answer the complaint in the manner prescribed by § 12.18 of these rules.

13. § 12.18(a)(7) is revised to read as follows:

§ 12.18 Answer; election of procedure.

* * * * *

(a) * * *

(7) An election of an alternative decisional procedure pursuant to subparts C, D, or E of these rules. (A proceeding pursuant to subpart D may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages exceeds $30,000;

* * * * *

§ 12.25 [Amended]

14. In § 12.25(a)(1) "$25.00;" is revised to read "$50.00;".

15. In § 12.25(a)(2) "$10,000," is revised to read "$30,000," and "$100.00." is revised to read "$125.00.".

16. In § 12.25(a)(3) "$10,000," is revised to read "$30,000," and "$200.00." is revised to read "$250.00."

17. In § 12.25(b)(1) "$10,000" is revised to read "$30,000".

18. In § 12.25(b)(2) "$10,000" is revised to read "$30,000", and "$175.00." is revised to read "$200.00.".

19. In § 12.25(c) "$175.00" is revised to read "$200.00".

§ 12.26 [Amended]

20. In § 12.26(a) "within 60 days thereafter." is revised to read "within 50 days thereafter.".

21. In § 12.26(b) "$10,000," is revised to read "$30,000,", and "within 60 days thereafter." is revised to read "within 50 days thereafter.".

22. In § 12.26(c) "$10,000," is revised to read "$30,000", "within 60 days thereafter." is revised to read "within 50 days thereafter.", and the words "forward the pleadings and materials of record to a Proceedings Officer for discovery purposes, and" are removed.

§ 12.30 [Amended]

23. In § 12.30(d) the phrase "within forty (40) days (and all discovery shall be completed within sixty (60) days" is revised to read "within 30 days (and all discovery shall be completed within 50 days)" and the last sentence is removed.

§ 12.106 [Amended]

24. In § 12.106(c) the phrase "(other than costs assessed as a sanction for abuse of discovery)" is revised to read "(other than the filing fee and costs assessed as a sanction for abuse of discovery)".

25. Section 12.201(g) is revised to read as follows:

§ 12.201 Functions and responsibilities of the Judgment Officer.

* * * * *

(g) If an oral hearing is ordered, to preside at the hearing, which shall include the authority to receive relevant evidence, to administer oaths and affirmations, to examine witnesses, and to rule on offers of proof;

* * * * *

§ 12.204 [Amended]

26. In § 12.204(a) "$10,000" is revised to read "$30,000".

27. In § 12.204(b) "$10,000" is revised to read "$30,000".

28. Section 12.208(b) is revised to read as follows:

§ 12.208 Submissions of proof.

* * * * *

(b) *Oral testimony and examination.* The Judgment Officer may order an oral hearing for the presentation of testimony and examination of the parties and their witnesses when appropriate and necessary for the resolution of factual issues, upon motion by either a party or the Judgment Officer. An oral hearing held under this section will be convened by conference telephone call as provided in § 12.209(b), except that an in-person hearing may be held in Washington, D.C., under the circumstances set forth in § 12.209(c).

29. § 12.209 is revised to read as follows:

§ 12.209 Oral testimony.

(a) *Generally.* When the Judgment Officer determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, D.C., as set forth below. The Judgment Officer, in his or her discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in his or her discretion, the Judgment Officer may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When a Judgment Officer has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony, and the Judgment Officer also may impose any appropriate sanction listed in § 12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Judgment Officer (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, D.C. hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Judgment Officer may order an in-person hearing in Washington, D.C. upon written request by a party and the agreement of at least one opposing party. The Judgment Officer will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided herein, an in-person hearing will be held and recorded in the manner prescribed in § 12.312(c) through (f) of these rules. A party not agreeing to appear at the hearing in Washington, D.C., may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under § 12.35 as the Judgment Officer may find appropriate. The Judgment Officer may order any party who requests or agrees to appear at a hearing in Washington, D.C. and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, D.C., may be made in writing to the Judgment Officer without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at § 12.313 of these rules.

§ 12.210 [Corrected and Amended]

30. In § 12.210(a) the phrase "pay reparation award" is revised to read "pay a reparation award".

31. In § 12.210(b)(4) "respondent's violations, which" is revised to read "respondent's violations, the amount of punitive damages, if any, for which respondent is liable to complainant, which" and "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.314 [Amended]

32. In § 12.314(b)(4) "violations, and the amount," is revised to read "violations, the amount of punitive damages if warranted, and the amount,"

§ 12.315 [Amended]

33. In the heading of § 12.315 "$10,000." is revised to read "$30.000.".

34. In § 12.315 "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.404 [Corrected]

35. In § 12.404 the phrase "of proceeding on appeal of review before" is revised to read "of proceedings on appeal before".

§ 12.408 [Corrected]

36. The heading of § 12.408 is revised to read "Delegation of authority to the Deputy General Counsel for Opinions."

37. In the first sentence of § 12.408 revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

38. In § 12.408(b) revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

Issued by Order of the Commission.

Dated: February 23, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4574 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 89N–0440]

Antibiotic Drugs; New Tests and Specifications for Doxorubicin Hydrochloride and its Dosage Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the accepted standards for doxorubicin hydrochloride bulk and its dosage forms to reflect advances in analytic chemistry and improvements in the manufacturing technology of this antibiotic drug. These actions are being taken at the request of a manufacturer and will provide better quality control of this product.

DATES: Effective March 1, 1994; written comments, notice of participation, and request for a hearing by March 31, 1994; data, information, and analyses to justify a hearing by May 2, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 1990 (55 FR 18617), FDA proposed to amend the antibiotic drug regulations for doxorubicin hydrochloride bulk and its dosage forms to reflect the significant improvement in the extraction and chromatographic separation methods since the original promulgation of regulations for doxorubicin hydrochloride in 1976. This improvement in manufacturing technology and analytical testing methodology has resulted in the production of highly purified drug substances and finished dosage forms.

Specifically, FDA proposed to amend the regulations for doxorubicin hydrochloride bulk to: (1) Revise the doxorubicin hydrochloride content limits from 900 to 1,100 micrograms per milligram (μg/mg) on the anhydrous basis to 970 to 1,020 μg/mg on the anhydrous and solvent-free basis; (2) revise the high-pressure liquid chromatography (HPLC) test currently specified for determining the content of doxorubicin hydrochloride; (3) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.0 to 5.5; (4) add a total solvent residue test with an upper limit of not more than 2.5 percent; (5) add a chromatographic purity test with a total impurity specification of not more than 3.0 percent; (6) delete the microbiological agar diffusion assay for determining microbiological activity; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to amend the regulations for doxorubicin hydrochloride for injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.5 to 6.5; (3) add a provision to the product description permitting the product to contain methylparaben; (4) replace the pyrogen test with the U.S. Pharmacopeia (U.S.P.) Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (5) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; (6) delete the depressor substances test for the product and add the depressor substances specification for the doxorubicin hydrochloride used in making the product; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to the amend the regulation for doxorubicin hydrochloride injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) replace the pyrogen test with the U.S.P. Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (3) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; and (4) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

Interested persons were given until July 2, 1990, to submit written comments on this proposal and until June 4, 1990, to submit requests for an informal conference. One comment was received from the manufacturer requesting the proposed changes. This comment involved the description of the preparation of the resolution test solution and the system suitability requirements for the new HPLC method. The manufacturer requested that the preparation method in U.S.P. XXII, supp. I, be used and that the system suitability requirements be those in U.S.P. XXII, supp. I.

FDA believes that both the method in the proposal and the U.S.P. method of preparation for the resolution test solution give satisfactory production of doxorubicinone and, therefore, will present both methods in this final rule. FDA believes that the term "asymmetry factor" is the correct one because measurements are being made on both sides of the HPLC peak and not just the

tailing side. This final rule will, therefore, use the term "asymmetry factor" and will not be the same as the U.S.P., which uses the term "tailing factor." To be consistent with the U.S.P., however, this final rule will use limits of not less than 0.7 and not more than 1.2 instead of not less than 0.9 and not more than 1.2 that were proposed. FDA also believes that column efficiency should be stated as absolute column efficiency (h_r) and not as theoretical plates (n), because the number of theoretical plates varies with the length and particle size of the packing in the column. If the column is packed with 10-micrometer (μm) particles and is 25 centimeters (cm) long, then a column efficiency of not greater than 10.0 is equivalent to 2,500 theoretical plates which is close to the 2,250 plates stated in the U.S.P. The efficiency of the column, which will be stated in the final rule as absolute column efficiency (h_r), is satisfactory if it is not greater than 10.0, equivalent to 2,500 theoretical plates for a 25-cm column of 10–μm particles. To be consistent with the U.S.P., the proposed resolution of not less than 8.0 between the peaks of doxorubicin and doxorubicinone has been changed in the final rule to not less than 5.5.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule would impose an insubstantial amendment to existing requirements and would refine existing technical provisions without imposing more stringent requirements. Accordingly, the agency certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

IV. Submitting Comments and Filing Objections

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 31, 1994, a written notice of participation and request for a hearing, and (2) on or before May 2, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this document, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this document, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 450

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 450.24 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(v); by adding new paragraph (a)(1)(viii); by revising paragraph (a)(3)(i), the last sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(2); and by adding new paragraph (b)(8) to read as follows:

§ 450.24 Doxorubicin hydrochloride.

(a) * * *

(1) * * *

(i) Its doxorubicin hydrochloride content is not less than 970 micrograms and not more than 1,020 micrograms of doxorubicin hydrochloride per milligram on the anhydrous and solvent free basis.

(ii) Its total solvent residue (as acetone and alcohol) is not more than 2.5 percent.

* * * * *

(v) The pH of an aqueous solution containing 5 milligrams per milliliter is not less than 4.0 and not more than 5.5.

* * * * *

(viii) The total of any impurities detected by high-pressure liquid chromatography assay is not more than 3.0 percent.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for doxorubicin hydrochloride content, solvent residue, depressor substances, moisture, pH, crystallinity, identity, and total impurities.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of dilute sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, a 4.6-millimeter X 25-centimeter column packed with microparticulate (5 to 10 micrometers in diameter) packing material, such as trimethylsilane chemically bonded to porous silica, a flow rate of not more than 2.0 milliliters per minute, and a known injection volume of between 10 and 20 microliters. Mobile phase, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* Prepare a suitable mixture of water, acetonitrile, methanol, and phosphoric acid (540:290:170:2). Dissolve 1 gram of sodium lauryl sulfate in 1,000 milliliters of this solution, adjust with 2*N* sodium hydroxide to a pH of 3.6±0.1. Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution test solutions—*(A) *Working standard solution.* Dissolve an accurately weighed quantity of doxorubicin hydrochloride working

standard in mobile phase to obtain a solution having a known concentration of 0.1 milligram of doxorubicin hydrochloride per milliliter.

(B) *Sample solution.* Transfer approximately 20 milligrams of sample, accurately weighed, to a 200-milliliter volumetric flask, add mobile phase to volume, and mix. This yields a solution containing 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(C) *Resolution test solution.* Use either of the following preparation methods:

(*1*) To 2 milliliters of a 1.0 milligram per milliliter solution of doxorubicin hydrochloride, add 20 microliters of 1*N* hydrochloric acid. Hold for 30 minutes at 95 °C in an oil bath.

(*2*) Dissolve about 10 milligrams of doxorubicin hydrochloride in 5 milliliters of water, add 5 milliliters of phosphoric acid, and allow to stand for about 30 minutes. Adjust with 2*N* sodium hydroxide (about 37 milliliters) to a pH of 2.6±0.1, add 15 milliliters of acetonitrile and 10 milliliters of methanol, mix, and filter. (Note: Portions of this solution may be frozen until needed, then thawed and mixed before use.)

(*3*) The procedures in paragraphs (b)(1)(ii)(C)(*1*) and (b)(1)(ii)(C)(*2*) of this section generate doxorubicinone, the aglycone of doxorubicin. Use this solution to determine the resolution requirement for the chromatographic system.

(iii) *System suitability requirements*—(A) *Asymmetry factor.* The asymmetry factor (A_S) for the doxorubicin peak measured at a point 5 percent of the peak height is not less than 0.7 and not more than 1.2.

(B) *Efficiency of the column.* The absolute column efficiency (h_r) is satisfactory if it is not greater than 10.0, equivalent to 2,500 theoretical plates for a 25-centimeter column of 10-micrometer particles.

(C) *Resolution.* The resolution (R) between the peaks of doxorubicin and doxorubicinone (generated in situ) is satisfactory if it is not less than 5.5.

(D) *Capacity factor.* The capacity factor (k) for doxorubicin is satisfactory if it is in the range between 1.0 and 5.0.

(E) *Coefficient of variation.* The coefficient of variation (*relative standard of deviation* in percent) of 5 replicate injections is satisfactory if it is not more than 1.0 percent. If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculations.* Calculate the micrograms of doxorubicin hydrochloride per milligram of sample as follows:

$$\text{Micrograms of doxorubicin hydrochloride per milligram} = \frac{A_U \times P_S \times 100}{A_S \times C_U \times (100 - m - X)}$$

where:

A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;

P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter;

C_U = Milligrams of the sample per milliliter of sample solution;

m = Percent moisture content of the sample; and

X = Percent solvent residue determined as directed in paragraph (b)(2) of this section.

(2) *Residue solvent (as acetone and alcohol)*—(i) *Standard preparation.* Transfer to a 100-milliliter volumetric flask about 200 milligrams of acetone, 300 milligrams of dehydrated alcohol, and 1,000 milligrams of dioxane, each accurately weighed, and mix. Dilute with water to volume, and mix. Transfer 5.0 milliliters of the resulting solution to a 50-milliliter volumetric flask, dilute with water to volume, and mix. This solution contains about 0.2 milligram of acetone, 0.3 milligram of alcohol, and 1 milligram of dioxane per milliliter.

(ii) *Solvent.* Transfer about 100 milligrams of dioxane, accurately weighed to a 100-milliliter volumetric flask, dilute with water to volume, and mix.

(iii) *Test preparation.* Dissolve about 200 milligrams of doxorubicin hydrochloride sample in 3.0 milliliters of solvent.

(iv) *Chromatographic system (see United States Pharmacopeia (U.S.P.) Chromatography (621)).* The gas chromatograph is equipped with a flame-ionization detector and a 4-millimeter X 2-meter column packed with 8-percent liquid phase G16 (see U.S.P. Chromatographic Reagents—Phases) on 100- to 120-mesh support S1AB (potassium hydroxide-washed) (see U.S.P. Chromatographic Reagents—Supports). The column is maintained at about 60 °C, and helium is used as the carrier gas. Adjust the column temperature and carrier gas flow rate so that dioxane elutes in about 6 minutes. Chromatograph the standard preparation, and record the peak responses as directed under procedure; the resolution (R) between adjacent peaks is not less than 2.0; the relative standard deviations of the ratios of the peak responses of the acetone and dioxane peaks and of the alcohol and dioxane peaks for replicate injections is not more than 4.0 percent; and the tailing factor for the alcohol peak is not more than 1.5.

(v) *Procedure.* (Note: Use peak areas where peak responses are indicated.) Separately inject equal volumes (about 1 microliter) of the standard preparation and the test preparation into the chromatograph, record the chromatograms, and measure the responses for the major peaks. The relative retention times are about 0.2 for acetone, 0.5 for alcohol, and 1.0 for dioxane. Calculate the percentage, by weight, of acetone and alcohol, respectively, in the sample as follows:

X = Percent acetone or alcohol = $100(C_A/C_D)(D_U/W_U)(R_U/R_S)$

where:

C_A = Concentration of acetone or alcohol in the standard preparation in milligrams per milliliter;

C_D = Concentration of dioxane in the standard preparation in milligrams per milliliter;

D_U = Total quantity of dioxane in the test preparation, in milligrams;

W_U = Quantity of doxorubicin hydrochloride taken to prepare the test preparation, in milligrams;

R_U = Response ratio of the analyte peak (acetone or alcohol) to the dioxane peak obtained from the test preparation; and

R_S = Response ratio of the analyte peak (acetone or alcohol) to the dioxane peak obtained from the standard preparation.

The total of acetone and alcohol is not greater than 2.5 percent. Use the result obtained to calculate the doxorubicin hydrochloride content of the sample on the solvent-free basis.

* * * * *

(8) *Chromatographic purity.* Proceed as directed in paragraph (b)(1) of this section, except prepare the sample solution by dissolving the sample to be tested in mobile phase to obtain a solution containing approximately 0.5 milligram of doxorubicin hydrochloride per milliliter. Calculate the percentage of impurities as follows:

$$\text{Percent total impurities} = (100\ S)/(S + r)$$

where:
S = The sum of the responses of the minor component peaks; and
r = The response of the major doxorubicin hydrochloride peak.

The total related impurities detected is not more than 2.0 percent.

3. Section 450.224a is amended by revising paragraphs (a)(1), (a)(3)(i)(*a*), (a)(3)(i)(*b*), the last sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(3); and by removing and reserving paragraph (b)(4) to read as follows:

§ 450.224a Doxorubicin hydrochloride for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxorubicin hydrochloride for injection is a freeze-dried powder whose components are doxorubicin hydrochloride and lactose. It may also contain methylparaben. Its doxorubicin hydrochloride content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of doxorubicin hydrochloride that it is represented to contain. It is sterile. It contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride. Its moisture content is not more than 4.0 percent. When reconstituted as directed in the labeling, its pH is not less than 4.5 and not more than 6.5. It passes the identity test. The doxorubicin hydrochloride used conforms to the standards prescribed by § 450.24(a)(1).

* * * * *

(3) * * *

(i) * * *

(*a*) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, residue solvents, depressor substances, moisture, pH, crystallinity, identity, and total related impurities.

(*b*) The batch for doxorubicin hydrochloride content, sterility, bacterial endotoxins, moisture, pH, and identity.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 450.24(b)(1), preparing the sample solution and calculating the doxorubicin hydrochloride content as follows:

(i) *Sample solution.* Prepare the sample solution by rinsing the contents of the vial into an appropriate sized volumetric flask with sufficient mobile phase to obtain a concentration of 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(ii) *Calculations.* Calculate the doxorubicin hydrochloride content per vial as follows:

$$\text{Milligrams of doxorubicin hydrochloride per vial} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:
A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;
P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter; and
d = Dilution factor of the sample.

* * * * *

(3) *Bacterial endotoxins.* Proceed as directed in the United States Pharmacopeia (U.S.P.) Bacterial Endotoxin Test, using a solution of doxorubicin hydrochloride for injection containing 1.1 milligrams of doxorubicin hydrochloride per milliliter. The specimen under test contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride.

(4) [Reserved]

* * * * *

4. Section 450.224b is amended by revising paragraphs (a)(1), (a)(3)(i)(A), (a)(3)(i)(B), the last sentence in the introductory text of paragraph (b), and paragraph (b)(1); by removing and reserving paragraph (b)(2); and by revising paragraph (b)(4) to read as follows:

§ 450.224b Doxorubicin hydrochloride injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxorubicin hydrochloride injection is an aqueous solution of doxorubicin hydrochloride in an isosmotic diluent. Each milliliter contains doxorubicin hydrochloride equivalent to 2 milligrams of doxorubicin hydrochloride. Its doxorubicin hydrochloride content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams it is represented to contain. It is sterile. It contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride. Its pH is not less than 2.5 and not more than 3.5. It passes the identity test. The doxorubicin hydrochloride used conforms to the standards prescribed by § 450.24(a)(1).

* * * * *

(3) * * *

(i) * * *

(A) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, residue solvents, depressor substances, moisture, pH, crystallinity, identity, and total related impurities.

(B) The batch for doxorubicin hydrochloride content, sterility, bacterial endotoxins, pH, and identity.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 450.24(b)(1), preparing the sample solution and calculating the doxorubicin hydrochloride content as follows:

(i) *Sample solution.* Dilute an accurately measured volume of sample equivalent to not less than 2 milligrams of doxorubicin hydrochloride, quantitatively with mobile phase to obtain a solution containing 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(ii) *Calculations.* Calculate the milligrams of doxorubicin hydrochloride per milliliter of sample as follows:

$$\text{Milligrams of doxorubicin hydrochloride per milliliter} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:
A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;

P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) [Reserved]

* * * * *

(4) *Bacterial endotoxins.* Proceed as directed in the United States Pharmacopeia (U.S.P.) Bacterial Endotoxin Test, using a test solution prepared by diluting doxorubicin hydrochloride injection with sterile water for injection to obtain a concentration of 1.1 milligrams of doxorubicin hydrochloride per milliliter. The specimen under test contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride.

* * * * *

Dated: February 18, 1994.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94-4518 Filed 2-28-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 22, 25, and 602

[TD 8522]

RIN 1545-AC67

Estate and Gift Tax Marital Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the estate tax and gift tax marital deduction. Changes to the applicable tax law were made by the Tax Reform Act of 1976, the Revenue Act of 1978, the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Energy Policy Act of 1992. These regulations will provide the public with the guidance needed to comply with those Acts.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz, (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0015. The estimated annual burden per respondent varies from .1 to .5 hours depending on individual circumstances, with an estimated average of .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On May 21, 1984, the IRS published in the **Federal Register** proposed amendments to the Estate and Gift Tax Regulations (26 CFR part 20 and part 25) under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code (Code) (49 FR 21350). Conforming changes were proposed for regulations under other sections of the Code. The amendments implement and provide guidance with respect to sections 2044, 2056, 2207A, 2519, 2523, and 6019 which were added or amended by the Tax Reform Act of 1976, the Revenue Act of 1978, the Economic Recovery Tax Act of 1981, and the Technical Corrections Act of 1982. This project finalizes those amendments. Additionally, revisions have been made in the final regulations to reflect certain statutory changes made since the publication of the proposed regulations by the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Energy Policy Act of 1992. Written comments responding to the Notice of Proposed Rulemaking were received. No public hearing was requested and none was held. After consideration of all of the comments regarding the proposed amendments, those amendments are adopted by this Treasury decision with revisions in response to those comments. The significant comments and revisions are described below.

Explanation of Provisions

In response to comments, § 20.2044-1(b), as proposed, has been revised to include a reference to section 6166. Therefore, property included in the surviving spouse's gross estate under section 2044 is treated as passing from such spouse's estate upon such spouse's later death for purposes of determining whether the estate is eligible to pay the estate tax liability in installments under section 6166.

In response to comments, § 20.2044-1(c), as proposed, has been revised to include guidance for taxpayers on the evidence that is required in order to rebut the presumption that property in which the surviving spouse had a qualifying income interest for life was deducted by the first decedent's estate under section 2056(b)(7) or by the donor spouse under section 2523(f) in determining the prior decedent's estate or gift tax liability.

Several changes were made in the final regulations regarding the definition of the term "specific portion" as used in sections 2056(b)(5), 2056(b)(7), 2523(e) and 2523(f). In general, a spousal interest qualifies for the marital deduction under section 2056(b)(5) or section 2523(e) if the spouse receives an income interest with respect to the entire interest in property or a "specific portion" of the entire interest, coupled with a general power of appointment over the entire corpus or a "specific portion" of the entire corpus. Similarly, an interest is eligible for the qualified terminable interest property (QTIP) election under section 2056(b)(7) or section 2523(f) if the spouse receives an income interest in the entire interest or a "specific portion" of the interest. Under §§ 20.2056(b)-5(c) and 25.2523(e)-1(c), in order to constitute a right to income in, or power over, a specific portion of property, the right or power must relate to a fraction or percentage share of the property.

However, in *Northeastern Pennsylvania National Bank and Trust Co.* v. *United States*, 387 U.S. 213 (1967), the United States Supreme Court held that, for purposes of section 2056(b)(5), a right to receive a specified periodic payment (e.g., $24,000 per year) from a trust also constitutes a right to receive the income from a specific portion of the trust corpus; i.e., the pecuniary amount of corpus that, based on the assumed rate of return used in the regulations, would generate the periodic payment. In reaching this conclusion, the Court invalidated § 20.2056(b)-5(c) to the extent it precluded characterization of a specific

periodic payment as a right to income from a specific portion of trust corpus.

In *Estate of Alexander* v. *Commissioner*, 82 T.C. 34 (1984), *aff'd without opinion* (4th Cir. 1985), the Tax Court held that a power of appointment over a pecuniary amount of trust corpus constituted a power of appointment over a "specific portion" of the trust property thus qualifying the property for the marital deduction under section 2056(b)(5). The Tax Court felt compelled to reach this decision in view of the Supreme Court's decision in *Northeastern Pennsylvania National Bank*, which applied the term in the context of the requisite spousal income interest.

The proposed regulations provided amendments to the definition of the term "specific portion" under §§ 20.2056(b)–5(c) and 25.2523(e)–1 with respect to the requisite spousal income interest that conform to the Court's decision in *Northeastern Pennsylvania National Bank*. In addition, §§ 20.2056(b)–7(c) and 25.2523(f)–1(c), and illustrative examples, adopted the *Northeastern Pennsylvania National Bank* rule with respect to interests within the purview of section 2056(b)(7) or section 2523(f).

However, section 1941 of the Energy Policy Act of 1992, Public Law 102–486, amended section 2056(b) and section 2523 (e) and (f) to limit the term "specific portion" such that it references a portion determined only on a fractional or percentage basis. The amendments are generally effective in the case of estates of decedents dying after October 24, 1992 (the date of enactment) and to gifts made after that date, subject to certain transitional rules. The legislative history underlying the amendments provides that no inference should be drawn from the legislation regarding the law prior to enactment. H.R. Rep. No. 1018, 102nd Cong. 2d Sess. 432 (1992).

The definition in the proposed regulations of "specific portion" as a fractional or percentage interest has been adopted. However, for estates coming within the purview of the transitional rule of Public Law 102–486 the definition of specific portion in the final regulations adopts the proposed amendments to §§ 20.2056(b)–5 and 25.2523(e)–1, which reflect the decision in *Northeastern Pennsylvania National Bank*. The corresponding proposed amendments to §§ 20.2056(b)–7 and 25.2523(f)–1 (and pertinent portions of the proposed amendments to §§ 20.2044–1 and 25.2519–1) have also been retained in the final regulations. In addition, the IRS recognizes that *Estate of Alexander* reflects the law prior to enactment of Public Law 102–486, with respect to interests within the purview of sections 2056(b)(5) and 2523(e) and the final regulations also incorporate this decision, subject to the Public Law 102–486 effective date and transitional rules.

The IRS recognizes that some aspects of the 1992 legislation should be the subject of separate proposed regulations under section 2056(b)(7). For example, the IRS invites comments on the application of the Energy Policy Act of 1992 to the treatment of annuities as described in the last sentence of section 2056(b)(7)(B)(ii). Send comments to: CC:DOM:CORP:T:R, room 5528, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

In response to comments, *Example 4* of § 20.2056(b)–5(c)(5) has been revised to eliminate the reference to the office building in the facts. The example, as revised, focuses on the definition of "specific portion" under section 2056(b)(5) and the amount deductible under the facts presented. A similar revision was made to *Example 4* of § 25.2523(e)–1(c)(5) which contains similar facts.

In response to comments, § 20.2056(b)–7(b)(3), as proposed, has been revised to clarify that an executor who is appointed, qualified and acting within the United States, within the meaning of section 2203, is responsible for making the QTIP election, even with respect to property that is not in the executor's possession, such as an inter vivos trust established by the decedent. If there is no executor appointed, the person in actual or constructive possession of the qualifying income interest property may make the election.

Paragraph (c) of § 20.2056(b)–7, has been added, in response to comments, to provide limited circumstances under which a protective QTIP election is recognized for estate tax purposes. In general, the protective election will be recognized only if, at the time the return is filed, a bona fide issue is presented the resolution of which is uncertain at the time the federal estate tax return is filed, that concerns whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. Because of changes made to Schedule M of Form 706, it was deemed unnecessary to provide for a protective election for a trust that fails to meet the requirements of section 2056(b)(5). The availability of a protective gift tax QTIP election was considered but rejected because of the perceived absence of a need for such an election.

Section 20.2056(b)–7(d)(3) retains the position of the proposed regulations that an income interest does not qualify as a qualifying income interest for life if the income interest is contingent on the executor's election of QTIP treatment; for example, if the spouse is entitled to trust income only if the executor makes the QTIP election with respect to the trust. This issue has been the subject of recent litigation. Although the Tax Court has agreed with the position of the proposed regulations, the Eighth Circuit and the Fifth Circuit have reversed the Tax Court on this issue. *Estate of Robertson* v. *Commissioner*, No. 93–2488 (8th Cir. February 4, 1994), *rev'g* 98 T.C. 678 (1992); *Estate of Clayton* v. *Commissioner*, 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991). See also, *Estate of Spencer* v. *Commissioner*, T.C. Memo 1992–579, *appeal docketed*, No. 93–1997 (6th Cir. July 26, 1993). In *Estate of Robertson* and *Estate of Clayton*, the appellate courts found that under section 2056(b)(7)(B), qualified terminable interest property is defined *inter alia* as property for which an election is made. Thus, qualification of property as qualified terminable interest property is always contingent on the executor's election. Qualification for the marital deduction is determined as of the time of death. The IRS continues to believe, consistent with the conclusion reached by the Tax Court, that if the substantive rights and interests the spouse receives in trust property are dependent on the executor's post-death exercise of discretionary authority, the rights and interests received by the spouse cannot properly be characterized as qualifying as of the time of death, nor can the rights and interests received by the spouse be characterized as passing from the decedent to the spouse, as required under section 2056(a). The appellate courts take the position that the statutory language supports the allowance of the marital deduction if the receipt of the requisite substantive rights and interests is contingent on making the election. This is inconsistent with the fundamental principle that qualification of an interest in property for the marital deduction is determined as of the date of death. Accordingly, the Service believes that the statute does not authorize a grant of discretion to the executor to create substantive rights in the spouse, and the final regulations reflect this position.

Example (14) of § 20.2056(b)–7(e), as proposed, has not been adopted. This example illustrated that an annuity purchased by an executor pursuant to a directive of the decedent qualifies as

qualified terminable interest property under section 2056(b)(7). The example was in conflict with section 2056(b)(1)(C), which provides that a marital deduction is not allowed with respect to any terminable interest (i.e., any interest that will terminate or fail on the occurrence of a specified event, or due to lapse of time) if the interest is to be acquired by the executor for the surviving spouse pursuant to the directions of the decedent (e.g., a will direction to purchase an annuity for the spouse.) Section 2056(b)(7), which provides an exception allowing a deduction for terminable interests described in section 2056(b)(1)(A), does not provide an exception for interests described in section 2056(b)(1)(C). Section 20.2056(b)–7(c) of the final regulations reflects this fact.

Section 2056(b)(7)(C), added to the Code by the Technical and Miscellaneous Revenue Act of 1988, and amended by the Omnibus Budget Reconciliation Act of 1989, provides for an automatic section 2056(b)(7) election (and deduction) in the case of an annuity includible in the decedent's gross estate under section 2039, where only the surviving spouse has the right to receive payments before the death of the surviving spouse. With respect to the gift tax, the qualification of a spouse's interest in a joint and survivor annuity that is the subject of a gift under section 2511 is now governed by section 2523(f)(6), also added by TAMRA in 1988. This section provides for an automatic election if only the donor and the donor's spouse have a right to receive payments prior to the death of the last spouse to die. Rules governing the application of section 2056(b)(7)(C), as well as section 2523(f)(6), will be prescribed under regulations to be proposed under those sections at a later date.

Example 10 of § 20.2056(b)–7(e), as proposed, considered the treatment of a spousal annuity payable from a decedent's individual retirement account. In response to comments, this example has been retained as an illustration of an interest that qualifies as a qualifying income interest for life under section 2056(b)(7)(B)(ii), without regard to section 2056(b)(7)(C). However, the IRS recognizes that the arrangement described in the example may also qualify, at least in part, for the automatic election and deduction under section 2056(b)(7)(C), and this question will be considered in regulations to be proposed under that section at a later date.

Section 20.2056(b)–7(b), as proposed, provided that a marital trust that qualifies under section 2056(b)(7) may be divided into separate trusts to reflect a partial election with respect to the trust. This provision has been clarified to specify that the severance of the trust must occur no later than the termination of the period of estate administration. Further, the provision has been clarified to indicate that although the severed trusts must be funded based on fair market values on the date of division, the trusts need not be funded with a pro rata portion of each asset. *Example 4* of § 20.2056(b)–7(h) has been added to illustrate this provision.

Section 20.2056(b)–8, as proposed, has been revised to provide that a charitable remainder trust described in section 664 may qualify for a marital deduction under section 2056(b)(7) in situations where the surviving spouse is not the only noncharitable beneficiary of the charitable remainder trust (e.g., where the trust provides for a successive life beneficiary on the spouse's death). However, in view of the enactment of section 1941 of The Energy Policy Act of 1992 (discussed above), this provision is limited in application to those estates not subject to the 1992 amendments to the Code. A similar change (with similar limitations) was made to § 25.2523(g)–1, as proposed, providing that a charitable remainder trust in which the donor's spouse is a noncharitable beneficiary can qualify as qualified terminable interest property under section 2523(f), even if the trust fails to qualify under section 2523(g) (because, for example, the donor and the donor's spouse are not the only noncharitable beneficiaries of the trust.)

The IRS requests comments on whether the unitrust or annuity interest in a charitable remainder trust described in sections 664(d)(1) or (d)(2) qualifies as a qualifying income interest for life in view of the 1992 amendments. See, e.g., the last sentence of section 2056(b)(7)(B)(ii).

Sections 20.2056(b)–9 and 25.2523(h)–1 have been added to reflect the addition of sections 2056(b)(9) and 2523(h) (denial of double deduction) to the Code by the Technical Corrections Act of 1982.

Sections 20.2056(c)–1A and 20.2056(c)–2A, as proposed, have not been adopted by the final regulations. These sections contained comprehensive rules for computing the amount of the allowable estate tax marital deduction in the case of estates of decedents dying in 1977 through 1981. In general, the allowable marital deduction applicable to these estates was limited in amount to the greater of $250,000 or one-half of the adjusted gross estate. The section, as proposed, also contained rules promulgated under the transitional rules accompanying section 2002(d)(1) of the Tax Reform Act of 1976 (which increased the limitation on the allowable marital deduction to the greater of $250,000 or one-half of the adjusted gross estate), and the transitional rule under section 403(e) of the Economic Recovery Tax Act of 1981 (which enacted the unlimited marital deduction).

In general, the comprehensive rules discussing the computation of the amount of the marital deduction under the statutory changes enacted in 1976 will only apply to the estates of decedents who died in 1977 through 1981 and, in some cases, estates of decedents dying after 1981 if the decedent's will was executed prior to 1982. In view of the limited continuing applicability of these rules, they have not been adopted by the final regulations. Similarly, the transitional rules primarily involved estates of decedents dying after 1981 under wills or other testamentary instruments executed prior to 1982. Many of the issues involving the application of these transitional rules have been settled by litigation. See, e.g., *Estate of Niesen* v. *Commissioner*, 865 F.2d 162 (8th Cir. 1988); *Estate of Levitt* v. *Commissioner*, 95 T.C. 289 (1990); *Estate of Christmas* v. *Commissioner*, 91 T.C. 769 (1988). Accordingly, the proposed regulations discussing these rules have also not been adopted. A short reference to these rules has been added to § 20.2056(a)–1 of the regulations.

Section 22.2056–1 is removed, since this temporary regulation (which considered the requirements for a partial QTIP election) has been incorporated into the final regulations contained in this document.

Section 25.2519–1(c), as proposed, discussed the amount of the gift under section 2519 if the surviving spouse transfers all or a part of the spouse's income interest in property subject to a QTIP election under either section 2056(b)(7) or section 2523(f). Under section 2207A(b), the spouse has a right to recover from the persons receiving the transferred property any gift tax imposed on the transfer. Section 25.2519–1(a), as proposed, provided that in determining the amount of the gift under section 2519, the value of the transfer is reduced by the amount of the gift tax reimbursement. That is, the section 2519 gift was proposed to be treated as a "net gift." See, e.g., Rev. Rul. 75–72, 1975–1 C.B. 310. However, the section 2207A(b) reimbursement provision could be viewed as shifting the liability for the gift tax imposed on the transfer to the persons receiving the property. Arguably, payment by those

persons of a gift tax for which they are liable under the statute should not reduce the amount of the transfer for gift tax purposes, or otherwise result in net gift treatment. See, e.g., Rev. Rul. 80–111, 1980–1 C.B. 208. Accordingly, the reference in § 25.2519–1(c), treating the transfer as a net gift, has been deleted. The IRS anticipates that the issue regarding net gift treatment will be the subject of subsequent proposed regulations and specifically requests comments on this issue.

Section 25.2519–1(a) and *Examples 4* and *5* of § 25.2519–1(g) have been revised to reflect the application of section 2702 as added to the Code by the Revenue Reconciliation Act of 1990.

Section 25.2523(f)–1(b)(4), as proposed, discussed the manner and time for making the gift tax qualified terminable interest property election. That section has been revised in the final regulations in order to reflect the changes made to section 2523(f)(4)(A) by the Tax Reform Act of 1986. Under section 2523(f)(4)(A), as amended, the gift tax election is to be made on or before the date prescribed by section 6075(b) for filing a gift tax return (including extensions authorized under section 6075(b)(2), relating to automatic extensions of time for filing a gift tax return where the taxpayer is granted an extension of time to file the income tax return.) The section, as proposed, has also been revised to permit QTIP elections to be made on returns for which extensions have been granted pursuant to section 6081(a) of the Code.

Comments have been received suggesting that an inter vivos transfer in trust where the donor retains an income interest and the spouse receives the right to trust income on the termination of the donor's preceding life income interest should qualify as qualified terminable interest property under section 2523(f). These comments were rejected. In general, the statute requires that the spouse must be entitled to receive the trust income for the spouse's life. An income interest that commences at some time in the future, if the spouse survives until that time, is not payable to the spouse for life as required by the statute. Further, if such an interest were allowed to qualify under section 2523(f), it is problematical whether, in the event the donee spouse predeceased the donor spouse, the IRS could sustain inclusion of the trust corpus in the gross estate of the donee spouse under section 2044 (or sustain treating the assignment of the spouse's interest as a disposition under section 2519), since, as noted above, it is questionable whether such an interest constitutes a qualifying income interest for life. Accordingly, § 25.2523(f)–1(c)(2) has been added to clarify that, in order to constitute a qualifying income interest for life, the spouse must receive the immediate right to receive the income from the property.

Examples 9, *10*, and *11* of § 25.2523(f)–1(f) have been added, illustrating the application of section 2523(f)(5) and § 25.2523(f)–1(d). Under these sections, where the donor spouse retains an interest in a trust subject to a section 2523(f) QTIP election (e.g., the trust provides an income interest to the spouse for life, then to the donor for life, with remainder to children), the trust corpus is not subject to inclusion in the donor's gross estate under section 2036 (by virtue of the retained life estate) if the donor predeceases the spouse. Further, any transfer of the retained interest during the donor's lifetime prior to the death of the donee spouse is not subject to gift tax. However, under section 2523(f)(5)(B), this exclusion rule does not apply if, prior to the donor's death (or the transfer of the interest), the property is included in the donee spouse's gross estate under section 2044 or is treated as a gift by the donee spouse under section 2519. The examples clarify, *inter alia*, that if the property is included in the donee spouse's gross estate (or is subject to a gift tax under section 2519), the donee spouse is treated as the transferor of the property for estate and gift tax purposes. Accordingly, on the subsequent death of the donor spouse, the donor is not treated as the transferor of the property in which the donor possesses an income interest. In such circumstances, notwithstanding section 2523(f)(5)(B), the property is not includible in the donor's gross estate under section 2036. However, the property could be subject to inclusion in the donor's gross estate under another applicable section of the Code, the application of which is not dependent on the donor's status as a transferor of the property. For example, if the donee spouse's estate made an election under section 2056(b)(7) with respect to the property, then the property would be includible in the donor spouse's gross estate under section 2044 (a so-called lifetime reverse QTIP trust).

Sections 20.2056(a)–1(a), 20.2056(b)–7(e), 25.2523(a)–(1)(a), 25.2523(a)–1(c) and 25.6019–1, as proposed, have been revised to refer to the changes made by the Technical and Miscellaneous Revenue Act of 1988 and the Omnibus Budget Reconciliation Act of 1989, in regard to the availability of the estate tax marital deduction where the surviving spouse is not a United States citizen and the gift tax marital deduction where the donee spouse is not a United States citizen.

Several minor clarifying amendments have been made to the text and the examples in the proposed regulations to better describe the intent and scope of those provisions.

Effective Dates

Except as specifically provided in §§ 20.2044–2, 20.2056(b)–5(c)(3)(ii) and (iii), 20.2056(b)–7(e)(5), 20.2056(b)–8(b), 25.2519–2, 25.2523(e)–1(c)(3), 25.2523(f)–1(c)(3) and 25.2523(g)–1(b), these regulations are effective in the case of estates of decedents dying after March 1, 1994, and to gifts made after that date. With respect to estates of decedents dying on or before March 1, 1994, or gifts made on or before that date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For this purpose, the proposed regulations published in the **Federal Register** on May 21, 1984 (49 FR 21350) are considered a reasonable interpretation of the statutory provisions.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Susan Hurwitz of the Office of Chief Counsel, Internal Revenue Service. Other personnel from the IRS and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 22

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20, 22, 25, and 602 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Section 20.2031–7 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2031–10 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2032–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2055–2 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(50).

Section 20.2204–1 also issued under 26 U.S.C. 6324A(a).

Section 20.2204–3 also issued under 26 U.S.C. 6324A(a).

Section 20.6324A–1 also issued under 26 U.S.C. 6324A(a).

Section 20.6324B–1 also issued under 26 U.S.C. 6324B.

Par. 1a. The authority citations immediately following §§ 20.2031–7, 20.2031–10, 20.2032–1, 20.2055–2, 20.2204–1, 20.2204–3, 20.6324A–1 and 20.6324B–1 are removed.

§ 20.0–1 [Amended]

Par. 2. In § 20.0–1(b)(1), the last sentence is amended by removing the reference "20.2056(e)–3" and adding "20.2056(d)–1" in its place.

Par. 3. Section 20.2012–1 is amended as follows:

a. In paragraph (a), the first sentence is revised to read as set forth below.

b. In paragraph (d)(2)(ii), the fourth and fifth sentences are removed.

c. Paragraph (d)(3) is removed.

§ 20.2012–1 Credit for gift tax.

(a) *In general.* With respect to gifts made before 1977, a credit is allowed under section 2012 against the Federal estate tax for gift tax paid under chapter 12 of the Internal Revenue Code, or corresponding provisions of prior law, on a gift by the decedent of property subsequently included in the decedent's gross estate. * * *

* * * * *

Par. 4. Section 20.2013–4, paragraph (b)(3)(ii) is amended by removing the second sentence.

Par. 5. Section 20.2014–3 is amended as follows:

a. The concluding text of paragraph (b) immediately following paragraph (b)(2) is revised to read as set forth below.

b. Paragraph (c), *Example (3)*(ii), second sentence, is revised to read as set forth below.

§ 20.2014–3 Second limitation.

* * * * *

(b) * * *

Any reduction described in paragraph (b)(1) or (b)(2) of this section on account of the marital deduction must proportionately take into account, if applicable, the limitation on the aggregate amount of the marital deduction contained in § 20.2056(a)–1(c). See § 20.2014–3(c), *Example 3.*

(c) * * *

Example 3. * * *

(ii) * * * Assume that the limitation imposed by section 2056(c), as in effect before 1982, is applicable so that the aggregate allowable marital deduction is limited to one-half the adjusted gross estate, or $400,000 (which is 50 percent of $800,000). * * *

* * * * *

Par. 6. Section 20.2044–1 is redesignated § 20.2045–1 and new §§ 20.2044–1 and 20.2044–2 are added to read as follows:

§ 20.2044–1 Certain property for which marital deduction was previously allowed.

(a) *In general.* Section 2044 generally provides for the inclusion in the gross estate of property in which the decedent had a qualifying income interest for life and for which a deduction was allowed under section 2056(b)(7) or 2523(f). The value of the property included in the gross estate under section 2044 is not reduced by the amount of any section 2503(b) exclusion that applied to the transfer creating the interest. See section 2207A, regarding the right of recovery against the persons receiving the property that is applicable in certain cases.

(b) *Passed from.* For purposes of section 1014 and chapters 11 and 13 of subtitle B of the Internal Revenue Code, property included in a decedent's gross estate under section 2044 is considered to have been acquired from or to have passed from the decedent to the person receiving the property upon the decedent's death. Thus, for example, the property is treated as passing from the decedent for purposes of determining the availability of the charitable deduction under section 2055, the marital deduction under section 2056, and special use valuation under section 2032A. In addition, the tax imposed on property includible under section 2044 is eligible for the installment payment of estate tax under section 6166.

(c) *Presumption.* Unless established to the contrary, section 2044 applies to the entire value of the trust at the surviving spouse's death. If a marital deduction is taken on either the estate or gift tax return with respect to the transfer which created the qualifying income interest, it is presumed that the deduction was allowed for purposes of section 2044. To avoid the inclusion of property in the decedent-spouse's gross estate under this section, the executor of the spouse's estate must establish that a deduction was not taken for the transfer which created the qualifying income interest. For example, to establish that a deduction was not taken, the executor may produce a copy of the estate or gift tax return filed with respect to the transfer by the first spouse or the first spouse's estate establishing that no deduction was taken under section 2523(f) or section 2056(b)(7). In addition, the executor may establish that no return was filed on the original transfer by the decedent because the value of the first spouse's gross estate was below the threshold requirement for filing under section 6018. Similarly, the executor could establish that the transfer creating the decedent's qualifying income interest for life was made before the effective date of section 2056(b)(7) or section 2523(f).

(d) *Amount included*—(1) *In general.* The amount included under this section is the value of the entire interest in which the decedent had a qualifying income interest for life, determined as of the date of the decedent's death (or the alternate valuation date, if applicable). If, in connection with the transfer of property that created the decedent's qualifying income interest for life, a deduction was allowed under section 2056(b)(7) or section 2523(f) for less than the entire interest in the property (i.e., for a fractional or percentage share of the entire interest in the transferred property), the amount includible in the decedent's gross estate under this section is equal to the fair market value of the entire interest in the property on the date of the decedent's death (or the alternate valuation date, if applicable) multiplied by the fractional or percentage share of the interest for which the deduction was taken.

(2) *Inclusion of income.* If any income from the property for the period between the date of the transfer creating the decedent-spouse's interest and the date of the decedent-spouse's death has not been distributed before the decedent-spouse's death, the undistributed income is included in the decedent-spouse's gross estate under this section to the extent that the income is not so included under any

other section of the Internal Revenue Code.

(3) *Reduction of includible share in certain cases.* If only a fractional or percentage share is includible under this section, the includible share is appropriately reduced if—

(i) The decedent-spouse's interest was in a trust and distributions of principal were made to the spouse during the spouse's lifetime;

(ii) The trust provides that the distributions are to be made from the qualified terminable interest share of the trust; and

(iii) The executor of the decedent-spouse's estate can establish the reduction in that share based on the fair market value of the trust assets at the time of each distribution.

(4) *Interest in previously severed trust.* If the decedent-spouse's interest was in a trust consisting of only qualified terminable interest property and the trust was severed (in compliance with § 20.2056(b)–7(b) or § 25.2523(f)–1(b) of this chapter) from a trust that, after the severance, held only property that was not qualified terminable interest property, only the value of the property in the severed portion of the trust is includible in the decedent-spouse's gross estate.

(e) *Examples.* The following examples illustrate the principles in paragraphs (a) through (d) of this section, where the decedent, D, was survived by spouse, S.

Example 1. Inclusion of trust subject to election. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with income payable to S for life. Upon S's death, the trust principal is to be distributed to D's children. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. S made no disposition of the income interest during S's lifetime under section 2519. On the date of S's death, the fair market value of the trust property was $740,000. S's executor did not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $740,000.

Example 2. Inclusion of trust subject to partial election. The facts are the same as in *Example 1*, except that D's executor elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Consequently, only the equivalent portion of the trust is included in S's gross estate; i.e., $370,000 (50 percent of $740,000).

Example 3. Spouse receives qualifying income interest in a fraction of trust income. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with 20 percent of the trust income payable to S for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected to deduct, pursuant to section 2056(b)(7), 50 percent of the amount for which the election could be made; i.e., $80,000 (50 percent of 20 percent of $800,000). Consequently, on the death of S, only the equivalent portion of the trust is included in S's gross estate; i.e., $74,000 (50 percent of 20 percent of $740,000).

Example 4. Distribution of corpus during spouse's lifetime. The facts are the same as in *Example 3*, except that S was entitled to receive all the trust income but the executor of D's estate elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Pursuant to authority in the will, the trustee made a discretionary distribution of $100,000 of principal to S in 1995 and charged the entire distribution to the qualified terminable interest share. Immediately prior to the distribution, the fair market value of the trust property was $1,100,000 and the qualified terminable interest portion of the trust was 50 percent. Immediately after the distribution, the qualified terminable interest portion of the trust was 45 percent ($450,000 divided by $1,000,000). Provided S's executor can establish the relevant facts, the amount included in S's gross estate is $333,000 (45 percent of $740,000).

Example 5. Spouse assigns a portion of income interest during life. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with all the income payable to S, for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. During the term of the trust, S transfers to C the right to 40 percent of the income from the trust for S's life. Because S is treated as transferring the entire remainder interest in the trust corpus under section 2519 (as well as 40 percent of the income interest under section 2511), no part of the trust is includible in S's gross estate under section 2044. However, if S retains until death an income interest in 60 percent of the trust corpus (which corpus is treated pursuant to section 2519 as having been transferred by S for both gift and estate tax purposes), 60 percent of the property will be includible in S's gross estate under section 2036(a) and a corresponding adjustment is made in S's adjusted taxable gifts

Example 6. Inter vivos trust subject to election under section 2523(f). D transferred $800,000 to a trust providing that trust income is to be paid annually to S, for S's life. The trust provides that upon S's death, $100,000 of principal is to be paid to X charity and the remaining principal distributed to D's children. D elected to treat all of the property transferred to the trust as qualified terminable interest property under section 2523(f). At the time of S's death, the fair market value of the trust is $1,000,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate is $1,000,000; i.e., the fair market value at S's death of the entire trust property. The $100,000 that passes to X charity on S's death is treated as a transfer by S to X charity for purposes of section 2055. Therefore, S's estate is allowed a charitable deduction for the $100,000 transferred from the trust to the charity to the same extent that a deduction would be allowed by section 2055 for a bequest by S to X charity.

Example 7. Spousal interest in the form of an annuity. D died prior to October 24, 1992, the effective date of the Energy Policy Act of 1992 (Pub. L. 102–486). See § 20.2056(b)–7(e). Under D's will, assets valued at $500,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust pursuant to which an annuity of $20,000 a year was payable to S for S's life. Trust income not paid to S as an annuity is to be accumulated in the trust and may not be distributed during S's lifetime. D's estate deducted $200,000 under section 2056(b)(7) and § 20.2056(b)–7(e)(2). S did not assign any portion of S's interest during S's life. At the time of S's death, the value of the trust property is $800,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $320,000 ([$200,000/$500,000] x $800,000).

§ 20.2044–2 Effective dates.

Except as specifically provided in *Example 7* of § 20.2044–1(e), the provisions of § 20.2044–1 are effective with respect to estates of a decedent-spouse dying after March 1, 1994. With respect to estates of decedent-spouses dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2044–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 7. Section 20.2055–6 is added to read as follows:

§ 20.2055–6 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed from the decedent's gross estate under section 2055 for property with respect to which a deduction is allowed by reason of section 2056(b)(7). See section 2056(b)(9) and § 20.2056(b)–9.

Par. 8. Section 20.2056–0 is added to read as follows:

§ 20.2056–0 Table of contents.

This section lists the captions that appear in the regulations under §§ 20.2056(a)–1 through 20.2056(d)–2.

§ 20.2056(a)–1 Marital deduction; in general.

(a) In general.

(b) Requirements for marital deduction.
(1) In general.
(2) Burden of establishing requisite facts.
(c) Marital deduction; limitation on aggregate deductions.
(1) Estates of decedents dying before 1977.
(2) Estates of decedents dying after December 31, 1976, and before January 1, 1982.
(3) Estates of decedents dying after December 31, 1981.

§ 20.2056(a)–2 Marital deduction; deductible interests and nondeductible interests.

(a) In general.
(b) Deductible interests.

§ 20.2056(b)–1 Marital deduction; limitation in case of life estate or other "terminable interest."

(a) In general.
(b) Terminable interests.
(c) Nondeductible terminable interests.
(d) Exceptions.
(e) Miscellaneous principles.
(f) Direction to acquire a terminable interest.
(g) Examples.

§ 20.2056(b)–2 Marital deduction; interest in unidentified assets.

(a) In general.
(b) Application of section 2056(b)(2).
(c) Interest nondeductible if circumstances present.
(d) Example.

§ 20.2056(b)–3 Marital deduction; interest of spouse conditioned on survival for limited period.

(a) In general.
(b) Six months' survival.
(c) Common disaster.
(d) Examples.

§ 20.2056(b)–4 Marital deduction; valuation of interest passing to surviving spouse.

(a) In general.
(b) Property interest subject to an encumbrance or obligation.
(c) Effect of death taxes.
(d) Remainder interests.

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

(a) In general.
(b) Specific portion; deductible amount.
(c) Meaning of specific portion.
(1) In general.
(2) Fraction or percentage share.
(3) Special rule in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
(4) Local law.
(5) Examples.
(d) Meaning of entire interest.
(e) Application of local law.
(f) Right to income.
(g) Power of appointment in surviving spouse.
(h) Requirement of survival for a limited period.
(j) Existence of power in another.

§ 20.2056(b)–6 Marital deduction; life insurance or annuity payments with power of appointment in surviving spouse.

(a) In general.
(b) Specific portion; deductible interest.
(c) Applicable principles.
(d) Payments of installments or interest.
(e) Powers of appointment.

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) In general.
(b) Qualified terminable interest property.
(1) In general.
(2) Property for which an election may be made.
(3) Persons permitted to make the election.
(4) Manner and time of making the election.
(c) Protective elections.
(1) In general.
(2) Protective election irrevocable.
(d) Qualifying income interest for life.
(1) In general.
(2) Entitled for life to all income.
(3) Contingent income interests.
(4) Income between last distribution date and spouse's date of death.
(5) Pooled income funds.
(6) Power to distribute principal to spouse.
(e) Annuities payable from trusts in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
(1) In general.
(2) Deductible interest.
(3) Distributions permissible only to surviving spouse.
(4) Applicable interest rate.
(5) Effective dates.
(f) Joint and survivor annuities. [Reserved]
(g) Application of local law.
(h) Examples.

§ 20.2056(b)–8 Special rule for charitable remainder trusts.

(a) In general.
(1) Surviving spouse only noncharitable beneficiary.
(2) Interest for life or term of years.
(3) Payment of state death taxes.
(b) Charitable trusts where surviving spouse is not the only noncharitable beneficiary.

§ 20.2056(b)–9 Denial of double deduction.

§ 20.2056(b)–10 Effective dates.

§ 20.2056(c)–1 Marital deduction; definition of passed from the decedent.

(a) In general.
(b) Expectant interest in property under community property laws.

§ 20.2056(c)–2 Marital deduction; definition of "passed from the decedent to his surviving spouse."

(a) In general.
(b) Examples.
(c) Effect of election by surviving spouse.
(d) Will contests.
(e) Survivorship.

§ 20.2056(c)–3 Marital deduction; definition of passed from the decedent to a person other than his surviving spouse.

§ 20.2056(d)–1 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) Disclaimer by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.

§ 20.2056(d)–2 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) Disclaimers by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.
(1) Decedents dying after October 3, 1966, and before January 1, 1977.
(2) Decedents dying after September 30, 1963, and before October 4, 1966.
(3) Decedents dying before October 4, 1966.

Par. 9. Section 20.2056(a)–1 is revised to read as follows:

§ 20.2056(a)–1 Marital deduction; in general.

(a) *In general.* A deduction is allowed under section 2056 from the gross estate of a decedent for the value of any property interest which passes from the decedent to the decedent's surviving spouse if the interest is a *deductible interest* as defined in § 20.2056(a)–2. With respect to decedents dying in certain years, a deduction is allowed under section 2056 only to the extent that the total of the deductible interests does not exceed the applicable limitations set forth in paragraph (c) of this section. The deduction allowed under section 2056 is referred to as the *marital deduction.* See also sections 2056(d) and 2056A for special rules applicable in the case of decedents

dying after November 10, 1988, if the decedent's surviving spouse is not a citizen of the United States at the time of the decedent's death. In such cases, the marital deduction may not be allowed unless the property passes to a qualified domestic trust as described in section 2056A(a).

(b) *Requirements for marital deduction*—(1) *In general.* To obtain the marital deduction with respect to any property interest, the executor must establish the following facts—

(i) The decedent was survived by a spouse (see § 20.2056(c)–2(e));

(ii) The property interest passed from the decedent to the spouse (see §§ 20.2056(b)–5 through 20.2056(b)–8 and 20.2056(c)–1 through 20.2056(c)–3);

(iii) The property interest is a *deductible interest* (see § 20.2056(a)–2); and

(iv) The value of the property interest (see § 20.2056(b)–4).

(2) *Burden of establishing requisite facts.* The executor must provide the facts relating to any applicable limitation on the amount of the allowable marital deduction under § 20.2056(a)–1(c), and must submit proof necessary to establish any fact required under paragraph (b)(1), including any evidence requested by the district director.

(c) *Marital deduction; limitation on aggregate deductions*—(1) *Estates of decedents dying before 1977.* In the case of estates of decedents dying before January 1, 1977, the marital deduction is limited to one-half of the value of the *adjusted gross estate*, as that term was defined under section 2056(c)(2) prior to repeal by the Economic Recovery Tax Act of 1981.

(2) *Estates of decedents dying after December 31, 1976, and before January 1, 1982*—Except as provided in § 2002(d)(1) of the Tax Reform Act of 1976 (Pub. L. 94–455), in the case of decedents dying after December 31, 1976, and before January 1, 1982, the marital deduction is limited to the greater of—

(i) $250,000; or

(ii) One-half of the value of the decedent's adjusted gross estate, adjusted for intervivos gifts to the spouse as prescribed by section 2056(c)(1)(B) prior to repeal by the Economic Recovery Tax Act of 1981 (Pub. L. 97–34).

(3) *Estates of decedents dying after December 31, 1981.* In the case of estates of decedents dying after December 31, 1981, the marital deduction is limited as prescribed in paragraph (c)(2) of this section if the provisions of § 403(e)(3) of Pub. L. 97–34 are satisfied.

Par. 10. Section 20.2056(a)–2 is amended as follows:

a. In paragraph (a), a paragraph heading is added and the last sentence is revised.

b. In paragraph (b), a paragraph heading is added.

c. The additions and revisions read as follows:

§ 20.2056(a)–2 Marital deduction; deductible interests and nondeductible interests.

(a) *In general.* * * * Subject to any applicable limitations set forth in § 20.2056(a)–1(c), the amount of the marital deduction is the aggregate value of the *deductible interests.*

(b) *Deductible interests.* * * *

* * * * *

Par. 11. Section 20.2056(b)–1 is amended as follows:

a. Paragraphs (d)(2) and (d)(3) are revised.

b. Paragraphs (d)(4) and (d)(5) are added.

c. Paragraph (e)(4) is revised.

d. In paragraph (g), the introductory text is revised.

e. The revisions and additions read as follows:

§ 20.2056(b)–1 Marital deduction; limitation in case of life estate or other terminable interest.

* * * * *

(d) * * *

(2) It is a right to income for life with a general power of appointment, meeting the requirements set forth in § 20.2056(b)–5;

(3) It consists of life insurance or annuity payments held by the insurer with a general power of appointment in the spouse, meeting the requirements set forth in § 20.2056(b)–6;

(4) It is qualified terminable interest property, meeting the requirements set forth in § 20.2056(b)–7; or

(5) It is an interest in a qualified charitable remainder trust in which the spouse is the only noncharitable beneficiary, meeting the requirements set forth in § 20.2056(b)–8.

(e) * * *

(4) The terms *passed from the decedent, passed from the decedent to his surviving spouse* and *passed from the decedent to a person other than his surviving spouse* are defined in §§ 20.2056(c)–1 through 20.2056(c)–3.

* * * * *

(g) *Examples.* The application of this section may be illustrated by the following examples. In each example, it is assumed that the executor made no election under section 2056(b)(7) (even if under the specific facts the election would have been available), that any property interest passing from the decedent to a person other than the surviving spouse passed for less than full and adequate consideration in money or money's worth, and that section 2056(b)(8) is inapplicable.

* * * * *

Par. 12. In § 20.2056(b)–2, headings are added to paragraphs (a) through (d) to read as follows:

§ 20.2056(b)–2 Marital deduction; interest in unidentified assets.

(a) *In general.* * * *

(b) *Application of section 2056(b)(2).* * * *

* * * * *

(c) *Interest nondeductible if circumstances present.* * * *

(d) *Example.* * * *

* * * * *

§ 20.2056(b)–4 [Amended]

Par. 13. In § 20.2056(b)–4, paragraph (b) is amended by removing the fifth sentence.

Par. 14. Section 20.2056(b)–5 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. The heading and first sentence of paragraph (d) are revised to read as set forth below.

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

* * * * *

(c) *Meaning of specific portion*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a specific portion of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent the specific portion is subject to invasion for the benefit of any person other than the surviving spouse, except in the case of a deduction allowable under section 2056(b)(5), relating to the exercise of a general power of appointment by the surviving spouse.

(2) *Fraction or percentage share.* Under section 2056(b)(10), a partial interest in property is treated as a specific portion of the entire interest if the rights of the surviving spouse in income, and the required rights as to the power described in § 20.2056(b)–5(a), constitute a fractional or percentage share of the entire property interest, so that the surviving spouse's interest reflects its proportionate share of the increase or decrease in the value of the entire property interest to which the income rights and the power relate. Thus, if the spouse's right to income and the spouse's power extend to a

specified fraction or percentage of the property, or the equivalent, the interest is in a specific portion of the property. In accordance with paragraph (b) of this section, if the spouse has the right to receive the income from a specific portion of the trust property (after applying paragraph (c)(3) of this section) but has a power of appointment over a different specific portion of the property (after applying paragraph (c)(3) of this section), the marital deduction is limited to the lesser specific portion.

(3) *Special rule in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.*

(i) In the case of estates of decedents within the purview of the effective date and transitional rules contained in paragraphs (c)(3) (ii) and (iii) of this section:

(A) A specific sum payable annually, or at more frequent intervals, out of the property and its income that is not limited by the income of the property is treated as the right to receive the income from a specific portion of the property. The specific portion, for purposes of paragraph (c)(2) of this section, is the portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the decedent's death, would produce income equal to such payments. However, a pecuniary amount payable annually to a surviving spouse is not treated as a right to the income from a specific portion of the trust property for purposes of this paragraph (c)(3)(i)(A) if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property. To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(B) The right to appoint a pecuniary amount out of a larger fund (or trust corpus) is considered the right to appoint a specific portion of such fund or trust for purposes of paragraph (c)(2) in an amount equal to such pecuniary amount.

(ii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply with respect to estates of decedents dying on or before October 24, 1992.

(iii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust agreement executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of the property and did not regain competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iv) Notwithstanding paragraph (c)(3)(iii) of this section, paragraphs (c)(3)(i) (A) and (B) of this section do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest so passes to the surviving spouse of the decedent.

(4) *Local law.* A partial interest in property is treated as a specific portion of the entire interest if it is shown that the surviving spouse has rights under local law that are identical to those the surviving spouse would have acquired had the partial interest been expressed in terms satisfying the requirements of paragraph (c)(2) (or paragraph (c)(3) if applicable) of this section.

(5) *Examples.* The following examples illustrate the application of paragraphs (a) through (c)(4) of this section:

Example 1. Spouse entitled to the lesser of an annuity or a fraction of trust income. The decedent, D, died prior to October 24, 1992. D bequeathed in trust 500 identical shares of X company stock, valued for estate tax purposes at $500,000. The trust provides that during the lifetime of D's spouse, S, the trustee is to pay annually to S the lesser of one-half of the trust income or $20,000. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. S has a testamentary general power of appointment over the entire trust principal. The applicable interest rate for valuing annuities as of D's date of death under section 7520 is 10 percent. For purposes of paragraphs (a) through (c) of this section, S is treated as receiving all of the income from the lesser of—

(i) One half of the stock ($250,000); or

(ii) $200,000, the specific portion of the stock which, as determined in accordance with § 20.2056(b)–5(c)(3)(i)(A), would produce annual income of $20,000 (20,000/.10). Accordingly, the marital deduction is limited to $200,000 (200,000/500,000 or ⅖ of the value of the trust).

Example 2. Spouse possesses power and income interest over different specific portions of trust. The facts are the same as in *Example 1* except that S's testamentary general power of appointment is exercisable over only ¼ of the trust principal. Consequently, under section 2056(b)(5), the marital deduction is allowable only for the value of ¼ of the trust ($125,000); i.e., the lesser of the value of the portion with respect to which S is deemed to be entitled to all of the income (⅖ of the trust or $200,000), or the value of the portion with respect to which S possesses the requisite power of appointment (¼ of the trust or $125,000).

Example 3. Power of appointment over pecuniary amount. The decedent, D, died prior to October 24, 1992. D bequeathed property valued at $400,000 for estate tax purposes in trust. The trustee is to pay annually to D's spouse, S, one-fourth of the trust income. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. The will gives S a testamentary general power of appointment over the sum of $160,000. Because D died prior to October 24, 1992, S's power of appointment over $160,000 is treated as a power of appointment over a specific portion of the entire trust interest. The marital deduction allowable under section 2056(b)(5) is limited to $100,000; that is, the lesser of—

(1) The value of the trust corpus ($400,000);

(2) The value of the trust corpus over which S has a power of appointment ($160,000); or

(3) That specific portion of the trust with respect to which S is entitled to all the income ($100,000).

Example 4. Power of appointment over shares of stock constitutes a power over a specific portion. Under D's will, 250 shares of Y company stock were bequeathed in trust pursuant to which all trust income was payable annually to S, D's spouse, for life. S was given a testamentary general power of appointment over 100 shares of stock. The trust provides that if the trustee sells the Y company stock, S's general power of appointment is exercisable with respect to the sale proceeds or the property in which the proceeds are reinvested. Because the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not necessarily a power to appoint the entire interest that the 100 shares represented on the date of D's death. If it is shown that, under local law, S has a general power to appoint not only the 100 shares designated by D but also 100/250 of any distributions by the corporation that are included in trust principal, the requirements of paragraph (c)(2) of this section are satisfied and S is treated as having a general power to appoint 100/250 of the entire interest in the 250 shares. In that case, the marital deduction is limited to 40 percent of the trust principal. If local law does not give S that power, the 100 shares would not constitute a specific portion under § 20.2056(b)–5(c) (including § 20.2056(b)–5(c)(3)(i)(B)). The nature of the asset is such that a change in the capitalization of the corporation could cause an alteration in the original value represented by the shares at the time of D's death and, thus, it does not represent a specific portion of the trust.

(d) *Meaning of entire interest.* Because a marital deduction is allowed for each separate qualifying interest in property passing from the decedent to the decedent's surviving spouse (subject to any applicable limitations in § 20.2056(a)–1(c)), for purposes of paragraphs (a) and (b) of this section,

each property interest with respect to which the surviving spouse received any rights is considered separately in determining whether the surviving spouse's rights extend to the entire interest or to a specific portion of the entire interest. * * *

* * * * *

Par. 15. Sections 20.2056(b)–7 through 20.2056(b)–10 are added to read as follows:

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) *In general.* Subject to section 2056(d), a marital deduction is allowed under section 2056(b)(7) with respect to estates of decedents dying after December 31, 1981, for qualified terminable interest property as defined in paragraph (b) of this section. All of the property for which a deduction is allowed under this paragraph (a) is treated as passing to the surviving spouse (for purposes of § 20.2056(a)–1), and no part of the property is treated as passing to any person other than the surviving spouse (for purposes of § 20.2056(b)–1).

(b) *Qualified terminable interest property*—(1) *In general.* Section 2056(b)(7)(B)(i) provides the definition of *qualified terminable interest property.*

(i) Terminable interests described in section 2056(b)(1)(C) cannot qualify as qualified terminable interest property. Thus, if the decedent directs the executor to purchase a terminable interest with estate assets, the terminable interest acquired will not qualify as qualified terminable interest property.

(ii) For purposes of section 2056(b)(7)(B)(i), the term *property* generally means the *entire interest in property* (within the meaning of § 20.2056(b)–5(d)) or a *specific portion of the entire interest* (within the meaning of § 20.2056(b)–5(c)).

(2) *Property for which an election may be made*—(i) *In general.* The election may relate to all or any part of property that meets the requirements of section 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying sections 2044 or 2519. The fraction or percentage may be defined by formula.

(ii) *Division of trusts*—(A) *In general.* A trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

(B) *Manner of dividing and funding trust.* The division of the trust must be done on a fractional or percentage basis to reflect the partial election. However, the separate trusts do not have to be funded with a pro rata portion of each asset held by the undivided trust.

(C) *Local law.* A trust may be divided only if the fiduciary is required, either by applicable local law or by the express or implied provisions of the governing instrument, to divide the trust on the basis of the fair market value of the assets of the trust at the time of the division.

(3) *Persons permitted to make the election.* The election referred to in section 2056(b)(7)(B)(i)(III) must be made by the executor that is appointed, qualified, and acting within the United States, within the meaning of section 2203, regardless of whether the property with respect to which the election is to be made is in the executor's possession. If there is no executor appointed, qualified, and acting within the United States, the election may be made by any person with respect to property in the actual or constructive possession of that person and may also be made by that person with respect to other property not in the actual or constructive possession of that person if the person in actual or constructive possession of such other property does not make the election. For example, in the absence of an appointed executor, the trustee of an intervivos trust (that is included in the gross estate of the decedent) can make the election.

(4) *Manner and time of making the election*—(i) *In general.* The election referred to in section 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by section 2001 (or section 2101). For purposes of this paragraph, the term *return of tax imposed by section 2001* means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

(ii) *Election irrevocable.* The election, once made, is irrevocable, provided that an election may be revoked or modified on a subsequent return filed on or before the due date of the return, including extensions actually granted. If an executor appointed under local law has made an election on the return of tax imposed by section 2001 (or section 2101) with respect to one or more properties, no subsequent election may be made with respect to other properties included in the gross estate after the return of tax imposed by section 2001 is filed. An election under section 2056(b)(7)(B)(v) is separate from any elections made under section 2056A(a)(3).

(c) *Protective elections*—(1) *In general.* A protective election may be made to treat property as qualified terminable interest property only if, at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive, i.e., whether property that is includible is eligible for the qualified terminable interest property election. The protective election must identify either the specific asset, group of assets, or trust to which the election applies and the specific basis for the protective election.

(2) *Protective election irrevocable.* The protective election, once made on the return of tax imposed by section 2001, cannot be revoked. For example, if a protective election is made on the basis that a bona fide question exists regarding the inclusion of a trust corpus in the gross estate and it is later determined that the trust corpus is so includible, the protective election becomes effective with respect to the trust corpus and cannot thereafter be revoked.

(d) *Qualifying income interest for life*—(1) *In general.* Section 2056(b)(7)(B)(ii) provides the definition of *qualifying income interest for life.* For purposes of section 2056(b)(7)(B)(ii)(II), the surviving spouse is included within the prohibited class of powerholders referred to therein.

(2) *Entitled for life to all income.* The principles of § 20.2056(b)–5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest, or a specific portion of the entire interest, apply in determining whether the surviving spouse is entitled for life to all of the income from the property regardless of whether the interest passing to the spouse is in trust.

(3) *Contingent income interests.* An income interest granted for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., remarriage), is not a qualifying income interest for life. In addition, an income interest (or life estate) that is contingent upon the executor's election under section

2056(b)(7)(B)(v) is not a qualifying income interest for life, regardless of whether the election is actually made.

(4) *Income between last distribution date and date of spouse's death.* An income interest does not fail to constitute a qualifying income interest for life solely because income between the last distribution date and the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse. See § 20.2044–1 relating to the inclusion of such undistributed income in the gross estate of the surviving spouse.

(5) *Pooled income funds.* An income interest in a pooled income fund described in section 642(c)(5) constitutes a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(6) *Power to distribute principal to spouse.* An income interest in a trust will not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the surviving spouse. The fact that property distributed to a surviving spouse may be transferred by the spouse to another person does not result in a failure to satisfy the requirement of section 2056(b)(7)(B)(ii)(II). However, if the surviving spouse is legally bound to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of section 2056(b)(7)(B)(ii)(II) is not satisfied.

(e) *Annuities payable from trusts in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date—(1) In general.* In the case of estates of decedents within the purview of the effective date and transitional rules contained in § 20.2056(b)–7(e)(5), a surviving spouse's lifetime annuity interest payable from a trust or other group of assets passing from the decedent is treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(2) *Deductible interest.* The deductible interest, for purposes of § 20.2056(a)–2(b), is the specific portion of the property that, assuming the applicable interest rate for valuing annuities, would produce income equal to the minimum amount payable annually to the surviving spouse. If, based on the applicable interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of the property. The value of the deductible interest may not exceed the value of the property from which the annuity is payable. If the annual payment may increase, the increased amount is not taken into account in valuing the deductible interest.

(3) *Distributions permissible only to surviving spouse.* An annuity interest is not treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii) if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property or its income (including any distribution under an annuity contract) from which the annuity is payable.

(4) *Applicable interest rate.* To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(5) *Effective dates.* (i) The rules contained in § 20.2056(b)–7(e) apply with respect to estates of decedents dying on or before October 24, 1992.

(ii) The rules contained in § 20.2056(b)–7(e) apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iii) Notwithstanding the foregoing, the rules contained in § 20.2056(b)–7(e) do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest so passes to the surviving spouse.

(f) *Joint and survivor annuities.* [Reserved]

(g) *Application of local law.* The provisions of local law are taken into account in determining whether the conditions of section 2056(b)(7)(B)(ii)(I) are satisfied. For example, silence of a trust instrument as to the frequency of payment is not regarded as a failure to satisfy the requirement that the income must be payable to the surviving spouse annually or more frequently unless applicable local law permits payments less frequently.

(h) *Examples.* The following examples illustrate the application of paragraphs (a) through (g) of this section. In each example, it is assumed that the decedent, D, was survived by S, D's spouse and that, unless stated otherwise, S is not the trustee of any trust established for S's benefit.

Example 1. Life estate in residence. D owned a personal residence valued at $250,000 for estate tax purposes. Under D's will, the exclusive and unrestricted right to use the residence (including the right to continue to occupy the property as a personal residence or to rent the property and receive the income) passes to S for life. At S's death, the property passes to D's children. Under applicable local law, S must consent to any sale of the property. If the executor elects to treat all of the personal residence as qualified terminable interest property, the deductible interest is $250,000, the value of the residence for estate tax purposes.

Example 2. Power to make property productive. D's will established a trust funded with property valued for estate tax purposes at $500,000. The assets include both income producing assets and non-productive assets. S was given the power, exercisable annually, to require distribution of all of the trust income to herself. No trust property may be distributed during S's lifetime to any person other than S. Applicable local law permits S to require that the trustee either make the trust property productive or sell the property and reinvest in productive property within a reasonable time after D's death. If the executor elects to treat all of the trust as qualified terminable interest property, the deductible interest is $500,000. If the executor elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is $100,000, i.e., 20 percent of $500,000.

Example 3. Power of distribution over fraction of trust income. The facts are the same as in *Example 2* except that S is given the right exercisable annually for S's lifetime to require distribution to herself of only 50 percent of the trust income for life. The remaining trust income is to be accumulated or distributed among S and the decedent's children in the trustee's discretion. The maximum amount that D's executor may elect to treat as qualified terminable interest property is $250,000; i.e., the estate tax value of the trust ($500,000) multiplied by the percentage of the trust in which S has a qualifying income interest for life (50 percent). If D's executor elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $50,000, i.e., 20 percent of $250,000.

Example 4. Power to distribute trust corpus to other beneficiaries. D's will established a trust providing that S is entitled to receive at least annually all the trust income. The trustee is given the power to use annually during S's lifetime $5,000 from the trust for the maintenance and support of S's minor child, C. Any such distribution does not necessarily relieve S of S's obligation to support and maintain C. S does not have a qualifying income interest for life in any portion of the trust because the bequest fails

to satisfy the condition that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2056(b)(7) if S, rather than the trustee, held the power to appoint a portion of the principal to C. However, in the latter case, if S made a qualified disclaimer (within the meaning of section 2518) of the power to appoint to C, the trust could qualify for the marital deduction pursuant to section 2056(b)(7), assuming that the power is personal to S and S's disclaimer terminates the power. Similarly, in either case, if C made a qualified disclaimer of C's right to receive distributions from the trust, the trust would qualify under section 2056(b)(7), assuming that C's disclaimer effectively negates the trustee's power under local law.

Example 5. Spouse's income interest terminable on remarriage. D's will established a trust providing that all of the trust income is payable at least annually to S for S's lifetime, provided that, if S remarries, S's interest in the trust will pass to X. The trust is not deductible under section 2056(b)(7). S's income interest is not a *qualifying income interest for life* because it is not for life but, rather, is terminable upon S's remarriage.

Example 6. Spouse's income interest contingent on executor's election. D's will established a trust providing that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. S does not have a qualifying income interest for life in any portion of the trust because the income interest is contingent upon the executor's election. Accordingly, the executor cannot elect qualified terminable interest treatment for any portion of the trust. If the decedent's will gives the surviving spouse a qualifying income interest for life in a specific portion of the trust (such as the minimum portion of the trust that is necessary to reduce the Federal estate tax to zero) and the interest is not contingent on the executor's election, the executor can elect qualified terminable interest treatment for the specified portion of the trust.

Example 7. Formula partial election. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's executor elects to deduct a fractional share of the residuary estate under section 2056(b)(7). The election specifies that the numerator of the fraction is the amount of deduction necessary to reduce the Federal estate tax to zero (taking into account final estate tax values) and the denominator of the fraction is the final estate tax value of the residuary estate (taking into account any specific bequests or liabilities of the estate paid out of the residuary estate). The formula election is of a fractional share. The value of the share qualifies for the marital deduction even though the executor's determinations to claim administration expenses as estate or income tax deductions and the final estate tax values will affect the size of the fractional share.

Example 8. Formula partial election. The facts are the same as in *Example 7* except that, rather than defining a fraction, the executor's formula states: "I elect to treat as qualified terminable interest property that portion of the residuary trust, up to 100 percent, necessary to reduce the Federal estate tax to zero, after taking into account the available unified credit, final estate tax values and any liabilities and specific bequests paid from the residuary estate." The formula election is of a fractional share. The share is equivalent to the fractional share determined in *Example 7*.

Example 9. Severance of QTIP trust. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all of the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's will authorizes the executor to make the election under section 2056(b)(7) only with respect to the minimum amount of property necessary to reduce estate taxes on D's estate to zero, authorizes the executor to divide the residuary estate into two separate trusts to reflect the election, and authorizes the executor to charge any payment of principal to S to the qualified terminable interest trust. S is the sole beneficiary of both trusts during S's lifetime. The authorizations in the will do not adversely affect the allowance of the marital deduction. Only the property remaining in the marital deduction trust, after payment of principal to S, is subject to inclusion in S's gross estate under section 2044 or subject to gift tax under section 2519.

Example 10. Payments to spouse from individual retirement account. S is the life beneficiary of sixteen remaining annual installments payable from D's individual retirement account. The terms of the account provide for the payment of the account balance in nineteen annual installments that commenced when D reached age 70½. Each installment is equal to all the income earned on the remaining principal in the account plus a share of the remaining principal equal to 1/19 in the first year, 1/18 in the second year, 1/17 in the third year, etc. Under the terms of the account, S has no right to withdraw any other amounts from the account. Any payments remaining after S's death pass to D's children. S's interest in the account qualifies as a qualifying income interest for life under section 2056(b)(7)(B)(ii), without regard to the provisions of section 2056(b)(7)(C).

Example 11. Spouse's interest in trust in the form of an annuity. D died prior to October 24, 1992. D's will established a trust funded with income producing property valued at $500,000 for estate tax purposes. The trustee is required by the trust instrument to pay $20,000 a year to S for life. Trust income in excess of the annuity amount is to be accumulated in the trust and may not be distributed during S's lifetime. S's lifetime annuity interest is treated as a qualifying income interest for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is (assuming that 10 percent is the applicable interest rate under section 7520 for valuing annuities on the appropriate valuation date) $200,000, because that amount would yield an income to S of $20,000 a year.

Example 12. Value of spouse's annuity exceeds value of trust corpus. The facts are the same as in *Example 11* except that the trustee is required to pay S $70,000 a year for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $500,000, which is the lesser of the entire value of the property ($500,000), or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $70,000 a year ($700,000).

Example 13. Pooled income fund. D's will provides for a bequest of $200,000 to a pooled income fund described in section 642(c)(5), designating S as the income beneficiary for life. If D's executor elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000.

Example 14. Funding severed QTIP trusts. D's will established a trust satisfying the requirements of section 2056(b)(7). Pursuant to the authority in D's will and § 20.2056(b)–7(b)(2)(ii), D's executor indicates on the Federal estate tax return that an election under section 2056(b)(7) is being made with respect to 50 percent of the trust, and that the trust will subsequently be divided to reflect the partial election on the basis of the fair market value of the property at the time of the division. D's executor funds the trust at the end of the period of estate administration. At that time, the property available to fund the trusts consists of 100 shares of X Corporation stock with a current value of $400,000 and 200 shares of Y Corporation stock with a current value of $400,000. D may fund each trust with the stock of either or both corporations, in any combination, provided that the aggregate value of the stock allocated to each trust is $400,000.

§ 20.2056(b)–8 Special rule for charitable remainder trusts.

(a) *In general*—(1) *Surviving spouse only noncharitable beneficiary.* With respect to estates of decedents dying after December 31, 1981, subject to section 2056(d), if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under

section 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under section 2055. If an interest in property qualifies for a marital deduction under section 2056(b)(8), no election may be made with respect to the property under section 2056(b)(7). For purposes of this section, the term *non-charitable beneficiary* means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(2) *Interest for life or term of years.* The surviving spouse's interest need not be an interest for life to qualify for a marital deduction under section 2056(b)(8). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years.

(3) *Payment of state death taxes.* A deduction is allowed under section 2056(b)(8) even if the transfer to the surviving spouse is conditioned on the spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust. See § 20.2056(b)–4(c) for the effect of such a condition on the amount of the deduction allowable.

(b) *Charitable remainder trusts where the surviving spouse is not the only noncharitable beneficiary.* In the case of a charitable remainder trust where the decedent's spouse is not the only noncharitable beneficiary (for example, where the noncharitable interest is payable to the decedent's spouse for life and then to another individual for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2056(b)(7) and not under section 2056(b)(8). Accordingly, if the decedent died on or before October 24, 1992, or the trust otherwise comes within the purview of the transitional rules contained in § 20.2056(b)–7(e)(5), the spousal annuity or unitrust interest may qualify under § 20.2056(b)–(7)(e) as a qualifying income interest for life.

§ 20.2056(b)–9 Denial of double deduction.

The value of an interest in property may not be deducted for Federal estate tax purposes more than once with respect to the same decedent. For example, where a decedent transfers a life estate in a farm to the spouse with a remainder to charity, the entire property is, pursuant to the executor's election under section 2056(b)(7), treated as passing to the spouse. The entire value of the property qualifies for the marital deduction. No part of the value of the property qualifies for a charitable deduction under section 2055 in the decedent's estate.

§ 20.2056(b)–10 Effective dates.

Except as specifically provided in §§ 20.2056(b)–5(c)(3) (ii) and (iii), 20.2056(b)–7(e)(5), and 20.2056(b)–8(b), the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedents dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

§§ 20.2056(c)–1 and 20.2056(c)–2 [Removed]

Par. 16. Sections 20.2056(c)–1 and 20.2056(c)–2 are removed.

Par. 17. Section 20.2056(e)–1 is redesignated § 20.2056(c)–1 and amended as follows:

a. The section heading is revised as set forth below.

b. Headings are added for paragraphs (a) and (b) as set forth below.

c. The last sentence in paragraph (b) is removed.

§ 20.2056(c)–1 Marital deduction; definition of passed from the decedent.

(a) *In general.* * * *

(b) *Expectant interest in property under community property laws.* * * *

Par. 18. Section 20.2056(e)–2 is redesignated § 20.2056(c)–2, and amended as follows:

a. The section heading is revised.

b. The first sentence of paragraph (a) is amended by removing the reference "§ 20.2056(e)–1" and adding "§ 20.2056(c)–1" in its place.

c. Paragraphs (a)(2) through (a)(5) are redesignated as paragraphs (a)(3) through (a)(6), respectively, and a new paragraph (a)(2) is added.

d. The first sentence in the concluding text of paragraph (a) following newly designated paragraph (a)(6) is revised.

e. Paragraphs (b)(1)(iv) and (b)(2)(iii) are amended by removing the reference "§ 20.2056(b)–5" and adding "§ 20.2056(b)–5 or 20.2056(b)–7" in its place.

f. Paragraph (b)(3)(v) is amended by removing the reference "section 2056(b)(5)" and adding "§ 20.2056(b)–5 or 20.2056(b)–7" in its place.

g. The revisions and additions read as follows:

§ 20.2056(c)–2 Marital deduction; definition of passed from the decedent to his surviving spouse.

(a) * * *

(2) In the case of certain interests with income for life to the surviving spouse that the executor elects to treat as qualified terminable interest property (see § 20.2056(b)–7);

* * * * *

A property interest is treated as passing to the surviving spouse only if it passes to the spouse as beneficial owner, except to the extent otherwise provided in §§ 20.2056(b)–5 through 20.2056(b)–7. * * *

* * * * *

§ 20.2056(e)–3 [Redesignated as § 20.2056(c)–3 and Amended]

Par. 19. Section 20.2056(e)–3 is redesignated § 20.2056(c)–3, and amended by removing the references to "§ 20.2056(e)–1" and "§ 20.2056(e)–2" and adding "§ 20.2056(c)–1" and "§ 20.2056(c)–2" in their respective places in the first sentence.

Par. 20. Sections 20.2207A–1 and 20.2207A–2 are added to read as follows:

§ 20.2207A–1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) *In general*—(1) *Right of recovery from person receiving the property.* If the gross estate includes the value of property that is includible by reason of section 2044 (relating to certain property in which the decedent had a qualifying income interest for life under sections 2056(b)(7) or 2523(f)), the estate of the surviving spouse is entitled to recover from the *person receiving the property* (as defined in paragraph (d) of this section) the amount of Federal estate tax attributable to that property. The right of recovery arises when the Federal estate tax with respect to the property includible in the gross estate by reason of section 2044 is paid by the estate. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the gross estate if no tax is attributable to that property.

(2) *Failure to exercise right of recovery.* Failure of an estate to exercise a right of recovery under this section upon a transfer subject to section 2044 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts from the persons who would benefit from the recovery to the persons from whom the recovery could have been obtained. See § 25.2511–1 of this

chapter. The transfer is considered made when the right of recovery is no longer enforceable under applicable local law. A delay in the exercise of the right of recovery may be treated as an interest-free loan with appropriate gift tax consequences under section 7872 depending on the facts of the particular case.

(3) *Waiver of right of recovery.* The provisions of § 20.2207A–1(a)(2) do not apply to the extent that the surviving spouse's will provides that a recovery shall not be made or to the extent that the beneficiaries cannot otherwise compel recovery. Thus, e.g., if the surviving spouse gives the executor of the estate discretion to waive the right of recovery and the executor waives the right, no gift occurs under § 25.2511–1 of this chapter if the persons who would benefit from the recovery cannot compel the executor to exercise the right of recovery.

(b) *Amount of estate tax attributable to property includible under section 2044.* The amount of Federal estate tax attributable to property includible in the gross estate under section 2044 is the amount by which the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that has been paid, exceeds the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that would have been paid if the value of the property includible in the gross estate by reason of section 2044 had not been so included.

(c) *Amount of estate tax attributable to a particular property.* An estate's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value for Federal estate tax purposes of the particular property included in the gross estate by reason of section 2044, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the gross estate by reason of section 2044, less any deductions allowed with respect to those properties.

(d) *Person receiving the property.* If the property is in a trust at the time of the decedent's death, the *person receiving the property* is the trustee and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (d) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. D died in 1994. D's will created a trust funded with certain income producing assets included in D's gross estate at $1,000,000. The trust provides that all the income is payable to D's wife, S, for life, remainder to be divided equally among their four children. In computing D's taxable estate, D's executor deducted, pursuant to section 2056(b)(7), $1,000,000. Assume that S received no other property from D and that S died in 1996. Assume further that S made no section 2519 disposition of the property, that the property was included in S's gross estate at a value of $1,080,000, and that S's will contained no provision regarding section 2207A(a). The tax attributable to the property is equal to the amount by which the total Federal estate tax (including penalties and interest) paid by S's estate exceeds the Federal estate tax (including penalties and interest) that would have been paid if S's gross estate had been reduced by $1,080,000. That amount of tax may be recovered by S's estate from the trust. If, at the time S's estate seeks reimbursement, the trust has been distributed to the four children, S's estate is also entitled to recover the tax from the children.

§ 20.2207A–2 Effective date.

The provisions of § 20.2207A–1 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedent dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2207A–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

PART 22—TEMPORARY ESTATE AND GIFT TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 21. The authority citation for part 22 is revised to read as folows:

Authority: 26 U.S.C. 7805.

§ 22.2056–1 [Removed]

Par. 22. Section 22.2056–1 is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 23. The authority citation for part 25 is revised to read as follows:

Authority: 26 U.S.C. 7805.

(Section 25.2512–5 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2512–9 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2513–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2522(c)–3 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2522(d)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2523(a)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2523(b)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.6091–1 also issued under 26 U.S.C. 6091)

Par. 24. The authority citations immediately following §§ 25.2512–5, 25.2512–9, 25.2522(c)–3 and 25.2523(a)–1 are removed.

Par. 25. Sections 25.2207A–1 and 25.2207A–2 are added immediately following the undesignated center heading "Determination of Tax Liability" to read as follows:

§ 25.2207A–1 Right of recovery of gift taxes in the case of certain marital deduction property.

(a) *In general.* If an individual is treated as transferring an interest in property by reason of section 2519, the individual or the individual's estate is entitled to recover from the *person receiving the property* (as defined in paragraph (e) of this section) the amount of gift tax attributable to that property. The value of property to which this paragraph (a) applies is the value of all interests in the property other than the qualifying income interest. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the total amount of gifts, if no Federal gift tax is attributable to the property. The right of recovery arises at the time the Federal gift tax is actually paid by the transferor subject to section 2519.

(b) *Failure of a person to exercise the right of recovery.* [Reserved].

(c) *Amount of gift tax attributable to all properties.* The amount of Federal gift tax attributable to all properties includible in the total amount of gifts under section 2519 made during the calendar year is the amount by which the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which has been paid, exceeds the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which would have been paid if the value of the properties includible in the total amount of gifts by

reason of section 2519 had not been included.

(d) *Amount of gift tax attributable to a particular property.* A person's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (c) of this section multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of section 2519, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reason of section 2519, less any deductions allowed with respect to those properties.

(e) *Person receiving the property.* If the property is in a trust at the time of the transfer, the *person receiving the property* is the trustee, and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (e) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(f) *Example.* The following example illustrates the application of paragraphs (a) through (e) of this section.

Example. D created an inter vivos trust during 1994 with certain income producing assets valued at $1,000,000. The trust provides that all income is payable to D's wife, S, for S's life, with the remainder at S's death to be divided equally among their four children. In computing taxable gifts during calendar year 1994, D deducted, pursuant to section 2523(f), $1,000,000 from the total amount of gifts made. In addition, assume that S received no other transfers from D and that S made a gift during 1996 of the entire life interest to one of the children, at which time the value of trust assets was $1,080,000 and the value of S's life interest was $400,000. Although the entire value of the trust assets ($1,080,000) is, pursuant to sections 2511 and 2519, included in the total amount of S's gifts for calendar year 1996, S is only entitled to reimbursement for the Federal gift tax attributable to the value of the remainder interest, that is, the Federal gift tax attributable to $680,000 ($1,080,000 less $400,000). The Federal gift tax attributable to $680,000 is equal to the amount by which the total Federal gift tax (including penalties and interest) paid for the calendar year exceeds the federal gift tax (including penalties and interest) that would have been paid if the total amount of gifts during 1996 had been reduced by $680,000. That amount of tax may be recovered by S from the trust.

§ 25.2207A–2 Effective date.

The provisions of § 25.2207A–1 are effective with respect to dispositions made after March 1, 1994. With respect to gifts made on or before such date, the donor may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 25.2207A–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 26. Section 25.2515–1 is amended by:

a. Redesignating paragraph (a) as (a)(3).

b. Adding paragraphs (a)(1) and (2) to read as follows:

§ 25.2515–1 Tenancies by the entirety; in general.

(a) *Scope*—(1) *In general.* This section and §§ 25.2515–2 through 25.2515–4 do not apply to the creation of a tenancy by the entirety after December 31, 1981, and do not reflect changes made to the Internal Revenue Code by sections 702(k)(1)(A) of the Revenue Act of 1978, or section 2002(c)(2) of the Tax Reform Act of 1976.

(2) *Special rule in the case of tenancies created after July 13, 1988, if the donee spouse is not a United States citizen.* Under section 2523(i)(3), applicable (subject to the special treaty rule contained in Public Law 101–239, section 7815(d)(14)) in the case of tenancies by the entirety and joint tenancies created between spouses after July 13, 1988, if the donee spouse is not a citizen of the United States, the principles contained in section 2515 and §§ 25.2515–1 through 25.2515–4 apply in determining the gift tax consequences with respect to the creation and termination of the tenancy, except that the election provided in section 2515(a) (prior to repeal by the Economic Recovery Tax Act of 1981) and § 25.2515–2 (relating to the donor's election to treat the creation of the tenancy as a transfer for gift tax purposes) does not apply.

* * * * *

Par. 27. Sections 25.2519–1 and 25.2519–2 are added immediately after the undesignated center heading "Deductions" and before § 25.2521–1 to read as follows:

§ 25.2519–1 Dispositions of certain life estates.

(a) *In general.* If a donee spouse makes a disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under section 2056(b)(7) or section 2523(f) for the transfer creating the qualifying income interest, the donee spouse is treated for purposes of chapters 11 and 12 of subtitle B of the Internal Revenue Code as transferring all interests in property other than the qualifying income interest. For example, if the donee spouse makes a disposition of part of a qualifying income interest for life in trust corpus, the spouse is treated under section 2519 as making a transfer subject to chapters 11 and 12 of the entire trust other than the qualifying income interest for life. Therefore, the donee spouse is treated as making a gift under section 2519 of the entire trust less the qualifying income interest, and is treated for purposes of section 2036 as having transferred the entire trust corpus, including that portion of the trust corpus from which the retained income interest is payable. A transfer of all or a portion of the income interest of the spouse is a transfer by the spouse under section 2511. See also section 2702 for special rules applicable in valuing the gift made by the spouse under section 2519.

(b) *Presumption.* Unless the donee spouse establishes to the contrary, section 2519 applies to the entire trust at the time of the disposition. If a deduction is taken on either the estate or gift tax return with respect to the transfer which created the qualifying income interest, it is presumed that the deduction was allowed for purposes of section 2519. To avoid the application of section 2519 upon a transfer of all or part of the donee spouse's income interest, the donee spouse must establish that a deduction was not taken for the transfer of property which created the qualifying income interest. For example, to establish that a deduction was not taken, the donee spouse may produce a copy of the estate or gift tax return filed with respect to the transfer creating the qualifying income interest for life establishing that no deduction was taken under section 2056(b)(7) or section 2523(f). In addition, the donee spouse may establish that no return was filed on the original transfer by the donor spouse because the value of the first spouse's gross estate was below the threshold requirement for filing under section 6018. Similarly, the donee spouse could establish that the transfer creating the qualifying income interest for life was made before the effective date of section 2056(b)(7) or section 2523(f), whichever is applicable.

(c) *Amount treated as a transfer—(1) In general.* The amount treated as a transfer under this section upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the fair market value of the entire property subject to the qualifying

income interest, determined on the date of the disposition (including any accumulated income and not reduced by any amount excluded from total gifts under section 2503(b) with respect to the transfer creating the interest), less the value of the qualifying income interest in the property on the date of the disposition. The gift tax consequences of the disposition of the qualifying income interest are determined separately under § 25.2511–2.

(2) *Disposition of interest in property with respect to which a partial election was made.* If, in connection with the transfer of property that created the spouse's qualifying income interest for life, a deduction was allowed under section 2056(b)(7) or section 2523(f) for less than the entire interest in the property (i.e., for a fractional or percentage share of the entire interest in the transferred property) the amount treated as a transfer by the donee spouse under this section is equal to the fair market value of the entire property subject to the qualifying income interest on the date of the disposition, less the value of the qualifying income interest for life, multiplied by the fractional or percentage share of the interest for which the deduction was taken.

(3) *Reduction for distributions charged to nonelective portion of trust.* The amount determined under paragraph (c)(2) of this section (if applicable) is appropriately reduced if—

(i) The donee spouse's interest is in a trust and distributions of principal have been made to the donee spouse;

(ii) The trust provides that distributions of principal are made first from the qualified terminable interest share of the trust; and

(iii) The donee spouse establishes the reduction in that share based on the fair market value of the trust assets at the time of each distribution.

(4) *Effect of gift tax recovered under section 2207A on the amount of the transfer.* [Reserved]

(5) *Interest in previously severed trust.* If the donee spouse's interest is in a trust consisting of only qualified terminable interest property, and the trust was previously severed (in compliance with § 20.2056(b)–7(b)(2)(ii) of this chapter or § 25.2523(f)–1(b)(3)(ii) from a trust that, after the severance, held only property that was not qualified terminable interest property, only the value of the property in the severed portion of the trust at the time of the disposition is treated as transferred under this section.

(d) *Identification of property transferred.* If only part of the property in which a donee spouse has a qualifying income interest for life is qualified terminable interest property, the donee spouse is, in the case of a disposition of all or part of the income interest within the meaning of section 2519, deemed to have transferred a pro rata portion of the entire qualified terminable interest property for purposes of this section.

(e) *Exercise of power of appointment.* The exercise by any person of a power to appoint qualified terminable interest property to the donee spouse is not treated as a disposition under section 2519, even though the donee spouse subsequently disposes of the appointed property.

(f) *Conversion of qualified terminable interest property.* The conversion of qualified terminable interest property into other property in which the donee spouse has a qualifying income interest for life is not, for purposes of this section, treated as a disposition of the qualifying income interest. Thus, the sale and reinvestment of assets of a trust holding qualified terminable interest property is not a disposition of the qualifying income interest, provided that the donee spouse continues to have a qualifying income interest for life in the trust after the sale and reinvestment. Similarly, the sale of real property in which the spouse possesses a legal life estate and thus meets the requirements of qualified terminable interest property, followed by the transfer of the proceeds into a trust which also meets the requirements of qualified terminable interest property, or by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, is not considered a disposition of the qualifying income interest. On the other hand, the sale of qualified terminable interest property, followed by the payment to the donee spouse of a portion of the proceeds equal to the value of the donee spouse's income interest, is considered a disposition of the qualifying income interest.

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples below, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, and that section 2503(e) is not applicable to the amount deemed transferred.

Example 1. Transfer of the spouse's life estate in residence. Under D's will, a personal residence valued for estate tax purposes at $250,000 passes to S for life, and after S's death to D's children. D's executor made a valid election to treat the property as qualified terminable interest property. During 1995, when the fair market value of the property is $300,000 and the value of S's life interest in the property is $100,000, S makes a gift of S's entire interest in the property to D's children. Pursuant to section 2519, S makes a gift in the amount of $200,000 (i.e., the fair market value of the qualified terminable interest property of $300,000 less the fair market value of S's qualifying income interest in the property of $100,000). In addition, under section 2511, S makes a gift of $100,000 (i.e., the fair market value of S's income interest in the property). See § 25.2511–2.

Example 2. Sale of spouse's life estate. The facts are the same as in *Example 1* except that during 1995, S sells S's interest in the property to D's children for $100,000. Pursuant to section 2519, S makes a gift of $200,000 ($300,000 less $100,000 value of the qualifying income interest in the property). S does not make a gift of the income interest under section 2511, because the consideration received for S's income interest is equal to the value of the income interest.

Example 3. Transfer of income interest in trust subject to partial election. D's will established a trust valued for estate tax purposes at $500,000, all of the income of which is payable annually to S for life. After S's death, the principal of the trust is to be distributed to D's children. Assume that only 50 percent of the trust was treated as qualified terminable interest property. During 1995, S makes a gift of all of S's interest in the trust to D's children at which time the fair market value of the trust is $400,000 and the fair market value of S's life income interest in the trust is $100,000. Pursuant to section 2519, S makes a gift of $150,000 (the fair market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 income interest in the qualified terminable interest property). S also makes a gift pursuant to section 2511 of $100,000 (i.e., the fair market value of S's life income interest).

Example 4. Transfer of a portion of income interest in trust subject to a partial election. The facts are the same as in *Example 3* except that S makes a gift of only 40 percent of S's interest in the trust. Pursuant to section 2519, S makes a gift of $150,000 (i.e., the fair market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 value of S's qualified income interest in the qualified terminable interest property). S also makes a gift pursuant to section 2511 of $40,000 (i.e., the fair market value of 40 percent of S's life income interest). See also section 2702 for additional rules that may affect the value of the total amount of S's gift under section 2519 to take into account the fact that S's 30 percent retained income interest attributable to the qualifying income interest is valued at zero under that section, thereby increasing the value of S's section 2519 gift to $180,000. In addition, under § 25.2519–1(d), S's disposition of 40 percent of the income interest is deemed to be a transfer of a pro rata portion of the qualified terminable interest property. Thus, assuming no further

lifetime dispositions by S, 30 percent (60 percent of 50 percent) of the trust property is included in S's gross estate under section 2036 and an adjustment is made to S's adjusted taxable gifts under section 2001(b)(1)(B). If S later disposes of all or a portion of the retained income interest, see § 25.2702–6.

Example 5. Transfer of a portion of spouse's interest in a trust from which corpus was previously distributed to the spouse. D's will established a trust valued for estate tax purposes at $500,000, all of the income of which is payable annually to S for life. The trustee is granted the discretion to distribute trust principal to S. All appointments of principal must be made from the portion of the trust subject to the section 2056(b)(7) election. After S's death, the principal of the trust is to be distributed to D's children. The executor makes the section 2056(b)(7) election with respect to 50 percent of the trust. In 1994, pursuant to the terms of D's will, the trustee distributed $50,000 of principal to S and charged the entire distribution to the qualified terminable interest portion of the trust.

Immediately prior to the distribution, the value of the entire trust was $550,000 and the value of the qualified terminable interest portion was $275,000 (50 percent of $550,000). Provided S can establish the above facts, the qualified terminable interest portion of the trust immediately after the distribution is $225,000 or 45 percent of the value of the trust ($225,000/$500,000). In 1996, when the value of the trust is $400,000 and the value of S's income interest is $100,000, S makes a transfer of 40 percent of S's income interest. S's gift under section 2519 is $135,000; i.e., the fair market value of the qualified terminable interest property, 45 percent of $400,000 ($180,000), less the value of the income interest in the qualified terminable interest property, $45,000 (45 percent of $100,000). S also makes a gift under section 2511 of $40,000; i.e., the fair market value of 40 percent of S's income interest. S's disposition of 40 percent of the income interest is deemed to be a transfer under section 2519 of the entire 45 percent portion of the remainder subject to the section 2056(b)(7) election. Since S retained 60 percent of the income interest, 27 percent (60 percent of 45 percent) of the trust property is includible in S's gross estate under section 2036. See also section 2702 and *Example 4* as to the principles applicable in valuing S's gift under section 2702 and adjusted taxable gifts upon S's subsequent death.

Example 6. Transfer of Spousal Annuity Payable From Trust. D died prior to October 24, 1992. D's will established a trust valued for estate tax purposes at $500,000. The trust instrument required the trustee to pay an annuity to S of $20,000 a year for life. All the trust income other than the amounts paid to S as an annuity are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. After S's death, the principal of the trust is to be distributed to D's children. Because D died prior to the effective date of section 1941 of the Energy Policy Act of 1992, S's annuity interest qualifies as a qualifying income interest for life. Under § 20.2056(b)–7(e) of this chapter, based on an applicable 10 percent interest rate, 40 percent of the property, or $200,000, is the value of the deductible interest. During 1996, S makes a gift of the annuity interest to D's children at which time the fair market value of the trust is $800,000 and the fair market value of S's annuity interest in the trust is $100,000. Pursuant to section 2519, S is treated as making a gift of $220,000 (the fair market value of the qualified terminable interest property, 40 percent of $800,000 ($320,000), less the $100,000 annuity interest in the qualified terminable interest property). S is also treated pursuant to section 2511 as making a gift of $100,000 (the fair market value of S's annuity interest).

§ 25.2519–2 Effective date.

Except as specifically provided in § 25.2519–1(g), *Example 6*, the provisions of § 25.2519–1 are effective with respect to gifts made after March 1, 1994. With respect to gifts made on or before such date, the donee spouse of a section 2056(b)(7) or section 2523(f) transfer may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 25.2519–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 28. Section 25.2522(c)–4 is added to read as follows:

§ 25.2522(c)–4 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed under section 2522 for the transfer of an interest in property if a deduction is taken from the *total amount of gifts* with respect to that property by reason of section 2523(f). See § 25.2523(h)–1.

Par. 29. Section 25.2523(a)–1 is amended as follows:

a. Paragraph (a) is revised.

b. Paragraph (b)(3)(ii) is revised.

c. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

d. New paragraph (c) is added.

e. Newly designated paragraph (d) is amended by:

1. Revising the paragraph heading.

2. Revising the introductory text.

3. The designations "(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)" appearing before each example are revised to read "1.", "2.", "3.", "4.", "5.", "6.", "7.".

4. *Example 8* is added.

f. Newly designated paragraph (e) is amended by revising the first sentence.

g. The revisions and additions read as follows:

§ 25.2523(a)–1 Gift to spouse; in general.

(a) *In general.* In determining the amount of taxable gifts for the calendar quarter (with respect to gifts made after December 31, 1970, and before January 1, 1982), or calendar year (with respect to gifts made before January 1, 1971, or after December 31, 1981), a donor may deduct the value of any property interest transferred by gift to a donee who at the time of the gift is the donor's spouse, except as limited by paragraphs (b) and (c) of this section. See § 25.2502–1(c)(1) for the definition of calendar quarter. This deduction is referred to as the *marital deduction.* In the case of gifts made prior to July 14, 1988, no marital deduction is allowed with respect to a gift if, at the time of the gift, the donor is a nonresident not a citizen of the United States. Further, in the case of gifts made on or after July 14, 1988, no marital deduction is allowed (regardless of the donor's citizenship or residence) for transfers to a spouse who is not a citizen of the United States at the time of the transfer. However, for certain special rules applicable in the case of estate and gift tax treaties, see section 7815(d)(14) of Public Law 101–239. The donor must submit any evidence necessary to establish the donor's right to the marital deduction.

(b) * * *

(3) * * *

(ii) Any property interest transferred by a donor to the donor's spouse is a *nondeductible interest* to the extent it is not required to be included in a gift tax return for a calendar quarter (for gifts made after December 31, 1970, and before January 1, 1982) or calendar year (for gifts made before January 1, 1971, or after December 31, 1981).

(c) *Computation*—(1) *In general.* The amount of the marital deduction depends upon when the interspousal gifts are made, whether the gifts are terminable interests, whether the limitations of § 25.2523(f)–1A (relating to gifts of community property before January 1, 1982) are applicable, and whether § 25.2523(f)–1 (relating to the election with respect to life estates) is applicable, and (with respect to gifts made on or after July 14, 1988) whether the donee spouse is a citizen of the United States (see section 2523(i)).

(2) *Gifts prior to January 1, 1977.* Generally, with respect to gifts made during a calendar quarter prior to January 1, 1977, the marital deduction allowable under section 2523 is 50 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction.

(3) *Gifts after December 31, 1976, and before January 1, 1982.* Generally, with respect to gifts made during a calendar quarter beginning after December 31, 1976, and ending prior to January 1, 1982, the marital deduction allowable under section 2523 is computed as a percentage of the deductible interests in those gifts. If the aggregate amount of deductions for such gifts is $100,000 or less, a deduction is allowed for 100 percent of the deductible interests. No deduction is allowed for otherwise deductible interests in an aggregate amount that exceeds $100,000 and is equal to or less than $200,000. For deductible interests in excess of $200,000, the deduction is limited to 50 percent of such deductible interests. If a donor remarries, the computations in this paragraph (c)(3) are made on the basis of aggregate gifts to all persons who at the time of the gifts are the donor's spouse. See section 2524 for an additional limitation on the amount of the allowable deduction.

(4) *Gifts after December 31, 1981.* Generally, with respect to gifts made during a calendar year beginning after December 31, 1981 (other than gifts made on or after July 14, 1988, to a spouse who is not a United States citizen on the date of the transfer), the marital deduction allowable under section 2523 is 100 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction, and section 2523(i) regarding disallowance of the marital deduction for gifts to a spouse who is not a United States citizen.

(d) *Examples.* The following examples (in which it is assumed that the donors have previously utilized any specific exemptions provided by section 2521 for gifts prior to January 1, 1977) illustrate the application of paragraph (c) of this section and the interrelationship of sections 2523 and 2503.

* * * * *

Example 8. A donor made a transfer by gift to the donor's spouse, a United States citizen, of $200,000 cash on January 1, 1995. The donor made no other transfers during 1995. For calendar year 1995, the amount excluded under section 2503(b) is $10,000; the marital deduction is $190,000; and the amount of taxable gifts is zero ($200,000—$10,000 (annual exclusion)—$190,000 (marital deduction)).

(e) *Valuation.* If the income from property is made payable to the donor or another individual for life or for a term of years, with remainder to the donor's spouse or to the estate of the donor's spouse, the marital deduction is computed (pursuant to § 25.2523(a)–1(c)) with respect to the present value of the remainder, determined under section 7520. * * *

Par. 30. Section 25.2523(b)–1 is amended as follows:

a. Paragraph (a)(1) is revised.

b. In paragraph (b)(3), the first sentence is amended by removing the reference "§ 25.2523(e)–1" and adding "§ 25.2523(e)–l or 25.2523(f)–l" in its place.

c. In paragraph (b)(3), the designations "(1)" and "(2)" appearing before each example are revised to read "1." and "2."

d. In paragraph (b)(3), the phrase immediately preceding *Example 1* is revised.

e. In paragraph (b)(6), the designations "(1)", "(2)", "(3)", "(4)", "(5)", "(6)" appearing before each example are revised to read "1.", "2.", "3.", "4.", "5.", "6.".

f. In paragraph (b)(6), the phrase immediately preceding *Example 1* is revised.

g. In paragraph (c)(2), the phrase immediately preceding the example is removed and a sentence is added in its place.

h. The additions and revisions read as follows:

§ 25.2523(b)–1 Life estate or other terminable interest.

(a) *In general.* (1) The provisions of section 2523(b) generally disallow a marital deduction with respect to certain property interests (referred to generally as *terminable interests* and defined in paragraph (a)(3) of this section) transferred to the donee spouse under the circumstances described in paragraph (a)(2) of this section, unless the transfer comes within the purview of one of the exceptions set forth in § 25.2523(d)–1 (relating to certain joint interests); § 25.2523(e)–1 (relating to certain life estates with powers of appointment); § 25.2523(f)–1 (relating to certain qualified terminable interest property); or § 25.2523(g)–1 (relating to certain qualified charitable remainder trusts).

* * * * *

(b) * * *

(3) * * * The following examples, in which it is assumed that the donor did not make an election under sections 2523(f)(2)(C) and (f)(4), illustrate the application of the provisions of this paragraph (b)(3):

* * * * *

(6) * * * In each example, it is assumed that the donor made no election under sections 2523(f)(2)(C) and (f)(4) and that the property interest that the donor transferred to a person other than the donee spouse is not transferred for adequate and full consideration in money or money's worth: * * *

(c) * * *

(2) * * * The application of this paragraph may be further illustrated by the following example, in which it is assumed that the donor made no election under sections 2523(f)(2)(C) and (f)(4).

* * * * *

Par. 31. § 25.2523(c)–1 is amended by removing the first sentence of paragraph (c) and adding three new sentences in its place to read as follows:

§ 25.2523(c)–1 Interest in unidentified assets.

* * * * *

(c) If both of the circumstances set forth in paragraph (b) of this section exist, only a portion of the property interest passing to the spouse is a deductible interest. The portion qualifying as a deductible interest is an amount equal to the excess, if any, of the value of the property interest passing to the spouse over the aggregate value of the asset (or assets) that if transferred to the spouse would not qualify for the marital deduction. See paragraph (c) of § 25.2523(a)–l to determine the percentage of the deductible interest allowable as a marital deduction. * * *

* * * * *

Par. 32. The third sentence of § 25.2523(d)–1 is revised to read as follows:

§ 25.2523(d)–1 Joint interests.

* * * Thus, if the donor purchased real property in the name of the donor and the donor's spouse as tenants by the entirety or as joint tenants with rights of survivorship, a marital deduction is allowable with respect to the value of the interest of the donee pouse in the property (subject to the limitations set forth in § 25.2523(a)–1). * * *

Par. 33. Section 25.2523(e)–1, paragraph (c) is revised to read as follows:

§ 25.2523(e)–1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(c) *Meaning of specific portion*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a *specific portion* of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent the specific portion is subject to invasion for the benefit of any person other than the donee spouse, except in the case of

a deduction allowable under section 2523(e), relating to the exercise of a general power of appointment by the donee spouse.

(2) *Fraction or percentage share.* Under section 2523(e), a partial interest in property is treated as a specific portion of the entire interest if the rights of the donee spouse in income, and the required rights as to the power described in § 25.2523(e)–1(a), constitute a fractional or percentage share of the entire property interest, so that the donee spouse's interest reflects its proportionate share of the increase or decrease in the value of the entire property interest to which the income rights and the power relate. Thus, if the spouse's right to income and the spouse's power extend to a specified fraction or percentage of the property, or its equivalent, the interest is in a specific portion of the property. In accordance with paragraph (b) of this section, if the spouse has the right to receive the income from a specific portion of the trust property (after applying paragraph (c)(3) of this section) but has a power of appointment over a different specific portion of the property (after applying paragraph (c)(3) of this section), the marital deduction is limited to the lesser specific portion.

(3) *Special rule in the case of gifts made on or before October 24, 1992.* In the case of gifts within the purview of the effective date rule contained in paragraph (c)(3)(iii) of this section:

(i) A specific sum payable annually, or at more frequent intervals, out of the property and its income that is not limited by the income of the property is treated as the right to receive the income from a specific portion of the property. The specific portion, for purposes of paragraph (c)(2) of this section, is the portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the donor's gift, would produce income equal to such payments. However, a pecuniary amount payable annually to a donee spouse is not treated as a right to the income from a specific portion of trust property for purposes of this paragraph (c)(3)(i) if any person other than the donee spouse may receive, during the donee spouse's lifetime, any distribution of the property. To determine the applicable interest rate for valuing annuities, see sections 2512 and 7520 and the regulations under those sections.

(ii) The right to appoint a pecuniary amount out of a larger fund (or trust corpus) is considered the right to appoint a specific portion of such fund or trust in an amount equal to such pecuniary amount.

(iii) The rules contained in paragraphs (c)(3) (i) and (ii) of this section apply with respect to gifts made on or before October 24, 1992.

(4) *Local law.* A partial interest in property is treated as a specific portion of the entire interest if it is shown that the donee spouse has rights under local law that are identical to those the donee spouse would have acquired had the partial interest been expressed in terms satisfying the requirements of paragraph (c)(2) of this section (or paragraph (c)(3) of this section if applicable).

(5) *Examples.* The following examples illustrate the application of paragraphs (b) and (c) of this section, where D, the donor, transfers property to D's spouse, S:

Example 1. Spouse entitled to the lesser of an annuity or a fraction of trust income. Prior to October 24, 1992, D transferred in trust 500 identical shares of X Company stock, valued for gift tax purposes at $500,000. The trust provided that during the lifetime of D's spouse, S, the trustee is to pay annually to S the lesser of one-half of the trust income or $20,000. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. S has a testamentary general power of appointment over the entire trust principal. The applicable interest rate for valuing annuities as of the date of D's gift under section 7520 is 10 percent. For purposes of paragraphs (a) through (c) of this section, S is treated as receiving all of the income from the lesser of one-half of the stock ($250,000), or $200,000, the specific portion of the stock which, as determined in accordance with § 25.2523(e)-1(c)(3)(i) of this chapter, would produce annual income of $20,000 (20,000/.10). Accordingly, the marital deduction is limited to $200,000 (200,000/500,000 or ⅖ of the value of the trust.)

Example 2. Spouse possesses power and income interest over different specific portions of trust. The facts are the same as in *Example 1* except that S's testamentary general power of appointment is exercisable over only ¼ of the trust principal. Consequently, under section 2523(e), the marital deduction is allowable only for the value of ¼ of the trust ($125,000); i.e., the lesser of the value of the portion with respect to which S is deemed to be entitled to all of the income (⅖ of the trust or $200,000), or the value of the portion with respect to which S possesses the requisite power of appointment (¼ of the trust or $125,000).

Example 3. Power of appointment over shares of stock constitutes a power over a specific portion. D transferred 250 identical shares of Y company stock to a trust under the terms of which trust income is to be paid annually to S, during S's lifetime. S was given a testamentary general power of appointment over 100 shares of stock. The trust provides that if the trustee sells the Y company stock, S's general power of appointment is exercisable with respect to the sale proceeds or the property in which the proceeds are reinvested. Because the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not necessarily a power to appoint the entire interest that the 100 shares represented on the date of D's gift. If it is shown that, under local law, S has a general power to appoint not only the 100 shares designated by D but also 100/250 of any distributions by the corporation that are included in trust principal, the requirements of paragraph (c)(2) of this section are satisfied and S is treated as having a general power to appoint 100/250 of the entire interest in the 250 shares. In that case, the marital deduction is limited to 40 percent of the trust principal. If local law does not give S that power, the 100 shares would not constitute a specific portion under § 25.2523(e)–1(c) (including § 25.2523(e)–1(c)(3)(ii)). The nature of the asset is such that a change in the capitalization of the corporation could cause an alteration in the original value represented by the shares at the time of the transfer and is thus not a specific portion of the trust.

* * * * *

Par. 34. An undesignated center heading is added immediately following § 25.2524–1 to read as follows:

"Deductions Prior to 1982"

Par. 35. Section 25.2523(f)–1 is redesignated as § 25.2523(f)–1A under the new undesignated center heading "Deductions Prior to 1982" and amended as follows:

(a) The section heading of newly designated § 25.2523(f)–1A is revised.

(b) The first sentence of paragraph (a) is revised.

(c) The revisions read as follows:

§ 25.2523(f)–1 A Special rule applicable to community property transferred prior to January 1, 1982.

(a) *In general.* With respect to gifts made prior to January 1, 1982, the marital deduction is allowable with respect to any transfer by a donor to the donor's spouse only to the extent that the transfer is shown to represent a gift of property that was not, at the time of the gift, held as *community property*, as defined in paragraph (b) of this section.

* * *

* * * * *

Par. 36. New §§ 25.2523(f)–1, 25.2523(g)–1, 25.2523(h)–1 and 25.2523(h)–2 are added to read as follows:

§ 25.2523(f)–1 Election with respect to life estate transferred to donee spouse.

(a) *In general.* (1) With respect to gifts made after December 31, 1981, subject to section 2523(i), a marital deduction is allowed under section 2523(a) for transfers of *qualified terminable interest property.* Qualified terminable interest property is terminable interest property described in section 2523(b)(1) that

satisfies the requirements of section 2523(f)(2) and this section. Terminable interests that are described in section 2523(b)(2) cannot qualify as qualified terminable interest property. Thus, if the donor retains a power described in section 2523(b)(2) to appoint an interest in qualified terminable interest property, no deduction is allowable under section 2523(a) for the property.

(2) All of the property for which a deduction is allowed under this paragraph (a) is treated as passing to the donee spouse (for purposes of § 25.2523(a)–1), and no part of the property is treated as retained by the donor or as passing to any person other than the donee spouse (for purposes of § 25.2523(b)–1(b)).

(b) *Qualified terminable interest property*—(1) *Definition.* Section 2523(f)(2) provides the definition of *qualified terminable interest property.*

(2) *Meaning of property.* For purposes of section 2523(f)(2), the term *property* generally means an *entire interest in property* (within the meaning of § 25.2523(e)–1(d)) or a *specific portion of the entire interest* (within the meaning of § 25.2523(e)–1(c)).

(3) *Property for which the election may be made*—(i) *In general.* The election may relate to all or any part of property that meets the requirements of section 2523(f)(2) (A) and (B), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in the entire property for purposes of applying sections 2044 or 2519. Thus, if the interest of the donee spouse in a trust (or other property in which the spouse has a qualifying income interest) meets the requirements of this section, the election may be made under section 2523(f)(2)(C) with respect to a part of the trust (or other property) only if the election relates to a defined fraction or percentage of the entire trust (or other property) or specific portion thereof within the meaning of § 25.2523(e)–1(c). The fraction or percentage may be defined by formula.

(ii) *Division of trusts.* If the interest of the donee spouse in a trust meets the requirements of this section, the trust may be divided into separate trusts to reflect a partial election that has been made, if authorized under the terms of the governing instrument or otherwise permissible under local law. A trust may be divided only if the fiduciary is required, either by applicable local law or by the express or implied provisions of the governing instrument, to divide the trust according to the fair market value of the assets of the trust at the time of the division. The division of the trusts must be done on a fractional or percentage basis to reflect the partial election. However, the separate trusts do not have to be funded with a pro rata portion of each asset held by the undivided trust.

(4) *Manner and time of making election.* (i) An election under section 2523(f)(2)(C) (other than a deemed election with respect to a joint and survivor annuity as described in section 2523(f)(6)), is made on a gift tax return for the calendar year in which the interest is transferred. The return must be filed within the time prescribed by section 6075(b) (determined without regard to section 6019(a)(2)), including any extensions authorized under section 6075(b)(2) (relating to an automatic extension of time for filing a gift tax return where the donor is granted an extension of time to file the income tax return).

(ii) If the election is made on a return for the calendar year that includes the date of death of the donor, the return (as prescribed by section 6075(b)(3)) must be filed no later than the time (including extensions) for filing the estate tax return. The election, once made, is irrevocable.

(c) *Qualifying income interest for life*—(1) *In general.* For purposes of this section, the term *qualifying income interest for life* is defined as provided in section 2056(b)(7)(B)(ii) and § 20.2056(b)–7(d)(1).

(i) *Entitled for life to all the income.* The principles outlined in § 25.2523(e)–1(f) (relating to whether the spouse is entitled for life to all of the income from the entire interest or a specific portion of the entire interest) apply in determining whether the donee spouse is entitled for life to all the income from the property, regardless of whether the interest passing to the donee spouse is in trust. An income interest granted for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., divorce) is not a qualifying income interest for life.

(ii) *Income between last distribution date and date of spouse's death.* An income interest does not fail to constitute a qualifying income interest for life solely because income for the period between the last distribution date and the date of the donee spouse's death is not required to be distributed to the estate of the donee spouse. See § 20.2044–1 of this chapter relating to the inclusion of such undistributed income in the gross estate of the donee spouse.

(iii) *Pooled income funds.* An income interest in a pooled income fund described in section 642(c)(5) constitutes a qualifying income interest for life for purposes of this section.

(iv) *Distribution of principal for the benefit of the donee spouse.* An income interest does not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the donee spouse. The fact that property distributed to a donee spouse may be transferred by the spouse to another person does not result in a failure to satisfy the requirement of section 2056(b)(7)(B)(ii)(II). However, if the governing instrument requires the donee spouse to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of section 2056(b)(7)(B)(ii)(II) is not satisfied.

(2) *Immediate right to income.* In order to constitute a qualifying income interest for life, the donee spouse must be granted the immediate right to receive the income from the property. Thus, an income interest does not constitute a qualifying income interest for life if the donee spouse receives the right to trust income commencing at some time in the future, e.g., on the termination of a preceding life income interest of the donor spouse.

(3) *Annuities payable from trusts in the case of gifts made on or before October 24, 1992.* (i) In the case of gifts made on or before October 24, 1992, a donee spouse's lifetime annuity interest payable from a trust or other group of assets passing from the donor is treated as a qualifying income interest for life for purposes of section 2523(f)(2)(B). The deductible interest, for purposes of § 25.2523(a)–1(b), is the specific portion of the property that, assuming the applicable interest rate for valuing annuities at the time the annuity interest is transferred, would produce income equal to the minimum amount payable annually to the donee spouse. If, based on the applicable interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of the property. The value of the deductible interest may not exceed the value of the property from which the annuity is payable. If the annual payment may increase, the increased amount is not taken into account in valuing the deductible interest.

(ii) An annuity interest is not treated as a qualifying income interest for life for purposes of section 2523(f)(2)(B) if any person other than the donee spouse may receive during the donee spouse's

lifetime, any distribution of the property or its income from which the annuity is payable.

(iii) To determine the applicable interest rate for valuing annuities, see sections 2512 and 7520 and the regulations under those sections.

(4) *Joint and survivor annuities.* [Reserved]

(d) *Treatment of interest retained by the donor spouse*—(1) *In general.* Under section 2523(f)(5)(A), if a donor spouse retains an interest in qualified terminable interest property, any subsequent transfer by the donor spouse of the retained interest in the property is not treated as a transfer for gift tax purposes. Further, the retention of the interest until the donor spouse's death does not cause the property subject to the retained interest to be includable in the gross estate of the donor spouse.

(2) *Exception.* Under section 2523(f)(5)(B), the rule contained in paragraph (d)(1) of this section does not apply to any property after the donee spouse is treated as having transferred the property under section 2519, or after the property is includable in the gross estate of the donee spouse under section 2044.

(e) *Application of local law.* The provisions of local law are taken into account in determining whether or not the conditions of section 2523(f)(2) (A) and (B), and the conditions of paragraph (c) of this section, are satisfied. For example, silence of a trust instrument on the frequency of payment is not regarded as a failure to satisfy the requirement that the income must be payable to the donee spouse annually or more frequently unless applicable local law permits payments less frequently to the donee spouse.

(f) *Examples.* The following examples illustrate the application of this section, where D, the donor, transfers property to D's spouse, S. Unless stated otherwise, it is assumed that S is not the trustee of any trust established for S's benefit:

Example 1. Life estate in residence. D transfers by gift a personal residence valued at $250,000 on the date of the gift to S and D's children, giving S the exclusive and unrestricted right to use the property (including the right to continue to occupy the property as a personal residence or rent the property and receive the income for her lifetime). After S's death, the property is to pass to D's children. Under applicable local law, S's consent is required for any sale of the property. If D elects to treat all of the transferred property as qualified terminable interest property, the deductible interest is $250,000, the value of the property for gift tax purposes.

Example 2. Power to make property productive. D transfers assets having a fair market value of $500,000 to a trust pursuant to which S is given the right exercisable annually to require distribution of all the trust income to S. No trust property may be distributed during S's lifetime to any person other than S. The assets used to fund the trust include both income producing assets and nonproductive assets. Applicable local law permits S to require that the trustee either make the trust property productive or sell the property and reinvest the proceeds in productive property within a reasonable time after the transfer. If D elects to treat the entire trust as qualified terminable interest property, the deductible interest is $500,000. If D elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is $100,000; i.e., 20 percent of $500,000.

Example 3. Power of distribution over fraction of trust income. The facts are the same as in *Example 2* except that S is given the power exercisable annually to require distribution to S of only 50 percent of the trust income for life. The remaining trust income may be accumulated or distributed among D's children and S in the trustee's discretion. The maximum amount that D may elect to treat as qualified terminable interest property is $250,000; i.e., the value of the trust for gift tax purposes ($500,000) multiplied by the percentage of the trust in which S has a qualifying income interest for life (50 percent). If D elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $50,000; i.e, 20 percent of $250,000.

Example 4. Power to distribute trust corpus to other beneficiaries. D transfers $500,000 to a trust providing that all the trust income is to be paid to D's spouse, S, during S's lifetime. The trustee is given the power to use annually $5,000 from the trust for the maintenance and support of S's minor child, C. Any such distribution does not necessarily relieve S of S's obligation to support and maintain C. S does not have a qualifying income interest for life in any portion of the trust because the gift fails to satisfy the condition in sections 2523(f)(3) and 2056(b)(7)(B)(ii)(II) that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2523(f) if S, rather than the trustee, were given the power to appoint a portion of the principal to C. However, in the latter case, if S made a qualified disclaimer (within the meaning of section 2518) of the power to appoint to C, the trust could qualify for the marital deduction pursuant to section 2523(f), assuming that the power was personal to S and S's disclaimer terminates the power. Similarly, if C made a qualified disclaimer of the right to receive distributions from the trust, the trust would qualify under section 2523(f) assuming that C's disclaimer effectively negates the trustee's power under local law.

Example 5. Spouse's interest terminable on divorce. The facts are the same as in *Example 3* except that if S and D divorce, S's interest in the trust will pass to C. S's income interest is not a qualifying income interest for life because it is terminable upon S's divorce. Therefore, no portion of the trust is deductible under section 2523(f).

Example 6. Spouse's interest in trust in the form of an annuity. Prior to October 24, 1992, D established a trust funded with income producing property valued for gift tax purposes at $800,000. The trustee is required by the trust instrument to pay $40,000 a year to S for life. Any income in excess of the annuity amount is to be accumulated in the trust and may not be distributed during S's lifetime. S's lifetime annuity interest is treated as a qualifying income interest for life. If D elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $400,000, because that amount would yield an income to S of $40,000 a year (assuming a 10 percent interest rate applies in valuing annuities at the time of the transfer).

Example 7. Value of spouse's annuity exceeds value of trust corpus. The facts are the same as in *Example 6*, except that the trustee is required to pay S $100,000 a year for S's life. If D elects to treat the entire portion of the trust in which S has a qualifying income interest for life as qualified terminable interest property, the value of the deductible interest is $800,000, which is the lesser of the entire value of the property ($800,000) or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $100,000 a year ($1,000,000).

Example 8. Transfer to pooled income fund. D transfers $200,000 on June 1, 1994, to a pooled income fund (described in section 642(c)(5)) designating S as the only life income beneficiary. If D elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000.

Example 9. Retention by donor spouse of income interest in property. On October 1, 1994, D transfers property to an irrevocable trust under the terms of which trust income is to be paid to D for life, then to S for life and, on S's death, the trust corpus is to be paid to D's children. Because S does not possess an immediate right to receive trust income, S's interest does not qualify as a qualifying income interest for life under section 2523(f)(2). Further, under section 2702(a)(2) and § 25.2702–2(b), D is treated for gift tax purposes as making a gift with a value equal to the entire value of the property. If D dies in 1996 survived by S, the trust corpus will be includible in D's gross estate under section 2036. However, in computing D's estate tax liability, D's adjusted taxable gifts under section 2001(b)(1)(B) are adjusted to reflect the inclusion of the gifted property in D's gross estate. In addition, if S survives D, the trust property is eligible for treatment as qualified terminable interest property under section 2056(b)(7) in D's estate.

Example 10. Retention by donor spouse of income interest in property. On October 1, 1994, D transfers property to an irrevocable trust under the terms of which trust income is to be paid to S for life, then to D for life

and, on D's death, the trust corpus is to be paid to D's children. D elects under section 2523(f) to treat the property as qualified terminable interest property. D dies in 1996, survived by S. S subsequently dies in 1998. Under § 2523(f)–1(d)(1), because D elected to treat the transfer as qualified terminable interest property, no part of the trust corpus is includible in D's gross estate because of D's retained interest in the trust corpus. On S's subsequent death in 1998, the trust corpus is includible in S's gross estate under section 2044.

Example 11. Retention by donor spouse of income interest in property. The facts are the same as in *Example 10*, except that S dies in 1996 survived by D, who subsequently dies in 1998. Because D made an election under section 2523(f) with respect to the trust, on S's death the trust corpus is includible in S's gross estate under section 2044. Accordingly, under section 2044(c), S is treated as the transferor of the property for estate and gift tax purposes. Upon D's subsequent death in 1998, because the property was subject to inclusion in S's gross estate under section 2044, the exclusion rule in § 25.2523(f)–1(d)(1) does not apply under § 25.2523(f)–1(d)(2). However, because S is treated as the transferor of the property, the property is not subject to inclusion in D's gross estate under section 2036 or section 2038. If the executor of S's estate made a section 2056(b)(7) election with respect to the trust, the trust is includible in D's gross estate under section 2044 upon D's later death.

§ 25.2523(g)–1 Special rule for charitable remainder trusts.

(a) *In general.* (1) With respect to gifts made after December 31, 1981, subject to section 2523(i), if the donor's spouse is the only noncharitable beneficiary (other than the donor) of a charitable remainder annuity trust or charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2523(b) does not apply to the interest in the trust transferred to the donee spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under section 2523(g) and the value of the remainder interest qualifies for a charitable deduction under section 2522.

(2) A marital deduction for the value of the donee spouse's annuity or unitrust interest in a qualified charitable remainder trust to which section 2523(g) applies is allowable only under section 2523(g). Therefore, if an interest in property qualifies for a marital deduction under section 2523(g), no election may be made with respect to the property under section 2523(f).

(3) The donee spouse's interest need not be an interest for life to qualify for a marital deduction under section 2523(g). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years or the trust does not qualify under section 2523(g).

(4) A deduction is allowed under section 2523(g) even if the transfer to the donee spouse is conditioned on the donee spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust.

(5) For purposes of this section, the term *noncharitable beneficiary* means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(b) *Charitable remainder trusts where the donee spouse and the donor are not the only noncharitable beneficiaries.* In the case of a charitable remainder trust where the donor and the donor's spouse are not the only noncharitable beneficiaries (for example, where the noncharitable interest is payable to the donor's spouse for life and then to another individual (other than the donor) for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2523(f) and not under section 2523(g). Accordingly, if the transfer to the trust is made prior to October 24, 1992, the spousal annuity or unitrust interest may qualify under § 25.2523(f)–(1)(c)(3) as a qualifying income interest for life.

§ 25.2523(h)–1 Denial of double deduction.

The value of an interest in property may not be deducted for Federal gift tax purposes more than once with respect to the same donor. For example, assume that D, a donor, transferred a life estate in a farm to D's spouse, S, with a remainder to charity and that D elects to treat the property as qualified terminable interest property. The entire value of the property is deductible under section 2523(f). No part of the value of the property qualifies for a charitable deduction under section 2522 for gift tax purposes.

§ 25.2523(h)–2 Effective dates.

Except as specifically provided, in §§ 25.2523(e)–1(c)(3), 25.2523(f)–1(c)(3), and 25.2523(g)–1(b), the provisions of §§ 25.2523(e)–1(c), 25.2523(f)–1, 25.2523(g)–1, and 25.2523(h)–1 are effective with respect to gifts made after March 1, 1994. With respect to gifts made on or before such date, donors may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 25.2523(e)–1(c), 25.2523(f)–1, 25.2523(g)–1, and 25.2523(h)–1, (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 37. Section 25.6019–1 is amended as follows:

a. Paragraphs (a) and (b) are revised.

b. Paragraphs (c) and (d) are redesignated paragraphs (g) and (h).

c. New paragraphs (c) through (f) are added.

d. The revisions and additions read as follows:

§ 25.6019–1 Persons required to file returns.

(a) *Gifts made after December 31, 1981.* Subject to section 2523(i)(2), an individual citizen or resident of the United States who in any calendar year beginning after December 31, 1981, makes any transfer by gift other than a transfer that, under section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for payment of certain educational and medical expenses), is not included in the total amount of gifts for that year, or a transfer of an interest with respect to which a marital deduction is allowed for the value of the entire interest under section 2523 (other than a marital deduction allowed by reason of section 2523(f), regarding qualified terminable interest property for which a return must be filed in order to make the election under that section), must file a gift tax return on Form 709 for that calendar year.

(b) *Gifts made after December 31, 1976, and before January 1, 1982.* An individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1976, and before January 1, 1982, must file a gift tax return on Form 709 for any calendar quarter in which the sum of the taxable gifts made during that calendar quarter, plus all other taxable gifts made during the year (for which a return has not yet been required to be filed), exceeds $25,000. If the aggregate transfers made in a calendar year after 1976 and before 1982 that must be reported do not exceed $25,000, only one return must be filed for the calendar year and it must be filed by the due date for a fourth quarter gift tax return (April 15).

(c) *Gifts made after December 31, 1970, and before January 1, 1977.* An individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1970, and before January 1, 1977, must file a gift tax return on Form 709 for the calendar quarter in which any portion of the value of the gift, or any portion of the sum of the values of the gifts to such donee during that calendar year, is not excluded from the total amount of taxable gifts for that year, and must also

make a return for any subsequent quarter within the same taxable year in which any additional gift is made to the same donee.

(d) *Gifts by nonresident alien donors.* The rules contained in paragraphs (a) through (c) of this section also apply to a nonresident not a citizen of the United States provided that, under section 2501(a)(1) and § 25.2511–3, the transfer is subject to the gift tax.

(e) *Miscellaneous provisions.* Only individuals are required to file returns and not trusts, estates, partnerships, or corporations. Duplicate copies of the return are not required to be filed. See §§ 25.6075–1 and 25.6091–1 for the time and place for filing the gift tax return. For delinquency penalties for failure to file or pay the tax, see section 6651 and § 301.6651–1 of this chapter (Procedure and Administration Regulations). For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(f) *Return required even if no tax due.* The return is required even though, because of the deduction authorized by section 2522 (charitable deduction) or the unified credit under section 2505, no tax may be payable on the transfer.

* * * * *

Par. 38. Section 25.6019–2 is revised to read as follows:

§ 25.6019–2 Returns required in case of consent under section 2513.

Except as otherwise provided in this section, the provisions of § 25.6019–1 (other than paragraph (d) of § 25.6019–1) apply with respect to the filing of a gift tax return or returns in the case of a husband and wife who consent (see § 25.2513–1) to the application of section 2513. If both spouses are (without regard to the provisions of section 2513) required under the provisions of § 25.6019–1 to file returns, returns must be filed by both spouses. If only one of the consenting spouses is (without regard to the provisions of section 2513) required under § 25.6019–1 to file a return, a return must be filed by that spouse. In the latter case if, after giving effect to the provisions of section 2513, the other spouse is considered to have made a gift not excluded from the total amount of such other spouse's gifts for the taxable year by reason of section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for certain educational or medical expenses), a return must also be filed by such other spouse. Thus, if during a calendar year beginning after December 31, 1981, the first spouse made a gift of $18,000 to a child (the gift not being either a future interest in property or an amount excluded under section 2503(e)) and the other spouse made no gifts, only the first spouse is required to file a return for that calendar year. However, if the other spouse had made a gift in excess of $2,000 to the same child during the same calendar year or if the gift made by the first spouse had amounted to $21,000, each spouse would be required to file a return if the consent is signified as provided in section 2513.

Par. 39. Section 25.6019–3 is amended as follows:

a. The first sentence in paragraph (a) is revised.

b. The second sentence in paragraph (b) is revised.

c. The revisions read as follows:

§ 25.6019–3 Contents of return.

(a) *In general.* The return must set forth each gift made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970, and before January 1, 1982) that under sections 2511 through 2515 is to be included in computing taxable gifts; the deductions claimed and allowable under sections 2521 through 2524; and the taxable gifts made for each of the preceding reporting periods. * * *

(b) * * * In any case where a husband and wife enter into a written agreement of the type contemplated by section 2516 and the final decree of divorce is not granted on or before the due date for the filing of a gift tax return for the calendar year (or calendar quarter with respect to periods beginning after December 31, 1970, and ending before January 1, 1982) in which the agreement became effective (see § 25.6075–1), then, except to the extent § 25.6019–1 provides otherwise, the transfer must be disclosed by the transferor upon a gift tax return filed for the calendar year (or calendar quarter) in which the agreement becomes effective, and a copy of the agreement must be attached to the return. * * *

Par. 40. Section § 25.6019–4 is amended by revising the first sentence to read as follows:

§ 25.6019–4 Description of property listed in return.

The properties comprising the gifts made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970, and before January 1, 1982) must be listed on the return and described in a manner that they may be readily identified. * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 41. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 42. Section 602.101(c) is amended by adding two entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056(b)–7	1545–0015
* * * * *	
25.2523(f)–1	1545–0015
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: January 7, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–3945 Filed 2–28–94; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 31

[TD 8525]

RIN 1545–AR07

Supplemental Annuity Tax—Railroad Retirement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the supplemental annuity tax under the Railroad Retirement Tax Act (RRTA). The regulations contain rules for calculating the work-hours subject to the tax. The regulations also contain a safe harbor that railroad employers may use to determine the taxable work-hours in lieu of calculating work-hours separately for each employee. The regulations provide railroad employers with guidance necessary to comply with the law and offer a simple safe-harbor calculation that can significantly reduce the burden on employers. The regulations affect all railroad employers and employee representatives.

EFFECTIVE DATES: These regulations are effective for calendar years beginning after December 31, 1992, except that

§ 31.3221–3(d) is effective for calendar years beginning after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1993, the IRS published in the **Federal Register** (58 FR 28371) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3221(c) of the Internal Revenue Code (Code), which imposes a supplemental tax on railroad employers for each work-hour for which compensation is paid by the employer for services rendered to the employer during a calendar quarter.

Two written comments were received from the public on the proposed regulations, and a public hearing was held on August 30, 1993. After consideration of the written comments received and the statements made at the public hearing, the proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

Retirement benefits for railroad employees are provided under a system that currently combines elements similar to those under both the social security system and the private pension system.

In addition to Tier I benefits (similar to social security benefits) and Tier II benefits (similar to private pension benefits), a supplemental retirement annuity was established in 1966 by Public Law 89–699 (1966 Act). The benefit provisions are administered by the Railroad Retirement Board (Board).

The 1966 Act established a program to be administered by the Board for the payment of supplemental annuities for career railroad employees. The program, which was required to be self-financing, was to be financed separately from the regular railroad retirement program by imposing on railroad employers an excise tax under section 3221(c) of the Code. The rate was originally set at 2 cents for each work-hour of employment. In 1970, Public Law 91–215 replaced the 2-cents rate with a rate determined quarterly by the Board at a level sufficient to finance the annuities. The rate is currently 30 cents.

The supplemental tax is imposed on every employer for each work-hour for which compensation is paid by the employer for services rendered to the employer during a calendar quarter. Section 3211(b) of the Code imposes a similar tax on employee representatives. No tax is imposed on employees to fund the supplemental annuities.

The only guidance previously published with respect to the supplemental tax is in the instructions for Form CT–1, Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return. The instructions today are nearly identical to the instructions 25 years ago. Nevertheless, in recent years, significant variations in the interpretation of the statutory language have arisen.

Definition of Work-Hours

The final regulations, like the proposed regulations, do not change the longstanding interpretation of work-hours that was included in the instructions for Form CT–1 when the supplemental annuity tax was enacted. A commentator suggested that the 1970 legislation clarified that the term is limited to those hours both worked and paid for, and recommended that the regulations be revised accordingly. This recommendation has not been adopted for the reasons set forth below.

The definition of work-hours as it appeared in the instructions for Form CT–1 was not changed following the 1970 legislation, because the IRS believed that the revised statutory language was not intended to change the meaning of work-hours, or to clarify its meaning. When the taxing provision was enacted in 1966, the tax was equal to 2 cents for each work-hour. The 1970 legislation changed the rate from 2 cents to a rate to be determined quarterly by the Board, beginning April 1, 1970. Because the rate would no longer be constant, Congress changed the statutory language to make it clear that the taxing period is a calendar quarter and that, for purposes of the tax, the timing of the services, not the timing of the payment for the services, governed.

With respect to services rendered, the Treasury and the IRS believe that Congress intended to tax those hours for which the employee was paid both to perform and not to perform services. If an employee is guaranteed *x* hours of work a week and is paid for *x* hours, this is the number of hours to be taxed, even if there are less than *x* hours of work to be performed. The Treasury and the Service believe that this is so whether the employee is expected to report to the work site and do no work, whether the employee is not expected to report when no work is available, or whether the employee is not expected to report when no work is available but is expected to be available to be called to work.

The 1970 legislation did not alter the statutory language regarding employees who receive daily, weekly, or monthly rates of compensation. The language is clear that the tax applies to the number of hours comprehended in the rate, plus overtime hours. Thus, if a monthly rate of compensation comprehends that the employee is entitled to time off from work for holiday time, vacation time, and sick time, all of those hours are taxed, not merely the hours during which the employee actually performed services.

Safe Harbor

The final regulations retain a safe harbor method of calculating work-hours provided in the proposed regulations. Under the safe harbor, the employer counts the number of employees who received any compensation during the month and multiplies that figure by a "safe harbor number" to determine the number of work-hours subject to the tax. Each individual who is paid compensation is counted, even if the individual is a part-time, temporary, or seasonal employee. For purposes of the safe harbor count, it is irrelevant whether an employee actually performed any services for the employer during the month.

The Treasury and the IRS believe that the safe harbor is an attractive method of significantly reducing administrative complexity, because the safe harbor will simplify calculation of the supplemental annuity tax. The Service has worked with the railroad industry in establishing a safe harbor number that will fairly and equitably implement the supplemental annuity tax provisions while providing a method of computing the liability that reduces the need to make a work-hour determination on an individual-by-individual basis. The Treasury and the IRS anticipate that, for most employers, use of the safe harbor number will result in fewer taxable hours, and the Board will adjust the tax rate accordingly.

The regulations provide the Commissioner with the authority to publish the safe harbor number in guidance of general applicability. Pursuant to this grant of authority, a revenue procedure will be published to announce the safe harbor number. Commentators on the proposed regulations, representing both the Class I railroads and the Class III railroads, suggested a safe harbor number of 164. These comments have been taken into account in developing the revenue procedure.

Retroactivity

One commentator suggested that the safe harbor provision be made retroactive at the election of the

taxpayer. Because the number the safe harbor produces is generally more favorable than work-hours calculated under the regulations, retroactive application of the safe harbor would, in many situations, produce taxable work-hours at levels below those anticipated when prior-period tax rates were set. Also, retroactive application would be inequitable because some taxpayers have many open tax years and others do not. For these reasons, the Treasury and the IRS have rejected any period of retroactivity and, therefore, this approach is not included in the final regulations. Thus, the safe harbor provision is effective for calendar years beginning after December 31, 1993, as proposed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3211–3 is added to read as follows:

§ 31.3211–3 Employee representative supplemental tax.

See paragraphs (a), (b), and (c) of § 31.3221–3 for rules applicable to the supplemental tax for each work-hour for which compensation is paid to an employee representative for services rendered as an employee representative.

Par. 3. Section 31.3221–3 is added under the heading "Tax on Employers" to read as follows:

§ 31.3221–3 Supplemental tax.

(a) *Introduction*—(1) *In general.* Section 3221(c) imposes an excise tax on every employer, as defined in section 3231(a) and § 31.3231(a)–1, with respect to individuals employed by the employer. The tax is imposed for each work-hour for which the employer pays compensation, as defined in section 3231(e) and § 31.3231(e)–1, for services rendered to the employer during a calendar quarter. This § 31.3221–3 provides rules for determining the number of taxable work-hours.

(2) *Overview.* Paragraph (b) of this section defines *work-hours.* Paragraph (c) of this section demonstrates the calculation of work-hours. Paragraph (d) of this section offers a safe harbor calculation of work-hours for use by any employer in lieu of calculating the number of work-hours for each employee.

(b) *Definition of work-hours*—(1) *In general.* For purposes of section 3221(c) and this section, *work-hours* are hours for which the employee is compensated, whether or not the employee performs services.

(i) *Payments included in work-hours.* Work-hours include regular time worked; overtime; time paid for vacations and holidays; time allowed for meals; away-from-home terminal time; called and not used, runaround, and deadheading time; time for attending court, participating in investigations, and attending claim and safety meetings; and guaranteed time not worked. Work-hours also include conversion hours, that is, compensation converted into work-hours. Conversion hours may be derived from payment by the mile or by the piece. Work-hours also include time for which the employee is paid for periods of absence not due to sickness or accident disability, such as for routine medical and dental examinations or for time lost.

(ii) *Payments excluded from work-hours.* Certain kinds of payments are not subject to conversion into work-hours. These include those payments that are specifically excluded from *compensation* within the meaning of section 3231(e), such as certain sick pay payments (section 3231(e)(1)(i)); tips (section 3231(e)(1)(ii)); and amounts paid specifically (either as an advance, as reimbursement, or allowance) for traveling expenses (section 3231(e)(1)(iii)). Traveling expenses paid under a nonaccountable plan are excluded from work-hours even though they are includible in compensation. See § 31.3231(e)–1(a)(5). Also excluded from work-hours are amounts representing bonuses, amounts received pursuant to the exercise of an employee stock option, and all separation payments or severance allowances.

(2) *Hourly compensation.* Because the tax under section 3221(c) is calculated on the basis of work-hours, the number of hours for which an employee receives compensation is the figure used to determine work-hours. In the case of an hourly-rated employee, each hour for which the employee receives compensation is one work-hour.

(3) *Daily, weekly, monthly compensation.* (i) If an employee is paid by the day, week, month, or other period of time, the tax is imposed on the number of hours comprehended in the rate and, if any, the number of overtime hours for which additional compensation is paid. Thus, in the case of an office worker who receives an annual salary based on an 8-hour, 5-day-a-week work schedule that includes paid holidays, vacations, and sick time, the number of work-hours for one month is 174 (2088 hours/year ÷12 months).

(ii) The rule in paragraph (b)(3)(i) of this section is illustrated by the following examples.

Example 1. A, an office worker, receives an annual salary that is paid monthly. The salary is based on an 8-hour, Monday through Friday work schedule. *A* is not paid for overtime hours. *A* is not expected to work on holidays, during *A*'s annual vacation, or during periods that *A* is ill. The number of work-hours for one month is 174 (2088 hours/year ÷12 months). This figure remains constant, even though some months have more workdays than others.

Example 2. B is paid a stated amount for each day *B* works, regardless of the number of hours worked. However, if *B* works more than 8 hours during any day, *B* is paid overtime for each additional hour worked that day. *B* is not paid for holidays, vacations, or sick time. During May, *B* worked 6 hours on 4 days, 7 hours on 6 days, 8 hours on 6 days, and 9 hours on 5 days. Because *B* is paid a daily rate for up to 8 hours, 8 hours are comprehended in the daily rate. Therefore, the number of work-hours for May is 173 (21 days×8 hours/day+5 overtime hours), even though *B* actually worked 159 hours.

(4) *Conversion hours*—(i) Compensation not based on time (hour, day, month, etc.), such as compensation paid by the mile or by the piece, must be converted into the number of hours represented by the compensation paid. Thus, if an employee is paid by the mile, 1 work-hour equals the number of miles constituting a workday, divided by 8 hours. However, in the case of a collective bargaining agreement that specifies a number of hours as constituting a workday, the number of hours specified under the agreement may be used instead of 8.

(ii) The rule in paragraph (b)(4)(i) of this section is illustrated by the following example.

Example. C's normal workday consists of 2 150-mile round trips that together take 6 hours. *C* is paid by the mile. The collective bargaining agreement does not specify the number of hours in a workday. Thus, the number of work-hours for each day *C* works is 8, or 1 work-hour for each 37.5 miles (300 miles/day ÷ 8 hours/day). If the applicable collective bargaining agreement specifies that 6 hours constitute a workday, the number of work-hours for each day *C* works would be 6.

(c) *Calculation of work-hours*—(1) An employer may calculate the work-hours separately for each employee, as described in the examples in this paragraph. If the employer chooses to calculate work-hours separately for each employee, the employer must calculate the number of regular hours, overtime hours, and conversion hours for each employee for each month. In lieu of separate calculations, the employer may calculate the work-hours for all the employer's employees using the safe harbor formula described in paragraph (d) of this section.

(2) The rules in paragraph (c) of this section are illustrated by the following examples.

Example 1. D worked 8 hours a day, Monday through Friday, during the months of February and March 1992. *D* did not work on President's Day, but was paid for the holiday. *D*'s work-hours for February were 160 (19 days × 8 hours a day + 8 holiday hours). *D*'s work-hours for March were 176 (22 days × 8 hours a day).

Example 2. E worked 7-hour shifts every Tuesday through Saturday during the months of February and March 1992. *E* also worked 7 overtime hours during February and 21 overtime hours during March. Also, *E* was paid for 7 hours on President's Day, even though *E* did not work on that day. The number of work-hours for February was 161 (21 days × 7 hours a day + 7 overtime hours + 7 holiday hours). The number of work-hours for March was 168 (21 days × 7 hours a day + 21 overtime hours). Because *E* receives an hourly wage and was paid for the President's Day holiday, the number of hours (7) for which *E* was paid are added to the hours *E* actually worked. If *E* had worked on President's Day and had received extra pay for working on a holiday and holiday pay for 7 hours, the employer would include 14 hours in *E*'s work-hours for that day, the 7 hours *E* actually worked and the 7 holiday hours for which *E* was paid.

Example 3. Employment beginning during month. F began employment on March 16, a Monday, and worked 8 hours a day, Monday through Friday. The employer calculates that *F*'s hours for the month were 96, because *F* worked 12 8-hour days during the month. If March 16 were on a Friday, the employer would calculate 11 days, or 88 hours.

Example 4. Employment ending during month. G's last day of employment was Friday, March 13. *G* worked 8 hours a day, Monday through Friday, except for March 3, when *G* was ill. *G* was paid for 8 hours for March 3. The employer calculates that *G*'s work-hours for March were 80, because *G* worked 9 8-hour days and was paid for an additional 8 hours.

(d) *Safe harbor*—(1) *In general.* In lieu of calculating work-hours separately for each employee, an employer may use the safe harbor for all employees. If the employer elects to use the safe harbor for a calendar year, the employer must use the safe harbor for all employees for the entire calendar year. If an employer uses the safe harbor for a calendar year, the employer need not elect the safe harbor for the following calendar year. An employer that elects the safe harbor for a calendar year may not subsequently elect to separately calculate employee work-hours for that calendar year.

(2) *Method of calculation.* The safe harbor treats each employee of the employer as receiving monthly compensation for a number of hours equal to the safe harbor number. To determine the number of work-hours for a month, the employer multiplies the safe harbor number by the number that equals the total number of employees to whom the employer paid compensation during the month.

(i) *Safe harbor number defined.* The safe harbor number is the number established in guidance of general applicability promulgated by the Commissioner.

(ii) *Employee defined.* Solely for purposes of this paragraph, an employee is any individual who is paid compensation, within the meaning of § 31.3231(e)–1, regardless of the amount, during the month. Thus, for example, a part-time, temporary, or seasonal employee is counted as an employee. A terminated employee is counted in the month of termination (provided the terminated employee received compensation in the month of termination), but not in any subsequent month in which the employee does not perform service for the employer as an employee, even if the terminated employee is paid compensation in a subsequent month. Thus, for example, an employee who terminates employment during the month, receives compensation during the month of termination, and receives a final paycheck the following month is counted as an employee of the employer for the month of termination but not for the following month.

(3) *Method of election.* An employer makes the safe harbor election for a calendar year on the employment tax return filed for the previous calendar year.

(4) *Additional rules.* The Commissioner may, in revenue procedures, revenue rulings, notices, or other guidance of general applicability, revise the safe harbor number or provide additional safe harbors that satisfy section 3221(c).

(e) *Effective dates.* This § 31.3221–3 is effective for calendar years beginning after December 31, 1992, except that paragraph (d) is effective for calendar years beginning after December 31, 1993. Taxpayers may apply the rules in paragraphs (a), (b), and (c) of this section before January 1, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 23, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–4675 Filed 2–25–94; 8:54 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Program

AGENCY: Defense Logistics Agency, DOD.

ACTION: Final rule.

SUMMARY: On January 19, 1994, (59 FR 2786) the Defense Logistics Agency published a proposed rule to exempt an existing system of records, S255.01 DLA–GC, entitled Fraud and Irregularities, from certain provisions of the Privacy Act of 1974. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The notice was previously published on November 16, 1993, at 58 FR 60428.

EFFECTIVE DATE: February 19, 1994.

ADDRESSES: If you have any questions concerning this rule, address them to the Privacy Act Officer, Administrative Management Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This final rule adds two exemptions to an existing DLA system of records. DLA performs as one of its principal functions investigations into and enforcement actions concerned with violations of civil and administrative law, fraud, or antitrust rules relating to DLA procurement, property disposal, contract administration, or other DLA activities. The (k)(2) and (k)(5) exemptions reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The Director, DLA has adopted the exemptions for the above reasons.

List of subjects in 32 CFR part 323

Privacy.

Accordingly, the Defense Logistics Agency amends 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to Part 323 is amended by adding paragraph c.

Appendix H to Part 323–DLA Exemption Rules

* * * * *

c. ID: S100.50 DLA–GC (Specific exemption).

1. *System name:* Fraud and Irregularities.

2. *Exemption:* This system of records is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. *Authorities:* 5 U.S.C. 552a(k)(2) and (k)(5).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: February 22, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4520 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI30–02–6143; AMS–FRL–4841–8]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action conditionally approves a revision to the Wisconsin State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standards for ozone. This revision provides for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting all the requirements of the United States Environmental Protection Agency (USEPA) regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs. The

USEPA is conditionally approving this SIP revision pursuant to section 110(k)(4) of the Clean Air Act (Act). The conditional approval is based on a November 18, 1992, SIP submittal, amended on January 19, 1993, which contained a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of USEPA's I/M regulations, a schedule for implementation of the required program, and evidence of a hearing on the commitment. A full SIP revision, including legal authority to implement the program, was required by November 15, 1993. Wisconsin submitted a full SIP revision on November 15, 1993.

EFFECTIVE DATE: This final rulemaking becomes effective March 31, 1994.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Environmental Protection Specialist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

Anyone wishing to come to Region 5 offices should contact John M. Mooney first.

SUPPLEMENTARY INFORMATION:

I. Summary

On September 20, 1993, the USEPA published a notice of proposed rulemaking in the **Federal Register** (58 FR 48812) which proposed to conditionally approve the State of Wisconsin's November 18, 1992, SIP submittal, as amended on January 19, 1993, as a revision to the Wisconsin SIP. A more detailed account of the USEPA's action can be found in the proposed rule.

II. Analysis of State Submittal

The USEPA has reviewed this submittal and is conditionally approving it pursuant to section 110(k)(4) of the Act, on the condition that the I/M program is adopted and implemented according to the commitments and schedule contained in the SIP submittal. The submittal specifies that Wisconsin has committed to adopt the necessary I/M regulation to meet the requirements of the USEPA's I/M rule and to submit a final SIP to the USEPA by November 15, 1993. Wisconsin submitted a final SIP to the USEPA on November 15, 1993, and this submittal was found to be complete by the USEPA on January 3, 1994. The USEPA will review and take action on the final SIP in a separate FR notice. The conditionally approved commitment will remain part of the SIP until the USEPA takes final action approving or disapproving the new submittal. If the USEPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

III. Public Comments

On September 20, 1993, the USEPA proposed to conditionally approve this SIP submittal and requested public comment. The public comment period closed on October 20, 1993, on which date comments were received from the Natural Resources Defense Council (NRDC), the only comments on this proposal. The following summarizes NRDC's comments and USEPA's response to these comments:

Comment: "NRDC urges EPA to disapprove Wisconsin's submittal. The Clean Air Act ("CAA" or the "Act") requires States to submit complete I/M programs in 1990 (basic) for many regions and on November 15, 1992, for other regions (enhanced). Because the submittal evaluated in this proposed rule does not contain regulations actually establishing an I/M program they are incomplete within the meaning of 40 CFR part 51, appendix V. As such section 110(k)(1) of the Act requires EPA to make a finding of incompleteness. EPA lacks the authority to approve conditionally such submittals because they contain major deficiencies and consequently do not constitute "official plan submittals" within the meaning of the Act. See 40 CFR 51.103. Conditional approval of these documents is also inconsistent with the conditions outlined in the I/M rule and other EPA guidance for the approval of committal SIPs. EPA has a legal obligation to follow its own rules."

Response: As noted in a July 22, 1992, memorandum from Michael Shapiro entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992," the USEPA identified the I/M program as one where conditional approvals under section 110(k)(4) of the Act would be appropriate. According to the final I/M regulation "EPA believes that conditional approvals are appropriate in these circumstances because States cannot be expected to begin developing I/M programs meeting the requirements of these regulations until the regulations are finally adopted." (57 FR 52970.) This did not occur until November 5, 1992. As a result, States were not required by the I/M rule to submit final regulations with the November 15, 1992, submittal. For areas required to implement "enhanced" I/M programs, such as the Milwaukee ozone nonattainment area, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), States that "in the event that EPA's enhanced performance standard is not finalized soon enough to provide sufficient time for SIP development, USEPA will use its authority under section 110(k)(4) to conditionally approve SIP submittals committing to adopt enhanced I/M programs consistent with USEPA's guidance." This has served as the basis for the USEPA's rulemaking on Wisconsin's enhanced I/M SIP submittal.

In cases where the USEPA issues conditional approvals under section 110(k)(4) of the Act, States are not required to submit fully adopted rules until the date specified by the State's commitment. In determining the completeness of these submittals, the USEPA considers only the aspects of the completeness criteria that are relevant to the rulemaking action. Since the USEPA's conditional approval in this instance is not based on a consideration of fully adopted rules, the State's submittal can be found complete without them.

Comment: "The I/M rule requires States to commit to sending a complete program to EPA by November 15, 1993. 57 FR 52950, 53002 (November 5, 1992). NRDC insists on literal compliance with the rule's requirement that the I/M commitment come from the Governor, not his designee. See 57 FR 52970. That kind of high-level personal commitment is necessary in order to make sure the commitment to a controversial program is kept. This is not an idle concern. EPA received no such commitment from the Governor of California and he now feels free to fight actively passage of a rule meeting the I/M regulations unencumbered by any threat of mandatory sanctions. The absence of such high-level commitment requires disapproval of a State's submission."

Response: Traditionally, Governors have chosen to delegate their authority for making formal SIP revisions to whomever they deem fit. In the State of Wisconsin, this authority has been delegated to the Director of the Bureau of Air Management in the Wisconsin Department of Natural Resources. It is the USEPA's interpretation that, not withstanding the particular language in

the final I/M regulation, the Governor's designee has been authorized to make such a commitment to be incorporated into the SIP and that this commitment is legally binding on the State. The USEPA believes that a commitment made by the State official responsible for making SIP submittals constitutes a commitment from the Governor within the meaning of 40 CFR 51.372(b)(1).

Comment: "The I/M rule also requires a State seeking conditional approval to obtain legal authority for implementing an appropriate program in the first legislative session after November 5, 1992, including legislative sessions in progress if at least 21 days remain before the bill submittal deadline. 57 FR 53003 (to be codified at 40 CFR 51.373(e)). Failure to obtain such prompt legislative authority for an I/M program requires disapproval of a State's submission."

Response: Based on the SIP submittal requirements contained in the USEPA final I/M regulation, States were required to implement I/M programs "as expeditiously as practicable" and were not required to submit fully adopted legislation for I/M until November 15, 1993. However, in its committal SIP submittal, the State of Wisconsin did include the fully adopted legislation which authorizes the Wisconsin Department of Natural Resources to develop an I/M program as necessary to meet Federal requirements (Wisconsin Acts 39 and 302). Thus, Wisconsin fully satisfied the obligation to obtain appropriate legal authority by the first full legislative session after November 5, 1992, as required by 57 FR 3003, (to be codified at 40 CFR 51.373(e).

Comment: "Furthermore, EPA's I/M rule requires States to submit a schedule of specific dates of program implementation milestones. 57 FR 52970. Such schedule must include at a minimum: a date for final specification and test procedures, 57 FR 53002 (to be codified at 40 CFR 51.372(a)(1)(iii)); a date for licensing or certifications of stations and inspectors, id. (to be codified at 40 CFR 51.372(a)(1)(v)); and a date when full stringency cut points will be supplied, id. (to be codified at 40 CFR 51.372(a)(1)(vii))."

Response: Wisconsin's submittal included a schedule which contained the milestones specified by the USEPA final I/M regulation including deadlines for final specification and test procedures and full stringency cutpoints. Dates for certifications of stations and inspectors are established through the operation of the I/M program that is currently in place in the Milwaukee area. Since this latest SIP revision represents an upgrade and expansion of the existing program, and not the implementation of a new program, these existing procedures provide an adequate method for certifying stations and inspectors as they become necessary during the program enhancement process. Since this program is already in place, the USEPA does not believe it was necessary for Wisconsin to include dates for station and inspector certification in its I/M committal SIP.

Comment: "In determining whether to conditionally approve a State's submission, EPA must assess the likelihood that the State will meet its commitments. See e.g., "Memorandum from John Calcagni to Regional Air Directors re. Processing of SIP Submittals (July 9, 1992) at 6. In particular, the final rule must address whether the State has met scheduled milestones that pass prior to final conditional approval. If any one of them has not been met, EPA cannot conditionally approve the commitment. In addition, as the November 15, 1993 deadline for a complete I/M program nears, EPA is now in position to evaluate a State's ability to submit a timely approvable plan. For those States which will be unable to meet the November 15, 1993 deadline, of which there are many, EPA should reject the States' submissions now and impose sanctions pursuant to section 110(k)(1)."

Response: In processing the State's submittal, the USEPA has based its action on the State's ability to meet the November 15, 1993, submittal date. As noted above, the State submitted its final I/M SIP to the USEPA on November 15, 1993. Therefore, the USEPA believes that it is appropriate at this time to conditionally approve the State's submittal.

Comment: "NRDC opposes EPA's broad use of conditional approvals in evaluating SIP submissions and has sued the agency in the D.C. Circuit for the U.S. Court of Appeals regarding such policy. Having relaxed statutory deadlines for I/M, EPA is at least obligated to the public to follow its own rule, published in final form on November 5, 1992. Failing to hold States strictly to the I/M rule's standards for committals sends the wrong message to States and thwarts the goals of the Clean Air Act."

Response: As noted in the I/M regulation, for their November 15, 1992 submittals, States were allowed to submit a commitment from the Governor to the timely adoption and implementation of an I/M program meeting all of the requirements of the I/M regulation, a schedule of implementation, and evidence that a public hearing was held on the commitment. The USEPA's final action on the State's November 15, 1992, submittal is based on a consideration of Wisconsin's ability to comply with these elements. Action with respect to the State's November 15, 1993 submittal for the fully adopted I/M program will be addressed by the USEPA shortly in a separate rulemaking in accordance with the Act and the final regulation for I/M.

Comment: The NRDC also asserts that EPA should disapprove Wisconsin's committal SIP or make a finding of nonsubmittal or incompleteness retroactive to November 15, 1992.

Response: The USEPA does not believe that it can make a disapproval action or incompleteness determination retroactive to November 15, 1992, as requested by NRDC. Retroactive application of rules is not allowed in the absence of an express Congressional grant of such authority. *Bowen* v. *Georgetown University Hosp.*, 109 S. Ct. 468, 471 (1988). Congress has provided no authority for the USEPA to make disapproval actions or incompleteness determinations retroactive to the time the submittal was due. Moreover, since the USEPA made a finding on January 3, 1994, that Wisconsin submitted a complete I/M committal SIP, the USEPA cannot now make a finding of failure to submit or of incompleteness, nor make such a finding retroactive, with respect to this submittal.

IV. Rulemaking Action

The USEPA is conditionally approving Wisconsin's submittal pursuant to section 110(k)(4) of the Act. The submittal specifies that Wisconsin has committed to adopt the necessary I/M regulation to meet the requirements of the USEPA's I/M rule and to submit a final SIP to the USEPA by November 15, 1993. The State submitted a final SIP revision to the USEPA on November 15, 1993.

Procedural Background

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as Table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222)

from the requirement of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, The USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals under sections 110 and 301, subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the USEPA certifies that it is does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: February 7, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2569 is amended adding paragraph (a)(2) to read as follows:

§ 52.2569 Identification of plan—conditional approval.

(a) * * *

(2) On November 18, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted a commitment to adopt motor vehicle enhanced inspection and maintenance (I/M) rules as a revision to the State's ozone State Implementation Plan (SIP). After holding a public hearing on the submission, WDNR resubmitted the SIP on January 19, 1993. In this submission, the State commits to submit a fully adopted I/M program to the USEPA by November 15, 1993.

[FR Doc. 94–4443 Filed 2–28–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7594]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas

(section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey:				
Linden, city of, Union County	340467	Nov. 20, 1970, Emerg; Nov. 24, 1976, Reg; Mar. 2, 1994, Susp.	3–2–94	Mar. 2, 1994.
Region III				
Virginia:				
Williamsburg, city of	510294	Oct. 29, 1975, Emerg; Nov. 20, 1981, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region VI				
Texas:				
San Angelo, city of, Tom Green County	480623	Mar. 3, 1972, Emerg; May 16, 1977, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region IX				
California:				
Kern County, unincorporated areas	060075	Sept. 10, 1971, Emerg; July 28, 1972, Susp; Jan. 18, 1974, Rein; Sept. 29, 1986, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region III				
Pennsylvania:				
Hawley, borough of, Wayne County	420863	July 18, 1974, Emerg; Aug. 19, 1991, Reg; Mar. 15, 1994, Susp.	3–15–94	Mar. 15, 1994.
Region IV				
Mississippi:				
Richland, city of, Rankin County	280299	Nov. 9, 1976, Emerg; Feb. 2, 1983, Reg; Mar. 15, 1994, Susp.	3–15–94	Do
Region VI				
Louisiana:				
Monroe, city of, Ouachita Parish	220136	Sept. 6, 1974, Emerg; Dec. 18, 1979, Reg; Mar. 15, 1994 Susp.	3–15–94	Mar. 15, 1994.
Ouachita Parish, unincorporated areas	220135	Jan. 29, 1974, Emerg; July 2, 1980, Reg; Mar. 15, 1994, Susp.	3–15–94	Do

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Richwood, town of, Ouachita Parish	220378	Feb. 9, 1978, Emerg; Sept. 30, 1987 Reg; Sept. 30, 1987, Susp; Nov. 5, 1987, Rein; Mar. 15, 1994, Susp.	3–15–94	Do

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 17, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–4585 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–21–P

Proposed Rules

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD58

Revisions to the Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: Concerns have been raised about the cost of the upland cotton user marketing certificate program and the way in which it has been administered. A notice requesting comments regarding the program was published in the **Federal Register** on August 20, 1993, at 58 FR 44320. Comments were solicited with respect to several of the concerns that have been raised. The Commodity Credit Corporation (CCC) is now requesting further comments with respect to proposed changes in the formula for determining the user marketing payment rate; whether export contracts that specify shipment after September 30 should be eligible for payments beginning October 1, and, if so, whether the maximum payment rate should be 2.5 cents per pound until such time as the payment rate calculation is based entirely on Northern Europe forward prices; and whether a destination should be required to be declared for export sales contracts.

DATES: Comments must be received by March 11, 1994, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, PO Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, FRAD, ASCS, USDA, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this proposed rule would materially alter the budgetary impacts of entitlements and the rights and obligations of entitlement recipients. A change in the method of determining the payment rate under the program could raise payment rates for domestic textile mills and lower payment rates for exporters of U.S.-grown cotton, reducing budgetary expenditures. The ability of exporters to earn a payment on forward-crop sales beginning earlier in the marketing year could afford them greater benefits under the program and result in more price competition. The requirement that exporters designate the country of destination of the cotton before CCC will fix a payment rate will entail additional paperwork for exporters and could reduce exports of U.S. cotton.

These program changes are projected to increase the average rate at which domestic mills are being paid by about one-half cent and to decrease the average rate at which exporters are being paid by about two cents. As a result, domestic mill use of upland cotton is expected to increase by 50,000 bales per year and exports of U.S. cotton are expected to be reduced by 100,000 bales per year. These changes are not significant enough to have any impact on acreage reduction programs, prices, or farm income. Government outlays for Step-2 payments are projected to be reduced by an average of almost $30 million per year.

Other than the impacts indicated above, this action:

(1) Will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Will not materially alter the budgetary impacts of user fees or loan programs, and;

(4) Will not raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in the current regulations have been approved by the Office of Management and Budget (OMB), under the provisions of 44 U.S.C. chapter 35, through August 31, 1994 (OMB No. 0560–0136). Changes made to the Upland Cotton Domestic User/Exporter Agreement as a result of this proposed rule have been submitted to OMB for approval in addition to one new information collection requirement (see Attachment 1).

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Background

This proposed rule amends 7 CFR part 1427 to set forth proposed determinations with respect to the upland cotton user marketing certificate program. A notice requesting comments on the administration of the program was published on August 20, 1993, at 58 FR 44320. Comments were requested on these specific concerns:

(1) How to make the program equitable to exporters with and without foreign affiliates, to domestic textile mills, and to other members of the U.S. cotton industry;

(2) How best to meet the legislative objectives of the program as they relate to U.S. cotton competitiveness;

(3) How to assure that export contracts considered eligible to lock in rates in advance under the program represent actual sales and how to institute appropriate measures that discourage program abuse but do not unduly penalize exporters if they are unable to ship cotton due to unforseen and unavoidable circumstances;

(4) How to operate a program that interferes as little as possible with normal cotton marketing practices, that does not overly influence or dominate decision-making in the cotton market, that will not result in cotton price distortions, and that will not commit Federal funds unnecessarily to the competitiveness program; and

(5) How to accomplish the above objectives in a way that is not administratively burdensome.

A total of sixteen comments were received in response to the notice requesting comments.

With regard to changing the formula for calculating the user marketing certificate payment rate, four respondents supported a proposal that would limit the weekly increase in the forward payment rate calculation to 25 percent of the current week's payment rate calculation. Two respondents recommended basing the user marketing certificate payment rate throughout the year on a four-week moving average of the payment rate formula. One respondent commented that domestic mills should receive the same rate as exporters or the formula should be eliminated. Another respondent urged elimination of the current and forward dual rate structure and suggested that CCC make adjustments in the price quotations to reflect actual sales prices. Four respondents recommended eliminating the program altogether, one respondent recommended eliminating the program for exporters only, and one respondent suggested using a fixed certificate rate of 0.5 cents per week. Two respondents did not comment on the payment rate formula.

With regard to the formula used to determine whether a special import quota is in effect, three respondents recommended that only current Northern Europe price quotations be used.

With regard to sales to foreign affiliates, one respondent asked that sales to foreign affiliates be allowed to continue, one respondent asked that sales to foreign affiliates not be allowed, and three respondents asked that only sales to end users be allowed. In addition, one respondent requested that CCC not establish regulations that interfere with traditional international marketing practices.

Two respondents requested that there not be a time limit for specifying the destination of any exports. One respondent asked that liquidated damages be calculated based on 50 percent of the certificate value and another respondent asked that CCC increase penalties for non-performance on export contracts.

Several respondents commented on various provisions of the upland cotton loan program. One respondent suggested lowering the loan rate to 45 cents. One respondent asked that the loan period be shortened to ten months with a two-month extension, that preliminary notice of any discretionary adjustment to the adjusted world price (AWP) be given and that producers be ineligible for loans if they have cotton under loan from a previous crop. One respondent suggested that CCC deduct carrying charges from the loan proceeds.

After considering these comments, the following changes are proposed to be made with respect to the regulations governing the upland cotton user marketing certificate program:

(1) Beginning with the period each year when both Northern Europe current prices and Northern Europe forward prices are available, determine the payment rate for both domestic mills and exporters using a blend of the two prices similar to the method used to make a transition in the AWP from current to forward prices. Establish a six-week transition period during which blended prices would be used. Following the transition period, calculate payment rates based on the Northern Europe forward prices. If adopted, this proposal would require that a complementary procedure be established for determining the "Step 3" special import quota;

(2) Allow export contracts that specify delivery after September 30 to qualify for payments beginning about October 1. Such contracts would earn the lower of the rate in effect for a given week or 2.5 cents per pound until such time as the payment rate is based entirely on Northern Europe forward prices. Thereafter, no limitation on the payment rate would apply; and

(3) Require exporters to declare the country of destination before a Step-2 payment rate can be established for an export contract.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR part 1427 be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.102 is amended by:

A. Adding "End user" definition, and

B. Revising definitions of "Northern Europe current price", "Northern Europe forward price", "Northern Europe price", "U.S. Northern Europe current price", "U.S. Northern Europe forward price", and "U.S. Northern Europe price" to read as follows:

§ 1427.102 Definitions.

* * * * *

End user means the person or entity who opens a bale of cotton for use in the manufacture of cotton products.

* * * * *

Northern Europe current (NEc) price means the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe.

Northern Europe forward (NEf) price means the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths

quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

Northern Europe (NE) price means, during the period in which only one daily price quotation is available for the growth quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday period of the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

* * * * *

U.S. Northern Europe current (USNEc) price means the average of the current shipment prices for the preceding Friday through Thursday for the lowest-priced United States growth as quoted for Middling (M) 3/32 inch cotton C.I.F. northern Europe.

U.S. Northern Europe forward (USNEf) price means the average of the forward shipment prices for the preceding Friday through Thursday for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

U.S. Northern Europe (USNE) price means, during the period in which only one daily price quotation is available for the growth quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday period of the lowest-price United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

3. Section 1427.107 is amended by:

A. Redesignating paragraphs (d) through (g) as paragraphs (f) through (i), respectively,

B. Revising paragraphs (a), (b), and (c),

C. Adding new paragraphs (d) and (e), and

D. Revising redesignated paragraph (f)(3)(i) to read as follows:

§ 1427.107 Payment rate.

(a) Payments will be made to domestic users for all eligible bales opened and exporters on contracts which specify shipment of the cotton by not later than September 30 following such contract period and for which a country of destination has been named, whenever the formula defined in paragraph (c) of this section (hereinafter referred to as the "payment rate calculation") results in positive values for the four preceding consecutive weeks and the adjusted world price, determined in accordance with § 1427.25 of this part (hereinafter referred to as the "AWP"), does not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period. Payments will not be made if the payment rate calculation, adjusted for the value of any certificate or cash payments issued under this section, results in a positive value for each week of the immediately preceding 10-week period. The payment rate for any Friday through Thursday period is equal to the payment rate calculation for the immediately preceding Friday through Thursday period.

(b) Payments will be made to exporters on contracts which specify shipment of the cotton after September 30 following such contract period and for which a country of destination has been named beginning the Friday through Thursday week which includes October 1 whenever the payment rate calculations defined in paragraph (c) of this section are positive for the preceding four consecutive weeks and the AWP does not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period. No payments will be allowed on contracts which specify shipment of the cotton after September 30 following such contract period if the contract was made prior to the Friday through Thursday week which includes the preceding October 1. With respect to contracts which specify shipment of the cotton after September 30, 1994 but before September 30, 1995, no payments will be made on contracts made prior to the week following the first week covering the period Friday through Thursday which includes April 15, 1994 or, if the USNEc, the USNEf, the NEc and the NEf are not available, prior to the week following the first week covering the period Friday through Thursday after the week which includes April 15, 1994 in which the USNEc, the USNEf, the NEc and the NEf are available. Payments will not be made if the payment rate calculation, adjusted for the value of any certificate or cash payments issued under this section, results in a positive value for each week of the immediately preceding 10-week period. Beginning the Friday through Thursday week which includes October 1 and until the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, until the seventh week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate for any Friday through Thursday period is equal to the lower of the payment rate calculation for the immediately preceding Friday through Thursday period or 2.5 cents. Beginning the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the seventh week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate for any Friday through Thursday period is equal to the payment rate calculation for the immediately preceding Friday through Thursday period.

(c) (1) Beginning August 1 until the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, NEc and the NEf are not available, until the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate calculation is the USNE minus the NE price minus 1.25 cents per pound.

(2) Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf price are available, the payment rate calculation will be based on an average of the USNEc price and the USNEf (hereinafter referred to as the "blended U.S. Northern Europe price") and an average of the NEc and the NEf (hereinafter referred to as the "blended Northern Europe price") as follows:

(i) Weeks 1 and 2: Blended U.S. Northern Europe price equals ((2×USNEc)+USNEf)/3. Blended Northern Europe price equals ((2×NEc)+NEf)/3.

(ii) Weeks 3 and 4: Blended U.S. Northern Europe price equals (USNEc+USNEf)/2. Blended Northern Europe price equals (NEc+NEf)/2.

(iii) Weeks 5 and 6: Blended U.S. Northern Europe price equals (USNEc+(2×USNEf))/3. Blended Northern Europe price equals (NEc+(2×NEf))/3. The payment rate calculation for the 6-week period is the blended U.S. Northern Europe price minus the blended Northern Europe price minus 1.25 cents per pound.

(3) Beginning with the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the seventh

week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, until July 31, the payment rate calculation is the USNEf minus the NEf minus 1.25 cents per pound.

(d) For contracts entered into before August 30, 1991, the payment rate shall be zero.

(e) All export contracts must specify a country of destination in order to determine the applicable payment rate. If the country of destination is declared on the date the export sale is first confirmed in writing, the payment rate shall be the rate in effect for that Friday through Thursday week. If the country of destination is declared after the date that sale is first confirmed in writing but prior to shipment, the payment rate shall be the lower of the rate in effect at the time the sale was made or the rate in effect at the time the destination was declared. If no destination is declared prior to shipment, the payment rate shall be the lower of the rate in effect at the time the sale was first confirmed in writing or the rate in effect on the shipment date. The exporter shall notify CCC if there is a change in the country of destination previously declared for any export contract. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of the payment rate in effect when the original contract was made, or the payment rate in effect on the date written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be shipped to a country other than that shown in the original contract.

* * * * *

(f) * * *

(3) * * *

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was based upon a current or forward contract, and the lower of the original contract payment rate or if a replacement contract has been made, the replacement contract payment rate, or if a change of destination country was made, the payment rate in effect at the time change of destination is declared, or

* * * * *

4. Section 1427.108 (c)(2) and (d) are revised to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) Sold by the exporter on the date the contract for sale is first confirmed in writing by the exporter or importer and the destination country is named.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC. Retention of export payments is predicated upon the receipt by CCC of proof of delivery to the designated country within 60 calendar days of such payment.

5. Section 1427.109(c)(3)(i) is revised to read as follows:.

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) * * *

(i) The difference between the highest payment rate paid to or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by the exporter was based upon a current or forward contract and the lower of the original contract payment rate or if a replacement contract has been made, the replacement contract payment rate, or if a change of destination country was made, the payment rate in effect at the time the change of destination is declared, or

* * * * *

Signed at Washington, DC, on February 24, 1994.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 3410-05-P

CCC-1046
(02-17-94)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

Form Approved - OMB No. 0560-0136

CERTIFICATE OF IMPORTATION OF AMERICAN RAW COTTON

NOTE: *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1980, as amended. The authority for requesting the following information is 7CFR Part 1427, Subpart–Upland Cotton User Marketing Certificate Program. The information will be used to insure contractual requirements. Furnishing the requested information is mandatory. Failure to furnish the requested information will result in recovery of payment which may include interest and/or liquidated damages. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.*

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0136), Washington, D.C. 20503.

PART A - EXPORTER AND PURCHASER DATA *(Complete Part A before forwarding to the approving port official.)*

1. NAME AND ADDRESS OF EXPORTER		2. NAME AND ADDRESS OF PURCHASER	
3. QUANTITY SHIPPED	4. PORT OF EXPORT	5. VESSEL	6. BILL OF LADING NUMBER
7. DATE LOADED ON VESSEL	8. DESTINATION COUNTRY		
9. CCC CONTRACT CONTROL NUMBER		10. AGREEMENT NUMBER	11. EXPORTER'S INVOICE NUMBER
12. EXPORTER'S SALES NUMBER		13. SHIPPING MARKS AS SHOWN ON BILL OF LADING	

PART B - APPROVING OFFICIAL *(Must be a duly - authorized customs or port official of the destination country.)*

NOTE: This information is being requested by the exporter listed in Item 1 so that the exporter can report to the Commodity Credit Corporation, United States Department of Agriculture, the place and date of debarkation of this cargo of American upland cotton. ***The original of this certificate to be airmailed to the exporter entered in item 1 above.***

14. SIGNATURE	15. OFFICIAL TITLE	16. DATE SIGNED

17. SIGNED AT:	18. PORT OF DISCHARGE	19. SIGNED AT *(CITY, COUNTRY)*
20. DATE DISCHARGED FROM SHIP		

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability

[FR Doc. 94–4674 Filed 2–24–94; 4:22 pm]
BILLING CODE 3410–05–C

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-101-1]

Goats Imported From Mexico for Immediate Slaughter; Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations concerning importation of animals into the United States to allow importation of goats from Mexico without a health certificate if the goats are imported for immediate slaughter within 2 weeks following importation. Goats imported from Mexico for immediate slaughter would have to be sprayed for ticks at the time of importation, would have to be inspected at the port of entry and found free from evidence of and exposure to both communicable animal disease and fever tick infestation, and would have to be moved directly from the port of entry to a recognized slaughtering establishment in a sealed vehicle.

This change would allow goats from Mexico, that do not present a significant risk of spreading animal disease because they are bound for immediate slaughter, to be imported without meeting the health certificate requirements that are needed for goats not bound for immediate slaughter, which present a greater risk of spreading animal disease.

We also propose to make a minor change for clarity in our regulations concerning horses subject to quarantine after importation into the United States.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-101-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United States of certain animals and poultry and certain animal and poultry products. Section 92.426 deals with inspection at the port of entry of ruminants (including goats) from Mexico, and § 92.428 deals with health certification requirements for sheep, goats, and wild ruminants from Mexico. Section 92.429 addresses the importation of ruminants (excluding sheep and goats) from Mexico for immediate slaughter.

Currently, § 92.428 requires, in part, that goats from Mexico offered for importation into the United States be accompanied by a certificate issued by a salaried veterinarian of the Mexican government which states that the goats are not affected with, nor have been exposed to, scrapie and other communicable diseases, and which requires that "[n]otwithstanding such certificate, such * * * goats shall be detained or quarantined as provided in § 92.427 and shall be dipped at least once in a permitted scabies dip under supervision of an inspector." The currently required certificate must also state that the goats "have been tested for tuberculosis and brucellosis with negative results within 30 days preceding their being offered for entry, and give the date and method of testing, the name of the consignor and of the consignee, and a description of the animals including breed, ages, markings, and tattoo and eartag numbers. Notwithstanding such certification, such goats shall be detained or quarantined as provided in § 92.427 and retested for brucellosis."

We believe these requirements are not necessary to prevent the introduction or spread of animal disease in the case of goats imported from Mexico for immediate slaughter. These requirements were designed for animals which have significant opportunity to spread disease to other animals in the United States, such as through breeding or prolonged contact with other animals; goats moved for immediate slaughter following importation should not have these opportunities.

We believe that goats may be imported from Mexico without presenting a significant disease risk if they are treated for ticks prior to their entry, and if they are moved directly from the port of entry to a recognized slaughtering establishment in a sealed vehicle, and slaughtered within 2 weeks.

The tick treatment would control the possibility that disease-bearing ticks could become dislodged from the goats and move to other animals in the United States. As a treatment for ticks, we propose that the goats be sprayed with a solution of 0.25 percent of an approved proprietary brand of coumaphos under the supervision of a port veterinarian. This treatment has been used effectively for many years to control ticks in goats and other ruminants, and the proper concentration of coumaphos is readily available in the form of commercial products such as Co-Ral®.

The requirement for movement in a sealed vehicle would prevent contact with other animals while the goats are en route to slaughter, and the requirement for slaughter within 2 weeks would reduce the possibility that the goats could come in contact with other animals while awaiting slaughter, or be diverted from slaughter. The requirement for direct movement appears necessary to minimize the risk of goats spreading disease to animals in the United States, should any of the imported goats have an infectious disease. As defined in § 92.400, and consequently applicable here, "moved directly" is "[m]oved without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs."

Therefore, we propose to exempt goats imported from Mexico for immediate slaughter from the requirements of § 92.428, and to allow their importation subject to the requirements described above, which we would add to § 92.429.

We do not propose to exempt goats imported from Mexico for immediate slaughter from any of the requirements currently contained in §§ 92.424, 92.425, and 92.426 that apply to ruminants imported from Mexico. Section 92.424 requires the importer, subject to certain exceptions, to obtain an import permit for ruminants, and to deliver an application for inspection at the port of entry. Section 92.425 requires the importer to present two copies of a declaration to the collector of customs at the port of entry, containing certain information about the importer, the animals offered for importation, and their destination. Section 92.426 provides for inspection of ruminants at the port of entry, and refusal of entry for ruminants found to be affected with or exposed to a

communicable disease or infested with fever ticks.

Horse Quarantine Facilities

Our regulations at 9 CFR 92.308 establish requirements for the quarantine of certain horses imported into the United States. Section 92.308(c)(2)(ii)(B), which contains the physical requirements for a quarantine facility, provides that "Doors, windows, and other openings of the facility shall be provided with double screens which will prevent insects from entering the facility."

However, the preceding paragraph, § 92.308(c)(2)(ii)(A) states that "All walls, floors, and ceilings shall be constructed of solid impervious material or be screened as provided in paragraph (c)(2)(ii)(B) of this section." The last phrase of this sentence has led some readers to believe that walls, floors, and ceilings of quarantine facilities could somehow be constructed of screening. That was not our intent when we originally promulgated this language. We simply meant that if a facility's solid and impervious walls, floor, or ceiling had openings, they must be screened in accordance with § 92.308(c)(2)(ii)(B). Therefore, we propose to remove the last phrase of the misleading sentence in § 92.308(c)(2)(ii)(A), to make it read "All walls, floors, and ceilings shall be constructed of solid impervious material."

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This proposed amendment, if adopted, would allow importation of a small number of goats from Mexico under reduced paperwork requirements. This change would also relieve certain requirements for testing and veterinary examination. The goats eligible for such importation do not present a significant risk of spreading animal disease because they are bound for immediate slaughter. It is anticipated that no more than 100 goats a year would be imported in accordance with the proposed regulations. The ability to import the goats would benefit several small businesses near the Mexican border that are interested in importing goats to meet local demands for goat meat. The expected scale of the imports would preclude any significant competition with large or small domestic goat producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308(c)(2)(ii)(A) would be amended by removing the phrase "or be screened as provided in paragraph (c)(2)(ii)(B) of this section".

§ 92.428 [Amended]

3. In § 92.428, paragraph (a) introductory text, the first word "Sheep" would be removed and the phrase "Except for goats imported from Mexico for immediate slaughter in accordance with § 92.429(b), sheep" would be added in its place.

4. In § 92.428, paragraph (b), the phrase "accompanying goats offered for importation from Mexico shall, in addition to the statement required by paragraph (a) of this section," would be removed and the phrase "required by paragraph (a) of this section to accompany goats, shall also" would be added in its place.

§ 92.429 [Amended]

5. The existing text of § 92.429 would be designated as paragraph (a); in the last sentence the phrase "and goats" would be removed; and a new paragraph (b) would be added to read as follows:

§ 92.429 Ruminants for immediate slaughter.

* * * * *

(b) *Goats imported from Mexico for immediate slaughter.* Goats may be imported from Mexico for immediate slaughter, subject to the provisions of §§ 92.424, 92.425, and 92.426. Such goats shall at the time of importation be sprayed for ticks with a solution of 0.25 percent of an approved proprietary brand of coumaphos (Co-Ral®) under the supervision of a port veterinarian. Such goats shall be moved directly from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of entry. Such goats shall be moved from the port of entry in conveyances sealed with seals of the United States Department of Agriculture.

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4594 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 101 and 113

[Docket No. 92–201–1]

Viruses, Serums, Toxins, and Analogous Products; General Requirements for Inactivated Bacterial Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to include a general Standard Requirement for inactivated bacterial products that is consistent with the general Standard Requirements for live bacterial products, killed virus vaccines, and live virus vaccines. The proposed rule would update the current standards and provide uniform, relevant criteria for inactivated bacterial products. We are also including criteria and tests concerning Master Seed and its identity. Finally, the proposed amendment provides a choice of the most appropriate test methods, including identity tests, for the broad range of inactivated bacterial products available today.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–201–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR part 113, Standard Requirements are prescribed for the licensing of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

General Standard Requirements are currently listed in Title 9, Code of Federal Regulations, part 113 for live virus vaccines, killed virus vaccines, and live bacterial vaccines. General Standard Requirements, however, have not been established for inactivated bacterial products. Previously, the general Standard Requirements for live bacterial products in § 113.64 have often been applied to inactivated bacterial products. The proposed amendments would define the relevant criteria for the evaluation of the purity, safety, and identity of inactivated bacterial products in proposed § 113.100(a–d). The proposed amendments would also define the Master Seed concept in proposed § 113.100(c) as it applies to inactivated bacterial products. The proposed amendments would provide more specific criteria for these inactivated bacterial products in proposed § 113.100(a–d).

Section 113.100 pertaining to inactivated bacterial products currently defines four categories of products: bacterin, toxoid, bacterin-toxoid, and bacterial extract. These definitions in current § 113.100, paragraphs (a–d) are accurate, but should appear in Part 101—Definitions. Therefore, the definitions for bacterin, toxoid, bacterin-toxoid, and bacterial extract, with minor editorial changes for clarity, would be removed from § 113.100 and added to § 101.3 of the regulations, which defines biological products and related terms.

The general Standard Requirement in proposed new § 113.100 would establish criteria for purity, safety, identity of Master Seed, and ingredients used in the preparation of inactivated bacterial products.

The purity of inactivated bacterial products would be based on applicable tests in §§ 113.26 and 113.27(d) of the regulations.

The safety of inactivated bacterial products would be based on mouse or guinea pig safety tests in §§ 113.33(b) and 113.38 of the regulations.

The identity of the Master Seed Bacteria would be determined to the genus and species level according to published criteria. If the Master Seed bacteria are characterized as to serotype, serovar, subtype, pilus type, strain, or other taxonomic subdivision below the species level, adequate testing would be required to distinguish the Master Seed bacteria from other bacteria characterized to that level based on specified test methods.

Finally, ingredients used in the growth and preparation of the Master Seed bacteria would have to meet specified requirements in §§ 113.50 and 113.53 of the regulations.

Executive Order 12866 and Regulatory Flexibility Act

The Department is issuing this proposed rule in conformance with Executive Order 12866.

There are currently no general requirements for inactivated bacterial products in the regulations. However, approximately 30 percent of the 114 currently licensed veterinary biologics companies manufacture inactivated bacterial products. Many of these companies would be considered small entities and would benefit from the adoption of this proposed rule. The benefits of the proposed rule would include increased efficiency and reduced time and expense in accomplishing the steps toward licensure of an inactivated bacterial product. These benefits would be realized because of ready access to clear requirements, uniformity and consistency in product development, and the alleviation of unnecessary steps in production of these type of products. These companies should not experience any additional costs above those which they currently incur to license an inactivated bacterial product as a result of adoption of this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 113 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.3, would be amended by adding, at the end of the section, the following definitions to read as follows:

§ 101.3 Biological products and related terms.

* * * * *

(m) *Bacterin.* An antigenic suspension of organisms or particulate parts of organisms, representing a whole culture or a concentrate thereof, with or without the unevaluated growth products, which has been inactivated as demonstrated by acceptable tests written into the filed Outline of Production for the product.

(n) *Toxoid.* A sterile, antigenic toxin or toxic growth product, which has resulted from the growth of bacterial organisms in a culture medium from which the bacterial cells have been removed, which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, and which is nontoxic as demonstrated by acceptable tests written into the filed Outline of Production.

(o) *Bacterin-toxoid.* An inactivated bacterial product which is either:

(1) A suspension of organisms, representing a whole culture or a concentrate thereof, with the toxic growth products from the culture which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, the inactivation of organisms and toxins being demonstrated by acceptable tests written into the filed Outline of Production: *Provided,* That it shall contain cellular antigens and shall stimulate the development of antitoxin, or

(2) A combination product in which one or more toxoids or bacterin-toxoids is combined with one or more bacterins or one or more bacterin-toxoids.

(p) *Bacterial extract.* The sterile, nontoxic, antigenic derivatives extracted from bacterial organisms or from culture medium in which bacterial organisms have grown.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 113.100, the heading, introductory paragraph, and paragraphs (a) through (d) would be revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

Unless otherwise prescribed in an applicable Standard Requirement or in the filed Outline of Production, an inactivated bacterial product shall meet the applicable requirements in this section.

(a) *Purity tests.* (1) Final container samples of completed product from each serial and each subserial shall be tested for viable bacteria and fungi as provided in § 113.26.

(2) Each lot of Master Seed Bacteria shall be tested for the presence of extraneous viable bacteria and fungi in accordance with the test provided in § 113.27(d).

(b) *Safety tests.* Bulk or final container samples of completed product from each serial shall be tested for safety in young adult mice in accordance with the test provided in § 113.33(b) unless:

(1) The product contains material which is inherently lethal for mice. In such instances, the guinea pig safety test provided in § 113.38 shall be conducted in place of the mouse safety test.

(2) The product is recommended for poultry. In such instances, the product shall be safety tested in poultry as defined in the specific Standard Requirement or Outline of Production for the product.

(c) *Identity test.* Methods of identification of Master Seed Bacteria to the genus and species level by laboratory tests shall be sufficient to distinguish the bacteria from other similar bacteria according to criteria described in the most recent edition of *Bergey's Manual of Systematic Bacteriology* or the American Society for Microbiology *Manual of Clinical Microbiology.* If Master Seed Bacteria are referred to by serotype, serovar, subtype, pilus type, strain or other taxonomic subdivision below the species level, adequate testing must be used to identify the bacteria to that level. Tests which may be used to identify Master Seed Bacteria include, but are not limited to:

(1) Cultural characteristics,
(2) Staining reaction,
(3) Biochemical reactivity,
(4) Fluorescent antibody tests,
(5) Serologic tests,
(6) Toxin typing,
(7) Somatic or flagellar antigen characterization, and
(8) Restriction endonuclease analysis.

(d) *Ingredient requirements.* Ingredients used for the growth and preparation of Master Seed Bacteria and of final product shall meet the requirements provided in § 113.50. Ingredients of animal origin shall meet the applicable requirements provided in § 113.53.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4592 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Ch. II, III, and X; 18 CFR Ch. I; and 48 CFR Ch. 9

[Docket No. GC–NOI–94–110]

Review of Existing Regulations for Modification or Elimination

AGENCY: Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: As a first step of a comprehensive initiative by the Department of Energy (DOE or Department) to reform its rulemaking efforts, the public is requested to provide general comments on existing regulations and programs where improvements might be made through their modification or elimination. DOE's existing regulations are listed in the table below.

This effort is in response to Executive Order 12866, "Regulatory Planning and Review," published on October 4, 1993 (58 FR 51735). The Executive Order requires that existing significant regulations be reviewed to: Make them more effective in achieving regulatory objectives, reduce regulatory burden, or align them more closely with the

President's priorities or principles of the Executive Order.

It is the Department's intention at a later time to seek specific public recommendations for regulatory modifications or rescissions within these subject matter areas. Any modifications or rescissions to existing significant regulations that may be undertaken will be implemented through appropriate administrative actions, including issuance of notices of proposed rulemaking.

DATES: Written comments (original and five copies) will be considered if received at the address provided below no later than March 30, 1994.

ADDRESSES: Written comments (original and five copies) and the envelope should be marked, "Notice of Inquiry: Regulatory Planning and Review Initiative, Docket No. GC–NOI–94–110." Comments must be submitted to: U.S. Department of Energy, Office of General Counsel, GC–1, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Romulo L. Diaz, Jr., U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's new mission commits DOE to providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense. The DOE is beginning a review of its existing regulations to determine where improvements are warranted to better align existing regulations with the Department's mission and commitment to quality improvements.

II. Discussion

Public Involvement in Targeting Regulations

The Department is seeking through this Notice to maximize public involvement early in this review of DOE regulations, and, in addition, invites the public to comment on how DOE might facilitate public involvement over the course of this effort. It is DOE's expectation that through an interactive process of notices and public comment the Department can best target existing regulations for improvement, taking into account the views expressed by the general public. By Fall 1994, the DOE expects to have completed its preliminary review of the existing regulations and will target specific regulations for modification or elimination.

Possible Areas for Modification or Elimination

To facilitate public review, DOE staff has suggested several specific DOE regulations where public comment on the need for modification or elimination would be useful. These are intended only as examples of existing regulations that do not meet the standards established by Executive Order 12866. The DOE welcomes public review and comment on the totality of the regulations reflected in the attached table.[1]

- Unfunded Mandates: Under the terms of Executive Order 12875, agencies are barred from the promulgation of future regulatory mandates "not required by statute" on State, local, and tribal governments unless Federal funds are provided to pay for compliance or there has been adequate consultation with affected governments. The Executive Order also provides for review and improvement of administrative procedures for obtaining waivers from unfunded mandates. DOE is particularly interested in hearing the extent to which State, local, and tribal governments believe that existing DOE regulations contain such unfunded mandates, and their suggestions for improvement.

- The Department of Energy Acquisition Regulations (48 CFR Ch. 9): These regulations provide detailed and sometimes burdensome requirements on DOE organizational elements and direction to those companies and individuals who seek to provide goods or services to the Department. The DOE seeks to identify opportunities for simplifying and streamlining the contracting process.

- Regulations Implementing the Atomic Energy Act of 1954, as amended (10 CFR Ch. III and X): In view of the Department's current priorities and initiatives, are there existing regulations under the Atomic Energy Act, as amended, that should be considered for modification or elimination?

- Energy Extension Service (EES) Regulations (10 CFR part 465): The National Energy Extension Service Act (Pub. L. 95–39) was repealed by section 143(a) of the Energy Policy Act of 1992 (Pub. L. 102–486). EES programs will be closed out by September 1994.

Scope of Review

Although the Executive Order requires that Federal agencies periodically review only "existing significant regulations," the DOE views this effort as an opportunity to consider needed improvements to all of its existing regulations, including those that do not reach the "significance" threshold.

The DOE is also mindful of the need to identify any legislative mandates that require the DOE to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances. Thus, suggestions should not be restricted to existing regulations that are discretionary in nature. It is DOE's intention to consider the need for related statutory changes in the development of the Department's annual legislative program.

Issued in Washington, DC, on February 22, 1994.

Robert R. Nordhaus,

General Counsel.

[1] Please note that a separate Notice of Inquiry on 10 CFR part 961, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste," will be issued in March. Any comments on the standard contract should be filed in that docket, and not this one.

DEPARTMENT OF ENERGY REGULATIONS

[January 1994]

Part	Title
	Title 10—Energy
	Chapter II—Department of Energy (Parts 200–699)
	Subchapter A—Oil
202	Production or disclosure of material or information.
205	Administrative procedures and sanctions
207	Collection of information
209	International voluntary agreements
210	General allocation and price rules
211	Mandatory petroleum allocation regulations
212	Mandatory petroleum price regulations
215	Collection of foreign oil supply agreement information
216	Materials allocation and priority performance under contracts or orders to maximize domestic energy supplies
218	Standby mandatory international oil allocation
221	Priority supply of crude oil and petroleum products to the Department of Defense under the Defense Production Act
	Appendix to Subchapter A—DOE rulings
	Subchapter B—Coal
303	Administrative procedures and sanctions
305	Coal utilization
	Subchapter D—Energy Conservation
420	State energy conservation program
430	Energy conservation program for consumer products
435	Energy conservation voluntary performance standards for new buildings; mandatory for Federal buildings
436	Federal energy management and planning programs
440	Weatherization assistance for low-income persons
450	Energy measures and energy audits
455	Grant programs for schools and hospitals and buildings owned by units of local government and public care institutions
459	Residential energy efficiency program
463	Annual reports from States and nonregulated utilities on progress in considering the ratemaking and other regulatory standards under the Public Utility Regulatory Policies Act of 1978
465	Energy extension service
470	Appropriate technology small grants program
473	Automotive propulsion research and development
474	Electric and hybrid vehicle research, development and demonstration program; equivalent petroleum-based fuel economy calculation
475	Electric and hybrid vehicle research, development, and demonstration project
476	Electric and hybrid vehicle research, development, and demonstration program small business planning grants
478	Methane transportation research and development; review and certification of contracts, grants, cooperative agreements, and projects
	Subchapter E—Alternate Fuels
500	Definitions
501	Administrative procedures and sanctions
503	New facilities
504	Existing powerplants
515	Transitional facilities
	Subchapter G—Natural Gas
580	Curtailment priorities for essential agricultural uses
590	Administrative procedures with respect to the import and export of natural gas
	Subchapter H—Assistance Regulations
600	Financial assistance rules
601	New restrictions on lobbying
605	Special research grants program
	Subchapter I—Sales Regulation
622	Contractual provisions
624	Contract clauses
625	Price competitive sale of Strategic Petroleum Reserve petroleum

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
	Chapter III—Department of Energy (Parts 700–999)
703	Contract appeals
706	Security policies and practices relating to labor-management relations
707	Workplace substance abuse programs at DOE sites
708	DOE contractor employee protection program
710	Criteria and procedures for determining eligibility for access to classified matter or significant quantities of special nuclear material
715	Definition of nonrecourse project-financed
725	Permits for access to restricted data
730	Unusual volumes allocation petition procedures
745	Protection of human subjects
760	Domestic uranium program
761	Criteria to assess viability of domestic uranium mining and milling industry
762	Uranium enrichment services criteria
763	Uranium enrichment late payment charges
766	Uranium Enrichment Decontamination and Decommissioning Fund; Procedures
780	Patent Compensation Board regulations
781	DOE patent licensing regulations
782	Claims for patent and copyright infringement
783	Waiver of patent rights
790	The geothermal loan guaranty program
791	Electric and hybrid vehicle research, development, demonstration, and production loan guaranties
792	Loans for reservoir confirmation projects
794	Loans for development of wind energy systems and small hydroelectric power projects
796	Federal loan guarantees for alternative fuel demonstration facilities
797	Loans for small hydroelectric power project feasibility studies and related licensing
798	Urban wastes demonstration facilities guarantee program
799	Loan guarantees for alcohol fuels, biomass energy and municipal waste projects
800	Loans for bid or proposal preparation by minority business enterprises seeking DOE contracts and assistance
810	Assistance to foreign atomic energy activities
820	Procedural Rules for DOE nuclear activities
835	Occupational Radiation Protection
840	Extraordinary nuclear occurrences
860	Trespassing on Administration property
861	Control of traffic at Nevada test site
862	Restrictions on aircraft landing and air delivery at Department of Energy nuclear sites
871	Air transportation of plutonium
903	Power and transmission rates
904	General regulations for the charges for the sale of power from the Boulder Canyon Project
960	General guidelines for the recommendation of sites for nuclear waste repositories
961	Standard contract for disposal of spent nuclear fuel and/or high-level radioactive waste
962	Byproduct material
	Chapter X—Department of Energy (General Provisions) (Parts 1000–1099)
1000	Transfer of proceedings to the Secretary of Energy and the Federal Energy Regulatory Commission
1001	Separation of regulatory and enforcement functions within the Economic Regulatory Administration
1002	Official seal and distinguishing flag
1004	Freedom of information
1005	Intergovernmental review of Department of Energy programs and activities
1008	Records maintained on individuals (Privacy Act)
1009	General policy for pricing and charging for materials and services sold by DOE
1010	Conduct of employees
1013	Program fraud civil remedies and procedures
1014	Administrative claims under Federal Tort Claims Act
1015	Collection of claims owed the United States
1016	Safeguarding of restricted data
1017	Identification and protection of unclassified controlled nuclear information
1018	Referral of debts to IRS for tax refund offset
1020	Grand Junction remedial action criteria
1021	Compliance with the National Environmental Policy Act
1022	Compliance with floodplain/wetlands environmental review requirements
1023	Contract appeals
1024	Procedures for financial assistance appeals
1035	Debarment and suspension (Procurement)
1036	Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
1039	Uniform relocation assistance and real property acquisition for Federal and federally assisted programs
1040	Nondiscrimination in federally assisted programs
1041	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by Department of Energy

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
1045	National security information
1046	Physical protection of security interests
1047	Limited arrest authority and use of force by protective force officers
1048	Trespassing on strategic petroleum reserve facilities and other property
1049	Limited arrest authority and use of force by protective force officers of the Strategic Petroleum Reserve
1050	Foreign gifts and decorations
1060	Payment of travel expenses of persons who are not Government employees
	Title 18—Conservation of Power and Water Resources
	Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1–399) Subchapter L—Regulations for Federal Power Marketing Administrations
300	Confirmation and approval of the rates of Federal power marketing administrations
301	Average system cost methodology for sales from utilities to Bonneville Power Administration Northwest Power Act
	Title 48—Federal Acquisition Regulations
	Chapter 9—Department of Energy (Parts 900–999)
	Subchapter A—General
901	Federal Acquisition Regulations System
902	Definitions of words and terms
903	Improper business practices and personal conflicts of interest
904	Administrative matters
	Subchapter B—Acquisition Planning
905	Publicizing contract actions
906	Competition requirements
907	Acquisition planning
908	Required sources of supplies and services
909	Contracting qualifications
910	Specifications, standards, and other purchase descriptions
912	Contract delivery or performance
	Subchapter C—Contracting Methods and Contract Types
913	Small purchase and other simplified purchase procedures
914	Sealed bidding
915	Contracting by negotiation
916	Types of contracts
917	Special contracting methods
	Subchapter D—Socioeconomic Programs
919	Small business and small disadvantaged business concerns
920	Labor surplus area concerns
922	Application of labor laws to Government acquisition
923	Environment, conservation, and occupational safety
924	Protection of privacy and freedom of information
925	Foreign acquisition
	Subchapter E—General Contracting Requirements
927	Patents, data, and copyrights
928	Bonds and insurance
931	Contract cost principles and procedures
932	Contract financing
933	Protests, disputes, and appeals
	Subchapter F—Special Categories of Contracting
935	Research and development contracting
936	Construction and architect—engineer contracts
937	Service contracting
	Subchapter G—Contract Management
942	Contract administration
943	Contract modifications
944	Subcontracting policies and procedures

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
945	Government property
947	Transportation
949	Termination of contracts
950	Extraordinary contractual actions
951	Use of Government sources by contractors
	Subchapter H—Clauses and Forms
952	Solicitation provisions and contract clauses
	Subchapter I—Agency Supplementary Regulations
970	DOE management and operating contracts
971	Review and approval of contract actions

[FR Doc. 94–4633 Filed 2–28–94, 8:45 am]
BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB35

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) proposes to amend its regulations governing computation of an institution's assessment base to provide for the subtraction of certain liabilities arising under depository institution investment contracts. The subject liabilities are those not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (FDI Act). Under the proposal, these liabilities would be excluded from the deposit base on which deposit insurance premiums are assessed, thereby reducing assessment payments for affected institutions. The purpose of the amendment is to give effect, by regulation, to apparent congressional intent.

DATES: Written comments must be received by the FDIC on or before March 31, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William Farrell, Chief, Assessments Management Section, Division of Finance, (703) 516–5546; or Gerald J. Gervino, Senior Attorney, (202) 898–3723; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Prior to December 1993, liabilities arising under bank or thrift investment contracts (BICs) that qualified as deposits under section 3(*l*) of the FDI Act, 12 U.S.C. 1813(*l*), were insured in accordance with the statutory and regulatory provisions governing federal deposit insurance coverage. Similarly, BIC liabilities that qualified as deposits were included in an institution's deposit base for the purpose of calculating the institution's deposit insurance premiums.

Effective December 19, 1993, a new section 11(a)(8) was added to the FDI Act by section 311(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Under this new provision, codified at 12 U.S.C. 1821(a)(8), liabilities arising under certain depository institution investment contracts are no longer treated as insured deposits.

A companion provision to the new section 11(a)(8) was a new subparagraph (D) added to section 7(b)(6) of the FDI Act by section 311(a)(2) of FDICIA, which also became effective December 19, 1993. Section 7(b)(6)(D) excluded from an institution's insurance assessment base any liability of the institution not treated as an insured deposit pursuant to section 11(a)(8).

Although section 11(a)(8) continues in force, its companion provision does not. Section 7(b)(6), as amended effective December 19, 1993, was superseded as of January 1, 1994, by a totally revised version of section 7(b) that provides for a risk-based assessment system. The existing section 7(b), 12 U.S.C. 1817(b), as amended by section 302(a) of FDICIA, omits all provisions of the superseded section 7(b) that dealt with the computation of an institution's deposit insurance assessment base. Under the existing provisions, definition of the assessment base is to be determined by the FDIC.

The FDIC believes that it is appropriate and desirable to give continued effect, by regulation, to the intent of Congress, as reflected in superseded section 7(b)(6), that investment-contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act should be excluded from the universe of deposits on which insurance assessments are paid. The proposed amendment would maintain the balance we believe Congress intended in enacting the former section 7(b)(6) as a companion to section 11(a)(8).

Accordingly, the Board proposes to amend its assessments regulation to exclude from an institution's assessment base, as computed under part 327.4, those investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act.

The Board hereby requests comments on the proposed amendment. Interested persons are invited to submit written comment during a 30-day comment period.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the

Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It would not impose burdens on depository institutions of any size and would not have the type of economic impact addressed by the Act.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 327 as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b; 1817–1819.

2. Section 327.4 is amended by removing the period at the end of paragraph (b)(2)(iv)(B) and adding a semicolon in lieu thereof, and by adding paragraph (b)(2)(v) to read as follows:

§ 327.4 Average assessment base.

* * * * *

(b) * * *

(2) * * *

(v) Liabilities arising from a depository institution investment contract that are not treated as insured deposits under section 11(a)(8) of Federal Deposit Insurance Act (12 U.S.C. 1821(a)(8)).

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of February, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–4527 Filed 2–28–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce.

ACTION: Proposed rule; Notice of public meeting and extension of comment period.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act of 1990 requires the President, acting through the Under Secretary for Oceans and Atmosphere to promulgate regulations for the assessment of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) proposed those regulations on January 7, 1994 (59 1062). Today's Notice announces a public meeting to be held on March 24–25, 1994, in Washington, DC, and extends the comment period on the proposed rule to July 7, 1994.

DATES: Written comments on the January 7, 1994 proposed rule (59 FR 1062) should be received no later than July 7, 1994.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1350 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Karl Gleaves, Office of General Counsel, DART, telephone 202–606–8000; FAX: 202–606–4900.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1994 (59 FR 1062), NOAA published a notice of proposed rulemaking concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990. NOAA requested comments, recommendations, and technical information concerning appropriate assessment procedures and the overall assessment process. NOAA also announced a series of regional meetings to discuss and solicit comments on the proposed rule (59 FR 1189). Comments on the proposed rule were to be received by April 7, 1994. Through today's Notice, NOAA announces a public meeting concerning the proposed rule and an extension of the comment period.

II. Public Meeting

NOAA has held six regional meetings in January and February of 1994 to discuss the proposed natural resource damage assessment regulations and to encourage future cooperative efforts among various natural resource trustees and potentially responsible parties. NOAA has received requests from these meeting participants and other interested parties that an additional meeting should be held in Washington, DC, to discuss and take questions on the proposed rule and to report on the regional meetings. Therefore, NOAA will hold a meeting on March 24–25, 1994, from 9 a.m. to 4:30 p.m. each day. The meeting will be held in Room 4830 at the Department of Commerce, 14th and Pennsylvania Ave., NW., Washington, DC. This meeting will be open to the public, however, representatives of organizations that have a direct interest in the assessment process and the proposed rule are encouraged to attend. Such interested organizations may include, but are not limited to: Federal response and trustee agencies; States; Indian tribes; foreign trustees; industries or industry organizations; natural scientists; and economists.

The general format of the meeting is as follows (although it may be revised in some part): the morning of March 24 will be devoted mainly to a discussion of issues that were of most concern in the regional meetings, as well as an opportunity to raise new issues; the afternoon of March 24 will provide an opportunity to report on the cooperative prespill planning workshops with a discussion of the possibilities and concerns that arose during those meetings. On March 25, the morning session will be divided into three concurrent discussion groups: one group to discuss the legal/procedural issues; a second group to discuss the scientific/resource issues; and the third group to discuss the economic/valuation issues. In the afternoon of March 25, all groups will come together again to begin a question and answer period devoted to both the proposed rule and the cooperative efforts.

III. Comment Period for Proposed Rule

NOAA has received numerous requests to extend the comment period for the proposed rule. Several of the participants in the regional meetings asked for more time to review the compensation formulas in particular. Because NOAA wants to encourage a thorough and thoughtful review of all components of the proposed rule, the comment period will be extended for ninety days. Therefore, comments on the proposed rule are now due on or before July 7, 1994. Comments are to be submitted to the address given at the beginning of this Notice.

Authority: Sec. 1006(e), Pub. L. 101–380.

Dated: February 23, 1994.

Meredith J. Jones,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 94–4534 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing for comment rules to implement the risk assessment provisions of the Futures Trading Practices Act of 1992. The proposed rules would enhance the Commission's financial surveillance program by providing the Commission with access to information concerning the activities of affiliates of registered futures commission merchants ("FCMs") whose activities are reasonably likely to have a material impact on the financial or operational condition of the FCM. As proposed, these rules would require registered FCMs to maintain certain records concerning the financial activities of such material affiliates, to file certain information with the Commission on an annual and quarterly basis and to provide additional information to the Commission upon the occurrence of specified events.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to "Proposed Risk Assessment Rules."

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

Following the failures of certain FCMs operating as part of a group of affiliated companies, the Commission requested and received new statutory authority, codified in the Futures Trading Practices Act of 1992 ("FTPA"),[1] to obtain information concerning affiliate activities that could pose material risks to the FCM. The Commission is proposing rules to implement this new authority. The proposed rules, in accordance with the statutory authority granted the Commission, establish three basic types of risk assessment requirements: (1) Recordkeeping; (2) reporting to the Commission of certain information on a routine basis; and (3) reporting to the Commission upon the occurrence of certain events that warrant further review.

First, the proposed rules require that FCMs maintain certain records. These records concern FCM risk management policies, procedures and systems and the activities of their affiliates that could result in material risks to the FCM's financial condition or operations. They include information concerning on-balance sheet and off-balance financial activities of the FCM's material affiliates, and consolidated financial information for the group of companies of which the FCM is a part.

Second, the proposed rules would require reporting by the FCM to the Commission, generally on an annual basis unless significant changes in the reported information occur, of the risk management and affiliate activity information required to be maintained by the FCM. Aggregate information concerning the noncustomer accounts carried by the reporting FCM would be required on a routine quarterly basis. These routine reporting requirements are designed to facilitate identification of FCMs whose financial condition or operations may be affected by their relationships with affiliate firms, to provide Commission staff background information on the group and its activities to enable it to better evaluate non-routine reports and permit more efficient and informed responses by the Commission in emergency situations, to permit identification of significant changes in the scope, types and risk of those activities, to permit the Commission to better understand how the group is funded, and to provide the Commission with information concerning the types of affiliate activities that are likely to pose risks to the FCM.

Third, the proposed rules would require that FCMs give notice to the Commission of certain events such as a decline in the FCM's capital or losses at a material affiliate exceeding specified thresholds. These "trigger" events have been constructed with a view towards providing the Commission with notice of circumstances likely to warrant further scrutiny. Upon receipt of such a notice, the Commission may seek additional information, as warranted in the circumstances, from another regulator and/or from the FCM. The use of specified events triggering notice to the Commission is also intended to reduce the need for routine reports to the Commission without compromising the overall objectives of the risk assessment program.

The rules contain certain required exemptions for banks and insurance companies and defer to certain Securities Exchange Act requirements in the case of broker-dealer FCMs.

Comment is requested concerning all aspects of the proposed rules and specifically concerning the appropriate balance of routine reporting requirements, event-specific notice requirements, and use of statutory special call authority.

A. Current Financial Regulatory Framework

Section 229 of the FTPA, entitled "Risk Assessment for Holding Company Systems," added new section 4f(c)[2] to the Commodity Exchange Act ("CEA" or "Act"). Section 4f(c) provides the Commission with authority to obtain information concerning activities of an FCM's affiliates that could pose material risks to the FCM. The Commission's new risk assessment authority augments long-standing provisions of the CEA and Commission regulations designed to safeguard funds held by FCMs on behalf of futures customers and to assure that FCMs maintain a minimum level of capital to support their obligations to customers and the marketplace on an ongoing basis.

Section 4d(2) of the CEA and Commission regulations require that one hundred percent of customer funds and property, that is, all funds and property deposited to "margin, guarantee or secure" futures or commodity option positions, and all accruals thereon, be maintained for the exclusive benefit of the depositing customer and segregated from the funds of the FCM.[3] The segregation requirement bars the use by an FCM of one customer's funds for any purpose other than to margin or secure that customer's trades and facilitates customer recovery on a first priority basis in the event of the bankruptcy of the FCM. Under Section 4d(2) and Commission rules, an FCM must always maintain sufficient funds in segregation to satisfy the claims of all customers holding accounts with positive net equities. An FCM therefore is required to add its own funds to the segregated customer funds account to cover any debit or deficit account balance of any

[1] Pub. L. No. 102–546, 106 Stat. 3590 (1992). The FTPA was enacted on October 28, 1992.

[2] 7 U.S.C. 6f(c) (Supp. IV 1992).

[3] 7 U.S.C. 6d(2) (1988).

customer by the close of business on the day the deficit occurs. As a consequence, if the segregation requirements are satisfied, an FCM's financial failure generally should not result in a loss of customer funds, and one customer's withdrawal of funds or failure to satisfy margin demands should not affect the funds of any other customer.[4]

The CEA and Commission rules requiring that FCMs maintain regulatory capital at or above specified minimum levels buttress the security of customer funds and the overall financial integrity of the futures markets. Minimum capital requirements for FCMs are designed to assure that futures firms are financially sound and have liquid assets sufficient to sustain normal market reverses without losses to customers. The CFTC's financial regulations also establish an "early warning" system to identify firms whose capital levels or other conditions warrant intensified surveillance. This system requires notice to the Commission when an FCM's capital falls below 150 percent of its required minimum capital and when certain other conditions exist that constitute or could lead to capital impairment or other financial deficiencies.[5]

Other safeguards for customer funds established by the CEA and CFTC regulations include protections against the use of customer funds by depositories, such as banks or clearing organizations, to offset obligations of the FCM to the depository, limitations on investments of customer funds to U.S. government or municipal securities, and the requirement that an FCM's independent public accountant review and report upon the adequacy of the firm's internal controls and procedures for safeguarding customer assets.

The statutory and regulatory framework administered by the Commission requires that each futures exchange, as a self-regulatory organization ("SRO"), adopt and enforce minimum financial requirements and reporting rules for its member FCMs that are at least as stringent as those established by Commission regulations. As SROs, the futures exchanges and the National Futures Association ("NFA"), an industry-wide self-regulatory organization responsible for firms that are not members of an exchange, have the primary direct responsibility to ensure the financial integrity of their member firms.[6] The Commission is responsible for oversight of the SROs' financial surveillance and rule enforcement programs.

The Commission's routine financial oversight activities include evaluation and monitoring of SRO financial surveillance and audit activities, direct audits of FCMs and introducing brokers ("IBs") as a quality control check of SRO audit work, and targeted reviews of FCMs that have "early warning" conditions or have otherwise been identified as high risk firms. The Commission's financial oversight program makes use of various types of information to target firms for heightened surveillance and to better understand firm operations, including among other sources of relevant information, data identifying the holders of large market positions generated on a daily basis by the Commission's large-trader reporting system, notices of adjusted net capital being below early warning levels, and financial data, including pay and collect data, generated by the SROs' surveillance systems.

B. Purposes of Risk Assessment Authority

The risk assessment provisions of the FTPA are designed to facilitate financial oversight of FCMs which are part of holding company groups whose activities may affect the FCM's overall financial condition, or where the structure of the group of companies places control of funding outside the FCM. As such, the risk assessment provisions are intended to enhance the effectiveness of existing safeguards of customer funds by providing the Commission with increased access to material information concerning the operations of affiliates of the FCM whose activities may expose the FCM to financial or operational risks. This new statutory authority recognizes that, as illustrated by the experience of the CFTC and other regulators with several recent failures of regulated brokerage firms, the operations of regulated FCMs may be materially affected by, and only understood in conjunction with, the activities of affiliated entities, many of which may be unregulated. Concomitantly, the effectiveness of ongoing financial oversight programs may depend upon access to information concerning risks to the FCM created by affiliate activity, and the efficacy of regulatory responses to financial problems at the regulated entity may be enhanced by access to information concerning relevant affiliate activity.

For example, Commission staff and futures industry self-regulators worked closely with securities and banking regulators to facilitate the rapid wind-down of Drexel Burnham Lambert, Inc. ("DBL"), a registered FCM and securities broker-dealer, and to minimize adverse effects of the wind-down on customers and the markets. Approximately 1700 futures accounts were transferred from DBL to other futures firms during a two-week period in February 1990.[7] The immediate cause of DBL's failure was the inability of its parent firm, The Drexel Burnham Lambert Group, Inc. ("DBL Group"), to meet certain debt payments, some of which consisted of commercial paper, following a reduction of DBL's credit rating. DBL Group filed a bankruptcy petition on February 13, 1990. Previously, approximately $220 million of DBL's excess capital had been transferred to DBL Group in the form of short-term loans.[8]

In addition to monitoring and facilitating the transfer of DBL's futures accounts to other firms, Commission staff monitored the liquidation of futures positions of Drexel Burnham Lambert Trading Corporation ("Drexel Trading"), a noncustomer affiliate whose account was carried by DBL. Drexel Trading's futures account at DBL was apparently used to hedge its commodity trading activities in unregulated cash and forward markets. The wind-down of Drexel Trading's business thus entailed the liquidation of futures positions that were related to unregulated cash positions. In the course of the Drexel events, the availability of information concerning the developing problems at DBL Group and better understanding of the unregulated activities of Drexel Trading and other Drexel Group entities that carried futures positions in noncustomer accounts at DBL to manage the risks of related cash operations and swaps positions would have facilitated the Commission's financial oversight of DBL and the development and tailoring of regulatory responses to those events.

Commission staff also monitored the wind-down of Stotler and Company

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[4] *See, generally,* Commission Rules 1.20–1.30 and Part 190. Commission rules referred to herein are found at 17 CFR Ch. I (1993).

[5] Commission rules require, for example, that an FCM provide notice to the Commission if the FCM fails to keep current books and records, is notified by an independent public accountant of a material inadequacy under Rule 1.16(d)(2), becomes subject to trading restrictions for failure to meet a margin call or determines that it is carrying an account that is undermargined by an amount exceeding its adjusted net capital. *See* Commission Rule 1.12.

[6] Responsibility for routine periodic audits of firms that are members of more than one SRO is allocated among the SROs under a Joint Audit Plan in which all of the exchanges and NFA participate.

[7] No regulated futures customers suffered losses due to DBL's insolvency.

[8] The New York Stock Exchange subsequently ordered DBL to maintain excess capital of $300 million.

("Stotler"), a registered FCM and government securities broker-dealer. On July 25, 1990, Stotler Group, Inc. ("Stotler Group"), Stotler's parent firm, formally announced that it had defaulted on $750,000 of commercial paper obligations and that Stotler would be winding down its futures brokerage business. As those events unfolded, it became apparent that Stotler's FCM was dependent upon financing from Stotler Group, which in turn was dependent upon the issuance of commercial paper for its own financing. Stotler had already commenced informally winding down its futures brokerage business on July 12, 1990, following notification by the Commission that it did not meet minimum capital requirements, due to adjustments to Stotler's reported capital to correct, among other things, the failure to reflect in Stotler's capital computations liabilities purportedly transferred to Stotler Group. In a period of approximately eight weeks, Stotler, with the assistance and monitoring of the CFTC and self-regulatory authorities, transferred more than 65,000 futures customer accounts and customer segregated funds totaling over $309 million.[9] Access to information concerning Stotler Group's commercial paper operations, on which Stotler drew for financing, would have assisted the Commission in its oversight of Stotler and aided in the identification of the developing difficulties of the Stotler entities.

The well-publicized problems of the Metallgesellschaft AG group of companies provide the most recent example of the potential utility of information on entities affiliated with an FCM. MG Futures, Inc. ("MG Futures"), a registered FCM and a wholly-owned subsidiary of Metallgesellschaft AG, carried large, purported hedge positions in the energy futures markets for the MG group of companies. Large losses sustained by the MG Group of companies in late 1993 apparently caused severe cash flow problems for MG Futures, the regulated intermediary. The losses, which occurred at an affiliated entity, were not reflected in the financial reports filed by MG Futures with the Commission and materially affected MG Futures' funding arrangements.

The interrelationships between FCMs and their affiliates may include a wide range of financial relationships that render the FCM dependent upon certain affiliates' financial condition or expose the FCM's capital to withdrawal or other impairment to support an affiliate experiencing funding difficulties. These types of financial relationships include, for example, guarantee arrangements between the FCM and its parent or other affiliate, arrangements to shift capital from the FCM to an affiliate, financing or investment relationships between the FCM and an affiliate, maintenance by the FCM of a futures account for an affiliate, and business referral arrangements or other forms of contractual arrangements that create financial interdependencies between the FCM and an affiliate. Further, even in the absence of direct exposure of the FCM's resources to an affiliate's activities pursuant to contract or common ownership, the existence of management or ownership linkages between the FCM and an affiliate may have the result that financial or operational difficulties of a closely linked affiliate adversely affect the FCM's credit or customer relationships, and thus its liquidity.

The potential risks to FCM operations created by affiliate activities may be exacerbated, and the importance of ready access to information concerning affiliate activities heightened, by the nature of the affiliate activities. Because FCM activities are subject to minimum capital requirements designed to measure, and provide resources adequate to protect against, the risks of various types of transactions, a holding company group may elect to conduct activities giving rise to capital charges in unregulated affiliates rather than the regulated entity. As a result, activities conducted on an unregulated basis but that nonetheless may create significant market, credit or other risk exposures, may be concentrated in affiliated entities that are not subject to federal or state oversight.[10]

C. Statutory Risk Assessment Provisions

The risk assessment provisions added to the CEA by the FTPA provide a mechanism for the Commission to obtain information concerning FCM affiliate activities that should facilitate both a better understanding of the ongoing risk exposures of the FCM and an improved ability to determine appropriate intervention in the event of financial difficulties at the FCM or in other circumstances of heightened risk. New Section 4f(c) of the Act authorizes the Commission to require each registered FCM to obtain "such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant's policies, procedures or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person."[11] The statute provides that the required records should "describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations."[12] The Commission is authorized to require, by rule or regulation, summary reports of such information to be filed no more frequently than quarterly. Section 4f(c) also authorizes the Commission to require the filing by FCMs of supplemental reports if, as a result of adverse market conditions, based on reports provided pursuant to this section, or other available information, the Commission "reasonably concludes" that it has concerns regarding the financial or operational condition of any registered FCM.[13]

Section 4f(c) also provides that the Commission may exempt "any person or class of persons" from recordkeeping or reporting requirements established pursuant to that provision. In granting such exemptions, the Commission is directed to consider, "among other factors," whether information of the type required is available from the Securities and Exchange Commission ("SEC"), a state insurance commission or similar state agency, a supervisory agency as defined in section 1101(7) of the Right to Financial Privacy Act of 1978[14] or a similar foreign regulator; the

[9] Less than one percent of customer segregated funds had not been returned to customers prior to the filing by Stotler and Stotler Group of petitions in bankruptcy on August 24, 1990. The remaining one percent was subsequently returned.

[10] As the SEC noted in proposing its risk assessment rules for broker-dealers, "the activities carried out by the affiliates of a broker-dealer are, in the aggregate, generally more highly leveraged and riskier than permitted by the net capital rule." 56 FR 44014, 44015 (September 6, 1991).

[11] 7 U.S.C. 6f(c)(2)(A) (Supp. IV 1992).

[12] 7 U.S.C. 6f(c)(2)(B) (Supp. IV 1992).

[13] 7 U.S.C. 6f(c)(3)(A) (Supp. IV 1992).

[14] The term "supervisory agency" is defined in section 1101(7) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401(7), to include the following agencies which have the statutory authority to examine the financial condition, business operations, or records or transactions of a financial institution, holding company, or subsidiary thereof: (1) The Federal Deposit Insurance Corporation; (2) the Director, Office of Thrift Supervision; (3) the National Credit Union Administration; (4) the Board of Governors of the Federal Reserve System; (5) the Comptroller of the Currency; (6) the Securities and Exchange Commission; (7) the

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primary business of any affiliated person; the nature and extent of domestic or foreign regulation of the affiliated person's activities; the nature and extent of the FCM's futures and options activities; and, with respect to the FCM and its affiliated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the U.S. futures markets.[15] The legislative history reflects that the Commission "may determine not to require information concerning holding companies or other affiliates of FCMs that are primarily engaged in nonfinancial activities such as merchandising, construction (other than equity investment or financing), travel services, real estate brokerage, consumer lending, publishing or nonfutures-related information processing."[16]

Section 4f(c) provides that generally an FCM will be considered to have complied with a recordkeeping or reporting requirement adopted by the Commission concerning an affiliated person subject to examination by, or reporting requirements of, a federal banking agency if the FCM uses for that purpose copies of reports filed by the affiliated person with the relevant federal banking agency pursuant to specified statutory provisions. However, the Commission is authorized to require the FCM to obtain, maintain or report supplemental information if the Commission makes a finding that such information is necessary to inform the Commission concerning potential risks to the FCM and first requests the federal banking agency to expand its requirements to include the information.[17]

The risk assessment provisions of the FTPA require the Commission to treat any risk assessment information required to be provided to it pursuant to that authority as subject to the confidentiality provisions of section 8 of the Act. The Commission therefore is generally prevented from disclosing such information to third parties.[18]

D. SEC Final Temporary Risk Assessment Regulations

The Commission's statutory risk assessment authority is substantially similar to that granted to the SEC under Section 4 of the Market Reform Act of 1990.[19] Pursuant to this risk assessment authority, the SEC has adopted "final temporary" rules[20] which generally require securities broker-dealers to maintain and preserve records and file quarterly reports containing information concerning the financial and securities activities of the broker-dealers' material affiliates.[21] The SEC's risk assessment structure includes recordkeeping and reporting rules applicable generally to all broker-dealers that maintain capital equal to or greater than twenty million dollars or that carry customer accounts and maintain capital of $250,000. Under the SEC's risk assessment rules, broker-dealers are required to maintain an organizational chart identifying material associated persons, to depict the broker-dealer's risk management policies and procedures, to provide certain financial data on the affiliated system, including consolidated and consolidating financial statements, to provide aggregate securities and commodities positions, including financial instruments with off-balance sheet risk and concentrations of credit risk (as defined in Statement of Financial Accounting Standards No. 105 ("SFAS 105")) on a disaggregated basis for each material associated person, and other financial and securities-related information. Under the SEC's risk assessment program, the information required to be maintained by broker-dealers under the recordkeeping rule generally is required to be filed within 60 days after the end of each quarter on SEC Form 17–H.[22]

The SEC's rules include provisions designed to diminish the necessity for broker-dealers to create additional sets of records where records substantially similar to those required by the risk assessment rules are created for the use of other federal or state regulators. For example, under the SEC's rules, a broker-dealer will be deemed in compliance with the recordkeeping and reporting requirements concerning a material associated person subject to the CFTC's supervision if it maintains and files copies of Forms 1–FR–FCM or 1–FR–IB filed by the FCM or the IB, respectively, with the CFTC.[23] In adopting its risk assessment rules, the SEC stated that these special provisions for CFTC registrants were appropriate "because entities regulated by the CFTC are subject to recordkeeping, reporting, and supervisory requirements similar to those imposed by the Commission on broker-dealers."[24] The SEC's risk assessment rules also include special provisions for reporting broker-dealers with respect to other types of regulated affiliates, including banks, insurance companies, and entities subject to the supervision of foreign financial regulatory authorities.

E. Coordination With Other Regulators

The legislative history of the FTPA indicates that Congress intended that the Commission take into account the existing reporting systems of other relevant financial regulators in exercising the risk assessment authority conferred upon it.[25] The Commission has consulted extensively with other financial regulators to develop, to the extent possible, a coordinated approach to information-gathering concerning regulated affiliates of FCMs. Commission staff have met with securities and banking regulators on multiple occasions and have reviewed various reports and filings required

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Secretary of the Treasury; and (8) any state banking or securities department or agency.

[15] 7 U.S.C. 6f(c)(9) (Supp. IV 1992).

[16] S. Rep. No. 22, 102d Cong., 2d Sess. 50 (1992).

[17] Section 4f(c)(5) also provides that prior to making a request for supplemental information pursuant to section 4f(c)(3) with respect to an affiliated person that is subject to examination by or reporting requirements of a federal banking agency, the Commission shall notify the agency of the information requested and consult with the agency to determine whether the information required is available from the agency and for other purposes, "unless the Commission determines that any delay resulting from the consultation would be inconsistent with ensuring the financial and operational condition of the futures commission merchant or the stability or integrity of the futures markets." 7 U.S.C. 6f(c)(5) (Supp. IV 1992).

[18] Section 8 of the Act provides generally that the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and the trade secrets or names of customers unless such information has been previously disclosed in connection with a congressional proceeding or an administrative or judicial proceeding brought under the Act. 7 U.S.C. 12 (1988 & Supp. IV 1992).

[19] Pub. L. No. 101–432, 104 Stat. 963 (1990).

[20] The SEC adopted "final temporary" rules as an interim step in the adoption of final regulations to enable the agency to gain experience with the information obtained pursuant to its risk assessment rules and to evaluate the operation of the risk assessment program based upon review of this information. The SEC's Division of Market Regulation will prepare a study evaluating the effectiveness of the rules which will be published 90 days after the rules have been in full effect for two years. After evaluating public comment on this report, the SEC will determine what modifications to the rule, if any, are necessary. *See* 57 FR 32159, 32161 (July 21, 1992).

[21] 57 FR 32159 (July 21, 1992).

[22] The SEC's rules require broker-dealers to file an organizational chart as part of its first risk assessment filing and with each year-end filing. Quarterly updates are required only if a material change has occurred. The risk management policies must be filed only with the first risk assessment filing, unless a material change has occurred, in which case a quarterly update is required.

[23] The CFTC and SEC, in cooperation with securities and futures industry self-regulatory organizations, have developed a draft of a new, combined Form 1–FR/FOCUS report, which will further harmonize and facilitate electronic financial reporting for broker-dealers and FCMs and will capture certain information on a regulated firm's derivative product positions. The draft form is expected to be published for public comment within the next several months.

[24] 57 FR at 32163.

[25] S. Rep. No. 22, 102d Cong., 2d Sess. at 50.

under the securities and banking regulatory frameworks. In particular, Commission staff have explored the extent to which other federal financial regulators may share relevant risk assessment information concerning entities subject to their supervision with the CFTC on a confidential basis in order that requirements for reporting to the CFTC with respect to such entities might be minimized. The Commission believes that, subject to appropriate confidentiality safeguards such as are afforded by section 8 of the CEA, information-sharing among federal financial regulators responsible for oversight of various entities operating within the same holding company group should be fostered to facilitate financial oversight of the group and its regulated component entities and to minimize reporting requirements under the various individual regulatory structures. For example, Commission staff have explored the extent to which various types of event-specific information could be provided directly to the CFTC by the relevant regulatory authority. The staff also has discussed establishing lead regulator type responsibilities to the extent practicable.

Further, the Commission has given extensive consideration to the risk assessment rules adopted by the SEC pursuant to the risk assessment authority granted it in the Market Reform Act of 1990. To the extent possible, the Commission has designed its risk assessment provisions with a view towards permitting FCMs which are broker-dealers (or which are part of holding company groups that include a broker-dealer) required to report pursuant to the SEC's risk assessment rules to use reports prepared pursuant to the SEC's requirements to fulfill the Commission's requirements. Generally, the Commission's proposed rules would require filing of a subset of the information called for by the SEC on a routine basis but call for certain additional information specific to the operations of FCMs acting as clearing firms for affiliated entities. The proposed rules are designed to permit the use of the SEC risk assessment form, Form 17–H, given appropriate supplementation, on an elective basis in lieu of new CFTC Form 1.15A. To the extent that the Commission's approach alters that of the SEC, it is intended to give early warning of events that would cause the CFTC to request further information or to seek assistance from other regulators and to take account of the more limited resources available to the Commission to assess the information provided.

II. The Proposed Rules

Proposed Rule 1.14 would require FCMs to maintain and preserve certain records and information concerning, among other things, the organizational structure of which the FCM is part, the FCM's policies and systems for monitoring and controlling risks arising from the activities of its affiliates, consolidated and consolidating financial statements for the FCM and its ultimate parent company, and aggregate information concerning futures, forwards and financial instruments with off-balance sheet risk and concentrations of credit risk. Proposed Rule 1.15 requires FCMs to file with the Commission, generally on an annual basis, the information required to be maintained under proposed Rule 1.14 and to provide the Commission with notice upon the occurrence of certain specified events, such as large decreases in the reported adjusted net capital of FCMs or the equity of their parent companies.

Maintenance of the records required under proposed Rule 1.14 and reporting of the data required pursuant to proposed Rule 1.15 are intended to impose a discipline on the FCM relative to its own risk management activities as well as to permit the Commission to make informed assessments relevant to market events and to the analysis of possible regulatory responses to such events. For example, risk assessment information may permit more effective and moderate management of financial market disruptions than would occur in the absence of pertinent information.

The risk assessment provisions being proposed by the Commission would apply generally to FCMs that hold customer funds of $6,250,000 or greater, maintain adjusted net capital in excess of $5,000,000 or that are clearing members of a contract market. As proposed, however, the rules make special provisions for FCMs that are dually registered with the SEC as broker-dealers, or that are part of a holding company group that includes a broker-dealer, filing reports pursuant to the SEC's risk assessment rules. Further, in general, the proposed rules would allow FCMs that have affiliates subject to regulation by a federal banking agency, a state insurance commission or similar state agency, or a foreign futures authority or other relevant foreign authority to comply with certain reporting and recordkeeping requirements by filing or maintaining records that the regulated affiliate is required to file with the relevant regulator.

A. Definition of Material Affiliated Person

The FTPA requires that, in general, FCMs maintain certain records regarding "their affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the FCM."[26] For the purpose of determining which affiliated persons are covered under this standard, the proposed rules would define the term "material affiliated person" ("MAP") by reference to several illustrative factors relevant to the activities of the FCM and its affiliate and the relationship between the entities. The factors specified are intended to provide guidance and not to be exhaustive. FCMs should consider all of the facts and circumstances pertinent to the identification of their affiliated entities whose business activities are reasonably likely to have a material impact on the financial or operational condition of the FCM.

The material affiliated person definition used in the Commission's proposed rules is similar to that used in SEC Rule 17h-1T.[27] However, for purposes of these rules, the Commission has used the term "affiliated person" rather than "associated person" to avoid confusion with the associated person registration category described in section 4k of the Act[28] and Commission Rule 3.12. Like the SEC under its risk assessment regulations, the Commission proposes to leave the determination as to which entities affiliated with an FCM are MAPs with the reporting FCM, in the first instance, based on the FCM's examination of all relevant facts and circumstances.

A first relevant factor in determining the materiality of an affiliated person is the legal relationship between the FCM and the affiliated person, *i.e.*, the nature and proximity of the relationship between the FCM and the affiliated person. In a two-tier holding company structure, for example, the first tier may

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[26] Specifically, Section 4f(c)(2)(A) of the Act states that each FCM "shall obtain such information and make and keep such records as the Commission, by rule or regulation prescribes concerning the registered (FCM's) policies, procedures or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than natural persons." 7 U.S.C 6f(c)(2)(A) (Supp. IV 1992). The term "affiliated person" is defined for purposes of section 4f(c)(1)(i) of the Act to mean "any person directly or indirectly controlling, controlled by or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection." Natural persons are generally excluded from risk assessment requirements. 7 U.S.C. 6f(c)(2)(A) and (3)(A) (Supp. IV 1992).

[27] 17 CFR 240.17h-1T (1993).

[28] 7 U.S.C. 6k (1988 & Supp. IV 1992).

include the direct holding company parent of the FCM and several related financial service entities. The entities at this first tier are very likely to be material to the FCM in light of their close proximity and consequent potential for direct financial impact upon the FCM and its funding. In some cases, entities other than the FCM's parent and the parent's affiliates may be required to be deemed MAPs. For example, intermediate holding companies and the ultimate parent corporation may be deemed MAPs if, for example, a bankruptcy of the ultimate parent could significantly affect the FCM's ability to obtain needed credit. If, however, after evaluating all of the relevant facts and circumstances, it appears that an affiliated person in the upper tiers of a holding company structure could have only a remote impact on the financial or operational condition of the FCM, the affiliate would not be required to be designated as a MAP. Moreover, if the ultimate parent in a multi-tiered holding company structure primarily is engaged in activities which are not related to the futures or financial markets, such as manufacturing or retailing, the parent would not generally be required to be designated a MAP. However, an ultimate parent company which is engaged in non-financial activities may clear its futures account through the FCM in order to manage the risk of cash commodity positions and this relationship could expose the FCM to potential risks relative to cash or over-the-counter trading that would render the parent company a MAP.

A second factor relevant to the identification of MAPs is the degree of financial dependence of the FCM on its affiliate and the nature of the FCM's financing requirements. For example, if the FCM's obligations are guaranteed by a parent or other affiliate, the FCM has a degree of financial dependence upon the guarantor entity such that, absent unusual circumstances, that entity would be a MAP. Similarly, if the FCM relies for financing upon a parent company whose capacity to provide such financing depends upon the issuance of commercial paper or other sources of unsecured credit, the FCM would be materially affected by an acceleration or call by the holders of these obligations, especially if the FCM did not have sufficient liquid assets or alternative financing available to replace the financing provided by its parent company.

A third materiality factor is the degree to which an FCM or its customers rely upon an affiliated person for operational services or support. If an FCM relies upon an affiliated person for significant operational facilities or support, the operations or financial difficulties of the affiliated person could materially impact the FCM's operations.

Another relevant factor in the materiality determination is the level of market, credit and other risk present in an affiliated entity's activities. A high volume of over-the-counter derivative transactions conducted through an unregulated affiliated entity may give rise to market, credit, operational or other risks that require sophisticated risk management strategies and internal control procedures to protect against potential losses that could jeopardize the resources of the affiliate and potentially impact related entities. Position taking by an affiliate may also expose the affiliate to risks that create the potential for spillover effects upon the FCM. Generally, affiliated entities that assume greater risk exposures may incur an increased likelihood of liquidity declines or other financial difficulties that increase the potential for adverse effects upon the FCM.

Finally, the extent to which an affiliated person has the authority or ability to negatively impact the FCM's capital is a factor in determining the materiality of the affiliated entity. The activities of a parent company or other affiliate that has the ability to remove capital from the FCM, such as for the purpose of repayment of loans or debt, generally are material to the FCM (*e.g.*, a parent company of an FCM may have the ability to withdraw capital from a subsidiary FCM if the parent is unable to meet interest or principal payments on debt).[29]

B. Information Required To Be Maintained and Filed on a Routine Basis

The proposed rules generally require two forms of risk assessment activity by FCMs: Recordkeeping and reporting. FCMs subject to the rules would generally be required to maintain specified types of information and to file reports of that information on a routine basis, in most cases annually, absent a material change in reported data. The categories of information called for are discussed below, with specific reference to the relevant recordkeeping and reporting requirements of the proposed rules.

1. Organizational Chart

Proposed Rule 1.14(a)(1)(i) would require an FCM to maintain an organizational chart depicting the holding company structure of which the FCM is a part. The chart should provide an overview of the entire organization and identify those affiliated persons that are MAPs of the FCM, as determined by the registrant in accordance with the standards set forth in the proposed rule and discussed above. The chart should also indicate which MAPs file routine financial or risk exposure reports with the SEC, a federal banking agency, an insurance commissioner or other similar official or agency of a state or a foreign regulatory authority. In addition, the chart should indicate whether a MAP is a dealer or end user (or both) of financial instruments with off-balance sheet risk. End-users employ financial instruments to facilitate the management of financial risks that arise in the course of their business. Dealers are distinguished from end-users by their readiness to make two-way markets in financial instruments, thereby providing end-users (and other dealers) with the financial instrument positions they seek. As proposed, Rule 1.15(a)(1)(i) would require the FCM to file its organizational chart within 90 calendar days after the effective date of the rule or within 60 calendar days of registration if that occurs after the rule's effective date. Where there is a material change in the information provided, an updated organizational chart is required to be filed within five calendar days after the end of the fiscal quarter in which the change occurred. If no material change occurs, no updates are required.[30]

2. Risk Management Policies

Paragraph (a)(1)(ii) of proposed Rule 1.14 would require an FCM to maintain records relating to the FCM's procedures for monitoring and controlling financial and operational risks to it resulting from the activities of its affiliates. Like the SEC's risk assessment rules, the Commission's proposed rule would require that FCMs maintain and preserve their written policies, procedures or systems concerning methods for monitoring and controlling financial and operational risks resulting from the activities of any of their affiliated persons and concerning their financing and capital adequacy, including information regarding sources of funding and a narrative discussion by management of the liquidity of the material assets, the structure of debt capital and sources of alternative

[29] Of course, the parent could only lawfully withdraw capital to the extent that the FCM would remain in compliance with the Commission's net capital requirements.

[30] A statement that updates required under Rule 1.15 in the event of a change in previously reported information are not required because no change sufficient to trigger the update requirement has occurred may be requested on the new combined 1–FR/FOCUS report.

funding. Also like the SEC rule, the Commission's proposed rule would require the FCM to maintain written policies concerning trading positions and risks, such as records regarding reporting responsibilities for trading activities, limitations on trading activities and a description of the types of reviews conducted to monitor existing positions. However, the CFTC's proposed requirement relating to records of policies, procedures and systems with respect to trading activity, while incorporating the matters covered by the SEC's rules, includes specific reference to the FCM's internal controls with respect to the market risks, credit risks and other risks created by the FCM's proprietary and noncustomer clearing activities, reflecting risks entailed in the performance of the clearing function typical of FCMs operating within a holding company structure. These would include, for example, as specified in proposed Rule 1.14(a)(1)(ii), systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts or financial instruments such as swaps, and policies for hedging or managing risks created by its proprietary trading activities and reviewing hedging and risk management strategies of noncustomer affiliates.

Subject to the CEA and Commission regulations, in particular any requirements encompassed by existing Rule 166.3, the proposed rule does not itself require an FCM to create specific risk management policies and procedures.[31] It is sufficient for purposes of the risk assessment requirements for an FCM to document, in writing, the policies in place or the absence of such policies in the unlikely event that it operates without them. However, the Commission believes that from the perspective of prudent risk management, FCMs subject to these rules should review their existing internal controls and risk management systems and procedures with a view towards assuring that those systems are sufficient in light of the potential risks created by their own and their affiliates' activities. The types of risk management policies and internal controls referred to in the proposed rule, while by no means exclusive of those necessary to prudent risk management,[32] are indicative of the types of risk management systems that may be warranted to address risks engendered by affiliate activities.

Paragraph (a)(1)(ii) of Rule 1.15 requires an FCM to file the information referred to above with the Commission within 90 calendar days from the effective date of the rule or 60 days following the FCM's registration if that occurs after the rule's effective date. Where there is a material change in the information provided, such a change is required to be reported to the Commission within five calendar days after the end of the fiscal quarter in which the change occurred. If there is no material change, no update is required.[33]

3. Financial Statements

The following financial statements would be required on a consolidated basis for the FCM and its ultimate parent company and would be required to be filed within 105 calendar days after the end of each fiscal year: (1) Balance sheet; (2) statement of income; (3) statement of cash flows; and (4) explanatory notes to the financial statements. Additionally, a consolidating balance sheet and statement of income must be filed annually for the FCM and its ultimate parent company. The consolidated and consolidating financial statements would be required to be prepared in accordance with United States generally accepted accounting principles, consistently applied ("U.S. GAAP"), except as indicated below. If an annual audit and certification is performed as an ordinary and customary part of the entity's business, the consolidated statements should be certified by an independent certified public accountant. The consolidating financial statements must show separately the FCM, its ultimate parent company and each MAP.

With respect to affiliated persons that use a comprehensive set of accounting principles other than U.S. GAAP, a note to the financial statements indicating the comprehensive body of accounting principles used to prepare the financial statements should be included. The note should provide a narrative description of the items that are treated differently by U.S. GAAP. The consolidated financial statements also should be accompanied by the footnotes required by GAAP and any other information necessary for an understanding of the information being presented (*e.g.*, the summary of significant accounting policies).

The Commission requests comment as to whether quantification of any material differences in the contents of the financial statements, in addition to a narrative description of items treated differently from U.S. GAAP, should be required where accounting principles other than U.S. GAAP are used.

The financial statements required to be maintained and filed pursuant to the proposed rules are the same as those required under the SEC's risk assessment program. The proposed rules, however, require the consolidated financial statements to be certified if an audit is ordinarily performed. The Commission does not believe that this should create any additional burdens for FCMs also subject to the SEC's regulations, because the proposed rules would not impose the added expense of an annual audit if an annual audit is not customarily performed. Moreover, the Commission is requesting financial statements to be filed on an annual basis rather than quarterly as required under SEC rules. However, the Commission requests comment as to whether consolidated and consolidating financial statements are customarily prepared on a quarterly basis and, if so, whether they should be required to be filed quarterly so as to provide more current financial data.

4. Aggregate Securities and Commodity Positions

Paragraph (a)(1)(v) of proposed Rule 1.14 would require FCMs to maintain records of the fair market value as of the end of each fiscal quarter of each MAP's inventory of long and short securities and physical commodity positions as specified in new Form 1.15A, including a separate listing for each MAP of any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars and measured by interest rate, duration, instrument or other measure as specified by the reporting entity, which exceeds a Materiality Threshold. For purposes of the proposed rules, the term "materiality threshold" is defined as the greatest of: (i) $20 million; (ii) 10 percent of the FCM's adjusted net capital on the most recent financial reports filed by the FCM with the Commission pursuant to Rule 1.10; (iii)

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[31] See 57 FR at 32165 (wherein the SEC notes that broker-dealers need not create risk management policies for purposes of the SEC risk assessment requirements if none exist).

[32] Simulation analyses or major market move scenarios to measure the impact upon positions carried and upon regulatory capital of extreme price movements would be one tool for management of the risk of positions carried by the FCM, one which has been favorably mentioned by audit staff in oversight reviews of exchange financial surveillance programs. Separation of functions, periodic reconciliations of key accounts, daily marking-to-market of positions, and on-going assessments of the effectiveness of hedge positions, are examples of other internal controls generally important to an FCM's business, some of which are explicitly required under the CEA and Commission rules.

[33] In this regard, the Commission's proposed rule departs from the SEC's reporting structure which requires similar information to be filed on an annual basis.

10 percent of the MAP's tangible net worth; or (iv) for an FCM that is required, or that has a MAP that is required, to file pursuant to SEC Rule 17h-2T, the Materiality Threshold specified in SEC Rule 17h-1T.

The Commission requests comment as to whether the Materiality Threshold should be applied on a product-by-product basis with respect to each MAP or on an aggregate basis for all transactions of a MAP with a single counterparty. If product-by-product differentiation is more appropriate for credit risk assessment purposes, what product breakdowns are desirable?

The information required under this provision of the proposed rules is intended to encompass only the types of items which appear on the balance sheet of the FCM. Accordingly, records of physical (spot) commodities would be maintained under this paragraph and reported under the "aggregate securities and commodities" heading of Form 1.15A, while off-balance sheet items such as futures and forwards are covered in paragraph (a)(1)(vi) of proposed Rule 1.14 which concerns "financial instruments," as discussed below.

The on-balance sheet items provide more particularity by instrument than required financial reports and some information relative to funding. Nonetheless, the Commission requests comment concerning the scope of the requirement for on-balance sheet information, in particular as to whether the specified on-balance sheet items should generally be required or only required where the item is part of a financing transaction.

Rule 1.15 requires the information discussed above to be filed on Form 1.15A on an annual basis within 105 days after the end of each fiscal year. Quarterly updates would be required only if a change of 20 percent or greater in a line item has occurred since the FCM's last filing with the Commission. Rather than require routine quarterly reporting of on-balance sheet aggregate securities and commodities information, the Commission is proposing to require quarterly updates only when a significant change in previously reported information has occurred. When filing any quarterly update referred to herein, only the particular line item in which the 20 percent or greater change occurred need be updated, not the entire form. However, an FCM may elect to file this information for each fiscal quarter.

The Commission requests comment as to whether the requirement for quarterly updates would more appropriately be framed in terms of whether a "material change," rather than a 20 percent change, in such data has occurred or whether a routine quarterly filing requirement would be preferable.

The type of information required under the foregoing provisions is the same as that required under the SEC's interim final regulations. However, the information would be provided on new CFTC Form 1.15A in the aggregate for the FCM's MAPs rather than separately for each MAP as is required under the SEC's rules, unless such a presentation would materially understate the risk relative to stockholders' equity of any MAP, in which case the information must be provided separately for such MAP. The Commission, however, is including a proposed Part C to Form 1.15A to elicit comment as to whether such a schedule is preferable for identifying MAPs that require additional review and could be used for reporting cases where aggregate data for all MAPs might disguise a particular MAP's risk. For example, Part C would require information on a MAP's trading book, and if a MAP maintains separate trading books for different types of instruments, these must be discussed separately.

The Commission requests comment as to whether Part C should be used in lieu of providing the information on Parts A and B for such MAP separately. The Commission requests comment concerning Form 1.15A generally as well as concerning Part C thereof, and the Commission further requests comment as to whether reporting on Form 1.15A should generally be required separately for each MAP rather than on an aggregate basis for all MAPs.

The Commission's proposed rules also incorporate a lower Materiality Threshold than is provided in the SEC's risk assessment rules, which use the greater of $100 million or 10 percent of the broker-dealer's tentative net capital or tangible net worth.[34] The Commission believes that a $20 million threshold is a more realistic materiality figure for FCMs as opposed to generally larger broker-dealers but requests comment on this point. To reduce reporting burdens for FCMs that also file under the SEC's rules or are part of a holding company group that includes a reporting broker-dealer, the Commission's proposed threshold incorporates the SEC's higher materiality threshold for such firms.

[34] Further, Form 1.15A, unlike SEC Form 17–H, does not call for information concerning purchased options or risk arbitrage.

5. Financial Instruments

Proposed Rule 1.14(a)(1)(vi) requires FCMs to maintain records of the amount at the end of each fiscal quarter, on an aggregate basis for the FCM and its MAPs, of the notional or contractual amounts, and in the case of options, the value of the underlying instruments, of exchange-traded futures and commodity option contracts, forward contracts, over-the-counter commodity options, and financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk, as those terms are defined in SFAS 105, broken down by contract type and maturity as specified in proposed Form 1.15A. The record must identify each instrument where credit risk with respect to a counterparty exceeds the Materiality Threshold. SFAS 105 is applicable to all companies that prepare financial statements in accordance with GAAP and requires disclosure of information about financial instruments[35] with off-balance sheet risk and financial instruments with a concentration of credit risk. As noted above, in contrast to paragraph (a)(1)(v) of Rule 1.14 which concerns "on-balance sheet" aggregate securities and commodity positions, the information regarding "financial instruments" is intended to encompass off-balance sheet activities.

"Off-balance sheet risk" is defined in SFAS 105 as the risk of accounting loss.[36] SFAS 105 defines "credit risk" as the possibility that a loss may occur from the failure of another party to perform under the terms of the contract. The proposed rules would require an FCM to separately list each instrument where the credit risk with respect to an individual counterparty exceeds the Materiality Threshold at quarter end.

The reporting of futures, forwards and swaps on proposed Form 1.15A differs slightly from that under SEC Form 17–H. While SEC Form 17–H breaks out only interest rate and foreign exchange swaps, proposed Form 1.15A also includes separate entries for energy and

[35] The term "financial instrument" is defined in SFAS 105 as cash, evidence of an ownership interest in an entity or a contract that both:

a. Imposes on one entity a contractual obligation (1) to deliver cash or another financial instrument to a second entity or (2) to exchange financial instruments on potentially unfavorable terms with the second entity; and

b. Conveys to that second entity a contractual right (1) to receive cash or another financial instrument from the first entity or (2) to exchange other financial instruments on potentially favorable terms with the first entity.

[36] "Accounting loss" is further defined as the loss that may have to be recognized due to credit and market risk as the result of the obligations from a financial instrument.

precious metal swaps. The same category breakdown would also apply for reporting futures and forwards on proposed Form 1.15A. This is in contrast to SEC Form 17–H, which breaks down the reporting of futures and forward contracts by three categories of underlying instrument: (1) U.S. Treasury and mortgage-backed securities; (2) other securities; and (3) all others. In addition, Form 1.15A would require separate listing of all swaps and forwards by three different maturities: less than one year; one to five years; and more than five years.

These changes are intended to take account of differences between banking and securities reporting of off-balance sheet exposures and ongoing discussions on data relative to macro-prudential, as opposed to micro-prudential, risk. The Commission requests comment as to whether additional maturity breakdowns under one year or over five years would be appropriate, particularly in the case of interest rate instruments.

Rule 1.15 requires the above information to be filed on Form 1.15A on an annual basis within 105 days after the end of each fiscal year. Quarterly updates would be required within 60 calendar days after the end of any fiscal quarter in which a change of 20 percent or greater in any line item has occurred since the FCM's last filing with the Commission. An FCM may elect to file this information routinely for each fiscal quarter.

The Commission requests comment as to whether a materiality standard, as compared to a quantitative threshold, should be used to determine whether quarterly updates are required or whether a routine quarterly filing requirement would be preferable to an update requirement triggered by a change in any line item. Comment is also requested as to whether any efficiencies in reporting would be achieved if large trader account numbers were substituted for domestic exchange traded futures positions.

6. Extensions of Credit

Paragraph (a)(1)(vii) of proposed Rule 1.14 would require an FCM to maintain records of the aggregate amount as of quarter end of all material unsecured extensions of credit by each MAP, including a description of any extensions of credit to a single borrower which exceed the Materiality Threshold. Annual filing of this information would be required on Form 1.15A pursuant to proposed Rule 1.15. If a change of 20 percent or greater occurs in the information last filed with the Commission, a quarterly update must be filed within 60 calendar days after the end of the fiscal quarter in which such a change occurred. An FCM may, at its option, file this information routinely for each fiscal quarter.

The information required under this paragraph is essentially the same as that required under the SEC's risk assessment rules. However, the Commission's proposal does not break out bridge loans as a separate listing under this heading. Rather, a bridge loan, if material, would be treated the same as and be grouped together with any other material unsecured extensions of credit for recordkeeping and reporting purposes under the Commission's proposal.

7. Commercial Paper and Other Financing Information

Paragraph (a)(1)(viii) of Rule 1.14 would require FCMs to keep records of the aggregate amount at fiscal quarter end of commercial paper, secured and unsecured borrowing, bank loans, lines of credit and the principal installments of long-term or medium-term debt scheduled to mature within one year. Under proposed Rule 1.15 this information would be required to be filed on Form 1.15A annually unless a change of 20 percent or greater occurs in any of the information last filed with the Commission pursuant to either paragraph (a)(2)(iii) or (a)(4) of Rule 1.15, in which case a quarterly update would be required to be filed within 60 calendar days after the end of the fiscal quarter in which such a change occurred. An FCM may, at its option, file this information routinely for each fiscal quarter. The information discussed above is of the same nature as that called for under the SEC's risk assessment regulations, except that the proposed rule generally calls for such information to be reported in the aggregate for the FCM's MAPs rather than for each MAP as required under SEC rules.

8. Real Estate Information

Proposed Rule 1.14(a)(1)(ix) requires FCMs to maintain information concerning the annual gross income derived from real estate activities, including mortgage loans and investments, for each MAP that derived more than 20 percent of its gross income (loss) from such activities during the fiscal year. This information would be required to be reported annually on Form 1.15A. The information required under the SEC's risk assessment rules regarding a MAP's real estate activities is considerably more detailed than that which would be required under the Commission's proposed rules. The SEC's rules require that a broker-dealer maintain and file information regarding any real estate activities of a MAP, without regard to the percentage of gross income derived from such activities, and call for a variety of types of information concerning each MAP's real estate operations.[37] The proposed rules would require reporting of the annual gross income derived from real estate activities for any MAP that derived more than 20 percent of its gross income (loss) from such activities during the fiscal year. Although the Commission may ask for supplemental information concerning a MAP's real estate activities if necessary in the circumstances, the Commission believes that, in the first instance, the information requested under the proposed rules should be sufficient to highlight the real estate activities of those MAPs which may require additional review. The Commission requests comment, however, as to whether more detailed information, such as is called for by the SEC's rules, should be required.

9. Information Regarding Noncustomer Accounts

Paragraph (a)(1)(x) of Rule 1.14 would require an FCM to maintain on a quarterly basis the gross notional value, long and short, of open positions in noncustomer accounts, as that term is defined in Rule 1.17(b)(4),[38] the percentage of this value compared to the FCM's adjusted net capital, the percentage of the notional value of noncustomer accounts carried by the futures commission merchant that are bona fide hedging positions in accordance with Rule 1.3(z), and the percentage of the aggregate notional value of noncustomer accounts carried for the purpose of managing the risk of

[37] For example, the SEC's rules require that a broker-dealer maintain and file information concerning a material associated person's real estate mortgage or loan investment type, a geographic distribution of such activities by year, the value of loans that are noncurrent, are in the process of foreclosure or have been restructured, the allowance for losses on loans and investments and information concerning risk concentration in the material associated person's investment and loan portfolio. See 17 CFR 240.17h–1T(a)(1)(x).

[38] Rule 1.17(b)(4) defines a "noncustomer account" as a commodity futures or option account carried on the books of an FCM "which is not included in the definition of customer or * * * proprietary account (as defined in § 1.17(b)(3))." "Proprietary account" is defined in Rule 1.17(b)(3) to mean a commodity futures or option account carried on the books of the FCM for the FCM itself, or for general partners in the FCM. Essentially, the definition of noncustomer account includes proprietary accounts as defined in Rule 1.3(y) other than the account of the FCM itself or its general partners. Noncustomer accounts would thus include, among others, accounts of affiliates of the FCM that are under common control with the FCM, that control the FCM, or are controlled by the FCM.

cash market commitments that mature more than 12 months from quarter end and more than 60 months from quarter end, compared to the aggregate notional value of open positions in all noncustomer accounts carried by the FCM. Large positions carried in noncustomer accounts of an FCM may represent a significant exposure of the FCM to risks created by its affiliate's trading activities relative to cash flow or financing shortages. The nature of the affiliate's activities, *i.e.*, whether the positions are for hedging purposes or for speculation and, if for hedging or risk management purposes, the maturities of the cash positions being offset, may bear significantly upon the risks assumed by the FCM carrying an affiliate's account.

The Commission believes that the size and nature of noncustomer accounts carried by the FCM are likely to be important components of risk assessment information, particularly in circumstances in which futures positions carried for affiliates are either not offset by, or are imperfectly correlated with, cash positions at the affiliate. Accordingly, information concerning such positions is necessary for a complete risk assessment evaluation of an FCM. The noncustomer account information that would be required under the proposed rules would, for the most part, be maintained by the FCM as part of its required recordkeeping under current rules [39] and could be used to trigger more extensive financial oversight by the CFTC. To the extent that additional information is required to be maintained and reported concerning the maturities of cash commitments which a MAP is hedging or the risks of which the MAP is managing by means of futures transactions carried by the FCM, the information requested is material to the FCM's own risk management program and should be readily accessible to the FCM.

Rule 1.15(a)(1)(iii) would initially require filing of the information discussed above within 90 calendar days of the rule's effective date or 60 calendar days from the date of the FCM's registration if later. Thereafter, Rule 1.15(a)(3) would require this information to be filed within 60 calendar days after the end of each fiscal quarter. and 1.46.

C. Information Required Upon the Occurrence of Certain Events

The proposed rules would require the majority of the required risk assessment information to be filed on an annual basis, with updates to be provided at the end of a quarter only if a change of 20 percent or greater has occurred in the information provided to the Commission since the FCM's last risk assessment filing. Only information concerning noncustomer accounts, which is either wholly or largely within the scope of the FCM's routine recordkeeping systems, would be required routinely on a quarterly basis. This approach differs from that adopted by the SEC, which generally requires routine quarterly reporting. In lieu of requiring routine quarterly filing of substantial information concerning each affiliate's activities, the Commission's proposed rules identify certain extraordinary events which trigger a required notice to the Commission. Upon receipt of notice of such an event, the Commission may then determine whether supplemental information should be requested of the FCM, in light of the circumstances of the FCM and its affiliated entities, the nature of the event triggering the notice requirement and other available information concerning the FCM.

The proposed rule would require notification to the Commission upon the occurrence of any of eight "triggering" events which may indicate a basis for further inquiry or closer scrutiny of the FCM. In specifying "triggering" events requiring notice to the Commission, together with quarterly updates of significant changes in financial information, the Commission has endeavored to construct a reporting system that minimizes routine filings and operates instead to identify potentially significant events from a financial monitoring perspective that should be readily evident to the FCM, are objectively or quantitatively defined, evidence circumstances likely to warrant further review, and should occur infrequently. An FCM would be required to notify the Commission (by notice to the Director of the Division of Trading and Markets or the Director's designee) [40] within three business days of the occurrence of any event specified in paragraph (b)(2) of proposed Rule 1.15 except to the extent that shorter periods are specified in paragraphs (b)(2)(i) and (b)(2)(viii) with respect to particular triggering events. After reviewing the notice filed by an FCM, additional information may be requested from the firm or a relevant regulatory agency, as determined to be necessary in the circumstances. The Commission requests comment, however, as to whether the notice of occurrence of a triggering event should be required to be accompanied by an explanation of the circumstances giving rise to the occurrence such that supplemental inquiries might be obviated in many cases.

Comment is also requested, in view of the recordkeeping requirements of proposed Rule 1.14, as to whether any efficiencies would be achieved by limiting the reporting of certain information required on Form 1.15A to a response for a request for information in the event of a triggering event. In this connection, commenters should specifically address what routine information would be sufficient to provide such understanding of group activities and exposures as may be necessary to provide background about the liquidity management of the group and to assist in evaluating potential risks and the significance of a triggering event to the regulated FCM. Commenters should also address the practicability of developing particularized information on a sufficiently timely basis, if such information were only provided upon a triggering event, to assist the Commission's management of emergency situations. For example, when market surveillance special calls are made, generally a response is required within 24 hours.

Under the proposed rule, the following events would require notice to the Commission.

1. Reduction in FCM's Adjusted Net Capital or Parent's Stockholders' Equity

The Commission believes that a sudden major reduction in the adjusted net capital of an FCM or the consolidated stockholders' equity of the FCM's parent may be an indication of impending financial difficulties and should be brought to the Commission's attention. Accordingly, the Commission's proposed rules require that an FCM notify the Commission of any such reduction. Paragraph (b)(2)(i) of Rule 1.15 requires an FCM to notify the Commission of any reduction of 20 percent or more in its adjusted net capital as last reported on its financial reports filed with the Commission pursuant to Rule 1.10. The FCM must provide notice within two business days of any such reduction caused by an activity in the normal course of business, such as an operating loss, proprietary trading loss or increase in charges against net capital, or at least two business days prior to any extraordinary transactions or series of transactions, such as a dividend

[39] *See, generally*, Rule 1.35; *see also* Rules 1.33, 1.37 and 1.46.

[40] The Director of the Division of Trading and Markets is generally delegated the authority to act on behalf of the Commission with respect to the proposed risk assessment regulations.

payment or making of a loan. This notification requirement is essentially the same as that provided in Rule 921 of the Chicago Mercantile Exchange ("CME"), which requires that an FCM notify the CME within 48 hours after activities in the normal course of business or at least two business days prior to any extraordinary transaction or series of transactions that cause greater than a twenty percent reduction in the FCM's last reported adjusted net capital.[41] SEC regulations also require notice in the event of withdrawals, advances or loans by a broker-dealer or its consolidated subsidiaries or affiliates that exceed certain thresholds.[42]

Similarly, paragraph (b)(2)(v) of the rule requires an FCM to notify the Commission of any reduction of 20 percent or more of its parent's consolidated stockholders' equity from the date of the parent's last quarterly consolidated financial statements. Such notice must be provided within three calendar days of any such reduction.

2. Outflow of FCM's Assets

Paragraph (b)(2)(ii) of Rule 1.15 requires an FCM to notify the Commission of any outflow of assets from the FCM which in the aggregate in any 30 calendar day period exceeds 20 percent or more of the FCM's excess adjusted net capital. The rule explicitly excludes, however, securities transactions between FCMs and their MAPs which occur in the ordinary course of business where payment is made within two business days, and aggregate withdrawals equalling $500,000 or less (computed on a net basis) within a 30 calendar-day period. This provision would enable the Commission to receive current information on matters that materially impact the financial resources of a futures commission merchant and to update the Commission's records regarding the amount of an entity's adjusted net capital and other financial resources maintained by a firm, which otherwise could become materially inaccurate. This notice requirement is similar to a requirement in the SEC's net capital rule which requires broker-dealers to notify the SEC of certain withdrawals of equity capital.[43] The Commission's rule is, however, both more lenient and broader than the SEC rule. The Commission's proposal allows three business days for an FCM to notify the Commission of any transaction which falls within the proposed rule, as opposed to the advance notice or two business day notification requirements established by the SEC. However, the Commission requires notice of "any outflow of assets" that meets the criteria set forth in the proposed rule and therefore potentially could require notice of certain transactions that would not affect an entity's regulatory capital and therefore would not fall within the SEC's notice provisions.

3. Losses

Paragraph (b)(2)(iii) of proposed Rule 1.15 would require an FCM to notify the Commission if aggregate cumulative losses occurring in all noncustomer accounts (as defined in Rule 1.17(b)(4)) carried by the FCM exceed: (1) In any 30 day period, the greater of 10 percent of the last reported consolidated stockholders' equity of the FCM's parent or $50 million; or (2) in any 12-month period, the greater of 20 percent of the last reported consolidated stockholders' equity of the FCM's parent or $100 million.

This provision is designed to assure that the FCM alerts the Commission to material losses in the futures markets to the extent such losses are incurred by the consolidated group in noncustomer accounts carried by the FCM. Since reporting under this provision is triggered by losses in the futures markets and does not depend upon a computation of corporate net income pursuant to generally accepted accounting principles, it is a simple and relatively sensitive reporting device. Although the Commission recognizes that losses on futures transactions may be offset by corresponding gains on related cash positions, this notice provision is intended to permit the Commission to make early inquiries regarding financial strategies or positions that may be causing material cash flow demands on the resources of the consolidated group of which the FCM is a part.

Paragraph (b)(2)(iv) of Rule 1.15 is intended to alert the Commission to large losses occurring at a MAP which may affect the consolidated group's financial stability. This provision requires an FCM to notify the Commission of any net loss at a MAP during any quarter which exceeds 30 percent of the MAP's last reported net worth or 20 percent of the FCM's adjusted net capital.

4. Changes in Credit or Capital Rating

Paragraph (b)(2)(vi) of Rule 1.15 requires an FCM to notify the Commission of any reduction in a MAP's credit rating by Standard & Poor's Corporation, Moody's Investor Services, Inc. or any other nationally recognized rating service. As over-the-counter transactions may be conducted through unregulated entities that are heavily dependent upon high credit ratings for the conduct of their business, a change in credit rating may be very material to such entities' operations. Consequently, reporting under this provision will alert the Commission to events which could adversely impact the FCM or its consolidated group.

Paragraph (b)(2)(vii) requires an FCM to notify the Commission if a MAP files a notice with a banking regulator stating that an adjustment to its capital category may have occurred. A reduction in capital category may have been due to financial or other events of which the Commission has not yet become aware. Under banking regulations, an entity subject to the supervision of the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency must provide written notice to its supervisory agency or agencies that an adjustment to the entity's capital category may have occurred, no later than 15 calendar days following the date that any material event has occurred that would cause the

[41] The Commodity Exchange, Inc. ("COMEX"), New York Mercantile Exchange ("NYMEX") and Chicago Board of Trade ("CBT") have adopted similar rules. *See* COMEX Rule 7.08(a); NYMEX Rule 2.14(D); and CBT Rule 285.03.

[42] 17 CFR 240.15c3–1(e)(1) (1993). In general, the SEC rule provides that a broker-dealer or consolidated subsidiary or affiliate must notify the SEC: (1) Two business days prior to any withdrawals, advances or loans which on a net basis exceed in the aggregate in any 30 calendar day period 30 percent of the broker-dealer's excess net capital; or (2) two business days after withdrawals, advances or loans which on a net basis exceed in the aggregate in any 30 calendar day period 20 percent of the broker-dealer's excess net capital. The rule, however, is limited to the following types of transactions that cause an equity reduction: (1) Withdrawals by action of a stockholder or partner; (2) redemption or repurchase of stock by a consolidated entity; (3) payment of dividends or any similar distribution; or (4) an unsecured advance or loan made to a stockholder, partner, sole proprietor, employee or affiliate. Pursuant to SEC Rule 15c3–1(e)(3)(i), the SEC also may restrict for up to twenty business days any withdrawal of equity capital by a broker-dealer or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate if: (1) Such advance or loan when aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period exceeds 30 percent of the broker-dealer's excess net capital; or (2) the SEC concludes that the withdrawal, advance or loan may be detrimental to the broker-dealer's financial integrity, may unduly jeopardize the broker-dealer's ability to repay customer claims or other liabilities which may cause a significant impact on the markets or expose the broker-dealer's customers or creditors to loss. 17 CFR 240.15c3–1(e)(3)(i) (1993). *See also* 17 CFR 240.15c3–1(e)(2) (1993) (placing various other limitations on withdrawals of broker-dealer's equity capital).

[43] *See supra* note 42.

entity to be placed in a lower capital category.[44]

5. Guarantee Agreements

Paragraph (b)(2)(viii) of Proposed Rule 1.15 would require an FCM to notify the Commission three business days prior to the effective date of any agreement whereby the FCM agrees to guarantee the obligation of any affiliated entity. The Commission wishes to emphasize that this provision applies to agreements between the FCM and any affiliate and is not limited to guarantee agreements entered into with a MAP.[45] Notice under this provision would inform the Commission as to new financial obligations undertaken by an FCM that may have a material impact upon the firm's regulatory capital and may not yet have been reflected in financial reports filed with the Commission. Upon receipt of a notice under this provision, depending upon the nature and extent of the guarantee, the Commission may request a current pro forma computation of an FCM's adjusted net capital position, which would indicate the potential impact on adjusted net capital of any newly undertaken guarantees.

D. Exemptions and Special Provisions

Under Section 4f(c), the Commission may exempt, "under such terms and conditions and for such periods as the Commission shall provide," any person or class of persons from rules issued pursuant to that provision. Section 4f(c) of the Act directs the Commission to consider the following general factors in determining whether to grant such exemptions: (1) Whether the information requested is available from another supervisory agency; (2) the primary business of an affiliated person; (3) the nature and extent of domestic or foreign regulation of the affiliated person's activities; (4) the nature and extent of the FCM's commodity futures and options activities; and (5) the amount of assets and revenues derived from and involved in United States futures markets.

Based upon these factors and the purposes of the risk assessment rules, the Commission has determined to provide an exemption for FCMs who, based on the amount of customer funds held and adjusted net capital maintained, appear to engage in only small amounts of futures and options activities. Further, the proposed rules provide special provisions for entities which are subject to the regulatory oversight of other domestic and foreign regulatory bodies. With respect to FCMs that are not otherwise exempt, the proposed rules permit an FCM, by application, to request individual exemptions from the rules which would be considered by the Commission on a case-by-case basis.

1. Exemption Based on Level of Customer Funds and Net Capital

Preliminarily, the Commission has determined to focus its risk assessment program upon those FCMs which appear to be significantly engaged in futures and options trading or which, by virtue of their status as clearing members[46] of exchanges may have a significant impact upon the financial integrity of the exchange marketplace. In this regard, the Commission is proposing to exempt from the risk assessment requirements all FCMs, other than clearing member firms, that hold customer funds of less than $6,250,000[47] and maintain adjusted net capital of less than $5,000,000, calculated as of the FCM's fiscal year-end.[48] Of course, the Commission may re-evaluate these customer funds and adjusted net capital levels at a later date should experience indicate that they are either too high or too low given the objective of the risk assessment rules to provide the Commission with data designed to reduce risks to the futures markets and users of regulated intermediaries transacting in these markets arising from the financial deterioration of an FCM or related company.

Currently, the Commission requires an FCM to calculate its minimum adjusted net capital requirement by multiplying the amount it is required to segregate and set aside in special accounts for the benefit of its customers by four percent, subject to a minimum dollar requirement of $50,000.[49] However, Commission Rule 170.15 provides that "(e)ach person required to register as a futures commission merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such futures commission merchant, unless no such futures association is so registered." The Commission approved an increase in the minimum dollar requirement for member FCMs of the NFA, currently the only registered futures association, from $50,000 to $250,000, effective December 31, 1990. This increase effectively requires all FCMs to maintain adjusted net capital of at least $250,000. Therefore, the Commission believes that it is appropriate to use as the minimum level for the application of those rules that level of customer funds carried by an FCM where an increase in such amount of funds will effectively cause an increase in the minimum adjusted net capital requirement. Based upon the NFA minimum dollar amount and the Commission's basic four percent calculation, that level is $6,250,000.

The Commission further believes that, even if an FCM is not carrying any customer funds, it may be engaged in proprietary trading or trading for noncustomer accounts to an extent that could create the potential for risks to other market participants or systemic risks. The Commission is therefore proposing $5 million of adjusted net capital as an additional minimum level for application of these rules, even if a firm is not carrying the minimum level of customer funds of $6,250,000. In determining this amount, the Commission examined data concerning the financial condition of registered FCMs and comparable SEC rules.[50]

The Commission requests comment as to the appropriateness of the adjusted net capital and customer funds exemption levels established by the proposed rules.

2. Special Provisions for Certain Regulated Entities

a. *Broker-Dealers.* The legislative history of section 4f(c) of the FTPA indicates that Congress intended that, in promulgating its risk assessment rules, the Commission would "avoid imposing

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[44] *See* 12 CFR 208.32(c)(1993); 12 CFR 565.3(c)(1993); 12 CFR 325.102(c)(1993); and 12 CFR 6.3(c)(1993).

[45] However, the establishment of such a guarantee arrangement may result in the affiliate becoming a MAP.

[46] Rule 1.3(c) defines "clearing member" as any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a contract market.

[47] In determining the dollar amount of customer funds held by an FCM at fiscal year-end, funds required to be segregated pursuant to section 4d(2) of the Act and set aside pursuant to part 30 of the Commission's rules are required to be included. The Commission requests comment as to whether the calculation of customer funds for this purpose should be the same as that for Rule 1.17 capital computation purpose, *i.e.*, whether long option values should be deducted.

[48] The Commission estimates that approximately 200 FCMs would be covered under the proposed rules. A substantial percentage of these FCMs either are dually registered as broker-dealers reporting under the SEC's risk assessment rules or are affiliated with a reporting broker-dealer, bank or insurance company.

[49] See Commission Rule 1.17(a)(1)(i).

[50] The comparable SEC figure is $20 million. 17 CFR 240.17h–1T(d)(1)(iv) and 240.17h–2T(b)(1)(iv). However, given the relative size of securities and futures market activity, the degree of leverage in futures transactions, and the fact that the Commission is proposing a materiality threshold of $20 million, as compared to the SEC's $100 million, a $5 million adjusted net capital ceiling for exemption from these rules appears to be an appropriate level.

unnecessary paperwork burdens upon securities brokers or dealers regulated by the SEC."[51] As noted above, the SEC has adopted interim risk assessment rules which require recordkeeping and quarterly reporting of comprehensive information concerning material affiliates of broker-dealers. The proposed rules derive in significant measure from the SEC's risk assessment rules and are intended to facilitate reporting by FCMs that are either also registered as broker-dealers and are required to report to the SEC pursuant to the SEC's rules or are part of a holding company group that includes a broker-dealer reporting pursuant to the SEC's rules. The rules also contemplate coordination with other regulators and the use of triggering events to diminish routine paperwork. In light of the SEC's risk assessment requirements, the Commission's proposed rules permit FCMs that are dually registered as securities broker-dealers or that have affiliates that are registered as broker-dealers to file SEC Form 17–H, the SEC's risk assessment information form, in partial compliance with the Commission's proposed rules. Generally, under proposed Rule 1.15(d)(1), an FCM that is dually registered as a broker-dealer or that has an affiliate that is registered as a broker-dealer would be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15, except the filing of risk management policies pursuant to paragraph (a)(1)(ii) of Rule 1.15[52] and the reporting of information regarding the FCM's noncustomer accounts under paragraphs (a)(1)(iii) and (a)(3) of proposed Rule 1.15, if the FCM files SEC Form 17–H with the Commission. However, if the SEC filing does not include as MAPs all of the entities that would be MAPs of the FCM under the CFTC's rules, the SEC filing would be required to be supplemented to include those MAPs. Only an individual filing for the excluded MAP need be filed. Similarly, the FCM would be deemed to be in compliance with all of the recordkeeping requirements of proposed Rule 1.14, except for the requirements that the FCM maintain records concerning the FCM's risk management policies under paragraph (a)(1)(ii) and noncustomer accounts under paragraph (a)(1)(x), if the FCM maintains, in accordance with the proposed rule, copies of the records and reports maintained and filed on SEC Form 17–H. The FCM would, however, be required to maintain supplemental information for any entities required to be treated as MAPs under the CFTC's rules that are not treated as MAPs for purposes of the SEC's rules.

Because SEC Form 17–H is, with respect to certain reporting requirements, more inclusive than the Commission's proposed reporting requirements, Rule 1.15(d)(1) provides an FCM with the option of either filing Form 17–H in its entirety, or filing the form with certain modifications to omit information that would not be required under the proposed rules. Specifically, the FCM may make the following changes to its Form 17–H filing: (1) The FCM need not include information on arbitrage and purchased options required under Items 10 and 11, respectively, of Part I of Form 17–H; (2) the FCM may substitute the real estate information required to be maintained under Rule 1.14(a)(ix) and reported under Section V of Form 1.15A for the detailed information required under Section V of Form 17–H; and (3) the FCM may file the information required under Part II of Form 17–H on an aggregate basis for its MAPs rather than for each MAP as otherwise required, provided that if this would materially understate risk in relation to equity in any MAP, the information must be provided separately for such MAP. The FCM may use either the Commission or the SEC form for the latter purpose. As noted above, however, an FCM who qualifies under the special provisions applicable to SEC filers would remain responsible for maintaining and furnishing the Commission with information concerning the FCM's risk management policies under paragraph (a)(1)(ii) of proposed Rules 1.14 and 1.15 and noncustomer accounts under paragraphs (a)(1)(x) of proposed Rule 1.14 and (a)(1)(iii) and (a)(3) of proposed Rule 1.15. Moreover, the FCM would remain responsible for notifying the Commission of the occurrence of the events specified in Rule 1.15(b)(2) and providing supplemental information, if requested. If, however, such a "triggering" event occurs, the Division Director will attempt, in the first instance, to obtain any necessary supplemental information from the FCM's or its MAP's filings with the SEC.[53]

The Commission believes that compliance with the notice provisions of proposed Rule 1.15(b) is essential to enable the Commission to act expeditiously in emergency situations and to detect incipient problems. The Commission does not believe that such compliance should impose an undue burden on entities dually registered as FCMs and securities broker-dealers, as the events that require notification under proposed Rule 1.15(b) should occur infrequently.

b. *Banks.* Section 4f(c)(4)(B) of the Act provides generally that a registered FCM shall be considered to have complied with recordkeeping or reporting requirements adopted by the Commission "concerning an affiliated person that is subject to examination by, or reporting requirements of, a Federal banking agency if the [FCM] utilizes for the recordkeeping or reporting requirement copies of reports filed by the affiliated person with the Federal banking agency" pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act or section 5 of the Bank Holding Company Act. The legislative history of the FTPA indicates, however, that an FCM may not be required under any circumstances to obtain or furnish the Commission with copies of examination reports.[54]

With respect to an FCM with a MAP that is subject to supervision by a federal banking agency, the proposed rule provides that an FCM will be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15(a)(2) with respect to such MAP, if the FCM maintains in accordance with Rule 1.14 copies of all reports filed by the MAP with bank regulators.[55] Paragraph (b)(2) of proposed Rule 1.14 provides similar treatment with respect to recordkeeping requirements. Generally, foreign banking organizations that are subject to U.S. banking regulation will be treated in the same fashion as domestic banks for purposes of the application of the proposed rules. Additionally, as part of its risk assessment program with respect to MAPs that are subject to the supervision of a federal banking agency, the Commission intends to obtain and

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[51] S. Rep. No. 22, 102d Cong., 2d Sess. at 50.

[52] The relief provided does not extend to filing of risk management policies because although the SEC rules require filing of many of the same types of written policies and procedures as the CFTC's rules, the CFTC rule requires additional information relating to FCM risk management policies with respect to noncustomer trading activities.

[53] A letter from the FCM or a relevant MAP acknowledging the Commission's right of access to relevant SEC risk assessment filings may be requested in these circumstances.

[54] H.R. Rep. No. 978, 102d Cong., 2d Sess. 75 (1992).

[55] With respect to Form FR 2068, the Confidential Form of Operations required to be filed with the Board of Governors of the Federal Reserve System by foreign banking organizations, Commission staff are exploring with Federal Reserve officials procedures by which access to Form 2068 may be obtained on an as needed basis.

review, on an as-needed basis, the Bank Holding Company Performance Report prepared by the Board of Governors of the Federal Reserve and/or the Uniform Bank Performance Report, prepared by the Federal Deposit Insurance Corporation, to gain further information regarding the financial activities of such MAPs.

c. *Insurance Companies.* Section 4f(c) of the Act requires that, in granting exemptions from the reporting and recordkeeping requirements, the Commission should consider, among other factors, whether information of the type required is available from a state insurance commission or similar state agency. The proposed rules would provide relief comparable to that provided with respect to MAPs subject to supervision by Federal banking agencies for MAPs subject to regulation by an insurance commissioner or other similar state official or agency. Under the proposed rule, an FCM with a MAP that is an insurance company would satisfy the routine reporting requirements of proposed Rule 1.15(a)(2) with respect to such a MAP if, in the case of a mutual insurance company or non-public stock company, the FCM maintains in accordance with proposed Rule 1.14 copies of the annual reports filed by the parent insurance company on forms prescribed by the National Association of Insurance Commissioners. With respect to a MAP organized as a public stock company, the FCM would be required, in addition to maintaining state insurance reports, to maintain in accordance with proposed Rule 1.14 copies of the filings the insurance company makes under Sections 13 or 15 of the Securities Exchange Act of 1934 and filings made under the Investment Company Act of 1940.

d. *Firms subject to foreign regulatory supervision.* With respect to foreign firms that are regulated in a foreign jurisdiction, the proposed rules would permit an FCM to maintain and file any financial or risk exposure reports filed by a MAP with a foreign futures authority, as that term is defined in section 1a(10) of the Commodity Exchange Act, or other foreign regulatory authority with which the Commission has an information-sharing agreement in effect. The proposed rules require that the FCM file with the Commission a copy of the original report as well as one copy translated into English. In the absence of such an information-sharing agreement, the FCM would be required to comply with the proposed rules with respect to foreign MAPs subject to foreign regulation to the same extent as unregulated entities.

III. Implementation Schedule

The Commission is proposing to phase in implementation of the risk assessment rules in order to provide FCMs with the opportunity to make any internal adjustments in their financial recordkeeping and reporting operations which may be necessary prior to beginning compliance with the risk assessment rules. The proposed rules would require that FCMs maintain and file with the Commission the organizational chart, risk management policy information and noncustomer account information required by paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(x) of proposed Rule 1.14 and paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of proposed Rule 1.15 within 90 calendar days from the effective date of the proposed rules. The first annual filings for fiscal years ending December 31, 1994 or thereafter would be due, in accordance with the proposed rules, within 105 calendar days of fiscal year-end.

IV. Other Matters

The Commission has proposed these rules recognizing the types and formats of information provided to other reporting agencies and based upon the types of information it uses to consider regulatory intervention in financial disruptions. Nonetheless, the Commission requests comment on whether alternative approaches could achieve the Commission's and Congress' objectives and could be reasonably integrated with the approaches of other financial regulators. In that current events have caused the Commission to need enhanced authority to obtain information concerning affiliate activity, the Commission will only consider responses to this request for alternatives that are sufficiently specific to reasonably convince it that the alternative would address the Commission's objectives.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[56] FCMs have been determined not to be small entities under the RFA. Additionally, smaller FCMs generally will not be affected by the proposed rules because the rules exempt from their requirements certain smaller entities. The Commission believes that the proposals, if adopted, would not have a significant economic impact on smaller entities.

Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered FCM who believes that these rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules, is as follows:

Average Burden Hours Per Response: 18.55
Number of Respondents: 1,990
Frequency of Response: Annually and on occasion

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours Per Response: 3.05
Number of Respondents: 620
Frequency of Response: Annually and on occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Office, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

C. Electronic Filing

The Office of the Executive Director expects to include review of this proposal in any plan to enhance and refine systems to accept electronic filings. Should it appear that the filing of data electronically would expedite the purposes of collecting the information or provide a significant cost benefit to reporting entities and the Commission, the Commission will work

[56] 47 FR 18618–18621 (April 30, 1982).

with the reporting entities to define and implement a secure cost-effective reporting method.

List of Subjects in 17 CFR Part 1

Financial reporting, Recordkeeping requirements, Risk assessment.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 4f(b), 4f(c) 4g and 8a, 7 U.S.C. 6f(b), 6f(c), 6g and 12a, the Commission hereby proposes to amend part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.14 is proposed to be added to read as follows:

§ 1.14 Risk assessment recordkeeping requirements for futures commission merchants.

(a) *Requirement to maintain and preserve information.* (1) Each futures commission merchant registered with the Commission pursuant to section 4d of the Act, unless exempt pursuant to paragraph (d) of this section, shall prepare, maintain and preserve the following information:

(i) An organizational chart which includes the futures commission merchant and each of its affiliated persons. Included in the organizational chart shall be a designation of which affiliated persons are "Material Affiliated Persons" as that term is used in paragraph (a)(2) of this section, which Material Affiliated Persons file routine financial or risk exposure reports with the Securities and Exchange Commission, a federal banking agency, an insurance commissioner or other similar official or agency of a state, or a foreign regulatory authority, and which Material Affiliated Persons are dealers, end users or both;

(ii) Written policies, procedures, or systems concerning the futures commission merchant's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the futures commission merchant, the structure of debt capital, and sources of alternative funding;

(C) Establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the futures commission merchant's proprietary and noncustomer clearing activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts and financial instruments; policies for hedging or managing risks created by trading activities or reviewing hedging and risk management strategies of noncustomer affiliates, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities:

Provided, however, that if the futures commission merchant has no such written policies, procedures or systems, it must so state in writing.

(iii) Fiscal year end consolidated and consolidating balance sheets for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating balance sheet shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person;

(iv) Fiscal year end consolidated and consolidating income statements and consolidated cash flow statements for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating statements shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person;

(v) The fair market value as of the end of each fiscal quarter of each Material Affiliated Person's inventory of long and short securities and physical commodity positions as specified in Form 1.15A, including a separate listing for each Material Affiliated Person of any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars measured by interest rate, duration, instrument or other measure as specified by the reporting entity, that exceeds the Materiality Threshold, as defined in this section, at any fiscal quarter end;

(vi) The notional or contractual amounts, and in the case of options, the value of the underlying instruments, as of the end of each fiscal quarter, of exchange-traded futures and commodity option contracts, forward contracts, over-the-counter commodity options, and financial instruments with off-balance sheet risk or concentrations of credit risk (as those terms are used in Statement of Financial Accounting Standards No. 105), broken down by contract type and maturity, as specified in Form 1.15A. The record must identify each instrument or contract where the credit risk (as that term is used in Statement of Financial Accounting Standards No. 105) with respect to a counterparty exceeds the Materiality Threshold at the fiscal quarter end;

(vii) The aggregate amount as of the end of each fiscal quarter of all material unsecured extensions of credit (not including intra-group receivables) with an initial or remaining maturity of less than one year by each Material Affiliated Person, together with the allowance for losses for such transactions;

(viii) The aggregate amount as of the end of each fiscal quarter of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter for each Material Affiliated Person;

(ix) The percentage, as of fiscal year end, of annual gross income or loss derived from real estate activities, including mortgage loans and investments in real estate, with respect to each Material Affiliated Person which derived greater than 20 percent of its gross income or loss for the fiscal year from such activities; and

(x) The gross notional value, long and short, of open positions in noncustomer accounts, as defined in § 1.17(b)(4), carried by the futures commission merchant as of the end of each fiscal quarter, the percentage of such aggregate notional value compared to the futures commission merchant's adjusted net capital, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that

constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of noncustomer accounts carried for the purpose of managing the risk of cash market commitments that mature more than 12 months and 60 months, respectively, from fiscal quarter end compared to the aggregate notional value of open positions in all noncustomer accounts carried by the futures commission merchant.

(2) The determination of whether an affiliated person of a futures commission merchant is a Material Affiliated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the futures commission merchant and the affiliated person;

(ii) The overall financing requirements of the futures commission merchant and the affiliated person, and the degree, if any, to which the futures commission merchant and the affiliated person are financially dependent on each other;

(iii) The degree, if any, to which the futures commission merchant or its customers rely on the affiliated person for operational support or services in connection with the futures commission merchant's business;

(iv) The level of market, credit or other risk present in the activities of the affiliated person; and

(v) The extent to which the affiliated person has the authority or the ability to cause a withdrawal of capital from the futures commission merchant.

(3) The information, reports and records required by this section shall be maintained and preserved, and made readily available for inspection in accordance with the provisions of § 1.31.

(4) For the purposes of this section and § 1.15, the term Materiality Threshold shall mean the greatest of:

(i) $20 million;

(ii) 10 percent of the futures commission merchant's adjusted net capital as reported on its most recent financial reports filed pursuant to § 1.10;

(iii) 10 percent of the Material Affiliated Person's tangible net worth; or

(iv) In the case of a futures commission merchant that is required, or that has a Material Affiliated Person that is required, to maintain and preserve information pursuant to Rule 240.17h-1T of this title, the Materiality Threshold specified in § 240.17h-1T or such other risk-assessment regulations as the Securities and Exchange Commission may adopt.

(b) *Special provisions with respect to material affiliated persons subject to the supervision of certain domestic regulators.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(i) and (a)(1)(iii) through (ix) of this section if:

(1) The futures commission merchant is required, or has a Material Affiliated Person that is required, to maintain and preserve information pursuant to Rule 240.17h-1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, and maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by such futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h-1T and 240.17h-2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, provided, however, that if the futures commission merchant has any Material Affiliated Persons for purposes of this section and § 1.15 that are not designated as Material Associated Persons for purposes of §§ 240.17h-1T and 240.17h-2T of this title, the futures commission merchant must also maintain the information required pursuant to paragraphs (a)(1)(v) through (ix) of this section for any such Material Affiliated Person;

(2) In the case of a Material Affiliated Person that is subject to examination by, or the reporting requirements of, a Federal banking agency, the futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(3) In the case of a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, the futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner.

(c) *Special provisions with respect to material affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(iii) through (a)(ix) of this section with respect to a Material Affiliated Person if such futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other relevant foreign authority. The futures commission merchant shall maintain a copy of the original report and a copy translated into the English language.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000, has less than $5,000,000 in adjusted net capital as of the futures commission merchant's current fiscal year end, and is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any futures commission merchant affiliated with such Reporting Futures Commission Merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of adjusted net capital as last reported on financial reports filed with the Commission pursuant to § 1.10. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records required by this section concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to this section or § 1.15.

(e) *Location of records.* A futures commission merchant required to maintain records concerning Material Affiliated Persons pursuant to this section may maintain those records either at the principal office of the

Material Affiliated Person or at a records storage facility, provided that the records are located within the boundaries of the United States and the records are kept and available for inspection in accordance with § 1.31. If such records are maintained at a place other than the futures commission merchant's principal place of business, the Material Affiliated Person or other entity maintaining the records shall file with the Commission a written undertaking, in a form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the futures commission merchant were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time, or from time to time during business hours, by representatives or designees of the Commission and promptly furnish the Commission representative or its designee true, correct, complete and current hard copy of any or all or any part of such records. The election to maintain records at the principal place of business of the Material Affiliated Person or at a records storage facility pursuant to the provisions of this paragraph shall not relieve the futures commission merchant required to maintain and preserve such records from any of its responsibilities under this section or § 1.15.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Affiliated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each futures commission merchant subject to the requirements of this section shall maintain and preserve the information required by this section commencing 90 days from the effective date of this section.

3. Section 1.15 is proposed to be added to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) *Reporting requirements with respect to information required to be maintained by § 1.14.* (1) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports within 90 calendar days after the effective date of this section, provided that in the case of a futures commission merchant whose registration becomes effective after the effective date of this section, such futures commission merchant shall file the following within 60 calendar days after the effective date of such registration:

(i) A copy of the organizational chart maintained by the futures commission merchant pursuant to paragraph (a)(1)(i) of § 1.14. Where there is a material change in information provided, an updated organizational chart shall be filed within five calendar days after the end of the fiscal quarter in which the change has occurred;

(ii) Copies of the financial, operational, and risk management policies, procedures and systems maintained by the futures commission merchant pursuant to paragraph (a)(1)(ii) of § 1.14. If the futures commission merchant has no such written policies, procedures or systems, it must file a statement so indicating. Where there is a material change in information provided, such change shall be reported within five calendar days after the end of the fiscal quarter in which the change has occurred; and

(iii) The aggregate notional value of open positions in noncustomer accounts, as defined in § 1.17(b)(4), held by the futures commission merchant as of the end of the most recent fiscal year, the percentage of such aggregate notional value compared with the futures commission merchant's adjusted net capital as of its fiscal year end, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of open positions in noncustomer accounts held for the purpose of managing the risks of cash market commitments that mature more than 12 months and 60 months, respectively, from the most recent fiscal quarter end, as compared to the aggregate notional value of open positions in all noncustomer accounts held by the futures commission merchant.

(2) Each futures commission merchant registered with the Commission pursuant to section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports within 105 calendar days after the end of each fiscal year:

(i) Fiscal year end consolidated and consolidating balance sheets for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated balance sheet shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated balance sheets shall include appropriate explanatory notes. The consolidating balance sheet shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person.

(ii) Fiscal year end annual consolidated and consolidating income statements and consolidated cash flow statements for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated statements shall include appropriate explanatory notes. The consolidating statements shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person.

(iii) Form 1.15A. The information required to be reported on Form 1.15A may be provided on an aggregate basis for the futures commission merchant's Material Affiliated Persons, provided that if this would materially understate the risk relative to stockholders' equity of any Material Affiliated Person, the required information must be provided separately for such Material Affiliated Person.

(3) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file with the regional office with which it files periodic financial reports within 60 calendar days after the end of each fiscal quarter the aggregate notional value of open positions in noncustomer accounts, as defined in § 1.17(b)(4), held by the futures commission merchant as of the end of each fiscal year, the percentage of such aggregate notional value compared with the futures commission merchant's adjusted net capital as of fiscal year end, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of open positions in noncustomer

accounts held for the purpose of managing the risk of cash market commitments that mature more than 12 months and 60 months, respectively, from fiscal quarter end compared to the aggregate notional value of open positions in all noncustomer accounts held by the futures commission merchant.

(4) A futures commission merchant shall provide the Commission with updated information within 60 calendar days after the end of each fiscal quarter for any line item in which a change of 20% or greater has occurred since the futures commission merchant's last filing with the Commission with respect to any information required to be reported pursuant to paragraph (a)(2)(iii) of this section, except information relating to a Material Affiliated Person's real estate activities; provided, however, that a futures commission merchant may, at its option, file the information required by paragraph (a)(2)(iii) of this section on a routine quarterly basis.

(5) For the purposes of this section, the term Material Affiliated Person shall have the meaning used in § 1.14.

(b) *Notice and additional reporting requirements upon the occurrence of certain events.* (1) A futures commission merchant shall notify the Director of the Division of Trading and Markets or the Director's designee of the occurrence of any event specified in paragraph (b)(2) of this section. Such notice must be provided within three business days of such occurrence unless a different reporting period is specified in paragraph (b)(2) of this section. Upon receipt of such notice from a futures commission merchant, the Director of the Division of Trading and Markets or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

(2) The following events shall require a futures commission merchant to notify the Director of the Division of Trading and Markets or the Director's designee in accordance with paragraph (b)(1) of this section.

(i) Any reduction in adjusted net capital in excess of 20 percent of the futures commission merchant's adjusted net capital as last reported in financial reports filed with the Commission pursuant to § 1.10 shall be reported as follows.

(A) With respect to activities in the normal course of business (*e.g.*, operating losses, proprietary trading losses, increased charges against net capital) that cause such reduction, written notification must be received within two business days of such reduction; and

(B) With respect to any extraordinary transaction or series of transactions that will cause such reduction, written notification must be received at least two business days in advance of the transaction or the first in the series of transactions.

(ii) Any outflow of assets from the futures commission merchant, including but not limited to any loans, advances, asset transfers, redemption or repurchase of a consolidated entity's stock, recapitalization of stock or payment of dividends, which withdrawal, advance or loan on a net basis exceeds in the aggregate in any 30 calendar day period 20 percent or more of the futures commission merchant's excess adjusted net capital, provided, however, that this paragraph shall not apply to:

(A) Securities transactions in the ordinary course of business between a futures commission merchant and a Material Affiliated Person where the futures commission merchant makes payment to or on behalf of such Material Affiliated Person for the securities transaction within two business days of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any thirty calendar day period, on a net basis, equal $500,000 or less.

(iii) Aggregate, cumulative losses occurring in all non-customer accounts carried by the futures commission merchant, as defined in § 1.17(b)(4), which exceed the greater of: (A) In any 30-day period, 10 percent of the last reported consolidated stockholders' equity of the parent company of the futures commission merchant or $50 million; and (B) in any 12-month period, 20 percent of the last reported consolidated stockholders' equity of the parent company of the futures commission merchant or $100 million;

(iv) Negative net income at a Material Associated Person during any quarter which is the greater of:

(A) 30 percent of the Material Associated Person's last-reported net worth; or

(B) 20 percent of the futures commission merchant's adjusted net capital;

(v) A reduction of 20 percent or more of the consolidated stockholders' equity of the futures commission merchant's parent from the date of the parent's last quarterly consolidated financial statements;

(vi) Any reduction in the credit rating of a Material Affiliated Person as reported by Standard & Poor's Corporation, Moody's Investor Services, Inc. or any other nationally recognized rating organization;

(vii) Filing of a notice by a Material Associated Person with the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the Office of the Comptroller of the Currency pursuant to 12 CFR 208.32(c), 12 CFR 325.102(c), 12 CFR 565.3(c) or 12 CFR 6.3(c), with respect to possible adjustment of a Material Affiliated Person's capital category; or

(viii) Agreement by the futures commission merchant to guarantee any obligation of any affiliated entity, such notice to be filed within three business days before such guarantee is to become effective.

(3) The reports required to be filed pursuant to paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission merchant files financial reports pursuant to § 1.10. Any notice required to be filed pursuant to paragraph (b)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(c) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000, has less than $5,000,000 in adjusted net capital as of the futures commission merchant's fiscal year end, and is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any futures commission merchants affiliated with the Reporting Futures Commission merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of net capital as last reported on its financial reports filed with the Commission pursuant to § 1.10. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and

other information required to be maintained pursuant to § 1.14 concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to the provisions of this section.

(d) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* (1) In the case of a futures commission merchant which is required to file, or has a Material Affiliated Person which is required to file, Form 17–H (or such other forms or reports as may be required) with the Securities and Exchange Commission pursuant to §§ 240.17h–2T of this title or such other risk assessment regulations as the Securities and Exchange Commission may adopt, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraphs (a)(1)(i) and (a)(2) of this section if the futures commission furnishes, in accordance with paragraph (a)(2) of this section, a copy of the most recent Form 17–H filed by the futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission, provided however, that if the futures commission merchant has designated any of its affiliated persons as Material Affiliated Persons for purposes of this section and § 1.14 which are not designated as Material Associated Persons for purposes of the Form 17–H filed pursuant to §§ 240.17h–1T and 240.17h–2T of this title, the futures commission must also file any information required pursuant to paragraph (a)(2)(iii) of this section with respect to any such Material Affiliated Person and designate any such affiliated person as a Material Affiliated Person on the organizational chart required as Item 1 of Part I of Form 17–H. To comply with paragraphs (a)(1)(i) and (a)(2) of this section, such futures commission merchant may, at its option, file Form 17–H in its entirety or file such form with the following amendments:

(i) The information concerning arbitrage and purchased options required to be reported on Items 10 and 11, respectively, of Part I of Form 17–H need not be included;

(ii) The information concerning real estate activities required to be maintained under Rule 1.14(a)(1)(ix) and reported on Section V of Form 1.15A may be included in lieu of the information required under Section V of Part II of Form 17–H; and

(iii) The information required to be reported on Part II of Form 17–H may be provided on an aggregate basis for the futures commission merchant's Material Affiliated Persons, provided that if this would materially understate the risk relative to stockholders' equity of any Material Affiliated Person, the required information must be provided separately for such Material Affiliated Person.

(2) In the case of a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency, the futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the futures commission merchant or such Material Affiliated Person maintains in accordance with § 1.14 copies of all reports filed by the Material Affiliated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners Loan Act, or section 5 of the Bank Holding Company Act of 1956.

(3) In the case of a futures commission merchant that has a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to the Material Affiliated Person if:

(i) With respect to a Material Affiliated Person organized as a mutual insurance company or a non-public stock company, the futures commission merchant maintains in accordance with § 1.14 copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner; and

(ii) With respect to a Material Affiliated Person organized as a public stock company, the futures commission merchant maintains, in addition to the annual statements with schedules and exhibits required to be maintained pursuant to § 1.14, copies of the filings made by the Material Affiliated Person pursuant to sections 13 or 15 of the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

(4) No futures commission merchant shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Affiliated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 8 of the Act.

(5) The furnishing of any information or documents by a futures commission merchant pursuant to this section shall not constitute an admission for any purpose that a Material Affiliated Person is otherwise subject to the Act.

(e) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to a Material Affiliated Person if such futures commission merchant furnishes, in accordance with the provisions of this section, copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority with which the Commission has entered into an information sharing agreement which remains in effect as of the futures commission merchant's fiscal year end. The futures commission merchant shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Futures Authority shall have the meaning set forth in section 1a(10) of the Act.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Associated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each futures commission merchant subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section within 90 calendar days from the effective date of this section. Commencing December 31, 1994, the provisions of this section shall apply in their entirety.

Risk Assessment Report for Futures Commission Merchants CFTC Form 1.15A—Instructions

1. This form contains three parts. Part A is the cover page and includes a summary of the FCM's Material Affiliated Persons that are included in this report as well as the FCM's attestation. Part B contains information concerning the FCM's MAPs' on-balance

sheet financial instruments (Section I); financial instruments with off-balance sheet risk (Section II); extensions of credit (Section III); sources of funding for operations (Section IV); and real estate activities (Section V). Part C contains information for individual MAPs whose positions with a single counterparty exceed the Materiality Threshold as defined in paragraph 9 of these instructions.

2. The information requested in Part B is to be completed in the aggregate for all MAPs. However, if this would materially understate the risk exposure relative to stockholders' equity of any MAP, an additional Part B must be prepared showing the required information for just that MAP. In addition, Part C must also be prepared for such separately reported MAP, if applicable.

3. This Form contains line items for reporting numerical and other data required by paragraphs (a)(1)(v) through (ix) of Rule 1.14. The information to be provided on this Form is in addition to the reporting requirements of paragraphs (a)(1) (organizational chart, risk management policies, and initial filing of aggregate notional value of open positions in noncustomer accounts), (a)(2)(i) and (ii) (annual consolidated and consolidating balance sheets, income statements and cash flow statements), and (a)(3) (quarterly noncustomer account data) of Rule 1.15.

4. The report is to be prepared as of the last day of the FCM's fiscal year or fiscal quarter if a quarterly update is required under Rule 1.15. This Form is to be filed within 105 calendar days after the end of each fiscal year. An update as to the particular line item only must be filed within 60 calendar days after the end of each fiscal quarter for which any line item change of 20 percent or more has occurred since the FCM's last filing with the Commission.

5. If an FCM is affiliated with one or more other registered FCMs, each FCM is required to file a separate Form 1.15A. The Commission may exempt from the filing requirements all FCMs affiliated with an FCM that has been designated a "Reporting Futures Commission Merchant" as defined in Rules 1.14 and 1.15, i.e., the FCM which maintains the greater amount of adjusted net capital as last reported to the Commission. An FCM seeking designation as a Reporting Futures Commission Merchant must apply to the Commission for such designation pursuant to Rule 1.15. Pending such designation, each FCM affiliated with the FCM requesting such designation is required to file a separate Form 1.15A.

6. Whenever a replacement cost is required to be reported, the methodology for determining such amount must be stated.

7. Although specific maturities only for swaps and forwards need be identified, an FCM should also indicate if the maturities of any other instruments reported herein represent unusual risk.

8. All amounts should be reported in thousands of U.S. dollars.

9. The term "Materiality Threshold" shall mean the greatest of: (i) $20 million; (ii) 10 percent of the FCM's adjusted net capital as reported on its most recent financial report; (iii) 10 percent of the Material Affiliated Person's tangible net worth; or (iv) in the case of an FCM that is required, or that has a Material Affiliated Person that is required, to maintain and preserve information pursuant to SEC Rule 240.17h-1T, the Materiality Threshold specified in that rule or such other risk assessment rules as the SEC may adopt.

10. The term "Designated Country" shall mean Canada, France, Germany, Japan, Switzerland, and the United Kingdom. The term "Designated Currency" shall mean Canadian dollar, French franc, Deutschemark, Japanese yen, Swiss franc, British pound, and European currency unit.

BILLING CODE 6351-01-P

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART A - BACKGROUND INFORMATION AND ATTESTATION

FCM Name and Address	NFA ID No: _____
	Contact Person: _____
	Contact's Phone: _____
Report as of date: _____	[ ] Year-End Report
Prior report date: _____	[ ] Quarterly Update

Names of material affiliated persons included in this report:	City, State / Country:	Parts Attached [x] [B] [C]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]
_____	_____	[ ] [ ]

Attestation

The futures commission merchant submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted, provided however that, in the case of a required quarterly update, this representation applies only to those particular items that are updated or would be required to be updated. It is further understood that any willfully made false or misleading statement or omission of a material fact may constitute violations of the Commodity Exchange Act (7 U.S.C. § 9), federal criminal violations (7 U.S.C. § 13 and 18 U.S.C. § 1001) or grounds for disqualification from registration.

Signed this_____day of_____, 19_____

Manual signature_____

Type or print name_____ Title: _____

_____ Chief Executive Officer _____ Chief Financial Officer

_____ General Partner _____ Sole Proprietor

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART B - AGGREGATE FINANCIAL INFORMATION ON MAPs

Is this form being filed for all MAPs in the aggregate or for a particular MAP that exceeds the *materiality threshold* as defined in paragraph 9 of the instructions.

[ ] All MAPs in the aggregate

[ ] Particular MAP – Identify: _____

I. Securities and Commodity Positions – Inventory or On-Balance Sheet Items – Separately list for each Material Affiliated Person any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars measured by interest rate, duration, instrument or other measure as specified by the reporting entity that exceeds the Materiality Threshold (attach schedule)		
FINANCIAL INSTRUMENT	MARKET VALUE AT END OF PERIOD	
	LONG POSITIONS	SHORT POSITIONS
U.S. Treasury securities		
U.S. government agency securities		
State and municipal securities		
Foreign government securities Designated countries (see paragraph 10 of the instructions)		
Other countries		
Bankers' acceptances		
Certificates of deposit		
Commercial paper		
Corporate obligations		
Stocks and warrants		
Physical commodities		
Investments with no ready market Equity		
Debt		
Other (Include limited partnership interests)		
Other		

II. Financial Instruments With Off-Balance Sheet Risk and With Concentration of Credit Risk – Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument. In the event a separate listing of a position or instrument is required pursuant to the provisions of paragraph 9 of these instructions, separately state such positions.

FINANCIAL INSTRUMENT	NOTIONAL OR CONTRACTUAL AMOUNTS	
	LONG	SHORT
A. SECURITIES 1. When-issued securities (a) Gross commitments to purchase (b) Gross commitments to sell		
2. Written stock options contracts (a) Market value of covered call contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(b) Market value of covered put contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(c) Market value of naked call contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(d) Market value of naked put contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		

** Report these amounts here and not under Part I.

FINANCIAL INSTRUMENT	Notional or Contractual Amount	Aggregate Current Cost to Replace by Counterparty Where MAP has Gain	By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)
B. INTEREST RATE SWAPS			
1. U.S. dollar denominated swaps			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
2. Cross currency swaps - designated currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
3. Cross currency swaps -- all other currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
C. FOREIGN CURRENCY			
1. Swaps - designated currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
2. Swaps - all other currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
3. Naked written option contracts	Contractual Value	Value of the Underlying Instruments	

FINANCIAL INSTRUMENT	Notional or Contractual Amount	Aggregate Current Cost to Replace by Counterparty Where MAP has Gain	By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)
D. ENERGY SWAPS			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			
E. PRECIOUS METAL SWAPS			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			
F. ALL OTHER SWAP AGREEMENTS (Specify type - attach schedule if necessary).			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			

FINANCIAL INSTRUMENT	Notional or Contractual Amounts		Aggregate Current Cost to Replace by Counterparty Where MAP has Gain		By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)	
	LONG	SHORT	LONG	SHORT	LONG	SHORT
G. COMMODITIES 1. Futures (a) Interest rate (b) Foreign currency (c) Energy (d) Precious metal (e) Other (specify)						
2. Forwards (by contract type and maturity in years): (a) Interest rate (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(b) Foreign currency (*Designated currencies* – see paragraph 10 of the instructions) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years (*Other currencies* – see paragraph 10 of the instructions) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(c) Energy (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(d) Precious metals (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(e) Other (specify) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years (f) Where credit risk exceeds the Materiality Threshold for any one counterparty, note here and attach schedule providing details.						

FINANCIAL INSTRUMENT	Notional or Contractual Amounts	
	Long	Short
G. COMMODITIES (Conunued)		
3. Sold option contracts (e.g., opuons on individual commodities and commodity indexes)		
(a) Market value of covered call contracts		
(i) Listed		
(A) Market Value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market Value		
(B) Value of underlying position **		
(b) Market value of covered put contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying posituon **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying posituon **		
(c) Market value of naked call contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying position **		
(d) Market value of naked put contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying position **		

H. Identify and discuss other off-balance sheet items which may materially affect the financial position of the FCM.

I. Identify and discuss significant concentrations of credit risk as defined in Statement of Financial Accounting Standards No. 105.

** Report these amounts here and not under Part I.

III. Extensions of Credit by MAPs

A. Provide details concerning material extensions of credit granted by MAPs that were in effect at the end of the reporting period. Include a discussion of losses experienced during the year and allowance for losses provided

B. Identify guarantees of indebtedness provided by MAPs which were in effect at the end of the reporting period. Include guarantees of indebtedness and standby commitments, including assets sold with recourse. Include in the discussion whether the guarantees were for the benefit of any other companies within the FCM's corporate group, and whether any guarantees were acted on by third parties.

IV. Sources of Funding for MAPs – Discuss in detail the sources of funding for MAPs. If NONE, so state after each form of funding.

FORM OF FINANCING	Amount	Commercial Paper Ratings, Rating Agencies, and Comments
A. Short term borrowings		
1. Commercial paper		
2. Bank loans - secured		
3. Bank loans - unsecured		
4. Other (including material changes in inter-company accounts not due to routine operations) (describe in attachment)		
5. Total		
B. Long and medium-term debt (specify nature)		

	Commitments	Amount Used	Comments
C. Lines of Credit			
1. Banks			
2. Other (Describe in Comments column)			
D. Total standby, commercial and similar letters of credit or guarantees			

V. Real Estate Activities – Provide a listing of the percentage of annual gross income (loss) derived from real estate activities for each MAP which derived more than 20 percent of its gross income (loss) for the fiscal year from such activities. If NONE, so state.

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART C - INFORMATION CONCERNING INDIVIDUAL MAPs

1. Name of MAP:

2. Explain why the affiliate is a MAP of the FCM:

3. Describe the MAP's major business segments and percent of gross revenue derived from each: Percent

4. Does the MAP maintain a trading book? [ ] YES [ ] NO If YES, specify in which derivative products (by underlying instrument or commodity, and contract type) the book is maintained and the percentage of maturities in each book that exceed five years. Also, specify the percentage which are collateralized:

5. During the past year what have been the aggregate losses, if any, due to non-payment or other default by counterparties? Describe.

6. Concentration – Indicate the greatest replacement cost attributable to a single counterparty that exceeds 10 percent of the MAP's tangible net worth:

7. MAP Funding

a. Discuss the extent to which the MAP depends on another group member for funding:

b. Describe the largest funding transaction during the reporting period:

BILLING CODE 635-01-C

Issued in Washington, DC, on February 23, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4570 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. I

Minerals Management Service

30 CFR Ch. II

Geological Survey

30 CFR Ch. IV

Bureau of Mines

30 CFR Ch. VI

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

National Park Service

36 CFR Ch. I

Office of the Secretary

43 CFR Subtitle A

48 CFR Ch. 14

Bureau of Reclamation

43 CFR Ch. I

Bureau of Land Management

43 CFR Ch. II

Fish and Wildlife Service

50 CFR Chs. I and IV

Review of Existing Significant Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of intent of periodic reviews of regulations; request for comment.

SUMMARY: Pursuant to Executive Order 12866 (the "Order"), the Department of the Interior ("DOI") is announcing its intent to establish periodic reviews of all "significant" regulations published by the Department. The purpose of these reviews is to ensure that all significant DOI regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the objectives of the program being implemented. The purpose of this notice is to seek public comment on which DOI regulations should be reviewed, the best means for ensuring appropriate public involvement in the review process, and on mechanisms or processes to ensure that thorough reviews are conducted at appropriate intervals.

DATES: Written comments must be received by May 2, 1994.

ADDRESSES: Please send written comments to Bill Vincent, Deputy Director, Office of Regulatory Affairs, Department of the Interior, Mail Stop 6214 MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill Vincent, Deputy Director, Office of Regulatory Affairs, phone (202) 208–5271.

SUPPLEMENTARY INFORMATION:

Background

Section 5 of the Order requires all federal agencies to establish periodic reviews of all "significant" regulations currently published in the Code of Federal Regulations. The purpose of these reviews is to ensure that regulations help provide the highest possible quality services to the public, are tailored no broader than necessary to efficiently and effectively meet program objectives and Presidential priorities, and impose the least possible burden on the public.

DOI is developing a methodology for conducting these reviews and is seeking public comment to help determine which regulations should be reviewed as part of this process, to develop a mechanism to encourage the fullest appropriate public involvement in the review process, and to develop schedules for conducting reviews at appropriate intervals. DOI intends to solicit public comment on the substance of the reviews at a later date by publishing in the **Federal Register** a listing of all rules subject to review and inviting public comments on those rules.

Review Plan

To implement the Order, the Department first is seeking to determine which regulations should be reviewed within the next two years. Each bureau and office currently is identifying all "significant" existing regulations within their respective program areas. The Order defines a "significant" regulation as any regulation

> That is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

In determining which existing regulations are significant, DOI plans to consider all regulations within their programmatic context. As a result, rules that are not "significant" standing alone may be significant as part of a broader programmatic scheme and, therefore, may be subject to review.

Although the Order requires only the review of existing "significant" regulations, DOI will consider reviewing any existing regulation that is identified as in need of review. Commenters therefore are encouraged to identify such regulations, and to explain briefly why review is important at this time.

Commenters also may indicate how regulatory changes will improve the services we provide to our customers, the public. Service improvement includes better access to services, improved responsiveness to requests and applications, reduced waiting times for processing information and decisionmaking, and better mechanisms for including customers' needs and desires in the decisionmaking process. In achieving such service improvements, the Department is committed to using modern management techniques wherever practical. These techniques include: (1) Empowering managers and employees to achieve results rather than simply adhering to rigid bureaucratic procedures; (2) ensuring that authority, responsibility, and accountability are placed at the most appropriate levels; and (3) seeking methods to ensure continuous improvements in quality and program integrity while minimizing administrative expenses.

The Department intends to encourage the fullest appropriate public involvement in the review process. Commenters should indicate the best means for ensuring appropriate public participation. The Department is willing to meet with industry, interest groups, and others to discuss their ideas on regulatory reform. The Department also intends to coordinate with other federal agencies and state, local, and tribal governments to ensure that regulatory policies are clear and consistent and to minimize unnecessary overlap and duplication.

Commenters also may suggest mechanisms and processes they believe will help ensure that thorough reviews are conducted in a periodic and timely manner. Currently, the Department intends, wherever possible, to conduct periodic reviews concurrently with reviews required by statute or other competent legal authority. Where such mandated reviews do not exist, however, the Department intends to develop review schedules that are appropriate for particular program areas. Commenters should indicate the frequency with which reviews should be conducted. Although the timing of specific reviews may vary, the Department is considering requiring that the first cycle of reviews, including the implementation of any recommended changes, be completed by June 30, 1996.

Dated: February 23, 1994.

Bill Vincent,

Deputy Director, Office of Regulatory Affairs, Office of the Secretary.

[FR Doc. 94–4601 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–61–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF03

Line of Duty

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning the service connection of disabilities incurred or aggravated in line of duty. This proposed change is necessary to implement legislation which precludes the establishment of service connection for any condition that results from the abuse of alcohol or drugs.

DATES: Comments must be received on or before May 2, 1994. Comments will be available for public inspection until May 10, 1994. This proposed change is proposed to be effective November 1, 1990, the date established by the enacting legislation.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until May 10, 1994.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr. Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 8052 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, amended 38 U.S.C. 105(a), 1110 and 1131 to provide that injuries or diseases incurred or aggravated during service as a result of the abuse of alcohol or drugs will not be considered incurred or aggravated in the line of duty and thus would not be compensable by VA as service-connected disabilities. These provisions apply to claims filed after October 31, 1990. VA proposes to define drug abuse as the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects. VA proposes to define alcohol abuse as the drinking of alcoholic beverages in any amount, over any period of time, sufficient to cause disability or death. VA proposes to amend 38 CFR 3.1 and 3.301 to implement this new statutory provision.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 22, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.1 [Amended].

2. In § 3.1(m) introductory text, the first sentence, after the words "willful misconduct" add the words "or abuse of alcohol or drugs".

§ 3.301 [Amended].

3. In § 3.301(a), after the words "willful misconduct" add the words "or abuse of alcohol or drugs".

4. In § 3.301(c), the heading of the introductory text, after the word "*applications*" add the words "*; willful misconduct*".

5. In § 3.301(c)(3), after the third sentence, add the words "(See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.)". In the fourth sentence, remove the words "Similarly, where" and add, in their place, the word "Where".

6. In § 3.301, add a new paragraph (d) to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs. For the purpose of this paragraph, alcohol abuse means the drinking of alcoholic beverages in any amount, over any period of time, sufficient to cause disability or death; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[FR Doc. 94–4479 Filed 2–28–94; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposed Endangered Status for the Pacific Pocket Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, gives notice that a public hearing will be held on the proposed action to list the Pacific pocket mouse (*Perognathus longimembris pacificus*) as an endangered species. The Service will allow all interested parties to submit oral or written comments at the hearing on the proposal.

DATES: A public hearing will be held from 6 to 8 p.m. on Thursday, March 24, 1994, in San Clemente, California. Comments from all interested parties must be received by April 4, 1994.

ADDRESSES: The hearing on Thursday, March 24, 1994, will be held at the Casa Clemente Resort (formerly known as the Ramada Inn), 35 Calle de Industrias, San Clemente, California.

Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Loren Hays or Fred Roberts, Carlsbad Field Office, (see **ADDRESSES** section) or telephone 619/431–9440.

SUPPLEMENTARY INFORMATION:

Background

The Pacific pocket mouse (*Perognathus longimembris pacificus*), a small heteromyid rodent, which historically occurred within about 3 kilometers (2 miles) of the immediate coast at eight locations from Marina del Rey and El Segundo in Los Angeles County south to the vicinity of the Mexican border in San Diego County, California. This species is brownish or grayish in color and attains a total length of 126 millimeters (4.9 inches).

The Pacific pocket mouse occurs on fine-grain, sandy substrates, and inhabits coastal strand, coastal dunes, river alluvium, and coastal sage scrub vegetation on marine terraces. The only known extant population of this species is found on the Dana Point Headlands in Dana Point, California. On February 3, 1994, the Service listed the Pacific pocket mouse as an endangered species using the emergency provision of the Act because it is in imminent danger of extinction due to habitat loss and fragmentation, and predation by feral and domestic cats (59 FR 5306). A proposed rule to list this species and announcing the Service's intention to hold a public hearing on this matter was also published in the **Federal Register** on that date (59 FR 5311).

Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes April 4, 1994.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

(Notice of Public Hearing: Pacific pocket mouse; endangered without critical habitat)

Dated: February 21, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–4545 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–65–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[I.D. 022294C]

Atlantic Billfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Atlantic billfishes; notice of an additional scoping meeting and extension of comment period.

SUMMARY: NMFS previously announced scoping meetings for Atlantic billfish on February 9, 1994. The purpose of the scoping meetings is to receive comments concerning the Atlantic billfish fishery from fishery participants and other members of the public regarding: A definition of overfishing; reducing fishing mortality; reporting requirements; and other issues. NMFS is also soliciting written comments on issues of concern in this fishery. NMFS requests input at any time during the scoping process, by mail or by fax. An issues/options statement will be prepared for the initial hearing and revised, based on written and oral comments, for subsequent hearings. This notice announces an additional scoping meeting and extends the comment period for the billfish scoping meetings.

DATES: Written scoping comments must be received on or before May 2, 1994. The scoping meeting will be held from 8 a.m. to 10 a.m., March 15, 1994.

ADDRESSES: Written scoping comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, room 14853, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Billfish Scoping Comments." Input for the issues/options statement may also be provided to the same address, or by sending a fax to C. Michael Bailey at 301–713–1035. The meeting will be held at the Hynnes Convention Center, Room 208 (NFI Room/Lounge), 900 Boyleston Avenue, Boston, MA.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347 or fax 301–713–1035.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Depending upon the interest of the audience, the Meeting Officer may increase the length of the meetings, and additional meetings may be announced at a later date. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard H. Schaefer by March 11, 1994 (see **ADDRESSES**).

Dated: February 23, 1994.

David S. Crestin,

Acting Office Director, Office of Fisheries Conservation and Management.

[FR Doc. 94–4535 Filed 2–24–94; 10:01 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940246–4046; I.D. 012794A]

RIN 0648–AE51

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). Amendment 6 would establish management measures necessary to conserve overfished stocks of snowy grouper, golden tilefish, speckled hind, and warsaw grouper in the South Atlantic exclusive economic zone (EEZ). The intended effects of this rule are to rebuild the snapper-grouper resources and to clarify the regulations implementing the FMP.

DATES: Written comments must be received on or before April 11, 1994.

ADDRESSES: Comments on the proposed rule must be sent to Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 6, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston SC 29407–4699; FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Recent stock assessments by NMFS have identified snowy grouper, golden tilefish, speckled hind, and warsaw grouper as being overfished. The management measures in Amendment 6 represent the Council's initial steps to prevent this overfishing and to rebuild the abundance level of these species.

Amendment 6 would establish commercial quotas and trip limits for snowy grouper and golden tilefish; impose a trip limit of one warsaw grouper and one speckled hind per vessel and prohibit sale of these species; include tilefish species in the current grouper bag limit; require that vessel logbooks be submitted by all permitted vessels; and close the Oculina Bank habitat area of particular concern (HAPC) to fishing for snapper-grouper species. In addition, NMFS proposes changes to the regulations to clarify them and conform them to current standards.

Snowy Grouper and Golden Tilefish

The most recent stock assessment report for the deep water component of the snapper-grouper fishery indicates that a 40 percent reduction in the fishing mortality rate is necessary to rebuild the snowy grouper stock and a 42 percent reduction is necessary for the golden tilefish stock. These reductions in mortality rate should result in a spawning stock ratio of 30 percent, the level at which the stocks are no longer considered to be overfished under the provisions of the FMP. The Council concluded that reductions in fishing mortality should be achieved through reductions in allowable catch, a manageable proxy for fishing mortality, and should be phased in through equal reductions in each of the next 3 years. Such phased-in catch reductions should minimize financial impacts on fishermen and provide additional information for measuring the effectiveness of the rebuilding schedule.

Accordingly, Amendment 6 would establish a commercial quota for snowy grouper and a commercial quota for golden tilefish for each of the years 1994, 1995, and 1996. To minimize any "derby" fishing that might be caused by the quota system, vessel trip limits are proposed on snowy grouper of 2,500 pounds (1,134 kg) and golden tilefish of 5,000 pounds (2,268 kg). All trip limit weights are either whole weight or gutted weight, at the harvesting vessel's option. Thus, compliance may be determined by weighing the fish without having to sort and weigh whole and gutted fish separately. When a quota for either species is reached, a reduced trip limit of 300 pounds (136 kg) would be implemented for that species for the remainder of the fishing year. The 300-pound level is deemed to be appropriate as a bycatch allowance. Each year's quota would be established at a level that would ensure that bycatch plus the quota would not exceed the catch levels necessary to achieve the targeted reductions in fishing mortalities.

Annual quotas, in gutted weights, are proposed as follows:

	Snowy grouper		Golden tilefish	
	Pounds	Kg	Pounds	kg
1994	540,314	245,082	1,475,795	669,409
1995	442,448	200,691	1,238,818	561,918
1996	344,508	156,266	1,001,663	454,347

Warsaw Grouper and Speckled Hind

Amendment 6 proposes to limit the possession of warsaw grouper and speckled hind to one of each per vessel per trip and to ban the sale of these species. Fishermen would be encouraged to donate fish caught under the trip limit to "good causes," such as charitable organizations. This measure would reduce the fishing mortality on these overfished species but, since they are minor components of the snapper-grouper fishery, would not have a significant adverse economic effect on fishermen.

Tilefish

Amendment 6 proposes to include tilefish species in the bag limit for groupers, currently five fish per person per day. This action would reduce fishing mortality on golden tilefish, which are known to be overfished, and on the other tilefish species, which, because of similar life history characteristics, are suspected to be overfished. In addition, inclusion of all tilefish species will obviate the necessity for species differentiation

among members of the tilefish family, a task that may be difficult for recreational fishermen.

Fishing Vessel Logbooks

Amendment 6 proposes that all permitted vessels be required to maintain and submit vessel logbooks that provide catch and effort data. Such data are needed for quota monitoring, stock assessments, catch histories, and indications of shifts in effort. Currently, the regulations require vessel logbooks on behalf of vessels selected by the Science and Research Director. Since January 1993, all vessels have been selected. Amendment 6 would not change the level of logbook coverage. Selection of all to report, however, would be in the regulations rather than by individual notification.

Oculina Bank

The Council is concerned that traditional fishery management measures, such as minimum size limits and quotas, may not be sufficient to protect fully the snapper-grouper resources. The Council considered establishing marine reserves in the EEZ off the southern Atlantic states but deferred action due to public opposition and lack of information on benefits derived from marine reserves. To evaluate the benefits of marine reserves, Amendment 6 proposes to prohibit fishing for snapper-grouper species in the Oculina Bank HAPC. The Oculina Bank is an established HAPC under the regulations governing coral and coral reefs of the Gulf of Mexico and South Atlantic (50 CFR part 638) in which fishing with bottom longlines, traps, pots, dredges, and bottom trawls is prohibited. The Oculina Bank HAPC is located offshore from Ft. Pierce to Sebastian Inlet, Florida, at depths between 30 and 75 fathoms. To aid enforcement of the area restrictions of no bottom fishing, the Council also proposes to prohibit fishing while at anchor in the Oculina Bank HAPC. NMFS is not aware of any fishing that would be conducted in the HAPC while anchored other than fishing for snapper-grouper species. Accordingly, this proposed rule would establish a rebuttable presumption that fishing while anchored constitutes fishing for snapper-grouper species. The Council believes this action will provide protection for overfished species in the management unit and will provide data on the benefits of marine reserves while minimizing adverse impacts upon user groups. This measure will "sunset" after 10 years if not reauthorized by the Council. NMFS is to report to the Council on the effectiveness of the HAPC as soon as data are available, but no later than the end of 2000.

Availability of Amendment 6

Additional background and rationale for the measures discussed above are contained in Amendment 6, the availability of which was announced in the **Federal Register** (59 FR 5562, February 7, 1994).

Additional Changes Proposed by NMFS

In § 646.1(b), NMFS proposes to clarify that the scope of the regulations in part 646 includes not only fish in the snapper-grouper fishery in or from the South Atlantic EEZ, but also, for data collection and quotas, such fish in adjoining state waters.

In § 646.2 in the definition of "Fish in the snapper-grouper fishery," NMFS proposes to change "Tilefish (Golden)" to "Golden tilefish" for ease of reference, and to change the family designation "Triggerfishes—Balistidae" to "Leatherjackets—Balistidae" in accordance with current scientific nomenclature.

Section 646.4(b)(2)(vi)(C) requires an applicant for a vessel permit authorizing the use of sea bass pots to sign a statement that allows an authorized officer reasonable access to the applicant's property to examine pots for compliance with the regulations. NMFS finds that this requirement is unnecessary. Accordingly, as a technical amendment, this proposed rule would remove § 641.4(b)(2)(vi)(C).

NMFS proposes to remove from the regulatory text specification of the statistical areas used for reporting catches to designees of the Science and Research Director. Such designees have the capability of recording catch areas with the required specificity. Accordingly, reference to the statistical areas in § 646.5(d) and depiction of the areas in Figure 2 to part 646 would be removed.

NMFS proposes to add a prohibition regarding false statements to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish. This addition would aid in enforcement of the regulations and conform the regulations to current standards.

Classification

This rule is not subject to review under E.O. 12866. The Council prepared an initial regulatory flexibility analysis (IRFA) as part of Amendment 6, which concludes that Amendment 6 may have a significant economic impact on a substantial number of small entities. The IRFA is summarized as follows. Virtually every permitted vessel in the snapper-grouper fishery represents a small entity, at least 20 percent of which could be affected by the amendment. The estimated potential loss of revenues to fishermen over a period of 3 years is $1.15 million, which may equate to individual reductions in annual gross revenues exceeding 5 percent. Additional analysis and discussion are contained in the IRFA, a copy of which is available (see **ADDRESSES**).

This rule involves a collection-of-information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under OMB Control Numbers 0648–0016. The public reporting burden for this collection of information is estimated to be 10 minutes.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the south Atlantic states. This determination was submitted for review by responsible state agencies under section 307 of the Coastal Zone Management Act.

An informal consultation under the Endangered Species Act was concluded for Amendment 6 on September 27, 1993. As a result of the informal consultation, the Regional Director determined that neither the fishing activities nor the management measures under this rule are likely to adversely affect endangered or threatened species or critical habitat.

The Council prepared an environmental assessment (EA) that discusses the impacts of the amendment's measures on the human environment as a result of this rule. The EA is available (see **ADDRESSES**) and comments on it are invited.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 23, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service

For the reasons set forth in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the South Atlantic EEZ, except that §§ 646.5 and 646.24 also apply to such fish in or from adjoining state waters.

§ 646.2 [Amended]

3. In § 646.2, in the definition for "Fish in the snapper-grouper fishery", the listing for "Tilefish (Golden)" under the family designation "Tilefishes—Malacanthidae" is revised to read "Golden tilefish" and the family designation "Triggerfishes—Balistidae" is revised to read "Leatherjackets—Balistidae"; and in the definition for "Sea bass pot", in paragraph (3) introductory text, the parenthetical phrase "(see Figure 3)" is revised to read "(see Figure 2)".

§ 646.4 [Amended]

4. In § 646.4, in paragraph (b)(2)(vi)(A), the word "and" is added after the concluding semicolon; in paragraph (b)(2)(vi)(B), the semicolon and concluding word "and" are removed and a period is added in their place; and paragraph (b)(2)(vi)(C) is removed.

5. In § 646.5, paragraphs (a)(1), (d) introductory text, and (d)(4) are revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) * * * (1) The owner or operator of a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, as required by § 646.4(a)(1); and

* * * * *

(d) *Charter vessel and headboat inventory.* A person described under paragraph (b) of this section who is not selected to report must provide the following information when interviewed by the Science and Research Director:

* * * * *

(4) Fishing areas;

* * * * *

6. In § 646.7, paragraph (kk) is revised; paragraph (mm) is redesignated as paragraph (ss); and new paragraphs (mm) through (rr) are added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(kk) Transfer at sea—

(1) Warsaw grouper or speckled hind, as specified in § 646.21(j)(6);

(2) Fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f); or

(3) Snowy grouper or golden tilefish, as specified in § 646.25(e).

* * * * *

(mm) Fish for fish in the snapper-grouper fishery in the Oculina Bank habitat area of particular concern (HAPC); retain such fish in or from the Oculina Bank HAPC; or fail to release immediately such fish taken in the Oculina Bank HAPC by hook-and-line gear, as specified in § 646.26(d)(2).

(nn) Possess a warsaw grouper or speckled hind in excess of the vessel trip limit, as specified in § 646.21 (j)(1) or (j)(2).

(oo) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a warsaw grouper or speckled hind, as specified in § 646.21(j)(3).

(pp) Exceed a commercial trip limit for snowy grouper or golden tilefish, as specified in § 646.25 (a) or (b).

(qq) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snowy grouper or golden tilefish in excess of an applicable trip limit, as specified in § 646.25(f).

(rr) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a fish in the snapper-grouper fishery.

* * * * *

7. Section 646.20 is revised to read as follows:

§ 646.20 Fishing years.

(a) The fishing year for wreckfish begins on April 16 and ends on April 15.

(b) The fishing year for fish in the snapper-grouper fishery other than wreckfish begins on January 1 and ends on December 31.

8. In § 646.21, a new paragraph (j) is added to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(j) *Warsaw grouper and speckled hind.* (1) The possession of warsaw grouper in or from the EEZ is limited to one per vessel per trip.

(2) The possession of speckled hind in or from the EEZ is limited to one per vessel per trip.

(3) A warsaw grouper or a speckled hind in or from the EEZ may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(4) A person who fishes in the EEZ may not combine a possession limit specified in paragraph (j)(1) or (j)(2) of this section with a bag or possession limit applicable to state waters.

(5) The operator of a vessel that fishes in the EEZ is responsible for the possession limit applicable to that vessel.

(6) A warsaw grouper or speckled hind taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; and a warsaw grouper or speckled hind may not be transferred at sea in the EEZ, regardless of where such fish was taken.

9. In § 646.23, a new paragraph (a)(4) is added and paragraph (b)(3) is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(4) Special limitations on possession of warsaw grouper and speckled hind apply. (See § 646.21(j).)

(b) * * *

(3) Groupers, excluding jewfish and Nassau grouper, and tilefishes, combined—5.

* * * * *

10. Section 646.24 is revised to read as follows:

§ 646.24 Commercial quotas.

Persons who are not subject to the bag limits are subject to the following quotas. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Wreckfish* (whole weight)—2 million pounds (907,185 kg), each fishing year.

(b) *Snowy grouper* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 540,314 pounds (245,082 kg), in the fishing year that commences January 1, 1994.

(2) 442,448 pounds (200,691 kg), in the fishing year that commences January 1, 1995.

(3) 344,508 pounds (156,266 kg), in the fishing year that commences January 1, 1996.

(c) *Golden tilefish* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 1,475,795 pounds (669,409 kg), in the fishing year that commences January 1, 1994.

(2) 1,238,818 pounds (561,918 kg), in the fishing year that commences January 1, 1995.

(3) 1,001,663 pounds (454,347 kg), in the fishing year that commences January 1, 1996.

§§ 646.27 and 646.25 [Redesignated as §§ 646.28 and 646.27]

11. Section 646.27 is redesignated as § 646.28; § 646.25 is redesignated as § 646.27; and a new § 646.25 is added to read as follows:

§ 646.25 Commercial trip limits.

Persons who are not subject to the bag limits who fish in the EEZ on a trip are subject to the following vessel trip limits. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Snowy grouper* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(b) is reached, 2,500 pounds (1,134 kg).

(2) After the fishing year quota specified in § 646.24(b) is reached, 300 pounds (136 kg).

(b) *Golden tilefish* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(c) is reached, 5,000 pounds (2,268 kg).

(2) After the fishing year quota specified in § 646.24(c) is reached, 300 pounds (136 kg).

(c) *Reduction of trip limits.* When a commercial quota specified in § 646.24 (b) or (c) is reached, or is projected to be reached, the Assistant Administrator will file a notice to that effect with the Office of the Federal Register. On and after the effective date of such notice, for the remainder of the fishing year, the appropriate trip limit applies.

(d) A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) A snowy grouper or golden tilefish taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; and a snowy grouper or golden tilefish may not be transferred at sea in the EEZ, regardless of where such snowy grouper or golden tilefish was taken.

(f) Snowy grouper or golden tilefish in excess of an applicable trip limit specified in paragraph (a) or (b) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

12. In § 646.26, a new paragraph (d) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(d) *Habitat area of particular concern (HAPC).* (1) The Oculina Bank, which is a coral HAPC under § 638.23(c) of this chapter, is bounded on the north by 27°53′ N. latitude, on the south by 27°30′ N. latitude, on the east by 79°56′ W. longitude, and on the west by 80°00′ W. longitude.

(2) No fishing for fish in the snapper-grouper fishery may be conducted in the Oculina Bank HAPC and such fish may not be retained in or from the Oculina Bank HAPC. Fish in the snapper-grouper fishery taken incidentally in the Oculina Bank HAPC by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water. It is a rebuttable presumption that fishing aboard a vessel that is anchored in the HAPC constitutes fishing for fish in the snapper-grouper fishery.

(3) See § 638.23(c) of this chapter for prohibitions on fishing with bottom longlines, traps, pots, dredges, and bottom trawls in the Oculina Bank HAPC.

13. Figure 2 to part 646 is removed and Figure 3 to part 646 is redesignated as Figure 2 to part 646.

[FR Doc. 94–4528 Filed 2–24–94; 10:50 am]
BILLING CODE 3510–22–P

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50 CFR Part 658

[I.D. 021494C]

Shrimp Fishery of the Gulf of Mexico; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene four public hearings on Draft Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. Amendment 7 proposes to: define overfishing for white shrimp; provide for a framework adjustment for the overfishing definitions for brown, white, and pink shrimp; revise the overfishing definition for royal red shrimp; and eliminate the total allowable level of foreign fishing to allow the domestic fleet to obtain optimum yield. Two public hearings were previously announced in the **Federal Register** for Corpus Christi, Texas and Galveston, Texas.

DATES: Written comments on the proposed amendment must be received by April 22, 1994. The hearings are scheduled from 6 p.m. to 8 p.m. as follows: Tuesday, March 15, 1994, in Bon Secour, Alabama; Wednesday, March 23, 1994, in Ft. Myers, Florida; Tuesday, March 29, 1994, in Houma, Louisiana; and Wednesday, March 30, 1994, in Biloxi, Mississippi.

ADDRESSES: Comments should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609 FAX: 813–225–7015. The hearings will be held at the following locations:

1. Bon Secour, Alabama—St. Peters Episcopal Church, 6270 Bon Secour Highway, Intersection of County Roads 10 & 49, Bon Secour, Alabama
2. Ft. Myers, Florida—Holiday Inn Central, 2431 Cleveland Avenue, Ft. Myers, Florida
3. Houma, Louisiana—Holiday Inn, 210 South Hollywood Road, Houma, Louisiana
4. Biloxi, Mississippi—Broadwater Beach Resort, 2110 Beach Boulevard, Biloxi, Mississippi

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, 813–228–2815.

SUPPLEMENTARY INFORMATION: These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) 5 working days prior to the applicable meeting.

Dated: February 24, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4615 Filed 2–28–94; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 59, No. 40

Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Proposed Information Collection Request Submitted to OMB

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States has submitted to the Office of Management and Budget (OMB) for approval a proposed version of a confidential disclosure form to be submitted by those individuals from the private sector who are members of the Administrative Conference. This form is a substitute for Standard Form 450 issued by the Office of Government Ethics that such members would otherwise be required to file.

DATES: Comments on this proposal should be received by March 31, 1994.

ADDRESSES: Comments should be sent to Gary J. Edles, General Counsel and Designated Agency Ethics Officer, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles, General Counsel and Designated Agency Ethics Officer, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037. Telephone: (202) 254–7020. A copy of the Administrative Conference's request for approval from OMB, including the proposed form, can be obtained from Susan Mack, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States (ACUS) is a federal agency that is also a federal advisory committee under the terms of the Federal Advisory Committee Act. Members of ACUS from the private sector are deemed to be special government employees within the meaning of 18 U.S.C. 202(a) and, therefore, are subject to confidential financial disclosure requirements of the Ethics in Government Act, 5 U.S.C. App. 107, and implementing regulations issued by the U.S. Office of Government Ethics (OGE), 5 CFR Part 2634, Subpart I. The proposed form is a substitute for OGE Standard Form 450 that Administrative Conference members otherwise would be required to file. It was approved by the Director of the Office of Government Ethics following a determination by the ACUS Chairman, pursuant to 5 CFR 2634.905 (a), that greater disclosure by public members is not required because the duties of a member make remote the possibility that a real or apparent conflict of interest will occur. As required by the Ethics in Government Act, 5 U.S.C. App. 107(a); Executive Order 12674, 201(d); and OGE regulations, 5 CFR 2634.901(d), this form is confidential and required to be withheld from the public. As the OGE regulations make clear, section 107(a) of the Ethics in Government Act leaves no discretion on this issue with the Administrative Conference.

Dated: February 22, 1994.

Gary J. Edles,

General Counsel.

[FR Doc. 94–4624 Filed 2–28–94; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–006N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meetings

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods' subcommittees on Seafood and HACCP will be held Thursday, March 10 and Friday, March 11, 1994, from 8:30 a.m. to 5 p.m. each day, at the Radisson Haus Inn Sunnyvale, 1085 East El Camino Real, Sunnyvale, California 94087, telephone (408) 247–0800.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing processes.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2151, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

Done at Washington, DC, on: February 23, 1994.

Donald L. White,

Acting Administrator.

[FR Doc. 94–4538 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Establishment of Fifteenmile Creek Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Fifteen Mile Creek Purchase Unit.

SUMMARY: On January 21, 1994, the Assistant Secretary, Natural Resources and Environment, created the Fifteenmile Creek Purchase Unit. This purchase unit comprises approximately 595 acres within Wasco County, Oregon. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Creation of this purchase unit was effective January 21, 1994.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; telephone: (202) 205–1248.

Dated: February 18, 1994.

Lyle Laverty,

Acting Deputy Chief.

Establishment of Fifteenmile Creek Purchase Unit Wasco County, Oregon

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949), the Fifteenmile Creek Purchase Unit is being created in Wasco County, Oregon. The lands within the purchase unit are described as follows:

Wasco County, Oregon, Willamette Meridian
T. 2 S., R. 12 E.
Section 19: Government lots 1 through 4, NE¼, E½NW¼, E½SW¼, W½SE¼
Section 20: NW¼NW¼

The area described contains 595 acres, more or less, and is adjacent to the Mt. Hood National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: January 21, 1994.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 94–4623 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–11–M

Trails End Integrated Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Trails End integrated project. The Forest Service is proposing to harvest timber on approximately 2000 acres of National Forest land in the northern portion of the Ridgway Ranger District. Forest health is the driving concern in this project proposal. Sugar maple decline and beech-scale necteria are causing growth loss and mortality. Treatments will consist of clearcuts, overstory removals, salvage, improvement cuts and thinnings. In addition to harvesting timber, the proposed action will consider approximately 120 acres of wildlife habitat improvement. These treatments will consist of vegetative planting to increase food availability, maintaining existing apple trees, improving turkey winter habitat, establishing beaver preferred food species, releasing thermal cover and shrubs plus protecting native trout streams.

DATES: Public scoping has been completed. A scoping letter was sent to all interested parties and land owners in or adjacent to the proposed project area. A notice was also published in the Ridgway Record on August 18, 1993. Additional comments will be accepted during the planning process and should reach us by March 31, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Leon F. Blashock, District Ranger, Ridgway Ranger District, RD #1 Box 28A Ridgway, Pa 15853.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Carl Leland, Interdisciplinary Team Leader, Ridgway Ranger District, Ridgway, Pa., phone 814–776–6172.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan was approved in March 1986. Of the total of 5427 acres in the project area, the plan allocated 400 acres of Management Area (MA) 6.1 and 5027 acres of MA 3.0. MA 6.1 emphasizes mature and overmature hardwood forests with the following primary purposes; (1) maintain or enhance scenic quality, (2) emphasize a variety of dispersed recreation activities in a semi-primitive motorized setting, and (3) emphasize wildlife species which require mature or overmature hardwood forests, such as turkey, bear and cavity nesting birds and mammals. MA 3.0 has the following primary purposes; (1) to provide a sustained yield of high-quality Allegheny hardwood sawtimber though even-aged management, (2) to provide age class or size class habitat diversity from seedlings through mature timber in a variety of different types, (3) emphasize deer and turkey in all timber types and (4) provide a roaded natural setting for all types of developed and dispersed recreation opportunities with an emphasis on motorized recreation activities.

A range of alternatives will be considered. One of these will be no planned activity for the proposed project area. Other alternatives to the proposed action will consider regeneration areas larger than the 40-acre maximum called for in the National Forest Management Act due to the health of some of the stands. Landscape corridor designations will be determined for the project area.

Leon F. Blashock, District Ranger, Ridgway Ranger District, Allegheny National Forest is the responsible official.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by June 1994. At that time the Environmental Protection Agency will publish a notice of availability of the document in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC, 435 U.S. 519 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by September 1994. The decision will be subject to appeal under 36 CFR part 215.

Dated: February 14, 1994.
Leon F. Blashock,
District Ranger.
[FR Doc. 94–4600 Filed 2–28–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Annual Capital Expenditures Survey
Form Number(s): ACE–1, ACE–2.
Agency Approval Number: none.
Type of Request: New collection.
Burden: 108,500 hours.
Number of Respondents: 45,000.
Avg Hours Per Response: 2 hours 25 minutes.
Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Much of the current data on investment are estimates for broad categories of capital expenditures with very little or no detail about the investing industries. Census is proposing a new annual data collection to provide detail on capital expenditures needed for estimating the national income and product accounts, estimating productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data. In 1991 we conducted a pilot survey under OMB number 0607–0737 to examine the basic survey design, forms and content, and survey processing system. We also conducted a response analysis designed to detect major errors in the forms and obtain respondents' reactions to individual survey items. We then collected 1992 data in a preliminary survey with an expanded panel in order to further test the processing system and survey design. We now plan to collect 1993 data in a full–scale survey. This request is for clearance of the full–scale survey. This request if for clearance of the full–scale survey which includes refinements from the previous efforts.
Affected Public: Businesses or other for–profit institutions, non–profit institutions, small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1994.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–4619 Filed 2–28–94; 8:45 am]
BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1993 Survey of Housing Starts, Sales, and Completions.
Form Number(s): SOC 900, 900.1, 900.1(L), 900A, 900A.1, 900A.1(L).
Agency Approval Number: 0607–0110.
Type of Request: Revision of a currently approved collection.
Burden: 4,849 hours.
Number of Respondents: 6,865.
Avg Hours Per Response: 12 minutes.
Needs and Uses: The Survey of Housing Starts, Sales, and completions, also known as the Survey of Construction (SOC), is conducted by Census to collect information on construction characteristics from a sample of home builders, real estate agents, and new home owners. The survey is conducted by mailing out a questionnaire to respondents. A Census interviewer calls the respondent a few days later to transcribe the information onto another form. During the period of 1995 to 1996, Census plans to gradually replace the transcription form with an automated format on laptop computer. The change will be transparent to respondents except that the interviewer will be able to perform interactive editing of the respondents' answers during the interview. The data gathered are used to publish estimates of the number of new residential housing units started, under construction and completed, and the number of new homes sold and for sale. Statistics from the SOC are used by government agencies and private companies to monitor and evaluate this sector of the economy.
Affected Public: Individuals or households, businesses or other for–profit institutions, small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1994.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–4620 Filed 2–28–94; 8:45 am]
BILLING CODE 3510–07–F

International Trade Administration

Intent to Revoke Countervailing Duty Orders and Terminate Suspended Investigations

AGENCY: International Trade Administration/Import Administration, Department of Commerce.
ACTION: Notice of intent to revoke countervailing duty orders and terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty orders and terminate the suspended countervailing duty investigations listed below. Domestic interested parties who object to these revocations or terminations must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: March 1, 1994.
FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke a

countervailing duty order or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the following countervailing duty orders and terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

	Effective date
Countervailing Duty Orders	
Argentina: Certain Textile Mill Products (C–357–404) Contact: Megan Waters (202) 482–1767 or 482–2786.	03/12/85 48 FR 9846
Chile: Standard Carnations (C–337–601) Contact: Cameron Cardozo (202) 482–6071 or 482–2786.	03/19/87 52 FR 8635
France: Brass Sheet and Strip (C–427–603) Contact: Karn Goff (202) 482–3691 or 482–2786.	03/06/87 52 FR 6996
Iran: Raw In-Shell Pistachios (C–507–501) Contact: Patricia W. Stroup (202) 482–0983 or 482–2786.	03/11/86 51 FR 8344
Israel: Oil Country Tubular Goods (C–508–601) Contact: Kelly Parkhill (202) 482–4126 or 482–2786.	03/06/87 52 FR 6999
New Zealand: Carbon Steel Wire Rod (C–614–504) Contact: Lorenza Olivas (202) 482–1775 or 482–2786.	03/07/86 51 FR 7971
Peru: Certain Apparel (C–333–402) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9871
Peru: Certain Textile Mill Products (C–333–402) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9871
Sri Lanka: Certain Apparel (C–542–401) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9826
Sri Lanka: Certain Textile Mill Products (C–542–401) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9826
Turkey: Welded Carbon Steel Pipes and Tubes (C–489–502) Contact: Norbert Gannon (202) 482–0394 or 482–2786.	03/07/86 51 FR 7984
Turkey: Welded Carbon Steel Line Pipe (C–489–502) Contact: Norbert Gannon (202) 482–0394 or 482–2786.	03/07/86 51 FR 7984
Suspended Countervailing Duty Investigations	
Colombia: Certain Textile Mill Products (C–301–401) Contact: Will Sjoberg (202) 482–0413 or 482–3793.	03/12/85 50 FR 9863
Thailand: Certain Textile Mill Products Except Noncontinuous Noncellulose Yarns (C–549–401) Contact: Lisa Yarbrough (202) 482–3208 or 482–3793.	03/12/85 50 FR 9832

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if domestic interested parties (defined in §§ 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) do not object to the Department's intent to revoke these orders or terminate these suspended investigations pursuant to this notice, or interested parties (defined in § 355.2(i) of the regulations) do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders or suspended investigations are no longer of interest to interested parties and shall proceed with the revocation(s) or termination(s).

Opportunity to Object

Not later than 30 days after the publication date of this notice, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders or terminate these suspended investigations. Any submission objecting to a revocation or termination must include the name and case number of the order or suspension agreement and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

A separate objection must be filed for each order or suspension agreement. In instances where two or more countervailing duty orders or suspension agreements share the same case number (*e.g.*, C–489–509 includes welded carbon steel pipes and tubes, and carbon steel line pipe, or C–333–402 includes certain apparel, and certain textile mill products), an objection must be submitted for each separate order or suspension agreement, as listed above.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–4786 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022394C]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting on March 16–17, 1994, from 8:30 a.m. until 5 p.m., at the Holiday Inn on the Beach, 365 East Beach Boulevard (Highway 182), Gulf Shores, AL; telephone: (205) 948–6191. Related committee meetings will be held on March 14 and 15, 1994.

On March 16, from 8:45 a.m. until 12 noon, the Council will receive public testimony on Amendment 9 to the Reef Fish Fishery Management Plan, on Amendment 2 to the Coral Fishery Management Plan, and on Amendment 7 to the Mackerel Fishery Management Plan (NOTE: Testimony cards must be turned in to staff before the start of public testimony). From 1:30 p.m. until 4 p.m., the Council will receive a report of the Reef Fish Management Committee and take final action on Reef Fish Amendment 9; and from 4 until 5 p.m., take action on Coral Amendment 2.

The Council will reconvene on March 17 to receive reports from 8:30 a.m. until 9 a.m. from the Mackerel Management Committee (including a report on Amendment 7); from 9 until 9:30 a.m., from the Habitat Protection Committee; from 9:30 until 9:45 a.m., from the Stone Crab Management Committee; and from 9:45 until 10 a.m., from the Scientific and Statistical Committee (SSC) Selection Committee. These items will be followed by Enforcement Reports, a discussion of PESCA (Fisheries Department of the Mexican Government) participation in Council Meetings, and the Director's Reports. This meeting will adjourn at 11:15 a.m.

Committees will convene at 1 p.m. on March 14, beginning with meetings of the SSC Selection Committee, the Mackerel Management Committee and a joint meeting between the Law

Enforcement Advisory Panel and the Reef Fish Management Committee; these meetings will recess at 5 p.m. Committees will reconvene at 8 a.m. on March 15, beginning with a meeting of the Reef Fish Management Committee, followed by meetings of the Coral Management Committee, the Habitat Protection Committee, and the Stone Crab Management Committee. The meetings will adjourn at 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by March 4, 1994.

Dated: February 23, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4541 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 022394D]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Squid, Mackerel and Butterfish Committee and Squid, Mackerel, and Butterfish Industry Advisory Subcommittee will hold a meeting on March 15, 1994, at the Ramada Inn (1776 Room), 76 Industrial Highway, Essington, PA; telephone: (215) 521–9600. The meeting will begin at 10 a.m.

The following topics will be discussed: History of the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP); timetable of development, goals and objectives of the current FMP; purpose and need for Amendment 5; description of biology and fisheries; review of current management strategy; problems identified during scoping meetings; and review and discussion of alternative management strategies.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: February 23, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4542 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–22–P

National Telecommunications and Information Administration

[Docket No. 940104–4004]

Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Extension of time for filing comments.

SUMMARY: On February 11, 1994, NTIA published a Notice of Inquiry and Request for Comments in the **Federal Register** entitled "Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Information." 59 FR 6842. Due to a Government Printing Office error, however, some copies of that February 11 issue of the **Federal Register** were misprinted, and instead contained the material scheduled for publication on February 14. We have been advised that a corrected replacement copy for the February 11 issue is available at no charge from the Government Printing Office.

DATES: To ensure that all interested parties have an opportunity to participate in this proceeding, the date for filing comments is hereby extended to March 30, 1994.

Authority: National Telecommunications and Information Administration Organization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 (1992) (to be codified at 47 U.S.C. 901 *et seq.*).

Dated: February 24, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–4618 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

February 23, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 19, 1994 between the Governments of the United States and the Federative Republic of Brazil, agreement was reached to extend the limit for Category 219 for a one-year period beginning on April 1, 1994 and extending through March 31, 1995. Also, the two governments agreed to provide special carryforward to the April 1, 1993 through March 31, 1994 period for Category 219.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to increase the current limit for Category 219.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 14381, published on March 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 23, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1993 and extends through March 31, 1994.

Effective on March 2, 1994, you are directed to amend the directive dated March 12, 1993 to increase the limit for Category 219 to 18,718,880 square meters [1], pursuant to the Memorandum of Understanding dated January 19, 1994 between the Governments of the United States and the Federative Republic of Brazil.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4553 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1993.

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

February 23, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 26, 1994 between the Governments of the United States and the Philippines, agreement was reached to amend and extend further the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, for two consecutive one-year periods beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 23, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated January 26, 1994 between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 2, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels not in a group	
669–P [2]	3,173,611 kilograms.
670–L [3]	5,405,405 kilograms.
Levels in Group I	
237	1,337,255 dozen.
239	8,068,604 kilograms.
331/631	4,330,455 dozen pairs.
333/334	209,483 dozen of which not more than 30,073 dozen shall be in Category 333.
335	136,352 dozen.
336	496,198 dozen.
338/339	1,819,393 dozen.
340/640	807,917 dozen.
341/641	729,042 dozen.
342/642	429,187 dozen.
345	127,810 dozen.
347/348	1,503,631 dozen.
350	113,147 dozen.
351/651	468,112 dozen.
352/652	1,838,400 dozen.
359–C/659–C [4]	636,000 kilograms.
361	1,429,219 numbers.
369–S [5]	323,968 kilograms.
431	162,429 dozen pairs.
433	3,198 dozen.
443	38,673 numbers.
445/446	26,415 dozen.
447	7,345 dozen.
611	4,289,201 square meters.
633	27,654 dozen.
634	343,118 dozen.
635	315,037 dozen.
636	1,293,122 dozen.
638/639	1,869,013 dozen.
643	660,549 numbers.
645/646	594,155 dozen.
647/648	907,277 dozen.
649	5,996,169 dozen.
650	80,983 dozen.
659–H [6]	1,065,516 kilograms.
847	706,737 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [7], 360, 362, 363, 369–O [8], 400–414 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [9], 665, 666, 669–O [10], 670–O [11], 831–846 and 850–859, as a group.	[1] 5,685,943 square meters equivalent.
Sublevel in Group II	
604	1,515,244 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[3] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[7] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[8] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[10] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[11] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated January 26, 1994 and the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4552 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange: Proposed Amendments to the New York Harbor Unleaded Regular Gasoline Futures Contract Relating to Grade and Quality Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has submitted for Commission's approval, under section 5a(a)(12) of the Commodity Exchange Act and Commission Regulation 1.41(b), proposed amendments to its New York Harbor unleaded regular gasoline (gasoline) futures contract. The proposed amendments revise the grade and quality specifications for deliverable gasoline to reflect recently adopted EPA requirements for reformulated gasoline. The amendments would apply only to newly listed contracts beginning with the December 1994 and January and February 1995 delivery months.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegate by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comments must be received on or before March 31, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the New York Mercantile Exchange New York Harbor unleaded regular gasoline futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Acting on a mandate set forth in the amended Clean Air Act of 1990, the U.S. Environmental Protection Agency (EPA) on December 15, 1993, promulgated new regulations requiring that gasoline sold in certain areas of the U.S. be "reformulated" to reduce vehicle emissions of toxic and ozone forming compounds. The delivery area of the NYMEX gasoline futures contract, the New York harbor area, is one of those areas in the U.S. that will be affected by the new EPA regulations.

To implement the reformulated gasoline regulations, the EPA has devised a two-step approach. The first step, which will go into effect on December 1, 1994, utilizes a simple model. This model requires manufacturers (i.e., refiners, blenders, and importers) to certify that their product meets applicable emission reduction standards with respect to a gasoline's oxygen, benzene, heavy metal and aromatic content, and Reid Vapor Pressure (RVP).[1] In this respect, the EPA has established two (2) methods by which compliance with the new requirements can be achieved. Compliance with the new gasoline standards can be met by using either a "per gallon" or an "averaging" method. The former method requires the manufacturer of gasoline to ensure that every gallon of product meets a set of standards for each gallon. The latter method, on the other hand, sets a range for each standard within which a manufacturer's product must fall as long as the manufacturer's average over a given period meets specified standards.

Specifically, the new EPA regulations stipulate that, for gasoline to be certified as reformulated under the "per-gallon" method, it must satisfy the following requirements: (1) RVP—8.1 psi maximum from May 1 through September 15; (2) oxygen—2.0% by weight minimum year round; and (3) Benzene—1.0% by volume maximum year round. Under the "averaging" method, the specifications are: (1) RVP—8.3 psi maximum on any gallon from May 1 through September 15, and 8.0 psi maximum on average for the same period; (2) oxygen—1.5% by weight minimum year round on any gallon, and 2.1% by weight minimum

[1] The second step will utilize a complex model and supplant the simple model for certifying compliance with the new gasoline standards as promulgated by the EPA. It will go into effect on January 1, 1998.

on an annual average, with a 3.5% by weight maximum; and (3) benzene—1.3% by volume maximum year round on any gallon and 0.95% by volume maximum on an annual average basis.

The new EPA regulations also require each manufacturer or importer of gasoline to designate its product as reformulated or conventional. This designation is to be accomplished with the use of batch numbers and EPA-assigned facility registration numbers. Finally, to further enforce these new standards, the EPA has established enforcement test tolerance values of 0.3 psi, 0.3 percent weight, and 0.21 percent volume for RVP, oxygen and benzene, respectively.

Current NYMEX provisions stipulate that during the period April 1 through April 30 deliverable gasoline must have an RVP not exceeding 9.0 psi. If delivery is made during the period May 1 through September 15, then the RVP must comply with the applicable state (*i.e.*, New York or New Jersey) law requirements at the time of delivery. Existing provisions of the NYMEX gasoline futures contract do not contain any specifications for benzene or oxygen.

To comply with the new EPA regulations noted above, the Exchange has decided to adopt the "averaging" method of compliance noted above. Accordingly, the NYMEX has revised specifications for RVP and has adopted specifications for oxygen and benzene. Specifically, the proposed amendments are as follows:

Reid Vapor Pressure: Beginning December 1, 1994, gasoline delivered during the period from May 1 through September 15, shall not exceed 8.3 psi (EPA Test Method) and from September 16 through March 31 shall comply with the Colonial Pipeline Company specifications then in effect for the time and place of delivery. Provided that, deliveries on the September contract originally nominated for delivery on or before September 15 shall not exceed 8.3 psi, regardless of the time of actual delivery.

Oxygenation Level: Beginning December 1, 1994, gasoline delivered during the period May 1 through September 30 shall contain minimum 1.5% oxygen by weight; gasoline delivered during the period November 1 through the last day of February shall contain minimum 2.7% oxygen by weight. Any oxygenates included in the product shall conform to the permissible oxygenate qualities contained in the Colonial Pipeline Company specifications for Northern Grade 47 unleaded regular gasoline.

Benzene: Beginning December 1, 1994, gasoline delivered shall contain maximum 1.3% benzene by volume.

The proposed amendments also would incorporate into the NYMEX rules the EPA enforcement test tolerance values noted above, and require the seller making delivery on the futures contract to provide a written statement noting that, to his knowledge his deliverable product is reformulated gasoline, as defined by EPA.

According to the NYMEX, the subject proposed amendments are necessary because, ". . . [d]ata suggests that approximately 30% of total U.S. gasoline will be RFG [i.e., reformulated gasoline] starting in December 1994, and, further, the vast majority (around 75%) of the New York Harbor market will be RFG. RFG in the New York Harbor will conform to EPA enforcement regulations for Simple Model RFG in the Northeast . . . ." The Exchange further maintains that it has adopted the "averaging" instead of the "per-gallon" standards as the method of compliance with the new EPA regulations for several reasons:

First, it is not known at this time how many refiners, blenders and importers will be "averaging" and how many will be on the "per-gallon" method. Therefore, the most conservative approach for the Exchange is to have standards that can be met under all circumstances, regardless of what compliance methodology manufacturers select. Because "averaged" gasoline is less restrictive than "per-gallon" gasoline, "per-gallon" gasoline would be deliverable against the Exchange's "averaging" contract. Second, Colonial Pipeline has indicated to the Exchange informally that it intends to introduce fungible product streams reflecting RFG for delivery to the Northeast market that meets the "averaging" requirements. Third, EPA has indicated that enforcement downstream of the manufacturer will consist of determining that the gasoline meets the minimum and maximum limits under the "averaging" standards.

The NYMEX is proposing to apply the suspect amendments, at this time, only to three delivery months: December 1994 through February 1995. These months are currently not listed for trading.

The Commission requests comment on the proposed amendments to the NYMEX gasoline futures contract. The Commission is specifically requesting comments on the effect of the proposed amendments on the economically deliverable supply of gasoline available for the contract as well as the effect, if any, on the futures pricing basis.

Copies of the amended terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 22, 1994.

Blake Imel,

Acting Director.

[FR Doc. 94–4575 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Under OMB Review

ACTION: Notice, Amendment.

The Department of Defense published on Thursday, February 10, 1994, (59 FR 6243), the Information Collection Proposal entitled "Annual Health Care Survey for DoD Beneficiaries." This amends "Type of Request" to add "EXPEDITED PROCESSING—Approval Date Requested: 30 days following publication in the Federal Register."

All other information remains unchanged.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4596 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 1, 1994;

Tuesday, March 8, 1994; Tuesday, March 15, 1994; Tuesday, March 22, 1994; and Tuesday, March 29, 1994, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person a privileged of confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4597 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Mobility Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 22–24 March 1994 at Robins AFB, GA and Charleston AFB, SC from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–4599 Filed 2–28–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Supportability Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 22–24 March 1994 at The Pentagon, Washington, DC; HQ ACC, Langley AFB, VA and HQ AFMC & HQ ASC Wright-Patterson AFB, OH from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4602 Filed 2–28–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning HIV Negative-Strand Transcripts

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial Number 08/126,295 entitled "HIV Negative-Strand Transcripts" filed September 24, 1993 for licensing. This patent has been assigned to the United States government as represented by the Secretary of the Army.

ADDRESSES: Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065.

SUPPLEMENTARY INFORMATION: The invention relates to HIV transcripts of negative-strand polarity in HIV-infected cells, the cloning of cDNAs derived from negative-strand transcripts, and to genetically engineered host cells which express the negative-strand encoded proteins. The invention also relates to HIV sequences that function to promote transcription of the negative-strand RNAs and the demonstration of these RNAs. The identification of negative-strand polarity extends the coding capacity of HIV and suggest a role for antisense regulation of the HIV viral lytic cycle. The negative-strand transcripts and their encoded protein products may be used as research reagents, diagnostic products, or therapeutic products. Regulation of negative-strand transcription may be used in therapeutic intervention, or as a target for drug development.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–4603 Filed 2–28–94; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New Computer Matching Program Between the United States Department of Agriculture and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the United States Department of Agriculture (USDA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby

giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between USDA and DoD that their records are being matched by computer. The record subjects are USDA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under the Food Stamp Program administered by USDA so as to permit USDA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective March 31, 1994, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USDA has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that USDA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between USDA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the USDA, 14th and Independence Avenue, S.W., Room 4094–S, Washington, DC 20250. Telephone (202) 720–1168.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 15, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program between the United States Department of Agriculture and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the United States Department of Agriculture (USDA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USDA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, USDA will provide and disclose certain food stamp debtor records to DMDC so that DMDC can identify and locate any Federal personnel, employed or retired from service with the Federal Government, who may owe delinquent debts to the Federal Government for overissued Food Stamp Program benefits. USDA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act when voluntary payment is not forthcoming. These collection efforts will include requests by USDA of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 7 U.S.C. 2022 (Collection and Disposition of Claims); 10 U.S.C. 136, Assistant Secretaries of Defense; Section 206 of Executive Order No. 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees (OPM); 7 CFR part 3, Debt Management (Agriculture); 7 CFR 273.18 (Claims against households).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: USDA will use records from the system of records published as Claims Against Food Stamp Recipients—USDA FNS–3, last published at 56 FR 50552 on October 7, 1991, and amended at 58 FR 48633 on September 17, 1993.

DoD will use the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base', last published in the **Federal Register** at 58 FR 10875 on February 22, 1993.

E. *Description of computer matching program:* USDA, as the source, will provide DMDC with a magnetic tape of individuals delinquent in repayment of overissued food stamp benefits. The tape will contain data elements of name, SSN, and internal account number on a total of 200,000 delinquent debtors. Upon receipt of the computer tape file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using all nine digits of the SSN of the file against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement between DoD, OPM, OMB and the Treasury Department, consists of employment records of approximately 10 million Federal employees. Matching records, 'hits' based on the SSN, will produce the member's name, service or agency,

category of employee, salary or benefit amounts, and current work or home address. The hits will be furnished to USDA. USDA will be responsible for verifying and determining if the data of the DMDC reply tape file are consistent with USDA's source file and to resolve any discrepancies or inconsistencies on an individual basis. USDA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USDA and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–4598 Filed 2–28–94; 8:45 am]
BILLING CODE 5000–04–F

Department of the Navy

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of Additional Family Housing at the Naval Submarine Base, Bangor, Silverdale, WA

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of Navy announces the intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of construction of 352 Family Housing units at the Naval Submarine Base (SUBASE) Bangor, Silverdale, Washington. SUBASE is located on a 7,150 acre federal site approximately ten miles north of the City of Bremerton.

In accordance with the recommendations of the 1993 Base Closure and Realignment Commission (BRAC), the Navy plans to construct approximately 352 multi-family housing units on approximately 75 acres of Government-owned land at SUBASE, Bangor. These additional units are required to house military families connected to the BRAC relocation of military units to Kitsap County, Washington. The Navy family housing mission is to provide quality neighborhoods which meet the needs of personnel, enhance morale and retention, and support the operational readiness of the Navy.

Alternative siting on SUBASE, Bangor, including the no action alternative, will be analyzed to determine the direct and indirect environmental effects of each alternative. Cumulative impacts will be analyzed taking into account other past and future projects at the SUBASE. Additionally, site specific mitigation measures for each alternative will be identified and their effectiveness evaluated.

A public scoping meeting, to determine the scope of issues to be addressed, will be held on March 24, 1994, at 7 p.m. at the Central Kitsap High School auditorium, Silverdale, Washington. At this public meeting, a brief presentation of the proposed action will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. Federal, state, and local agencies and interested individuals are encouraged to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of oral comments at the public meeting. To be most helpful scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements should be mailed no later than April 14, 1994, to: Commanding Officer, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 3505 NW., Anderson Hill Road, Silverdale, Washington 98383–9130 (Attn: Mr. Joe DiVittorio, Code 232JD), telephone (206) 396–5976.

Dated: February 24, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–4611 Filed 2–28–94; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.262]

Programs to Encourage Minority Students to Become Teachers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994.

Purpose of Program: To improve recruitment and training opportunities in education for minority teachers in elementary and secondary schools; to increase the number of minority teachers, including language minority teachers, in elementary and secondary schools; and to identify and encourage minority students in the 7th through 12th grades to aspire to, and to prepare for, careers in elementary and secondary school teaching. The program is comprised of two components: the Teacher Partnerships Program and the Teacher Placement Program.

Eligible Applicants: Partnership grants are awarded to partnerships between: (1) One or more institutions of higher education which have a demonstrated record and speciel expertise in carrying out the purposes of this program and (2) one or more local educational agencies; a State educational agency or a State higher education agency; or community-based organizations. Placement grants are awarded to institutions of higher education that have schools or departments of education.

Deadline for Transmittal of Applications: April 15, 1994.

Deadline for Intergovernmental Review: June 14, 1994.

Applications Available: March 2, 1994.

Available Funds: $490,800.

Estimated Range of Awards: $200,000—$250,000.

Estimated Average Size of Awards: $225,000.

Estimated Number of Awards: Two.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months, comprising 12-month budget periods.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Supplementary Information: The Federal share for carrying out the purposes of the Teacher Partnerships Program and the Teacher Placement Program shall be 50 percent. In any fiscal year, the Secretary may, based upon evaluation and monitoring results of projects under the Teacher Placement Program, increase the Federal share of a grant under this program for the succeeding fiscal year to 75 percent if the Secretary determines that there is demonstrated success in the operation of the project.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 20 U.S.C. 1112b(c) and EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including an additional 15 points. The Secretary distributes the additional 15 points as follows:

Meeting the purposes of the authorizing statute (34 CFR 75.210 (b)). Ten points are added to this criterion for a possible total of 40 points.

Evaluation plan (34 CFR 75.210 (6)). Five points are added to this criterion for a possible total of 10 points.

For Applications or Information Contact: Janice Wilcox, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 260–3207. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1112, 1112a-1112e.

Dated: February 23, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–4543 Filed 2–28–94; 8:45 am]

BILLING CODE 4000-01-P

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: March 24 and 25, 1994, 9 a.m. to 5 p.m.

ADDRESSES: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036, Telephone: 202–265–1600.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Washington, DC 20202–7579, (202) 205–9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986, Public Law 99–498, (20 U.S.C. 1221e).

The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for March 24 includes presentations on Goals 2000 and on the School to Work Transition Act. The Council will give final approval to its Fiscal Year 1993 Annual Report. On March 25, the meeting will discuss the Reading Recovery program and other pending issues in educational research. The final agenda will be available from the Council office on March 21.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., suite 4076, Washington, DC 20202–7579, from 9 a.m. to 5 p.m., Monday through Friday.

Dated: February 23, 1994.

Mary Grace Lucier,

Executive Director.

[FR Doc. 94–4550 Filed 2–28–94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award to State of Kentucky

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance with the State of Kentucky.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (C), and in support of the Metairie Site Office (MSO), it intends to make a Non-Competitive Financial Assistance Award to the State of Kentucky.

SCOPE: The Department of Energy has determined that the relative complexity of the oil and gas regulations in the State of Kentucky are not thoroughly understood by all local operators. It is assumed that a clearer, simpler guidance document could help these operators comply with environmental regulations more cost effectively.

In accordance with 10 CFR 600, 7(b)(2)(i) criteria (C), a noncompetitive Financial Assistance Award to the State of Kentucky, Division of Oil and Gas has been justified. This effort must be completed with the validation of the State agencies responsible for the regulations summarized in the desired guidance document. The Department of Energy believes that no other organization can guarantee this required outcome other than the relevant State offices themselves. The effort is therefore considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a competitive solicitation.

Department of Energy funding for this research is estimated to be approximately $75,000 for the 12 month duration of the project. These funds shall be used to pay for the reasonable cost of staff, consultants, experts, travel, administrative support personnel, printing and mailing.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn: John R. Owen, Contract Specialist, Telephone: (412) 892–4879.

Issued in Washington, DC on February 15, 1994.

Debra E. Ball,

Chief, Administrative Support Group, Acquisition and Assistance Division.

[FR Doc. 94–4630 Filed 2–28–94; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance to Manufacturing Sciences Corp.

AGENCY: US Department of Energy (DOE), Rocky Flats Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The US Department of Energy, Rocky Flats Office, gives notice of its plan to award a noncompetitive Cooperative Agreement to Manufacturing Sciences Corporation (MSC) pursuant to the DOE Financial Assistance Rules at 10 CFR 600.7(b)(2)(i)(H). This Cooperative Agreement is for the initial stages of a National Conversion Pilot Project, approved by the Secretary on December 15, 1993, for the recycling of radioactively contaminated DOE scrap metals at Rocky Flats. Funding of approximately $1 million for Stage I will be provided by DOE Office of Facility Transition and Management (EM–60). The Stage II needs are estimated to be $21 million per year for up to two years and will be provided from funds available for economic conversion. Stage III will take up to three years to complete and the cost will be negotiated with a private firm selected through full and open competition. MSC will not be precluded from competing for Stage III as a result of their work on stages I and II.

SUPPLEMENTARY INFORMATION: The mission of the National Conversion Pilot Project is to convert former Defense facilities and hire former Defense production workers, to recycle radioactively contaminated DOE scrap metals. The Pilot Project has the following objectives: to develop a process to convert DOE surplus Defense facilities to alternative uses; to team stakeholders and regulators with DOE to resolve conversion issues; to create an economically competitive environment for conversion; to make immediate tangible progress in cleanup activities; to reduce DOE storage and waste management costs; to protect the environment through recycling; and to use potentially displaced workers and surplus facilities.

FOR FURTHER INFORMATION CONTACT: Richard B. Wallace, Contract Specialist, US Department of Energy, Rocky Flats Office, Acquisition and Financial Assistance Team, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition No. DE–FC34–94RF00733.

Issued at Golden, CO, February 14, 1994.

Mark N. Silverman,

Manager.

[FR Doc. 94–4631 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before March 31, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–544.
3. 1902–0153.
4. Gas Pipeline Rates: Rate Change (Formal).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 40 respondents.
10. 1 response.
11. 4,582.5 hours per response.
12. 183,300 hours.
13. The filing is required by the Commission to determine whether or not jurisdictional natural gas rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential." If after preliminary review the rate filings are set for formal hearing, the data under FERC–544 are collected.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–546.
3. 1902–0155.
4. Certificated Rate Filings: Gas Pipeline Rates.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 100 respondents.
10. 4 responses.
11. 40 hours per response.
12. 163,000 hours.
13. Data collected in tariff filings to implement certificated new/revised service for the transportation and/or sale of natural gas by jurisdictional pipelines. The data are used by the Commision to establish a basis for determining just and reasonable rates that should be charged.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, February 18, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–4632 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11160–001 New York]

GSA International Corp.; Surrender of Preliminary Permit

February 23, 1994.

Take notice that GSA International Corporation, permittee for the Ancram Project No. 11160, located on the Roeliff Jansen Kill Creek, Columbia County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 27, 1991, and would have expired on August 31, 1994. The permittee states that the project would be economically infeasible.

The permittee filed the request on January 28, 1994, and the preliminary permit for Project No. 11160 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4636 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–232–000]

ANR Pipeline Company and Colorado Interstate Gas Company; Application

February 23, 1994.

Take notice that on February 16, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 and Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a joint application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation and exchange agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and CIG state that they propose to abandon the Transportation and Exchange Agreement (Agreement) dated July 20, 1979, as amended, constituting ANR's Rate Schedule X–86, Original Volume No. 2 and CIG's Rate Schedule X–35, Original Volume No. 2. It is stated that the Agreement provides for transportation by CIG and redelivery to ANR of equivalent volumes of natural gas which ANR delivers to CIG's system, and the transportation by ANR and redelivery to CIG of equivalent volumes of natural gas which CIG delivers to ANR's system. ANR and CIG state that no facilities will be abandoned; the facilities used for the transportation and exchange may continue to be used by ANR and CIG for open access transportation.

It is further stated that pursuant to Article XVII of the Agreement, the term of the Agreement was effective as of the date of the Agreement for a term ending 20 years from the date of commencement of deliveries of gas by either Party and thereafter as long as either Party is delivering gas to the other Party for transportation. However, ANR and CIG submit that since both have open access transportation certificates and the Commission has approved the restructuring of services on both pipelines, there is no longer a requirement for the Agreement. Consequently, ANR and CIG have agreed to terminate the Agreement.

Upon the grant of authorization requested herein, CIG states that it will file pursuant to Section 154 of the Regulations to cancel Rate Schedule X–35 to its FERC Gas Tariff, Original Volume No. 2. Likewise, ANR states that it will file to cancel Rate Schedule X–86 to its FERC Gas Tariff, Original Volume No. 2.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 1994, file with the Federal Energy Regulatory Commission, Washington, the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy and Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR and CIG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 94–4643 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2306]

Citizens Utilities Companies; Public Scoping Meetings

February 23, 1994.

The Federal Energy Regulatory Commission (Commission) has received an application for relicense of the existing Clyde River Project No. 2306. This project is located on the Clyde River in northern Vermont, near the town of Newport. The project is operated by Citizens Utilities Companies.

Upon review of the application, supplemental filings, and intervenor submittals, the Commission staff has concluded that they will prepare an Environmental Assessment (EA) that describes and evaluates the probable impacts of the applicant's proposal and alternatives for the project.

One element of the EA process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EA;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EA; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EA.

Scoping Meetings

Commission staff will conduct two scoping meetings for the Clyde River Project. All interested individuals, organizations, and agencies are invited to attend the meetings and help staff identify the scope of environmental issues that should and should not be analyzed in the Clyde River Project EA.

The first scoping meeting for the Clyde River Project will be conducted on March 9, 1994, from 7 p.m. to 10

p.m. in the auditorium of the North Country Union High School on Veterans Avenue in Newport, Vermont. The second scoping meeting will be conducted on March 10, 1994, from 7 p.m. to 10 p.m. in the auditorium of the Grand Isle School located at 224 U.S. Route 2, in Grand Isle, Vermont.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Clyde River Project. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meeting. Speaking time allowed for individuals will be determined before the meetings, based on the number of persons wishing to speak and the approximate amount of time available for the sessions, but all speakers will be provided at least five minutes to present their views.

Objectives of the Scoping Meetings

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EA;
- Identify resource issues that are of lessor importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EA.

Information Requested

Federal and state resources agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the project. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the project;
- Information and data that helps staff identify or evaluate significant environmental issues; and
- Evidence that would support a conclusion that the project does not or would not contribute to adverse cumulative effects on resources within the river basin.

Scoping information and associated comments should be submitted to the Commission no later than April 1, 1994. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page: Clyde River Hydroelectric Project, FERC No. 2306.

All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the project's service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4638 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–28–000]

CMS Generation S.A.; Application for Commission Determination of Exempt Wholesale Generator Status

February 23, 1994.

On February 15, 1994, CMS Generation S.A., Av. Roque Saenz Peña 1116, piso 9 (1035), Buenos Aires, Argentina, c/o Los Nihuiles S.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CMS Generation S.A. is a subsidiary of CMS Enterprises Company, which is a wholly-owned subsidiary of CMS Energy Corporation. Through affiliates, CMS Generation S.A. will participate in a bid to hold and operate three hydroelectric generating facilities with a combined capacity of 265.2 MW on the Atuel River, 350 kilometers south of the City of Mendoza in Argentina.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before March 14, 1994 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4640 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–5–016]

Columbia Gas Transmission Corp.; Corrected Compliance Filing

February 23, 1994.

Take notice that on February 18, 1994, Columbia Gas Transmission Corporation (Columbia) filed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, as listed on Attachment A. Such tariff sheets include corrected tariff sheets to become effective November 1, 1993 and January 1, 1994.

Columbia states that this filing is being made to correct an error in the demand determinants included in the Second Revised Compliance Filing and the Third Revised Compliance Filing in these proceedings. Columbia states that the corrected tariff sheets eliminate a "double-counting" of certain demand and commodity determinants associated with the conversion of the X–70 rate schedule to transportation service under a part 284 service agreement. In light of this correction, Columbia is withdrawing the sheets listed on Attachment B and pending in Docket No. RS92–5–013.

Columbia states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers, and interested state Commissions.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before March 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Attachment A

Proposed to Be Effective November 1, 1993

Second Sub Original Sheet No. 25
Second Sub Original Sheet No. 26
Second Sub Original Sheet No. 27
Second Sub Original Sheet No. 28
Second Sub Original Sheet No. 30A
Second Sub Original Sheet No. 30B
Second Sub Original Sheet No. 30C
Second Sub Original Sheet No. 30D

Proposed to Be Effective January 1, 1994

Sub Third Revised Sheet No. 25
Sub Third Revised Sheet No. 26
Sub Third Revised Sheet No. 27
Sub Third Revised Sheet No. 28
Sub Second Revised Sheet No. 30A
Sub Second Revised Sheet No. 30B
Sub Second Revised Sheet No. 30C
Sub Second Revised Sheet No. 30D

Attachment B

Withdraw Sheets Proposed to Be Effective November 1, 1993

Substitute Original Sheet No. 25
Substitute Original Sheet No. 26
Substitute Original Sheet No. 27
Substitute Original Sheet No. 28
Substitute Original Sheet No. 30A
Substitute Original Sheet No. 30B
Substitute Original Sheet No. 30C
Substitute Original Sheet No. 30D

Withdraw Sheets Proposed to Be Effective January 1, 1994

Third Revised Sheet No. 25
Third Revised Sheet No. 26
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Second Revised Sheet No. 30A
Second Revised Sheet No. 30B
Second Revised Sheet No. 30C
Second Revised Sheet No. 30D

[FR Doc. 94–4634 Filed 2–28–94; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. ER94–967–000]

Delmarva Power & Light Company; Filing

February 17, 1994.

Take notice that on February 10, 1994, Delmarva Power & Light Company (DPL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between DPL and New York State Electric & Gas Corporation (NYSEG) dated February 4, 1994.

DPL states that the Agreement sets for the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to NYSEG. DPL requests that the Commission waive its standard notice period and allow this Agreement to become effective on March 1, 1994.

DPL states that a copy of this filing has been sent to NYSEG and will be furnished to the New York Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4641 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–15–000]

MDU Resources Group, Inc.; Application

February 23, 1994.

Take notice that on February 14, 1994, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of an aggregate of not to exceed $60,000,000 principal amount of one or more series of its First Mortgage Bonds and/or of secured medium term notes and an exemption from competitive bidding.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4639 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–138–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 23, 1994

Take notice that on February 18, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to become effective April 1, 1994:

First Revised Sheet Number 103
Second Revised Sheet Number 157
First Revised Sheet No. 158
First Revised Sheet No. 236
First Revised Sheet Number 262
First Revised Sheet Number 262A
First Revised Sheet Number 431
First Revised Sheet Number 500
Second Revised Sheet Number 501
First Revised Sheet Number 502

Northern Border states that the purpose of this filing is to: (i) Require Northern Border to refund or credit to Shippers overpayment amounts and associated carrying charges at an earlier date; (ii) revise the Minimum Revenue Credit (MRC) calculation; (iii) provide for a mileage based determination of any Billing Adjustment for Failure to Accept Gas and Tender Deficiencies; (iv) provide Shippers the option to purchase Company Use Gas and Lost or Otherwise Unaccounted for Gas; (v) revise Article 4 of the IT–1 Transportation Agreement; and (vi) revise the index of firm Shippers. The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 2, 1994. Protests will be considered but

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4637 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–59–001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 23, 1994.

Take notice that on February 18, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that on January 5, 1994, Northern filed Sixth Revised Sheet No. 53 to establish the Index Price for December 1993. On January 14, 1994, Northern filed 2 Substitute Fifth Revised Sheet No. 53 in Docket No. RP94–64–002 to revise the rates for Rate Schedule GS–T due to revisions of certain aspects of Northern's quarterly transition cost components.

Northern states that due to the timing of these filings, Sixth Revised Sheet No. 53 is the currently effective sheet for the period January 1, 1994, through January 31, 1994. However, this sheet does not reflect the updated GS–T transition cost components as filed by Northern in 2 Substitute Fifth Revised Sheet No. 53. Therefore, Northern hereby files Substitute Sixth Revised Sheet No. 53 to appropriately reflect the December 1993 Index Price of $1.9976 and the currently effective transition cost components for Rate Schedule GS–T effective January 1, 1994.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 2, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Copies of the filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4635 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–230–000]

Northwest Pipeline Corporation; Application

February 23, 1994.

Take notice that on February 16, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application with the Commission in Docket No. CP94–230–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to (1) install valves and piping at its Sumner compressor station in Pierce County, Washington, to accommodate a mobile compressor unit and to (2) temporarily install and operate two existing mobile compressor units with pre-granted abandonment at the Snohomish compressor station in Snohomish County, Washington, and the Sumner compressor station, all as more fully set forth in the application which is open to the public for inspection.

Northwest proposes to temporarily add a 1,343 H.P. mobile compressor unit at both of the Sumner and Snohomish compressor stations for operation during the summers of 1994 and 1995. Northwest also proposes to permanently install additional piping and valves at the Sumner compressor station in order to accommodate a mobile compressor unit. Northwest proposes to remove the mobile compressor units at the end of each summer season to make them available for their ongoing purpose of temporarily replacing out-of-service compressor units as needed at other locations on Northwest's system during peak service periods. Northwest estimates that it would spend approximately $100,000 to install the piping and valves at the Sumner compressor station and $5,000 for each of the temporary connections and removals of the mobile compressor units.

Northwest states that the proposed temporary horsepower additions at the Sumner and Snohomish compressor stations would increase the capacity through these two compressor stations by about 24 Mmcf per day under an off-peak south-flow design scenario. Until Northwest completes the previously authorized [1] permanent upgrades at these compressor stations, availability of the mobile units would enhance Northwest's operational capability to accommodate receipt point flexibility to switch between domestic and Canadian gas supplies under existing transportation agreements serving markets south of these compressor stations.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4642 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] *See* order issued in Docket No. CP93–437–000 at 64 FERC ¶62,175 (1993).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4843–5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as Amended by the Superfund Amendments and Reauthorization Act—Idaho Pole Co. Site, Bozeman, MT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h) concerning the Idaho Pole Company site near Bozeman, Montana. The proposed administrative settlement requires Idaho Pole Company (Washington Corporation); Idaho Pole Company (Co-Partnership); Burlington Northern Railroad Company; L.D. McFarland Company, Ltd.; McFarland Cascade Holdings, Inc.; Brendon Corry McFarland; and Gregory D. McFarland ("Settling Parties") to pay $2,193,578.00 to the U.S. Environmental Protection Agency ("EPA"). The settlement resolves the liability of Settling Parties to the United States under Section 107 of CERCLA for reimbursement of response costs incurred at the Idaho Pole Company site pursuant to CERCLA through September 30, 1993.

DATES: Opportunity for comment: Comments must be submitted on or before March 31, 1994.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Montana Office Record Center, Federal Building, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096. Comments should be addressed to Jim Harris, Remedial Project Manager, at the above address, and should reference the Idaho Pole Company site.

FOR FURTHER INFORMATION CONTACT: Jim Harris at (406) 449–5720.

It is so agreed:

Dated: February 9, 1994.

William Yellowtail,

Regional Administrator.

[FR Doc. 94–4650 Filed 2–28–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4843–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete Revere Textile Prints Corporation Superfund Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Revere Textile Prints Corporation Superfund Site (the Revere Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended. EPA and the State of Connecticut have determined that all appropriate CERCLA actions have been implemented and that no further CERCLA cleanup is appropriate. Moreover, EPA and the State have determined that removal activities conducted at the Revere Site to date have been protective of public health, welfare, and the environment with regard to CERCLA

DATES: Comments concerning this site may be submitted on or before March 31, 1994.

ADDRESSES: Comments may be mailed to: Eric van Gestel, Remedial Project Manager, HEC CAN 6, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, MA 02203.

Comprehensive information on this site is available through the EPA Region I public docket, which is located at EPA's Region I office and is available for viewing by appointment only from 10 a.m. to 1 p.m. and from 2 p.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments of copies of the background information from the Regional public docket should be directed to the EPA Region I docket office.

The address for the Regional docket office is: Ms. Linda D'Amore, Docket Clerk, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building—RCG, Boston, MA 02203, (617) 565–3351.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Revere Site information repository located with: Clair French, Sterling Public Library, 1110 Plainfield Pike, Oneco, CT 06373, (203) 564–2692.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA Region I announces its intent to delete the Revere Textile Prints Corporation Superfund Site, Sterling, Connecticut, from the NPL, which constitutes Appendix B of the NCP, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e) (3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required under CERCLA;

(ii) All appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate under CERCLA; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures under CERCLA is not appropriate.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region I will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region I has recommended deletion and has prepared the relevant documents.

2. The State of Connecticut has concurred with the decision to delete the site from the NPL.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, March 15, 1994, and will conclude on April 14, 1994.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the EPA Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region I.

IV. Basis for Intended Site Deletion

The Revere Site is located in the center of Sterling, CT at the intersection of Route 14 and Main Street. The former textile mill operated from 1879 until March 1980 when a fire destroyed most of the buildings. The mill used a variety of pigments, paints and solvents to dye and clean textiles. In 1987, EPA added the site to the National Priorities List, making it eligible for federal action under the Superfund law.

Over 1500 drums of hazardous substances stored on the site were removed in 1983, along with some contaminated soil. The possibility of residual contamination from these drums in area soil and ground water prompted EPA to continue investigations at the site.

The Remedial Investigation which began in 1990 included sampling of site soil, sediments, air, and ground water, and also testing of surface water such as the Moosup River. EPA found limited contamination in certain areas of the site, but not enough to cause a significant risk to human health or the environment.

Some of the contaminants found on the site during the Remedial Investigation include volatile organic compounds, heavy metals, and pesticides. In signing the Record of Decision, EPA assumes that the site will be developed for industrial or commercial purposes. Under this scenario, contamination at the site would not result in an unacceptable risk, therefore, no further work will occur. Also included in the final decision is a five year ground water monitoring program to ensure that contaminant levels do not increase.

EPA proposed the no-action alternative in August, 1992 and held a thirty day public comment period to accept comments on the plan. Copies of the Record of Decision along with responses to public comments are available in the Sterling Public Library in Oneco, Connecticut and in the EPA Records Center in Boston.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the Revere Site in December, 1993. ATSDR reviewed the remedial investigation data and has made determinations in that document consistent with the no-action Record of Decision that the concentrations of contaminants measured did not pose an imminent health threat.

The Town of Sterling, Connecticut imposed deed restrictions at the Revere Site which include prohibitions of both present and future ground water use and non-commercial development.

EPA, with concurrence of the State of Connecticut, has determined that all appropriate Fund-financed responses under CERCLA at the Revere Site have been completed, and that no further cleanup by responsible parties under CERCLA is appropriate.

Dated: December 28, 1993.

Paul G. Keough,

Acting Regional Administrator, USEPA Region I.

[FR Doc. 94–4652 Filed 2–28–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1009–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1009–DR), dated February 18, 1994, and related determinations.

EFFECTIVE DATE: February 20, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi dated February 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 18, 1994:

Alcorn, Benton, Calhoun, Chickasaw, Desoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, and Union Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–4583 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1009–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1009–DR), dated February 18, 1994, and related determinations.

EFFECTIVE DATE: February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 18, 1994, the President

declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from a severe winter storm, freezing rain, and sleet on February 9, 1994, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint J. Roland Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Bolivar, Coahoma, Leflore, Sunflower, Tallahatchie, Washington, and Yalobusha Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James Lee Witt,

Director.

[FR Doc. 94–4584 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Guillermo E. Briceno, 9735 NW 52nd Street, #220, Miami, FL 33178, Sole Proprietor

Rail Van, Inc. dba Multi Modal, Division of Rail Van, Inc., 400 West Wilson Bridge Road, Worthington, OH 43085, Officers: Jeffrey R. Brashares, President; William R. Lee, Exec. Vice President; Denis M. Bruncak, Vice President

Gulf Shipping Company, 6245 Renwick No. 4526, Houston, TX 77081, Ahmed M. Mohammed, Sole Proprietor

Derwent Freight International Inc., Raritan Center, 426 Northfield Avenue, Edison, NJ 08818, Officers: Kevin John Wall, Director; Glenn Patrick Overton, Director

Venchi International Corp., 780 NW Le June Rd., Unit #9, Miami, FL 33126, Officer: Patricia Nazar, President/Chairman/ Stockholder

Todd Maritime Services, 1406 45th Street, North Bergen, NJ 07047, Richard Todd, Sole Proprietor.

Dated: February 23, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–4516 Filed 2–28–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Recession of Order of Revocation

Notice is hereby given that the Order of Revocation pertaining to the following ocean freight forwarder has been rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name Address
3640	Ruben Posada dba Posada International Cargo, 1595 East El Segundo Blvd., El Segundo, CA 90245.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–4517 Filed 2–28–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 21, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 21, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a strong advance in economic activity in recent months. Total nonfarm payroll employment rose appreciably further in November, and the civilian unemployment rate fell considerably to 6.4 percent. Industrial production increased sharply in October and November, partly reflecting a continuing rebound in the output of motor vehicles. Retail sales were up moderately in November after a large increase in October. Housing starts advanced substantially in November. Business equipment expenditures have been rising rapidly, and nonresidential construction has turned up from depressed levels. The nominal U.S. merchandise trade deficit in October was about unchanged from its average rate in the third quarter. Broad indexes of consumer and producer prices suggest little change in inflation trends, although prices of some raw materials have increased recently.

Short-term interest rates have changed little, while intermediate- and long-term rates have risen slightly since the Committee meeting on November 16. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies is about unchanged on balance over the intermeeting period.

Growth of M2 and M3 strengthened in November, and both aggregates have risen at somewhat faster rates since late summer than earlier in the year. For the year through November, M2 and M3 are estimated to have grown at rates somewhat above the lower end of the Committee's ranges for the year. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through November it is estimated to have increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 21, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, February 22, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94–4539 Filed 2–28–94; 8:45 am]

BILLING CODE 6210–01–F

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 24, 1994. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on the key elements of the interagency proposal to revise CRA rules, revisions designed to provide clearer guidance to financial institutions and set new standards on how CRA performance will be evaluated.

Truth in Savings Proposal Regarding APY Calculations. Discussion led by the Depository and Delivery Systems Committee on the merits of requiring depository institutions to use a new formula to calculate the annual percentage yield for certain accounts.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether it is getting easier to obtain a loan, and whether there is a strong focus on lending in the inner cities).

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Consumer Credit Counseling Study. A statistical presentation by a Council member on nonprofit consumer credit counseling services affiliated with the National Foundation for Consumer Credit.

Committee Reports. Reports from Council committees on their work and plans for 1994.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, March 21, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, February 22, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4540 Filed 2–28–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–413]

Announcement of a Cooperative Agreement to the Association of State and Territorial Public Health Laboratory Directors

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds to continue a cooperative agreement with the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) for the purpose of addressing the need to maintain effective laboratory information and management systems and to promote and provide effective laboratory training to the Nation's public health laboratorians.

Approximately $1,150,000 is available in FY 1994 to fund this award. It is expected that the award will begin on July 1, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The CDC will be responsible for the activities described below:

1. Provide a forum for communication, coordination, collaboration, and consensus development among the participants in the National Laboratory Training Network (NLTN). Support activities include: Participating in policy development for the NLTN; providing a Training Advisor who serves as the principal laboratory training specialist to one of the seven area resource offices of the NLTN; providing training expertise in designing, developing, delivering, and evaluating laboratory training; participating in developing and implementing training needs assessment methodologies; continue compiling and maintaining the National Laboratory Training Resource Directory and Training Calendar that are available to Area Resource Offices (ARO) staff; developing and evaluating NLTN training products/materials; participating in evaluating the effectiveness of the NLTN; providing a NLTN coordinator who collaborates on the NLTN project aspects, including consultation on training activities, promotion of communication links,

maintenance of National Laboratory Training Resource Directory and Training Calendar; upon the request of ASTPHLD, participating in meetings relating to NLTN issues and activities including Training Committee meetings, ASTPHLD annual meetings, Area Laboratory Training Alliance (ALTA) meetings, NLTN staff meetings that involve CDC training advisors; providing staff support and assistance in developing a strategy to promote networking and communication links on the national level; providing direction in assessing the need to conduct training activities with a national focus;

2. Participate in maintaining, monitoring, and providing through the Information Network for Public Health Officials (INPHO) a public health information management system to facilitate the sharing of public health data;

3. Assist in defining core functions of a public health laboratory and in developing strategies to help laboratorians better perform these functions; and

4. Assist in developing a program to promote public health laboratory leadership.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, HIV Infections, Sexually Transmitted Diseases, Immunization and Infectious Diseases, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 317(k)(3) of the Public Health Service Act, 42 U.S.C. 247b(k)(3), as amended.

Eligible Applicant

Assistance will be provided only to the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD). No other applications are solicited. The program announcement and application kit have been sent to ASTPHLD.

ASTPHLD is uniquely qualified to be the recipient organization for the following reasons:

- ASTPHLD is the only organization that represents all the State and Territorial public health laboratory officials. By working through its own membership, the various ASTPHLD committees, and other affiliate organizations, ASTPHLD has developed a unique knowledge of the needs and operations of State public health laboratory agencies.
- The membership of ASTPHLD has already gained an enormous wealth of experience in developing information systems and laboratory training and has identified information systems and training programs as a priority need for State health agencies.
- ASTPHLD has attained a prominent position among national public health professional associations. In collaboration with the Centers for Disease Control and Prevention (CDC) and a number of other organizations, ASTPHLD developed the National Laboratory Training Network (NLTN). More than 770 training courses with over 28,000 participants have been conducted at numerous sites in the Nation.
- ASTPHLD has been the lead professional organization that has facilitated the development of the NLTN and the National Laboratory Partnership (NLP), and is therefore uniquely qualified to promote and support the continuation of the NLTN and NLP. A continuing, close, and collaborative relationship is essential to maintain the progress to date and ensure future success of these projects.
- ASTPHLD established and coordinated an NLTN Training Committee and regional NLTN training alliances composed of representatives from State public health professional organization, academia, national professional training groups, and CDC. The NLTN Training Committee provided policy guidance while the regional training alliances provide training needs assessment information and training resources. These groups have positioned ASTPHLD to address and resolve issues that promote and support further implementation of state and local action training strategies.
- ASTPHLD is the only professional association that has collected data about the structure and services of the nation's State laboratory systems and makes the data available to the public health community through its Consolidated Annual Report.
- ASTPHLD has access to State public health laboratory directors throughout the country and has demonstrated the ability to obtain their input and active involvement in key projects.
- ASTPHLD currently sponsors the only national meeting designed specifically for State public health laboratory officials.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement 413 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, Georgia 30305, telephone (404) 842–6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: February 23, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4546 Filed 2–28–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94D–0029]

International Conference on Harmonisation; Draft Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "The Extent of Population Exposure Required to Assess

Clinical Safety for Drugs Intended for Long-term Treatment of Non-life-threatening Conditions." This draft guideline was prepared by the Expert Group on Efficacy of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases.

DATES: Submit written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Leah Ripper, Center for Drug Evaluation and Research (HFD–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the organizing bodies and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that a draft tripartite guideline entitled "Draft Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline presents an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment of non-life-threatening diseases. The draft guideline distinguishes between clinical data on adverse drug events (ADE's) derived from studies of shorter duration and of exposure and data from studies of longer duration, which frequently include nonconcurrently controlled studies. The principles discussed in the draft guideline are summarized as follows: (1) Regulatory standards are valuable for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions; however, there are a number of circumstances where harmonized regulatory standards for the clinical safety evaluation may not be applicable; (2) further investigation is needed about the occurrence of ADE's in relation to duration of treatment for different drug classes; (3) because most ADE's first occur within the first 3 to 6 months of drug treatment, many patients should be treated and observed for 6 months at dosage levels intended for clinical use; and (4) because some serious ADE's may occur only after drug treatment for more than 6 months, some patients should be treated with the drug for 12 months.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

The Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions

The objective of this guideline is to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases. The safety evaluation during clinical drug development is expected to characterize and quantify the safety profile of a drug over a reasonable duration of time consistent with the intended long-term use of the drug. Thus, duration of drug exposure and its relationship to both time and magnitude of occurrence of adverse events are important considerations in determining the size of the data base necessary to achieve such goals.

For the purpose of this guideline, it is useful to distinguish between clinical data on adverse drug events (ADEs) derived from studies of shorter duration of exposure and data from studies of longer duration, which frequently are non-concurrently controlled studies. It is expected that short-term event rates (cumulative 3 month incidence of about 1%) will be well characterized. Events where the rate of occurrence changes over a longer period of time may need to be characterized depending on their severity and importance to the risk-benefit assessment of the drug. The safety evaluation during clinical drug development is not expected to characterize rare adverse events, for example, those occurring in less than 1 in 1,000 patients.

The design of the clinical studies can significantly influence the ability to make

causality judgments about the relationships between the drug and adverse events. A placebo-controlled trial allows the adverse event rate in the drug-treated group to be compared directly with the background event rate in the patient population being studied. Although a study with a positive or active control will allow a comparison of adverse event rates to be made between the test drug and the control drug, no direct assessment of the background event rate in the population studied can be made. A study that has no concurrent control group makes it more difficult to assess the causality relationship between adverse events observed and the test drug.

There was general agreement on the following:

1. A harmonized regulatory standard is of value for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions. Although this standard covers many indications and drug classes, there are exceptions.

2. Regulatory standards for the safety evaluation of drugs should be based on previous experience with the occurrence and detection of adverse drug events (ADEs), statistical considerations of the probability of detecting specified frequencies of ADEs, and practical considerations.

3. Information about the occurrence of ADEs in relation to duration of treatment for different drug classes is incomplete, and further investigations to obtain this information would be useful.

4. Available information suggests that most ADEs first occur, and are most frequent, within the first few months of drug treatment. The number of patients treated for 6 months at dosage levels intended for clinical use should be adequate to characterize the pattern of ADEs over time.

To achieve this objective the cohort of exposed subjects should be large enough to observe whether more frequently occurring events increase or decrease over time as well as to observe delayed events of reasonable frequency (e.g., in the general range of 0.5%–5%). Usually from 300–600 patients should be adequate.

5. There is concern that, although they are likely to be uncommon, some ADEs may increase in frequency or severity with time or that some serious ADEs may occur only after drug treatment for more than 6 months. Therefore, some patients should be treated with the drug for 12 months. In the absence of more information about the relationship of ADEs to treatment duration, selection of a specific number of patients to be followed for 1 year is to a large extent a judgment based on the probability of detecting a given ADE frequency level and practical considerations.

100 patients exposed for a minimum of 1 year is considered to be acceptable to include as part of the safety data base. The data should come from prospective studies appropriately designed to provide at least one year exposure at dosage levels intended for clinical use. When no serious ADE is observed in a one year exposure period this number of patients can provide reasonable assurance that the true cumulative 1-year incidence is no greater than 3%.

6. It is anticipated that the total number of individuals treated with the investigational drug, including short-term exposure, will be about 1500. Japan currently accepts 500–1500 patients; the potential for a smaller number of patients is due to the post-marketing surveillance requirement, the actual number for a specific drug being determined by the information available on the drug and drug class.

7. There are a number of circumstances where the harmonized general standards for the clinical safety evaluation may not be applicable. Reasons for, and examples of, these exceptions are listed below. It is expected that additional examples may arise. It should also be recognized that the clinical data base needed for efficacy testing may be occasionally larger or may give rise to a need for longer patient observation than that acceptable under this guideline.

Exceptions:

a. Instances where there is concern that the drug will cause late developing ADEs, or cause ADEs that increase in severity or frequency over time, would result in a need for a larger and/or longer-term safety data base. The concern could arise from:

(1). data from animal studies;

(2). clinical information from other agents with related chemical structures or from a related pharmacologic class; and

(3). pharmacokinetic or pharmacodynamic properties known to be associated with such ADEs.

b. Situations in which there is a need to quantitate the occurrence rate of an expected specific low frequency ADE will result in a need for a greater long-term data base. Examples would include situations where a specific serious ADE has been identified in similar drugs or where a serious event that could represent an alert event is observed in early clinical trials.

c. Larger safety data bases may be needed to make risk/benefit decisions in situations where the benefit from the drug is either: (1) small (e.g., symptomatic improvement in less serious medical conditions) or (2) will be experienced by only a fraction of the treated patients (e.g., certain preventive therapies administered to healthy populations) or; (3) is of uncertain magnitude (e.g., efficacy determination on a surrogate endpoint).

d. In situations where there is concern that a drug may add to an already significant background rate of morbidity or mortality, clinical trials may need to be designed with a sufficient number of patients to provide adequate statistical power to detect prespecified increases over the baseline morbidity or mortality.

e. In some cases, a smaller number of patients may be acceptable, for example, where the intended treatment population is small.

8. Filing for approval will usually be possible based on the data from patients treated through 6 months. Data on patients treated through 12 months are to be submitted as soon as available and prior to approval in the United States and Japan but may be submitted after approval in the E.C. In the U.S. the initial submission for those drugs designated as priority drugs is expected to include the 12 months patient data.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4567 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0028]

International Conference on Harmonisation; Draft Guideline on Repeated Dose Tissue Distribution Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies." The draft guideline was prepared by the Safety Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to provide guidance on the circumstances when repeated dose tissue distribution studies should be considered and on the conduct of those studies.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan S. Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Toxicokinetics: Guidance for Repeated Dose Tissue Distribution Studies" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline recommends that repeated dose tissue distribution studies should not be required uniformly for all compounds and should only be conducted when appropriate data cannot be derived from other sources. Repeated dose studies may be appropriate for compounds which have: (1) An apparently long half life; (2) incomplete elimination; or (3) unanticipated organ toxicity. The draft guideline provides general guidance on the use of radio-labelled compounds, dose and species selection, and duration of studies.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, it would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, to the Dockets Management Branch (address above) submit written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies

I. Introduction

A comprehensive knowledge of the absorption, distribution, metabolism, and elimination of a compound is important for the interpretation of pharmacology and toxicology studies. Tissue distribution studies are essential in providing information on distribution and accumulation of the compound and/or metabolites especially in relation to potential sites of action. This information may be useful for designing toxicology and pharmacology studies and for interpreting the results of these experiments.

In the European Community, the United States, and Japan, there has been a general agreement on the need to conduct single dose tissue distribution studies as part of the preclinical package. These studies often provide sufficient information about tissue distribution.

There has been no consistent requirement for repeated dose tissue distribution studies. However, there may be circumstances when assessments after repeated dosing may yield important information.

This paper provides guidance on circumstances when repeat dose tissue distribution studies should be considered and on the conduct of such studies.

II. Circumstances Under Which Repeated Dose Tissue Distribution Studies Should Be Considered

1. When information is available to predict that accumulation of a compound will occur in organs and tissues after repeated administration, then the extent and the time course of accumulation and elimination should be examined by repeated dose tissue distribution studies. For example, when single dose tissue distribution studies suggest that the apparent half-life of the test compound (and/or metabolites) in organs or tissues significantly exceeds the apparent half life of the elimination phase in plasma and is more than twice the dosing interval in the toxicity studies, repeated dose studies may be appropriate.

2. When repeated dose pharmacokinetic or toxicokinetic data suggest an accumulation of the compound and/or metabolites, which was not predicted by single dose kinetic studies, repeated dose tissue distribution studies should be considered.

3. When patho-morphological changes are observed that would not be predicted from short term toxicity studies and single dose tissue distribution studies, repeated dose tissue distribution studies may aid in the interpretation of these findings. Those organs or tissues which were the site of the lesions should be the focus of such studies.

III. Design and Conduct of Repeated Dose Tissue Distribution Studies

1. The objectives of these studies may be achieved using radio-labelled compounds or alternative methods of sufficient sensitivity and specificity.

2. Dose level(s) and species should be chosen to address the problem that led to the consideration of the repeated dose tissue distribution study.

3. Information from previous pharmacokinetic and toxicokinetic studies should be used in selecting the duration of dosing in repeated dose tissue distribution studies. One week of dosing is normally considered to be a minimum period. A longer duration should be selected when the blood/plasma concentration of the drug and/or its metabolites does not reach steady state. It is normally considered unnecessary to dose for longer than 3 weeks.

4. Consideration should be given to measuring unchanged compound and/or metabolites in organs and tissues in which extensive accumulation occurs or if it is believed that such data may clarify mechanisms of organ toxicity.

IV. Conclusions

Tissue distribution studies are an essential component in the preclinical kinetics programme. For most compounds, it is expected that single dose tissue distribution studies with sufficient sensitivity and specificity will provide an adequate assessment of tissue distribution and the potential for accumulation. Thus, repeated dose tissue distribution studies should not be required uniformly for all compounds. Repeated dose studies may be appropriate under certain circumstances based on the data from single dose tissue distribution studies, toxicity and toxicokinetic studies. The studies may be most appropriate for compounds which have an apparently long half life, incomplete elimination or unanticipated organ toxicity. The design and timing of repeated dose tissue distribution studies should be determined on a case-by-case basis.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4568 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0016]

International Conference on Harmonisation; Draft Guideline on Validation of Analytical Procedures for Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline on the validation of analytical procedures for pharmaceuticals. This draft guideline was prepared by the Expert Working Group on Quality of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guideline is intended to present characteristics that should be considered during the validation of the analytical procedures included as part of registration applications for pharmaceuticals.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Charles S. Kumkumian, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that a draft tripartite guideline entitled "Draft Guideline on Validation of Analytical Procedures" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted in Europe, Japan, and the United States. The draft guideline discusses common types of analytical procedures and defines basic terms, such as "analytical procedure," "specificity," and "precision." These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of the European Union, Japan, and the United States.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise § 10.85(d) and § 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of § 10.85(d) and § 10.90(b) and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Text on Validation of Analytical Procedures

1. Introduction

This document presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted within Europe, Japan, and the United States. This document does not necessarily seek to cover the testing that may be required for registration in, or export to, other areas of the world. Furthermore, this text presentation serves as a collection of terms, and their definitions, and is not intended to provide direction on how to accomplish validation. These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of Europe, Japan, and the United States.

The objective of validation of an analytical procedure is to demonstrate that it is suitable for its intended purpose. A tabular summation of the characteristics applicable to identification, control of impurities and assay procedures is included. Other analytical procedures may be considered in future additions to this document.

2. Types of Analytical Procedures to be Validated

The discussion of the validation of analytical procedures is directed to the four most common types of analytical procedures:

- Identification tests.
- Quantitative measurements for impurities' content.
- Limit tests for the control of impurities.
- Quantitative measure of the active moiety in samples of drug substance or drug product or other selected component(s) in the drug product.

Although there are many other analytical procedures, such as dissolution testing for drug products or particle size determination for drug substance, these have not been addressed in the initial text on validation of analytical procedures. Validation of these additional analytical procedures is equally important to those listed herein and may be addressed in subsequent documents.

A brief description of the types of tests considered in this document is provided below.

• Identification tests are intended to ensure the identity of an analyte in a sample. This is normally achieved by comparison of a property of the sample (e.g. spectrum, chromatographic behavior, chemical reactivity, etc) to that of a reference standard.

• Impurity tests can be either a quantitative test or a limit test for the impurity in a sample. Either test is intended to accurately reflect the purity characteristics of the sample. Different validation characteristics are needed for a quantitative test than for a limit test.

• Assay procedures are intended to measure the analyte present in a given sample. In the context of this document, the assay represents a quantitative measurement of the major component(s) in the drug substance. For the drug product, similar validation characteristics also apply when assaying for the active or other selected component(s). The same validation characteristics may also apply to assays associated with other analytical procedures (e.g. dissolution).

The objective of the analytical procedure should be clearly understood since this will govern the validation characteristics which need to be evaluated. Typical validation characteristics which should be considered are listed below:

Accuracy;
Precision:
  Repeatability,
  Intermediate precision,
  Reproducibility;
Specificity;
Detection limit;
Quantitation limit;
Linearity;
Range.

Each of these validation characteristics is defined in the attached Glossary. The table lists those validation characteristics regarded as the most important for the validation of different types of analytical procedures. This list should be considered typical for the analytical procedures cited but occasional exceptions should be dealt with on a case by case basis. It should be noted that robustness is not listed in the table but should be considered at an appropriate stage in the development of the analytical procedure.

Table

Type of analytical procedure; characteristics	Identification	Impurities purity test		Assay; content/potency dissolution: measurement only
		Quantitation	Limit	
Accuracy	–	+	–	+
Precision:				
Repeatability	–	+	–	+
Intermediate precision	–	+[3]	–	+[3]
Reproducibility	–	–[1]	–	–[1]
Specificity	+	+	+	+[2]
Detection limit	–	+	+	–
Quantitation limit	–	+	–	–
Linearity	–	+	–	+
Range	–	+	–	+

Note: – signifies that this parameter is not normally evaluated; + signifies that this parameter is normally evaluated.
[1] May be needed in some cases.
[2] May not be needed in some cases.
[3] In cases where reproducibility has been performed, intermediate precision is not needed.

Annex

Glossary

1. Analytical Procedure

The analytical procedure is a detailed description of the steps necessary to perform each analytical test. This may include but is not limited to: the sample, the reference standard and the reagents preparations, use of the apparatus, generation of the calibration curve, and use of the formulae for the calculation, etc.

2. Specificity

Specificity is the ability to assess unequivocally the analyte in the presence of components which may be expected to be present. Typically these might include impurities, degradants, matrix, etc.

Lack of specificity of an individual analytical procedure may be compensated by other supporting analytical procedure(s).

This definition has the following implications:

Identification: to ensure the identity of an analyte.

Purity Tests: to ensure that all the analytical procedures performed allow an accurate statement of the content of impurities of an analyte, i.e. related substances test, heavy metals, residual solvents content, etc.

Assay (content or potency): to provide an exact result which allows an accurate statement on the content or potency of the analyte in a sample.

3. Accuracy

The accuracy of an analytical procedure expresses the closeness of agreement between the value which is accepted either as a conventional true value or an accepted reference value and the value found.

4. Precision

The precision of an analytical procedure expresses the closeness of agreement (degree of scatter) between a series of measurements obtained from multiple sampling of the same homogeneous sample under the prescribed conditions. Precision may be performed at three levels: repeatability, intermediate precision and reproducibility.

Precision should be measured using authentic samples. However, if it is not possible to obtain a homogeneous sample it may be measured using artificially prepared samples or a sample solution.

The precision of an analytical procedure is usually expressed as the variance, standard deviation or coefficient of variation of a series of measurements.

4.1 Repeatability

Repeatability expresses the precision under the same operating conditions over a short interval of time. Repeatability is also termed intra-assay precision.

4.2 Intermediate precision

Intermediate precision expresses within laboratories variations: different days, different analysts, different equipment, etc.

4.3 Reproducibility

Reproducibility expresses the precision between laboratories (collaborative studies).

5. Detection Limit

The detection limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be detected but not necessarily quantitated as an exact value.

6. Quantitation Limit

The quantitation limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be quantitatively determined with suitable precision and accuracy. The quantitation limit is a parameter of quantitative assays for

low levels of compounds in sample matrices, and is used particularly for the determination of impurities and/or degradation products.

7. Linearity

The linearity of an analytical procedure is its ability (within a given range) to obtain test results which are directly proportional to the concentration (amount) of analyte in the sample.

For those analytical procedures which are not linear, another mathematical relationship (proportionality) should be demonstrated.

8. Range

The range of an analytical procedure is the interval between the upper and lower concentration (amounts) of analyte in the sample (including these concentrations) for which it has been demonstrated that the analytical procedure has a suitable level of precision, accuracy, and linearity.

9. Robustness

The robustness of an analytical procedure is a measure of its capacity to remain unaffected by small, but deliberate variations in method parameters and provides an indication of its reliability during normal usage.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4565 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0017]

International Conference on Harmonisation; Draft Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline on dose selection for carcinogenicity studies of pharmaceuticals. This draft guideline examines criteria for establishing uniformity among international regulatory agencies for high dose selection for carcinogenicity studies of human pharmaceuticals. This draft guideline was prepared by the Expert Working Group on Safety of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), and it is intended to help ensure that dose selection for carcinogenicity studies of pharmaceuticals to support drug registration is carried out according to sound scientific principles.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Dose Selection for Carcinogenicity Studies of Pharmaceuticals" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline. The draft guideline discusses criteria for high dose selection for carcinogenicity studies of pharmaceuticals. Five generally acceptable criteria are dose limiting pharmacodynamic effects, maximum tolerated dose, a minimum of a 25-fold area under the concentration-time curve (AUC) ratio (rodent:human), saturation of absorption, and maximum feasible dose. The draft guideline also considers other pharmacodynamic-, pharmacokinetic-, or toxicity-based endpoints in study design based on scientific rationale and individual merits.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues the guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Dose Selection for Carcinogenicity Studies of Pharmaceuticals

Introduction

Traditionally, carcinogenicity studies for chemical agents have relied upon the

maximally tolerated dose (MTD) as the standard method for high dose selection (Note 1). The MTD is generally chosen based on data derived from toxicity studies of 3 months' duration.

In the past, the criteria for high dose selection for carcinogenicity studies of human pharmaceuticals have not been uniform among international regulatory agencies. In Europe and Japan, dose selection based on toxicity endpoints or attaining high multiples of the maximum recommended human daily dose (greater than 100 times on a milligram per kilogram (mg/kg) basis) have been accepted. However, in the United States, dose selection based on the MTD has traditionally been the only acceptable practice. All regions have used a maximum feasible dose as an acceptable endpoint (Note 2).

For pharmaceuticals with low rodent toxicity, use of the MTD may result in the administration of very large doses in carcinogenicity studies, often representing high multiples of the clinical dose. The usefulness of an approach developed for genotoxic substances or radiation exposure where a threshold carcinogenic dose is not necessarily definable may not be appropriate for nongenotoxic agents. For nongenotoxic substances where thresholds may exist and carcinogenicity may result from alterations in normal physiology, linear extrapolations from high dose effects have been questioned. This has led to the concern that exposures in rodents greatly in excess of the intended human exposures may not be relevant to human risk, because they so greatly alter the physiology of the test species, the findings may not reflect what would occur following human exposure.

Ideally, the doses selected for rodent bioassays for nongenotoxic pharmaceuticals should provide exposures to the agent that: (1) Allow an adequate margin of safety over the human therapeutic exposure, (2) are tolerated without significant chronic physiological dysfunction and are compatible with good survival, (3) are guided by a comprehensive set of animal and human data that focuses broadly on the properties of the agent and the suitability of the animal, and (4) permit data interpretation in the context of clinical use.

In order to achieve international harmonization of requirements for high dose selection for carcinogenicity studies of pharmaceuticals, and to establish a rational basis for high dose selection, the ICH Expert Working Group on Safety initiated a process to arrive at mutually acceptable and scientifically based criteria for high dose selection. Several features of pharmaceutical agents distinguish them from other environmental chemicals and can justify a guideline which may differ in some respects from other guidelines. This should enhance the relevance of the carcinogenicity study for pharmaceuticals. Thus, much knowledge may be available on the pharmacology, pharmacokinetics, and metabolic disposition in humans. In addition, there will usually be information on the patient population, the expected use pattern, the range of exposure, and the toxicity and/or side effects that cannot be tolerated in humans. Diversity of the chemical and pharmacological nature of the substances developed as pharmaceuticals, plus the diversity of nongenotoxic mechanisms of carcinogenesis calls for a flexible approach to dose selection. This document proposes that any one of several approaches may be appropriate and acceptable for dose selection, and should provide for a more rational approach to dose selection for carcinogenicity studies for pharmaceuticals. These include:

1. Pharmacodynamic endpoints,

2. Toxicity-based endpoints,

3. Pharmacokinetic endpoints,

4. Saturation of absorption,

5. Maximum feasible dose.

Consideration of all relevant animal data and integration with available human data is paramount in determining the most appropriate endpoint for selecting the high dose for the carcinogenicity study. Relevant pharmacokinetic, pharmacodynamic and toxicity data should always be considered in the selection of doses for the carcinogenicity study regardless of the primary endpoint used for high dose selection.

In the process of defining such a flexible approach, it is recognized that the fundamental mechanisms of carcinogenesis are only poorly understood at the present time. Further, it is also recognized that the use of the rodent to predict human carcinogenic risk has inherent limitations although this approach is the best available option at this time. Thus, while the use of plasma levels of drug-derived substances represents an important attempt at improving the design of the rodent bioassay, progress in this field will necessitate continuing examination of the best method to detect human risk. This document is therefore intended to serve as guidance in this difficult and complex area recognizing the importance of updating the specific provisions outlined below as new data become available.

General Considerations for the Conduct of Dose-Ranging Studies

The considerations involved when undertaking dose-ranging studies to select the high dose for carcinogenicity studies are the same regardless of the final endpoint utilized.

1. In practice, carcinogenicity studies are carried out in a limited number of rat and mouse strains for which there are reasonable information on spontaneous tumor incidence. Ideally, rodent species/strains with metabolic profiles as similar as possible to humans should be studied (Note 3).

2. Dose-ranging studies should be conducted for both males and females for all strains and species to be tested in the carcinogenicity bioassay.

3. Dose selection is generally determined from 90-day studies using the route and method of administration that will be used in the bioassay.

4. Selection of an appropriate dosing schedule and regimen should be based on clinical use and exposure patterns, pharmacokinetics, and practical considerations.

5. Ideally, both the toxicity profile and any dose-limiting toxicity should be characterized. Consideration should also be given to general toxicity, the occurrence of preneoplastic lesions and/or tissue-specific proliferative effects, and disturbances in endocrine homeostasis.

6. Changes in metabolite profile or alterations in metabolizing enzyme activities (induction or inhibition) over time, should be understood to allow for appropriate interpretation of studies.

Pharmacodynamic Endpoints in High Dose Selection

The utility and safety of many therapeutics depend on their pharmacodynamic receptor selectivity. Pharmacodynamic endpoints for high dose selection will be highly compound-specific and are considered for individual study designs based on scientific merits (Note 10). The high dose selected should not produce disturbances of physiology or homeostasis but should produce a pharmacodynamic response in dosed animals which would preclude further dose escalation and compromise the validity of the study.

Toxicity Endpoints in High Dose Selection

ICH 1 agreed to evaluate endpoints other than the MTD for the selection of the high dose in carcinogenicity studies. These were to be based on the pharmacological properties and toxicological profile of the test compound. There is no scientific consensus for the use of toxicity endpoints other than the MTD. Therefore, the ICH Expert Working Group on Safety has currently agreed to continue use of the MTD as an acceptable toxicity-based endpoint for high dose selection for carcinogenicity studies (Note 1).

Pharmacokinetic Endpoints in High Dose Selection

A systemic exposure representing a large multiple of the human AUC (at the maximum recommended daily dose) may be an appropriate endpoint for dose selection for carcinogenicity studies for nongenotoxic therapeutic agents which have similar metabolic profiles in humans and rodents and low organ toxicity in rodents (high doses are well tolerated in rodents). The level of

animal systemic exposure should be sufficiently great, compared to human exposure, to provide reassurance of an adequate test of carcinogenicity.

It is recognized that the doses administered to different species may not correspond to tissue concentrations because of different metabolic and excretory patterns. Comparability of systemic exposure is better assessed by blood concentrations of parent drug and metabolites than by administered dose. The unbound drug in plasma is thought to be the most relevant indirect measure of tissue concentrations of unbound drug. The AUC is considered the most comprehensive pharmacokinetic endpoint since it takes into account the plasma concentration of the compound and residence time in vivo.

There is as yet, no validated scientific basis for use of comparative drug plasma concentrations in animals and humans for the assessment of carcinogenic risk to humans. However, for the present, and based on an analysis of a database of carcinogenicity studies performed at the MTD, the selection of a high dose for carcinogenicity studies which represents at a minimum a 25-fold ratio of rodent to human plasma AUC of parent compound and/or metabolites is considered pragmatic (Note 4).

Criteria for comparisons of AUC in animals and man for use in high dose selection

The following criteria are especially applicable for use of a pharmacokinetically-defined exposure for high dose selection.

1. Rodent pharmacokinetic data are derived from the strains used for the carcinogenicity studies using the route of compound administration and dose ranges planned for the carcinogenicity study (Notes 5, 6, and 7).

2. Pharmacokinetic data are derived from studies of sufficient duration to take into account potential time-dependent changes in pharmacokinetic parameters which may occur during the dose ranging studies.

3. Documentation is provided on the similarity of exposure to parent compound and metabolites between rodents and humans.

4. In assessing exposure, scientific judgment is used to determine whether the AUC comparison is based on data for the parent, parent and metabolite(s) or metabolite(s). The justification for this decision is provided.

5. Interspecies differences in protein binding are taken into consideration when estimating relative exposure (Note 8).

6. Human pharmacokinetic data are derived from studies encompassing the maximum recommended human daily dose (Note 9).

Saturation of Absorption in High Dose Selection

High dose selection based on saturation of absorption measured by systemic availability of drug-related substances is acceptable. The mid and low doses selected for the carcinogenicity study should take into account saturation of metabolic and elimination pathways.

Additional Endpoints in High Dose Selection

It is recognized that there may be merit in the use of alternative pharmacokinetic (e.g. Cmax) and toxicity endpoints, not specifically defined in this guidance on high dose selection for rodent carcinogenicity studies. Use of these additional endpoints in individual study designs should be justified. Such designs are evaluated based on their individual merits (Note 10).

Selection of Middle and Low Doses in Carcinogenicity Studies

Regardless of the method used for the selection of the high dose, the selection of the mid and low doses for the carcinogenicity study should provide information to aid in assessing the relevance of study findings to humans. The doses should be selected following integration of rodent and human pharmacokinetic, pharmacodynamic, and toxicity data. The rationale for the selection of these doses should be provided. While not all-encompassing, the following points should be considered in selection of the middle and low doses for rodent carcinogenicity studies:

1. Linearity of pharmacokinetics and saturation of metabolic pathways,

2. Human exposure and therapeutic dose,

3. Pharmacodynamic response in rodents,

4. Alterations in normal rodent physiology,

5. Mechanistic information and potential for threshold effects,

6. The unpredictability of the progression of toxicity observed in short term studies.

Summary

This guidance outlines five equally acceptable criteria for selection of the high dose for carcinogenicity studies of pharmaceuticals: dose limiting pharmacodynamic effects, maximum tolerated dose, a minimum of a 25-fold AUC ratio (rodent:human), saturation of absorption, maximum feasible dose. The use of other pharmacodynamic-, pharmacokinetic- or toxicity-based endpoints in study design is considered based on scientific rationale and individual merits. In all cases, appropriate dose ranging studies need to be conducted. All relevant information should be considered for dose and species/strain selection for the carcinogenicity study. This information should include knowledge of human use, exposure patterns and metabolism. The availability of multiple acceptable criteria for dose selection will provide greater flexibility in optimizing the design of carcinogenicity studies for pharmaceutical agents.

Note 1

The following are considered equivalent definitions of the toxicity based endpoint describing the maximum tolerated dose:

The U.S. Interagency Staff Group on Carcinogens has defined the MTD as follows:

"The highest dose currently recommended is that which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's normal lifespan due to effects other than carcinogenicity. This dose, sometimes called the maximum tolerated dose (MTD), is determined in a subchronic study (usually 90 days duration) primarily on the basis of mortality, toxicity and pathology criteria. The MTD should not produce morphologic evidence of toxicity of a severity that would interfere with the interpretation of the study. Nor should it comprise so large a fraction of the animal's diet that the nutritional composition of the diet is altered, leading to nutritional imbalance."

"The MTD was initially based on a weight gain decrement observed in the subchronic study; i.e., the highest dose that caused no more than a 10% weight gain decrement. More recent studies and the evaluation of many more bioassays indicate refinement of MTD selection on the basis of a broader range of biological information. Alterations in body and organ weight and clinically significant changes in hematologic, urinary, and clinical chemistry measurements can be useful in conjunction with the usually more definitive toxic, pathologic or histopathologic endpoints." (See *Environmental Health Perspectives*, vol. 67:201–181, 1986.)

The Committee on Proprietary Medicinal Products of the European Communities prescribes the following: "The top dose should produce a minimum toxic effect, for example a 10% weight loss or failure of growth, or minimal target organ toxicity. Target organ toxicity will be demonstrated by failure of physiological functions and ultimately by pathological changes." (See "Rules Governing Medicinal Products in the European Communities," vol. III, 1987.)

The Ministry of Health and Welfare in Japan prescribes the following:

"The dose in the preliminary carcinogenicity study that inhibits body weight gain by less than 10% in comparison with the control and causes neither death due to toxic effects nor remarkable changes in the general signs and laboratory examination findings of the animals is the highest dose to be used in the full-scale carcinogenicity study." (See "Toxicity Test Guideline for Pharmaceuticals," chapter 5, p. 127, 1985.)

Note 2

Currently, the maximum feasible dose by dietary administration is considered 5 percent of the diet.

Note 3

This does not imply that all possible rodent strains will be surveyed for metabolic profile. But rather, that standard strains used in carcinogenicity studies will be examined.

Note 4

In order to select a multiple of the human AUC that would serve as an acceptable endpoint for dose selection for carcinogenicity studies, a retrospective analysis was performed on data from FDA files of carcinogenicity studies of products conducted at the MTD for which there was sufficient human and rodent pharmacokinetic data for comparison of AUC values. (See Contrera et al., "Report to the ICH Safety Working Group Task Force on Dose Selection for Carcinogenicity Studies.")

In 35 drug carcinogenicity studies carried out at the MTD for which there was adequate pharmacokinetic data in rats and humans, approximately 1/3 had a relative systemic

exposure ratio equal to or less than 1, and another 1/3 had a ratio greater than 1 and less than 10 at the MTD.

An analysis of the correlation between the relative systemic exposure ratio, the relative dose ratio (rat mg/kg MTD:human mg/kg maximum recommended dose (MRD) and the dose ratio adjusted for body surface area (rat mg/meter squared (M^2) MTD:human mg/M^2 MRD), performed in conjunction with the above described database analysis indicates that the relative systemic exposure corresponds better with dose ratios expressed in terms of body surface area rather than of body weight. When 123 compounds in the expanded FDA database were analyzed by this approach, a similar distribution of relative systemic exposures was observed.

In the selection of a relative systemic exposure ratio (AUC ratio) to apply in high dose selection, consideration was given to a ratio value that would be attainable by a reasonable proportion of compounds, that would detect known or probable human carcinogens (International Agency for Research on Cancer (IARC) 1 or 2A) and that represents an adequate margin of safety.

To address the issue of detection of known or probable human carcinogenic therapeutics, an analysis of exposure and/or dose ratios was performed on IARC class 1 and 2A therapeutics with positive rat findings. For phenacetin, sufficient rat and human pharmacokinetic data is available to estimate that a relative systemic exposure ratio of at least 15 is necessary to produce positive findings in a rat carcinogenicity study. For most of 14 IARC 1 and 2A drugs evaluated with positive carcinogenicity findings in rats, there is a lack of adequate pharmacokinetic data. For these compounds, the body surface area adjusted dose ratio was employed as a surrogate for the relative systemic exposure ratio. The results of this analysis indicated that using doses in rodents corresponding to body surface area ratios of 20 or less would identify the carcinogenic potential of these therapeutics.

As a result of the evaluations described above, a minimum systemic exposure ratio of 25 is proposed as an acceptable pharmacokinetic endpoint for high dose selection. This value was attained by approximately 25 percent of compounds tested, is high enough to detect known or probable (IARC 1, 2A) human carcinogenic drugs and represents an adequate margin of safety. Those therapeutics tested using a 25-fold or greater AUC ratio for the high dose will have exposure ratios greater than 75 percent of pharmaceuticals tested previously in carcinogenicity studies performed at the MTD.

Note 5

The rodent AUC's and metabolite profiles may be determined from separate steady state kinetic studies, as part of the subchronic toxicity studies, or dose ranging studies.

Note 6

AUC values in rodents are usually obtainable using a small number of animals (e.g. four or more time points with as few as four animals each), depending on the route of administration and the availability of data on the pharmacokinetic characteristics of the test compound.

Note 7

Equivalent analytical methods of adequate sensitivity and precision are used to determine plasma concentrations of therapeutics in rodents and humans.

Note 8

For example, when protein binding is low in both humans and rodents or when protein binding is high and the unbound fraction of drug is greater in rodents than in man, the comparison of total plasma concentration of drug is acceptable. When protein binding is high and the unbound fraction is greater in man than in rodents, the ratio of the unbound concentrations should be used.

Note 9

Human systemic exposure data may be derived from pharmacokinetic monitoring in normal volunteers and/or patients. In the absence of knowledge of the maximum recommended human daily dose, at a minimum, doses producing the desired pharmacodynamic effect in humans are used to derive the pharmacokinetic data.

Note 10

When using any new endpoint, either pharmacokinetic, pharmacodynamic, or toxicity based for high dose selection it is necessary to carefully consider, prior to carcinogenicity study initiation, if the endpoint can insure the acceptability of the carcinogenicity study. In the United States, it is considered advisable to do this by consultation with the FDA.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4566 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0015]

International Conference on Harmonisation; Draft Guideline on the Assessment of Systemic Exposure in Toxicity Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled, "Toxicokinetics: A Guidance on the Assessment of Systemic Exposure in Toxicity Studies." This guideline was prepared by the Safety Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guideline is intended to help ensure that the assessment of systemic exposure in toxicity studies to support drug registration is carried out according to sound scientific principles.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan S. Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on October 27 through 29, 1993, the ICH Steering

Committee agreed that the draft tripartite guideline entitled "The Assessment of Systemic Exposure in Toxicity Studies" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline. The draft guideline discusses toxicokinetics, which is the generation of pharmacokinetic data in nonclinical toxicity studies or ancillary studies to assess exposure. The objectives of toxicokinetics are: (1) To describe the systemic exposure achieved in animals, its relationship to dose level, and the time course of the toxicity study; (2) to relate the exposure achieved in toxicity studies to toxicological findings; (3) to support the choice of species and treatment regimen in nonclinical toxicity studies; and (4) to supply information which, along with the toxicity findings, will contribute to developing additional nonclinical toxicity studies.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Toxicokinetics: A Guidance on the Assessment of Systemic Exposure in Toxicity Studies

1. Introduction

This Note for Guidance concerns toxicokinetics only with respect to the development of pharmaceutical products intended for use in human subjects[1].

In this context, toxicokinetics is defined as the generation of pharmacokinetic data, either as an integral component in the conduct of nonclinical toxicity studies or in specially designed supportive studies, in order to assess systemic exposure. These data may be used in the interpretation of toxicology findings and their relevance to clinical safety issues (see Note 1 for definitions of other terms used in this document).

The Note for Guidance has been developed in order to provide an understanding of the meaning and application of toxicokinetics and to provide guidance on developing test strategies in toxicokinetics. The guidance highlights the need to integrate pharmacokinetics into toxicity testing, which should aid in the interpretation of the toxicology findings and promote rational study design development.

Toxicokinetic measurements are normally integrated within the toxicity studies and as such are described in this document as 'concomitant toxicokinetics' (Note 1). Alternatively, data may be generated in other supportive studies conducted by mimicking the conditions of the toxicity studies.

Toxicokinetic procedures provide a means of obtaining multiple dose pharmacokinetic data in the test species, if appropriate parameters are monitored, thus avoiding duplication of such studies; optimum design in gathering the data will reduce the number of animals required.

Various components of the total nonclinical pharmacokinetics and metabolism programme may be of value in contributing to the interpretation of toxicology findings. However, the toxicokinetic data focuses on the kinetics of a new therapeutic agent under the conditions of the toxicity studies themselves.

Toxicokinetics is thus an integral part of the nonclinical testing programme; it should enhance the value of the toxicological data generated, both in terms of understanding the toxicity tests and in comparison with clinical data as part of the assessment of risk and safety in humans. Due to its integration into toxicity testing and its bridging character between nonclinical and clinical studies, the focus is primarily on the interpretation of toxicity tests and not on characterizing the basic pharmacokinetic parameters of the substance studied.

As the development of a pharmaceutical product is a dynamic process which involves continuous feed-back between nonclinical and clinical studies, no rigid *detailed* procedures for the application of toxicokinetics are recommended. It may not be necessary for toxicokinetic data to be collected in all studies and scientific judgement should dictate when such data may be useful. The need for toxicokinetic data and the extent of exposure assessment in individual toxicity studies should be based on a flexible step-by-step approach and a case-by-case decision making process to provide sufficient information for a risk and safety assessment.

2. The Objectives of Toxicokinetics and the Parameters Which May Be Determined

The primary objective of toxicokinetics is:

- to describe the systemic exposure achieved in animals and its relationship to dose level and the time course of the toxicity study;

Secondary objectives are:

- to relate the exposure achieved in toxicity studies to toxicological findings and contribute to the assessment of the relevance of these findings to clinical safety;
- to support (Note 1) the choice of species and treatment regimen in nonclinical toxicity studies;
- to provide information which, in conjunction with the toxicity findings, contributes to the design of *subsequent* nonclinical toxicity studies.

These objectives may be achieved by the derivation of one or more pharmacokinetic parameters (Note 2) from measurements made at appropriate time points during the course of the individual studies. These measurements usually consist of plasma (or whole blood or serum) concentrations for the parent compound and/or metabolite(s) and should be selected on a case-by-case basis. Plasma (or whole blood or serum) AUC, Cmax, and $C_{(time)}$ (Note 2) are the most commonly used parameters in assessing exposure in toxicokinetic studies. For some compounds it will be more appropriate to calculate exposure based on the (plasma protein) unbound concentration.

These data may be obtained from all animals in a toxicity study, in representative subgroups, or in satellite groups (see 3.5 and Note 3).

Toxicity studies which may be usefully supported by toxicokinetic information include single and repeated dose toxicity studies, and reproductive, genotoxicity, and carcinogenicity studies. Toxicokinetic information may also be of value in assessing the implications of a proposed change in the clinical route of administration.

3. General Principles To Be Considered

3.1 Introduction

In the following paragraphs some general principles are set out which should be taken into consideration in the design of individual studies.

It should be noted that for those toxicity studies whose performance is subject to Good Laboratory Practice (GLP) the concomitant toxicokinetics should also conform to GLP's. Toxicokinetic studies retrospectively designed to generate specific sets of data under conditions which closely mimic those of the toxicity studies should also conform to GLP.

3.2 Quantification of exposure

The quantification of systemic exposure provides an assessment of the burden on the test species and assists in the interpretation of similarities and differences in toxicity across species, dose groups, and sexes. The exposure might be represented by plasma (serum or blood) concentrations or the AUC's of parent compound and/or metabolite(s). In

some circumstances, studies may be designed to investigate tissue concentrations. When designing the toxicity studies, the exposure and dose-dependence in humans at therapeutic dose levels (either expected or established), should be considered in order to achieve relevant exposure at various dose levels in the animal toxicity studies. The possibility that there may be species differences in the pharmacodynamics of the substance (either qualitative or quantitative) should also be taken into consideration.

Pharmacodynamic or toxicodynamic effects might also give supporting evidence of exposure or even replace pharmacokinetic parameters in some circumstances.

Toxicokinetic monitoring or profiling of the toxicity studies should establish what level of exposure has been achieved during the course of the study and may also serve to alert the toxicologist to non-linear dose related changes in exposure (Note 4) which may have occurred. Toxicokinetic information may allow better interspecies comparisons than simple dose/body-weight (or surface area) comparisons[4].

3.3 Justification of time points for sampling

The time points for collecting body fluids in concomitant toxicokinetic studies should be as frequent as is necessary, but not so frequent as to interfere with the normal conduct of the study or to cause undue physiological stress to the animals (Note 5). In each study, the number of time points should be justified on the basis that they are adequate to estimate exposure (see 3.2). The justification should be based on kinetic data gathered from earlier toxicity studies, from pilot or dose range-finding studies, from separate studies in the same animal model or in other models allowing reliable extrapolation.

3.4 Contribution to the setting of dose levels in order to produce adequate exposure

3.4.1 Introduction

The setting of dose levels in repeat dose toxicity studies is largely governed by the toxicology findings and the pharmacodynamic responses of the test species. However, the following toxicokinetic principles may contribute to the setting of the dose levels.

3.4.2 Low dose levels

At the low dose level, preferably a no-toxic-effect dose level (Note 6), the exposure in toxicity studies (of all kinds) should normally exceed that expected or known to be attained in humans at steady state following therapeutic dose levels. There are, however, cases where this objective may not be achieved even with the maximum dose which can be administered.

3.4.3 Intermediate dose levels

Exposure at intermediate dose levels should normally represent an appropriate multiple (or fraction) of the exposure at lower (or higher) dose levels dependent upon the objectives of the toxicity study.

3.4.4 High dose levels

The high dose levels in toxicity studies will normally be determined by toxicological considerations. However, the exposure achieved at the dose levels used should be assessed.

Where toxicokinetic data indicate that absorption of a compound limits exposure to parent compound and/or metabolite(s) (Note 7), the lowest dose level of the substance producing the maximum exposure should be accepted as the top dose level to be used (particularly when no other dose-limiting constraint applies, Note 8).

Very careful attention should be paid to the interpretation of toxicological findings in toxicity studies (of all kinds) when the dose levels chosen result in non-linear kinetics (Note 4). However, non-linear kinetics should not necessarily result in dose limitations in toxicity studies or invalidate the findings; toxicokinetics can be very helpful in assessing the relationship between dose and exposure in this situation.

3.5 Extent of exposure assessment in toxicity studies

In toxicity studies, systemic exposure should be estimated in an appropriate number of animals and dosed groups (Note 9) to provide a basis for risk assessment.

Concomitant toxicokinetics may be performed either in all or a representative proportion of the animals used in the main study or in special satellite groups (Notes 1, 3 and 5). Normally, samples for the generation of toxicokinetic data may be collected from main study animals, where large animals are involved, but satellite groups may be required for the smaller (rodent) species.

The number of animals to be used should be the minimum consistent with generating adequate toxicokinetic data. Where both male and female animals are utilised in the main study it is normal to estimate exposure in animals of both sexes unless some justification can be made for not so doing.

Toxicokinetic data are not necessarily required from studies of different duration if the dosing regimen is essentially unchanged (see also 4.3).

3.6 Complicating factors in exposure interpretation

Although estimating exposure as described above may aid in the interpretation of toxicity studies and in the comparison with human exposure, a few caveats should be noted.

Species differences in protein binding, tissue uptake, receptor properties, and metabolic profiles should be considered. For example, it may be more appropriate for some compounds to have exposure expressed as the free (unbound) concentrations. In addition, the pharmacological activity of metabolites, the toxicology of metabolites and antigenicity of biotechnology products may be complicating factors. Furthermore, it should be noted that even at relatively low plasma concentrations, high levels of the administered compound and/or metabolite(s) may occur in specific organs or tissues.

3.7 Route of administration

The toxicokinetic strategy to be adopted for the use of alternative routes of administration, for example by inhalation, topical, or parenteral delivery, should be based on the pharmacokinetic properties of the substance administered by the intended route.

It sometimes happens that a proposal is made to adopt a new clinical route of administration for a pharmaceutical product; for example, a product initially developed as an oral formulation may subsequently be developed for intravenous administration. In this context, it will be necessary to ascertain whether changing the clinical route will significantly reduce the safety margin.

This process may include a comparison of the systemic exposure to the compound and its relevant metabolite(s) (plasma AUC and Cmax) in humans generated by the existing and proposed routes of administration. If the new route results in increased AUC and/or Cmax, or a change in metabolic route, the continuing assurance of safety from animal toxicology and kinetics should be reconsidered. If exposure is not substantially greater, or different, by the proposed new route compared to that for the existing route(s) then additional nonclinical toxicity studies may focus on local toxicity.

3.8 Determination of metabolites

A primary objective of toxicokinetics is to describe the systemic exposure to the administered compound achieved in the toxicology species. However, there may be circumstances when measurement of metabolite concentrations in plasma or other body fluids is especially important in the conduct of toxicokinetics:

- When the administered compound acts as a 'pro-drug' and the delivered metabolite is acknowledged to be the primary active entity
- When the compound is metabolised to a pharmacologically or toxicologically active metabolite which would make a significant contribution to the pharmacological or toxicological response, in addition to the compound itself (Note 10).
- When the administered compound is very extensively metabolised and the measurement of plasma or tissue concentrations of a major metabolite is the only practical means of estimating exposure following administration of the compound in toxicity studies (Note 11).

3.9 Statistical evaluation of data

The data should allow a representative assessment of the exposure. However, because large intra- and interindividual variation of kinetic parameters may occur and small numbers of animals are involved in generating toxicokinetic data, a high level of precision in terms of statistics is *not* normally possible or required. Consideration should be given to the calculation of mean or median values and estimates of variability, but in some cases the data for individual animals may be more important than a refined statistical analysis of group data.

3.10 Analytical methods

Integration of pharmacokinetics into toxicity testing implies early development of analytical methods for which the choice of analytes and matrices should be continually reviewed as information is gathered on metabolism and species differences.

The analytical methods to be used in toxicokinetic studies should be specific for

the entity to be measured and of an adequate accuracy and precision[6]. The limit of quantification should be adequate for the measurement of the range of concentrations anticipated to occur in the generation of the toxicokinetic data.

The choice of analyte and the matrix to be assayed (biological fluids or tissue) should be stated and possible interference by endogenous components in each type of sample (from each species) should be investigated. Plasma or whole blood are normally the matrices of choice for toxicokinetic studies.

If the drug substance is a racemate or some other mixture of enantiomers, additional justification should be made for the choice of the analyte [racemate or enantiomer(s)].

The analyte and matrix assayed in nonclinical studies should ideally be the same as in clinical studies. If different assay methods are used in nonclinical and clinical studies they should all be suitably validated[6].

3.11 Reporting

A rationale for the toxicokinetic policy adopted should be reported either in the toxicity study report or in a separate report. A comprehensive account of the toxicokinetic data generated, together with an evaluation of the results and of the implications for the interpretation of the toxicology findings should be given.

An outline of the analytical method should be reported or referenced. In addition, a rationale for the choice of the matrix analysed and the analyte measured (see 3.8 and 3.10) should be given.

4. Toxicokinetics in the Various Areas of Toxicity Testing-Specific Aspects

4.1 Introduction

Based on the principles of toxicokinetics outlined above, the following specific considerations refer to individual areas of toxicity testing. The frequency of exposure monitoring or profiling may be extended or reduced where necessary.

It may be appropriate to take samples from individual animals on a study where this may help in the interpretation of the toxicology findings for these animals.

4.2 Single-dose toxicity studies

These studies are often performed in a very early phase of development before a bioanalytical method has been developed and toxicokinetic monitoring of these studies is therefore not normally possible. Plasma samples may be taken in such studies and stored for later analysis; appropriate stability data for the analyte in the matrix sampled would then be needed.

Alternatively, additional toxicokinetic studies may be carried out *after* completion of a single dose toxicity study in order to respond to specific questions which may arise from the study.

Results from single dose kinetic studies may help in the choice of formulation and in the prediction of rate and duration of exposure during a dosing interval. This may assist in the selection of appropriate dose levels for use in later studies.

4.3 Repeated dose toxicity studies

The treatment regimen (Note 12) and species should be selected whenever possible with regard to pharmacodynamic and pharmacokinetic principles. This may not be achievable for the very first studies, at a time when neither animal nor human pharmacokinetic data are normally available.

Toxicokinetics should be incorporated appropriately into the design of the studies. It may consist of exposure profiling or monitoring (Note 1) at appropriate dose levels at the start and towards the end of the treatment period of the first repeat dose study (Note 13). The procedure adopted for later studies will depend on the results from the first study and on any changes in the proposed treatment regimen. Monitoring or profiling may be extended or reduced, or modified for specific compounds where problems have arisen in the interpretation of earlier toxicity studies.

4.4 Genotoxicity studies

For negative results of in vivo genotoxicity studies, it may be appropriate to have demonstrated systemic exposure in the species used or to have characterized exposure in the indicator tissue[7].

4.5 Carcinogenicity (Oncogenicity) studies

4.5.1 Sighting or dose-ranging studies

Appropriate monitoring or profiling of these studies should be undertaken in order to generate toxicokinetic data which may assist in the design of the main studies (see 4.5.2). Particular attention should be paid to species and strains which have not been included in earlier toxicity studies and to the use of routes or methods of administration which are being used for the first time.

Toxicokinetic data may assist in the selection of dose levels in the light of information about clinical exposure and in the event that non-linear kinetics (Note 4) may complicate the interpretation of the study. Particular attention should be paid to the establishment of appropriate toxicokinetic data when administration is to be in the diet (Note 14).

It is recommended that dose levels in oncogenicity studies generate a range of systemic exposure values that exceed the maximum therapeutic exposure for humans by varying multiples. However, it is recognized that this idealized selection of dose levels may be confounded by unavoidable species-specific problems. Thus, the emphasis of this guidance is on the need to estimate systemic exposure, to parent compound and/or metabolite(s) at appropriate dose levels and at various stages of an oncogenicity study, so that the findings of the study may be considered in the perspective of comparative exposure for the animal model and humans.

In practice, the 'Maximum Tolerated Dose' (MTD) has been used, whenever possible, as the top dose level in these studies. However, it has been suggested[8] that it may be acceptable to select a high dose level based on consideration of the kinetics in humans and in the test species.

For nongenotoxic compounds of comparatively low general toxicity, in addition to a toxicity-based endpoint (MTD) which remains acceptable, it has been proposed[9] reasonable to define a level of animal exposure that would be considered sufficiently great, compared to human exposure, to provide reassurance of an adequate test of carcinogenicity. It is considered important to compare exposure rather than administered dose because the latter does not take into account inter-species differences in pharmacokinetics[9].

4.5.2 The main studies

The treatment regimen and species and strain selection should, as far as is feasible, be determined with regard to the available pharmacokinetic and toxicokinetic information. In practice, the vast majority of these studies are conducted in the rat and mouse. Reassurance should be sought from the toxicokinetic data that the exposure level in the chosen species is consistent with the results from the dose ranging studies.

Concomitant toxicokinetics may be confined to monitoring exposure at appropriate dose levels at a number of stages in the study. Appropriate stages may be early in the study, and after prolonged treatment, for example at one year. It is not considered necessary to monitor exposure beyond one year in these studies. The design for each test should be selected on a compound by compound basis utilizing data gathered from earlier studies (see 4.5.1).

4.6 Reproductive toxicity studies

4.6.1 Introduction

It is preferable to have some information on pharmacokinetics before initiating reproduction studies, since this may suggest the need to adjust the choice of species, study design, and dosing schedules. At this time, the information need not be sophisticated or derived from pregnant or lactating animals[10]. At the time of study evaluation, further information on pharmacokinetics in pregnant or lactating animals may be necessary depending on the results obtained[10].

The limitation of exposure in reproductive toxicity is usually governed by maternal toxicity. Thus, while toxicokinetic monitoring in reproductive toxicity studies may be valuable in some instances, especially with compounds with low toxicity, such data are not generally necessary for all compounds.

Where appropriate, toxicokinetic principles should be applied to determine the exposures achieved in the different stages of the reproduction toxicity studies. A satellite group of female animals may be used to collect the toxicokinetic data.

4.6.2 Fertility studies

The general principles for repeated dose toxicity studies apply (see 4.3). The need to monitor these studies will depend on the dosing regimen used and the information already available from earlier studies in the selected species.

4.6.3 Studies in pregnant and lactating animals

The treatment regimen during the exposure period should be selected on the basis of the toxicological findings and on

pharmacokinetic and toxicokinetic principles.

Toxicokinetics may involve exposure assessment of dams, embryos, fetuses, or newborn at specified days (Note 15). Secretion in milk may be assessed to define its role in the exposure of newborn. In some situations, additional studies may be necessary or appropriate in order to study embryo/fetal transfer and secretion in milk.

Consideration should be given to the possibility that pharmacokinetics may differ in pregnant and non-pregnant animals.

Consideration should be given to the interpretation of reproductive toxicity tests in species in which placental transfer of the substance cannot be demonstrated (Note 16).

5. Supplementary Notes

Note 1 Definitions of expressions appearing in this "Note for Guidance":

Analyte: the chemical entity assayed in biological samples.

Concomitant toxicokinetics: toxicokinetic measurements performed in the toxicity study animals, either in all or in representative subgroups or in satellite groups.

Exposure: exposure is represented by pharmacokinetic parameters demonstrating the local and systemic burden on the test species with the test compound and/or its metabolites. The area under the plasma level concentration-time curve (AUC) and/or the measurement of plasma concentrations at the expected peak-concentration time Cmax, or at some other selected time $C_{(time)}$, are the most commonly used parameters. Others might be more appropriate in particular cases.

Monitor: to take a small number of blood samples (say 1–3) during a dosing interval to estimate $C_{(time)}$ or Cmax.

Profile: to take (say) 4–8 blood samples during a dosing interval to make an estimate of Cmax and/or $C_{(time)}$ and area under the plasma concentration-time curve (AUC).

Satellite groups: groups of animals included in the design and conduct of the toxicity study and housed with the main-study animals, but used primarily for toxicokinetics.

Support: in the context of a toxicity study - to ratify or confirm the design of a toxicity study with respect to pharmacokinetic and metabolic principles. This process may include two separate steps:

a) confirmation using toxicokinetic principles that the animals on a study were exposed to appropriate systemic levels of the administered compound (see 3.4) and/or its metabolite(s).

b) confirmation that the metabolic profile in the species used was acceptable; data to support b) will normally be derived from metabolism studies in animals and in humans.

Validate: in the context of an analytical method - to establish the accuracy, precision, reproducibility, response function and the specificity of the analytical method with reference to the biological matrix to be examined and the analyte to be quantified[6].

Note 2 Symbols and definitions according to "Manual of Symbols, Equations and Definitions in Pharmacokinetics", Committee for Pharmacokinetic Nomenclature of the American College of Clinical Pharmacology, Philadelphia, PA, May 1982:

Cmax - Maximum (peak) plasma concentration

$C_{(time)}$ - Plasma concentration at a specified time after administration of a given dose

tmax - Time to reach peak or maximum concentration following administration

$AUC_{(0-t)}$ - Area under concentration-time curve from zero to time t. It should be noted that $AUC_{(0-infinity)}$ is a special case of $AUC_{(0-t)}$.

Other measurements, for example urinary excretion, may be more appropriate for some compounds. Other derived parameters, for example bioavailability, half-life, fraction of unbound drug, and volume of distribution may be of value in interpreting toxicokinetic data. Thus, the selection of parameters and time points has to be made on a case-by-case basis considering the general principles as outlined in Section 3.

Note 3 Satellite groups (Note 1) to toxicity studies should be housed in conditions identical to those provided for the main test animals and be subject to the same dosing procedures and animal husbandry procedures.

Note 4 Increases in exposure may arise unexpectedly as a result of non-linear kinetics[11] due to saturation of a clearance process. Increasing exposure may also occur during the course of a study for those compounds which have a particularly long plasma half-life. Careful attention should also be paid to compounds which achieve high plasma Cmax values over comparatively short time periods within the dosing interval. Conversely, unexpectedly low exposure may occur during a study as a result of auto-induction of metabolic enzymes.

Note 5 If samples are taken from main study animals it should be considered whether samples should be taken from *all* the dosed animals and the controls in order to treat all animals on the study in the same way, or whether samples should be taken from representative subgroups of the same size.

Note 6 In this context, a 'no-toxic-effect dose level' (deemed to be the same as 'no-observed-adverse-effect dose level') is defined as a dose level at which some pharmacological response may be observed, but at which no adverse effect is found.

Note 7 In these circumstances it should be established that absorption is the rate limiting step and that limitations in exposure to the administered substance are not due to an increased clearance by metabolism.

Note 8 The limits placed on acceptable volumes which can be administered orally to animals may constrain the dose levels achievable for comparatively non-toxic compounds administered as solutions or suspensions.

Note 9 It is often considered unnecessary to assay samples from control groups, but samples may be collected and then assayed if it is deemed that this may help in the interpretation of the toxicity findings, or in the validation of the assay method.

Note 10 Measurement of metabolite concentrations may be especially important when documentation of exposure to human metabolite(s) is needed in the nonclinical toxicity studies in order to demonstrate adequate toxicity testing of these metabolites[5].

Note 11 It is recognized that measurement of metabolite(s) as a part of toxicokinetic evaluation serves only to assess exposure and cannot account for possible reactive intermediate metabolites[12].

Note 12 Treatment regimen encompasses dosage, formulation, route of administration, and dosing frequency.

Note 13 The first repeat dose study incorporating toxicokinetic data for each species is normally of 14 days' duration or longer.

Note 14 Additional studies may be necessary in order to compare exposure to the compound administered in diet and by gavage or by routes different from the intended clinical route.

Note 15 Separate pharmacokinetic studies may be needed in order to establish the pharmacokinetic profile in species and strains selected for reproductive toxicity studies which have not been previously selected for general toxicity studies. It should be noted that while it is important to consider the transfer of substances entering the embryo-fetal compartment, fetal exposure is the parameter which is most often assessed in practice and expressed as 'placental transfer'.

Note 16 For practical reasons, it is normally accepted that placental transfer has not been demonstrated if the concentration in the whole fetus does not exceed 1% of the maternal plasma concentration.

7. References

1 Design of Toxicokinetic Studies. Smith D. A., Humphrey M. J., and Charuel, *Xenobiotica*, 1990, Vol. 20, No. 11. 1187–1199.

2 Food and Drug Administration, Department of Health and Human Services, Statement dated June 9th 1993.

3 Commission of the European Communities, Statement on Applicability of Good Laboratory Practice (III/3824/92).

4 Opportunities for Integration of Pharmacokinetics, Pharmacodynamics, and Toxicokinetics in Rational Drug Development, Peck C. C. et al., *Pharmaceutical Research*, 1992, Vol. 9, No. 6, 826–833.

5 Proceedings of The First International Conference on Harmonisation, Brussels 1991. Ed: D'Arcy, P. F. and Harron, D. W. G. (1992), page 188.

6 Analytical methods validation: Bioavailability, Bioequivalence and Pharmacokinetic Studies, Shah, V. P. et al., *European Journal of Drug Metabolism and Pharmacokinetics*, 1991, Vol. 16, No. 4, 249–255.

7 ICH Joint Position Paper: Genotoxicity, 1993.

8 Proceedings of The First International Conference on Harmonisation, Brussels 1991. Ed: D'Arcy, P. F. and Harron, D. W. G. (1992), pages 185 and 331.

9 ICH Position Paper: 'High Dose Selection for Carcinogenicity Studies', 1993.

10 ICH Tripartite Guideline: 'Guideline on Detection of Toxicity to Reproduction for Medicinal Products', 1993.

11 Gibaldi M. and Perrier D., 'Pharmacokinetics' Second Edition, Chapter 7, Marcel Dekker Inc., New York (1982).

12 What is an appropriate measure of exposure when testing drugs for carcinogenicity in rodents? Monro, A., *Toxicology and Applied Pharmacology*, 1992, *112*, 171–181.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4569 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Food Advisory Committee

Date, time, and place. March 9 and 10, 1994, 8 a.m., Salon B, Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA 22202.

Type of meeting and contact person. Open committee discussion, March 9, 1994, 8 a.m. to 5 p.m.; open committee discussion, March 10, 1994, 8 a.m. to 12:45 p.m.; open public hearing, 12:45 p.m. to 1:45 pm., unless public participation does not last that long; open committe discussion, 1:45 p.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business March 4, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes per participant.

Open committee discussion. The committee will undertake a scientific discussion of the safety review of whole foods produced by new biotechnologies. A genetically modified tomato currently under consideration by the agency will serve as the focus of the discussion.

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting because of scheduling difficulties and the press of other committee business. The next regularly scheduled meeting of the committee is tentatively set for April 6 through 8, 1994, with an agenda scheduled to cover 3 days. Attempts were made to schedule a committee meeting in March with sufficient time for at least a 15-day public notice. However, it was not possible to find a date during that period on which a quorum of committee members could meet with responsible staff from the agency and other affected parties. The agency has decided that it is in the public interest to hold this scientific discussion on March 9 and 10, 1994, even if there is not time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 23, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–4691 Filed 2–25–94; 11:10 am]

BILLING CODE 4160–01–F

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of an Ad Hoc Subcommittee on Childhood Vaccines.

DATES: Date, Time and Place: March 15, 1994, at 8:30 a.m. to 5 p.m., 6130 Executive Boulevard, Conference Room G, Rockville, Maryland 20852. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, HHH Building, room 730E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 401–8141.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Because of limited seating, those desiring to make such presentations should make a request to the contact person before March 9, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants. A maximum of 10 minutes will be allowed for a given presentation, but the time may be adjusted depending on number of persons presenting. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the Chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will discuss the Institute of Medicine's (IOM) report entitled "Adverse Events Associated with Childhood Vaccines" and the implications of the findings in the report for several DHHS activities. The agenda will be announced at the beginning of the meeting.

A list of Subcommittee members and the charter of the NVAC Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: February 22, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94–4563 Filed 2–28–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–94–1051; FR–3667–D–01]

Amendment of Delegation of Authority from the Secretary of Housing and Urban Development to Officials of the Office of General Counsel

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment of delegation of authority.

SUMMARY: This Notice amends a Delegation of Authority from the Secretary of HUD to officials of the Office of General Counsel so that it grants the authority of the General Counsel concurrently to the Deputy General Counsel (Programs & Regulations) and the Deputy General Counsel (Civil Rights & Litigation) as well as the Deputy General Counsel (Operations). The position identified as "Deputy General Counsel" is no longer granted concurrent authority because there is currently no position so identified

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, room 10254, 451 7th Street SW., Washington, DC 20410, (202) 708–9983. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice amends a Delegation of Authority from the Secretary of HUD to officials in the Office of General Counsel so that it grants the authority of the General Counsel concurrently to the Deputy General Counsel (Programs & Regulations) and the Deputy General Counsel (Civil Rights & Litigation) as well as the Deputy General Counsel (Operations). The position identified as "Deputy General Counsel" is no longer granted concurrent authority because there is currently no position so identified.

Accordingly, the Delegation of Authority published in the **Federal Register** on January 31, 1989 at 54 FR 4913 (Docket No. D–89–893; FR–2595) is amended as follows:

Amendment of Delegation of Authority

1. Section A of the Delegation of Authority published on January 31, 1989 at 54 FR 4913 (Docket No. D–89–893; FR–2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

2. Section C, Paragraph 1 of the Delegation of Authority published on January 31, 1989, at 54 FR 4913 (Docket No. D–89–893; FR–2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

3. Section C, Paragraph 5 of the Delegation of Authority published on January 31, 1989 at 54 FR 4913 (Docket No. D–89–893; FR–2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: February 17, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94–4529 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N–94–3725]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 16, 1994.

David Christy,

Acting Director, IRM Policy and Management Division.

Proposal: Cost Certification Forms.

Office: Housing.

Description of the need for the information and its proposed use: The forms are used by mortgagors and contractors for requests of construction advances and certification of actual cost. The forms are needed by HUD to issue advances and assure that mortgage proceeds are used solely for construction costs.

Form number: FHA–2205–A, HUD–2328, and HUD–92330–A.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
FHA–2205–A	75		1		8		600
HUD–2328	500		1		8		4,000
HUD–92330–A	350		1		40		14,000

Total estimated burden hours: 18,600.

Status: Extension.

Contact: Roger Kramer, HUD, (202) 708–0743, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 18, 1994.

Proposal: Evaluation of the HOPE for Elderly Independence Demonstration Program.

Office: Policy Development and Research.

Description of the need for the information and its proposed use: The national evaluation of the HOPE for Elderly Independence Demonstration Program will test the effectiveness of combining housing with supportive services to assist frail elderly persons to continue to live independently. The evaluation will also document how grantees have implemented their demonstrations.

Form number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of submission: Biennially.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Evaluation	2,130		1		1.05		2,245

Total estimated burden hours: 2,245.

Status: New.

Contact: Priscilla Prunella, HUD, (202) 708–3700, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 18, 1994.

[FR Doc. 94–4626 Filed 2–28–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. R–94–1707; FR–3568–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 15, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Tenant Participation and Tenant Opportunities in Public Housing (24 CFR 964—FR–3568).

Office: Public and Indian Housing.

Description of the need for the information and its proposed use: The revision of the 24 CFR 964 will allow for broader, more flexible programs aimed at economic uplift for public housing resident organizations to participate and receive grant funds. Family Investment Centers will provide grants to PHAs and IHAs to enable families to have greater access to education and job opportunities to achieve self-sufficiency and independence.

Form number: None.

Respondents: State or Local Governments, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of submission: On Occasion and Recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,500		1		Varies		34,500
Recordkeeping	1,500		1		1		1,500

Total estimated burden hours: 36,000.

Status: Revision.

Contact: Dorothy Walker, HUD, (202) 708–3611, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 15, 1994.

[FR Doc. 94–4627 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. R–94–1655; FR–3384–N–03].

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 15, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Preservation of Multifamily Low-Income Housing (FR–3384).

Office: Housing.

Description of the need for the information and its proposed use: This information collection is the result of statutory requirements resulting from Title III of the Housing and Community Development Act of 1992. The information collection will be used to monitor assistance grant programs and to give residents more information on the status of the projects in which they reside.

Form number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		.2		40

Total estimated burden hours: 40.
Status: Extension.
Contact: Betsy Keeler, HUD, (202) 708–1142, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 15, 1994.

[FR Doc. 94–4628 Filed 2–28–94; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3486; FR–3288–N–05]

NOFA for Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations (CBOs), and Resident Councils (RCs) Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990: Technical Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Technical amendment to NOFA.

SUMMARY: This notice amends the NOFA published at 57 FR 40570 (September 3, 1992) and amended at 57 FR 56929 (December 1, 1992) and 58 FR 8766 (February 17, 1993), to allow funding of eligible grant activities prior to the grant award if there is a delay in the award subsequent to submission of an acceptable application package. For a variety of reasons, numerous grantees under this NOFA have not been awarded grants during the appropriate selection timeframe. Due to the time-sensitive nature of the Preservation sales program, grantees in these cases may be precluded from moving forward with activities critical to achieving a resident-supported purchase in a timely manner. This notice amends the current NOFA to allow funding for grant activities performed subsequent to the 30-day departmental application review period, if the Department has not yet awarded grant funds. Because there can be no guarantee of funding prior to grant award, activities performed prior to grant award are performed at the applicant's own risk. All activities performed must have been included in the applicant's original submission package and no funds will be released to the recipient until after a grant is formally awarded. This amendment applies to all grants awarded under this NOFA.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street NW., Washington, DC 20410; telephone (202) 708–2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the TDD number, telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 92–21232, published at 57 FR 40570 (September 3, 1992) and amended at 57 FR 56929 (December 1, 1992) and at 58 FR 8766 (February 17, 1993), is further amended to:

(1) On page 40571, section I.B. fourth paragraph is revised to read as follows:

I. Purpose and Substantive Description

* * * * *

B. Allocation of Amounts

* * * * *

Any expenses incurred by an applicant prior to being awarded a grant under this NOFA will not be reimbursed from the grant unless the grant award is delayed by the Department. In such case, funds for grant activities which are included in the original application submission and performed prior to grant award but beginning no earlier than 30 days after an acceptable application submission may be reimbursed at grant award. Once a Plan of Action is approved and the purchase completed, the purchaser may be reimbursed for certain expenses pursuant to 24 CFR 248.157(m) (6) and (7) that are not covered by grants received under this NOFA.

* * * * *

(2) On page 40573, paragraph I.H. (7) is revised to read as follows:

* * * * *

I. Purpose and Substantive Description

* * * * *

(H) *Ineligible Activities:*

* * * * *

(7) Activities completed prior to the date funding is approved under this NOFA, or in the case of a grant award that is delayed beyond the 30 day application review period, prior to 30 days after an acceptable application submission. In the latter case, all activities must be included in the original grant application submission package and funds will not be released prior to grant award.

* * * * *

Authority: 12 U.S.C. 1715 *et seq.*, 42 U.S.C. 3535(d).

Dated: February 23, 1994.

Nicolas P. Retsinas,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–4533 Filed 2–28–94; 8:45 am]
BILLING CODE 4210–27–P

Office of the Secretary

[Docket No. D–94–1053; FR–3657–D–01]

Delegation of Authority for Indian Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This delegation of authority revokes the authority to administer the Community Development Block Grant Program for Indian Tribes and Alaska Natives presently delegated to the Assistant Secretary for Community Planning and Development and delegates the authority to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 45 7th Street SW., telephone (202) 708–1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 902 of the Housing and Community Development Act of 1992 (Pub. L. 102–550; October 28, 1992) ("Housing Act of 1992") established a new office for Indian and Alaska Native programs to be located within the Office of Public and Indian Housing. The Housing Act of 1992 states that the office is to be headed by the Special Assistant for Indian and Alaska Native Programs. Subsequent Congressional guidance indicated that it would not be inappropriate, however, for the head of the office to have a different job title.

The Department is therefore establishing within the Office of Public and Indian Housing, the Office of Native American programs, to be headed by a Director. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. The office is responsible for directing, coordinating, and assisting in managing HUD field offices that administer Indian and Alaska Native programs. The statute also provides that the office is responsible for administering the provision of assistance to Indian tribes

under the Community Development Act of 1974.

In a redelegation of authority appearing elsewhere in the Federal Register today, the Assistant Secretary for Public and Indian Housing is revoking all authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegations of that authority, and redelegating the authority (including all authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives) to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

The present delegation of authority revokes from the Assistant Secretary for Community Planning and Development and delegates to the Assistant Secretary for Public and Indian Housing the power and authority to administer the Community Development Block Grant Program for Indian Tribes and Alaska Natives under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

Therefore, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Public and Indian Housing all power and authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), except as provided in Section B of this delegation of authority.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Revocation and Supersedure

This delegation revokes in part the delegation of authority to the Assistant Secretary for Community Planning and Development published in the **Federal Register** on October 25, 1983 at 48 FR 49384, with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) as well as the redelegations of authority published at 43 FR 34102 and 45 FR 67157.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), as amended; Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 15, 1994.

Henry Cisneros,

Secretary, Department of Housing and Urban Development.

[FR Doc. 94–4531 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–94–1053; FR–3657–D–02]

Redelegation of Authority for Indian Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Public and Indian Housing is revoking all authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegations of that authority, and redelegating that authority to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

EFFECTIVE DATE: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 7th Street SW., telephone (202) 708–1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 902 of the Housing and Community Development Act of 1992 (Pub. L. 102–550; October 28, 1992) ("Housing Act of 1992") established a new office for Indian and Alaska Native programs to be located within the Office of Public and Indian Housing. The Housing Act of 1992 states that the office is to be headed by the Special Assistant for Indian and Alaska Native Programs. Subsequent Congressional guidance indicated that it would not be inappropriate, however, for the head of the office to have a different job title.

The Department is therefore establishing within the Office of Public and Indian Housing, the Office of Native American programs, to be headed by a Director. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. The office is responsible for directing, coordinating, and assisting in managing HUD field offices that administer Indian and Alaska Native programs. The statute also provides that the office is responsible for administering the provision of assistance to Indian tribes under the Community Development Act of 1974.

In a delegation of authority appearing elsewhere in the **Federal Register** today, the responsibility for administering and delivering the Community Development Block Grant Program for Indian Tribes and Alaska Natives under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), presently delegated to the Assistant Secretary for Community Planning and Development is revoked, and the authority is delegated to the Assistant Secretary for Public and Indian Housing.

The present redelegation of authority revokes all authority previously redelegated by the Assistant Secretary for Public and Indian Housing to HUD Regional Administrators with respect to Indian and Alaska Native programs, and any further redelegations of that authority, and redelegates that authority (including all authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives) to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs, all authority with respect to the Department of Housing and Urban Development's programs for Indians and Alaska Natives. Among the specific authorities redelegated are:

1. All power and authority with respect to the management and development or acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), and the development or acquisition of public housing under the Mutual Help Homeownership Opportunity Program under Section 202 of the Act (42 U.S.C. 1437bb).

2. All power and authority with respect to the HOME Investment

Partnerships (HOME) Program for Indian tribes (42 U.S.C. 12701 *et seq.*).

3. All power and authority with respect to the Indian community development block grant program, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), as amended.

4. The authority to approve or to approve conditionally homeownership plans submitted by IHAs under the section 5(h) Homeownership Program—pursuant to 24 CFR part 905, subpart P (Sections 905.1001–1021). This includes the authority to execute implementing agreements under 24 CFR 905.1019.

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Revocation and Supersedure

This redelegation revokes and supersedes all redelegations of authority to Regional Administrators, and any further redelegations of that authority, with respect to Indian and Alaska Native programs.

Among the specific redelegations revoked or revoked in part are:

1. The redelegation of authority published at 57 FR 46401, October 8, 1992.
2. The redelegation of authority published at 57 FR 12516, April 10, 1992, with respect to Indian Housing Authorities only.
3. The redelegation of authority published at 56 FR 56524, November 5, 1991, with respect to Indian Housing Authorities only.
4. The redelegation of authority published at 51 FR 27604, August 1, 1986.

Authority: Section 902, Housing and Community Development Act of 1992; Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 15, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public Housing

[FR Doc. 94–4532 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–32–M

Office of the General Counsel

[Docket No. D–94–1052; FR–3666–D–01]

Order of Succession, Acting General Counsel

AGENCY: Office of the General Counsel, HUD.

ACTION: Order of succession.

SUMMARY: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, room 10254, 451 7th Street SW., Washington, DC 20410, (202) 708–9983. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the General Counsel designates the following order of succession:

Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office of the General Counsel, the following are hereby designated to serve as Acting General Counsel:

(1) Deputy General Counsel (Programs & Regulations)
(2) Deputy General Counsel (Civil Rights & Litigation)
(3) Deputy General Counsel (Operations)
(4) Associate General Counsel for Assisted Housing and Community Development
(5) Associate General Counsel for Legislation and Regulations
(6) Associate General Counsel for Program Enforcement
(7) Associate General Counsel for Insured Housing and Finance
(8) Associate General Counsel for Equal Opportunity and Administrative Law
(9) Associate General Counsel for Litigation

These officials shall serve as Acting General Counsel under this order of succession in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this order of succession are unable to serve as Acting General Counsel by reason of absence, disability or vacancy in office, officials designated to serve as acting officials for these designated officials (designees) will serve in the same order of succession as their principals.

Officials ranking below the Deputy General Counsel (Operations) in the above Order of Succession, and their designees, while serving as Acting General Counsel, may only take actions with the approval of the Special Assistant to the General Counsel.

Authorization to serve as Acting General Counsel shall not exceed 120 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Authority: Sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 13, 1994.

Nelson A. Díaz,

General Counsel.

[FR Doc. 94–4530 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Manager

[Docket No. D–94–1050; FR3652–D–01]

New Orleans Field Office Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Rita Vinson, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905, Telephone (817) 885–5451 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the

powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Manager,
2. Director of Community Planning and Development,
3. Chief Counsel,
4. Director of Public Housing,
5. Director of Housing Management,
6. Director of Housing Development,
7. Director of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective September 20, 1993, published in the **Federal Register** issue of November 12, 1993 (58 FR 60047).

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, effective October 1, 1970; 36 FR 3389, February 23, 1971.

Robert J. Vasquez,

Manager, New Orleans Office.

Frank L. Davis,

Acting Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 94–4629 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

U.S. DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–785148

Applicant: Ogden Environmental & Energy Services Co., Inc.

The applicant requests a permit to take (sacrifice) 15 male and 15 female Riverside fairy shrimp (*Streptocephalus wootoni*) for voucher specimens obtained from vernal pools at Naval Air Station, Miramar, San Diego County for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 24, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4617 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: D&E Investments, Limited (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy lands owned by the Applicant in Gulf Shores, Baldwin County, Alabama.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on *Peromyscus polionotus ammobates* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before March 31, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application, EA or HCP should be submitted to the Regional Office. Please reference permit under PRT–787172 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: *Peromyscus polionotus ammobates* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of *Peromyscus polionotus ammobates* extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The depth of the habitat from the beach inland varies depending on the configuration of the sand dune system and the vegetation. Generally, these habitat zones are considered as primary dune (dunes immediately fronting the beach) supporting sea oats and other widely scattered grasses, an interdune area consisting of other grasses, and sedges, and a secondary dune zone supporting small trees and shrubs. The Applicant proposes to construct a planned unit development, including a 18-hole golf course, multi-family units, and single family residences, on ±251.7 acres of land

located adjacent to and south of Alabama Highway 180, southern side of the Fort Morgan peninsula, Section 29, Township 9 South, Range 2 East, Gulf Shores, Baldwin County, Alabama. The Applicant's property contains *Peromyscus polionotus ammobates* habitat, and recent trapping efforts have confirmed its presence in the primary dune zone and interdune zone in different densities and patterns of utilization. The property contains ±32 acres of designated critical habitat of *Peromyscus polionotus ammobates*. Initial construction of roads and utilities and subsequent development of individual homesites may result in death of or injury to beach mouse incidental to the carrying out of these otherwise lawful activities. Habitat alternation associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of suboptimal habitat for *Peromyscus polionotus ammobates* and exposure of the Applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The delisting of the *Peromyscus polionotus ammobates* as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the Applicant and the Service. The HCP attached with the permit is modified to the maximum extent practicable. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, placement of walkover structures across sand dunes, continued monitoring of *Peromyscus polionotus ammobates*, control of cats and competitors of *Peromyscus polionotus ammobates*, controls on residential outdoor lighting, storage and maintenance of trash and garbage in scavenger proof containers, and distribution of educational materials to construction personnel and residents. The HCP also provides a funding mechanism for these mitigation measures.

Dated: February 18, 1994.

Nancy C. Coon,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 94–4547 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 12, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 16, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Ashley County

Bunckley, H. R., House, 509 E. Parker St., Hamburg, 94000189

Garland County

Gillham House, Co. Rd. 584 N of jct. with US 270, Royal, 94000188

Little River County

Memphis, Paris and Gulf Railroad Depot (Historic Railroad Depots of Arkansas MPS), Jct. of Whitaker Ave. and Frisco St., N corner, Ashdown, 94000192

GEORGIA

Camden County

Kingsland Commercial Historic District, Area surrounding S. Lee St., between King and William Sts., Kingsland, 94000186

MAINE

Oxford County

Churchill Bridge, Mountain Rd. across Bicknell Brook, 1.0 mi. W of jct. with Sodom Rd., Buckfield vicinity, 94000180

Penobscot County

Gut Island Site, Address Restricted, Old Town vicinity, 94000182

Waldo County

Hardscrabble Farm, E side ME 131, 0.5 mi. S of jct. with ME 173, Searsmont vicinity, 94000181

Washington County

Pettegrove, Joshua, House, E side US 1, .25 mi. N of jct. with Shattuck Rd., Red Reach, 94000179

York County

Lower Alewive Historic District, N side Emmons Rd., E of jct. with ME 35, Kennebunk vicinity, 94000178

MINNESOTA

Carlton County

Minneapolis, St. Paul, and Sault Ste. Marie Depot, 840 Folz Blvd., Moose Lake, 86003813

MISSISSIPPI

Jasper County

Archeological Site No. 22JS587, Address Restricted, Bay Springs vicinity, 94000175

NEVADA

Nye County

Sudan Crater, Area 10, Nevada Test Site, Mercury vicinity, 94000183

NEW HAMPSHIRE

Cheshire County

Golden Rod Grange No. 114, W side NH 302, 0.1 mi. S of jct. with Eaton Rd., Swanzy, 94000169

Hillsborough County

Carpenter, Frank Pierce, House, 1800 Elm St., Manchester, 94000168

NEW YORK

Cayuga County

Howland Cobblestone Store [Cobblestone Architecture of New York State MPS], N side Sherwood Rd., just E of jct. with Co. Rd. 348, Scipio, 94000171

Wayne County

Walling Cobblestone Tavern [Cobblestone Architecture of New York State MPS], 7851 Ridge Rd., Hamlet of Wallington, Sodus, 94000173

Wallington Cobblestone Schoolhouse District No. 8 [Cobblestone Architecture of New York State MPS], 6135 N. Geneva Rd., Hamlet of Wallington, Sodus, 94000172

NORTH CAROLINA

Guilford County

Grayson, Dr. C.S., House, 1009 N. Main St., High Point, 94000190

Orange County

Jackson, Jacob, Farm, NC 1002, 0.4 mi. W of NC 1538, Hillsborough, 94000184

Wake County

Apex Historic District, Roughly bounded by N. Elm, N. Salem, Center, S. Salem, and W. Chatham Sts., Apex, 94000185

OHIO

Butler County

Hamilton Historic Civic Center, Roughly bounded by Market St., High St., Court St., and Monument Ave., including High—Main St. Bridge, Hamilton, 94000170

PUERTO RICO

Vieques Municipality

Casa Alcaldia de Vieques, Jct. of Carlos LeBrum St. and Benitez Guzman St., Isabel Segunda, 94000174

SOUTH DAKOTA

Hand County

Hand County Courthouse and Jail [County Courthouses of South Dakota], 415 W. First Ave., Miller, 94000193

Lincoln County

Bergstrom, Magnus O., House, 415 S. Cedar, Canton, 94000196

Tuntland, Peder and Helga, Farmstead, Roughly, 10 mi. NW of Beresford, Beresford vicinity, 94000194

Minnehaha County

Randolph, Dr. Fredrich A., Block, 320 N. Main, Sioux Falls, 94000195

TENNESSEE

Sevier County

Elkmount Historic District, Great Smoky Mountains NP, Off TN 72 SW of Gatlinburg, Gatlinburg vicinity, 94000166
Thomas Addition Historic District, Roughly bounded by Park Rd., Belle Ave., Cedar St., Grace Ave. and Prince St., Sevierville, 94000197

VERMONT

Addison County

Salisbury Fish Hatchery [Fish Culture Resources of Vermont MPS], VT 53, SE of jct. with Smead Rd., Salisbury, 94000176

Bennington County

Jenks Tavern, Jct. of Dorset West Rd. and VT 315, Rupert, 94000191

Washington County

Roxbury Fish Hatchery [Fish Culture Resources of Vermont MPS], W side VT 12A, about 1.0 mi. S of Roxbury, Roxbury vicinity, 94000177

WYOMING

Converse County

Douglas City Hall, 130 S. Third St., Douglas, 94000167

[FR Doc. 94–4548 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 19, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 16, 1994.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

New Haven County

Charter Oak Firehouse, 105 Hanover St., Meriden, 94000255

New London County

Colchester Village Historic District, Roughly along Broadway, Hayward, Linwood and Norwich Aves., Cragin Ct., Pierce Ln., Stebbins Rd., Main and S. Main Sts., Colchester, 94000254

Windham County

Knowlton Memorial Hall, 25 Pompey Hollow Rd., Ashford, 94000252
Mixer Tavern, 14 Westford Rd., Ashford, 94000253

INDIANA

Boone County

Scotland Bridge, Lost Rd. (Co. Rd. 200 E) over Sugar Cr., Mechanicsburg vicinity, 94000228

Clinton County

Colfax Carnegie Library, 207 S. Clark St., Colfax, 94000230

Daviess County

Faith Thomas House, 1208 Bedford Rd., Washington, 94000227

Dearborn County

Carnegie Hall of Moores Hill College, 14687 Main St., Moores Hill, 94000229

Elkhart County

Nappanee West Park and Pavilion, Jct. of Nappanee and Van Buren Sts., Nappanee, 94000231

Grant County

Marion Downtown Commercial Historic District, Roughly bounded by 7th, 2nd, Branson and Gallatin Sts., Marion, 94000226

Huntington County

Purviance, David Alonzo and Elizabeth, House, 809 N. Jefferson St., Huntington, 94000225

Jasper County

Rensselaer Carnegie Library, 301 N. Van Rensselaer St., Rensselaer, 94000233

Newton County

McCaim—Turner House, 124 W. Jasper St., Goodland, 94000232

Orange County

First Baptist Church, Jct. of Elm and Sinclair Sts., West Baden Springs, 94000234

St. Joseph County

Dille—Probst House, 520 E. Colfax Ave., South Bend, 94000224

KENTUCKY

Allen County

Whitney, Andrew M., House and Barn, KY 1855 NE of Scottsville, Scottsville vicinity, 94000250

Carlisle County

Stone, George H., House, KY 80, Millburn, 94000223

Logan County

Auburn Historic District, Roughly, along E. and W. Main, N. Lincoln, Perkins, Pearl, Caldwell, Wilson, Maple and Viers Sts., Auburn, 94000222

LOUISIANA

Iberia Parish

New Iberia High School, 415 Center St., New Iberia, 94000236

Lafayette Parish

Evangeline Hotel, 302 Jefferson St., Lafayette, 94000235

MAINE

Cumberland County

Tracy—Causer Block, 505—509 Fore St., Portland, 89001941

MICHIGAN

St. Clair County

Howard Block, 201–205 Huron Ave., Port Huron, 94000251

MISSISSIPPI

Tate County

College Street Historic District (Senatobia MPS), Roughly, along N. Center, College, N. Front, N. Panola, N. Ward and W. Main Sts., Senatobia, 94000206
Downtown Senatobia Historic District (Senatobia MPS), Roughly, along N. and S. Center, N. and S. Front, W. Main, W. Tate and N. and S. Ward Sts., Senatobia, 94000205
North Park Street Historic District (Senatobia MPS), 113–209 W. Park St., Senatobia, 94000208
Panola Street, North, Historic District (Senatobia MPS), 101 S. Panola St., 104, 106 and 108 N. Panola St., Senatobia, 94000207
Panola Street, South, Historic District (Senatobia MPS), 200—401 S. Panola St., Senatobia, 94000204
Senatobia Christian Church (Senatobia MPS), 407 W. Tate St., Senatobia, 94000203
South Ward Street Historic District (Senatobia MPS), Roughly, along Church, W. Gilmore and S. Ward Sts., Senatobia, 94000199
Southeast Senatobia Historic District (Senatobia MPS), Roughly, along S. Park, S. Park (West), E. Gilmore, E. Tate and S. Heard Sts., Senatobia, 94000202
Tate County Agricultural High School Historic District (Senatobia MPS), 510 N. Panola St., Senatobia, 94000201
Tate County Courthouse (Senatobia MPS), 201 S. Ward St., Senatobia, 94000200

NEW YORK

Fulton County

Miller, William, Farm Historic District (Boundary Increase), Co. Rt. 11 W of US 4, Hampton, 94000256

Nassau County

Cold Spring Harbor Laboratory Historic District, Jct. of NY 25A and Bungtown Rd., Laurel Hollow, 94000198

Otsego County

West Main Street—West James Street Historic District, Roughly, along W. Main, W. James, Elm and Center Sts. and Taylor Ave., Richfield Springs, 94000257

Saratoga County

West Side Historic District, Roughly, along Church, Van Dam, State and Washington

Sts., Woodlawn and Grand Aves. and Franklin Sq., Saratoga Springs, 94000258

NORTH CAROLINA

Guilford County

Kellenberger Estate, 1415 Kellenberger Rd., Greensboro, 94000218

Tyrrell County

Columbia Historic District, Roughly bounded by the Scuppernong R., US 64, Road St. and Howard St., Columbia, 94000219

NORTH DAKOTA

Dickey County

Carroll House Hotel, 19 N. Monroe St., Fullerton, 94000221

Walsh County

Pisek School, E end of Main St. at Lovick Ave., Pisek, 94000220

OHIO

Belmont County

St. Clairsville Historic District, E. and W. Main St. between Butler and Sugar Sts., St. Clairsville, 94000246

Butler County

Hughes Manor, 5849 Hamilton—Lebanon Rd., Middletown vicinity, 94000242

Coshocton County

Warsaw Hotel, 102 E. Main St., Warsaw, 94000244

Cuyahoga County

Globe Iron Works Building, 2320 Center St., Cleveland, 94000245

Franklin County

Stoddart Block, 260 S. Fourth St., Columbus, 94000237

Harrison County

Ourant's School, Ourant Rd., W of Cadiz, Cadiz vicinity, 94000241

Lake County

Yager, John and Carrie, House, 7612 S. Center St., Mentor, 94000240

Ottawa County

Ohio State Route 51 Bridge Over the Portage River, OH 51 over the Portage R., Elmore vicinity, 94000239

Summit County

Viall Lodge, 1135 E. Market St., Akron, 94000238

Hesley Temple AME Church, 104 N. Prospect St., Akron, 94000243

PENNSYLVANIA

Westmoreland County

Hannastown Farm, NH of jct. of T825 and PA 64054, Salem Township, Forbes Road, 94000209

PUERTO RICO

Vieques Municipality

Acevedo, Rafael, House, Victor Duteil St. between San Jose and Baldorioty Sts., Isabel Segunda, 94000249

TEXAS

Harris County

Dawson, James A., House, 400 Emerson Ave., Houston, 94000248

Meek, James V., House, 3704 Garrott Ave., Houston, 94000247

WEST VIRGINIA

Braxton County

Gassaway Depot, Between 4th and 5th Sts., Gassaway, 94000215

Cabell County

Ohev Sholom Temple, 949 10th Ave., Huntington, 94000211

Gilmer County

Cedarville School, Jct. of Smith Ave. and Edmond St., Cedarville, 94000210

Jefferson County

Hopewell, Bloomery Rd. (Co. Rd. 27) NE of Bloomery, Charles Town vicinity, 94000214

Logan County

Chafin House, 581 Main St., Logan, 94000217

Marion County

Fairmont Normal School Administration Building, Jct. of Locust Ave. and Bryant St., Fairmont, 94000216

Monongalia County

Anderson, D. I. B., Farm, 3333 Collins Ferry Rd., Morgantown, 94000213

Preston County

Brown, Col. Thomas, House, Co. Rd. 92/4 S of Reedsville, Reedsville vicinity, 94000212

[FR Doc. 94–4549 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32452]

City of Oshkosh, WI and Wisconsin Central Ltd.—Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the City of Oshkosh (City) and Wisconsin Central Ltd. (WCL) this proceeding is instituted to determine whether the City will become a common carrier under the Interstate Commerce Act and whether regulatory approvals are required for an acquisition and consolidation agreement. Interested persons are invited to file comments.

DATES: Written Comments (original and 10 copies) must be filed by March 21, 1994, and concurrently served on the representative of petitioners.

ADDRESSES: Send comments referring to Finance Docket No. 32452 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Commission has authority to issue declaratory and interpretive orders and in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty under 5 U.S.C. 554(e) and 49 U.S.C. 10321. This proceeding is instituted at the request of petitioners to clarify the status of the City as a noncarrier. According to petitioners, under an agreement for rail acquisition and consolidation by and among the City, WCL and Fox Valley & Western Ltd. (FVW),[1] the City has acquired from WCL the right-of-way underlying the rail line between West 20th Avenue and Harrison Street, within the city limits of Oshkosh, between milepost 172.1 and milepost 176.6, a distance of approximately 4.5 miles.[2] WCL has retained ownership of the rail, ties, and other track material, and has retained a permanent unconditional easement to provide freight operations. The sale of the property to the City is a part of a WCL/FVW plan to coordinate and consolidate railroad operations and to improve grade crossings in the Oshkosh area.

Petitioners assert that, although the City acquired the property underlying the rail line, it did not acquire the obligation to provide common carrier service. WCL, not the City, holds itself out to provide freight service to the public. There is no shared use of the rail corridor, petitioners assert; rather, the City will merely own the underlying property and WCL will continue to own the tracks and to provide exclusive freight service. Petitioners conclude that because WCL will retain the common carrier obligation to provide freight service, the limited acquisition by the

[1] WCL and FVW are commonly controlled by Wisconsin Central Transportation Corporation.

[2] The agreement also covers the City's acquisition of FVW right-of-way between milepost 20.1 and milepost 23.0 subject to a pending petition for abandonment exemption in *Fox Valley & Western Ltd.—Abandonment Exemption—In Fond du Lac and Winnebago Counties, WI*, Docket No. AB–402 (Sub-No. 1X) (ICC filed Nov. 10, 1993). According to the City, the sale of this line will not take place until the Commission has authorized its abandonment. Thus, the City's acquisition of the FVW right-of-way is not a subject of this petition for declaratory order.

City of the subject property does not constitute an acquisition of a railroad line subject to the Commission's jurisdiction.

Petitioners request the Commission to issue an order declaring that: (1) the acquisition by the City is not subject to the Commission's jurisdiction; and (2) the acquisition by the City does not make the City a carrier. Copies of the petition are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Decided: February 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4578 Filed 2–28–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32429]

Gordon Morris—Continuance in Control Exemption—Morris Leasing Co., LTD.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts Gordon Morris from the prior approval requirements of 49 U.S.C. 11343 *et seq.* to continue in control of Michigan Southern Railroad Company, Inc. and Morris Leasing Co., Ltd., upon the latter's becoming a carrier. The exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on March 30, 1994.

Petitions to stay must be filed by March 10, 1994.

Petitions to reopen must be filed by March 20, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32429 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 18, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4579 Filed 2–28–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 6, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ciment Quebec, Inc., Portneuf, Quebec, CANADA has become a member of PCA effective January 1, 1994, and Dolomite Brick Corporation, an associate member, has changed its name to Baker Refractories, York, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on October 5, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 18, 1993, 58 FR 60880.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4622 Filed 2–28–94; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Privacy Act of 1974; System of Records; Expansion of Denial or Federal Benefits Project Clearinghouse (DEBAR)

AGENCY: Department of Justice, Office of Justice Programs (OJP).

ACTION: Notice.

SUMMARY: The Office of Justice Programs is publishing, as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, this notice of an expansion of the system of records to include information pertaining to conviction of individuals for defense contract related felonies as required to implement Section 815 of the 1993 National Defense Authorization Act.

DATES: The Department of Justice has requested a waiver of the 60-day review period from the Office of Management and Budget. The effective date of this notice will be March 31, 1994.

ADDRESSES: Copies of supporting documentation are available for public inspection upon request at the following location: U.S. Department of Justice, Office of Justice Programs, Denial of Federal Benefits Project, 633 Indiana Avenue NW., room 542, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Michael J. Dalich, Director, Denial of Federal Benefits Project, Department of Justice, Office of Justice Programs, at the address above; telephone (202) 307–0630.

SUPPLEMENTARY INFORMATION: Section 815 of the 1993 National Defense Authorization Act (Section 815 of Pub. L. 102–484), provides that individuals convicted of certain defense-contract related felonies are disqualified from employment by defense contractors or first tier subcontractors. The Attorney General has directed the Denial of Federal Benefits Clearinghouse of the Department of Justice to perform certain duties in order that the purpose of the statute might be fulfilled. These duties include maintaining an information clearinghouse for persons so disqualified and forwarding to the General Services Administration (GSA) data concerning court denials of Federal benefits for inclusion in GSA's Lists of Parties excluded from Federal Procurement or Nonprocurement Programs, more commonly referred to as the "Debarment List." The system of records will be expanded in that the Denial of Federal Benefits Project (DFBP) Clearinghouse of the Office of Justice Programs will identify individuals disqualified under the 1993

National Defense Authorization Act and forward that information to the GSA. The Clearinghouse also will provide information on persons so convicted to defense-related contractors and first tier subcontractors as required for determination of employment eligibility purposes.

This notice expands the previous OJP Denial of Federal Benefits Clearinghouse System (DEBAR) system of records notice to include the expanded system for implementation of the requirements of the 1993 National Defense Authorization Act. (Section 815 of Pub. L. 102–484) (55 FR 149, August 2, 1990)

OJP–13

SYSTEM NAME:

Denial of Federal Benefits Clearinghouse System (DEBAR).

SYSTEM LOCATION:

Office of Justice Programs; Denial of Federal Benefits Project (DFBP), 633 Indiana Avenue NW., room 542, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual convicted of a Federal or State offense involving drug trafficking or possession of a controlled substance who has been denied Federal benefits by Federal or State courts. The expanded system also will include persons convicted of defense-contract related felonies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Executed Denial of Federal Benefits Forms, court orders, Federal Agency Benefits Listings, and notices from U.S. Attorneys concerning convictions of defense-contract related felonies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 21 U.S.C. 853a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system will be disclosed routinely to the General Services Administration (GSA) for inclusion in the publication, *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs*, More commonly known as the "Debarment List." Records from the system will routinely be disclosed to Federal agencies, defense-related contractors and first-tier subcontractors to verify prior defense-contract related felonies that require such records to deny benefits or employment.

Release of information in an adjudicative proceeding: Records and information within this system may be released in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when:

i. The OJP, or any subdivision thereof; or

ii. Any employee of the OJP in his or her official capacity; or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice, unless it is determined that release of the specific information in a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or a staff person acting on the Member's behalf, when the Member or staff officially requests the information on behalf of, and at the request of, the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored on computer discs or diskettes for use in a computer environment, as well as in manual file folders.

RETRIEVABILITY:

Data is retrievable by name of individual, social security number, or type of conviction.

SAFEGUARDS:

Information contained in the system is maintained in accordance with DFBP procedures. Manual information in the system is safeguarded in locked file cabinets within a limited access room in a limited access building. Access to manual files is limited to personnel who have a need for files to perform official duties. Operational access to information maintained on a dedicated computer system, with computer discs or diskettes, is controlled by levels of security provided by password keys to prevent unauthorized entry, and an audit trail of accessed information. Access is also limited to personnel who have a need to know to perform official duties.

RETENTION AND DISPOSAL:

Data is maintained for current and prior years in a master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DFBP, Office of Justice Programs, 633 Indiana Avenue, NW., Room 542, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be in writing, with the envelope and letter marked "Privacy Access Request". Direct the access request to the System Manager listed above. Identification of individuals requesting access to their records will include fingerprinting (28 CFR 20.34).

CONTESTING RECORDS PROCEDURES:

An individual desiring to contest or amend information maintained in the system should direct the request to the System Manager listed above. The request should state clearly and concisely the information being contested, the reasons for contesting the information, and the proposed information amendment(s) sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are Federal and State courts, individuals convicted of certain drug offenses, and Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Laurie Robinson,

Acting Assistant Attorney General.

[FR Doc. 94–4497 Filed 2–28–94; 8:45 am]

BILLING CODE 4410–18–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94-2 CARP-DD]

Ascertainment of Controversy for 1992 and 1993 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office directs all claimants to royalty fees collected for Digital Audio Recording Devices and Media (DART) for 1992 and 1993 to submit comments as to whether a controversy exists as to the distribution of either of these funds. The Office announces the suspension of certain deadlines for distribution of these royalties. The Office also seeks comment as to whether it should consolidate the 1992 and 1993 royalty funds into one proceeding.

DATES: Written comments are due by June 10, 1994.

ADDRESSES: If sent by mail, ten copies of written comments should be addressed to: Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If hand delivered, ten copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue SE., Washington DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Marybeth Peters, Acting General Counsel, U.S. Copyright Office, Department 17, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act (AHRA), which required manufacturers and importers to pay royalties on digital audio recording devices or media that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed by the Copyright Royalty Tribunal to interested copyright parties that file claims with the Tribunal each year during January and February.

The Act provides that the royalties are to be divided into two funds—the Sound Recordings Fund which gets 66⅔% of the royalties, and the Musical Works Fund which gets 33⅓%.

Within each fund, the Act establishes subfunds. The Sound Recordings Fund consists of four subfunds: The first of these—the Nonfeatured Musicians' Subfund—is allocated 2⅝% of the Sound Recordings Fund, and the second subfund—the Nonfeatured Vocalists' Subfund—gets a 1⅜% share; after the shares of these two subfunds are subtracted, two other subfunds—the Featured Recording Artist Subfund and the Sound Recording Owners Subfund—receive 40% and 60% of the remainder respectively. In the Musical Works Fund, there are two subfunds—the Publishers' Subfund and the Writers' Subfund—which each get 50% of that Fund. The Act thus establishes the percentages for each fund and subfund, but left it to the Copyright Royalty Tribunal to decide what each claimant within a subfund would get.

Accordingly, the Act required the Tribunal to ascertain within 30 days after the last day for filing claims—March 30—whether there were any controversies among the claimants as to the proper distribution of the royalties in their fund and/or subfund. If there were any controversies, the Tribunal was to initiate a proceeding immediately and make a final determination concerning distribution within one year.

II. Tribunal Actions in 1993

Last year the Tribunal asked the claimants if there were any controversies in distributing the 1992 DART royalties, and made an initial funding that there were controversies in both the Sound Recording and the Musical Works Funds. 58 FR 17576 (1993).

By the end of 1993 all the claimants to the Musical Works Fund had reached settlements, except for one individual, who asserted that there were controversies in both the Publishers' and the Writers' Subfunds. Concerning the Sound Recordings Fund, there were settlements in three of the four subfunds; however, for the Featured Recording Artists' Subfund, the Gospel Music Coalition, the Alliance of Artists and Recording Companies, Reachout Records International, Inc. and Copyright Management, Inc. had not reached settlements with one corporation and one individual by the end of the last year.

The Tribunal had established December 1, 1993 as the date by which the parties in controversy would be required to file their written direct cases. However, effective December 17, 1993, Congress passed the Copyright Royalty Tribunal Reform Act of 1993: This legislation dissolved the Tribunal and established a new system of copyright arbitration royalty panels (CARPs) to be supported by the Library of Congress and the Copyright Office.

Before the Act was passed, but in anticipation of it, two requests were made of the Tribunal. The parties to the Musical Works Fund asked the Tribunal to consolidate the 1992 DART distribution proceeding with the 1993 DART distribution proceeding (scheduled to begin in 1994), insofar as it applied to that particular fund. The parties to the Sound Recordings Fund did not join with the request for consolidation, but instead asked the Tribunal for a suspension of the procedural date requiring them to file a written direct case by December 1, 1993.

On November 29, 1993, the Tribunal granted both requests, thus consolidating the 1992 and 1993 Musical Works Fund proceedings and suspending the procedural dates for the 1992 Sound Recording Fund proceeding.

III. The New CARP System

As we said, Congress dissolved the Copyright Royalty Tribunal and, effective December 17, 1993, established the CARP system in the Library of Congress. As instructed by the Reform Act, the Copyright Office immediately issued a notice adopting the full text of the former Tribunal's rules and regulations on an interim basis. 58 FR 67690 (1993). Then, on January 18, 1994, the Office published proposed regulations revising the adopted Tribunal rules to adapt them to the requirements of the new CARP system. 59 FR 2550 (1994).

In the January 18, 1994 notice, we stated that we did not consider the Copyright Office to be the successor agency of the Copyright Royalty Tribunal, and that it was Congress' intent to establish an entirely new system. Therefore, the proceedings that the Tribunal had started but not concluded by December 17, 1993 would not be taken up where they had left off, but would be begun anew under the new CARP regime. *Id.* at 2551.

IV. Purposes of This Notice

The first purpose of this notice is to begin anew the 1992 DART royalty distribution proceeding. We are asking the claimants to provide the Copyright Office, by June 10, 1994, with the following information: (a) Whether any controversies exist concerning distribution of 1992 DART royalties; (b) if controversies do exist, the particular subfunds for which they exist; and (c)

if settlements have been made, the identity of the parties who have settled and of those who have not.

The second purpose of this notice is to comply with the statutory obligation to begin the 1993 DART distribution proceeding. We are asking the same questions about 1993 DART as we are asking about 1992 DART: whether any controversies exist, for which subfunds, and who are the settled and non-settled parties.

After the existence of any controversies are determined, AHRA gives the Copyright Office 30 days to distribute those royalties not in controversy. In order to make that determination for both the 1992 and 1993 proceedings, we are asking the claimants who report that they are in controversy to state how much is in controversy in each subfund. The information to be provided should include each claimant's asserted percentage or dollar claim to the subfund, and a brief narrative justifying that asserted claim. In addition, we are asking each claimant who expects to be participating in a CARP proceeding to file a Notice of Intent to Participate, as required by 37 CFR 251.43(a).

Third, we are seeking comment as to the advisability of consolidating the 1992 DART and the 1993 DART distribution proceedings. We are aware that the Tribunal granted a request for consolidation filed by the Musical Works Fund claimants. The reasons the claimants cited at the time was that the 1992 fund, which only included royalties collected between October 28 and December 31 of that year, was relatively small, that the amounts in controversy were necessarily even smaller, that the cost of litigating each fund separately would be high in comparison with the size of the funds, and that the 1992 proceeding, being the first of its kind, would be setting important precedent and would benefit from consolidation with the 1993 proceeding. We should like to learn two things: (1) Whether the claimants who requested consolidation of the 1992 and 1993 DART Musical Works Fund distributions are adhering to their request; and (2) whether the claimants of the Sound Recordings Fund believe that similar consolidations should be made for that fund.

Fourth, as explained below, we are using this notice to announce three-month delays in meeting two DART deadlines this year: the determination of the existence of controversies and the distribution of DART royalties not in controversy.

V. DART Deadlines

The AHRA establishes several statutory deadlines to assure the speedy distribution of DART royalties. Claims are to be filed by the last day of February, each year. The existence of any controversies is to be ascertained by March 30. Distribution of royalties not in controversy are to be authorized to be distributed within 30 days of the finding that they were not in controversy—that is, no later than April 29. Under the earlier law, the Tribunal was to conclude all proceedings to resolve any controversies within one year of declaring the existence of those controversies. The abolition of the Tribunal and the establishment of an entirely new CARP system in the Library of Congress has made the meeting of certain statutory deadlines exceedingly difficult and, in at least three cases, virtually impossible.

The Administrative Conference of the United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (1978), 1 CFR 305.78–3. The Administrative Conference said:

> It should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

Id., at para. 4. The Copyright Office finds that good cause exists for not meeting one earlier, and two current statutory deadlines for the distribution of 1992 and 1993 DART royalties.

Under the law in effect before December 17, 1993, the Tribunal was obliged to conclude the 1992 DART distribution proceeding by April, 1994. However, because the Tribunal no longer exists and because the Copyright Office is not the successor agency to the Tribunal, we cannot be bound by the Tribunal's deadlines. We believe that all proceedings started by the Copyright Office are governed by the new provisions of the Copyright Royalty Tribunal Reform Act of 1993, which sets its own statutory time limits on the Library of Congress and the Copyright Office for conducting CARP proceedings.

Our authority to begin DART distribution proceedings is dependent on having the new CARP system in place. That means adopting extensive new rules after full opportunity for the public to comment has been given. It also involves the time-consuming and important process of identifying a pool of potential arbitrators and evaluating their qualifications, ethical eligibility, and availability in consultation with various arbitration associations. We are acting with the utmost speed in all these areas, but it is obvious that these goals cannot be accomplished in time to begin DART distribution proceedings in April, 1994.

We therefore find that a delay of three months is necessary with respect to two DART deadlines. Instead of declaring the existence of any controversies in 1992 and/or 1993 DART distribution by March 30, 1994, we will make such declaration no later than June 30, 1994. Distribution of royalties not in controversy will be authorized on or before August 1, 1994.

Dated: February 22, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–4456 Filed 2–28–94; 8:45 am]

BILLING CODE 1410–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–014]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Universal Propulsion Company, Inc., of Phoenix, Arizona, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,160,233, entitled "Fastening Apparatus Having Shape Memory Alloy Actuator," which issued on November 3, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent

Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by May 2, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: February 17, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–4519 Filed 2–28–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CIVILIAN COMMUNITY CORPS

AGENCY: National Civilian Community Corps.

ACTION: Changes and additions to previously published notice of availability of funds.

SUMMARY: The National Civilian Community Corps (NCCC) published a notice in the **Federal Register**, Volume 59, Number 20 on January 31, 1994, announced the availability of funds for a summer national service program. This notice changes the requirement that the NCCC summer youth camp be located in the Northeast region of the United States and expands acceptable locations to any area of the country that meets the criteria published in this notice. Additionally, this notice provides more background information, more details on criteria that will be used to select a non-profit organization to operate the camp, and extends the application due date from February 28, 1994 to March 21, 1994. The primary purpose of the previous notice—to establish a cooperative agreement with a single non-profit organization capable of setting-up and operating a youth camp in support of the summer national service program—remains the same.

DATES: Applications must be received no later than 5 p.m. EST on March 21, 1994, to be eligible. The NCCC will announce its determination not later than March 31, 1994, and reserves the right not to award any funds for this purpose if no acceptable applications are received.

ADDRESSES: To receive an application kit, contact: National Civilian Community Corps, Corporation for National and Community Service, 1100 Vermont Avenue NW. (11th Floor), Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Gregory Knight at (202) 606–5000 ext. 103 or (202) 606–5256 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1993, President Clinton signed into law the National and Community Service Trust Act (the Act), which created the Corporation for National and Community Service. The Corporation's mission is to engage Americans of all ages and backgrounds in service that addresses the nation's education, public safety, health, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that binds us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

The Corporation is a new federal agency that encompasses the work and staff of two existing independent agencies, the Commission on National and Community Service and ACTION. The Corporation also funds the new national service initiative called AmeriCorps, service-learning initiatives in elementary and secondary schools and institutions of higher education, and the new National Civilian Community Corps (NCCC). The Corporation will also engage in efforts to improve the quality of service programs and continue to support the Volunteers In Service To America (VISTA) program and the senior volunteer programs previously sponsored by ACTION.

The National Civilian Community Corps

The NCCC, a new federally managed program under the AmeriCorps umbrella, is in the process of establishing several residential sites across the country for national service. A main objective of NCCC is to utilize excess military capacity and personnel as the Department of Defense (DOD) down-sizes. The purpose, authority, and guidelines for the NCCC are written under Subtitle E of the Act which provides a basis for determining:

(1) Whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States.

(2) Whether such programs can expand the opportunities for young men and women to perform meaningful, direct, and consequential acts of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States.

(3) Whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selective Reserve of the Ready Reserve in connection with reduced DOD spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service.

(4) Whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

In accordance with the Act, the Corporation has established the NCCC demonstration program to carry out the purpose of Subtitle E. Under the demonstration program, NCCC Corps members (participants) may receive training and perform service in one of two program components: (1) A national service program or (2) a summer national service program. Both components are residential programs. The members of each program shall reside with other members of the Corps in Corps housing during the period of service. This notice addresses the summer national service program component of the NCCC only. The summer component is tailored to support Corporation objectives for the Summer of Safety.

The Summer of Safety

The Summer of Safety is being launched by the Corporation to respond to the growing fear of and frustration over the levels of crime and violence in every part of the country. The 1994 Summer of Safety will demonstrate the potential of national service to respond to these urgent needs by using the talents and energies of young Americans. The Summer of Safety will specifically address the public safety needs of communities by achieving the following Corporate objectives:

(1) Make direct and demonstrable impacts on crime, violence and fear by identifying and meeting public safety needs.

(2) Build new partnerships and collaborations for safety that capitalize on all of the community's resources.

(3) Demonstrate that young people can help make communities safer.

(4) Stimulate public interest in national service as a means to respond to America's problems.

The Corporation has established a range of Summer of Safety initiatives which will focus on enhancing public safety. The NCCC is sponsoring one of these initiatives which, as stated above, is tailored to support Corporate objectives.

Under the NCCC's sponsored Summer of Safety program, approximately 200 young people, ages 14–17, will do public safety-related service projects with schools, local law enforcement agencies, and community-based organizations. The young people, known as Corps members will receive leadership training and a mix of the best military and civilian youth service programming during their eight weeks at the camp on an underutilized military installation. The broad objectives established by the NCCC to support the Summer of Safety are as follows:

(1) To demonstrate that youth, properly trained and led, can have a direct and demonstrable impact on community public safety.

(2) To demonstrate that 14–17 year old youth Corps members from diverse, economic, geographic, and ethnic backgrounds can work together in teams to address community safety problems and concerns.

(3) To demonstrate that the service-learning model, created by combining the best elements from military training techniques and Civilian Conservation Corps values, is an effective means of preparing youth for public service.

NCCC Summer of Safety Program Overview

The NCCC seeks to set up a cooperative agreement with a single, innovative nonprofit organization (including institutions of higher education) to operate a summer camp for youth 14–17 years of age in support of the Summer of Safety. Preference will be given to organizations with previous experience and demonstrated success in similar operations. The applicant selected will be known as the Cooperator. A cooperative agreement was chosen as the vehicle of funds award (instead of a grant) to allow the NCCC to work hand-in-hand with the Cooperator on this program.

The NCCC is sponsoring only one national summer camp program for the summer of 1994. This camp will run for approximately 8 weeks beginning July 5, 1994. Long range plans are to sponsor additional summer camps in 1995. This notice is for the 1994 camp only. As a demonstration program, future camps will be impacted by the results of the 1994 effort.

The Cooperator selected must handle all aspects of camp operation except where stated otherwise in this notice. The main areas of concern for camp operation include the following: finding and securing a suitable camp location, logistics (food, lodging, supplies, transportation, support, etc.), recruitment of Corps members, hiring of staff, training of staff and Corps members, and identification, development, and performance of community service projects that support the goals of the Summer of Safety.

Eligibility

All nonprofit organizations, including institutions of higher education, may apply to be selected as the Cooperator for this project. Prior experience is highly desirable but not mandatory.

Guidelines

Camp Selection: The summer camp may be located anywhere in the United States on a military base or other under-utilized DOD facility. The applicant must find a suitable camp location and obtain approval for its use. Letters of intent or agreement from installation command personnel should be provided with the application. The applicant should show what services will be provided by the base and what must be provided by the Cooperator. The camp should include suitable living, classroom, and support facilities for the diverse group of up to 200 young men and women aged 14–17. Support facilities should include but not be limited to: food service, laundry, clinic or first aid station, and places for appropriate recreational activities. The camp should not be in an extremely remote area. Travel to and from the camp should be possible on a cost effective basis. Care should be taken to select a camp in an area where community projects can be done near-by the camp location. Although meaningful public safety projects may be accomplished in rural, suburban, or urban areas, excessive travel time from the camp to the project area should be avoided.

Recruitment: As this is a national program, recruitment should be accomplished on a national basis. All recruitment activities for this NCCC Summer of Safety summer camp program are to be accomplished by the Cooperator. Up to 200 Corps members shall be selected. Corps members shall be at least 14 but not over 17 years of age during the period of camp which will be approximately from July 5, 1994 through August 24, 1994. Application procedures and a time period for potential Corps members to return applications will be established by the Cooperator. Also, a fair application review process must be used. Precise guidelines will be coordinated with the selected Cooperator for recruiting Corps members.

In general, Corps members will represent economically, geographically, and ethnically diverse backgrounds. To the extent practicable, at least 50 percent shall be economically disadvantaged youths. The term "economically disadvantaged" follows the guidelines established by the Job Training Partnership Act. A precise definition of this term will be provided by NCCC for the applicant selected as Cooperator. Corps members must be U.S. citizens or permanent residents, have no felony convictions or adjudications, and have no current substance abuse problems (drugs or alcohol). Recruits must have no chronic or life threatening physical conditions. Procedures to make these determinations will be researched and recommended by the applicant. NCCC reserves the right to approve any method(s) of determination to be used.

Reasonable accommodation will be made for Corps members with disabilities. Disabled Corps members must be capable of self-care and able to accomplish project tasks. Disabled recruits will be evaluated on a case-by-case basis and fair methods of evaluation jointly established by the Cooperator and NCCC.

The Cooperator and the NCCC shall establish standards of conduct that apply to Corps members. The Cooperator shall appoint a camp superintendent who will enforce the standards of conduct, through his or her staff, to promote proper moral and disciplinary conditions in the camp. Enforcement methods for standards of conduct shall be jointly determined with the NCCC. If enforcement fails, a Corps member may be dismissed if the superintendent determines the retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

Camp Staff: Applicants will screen, select, and hire a qualified camp staff. The staff may include administrative personnel and Corps member supervisory and training staff as determined necessary by the applicant. All staff personnel should reflect the principles of diversity established by

NCCC, be quality-oriented with high personal standards, and be capable of being good role models for Corps members. An appropriate method of accomplishing a background check and certification of potential staff members should be established by the applicant. Preference will be given to applicants who show intention and ability to recruit qualified retired, discharged, and other inactive members and former members of the Armed Forces, and former VISTA, Peace Corps, and youth service program personnel as staff members. The NCCC will provide trainers and a one-week training program for the camp staff members who will work directly with Corps members. Therefore, plans should be made to have those staff members available to receive training not later than one week prior to the camp start date. The applicant shall be responsible for supervising the camp staff and administrative personnel and for all required personnel actions such as record keeping, salary payments, scheduling, insurance, and all other details.

Corps Member Compensation & Benefits: As stated above, Corps members shall be recruited nationally. They will receive a one-time round-trip transportation allowance to and from the camp location, a living allowance, and an education benefit upon completion of the program. These funds shall all be provided by the NCCC but managed and disbursed by the selected Cooperator. The amount of each funding element will be determined by NCCC and provided to the Cooperator under a jointly established procedure. These funds need not be included in proposals. However, a plan to provide an accounting system to manage and disburse these funds to Corps members should be included and the cost of this service should be shown.

Uniforms: The NCCC will provide uniforms for Corps members and camp staff. Applicants shall manage and distribute clothing items. Clothing items are now being determined by NCCC. An estimate of clothing items includes; 3 shorts, 3 pants, 3 tee shirts, 2 polo shirts, 1 light windbreaker, 1 cap, one pair of sneakers, and one knapsack per camper. Similar items will be available for staff. Spare items will need to be stored, accounted for, and distributed as required. Laundry plans should be considered among other logistics details.

Corps Member Training: NCCC objectives for the Summer of Safety relate directly to the accomplishment of community service projects supporting public safety needs. However, to prepare Corps members to accomplish these projects successfully, careful training and learning must take place. To that end, Corps members will receive training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work training, citizenship, and physical conditioning. The NCCC will provide a curriculum to the selected applicant. The Cooperator's camp staff will administer the training to the Corps members. The NCCC reserves the right to be involved closely in all training. The Cooperator may provide additional training and perhaps modify or adapt the curriculum provided by NCCC when changes are coordinated with NCCC and receive NCCC approval. All training must reflect an innovative and structured approach that combines the best of military training techniques, Civilian Conservation Corps values, and service learning models. For the purposes of training, the following definitions apply: (1) *Military training techniques* relate to leadership/followership skills, self discipline, self responsibility, and teamwork; (2) *Civilian Conservation Corps values* focus on love of one's fellowman, personal responsibility for one's own actions, justice, compassion, humility, respect for self and others, concern for the environment, and community service (3) *service learning* with respect to Corps members means a method—(a) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs, (b) that provides structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity, (c) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities, and (d) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

Applicants should be innovative in applying or suggesting other areas of training or education that may be available. For example evening instruction in such areas as computers, foreign language, and so forth may be considered. Also, field trips or other activities directly related to the objectives may be proposed for consideration.

Project Development/Service Activities: Community service projects shall focus on public safety needs. All service projects carried out by Corps members shall: (1) Meet an identifiable public need, (2) emphasize the performance of community service activities that provide direct and demonstrable community benefits and opportunities for service learning and skills development, (3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together, and (4) include education and training in various technical fields. The Summer of Safety program must consider projects appropriate to the ages and capabilities of the Corps members.

The applicant may consider having Corps members accomplish one relatively large project or a series of smaller projects. The NCCC will work closely with the applicant selected to develop service projects in public safety. Appendix 1 gives suggestions for how the applicant may approach the development of Summer of Safety projects. The applicant should begin to work with the community and describe some candidate projects in the proposal. The NCCC reserves the right of final project approval.

Camp Operations and Logistics: The Cooperator is responsible for all logistical details of camp operations. Areas that must be considered include: medical care and first aid, food for off-site meals during projects, camp transportation, and tools and proper safety equipment for project work. This is by no means an exhaustive list but is provided as examples only. In some cases, innovative solutions may be possible. For example, community groups may agree to provide tools and/or safety equipment needed for Corps members to work on projects. Applicants should develop a time-phased plan or realistic schedule for accomplishing all tasks and include this information with the proposal. A detailed budget must be included as well.

Appropriate opening and closing ceremonies to kick off this program and end it in a positive manner should be planned. Details of these events must be coordinated with NCCC for approval.

The applicant must be prepared to make an on-site presentation to NCCC that explains all aspects of camp operations and program activities. The date for the presentation will be jointly arranged but should be no later than two weeks prior to the camp start date.

Evaluation: Evaluation is an important aspect of the NCCC Summer of Safety camp program. The goal is to take lessons learned from the design of this year's program and apply those lessons to future camps. The applicant should include a detailed evaluation plan consisting of the following

components; (1) progress toward achievement of program objectives, (2) measurement of the quality and effectiveness of service provided to communities, (3) changes in behavior of Corps members, and (4) management effectiveness of the delievery of the total program. Additionally, internal evaluation and monitoring should be a continuous process, allowing for frequent feedback and quick correction of problems. The selected Cooperator will be asked to present a briefing of lessons learned to NCCC at the end of the Summer of Service camp and provide periodic reports throughout the summer.

Application Procedures

An application kit can be requested by writing to or calling the NCCC using the address or phone numbers listed in this notice. Applications must consist of the following items:

(1) A narrative description consisting of not more than 25 typed pages.

(2) Completion of an application for Federal Assistance (Form 424) with budget sheet and required assurances (Included in application kit).

(3) A signed and dated certification regarding drug free workplace requirements (Included in application kit).

(4) A signed and dated certification regarding debarment, suspension, and other responsibility matters (primary covered transactions) (Included in application kit).

(5) A signed and dated certification regarding lobbying if the Federal Assistance exceeds $100,000 (Included in application kit).

Proposal Narrative

Applicants should present their proposals in narrative form with the other components of the application package. Where appropriate in the narrative, methods to implement specific plans should be linked with one or more measurable or demonstrable outcomes. Show not only what tasks are planned, but also the conditions and standards by which they will be accomplished (behavioral terms). The narrative should not exceed 25 type written pages and include the following items as a minimum:

1. *Title page:* Show the name and address of legal applicant (include the signature of the authorized executive), the names of any other organizations participating in a partnership and the amount of federal funds requested. A section on the background of the organization may be included showing experience and capability. Attach a short resume or biography of the primary project director.

2. *Location of camp:* Identify a camp location suitable to support 200 Corps members in accordance with the guidelines provided in this notice.

3. *Recruitment plan:* Include a detailed plan for recruiting Corps members nationwide in accordance with the guidelines provided.

4. *Standards of conduct:* A plan for establishing and enforcing standards of conduct for Corps members should be included in accordance with the guidelines. Although establishment of standards of conduct will be a joint Cooperator/NCCC responsibility, the applicant should include plans for dealing with problems that may be anticipated.

5. *Staffing plan:* Applicants should explain in detail how staffing of the camp will be accomplished in accordance with the guidelines.

6. *Funds management plan:* Explain in detail how the compensation and benefit funds for Corps members (described in guidelines) will be managed and disbursed.

7. *Uniform plan:* Explain details of how the uniforms provided by NCCC for Corps members and camp staff will be managed. Include a distribution, storage, and replacement plan.

8. *Training plan:* Include a detailed plan for conducting a training program for Corps members using curriculum and educational materials provided by NCCC and any other training proposed to help meet objectives. Where possible explain any project-specific training anticipated and methods of accomplishment.

9. *Supplementary activities:* Include a detailed explanation of any additional activities proposed for Corps members such as: mentoring, tutoring, skills training, recreation, education, or cultural activities.

10. *Projects:* Include detailed plans to identify and implement public safety projects that meet the criteria of the guidelines provided. Include an overall project development plan including methods to establish good working relationships with the military base, the corps staff, youth corps members, and community leadership. (Community leadership sectors may include, for example, business, labor, foundations, colleges, universities, media, religious organizations, other military services, government, and health care agencies.) Where possible, include appropriate letters showing support from local community leaders and elected/appointed officials.

11. *Project tools and safety equipment:* Explain in detail what tools and safety equipment might be needed for any known or proposed projects. Safety equipment may include such items as safety goggles, gloves, hard hats, or protective clothing. Explain also how tools and safety equipment will be obtained.

12. *Budget:* Provide a detailed budget plan showing how funds will be used. Also, it is desirable to show experience in managing a budget, including evidence of the applicant's fiscal capacity to administer federal funds.

13. *Medical and first aid care:* Provide a detailed plan for providing this service to Corps members and staff.

14. *Transportation:* Explain in detail all aspects of transportation including getting Corps members safely from the camp to the project site(s) and back on a routine basis.

15. *Meals:* Include a plan for providing meals at the camp and at project sites when required.

16. *Evaluation:* Applicants should include an evaluation plan in accordance with the guidelines provided in this notice.

General Criteria for Applicant Selection

Applications will be reviewed and evaluated using the criteria below. Failure to respond to program requirements discussed in this notice may result in the removal of a proposal from further consideration. The narrative portion of the application should not exceed 25 type-written double spaced pages. Please do not bind your proposal, in case additional copies must be made.

The criteria noted below, which are based on the guidelines and requirements contained in this notice, will be used for selection of a Cooperator. Each criteria will be considered up to the total points available as noted.

(1) Quality of Plans and Attention to Detail (60 Points)

- A camp location suitable to support 200 Corps members in accordance with the guidelines provided in this notice is identified.
- The applicant provides evidence of the ability to accomplish all tasks outlined in this notice successfully. This is shown by outlining previous experience and in carefully formulated written plans with a realistic time-phased scheduled for accomplishing all tasks.
- The overall implementation plan is feasible and has a realistic time table.
- Where appropriate, the applicant explains methods to implement plans that are linked to one or more

measurable/demonstrable outcomes. Planned tasks, as well as the conditions and standards by which they will be accomplished, are clearly shown.

- Letters of intent or agreement from command personnel of the chosen military or other DOD location are provided.
- A detailed plan for recruiting Corps members nationwide in accordance with the guidelines of this notice is provided.
- A plan for establishing and enforcing standards of conduct is included and is in accordance with the guidelines of this notice.
- A detailed staffing plan for screening and hiring qualified camp personnel is included and meets the guidelines provided with this notice.
- The staffing plan gives consideration to retired, discharged, and other inactive members and former members of the Armed Forces, former VISTA, Peace Corps, and youth service program personnel.
- The staffing plan ensures the staff is comprised of men and women of diverse ethnic, economic, professional, and geographic backgrounds.
- A detailed explanation shows how funds for Corps members, such as the living allowance and the educational benefit, are to be managed and disbursed.
- Details are given of how Corps member and staff uniforms and related items will be distributed, replaced, cleaned, and stored for issue.
- A detailed plan for conducting training program for Corps members using curriculum and educational materials provided by NCCC is provided.
- Detailed plans for providing additional activities for Corps members such as: mentoring, tutoring, skills training, recreation, education, and cultural activities are included.
- Detailed plans to identify and implement public safety projects that meet the criteria of the guidelines of this notice are provided.
- An overall project development plan, including methods to establish good working relationships with the military base, the corps staff, youth corps members, and community leadership are included.
- Specific plans to identify and coordinate community service projects with the local community are included.
- The plan identifies specific learning projects and methods by which they will be structured to ensure true service learning takes place.
- Plans to involve Corps members in the use of a team approach in daily camp and project activities are clearly shown.
- Individual projects and tasks are appropriately matched to Corps member age level and skills.
- Letters showing support for projects and the Summer of Safety program from local community leaders and elected/appointed officials are included.
- A detailed plan for providing medical and first-aid care to Corps members and staff is provided.
- All aspects of transportation, including getting Corps members safely to and from project sites, is explained in detail.
- A plan for providing off-site meals (at project sites) when required is outlined.
- A plan to supply tools and safety equipment that might be needed to accomplish projects is explained.

2. Evaluation (10 Points)

A detailed evaluation plan is provided designed to: track progress toward achievement of program objectives, measure the quality and effectiveness of service provided to communities, measure the satisfaction of both Corps members and camp staff, and assess management effectiveness. Also, plans show that internal evaluation and monitoring is a continuous process, allowing for frequent feedback and quick correction of problems.

3. Leadership and management (10 Points)

Evidence is provided that the program director(s) and supervisor(s) are well-qualified for their responsibilities, have a reasonable amount of previous project and personnel management experience, and experience in recruiting, selecting and supervising youth participants in community service programs. Evidence of ability to establish and work within a budget is provided.

4. Cost effectiveness (10 Points)

The proposal shows a cost effective approach to the use of Federal funds and Federal/non-Federal resources. The submitted budget is reasonable for the proposed service activities and the identified community projects. Detailed budget plans clearly show how funds will be used.

5. Innovation and replication (10 Points)

The proposal incorporates innovative approaches to community involvement and service. The program is a good model adaptable in other locations and circumstances. A plan for reporting and briefing results of the summer of service program, including lessons learned, to the NCCC staff is included.

Application Review Process

Applications submitted will be reviewed and evaluated by the NCCC according to the above criteria. NCCC reserves the right to ask for evidence of any claims of past performance or future capability. Selection of a Cooperator must be finalized by execution of a Cooperative Agreement which may require discussions between the NCCC and the applicant to resolve any open issues and/or to further develop plans or specific strategies.

Appendix 1

This appendix provides suggestions for how the Cooperator might approach identification of projects for the NCCC Summer of Safety program. This is meant to be thought-provoking and is not a required process. It will be helpful if the Cooperator can do some preliminary work with local communities to identify potential public safety related projects. One approach to the project selection process is to: (1) Find out what the community needs are (what problems are important to the community), (2) identify other community organizations with a stake in the problem that may be recruited for support, and finally, (3) plan realistic response activities. The following information expands on these steps.

I. Identify Crime/Violence Problems To Be Addressed

By working directly with local law enforcement, neighborhoods, attending community meetings, setting up meetings for law enforcement with community groups, contacting and surveying local businesses, public agencies, service organizations, youth groups, senior groups, etc., your organization can identify specific crime problems which confront the community and concern residents. The types of issues most readily identified through this analysis may include:

—Specific population needs (e.g., seniors who are afraid to go to the market after dark, or children who can't use playgrounds because of drug activity, debris or disrepair, or teenagers who get into trouble when a facility—theater, club, etc.—closes for the evening, or groups are targets of hate crimes);
—Physical hazards (e.g., drug houses, vacant structures used for drug trade or other illegal or disorderly purpose, abandoned vehicles, missing street lights, broken fences, dangerous vehicle traffic patterns, open-air drug markets);
—Unreported or undetected criminal activity (e.g., drug use/sales, gang activity, prostitution, domestic violence or fraudulent solicitors/practices).

II. Pick Community Partners or Collaborators

Think broadly about the range of organizations in the community that may become involved or are already involved in reducing crime and violence in the community. Try to identify which ones have missions, resources or experience that may

be useful. Examples are: City agencies, law enforcement, schools, senior or neighborhood centers, public/private organizations, etc. These organizations may be willing to take part or support your efforts to resolve problems.

III. Craft a Specific Problem Response

It may help to have various activities linked with a common theme. For example, "victim support" may include: Support of victim services within the court, notification of victims for court dates and procedures, meeting and accompanying victims to court, providing child care for victims, follow-up on restitution orders, etc.

You should try to ensure the activities are realistic. Ask if the activities will make a difference in the community. It must be realized that not all problems can be solved in a summer program. Other activities for consideration are:

—Involve youth in senior escort service.
—Conduct and disseminate crime prevention surveys and information/advice.
—Undertake community clean-up efforts, focusing on graffiti, vacant lots, alleys, and other sites where fear of crime and disorder are evident.
—Organize neighborhood watch programs.
—Initiate or enhance relationships between law enforcement and local youth organizations
—Develop a network of "safe houses" or "safe corridors" in neighborhoods, and training parents and children about the program.
—Develop and conduct anti-violence presentations for youth groups.
—Develop and supervise youth activities that incorporate age-appropriate personal safety/violence prevention training; e.g., illicit drug use, impaired driving, etc.
—Establish conflict resolution programs, including outreach, training, and ongoing activities for youth.
—Lead public safety field trips for youth with appropriate orientation; e.g., to jails/prisons, police stations, courts, hospitals, etc.

Dated: February 23, 1994.

Fred Peters,

Deputy Director of Education, Training, & Military Affairs.

[FR Doc. 94–4564 Filed 2–28–94; 8:45 am]

BILLING CODE 4430–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–366]

Georgia Power Co., et al., Edwin I. Hatch Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Georgia Power Company, acting for itself, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensees), for the Edwin I. Hatch Nuclear Plant, Unit 2 (Hatch or the facility), Facility Operating License No. NPF–5, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Hatch Unit 2 Technical Specifications (TS) to increase the allowable main steam isolation valve (MSIV) leakage rate from 11.5 standard cubic feet per hour (scfh) to 100 scfh for any one MSIV and a combined maximum pathway leakage rate of 250 scfh for all four main steam lines, and would delete the TS requirements for the currently installed MSIV leakage control system (LCS).

The proposed amendment is in accordance with the licensee's application dated October 1, 1993, as revised January 6, 1994, and supplemented February 3, 1994.

The Need for the Proposed Action

The proposed amendment is needed to reduce the need for repairs of the MSIVs in order to meet the present, restrictive, leakage requirements; to resolve concerns associated with the current LCS performance capability at high MSIV leakage rates; and to assure a reliable and effective method is available for treating any potential MSIV leakage during a postulated loss of coolant accident (LOCA). Many BWRs have difficulty meeting their MSIV leakage rate limits. Extensive repair, rework and retesting efforts have negative effects on outage costs and schedules, as well as significant impact on ALARA (as low as reasonably achievable) radiological exposure programs for the licensee's staff and labor force. The alternate means proposed by the licensee to treat MSIV leakage makes use of components and systems that can reasonably be expected to remain intact and serviceable following a design basis LOCA. These components are the main steam lines and condenser.

Environmental Impacts of the Proposed Action

The proposed amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action will not increase potential radiological environmental effects due to MSIV leakage beyond those already permitted by the regulations.

MSIV leakage, along with containment leakage, is used to calculate the maximum radiological consequences of a design basis accident. Standard conservative assumptions were used to calculate offsite, control room and the technical support center (TSC) doses, including the doses due to MSIV leakage, which could potentially result from a postulated design basis LOCA at Hatch, and are described in Section 15.1.39 of the Hatch Unit 2 Final Safety Analysis Report (FSAR). The control room, TSC, and offsite doses resulting from a postulated LOCA have recently been recalculated using currently accepted iodine dose conversion factors. This analysis demonstrated that a total leakage rate of 250 scfh results in dose exposures for the control room, TSC, and offsite (exclusion area boundary and low population zone) that remain within the requirements of 10 CFR part 100 for offsite doses and 10 CFR part 50, appendix A, for the control room and TSC.

Deletion of the MSIV Leakage Control System will reduce the overall occupational dose exposures due to the elimination of maintenance and surveillance activities associated with the system. The dose exposure associated with deleting the system will be as low as reasonably achievable and will be less than the dose which would result from maintenance and surveillance activities associated with the present system for the remainder of plant life.

Therefore, radiological releases will not differ significantly from those determined previously, and the proposed amendment does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed action does not affect plant nonradiological effluents and has no other nonradiological environmental impact.

Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed amendment does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

Based on its review, the Commission concludes that the proposed amendment is acceptable. The staff has determined that the proposed amendment does not alter any initial conditions assumed for the design basis accidents previously evaluated and the alternate system is capable of mitigating the design basis accidents.

The proposed amendment does not increase the probability or consequences

of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for the proposed amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Edwin I. Hatch Nuclear Plant, Unit No. 2, dated March 1978.

Agencies and Persons Consulted

The staff consulted with the State of Georgia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated October 1, 1993, as revised January 6, 1994, and supplemented February 3, 1994, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Loren R. Plisco,

Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4560 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 15 and 16, 1994, in the East Auditorium at the Westinghouse Nuclear Energy Center, 4350 Northern Pike Road, Monroeville, PA.

Most of the meeting will be closed to the public to discuss information deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Tuesday, March 15, 1994—8:30 a.m. until the conclusion of business.

Wednesday, March 16, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the test programs being conducted by Westinghouse in support of the AP600 passive plant design certification review. The focus of the discussions will be on the Core Make-up Tank (CMT) and Passive Containment Cooling System (PCCS) test programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred, including the specific schedule for the sessions open to the public.

Dated: February 23, 1994.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 94–4556 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee Meetings on ABB–CE Standard Plant Designs and on Advanced Boiling Water Reactors; Revisions

The meeting of the ACRS Subcommittee on ABB–CE Standard Plant Designs scheduled to be held on March 8, 1994, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland has been extended until the close of business on March 9, 1994. Notice of this meeting was previously published in the **Federal Register** on Wednesday, February 23, 1994 (59 FR 8666). All other items pertaining to this meeting remain the same as previously published. For further information please contact the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST).

The meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors scheduled to be held on Wednesday, March 9, 1994, has been cancelled. Notice of this meeting was previously published on Wednesday, February 23, 1994 (59 FR 8666). For further information please contact the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: February 23, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–4554 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued a report entitled "Characterization of Class A Low-Level Radioactive Waste 1986–1996" (NUREG/CR–6147). This manual, prepared for the NRC by S. Cohen and Associates, is now available.

This report characterizes Class A Low-Level Waste shipped for disposal from 1986 through 1990. It was developed as part of a Nuclear Regulatory Commission (NRC) sponsored study to develop a technical information base useful to persons and organizations involved in the management and disposal of low-level radioactive waste and in the regulation of these activities.

Copies of NUREG/CR–6147 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room, 2120, L Street NW. (Lower Level), Washington, DC.

For further information contact James C. Malaro, Radiation Protection and Health Effects Branch, Mail Stop NL/S–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3764.

Dated at Rockville, Maryland, this 25th day of January, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–4558 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company (Zion Nuclear Power Station, Unit Nos. 1 and 2)

Exemption

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License Nos. DPR–39 and DPR–48 which authorize operation of Zion Nuclear Power Station, Units 1 and 2, at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of two pressurized water reactors located at the licensee's site in Lake County, Illinois. The licenses provide, among other things, that they are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In a letter dated December 3, 1993, the licensee provided an assessment of the reference temperature for pressurized thermal shock (RT_{PTS}) for the design life (32 effective full power years) for the Zion Nuclear Power Station Units 1 and 2 (Zion 1 and 2) reactor vessels and requested an exemption from determining the unirradiated reference temperature (initial RT_{NDT}) in accordance with NB–2331 of Section III of the ASME Boiler and Pressure Vessel Code (ASME Code), as specified in 10 CFR 50.61(b)(2)(i). Prior correspondence commenced with the licensee's letter dated December 13, 1991, that replied to the amendment to 10 CFR 50.61 which was published in the **Federal Register** on May 15, 1991, (56 FR 22300). In a letter dated March 13, 1992, the licensee provided its flux reduction program to ensure the intermediate-to-lower shell circumferential weld for Zion Unit 1 would remain less than the screening criterion through 32 EFPY. In a letter dated May 22, 1992, the licensee used data provided by the Babcock and Wilcox Owners' Group (B&WOG) to address the initial RT_{NDT} and RT_{PTS} for the Zion Unit 1 and 2 reactor pressure vessels (RPVs). With this data, the licensee was able to show that the RPVs will satisfy the pressurized thermal shock (PTS) screening criteria through 32 EFPY. After reviewing the licensee's submittals, the staff requested additional information in a letter dated December 2, 1992. The licensee responded in a letter dated January 28, 1993. On June 9, 1993, the staff met with the licensee to discuss the performance of a modified analysis utilizing improved analytical techniques. In a letter dated September 1, 1993, the licensee provided a summary report demonstrating that the Zion RPVs will not exceed the end of life PTS screening criteria. In another letter dated October 5, 1993, the licensee detailed the development of the methodology utilized in performing the PTS evaluation for the Zion RPVs.

III

The Pressurized Thermal Shock (PTS) rule, 10 CFR 50.61, "Fracture toughness requirements for protection against pressurized thermal shock events," adopted on July 23, 1985, establishes screening criteria that define a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. The screening criteria are given in terms of reference temperature, RT_{PTS}. The screening criteria are 270°F for plates and axial welds and 300°F for circumferential welds. The RT_{PTS} is defined as the sum of (a) the unirradiated reference temperature, (b) the margin to be added to cover uncertainties in the initial properties, copper and nickel contents, fluence, and calculation procedures, and (c) the increase in RT_{PTS} caused by irradiation. The amount of increase in RT_{PTS} is based on the amount of neutron irradiation and the amount of copper and nickel in the material. The greater the amounts of copper, nickel and neutron fluence, the greater the increase in RT_{PTS} for the material and the lower its fracture resistance. The PTS rule requires that the unirradiated reference temperature be determined from measurements as defined in the ASME Code, Section III, Paragraph NB–2331. The amount of margin is dependent on whether: (a) The material is a weld or a base metal, (b) the unirradiated reference temperature is a generic value or a measured value, and (c) the increase in RT_{PTS} is from credible surveillance material or is from the chemistry factor tables in the PTS rule.

The PTS rule was amended on May 15, 1991. The amended rule changed the method of calculating embrittlement to the method recommended in Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials", and requires licensees to consider the effect of reactor vessel operating temperature and surveillance results on the calculated RT_{pts} value. The licensee provided this assessment in a letter dated July 2, 1992, which contained the licensee's response to Generic Letter (GL) 92–01, Revision 1, "Reactor Vessel Structural Integrity, 10 CFR 50.54(f)". The purpose of GL 92–01 was to obtain information needed to assess compliance with requirements set forth in 10 CFR Part 50, Appendices G and H and commitments made in response to GL 88–11 regarding reactor vessel structural integrity. The licensee's responses to GL 92–01 are being evaluated and will be resolved as an issue separate from this exemption request.

Pressurized Thermal Shock (PTS) Evaluation

Licensee's Evaluation

The licensee reports that the beltline of each reactor vessel consists of a forging, four plates, four longitudinal welds and three circumferential welds. There are sufficient records to identify the heat number and chemical composition (percentage copper and nickel) of all beltline materials.

Unirradiated Reference Temperature

The unirradiated reference temperature for the beltline forgings and plates was determined from test results from the materials. The licensee used a generic value (−5°F) for the unirradiated reference temperature of all beltline weld metals, with the exception of the weld metal identified as WF–70. The unirradiated reference temperature for WF–70 weld metal was determined from drop weight tests and fracture toughness tests from welds fabricated with WF–70 and WF–209–1 weld metal. Since WF–70 and WF–209–1 welds were fabricated using the same heat number of weld wire and the same type of flux, their material properties are considered equivalent. The licensee's data will be discussed in the Staff Evaluation of Unirradiated Reference Temperature for WF–70.

The unirradiated reference temperature that is defined in Section III of the ASME Code, Paragraph NB–2331 is determined from Charpy V–notch (CVN) impact and drop weight tests. These tests have been performed on WF–70 weld metal by the licensees for Zion and Oconee, the B&WOG and Oak Ridge National Laboratory (ORNL). The test results indicate that the unirradiated reference temperature varies from −3°F to +123°F with a standard deviation of 43.1°F and a mean value of 49°F. This wide variability was a surprise to the staff because welds similar to WF–70 were reported to have a mean value of −4.8°F and a standard deviation of 19.7°F. The staff believes that the large uncertainty in unirradiated reference temperature for WF–70 weld metal is due to the low upper-shelf behavior of the material and that the definition of unirradiated reference temperature in the ASME Code is not applicable for material with low upper-shelf behavior like WF–70 weld metal. The licensee has proposed to determine the unirradiated reference temperature from drop weight and fracture toughness tests instead of the method defined in Section III of the ASME Code. The licensee proposes to define the unirradiated reference temperature as equal to the sum of: (a) the mean value for the nilductility transition temperature, T_{NDT}, from the drop weight test data from WF–70 and WF–209–1 weld and (b) the two standard deviation value determined from the drop weight test data. This method results in a mean value for the T_{NDT} of −56°F and a standard deviation of 14.8°F for WF–70 weld metal. Using these values of T_{NDT} and standard deviation, the unirradiated reference temperature is −26°F for WF–70 weld metal. Since the licensee has not followed the method in Section III of the ASME Code, the licensee's method for determining the unirradiated reference temperature of WF–70 does not meet the requirements of 10 CFR 50.61. The licensee has, therefore, requested an exemption from the requirement to determine the unirradiated reference temperature (initial RT_{NDT}) in accordance with NB–2331 of Section III of the ASME Boiler and Pressure Vessel Code (ASME Code), as specified in 10 CFR 50.61(b)(2)(i).

Increase in RT_{PTS} and Margin

The increase in RT_{PTS} for each beltline material, except WF–70 weld metal, was determined using the chemistry factor tables in the PTS rule. The increase in RT_{PTS} for WF–70 weld metal was determined from Charpy impact tests on WF–70 weld metal irradiated in the Zion Units 1 and 2 surveillance capsules. The increase in RT_{PTS} for WF–70 weld metal was determined using the methodology documented in Section 2.1 of RG 1.99, Revision 2.

The amount of margin for each beltline plate and forging was the amount identified in the PTS rule for base metal with measured unirradiated reference temperature. The amount of margin for each beltline weld, with the exception of WF–70, was the amount identified in the PTS rule for weld metal with generic values of unirradiated reference temperature. The amount of margin for WF–70 weld metal was determined using the standard deviation for the increase in RT_{PTS} from irradiation in RG 1.99, Revision 2, when credible surveillance data is available. This results in a margin value of 28°F for WF–70 weld metal.

Paragraph 10 CFR 50.61(b)(3) requires that RT_{PTS} values which are modified by surveillance data be approved by the Director, Office of Nuclear Reactor Regulation. The staff believes that using the methodology in RG 1.99, Revision 2 for determining the increase in RT_{PTS} from surveillance material is an acceptable alternative to the value determined from the chemistry factor tables in the PTS rule. The staff believes that the amount of margin for WF–70 should be the amount determined using the standard deviation for the increase in RT_{PTS} from irradiation in RG 1.99, Revision 2. This results in a margin value of 28°F and an unirradiated reference temperature of −26°F for WF–70. The reasons for not including the uncertainty of the unirradiated reference temperature in the margin, but adding it to the T_{NDT} will be discussed in the Staff Evaluation of Unirradiated Reference Temperature for WF–70.

RT_{PTS} at Expiration of the Zion 1 and 2 licenses

The licensee has projected that at the expiration of their licenses, WF–70 weld metal in Units 1 and 2 will have RT_{PTS} values of 230°F and 172°F, respectively. Both these values are significantly below the PTS screening criteria in the PTS rule. As a result of the licensee's evaluation of WF–70 weld metal, the limiting material in Unit 1 is a circumferential weld fabricated using WF–154 weld metal and the limiting material in Unit 2 is a circumferential weld fabricated using SA–1769 weld metal. The RT_{PTS} values for these welds at the expiration of the Units 1 and 2 licenses are 268°F and 269°F, respectively. Both of these values are significantly below the PTS screening criterion, 300°F, in the PTS rule.

Staff Evaluation of Unirradiated Reference Temperature for WF–70

As discussed previously, the licensee and the B&WOG have concluded that determination of unirradiated reference temperature via the CVN procedure of NB–2331 of Section III of the ASME Code is not appropriate for the Zion beltline welds fabricated with WF–70 weld metal. The staff recognizes that the ASME Code procedure, when applied to lower upper shelf materials such as WF–70, may not produce a reasonable determination of unirradiated reference temperature. The staff has, therefore, encouraged the licensee to pursue alternate approaches to determine the unirradiated reference temperature for WF–70. The approach selected by the licensee and the B&WOG involves analysis of WF–70 fracture toughness data in accordance with the Draft ASTM Standard on Fracture Toughness in the Transition Range (Draft 5, Rev. 3–3–93). The purpose of the licensee's analysis is to demonstrate that the above methodology "bounds" the fracture toughness data and can be indexed to the ASME fracture toughness reference curves. The indexing to either the K_{IC} or K_{IR} curves is used to show that the reference temperature determined from drop weight tests provides an

appropriate unirradiated reference temperature for WF–70.

At a meeting with the licensee on June 9, 1993, the staff acknowledged the merit of the ASTM approach and encouraged the licensee to pursue it to completion. At that time, the staff also indicated that the licensee should consider constraint adjustments and strain rate effects on the data. In particular, the staff questioned the basis for directly indexing the Babcock and Wilcox (B&W) dynamic fracture toughness data to the ASME K_{IR} curve with respect to the differing strain rates involved in generation of the data. The licensee subsequently submitted a B&W report (BAW–2202, September, 1993) which addresses its revised analysis for the determination of the unirradiated reference temperature.

The staff has independently evaluated the data provided in BAW–2202 and the previous report (BAW–2100, January, 1993) in accordance with the Draft ASTM Standard on Fracture Toughness in the Transition Range. The staff analysis, presented in the attached Figure 1, considered both constraint and rate effects on the data. Figure 1 presents the B&W dynamic fracture toughness data as the open symbols. The solid symbols represent the same data constraint corrected using the procedure suggested by Anderson and Dodds, 1993. The ASTM curves (K_{jc} median, 95% CL and lower bound) were derived from the constraint-corrected data at 0°F where it can be seen that the magnitude of the correction was small. It is seen that the ASTM K_{jc} lower bound curve effectively bounds all of the data with the possible exception of the constraint-corrected point at +132°F. However, the specimen at +132°F exhibited a significant amount of ductile tearing prior to failure by cleavage. It is known that the Anderson-Dodds procedure will "over-correct" for constraint in such instances.

With respect to strain rate effects, the B&W dynamic data were generated at a rate of approximately 7×10^4 ksi $\sqrt{in/sec}$. This rate is on the threshold of the rates achieved in the crack arrest tests which constitute the ASME K_{IR} curve. Figure 1 also shows a direct comparison between the B&W dynamic fracture toughness data and some recently available crack arrest data on WF–70 from the ORNL. While the crack arrest data are generally conservative in comparison to the B&W data, it is seen that the ASTM K_{jc} lower bound curve also bounds the ORNL data. On the basis of this analysis, the staff finds the methodology of indexing the B&W dynamic data to the K_{IR} curve acceptable.

In conclusion, the staff analysis which addresses constraint and rate effects has shown the fracture toughness based procedure for determination of unirradiated reference temperature to be acceptable for WF–70. As shown in Figure 1, the ASME K_{IR} curve, with a reference temperature of −26°F bounds all of the constraint-adjusted data and the ASTM curves up to approximately 140°F. This analysis therefore supports an unirradiated reference temperature of −26°F for the WF–70 material.

Other procedures for determination of RT_{NDT} may serve as acceptable alternatives to NB–2331 contingent on staff review and approval. However, it should be noted that the staff acceptance of the alternative procedure in this evaluation was contingent on the analysis of a significant amount of fracture toughness data for the WF–70 weld metal. Acceptance of such a procedure in a case where little or no fracture toughness data were available would be difficult in the absence of an officially sanctioned consensus standard.

As part of the resolution of low-upper-shelf reference temperature issues on a generic basis, the ASME Code has tasked the Failure Modes of Components Committee of the Pressure Vessel Research Council (PVRC) to consider alternate procedures for the determination of unirradiated reference temperature. To this end, the PVRC recently held a ½ day workshop on "K_{IR} Curves and RT_{NDT}" on October 11, 1993, where the ASTM fracture toughness based approach was highlighted. As a result of the workshop, it is expected that the Committee will be able to make recommendations to the ASME Code by December 31, 1994.

Irradiation Temperature and Surveillance Material Test Results

The methods of calculating the increase in RT_{PTS} in the PTS rule and in RG 1.99, Revision 2 were empirically derived from surveillance data from U.S. commercially operated nuclear reactor vessels. The methods are valid for a nominal irradiation temperature of 550°F. Irradiation below 525°F is considered to produce embrittlement greater than the values predicted in the PTS rule and RG 1.99, Revision 2.

In its response to GL 92–01, the licensee reported that the cold leg temperature during nuclear systems power operation varied linearly between 547.0°F at 0 percent power and 529.4°F at 100 percent power. Hence, irradiation occurred at temperatures exceeding 525°F and the methodologies in the PTS rule and RG 1.99, Revision 2 are applicable to Zion Units 1 and 2.

Regulatory Guide and 1.99, Revision 2 indicates that about a best-fit line to the surveillance data, scatter should be less than 28°F for welds and for fluence of two or more orders of magnitude, the scatter should be less than 56°F. Zion 1 has four irradiated surveillance data points and Zion 2 has three irradiated surveillance data points from WF–70 weld metal. The maximum difference between the measured increase in reference temperature and the best fit line is 20°F. Since this is less than 28°F, the increase in RT_{PTS} and the associated standard deviation may be based on the methodology in Section 2.1 of RG 1.99, Revision 2.

Conclusions

Based on the Zion 1 and 2 irradiation temperature and surveillance data, the methodologies in the PTS rule and RG 1.99, Revision 2 are applicable to Zion 1 and 2. As a result of its review, the staff concludes that the licensee's method of determining the unirradiated reference temperature is an acceptable alternative to the method described in NB–2331 of Section III of the ASME Code because staff and licensee analyses indicate that the fracture toughness data are bounded by the ASME K_{IR} curve with an unirradiated reference temperature of −26°F. However, since the unirradiated reference temperature was not determined in accordance with the method in Section III of the ASME Code, an exemption to the PTS rule is required. The RT_{PTS} values for all beltline materials will be below the PTS screening criteria when the Zion 1 and 2 licenses expire. 10 CFR 50.12(a)(1) allows the Commission to grant exemptions which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Since the licensee's method of determining the unirradiated reference temperature is an acceptable alternative to the method in NB–2331 of Section III of the ASME Code, RT_{PTS} values for WF–70 weld metal that are calculated using the licensee's method are authorized by law and will not present an undue risk to the public health and safety and are consistent with the common defense and security. For the same reason, the staff finds that application of the regulation would not serve the underlying purpose of the rule, which is to ensure that reactor pressure vessels in service are not susceptible to fracture as a result of pressurized thermal shock. On this basis, the staff finds that the licensee has demonstrated that there are special

circumstances present as required by 10 CFR 50.12(a)(2).

References

(1) "Properties of Weld Wire Heat Number 72105 (Weld Metals WF–70 and WF–209–1), BAW–2100, January, 1993.

(2) "Test Practice (Method) for Fracture Toughness in the Transition Range," Draft 5, Rev. 3–3–93, presented at the ASTM E08 Committee Meetings, Atlanta, GA, May, 1993.

(3) "Fracture Toughness Characterization of WF–70 Weld Metal," BAW–2202, September, 1993.

(4) "Simple Constraint Corrections for Subsize Fracture Toughness Specimens," T.L. Anderson and R.H. Dodds, Jr., ASTM STP 1024, 1993, pp. 93–105.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to a requirement of 10 CFR 50.61:

For Zion Nuclear Power Station, Units 1 and 2, the licensee's method of determining the unirradiated reference temperature (initial RT_{NDT}) from drop weight and fracture toughness tests is an acceptable alternative to the method in NB–2331 of Section III of the ASME Code as specified in 10 CFR 50.61(b)(2)(i).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject exemption will not have a significant effect on the quality of the human environment (59 FR 4727).

Dated at Rockville, Maryland this 22nd day of February 1994.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Director of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4555 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–414]

Duke Power Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–52 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Unit 2, located in York County, South Carolina.

The proposed amendment would change the method of measuring the reactor coolant system flow rate (Technical Specifications 2.0 and 3/4.2) during the 18-month surveillance for Catawba, Unit 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The change in method of flow measurement will not change the probability of actuation of any Engineered Safeguard Feature or other device. The actual flow rate will not change. The consequences of previously-analyzed accidents will not change as a result of the new method of flow measurement.

(2) This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification or system realignment will occur which could create the possibility of a new event not previously considered. The elbow taps are already in place, and are used to monitor flow for the Reactor Protection System. They will not initiate any new events.

(3) This amendment will not involve a significant reduction in a margin of safety.

As described in [the licensee's application], the change in method of RCS [reactor coolant system] flow measurement will provide a more accurate indication of the flow. The actual flow rate will not be affected. The revised setpoints for low reactor coolant flow are driven by changes to statistical allowances and do not represent substantive, or less conservative, changes. There is not significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no signficiant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 10, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public docket room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4559 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–00810, License No. 21–00278–02, General License, 10 CFR 31.5 EA 93–234]

Michigan Technological University, Houghton, MI; Order Imposing Civil Monetary Penalty

I

Michigan Technological University (Licensee) is the holder of Byproduct Material License No. 21–00278–02 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 25, 1958. The license was amended in its entirety on December 17, 1991, and is due to expire on December 31, 1996. The license authorizes the Licensee to possess byproduct materials for laboratory research, cesium-137 and americium-241 for use in a moisture/density gauge, nickel-63 for use in a gas chromatograph, and hydrogen-3 targets for a neutron generator, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on August 26 through September 27, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 26, 1993. The Notice stated the nature of the violations, the positions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by a letter dated December 17, 1993. In its response, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least 50 percent of the base civil penalty. Further, the Licensee admitted Violations I.A through I.D, I.G., I.H, II, III, and IV, denied Violation I.E in part, and denied Violations I.F. and V.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed in the Notice for the violations should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.E., I.F, and V of the Notice referenced in section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On November 26, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for thirteen violations identified during an NRC inspection on August 26 through September 27, 1993. Michigan Technological University responded to the Notice in a letter dated December 17, 1993. In its response, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least by 50 percent of the base civil penalty. Further, the Licensee admitted Violations I.A through I.D, I.G, I.H, II, III, and IV, denied Violation I.E in part, and denied Violations I.F. and V. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

Restatement of Violation I.E

I. Condition 19.A of License No. 21–00278–02 requires that the Licensee conduct its program in accordance with statements, representations and procedures contained in applications dated June 30 and November 12, 1991, including enclosures.

E. Part 4 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991, entitled, "Summary of Planned Inventory and Possession Limits of the Users of Radioactive Materials in Liquid Form," states that Dr. Murthy's possession limit for phosphorus-32 is 2 millicuries and that Dr. Leuking's possession limit for tritium is 2 millicuries and for sulfur-35 is 0.5 millicuries.

Contrary to the above, from approximately January through July 1993, Dr. Murthy possessed 5 millicuries of phosphorus-32 and Dr. Leuking possessed 5 millicuries of tritium and 3 millicuries of sulfur-35.

Summary of Licensee's Response to the Violation I.E

The Licensee denied Violation I.E in part. The licensee stated that the user limits remained within University limits for users of radioactive materials. The Licensee, therefore, holds rigidly to control possession within those limits for the University spelled out in the license. While Dr.'s Murthy and Leuking possessed radioactive materials in excess of their individual limits, neither user's inventory impacted the University's limits.

NRC Evaluation of Licensee's Response to Violation I.E

Although the Licensee's possession of radioactive materials remained within the University limits specified in the license, the two individual users did, in fact, violate the individual limits which were incorporated in License Condition 19.A, by reference to Part 4 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991. Therefore, the NRC concludes that Violation I.E is valid.

Restatement of Violation I.F

I. Condition 19.A of License No. 21–00278–02 requires that the Licensee conduct its program in accordance with statements, representations and procedures contained in applications dated June 30 and November 12, 1991, including enclosures.

F. Part 3 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991, entitled, "The Radiation Safety Program and DRU Concept," lists the duties and responsibilities of the DRUs. Item c. of the list states that the DRU will keep a log book of the receipt, use, and disposition of their radioisotopes.

Contrary to the above, from approximately January through July 1993, Dr. Murthy, a DRU, did not log the disposition of the quantities of phosphorus-32 that were disposed as liquid radioactive waste in the sanitary sewer and the quantities of solid radioactive waste that were transported out of the laboratory.

Summary of Licensee's Response to Violation I.F

The Licensee asserted that the alleged violation resulted from the interpretation made by the inspector of information posted in the log. Neither the responsible DRU nor assigned graduate laboratory assistants were present at the time of the inspection. This observation would not have occurred had any one of the three responsible persons been present during the inspection. In Dr. Murthy's procedures, liquid phosphorus-32 is never disposed of down the sanitary sewer as radioactive waste. Generally all radioactive phosphorus-32 compounds are used within one to two weeks after receipt. All radioactive phosphorus-32 waste, solid and liquid, is then stored in the hazardous material storage building for greater than ten half-lives from the date received and then disposed of as non-radioactive waste. Dates

received, users, quantities used, and quantities left in vials are timely entered in the radioactive compound log columns. Disposal columns are left open until decayed materials are brought back and disposed of as non-radioactive materials. Hand written notes are made in the margin of the log forms to act as reminders to properly dispose of the waste. This process could have been satisfactorily explained to the inspector had any of the three responsible lab persons been present. To prevent reoccurrence of misinterpretation, Dr. Murthy has been advised of the necessity to follow standard procedures when maintaining the log records.

NRC Evaluation of Licensee's Response to Violation I.F

Although neither the responsible DRU (Dr. Murthy) nor the assigned graduate laboratory assistants were present during the inspection of this item, the inspector was assisted by the RSO when Dr. Murthy's laboratory was visited. The RSO indicated that liquid radioactive waste was disposed to the sewer via the hot sink located in a designated fume hood in the laboratory. This fume hood also contained laboratory trash that was contaminated with phosphorus-32.

The inspector measured radiation dose rates from the hot sink drain that indicated 3 millirem per hour. The inspector also confirmed that the measured radiation dose rates in the hot sink were not generated from the laboratory trash that was also stored in the fume hood. The radiation dose rate measurements indicated that phosphorus-32 had been disposed as liquid radioactive waste to the sewer via the hot sink in the fume hood in the manner described by the RSO.

In addition, the inspector evaluated, with the assistance of the RSO, Dr. Murthy's written records for receipt, use, and disposal of phosphorus-32 and tritium. The records were formatted as a balance sheet for radioactivity. The balance sheets indicated dates and activities of phosphorus-32 received and used by Dr. Murthy's graduate laboratory assistants. However, the balance did not indicate the activities disposed as liquid and solid radioactive waste. As indicated by the Licensee's response dated December 17, 1993, Dr. Murthy did not follow standard procedures when maintaining the records of radioactive waste in that Dr. Murthy did not account for liquid radioactive waste that was disposed via the hot sink and solid radioactive waste that was transferred from the laboratory. Therefore, NRC concludes that Violation I.F is valid.

Restatement of Violation V

V. 10 CFR 31.5(c)(3) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall assure that installation involving the radioactive material is performed: (1) in accordance with the instructions provided by the labels; or (2) by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities.

Contrary to the above, from approximately 1976 until August 26, 1993, installation of the Licensee's Texas Nuclear Model 5176 and three Kay Ray Model 7030B density gauges each containing cesium-137, was not performed in accordance with the instructions provided by the labels or by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities. Specifically, the density gauges were not permanently installed on a pipeline in a manner consistent with the installation requirements.

Summary of Licensee's Response to Violation V

The Licensee stated that the portable carts for four (4) density gauges were fabricated at Michigan Technological University. Upon receipt from the manufacturers, the gauges were permanently installed on the carts. Upon completion of the installation they were inspected and tested by representatives of the manufacturers. The portable carts are necessary to make various temporary installations on various pilot-plant projects. These temporary installations do not alter the factory approved testing and installation. The Licensee asserted that the alleged violation stems from the fact that its carts are prototype carts and not of the standard manufactured model. Because its gauges are mounted on portable carts rather than stationary, the pipe moves when the density gauges move.

NRC Evaluation of Licensee's Response to Violation V

Although the Licensee installed the four density gauges on portable carts that were fabricated by the Licensee, the sealed source and device evaluation of the gauge performed by NRC and the State of Texas did not review and approve use of the density gauges in a portable fashion. The manufacturer did not furnish to the Licensee specific instructions for installation and use of the density gauges on portable carts. The density gauges were designed and evaluated as devices that would be installed in a permanent location by instructed individuals who are specifically authorized by NRC or an Agreement State to install or relocate the device. Therefore, NRC concludes that Violation V is valid.

Summary of Licensee's Request for Mitigation

The Licensee denied the breakdown in the control of licensed activities in its December 17, 1993 answer to the Notice. While the Licensee admitted some of the violations stated in the NRC's letter, the Licensee believed that in no instance was any violation driven by willful intent to evade compliance, nor was there reckless disregard for radiation safety and health. Further, the Licensee believed that as its improved safety procedures were reestablished and after its management team had been restructured, each instance of noncompliance would have ultimately been discovered and corrected by persons entrusted with the responsibility for radiation safety on its campus. The Licensee asserted that these violations came about as the result of a temporary condition that existed at the University. While the NRC inspection hastened the discovery and correction of the problem areas, given time, the Licensee would have discovered all the infractions found by the NRC inspector and made necessary corrections without NRC intervention. The Licensee stated that both management and the Radiation Safety Officer insist on compliance with the radiation safety program and its requirements. Given these facts, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least by 50 percent of the base civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC determined that the thirteen violations represented a breakdown in the control of licensed activities. The root cause of the violations was an apparent lack of management attention to the radiation safety program by Michigan Technological University's administration, the Radiation Safety Committee, and the Radiation Safety Officer following the replacement of the upper two echelons of management at the university. The violations are related and collectively represented a potentially significant lack of attention or carelessness toward licensed responsibilities and were classified as Severity Level III in accordance with Supplement VI.C.7 of the Enforcement Policy (10 CFR Part 2, Appendix C).

With regard to your concern that these violations were willful or reckless, the NRC did not characterize the violations as willful. Had the NRC characterized the violations as willful (i.e., careless disregard or deliberate), the severity level would have been increased and the base civil penalty would have been increased in accordance with Table 1A and 1B of the Enforcement Policy. In addition, if the violations involved the deliberate intent to violate NRC requirements, the Commission might have taken additional enforcement action, including issuance of appropriate orders to modify, suspend or revoke your license.

The NRC acknowledges the improvements of the safety procedures and the significant management changes made by the Licensee. The staff views the Licensee's improvements in the radiation safety program as ongoing and that the Licensee, as it asserts, may have ultimately discovered and corrected each instance of noncompliance by persons entrusted with the responsibility for radiation safety on its campus. However, this assertion does not alter the fact that violations and noncompliance with NRC requirements existed and were identified by the NRC. As a result, the base civil penalty was escalated 50 percent for NRC identification in accordance with the Enforcement Policy.

Based on the above, the staff concludes that mitigation is not warranted based on the licensee's request for mitigation.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that the violations did occur as stated, and that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $3,750 should be imposed by order.

[FR Doc. 94–4561 Filed 2–28–94; 8:45 am]
BILLING CODE 7590–01–M

Pacific Gas & Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

[Docket No. 50–275 and 50–323]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas & Electric Company (the licensee) for operation of the Diablo Canyon Nuclear Power Plant located in San Luis Obispo County, California.

The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," as follows:

(1) Table 3.3–3, functional unit 6.c.2), channels to trip, would be changed from 2/steam generator in one steam generator to 2/steam generator in any 2 steam generators.

(2) Table 3:3–4 would be changed as follows:

a. Functional Unit 4.e., Negative Steam Pressure Rate—High, trip setpoint and allowable value, would be changed from −100 psi/sec and −105.4 psi/sec to 100 psi and 105.4 psi, respectively.

b. A note would be added stating that the time constants utilized in the rate-lag controller for Negative Steam Pressure Rate—High, are equal to 50 seconds.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the Start Turbine-Driven Pump, function is administrative in nature and does not involve any modifications to any plant equipment or affect plant operation.

The Negative Steam Pressure Rate—High, function is not involved in any accident initiation sequences.

Although the safety function of the Negative Steam Pressure Rate—High, function is to protect against a steam line break (SLB) below P–11 [pressurizer pressure low (P–11) setpoint], the consequences of a SLB are more limiting at higher pressures and, therefore, SLB is analyzed at the more limiting reactor coolant system (RCS) conditions. The proposed change more adequately defines the trip setpoint and allowable value to be consistent with the original intent of [license amendment request] LAR 92–05 and actual plant practice. This clarifying change does not involve a change to the actual values or the manner in which they are used.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the Start Turbine-Driven Pump, function is administrative in nature, does not involve any physical alterations to any plant equipment, and causes no change in the method by which any safety-related system performs its function.

The Negative Steam Pressure Rate—High, function is not involved in any accident initiation sequences. No new operating configuration is being imposed by the Negative Steam Pressure Rate—High, function that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

The proposed change to the Start Turbine-Driven Pump, function corrects an administrative error in Table 3.3–3 and does not effect any safety analysis.

The proposed change to the Negative Steam Pressure Rate—High, function does not involve any changes to the actual values or the manner in which they are used. There is no impact of the proposed change on any safety analysis assumption.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay, Director, Project Directorate V]: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4557 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[BAC: 7710–FW–P]

Notice of Commission Briefing

February 18, 1994.

Notice is hereby given that members of the Postal Rate Commission and staff will be briefed by Frank Neri of the United States Postal Service Office of Systems Implementation and Support and Michael Tidwell of the United States Postal Service, Office of the General Counsel on the developmental.

technical, and operational aspects of the Remote Video Bar Coding program of the U.S. Postal Service, on Wednesday, March 2, 1994 at 10:30 a.m.

A report of the briefing will be on file in the Commission's Docket Section. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–4573 Filed 2–28–94; 8:45 am]

BILLING CODE 7710–FW–P

[BAC: 7710–FW–P]

McGraw-Hill, et al.; Cancellation of Visit and Notice of Commission Briefing

February 18, 1994.

Notice is hereby given that Commission visits previously scheduled for February 22, 23, 24, and 25, 1994, notice of which was published on February 18, 1994 (59 FR 8279), had to be cancelled due to scheduling conflicts. In lieu of one of the intended visits, notice is hereby given that representatives of Readers Digest Association, Inc., will make an oral presentation to members of the Commission and staff in the Commission's offices in Washington, DC, at 4 p.m. on March 3, 1994.

A report of the presentation will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–4572 Filed 2–28–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33658; File No. SR–PSE–93–29]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Time Within Which Members Must Notify the Exchange of Changes of Address

February 23, 1994.

On November 1, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the time within which a member or member firm must notify the Exchange of a change to the address at which notices may be served upon such member or member firm, from 60 calendar days to 15 business days.

The proposed rule change was published for comment in the **Federal Register** on December 23, 1993.[3] No comments were received on the proposed rule change. This order approves the proposal.

PSE Rule 1.13 currently provides that Exchange members and member firms must submit to the Exchange any changes to their address where notices may be served within sixty (60) calendar days of such change.[4] The Exchange believes that a shorter period of time for notifying the Exchange of such changes of address is appropriate due to the need for the Exchange to contact members and member firms promptly regarding membership requirements, requests for information in regulatory investigations, the commencement of disciplinary actions, and other such matters. Accordingly, the current proposal amends PSE Rule 1.13 to require that members and member firms notify the Exchange within fifteen (15) business days of any change to the address at which such notices may be served.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5).[5] Specifically, the proposed change will ensure that the PSE is notified on a timely basis of member or member firm address changes, which should help the PSE in its regulatory responsibilities under the Act. Further, the Commission believes that 15 business day notification is not an unreasonable time period to notify the PSE of an address change, and will serve to foster more efficient communications between the Exchange and its members and member firms.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–PSE–93–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4582 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rules 12f–1 thereunder for unlisted trading privileges in the following securities:

Empresas La Moderna S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12036)
First USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12037)
Hyperion 1997 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–12038)
Istituto Mobiliare Italiano SPA de C.V.
American Depositary Shares, No Par Value (File No. 7–12039)
McArthur/Glen Realty Corp.
Common Stock, $.01 Par Value (File No. 7–12040)
Brazilian Equity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12041)
Geon Company
Common Stock, $.01 Par Value (File No. 7–12042)
Health & Rehabilitation Properties Trust
Shares of Beneficial Interest, No Par Value (File No. 7–12043)
Harveys Casino Resorts
Common Stock, $.01 Par Value (File No. 7–12044)
Post Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12045)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 33349 (December 15, 1993), 58 FR 68184 (December 23, 1993).

[4] See also PSE Constitution, Art. VIII, § 1(g), which provides that "[e]very member and member firm shall register with the Exchange addresses and subsequent changes thereof where notice may be served."

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions or unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4524 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Guardian Bancorp
Common Stock, No Par Value (File No. 7–12071)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commissions, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4523 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Commercial Net Lease Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12049)
Corestates Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–12050)
Duke Power Co.
8.375% Pfd. Stk. A 1993 Ser., $25.00 Par Value (File No. 7–12051)
First Maryland Bancorp
7.875% Non-Cm. Pfd. Stk. Ser. A (File No. 7–12052)
Gables Residential Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12053)
Glimcher Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12054)
G.T. Developing Markets Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12055)
Hillhaven Corp.
Common Stock, $.75 Par Value (File No. 7–12056)
JP Realty, Inc.
Common Stock, $.0001 Par Value (File No. 7–12057)
Kendall International, Inc.
Common Stock, $.01 Par Value (File No. 7–12058)
Osmonics, Inc.
Common Stock, $.01 Par Value (File No. 7–12059)
Plantronics, Inc.
Common Stock, $.01 Par Value (File No. 7–12060)
Quantum Restaurant Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12061)
Reynolds Metals Co.
Pfd. Red. Inc. Div. Equity Sec. PRIDES (File No. 7–12062)
Rowe Furniture Corp.
Common Stock, $1.00 Par Value (File No. 7–12063)
Savannah Electric & Power Co.
6.64% Pfd. Stk., $25.00 Par Value (File No. 7–12064)
Southdown, Inc.
Pfd. Stk. Cm. Cv. Ser. D, $.05 Par Value (File No. 7–12065)
Travelers, Inc.
Common Stock, $1.25 Par Value (File No. 7–12066)
Travelers, Inc.
Depositary Shares (Rep. 1/2 sh. 9.25% Pfd. Stk. Ser. D) (File No. 7–12067)
Travelers, Inc.
Depositary Shares (Rep. 1/10 sh. 8.125% Cm. Pfd. Stk. Ser. A) (File No. 7–12068)
Stewart Information Service Corporation
Common Stock, $.01 Par Value (File No. 7–12070)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4526 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Guardian Bancorp
Common Stock, No Par Value (File No. 7–12046)
Unionfed Financial Corporation
Common Stock, $.01 Par Value (File No. 7–12047)
Top Source, Inc.
Common Stock, $.001 Par Value (File No. 7–12048)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4525 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Empresas La Moderna S.A. de C.V.
American Depositary Shares (File No. 7–12021)
Morgan Stanley Africa Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12022)
National Health Investors, Inc.
Cum. Cv. Pfd. Stock (File No. 7–12023)
Gables Residential Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12024)
American Paging, Inc.
Common Stock, $.01 Par Value (File No. 7–12025)
Summit Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12026)
Chiquita Brands International, Inc.
Non Voting Cum. Pfd. Stock (File No. 7–12027)
Kaiser Aluminum Corporation
8.255% PRIDES Conv. Pfd. Stock, $.05 Par Value (File No. 7–12028)
Morgan Stanley Finance Plc
7.70 Cap. Units (File No. 7–12029)
National Health Investors, Inc.
8.5% Cum. Conv. Pfd. Stock, $.01 Par Value (File No. 7–12030)
Fountain Powerboat Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12031)
Public Service Electric and Gas Company
6.75 Pc. Cum. Pfd. Stock, $25 Par Value (File No. 7–12032)
Bufete Industrial S.A.
American Depositary Shares (File No. 7–12033)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12034)
Istituto Mobiliare Italiano SPA
American Depositary Shares, Lit 5000 Par Value (File No. 7–12035)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4522 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20094; No. 812–8772]

Great American Reserve Insurance Co., et al; Application for Order

February 23, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great American Reserve Insurance Company ("GARCO"), Great American Reserve Variable Annuity Account E ("Account E"), and Garco Equity Sales, Inc. ("GARCO Sales") collectively, ("Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account E of mortality and expense risk charges in connection with the offer and sale of certain flexible purchase payment group and individual variable annuity contracts.

FILING DATE: The application was filed on January 13, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o William R. Radez, Jr., Esq., Great American Reserve Insurance Company, 11815 N. Pennsylvania Street, Carmel, Indiana 46032; and c/o Michael Berenson, Esq., or Ann B. Furman, Esq., Jorden, Burt, Berenson & Klingensmith, suite 400-East, 1025 Thomas Jefferson Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. GARCO is a stock life insurance company and an indirect wholly owned subsidiary of CCP Insurance, Inc. ("CCP"). CCP is an affiliate of, and controlled by, Conseco, Inc. ("Conseco"), a publicly owned financial services holding company. GARCO offers life insurance and variable and fixed rate annuities.

2. Account E is a separate account of GARCO. On January 13, 1994, Account E filed on Form N–8A a notification of registration as a unit investment trust under the 1940 Act (File No. 811–8288) and a registration statement on Form N–4 under the Securities Act of 1933 (File No. 33–74092) in connection with

certain Flexible Purchase Payment Group and Individual Deferred Variable Annuity Contracts ("Contracts"). Account E is used by GARCO to fund the Contracts.

Account E currently is divided into subaccounts which invest in corresponding portfolios of the Conseco Series Trust ("Conseco Trust"). In the future, Account E may establish other sub-accounts which will invest in other portfolios of the Conseco Trust or other investment companies registered under the 1940 Act. Account E also may be used to fund other variable annuity contracts offered by GARCO.

3. GARCO Sales, a wholly owned subsidiary of GARCO, is the principal underwriter of the Contracts. GARCO Sales is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. The Conseco Trust is an open-end diversified management investment company registered under the 1940 Act. Shares of the Conseco Trust are registered under the Securities Act of 1933. The Trust is a series fund currently consisting of five separate investment portfolios: Money Market, Government Securities, Common Stock, Asset Allocation and Corporate Bond Portfolios.

Conseco Capital Management, Inc. ("CCM") a registered investment adviser under the Investment Advisers Act of 1940, provides investment advisory services to the Trust. For its services, CCM is paid a fee based upon each Portfolio's average monthly net asset value at the following annual rates: .25% for the Money Market Portfolio; .50% for the Government Securities Portfolio and the Corporate Bond Portfolio; and .55% for the Asset Allocation Portfolio.

5. The Contracts require certain minimum initial payments and permit certain additional payments. Contractowners may, after deductions for applicable charges, direct allocation of payments made under the Contracts among the subaccounts of Account E. Contractowners may make withdrawals of account value, subject to certain restrictions. A Guaranteed Death Benefit will be payable.

The account value under the Contracts increases or decreases depending upon the investment performance of the subaccounts of Account E to which value has been allocated. The Contracts provide either fixed or variable annuity payments which are determined on the basis of annuity tables specified in the Contracts, the annuity option selected and, in the case of variable annuities, the investment performance of Account E.

6. Various fees and expenses are deducted under the Contracts, including, among others, up to 3.5% for state premium taxes, if assessed, which will be deducted from the Contracts' account value either at annuitization or when the tax becomes due. Additionally, an administrative fee of $30 will be charged annually and upon surrender of the Contract for its full value. The $30 fee will be deducted pro rata according to the account values in each sub-account of Account E and the fixed account under the Contracts. An administrative charge equal to .15% of the subaccount assets on an annualized basis will also be deducted. The administrative fees are intended to reimburse GARCO for expenses relating to maintenance of the Contracts and for the operation of Account E and GARCO in connection with the Contracts. Applicants represent that these fees are based upon GARCO's current estimates of the administrative costs for such services over the lifetime of the Contracts. These fees are guaranteed never to be increased during the term of the Contracts, and are not designed or expected to generate a profit. Applicants rely on Rule 26a–1 under the 1940 Act to assess such fees.

7. While no sales charges are deducted from premium payments, the Contracts are subject to a contingent deferred sales charge ("CDSC") in the event of a withdrawal or surrender, subject to certain conditions. After the first Contract year, Contractowners may withdraw without a withdrawal charge ("Free Withdrawal Amount") the greater of up to 10% of Contract Value, or the Contract Value divided by the owner's life expectancy, or any purchase payments that have been in the Contract more than six Contract Years. Withdrawals in excess of the Free Withdrawal Amount will be subject to the following deferred sales charges over a six year period:

Contract year	CDSC (percent)
1	9
2	9
3	8
4	7
5	5
6	3
Thereafter	0

Withdrawal charges may also be imposed when certain annuity options are selected. No withdrawal charge is made from annuity payments under a selected option involving life time payments or from amounts paid due to the death of a participant. In no event, however, will cumulative deductions exceed 8.5% of cumulative purchase payments made under the Contracts. Under certain circumstances, the CDSC, administrative and other expense charges may be reduced or eliminated. Applicants rely on Rule 6c–8 under the 1940 Act to impose the withdrawal charge.

8. Each subaccount also will be assessed a charge each valuation period for mortality and expense risks assumed by GARCO at an effective annual rate of 1.25%, consisting of .75% for mortality risks and .50% for expense risks assumed by GARCO. These charges are designed to compensate GARCO reasonably for the assumption of mortality and expense risks assumed under the Contracts.

9. The mortality risk assumed by GARCO under the Contracts arises from its contractual obligation to make periodic payments in accordance with annuity rates and other contract provisions set forth in the Contracts regardless of how long all Annuitants or any one Annuitant may live. GARCO thus assumes the risk that Annuitants, as a class, may live longer than has been estimated by its actuaries, and Contractowners are assured that neither longevity nor an improvement in life expectancy, generally, will have an adverse effect on annuity payments. GARCO also incurs a mortality risk in connection with the Guaranteed Death Benefit.

10. The expense risk assumed by GARCO is the risk that its actual expenses of administering the Contracts and Account E will exceed the proceeds of the administrative charges assessed under the Contracts.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a

reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of Account E of the 1.25% charge for the assumption of mortality and expense risks. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, death benefit guarantees, guaranteed annuity rates, and other contract charges and options. Based upon this review, Applicants have concluded that the mortality and expenses risk charges are within the range of charges determined by industry practice. Applicants will maintain at GARCO's principal executive office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of GARCO's comparative review.

4. Applicants acknowledge that the withdrawal charges under the Contracts may be insufficient to cover all costs relating to distribution of the Contracts. In such circumstances, the charge for mortality and expense risks may be a source of profit which would be available to pay GARCO's distribution expenses not reimbursed by applicable withdrawal charges. GARCO has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Account E and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by GARCO at its principal administrative office and made available to the Commission upon request.

5. Account E will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons," as defined under section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants request exemptions under section 6(c) of the 1940 Act from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the assessment of the mortality and expense risk charges with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4581 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20093; 812–8694]

Sierra Trust Funds, et al.; Notice of Application

February 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sierra Trust Funds (the "Trust"), currently consisting of the following portfolios: Global Money Fund, U.S. Government Money Fund, California Money Fund, U.S. Government fund, Corporate Income Fund, California Municipal Fund, Florida Insured Municipal Fund, National Municipal Fund, Growth and Income Fund, Emerging Growth Fund, International Growth Fund, Short term Global Government Fund, Short Term High Quality Bond Fund, and Growth Fund (collectively, the "Funds"), Sierra Investment Advisors Corporation (the "Advisor"), and Sierra Investment Services Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities, and to impose, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on the redemption of certain shares. The order would supersede a prior order (the "Prior Order") and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order, and to waive the CDSC in certain additional circumstances.

FILING DATE: The application was filed on November 22, 1993 and amended on January 7, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 9301 Corbin Avenue, suite 333, Northridge, California 91328–1160.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, (202) 272–3809 or Robert A. Robertson, Branch Chief, (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Each Fund has entered into an investment advisory agreement with the Advisor pursuant to which the Advisor provides investment advisory services to the Fund. Each Fund also has entered into a distribution agreement with the Distributor pursuant to which the Distributor acts as the principal underwriter for the Fund.

2. Each of the Funds, except the money market Funds, are offered to investors at net asset value plus a front-end sales load, and all of the Funds have adopted distribution plans pursuant to rule 12b–1 under the Act. The rule 12b–1 plans currently provide for payments to the Distributor at the annual rate of up to 0.25% of each Fund's net assets. The money market Funds are offered to investors at net asset value without the imposition of front-end sales loads.

3. Under the Prior Order, shares of certain Funds (the "Non-Money

Funds") may be subject to a CDSC upon redemption.[1] Subsequent to the granting of the Prior Order, the SEC's Division of Investment Management provided no-action assurance to the Trust in the event the Trust ceased the CDSC arrangement permitted by the Prior Order on certain redemptions of shares acquired after a particular date and imposed a front-end sales load on purchases after that date, and waived the CDSC on certain redemptions of shares in addition to those permitted under the Prior Order.[2]

4. Applicants request an order on behalf of themselves and all other registered investment companies for which the Advisor, the Distributor or any entity controlling, controlled by, or under common control with the Advisor or the Distributor acts as adviser or distributor in the future. Applicants propose to establish a multiple distribution arrangement (the "Variable Pricing System"). Under the Variable Pricing System, each of the Funds would have the opportunity to provide investors with the option of purchasing different classes of shares. The existing shares, "Class A shares," would be subject to a conventional front-end sales load and a lower rule 12b–1 distribution fee. "Class B shares" would be subject to a CDSC and a higher rule 12b–1 distribution fee. The sales loads, distribution and service fees under rule 12b–1 will be structured to comply with the provisions of Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

5. Applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the Class A shares and Class B shares, but only in the following respects: (i) The amount of fees permitted by different rule 12b–1 plans, (ii) the shareholder servicing expenses permitted by non-rule 12b–1 shareholder services plans, (iii) voting rights with respect to a class's rule 12b–1 plan, (iv) different designations, (v) the impact of any incremental transfer agency fees directly attributable to a particular class of shares, and (vi) different exchange privileges among Funds or conversion features.

6. Initially, applicants will not offer a class of shares with a feature providing for automatic conversion of such shares to shares of the other class. The Funds may in the future, however, offer a class of shares that automatically will convert after a period of time to shares of another class. Any conversions will be done at net asset value, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion.

7. Any exchange privilege offered by a Fund would provide that shares of a class of that Fund would be exchanged only for shares of the same class of another Fund that is part of the same "group of investment companies" as defined in rule 11a–3 under the Act. In addition, the right of any shareholder to exchange into a class subject to a sales load will comply with rule 11a–3.

8. Under the Variable Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each such class, except that each class's net asset value and expenses will reflect the expenses associated with that class's rule 12b–1 plan (if any), including any costs associated with obtaining shareholder approval of such plan, any incremental shareholder servicing fees attributable to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order. As a result, the net asset value per share of the classes will differ at times.

9. Applicants also request an exemption to permit the Funds to impose CDSC schedules that may be different from the Prior Order and to waive the CDSC for certain additional types of redemptions. The requested exemption would supersede the Prior Order. An investor's proceeds from a redemption of Class B shares made within a specified period of purchase of such shares may be subject to a CDSC, which is paid to the Distributor. The amount of any applicable CDSC will be calculated by multiplying the applicable percentage charge by the lesser of (a) the net asset value of the shares at the time of purchase or (b) the net asset value of the shares at the time of redemption.

10. The CDSC will not be imposed on redemptions of shares purchased more than a fixed number of years prior to the redemptions or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate.

11. The Funds may waive or reduce the CDSC on (a) automatic cash withdrawals if the amount withdrawn per month is equal to or less than 5% of the value of the shareholder's shares in a Fund at the time the withdrawal plan commences; (b) redemptions of shares in connection with post-retirement distributions and withdrawals from IRAs, Keogh Plans or custodial accounts pursuant to section 403(b)(7) of the Code, redemptions that result from tax-free returns of excess contributions pursuant to section 408(d)(4) or (5) of the Code, or redemptions made within one year following the death or disability of a shareholder; (c) redemptions by (i) employees or retired employees of the parent corporation of the Distributor or any of its affiliates and members of their immediate families and IRAs, Keogh plans and employee benefit plans for such employees or retired employees; (ii) directors, trustees, officers or advisory board members, or persons retired from such positions, of any investment company for which Sierra Advisors or an affiliate serves as investment advisor; (iii) registered representatives or full-time employees of dealers that sell Fund shares; (iv) employees of any of the Funds' sub-advisors; and (v) retirement plans created pursuant to section 457 of the Internal Revenue Code of 1986, as amended; (d) redemptions by institutional investors that invest at least $1 million in one or more of the Funds in the aggregate; and (e) redemptions by shareholders who have suffered financial loss as a result of a hardship resulting from living in an area that has experienced a recent natural disaster, such as a flood, fire, hurricane, tornado or earthquake. The term "hardship" shall be defined as an immediate and heavy financial need occurring in the personal affairs of a shareholder as determined by Fund management. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) to the extent that the Variable Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent that

[1] *GW Sierra Trust Funds*, Investment Company Act Release Nos. 17013 (June 16, 1989) (notice) and 17061 (July 11, 1989) (order).

[2] *GW Sierra Trust Funds*, (pub. avail. Dec. 21, 1990).

the allocation of voting rights may violate section 18(i). Applicants believe that the Variable Pricing System does not raise any of the concerns that section 18 was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds. Applicants further believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and will not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder. Applicants believe that the CDSC permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (i) The amount of fees permitted by different rule 12b–1 plans, (ii) the shareholder servicing expenses permitted by non-rule 12b–1 shareholder services plans, (iii) voting rights with respect to a class's rule 12b–1 plan, (iv) different designations, (v) the impact of any incremental transfer agency fees directly attributable to a particular class of shares, (vi) different exchange privileges among Funds or conversion features.

2. The trustees of each of the Funds, including a majority of the independent trustees, will approve the Variable Pricing System. The minutes of the meetings of the trustees of each of the Funds regarding the deliberations of the trustees with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for the trustees' determinations that the proposed Variable Pricing System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisor and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Advisor and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Funds including a majority of the trustees who are not interested persons of the Funds. Any person authorized to direct the allocation and disposition of moneys paid or payable by the Funds to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditure made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to the class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that distribution and shareholder servicing payments relating to each respective class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Independent Examiner") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares and this representation will be concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent

Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner, or appropriate substitute Independent Examiner.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the trustees.

13. Each fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each case of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

14. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that each Fund may make pursuant to its rule 12b-1 plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except the New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3 any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4580 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by March 31, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416, telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Loan Closing Documents.

Form No.: SBA Forms 147, 148, 159, 160, 160A, 529, 928, 1059.

Frequency: On Occasion.

Description of Respondents: SBA Loan Applicants.

Annual Responses: 25,451.

Annual Burden: 152,706.

Dated: February 18, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4604 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by March 31, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Nominate a Small Business Person or Advocate of the Year.

Form No.: 77660 N/A.

Frequency: Annually.

Description of Respondents: Organizations nominating a small business leader for small business advocacy awards.

Annual Responses: 500.

Annual Burden: 1083.

Dated: February 18, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4605 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of thee Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by March 31, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Home Loan Application.

Form No.: SBA Forms 5C, 739, and 1632.

Frequency: On Occasion.

Description of Respondents: Applicants requesting SBA Disaster Home Loans.

Annual Responses: 26,100.

Annual Burden: 52,200.

Dated: February 17, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4606 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 31, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Questionnaire for Section 503 Development Company.

Form No.: SBA Form 1301.

Frquency: On Occasion.

Description of Respondents: State and Local Development Companies.

Annual Responses: 10.

Annual Burden: 20.

Title: Questionnaire for Company Doing Business with a Section 503 Development Company.

Form No.: SBA Form 1302.

Frequency: On Occasion.

Description of Respondents: State and Local Development Companies.

Annual Responses: 80.

Annual Burden: 160.

Dated: February 16, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4608 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0548]

Exeter Venture Lenders, L.P.; Issuance of a Small Business Investment Company License

On December 8, 1993, a notice was published in the **Federal Register** (58 FR 64637) stating that an application had been filed by Exeter Venture Lenders, L.P., New York, New York, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business January 7, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0548 on February 7, 1994, to Exeter Venture Lenders, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 17, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–4607 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 18, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49413.
Date filed: February 14, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1544 dated December 3, 1993, USA-Europe Resos r–1 to r–26.
Proposed Effective Date: April 1, 1994.

Docket Number: 49414.
Date filed: February 14, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0634 dated January 28, 1994, Europe-Southeast Asia Resos r-1 to r-30.
Proposed Effective Date: April 1, 1994.

Docket Number: 49417.
Date filed: February 15, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0564 dated December 17, 1993, TC3 Areawide (Except UST) r–1 to r–6; TC3 Reso/P 0566 dated December 17, 1993, Within South Asian Sub. r–7 to r–12; TC3 Reso/P 0567 dated December 17, 1993, Japan/Korea-SE Asia (Except UST) r–13 to r–33; TC3 Reso/P 0569 dated December 17, 1993, SE Asia-S.Asia Subc (Except UST) r–34 to r–41; TC3 Reso/P 0571 dated December 17, 1993, S.Asian Subc-SW Pacific r–42 to r–49; TC3 Reso/P 0572 dated December 17, 1993, SE Asia-SW Pacific (except UST) r–50 to r–54; TC3 Reso/P 0574 dated December 17, 1993, Within SE Asia (except UST) r–55 to r–62; TC3 Reso/P 0576 dated December 17, 1993, Within Southwest Pacific r–63 to r–67; TC3 Reso/P 0578 dated December 17, 1993, Japan-Korea Resos r–68 to r–79; TC3 Reso/P 0579 dated December 17, 1993, Japan-Korea-S.Asian Subc r–80 to r–92; TC3 Reso/P 0580 dated December 17, 1993, Japan/Korea-SW Pacific r–93 to r–106; TC3 Reso/P 0581 dated December 17, 1993, Japan/Korea-Australia r–107 to r–126; TC3 Reso/P 0582 dated December 17, 1993, Japan/Korea-New Zealand Resos r–127 to r–144.
Proposed Effective Date: April 1, 1994.

Docket Number: 49418.
Date filed: February 15, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0565 dated December 14, 1993, TC3 Areawide (US Territories) r–1 to r–4; TC3 Reso/P 0568 dated December 17, 1993, Japan/Korea-Southeast Asia (UST) r–5 to r–17; TC3 Reso/P 0570 dated December 17, 1993, Southeast Asia-South Asian Subc (UST) r–18 to r–21; TC3 Reso/P 0573 dated December 17, 1993, Southeast Asia-SW Pacific (UST) r–22 to r–25; TC3 Reso/P 0575 dated December 17, 1993, Within Southeast Asia (UST) r–26 to r–33; TC3 Reso/P 0577 dated December 17, 1993, With Southwest Pacific (UST) r–34 to r–37.
Proposed Effective Date: April 1, 1994.

Docket Number: 49420.
Date filed: February 16, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0630 dated January 18, 1994, Europe-Southwest Pacific Resos r–1 to r–22.
Proposed Effective Date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4576 Filed 2–28–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart V During the Week Ended February 18, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48574.
Date filed: February 18, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 1994.
Description: Amended Application of American Trans Air, Inc. for certificate authority to permit operation of scheduled foreign air transportation of persons, property and mail between New York and Riga, Latvia nonstop or via Belfast, Northern Ireland or Shannon, Republic of Ireland. ATA requests that Riga, Belfast and Shannon be named as coterminal points to permit maximum flexibility in scheduling.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4577 Filed 2–28–94; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0118.
Form Number: None.
Type of Review: Reinstatement.
Title: Declaration by Originating Artist, or Seller, or Shipper That Goods Imported are Original Works of Art.
Description: This declaration is needed to insure that original works of art are in fact originals and, therefore, permitted free entry into the United States.
Respondents: Individuals or households, Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 7,215.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,766 hours.

OMB Number: 1515–0154.
Form Number: CF 339.
Type of Review: Extension.
Title: User Fees.
Description: The collection of information is necessary for Customs to

effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, entering the United States and recipients of certain dutiable mail entries for certain official services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 53,330 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–4589 Filed 2–28–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8023–A.

Type of Review: New collection.

Title: Corporate Qualified Stock Purchases.

Description: Form 8023–A is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023–A to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 201.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hours, 37 minutes.

Learning about the law or the form—1 hour, 5 minutes.

Preparing and sending the form to the IRS—1 hour, 17 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,207 hours.

OMB Number: 1545–0132.

Form Number: IRS Form 1120X.

Type of Review: Revision.

Title: Amended U.S. Corporation Income Tax Return.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 67,302.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—12 hours, 12 minutes.

Learning about the law or the form—1 hour, 8 minutes.

Preparing the form—3 hours, 14 minutes.

Copying, assembling, and sending the form to the IRS—32 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,151,537 hours.

OMB Number: 1545–0928.

Regulation ID Number: EE–35–85 NPRM and EE–110–84 (TD 8037); and TD 8219 (Final).

Type of Review: Extension.

Title: Notices, Elections and Consents Under the Retirement Equity Act of 1984.

Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Respondents: State or local governments; Businesses or other for-profit, Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: 35 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 435,000 hours.

OMB Number: 1545–1380.

Regulation ID Number: IA–17–90 NPRM.

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the proposed regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirements.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–4590 Filed 2–28–94; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning Certain U.S. Measures on Tobacco

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Contracting Parties of the General Agreement on Tariffs and Trade (GATT) has decided, pursuant to a request by the governments of Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand, Zimbabwe, and Canada, to establish a dispute settlement panel to review the complaint by these governments against the U.S. provisions regarding tobacco in section 1106 of Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

FOR FURTHER INFORMATION CONTACT:

Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street, NW., Washington, DC 20506, (202) 395–7305.

SUPPLEMENTARY INFORMATION: USTR is providing notice of the request for, and establishment of, a dispute settlement panel to examine the consistency of the U.S. measures in section 1106 (which concern tobacco) with the obligations of the United States under the GATT. Eight governments are currently the complaining parties in this dispute, and a ninth has asked to join (Argentina). In addition, there are several countries that have indicated a desire to participate in the panel proceeding as third parties. These include New Zealand, India and the European Community.

Members of the panel have now been selected. The panel is expected to meet as necessary at the GATT headquarters in Geneva, Switzerland, to consider information relevant to the dispute. The panel will then provide a report to the GATT Council detailing its findings and recommendations.

Ira S. Shapiro,

General Counsel.

[FR Doc. 94–4613 Filed 2–28–94; 8:45 am]

BILLING CODE 3190–01–M

Report on Environmental Issues in the Uruguay Round Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comments regarding environmental issues in the Uruguay Round Agreements.

SUMMARY: The U.S. Trade Representative intends to prepare a report on environmental issues related to the Uruguay Round Agreements. To assist in the preparation of this report, the U.S. Trade Representative invites public comments on environmental issues related to the Uruguay Round agreements.

FOR FURTHER INFORMATION CONTACT: For further information contact Laura Kneale Anderson, Director for Trade and the Environment, Office of Environmental and Natural Resources, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506; telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background

On December 15, 1993, in accordance with section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (the Act), President Clinton notified the Senate and the House of Representatives of his intent to enter into trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).

In section 1101 of the Act the Congress set as the first overall U.S. negotiating objective for the Uruguay Round more open, equitable and reciprocal market access. In accordance with this objective, the Uruguay Round results will provide an unprecedented level of new market access opportunities for exports of U.S. goods and services. Moreover, in fulfillment of the second overall U.S. negotiating objective, the reduction or elimination of barriers and other trade-distorting policies and practices, the Uruguay Round package includes a number of agreements to reduce or eliminate non-tariff barriers to trade. In addition, the Uruguay Round agreements include a number of provisions of environmental interest.

In accordance with the procedures in the Act, the United States will not enter the Uruguay Round agreements until April 15, 1994. After the agreements have been signed, they will be submitted for Congressional approval, together with proposed implementing legislation and a statement of administrative action necessary or appropriate to implement the agreements in the United States. The agreements will not take effect with respect to the United States, and will have no domestic legal force, until the Congress has enacted implementing legislation.

2. Scope of Report

Because of the high priority the Administration places on protecting the environment, and on its desire to inform the public fully on the issues, the U.S. Trade Representative (USTR) plans to produce a report on the likely significance of the Uruguay Round agreements for environmental and conservation issues.

The USTR will submit its report on environmental issues in the Uruguay Round agreements to the Congress in conjunction with the implementing legislation described above. USTR proposes to include the following areas in the report:

(a) Overview of the Uruguay Round agreements;

(b) Trade and environment issues under the current GATT and its associated agreements, as well as background on provisions of environmental interest in the Uruguay Round;

(c) Provisions of the Uruguay Round agreements of environmental interest;

(d) Other possible environmental effects of the Uruguay Round agreements, including effects on specific sectors (such as agriculture, environmental technology and services, transportation, energy, non-renewable resources, wildlife and fisheries, and forest resources); and

(e) U.S. plans for further work on trade and the environment.

3. Public Comments

1. Comments are invited on the possible environmental effects of the Uruguay Round agreements. Any comments must be submitted, in twenty typed copies, no later than noon, March 31, 1994, to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, room 414, 600 Seventeenth Street, NW., Washington, DC 20506. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–4614 Filed 2–28–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 40

Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4743 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4744 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 11, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4745 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–06; Emergency Notice]

TIME AND DATE: Monday, February 28, 1994 at 3:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–644 (Final) (Welded Stainless Steel Pipe from Malaysia)—briefing and vote
5. Outstanding action jacket:
   1. GC–94–005, Sanction for APO breach in an investigation under section 337 of the Tariff Act of 1930
   2. ID–94–03, Industry and Trade Summaries: Air-Conditioning Equipment and Parts; Aircraft and Reaction Engines, Other Gas Turbines, and Parts; Builders Hardware; Fatty Chemicals; Paper Boxes and Bags; and Pesticide Products and Formulations

CONTACT PERSON FOR MORE INFORMATION:
Donna R. Koehnke, Secretary, (202) 205–2000.

Dated: February 24, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4679 Filed 2–24–94; 4:42 pm]

BILLING CODE 7020–02–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m., Friday, March 11, 1994.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION:
Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes, January 5, 1994, Regular Meeting
III. Audit Committee Report: March 7, 1994, Regular Meeting
   a. Receive FY 1993 Audit Report from Outside Auditors
   b. Proposed Changes in the Corporate Investment Policy
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 94–4693 Filed 2–25–94; 10:42 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 28, March 7, 14, and 21, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 28

Monday, February 28

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Tuesday, March 1

10:00 a.m.
Briefing on Proposed Changes to Part 100 (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Issuance of Final Rule Reinstating Nonprofit Education Exemption and Denial of Petition for Rulemaking (Tentative)
(Contact: Michael Rakfy, 301–504–1974)

Week of March 7—Tentative

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 14—Tentative

Monday, March 14
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m/
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of March 21—Tentative

There are no meetings scheduled for the Week of March 21.

ADDITIONAL INFORMATION: By a 3–0 vote (Commissioner Rogers was not present) on February 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues"

(Closed—Ex. 2 and 6) be held on February 8, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 25, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–4779 Filed 2–25–94 ; 3:13 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 59, No. 40

Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1930, and 1944

RIN 0575–AB08

Cost Containment and Vulnerability

Correction

In rule document 94-3117 beginning on page 6869 in the issue of Monday, February 14, 1994, make the following correction:

On page 6869, in the third column, under **EFFECTIVE DATE:**, "March 14, 1994." should read "March 16, 1994."

BILLING CODE 1505-01-D

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Correction

In the Sunshine Act meetings document 94-3363 beginning on page 6676 in the issue of Friday, February 11, 1994, make the following correction:

On page 6676, in the first column, under MATTERS TO BE CONSIDERED: in the third and fourth lines, the phrase "(TA-5)" should read "(TA-55)".

BILLING CODE 1505-01-D

RESOLUTION TRUST CORPORATION

Revised Policy Statement for the Disposition of Residential Units Which Were Previously Subject to Rent and Securities Regulations

Correction

In notice document 94-2475 beginning on page 5450 in the issue of Friday, February 4, 1994 make the following correction:

On page 5451, in the first column, under 4.A.(3), several lines of text was omitted, and should read as set forth below.

"The disaffirmance or repudiation of which the conservator or receiver determines, in its discretion, will promote the orderly administration of the institution's affairs. In circumstances where the RTC determines that performance of the leases is not burdensome and/or their repudiation will not promote the orderly administration of the institution's affairs, the RTC will not repudiate the leases."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33525; File No. SR-NSCC-93-11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Capital and Clearing Fund Requirements for Users of Mutual Fund Services

January 26, 1994.

Correction

In notice document 94-2321 beginning on page 4959 in the issue of Wednesday, February 2, 1994, make the following correction:

On page 4959, in the second column, and the last line after "On August 23, 1993," insert the following omitted text "NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on November 12, 1993, to solicit comments from interested persons.[2] Two comment letters were received; both of which were in support of the proposed rule change.[3] As discussed below, this order approves the proposal."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Termination of Restrictions on Importation of, and Certification Requirements for, Nickel and Nickel-Bearing Materials Originating in the Soviet Union or its Successor States

FR Correction

In notice document 94-3225 appearing on page 6675 in the issue of Friday, February 11, 1994, in the second column, the "**DATES:**" heading should read "**EFFECTIVE DATE:**".

BILLING CODE 1505-01-D

Federal Register

Tuesday
March 1, 1994

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–4834–9]

RIN 2050–AD59

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous six wastes generated during the production of carbamates, to exempt one of these wastes from the definition of hazardous wastes, if it is demonstrated that hazardous air pollutants are not being discharged or volatilized during waste treatment, and to exempt biological treatment sludges generated from the treatment of one of these wastes provided the sludges are not characteristically hazardous. The Agency is also proposing to add 4 generic groups and 70 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded. Also, EPA is proposing not to list as hazardous certain wastes generated during the manufacture of carbamates. This action proposes to amend the basis for listing hazardous waste by adding the six wastes and hazardous constituents found in the wastes on which the listing determinations are based, and to add 78 compounds to the list of hazardous constituents.

This action is proposed under the authority of under sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of this proposed regulation, if promulgated, is that these wastes will be subject to regulation as hazardous wastes under subtitle C of RCRA. Additionally, this action proposes to designate the wastes proposed for listing as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

DATES: EPA will accept public comments on this proposed rule until May 2, 1994. Comments post-marked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by March 15, 1994.

ADDRESSES: The official record of this rule-making is identified by Docket Number F–94–CPLP–FFFFF and is located at the following address. The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2616 (5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a hearing should be addressed to Mr. David Bussard at: Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the RCRA hazardous waste listings, contact John Austin, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 260–4789.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this proposed rule are listed in the following outline:

I. Legal Authority
II. Background
A. Introduction
B. Previous Listings
C. Previous Proposed Listings
D. Description of the Industry
III. Summary of Proposed Regulation and Request for Comments
A. Overview of the Proposal
B. Description of the Wastes
C. Basis for Listing Determination
1. Waste Characterization and Constituents of Concern
2. Human Health Criteria and Effects
3. Environmental Damage Cases
4. Mobility and Persistence of Constituents in Carbamate Wastes
5. Risk Analysis
6. Estimating Hazard Quotients: Dose Response Risk Assessment Techniques for Noncancer Endpoints
7. Ecological Risk Assessment
8. Summary of Basis for Listing for Additional K Listings and Other Considerations
9. Summary Basis for a No-Listing Decision on Wastewaters, and Certain Wastewater Treatment Residuals
10. Summary of Basis for Listing for Additional P & U Listings
D. Source Reduction
IV. Applicability of Land Disposal Restrictions Determinations
A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards
B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program
V. State Authority
A. Applicability of Rule in Authorized States
B. Effect on State Authorizations
VI. CERCLA Designation and Reportable Quantities
VII. Compliance Dates
A. Notification
B. Interim Status and Permitted Facilities
VIII. Executive Order 12866
IX. Economic Analysis
A. Compliance Costs for Proposed Listings
1. Universe of Carbamate Production Facilities and Waste Volumes
2. Method for Determining Cost and Economic Impacts
3. P and U List Wastes
4. Summary of Results
B. Proposed Rule Impacts
X. Regulatory Flexibility Act
XI. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(1), (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. Introduction

As part of its regulations implementing Section 3001(e) of the Resource Conservation and Recovery

Act of 1976, as amended (RCRA), EPA published a list of hazardous wastes that includes hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In this action, EPA is proposing to amend this section to add six wastes generated during the production of carbamate chemicals. In addition, under the authority of section 3001 of RCRA, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. In this action, the Agency is proposing to add four generic and 70 specific materials to this list.

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. EPA is not taking action at this time to adjust the one-pound statutory RQs for these substances.

The following discussion briefly summarizes prior regulatory actions affecting wastes from the carbamates industry, and presents an overview of the industry.

B. Previous Listings

A number of carbamate products and wastes have previously been listed as hazardous wastes when discarded. The Agency notes that neither the scope of the existing hazardous waste listings (described below) nor their regulation under CERCLA are affected in any way by this proposal. EPA is not soliciting comments concerning these listings and does not intend to respond to any such comments received.

The following carbamate wastes from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts have already been listed as hazardous wastes based on the presence of the carcinogen ethylene thiourea (ETU) in the wastes (51 FR 37725, October 24, 1985):

K123—Process Wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.

K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.

K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.

In addition, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded which includes the carbamate materials listed in Table 1.

TABLE 1.—CARBAMATE HAZARDOUS WASTE LISTINGS

Waste No.	Name(s) used in CFR	CAS No.
P045	2-Butanone, 3,3-dimethyl-1- (methylthio)-, O- [(methylamino)- carbonyl] oxime	391696–18–4
P070	Aldicarb	116–06–3
P066	Methomyl	16752–77–5
U062	Diallate Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2- propenyl) ester	2303–16–4
U114	Carbamothioic acid, 1,2-ethanediylbis- salts and esters Ethylene bisdithiocarbamate acid, salts, & esters	1111–54–6a
U178	Carbamic acid, methylnitroso-, ethyl ester	615–52–2
U238	Carbamic acid, ethyl ester Ethyl carbamate	51–79–6
U244	Thiram	137–26–8

[1] CAS number given for parent compound only.

In addition, EPA classified certain carbamate products and wastes as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs) and include the carbamate wastes in Table 2.

TABLE 2.—LIST OF CURRENTLY REGULATED CARBAMATE CERCLA HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CAS No.	Final RQ (lbs)
Aldicarb	116–06–3	1
Carbaryl	63–25–2	100
Carbofuran	1563–66–2	10
Diallate	2303–16–4	100
Ethyl carbamate	51–79–6	100
Ethylene- bisdithiocarbamic acid, salts & esters	111–54–6	5000
Methomyl	16752–77–5	100
Methiocarb	2032–65–7	10
Mexacarbate	315–18–4	1000
Thiofanox	39196–18–4	100
Carbamic acid, methylnitroso-, ethyl ester	615–3–2	1
Thiram	137–26–8	10
Triethylamine	121–44–8	5000
K123		10
K124		10

TABLE 2.—LIST OF CURRENTLY REGULATED CARBAMATE CERCLA HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CAS No.	Final RQ (lbs)
K125		10
K126		10

C. Previous Proposed Listings

The carbamates listed in Table 3 were proposed to be included in the list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded under 40 CFR 261.33 (49 FR 49784, December 21, 1984). These carbamate listings were proposed in response to a petition by the State of Michigan to include 109 chemicals to the lists in 40 CFR 261.33. This rule was never finalized. Today the Agency is reproposing a number of carbamate chemicals, that were also part of the Michigan petition. EPA is not soliciting comments concerning any other compounds contained in the December 21, 1984, notice and does not intend to respond to any such comments received.

TABLE 3.—1984 PROPOSED CARBAMATE HAZARDOUS WASTE LISTINGS

Proposed waste No.	Name(s) used in FR	CAS No.
P127	Carbofuran	1563–66–2
P128	Mexacarbate	315–18–4
U271	Benomyl	17804–35–2
U277	Sulfallate	95–06–7
U278	Bendiocarb	22781–23–3
U279	Carbaryl	63–25–2
U280	Barban	101–27–9
U336	Ziram	137–30–4

Additionally, a number of acutely toxic carbamate products have been proposed under section 302(A)(2) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) as Extremely Hazardous Substances for addition to Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). These carbamate compounds are listed in Table 4. The Extremely Hazardous Substances Proposal (54 FR 3388, January 23, 1989) has also not been promulgated. The Agency requests additional comment only for those carbamates listed in Table 4, which were previously proposed only for addition to Table 302.4. The Agency does not intend to respond to comments received on other constituents in the January 23, 1989, notice.

TABLE 4.—PROPOSED EXTREMELY HAZARDOUS SUBSTANCES AND PROPOSED RQS

CAS No.	Chemical name (common name)	Proposed RQ pounds
26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)	1
57–64–7	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)- 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostimigine salicylate).	1
119–38–0	Carbamic acid, dimethyl-, 3-methyl-1-(1- methylethyl)-1H-pyrazol-5-yl ester (Isolan)	1
1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
644–64–4	Carbamic acid, dimethyl-,1- (dimethylamino)carbonyl)-5-methyl-1H-pyrazol-3- yl ester (Dimetilan)	1
23135–22–0	Ethanimidothioic acid, 2-(dimethylamino)-N- [[methylamino carbonyl] oxy]-2-oxo-, methyl ester (Oxamyl)	1
17702–57–7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
23422–53–9	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1
64–00–6	Phenol, 3-(1-methylethyl), methyl carbamate (UC 10854)	1
2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-methyl carbamate (Promecarb)	1
57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a- hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1

D. Description of the Industry

The U.S. carbamates manufacturing industry is a very diverse industry in both products manufactured and companies that make up the industry. The carbamates manufacturing industry is made up of four major classes of compounds with distinct functional characteristics. These include carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates.

In 1990, the carbamate industry in the U.S. was composed of 64 chemical products produced by 20 manufacturers at 24 facilities. The majority of the carbamate manufacturers are located in the eastern half of the United States with only four facilities located west of the Mississippi River. There are carbamate manufacturers located in 13 states. The total domestic production of carbamates in 1990 was approximately 112,000 metric tons (MT). In 1990, individual carbamate products were manufactured at a rate of between 2.5 and 14,000 metric tons per year. Carbamates are manufactured at very different rates depending on the type of product. Typically, dithiocarbamates are produced in smaller quantities than other classes of carbamates. Based on

the results of EPA's RCRA § 3007 survey, the typical carbamate facility manufactures one carbamate product or one chemical class of carbamate products. Of the 24 carbamate manufacturing facilities 14 produce only dithiocarbamates. Five of these 14 only produce one dithiocarbamate product. Of the remaining ten carbamate manufacturers 5 produce one carbamate product. Three of the remaining 5 manufacturers produce a single class of carbamates (e.g., carbamate, carbamoyl oxime, or thiocarbamate) and 2 produce more than one class of carbamate. Carbamate products are widely used as active ingredients in pesticides (i.e., herbicides, insecticides, and fungicides). Dithiocarbamates are also manufactured for use in the rubber processing industry as rubber accelerators. Uses have also been found for carbamates in the wood preserving and textiles industries.

The commercial manufacture of carbamates currently includes five chemical reaction processes: (1) Reaction of an isocyanate with an alcohol to form a carbamate, (2) reaction of an amine and a chloroformate to form a carbamate, (3) reaction of an isocyanate and an organic oxime to form a carbamoyl oxime, (4) reaction of an organic chlorothioformate and an amine to form a thiocarbamate, and (5) the reaction of an amine with carbon disulfide in the presence of a metal salt to form a dithiocarbamate. The primary raw materials used in the production of these products will vary depending on the final product. The Carbamate Background Document [1] (available in the RCRA Docket at EPA Headquarters—see **ADDRESSES** section) and the sources cited therein describe these production processes more thoroughly.

Most carbamate, carbamoyl oxime, and thiocarbamate facility operations are organized along similar process lines with a carbamate intermediate preparation phase (e.g. alcohol or oxime), the carbamolation step, and product and reactant recovery phase. Dithiocarbamate production facilities are generally run as batch operations where the reactants are put into a stirred reaction vessel and allowed to come to reaction completion. Facilities typically operate with a common wastewater treatment plant for all facility operations.

[1] The Background Document consists of Engineering Analysis of the Production of Carbamates, Carbamate Waste Listing Support Health Effects Background Document, Assessment of Risks from the Management of Carbamate Wastes, and other supporting documents. Because of the confidential nature of the information in the Engineering Analysis, it has been classified as Confidential Business Information (CBI), and is not available to the public. However, a concise summary of this document has been assembled for the public docket. EPA's procedures governing the handling of information claimed as confidential, including procedures for challenging a CBI determination are found at 40 CFR Part 2.

III. Summary of the Proposed Regulation and Request for Comments

A. Overview of the Proposal

Under section 3001(e) of RCRA, EPA must make listing determinations on wastes generated by specific industries, including the carbamate industry. The carbamate industry can be divided into three major segments that include carbamates and carbamoyl oximes, thiocarbamates, and dithiocarbamates. This rule, if finalized, will satisfy the section 3001(e) requirement to make hazardous waste listing determinations for wastes from the carbamate industry. This action proposes to list as hazardous six wastes generated during the production of carbamates:

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.

K159—Organics from the treatment of thiocarbamate wastes.

K160—Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

Under the authority of section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), and EPA's regulations at 40 CFR 261.11, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. Section 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these chemicals if discarded (§ 261.33 (b) and (d)). Finally § 261.33 lists as hazardous wastes the containers that have held those chemicals listed in § 261.33(e), if they are discarded, unless the containers have been triple-rinsed with a solvent capable of removing the chemical, or have been decontaminated in an equivalent manner.

In listing waste as hazardous at § 261.33, the Agency intends to encompass those hazardous chemical products which, for various reasons, are sometimes disposed in pure or diluted form. The regulation is intended to designate chemicals themselves as hazardous waste, if discarded.

A chemical substance is listed in 40 CFR 261.33(e), if it meets the criteria of § 261.11(a)(2); that is, it is acutely hazardous because it has been found to be fatal to humans in low doses or in the absence of data on human toxicity, it has been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal (rabbit) LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or is otherwise capable of causing or significantly contributing to serious illness.

Chemical substances which pose toxic threats to human health or the environment are listed in 40 CFR 261.33(f). For the purposes of identifying wastes to be included on this list of toxic discarded commercial products, off-specification species, container residues , and spill residues thereof, the Agency considers principally the nature of the toxicity (see 40 CFR 261.11(a)(3)(i)) and its concentration (see 40 CFR 261.11(a)(3)(ii)).

This action proposes that the 22 substances listed in Table 5 be added to the list of acutely hazardous wastes. The commercial chemical products bendiocarb and ziram were previously proposed to be listed as toxic hazardous wastes (49 FR 49784). Today the Agency is proposing to list these two chemicals as acutely hazardous, based on more current toxicity information. This action also proposes that four generic groups and 48 specific substances listed in Table 6 should be added to the list of toxic hazardous wastes because all of these compounds meet the criteria for listing hazardous wastes contained in 40 CFR 261.11(a)(3).

The Agency requests comments on the proposed listing of the above wastes, particularly those identified as K156–

K161 wastes, and on the option of not listing these wastes. EPA requests comments on the data used in this proposed listing determination, the methodology and assumptions used in the risk assessment, and other analyses supporting the proposed listings.

TABLE 5.—LIST OF PROPOSED ACUTE HAZARDOUS WASTES

Hazardous waste No.	Acutely hazardous wastes—CAS name (common name in parentheses)	CAS No.
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4- dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate)	26419-73-8
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781-23-3
P127	7-Benzofuranol, 2,3-dihydro-2,2- dimethyl-,methylcarbamate (Carbofuran)	1563-66-2
P188	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethylpyrrolo[2,3-b]indol-5- yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57-64-7
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3- dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	55285-14-8
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1129-41-5
P191	Carbamic acid, dimethyl-, 1- [(dimethylamino)carbonyl]-5-methyl-1H- pyrazol-3-yl ester (Dimetilan)	644-64-4
P192	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester (Isolan)	119-38-0
P193	Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	23564-05-8
P194	Ethanimidothioc acid, 2- (dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	23135-22-0
P195	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis- , dimethyl ester (Thiodicarb)	59669-26-0
P196	Manganese, bis(dimethylcarbamodithioato-S,S')-, (Manganese dimethyldithiocarbamate)	15339-36-3
P197	Methanimidamide, N,N-dimethyl-N'-[2- methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	17702-57-7
P198	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422-53-9
P128	Phenol, 4-(dimethylamino)-3,5-dimethyl- , methylcarbamate (ester) (Mexacarbate)	315-18-4
P199	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb)	2032-65-7
P200	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur)	114-26-1
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	2631-37-0
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC-5727)	64-00-6
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)	1646-88-4
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	57-47-6
P205	Zinc, bis(dimethylcarbamodithioato- S,S')-, (Ziram)	137-30-4

TABLE 6.—LIST OF PROPOSED TOXIC HAZARDOUS WASTES

Hazardous waste No.	Toxic hazardous wastes—IUPAC Name (Common name in parentheses)	CAS No.
U360	Carbamates, N.O.S.	
U361	Carbamoyl Oximes, N.O.S.	
U362	Thiocarbamates, N.O.S.	
U363	Dithiocarbamate acids, salts and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, and/or ester).	
U279	1-Naphthalenol, methylcarbamate (Carbaryl)	63-25-2
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961-82-6
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	2212-67-1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet)	533-74-4
U367	7-Benzofuranol, 2,3-dihydro-2,2- dimethyl- (Carbofuran phenol)	1563-38-8
U368	Antimony, tris (dipentylcarbamodithioato-S,S')-(Antimony trisdipentyldithiocarbamate)	15890-25-2
U369	Antimony, tris[bis(2- ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2- ethylhexyl)dithiocarbamate)	15991-76-1
U370	Bismuth, tris(dimethylcarbamodithioato-S,S')-, (Methyl bismate)	21260-46-8
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086-85-3
U280	Carbamic acid, (3-chlorophenyl)-, 4- chloro-2-butynyl ester (Barban)	101-27-9
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	10605-21-7
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122-42-9
U374	Carbamic acid, [[3- [(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069)	112006-94-7
U271	Carbamic acid, [1- [(butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester (Benomyl)	17804-35-2
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase)	55406-53-6
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144-34-3
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	137-41-7
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40)	51026-28-9
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	95-06-7
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	136-30-1
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723)	10254-57-6
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	148-18-5
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam)	128-04-1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85)	128-03-0
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	137-42-8
U385	Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate)	1929-77-7
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1134-23-2
U387	Carbamothioic acid, dipropyl-, S- (phenylmethyl) ester (Prosulfocarb)	52888-80-9

TABLE 6.—LIST OF PROPOSED TOXIC HAZARDOUS WASTES—Continued

Hazardous waste No.	Toxic hazardous wastes—IUPAC Name (Common name in parentheses)	CAS No.
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb)	85785-20-2
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2- propenyl) ester (Triallate)	2303-17-5
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam)	759-94-4
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1114-71-2
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	2008-41-5
U393	Copper, bis(dimethylcarbamodithioato- S,S')-, (Copper dimethyldithiocarbamate)	137-29-1
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	30558-43-1
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG)	5952-26-1
U396	Iron, tris(dimethyl carbamodithioato- S,S')-, (Ferbam)	14484-64-1
U397	Lead, bis(dipentyl carbamodithioato S,S')-	36501-84-5
U398	Molybdenum, bis(dibutyl carbamothioato)di-.mu.-oxodioxodi-, sulfurized	68412-26-0
U399	Nickel, bis(dibutyl carbamodithioato- S,S')-(Nickel dibutyldithiocarbamate)	13927-77-0
U400	Piperidine, 1,1'- (tetrathiodicarbonothioyl)-bis-(Sulfads)	120-54-7
U401	Bis(dimethyl thiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	97-74-5
U402	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads)	1634-02-2
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	97-77-8
U404	Ethanamine, N,N-diethyl- (Triethylamine)	121-44-8
U405	Zinc, bis[bis(phenylmethyl)carbamodithioato- S,S']- (Arazate)	14726-36-4
U406	Zinc bis(dibutylcarbamodithioato- S,S')-(Butyl Ziram)	136-23-2
U407	Zinc, bis(diethylcarbamodithioato- S,S')-(Ethyl Ziram)	14324-55-1

As a result of the Agency's studies, a number of generic groups of wastes produced from the manufacture of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates were not found by the Agency to require additional regulation as a listed hazardous waste under RCRA. The Agency is therefore proposing to not list as hazardous the following categories of wastes:

—Spent carbon and wastewater treatment sludges from the production of carbamates and carbamoyl oximes
—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production
—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates
—Reactor vent scrubber water from the production of dithiocarbamates
—Organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates

Pursuant to HSWA, the Agency has collected information that supports the addition of these six wastes to 40 CFR 261.32. The Agency proposes to add K156, K157, K158, K159, K160, and K161 to 40 CFR 261.32 because the wastes satisfy the criteria in 40 CFR 261.11(a)(1–3) for listing hazardous wastes. Based on the similarity of wastes from the production of each functional chemical class (carbamates/carbamoyl oximes, thiocarbamates, and dithiocarbamates), the Agency is proposing to identify wastes from each functional chemical class grouped by class and physical properties. Each of the six waste groups proposed for listing as hazardous wastes meets the definition of hazardous wastes by typically and frequently exhibiting toxicity, persistence, and mobility.

Carbamate wastes that satisfy the proposed hazardous waste listing descriptions are not limited to the five typical production processes described above in section II.D. Wastes from any process that produces any of the four major functional carbamate classes (i.e., carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) would be subject to hazardous waste regulation.

The proposed hazardous waste listings are intended to encompass the wastes generated from any carbamate manufacturing, including the wastes generated when carbamates are produced as intermediates. For example, a facility may produce a carbamate intermediate to be used directly as a raw material in another process. Similar wastes are generated from the production of the carbamate whether it is the final product or an intermediate product.

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes and would require treatment, storage, or disposal at permitted facilities. Residuals from the treatment, storage, or disposal of the wastes included in this proposed listing also would be classified as hazardous wastes by the "derived-from" rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals from treatment of the listed wastes would be subject to the hazardous waste regulations. Also, 40 CFR 261.3(a)(2)(iv) (the "mixture" rule) provides that any mixture of a listed waste and a solid waste is itself a RCRA hazardous waste with certain limited exceptions.

However, when these wastes are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if a waste is collected and returned in a closed-loop fashion to the same carbamate process, the waste would not be regulated. To meet the exemption, the waste must meet the three key requirements outlined in the rules and in 50 FR 639 (January 4, 1985): (1) The material must be returned to the original process from which it was generated without first being reclaimed; (2) the production process to which the materials are returned must use raw materials as principal feedstocks; and (3) the material must be returned as a substitute for raw material feedstock in the original production process. (The regulations contain other recycling exclusions as well, but the provisions referenced above are the principal ones most likely to be applicable to the wastes at issue in this proposal.)

B. Description of the Wastes

While the Agency has observed that carbamate manufacturing processes differ according to product and raw materials, many similarities in the wastes generated exist. The proposal to list K156 through K161 and to not list other groupings of wastes from this industry is based on the similarity of the production processes used by carbamate manufacturers and the similarity of the wastes generated by these facilities. In the course of the Agency's evaluations, wastes within similar processes were

grouped by like physical properties due to their similar management, and to facilitate the development of potential land disposal treatment standards (see 40 CFR 268.2(f)). Wastewaters with less than 1 percent by weight of total organic carbon (TOC) and less than 1 percent by weight of total suspended solids (TSS) were grouped as aqueous. Liquids that contained equal to or greater than 1 percent by weight of TOC were grouped as organic, and wastes that contain equal to or greater than 1 percent by weight of TSS were grouped as solids. When process and wastes characterizations are taken into account, ten waste groups result.

Group 1 consists of organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. The Agency is proposing that these wastes be listed as Hazardous Waste Number K156.

Group 2 wastes include wastewaters (including scrubber waters, condenser waters, washwaters, separation waters) from the production of carbamates and carbamoyl oximes. Group 2 wastewaters are proposed to be listed as Hazardous Waste Number K157.

Group 3 consists of solids from the production of carbamate and carbamoyl oxime products. These wastes are typically generated from the filtration of liquid products and include such wastes as baghouse dusts, dust collector bags, and process precipitates, and may contain high levels of carbamate product. From this generic waste grouping, wastewater treatment sludges and spent carbon from the production of carbamates and carbamoyl oximes are not proposed for listing. The decision not to list these wastes and other waste groupings is discussed in detail in section III.C.8. Group 3 baghouse dusts and filter/separation solids are proposed to be listed as Hazardous Waste Number K158.

Group 4 wastes include organics from the treatment of thiocarbamate wastes. These wastes are generated from the treatment of the brine wastewater from the carbamolation reaction, and are proposed to be listed as Hazardous Waste Number K159.

Group 5 wastes are wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production. EPA is proposing not to list this group of wastes.

Group 6 wastes are the solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes. These wastes include spent catalysts generated from the production of chlorothioformates, filter cakes from the filtration of product to remove byproduct amine chlorides, and solid wastes resulting from the treatment of waste brine from the carbamolation step. The Agency is proposing to list Group 6 wastes as Hazardous Waste Number K160.

Group 7 wastes include process wastewater (including supernates, filtrates, and washwaters) and Group 8 includes reactor vent scrubber water from the production of dithiocarbamates. EPA is proposing not to list group 7 or group 8 wastes.

Group 9 wastes include purification solids, baghouse dust, and floor sweepings from the production of dithiocarbamates. In many cases these wastes are the residues resulting from the filtration of a liquid product, and includes filtration media, filters, filter cloths, centrifugation solids, evaporation solids, or dryer wastes. Group 9 wastes are proposed for listing as Hazardous Waste Number K161.

Group 10 wastes include organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates. EPA is proposing not to list this group of wastes.

Based on data collected from industry by the 1990 RCRA section 3007 survey, engineering site visits, and sampling and analysis, the Agency believes that each of the waste groups typically contain significant concentrations of hazardous constituents. Table 7 identifies the constituents of concern for the carbamate waste streams. The Agency conducted sampling and analysis of each of these wastes to support this proposed hazardous waste listing determination. The following section, III.C., presents this data and additional health effects data, which are the basis for the Agency's proposal to list or not list the wastes studied in this rulemaking.

The total reported generation rate of these wastes in 1990 was approximately 841,000 metric tons. Tables 8 and 9 present the characteristics of, and management method used for these wastes by group.

TABLE 7.—WASTE STREAM CONSTITUENTS

Waste group	Constituent
1—Organic Carbamate/Carbamoyl Oxime Wastes.	Acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, odichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.
2—Aqueous Carbamate/Carbamoyl Oxime Wastes.	Acetone, carbon tetrachloride, chloroform, formaldehyde, methomyl, methyl isobutyl ketone, methyl chloride, methyl ethyl ketone, methylene chloride, ophenylenediamine, pyridine, triethylamine.
3—Solid Carbamate/Carbamoyl Oxime Wastes.	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, hexane, methanol, methylene chloride, phenol, xylene.
4—Organic Thiocarbamate Wastes.	Benzene, butylate, eptam, molinate, pebulate, vernolate.
5—Aqueous Thiocarbamate Wastes.	Benzene, butylate, eptam, molinate, pebulate, toluene, vernolate, xylene.
6—Solid Thiocarbamate Wastes.	Butylate, eptam, cycloate, molinate, pebulate, vernolate.
7—Aqueous Dithiocarbamate Process Waters.	Carbon disulfide, dithiocarbamate product, xylene.
8—Aqueous Dithiocarbamate Scrubber Wastes.	Carbon disulfide, dithiocarbamate product, methylene chloride, n-nitrosodimethylamine.
9—Solid Dithiocarbamate Wastes.	Carbon disulfide, dithiocarbamate product, xylene.
10—Organic Dithiocarbamate Wastes.	Carbon disulfide, dithiocarbamate product, hexane, toluene, xylene.

TABLE 8.—1990 WASTE MANAGEMENT BY RCRA HAZARDOUS WASTE IDENTIFICATION AND GROUP

[metric tons/year] [1]

Waste classification	Non-haz.	As-haz.	Corr.	Ignit.	TC	I&TC	I&C	TC&C	Unknown
Group 1	46,398	1,912	69,780	1,960	1.5	2,302	2,773	.....	1,368
Group 2	140,145	3,735	246,595	6.8	41.9	.....	.....	.....	Varies.
Group 3	9,729	0.4	14.8	5.5	12.3	.....	.....	.....	.....
Group 4	.....	.....	.....	.....	.....	549	.....	.....	.....
Group 5	.....	.....	130,664	.....	.....	.....	.....	.....	.....
Group 6	.....	77	.....	.....	588	.....	.....	.....	.....
Group 7	43,810	7,218	9	1.1	380,430	.....	.....	.....	230
Group 8	46,054	.....	49.1	.....	[2] 0	.....	.....	1,055	89
Group 9	3,493	195	.....	3.1	15.8	.....	.....	.....	205
Group 10	.....	46.8	.....	162.9	.....	65.4	.....	.....	91
Total	289,629	13,185	447,112	2,159	381,090	2,916	2,773	1,055	1,983

Non-Haz.: Managed as nonhazardous waste
As-Haz.: Managed as a hazardous waste
Characteristically Hazardous Wastes
Ignit.: Ignitable (40 CFR 261.21)
Corr.: Corrosive (40 CFR 261.22)
I&C: Ignitable and corrosive
I&TC: Ignitable and TC
TC&C: TC and corrosive
TC: Toxicity Characteristic (40 CFR 261.24)
[1] Wastes may have several classifications; therefore, the total mass of each waste group may exceed the actual mass.
[2] There is a toxic stream in Group 8 but it was not generated in 1990.

TABLE 9.—CURRENT WASTE MANAGEMENT BY WASTE TYPE AND QUANTITY

[metric tons/year]

Group	1	2	3	4	5	6	7	8	9	10	Total
Recycle/Reuse	1,601	.....	26	.....	.....	.....	701	57	64	180	2,629
Incineration	3,263	1,975	18	549	.....	.....	.....	50	2	98	5,955
Fuel Blending	.....	.....	.....	.....	.....	.....	.....	.....	.....	24	24
Boiler	6,360	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,360
POTW	.....	20,497	.....	.....	.....	.....	42,599	45,957	.....	.....	109,053
PrOTW	2,922	4,986	.....	.....	.....	.....	1,410	23	.....	.....	9,341
WWTP	112,292	238,751	.....	.....	130,664	.....	4,670	.....	.....	.....	486,377
Subtitle C Landfill	.....	.....	.....	.....	.....	665	.....	.....	193	.....	858
Subtitle D Landfill	.....	.....	1340	.....	.....	.....	.....	.....	3,199	.....	4,539
Deep Well Injection	.....	.....	.....	.....	213,582	.....	1,517	100	.....	.....	215,199
Other	.....	.....	6	.....	.....	.....	645	13	.....	65	729
Total	126,438	266,209	1,390	549	344,246	665	51,542	46,200	3,458	367	841,064

POTW—Publicly Owned Treatment Works
PrOTW—Privately Owned Treatment Works
WWTP—Wastewater Treatment Plant

C. Basis for Listing Determination

1. Waste Characterization and Constituents of Concern

The Agency has conducted significant data gathering efforts in order to evaluate each of the criteria for listing hazardous wastes found at 40 CFR 261.11. In conducting its investigation before proposing to list a specific waste under 40 CFR 261.32, the Agency characterized the waste based on survey information, engineering analysis, and sampling and analysis. The constituents of concern in this proposal were identified by these methods and are proposed as the basis for listing and for addition to appendix VII of 40 CFR part 261 (see Table 7). The toxic constituents of concern which are the basis of this and possibly future hazardous waste listing determinations are being proposed for addition to appendix VIII of 40 CFR part 261 pursuant to 40 CFR 261.11(a)(3).

This section summarizes the information concerning waste characterization and constituents of concern that EPA has gathered to support this proposed listing. Other compounds also have been identified in these wastes but are not presented as constituents of concern because they are either not sufficiently toxic, are present at low concentrations, or do not migrate through the environment under reasonable conditions.

Information regarding the identity and concentration of the compounds found in carbamate wastes from EPA sampling during engineering site visits is presented in summary form in the Appendix A of the "non-CBI" Engineering Analysis of the Production of Carbamates, which is available in the Public Docket for this proposed rulemaking. See "ADDRESSEES" section.

The constituents of concern are found at varying levels in each of the carbamate waste streams proposed for listing. Despite differences in constituents and concentrations, each of the wastes proposed for listing exhibit similar levels of potential hazard and are also amenable to similar treatment technology. The Agency therefore is proposing to regulate wastes from each of these processes together under the K156 through K161 listings.

Table 10 lists the constituents found at concentrations above the level of concern (the Agency's rationale for identifying a concentration level of

concern is detailed in the following section) from wastes sampled and analyzed by the Agency during the course of the engineering analysis of wastes in the carbamate industry and effluent guideline development under sections 405 (d) and (e) of the Clean Water Act (CWA), or reported present by the manufacturer in response to the Agency's RCRA section 3007 questionnaire. This table presents a compilation of all concentration data for each group of waste studied. Additional constituents were detected at concentrations below the level of concern. All of the collected data is presented in the carbamates engineering analysis. However, the risk analysis described in section III.C.5. of this preamble used only the results of the carbamate industry study.

TABLE 10.—RANGE OF CONCENTRATIONS FOR CONSTITUENTS OF CONCERN

Group	Constituent of concern	No. of streams	Max. conc. (ppm)	Min. conc. (ppm)	Mean conc. (ppm)	Median conc. (ppm)
1	acetone	8	900,000	13	214,502	96,000
	acetonitrile	3	400,000	50,000	176,667	80,000
	acetophenone	1	890.7	890.7	890.7	890.7
	aniline	1	3.8	3.8	3.8	3.8
	benomyl	2	20,000	22	10,011	10,011
	benzene	1	350	350	350	350
	carbaryl	1	100,000	100,000	100,000	100,000
	carbendazim	2	80,000	22.3	40,011	40,011
	carbofuran	3	10,000	2,490	7,497	10,000
	carbosulfan	3	350,000	9	117,433	2,290
	chlorobenzene	1	1,800	1,800	1,800	1,800
	chloroform	1	1.2	1.2	1.2	1.2
	o-dichlorobenzene	1	12,000	12,000	12,000	12,000
	hexane	8	200,000	42	73,755	65,000
	methanol	10	910,000	9.23	359,033	130,100
	methomyl	2	38.7	1.06	19.9	19.9
	methyl ethyl ketone	4	500,000	58	151,240	7,300
	methyl isobutyl ketone	6	650,000	21,000	335,167	210,000
	methylene chloride	7	150,000	1.8	32,572	20,000
	naphthalene	1	6,440	6,440	6,440	6,440
	phenol	5	128,700	0.0138	28,706	3,000
	pyridine	6	130,000	920	63,570	49,750
	toluene	3	980,000	290	334,163	22,200
	triethylamine	2	286,000	580	143,290	143,290
	xylene	6	996,100	7,300	449,200	570,000
2	acetone	12	4,000	0.3	338.3	2.9
	carbon tetrachloride	1	0.51	0.51	0.51	0.51
	chloroform	5	8.6	0.024	2.3	0.57
	formaldehyde	1	48	48	48	48
	methomyl	5	40,000	0.0016	10,750	49.5
	methyl isobutyl ketone	5	300	0.8	78.3	12
	methyl chloride	5	4,200	0.0076	840.9	3.5
	methyl ethyl ketone	5	10,000	1.1	3,400.7	300
	methylene chloride	15	4,100	0.074	285.9	1.4
	o-phenylenediamine	1	77.4	77.4	77.4	77.4
	pyridine	3	13,600	17.6	4,687	443
	triethylamine	5	7,380	7.4	1,901	9.8
3	benomyl	2	20,000	0.3	10,000	10,000
	carbendazim	2	20,000	0.3	10,000	10,000
	carbofuran	2	700,000	6.8	350,003	350,003
	carbosulfan	1	100,000	100,000	100,000	100,000
	chloroform	1	2,600	2,600	2,600	2,600
	hexane	1	3,800	3,800	3,800	3,800
	methanol	2	69.5	58	63.8	63.8
	methylene chloride	3	13,000	0.047	6,000	5,000
	phenol	2	5,000	0.346	2,500	2,500
	xylene	2	135,100	610	67,855	67,855
4	butylate	1	50,000	50,000	50,000	50,000
	eptam	1	50,000	50,000	50,000	50,000
	molinate	1	50,000	50,000	50,000	50,000
	pebulate	1	50,000	50,000	50,000	50,000
	vernolate	1	50,000	50,000	50,000	50,000
5	benzene	1	0.15	0.15	0.15	0.15
	butylate	2	1.2	0.3	0.8	0.8
	eptam	3	170	0.14	57	1.7
	molinate	2	39	7.5	23.3	23.3
	pebulate	3	0.71	0.015	0.27	0.09
	vernolate	2	0.16	0.021	0.09	0.09
6	benzene	1	1,100	1,100	1,100	1,100
	toluene	1	9,400	9,400	9,400	9,400
	butylate	2	8,800	7,400	8,100	8,100
	eptam	3	401,000	12,000	271,333	271,333
	molinate	1	22,000	22,000	22,000	22,000

TABLE 10.—RANGE OF CONCENTRATIONS FOR CONSTITUENTS OF CONCERN—Continued

Group	Constituent of concern	No. of streams	Max. conc. (ppm)	Min. conc. (ppm)	Mean conc. (ppm)	Median conc. (ppm)
	pebulate	1	500	500	500	500
	vernolate	1	620	620	620	620
	xylene	1	201	201	201	201
7	carbon disulfide	1	94,000	94,000	94,000	94,000
	xylene	4	5,000	1,000	3,750	4,500
	dithiocarbamate product	8	10,000	10,000	10,000	10,000
8	carbon disulfide	5	5,000	0.028	1,178	15
	methylene chloride	2	0.57	0.490	0.53	0.53
	n-nitrosodimethylamine	1	104	104	104	104
	piperidine	1	65,000	65,000	65,000	65,000
	dithiocarbamate product	5	6,960	42.4	2,039	70.9
9	carbon disulfide	2	420	15	218	218
	dithiocarbamate product	81	1,000,000	1,000	505,201	450,000
	xylene	2	240,000	240,000	240,000	240,000
10	carbon disulfide	5	1,000,000	4,000	676,800	950,000
	hexane	7	1,000,000	600,000	942,857	1,000,000
	toluene	2	50,000	50,000	50,000	50,000
	xylene	2	600,000	600,000	600,000	600,000

2. Human Health Criteria and Effects

The Agency uses health-based levels, or HBLs, to evaluate levels of concern of toxic constituents in various media. In establishing HBLs, EPA evaluates a wide variety of health effects data and existing standards and criteria. EPA uses any Maximum Contaminant Level (MCL) promulgated under the Safe Drinking Water Act as an HBL for contaminants in aqueous streams. MCLs are Drinking Water Standards promulgated under section 1412 of the Safe Drinking Water Act of 1974 (SDWA), as amended in 1984 for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors (see 52 FR 25697–98, July 8, 1987). For other media, or if there is no MCL, EPA uses an oral reference dose (RfD), an inhalation reference concentration (RfC), and/or a carcinogenic slope factor (CSF) to derive the HBL, in conjunction with various exposure assumptions and, for carcinogens, a risk level of concern. The Agency relies on standard intake and exposure assumptions to derive HBLs. Standard daily intake assumptions are: 2 liters of water; 20 cubic meters of air; 200 mg of soil for six years (children) and 100 mg of soil for 24 years (adults). For carcinogens, the daily intake is averaged over a 70 year lifetime; for noncarcinogens, the daily intake is averaged over a daily period of exposure. The risk level of concern may vary, but for the purpose of deriving HBLs in the following discussion, the minimal or threshold risk level of concern is taken as 10^{-6} (i.e., one incremental cancer risk in a million based on lifetime exposure). A given constituent may have an RfD, and RfC, and/or a CSF, depending on the variety and nature of the toxic effects exhibited. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population, including sensitive subgroups, that is likely not to present appreciable risk of deleterious effects during a lifetime. The CSF is an estimate of the upper bound confidence limit of the lifetime risk of developing cancer, per unit dose, which results from the application of a low-dose extrapolation procedure. When available, EPA uses RfDs, RfCs, and CSFs that have been verified by the Agency's Reference Dose/Reference Concentration (RfD/RfC) Work Group or Carcinogen Risk Assessment Verification Endeavor (CRAVE). If no verified value exists, other estimates of RfDs, RfCs, and CSFs are examined to determine if they are appropriate for use in establishing HBLs. Health-based levels in water and soil, and the criteria used to establish them, are shown in Table 11 for the constituents identified in the carbamate wastes. A more detailed discussion of the toxicity of these constituents is included in the background document "Carbamate Waste Listing Support: Health Effects Background Document" and associated materials for this proposal and is available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Acetone (67–64–1).	1E–1 (1)	N (1,7)	N (1,7)	N (1,7)	4E+0	8E+3	N (1,6)	Systemic: Increased liver and kidney weights, and nephrotoxicity.
Acetophenone (98–86–2).	1E–1 (1)	N (1,7)	N (1,7)	N (1,7)	4E+0	6E+3	N (1,6)	Systemic: General toxicity.
Aniline (62–53–3).	N (1,7)	5.7E–3 (1)	1E–3 (1)	N (1,7)	6.25E–3	1.0E+2	N (1,6)	Cancer: Spleen tumors. Systemic: Spleen toxicity.
Anthracene (120–12–7).	3E–1 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	3E+4	N (1,6)	Systemic: Phototoxic dermatitis, inflammation of the gastrointestinal tract.
Antimony (7440–36–0).	4E–4 (1,6,7)	N (1,7)	N (1,7)	N (1,7)	6E–3	3E+1	0.006 (6)	Systemic: Increased mortality and altered blood glucose and cholesterol levels.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Arsenic (7440–38–2).	3E–4 (1)	1.75E+0 (1)	N (1,7)	1.5E+1 (1)	5E–2	4E–1	0.05 (6)	Cancer: Respiratory system tumors. Systemic: Hyperpigmentation, keratosis, and possible vascular complications.
Barium (7440–39–3).	7E–2 (1)	N (1,7)	5E–4 (7)	N (1,7)	2E+0	6E+3	2 (6)	Systemic: Oral; Increased blood pressure. Inhalation: Fetotoxicity.
Benomyl (17804–35–2).	5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Fetotoxicity (decreased pup weanling weights).
Bensulide (741–58–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Neuro-muscular pathology[b].
Benz[a]-anthracene (56–55–3).	2E–1 (92)[c]	2E+1 (92)	N (1,7)	N (1,7)	1E–4	3E–2	0.0001 PMCL (6)	Cancer: Liver hepatoma. Systemic: Respiratory system effects.
Benzene (71–43–2).	N (1,7)	2.9E–2 (1)	N (1,7)	2.9E–2 (7)	5E–3	2E+1	0.005 (6)	Cancer: Human leukemia.
Benzo[b]-fluoranthene (205–99–2).	N (1,7)	7.3E–1 (TEF[d])[c]	N (1,7)	N (1,7)	2E–4	9E–1[a]	0.0002 PMCL (6)	Cancer: Lung adenomas and epidermoid carcinomas, putative forestomach tumors.
Benzo[k]-fluoranthene (207–08–9).	N (1,7)	7.3E–2 (TEF[d])[c]	N (1,7)	N (1,7)	2E–4	9E+0[a]	0.0002 PMCL (6)	Cancer: Lung adenomas and epidermoid carcinomas, putative forestomach tumors.
Benzoic acid (65–85–0).	4E+0 (1,7)[c]	N (1,7)	N (1,7)	N (1,7)	1E+2	3E+5	N (1,6)	Systemic: Practically safe to humans and animals.
Butylamine (109–73–9).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Butylate (2008–41–5).	5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Increased relative liver weights.
Cadmium (7440–43–9).	5E–4[a], 1E–3[a] (1).	N (1,7)	N (1,7)	6.3E+0 (1)	5E–3	8E+1	0.005 (6)	Cancer: Human lung, tracheal, and bronchial tumors. Systemic: Significant proteinuria.
Carbendazim (10605–21–70).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Reproductive effects.
Carbofuran (1563–66–2).	5E–3 (1)	N (1,7)	N (1,7)	N (1,7)	4E–2	4E+2	0.04 (6)	Systemic: RBC and plasma cholinesterase inhibition, and testicular and uterine effects.
Carbon disulfide (75–15–0).	1E–1 (1)	N (1,7)	1E–2 (7)	N (1,7)	4E+0	8E+3	N (1,6)	Systemic: Oral; Fetal toxicity and teratogenicity. Inhalation: Fetal toxicity.
Carbon tetrachloride (56–23–5).	7E–4 (1)	1.3E–1 (1)	N (1,7)	5.2E–2 (1)	5E–3	5E+0	0.005 (6)	Cancer: Liver tumors. Systemic: Liver lesions.
Carbosulfan (55285–14–8).	1E–2 (1)	N (1,7)	N (1,7)	N (1,7)	4E–1	8E+2	N (1,6)	Systemic: Decreased body weight.
Chlorobenzene (108–90–7).	2E–2 (1)	N (1,7)	2E–2 (7)	N (1,7)	1E–1	2E+3	0.1 (1)	Systemic: Histopathological changes in liver.
Chloroform (67–66–3).	1E–2 (1)	6E–3 (1)	N (1,7)	8.1E–2 (1)	5.8E–3	1E+2	N (1,6)	Cancer: Kidney tumors. Systemic: Fatty cyst formation in liver.
Chromium VI (18540–29–9).	5E–3 (1)	N (1,7)	N (1,7)	4.2E+1 (1)	1E–1	4E+2	0.1 (6)	Cancer: Human lung tumors. Systemic: Kidney and liver damage, and cardiovascular and gastrointestinal effects.
Chrysene (218–01–9).	N (1,7)	7.3E–2 (TEF[d])[c]	N (1,7)	N (1,7)	2E–4	9E–0[a]	0.0002 PMCL (6)	Cancer: Putative forestomach tumors.
Cyanide (57–12–5).	2E–2 (1)	N (1,7)	N (1,7)	N (1,7)	2E–1	2E+3	0.2 (6)	Systemic: Degenerative neurotoxicity, and thyroid effects.
Cycloate (1134–23–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: neurotoxicity skeletal muscle myopathy. (2)[b].
Dibutylamine (111–92–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
1,2-Dichlorobenzene (95–50–1).	9E–2 (1)	N (1,7)	2E–1 (7)	N (1,7)	6E–1	8E+3	0.6 (6)	Systemic: Oral; Liver pathology. Inhalation: Decreased relative spleen weight.
1,3-Dichlorobenzene (541–73–1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Hemoglobin changes and liver and kidney damage.
1,4-Dichlorobenzene (106–46–7).	N (1,7)	2.4E–2 (7)	7E–1 (7)	N (1,7)	7.5E–2	3E+1	0.075 (6)	Cancer: Liver tumors. Systemic: Liver damage.
Diethylphthalate (84–66–2).	8E–1 (1)	N (1,7)	N (1,7)	N (1,7)	3E+1	7E+4	N (1,6)	Systemic: Decreased growth rate, food consumption, and altered organ weights.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Dimethylamine (124–40–3).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Liver fatty degeneration and necrosis, and tubular degeneration of the testes. (2).
Dimethyldodecylamine (112–18–5).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Respiratory tract effects.
Dipropylamine (142–84–7).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Eptam (EPTC) (759–94–4).	2.5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	8.8E–1	2E+3	N (1,6)	Systemic: Degenerative cardiomyopathy.
Esprocarb (85785–20–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Ethylbenzene (100–41–4).	1E–1 (1)	N (1,7)	1E+0 (1)	N (1,7)	7E–1	8E+3	0.7 (6)	Systemic: Liver and kidney effects.
2-Ethylhexylamine (104–75–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Fluoranthene (206–44–0).	4E–2 (1)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Kidney effects, increased liver weights, hematological alterations.
Formaldehyde (50–00–0).	2E–1 (1)	N (1,7)	N (1,7)	4.5E–2 (1)	7E+0	2E+4	N (1,6)	Cancer: Nasal cavity tumors. Systemic: Gastrointestinal histopathology.
Hexachloroethane (67–72–1).	1E–3 (1)	1.4E–2 (1)	N (1,7)	1.4E–2 (1)	3E–3	5E+1	N (1,6)	Cancer: Hepatocellular carcinoma. Systemic: Atrophy and degeneration of kidney tubules.
Hexane (110–54–3).	6E–2 (7)	N (1,7)	2E–1 (1)	N (1,7)	2E+0	5E+3	N (1,6)	Systemic: Oral; nervous system effects, testicular atrophy. Inhalation: Neurotoxicity (electrophysiological alterations), and epithelial lesions in the nasal cavity.
Hexylamine (111–26–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Isopropanol (67–63–0).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Lead (7439–92–1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Cancer: Renal tumors. Systemic: Neurotoxic, adverse hematopoietic, and reproductive and developmental effects.
Mercury (7439–97–6).	3E–4 (7)	N (1,7)	3E–4 (7)	N (1,7)	2E–3	3E+1	0.002 (6)	Systemic: Damage to brain, kidneys, and developing fetuses.
Metam-Sodium (137–42–8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Developmental effects. (A).
Methanol (67–56–1).	5E–1 (1)	N (1,7)	N (1,7)	N (1,7)	2E+1	4E+4	N (1,6)	Systemic: Alterations in liver enzyme levels, and decreased brain weight.
Methomyl (16752–77–5).	2.5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	9E–1	2E+3	N (1,6)	Systemic: Kidney and spleen pathology.
Methylamine (74–89–5).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Data not available.
Methyl chloride (74–87–3).	N (1,7)	1.3E–2 (7)	N (1,7)	6.3E–3 (7)	3E–3	5E+1	N (1,6)	Cancer: Renal tumors in mice from intermittent inhalation exposure. Systemic: Liver and kidney effects, and degeneration and atrophy of the seminiferous tubules.
Methylene chloride (75–09–2).	6E–2 (1)	7.5E–3 (1)	3E+0 (7)	1.6E–3 (1)	5E–3	9E+1	.005 (6) PMCL	Cancer: Liver tumors. Systemic: Adverse liver effects.
Methyl ethyl ketone (78–93–3).	6E–1 (1)	N (1,7)	1E+0 (1,7)	N (1,7)	2E+1	5E+4	N (1,6)	Systemic: Decreased fetal birth weight.
Methyl isobutyl ketone (108–10–1).	5E–2 (7)	N (1,7)	8E–2 (7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Liver and kidney toxicity.
Methyl isothiocyanate (556–61–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Data not available.
Molinate (2212–67–1).	2E–3 (1)	N (1,7)	N (1,7)	N (1,7)	7E–2	2E+2	N (1,6)	Systemic: Reproductive toxicity.
Molybdenum (7439–98–7).	5E–3 (1)	N (1,7)	N (1,7)	N (1,7)	2E–1	4E+2	N (1,6)	Systemic: Increased uric acid in the urine, decreased blood copper levels, and painful swelling in the joint in humans.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Nabam (142–59–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Cancer: Putative induction of thyroid adenomas and adenocarcinomas, and hepatomas (75).[kJ]
Naphthalene (91–20–3).	4E–2 (7)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Decreased whole body weight in rats.
Nickel (7440–02–0).	2E–2 (1)	N (1,7)	N (1,7)	8.4E–1 (1)	1E–1	2E+3	0.1 (6)	Cancer: Respiratory system tumors in humans. Systemic: Pulmonary toxicity.
Nitrobenzene (98–95–3).	5E–4 (1)	N (1,7)	2E–3 (7)	N (1,7)	2E–2	4E+1	N (1,6)	Systemic: Adrenal, renal, and hepatic lesions and hematopathology.
N-Nitroso-di-n-butylamine (924–16–3).	N (1,7)	5.4E+0 (1)	N (1,7)	5.6E+0 (1)	6E–6	1E–1	N (1,6)	Cancer: Bladder and gastrointestinal tract tumors.
N-Nitroso-di-n-methylamine (62–75–9).	N (1,7)	5.1E+1 (1)	N (1,7)	4.9E+1 (1)	7E–7	1E–2	N (1,6)	Cancer: Liver tumors.
Oxamyl (23135–22–0).	2.5E–2	N (1,7)	N (1,7)	N (1,7)	9E–1	2E+3	0.2 (6)	Systemic: Cholinesterase inhibition, liver effects, and fetotoxicity.
Pebulate (1114–71–2).	5E–2 (7)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	No data available.
Phenol (108–95–2).	6E–1 (1,7)	N (1,7)	N (1,7)	N (1,7)	2E+1	5E+4	N (1,6)	Systemic: Developmental effects (stunted growth).
o-Phenylenediamine (95–54–5).	N (1,7)	4.7E–2 (7)	N (1,7)	N (1,7)	7.4E–4	1.4E+1	N (1,6)	Cancer: Liver tumors.
Piperidine (110–89–4).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Developmental and reproductive effects (5).
n-Propylbenzene (103–65–1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Prosulfocarb (52888–80–9).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Pyrene (129–00–00).	3E–2 (1)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Kidney effects (renal tubular pathology, decreased kidney weight).
Pyridine (110–86–1).	1E–3 (1)	N (1,7)	5E–3 (53)	N (1,7)	4E–2	8E+1	N (1,6)	Systemic: Increased liver weight.
Selenium (7782–49–2).	5E–3 (1)	N (1,7)	N (1,7)	N (1,7)	5E–2	4E+2	0.05 (total) (6)	Systemic: Clinical selenosis.
Styrene (100–42–5).	2E–1 (1)	N (1,7)	1E+0 (1)	N (1,7)	1E–1	2E+4	0.1 (6)	Systemic: Oral; Red blood cell and liver effects. Inhalation: Human central nervous system effects.
Tetralin (119–64–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Kidney effects and cataracts.
Toluene (108–88–3).	2E–1 (1)	N (1,7)	4E–1 (1)	N (1,7)	1E+0	2E+4	1.0 (6)	Systemic: Oral; Altered kidney and liver weights. Inhalation: Neurological effects and degeneration of nasal epithelium.
Triethylamine (121–44–8).	N (1,7)	N (1,7)	7E–3 (1)	N (1,7)	NA	NA	N (1,6)	Systemic: Nasal passage toxicity (inflammation).
1,2,3-Trimethylbenzene (526–73–8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2)[m].
1,2,4-Trimethylbenzene (95–63–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2).
1,3,5-Trimethylbenzene (108–67–8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2).
Vernolate (Vernam) (1929–77–7).	1E–3 (1)	N (1,7)	N (1,7)	N (1,7)	4E–2	8E+1	N (1,6)	Systemic: Altered liver weight and hematopoiesis, and cholinesterase inhibition, elevated alkaline phosphatase levels, and spinal cord and nerve degeneration (100).
Vinyl acetate (108–05–4).	1E+0 (7)	N (1,7)	2E–1 (1)	N (1,7)	4E+1	8E+4	N (1,6)	Systemic: Nasal tract toxicity (lesions).

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Xylene (1330–20–7).	2E+0 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	2E+5	10 (6)	Systemic: Central nervous system effects (hyperactivity), decreased body weight, and increased mortality.
o-Xylene (95–47–6).	2E+0 (7)	N (1,7)	N (1,7)	N (1,7)	7E+12	E+5	N (1,6)	Systemic: Central nervous system effects (hyperactivity) and decreased body weight.
Zinc (7440–66–6).	3E–1 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	3E+4	N (1,6)	Systemic: Decrease in erythrocyte superoxide dismutase (ESOD) in adult females.
Ziram (137–30–4).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Alteration of liver enzymes and immune responses, spleen enlargement, and developmental effects (77, 2).

N No data found in reference.
NA Inadequate data for calculation of health based level.
a. None available.
b. At an animal oral LOAEL of 89.8 mg/kg/day.
c. Human cancer potency value.
d. Benzo(a)pyrene Toxicity Equivalent Factor.
e. USEPA Provisional Guidance for the Qualitative Risk Assessment of Polycyclic Aromatic Hydrocarbons. 1993.
f. The human per capita intake was used as the critical dose level.
g. Drinking water RfD.
h. Dietary exposure RfD.
i. Inhalation unit risk.
j. At an animal oral LOAEL of 55 mg/kg/day.
k. At animal LOAEL of 97 ppm.
l. Known toxic effect of ethylene bis-dithiocarbamate (EBDC) metabolite of nabam.
m. Exposure to a mixture of (1,2,3-, 1,2,4-, 1,3,5-) trimethylbenzenes.

References
(1) Integrated Risk Information System (IRIS). 1993.
(2) Hazardous Substances Databank (HSDB). 1993.
(5) RTECS (Registry of Toxic Effects of Chemical Substances) July 1992.
(6) Drinking Water Regulations and Health Advisories.
(7) Health Effects Assessment Summary Tables (HEAST). March 1993.
(53) Health and Environmental Effects Profile for Pyridine. June 1986.
(75) Nabam Pesticide Fact Sheet, Office of Pesticide Program, April 1987.
(77) Ziram TOX ONE-LINER. EPA Office of Pesticides, February 20, 1992.
(92) U.S. Environmental Protection Agency, Office of Research and Development, "Evaluation of the Potential Carcinogenicity o Benz(a)anthracene", June 1988.
(100) Vernolate TOX ONE-LINER. EPA Office of Pesticides, September 23, 1991.
(A) Developmental and Reproductive Toxicity Peer Review of Metam-Sodium. EPA Office of Pesticides.

3. Environmental Damage Cases

The nature and severity of the human health and environmental damage that has occurred as a result of improper management is a factor considered in the decision to list wastes as hazardous (see 40 CFR 261.11(a)(3)(ix)). The Agency has limited records of damages resulting directly from the mismanagement of carbamate wastes. Most applicable is Superfund Record of Decision (EPA Region 4): Stauffer/Cold Creek, AL (First Remedial Action), September, 1989 (PB90–186388). In studying this site, which continues to manufacture thiocarbamate products, the Agency found groundwater contaminated by wastes from the manufacture of the products butylate, cycloate, EPTC, molinate, pebulate, and vernolate at levels of concern. Groundwater contamination at this site was attributed to past disposal of waste solids from thiocarbamate manufacture in an on-site unlined landfill.

The Agency has a limited number of reports of adverse environmental effects from carbamate waste streams proposed for listing. However, because pesticide products when formulated for end use may contain from 0.01 to 100 percent active ingredient, EPA believes that reports of adverse environmental impacts such as ground water contamination, fish kills, birds kills, or other non-target impacts are comparable to the possible adverse environmental impacts which could occur should wastes which contain pesticide active ingredients at comparable concentrations be mismanaged in the way pesticide products have been mismanaged. The Agency has collected information on environmental damages caused by improper use of carbamate products, mismanagement of containers previously storing carbamate products, and an accidental spill releasing a large volume of product to surface waters. The EPA believes these incidents are appropriate to consider in proposing listing several waste streams for the following reasons: (1) The wastes the Agency is proposing to list typically contain the carbamate active ingredients found in the products; (2) the concentrations of the active ingredients in the waste streams are typically many times higher than what is found in some formulated products; and, (3) the nature of some of the waste streams is similar to the product (e.g., solid, granular, fines) and would behave similarly if released uncontrolled to the environment.

In the case of carbamate chemicals the Agency has recorded numerous bird kill incidents associated with the use or possible misuse of carbamate products, which the Agency feels are applicable to an open disposal mismanagement scenario of solids. For example, between 1972 and 1991, 107 incidents have been attributed to granular carbofuran and 40 to flowable carbofuran. These incidents resulted in loss of 9,600 and 7,500 birds, respectively.

In general, carbamate products are acutely toxic to aquatic organisms. A number of fish kills have been attributed to carbamate products. From 1980 to 1988, the California Department of Fish and Game's Pesticide Investigations Unit estimated 7,000 to 30,000 fish were killed in the Colusa Basin Drain due to molinate entering the waterway from carbamates in rice fields. The most severe fish kill incident resulted from the July 14, 1991, derailment of a tank car containing 19,500 pounds of metam-sodium, a dithiocarbamate product. As a result of the spill, the surrounding

environment along a 45-mile stretch of the Sacramento River and portions of Lake Shasta were significantly adversely affected. More than 200,000 fish were killed, and several hundred people were treated for eye, skin, and respiratory irritation.

The collected case studies document human exposure and wildlife loss caused by the improper management or misuse of carbamate products. While only a limited number of the carbamate products have documented damage incidents, they do illustrate the potential ecological effects that some carbamate active ingredients can exert if released uncontrolled to the environment. These damage incident reports document contamination in ground water, surface water, air and soil by carbamate products. The Agency currently has a more limited number of damage incidents for the carbamate wastes under consideration for listing. A more extensive discussion of these and additional damage incident reports can be found in risk assessment support document for carbamate wastes included in the docket. See **ADDRESSEES** section.

4. Mobility and Persistence of Constituents in Carbamate Wastes

Mobility is the ability of a constituent to migrate from a waste to a transport medium, such as air, groundwater, or surface water. Persistence is a measure of a constituent's stability or its resistance to degradation in the environment. To assess mobility and persistence, the Agency has identified environmental release and transport pathways representing plausible worst-case management and disposal scenarios. By assessing these pathways, potential exposure can be estimated. Thus, if a constituent is sufficiently mobile and does not degrade as it moves along an environmental pathway, it may potentially reach a receptor and threaten human health and the environment.

The Agency assesses mobility by estimating the concentration at which a constituent could migrate from the waste disposal or storage unit to the underlying aquifer, adjacent soils, or to the air above the unit. The propensity of each specific constituent to either leach, runoff, or volatilize can be estimated using well-established physical parameters as well as historic damage incident cases and transport theories.

To assess the potential hazard posed by the constituents of concern in the wastes, the Agency compared the concentrations of constituents found in the wastes to known [2] health-based levels. The Agency also compared the concentrations that may reach potential human and environmental receptors to the health-based levels. The Agency took into account the possible dilution and attenuation that may occur due to leaching from the waste, movement of waste constituents adsorbed to soil particulates, and subsequent dilution or release to the air as a result of plausible worst-case mismanagement of the waste.

To evaluate the dilution and attenuation associated with leaching from the waste, the Agency considers the physical state of the waste. If the physical state of the waste is solid, the Agency first estimates the leaching rates for the constituents from the waste. A dilution/attenuation factor is applied to account for dispersion in the subsurface from the disposal site into ground water and subsequently to a drinking water source. This dilution and attenuation may occur because of various phenomena, such as hydrolysis, solubility, soil conditions, adsorption onto soil particles, dilution with ground water, and biodegradation to the extent those processes are likely to occur in a plausible worst-case management or disposal scenario.

The Agency believes that liquid wastes are mobile if improperly disposed and that they may reach environmental receptors through groundwater transport or through direct overland flow. The carbamate wastes proposed for listing can be either solids or liquids at ambient temperature.

Ground-water fate and transport have been evaluated by EPA. Evaluations of ground-water transport were conducted in support of the Toxicity Characteristic (TC) (55 FR 11798). In the final TC rule promulgated on March 29, 1990, EPA determined that a dilution and attenuation factor of 100 was appropriate for a reasonable worst-case management of non-specific wastes that may be disposed of in municipal landfills. The factor of 100 was determined assuming no adsorption, or degradation of a chemical.

In assessing the intrinsic risks associated with carbamate wastes, the Agency compared concentrations of constituents found in the wastes to 100 times their HBLs. While many carbamate active ingredients may exhibit break down through rapid hydrolysis at pH extremes or other degradation in the environment, they can be highly mobile in the soil column, and have been documented to reach ground water where these mitigating effects of hydrolysis/degradation are slowed. The factor of 100 times the HBL (i.e., assuming a dilution factor of 100X) in the case of carbamate waste constituents is viewed as a screening level representing a potential level of concern that would warrant further analysis to better quantify potential risks.

Table 12 shows that certain of these wastes contain sufficient levels of the constituents of concern to warrant further analysis. Given the high concentrations of the constituents of concern in comparison to HBLs, the Agency believes that there is the potential for exposure to harmful concentrations of the constituents of concern should the wastes be mismanaged.

TABLE 12.—SUMMARY OF STREAMS EXCEEDING 100 x HBL CONSTITUENT

Waste group	Percentage by waste volume containing hazardous constituent above 100 x HBL	Percentage by number of streams containing hazardous constituent above 100 x HBL
1	82.8	47
2	97.2	88
3	0.75	30.4
4	98.1	64.7
5	99.4	70
6	100	100
7	11.1	51.7
8	0.01	0.16
9	46.2	80
10	87.6	85.7

The mobility of carbamate active ingredients in the soil column is documented in the Agency's Federal Reporting Database System, maintained by the EPA Office of Groundwater and Drinking Water. This database tracks groundwater monitoring data reported from both known pesticide spills and as a result of normal applications. Carbamate active ingredients have been found in the groundwater of 19 states. Concentrations above health base levels of concern have been measured for aldicarb, carbofuran, and oxamyl. (For additional damage incidents cases and details, see the Carbamate Health Assessment Document and associated materials available in the Public Docket at EPA Headquarters. See **ADDRESSES** section, and section III.C.3.) EPA's overall approach to damage case information and the relationship of carbamate active ingredient damage

[2] The Agency acknowledges that it lacks health assessment studies for every substance determined to be present in the wastes sampled as indicated by the data gaps in Table 11. Health assessment studies are and ongoing process where by future studies may uncover additional information not considered in today's rulemaking.

cases to carbamate wastes is discussed earlier in this preamble.

When assessing the air pathway, constituents must be evaluated considering the waste management and transport scenario to determine if they are sufficiently mobile to support an air plume capable of threatening human health. The key parameters used to estimate the mobility of constituents into the air are the vapor pressure of the pure substance and the Henry's Law Constant [3] of the compound.

The Agency has evaluated several air release scenarios using these parameters and has found that a number of constituents present in carbamate wastes, including benzene, chloroform, formaldehyde, methyl chloride, methyl ethyl ketone, methylene chloride, pyridine, triethylamine, and xylene, may present a threat to human health by the air transport pathway. These air transport assessments are consistent with the assessments used by the Agency in its air emissions rule (56 FR 335490, July 22, 1991, "Hazardous Waste Treatment Storage and Disposal Facilities: Emission Standards of Tanks, Surface Impoundments, and Containers: Proposed Rule) and use the Quiescent Surface Model for Inorganic Wastes and the Oil Film Model for Organic Waste to estimate releases from tanks and materials balance calculations for incineration. These models are explained in detail in "Hazardous Waste Treatment, Storage and Disposal Facilities (TSDF) Air Emission Models," Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–450/3–87–0026. The model and documentation are included in the docket supporting this proposed rule. See **ADDRESSES** section.

Evaluation of the air transport assessments can be found in the document Assessment of Risk from the Management of Carbamate Waste and associated materials available in the Public Docket at EPA Headquarters. See **ADDRESSES** section. The risks associated with the air pathway are further discussed in section III.C.5.

Persistence can be evaluated by considering the various rates of degradation or adsorption that affect the compound during transport. A number of factors can potentially degrade or attenuate a compound during transport. Many of these processes, including biodegradation, photolysis, and adsorption, affect constituent concentrations under certain situations. Under plausible worst-case waste management scenarios, these processes and many others cannot be relied upon to attenuate constituents, because of the limited circumstances under which these mitigating processes could exist.

Table 13 presents the relevant hydrolysis half-lives of each compound in water and air.

TABLE 13.—PERSISTENCE OF CONSTITUENTS OF CONCERN

Constituent	Hydrolysis half-life in water	Hydrolysis half-life in air
Acetone	20 hours	22 days.
Acetonitrile (2)	5.5 days	—
Acetophenone	—	—
Aniline	—	—
Benomyl	<1 week	1 hour.
Benzene (1)	170 hours	17 hours.
Butylate	—	—
Cadmium	—	—
Carbaryl	10.5 days	12 hours.
Carbendazim	—	—
Carbofuran	8.2 weeks	4 hours.
Carbon disulfide.	2 hours	9 days.
Carbon tetrachloride (1).	1,700 hours	1,700 hours.
Carbosulfan	—	—
Chlorobenzene (1).	1,700 hours	170 hours.
Chloroform (1)	1,700 hours	1,700 hours.
Cycloate	—	—
Dibutylamine	12.9 hours	4.4 hours.
o-Dichlorobenzene (1).	1,700 hours	550 hours.
Dimethylamine	1.5 days	5.9 hours.
Eptam	—	—
Hexane	550 hours	17 hours.
Isopropyl alcohol.	5.4 days	1 day.
Lead	—	—
Methanol	2 days	17.8 days.
Methomyl	38 weeks	1.14 months.
Methylamine	1.9 days	22 hours.
Methyl ethyl ketone.	12 days	2.3 days.
Methyl isobutyl ketone.	33 hours	15 hours.
Methyl chloride (1).	2.4 to 24 hours	168 to 672 hours.
Methylene chloride (3)	686 years	Several months.
Methylisothiocyanate.	—	—
Molinate	—	—
Naphthalene (1).	170 hours	17 hours.
o-Phenylenediamine.	—	—
Pebulate	—	—
Phenol	4 days	15 hours.
Pyridine	90 hours	32 days.
Sodium n-methyldithiocarbamate.	—	—
Tetralin	—	—
Toluene (1)	550 hours	17 hours.
Vernolate	—	—
Xylene (1)	550 hours	17 hours.

TABLE 13.—PERSISTENCE OF CONSTITUENTS OF CONCERN—Continued

Constituent	Hydrolysis half-life in water	Hydrolysis half-life in air
Zinc	—	—
Ziram	—	—

—No Data

Unless otherwise specified, all values are from: Howard, Philip H., ed. *Handbook of Environmental Fate and Exposure Data for Organic Chemicals.* 1991.

(1) Mackay, Donald et al. *Illustrated Handbook of Physical-Chemical Properties and Environmental Fate for Organic Chemicals.* 1992.

(2) J. Jackson Ellington et al. *Measurement of Hydrolysis Rate Constants for Evaluation of Hazardous Waste Land Disposal: Volume 2. Data on 54 Chemicals.* 1987. U.S. EPA, Office of Research and Development. EPA/600/3–87/019.

(3) J. Jackson Ellington et al. *Chemical Specific Parameters for Toxicity Characteristic Contaminants.* 1991. U.S. EPA, Office of Research and Development. EPA/600/3–91/004.

In the case of dithiocarbamates, thermal decomposition, hydrolysis, and oxidation can lead to the formation of additional toxic chemicals of concern. Dithiocarbamic acids are extremely reactive and are commonly reacted to form more stable salts. Decomposition products include carbon disulfide, hydrogen disulfide, alkylisothiocyanates such as methylisothiocyanate, and amines. These amines react with nitrogen oxides from the air or other nitrosating ingredients to form highly toxic nitrosoamines. The carcinogenic potential of a number of these nitrosoamines has been studied and found to be significant. The Agency, therefore, believes dithiocarbamate chemicals typically exhibit the characteristic of reactivity and that discarded dithiocarbamate products, off-specification species, container residues, and spill residues of dithiocarbamate products should be managed as reactive hazardous wastes.

5. Risk Analysis

In support of this proposed rulemaking, the Agency estimated the risks that the constituents and waste streams pose to human health and the environment. A more detailed presentation is included in two background documents entitled, "Carbamate Waste Listing Support: Health Effects Background Document" and "Assessment of Risk from the Management of Carbamate Waste," which are included in the docket for this proposed rulemaking. See **ADDRESSEES** section. The results of the risk assessment are summarized in this section.

[3] Henry's Law Constants are physical chemistry constants which equate the vapor pressure of a slightly soluble gas in contact with a definite mass of liquid at a given temperature.

a. *Baseline Waste Management Practices and Release Potential of Constituents of Concern.* For each proposed waste group, waste management scenarios were developed based on current industry practices. In developing these scenarios, waste management practices, waste management units, treatment processes, and the quantities of waste being managed were identified. For each waste group, RCRA § 3007 questionnaire data which identify waste descriptions, waste quantities, waste management methods, and waste management units were compiled. Site visit reports provided an additional source of information.

Based on this information and best engineering judgment, six waste management practices and the sequence of management units that would be associated with each practice were identified as follows:

(1) Recycled Wastes—covered tank treatment/recycled;
(2) Incinerated Wastes—open tank storage/industrial boiler/landfill ash;
(3) Wastewater Treatment Process Waste—open quiescent or aerated treatment tank;[4]
(4) Fuel Blended Wastes—covered treatment tank;
(5) Landfilled Wastes—open storage tank/landfill wastes; and
(6) Other—open quiescent treatment tank or impoundment.

Table 14 identifies baseline waste management practices and the quantity of the waste groups going to each management practice.

TABLE 14.—APPORTIONMENT OF WASTE STREAM QUANTITIES TO BASELINE MANAGEMENT PRACTICES

Waste codes	Current management practices	Percentage of waste stream
Waste group 1.	Covered Trt. Tank/Recycle	1.
	Open St. Tank/Boiler/Landfill Ash	8.
	WWTP—Open Quiescent Trt. Tank	91.
Waste group 2.	Open St. Tank/Boiler/Landfill Ash	1.
	WWTP—Aerated Trt. Tank	99.
Waste group 3.	Covered St. Tank/Recycle	2.
	Open St. Tank/Boiler/Landfill Ash	1.
	Open St. Tank/Landfill	97.
WWT sludges.	Other—Open Quies. Trt. Impoundment	Less than 1.
	Open St. Tank/Landfill	Greater than 99.
Waste group 4.	Open St. Tank/Boiler/Landfill Ash	100.
Waste group 5.	WWTP—Open Quies. Trt. Tank	100.
Waste group 6.	Open St. Tank/Landfill	100.
Waste group 7.	Covered Trt. Tank/Recycle	1.5.
	WWTP—Open Quies. Trt. Tank	97.
	Other—Open Quies. Trt. Tank	1.5.
Waste group 8.	Covered Trt. Tank/Recycle	Less than 1.
	Open St. Tank/Boiler/Landfill Ash	Less than 1.
	WWTP—Open Quies. Trt. Tank	Greater than 99.
	Other—Open Quies. Trt. Tank	Less than 1.
Waste group 9.	Covered Trt. Tank/Recycle	Less than 1.
	Open St. Tank/Boiler/Landfill Ash	Less than 1.
	Open St. Tank/Landfill	53.
	Covered Trt. Tank—Fuel Blending	Less than 1.
	Other—Open Quies. Trt. Tank	46.
Waste group 10.	Covered Trt. Tank/Recycle	49.
	Open St. Tank/Boiler/Landfill Ash	27.
	Covered Trt. Tank—Fuel Blending	6.
	Other—Open Quies. Trt. Tank	18.

[4] The RCRA section 3007 questionnaire data indicated that some wastes were being deepwell injected. However, EPA has received subsequent information that due to the expiration of the facility's deepwell permit these wastes will no longer be deepwell injected but will be sent to wastewater treatment processes once a NPDES discharge is approved. Therefore, waste reported as deepwell injected were assumed to be sent to wastewater treatment.

b. *Exposure Pathway Analysis.* For each constituent of concern in each waste group, physical, chemical, and biological properties that can be used to predict environmental persistence, mobility, and bioaccumulation of constituents were identified. These properties include aqueous solubility, octanol water partition coefficient,[5] soil adsorption coefficient, vapor pressure, Henry's Law Constant, bioconcentration factor for fish tissue, bioaccumulation factor for meat and dairy products, air degradation value, and plant uptakes and adherence values. The majority of the collected values were obtained from available literature. In the absence of reported data, estimation methods[6] were used to calculate input parameter values.

For this analysis, all potential exposure pathways were identified for each constituent in each waste stream using information on physical and chemical properties of a constituent, and physical and chemical properties that are associated with persistence and mobility in a specific pathway. For example, a pathway in which a chemical is released from a tank to the air, is transported through the air to the exposed individual, and is directly inhaled by humans would be driven primarily by vapor pressure and Henry's Law Constant. Constituents with high vapor pressures and Henry's Law Constants (such as volatile organic compounds) would be expected to be present in this pathway, where as constituents with low values for these properties (such as metals) would not be expected to show up in this pathway. Damage incident cases and baseline management practices also were examined to determine which constituents have been released to the environment at concentrations presenting a concern and to determine which media and exposure pathways are potentially significant, or are reasonably expected to be released to the environment. For each waste group, Table 15 shows the number of potential exposure pathways identified using this screening method.

[5] The octanol water partition coefficient is the ratio of a chemical's concentration in the octanol phase to its concentration in the aqueous phase of a two-phase octanol/water system. Values represent the tendency of the chemical to partition itself between an organic phase and an aqueous phase.

[6] The principle source of estimation methods for input parameters was the "Handbook of Chemical Property Estimation Methods: Environmental Behavior of Organic Compounds" by Warren L. Lyman, William F. Reel, and David H. Rosenblatt, published by McGraw-Hill Book Company in 1982.

TABLE 15.—NUMBER OF POTENTIAL EXPOSURE PATHWAYS IDENTIFIED FOR EVALUATION

Waste stream	Number of constituents of concern	Number of potential exposure pathways
Waste group 1	30	25
Waste group 2	39	31
Waste group 3	4	15
Waste group 4	13	20
Waste group 5	6	18
Waste group 6	14	18
Waste group 7	12	30
Waste group 8	20	31
Waste group 9	17	28
Waste group 10	9	26
WWT sludge	7	5

Based on baseline management practices and damage incident reports, all relevant exposure pathways identified were evaluated for inclusion in the risk analysis. The background document for the risk analysis (Assessment of Risk from the Management of Carbamate Waste) examines potential pathways for specific constituents of concern. Those pathways determined to be plausible were identified for further assessment and only the exposure routes associated with these pathways were considered to be potential exposure routes. These routes included direct inhalation, indirect inhalation of soil and dust, direct soil ingestion, indirect soil ingestion, ingestion of ground-water, ingestion of surface water, ingestion of crops, ingestion of animal/dairy products, and ingestion of fish and shellfish.

c. *Risk Estimates.* i. Overview. In conducting the risk analysis, EPA calculated risk estimates for each waste group/management unit/exposure pathway/exposure route combination. (An example would be direct inhalation of a constituent from Group 1 waste that has been emitted as a gas from a treatment tank.) One exception to this methodology concerned those wastes identified with the following waste management sequence: tank storage/ boiler/landfill ash. Preliminary analysis of this exposure route indicated that constituents released from the ash portion of this waste managed in landfills would not pose risks at or above levels of concern for the most exposed individuals (i.e., a risk of 1 in a million for carcinogens or a hazard quotient of one or greater). This level of risk ($<10^{-6}$ for carcinogens or a hazard quotient of <1) is beneath the lower bound of EPA's regulatory level of concern for hazardous waste listing, and for this reason, risk estimates for the portion of waste being landfilled as ash were not made.

The Agency developed baseline risk estimates by selecting plausible mismanagement practices based on information collected in the RCRA 3007 survey for current management operations. For wastewaters, the Agency selected the plausible mismanagement practice to be the current practice of storage and treatment in tanks and boilers. The Agency has no information or reason to believe that if not listed, the wastewaters would likely be managed in a different manner (e.g., unlined surface impoundment). The Agency believes firms would not switch to less protective management methods, such as unlined surface impoundments, because it would be expensive to do so. For sludges and waste solids, the Agency selected the plausible mismanagement to be an unlined industrial landfill. The Agency has information that a portion of these wastes, while not regulated as hazardous, are managed as hazardous with disposal in Subtitle C landfills. However, the Agency lacks adequate information showing, that if not listed as hazardous, the wastes would continue to be disposed in Subtitle C landfills and result in significantly lower estimates of potential risk. The Agency requests comment on this approach to modeling plausible mismanagement practices.

Risk characterization approach. The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Habicht, 1992) and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to address or provide descriptions of (1) individual risk to include the central tendency and high-end portions of the risk distribution, (2) important subgroups of the population such as highly exposed or highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, the guidance also specifies that the results portray a reasonable picture of the actual or projected exposures with an open discussion of uncertainties.

Individual risk. Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, the risk levels of various groups within the population, and the average risk for individuals within a population of interests. The approach used in this analysis for characterizing baseline individual risk included: (1) identifying and describing the population of concern for each exposure route and important subpopulations that would exhibit much higher exposure patterns; (2) conducting screening analyses to obtain bounding and high-end estimates and to determine the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating risk for each pathway that provide a characterization of the average individual risk and high-end risk descriptors.

Bounding estimates. Screening estimates of risk are developed to determine whether an exposure pathway is of concern and to identify the parameters in the exposure calculation that contribute most to the certainty of the estimate. An initial screening estimate conducted for the potential pathways of concern was a bounding estimate. "Bounding estimates" purposefully overestimate the exposure or dose in an actual population for the purpose of developing a statement that the risk is "not greater than x." These bounding estimates were used to focus the analysis of central tendency and high end risk estimates on the most important pathways and constituents in these pathways.

Following the bounding estimate, all of the parameters used in risk estimation for each of the exposure pathways were systematically evaluated for their relative influence on the risk estimates. This sensitivity analysis provides information as to which of the parameters are the most important to include in the risk analysis.

Central tendency estimates. The central tendency risk descriptors are intended to provide a characterization of risk for the typical situation in which an individual is likely to be exposed. For each waste stream/management practice/constituent/ pathway combination, a central tendency estimate was made. Parameter values for waste stream characteristics, management unit characteristics, environmental fate and transport properties and exposure scenarios were all set at a central tendency value simultaneously.

High-end estimates. The "high-end" of the risk distribution is, conceptually, above the 90th percentile of the actual (either measured or estimated) distribution. As described in the 1992 EPA Risk Assessment Guidance for Risk Managers and Risk Assessors:

The high-end risk descriptor is a plausible estimate of the individual risk for those persons at the upper end of the risk distribution. The intent of this descriptor is to convey an estimate of risk in the upper range of the distribution, but to avoid estimates which are beyond the true distribution. Conceptually, high-end risk means risk above the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest risk. High-end estimates focus on estimates of exposure or dose in the actual population. (EPA Risk Assessment Council, 1991)

The "high-end" risk descriptor is intended to estimate the risk that is expected to occur in a small but plausible high-end segment of the population. The individuals with high-end risk may be members of a special population segment or individuals in the general population who are highly exposed.

If only limited information on the exposure or dose factors is available, the guidance recommends an approach for estimating high-end exposure or risk that identifies the most sensitive parameters and then uses maximum or near maximum values for one or a few of these variables, leaving others at their mean values. The guidance states that maximizing all variables will, in virtually all cases, result in an estimate that is above the actual values seen in the population.

For this analysis, data on exposure were generally not available for estimating specific percentiles of the exposed population for any of the pathways. Nonetheless, limited data were available to develop high-end estimates following the approach described above. All exposure factors for each of the pathways of concern [7] were identified and sensitivity analyses were conducted to identify those parameters that are the most sensitive in the risk estimation process. Based on these sensitivity analyses, a matrix was developed for each exposure pathway of concern that included all of the important parameters. A base case was then established using the arithmetic mean and median values for all of the parameters; this approach provided the average estimate. Then, each parameter was varied using a high-end value while keeping all other parameters at their mean or median value. These were considered high-end estimates of risk.

Upper-tail estimates. An upper-tail estimate is conceptually above the 99th percentile of the cumulative risk distribution. It represents an extreme case, which could occur but is not probable. The EPA developed upper-tail estimates by varying two parameters at the same time using high-end values while keeping all other parameters at their mean or median value. Parameters were varied in a way that did not present inconsistencies, such as low body weight and high intake rate. Also, combinations of high-end values for two parameters at a time that seemed inconsistent or implausible were eliminated.

Population risk. Descriptors of population risk are intended to convey information about the risk borne by the population or population segment being studied. These risk descriptors are used to answer questions concerning the number of cases of a particular health effect that probabilistically could occur within the population during a given time period, the number of persons or percent of the population above a certain risk level or health benchmark (e.g., RfD or RfC), and risk for a particular population segment.

The calculation of population risk based on estimates of risk for all individuals in the population is very data-intensive and such data are normally not available, as is the case for this analysis. As the 1992 EPA Guidelines for Exposure Assessment (57 FR 22888, May 29, 1992) states:

> . . . although it has been common practice to estimate the number of cases of disease, especially cancer, for populations exposed to chemicals, it should be understood that these estimates are not meant to be accurate predictions of real (or actuarial) cases of disease. The estimate's value lies in framing hypothetical risk in an understandable way rather than in any interpretation of the term cases.

The population risk estimates for each exposure route addressed in this analysis were based on this approach. The exposure routes described above have associated populations or subpopulations that are distinct, although not necessarily mutually exclusive. For this analysis, population data were collected to approximate the potential number of individuals exposed within a 10 mile radius of a representative facility. Data were collected for land surrounding eight existing carbamate facilities. Population distributions within the eight study areas were then computed using 1990 census tract-level population data to estimate the total number of persons within each study area, as well as subpopulations, including children.

Using these data and central tendency individual risk estimates or hazard quotients (i.e., the ratio of the predicted concentration to the applicable health based level), population risk estimates were calculated. However, for inhalation risk, an overlay of estimated concentration in 160 sectors surrounding a facility was used to more accurately estimate population risk.

ii. Bounding Estimates for Individual Risk. The results of the baseline bounding assessment are provided in the risk assessment support document, "Assessment of Risk from The Management of Carbamate Waste" (RTI, 1993). In conducting the bounding estimates all input parameters were set at high-end values. The bounding estimates were used to identify management practice/constituent/pathway combinations for each waste group that could potentially present risk to individuals at levels of concern. Two general results are of particular importance from this analysis. First, all food chain pathways were found to result in human health risk below levels of concern for all constituents in all waste groups. Second, EPA developed bounding risk estimates for wastewaters and organic liquids managed in surface impoundments from the production of carbamates, thiocarbamates and dithiocarbamates assuming an unlined impoundment. Risks exceeding $1x10^{-6}$ or a hazard quotient of 1 were predicted for ground water ingestion of constituents in waste groups 1 and 2. However, since no case could be documented of untreated waste from groups 1 and 2 currently being managed in unlined surface impoundments, this management scenario was not included for further evaluation in the baseline risk analysis.

iii. Risk Estimates by Exposure Route, Waste Group and Management Practice. This section discusses baseline individual and population risk estimation for direct inhalation, direct soil ingestion, indirect soil ingestion, and ingestion of ground water. For each waste management unit/exposure route combination, the methodologies used in calculating individual and population risk and the resulting risk estimates are presented. The waste/management practice/constituent/pathway combinations discussed in this section include only those with bounding risk estimates of $1x10^{-6}$ or greater for carcinogens and a hazard quotient of 1 or greater for noncarcinogens.

[7] High end estimates were made for only those pathways/constituents associated with a bounding risk estimate of 1×10^{-6} or greater for carcinogens or a bounding hazard quotient of 1 or greater for noncarcinogens. For a chemical constituent of concern, a hazard quotient is the ratio of chemical's waste stream concentration to its reported toxicity benchmark. A quotient of 1 shows that the toxicity benchmark was *not* exceeded.

Direct Inhalation

Individual risk estimates for tanks. The methodology used to estimate risk from the direct inhalation of contaminants by humans is based on the premise that humans live in close proximity to a facility where wastes are managed in tanks. The potential exists for humans to be exposed to hazardous constituents that volatilize from the wastes in the tanks.

For this analysis, EPA estimated the typical and high-end ambient air concentrations using air emission and dispersion models. The EPA model CHEMDAT7 was used for air emissions, the EPA Industrial Source Long Term model (version 2) (ISCLT2) was used for emission dispersion.

For each waste group/management practice/exposure route, Table 16 presents the high-end and central tendency risk estimates for those constituents identified presenting risk at levels of concern (i.e., having a high-end risk estimate greater than or equal to 1×10^{-6} for carcinogens or a hazard quotient greater than or equal to 1 for noncarcinogens). Table 16 also identifies the parameters that significantly defined the lower and upper boundaries of the high-end range.

A detailed discussion of the methodology used to estimate exposure and the various air modeling assumptions and values of the input parameters for high-end and central tendency exposures is found in the risk assessment background document. A sensitive parameter in the air modeling is the distance from the emissions source to the receptor. The Agency used distances of 250 feet and 1000 feet to represent high-end and central tendency receptor distances,[8] respectively. The Agency specifically requests comments on the appropriateness of using these distances in the analysis. The Agency also requests comment on the exposure assumptions for a receptor living in the vicinity of the waste streams being considered in today's proposal. Information requested includes length of time an individual dwells at any one residence in these areas and the amount of time (number of days a year, hours per day) an individual spends in and around the residence.

TABLE 16.—INDIVIDUAL RISK ESTIMATES FOR DIRECT INHALATION: TANKS

Waste No.	Management practice	Constituent of concern	High-end parameters single/double	High-end risk estimate	High-end hazard quotient	Central tendency	
						Risk estimate	Hazard quotient
Waste Group 1 ..	Covered Treatment Tank/Recycle.	Triethylamine	Recept. distance/tank & recept. distance.	NA	4–30	NA	1
Waste Group 1 ..	Open Tank Storage/ Boiler/Landfill Ash.	Methylene Chloride	Recept. dist./conc. & recept. distance.	3E–07—1E–06	NA	3E–08	NA
		Triethylamine	Recept. dist./recept. distance & met. data.	NA	20–40	NA	2
Waste Group 1 ..	WWTP—Open Quiescent Treatment Tank.	Formaldehyde	Quantity/tank & recept. distance.	3E–06—1E–05	NA	6E–07	NA
		Methylene Chloride	Conc./tank & exposure duration.	1E–05—5E–05	NA	3E–06	NA
		Triethylamine	Met data/tank & recept. distance.	NA	500–2000	NA	200
Waste Group 2 ..	WWTP—Aerated Tank.	Carbon Disulfide ...	Quantity/quantity & recept. distance.	NA	0.4–2	NA	0.07
		Carbon Tetrachloride.	Recept. distance/ recept. dist. & expo. dur.	2E–06—7E–06	NA	4E–07	NA
		Chloroform	Quantity/quantity & recept. distance.	1E–06—7E–06	NA	2E–07	NA
		Methyl Chloride	Quantity/conc. & quantity.	4E–05—2E–04	NA	7E–06	NA
		Methyl Ethyl Ketone.	Recept. distance/ conc. & recept. dist.	NA	0.2–1	NA	0.04
		Methylene Chloride	Conc./conc. & quantity.	9E–06—5E–05	NA	9E–07	NA
		Pyridine	Recept. distance/tank & conc.	NA	3–20	NA	0.6
		Triethylamine	Recept. distance/ conc. & distance.	NA	40–200	NA	7
Waste Group 3 ..	Open Tank Storage/ Landfill.	Chloroform	Recept. distance/ recept. dist. & expo. dur.	4E–06—1E–05	NA	4E–07	NA
		Methylene Chloride	Recept. distance/ recept. dist. & expo. dur.	4E–07—1E–06	NA	5E–08	NA
Waste Group 4 ..	Open Tank Storage/ Boiler/Landfill Ash.	Benzene	Recept. distance/ recept. dist. & expo. dur.	5E–05—2E–04	NA	6E–06	NA

[8] From "Hazardous Waste Treatment, Storage, and Disposal Facilities-Organic Air Emissions Standards for Process Vents an Equipment Leaks Final Rule", 55 FR 25454, June 21, 1990.

Population risk estimates for tanks. To estimate the population risk associated with direct inhalation of volatile constituents, the number of individuals that may potentially be exposed over a 70 year period was estimated. Using typical case exposure conditions, population risk was then calculated for each waste/constituent of concern/waste management practice combination. For each combination, estimates were made for individuals exposed in all directions (i.e., north, south, east, and west) out to 10 miles. Exposure concentrations were estimated at 0.25, 0.5, 1.0 miles from the modeled facility in each direction and at 1.0 mile incremental distances thereafter. The number of exposed individuals in each sector is an average of the population data collected at eight carbamate production facilities. For carcinogens, the number of cancer cases occurring over 70 years were calculated based on the individual risk, number of exposed individuals, and number of 9 year cohorts in a 70 year time period. For noncarcinogens, the total number of people exposed to constituent concentrations greater than or equal to the RfCs were identified. For each combination, the estimates were summed across all directions and out to 10 miles to obtain the population risk (Table 17).

TABLE 17.—POPULATION RISK ESTIMATES: TANKS

Waste codes	Current management practices	Constituent of concern	Cancer cases/70 years	People exposed over RfC per 70 yrs
Waste Group 1 ..	Covered Trt. Tank/Recycle	Methylene chloride	1.5E–04	NA
		Triethylamine.	NA	73
	Open St. Tank/Boiler/Landfill Ash	Formaldehyde	2.8E–05	NA
		Methylene chloride	1.4E–04	NA
		Triethylamine	NA	73
	WWTP—Open Quiescent Trt. Tank	Chloroform	1.4E–04	NA
		Formaldehyde	4.8E–03	NA
		Methylene chloride	2.8E–02	NA
		Triethylamine	NA	54,000
Waste Group 2 ..	Open St. Tank/Boiler/Landfill Ash	Methyl chloride	1.3E–05	NA
		Methylene chloride	2.3E–06	NA
	WWTP—Aerated Trt. Tank	Carbon tetrachloride	7.7E–04	NA
		Chloroform	1.2E–03	NA
		Formaldehyde	6.2E–05	NA
		Methyl chloride	3.4E–02	NA
		Methylene chloride	4.4E–03	NA
		Triethylamine	NA	390
Waste Group 3 ..	Open St. Tank/Landfill	Chloroform	1.9E–03	NA
		Methylene chloride	2.3E–04	NA
Waste Group 4 ..	Open St. Tank/Boiler/Landfill Ash	Benzene	2.7E–02	NA
Waste Group 6 ..	Open St. Tank/Landfill	Benzene	1.4E–04	NA

Individual risk estimates for boilers. As discussed above for tanks, the methodology used to estimate baseline individual risk from the direct inhalation of contaminants by humans is based on the premise that humans live in close proximity to a facility where wastes are managed. The potential also exists for humans living in close proximity to a facility to be exposed to hazardous constituents that are emitted from industrial boilers, furnaces or incinerators burning the wastes.

Results from air emission and dispersion modeling using ISCLT2 were used to develop boiler-specific scaled modeled air concentrations (SMACs) for use in calculating ambient air concentrations. These scaled modeled air concentrations represent the downwind concentrations normalized by the feed rate that would result if the boiler emission rate is 1 gram per second (g/s). The SMACs were multiplied by the waste constituent concentrations, estimations of the fraction of the boiler feed that the waste comprised, and a specified destruction and removal efficiency (DRE) to calculate ambient air concentrations. The high-end air concentrations were estimated based on high-end waste constituent concentrations and the boiler-specific coefficient associated with the high-end boiler and meteorological data. The methodology used in calculating the typical case air concentrations used typical case values for the waste constituent concentrations and boiler-specific coefficient. Based on the high end estimates, the potential risk posed by the majority of the constituents in the wastes going to boilers is below levels of concern. The only constituent shown to be of concern (i.e., having a high-end risk estimate greater than or equal to 1×10^{-6} for carcinogens or a hazard quotient greater than or equal to 1 for noncarcinogens) is benzene in waste Group 4. The central tendency and high end range for this constituent are 9×10^{-8} and 4×10^{-7} to 1×10^{-6}, respectively.

Population risk estimates for boilers. Using typical case exposure conditions, EPA estimated the population risk for each waste group/constituent of concern combination for waste managed in boilers, using a methodology similar to that used for air emissions from tanks (Table 18).

TABLE 18.—POPULATION RISK ESTIMATES: BOILERS

Waste codes	Current management practices	Constituent of concern	Cancer cases/70 years	People exposed over RfC per 70 yrs
Waste Group 1 ..	Open tank storage/boiler/landfill ash	Methylene chloride	8.9E–01	NA
Waste Group 2 ..	Open tank storage/boiler/landfill ash	Chloroform	2.0E–07	NA
		Methyl chloride	5.7E–06	NA
		Methylene chloride	7.5E–07	NA
Waste Group 3 ..	Open tank storage/boiler/landfill ash	Methylene chloride	5.7E–08	NA
Waste Group 4 ..	Open tank storage/boiler/landfill ash	Arsenic	9.6E–04	NA
		Benzene	3.4E–03	NA
Waste Group 8 ..	Open tank storage/boiler/landfill ash	Chromium	4.3E–06	NA
		n-Nitrosodibutylamine	1.5E–07	NA
		n-Nitrosodimethylamine	1.4E–04	NA
Waste Group 9 ..	Open tank storage/boiler/landfill ash	Arsenic	2.4E–08	NA
		Cadmium	2.0E–08	NA
		Chromium	4.2E–08	NA
Waste Group 10	Open tank storage/boiler/landfill ash	Chromium	8.2E–07	NA

Individual risk estimates for landfills. The equations used to generate the hazard quotients and risk resulting from inhalation of volatiles were consistent with those presented in EPA's Risk Assessment Guidance for Superfund (RAGS Part B, 1991). The central tendency risk estimates were derived from a 30 year average atmospheric concentration and a 9 year exposure duration. A 30 year exposure duration was used as a high-end exposure duration value when generating the high-end risk estimates.

Central tendency and high-end risk estimates were generated for those constituents with a bounding risk estimate greater than 10^{-6} and a bounding hazard quotient estimate greater than or equal to 1 (Table 19).

TABLE 19.—INDIVIDUAL BASELINE RISK FROM INHALATION OF VOLATILES: LANDFILLS

Waste codes	Current management practices	Constituent of concern	Risk		High-end parameters
			High-end	Central	
Waste Group 3 .	Landfill	Chloroform	8E–05—1E–04	2E–05	Receptor distance and exposure duration.
		Methylene chloride	1E–05—2E–05	3E–06	Receptor distance and exposure duration.
Waste Group 6 .	Landfill	Benzene	1E–05—2E–05	4E–06	Receptor distance and exposure duration.

Population risk estimates for landfills. Population risk for the inhalation of volatile emissions from the landfill is a function of individual risk from inhalation of volatile contaminants and the number of people living in the area where exposure will occur. The population risks were based on centrally tendency risk estimates for individuals.

A sensitive parameter for many of the landfill pathways is the volume and management of the wastes sent to a landfill. To calculate the volatile emissions, waste run-off, and particle generation, EPA assumed the disposal of an annual quantity for each waste stream. The waste is allowed to remain uncovered while the portion of the landfill is active. EPA estimates that the landfill disposal depth is 3 meters and that the density of the waste is 150 kg/m^3, a value resembling highly organic, muck soils. EPA requests comments on these assumptions or any data on these assumptions.

As discussed above regarding population risk estimates from direct inhalation, the number of people living at various distances from a facility were also evaluated for the population risk estimates. A total of 493 people were determined to live within 0.3 miles of the facility. The central tendency risk estimates used in the baseline analyses incorporated a 30 year average air concentration.

The population risk estimates for constituents of concern in waste group 3 are 8×10^{-2} cases over a 70-year period for chloroform, and 1×10^{-2} cases over a 70-year period for methylene chloride. The population risk for benzene, the constituent of concern in waste group 6, is estimated at 2×10^{-2} cases over a 70-year period.

Individual risk estimates for surface impoundments. The sludge waste group was the only untreated waste group currently being managed in surface impoundments. The bounding risk estimates for those constituents in the sludge waste group were below levels of concern. Therefore, further risk evaluations were not required.

Population risks estimates for surface impoundments. The bounding risk estimates did not indicate any constituents of concern. Therefore, further risk evaluations were not required.

Direct Soil Ingestion

Individual risk estimates for landfills. The equations used to quantify risks resulting from ingestion of contaminated soil are consistent with those soil ingestion risk equations contained in EPA RAGS Part B. The exposure durations of 9 years and 30 years were used to represent central tendency and high-end. Obviously, this exposure duration could occur during various stages of life. For this analysis, it was assumed that 6 years of the exposure period was during childhood when soil ingestion is estimated to be highest. This is consistent with the RAGS Part B methodology.

The risk estimates for this pathway are sensitive to the amount of the waste that travels from the landfill to off-site receptors either through run-off or deposition of wind-blown particulates. EPA assumed that landfills do not have run-off controls or that the local terrain, roads, or other engineered controls do not channel run-off from residences.

The Agency requests comment on these assumptions and data on these parameters.

Central tendency and high-end risk estimates were generated for those constituents identified at levels of concern from the bounding risk analysis (Table 20).

TABLE 20.—Individual Baseline Risk From Direct and Indirect Soil Ingestion

Waste codes	Current management practices	Constituent of concern	Risk or hazard		High end parameters
			High end	Central	
Waste Group 3 .	Landfill	Methylene chloride	1E–07—2E–07	NA	Soil mixing depth and soil intake rate.
Waste Group 6 .	Landfill	EPTC	4–9	2	Constituent concentration and soil intake rate.
		Molinate	20–40	10	Soil mixing depth and soil intake rate.
Waste Group 9 .	Landfill	Arsenic	3E–06—4E–06	1E–06	Exposure duration and soil intake rate.
		Antimony	600–1000	300	Constituent concentration and soil intake rate.
		Zinc	1–2	0.4	Constituent concentration and soil intake rate.

Population risk estimates for landfills. Population risk estimates for soil ingestion were not evaluated. The EPA concluded that the general population in the vicinity of the facilities would not have access to the facilities. Therefore, the direct soil ingestion route was not considered an exposure scenario warranting population risk estimates.

Indirect Soil Ingestion

Individual risk estimates for landfills. The same risk estimation methodology used to calculate risks from direct soil ingestion was used to calculate risks resulting from indirect soil ingestion. This scenario considered soil that had eroded from the site to a nearby field. Central tendency and high-end risk estimates were generated for those constituents with bounding risk estimates greater than or equal to 10^{-6} or hazard quotients greater than or equal to 1 (Table 20).

Ingestion of Ground Water

Individual risk estimates for landfills. The equations used to calculate risk resulting from the ingestion of contaminated ground water were consistent with those presented in EPA's RAGS Part B. The ground-water concentration used in the central tendency and high-end risk estimates reflects a 30 year average ground-water concentration. The Multimedia Exposure Assessment Model (MULTIMED), an EPA analytical model, was used to estimate the various contaminants at specific receptor points downgradient from the source for a variety of scenarios. A full discussion of the model and inputs used for this analysis is contained in the report, "Assessment of Risk from the Management of Carbamate Waste" (RTI, 1993), which is available in the docket for this proposed rule. See ADDRESSES section.

Central tendency and high-end risk estimates were generated for those constituents with bounding risk estimates greater than or equal to 10^{-6} or hazard quotients greater than or equal to 1 (Table 21).

The groundwater modeling analysis assumes that groundwater contamination results from the disposal of waste in an on-site unlined landfill. The Agency collected data on well use surrounding the facility in all directions and assumed that the nearest wells are always downgradient of these facilities. The analysis further assumes that groundwater downgradient of the source may be used for drinking water, these wells are on the centerline of the plume, and these wells draw from only the uppermost aquifer. Given the current practice that most carbamate sludges and waste solids are disposed at off-site landfills, the Agency requests comments on the appropriateness of its assumptions, the resulting risk estimates, and the data used by the Agency.

TABLE 21.—Individual Risk Estimates From Ground-Water Ingestion: Landfills

Waste Code	Current management practice	Constituent of concern	Risk or hazard		High End parameters
			High end	Central	
Waste Group 3 .	Landfill	Chloroform	1E–07—3E–07	1E–08	Landfill area/leachate conc./recharge rate/infiltration rate & distance to well.
		Methylene chloride	3E–06—9E–06	2E–07	Distance to well and exposure duration.
Waste Group 6 .	Landfill	Benzene	5E–07—2E–06	3E–08	Landfill area/leachate conc/recharge rate/infiltration rate and distance to well.
		EPTC	10–50	0.1	Landfill area/leachate conc/recharge rate/infiltration rate and distance to well.
		Molinate	60–70	0.6	Distance to well and neutral hydrolysis rate.

Population risk estimates for landfills. In conducting this analysis, EPA estimated the risk to the exposed population from ingestion of ground-water based on the estimates of the population using water from public or private wells and individual risk estimates. Population risk estimates were generated for those constituents which were quantitatively analyzed for the ground-water exposure route.

The number of people using well water was estimated from the results of a land-use survey around 8 carbamate production facilities. For most of the states in which the study areas are located, little information was available on private well-use.

To characterize the spatial distribution of well-water use, EPA contacted public works officials from the urban centers nearest the study areas to determine which portions of the study areas were served by their

municipal facilities. These officials were then asked whether those areas not served by their public water systems are likely to be on private wells, or whether other smaller public utilities serve those areas.

For those areas where smaller public utilities were in operation, those utilities were contacted. Representatives for those smaller utilities (usually serving rural areas adjacent to urban centers) were asked whether they use well water, or pipe in water from the larger municipalities nearby. In addition, the smaller public utilities were asked whether those areas not receiving their service are on private wells. Through this process, it was possible to identify those areas likely to be on well water (both private and public) and those areas likely to be on non-well water.

The land-use survey was also used to determine the location of the well closest to each of the facilities evaluated in the survey. The average of the well location point closest to each facility was approximately 3.7 miles (5,985 m). This distance to the ground water exposure point was used to generate the central tendency risk estimates required for the population risk estimates. The survey results also indicate that there is a total of 672 people within a 3.7 mile radius of the site who use either public or private wells as their drinking water source. The ground water concentration used to calculate the risk represents a 70-year average ground water concentration.

The population risk estimates for the constituents of concern in waste group 3 are 1×10^{-5} cases over a 70-year period for chloroform and 2×10^{-4} cases over a 70-year period for methylene chloride. For waste group 6, the total number of cases per 70-year period resulting from benzene-contaminated ground water is estimated at 4×10^{-5}. The other constituents in this waste stream which were analyzed, eptam (EPTC), molinate, and toluene had hazard quotients less than 1 and were not analyzed further. The population risk posed by the constituent of concern in waste group 9, arsenic, was not significant.

6. Estimating Hazard Quotients: Dose Response Risk Assessment Techniques for Noncancer Endpoints

Table 11 contains RfDs, RfCs, and observed toxic effects for constituents detected in carbamate wastes. Because the noncarcinogens EPTC (eptam), triethylamine, and ziram were significant to the Agency's risk assessment, the Agency is seeking to further quantify the probability of adverse effects resulting from exposures to these chemicals at levels above hazard quotients. Exposure above the hazard quotient is viewed by the Agency to provide an indication that adverse effects similar to those observed in animal studies could also be observed in the exposed human population. However, the likelihood of particular effects above the RfD or RfC cannot be effectively predicted. The Agency is considering using logistic regression on ordered categories (i.e., categorical regression analysis) to provide estimates of risks at exposure levels above the RfD or RfC, and for the probability of adverse population effects. The following sections present an overview of dose-response assessment and categorical regression. A more detailed discussion of the categorical regression methodology is found in a paper Using Categorical Regression Instead of a NOEAL to Characterize a Toxicologist's Judgment in Noncancer Risk Assessment by Richard C. Hertzberg, Ph.D. and Michael L. Dourson, Ph.D. of EPA's Environmental Criteria and Assessment Office. This paper is available in the docket supporting this proposal. See "ADDRESSES" section.

Dose-Response Assessment. Dose-response assessment follows hazard identification in the risk assessment process as defined by the National Academy of Sciences (1983). Dose-response assessment involves the quantitative evaluation of toxicity data to determine the like incidence of the associated effects in humans. The information available for dose-response assessment ranges from well-conducted and controlled studies on human exposures, epidemiology studies with large numbers of subjects and well-characterized exposures, and supportive studies in several animal species, to a lack of human and animal toxicity data with only structure-activity relationships to guide the evaluation. In any case, the Agency considers all pertinent studies in this process. However, only data of sufficient quality are used in the dose-response assessment of a chemical.

The Chronic Reference Dose (RfD), and Reference Concentration (RfC). Given at least a moderate amount of toxicity data, one risk assessment goal is to determine a level of daily exposure that is likely to be without an appreciable risk of deleterious effects during a lifetime. The Agency's Reference Dose (RfD) and Reference Concentration (RfC) approaches strive to include scientific considerations in their determination.

The Agency defines the chronic RfD as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. In addition, the Agency is also using this model for inhalation exposures and similarly defines a Reference Concentration (RfC).

The RfD and RfC are useful as reference points for gauging the potential effects of other doses and for estimating hazard quotients. Doses at the RfD or less (consistent with hazard quotients of 1 or less) are not likely to be associated with any health risks, and are, therefore, assumed likely to be of little regulatory concern. In contrast, as the amount and frequency of exposures exceeding the RfD increase (or the hazard quotient exceeds 1), the probability that adverse effects may be observed in a human population also increases. However, the conclusion that all doses below the RfD are acceptable and that all doses in excess of the RfD are unacceptable cannot be categorically stated because these models cannot effectively predict the likelihood of particular effects above the RfD or RfC.

Another risk assessment goal is to determine or estimate the likely human response to various exposure levels of a particular contaminant. For carcinogens, a dose-response model is appropriate if sufficient data exist. Dose response models for noncancer endpoints are just now starting to be used. The next section highlights a new procedure, categorical regression, for which the Agency asks for comments. The Agency is interested in receiving comments on the categorical regression technique as applied to estimating the probability of effect above a benchmark level, and also on the appropriateness of using this technique in a hazardous waste listing determination.

Categorical Regression. The categories of response used in the analysis correspond to the RfD and RfC derivation: no-observed-effect level (NOEL) = exposure level at which no effects were observed; NOAEL = exposure at which no adverse effects were observed; AEL = exposure at which mild to moderate adverse effects were observed; FEL = exposure at which severe (frank) effects were observed. Categorical regression procedures can be used to model the probabilities of these four categories occurring as a function of exposure level expressed as the logarithm of human equivalent dose or human equivalent concentration and duration of exposure expressed as a proportion of life span. For each of the compounds studied by this technique, a second data set is constructed by identifying and censoring "unreliable"

NOELs or NOAELs from each data set; these "censored" studies would not include measurement of sensitive toxicologic endpoints shown to be of interest, or were studies that tested clearly insensitive species.

The categorical regression model is described as follows: Given a categorical response variable where the K categories are ordered in some fashion, the outcomes can be expressed as numbers 1 .... K (e.g., Y=1(NOEL), Y=2(NOAEL), Y=3(AEL), Y=4(FEL)). Categorical regression can be used to express the relationship between category (Y) and an explanatory variable (X) and to estimate, at a specified value of X, the probability of the occurrence of a particular response category (Y=i). The final 3- and 4-category regression equations can be used to estimate the risk of a dose above the RfD or a concentration above the RfC.

7. Ecological Risk Assessment

The degree to which the constituents in a waste or any degradation product of the constituents bioaccumulates in ecosystems, and poses ecological risks when improperly treated, stored or disposed of, or otherwise managed are also considered in the Agency's listing determinations. See 40 CFR 261.11(a)(3). The measure of a chemicals tendency to bioconcentrate is expressed as a bioconcentration factor (BCF). The BCF is calculated by dividing the concentration of the chemical in exposed organism's tissues by the concentration of the chemical in the exposure medium. The values calculated are normalized to a 3% lipid content (typical to fish) for comparison. The higher the BCF, the greater the potential for bioconcentration to levels which would have ecological effects or pose risks to humans through consumption. Table 22 presents BCFs for selected carbamate products. A number of carbamate chemicals show significant potential to bioaccumulate if wastes containing these chemicals were to be mismanaged.

TABLE 22.—BIOCONCENTRATION FACTORS

CAS#	Common name	Estimated bioconcentration factor (BCF) 3% lipid
116–06–3	Aldicarb	3.03
1646–88–1	Aldicarb sulfone (Aldoxycarb)	1
337–71–1	Asulam	1.22
2008–41–5	Butylate	730
63–25–2	Carbaryl	30.5
1563–66–2	Carbofuran	35.8
101–21–3	Chloropropham	241
759–94–4	EPTC (Eptam)	171
2212–67–1	Molinate	88.2
114–26–1	Propoxur	7.02
122–42–9	Propham	45
28249–77–6	Thiobencarb	179
23564–05–8	Thiophanate-methyl	7.31
23031–17–5	Triallate	970

Screening methodology. The EPA performed a screening analysis for ecological risk based on waste stream description, waste management practice, and reasonable release scenarios. Chemical properties of the waste groups were another key component in determining ecological exposure routes. For example, given the fact that most of the chemical constituents had low BCFs, an estimate of exposure to chemicals that bioaccumulate up the food chain was not necessary for most constituents. Taking into account current waste management practices, reasonable release scenarios were established only for those waste streams going to landfills (Waste Groups 3, 6, 9, and Sludges). The remaining waste streams are managed in wastewater treatment plants (WWTP) and on-site treatment tanks, therefore significant releases to either aquatic or terrestrial ecosystems are not likely. Examples of relevant ecological exposure routes stemming from landfills include:

- Direct contact with contaminated soil and surface water that has been contaminated by overland runoff or by air particle deposition, or by groundwater that was contaminated as a result of landfill leachate;
- Direct ingestion of contaminated soil or surface water that has been contaminated by overland runoff, or by air particle deposition, or by groundwater that was contaminated as a result of landfill leachate.

Aquatic ecosystems. A comparison of waste stream chemical concentrations to their respective aquatic benchmarks, such as ambient water quality criteria and LC50s, was used as an initial screening to isolate chemicals of potential ecological concern. Those chemicals whose waste stream concentrations exceeded their aquatic benchmark, were then modeled through various pathways to estimate surface water (river) concentrations of the chemical. Only Ziram in waste group 9 appears at levels of concern in surface waters through the pathways modeled. Wastes solids from the production of the dithiocarbamate ziram were modeled to exceed the LC50 of trout by 11.9 fold for possible air to overland transport of solids to surface waters, and by 8.9 fold for overland transport to surface waters. The Agency concludes that solids from the production of similar dithiocarbamate products would present similar hazards, because of the acute aquatic toxicity exhibited by dithiocarbamates as a chemical class.

Terrestrial ecosystems. A comparison of waste group concentrations of chemicals to their respective terrestrial benchmarks was used as an initial screening to isolate the chemicals of potential concern. Those chemicals whose waste stream concentrations exceeded their terrestrial benchmark, were identified as constituents of concern. Modeling was conducted for each of these constituents through various pathways to estimate exposure concentrations. Since terrestrial organisms could be exposed through several media, chemical concentrations were estimated in soil, in fish, and in river water. A comparison was made of the estimated media concentrations of constituents to five types of terrestrial toxicity data: lowest observable adverse effect level (LOAEL) pertaining mostly

to rat species, oral LD_{50} for rat, dermal LD_{50} for rabbit, bird LD_{50} for a variety of avian species, and reproductive TD_{LO} (the toxic dose having the lowest effect) for rats.

Several constituents are present in the media at concentrations that exceed their respective terrestrial benchmark. Carbofuran in waste group 3 presents a potential hazard to birds, as soil concentrations are estimated to be above the avian LD_{50}. Bensulide, EPTC (eptam), vernolate, butylate and molinate in waste group 6 present potential hazards to mammals, as soil concentrations exceed both oral and dermal LD_{50}s and other criteria. In waste group 9, ziram, molybdenum, dibutylamine, dimethylamine, antimony and zinc are estimated to be present in soils and food chain pathways at levels that may present a hazard to both mammals and birds. Table 23 presents the results of this screening analysis for terrestrial toxicity.

EPA was unable to thoroughly assess exposures of particular animal species, their behavioral habits, and the complex relationships within their ecosystems, in order to quantify the terrestrial risk from carbamate waste.

TABLE 23.—TERRESTRIAL TOXICITY ASSESSMENT

Waste stream	Pathway type	Chemical	CAS	Concentration in media (mg/kg)	Ratio of media conc. to:				
					LOAEL	Oral LD50	Dermal LD50	Bird LD50	Reproduct. TDLo
Waste Group 3 ..	Soil	Carbofuran	1563662	soil—1.417E+0	1.10E-01	2.30E-01	1.30E-03	2.90E+00	2.00E-02
				veg—1.035E-1	8.00E-03	2.10E-02	1.20E-04	2.60E-01	1.50E-03
				fish—1.759E-4	1.40E-05	3.50E-05	2.00E-07	4.40E-04	2.50E-06
				river—1.256E-5 (mg/L)	1.00E-06	2.50E-06	1.40E-08	3.20E-05	1.80E-07
	Soil to Air to Soil.	Carbofuran	1563662	soil—1.417E+0	1.10E-01	2.30E-01	1.30E-03	2.90E+00	2.00E-02
				veg—1.035E-1	8.00E-03	2.10E-02	1.20E-04	2.60E-01	1.50E-03
				fish—8.329E-7	6.70E-08	1.70E-07	9.40E-10	2.10E-06	1.20E-08
				river—5.949E-8 (mg/L)	4.80E-09	1.20E-08	6.70E-11	1.50E-07	8.50E-10
Waste Group 6 ..	Soil	Bensulide	741582	soil—1.175E+3	na	4.30E+00	na	8.50E-01	na
				veg—1.796E+1	na	6.60E-02	na	1.30E-02	na
				fish—4.976E-2	na	1.80E-04	na	3.60E-05	na
				river—5.529E-4 (mg/L)	na	2.00E-06	na	4.00E-07	na
		EPTC	759944	soil—4.000E+4	4.00E+03	4.40E+01	2.70E+01	4.00E+02	4.00E+02
				veg—7.520E+2	7.50E+01	8.20E-01	5.20E-01	7.50E+00	7.50E+00
				fish—1.402E+0	1.40E-01	1.50E-03	9.60E-04	1.40E-02	1.40E-02
				river—2.089E-2 (mg/L)	2.10E-03	2.30E-05	1.40E-05	2.10E-04	2.10E-04
		Vernolate	1929777	soil—4.819E+1	9.60E+00	4.00E-02	na	na	na
				veg—4.753E-1	1.00E-01	4.00E-04	na	na	na
				fish—4.48E-03	9.00E-04	3.70E-06	na	na	na
				river—2.546E-5 (mg/L)	5.10E-06	2.10E-08	na	na	na
		Butylate	2008415	soil—5.054E+2	2.00E+01	1.70E-01	2.50E-01	na	5.10E+01
				veg—3.683E+0	1.50E-01	1.20E-03	1.80E-03	na	3.70E-01
				fish—7.340E-2	2.90E-03	2.40E-05	3.70E-05	na	7.30E-03
				river—2.549E-4 (mg/L)	1.00E-05	8.50E-08	1.30E-07	na	2.50E-05
		Molinate	2212671	soil—7.823E+3	1.96E+03	2.10E+01	2.20E+00	na	na
				veg—2.289E+2	5.70E+01	6.20E-01	6.50E-02	na	na
				fish—1.507E-1	3.80E-02	4.10E-04	4.30E-05	na	na
				river—4.319E-3 (mg/L)	1.10E-03	1.20E-05	1.20E-06	na	na
	Soil to Air to Soil.	Bensulide	741582	soil—1.175E+3	na	4.30E+00	na	8.50E-01	na
				veg—1.796E+1	na	6.60E-02	na	1.30E-02	na
				fish—7.227E-4	na	2.70E-06	na	5.20E-07	na
				river—8.03E-6 (mg/L)	na	3.00E-08	na	5.80E-09	na
		EPTC	759944	soil—4.000E+4	4.00E+03	4.40E+01	2.70E+01	4.00E+02	4.00E+02
				veg—7.520E+2	7.50E+01	8.20E-01	5.20E-01	7.50E+00	7.50E+00
				fish—2.036E-2	2.00E-03	2.20E-05	1.40E-05	2.00E-04	2.00E-04
				river—3.034E-4 (mg/L)	3.03E-05	3.30E-07	2.10E-07	3.00E-06	3.00E-06
		Vernolate	1929777	soil—4.819E+1	9.60E+00	4.00E-02	na	na	na
				veg—4.753E-1	1.00E-01	4.00E-04	na	na	na
				fish—6.508E-5	1.30E-05	5.40E-08	na	na	na
				river—3.697E-7 (mg/L)	7.40E-08	3.10E-10	na	na	na
		Butylate	2008415	soil—5.054E+2	2.00E+01	1.70E-01	2.50E-01	na	5.10E+01
				veg—3.683E+0	1.50E-01	1.20E-03	1.80E-03	na	3.70E-01
				fish—1.066E-3	4.30E-05	3.60E-07	5.30E-07	na	1.10E-04
				river—3.702E-6 (mg/L)	1.20E-07	1.00E-09	1.50E-09	na	3.70E-07
		Molinate	2212671	soil—7.823E+3	1.96E+03	2.10E+01	2.20E+00	na	na
				veg—2.289E+2	5.70E+01	6.20E-01	6.50E-02	na	na
				fish—2.189E-3	5.50E-04	5.90E-06	6.20E-07	na	na
				river—6.272E-5 (mg/L)	1.60E-05	1.70E-07	1.80E-08	na	na
		Dipropylamine	142847	soil—3.973E+3	na	8.60E+00	3.20E+00	na	na
				veg—5.823E+2	na	1.30E+00	4.70E-01	na	na

				fish—9.506E–5	na	2.10E–07	7.60E–08	na	na
				river—3.278E–5 (mg/L)	na	7.10E–08	2.60E–08	na	na
Waste Group 9 ..	Soil	Ziram	137304	soil—1.552E+5	na	5.81E+02	na	1.55E+03	6.21E+02
				veg—7.536E+3	na	2.80E+01	na	7.50E+01	3.00E+01
				fish—1.375E–1	na	5.10E–04	na	1.40E–03	5.50E–04
				river—7.766E–2 (mg/L)	na	2.90E–04	na	7.70E–04	3.10E–04
		Molybdenum	7439987	soil—8.410E+1	6.01E+02	na	na	na	1.40E+01
				veg—1.750E+0	1.30E+01	na	na	na	2.90E–01
				fish—3.881E–4	2.80E–03	na	na	na	6.40E–05
				river—3.881E–5 (mg/L)	2.80E–04	na	na	na	6.40E–06
		Antimony	7440360	soil—3.589E+4	1.03E+05	5.10E+00	na	na	na
				veg—1.198E+2	3.42E+02	1.70E–02	na	na	na
				fish—1.84E–2	5.30E–02	2.60E–06	na	na	na
				river—1.84E–2 (mg/L)	5.30E–02	2.60E–06	na	na	na
		Zinc	7440666	soil—5.107E+4	5.11E+04	na	na	na	na
				veg—3.159E+3	3.16E+03	na	na	na	na
				fish—4.782E+1	4.80E+01	na	na	na	na
				river—2.391E–2 (mg/L)	2.40E–02	na	na	na	na
	Soil to Air to Soil.	Dibutylamine	111922	soil—4.971E+2	na	2.60E+00	4.90E–01	na	na
				veg—1.737E+1	na	9.20E–02	1.70E–02	na	na
				fish—7.066E–5	na	3.70E–07	7.00E–08	na	na
				river—3.533E–6 (mg/L)	na	1.90E–08	3.50E–09	na	na
		Dimethylamine	124403	soil—7.179E+3	na	1.00E+01	na	na	na
				veg—2.079E+4	na	3.00E+01	na	na	na
				fish—8.269E–5	na	1.20E–07	na	na	na
				river—2.067E–4 (mg/L)	na	3.00E–07	na	na	na
		Ziram	137304	soil—1.552E+5	na	5.81E+02	na	1.55E+03	6.21E+02
				veg—7.536E+3	na	2.80E+01	na	7.50E+01	3.00E+01
				fish—1.996E–3	na	7.50E–06	na	2.00E–05	8.00E–06
				river—1.128E–3 (mg/L)	na	4.20E–06	na	1.10E–05	4.50E–06
Waste Group 9 ..	Soil to Air to Soil.	Molybdenum	7439987	soil—8.410E+1	6.01E+02	na	na	na	1.40E+01
				veg—1.750E+0	1.30E+01	na	na	na	2.90E–01
				fish—5.636E–6	4.00E–05	na	na	na	9.30E–07
				river—5.636E–7 (mg/L)	4.00E–06	na	na	na	9.30E–08
		Antimony	7440360	soil—3.589E+4	1.03E+05	5.10E+00	na	na	na
				veg—1.198E+2	3.42E+02	1.70E–02	na	na	na
				fish—2.673E–4	7.60E–04	3.80E–08	na	na	na
				river—2.673E–4 (mg/L)	7.60E–04	3.80E–08	na	na	na
		Zinc	7440666	soil—5.107E+4	5.11E+04	na	na	na	na
				veg—3.159E+3	3.16E+03	na	na	na	na
				fish—6.946E–1	6.90E–01	na	na	na	na
				river—3.473E–4 (mg/L)	3.50E–04	na	na	na	na

8. Summary of Basis for Listing For Additional K Listings and Other Considerations

EPA's decision to propose additional hazardous waste listings represents a determination by the Agency that six carbamate wastes (identified as K156 through K161) meet the criteria for listing as hazardous wastes presented in 40 CFR 261.11. Consequently, EPA is proposing to add these 6 wastes to the list of hazardous wastes from specific sources contained in 40 CFR 261.32. K156 through K161 wastes typically and frequently contain mobile and persistent hazardous constituents at levels such that concentrations of these constituents at human or environmental receptors may exceed one or more human or environmental health-based levels (HBLs) if the wastes are improperly managed. The high concentrations of hazardous constituents in these wastes, the mobility and persistence of the constituents of concern, and the estimated risks associated with those constituents satisfy the criteria set forth in 40 CFR 261.11 for listing a waste as hazardous and provide the basis for listing these wastes as hazardous. EPA is proposing that these wastes from carbamate production be listed as hazardous and subject to the requirements of 40 CFR parts 124, 262–266, 268, 270, and 271 since they are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise handled.

As described in more detail below, these wastes frequently contain significant concentrations of product material and raw materials listed in Appendix VIII of 40 CFR part 261. These compounds may present a threat to human health and the environment if mismanaged due to their toxicity, mobility, and persistence. These constituents may be carcinogenic, mutagenic, and/or cause other chronic systemic effects if mismanaged. Some of these constituents are highly persistent and are mobile in the environment based on their physical properties and evidence from damage incidents studies collected by the Agency.

EPA in its risk analysis attempted to quantify the magnitude of the risk posed by plausible mismanagement of each of the waste groupings. EPA also notes that significant toxicological data gaps exist for all wastes, precluding a full accounting of the total risk from plausible waste mismanagement and from possible additive or synergistic interactions. The Agency was able to calculate risks for only those constituents of concern for which health-based numbers were available. All these wastes contain significant quantities or percent levels of chemicals which have limited toxicological data from which health-based numbers can not be developed.

The Agency requests comment on the basis for listing these wastes. EPA also requests comment on the data obtained for use in this listing determination, the methodology and the assumptions used in the risk assessment, and on the Agency's decision to list these waste streams. Specifically, the Agency requests comments on the assumptions used in the risk assessment which are highlighted in Section III.C.5 of this preamble. In particular, the Agency requests comments on the assumptions pertaining to characterization of the wastes, the distances from where the waste is managed to a receptor, the operating management practices for carbamate wastes disposed in a landfill, and the exposure frequencies and durations assumed at a receptor.

The Agency also requests comments on the option of not listing these waste streams. The Agency requests comments on the use of carbamate active ingredient damage information in assessing the potential damage from the mismanagement of carbamate waste streams and on the relevance of the historical record on management of these waste streams. In addition, EPA recognizes the volumes of some of the carbamate waste streams are relatively low and the Agency requests comment on whether and how they should be addressed in this listing. The Agency requests comments on whether existing or potential regulations under the Clean Air Act (CAA) or Clean Water Act (CWA), if promulgated, would reduce incremental risks from the mismanagement of carbamate wastes significantly to warrant not listing these wastes. Finally, the Agency also solicits comments on the methodology and assumptions used in the risk assessment. The Agency's risk assessment finds that the central tendency risk estimates are on the order of one in a million, with high end individual risk estimates falling in the range of 10^{-4} to 10^{-6}. EPA requests comments on the representativeness of these high-end scenarios and on the merits of alternative risk management strategies including decisions to list and not to list these waste streams.

The following provides a summary of the rationale for each of the proposed listings based on EPA's consideration of the criteria for listing set forth in 40 CFR 261.11. The supporting data and specific results of the risk assessment are presented elsewhere in this preamble. Results of the Agency's risk assessment estimating individual high-end and central tendency estimates and population estimates are presented in Section III of this preamble.

K156 Carbamate Organic Wastes. From the carbamate/carbamoyl oxime segment of the industry, the Agency is proposing to list organic wastes (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) as Hazardous Waste Number K156. K156 wastes frequently contain high concentrations of volatile solvents such as methylene chloride, methyl chloride, pyridine, and methyl ethyl ketone, and highly toxic products such as carbaryl and carbofuran. For K156 wastes, the primary pathway of concern was found to be air emissions and subsequent transport to nearby residents from the plausible mismanagement in open tanks. The high-end individual exposures were estimated to present cancer risks above a 10^{-6} level, as well as non-cancer effects based on exposures above reference concentrations. The Agency has also collected damage resource information showing the toxicity to wildlife of carbamate active ingredients such as those found in these wastes resulting from their misuse or mismanagement.

K157 Carbamate Wastewaters. K157 wastes frequently contain high concentrations of volatile solvents such as acetone, acetonitrile, acetophenone, aniline, benzene, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, and, xylene as well as toxic products including benomyl, carbaryl, carbendazim, carbofuran, and carbosulfan. The risk assessment primary pathway of concern was found to be air emissions from management in aerated tanks. In this scenario, the high-end individual exposure from volatile solvents were estimated to present inhalation cancer risks above a 10^{-6} level and non-cancer effects based on exposures above reference concentrations. The Agency has collected damage information showing toxicity to wildlife from carbamate active ingredients such as those found in these wastes resulting from the misuse or mismanagement of these chemicals.

In the case of wastewaters proposed for listing as K157, air emissions from current management practices were found to present substantive high-end individual cancer risks, as well as non-cancer effects. In order to control and reduce these emissions, a number of

possible options were considered by the Agency. The Agency believes that industry should implement cost-effective source reduction efforts to reduce the volume and toxicity of the wastes that pose these risks through chemical substitution, process changes, or other measures that could result in the greater recovery and reuse of volatile chemicals in the original production process to reduce the risks. Where process changes are not cost-effective, the Agency believes cost-effective controls should be installed to capture these emissions for reuse or off-site recycling.

Air emissions from hazardous waste treatment, storage, and disposal facilities (TSDFs) can be addressed by regulations under RCRA 3004(n). Currently, standards are in place for process vents and equipment leaks (subparts AA and BB of 40 CFR part 264 and part 265). Regulations to control air emissions from tanks, surface impoundments, containers, and certain miscellaneous units were proposed July 22, 1991 (56 FR 33490). This proposal would add part CC air emission requirements to 40 CFR part 264 and part 265. However, under 40 CFR 264.1(g)(6) and 265.1(c)(10), wastewater treatment units which employ tanks and are subject to regulation under either section 402 or 307(b) of the Clean Water Act are not subject to either the part 264 or 265 standards, and, as such, would not be subject to the CC regulations when promulgated as a final rule. As a result, listing these wastes as hazardous without also changing existing exemptions from waste management rules can not mitigate the risks found, since the current exemptions would also prevent application of part CC air emission standards, when finalized, to these units. As EPA stated when it promulgated the limited permitting exemption, these exemptions "were intended to reduce the regulatory burden on a class of facilities which pose less of a risk to human health and the environment than other types of hazardous waste management facilities" (47 FR 4706). Removal of these exemptions as a means to control the air emissions from this one industry group would defeat this purpose, and necessitate the resource-intensive permitting of thousands of low risk facilities. The Agency is not at this time proposing to remove or amend 40 CFR 264.1(g)(6) and 264.1(c)(10). However, the Agency is exploring additional options to control air emissions from such facilities.

As an alternative to listing this wastewater stream as hazardous and subjecting them to the management control of the air emission under RCRA 3004(n) authority, the Agency also considered the availability of other authorities that specifically direct EPA to control air emissions. The primary statute providing such authority is the Clean Air Act (42 U.S.C. 7401 et seq., as amended by the Clean Air Act of 1990, Public Law 101–549, Nov. 15, 1990). Under the Clean Air Act (CAA), the Agency has proposed a National Emission Standard for Hazardous Air Pollutants (NESHAP) for producers of hazardous organic air pollutants (57 FR 62608). The proposed NESHAP, if promulgated as a Final Rule, would control wastewaters from the production of one of the carbamate products (carbaryl), provided the total hazardous air pollutant (HAP) concentration is 10,000 parts per million by weight, or a total average concentration greater than or equal to 1,000 parts per million by weight and the average flow rate is greater than or equal to 10 liters per minute, but does not impact other carbamate product lines. With the passage of the CAA, the Agency has embarked on a multiyear plan for implementation through the year 2000 (57 FR 44147, July 16, 1992). As explained in the July 16, 1992 notice, the Agency is also developing additional NESHAPs to cover a number of other source categories, but these actions would not fully control the risks associated with the particular wastewaters of concern in the carbamate industry segment. The Agency has also developed draft control technique guidlines (CTGs) under the Clean Air Act (see document No. EPA 453/D–93–056) which may address some air risks at facilities in non-attainment areas. The Agency also plans to develop alternative control techniques (ACTs) which are not mandatory. Because of the limited applicability of the CTGs and ACTs, they will not address all air risks from carbamate facilities.

In order to provide industry with flexibility to allow it to accomplish the Agency's source reduction goals, the Agency is proposing a regulatory strategy which allows for a concentration-based exemption from the listing. For wastewaters from the production of carbamate and carbamoyl oxime chemicals (proposed as hazardous waste code K157), a hazardous waste listing coupled with a concentration-based listing exemption is appropriate to define when the K157 wastewater in tanks ceases to pose an unacceptable risk to human health or the environment. Using models to calculate the atmospheric concentrations of chemicals of concern, the Agency found that for these wastewaters a total concentration of 5 parts per million by weight (ppmwt) would be protective for wastewater containing formaldehyde, methyl chloride, methylene chloride, and triethylamine. For these constituents of concern, the 5 ppmwt level, while protective of air emission risks, would be above the 40 CFR part 268 best demonstrated available treatment (BDAT) level for these constituents in other hazardous wastewaters and current delisting criteria. These treatment standards assume that wastes have been subjected to final treatment prior to disposal. Assuming further wastewater treatment as necessary before discharge, under the "plausible mismanagement" scenario of treatment in open tanks for K157 (see Section III.C.5), the Agency views this level as protective. In addition, EPA notes that the 40 CFR Part 268 land disposal restrictions's would not apply to wastes managed in tanks except to the extent the wastes were also managed in land-based units such as surface impoundments. Therefore, the Agency is proposing a concentration-based exemption to the listing description of these wastewaters.

The Agency is proposing to list as Hazardous Waste Number K157 the "group 2" wastewaters as follows:

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

Under § 261.3(a)(2)(iv), a new exemption to the definition of hazardous wastes would be created for these wastewaters. This proposed new exemption would read:

§ 261.3(a)(2)(iv) * * *

(F) One or more of the following wastes listed in § 261.32— wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)— provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

Under this exemption, wastes which are calculated to contain less than a total concentration of 5 ppmwt for the sum of the four constituents of concern would not be hazardous wastes, and any sludges generated from further biological treatment would not be derived from hazardous wastes,

assuming wastewaters are <5 ppmwt at the point of generation.

The Agency does not intend to determine compliance with this provision by requiring that generators actually monitor the concentration of the constituents of concern in untreated wastewater, but proposes to use the same strategy used in other exemptions for wastewaters discharged into the headworks of a wastewater treatment system found at 40 CFR 261.3(a)(2)(4) (46 FR 56582, November 17, 1981). A generator must be able to demonstrate that the total amount of all constituents of concern that is not converted to product or recovered (i.e., what is discharged or volatilized) during the week divided by the average weekly flow of the process unit discharge to into the headworks of the final wastewater treatment step not exceed the proposed standards.

This demonstration can be made through an audit of various records already maintained at most facilities, including invoices showing material purchases, lists including to whom and how much inventory was distributed and other, similar, operating records. A facility can exclude that portion of the constituents of concern not disposed to wastewaters. No portion of the material of concern which is volatilized may be excluded from the calculation. The Agency requests comment on whether or not specific record keeping requirements should be promulgated. Under current regulations (40 CFR 262.11 and 268.7) generators are required to determine whether their wastes are hazardous. Facilities claiming the exemption would have to be able to demonstrate that they meet the exemption. Such information would be intended to verify compliance with this concentration standard. An EPA inspector would look to this information to verify the assessment made by the generator, and may employ direct analytical testing as further verification. Should either measurement indicate a total concentration greater than 5 ppmwt for the sum of the concentrations of the four chemicals of concern, then the wastes shall be subject to regulation as K157 hazardous waste. In this manner, the Agency seeks to discourage and prevent air stripping or other technologies which would merely continue to volatilize these hazardous air pollutants of concern. The Agency requests comment on using this regulatory strategy to achieve risk reduction.

The Agency is also proposing to specifically exempt biological treatment sludges from the treatment of wastewaters from the production of carbamates and carbamoyl oximes from the definition of hazardous waste. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes would be created for sludges from the biological treatment of these wastewaters. This proposed new exemption would read:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

Without exemption, a large volume of previously disposed wastes and sludge currently collecting within the various treatment systems would require management as derived from newly identified hazardous waste. However, in the case of the biological sludges from the treatment of carbamate and carbamoyl oxime wastewaters, the Agency could only identify risks resulting from the hazardous volatile air pollutants present in the wastewaters being treated. Neither these air pollutants nor other hazardous substances were found to be accumulating in the biological treatment sludges studied by the Agency. This leads the Agency to believe these sludges do not meet the definition of hazardous waste. Therefore, the Agency is proposing to exempt these sludges derived from the proposed K157 wastes from the definition of hazardous wastes, provided the wastes are not otherwise characteristically hazardous. EPA believes that this exemption is particularly appropriate because of the small number of facilities in this industry and the Agency's through investigation of carbamate wastes, as described elsewhere in this preamble.

K158 Carbamate Baghouse Dust and Filter/Separation Solids. K158 wastes frequently contain percent levels of such products as carbofuran, carbosulfan, benomyl, and carbendazim as well as such solvents as methylene chloride, chloroform, phenol, and xylene. These materials are known to be mobile in soils and may pose risks above a 10^{-6} level by direct exposure or through groundwater transport when landfilled. The product chemicals in K158 wastes are acutely toxic to humans, birds, and fish. The Agency believes that, if mismanaged, carbofuran wastes will present significant risks through a soil pathway for wildlife. The Agency recognizes that there is 549 metric tons of K158 waste generated annually. The Agency has collected damage information showing toxicity to wildlife from carbamate active ingredients such as those found in these wastes resulting from their misuse or mismanagement.

K159 Thiocarbamate Organic Wastes. The Agency is proposing to list organics from the treatment of thiocarbamate wastes as Hazardous Waste Number K159. These wastes frequently contain benzene, and toxic thiocarbamate product materials, such as eptam, molinate, and butylate, at percent levels.

EPA's risk assessment estimated high-end individual cancer risk above a 10^{-6} level for inhalation of benzene, assuming plausible mismanagement in open tanks. In addition, because EPA currently lacks inhalation reference levels for the other constituents (eptam, molinate, and butylate), EPA was unable to evaluate potential risks from volatilization of these other constituents. The Agency has damage case information for these wastes involving groundwater contamination.

K160 Thiocarbamate Solids. The Agency is proposing to list solids (including spent carbon, filter wastes, separation solids and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes as Hazardous Waste Number K160. These wastes contain significant concentrations of benzene and percent levels of thiocarbamate product materials, such as eptam, molinate, and butylate. Also, similar to K159 wastes, the Agency was unable to quantify risks from volatilization of eptam, molinate, and butylate. Assuming plausible mismanagement in an unlined landfill, EPA's risk assessment showed high-end individual cancer risks above a 10^{-6} level and non-cancer effects for the ground water, air, and soil ingestion pathways.

In addition to the human health risk assessment results, EPA has records of mismanagement contributing to ground water contamination. These damage cases are discussed in Section III.C.4 of this preamble. Furthermore, the Agency calculated numerous significant terrestrial ecosystem risks, which are presented in Table 23 of this preamble. There is approximately 665 metric tons of K160 waste generated annually.

K161 Dithiocarbamate Solid Wastes. From the dithiocarbamate segment of the industry the Agency is proposing to list purification solids (including filtration, evaporation, and centrifugation solids), and baghouse dust and floor sweepings as Hazardous Waste Number K161. K161 wastes frequently contain carbon disulfide, heavy metals such as lead, nickel, arsenic, selenium, antimony and cadmium, and are comprised largely of reactive dithiocarbamate product

materials such as metam-sodium and ziram, which are highly toxic to aquatic organisms. Because these products readily react in the environment to form other gases or vapors, such as carbon disulfide, hydrogen sulfide, methylisothiocyanate, and amines, which can oxidize to carcinogenic nitrosoamines, the EPA is proposing to require management of these dithiocarbamate wastes as reactive and toxic hazardous wastes. High-end individual cancer risks above a 10^{-6} level and non-cancer effects for wastes disposed in an off-site landfill were estimated, and significant adverse aquatic or terrestrial ecological effects were predicted from airborne transport. The Agency has also collected damage resource information showing the toxicity to wildlife if the wastes containing dithiocarbamate product were mismanaged or the product was misused.

9. Summary Basis for a No-Listing Decision on Wastewaters, and Certain Wastewater Treatment Residuals

The Agency's decision to propose a "no list" determination for a particular waste or waste stream represents a weight of evidence finding that additional regulation is not required to protect human health and the environment based on currently available information. This in no way implies that there is no potential hazard, or that significant environmental damage could not occur from gross mismanagement of the wastes. However, based on a comprehensive survey of the industry, EPA believes that no significant threat exists from normal or plausible mismanagement.

Wastewaters of groups 5, 7, and 8 are generated throughout the carbamate manufacturing processes. Typically, a facility's wastewaters include reactor and tank washwaters, scrubber waters, condenser waters, process decantates, mother liquors, rinsewaters, equipment washes, and rainwater runoff. Several facilities treat wastewaters on site before discharge to a publicly owned treatment works (POTW) or a privately owned treatment works (PrOTW) or through an on-site wastewater treatment plant and then discharge under a National Pollutant Discharge Elimination System (NPDES) permit. Some wastewaters are incinerated and many are recycled back to the process. The Agency has analyzed several of these wastewaters and found that in some cases they may also contain constituents of concern at significant levels.

Most wastewaters are collected and treated in an on-site wastewater treatment plant. As a result, the effluent from the wastewater treatment plant is subject to either the effluent guidelines and pretreatment standards promulgated for the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) industries (52 FR 42522, November 5, 1987) or the Pesticide Chemicals Manufacturing Effluent Limitations, Guidelines, Pretreatment Standards, and New Source Performance Standards. These pesticide chemical manufacturing effluent limitations, guidelines and standards have been promulgated for a limited number of carbamate pesticides (58 FR 50638, September 28, 1993).

In response to the effluent guidelines, a number of facilities may install steam stripping or other technologies to aid in compliance with the new effluent guidelines. The result of such action could be a reduction in the volatile materials currently reaching the wastewater treatment systems, if the stripper heads are recycled.

In addition to the wastewaters proposed as hazardous waste number K157, the Agency also considered the following possible listings for wastewaters:

Group 5—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production.

Group 7—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates.

Group 8—Reactor vent scrubber water from the production of dithiocarbamates.

A large proportion of these streams are treated on site in tanks before discharge under the Clean Water Act (CWA). Current risks were modeled for air emissions from the wastewater treatment units (i.e., tanks). Although the gross mismanagement of these wastewaters in unlined surface impoundments could result in significant environmental harm, management in unlined surface impoundments currently exists only for wastewaters which have been treated to reduce toxicity. Therefore, the Agency determined that for these wastewaters "plausible mismanagement" would be continued management in the open tanks of the existing treatment systems. The Agency is proposing not to list wastewaters from groups 5, 7, and 8, which were modeled and found to not present significant risks from current management practices.

The Agency requests comment on its decisions not to list these wastes, and in particular on its selection of "plausible mismanagement" of the wastewaters to be the current management in tanks. Had the Agency selected "plausible mismanagement" to be "gross mismanagement" such as management in unlined surface impoundments or discharge without treatment, then the significant intrinsic hazard of these wastes would have likely resulted in significantly greater estimates of potential risk. In this case, the Agency surveyed the entire industry and identified all current management practices to be treatment in tanks, except in the last stages of wastewater treatment. The Agency can foresee no reason for these facilities to abandon their current treatment works, and therefore, it is reasonable for the Agency to conclude, for these wastes in this industry, that current practices constitute "plausible mismanagement."

The treatment of wastewaters generates sludges from aqueous separation, neutralization, and biological treatment. The Agency has found that organic/aqueous separator sludges are concentrated organic residuals containing significant levels of the constituents of concern. In contrast, most of the constituents of concern were not detected in wastewater neutralization and biological sludges from the production of carbamate and carbamoyl oxime products. Constituents present in these wastes, when detected, were typically present at levels below 100 times the HBL. Thus, the Agency is proposing to not exempt biological wastewater treatment sludges derived from the production of carbamate and carbamoyl oxime products from the definition of hazardous wastes and to provide an exemption for the source wastewaters provided hazardous air pollutants have been removed.

In addition, a significant volume of spent carbons are generated from the production of carbamate and carbamoyl oxime products. These spent carbons are currently regulated as D022 hazardous wastes due to the leachable concentration of chloroform absorbed on the spent carbon. During its data collection effort in support of this proposal, the Agency characterized the spent carbons and found chloroform to be the driving contaminant of concern. In the Agency's opinion, existing hazardous waste regulations are adequate for these spent carbons, and therefore proposes to narrow the scope of the waste grouping of solids from the production of carbamates and carbamoyl oximes to focus on bag house dusts and filter/separation solids which are currently not regulated.

Similarly, for organic wastes from the production of dithiocarbamates, the Agency found from its § 3007 Carbamate Industry Survey that all wastes in the grouping were already regulated as either hazardous waste F003 or F005. The Agency feels that these wastes are adequately regulated by existing

regulations, and is proposing not to separately list these wastes as hazardous to avoid redundant regulation.

10. Summary of Basis for Listing For Additional P & U Listings

The 23 materials listed in Table 5 meet the criteria for listing as acute hazardous wastes presented in 40 CFR 261.11(a)(2). They are acutely hazardous because they have been found to be fatal to humans in low doses or in the absence of data on human toxicity, have been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal rabbit LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or are otherwise capable of causing or significantly contributing to serious illness. Table 24 presents these commercial chemical products proposed for listing as acute hazardous waste, the oral LD50 (rat), inhalation LC50 (rat), and the dermal LD50 (rabbit). As shown in this table, each of these chemicals meets at least one of these criteria. Consequently, based in part on these aquatic and acute mammalian toxicity data, EPA is proposing to add these 23 materials to the list of hazardous wastes in 40 CFR 261.33(e).

Chemical substances which pose toxic threats to human health or the environment are listed in 40 CFR 261.33(f). For the purposes of identifying compounds to be included on this list, the Agency considers principally the nature of the toxicity (see 40 CFR 261.11(a)(3)(i)) and its concentration (see 40 CFR 261.11(a)(3)(ii)). Concentration of the material will be high because commercial chemicals will consist in a large degree the toxic compound or contain the compound as the sole active ingredient. Table 25 presents aquatic and acute mammalian toxicity data, including the oral LD50 (rat), inhalation LC50 (rat), and dermal LD50 (rabbit), used to support the proposed hazardous waste listing of these toxic commercial chemical products.

In compiling the basic toxicological information contained in Table 25, the Agency found that for many carbamate products or captive intermediates, there was little or no toxicological studies recorded in either the available literature, the Agency's records, or on current Material Safety Data Sheets. To facilitate the assessment of toxicological properties of the chemicals of concern in the production of carbamate chemicals, these chemicals with limited toxicity data were divided into structure-toxicity groups. These groups are:

a. esterase (cholinesterase) inhibiting,
b. other non-cancer toxicity,
c. potentially carcinogenic, and
d. toxic metal (metallocarbamates).

Structure-toxicity surrogates were then selected for each group and their toxicity ascribed to the group members, for which human data are lacking and animal data are inadequate. For most of the constituents, some data on the toxicity of the chemical itself or of its metabolites were available. This information was used to assign the chemicals to one of the four toxicity groups. The assignment of groups was used to develop surrogate health benchmarks for use in the analysis. Although the data were adequate for identifying the toxicity of a chemical, there is considerable uncertainty in assigning surrogate health benchmarks for these chemicals. Further discussion of this approach can be found in "Integrative Evaluation of the Toxicity of Data-Poor Constituents of the Carbamate Waste Listing," available in the docket supporting this proposed rule. See "**ADDRESSES**" section. The Agency believes that this approach is especially valid for such structurally similar chemicals as carbamates. The Agency requests comment on this approach, and any additional toxicity information.

Table 25 also includes four generic listings; one each for each specific chemical group of carbamate products. The Agency feels that these generic descriptions are warranted to help emergency first responders identify the potential hazards of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate products. These descriptions are intended to be analogous to the current Department of Transportation labeling requirements for carbamate pesticides and dithiocarbamate pesticides to speed hazard identification in the advent of future transportation accidents.

The Agency feels such generic product listings are especially appropriate for such structurally similar chemicals as carbamate, carbamoyl oximes, thiocarbamates and dithiocarbamates. As a group this chemicals exhibit significant toxicity to a number of organisms, which has been the basis for the registration and use of a number of these substances as pesticide active ingredients.

As a chemical class dithiocarbamates are highly reactive materials, which are normally utilized as a more stable metal salt. However, even these salts are subject to decomposition to toxic amines, alkylisothiocyanates, and carbon disulfide, and to the oxidation of the amines to form carcinogenic nitrosoamines. The Agency, therefore, believes that the entire class of dithiocarbamate discarded products and spill residues will typically exhibit the characteristic of reactivity and is subject to existing regulation as D003 Characteristic Hazardous Wastes. Because no facility reported current management of these dithiocarbamate products waste as reactive hazardous wastes, the Agency is proposing to separately designate these dithiocarbamate wastes as hazardous wastes.

TABLE 24.—TOXICITY DATA FOR PROPOSED ACUTELY HAZARDOUS COMMERCIAL CHEMICAL PRODUCTS

Proposed waste code	Acutely hazardous wastes CAS name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LD50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419–73–8	1	.....	350	
P186	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl]oxime (Thiofanox).	39196–18–4	8.5	0.070	39	
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781–23–3	64–119 female rat, 72–156 male rat.	0.55 2.2/1hr	566 rat	0.47–1.67 (BG), 1.2–1.5 (Trout), 5.55 (RC).

TABLE 24.—TOXICITY DATA FOR PROPOSED ACUTELY HAZARDOUS COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Acutely hazardous wastes CAS name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LD50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
P127	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate (Carbofuran).	1563–66–2	5	0.017–0.047	885	0.165 (BG), 0.380 (RT)a, 0.872 (FM)a.
P188	Benzoic acid, 2-hydroxy, compd. with (3as-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57–64–7	2.5 (mouse)			
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285–14–8	51	1.53/1hr	>2,000	
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).	1129–41–5	268	0.475		
P191	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644–64–4	25		2,000	0.012/0.5 hr (DM), 0.074/2d (TC).
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119–38–0	10.8			10.7 (RT).
P193	Carbamic acid, [1,2- phenylenebis (imino carbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564–05–8	6,640	1.7	>10,000	11.4/3d (RT), 16/2d (DM).
P194	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135–22–0	2.5 female	0.064 male	740	8.3 (FM).
P195	Ethanimidothioic acid, N,N'-[thiobis [(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669–26–0	66	0.52	6,310	1.21 (BG), 2.55 (RT).
P196	Manganese, bis(dimethyl carbamodithioato-S,S')-, (Manganese dimethyldithio carbamate).	15339–36–3	32			
P197	Methanimidamide, N,N-dimethyl -N'-[3-methyl- 4-[[(methyl amino)carbonyl] oxy]phenyl]-(Formparanate).	17702–57–7	7.2			
P198	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino) carbonyl]oxy] phenyl]-, monohydro chloride (Formetanate hydrochloride).	23422–53–9	20		10,200	
P128	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) (Mexacarbate).	315–18–4	14		>500	10.4 (BG), 12 (RT)a, 23.7 (FM), 15.8 (CT)a.
P199	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb).	2032–65–7	20		>2,000 350 (rat).	0.8 (RT), 0.21 (BG).
P200	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur).	114–26–1	70	1.44/1hr	800 (Rat)	1.47 (DM), 8.2 (RT)a, 25 (FM)a, 4.8 (BG)a.
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631–37–0	35		>1,000	28 (TD).
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727).	64–00–6	16		40	0.180 (RT).
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646–88–4	20	0.14	200	1.017/2d (DL).
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57–47–6	3 (mouse)			
P205	Zinc, bis(dimethyl carbamodithioato-S,S')-, (Ziram).	137–30–4	267	0.081	>2,000	0.002/60d (RT), 0.17/4d (FM) [1].

BG: Blue Gill
DS: Daggerblade Shrimp
RT: Rainbow Trout
WM: White Mullet
b: Interperitoneal
CT: Cutthroat Trout
FM: Fathead Minnow
SC: Scud
a: Active ingredient

DP: Daphnia Pulex
DL: Daphnia Laevis
HF: Harlequinfish
TC: Tooth Carp
DM: Daphnia Magna
RC: Red Crayfish
TD: Toad
[1] Recalculation involved

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U360	Carbamates N.O.S					
U361	Carbamoyl Oximes N.O.S					
U362	Thiocarbamates N.O.S					
U363	Dithiocarbamate acids, salts, and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, or ester.).	.....	.....	.....	.....	
U279	1-Naphthalenol, methylcarbamate (Carbaryl).	63–25–2	230	>3.4	2,000	3.28 (DM), 6.7 (BG), 2.1 (RT), 13.4 (FM).
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).	22961–82–6	4,640	.....	.....	10 (RT), 25/2d (DM).
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212–67–1	369	>0.2	3,536	0.32 (BG)a, 14.0 (RT).
U366	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533–74–4	320	8.4	7,000	0.28/2d [1] (HF).
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-(Carbofuran phenol).	1563–38–8	.....	.....	.....	16/2d (DP).
U368	Antimony tris (dipentylcarbamodithioato-S,S')-(Antimony trisdipentyldithiocarbamate).	15890–25–2	16,400	.....	16,000	
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991–76–1	16,400	.....	16,000	
U370	Bismuth, tris(dimethylcarbamodithioato-S,S+-, (Methyl bismate).	21260–46–8	>3,000			
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086–85–3	>11,000			
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101–27–9	527	27.4	23,000	1.16/2d (HF)[1].
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605–21–7	6,400	.....	>10,000	>3.20 (BG), 0.48 (RT), 0.55/2d (DM).
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham).	122–42–9	1,000	.....	>5,000 (Rat).	38 (RT)a, 29 (BG)a, 10 (SC).
U374	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006–94–7	>11,000	>5.7		
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).	17804–35–2	10,000	>2	>10,000	1.3 (BG), 0.29 (RT), 2.05 (FM)a.
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).	55406–53–6	372	.....	>2,000	1.1 (RT).
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144–34–3	104 (mouse)			
U377	Carbamodithioic acid, methyl,-monopotassium salt (Potassium n-methyldithiocarbamate).	137–41–7	630	.....	.....	0.012/2d (DM), 0.08 (RT).
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).	51026–28–9	590			

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95–06–7	850		2,200	
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136–30–1	670			
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).	10254–57–6	>16,000		>2,000	
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148–18–5	1,500		>1,000 (Rat).	0.91/2d (DM).
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam).	128–04–1	1,000			0.0064/60d (RT), 0.67/2d (DM).
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85).	128–03–0				0.049 (DS).
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137–42–8	450		800	0.33/1.08d (DM)[1].
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate).	1929–77–7	1,200		>9,000	2.5 (BG)a, 4.3 (RT)a, 1.8 (SC).
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134–23–2	1,678		3,000	2.6 (SC)[1].
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888–80–9	1,820	>4.7	>2,000	
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785–20–2	>2,000		>2,000 (rat)	
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303–17–5				6.0/2d (HF)[1].
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam).	759–94–4	916	4.3	1,460	17 (CT)a.
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).	1114–71–2	921		4,640	6.25/2d (WM)[1].
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008–41–5	4,000		2,000–5,000.	5.5 (BG), 3.6 (RT), 11 (SC).
U393	Copper, bis(dimethylcarbamodithioato-S,S')-, (Copper dimethyldithiocarbamate).	137–29–1				0.15 (FM)[1], 0.32 (BG)[1].
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558–43–1	>7,000			
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4–DEG).	5952–26–1	8,300 (mouse)			5.0/2d (RT), 5.0/2d (BG).
U396	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam).	14484–64–1	1,130			.0029/60d (RT), 2.2 (FM), 0.9/2d (DM).
U397	Lead, bis(dipentylcarbamodithioato-S,S')-.	36501–84–5	>10		>4.64	
U398	Molybdenum, bis(dibutylcarbamothioato)-di-.mu.-oxodioxodi-, sulfurized.	68412–26–0	>10,000	>34.4	>10,000	
U399	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).	13927–77–0	17,000			
U400	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Sulfads).	120–54–7	200 (mouse) b			
U401	Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97–74–5				0.038/60d (RT), 2.9/2d (DM).
U402	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).	1634–02–2	2,350 (mouse)			>0.56/2d (DM).
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).	97–77–8	8,600			0.009/60d (RT), 0.12/2d (DM).
U404	Ethanamine, N,N-diethyl-(Triethylamine).	121–44–8	460	6/2hr (mouse)	570	137/60d (RT).
U405	Zinc, bis[bis(phenyl methyl)carbamodi thioato-S,S']-(Arazate).	14726–36–4	>2,000			
U406	Zinc, bis(dibutyl carbamodi thioato-S,S')-(Butyl Ziram).	136–23–2	290			

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U407	Zinc, bis(diethyl carbamodi thioato-S,S')-(Ethyl Ziram).	14324–55–1	2,910	.....	.....	0.24/2d (DM).

BG: Blue Gill
CT: Cutthroat Trout
DL: Daphnia Laevis
DM: Daphnia Magna
DS: Daggerblade Shrimp
FM: Fathead Minnow
HF: Harlequinfish
RC: Red Crayfish
RT: Rainbow Trout
SC: Scud
TC: Tooth Carp
TD: Toad
WM: White Mullet
a: Active ingredient
b: interperitoneal
DP: Daphnia pulex
' Recalculation involved

D. Source Reduction

In the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990), Congress declared pollution prevention the national policy of the United States. The Act declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. While the Pollution Prevention Act gives first priority to source reduction, RCRA promotes "waste minimization." This section provides a brief discussion of some pollution prevention and waste minimization techniques that facilities may wish to consider exploring.

Pollution prevention, recycle and reuse practices fall into three general groups: Actual production practices, housekeeping practices, and practices that employ the use of equipment that by design promote pollution prevention. Some of these practices/equipment listed below conserve water, others reduce the amount of product in the waste stream, while others may prevent the creation of the waste altogether. EPA acknowledges that some of these practices/equipment may lead to media transfers or increased energy consumption. This information is presented for general information, and is not being proposed as a regulatory requirement.

Production practices include:

- Triple-rinsing raw material shipping containers and returning the rinsate directly to the reactor;
- Scheduling production to minimize changeover cleanouts;
- Segregating equipment by individual product or product "families;"
- Packaging products directly out of reactors;
- Using raw material drums for packaging final products; and
- Dedicating equipment for hard to clean products.

Housekeeping practices include:

- Performing preventative maintenance on all valves, fittings, and pumps;
- Promptly correcting leaky valves and fittings;
- Placing drip pans under valves and fitting to contain leaks;
- Cleaning up spills or leaks in bulk containment areas to prevent contamination of storm or wash wasters.

Equipment that promote pollution prevention by reducing or eliminating waste generation:

- Use of low volume—high pressure hoses for cleaning;
- Drum triple rinsing stations;
- Reactor scrubber systems designed to return captured reactants to the next batch rather than to disposal;
- Construction of material storage tanks with inert liners to prevent contamination of water blankets with contaminants which would prohibit its use in the process;
- Enclosed automated product handling equipment to eliminate manual product packaging; and
- Steam stripping wastewaters to recovery reactants or solvents for reuse.

One or more of these practices was observed to be already implemented at the facilities EPA visited during its engineering site visit and sampling effort in the carbamate industry. The Agency took note that in some cases the ability of a facility to implement further pollution preventions efforts may be inhibited by the manner in which the facility elected to comply with other existing regulations. For example, the Agency observed that facilities dedicated to one or two product lines often dedicated equipment and hence air pollution control scrubbers to the individual processes, where facilities with larger product lines and numerous reactors often chose to treat air emissions in a central control system. The result of this choice is that the facilities with fewer products were able to potentially recover reactants for reuse, while the facilities with central treatment systems generated wastes which were not reusable in any one process. The Agency seeks additional information on any other factors which might inhibit the implementation of the pollution prevention practices described, as well as information on additional pollution prevention practices.

Section 1003 of the Hazardous and Solid Waste Amendments of 1984, a nation policy under the Resource Conservation And Recovery Act (RCRA), was established to "minimize the generation of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment." To further EPA's pollution prevention goals, the Waste Minimization Branch (WMB) in EPA's Office of Solid Waste (OSW) established the RCRA Waste Minimization Action Plan to integrate source reduction and recycling into the National RCRA Program, and RCRA activities into the Agency's Pollution

Prevention Strategy. As part of this effort, EPA attempts to incorporate pollution prevention alternatives in hazardous waste listing determinations.

The residuals reported on EPA's RCRA section 3007 carbamate questionnaire were evaluated for possible pollution prevention opportunities. Each residual and its generating process was examined for a limited number of facilities. As noted in section III.D, a number of possible pollution prevention options were identified for those residuals with waste minimization potential. EPA also performed a literature search to determine the feasibility of the pollution prevention technologies identified. The residuals were then ranked considering quantity of waste generated, impact on the environment, and pollution prevention potential.

A pollution prevention economic analysis was performed for a limited number of facilities. The economic analysis was conducted to estimate the monetary value the carbamate industry forgoes by not instituting pollution prevention programs. Two value components were estimated: Constituent value and avoided costs of disposal. Many constituent values were found in the residuals from the sampling analysis results and/or questionnaire responses. If these constituents were recovered in the production process, it would reduce the cost of raw materials. The avoided cost of disposing of the residuals was estimated using the questionnaire waste management costs. The two component values were added to determine the total revenues of avoided costs (i.e., savings to the facility by implementing pollution prevention programs).

Pollution prevention/waste minimization measures can be tailored to the needs of individual industries, processes, and firms. This approach may make it possible to achieve greater pollution reduction with less cost and disruption to the firm. The Agency's economic analysis of the carbamate industry indicates that there may be monetary benefits to be gained by implementing further waste minimization programs.

The economic analysis result was provided to each individual facility to review and comment. Since the 1990 base year of the questionnaire, some facilities have initiated pollution prevention programs while others had not considered recovering these waste streams until they received the economic analysis but felt there was a possibility for them to reclaim these wastes. The overall theme of the comments from these limited number of facilities indicates that they do not want the current or future regulations to inhibit their ability to perform source reduction and recycling efforts at their facilities.

To this end, the Agency intends to gather information on pollution prevention potential wherever feasible and thus is requesting comment on particular opportunities for additional volume and toxicity reduction through increased recycling or other process changes for carbamate wastes proposed to be listed as hazardous in this rule.

The Agency invites all parties concerned to use this open communication approach to give inputs that might help better promote pollution prevention. Through cooperative efforts such as these, the Agency can better inform the public and make enlightened decisions on regulatory matters. At the same time, the information collected as a response to this proposed rule can be assembled, evaluated, and potentially disseminated through the Agency's technology transfer program, potentially resulting in short-term positive impacts on volume reductions.

Defined process control, waste segregation, and good housekeeping practices can often result in significant volume reduction. Evaluations of existing processes may also point out the need for more complex engineering approaches (e.g., waste reuse, secondary processing of distillation bottoms, and use of vacuum pumps instead of steam jets) to achieve pollution prevention objectives. Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple non-engineering practices that can be successfully implemented.

Pollution prevention opportunities for the manufacturing processes generating carbamate wastes (K156 through K161) may potentially result in reductions in waste generation.

The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, as well as the potential for volume or toxicity reductions. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific processes have very little potential for decreases in waste generation rates or toxicity. The Agency is particularly interested in such specific information as: (1) Data on the quantities of wastes that have been or could be reduced; (2) a means of calculating percentage reductions that are achievable (accounting for changes in production rates); (3) the potential for reduction in toxicity and mobility of the wastes; (4) the results of waste audits that have been performed; and (5) potential cost savings that can be (or have been) achieved; (6) the feasibility and cost burden that could be faced to reuse/recycle these wastes including an estimated return on investment; (7) lead time required to successfully implement a recovery and/or recycling method; or other methods (such as process modification to improve efficiency) that significantly reduce the volume and/or toxicity of the wastes; and (8) other barriers to implementation.

IV. Applicability of the Land Disposal Restrictions Determinations

A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards

RCRA requires EPA to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). EPA is also required to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Land disposal of wastes that meet treatment standards thus established by EPA is not prohibited. The wastes being proposed for listing in this action would be subject to this requirement once a final rule is promulgated.

A general overview of the Agency's approach in performing analysis of how to develop treatment standards for hazardous wastes can be found in greater detail in section III.A.1 of the preamble to the final rule that set land disposal restrictions (LDR's) for the Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated November 7, 1986. (51 FR 40572).

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably, some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using BDAT will be required to be developed for these wastes, if a

final rule listing them as hazardous is promulgated.

Treatment standards typically are established based on the performance data from the treatment of the listed waste or wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards are established for both wastewater and nonwastewater forms on a constituent-specific basis. The constituents selected for regulation under the Land Disposal Restrictions Program are not necessarily limited to those identified as present in the listings proposed in this action, but include those constituents or parameters that will ensure that the technologies are operated properly.

Although data on waste characteristics and current management practices for wastes proposed in this action have been gathered as part of the administrative record for this rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific treatment standards or assessing the capacity to treat (or recycle) these wastes.

Available treatment performance data show that incineration, chemical hydrolysis, and biological treatment are potentially applicable to carbamate wastes. These technologies have shown some promise, and the data are under review for the purpose of developing treatment standards for K156 through K161. A collection of the available treatment information has been placed in the docket for this rule.

EPA intends to propose treatment standards for K156 through K161 and the proposed P and U wastes in a separate rulemaking. However, EPA specifically is soliciting comment and data on the following as they pertain to the proposed listing of carbamate wastes K156 through K161 as described in this action:

(1) Technical descriptions of treatment systems that are or could potentially be used for these wastes;

(2) Descriptions of alternative technologies that might be currently available or anticipated as applicable;

(3) Performance data for the treatment of these or similar wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions);

(4) Information on known or perceived difficulties in analyzing treatment residues or specific constituents;

(5) Quality assurance/quality control information for all data submissions;

(6) Factors affecting on-site and off-site treatment capacity;

(7) Information on the potential costs for set-up and operation of any current and alternative treatment technologies for these wastes;

(8) Information on waste minimization approaches.

B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program

In the land disposal restrictions determinations, the Agency must demonstrate that adequate commercial capacity exists to manage the waste with BDAT standards before it can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine if sufficient alternative treatment or recovery capacity exists to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, RCRA section 3004(h) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

To perform capacity analyses, the Agency needs to determine the volumes of the listed waste that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the listed waste generators. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, as the regulatory process proceeds, generators may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus EPA will update and monitor changes in management practices because these changes will affect the final volumes of waste requiring commercial treatment capacity. Therefore, EPA needs information on current and future waste management practices for these wastes, including the volumes of waste that are recycled, mixed with or co-managed with other waste, discharged under Clean Water Act provisions, and the volumes and types of residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

The availability of adequate commercial treatment capacity for these wastes determines whether or not a waste is granted a capacity variance under RCRA section 3004(h). EPA continues to update and monitor changes in available commercial treatment capacity because the commercial hazardous waste management industry is extremely dynamic. For example, national commercial treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). To determine the availability of capacity for treating these wastes, the Agency needs to consider currently available data, as well as the timing of any future changes in available capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys including the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey) and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). However, these surveys cannot be used to determine the volumes of carbamate wastes requiring treatment, since the wastes were not included in the surveys. Additionally, these surveys may not contain adequate information on currently available capacity to treat newly identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to these data to account for changes in waste management through 1990, this was not done on a consistent basis across all waste management practices.

Data on waste characteristics and management practices have been gathered for the purpose of the carbamates hazardous waste listing determinations in the carbamate RCRA Section 3007 survey. The Agency has compiled the capacity-related information from the survey responses and is soliciting any updated or additional pertinent information.

To perform the necessary capacity analyses in the land disposal restrictions rulemaking, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity. The Agency will need the annual generation volumes of waste by each waste code including wastewater and nonwastewater forms, and soil or debris contaminated with these wastes and the quantities stored, treated, recycled, or disposed due to any change of management practices. The Agency also requests data from facilities capable of treating these wastes on their current treatment capacity and any plans they may have in the future to expand or reduce existing capacity. The Agency is

also requesting comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, the Agency requests information on the determining factors involved in making decisions to build new treatment capacity. Waste characteristics such as pH level, BTUs, anionic character, total organic carbon content, constituents concentration, and physical form may also limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

V. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Because this proposal (with the exception of the actions proposed under CERCLA authority) will be promulgated pursuant to the HSWA, a state submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the states must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the federal regulations being proposed to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). This proposed rule, if finalized, is neither less stringent than nor a reduction in the scope or the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA § 103. In this proposal, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4, but is taking no action to adjust the one-pound statutory RQs for these substances.

Reporting Requirements. Under section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by regulation. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ shall immediately notify the NRC of the release as soon as that person has knowledge thereof. The toll free number of the NRC is 1–800–424–8802; in the Washington, DC metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA section 304 notification must be given immediately after the release of a RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

If this proposal is promulgated as a final rule, releases equal to or greater than the one-pound statutory RQ will be subject to the requirements described above, unless and until the Agency adjusts the RQs for these substances in a future rulemaking.

TABLE 26.—PROPOSED ONE-POUND STATUTORY RQS FOR PROPOSED K, P, AND U WASTES

Waste code	Constituent of concern	Statutory RQ (pounds)
K156	acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.	1
K157	acetone, acetonitrile, acetophenone, aniline, benomyl, carbaryl, carbofuran, carbosulfan, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, xylene.	1
K158	benomyl, carbendazim, carbofuran, carbosulfan, methylene chloride	1
K159	benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S	1
K160	benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S	1
K161	arsenic, antimony, cadmium, metam-sodium, xylene, ziram, dithiocarbamate product N.O.S	1
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate)	1
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	1
P188	Benzoic acid, 2-hydroxy, compd. with (3as-cis)- 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3- b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	1
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro- 2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	1
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
P191	Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5- methyl-1H-pyrazol-3-yl ester (Dimetilan)	1
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H- pyrazol-5-yl ester (Isolan)	1
P193	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	1
P194	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	1
P195	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	1
P196	Manganese, bis(dimethylcarbamodithioato-S,S')- (Manganese dimethyldithiocarbamate)	1
P197	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
P198	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	1
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC-5727)	1
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O- [(methylamino)carbonyl] oxime (Aldicarb sulfone)	1
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1
P205	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)- (Ziram)	1
U360	Carbamates N.O.S	1
U361	Carbamoyl Oximes N.O.S	1
U362	Thiocarbamates N.O.S	1
U363	Dithiocarbamate acids, salts, and/or esters N.O.S., (This listing includes mixtures of one or more dithiocarbamate acid, salt, and/or ester.).	1
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl- (Bendiocarb phenol)	1
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl- (Dazomet)	1
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1
U368	Antimony, tris(dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate)	1
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']- (Antimony tris(2-ethylhexyl)dithiocarbamate)	1
U370	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate)	1
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	1
U371	Carbamic acid, [(dimethylamino)iminomethyl)] ethyl ester monohydrochloride (Hexazinone intermediate)	1
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	1
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	1
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2- yl]-, methyl ester (Benomyl)	1
U374	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069)	1
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase)	1
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	1
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	1
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40)	1
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	1
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723)	1
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	1
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	1
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam)	1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85)	1
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	1
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate)	1
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)	1
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb)	1
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester (Triallate)	1
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam)	1

TABLE 26.—PROPOSED ONE-POUND STATUTORY RQS FOR PROPOSED K, P, AND U WASTES—Continued

Waste code		Constituent of concern	Statutory RQ (pounds)
U391		Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1
U392		Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	1
U393		Copper, bis(dimethylcarbamodithioato-S,S')- (Copper dimethyldithiocarbamate)	1
U394		Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	1
U395		Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG)	1
U396		Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam)	1
U397		Lead, bis(dipentylcarbamodithioato-S,S')-1.	
U398		Molybdenum, bis(dibutylcarbamothioato)di-.mu.-oxodioxodi-, sulfurized	1
U399		Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate)	1
U400		Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis- (Sulfads)	1
U401		bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	1
U402		Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads)	1
U403	•	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	1
U404		Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']- (Arazate)	1
U405		Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram)	1
U406		Zinc, bis(diethylcarbamodithioato-S,S')- (Ethyl Ziram)	1

VII. Compliance Dates

A. Notification

Under the RCRA section 3010 any person generating, transporting, or managing a hazardous waste must notify EPA (or an authorized State) of its activities. Section 3010(a) allows EPA to waive, under certain circumstances, the notification requirement under section 3010 of RCRA. If these hazardous waste listings are promulgated, EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe (i.e., persons who have an EPA identification number under 40 CFR 262.12). EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number. Such individuals will have to provide notification under section 3010.

B. Interim Status and Permitted Facilities

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate K156 through K161 and the P and U listed wastes until States are authorized to regulate these wastes. Thus, once this regulation becomes effective as a final rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

VIII. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

IX. Economic Impact Analysis

This section of the preamble summarizes the costs and the economic impact analysis (EIA) for the proposed carbamate hazardous waste listings. Based upon the EIA for this proposal, the Agency estimates that the listing of the six carbamate production wastes discussed above may result in nationwide annualized costs of at least $890,000. A complete discussion of the EIA is available in the regulatory docket for this proposed rule in a report entitled "Economic Impact Analysis of the Identification and Listing of Carbamate Production Waste," January 26, 1994.

A. Compliance Costs for Proposed Listings

The remainder of this section briefly describes (1) the universe of carbamate production facilities and volumes of carbamate production wastes in the 6 waste groups proposed for hazardous waste listing, (2) the methodology for determining incremental cost and economic impacts to regulated entities, and (3) the regulatory flexibility analysis. Results of the analysis are summarized in section 3, Tables 30 and 31.

1. Universe of Carbamate Production Facilities and Waste Volumes

In order to estimate costs for the EIA, it was first necessary to estimate total annual generation of carbamate production wastes. As described in section III of this preamble, the carbamate production industry is composed of 64 chemical products produced by 20 manufacturers at 24 facilities. Total annual waste quantities generated by these facilities were derived from a 1990 survey of the carbamate production industry. Table 27 presents the total waste quantities reported, by waste group, for the carbamate production industry.

TABLE 27.—1990 TOTAL WASTE QUANTITIES OF CONCERN, BY WASTE GROUP, REPORTED BY THE CARBAMATE PRODUCTION INDUSTRY

Waste category (Quantities given in Metric tons per year)	Total quantity reported
Category 1—Organic wastes from the production of carbamates and carbamoyl oximes	126,000
Category 2—Wastewaters from the production of carbamates and carbamoyl oximes	269,000

TABLE 27.—1990 TOTAL WASTE QUANTITIES OF CONCERN, BY WASTE GROUP, REPORTED BY THE CARBAMATE PRODUCTION INDUSTRY—Continued

Waste category (Quantities given in Metric tons per year)	Total quantity reported
Category 3—Solids from the production of carbamates an carbamoyl oximes	1,390
Category 4—Organic wastes from the production of thiocarbamates	500
Category 5—Wastewaters from the production of thiocarbamates	344,000
Category 6—Solids from the production of thiocarbamates	700
Category 7—Process wastewater from the production of dithiocarbamates	51,000
Category 8—Reactor vent scrubber water from the production of dithiocarbamates	46,000
Category 9—Purification solids from the production of dithiocarbamates	3,400
Category 10—Organic wastes from the production of dithiocarbamates	400
Total:	*839,500

*Numbers may not add due to rounding.

2. Method for Determining Cost and Economic Impacts

This section details EPA's approach for estimating the incremental compliance cost and the economic impacts attributable to the listing of carbamate production waste. Because the carbamate production industry is relatively small (only 20 manufacturers at 24 facilities in 1990), EPA was able to collect facility-specific information and estimate incremental costs at the waste stream level. The information used in this analysis was collected in 1990 under the authority of a RCRA section 3007 survey; the survey included engineering site visits, and sampling and analysis of waste streams.

Approach to the Cost Analysis

EPA's approach to the cost analysis for this proposal was to compare the cost of current management practices, as reported in the 3007 survey of carbamate production facilities, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program as would be required by the proposed rule. This difference in cost, when annualized,[9] represents the incremental annual compliance cost attributable to the proposed rule.

Baseline or Current Management Scenario

Relying on survey responses and engineering site visits, EPA was able to determine the current (i.e., 1990) management practices for the handling and disposal of carbamate production wastes. Current management practices varied among facilities and waste streams, and included such practices as off-site incineration, deep-well disposal, on-site destruction in boilers, and off-site landfilling. These current management practices at each facility represent the baseline scenario of the analysis.

As part of the 3007 survey, EPA asked each facility to identify current costs for the management of carbamate production wastes. For this analysis, EPA has relied on and has not changed the industry's own waste-specific estimates concerning the cost of current management. EPA realizes that future events such as waste minimization efforts or increased demand for carbamate products may change waste generation volumes and, thus, future waste management costs.

Post-Regulatory Management Scenarios

In predicting how industry would comply with the listing of carbamate production waste as RCRA hazardous waste, EPA developed nine post-regulatory management scenarios, described below, that represent plausible management reactions on the part of industry. EPA developed these post-regulatory management categories based on its knowledge of current waste management and the physical and chemical properties of the waste.

Management Category (MC) 1: Wastes Currently Managed as Hazardous Waste, Either On or Off Site

EPA assumed in this post-regulatory scenario, that wastes would continue to be managed as in the baseline scenario. On-site hazardous waste management implies that there already exists a RCRA Subtitle C permitted (or interim status) unit at the facility, such as a RCRA permitted incinerator. If wastes are managed as hazardous on site, the incremental change due to the proposed rule would be to modify the RCRA permit (or interim status/permit application) to account for the new listing of carbamate production waste.[10] If wastes are managed as hazardous off site, the incremental change would be the cost from the completion of a waste generator manifest.

Management Category 2: Wastes Currently Managed in Boilers Subject to BIF Requirements[11]

EPA assumed that these wastes would continue to be managed in boilers. If the boiler is on site, costs for a Class II incinerator permit modification and manifest and biennial reporting would be incurred, similar to management Category 1. If the waste is sent to off-site boilers subject to BIF requirements, the only incremental cost would be that for completing the manifest.

Management Category 3: Wastes Currently Managed in On Site, Subtitle D, Non-hazardous Waste Incinerators

EPA assumed that post-regulatory management would be off site at the nearest commercial hazardous waste (i.e., RCRA Subtitle C permitted) incinerator.[12] In addition to the commercial treatment and transportation costs, the post-regulatory management of these wastes would include contingency plan maintenance, biennial reporting, and manifesting.

Management Category 4: Wastes Currently Discharged Under National Pollution Discharge Elimination System (NPDES) Permits, Treated at Publicly Owned Treatment Works (POTWs) Under the Clean Water Act, Privately Owned Treatment Works, or On-Site Wastewater Treatment Systems

EPA assumed that the post-regulatory management of these wastes as a result of this proposal would be the same as baseline management, because the systems or wastes would still be, either exempt from RCRA regulation (see 40 CFR 264.1(g)(6)), or that the systems are already covered under a RCRA permit by rule (see 40 CFR 265.1(c)(10)), and would therefore not incur any significant incremental costs. Consequently, the only incremental cost attributed to this proposal is for contingency plan maintenance and biennial reporting.

Management Categories 5 and 6: Wastes Currently Being Recycled (Category No. 5) or Recovered (Category No. 6)

No incremental cost is attributed to these waste volumes as recycled wastes were assumed to be exempt from RCRA Subtitle C regulation.[13]

[9] Costs are discounted at a rate of 7 percent over a 20 year period.

[10] For this category, EPA assumed that the facility would need a RCRA Class II permit modification to the facility's annual contingency plan maintenance and biennial reporting.

[11] Boilers and Industrial Furnaces.

[12] EPA estimated each of facility-to-commercial incinerator distance from road maps.

[13] Because of the complexities of RCRA recycling and reuse, it is possible that these carbamate production wastes are recycled in a manner that is

Management Category 7: Wastes Currently Managed Off Site in Subtitle D, Non-Hazardous Waste Incinerators

EPA assumed that this waste will continue to be shipped off site, but to the nearest commercial hazardous waste incinerator. In addition to treatment costs, incremental costs would include those for contingency plan maintenance, manifesting, and biennial reporting.

Management Categories 8 and 9: Wastes Currently Managed in Subtitle D Landfills (Category No. 8 for Wastes Managed Off Site, and Category No. 9 for Wastes Managed On Site)

In the post-regulatory scenario, wastes in both categories would be shipped off site to the nearest commercial Subtitle C hazardous waste landfill. Commercial landfilling costs, biennial reporting, and manifesting would present incremental costs associated with this proposal.

Management Category 10: Segregation of Subtitle D Wastes Currently Commingled

In the post-regulatory scenario, wastes currently commingled with industrial or process trash and managed in Subtitle D landfills may incur separation costs. The process trash will be managed in the current fashion, while the listed waste will be managed under Subtitle C facilities. Carbamate producers must devote labor and capital to separate these materials and devote space to storage.

Unit costs for Subtitle C treatment (i.e., incineration) or land disposal, waste transportation between facilities, permit modifications, maintenance of contingency plans, manifesting and biannual reporting system (BRS) reporting are contained in Table 28 below. The total volume of waste affected by each waste management category described above are presented below in Table 29. EPA requests comments on these cost estimates.

TABLE 28.—POST-REGULATORY WASTE MANAGEMENT UNIT COST ESTIMATES

	Cost (1992 $)	Source
Commercial hazardous waste incineration	$1,600 per metric ton	SAIC/ICF analysis.
Commercial hazardous waste landfill	$200 per metric ton	SAIC/ICF analysis.
Hazardous waste transportation	$0.27 per metric ton per mile if under 200 miles $0.24 per metric ton per mile if over 200 miles	SAIC analysis.
Class II on-site hazardous waste landfill permit modification [1].	$80,102	ICF analysis.
Class II on-site hazardous waste incinerator permit modification [1].	$40,585	ICF analysis.
Other class II on-site hazardous waste treatment permit modification.	$7,476	ICF analysis.
Segregation of industrial Subtitle D waste	$10 per metric ton	EPA estimate.
Maintenance of contingency plan	$200 per facility per year	Source a.
Manifesting [2]	$36 per shipment	Sources b, c.
BRS reporting	$428 per facility per year	Sources c, d.

[1] Permit modification costs were assumed to be incurred no more than once for each type of treatment at each facility. These costs were annualized over 20 years using a discount rate of 7 percent.

[2] Manifest completion costs were assumed to be incurred once a year for each waste shipped off site. One shipment was assumed to equal one truckload of 20 tons.

Sources: a. "Estimating Costs for the Economic Benefits of RCRA Non-compliance," Draft Report prepared by DPRA for Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, May 1993.

b. ICF No. 801 "Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System," June 15, 1992.

c. *Employment and Earnings*, Bureau of Labor Statistics, March 1993.

d. "1991 Hazardous Waste Report," U.S. Environmental Protection Agency.

TABLE 29.—TOTAL CARBAMATE PRODUCTION WASTE QUANTITIES AND TOTAL INCREMENTAL ANNUAL COST INCURRED BY EACH POST-REGULATORY WASTE MANAGEMENT CATEGORY

Post-regulatory waste management scenario	Total quantity of carbamate production waste affected (in metric tons)	Total annualized incremental cost incurred
MC 1	234,000	$25,600
MC 2	6,400	8,200
MC 3	1	700
MC 4	809,900	776,700
MC 5 and 6	2,700	200
MC 7	0	20
MC 8 and 9	200	58,100
MC 10	4,100	41,000
Total [1]	840,000	910,000

[1] Numbers may not add due to rounding.

not exempt from RCRA permitting and other requirements. Without further investigation of each process configuration it is impossible to determine which wastes would continue to be recycled or recovered in the post-regulatory scenario. There are 2,630 metric tons assigned to management categories 5 and 6, if all this waste was to be shipped off site to a Subtitle C hazardous waste landfill (at $200/metric ton), then the incremental annualized cost reported in this analysis would increase by at least $530,000.

Specific Analysis of K157 Wastewaters

EPA examined two scenarios for the post-regulatory management of K157 wastewaters. The first scenario assumed that K157 wastewaters would continue to be sent through NPDES-permitted discharges or to POTWs, but that (1) sludge would be managed as hazardous waste, (2) surface impoundments would be closed and converted to tanks. The second scenario assumed that wastewaters would be treated by steam stripping before discharge into centralized wastewater treatment systems. Exemption of these sludges from the definition of hazardous waste was found to not impact the incremental costs, which are dominated by impoundment conversion costs.

For the first K157 wastewater scenario, EPA reviewed the information collected as part of the RCRA section 3007 survey. The facility-specific information shows that only two facilities employ operational surface impoundments (as of 1990). EPA thus calculated the costs associated with the closure of the surface impoundments and conversion to tanks. The ELA technical background document contains details of these cost calculations. EPA estimated that the costs associated with the first scenario to be approximately $760,000 per year.

For the second K157 wastewater scenario, EPA explored the possibility of off-site steam stripping as well as constructing on-site steam stripping units. EPA identified seven facilities with K157 wastewater streams in significant quantities to merit construction of on-site steam stripping units. For these facilities, EPA calculated rough engineering cost estimates for the on-site systems, both for capital costs and annual operation and maintenance. EPA identified two additional facilities which did not produce significant quantities of K157 wastewaters to merit construction of on-site steam stripping units. For volumes generated by these facilities (approximately 400 tons), EPA estimated the total annualized cost of off-site steam stripping.[14] The total estimated annualized cost for scenario two is $6.4 million.

Because the K157 incremental annualized cost of scenario two is more than seven times that of scenario one, EPA assumed that industry would minimize its cost by adopting the lower-cost management.[15] The costs estimated for scenario one have been used in the total costs for K157 wastes reported below.

3. P and U List Wastes

EPA has not estimated the amounts of P and U wastes that are generated annually by the carbamate producers or wastes resulting from spills or other one-time generation occurrences. EPA would appreciate any comment concerning the costs of on-going P and U waste generation as well as costs resulting from spills and other such incidents. Similarly, EPA has not explored the possible use of carbamate products for the precipitation of metals in the waste treatment of other industries.

4. Potential Remedial Action Costs

In addition to carbamate process wastes, the proposed carbamate hazardous waste listing could affect the management of soils, ground water, and other remedial materials. The Agency's "contained in" policy defines certain remediation wastes "containing" a listed hazardous waste as a RCRA hazardous waste. It is possible that areas of past carbamate waste management, spills, or disposal, which met the proposed K156–K161 listing description at the time they were placed on the land, may still have contaminant concentrations which exceed "contained in" levels. A person who disturbs such material could become a generator of RCRA hazardous waste. The likelihood of this imposing a significant additional burden is low since at least 22 of 24 carbamate production facilities are already permitted TSDFs. Releases from all solid waste management units at these TSDFs, including those that in the future would be found to contain a waste meeting the carbamate listing descriptions, are already covered by facility-wide cleanup rules under 40 CFR 264.101. This issue would be more likely to arise from historical offsite management at facilities that were not TSDs.

There are two remedial possibilities for land containing this material. First, it may be possible to not disturb the contaminated area or manage the material in place with source controls or in situ treatment and thus avoid generating a hazardous waste. Owners may be unable to make full value use of the land. In this case, the cost under this scenario is the difference between the cost of the land at its highest valued use and the cost of the land at the lower value. The Agency also recognizes that under this alternative property owners surrounding these locations may experience a change in their property values but this is difficult to evaluate. Second, owners may excavate the material. If the material contains a hazardous waste owners would bear hazardous waste treatment, disposal, management, and potentially permitting costs. Owners and EPA are likely to prefer the first alternative when that action is protective of human health and the environment.

The Agency requests comment on the likely costs associated with remediation of wastes found to contain the wastes identified for listing in today's proposal. The Agency is interested in estimates of potential remedial wastes that would be defined as hazardous under RCRA because of this proposed listing and the potential management costs. EPA specifically requests comments on the number of carbamate production facilities already subject to federal (e.g., RCRA Corrective Action) or state authorities compelling owners to clean up their entire facility, including areas of past K165–K161 management, both onsite and offsite.

5. Summary of Results

Table 30 presents a summary of estimated national incremental annualized compliance costs, by waste group,[16] associated with this proposal to list certain carbamate production wastes as hazardous.

TABLE 30.—SUMMARY OF ESTIMATED NATIONAL INCREMENTAL ANNUALIZED COMPLIANCE COSTS (1992 DOLLARS/YEAR) [1]

Waste group	RCRA waste code	Annual incremental compliance cost
1	K156	$14,000
2	K157	770,000
3	K158	37,000
4	K159	1,200
6	K160	2,100
9	K161	69,000
Total		[2] 890,000

[1] Numbers may not add up due to rounding.
[2] EPA also estimated the incremental compliance costs associated with waste groups 5, 7, 8 and 10, which are not recommended for listing under today's proposal. If listed, total incremental annual compliance costs for these waste groups are estimated to be $22,000.

Table 30 presents the annual incremental compliance costs as they correspond to the RCRA waste codes proposed for listing (i.e., K156 through K160). Please note that these codes correspond directly to the waste groups proposed for listing under this proposal (i.e., groups 1, 2, 3, 4, 6 and 9). As indicated in Table 30 the total annual incremental compliance cost attributable to this proposal is $890,000. Waste category 2 (i.e., K157—wastewaters from the production of carbamates and carbamoyl oximes) constitutes 86 [17] percent of national incremental compliance cost. Waste category 9 (i.e., K161—purification solids, bag-house dust, and floor

[14] Recent vendor quotes of off-site steam-stripping showed a cost of $0.75 per gallon (approximately $200 per metric ton).

[15] EPA also considered facility specific comparisons between scenarios one and two. It should be noted that, under scenario one, given the worst possible case (conversion of three surface impoundments, one tank cover and sludge disposal) costs were still favorable to those that would be incurred by the same facility under scenario two.

[16] For a detailed description of these waste groupings, please refer to Table 27 of this preamble.

[17] The bulk of this cost (99 percent) is attributable to one facility for the conversion of three surface impoundments to tanks. The ratio of total annual incremental cost that would be incurred by this facility, to annual revenues for the entire company, is less than 1 percent.

sweepings from the production of dithiocarbamates) constitutes 5 percent; and waste category 3 (i.e., K158—solids from the production of carbamate and carbamoyl oxime products) constitutes 3 percent of national incremental compliance cost. The remaining 1 percent are distributed among other waste groups.

B. Regulatory Flexibility Analysis

Table 31 presents the estimated annualized incremental compliance costs borne by the five small businesses [18] in the carbamate production industry. The annual incremental cost of the rule for the five facilities ranged from $628 to $772. The greatest ratio of compliance cost to sales is 0.01%, thus, EPA concluded that no small businesses are significantly affected by this rule.

TABLE 31.—RESULTS OF THE REGULATORY FLEXIBILITY ANALYSIS

Facility	Annual incremental cost of rule	Annual sales (millions)	Annual cost of compliance/annual sales (percent)
1	$772	$17.8	<0.01
2	628	110	<0.01
3	664	6.6	<0.01
4	628	45	<0.01
5	736	19	<0.01

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered which mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

If, however, the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required. Of the 24 entities which are directly subject to this proposed rule, 18 entities would incur incremental compliance costs. Of the 18 affected facilities, 4 entities fit the definition of a "small entity" as defined by the Regulatory Flexibility Act.[19] The annual incremental cost impact to these 4 entities ranges from $600 to $800. For each of the 4 facilities impacted, these annual costs constitute less than 1 percent of total annual sales. EPA believes that these costs do not represent a significant impact. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), "the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities."

XI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 31, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 261, 271, and 302 are proposed to be amended as follows:

Part 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.3 is amended by adding paragraphs (a)(2)(iv)(F) and (c)(2)(ii)(D) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

* * * * *

3. Section 261.32 is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup "Pesticides" to read as follows.

§ 261.32 Hazardous wastes from specific sources.

* * * * *

[18] A small business is defined by the Small Business Size Regulations (13 CFR part 121) as one with under 500 employees.

[19] According to "EPA Guidelines for Implementing the Regulatory Flexibility Act" (April, 1992), any producer of pesticides and agricultural chemicals (SIC 2879) with less than 500 employees constitutes a "small entity." None of the entities which would incur incremental compliance costs as a result of this proposal have less than 500 employees.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	• • • • •	
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	(T)
K159	Organics from the treatment of thiocarbamate wastes	(T)
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.).	(R,T)
	• • • • •	

4. Sections 261.33(e) and (f) are amended by adding in alphabetic order (by the third column) the following substances to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

(e) * * *

* * * * *

Hazardous waste No.	Chemical abstracts No.	Substance
•	•	• • • • • •
P187	22781–23–3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).
P127	1563–66–2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate (Carbofuran).
P188	57–64–7	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)- 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).
•	•	• • • • • •
P189	55285–14–8	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3- dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).
P191	644–64–4	Carbamic acid, dimethyl-, 1- [(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).
P192	119–38–0	Carbamic acid, dimethyl-, 3-methyl-1-(1- methylethyl)-1H-pyrazol-5-yl ester (Isolan).
P190	1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).
P193	23564–05–8	Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).
•	•	• • • • • •
P185	26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate).
•	•	• • • • • •
P194	23135–22–0	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).
P195	59669–26–0	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).
•	•	• • • • • •
P196	15339–36–3	Manganese, bis(dimethylcarbamodithioato-S,S')-, (Manganese dimethyldithiocarbamate).
•	•	• • • • • •
P198	23422–53–9	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).
P197	17702–57–7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate).
•	•	• • • • • •
P128	315–18–4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) (Mexacarbate).
P199	2032–65–7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb).
•	•	• • • • • •
P200	114–26–1	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur).
P202	64–00–6	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727).
•	•	• • • • • •
P201	2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).

Hazardous waste No.	Chemical abstracts No.	Substance
•	•	•
P203	1646–88–4	Propanal, 2-methyl-2-(methylsulfonyl)-, O- [(methylamino)carbonyl] oxime (Aldicarb sulfone).
•	•	•
P204	57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).
•	•	•
P205	137–30–4	Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram).
•	•	•
(f) • • •		
•	•	•
U369	15991–76–1	Antimony, tris[bis(2-ethylhexyl)carbamodithioato- S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).
U368	15890–25–2	Antimony tris(dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate).
U365	2212–67–1	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).
•	•	•
U364	22961–82–6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).
U367	1563–38–8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).
•	•	•
U401	97–74–5	Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).
U370	21260–46–8	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate).
•	•	•
U360	.....	Carbamates N.O.S.
U372	10605–21–7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).
U271	17804–35–2	Carbamic acid, [1-[(butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester (Benomyl).
U375	55406–53–6	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).
U280	101–27–9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2- butynyl ester (Barban).
U380	10254–57–6	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).
U277	95–06–7	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).
U374	112006–94–7	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069).
U371	65036–85–3	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).
•	•	•
U373	122–42–9	Carbamic acid, phenyl-, 1-methylethyl ester (Propham).
•	•	•
U379	136–30–1	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).
U381	148–18–5	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).
U383	128–03–0	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85).
U382	128–04–1	Carbamodithioic acid, dimethyl-, sodium salt (Dibam).
U376	144–34–3	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).
•	•	•
U378	51026–28–9	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).
U384	137–42–8	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).
U377	137–41–7	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate).
•	•	•
U389	2303–17–5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester (Triallate).
U392	2008–41–5	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).
U391	1114–71–2	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).
U386	1134–23–2	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).
U388	85785–20–2	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb).
U390	759–94–4	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam).
U385	1929–77–7	Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate).
U387	52888–80–9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).
U361	.....	Carbamoyl Oximes N.O.S.
•	•	•
U393	137–29–1	Copper, bis(dimethylcarbamodithioato-S,S')-, (Copper dimethyldithiocarbamate).

Hazardous waste No.	Chemical abstracts No.	Substance
•	•	• • • • • •
U363	.....	Dithiocarbamate acids, salts, and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, or ester.)
•	•	• • • • • •
U404	101–44–8	Ethanamine, N,N-diethyl- (Triethylamine).
•	•	• • • • • •
U394	30558–43–1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy- 2-oxo-, methyl ester (A2213).
•	•	• • • • • •
U395	5952–26–1	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG).
•	•	• • • • • •
U396	14484–64–1	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam).
•	•	• • • • • •
U397	36501–84–5	Lead, bis(dipentylcarbamodithioato-S,S')-
•	•	• • • • • •
U398	68412–26–0	Molybdenum, bis(dibutylcarbamothioato)di-.mu.- oxodioxodi-, sulfurized.
•	•	• • • • • •
U279	63–25–2	1-Naphthalenol, methylcarbamate (Carbaryl).
•	•	• • • • • •
U399	13927–77–0	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).
•	•	• • • • • •
U400	120–54–7	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis (Sulfads).
•	•	• • • • • •
U366	533–74–4	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5- dimethyl- (Dazomet).
U362	.....	Thiocarbamates N.O.S.
•	•	• • • • • •
U402	1634–02–2	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).
U403	97–77–8	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).
•	•	• • • • • •
U405	14726–36–4	Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']- (Arazate).
U406	136–23–2	Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram).
U407	14324–55–1	Zinc, bis(diethylcarbamodithioato-S,S')- (Ethyl Ziram).
•	•	• • • • • •

5. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

APPENDIX VII TO PART 261.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
•	• • • • • • •
K156	Acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.
K157	Acetone, carbon tetrachloride, formaldehyde, methomyl, methyl isobutyl ketone, methyl chloride, methylene chloride, o-phenylenediamine, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, hexane, methanol, methylene chloride, phenol, xylene.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S.
K160	Benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S.
K161	Metam-sodium, xylene, ziram, dithiocarbamate product N.O.S.

* * * * *

6. Appendix VIII of Part 261 is amended by adding the following hazardous constituents in alphabetical order (by the first column) to read as follows.

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
A2213	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.	30558-43-1	U394
* * *	* * *		*
Acetone	2-Propanone	67-64-1	K156
* * *	* * *		*
Aldicarb sulfone	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime.	1646-88-4	P203
* * *	* * *		*
Antimony tris(2-ethylhexyl)dithiocarbamate	Antimony, tris[bis(2- ethylhexyl)carbamodithioato-S,S']-,	15991-76-1	U369
Antimony trisdipentyldithio-carbamate	Antimony tris (dipentylcarbamodithioato-S,S')-	15890-25-2	U368
* * *	* * *		*
Arazate	Zinc, bis[bis(phenylmethyl) carbamodithioato- S,S']-	14726-36-4	U405
Barban	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester	101-27-9	U280
* * *	* * *		*
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781-23-3	P187
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961-82-6	U364
Benomyl	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.	17804-35-2	U271
Bis(dibutylcarbamothioato) dioxodimolybdenum sulfurized.	Molybdenum, bis(dibutylcarbamothioato) dioxodi-, sulfurized	68412-26-0	U389
* * *	* * *		*
Busan 40	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt.	51026-28-9	U378
Butylate	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * *	* * *		*
Butyl Tuads	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	U402
Butyl Ziram	Zinc, bis (dibutylcarbamodithioato-S,S')-	136-23-2	U406
* * *	* * *		*
Carbaryl	1-Naphthalenol, methylcarbamate	63-25-2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605-21-7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563-66-2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8	U367
* * *	* * *		*
Carbosulfan	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro- 2,2-dimethyl-7-benzofuranyl ester.	55285-14-8	P189
* * *	* * *		*
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * *	* * *		*
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	U386
* * *	* * *		*
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-	533-74-4	U366
* * *	* * *		*
Dibam	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	U382
* * *	* * *		*
Dimetilan	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester.	644-64-4	P191
* * *	* * *		*
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	U403

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
EPTC (Eptam)	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	U390
Esprocarb	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester.	85785-20-2	U388
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	U407
Ferbam	Iron, tris(dimethylcarbamodithioato- S,S')-,	14484-64-1	U396
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride.	23422-53-9	P198
Formparanate	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-.	17702-57-7	P197
Hercules AC-5727	Phenol, 3-(1-methylethyl), methyl carbamate	64-00-6	P202
Hexane	n-Hexane	110-54-3	K156
Hexazinone intermediate	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride.	65086-85-3	U371
Isolan	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester.	119-38-0	P192
Lead, bis(dipentyl carbamodithioato- S,S')-	Lead, bis(dipentylcarbamodithioato-S,S')-	36501-84-5	U397
Manganese dimethyldithiocarbamate	Manganese, bis(dimethyl carbamodithioato- S,S')-,	15339-36-3	P196
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	U384
Methanol	Methyl alcohol	67-56-1	K156
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032-65-7	P199
Methyl bismate	Bismuth, tris(dimethylcarbamodithioato-S,S'-,	21260-46-8	U370
Methyl isobutyl ketone	4-Methyl-2-pentanone	108-10-1	K156
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P190
Mexacarbate	Phenol, 4-(dimethylamino)- 3,5-dimethyl-, methylcarbamate (ester).	315-18-4	P128
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	U365
Nickel dibutyldithio carbamate	Nickel, bis(dibutyl carbamodi thioato-S,S')-	13927-77-0	U399

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Oxamyl	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl] oxy]-2-oxo-, methyl ester.	23135-22-0	P194
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	U391
Physostigmine	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.	57-47-6	P204
Physostigmine salicylate	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1).	57-64-7	P188
Potassium dimethyl dithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	U383
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl,-monopotassium salt	137-41-7	U377
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631-37-0	P201
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9	U373
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114-26-1	P199
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	U387
Reactacrease 4-DEG	Ethanol, 2,2'-oxybis-, dicarbamate	5952-26-1	U395
Selenium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.	144-34-3	U376
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	U379
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	U381
Sulfads	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	U277
Tetramethylthiuram monosulfide	Bis(dimethylthiocarbamoyl) sulfide	97-74-5	U401
Thiodicarb	Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester.	59669-26-0	P195
Thiophanate-methyl	Carbamic acid, [1,2- phenylenebis (iminocarbonothioyl)] bis-, dimethyl ester.	23564-05-8	P193
Tirpate	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.	26419-73-8	P185
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester.	2303-17-5	U389
Triethylamine	Ethanamine, N,N-diethyl-	121-44-8	U404
Troysan Polyphase	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	U375
U9069	Carbamic acid, [[3- [(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester.	112006-94-7	U374

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
• • •	• • •		•
Vanlube 7723	Carbamodithioic acid, dibutyl-, methylene ester	10254-57-6	U380
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929-77-7	U385
• • •	• • •		•
m-Xylene	1,3-Dimethylbenzene	108-38-3	K156
o-Xylene	1,2-Dimethylbenzene	195-47-6	K156
p-Xylene	1,4-Dimethylbenzene	106-42-3	K156
• • •	• • •		•
Ziram	Zinc, bis(dimethylcarbamodithioato-S,S')- , (T-4)-	137-30-4	P204

• • • • • •

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

• • • • •

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
• •	• • •	•	•
[Date of publication of final rule]	Listing Wastes from the Production of Carbamates	[Federal Register page numbers].	[Effective date of final rule].

• • • • •

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

9. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

10. Section 302.4 is amended by adding the following entries in alphabetical order (by the first column) to Table 302.4, and by adding footnote "##" to the table to read as follows. The other appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

• • • • •

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
• •	•	•	•	•	•	•	•
Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991761	.....	*1	4	U369	.....	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
Antimony, tris(dipentylcarbamodithioato-S,S')-(Antimony trisdipentyldithiocarbamate).	15890252		*1	4	U368		##
1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212671		*1	4	U365		##
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).	22961826		*1	4	U364		##
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781233		*1	4	P187		##
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).	1563388		*1	4	U367		##
Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57647		*1	4	P188		##
Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97745		*1	4	U401		##
Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate).	21260468		*1	4	U370		##
Carbamates N.O.S			*1	4	U360		##
Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).	55406536		*1	4	U375		##
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl).	17804352		*1	4	U271		##
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605217		*1	4	U372		##
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101279		*1	4	U280		##
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285148		*1	4	P189		##
Carbamic acid, [[3-[(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006947		*1	4	U374		##
Carbamic acid, [(dimethylamino)iminomethyl)] ethyl ester monohydrochloride (Hexazinone intermediate).	65086853		*1	4	U371		##
Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644644		*1	4	P191		##
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119380		*1	4	P192		##
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).	1129415		*1	4	P190		##
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564058		*1	4	P189		##
Carbamic acid, phenyl-, 1-methylethyl ester (Propham).	122429		*1	4	U373		##
Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136301		*1	4	U379		##
Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).	10254576		*1	4	U380		##
Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95067		*1	4	U277		##
Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148185		*1	4	U381		##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate).	128030		*1	4	U383		##
Carbamodithioic acid, dimethyl-, sodium salt (Dibam).	128041		*1	4	U382		##
Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144343		*1	4	U376		##
Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).	51026289		*1	4	U378		##
Carbamodithioic acid, methyl,-monopotassium salt (Potassium n-methyldithiocarbamate).	137417		*1	4	U377		##
Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137428		*1	4	U384		##
• • •	•	•	•	•	•	•	•
Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008415		*1	4	U392		##
• • •	•	•	•	•	•	•	•
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303175		*1	4	U389		##
Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).	1114712		*1	4	U391		##
Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134232		*1	4	U386		##
Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785202		*1	4	U388		##
Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC (Eptam)).	759944		*1	4	U390		##
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888809		*1	4	U387		##
Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate).	1929777		*1	4	U385		##
Carbamoyl Oximes N.O.S			*1	4	U361		##
• • •	•	•	•	•	•	•	•
Copper, bis(dimethylcarbamodithioato-S,S')-(Copper dimethyldithiocarbamate).	137291		*1	4	U393		##
• • •	•	•	•	•	•	•	•
Dithiocarbamate acids, salts, and/or esters N.O.S., (This listing includes mixtures of one or more dithiocarbamate acid, salt, and/or ester.).			*1	4	U363		##
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419738		*1	4	P185		##
• • •	•	•	•	•	•	•	•
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558431		*1	4	U394		##
Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135220		*1	4	P194		##
• • •	•	•	•	•	•	•	•
Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669260		*1	4	P195		##
• • •	•	•	•	•	•	•	•
Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG).	5952261		*1	4	U395		##
• • •	•	•	•	•	•	•	•
Iron, tris(dimethylcarbamodithioato-S,S')-(Ferbam).	14484641		*1	4	U396		##
• • •	•	•	•	•	•	•	•
Lead, bis(dipentylcarbamodithioato-S,S')-(Lead bisdipentyldithiocarbamate).	36501845		*1	4	U397		##
• • •	•	•	•	•	•	•	•
Manganese, bis(dimethylcarbamodithioato-S,S')-(Manganese dimethyldithiocarbamate).	15339363		*1	4	P196		##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
• • •	•		•	•	•		•
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422539	.....	*1	4	P198	.....	##
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702577	.....	*1	4	P197	.....	##
• • •	•		•	•	•		•
Molybdenum, bis(dibutylcarbamothioato)di-.mu.-oxodioxodi-, sulfurized.	68412260	.....	*1	4	U398	.....	##
• • •	•		•	•	•		•
Nickel, bis(dibutylcarbamodithioato-S,S')-(Nickel dibutyldithiocarbamate).	13927770	.....	*1	4	U399	.....	##
• • •	•		•	•	•		•
Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727).	64006	.....	*1	4	P202	.....	##
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631370	.....	*1	4	P201	.....	##
• • •	•		•	•	•		•
Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Sulfads).	120547	.....	*1	4	U400	.....	##
• • •	•		•	•	•		•
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646884	.....	*1	4	P203	.....	##
• • •	•		•	•	•		•
Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57476	.....	*1	4	P204	.....	##
• • •	•		•	•	•		•
2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533744	.....	*1	4	U366	.....	##
Thiocarbamates N.O.S.	.....	.....	*1	4	U362	.....	##
• • •	•		•	•	•		•
Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).	1634022	.....	*1	4	U402		
Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).	97778	.....	*1	4	U403	.....	##
• • •	•		•	•	•		•
Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram).	137304	.....	*1	4	P205	.....	##
Zinc, bis(diethylcarbamodithioato-S,S')-(Ethyl Ziram).	14324551	.....	*1	4	U407	.....	##
Zinc, bis(dibutylcarbamodithioato-S,S')-(Butyl Ziram).	136232	.....	*1	4	U406	.....	##
Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']-(Arazate).	14726364	.....	*1	4	U405	.....	##
• • •	•		•	•	•		•
K156 Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	.....	.....	*1	4	K156	.....	##
K157 Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not include sludges derived from the treatment of these wastewaters).	.....	.....	*1	4	K157	.....	##
K158 Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	.....	.....	*1	4	K158	.....	##
K159 Organics from the treatment of thiocarbamate wastes.	.....	.....	*1	4	K159	.....	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
K160 Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	.....	.....	*1	4	K160	.....	##
K161 Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts (This listing does not include K125 or K126.).	.....	.....	*1	4	K161	.....	##

+—indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
*1—indicates that the 1-pound RQ is a CERCLA statutory RQ.
##—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 94–4051 Filed 2–28–94; 8:45 am]

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Federal Register

Tuesday
March 1, 1994

Part III

Environmental Protection Agency

40 CFR Part 238
Degradable Plastic Ring Carriers; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 238

[EPA/OSW–FR–93–DPRF–FFFFF; FRL–4842–2]

RIN 2050–AD09

Degradable Plastic Ring Rule

AGENCY: Environmental Protection Agency, EPA.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing this final rule in response to "Degradable Plastic Ring Carriers" (Pub. L. 100–556), which in general provides that EPA shall require plastic ring carriers (for beverage cans) be made of degradable material. The statute requires that such ring carriers must be processed from a material that, in addition to allowing the ring carrier to perform its intended use, degrades quickly and does not pose a greater threat to the environment than nondegradable materials.

The Agency has chosen to require ring carrier processors to test their ring carriers using either a lab or an *in situ* test. The Agency has chosen a degradability performance standard for ring carriers, rather than specify a particular type of degradable plastic, to allow the processors of ring carriers the flexibility to use new technology.

EFFECTIVE DATE: Part 238 is effective on September 1, 1994. The incorporation by reference of American Society of Testing and Materials standards adopted in this rule is approved by the Director of the Federal Register as of September 1, 1994 in accordance with 5 U.S.C. 552(a).

ADDRESSES: The public record for this rulemaking (docket number F–92–DPRF–FFFFF) is located at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346. In the Washington, DC metropolitan area, call (703) 412–9810. For information regarding specific aspects of this notice, contact Tracy Bone, Office of Solid Waste (5306), USEPA, 401 M Street SW., Washington, DC, 20460, telephone (202) 260–5649.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
  A. Mechanisms of Degradation
  B. Factors Affecting Degradation
  C. State Laws
  D. Other Programs and Investigations Concerning Degradable Plastics
III. Summary of the Proposed Rule
IV. Response to Comment
  A. Definition of Terms
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I. Authority

The Environmental Protection Agency (EPA) is promulgating this rule under the authority of sections 101, 102, and 103 of Public Law 100–556 (the "Act" or "Statute"). Although this statute has been codified in Subtitle B of the Resource Conservation and Recovery Act (42 U.S.C.A. 6914b and 6914b–1), it does not amend RCRA. In section 101 of this law, Congress found that: (1) Nondegradable plastic ring carrier devices have been found in large quantities in the marine environment; (2) fish and other wildlife have become entangled in such ring carriers; (3) such ring carriers can remain intact in the marine environment for decades, posing a threat to fish and other marine wildlife; and (4) sixteen states (as of 1988) had enacted laws requiring that ring carriers be made of degradable material in order to reduce litter and protect fish and wildlife. (As of 1991, eleven additional states have passed laws of this kind.)

As a result of these findings, Congress required EPA under section 103 of the Act to promulgate a rule that would require that plastic ring carriers (as defined in section 102(1)) be made of "naturally degradable material which, when discarded, decomposes within a period established by such regulation." 42 U.S.C. 6914b–1. The period to be established under the rule for such decomposition or degradation is to be "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." *Id.* Section 102(2) of the Act defines "naturally degradable material" to mean a "material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis." 42 U.S.C. 6914b(2). EPA, however, may not require the use of a degradable ring carrier if it is not "feasible" or if the degradable ring carriers present greater threats to the environment than nondegradable ring carriers. 42 U.S.C. 6914b–1.

II. Background

Concern about the disposal of plastic materials dates back to the early 1970s. Degradable plastics were seen by some as a solution for the problems of littering, landfill capacity, and wildlife entanglement and were developed for agricultural uses (mulch film, seedling pots) as well as medical applications (sutures, implants).

Renewed public concern over solid waste management and resource conservation in the past few years has been met by a resurgence of corporate and academic research into degradable plastics, and by the commercialization of various products designed to degrade. Specifically, there has been great interest in finding new degradable plastics made from non-petroleum-derived materials.

A. Mechanisms of Degradation

Plastics are polymers (chemicals made of repeating subunits) most often derived from petroleum. There are plastics derived from other natural materials that have many of the same properties as petroleum-derived plastics and have been used to make degradable products. Starch, for example, is a naturally-derived plastic that may include over 10,000 linked subunits. Lactic acid is used to make surgical sutures that degrade within the body after the incision has healed.

Plastics degrade by a number of different physical and chemical processes. In photodegradation, light causes physical changes that cause the plastic to become brittle and crumble into small pieces. Fragments may range in size from several centimeters in diameter to invisible macromolecular particles. All ring carriers in use currently, are made from low density polyethylene (LDPE) plastic and degrade in this manner.

Plastics also may be designed to be completely broken down and assimilated into the environment. These plastics differ from those that undergo photodegradation in that chemical

changes occur in the structure of polymer molecules, and the ultimate products are different from the original plastic. This chemical breakdown and alteration may be caused by one of a number of processes, including chemical reactions with natural compounds (*e.g.*, dissolution by naturally-occurring acids) and biological activity (*e.g.*, biodegradation). Degradable plastics also may be designed to combine degradation processes; they may break down to smaller fragments due to photodegradation and then rely on biodegradation to complete the process.

The Agency developed this rule based on data available for the photodegradable petroleum-based plastic ethylene carbon monoxide (E/CO), currently used for ring carriers. EPA discussed, in the proposal (April 7, 1993, 58 FR 18062), new plastic technology that could be used to make ring carriers. EPA does not, however, have specific information or data from plastic technology (other than E/CO) that can be used to process ring carriers. Despite the lack of information on new technology, EPA does not intend to impose any barriers to potential ring carrier products.

B. Factors Affecting Degradation

Two key factors affecting degradation are the time required for degradation and the environment in which degradation takes place. Given enough time or a harsh enough environment, all materials, including plastics not designed to degrade, will degrade. A meaningful definition of degradability must include a time limit that is appropriate for the planned use of and the ultimate method of disposal for the specific degradable product.

Environmental conditions also play a critical role in controlling degradation. The rate of biodegradation is primarily determined by temperature, moisture, and the presence of oxygen. For example, biodegradation is very slow in municipal solid waste landfills since these facilities are generally engineered to exclude water and air. In desert environments, the absence of water retards biodegradation. In northern climates, temperature is typically the factor that controls biodegradation rates. The intensity and wavelengths of light are the most important factors in determining the rate of photodegradation. Light intensity and wavelength also play roles in some types of biodegradation. Public Law 100–556 directs EPA to reduce the threat of entanglement of marine fish and wildlife; therefore, EPA requires degradation be tested under marine conditions (or equivalent laboratory conditions).

C. State Laws

In 1977, the State of Vermont enacted the first law banning the use of nondegradable ring carriers. By the end of 1991, 27 states had passed legislation specifically prohibiting the sale of nondegradable ring carriers. State legislation typically is written to prohibit the sale of nondegradable ring carriers by retail stores. Most of these states indicated that the primary purposes for adopting the legislation were to promote litter reduction and to address wildlife entanglement concerns. The states that have adopted legislation banning nondegradable ring carriers, the dates the legislation took effect, the time limit required for degradation under each state law, and allowable mechanisms for degradation (as of 1992), are listed in reference 4.

D. Other Programs and Investigations Concerning Degradable Plastics

Reflecting the significant public and legislative interest in the use of degradable plastics, a number of organizations have addressed the issues related to degradable plastics in the past few years. These organizations include EPA, the U.S. General Accounting Office, the Congressional Office of Technology Assessment, the U.S. Food and Drug Administration (FDA), the U.S. Federal Trade Commission (FTC), the National Institute of Standards and Technology, the American Society for Testing and Materials (ASTM), the Department of Defense, and many state governments. Except for EPA, ASTM, and the Department of Defense, the organizations and states addressing degradable plastics issues typically are focusing more on litter and landfill capacity problems than on the risk to marine mammals or on degradation in the marine environment.

The ASTM D–20 committee (Ref. 1) has developed standards for testing degradable plastics under certain environmental conditions (including photodegradation and composting). EPA is using two ASTM tests (specifically D–5208–91 and D–3826–91) in this rule. These tests are recommended by ASTM for testing photodegradable plastic film. ASTM is working on a test to simulate and measure degradation under marine conditions which could be used to test biodegradable ring carriers under lab conditions. Because of statutory deadlines, EPA can not wait for ASTM to approve that test; therefore, we have included in this rule an *in situ* test that could be used for biodegradable ring carriers. EPA may, at a future date, review this rule to consider the effect of any new ASTM marine test.

III. Summary of the Proposed Rule

On April 7, 1993 (58 FR 18062), EPA issued a proposal in response to Public Law 100–556. The Agency proposed a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. The proposed performance standard included the same three factors in this rule's *in situ* test: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. In the proposal, EPA referred to these factors as the performance standard.

The proposed performance standard required testing in very specific marine conditions that would be more costly than the currently employed lab tests. Therefore, the proposal also allowed a processor of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers as long as the lab tests were equivalent to the performance standard.

IV. Response to Comment

EPA received comments on the proposed rule from eighteen persons or groups. This section summarizes and addresses the major comments. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center. See the "**ADDRESSES**" section at the beginning of this rule for information on getting a copy of the document.

A. Definition of Terms

In the April 7, 1993 proposed rule, EPA proposed three definitions: "5 percent elongation at break", "processor" and "ring carrier." EPA received no comments on the definitions for "processor", and "ring carrier"; therefore, they remain unchanged in the final rule. In response to one comment, EPA has changed the definition for "elongation at break". In the proposed rule, EPA defined "5 percent elongation at break" as " * * * computed by dividing the length, at break, of the material before it is tested by the length of the material, at break, after it is stretched * * * " The commenter pointed out that the proposed definition incorrectly divided the original length of the plastic by the length after it has been stretched. The definition found in the final rule language corrects this error as well as defines the term to more closely resemble the ASTM definition.

EPA received many comments on the proposed rule's usage of terms

describing degradability such as: Photodegradation, biodegradation, naturally-derived plastics, and synthetic plastics. The Agency defined and used these terms in the preamble only for the purpose of discussing the issues surrounding degradable plastics; EPA does not use any of these terms in the final rule language. Therefore, regulatory definitions for those terms are not necessary.

EPA added the word "plastic" to the title of the regulation in response to one comment. The commentor expressed concern that this rule may be construed to apply to cardboard beverage carriers. EPA added "plastic" to the title to clarify the scope of this rule as set by Congress in Public Law 100–556. The definitions and requirements of today's regulation are not necessarily relevant to degradable plastics intended for other end uses.

B. Testing Degradation

After the formulation of the resin, environmental conditions are the most important factors for determining the rate of degradation. For example, a photodegradable plastic buried in a landfill will degrade at essentially the same rate as the nondegradable formula of that plastic because there is no source of light to degrade the plastic. The Statute directs the Agency to protect marine wildlife. To achieve this goal, the Agency proposed that ring carriers be tested for degradability by being exposed, "for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters." The Agency proposed that the amount of degradation could then be tested and measured, using ASTM D–3826–91, to show 5 percent elongation at break. In addition to the *in situ* test described above, the proposal also allowed processors of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers (rather than a location below latitude 26 degrees North) as long as the lab tests were equivalent to the *in situ* test. In the preamble to the proposal EPA stated that, for the purpose of testing a photodegradable ring carrier, a lab test following the ASTM test D–5208–91 (using cycle A conditions for 250 light hours) is equivalent to the *in situ* test and could be used by ring carrier processors to meet the proposed regulation. EPA asked for comment on the use of ASTM tests D–5208–91, D–3826–91 and G–26.

Several commenters felt that the ASTM tests for exposure to UV and measurement of elongation at break (ASTM D–5208–91 and D–3826–91, respectively) should be required in the rule language rather than referred to in the preamble and urged that the *in situ* test (referred to in the proposal as the performance standard) should be deleted. The commenters felt that the *in situ* test was vague and not reproducible. The ASTM tests were felt to be easily implemented and reliable.

In response to these comments, EPA decided to include the ASTM tests in the final rule language as an option along with the *in situ* test. EPA decided to not require the ASTM tests alone because of the potential negative effects on future use of biodegradables or other new technology. A purely biodegradable ring carrier (if one is developed) could never pass these tests, which are based on UV absorption and photodegradation rather than biodegradation. As a result, the final rule provides that the processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91 using cycle A conditions for 250 light hours and ASTM D–3826–91) or the *in situ* test (i.e., expose the ring carrier for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters to degrade the ring carrier material and then use D–3826–91 to test for 5 percent elongation at break).

C. Measuring Degradation

The rate and extent of degradation typically are assessed by measuring changes in the physical properties of a material. For degradable plastics, a common method used to quantify the extent of degradation is to assess the "brittleness" of the material by measuring the amount of stress that must be applied before the plastic breaks. Brittleness can be measured in many ways, including tensile strength and the elongation of the plastic prior to breaking.

In the proposed rule, the Agency chose "elongation at break" to measure degradation. There are data that show a close correlation between the loss of elasticity (i.e., becomes brittle) and the rate of degradation. Brittleness can be used to predict the loss of physical integrity of the plastic which correlates to a reduced risk to wildlife from entanglement.

Plastic that has degraded to the point of 5 percent elongation at break will stretch only 5 percent of its original length before crumbling. The LDPE resin used to make ring carriers stretches readily. Ring carriers made from LDPE normally can be stretched to more than several hundred percent of their original length before breaking. Once the plastic material has been exposed to degrading factors, the material becomes more brittle and no longer can stretch very much before the plastic breaks. At approximately one hundred percent elongation at break, ring carriers lose their ability to function and the cans fall out of the carriers (Ref. 2).

"Elongation at break" is accepted by many in the scientific community as an appropriate method for measuring brittleness, and therefore, degradation of degradable plastics. However, some commenters interested in developing new ring carrier technology (for example, a biodegradable plastic ring carrier) expressed concern that elongation at break may not be appropriate for the new technology. Two commenters suggested the use of respirometric tests (using the evolution of carbon dioxide as a measure of biodegradation) for measuring degradation of biodegradable plastics. Respirometric tests are extremely complicated to design and run; in order to measure the carbon dioxide evolution, the experiment must be run under very controlled laboratory conditions. To EPA's knowledge, a respirometric test that reflects the marine environment has not been developed. None of these commenters provided specific suggestions or data on how EPA can measure degradation of materials other than photodegradable plastics. Therefore, EPA has decided to leave the measurement of elongation at break in the final regulation, but has included the *in situ* test as an option for any new technology that may be developed.

D. Time Limit for Degradation

The Agency is required by the statute to establish a time limit for degradation that is "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." Although it would be ideal to set a time limit that is not expected to pose any risk to marine wildlife, it is likely that some risk to marine wildlife will remain because it is not technically possible to design a ring carrier that degrades immediately upon disposal in a marine environment, but also is strong enough for its intended use (holding beverages).

The Agency investigated whether or not the material currently being used to make ring carriers, E/CO, degrades under marine conditions. EPA requested, but did not receive, any information to suggest that a faster time than measured in the EPA study (Ref. 3) could be achieved by E/CO or any other plastic product (that can also function as a ring carrier). E/CO clearly degrades when exposed to sunlight. Therefore,

the Agency has chosen a time limit for degradation that is based on the best performance observed in actual testing of the E/CO ring carriers currently in use. In a study (Ref. 3) performed by Research Triangle Institute for EPA, it took 35 days for E/CO ring carriers to reach 5 percent elongation at break in the marine environment. The testing was done during the months of June and July, off the coast of Miami, Florida. The time degradable ring carriers require to degrade is a fraction of the time nondegradable ring carriers were estimated to remain intact; therefore, the risk to marine species from degradable ring carriers will be much less than the risk posed by nondegradable ring carriers.

Some commenters felt that E/CO could not meet the requirement within the proposed time period. However, EPA has data to the contrary which is included in the docket to this rule (Ref. 3). Moreover, an E/CO processor commented that they believed E/CO could meet the proposed lab tests.

Several commenters were concerned that the performance standard would inhibit the development of new technology. Commenters also felt that EPA should allow a longer timeframe for biodegradable ring carriers to degrade than for photodegradables because of their greater environmental desirability. EPA disagrees. Although EPA understands the environmental advantages of a biodegradable carrier, the Agency believes that any biodegradable ring carrier must degrade as quickly as E/CO so as to meet the statute's goal of protection of marine fish and wildlife.

Commenters noted that states may misunderstand that the 35 day time limit hinges on testing in a warm and sunny environment. They feared that states other than Florida might require the 35 day timeframe. EPA realizes that a ring carrier that degrades in 35 days in Miami will take longer to degrade in other parts of the country. It will also take longer for a ring carrier to degrade in Miami during winter than during the summer months (seasonal variation of UV is greater than geographic variation).

By establishing the *in situ* test in § 238.30(a), the Agency does not intend to require that a ring carrier degrade to 5 percent elongation at break in 35 days in coastal waters everywhere in the United States. For example, this rule is not requiring a ring carrier be processed so that it degrades within 35 days in northern coastal waters (e.g., Maine). Such a ring carrier may not be able to be marketed nationally because it may degrade too quickly in the south during the summer and, therefore, would not be able to perform its intended function. Therefore, the Agency wishes to emphasize that the *in-situ* test is 35 days in marine conditions in a location below the latitude 26 degrees North, not 35 days in any coastal water in the continental United States.

E. Preemption of State Regulations

Over half of the states have enacted legislation requiring the use of degradable ring carriers. State requirements (Ref. 4) vary widely in timeframes for degradation, definitions of plastic articles covered, testing requirements, and degradation processes. EPA received four comments requesting that this rule preempt State regulations concerning the degradability of plastic ring carriers. Commenters expressed concern that the various state standards could force the processors and distributors of ring carriers to use more than one type of ring carrier rather than the one ring carrier currently used nationally.

EPA understands this concern and, in principle, agrees that one degradable ring carrier should provide adequate protection for fish and wildlife nationwide. However, Congress did not provide authority for this rule to preempt state regulation of degradable ring carriers. Nor does EPA believe Congress intended this rule to preempt more stringent state and local regulations.

The Agency does not intend to interfere with local, state, or other federal programs pertaining to the regulation of degradable plastics.

V. Implementation and Summary of This Final Rule

In summary, today's Final Rule requires that manufacturers and importers of plastic ring carriers test their ring carriers to ensure that they degrade. The processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91, using cycle A conditions for 250 light hours, and D–3826–91) or the *in situ* test (expose for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters and then, using D–3826–91, test for 5 percent elongation at break).

This rule applies to both processors in the United States and also to any person in the United States importing ring carriers. This rule does not differentiate between ring carriers processed for use in the United States and other countries because, at the time of sale to beverage bottlers, the processor has no knowledge as to where the ring carriers will be sold or used.

Each ring processor and importer must determine that its ring carrier meets this degradable performance standard using either of the tests described in today's rule, before marketing for use the ring carriers. The Agency does not intend for processors and importers of ring carriers to test each shipment of ring carriers to determine if they meet the performance standard; rather they should test the ring carrier each time the ring carrier's formulation or processing procedure changes substantially. Importers must not knowingly distribute ring carriers that do not meet this performance standard and they should seek assurance from the processors that the ring carriers meet the performance standard. If more than one processor manufactures ring carriers using the same ring carrier material and processing conditions, then they do not each have to test their own ring carrier; they may share the test data.

VI. Administrative Designation and Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review because the Agency believes the processors are able to meet these standards without changing current technology.

B. Executive Order 12875

Executive Order 12875, "Enhancing the Intergovernmental Partnership", is

intended to reduce imposition of unfunded federal mandates on state, local and tribal governments. This rule does not impose a mandate on these governments. The requirements of this rule apply solely to the plastic processors of ring carriers and do not compel any action by state, local or tribal governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This rule will affect ring carrier processors, none of whom are small entities. Small entities are not likely to enter into this market because of the requirements for expensive application equipment and quantities of materials. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, as promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

D. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VII. References

(1) Narayan, Ramani. "Development of Standards for Degradable Plastics by ASTM Subcommittee D–20.96 on Environmentally Degradable Plastics". 1992.

(2) Samaras, Peter, L. Letter to EPA, for ITW Hi-cone. August 31, 1992.

(3) Research Triangle Institute. "Weatherability of Enhanced-Degradable Plastics." Contract No. 68–02–4544. U.S. Environmental Protection Agency, Cincinnati, OH. 1992.

(4) Eastern Research Group. Current Status of State Regulations Requiring Degradable Ring Carriers. March 1992.

List of Subjects in 40 CFR Part 238

Environmental protection, Beverage ring carrier, Biodegradation, Degradable plastic, Degradability standards, Imports, Incorporation by reference, Photodegradation, Ring carrier, Waste treatment and disposal.

Dated: February 16, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulation is amended by adding part 238 consisting of §§ 238.10, 238.20 and 238.30 to read as follows:

PART 238—DEGRADABLE PLASTIC RING CARRIERS

Subpart A—General Provisions

Sec.

238.10 Purpose and applicability.
238.20 Definitions.

Subpart B—Requirements

238.30 Requirement.

Authority: 42 U.S.C. 6914b–1.

Subpart A—General Provisions

§ 238.10 Purpose and applicability.

The purpose of this part is to require that plastic ring carriers be made of degradable materials as described in §§ 238.20 and 238.30. The requirements of this part apply to all processors and importers of plastic ring carriers in the United States as defined in § 238.20.

§ 238.20 Definitions.

For the purpose of this part:

Percent elongation at break means the percent increase in length of the plastic material caused by a tensile load. Percent elongation at break shall be calculated by dividing the extension at the moment of rupture of the specimen by the initial gage length of the specimen and multiplying by 100.

Processor means the persons or entities that produce ring carriers ready for use as beverage carriers.

Ring carrier means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles.

Subpart B—Requirement

§ 238.30 Requirement.

(a) No processor or person shall manufacture or import, in bulk, ring carriers intended for use in the United States unless they are designed and manufactured so that the ring carriers degrade to the point of 5 percent elongation at break, when tested in accordance with ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", after the ring carrier is exposed to, either:

(1) 250 light-hours of UV in accordance with ASTM D–5208–91," Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics", using cycle A; or

(2) 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters.

(b) The incorporation by reference of ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", and ASTM D–5208–91, "Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics," was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These materials are incorporated as they exist on the date of the approval and notice of any change in these materials will be published in the **Federal Register**.

[FR Doc. 94–4369 Filed 2–28–94; 8:45 am]

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Federal Register

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March 1, 1994

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR 651

Northeast Multispecies Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931076–4052; I.D. 100193A]

RIN 0648–AD33

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). Amendment 5 implements conservation measures to eliminate the overfished condition of the multispecies finfish (groundfish) stocks. This final rule implements the Amendment by imposing a moratorium with exceptions for certain vessels fishing in the fishery, an effort control system to reduce fishing effort over 5 to 7 years, monitoring requirements to track fishing effort, and new permitting and reporting requirements. In addition, the rule increases minimum mesh size requirements for several different areas and expands the area where mesh size is regulated.

EFFECTIVE DATE: March 1, 1994, except for § 651.32(a), which is effective April 15, 1994. Section 651.9(a) (11) and (12), § 651.9(e) (33) and (34), and § 651.27(b) expire at 2400 hours, April 2, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097. Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Richard B. Roe, Northeast Regional Director, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252 or E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) approved at its June 1993 meeting a package of measures for inclusion in Amendment 5 to the FMP. The FMP has been in effect since 1986, and has been amended four times. The two main objectives of Amendment 5 are to eliminate the overfished condition of the principal groundfish stocks (cod, haddock, and yellowtail flounder) by reducing the rate at which fish are caught by 50 percent over the next 5 to 7 years, and to reduce the bycatch of harbor porpoise in the sink gillnet fishery.

Two measures contained in Amendment 5, as originally submitted, were disapproved by the Secretary of Commerce (Secretary) on September 30, 1993, and were not contained in the proposed rule to implement the amendment published on October 27, 1993 (58 FR 57774). Reasons for disapproval of those measures were given in the proposed rule and are not repeated here.

Amendment 5, less the two measures disapproved on September 30, 1993, was approved on January 3, 1994, after consideration of the comments received during the public comment period. This rule implements measures in Amendment 5 that are expected to reduce the fishing mortality rate to such a level as to eliminate overfishing. Since development began on the amendment, the condition of the multispecies finfish stocks continued to decline to record low levels. It is essential that fishing mortality levels be reduced as soon as possible because only then can rebuilding of stocks occur, especially for haddock, cod, and yellowtail flounder.

In approving the amendment, the Director, Northeast Region, NMFS, (Regional Director) notified the Council of several concerns that had been raised during Secretarial review, including that the Council needs to develop specific rebuilding goals, the annual mortality reduction may be set too low in the early years of the amendment, the effort exemption for vessels 45 ft (13.7 m) or less in length may be too permissive, that the overfishing definition for pollock may need to be adjusted, and the sink gillnet measures to reduce harbor porpoise take may not be sufficient. Also, the Council's objective to eliminate overfishing for cod and yellowtail flounder, while certainly a necessary first step, fails to offer specific rebuilding objectives for these species and the Council has been notified that it should begin formulating such objectives as soon as possible.

Incorporation of Emergency Measures Into the Final Rule

On January 3, 1994, NMFS published an emergency rule, at 59 FR 26, effective January 3, 1994, through April 2, 1994, to protect the seriously depleted stocks of haddock. The emergency rule established a 500-lb (226.8-kg) possession limit for haddock; began the closure of an expanded Closed Area II on January 3, 1994, rather than February 1, 1994; and implemented several other measures to protect haddock. This final rule implementing Amendment 5 permanently implements several measures that were contained in both the emergency rule and in the proposed rule for Amendment 5. Other measures in the emergency rule that were not contained in the proposed rule for Amendment 5 are continued in effect by this final rule, but will expire on April 2, 1994, as provided by the emergency rule, unless extended through further rulemaking. A description of these measures follows.

Definitions for "bottom-tending gillnet or sink gillnet", "dredge or dredge gear", "offload", "pair trawl or pair trawling", "scallop dredge vessel", "standard box", "standard tote", and "transfer", which were temporarily added by the emergency rule, are permanently added to § 651.2 by this final rule. Prohibitions on pair trawling in the groundfish fishery, temporarily added at § 651.7(a) (5) and (6) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition on transfer of multispecies finfish at sea, temporarily added at § 651.7(a)(7) by the emergency rule, is permanently added at § 651.9(e)(3) by this final rule. Prohibitions concerning haddock possession, temporarily added at § 651.7(a) (3) and (4) by the emergency rule, are permanently added at § 651.9(a) (11) and (12) by this final rule. A prohibition concerning sink gillnets, temporarily added at § 651.7(b)(15) by the emergency rule, is permanently added at § 651.9(e)(31) by this final rule. A prohibition concerning entry into Closed Area II of Georges Bank during a specified period of time, temporarily added at § 651.7(b)(16) by the emergency rule, is permanently added at § 651.9(e)(20) by this final rule. A prohibition concerning haddock possession on sea scallop dredge vessels, temporarily added at § 651.7(b)(17), and a prohibition concerning a haddock possession limit temporarily added at § 651.7(b)(18) by the emergency rule, are added at § 651.9(e) (33) and (34), respectively,

effective through April 2, 1994, by this final rule. Prohibitions concerning possession of multispecies finfish harvested by pair trawling, temporarily added at § 651.7(b) (19) and (20) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition concerning transfer of multispecies finfish from one vessel to another, temporarily added at § 651.7(b)(21) by the emergency rule, is permanently added at § 651.9(e)(5) by this final rule. A prohibition on pair trawling for multispecies finfish, temporarily added at § 651.20(g) by the emergency rule, is permanently added at § 651.20(h)(3) by this final rule. The closure of Closed Area I, temporarily added at § 651.21(c)(1) by the emergency rule, is permanently added at § 651.21(a) by this final rule. The closure of Closed Area II, temporarily added at § 651.21(c)(2) by the emergency rule, is permanently added at § 651.21(b) by this final rule, except that the annual closure period for 1994 is February through May, rather than January through May, as in the emergency rule. The haddock possession limits, temporarily added at § 651.28 by the emergency rule, are added at § 651.27(b), effective through April 2, 1994, by this final rule. Transfer-at-sea measures, temporarily added at § 651.29 by the emergency rule, are permanently added at § 651.30 by this final rule. Closed areas illustrated in Figure 6 to part 651, temporarily added by the emergency rule, are permanently incorporated into Figure 3 to part 651 by this final rule.

Amendment 5 Measures

Success of the amendment is largely dependent on meeting the annual fishing mortality reduction targets. NMFS is concerned that the annual targets may not be adequately protective, particularly during the first years of the plan, although it is recognized that the Council chose to minimize first year restrictions for valid socio-economic concerns. Therefore, it is more critical that the Council responds in a timely way to problems through the framework measure to ensure achievement of the amendment's objectives.

The Council has been requested to make it a priority to reexamine the exemption from effort control for vessels 45 ft (13.7 m) and less. The 45-ft (13.7-m) limit exempts a large number of vessels from effort control measures, thereby creating the possibility that the vessels may significantly reduce any gains from controls on larger vessels. Moreover, establishing a 45-ft (13.7-m) limit for vessels may create more inequities between vessels in the same port than if the minimum had been a smaller size. The Council was asked to consider measures that would prevent modification of vessels longer than 45 ft (13.7 m) to a size that would allow them to be exempt if the Council chose not to reduce the size of vessels being exempted.

The remaining overfishing definitions have been approved, but the definition for pollock needs to be reevaluated. Since the public hearings of May 1993, an assessment on pollock was reviewed and approved by the Stock Assessment and Review Committee of the NMFS Northeast Fisheries Science Center. The assessment indicates that a 25% maximum spawning potential (MSP) level is more appropriate than the 20% MSP obtained by analogy to similar species. Current (1992) fishing mortality for pollock is estimated to be 0.72, while the fishing mortality rate that would produce a spawning stock abundance amount which is 20% of the maximum spawning potential ($F_{20\%}$) is 0.65 and a fishing mortality rate that would produce a spawning stock abundance of 25% of the maximum spawning potential ($F_{25\%}$) is 0.47. Consequently, under either definition, pollock are overfished. Although the measures contained in Amendment 5 will have a collateral benefit on pollock, the Council was requested to reconsider this definition in developing Amendment 6.

The Council and the gillnet fishermen have expressed concern over the default harbor porpoise protection measure. The Council requested, at its February meeting, that implementation of the 4-day blocks out per month for gillnet gear be delayed until April 15, 1994, because it appears unlikely that harbor porpoise will be present in significant numbers until then. Others commented that when significant numbers of porpoises are present, the 4-days out of the fishery per month requirement may not be adequate to protect the porpoises. The final rule makes the 4-day out provision effective April 15, 1994. The Council is requested to take swift action under the harbor porpoise framework measure to ensure the protection of porpoise through the continued examination of the time and area of the gear-out requirement, and if necessary to protect porpoise, to change the provision.

The permit moratorium contained in Amendment 5 continues to be contentious. It becomes even more so as other fisheries establish control dates that some perceive as limiting the options available to fishermen. The Council was asked to work closely with the Mid-Atlantic Fishery Management Council to insure that fishermen continue to have alternatives available, such as the mackerel fishery, which is underexploited and can withstand additional effort. The control date established for the Atlantic mackerel, squid and butterfish fisheries may prevent this fishery being an option for groundfish vessels and the Mid-Atlantic Council was asked to consider this and work with the Council before developing final measures.

This final rule implements: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using fewer than 4,500 rigged hooks or fishing under a possession limit; an effort-reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet Days-At-Sea(DAS)), unless they elect to take an allocation of actual Individual DAS that vessels may fish for multispecies finfish; exceptions to the effort-reduction program for vessels 45 ft (13.7 m) and less in length, vessels fishing fewer than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; a possession limit for scallop dredge vessels; a requirement to purchase and install a Vessel Tracking System (VTS) unit for vessels fishing Individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size of 5 and 1/2 inches (13.97 cm) in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area from 5 and 1/2 (13.97 cm) to 6 inches (15.24 cm); exceptions to the mesh-size regulations for vessels possessing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of the closure of Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permit requirements for vessel operators and dealers; mandatory reporting for permitted vessels and dealers; mandatory observer requirements for vessels if required by the Regional Director; and framework measures to adjust the effort-control program and other measures.

Permit Changes and Applicable Dates

This rule substantially changes the fishing vessel permit application process. Vessel owners must now choose from several different permit categories. This choice will have implications on the future activity of a vessel. The permit category requirements and restrictions are complex and the applicants acting in anticipation of the final rule have been reluctant to choose a permit category, until they have discussed the implications with NMFS. Because of the volume of calls and requests for assistance received from the industry, NMFS has been unable to provide assistance to all those requesting it. To allow additional time for applicants to complete their vessel permit applications, the vessel permit requirement, and related measures, such as effort control measures and possession limits, become applicable on May 1, 1994. To be ensured of having a vessel permit by May 1, 1994, completed vessel permit applications must be received by NMFS by March 31, 1994. Applications received after March 31, 1994, cannot be guaranteed to be processed before May 1, 1994. Until these provisions of the regulations become applicable, vessels holding 1993 multispecies permits can fish for, possess or land multispecies in or from the EEZ.

This change will allow NMFS to continue to provide assistance to the industry so that the industry can make informed choices in a timely way on these important decisions. To further assist the industry, the Regional Director intends to allow vessel owners who believe they mistakenly chose a permit category based on incomplete information, to change permit categories within 30 days of receipt of their 1994 Federal multispecies permit. This change must be requested in writing and is in addition to the one change in category allowed under § 651.4(f)(2)(iv).

The Regional Director has determined that monitoring of vessels in the Fleet DAS reduction program will be accomplished initially through the call-in system. NMFS has reviewed several card monitoring systems to determine their appropriateness for this application. NMFS found that while these systems may serve the need, their cost, reliability, level of sophistication, and the relative newness of the technology make implementation difficult. The Regional Director does not believe that such a system could be made operational by the time of implementation and therefore has reserved the card monitoring system.

In addition, the Regional Director has authorized, pursuant to § 651.29(c), the use of the alternative call-in system as the sole method of notification for the DAS program. Until the Regional Director determines that the VTS is operable and he has provided adequate notification to permit holders, vessels participating in the DAS program must use the call-in system to provide notification of when they are leaving for and returning from fishing trips.

Comments and Responses

Written comments were submitted by Alliance for Community Education, Associated Fisheries of Maine, Center for Marine Conservation, City of Gloucester Mayor-elect Bruce H. Tobey, Commercial Fisheries News, Conservation Law Foundation, East Coast Fisheries Foundation, Inc., Gloucester Fishermen's Wives Association, Gloucester United, Maine Fishermen's Cooperative Association, Maine Gillnetters Association, Marine Mammal Commission, National Italian American Foundation, New England Fishery Management Council, North Shore Chamber of Commerce, Inc., Portland Fish Exchange, Senator George Mitchell, U.S. Coast Guard, and 18 individuals. In addition, letters containing 461 signatures were submitted in support of the Gloucester United comments.

Four VTS vendors provided comment on the proposed monitoring requirements under which they would be certified.

Comment 1: Three associations and four individuals stated that the amendment should be approved.

Response: The comments have been noted and the amendment has been approved.

Comment 2: One association expressed its support for an overall catch quota to ensure populations are not overfished in case measures to limit days at sea are not successful in reducing the amount of fish caught.

Response: The Council did not include overall quotas out of concerns that include possible market disruptions that could result when a quota is caught, small boats and large boats having to compete against each other for available quota, and the difficulty in monitoring quotas among different areas. Instead of an absolute quota, the Council chose the annual harvest targets to be used to gauge progress towards attaining the interim mortality reduction targets. NMFS and the Council are required to perform an annual review to determine what the actual mortality rate is compared to the harvest targets. Rather than quotas, the Council will then be able to modify the other measures contained within the amendment by using the framework to ensure that the targets are not exceeded in future years.

Comment 3: One association expressed concern about NMFS' ability to administer and enforce the amendment and recommended that NMFS enlist the advice of the Council and experienced members of the fishing industry.

Response: Most of the planning for implementation of the amendment and its administration and enforcement has already been done. NMFS will continue to work with the Council to address problems as they arise and will solicit industry advice when appropriate.

Comment 4: One association commented that Amendment 5 will provide further restrictions on small- and medium-sized vessels that are already limited by weather. Vessels will be forced to fish in bad weather and lives will be lost.

Response: The Council, in deliberating the amendment, made a conscious decision to reduce the impacts on small vessels. The possession limit exemption and hook exemption from the permit moratorium, and the 45-foot and day-trip exemptions from effort control were designed with the small and medium sized vessels in mind. Vessels outside these categories will be affected by the combined measures. Whether these vessels will decide to fish in bad weather is unknown, but the Council believes that other factors such as declining stock abundance and the competition for scarce catches are more likely to influence such a decision. NMFS, in approving this amendment, agrees with the Council's conclusions.

Comment 5: One association commented that Amendment 5 measures urge fishermen to go into alternative fisheries. This will be difficult because it costs money to get into a new fishery and banks and lending institutions are hesitant to lend money. Larger vessels that use up their groundfish days will have to resort to small-mesh fisheries to survive.

Response: The declining state of the groundfish resource makes it increasingly difficult to make a successful trip. Vessel owners facing such a decline would normally consider alternatives to groundfish, which the amendment's measures support. A switch to a new fishery may mean a capital investment in new gear. The amendment makes no distinction regarding which vessels may be able to switch to other fisheries and it imposes a consistent possession limit on all vessel size classes when small-mesh

gear is used to lessen the impact on groundfish. Using the framework measure of subpart C, the Council may adjust these measures if it determines that there is a problem.

Comment 6: Six associations and seven individuals recommended that the Secretary enter into negotiated rulemaking under the Negotiated Rulemaking Act of 1990 instead of implementing the moratorium, DAS, and target quotas.

Response: The responses to the recommendation to disapprove the moratorium, the DAS provisions, and target quotas are provided under Comments 7, 35, and 36. Development of fishery management plans and amendments must adhere to procedures provided for in the Magnuson Fishery Conservation and Management Act (Magnuson Act), which established fishery management councils and the development of fishery management plans to ensure public participation by the affected public in the process, similar to the intent of the Negotiated Rulemaking Act. The Magnuson Act development process for Amendment 5 involved active public participation throughout. At its Multispecies Committee and Council meetings, the Council provided ample opportunity and encouraged the public's development of alternative management measures. At the two rounds of public hearings, which were well attended by the fishing industry, several alternative management plans were proposed. Most were analyzed against the Council's objectives and many of the measures proposed were adopted by the Council. Several of these had to be adjusted to ensure that they would meet the amendment's objectives.

Because of the public process that has already occurred, and the many opportunities for comment, there was no need for a negotiated rulemaking. The Council may not have decided on measures favored by all in the fishing industry, but it is the Council's responsibility to exercise its best judgement on what is necessary and appropriate for the fishery under its jurisdiction.

Vessel Permits/Limited Entry Permits

Comment 7: Six associations and eight individuals recommended that the moratorium on vessel permits be disapproved. The commenters stated that the moratorium is not based upon conservation, will change the character of the industry leading to corporate ownership, is irreversible, and was rejected by the fishing industry at public hearings.

Response: A moratorium is important to the effort reduction program because it enhances the predictability of the effect of effort reductions on total mortality and it reduces the impact of the effort reductions on individual participants. To insure some control on the predictability of the effort reduction program, a finite number of units of effort, i.e., fishing vessels, is necessary. Otherwise, the size of the reduction in fishing mortality could not be predicted and would not be known until after the effect of the new vessels that had entered the fishery could be measured. Consequently, the Council would always be playing catch-up with little likelihood of success.

A moratorium is important to controlling the magnitude of the impact of effort reductions on individual participants in the fishery. Without a moratorium, new vessels could continue to enter the fishery. If this occurred, individual vessel time at sea would have to be reduced to compensate for the increase in total time at sea. During the rebuilding program, this would increase the magnitude of the individual reductions in effort proposed and, as the resource improves, even more vessels would be encouraged to enter and any individual gains associated with the improvement in the resource would be dissipated. The unpredictability of future individual reductions would contribute to economic instability in the fleet and the inability of participants to plan for the long term.

The Council proposed the moratorium to ensure long-term gains for those individuals being forced to make short-term sacrifices in the form of effort controls. As the effort control measures achieve fishing mortality reductions and the resource starts to rebuild, new entrants into the fishery would likely harvest the surplus in the absence of a moratorium. Thus, there would be no promise of a "return on investment" for the vessels that are making the sacrifices in the early years of the plan. Moreover, a moratorium provides an incentive to participants to protect their long-term interests. This translates into increased protection for the resource. Effort control measures without a moratorium are less likely to provide conservation benefits because an important restriction on the expansion of total effort would have been eliminated.

It is unknown whether the moratorium will change the character of the industry. It is difficult, if not impossible, to predict the individual vessel's decisions and the circumstances leading to those decisions that would be made to allow such a wholesale change.

The Council allowed for some new entry to the fishery through the use of the 4,500 hook and possession limit exemptions. In providing these exemptions, the Council determined that these activities would not have a significant impact on attaining the goals and objectives of the amendment. These exemptions and the moratorium itself can be reviewed and modified in future years if the Council determines that there is need and that the amendment's objectives could still be met. The Council has also stated its intention that the moratorium be effective only for the duration of the effort reduction program established by this amendment.

While there was some support for the moratorium at the public hearings, the primary rationale for approval is its relationship to the effort reduction program. Absolute acceptance by the industry for a measure, though desired, is not the sole criteria on whether a given measure should be approved.

Comment 8: One association commented that, in § 651.4, the eligibility criteria for a limited entry permit and conditions for upgrading are very similar to those promulgated in the original Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. With that plan, all the participants agreed that the tendency of the standards was to encourage an "arms race," which consumed capital and complicated effort reduction objectives for years. This should be avoided if possible.

Response: Some of the language and requirements for moratorium permits are similar to those contained in fishery management plan for the Mid-Atlantic surf clam fishery. The Council was aware of the problems experienced in that fishery, because it was consulted and involved in the development of the plan for that fishery. Many of the conditions that occurred in the Mid-Atlantic surf clam fishery after implementation of the moratorium have already occurred in the multispecies fishery. In the multispecies fishery, similar to what happened in the surf clam fishery, there has been a rapid rise in fishing effort brought about by several factors, including longer trips, shorter turnaround time between trips, and increased technology making fishermen more efficient. The Council, therefore, attempted to minimize problems in Amendment 5 by allowing some flexibility in limitations on size and horsepower and by adopting a framework measure to facilitate adjustments to measures.

Comment 9: One association commented that, in § 651.4(q) of the vessel permit requirements, the

provision that a limited access permit is forfeited if not annually renewed is likely to cause fishermen to lose their license permanently because of a technicality. Either an annual renewal notice or other flexibility should be incorporated to avoid serious hardship claims.

Response: Since the inception of annual permit renewals in 1986, NMFS has sent annual permit renewal applications to those issued permits in the previous year. This practice will not change with the implementation of this amendment. However, it will continue to be the vessel owner's responsibility to have a valid Federal Fisheries Permit, maintained on board the vessel, before engaging in fishing for multispecies finfish.

Comment 10: One association questioned whether the restriction on issuance of limited access permits, contained in § 651.4(s) of the vessel permit requirements, meant that a vessel in this fishery could not enter other fisheries. If this is the case, then the commenter stated it would be a clear violation of national standard 6.

Response: Vessels may enter, and are encouraged to enter, other fisheries, so long as they meet the criteria for entry to those fisheries. The section cited does not limit a vessel from entering other fisheries; rather, § 651.4(s) specifies that the permit or fishing history of one vessel may not be used to qualify another vessel at the same time in some other fishery. This means that if the vessel had permits for several fisheries in the past and was still qualified for those fisheries, the permit or history could not be used to qualify a different vessel for another limited entry fishery, and at the same time qualify for a limited access multispecies permit.

Comment 11: One individual expressed support for the hook exemption and requested adoption of a similar exemption for fish traps. The commenter stated that both conserve the stock and fish habitat, and reduce fuel consumption.

Response: A specific exemption for fish traps was not considered by the Council for inclusion in the amendment. This comment is being forwarded to the Council for possible inclusion of a fish trap exemption in a future amendment.

Comment 12: One association supported the moratorium, but opposed the issuance of new permits after only 3 years.

Response: After 3 years, the Council may adjust the criteria for limited entry permits after taking into consideration the fishing mortality goals and objectives of the amendment and conditions in the fishery. This would be accomplished through the framework measures contained in subpart C, which include opportunity for public comment.

Comment 13: One association objected to the requirement for a vessel permit in § 651.4(f)(1), which requires that the names and addresses of shareholders holding more than 25% ownership be provided. The commenter believed that this is an invasion of privacy, is not required by other government agencies, and that the officers of a corporation are a matter of record.

Response: By receiving this information, NMFS will be able to determine who the true owner of a vessel is. It gives a more complete picture that is not available when a vessel owner provides just the corporation name. This is particularly important when determining who is responsible if a violation of a regulation occurs. Without this information, determining whether a particular owner is a repeat violator would also be difficult. To seek this information from other sources would require systematic searches of state records, requiring NMFS to expend an extensive amount of time. It is not an unlawful invasion of privacy because it is only required of vessel owners that voluntarily submit themselves to the highly regulated industry of fishing as a condition to obtaining the privilege to fish with a Federal permit in Federal waters.

Operator Permits

Comment 14: One association commented that, in § 651.5(d) of the operator permit requirements, the requirement for passport photos to be submitted with an application for an operator permit probably adds several hours to the information burden calculation for each applicant under this program, which is not accounted for in the analysis.

Response: The requirement is not for passport photos, but rather passport-size photos, which makes the requirement substantially easier to meet. Regardless, the analysis did take this into account and allowed for 1 hour for response instead of 5 minutes, for example, as specified for applying for a dealer permit. In determining burden estimates, an average is taken.

Some individuals will already have a passport-size photo or have easy access and their burden will be minimal. Other individuals may have to travel to have this service performed. The burden is further reduced by NMFS' intention to allow the operator permit to be valid for multiple years, rather than just 1 year. In any event, the estimate of time does not pose any time constraints on applicants. NMFS will monitor whether the time estimate is correct.

Comment 15: The U.S. Coast Guard commented that the wording under § 651.5(c) in the operator permit requirements, which prohibits operators who have had their operator permit suspended or revoked from being on board a vessel, in any capacity, issued a Federal Fisheries Permit is unenforceable unless all crew members are permitted.

Response: NMFS disagrees that the measure is unenforceable. The intent of this measure is to improve compliance with the measures by those who are most directly able to control the actions of the vessel and crew. The number of operators having their permits suspended or revoked is expected to be relatively few. Information on these individuals, including their picture, can be distributed to the U.S. Coast Guard and other enforcement officials and used during boardings. To require all crew members to obtain a permit would impose too great of an administrative burden on NMFS and crew members for which there would be insufficient improvement in the ability to enforce such a measure. Further, a change such as this is beyond the scope of Amendment 5.

Comment 16: The U.S. Coast Guard commented that § 651.5(d) should require proof of U.S. citizenship to obtain an operator permit.

Response: The Magnuson Act requires that all vessels of the United States that are larger than 5 net tons be documented by the U.S. Coast Guard. Federal law requires that the masters of U.S. documented vessels be U.S. citizens or U.S. nationals. As applied to vessels larger than 5 tons, the Coast Guard's suggestion is duplicative of existing law. As applied to vessels smaller than 5 tons, the adoption of a U.S. citizenship requirement would prevent aliens lawfully admitted to permanent residence in the United States from continuing to serve as masters of small vessels as they endeavor to qualify for U.S. citizenship. For these reasons, NOAA has not adopted the U.S. Coast Guard recommendation.

Comment 17: One association noted that the operator permit requirements in §§ 651.5 and 651.9 are inconsistent with the amendment by failing to exempt recreational vessels.

Response: The intent was to require operator permits for operators of vessels required to obtain federal fishery permits. The final rule provides that if a vessel is exempted from the vessel

permit requirements, then that vessel's operator is exempted from the permit requirement as well.

Comment 18: One association objected to the operator permit condition under § 651.5(c), which prohibits vessel operators from working on board a vessel issued a Federal Fisheries Permit, in any capacity, if the operator permit has been revoked or suspended.

The commenter further stated that guilt should be determined first, and the penalty determined by the Courts, rather than the penalty being agreed to first.

Response: This penalty would be assessed against a vessel operator only if the vessel operator is determined to have been involved in a major violation or is a significant repeat offender of Federal fishing regulations. In all cases, the vessel operator will have an opportunity for a hearing before an administrative law judge. Further, the vessel operator will always have the option of appealing the determination by the agency to a Federal court. The language gives notice to the vessel operator that his/her right and privilege to operate and serve on a federally-permitted fishing vessel is subject to the condition, and that the right may be suspended or revoked in certain circumstances. Without the possibility of suspending or revoking an operator's right to serve in any capacity on a federally-permitted vessel, the purpose of requiring operator's permits would be meaningless. The language also puts the operator on notice that he/she will be responsible for his/her actions and will not be able to move to another vessel, should a suspension occur. It is consistent with a vessel permit suspension, which takes the vessel out of the fishery during the time of suspension.

Reporting and Recordkeeping

Comment 19: One association commented that, in § 651.7(b)(1) of the reporting requirements, the requirement to provide "any other information required by the Regional Director" is overbroad, a standardless delegation, and potentially unconstitutional.

Response: This requirement provides NMFS the flexibility to obtain the information necessary for management, and is not open-ended, since the Regional Director must demonstrate that any additional data requested is necessary to manage the fishery.

Comment 20: One individual stated that the requirements for recordkeeping and reporting are impracticable, of little or no use, and cannot be enforced due to limited resources.

Response: The recordkeeping and reporting requirements are in direct response to the inability to collect complete information under the existing voluntary system and were supported by the fishing industry. The Council's previous attempts at management measures were stymied by the lack of complete information on the fleet. For some areas or classes of vessels, there was little coverage or incomplete coverage. The information collected from the reporting requirements is necessary to, and will be used to monitor, the effects of the various measures being implemented by this rule. Implementation of this rule, along with recent amendments to the Summer Flounder and Atlantic Sea Scallop Fishery Management Plans, will provide for a comprehensive collection of fishery information coastwide. Its requirements can be enforced because of the ability to verify reporting compliance due to the dual requirement that dealers and vessels must report. These requirements have been shown to be enforceable in other fisheries in the Northeast.

Comment 21: One association commented that the reporting burden estimates for the vessel logbook report (5 minutes), dealer logbook report (2 minutes) and operator permit (1 hour) are unrealistic and that they fail to take into account time to read instructions, search existing data sources, gather and maintain the data needed, and complete and review the requirement.

Response: Initially, the time to complete the requirements will be longer than that estimated. As fishermen and dealers become familiar with the report form and requirements, the time to complete and submit the information will decrease. The reporting time estimates for both the vessel and dealer may seem low, but the estimates take into account that most of the information is being collected during the normal course of business and in many cases for dealers, on the same form that is being adopted for the reporting requirement. The report estimates also take into account that the reporting burden will vary between areas and fisheries. Moreover, as stated above, the time estimate does not impose time constraints on those required to report. NMFS will continue to monitor this activity to determine if adjustments to the associated burden time need to be made. NMFS encourages vessel operators and dealers to submit information on the time needed to comply with these reports as such individuals gain experience actually completing logbooks and permit forms.

Vessel Identification

Comment 22: The U.S. Coast Guard commented that the wording under § 651.8(a) regarding vessel identification should be reworded to require the name on each side of the bow and the name of the vessel and homeport at or near the stern. The U.S. Coast Guard further commented that term "if possible" be deleted to eliminate ambiguity.

Response: NMFS has proposed consolidating requirements common to Northeast fisheries in 50 CFR part 622, Northeast Region General Fisheries Permit and Reporting Procedures (58 FR 53172, October 14, 1993). Where this comment is common to requirements in other fisheries, it will be considered in the context of part 622. A final rule implementing consolidated permitting and reporting procedures will be issued after this final rule implementing Amendment 5 is published.

Prohibitions

Comment 23: One association commented that, regarding the prohibition specified in § 651.9(a)(6), it is unreasonable to expect fishermen to enforce the FMP by demanding to see dealer licenses, given the locus of market power in sale transactions, and considering fishermen often have no direct contact with their dealer (i.e., fish are picked up by truck). It would be impossible for fishermen to make the legal conclusion that the permit is "valid."

Response: It is reasonable to expect that fishermen know to whom they are selling their fish, because this information is necessary to know from whom to expect payment. Further, since fishermen must provide this information on the vessel logbook submitted to NMFS, vessel owners will have to make an effort to identify to whom they are selling fish. NMFS will make an effort to identify those permitted dealers purchasing multispecies finfish so that the likelihood of a fishermen selling to an unpermitted dealer will be substantially reduced. If fish are sold to a truck, the truck does not need to be permitted if the truck is used for transportation only. If the truck driver acts as a purchaser, a dealer permit would be needed.

Comment 24: Two associations commented that observer requirements in § 651.0(a)(10) were not disclosed at public hearings. Requiring provision of food, etc., is an uncompensated taking in violation of the Constitution.

Response: Observer requirements have been part of the FMP since implementation of Amendment 4 and were discussed by the Council in public

meetings. In Amendment 4, vessels participating in the Exempted Fisheries Program were required to take a sea sampler if requested by the Regional Director. In the version of Amendment 5 taken to public hearing, observer requirements were included under the midwater trawl exemption. Once the public hearings had concluded, the Council discussed in a public meeting and added the measure to provide consistency with a measure in Amendment 4 to the Fishery Management Plan for Atlantic Sea Scallops. By including the requirement in the proposed rule, the public has been given additional opportunity to comment.

This provision is needed to supplement, rather than replace, the existing Domestic Sea Sampler Program. Several times in the past, when management actions were contemplated, the reaction by some fishermen has been to deny sea sampler's requests to be on board vessels. This seriously hampers NMFS' ability to collect discard, bycatch, and other biological information and as a consequence, management actions were based upon incomplete, though best available, information. This provision will allow the Regional Director to require vessels to carry an observer, if vessels refuse to take sea samplers.

A mandatory observer program is necessary for the management program to be effective. A taking occurs if a regulation denies an owner economically viable use of his/her property. The regulations do not dispossess fishermen or limit the use of their property. It is not equivalent to a seizure of their property or a restraint on entry and use, and therefore does not constitute an unlawful taking.

Comment 25: One association commented that, in § 651.9(b)(2)(i), the requirement for having a certified, operational and functioning VTS unit on board the vessel at all times will force fishermen to have at least two of these units on board the vessel at all times, at a cost of $14,000. No provision has been made to enable fishermen to keep information confidential from third parties with receivers. The VTS has evolved into a complicated, prohibitively expensive, intrusive violation of basic constitutional principles and an end to itself instead of providing NMFS with bare-bones requirements to make the management program work simply and effectively.

Response: The requirement is to have a functioning VTS unit on board the vessel. If the vessel owner believes that the VTS unit is not reliable enough to provide the service required, the vessel owner may decide to purchase another VTS unit. The minimum VTS performance criteria were developed with the rigors of at-sea conditions in mind. The approved VTS vendors have stated that their units meet these specifications. Many of the units are in use on board fishing vessels already and have been found to be reliable and able to withstand weather at sea.

Fishermen subject to the VTS requirement are expected to purchase the units directly from approved vendors. In making such a purchase, the vessel owner should decide whether to include in the purchase contract items such as confidentiality of information, position integrity, etc. NMFS does require that a vessel owner applying for a limited access permit must provide NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessel's DAS and location data. All information from the VTS units forwarded to NMFS will be considered data submitted pursuant to 16 U.S.C. 1853(a)(5), which is subject to the confidentiality requirements of 16 U.S.C. 1853(d).

NMFS disagrees with the last comment. The VTS was developed to address the need to monitor effectively basic vessel activities at substantial savings to NMFS. The VTS allows enforcement resources to be deployed where most effective while at the same time monitoring is maintained throughout the fishery. The VTS also provides greater efficiency for vessel operators and greater safety for at-sea operations. Further, the requirement to carry a VTS unit is a condition to participate in a highly regulated industry operating in federally regulated waters. There is no compensable taking of private property under the Fifth Amendment of the Constitution.

Comment 26: One association commented that, in § 651.9(b)(10), the trip notice provision is cast without a negative and thus would make all fishermen violators.

Response: This has been corrected in the final rule.

Comment 27: One association commented that the provision in § 651.9(e)(13) is far too broad and makes no allowance for the rigors of the sea, the vagaries of atmospheric transmission, etc. The fisherman becomes a guarantor of perfect airwaves, which is an impossible burden.

Response: The prohibition refers to a willful act, rather than that which would occur through weather or other Acts of God. The burden will be on NMFS to show that such a willful act has occurred.

Comment 28: An industry association commented that, in § 651.9(e)(31), the requirement that any fisherman must remove from the water sink gillnets is directly in conflict with Magnuson Act prohibitions on hauling or tampering with gear of others.

Response: The final rule has been changed to clarify that a sink gillnet fisherman is required to remove only his or her own gear.

Comment 29: One association commented that in § 651.9(e)(23), recreational vessels are allowed to possess regulated species smaller than the minimum size, which is contrary to Council intention.

Response: The language of § 651.9(e)(23) allows vessels exempted under § 651.9(e)(1)(ii) to be exempted from the requirement. Vessels under this exemption are those fishing in state waters exclusively, without Federal permits, where these regulations are not applicable because of the Councils' and the Secretary's limited authority under the Magnuson Act to regulate fishing activities that occur only in state waters. The Magnuson Act was enacted pursuant to the Constitution's grant of authority to Congress to pass laws that regulate interstate and foreign commerce. The Act authorizes the Secretary to issue such regulations as are necessary and appropriate to implement the Act. The Secretary has determined that keeping track of the location of fishing vessels is essential to conserve and manage the multispecies fishery. A VTS allows the Secretary to ascertain the vessel's location in a cost-effective manner.

Regulated Mesh Areas

Comment 30: One association supported the finfish excluder device requirement contained in § 651.20(a)(3)(ii).

Response: The comment is noted and the measure has been approved.

Comment 31: One association commented that it supported the increase in minimum mesh size to 6 inches (15.24 cm), but that the area should also include Southern New England.

Response: The Council specified different minimum mesh sizes, by area, based upon the different historical fishing patterns that occur there. Prior to this amendment, much of the Southern New England area was not subject to mesh restrictions. Amendment 5 imposes a minimum mesh size restriction throughout the area, thereby providing substantial protection for undersized, immature groundfish. In year 2, the mesh size increases to 6-inch (15.24-cm) square mesh or 5½-inch

(13.97-cm) diamond mesh. Also included in the measures applicable to the Southern New England Area is an area closure triggered when there is an incoming year class of yellowtail flounder that reaches a certain level of abundance as determined by the annual spring bottom trawl survey conducted by NMFS. If further restrictions are necessary, the Council may use the framework measures contained in subpart C to effect changes.

Comment 32: The U.S. Coast Guard commented that the area defined in § 651.20(c) for the Southern New England Regulated Mesh Area (RMA) and its allowance of more than one mesh on board overlaps the boundaries of the Nantucket Lightship Closed Area. The U.S. Coast Guard stated that this creates an enforcement policy that is inconsistent with conservation goals. It recommended that the Southern New England RMA be redrawn to exclude the Nantucket Lightship Closed Area from the more than one mesh on board provision.

Response: The Nantucket Lightship Closed Area closes only when a survey index indicates a strong incoming year class of yellowtail flounder. When such a closure occurs, vessels are prohibited from fishing in the area unless specifically exempted, and the gear types exempted (lobster pot gear, surf clam/ocean quahog dredge gear, hook and line) do not include gear subject to the gear stowage requirement. It is not necessary, therefore, to redraw this area such as was done for the Nantucket Lightship Regulated Mesh Area.

Comment 33: One association commented that it is inappropriate to allow mid-trawlers year-round, unsupervised access to the Gulf of Maine.

Response: Midwater trawlers are subject to a possession limit when fishing with small mesh and are required to fish with the net off the bottom. If NMFS believes that a problem is occurring with this fishery, observers could be deployed to gather information. The vessel reporting requirements will also aid in determining whether this gear is appropriate for use in this area.

Comment 34: One association recommended that the Nantucket Lightship Regulated Mesh Area be disapproved because the area allows smaller mesh size in an area that abounds with haddock, cod and yellowtail flounder.

Response: NMFS is also concerned about this area and about the confusion that can result because of the differences between the adjoining regulated mesh areas and this area. If this requirement were disapproved, however, it would leave this area with no regulated mesh size or one mesh on board requirement. NMFS is requesting the Council reexamine this area and determine whether it is appropriate to allow the smaller minimum mesh size, given the low stock abundance of regulated species occurring there.

Closed Areas

Comment 35: One association commented that, in § 651.21(b)(4), the exemption allowing safe haven in the vicinity of Closed Area II, required for vessel safety, is virtually unattainable. It depends on the National Weather Service (NWS) identifying adverse conditions far out at sea, posting warnings, and the operator being able to contact a U.S. Coast Guard unit in the area. Unless this provision is rational, it will cost lives in transit.

Response: The exemption was requested by fishermen at a meeting of the Council. The criteria for the exemption were developed to ensure that it could not be used to circumvent the regulations. The intent is that when there is a legitimate need, because of bad weather, to seek shelter in deeper water, vessels can enter the closed area. The best criterion for vessels to know when this is allowed is the storm postings of the NWS, which has offshore monitoring capabilities. NMFS is actively discussing with NWS and the National Ocean Survey, the possibility of using the VTS units to collect weather information for offshore areas. If vessels cannot contact a U.S. Coast Guard unit in the area, notice should be provided to a U.S. Coast Guard shoreside facility. NMFS believes these measures are reasonable and adequate to provide vessels a safe route during bad weather. This exemption will be monitored and, if adjustments are needed, they can be made through the framework measures in subpart C.

Effort Control Program

Comment 36: Six associations and eight individuals recommended that the effort control measures be disapproved, citing that this type of management will not achieve conservation because vessels will fish longer, fish closer to shore, target high value species, and the program will be almost impossible to administer and enforce.

Response: The Council chose effort reduction measures rather than relying solely on indirect measures (minimum mesh size, minimum fish size) or other direct measures (vessel or total quotas). In doing so, it believed that the effort control measures would provide greater assurance in achieving the Council objectives, would be less disruptive to the supply of groundfish, and would provide flexibility to vessel operators, thereby balancing the need to prevent overfishing with socio-economic concerns of the fishing industry.

With declining fish stocks, fishermen are already making longer trips with fewer crew members and with less time at the dock between trips. There have already been complaints over the last few years of larger vessels displacing small vessels by working inshore areas. The combination of annual reduction of days at sea allowed, regulated layover time at the dock, and target quotas is designed to meet eventually the objectives of the amendment. It is recognized that there will be adjustments by the fleet in the first few years. Eventually these adjustments will be overcome by the measures resulting in reductions in fishing mortality.

NMFS believes that the effort reduction program can be administered and enforced. Tracking of days at sea can be accomplished shoreside rather than at sea and the VTS and call-in systems will enhance this effort. The VTS system will identify when vessels leave port, when they return to port, which port and where they are at sea. The exemptions for hook vessels, possession limit vessels and vessels 45 ft (13.7 m) and less will substantially reduce the enforcement and monitoring burden.

Comment 37: Six associations and eight individuals recommended that the target quotas be disapproved.

Response: To determine how effective the effort reduction program and other measures are at attaining interim fishing mortality goals and to provide the industry and the public with a quantifiable objective, the Council included target quotas based upon the major groundfish stocks. The target quotas will be determined annually and, if exceeded, the Council will adjust fishing mortality reduction measures to help assure that it does not occur again. If the target quotas had been disapproved, NMFS the Council would have had little information on which to judge the success of individual measures for a given year, and little justification for adjusting management measures in future years. Exceeding a target quota does not result in any automatic regulatory measure.

Comment 38: The Council and one association commented that the layover day requirement specified in § 651.22(c)(1)(ii) should reflect the Council's intent that vessels need to move between docks within port.

Response: In order to monitor effectively vessel DAS activity, it is

necessary for NMFS to be able to track vessel movement. NMFS intends to allow some reasonable movement within port through enforcement discretion, so long as it does not compromise the accurate monitoring of vessel DAS.

Comment 39: One association commented that the provision in Amendment 5 exempting vessels 45 ft (13.7 m) or less, from the effort reduction program, should be changed back to 30 ft (9.1 m), because the longer length allows for too much additional fishing effort.

Response: An exemption length of 45 ft (13.7 m) exempts 1,554 more vessels than would an exemption length of 30 ft (9.1 m). Still, if the 45-ft (13.7 m) exemption was disapproved, there would have been no exemption for smaller vessels from the effort control program. A lack of an exemption from the effort control program for smaller vessels, may have serious negative economic effects on fishermen operating those vessels without sufficient commensurate benefits to the groundfish stocks to justify the lack of such an exemption. The Council has been asked to reexamine the 45-ft exemption, and its effects will be closely monitored. If a change is necessary, it could be implemented through the framework provisions of subpart C.

Minimum Fish Sizes

Comment 40: The U.S. Coast Guard commented that, in § 651.23(d)(i), the minimum fish sizes are only enforceable if the whole fish can be measured. The exception allowing 25 lbs (11.3 kg) of fillets less than the minimum size should be deleted since enforcement officers cannot verify that the fillets originated from legal-size fish.

Response: The 25 lbs (11.3 kg) of fillets allowed per person cannot be offered or intended for sale, trade, or barter. While NMFS agrees that it will be difficult to enforce this requirement, the small amount of fillets allowed and the intended use of the fillets should have a minimal impact on the conservation goals of the FMP. This exemption allows the traditional fishing practice of crew members filleting fish for personal use to continue. If this exemption poses a problem in the future, it may be modified using the framework provisions of subpart C.

Flexible Area Action System

Comment 41: One association commented that the FAAS described in § 651.26, is an overbroad, standardless delegation in violation of the Administrative Procedure Act and the Constitution.

Response: The Flexible Area Action System described in § 651.26 is not a new provision, rather it was implemented through the approval of Amendment 3 to the FMP. The proposed rule republished the entire part and not just the provisions changed or added by Amendment 5. This was done to aid the reader. The commenter is invited to review responses to comments published at the time this section was promulgated.

Monitoring Requirements

Comment 42: One association commented that the presumption in § 651.28(a)(4) is unreasonable because the vessel operator may not know the violation is occurring and thus may fail to collect the evidence to rebut the presumption. A vessel could run through its whole allocation without knowing it, if a battery shorts out.

Response: The VTS unit typically displays a signal when the unit is in communication with an overhead satellite. The vessel operator should be able to determine readily if the unit is functioning or at least enter into agreement with the VTS unit vendor that he/she be notified when the unit is not functioning properly. If the unit is not functioning properly, the vessel operator should respond accordingly and try to correct the problem, and if not able to, gather the evidence necessary.

Comment 43: One association commented that, in § 651.28(a)(7), the definition for tampering must except unknowing activity and such actions as rigging the vessel, raising fishery cones, sailing into fog banks, etc., all of which could affect signal or position accuracy.

Response: Adverse weather typically does not distort the information provided by a VTS unit. This only occurs if the antenna is disrupted or there is an occurrence of extreme weather. Tampering implies a knowing violation. Enforcement discretion will be used in determining violations and whether an action was willful or not.

Comment 44: Four VTS vendors commented that the requirement for polling is not essential for vessel monitoring objectives.

Response: NMFS believes that the polling requirement is an integral component of a monitoring system employing a VTS. Polling will enhance NMFS ability to insure adequacy of its DAS monitoring requirements. Moreover, the use of a VTS will not be limited to just DAS monitoring, but will also be used for closed area and Hague Line surveillance, and other enforcement concerns. Polling will allow NMFS to change the frequency of location reporting in support of specific enforcement operations. This could occur for a given area, individual vessels or groups of vessels. Polling can also be beneficial to search and rescue operations by pinpointing location, speed of drift, etc.

Comment 45: Four VTS vendors commented that the requirement that the VTS provide two-way network communication between the vessel and shore is not essential for vessel monitoring objectives. The commenters stated that vessels are already equipped with radios, telephone, telex, or facsimile equipment.

Response: NMFS believes that two-way communication is necessary. Under § 651.7(b)(1), vessel operators may choose to provide catch information through the VTS unit. Under § 651.29(a)(1), vessels will use the VTS to notify NMFS that they are leaving on a trip that will not involve a groundfish DAS. Allowing reporting such as noted above through the VTS, greatly enhances NMFS' ability to receive information on a timely basis, 24 hours a day. Radios and telephones require someone to be present to receive the call. Telex and facsimile equipment could provide the information, but at greater expense to NMFS through having to input the data to another system. NMFS believes that the two-way communication capabilities will allow VTS to be used for more applications, once established. Consequently, NMFS is not changing the specifications.

Days-at-Sea Notification

Comment 46: One association commented that, in § 651.29 (a) and (b), if the primary system fails or malfunctions and the Regional Director fails to authorize the use of a call-in system, then vessels are not allowed to fish. The Regional Director should be required, not just permitted, to fill the gap.

Response: NMFS recognizes that without a VTS requirement, as written in the proposed rule, vessels would be unable to fish. The final rule has been revised so that initially a call-in system will be required by vessels that will later be subject to VTS requirements when such a system is available. Also, the final rule has been revised so that the Regional Director must authorize a call-in system if a VTS is later shown to be ineffective for monitoring DAS.

Comment 47: One association commented that, in § 651.29(c) (2) and (4), requiring a confirmation by the Regional Director renders the call-in and fax-in useless on nights and weekends

(when most trips start or finish). If the Regional Director fails to confirm the end of the trip, the counting of DAS will run without the fisherman being able to stop it. An alternate to confirmation must be provided.

Response: Confirmation will be automatic through the call-in system or FAX. Neither system will require the vessel operator or owner to be limited to NMFS work hours. The systems have been designed to handle multiple calls and will have sufficient backup such that any inconvenience will be minimized.

Observer Requirements

Comment 48: One association commented that, in § 651.31(c), the requirements applying to an owner or operator regarding at-sea observer coverage represents an unlawful taking, unless compensated.

Response: See response to Comment 24.

Comment 49: One association expressed concern about the cost to the vessel of the observer requirements under § 651.31, citing the expense of liability insurance.

Response: As has been done for the past several years, NMFS will continue to place voluntary sea samplers on board vessels. Whether it is a voluntary sea sampler or a mandatory observer, NMFS will be responsible for the salary, but the vessel will be responsible for adequate accommodations and food. NMFS is not required to provide insurance to the vessel owner regarding liability to the observer. If such insurance is desired by the vessel owner, it will be the owner's responsibility to provide such insurance coverage for the time the observer is on the vessel.

Comment 50: One association commented that the allowance for an observer to inspect and copy communication logs may be an invasion of privacy or an unauthorized disclosure of proprietary information. The requirement to inspect and copy should be restricted to information pertaining to catch and related data.

Response: The final rule requires that only information relating to the catch and related data be provided to the observer.

Sink Gillnet Requirements

Comment 51: One association stated that the amendment does not provide consistent, targeted controls to reduce incidental harbor porpoise mortality and recommended that time and area closures be implemented.

Response: In anticipation of the harbor porpoise framework measure being approved, the Council has been evaluating the feasibility of time/area closures. The measure and implementing rule requiring all gillnets to be out of the water, is intended to serve as the default harbor porpoise mitigation of take measure until such time as another is implemented. It was designed to meet harbor porpoise protection objectives over 5 years. Under the framework measure, the Council will be able to recommend time/area closures for implementation once they are determined to be appropriate.

Comment 52: The Marine Mammal Commission commented that the monthly period of time when sink gillnets are required to be removed from the water should be 16 days per month in year 1, rather than 4 days per month. The 16 days per month should be put into effect pending an assessment of its effect on reducing the incidental take level and/or development of alternative management measures.

Response: Once a fishery management plan or amendment has been formally submitted by a Council, NMFS has authority to approve or disapprove provisions, but has little authority to modify a provision. To disapprove this measure would have eliminated all protection for harbor porpoise and groundfish afforded by this measure, at least in the short term. Indeed, the Biological Opinion prepared for the amendment recommends an accelerated schedule, by initially going to the year 2 schedule of 8 days a month in the first year. As stated previously, the Council's evaluation of time/area closures is being conducted with the goal of implementing such a measure under the framework as soon as possible. If the Council recommends such a measure and it is approved for implementation, the necessary protection may be provided.

Comment 53: The Marine Mammal Commission commented that the proposed critical habitat areas for right whales (Cape Cod Bay and Great South Channel) should be adopted as closed areas, instead of the area designated as Closed Area I.

Response: Much of the proposed critical habitat is already included in Closed Area I and the closure occurs at a time when right whales are present in the area. The Biological Opinion prepared for this amendment determined that Cape Cod Bay and the Great South Channel will not be adversely affected by the Amendment 5 measures. If the proposed critical habitat for right whales becomes final, it may be appropriate at that time to consider such a change under the framework provisions, in subpart C. The exception to this would be Cape Cod Bay, which is under the Commonwealth of Massachusetts' jurisdiction.

Comment 54: The Marine Mammal Commission recommended that the exemption for gillnets from the effort control measures be disapproved.

Response: The Council intends for the exemption to be in place only until such time as it can determine the impact of the harbor porpoise take reduction measures on fishing mortality. Rather than try to reconcile the two measures, the Council chose to concentrate its efforts on reduction of harbor porpoise mortality. It is likely that these measures will reduce fishing mortality. Reducing the time when gillnets are allowed in the water also reduces the time to catch groundfish and take harbor porpoise incidentally. A reduction in time will reduce fishing effort.

Framework Specifications

Comment 55: One individual stated that the framework measures are illegal in that they override and assume the functions of NMFS. The framework measures will not provide the quick reaction needed to conserve small fish.

Response: The framework measures are consistent with the Magnuson Act and other applicable law; NMFS authority is not diminished by this measure or the Council. Measures proposed by the Council must be analyzed and are subject to public comment. Once the Council recommends measures, NMFS will make a determination on the appropriateness of the measures with regard to the Magnuson Act and other applicable law.

The framework measure is not specifically designed to preserve concentrations of small fish. Other permanent measures, such as the increase in minimum mesh size, the Stellwagen Bank and Jeffreys Ledge juvenile protection areas, Nantucket Lightship Closed Area and the Flexible Area Action System are designed to provide protection to juvenile fish. If other areas are determined to need protection or the timing of protection needs to be changed, the framework measure can be used to accomplish this.

Comment 56: One association expressed concern that the amendment's measures may be insufficient to end overfishing and rebuild depleted fish stocks. The commenter expressed hope that the framework measure of subpart C would be followed and that it would allow for sufficient adjustments, if necessary.

Response: NMFS is concerned about the continued decline of the stocks and

that it may be necessary to take further action through the framework measure. NMFS, in approving the amendment, has sent the Council a letter describing this concern and stating NMFS' expectation that the framework provisions will be used to meet the goals and objectives of the Amendment.

Other Comments

Comment 57: One individual raised several questions about the process by which the proposed rule was promulgated, with regard to the submitted amendment and the role of the Council and NMFS.

Response: The Magnuson Act, section 302(h), specifies the functions of Regional Fishery Management Councils. One of these functions is to prepare and submit to the Secretary fishery management plans and amendments for those fisheries that require conservation and management within its geographical area of authority. Under section 303(c), the Magnuson Act specifies that "proposed regulations which the Council deems necessary and appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305." The Secretary is then responsible for making any changes necessary for implementation and publishing the proposed regulations. Thus, the Council is responsible for proposing those measures necessary for the conservation and management of the resource. If what a Council proposes is consistent with the Magnuson Act and other applicable law, the Secretary is responsible for the approval and implementation of the proposed measures.

Comment 58: One individual disputed the statement in the Supplementary Information section of the preamble of the proposed rule, that "the FMP has been in effect since 1986, and has been amended four times * * *" The commenter was not aware of any evidence that the FMP had been approved or accepted by the Secretary prior to final rulemaking.

Response: On August 20, 1986, an interim rule (51 FR 29642) was issued, which indicated that the Secretary had partially disapproved the FMP and that the remaining approved measures were implemented for a period ending on September 30, 1987. On September 17, 1987, a final rule (52 FR 35093) was published that implemented Amendment 1, which responded to the deficiencies of the FMP. The approval of Amendment 1 was not conditional and its measures along with the approved FMP measures remained in effect until amended by Amendment 2 (54 FR 4798, January 31, 1989), Amendment 3 (54 FR 52803, December 22, 1989), Amendment 4 (56 FR 24724, May 31, 1991) and now, Amendment 5.

With regard to Amendment 5, the Council, with assistance from NMFS, U.S. Coast Guard, state fishery agencies, academia, and the Mid-Atlantic Fishery Management Council, prepared the amendment and other supporting documents. NMFS prepared the proposed rule, which was reviewed by the Council for consistency with the amendment.

Other comments were received related to approval of the amendment or other concerns, rather than on the proposed rule. These comments included: Comments on the adequacy of the analysis performed by the Council, recommendations for emergency action on haddock, additional measures for yellowtail flounder, recommendations on the proposed listing of harbor porpoise under the Endangered Species Act and action under Marine Mammal Protection Act, recommendations for increased observer coverage under the Marine Mammal Protection Act, reauthorization of the Magnuson Act, the relationship between the Magnuson Act and the Administrative Procedure Act. All comments received were considered in the decision to approve the amendment.

Changes From the Proposed Rule

In § 651.2, in the definition for a "combination vessel" the phrase "and the Atlantic Sea Scallop Fishery Management Plan" was removed to make it clear that qualification for scallop DAS is not required under this part.

In § 651.2, the definition for "DAS (Day(s)-at-sea)" was modified to clarify when a DAS occurs, and a definition for "out of the multispecies fishery or DAS program" was added to distinguish between when a vessel is subject to DAS and when it is not.

In § 651.2, the definition for "Dealer" was modified to include the phrase "issued a valid Federal vessel permit under this part" to clarify that dealers are required to have a permit if they purchase from vessels issued a Federal multispecies permit.

In § 651.2, the phrase "declared out of the multispecies fishery" was replaced with the phrase "out of the multispecies fishery or DAS program" to reflect more accurately the requirements of § 651.22.

In § 651.2, the definition for "scallop dredge vessel" was made consistent with the regulatory requirements by adding a phrase to clarify that a scallop dredge vessel must have been issued or applied for a limited access scallop permit.

In § 651.4, a phrase was added to the introductory text to explain the changes made to the applicability date of this requirement.

In § 651.4, the narrative within the introductory text was modified by adding the word "valid" before the types of permits listed, to provide further clarification.

In §§ 651.4, 651.5 and 651.6, several editorial changes were made to provide consistency between the administrative requirements contained in these sections and similar sections contained in 50 CFR part 650.

In § 651.4(a)(1)(i)(B), the phrase "on or prior to" was replaced with "as of" to reflect the language in Amendment 5 and to clarify the requirement.

In § 651.4, paragraph (a)(1)(i)(B) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4, paragraph (a)(3) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4(a)(4)(ii), the sentence "For undocumented vessels, net tonnage does not apply" was added to clarify further the requirements for replacement vessels.

In § 651.4(f)(2)(iii), the references to 1994 and 1995 were removed to clarify that this election must be on the permit application in all years.

Section 651.4(f)(2)(v) was rewritten to clarify options for movement between the non-DAS program permit categories.

Section 651.5(a) was modified so that a vessel operator need only carry the operator permit while on board the vessel rather than in possession at all times.

Section 651.5(c) was modified to add the sentence "Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading." This sentence was included under § 651.5(n) in the proposed rule and is repeated in this section in the final rule to increase awareness of this provision.

Section 651.9(b)(10) was modified to clarify what act was actually prohibited.

In § 651.9(c), the phrase "while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species" was added to clarify this requirement.

Section 651.9(e)(2)(ii) was divided into paragraphs (e)(2)(ii) and (e)(2)(iii) to clarify the prohibitions.

In § 651.20, paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) have been corrected to cross reference § 651.20 (e) and (f), instead of § 651.20 (f) and (g).

In § 651.20, paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), (f)(4), the phrase "the possession limit of regulated species specified under § 651.27(a)" is replaced with "500 lbs (226.8 kg) of regulated species." This is because § 651.27(a) is not implemented until May 1, 1994, and the bycatch requirement for the small mesh fisheries must be implemented on March 1, 1994.

In § 651.22, paragraph (b)(3)(iv), the requirement under § 651.22(c)(1)(i)(E) was added for consistency between an identical requirement between the Fleet DAS and Individual DAS programs.

Section 651.22(d)(1)(i)(C) was revised to clarify what is required to verify the length of a vessel.

Section 651.22(d)(1)(ii) was modified with the addition of the phrase "excepts gillnets and gear not intended to fish for multispecies finfish such as lobster", to provide consistency with the Council's intent for this requirement.

Section 651.22(d)(2) was replaced with paragraphs (2)(i) through (iii) to clarify that sink gillnet vessels greater than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program when using sink gillnet gear exclusively, unless further effort reduction measures are implemented; that when these vessels use other gear and intend to fish for, possess or land, or do possess or land more than 500 lbs. (226.9 kg) of regulated species, they shall be subject to the DAS effort reduction program; and that sink gillnet vessels less than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program unless further effort reduction measures are implemented. These changes clarify what sink gillnet vessels are subject to with regard to the effort reduction program and under which circumstances sink gillnet vessels are exempted from its requirements.

In § 651.22, paragraph (d)(2)(ii), a sentence was added to clarify the requirements for vessel fishing in both the sink gillnet fishery and a DAS program.

Section 651.22,(d)(3) was modified by adding the phrase "except for combination vessels" to clarify that combination vessels are not subject to this requirement.

In § 651.27, paragraph (a)(1), the phrase "vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear" was added to further clarify when vessels using this type of gear are subject to the possession limit.

In § 651.28, paragraph (a)(1), the heading and all subsequent references have been revised from "certification" to "approval" to better define the process by which will NMFS select VTS vendors.

In § 651.28(a)(4), the phrase "not participating in the multispecies fishery" was replaced by "declared out of the multispecies finfish fishery" to provide consistency with other sections of the regulations.

Section 651.28(c)(3) has been revised to read, "If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip" in order to clarify when a sink gillnet vessel owner is required to provide notice.

In § 651.29, the information requirements under paragraphs (c)(1) and (c)(2) were modified such that the caller's telephone number is required, instead of the caller's address, in order to facilitate administration of this requirement.

In § 651.31(c)(5), the phrase "the vessel's log, communications logs," was deleted because it was determined to be inappropriate..

In § 651.32(a)(1)(i), the phrase "Vessel owners using sink gillnet gear must remove all of their sink gillnet gear" was added to clarify that vessel owners must remove only their own sink gillnet gear.

In § 651.32(a)(2), the phrase "upon issuance of the permit" was deleted to allow the Regional Director more flexibility in form and timing of notification.

In § 651.32, paragraph (c) was corrected to be paragraph (b).

In §§ 651.4 introductory text, 651.4(a), 651.4(b), 651.4(c), 651.9(e)(2) introductory text, 651.22(a), 651.22(b)(1)(i), 651.22(c)(1), 651.22(d)(1)(i), 651.22(e), 651.29(a)(1), 651.29(b), introductory text, and 651.33 introductory text, wording was added to implement these requirements on May 1, 1994, and to clarify that vessels may fish using a valid 1993 multispecies vessel permit until that time.

In §§ 651.5(a), 651.9(a) introductory text, 651.9(e)(1)(i), 651.9(e)(6), 651.9(e)(8), 651.9(e)(9), 651.20 introductory text, 651.20(a)(2), 651.20(a)(3)(ii), and 651.20(c)(4), revisions were made to clarify that all permit holders under this part are subject to these requirements.

Classification

The Council prepared an FSEIS for Amendment 5, which was filed by the Environmental Protection Agency with the Office of the Federal Register. The Assistant Administrator for Fisheries, NOAA, (AA) determined, upon review of the FSEIS and public comments that the preferred alternative of the Amendment is environmentally preferable to the status quo. The FSEIS demonstrates that the preferred alternative contains management measures to eliminate the overfished condition of stocks of groundfish, especially haddock, cod, and yellowtail flounder; provides economic and social benefits to the fishery in the long term; and should provide better balance in the ecosystem in terms of the groundfish resources.

NMFS notified the Small Business Administration during the proposed rule stage that this action may have significant effects on a substantial number of small entities based upon an IRFA prepared by the Council. The IRFA now constitutes an FRFA based on public comments. The FRFA determines that most active vessels that participate in the fishery are considered small entities according to the criteria established by the Small Business Administration. Amendment 5 excludes the smaller vessels (i.e., boats 45 ft (13.7 m) and smaller in length) from effort reduction measures. The regulations would probably not have a significant impact on these vessels, which constitute about 64 percent of the qualified vessels and which landed approximately 15 percent of the groundfish in 1991. However, the proposed reduction in effort may have considerable impacts on those vessels that are still considered small entities which are longer than 45 ft (13.7 m). These small entities constitute 36 percent of the qualified vessels, and landed approximately 85 percent of the groundfish in 1991, and are expected to incur significant short-term losses in revenue that will be offset by long-term gains and greater stability in the fishery.

The rule contains eight new collection-of-information requirements and revises seven existing requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the Office of Management and Budget (OMB). Nevertheless, public comments are invited on the burden-hour estimates for the collection-of-information requirements listed below.

The new reporting requirements are:

1. Dealer permits, (§ 651.6—OMB Approval #0648–0202) (5 minutes/response);

2. Operator permits, (§ 651.5—OMB Approval #0648–0202) (1 hour/response);

3. Notice requirements for observer deployment, (§ 651.31—OMB Approval #0648–0202) (2 minutes/response);

4. Proof of installation of vessel tracking system, (§ 651.4(f)(vi)—OMB Approval #0648–0202) (2 minutes/response);

5. Automated vessel tracking system, (§ 651.29(a)—OMB Approval #0648–0202) (0 minutes/response);

6. Vessel call-in or electronic card reporting requirement, (§ 651.29(b)—OMB Approval #0648–0202) (2 minutes/response);

7. Notice of entry/exit of Closed Area II due to hazardous weather, (§ 651.21(b)(iii)(D)—OMB Approval #0648–0202) (2 minutes/response);

8. Vessel logbooks, (§ 651.7(b)—OMB Approval #0648–0212) (5 minutes/response).

Revisions to the existing requirements are:

1. Three new vessel permit categories (limited access, hook-gear-only permits, possession-limit-only permits) (§ 651.4(a), (b), and (c)—OMB Approval #0648–0202) (no increase in burden above that currently associated with vessel permits);

2. Limited access permit denial appeals, (§ 651.4(a)(8)—OMB Approval #0648–0202) (0.5 hours/response);

3. Limited access permits, days at sea appeals (§ 651.22(a)(6)—OMB Approval #0648–0202) (2 hours/response);

4. The Cultivator Shoals Exemption Program (§ 651.20(a)(4)(i)—OMB Approval #0648–0202) (2 minutes/response);

5. The Midwater Trawl Exemption Program (§ 651.20(e)—OMB Approval #0648–0202) (2 minutes/response);

6. Dealer purchase reports (§ 651.7(a)—OMB Approval #0648–0229) (2 minutes/response);

7. Annual processed products reports (§ 651.7(a)(2)—OMB Approval #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections-of-information, including suggestions for reducing the burdens, to Richard Roe, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

The AA has determined that there is good cause to waive the 30-day delay in effective date normally required by section 553(d) of the Administrative Procedure Act because many of the provisions of this rule must be effective by March 1, 1994 to begin eliminating the overfished condition of some groundfish stocks. Some provisions of the rule do not become applicable by their own terms until dates after March 1, 1994, such as permit requirements described in § 651.4, and requirements for vessels having limited access permits which will be fishing in the individual DAS program and combination vessels to use a VTS as described in § 651.29. A letter sent by the Regional Director to all permit holders advises that the call-in notification procedure described in § 651.29 shall apply to all vessels holding limited access permits until a VTS system is operational, sometime after 6 months after March 1, at which time vessels fishing under the individual DAS program and combination vessel.

List of Subjects in 50 CFR Part 651

Fisheries, Reporting and recordkeeping requirements.

Dated: February 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is revised; with § 651.9(a)(11) and (12), § 651.9(e)(33) and (34), and § 651.27(b) expiring at 2400 hours, April 2, 1994; to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

651.1 Purpose and scope.
651.2 Definitions.
651.3 Relation to other laws.
651.4 Vessel permits.
651.5 Operator permits.
651.6 Dealer permits.
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Subpart B—Management Measures

651.20 Regulated mesh areas and restrictions on gear and methods of fishing.
651.21 Closed areas.
651.22 Effort-control program for limited access vessels.
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651.27 Possession limits.
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651.30 Transfer-at-sea.
651.31 At-sea observer coverage.
651.32 Sink gillnet requirements to reduce harbor porpoise takes.
651.33 Hook-gear-only vessel requirements.

Subpart C—Framework Adjustments to Management Measures

651.40 Framework specifications.
Figure 1 to Part 651—Regulated mesh areas.
Figure 2 to Part 651—Nordmore grate.
Figure 3 to Part 651—Closed areas.

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Bottom-tending gillnet or sink gillnet means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Butterfish means *Peprilus triacanthus.*

Chair means the Chair of the Multispecies (Groundfish) Oversight Committee of the Council.

Charter and party boats means vessels carrying recreational fishing persons or parties for a per capita fee or for a charter fee.

Codend means the terminal section of a trawl net in which captured fish may accumulate.

COLREGS Demarcation Lines means the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of DAS under the FMP and has applied for or been issued a Federal limited access scallop permit.

Committee means the Multispecies (Groundfish) Oversight Committee of the Council.

Council means the New England Fishery Management Council.

DAS (Day(s)-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port for purposes of multispecies finfish fishing in which the vessel intends to possess or possesses more than the possession limit of regulated multispecies.

Dealer means any person who receives multispecies finfish for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

Dredge or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

Fishery Management Plan (FMP) means the Fishery Management Plan for Northeast Multispecies Fishery, as amended.

Gillnet means fishing gear comprised of a net hung from a float-line, with a lead-line on the bottom, such that it is designed to be or is configured vertically in the water column to entangle passing fish.

Gross registered tonnage means the gross tonnage specified on the U.S. Coast Guard documentation.

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the Council to review, analyze, and propose harbor porpoise take mitigation alternatives.

Herring means Atlantic herring, *Clupea harengus harengus*, or blueback herring, *Alosa aestivalis*.

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Mackerel means Atlantic mackerel, *Scomber scombrus*.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Midwater trawl gear means trawl gear that is designed to fish for, capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Multispecies finfish or finfish means the following finfish:

Gadus morhua—Atlantic cod.
Glyptocephalus cynoglossus—witch flounder.
Hippoglossoides platessoides—American plaice.
Limanda ferruginea—yellowtail flounder.
Macrozoarces americanus—ocean pout.
Melanogrammus aeglefinus—haddock.
Merluccius bilinearis—silver hake.
Pollachius virens—pollock.
Pseudopleuronectes americanus—winter flounder.
Scophthalmus aquosus—windowpane flounder.
Sebastes marinus—redfish.
Urophycis chuss—red hake.
Urophycis tenuis—white hake.

NEFSC means the Northeast Fisheries Science Center of NMFS, NOAA.

Northern shrimp means *Pandalus borealis*.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master, captain, or other individual on board a fishing vessel and in charge of that vessel's operations.

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port for purposes of fishing in which the vessel possesses no more than the possession limit of regulated species.

Pair trawl or pair trawling means to tow a single net between two vessels for the purpose of, or that is capable of, catching multispecies finfish.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Recreational fishing means fishing that is not intended to, nor does it result, in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Regulated species means the subset of multispecies finfish that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 hours local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for multispecies finfish.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use dredge gear, and that has been issued or has applied for a Federal limited access scallop permit.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard box means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cu. ft or 83.57 cm^3).

Standard tote means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic cm^3).

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

Trip is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction or reconstruction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 651.28(a) and approved by NMFS for use by multispecies finfish vessels as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the tracked position as required by this part.

Whiting means *Merluccius bilinearis*.

§ 651.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), through (e) of this section.

(b) Additional regulations governing domestic fishing for squid, mackerel, and butterfish, which are affected by this part, are found at 50 CFR part 655.

(c) Additional regulations governing domestic fishing for summer flounder, which are affected by this part, are found at 50 CFR part 625.

(d) Additional regulations governing domestic fishing for Atlantic sea scallops, which are affected by this part, are found at 50 CFR part 650.

(e) Nothing in these regulations supersedes more restrictive state management measures for multispecies finfish.

§ 651.4 Vessel permits.

Beginning on May 1, 1994, any vessel of the United States that fishes for, possesses, or lands multispecies finfish, except vessels that fish for multispecies finfish exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board an authorizing letter issued under paragraph (a)(8)(v) of this section, a valid limited access multispecies permit, a valid hook-gear-only permit, or a valid possession-limit-only permit issued under this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(a) *Limited access multispecies permits.* Beginning on May 1, 1994, any vessel of the United States that possesses or lands more than the possession limit of regulated species specified under § 651.27(a), except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in paragraph (b) of this section, vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal limited access multispecies permit, or an authorizing letter issued under paragraph (a)(8)(v) of this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application. To qualify for a limited access multispecies permit, a vessel must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access multispecies permit for 1994, a vessel must meet one of the following criteria:

(A) The vessel had been issued a Federal multispecies permit as of February 21, 1991, or renewed a Federal multispecies permit in 1991 that was issued before February 21, 1991, and the vessel landed multispecies finfish on at least one trip completed between January 1, 1990, and February 21, 1991, inclusive; or

(B) The vessel was under written agreement for construction or re-rigging, or was under written contract for purchase as of February 21, 1991, and the vessel was issued a Federal multispecies permit and landed multispecies fihfish on at least one trip between February 21, 1991, and February 21, 1992; or

(C) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (a)(1)(i) (A) or (B) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) A limited access multispecies permit for 1994 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access multispecies permit after 1994, a vessel must have been issued a limited access multispecies permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access multispecies permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access multispecies permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access multispecies permit, as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access multispecies permit; except that the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit. For purposes of paragraph (a)(2), a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 gross registered tons. For undocumented vessels, net tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access

multispecies permit, or to apply for or renew a limited access multispecies permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's permit application for a 1994 limited access multispecies permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's application for a 1994 limited access multispecies permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access multispecies permit if they meet the requirements contained in paragraphs (d) through (h) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access multispecies permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access multispecies permit by meeting the requirements described under paragraphs (e) and (f) of this section and by submitting the information described in paragraphs (a)(1) through (5) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(8) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access multispecies permit will be issued to the vessel.

(7) *Consolidation restriction.* Limited access multispecies permits and DAS allocations may not be combined or consolidated.

(8) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant denied a limited access multispecies permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) *Status of vessels pending appeal of a limited access multispecies permit denial.* A vessel for which an application has been completed and an appeal has been initiated may fish under the Fleet DAS program if it has appealed the denial, the appeal is pending, and the vessel has on board a letter from the Regional Director, authorizing the vessel to fish under the Fleet DAS. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(9) *Adjustments to limited access multispecies permits.* In 1996 and thereafter, the Council may adjust the criteria for issuance of a limited access multispecies permit. In making the adjustment, the Council shall take into consideration the fishing mortality goals and the objectives of the FMP. Any such adjustment may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(b) *Hook-gear-only permit.* Beginning on May 1, 1994, any vessel of the United States that does not have on board a valid limited access multispecies permit or a possession-limit-only permit, except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, may possess and land multispecies finfish if it never sets, per day, or possesses, more than 4,500 rigged hooks as specified in § 651.33, and has on board a valid hook-gear-only permit. A hook-gear-only permit may be issued to a vessel regardless of whether it qualifies for a limited access multispecies permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(c) *Possession-limit-only permit.* Any vessel of the United States that does not have on board a valid limited access multispecies permit or hook-gear-only permit, and that possesses or lands no more than the possession limit of multispecies finfish specified under § 651.27(a), except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, must have aboard a valid possession-limit-only permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(d) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are

subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access multispecies permits under this section will not be accepted after December 31, 1994. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for either a limited access multispecies, hook-gear-only, or possession-limit-only permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than a 25-percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access multispecies permit must also contain the following information:

(i) The engine horsepower of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1994, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1-year of the date of when the contract for the replacement engine was signed.

(ii) The length, gross tonnage, and net tonnage of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year of the date of when the contract for the upgrade was signed.

(iii) If the vessel owner is applying to fish under the individual DAS program specified in this section, the application must include such election.

(iv) In 1995, if the vessel owner is applying to fish under a different DAS program than was assigned for 1994, the application must include such election and the vessel must fish only in that category for the entire year.

(v) For 1996 and thereafter, a vessel, when fishing under the DAS program, may fish only under the DAS program assigned to it in 1995, or if not assigned in 1995, the DAS program assigned to it on its initial permit to fish under the DAS program. However, any vessel may elect for any year to fish under a hook-gear-only permit if it meets the requirements specified in paragraph (b) of this section.

(vi) Beginning on September 1, 1994, if the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

(g) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (h) of this section.

(h) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (a)(9) of this section, the Regional Director shall issue a Federal multispecies vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 651.7; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (a)(1)(iii) and (p) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(1) and (2) of this section; or

(iv) The applicant applying for a permit for a combination vessel, electing to participate in the Individual DAS program, or electing to use a VTS, has failed to meet all of the VTS requirements as described in § 651.28; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(i) *Expiration.* Federal fishing permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it

otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(m) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

(r) *Abandonment or voluntary relinquishment of limited access multispecies permits.* If a vessel's limited access multispecies permit is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access multispecies permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(s) *Restriction on the issuance of limited access multispecies permits to vessels qualifying for other Federal limited access permits.* A limited access multispecies permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

§ 651.5 Operator permits.

(a) *General.* Any operator of a vessel holding a valid Federal multispecies permit under this part, or any operator of a vessel fishing for multispecies finfish in the EEZ or in possession of multispecies finfish in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 651.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* Federal operator permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 651.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 651.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Federal dealer permits must be renewed annually, and unless renewed, will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 651.7 Recordkeeping and reporting.

(a) *Dealers.*—(1) *Weekly report.* Dealers must send by mail, to the Regional Director, or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon request by an authorized officer or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make permanently available for inspection, copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and, if mailed, postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners.*—(1) *Fishing log reports.* The owner of any vessel issued a Federal multispecies permit under § 651.4 must maintain, on board the

vessel, and submit an accurate daily fishing log for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, using the VTS, or through other media. The following information and any other information required by the Regional Director must be provided: Vessel name, U.S. Coast Guard documentation number (or state registration number if undocumented), and permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow-time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip, all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 651.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25 ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S.C.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel holding a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(3) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Sell, transfer, or attempt to sell or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal Dealer's Permit issued under § 651.6.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer multispecies finfish or fish from one vessel to another vessel or other floating conveyance.

(8) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(9) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(10) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 651.31.

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock, as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(13) Fish with, set, haul back, possess on board a vessel, or fail to remove from all waters, a sink gillnet during the times specified in § 651.32(b).

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 651.4(a) or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land more than 500 lbs. (226.8 kg) of regulated species per trip after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(2) If required to have a VTS unit as specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 651.29(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(a)(5)(i).

(5) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(a)(5)(ii).

(6) Fail to comply with any requirement regarding the DAS notification as specified in § 651.29.

(7) If not fishing under the VTS system, fail to have on board the vessel

a card issued by the Regional Director, as specified in § 651.29(b).

(8) Fail to notify that a vessel is participating in the DAS program as specified in § 651.29(b).

(9) Fail to comply with the other methods of notification requirements, including a call-in system as specified in § 651.29(c), if required by the Regional Director.

(10) Fail to provide notification of the beginning or ending of a DAS before leaving port or before returning to port, as required under § 651.29 (b) or (c).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a hook-gear-only permit under § 651.4(b) to fish with, set, or haul back more than 4,500 rigged hooks per day, or to possess on board a vessel more than 4,500 rigged hooks while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs. (226.8 kg) of, or fishing for regulated species.

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), and the operator on board such vessel has been issued an operator's permit under § 651.5 and has a valid permit on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Possess or land regulated species in excess of 500 lbs (226.8 kg) per trip on or after May 1, 1994, as specified in § 651.27 unless:

(i) The multispecies finfish were harvested by a vessel that has been issued a limited access permit under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a)(8)(v); or

(ii) The regulated species were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(4) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(5) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director.

(6) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any multispecies finfish from a trip unless the vessel is holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), or the multispecies finfish were harvested by a vessel without a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters.

(7) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(8) Purchase, possess, or receive for commercial purposes multispecies finfish caught by a vessel other than one holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or holding a Federal multispecies permit under this part without having been issued and possessing a valid operator's permit issued under § 651.5.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(11) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(12) Make any false statement in connection with an application under §§ 651.4 or 651.5 or on any report required to be submitted or maintained under § 651.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(14) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3) or (a)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) Fish with or possess within the area described in § 651.20(b)(1) nets of mesh smaller than the minimum size specified in § 651.20(b)(2), unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess within the areas described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Enter the area described in § 651.21(a) on a fishing vessel during a

period in which the area is closed, except as specified in that section.

(19) Fish with, set, haul back, have on board a fishing vessel, or fail to remove sink gillnet gear in or from the area specified in § 651.21(a) during the time period specified in § 651.21(a)(1).

(20) Enter the area described in § 651.21(b) on a fishing vessel during the time period specified in § 651.21(b)(3), except as specified by § 651.21(b)(4).

(21) Fish in the area described in § 651.21(c), if the area has been closed as provided for in § 651.21(c), except as provided by § 651.21(c)(5).

(22) Fail to comply with the gear-marking requirements of § 651.25.

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes as specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(24) Interfere with, obstruct, delay, or prevent by any means lawful investigation or search relating to the enforcement this part.

(25) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(26) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(27) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3)(ii).

(29) Fail to comply with the requirements as specified in § 651.20(a)(5).

(30) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size by area fished specified in § 651.20, or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20 (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(31) Fish with, set, haul back, possess on board a vessel, or fail to remove from the EEZ, a sink gillnet during the times specified in § 651.32(b).

(32) Violate any provision specified under § 651.29.

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(35) To purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species from a vessel issued a federal multispecies permit in excess of the possession limit applicable to a vessel as specified in § 651.27.

(f) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 651.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 651.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing multispecies finfish in or from the EEZ and all vessels holding a Federal multispecies permit under this part must comply with the following restrictions on minimum mesh size, gear, and methods of fishing, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) regulated mesh area.* (1) *Area definition.* The Gulf of Maine/Georges Bank regulated mesh area is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	Latitude	Longitude
G1	(1)	(1)
G2	43°58′ N.	67°22′ W.
G3	42°53.1′ N.	67°44.4′ W.
G4	42°31′ N.	67°28.1′ W.
G5	41°18.6′ N.	66°24.8′ W.

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary [southward along the irregular U.S.-Canada maritime boundary].

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude	Approximate Loran C bearings
G6	40°55.5′ N.	66°38′ W.	5930–Y–30750 and 9960–Y–43500
G7	40°45.5′ N.	68°00′ W.	9960–Y–43500 and 68°00 W.
G8	40°37′ N.	68°00′ W.	9960–Y–43450 and 68°00 W.
G9	40°30.5′ N.	69°00′ W.	
G10	40°50′ N.	69°00′ W.	
G11	40°50′ N.	70°00′ W.	
G12		70°00′ W.[1]	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a)(3) through (5), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the

entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m) 3 (9 sq. ft (0.81 m^2)), or to vessels not holding a Federal multispecies permit under this part and that are fishing exclusively in state waters.

(3) *Small-mesh exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the GOM/GB small mesh exemption area, if the vessel complies with the requirements specified in paragraphs (a)(3)(i) and (ii) of this section, if applicable. The GOM/GB small mesh exemption area is defined as the area between the territorial sea and the straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GOM/GB SMALL-MESH EXEMPTION AREA

Point	Latitude	Longitude
SM1 ...	41°35′ N.	70°00′ W.
SM2 ...	41°35′ N.	69°40′ W.
SM3 ...	42°49.5′ N.	69°40′ W.
SM4 ...	43°12′ N.	69°00′ W.
SM5 ...	43°41′ N.	68°00′ W.
G2	43°58′ N.	67°22′ W.; (the U.S.-Canada maritime Boundary).

GOM/GB SMALL-MESH EXEMPTION AREA—Continued

Point	Latitude	Longitude
G1	(1)	(1)

1 Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Possession limit exemption.* A vessel may not possess on board or land per trip more than 500 lbs. (226.8 kg) of regulated species.

(ii) *Northern shrimp exemption.* A vessel holding a Federal multispecies permit under this part that is fishing for, harvesting, possessing, or landing northern shrimp, and a vessel fishing for, harvesting, or possessing northern shrimp in the EEZ, must have a properly configured and installed finfish excluder device in any net used to fish for or harvest northern shrimp, during the northern shrimp season as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 2 to part 651) for an example of a properly configured and installed finfish excluder device):

(A) A finfish excluder device is a rigid or semi-rigid grate consisting of parallel bars of not more than 1 inch (2.54 cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(4) *Cultivator Shoal whiting (silver hake) fishery exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Cultivator Shoal whiting fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal whiting fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 1 to part 651):

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
C1	42°10′ N.	68°10′ W.	13132	43970
C2	41°25′ N.	68°45′ W.	13527	43767
C3	41°05′ N.	68°20′ W.	13495	43627
C4	41°55′ N.	67°40′ W.	13074	43861
C1	42°10′ N.	68°10′ W.	13132	43970

(i) *Requirements.* Vessels fishing in this fishery must have on board an authorizing letter issued by the Regional Director. Vessel owners are subject to the following conditions:

(A) A bycatch limit (as defined in § 651.2) not to exceed 500 lbs (226.8 kg) of regulated species;

(B) A minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net;

(C) A season of June 15 through October 31, unless otherwise specified by publication of a notification in the **Federal Register**.

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The Council shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make the appropriate recommendations to the Regional Director following the procedures specified in subpart C of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* During the period March 1 through July 31 of each year, the minimum mesh size for nets in the following area shall be 6 inches (15.24 cm) in all sink gillnets and 6 inches (15.24 cm) square mesh in the last 140 bars of the codend and extension piece of all mobile net gear.

(i) The Stellwagen Bank/Jeffreys Ledge juvenile protection area is defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295
SB2	42°28.8′ N.	70°39.0′ W.	13861	44295
SB3	42°18.6′ N.	70°22.5′ W.	13810	44209
SB4	42°05.5′ N.	70°23.3′ W.	13880	44135
SB5	42°11.0′ N.	70°04.0′ W.	13737	44135
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445
JL2	43°09.5′ N.	70°08.0′ W.	13437	44445
JL3	42°57.0′ N.	70°08.0′ W.	13512	44384
JL4	42°52.0′ N.	70°21.0′ W.	13631	44384
JL5	42°41.5′ N.	70°32.5′ W.	13752	44352
JL6	42°34.0′ N.	70°26.2′ W.	13752	44300
JL7	42°55.2′ N.	70°00.0′ W.	13474	44362
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed subject to the requirements of paragraph (a)(3)(ii) of this section, except that no bycatch of regulated species is allowed on board vessels participating in the northern shrimp fishery in the area and during the time period specified in paragraph (a)(5) of this section.

(b) *Nantucket Lightship regulated mesh area.*—(1) *Area definition.* The Nantucket Lightship regulated mesh area is that area bounded by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

NANTUCKET LIGHTSHIP REGULATED MESH AREA

Point	Latitude	Longitude
NL1	40°50′ N.	69°40′ W.
NL2	40°18.7′ N.	69°40′ W.
NL3	40°22.7′ N.	69°00′ W.
G10	40°50′ N.	69°00′ W.
NL1	40°50′ N.	69°40′ W.

(2) *Mesh-size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 sq. ft (0.81 m²)).

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 square feet (0.81 m²)).

(c) *Southern New England regulated mesh area*—(1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 Part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6′ N.	66°24.8′ W.
G6	40°55.5′ N.	66°38′ W.
G7	40°45.5′ N.	68°00′ W.
G8	40°37′ N.	68°00′ W.
G9	40°30.5′ N.	69°00′ W.
NL3	40°22.7′ N.	69°00′ W.
NL2	40°18.7′ N.	69°40′ W.
NL1	40°50′ N.	69°40′ W.
G11	40°50′ N.	70°00′ W.
G12		70°00′ W.[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by a line running from the shoreline along 72°30′ W. longitude to the outer boundary of the EEZ.

(2) *Mesh size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess or land per trip more than 500 pounds (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(4) *Net stowage requirements.* Except as provided in paragraphs (c)(3)(i) and (d)(3)(i) of this section, a vessel holding a valid Federal multispecies permit under this part and fishing in the Southern New England or Mid-Atlantic regulated mesh areas may not have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (c)(2) and (d)(2) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved;

(B) The towing wires, including the "leg" wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference; or

(ii) A net stowed and lashed down on deck, provided:

(A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net; or

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) The codend is removed from the net and stored below deck, or

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(d) *Mid-Atlantic regulated mesh area.*—(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the shoreline along 72°30′ west longitude to the intersection of the outer boundary of the EEZ (see Figure 1).

(2) *Mesh-size restrictions.* Except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at 50 CFR 625.24(a). This restriction does not apply to vessels that have not been issued a multispecies finfish permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(e) *Midwater trawl gear exception.* (1) For regulated mesh areas south of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squid may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is issued an authorizing letter by the Regional Director;

(iii) The authorizing letter is on board the vessel; and

(iv) The bycatch does not exceed 500 pounds (226.8 kg) of regulated species.

(2) For regulated mesh areas north of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirements of paragraphs (f)(1)(i) through (iv) of this section are met.

(f) *Purse seine gear exception.* Fishing for Atlantic herring or blueback herring, mackerel, and menhaden may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) The vessel deploying the purse seine gear is issued an authorizing letter by the Regional Director;

(3) The authorizing letter is on board the vessel; and

(4) The bycatch of regulated species does not exceed 500 lbs (226.8 kg) of regulated species.

(g) *Mesh measurements.* Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(h) *Restrictions on gear and methods of fishing.*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (h)(1), head ropes shall not be considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (h)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) No vessel may use a net capable of catching multispecies finfish in which the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for multispecies finfish while pair trawling, or possess or land multispecies finfish that have been harvested by means of pair trawling.

§ 651.21 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area known as Closed Area I, defined by paragraph (a)(2) of this section, during the months of February through May.

(i) The use of other gear types may be prohibited in Closed Area I if it is determined that spawning fish are located in the area.

(ii) A determination that spawning fish are present in the area will be based upon available information, such as sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources, research surveys, fishermen's reports, and any other source of information.

(iii) The determination will be made by the Regional Director, with concurrence from the Council, and implemented, following the procedures specified in subpart C of this part.

(2) Closed Area I is bounded by six straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
CI1	40°53′ N.	68°53′ W.
CI2	41°35′ N.	68°30′ W.
CI3	41°50′ N.	68°45′ W.
CI4	41°50′ N.	69°00′ W.
CI5	41°30′ N.	69°00′ W.
CI6	41°30′ N.	69°23′ W.; and
CI1	40°53′ N.	68°53′ W.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may fish or be in the area known as Closed Area II, as defined in paragraph (b)(2) of this section, during the time period specified in paragraph (b)(3) of this section, except as specified in paragraph (b)(4) of this section (see Figure 3 to Part 651).

(2) Closed Area II is bounded by four straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CII1	41°00′ N.	67°20′ W.
CII2	41°00′ N.	66°35.8′ W.
G5	41°18.6′ N.	66°24.8′ W. (the U.S.-Canada Maritime Boundary)
CII3	42°22′ N.	67°20′ W. (the U.S.-Canada Maritime Boundary); and
CII1	41°00′ N.	67°20′ W.

(3) *Duration.* (i) For 1994 and 1995, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of February through May.

(ii) For 1996 and after, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of January through June.

(4) *Exceptions.* Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters;

(ii) Fishing with or using dredges designed and used to take scallops; or

(iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area providing that:

(A) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(B) Such vessels do not fish in the area;

(C) Fishing gear is stowed in accordance with paragraph (c)(4) of this section; and

(D) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 kHz) of its intention of transitting the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(5) The Regional Director may open Closed Area II to fishing prior to the scheduled openings in paragraph (b)(3) of this section by notification in the **Federal Register**, if the Regional Director determines that concentrations of spawning fish are no longer in the area.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may fish in the area known as the Nantucket Lightship Closed Area, defined in paragraph (c)(2) of this section, during the time period specified in the notification provided under paragraph (c)(3) of this section, except as specified in paragraph (c)(5) of this section, if the Regional Director determines that the NEFSC spring standardized bottom trawl survey index of age-2 yellowtail flounder is 12.0 or higher, based upon the number of yellowtail flounder per standardized tow.

(2) The Nantucket Lightship Closed Area is bounded by four straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
G10	40°50′ N.	69°00′ W.
CN1	40°20′ N.	69°00′ W.
CN2	40°20′ N.	70°20′ W.
CN3	40°50′ N.	70°20′ W.; and
G10	40°50′ N.	69°00′ W.

(3) *Notification.* The Regional Director shall provide notification of the closure through publication in the **Federal Register**.

(4) *Duration.* The area shall remain closed until the end of June of the following year.

(5) *Exceptions.* The closure shall not apply to persons on board vessels or fishing vessels fishing with or using:

(i) Pot gear designed and used to take lobsters;

(ii) Dredge gear designed and used to take ocean quahogs or surf clams; or

(iii) Hook-and-line gear, except that possession of yellowtail flounder by persons or vessels fishing with hook-and-line gear within this area is prohibited.

§ 651.22 Effort-control program for limited access vessels.

(a) Beginning on May 1, 1994, the owner of a vessel issued a limited access permit under the criteria specified in § 651.4(a), unless exempted under § 651.22(d), shall be subject to either the Individual DAS program as specified in paragraph (b) of this section or the Fleet DAS program as specified in paragraph (c) of this section. All such vessels shall automatically be assigned to the Fleet DAS program unless the vessel owner elects to apply for the Individual DAS program and is issued a limited access permit under § 651.4(a), or the vessel has been determined to be a combination vessel and the vessel owner has elected to apply for a limited access permit under § 651.4(a). Limited access permits will indicate the program under which the vessel owner will fish.

(b) *Individual Days-at-Sea*—(1) *Eligibility.* (i) Beginning on May 1, 1994, any vessel that is greater than 45 ft (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for or renewal of a limited access permit. For 1996 and thereafter, the vessel must remain in the DAS program assigned to it in 1995.

(ii) The vessel owner of a vessel that has been determined to be a combination vessel and who has applied for a limited access permit under § 651.4(a) must fish under the Individual DAS program.

(2) *Criteria for determining a vessel's Individual DAS.* The initial DAS assigned to a vessel for purposes of determining that vessel's annual allocation as specified in paragraph (b)(3) of this section shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990 based on data, information, or other credible evidence available to the Regional Director at the time of election to participate under the Individual DAS program. Multispecies DAS are deemed to be the total number of days the vessel was absent for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(3) *DAS allocations.* (i) Each vessel participating in the Individual DAS program shall be allocated, annually, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. A vessel that has declared

out of the multispecies finfish fishery pursuant to the provisions of § 651.29, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess or land more than the possession limit of regulated species specified under § 651.27(a) and complies with the other requirements of this part.

(ii) *Annual DAS allocations.* Vessels fishing under the Individual-DAS program will receive and be subject to annual allocations of DAS as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each year, including the first year, for the first 5 years of the effort reduction program.

INDIVIDUAL-DAS ALLOCATION=X DAYS

Year	Annual allocation
1994	x – 10% days.
1995	x – 20% days.
1996	x – 30% days.
1997	x – 40% days.
1998	x – 50% days.

(iii) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between March 1 and May 31 of each year, using the notification requirements specified under § 651.29(a). If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(4) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(5) *Notice of initial DAS allocation.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access permit pursuant to § 651.4(a)(6) based on data, information, and other evidence available to the Regional Director.

(6) *Appeal of DAS allocation*—(i) *Appeal criteria.* Initial allocations of Individual DAS to a vessel may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's allocation. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in 1995.

(8) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(i) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(ii) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(c) *Fleet Days-at-Sea program.* (1) Beginning on May 1, 1994, all vessels issued a limited access permit that are longer than 45 ft (13.7 m) in length that have not elected to fish under the Individual DAS program as specified in paragraph (a) of this section shall be subject to the following effort-control requirements:

(i) *Days in which vessel may not possess more than 500 lbs (226.8 kg) of regulated species.* (A) During each year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared between March 1 and May 31 of each year:

Year	Days out of multispecies fishing
1994	80
1995	80
1996	128
1997	165
1998	200
1999	233

(B) During each period of time declared, the applicable vessel may not possess more than 500 lbs (226.8 kg) of multispecies.

(C) Adjustments to the schedule of days out of the multispecies fishery, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(D) *Procedure for declaring days.* Fleet DAS participants shall declare their periods of required time under paragraph (c)(1)(i) of this section, following the notification procedures specified in § 651.29(b).

(E) If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the year.

(ii) *Layover day requirement.* (A) Fleet DAS participants engaged in a fishing trip that is not during the period of time declared pursuant to paragraph (c)(1)(i) of this section and that is longer than 24 hours must tie-up at the dock at the end of such trip for a period equal to half the time of the DAS accrued on the trip,

based on hourly increments, as recorded through the notification procedures specified in § 651.29(b).

(B) *Accrual of DAS.* DAS under the card or call-in notification systems, described in § 651.29(b) and (d), respectively, shall accrue in hourly increments with all partial hours counted as full hours. A DAS, under either the card or call-in notification system, begins once the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director. A DAS ends under either the card or phone notification system, when after returning to port, the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director.

(C) Tie-up time begins to accrue when the Regional Director is notified through the monitoring system that the trip is ended.

(D) A vessel that remains tied to the dock beyond the time required will not be credited with the additional time.

(E) A vessel required to be tied-up at the dock under this part may not fish or leave the dock under any capacity during the tie-up period unless authorized by the Regional Director.

(2) [Reserved]

(d) *Exemptions from effort reduction program* —(1) *Small boat.*

(i) Beginning on May 1, 1994, vessels issued a limited access permit under § 651.4(a) that are 45 ft (13.7 m) or less in length overall, except vessels using sink gillnet gear, will be exempt from the effort reduction program if the vessel and vessel owner comply with the following:

(A) Determination of the length will be through the measurement along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern;

(B) To be eligible for the small-boat exemption, vessels for which construction is begun after May 1, 1994, must be 45 feet (13.7 m) or less in length and must be constructed such that the product of the overall length divided by the beam will not be less than 2.5; and

(C) The measurement of length overall may be verified using U.S. Coast Guard documentation if it is dated after 1984. Otherwise, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by state registration papers if such documentation accurately states the vessel's length overall as required. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(ii) Vessels fishing under the small boat exemption must bring all gear back to port at the conclusion of a fishing trip, except gillnets and gear not intended to fish for multispecies finfish, such as lobster.

(iii) Adjustments to the small-boat exemption, including changes to the length requirement, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(2) *Sink gillnet vessels.* (i) A sink gillnet vessel greater than 45 ft (13.7 m) in length is exempt from the DAS effort reduction program of this part on all fishing trips during which the vessel fishes for multispecies exclusively with sink gillnet gear, and does not have other gear available for immediate use as described in § 651.20(c)(4), if the vessel owner or owner's authorized representative complies with monitoring requirements set forth in § 651.28(c), unless effort reduction measures are implemented pursuant to subpart C of this part.

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land or does possess or land more than 500 lbs (226.8 kg) of regulated multispecies with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section; provided, however, that the owner of such vessel must request to fish under the Individual DAS program or the Fleet DAS program, as applicable, at the time such vessel applies for and is issued a Limited Access permit, and that the vessel complies with the requirement to take periods of time out of the multispecies fishery as required under § 651.22.

(iii) A sink gillnet vessel 45 ft (13.7 m) or less in length is exempt from the DAS effort reduction program of this part unless effort reduction measures are implemented pursuant to subpart C of this part.

(3) *Hook-gear-only vessels.* Vessels issued a limited access permit under § 651.4(a) and fishing with per trip, or possessing on board the vessel, no more than 4,500 rigged hooks are exempt from the effort reduction program of this part, subject to the requirements specified in § 651.33.

(e) *Scallop dredge vessels.* Beginning on May 1, 1994, scallop dredge vessels issued a limited access permit under § 650.4(a), except for combination vessels, may not participate in and are not subject to the DAS program and may not possess regulated species in excess of the possession limit specified under § 651.27(a).

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for the following species are as follows:

Species	Inches
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (27.9 cm)
Redfish	9 (22.9 cm)

(b) The minimum lengths specified by paragraph (a) of this section shall be measured on a straight line from the tip of the snout to the end of the tail.

(c) The minimum size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in this paragraph (c), and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(d) *Exception.* (1) Each person on board a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lbs (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(e) *Adjustments of minimum size.* (1) In 1994, or at anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) The minimum fish size for yellowtail flounder, witch flounder, and

American plaice will be determined from the best available mesh selectivity studies applicable to 5½-inch (13.97-cm) diamond mesh.

(3) The minimum fish size for cod, haddock, pollock, and redfish will be determined from the best available mesh selectivity studies applicable to 6-inch (15.24-cm) diamond mesh.

(4) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented in 1995, or at anytime thereafter, following the procedures specified in subpart C of this part.

(5) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C of this part.

§ 651.24 Experimental fishing.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the multispecies finfish resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the multispecies finfish resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity shall be subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

§ 651.25 Gear-marking requirements.

(a) Bottom-tending fixed gear, including but not limited to gillnets and longlines, designed for, capable of, or fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear need display only the standard 12-inch (30.5 cm) tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gillnets must not exceed 6,600 feet (2,011.7 m) between the end buoys.

(d) In the Gulf of Maine/Georges Bank regulated mesh area specified in § 651.20(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30 degrees from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 651.26 Flexible Area Action System.

(a) The Chair of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chair will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Chair will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chair will request the Regional Director to publish a notification in the **Federal Register**. The request must include a complete draft of the notification. The Secretary must file the notification at the Office of the Federal Register within 1 business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notification will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chair's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates, and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action that may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts;

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14, the following activities will take place:

(1) The Regional Director will prepare a fact-finding report that will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

(2) After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he/she will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS' capabilities for administering, monitoring, and enforcing any of the proposed options.

(3) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is 6 days after release of the fact-finding

report required by paragraphs (c)(1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact-finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh-size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure, but already contained within and implemented by the FMP;

(2) Between 3 weeks and 6 months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities. If the Committee recommends that action is not warranted, and the Regional Director concurs, notification will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23, the Regional Director will either accept or reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notification in the **Federal Register**, to be filed with the Office of the Federal Register by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal multispecies permits. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report, and the public comments, are no longer in existence, he will terminate the action by notification in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day that is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c)(1) and (d) of this section have been made available for public review.

§ 651.27 Possession limits.

(a) *Multispecies possession limit.* (1) Beginning on May 1, 1994, vessels subject to effort control programs specified in § 651.22 and persons issued a limited access permit under § 651.4(a), that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on a vessel, or landing per trip, more than 500 lbs (226.8 kg) of regulated species.

(2) Vessels subject to the multispecies possession limit shall have on board the vessel at least one standard box or one standard tote.

(3) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.

(4) The possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

(b) *Haddock possession limits.*—(1) Scallop dredge vessels.

(i) No person owning or operating a scallop dredge vessel issued a permit under § 651.4 may land, or possess on board a vessel, haddock.

(ii) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ.

(2) *Other vessels.*—(i) No person owning or operating a vessel issued a permit under § 651.4 may land, or possess on a vessel, more than 500 lbs (226.8 kg) of haddock.

(ii) No person may possess on a vessel more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access vessels.* By May 1, 1994, unless otherwise authorized or required by the Regional Director under § 651.29(c), vessel owners electing to fish under the Individual DAS program specified in § 651.22(a), and combination vessels, must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. Such vessel owners must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. If a vessel has already been issued a limited access multispecies permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to install an operational VTS unit, provide documentation that the unit is operational, and provide such documentation to the Regional Director. This VTS unit must be part of an

approved VTS as specified in paragraph (a)(1) of this section.

(1) *Approval.* The Regional Director will annually approve VTSs that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person on board a fishing vessel or by the vessel owner;

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) VTS equipment shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 m (1,300 ft);

(iv) The VTS shall be capable of transmitting and storing information, including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS;

(viii) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas; and

(ix) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* If a vessel's VTS unit fails to transmit an hourly signal of the vessel's position, the vessel shall be presumed to be fishing under the DAS program for that day, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the multispecies finfish fishery, as specified in §§ 651.22 and 651.29, or was not at sea, will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is part of an operational approved system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a limited access permit, all vessel owners must allow NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS unit at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the system or unit's:

(i) Ability to operate properly;

(ii) Signal; or

(iii) Accuracy of computing the vessel's position fix.

(b) *Fleet DAS and other limited access vessels*—(1) *Requirements.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in § 651.29(c).

(2) *Card notification.* [Reserved.]

(c) *Sink gillnet DAS vessels.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) and who hold permits to participate in either the individual or fleet DAS program and the sink gillnet exemption program under § 651.22(d)(2) are subject to the following requirements:

(1) The vessel owner or owner's representative shall notify the Regional Director prior to leaving port at the beginning of each sink gillnet trip that it will be participating in the sink gillnet fishery by providing notification under § 651.29(b)(1).

(2) Upon returning to port, at the end of each sink gillnet trip, the vessel owner or authorized representative shall notify the Regional Director by providing notice as specified under § 651.29(b)(1).

(3) If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip, the owner or the owner's authorized representative shall provide notification of the change in fisheries following the procedures of § 651.29(b)(1). and shall comply with the effort reduction program set forth in § 651.22.

§ 651.29 DAS notification program.

(a) *VTS notification.* Beginning on May 1, 1994, unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of multispecies vessels with limited access permits that have elected to or are required to use a VTS system shall be subject to the following:

(1) Multispecies vessels at sea are presumed to be fishing under the DAS allocation program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, or declares it into the sink gillnet fishery as required in § 651.28(c), by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (c) of this section.

(3) Notification that the vessel is not under the DAS program must be

received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* (1) Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in paragraph (c) of this section.

(2) *Card notification.* [Reserved.]

(c) *Alternative call-in system of notification.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Vessel owners authorized or required by the Regional Director, or required by § 651.28(c), to provide notification by a call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program, or in the sink gillnet fishery as required under § 651.28(c), by calling 508–281–9335 or faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508–281–9335 or by faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands more than 500 lbs (226.8 kg) of regulated species shall be deemed in the DAS program for purposes of counting DAS, whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(6) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

§ 651.30 Transfer-at-sea.

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel, unless authorized in writing by the Regional Director.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

§ 651.31 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal multispecies permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate NMFS Regional or Northeast Fisheries Science Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any multispecies finfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel, upon request, for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel, upon request, to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, vessels using, or possessing on board the vessel, sink gillnet gear are subject to the following restrictions:

(1) *Gear removal.* (i) All vessels must remove all their sink gillnet gear from EEZ waters for the number of days per month specified in the schedule below. All vessels issued a Federal Multispecies Limited Access Permit must remove all of their sink gillnet gear from all waters for the number of days per month specified in the schedule below. The Regional Director, in consultation with the Council, will provide the specific dates per month during which all sink gillnets must be removed from the regulated mesh areas according to the schedule below. The days per month shall be consecutive days on the dates of the month specified by the Regional Director according to paragraph (a)(2) of this section.

Year	Days/ month	Total days/per year
1994	4	48
1995	8	96
1996	8	96
1997	12	144
1998	16	192

(2) Annual notification of the specific dates will be sent to all vessels issued a permit under § 651.4.

(3) During the time sink gillnet gear is removed from the water, the vessel may use other gear in accordance with the regulations of this part, provided that the vessel provides adequate notification as specified in § 651.28(c) and complies with the effort reduction program set forth in § 651.22.

(b) *Framework adjustment.* (1) By August 1 of each year, the Council's Harbor Porpoise Review Team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may make recommendations on other "reduction-of-take" measures.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or changes, if any, to the "reduction-of-take" measures should be implemented.

(3) The Council may request at any time that the HPRT review and make recommendations on any alternative "reduction-of-take" measures or develop additional "reduction-of-take" proposals.

(4) Upon receiving the recommendations of the HPRT, the Regional Director will publish notification in the **Federal Register** of any recommended changes or additions to the "reduction-of-take" measures and provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the

"reduction-of-take" measures at the second Council meeting following the meeting at which it received the HPRT's recommendations.

(6) If the Council decides to recommend changes or additions to the "reduction-of-take" measures, it shall make such a recommendation to the Regional Director, which must include supporting rationale, and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(d).

(7) The Regional Director may accept, reject, or, with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule. If the Regional Director does not approve the Council's specific recommendation, he/she must provide in writing to the Council the reasons for his/her action prior to the first Council meeting following publication of his/her decision.

§ 651.33 Hook-gear-only vessel requirements.

Beginning on May 1, 1994, vessels, and persons on such vessels, fishing under the hook-gear-only permit specified in § 651.4(b), whether or not the vessel has also been issued a limited access permit under § 651.4(a), are subject to the following requirements throughout the year for which the permit is issued:

(a) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel while the vessel and persons on the vessel are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species at any time during the year for which the hook-gear-only permit is issued.

(b) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks.

(1) A hook is considered to be rigged to be fished if the hook and gangion is secured to the ground line of the trawl, whether or not it is baited.

(2) An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is considered to be a replacement hook and is not counted toward the 4,500 hook limit.

(3) A "snap-on" hook is considered to be a replacement hook if it is not rigged or baited.

(c) Adjustments to the hook exemption, hook size and style, and restrictions on gear used, such as crucifiers, in the hook fishery may be implemented or considered by the Council under subpart C of this part.

Subpart C—Framework Adjustments to Management Measures

§ 651.40 Framework specifications.

(a) At least annually, the Regional Director will provide the Council with information on the status of the multispecies finfish resource and provide harvest targets for the upcoming year. The annual harvest targets shall be determined by the Stock Assessment Review Committee and shall be based on the projected fishing mortality rate reductions required under § 651.22 for the principal multispecies stocks (Gulf of Maine cod, Georges Bank cod, Georges Bank haddock, Georges Bank yellowtail flounder, and Southern New England yellowtail flounder).

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the multispecies finfish resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 651.22, to achieve the target fishing mortality rate and the annual harvest targets determined from that rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes;
(2) Effort monitoring;
(3) Data reporting;
(4) Possession limits;
(5) Gear restrictions;
(6) Closed areas;
(7) Permitting restrictions;
(8) Crew limits;
(9) Minimum fish sizes;
(10) Onboard observers;
(11) Minimum hook size and hook style;
(12) The use of crucifiers in the hook fishery;
(13) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final

rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

BILLING CODE 3510-22-P

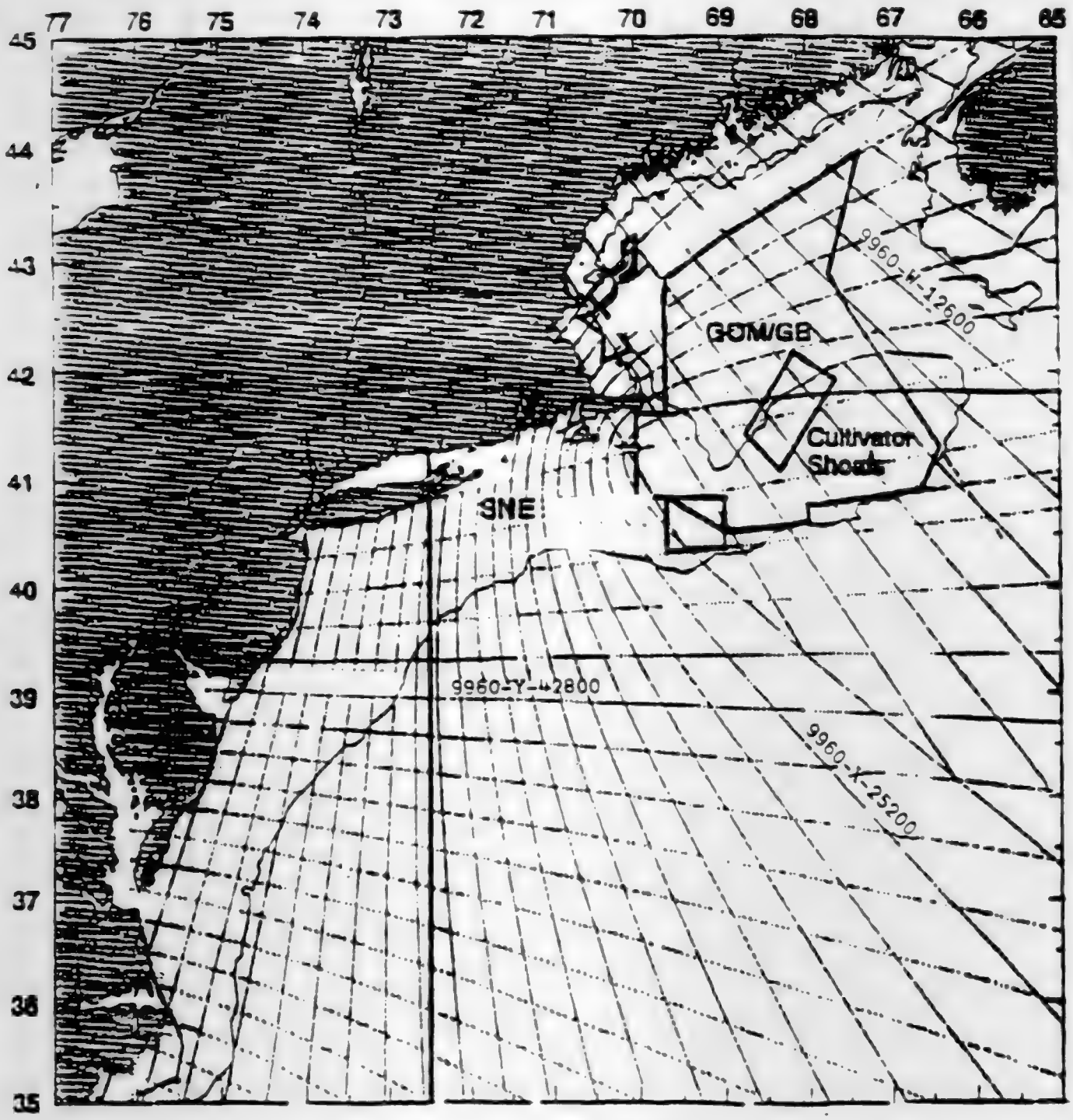

Figure 1 to part 651: Regulated Mesh Areas.

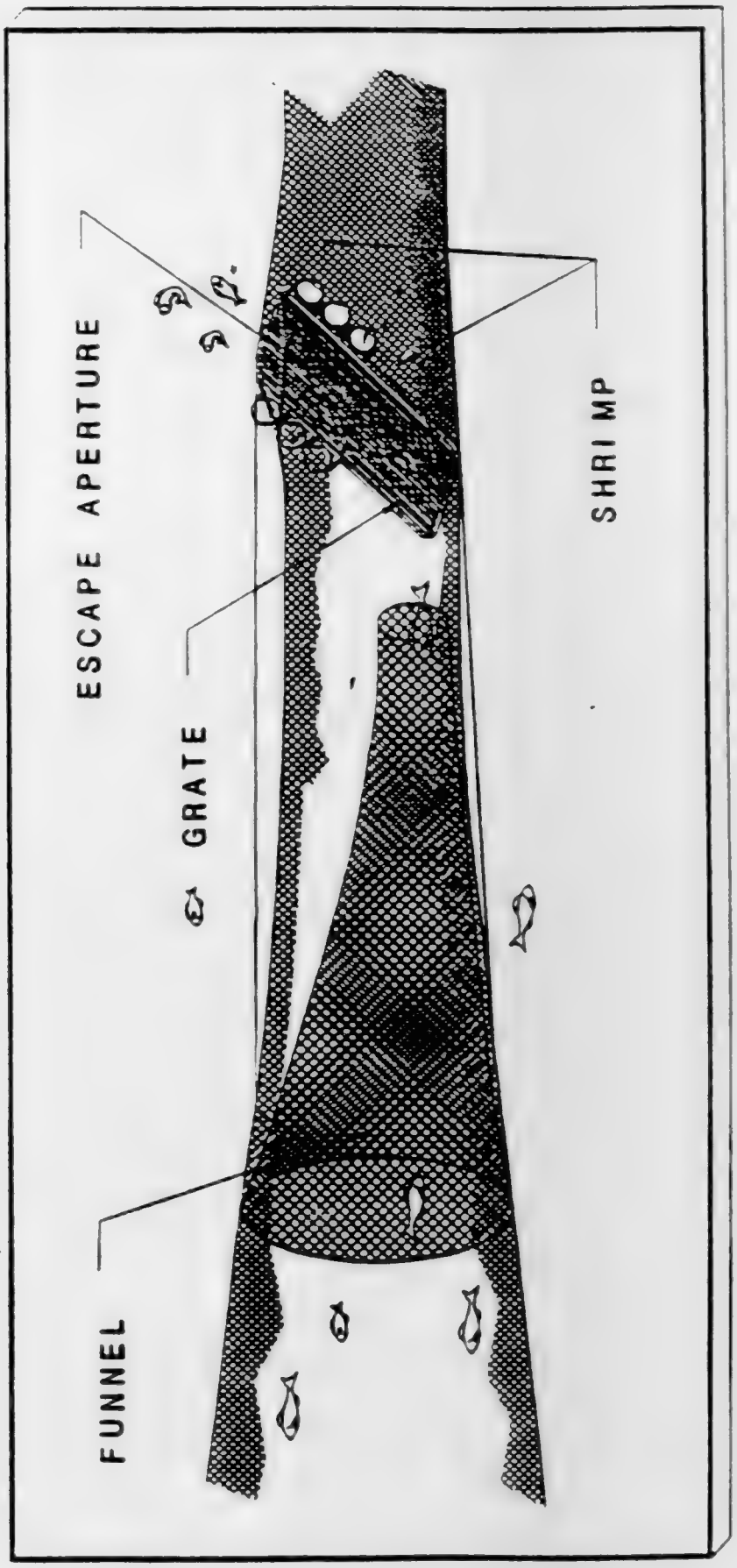

Figure 2 to part 651: Nordmore grate.

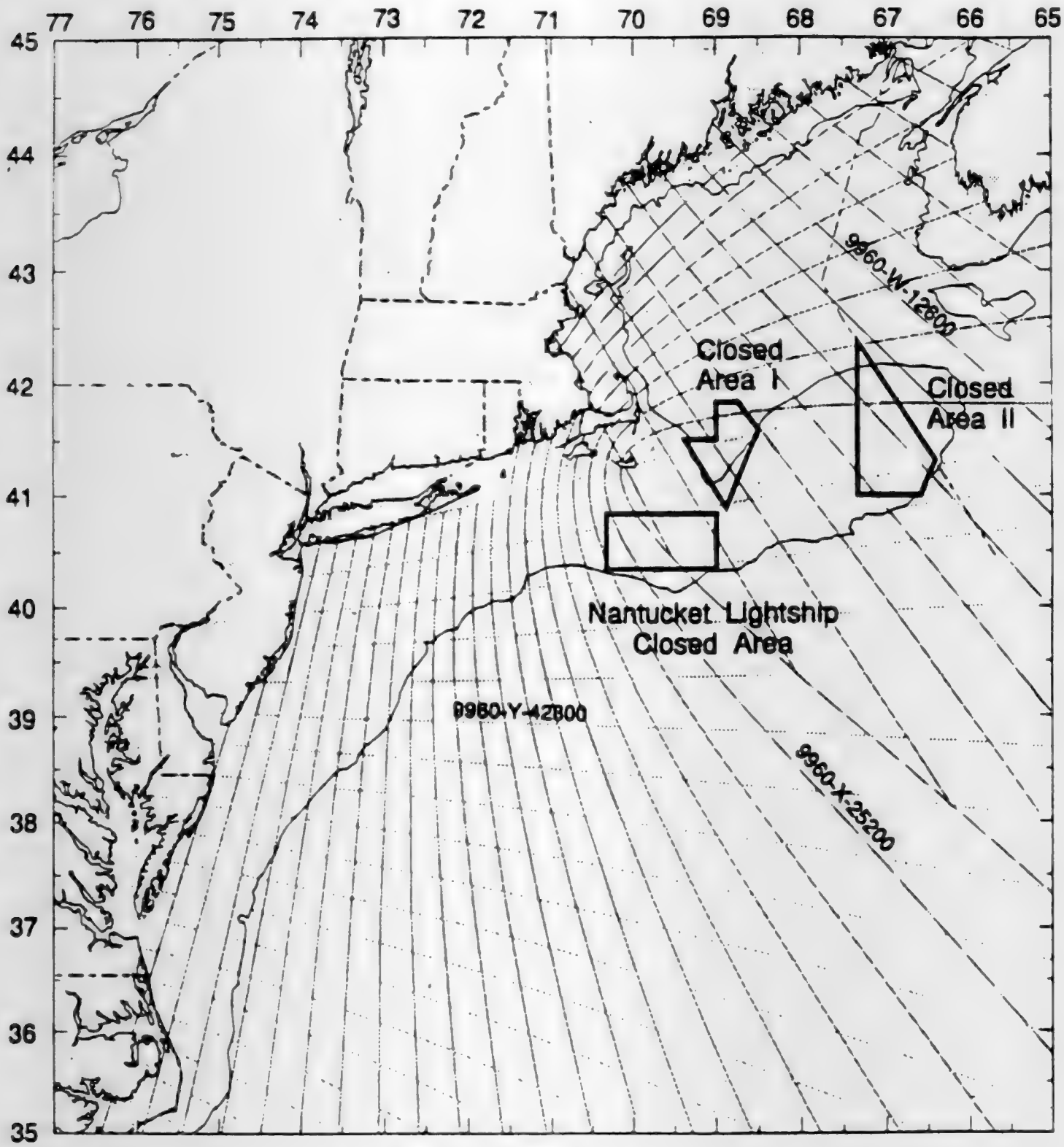

Figure 3 to part 651: Closed Areas.

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Federal Register

Tuesday
March 1, 1994

Part V

Department of Labor

Employment and Training Administration

Job Training Partnership Act; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Proposed Revisions to the Performance Management System, and Proposed Performance Standards for Program Years (PY's) 1994 and 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed revisions to the performance management system, and proposed revisions to the secretary's performance standards; request for comments.

SUMMARY: To comply with the statutory requirements in the Job Training Partnership Act, as amended in 1992, the Department of Labor is proposing changes to State incentive and sanction provisions for programs operated under Title II of the Job Training Partnership Act. Also being introduced are two new performance standards for job training programs serving older workers funded under Section 204.

DATES: These changes to the performance management system will be effective for programs in PY's 1994 and 1995 (July 1, 1994–June 30, 1996).

COMMENTS: Written comments are invited from the public. Comments must be submitted on or before March 31, 1994.

ADDRESSES: Written comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, room N5631, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Steven Aaronson, Chief, Adult and Youth Standards Unit.

PAPERWORK REDUCTION ACT: Information collection related to this regulation has been approved previously by the Office of Management and Budget, No. 1205–0321. No further information collections or other paperwork requirements of the public are needed.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Chief, Adult and Youth Standards Unit. Telephone: 202 219–5487, extension 107 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

The Job Training Reform Amendments of 1992 (Amendments) introduced significant changes in the way job training programs are designed and operated at the local levels. These statutory changes, combined with recent legislative and administrative initiatives to promote high-quality, results-driven, customer-oriented services throughout the Federal Government, are reshaping national and State policy and practices.

Under Section 106 of the amended Job Training Partnership Act (JTPA), the Secretary of Labor is required to set standards for programs serving: (1) Adults and youth under Title II–A and Title II–C; (2) dislocated workers under Title III; and (3) older workers under section 204(d). The Secretary may modify these performance standards no more than every two years, and such modifications cannot be retroactive.

National job training objectives have remained unchanged since 1990 and focus on enhancing the long-term employability and economic self-sufficiency of those most at risk of becoming or remaining unemployed. Current adult measures reflect this emphasis on employment retention and earnings; for youth, employment and skill enhancements are stressed. For this reason, the Secretary's performance measures will be retained for PY's 1994 and 1995.

Numerical levels for these core standards, however, have been updated to reflect the most recent JTPA program experience.

Programs serving older workers were not previously subject to performance standards. Under section 204(d) of JTPA, as recently amended, these programs are now subject to performance standards that are to be focused on increasing employment and earnings including hourly wages, similar to those programs serving other disadvantaged adults. In developing requirements for these performance standards, the special needs and circumstances of this population group were considered. Because field evidence suggests that older workers are much more likely to remain employed once they are placed in jobs, employment at program completion is a fundamental priority. The employment and wage measures together underscore the employment focus of the program, particularly in jobs that are higher paying.

To comply with the new legislative provisions, the Department considered adding specific outcome measures for hard-to-serve participants, and separate outcomes for in-school and out-of-school youth. However, in the interest of avoiding a proliferation of performance measures and limiting local flexibility in programming, additional measures for these three separate groups were not proposed.

States will need to consider, however, the quality of service to out-of-school youth and placements in jobs with employer-assisted benefits when judging service delivery area (SDA) performance and awarding incentive funds. The Department requests comments on whether these proposals adequately address statutory requirements for promoting service to the hard-to-serve population and improving service to out-of-school youth through its existing performance standards and revised incentive award criteria.

Since the Department is undertaking a comprehensive review of its Title III programs, changes in outcome measures will be deferred until this critical assessment is completed. Governors will continue to be required to set an entered employment rate standard for their Title III programs and encouraged to establish an average wage at placement goal. At the same time, the Department will be exploring ways to maximize post-program wages, to better measure skills acquisition and customer satisfaction, and to improve the quality of services provided to dislocated workers.

Financial information will continue to be collected for program management purposes; however, the policy of excluding cost measures from incentive awards will remain unchanged.

Statutory Basis of Performance Standards

Section 106 of JTPA directs the Secretary of Labor to establish performance standards for major job training programs funded under separate JTPA statutory provisions: Title II–A (adult programs), Title II–C (youth programs), and Title III (dislocated worker programs). Section 204(d)(6)(A) of JTPA, as recently amended, for the first time subjects older worker programs to performance standards. Performance standards serve the purpose of assuring Congress that the basic statutory objectives (increased earnings and employment, skills acquisition, and reduced welfare dependency) are being met (29 U.S.C. 1516). On the basis of the Secretary's performance standards, Governors must set performance standards for each of their SDA's and substate areas (SSA's).

The proposed issuance appended to this notice contains revised performance standards levels and implementation instructions to conform the Title II performance management system with the Job Training Reform Amendments of 1992.

Rationale for Retaining Adult Measures

Data on post-program employment and earnings provide the most direct measure of long-term employability. Currently, measures for programs serving adults and adult welfare

recipients capture a participant's employment status and earnings three months after program completion.

The Amendments, however, envision longer periods of employment retention—beyond six months—to measure a job training program's success in preparing its adult participants for long-term employment. Looking toward the feasibility of developing such measures, the Department has awarded grants to 16 States to compare alternative approaches, measures using Unemployment Insurance (UI) wage records versus follow-up survey data, as a basis for assessing and rewarding local program performance. Information on the operational problems of using alternative measures, such as timing for incentive awards and addressing uncovered or out-of-State employment, will be an important part of the pilot project report due in Fall 1994. The Department, in conjunction with State and local staff, will use the results of these State case studies and other information to introduce, where feasible, alternative post-program measures in FY 1995.

Rationale for Retaining Youth Measures

Youth measures have undergone the most refinements since JTPA's inception and now more fully reflect the dual goals of programs serving youth who are enrolled in school, as well as those who are out of school and seeking employment. Additionally, all the required program outcomes in the newly revised youth provisions at Section 106(b)(4), including employment, attainment of employment competencies, dropout prevention and recovery, secondary and post-secondary school completion, and enrollment in advanced training, are encompassed in the current two measures. To address a longstanding concern that employment may not be an appropriate outcome for all youth, the Department will continue its practice of excluding in-school youth—those enrolled in dropout prevention or dropout recovery programs—from the base used to compute the Youth Entered Employment Rate.

Although separate performance measures for in-school and out-of-school youth are not specifically called for in Section 106(b)(4)(B), the Department has carefully examined the implications of a dual performance management system for youth programs. Separate performance measures are not preferred for a number of reasons. One objection to separate performance measures is that they lead to a proliferation of measures, creating confusion at the local level among conflicting policy priorities. In addition, separate measures for in-school and out-of-school youth limit flexibility in program design by penalizing SDA's that do not choose to balance enrollments between in-school and out-of-school youth. In programs serving only small numbers of in-school youth, each terminee would represent a large percentage of in-school terminations. Individual outcomes would therefore have a relatively larger impact on overall performance.

Rationale for New Older Worker (Section 204(d)) Performance Measures

Section 204(d)(6)(A) of JTPA imposes performance standards on State programs serving older workers. Quality employment is a primary goal of these programs and the Department believes that, in the absence of postprogram data, measures surrounding job placements at termination are appropriate at this time. As postprogram information becomes available on the section 204(d) program, the Department will reconsider the possibility of follow-up employment and earnings measures. However, for PYs 1994 and 1995, the Department is proposing to assess programs operated under section 204(d) using an Entered Employment Rate and an Average Wage at Placement measure..

Note: Programs operated under section 204(d) are State programs, even though they may be operated by various local entities. Therefore, the two performance measures will be applied to all older worker programs statewide.

Rationale for Not Establishing Separate Hard-to-Serve Performance Measures

Section 106(b)(7) of JTPA states that Governors shall award incentive grants to SDA's that, in addition to meeting other criteria, "exceed the performance standards established by the Secretary * * * with respect to services to populations of hard-to-serve individuals * * *". This provision could be interpreted as requiring the addition of separate hard-to-serve performance measures to the current JTPA performance standards system.

However, additional performance measures for the hard-to-serve population, *per se*, do not appear to be the best approach for implementing this requirement. The four current adult measures provide critical evaluative data which would preclude their exclusion from the performance standards system. Therefore, additional hard-to-serve performance measures merely would add to the complexity of the system and lead to an unwanted proliferation of measures. In fact, past experience with 12 performance measures provided solid evidence of the pitfalls of introducing such complexity.

Moreover, with the addition of hard-to-serve measures, the core set of performance standards is redundant and, thus, not a useful management tool. It is estimated that over 60 percent of adults and youth currently served in JTPA qualify for one or more hard-to-serve categories. Therefore, it can be argued that the current measures adequately reflect the program goals of increased employment and self-sufficiency among those most in need of JTPA's services, because these individuals constitute a majority of the program's participants. In fact, welfare recipients are already double counted in the current measures; adding outcomes for hard-to-serve groups will result in welfare recipients being counted three times (as adults, as welfare adults, and as hard-to-serve adults).

The Department considered several strategies for avoiding the proliferation of measures while, at the same time, maintaining Congressional intent. The most expedient way to approach the statutory requirement was from a State incentive policy perspective. Therefore, in order for an SDA to be considered eligible to receive any incentive award, the Department is proposing that 65 percent of their terminees (*i.e., both* 65 percent of Title II–A terminees and 65 percent of Title II–C terminees) receiving services beyond objective assessment (*i.e.*, training and/or job search assistance) must be from the legislatively defined hard-to-serve categories.

This requirement serves as a "gate" in determining an SDA's eligibility for incentive awards, thus ensuring the Congressional objective that program be rewarded on the basis of both high levels of service to the hard-to-serve and good performance. In the absence of such a gate, both State and local administrators expressed concerns that local programs could exceed their performance standards and thus be rewarded, even if service levels to the hard-to-serve fall below the legislatively required floor of 65 percent.

Excluding individuals participating in the program, but receiving only objective assessment, from the determination of eligibility for incentive awards is consistent with existing Department policy of excluding such individuals from the performance standards universe.

Rationale for Including Improved Service to Out-of-School Youth and Employer-Assisted Benefits Incentive Award Criteria

Section 106(b)(7) of JTPA includes, among other required criteria for awarding incentive grants to SDA's, improved service to out-of-school youth and job placements that provide employer-assisted benefits. Governors will be required to reward model out-of-school youth programs either identified by the Department of Labor or recognized by the State or SDA as having a demonstrated record of success. Considerable flexibility will be given to Governors in establishing a method for doing so.

The Act is not at all directive with regard to rewarding employment in jobs offering fringe benefits. In the absence of *any* data on what constitutes a reasonable national estimate of job placements with employer-assisted benefits in JTPA, the Department has given States considerable flexibility in establishing incentive policies that promote such placements. Once relevant data become available from JTPA's management information system, the Department will be able to offer more guidance to States.

Because numerous types of employer-assisted benefits are available which are more or less typically provided, the Department needs to ensure some degree of uniformity. It is proposed that the States use a standardized definition. The definition used in JTPA's newly instituted Standardized Program Information Report (SPIR) provides this comparability. This definition requires that the job offer employer-assisted health benefits; but the individual does not have to actually receive such benefits. Again, in the absence of firm data with which to establish a credible benchmark, the Department is offering States maximum flexibility in measuring the provision of employer-assisted benefits and determining an appropriate incentive policy emphasis.

Rationale for New Numerical Levels

The Secretary's national numerical standards for PY's 1994–1995 are set on the basis of the most recent JTPA performance data available (PY 1992). The numerical values of the standards are generally set so that if SDA's/SSA's continue to perform in the same manner as they did in the most recent program year, 75 percent of the system should exceed their standards. This means that the proposed numerical standards for five of the six core measures and the Title III Entered Employment Rate measure are set at the 25th percentile of PY 1992 performance. Revising the numerical standard for the youth entered employment rate (YEER) in the same way would lead to reduced standards for SDAs. However, 30 month results from the recent National JTPA Study suggest that outcomes experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent. The Secretary's standards for the new older worker measures are derived from a combination of data obtained from Job Training Quarterly Survey data and the JTPA Annual Status Report.

Rationale for New Sanction Policy Provisions

The amended JTPA states in Section 106(j)(1) that the Department is to establish uniform criteria for determining whether an SDA fails to meet performance standards and the circumstances under which remedial action shall be taken. This provision shifts responsibility for defining "failure" to meet standards from the States to the Department.

In determining the new sanction policy provisions, the Department sought uniformity and, thus, comparability across the JTPA system. This is clearly in line with Congressional intent. Furthermore, the Department believes that, to minimize confusion, the meaning of "failure" in one year should be consistent with the meaning of "failure" for a second year, since failure for two consecutive years triggers reorganization. States and local areas should clearly understand the meaning of failure, and it should be consistent from one program year to the next. Use of the Secretary's standards for the purpose of imposing sanctions on SDA's is consistent with past practices.

Another issue related to imposing sanctions on SDA's concerns the definition of "failure", specifically, defining an appropriate "level of failure". Consistent with the intent of the amended legislation, the Department has specified the number of "standards not met" as constituting failure. It was noted that the lack of specificity in the past led to confusion and inconsistency across the JTPA system. In addition, to make the definition more explicit and to properly consider the goals of the youth program, the Department added a stipulation that an SDA which does not meet at least one of the two youth standards will be considered as failing.

"Meeting Performance Standards" is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, "Failure" is defined as: Failing to meet three (3) or more of the core standards or failing to meet both youth standards. For the first year, failure will require a State to provide technical assistance to an SDA and will preclude that SDA from receiving any incentive award. (This is explicitly stated, since an SDA which passes through the eligibility gate could conceivably qualify for an incentive award based on meeting other criteria.) For the second year, failure will trigger the reorganization of the SDA and preclude receipt of any incentives in that year.

Public Comment and Participation

The Department is committed to a participatory process in the development of performance standards through periodic meetings with State, SDA, and Private Industry Council (PIC) representatives to address performance standards issues. Such a meeting was held in July 1993 to provide the Department with field input critical to the development of these standards. This request for comment, which incorporates that input, is another important part of the participatory process.

The Secretary especially requests comments on the following issues:

General

Does the system proposed in this notice adequately deal with legislated requirements for promoting service to the hard-to-serve through performance standards and related incentive award criteria?

Retaining Current Adult and Youth Measures as the Secretary's Core Measures

Given currently available data, do the six adult and youth measures proposed as the Secretary's core measures adequately and appropriately reflect the program's overall goals of increased employment and earnings, reduced welfare dependency, long-term economic self-sufficiency, and increased educational attainment and occupational skills?

Hard-to-Serve "Gate" for Incentive Award Eligibility

The Department proproses to require for eligibility to receive incentive awards that SDA's ensure that 65 percent of their terminees receiving training or other services beyond objective assessment represent one of the statutorily defined hard-to-serve categories. Does establishing this requirement fully address the need to

emphasize this population in the performance standards system? Would additional outcome measures for hard-to-serve create confusion or undue complexity at the local level? In assessing compliance with the eligibility gate for incentive awards, should the 65 percent targeting provision be applied to those enrolled in JTPA or those completing the program? Also, should the eligibility gate be comprised of total individuals served (*i.e.*, adults and youth combined), or should appropriate separate adult and youth gates be identified?

Failure To Meet Performance Standards

Is the definition of failure to meet standards reasonable, fair, and consistent with the intent of the amended JTPA?

Older Worker (Sec. 204(d)) Performance Measures

Is it appropriate to limit performance assessment to outcomes at termination, or does the reintroduction of termination-based measures create a perverse effect? Once postprogram data on 204(d) programs become available from the SPIR beginning in PY 1994, should any postprogram measures be considered? Do the standards adequately address the needs of individuals who participate in older worker programs?

Signed at Washington, DC, this 18th day of February 1994.

Doug Ross,

Assistant Secretary of Labor.

Appendix—Revisions to the Performance Management System, and Performance Standards for Program Years (PY's) 1994 and 1995

Training and Employment Guidance Letter

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Training and Employment Guidance Letter No. _____

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Job Training Partnership Act (JTPA) Title II and Title III Performance Standards for PY's 1994–1995

1. *Purpose.* To transmit guidance on the Secretary's required performance measures and the Secretary's implementing instructions for performance standards provisions for Program Years (PY's) 1994 and 1995 (July 1, 1994–June 30, 1995; July 1, 1995–June 30, 1996).

2. *Background.* Sec. 106 of JTPA, as amended, directs the Secretary to establish performance standards for adult, youth, and dislocated worker programs. These standards are updated every two years based on the most JTPA program experience and on program emphases and goals established by the Department of Labor. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for service delivery areas (SDA's) and substate areas (SSA's).

The Job Training Reform Amendments (JTRA) of 1992 mandated significant changes in the design and operation of local job training programs, as well as the criteria used to assess their performance. The revised Section 106 requires that performance standards reflect job placements that are a minimum of 20 hours per week, and that programs be rewarded based not only on high performance, but also on increased service to the "hard-to-serve," and on quality job placements that are both high paying and offer employer-assisted benefits. Incentive and sanction policies are to be structured around more explicit criteria and guidelines, and criteria for failure to achieve program objectives are to be clarified and made more uniform. Section 204(d) mandates performance measures for the older worker program.

To assist the Department in responding to the substantive changes required in the Section 106 amendments, a Technical Workgroup was convened in Washington, DC, in mid-July, 1993. The workgroup had representatives from State and local JTPA programs; public interest groups including the Partnership for Training and Employment Careers, the U.S. Conference of Mayors, the National Association of Counties, the National Governors' Association, and the National Council on the Aging; and staff from the Department of Labor (DOL) Office of the Inspector General. This Guidance Letter incorporates, to a large extent, the workgroup's findings.

3. *Performance Management Goals for PY's 1994–1995.* PY 1994 will begin the sixth two-year cycle of the performance management system under JTPA. Departmental goals, initially established for PY 1990 in anticipation of the amendments, remain unchanged:

- Targeting services to a more at-risk population;
- Improving the quality and intensity of services that lead to skills acquisition, long-term employability and increased earnings;
- Placing greater emphasis on basic skills acquisition to qualify for employment or advanced education or training; and
- Promoting comprehensive, coordinated human resource programs to address the multiple needs of at-risk populations.

In addition, with the passage of the Amendments in 1992, the performance management system has been tasked, through performance incentive award policies, to improve service to out-of-school youth and also foster employment in better quality jobs which offer high wages and employer-assisted benefits

These goals are reflected in the Secretary's six Title II–A and Title II–C (core) measures, national numerical standards for these measures, new incentive award criteria, and associated reporting requirements. Governors still retain authority to establish additional standards which reflect State policy and to develop the specific approach to determining incentive awards.

This issuance specifies the national standards for PY's 1994–1995 and introduces the new criteria which must be a part of State incentive grant policies. Data to support additional non-cost measures will continue to be reported and Governors may use those in incentive policies. Cost data are to be used for purposes of program oversight and fiscal management only. Numerical levels for the core standards are identified in Section 7 of this Guidance Letter.

Note: The Department has identified two additional goals for which Title II measures/standards have not yet been established:

- Establishing a strong customer focus and orientation and improving the responsiveness of services to the individual needs of participants; and
- Improving access to labor market information and obtaining feedback from customers and employers on the quality of program services.

Various options for collecting and analyzing customer feedback will be explored. In the meantime, States and SDA's are encouraged to begin on their own to focus on improving the quality of program services and using customer feedback as a management tool.

4. *Title II–A and Title II–C Core Performance Measures.* Four performance measures will be used for Title II–A for PY's 1994 and 1995. These are:

—the Adult Follow-Up Employment Rate;
—Adult Weekly Earnings at Follow-Up;
—the Welfare Follow-Up Employment Rate; and
—Welfare Weekly Earnings at Follow-Up.

Two performance measures will be used for Title II–C for PY's 1994 and 1995. These are:

—the Youth Entered Employment Rate; and
—the Youth Employability Enhancement Rate.

The adult and welfare measures are being retained because post-program outcomes are the most direct measure of long-term employability. The current measures send an explicit policy signal that JTPA, as a value-added program, promotes employment retention for its participants, as measured by an individual's employment status and earnings three months after leaving the program. Since earnings are also a critical factor in reducing welfare dependency, the welfare earnings measure is the best proxy currently available for identifying reduced dependency.

Note: The Amendments suggest that adult program measures should address longer periods of employment retention than the current 13 weeks. The Department has awarded grants to 16 States that will examine the merits of using Unemployment Insurance (UI) wage records for such longer-term measures. Preliminary data indicate that comparable performance measures can be developed from UI wage records. Applying the results of longer-term measures to ongoing program management and annual incentive award determinations raises technical and operational issues which will need to be examined by the pilot sites. The Department will use the results of these States studies and other available data to introduce, where feasible, longer-term measures in PY 1995.

Youth measures are unchanged because they fully reflect Departmental priorities and the required performance standards factors listed in section 106(b)(4) of JTPA (employment, attainment of employment competencies, dropout prevention and recovery, secondary and post-secondary school completion, and enrollment in other training programs). Acknowledging that employment may not be an appropriate outcome for all youth, those individuals who are enrolled in dropout prevention programs and successfully remain in school, and those who are enrolled in dropout recovery programs and successfully return to school will not be included in the Youth Entered Employment Rate.

5. *Performance Standards Provisions for Older Workers Programs.* Except for incentive award and sanctions provisions, section 204 (d)(6) of JTPA identifies requirements, including performance standards, for the operation of older worker programs. In response to this new provision, two performance measures have been established to take into account program goals for this segment of the population. Starting in PY 1994, there will be an Entered Employment Rate performance measure as well as an Average Wage at Placement performance measure for older worker programs. As postprogram information becomes available on the section 204(d) program, the Department will reconsider the possibility of follow-up employment and earnings measures.

Note: Programs operated under section 204(d) are State programs even though they may be operated by various local entities. Therefore, performance standards will be applied to the total older worker programs State-wide.

6. *Performance Standards Provisions for Title III.* Governors are required to set an entered employment rate standard for Title III programs and are encouraged to establish an average wage at placement goal. Performance standards for Title III will be applied to the following programs funded under section 302: all of section 302(c)(1) State activities, and sections 302(c)(2) and 302(d) substate area activities. Performance outcomes will be reported for programs operated under section 302(a)(2), Secretary's National Reserve, in lieu of applying performance standards, because these funds are typically used for one-time projects rather than ongoing programming.

While rewards and the imposition of sanctions are not required for title III programs, Governors may use a portion of the 40 percent funds reserved for State activities under section 302(c)(1) for rewarding substate area performance, particularly lengthier, substantive training that will better ensure the long-term employability of participants. Although no statutory requirement exists for *monetary* incentives, Congress requires State plans to include incentives to ensure that long-term training is provided to those who need it.

7. *Secretary's National Numerical Standards for PY's 1994–1995.* The title II–A and II–C numerical standards are derived from PY '92 performance data reported on the JTPA Annual Status Report (JASR) and are generally set at a level that approximately 75% of the SDA's are expected to exceed. Revising the numerical standard for the youth entered employment rate (YEER) in the same way would lead to reduced standards for SDAs. However, 30 month results from the recent National JTPA Study suggest that outcomes experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent. Earnings have been adjusted to account for expected future inflation. Finally, an additional special adjustment has been made to the Adult and Welfare Follow-Up Employment Rates and the Youth Entered Employment Rate to account for the requirement in section 106(k) that for performance standards purposes ". . . 'employment' means employment for 20 or more hours per week."

The Secretary's standards for title II–A for PY's 1994–1995 are as follows:

Adult Follow-up Employment Rate: 59%
Adult Weekly Earnings at Follow-up: $245
Welfare Follow-up Employment Rate: 47%
Welfare Weekly Earnings at Follow-up: $223

The Secretary's standards for title II–C for PY's 1994–1995 are as follows:

Youth Entered Employment Rate: 41%
Youth Employability Enhancement Rate: 40%

No national data on older worker program performance are currently available to assist in setting national standards. However, the Job Training Quarterly Survey (JTQS) has detailed employment and wage data on older workers served by regular title II–A programs. Based on these data, and adjusting for the 20 hours per week employment requirement, the Secretary's standards for older worker programs are as follows:

Entered Employment Rate: 62%
Average Hourly Wage at Placement: $5.45

The title III standard is derived from PY '92 performance data reported on the Worker Adjustment Program Annual Program Report (WAPR). This standard is at a level that approximately 75 percent of the substate areas are expected to exceed. As with the employment measures for title II–A and II–C, an adjustment has been made to take into account the 20 hour per week employment requirement. The Secretary's standard for title III is:

Entered Employment Rate: 67%

8. *Implementing Provisions.* The following implementing requirements must be followed:

A. *Required Standards.* For titles II–A and II–C, Governors are required to set, for each SDA, a numerical performance standard for each of the six Secretary's measures; for the older worker program, Governors are required to set numerical Entered Employment Rate and Average Wage at Placement standards for programs operated under section 204(d); for title III, Governors are required to set for each substate area a numerical performance standard for the Entered Employment Rate and are encouraged to establish an average wage at placement goal.

B. *Setting the Standards.* Consistent with new legislative provisions, Governors are now required to adjust the Secretary's performance standards to reflect local area circumstances (section 106(d)). Such adjustments must conform to the Secretary's parameters described below:

1. Procedures must be:
- Responsive to the intent of the Act,
- Consistently applied among the SDA's/SSA's,
- Objective and equitable throughout the State,
- In conformance with widely accepted statistical criteria;

2. Source data must be:
- Of public use quality,
- Available upon request;

3. Results must be:
- Documented,
- Reproducible; and

4. Adjustment factors must be limited to:
- Economic factors,
- Labor market conditions,
- Geographic factors,
- Characteristics of the population to be served,
- Demonstrated difficulties in serving the population (this adjustment factor is new), and
- Type of services to be provided.

The Department offers an adjustment methodology that conforms to these parameter criteria for Governors to use in making required adjustments. Should the Governor choose to use an alternate methodology, or make adjustments not addressed by the Departmental model, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan (GCSSP) prior to the program year to which it applies.

The State Job Training Coordinating Council and, where appropriate, the State Human Resources Investment Council, must have an opportunity to consider adjustments to the Secretary's standards and to recommend variations. To determine whether an SDA has met/exceeded a performance standard, Governors must use actual, end-of-year program data to recalculate the performance standards.

C. *Performance Standards Definitions.* Governors must calculate the performance of their SDA's, SSA's, and Section 204(d) programs according to the definitions included in the attachments.

D. *Titles II–A and II–C Incentive and Sanction Policies.* Performance standards are to be established for programs funded under Titles II and III of the Act. In applying the Secretary's standards for Titles II–A and II–C, Governors *must use* the six core measures and also consider criteria relating to model programs successfully serving out-of-school youth and placement in jobs providing employer-assisted benefits. Governors may select additional non-cost measures to form the basis of incentive policies as long as the following criteria are met:

1. As the basis for making incentive awards, the Governors must use all (i.e., cannot "zero weight" *any*) of the six Secretary's core measures. Governors will also be required to reward model out-of-

school youth programs either identified by the Department of Labor or recognized by the State or SDA as having a demonstrated record of success. Considerable flexibility will be given to Governors in establishing a method for doing so. Likewise, in the absence of firm data with which to establish a credible benchmark, States have total flexibility in how to measure the provision of employer-assisted benefits. Decisions regarding the relative weight or emphasis of each core measure (e.g., the Youth Entered Employment Rate) and incentive criterion (e.g., placement in jobs with employer-assisted benefits) in a State's incentive award formula rest with the Governor. The core measures will be the basis for identifying SDA's that are candidates for technical assistance and for imposing sanctions. At least 75 percent of the funds set aside for performance incentives must be related to these measures and the out-of-school and employer-assisted benefits criteria, in accordance with Section 106(b)(7)(E).

2. Cost standards cannot be used for incentive award purposes.

3. Incentive policies may include adjustments to incentive award amounts based upon factors such as grant size, additional services to the hard-to-serve, intensity of service, and expenditure level.

4. A Secretary's standard for service to the hard-to-serve, as required by Section 106(b)(7)(B) of the amended JTPA, has been established in the form of a stand-alone eligibility criterion ("gate") for incentive awards. In order for an SDA to be eligible to receive *any* incentive award, at least 65 percent of *both* the SDA's (a) Title II–A and (b) title II–C (in-school and out-of-school combined) terminees receiving training and/or other services beyond objective assessment must be hard-to-serve. The definitions of hard-to-serve are to be consistent with the definitions in Sections 203(b), 263(b), and 263(d) of the Act.

5. For those SDA's that successfully "pass through" the gate, three criteria (in addition to any funds set aside for Governors' standards) will determine the amount of the incentive award: Exceeding the Secretary's standards; providing quality service to out-of-school youth and placing participants in employment that provides employer-assisted benefits.

—The definition of "employer-assisted benefits" is to be consistent with the SPIR definition (Item 35c). Thus, State incentive policies will be structured to include benefit information for those participants who entered employment at termination, and Governors will have considerable latitude in implementing this incentive policy requirement.

6. Consistent with present DOL policy, SDA's that exceed all six of the Secretary's Titles II–A and II–C standards *must* receive an incentive award (if the "gate" is successfully attained).

7. Determination of an SDA's failure to meet standards and consequent imposition of technical assistance and reorganization requirements, under Section 106(j), will be based only on the Secretary's title II–A and Title II–C core measures.

—"Meeting Performance Standards" is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, "Failure" is defined as failing to meet three (3) or more of the core standards *or* failing to meet both youth standards.

—Failure for the first year precludes an SDA from receiving *any* incentive awards and requires Governors to provide technical assistance to the underperforming SDA.

—Failure for the second year precludes an SDA from receiving *any* incentive award and requires Governors to impose a reorganization plan.

8. Section 106(j)(3) requires each State to report to the Secretary, not later than 90 days after the end of each program year, the actual performance and performance standards for each SDA within that State. Within the same timeframe, technical assistance plans for each SDA "failing" for the first year are required. A 90-day timeframe also applies to the imposition of a reorganization plan, which is mandatory when an SDA "fails" for a second consecutive year.

Specific procedures for the formal performance standards report and required State action will be provided under separate cover. However, in addition to the formal annual process, there should be ongoing oversight of SDA performance and continuous technical assistance and capacity-building aimed at addressing areas where program performance can be improved.

9. Governors must specify in the GCSSP their incentive award policy under Section 202(c)(1)(B) and 202(c)(3)(A) and imposition of sanctions policy under Section 106(j).

10. In PY 1994 and 1995, Governors will continue to have the discretion to exclude pilot projects serving "hard-to-serve" individuals, particularly out-of-school youth, funded from the 5 percent incentive fund set-aside in computing their standards and actual performance. States and SDA's are encouraged to use such funds to develop or replicate model programs serving out-of-school youth, particularly those based on contextual learning models.

Note. For those SDA's in which "incentive projects" are indistinguishable from those that provide general training, these programs would *not* be considered exempt from performance standards.

9. *State Action.* States are to distribute this Guidance Letter to all officials within the State who need such information to implement the new performance standards policies and requirements for PY 1994–1995. It is especially critical that States, State Councils, Private Industry Councils and SDA operational staff become thoroughly familiar with the new provisions concerning incentive and sanctions policies.

A copy of this Guidance Letter is also being sent to your State JTPA Liaison, the State Wagner-Peyser Administering Agency, and the State Worker Adjustment Liaison.

10. *Inquiries.* Questions concerning this issuance may be directed to Steven Aaronson at (202) 219–5487, extension 107.

11. *Attachments:*

1. Definitions for Performance Standards
2. Youth Employability Enhancement Definitions

Attachment 1—Definitions for Performance Standards

Those terminees who receive only objective assessment (or only objective assessment and entered employment) are to be excluded from the calculation of performance outcomes for Title II–A, Title II–C, and Section 204(d) older worker programs. Participants in special 5-percent-funded projects may, at the discretion of the Governor, also be excluded from the calculation of performance outcomes for Title II–A and Title II–C.

The following defines the Title II–A performance standards:

1. *Adult Follow-Up Employment Rate*—Total number of adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

2. *Adult Follow-Up Weekly Earnings*—Total weekly earnings for all adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents employed (for at least 20 hours per week) at the time of follow-up.

Welfare

3. *Welfare Follow-Up Employment Rate*—Total number of adult welfare respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e., terminees who completed follow-up interviews).

4. *Welfare Follow-Up Weekly Earnings*—Total weekly earnings for all adult welfare respondents employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed (for at least 20 hours per week) at the time of follow-up.

Note: If the response rates for those employed at termination and those not employed at termination in an SDA differ by more than 5 percentage points in either the adult or welfare samples, then the calculations of the follow-up outcomes for that group must be modified to adjust for nonresponse bias.

The following defines the Title II–C performance standards:

5. *Youth Entered Employment Rate (YEER)*—Total number of youth who entered employment at termination (for at least 20 hours per week), divided by the total number of youth who terminated, excluding those potential dropouts who are reported (on the Standardized Program Information Report [SPIR]) as remained-in-school and dropouts who are reported (on the SPIR) as returned-to-school.

Note: As in past practice, youth terminees who remain-in-school or return-to-school and who also enter employment will *not* be excluded from the termination pool reflected in the denominator of the Youth Entered Employment Rate. In effect, SDA's would "receive credit" for these individuals twice—

in the YEER and in the YEEN. However, only employment of at least 20 hours per week satisfies the requirement for "employment."

6. *Youth Employability Enhancement Rate (YEEN)*—Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated.

• Youth Employability Enhancements include:

a. Attained (two or more) PIC-recognized Youth Employment Competencies.

b. Completed major level of education following participation of at least 90 calendar days or 200 hours in JTPA activity.

c. Entered and retained for at least 90 calendar days or 200 hours in non-Title II training or received a certification of occupational skill attainment.

Note: It is expected that the ultimate result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

d. Returned to and retained in full-time school for one semester or at least 120 calendar days (dropouts only), attained a basic or job-specific skill, and made satisfactory progress.

Note: For the purposes of this outcome, and the remained in school outcome described below, "school" *includes alternative schools*, defined as a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or General Educational Development (GED) test preparation.

e. Remained in school for one semester or at least 120 calendar days (for youth at risk of dropping out of school), attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For youth aged 14 and 15, the acceptable competencies will be basic skills or pre-employment/work maturity.

The following defines Section 204(d) Older Worker performance standards:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, divided by the number of total terminations.

2. *Average Wage at Placement*—Total hourly wage rate of all terminees who entered employment of at least 20 hours per week at termination, divided by the number of terminees who entered employment of at least 20 hours per week at termination.

The following defines the Title III performance standard:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, excluding those who were recalled or retained by the original employer after receipt of a layoff notice, divided by the total terminations, excluding those who were recalled or retained by the original employer after receipt of a layoff notice.

Attachment 2—Youth Employability Enhancement Definitions

"Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

(1) Attained PIC–Recognized Youth Employment Competencies (two or more);

(2) Returned to Full-Time School;

(3) Remained in School;

(4) Completed Major Level of Education; or

(5) Entered Non-Title II Training.

1. *Attained PIC-Recognized Youth Employment Competencies*—The total number of youth who demonstrated proficiency as defined by the PIC in *two or more* of the following three skill areas *in which the terminee was deficient at enrollment*: pre-employment/work maturity; basic education; or job-specific skills. Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification.

The completely detailed definition for Youth Employment Competency systems is located in the Standardized Program Information Reporting System (SPIR) instructions, transmitted in TEIN No. 5–93, dated July 30, 1993.

2. *Returned to Full-Time School*—The total number of youth who: (1) had returned to full-time secondary school (e.g., junior high school, middle school and high school)—including alternative school—if, at the time of intake, the participant was not attending school (exclusive of summer school) and had not obtained a high school diploma or equivalent; and (2) prior to termination had been retained in school for one semester or at least 120 calendar days.

Alternative School—A specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation.

Note: To obtain credit for Returned to Full-Time School and Remained in School (described below), SDA's must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities and the youth must: (1) Be making satisfactory progress in school; and (2) (for youth aged 16–21) attain a PIC-approved Youth Employment Competency in Basic Skills or Job-Specific Skills; or (3) (for individuals aged 14–15) attain a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

Satisfactory Progress in School—An SDA, in cooperation with the local school system, must develop a written policy that defines an individual standard of progress that each participant is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress (e.g., performance on a criterion-referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

3. *Remained in School*—The total number of youth who, prior to termination, had been retained in full-time secondary school, including alternative school, for one semester or at least 120 calendar days. A youth may be reported as Remained-in-School only if he/she was attending school at the time of intake, had not received a high school diploma or its equivalent, and was considered "at risk of dropping out of school," as defined by the Governor in consultation with the State Education Agency.

4. *Completed Major Level of Education*—The total number of adults/youth who, prior to termination, had completed, during enrollment in the program, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post-secondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the post-secondary level.

Note: To obtain credit, completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days *or* 200 hours, usually prior to the completion of the major level of education.

5. *Entered Non-Title II Training*—The total number of adults/youth who, prior to termination, had entered an occupational skills employment/training program not funded under Title II of the JTPA, that builds upon and *does not duplicate* training received under Title II.

Note: To obtain credit, the participant must have been retained in that program for at least 90 calendar days OR 200 hours *or* must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services. It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

[FR Doc. 94–4587 Filed 2–28–94; 8:45 am]

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Federal Register

Vol. 59, No. 40

Tuesday, March 1, 1994

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March 11	March 28	April 11	April 25	May 10	June 9
March 14	March 29	April 13	April 28	May 13	June 13
March 15	March 30	April 14	April 29	May 16	June 13
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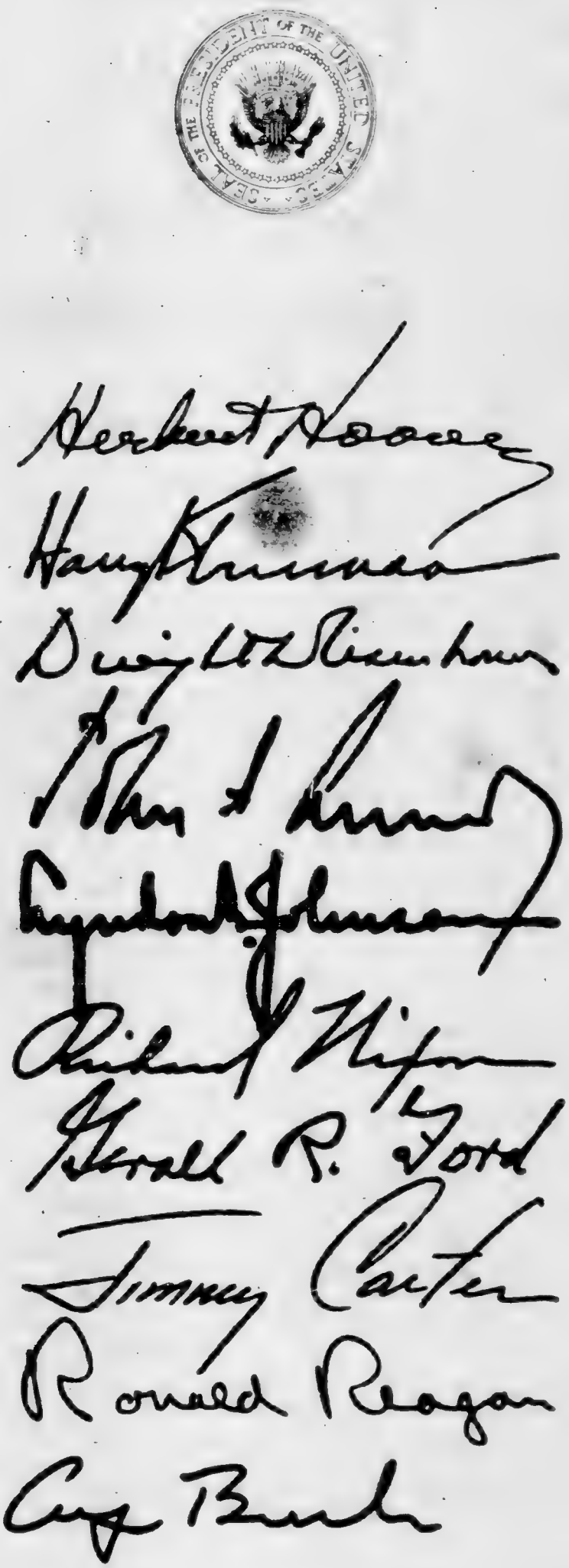

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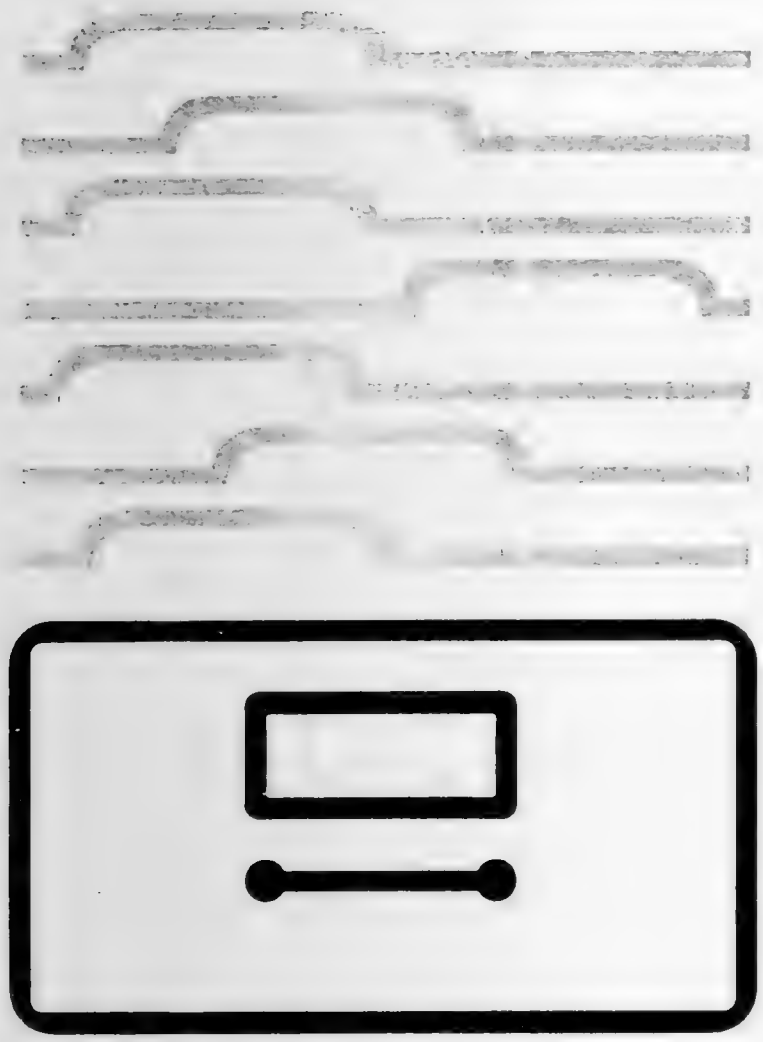

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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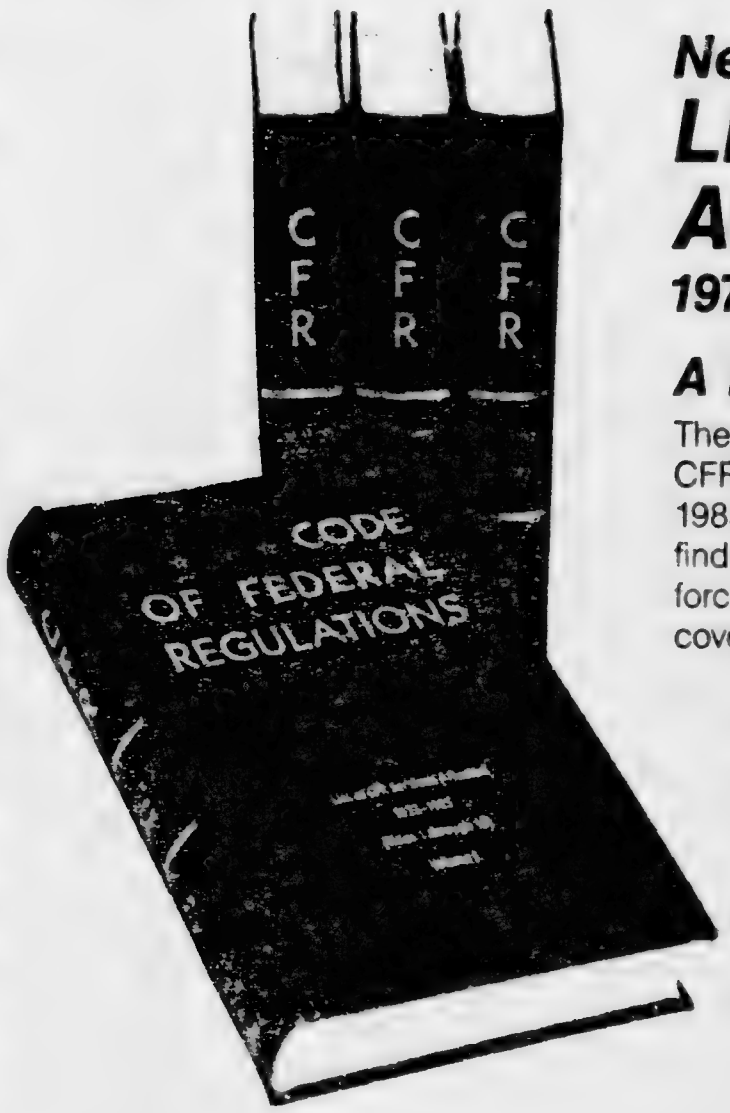

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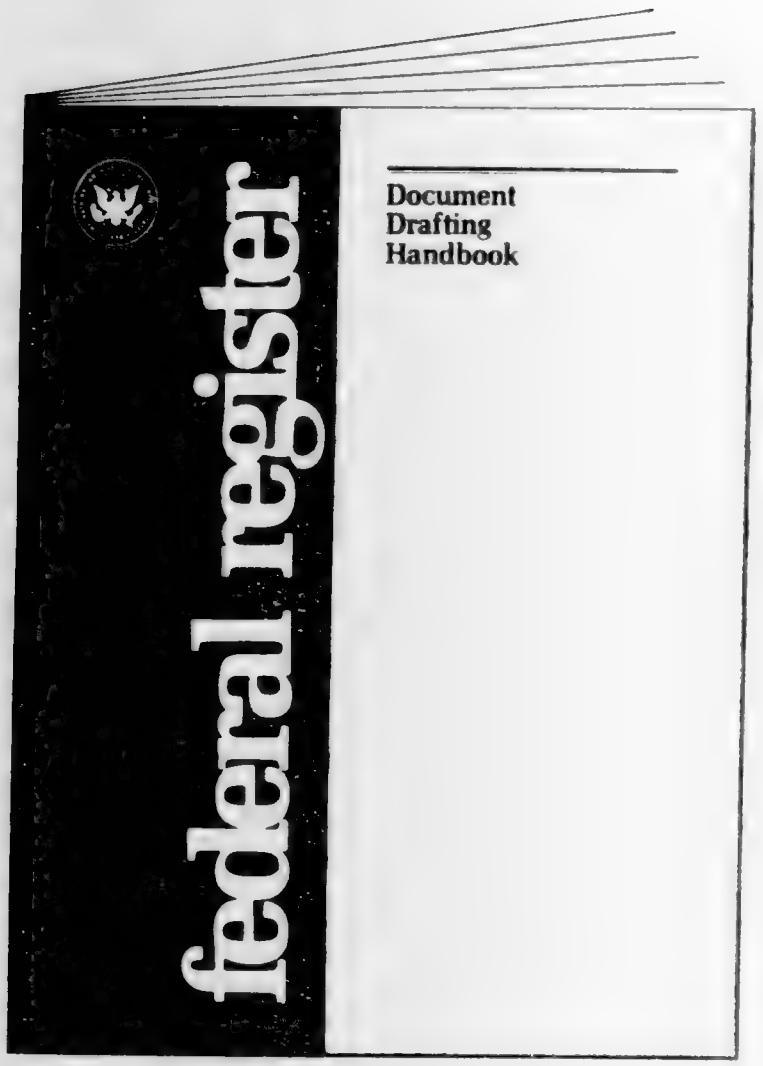

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Rules and Regulations

Federal Register
Vol. 59, No. 41
Wednesday, March 2, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 321

[Docket No. 93-021-3]

RIN 0579-AA60

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the foreign quarantine notices and the regulations concerning the importation of potato plants and tubers from Canada that were established to prevent the introduction of the necrotic strain of potato virus Y (PVY^{n}) into the United States. The United States and Canada have agreed upon a PVY^{n} management plan that relies on seed potato testing and certification. It is our judgment that implementation of the Canada/United States PVY^{n} Management Plan will protect U.S agriculture from potential risks imposed by PVY^{n}, and that Federal regulations that apply to potatoes from Canada with respect to PVY^{n} are no longer necessary. This final rule relieves unnecessary and burdensome restrictions on the importation of potatoes from Canada.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.37, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as the nursery stock regulations) govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles.

The regulations in 7 CFR part 321 (referred to below as the regulations) restrict the importation of potatoes from foreign countries to prevent the introduction into the United States of injurious potato diseases and insect pests.

On December 20, 1993, we published in the **Federal Register** (58 FR 66305-66307, Docket No. 93-021-2) a proposal to amend the regulations by removing the foreign quarantine notices and the regulations concerning the importation of potato plants and tubers from Canada that were established to prevent the introduction of the necrotic strain of potato virus Y (PVY^{n}) into the United States. We explained in the proposal that protection against PVY^{n} would be provided through the implementation of the Canada/United States PVY^{n} Management Plan (referred to below as the management plan), which relies on seed potato testing and certification as an alternative to the current quarantine notices and regulations involving the importation of potatoes from Canada.

We solicited comments concerning our proposal for a 30-day comment period ending January 19, 1994. We received 7 comments by that date. They were from a farmers exchange, tobacco cooperative, and representatives of State and foreign governments. All responses fully supported the management plan and removing the current quarantine notices and regulations. Commenters stated they feel the provisions of the management plan are sufficient to protect the seed potato and tobacco industries from infection with PVY^{n} and will not be burdensome to U.S. producers. In addition, they requested that the change be made effective as quickly as possible now that the shipping season for potatoes from Canada is in progress. This will avoid the unnecessary burden of the need for import permits and phytosanitary certificates.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

This final rule does not affect other restrictions on the importation into the United States of potatoes grown in Canada.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for potatoes from Canada is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

Canadian imports of potatoes to the United States vary from year to year depending upon market conditions in both countries. Canadian potato-producing provinces produced only approximately 8.5 percent as many potatoes as were produced in the United States in 1992, prior to the imposition of our March 2, 1993, interim rule, which relaxed earlier restrictions by requiring certification of certain potatoes imported into the United States from Canada based on surveys performed by Agriculture Canada. Canada is also a major export market for U.S. potatoes.

U.S. imports of Canadian potatoes declined between 1990 and 1992. This decline in imports did not result in increased prices of these products in the United States. Domestic prices are influenced more by the volume of U.S. production. Statistics indicate that a slight increase or decrease in imports would have very little or no effect on domestic prices since the volume of imports is small compared to U.S. production. In addition, potato demand and supply are not highly responsive to price changes.

Although the effects would be minimal, the entities that may be most affected by this rule include U.S. potato producers, importers, and processing

plants. Although it is not possible to determine the total number of entities within these categories which can be classified as small entities, over 64 percent of all potato growers and 94 percent of U.S. fruit and vegetable processing firms could be considered small by Small Business Administration guidelines. The negative impact on U.S. producers due to increased imports is likely to be small since U.S. prices are more influenced by domestic production and market conditions than by imports. Any negative impact is likely to be offset by a positive impact upon importers, exporters, potato processing firms, and consumers. The increased availability of Canadian potatoes will benefit potato farmers, shippers, importers, wholesalers, and retailers as well as potato processing firms. Consumers will be positively affected by slightly lowered prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule allows potatoes to be imported into the United States from Canada. State and local laws and regulations regarding potatoes imported under this rule will be preempted while the vegetable is in foreign commerce. Fresh potatoes are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 319 and 321 are amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37–2, paragraph (a), the table, the first entry for "Solanum spp." is revised to read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
• •	• •	• •
Solanum spp. (potato) (tuber bearing species only—Section Tuberarium) (excluding potato tubers which are subject to 7 CFR part 321).	All except Canada.	
• •	• •	• •

PART 321—RESTRICTED ENTRY ORDERS

3. The authority citation for part 321 is revised to read as follows:

Authority: 7 U.S.C. 136, 136a, 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

§ 321.2 [Amended]

4. Section 321.2 is revised by removing the definitions for *Processing potato, Seed lot, Seed potato, Sibling potatoes,* and *Table stock.*

5. The section heading for § 321.8 is revised to read "§ 321.8 *Importation of potatoes from Bermuda.*"

6. Section 321.9 is revised to read as follows:

§ 321.9 Importation of potatoes from Canada.

Potatoes grown in Canada may be imported from Canada into the United States free of restrictions, except that potatoes grown in Newfoundland and the Land District of South Saanich on Vancouver Island of British Columbia may not be imported.

Done in Washington, DC, this 23rd day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4725 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1475

RIN 0560–AD49

Emergency Livestock Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On November 29, 1993, the Commodity Credit Corporation (CCC) issued an interim rule to the regulations for the livestock emergency programs, which are authorized by the Agricultural Act of 1949 as amended, and the CCC Charter Act. The interim rule, provided an amended and simplified method for determining the value of livestock feed needs. Other minor changes to update the regulations included changes in weight ranges and an appropriate amount of energy required to provide the daily maintenance needs for dairy goats; determining pasture value; applying the $50,000 payment limitation to crop year rather than calendar year; and calculating interest on refunds due CCC. This rule adopts as final the interim rule published on November 29, 1993.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: James C. Williams, Program Specialist, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–1324.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information complied by the Department, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency:

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel, legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws and are not retroactive to 1992 and prior crop years. Before any judicial action may be brought regarding the provisions of this regulation, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1475 set forth in this final rule will not result in any change in the public reporting burden.

Background

An interim rule was published in the **Federal Register** on November 29, 1993, at 58 FR 62510 which amended 7 CFR part 1475 to provide for administering CCC's livestock emergency programs.

The interim rule amended § 1475.3 to modify the definition for dairy cow "weight ranges" and to add a weight range for dairy goats in the table.

The interim rule amended § 1475.6:

(1) Paragraph (c), to change the reference from CCC–653 to CCC–651;

(2) Paragraph (e)(4), to clarify the manner in which pasture value is actually calculated for 1991 and subsequent crop years;

(3) Paragraph (i)(1)(i)(A), to change the method for determining the value of livestock feed needs; and

(4) Paragraph (i)(2)(iii), to correct a misprint in the **Federal Register**.

The interim rule amended § 1475.10(b) to clarify when the emergency livestock feed program may be suspended or terminated in a contiguous county.

The interim rule amended § 1475.17(a), (c), and (g) to clarify what type of interest will be charged on refunds to CCC.

The interim rule amended § 1475.22 to change the payment limitation from "calendar" year to "crop" year.

The interim rule provided for a 30-day public comment period which ended on December 29, 1993. No comments were received during the comment period.

Accordingly, under the authority of 7 U.S.C. 1427, and 1471–1471j and 15 U.S.C. 7146 and 714c, the interim rule amending 7 CFR part 1475, which was published at 58 FR 62510 on November 29, 1993, is adopted as a final rule without change.

Signed at Washington, DC, on February 24, 1994.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–4673 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–1]

Alteration of Jet Route J–29

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns jet Route J–29 from the Bangor, ME, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Halifax, Canada, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was requested by the Canadian government to improve operations and expedite the flow of air traffic transiting to the Halifax area.

EFFECTIVE DATE: 0901 u.t.c. April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On September 10, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign J–29 from the Bangor, ME, VORTAC (BGR), to the Halifax, Canada, VOR/DME (YHZ) (58 FR 47680). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as

that proposed in the notice. Jet Routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations realigns J–29 from the Bangor, ME, VORTAC, to the Halifax, Canada, VOR/DME. Realigning J–29 will improve operations and expedite the flow of air traffic to the Canadian airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–29 [Revised]

From the INT of the United States/Mexican Border and the Corpus Christi, TX, 229° radial, via Corpus Christi; Palacios, TX; Humble, TX; Lufkin, TX; Elm Grove, LA; El Dorado, AR; Memphis, TN; Pocket City, IN; INT Pocket City 051° and Rosewood, OH, 230° radials; Rosewood; Dryer, OH; Jamestown, NY; Syracuse, NY; Plattsburgh, NY; Bangor, ME; to Halifax, Canada; excluding the portions within Mexico and Canada.

* * * * *

Issued in Washington, DC, on February 22, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–4715 Filed 3–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–6]

Modification of Class E Airspace, Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class E Airspace at Yampa Valley Airport, Hayden, Colorado. The airspace was described incorrectly, using a magnetic radial instead of a true radial, and cited the Yampa Valley Airport instead of the Craig Moffat Airport. Therefore, controlled airspace as depicted on aeronautical charts does not currently encompass the instrument approach procedure at the Craig Moffat Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area" replacing it with the designation "Class E airspace."

DATES: *Effective date:* March 2, 1994.

Comment date: Comments must be received before March 31, 1994.

ADDRESSES: Send comments on the rule to: Manager, Airspace & Procedures Branch, ANM–530, FAA Docket 94–ANM–6, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, FAA Docket No. 94–ANM–6, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. The FAA will use the comments submitted, together with other available information to review the regulation. If the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

History

The Hayden, Colorado, Class E airspace was designated to contain an instrument approach procedure in controlled airspace from 700 feet or more above the surface of the earth at Craig Moffat Airport. It was incorrectly published under the Yampa Valley Airport title, and the airspace information incorrectly lists a magnetic radial instead of a "true" radial. Accordingly, neither the airspace designation nor the aeronautical chart depiction reflect the controlled airspace. Currently, IFR pilots are not afforded controlled airspace in which to conduct instrument flight rules procedures to the Craig Moffat Airport. Similarly, VFR pilots do not have correct references for controlled airspace.

Any matter which adversely affects aeronautical safety requires immediate corrective action in the interest of flight safety. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to public interest, and the FAA finds good cause, pursuant to 5 U.S.C., 553(d) for making this amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in the area.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace areas extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations amends the Hayden, Colorado, Class E airspace, which was designed to provide controlled airspace for an instrument approach procedure at Craig Moffat Airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[Amended]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [Amended]

Hayden, Craig Moffat Airport, CO
(lat. 40°29'43" N., long. 107°31'18" W
Hayden VOR/DME
(lat. 40°31'13" N., long. 107°18'17" W)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the Hayden VOR/DME 262° radial extending from the VOR/DME to 15.7 miles southwest of the VOR/DME.

* * * * *

Issued in Seattle, Washington, February 3, 1994.

Richard E. Prang,

Acting Manager, Air Traffic Division.

[FR Doc. 94–4716 Filed 3–1–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 931221–3321]

RIN 0648–AF72

Weather Service Modernization Criteria

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes NWS criteria for taking certain modernization actions such as commissioning new weather observation systems, decommissioning outdated NWS radars and evaluating staffing needs for field offices in an affected area; and its criteria for certifying that closing, consolidating, automating, or relocating a field office will not degrade service to the affected area. A notice of proposed rulemaking (published December 6, 1993, 58 FR 64202) set forth the proposed criteria for those actions except for automating and closing field offices. The criteria for those two actions require further development and, after notice, public comments, and consultation with the Committee and NRC will be published in final form before either of these actions take place. All final criteria will be set forth as Appendix A to the basic modernization regulations at 15 CFR part 946 promulgated at 58 FR 64088.

EFFECTIVE DATE: March 2, 1994.

ADDRESSES: Requests for copies of documents should be sent to Julie Scanlon, NOAA/GCW, 1325 East-West Highway, #18111, Silver Spring, MD 20910, 301–713–0053.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon, 301–713–0053.

SUPPLEMENTARY INFORMATION: Section 704 of the NOAA Authorization Act of 1992 (Act) requires the NWS to contract with the National Research Council (NRC) for a review of the scientific and technical modernization criteria by which the NWS proposes to certify, under section 706 of the Act, actions to close, consolidate, automate, or relocate a field office and the preparation and submission of a report assessing these criteria. The NRC prepared this report and submitted it to the Secretary of Commerce on July 28, 1993. The NRC endorsed the criteria proposed, with certain reservations about some of the criteria that relate to the commissioning of Automated Surface Observing System (ASOS) and automation certification.

Section 704(b) of the Act requires the NWS to publish the final criteria in the **Federal Register**, based on the NRC report, after providing an opportunity for public comment, and after consulting with the NRC and the Modernization Transition Committee (the Committee). The public comment period closed January 5, 1994. There was one comment received. This was submitted by the National Weather Service Employees Organization (NWSEO). Consultation with the Committee was completed on January 13, 1994. The Committee reviewed the public comment and offered one recommendation to be added to the criteria. Consultation with the NRC was completed on February 23, 1994.

The major comments were as follows

Comment 1—NWSEO stated that the criteria do not contain "statistical and analytical measures" for determining that there will be no degradation of service but rather are merely "process criteria."

Response—The commentor is incorrect in stating that the criteria are merely process criteria. The criteria for each action contain the necessary analytical and performance measures. The criteria for consolidation contain measures for evaluating each of its component and subcomponent elements, often in exhaustive detail. These include measures to ensure that the new radar is commissionable, e.g., adequate operations and maintenance personnel, adequate backup capability, system availability of at least 96 percent; and that the old radar can be decommissioned. The criteria for relocation include a checklist to ensure that each element of the move will be considered in advance and can be completed without degrading services. The NRC found these criteria to be adequate to determine that no degradation would result from these actions.

The commentor advocates use of *post hoc* statistical verification measures for every type of certifiable action. Such a regime is impractical. For example, in the case of a relocation, it is impossible to collect statistical data from the new

office location until the old office has been relocated there, and the office relocation can not legally occur until a relocation certification has been approved; yet the certification would be dependent on the statistical data.

As contemplated by NWSEO, such a regime would impose extensive delays and costs on the modernization and clearly would be unreasonable. Statistical data must be collected over a long period of time after the restructuring actively has taken place to be statistically valid. The minimum time period that would be acceptable would be 1 year after the certifiable event.

Comment 2—The NWSEO contends that any relocation also constitutes a closure and, therefore, the criteria should be the same.

Response—Congress specifically listed four separate types of actions that are to be certified and clearly stated that one, closures, could not take place until 1996. This scheme is clearly understandable. The proposed interpretation of NWSEO would effectively eliminate a "relocation" as a separate category of certifiable action. Relocation of an office is distinctly different from closure of an office. In the case of relocation, the same office continues to exist, albeit in a different location. The office continues to provide the same products and services to the same users in the same service area. In the case of a closure, the office ceases to exist as an entity; the responsibility for providing products and services and the service area is reassigned to another office, or split up among several other offices. Also, as the commentor notes, this interpretation would preclude the NWS from relocating any office until 1996. The legislative history of Public Laws 100–685 and 102–567 make it clear that one of Congress' overriding concerns was with the closure of offices as the NWS field office structure shrinks from 250 to 116. Before the new Weather Forecast Office (WFO) takes on full responsibility for its new larger area, statistical verification is appropriate. In the case of a relocation, no such considerations are present.

Comment 3—NWSEO comment states that the evidence from previous office moves is not an appropriate basis for certifying that relocating the Redwood City office will not lead to any degradation of service.

Response—In essence, this comment repeats the arguments discussed above—the NWS cannot relocate this office until it has statistical verification and not until at least 1996 after AWIPS is installed. The NWS disagrees for the reasons stated.

The NWS agrees that it is important to identify those analogous previous office moves that will be relied upon for evidence. Primarily, these are the offices that were moved in their entirety, although experience in moving other offices in stages may be useful with respect to certain aspects of the relocation and, therefore, that evidence may be relevant. Offices that have been moved in their entirety were: The Washington WSFO, which was moved from Camp Springs, MD, to Sterling, VA; the Philadelphia WSFO which was moved from Philadelphia, PA, to Mount Holly, NJ; and the Ann Arbor WSFO, which was moved from Ann Arbor, MI to White Lake, MI. The evidence from these moves will be considered as part of the relocation certification.

The comment that these moves are within a "local commuting area" (a concept that was not even in existence at the time of one of these moves) and may involve different climatological conditions completely misses the point—there simply is no difference between the existing office and the relocated office in terms of the data that is received, the equipment and staff that processes it, the products and services that are disseminated, and the way they are disseminated, except perhaps where the telecommunications services are obtained from a different company. The evidence from these previous moves demonstrates that the NWS is capable of making the necessary technical changes so that the relocated office will operate identically and provide identical services.

Comment 4—The NWSEO states "no new technology is involved in relocation actions".

Response—At the time of the actual relocation from Redwood City, CA, to Monterey, CA, no new technology will be involved. The Redwood City office will be moved in its entirety, including all existing equipment, to Monterey. The commentor is correct however, that "the new facility at Monterey will have NEXRAD and eventually AWIPS", since Monterey will become a WFO. These later steps could involve a consolidation or closure. This illustrates that a relocation is a distinctly different action than a consolidation or closure, which will involve new technology. Certifications of such consolidation or closures will include evidence based on the use of the new technology.

Comment 5—The NWSEO commented that "the criteria proposed by the NWS contains no measure of service quality, nor any indication that service quality will be measured as part of the certification process."

Resonse—For a consolidation certification, criteria 2, User Confirmation of Services, measures service quality from the user perspective. After services have been transferred to the NEXRAD office, but prior to the consolidation action, confirmation that services have not been degraded is obtained from users in the affected service area. Since this is impractical for relocation certification, evidence from other completed office moves is used as a measure of service quality.

Comment 6—The Committee recommended that section IIA3 be amended to include that there would be no degradation of service.

Response—the NWS agrees and has changed that section accordingly.

A. Classification Under Executive Order 12866

This rule is not subject to review under E.O. 12866.

B. Regulatory Flexibility Act Analysis

These regulations set forth the criteria for certain modernization actions such as commissioning new weather observation systems, decommissioning outdated NWS radars, and evaluating staff needs at a field office and the criteria for certifying certain modernization actions such as consolidating and relocating a field office, will not result in a degradation of service to the affected area. These criteria will be appended to the Weather Service Modernization regulations. The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when these criteria were proposed, that this action will not have a significant economic impact on a substantial number of small entities. These final criteria are intended for internal agency use, and the impact on small business entities will be negligible. The final criteria does not directly affect "small government jurisdictions" as defined by Public Law 96–354, the Regulatory Flexibility Act.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Public Law 96–511, the Paperwork Reduction Act of 1980.

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that publication of the final rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation is being reviewed.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Certification, Commissioning, Decommissioning, National Weather Service, Weather service modernization.

Dated: February 23, 1994.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is amended as follows:

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102–567, 106 Stat. 4303 (15 U.S.C. 313 note).

2. An Appendix A is added at the end of part 946 to read as follows:

Appendix A to Part 946—National Weather Service Modernization Criteria

I. Modernization Criteria for Actions Not Requiring Certification

(A) Commissioning of New Weather Observation Systems

(1) Automated Surface Observation Systems (ASOS)

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the ASOS equipment, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

Note: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis, for example, by human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The ASOS Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

References: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored Automated Surface Observing System (ASOS) Site Component Commissioning Plan (the ASOS Plan), more specifically in Addendum I, Appendix D of the ASOS Site Component Commissioning Evaluation Package (the ASOS Package).

Criteria: a. ASOS Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the ASOS, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with item 1a, p. D–2 of Appendix D of the ASOS Package.

b. Sensor Siting: Sensor sitings provide representative observations in accordance with Appendix C of the ASOS Package, Guidance for Evaluating Representativeness of ASOS Observations and item 1b, p. D–2 of Appendix D of the ASOS Package.

c. Initialization Parameters: Initialization parameters are in agreement with source information provided by the ASOS Program Office, in accordance with item 1c, pp. D–2 & D–3 of Appendix D of the ASOS Package.

d. Sensor Performance Verification: Sensor performance has been verified in accordance with the requirements stated in the ASOS Site Technical Manual and item 1d, p. D–3 of the ASOS Package.

e. Field Modification Kits/Firmware Installed: All critical field modification kits and firmware for the site as required by attachments 3a & b (pp. D–45 & D–46) or memorandum issued to the regions, have been installed on the ASOS in accordance with item 1e, p. D–4 of Appendix of the ASOS Package.

f. Operations and Maintenance Documentation: A full set of operations and maintenance documentation is available in accordance with items 2a–h, pp. D–5 & D–6 of Appendix D of the ASOS Package.

g. Notification of and Technical Coordination with Users: All affected users have been notified of the initial date for ASOS operations and have received a technical coordination package in accordance with item 2i, pp. D–6 & D–7 of Appendix D of the ASOS Package.

h. Availability of Trained Operations Personnel: Adequate operations staff are available, training materials are available, and required training has been completed, per section 3.2.3.1 of the ASOS Plan, in accordance with items 3a–c, p. D–8 of Appendix D of the ASOS package.

i. Maintenance Capability: Proper maintenance personnel and support systems and arrangements are available in accordance with items 4a–e, pp. D–9 & D–10 of Appendix D of the ASOS Package.

j. Performance of Site Interfaces: The equipment can be operated in all of its required modes and in conjunction with all of its interfacing equipment per the detailed checklists of items 5a–b, pp. D–11 & D–19 of Appendix D of the ASOS Package.

k. Support of Associated NWS Forecasting and Warning Services: The equipment provides proper support of NWS forecasting and warning services and archiving, including operation of all specified automatic and manually augmented modes per the checklist, items 6a–e, pp. D–20 to D–29, of Appendix D of the ASOS Package.

l. Service Backup Capabilities: Personnel, equipment, and supporting services are available and capable of providing required backup readings and services in support of operations when primary equipment is inoperable in accordance with items 7e–g, pp. D–30 to D–32, of Appendix D of the ASOS Package.

m. Augmentation Capabilities: Personnel are available and trained to provide augmentation of ASOS observations in accordance with augmentation procedures, items 8a–c, p. D–33 of Appendix D of the ASOS Package.

n. Representativeness of Observations: Observations are representative of the hydrometeorological conditions of the observing location as determined by a period of observation of at least 60 days prior to commissioning in accordance with Appendix C and item 6e, pp. D–27 to D–29 of Appendix D of the ASOS Package.

(2) WSR–88D Radar System

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the WSR–88D radar system, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel; and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

Note: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application for a pre-approved operational procedure implemented on a temporary basis. The WSR–88D Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

Reference: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored WSR–88D Site Component Commissioning Plan (the 88D Plan) and an Attachment to that Plan, called the WSR–88D Site Component Commissioning Evaluation Package (the WSR–88D Package).

Criteria: a. WSR–88D Radar Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the WSR–88D radar, as installed at the given site, meets its technical specifications,

has been successfully completed in accordance with items 1a–f, p. A–2 of Appendix A of the WSR–88D Package.

b. Availability of Trained Operations and Maintenance Personnel: Adequate operations and maintenance staffs are available, training materials are available, and required training has been completed in accordance with items 2a–h, pp. A–3 & A–4 of Appendix A of the WSR–88D Package.

c. Satisfactory Operation of System Interfaces: The system can be operated in all of its required modes and in conjunction with all of its interfacing equipment in accordance with items 3a–e, p. A–5 of Appendix A of the WSR–88D Package.

d. Satisfactory Support of Associated NWS Forecasting and Warning Services: The system provides proper support of NWS forecasting and warning services, including at least 96 percent availability of the radar coded message for a period of 30 consecutive days prior to commissioning in accordance with items 4a–kk, pp. A–6 to A–17 of Appendix A of the WSR–88D Package.

e. Service Backup Capabilities: Service backup capabilities function properly when the primary system is inoperable in accordance with items 5a–e, p. A–18 of Appendix A of the WSR–88D Package.

f. Documentation for Operations and Maintenance: A full set of operations and maintenance documentation is available in accordance with items 6a–n, pp. A–19 to A–25 of Appendix A of the WSR–88D Package.

g. Spare Parts and Test Equipment: A full complement of spare parts and test equipment is available on site in accordance with items 7a–e, p. A–26, of Appendix A of the WSR–88D Package.

(B) Decommissioning an Outdated NWS Radar

Purpose: Successful decomissioning of an old radar requires assurance that the existing radar is no longer needed to support delivery of services and products and local office operations.

References: The criteria and evaluation elements for decommissioning are set forth and further detailed in the NWS-Sponsored Network and Local Warning Radars (Including Adjunct Equipment) Site Component Decommissioning Plan (the Plan), more specifically in Appendix B to that Plan, called the Site Component Decommissioning Evaluating Package, and in Section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the Weather Service.

Criteria: a. Replacing WSR–88D(s) Commissioning/User Service Confirmation: The replacing WSR–88D(s) have been commissioned and user confirmation of services has been successfully completed, *i.e.*, all valid user complaints related to actual system performance have been satisfactorily resolved, in accordance with items 1a–c, p. B–10 of Appendix B of the Plan.

b. Operation Not Dependent on Existing Radar: The outdated radar is not required for service coverage, in accordance with items 2a–c, p. B–11 of Appendix B of the Plan.

c. Notification of Users: Adequate notification of users has been provided, in accordance with items 3a–f, pp. B–12 & B–13 of Appendix B of the Plan.

d. Disposal of Existing Radar: Preparations for disposal of the old existing radar have been completed, in accordance with items 4a–d, pp. B–14 & B–15 of Appendix B of the Plan.

(C) Evaluating Staffing Needs for Field Offices in Affected Areas

References: The criteria and evaluation elements are set forth and further detailed in the ASOS and WSR–88D Evaluation Packages and in the Human Resources and Position Management Plan for the National Weather Service Modernization and Associated Restructuring (the Human Resources Plan).

Criteria: 1. Availability of Trained Operations and Maintenance Personnel at a NEXRAD Weather Service Forecast Office or NEXRAD Weather Service Office: Adequate operations and maintenance staffs are available to commission a WSR–88D, specifically criterion b. set forth in section I.A.2. of this Appendix which includes meeting the Stage 1 staffing levels set forth in chapter 3 of the Human Resources Plan.

2. Availability of Trained Operations and Maintenance Personnel at any field office receiving an ASOS: Adequate operations and maintenance staff are available to meet the requirements for commissioning an ASOS, specifically criteria h and i set forth in section I.A.1 of this Appendix.

II. Criteria for Modernization Actions Requiring Certification

(A) Modernization Criteria Common to all Types of Certifications (Except as Noted)

1. Notification: Advanced notification and the expected date of the proposed certification have been provided in the National Implementation Plan.

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all services currently provided to the affected service area will continue to be provided with no degradation of services.

4. Recent or Excepted Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10,000 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Services to In-state Users (applies only to relocation and closure of the only field office in a state): Verification that there will be no degradation of weather services provided to the state has been made by evaluating the effect on weather services provided to in-State users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

(B) Modernization Criteria Unique to Consolidation Certifications

1. WSR–88D Commissioning: All necessary WSR–88D radars have been successfully commissioned in accordance with the criteria set forth in section I.A.2. of this Appendix.

2. User Confirmation of Services: All valid user complaints related to actual system performance have been satisfactorily resolved in accordance with section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service.

3. Decommissioning of Existing Radar: The existing radar, if any, has been successfully decommissioned in accordance with the criteria set forth in section I.B. of this Appendix.

(C) Modernization Criteria Unique to Relocation Certifications

1. Approval of Proposed Relocation Checklist: The cognizant regional director has approved a proposed relocation checklist setting forth the necessary elements in the relocation process to assure that all affected users will be given advanced notification of the relocation, that delivery of NWS services and products will not be interrupted during the office relocation, and that the office to be relocated will resume full operation at the new facility expeditiously so as to minimize the service backup period.

Specific Elements: a. Notification of and Technical Coordination with Users: The proposed relocation checklist provides for the notification of and technical coordination with all affected users.

b. Identification and Preparation of Backup Sites: The proposed relocation checklist identifies the necessary backup sites and the steps necessary to prepare to use backup sites to ensure service coverage during the move and checkout period.

c. Start of Service Backup: The proposed relocation checklist provides for invocation of service backup by designated sites prior to office relocation.

d. Systems, Furniture and Communications: The proposed relocation

checklist identifies the steps necessary to move all systems and furniture to the new facility and to install communications at the new facility.

e. Installation and Checkout: The proposed relocation checklist identifies all steps to install and checkout systems and furniture and to connect to communications at the new facility.

f. Validation of Systems Operability and Service Delivery: The proposed relocation checklist provides for validation of system operability and service delivery from the new facility.

2. Publishing of the Proposed Relocation Checklist and Evidence form Completed Moves: The proposed relocation checklist and the evidence from other similar office moves that have been completed, have been published in the **Federal Register** for public comment. The evidence from the other office moves indicates that they have been successfully completed.

3. Resolution of Public Comments Received: All responsive public comments received from publication, in the **Federal Register**, of the checklists and of the evidence from completed moves are satisfactorily answered.

[FR Doc. 94–4659 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F–0100]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the polymeric reaction product of 1,3,5-benzenetricarbonyl trichloride with piperazine and 1,2-diaminoethane as a food-contact layer of reverse osmosis membranes. This action responds to a petition filed by PCI Membrane Systems, Ltd.

DATES: Effective March 2, 1994; written objections and requests for a hearing by April 1, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 23, 1992 (57 FR 10028), FDA announced that a food additive petition (FAP 9B4157) had been filed by PCI Membrane Systems, Ltd., Laverstoke Mill, Whitechurch, Hampshire RG28 7NR, England. The petition proposed that the food additive regulations be amended to provide for the safe use of the reaction product of 1,3,5-benzenetricarbonyl trichloride with piperazine and 1,2-diaminoethane as a food-contact layer of reverse osmosis membranes.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use for the polymeric reaction product of 1,3,5-benzenetricarbonyl trichloride with piperazine and 1,2-diaminoethane as the food-contact layer of reverse osmosis membranes is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect and therefore, § 177.2550 (21 CFR 177.2550) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 1, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2550 is amended by adding new paragraph (a)(5) and by revising paragraph (d)(1) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) * * *

(5) A polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride polymer (CAS Reg. No. 4422–95–1) with piperazine (CAS Reg. No. 110–85–0) and 1,2-diaminoethane (CAS Reg. No. 107–15–3). The membrane is the food-contact layer and may be applied as a film on a suitable support. Its maximum weight is 15 milligrams per square decimeter (1 milligram per square inch).

* * * * *

(d) *Conditions of use*—(1) Reverse osmosis membranes described in paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) of this section may be used in contact with all types of liquid food at temperatures up to 80 °C (176 °F).

* * * * *

Dated: February 16, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–4661 Filed 3–1–94; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2647

RIN 1212–AA38

Reduction or Waiver of Complete Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Pension Benefit Guaranty Corporation's regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR part 2647) establishes procedures under which covered multiemployer pension plans may adopt rules, subject to PBGC approval, for the reduction or waiver of complete withdrawal liability, and establishes standards for PBGC approval of such rules. The Employee Retirement Income Security Act of 1974 directs the PBGC to prescribe such procedures and standards. The amendment allows covered multiemployer pension plans to develop their own rules for the reduction or waiver of complete withdrawal liability, and also provides less restrictive time limits on employer' applications to plans for abatement of complete withdrawal liability.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ralph L. Landy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; (202) 326–4127 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or "the Act"), sets forth the circumstances under which an employer is deemed to have completely withdrawn from a covered multiemployer pension plan. The amount of complete withdrawal liability is calculated under section 4211. Section 4207(a) requires the PBGC to provide by regulation for the reduction or waiver of complete withdrawal liability in the event that an employer that has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent that the PBGC determines that reduction or waiver of complete withdrawal liability is consistent with the purposes of ERISA. Section 4207(b) requires the PBGC to prescribe by regulation a procedure and standards for the amendment of plans to provide alternative rules for the reduction or waiver of complete withdrawal liability in the event that an employer that has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent such rules are consistent with the purposes of ERISA.

The PBGC's regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR part 2647; see also 29 CFR 2640.6) provides rules requiring pension plans to reduce or waive complete withdrawal liability under ERISA section 4207(a). However, the regulation has not heretofore provided a procedure for pension plans to adopt alternative rules for reduction or waiver of complete withdrawal liability under ERISA section 4207(b).

When the PBGC originally proposed the regulation on Reduction or Waiver of Complete Withdrawal Liability, the PBGC was not prepared to propose rules under section 4207(b). The PBGC believed at that time, however, that "it is important to provide the relief contemplated under section 4207(a)." (49 FR 8036.) Consequently, the PBGC decided to propose and issue rules under section 4207(a) at that time and to promulgate rules under section 4207(b) at a later date.

On October 23, 1992, the PBGC published (at 57 FR 48348) a proposed amendment to the regulation on Reduction or Waiver Of Complete Withdrawal Liability. The provisions of the proposed amendment included a procedure for pension plans to adopt alternative rules for reduction or waiver of complete withdrawal liability, requirements for a plan sponsor to submit a written request for PBGC approval of a plan amendment adopting rules for the reduction or waiver of complete withdrawal liability, a description of the information to be submitted to the PBGC for its review of the request, the standards for PBGC approval of the request, a safe harbor period of at least fifteen days from the date of resuming covered operations for an employer resuming covered operations to file its application for abatement of complete withdrawal liability, and an editorial change to expand the purpose of part 2647 to cover both section 4207(a) and section 4207(b) of ERISA. All of these provisions were discussed in the preamble to the proposed amendment. No written comments were received on the proposal, and the PBGC is adopting the amendment as proposed.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. This rule affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 6 percent of all multiemployer plans covered by the PBGC (118 out of 2000). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of these employers are required to pay complete withdrawal liability in any year, and an even smaller percentage subsequently resume their participation under a plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

Paperwork Reduction Act

The collection of information requirements contained in this rule (viz., in § 2647.9) have been reviewed and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 under control number 1212–0044. The PBGC estimates that not more

than ten plans per year will make submissions under § 2647.9 and that each submission will take one-quarter hour to prepare and submit. The total estimated annual burden resulting from this collection of information is thus not more than two and one-half hours. Comments concerning the accuracy of this burden estimate and any suggestions for reducing the burden should be directed to the Office of the General Counsel of the Pension Benefit Guaranty Corporation at the address set forth above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

List of Subjects in 29 CFR Part 2647

Employee benefit plans, Pension Benefit Guaranty Corporation, Reporting and recordkeeping requirements.

In consideration of the foregoing, the PBGC amends 29 CFR part 2647 as follows:

PART 2647—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

1. The authority for part 2647 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1387.

2. Section 2647.1 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 2647.1 Purpose and scope.

(a) *Purpose.* * * * This part also provides procedures, pursuant to section 4207(b) of the Act, for plan sponsors of multiemployer plans to apply to PBGC for approval of plan amendments that provide for the reduction or waiver of complete withdrawal liability under conditions other than those specified in section 4207(a) of the Act and this part.

* * * * *

3. Section 2647.2 is amended by revising the second and fourth sentences of paragraph (a) to read as follows:

§ 2647.2 Abatement.

(a) *General.* * * * Applications shall be filed by the date of the first scheduled withdrawal liability payment falling due after the employer resumes covered operations or, if later, the fifteenth calendar day after the employer resumes covered operations. * * * Upon receiving an application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4, § 2647.8, or a plan amendment which has been approved by PBGC pursuant to § 2647.9.

* * *

* * * * *

4. Section 2647.9 is added to read as follows:

§ 2647.9 Plan rules for abatement.

(a) *General rule.* Subject to the approval of the PBGC, a plan may, by amendment, adopt rules for the reduction or waiver of complete withdrawal liability under conditions other than those specified in §§ 2647.4 and 2647.8(c) and (d), provided that such conditions relate to events occurring or factors existing subsequent to a complete withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. A plan amendment under this section may not be put into effect until it is approved by the PBGC. However, an amendment that is approved by the PBGC may apply retroactively to the date of the adoption of the amendment. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. Sections 2647.5, 2647.6, and 2647.7 shall apply to all subsequent partial withdrawals after a reduction or waiver of complete withdrawal liability under a plan amendment approved by the PBGC pursuant to this section.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to the Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the Internal Revenue Service and the three-digit Plan Identification Number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with the PBGC. If no EIN or PN has been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date; and

(iii) The full text of the rules on the reduction or waiver of complete withdrawal liability.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes it pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of the Act. An abatement rule is not consistent with the purposes of the Act if—

(1) Implementation of the rule would be adverse to the interest of plan participants and beneficiaries; or

(2) The rule would increase the PBGC's risk of loss with respect to the plan.

Issued at Washington, DC, on this 17th day of February 1994.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving, and authorizing its chairman to issue, this final rule.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 94–4692 Filed 3–1–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Department of the Navy Privacy (PA) Program

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This is an administrative change. Within the Department of the

Navy, the Naval Intelligence Command will now be called the Office of Naval Intelligence. Therefore, this rule reflects the correct Navy organization responsible for the exempt system of records N03834–1, entitled Special Intelligence Personnel Access File. The exempt system of records is subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending 32 CFR part 701, subpart G, paragraph (f) by revising the Navy organization name. This is an administrative change.

List of Subjects in 32 CFR Part 701

Privacy.

For reasons set forth in the preamble, 32 CFR part 701, subpart G is amended as follows:

1. The authority citation for part 701, subpart G, continues to read as follows:

Authority: Pub.L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. In subpart G, § 701.119, paragraph (f), introductory text, is revised as follows:

* * * * *

Subpart G – Privacy Act Exemptions

* * * * *

§ 701.119 Exempt Navy record systems.

* * * * *

(f) *Office of Naval Intelligence* –

* * * * *

Dated: February 22, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4719 Filed 3–1–94; 8:45am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300309A; FRL–4747–5]

RIN 2070–AB78

Acrylonitrile-Styrene-Hydroxypropyl Methacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acrylonitrile-styrene-hydroxypropyl methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only. This regulation was requested by Day-Glo Color Corp.

EFFECTIVE DATE: This regulation becomes effective March 2, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300309A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 1993 (58 FR 62070), EPA issued a proposed rule that gave notice that Day-Glo Color Corp., 4515 St. Clair Ave., Cleveland, OH 44103, had submitted pesticide petition (PP) 3E04181 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acrylonitrile-styrene-hydroxypropyl methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

One comment was received in response to the proposed rule. The comment addressed the use of the inert in pesticide formulations. The commenter requested that the Agency amend the use statement to read "dye, coloring agent" instead of "pigment carrier." Because this chemical is not a dye but rather a polymeric resin which can be used as a pigment carrier, the Agency denied the request and the

proposed use statement will remain as is.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • •	•	• • •
Acrylonitrile-styrene-hydroxypropyl methacrylate co-polymer; minimum number-average molecular weight 447,000.		Pigment carrier
• • •	•	• • •

* * * * *

[FR Doc. 94-4644 Filed 3-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0F3851/R2042; FRL-4759-7]

RIN 2070-AB78

Exemption From the Requirement of a Pesticide Tolerance for the Insect Pheromone Codlure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a pesticide tolerance on all raw agricultural commodities for the insect pheromone codlure, [(E,E)-8,10-dodecadien-1-ol], in accordance with certain prescribed conditions. Consep Membranes, Inc., requested this tolerance exemption regulation.

EFFECTIVE DATE: Effective on March 2, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3851/R2042], may be submitted to: Hearing Clerk, Environmental Protection

Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Philip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1990 (55 FR 26752), EPA issued a notice which announced that Consep Membranes, Inc., of Bend, OR, had submitted a pesticide petition (PP OF3851) to EPA proposing to amend 40 CFR part 180 by establishing a regulation for exemption from the requirement of a tolerance (under section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346(a)), for codlure, [(E,E)-8,10-dodecadien-1-ol], in or on all raw agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated.

The mammalian toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity study in rats, an acute dermal toxicity study in rats, an acute intratracheal toxicity study in rats, a primary eye irritation study in rabbits, a primary dermal irritation study in rabbits, a dermal sensitization study in guinea pigs, and an Ames mutagenicity assay.

The results of these studies showed no significant toxic effects. When male and female rats were dosed orally at 5,050 mg/kg, minor effects including piloerection, diarrhea, salivation, nasal discharge, epistaxis, and polyuria occurring immediately following dosing were observed. All symptoms disappeared within 3 days after dosing. (Toxicity Category IV). When male and female rats were dosed dermally at 2,020 mg/kg in a single application, one of the females showed decreased defecation and diarrhea, whereas males showed no effects. No deaths occurred and no gross pathological findings were reported for any animals (Toxicity Category III). Male and female rats exposed to 2.5 mL/kg codlure via the intratracheal route gained weight during the course of the study. Only minor clinical signs of toxicity were observed, i.e., decreased activity, chromodacryorrhea, constricted pupils, epistaxis, nasal discharge, salivation, and respiratory gurgle. No deaths were reported and upon necropsy, no compound-related findings were observed (Toxicity Category III). The primary eye irritation study demonstrated resolution of conjunctival redness by day 7 and resolution of chemosis and conjunctival discharge by 72 hours in rabbits (Toxicity Category III). The primary dermal irritation study in rabbits resulted in primary dermal irritation scores of 2.5 (mildly irritating) and 3.3 (moderately irritating) at 72 and 96 hours, respectively (Toxicity Category III). The dermal sensitization study (Buehler) indicated that the codlure pheromone is not a dermal sensitizer. The Ames mutagenicity assay indicated up to cytotoxic levels that in the presence or absence of S9 activation, codlure showed no evidence of mutagenic activity in *Salmonella typhimurium*.

Reference Dose (RfD) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that this insect pheromone showed no significant adverse effect to laboratory animals in any test. Because no tolerance level is set for this insect pheromone, the requirement for an analytical method for enforcement purposes is not applicable to this exemption from the requirement of a tolerance.

Based on the information cited above, the Agency has determined that the establishment of a tolerance is not necessary to protect the public health. Therefore, the permanent exemption from the requirement of a tolerance is established with the following conditions:

a. Application shall be limited solely to codlure dispensers that conform to the following specifications:

1. Commodity exposure must be limited to inadvertent physical contact. The design of the dispenser must be such as to preclude any exposure of its components to the raw agricultural commodity (RAC) or processed foods/feeds derived from the commodity due to its proximity to the RAC or as a result of its physical size. Dispensers must be of such size and construction that they are readily recognized post-application.

2. The dispensers must be applied discretely, i.e., placed in the field in easily perceived distinct locations in a manner that does not prevent later retrieval. This exemption does not apply to codlure applied in a broadcast manner either to a crop field plot or to individual plants.

b. A codlure dispenser is a single-enclosed or semi-enclosed unit that releases codlure into the surrounding atmosphere via volatilization and is applied in a manner to provide discrete application, i.e., in easily perceived distinct locations in a manner that does not prevent later retrieval of the codlure into the environment.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. A copy of the objections and hearing requests filed withthe Hearing Clerk should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis,

review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1126 to subpart D, to read as follows:

§ 180.1126 Codlure, (E,E)-8,10-Dodecadien-1-ol; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for the insect pheromone codlure, (E,E)-8,10-dodecadien-1-ol, on all raw agricultural commodities in accordance with the following prescribed conditions:

(a) Application shall be limited solely to codlure dispensers that conform to the following specifications:

(1) Commodity exposure must be limited to inadvertent physical contact. The design of the dispenser must be such as to preclude any exposure of its components to the raw agricultural commodity (RAC) or processed foods/feeds derived from the commodity due to its proximity to the RAC or as a result of its physical size. Dispensers must be of such size and construction that they are readily recognized post-application.

(2) The dispensers must be applied discretely, i.e., placed in the field in easily perceived distinct locations in a manner that does not prevent later retrieval. This exemption does not apply to codlure applied in a broadcast manner either to a crop field plot or to individual plants.

(b) A codlure dispenser is a single enclosed or semi-enclosed unit that releases codlure into the surrounding atmosphere via volatilization and is applied in a manner to provide discrete application (i.e., in easily perceived distinct locations in a manner that does not prevent later retrieval) of the codlure into the environment.

[FR Doc. 94-4645 Filed 3-1-94; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 1F4016 and PP 2F4053/R2039; FRL-4756-8]

RIN 2070-AB78

Pesticide Tolerances for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insect growth regulator cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on leafy vegetables (except Brassica) at 10.0 ppm and in or on cucurbits vegetables at 2.0 ppm. This regulation to establish maximum permissible levels for residues of the insecticide was requested pursuant to petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective March 2, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 1F4016 and PP 2F4053/R2039], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM 18), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 11, 1992 (57 FR 8658 -8659), EPA issued notices which announced that Ciba-Geigy Corp., P.O. box 18300, Greensboro, NC 27419, had submitted pesticide petitions (PP 1F4016 and PP 2F4039) to EPA proposing to amend 40 CFR 180.414 by establishing tolerances, under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for residues of the insecticide cyromazine (*N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on the raw agricultural commodities leafy vegetables crop group at 10.0 ppm and cucurbit vegetables crop group at 2.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing. The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the **Federal Register** of April 27, 1984 (49 FR 18120); in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the **Federal Register** of May 15, 1985 (50 FR 20373) and in the proposed rule regarding the

establishment of a tolerance for residues of cyromazine and its metabolite melamine, calculated as cyromazine, in or on mushrooms at 10.0 ppm in the **Federal Register** of June 30, 1993 (58 FR 34972).

A chronic dietary exposure/risk assessment for the proposed use on cucurbit vegetables and leafy vegetables (except Brassica) based on tolerance residue levels of 2.0 ppm and 10.0 ppm, respectively, was performed. This chronic analysis compared exposure estimates to a Reference Dose (RfD) of 0.0075 mg/kg/ body weight/day based on a no-observable-effects level (NOEL) of 0.75 mg/kg body weight/day and an uncertainty factor of 100. The NOEL is based on a 6-month dog feeding study which demonstrated decreased hematocrit and hemoglobin levels. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances for cyromazine utilizes 30% of the RfD for the overall U.S. population. With the inclusion of leafy vegetables (except Brassica) and cucurbit vegetables, dietary risk is raised to 60 percent of the RfD. Therefore, the contribution of the leafy vegetables (except Brassica) and cucurbit vegetables tolerances takes up an additional 30 percent of the RfD. Further, with the inclusion of the leafy vegetables (except Brassica) and cucurbit vegetables, the estimates for the total percent RfD occupied for infants aged less than 1 year and children 1 through 6 years of age become 44% and 66%, respectively. Since the exposure estimates are based on theoretically maximum residues, and are typically overestimates of actual exposure, and since they do not exceed the Reference Dose, the chronic dietary risk of cyromazine does not appear to be of concern.

The nature of the residue in plants is adequately understood for the purposes of these tolerances. An adequate analytical method, high-pressure liquid chromatograph with UV detection, is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II (PAM II).

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock or poultry feed items asssociated with this action.

Based on the information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. The pesticide is considered useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. Therefore, the tolerance is established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.414(e) in the table therein by adding and alphabetically inserting the following entries, to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(e) * * *

Commodity	Parts per million
* * * * *	
Cucurbit vegetables	2.0
Leafy vegetables (except Brassica)	10.0
* * * * *	

[FR Doc. 94-4750 Filed 3-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 233

[FRL–4834–2]

New Jersey Department of Environmental Protection and Energy Section 404 Permit Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule; approval of State program.

SUMMARY: The State of New Jersey has submitted an application under section 404(g) of the Clean Water Act for the approval of a program to regulate the discharge of dredged or fill material into certain waters of the United States within the State. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate discharges of dredged or fill material meets the requirements of section 404(h) of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This approval will become effective at 1 p.m. eastern daylight time on March 2, 1994. The incorporation by reference of certain publications listed in this approval is approved by the Director of the Federal Register, as of 1 p.m. on March 2, 1994, in accordance with 5 U.S.C. 552(a).

FOR FURTHER INFORMATION CONTACT: Mario Del Vicario, Chief, Marine & Wetlands Protection Branch, Water Management Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278 or by telephone at (212) 264–5170. Copies of EPA's responsiveness summary are available from the above address.

SUPPLEMENTARY INFORMATION: The Federal Clean Water Act (33 U.S.C. 1251 et seq., hereinafter the "CWA") established the section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into waters of the United States at specified disposal sites. Section 404(g) of the CWA provides that the Governor of any state desiring to administer its own individual and general permit program for the discharge of dredged or fill material into waters of the United States (other than those waters which are presently used, or are susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator of the USEPA a full and complete description of the program it proposes to establish and administer under State law, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program. The Administrator is required to approve such submitted program unless the program does not meet the requirements of Section 404(h) of the CWA. Among other authorities, the State must have:

(1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under section 404(b)(1); (2) adequate authority, including civil and criminal penalties, to abate violations of the permit or the permit program; and (3) authority to ensure that the Administrator, the public, any other affected State, and other affected agencies, are given notice of each application for permit and are provided an opportunity for a public hearing before a ruling on each such application. The regulations establishing the requirements for the approval of the 404 Permit Programs were published at 53 FR 20764 on June 6, 1988 (40 CFR parts 232 and 233).

On June 15, 1993 the State of New Jersey completed the submission of an application under section 404(g) for EPA approval of a program administered by the New Jersey Department of Environmental Protection and Energy (NJDEPE) to regulate the discharge of dredged or fill material into waters of the United States within the State. On July 9, 1993 EPA published notice of its receipt of the application, requested public comments, and scheduled three public hearings on the State's submission (FR Doc. 93–16307). The public hearings were held throughout the state on August 10, 11, and 12, 1993.

After careful review of this application, I have determined that the State of New Jersey's Program submitted by the NJDEPE to regulate discharges of dredged or fill material meets the requirements of section 404(h) of the CWA, and hereby approve it. The effect of this approval is to establish this program as the applicable regulatory program under the CWA for discharges of dredged or fill material into waters of the United States in New Jersey that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto.

Since this approval, in large part, simply ratifies State regulations and requirements already in effect under State law, EPA is publishing this approval, effective immediately. This will enable New Jersey to begin immediately regulating discharges of dredged or fill material under the Federally approved program.

List of Subjects in 40 CFR Part 233

Environmental protection, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Water pollution control.

Dated: January 25, 1994.

William J. Muszynski,

Acting Regional Administrator

For the reasons set forth in the preamble, chpater I, title 40 of the Code of Federal Regulations is amended as follows:

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart H—Approved State Programs

2. Part 233 is amended by adding § 233.71 to subpart H to read as follows:

§ 233.71 New Jersey.

The applicable regulatory program for discharges of dredged or fill material into waters of the United States in New Jersey that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection and Energy, approved by EPA, pursuant to section 404 of the CWA. The program becomes effective March 2, 1994. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in paragraph (b) of this section are hereby incorporated by reference and made a part of the applicable 404 Program under the CWA for the State of New Jersey, for incorporation by reference by the Director of the Federal Register in accordance with 552(a) and 1 CFR part

51. Material is incorporated as it exists at 1 p.m. on March 2, 1994 and notice of any change in the material will be published in the **Federal Register**.

(b) Copies of materials incorporated by reference may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of materials incorporated by reference may be obtained or inspected at the EPA OUST Docket, 401 M Street, SW., Washington, DC 20460, and at the Library of the Region 2 Regional Office, Federal Office Building, 26 Federal Plaza, New York, NY 10278.

(1) New Jersey Statutory Requirements Applicable to the Freshwater Wetlands Program, 1994.

(2) New Jersey Regulatory Requirements Applicable to the Freshwater Wetlands Program, 1994.

(c) *Other laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Administrative Procedure Act, N.J.S.A. 52:14B–1 *et. seq.*

(2) New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1–1.1 *et. seq.*

(3) Open Public Meetings Act, N.J.S.A. 10:4–6 *et. seq.*

(4) Examination and Copies of Public Records, N.J.S.A. 47:1A–1 *et. seq.*

(5) Environmental Rights Act, N.J.S.A. 2A:35A–1 *et. seq.*

(6) Department of Environmental Protection (and Energy), N.J.S.A. 13:1D–1 *et. seq.*

(7) Water Pollution Control Act, N.J.S.A. 58:10A–1 *et. seq.*

(d) *Memoranda of agreement.* The following memoranda of agreement, although not incorporated by reference also are part of the approved State administered program:

(1) The Memorandum of Agreement between EPA Region II and the New Jersey Department of Environmental Protection and Energy, signed by the EPA Region II Acting Regional Administrator on June 15, 1993.

(2) The Memorandum of Agreement between the U.S. Army Corps of Engineers and the New Jersey Department of Environmental Protection and Energy, signed by the Division Engineer on March 4, 1993.

(3) The Memorandum of Agreement between EPA Region II, the New Jersey Department of Environmental Protection and Energy, and the U.S. Fish and Wildlife Service, signed by all parties on December 22, 1993.

(e) *Statement of legal authority.* The following documents, although not incorporated by reference, also are part of the approved State administered program:

(1) Attorney General's Statement, signed by the Attorney General of New Jersey, as submitted with the request for approval of The State of New Jersey's 404 Program.

(2) The program description and any other materials submitted as part of the original application or supplements thereto.

[FR Doc. 94–4651 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–265; DA 94–164]

Cable Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction of effective date.

SUMMARY: The Commission corrects the January 10, 1994, effective date for adoption of its rules regarding carriage agreements between multichannel video programming distributors and video programming vendors (47 CFR 76.1300–76.1302). The effective date for this rule adoption is now January 26, 1994. The rule adoption was published on Tuesday, November 16, 1993 (58 FR 60390).

EFFECTIVE DATE: January 26, 1994.

FOR FURTHER INFORMATION CONTACT: Diane Hofbauer, 202–416–0807.

SUPPLEMENTARY INFORMATION: The Commission, issued a Second Report and Order in MM Docket 92–265, which, in response to the Cable Television Consumer Protection and Competition Act of 1992 prescribed regulations governing carriage agreements between multichannel video programming distributors and video programming vendors. As part of this action, the Commission adopted 47 CFR 76.1300–76.1302. These regulations included adoption of complaint procedures requiring approval by the Office of Management and Budget. That approval was received on January 26, 1994. Accordingly, the January 10, 1994, effective date for the adoption of 47 CFR 76.1300–76.1302 as published in FR Doc. 93–27880, on November 16, 1993 (page 60390, column 2) is corrected to be January 26, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–4458 Filed 3–1–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 92–264; DA 94–160]

Cable Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction of effective date.

SUMMARY: The Commission corrects the January 10, 1994, effective date for an amendment to its rules regarding limits on the carriage of vertically integrated cable programming (47 CFR 76.504). The effective date for this amendment is now January 26, 1994. The rule amendment was published on Monday, November 15, 1993 (58 FR 60135).

EFFECTIVE DATE: Section 76.504 is effective January 26, 1994.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, 202–632–5414.

SUPPLEMENTARY INFORMATION: The Commission, issued a Second Report and Order in MM Docket 92–264, which, in response to the Cable Television Consumer Protection and Competition Act of 1992 prescribed national subscriber limits and limits on the number of channels that can be occupied on a cable system by a video programmer in which the cable operator has an attributable interest. As part of this action, the Commission added 47 CFR 76.504. This addition included a recordkeeping obligation requiring approval by the Office of Management and Budget. That approval was received on January 26, 1994. Accordingly, the January 10, 1994, effective date for the addition of 47 CFR 76.504 as published in FR Doc. 93–27630, on November 15, 1993 (page 60135, column 1) is corrected to be January 26, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–4457 Filed 3–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Auerodendron Pauciflorum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Auerodendron pauciflorum* (no common name) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. This evergreen shrub is endemic to Puerto Rico, where only 10 individuals are known to exist in the limestone hills of Isabela in the northwestern part of the island. The primary threat to the species is habitat destruction from development. This final rule will implement the Act's protection and recovery provisions for *Auerodendron pauciflorum*.

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/679–7096).

SUPPLEMENTARY INFORMATION:

Background

Auerodendron pauciflorum was first discovered by Mr. Roy Woodbury in 1976 in the limestone hills of Isabela in northwestern Puerto Rico. It was later described by Alain Liogier in 1982. This was also the first record of this genus in Puerto Rico.

Auerodendron pauciflorum is an evergreen shrub or small tree which may reach up to 5 meters in height. The leaves are opposite or subopposite, ovate to ovate-elliptic, 6 to 15 centimeters long and 3.5 to 6 centimeters wide, glabrous, and with minute black glandular dots. Paired ovate-triangular, ciliate stipules, 1.5 millimeters long, are present at the base of the petiole. The peduncles vary from 5 to 7 millimeters in length. Two to three flowers are borne in the leaf axils. The calyx tube is broadly campanulate, 2 millimeters long and 3 millimeters wide. The fruit is unknown at the present time (Proctor 1991).

Auerodendron pauciflorum is restricted to the semi-evergreen forests (subtropical moist forest life zone) of the limestone hills of Isabela in northwestern Puerto Rico at elevations of less than 100 meters. Only 10 individual plants are known from the edges of these limestone cliffs (Proctor 1991). Hills in the area were destroyed for the construction of the existing Highway 2. The area is privately owned and presently under intense pressure for rural, urban and tourist development. The construction of a resort development, including 7 hotels, 5 golf courses, 36 tennis courts and 1,300 housing units is proposed for the area.

Auerodendron pauciflorum was included as a Category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice of review. A proposal to list *Auerodendron pauciflorum* as endangered was published on March 18, 1993 (58 FR 14541).

Summary of Comments and Recommendations

In the March 18, 1993, proposed rule and associated notifications, all interested parties' were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, universities and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Juan Star on April 4, 1993. Two letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources supported the listing of *Auerodendron pauciflorum* as an endangered species. It stated that the species is only known from one site, the type locality, and is a member of a genus which consists of only seven species endemic to the West Indies.

Dr. Duane Kolterman and Dr. Gary Breckon, of the University of Puerto Rico at Mayaguez, also supported the listing of the species as endangered. They stated that the species is one of the rarest plants in Puerto Rico and that an additional threat is the construction of transmission towers for the cellular telephone industry.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Auerodendron pauciflorum* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Auerodendron pauciflorum* Alain are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Auerodendron pauciflorum is found on privately owned land currently subject to intense pressure for rural, urban and tourist development. Hills in this area were destroyed for the construction of Highway 2. A large resort complex is currently proposed for the area and many hills are being utilized for the construction of transmission towers. Limestone hills are continuously being leveled for the production of construction material. These factors, as well as random cutting and the harvesting of yams, have contributed to the decline of the species and continue to threaten the remaining individuals.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of this species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Auerodendron pauciflorum* is not yet on the Commonwealth list. Federal listing provides immediate protection and enhances its protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of this species is its limited distribution.

Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. The fruit has not been described and seedlings have not been observed in the field.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Auerodendron pauciflorum* as endangered. Only 1 population consisting of 10 individuals is known to exist. Deforestation for rural, urban, and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the Critical Habitat section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Auerodendron pauciflorum* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Auerodendron pauciflorum*, as discussed above. Federal involvement may occur through the funding of residential developments by agencies such as the Farmers Home Administration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Auerodendron pauciflorum* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 420C, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Liogier, A. 1982. *Auerodendron pauciflorum* Alain. Phytologia 50(3):164–166.

Proctor, G.R. 1991. Status report on *Auerodendron pauciflorum* Alain. Unpublished status report submitted to the U.S. Fish and Wildlife Service. Boquerón, Puerto Rico. 8 pp.

Author

The primary author of this rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Rhamnaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Rhamnaceae—Buckthorn family:						
Auerodendron pauciflorum	None	U.S.A. (PR)	E	531	NA	NA
•	•	•	•	•	•	•

Dated: February 15, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4723 Filed 3–1–94; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 59, No. 41
Wednesday, March 2, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–120–1]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations by revising standards established for the brucellosis testing of cattle and bison with the particle concentration fluorescence immunoassay test. By revising the standards for this test, we believe we would help designated epidemiologists to avoid incorrectly classifying cattle and bison as brucellosis suspects.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–120–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Kopec, Senior Staff Veterinarian, Cattle Diseases Staff, Veterinary Services, APHIS, USDA, room 730, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious and contagious disease, caused by bacteria of the genus Brucella, that affects animals and man. The Secretary of Agriculture is authorized to cooperate with the States in conducting a brucellosis eradication program and in preventing the interstate spread of brucellosis. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

One official test is the particle concentration fluorescence immunoassay (PCFIA) test, an automated serologic test for brucellosis in cattle, bison, and swine. Results of the PCFIA test are expressed as an S/N value, which is the ratio of the test sample to a negative control. Currently, under the definition of *Official test* in § 78.1(a)(10) of the regulations, cattle and bison are considered: (1) reactors when the S/N value of their PCFIA test results is less than or equal to 0.25; (2) suspects when the S/N value is greater than or equal to 0.26, but less than or equal to 0.70; and (3) negative when the S/N value is greater than 0.70.

We believe that the spectrum of S/N ratios indicating suspect status in cattle and bison is too broad. We have determined that tested cattle and bison with S/N values between 0.60 and 0.70, and thus classified under the regulations as brucellosis suspects, almost always prove to be noninfected after supplemental testing. Moreover, we have also determined that the vast majority of tested cattle and bison with S/N values between 0.25 and 0.30, and thus classified as brucellosis suspects, prove to be brucellosis reactors in subsequent testing.

We propose, therefore, to revise the PCFIA test standards to reflect this new information. This would allow the brucellosis disease status of test-eligible cattle and bison to be more accurately determined. Under this proposal, cattle and bison tested with the PCFIA test would be considered: (1) reactors when the S/N value of their test results is less than or equal to 0.30; (2) suspects when the S/N value is greater than 0.30, and less than or equal to 0.60; and (3) negative when the S/N value is greater than 0.60.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

We are proposing to amend the brucellosis regulations by revising standards established for the brucellosis testing of cattle and bison with the PCFIA test. We believe that the test result standards in the current regulations which indicate the disease status of tested animals can be improved.

Incorrect brucellosis classification of cattle and bison as a result of the current PCFIA test standards creates marketing delays and unnecessary costs for farmers. Under the regulations, cattle and bison classified as brucellosis suspects must either be quarantined and retested within 30 days or sold for slaughter (usually at a loss). Consequently, farmers may unnecessarily quarantine or slaughter, at a loss, incorrectly classified cattle and bison. Therefore, we believe our proposal to revise the PCFIA test result standards would save farmers both time and money.

Though we believe that the economic impact of this proposal would be positive, we also believe it would be minimal. We anticipate that only about 7,200 cattle and bison in 560 herds (less than one thousandth of a percent of all cattle and bison in the United States) are classified incorrectly as brucellosis suspects under our current regulations. We estimate that all of the cattle and bison affected by this proposal would be owned by farms classified as small entities under Small Business Administration standards.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78, would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of *Official test*, paragraph (a)(10), the table would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(10) * * *

S/N ratio	Classification
Greater than .60	Negative.
Greater than .30 but less than or equal to .60.	Suspect.
.30 or less	Positive.

* * * * *

Done in Washington, DC, this 23rd day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4724 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 94

[Docket No. 93–172–1]

Change in Disease Status of Hungary Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Hungary free of rinderpest and foot-and-mouth disease. As part of this proposed action, we would add Hungary to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We would also add Hungary to the list of countries from which the importation into the United States of llamas and alpacas is restricted. This proposed rule would remove the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations would be subject to certain restrictions. This proposed rule would also relieve restrictions on the importation, from Hungary, of milk and milk products of ruminants.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–172–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which have been declared to be free of both diseases. We will consider declaring a country to be free of rinderpest and FMD if there have been no reported cases of either disease in that country for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period.

The last outbreak of rinderpest in Europe occurred prior to 1921, and there have been no outbreaks of FMD since 1973. A limited FMD vaccination program that was conducted near the country's eastern borders was discontinued in 1989. Based on these considerations, the government of Hungary requested that the U.S. Department of Agriculture (USDA) declare Hungary to be free of rinderpest and FMD.

The Animal and Plant Health Inspection Service (APHIS) reviewed the documentation submitted by the government of Hungary in support of its request, and a team of APHIS officials traveled to Hungary in October 1993 to conduct an on-site evaluation of the country's animal health program with regard to the FMD situation in Hungary. The evaluation consisted of a review of Hungary's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of rinderpest and FMD into Hungary through the importation of animals, meat, or animal products. The APHIS officials conducting the on-site evaluation concluded that Hungary is free of rinderpest and FMD. (Details concerning the on-site evaluation are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Therefore, based on the information discussed above, we are proposing to amend § 94.1(a)(2) by adding Hungary to the list of countries declared to be free of both rinderpest and FMD. This proposed action would remove the prohibition on the importation, from

Hungary, of ruminants and any fresh, chilled, and frozen meat of ruminants, and would relieve restrictions on the importation, from Hungary, of milk and milk products of ruminants. However, because Hungary has not been declared free of hog cholera, the importation of pork and pork products would continue to be restricted under § 94.9 of the regulations, and the importation of swine from Hungary would continue to be prohibited under § 94.10. Similarly, for the reasons discussed below, we would make the importation of meat and other animal products of ruminants or swine from Hungary subject to the restrictions contained in § 94.11.

We are proposing to amend § 94.11(a) by adding Hungary to the list of countries that have been declared free of rinderpest and FMD but from which the importation into the United States of meat and other animal products is restricted. The countries listed in § 94.11(a) are subject to these restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD; (2) have a common land border with countries designated as infected with rinderpest or FMD; or (3) import ruminants or swine from countries designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Hungary supplements its national meat supply by importing fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. In addition, Hungary has common land borders with Slovakia, Ukraine, Romania, Yugoslavia, Croatia, and Slovenia, which are designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, even though Hungary appears to qualify for designation as a country free of rinderpest and FMD, there is the potential for meat or other animal products produced in Hungary to be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists. This potential for commingling constitutes an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants or swine, as well as any ship's stores, airplane meals, or baggage containing such meat or other animal products, offered for importation into the United States from Hungary be subject to the restrictions specified in § 94.11 of the regulations in addition to the applicable regulations of the USDA's Food Safety and Inspection Service, which are located in 9 CFR chapter III. Section 94.11 generally requires that the meat and other animal products of ruminants or swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certification from a full-time salaried veterinary official of the national government of the exporting country, stating that the meat or other animal product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country infected with rinderpest or FMD.

We are also proposing to add Hungary to a third list, this one in § 94.1(d)(1). All countries in which rinderpest or FMD has been known to exist that have been declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding Hungary to this list would mean that no llama or alpaca could be imported or entered into the United States from Hungary unless in accordance with 9 CFR 92.435. We are not, however, aware of any llamas or alpacas in Hungary that are available for export.

Miscellaneous

In addition to the proposed changes set forth above, we would correct the paragraph designations used in § 94.9(b)(1)(ii) and (iii). In each of those paragraphs, italicized lowercase letters were used where normal uppercase letters are needed. Also in § 94.9, we would make several nonsubstantive editorial changes for the sake of clarity or to correct grammatical errors. Finally, in § 94.11(a), we would adjust the order in which three countries appear to restore alphabetical order to the list of countries in that paragraph.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule, if adopted, would amend the regulations in part 94 by adding Hungary to the list of countries declared to be free of rinderpest and FMD. This action would remove the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations would be subject to certain restrictions. This proposed revision would also relieve restrictions on the importation, from Hungary, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Hungary into the United States as a result of this proposed rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2 million. The United States did not import any cattle or sheep from Hungary during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Hungary free of rinderpest and FMD would have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Hungary. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Hungarian meat production in 1991 reached approximately 115,000 metric tons, about 1 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Hungary exported a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies would be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Hungary into the United States as a result of this proposed rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer

has applied for and obtained written permission from the Administrator. The United States imported about 662 metric tons of casein from Hungary in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Hungary free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Hungary because the current restrictions do not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this proposed rule would have the effect of removing certain restrictions on the importation of bovine semen and cattle embryos from Hungary, the economic effect of this proposed rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers would be interested in importing bovine semen or cattle embryos from Hungary if this proposed rule is adopted, the amount of each that might be imported would be minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Hungary," immediately after "Honduras,".

3. In § 94.1, paragraph (d)(1) would be amended by adding "Hungary," immediately after "France,".

§ 94.9 [Amended]

4. Section 94.9 would be amended as follows:

a. Paragraphs (b)(1) (ii) (*a*) and (*b*) would be redesignated as paragraphs (b)(1)(ii) (A) and (B).

b. Paragraphs (b)(1)(iii) (*a*), (*b*), and (*c*) would be redesignated as paragraphs (b)(1)(iii) (A), (B), and (C).

c. In newly designated paragraph (b)(1)(iii)(C)(*2*), the words "paragraph (b)(1)(iii)(*c*)(*1*) of" would be removed and the words "paragraph (b)(1)(iii)(C)(*1*) of" added in their place, and the words "paragraphs (b)(1), (i), (ii), or (iii)" would be removed and the words "paragraph (b)(1) (i), (ii), or (iii)" added in their place.

d. In paragraph (b)(2), the words "under paragraphs" would be removed and the words "under paragraph" added in their place.

e. In paragraph (b)(3), the first sentence, the words "under paragraphs" would be removed and the words "under paragraph" added in their place, and the words "paragraph (b)(1) (ii) or (iii) of this section has" would be removed and the words "the provisions of paragraph (b)(1) (ii) or (iii) of this section have" added in their place.

f. In paragraph (c), the words "provisions of" would be added immediately before the reference "§ 94.12(b)(1)(iii)".

§ 94.11 [Amended]

5. In § 94.11, paragraph (a), the first sentence would be amended by adding "Hungary," immediately before "Japan," and by removing the words "Spain, Poland, Republic of Ireland," and adding, in their place, "Poland, Republic of Ireland, Spain,".

Done in Washington, DC, this 23rd day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4726 Filed 3–1–94; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 94

[Docket No. 93–173–1]

Change in Disease Status of Austria Because of Rinderpest, Foot-and-Mouth Disease, and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Austria free of rinderpest, foot-and-mouth disease, and swine vesicular disease. As part of this proposed action, we would add Austria to the lists of countries that, although declared free of rinderpest, foot-and-mouth disease, and swine vesicular disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We would also add Austria to the list of countries from which the importation into the United States of llamas and alpacas is restricted. Declaring Austria free of rinderpest, foot-and-mouth disease, and swine vesicular disease appears to be appropriate because the last outbreak of rinderpest in Europe occurred prior to 1921, there have been no outbreaks of foot-and-mouth disease in Austria since 1981, and there have been no outbreaks of swine vesicular disease since 1979. This proposed rule would remove the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations would be subject to certain restrictions. This proposed rule would also relieve restrictions on the importation, from Austria, of milk and milk products of ruminants.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–173–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which have been declared to be free of both diseases. Section 94.12(a) of the regulations provides that SVD is considered to exist in all countries of the world except those listed in § 94.12(a), which have been declared to be free of SVD. We will consider declaring a country to be free of rinderpest, FMD, and SVD if there have been no reported cases of the diseases in that country for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period.

The last outbreak of rinderpest in Europe occurred prior to 1921. There have been no outbreaks of FMD in Austria since 1981, and there have been no vaccinations for FMD in Austria since that 1981 outbreak. There have been no outbreaks of SVD since 1979. Based on these considerations, the government of Austria has requested that the U.S. Department of Agriculture (USDA) declare Austria to be free of rinderpest, FMD, and SVD.

The Animal and Plant Health Inspection Service (APHIS) reviewed the documentation submitted by the government of Austria in support of its request, and a team of APHIS officials traveled to Austria in October 1993 to conduct an on-site evaluation of the country's animal health program with regard to the rinderpest, FMD, and SVD situation in Austria. The evaluation consisted of a review of Austria's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of rinderpest, FMD, and SVD into Austria through the importation of animals, meat, or animal products. The APHIS officials conducting the on-site evaluation concluded that Austria is free of rinderpest, FMD, and SVD. (Details concerning the on-site evaluation are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT.**)

Therefore, based on the information discussed above, we are proposing to amend § 94.1(a)(2) by adding Austria to the list of countries declared to be free of both rinderpest and FMD. We are also proposing to amend § 94.12(a) by adding Austria to the list of countries declared to be free of SVD. These proposed actions would remove the prohibition on the importation, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, and would relieve restrictions on the importation, from Austria, of milk and milk products of ruminants. However, because Austria has not been declared free of hog cholera, the importation into the United States, from Austria, of pork and pork products would continue to be restricted under § 94.9 of the regulations, and the importation of swine from Austria would continue to be prohibited under § 94.10. Similarly, for the reasons discussed below, we would make the importation of the meat and other animal products of ruminants or swine from Austria subject to the restrictions contained in §§ 94.11 and 94.13.

We are proposing to amend § 94.11(a) by adding Austria to the list of countries that have been declared free of rinderpest and FMD but from which the importation of meat and other animal products is restricted. Similarly, we are proposing to amend § 94.13(a) by adding Austria to the list of countries that have been declared free of SVD but from which the importation of pork and pork products is restricted. The countries listed in §§ 94.11(a) and 94.13(a) are subject to these restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD or in § 94.12 as infected with SVD; (2) have a common land border with countries designated as infected with rinderpest, FMD, or SVD; or (3) import ruminants or swine from countries designated as infected with rinderpest, FMD, or SVD under conditions less restrictive than would be acceptable for importation into the United States.

Austria supplements its national meat supply by importing fresh, chilled, and frozen meat of ruminants and swine from countries designated in §§ 94.1(a)(1) and 94.12(a) as countries in which rinderpest, FMD, or SVD exists. In addition, Austria has common land borders with the Czech Republic, Slovakia, Slovenia, Italy, Switzerland, and Liechtenstein. Those countries are designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists and, except for Switzerland, are also designated in § 94.12(a) as countries where SVD exists. As a result, even though Austria appears to qualify for designation as a country free of rinderpest, FMD, and SVD, there is the potential for meat or other animal products produced in Austria to be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest, FMD, or SVD exists. This potential for commingling constitutes an undue risk of introducing rinderpest, FMD, or SVD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants or swine, as well as any ship's stores, airplane meals, or baggage containing such meat or other animal products, offered for importation into the United States from Austria be subject to the restrictions specified in §§ 94.11 and 94.13 of the regulations and to the applicable requirements contained in the regulations of the USDA's Food Safety and Inspection Service at 9 CFR chapter III. Sections 94.11 and 94.13 generally require that the meat and other animal products of ruminants or swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by

an additional certification from a full-time salaried veterinary official of the national government of the exporting country, stating that the meat or other animal product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country infected with rinderpest, FMD, or SVD.

We are also proposing to add Austria to another list, this one in § 94.1(d)(1). All countries in which rinderpest or FMD has been known to exist that have been declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding Austria to this list would mean that no llama or alpaca could be imported or entered into the United States from Austria unless in accordance with 9 CFR 92.435. We are not, however, aware of any llamas or alpacas in Austria that are available for export.

Miscellaneous

In addition to the proposed changes set forth above, we would make several nonsubstantive editorial changes in § 94.13 for the sake of clarity or to correct grammatical errors.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule, if adopted, would amend the regulations in part 94 by adding Austria to the list of countries declared to be free of rinderpest and FMD and to the list of countries declared free of SVD. This action would remove the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations would be subject to certain restrictions. This proposed revision would also relieve restrictions on the importation, from Austria, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Austria into the United States as a result of this proposed rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2.0 million. The United States did not import any cattle or sheep from Austria during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Austria free of rinderpest and FMD would have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Austria. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Austrian meat production in 1991 reached approximately 230,000 metric tons, about 2 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Austria exported a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies would be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Austria into the United States as a result of this proposed rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The United States did not import any casein from Austria in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Austria free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Austria because the current restrictions do not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this proposed rule would have the effect of removing certain restrictions on the importation of bovine semen and cattle embryos from Austria, the economic effect of this proposed rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers would be interested in importing bovine semen or cattle embryos from Austria if this proposed rule is adopted, the amount of each that might be imported would be minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Austria," immediately after "Australia,".

3. In § 94.1, paragraph (d)(1) would be amended by removing "September 28, 1990;" and by adding "September 28, 1990: Austria," in its place.

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence would be amended by adding "Austria," immediately before "The Bahamas,".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a), the first sentence would be amended by adding "Austria," immediately after "Australia,".

§ 94.13 [Amended]

6. In § 94.13, in the introductory text, the first sentence would be amended by adding "Austria," immediately before "The Bahamas,"; by adding a comma immediately after "Yugoslavia"; by removing the words "§ 94.12(a); are countries which" and adding the words "§ 94.12(a), are countries that" in their place; and by removing the words "or which have a common border with such countries; or which" and adding the words "have a common border with such countries; or" in their place.

Done in Washington, DC, this 23rd day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4727 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AE60

Loan Guaranty: Acceptance of Partial Payments; Indemnification of Default

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations to comply with certain provisions of the Veterans Home Loan Indemnity and Restructuring Act of 1989. Changes made by this law which VA proposes to incorporate into the regulations by these amendments are: The addition of a requirement that the holder provide notice to the Secretary when refusing to accept partial payment on a loan in default; and a clarification of when a veteran has liability to the Secretary for a loss due to a loan default. These changes will ensure that no veteran loses a home because a loan holder returned partial payments in violation of VA requirements and will aid VA in obtaining the cooperation of veterans in reducing loan guaranty losses by pursuing alternatives to foreclosure.

DATES: Comments must be received on or before May 2, 1994. VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 170, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: VA is proposing to incorporate into its regulations two changes to comply with provisions of Public Law 101–237, the Veterans Home Loan Indemnity and Restructuring Act of 1989.

Sections 36.4275(f) and 36.4315(b) of 38 CFR part 36 provide that except under certain conditions described in the regulations the holder must accept from the borrower partial payment on a loan in default. Public Law 101–237 requires the holder to notify the Secretary when refusing to accept partial payment and provides that the Secretary may require certain specific information in the notice. VA proposes to amend §§ 36.4275(f) and 36.4315(b) to incorporate the requirement that the holder notify the Secretary within 10 days after refusing a partial payment. These sections will also be amended to require that the notice include the date of the tender, the amount tendered, the date the payment was returned, and the reason for the holder's refusal. This information will enable VA to verify that the lender's reason for refusal is in compliance with the regulations.

Section 36.4323(e) provides that the veteran owes a debt to the United States equal to any amount paid by the Secretary on account of the veteran's liability for the loan. Public Law 101–237 provides that an individual obtaining a guaranteed or insured loan closed after December 31, 1989, shall have no liability to the Secretary for loss resulting from a default on the loan, except: (1) In the case of fraud, misrepresentation, or bad faith by the individual in obtaining the loan or in connection with the loan default; or (2) where under 38 U.S.C. 3729(b) an individual pays a fee or is exempt from paying a fee to assume a loan; or, (3) where an individual obtains a loan for any purpose specified in 38 U.S.C. 3712, which pertains to manufactured homes. VA proposes to amend 38 CFR 36.4323, to reflect this change and to add a definition of bad faith to the loan guaranty regulations.

The proposed definition of bad faith is largely consistent with that promulgated at 58 FR 3841 on January 12, 1993 (38 CFR 1.965). There are, however, some differences. Reasons for the differences include:

1. The 38 CFR 1.965 definition is strictly for use by the Committee on Waivers and Compromises (COWC). The COWC has jurisdiction over waiver and compromise of all benefit overpayments, including Loan Guaranty debts, but within its jurisdiction the COWC only applies the definition of "bad faith" to define a condition which will bar waiver of an indebtedness which has been found to be valid. The COWC is not involved in determining whether a debt is valid.

2. The examples included with the proposed definition in 38 CFR 36.4202 and 4301 definition are strictly for use by Loan Guaranty and apply only to home loans. In Loan Guaranty "bad faith" is used in a number of contexts which are quite different from the way

in which it is used by the COWC. For example: A Loan Guaranty finding of bad faith is a basis for establishing a valid debt against a veteran on a GI loan originated after December 31, 1989; it is also the standard for deciding a veteran's appeal of such a finding.

Note: Appeal of the validity of a Loan Guaranty debt is processed by Loan Guaranty—the veteran has the right to file a subsequent Notice of Disagreement with the Board of Veterans Appeals.

For another example: A finding of bad faith on a real estate loan originated before January 1, 1990, prevents Loan Guaranty from granting a pre-foreclosure waiver of VA's right to establish and collect a veteran's liability account under 38 CFR 36.4323(e)(1).

3. Loan Guaranty debts differ from other overpayments in that the veteran often bears no direct role in their creation (i.e., foreclosure often occurs as a result of circumstances outside the veteran's control), in that the veteran has not profited personally by receiving a benefit (i.e., an overpayment) to which he or she was not entitled, and in that the amount of the debt which would ultimately be established can often be greatly reduced by the veteran cooperating with VA. Accordingly, for Loan Guaranty purposes "bad faith" must take into account the element of cooperation.

As the examples illustrate, the definition will permit a finding of lack of "bad faith" when the veteran is willing to cooperate with VA but prevented from doing so by circumstances beyond his or her control (e.g., the veteran is willing to offer a deed in lieu of foreclosure, but his or her spouse refuses to sign).

Many Loan Guaranty debts are established after foreclosure in cases where less costly alternatives could not be considered because the veteran did not respond to VA outreach efforts. This proposed regulation permits such a failure to respond to be deemed a "failure to cooperate with VA representatives in resolving an insoluble default in a manner which will minimize the amount of claim payable." "Compelling reasons" which would justify such failure would be heard by VA Loan Guaranty if offered after foreclosure inconnection with a veteran's dispute of the validity of an indebtedness. For example:

Assume a debt is established against a veteran on a loan originated after December 31, 1989, because he or she did not respond to VA outreach efforts. After foreclosure, the veteran explains and documents that he or she did not contact VA and pursue alternatives to foreclosure because, at the time, there was insufficient family income available to obtain any other housing. The veteran therefore intentionally took advantage of the time required to complete foreclosure to provide shelter for his or her family.

If the veteran questioned the validity of the debt by asserting that, under the circumstances, he or she did not show bad faith, the case would be reviewed by Loan Guaranty. (It could not be reviewed by the COWC because the COWC lacks jurisdiction over cases where the validity of debt is at issue.) Loan Guaranty could determine there were compelling reasons for the veteran's action, which would permit recission of the finding of bad faith, thereby invalidating the debt.

The examples included with the definition are considered appropriate because Loan Guaranty debts arise from substantially different circumstances than other VA liability accounts. The proposed regulation is intended to clarify the types of conduct which would be considered "bad faith" with respect to Loan Guaranty debts. Comments are specifically invited on these points.

Other changes required by Public Law 101–237 are being incorporated into the regulations through separate amendments. In addition, an amendment has been made to § 36.4275 to conform to the requirements of the Fair Housing Act of 1988, 42 U.S.C. 3601 et seq. which make it unlawful to discriminate in residential housing transactions against any person because of familial status or handicap.

Paperwork Reduction Act

Sections 36.4275 and 36.4315 of these regulations contain information collection requirements which will result in a reporting burden. The reporting burden is estimated to average 10 minutes per response for a total of 16,667 hours.

The average estimated time per response includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed amendments update VA regulations to implement the changes made by Public Law 101–237. The clarification of when a veteran has liability due to a loan default directly affects individual veterans, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

These amendments are proposed under Public Law 101–237 and the authority granted the Secretary by section 501(a) of title 38, United States Code.

Approved: November 23, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble 38 CFR part 36, is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, sections 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Section 36.4202 is amended by adding the term *Bad faith* to read as follows:

§ 36.4202 Definitions.

* * * * *

Bad faith. Unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Conduct in connection with an obligation arising from participation in the Loan Guaranty program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the Government. Examples of bad faith

include, but are not limited to, the following:

(1) Property abandonment;

(2) Failure to make payments on a VA-guaranteed loan, despite having the financial ability to make such payments; and,

(3) Failure to cooperate with VA representatives in resolving an insoluble default in a manner which will minimize the amount of claim payable by the Government, absent compelling reasons which would justify such failure.

* * * * *

3. Section 36.4275 is amended by removing the word "mobile" in the first sentence of paragraph (a)(1), and adding, in its place, the word "manufactured"; by adding in paragraph (c) the words "sex, handicap, familial status," after the word "religion,"; by redesignating paragraph (f)(3) as paragraph (f)(4); and by adding a newly designated paragraph (f)(3) to read as follows:

§ 36.4275 Events constituting default and acceptability of partial payments.

* * * * *

(f) * * *

(3) The holder shall give notice to the Secretary within ten days after a partial payment has been returned to the obligor. The notice shall include the date of the tender, the amount tendered, the date the payment was returned, and the reason for the holder's refusal.

* * * * *

4. The authority citation for part 36, sections 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

5. Section 36.4301 is amended by adding the term *Bad faith* to read as follows:

§ 36.4301 Definitions.

* * * * *

Bad faith. Unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Conduct in connection with an obligation arising from participation in the Loan Guaranty program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the Government. Examples of bad faith include, but are not limited to, the following:

(1) Property abandonment;

(2) Failure to make payments on a VA-guaranteed loan, despite having the financial ability to make such payments; and,

(3) Failure to cooperate with VA representatives in resolving an insoluble default in a manner which will minimize the amount of claim payable by the Government, absent compelling reasons which would justify such failure.

6. In § 36.4315, paragraph (b)(3) is redesignated paragraph (b)(4) and a newly designated paragraph (b)(3) is added to read as follows:

§ 36.4315 Notice of default and acceptability of partial payments.

* * * * *

(b) * * *

(3) The holder shall give notice to the Secretary within ten days after a partial payment has been returned to the obligor. The notice shall include the date of the tender, the amount tendered, the date the payment was returned, and the reason for the holder's refusal.

* * * * *

7. In § 36.4323, paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) are redesignated paragraphs (e)(3), (e)(4), (e)(5), and (e)(6), respectively; the introductory text in paragraph (e) is revised and newly designated paragraphs (e)(1) and (e)(2) are added to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) Any amounts paid by the Secretary on account of a loan guaranteed for any purpose specified in section 3710 of title 38, United States Code, shall constitute a debt owing to the United States:

(1) By the veteran if:

(i) The loan closed on or before December 31, 1989; or

(ii) The loan closed after December 31, 1989, and there has been fraud, misrepresentation, or bad faith by such veteran in obtaining the loan or in connection with the loan default; or

(2) By any person who was approved to assume the loan pursuant to sections 3713 and 3714 of title 38, United States Code.

* * * * *

[FR Doc. 94–4667 Filed 3–1–94, 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[FRL 4843–3]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. The purpose of the meeting is to continue identification and discussion of issues, discuss interests of committee members, and hear reports from task groups.

DATES: The committee will meet on March 22, 1994 from 10 a.m. to 6 p.m.

ADDRESSES: The location of the meeting will be the Holiday Inn East, 3750 Washtenaw, Ann Arbor, MI 48104, (313) 971–2000.

FOR FURTHER INFORMATION CONTACT:

Persons needing further information on the technical and substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4344. Persons needing further information on committee proceeds should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 260–5495, or the Committee's facilitator, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: February 22, 1994

Deborah Dalton,

Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 94–4648 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–4844–3]

Notice of Cancellation of March 3, 1994 Public Hearing Scheduled In Connection With the Proposed Imposition of Statewide Sanctions on California Under Clean Air Act Section 110(m) for Failure To Submit a Complete SIP Revision for an Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is cancelling the public hearing that had been scheduled for March 3, 1994 in Los Angeles to receive public comment on its proposed imposition of discretionary sanctions on the State of California. The sanctions had been proposed because of failure by the State to submit a complete SIP revision for an enhanced motor vehicle inspection and maintenance (I/M) program as required by the Clean Air Act for certain ozone and carbon monoxide (CO) nonattainment areas.

FOR FURTHER INFORMATION CONTACT: David Calkins, Chief, Air Planning Branch (A–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1500.

SUPPLEMENTARY INFORMATION: On January 7, 1994 (59 FR 3534, January 24, 1994) EPA proposed a rule for the imposition of discretionary sanctions on the State of California under section 110(m) of the Clean Air Act for failure to submit a complete SIP revision for an enhanced motor vehicle I/M Program. In the proposed rule, EPA announced its intention to finalize sanctions on California on May 15, 1994 if sufficient progress had not been made by the State toward the implementation of an approvable I/M program to be operational on or before January 1, 1995. The proposed rule announced a public hearing on the proposed action on March 3, 1994 to be held in Los Angeles.

Following the January 17, 1994 earthquake in California, on January 24, 1994 EPA Administrator Carol Browner sent a letter to California Governor Pete Wilson advising him that in light of the earthquake in California and the resulting damage to the state's highway system and economy, EPA was cancelling the May 15, 1994 deadline contained in the proposed rule for finalizing sanctions on California. Based on Administrator Browner's January 24th letter, EPA is cancelling the previously scheduled public hearing of March 3, 1994. At this time EPA is not accepting public comment on this proposal.

The public hearing was scheduled to be held on March 3, 1994 in the auditorium of the Los Angeles Department of Water and Power, 111 North Hope, Los Angeles, California 90012 from 1 p.m. to 5 p.m. and from 7 p.m. to 9 p.m.

Dated: February 23, 1994.

David P. Howekamp,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 94–4755 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 68

[FRL–4843–4]

List of Regulated Substances for Accidental Release Prevention Under Section 112(r) of the Clean Air Act as Amended; Risk Management Programs for Chemical Accident Release Prevention Under Section 112(r)(7) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice; extension of comment period.

SUMMARY: The Clean Air Act Amendments of 1990, signed into law on November 15, 1990, include provisions for chemical accident prevention. On January 31, 1994, the Environmental Protection Agency promulgated the list of regulated substances and thresholds required under section 112(r) of the Clean Air Act as Amended (59 FR 4478). The list and threshold quantities will identify facilities subject to chemical accident prevention regulations to be promulgated under section 112(r) of the Clean Air Act as Amended; a proposed regulation for such requirements was published in the **Federal Register** on October 20, 1993 (58 FR 54190). In promulgating the list, EPA deferred action on the proposed threshold quantities exemption for listed flammable substances when used solely for facility consumption as fuel (see 58 FR 5102, 5120, (January 19, 1993)). A supplemental notice was published on January 31, 1994 (59 FR 4500), requesting additional public comment on the hazards associated with flammable substances used as fuel and the appropriateness of the proposed exemption. In addition, EPA also requested comments on the impacts of proposed accident prevention requirements in the absence of an exemption, and on ways of reducing the impacts of these requirements. This notice extends the public comment period for the supplemental notice.

DATES: The comment period for the supplemental notice will be extended from the original closing date of March 2, 1994 to April 1, 1994.

ADDRESSES: Comments may be mailed or submitted to: Environmental Protection Agency, Attn: Docket No. (A–91–74), room 1500, Waterside Mall, 401 M Street S.W., Washington, DC 20460. Comment must be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office (5101), Environmental Protection Agency, 401 M Street SW., Washington DC 20460, or the Emergency Planning and Community Right-to-Know Hot Line at 1–800–535–0202.

Dated: February 23, 1994.

Elliott Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–4649 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300327; FRL–4762–1]

RIN 2070–AC18

Polyvinyl Alcohol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of polyvinyl alcohol (CAS Registry No. 9002-89-5) when used as an inert ingredient (surfactant) in pesticide formulations applied to food animals. This proposed regulation was requested by Farnum Companies, Inc.

DATES: Comments, identified by the document control number [OPP-300327], must be received on or before April 1, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal

Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Bldg., North, 2800 Crystal Drive, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Farnum Cos., Inc., 301 West Osborn, Phoenix, AZ 85013-3928, submitted pesticide petition (PP) 3E4176, requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for residues of polyvinyl alcohol (CAS Registry No. 9002-89-5) when used as an inert ingredient (surfactant) in pesticide formulations applied to food animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risk posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency generally does not need some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that any data, in addition to that described below, normally required to support polyvinyl alcohol will not need to be submitted. The rationale for this decision is described below.

1. Polyvinyl alcohol (PVA) is very poorly absorbed by the oral and dermal route.

2. Although PVA produces sarcomas, widespread cardiovascular lesions, severe glomerulonephritis and various organ enlargements when administered by subcutaneous injection, feeding studies indicate a low order of toxicity. When PVA was fed to rats (2 grams in 45 grams of feed for the first 2 weeks, followed by 4 grams in 45 grams of feed for the next 2 weeks), no toxic effects were observed and necropsy did not reveal any gross lesions of the internal organs.

3. PVA is cleared as an indirect food additive for use in adhesives (21 CFR 175.105), resinous and polymeric coatings (21 CFR 175.300 and 175.320), components of paper and paperboard in contact with food (21 CFR 176.170 and 176.180), with cellophane in food packaging (21 CFR 177.1200), in food-contact film (21 CFR 177.1670), in resin-bonded filters (21 CFR 177.2260), and in textiles and textile fibers (21 CFR 177.2800).

4. PVA is exempt from the requirement of a tolerance under 40 CFR 180.1001(d) when used as a binder, water soluble bag container, or film tape for encapsulating seeds.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating he document control number, [OPP-300327]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 22, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraph (e) in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
• • •	• • •	• •
Polyvinyl alcohol (CAS Registry No. 9002-89-5)	.....	Surfactant
• • •	• • •	• •

[FR Doc. 94-4647 Filed 3-1-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9E3752 and 9E3791/P575; FRL-4751-4]

RIN No. 2070-AC18

Pesticide Tolerances for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for combined residues of the insecticide cyromazine and its metabolite melamine in or on the raw agricultural commodities Chinese cabbage and Chinese mustard. The proposed regulation to establish maximum permissible levels for residues of the insecticide was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 9E3752 and 9E3791/P575], must be received on or before April 1, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 9E3752 and 9E3791 on behalf of the Agricultural Experiment Station of Florida. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.414 by establishing tolerances for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the raw agricultural commodities Chinese cabbage (PP 9E3752) and Chinese mustard (PP 9E3791) at 3.0 parts per million (ppm). The petitioner proposed that these uses of cyromazine be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The scientific data submitted in the petitions and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the proposed tolerances as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the **Federal Register** of April 27, 1984 (49 FR 18120); in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the **Federal Register** of May 15, 1985 (50 FR 20373); and in the proposed rule regarding the establishment of a tolerance for residues of cyromazine and its metabolite melamine, calculated as cyromazine, in or on mushrooms at 10.0 ppm in the **Federal Register** of June 30, 1993 (58 FR 34975).

A dietary exposure/risk assessment was performed for cyromazine using a Reference Dose (RfD) of 0.0075 mg/kg body weight/day. The RfD is based on a NOEL of 0.75 mg/kg/day from a 6-month feeding study in dogs, which demonstrated decreased hematocrit and hemoglobin levels, and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances for cyromazine utilizes 60 percent of the RfD for the overall U.S. population and 66 percent of the RfD for children aged 1 through 6 years. This dietary exposure/risk assessment includes tolerances for cyromazine on the cucurbit vegetables and leafy vegetables (except Brassica) crop groupings, which are published elsewhere in this issue of the **Federal Register** (document control number PP 1F4016 and 2F4053/R2039). The proposed tolerances for Chinese cabbage and Chinese mustard would utilize less than 1 percent of the RfD for the overall U.S. population and approximately 1% of the RfD for children aged 1 through 6 years. Since the risk estimates are based on the TMRC, typically an overestimate of actual exposure, and do not exceed the Reference Dose, the chronic dietary risk of cyromazine does not appear to be of concern.

The nature of the residue in plants is adequately understood for the purposes of these tolerances. An adequate analytical method, high-pressure liquid chromatography, is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II (PAM II).

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock or poultry feed items associated with this action.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3752 and 9E3791/P575]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 8, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.414, by adding new paragraph (f), to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(f) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cabbage, Chinese	3.0
Mustard, Chinese	3.0

[FR Doc. 94–4751 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 281

[FRL–4843–1]

Kansas; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of the State of Kansas for Final Approval, Public Comment Period.

SUMMARY: The State of Kansas has applied for final approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Kansas' application and has made the tentative decision that Kansas' UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA intends to grant final approval to Kansas to operate its program in lieu of the federal program. Kansas' application for final approval is available for public review and comment and a public hearing will be held to solicit comments on the application, if there is significant interest.

DATES: The public may submit written comments on EPA's tentative determination until April 1, 1994.

EPA expects to make a final decision on whether or not to approve Kansas' program by May 31, 1994 and will give notice of it in the **Federal Register**.

Any request for a hearing and all comments on Kansas' final approval application must be received at the EPA Region 7 office by the close of business on April 1, 1994.

ADDRESSES: Copies of Kansas' program application are available during business hours at the following addresses for inspection and copying: Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, Phone: (913) 296–1578; U.S. EPA Headquarters, CUST Docket, room 2616, 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–9720; and U.S. EPA Region 7 Library, 726 Minnesota Ave., Kansas City, Kansas 66101, Phone: (913) 551–7266.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. Program approval is granted by EPA if the Agency finds that the State program is: (1) "No less stringent" than the Federal program in new tank standards, upgrading existing tanks, general operating requirements, release detection, release reporting, corrective action, tank closure, financial responsibility and notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

B. Kansas

Kansas promulgated its first UST regulations in 1981 under the authority of the water pollution control statutes. With the enactment of the Kansas Storage Tank Act, K.S.A. 65–34,101 through 65–34,124, promulgated on May 18, 1989, the Kansas Department of Health and Environment now has specific authority to regulate underground storage tanks and enforce compliance of these regulations. Over the years the regulations have undergone a series of revisions which now are consistent with and no less stringent than the Federal program. The program includes standards for: new tanks, upgrading existing tanks, general operating requirements, release detection, release reporting, corrective action, tank closure, financial responsibility and notification requirements. These regulations have been in effect since November 26, 1990.

On September 1, 1993, Kansas submitted an official application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. Kansas also regulates heating oil tanks with the exception of tanks used to store heating oil for consumptive use on a single family residence. However, this part of the Kansas program is broader in scope than the Federal program and is not included in this tentative approval. Prior to its submission, Kansas provided an opportunity for public notice and comment in the development of its underground storage tank program as required under 40 CFR 281.50(b). EPA has reviewed Kansas' application and has tentatively determined that the State's program meets all of the necessary requirements to qualify for final approval. Consequently, EPA intends to grant Kansas final approval to Kansas to operate its program in lieu of the Federal program.

The public may submit comments regarding EPA's tentative determination as provided in the "Submission of Comments" section of this notice.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Kansas' program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission of Comments

The public may submit written comments on EPA's tentative determination until April 1, 1994. EPA will consider all public comments on its tentative determination received during the public comment period or which may be received at the public hearing. Issues raised by those comments may be the basis for a decision to deny final approval to Kansas. EPA expects to make a final decision on whether or not to approve Kansas' program by May 31, 1994 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

A public hearing will be held only if significant public interest on substantive issues is shown. Any request for a hearing and all comments on Kansas' final approval application must be received at the EPA Region 7 office by the close of business on April 1, 1994. If a public hearing is held, all those making comments or requesting a hearing will be notified by EPA of the place and time.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative Practice and Procedure, Hazardous Materials, State Program Approval, and Underground Storage Tanks.

Authority: This notice is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dennis Grams,

Regional Administrator.

[FR Doc. 94–4544 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 745

[OPPTS–00152A; FRL–4764–7]

Proposed Identification of Dangerous Levels of Lead; Public Meeting Postponement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting postponement.

SUMMARY: EPA's Office of Pollution Prevention and Toxics is postponing its March 3, 1994 meeting to discuss its strategy for developing health-based standards for lead in paint, dust, and soil (59 FR 9170, February 25, 1994). The purpose of the meeting was to review the Agency's regulatory approach and the findings of recent analytical and research efforts and to obtain feedback from technical experts and stakeholders. Section 403 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directed the Agency to promulgate a regulation which shall identify lead-based paint hazards, lead contaminated dust, and lead contaminated soil. The meeting was scheduled to be held from 10 a.m. to 3 p.m. at the EPA Auditorium in the EPA Education Center, 401 M St., SW., Washington, DC, 20460. EPA will announce the new date for the meeting in the **Federal Register** as soon as it is scheduled.

FOR FURTHER INFORMATION CONTACT: For information on substantive issues, please contact: Dave Topping, Program Development Branch (PDB), at (202) 260-7737. For information on administrative matters, please contact: Jonathan Jacobson, PDB, at (202) 260-3779.

Dated: February 25, 1994.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–4860 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1837 and 1852

NASA FAR Supplement Coverage on Uncompensated Overtime

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the NASA Federal Acquisition Regulation (NFS) to include coverage on evaluation of uncompensated overtime NASA's policy is to consider uncompensated overtime in the evaluation of proposals and professional compensation. Contracting officers are required to conduct a risk assessment of proposals for technical and professional services that include low labor rates and/or a high level of uncompensated overtime. A solicitation provision is prescribed for use in solicitations for professional and technical services

estimated at $500,000 or more. Use of the provision is optional between $100,000 and $500,000. The provision requires offerors to identify uncompensated overtime hours and the effective hourly rate for all Fair Labor Standards Act-exempt personnel included in their proposals and subcontractor proposals.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Submit comments to Ms. Anne Guenther, NASA, Code HC, Washington, DC 20546. Comments should also be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Guenther, (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

The proposed coverage was generated in response to industry and internal NASA requests for a uniform uncompensated overtime policy within the Agency.

Impact

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). It requires offerors to identify uncompensated overtime hours in their proposals, including their uncompensated overtime policy and the historical basis for those hours. This information is in many cases already being provided by offerors for proposal evaluation and is not required for lower dollar value procurements. NASA will request OMB approval of any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1837 and 1852

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1837 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1815, 1837 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.608–72 [Added]

2. Section 1815.608–72 is added to read as follows:

1815.608–72 Uncompensated overtime.

The contracting officer shall conduct a risk assessment of any proposal received for technical and professional services that includes low labor rates or uses a high level of uncompensated overtime (as defined in 1852.237–71) in key technical positions. Such practices on the part of the contractor may jeopardize its ability to successfully perform contract requirements due, for example, to its inability to hire or retain qualified personnel. Such a risk assessment shall be performed as part of the technical evaluation and considered in proposal evaluation (See (FAR) 48 CFR 22.11 and 1837.102(b)).

PART 1837—SERVICE CONTRACTING

3. Part 1837 is amended as set forth below:

1837.102 [Added]

a. Section 1837.102 is added to read as follows:

1837.102 Policy.

(a) To the maximum extent practicable, it is the policy of NASA to acquire services on the basis of the task to be performed rather than on a labor-hour basis.

(b) The use of uncompensated overtime (as defined in 1852.237–71) is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation and the evaluation of professional compensation (see (FAR) 48 CFR 22.11).

1837.110 [Amended]

b. Section 1837.110 is revised to read as follows:

1837.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall obtain the Associate Administrator for Procurement's (Code HC) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

(b) When professional and technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, and the resulting contract is expected to exceed $500,000, the contracting officer shall insert the provision at 1852.237–72, Identification of Uncompensated Overtime, in the solicitation. Use of this provision is optional between $100,000 and $500,000. This provision requires offerors to identify uncompensated overtime hours and the effective hourly rate for all Fair Labor Standards Act-exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 1815.608–72).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.237–72 is added to read as follows:

1852.237–71 Identification of Uncompensated Overtime.

As prescribed in 1837.110(b), insert the following provision:

Identification of Uncompensated Overtime (XXX 1993)

(a) *Definitions.* As used in this provision:

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Effective hourly rate is the rate which results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20.00 per hour would be converted to an effective hourly rate of $17.78 per hour [($20.00 x 40) divided by 45 = $17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, including a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

[FR Doc. 94–4616 Filed 3–1–94; 8:45 am]
BILLING CODE 7510-01-M

Notices

Federal Register
Vol. 59, No. 41
Wednesday, March 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eldorado National Forest Land and Resource Management Plan; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for resource management activities, including biomass removal, timber harvest, fuelbreak construction and wildlife habitat improvement work on the Whale Rock Forest Health Multi-resource Project, involving a total planning area size of about 4,500 acres on the Pacific Ranger District of the Eldorado National Forest. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by April 4, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Marie Kennedy, Assistant Silviculturist, Pacific Ranger Station, Pollock Pines, California, 95726.

FOR FURTHER INFORMATION CONTACT: Quesitons about the proposed action and EIS should be directed to Marie Kennedy, Assistant Silviculturist, Pacific Ranger Station, Pollock Pines, California, 95726, phone 916–644–2349.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan was completed in January 1989. The Whale Rock Forest Health Multi-resource Project EIS will tier to the approved Eldorado National Forest Land and Resource Management Plan. Most of the land in the analysis area is identified in the approved Plan as having a general management direction of timber management.

There are no known permits or licenses required to implement the proposed action.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. The proposed alternatives will include the following tentative alternative themes:

1. No Action
2. Forest Health—timber product, including biomass, management emphasis
3. Forest Health—wildlife management emphasis
4. Forest Health—fuels management emphasis
5. Forest Health—multiple use management emphasis.

These alternatives will consider varying levels and distribution of vegetation manipulation, timber harvest and fuels management. No new specified road construction is anticipated. Road reconstruction needs will include drainage work, clearing and minor realignment. The amount of road reconstruction necessary for this project will vary between alternatives. Harvest prescriptions will include understory removal of both merchantable and sub-merchantable trees, commercial thinning, and fuelbreak construction guidelines. All harvest prescriptions will conform with the California Spotted Owl Sierran Province Interim Guidelines Environmental Assessment and Decision Notice. Adaptive management strategies for the Spotted Owl may be included under certain alternatives where benefits to the spotted owl can be shown, that is, wildlife habitat activities or fuel management activities that are designed to better maintain future management options of the spotted owl by improving or retaining stand components most at risk.

Volume estimates of timber to be harvested range from 0 to 10 mmbf of commercial sawtimber. Biomass estimates range from 0 to 30,000 tons. These estimates will be dependent on which alternative is chosen.

Preliminary issues that have been identified during the internal scoping process include:

1. The potential for cumulative watershed effects within the project area.
2. The selection and application of adaptive management strategies to best achieve the habitat needs of the spotted owl.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7).

The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper interdisciplinary team make-up.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the EIS and alternatives.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Robert Harris, Acting Forest Supervisor, Eldorado National Forest, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1994. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date that EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewers's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).*

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in prearing the final EIS. The final EIS is scheduled to be completed by October 1994. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will considered the comments, responses, and enviornmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR part 215.

Dated: February 23, 1994.

Robert Harris,

Acting Forest Supervisor, Eldorado National Forest.

[FR Doc. 94–4684 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–11–M

Nighthawk Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Withdrawal notice for an environmental impact statement.

SUMMARY: The notice of intent to prepare an environmental impact statement for the Nighthawk Timber Sale has been withdrawn and no further analysis will occur on this proposed timber sale until the completion of the Medicine Bow National Forest Land and Resource Management Plan revision, tentatively scheduled for early 1995.

The analysis responded to a proposal to harvest timber and build roads in the Singer Peak Roadless Area, located on the Brush Creek/Hayden Ranger District, Medicine Bow National Forest, Carbon County, Wyoming. The notice of intent to prepare an environmental impact statement was published in the **Federal Register** on June 17, 1992 (Volume 57, Number 117, Page 27017 and 27018).

FOR FURTHER INFORMATION CONTACT: For further information concerning the withdrawal of the notice of intent for the Nighthawk Timber Sale, contact George Foley, NEPA Coordinator, P.O. Box 187, Encampment, WY 82325, or phone (307) 327–5481.

Dated: February 9, 1994.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 94–4678 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–11–M

Strawberry Gulch Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Withdrawal notice for an environmental impact statement.

SUMMARY: The Strawberry Gulch Timber Sale Draft Environmental Impact Statement has been withdrawn and no further analysis will occur on this proposed timber sale until the completion of the Medicine Bow National Forest Land and Resource Management Plan revision, tentatively scheduled for early 1995.

The analysis responded to a proposal to harvest timber and build roads in the Jack Creek Roadless Area, located on the Brush Creek/Hayden Ranger District, Medicine Bow National Forest, Carbon County, Wyoming. The Notice of Availability for the draft environmental impact statement was published in the **Federal Register** on July 17, 1992 (Volume 57, Number 138, Page 31713).

FOR FURTHER INFORMATION CONTACT: For further information concerning the withdrawal of Strawberry Gulch DEIS, contact George Foley, NEPA Coordinator, P.O. Box 187, Encampment, WY 82325, or phone (307) 327–5481.

Dated: February 9, 1994.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 94–4677 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Recreation Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the times and location of the next meeting of the Recreation Access Advisory Committee.

DATES: The next meeting of Recreation Access Advisory Committee is scheduled for Friday, March 18, 1994 (8:30 a.m.–5 p.m.), Saturday, March 19, 1994 (9 a.m.–4 p.m.), and Sunday, March 20, 1994 (9 a.m.–11:30 a.m.). The schedule of events is as follows:

Friday, March 18, 1994

8:30 a.m.–9:15 a.m.—Convene in Full Committee.
9:15 a.m.–11 a.m.—Play Area Settings Subcommittee Report.
11 a.m.–2:30 p.m.—Subcommittee meetings.
2:30 p.m.–4 p.m.—Convene in Full Committee/Sports Facilities Subcommittee Report.
4 p.m.–5 p.m.—Public Comment Period.

Saturday, March 19, 1994

9 a.m.–9:30 a.m.—Convene in Full Committee.
9:30 a.m.–11:15 a.m.—Developed Outdoor Recreation Facilities and Areas Subcommittee Report.
11:15 a.m.–12:30 p.m.—Recreational Boating and Fishing Subcommittee Report.
1:30 p.m.–3 p.m.—Amusement Parks Subcommittee Report.
3 p.m.—4 p.m.—Public Comment Period.

Sunday, March 20, 1994

9 a.m.–10:30 a.m.—Golf Subcommittee Report.
10:30 a.m.–11:30 a.m.—Public Comment Period.

ADDRESSES: The meeting will be held at 800 North Capital Street, NW.,

Washington, DC in the Maritime Commission Hearing Room on the first floor of the building. The accessible entrance is on the H Street side of the building. Building security requires a list of members of the public wishing to attend the meeting. Please call the Access Board in advance and leave your name on voice mail ext. 6801.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34. (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board established a Recreation Access Advisory Committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. This advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 for newly constructed and altered recreational facilities and outdoor developed areas. The advisory committee is composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons.

The Recreation Access Advisory Committee has formed subcommittees to assist in its work. The subcommittees include: Amusement Parks; Golf; Play Area Settings; Recreational Boating and Fishing; Developed Outdoor Recreation Facilities and Areas; and Sports Facilities. Subcommittee meetings will be held on Friday, March 18, 1994 (11 a.m.–2:30 p.m.) and at other scheduled dates. The public is encouraged to attend subcommittee meetings and to provide input in the form of written material. Information about these subcommittees can be obtained from Peggy Greenwell at the address indicated at the beginning of this notice.

This meeting is open to the public and meeting sites will be accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 94–4729 Filed 3–1–94; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–807]

Ceiling Fans From the People's Republic of China: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Reviews; and Amended Final Determination and Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to amended final determination of sales at less-than-fair-value, exclusion from the application of the amended antidumping duty order, and termination of administrative reviews in accordance with decision upon remand.

SUMMARY: On January 5, 1994, the United States Court of International Trade ("CIT") affirmed the Department's May 14, 1993, remand determination without comment. See *CEC Electrical Manufacturing (Int'l) Company Ltd.* v. *United States*, Slip Op. 94–2 (CIT January 5, 1994). The remand resulted in a finding of a *de minimis* margin for CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. ("CEC") and, consequently, a negative determination of sales at less than fair value for the investigation of CEC. Therefore, CEC is excluded from the application of the antidumping duty order on ceiling fans from the People's Republic of China ("PRC"). Because CEC is excluded from the application of the antidumping duty order, we are also terminating both ongoing administrative reviews with respect to CEC. In addition, the exclusion of CEC results in a change in the all others rate.

EFFECTIVE DATE: January 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffery B. Denning or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4194 or (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On June 5, 1991, the Department published its Preliminary Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China (56 FR 25664). In that determination, the Department found CEC's weighted-average dumping margin for the ceiling fans class or kind of merchandise to be 0.37 percent, *de minimis*. (CEC was not identified as a producer or exporter of products within the oscillating fans class or kind of merchandise.) However, in the final determination the Department found CEC's weighted-average dumping margin for the ceiling fans to be 2.70 percent. See Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 55271 (October 25, 1991). Consequently, we instructed the U.S. Customs Service to begin suspension of liquidation of all entries of ceiling fans manufactured by CEC entered into U.S. Customs territory on or after October 25, 1991, the date of publication of the final determination. On December 9, 1991, the Department published an amendment to its final determinations, and antidumping duty orders in this proceeding. See Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 64240 (December 9, 1991) ("Fans LTFV Final and Order").

CEC instituted an action at the CIT challenging the Department's final less-than-fair-value determination.[1] *See CEC Electrical Manufacturing (Int'l) Company Ltd.* v. *United States*, Court No. 92–01–0014 ("*CEC Electrical*"). On December 7, 1992, the Department filed a motion before the CIT for voluntary remand in *CEC Electrical*, and on December 8, 1992, the CIT granted the Department's request. Pursuant to the court's order granting voluntary remand, on May 14, 1993, the Department presented to the court the *Final Results of Redetermination Pursuant To Grant*

[1] A second respondent involved in the original investigation, Holmes/Esteem, instituted a separate challenge before the CIT challenging the Department's final determination. *Holmes Products Corp. & Esteem Industries, Ltd.* v. *United States*, Court No. 91–12–00906. That action has been resolved. *See Oscillating Fans from the People's Republic of China: Notice of Court Decision, Retroactive Revocation of Antidumping Duty Order, and Termination of Administrative Review*, 58 FR 30026 (May 25, 1993). As a result of the Department's May 25, 1993, action, the scope of these proceedings has been reduced to a single class or kind of merchandise: ceiling fans.

Of Voluntary Remand: CEC Electrical Manufacturing Company Ltd. v. *United States* ("*Voluntary Remand*").

In that remand redetermination, the Department considered four issues raised by CEC. These were:

1. Double-counting of certain inputs in the downrod assembly;
2. Double-counting of the raw material input in the paddle brackets;
3. Misreported price of a specific input for one fan model; and
4. The Department's use of surrogate equivalents for certain inputs.

Regarding issues one and two, the Department determined that double-counting had occurred in both instances in the *Fans LTFV Final and Order*. For the remand redetermination we eliminated all such double-counting. Regarding issue three, we corrected the misreported price. Finally, issue four involves CEC's challenge of certain applications of surrogate data in valuing factors of production. CEC claimed that the Department is required to adjust surrogate data for such factors as: the number of fan blades; the size of the fan; and variations in packing materials. In the remand redetermination we rejected CEC's arguments. The basis for our rejection is that section 773(c)(1) of the Act provides for valuation of factors of production on the "best available information" from an appropriate surrogate country, not on the basis of perfectly conforming information. Therefore, we maintained that we were not required to make the adjustments CEC requested. The Department's redetermination on remand was affirmed by the CIT on January 5, 1994. See *CEC Electrical Manufacturing (Int'l) Company Ltd.* v. *United States*, Slip Op. 94–2 (CIT January 5, 1994).

As a result of these three modifications to our antidumping duty calculations, the final weighted-average dumping margin for CEC is 0.37 percent, and is, therefore, *de minimis*, pursuant to section 353.6(a) of the Department's regulations. Consequently, our final less-than-fair-value determination for CEC is negative.

Exclusion From the Application of the Antidumping Duty Order, in Part

Pursuant to section 735(c)(2) of the Act and 19 CFR 353.21(c), we are excluding CEC from the application of the antidumping duty order on imports of ceiling fans. However, if the Department has reasonable cause to believe or suspect at any time during the existence of the antidumping duty order that CEC has sold or is likely to sell the subject merchandise to the United States at less than its foreign market value, the Department may institute an administrative review of CEC under section 751(b) of the Tariff Act of 1930, as amended.

Because CEC obtained an injunction during the court proceeding, the effective date of the exclusion is retroactive to October 25, 1991, the publication date of the Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, and the date we began suspension of liquidation for entries of CEC ceiling fans from the PRC.

Termination of Administrative Reviews

Since publication of the *Fans LTFV Final and Order*, the Department has initiated, pursuant to section 751 of the Act, first and second administrative reviews of the antidumping duty order. Those reviews are investigating imports of subject merchandise during the respective review periods by CEC (as well as other producers). (See our published notices of initiation of administrative reviews, 58 FR 11026 (February 23, 1993) and 59 FR 2593 (January 18, 1994), respectively.) Because we are retroactively excluding CEC from the application of this antidumping duty order, we are also hereby terminating both administrative reviews with regard to imports by CEC.

Termination of Suspension of Liquidation

Pursuant to section 516(e)(2) of the Act, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation of ceiling fans from the PRC, entered or withdrawn for consumption on or after October 25, 1991, by CEC and to proceed with liquidation of the subject merchandise, which entered the United States on or after that date without regard to antidumping duties. Additionally, the Department will instruct U.S. Customs Service to release any bond or other security with respect to entries of subject merchandise, pursuant to section 735(c)(3)(B) of the Act.

Change in All Others Rate

The exclusion of CEC changes the all others antidumping rate from 2.05 to 1.65 percent, which is the rate of the only remaining company from the investigation (Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd.) with a margin above *de minimis*. The Department will instruct the U.S. Customs Service to begin collecting antidumping duty deposits equal to 1.65 percent of the entered value of the subject merchandise from all other producers/exporters, effective January 15, 1994.

Dated: February 23, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4773 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–829]

Notice of Antidumping Duty Order: Defrost Timers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 482–4162.

Scope of Order

For purposes of this investigation, defrost timers are electro-mechanical and electronic defrost timers for residential refrigerators. Electro-mechanical defrost timers are comprised of several components that make or break electric circuits by activating two sets of electrical contact points—one to disconnect the compressor (the cooling mechanism) and the other to connect the defrost heater. The articles are equipped with a synchronous or subsynchronous motor. The defrost timer disconnects the compressor by opening an electrical circuit after the compressor itself has run for a length of time predetermined by the manufacturer depending on the specifications of the model. Upon completion of the compressor run cycle (and simultaneously with the compressor's disconnection) the defrost heater is activated and runs for a preset time (again depending on the model), as predetermined by the manufacturer. Electronic defrost timers have a similar function but operate with greater efficiency. This is because a microprocessor in the device uses information gathered during the defrost cycle to adjust the compressor run time. This system defrosts only when needed, thereby improving the efficiency of the refrigerator.

The defrost timers subject to this investigation are currently classifiable under subheading 9107.00.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The

written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On February 22, 1994, the International Trade Commission notified the Department, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act) that imports of defrost timers from Japan materially injure the U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of defrost timers from Japan. These antidumping duties will be assessed on all unliquidated entries of defrost timers from Japan entered, or withdrawn from warehouse, for consumption on or after August 24, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 44655). On or after the date of publication of this notice in the **Federal Register**, Custom officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Sankyo Seiki Manufacturing Co. Ltd	83.67
All others	83.67

This notice constitutes the antidumping duty order for defrost timers from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 23, 1994.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4735 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–810]

Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 18, 1993, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers four manufacturers/exporters of subject merchandise to the United States and the period February 1, 1992, through January 31, 1993. We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and two respondents. Based on our analysis, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 60843) the preliminary results of the third administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan (55 FR 5642, February 16, 1990). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

This review covers four manufacturer/exporters of MTPs from Japan entered into the United States during the period February 1, 1992, through January 31, 1993. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. See "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992. On November 23, 1993, the Department determined that Aida's FMX series cold forging press is within the scope of the order. See "Final Scope Ruling—Antidumping Duty Order on Mechanical Transfer Presses from Japan: Aida Engineering, Ltd.," U.S. Department of Commerce, November 23, 1993. We have included the FMX press in our analysis for these final results.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review, as provided by 19 CFR 353.38. We received comments from the petitioner, Verson Division of Allied Products Corp., and two respondents, Aida Engineering, Ltd. (Aida), and Komatsu Ltd. (Komatsu).

Comment 1: The petitioner argues that the Department should have used an exchange rate based on either the date of shipment or the date of entry, instead of employing the exchange rate in effect on the date of sale to the United States, because of the extended time between the sale and shipment of MTPs, and the appreciation of the yen against the dollar during the review period.

Aida and Komatsu state that the Department correctly employed the exchange rate in effect on the date of the U.S. sale, according to the Department's regulations, 19 CFR 353.60, 353.46, 353.49 and 353.50.

Department's Position: We agree with respondents that we have properly employed the exchange rate that was in effect on the date the merchandise was sold to the United States. According to our regulations and long-standing practice, when the U.S. price is based on purchase price and the foreign market value (FMV) is based on constructed value (CV), the conversion of currency is directly tied to the date the merchandise is sold for exportation to the United States. See 19 CFR 353.60 and 19 CFR 353.50(b)(1).

Comment 2: Aida states that it is reserving the right to challenge the Department's inclusion of the FMX press within the scope of the order and within the final results of this review.

The petitioner claims that the Department should include home market and U.S. sales of Aida's FMX press and its optional transfer unit in its analysis for these final results, because the Department has determined that the FMX press is within the scope of the order.

Department's Position: We agree with petitioner. We did not include the FMX press in our preliminary results of review, but stated we would do so in our final results if an affirmative scope determination were made by that time. On November 23, 1993, the Department determined that Aida's FMX cold forging press is within the scope of the antidumping duty order on MTPs. See "Final Scope Ruling—Antidumping Duty Order on Mechanical Transfer Presses from Japan: Aida Engineering, Ltd.," U.S. Department of Commerce, November 23, 1993. We verified the sales and CV data Aida submitted with respect to the FMX press sold in the United States during the review period, and have included this sale in our final analysis.

Comment 3: Aida states that, subsequent to verification, it analyzed the year-end warranty cost adjustments discovered at verification, and concluded that only a portion thereof should be allocated to warranty cost. In its case brief, Aida presents a recalculation of the warranty expense factor, and asks that the Department use this revised factor to calculate warranty costs for the final results.

Department's Position: At verification, the Department discovered that Aida's records indicated an amount for additional warranty costs that Aida had not reported. At that time, Aida claimed that these costs were related to non-subject merchandise, but was unable to satisfactorily document this position. See sales verification report dated October 19, 1993, page 13.

According to 19 CFR 353.31(a)(1)(ii), the time limit for submitting factual information in an administrative review is not later than the earlier of the date of publication of the notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of the review. As Aida submitted its explanation of the additional unreported warranty expenses and recalculation of the warranty expense factor after the date of publication of the preliminary results, this information was untimely submitted. Therefore, we did not consider this information for these final results. As in the preliminary results of review, we used warranty costs as adjusted for the additional costs discovered at verification.

Comment 4: Aida states that the Department erred in adding related-party commissions on U.S. sales to FMV, and offsetting the commissions by deducting home market indirect selling expenses up to the amount of the commissions. Aida believes that the Department should have treated the commissions as internal transfers, which do not require any adjustment to FMV or offsetting adjustment for indirect home market selling expenses.

Department's Position: Aida reported commissions to a related party that varied directly with the sale price of an MTP. We verified the commissions paid, and have no reason to believe that these directly related selling expenses were not, in fact, in the nature of commissions. The fact that these commissions were paid to a related party does not change their nature as commissions. Therefore, in accordance with 19 CFR 353.56(a), we are adjusting FMV for the differences in home market and U.S. commissions. Because there were commissions on both U.S. and home market sales, 19 CFR 353.56(b), which calls for an offset when there are commissions in one market but not the other, does not apply.

Comment 5: The petitioner asserts that the Department did not evaluate or adjust Aida's transfer prices from a certain related party supplier for such things as direct materials, labor, and/or overhead, as applicable, to reach a fully-loaded cost of production. The petitioner further states that the only adjustment made to the related party inputs was an adjustment made by the Department to include the general and administrative expense of the related supplier.

Aida contends that it made an adjustment for the difference between the transfer price of components purchased from its related party supplier and the related party supplier's cost of manufacturing the components. Aida acknowledges that it inadvertently failed to take into account its related party's processing cost variance and general and administrative expense, but notes that the Department made an adjustment for these, based on verification findings, in its preliminary results.

Department's Position: We agree with Aida. The Department was able to verify Aida's adjustment to restate related party inputs to fully-loaded costs. Aida's adjustment included direct materials, labor, and overhead. Based on the Department's findings at verification, an adjustment was made to not only general and administrative expenses, but also to the related party's processing variance. (See cost verification report dated October 22, 1993, page 9.)

Comment 6: Petitioner contends that the Department failed to verify, but should establish, whether transfer prices of inputs acquired by Aida from other related parties were at or above cost.

Aida states that the only material purchased for the subject presses from a related company, other than those from the related party discussed in *Comment 5*, above, consisted of control panels purchased from a partially-owned subsidiary. Aida further states that the reasonableness of the transfer prices used to determine the cost of these components was reviewed and confirmed at verification. With respect to subcontracted work, Aida states that, with the exception of the related party the Department verified, all subcontractors are unrelated.

Department's Position: We agree with Aida. At verification, the Department analyzed all transactions with related parties. Based on our analysis, we found these transactions to have been made at or above cost. (See cost verification report dated October 22, 1993, page 9.)

Comment 7: Komatsu argues that the adjustment that the Department made, in its preliminary results, to costs of subcontracted work performed by a particular related-party supplier, was based on a misunderstanding regarding the method used to calculate costs for that work. In fact, Komatsu claims, in calculating the actual cost of the related-party inputs, it inadvertently overstated the costs by a specific profit percentage. Komatsu contends that, given the above, the costs of the related-party inputs should be reduced rather than increased.

Department's Position: We disagree with Komatsu. Komatsu did not clearly demonstrate at verification its alleged overstatement of the actual costs of the related-party inputs by a profit margin. Given that the information reviewed at verification indicates an understatement, rather than an overstatement, of costs, an upward adjustment to the value of these related-party inputs for a portion of the period loss incurred by the related party is warranted. (See cost verification report dated October 25, 1993, pages 7 and 8.)

Comment 8: The petitioner asserts that the Department should increase Komatsu's submitted costs to account for losses incurred by certain other related suppliers during the review period. The petitioner notes that the

Department failed to verify the costs of inputs from these suppliers.

Komatsu argues that the amount of Komatsu's purchases from those suppliers was clearly insignificant, as would have been any adjustment the Department might have made.

Department's Position: We agree with Komatsu. At verification, the Department tested those related party transactions that made significant contributions to the subject merchandise. See cost verification report dated October 25, 1993, page 7. Adjustments to costs for transactions with other related party suppliers, even if warranted, would not have significantly affected the margin analysis.

Comment 9: Komatsu argues that the Department should allow an offset to the general and administrative expenses for the gains on sales of plant assets recorded at its head office, which relate to the company's general and administrative activities. Komatsu adds that these gains should be offset against the company-wide general and administrative expenses, in addition to the offset the Department allowed for the gain on sales of plant assets at the Komatsu plant.

Petitioner argues that these gains do not appear to relate to the production operations for subject merchandise, and therefore should be excluded from the general and administrative expenses calculation.

Department's Position: We agree with the petitioner. During verification, the respondent provided an exhibit that specifically identified the gains that related to the Komatsu plant manufacturing the subject merchandise. (See cost verification exhibit number 29.) No documentation or other support was provided to establish a basis on which to allow an offset for the gains on sales of the other plant assets.

Comment 10: Aida states that the Department double counted an adjustment it made to the cost variance and general and administrative expenses in applying these adjustments to the CV format for one of the U.S. sales.

Department's Position: We agree with Aida and have corrected the adjustment to the cost variance and general and administrative expenses.

Comment 11: Aida states, in its case brief, that the Department made certain clerical errors in its calculations, with respect to inland freight, packing, credit and warranty.

Department's Position: We agree, and have adjusted our calculations accordingly.

Final Results of Review

As a result of our review, the Department has determined that the following margins exist for the period February 1, 1992, through January 31, 1993:

Manufacturer/exporter	Margin (percent)
Aida Engineering, Ltd	3.50
Komatsu Ltd	0.00
Ishikawajima-Harima Heavy Ind	[1] 0.00
Hitachi-Zosen Corporation	[1] 0.00

[1] No shipments during the period. Rate is from the last final results of review for this company.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. The all others rate is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4736 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–814]

Polyethylene Terephthalate Film, Sheet, and Strip from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one respondent and one U.S. producer the Department of Commerce has conducted an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Japan. The review covers three manufacturers/ exporters of this merchandise to the United States and the period November 30, 1990, through May 31, 1992. We preliminarily determine that margins exist for the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration,

U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (57 FR 24244) of the antidumping duty order on PET film (56 FR 25660, June 5, 1991). On June 30, 1992, one respondent, Toray Industries Inc. (Toray), requested an administrative review and one U.S. producer, Toray Plastics America (TPA) (see Decision Memorandum dated December 28, 1992, regarding Toray's status as a producer in the United States), requested an administrative review for two other Japanese manufacturers/exporters of PET film. We initiated the review on Toray, covering November 30, 1990, through May 31, 1992, on July 22, 1992 (57 FR 32521) and the reviews on Teijin, Ltd. (Teijin) and Diafoil Co. Ltd. (Diafoil), on August 26, 1992 (57 FR 38668). The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed PET film, whether extruded or co-extruded. The films excluded from the scope of this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of performance-enhancing resin or inorganic layer more than 0.00001 inches (0.054 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for Customs purposes. The written description remains dispositive.

The review covers three Japanese manufacturers/exporters of this merchandise to the United States, Toray, Teijin, and Diafoil, and the period November 30, 1990, through May 31, 1992.

Such or Similar Comparisons

As stated in the less-than-fair-value (LTFV) investigation, we have determined that the subject merchandise constitutes a single class or kind of merchandise. Each company had sufficient home market sales of PET film to unrelated customers to serve as a basis for calculating foreign market value (FMV).

Best Information Available

Diafoil did not respond to the Department's questionnaire. Therefore, we are using best information available for the purposes of this review. As best information for Diafoil, we preliminarily determine the dumping margin to be 14.00 percent, the highest margin calculated in the original investigation.

United States Price

For Toray, we calculated the United States price based on purchase price as all U.S. sales were made to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Tariff Act.

For Toray, we calculated purchase price based on f.o.b. Japanese port or delivered U.S. customer prices. We made deductions, where appropriate, for price adjustments (rebates). We also made deductions, where appropriate, for the costs of foreign inland freight, containerization, warehousing, credit expense, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. brokerage and handling, and U.S. inland freight in accordance with section 772(d)(2) of the Tariff Act.

For Teijin, we calculated purchase price based on f.o.b. Japanese port or delivered U.S. customer prices. We made deductions, where appropriate, for price adjustments (rebates). We also made deductions, where appropriate, for the costs of foreign inland freight and insurance, bank charges, foreign brokerage and handling, ocean freight, warehousing, commissions, credit insurance, indirect selling expenses (U.S. and non-U.S.), inventory carrying charges, other expense, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight and insurance in accordance with section 772(d)(2) of the Tariff Act.

In addition, for both Toray and Teijin, we made adjustments for the value added tax applied in the home market. On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to U. S. price (USP) under section 772(d)(1)(C) of the Tariff Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Tariff Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decision. The Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses that the price of the foreign market merchandise The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Tariff Act should not create an antidumping duty margin if pre-tax FMV does exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the

USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 7609 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

Foreign Market Value

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1)(B) of Tariff Act. Each respondent had a viable home market with respect to sales of PET film made during the period of review.

For Toray, we calculated the FMV based on delivered prices to unrelated customers in the home market. We did not use related party sales because the prices to related parties were determined not to be at arm's length, in accordance with 19 CFR 353.45(a). We made deductions, where appropriate, for rebates and inland freight. We deducted home market packing cost and added U.S. packing costs.

Pursuant to section 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in claimed warranty expenses, post-sale warehousing expenses, credit expenses, and credit interest revenue.

We made a difference-in-merchandise adjustment, where appropriate, based on differences in the variable costs of manufacture.

For Teijin, we calculated FMV based on delivered prices to unrelated and three related customers in the home market. These related party sales were determined to be at arm's length, in accordance with section 353.45(a) of our regulations. We made deductions, where appropriate, for rebates, inland freight, and insurance. We deducted home market packing cost and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in post-sale warehousing expenses, and credit expenses.

For both Toray and Teijin, in order to simplify analysis, we decided to test the home markets sales to determine whether we could use annual FMVs as a basis of comparison to U.S. sales. To determine whether a period of review (POR) weighted-average price was representative of the transactions under consideration we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average prices. We did this test for each model. We then compared the volume of sales of all models of whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average price from the total volume of sales. If the POR weighted-average price of at least 90 percent of sales did not vary more than plus or minus ten percent from the monthly weighted-average price, we consider the POR weighted-average price to be representative of the sales under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation was less than 0.05 (where a coefficient approaching 1.0 indicates a direct relationship between price and time), we concluded that there was no significant relationship between price and time. Since home market prices of both companies passed all of these tests we used annual FMV's as a basis of comparison for both companies.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period November 30, 1990, through May 31, 1992:

Manufacturer/producer/exporter	Margin (percent)
Toray	4.76
Diafoil	14.00
Teijin	5.73

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place not later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or in the original LTFV investigation will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination will be based upon the most recently published company-specific rate for that manufacturer, and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by these or any previous administrative review conducted by the Department will be the "all others" rate established in the LTFV investigation.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rates is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as

amended for correction of clerical errors or as a result of litigation) in the proceeding governed by antidumping duty orders.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 6.32 percent, the "all others" rate established in the LTFV investigation (56 FR 25660, June 5, 1991).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: February 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4775 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–020]

Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part of the antidumping duty order.

SUMMARY: On November 30, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan and its intent to revoke the order in part. We have now completed this review and found no dumping margin for Showa Denko K.K. (Showa) during the period November 1, 1991 to October 31, 1992. We also determine that Showa has met the requirements for revocation.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 63,155) the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47,053; November 30, 1984). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classified under subheading 8108.10.50.10 of the *Harmonized Tariff Schedule* (HTS). The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise to the United States, Showa, and the period November 1, 1991 through October 31, 1992.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the respondent, Showa.

Comment 1: Respondent argues that the Department should use Showa's reported general and administrative (G&A) expenses in its calculation of constructed value. Instead, in its preliminary results of review, the Department allocated Showa's, the parent company, G&A costs to Showa Titanium (STIC) based on the ratio of Showa's equity ownership in STIC to Showa's total equity. The respondent maintains that its methodology for calculating G&A expense in this review is in accordance with its books and records, and is consistent with Showa's reporting in previous review periods. Moreover, in both the fourth and fifth reviews, the Department specifically rejected petitioner's arguments that Showa's reported G&A expense should be recalculated. However, should the Department choose to reverse its position and reject Showa's internal allocation methodology, it should allocate Showa's headquarters G&A based on cost of goods sold, following the Department's established allocation methodology.

Department's Position: The respondent's submitted G&A costs included STIC's G&A expenses and a portion of Showa parent company G&A expenses allocated to STIC based on a formula used in its ordinary course of business. As a result, we recalculated constructed value utilizing Showa's submitted G&A allocation methodology, which had no effect on the margin.

Final Results of Review

As a result of our comparison of United States price to foreign market value, as discussed in the preliminary results of this review, we determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Showa Denko K.K.	11/1/91–10/31/92	Zero (0).

Based on information submitted by Showa during this and two previous reviews (*See Final Results of Antidumping Duty Administrative Review on Titanium Sponge from Japan* (58 FR 18,202; April 8, 1993), and *Final Results of Antidumping Duty Administrative Review on Titanium Sponge from Japan* (57 FR 9,688; March 20, 1992)), we further determine that Showa has met the requirements for revocation set forth in sections 353.25(a) and 353.25(b) of the Department's regulations. Showa has demonstrated three consecutive years of sales at not less than foreign market value and has submitted the required certifications. On the basis of no sales at less than foreign market value for a period of three consecutive years, an agreement by Showa to immediate reinstatement of the order if it should make such sales in the future, and the lack of any indication to the contrary, the Department concludes that Showa is not likely to sell subject merchandise at less than foreign market value in the future. Therefore, the Department is revoking the order with respect to Showa.

The Department will instruct the Customs Service to liquidate, without regard to antidumping duties, all shipments of this merchandise entered by Showa on or after November 1, 1991 and on or before October 31, 1992. The Department also will instruct Customs

to terminate suspension of liquidation and to cease collecting cash deposits with regard to Showa.

Further, the following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) no cash deposit will be required for the reviewed company; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 28.25 percent, the "all others" rate established in the final notice of LTFV investigation by the Department, as amended (50 FR 32,459, August 12, 1985), in accordance with the decisions of the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (CIT May 25, 1993), and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, (CIT May 25, 1993).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and sections 353.22 and 353.25(c) of the Department's regulations.

Dated: February 23, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4774 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–010. *Applicant:* University of Utah, Department of Biology, Salt Lake City, UT 84112. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used for studies of both plant and animal tissues which involve analyses of both whole tissues and individual subcellular components. In addition, there will be studies of atmospheric gases and soil water since they will affect the composition of the biological materials being analyzed. The instrument will also be used for educational purposes in biology courses. *Application Accepted by Commissioner of Customs:* January 27, 1994.

Docket Number: 94–011. *Applicant:* Texas Children's Hospital, 6621 Fannin, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1210. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for studies focusing on demonstrating gene products from specific cells, identification of pathognomonic lesions in both human and animal tissues, and evaluation of structural integrity at the ultrastructural level of the nervous system in transgenic animal models which express neurologic disease entitites. In addition, the instrument will be used for training in technical use and application of the electron microscope in biomedical research of all users on an individual basis. *Application Accepted by Commissioner of Customs:* February 2, 1994.

Docket Number: 94–012. *Applicant:* Texas A&M University, Department of Rangeland Ecology and Management, College Station, TX 77843–2126. *Instrument:* Gas Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to make high precision (0.2‰) measurements of $^{15}N/^{14}N$ and $^{13}C/^{12}C$ ratios in natural organic and inorganic materials as a tool in the study of biogeochemistry. More specifically, this instrument will be used to describe and quantify pool sizes and flux rates of carbon and nitrogen in managed and unmanaged ecosystems. *Application Accepted by Commissioner of Customs:* February 3, 1994.

Docket Number: 94–013. *Applicant:* South Dakota State University, Box 2207-A, Brookings, SD 57007. *Instrument:* GC - Dumas Ratio Mass Spectrometer, Model Europa 20–20. *Manufacturer:* Europa, United Kingdom. *Intended Use:* The instrument will be used to determine $^{13}C/^{12}C$ and $^{15}N/^{14}N$ ratios in plant, soil, gas and water samples. The instrument will also be used in graduate student training and special research topics for undergraduate students. The students will be trained in sample preparation, machine operation and trouble shooting. *Application Accepted by Commissioner of Customs:* February 9, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–4734 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Meeting of Reference Materials Producers

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a meeting of reference materials producers and users for the purpose of discussing means of achieving traceability of environmental reference materials to national measurement standards. This meeting is being sponsored by the NIST and the American Chemical Society on Environmental Improvement in conjunction with the Pittsburgh Conference. Interested members of the public are invited to attend.

DATES: The meeting will convene March 2, 1994, at 1.

LOCATION: The location is the McCormmick Place, North Hall, Room L8, Level One, Chicago, Illinois.

FOR MORE INFORMATION CONTACT: William Reed, National Institute of Standards and Technology, Office of Measurement Services, room B–354, Physics Building, Gaithersburg, Maryland 20899; Phone: (301) 975–2011; Facsimile: (301) 975–2183.

Dated: February 24, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–4670 Filed 3–1–94; 8:45 am]

BILLING CODE 3510–13–M

COMMISSION ON IMMIGRATION REFORM

Commission on Immigration Reform; El Paso Hearing

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of hearing.

This notice announces a public hearing of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The mandate of the Commission is to review and evaluate the impact of U.S. immigration policy and transmit to the Congress a report of its findings and recommendations. The Commission's first report to Congress is due on September 30, 1994.

The Commission will hear from service agencies, state and local officials, local businesses, researchers and other experts. The focus of the meeting will be the impact of immigration on the El Paso and border region.

DATES: March 17, 1994, 1 p.m. to 5 p.m.

ADDRESSES: City Hall Council Chambers, Two Civic Center Plaza, El Paso, TX.

FOR FURTHER INFORMATION CONTACT: Pat Cole or Brett Endres; Telephone: (202) 673–5348.

Dated: February 24, 1994.

Susan Martin,

Executive Director.

[FR Doc. 94–4772 Filed 3–1–94; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 9 March 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4720 Filed 3–1–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend six systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on April 1, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004 or DSN 224–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

N01001–3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File *(February 22, 1993, 58 FR 10693).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other user code system.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.'

* * * * *

N01001–3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File.

SYSTEM LOCATION:

Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel of the Naval Reserve Intelligence Program and applicants for affiliation with the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military promotions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by Federal Agencies, and E.O. 9397.

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized floppy/hard disk; microform; and paper records.

RETRIEVABILITY:

Name, Social Security Number, or any file element.

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for a period of five years after last data filed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve data submitted by the individual and investigative reports from the Naval Criminal Investigative Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–7

SYSTEM NAME:

NEXCOM Military Personnel Information System *(February 22, 1993, 58 FR 10698).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change '5031' to read '5013.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange System, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Director, Office of Military Personnel, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Military Personnel, 3280

Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Military Personnel, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.'

* * * * *

N01070–7

SYSTEM NAME:

NEXCOM Military Personnel Information System.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past military officers and key enlisted personnel assigned to the Navy Exchange System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; rank or rate; dependency status; Social Security Number; designation; date of rank; date reported; rotation date; educational level; lineal number; location of assignments; preference of assignment, biographical information, and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and E.O. 9397.

PURPOSE(S):

To assist officials and employees of the Navy Exchange Service Command in the management, supervision, and administration of its personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records, printed reports, card files, and file folders.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Supervised office spaces and computers are accessible only through the computer center whose entry is limited to authorized personnel only. All information is maintained in locked file cabinets or locked archives. Computer systems are password protected.

RETENTION AND DISPOSAL:

Destroyed three years following an individual's discharge/retirement from the Navy.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange System, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Director, Office of Military Personnel, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Military Personnel, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Military Personnel, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Written requests must include full name, Social Security Number and military duty status. At the time of a personal visit, the requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

U.S. Navy Manpower Information System; Bureau of Naval Personnel; the individual; and the individual's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–8

SYSTEM NAME:

Correction Board Case Files System *(February 22, 1993, 58 FR 10699).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Board for Correction of Naval Records, Department of the Navy, Washington, DC 20370–5100.

Decentralized segments located in the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001; and, the individual military personnel record of the service member concerned.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In lines 19 and 21, delete the words 'Naval Military Personnel Command' and replace with 'Bureau of Naval Personnel.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add 'and E.O. 9397.'

PURPOSE(S):

In paragraph two, delete the words 'Naval Military Personnel Command' and replace with 'Bureau of Naval Personnel.'

* * * * *

STORAGE:

Delete entry and replace with 'Manual and computerized records.'

RETRIEVABILITY:

Delete entry and replace with 'Last name of the applicant and cross-filed by docket number and social security number.'

SAFEGUARDS:

At end of entry, add 'Computer systems are password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent. After three years, records are retired to the Washington National Records Center, Suitland, MD.'

* * * * *

N01070–8

SYSTEM NAME:

Correction Board Case Files System.

SYSTEM LOCATION:

Board for Correction of Naval Records, Department of the Navy, Washington, DC 20370–5100.

Decentralized segments located in the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001; and, the individual military personnel record of the service member concerned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any member or former member of the U.S. Navy or Marine Corps who has applied for the correction of his/her naval record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of file cards with basic information and computer records derived therefrom, case files containing records of board proceedings, material submitted for correction and supporting documentation, correspondence and transcripts of board formal hearings. The basic case information and computer records derived therefrom include the following: Rank; Social Security Number/service number; docket number; date application received; subject category; subject category description; examiner's initials; date examiner assigned; branch of service; board decision; date of board decision; date decision promised if interested members of Congress; date case forwarded to the Secretary of the Navy; lineal number of officer applicant; officer designated; date officer case forwarded to Bureau of Naval Personnel/Commandant of the Marine Corps; date officer case returned from Bureau of Naval Personnel/ Commandant of the Marine Corps; date advisory opinion requested; identity of advisor's organization; date advisory opinion received; date service record ordered; date medical record ordered; date court-martial record ordered; date confinement record order; date Navy Discharge Review Board record ordered; date other record ordered; date service record received; date medical record received; date court-martial record received; date confinement record received; date Navy Discharge Review Board record received; date other record received; number of Navy applications received; number of Marine Corps applications received; total number of Navy and Marine Corps applications received; percent of total to grand total; total number of Navy discharge cases; total number Marine Corps discharge cases; Navy grant count; Navy deny count; Navy modify count; Marine grant; Marine deny count; Marine modify count.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552; 32 CFR part 723; and E.O. 9397.

PURPOSE(S):

To review applicant's Naval record to determine the existence of alleged error or injustice and to recommend appropriate corrective action when warranted - to report its findings, conclusions and recommendations to the Secretary of the Navy in appropriate cases - to respond to inquiries from applicants, their counsel, and members of Congress.

To provide officials of the Bureau of Naval Personnel with advisory opinions in cases involving present and former Navy personnel - to correct records of present and former Navy personnel in accordance with approved Board decisions.

To provide officials and employees of the Bureau of Medicine and Surgery with advisory opinions on medical matters.

To provide the Naval Council of Personnel Boards/Office of Naval Disability Evaluation with advisory opinions on medical matters.

To provide officials and employees of HQ, U.S. Marine Corps with advisory opinions in cases involving present and former Marine Corps personnel - to correct records of present and former Marine Corps personnel in accordance with approved correction Board decisions.

To officials and employees of the Litigation Division, NJAG, to prepare legal briefs and answers to complaints against the Department of the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Last name of the applicant and cross-filed by docket number and Social Security Number.

SAFEGUARDS:

Access to building is protected by uniformed security officers requiring positive identification; for admission after hours, records are maintained in areas accessible only to authorized personnel. Computer systems are password protected.

RETENTION AND DISPOSAL:

Permanent. After three years, records are retired to the Washington National Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Board for Correction of Naval Records, Department of the Navy, Washington, DC 20370–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Executive Director, Board for Correction of Naval Records, Department of the Navy, Washington, DC 20370–5100.

Individual should provide full name, and Social Security Numbers or service numbers. Visitors should be able to provide proper identity, such as a drivers license. Written requests must be signed by a requester or his/her legal representative.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Board for Correction of Naval Records, Department of the Navy, Washington, DC 20370–5100.

Individual should provide name, military status, branch of service and Social Security Number. Current address and telephone numbers should be included. Personal visits may be made only to the Board for Correction of Naval Records, Arlington Annex, Columbia Pike and Southgate Road, Arlington, VA. For personal visits, identification will be required.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and

appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

All official Naval records, Department of Veterans Affairs and police and law enforcement records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03461–2

SYSTEM NAME:

POW/MIA Captivity Studies *(February 22, 1993, 58 FR 10730).*

CHANGES:

SYSTEM NAME:

Delete entry and replace with 'POW Follow-up Program.'

SYSTEM LOCATION:

Delete entry and replace with 'Naval Aerospace Medical Institute, Special Studies Department (25), Naval Air Station, Pensacola, FL 32508–1047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Prisoners of War (POWs) from 1974 to present; matched comparison group consisting of former aviators; some spouses.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Medical records; X-rays; dental and somatotype photographs; newspaper clippings; research questionnaires, Social Security Number.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add 'and E.O. 9397.'

PURPOSE(S):

Delete entry and replace with 'To research the effects of the captivity experience on the man and his family and for recommending changes in training and improved health care delivery services, as well as for professional publications.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047.

Individuals should provide full name, military or civilian status, POW status, security clearance, and service affiliation.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047.

Individual should provide full name, military or civilian status, POW status, security clearance, and service affiliation.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Personal interviews with returned POWs and families of POW/MIA/KIA/hostages/civilian POWs; newspapers and periodicals; Department of the Army; Bureau of Medicine and Surgery; and Marine Corps Headquarters.'

* * * * *

N03461–2

SYSTEM NAME:

POW Follow-up Program.

SYSTEM LOCATION:

Naval Aerospace Medical Institute, Special Studies Department (25), Naval Air Station, Pensacola, FL 32508–1047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners of War (POWs) from 1974 to present; matched comparison group consisting of former aviators; some spouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records; X-rays; dental and somatotype photographs; newspaper clippings; research questionnaires, Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

To research the effects of the captivity experience on the man and his family and for recommending changes in training and improved health care delivery services, as well as for professional publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files consist of file folders, magnetic and video tapes, key-punched IBM cards, computer tapes, microfiche and microfilm.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

All files in this system are protected by limited, controlled access, locked doors and class 6 security cabinets. Only professional and/or research staff with appropriate security clearances are given access to files.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Head, RPOW Data Analysis Division, Naval Aerospace Medical Institute, Naval Air Station, Pensacola, FL 32508–1047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047

Individual should provide full name, military or civilian status, POW status, security clearance, and service affiliation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer, Naval Aerospace Medical Institute, ATTN: Code 25, Naval Air Station, Pensacola, FL 32508–1047.

Individual should provide full name, military or civilian status, POW status, security clearance, and service affiliation.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal interviews with returned POWs and families of POW/MIA/KIA/ hostages/civilian POWs; newspapers and periodicals; Department of the Army; Bureau of Medicine and Surgery; and Marine Corps Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03834–1

SYSTEM NAME:

Special Intelligence Personnel Access File *(February 22, 1993, 58 FR 10733).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of Naval Intelligence, 4251 Suitland Road, Washington, DC 20395–5720.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by Federal Agencies; E.O. 9397; and E.O. 12356, National Security Information.'

* * * * *

STORAGE:

Delete entry and replace with 'Active files consist of paper and computerized records. Inactive files are retained on microfiche and optical storage.'

RETRIEVABILITY:

Delete entry and replace with 'Name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other user code system.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Office of Naval Intelligence, 4251 Suitland Road, Washington, DC 20395–5720.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain full name, residence address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.'

* * * * *

N03834–1

SYSTEM NAME:

Special Intelligence Personnel Access File.

SYSTEM LOCATION:

Office of Naval Intelligence, 4251 Suitland Road, Washington, DC 20395–5720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian and military personnel of the Department of the Navy and contractors and consultants of the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to the eligibility of Department of the Navy personnel (civilian, military, contractor and consultant) to be granted access to Special Intelligence which include documents of nomination, personal history statements, background investigation date and character, narrative memoranda of background investigation, eligibility documents for access to special intelligence, proof of indoctrination and debriefings as applicable and record of hazardous activity restrictions assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503, Department of the Navy; 10 U.S.C. 6011, Navy Regulations; 44 U.S.C. 3101, Records Management by Federal Agencies; E.O. 9397; and E.O. 12356, National Security Information.

PURPOSE(S):

To permit a determination of an individual's eligibility for access to Special Intelligence information.

This information may be provided to the Department of Defense and all its components to certify Special Compartmented Intelligence (SCI) access status of naval personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, the Department of Energy, the Department of Treasury, and to any other federal agency in the performance of their official duties, to certify SCI access status of Naval personnel.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active files consist of paper and computerized records. Inactive files are retained on microfiche and optical storage.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is a sensitive compartmented information facility which is protected by enhanced security devices. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are retained indefinitely. Inactive files are retained on microfiche

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Naval Intelligence, 4251 Suitland Road, Washington, DC 20395–5720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain the full name of the requester, home address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Director, Office of Naval Intelligence, 4251 Silver Hill Road, Washington, DC 20395–5720.

The request should contain full name, residence address and date and place of birth. An unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal History Statement and related forms from the individual. Access forms and documents prepared by the system manager. Correspondence between system manager and activities requesting access status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1) and (k)(5) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N07230–2

SYSTEM NAME:

NEXCOM Payroll Processing *(February 22, 1993, 58 FR 10806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete 'Naval Station New York Staten Island, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724' and delete 'Subic Bay.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'Subic Bay.'

* * * * *

STORAGE:

Delete entry and replace with 'Computer tape.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Controller, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

In line five, delete the words 'Naval Station New York Staten Island, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line five, delete the words 'Naval Station New York Staten Island, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N07230–2

SYSTEM NAME:

NEXCOM Payroll Processing.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 and at all Navy Exchanges located in CONUS, Guam, and Japan. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy Exchange System employees located in CONUS, Guam, and Japan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Master Payroll Files and Leave Year Record File will contain at a minimum employee name, Social Security Number, department, exchange number, payroll number, birth date, marital status, citizenship, hire date, adjusted date of hire, job grade and step, employee category, pay basis, pay status (exempt/nonexempt), employee benefit, deduction information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain a data base which will permit the contractor to supply bi-weekly payroll processing which includes, but is not limited to preparation and issuance of time cards, be-weekly pay checks and pay check stubs, check registers and payroll registers; preparation and issuance of various bi-weekly, monthly, quarterly, semi-annual and annual reports; establishment and maintenance of current payroll master file; annual preparation and distribution of wage and tax statements, Form W–2; and, payroll tax filing services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape.

RETRIEVABILITY:

Name, Social Security Number, exchange number, and payroll number.

SAFEGUARDS:

Contractor facility is protected with an ADT Alarm System which is in operation 24 hours per day, seven days a week. All rooms within the facility, as well as the entire perimeter of the facility, are on-line with this system. All alarms are wired to the Security Company as well as the local police station. The Navy Exchange Service Command (NEXCOM) data cannot be obtained through any dial-up method by other than an authorized Navy Exchange location.

RETENTION AND DISPOSAL:

Records are maintained by the contractor for the life of the contract (three years or more). Once contract is

complete, records are returned to NEXCOM where they are maintained for seven years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Controller, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Comptroller, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

The request must contain individual's full name and Social Security Number and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Comptroller, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

The request must contain individual's full name and Social Security Number and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in the Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Timekeeping management documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–4722 Filed 3–1–94, 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend three systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on April 1, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004 or DSN 224–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 23, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05521–1

SYSTEM NAME:

Access Control System *(February 22, 1993, 58 FR 10765).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'File folders, card files, magnetic tape, personal computers.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Visit requests; individual; records of the activity; investigators; witnesses; contractors; companies.'

* * * * *

N05521–1

SYSTEM NAME:

Access Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy and any visitor (military, civilian, contractor) requiring access to a naval base/activity or contractor facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity/contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain all aspects of proper access control, to replace lost badges, to retrieve passes upon separation, to maintain visitor statistics and background information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To designated contractors when Navy member is visiting that contractor's facility.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, magnetic tape, personal computers.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are

maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are retained for 30 days and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Visit requests; individual; records of the activity; investigators; witnesses; contractors; companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05527–1

SYSTEM NAME:

Security Incident System *(February 22, 1993, 58 FR 10766).*

CHANGES:

* * * * *

PURPOSE(S):

Delete entry and replace with 'To track and prosecute offenses, counsel victims, and other administrative actions; to support insurance claims and civil litigation; to revoke base, station, or activity driving privileges.'

* * * * *

STORAGE:

Delete entry and replace with 'File folders, card files, personal computer, magnetic tape.'

* * * * *

N05527–1

SYSTEM NAME:

Security Incident System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in or witnessing incidents requiring the attention of base, station, or activity security personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident/complaint report, investigator's report, data sheets which contain information on victims and perpetrators, military magistrate's records, confinement records, traffic accident and violation records, traffic court file, citations to appear before U.S. Magistrate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To track and prosecute offenses, counsel victims, and other administrative actions; to support insurance claims and civil litigation; to revoke base, station, or activity driving privileges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, personal computer, magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, case number, and organization

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Maintained for five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name, Social Security Number, and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name, Social Security Number, and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE PROCEDURES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this system has been published in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05527–2

SYSTEM NAME:

Security Inspection and Violation System *(February 22, 1993, 58 FR 10767).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'File folders, card files, personal computers, and magnetic tape.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained for three years and then destroyed.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual; records of the activity; investigator's reports; witness statements.'

* * * * *

N05527–2

SYSTEM NAME:

Security Inspection and Violation System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security violation reports, security inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To identify problem areas in security indoctrination, to alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, personal computers, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number Case number, organization.

SAFEGUARDS:

Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; records of the activity; investigator's reports; witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–4721 Filed 3–1–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: February 24, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision
Title: Campus-Based Reallocation Form
Frequency: Annually
Affected Public: State or local governments; Businesses and other for-profit; Non-profit institutions
Reporting Burden:
Responses: 2,000
Burden Hours: 608
Recordkeeping Burden:
Recordkeepers: 2,000
Burden Hours: 100
Abstract: This form will allow institutions of postsecondary education to report anticipated 1993–94 unspent funds for the campus-based programs so these unspent funds can be distributed as supplemental 1994–95 awards and to report the 1993–94 (FWS) Community Service Activities. Failure to collect this information would prevent the maximum utilization of the funds appropriated, deprive needy students of financial aid, and result in ED's non-compliance with the reallocation provisions of the HEA.

[FR Doc. 94–4695 Filed 3–1–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.215C]

Fund for Innovation in Education: Technology Education Program Notice Inviting Applications for New Awards for Fiscal Year 1994

ACTION: Correction notice.

SUMMARY: On February 11, 1994 a notice inviting applications for new awards under the Fund for Innovation in Education: Technology Education Program for fiscal year 1994 was published in the **Federal Register** at 59 FR 6860.

This notice corrects an error in the *selection criteria section* of that notice. Five additional points instead of ten additional points should be added to the selection criterion, *Plan of operation,* and ten additional points instead of five additional points should be added to the selection criterion, *Evaluation plan.*

FOR FURTHER INFORMATION CONTACT: Beverly Coleman or Adria White, U.S. Department of Education, 555 New Jersey Avenue NW., room 502, Washington, DC 20208–5644. Telephone (202) 219–2116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: February 24, 1994.

Sharon P. Robinson,

Assistant Secretary, Educational Research and Improvement.

[FR Doc. 94–4694 Filed 3–1–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Public Meeting

AGENCY: Office of Policy, Planning and Program Evaluation, DOE.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the U.S. Department of Energy's Office of Policy, Planning and Program Evaluation will hold two stakeholder meetings to gather comments on a draft report titled "Energy Infrastructure of the United States and Projected Siting Needs: Scoping Ideas, Identifying Issues and Options; Draft Report of the Department of Energy Working Group on Energy Facility Siting to the Secretary." This report was noticed for public comment in the **Federal Register** on December 16, 1993; the public comment period has been extended to April 30, 1994, as noticed in the **Federal Register** on February 4, 1994.

DATES: Two separate meetings with the same agenda will be held on March 15 and March 16, 1994, at the U.S. Department of Energy's Forrestal Building located at 1000 Independence Ave., SW., room 1E–245, from 8:30 to 4:30 p.m. Individuals wishing to attend are asked to contact Karen Stockmeyer at (202) 646–7794 by close of business, Friday, March 4.

FOR FURTHER INFORMATION CONTACT: Dr. Barry Gale, Office of Policy Planning and Program Evaluation, U.S. Department of Energy, 1000 Independence Ave., SW., PO–63, Washington, DC 20585, (202) 586–6708.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy issued on December 16, 1993 this draft report and an accompanying documentation summary under the authority provided by the Department of Energy Organization Act. The draft report is the result of over a year-long effort on behalf of staff representing DOE's various subdivisions reflecting diverse expertise and knowledge. The report examines the possible need for expanding the nation's energy infrastructure, and issues related to that potential growth, based on projections of energy supply and demand developed by the Energy Information Administration, with the goal of developing appropriate policy direction for the Department.

The agenda for each stakeholder meeting will cover topics such as siting needs, siting problems and constraints, the ideas presented in the draft report, and constructive roles for the Department of Energy and other federal agencies in improving energy facility siting processes. The meetings will be structured to elicit individual views, not to reach consensus. Members of the general public are invited to observe the meetings and offer comment during a portion of the agenda, within space and time constraints. The views expressed at the meetings will be considered in preparing the final report.

Issued in Washington, DC, on February 24, 1994.

Abraham E. Haspel,

Acting Assistant Secretary for Policy, Planning and Program Evaluation.

[FR Doc. 94–4739 Filed 3–1–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2069–003]

Arizona Public Service Company; Notice of Intent To Prepare an Environmental Assessment and Conduct Public Scoping Meetings and Site Visit

February 24, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the existing Childs Irving Hydroelectric Project, Project No. 2069–003. The project is located on Fossil Creek, a tributary of the Verde River, in Yavapai and Gila counties, Arizona. The project is entirely within the Coconino and Tonto National Forests, administered by the U.S. Forest Service (Forest Service).

The FERC staff, in cooperation with the Forest Service, intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis.

The FERC staff will issue and circulate a draft EA for review by all interested parties. The staff will analyze and consider all comments filed on the draft EA in a final EA. The staff will then present its conclusions and recommendations to the Commission for consideration in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings on March 15, 1994. A scoping meeting oriented toward the agencies will be held at 9:30 a.m. at the Cliff Castle Best Western, 333 Middle Verde Road, Camp Verde, Arizona. A scoping meeting oriented toward the public will be held at 7 p.m. at the Cliff Castle Best Western.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and help the staff identify the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, the staff will mail a Scoping Document 1, outlining subject areas to be addressed in the EA to agencies and interested individuals on the FERC mailing list. Copies of Scoping Document 1 will also be available at the scoping meetings.

Objectives

At the scoping meetings the FERC staff will: (1) Identify preliminary environmental issues related to the project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff preliminary views.

Procedures

A court reporter will record the meetings and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Childs Irving Project. Individuals representing statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and define and clarify issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until April 15, 1994.

All written correspondence should clearly show the following caption on the first page: Childs Irving Project, FERC Project No. 2069–003.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the Childs Irving Hydro Project is planned for March 16, 1994. Those who wish to attend should plan to meet at the Cliff Castle Best Western at 8 a.m. or contact Ken Anderson at the Beaver Creek Ranger District, Coconino National Forest, (602) 567–4501 for details.

Any questions regarding this notice may be directed to Dianne Rodman at (202) 219–2830.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 94–4706 Filed 3–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–02877T Texas–157]

State of Texas NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 24, 1994.

Take notice that on February 15, 1994, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spraberry Trend Area Formation, North Curtis Ranch area, underlying a portion of Martin County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 8 and consists of approximately 40,360 acres as described on the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Spraberry Trend Area Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson,

Acting Secretary.

Appendix

The recommended area consists of approximately 40,360 acres in Martin County, Texas and includes all or portions of the following sections:

La Salle County School Lands

Leagues 322–325: All

Township 2 North

M. Curtis Survey—Block A Sections 137–140: All

T & P RR Survey—Block 38 Sections 1–6: All

Township 1 North

GM & MB & A Survey—Block 38 Sections 1–9: All
GM & MB & A Survey—Block 39 Sections 1–4: All
T & P RR Survey—Block 39 Sections 1–2: All
T & P RR Survey—Block 38 Sections 1–9: All
Scrap File
SF 6883 Section 5: All
SF 13416: All
SF 13417: All

[FR Doc. 94–4705 Filed 3–1–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP91–164–010]

Granite State Gas Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff

February 24, 1994.

Take notice that on February 17, 1994, Granite State Gas Transmission, Inc. (Granite State) submitted for filing with the Commission Third Revised Sheet No. 22 in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates for effectiveness on February 1, 1994.

According to Granite State, it was authorized to collect a special volumetric surcharge of $0.0043 per Dth in its rates to reimburse it for $200,000 for costs incurred in acquiring a supply of Canadian gas for its system. Granite State Gas Transmission, Inc., 61 FERC 61,335 (1992). It is further said that Granite State began collecting the surcharge in its rates for sales to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) on February 1, 1993 and, after November 1, 1993 in the rates for firm transportation service under Rate Schedule FT–NN in its restructuring compliance tariff.

Granite State states that the monthly collections from the surcharge reached the authorized sum of $200,000 during January, 1994, with a small amount of overcollection at the end of January, which will be refunded to Bay State and Northern Utilities.

According to Granite State, the revised rates on Third Revised Sheet No. 22 remove the special surcharge of $0.0043 per Dth from the volumetric rates for firm transportation service under Rate Schedule FT–NN.

Granite State states that copies of its filing were served upon its customers Bay State and Northern Utilities, the intervenors in Docket No. RP91–164–000 and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before March 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 94–4708 Filed 3–1–94; 8.45 am]
BILLING CODE 6717–01–M

[Docket No. RP91–126–012]

Koch Gateway Pipeline Co.; Notice of Report of Refunds

February 24, 1994.

Take notice that on February 18, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing a refund report. The report documents refunds of amounts due customers under Koch Gateway's Docket No. RP91–126.

Koch Gateway states that it is filing the refund report pursuant to a Joint Stipulation and Agreement filed on September 30, 1991, in the above referenced docket. Koch Gateway further states that in accordance with the terms of the 1991 settlement and the extension of those provision as approved in a subsequent settlement submitted on February 25, 1993, in Docket No. RP92–235, Koch Gateway has refunded non-gas revenues received under rate schedule PL.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before March 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4707 Filed 3–1–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–159–000]

Michigan Gas Storage Co.; Notice of Informal Settlement Conference

February 24, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, March 7, 1994. The conference will begin at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in conference Room 2402–A. The purpose of the conference is to explore the possibility of settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Russell B. Mamone at (202) 208–0744 or Irene E. Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4710 Filed 3–1–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–36–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

February 24, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 2, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0909 or John P. Roddy (202) 208–1176.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 94–4709 Filed 3–1–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–139–000]

Williston Basin Interstate Pipeline Co.; Notice of Request Under Blanket Authorization

February 24, 1994.

Take notice that on February 18, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), filed a request for a one-time waiver of the requirements of its FERC Gas Tariff, Second Revised Volume No. 1 (tariff), so as to allow any shipper to change its method of fuel reimbursement effective April 1, 1994.

Williston Basin states that its tariff allows shippers to change its election of the method to be used to reimburse Williston Basin for fuel use, lost and unaccounted for gas on the dates Williston Basin revises its fuel reimbursement rate (February 1 and August 1 of each year) pursuant to Section 38 of the General Terms and Conditions of such Tariff. Since this was the shippers' first opportunity to make such a change in its election and due to certain shippers' confusion over the implementation dates of the fuel reimbursement election, Williston Basin herewith seeks a one-time waiver of its tariff requirements to allow any and all shippers the one-time opportunity to change its method of fuel reimbursement effective April 1, 1994. Any such changes made effective pursuant to this waiver would be effective from April 1, 1994, forward until changed in accordance with Section 38 of the General Terms and Conditions of Williston Basin's Tariff. Williston Basin will post this one-time waiver of its tariff on its Electronic Bulletin Board and notify each shipper via written correspondence.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 94–4711 Filed 3–1–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTLAL PROTECTION AGENCY

[FRL–4844–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 1, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Information Collection Request for Combined Sewer Overflow Policy (EPA No. 1680.01).

Abstract: This is a new collection of information in support of the 1993 Combined Sewer Overflow (CSO) Policy, a national guidance that was issued earlier as a draft Policy in 1992, and is partially based on the 1989 Combined Sewer Overflow (CSO) Strategy, as published at 54 FR 37370. The Clean Water Act (CWA), as promulgated at 40 CFR Parts 121 through 125, provides the authority to regulate Combined Sewer Systems (CSSs) as point sources subject to National Pollution Discharge Elimination System (NPDES) permit requirements. CSSs are wastewater collection systems designed to transport both wastewater and stormwater to publicly-owned treatment works (POTWs). CSSs may periodically experience flows that exceed capacity, resulting in discharges of untreated wastes into surface waters. The CSO policy requires POTWs to provide information to EPA, or the delegated State authority, that will be used to ensure the adequacy of existing CSO controls, to establish permit terms and conditions, to track performance, and to conduct compliance assessment and enforcement of CWA requirements.

Under the CSO Policy, municipal POTWs are expected to document the implementation of nine control measures develop a Long Term CSO Control Plan (LTCCP), and perform ongoing compliance monitoring. The information provided by CSOs may include: 1) operation and maintenance plans; 2) revised sewer-use ordinances for industrial users; 3) infiltration/inflow studies; 4) descriptions of pollution prevention programs; 5) public notification plans; 6) facility plans for maximizing the capabilities of existing collection, storage and treatment systems; 6) contracts and schedules for minor construction programs; and 7) information or data relevant to assessing the extent to which the nine minimum controls satisfy water quality standards.

Documentation, monitoring and reporting by POTWs will occur over the normal five year duration of their NPDES permit. POTWs will be required to retain records for a period of three years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 565 hours per response for POTWs and 1,052 hours for States operating NPDES programs including time for reviewing the policy, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Annual public recordkeeping is estimated to average 25 hours per POTW and 6 hours for each State operating an NPDES program.

Respondents: Municipal POTWs and States operating NPDES programs.

Estimated number of respondents; 1100 POTWs, 30 States.

Estimated number of responses per respondent: 1.

Frequency of Collection: Twice every five years.

Estimated Total Annual Burden on Respondents: 591 hours for POTWs, 1,058 hours for States.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460. and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: February 23, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–4754 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4843–7]

Alabama: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial program determination of adequacy of the State of Alabama's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Alabama applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed Alabama's MSWLF application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF criteria. After reviewing all comments received, EPA today is granting final approval to Alabama's partial program.

EFFECTIVE DATE: The determination of adequacy for the State of Alabama shall be effective on March 2, 1994.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-OSW, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet those requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. As provided in the October 9, 1991, municipal landfill rule, EPA's national Subtitle D standards took effect on October 9, 1993. Consequently, any portion of the Federal Criteria that are not included in an approved State/Tribal program by October 9, 1993 apply directly to the owner/operator without any approved State/Tribal flexibility. On October 1, 1993, the October 9, 1993, effective date was extended for certain smaller landfills and for certain landfills receiving waste from flood disaster areas (58 FR 51536). The effective date is now April 9, 1994, for MSWLFs that accept less than 100 tons of waste per day, are not a Superfund National Priority List site, and are either in a State that has submitted an application to EPA for approval before October 9, 1993, or are located on Tribal lands. The effective date has been extended to October 9, 1995, for very small (less than 20 tons of waste per day), remote landfills in arid climates that lack a practicable alternative for waste disposal or experience significant disruption of surface transportation. Certain large facilities receiving waste from flood disaster areas also are allowed an extension of the compliance date if the State determines that they are needed to dispose of flood debris. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and Federal requirements mesh reasonably well and do not leave significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the flexibility allowed under the Federal criteria for approved states for those portions of the State's program that have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a

permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in the STIR.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

B. State of Alabama

On July 9, 1993, the State of Alabama submitted a final application for partial program adequacy determination for their MSWLF permit program. On December 17, 1993, EPA published a tentative determination of adequacy for all portions of Alabama's program except for the Financial Assurance Criteria set forth in Subpart G. Further background on the tentative determination of adequacy appears at 58 FR 65982, (December 17, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. Region IV of EPA held a public hearing on February 10, 1994, at 7 p.m. in Montgomery, Alabama.

The State of Alabama has the authority to issue permits that incorporate all the requirements of the Revised Federal MSWLF Criteria, except Financial Assurance, to all MSWLFs in the State, with the exception of those located on Tribal Lands.

The EPA has determined that the State of Alabama's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

The State of Alabama requested approval for all portions of the Federal criteria except Subpart G–Financial Assurance Criteria. The Alabama Department of Environmental Management does not currently have statutory authority to develop and enforce financial assurance regulations for MSWLFs. The schedule that Alabama submitted indicates that the necessary changes to the laws, regulations, and guidance to comply with the remaining part 258 requirements will be completed by January, 1995.

C. Public Comment

One written comment was submitted during the public comment period. The commenter supported the tentative decision to partially approve Alabama's MSWLF permit program. There were no written or oral comments submitted during the public hearing.

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that Alabama's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted a partial program determination of adequacy for all portions of its MSWLF permit program except Subpart G–Financial Assurance Requirements.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This action, therefore, does not require a regulatory flexibility analysis.

Authority: This notice of final partial program adequacy determination of Alabama's municipal solid waste permit program is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 18, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 94–4757 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4843–6]

State of Florida; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on Florida application for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit

programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Florida has applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV has reviewed Florida's MSWLF application and has made a tentative determination that Florida's MSWLF permit program meets the requirements for full program approval and ensures compliance with the revised MSWLF Criteria (40 CFR part 258).

Florida's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although, RCRA does not require EPA to hold a public hearing on a determination to approve a State's/Tribe's MSWLF program, Region IV has scheduled a public hearing on this determination. The date, location and time of the hearing is discussed below in the **DATES** section. Anyone requiring additional information regarding the hearing, may call the person listed in the **CONTACTS** section below.

DATES: All comments on Florida's application for a determination of adequacy must be received at the EPA Region IV Office of Solid Waste by close of business, Monday, April 25, 1994. Comments may also be submitted at the public hearing which will be held on Monday, April 25, 1994, at the Florida Department of Environmental Protection—Margarie Stoneman Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 30399–3000, beginning at 6:30 p.m. The State will participate in the hearing which is being held by EPA. Please contact one of the individuals listed as a contact below at least 72 hours before the hearing if special accommodations are required.

ADDRESSES: Copies of Florida's application for adequacy determination are available between the hours of 8 a.m. and 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Florida Department of Environmental Protection, Solid Waste Section, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, Attn: Ms. Mary Jean Yon, telephone (904) 488–0300; and U.S EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Priscilla Pride, telephone (404) 347–4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD–OSW, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD–OSW, telephone (404) 347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

As provided in the October 9, 1991 municipal solid waste landfill rule, EPA's national Subtitle D standards took effect on October 9, 1993. Consequently, any remaining portions of the Federal criteria that are not included in an approved State/Tribal program apply directly to the owner/operator without any approved State/Tribal flexibility. On October 1, 1993, EPA published the Final Rule to extend the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). On October 14, 1993, EPA published corrections to the Final Rule to extend the effective date (58 FR 53137).

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of an MSWLF program before it gives full approval to an MSWLF program

B. State of Florida

On July 20, 1993, Florida submitted a final application to EPA Region IV for adequacy determination. Region IV reviewed the final application and submitted substantive comments to Florida. Florida addressed EPA's comments and submitted an extensively revised final application in September 1993. Region IV has completed technical review of Florida's revisions and has tentatively determined that, as

revised, all portions of Florida's Subtitle D MSW landfill permit program meet the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until close of the public hearing to the person listed in the "Contacts" section of this notice. Copies of Florida's application are available for inspection and copying at the location(s) indicated in the "Addresses" section of this notice. Comments may also be submitted during the scheduled public hearing, as transcribed from the discussion of the hearing or in writing at the time of the hearing.

Florida's revised application includes new regulations which the State developed to be technically comparable to the requirements of the federal criteria. Florida's revised regulations became effective on January 2, 1994, and have been deemed technically comparable to the federal criteria.

Although regulatory language and structure in certain of Florida's regulations may not reflect the exact language and structure in the corresponding EPA requirements, EPA has determined that Florida will ensure compliance with 40 CFR part 258. The following paragraphs detail the major issues for which Florida was required to demonstrate technical comparability.

1. Daily Cover—40 CFR 258.21 requires that six (6) inches of earthen material be placed over the working face of MSWLFs at the end of each working day to control blowing litter, scavenging, etc. Directors of EPA-approved states have the flexibility to allow daily covers made of alternative materials and thicknesses. Florida's regulations previously provided MSWLFs owner/operators an exemption from daily cover if the period between cessation of operation on one day and start of operation the next was 18 hours or less. Florida revised their regulatory language to eliminate this exemption and require daily cover. Florida also added language to allow a reusable tarpaulin (to be rolled out over the working face at the end of one day and taken up at the beginning of the next) as an acceptable alternative to a soil daily cover.

2. Liner Design—40 CFR 258.40 requires that new landfills and lateral expansions to existing landfills be constructed with a specific composite liner and leachate collection system or an alternative which ensures that drinking-water-based maximum concentration limits (MCLs) are not exceeded in the uppermost groundwater aquifer at a predetermined point of compliance (POC). The POC must be on the landfill owner/operator's property and within 150 meters (approximately 500 feet) of the landfill unit boundary.

EPA Headquarters has interpreted the federal criteria to also afford states the opportunity to present alternative liner designs to regional offices for review. If a state demonstrates, via mathematical modelling, that the proposed alternative(s) meet the minimum federal performance standard based on "worst-case" conditions (considering hydrology, geology, climate, groundwater flow, etc.), then the EPA regional office can approve the alternative(s) to be used as state standard(s) in lieu of the federal standard composite liner system.

Florida's regulations allow several alternative composite liner designs and a double synthetic liner design with primary and secondary leachate collection systems. Florida has presented information, including analysis data from the MultiMed mathematical modeling program, to adequately demonstrate that each of their liners meets the federal performance standards. Additionally, Florida determines the need for corrective action due to contaminant releases from the landfill into the subsurface based on analysis of groundwater sampled at distances within 100 feet of the landfill unit boundary (as compared to the federal range of 0 to 150 meters (or approximately 500 feet) from the unit boundary). Further, in addition to sampling and analyzing groundwater, Florida performs annual analysis of leachate collected from the landfill, to determine which constituents might be expected to be found in groundwater in the event that a release does occur.

3. Groundwater Monitoring and Corrective Action—40 CFR 258.54 requires detection monitoring for sixty-two (62) constituents. Florida's original detection monitoring program required analysis of fewer and several different constituents than the federal. Florida has revised their regulatory language to include analysis of all constituents listed in 40 CFR part 258.54 in addition to their original parameters.

4. Final Closure Cover—40 CFR 258.60 requires that a MSWLF final closure cover include a composite cap which consists of a minimum 6 inch earthen erosion/vegetative layer and an infiltration layer of at least 18 inches of soil compacted to a permeability of 1×10^{-5} cm/sec or the permeability of the bottom liner system, whichever is less. EPA Headquarters has interpreted this description to imply that MSW landfills with a synthetic in their liner system must be closed with a cap that includes a synthetic in the infiltration layer. Directors of EPA-approved states have the flexibility to allow infiltration layers of alternative materials and/or thicknesses.

Florida's original regulations did not require a synthetic in the final closure cover of a synthetically lined MSW landfill. Florida has revised their regulatory language to require that final closure covers on MSW landfills include "a barrier layer which is substantially equivalent to, or less than, the permeability of the bottom liner system." Florida also specifically requires that, "If the landfill uses a geomembrane in the bottom liner system, the barrier layer shall also incorporate a geomembrane."

5. Financial Assurance for Corrective Action—40 CFR 258.73 requires that landfill owner/operators required to undertake corrective action procedures, have financial assurance based on a written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. Florida's original program did not address this issue. Florida has revised their regulatory language to require an acceptable mechanism by which owner/operators must provide financial assurance in the event that corrective action activities are necessary at their facility.

EPA Region IV will consider all public comments on its tentative determination which are received by close of the scheduled public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Florida's program. EPA Region IV will make a final decision on whether or not to approve Florida's program after all comments are received and reviewed, and will give notice of that decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments received by the end of the scheduled public hearing.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 18, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 94–4759 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4843–8]

Meeting; Clean Air Act Advisory

ACTION: Clean Air Act Advisory Committee Notice of Meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The charter for the CAAAC was reissued and the Committee was authorized to be extended until November 19, 1994 under regulations established by the Federal Advisory Committee Act (FACA).

On August 4, 1993 EPA requested nominations for new members to the committee. In February 1994 all new and reappointed members of the Clean Air Act Advisory Committee were contacted and informed of their selection. The membership of the Committee represents a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members were drawn from: business and industry; academic institutions; state and local governmental bodies; environmental and nongovernmental organizations; unions and service groups.

Fifty-two individuals were selected to participate as members of the CAAAC. The Advisory Committee will be authorized to form subcommittees to consider specific issues or actions and report back to the Committee.

Open Meeting Notice: Notice is hereby given that the reauthorized Clean Air Act Advisory Committee will hold its initial open meeting on March 29, 1994 from 10 a.m. to 3:30 p.m., at the Washington Renaissance Hotel, 999 9th Street, NW. in Washington, DC. Seating will be available on a first come, first served basis.

The CAAAC was established to advise EPA on the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Clean Air Act of 1990. At this initial meeting, the Committee will highlight implementation priorities for the next year; consider potential sub-committee formation, and; receive a report from the existing New Source Review Sub-committee.

Inspection of Committee Documents: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket Number A–90–39 in Room 1500 of EPA Headquarters, 401 M Street, SW., Washington, DC.

For further information concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA, Office of Air and Radiation (Mail Code 6101), Washington, DC 20460.

Dated: February 24, 1994.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–4758 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4844–1]

Notice of Schedule of Meetings of the Pine Street Canal Superfund Site Coordinating Council

In accordance with the objectives of section 117 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9617, the United States Environmental Protection Agency (EPA) has established a community working group known as the Coordinating Council at the Pine Street Canal Superfund Site, in Burlington, Vermont. The Coordinating Council is comprised of representatives from EPA, the Vermont Department of Environmental Conservation, the United States Fish and Wildlife Service, the Lake Champlain Committee, the City of Burlington, Vermont, entities which have been identified as potentially responsible parties under section 107 of CERCLA, and citizen representatives.

The Coordinating Council is currently developing a scope of work for further remedial investigation/feasibility studies for the Pine Street Canal Superfund Site. This notice provides the public with notice of the meetings of the Coordinating Council. The meetings of the Coordinating Council are held at locations in Burlington, Vermont, and are open to the public.

Meetings of the Coordinating Council have been scheduled for the following dates:

February 27, 1994—5:30 p.m.–9 p.m.
March 2, 1994—5:30 p.m.–9 p.m.
March 3, 1994—5:30 p.m.–9 p.m.
March 31, 1994—5:30 p.m.–9 p.m.
April 21, 1994—5:30 p.m.–9 p.m.
May 18, 1994—5:30 p.m.–9 p.m.
May 19, 1994—5:30 p.m.–9 p.m.
June 8, 1994—5:30 p.m.–9 p.m.
June 9, 1994—5:30 p.m.–9 p.m.
June 28, 1994—5:30 p.m.–9 p.m.
June 29, 1994—5:30 p.m.–9 p.m.
July 13, 1994—5:30 p.m.–9 p.m.
July 14, 1994—5:30 p.m.–9 p.m.

Persons wishing further information concerning the locations of meetings of the Coordinating Council, updates concerning the scheduling of meetings of the Coordinating Council, and meeting summary reports, should contact Ross Gilleland, Remedial Project Manager, EPA Region I, JFK Federal Building (Mail Code HPS–CAN1), Boston, MA 02203, telephone (617) 573–5766, or Sheila Eckman, Remedial Project Manager, EPA Region I, JFK Federal Building (Mail Code HPS–CAN1), Boston, MA 02203, telephone (617) 573–5874.

Dated: February 18, 1994.

Harley Laing,

Acting Regional Administrator.

[FR Doc. 94–4756 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4844–2]

Revised Hours of Operation for Public Access to the Headquarters Library and INFOTERRA

AGENCY: U.S. Environmental Protection Agency.

SUMMARY: Notice is hereby given that beginning December 15, 1993, the Headquarters Library and INFOTERRA will be open to the public from 10:00 a.m. to 2:00 p.m., Monday through Friday (excluding Federal holidays). This constitutes a reduction in hours of operation.

FOR FURTHER INFORMATION CONTACT: Jonda Byrd, National Library Network Program Manager at (513) 569–7183 or Emma McNamara, INFOTERRA Manager at (202) 260–1522.

Dated: December 22, 1993.

Linda D. Garrison,

Acting Chief, Information Access Branch.

[FR Doc. 94–4760 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180921; FRL 4761–6]

Receipt of Application for Emergency Exemption to use Bifenthrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Environmental Protection Agency (hereafter referred to as the "Applicant") to use the pesticide bifenthrin [CAS 82657–04–3 *cis isomer* and CAS 83322–02–5 *trans isomer*] to treat up to 200,000 acres of cucurbits (cucumbers, melons, pumpkins, and squash) to control the sweet potato whitefly. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 17, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180921," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on cucurbits to control the sweet potato whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The sweet potato whitefly (SPWF) is a relatively new pest on cucurbits. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered compounds. The Applicant claims that significant economic losses are expected in California cucurbit production if the SPWF is not adequately controlled, and is therefore requesting this use of bifenthrin.

The Applicant proposes to apply bifenthrin at a maximum rate of 0.1 lb. active ingredient (a.i.) (6.4 oz. of product) per acre with up to three applications allowed, and a maximum of 0.3 lb. a.i. per acre per season, on a total of 200,000 acres of cucurbits. It is possible to produce two cucurbit crops per calendar year on a given acre, and therefore, the acreage could potentially receive 6 applications, (maximum of 0.6 lb. a.i. per acre) per calendar year. Therefore, use under this exemption could potentially amount to a maximum total of 120,000 lbs. of active ingredient. This notice does not constitute a decision by EPA on the application itself. This is the third time that the Applicant has applied for the use of bifenthrin on cucurbits, and the fourth year that this use has been requested under section 18. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency [40 CFR 166.24(a)(6)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Environmental Protection Agency.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: February 17, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–4537 Filed 3–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–592; FRL–4760–1]

Rohm & Haas; Agricultural Chemicals; Filing of Food Additive Petition and Amendments to Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Rohm & Haas, Agricultural Chemicals, a filing of a food additive petition and two amendments to previously submitted pesticide petitions for various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5540.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Rohm & Haas, Agricultural Chemicals, Independence Mall West, Philadelphia, PA 19105, an initial filing of a food additive petition (FAP) and two amendments to previously submitted pesticide petitions (PP) as follows.

Initial Filing

1. *FAP 4H5689.* Proposes to amend 40 CFR part 185 to establish a tolerance of 7.0 parts per million in or on dried prunes for the fungicide fenbuconazole [alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile], and its metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone], and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone].

Amended Filings

2. *PP 1F3989.* EPA issued a notice in the **Federal Register** of December 13, 1991 (56 FR 65080), that Rohm & Haas had filed the petition proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole [alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] in or on stone fruit crop group and dried prunes at 2.0 parts per million (ppm). Rohm & Haas has amended the petition to propose amending 40 CFR part 180 to establish a tolerance of 2.0 ppm in or on stone fruit crop group for fenbuconazole [alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile], and its metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone], and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone].

3. *PP 1F3995.* EPA issued a notice in the **Federal Register** of December 13, 1991 (56 FR 65081), that Rohm & Haas had filed the petition proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole [alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] in or on pecans at 0.1 ppm. Rohm & Haas has amended the petition to propose amending 40 CFR part 180 to establish a tolerance of for pecans at 0.1 ppm for fenbuconazole [alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile], and its metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone], *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-(3*H*)-furanone], and [alpha-[2-(4-chlorophenyl)-2-oxoethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile].

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: February 18, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-4646 Filed 3-1-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 24, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0035.

Title: Application for Renewal of Auxiliary Broadcast License (Short Form).

Form Number: FCC Form 313-R.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Other: Once every 7 years for radio; once every 5 years for television.

Estimated Annual Burden: 50 responses; .50 hours average burden per response; 25 hours total annual burden.

Needs and Uses: FCC Form 313-R is used by licensees of remote pickup, television auxiliary, aural studio link and relay stations that are not broadcast licensees (e.g., cable operators, network entities, international broadcast services, motion picture producers and television producers) to renew their auxiliary broadcast license. An application for renewal of license (FCC Form 313-R) shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a non-business day, the cutoff shall be the close of business of the first full business day thereafter. On 9/18/92, the Commission adopted a Memorandum Opinion and Order which eliminated the requirement that broadcast applicant(s) report pending litigation. The portion of the question dealing with pending litigation has been eliminated. The data is used by FCC staff to ensure that the station is operating as authorized.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-4698 Filed 3-1-94; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commmission, (202) 632-6934.

Federal Communications Commission

OMB Control No.: 3060-0590.

Title: In the Matter of Transport Rate Structure and Pricing, CC Docket No. 91–213, Second Report and Order, released January 31, 1994.

Expiration Date: 04/30/94.

Estimated Annual Burden: 110 total hours; 2 hours per response.

Description: In the Second Report and Order in CC Docket No. 91–213 (released 1/31/94), the Commission modified certain features of the price cap regulatory system applicable to local exchange carriers (LECs) to accommodate the recent restructure of the LECs local transport rates. Transport services, including all the transmission-related elements, the tandem switching charge, and the interconnection charge, were moved out of the price cap basket for traffic sensitive services and placed into a combined "trunking" basket containing transport and special access services. The Commission realigned the service categories and subcategories within the trunking basket to reflect the similarities between certain special access and flat-rated transport services, and to accommodate the new density zone pricing system that were adopted for both special access and transport. The pricing bands applicable to the service categories and subcategories were also adapted. All LECs subject to the price cap rules are required to file a supplemental tariff review plan to recalculate their price cap indexes pursuant to the decision in the Order. The recalculated indexes should be used as the basis of any price cap filing that changes rates of services in the trucking or traffic sensitive baskets subsequent to the effective date of the initial restructured transport tariffs. Subsequent tariff filings must be made pursuant to the modified rules. The information will be used to aid in the review of the LECs transport service restructure by the Commission and interested parties.

OMB Control No.: 3060–0484.

Title: Amendment of part 63 of the Commission's Rules to Provide for the Notification of Common Carriers of Service Disruptions—R&O, § 63.100.

Expiration Date: 06/30/96.

Estimated Annual Burden: 239 total hours; 2.3 hours per response.

Description: In the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, in CC Docket No. 91–273, released December 1, 1993, the Commission amended 47 CFR 63.100 to include competitive access providers among those required to report outages lasting 30 or more minutes and potentially affecting 50,000 or more of their customers. This action is necessary to ensure the Commission's ability to monitor outages and determine what steps may be necessary to ensure network reliability. The amendment will provide the Commission with the additional information it needs to perform this task. OMB approval also includes the Commission's proposal to amend § 63.100 to require that local exchange and interexchange common carriers that operate either transmission or switching facilities report outages affecting 30,000 or more customers or special facilities.

OMB Control No.: 3060–0583.

Title: Amendment of part 32 and 64 of the Commission's rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates—CC Docket No. 93–251 (Proposed Rules).

Expiration Date: 10/31/96.

Estimated Annual Burden: 320,020 total hours; 4980 total hours per response.

Description: OMB approved the proposed requirements contained in the Commission's notice of proposed rulemaking (notice) in CC Docket No. 93–453, released October 20, 1993. The notice sought comments to amend the Commission's affiliate transaction rules and on the specific procedures telephone companies would use in implementing the proposed rules. The FCC proposed these measures to enhance its ability to keep telephone companies from imposing the costs of nonregulated activities on interstate ratepayers, and to keep ratepayers from being harmed by the telephone companies imprudence. The Notice proposed new and modified information requirements to help ensure that carriers adhere to the proposed affiliate transactions rule amendments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–4699 Filed 3–1–94; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/state	File No.	MM docket No.
A. Victory Christian Center, Inc.	Harrisburg, NC	BPH–920326MA	93–302
B. InterMart Broadcasting of North Carolina, Inc.	Harrisburg, NC	BPH–920326MB	.....
C. Todd P. Robinson	Harrisburg, NC	BPH–920327MI	.....
D. Saturday Communications Limited Partnership	Harrisburg, NC	BPH–920327ML	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Air Hazard	A & C
2. Environmental	B, C & D
3. Comparative	A, B, C & D
4. Ultimate	A, B, C & D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140,

Washington, DC 20037 (telephone (202)–857–3800).

Linda B. Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–4700 Filed 3–1–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Harleysville National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Harleysville National Corporation, Harleyville, Pennsylvania; to acquire 100 percent of the voting shares of Security National Bank, Pottstown, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Union National Bancorp, Inc., Westminster, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Union National Bank of Westminster, Westminster, Maryland.

2. Hinton Financial Corporation, Hinton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Hinton, Hinton, West Virginia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Allendale Bancorp, Inc., Allendale, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Allendale, Allendale, Illinois.

2. Community Charter Corporation, St. Louis, Missouri; to become a bank holding company by acquiring at least 89.4 percent of the voting shares of Missouri State Bank and Trust Company, St. Louis, Missouri.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Bank Group, Inc., Minnepolis, Minnesota; to merge with Mapleton Bancshares, Inc., Mapleton, Minnesota, and thereby indirectly acquire The First National Bank of Mapleton, Mapleton, Minnesota.

2. Tysan Corportion, Minneapolis, Minnesota; to merge with Royalton Bancshares, Inc., Royalton, Minnesota, and thereby indirectly acquire Royalton State Bank, Royalton, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Peak Banks of Colorado, Inc., Nederland, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Peak National Bank, Nederland, Colorado

Board of Governors of the Federal Reserve System, February 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4776 Filed 3-1-94; 8:45 am]

BILLING CODE 6210-01-F

Lake Park Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lake Park Bancshares, Inc., Lake Park, Minnesota; to engage *de novo* in making loans for its own account pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4777 Filed 3-1-94; 8:45 am]

BILLING CODE 6210-01-F

Sumitomo Trust & Banking Co., Ltd., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 25, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Sumitomo Trust & Banking Co., Ltd., Osaka, Japan; to acquire Boullioun Aviation Services, Inc., Bellevue, Washington, and thereby engage in leasing personal property and acting as agent, broker or advisor in leasing such property pursuant to § 225.25(b)(5)(i); leasing tangible personal property and acting as agent, broker or advisor in leasing such property, in which the lessor relies on an estimated residential value of the property in excess of 25 percent pursuant to § 225.25(b)(5)(ii); making, acquiring or servicing commercial loans and other extensions of credit for its account or that of others and acting as agent, broker or advisor with respect to such credit financing transactions, pursuant to § 225.25(b)(1); acting as an investment or financial advisor to the extent of (i) providing portfolio investment advice regarding investments in aircraft leases and other financing of aircraft and related equipment; (ii) furnishing general economic statistical forecasting services and industry studies regarding the aircraft and air transportation industry; and (iii) providing advice, including rendering fairness opinions and providing valuation services, in connection with financing transactions or aircraft and related equipment (including private and public financing and loan syndications) and conducting financial feasibility studies pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. United Bancorp of Kentucky, Inc., Lexington, Kentucky; to acquire Computer Bank Services, Inc., Lexington, Kentucky, and thereby engage in providing to commercial banks and others data processing and data transmission services, facilities (including data processing and data transmission hardware and software) for the processing of financial, banking, and economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4778 Filed 3-1-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting at the Department of Health and Human Services, Room 800 Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20301, from 9 a.m., March 15, 1994, through 3 p.m., March 17, 1994.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Gosdeck, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 303–D, Humphrey Building Washington, DC 20201, (202) 690–8604.

SUPPLEMENTARY INFORMATION: During this meeting, the Advisory Board will: discuss the process for developing the fatalities report and its content; and the future directions of the Board. Nine new members of the Board will be sworn-in by the Secretary of Health and Human Services at a ceremony on March 15 at 4 p.m.

Dated: February 21, 1994.

Preston Bruce,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 94–4718 Filed 3–1–94; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

CDC-Funded Childhood Blood Lead Surveillance Cooperative Agreement Recipients

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Meeting of CDC-Funded Childhood Blood Lead Surveillance Cooperative Agreement Recipients.

Times and Dates: 8:30 a.m.–4:30 p.m., April 7, 1994; 8:30 a.m.–4:30 p.m., April 8, 1994.

Place: Sheraton Century Center Hotel, 2000 Century Boulevard NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by space available.

Purpose: This meeting will provide a forum for the recipients of CDC Cooperative Agreement funds to review program progress and discuss surveillance issues and concerns.

Matters to be Discussed: Topics to be discussed at this meeting include case definitions and data fields for the National Childhood Blood Lead Surveillance System. There will be a demonstration of surveillance data transfer using the PC WONDER system.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nancy Tips, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects (F42), NCEH, CDC, 4770 Buford Highway NE., Chamblee, Georgia 30341–3724, telephone 404/488–7330.

Written comments are welcome and should be received by the contact person no later than April 1, 1994. Persons wishing to make oral comments at the meeting should notify the contact person in writing or by telephone no later than close of business April 1, 1994. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: February 24, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4682 Filed 3–1–94; 8:45 am]

BILLING CODE 4163–18–M

Savannah River Site Environmental Dose Reconstruction Project; Public Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meetings.

Date: Wednesday, March 16, 1994, Wednesday, March 30, 1994.

Time: 1 p.m.–7 p.m., 1 p.m.–7 p.m.

Place: City of Aiken Conference Center, 215 "The Alley," Aiken, South Carolina 29801; Savannah Coastal Georgia Conference Center, 305 Martin Luther King, Jr., Boulevard, Savannah, Georgia 31401.

Date: Tuesday, April 12, 1994.

Time: 1 p.m.–7 p.m.,

Place: Ramada Hotel, 8105 Two Notch Road, Columbia, South Carolina 29223.

Status: Open to the public for observation and comment, limited only by space available. The meeting room will accommodate approximately 100 people.

Purpose: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Savannah River Site near Augusta, Georgia, as well as a worker study at the same site, the availability of a formal site-specific advisory committee composed of South Carolina and Georgia citizens to provide consensus advice regarding these projects is necessary. CDC and ATSDR are currently taking steps to obtain authorization for a "Citizen' Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites" to be chartered under the Federal Advisory Committee Act.

The draft charter for this proposed committee states, "Because of the varying concerns within communities at each DOE site, operational guidelines at each site must be developed separately to clarify the scope of activities and the responsibilities of the Committee members and agencies." Therefore, CDC and ATSDR are holding a series of public meetings to begin developing operational guidelines at specific DOE sites. The purpose of these public meetings is to update the public on the status of CDC's and ATSDR's community involvement plans and to seek individual advice and recommendations from interested parties concerning operational guidelines. A copy of the proposed "Citizens' Advisory Committee on Public Health Service Activities and Research at DOE Sites" draft charter is available upon request from the contact person listed below.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: February 24, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4685 Filed 3–1–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94N–0044]

Riker Laboratories, Inc., et al.; Withdrawal of Approval of 91 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 91 new drug applications (NDA's). The holders of the NDA's notified the agency in writing that the drug products were no longer being marketed under the NDA's and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Maizel, Center for Drug Evaluation and Research (HFD–53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed in the table below have informed FDA that these drug products are no longer being marketed under the NDA's and have requested that FDA withdraw approval of the applications. The applicants have also, by request, waived their opportunity for a hearing.

NDA No.	Drug	Applicant
0–607	Ophthalmic Isophrin Solution	Riker Laboratories, Inc., 3M Pharmaceuticals, 270–3A 3M Center, St. Paul, MN 55144.
2–139	Menadione and Proklo Tablets	Lilly Research Laboratories, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
3–895	Heparin Sodium Injection	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
4–203	Zylate Solution and Emulsion	The Upjohn Co., U.S. Pharmaceutical Regulatory Affairs, 7000 Portage Rd., Kalamazoo, MI 49001–0199.
5–725	Kappadione Injection	Lilly Research Laboratories.
5–969	Racemic Desoxyephedrine HCl Tablets	High Chemical Co., 1760 North Howard St., Philadelphia, PA 19122.
6–087	Topocide Lotion	Lilly Research Laboratories.
6–303	Thephorin Tablets, Lotion and Ointment	Hoffmann-La Roche Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
6–317	Neotrizine Tablets and Suspension, Co-Diazine Suspension, Sulfonamides Duplex Suspension, and Sulfonamides Duplex Savoret Tablets	Lilly Research Laboratories.

NDA No.	Drug	Applicant
6–441	Camoquin HCl Tablets	Parke-Davis Pharmaceutical Research, Division of Warner-Lambert Co., 2800 Plymouth Rd., Ann Arbor, MI 48105.
6–798	Berubigen Injection	The Upjohn Co.
6–946	Aminosalicylic Acid and Sodium Aminosalicylate Powders	Merck Research Laboratories, Merck & Co. Inc., West Point, PA 19486.
7–037	Berubigen Capsules	The Upjohn Co.
7–245	Aerolone Solution	Lilly Research Laboratories.
7–384	Cologel Liquid	Do.
7–448	Aminosalicylic Acid Tablets	Do.
8–059	Thiomerin and Thiomenn Sodium Injections	Wyeth-Ayerst Laboratories Inc., P.O. Box 8299, Philadelphia, PA 19101.
8–301	Sunstick Ointment	S.C. Johnson Wax, S.C. Johnson & Son Inc., 1525 Howe St., Racine, WI 53403–5011.
8–576	Teebaconin Tablets	Palisades Pharmaceuticals Inc., 219 County Rd., Tenafly, NJ 07670.
8–814	Unitensen Injection	Wallace Laboratories, Division of Carter-Wallace Inc., 301B College Rd. East, Princeton, NJ 08540.
8–869	Dicurin Procaine Injection	Lilly Research Laboratories.
8–915	Clistin Tablets	R.W. Johnson Pharmaceutical Research Institute, Welsh and McKean Rds., Spring House, PA 19477–0776.
8–973	Primaquine Tablets	Parke-Davis Pharmaceutical Research.
8–993	Marezine Tablets	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
9–217	Unitensen Tablets	Wallace Laboratories.
9–276	Rauwolfia Serpentina and Hiwolfia Tablets	JMI-Canton Pharmaceuticals, Inc., 119 Schroyer Ave. SW., Canton, OH 44702.
9–312	Romilar Syrup	Hoffmann-La Roche Inc.
9–344	Histalog Injection	Lilly Research Laboratories.
9–631	Reserpine and Hiserpia Tablets	JMI-Canton Pharmaceuticals, Inc.
9–645	Reserpine and Serpivite Tablets	Vitarine Pharmaceuticals Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.
9–789	Mylaxen Injection	Wallace Laboratories.
9–980	Camoprim Tablets	Parke-Davis Pharmaceutical Research.
10–289	Betadine Ointment	The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06850–3590.
10–290	Betadine Mouthwash	Do.
10–573	Sodium Versenate Injection	Riker Laboratories, Inc.
10–586	Doxan Tablets	Hoechst-Roussel Pharmaceuticals Inc., Route 202–206 North, Somerville, NJ 08876.
10–895	Norlutin Tablets	Parke-Davis Pharmaceutical Research.
11–047	Cardrase Tablets	The Upjohn Co.
11–267	Halodrin Tablets	Do.
11–294	Trilafon Syrup	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.
11–361	Trilafon Tablets	Do.
11–429	Betadine Aerosol Spray	The Purdue Frederick Co.
11–491	Vesprin Suspension and Emulsion	Apothecon, Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500.
11–914	Virac Surgical and Virac Rex Solutions	Sherwood Medical, 1915 Olive St., St. Louis, MO 63103–1642.
11–945	Hispril Capsules	SmithKline Beecham Pharmaceuticals, Four Falls Corporate Center, Route 23 and Woodmont Ave., P.O. Box 1510, King of Prussia, PA 19406.
12–033	Sevinol Tablets	Schering Corp.
12–126	ULO (chlophedianol hydrochloride) Syrup	Riker Laboratories Inc.
12–155	Rela Tablets	Schering Corp.
12–273	Betadine Surgical Scrub Liquid	The Purdue Frederick Co.
12–307	SunDare Clear Lotion	S.C. Johnson Wax.
12–728	Ortho-Novum 10 milligrams (mg), Ortho-Novum 2 mg–20, Ortho-Novum 2 mg–21, and Ortho-Novum 1/50–20 Tablets (those portions of NDA only)	R.W. Johnson Pharmaceutical Research Institute.
12–751	Head and Shoulders Shampoo	The Procter & Gamble Co., Sharon Woods Technical Center, 11511 Reed Hartman Hwy., Cincinnati, OH 45241–9974.
12–936	Drolban Injection	Lilly Research Laboratories.
13–141	Sonilyn Tablets	Wallace Laboratories.
13–376	Propoquin Dihydrochloride Injection	Parke-Davis Pharmaceutical Research.
13–554	Norlestrin 2.5-mg Tablets	Do.
14–360	Head and Shoulders Shampoo	The Procter & Gamble Co.
14–968	Dristan Sustained Action Capsules	Whitehall Laboratories, 685 Third Ave., New York, NY 10017–4076.
16–242	Norlestrin Tablets	Parke-Davis Pharmaceutical Research.
16–393	Head and Shoulders Shampoo	The Procter & Gamble Co.
16–605	Head and Shoulders Lotion Shampoo	Do.
16–723	Norlestrin 28 1/50 Tablets	Parke-Davis Pharmaceutical Research.
16–735	Surgidine Solution	Wallace Laboratories.
16–766	Norlestrin FE 1/50 Tablets	Parke-Davis Pharmaceutical Research.
16–813	Vapo-Iso Inhalant	Fisons Pharmaceuticals, Fisons Corp., Jefferson Rd., P.O. Box 710, Rochester, NY 14603.
17–033	Heparin Sodium and Sodium Heparin Injections	Lyphomed Inc., 2045 North Cornell Ave., Melrose Park, IL 60160–1002.

NDA No.	Drug	Applicant
17–079	Haldol Solutab Tablets	R.W. Johnson Pharmaceutical Research Institute.
17–346	Heparin Sodium and Heparin Lock Flush Injections	Parke-Davis Pharmaceutical Research.
17–366	Mucomyst with Isoproterenol Solution	Bristol-Myers Squibb Co., Bristol-Myers U.S. Pharmaceutical Group, 2400 West Lloyd Expressway, Evansville, IN 47721–0001.
17–374	Dormate Tablets	Wallace Laboratories.
17–415	Centrax Tablets and Verstran Capsules	Parke-Davis Pharmaceutical Research.
17–485	Vosol Otic Solution	Wallace Laboratories.
17–718	Heprinar Injection	Armour Pharmaceutical Co., A Company of Rorer Group Inc., 500 Virginia Dr., Fort Washington, PA 19034.
18–232	Somophyllin Enema	Fisons Pharmaceuticals.
18–296	Tymtran Injection	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216–6529.
18–497	Sodium Chloride 0.45% Solution	Baxter Healthcare Corp., Parenterals Division, Route 120 and Wilson Rd., Round Lake, IL 60073.
18–522	Glycine 1.5% Solution	Do.
19–130	Heparin Sodium 1,000 Units in Dextrose 5%, Heparin Sodium 5,000 Units in Dextrose 5%, and Heparin Sodium 2,000 Units in Dextrose 5% Injections	Kendall McGaw Laboratories Inc., P.O. Box 25080, Santa Ana, CA 92799–5080.
19–326	Synovalyte Solution in Plastic Container	Baxter Healthcare Corp.
19–412	Head and Shoulders Conditioner Lotion	The Proctor and Gamble Co.
19–490	Curity Surgical Scrub Brush-Sponge	Becton Dickinson AcuteCare, 9450 South State St., Sandy, UT 84070–3234.
50–046	Veracillin Capsules	Wyeth-Ayerst Laboratories.
50–056	Principen '250' and Principen '500' Capsules	Apothecon.
50–183	Chloromycetin Cream	Parke-Davis Pharmaceutical Research.
50–203	Chloromyxin Ophthalmic Ointment	Do.
50–289	Coly-Mycin S Ophthalmic Drops	Do.
50–374	Neo-Cortef Lotion	The Upjohn Co.
50–450	Mutamycin Powder for Injection	Bristol-Myers Squibb Co.
50–488	Principen with Probenecid Capsules	Apothecon.
50–495	Amikin Injection	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 1, 1994.

Dated: February 3, 1994.

Gerald F. Meyer,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–4660 Filed 3–1–94; 8:45 am]

BILLING CODE 4160–01–P

National Institutes of Health

National Institute on Aging; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of Subcommittee B meeting of the Biological and Clinical Aging Review Committee, and of Subcommittees A and B meetings of the Neuroscience, Behavior and Sociology of Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland, 20892 (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed for the meeting, in advance of the meeting.

Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated below:

Name of Subcommittee: Subcommittee B—Biological and Clinical Aging Review Committee.

Scientific Review Administrator: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: March 7–8, 1994.

Place of Meeting: Marriott Residence Inn, 7335 Wisconsin Ave., Bethesda, Maryland 20814.

Open: March 7—8 to 9 p.m.

Closed: March 8—8:30 a.m. to 4 p.m.

Name of Subcommittee: Subcommittee A—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrators: Dr. Maria Mannarino, Dr. Louise Hsu, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: March 14–16, 1994.

Place of Meeting: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin at Western Ave., Bethesda, Maryland 20015.

Open: March 14—7 to 8 p.m.

Closed: March 14—8 p.m. to adjournment on March 16, 1994.

Name of Subcommittee: Subcommittee B—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrator: Dr. Walter Spieth, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: March 6–8, 1994.

Place of Meeting: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: March 6—8 to 8:45 p.m.

Closed: March 6—8:45 p.m. to adjournment on March 8, 1994.

This notice is being published less than the 15 days prior to the meeting due to difficulties of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4795 Filed 2–25–94; 3:44 pm]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1994.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meetings and rosters of committee members. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: March 1–2, 1994.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open: March 1, 1994, 8 a.m.–9:30 a.m.

Closed: March 1, 1993, 9:30 a.m.–5 p.m. March 2, 1993, 8 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 10–12, 1994.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.

Open: March 10, 1994, 9 a.m.–10:30 a.m.

Closed: March 10, 1994, 10:30 a.m.–5 p.m. March 11, 1994, 9 a.m.–5 p.m. March 12, 1994, 9 a.m.–adjournment.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 29–30, 1994.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.

Open: March 29, 1994, 8:30 a.m.–9:30 a.m.

Closed: March 29, 1994, 9:30 a.m.–5 p.m. March 30, 1994, 8 a.m.–adjournment.

This meeting is being published less than the 15 days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4794 Filed 3–1–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the March 6–7, 1994, meetings of the National Kidney and Urologic Diseases Advisory Board, the Research Subcommittee and the Health Care Issues Subcommittee, which was published in the **Federal Register** on February 15, 1994, 59 FR 7257.

This Advisory Board was to have convened at 1:30 p.m. to 3:30 p.m. on March 7, 1994, but has been changed to 10:45 a.m. to approximately 5 p.m. The Research Subcommittee and the Health Care Issues Subcommittee was to have convened at 7 p.m. to recess on March 6 and 8 a.m. to 12 noon on March 7, but both meetings have been changed to no meeting on March 6 and 8 a.m. to 9:30 a.m. on March 7.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4796 Filed 2–25–94; 3:44 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PB3430D01]

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Final Supplemental Environmental Impact Statement

AGENCIES: Bureau of Land Management, Department of the Interior; and Forest Service, Department of Agriculture.

ACTION: Notice of availability of a final supplemental environmental impact statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl FES 94–6.

DATES: The awaiting period on this final supplemental environmental impact statement ends 30 days after the EPA Notice of Availability appears in the **Federal Register**.

ADDRESSES: Comments should be sent to: Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

FOR FURTHER INFORMATION CONTACT:

Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

SUPPLEMENTARY INFORMATION: Copies of the final supplemental environmental impact statement (SEIS) are available for review at local Bureau of Land Management and Forest Service offices and some public libraries in Oregon, Washington, and California. Alternately, copies may be obtained by calling (503) 326–7883 or by writing the Interagency SEIS Team at P.O. Box 3623, Portland, OR 97208–3623.

Dated: February 24, 1994.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance, Department of the Interior.

Dated: February 24, 1994.

Geri Bergen,

Acting Director, Environmental Coordination, Forest Service, Department of Agriculture.

[FR Doc. 94–4669 Filed 3–1–94; 8:45 am]

BILLING CODE 3410–11–M

[NV–930–4210–05; N–57882]

Notice of Realty Action; Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Lease/Purchase.

SUMMARY: The following described public land in Goodsprings, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The County of Clark, a political subdivision of the State of Nevada, proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 24 S., R. 58 E.,
Sec. 26: N½NE¼NW¼, SW¼NE¼NW¼, N½SE¼NE¼NE¼, SW¼SE¼NE¼NW¼.

Containing 37.50 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe,

and will be subject to:

1. An easement 50.00 feet in width along the north boundary in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 40.00 feet in width along the east boundary in favor of Clark County for roads, public utilities and flood control purposes.

3. An easement 30.00 feet in width along the south boundary in favor of Clark County for roads, public utilities and flood control purposes.

4. An easement 30.00 feet in width along the west boundary in favor of Clark County for roads, public utilities and flood control purposes.

5. Those rights for a well site, waterline and road purposes which have been granted to Clark County by Permit No. N–27686 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for a flood control dike purposes which have been granted to Clark County by Permit No. N–57559 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: February 15, 1994.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 94–4687 Filed 3–1–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Proposal To Award Concession Contract; Hot Springs National Park, AR

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued thermal water bathhouse facilities and services for the public at Hot Springs National Park, Arkansas, for a period of ten (10) years from the date of final execution of the concession contract.

EFFECTIVE DATE: May 2, 1994.

ADDRESSES: Interested parties should contact the Regional Director, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728 to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1990, and has been operating under interim letter of authorization since that time, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20d), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: December 6, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–4664 Filed 3–1–94; 8:45 am]

BILLING CODE 4310–70–M

Proposal To Award Concession Contract; Ozark National Scenic Riverways, MO

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of lodging, restaurant, general merchandise, hot shower, and firewood facilities and services for the public at Ozark National Scenic Riverways, Missouri, for a period of approximately five (5) years from date of execution through December 31, 1997.

EFFECTIVE DATE: May 2, 1994.

ADDRESSES: Interested parties should contact the Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965 to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the negotiation of a new proposed contract providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to much the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offers.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 18, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–4663 Filed 3–1–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States—Mexico Joint Project for Immediate Emergency Removal of Sediment in the Lower Colorado River in Mexico, Morelos Dam to the Northerly International Boundary—Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Based on a revised draft environmental assessment, the United States Section of the International Boundary and Water Commission, United States and Mexico (USIBWC), finds that the proposed action that the United States Government and the Government of Mexico engage in a joint project for immediate emergency removal of sediment in the lower Colorado River in Mexico from Morelos Dam to the Northerly International Boundary (NIB) is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

ADDRESSES: Mr. M.R. Ybarra, United States Section Secretary; United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: 915/534–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the United States Government and the Government of Mexico to engage in a joint project to remove sediment in the lower Colorado River in Mexico from Morelos Dam to the Northerly International Boundary (NIB).

The need for the project arises from extraordinary winter storm runoff in 1993 in the Gila River basin which resulted in the filling and spilling of Painted Rock Dam, located some 116 miles (187 kilometers) upstream of the Gila River's confluence with the Colorado River. The sustained high flows carried a large sediment load, causing dangerous accumulations in the international boundary segment of the Colorado River.

The sediment removal is necessary to provide immediate flood control relief in the vicinity of Morelos Dam and to enable Mexico to receive full deliveries of their 1944 Treaty waters. All sediment removal activities will be conducted in Mexico.

Alternatives Considered

Three alternatives, including the No Action Alternative and the Proposed Action Alternative, were considered:

The No Action Alternative would result in accumulated sediment not being removed from the lower Colorado River in the vicinity of Morelos Dam. Mexico would not be able to divert full domestic and irrigation allotments. Serious impacts to human health could result from an absence of an adequate domestic water supply. Sediment accumulation in the Morelos Dam system would increase flood stage elevations. The United States would not be acting in furtherance of the 1944 Water Treaty requirement to recommend and carry out flood control activities and the 1970 Boundary Treaty requirements for boundary preservation.

The Proposed Action Alternative is a joint United States/Mexico emergency project to remove sediment upstream of the Morelos Dam flood control gates for a distance yet to be determined, but no further upstream than the NIB, and downstream of the Morelos Dam intake gates. The IBWC, on behalf of the United States and Mexico, would coordinate the work utilizing, as authorized in the 1944 Water Treaty, the resources of the U.S. Department of Interior, Bureau of Reclamation (Reclamation), and the Mexican National Water Commission.

The project includes the removal of an estimated minimum 183,000 cubic yards (140,000 cubic meters) of sediment downstream of the Morelos Dam intake structure in Mexico, assigned to Mexico, and removal of an estimated minimum 314,000 cubic yards (240,000 cubic meters) of sediment, assigned to the United States, immediately upstream of Morelos Dam in the Colorado River, also in Mexico, up to the NIB. The Mexican government has requested the United States government perform the part of the work assigned to Mexico at full reimbursement to the United States Government because the existing Mexican equipment does not have the capacity to remove the amount of sediment necessary to restore the intake canal capacity to 5,650 cubic feet per second (160 cubic meters per second).

Work will be performed utilizing dredging equipment. It may also be necessary to use earth moving equipment along the Mexican bank of the Colorado River. The spoil material will be temporarily placed in Mexico just upstream of Morelos Dam. Mexico will remove the spoil material to a permanent disposal site in Mexico in the near future. The United States will advise Mexico on disposal site preparation in that country. The sediment has been tested for the presence of pesticides and heavy metals. The result of the tests will be furnished to the interested resource agencies when they become available.

This alternative will improve the flood carrying capacity in the Colorado River to pass flood flows through the NIB similar to those experienced during the 1993 Gila River floods. The Morelos Dam system will also allow Mexico to fully divert the waters delivered by the United States under the 1944 Water Treaty along with small flood flows that may arrive at the NIB. The United States would be acting in furtherance of the 1944 Water Treaty requirement to recommend and carry out flood control activities and the 1970 Boundary Treaty requirements for boundary preservation.

The Sediment Removal and Flood Control Alternative would result in the United States and Mexico concluding an international agreement through a Minute of the IBWC for sediment removal in the Colorado River from the confluence of the Gila River to the lower end of the Mexicali Valley Irrigation District, including the Morelos Dam intake canal. This action would restore the carrying capacity of the river channel to about 25,000 cubic feet per second (708 cubic meters per second) to permit passage of the 100-year flood discharge of approximately 40,000 cubic feet per second (1,130 cubic meters per second) with overbank discharges that will not overtop or endanger flood control levees in either the United States or in Mexico. This activity would also improve the Colorado River channel gradient in the lower end of the Mexicali Valley Irrigation District to increase the velocity of flood flows into the Laguna Salada diversion channel and to the Gulf of California. This alternative would also allow the United States and Mexico to resolve existing boundary issues and other differences in a cooperative manner.

This alternative would be a major federal undertaking which could not be accomplished within the short time needed to correct water diversion problems or handle potential significant flood events during 1994. An undertaking of this magnitude would also involve a consideration of river stabilization and river rectifications in addition to sediment removal. Such activities would require extensive cost-benefit analysis and environmental impact evaluation. This alternative was therefore not given further consideration. Instead, the elements of this alternative were considered as elements that merit considerable binational study for a possible longer term activity.

Revised Draft Environmental Assessment

The USIBWC met with the interested resource agencies on February 15, 1994, in Yuma, Arizona, to discuss the proposed action. The Revised Draft Environmental Assessment (RDEA) for the proposed project was completed on February 16, 1994, and made available for review and comment.

On the basis of the consensus reached with the interested resource agencies and the RDEA, the USIBWC has determined that an environmental impact statement is not required for the United States Government and the Government of Mexico to engage in a joint project for immediate emergency removal of sediment in Mexico from Morelos Dam to the NIB and hereby provides notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The RDEA and Draft Finding of No Significant Impact (FONSI) have been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of these documents are available to fill single copy requests at the above address.

Dated: February 23, 1994.

Manuel R. Ybarra,

Secretary.

[FR Doc. 94–4683 Filed 3–1–94; 8:45 am]

BILLING CODE 4710–03–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–643 (Final)]

Defrost Timers From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of defrost timers,[3] provided for in subheading 9107.00.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 24, 1993, following a preliminary determination by the Department of Commerce that imports of defrost timers from Japan were being, or were likely to be, sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 1993 (58 FR 48373). The hearing was held in Washington, DC, on January 11, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 22, 1994. The views of the Commission are contained in USITC Publication 2740 (February 1994) entitled "Defrost

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Don E. Newquist did not participate in the Commission's vote.

[3] Such defrost timers are electromechanical and electronic defrost timers for residential refrigerators.

Timers from Japan: Investigation No. 731–TA–643 (Final)."

By order of the Commission.

Issued: February 25, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4738 Filed 3–1–94; 8:45 am]

BILLING CODE 7020–02–U

[Investigation No. 337–TA–352]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Cyrix.

In the Matter of Certain Personal Computers with Memory Management Information Stored External Memory and Related Materials.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 23, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 23, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4737 Filed 3–1–94; 8:45 am]

BILLING CODE 7020–02–U

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Revision of a currently approved form.

Bureau/Office: Office of Compliance & Consumer Assistance.

Title of Form: Annual Performance Report.

OMB Form Number: 3120–0006.

Agency Form Number: OCP–101.

Frequency: Annually.

No. of Respondents: 3,000.

Total Burden Hours: 5375 [1].

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4712 Filed 3–1–94; 8:45 am]

BILLING CODE 7035–01–M

[1] 2875 carriers will complete Part A only at approximately 1 hr. per response. The remaining 125 carriers will complete Parts A & B at approximately 20 hrs. per response.

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–32 (Sub-No. 66X), Boston and Maine Corporation—Discontinuance of Service and Trackage Rights—Middlesex County, MA. EA available 2/25/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–406 (Sub-No. 1X) Central Kansas Railway, Inc.—Abandonment Exemption—in Kay and Grant Counties, OK and Harper County, KS. EA available 2/25/94.

AB–406 (Sub-No. 2X), Central Kansas Railway, Inc.—Abandonment Exemption—in Barber and Kiowa Counties, KS. EA available 2/25/94.

AB–12 (Sub-No. 169X), Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Los Angeles County, California. EA available 2/25/94.

AB–406 (Sub-No. 3X), Central Kansas Railway, Inc.—Abandonment Exemption—in Edwards and Pawnee Counties, KS. EA available 2/25/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4713 Filed 3–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on February 16, 1994, a proposed consent decree in *United States* v. *Motor Wheel Corporation et al.*, Civil Action No. 1–94–CV–96, was lodged with the United States District Court for the Western District of Michigan. This

action was brought, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* ("CERCLA"), to remedy an imminent and substantial endangerment to human health and the environment that may exist in connection with the release or threatened release of hazardous substances into the environment from a facility known as the Motor Wheel Disposal Site ("Site") in the City of Lansing, Michigan and for the recovery of costs expended by the United States in connection with cleanup of the Site.

Under the consent decree, defendants Motor Wheel Corporation, Goodyear Tire & Rubber Company, Textron, Inc., W.R. Grace and Co., General Motors, Inc., and Lansing Board of Water and Light will perform the remedial action selected by the United States Environmental Protection Agency ("EPA") in its Record of Decision ("ROD"), as further specified in the Scope of Work ("SOW") for the Motor Wheel Disposal Site, and to pay all of EPA's attendant oversight costs. In addition, under the Consent Decree, defendants will pay the United States all unreimbursed past costs that the United States incurred at the Site into the Hazardous Substances Superfund.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Motor Wheel Corporation, et al.*, DJ Ref. # 90–11–2–753.

The proposed consent decree may be examined at the office of the United States Attorney, 309 Federal Building & Courthouse, 110 Michigan Street, NW., Grand Rapids, MI 49503 and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decrees may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 94–4511 Filed 3–1–94; 8:45 am]

BILLING CODE 4410–11–M

Immigration and Naturalization Service

[INS No. 1400LI–94; AG Order No. 1854–94]

[RIN 1115–AC30]

Extension of Designation of Liberia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until March 28, 1995, the Attorney General's designation of Liberia under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on March 27, 1992. In addition during the extension period, some aliens may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This designation is effective on March 29, 1994, and will remain in effect until March 28, 1995. Re-registration procedures become effective on March 3, 1994, and will remain in effect until April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, room 7123, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. The Attorney General extended the designation of Liberia under the Temporary Protected Status program for additional 12-month periods until March 28, 1993, 57 FR 2932, and until March 28, 1994, 58 FR 7898.

This notice extends the designation of Liberia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, must comply in applying for continuation of Temporary Protected Status.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's Temporary Protected Status designation, late initial registrations are possible for some Liberians as the result of addition of 8 CFR 240.2(f)(2) under the interim rule published in the **Federal Register** on November 5, 1993, at 58 FR 58935–58938. Such late initial registrants must still meet the initial presence requirement for all Liberians and the status requirements contained in the November 5, 1993, interim rule.

Notice of Extension of Designation of Liberia Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have determined that, as a result of the ongoing civil unrest in that country, there still exist extraordinary and temporary conditions in Liberia that prevent aliens who are nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, from returning to Liberia in safety. I have further determined that permitting nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, to remain temporarily in the United States, is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Liberia under section 244A(b) of the Act is extended

for an additional 12-month period from March 29, 1994, to March 28, 1995.

(2) I estimate that there are approximately 4000 nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who received a grant of Temporary Protected Status during the initial period of designation from March 27, 1991, to March 27, 1992, and who re-registered for the third period which ends on March 28, 1994, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on March 2, 1994, and ending on April 1, 1994, in order to be eligible for Temporary Protected Status during the period from March 29, 1994, until March 28, 1995. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no filing fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–821 together with Form I–765 for information purposes, but in such cases both Form I–821 and Form I–765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 28, 1995, the designation of Liberia under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: February 24, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–4742 Filed 3–1–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements included in each notice may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 219–5095). Comments and questions about the items included in each notice should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ ETA/OAW/MSHA/ OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395–6880). Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration.
Job Training Partnership Act (JTPA) Title II Quarterly Status Report Supplement.
ETA 9045.
Annually.
State or local governments.
59 respondents; 1 hour per response; 59 total hours; 1 form.

The information will be used to assess JTPA local financial and participant data. Participant and financial data will be used to respond to Congressional oversight, to prepare budget requests and make annual reports to Congress as required by statute.

New

Employment and Training Administration.
Worker Adjustment Formula Financial Report Supplement.
ETA 9046.
Annually.
State or local governments.
52 respondents; 1 hour per response; 52 total hours; 1 form.

The information will be used to assess formula programs under the Job Training Partnership Act, Title III, as amended. Participant and financial data will be used to monitor program performance and to prepare reports and budget requests.

New

Employment and Training Administration.
National Job Analysis Study.
One-time survey.
State or local governments; Farms, Businesses or other for-profit; Federal agencies or employees; Non-profit institutions;
Small businesses or organizations.
21,966 respondents; 33 minutes per response; 12,157 total hours.

The study will identify workplace behaviors that are generalizable across most occupations in the nation. Once identified, the behaviors will form the foundation for workplace assessments, curriculum development, and career selection and training.

Reinstatement

Mine Safety and Health Administration.
Program of Instruction: location and use of fire fighting equipment; location of escapeways; exits and routes of travel; evacuation procedures; fire drills.
1219–0054.
On occasion; quarterly.
270 respondents; 30 minutes per response; 135 total hours.

Underground coal mine operators are required to have a plan approved by the Mine Safety and Health Administration for the instruction of miners in firefighting and evacuation procedures to be followed in the event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and certified by the operators' signature and date that the fire drills were conducted in accordance with the approved plan.

Signed at Washington, DC this 24th day of February, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–4746 Filed 3–1–94; 8:45 am]

BILLING CODE 4510–30–P

Office of the Secretary

Commission on the Future of Worker-Management Relations; Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to Section 10 (a) of FACA, this is to announce that the Commission will meet at the time and place shown below:

Time and Place: The meeting will be held on Wednesday, March 16, 1994 from 10 a.m. to 4:30 p.m. in room N–3437 A–D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the meeting is as follows:

The meeting will be devoted to reports on foreign experience with worker-management relations and on what can be learned for worker-management and labor-management relations in the United States.

Representatives of managements, labor organizations and academics from Germany, Australia, Italy and France will report on their labor-management arrangements and relationships.

Representatives of management and labor organization from the United States, with knowledge of overseas experience, will then comment on the presentations from overseas representatives and on their applicability to problems within this country.

The presentations by representatives of foreign experiences will begin in the morning and continue after the lunch break. Comments by United States representatives on the earlier presentations will begin by mid-afternoon.

The presenters will each be allotted 15 minutes of prepared presentations and then engage in discussion of the issues with each other and with members of the Commission.

Public Participation: The meeting will be open to the public. It will be in session from 10 a.m. until 12:30 p.m. when it will adjourn for lunch and will return at 1:45 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 15 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Due to the inclement weather that impacted the schedule, we are unable to give the full 15 days of advance notice of this meeting.

Signed at Washington, DC this 23rd day of February, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–4747 Filed 3–1–94; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of a specific license.

6. An estimate of the number of responses: 93.

7. An estimate of the number of respondents: 125.

8. An estimate of the number of hours needed to complete the requirement or request: 315 (Reporting—165 hours (1.77 hours per response); recordkeeping—150 hours (1.2 hours per recordkeeper)).

9. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

10. Abstract: 10 CFR part 110 provides application, reporting, and recordkeeping requirements for the export and import of nuclear equipment and material. The information collected and maintained pursuant to 10 CFR part 110 enables the NRC to authorize only those imports and exports which are not inimical to U.S. common defense and security and which meet any other U.S. statutory and policy requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0036), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at 202/395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, 301/492–8132.

Dated at Bethesda, Maryland this 23rd day of February, 1994.

For the U.S. Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–4688 Filed 3–1–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189

of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 5, 1994, through February 17, 1994. The last biweekly notice was published on February 16, 1994 (59 FR 7685).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 1, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: January 13, 1994

Description of amendment requests: Request for NRC consent to the indirect transfer of control of El Paso Electric Company's interest in Operating License Nos. NPF-41, NPF-51, NPF-74 and to amend Operating License Nos. NPF-51 and NPF-74 to delete provisions for El Paso Electric Company's sale-leaseback arrangements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. No. NPF-74. These section describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing sale and leaseback transactions. The proposed change does not affect the assumptions used in the accident analyses, nor does the proposed change result in changes to the physical configuration of the facility, design parameters, technical specifications, or operation and maintenance of the facility. Therefore, this amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing sale and leaseback transactions. The proposed change does not involve modifications to any of the existing equipment nor does the change affect the operation and maintenance of the facility. Therefore, this amendment request does not create the possibility of a new or different kind of accident not previously analyzed.

Standard 3 -- Involve a significant reduction in a margin of safety.

This amendment request does not involve a significant reduction in a margin of safety because it is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing sale and leaseback transactions. The proposed change does not involve changes to any existing plant equipment or accident analyses that provide for or establish margins of safety. There are no changes to the operation or maintenance of the facility and the existing margins of safety are not changed by the proposed change. Therefore, this amendment request does not involve a signigicant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the proposed license amendment reflects only a change in the structure of the financing of El Paso's interest in Palo Verde and the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004 Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 4, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.6.4, Containment Systems Combustible Gas Control, by eliminating the 12-hour channel check surveillance requirement for the containment hydrogen monitoring system in conformance with the new Standard Technical Specifications, NUREG-1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Final Safety Analysis Report (FSAR) section 6.2.5.2.3 states that the Hydrogen Analyzer is only required to be functioning (continuously indicating and recording hydrogen concentration) within 30 minutes

of safety injection initiation. The performance of an analog operational test every 31 days and a channel calibration test every 92 days verifies this operability. Based on this, the monitors will be fully capable of performing their intended design function following a safety injection initiation. Therefore, the elimination of the 12-hour channel check would not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Hydrogen Monitors perform an "indication" function only. [sic] to help ensure that hydrogen concentrations within containment are maintained below flammable limits during a post-LOCA [loss-of-coolant accident] condition. The proposed changes do not involve any modifications or additions to plant equipment and the design and operation of the plant will not be affected. Therefore, the elimination of the 12-hour channel check does not affect any parameters which relate to the margin of safety as defined in the Technical Specifications or the FSAR. Therefore, the proposed changes do not involve a significant reduction in a margin of safety

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed elimination of the 12-hour channel check does not affect any parameters which relate to the margin of safety as defined in the Technical Specifications or the FSAR. Therefore, the proposed changes do not involve a significant reduction in a margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: March 26, 1993

Description of amendment request: The proposed amendment would modify trip level settings for the Isolation Condenser and High Pressure Core Injection (HPCI) System Steam lines to more conservative values. In addition, the proposed amendment would revise the Emergency Core Cooling System Low-Low Water Level initiation trip level setting tolerance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Involve a significant increase in the probability or consequences of an accident previously evaluated because:

HPCI Steamline High Flow Isolation Trip Level Setting

The purpose of the HPCI leak detection systems are to detect breaks in the system piping. Normal steam flows within the system can fluctuate in excess of 250% rated flow and exceed 500% rated steam flow after experiencing a break. During the original licensing of the plant, it was analytically determined by GE that three times maximum steam flow (300%) is the optimum setpoint for the isolation of HPCI. A 300% steam flow setpoint ensures that spurious trips are avoided and that breaks in the piping are identified. Because the HPCI High Steamline Flow Isolation setpoint is not assumed as an accident precursor, the probability of any previously evaluated accident is not increased by the changed setpoint.

The proposed changes to the setpoint allow a more accurate and conservative value for 300% steam flow. The proposed change in conjunction with a more conservative field setting ensures HPCI isolation occurring between the range of 300% and 500% steam flow, thus ensuring HPCI isolation in the event of a pipe break. Because the HPCI high steamline flow setpoint will be maintained above normally found operational values (272% steam flow) and below expected conditions with a pipe break (500% steam flow), the consequences of any previously evaluated accident are not increased with the proposed setpoint change.

solation Condenser Steamline High Flow Isolation Trip Level Setting

The purpose of the Isolation Condenser leak detection instrumentation is to detect breaks in the system piping. Normal steam flows within the system can fluctuate in excess of 250% rated flow and exceed 500% rated steam flow after experiencing a break. During the original licensing of the plant, it was analytically determined by GE that three times rated steam flow (300%) is the optimum setpoint for the isolation of the Isolation Condenser. A 300% steam flow Isolation setpoint ensures that spurious trips are avoided and that breaks in the piping are identified. Because the Isolation Condenser High Steamline Flow setpoint is not assumed as an accident precursor, the probability of any previously evaluated accident is not increased by the changed setpoint. The proposed changes to the setpoint provide a more accurate and conservative field setting for 300% steam flow.

The proposed changes in conjunction with a more conservative field setting results in Isolation Condenser isolation occurring between the range of 300% and 500% steam flow, thus ensuring Isolation Condenser isolation in the event of a pipe break. Because the Isolation Condenser High Steamline Flow Isolation setpoint will be maintained above normally found operational values (272% steam flow) and below expected conditions with a pipe break (500% steam flow), the consequences of any previously evaluated accident are not increased with the proposed setpoint change.

Reactor Low-Low Water Level Trip Level Setting Tolerance

The Low-Low Reactor Water Level trip setting is designed to initiate ECCS when reactor water level is less than or equal to 444 inches above vessel zero. Top of active fuel (TAF) is defined as 360 inches above vessel zero. -59 inches is 84 inches above TAF. The present trip setting tolerance (84 inches, + 4, - 0, above TAF) only allows a deviation of 4 inches in the conservative direction. The proposed change (greater than or equal to 84 inches) does not impose a restriction on the limit toward the conservative direction. Because a level switch trip level setting by itself is not assumed as an accident precursor, the probability of any previously evaluated accident is not increased by the changed setpoint.

The proposed change eliminates a restriction on the trip level setting for Low-Low Reactor Water Level. Dresden proposes modifying the acceptance limit of the Low-Low trip setting such that the instrument field setting will not deviate below 84 inches. Therefore, the actuation of appropriate ECCS are unchanged and the consequences of any previously evaluated accident are not increased with the proposed setpoint change

Create the possibility of a new or different kind of accident from any accident previously evaluated because:

HPCI Steamline High Flow Isolation Trip Level Setting

The purpose of the HPCI Steamline High Flow Isolation trip level setting is to detect breaks in system piping and initiate isolation of the system if breaks are discovered. Normal steam flows within the system can fluctuate as high as 250% rated flow and exceed 500% rated steam flow after experiencing a break. 300% steam flow has been used as the setpoint to ensure that spurious trips are avoided and that breaks in the piping are identified. The changes to the HPCI High Steamline Flow setpoint ensure that isolation occurs at 300% rated steam flow (below 500% rated steam flow). The current setpoint will also isolate below 500% rated steam flow. Because the new setpoint continues to allow normal operational flexibility and ensures isolation in the event of a pipe break, the proposed changes do not create the possibility of a new or different kind of accident than previously evaluated.

Isolation Condenser Steamline High Flow Isolation Trip Level Setting

The purpose of the Isolation Condenser Steamline High Flow Isolation trip level setting is to detect breaks in system piping and initiate isolation of the system if breaks are discovered. Normal steam flows within the system can fluctuate in excess of 250% rated flow and exceed 500% rated steam flow after experiencing a break. 300% steam flow has been used as the setpoint to ensure that spurious trips are avoided and ensures that isolation occurs at 300% rated steam flow

(below 500% rated steam flow). The current setpoint will also isolate below 500% rated steam flow. Because the new setpoint continues to allow normal operational flexibility and ensures isolation in the event of a pipe break, the proposed changes do not create the possibility of a new or different kind of accident than previously evaluated.

Reactor Low-Low Level Trip Level Setting Tolerance

The Reactor Low-Low Water Level trip setting is designed to initiate the appropriate ECCS when Reactor Water Level is decreasing. The proposed change to the setpoint only eliminates the overly burdensome restriction within the setpoint tolerances. The absolute low limit of 84 inches is unchanged, thus maintaining all assumptions related to 84 inches (-59 inches indicated level) within Dresden's Safety Analysis. The removal of the upper tolerance will not increase the probability of inadvertent ECCS initiation since the actual field setting will be at a reactor vessel level which has not been reached in 40 + years of operation at Dresden Units 2 and 3. Therefore, the proposed changes do not create the possibility of a new or different kind of accident than previously evaluated.

Involve a significant reduction in the margin of safety because.

High Pressure Coolant Injection Setpoint

The HPCI high steamline flow setpoint ensures that isolation occurs at 300% maximum steam flow (below 500% rated steam flow). The current Technical Specification setpoint will also allow isolation below 500% rated steam flow but at a value greater than 300%. Thus, the proposed setpoint isolates at a lower steam flow rate than the current limit. Therefore, because isolation of HPCI would occur at a lower steam flow rate during a pipe break, the proposed changes do not involve a significant reduction in the margin of safety.

Isolation Condenser Steamline High Flow Isolation Trip Level Setting

The Isolation Condenser High Steamline Flow Isolation Trip Level setting ensures that isolation occurs at 300% rated steam flow (below 500% rated steam flow). The current setpoint will also isolate below 500% rated steam flow but at a value greater than 300%. Thus, the proposed setpoint isolates at a lower steam flow rate than the current limit. Therefore, because isolation of the Isolation Condenser would occur at a lower steam flow rate during a pipe break, the proposed changes do not involve a significant reduction in the margin of safety.

Reactor Low-Low Level Trip Level Setting Tolerance

The Reactor Low-Low Water Level trip setting tolerance ensures the proper initiation of appropriate ECCS in the event of a loss of inventory to the vessel. The proposed change to the setpoint only eliminates the restriction within the setpoint tolerances. The absolute low limit of 84 inches is unchanged, thus maintaining all assumptions related to 84 inches (minus 59 inches indicated) within Dresden's Safety Analysis. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 20, 1993

Description of amendment request: The proposed amendment would revise a minimum critical power ratio (MCPR) safety limit from 1.06 to 1.07 based on General Electric Standard Application for Reactor Fuel II (GESTAR II) NEDE-24011-P-A-10 for GE10 fuel design. The NRC staff has previously reviewed and approved the GE10 fuel design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The change is based on GE's generic rule licensing document GESTAR II (NEDE-24011-P-A-10) which has conservatively addressed the use of GE10 fuel in D-lattice cores with NRC approved methods and therefore does not adversely affect the consequences of previously evaluated accidents. The Safety Limit MCPR change does not affect the probability of analyzed accidents because it does not adversely impact any equipment important to safety. Increasing the Safety Limit MCPR from 1.06 to 1.07 upon implementation of GE10 fuel for Cycle 14 operation of Quad Cities Units 1 and 2 therefore does not involve a significant increase in the probability or consequences of any accident previously evaluated in the FSAR.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The Safety Limit MCPR change results from the use of NRC approved methods in GESTAR II NEDE-24011-P-A-10 for application to GE10 fuel for Cycle 14 for Quad Cities Units 1 and 2. The Safety Limit MCPR change does not result in any new interaction with equipment related to the safe shutdown of the plant. The change does not adversely impact equipment important to safety and, therefore does not create the possibility of a new or different kind of accident scenario. Therefore, the Safety Limit MCPR change from 1.06 to 1.07 in no way creates the possibility of a new or different kind of accident scenario from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety because:

Since the GE10 design in a D-lattice core has a geometry between C-lattice and D-lattice designs and the C-lattice design has a higher, more restrictive safety limit MCPR that the D-lattice design, the use of C-lattice safety limit MCPR for the GE10 design is a conservative approach. The GE10 fuel design has been generically analyzed with approved methods per GESTAR II NEDE-24011-P-A-10 and the use of the 1.07 Safety Limit MCPR value has been previously approved as conservative for application to GE10 fuel in D-lattice plants such as Quad Cities. Therefore, the proposed change to increase the Safety Limit MCPR from 1.06 to 1.07 maintains the margin to safety relative to the current level.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 10, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications to amend (1) Section 5.3.A (Reactor Core) to allow the use of VANTAGE + fuel with ZIRLO cladding and fuel with filler rods to allow fuel reconstitution, and (2) the Basis to Section 2.1 (Safety Limit: Reactor Core) to allow the use of departure from nucleate boiling (DNB) Correlations applicable to VANTAGE + fuel.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application involves

no significant hazards based on the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Neither the probability nor the consequences of an accident previously analyzed is increased due to the proposed changes. As discussed in [Letter from Thadani to Tritch, "Acceptance

for Referencing of Topical Report WCAP-12610, VANTAGE + Fuel Assembly Reference Core Report" (TAC No. 77258) July 1, 1991] the fuel containing ZIRLO clad will meet all the same material and mechanical design criteria as the Zircaloy clad fuel. The use of approved Westinghouse Methodology for fuel assembly reconstitution as documented in [Letter from Thadani to Tritch, "Acceptance for Referencing of Topical Report WCAP-13060-P, Westinghouse Fuel Assembly Reconstitution Evaluation Methodology" (TAC No. M821391), March 30, 1993] will ensure that all criteria are met. The change to the basis of Section 2.1 more accurately describes DNB methodology and application.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The changes will not create the possibility of a new or different kind of accident. The proposed changes involve approved methodology which have been shown to meet design and safety criteria. In addition, approved procedures will be used to implement the changes.

Response:

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed amendment does not involve a significant reduction in the margin of safety. The changes involve the use of approved methodology which meet design and safety criteria. The change to the Section 2.1 basis is descriptive and will more accurately describe the DNB methodology used in conjunction with the use of VANTAGE + fuel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 28, 1993

Description of amendment request: The requested amendments would delete the portion of the 18-month surveillance requirement on the autoclosure interlock (ACI) contained in TS 4.5.2.d associated with verifying that the decay heat removal system suction isolation valves automatically close on a reactor coolant system pressure signal. The terms decay heat removal (ND) and residual heat removal (RHR) are used interchangeably here. Also, an obsolete footnote to TS 4.5.2.e relating to the completion of the first Unit 1 refueling outage is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The requested amendments reference Westinghouse topical report WCAP-11736-A, "Residual Heat Removal System Autoclosure Interlock Removal Report for the Westinghouse Owners Group", for the general justification and safety analysis for removing the ACI feature from the Catawba ND suction isolation valves. This WCAP, which specifically covers the Catawba Nuclear station, has been deemed an acceptable reference by the NRC for use in making plant-specific licensing submittals. Additional Catawba-specific information/ improvements and analyses, as required by the WCAP and associated NRC safety evaluation, have been either completed or committed to, thereby ensuring that the WCAP/SE conclusion that removal of the RHR ACI produces a net safety benefit remains valid.

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the RHR ACI was analyzed in the WCAP for Callaway Nuclear Station in terms of (1) the frequency of an interfacing LOCA, (2) the availability of the RHR system, and (3) the effect on overpressure transients. Callaway is the WCAP's reference plant for Catawba Units 1 and 2, and a Catawba-specific Probabilistic Risk Assessment (PRA) review of the WCAP determined that removal of the ND ACI at Catawba will not invalidate the basic conclusions of the WCAP. Consequently, the following information from the Callaway analysis is considered applicable to Catawba Units 1 and 2.

With the removal of the ACI and addition of a control room alarm, the probabilistic risk analysis predicts a decrease in the frequency of interfacing LOCAs from 1.52E-06/year to 1.16E-06/year, a decrease of approximately 24%.

The availability of the RHR system was analyzed in three phases: initiation, short term cooling, and long term cooling. The probabilistic analysis indicated that deletion of the RHR ACI has no impact on the failure probability for RHR initiation. During short term cooling (72 hours after initiation), RHR ACI deletion decreased the RHR failure probability by 12%, from 1.64E-02 to 1.44E-02. The long term cooling RHR failure probability was calculated to decrease by 70%, from 3.91E-02 to 1.17E-02.

Appendix D of the WCAP presents the analysis used to determine the effect of removal of the ACI on overpressurization transients. The analysis categorizes the types of initiating events, determines their frequency of occurrence, and then identifies the consequences of these occurrences both with and without the ACI feature. The result is a list of overpressure consequence categories with associated failure probabilities (reference the WCAP's Appendix D, Tables D-14, -15, and -16). For the charging/safety injection event, consequence frequencies increased on the order of 1.0E-12/shutdown year. This is an insignificant increase, as the overall consequence frequency of the charging/safety injection event is 1.25E-01. Likewise, for the letdown isolation with RHR system operable case, one frequency category was increased on the order of 1.0E-15. Again, this is insignificant when compared with the total frequency of these events of 1.25E-01. For the letdown isolation with RHR system isolated event, the overall consequence frequency was reduced from 4.45E-01 to 2.22E-01. This occurs because many spurious closures of the RHR isolation valves cause the isolation of letdown. Removing the RHR ACI reduces the frequency of this event by approximately 50%. It is concluded that the removal of the RHR ACI circuitry has an insignificant impact on the frequency of overpressurization events at Callaway (and thus Catawba) Nuclear Station.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The effect of an overpressure transient at cold shutdown conditions will not be altered by removal of the ND ACI function. With or without the ACI function, the ND system could be subject to overpressrue for which the ND relief valves must be relied upon to limit pressure to within ND design parameters. While it is true that the ACI initiates an automatic closure of the ND suction/isolation valves on high NC system pressure, overpressure protection of the ND system is provided by the ND system relief valves and not by the suction/isolation valves that isolate the ND system from the NC system. (Refer to NUREG-0954, "Safety Evaluation Report related to the operation of Catawba Nuclear Station, Units 1 and 2," Section 5.4.4.3.)

The purpose of the ACI feature is to ensure that there is a double barrier between the ND system and the NC system when the plant is at normal operating conditions (i.e., heated and pressurized) and not in the ND cooling mode. Thus, the ACI feature serves to preclude conditions that could lead to a

LOCA outside of containment due to operator error. The safety function of the ACI is not to isolate the ND system from the NC system when the ND system is operating in the decay heat removal mode.

There are several methods to ensure that there is a double barrier between the ND system and the NC system when the plant is at normal operating conditions. First, plant operating procedures instruct the operators to isolate the ND system during plant heatup. Second, the alarm that will be installed as part of this change will annunciate in the control room given an open or intermediate valve position signal in conjunction with a high NC pressure signal. This alarm will alert operators that any of the four suction/isolation valves is (are) not fully closed and that double isolation has not been achieved. In conjunction with this alarm, operators will be trained using an annunciator response procedure to ensure that they act to restore double isolation or return to a safe shutdown condition. Third, the Open Permissive Interlock (OPI), which is not being removed, will prevent the opening of the valves whenever NC system pressure is greater than 385.5 psig.

Since relief valves prevent overpressurization of the ND system during shutdown conditions and since several methods are in place to ensure that the ND system is isolated from the NC system during normal plant conditions, removal of the ACI will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. The ND ACI function is not a consideration in a margin of safety in the basis for any technical specification. Since the probabilistic analysis of the WCAP for Callaway (which is applicable to Catawba as discussed above) indicates that the availability of the RHR system is increased with the removal of the ACI, overall safety will be increased.

In addition, similar amendments for other Westinghouse plants in the past have been determined to not involve significant hazards considerations.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 27, 1994

Description of amendment request: The requested amendments delete the verification that each upper and lower Containment Purge System (VP) supply and exhaust valve actuates to its isolation position on a High Relative Humidity (≤70%) isolation test signal and will allow elimination of the humidity control function of the VP System humidistats.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

CRITERION 1

This TS [Technical Specification] amendment will not increase the probability or consequences of an accident which has been previously evaluated. No physical changes will be made to the plant that would impact fuel handling inside containment, therefore, there is no increase in the probability of an accident. Control wiring changes that remove the humidistats from the [Containment Purge] System control circuits will be the only physical change.

The heaters will be maintained providing additional margin over analyzed conditions. For the reasons stated above, there will be no increase in the consequences of an accident previously evaluated.

CRITERION 2

This proposed TS amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed TS amendment will not cause any physical changes to the plant that will impact the handling of fuel inside containment or changes to fuel handling procedures. Because the plant will operate the same way it does now, this proposed amendment does not create the possibility of any new or different accident from any previously evaluated.

CRITERION 3

This proposed TS change will not cause a significant reduction in the margin of safety. The test method use[d] to evaluate the carbon after TS changes ι90 ([Unit] 1) and ι84 ([Unit] 2) does not consider heater availability. However the heaters will be tested and maintained per Technical specification 4.9.4.2.d.2. Therefore, the relative humidity of the air entering the carbon adsorber is never expected to reach 95% [relative humidity].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1 (ANO-1), Pope County, Arkansas

Date of amendment request: January 13, 1994

Description of amendment request: This amendment revises the specifications governing the reactor protection (RPS). It modifies the use of the RPS channel bypass as specified by Technical Specification (TS) 3.5.1.3 and revises a note with Table 3.5.1-1, to refer to a more appropriate action.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The RPS and EFIC [emergency feedwater initiation and control] system provide accident mitigation features and are not considered to be accident initiators. The accident mitigation features of the plant are not affected by the proposed amendment. In any configuration allowed by the revised specifications, the trip logic instituted on the RPS is at least equivalent to the trip logic instituted by placing a channel in channel or maintenance bypass. The RPS remains single-failure proof with one channel in channel bypass, manually tripped, or with an inoperable function unbypassed in the untripped state. Therefore, upon receipt of an initiating signal, a single failure will not prevent the proper actuation of RPS. Should a channel of RPS contain an inoperable function unbypassed in the untripped condition which does not affect an EFIC channel, any channel of EFIC may be placed in maintenance bypass. RPS and EFIC remain single-failure proof in this configuration.

Administrative controls are established to ensure that all inoperable RPS functions are evaluated for continued operation in the untripped state. Upon detection of a failed function in any channel of RPS, the administratively controlled condition reporting process evaluates the failure and its effect on other systems for continued operability. The operator is informed of the continuing status of inoperable functions through the use of Station Log entries and Plant Status board entries. In addition, during operation with an inoperable function in the untripped, unbypassed condition, the remaining RPS channel key-lock channel bypass switches will be "Hold Carded"

(tagged) to prevent their operation without prior management approval consistent with the requirements of TS Table 3.5.1-1. Plant management maintains the responsibility to approve continued operation with inoperable functions unbypassed in the untripped state to ensure that the plant is operated in the safest configuration with regard to the extent of the failure, and the plant operating conditions. Prior to placing any channel of RPS or EFIC in bypass, the operator checks the status of redundant systems for operability and TS compliance and takes the proper action as required by existing plant conditions, plant operating procedures and TS.

The clarification to TS 3.5.1.3 which directs the operator to the appropriate actions if multiple channels become inoperable, or in the event of an inoperable channel or inoperable function occurring concurrent with one channel in bypass is considered to be administrative in nature. The change to Note 6 of Table 3.5.1-1 results in the correction of misleading information and directs the Operator to place the plant in a safe mode depending on the system which is affected by a failure, and is also considered to be administrative in nature. The Bases changes add additional information to clarify the specifications.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The probability or consequences of equipment important to safety malfunctioning will not be increased. In any configuration allowed by the revised specifications, the trip logic instituted on the RPS is at least equivalent to the trip logic instituted by placing a channel in channel bypass. The RPS remains single-failure proof with one channel in channel bypass, manually tripped, or with an inoperable function unbypassed in the untripped state. Therefore, upon receipt of an initiating signal, a single failure will not prevent the proper actuation of RPS. Should a channel of RPS contain an inoperable function unbypassed in the untripped condition which does not affect an EFIC channel, any channel of EFIC may be placed in maintenance bypass. RPS and EFIC remain single-failure proof in this configuration.

The clarification to TS 3.5.1.3 which directs the operator to the appropriate actions if multiple channels become inoperable, or in the event of an inoperable channel or inoperable function occurring concurrent with one channel in bypass is considered to be administrative in nature. The change to Note 6 of Table 3.5.1-1 is also considered to be administrative in nature, in that misleading information in the specification has been corrected to an appropriate requirement. The Bases changes add additional information to clarify the specifications.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The RPS and EFIC system have the same capabilities to mitigate and/or prevent accidents as they had prior to this proposed change. Allowing flexibility in the response to a function failure in one channel of RPS allows placing the plant in the safest operating condition for the existing plant conditions considering the extent of the function failure. Operation of an RPS channel with an inoperable function unbypassed in the untripped state results in placing the inoperable function in a 2-out-of-3 trip logic (equivalent to channel bypass) while the remainder of the RPS functions remain in the normal 2-out-of-4 trip logic. The ANO-1 RPS has been reviewed as a 3 channel system with one channel in bypass. Implementing this change results in additional conservatism with respect to any postulated single-failures.

Administrative controls are established to ensure that all inoperable RPS functions are evaluated for continued operation in the untripped state. Upon detection of a failed function in any channel of RPS, the administratively controlled condition reporting process evaluates the failure and its effect on other systems for continued operability. The operator is informed of the continuing status of inoperable functions through the use of Station Log entries and Plant Status board entries. In addition, during operation with an inoperable function in the untripped, bypassed condition, the remaining RPS channel key-lock channel bypass switches will be "Hold Carded" (tagged) to prevent their operation without prior management approval consistent with the requirements of TS Table 3.5.1-1. Plant management maintains the responsibility to approve continued operation with inoperable functions unbypassed in the untripped state to ensure that the plant is operated in the safest configuration with regard to the extent of the failure, and the plant operating conditions. Prior to placing any channel of RPS or EFIC in bypass, the operator checks the status of redundant systems for operability and TS compliance and takes the proper action as required by existing plant conditions, plant operating procedures and TS. Should a channel of RPS contain an inoperable function unbypassed in the untripped condition which does not affect an EFIC channel, any channel of EFIC may be placed in maintenance bypass. RPS and EFIC remain single-failure proof in this configuration.

The clarification of TS 3.5.1.3 which directs the operator to the appropriate actions if multiple channels become inoperable, or in the event of an inoperable channel or inoperable function occurring concurrent with one channel in bypass is considered to be administrative in nature. The change to Note 6 or Table 3.5.1-1 results in the correction of misleading information and directs the Operator to place the plant in a safe mode depending on the system which is affected by a failure, and is also considered to be administrative in nature. The Bases changes add additional information to clarify the specifications.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 13, 1994

Description of amendment request: This amendment requests the removal of the interim technical specification limit on the number of spent fuel assemblies that may be stored in the spent fuel pool at Grand Gulf Nuclear Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The NRC approved the installation of high density spent fuel storage racks in Amendment 17 to the Grand Gulf Nuclear Station (GGNS) Operating License. This amendment also brought GGNS into compliance with Standard Review Plan criteria which required maintaining the spent fuel pool at less than or equal 140°F. The 140°F Technical Specifications (TS) limit remains in effect thereby preventing operation at excessive temperatures.

The only outstanding question from Amendment 17, which resulted in a 2324 assembly technical specification limit, was whether the fuel pool cooling system could handle the heat load of a full fuel pool without excessive reliance on residual heat removal for extensive fuel pool cooling assist. Entergy Operations' proposed solution to this question was accepted in the NRC's letter dated July 30, 1992. The NRC accepted the solution pending submittal of results from tests to verify the specified flows. These results were submitted in a letter dated November 08, 1993.

With previous approval of the installation of the high density spent fuel storage racks, the confirmation of adequate heat removal

capability, and the 140°F TS temperature limit, removal of the 2324 limit to allow full use of the spent fuel pool would not cause an increase in the probability or consequences of an accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The additional heat load generated by a full spent fuel pool (4348 assemblies) was evaluated. The evaluation concluded that full use of the spent fuel pool storage spaces would not exceed the temperature limits as are currently in place with the 2324 limit. The NRC letter dated July 30, 1992 and Entergy Operations letter dated November 08, 1993 resolved all outstanding heat removal questions. Therefore, this change would not create the possibility of a new or different kind of accident from any previously analyzed.

3. This change would not involve a significant reduction in a margin of safety.

Entergy Operations demonstrated in their November 01, 1991 letter that the fuel pool temperature could be maintained at or below 140°F as specified in TS 3/4.7.9. This letter also demonstrated the ability to handle single active failures. Approval of measures outlined in this letter was provided in a Safety Evaluation Report contained in an NRC letter dated July 30, 1992.

Given the 140°F maximum temperature requirement as contained in TS 3/4.7.9 and compliance with single active failure criteria, this change would not involve a significant reduction in a margin of safety.

Based on the above evaluation in accordance with 10CFR50l92(c), Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: December 28, 1993

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for Turkey Point Units 3 and 4 to incorporate features for steam generator (SG) overfill protection. Specifically, TS Tables 3.3-2, 3.3-3, 4.3-2 and the associated BASES section would be revised to add SG Water Level-High-High protection logic, instrumentation trip setpoints and surveillance requirements. The proposed TS changes would be in accordance with NRC Generic Letter (GL) 89-19, "Safety Implication of Control Systems in LWR Nuclear Power Plants."

Basis for proposed no significant hazards consideration determination: As a result of the technical resolution of USI A-47, "Safety Implications of Control Systems in LWR Nuclear Power Plants," the Nuclear Regulatory Commission (NRC or the staff) concluded that all Pressurized Water Reactors (PWR) plants should provide automatic SG overfill protection. On September 20, 1989, the staff issued GL 89-19 and recommended that plant procedures and TS include provisions for automatic SG overfill protection including surveillance requirements to assure that automatic overfill protection is available to mitigate main feedwater overfeed events during reactor power operation.

The licensee proposed TS changes in response to GL 89-19. No physical changes to the plant would be required as a result of the proposed license amendments.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Including the SG Overfill protection requirements in the Technical Specifications is not assumed in the initiation of any analyzed event. These amendments will not increase the probability or consequences of an accident previously evaluated since the SG overfill event is not required or assumed for accident mitigation in any Updated Final Safety Analysis Report (UFSAR) safety analyses that comprise Turkey Point licensing basis. The additional requirements for the SG overfill system helps ensure that continuous addition of feedwater and carryover of excessive moisture to the turbine, is prevented. As a result, equipment protection is improved by the availability of this system function. As such, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of the facility will not change as a result of the proposed license amendments, since Turkey Point currently maintains this protection logic. This change involves only the inclusion of the systems requirements into the Technical Specifications. The proposed change will not impose any new or unique requirements. Therefore, operation of the facility in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety as the function, operation and testing of the installed SG Overfill protection is not described in the UFSAR. In addition, the SG overfill protection logic is not required or assumed for accident mitigation in any of the safety analyses that comprise the Turkey Point licensing basis. The proposed change formalizes the existing design, operating and testing requirements in the Technical Specifications. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: December 30, 1993

Description of amendment request: The proposed change would allow a one time extension of the allowable outage time for each residual heat removal (RHR) pump from 3 to 7 days to allow modifications to the RHR system while the plant is in Mode 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because the redundant train will remain available to assure that the RHR will respond to an accident as assumed in the accident analysis. A one time increase in the allowable outage time from 3 to 7 days has been shown to have only a small effect on the calculated frequency of core damage.

2. The proposed change to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change only results in a one time increase of the allowable outage time. It does not result in an operational condition different from that which has already been considered by the Technical Specifications.

3. The proposed addition to the Technical Specifications does not involve a significant reduction in a margin of safety because the effects of increasing the allowed outage time on the calculated core damage frequency has been evaluated and determined to be small.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Loren R. Plisco, Acting

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 22, 1993

Description of amendment request: The proposed amendment would make editorial changes to correct typographical and administrative errors in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendment would only correct administrative and typographical errors. No physical changes to the plant or to the operation of the plant would result from this amendment.

2) The proposed amendment will not create the possibility of a new or different kind of accident from any evaluated previously. The amendment would only correct administrative and typographical errors. No physical changes to the plant or to operation of the plant would result from this amendment.

3) The proposed amendment will not reduce the margin of safety. The amendment would only correct administrative and typographical errors. No physical changes to the plant or to operation of the plant would result from this amendment.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 21, 1994

Description of amendment request: The proposed amendment would change the name of the company licensed to own a share of and operate the Duane Arnold Energy Center (DAEC) from Iowa Electric Light and Power Company to IES Utilities Incorporated, wherever it is referenced in the Operating License and Technical Specifications for DAEC. The title of the position responsible for the management of the Nuclear Division has also been changed to "Vice President, Nuclear" from "Manager-Nuclear Division."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical or operational changes to the DAEC will result from changing the corporate name or the position title. The DAEC will continue to be operated in the same manner with the same organization. The position title change results from the elimination of a layer of management. Formerly, the Manager-Nuclear Division reported through the Vice President, Production to the President of IELP. Now the Nuclear Division is headed by the Vice President, Nuclear who reports directly to the President of the corporation.

2) The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. No physical or operational changes will result. The title change results from the elimination of a layer of management.

3) The proposed change will not reduce any margin of safety. This change only revises the operating company name and changes a title.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: January 17, 1994

Description of amendment requests: The proposed amendments would change Technical Specification (TS) 3/4.1.3 for both units to increase the limit for control rod misalignment at or below 85% rated thermal power (RTP). The proposed changes would also increase the TS limit for control rod 8misalignment about 85% RTP if there is sufficient margin in the heat flux ($F_Q(Z)$) and the nuclear enthalpy ($F^N_{dcha\ H}$) hot channel factors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment to an operating license will not involve a significant hazards consideration if the proposed amendment satisfies the following three criteria:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed,

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated, or

3. Does not involve a significant reduction in a margin of safety.

Criteria 1 and 3

As seen in Attachment 4 [of the amendment request], sufficient margin exists in power distribution at 85% RTP to allow for increased misalignment. At 100% RTP, increased misalignment is allowed only if there is adequate margin in the peaking factors. Therefore, initial conditions remain unchanged from that assumed in the safety analyses. As far as the dropped rod and rod ejection accidents are concerned, the analyses were performed with conservative assumptions to envelope the increased misalignment. It should be noted that the power dependent insertion limit for Unit 1 will be changed in a conservative manner at the beginning of cycle 14. Based on these analyses, it is concluded that the proposed T/S changes do not significantly increase the probability or consequences of a previously analyzed accident or constitute a significant reduction in the margin of safety.

Criterion 2

The proposed T/S changes will not result in physical changes to the plant. Therefore, we believe that the proposed T/S changes will not create the possibility of a new or different kind of accident from any previously evaluated. Also, operation of the reactor with possible deeper rod insertion will not create the possibility of a new or different kind of accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: January 21, 1994

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.3, (Emergency Power Sources) to eliminate unnecessary testing of an operable emergency diesel generator (EDG) when the redundant EDG becomes inoperable. Eliminating unnecessary testing will potentially increase EDG reliability by reducing the stresses caused by such testing. The licensee stated that this proposed change is consistent with the guidance provided in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," and NUREG-1433, "Improved Standard Technical Specifications, General Electric Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 4.6.3.e requires that the operable diesel-generator be manually started and operated at rated load for a minimum time of one hour immediately and once per week thereafter in the event any diesel-generator becomes inoperable.

Niagara Mohawk proposes to revise Technical Specification 4.6.3.e such that if a diesel-generator is declared inoperable due to preplanned maintenance or testing or due to a support system being inoperable, redundant diesel-generator testing would not be required. Declaring a diesel-generator inoperable due to preplanned maintenance or testing or due to a support system being inoperable does not affect the reliability of the operable diesel-generator nor does it in any way imply that a common cause failure exists.

The normally required Technical Specification surveillance testing schedule demonstrates acceptable reliability and assures that the operable diesel-generator is capable of performing its intended safety function.

Niagara Mohawk proposes to add wording to Technical Specification 4.6.3.e to permit an operator to evaluate a diesel-generator failure to determine if a common cause failure exists before requiring testing of the redundant diesel-generator. As noted above, the intent of the additional diesel-generator testing is, in part, to determine if a common cause failure exists. Once the potential for a common cause failure has been examined and dismissed, testing beyond the normal surveillance schedule is excessive and does not contribute to improved diesel-generator reliability. Within eight (8) hours, the determination that no common cause failure exists is required to be completed or the operable diesel-generator will be tested. Eight (8) hours is consistent with the guidance provided in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

Technical Specification 4.6.3.e requires that the operable diesel-generator be operated at rated load (i.e., connected to offsite power) to demonstrate its operability in the event any diesel-generator becomes inoperable. As indicated in Information Notice 84-69, when a diesel-generator is operated connected to offsite or non-vital loads, the emergency power system is not independent of disturbances on the non-vital and offsite power systems. Therefore, diesel-generator availability is potentially lessened by a demonstration of operability requiring connection of the diesel-generator to offsite power sources. At a time when at least one diesel-generator is already inoperable, this Surveillance Requirement could add further risk to losing the remaining operable diesel-generator. Therefore, Niagara Mohawk proposes that Surveillance Requirement 4.6.3.e be changed such that a diesel-generator does not have to be operated at rated load. These changes will preclude offsite power source disturbances from affecting diesel-generator reliability.

Existing Technical Specification 4.6.3.e requires that the operable diesel-generator be started immediately in the event a diesel-generator becomes inoperable. The requirement to immediately test a diesel-generator is overly burdensome when compared to more recent diesel-generator Technical Specification requirements. As previously discussed, Niagara Mohawk proposes to add wording to Technical Specification 4.6.3.e to give an operator eight (8) hours to determine whether a common cause failure exists or to test the operable diesel-generator when a diesel-generator is declared inoperable for a reason other than an inoperable support system or preplanned maintenance or testing. Eight (8) hours is consistent with the guidance provided in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

Existing Technical Specification 4.6.3.e requires that the operable diesel-generator be tested immediately and once per week thereafter. Technical Specification 3.6.3.c requires that an inoperable diesel-generator be returned to an operable condition within seven (7) days to meet the Limiting Condition for Operation. Therefore, the requirement to test the operable diesel-generator "once a week thereafter" is not applicable. In addition, testing the operable diesel-generator one time is adequate to confirm operability of a diesel-generator. Repetitive testing following initial confirmation of operability is unwarranted. Therefore, Niagara Mohawk proposes to delete the requirement to test the operable diesel-generator weekly following the initial test.

Because the proposed change does not affect the design or performance of the diesel-generators nor adversely affect the reliability of the diesel-generators, the change will not result in an increase in the consequences of an accident previously evaluated (i.e., Station Blackout analyses). Because this change does not affect the probability of accident precursors, the proposed change does not affect the probability of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed change to Technical Specification 4.6.3.e does not introduce any new operating configurations or new accident precursors and does not involve any physical alterations to plant configurations which could initiate a new or different kind of accident. The proposed change does not affect the design or performance characteristics of the diesel-generators nor

does the change create the possibility of the loss of both diesel-generators because common cause failure assessments will be performed. The change will delete excessive diesel-generator testing and therefore increase overall plant safety by increasing diesel-generator reliability. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety

The proposed change to Technical Specification 4.6.3.e will not reduce the number of emergency power sources required by Technical Specification Limiting Condition for Operation 3.6.3 or affect the normal surveillance requirements as described in Technical Specification 4.6.3. The normal surveillance tests demonstrate acceptable reliability and assure that the operable diesel-generator is capable of performing its intended function. The proposed change to delete the excessive testing requirements does not affect the design or performance of any diesel-generator and does not adversely affect diesel-generator reliability. Eliminating unnecessary testing will potentially increase diesel-generator reliability by reducing the stresses caused by such testing. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: November 30, 1993

Description of amendment request: The proposed amendment would change sections 3.2/4.2, Protective Instrumentation, and 3.17/4.17, Control Room Habitability, by deleting the requirements for a chlorine detection system and revises the limiting conditions for operation for the Control Room Ventilation System to be more consistent with Standard Technical Specifications. Due to design changes at the Monticello Nuclear Generating Plant, chlorine is no longer stored onsite as a liquified gas and regulations requiring early warning of an onsite chlorine release do not apply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Concerning Deletion of Requirements for the Chlorine Detection System

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Postulated chemical releases of chlorine have been shown to be such that incapacitation of the control room operators would not occur within allowed time frames for the donning of protective breathing equipment, or that the probability of a chlorine trucking transportation accident which causes incapacitation of control room operators with potential consequences of a radioactive release in excess of 10 CFR 100 guidelines is well below the level of concern as established in regulatory guidance. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The performance of a new toxic chemical analysis for the Monticello site has demonstrated that human detection may be relied upon to detect chlorine toxic chemical releases. Operator protection is established via the donning of protective breathing equipment. The capability to manually isolate the control room with dampers is retained. The ability of the operators to cope with a chlorine toxic gas hazard remains consistent with the protection measures available for other toxic chemicals stored onsite, stored in the vicinity of the site, or transported near the plant site. The proposed amendment will not create the possibility of a new or different kind of accident.

The proposed amendment will not involve a significant reduction in the margin of safety.

The performance of a new toxic chemical analysis for the Monticello site has demonstrated that incapacitation of the control room operators would not occur within allowed time frames for the donning of protective breathing equipment and that a postulated hazardous chemical release due to a trucking transportation accident involving chlorine is of a sufficiently low probability of occurrence that it need not be considered. The basis of the chlorine detectors and associated Technical Specifications is to provide protection against an accident scenario which has been demonstrated to be of extremely low probability (a trucking transportation accident involving chlorine within five miles of the plant), therefore removal of the chlorine detectors from the plant design and the associated Technical Specifications will not involve a significant reduction in the margin of safety.

2. Concerning the Limiting Conditions for Operation for the Control Room Ventilation System and Technical Specification Bases

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Ventilation system ensures that Main Control Room habitability is maintained such that personnel and equipment located in the control room can respond to mitigate the consequences of an accident. The system does not contribute to the probability of occurrence of any design basis accident. The operability requirements as proposed for the revised specification 3.17.A ensure that the Control Room Ventilation system is operable during plant conditions for which significant radioactive releases are postulated consistent with the Standard Technical Specification. The proposed changes ensure the Control Room Ventilation system is restored to an operable status or that actions are taken to minimize the importance of the system function within time frames which take into consideration the low probability of an event occurring which would require Control Room Ventilation system function. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes to Technical Specifications 3.17.A do not alter the function of the Control Room Ventilation system or its interrelationships with other systems. The proposed changes provide requirements to ensure the Control Room Ventilation system is capable of performing its required function or that actions are taken to minimize the potential for its function being required consistent with regulatory guidance; therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

The operability requirements as proposed for the revised specification 3.17.A ensure that the Control Room Ventilation system is operable during plant conditions for which significant radioactive releases are postulated. The performance of a new toxic chemical analysis for the Monticello site has demonstrated that a postulated hazardous chemical release due to a trucking transportation accident involving chlorine is of a sufficiently low probability of occurrence that it need not be considered. As the basis of the chlorine detectors and current operability requirements for the control Room Ventilation system is to provide protection against an accident scenario which has been demonstrated to be of extremely low probability, the proposed revision to the Control Room Ventilation

operability requirements will not involve a significant reduction in the margin of safety.

The proposed changes to Technical Specification 3.17.A ensure that both trains of the Control Room Ventilation system are restored to an operable status within a time frame which takes into consideration the low probability of an event occurring requiring Control Room Ventilation system function, the availability of the redundant Control Room Ventilation train and the capability of the safety related Emergency Filtration Train to pressurize the control room without the Control Room Ventilation system. The proposed changes provide requirements to ensure the Control Room Ventilation system is capable of performing its required function or that actions are taken to minimize the potential for its function to be required consistent with regulatory guidance; therefore, the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 3, 1994

Description of amendment request: The proposed amendment would revise the requirements of Technical Specification 4.6.E.1.a, which currently specifies that a minimum of seven safety/relief valves shall be bench checked or replaced with a bench checked valve each refueling outage. The proposed amendment would change this specification to require the valves to be tested in accordance with the Section XI Inservice Testing Requirements of the ASME Boiler and Pressure Vessel Code. The proposed change is consistent with the Improved Standard Technical Specifications, NUREG-1433.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is limited to changes to the surveillance testing requirements (bench checking or replacement) applicable to the main steam system safety/relief valves. This surveillance requirement is performed while the plant is in a cold shutdown condition at a time when the safety/relief valves are not required to be operable. The performance of this evolution is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring. Current safety analyses conclude that the pressure relief capabilities of the Safety Relief valves are adequate assuming that one of the eight safety/relief valves fails to open upon demand. The proposed change will not adversely affect the reliability of the valves and will therefore not reduce the conservatism of this assumption.

Similarly, the proposed amendment specifies testing requirements consistent with accepted industry codes and regulatory guidance to provide assurance that the valves will function as designed. The amendment will not diminish the capability of the safety/relief valves to perform as required during any accident previously evaluated and will therefore not increase the consequences of any such accident.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment does not involve any modification to plant equipment or operating procedures, nor will it introduce any new safety/relief valve failure modes that have not been previously considered. The net result of the proposed amendment will be to allow the plant staff the option of decreasing the frequency of safety/relief valve testing to a level that has been acknowledged as acceptable by the ASME Code and NUREG-1433. We therefore conclude the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment does not involve a decrease in the number or capacity of safety/relief valves that are provided in the system, nor does it involve any change in safety/relief valve setpoints, operability requirements, or limiting conditions for operation. Based on these considerations, we conclude the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 4, 1994

Description of amendment request: The proposed amendment would change Technical Specifications section 3.11, Reactor Fuel Assemblies, by removing information concerning the analytical method to determine average planar linear heat generation rate (APLHGR) and providing reference to the presentation of the information in the Core Operating Limits Report. In addition, this proposed amendment would change section 6.7, Reporting Requirements, by revising the listing of approved analytical methods for developing the Core Operating Limits Report, and it would revise the Technical Specification Bases for section 3.11 concerning the calculation methodology for MCPR [minimum critical power ratio]. The proposed change to specification 3.11.A would eliminate the duplication of requirements specified in specification 6.7.A.7 and the Core Operating Limits Report for establishing APLHGR limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The APLHGR limits originate from and are associated with LOCA [loss-of-coolant accident] analyses. Standard exposure dependent APLHGR limits are generated from LOCA analyses initiated from rated power and flow conditions. For any allowable off power and off flow condition the APLHGR limit is the smaller of the flow dependent or power dependent limit. These limits are also used in the fuel thermal-mechanical analysis and transient analysis. Flow dependent APLHGR requirements will continue to be established based on analysis and fuel type specific limits determined using NRC approved methodologies to ensure that peak transient average planar heat generation rate during these events is not increased above the fuel design basis values. Power dependent APLHGR limits will continue to be established based on analysis

and fuel type specific limits determined using NRC approved methodologies to ensure that peak transient average planar heat generation rate during any transient is not increased above the rated fuel design basis transient values. The proposed amendment establishes appropriate controls to ensure that the APLHGR limits will continue to be determined and established using NRC approved methodology; therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment does not involve any modifications to plant equipment or operating procedures, nor will it introduce any new failure modes. The proposed amendment ensures that cycle specific APLHGR limits are determined and established using approved methodologies and will not create the possibility of a new or different kind of accident.

The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment removes duplication which exists in the Monticello Technical Specification for the identification of the approved analytical methods for establishing the APLHGR core operating limit. In addition the proposed amendment adds the NRC approved Siemens' analytical method for the determination of APLHGR limits based on LOCA/ECCS [emergency core cooling system] analyses. Inclusion of the NRC approved Siemens' analytical method ensures proper coordination of the methodology employed to establish the APLHGR limiting condition for operation for each type of fuel as a function of axial location and average planar exposure. APLHGR limits will continue to be determined using NRC approved methodology as established in specification 6.7.A.7.b. The established APLHGR limits will be verified to be consistent with the accident analysis contained in the Monticello Updated Safety Analysis Report. The proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: September 21, 1992, as revised December 29, 1992, and November 24, 1993

Description of amendments requests: The proposed amendments would change various Technical Specification (TS) sections and associated Bases for surveillance test intervals and allowed outage times for the engineered safety features and reactor protection system instrumentation consistent with the NRC Staff position as documented in NRC letters to the Westinghouse Owners Group.

The proposed license amendment request also updates operation modes to be consistent with Westinghouse Standard Technical Specification operational modes and also includes several editorial changes to the Prairie Island TS that are unrelated to the changes described above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The determination that the results of the proposed change are within all acceptable criteria have been established in the SERs prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 issued by References 1, 2, and 5 [of the November 24, 1993, application]. Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection and Engineered Safety Features Systems yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in a[n] increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in core damage frequency (CD) due to Engineered Safety Features unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of Reactor Protection System instrumentation. This reduction is primarily attributable to less frequent surveillance.

The reduction in inadvertent core melt frequency is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The values determined by the Westinghouse Owners Group and presented in the WCAP for the increase in core damage frequency were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the core damage frequency, the increase is considered acceptable.

The changes of an editorial nature, including the change to Standard Technical Specification format for the instrumentation Technical Specifications and mode definitions, have no impact on the severity or consequences of an accident previously evaluated.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the Reactor Protection System and Engineered Safety Features but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve hardware changes and do not result in a change in the manner in which the Reactor Protection System and Engineered Safety Features provide plant protection. No change is being made which alters the functioning of the Reactor Protection System or Engineered Safety Features. Rather the likelihood or probability of the Reactor Protection System or Engineered Safety Features functioning properly is affected as described above. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes of an editorial nature, including the change to Standard Technical Specification format for the instrumentation Technical Specifications and mode definitions does not create the possibility of a new or different kind of accident from any previously evaluated.

. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. Less frequent testing will result in less inadvertent reactor trips and actuation of Engineered Safety Features components.

b. Higher quality repairs leading to improved equipment reliability due to longer repair times.

c. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

The changes of an editorial nature, including the change to Standard Technical Specification format for the instrumentation Technical Specifications and mode definitions [do] not lead to a reduction in any margin of safety.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: December 28, 1993

Description of amendment request: The proposed amendment to the Technical Specifications would revise the surveillance test frequency from monthly to quarterly for several channel functional tests for Reactor Protective System and Engineered Safety Feature Instrumentation and Controls based on Generic Letter 93-05.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve significant hazards considerations because operation of Fort Calhoun Station Unit (FCS) No. 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the surveillance test interval (STI) from monthly to quarterly for the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS) instrumentation has two principal effects with opposing impacts on core melt risk. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. The unavailability of the tested instrumentation components is translated to result in a failure of the reactor to trip, an Anticipated Transient Without Scram (ATWS), or a failure of the appropriate engineered safety features to actuate when required. The opposing impact on core melt risk is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test-induced transients. This results in a net decrease in core melt frequency of approximately 4.1×10^{-5} per year.

Representative fault tree models were developed for FCS and the corresponding changes in core melt frequency were quantified in evaluations CEN-327-A and CEN-327-A, Supplement 1. The NRC issued a Safety Evaluation Report (SER) which found that these evaluations were acceptable for justifying the extensions in the STIs for the RPS and ESFAS from 30 days to 90 days and that the RPS unavailabilities resulting from extending the STIs were not considered to be significant. Estimates of the reduction in scram frequency from the reduction in test-induced scrams and the corresponding reduction in core melt frequency were found acceptable. STIs of 90 days were found to result in a net reduction in core melt risk.

A plant specific calculation/setpoint drift analysis was conducted, as required by the NRC SER, that analyzed the effect on instrument drift of extending the RPS and ESF instrumentation and controls functional STI from monthly to quarterly. The results demonstrated that the observed changes in instrument uncertainties for the extended STI do not exceed the current 30-day setpoint assumptions. Therefore, it is unnecessary to change any setpoints to accommodate the proposed extended STI.

Operation of the facility in accordance with this proposed change, therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any changes in equipment and will not alter the manner in which the plant will be operated. RPS and ESFAS setpoints will not be changed as the instrument uncertainties resulting from the proposed STI (calculated using actual plant data) are less than the instrument uncertainties assumed for 30 days. Thus, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

There are no changes to the equipment or plant operations. RPS and ESFAS setpoints will not be changed as the instrument uncertainties resulting from the proposed STI (calculated using actual plant data) are less that the instrument uncertainties assumed for 30 days.

Implementation of the proposed changes is expected to result in an overall improvement in plant safety due to the fact that reduced testing intervals will result in fewer inadvertent reactor trips and less frequent actuation of ESFAS components. The conclusions of the accident analyses in the FCS Updated Safety Analysis Report (USAR) remain valid and the safety limits continue to be met. Thus, this proposed change does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728NRC Project Director: William D. Beckner

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 28, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TSs) clarifies Limiting Condition for Operation (LCO) 3.5.D.4. Amendment No. 179 to the TS added LCO 3.5.D.4 to permit hydrostatic and leakage testing at temperatures up to 300°F without requiring certain equipment, including the automatic depressurization system (ADS), to be operable. However, LCO 3.5.D.4 can be mistakenly interpreted to require the ADS be operable at temperatures less than 212°F. Requiring the ADS to be operable during hydrostatic and leakage testing with temperatures below 212°F was clearly not the intent of Amendment No. 179. The proposed change will clarify LCO 3.5.D.4 to resolve this concern.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The plant accident analyses are not affected by the proposed Technical Specification change. Prior to implementation of Amendment 179, hydrostatic and leakage testing of the RCS was performed with reactor coolant temperatures below 212°F while the ADS was inoperable. Amendment 179 revised the Technical Specifications in anticipation of increased pressure temperature limits requiring hydrostatic and leakage testing at or above 212°F. Requiring the ADS to be operable during hydrostatic or leakage testing with temperatures below 212°F was clearly

not the intent of Amendment 179. The change will not increase the probability or consequences of previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed change involves no modifications to hardware, analyses, operations or procedures. The change clarifies LCO 3.5.D.4 to allow hydrostatic and leakage testing of the RCS below 300°F without requiring the ADS to be operable. The change is administrative in nature since it only clarifies the intent of the Technical Specifications as agreed to with the NRC and cannot create a new or different kind of accident.

3. involve a significant reduction in the margin of safety.

The proposed change will not affect any plant safety margins. The existing plant accident analyses are not affected by the proposed change. This revision of LCO 3.5.D.4 is intended to clarify that the ADS is not required to be operable during hydrostatic or leakage testing of the RCS. This position is substantiated by the NRC safety evaluation for Amendment 179 which acknowledges that hydrostatic and leakage testing can not be performed without making the ADS, and other systems, inoperable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 31, 1994

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications would revise the limiting conditions for operation (LCO), surveillance requirements, and Bases section for the main condenser steam jet air ejectors (SJAE). The proposed changes correct a typographical error, clarify the modes of operation during which the SJAE LCOs and surveillance requirements are applicable, revise the action required upon entering a SJAE LCO, and establish a threshold level below which there will be no requirement to perform grab samples and isotopic analyses of SJAE effluent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revision involves no hardware changes, no changes to the operation of any systems or components and no changes to structures. The changes clarify the Technical Specifications by specifying the modes of operation during which the LCOs and Surveillance Requirements of Specification 3.5 are applicable. The changes also include specific guidance for the operators to prevent or minimize the release of radioactive gases to the environment. These changes can not cause an increase in the probability of, nor alter the consequences of, an accident previously evaluated.

The establishment of a threshold below which grab samples are not required will alter procedures by allowing SJAE operation without grab samples to determine effluent content at low levels of radioactivity (i.e., less than 5,000 micro Ci/sec). This will not affect the monitoring system's ability to detect, alarm, and isolate the offgas system if the concentration of radioactive material in the effluence reaches the appropriate setpoint.

The surveillance requirement for taking a grab sample after a greater than 50% increase in release rate is intended to assist operators in determining if there is any increase in fuel failure during steady state operations. This would assure that routine operational limits are maintained. The grab samples do not provide any automatic protective function (e.g., MSIV (main steam isolation valve) or Offgas System isolation) for mitigating an accident but provide radionuclide concentration data.

The performance of SJAE effluent grab samples is not credited towards detecting nor mitigating any design basis accidents since spontaneous fuel failure is not a FSAR (Final Safety Analysis Report) accident initiator but a consequence of an accident. Therefore, the use of a 5,000 micro Ci/sec threshold, which is approximately 1% of the trip setpoint, would not alter the consequences or probabilities of established accident scenarios.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes provide improved clarity concerning applicability of the specifications and specific guidance for preventing/mitigating the release of radioactive gases to the environment. The proposed changes also provide guidance for limiting the number of unnecessary grab samples.

These changes do not affect the manner in which the main condenser steam jet air ejector is operated. The proposed changes to the Technical Specifications reflect either established plant practice (i.e., applicable modes or mitigation procedures) or new surveillance guidelines to minimize unnecessary grab samples. In all cases, the proposed changes have no affect on any parameters which would be considered or used in an accident analysis. The changes, therefore, do not pose a safety issue different from those analyzed previously for the FSAR.

3. involve a significant reduction in the margin of safety.

The proposed changes to the Technical Specifications will not alter the intent of the surveillance requirement to monitor for the possibility of fuel failure. Considering the difference between the proposed threshold value and the current alarm setpoint, a reduction in grab samples during plant operation with low concentrations of radioactivity in the primary coolant will not affect any plant safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 31, 1994

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications would revise Specification 3.8 to adopt the Limiting Conditions for Operation (LCO) of Section 3/4.7.6, "Sealed Source Contamination," as stated in NUREG-0123, "Standard Technical Specifications for General Electric Boiling Water Reactors (BWR/5)" (STS). In addition, the proposed change reformats Specifications 3.8 and 4.8 to make them consistent with the remainder of the FitzPatrick Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

Adopting the LCO described in the "Sealed Source Contamination" section of NUREG-0123 (STS) does not increase the probability or the consequences of an accident or malfunction of a safety-related structure, system, or component previously reviewed in the FSAR [Final Safety Analysis Report]. The proposed changes do not increase the probability of causing, either directly or indirectly an uncontrolled release of significant amounts of radiation. Deleting 10 CFR 30.71 as the basis for exempting sealed sources for the leak testing requirements removes a requirement that is redundant to other federal regulations requirements. The proposed changes to reformat Specifications 3.8 and 4.8 are administrative in nature and do not increase the probability or consequences of an accident previously evaluated in the FSAR. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the radioactive materials controls established at the restricted area boundaries and do not increase the amount of radioactive materials on site. There are no modifications to safety systems as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated in the FSAR.

3. involve a significant reduction in a margin of safety.

Adopting the wording of the STS regarding the sealed sources limiting conditions for operations will not reduce the ability of the operators to detect a leaking sealed radioactive source. Established radiological controls (i.e., handling techniques and good health physics practices) implemented through plant procedures will ensure that the sealed sources will continue to be tested as required by the Technical Specifications and applicable regulations. The proposed changes do not alter the radioactive materials controls established at the restricted area boundary and do not increase the amount of radioactive materials on site. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: December 9, 1993

Description of amendment request: The proposed amendment would change the Rancho Seco Permanently Defueled Technical Specifications (PDTS) to implement and ensure consistency with the revisions in 10 CFR Part 20.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

•A significant increase in the probability or consequences of an accident previously evaluated in the SAR (Safety Analysis Report) will not be created, because the proposed changes are editorial in nature, are designed to implement the 10 CFR Part 20 regulations, and have no effect on any accidents evaluated in the Rancho Seco Defueled Safety Analysis Report (DSAR), i.e., the dropped fuel assembly accident, the loss of offsite power condition, or a radwaste tank rupture.

•PA-187 (Proposed Amendment) will not create the possibility of a new or different type of accident evaluated in the SAR, because the changes are editorial in nature, implement the new 10 CFR Part 20 radiation protection regulations, and do not provide any new mechanisms by which an accident can occur.

•The proposed PDTS amendment will not involve a significant reduction in the margin of safety, because the District will continue to maintain the appropriate radiation protection controls, through implementation of the new 10 CFR Part 20 regulations, that are necessary to ensure Rancho Seco continues to be operated safely from a personnel radiation exposure standpoint during the Permanently Defueled Mode.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Central Library, Government Documents 828 I Street, Sacramento, California 95814.

Attorney for licensee: Dana Appling, Esquire, Sacramento Municipal Utility District, P.O. Box 15830, Sacramento, California 95852-1830

NRC Project Director: Seymour H. Weiss

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: February 8, 1994 (TS 94-02)

Description of amendment request: The proposed change would revise Operating License Condition 2.C.(17) to temporarily extend the surveillance interval for certain specified instruments from the normal 18-month interval to a maximum of 28 months for 18-month surveillances and 46 months for the 3-year Containment fire hose hydrostatic surveillance test in order to prevent exceeding the allowable testing frequency prior to the refueling outage that has been rescheduled to start in July 1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is temporary and allows a one-time extension of specific surveillance requirements (SRs) for Cycle 6 to allow surveillance testing to coincide with the sixth refueling outage. The proposed surveillance interval extension is short and will not cause a significant reduction in system reliability nor affect the ability of the systems to perform their design function. Current monitoring of plant conditions and continuation of the surveillance testing required during normal plant operation will continue to be performed to ensure conformance with TS operability requirements. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Extending the surveillance interval for the performance of specific testing will not create the possibility of any new or different kind of accidents. No changes are required to any system configurations, plant equipment, or analyses. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance test interval is being extended. Historical performance generally indicates a high degree of reliability, and surveillance testing performed during normal plant operation will continue to be performed to verify proper performance. Therefore, the plant will be maintained within the analyzed limits, and the proposed extension will not significantly reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 23, 1992

Description of amendment request: The proposed amendment would revise TS 3/4 3.3.5 and its Bases adding testing requirements for transfer switches used to meet 10 CFR Part 50, Appendix R (Fire Protection) requirements and specifies a new special report requirement for TS 6.9.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, indicating that the proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because none of the proposed changes are associated with the initiation of any design bases accident. The addition of Limiting Condition for Operation (LCO) 3.3.3.5.2 and Surveillance Requirement (SR) 4.3.3.5.2 to the Technical Specifications will require each control circuit and transfer switch that is required for a serious control room or cable spreading room fire to be operable during Modes 1, 2 and 3 and to be verified at least once per 18 months as capable of performing the intended function. New Action b will require restoration of an inoperable control circuit or transfer switch (required for a serious control room or cable spreading room fire) within 30 days or a Special Report submitted to the NRC pursuant to Specification 6.9.2 within the next 30 days. Surveillance testing procedures will be prepared, reviewed and approved in accordance with Technical Specification (TS) 6.5.3, Technical Review and Control, which will ensure an unreviewed safety question is not created. To support the addition of the new LCO, Action and SR, the existing LCO, Action and SR are proposed to be administratively re-numbered or re-lettered. The new Special Report requirement is proposed to be administratively added to TS 6.9.2.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no equipment, accident conditions, or assumptions are affected which could lead to significant increases in radiological consequences. The addition of LCO 3.3.3.5.2 and SR 4.3.3.5.2 to the Technical Specifications will require each control circuit and transfer switch that is required for a serious control room or cable spreading room fire to be operable during Modes 1, 2 and 3 and to be verified at least once per 18 months as capable of performing the intended function. New Action b will require restoration of an inoperable control circuit or transfer switch (required for a serious control room or cable spreading room fire) within 30 days or a Special Report submitted to the NRC pursuant to Specification 6.9.2 within the next 30 days. Surveillance testing procedures will be prepared, reviewed and approved in accordance with Technical Specification (TS) 6.5.3, which will ensure an unreviewed safety question is not created. To support the addition of a new LCO, Action and SR, the existing LCO, Action and SR are proposed to be administratively re-numbered or re-lettered. The new Special Report requirement is proposed to be administratively added to TS 6.9.2.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are introduced by the proposed changes. The addition of LCO 3.3.3.5.2 and SR 4.3.3.5.2 to the Technical Specifications will require each control circuit and transfer switch that is required for a serious control room or cable spreading room fire to be operable during Modes 1, 2 and 3 and to be verified at least once per 18 months as capable of performing the intended function. New Action b will require restoration of an inoperable control circuit or transfer switch (required for a serious control room or cable spreading room fire) within 30 days or a Special Report submitted to the NRC pursuant to Specification 6.9.2 within the next 30 days. Surveillance testing procedures will be prepared, reviewed and approved in accordance with TS 6.5.3, which will ensure an unreviewed safety question is not created. To support the addition of the new LCO, Action and SR, the existing LCO, Action and SR are proposed to be administratively re-numbered or re-lettered. The new Special Report requirement is proposed to be administratively added to TS 6.9.2.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are introduced by the proposed changes. The addition of LCO 3.3.3.5.2 and SR 4.3.3.5.2 to the Technical Specifications will require each control circuit and transfer switch that is required for a serious control room or cable spreading room fire to be operable during Modes 1, 2, and 3 and to be verified at least once per 18 months as capable of performing the intended function. New Action b will require restoration of an inoperable control circuit or transfer switch (required for a serious control room or cable spreading room fire) within 30 days or a Special Report submitted to the NRC pursuant to Specification 6.9.2 within the next 30 days. Surveillance testing procedures will be prepared, reviewed and approved in accordance with TS 6.5.3, which will ensure an unreviewed safety question is not created. To support the addition of the new LCO, Action and SR, the existing LCO, Action and SR are proposed to be administratively re-numbered or re-lettered. The new Special Report requirement is proposed to be administratively added to TS 6.9.2.

3. Not involve a significant reduction in a margin of safety because these are not new or significant changes to the initial conditions contributing to accident severity or consequences, therefore, there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 24, 1993

Description of amendment request: The proposed amendment would revise Technical Specifications to extend the reporting period of the Semiannual Radioactive Effluent Release Report from semiannually to annually. Additionally, the report submission date would change from 60 days after January 1 and July 1 of each year to before May 1 of each year. The changes to the reporting period and report date are being made to implement the August

31, 1992, amendment to 10 CFR 50.36a. The affected Technical Specifications Sections are 1.18, 3.11.1.4, 3.11.2.6, 6.9.1.7, 6.14c, and the Index.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because operation of Callaway Plant with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or assumptions. The radiological consequences of any accident previously evaluated remain unchanged.

(2)Create the possibility of a new or different kind of accident from any previously evaluated.

These changes do not impact any administrative controls nor do they involve physical alterations to the plant with respect to radioactive effluent. There is no new type of accident or malfunction created and the method and manner of plant operation will not change.

(3) Involve a significant reduction in a margin of safety.

The margin of safety remains unaffected since no design change is made and plant operation remains the same. The proposed changes do not affect any safety limits or boundary or system performance.

As discussed above, the proposed changes are strictly administrative in nature and have no affect on plant operations. They do not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any previously evaluated. These changes do not result in a significant reduction in a margin of safety. Therefore, it has been determined that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: October 6, 1993

Description of amendment request: The proposed amendment would revise Technical Specifications Section 3.8.3, Electrical Power Systems - Onsite Power Distribution, to make the limiting conditions for operation for four emergency busses (NG05E, NG06E, NG07, and NG08) consistent with other technical specifications. The proposed revision would make the allowed outage time (AOT) for any of these emergency busses 72 hours. This is equivalent to the AOT for one train of the ESW per Technical Specification 3.7.4 and equivalent to the AOT for one train of the UHS cooling tower per Technical Specification 3.7.5.

This amendment request also proposes an editorial change by removing the number sign (#) before each electrical bus, battery, and battery charger listed in Technical Specifications Section 3.8.3 in order to clarify the specifications and make the nomenclature consistent with other sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because operation of the Callaway Plant with these changes would not:

(1)Involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of the proposed technical specification changes does not involve any modifications to the physical plant. Even though the MCCs themselves will have an allowed outage time of 72 hours instead of 8 hours, the operability requirements of the ESW system itself have not been lessened. The addition of LCs NG07 and NG08 to the technical specifications and surveillances serves to clarify the 480-volt power supply requirements in the technical specifications. The proposed changes do not affect accident initiators or assumptions. The radiological consequences of any accident previously evaluated remain unchanged.

(2)Create the possibility of a new or different kind of accident from any previously evaluated.

As noted above, the proposed change eliminates inconsistent requirements from the technical specifications, but overall does not lessen the requirements on ESW system operability imposed by the technical specifications. The implementation of the proposed technical specification changes do not involve any modifications to the physical plant or any significant change to the methods of operation of plant systems. The proposed changes do not create any new accident initiators.

(3)Involve a significant reduction in a margin of safety.

The requirements of Technical Specification 3.7.4, Plant Systems - Essential Service Water System, provide specific limiting conditions for operation applicable to the ESW System. In accordance with the definition of operability contained in the technical specifications, the operability of the ESW MCCs has always been included within these requirements. The existing technical specification requirements for onsite A.C. power distribution systems are intended to assure the availability of A.C. power sources supplying multiple safety systems. The NG05E and NG06E MCCs identified by this proposed change provide power for a single safety system (ESW) and associated equipment. The use of the 72 hour limit for the ESW MCCs is consistent with the requirements of Regulatory Guide 1.93, "Availability of Electrical Power Sources" and has an insignificant impact on the Callaway Probabilistic Risk Analysis. LCs NG07 and NG08 also only provide power for a single safety system (ESW) and associated equipment (UHS cooling tower). Since the technical specification requirements relative to the ESW system operability are not lessened by this change, there will be no reduction in the margin of safety as defined in the basis for the technical specifications.

As discussed, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any previously evaluated. These changes do not result in a significant reduction in a margin of safety. Therefore, it has been determined that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: February 1, 1994

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) by

removing the review of the Emergency Plan and its implementing procedures from the list of responsibilities of the Plant Operations Review Committee (PORC). Guidance for this change was provided in Generic Letter 93-07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans," dated December 28, 1993. Several other administrative TS changes are proposed including removing specific titles from the list of PORC members in TS 6.5.a.2 and deleting TS 6.5.b which describes the Corporate Support Staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes were revised in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by these TS changes. These TS changes will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to these changes. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of the malfunction of equipment important to safety previously evaluated in the Updated Safety Analysis Report (USAR) are not increased by these changes.

The proposed changes are administrative in nature and, therefore, have no impact on accident initiators or plant equipment, and thus, do not affect the probabilities or consequences of an accident.

2)create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the facility in accordance with the proposed TS changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since these administrative changes do not contribute to accident initiation, they do not produce a new accident scenario or produce a new type of equipment malfunction. Also, these changes do not alter any existing accident scenarios; they do not affect equipment or its operation, and thus, do not create the possibility of a new or different kind of accident.

3)involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed TS would not involve a significant reduction in a margin of safety. The proposed changes do not affect the plant equipment or operation. The requirements previously contained in the TS's that are being deleted are redundant and are contained in other controlled documents. Safety limits and limiting safety system settings are not affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 10, 1994, as supplemented February 3, 1994 (Reference LAR 94-01)

Brief description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," and TS 3/4.6.2.3, "Containment Cooling System." TS 3/4.3.2 would be revised to expand the mode applicability to include Mode 4 for the high-high containment pressure signal. TS 3/4.6.2.3 would be revised to clarify acceptable containment fan cooling unit (CFCU) configurations that satisfy the safety analysis requirements and to clarify the minimum required component cooling water flow supplied to the CFCU cooling coils.

Date of individual notice in **Federal Register:** January 28, 1994 (59 FR 4121)

Expiration date of individual notice: February 28, 1994

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 11, 1993

Brief description of amendments: The amendments revise the Technical Specifications (TSs) for both Units 1 and 2 by relocating the tables of response time limits for the Reactor Protection System and the Engineered Safety Features Actuation System instruments from the TSs to the Updated Final Safety Analysis Report. These amendments are a "line-item" TSs improvement and follow the guidance of Generic Letter 93-08, "Relocation of Technical Specification Tables of Instrument Response Time Limits."

Date of issuance: February 10, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 184 and 161

Amendment Nos.: 184 and 161

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67841) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: December 31, 1992, as supplemented June 10, 1993, and August 23, 1993, and December 8, 1993.

Brief description of amendments: The amendments change the Technical Specifications to (1) revise the definition of core alteration in section 1.0, Definitions, (2) clarify the TS 3/4.9.3, Control Rod Position, in the action statement, surveillance requirements and associated bases, and (3) revise the frequency for the channel calibration of the High Pressure Core Injection Steam Line Tunnel Temperature - High instrument.

Date of issuance: February 8, 1994

Effective date: February 8, 1994

Amendment Nos.: 168 and 199

Amendment Nos.: 168 and 199

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (56 FR 36426), and January 5, 1994 (59 FR 617). The June 10, 1993, and August 23, 1993, letters provided supplemental information and updated TS pages and did not change the initial proposed no significant hazards consideration determinations. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 4, 1991, as supplemented on June 24, 1991, December 19, 1991, and October 15, 1993.

Brief description of amendments: The amendments (a) replace the current fire protection license condition in

Facility Operating License Nos. DPR-71 and DPR-62 with the standard license conditon in Generic Letter 86-10 and (b) change the Technical Specifications to relocate the fire protection requirements to the BSEP, Units 1 and 2, Updated Final Safety Analysis Report.

Date of issuance: February 10, 1994

Effective date: February 10, 1994

Amendment Nos.: 169 and 200

Amendment Nos.: 169 and 200

Facility Operating License Nos. DPR-71 and DPR-62. The amendments replace the current fire protection license condition in

Facility Operating License Nos. DPR-71 and DPR-62 with the standard license conditon in NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements."

Date of notices in **Federal Register:** March 20, 1991 (56 FR 11722) and February 5, 1992 (57 FR 4485) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 26, 1993

Brief description of amendment: The amendment makes three specific changes in the TS: (1) incorporates the auxiliary feedwater (AFW) flow control valve (FCV) automatic opening feature in periodic surveillance testing, and clarifies in the AFW Bases that given the FCVs auto-open design feature, (2) deletes periodic surveillance testing of the auto-closure feature for the AFW motor-driven pump recirculation line valves; and (3) revises the general description of the AFW Bases so they are more concise and address directly the basis of the surveillance requirements.

Date of issuance: February 14, 1994

Effective date: February 14, 1994

Amendment No.: 42

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46225) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 19, 1993

Brief description of amendments: The amendment revises the Technical Specifications by changing the reactor vessel low temperature overpressure protection setpoint.

Date of issuance: February 14, 1994

Effective date: February 14, 1994

Amendment Nos.: 153 and 141

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67842) The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated February 14, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 9, 1991, as supplemented by letters dated February 12, 1992, November 8, 1993, and January 25, 1994.

Brief description of amendment: The amendment would revise the Technical Specifications to delete the surveillance requirements and limiting operating conditions for the independent electrical turbine overspeed protection system and to extend the surveillance test interval for the turbine stop and control valves from monthly to an interval of not greater than yearly. Also included is a minor correction to a typographical error.

Date of issuance: February 8, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 168

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51922) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 4, 1993

Brief description of amendments: The amendments change the Technical Specifications to allow extended outage time for each train of the control area ventilation system to allow system maintenance to improve system reliability. The one time extension to 14 days (for each train, one at a time) will allow completion of the maintenance activities while one or both units are on-line; otherwise, it would be necessary to shut down both units to complete the maintenance activities or to divide the maintenance activities into less than 7-day segments, which would increase unavailability of the control area ventilation system.

Date of issuance: February 10, 1994

Effective date: February 10, 1994

Amendment Nos.: 140 and 122

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62155) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina Date of application of amendments: November 11, 1993, as supplemented November 22, 1993

Brief description of amendments: The amendments provide an interim acceptance criteria for control rod drop time on Oconee, Unit 1.

Date of Issuance: February 9, 1994

Effective date: February 9, 1994

Amendment Nos.: 205, 205, and 202

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1993 (58 FR 62689) The November 22, 1993, letter provided clarifying information that did not change the scope of the November 11, 1993, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: June 14, 1990, as supplemented November 17, 1993

Brief description of amendments: These amendments revise the Electrical Power System Shutdown, the AC Distribution - Shutdown, and the DC Distribution - Shutdown Specifications to more closely resemble the wording contained in the Standard Technical Specifications. The November 17, 1993, supplement changed existing terminology used to designate two emergency busses in Unit No. 1 and two DC busses in Unit 2 to standard nomenclature.

Date of issuance: February 7, 1994

Effective date: February 7, 1994

Amendment Nos.: 180 and 60

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38601) The November 17, 1993, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: August 23, 1993

Brief description of amendment: This amendment will delete the option of using a movable incore detector to determine Incore Instrumentation System operability from the provisions of Technical Specification 3.3.3.2.

Date of issuance: February 8, 1994

Date of issuance: February 8, 1994

Effective date: February 8, 1994

Amendment No.: 64

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52985) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of applications for amendment: May 26 and December 2, 1993

Brief description of amendment: The amendment revises the TMI-1 Technical

Specifications to correct the definition of flood stage. The amendment also revises the TMI-1 Technical Specifications to remove the limiting conditions for operation and surveillance requirements for the Chlorine Detection Systems. Because this bridge was underwater during the 1972 flooding, the reference datum point location will be specified as the Susquehanna River Gage at Harrisburg. TMI-1 removed the gaseous chlorine system for the Circulating Water and River Water Systems.

Date of issuance: February 10, 1994

Effective date: As of its date of issuance.

Amendment No.: 182

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59750) and January 5, 1994 (59 FR 621).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 16, 1992, as supplemented December 22, 1993.

Brief description of amendments: The amendments revise the licenses to allow the replacement of portions of the current Reactor Protection System instrumentation with a digital signal processing system.

Date of issuance: February 7, 1994

Effective date: February 7, 1994

Amendment Nos.: 175 & 160

Facility Operating License Nos. DPR-58 and DPR-74. Amendments add a license condition to the Operating Licenses.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12263) The December 22, 1993, letter provided clarifying information which did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 4, 1993

Brief description of amendment: The amendment incorporates an additional Emergency Diesel Generator Surveillance Requirement, 4.8.1.1.2.C.8, items a, b, and c, to the Technical Specification Section 3/4.8, "Electrical Power Systems." The change requires starting the EDG, with offsite power available, as a result of a Safety Injection Actuation Signal.

Date of issuance: February 14, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 171

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67852) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: August 19, 1992, as supplemented by letters dated May 18 and October 7, 1993

Brief description of amendment: The amendment changed the Technical Specifications to revise the logic which controls the automatic transfer of the High Pressure Coolant Injection pump suction source on high suppression pool level.

Date of issuance: February 9, 1994

Effective date: February 9, 1994

Amendment No.: 101

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42778) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: August 27, 1993, supplemented by letter dated November 17, 1993

Brief description of amendment: The amendment allows an expanded operating domain for the Limerick Generating Station (LGS), Unit 1, resulting from the implementation of the Average Power Range Monitor - Rod Block Monitor Technical Specifications/ Maximum Extended Load Line Limit Analysis.

Date of issuance: February 10, 1994

Effective date: February 10, 1994

Amendment No. 66

Facility Operating License No. NPF-39. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52992) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1994. No significant hazards consideration comments received:

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: November 30, 1993

Brief description of amendment: This amendment changes the Appendix A technical specifications by allowing the third Type A Containment Integrated Leakage Rate Test in the first 10-year service period to be conducted at Refuel 6.

Date of issuance: February 16, 1994

Effective date: February 16, 1994

Amendment No. 67

Facility Operating License No. NPF-39. The amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67858) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 30, 1993

Brief description of amendments: These amendments decrease the test frequency of the drywell-to-suppression chamber bypass leak test to coincide with the primary Containment Integrated Leak Rate Test interval and require an additional test to measure the vacuum breaker leakage area for those outages for which the drywell-to-suppression chamber bypass test is not scheduled.

Date of issuance: February 17, 1994

Effective date: February 17, 1994

Amendment Nos. 68 and 31

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 5, 1994 (59 FR 626) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 28, 1992

Brief description of amendment: The amendment revises the flow requirement for the Core Spray (CS) pumps and the associated Bases. The change reduces the CS pump minimum flow acceptance criteria by 10% and addresses an inconsistency between the system leakage rates in the Updated Final Safety Analysis Report and the Technical Specifications (TS). Specifically, the surveillance testing required by the TS is intended to verify the capability of a core spray pump to deliver acceptable flow to the core. The new CS pump minimum flow acceptance criteria now accounts for system leakage that is not delivered to the core.

Date of issuance: February 8, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 204

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58250) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 7, 1992

Brief description of amendments: These amendments revise Technical Specifications Tables 3.3-3, 3.3-4, 3.3-5, and 4.3-2, which provide the requirements for the Engineered Safety Features Actuation System (ESFAS) instrumentation. This Technical Specification change will clarify that a Manual Safety Injection Actuation Signal does not actuate a Containment Cooling Actuation Signal. This is an editorial change to make the Technical Specifications consistent with plant design.

Date of issuance: February 4, 1994

Effective date: February 4, 1994

Amendment Nos.: 110 and 99

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24679) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 10, 1993; amended January 31, 1994 (TS 93-02)

Brief description of amendments: The amendments add a reference to the test requirements of 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors" to the technical specifications at various locations, and remove the corresponding detailed test requirements and acceptance criteria. Other containment system specifications related to this issue are also removed. In addition, a change to Table 3.6-2, "Containment Isolation Valves," clarifies the additional testing requirements for the containment purge valves.

Date of issuance: February 10, 1994

Effective date: February 10, 1994

Amendment Nos.: 176, Unit 1 - 167, Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28059) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: September 23, 1991

Brief description of amendment: This amendment allows an alternate method for verifying whether a control rod drive pump is operating.

Date of issuance: February 14, 1994

Effective date: February 14, 1994

Amendment No. 55

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57705) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: December 10, 1993

Brief description of amendments: The amendments modify the surveillance frequency of the Auxiliary Feedwater

System pumps from monthly to quarterly.

Date of issuance: February 7, 1994

Effective date: February 7, 1994

Amendment Nos.: 177 and 158

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 5, 1994 (59 FR 631) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 23, 1993

Brief description of amendment: The amendment revises TS Section 3.5, "Instrumentation System," Table TS 3.5-6, "Instrumentation Operating Conditions for Indication," and Table TS 4.4-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." The amendment adds operability and surveillance requirements for the reactor vessel level indication and core exit thermocouple instrumentation to satisfy the recommendations of Generic Letter 83-37, "NUREG-0737 Technical Specifications." Similar additions are made for the wide range steam generator level instrumentation to satisfy Regulatory Guide 1.97 recommendations. Administrative changes are also incorporated as part of converting the TS document to the WordPerfect software.

Date of issuance: February 9, 1994

Effective date: February 9, 1994

Amendment No.: 105

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39061) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: November 16, 1993, as supplemented on December 7, 1993.

Brief description of amendment: The amendment modifies KNPP TS 4.4.a.7 by deleting the requirement that couples the performance of the Type A leakage tests to the 10-year inservice inspection program requirements. This change was made to reflect the partial exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.a.(a), which was granted by the NRC on February 14, 1994. In addition, administrative changes to KNPP TS Section 4.4 and its associated bases have been made.

Date of issuance: February 17, 1994

Effective date: February 17, 1994

Amendment No.: 106

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67865) The December 7, 1993, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks Manitowoc County, Wisconsin

Date of application for amendments: March 24, 1993

Brief description of amendments: These amendments revised Technical Specifications (TS) Section 15.6 to update several position titles, to modify the composition and duties of the Manager's Supervisory Staff (the onsite review committee), and to remove a redundant review of the Facility Fire Protection Program implementing procedures.

Date of issuance: January 27, 1994

Effective date: January 27, 1994

Amendment Nos.: 146 and 150

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43940) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 27, 1993

Brief description of amendment: The proposed changes would revise the heatup, cooldown, and cold overpressure mitigation system power-operated relief valve setpoint pressure/temperature limits. The revised limits reflect the analysis of the most recently withdrawn surveillance capsule associated with the reactor vessel radiation surveillance program (10 CFR 50, Appendix H). The revised limits bound operation through 13.6 Effective Full Power Years (EFPY).

Date of issuance: February 10, 1994

Effective date: February 10, 1994, to be implemented within 30 days of issuance.

Amendment No.: 71

Facility Operating License No. NPF-42: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36449) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1994.No significant hazards consideration comments received: No.Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Divisio Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 94-4562 Filed 3-1-94; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on January 20, 1994 (59 FR 3134). Individual authorities established or revoked under Schedules A and B and established under Schedule C between December 1 and December 31, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

The following exceptions were established:

Federal Deposit Insurance Corporation

Until June 1, 1996, all Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions. No new appointments may be made under this authority after December 31, 1993. Effective December 2, 1993.

Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year. Effective December 2, 1993.

Schedule B

No Schedule B authorities were established or revoked during December 1993.

Schedule C

Agency for International Development

Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs. Effective December 29, 1993.

Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs. Effective December 29, 1993.

Department of Agriculture

Confidential Assistant to the Administrator, Farmers Home Administration. Effective December 13, 1993.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective December 13, 1993.

Confidential Assistant to the Deputy Administrator, Food and Nutrition Service. Effective December 13, 1993.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective December 15, 1993.

Department of the Army (DOD)

Executive Assistant to the Secretary of the Army. Effective December 1, 1993.

Personal and Confidential Assistant to the Under Secretary of the Army. Effective December 7, 1993.

Defense Fellow (Public Affairs) to the Chief of Public Affairs. Effective December 8, 1993.

Department of Commerce

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 8, 1993.

Confidential Assistant to the Deputy Executive Secretary. Effective December 8, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Technology and Aerospace Industries. Effective December 8, 1993.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 13, 1993.

Special Assistant to the Assistant Secretary for Communications and Information. Effective December 13, 1993.

Special Assistant to the Director, Executive Secretariat. Effective December 22, 1993.

Confidential Assistant to the Deputy Director, Office of Public Affairs. Effective December 30, 1993.

Department of Defense

Civilian Executive Assistant to the Chairman of the Joint Chiefs of Staff. Effective December 1, 1993.

Defense Fellow to the Office of the Assistant Secretary of Defense (Personnel and Readiness). Effective December 1, 1993.

Principal Director, Threat Reduction Policy to the Deputy Assistant Secretary of Defense (Threat Reduction Policy). Effective December 1, 1993.

Special Assistant to the Assistant Secretary of Defense (Policy and Plans). Effective December 7, 1993.

International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support). Effective December 8, 1993.

Special Assistant to the Counsellor to the Secretary and Deputy Secretary of Defense. Effective December 13, 1993.

Special Assistant for Health Care Policy to the Assistant Secretary of Defense for Legislative Affairs. Effective December 17, 1993.

Secretary to the Assistant Secretary of Defense (Strategy, Requirements and Resources). Effective December 22, 1993.

Staff Specialist to the Special Assistant to the Secretary of Defense for Public Affairs. Effective December 22, 1993.

Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Logistics. Effective December 30, 1993.

Department of Education

Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective December 1, 1993.

Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective December 1, 1993.

Confidential Assistant to the Deputy Assistant Secretary, Student Financial Assistance Programs. Effective December 8, 1993.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective December 8, 1993.

Confidential Assistant to the Director, Executive Secretariat. Effective December 8, 1993.

Department of Energy

Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective December 8, 1993.

Staff Assistant to the Deputy Secretary of Energy. Effective December 8, 1993.

Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation. Effective December 22, 1993.

Program Information Coordinator to the Director, Office of Strategic Planning. Effective December 22, 1993.

Department of Health and Human Services

Special Assistant to the Director, Office of Public Liaison. Effective December 1, 1993.

Special Assistant to the Director of Intergovernmental Affairs. Effective December 8, 1993.

Deputy Director, Office of Public Liaison to the Director, Office of Public Liaison. Effective December 13, 1993.

Director of Communications to the Deputy Assistant Secretary for Public

Affairs (Policy and Communications). Effective December 15, 1993.

Executive Assistant to the Commissioner, Social Security Administration. Effective December 16, 1993.

Department of the Interior

Special Assistant to the Director, Minerals Management Service. Effective December 13, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective December 14, 1993.

Department of Justice

Secretary to the United States Attorney, Western District of New York. Effective December 1, 1993.

Secretary (OA) to the United States Attorney, Western District of Louisiana. Effective December 7, 1993.

Staff Assistant to the Director, Office of Public Affairs. Effective December 8, 1993.

Secretary (OA) to the United States Attorney, District of Massachusetts. Effective December 15, 1993.

Secretary to the United States Attorney, Northern District of Iowa. Effective December 15, 1993.

Secretary to the United States Attorney, District of New Mexico. Effective December 15, 1993.

Staff Assistant to the Director, Office of Public Affairs. Effective December 17, 1993.

Secretary (OA) to the United States Attorney, Eastern District of Wisconsin. Effective December 17, 1993.

Secretary (OA) to the United States Attorney, Eastern District of Tennessee. Effective December 17, 1993.

Secretary (OA) to the United States Attorney, Sioux Falls, South Dakota. Effective December 17, 1993.

Secretary (OA) to the United States Attorney, Middle District of Pennsylvania. Effective December 17, 1993.

Special Assistant to the Commissioner, Immigration and Naturalization Service. Effective December 30, 1993.

Department of Labor

Special Assistant to the Deputy Secretary of Labor. Effective December 7, 1993.

Special Assistant to the Assistant Secretary for Policy. Effective December 8, 1993.

Special Assistant to the Assistant Secretary for Public Affairs. Effective December 13, 1993.

Staff Assistant to the Deputy Under Secretary for International Labor Affairs. Effective December 15, 1993.

Secretary's Representative, Boston, MA, to the Director, Office of Intergovernmental Affairs. Effective December 17, 1993.

Secretary's Representative, Atlanta, GA, to the Director, Office of Intergovernmental Affairs. Effective December 17, 1993.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective December 17, 1993.

Deputy Secretary's Representative to the Secretary's Representative, Boston, MA. Effective December 17, 1993.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 21, 1993.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 21, 1993.

Special Assistant to the Assistant Secretary for Policy. Effective December 30, 1993.

Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective December 30, 1993.

Department of the Navy (DOD)

Staff Assistant to the Principal Deputy General Counsel of the Navy. Effective December 8, 1993.

Department of State

Staff Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective December 8, 1993.

Foreign Affairs Officer to the Assistant Secretary, Bureau of Public Affairs. Effective December 8, 1993.

Foreign Affairs Officer to the Chief of Protocol. Effective December 13, 1993.

Protocol Officer (Ceremonial) to the Foreign Affairs Officer (Ceremonial). effective December 17, 1993.

Special Assistant to the Chief of Protocol. Effective December 17, 1993.

Protocol Assistant to the Deputy Chief of Protocol. Effective December 17, 1993.

Department of Transportation

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective December 9, 1993.

Special Assistant to the Deputy Administrator, Maritime Administration. Effective December 9, 1993.

Director of Technology Deployment to the Deputy Secretary of Transportation. Effective December 22, 1993.

Department of the Treasury

Special Assistant to the Assistant Secretary (Management). Effective December 30, 1993.

Environmental Protection Agency

Advanced Program Advisor to the Assistant Administrator for Enforcement. Effective December 7, 1993.

Special Counsel to the Deputy Administrator of the Environmental Protection Agency. Effective December 7, 1993.

Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances. Effective December 7, 1993.

Confidential Assistant to the Chief of Staff. Effective December 8, 1993.

Special Assistant to the Associated Administrator for Regional Operations and State/Local Relations. Effective December 13, 1993.

Federal Energy Regulatory Commission

Attorney-Adviser (Public Utilities) to a Member of the Federal Energy Regulatory Commission. Effective December 8, 1993.

General Services Administration

Special Assistant to the Associate Administrator for Administration. Effective December 15, 1993.

Special Assistant to the Regional Administrator. Effective December 15, 1993.

National Aeronautics and Space Administration

Legislative Affairs Assistant to the Special Assistant to the Associate Administrator for Legislative Affairs. Effective December 30, 1993.

Office of Management and Budget

Confidential Assistant to the Associate Director for Health. Effective December 17, 1993.

Office of Personnel Management

Policy Analyst to the Director of Policy. Effective December 8, 1993.

Securities and Exchange Commission

Secretary to the Director, Investment Management. Effective December 8, 1993.

U.S. Arms Control and Disarmament Agency

Secretary (OA) to the Director. Effective December 7, 1993.

U.S. International Trade Commission

Staff Assistant to the Commissioner. Effective December 13, 1993.

Staff Assistant (Economics) to the Commissioner. Effective December 13, 1993.

Staff Assistant to the Commissioner. Effective December 13, 1993.

United States Information Agency

Special Assistant to the Director, Office of Research. Effective December 1, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–4595 Filed 3–1–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension	
Form N–6F	File No. 270–185.
Form N–8B–2	File No. 270–186.
Form N–54A	File No. 270–182.
Form N–54C	File No. 270–184.
Rule 24f–1	File No. 270–130.
Rule 30a–1	File No. 270–210.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget the following requests for extension of previously approved forms and rules under the Investment Company Act of 1940 (1940 Act).

Form N–6F permits a company that has lost its exclusion from the 1940 Act because it intends to make a public offering as a business development company, but is not ready to file Form N–54A, to remain exempt from the Act for up to ninety days. It is estimated that Form N–6F takes .5 hours per response.

Form N–8B–2 is the registration statement form used by unit investment trusts currently issuing securities to register under the 1940 Act. It is estimated that Form N–8B–2 takes 1,626 hours per response.

Form N–54A is the notification of election to be regulated as a business development company. It is estimated that Form N–54A takes .5 hours per response.

Form N–54C is used to notify the Commission that a company withdraws its election to be regulated as a business development company. It is estimated that Form N–54C takes 1 hour per response.

Rule 24f–1 permits certain investment companies which have inadvertent oversales of their shares to register such shares. The reporting burden under Rule 24f–1 is estimated to be 2 hours per response.

Rule 30a–1 requires every registered investment company to file a semi-annual report with the Commission. The burden of meeting the requirement of this rule is the burden of filing Form N–SAR, the reporting form prescribed under the rule. Approval for Form N–SAR has been given separately.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act numbers 3235–0238, 3235–0186, 3235–0237, 3235–0236, 3235–0155, 3235–0219), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 14, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4704 Filed 3–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33665; File No. SR–Amex–93–43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Modification of the Trading Hours for Amex Biotechnology Index Options

February 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to modify the trading hours for options on its Biotechnology Index ("BTK"). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, Exchange rules generally provide that, except as otherwise indicated or under unusual conditions, the trading hours for broad-based index option contracts shall be from 9:30 a.m. to 4:15 p.m. Four narrow-based index options (Computer Index, Oil Index, North American Telecommunications Index, and the Pharmaceutical Index) presently have trading hours of 9:30 a.m. to 4:10 p.m. The BTK, although narrow-based, currently has trading hours identical to those assigned to the Exchange's broad-based index options. The purpose of the current proposal is to modify the trading hours for options on the BTK from a 4:15 p.m. New York time close to a 4:10 p.m. New York time close.

The Amex believes that market professionals (including the specialist and market-makers) in BTK options are exposed to undue risk during the five-minute interval between the closing of equity options at 4:10 p.m. and the closing of BTK options at 4:15 p.m. Unlike specialists and market-makers in broad-based index options who can hedge their positions in the index futures market (for which trading terminates at 4:15 p.m. New York time), market-makers in a narrow-based index option such as BTK are best able to hedge their risks by taking or liquidating positions in options on the individual securities that comprise that index. However, since trading in equity options terminates on the Amex and on other option markets at 4:10 p.m. New York time, the Amex believes that Specialists and market-makers in narrow-based index options (such as BTK options) who are required to maintain a trading market until 4:15

p.m. are unnecessarily exposed to market risk during the five-minute interval between the closings of equity options and BTK options. The Exchange also believes that the proposed change will eliminate potential investor confusion by creating uniform trading hours for all narrow-based indexes on the Exchange as well as with other options markets.[1]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) thereunder.[2] Specifically, the Commission concludes that the proposed rule change promotes just and equitable principles of trade by creating uniform trading hours for all Amex narrow-based indexes, thereby eliminating the possibility of investor and market participant confusion.

The Commission finds good cause for approving the proposed rule change proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the change in trading hours can become effective as soon as possible, allowing the Amex to implement uniform trading hours for all Amex narrow-based indexes.[3]

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–43 and should be submitted by March 23, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–Amex–93–43) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4701 Filed 3–1–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The Amex has stated that, upon Commission approval of the rule change proposal, it will provide its membership with notice two weeks prior to effecting the change of trading hours. The Exchange will issue an information circular advising the membership of the new closing time that will be sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Self-Regulatory Oversight, Division of Market Regulation, SEC, dated February 22, 1994.

[2] 15 U.S.C. 78f (b) (5) (1982).

[3] The Commission notes that it did not receive any comments when the Chicago Board Options Exchange, Inc. amended its rules in order to change the trading hours of its BioTech Index from 4:15 p.m. to 4:10 p.m., New York time. See Securities Exchange Act Release No. 32937, 58 FR 5002 (September 28, 1993).

[4] 15 U.S.C. 78(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33662; File No. SR–NYSE–91–46]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Audit Trail Account Identification Codes

February 23, 1994.

On December 17, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce new account identification codes to indicate orders for the account of a competing dealer for audit trail reporting purposes.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30142 (January 2, 1992), 57 FR 728 (January 8, 1992). No comments were received on the proposal.[3]

NYSE Rule 132 presently requires that clearing member firms submitting a transaction to comparison must include certain audit trail data elements, including a specification of the account type for which the transaction was effected according to defined account categories.[4] Under NYSE Rule 132, the NYSE has established account identification codes which differentiate trades executed for customers from trades executed for the proprietary account of a member/member organization [5] and trades executed by a member/member organization as agent for another member/member

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The Commission notes that in a letter from William W. Uchimoto, General Counsel, Philadelphia Stock Exchange, to Mary Revell, Branch Chief, Division of Market Regulation, dated January 24, 1992, the Philadelphia Stock Exchange ("Phlx") requested an extension until March 4, 1992 to comment on the proposal and on an American Stock Exchange ("Amex") proposal concerning competing dealers (File No. SR–Amex–90–29). In the letter, the Phlx expressed its belief that both proposals were "highly controversial, giving rise to significant competitive and market structure concerns." The Commission did not, however, receive further comment from the Phlx regarding this NYSE proposal. See note 10, *infra*.

[4] NYSE Rule 132, Supp. Material .30(1) to (9) (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency), specify the trade elements that must be submitted. Paragraph (10) provides the Exchange with the authority to require additional information as well.

[5] The Exchange uses indicators D (Program Trade Index Arbitrage), C (Program Trade Non-Index Arbitrage), and P (All Other Orders) for transactions effected for a member/member organization's proprietary account.

organization.[6] The new indicators being approved herein will identify transactions effected for the account of a competing dealer.

New indicators of O, T, and R will denote that a transaction was effected for the account of a competing dealer. The identifier "0" denotes a proprietary order for the account of a competing dealer. The identifier "T" denotes an order where one member is acting as an agent for another member's competing dealer account. Finally, the identifier "R" denotes an order for the account of a non-member competing dealer.[7] In addition, the rule change adds the following definitions:

Competing Dealer: a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or market-maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

Proprietary, Competing Dealer: a member or member organization trading for its own competing dealer account.

As Agent for Other Member, Competing Dealer: a member or member organization trading as agent for another member's competing dealer account.

The Exchange states that the new account categories for order identification will enhance the efficiency and accuracy of audit trail information. Furthermore, the NYSE believes that the identifiers will improve the Exchange's ability to assess the extent of activity by competing dealers and market makers in NYSE-listed securities and the impact of this activity on the NYSE market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[8] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information used for surveillance purposes. Specifically, the Commission believes that the new, more precise identifier codes should facilitate surveillance investigations by clearly and more specifically demarcating competing dealers proprietary trading. In addition, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity. In summary, we believe the proposed identifier codes should permit the NYSE to perform its surveillance responsibilities more thoroughly and therefore, for this sole reason, find the proposal consistent with section 6(b)(5) of the Act.

The Commission notes that the approval of this proposal is limited solely to establishing competing dealer identifier codes for audit trail and surveillance purposes.[9] The proposal does not limit or restrict the activity of competing dealers or their access to the NYSE. Thus, any competitive burden on competing dealers would be minimal and outweighed by the surveillance benefits to be obtained by the NYSE.[10]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, [11] that the proposed rule change (SR–NYSE–91–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4702 Filed 3–1–94; 8:45 am]

BILLING CODE 8010–01–M

[6] The Exchange uses indicators M (Program Trade Index Arbitrage), N (program Trade non-Index Arbitrage), and W (All Other Orders) for transactions effected by a member/member organization as agent for another member/member organization.

[7] Member firms will be given a reasonable period of time (approximately six months) to make their own system enhancements so that they may be in compliance with the new account type identification requirements.

[8] 15 U.S.C. 78f(b) (1988).

[9] This information is not available to specialists or traders on the floor.

[10] The Commission is currently considering an Amex proposal (File No. SR–Amex–90–29) that would impose certain restrictions on limit orders for the account of a competing dealer. The Commission has received over 40 comments opposing this proposal. While the NYSE proposal being approved herein also concerns competing dealers, the proposal only requires orders for competing dealers to be noted on account identifiers for surveillance purposes.

[11] 15 U.S.C. 78s (b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33661; International Release No. 637; File No. SR–NYSE–93–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Listing Standards for Non-U.S. Companies

February 23, 1994.

I. Introduction

On December 16, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. holders of NYSE-listed foreign securities and American Depositary Receipts (ADRs) ("U.S. Holders") under certain circumstances.[3] On February 15, 1994, the NYSE submitted Amendment No. 1 to the rule filing.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33400 (December 29, 1993), 59 FR 642 (January 5, 1994). No comments were received on the proposal.

II. Description of the Proposal

Current NYSE policy requires all listed companies to submit to shareholders an annual report with financial information as detailed in Paragraph 203.01 of the NYSE Listed Company Manual. The Exchange is modifying its annual report requirements to allow U.S. Holders to receive summary annual reports if it is the practice in the home country of the foreign issuer and certain other conditions are met. The following is the text of the rule, with italics representing the language added:

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] An ADR is a negotiable receipt that is issued by a depository, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. ADRs are traded on the national stock exchanges and in over-the-counter markets like stocks of domestic companies.

[4] Letter from Michael J. Simon, Milbank, Tweed, Hadley & McCloy, to Richard Kosnik, Associate Director, Division of Corporation Finance, SEC, dated February 15, 1994 ("NYSE Letter"). The amendment added the phrase "including summary financial information" in subsection (a) of the new language. See text of new rule, *infra.*

103.00 Non-U.S. Companies

* * * * *

Where it appears to the Exchange that a non-U.S. Company's interim earnings reporting or corporate governance practices are not prohibited by the law in the country in which it is domiciled, such practices need not necessarily be barriers to listing or continued listing. *In addition, the Exchange will permit non-U.S. issuers to follow home-country practices regarding the distribution of annual reports to shareholders, if, at a minimum, (a) shareholders are provided at least summary annual reports, including summary financial information, (b) shareholders have the ability, upon request, to receive an annual report that complies with the requirements of Para. 203.01 (a "full annual report"), and (c) the financial information contained in the summary annual report is reconciled to U.S. generally-accepted accounting principles to the extent that such reconciliation would be required in the full annual report.*[5]

The rule change is, in part, in response to an amendment, adopted in 1990, to the U.K. Companies Act that permits issuers listed on the London Stock Exchange to provide holders of their ordinary shares a choice to receive a full annual report or a summary annual report.[6] Certain U.K. issuers sought permission from the NYSE to provide holders of ADRs with summary reports in place of full annual reports if the shareholders do not object.

The NYSE rule is formulated to permit foreign issuers to distribute summary annual reports consistent with the practices of their home countries. The rule does not attempt to specify particular financial requirements.[7] Instead, the Exchange will review specific proposals to ensure that U.S. Holders receive adequate information.[8]

The rule also does not mandate any specific method for providing U.S. Holders with summary annual reports. As with the substantive requirements, the NYSE proposal recognizes that foreign countries will develop their own procedures for issuers to provide summary reports in lieu of full annual reports. The Exchange, however, has indicated that it will review all proposed programs to ensure that U.S. Holders have reasonable access to the full annual report and receive full disclosure of their option to receive the full report.[9]

III. Discussion

The Commission finds that the proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. Holders according to the home country practice of the foreign issuer is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest, in that it accommodates foreign practices while ensuring that U.S. shareholders of foreign securities and holders of ADRs continue to receive adequate information concerning the companies in which they invest.

As the securities markets of the world become increasingly interconnected, it is inevitable that application of certain exchange rules conflict with customs and market practices in other jurisdictions.[11] The Commission believes that the NYSE's rule reflects an appropriate balance between the need to protect U.S. investors and the costs associated with requiring non-U.S. companies to provide U.S. investors with full annual reports while the companies home country law permits summary reports to foreign investors. Accordingly, for the reasons discussed in more detail below, we believe it is appropriate, in this limited situation pursuant to the conditions set forth in NYSE Rule 103.00, to allow foreign issuers to comply with their home country practices for the distribution of annual reports to U.S. Holders.

First, the rule sets forth certain minimum requirements before summary reports can be used, including that financial information contained in the summary annual report be reconciled to U.S. generally-accepted accounting principles, and that all shareholders have the ability upon request to receive a full annual report. Second, the NYSE will evaluate each country's program for providing shareholders with summary annual reports to verify that U.S. Holders are receiving adequate information under the laws of the foreign country. Finally, the NYSE will also review the procedure the country has provided for disclosing to shareholders the option to receive a full annual report. If the Exchange determines that either the substance or the procedure provided by a foreign country's law is unsatisfactory, the Exchange may prescribe additional requirements before the summary annual report can be distributed to U.S. Holders under the NYSE rule. In this regard, the NYSE has stated it will ensure, under its new rule, that shareholders receive adequate information and are provided with full and meaningful disclosure of their choices to receive the full annual report as opposed to the summary report.[12] Based on the above, the Commission believes the Exchange's review and oversight, combined with the minimum requirements set forth in the rule, should ensure the continued protection of investors and the public interest consistent with section 6(b)(5) of the Act.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 added language to subsection (a) of the proposed rule to clarify the Exchange's intention that summary annual reports include summary financial information.[13] The NYSE's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

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[5] NYSE Listed Company Manual Para. 103.00.

[6] The U.K. Companies Act sets forth the specific financial and management information that must be contained in the summary reports. In addition, the U.K. Companies Act requires that shareholders who receive only the summary report be given the opportunity, at any time, to obtain the full annual report from the company and that companies must notify shareholders annually of this right and how the report can be obtained. When the program was instituted in the U.K. in 1990, shareholders received both reports and notice of the available option with respect to future reports.

[7] Although the new rule is formulated to accommodate the U.K.'s program, other foreign countries may adopt different practices.

[8] NYSE Letter, *supra* note 4. The letter clarified that the Exchange does not intend to adopt the substance of the U.K. program, and that it will permit the practice of providing shareholders with an option to receive summary annual reports as opposed to full annual reports to evolve over time. The NYSE has committed to review each home country's practices to determine their sufficiency in providing information to U.S. Holders.

[9] *Id.* Under the NYSE rule, full annual reports must still be prepared and made available to all U.S. shareholders.

[10] 15 U.S.C. 78f(b) (1988).

[11] The Commission previously has allowed the Exchange to waive or modify certain of its listing standards for foreign companies based on the laws, customs or practices of their home countries. *See* Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987).

[12] See NYSE Letter, *supra* note 4.

[13] *Id.*

[14] See Securities Exchange Act Release No. 33400 (December 29, 1993), 59 FR 642 (January 5, 1994).

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–47 and should be submitted by March 23, 1994.

V. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–93–47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4703 Filed 3–1–94; 8:45 am]

BILLING CODE 8010–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The National Advisory Board meeting is scheduled for Friday, March 18, 1994, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board had established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

AGENDA: A detailed agenda will be available at the meeting. The meeting will include remarks from the national chairperson, briefings from the chairpersons of the six regional advisory boards on their respective meetings held throughout the country from February 1 to March 8. Discussion will focus on the key topics from the fifteenth series of regional meetings: Treasury Secretary Bentsen's Management Reforms; RTC's implementation of the RTC Completion Act's minority preference provisions; RTC's Small Investor Program, RTC's Environmentally Significant Property Sales Program, RTC's SAMDA program, and the impact of RTC activities on local real estate market conditions.

STATEMENTS: Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: February 24, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–4668 Filed 3–1–94; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 94–2–39 and Docket No. 49310]

Application of Rich International Airways, Inc. for Certificate Authority Under Subpart Q

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Rich International Airways, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 11, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49310 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: February 24, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–4671 Filed 3–1–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 94–013]

National Fire Protection Association Technical Committee on Fire Protection of Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard announces it will be participating in a new National Fire Protection Association (NFPA) technical committee on Fire Protection of Merchant Vessels. The goal of this technical committee will be the development of codes and standards applicable to fire protection of merchant vessels. The committee is intended for technical experts knowledgeable in the field who are interested in volunteering to participate in the development effort.

DATES: Completed applications for committee membership should be submitted directly to the NFPA before June 1, 1994.

ADDRESSES: Persons interested in applying for membership on the NFPA Technical Committee on Fire Protection of Merchant Vessels may obtain an application form by writing to the Secretary, Standards Council, National Fire Protection Association, One Batterymarch Park, PO Box 9101, Quincy, MA 02269–9101. Alternatively, you may obtain a membership application from Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001, or by calling the point of contact in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Mr. Morgan J. Hurley, Fire Protection Engineer, telephone (202) 267–2997, facsimile (202) 267–4816.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1993).

SUPPLEMENTARY INFORMATION: The National Fire Protection Association (NFPA) recently established a new technical committee on fire protection of merchant vessels. The NFPA has a long and successful history of developing codes and standards which cover a broad range of fire protection subjects for land based occupied structures. Additionally, the NFPA has developed maritime standards pertaining to recreational craft, control of gas hazards aboard ships, and fire protection of vessels during shipbuilding, repair, and lay-up.

With this new committee the NFPA will develop codes and standards for fire protection of merchant vessels. The committee may also develop marine supplements to existing land based standards for application aboard ships. All merchant vessel types currently regulated by the Coast Guard will be considered by this committee in developing codes and standards.

The Coast Guard may determine that the codes and standards developed by the committee would provide a level of safety greater or equal to current regulations. If so, the Coast Guard may allow vessel owners and operators the option to comply with the codes and standards in lieu of current regulations. The Coast Guard may also adopt all or part of the standard(s) developed by the committee through future rulemaking projects. The information, codes, and standards developed by the committee will also be of value in developing U.S. positions at the International Maritime Organization (IMO) and at the International Standards Organization (ISO).

The Committee may meet as often as three to four times per year within the United States. The NFPA typically limits membership on a technical committee to 30. However, additional specialized subcommittees may be created in the future to deal specifically with certain vessel types. All members serve without compensation (neither travel nor per diem) from the Federal Government.

Dated: February 23, 1994.

A.E. Hann,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-4766 Filed 3-1-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-014]

Marine Safety Issues Related to Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting and study availability.

SUMMARY: A Coast Guard prepared study, entitled Review of Marine Safety Issues Related to Uninspected Towing Vessels, is available to the public. The Coast Guard will also conduct a public meeting to discuss issues of towing vessel safety.

DATES: (1) The meeting will be held on Monday, April 4, 1994, from 9 a.m. to 5 p.m.

(2) Public comments on the study will be accepted until May 4, 1994.

ADDRESSES: (1) The meeting will be held at the Coast Guard Headquarters Building, room 2415, 2100 2nd Street SW., Washington, DC 20593.

(2) A copy of the study may be obtained by writing: U.S. Coast Guard (G-MVP-5/2507), 2100 Second Street SW., Washington, DC 20593-0001 or by calling: (202) 267-2705, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be received via facsimile at (202) 267-2721.

(3) Public comments on the study should be forwarded to: Executive Secretary, Marine Safety Council, CGD 94-014, U.S. Coast Guard Headquarters (G-LRA/3406), 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Walker, Project Manager, G-MVP-5, (202) 267-2705. Merchant Vessel Personnel Division of the Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: As a result of the fatal barge/railroad bridge accident near Mobile, Alabama on September 22, 1993, the Secretary of Transportation directed the U.S. Coast Guard and the Federal Railroad Administration (FRA) to review the circumstances surrounding the accident, and undertake initiatives to minimize the risk of any similar tragedy in the future. Therefore, the Coast Guard commissioned a study to review marine safety issues related to uninspected towing vessels and recommend ways to increase safety and minimize further risk of future accidents.

The study includes the Coast Guard's marine casualty statistics for towing vessels, over a twelve year period (1980-1991). Correlations are drawn from towing vessel casualties based on the area of operation, gross tonnage and horsepower. As a result, the Study group made 19 recommendations based on five major areas: (1) Requirements for Licensing for Operator of Uninspected Towing Vessel; (2) Requirements for Reporting Marine Casualties and Hazardous Conditions; (3) Bridge Fendering Systems and Navigational Lighting; (4) Adequacy of the Navigation Equipment for Uninspected Towing Vessels; (5) and, Adequacy of the Aids to Navigation System for Marking the Approaches to Bridges Over Navigable Waterways.

Conclusions drawn from towing vessel casualty statistics indicate the majority of personnel and vessel casualties involving uninspected towing vessels are directly attributable to human error. As a result, 10 of the 19 recommendations surround the qualifications, training and issuance of an operator of uninspected towing vessel license.

Legislation has been introduced in Congress that would mandate implementation of some of the study recommendations, including enhanced licensing requirements and requirements for navigational equipment.

The Coast Guard will hold a public meeting on April 4, 1994 to review the study and seek public comment on the recommendations identified in the study. The study, along with public comment may be used to develop future rulemaking projects. Of particular interest, and likely to be the subject of expedited rulemaking, are actions which could provide the necessary means and improve the navigational ability of the operator, including requiring charts, publications and a radar system, and requiring the operator to be qualified as a radar observer. Comments on the practical utility of these requirements for various classes or sizes of vessels or areas of operation, the costs involved, and the length of time appropriate for implementation would be especially helpful.

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the study by Docket number CGD 94-014 and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Dated: February 25, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-4761 Filed 3-1-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD02-94-008]

Special Local Regulations; Annual Marine Events Within the Second Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing the exact dates, times and locations for those annual marine events that will occur in the Second Coast Guard District in 1994. The Coast Guard has previously published a list of marine events which occur annually in the Second Coast Guard District, which were codified at 33 CFR 100.201. However, because the exact dates, times and locations of these events change from year to year, 33 CFR 100.201 contains only approximate dates and locations.

ADDRESSES: For additional information about any of the events listed in the table below, or to be placed on a mailing list for notices about annual marine events within the Second Coast Guard District, write to Commander (oan), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103-2832. The telephone number is (314) 539-3971.

SUPPLEMENTARY INFORMATION: Various public and private organizations sponsor marine events, which are scheduled to occur on an annual basis, on navigable waters of the United States within the Second Coast Guard District. However, the exact date, time and location of each event varies from year to year. The table below gives the exact dates, times and locations for those annual marine events, scheduled to occur in 1994, which are listed in 33 CFR 100.201. It should be noted that this list is not a complete list of all marine events that will occur in the Second Coast Guard District. It does not include events which the District Commander has determined do not require establishment of regulations for the safety of life and property on or adjacent to navigable waters. It also does not include non-annual events or events which have been scheduled in time for this publication.

The events listed in Table One include slow-moving boat parades, raft races, high-speed hydroplane races, steamboat races, fireworks displays, and other water-related events. The nature of each event is such that special local regulations are deemed necessary to ensure the safety of life and property on and adjacent to navigable waters during the events. During these events the river may be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels and patrol craft. Actual river closures will not exceed three hours in duration at any one time for events that last longer than four hours. Sponsors requiring more than three hours for their event will provide a suitable break for vessel traffic to transit the regulated area. Mariners will be afforded enough time between closure periods to transit the area.

Table One

1. Thunder Over Louisville
   Sponsor: Visual Presentations
   Date: April 17, 1994, 3:00 p.m. to 6:00 p.m.; 7:00 p.m. to 11:00 p.m.
   Location: Ohio River mile 603.2–604.3, Louisville, KY
2. Ky Derby Festival Great Steamboat Race
   Sponsor: Kentucky Derby Festival/ Belle of Louisville Operating Board
   Date: April 28, 1994, 4:00 p.m. to 8:00 p.m.
   Location: Ohio River mile 597.0–604.0, Louisville, KY
3. Memphis in May Canoe & Kayak Race
   Sponsor: Outdoors Inc.
   Date: May 8, 1994, 9:30 a.m. to 11:30 a.m.
   Location: Lower Mississippi River mile 735.5–738.5, Memphis, TN
4. Quad City River Bandits
   Sponsor: Quad City River Bandits Baseball Club
   Date: May 24, 1994, 10:00 p.m. to 10:45 p.m.
   Location: Upper Mississippi River mile 482.0–482.5, Davenport, IA
5. Three Rivers Festival and Regatta
   Sponsor: Three Rivers Festival And Regatta
   Date: May 27 & 30, 1994, 9:00 a.m.–5:00 p.m. (each day)
   Location: Monongahela River mile 126.0 to 128.73, Fairmont, WV
6. Riverfest (Little Rock, AR)
   Sponsor: Riverfest, Inc.
   Date: May 30, 1994, 11:30 a.m.–12:00 p.m.
   Location: Arkansas River mile 118.0–119.5, Little Rock, AR
7. Cape Girardeau Riverfest
   Sponsor: Cape Girardeau Riverfest Association
   Date: June 11, 1994, 3:00 p.m. to 9:00 p.m.; 9:15 p.m. to 10:00 p.m.; June 12, 1994, 11:00 a.m. to 8:00 p.m.; 8:45 p.m. to 10:15 p.m.
   Location: Upper Mississippi River mile 51.5–52.5, Cape Girardeau, MO
8. Burlington Steamboat Days
   Sponsor: Burlington Steamboat Days
   Date: June 21, 1994, 8:45 p.m. to 11:30 p.m.
   Location: Upper Mississippi River mile 403.5 to 404.5, Burlington, IA
9. Peoria Steamboat Days
   Sponsor: Peoria Area Community Events, Inc.
   Date: June 17–20, 1994, 8:00 p.m. to 12:00 a.m. (each day)
   Location: Illinois River mile 162.0–163.0, Peoria, IL
10. St. Albans FOP "Say 'No' to Drugs" Fireworks
    Sponsor: St. Albans FOP
    Date: June 18, 1994, 9:30 p.m. to 10:00 p.m.
    Location: Kanawha River mile 46.0 to 47.0 at St. Albans Roadside Park, St. Albans, WV
11. Riverfest Fireworks Display
    Sponsor: Old Fort Riverfest Committee
    Date: June 19, 1994, 9:15 p.m. to 10:30 p.m.
    Location: Arkansas River mile 297.0 to 298.0, Fort Smith, AR
12. Freedom Festival's Thunder on the Ohio
    Sponsor: Evansville Freedom Festival
    Date: June 25–27, 1994; June 25, 8:00 a.m. to 7:00 p.m.; June 26, 9:00 a.m. to 6:00 p.m.; June 27, 8:00 a.m. to 6:00 p.m.;
    Location: Ohio River mile 792.0 to 793.0, Evansville, IN
13. Riverfest (Pt. Pleasant, WV)
    Sponsor: City of Point Pleasant
    Date: June 26, 1994, 10:00 p.m. to 10:30 p.m.
    Location: Mouth of the Kanawha River mile 0.5 and Ohio River mile 265.0, Point Pleasant, WV
14. Sternwheel Regatta
    Sponsor: City of Augusta
    Date: June 26, 1994, 2:00 p.m. to 4:00 p.m.
    Location: Waterfront-Ohio River mile 426.0 to 429.0, Augusta, KY
15. Ashland Tri-State Fair and Regatta
    Sponsor: Tri-State Fair and Regatta
    Date: July 1–4, 1994, 6:00 p.m. to 11:00 p.m.
    Location: Asland Public Boat Dock, Ohio River mile 322.0 to 323.0, Huntington, WV
16. Riverfest, Inc. 1992 (La Crosse, WI)
    Sponsor: Riverfest, Inc.
    Date: July 1–5, 1994, 9:00 a.m. to 2:00 p.m. (each day)
    Location: Riverside Park, Upper Mississippi River mile 697.5–698.5, La Crosse, WI
17. Huntington Pops Orchestra Concert
    Sponsor: The Twentieth Street Bank
    Date: July 3, 1994, 9:30 p.m. to 10:00 p.m.
    Location: Harris Riverfront Amphitheatre, Ohio River mile

308.0–309.5, Huntington, WV
18. July 4th Fireworks
Sponsor: KDTH/KATF Radio
Date: July 3, 1994, 9:15 p.m. to 10:30 p.m.
Location: Dubuque, Iowa Volunteer Road between Hawthorne & Lime, Upper Mississippi River mile 581.5–583.0, Dubuque, IA
19. City of Pittsburgh Independence Eve Celebration
Sponsor: Citiparks
Date: July 3, 1994, 9:40 p.m. to 10:30 p.m.
Location: Point State Park, Pittsburgh, PA
20. Moline Riverfest
Sponsor: City of Moline
Date: July 3–5, 1994; July 3–4, 9:15 p.m. to 10:00 p.m. (fireworks display); July 5, 12:30 p.m. to 3:30 p.m. (ski show)
Location: Upper Mississippi River mile 486.0–488.0, Moline, IL
21. Budweiser Indiana Governor's Cup
Sponsor: Madison Regatta, Inc.
Date: July 3 & 4, 1994; 3, 9:00 a.m. to 6:00 p.m.; 4, 9:00 a.m. to 5:30 p.m.; 4, 9:00 p.m. to 10:00 p.m.
Location: Ohio River mile 557.0–558.0, Madison, IN
22. Owensboro Summer Festival
Sponsor: Owensboro Summer Festival, Inc.
Date: July 4, 1994, 1:00 p.m. to 2:30 p.m.
Location: Boat Dock at Foot of Frederica St., Ohio River mile 756.5–758.0, Owensboro, KY
23. Skyconcert—4th of July Celebration
Sponsor: WKZW
Date: July 4, 1994, 1:00 p.m. to 4:00 p.m.; 8:00 p.m. to 10:30 p.m.
Location: Illinois River mile 162.0–163.0, Peoria, IL
24. Riverfest 1994 (Fort Madison, IA)
Sponsor: Rivercities Fireworks Corp.
Date: July 4, 1994, 9:30 p.m. to 11:30 p.m.
Location: Upper Mississippi River mile 202.5–203.2, Fort Madison, IA
25. Fireworks Display (Buchanan, TN)
Sponsor: Tennessee Dept. of Environment & Conservation Division of Parks & Recreation
Date: July 4, 1994, 9:00 p.m. to 11:00 p.m.
Location: Tennessee River mile 66.0–67.0, Buchanan, TN
26. Muscatine 4th of July Fireworks
Sponsor: Muscatine Jaycees
Date: July 4, 1994, 9:15 p.m. to 10:30 p.m.
Location: Upper Mississippi River mile 450.5–451.5, Muscatine, IA
27. Star Spangled Celebration
Sponsor: WMC Stations
Date: July 4, 1994, 9:30 p.m. to 10:00 p.m.
Location: Mud Island (West side of Southern Tip) Audience on Tom Lee Park, Riverside Drive-Lower Mississippi River mile 735.5–736.5, Memphis, TN
28. Fourth of July Fireworks Display
Sponsor: Charleston Festival Commission, Inc.
Date: July 4, 1994, 9:00 p.m. to 10:00 p.m.
Location: Ohio River mile 59.9–61.2
29. July 4th Concert
Sponsor: Cincinnati Symphony Orchestra
Date: July 4, 1994, 8:30 p.m. to 11:00 p.m.
Location: Ohio River mile 460.5–461.5, Cincinnati, OH
30. St. Charles Jaycees Riverfest 1994 Fireworks Show
Sponsor: St. Charles Jaycees
Date: July 4, 1994, 7:00 p.m. to 10:00 p.m.
Location: Missouri River mile 28.0–29.0, St. Charles, MO
31. Spirit of Freedom Celebration
Sponsor: WLAY Radio
Date: July 4, 1994, 7:00 p.m. to 11:00 p.m.
Location: Tennessee River mile 255.5–256.5, Sheffield, AL
32. 4th of July Fireworks
Sponsor: Minneapolis Park & Rec. Board
Date: July 4, 1994, 10:00 p.m. to 10:30 p.m.
Location: Upper Mississippi River mile 854.0–854.1, Minneapolis, MN
33. Venetian Night Lighted Boat Parade
Sponsor: Quad City Venetian Night Committee
Date: July 4, 1994, 8:00 p.m. to 12:00 a.m.
Location: Upper Mississippi River mile 483.0–488.0, Geneseo, IL
34. National Association of Counties—Riverside Gala Fireworks Display
Sponsor: Hennepin County—Nat'l Assoc. of Counties Annual Meeting
Date: July 8, 1994, 10:00 p.m. to 10:15 p.m.
Location: Nicollet Island Park-Upper Mississippi River mile 854.5–854.6, Minneapolis, MN
35. 10th Annual Steubenville Regatta
Sponsor: Steubenville Regatta and Racing Association, Inc.
Date: July 9–11, 1994, 11:00 a.m. to 10:00 p.m. (each day)
Location: Ohio River mile 65.0–67.0, Steubenville, OH
36. New Haven, MO Boat Race
Sponsor: St. Louis Outboard Drivers Association
Date: July 11, 1994, 11:00 a.m. to 6:00 p.m.
Location: Missouri River mile 81.0–82.0, New Haven, MO
37. Minneapolis Aquatennial Power Boat Grand
Sponsor: Minneapolis Aquatennial Association
Date: July 17–18, 1994; July 17, 11:00 a.m. to 5:00 p.m.; July 18, 9:00 a.m. to 5:00 p.m.; July 18, 9:00 a.m. to 7:00 p.m.
Location: Plymouth Ave. Bridge to Railroad Bridge-Upper Mississippi River mile 855.0–855.8, Minneapolis, MN
38. Hastings Flotilla Frolic
Sponsor: Hastings Flotilla Frolic Association
Date: July 17, 1994, 1:00 p.m. to 2:30 p.m. & 4:00 p.m. to 5:30 p.m. & 7:30 p.m. to 11:00 p.m.
Location: Upper Mississippi River mile 813.0–814.3, Hastings, MN
39. Fireworks/Budweiser World Point Jet Ski Race/Huntington Miller Classic & Testing
Sponsor: Tri-State Fair and Regatta
Date: July 17, 18, 23, 24, 25, 1994; July 17, 9:30 p.m. to 10:30 p.m.; July 17 & 19, 8:00 a.m. to 6:00 p.m.; July 23, 8:00 a.m. to 12:00 p.m. & 1:00 p.m. to 8:00 p.m.; July 24, 9:30 p.m. to 10:30 p.m.; July 24 & 25, 8:00 a.m. to 12:00 p.m. & 1:00 p.m. to 8:00 p.m.
Location: Ohio River mile 308.8, Huntington, WV
40. Wabasha Riverboat Day
Sponsor: Wabasha Area Chamber of Commerce
Date: July 24, 1994, 9:00 a.m. to Midnight
Location: Upper Mississippi River mile 759.5–760.5, Wabasha, MN
41. Dragon Boat Races
Sponsor: Stillwater Area Chamber of Commerce
Date: July 24 & 25, 1994; 24, 5:00 p.m. to 9:30 p.m.; 25, 8:00 a.m. to 6:30 p.m.
Location: St. Croix River mile 21.0–23.7, Stillwater, MN
42. Rivercade Fireworks
Sponsor: Rivercade
Date: July 25, 1994, 10:00 p.m. to 11:00 p.m.
Location: Missouri River mile 727.5–728.5, Sioux City, IA
43. Oakmont Yacht Club Regatta
Sponsor: Oakmont Yacht Club
Date: July 31 thru Aug 2, 1994; 31, 9:00 a.m. to 6:00 p.m.; Aug 1 & 2, 9:00 a.m. to 6:00 p.m.
Location: 11th Washington Avenue-Allegheny River mile 12.0–13.0, Oakmont, PA
44. Fireworks
Sponsor: Red Wing Jaycees
Date: Aug 1, 1994, 10:00 p.m. to 11:00 p.m.
Location: Upper Mississippi River mile 790.0–794.0, Red Wing, MN
45. Mississippi Annual Down River Adventure by Canoe (MADRAC)

Sponsor: Mississippi River Adventures
Date: Aug 1 thru Aug 8, 1994, 7:00 a.m. to 5:00 p.m. (each day)
Location: Bellevue, IA to Burlington, IA, Upper Mississippi River mile 309.0–455.5, Coralville, IA

46. Great River Tug
Sponsor: Great River Tug
Date: Aug 7, 1994, 10:00 a.m. to 5:00 p.m.; 8, 1:00 p.m. to 3:00 p.m.
Location: Upper Mississippi River mile 496.5–497.5, LeClaire, IA

47. Pittsburgh Three Rivers Regatta
Sponsor: Pittsburgh Three Rivers Regatta, Inc.
Date: Aug. 5–8, 1994; 5, 4:00 p.m. to 9:30 p.m.; 6, 12:00 p.m. to 10:30 p.m.; 7, 6:30 a.m. to 9:45 p.m.; 8, 6:30 a.m. to 9:00 p.m.
Location: One mile around point at confluence of Allegheny, Monongahela and Ohio River, Allegheny River mile 0.0–1.0 and 0.0–0.8 Ohio and Monongahela River, Pittsburgh, PA

48. Peace Float
Sponsor: City of St. Paul, MN
Date: Aug 8, 1994, 9:00 p.m. to 9:45 p.m.
Location: Harriet Island–Upper Mississippi River mile 839.6–839.7, St. Paul, MN

49. Rollin on the River
Sponsor: Rollin On The River
Date: Aug 13, 1994, 9:15 p.m. to 9:45 p.m.
Location: Victory Park/Upper Mississippi River mile 363.0–365.0, Keokuk, IA

50. Parkersburg Homecoming Festival
Sponsor: Parkersburg Homecoming Festival
Date: Aug 13–15, 1994, 6:00 p.m. to 10:00 p.m. (each day)
Location: Downtown Parkersburg-Ohio River & Little Kanawha River mile 184.0–185.0, Parkersburg, WV

51. Lansing Fish Days Canoe Race
Sponsor: Lansing Lions Club
Date: Aug 14, 1994, 10:00 a.m. to 1:30 p.m.
Location: Upper Mississippi River mile 662.5–664.0, Lansing, IA

52. Kentucky Derby
Sponsor: Salvation Army Boys and Girls Club
Date: Aug 14, 1994, 3:30 p.m. to 7:25 p.m.
Location: Ohio River mile 603.5–604.5, Louisville, KY

53. Fernbank Regatta
Sponsor: Ohio Valley Motor Boat Racing Association
Date: Aug 15, 1994, 12:00 p.m. to 6:00 p.m.
Location: Old Fernbank Dam Park Ohio River mile 482.0–483.2, Cincinnati, OH

54. 2nd Annual Tennessee River Drag Boat Race
Sponsor: Clifton Rotary Club
Date: Aug 15, 1994, 1:00 p.m. to 6:00 p.m.
Location: Tennessee River mile 155.0–158.0, (Kentucky Lake) Clifton, TN

55. Bud Light Championship Grand Prix
Sponsor: Concord Village Lions Club
Date: Aug 19–21, 1994, 8:00 a.m. to 7:15 p.m.
Location: Meramec River at George Winter Park mile 14.0–16.0, Fenton, MO

56. Monongahela River Festival
Sponsor: Monongahela River Festival
Date: Aug 20–22, 1994, 6:00 a.m. to 12:00 a.m. (each day)
Location: Aquatorium/Monongahela River mile 31.5–32.0, North Bank, Monongahela, PA

57. Beaver County River Regatta
Sponsor: Beaver County River Regatta, Inc.
Date: Aug 20–22, 1994, 9:00 a.m. to 5:00 p.m.
Location: Beaver River, mile 00.0–2.0, Beaver, PA

58. Great River Days Limited
Sponsor: Great River Days Limited
Date: Aug 21, 1994, 9:00 p.m. to 11:00 p.m.
Location: Illinois side of river on shore-Upper Mississippi River mile 451.0–451.1, Muscatine, IA

59. Muscatine Great River Days Regatta
Sponsor: Muscatine Great River Days
Date: Aug 21, 1994, 4:30 to 6:00 p.m.
Location: Upper Mississippi River mile 457.0–457.1, Muscatine, IA

60. Kittanning Rotary Regatta
Sponsor: Kittanning Rotary
Date: Aug 21 & 22, 1994, 9:00 a.m. to 8:00 p.m. (each day)
Location: Allegheny River, mile 44.0–45.0, Ford City, PA

61. 22nd Annual Charleston Sternwheel Regatta
Sponsor: Kanawha River Navy Charleston Festival Commission, Inc.
Date: Aug 27 thru Sept 5, 1994; 27 thru Sept 5, 7:00 p.m. to 11:00 p.m. (each day); 28, 8:00 p.m. to 10:00 p.m.; 29, 12:00 p.m. to 6:00 p.m.; 30, 12:00 p.m. to 3:00 p.m.; Sept 4, 2:00 p.m. to 6:00 p.m.; 5, 1:00 p.m. to 5:00 p.m.; 5, 9:30 p.m. to 10:00 p.m.
Location: Great Kanawha River mile 57.5–61.5

62. New Richmond Riverfest
Sponsor: New Richmond Riverfest
Date: Aug 29, 1994, 12:00 p.m. to 6:00 p.m.
Location: Ohio River mile 449.0–450.6, New Richmond, OH

63. Labor Day Bash
Sponsor: City of Maxsville/Maxsville-Mason Co. Tourism
Date: Sep 4, 1994, 1:00 p.m. to 5:00 p.m.
Location: Ohio River mile 407.0–409.0, Maxsville, KY

64. Double Iron Triathlon
Sponsor: Ray & Nancy Sheppart
Date: Sep 5, 1994, 7:00 a.m. to 11:00 a.m.
Location: Tennessee River mile 330.0–334.3, Huntsville, AL

65. Portsmouth Riverdays
Sponsor: Portsmouth Riverdays, Inc.
Date: Sep 5, 1994, 9:45 p.m. to 10:30 p.m.
Location: Ohio River mile 355.5–357.0, Portsmouth, OH

66. Budweiser/Jesse Brent Memorial Boat Racing Assoc.
Sponsor: Budweiser/Jesse Brent Memorial Boat Racing Assoc.
Date: Sep 5, 1994, 9:00 a.m. to 5:00 p.m.
Location: Lake Ferguson-Lower Mississippi River mile 552.0–537.0, Greensville, MS

67. Toyota/WEBN Fireworks
Sponsor: WEBN
Date: Sep 5, 1994, 6:30 p.m. to 9:35 p.m.
Location: Between U.S. 27, L & N—I–471 Bridges-Ohio River mile 469.7, Cincinnati, OH

68. The Great Missouri River Raft Regatta
Sponsor: The Great Missouri River Raft Regatta, Inc.
Date: Sep 5, 1994, 10:00 a.m. to 7:30 p.m.
Location: Missouri River mile 627.5–601.0, Omaha, NE

69. Portsmouth Riverdays Hydroplane Regatta
Sponsor: Portsmouth Riverdays Inc.
Date: Sep 5 & 6, 1994, 10:00 a.m. to 6:00 p.m. (each day)
Location: Ohio River mile 355.5–357.0, Portsmouth, OH

70. Aspinwall Centennial Air Show
Sponsor: Aspinwall Centennial Committee
Date: Sep 6, 1994, 2:00 p.m. to 2:20 p.m.
Location: Lock & Dam #2-Allegheny River mile 6.7–7.5, Aspinwall, PA

71. The Steamboat Days Festival
Sponsor: Steamboat Days Festival Committee
Date: Sep 10, 1994, 10:00 p.m. to 10:30 p.m.
Location: Ohio River mile 602.0–603.0, Jeffersonville, IN

72. Kentuckiana Powerboat Classic
Sponsor: Bridge The Gap, Inc.
Date: Sep 10–12, 1994; 10, 12:00 p.m. to 4:00 p.m.; 11, 11:00 a.m. to 7:00 p.m.; 12, 11:00 a.m. to 7:00 p.m.
Location: Between Clark Memorial

and Kennedy Bridges-Ohio River mile 604.5–603.0

73. Ohio River Sternwheel Festival
Sponsor: Ohio River Sternwheel Festival
Date: Sep 10–12, 1994; 10, 6:30 p.m. to 9:30 p.m.; 11, 6:30 p.m. to 9:30 p.m.; 12, 12:30 p.m. to 3:00 p.m.
Location: Ohio River mile 170.8–171.9, Marietta, OH

74. Riverfront Pops Concert
Sponsor: Quad City Symphony Orchestra Association
Date: Sep 11, 1994, 6:00 p.m. to 9:00 p.m.
Location: LeClaire Park-Upper Mississippi River mile 497.0, Davenport, IA

75. Cincinnati Reds—Kraft
Sponsor: The Cincinnati Reds
Date: Sep 18, 1994, 10:30 p.m. to 11:00 p.m.
Location: Riverfront Stadium-Ohio River mile 469.8–470.4, Cincinnati, OH

76. Ashland Area Jaycees Flote Bote Race
Sponsor: Ashland Area Jaycees
Date: Sep 18, 1994, 11:00 a.m. to 3:00 p.m.
Location: Ashland Boat Ramp to Ironton Boat Ramp-Ohio River mile 322.8–327.4, Ashland, KY

77. Dardenne Boat Races
Sponsor: Dardenne Slough Race Association
Date: Sep 18 & 19, 1994, 8:00 a.m. to 6:00 p.m. (each day)
Location: Upper Mississippi River mile 224.0–228.5, St. Louis, MO

78. Head of the Des Moines Rowing Regatta
Sponsor: Des Moines Rowing Club
Date: Sep 25, 1994, 8:00 a.m. to 6:00 p.m.
Location: Des Moines River–Botanical Center to Prospect, Des Moines, IA

79. Head of the Ohio
Sponsor: Pittsburgh Mercy Foundation
Date: Sep 25, 1994, 8:30 a.m. to 4:00 p.m.
Location: Allegheny River mile 0.0–3.30, Pittsburgh, PA

80. PSA Fall Race Series
Sponsor: Pickwick Sailing Association
Date: Oct 2 & 3, 1994, 11:00 a.m. to 6:00 p.m. (each day)
Location: Pickwick Lake-Tennessee River mile 209.0–218.0, Cordova, TN

81. Head of the Missisippi Regatta
Sponsor: Minneapolis Rowing Club
Date: Oct 9, 1994, 7:30 a.m. to 6:00 p.m.
Location: Upper Mississippi River mile 850.0–853.0, Minneapolis, MN

82. Big Bend Sternwheel Festival
Sponsor: Big Bend Sternwheel Assn.
Date: Oct 10, 1994, 2:00 p.m. to 5:00 p.m.
Location: Ohio River mile 249.0, Pomeroy, OH

83. 1994 Great River Race
Sponsor: Browns Creek Sailing Assn.
Date: Oct 9 & 10, 1994, 10:00 a.m. to 10:00 a.m. (next day)
Location: Guntersville Lake-Tennessee River mile 352.0–365.0, Huntsville, AL

84. Tall Stacks 1994
Sponsor: Tall Stacks 1994
Date: Oct. 12–17, 1994, 6:00 a.m. to 2:30 a.m. (each day)
Location: Ohio River mile 469.0–471.0, Cincinnati, OH

85. Fleur De Lis Regatta
Sponsor: City of Louisville Board of Aldermen
Date: Oct 16 & 17, 1994, 11:00 a.m. to 5:00 p.m. (each day)
Location: Ohio River mile 602.0–604.0, Louisville, KY

86. Fall Color Cruise
Sponsor: Alhambra Shrine
Date: Oct 24, 25, 31 & Nov 1, 1994, 8:00 a.m. to 12:00 a.m. (each day)
Location: Tennessee River mile 425.0–471.3, Chattanooga, TN

87. Head of the Tennessee Regatta
Sponsor: Knoxville Rowing Association
Date: Oct 30, 1994, 8:00 a.m. to 6:00 p.m.
Location: Fort Loudon Lake mile 641.5–645.0, Alcoa Highway Bridge to Sequoyah Park, Knoxville, TN

Dated: February 18, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 94–4765 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on March 14, 1994, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., suite 1100, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held on 9:30 a.m., Monday, March 14, 1994, at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., suite 1100, Washington, DC. The agenda for this meeting will include a:

- Status report on the advisory circular on the operation of unmanned airspace vehicles;
- Status report of the Mode S ground sensor evaluation study;
- Discussion on changes to Advisory Circular No. 90–66A, Recommended Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers;
- Discussion of new project assignments.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on February 18, 1994.

Reginald C. Matthews,

Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 94–4717 Filed 3–1–94; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Pipeline Safety Advisory Bulletin ADB–94–03 Railroad-Pipeline Emergency Plans Coordination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to gas and hazardous liquids pipeline operators concerning pipelines (1) in a common right-of-way with a railroad, (2) in a parallel right-of-way, or (3) that cross a railroad right-of-way.

SUMMARY: The purpose of this advisory is to inform pipeline operators and state pipeline safety program managers of a special notice issued by the Federal Railroad Administration (FRA) to railroad operators, and a safety recommendation issued by the National Transportation Board (NTSB).

Advisory

The presence of pipelines carrying natural gas or hazardous liquids on or near railroad rights-of-way creates a need for pipeline and railroad operators to coordinate emergency response planning and actions. Accordingly, the Federal Railroad Administration (FRA), in its manual "Hazardous Materials Emergency Response Plan Guidance Document for Railroads" (DOT/FRA/ORD–93/09, March 1993 revision), issued the following special notice on coordination between railroad and pipeline operators:

Special Notice

After the Association of American Railroads had completed their work on this guidelines document, it became evident that additional information should be included regarding pipelines that might be affected by a railroad accident. This "Special Notice" was developed by the Federal Railroad Administration and the Research and Special Programs Administration to respond to this need.

Pipelines in Railroad Rights-of-Way

Many railroad rights-of-way contain underground pipelines which carry hazardous materials.

These pipelines may be in a common right-of-way with the railroad, in a parallel right-of-way, or cross the railroad right-of-way. Pipelines may carry natural gas, crude oil, or petroleum products including highly volatile liquids such as propane. These materials are often under high pressure.

A railroad incident which results in derailment, heavy equipment operations in the right-of-way, or any other disturbance of the right-of-way, has the potential of damaging underground pipelines. Derailed cars and engines can directly impinge on a pipeline. Loads imposed on a pipeline from a derailed train or cleanup equipment, or striking the pipeline with digging equipment can result in immediate or future failure. Therefore, the presence of underground pipelines carrying hazardous material must always be considered in responding to a rail incident. Railroads must actively coordinate their emergency response activities with pipeline operators to assess possible damage due to the incident and to prevent damage during response and cleanup operations.

Railroad emergency response plans should include information on underground pipelines which could be damaged by a rail incident. This information should include location, materials carried, and emergency numbers for the pipeline operator. Natural gas pipelines are operated under Federal Regulations 49 CFR part 192; hazardous liquid pipelines are operated under 49 CFR part 195.

In accordance with a safety recommendation from NTSB, pipeline operators having pipelines on or adjacent to railroad rights-of-way should discuss this "Special Notice" with those railroad operators to whom it applies, and mutually undertake development of plans for handling emergencies involving both rail and pipeline systems. Discussion should include information on how a pipeline can be damaged, how denting, gouging and even surface damage that appears to be minor can lead to future failure, the serious consequences that can result from coating damage, and information to suggest possibilities for one-call systems to be a help on incidents involving both railroad and pipeline facilities. RSPA policy for Federal inspectors responding to a derailment that may impact a pipeline is to examine the condition of the right-of-way for indications of possible damage to the pipeline, including visual examination of the pipe and, if needed, excavation to expose it. Where warranted, RSPA policy also requires integrity testing (i.e., pigging with an instrumented internal inspection device or hydrostatic testing).

This notice will be discussed with state pipeline safety program managers at upcoming Federal/state pipeline safety meetings.

Background

National Transportation Safety Board (NTSB) Safety Recommendation P–90–25 (issued in conjunction with NTSB Accident Report number NTSB/RAR–90/02 on the San Bernardino, CA train derailment and petroleum pipeline rupture in May 1989) urges that operators of pipelines located on or adjacent to railroad rights-of-way coordinate with railroad operators in the development of plans for handling transportation emergencies that may impact both the rail and pipeline systems. In addition, P–90–25 recommends that the plan be discussed with affected state and local emergency response agencies.

In initial response to this recommendation, representatives of RSPA met with FRA representatives. The foregoing "Special Notice" was developed in the course of their discussions.

Issued in Washington, DC, on February 23, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety

[FR Doc. 94–4676 Filed 3–1–94; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INFORMATION AGENCY

AGENCY: United States Information Agency.

ACTION: Notice of Meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, March 15, 1994, from 9 am to approximately 3:30 pm, USIA headquarters, 301 4th Street, SW., room 840, Washington, DC. The meeting's agenda will include deliberation of whether to extend an emergency import restriction (imposed under the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et al*) on archaeological material from the Sipan Archaeological Region, Lambayeque Valley, northern Peru. Since discussion of this matter will involve information the premature disclosure of which would likely frustrate implementation of proposed actions and policies, this portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

The Committee's agenda will also include a discussion of whether there is a need for special ethical criteria for the Committee. This portion of the meeting will be open to the public and will take place beginning approximately 1:30 pm. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619–6612 by 5 pm on Friday, March 11, 1994. A list of public attendees will be posted at the security desk of USIA in order to facilitate access to the meeting room.

Dated: February 25, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 94–4749 Filed 3–1–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special Disabilities Programs for Fiscal Year 1993 has been issued. The Report summarizes activities of the Committee on matters relative to special disability programs, prosthetic rehabilitation technology, accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540, and
Department of Veterans Affairs, Prosthetic and Sensory Aids Service, Techworld Plaza—room 542, 801 I Street NW., Washington, DC 20001

Dated: February 8, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4666 Filed 3–1–94; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Thursday and Friday, April 14–15, 1994, in room 534 on both days, at 801 I Street, NW., Washington, DC 20001. The meeting will convene at 9 a.m. and adjourn at 5 p.m.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Sylvia Arrington, Department of Veterans Affairs Central Office (026B), 810 Vermont Avenue, NW., Washington, DC 20420, phone (202) 523–3885, prior to April 1, 1994.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: February 8, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4665 Filed 3–1–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 41
Wednesday, March 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, March 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4832 Filed 2–28–94; 10:42 am]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

REVISED TIME AND CHANGE IN MATTERS CONSIDERED: Meeting Held on February 11, 1994; announced in **Federal Register**, Vol. 59.

Because of extreme weather conditions on February 11, 1994 that caused the Federal Government to close and with airports either limiting travel or closing, the National Science Board began earlier than the announced time to expedite the meeting and enable members to obtain transportation home. The change in time was announced at the earliest practical time. The changes were as follows:

MATTERS CONSIDERED:

Friday, February 11, 1994

Closed Session (8:00 a.m.–8:51 a.m.)

—Minutes
—Budget
—Grants and Contracts

Open Session (8:51 a.m.–9:10 a.m.)

—Minutes
—Chairman's Report
—Reports from Committees

Dated: February 23, 1994.

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–4913 Filed 2–28–94; 2:18 pm]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 28, 1994.

A closed meeting will be held on Thursday, March 3, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 3, 1994, at 10 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Regulatory matters regarding financial institutions.
Opinions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed please contact: Brian Lane (202) 272–2400.

Dated: February 25, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4861 Filed 2–28–94; 1:21 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
March 2, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the Charlotte, NC, Class B Airspace Area; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AWA–6]

RIN 2120–AF02

Proposed Alteration of the Charlotte, NC, Class B Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the Charlotte, NC, Class B airspace area. This proposal would maintain the upper limit of the Charlotte, Class B airspace area at 10,000 feet mean sea level (MSL) and redefine several existing subareas to improve air traffic procedures. The primary goal of this Class B airspace area modification is to improve safety while providing the most efficient use of the terminal airspace. This action is intended to improve the flow of traffic and increase safety in the Charlotte/Douglas terminal area. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "Terminal Control Area," replacing it with the term "Class B airspace area."

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 92–AWA–6, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWA–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91–78 to part 91 of the Federal Aviation Regulations (35 FR 7782), which provided for the establishment of Terminal Control Areas (TCA's).

On February 3, 1987, the FAA published a final rule that established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to have an operable transponder in a TCA.

On June 21, 1988, the FAA published a final rule that requires aircraft to have Mode C equipment when operating below 10,000 feet MSL within 30 nautical miles of any designated TCA primary airport, except for those aircraft not originally certified with an engine driven electrical system or which have not subsequently been certified with such a system installed (53 FR 23356).

On October 14, 1988, the FAA published a final rule that revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

On December 17, 1991, the FAA published a final rule on airspace reclassification (56 FR 65655). As a result of this reclassification, that airspace formerly referred to as the Charlotte, NC, Terminal Control Area was reclassified to Charlotte, NC, Class B airspace area, effective September 16, 1993.

Background

The Class B airspace area (Terminal Control Area prior to September 16, 1993) program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the types of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a

method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace area afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace area designations. The FAA is proposing to take action to modify or implement additional Class B airspace area, to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

The North Carolina State Department of Transportation, Division of Aviation, coordinated the establishment and oversight of an ad hoc committee to develop a viable Class B airspace area design recommendation. Representation from airport users and local aviation groups, including those that participated in the original Terminal Control Area ad hoc committee, was solicited and attained. Local control tower facility representatives provided technical input to the ad hoc committee. The committee's comments and recommendations were forwarded to the FAA's Southern Region for evaluation, on February 19, 1992, for review and incorporated into the proposed Charlotte, Class B airspace area modification. As announced in the **Federal Register**, 57 FR 14745, April 22, 1992, pre-NPRM airspace meetings were held on June 17 and 18, 1992, at the North Carolina Air National Guard Dining Facility, to allow other local interested airspace users an opportunity to provide input to the proposed Charlotte, Class B airspace area modification. As a result of those informal airspace meetings, seven letters were received from aviation organizations, soaring organizations and private citizens. The ad hoc committee report, letters submitted to the FAA, and the minutes of both airspace meetings are contained in the FAA airspace docket. The context of these letters, airspace meeting comments/concerns, and the FAA's findings, are summarized as follows:

1. Some persons were disappointed because they were not selected to be members of the ad hoc committee. The ad hoc committee members were chosen by the committee chairman, Mr. J.L. Bondurant, under the oversight of the North Carolina State DOT, Aviation Division. All significant aviation interests were represented by the committee. Any persons who did not participate on the committee had the opportunity during this phase to express their views for the FAA's consideration.

2. The Aircraft Owners and Pilots Association (AOPA) requested that the Class B airspace area altitude be lowered from 10,000 feet MSL to 8,000 feet MSL. The FAA rejected that proposal. Lowering the ceiling of the Class B airspace area would encourage VFR flight over the Class B airspace area between 8,000 feet MSL and 10,000 feet MSL, especially east/west operations. Should VFR pilots begin operating in that area, they would encounter heavy arrival and departure traffic within 15 miles of the Charlotte/Douglas International Airport. Traffic routinely descends on the downwind leg of the landing pattern, from altitudes above 8,000 feet MSL. Additionally, VFR pilots would conflict with traffic on VOR Federal Airway V–37, a route commonly used for IFR operations into and out of the Class B airspace area.

3. One commenter stated that lowering the floor of the Class B airspace area from 6,000 feet MSL to 3,600 feet MSL within the 20 to 25 mile segment north and south of the airport would allow placement of aircraft at a dangerously low altitude a long way from the runway. Aircraft outside the existing Class B airspace area are at these altitudes because of the requirements necessary to conduct simultaneous instrument approaches to parallel runways within the Class B airspace area. Under those approach procedures, it is not unusual or dangerous to have aircraft at these altitudes and distances on the final approach course.

4. Members of the Soaring Association proposed that the Class B airspace area not be amended until actual air traffic growth warrants further change. They also questioned whether more airspace would increase the airport's ability to handle a higher number of aircraft. The decision to propose modifying the Class B airspace area was based on the current air traffic growth and operational requirements (See discussion of specific growth figures later in this document). At times, aircraft cross the boundary of the Class B airspace area during simultaneous instrument approaches to parallel runways. Since modification is being pursued at this time for operational reasons, it is desirable for the FAA to consider all factors, including future airport and air traffic growth forecast.

5. Several commenters noted that other existing Class B airspace areas have primary airports with runway configurations similar to Charlotte/Douglas International, and the Class B airspace area does not extend beyond 20 miles in any direction. The commenters stated that, because the runway configuration of the Charlotte/Douglas International Airport is similar to those other primary airports, the FAA's proposal, which includes Class B airspace area out to 30 miles, is inappropriate. The FAA's responsibility is to manage effectively the airspace surrounding the Charlotte area, while providing the requisite level of safety. Comparison with other airports is generally inappropriate, since no two airports are the same. Each Class B airspace area must be site specific; and to meet the operational needs of the Charlotte area, the Charlotte Class B airspace area is required to extend out to 30 nautical miles.

6. The Chester Soaring Association questioned the need to modify the airspace to accommodate simultaneous instrument approaches that occur less than 50 percent of the time. Regardless of the percentage of use, it is unacceptable to the FAA to have any aircraft routinely vectored beyond the boundaries of the Class B airspace area into airspace where aircraft separation is not provided to all aircraft.

7. The Chester Soaring Association also objected to lowering the Class B airspace area floor southwest and southeast of the airport from 8,000 feet MSL to 6,000 feet MSL. It also shared the opinion of the Soaring Society of America that lowering the floor of the Class B airspace area will render the Chester Soaring site unusable for competition. The proposed design was submitted by the ad hoc committee as a means of containing aircraft descending on base leg, within the Class B airspace area while conducting simultaneous instrument approaches. While the FAA understands the concerns of the soaring community, those concerns can be accommodated only to the extent that they do not compromise the FAA's ability to manage efficiently the Charlotte Class B airspace area and provide the optimum level of safety to the flying public.

All comments were considered in developing the proposal to modify the Class B airspace area. If these modifications are adopted, the revised Charlotte Class B airspace area chart will depict VFR flyways and specific access instructions to facilitate alternatives to flight within the Class B airspace area.

The Proposal

The FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Charlotte Class B airspace area, based on safety and operational needs. The FAA's responsibility is to manage efficiently the airspace surrounding the Charlotte area while providing the optimum level of safety to the flying public. The number of enplaned passengers at Charlotte/Douglas International Airport was 7,784,047 in 1991 and 8,425,447 in 1992, an increase of 8.2 percent. The airport operations were 440,956 in 1991 and 466,351 in 1992, more than a 5.8 percent increase in traffic.

Section 91.131 of part 91 of the Federal Aviation Regulations (14 CFR 91.131) prescribes rules for aircraft operating in airspace designated as a Class B airspace area. The Class B airspace area rule provides, in part, that prior to entering the Class B airspace area, any pilot at any airport within the Class B airspace area or flying through the Class B airspace area must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within

a Class B airspace area; and (3) hold at least a private pilot certificate or meet the requirements of § 61.95 of the Federal Aviation Regulations (14 CFR 61.95), if the aircraft is operated by a student pilot.

Any person operating an aircraft within a Class B airspace area must have the aircraft equipped with an operable two-way radio capable of communications with ATC on appropriate frequencies for that Class B airspace area, and the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (b)(1) of § 91.215 of the Federal Aviation Regulations. Unless otherwise authorized by ATC, all large, turbine-powered aircraft operating to or from a Class B airspace area-primary airport must be operated at or above the designated floors of the Class B airspace area while within the lateral limits of the Class B airspace area. The pilot of any aircraft departing from an airport located within the surface area of a Class B airspace area is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a Class B airspace area are required to comply with all ATC clearances and instructions. However, ATC may authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation. Ultralight vehicle operations and parachute jumps in a Class B airspace area may only be conducted under the terms of an ATC authorization. Definitions and operating requirements applicable to Class B airspace area may be found in 14 CFR 71.41, 91.1, 91.117, 91.131, 91.215, SFAR No. 62, and appendix D to part 91 of the FAR.

The standard configuration of a Class B airspace area consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. Generally, the vertical limits of the Class B airspace are 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be necessary contingent upon terrain, adjacent regulatory airspace, and other factors unique to the terminal area. The site specific airspace configuration proposed herein is the result of an extensive FAA study, conducted after obtaining public input through an ad hoc committee, informal airspace meetings and written comments. Copies of the report of this study are contained in the FAA docket and are available on request. The FAA has determined that the proposed alteration of airspace for the Charlotte Class B airspace area would be consistent with Class B airspace area objectives. The proposed configuration considers the present terminal area flight operations and terrain.

The following proposed modification of the Charlotte Class B airspace area reflects public comments and user group inputs:

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Charlotte VOR/DME.

This airspace is necessary to contain large turbine-powered aircraft within the Class B airspace area, while operating to and from the primary airport, and allow for ingress/egress to secondary airports.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL between the 7- and 11-mile radius of the Charlotte VOR/DME, excluding that airspace within a 2-mile radius of the Gastonia Airport.

This airspace is required for vectoring aircraft arriving at, and departing from, the primary airport.

Area C. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 25-mile radius of the Charlotte VOR/DME, including that airspace within a 2-mile radius of the Gastonia Airport, excluding that airspace within and below Areas D, E, and F hereinafter described.

This airspace configuration would provide an area to contain aircraft during climb and descent transition maneuvers between the terminal and enroute structures.

Area D. That airspace extending upward from 4,600 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius northwest of the Charlotte VOR/DME, bounded on the west by U.S. Highway 321, and bounded on the east by the Marshall Steam Plant Rail Spur; and that airspace between the 20- and 25-mile radius southwest of the Charlotte VOR/DME, bounded on the east by U.S. Highway 21, and bounded on the west by a line due south from the Charlotte VOR/DME 218° radial 20-mile fix to the intersection of the 25-mile arc.

This airspace is required to provide an area to contain aircraft using Charlotte/Douglas International Airport during profile descent. The proposed floor would allow sufficient airspace for VFR operations underneath the Class B airspace area.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 35°36′30″ N., long. 80°57′45″ W., extending counterclockwise on the 25-mile arc of the Charlotte VOR/DME to U.S. Highway 321, thence south on U.S. Highway 321 until intercepting the 20-mile arc southwest of the Charlotte VOR/DME, thence counterclockwise on the 20-mile arc to the 218° radial of the Charlotte VOR/DME, thence due south to the intersection of the 25-mile arc of the Charlotte VOR/DME, thence due west until intercepting the 218° radial of the Charlotte VOR/DME, thence southwest on the 218° radial to the 30-mile fix, thence clockwise on the 30-mile arc to the 328° radial of the Charlotte VOR/DME, thence direct to the point of beginning, excluding that airspace between the 20- and 30-mile radius of the Charlotte VOR/DME between the 242° radial of the Charlotte VOR/DME clockwise to the 293° radial; and that airspace beginning at lat. 35°36′30″ N., long. 80°57′45″ W., extending clockwise on the 25-mile arc of the Charlotte VOR/DME to long. 80°46′00″ W., thence due south to the 20-mile arc northeast of the Charlotte VOR/DME, thence clockwise on the 20-mile arc to the 081° radial of the Charlotte VOR/DME, thence west along the 081° radial to the 11-mile fix from the Charlotte VOR/DME, thence direct to the Charlotte VOR/DME 147° radial 25-mile fix, thence clockwise on the 25-mile arc to the intersection of U.S. Highway 21, thence direct to the Charlotte VOR/DME 147° radial 30-mile fix, thence counterclockwise on the 30-mile arc to the Charlotte VOR/DME 025° radial, thence direct to the point of beginning, excluding that airspace east of U.S. Highway 601 between the Charlotte VOR/DME 062° radial clockwise to the 120° radial.

This airspace is required to provide an area to contain aircraft descending into the Charlotte/Douglas International Airport. The proposed boundaries would allow sufficient airspace for VFR aircraft operations outside the Class B airspace area.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte VOR/DME from the 242° radial clockwise to the 293° radial of the Charlotte VOR/DME; and that airspace between the 20- and 25-mile radius from the Charlotte VOR/DME between the 062° radial of the Charlotte VOR/DME clockwise to the 120° radial and east of U.S. Highway 601.

This airspace is necessary to provide descent profile for aircraft en route to Charlotte/Douglas International Airport and to allow sufficient airspace to VFR operations at area airports.

The preceding summary of the proposed alteration to the Class B airspace area configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Charlotte/Douglas International Airport. ATC would provide control and separation service for all flights within the proposed airspace boundaries. Furthermore, ATC clearance is required for aircraft operations within that airspace. Modifying this Class B airspace area would greatly enhance the safety of flight within the congested airspace overlying the Charlotte metropolitan area by facilitating the separation of controlled and uncontrolled flight operations.

Class B airspace area designations are published in Paragraph 3000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, and is incorporated by reference in 14 CFR 71.1 (58 FR 36298), July 6, 1993. The Class B airspace area designation listed in this document would be published subsequently in the order.

Regulatory Evaluation

In keeping with the "principles of regulation" contained in Executive Order 12866, this section summarizes the regulatory evaluation prepared by the FAA on the proposed amendment to 14 CFR part 71—to alter the Charlotte, Class B airspace area, Charlotte, NC. The full regulatory evaluation, contained in the docket, assesses and quantifies, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, state, and local governments. Additionally, the FAA has determined that this proposed rule is not a "significant regulatory action".

Operational requirements mandate that the Class B airspace area shelves be lowered between 20 and 25 nautical miles of the Charlotte/Douglas International Airport (CLT) to more easily accommodate large turbine-powered aircraft operating in the Class B airspace area. This situation is particularly critical when conducting simultaneous ILS operations due to the present lack of maneuvering airspace for aircraft on final approach to CLT or taking off from CLT.

The proposed modifications of the Charlotte Class B airspace area are the result of a staff study conducted by the local FAA authority. The staff's goal was to determine a better Class B airspace area design that would provide greater safety for aircraft operating to and from CLT. The airspace design reflects user feedback and information obtained during Informal Airspace Meetings held June 17 and 18, 1992 at the North Carolina Air National Guard Facility at Charlotte Douglas International Airport.

The proposed modifications were chosen after reviewing three options. The FAA does not recommend the first option, to retain the existing Class B airspace area design, because the area boundaries do not conform to current guidelines for regulated airspace at busier terminal facilities (FAA Order 7400.2), nor do these boundaries provide the necessary Class B airspace area to handle levels of traffic experienced today and projected for the future. The second option, which is also not recommended, would modify the existing Class B airspace area to the standard configuration as contained in FAA Order 7400.2. This option does not have any visual references and the amount of airspace involved would be greater than needed. The FAA chose the third option, which would establish a site specific Class B airspace area configuration based on the operational needs of the Air Traffic facility and input from the Charlotte Class B airspace area ad hoc committee. This option provides necessary Class B airspace area that would contain Charlotte present and future traffic flows. It would also minimize the impact on airspace users and would also enhance the visual means for boundary definition. Finally, it would provide airspace below the floor of the Class B airspace area for VFR operators desiring to remain clear of the Class B airspace area. It would, however, require site-specific charting, and a non-standard design would require heightened area awareness by users. It would also establish controlled airspace where it currently does not exist thereby impacting some users.

Cost Analysis

The proposed rule would impose little or no administrative costs to the FAA. Additional personnel and equipment are not needed to implement this rule. The FAA's controller workforce would be trained in the aspects and procedures of the proposed Class B airspace area during regularly scheduled briefing sessions at no additional costs to the FAA.

The Charlotte Sectional Chart and the Charlotte Terminal Area Chart would have to be revised, but the FAA would make these changes when those charts are routinely updated. These changes are considered part of the ordinary cost of chart revision, and therefore, the FAA would incur no additional costs. Because pilots normally use current charts, they should not incur any additional charting costs either; as the charts become obsolete, pilots should replace them with charts that depict the modified Class B airspace area.

The proposed rule would impose little costs to VFR users for several reasons. The FAA expects that Lincolnton, Jaars/Townsend, and Lake Norman airports would be the only public airports affected by the lower floor. North of Charlotte, the Class B airspace area floor would change from 6,000 feet to 4,600 feet (over Lincolnton) and would create a 6,000 foot floor over Lake Norman. South of Charlotte, the Jaars/Townsend airport would be affected by the floor of the Class B airspace area changing from 6,000 feet to 3,600 feet. Those pilots who currently use this airspace and wish to remain free of Class B airspace area control would incur circumnavigational costs. However, the added time and cost to circumnavigate is expected to be minimal. Those pilots who continue to operate in this airspace by participating in the Charlotte, Class B airspace area would be inconvenienced.

VFR operators who do not routinely fly inside the Charlotte, Class B airspace area may be potentially inconvenienced by having to participate in the Class B airspace area, (i.e., contact ATC and follow operational rules), if they operate in the areas of proposed Class B airspace area expansion. The FAA believes that most VFR operators would not be significantly inconvenienced because they are already participating in the Class B airspace area, either by voluntarily contacting ATC when in areas adjacent to or under the Class B airspace area by monitoring ATC frequencies.

Those aircraft operators who wish to avoid the Class B airspace area could face circumnavigational costs in those areas where the floor would be lowered north and south of the airport. However, the FAA believes that the costs would be negligible. Nevertheless, the FAA welcomes comments from those individuals that could potentially be affected by increased circumnavigational costs.

Finally, sailplane pilots, such as those representing the Chester Soaring Association, could face increased costs by having to relocate to a new airport should they not be able to fly at Chester In general, these users could incur costs if the FAA determines that a desired level of safety to the flying public could not be maintained if sailplanes are permitted in the proposed Class B airspace area. Sailplane pilots who use the Chester, SC airport may have to drive longer distances and incur added transportation costs before they can assemble and fly their gliders. In addition, the local economies of Chester

and Charlotte may be adversely affected by those pilots and families who attend major national-level contests at Chester.

However, under this proposed rule, the FAA would try to accommodate users of sailplanes even though soaring activities are somewhat random and unpredictable (as they are dependent upon thermals and other weather conditions). These users would be accommodated through Letter of Agreement procedures. These procedures should allow all parties use of the airspace provided that an optimum level of safety to the flying public is maintained.

Benefit Analysis

The proposed rule is expected to enhance safety by reducing the risk of midair collisions. The risk of a midair collision would be reduced by increasing the controlled airspace around Charlotte, North Carolina.

Due to the proactive nature of the proposed changes, the potential safety benefits are difficult to quantify in monetary terms. Aircraft operations within the present configuration of the Charlotte, Class B airspace area have increased since the Class B airspace area was created and the airspace has become more complex (a greater mix of large turbine-powered air carrier aircraft with other aircraft of varying performance characteristics). In addition, future operations are projected to increase.

Fortunately, there have been no midair collisions within the Charlotte, Class B airspace area. Without the experience of an actual midair collision, estimating the probability of a potential occurrence in the absence of a proposed rule cannot be reliably determined. Due to the projected increase in traffic (see earlier discussion), there is a potential safety problem, although it is not yet critical. Without the proposed rule, aviation safety in the Charlotte area could be reduce in the future, which could lead to catastrophic consequences.

Comparison of Costs and Benefits

The precise reduction in the risk of a midair collision avoided by the proposed rule and its monetary values cannot be estimated at the present time. However, system efficiency would be improved and safety enhanced. In view of the negligible costs of the proposed rule, coupled with benefits in the form of enhanced safety to all aircraft operators, the FAA believes the proposed rule would be cost-beneficial.

Conclusion

The precise reduction in the risk of a midair collision attributable to the proposed rule and the associated monetary values cannot be estimated at the present time. However, system efficiency would be improved and safety would be enhanced. In view of the negligible costs of the proposed rule, coupled with non-quantifiable benefits in the form of enhanced safety to all aircraft operators, the FAA believes the proposed rule would be cost-beneficial. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination, has been placed in the docket.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that the proposed rule could potentially affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. These unscheduled air taxi operators would be affected only when they were not operating under VFR. These operators fly regularly into airports with established radar approach control services. The FAA believes that unscheduled air taxi operators are already equipped to fly IFR. Because they can fly IFR instead of VFR, the proposed rule would not have a significant economic impact on any of them.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation (ICAO), it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any differences.

International Trade Impact Assessment

This proposed rule is not anticipated to affect the import of foreign products or services into the United States or the export of U.S. products or services to foreign countries.

Federalism Implications

This proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 71

Airspace, Federal Aviation Administration, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A,

Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASO NC B Charlotte, NC [Revised]
Charlotte/Douglas International Airport
(Primary Airport)
(lat. 35°12′52″ N., long. 80°56′37″ W.).
Charlotte/Douglas VOR/DME
(lat. 35°11′25″ N., long. 80°57′06″ W.).
Gastonia Airport
(lat. 35°12′00″ N., long. 81°09′00″ W.).

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Charlotte VOR/DME.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL between the 7- and 11-mile radius of the Charlotte VOR/DME, excluding that airspace within a 2-mile radius of the Gastonia Airport.

Area C. That airspace extending upward from 3,600 feet MSL to the including 10,000 feet MSL between the 11- and 25-mile radius of the Charlotte VOR/DME, including that airspace within a 2-mile radius of the Gastonia Airport, excluding that airspace within and below Areas D, E, and F hereinafter described.

Area D. That airspace extending upward from 4,600 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius northwest of the Charlotte VOR/DME, bounded on the west by U.S. Highway 321, and bounded on the east by the Marshall Steam Plant Rail Spur; and that airspace between the 20- and 25-mile radius southwest of the Charlotte VOR/DME, bounded on the east by U.S. Highway 21, and bounded on the west by a line due south from the Charlotte VOR/DME 218° radial 20-mile fix to the intersection of the 25-mile arc.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 35°36′30″ N., long. 80°57′45″ W., extending counterclockwise on the 25-mile arc of the Charlotte VOR/DME to U.S. Highway 321, thence south on U.S. Highway 321 until intercepting the 20-mile arc southwest of the Charlotte VOR/DME, thence counterclockwise on the 20-mile arc to the 218° radial of the Charlotte VOR/DME, thence due south to the intersection of the 25-mile arc of the Charlotte VOR/DME, thence due west until intercepting the 218° radial of the Charlotte VOR/DME, thence southwest on the 218° radial to the 30-mile fix, thence clockwise on the 30-mile arc to the 328° radial of the Charlotte VOR/DME, thence direct to the point of beginning, excluding that airspace between the 20- and 30-mile radius of the Charlotte VOR/DME between the 242° radial of the Charlotte VOR/DME clockwise to the 293° radial; and that airspace beginning at lat. 35°36′30″ N., long 80°57′45″ W., extending clockwise on the 25-mile arc of the Charlotte VOR/DME to long. 80°46′00″ W., thence due south to the 20-mile arc northeast of the Charlotte VOR/DME, thence clockwise on the 20-mile arc to the 081° radial of the Charlot VOR/DME, thence west along the 081° radial to the 11-mile fix from the Charlotte VOR/DME, thence direct to the Charlotte VOR/DME 147° radial 25-mile fix, thence clockwise on the 25-mile arc to the intersection of U.S. Highway 21, thence direct to the Charlotte VOR/DME 147° radial 30-mile fix, thence counterclockwise on the 30-mile arc to the Charlotte VOR/DME 025° radial, thence direct to the point of beginning, excluding that airspace east of U.S. Highway 601 between the Charlotte VOR/DME 062° radial clockwise to the 120° radial.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte VOR/DME from the 242° radial clockwise to the 293° radial of the Charlotte VOR/DME; and that airspace between the 20- and 25-mile radius from the Charlotte VOR/DME between the 062° radial of the Charlotte VOR/DME clockwise to the 120° radial and east of U.S. Highway 601.

* * * * *

Issued in Washington, DC, February 17, 1994.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 94–4714 Filed 3–1–94; 8:45 am]
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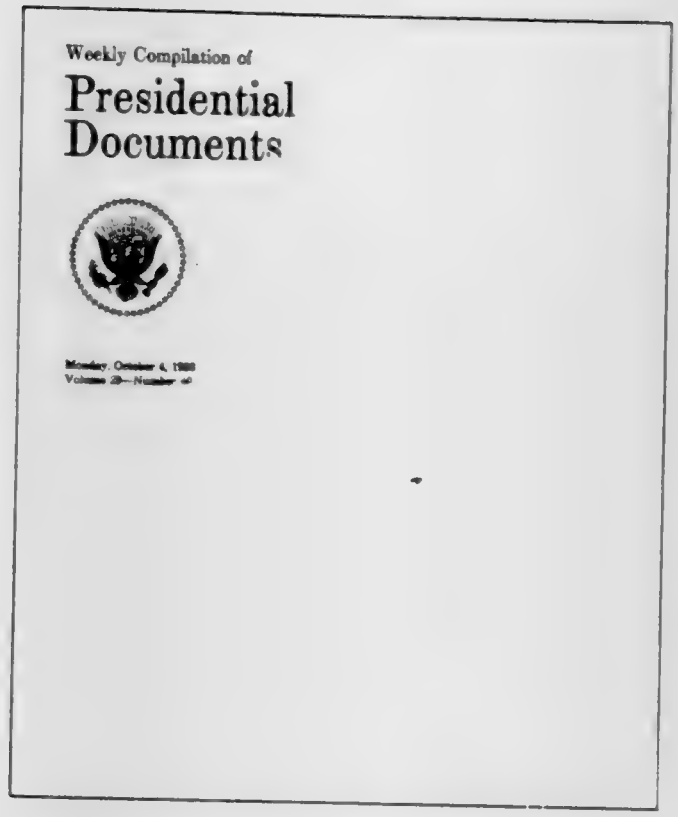

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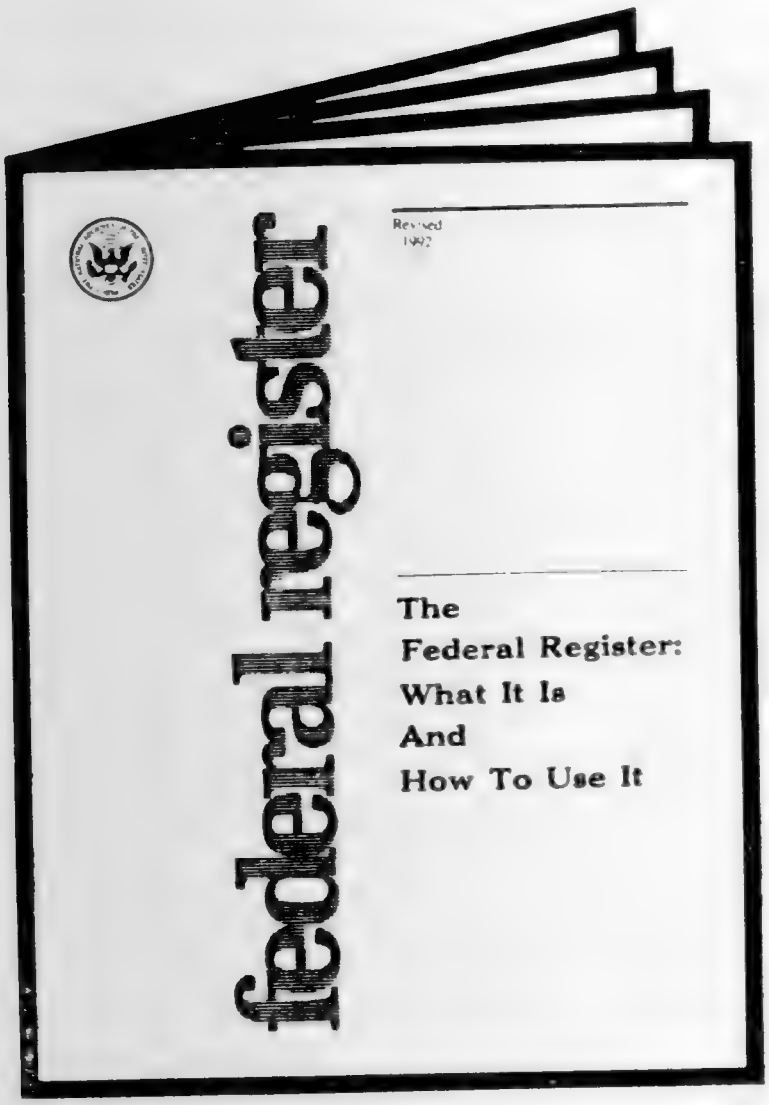

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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Presidential Determination No. 94–15 of February 18, 1994

Eligibility of Eritrea To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of Eritrea will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 18, 1994.

Billing code 3195–01–M

Justification for Presidential Determination of Eligibility of Eritrea To Be Furnished Military Assistance Under the Foreign Assistance Act of 1961, and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The United States has a significant security interest in the stability of newly founded Eritrea, which borders Sudan and occupies a strategic position on the Red Sea. Eritrea's security directly affects the stability of its neighbor and former ruler, Ethiopia. Moreover, Israel, Egypt, and Saudi Arabia all benefit from Eritrean stability in a region threatened by Islamic fundamentalism.

Eritrea gained its independence after a thirty year war against Ethiopian central authority and a United Nations-monitored referendum in April, 1993. Among the devastating consequences of this war is the remainder of over 500,000 anti-personnel land mines throughout the country. These land mines seriously hinder the government's efforts to reconstruct Eritrean society and the economy.

One of the Department's newly developed demining programs centers on the dispatch of U.S. military Special Operations Forces personnel to teach local instructors demining techniques. We have selected Eritrea to be the pilot country for this program because of the urgent need and a combination of favorable factors.

- Eritrea currently is politically stable. We believe that Eritrea will continue to enjoy political stability for the foreseeable future.

- The conditions are more favorable for detecting mines in the open terrain of this semi-arid country than in more forested countries.

- Eritrea has an educated work force. In addition, many Eritreans speak either Italian or English, which will facilitate the work of our Special Forces trainers.

- All sectors of Eritrean society, especially the Eritrean Government, recognize the gravity of the land mine situation. They are anxious to give us their complete cooperation for the demining program.

- Currently, no other organization or country is contributing to Eritrean demining. This program will garner the United States considerable good will, and will help establish a productive and cooperative security assistance relationship with Eritrea.

Providing defense articles and services to Eritrea pursuant to Foreign Assistance Act and Arms Export Control Act authorities will further our long-term goals of promoting stability both in Eritrea and in the strategic Horn of Africa, thereby strengthening the security of the United States and promoting world peace.

[FR Doc. 94–5034
Filed 3–1–94; 2:20 pm]
Billing code 4710–10–M

Presidential Documents

Proclamation 6651 of March 1, 1994

National Poison Prevention Week, 1994

By the President of the United States of America

A Proclamation

Keeping families healthy is an integral part of strengthening our Nation's future. It is the cornerstone in America's efforts to provide security for every one of our citizens. Yet, in this great Nation of wisdom and unparalleled potential, the American Association of Poison Control Centers estimates that almost one million American children are exposed to potentially poisonous medicines and household chemicals each year. This single statistic is appalling, but it is also correctable, for we are certain in the knowledge that accidental poisonings are preventable. This week, we recognize that it is one of our duties as a society to do everything in our power to prevent injuries and deaths caused by poisoning.

As the United States observes the 33rd National Poison Prevention Week, we are able to celebrate some small, but significant, triumphs. That the number of childhood deaths from poisoning annually has declined from 450 to 49 over the past thirty years is a testament to the dedicated efforts of countless citizens actively involved with poison control programs across the country. National requirements of child-resistant packaging for medicines have helped to limit dangerous exposure. Poison control centers, pharmacies, and public health centers have worked together to distribute vital information regarding poison prevention to our families and communities, and these measures have, indeed, saved lives.

If we are to end the tragedy of childhood poisonings once and for all, we must continually remind ourselves to take the basic steps necessary to prevent this occurrence in our own homes. Safety measures, such as using child-resistant packaging correctly and keeping potentially harmful substances out of children's reach, can mean the difference between health and injury, between life and death. During this week, we must seek to educate ourselves and others about all the ways we can work to avoid this kind of senseless loss. America's parents must take primary responsibility for this effort. Our Nation's children deserve no less.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 20, 1994, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5072
Filed 3–1–94; 4:17 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93-905-4-FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Gift Fruit Exemption Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule that relaxed the handling requirements which permit handlers to increase shipments of gift packages of Florida citrus fruit to individuals and distributors, under specific conditions. This rule will enable handlers to ship greater quantities of gift fruit to meet market needs.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee) met November 16, 1993, and unanimously recommended this action. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Section 905.140 (7 CFR 905.140) provides the terms and conditions under which handlers can ship fruit in gift packages exempt from handling regulations in effect under §§ 905.52 and 905.53 of the order. Certain gift fruit packages are exempted from such regulations, since they contain fruit of mixed varieties and non-fruit items, and thus, would not meet the grade and size requirements of the handling regulations. Prior to the effective date of the interim rule (58 FR 65538, December 15, 1993), handlers could only ship one or two gift packages per day exempt from such regulations, depending on the circumstances, to individuals and distributors. The interim final rule increased the number of gift packages of fruit which handlers can ship under this exemption provision, enabling handlers to ship an unlimited number of packages of gift fruit to individuals and distributors, provided certain safeguards are met by the handler of the fruit. These safeguards specify that each gift package must be individually addressed to the person using the fruit, and that gift packages shipped to any gift fruit distributor must either be individually addressed or marked "not for resale".

The interim final rule was effective on December 9, 1993, and published in the **Federal Register** (58 FR 65538, December 15, 1993). The interim final rule provided a 30-day comment period ending January 14, 1994, and no comments were received.

This final rule reflects the committee's and the Department's appraisal of the need to relax the

exemption provisions for gift fruit shipments as specified. Such relaxation will enable handlers to ship more packages of gift fruit to meet consumer needs, exempt from grade and size requirements issued under the order. This action is in the interest of producers, handlers, distributors, and consumers, and is expected to increase returns to Florida citrus fruit growers. The Department's view is that this action will have a beneficial impact on Florida citrus fruit producers and handlers, since it will permit the industry to make additional gift fruit available to meet consumer needs.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxation as set forth below will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 part 905, which was published in the **Federal Register** at 58 FR 65538, December 15, 1993, is adopted as a final rule without change.

Dated: February 24, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–4819 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 907 and 908

[FV93–907–4FIR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Form 8 and Form 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing reporting requirements prescribed under the California-Arizona navel and Valencia orange marketing orders. The marketing orders regulate the handling of navel and Valencia oranges grown in Arizona and designated parts of California and are administered locally by the Navel and Valencia Orange Administrative Committees (committees). This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes reduce the burden of information collection requirements currently provided for under the marketing orders.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 140 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 3,750 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California-Arizona navel and Valencia oranges may be classified as small entities.

This rule finalizes two changes in the reporting requirements prescribed under the California-Arizona orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes were unanimously recommended by the committees.

An interim final rule on this issue was published in the **Federal Register** (59 FR 1268, January 10, 1994), with an effective date of January 10, 1994. That rule suspended §§ 907.58, 907.71, 908.58, and 908.71 of the orders, and §§ 907.112, 907.141, 908.112, and

908.141 of the rules and regulations in effect under the orders. That rule provided a 30-day comment period which ended February 9, 1994. No comments were received.

Sections 907.58 and 908.58 of the navel and Valencia orange marketing orders specify that, for the handling of oranges other than by rail car (primarily truck shipments), handlers issue to the consignee an assignment of allotment certificate covering each quantity of oranges so handled. Sections 907.112 and 908.112 of the orders' rules and regulations require handlers to submit such information on Form 8. Handlers are also required to segregate the information on Form 8 by size of oranges shipped and destination (i.e., U.S. and Alaska or Canada).

Since the inception of the orders, the committees have utilized Form 8 primarily for tracking and verifying truck shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended (58 FR 53,114; October 14, 1993), the committees believe that continued submission of Form 8 creates an additional burden on handlers that is unnecessary.

According to the committees, many handlers have long questioned the value of Form 8 (commonly referred to in the industry as "the daily truck ticket") during periods of no volume regulation. Shipment information from Form 8 is transferred to Form 4 (Weekly Report). Handlers maintain their own manifest records of these shipments and, without weekly volume regulation, Form 4 provides similar data with the exception of number of cartons shipped by size. The committees plan on requesting size information from handlers as needed on a voluntary basis and anticipate revising the weekly Form 4 at a later time to provide for the collection of size information.

Thus, the committees believe that continued submission of Form 8, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.58 and 908.58 of the orders and §§ 907.112 and 908.112 of the orders' rules and regulations so that Form 8 will be discontinued.

The second change that the committees recommended concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Currently, §§ 907.71 and 908.71 of the orange orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada. Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit this information for rail car shipments on Form 3.

The information collected on Form 3 is similar to the information collected on Form 8 described earlier, but pertains to rail car shipments rather than truck shipments. Again, this information has historically been utilized primarily for tracking and verifying shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended, the committees believe that continued submission of Form 3, like Form 8, creates an additional burden on handlers that is unnecessary. Handlers are also required to submit similar information on rail car shipments on the weekly Form 4. As with size information pertaining to truck shipments, the committees plan on requesting size information from handlers for rail car shipments on a voluntary basis until the weekly Form 4 is appropriately revised.

Like Form 8, the committees believe that continued submission of Form 3, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.71 and 908.71 of the orders and §§ 907.141 and 908.141 of the orders' rules and regulations so that Form 3 will be discontinued.

Based on these considerations, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges. This rule reduces the reporting burden on approximately 265 handlers of navel and Valencia oranges who have been completing Form 8, taking about .40 hour to complete each report. This rule also reduces the reporting burden on about 80 orange handlers who ship by rail at some point during a season and utilize Form 3, taking about 0.20 hours to complete each report.

After consideration of all relevant material presented, the information and recommendations submitted by the committees, and other information, it is found that the provisions detailed in the interim final rule, at this time, do not tend to effectuate the declared policy of the Act. Therefore, this rule finalizes the interim final rule, without change, as published in the **Federal Register** (59 FR 1268, January 10, 1994).

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR part 907, which was published at 59 FR 1268 on January 10, 1994, is adopted as a final rule without change.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

3. Accordingly, the interim final rule amending 7 CFR part 908, which was published at 59 FR 1268 on January 10, 1994, is adopted as a final rule without change.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4821 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 917

[Docket No. FV92–917–1]

Fresh Pears and Peaches Grown in California; Suspension of the Pear Provisions and Certain Nomination Provisions, and Referendum Order Under Marketing Order No. 917

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension and referendum order.

SUMMARY: This rule suspends all the provisions applicable to pears and certain nomination provisions under Federal Marketing Order (M.O.) No. 917 This rule also directs that a referendum be conducted among eligible pear producers in California to determine whether they favor continuance of the pear provisions under M.O. 917. This

suspension is being implemented because the California Bartlett pear industry is now using a California State pear program, and is no longer using the pear provisions under M.O. 917.

EFFECTIVE DATE: The suspension becomes effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5127, or Terry Vawter, California Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of § 917.42 (b) of Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears and peaches grown in California, hereinafter referred to as the order.

The order authorizes minimum grade, maturity, quality, and size requirements; container size, pack, and marking requirements; and reporting and special purpose shipment requirements. The order also provides for the establishment of production and marketing research, market development, and paid advertising.

The referendum will be conducted in accordance with the procedure for the conduct of referenda to determine whether continuation of the order's pear provisions is favored by producers, who during the representative period were engaged, in the State of California, in the production of pears covered by the order. The procedure applicable to the referenda is the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*). The representative production period for the conduct of such referendum is hereby determined to be June 1, 1994, through November 30, 1994. The referendum will be conducted within the period beginning December 1, 1994, and ending February 15, 1995.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 California pear handlers subject to regulation under the order, and about 300 producers of pears in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

This rule indefinitely suspends all of the pear provisions in the order, along with the rules and regulations issued thereunder, including: (1) Provisions pertaining to the administration of the order, including committee nominations and selections; (2) the establishment of grade, size, quality, maturity, pack and container, and inspection requirements; (3) the issuance of administrative rules and regulations related to exemptions and special purpose shipments; and (4) information collection and reporting requirements. The pear provisions being suspended are in §§ 917.4, 917.15, 917.20, 917.21, 917.24, 917.25, 917.26, 917.28, 917.29, 917.34, and 917.35 of the order; and in §§ 917.100, 917.121, 917.143, 917.149, 917.176, 917.179, and 917.461 of the rules and regulations issued thereunder.

This rule also suspends certain provisions in § 917.18 pertaining to nomination of Control Committee members, to enable the Control Committee to continue to function with only peach members upon suspension of the order's pear provisions. Since the pear provisions are being suspended, there is no need for the pear industry members to serve on the Control Committee.

The Pear Commodity Committee (committee) unanimously recommended suspension of most of the pear provisions under the order, because such provisions are no longer needed. The California Bartlett pear industry is now functioning under the California Pear Marketing Program (State pear program), and is no longer using the pear order provisions. The State pear program, developed by the California Bartlett pear industry and the California Department of Food and Agriculture, is similar to the Federal pear program.

The committee recommended suspension, not termination, of the order's pear provisions to provide the California Bartlett pear industry with an opportunity to review operations under the State pear program for an indefinite period of time. The committee wants to maintain the option of reactivating the Federal pear program, if the State pear program does not operate satisfactorily. The California pear industry will have the opportunity to examine the effectiveness of the State pear program until the end of the 1994 marketing season. At that time, the Department will conduct a referendum of eligible pear producers to determine whether they favor continuance of the Federal pear program.

The Secretary of Agriculture (Secretary) has the authority to conduct a continuance referendum to determine whether producers affected by a marketing order favor continuance of their order. The Secretary has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs.

The Secretary would consider termination of the order's pear provisions if less than two-thirds of the pear producers voting in the referendum and producers of less than two-thirds of the volume of pears represented in the

referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary would consider the results of the continuance referendum, other relevant information concerning the operation of the order's pear provisions, and the relative benefits and disadvantages to producers, handlers, and consumers. Through such analysis, the Secretary would determine whether continued existence of the order's pear provisions would tend to effectuate the declared policy of the Act.

In any event section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers favor termination, and that majority produced for market more than 50 percent of the commodity covered by the order.

In the event the Secretary terminates the order's pear provisions, the Control Committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of any and all the funds and property in its possession, or under its control, including claims for any funds unpaid or property not delivered.

Upon termination, the said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

Any person to whom funds, property, or claims have been transferred or delivered, shall be subject to the same obligation imposed upon the committee and upon the trustees.

After a statement of total claims and debts, any remaining funds held in the reserve account will be returned, on a pro rata basis, to those pear handlers who paid assessments under the order during the 1991–92 fiscal period.

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 et seq.) to determine whether continuance of the order's pear provisions regulating the handling of pears is approved or favored by producers who during the representative period were engaged in the production of such pears grown in California.

The referendum agents of the Secretary to conduct the referendum are hereby designated as Kurt J. Kimmel and Terry Vawter, California Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: 209–487–5901.

Ballots will be mailed to all pear producers of record. Ballots may also be obtained at County Extension Service Offices, or by contacting the California Marketing Field Office. Copies of the order may also be obtained by contacting the California Marketing Field Office.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), information and collection requirements for pears under the order have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581–0080). The ballot material to be used in the referendum herein ordered has been submitted to and approved by OMB, and it has been estimated that it will take an average of 30 minutes to read and complete the ballot for each of the approximately 300 producers who elect to participate in the voluntary referendum balloting.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the committee's recommendations, and other available information, it is found and determined that the pear provisions in the order and the rules and regulations issued thereunder, along with certain provisions in § 917.18 pertaining to the nomination of members to the Control Committee, do not tend to effectuate the declared policy of the Act at this time, and that such provisions should be suspended. It is further found that suspending all the rules and regulations pertaining to pears issued under the order will tend to effectuate the declared policy of the Act

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

1. The authority citation for 7 CFR part 917 is revised to read as follows:

Authority: 7 U.S.C. 601–674

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.4 [Suspended in part]

2. In § 917.4 the words ", and (b) all varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau" are suspended.

§ 917.15 [Suspended in part]

3. In § 917.15 the words "§ 917.21 through" are suspended.

§ 917.18 [Suspended in part]

4. In § 917.18, paragraph (a) the words "The number of remaining members which each respective commodity committee shall be entitled to nominate shall be based upon the proportion that the previous three fiscal period's shipments of the respective fruit is of the total shipments of all fruit to which this part is applicable during such periods. In the event provisions of this part are terminated as to any one fruit, nominations of members to the Control Committee shall be composed of representatives of the remaining two fruits. The apportionment shall be determined as aforesaid. In the event provisions of this part are terminated as to any two fruits, the members of the commodity committee of the remaining fruit shall have all the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated." are suspended.

§ 917.20 [Suspended in part]

5. In § 917.20 the words "a Pear Commodity Committee and" are suspended.

§ 917.21 [Suspended]

6. Section 917.21 is suspended in its entirety.

§ 917.24 [Suspended in part]

7. In § 917.24, paragraph (a) the words "§ 917.21 and" are suspended, and in paragraph (c) the words "A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period." are suspended

§ 917.25 [Suspended in part]

8. In § 917.25 the words "§ 917.21 through" are suspended

§ 917.26 [Suspended in part]

9. In § 917.26 the words "§ 917.21 through" and the words "§ 917.21 and" are suspended.

§ 917.28 [Suspended in part]

10. In § 917.28 the words "§ 917.21 through", and the word", 917.21" are suspended.

§ 917.29 [Suspended in part]

11. In § 917.29, paragraph (b) the words "of the Pear Commodity Committee and" and the word "each" are suspended.

§ 917.34 [Suspended in part]

12. In § 917.34, paragraph (k) the words "§ 917.21 and" are suspended.

§ 917.35 [Suspended in part]

13. In § 917.35, paragraph (a) the words "and Pear" and the word "each" are suspended everywhere they appear.

§ 917.100 [Suspended in part]

14. In § 917.100 the words "pears and" are suspended.

§ 917.121 [Suspended]

15. Section 917.121 is suspended in its entirety.

§ 917.143 [Suspended in part]

16. In § 917.143, paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(4) the words "pears and" are suspended, and in paragraph (b)(3) the words "200 pounds of pears and" are suspended.

§ 917.149 [Suspended]

17. Section 917.149 is suspended in its entirety.

§ 917.176 [Suspended]

18. Section 917.176 is suspended in its entirety.

§ 917.179 [Suspended in part]

19. In § 917.179 the words "§ 917.176 and" and the words "pears and" are suspended.

§ 917.461 [Suspended]

20. Section 917.461 is suspended in its entirety.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4822 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1094

[DA–94–06]

Milk in the New Orleans-Mississippi Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends, for 23 months, the 45 percent delivery requirement for a plant operated by a cooperative association that is located within the New Orleans-Mississippi marketing area. The suspension was requested by Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana. The association states that without the suspension it will be forced to make inefficient qualifying shipments of milk merely to keep the milk of its producers qualified for pooling under the order.

EFFECTIVE DATE: March 3, 1994 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued January 3, 1994; published January 10, 1994 (59 FR 1307).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule also has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Orleans-Mississippi marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 10, 1994 (59 FR 1307), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that for the period commencing with publication of this document in the **Federal Register** and extending through December 31, 1995, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1094.7(c), the words "45 percent or more of the".

Statement of Consideration

The order will suspend through December 1995 the 45 percent delivery requirement for a cooperative association plant that is located in the New Orleans-Mississippi marketing area.

Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana, that is regulated under Order 94, submitted the suspension request. The cooperative stated that because of the present 45 percent delivery requirement applicable to a cooperative association that wishes to qualify a manufacturing plant for pooling, it has had to shift some of its producers to neighboring Greater Louisiana (Order 96) pool plants to keep its Kentwood plant qualified as a pool

plant under Order 94. It indicated that Order 96 requires that six days' production of a producer must be received at pool plants each month in order to qualify the milk for pooling by diversion to a nonpool plant. Accordingly, it has had to move the milk of selected producers to Order 96 pool plants six days per month. Since this milk is not actually needed by these pool plants, the cooperative has then had to back-haul the milk to its Kentwood manufacturing plant for processing. The problem is now particularly acute, according to the cooperative, because two Order 94 pool plants have notified Gulf Dairy Association that they will no longer purchase milk from them after February 1, 1994.

Gulf Dairy Association noted that the problem it is experiencing could be resolved through the proposed merger of milk orders that is now under consideration by the Department. It urged that the proposed suspension be effective pending the completion of that proceeding.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Orleans-Mississippi marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1094

Milk marketing orders.

For the reasons set forth in the preamble, effective March 3, 1994, through December 31, 1995, Title 7, Part 1094, is amended as follows:

PART 1094—MILK IN THE NEW ORLEANS–MISSISSIPPI MARKETING AREA

1. The authority citation for 7 CFR part 1094 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1094.7 [Temporarily suspended in part]

2. In § 1094.7(c), the words "45 percent or more of the" are suspended.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4820 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1994–2]

Recordkeeping and Reporting by Political Committees; Best Efforts

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On October 27, 1993 (58 FR 57725), the Commission published the text of revised regulations implementing the requirement of the Federal Election Campaign Act (FECA) that treasurers of political committees exercise their best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. The Commission announces that these rules are effective as of March 3, 1994.

EFFECTIVE DATE: March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 104.7(b), which implement 2 U.S.C. 432(i), were transmitted to Congress on October 22, 1993. Thirty legislative days expired in the Senate on February 4, 1994 and in the House of Representatives on February 11, 1994.

Announcement of Effective Date: 11 CFR 104.7(b), as published at 58 FR 57725 is effective as of March 3, 1994.

Dated: February 25, 1994.

Danny L. McDonald,

Vice Chairman.

[FR Doc. 94–4812 Filed 3–2–94; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–32; Amendment 39–8843; AD 94–05–05]

Airworthiness Directives; Teledyne Continental Motors Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines, that requires inspection of the cylinder rocker shaft bosses for cracks, and inspection of the cylinder rocker shaft for looseness and replacement, if necessary, with a serviceable part. This amendment is prompted by reports of cracked or improperly repaired cylinder rocker shaft bosses. The actions specified by this AD are intended to prevent engine power loss and engine failure.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, and O–300 series reciprocating engines was published in the **Federal Register** on June 2, 1993 (58 FR 31348). That action proposed to require fluorescent penetrant or etching inspections of the cylinder rocker shaft bosses for cracks, and dimensional

inspections of the cylinder rocker shaft bosses for looseness, at the next overhaul, in accordance with TCM Overhaul Manual Form X–30013, dated June 1982, applicable to TCM Models C125, C145, and O–300 series engines; and TCM Overhaul Manual Form X–30010, dated January 1984, applicable to TCM Models C75, C85, C90, and O–200 series engines. If the cylinder rocker shaft bosses are cracked, the cylinder must be replaced. Modified cylinders must be further inspected for cracks that may have been introduced during the repair process. Cylinders with loose rocker shafts must be replaced with serviceable cylinders, or modified by installing bushings.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the AD should require compliance at the next 100 hour or annual inspection, whichever occurs first. The commenter further states that the AD should require visual inspection for wear, broken bosses, or loose bushings at the earlier compliance time because cylinders with cracked bosses or loose bushing will likely fail before the cylinder requires overhaul. The FAA does not concur. Service Difficulty Reports and engineering analysis do not indicate that the shorter compliance time is necessary, and the comment did not include any data as a basis for the shorter compliance time. Furthermore, it is unlikely that a visual inspection without disassembly could detect cracks or looseness in the cylinder rocker shaft bosses.

The commenter further states that the TCM GO–300 series engines should be included in the AD. Production of new cylinders has been standardized by manufacturing the TCM GO–300 type cylinder only for use on all C–75 through C–145, as well as the O–200 and O–300 series engines. The commenter maintains that used GO–300 cylinder assemblies may find their way onto other engines. The GO–300 shares nearly identical valve train components with the other engines and is subject to the same type of rocker boss wear and possible failures. The FAA concurs. The GO–300 cylinders have been added to the applicability paragraph of this AD.

The commenter further states that TCM Service Bulletin (SB) No. M73–13 specifies a minimum edge thickness for the center rocker bosses only. The commenter argues that this requirement for minimum thickness should be redefined to be a minimum thickness anywhere on any boss because many cylinders have bosses with adequate material on the edges of the center bosses, but very little material between the edges. The commenter concludes by stating that outer bosses, also require close scrutiny for thickness, and if an outer boss fails, the center boss will likely be overloaded and also fail. The FAA does not concur. The center bosses are thinner by design and will therefore wear to the limit sooner than the outer bosses. If the center bosses have the correct edge to wall thickness, then the outer bosses will be correct also.

The commenter further states that consideration should be given to securing rocker boss repair bushings with a dowel pin to prevent rotation after installation. The commenter argues that any lack of concentricity between bushing ID and OD can severely overload bosses if one or more bushings rotate after installation. The FAA does not concur. If the repair is accomplished correctly, the bushing will be pressed in and this press fit will prevent rotation.

The commenter further states that when performing inspections for cracked bosses on cylinders that have been removed from the engine, dye penetrant inspection should be allowed in addition to the fluorescent penetrant inspection. The commenter maintains that dye penetrant inspection is quite effective and reliable when properly performed and is in widespread use by approved cylinder head repair facilities. The FAA concurs. Dye penetrant inspection has been added to the AD as an option for compliance. In addition, the FAA has added industry-accepted procedures to the AD for performing dye penetrant, fluorescent penetrant, and etching inspections in order to standardize the method of inspection.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35,600 engines installed on aircraft of U.S. registry would be affected by this AD, approximately 20,000 four-cylinder engines and 15,600 six-cylinder engines. The FAA estimates that it will take approximately one-half work hour per cylinder to inspect or install the bushings, and that the average labor rate is $55 per work hour. Required parts will cost approximately $11 per cylinder. Based on these figures, the cost impact of the AD for four-cylinder engines is estimated to be $154 per engine, the cost impact of the AD for six-cylinder engines is estimated to be $231 per engine, and the total cost impact of the AD on U.S. operators is estimated to be $6,683,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–05–05 Teledyne Continental Motors: Amendment 39–8843. Docket 92–ANE–32.

Applicability: Teledyne Continental Motors (TCM) Model C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines installed on but not limited to American Champion models 7BCM, 7CCM, 7EC, S7DC, S7CCM, 7EC,

S7EC, 7FC, 7JC, and 7ECA; Cessna Models 120, 140, 150, 170, 172, 172A–H, and 175; Luscombe Models 8E, 8F, and T–8F; Maule Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Piper Models PA–18 and PA–19; Swift Models GC–1A and GC–1B; Univair (Erco) Models 415–D, E, and G; Univair (Forney) Models F–1 and F–1A; Univair (Alon) Model A–2 and Univair (Mooney) Model M–10 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and engine failure, accomplish the following:

(a) At the next cylinder or engine overhaul after the effective date of this AD, inspect the cylinder rocker shaft bosses for cracks using one of the following methods, and if cracked replace with a serviceable cylinder:

Note: Certain cylinder cracks may be repaired by FAA-approved repair stations specifically rated to do those repairs.

(1) Fluorescent penetrant inspection, as follows:

(i) The penetrant shall be a nontoxic, noncorrosive, highly fluorescent liquid capable of penetrating fine discontinuities and, for aluminum castings, conforming to Aerospace Material Specification (AMS) 3156. If a darkened enclosure is not used for examination, AMS 3157 penetrant shall be used.

(ii) The emulsifier shall be composed of suitable oil or oil-like components together with such additives as are necessary to provide a stable, nontoxic, noncorrosive, oil-miscible, oil-emulsifying solution. Emulsifier shall not be used when AMS 3156 is used.

(iii) The developer shall be a highly absorbent, nonfluorescent and nontoxic powder, capable of being used dry or a similar powder capable of being suspended in water. When the suspension is used, the powder shall be thoroughly mixed with water to a concentration, unless otherwise permitted, of not less than 0.2 lb per gallon and a uniform distribution maintained by mechanical agitation.

(iv) The penetrant, the emulsifier (if used) and the developer shall be checked as often as necessary to maintain proper control. The penetrant shall be discarded if it shows a noticeable loss in penetrating power or marked contamination or when wax begins to form on the sides of the tank and dip basket.

(v) A darkness booth or a similar darkness area with a filtered black light shall be provided. The black light shall be at least equal to that produced by a 100 watt mercury vapor projection spot lamp equipped with a filter to transmit wave lengths of between 3200 and 4000 Angstrom units and absorb substantially all visible light. The intensity of the light at normal working distance shall be as specified by the purchaser but in no case shall be lower than 580 micro-watts per square centimeter as measured with an appropriate black light meter.

(vi) All parts shall be cleaned and dried in such a manner as to leave them free from grease, oil, soaps, alkalies and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(vii) Parts shall be immersed in the penetrant or shall be sprayed or brushed with the penetrant and shall be allowed to remain immersed in the penetrant or to stand for sufficient time to allow satisfactory penetration into all discontinuities. This time shall, unless otherwise specified, not be less than 5 minutes. The time for immersion or standing will depend upon the character and fineness of the discontinuities, the effectiveness of penetration increasing with time. Parts may be resprayed or re-immersed after standing to increase sensitivity and aid in removal of penetrant.

(viii) Parts shall be removed from the penetrant and cleaned thoroughly using a medium which will remove penetrant from the surface of parts; washing with water shall be used when the penetrant is water washable or when an emulsifying agent is applied to surfaces of parts to render the penetrant water washable. When emulsifiers are used, the parts shall be dipped in the emulsifier and removed slowly for draining or shall be sprayed with emulsifier and drained. Unless otherwise specified, the combined dipping and draining time shall be 1 to 5 minutes. When other than water washable penetrants are used, the penetrant shall be removed with a suitable cleaner or a suitable cleaner and lint-free cloths. During cleaning, the parts may be viewed under a suitable black light to ensure removal of the penetrant from the subrace of the part. Excessive cleaning which would remove the penetrant from discontinuities shall be avoided.

(ix) When a wet developer is used, the developer shall be applied to the parts, immediately after washing, by immersing the parts in the tank containing the water-suspended powder or by spraying or flowing the suspension onto the parts. The suspension shall be suitably agitated either during or immediately prior to application to parts. Immersed parts shall be removed from the wet developer; excess developer shall be allowed to drain off all parts. Special care shall be taken to remove excess developer from pockets, recesses, holes, threads, and corners so that the developer will not mask indications.

(x) When a dry developer or no developer is used, the parts shall be dried as thoroughly as possible by exposure to clean air. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Excessive drying time or part temperatures higher than 80°C (180°F) should be avoided to prevent evaporation of the penetrant.

(xi) When a dry developer is used, the developing powder shall be applied uniformly over the areas of the parts to be inspected by either dusting or powder-box immersion.

(xii) After sufficient time has been allowed to develop indications, parts shall be examined under a black light. Examination shall be made in a darkened enclosure unless AMS 3157 penetrant is used, in which case examination may be made under normal shop lighting but shaded from direct sunlight.

(xiii) When greater sensitivity is desired, the parts may be heated to 65°–85°C (150°–185°F) before immersion in the penetrant and/or before black light examination. To prevent evaporation, preheated parts shall remain fully immersed in the penetrant until cooled.

(xiv) Parts shall be cleaned, as necessary, to remove penetrant and developer.

(xv) Interpretation of the indications revealed by this inspection procedure and final disposition of the parts shall be the responsibility of only qualified personnel having experience with fluorescent penetrant inspection.

(xvi) Parts having discontinuities (cracks) shall be rejected.

(2) Dye penetrant inspection, as follows:

Note: Military Specification MIL–I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* after preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75°C (165°F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50°C (120°F) before proceeding to the developing procedure.

(v) *Developing:* apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* all penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(3) Etching inspection, as follows:

(i) For TCM C75, C85, C90, and O–200 series engines, in accordance with paragraph 13–7 of TCM Overhaul Manual Form X–30010, dated January 1984.

(ii) For TCM C125, C145, O–300, and GO–300 series engines, in accordance with paragraphs 5(b)(1), 5(b)(2), and 5(b)(3) of TCM Overhaul Manual Form X–30013, dated June 1982.

(b) At the next cylinder or engine overhaul after the effective date of this AD, dimensionally inspect cylinders for looseness of the rocker shaft in accordance with page 22, paragraph 5, and Table IX of TCM Overhaul Manual Form X–30013, dated June 1982, for TCM Models C125, C145, O–300, and GO–300 series engines; page 75, paragraph 13–6, and the dimensions table in paragraph 13–8 of TCM Overhaul Manual Form X–30010, dated January 1984, for TCM Models C75, C85, C90, and O–200 series engines; as applicable.

(1) Cylinders that do not exhibit dimensional looseness of the rocker shaft beyond the limits specified in the applicable TCM overhaul manual may be returned to service.

(2) For cylinders that exhibit dimensional looseness of the rocker shaft, beyond the limits specified in the applicable TCM overhaul manual, accomplish the following:

(i) Replace with a serviceable cylinder; or

(ii) Install bushings in accordance with the instructions on page 27 of TCM Overhaul Manual, Form X–30013, dated June 1982, for TCM Models C125, C145, O–300, and GO–300 series engines; or the instructions on page 85 of TCM Overhaul Manual Form X–30010, dated January 1984, for TCM Models C75, C85, C90, and O–200 series engines; as applicable.

(iii) After repairing a cylinder perform an additional inspection of the cylinder rocker shaft bosses for cracks using fluorescent penetrant, dye penetrant, or etching methods, and replace, if necessary, with a serviceable cylinder.

(c) Thereafter, at each subsequent cylinder or engine overhaul, reinspect cylinder rocker bosses and rocker shafts in accordance with paragraphs (a) and (b) of this AD

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 2, 1994.

Issued in Burlington, Massachusetts, on February 18, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–4837 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 300, 302, 303, 325, and 385

49 CFR Parts 1, 7, 8, and 28

[OST Docket No. 1; Amdt. 1–261]

Organization and Delegation of Powers and Duties; Delegations to the Assistant Secretary for Transportation Policy, to the Assistant Secretary for Aviation and International Affairs, to the Assistant to the Secretary and Director of Public Affairs, and to the Assistant General Counsel for Environmental, Civil Rights, and General Law

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the relevant regulations which contain delegations of authority to the Assistant Secretary for Policy and International Affairs. The title of the delegatee has been changed either to the Assistant Secretary for Transportation Policy or to the Assistant Secretary for Aviation and International Affairs, as appropriate, because a new Assistant Secretary position has been created. This rule is necessary to clarify which current delegations apply to the new Assistant Secretary for Transportation Policy and which apply to the new Assistant Secretary for Aviation and International Affairs.

This document also amends the relevant regulations which contain delegations of authority to the Assistant Secretary for Public Affairs. The title of the delegatee has been changed to the Assistant to the Secretary and Director of Public Affairs to reflect the new title of the head of that Office. Finally, this document also amends the relevant regulations which contain all remaining delegations of authority that should have been transferred in an earlier reorganization from the Assistant Secretary for Public Affairs to the Office of the General Counsel. These latter authorities are hereby delegated to the Assistant General Counsel for Environmental, Civil Rights, and General Law.

EFFECTIVE DATE: This rule becomes effective March 3, 1994.

FOR FURTHER INFORMATION CONTACT: John T. Peak, Office of the Assistant Secretary for Transportation Policy at (202) 366–5416, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366–9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the Secretary of Transportation approved a reorganization of the Office of the Secretary by creating a new position of Assistant Secretary for Transportation Policy and a new position of Assistant Secretary for Aviation and International Affairs. The title of the Assistant Secretary for Public Affairs was also changed by this reorganization to the Assistant to the Secretary and Director of Public Affairs. Thus, it is necessary to amend the relevant parts of the CFR in order to: (1) Clarify which current CFR delegations apply to the new Assistant Secretary for Transportation Policy and which apply to the new Assistant Secretary for Aviation and International Affairs; (2) reflect the new title of the head of the Office of Public Affairs; and (3) bring certain other provisions of 49 CFR part 7 into conformity with 49 CFR 1.57b, now entitled, Delegations to the Assistant General Counsel for Environmental, Civil Rights, and General Law. Until now, all of these CFR parts have referred either to the Assistant Secretary for Policy and International Affairs, or to the Assistant Secretary for Public Affairs. A summary of the CFR parts affected follows.

One CFR part (44 CFR part 403), which places restrictions on transportation movements and the transportation of goods to North Korea or the Communist-controlled area of Vietnam, is jointly administered by the Department of Transportation and the Department of Commerce. This part will be the subject of joint agency rulemaking at a later date.

14 CFR parts 300, 302, 303, 325 and 385 are procedural and organizational regulations concerning aviation economic proceedings. All references to the Assistant Secretary for Policy and International Affairs are being changed to the Assistant Secretary for Aviation and International Affairs, and a minor editorial change is being made to § 302.22a(b)(1).

49 CFR part 1 describes the organization of the Department of Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law. Delegations to the Assistant Secretary for Policy and International Affairs are being transferred to the Assistant Secretary for Transportation Policy and to the Assistant Secretary for Aviation and International Affairs, as appropriate. Delegations to the Assistant Secretary for Public Affairs are being transferred to the Assistant to the Secretary and Director of Public Affairs. Further, §§ 1.22 and 1.23 are being revised not only to reflect the structure and responsibilities of the Office of the Secretary as a result of these delegations, but also to reflect the structure and responsibilities of the Office as a result of earlier reorganizations. Finally, minor editorial changes are being made to §§ 1.43(c) and 1.65(c).

49 CFR part 7 implements the Freedom of Information Act, and prescribes rules governing the availability to the public of records of the Department of Transportation. Consistent with the delegation of authority to the Assistant General Counsel for Environmental, Civil Rights, and General Law in 49 CFR 1.57b, references to the Assistant Secretary for Public Affairs in part 7 are being changed to the Assistant General Counsel for Environmental, Civil Rights, and General Law. A minor editorial change is also being made to § 7.53(c).

49 CFR part 8 sets forth procedures for the classification and declassification of national security information and material. Authority to classify information is being transferred from the Assistant Secretary for Policy and International Affairs to both the Assistant Secretary for Transportation Policy and the Assistant Secretary for Aviation and International Affairs, and a minor editorial change is being made to § 8.11(b)(1).

Finally, 49 CFR part 28 carries out provisions of existing law that prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department. Certain compliance procedures for which the Assistant Secretary for Policy and International Affairs was responsible will now be the responsibility of the Assistant Secretary for Transportation Policy.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

In consideration of the foregoing, and under the authority of 49 U.S.C. 322, parts 300, 302, 303, 325 and 385 of title 14 and parts 1, 7, 8, and part 28 of title 49, Code of Federal Regulations, are amended as follows:

TITLE 14—AERONAUTICS AND SPACE

§§ 300.0, 302.1, 302.22a, 303.02, 325.7, 325.8, 385.1, 385.13, 385.14 [Amended]

1. In chapter II of 14 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Aviation and International Affairs" wherever they appear in the following places:

a. Section 300.0,
b. Section 302.1(a),
c. Section 302.22a (b) introductory text, (b)(1), (c), and (d),
d. Section 303.02(b),
e. Section 325.7(c),
f. Section 325.8(b),
g. Section 385.1, in the definition of "Reviewing Official",
h. Section 385.13(vv)(4),
i. Section 385.14 (b), (e), (cc)(4), and (kk).

§ 302.22a [Amended]

2. In subchapter B of 14 CFR, make the following amendments: a. In § 302.22a(b)(1), the word "carrier" is revised to read "career".

List of Subjects

49 CFR Part 1

Authority delegations (Government agencies)Organization and functions (Government agencies).

49 CFR Part 7

Freedom of information.

49 CFR Part 8

Classified information.

49 CFR Part 28

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

TITLE 49—TRANSPORTATION

3. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

4. The authority citation for part 7 continues to read as follows:

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

5. The authority citation for part 8 continues to read as follows:

Authority: E.O. 11652 (37 FR 5209), National Security Council Directive of May 17, 1972 (37 FR 10053), and secs. 3 and 9 of the Department of Transportation Act (49 U.S.C. 1652 and 1657).

6. The authority citation for part 28 continues to read as follows:

Authority: 29 U.S.C. 794.

§§ 1.45, 1.48 and 28.170 [Amended]

7. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Transportation Policy" wherever they appear in the following places:

a. Section 1.45(e)(2),
b. Section 1.48(cc),
c. Section 28.170(i).

§§ 1.43 and 1.47 [Amended]

8. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Aviation and International Affairs" wherever they appear in the following places:

a. Section 1.43(c),
b. Section 1.47(p)(2).

§§ 1.65 and 8.11 [Amended]

9. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs;" are revised to read "Assistant Secretary for Transportation Policy; Assistant Secretary for Aviation and International Affairs;" wherever they appear in the following places:

a. Section 1.65(c)(1),
b. Section 8.11(b)(1).

§§ 7.11, 7.53 and 7.97 [Amended]

10. In subtitle A of 49 CFR, the words "Assistant Secretary for Public Affairs" are revised to read "Assistant General Counsel for Environmental, Civil Rights, and General Law" wherever they appear in the following places:

a. Section 7.11,
b. Section 7.53(c),
c. Section 7.97(e).

11. 49 CFR Subtitle A is amended as follows:

a. Section 1.22 is revised to read as follows:

§ 1.22 Structure.

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the following, all of which report directly to the Secretary: The Associate Deputy Secretary and Director, Office of Intermodalism; the Executive Secretariat; the Board of Contract Appeals; the Departmental Office of Civil Rights; the Office of

Intelligence and Security; and the Office of Public Affairs. The Assistant Secretaries, the General Counsel, and the Inspector General also report directly to the Secretary.

(b) *Office of the Assistant Secretary for Transportation Policy.* This Office is composed of the Offices of Environment, Energy and Safety; and Economics.

(c) *Office of the Assistant Secretary for Aviation and International Affairs.* This Office is composed of the Offices of International Transportation and Trade; International Aviation; and Aviation Analysis.

(d) *Office of the General Counsel.* This Office is composed of the Offices of Environmental, Civil Rights, and General Law; International Law; Litigation; Legislation; Regulation and Enforcement; the Board for Correction of Military Records; and Aviation Enforcement and Proceedings.

(e) *Office of the Assistant Secretary for Budget and Programs.* This Office is composed of the Offices of Programs and Evaluation; and Budget.

(f) *Office of the Assistant Secretary for Governmental Affairs.* This Office is composed of the Offices of Congressional Affairs; and Intergovernmental and Consumer Affairs.

(g) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel; Management Planning; Information Resource Management; Administrative Services and Property Management; Hearings; Acquisition and Grant Management; Security; Financial Management; and Administrative Systems Development.

(h) *Office of the Inspector General.* The duties and responsibilities of the Office of Inspector General are carried out by the Assistant Inspector General for Auditing; the Assistant Inspector General for Investigations; the Assistant Inspector General for Policy, Planning, and Resources; and the Assistant Inspector General for Inspections and Evaluations.

b. Section 1.23 is revised to read as follows:

§ 1.23 Spheres of primary responsibility.

(a) *Secretary and Deputy Secretary.* Overall planning, direction, and control of departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in departmental programs, transportation research and technology, commercial space transportation, intelligence and security, and public affairs.

(b) *Associate Deputy Secretary and Director, Office of Intermodalism.* Assists the Secretary and Deputy Secretary in carrying out a variety of executive and managerial policies, programs and initiatives. Focal point within the Federal Government for coordination of intermodal transportation policy which brings together departmental intermodal perspectives, advocates intermodal interests, and provides secretarial leadership and visibility on issues that involve or affect more than one operating administration.

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary and the Office of the Secretary; final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; exercise of functions, powers, and duties as Judge Advocate General under the Uniform Code of Military Justice (Chapter 47 of Title 10, U.S.C.) with respect to the United States Coast Guard; advice and assistance with respect to uniform time matters; ensures uniform departmental implementation of the Freedom of Information Act (5 U.S.C. 552); responds to requests for records of the Office of the Secretary including the Office of the Inspector General, under that statute; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Departmental legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department; review and final action on application for correction of military records of the United States Coast Guard.

(d) *Assistant Secretary for Transportation Policy.* Principal policy advisor to the Secretary and the Deputy Secretary. Public policy development, coordination, and evaluation for all aspects of transportation, with the goal of making the Nation's transportation resources function as an integrated national system; evaluation of private transportation sector operating and economic issues; evaluation of public transportation sector operating and economic issues; regulatory and legislative initiatives and review; energy, environmental, disability, and safety policy and program development and review; and transportation infrastructure assessment and review.

(e) *Assistant Secretary for Aviation and International Affairs.* Public policy assessment and review; private sector evaluation; international transportation and transport-related trade policy and issues; regulatory and legislative initiatives and review of maritime/shipbuilding policies and programs; transport-related trade promotion; coordination of land transport relations with Canada and Mexico; technical assistance and science and technology cooperation; international visitors' programs; economic regulation of the airline industry; and essential air service program.

(f) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; departmental financial plans, apportionments, reapportionments, reprogrammings, and allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected administrative matters relating to the Immediate Office of the Secretary.

(g) *Assistant Secretary for Governmental Affairs.* Coordination of legislative and non-legislative relationships; congressional affairs; communications and coordination with Federal, State and local governments, industry and labor, and with citizens and organizations representing consumers.

(h) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; acquisition and grant management (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); information resource management; financial management; development and implementation of a Departmental Accounting and Financial Information System (DAFIS); property management information; security; computer support; telecommunications; and administrative support services for the Office of the Secretary and certain other components of the Department.

(i) *Inspector General.* Conduct, supervise, and coordinate audits and investigations, review existing and proposed legislation and make

recommendations to the Secretary and Congress (Semiannual reports) concerning their impact on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommend policies for and conduct, supervise, or coordinate other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse.

(j) *Executive Secretary.* Central facilitative staff for the Immediate Office of the Secretary and the Secretarial Officers.

(k) *Board of Contract Appeals.* Conducts trials and issues final decisions, which are appealable to the United States Court of Appeals for the Federal Circuit, on appeals from contracting officer decisions under contracts awarded by the Department and its constituent administrations in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq.; sits as the Contract Adjustment Board with plenary authority to grant extraordinary contractual relief in accordance with 50 U.S.C. 1431–1435 and Executive Order 10789 (3 CFR, 1954–1958 comp., p. 426), as amended; hears and decides all contractor and subcontractor debarment, suspension, or ineligibility cases pursuant to the Federal Acquisition Regulation, 48 CFR 9.402; judges serve as "neutrals" under the Administrative Dispute Resolution Act, 5 U.S.C. 581 et seq., in contract-related matters; and performs such other adjudicatory functions assigned by the Secretary as are consistent with the duties and responsibilities of the Board as set forth in 41 U.S.C. 601 et seq.

(l) *Departmental Office of Civil Rights.* DOT director of equal employment opportunity; Departmentwide compliance officer; Title VI (Civil Rights Act of 1964) coordinator; Departmentwide compliance with related laws, Executive Orders, regulations, and policies, and formal complaints of discrimination.

(m) *Office of Small and Disadvantaged Business Utilization* Responsible for the Department's implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act, as amended, (15 U.S.C. 637 and 644), and for other departmental small and disadvantaged business policy direction.

(n) *Office of Commercial Space Transportation.* Focal point within the Federal Government for private sector space launch contacts and licensing related to commercial expendable launch vehicle operations and for promotion and encouragement of commercial expendable launch vehicle industry.

(o) *Office of Intelligence and Security.* Focal point within the Department of Transportation for intelligence and security matters which affect the safety of the traveling public.

(p) *Office of Public Affairs.* Focal point for public information and departmental relations with the news media, the general public, and selected special publics.

§ 1.25 [Amended]

c. In § 1.25(b), the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Transportation Policy and the Assistant Secretary for Aviation and International Affairs, as appropriate,".

d. Section 1.26 is amended by revising paragraph (a) to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in the case of a vacancy, until a successor is appointed:

(1) Deputy Secretary.

(2) General Counsel.

(3) Assistant Secretary for Transportation Policy.

(4) Assistant Secretary for Aviation and International Affairs.

(5) Assistant Secretary for Governmental Affairs.

(6) Assistant Secretary for Budget and Programs.

(7) Associate Deputy Secretary

(8) Saint Lawrence Seaway Development Corporation Administrator.

(9) Assistant Secretary for Administration.

* * * * *

§ 1.43 [Amended]

e. In § 1.43(c), the phrase "§ 1.56a" is revised to read "§ 1.56b".

f. Section 1.56 is revised to read as follows:

§ 1.56 Delegations to the Assistant Secretary for Transportation Policy.

The Assistant Secretary for Transportation Policy is delegated authority to:

(a) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) within the Department of Transportation.

(b) Oversee the implementation of section 4(f) of the Department of Transportation Act of 1969 (49 U.S.C. 303).

(c) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation.

(d) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (49 U.S.C. 307) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(e) Carry out the functions vested in the Secretary by section 656 of the Department of Energy Organization Act (42 U.S.C. 7266) which pertains to planning and implementing energy conservation matters with the Department of Energy. Serves as the Department's principal conservation officer.

g. Section 1.56a is revised to read as follows:

§ 1.56a Delegations to the Assistant Secretary for Aviation and International Affairs.

The Assistant Secretary for Aviation and International Affairs is delegated authority to:

(a) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Trade Policy Review Group and the Trade Policy Staff Committee.

(b) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (49 U.S.C. 307) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(c) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Orders T–1 and T–2 (44 CFR chapter IV) under the Act of September 8, 1950, as amended (50 U.S.C. app. 2061 *et seq.*) and Executive Order No. 10480 (3 CFR, 1949–1953 comp., p. 962), as amended.

(d) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order No. 11382 (3 CFR, 1966–1970 comp., p. 691), as amended, serve as Chair of the Group.

(e) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by

Reorganization Plan No. 3 of 1979 (5 U.S.C. app. at 1381 (1988)) and Executive Order No. 12188 (3 CFR, 1980 comp., p. 131), as amended.

(f)(1) As supplemented by 14 CFR part 385, as limited by paragraph (f)(2) of this section, and except as provided in §§ 1.53(g), 1.57(a), and 1.61(d) of this title, carry out the functions transferred to the Department from the Civil Aeronautics Board under the following statutes:

(i) 49 U.S.C. app. 1551(b); and

(ii) Section 4(a)(1) through (4), (6), and (8) through (10) of the Civil Aeronautics Board Sunset Act of 1984 (49 U.S.C. app. 1553(a)(1) through (4), (6), and (8) through (10)).

(2) Insofar as the delegation in this paragraph (f) authorizes review of decisions of the Designated Senior Career Official in the Office of the Assistant Secretary for Aviation and International Affairs under § 1.56b of this title, the authority is limited to approving any such decision or remanding it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

(g) Carry out the functions vested in the Secretary by the following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports:

(1) Subsection 1115(e)(1), in coordination with the General Counsel, and the Federal Aviation Administrator; and

(2) Subsection 1115(e)(3), in coordination with the General Counsel, the Federal Aviation Administrator, the Assistant Secretary for Governmental Affairs, and the Assistant Secretary for Administration.

(h) Carry out the following statutory provisions relating to consumer protection:

(1) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (49 U.S.C. app. 1553(a)(5)) relating to enforcement of the Consumer Credit Protection Act;

(2) Sections 101(3) (relating to relieving certain carriers from provisions of the Federal Aviation Act), 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407(a) (relating to requiring the production of information), 407(e) (relating to entering carrier property, and inspecting records), 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301(3), 1324, 1374, 1377 (a) and (e), 1381, and 1386) as appropriate to the consumer protection functions in this paragraph.

h. A new § 1.56b is added to read as follows:

§ 1.56b Delegations to the Designated Senior Career Official, Office of the Assistant Secretary for Aviation and International Affairs.

The Designated Senior Career Official in the Office of the Assistant Secretary for Aviation and International Affairs is delegated exclusive authority to make decisions in all hearing cases to select a carrier for limited-designation international route authority, and in any other case that the Secretary designates, under the authority transferred to the Department from the Civil Aeronautics Board described in §§ 1.56a(f) and 1.61(d) of this title; this includes the authority to adopt, reject or modify recommended decisions of administrative law judges.

§ 1.57b [Amended]

i. In § 1.57b, the heading "Delegations to the Associate General Counsel" is revised to read "Delegations to the Assistant General Counsel for Environmental, Civil Rights, and General Law".

§ 1.63 [Amended]

j. In § 1.63, the words "Assistant Secretary for Public Affairs" are revised to read "Assistant to the Secretary and Director of Public Affairs" where they appear in the heading and the introductory text.

§ 1.65 [Amended]

k. In § 1.65(c) introductory text, the word "of" after the word "Authority" in the first sentence is revised to read "to".

§ 8.11 [Amended]

l. In § 8.11(b)(1), the word "Under" is revised to read "Deputy".

Issued at Washington, DC this 15th day of February 1994.

Federico Peña,

Secretary of Transportation

[FR Doc. 94–4247 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0023]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-(1,2-ethenediyldi-4,1-phenylene)bis(benzoxazole) as an optical brightener for food-contact polymers. This action is in response to a petition filed by Eastman Chemical Co., Eastman Kodak Co.

DATES: Effective on March 3, 1994; written objections and requests for a hearing by April 4, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1991 (56 FR 5415), FDA announced that a food additive petition (FAP 1B4240) had been filed by Eastman Chemical Co., Eastman Kodak Co., P.O. Box 511, Kingsport, TN 37662, proposing that the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 2,2′-(1,2-ethenediyldi-4,1-phenylene)bis(benzoxazole) as an optical brightener for food-contact polymers. Subsequently, after a company reorganization, Eastman Chemical Co. is no longer part of Eastman Kodak Co.; it is now referred to only as Eastman Chemical Co.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for

inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
. . . . .	. . . . .
2,2'-(1,2-Ethenediyldi-4,1-phenylene) bis(benzoxazole) (CAS Reg. No. 1533-45-5).	For use as an optical brightener for all polymers at a level not to exceed 0.025 percent by weight of polymer. The finished polymer shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter, under categories I, II, IV-B, VI-A, VI-B, VII-B, and VIII at temperatures not to exceed 275 °F.
. . . . .	. . . . .

Dated: February 24, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-4915 Filed 3-2-94; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 178

[Docket No. 91F-0439]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of cobalt aluminate as a colorant in all polymers intended to contact food. This action is in response to a petition filed by The Shepherd Color Co.

DATES: Effective March 3, 1994; written objections and requests for a hearing by April 4, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1991 (56 FR 65907), FDA announced that a food additive petition (FAP 2B4296) had been filed by The Shepherd Color Co., P.O. Box 465627, Cincinnati, OH 45246, proposing that the food additive regulations be amended in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of cobalt aluminate as a colorant in all polymers intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by adding new item 6 in the "Limitations" column for the entry "Cobalt aluminate" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
Cobalt aluminate	For use only: * * * 6. At levels not to exceed 5 percent by weight of all polymers except those listed under limitations 1 through 5 of this item. The finished articles are to contact food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.

Dated: February 22, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-4800 Filed 3-2-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8526]

RIN 1545-AN97

Certificates of Compliance with Income Tax Laws by Departing Aliens

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations that exempt certain alien students, industrial trainees, and exchange visitors from the requirement of obtaining a certificate of compliance with income tax laws before departing the United States. This action is necessary because of changes to the applicable tax laws made by the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: This regulation is effective March 3, 1994.

This regulation applies to departures after April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph (202-622-3880, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1991, the IRS published a notice of proposed rulemaking in the **Federal Register** (56 FR 3061) by cross reference to temporary regulations (56 FR 3034) that proposed amendments to the Income Tax Regulations under section 6851 of the Internal Revenue Code of 1986. These regulations implemented section 1001(d) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342. Comments responding to the notice of proposed rulemaking were received but no public hearing was requested or held. After consideration of the written comments, the IRS adopts the proposed regulations as revised by this Treasury decision.

Explanation of Provisions

The regulations exempt certain alien students, industrial trainees, and exchange visitors, and their spouses and children, from the requirement of obtaining a certificate of compliance with the U.S. income tax laws before they depart the United States. Aliens exempt from the requirements are those admitted to the United States solely on an F-1, F-2, H-3, H-4, J-1, or J-2 visa, who have received no gross income from U.S. sources other than: (1) Allowances to cover expenses incident to study in the United States, (2) the value of any services or accommodations furnished incident to that study, (3) income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa or (4) interest on deposits described in section 871(i)(2)(A). Furthermore, aliens admitted solely on an M-1 or M-2 visa who have received no gross income other than that derived in accordance with the employment authorization in 8 CFR 274a.12 (c)(6) or described in

section 871(i)(2)(A) are also exempt from the requirement.

Comments received were very positive. Accordingly, the regulations adopt the provisions of the notice of proposed rulemaking, with only minor changes. In response to a comment, the words "or training" are added immediately after the word "study" in § 1.6851–2(a)(2)(ii) (A) (*1*) and (*2*) to clarify that the regulations apply to payments incident to training as well as study. In addition, a commentator suggested that the exemption should apply to amounts, such as travel allowances, that may be received by students or trainees when not physically present in the United States. These regulations clarify that such amounts are covered by the exemption as well, assuming that the other requirements of the regulations have been met. The final regulations also provide that the exemption covers amounts received that are exempt from United States taxation under section 871(i)(2)(A), relating to certain interest on deposits.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by removing the entry for "Section 1.6851–2T" and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6851–2 also issued under 26 U.S.C. 6851(d). * * *

§ 1.6851–2T [Removed]

Par. 2. Section 1.6851–2T is removed.

Par. 3. Section 1.6851–2 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1.6851–2 Certificates of compliance with income tax laws by departing aliens.

(a) * * *

(2) * * *

(ii) *Alien students, industrial trainees, and exchange visitors.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of—

(A) An alien student, industrial trainee, or exchange visitor, and any spouse and children of that alien, admitted solely on an F–1, F–2, H–3, H–4, J–1 or J–2 visa, who has received no gross income from sources inside the United States other than—

(*1*) Allowances to cover expenses incident to study or training in the United States (including expenses for travel, maintenance, and tuition);

(*2*) The value of any services or accommodations furnished incident to such study or training;

(*3*) Income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa; or

(*4*) Interest on deposits described in section 871(i)(2)(A); or

(B) An alien student, and any spouse or children of that alien admitted solely on an M–1 or M–2 visa, who has received no gross income from sources inside the United States other than income derived in accordance with the employment authorization in 8 CFR 274a.12(c)(6) or interest on deposits described in section 871(i)(2)(A).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue

Approved: February 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury

[FR Doc. 94–4781 Filed 3–2–94; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8520]

RIN 1545–AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide guidance with respect to: Eligibility for a carryover allocation; procedures for electing an appropriate percentage month; the general public use requirement; utility allowances to be used in determining gross rent; and the inclusion of the cost of certain services in gross rent. The regulations incorporate and expand upon the guidance provided by Notice 89–1, 1989–1 C.B. 620, and Notice 89–6, 1989–1 C.B. 625. This information will assist State and local housing credit agencies and taxpayers in complying with the requirements of section 42. The regulations affect taxpayers that apply for or claim the low-income housing tax credit and State and local housing credit agencies.

DATES: These regulations are effective May 2, 1994.

For dates of applicability of these regulations, see § 1.42–12.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson (202) 622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1102. The estimated annual burden per State or local government respondent/recordkeeper varies from 18.60 hours to 51.63 hours, with an estimated average of 39.61 hours. The estimated annual burden for all other respondent/recordkeepers varies from 1.90 hours to 6.20 hours, with an estimated average of 4.50 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the

Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 29, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 61852) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. These amendments provide guidance on several requirements of the low-income housing tax credit and incorporate and expand upon the guidance provided by Notices 89–1 and 89–6.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was scheduled for February 16, 1993, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing by the designated date. On February 8, 1993, the IRS published a notice (58 FR 7497) cancelling the public hearing on the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Carryover Allocations

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only to the extent that the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency).

Under section 42(h)(1)(E), an allocation may be made to a qualified building that has not yet been placed in service, provided the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation (a carryover allocation). Section 42(h)(1)(E)(ii) defines a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation). For these purposes, the taxpayer's basis equals the taxpayer's basis in land and depreciable property. See 2 H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II–82 (1988), 1988–3 C.B. 572. A carryover allocation may also be made to a multiple-building project under section 42(h)(1)(F).

Commentators requested clarification on when a carryover allocation is treated as if it had never been made. The final regulations clarify that only a failure to satisfy a requirement of section 42(h)(1) (E) or (F) that must be satisfied by the close of the calendar year of allocation will cause a carryover allocation to be treated as if it had not been made.

The proposed regulations provide that a taxpayer does not have carryover-allocation basis in a project unless, by the close of the calendar year of allocation, the taxpayer is the owner, for federal income tax purposes, of land or depreciable real property expected to be part of the project. The final regulations do not explicitly contain this requirement. After further consideration, the IRS believes that satisfaction of the requirements of § 1.42–6 is sufficient to ensure that a taxpayer intends to complete a qualified low-income housing project. For example, if a taxpayer has basis in land or depreciable property that is reasonably expected to be part of a project and the requirements of § 1.42–6 are otherwise satisfied, the taxpayer has carryover-allocation basis with respect to the land or depreciable property. This basis includes all items that are properly capitalizable with respect to the land or depreciable property. Thus, notwithstanding the rule in Notice 89–1 to the contrary, a nonrefundable downpayment for, or an amount paid to acquire an option to purchase, land or depreciable property may be included in carryover-allocation basis if properly capitalizable into the basis of land or depreciable property that is reasonably expected to be part of a project.

Commentators objected to the exclusion of credit application fees from carryover-allocation basis and requested that the final regulations permit these fees to be included in carryover-allocation basis. On further consideration, it appears that an absolute prohibition against the inclusion of application fees (and compliance monitoring fees, which were also not included) in carryover-allocation basis is not warranted. Accordingly, the final regulations subject credit application and compliance monitoring fees to the same standards imposed upon other fees under the regulations. For example, if a fee is properly capitalizable as part of the taxpayer's basis in land or depreciable property that is reasonably expected to be part of a project, the fee is included in carryover-allocation basis.

Verification of Basis

The proposed regulations provide verification requirements and procedures that an Agency must follow to ensure that the minimum basis requirement that is required to be met by the close of the year of allocation is, in fact, met. A commentator suggested that the basis verification requirements are too burdensome to Agencies and that Agencies lack the expertise to verify the costs includible in basis. The IRS does not expect Agencies to audit projects or make legal determinations. Rather, the proposed regulations provide that an Agency may verify the basis requirement by requiring the taxpayer to obtain a certification from an attorney or certified public accountant that the taxpayer has incurred the minimum required basis by the close of the calendar year of allocation. Accordingly, the final regulations adopt the basis verification requirement of the proposed regulations.

Requirements for Making Carryover Allocations

The proposed regulations provide guidance on the information needed for carryover allocation documents. A commentator suggested that the final regulations clarify whether a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation and, if so, whether the same building identification number (B.I.N.) should be used.

The final regulations clarify that, in this and similar situations, a separate Form 8609 is necessary for both allocations and that the B.I.N. assigned to the building for the first allocation also is used for the subsequent allocation.

Use by the General Public

The legislative history of section 42 provides that residential rental units must be for use by the general public. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees. The proposed regulations provide an exception for an employer-provided resident manager unit that is a facility reasonably required by a project.

Commentators suggested that the exception for a resident manager unit be expanded to include a unit occupied by a full-time maintenance person. After

further review, IRS the Service and the Treasury have concluded that the reference to a resident manager unit in the proposed regulations was inappropriate because the general public use requirement only applies to residential rental units. A unit that is occupied by a full-time resident manager or a full-time maintenance person is not a residential rental unit but is a facility reasonably required by a project. See Rev. Rul. 92–61, 1992–2 C.B. 7. Accordingly, the final regulations remove the reference to a resident manager unit.

Utility Allowances

A commentator suggested that the final regulations provide that in areas where there is a utility allowance increase without a corresponding increase in area median gross income, an owner may adjust the rent upwards so that rent receipts do not decrease below the minimum rent floor of section 42(g)(2)(A). Because a change of this nature requires an amendment to the statute, the final regulations do not adopt this suggestion.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.42–6, 1.42–8, 1.42–9, 1.42–10, 1.42–11, and 1.42–12 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–6 is added, § 1.42–7 is added and reserved, and §§ 1.42–8 through 1.42–12 are added to read as follows:

§ 1.42–6 Buildings qualifying for carryover allocations.

(a) *Carryover allocations.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1) (E) or (F). If the requirements of section 42(h)(1) (E) or (F) that are required to be satisfied by the close of the calendar year are not satisfied, the allocation is treated as if it had not been made. For example, if the taxpayer's basis in the project as of the close of the calendar year of allocation is not more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the year of allocation, the carryover allocation is not valid and is treated as if it had not been made.

(b) *Carryover-allocation basis*—(1) *In general.* Subject to the limitations of paragraph (b)(2) of this section, a taxpayer's basis in a project for purposes of section 42(h)(1) (E)(ii) or (F) (carryover-allocation basis) is the taxpayer's adjusted basis in land or depreciable property that is reasonably expected to be part of the project, whether or not these amounts are includible in eligible basis under section 42(d). Thus, for example, if the project is to include property that is not residential rental property, such as commercial space, the basis attributable to the commercial space, although not includible in eligible basis, is includible in carryover-allocation basis. The adjusted basis of land and depreciable property is determined under sections 1012 and 1016, and generally includes the direct and indirect costs of acquiring, constructing, and rehabilitating the property. Costs otherwise includible in carryover-allocation basis are not excluded by reason of having been incurred prior to the calendar year in which the carryover allocation is made.

(2) *Limitations*—For purposes of determining carryover-allocation basis under paragraph (b)(1) of this section, the following limitations apply.

(i) *Taxpayer must have basis in land or depreciable property related to the project.* A taxpayer has carryover-allocation basis to the extent that it has basis in land or depreciable property and the land or depreciable property is reasonably expected to be part of the project for which the carryover allocation is made. This basis includes all items that are properly capitalizable with respect to the land or depreciable property. For example, a nonrefundable downpayment for, or an amount paid to acquire an option to purchase, land or depreciable property may be included in carryover-allocation basis if properly capitalizable into the basis of land or depreciable property that is reasonably expected to be part of a project.

(ii) *High cost areas.* Any increase in eligible basis that may result under section 42(d)(5)(C) from a building's location in a qualified census tract or difficult development area is not taken into account in determining carryover-allocation basis or reasonably expected basis.

(iii) *Amounts not treated as paid or incurred.* An amount is not includible in carryover-allocation basis unless it is treated as paid or incurred under the method of accounting used by the taxpayer. For example, a cash method taxpayer cannot include construction costs in carryover-allocation basis unless the costs have been paid, and an accrual method taxpayer cannot include construction costs in carryover-allocation basis unless they have been properly accrued. See paragraph (b)(2)(iv) of this section for a special rule for fees.

(iv) *Fees.* A fee is includible in carryover-allocation basis only to the extent the requirements of paragraph (b)(2)(iii) of this section are met and—

(A) The fee is reasonable;

(B) The taxpayer is legally obligated to pay the fee;

(C) The fee is capitalizable as part of the taxpayer's basis in land or depreciable property that is reasonably expected to be part of the project;

(D) The fee is not paid (or to be paid) by the taxpayer to itself; and

(E) If the fee is paid (or to be paid) by the taxpayer to a related person, and the taxpayer uses the cash method of accounting, the taxpayer could properly accrue the fee under the accrual method of accounting (considering, for example, the rules of section 461(h)). A person is a related person if the person bears a relationship to the taxpayer specified in sections 267(b) or 707(b)(1), or if the person and the taxpayer are engaged in trades or businesses under common

control (within the meaning of subsections (a) and (b) of section 52).

(3) *Reasonably expected basis.* Rules similar to the rules of paragraphs (a) and (b) of this section apply in determining the taxpayer's reasonably expected basis in a project (land and depreciable basis) as of the close of the second calendar year following the calendar year of the allocation.

(4) *Examples.* The following examples illustrate the rules of paragraphs (a) and (b) of this section.

Example 1. (i) *Facts.* C, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, in September of 1993. As of that date, C has not begun construction of the low-income housing building C plans to build. However, C has owned the land on which C plans to build the building since 1985. C's basis in the land is $100,000. C reasonably expects that by the end of 1995, C's basis in the project of which the building is to be a part will be $2,000,000. C also expects that because the project is located in a qualified census tract, C will be able to increase its basis in the project to $2,600,000. Before the close of 1993, C incurs $150,000 of costs for architects' fees and site preparation. C properly accrues these costs under its method of accounting and capitalizes the costs.

(ii) *Determination of carryover-allocation basis.* C's $100,000 basis in the land is includible in carryover-allocation basis even though C has owned the land since 1985. The $150,000 of costs C has incurred for architects' fees and site preparation are also includible in carryover-allocation basis. The expected increase in basis due to the project's location in a qualified census tract is not taken into account in determining C's carryover-allocation basis. Accordingly, C's carryover-allocation basis in the project of which the building is a part is $250,000

(iii) *Determination of whether building is qualified.* C's reasonably expected basis in the project at the close of the second calendar year following the calendar year of allocation is $2,000,000. The expected increase in eligible basis due to the project's location in a qualified census tract is not taken into account in determining this amount. Because C's carryover-allocation basis is more than 10 percent of C's reasonably expected basis in the project of which the building is a part, the building for which C received the carryover allocation is a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section.

Example 2. (i) *Facts.* D, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, on September 11, 1993. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. In 1993, D incurs some costs related to the planned building, including architects' fees. However, at the close of 1993, these costs do not exceed 10 percent of D's reasonably expected basis in the project

(ii) *Determination of whether building is qualified.* Because D's carryover-allocation basis is not more than 10 percent of D's reasonably expected basis in the project of which the building is a part, the building for which D received a carryover allocation is not a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. The carryover allocation to D is not valid, and is treated as if it had not been made.

(c) *Verification of basis by Agency—*(1) *Verification requirement.* An Agency that makes a carryover allocation to a taxpayer must verify that, as of the close of the calendar year of allocation, the taxpayer has incurred more than 10 percent of the reasonably expected basis in the project (land and depreciable basis).

(2) *Manner of verification.* An Agency may verify that a taxpayer has incurred more than 10 percent of its reasonably expected basis in a project by obtaining a certification from the taxpayer, in writing and under penalty of perjury, that the taxpayer has incurred by the close of the calendar year of the allocation more than 10 percent of the reasonably expected basis in the project. The certification must be accompanied by supporting documentation that the Agency must review. Supporting documentation may include, for example, copies of checks or other records of payments. Alternatively, an Agency may verify that the taxpayer has incurred adequate basis by requiring that the taxpayer obtain from an attorney or certified public accountant a written certification to the Agency, that the attorney or accountant has examined all eligible costs incurred with respect to the project and that, based upon this examination, it is the attorney's or accountant's belief that the taxpayer has incurred more than 10 percent of its reasonably expected basis in the project by the close of the calendar year of the allocation.

(3) *Time of verification.* An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time after the close of the calendar year of allocation. The Agency will need to verify basis in order to accurately complete the Form 8610, Annual Low-Income Housing Credit Agencies Report, for the calendar year. If certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the basis requirement for a carryover allocation, the allocation is treated as if it had not been made and the carryover allocation document should not be filed with the Form 8610.

(d) *Requirements for making carryover allocations—*(1) *In general.* Generally, an allocation is made when an Agency issues the Form 8609, Low-Income Housing Credit Allocation Certification, for a building. See § 1.42-1T(d)(8)(ii). An Agency does not issue the Form 8609 for a building until the building is placed in service. However, in cases where allocations of credit are made pursuant to section 42(h)(1)(E) (relating to carryover allocations for buildings) or section 42(h)(1)(F) (relating to carryover allocations for multiple-building projects), Form 8609 is not used as the allocating document because the buildings are not yet in service. When an allocation is made pursuant to section 42(h)(1) (E) or (F), the allocating document is the document meeting the requirements of paragraph (d)(2) of this section. In addition, when an allocation is made pursuant to section 42(h)(1)(F), the requirements of paragraph (d)(3) of this section must be met for the allocation to be valid. An allocation pursuant to section 42(h)(1) (E) or (F) reduces the state housing credit ceiling for the year in which the allocation is made, whether or not the Form 8609 is also issued in that year.

(2) *Requirements for allocation.* An allocation pursuant to section 42(h)(1) (E) or (F) is made when an allocation document containing the following information is completed, signed, and dated by an authorized official of the Agency—

(i) The address of each building in the project, or if none exists, a specific description of the location of each building;

(ii) The name, address, and taxpayer identification number of the taxpayer receiving the allocation;

(iii) The name and address of the Agency;

(iv) The taxpayer identification number of the Agency;

(v) The date of the allocation;

(vi) The housing credit dollar amount allocated to the building or project, as applicable;

(vii) The taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year in which the allocation is made;

(viii) The taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year in which the allocation is made and the

percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year;

(ix) The date that each building in the project is expected to be placed in service; and

(x) The Building Identification Number (B.I.N.) to be assigned to each building in the project. The B.I.N. must reflect the year an allocation is first made to the building, regardless of the year that the building is placed in service. This B.I.N. must be used for all allocations of credit for the building. For example, rehabilitation expenditures treated as a separate new building under section 42(e) should not have a separate B.I.N. if the building to which the rehabilitation expenditures are made has a B.I.N. In this case, the B.I.N. used for the rehabilitation expenditures shall be the B.I.N. previously assigned to the building, although the rehabilitation expenditures must have a separate Form 8609 for the allocation. Similarly, a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation. The B.I.N. assigned to the building for the first allocation must be used for the subsequent allocation.

(3) *Special rules for project-based allocations*—(i) *In general.* An allocation pursuant to section 42(h)(1)(F) (a project-based allocation) must meet the requirements of this section as well as the requirements of section 42(h)(1)(F), including the minimum basis requirement of section 42(h)(1)(E)(ii).

(ii) *Requirement of section 42(h)(1)(F)(i)(III).* An allocation satisfies the requirement of section 42(h)(1)(F)(i)(III) if the Form 8609 that is issued for each building that is placed in service in the project states the portion of the project-based allocation that is applied to that building.

(4) *Recordkeeping requirements*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1) (E) or (F), the taxpayer must retain a copy of the allocation document and file an additional copy with the Form 8609 that is issued to the taxpayer for a building after the building is placed in service. The taxpayer need only file a copy of the allocation document with the Form 8609 for the building for the first year the credit is claimed. However, the Form 8609 must be filed for the first taxable year in which the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year

(ii) *Agency.* The Agency must retain a copy of the allocation document and file the original with the Agency's Form 8610 that accounts for the year the allocation is made. The Agency must also retain a copy of the Form 8609 that is issued to the taxpayer and file the original with the Agency's Form 8610 that reflects the year the form is issued.

(5) *Separate procedure for election of appropriate percentage month.* If a taxpayer receives an allocation under section 42(h)(1) (E) or (F) and wishes to elect under section 42(b)(2)(A)(ii) to use the appropriate percentage for a month other than the month in which a building is placed in service, the requirements specified in § 1.42–8 must be met for the election to be effective.

(e) *Special rules.* The following rules apply for purposes of this section.

(1) *Treatment of partnerships and other flow-through entities.* With respect to taxpayers that own projects through partnerships or other flow-through entities (e.g., S corporations, estates, or trusts), carryover-allocation basis is determined at the entity level using the rules provided by this section. In addition, the entity is responsible for providing to the Agency the certification and documentation required under the basis verification requirement in paragraph (c) of this section.

(2) *Transferees.* If land or depreciable property that is expected to be part of a project is transferred after a carryover allocation has been made for a building that is reasonably expected to be part of the project, but before the close of the calendar year of the allocation, the transferee's carryover-allocation basis is determined under the principles of this section and section 42(d)(7). See also Rev. Rul. 91–38, 1991–2 C.B. 3 (see § 601.601(d)(2)(ii)(*b*) of this chapter). In addition, the transferee is treated as the taxpayer for purposes of the basis verification requirement of this section, and therefore, is responsible for providing to the Agency the required certifications and documentation.

§ 1.42–7 Substantially bond-financed buildings. [Reserved]

§ 1.42–8 Election of appropriate percentage month.

(a) *Election under section 42(b)(2)(A)(ii)(I) to use the appropriate percentage for the month of a binding agreement*—(1) *In general.* For purposes of section 42(b)(2)(A)(ii)(I), an agreement between a taxpayer and an Agency as to the housing credit dollar amount to be allocated to a building is considered binding if it—

(i) Is in writing;

(ii) Is binding under state law on the Agency, the taxpayer, and all successors in interest;

(iii) Specifies the type(s) of building(s) to which the housing credit dollar amount applies (i.e., a newly constructed or existing building, or substantial rehabilitation treated as a separate new building under section 42(e));

(iv) Specifies the housing credit dollar amount to be allocated to the building(s); and

(v) Is dated and signed by the taxpayer and the Agency during the month in which the requirements of paragraphs (a)(1) (i) through (iv) of this section are met.

(2) *Effect on state housing credit ceiling.* Generally, a binding agreement described in paragraph (a)(1) of this section is an agreement by the Agency to allocate credit to the taxpayer at a future date. The binding agreement may include a reservation of credit or a binding commitment (under section 42(h)(1)(C)) to allocate credit in a future taxable year. A reservation or a binding commitment to allocate credit in a future year has no effect on the state housing credit ceiling until the year the Agency actually makes an allocation. However, if the binding agreement is also a carryover allocation under section 42(h)(1) (E) or (F), the state housing credit ceiling is reduced by the amount allocated by the Agency to the taxpayer in the year the carryover allocation is made. For a binding agreement to be a valid carryover allocation, the requirements of paragraph (a)(1) of this section and § 1.42–6 must be met.

(3) *Time and manner of making election.* An election under section 42(b)(2)(A)(ii)(I) may be made either as part of the binding agreement under paragraph (a)(1) of this section to allocate a specific housing credit dollar amount or in a separate document that references the binding agreement. In either case, the election must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(I).

(iii) Be signed by the taxpayer;

(iv) If it is in a separate document, reference the binding agreement that meets the requirements of paragraph (a)(1) of this section; and

(v) Be notarized by the 5th day following the end of the month in which the binding agreement was made

(4) *Multiple agreements*—(i) *Rescinded agreements.* A taxpayer may not make an election under section 42(b)(2)(A)(ii)(I) for a building if an election has previously been made for the building for a different month. For example, assume a taxpayer entered into a binding agreement for allocation of a

specific housing credit dollar amount to a building and made the election under section 42(b)(2)(A)(ii)(I) to apply the appropriate percentage for the month of the binding agreement. If the binding agreement subsequently is rescinded under state law, and the taxpayer enters into a new binding agreement for allocation of a specific housing credit dollar amount to the building, the taxpayer must apply to the building the appropriate percentage for the elected month of the rescinded binding agreement. However, if no prior election was made with respect to the rescinded binding agreement, the taxpayer may elect the appropriate percentage for the month of the new binding agreement.

(ii) *Increases in credit.* The election under section 42(b)(2)(A)(ii)(I), once made, applies to any increase in the credit amount allocated for a building, whether the increase occurs in the same or in a subsequent year. However, in the case of a binding agreement (or carryover allocation that is treated as a binding agreement) to allocate a credit amount under section 42(e)(1) for substantial rehabilitation treated as a separate new building, a taxpayer may make the election under section 42(b)(2)(A)(ii)(I) notwithstanding that a prior election under section 42(b)(2)(A)(ii)(I) is in effect for a prior allocation of credit for a substantial rehabilitation that was previously placed in service under section 42(e).

(5) *Amount allocated.* The housing credit dollar amount eventually allocated to a building may be more or less than the amount specified in the binding agreement. Depending on the Agency's determination pursuant to section 42(m)(2) as to the financial feasibility of the building (or project), the Agency may allocate a greater housing credit dollar amount to the building (provided that the Agency has additional housing credit dollar amounts available to allocate for the calendar year of the allocation) or the Agency may allocate a lesser housing credit dollar amount. Under section 42(h)(7)(D), in allocating a housing credit dollar amount, the Agency must specify the applicable percentage and maximum qualified basis of the building. The applicable percentage may be less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(I). Whether the appropriate percentage is the appropriate percentage for the 70-percent present value credit or the 30-percent present value credit is determined under section 42(i)(2) when the building is placed in service.

(6) *Procedures*—(i) *Taxpayer.* The taxpayer must give the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the binding agreement is made. The taxpayer must retain a copy of the binding agreement and the election statement and must file an additional copy of each with the taxpayer's Form 8609, Low-Income Housing Credit Allocation Certification, for the first taxable year in which credit is claimed for the building.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the binding agreement and the election statement with the Agency's Form 8610, Annual Low-Income Housing Credit Agencies Report, that accounts for the year the allocation is actually made. The Agency must also retain a copy of the binding agreement and the election statement.

(7) *Examples.* The following examples illustrate the provisions of this section. In each example, X is the taxpayer, Agency is the state housing credit agency, and the carryover allocations meet the requirements of § 1.42–6 and are otherwise valid.

Example 1. (i) In August 1993, X and Agency enter into an agreement that Agency will allocate $100,000 of housing credit dollar amount for the low-income housing building X is constructing. The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore, has no effect on the state housing credit ceiling. On or before September 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of August 1993.

(ii) Agency makes a carryover allocation of $100,000 of housing credit dollar amount for the building on October 2, 1993. The carryover allocation reduces Agency's state housing credit ceiling for 1993. Due to unexpectedly high construction costs, when X places the building in service in July 1994, the product of the building's qualified basis and the applicable percentage for the building (the appropriate percentage for the month of August 1993) is $150,000, rather than $100,000. Notwithstanding that only $100,000 of credit was allocated for the building in 1993, Agency may allocate an additional $50,000 of housing credit dollar amount for the building from its state housing credit ceiling for 1994. The appropriate percentage for the month of August 1993 is the applicable percentage for the building for the entire $150,000 of credit allocated for the building, even though separate allocations were made in 1993 and 1994. Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609 to X. One Form 8609 must reflect the $100,000 allocation made in 1993, and the other Form 8609 must reflect the $50,000 allocation made in 1994.

(iii) X gives the original notarized statement to Agency on or before September 5, 1993, and retains a copy of the binding agreement, election statement, and carryover allocation document. X files a copy of the binding agreement, election statement, and carryover allocation document with X's Form 8609 for the first taxable year in which X claims credit for the building.

(iv) Agency files the original of the binding agreement, election statement, and 1993 carryover allocation document with its 1993 Form 8610. Agency retains a copy of the binding agreement, election statement, and carryover allocation document. After the building is placed in service in 1994, Agency issues to X a copy of the Form 8609 reflecting the 1993 carryover allocation of $100,000 and files the original of that form with its 1994 Form 8610. Agency also files the original of the 1994 Form 8609 reflecting the $50,000 allocation with its 1994 Form 8610 and issues to X a copy of the 1994 Form 8609. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. (i) In September 1993, X and Agency enter into an agreement that Agency will allocate $70,000 of housing credit dollar amount for rehabilitation expenditures that X is incurring and that X will treat as a new low-income housing building under section 42(e)(1). The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore, has no effect on Agency's state housing credit ceiling. On or before October 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of September 1993. Agency makes a carryover allocation of $70,000 of housing credit dollar amount for the building on November 15, 1993. The carryover allocation reduces by $70,000 Agency's state housing credit ceiling for 1993.

(ii) In October 1994, X and Agency enter into another binding agreement meeting the requirements of paragraph (a)(1) of this section. Under the agreement, Agency will allocate $50,000 of housing credit dollar amount for additional rehabilitation expenditures by X that qualify as a second separate new building under section 42(e)(1) On or before November 5, 1994, X signs and has notarized a written election statement meeting the requirements of paragraph (a)(3) of this section. On December 1, 1994, X receives a carryover allocation under section 42(h)(1)(E) for $50,000. The carryover allocation reduces by $50,000 Agency's state housing credit ceiling for 1994. The applicable percentage for the rehabilitation expenditures treated as the second separate new building is the appropriate percentage for the month of October 1994, not September 1993. The appropriate percentage for the month of September 1993 still applies to the allocation of $70,000 for the rehabilitation expenditures treated as the first

separate new building. Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609 to X. One Form 8609 must reflect the $70,000 allocation made in 1993, and the other Form 8609 must reflect the $50,000 allocation made in 1994.

(iii) X gives the first original notarized statement to Agency on or before October 5, 1993, and retains a copy of the first binding agreement, election statement, and carryover allocation document issued in 1993. X gives the second original notarized statement to Agency on or before November 5, 1994, and retains a copy of the second binding agreement, election statement, and carryover allocation document issued in 1994. X files a copy of the binding agreements, election statements, and carryover allocation documents with X's Forms 8609 for the first taxable year in which X claims credit for the buildings.

(iv) Agency retains a copy of the binding agreements, election statements, and carryover allocation documents. Agency files the original of the first binding agreement, election statement, and 1993 carryover allocation document with its 1993 Form 8610. Agency files the original of the second binding agreement, election statement, and 1994 carryover allocation document with its 1994 Form 8610. After X notifies Agency of the date each building is placed in service, the Agency will issue copies of the respective Forms 8609 to X, and file the originals of those forms with the Agency's Form 8610 that reflects the year each form is issued. The Agency also retains copies of the Forms 8609.

(b) *Election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued*—(1) *Time and manner of making election.* In the case of any building to which section 42(h)(4)(B) applies, an election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(II);

(iii) Specify the percentage of the aggregate basis of the building and the land on which the building is located that is financed with the proceeds of obligations described in section 42(h)(4)(A) (tax-exempt bonds);

(iv) State the month in which the tax-exempt bonds are issued;

(v) State that the month in which the tax-exempt bonds are issued is the month elected for the appropriate percentage to be used for the building;

(vi) Be signed by the taxpayer; and

(vii) Be notarized by the 5th day following the end of the month in which the bonds are issued.

(2) *Bonds issued in more than one month.* If a building described in section 42(h)(4)(B) (substantially bond-financed building) is financed with tax-exempt bonds issued in more than one month, the taxpayer may elect the appropriate percentage for any month in which the bonds are issued. Once the election is made, the appropriate percentage elected applies for the building even if all bonds are not issued in that month. The requirements of this paragraph (b), including the time limitation contained in paragraph (b)(1)(vii) of this section, must also be met.

(3) *Limitations on appropriate percentage.* Under section 42(m)(2)(D), the credit allowable for a substantially bond- financed building is limited to the amount necessary to assure the project's feasibility. Accordingly, in making the determination under section 42(m)(2), an Agency may use an applicable percentage that is less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(II).

(4) *Procedures*—(i) *Taxpayer.* The taxpayer must provide the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the bonds are issued. If an authority other than the Agency issues the tax-exempt bonds, the taxpayer must also give the Agency a signed statement from the issuing authority that certifies the information described in paragraphs (b)(1)(iii) and (iv) of this section. The taxpayer must file a copy of the election statement with the taxpayer's Form 8609 for the first taxable year in which credit is claimed for the building. The taxpayer must also retain a copy of the election statement.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the election statement and the corresponding Form 8609 for the building with the Agency's Form 8610 that reflects the year the Form 8609 is issued. The Agency must also retain a copy of the election statement and the Form 8609.

§ 1.42–9 For use by the general public.

(a) *General rule.* If a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) (24 CFR subtitle A and chapters I through XX). See HUD Handbook 4350.3 (or its successor). A copy of HUD Handbook 4350.3 may be requested by writing to: HUD, Directives Distribution Section, room B–100, 451 7th Street, SW., Washington, DC 20410.

(b) *Limitations.* Notwithstanding paragraph (a) of this section, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under section 42. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under section 42.

(c) *Treatment of units not for use by the general public.* The costs attributable to a residential rental unit that is not for use by the general public are not excludable from eligible basis by reason of the unit's ineligibility for the credit under this section. However, in calculating the applicable fraction, the unit is treated as a residential rental unit that is not a low-income unit.

§ 1.42–10 Utility allowances.

(a) *Inclusion of utility allowances in gross rent.* If the cost of any utilities (other than telephone) for a residential rental unit are paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. This section only applies for purposes of determining gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.

(b) *Applicable utility allowances*—(1) *FmHA-assisted buildings.* If a building receives assistance from the Farmers Home Administration (FmHA-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Farmers Home Administration (FmHA) for the building. For example, if a building receives assistance under FmHA's section 515 program (whether or not the building or its tenants also receive other state or federal assistance), the applicable utility allowance for all rent-restricted units in the building is determined using Exhibit A–6 of 7 CFR part 1944, subpart E (or a successor method of determining utility allowances).

(2) *Buildings with FmHA assisted tenants.* If any tenant in a building receives FmHA rental assistance payments (FmHA tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving HUD rental assistance

payments) is the applicable FmHA utility allowance.

(3) *HUD-regulated buildings.* If neither a building nor any tenant in the building receives FmHA housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an FmHA-assisted nor a HUD-regulated building, and no tenant in the building receives FmHA tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

(i) *Tenants receiving HUD rental assistance.* The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

(ii) *Other tenants*—(A) *General rule.* If none of the rules of paragraphs (b)(1), (2), (3), and (4)(i) of this section apply to any rent-restricted units in a building, the appropriate utility allowance for the units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any unit in the building in accordance with paragraph (b)(4)(ii)(B) of this section, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. This local utility company estimate procedure is not available for and does not apply to units to which the rules of paragraphs (b) (1), (2), (3), or (4)(i) of this section apply.

(B) *Utility company estimate.* Any interested party (including a low-income tenant, a building owner, or an Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The local utility company estimate may be obtained by an interested party at any time during the building's extended use period (see section 42(h)(6)(D)) or, if the building does not have an extended use period, during the building's compliance period (see section 42(i)(1)). Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party. The interested party that obtains the local utility company estimate (the initiating party) must retain the original of the utility company estimate and must furnish a copy of the local utility company estimate to the owner of the building (where the initiating party is not the owner), and the Agency that allocated credit to the building (where the initiating party is not the Agency). The owner of the building must make available copies of the utility company estimate to the tenants in the building.

(c) *Changes in applicable utility allowance.* If at any time during the building's extended use period (or, if the building does not have an extended use period, the building's compliance period), the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate.

§ 1.42–11 Provision of services.

(a) *General rule.* The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g).

(b) *Services that are optional*—(1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) *Continual or frequent services.* If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also § 1.42–9(b).

(3) *Required services*—(i) *General rule.* The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

(ii) *Exceptions*—(A) *Supportive services.* Section 42(g)(2)(B)(iii) provides an exception for certain fees paid for supportive services. For purposes of section 42(g)(2)(B)(iii), a supportive service is any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

(B) *Specific project exception.* Gross rent does not include the cost of mandatory meals in any federally-assisted project for the elderly and handicapped (in existence on or before January 9, 1989) that is authorized by 24 CFR 278 to provide a mandatory meals program.

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective date.* The rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are effective May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994 that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (see § 601.601(d)(2)(ii)(*b*) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42–6 and 1.42–9 through 1.42–12.

(b) *Prior periods.* Notice 89–1, 1989–1 C.B. 620 and Notice 89–6, 1989–1 C.B. 625 (see § 601.601(d)(2)(ii)(*b*) of this chapter) may be applied for periods prior to May 2, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. Part 602 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 26 U.S.C. 7805.

2. Section 602.101(c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control no.
. . . . .	.
1.42–6	1545–1102
1.42–8	1545–1102
1.42–10	1545–1102
. . . . .	.

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: January 25, 1994.
Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.
[FR Doc. 94–3515 Filed 3–2–94; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Part 301

[TD 8524]

RIN 1545–A079

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends § 301.6611–1 on Procedure and Administration. The amendments clarify the period during which interest is allowed on overpayments credited against a taxpayer's liability for interest and certain additions to the tax. The amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The amendments affect all taxpayers that have overpayments credited against underpayments.

DATES: These regulations are effective March 3, 1994. These regulations are applicable for credits made on or after August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:IT&A:Br06) or telephone 202–622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations on Procedure and Administration (26 CFR part 301) under section 6611 of the Internal Revenue Code (Code) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. These amendments conform the regulations to section 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248, 96 Stat. 635), and section 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369, 98 Stat. 696).

On August 25, 1992, the IRS published in the **Federal Register** a Notice of Proposed Rulemaking (57 FR 38457). The IRS did not receive any comment letters in response to that notice nor was a public hearing requested. The proposed regulations are adopted in this Treasury decision.

Explanation of Provisions

Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the Code provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621. Under section 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed under the Code on the taxpayer. Under section 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, specific due dates are provided in § 301.6611–1(h).

Generally, section 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added section 6622 of the Code, which requires interest imposed by the Code to be compounded daily. The effect of section 6601(f) on the compounding requirement of section 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of that interest (i.e., interest no longer accrues on the taxpayer's interest liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, § 301.6611–1(h)(2)(v) is amended to clarify that interest does not continue to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

Interest on Overpayments That Are Credited Against Certain Additions to the Tax

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In section 158 of DEFRA, Congress added section 6601(e)(2)(B) to the Code, which requires taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. Thus, § 301.6611–1(h)(2)(vi) is amended to clarify that no interest is allowed on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

Prior Regulations Obsolete

These regulations are effective for credits made on or after August 25, 1992. It should be noted that, since the enactment of section 6622 of the Code in TEFRA, the IRS has treated § 301.6611–1(h)(2)(v) of the prior regulations as obsolete. Likewise, the Service has treated § 301.6611–1(h)(2)(vi) of the prior regulations as obsolete with respect to certain additions to the tax since the enactment of section 6601(e)(2)(B) in DEFRA. Thus, the IRS has computed and is currently computing interest in a fashion consistent with these amendments.

Effect on Other Documents

On October 9, 1984, the IRS published in the **Federal Register** (49 FR 39566 [LR–280–82, 1984–2 C.B. 860]) proposed amendments to § 301.6611–1 and § 301.6601–1 on Procedure and Administration. The proposed amendments revised § 301.6611–1 to reflect section 346 of TEFRA and section 714(n) of DEFRA, eliminated certain deadwood provisions, and reorganized § 301.6611–1. The proposed amendments did not, however, include revisions to take into account section 344 of TEFRA or section 158 of DEFRA because those sections were beyond the scope of that regulation project. The proposed amendments have not been adopted as final regulations. If the proposed amendments are adopted as final regulations, their rules (and, to the extent necessary, their effective dates) will be modified to be consistent with these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6611–1 is amended by:

a. Revising paragraphs (h)(2)(v) and (h)(2)(vi) as set forth below.

b. Adding paragraph (k) to read as set forth below.

§ 301.6611–1 Interest on overpayments.

* * * * *

(h) * * *

(2) * * *

(v) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues for any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

(k) *Effective date.* Paragraphs (h)(2)(v) and (h)(2)(vi) of this section are effective for credits made on or after August 25, 1992.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 3, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–4780 Filed 3–2–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–93–028]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is reinstating the temporary regulations governing the operation of the Evergreen Point Bridge (State Route 520) across Lake Washington between Seattle and Bellevue, Washington. This rule will be in effect through June 30, 1994. The amended regulations will provide for the reasonable needs of navigation and allow the bridge owner to provide openings only during periods of reduced vehicular traffic if 12 hours notice is furnished. The purpose of this measure is to avoid risking failure of the drawspan in the open position during commuter hours as has previously occurred. The hours of limited operation insure sufficient time for the owner to restore the retractable span to the closed position before road traffic becomes heavy. During the period that this rule is in effect malfunctions of the draw mechanism will be analyzed and repaired.

EFFECTIVE DATES: This regulation becomes effective on April 4, 1994. This temporary final rule is effective through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Regulatory History

This same regulation was put into effect on September 21, 1992. It has since expired. On November 2, 1993, the Coast Guard published a proposed rule (58 FR 58518) to consider the reinstatement of the temporary regulations. The Commander, Thirteenth Coast Guard District, also published a public notice on November 19, 1993. Both articles solicited comments from interested parties until December 17, 1993. No objections to the temporary regulations were received. A public hearing was not requested and was not held.

Background and Purpose

The temporary regulations allow the bridge owner to limit openings for the passage of vessels to late at night. These restricted hours of operation enable the owner to restore the bridge to the closed position in the event of a malfunction prior to the daylight hours of heavy commuter traffic. Openings during the day are excluded. With 12 hours notice, the bridge will be opened from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning. The hours for opening on weeknights are more restricted to give greater time to restore the drawspan in the event of a failure prior to the start of heavy commuter traffic.

Discussions of Comments and Changes

No comments were received in opposition to the proposed rulemaking.

Regulatory Evaluation

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impacts of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We base our decision on the light and infrequent commercial traffic on the subject waterways during the hours affected by this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) the U.S. Coast

Guard must consider whether rules will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because this final rule imposes no new requirements on small businesses and will result in partial relief from a regulatory burden on the owner or operator of these bridges, the Coast Guard does not expect this rule to have significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1049 is temporarily suspending amended by paragraph (d) and revising paragraphs (a) and (c) to read as follows.

Note: This is a temporary amendment and will not appear in the Code of Federal Regulations.

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning if at least 12 hours notice is given. At all other times the draw need not open.

* * * * *

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

Dated: February 8, 1994.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 94–4763 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Miami 94–008]

Safety Zone Regulations; North Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Intracoastal Waterway at Bakers Haulover Inlet Florida. This safety zone is needed to protect vessels from a safety hazard associated with severe shoaling in the channel between Biscayne Bay daybeacon 6 (light list number 41185) and Biscayne Bay light 9 (light list number 41210). Entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

EFFECTIVE DATE: This regulation becomes effective on January 28, 1994 at 1 p.m. and terminates at 7 p.m. on April 11, 1994, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Chief Boatswains Mate Robert F. Chason, Port Operations Department, USCG Marine Safety Office Miami, Claude Pepper Federal Building, 5th Floor, 51 SW. First Avenue, Miami, Florida 33130–1608, (305) 536–5693

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to public safety interests since immediate action is needed to prevent potential damage to the public.

Drafting Information

The drafters of this regulation are Chief Boatswains Mate Robert F. Chason, Project Officer for the Captain of the Port, Miami, Florida, and Lieutenant J. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

This safety zone is needed to protect vessels from a safety hazard associated with severe shoaling in the channel between Biscayne Bay daybeacon 6, (light list number 41185) and Biscayne Bay light 9 (light list number 41210). There have been several recent tug and barge groundings caused by the current channel conditions, and the potential for a severe marine casualty is great if unrestricted commercial vessel traffic is allowed to continue. This area of the channel is scheduled to be dredged to its published depth between February 7, 1994 and April 11, 1994. Until the channel is dredged, entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Economic Assessment and Certification

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this

proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The safety zone will only be in effect 5 hours of one day, February 11, 1994.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T07–008 is added to read as follows:

§ 165.T07–008 Safety Zone: Intra Coastal Waterway, Bakers Haulover Inlet Florida.

(a) *Locations.* The following area is a safety zone: The waters of the Intracoastal Waterway (Statute Mile 1080) at Bakers Haulover Inlet Florida (chart 11467), between Biscayne Bay Daybeacon 6, (light list number 41185) and Biscayne Bay light 9 (light list number 41210).

(b) *Effective date.* This section becomes effective on January 28, 1994 at 1 p.m. and terminates at 7 p.m. April 11, 1994, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in 33 CFR 165.23 of this part, entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

Dated: January 28, 1994.

L.A. Doyle,

Captain, United States Coast Guard, Captain of the Port, Miami.

[FR Doc. 94–4762 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN31–1–6283; FRL–4842–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: This document contains corrections to a final rule which was published on April 8, 1981 relating to approval of a Minnesota State Implementation Plan (SIP) revision consisting of a sulfur dioxide control plan and emission limitations contained in revised operating permits for the Rochester and Twin Cities nonattainment area. This technical amendment corrects an error of codification in the CFR and prevents further confusion in citing the Minnesota SIP revision.

EFFECTIVE DATE: This action will be effective on March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Maggie J. Greene at (312) 886–6088.

SUPPLEMENTARY INFORMATION: On April 8, 1981, (46 FR 20996), the United States Environmental Protection Agency (USEPA) approved a Minnesota State Implementation Plan (SIP) revision consisting of a sulfur dioxide control plan and emission limitations contained in revised operating permits for the Rochester and Twin Cities nonattainment area. USEPA erroneously codified its approval at 40 CFR 52.1220(c)(16). Paragraph (c)(16) had already been utilized to codify USEPA's March 4, 1981 (46 FR 15138) approval of a revision to provide for modification of the Minnesota air quality surveillance network.

This revision is related to items incorporated by reference into the Minnesota State Implementation Plan which is designated as 40 CFR 52.1220, Identification of plan, subpart Y—Minnesota.

Need for Correction

Duplicate paragraphs 52.1220(c)(16) make citations to these paragraphs confusing and unclear. For this reason, USEPA is publishing this technical amendment to avoid further confusion.

List of Subjects in 40 CFR Part 52

Environmental protection, air pollution control, Incorporation by reference, Sulfur oxides.

Dated: February 14, 1994.

David A. Allrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by redesignating the second paragraph (c)(16) as paragraph (c)(17).

[FR Doc. 94–4374 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1853, and 1870

Contractor Performance Summary (CPS) Guidance

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final Rule.

SUMMARY: This rule removes NASA guidance on Contractor Performance Summary (CPS). NASA has determined that such guidance is an unnecessary burden on government contracting personnel.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION: Dave Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION: NASA guidance on Contractor Performance Summary (CPS) was adopted in 57 FR 3137, 01/28/92, and amended in 57 FR 60737, 12/22/92. This rule removes CPS guidance because the guidance is burdensome. This rule makes no change to the guidance on evaluating proposal risk which was also added by 57 FR 3137, 01/28/92, to Subpart 1870.3, Appendix I, to 1870.303 in Chapter 3, section 301, Mission Suitability, paragraph 1. Evaluation Subfactors, as subparagraph f.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public under the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1804, 1853, and 1870

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1804, 1853 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. In part 1804, sections 1804.677 and 1804.677–1 through 1804.677–6 are removed.

PART 1853—FORMS

1853.204–70 [Amended]

3. In subpart 1853.2, § 1853.204–70, the section heading is amended by removing "1651," and paragraph (o) is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.303 [Amended]

4. Subpart 1870.3, Appendix I, to § 1870.303 is amended as set forth below:

In Chapter 3, section 303, *Relevant Experience and Past Performance,* is amended by removing paragraph 1. and renumbering paragraphs 2. through 7. as paragraphs 1. through 6., respectively.

[FR Doc. 94–4770 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–P

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48 CFR Parts 1807, 1834, 1852, and 1870

Changes to NASA FAR Supplement Streamlining the Major System Acquisition Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA FAR Supplement to provide for selection/down-selection between phases of a Major System Acquisition utilizing a streamlined approach that eliminates the previous NASA requirement to provide a new, formal solicitation for each phase of the acquisition.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1993, an interim rule to amend the NASA FAR Supplement to streamline the major system acquisition process was published in the **Federal Register** for comment (58 FR 58791–58798). In addition to pointing out errata and inconsistencies that are corrected in the final rule, the public comments on the interim rule addressed several substantive issues and suggested NASA consider revising its policy to address them.

The first of these issues is that the NASA interim rule, by prohibiting the establishment of contractual requirements for subsequent phase proposals, may not provide a mechanism to ensure that the contractors in the initial phase of the procurement complete their efforts and submit proposals for the subsequent phase in a timely and responsive manner. The comment suggests that, absent the appropriate leverage, contractors could "game" the system to gain a competitive advantage in the down-selection by delaying proposal submission until their designs matured. The comment recommends that NASA revise its interim rule to ensure the integrity of the process in this area.

Although the comment correctly cites the NASA prohibition against establishing a contract requirement for subsequent phase proposals, it apparently misunderstands the NASA policy relative to requesting these proposals and ensuring their timely submittal. As stated in the interim rule, NASA will request proposals for the subsequent phase of the procurement from the preceding phase contractors (and any outside source that wishes to submit one) at a defined point during initial phase performance. This request will advise offerors that proposals will be required by a date certain and that FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, applies. This clause states that any proposal received after the required submission date will not be considered unless one of the specified exceptions applies. Consequently, if an initial phase contractor does not submit a proposal by the due date and one of the exceptions in FAR 52.215–10 does not apply, they forfeit the opportunity to continue in the competition, and the procurement will proceed without them. NASA believes that this procedure best suits our goals. We are not interested in requiring a contractor to submit a proposal if that offeror believes its design approach is not competitive. To do so would be to force a contractor to expend its resources in pursuit of a contract it has no reasonable expectation of winning, and the resultant "competition" could fairly be labeled a sham. Moreover, we expect contractors in progressive competition procurements to be committed to satisfying our requirements, and to work diligently toward providing, at the times specified, the products required for the Government's down-selection decisions. It is not in their interests to do otherwise. The hypothetical instance described in the public comment of a contractor attempting to "game" the system is effectively precluded by the proposal request procedures described above that would eliminate them from consideration for subsequent phase awards. No revision to our policy is necessary in this area.

A second public comment requested clarification of the interim rule to address the issue of proposals submitted for subsequent phases by sources other than the preceding phase contractors and how they would be treated. By way of example, the comment questioned whether such outside offerors have the right to protest and debriefing.

NASA's progressive competitions are full and open competitions throughout the process. All proposals received, whether from preceding phase contractors or from outside sources, are considered to be solicited and are given full, unbiased evaluation under NASA SEB procedures. Since outside offerors enjoy the same standing as the preceding phase contractors, they have the full rights of any offeror on a NASA procurement, including protest and debriefing. To accord a diminished set of rights to outside offerors would compromise both the commitment to full and open competition and the agency's source selection process. Even-handed treatment of all offerors is inherent in both our SEB procedures and the progressive competition policy, and no revision to our policy is necessary to address the public comment.

A third public comment requested further definition of the proposal preparation information that will be provided to offerors who are not preceding phase contractors.

The NASA interim rule specifies that such information includes the "previously issued solicitation; the preceding phase contracts; the preceding phase system performance and design requirements; all proposal

preparation instructions; and evaluation factors, subfactors and elements". NASA considers this list to be adequately inclusive for a policy that must address a wide range of programs. Individual programs will have unique information that will be provided to outside offerors, but these requirements cannot be anticipated at this time. No revision to our policy is necessary in this area.

The last substantive public comment recommended clarification of the procedure in 1834.005–1(d)(7) by which subsequent phase offerors other than initial phase contractors are eliminated from the competition if their proposals do not demonstrate a design maturity equivalent to that of the preceding phase contracts. The comment suggested that this process be explicitly linked to the competitive range standard in FAR 15.609(b).

Elimination of an offeror is technically a competitive range determination. Accordingly, we believe that explicit linkage of 1834.005–1(d)(7) and FAR 15.609(b) is unnecessary. Furthermore, NASA source selection procedures in 1815.613–71(b) already discuss elimination of offerors with more precision than a cross reference to the FAR would provide. Under these procedures, offerors may be eliminated at several points during the selection process, the first of which is through an initial identification of unacceptable proposals. This process occurs during initial review, before the proposal is formally scored or evaluated against the evaluation factors. At this time, if a proposal's deficiencies are clearly of such a magnitude that it warrants discontinuance of the evaluation, NASA eliminates that proposals from further consideration. The procedures of 1834.005–1(d)(7) cited in the public comment relate to this process. For those proposals still under consideration, NASA performs a full evaluation against the evaluation factors and makes a competitive range determination based on that evaluation. These long-standing procedures provide a clear description of the NASA evaluation process. Adoption of the public comment recommendation would only cloud this description, and no change is made to the interim rule in this area.

NASA is adopting as a final rule the text set out in the interim rule with minor changes that have no significant effect on the substance of the interim rule. First, the interim rule did not specify dates for the two clauses added to the NASA FAR Supplement, 1852.234–70 and 1852.234–71. These clauses are dated November 1993 in this final rule. Second, the interim rule included a number of references to NASA Management Instruction (NMI) 7102.4, "Management of Major System Programs and Projects." Several of these references should also have cited the NMI's companion NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook". These NHB references are included in this final rule. Third, a number of editorial changes are made to correct errata and inconsistencies in the publishes interim rule.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1834, 1852, and 1870

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1807, 1834, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Section 2807.170–1 is amended by revising the last sentence of paragraph (a) to read as follows:

1807.170–1 Procurement plans requiring approval by NASA headquarters.

(a) * * * Separate authorization must be obtained for each phase in accordance with the procedures of NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

PART 1834—MAJOR SYSTEM ACQUISITION

3. Section 1834.000 is amended by revising the first sentence to read as follows:

1834.000 Scope.

NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and (FAR) 48 CFR part 34 is contained in this part, subpart 18–70.5, and in NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * *

4. In section 1834.001, paragraph (b) is amended to read as follows:

1834.001 Definitions.

* * * * *

(b) *Major system.* Any system that: Is directed at and critical to fulfilling an agency mission; entails the allocation of a relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NMI 7120.4, "Management of Major System Programs and Projects," and NHB 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

5. In section 1834.005–1, paragraph (a) is revised to read as follows:

1834.005–1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A–109 and NMI 7120.4 and NHB 7120.5, or other similar phased procurements, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.234–70 and 1852.234–71 [Amended]

6. In sections 1852.234–70 and 1852.234–71, the reference "(Date)" after the clause title is revised to read "(November 1993)" in each instance, and in section 1852.234–70, the word "in" in the first sentence of paragraph (c) of the clause is revised to read "on".

PART 1870—NASA SUPPLEMENTARY REGULATIONS

7. In section 1870.502, the first sentence is revised to read as follows:

1870.502 Regulations.

The basic regulations governing major system acquisitions are Office of Management and Budget (OMB) Circular No. A–109, NASA Management Instruction (NMI) 7120.4 ("Management of Major System Programs and Projects") and NASA Handbook (NHB) 7120.5 ("Management of Major System Programs and Projects Handbook"), and NASA FAR Supplement (NFS) 48 CFR 1834. * * *

1870.503, Appendix I [Amended]

8. In section 1870.503, Appendix I, section 2 is amended by revising

paragraph 2.(b) and the third sentence of paragraph 2.(d) to read as follows:

Appendix I to 1870.503—NASA Procedures for Conducting Major System Acquisitions

* * * * *

2. Definitions

* * * * *

(b) *Major system.* Any system that: is directed at and critical to fulfilling an agency mission; entails the allocation of a relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

(d) * * * The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors.

* * *

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9. In Section 1870.503, Appendix I, paragraph 3 is amended by revising paragraph 3.(a), first sentence, and paragraph 3.(b) to read as follows:

3. *Phases of a Major System Acquisition*

(a) As described in NMI 7120.4 and NHB 7120.5, there are five phases in the life cycle of a major system acquisition, three of which are normally included in a phased procurement: Phase B, Definition; Phase C, Design; and Phase D, Development. * * *

(b) For a detailed description of the phases of a major system acquisition and their interrelationships, consult NHB 7120.5.

* * * * *

10. In section 1870.503, Appendix I, paragraph 5 is amended by revising the last sentence of paragraph 5.(b) to read as follows:

5. *Progressive Competition Synopsis Requirements*

* * * * *

(b) * * * Each synopsis must be prepared in accordance with (FAR) 48 CFR 5.207 and NFS 1834.005–1(d).

* * * * *

[FR Doc. 94–4771 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–M

48 CFR Part 1815

Applicability of NASA Formal Source Evaluation Board (SEB) Procedures

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement part 1815 to make editorial corrections and administrative changes to clarify when formal SEB procedures are to be used.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

NASA formal SEB procedures apply to all competitive negotiated procurements of $25 million or more, except for specific categories of procurements (e.g., NASA Research Announcements) that require their own unique procedures. For actions under $25 million, the formal procedures are optional. Existing agency regulations on this issue are not clear, and the NASA FAR Supplement is revised to clarify the applicability of formal SEB procedures. These revisions affect internal procedures only and have no direct impact on external entities. The revisions are issued as a final rule to ensure immediate implementation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1815 is amended as follows:

1. The authority citation for 48 CFR part 1815 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815.610 is revised to read as follows:

1815.610 Written or oral discussion.

(FAR) 48 CFR 15.610(c)(2) is not applicable to NASA competitive negotiated procurements. The limited discussion procedures described in (FAR) 48 CFR 15.613 and 48 CFR 1815.613 shall be used instead.

3. Section 1815.613–70 is revised to read as follows:

1815.613–70 General.

The source selection procedures in (FAR) 48 CFR 15.610, as modified by (FAR) 48 CFR 15.613 and 48 CFR 1815.613 to limit discussions with offerors, apply to all NASA competitive negotiated procurements except those conducted under the following procedures:

(a) Announcements of Opportunity (see 1870.103, App. I).

(b) NASA Research Announcements (see 1835.016–70 and 1870.203, App. I).

(c) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(d) Architect and Engineering (A&E) services (see (FAR) 48 CFR 36.6 and 48 CFR 1836.6).

4. In section 1815.613–71, paragraph (a) is revised to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

(a) *Applicability.* Unless one of the exceptions in 1815.613–70 (a) through (d) applies, the formal SEB procedures of 1870.303, App. I, shall be followed in all competitive negotiated procurements of $25 million or more (including the value of multiple awards, options, and later phases of the same project). The formal SEB procedures may be used in lesser valued procurements at the discretion of the Procurement Officer.

* * * * *

[FR Doc. 94–4769 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 022894A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowance of red king crab to the trawl rock sole/"other flatfish" fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 28, 1994, through 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 prohibited species bycatch allowance of red king crab in Zone 1 for the trawl rock sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established as 110,000 crabs by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the prohibited species bycatch allowance of red king crab for the trawl rock sole/"other flatfish" fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Zone 1 of the BSAI from 12 noon, A.l.t., February 28, 1994, through 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 28, 1994

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4902 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 022394A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for the offshore component in this area

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC of pollock for vessels catching pollock for processing by the offshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994), as 31,272 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 27,772 mt after determining that 3,500 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI, effective from 12 noon A.l.t., March 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 25, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4839 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 022594A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 2, 1994, until 12 noon, A.l.t., August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for the inshore component in the BS was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) as 178,054 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director) has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 173,054 mt with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS, effective from 12 noon, A.l.t., March 2, 1994, until 12 noon, A.l.t., August 15, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4838 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–14]

Proposed Establishment of Jet Route J–512 and Alteration of VOR Federal Airway V–351

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Jet Route J–512 from the Kalispell, MT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to Calgary, Alberta, Canada, to enhance traffic flow between the United States and Canada. This action also proposes to amend VOR Federal Airway V–351 from Kalispell, MT, to the United States/Canadian Border to reduce controller workload

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 93–AWA–14, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWA–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Jet Route J–512 from the Kalispell, MT, VOR/DME to Calgary, Alberta, Canada, excluding that airspace within Canada. This action would enhance traffic flow between the United States and Canada. This action would also amend V–351 from Kalispell, MT, to the United States/Canadian Border to reduce controller workload. Jet routes and domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The jet route and domestic VOR Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–512 [New]

From Kalispell, MT; to Calgary, Alberta, Canada. The airspace within Canada is excluded.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–351 [Revised]

From Kalispell, MT; to INT Kalispell 022°T(004°M) and Calgary, Alberta, Canada, 184°T(164°M) radials; Calgary. The airspace within Canada is excluded.

Issued in Washington, DC, on February 23, 1994.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 94–4873 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Food and Drug Administration

21 CFR Parts 123 and 1240

[Docket No. 93N–0195]

Proposal To Establish Procedures for the Safe Processing And Importing of Fish and Fishery Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of January 28, 1994 (59 FR 4142). The document proposed to adopt regulations to ensure the safe processing and importing of fish and fishery products. The proposed regulations provided, in part, for the monitoring of selected processes in accordance with Hazard Analysis Critical Control (HACCP) principles. The document was published with some errors. This document corrects those errors.

DATES: Written comments by April 28, 1994. The agency is proposing that any final rule based upon this proposal become effective 1 year following its publication.

ADDRESSES: Written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Paper or diskette copies of the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS number PB94–134707 for a paper copy and PB94–501301 for a diskette and include a payment of $30.00. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or an NTIS deposit account. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service, or 800–553–NTIS for rush service. For electronic access (via FedWorld™) to ordering and downloading options, dial 703–321–8020 with a modem (Internet: fedworld.gov (192.239.92.201)).

FOR FURTHER INFORMATION CONTACT: Philip Spiller, Center for Food Safety and Applied Nutrition (HFS–401), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3885.

In FR Doc. 94–1592, appearing on page 4142 in the **Federal Register** of Friday, January 28, 1994, the following corrections are made:

1. On page 4142, in the 1st column, in line 5, "Nos. 90N–0199 and" is removed and "No." is added in its place; Under the "**DATES**" caption, in line 1, "March 29, 1994" is corrected to read " April 28, 1994"; and under the "**ADDRESSES**" caption, the following text is added to read as follows:

Paper or diskette copies of the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Orders must reference NTIS number PB94–134707 for a paper copy and PB94–501301 for a diskette and include a payment of $30.00. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or an NTIS deposit account. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service or 800–553–NTIS for rush service. For electronic access (via FedWorld™) to ordering and downloading options, dial 703–321–8020 with a modem (Internet: fedworld.gov (192.239.92.201)).

2. On page 4148, in the 2d column, in the 1st full paragraph, in line 10, "Ph" is corrected to read "pH".

3. On page 4150, in the 2d column, in the 1st full paragraph, in the 3d line from the bottom of the paragraph, the word "*been*" is corrected to read "*become*".

3a. On page 4157, in the 3d column, in the 1st full paragraph, in line 14, the word "an" is corrected to read "a".

4. On page 4165, in the 3d column, in lines 2 and 21, the words "and smoked" are added after the words "Ready-to-eat"; and in line 16, the words " or smoked" are added after the words "Ready-to-eat".

5. On page 4171, in the 1st column, in the 1st full paragraph, in the 4th line from the bottom, the words "as guidance" are added after the word " forth"; and beginning in the 3d line from the bottom, the last sentence is corrected to read: "If FDA adopts the guidance on smoked and smoked-flavored fishery products in Appendix 1 as regulation based on the public comments that the agency receives, it will codify it in reserved subpart B of part 123."

6. On page 4181, in the 2d column, in the first full paragraph, in the 2d line from the bottom of the paragraph, the words "as guidance" are added after the word "procedures".

7. On page 4188, in the 1st column, in the 3d full paragraph, in line 12, the words ", smoked fishery products," are added after the words "ready-to-eat products".

Appendix A to Part 123 [Corrected]

8. On page 4198, in the 3d column, in section 1 of Appendix A to part 123, in the last line the words "covered by 21 CFR part 123, subpart B" are removed and the words "that are also smoked or smoke-flavored fishery products. Guidance on the processing of these products has been consolidated in the separate guidance document and is also provided in Appendix 1." are added in their place.

Appendix 1 [Corrected]

9. On page 4211, in the 2d column, in Appendix 1, Example 6, in lines 1, 3, and 15, the word "General" is corrected to read "Consolidated"; and in the 3d column, in line 19, "Appendix A" is corrected to read "separate guidance"; in line 20, the word "the" is removed, and the words "this consolidated" are added in its place; and in line 24, the parenthetical statement is corrected to read: "(These hazards are addressed in the materials in the FDA Fish and Fishery Products Hazards and Controls

Guide relating to species related hazards and controls)."

10. On page 4212, in the 1st column, in Appendix 1, Example 6, section 5.a.(1), beginning in the 3d line from the bottom of the paragraph, "§ 172.177 of this chapter" is corrected to read "21 CFR 172.177", and in the 2d column, in section 5.a.(4) beginning in line 8, and in section 5.b. beginning in line 5, "§§ 172.175 and 172.17 of this chapter" are corrected to read "21 CFR 172.175 and 172.177".

11. On page 4212, in the 1st column, in Appendix 1, Example 6, section 5.a.(2) beginning in the 5th line from the bottom the parenthetical phrase is corrected to read "(as permitted by 21 CFR 172.175 and 172.177)."

12. On page 4212, in the 2d column, in section 5.a.(4), line 11, and in section 5.b., line 7, and in the 3d column, in section 6.a., line 10, the word "Appendix" is removed and the words "consolidated guidance" are added in its place.

13. On page 4213, in the 1st column, in section 6.c.(2).ii, in line 3, and in the 2d column in section 7, line 1, the word "Appendix" is removed and the words "consolidated guidance" are added in its place; and in the 3d column in section 11, beginning in line 3, "Appendix C. section 5.a.," is removed and the words "section 5., Brining and smoking, of this consolidated guidance" are added in their place.

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4662 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 77

[AG Order No. 1851–94]

Communications With Represented Persons

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice ("Department") is issuing for an additional 30-day comment period a proposed rule governing the circumstances under which its attorneys may communicate with persons and organizations known to be represented by counsel in the course of law enforcement investigations and proceedings.

The purpose of the proposed rule is to impose a comprehensive, clear and uniform set of regulations on the conduct of government attorneys during criminal and civil investigations and enforcement proceedings. The rule is intended to ensure that government attorneys adhere to the highest ethical standards, while eliminating the uncertainty and confusion arising from the variety of interpretations of state rules, some of which have been incorporated by reference as local court rules in a number of federal district courts.

The proposed rule establishes a general prohibition, subject to limited enumerated exceptions, against contacts with "represented parties." This prohibition derives from the American Bar Association ("ABA") Code of Professional Responsibility and its successor, the ABA Model Rules of Professional Conduct. The proposed rule generally permits investigative contacts with represented individuals or organizations who have not yet been named as defendants in a civil or criminal enforcement proceeding or arrested as part of a criminal proceeding. However, the rule would not permit contacts with represented persons without the consent of counsel for the purpose of negotiating plea agreements, settlements or other similar legal arrangements.

In addition, the Department intends to issue substantial additions to the United States Attorneys' Manual ("Manual") to provide additional direction to Department attorneys when they deal with represented individuals and organizations, in order to accommodate more fully the principles and purposes underlying the bar rules. Those provisions further restrict government attorneys when they contact targets of criminal or civil law enforcement investigations who are known to be represented by counsel, and when they communicate with other represented persons. The intended additions to the United States Attorneys' Manual are provided for reference as part of this commentary.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Written comments should be submitted to: The Office of the Associate Attorney General, United States Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: F. Mark Terison, Senior Attorney, Legal Counsel, Executive Office for United States Attorneys, United States Department of Justice, (202) 514–5204. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. General Discussion

The Department issued for notice and comment a proposed rule on the same subject on two previous occasions. See 57 FR 54737 (Nov. 20, 1992) and 58 FR 39976 (July 26, 1993). The Department received many thoughtful comments from members of the bar, state courts, bar counsel, federal and state prosecutors and others during those comment periods. The current version of the proposed rule includes substantial revisions based on those comments. Accordingly, the Department is issuing the rule again for comments to ensure that all the interested parties have an opportunity to comment.

This proposal reflects the Department's commitment to fostering ethical behavior consistent with the principles informing DR 7–104(A)(1) of the ABA Code of Professional Responsibility and Rule 4.2 of the Model Rules of Professional Conduct, while setting forth clear and uniform national guidelines upon which federal attorneys can rely in carrying out their responsibilities to enforce federal laws. The regulations make clear that federal attorneys generally continue to be subject to state bar ethical rules where they are licensed to practice, except in the limited circumstances where state ethical rules clearly conflict with lawful federal procedures and practices. With respect to willful violations of the contacts rules as embodied in the Attorney General's proposed regulations, federal attorneys would remain subject to state bar disciplinary sanctions. This new proposal is the product of extensive review, comments and vigorous debate among judges, federal government attorneys, members of the private bar, disciplinary officials, academics and ethicists.

In essence, the proposed regulations would permit federal prosecutors and agents to continue to conduct criminal and civil investigations in routine fashion against all individuals, whether or not those persons are represented by counsel. They would allow Department attorneys to continue to make or direct undercover or overt contacts with individuals and organizations represented by counsel for the purpose of developing factual information up until the point at which they are arrested or charged with a crime or named as defendants in a civil law enforcement action. However, the regulations generally would not permit federal prosecutors to attempt to negotiate plea agreements, settlements or similar arrangements with individuals represented by counsel

outside of the presence or without the consent of their attorneys. These regulations also would preclude, with certain very narrow exceptions, any contacts with represented parties after an arrest, indictment, or the filing of a complaint on the subject matter of the representation. The principal exception to these general prohibitions occurs when the defendant voluntarily and knowingly initiates a contact with the government attorney, in which case the regulations would require the government attorney to take the matter before a district judge or magistrate judge to obtain approval for the communication or to obtain the appointment of substitute counsel for the defendant.

The United States Attorneys' Manual will set forth further guidance. The proposed Manual provisions, which are set out in their entirety at the end of this commentary, prohibit overt approaches by federal attorneys to represented targets of criminal or civil enforcement proceedings without the consent of counsel, unless certain enumerated exceptions are met. The Manual also will require that government attorneys receive approval from their supervisors before communicating with any represented party or represented target.

Since early in this century, the rules of professional conduct that govern attorneys have required that lawyers for one party in a dispute communicate only through an adverse party's lawyer, rather than directly. DR 7–104(A)(1) of the ABA Model Code of Professional Responsibility provides:

> A. During the course of his representation of a client a lawyer shall not:
>
> 1. Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Rule 4.2 of the ABA Model Rules states:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Disciplinary authorities in all 50 states and in the District of Columbia have adopted one of these rules, or a similar prohibition. Underlying these rules is the recognition that when two parties in a legal proceeding are represented, it is unfair for an attorney to circumvent opposing counsel and employ superior skills and legal training to take advantage of the opposing party.

At the same time, the courts have long recognized that government law enforcement agents must be allowed broad powers, within constitutional limits, to investigate crime and civil violations of police and regulatory laws. These powers properly include the authority to conduct undercover operations and to interview witnesses, potential suspects, targets and even defendants who waive their rights to remain silent. Although the Fifth and Sixth Amendments significantly restrict contacts with defendants after their initial appearance before a judge or after indictment, these constraints generally do not apply before a person has been taken into custody or charged in an adversary proceeding. Sound policies support this substantial power of police to investigate. The general public, victims of crime, and even potential suspects have a strong interest in vigorous inquiry by law enforcement officers before arrest or the filing of charges.

As long as investigations were treated as within the province of the police alone, the traditional rule forbidding counsel from directly contacting represented persons did not come into conflict with legitimate law enforcement activities. In recent years, however, the Department of Justice has encouraged federal prosecutors to play a larger role in preindictment, prearrest investigations. Some of this increased involvement stems from the wider use of law enforcement techniques, such as electronic surveillance, which require the preparation of legal filings. Also, complex white collar and organized crime investigations necessitate more intensive engagement of lawyers, who present such cases to grand juries. Most important, greater participation of lawyers at the preindictment stage of law enforcement has been regarded as helpful in assuring that police investigations comply with high legal and ethical standards.

This extension of the traditional prosecutor's responsibility has been a salutary development. One by-product, however, has been uncertainty about whether the traditional professional limitation on attorney contacts with represented parties should be viewed as a restriction upon prosecutors engaged in investigations and, by extension, the agents with whom they work. The overwhelming preponderance of federal appellate courts have held that the restriction on contacts with represented persons does not apply at the preindictment investigation stage. See, e.g., *United States* v. *Ryans*, 903 F.2d 731 (10th Cir.), cert. denied, 498 U.S. 855 (1990) (discussing cases); *United States* v. *Lemonakis*, 485 F.2d 941, 955–56 (DC Cir. 1973), cert. denied, 415 U.S. 989 (1974). Only the Second Circuit has suggested otherwise. See *United States* v. *Hammad*, 858 F.2d 834 (2d Cir. 1988). In recent years, state courts and state bar organizations have expressed different views on the point at which the prohibition on contacts now embodied in DR 7–104, Model Rule 4.2 and their analogs should apply to criminal enforcement proceedings.

Uncertainty about the scope and applicability of DR 7–104, Rule 4.2 and their state counterparts has directly affected the investigative activities of agents, including Federal Bureau of Investigation and Drug Enforcement Administration personnel, who work with prosecutors. An expansive application of these rules in some jurisdictions may have the effect of blocking preindictment interviews or undercover operations that most courts have held permissible under federal constitutional and statutory law.

This problem is compounded when federal attorneys assigned to the same case are members of different state bars. Under federal law, a Department attorney must be a member in good standing of a state bar, but he or she need not belong to the bar in each state in which he or she is practicing for the government. As a result, prosecution teams often comprise attorneys admitted to different bars. The application of different state disciplinary rules to these individuals creates uncertainty, confusion and the possibility of unfairness. Indeed, one member of a two-member federal prosecution team could receive a commendation for effective law enforcement while the other member would be subject to state discipline for the exact same conduct.

In light of these circumstances, the Department has concluded that a compelling need exists which warrants a uniform federal rule to reconcile the traditional rule against contacts with a represented person with the obligation of the Department of Justice to enforce the law vigorously. Indeed, absent a new federal rule, prosecutors have been forced on occasion to reduce their participation in the investigative phase of law enforcement so as to leave federal agents unfettered by state disciplinary rules that were never intended to govern police behavior. Such a retreat from the field by prosecutors serves neither efficiency nor the interest in elevating legal compliance and ethical standards in all phases of law enforcement.

Furthermore, the disciplinary rules themselves invite this type of regulation. Virtually all the states have adopted rules that include an "authorized by law" exception. These proposed regulations are intended to

provide legal authorization in states whose bar rules provide that exception.

Finally, the Department has long maintained, and continues to maintain, that it has the authority to exempt its attorneys from the application of DR 7–104 and Model Rule 4.2 and their state counterparts. Furthermore, the Department maintains that whether, and to what extent, such prohibitions should apply to Department attorneys is a policy question. See Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, 4B Op. O.L.C. 576, 577 (1980). However, in light of the fact that all 50 states and the District of Columbia have adopted some form of a prohibition on contacts with represented parties, and in view of the long history of those rules, the Department believes that its attorneys should adhere to the principles underlying those rules to the maximum extent possible. Therefore, even though the Department has the authority to exempt its attorneys from the reach of these rules, the Department has decided not to implement a wholesale exemption.

Rather, the proposed regulations attempt to reconcile the purposes underlying DR 7–104 and Rule 4.2 with effective law enforcement. Recognizing the importance of the attorney-client relationship and the desirability of an individual who is represented by counsel being fully advised by counsel before negotiating legal agreements, the regulations provide that federal attorneys may not negotiate plea bargains, settlement agreements, immunity agreements or similar arrangements without the participation or consent of the individual's attorney. In this context, the prosecutor's superior legal training and specialized knowledge could be used to the detriment of the untutored layperson. Thus, the regulations comport with the principal purpose of DR 7–104 and Rule 4.2 by insisting that the individual's attorney participate in these types of negotiations. At the same time, the regulations would permit direct contacts at the preindictment, prearrest investigative stage with any individual, whether or not he or she is represented by counsel, to inquire about the matters under investigation. The regulations are drafted to conform to the approach of most federal appellate courts that have considered the matter. See, e.g., *United States* v. *Lopez*, 4 F.3d 1455 (9th Cir. 1993); *United States* v. *Ryans*, 903 F.2d 731 (10th Cir.), cert. denied, 498 U.S. 855 (1990); *United States* v. *Fitterer*, 710 F.2d 1328, 1333 (8th Cir.), cert. denied, 464 U.S. 852 (1983); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.), cert. denied, 452 U.S. 920 (1981); and *United States* v. *Lemonakis*, 485 F.2d 941, 955–56 (D.C. Cir. 1973), cert. denied, 415 U.S. 989 (1974). The Department believes that public policy and effective law enforcement would not be served if one could exempt himself or herself from lawful, court-sanctioned investigative techniques simply by retaining an attorney. The Department believes that it is inappropriate to alter investigative techniques based upon an individual's financial ability to retain counsel before the point at which a court would appoint counsel for a person not able to afford counsel.

The regulations and the accompanying changes to the United States Attorneys' Manual also would give effect to other important aspects of the bar rules against contacts with represented parties. For example, the regulations would preclude federal attorneys from disparaging an individual's counsel or from attempting to gain access to attorney-client confidences or lawful defense strategy. The guidelines contained in the Manual provisions will also make clear that once an individual is in a likely adversarial situation with the government and has retained an attorney to represent him or her with respect to the particular subject matter under investigation, the government attorney must take greater care before making any *ex parte* contacts. While the proposed regulations authorize most communications before arrest, the proposed Manual changes provide that, as a matter of internal policy guidance, federal prosecutors generally should not make overt contacts with represented targets of investigations. However, the Manual provisions permit overt contacts with a represented target when initiated by the target; when necessary to prevent death or physical injury; when the relevant investigation involves ongoing, additional or different crimes from that to which the representation relates; or when a United States Attorney or an Assistant Attorney General expressly concludes, under all of the circumstances, that the contact is needed for effective law enforcement.

Finally, the proposed regulations and Manual provisions also address when a government attorney may communicate with an employee, officer or director of a represented corporation or organization without the consent of counsel. The regulations generally prohibit a government attorney from communicating with a current, high-level employee of a represented organization who participates as a "decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter" and the organization has been named as a defendant in a criminal or civil law enforcement proceeding. The Manual provisions further generally prohibit contacts with controlling individuals of organizations that have not yet been named as defendants but are targets of federal criminal or civil law enforcement investigations without the consent of counsel.

The proposed regulations recognize that state courts and disciplinary bodies continue to play the primary role in regulating the conduct of all attorneys, including those who work for the federal government. Further, Department of Justice attorneys continue to be subject to state bar ethical rules except to the limited extent those rules conflict with lawful federal procedures and practices. As noted above, however, because of the expanded participation of federal prosecutors in preindictment investigations, DR 7–104 and Model Rule 4.2 have inevitably affected and circumscribed the power of federal law enforcement officials to carry out their legally mandated responsibilities. State courts and disciplinary committees are not the appropriate final arbiters of the scope of federal policing. The Department of Justice must assume this role, subject to the Constitution and the laws of the United States. The new regulations would not supplant state discipline. Rather, the regulations would provide that attorneys who comply with the new federal rule will be shielded from inconsistent state disciplinary rules. On the other hand, attorneys who willfully violate the new regulations would continue to be subject to the full measure of state disciplinary jurisdiction.

The Department is confident that, taken together, the proposed regulations, Manual amendments and this supplemental information will promote the public interest in effective law enforcement conforming to the highest standards of legal ethics.

II. Analysis of Comments and Revisions

A detailed discussion of the comments received following the first publication of the earlier proposal is included at 58 FR 39976 (July 26, 1993).

The comments received following the second publication of the earlier proposal were similar in many respects to those received in the first round of comments. As of September 19, 1993, the Department received 219 written comments. Of those, 159 comments were received from Department of

Justice employees. Of those, 144, mostly from federal prosecutors from around the country, supported promulgation of the earlier proposal; 1 opposed the rule; and 14 others provided miscellaneous comments. The Department also received 21 comments from federal officials outside the Department, 18 of whom supported the proposal.

The Department received 39 comments from individuals and organizations outside of the federal government. These writers included private attorneys, public defenders, state court judges, bar associations, disciplinary officials and others. Twenty-eight writers in that group expressed opposition to the rule while 3 supported the proposal.

Those writing in support of the earlier proposal generally emphasized three major points. First, they stated that a clear rule governing communications by federal attorneys with represented individuals was critical to the vigorous enforcement of federal law. Several writers stated that the lack of clarity on the matter created by a variety of court and bar association opinions has had a chilling effect on federal enforcement efforts. They stated that some federal prosecutors fearful of the uncertain state of the law and unwilling to risk their licenses to practice law have decided not to engage in routine discussions with represented individuals. Second, several writers described the practice of some attorneys to claim representation of all the employees of a corporate client. They argued that this practice, along with the uncertainty of the state of the disciplinary rules, often makes it exceedingly difficult to investigate wrongdoing by corporations or other organizations. Third, several supporters of the previous proposal stated that they did not believe that it was the intention of DR 7–104 and Model Rule 4.2 to apply to criminal investigations. Furthermore, they argued that if the prohibitions in those rules apply to all federal criminal and civil investigations the result will be twofold: (1) Federal attorneys will be forced to reverse the trend of the last 20 years and become less involved in investigations; and (2) federal agents will stop consulting with federal attorneys during investigations. Both of these trends will result in less effective law enforcement.

The Department received several comments critical of the earlier proposal. Those criticisms fall generally in four categories. First, several individuals stated that they believed the proposal would exempt Department attorneys from ethical requirements that apply to all other attorneys, thus creating a double standard. Furthermore, they argued that the proposal improperly equated constitutional minimums with ethical conduct. Second, several writers argued that the Attorney General did not have the authority to promulgate such a regulation. They argued that the proposal unfairly impinged on the traditional right of state supreme courts to monitor and discipline attorneys admitted to practice before them. They also questioned whether the drafters of the "authorized by law" exceptions could have intended that the Attorney General would be empowered to release Department attorneys from the obligations of the rules simply by issuing a regulation.

Third, several people argued that the proposed regulation was not necessary for the vigorous enforcement of the law. And fourth, several writers commented on various aspects of the proposal itself. The most common objection was to the "controlling individual" test that the proposal used to determine whether communications with a particular employee of a represented corporation would be permissible. They argued that the test was much too narrow and would only apply to a corporation's general counsel and a small handful of very senior executives.

The Department has reviewed, analyzed and carefully considered all the comments it received and has made substantial revisions to its earlier proposal based on these comments. The Department believes the current proposal, in combination with the proposed additions to the United States Attorneys' Manual, appropriately addresses the concerns of the commenters critical of the earlier proposal, while preserving the Department's ability to enforce federal laws. Due to the significant nature of the changes made, the Department determined that an additional comment period is appropriate.

III. Section-by-Section Analysis

Section 77.1 Purpose and Authority

This section includes no material changes from the rule published earlier. It does, however, include additional discussion regarding the purpose of the rule.

The Attorney General's authority to establish standards of conduct for Department of Justice attorneys derives from two distinct sources: Section 301 of title 5, United States Code, and title 28 of the United States Code, which, through a variety of provisions, authorizes the Attorney General and the Department of Justice to enforce federal law. Section 301 states that "[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, [and] the distribution and performance of its business." Authority to promulgate this rule also is implicit in the Attorney General's statutory power to "supervise all litigation" to which the United States is a party and to direct United States Attorneys and other subordinate attorneys in the "discharge of their respective duties." 28 U.S.C. 519. Other specific statutory references are indicated in the text of the rule.

Section 77.2 Definitions

This section is substantially similar to the definitional section of the previous proposal. Two changes, however, are worthy of attention:

"Attorney for the Government"

First, the definition of "attorney for the government" has been refined explicitly to exclude from the definition those law enforcement agents employed by the Department of Justice who are also members of state bars, if they are employed as, and are performing the function of, agents rather than attorneys. The Federal Bureau of Investigation, Drug Enforcement Agency and other investigative agencies have long recruited individuals with advanced degrees—including, for example, engineering, business and law degrees—to serve as agents. The Department strongly encourages the recruitment of educated and specially trained individuals for positions as agents. An agent's bar membership should not adversely affect his or her ability to conduct comprehensive investigations and otherwise to fulfill his or her law enforcement functions. Therefore, the proposed rule specifically exempts attorney-agents from its scope if they are employed by the government as investigative agents and not as attorneys.

"Undercover Investigation"

Second, the section now includes a definition of the term "undercover investigation." Under this definition, the hallmark of an "undercover operation" is an investigation in which an individual "whose identity as an official of the government or a person acting at the behest thereof is concealed or is intended to be concealed." This definition is intended to be read broadly to include virtually every type of law enforcement investigation in which the identity of a government employee, or the fact that an individual is cooperating with the government, is concealed.

Section 77.3 Represented Party; Represented Person

This section differs significantly from the corresponding section in the earlier proposal in order more closely to follow the language in DR 7–104(a)(1) and Rule 4.2, which establish general prohibitions against *ex parte* contacts with a represented party, and to differentiate between those individuals who are represented by counsel and have become a party to a proceeding, and those represented individuals who are not parties to any relevant proceedings.

An individual is considered to be a "represented party" under these rules if: (1) The person is represented by counsel; (2) the representation is current and concerns the subject matter in question; and (3) the person has either been arrested or charged in a federal criminal case or is a defendant in a civil law enforcement proceeding concerning the subject matter of the representation. If the person is currently represented in fact regarding the subject matter in question, but has not been charged or arrested, that person is considered a "represented person." Thus, witnesses, suspects and targets of investigations who have not been indicted or arrested are considered represented persons under this rule and in the United States Attorneys' Manual guidelines.

Section 77.5 of this rule generally prohibits government attorneys from initiating *ex parte* contacts with represented parties, but does not prohibit *ex parte* contacts with represented persons. (However, §§ 77.8 and 77.9 prohibit some contacts with represented persons as well.) This distinction between represented parties and represented persons is consistent with the rulings of the vast majority of federal courts to consider the issue. *See United States* v. *Infelise*, 773 F. Supp. 93, 95 n.3 (N.D. Ill. 1991) (DR 7–104(A)(1) "speaks in terms of communications with a 'party', suggesting that the rule is to be applied only when adversarial proceedings have been initiated."); *United States* v. *Ryans*, 903 F.2d 731, 739 (10th Cir.) ("We are not convinced that the language of [DR 7–104(A)(1)] calls for its application to the investigative phase of law enforcement" because "the rule appears to contemplate an adversarial relationship between litigants, whether in a criminal or a civil setting."), cert. denied, 498 U.S. 855 (1990); *United States* v. *Dobbs*, 711 F.2d 84, 86 (8th Cir. 1983) (agent's "noncustodial interview of [suspect] prior to the initiation of judicial proceedings against the appellant did not constitute an ethical breach"); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.), cert. denied, 452 U.S. 920 (1981); *United States* v. *Lemonakis*, 485 F.2d 941, 956 (D.C. Cir. 1973), cert. denied, 415 U.S. 989 (1974); *In re U.S. Dept. of Justice Antitrust Investigation*, 1992–2 Trade Cases (CCH) ¶ 69,933, at 68,469 (D. Minn. 1992) (Rule 4.2 held inapplicable because "[t]he word 'parties' in Rule 4.2 indicates the presence of a lawsuit" and "[t]he present controversy relates to an investigation, not a lawsuit"); *United States* v. *Western Electric Co., Inc.*, 1990–2 Trade Cases (CCH) ¶ 69,148, at 64,314 & n.6 (D.D.C. 1990); *United States* v. *Guerrerio*, 675 F. Supp. 1430, 1438 (S.D.N.Y. 1987); *Faragher* v. *National R.R. Passenger Corp.*, 1992 U.S. Dist. LEXIS 1810 at *2–3 (E.D. Pa. 1992). Only the Second Circuit has suggested that DR 7–104(A)(1) may apply to federal law enforcement activities before indictment or arrest. See *United States* v. *Hammad*, 858 F.2d 834, 838–39 (2d Cir. 1988); *United States* v. *Pinto*, 850 F.2d 927, 935 (2d Cir.), cert. denied, 488 U.S. 867 (1988); *United States* v. *Sam Goody, Inc.*, 518 F. Supp. 1223, 1224–25 n.3 (E.D.N.Y. 1981), appeal dismissed, 675 F.2d 17 (2d Cir. 1982).

Section 77.4 Constitutional and Other Limitations

This section is substantially similar to the corresponding section in the earlier proposal. The section has been revised slightly to make clear that although the proposed rule does not supersede the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, this limitation does not extend to other rules regarding procedure in federal courts. Thus, rules of procedure adopted by individual courts as local rules, many of which incorporate state bar rules, are not included in this limitation.

Section 77.5 General Rule for Civil and Criminal Enforcement; Represented Parties

This section, as well as sections 77.6 through 77.9, differs substantially from corresponding sections contained in the earlier proposal.

This section closely tracks the language of DR 7–104(A)(1) and Rule 4.2 and applies similar prohibitions to attorneys for the government. The section prohibits an attorney for the government from communicating with a represented party, as defined in § 77.3, about the subject matter of the representation without the consent of that individual's attorney. The prohibition applies, however, only if the attorney for the government knows that the represented party is, in fact, represented by counsel. Therefore, communications by an attorney for the government with a represented party will not violate this rule if the attorney for the government is unaware of the fact of representation.

This section also prohibits an attorney for the government from causing another individual to communicate with a represented party. Accordingly, a government investigator acting at the attorney's direction and control may not do what the attorney himself or herself is prohibited from doing. Conversely, a government attorney will not be personally responsible for the actions of agents in communicating with represented persons unless, in doing so, the agents were acting as the attorney's "alter ego."

It also should be noted that this provision is violated (and thus, a basis for departmental discipline exists) when an inappropriate communication takes place, regardless of whether or not the communication results in eliciting an inculpatory statement or is otherwise prejudicial to the represented party.

Section 77.6 Exceptions; Represented Parties

This section describes the circumstances under which Department attorneys may communicate, or cause others to communicate, with a represented party who the Department attorney knows is represented concerning the subject matter of the representation without first obtaining the consent of the represented party's counsel. The exceptions enumerated in this section are similar to, but not identical with, the exceptions enumerated in § 77.7 of the earlier proposal.

Paragraph (a): Determination if Representation Exists

This exception recognizes the fact that there is no reason to prohibit a limited inquiry about whether an individual is, in fact, represented by counsel regarding the relevant subject matter. Such an inquiry does not involve the kind of communication about which courts have expressed concern and has little potential for undermining the attorney-client relationship.

There may be uncertainty about the existence of representation with respect to whether it has been established, whether it may have been terminated, and whether a particular subject falls within the scope of the representation. The first issue may arise when a judicial or other appearance has not occurred, but the government attorney has some information suggesting that the person

may be represented. It may also arise when an attorney purports to represent a group of persons, such as all the employees of a corporation. Uncertainty about the termination of the representation may arise when substantial time has passed since it was made known that the person was represented by counsel or when the attorney for the government has reason to believe that the representation has ceased. It is unlikely, however, that such uncertainty will arise when there are pending judicial proceedings, since the court must approve termination of representation.

When inquiring about the status of representation, government attorneys and agents generally must refrain from stating whether it is necessary or desirable to be represented by counsel. After the right to counsel has attached, a statement or implication suggesting that counsel is not providing proper or effective representation could violate the Sixth Amendment right to effective assistance of counsel. See *United States* v. *Morrison*, 449 U.S. 361, 364 (1981).

This exception is not intended to and does not create a duty on the part of the attorney for the government to inquire about the status of representation. However, if the attorney for the government has any reason to believe that the individual is represented by counsel with regard to the relevant subject matter, he or she should, as a matter of course, make the appropriate inquiries before engaging in substantive discussions with the individual.

Paragraph (b): Discovery or Judicial or Administrative Process

Any communication that is authorized by discovery procedures, such as a deposition of a party-opponent, or by judicial or administrative process, such as a grand jury, deposition, or trial subpoena or an administrative summons, obviously should not be prohibited by any rule. See *United States* v. *Schwimmer*, 882 F.2d 22, 28 (2d Cir. 1989), cert. denied, 493 U.S. 1071 (1990) (prosecutor's questioning of represented person before the grand jury outside the presence of counsel is "authorized by law" under DR 7–104). Among other reasons, a person who is served with process has an opportunity to consult with counsel prior to his or her appearance at the proceeding, and may have counsel present if desired during the proceeding (except, of course, while testifying before a grand jury). This provision ensures that such communications continue to be allowed.

This exception does not purport to authorize any communications not otherwise available pursuant to discovery procedures or legal process.

Paragraph (c): Initiation of Communication by Represented Party

One of the concerns most frequently raised by Department attorneys during the comment period on the previous proposal was the lack of clarity under current law regarding the propriety of communicating with a represented party, in the absence of that party's counsel, when the communication is initiated by the party. A defendant may wish to communicate with the government outside the presence of counsel for many valid reasons. Department attorneys repeatedly cited the situation in which a defendant wants to cooperate with the government but does not want his or her attorney to know for fear that the attorney will disclose the defendant's intentions to others. This situation typically arises when the defendant questions the loyalty of his or her attorney, who is being paid by another individual involved in a criminal enterprise. The same problem may arise when a single attorney represents multiple parties who are part of the same criminal enterprise.

When the desire of a defendant or arrestee to speak with the attorney for the government outside the presence of his or her counsel is "voluntary, knowing and informed," there is no valid reason to prohibit the government from engaging in such communications. In fact, the Department believes that it would be a dereliction of its obligation to enforce vigorously federal law if it promulgated a rule that would prohibit such communications.

It is well established that an individual who is entitled to counsel under the Fifth Amendment or the Sixth Amendment may waive that right and choose to communicate with the government outside the presence of his or her attorney, "provided the waiver is made voluntarily, knowingly and intelligently." *Moran* v. *Burbine*, 475 U.S. 412, 421 (1986) (internal quotations omitted); *Patterson* v. *Illinois*, 487 U.S. 285, 292 (1988); *Brewer* v. *Williams*, 430 U.S. 387, 404–06 (1977). In such a situation, the defendant should not be prohibited from engaging in communications that are allowed by the Constitution by a disciplinary rule that was intended to protect that individual in the first place. Neither common sense nor the principles underlying DR 7–104 and Rule 4.2 require such a result.

This paragraph amends the previous proposal by adding procedural protections designed to ensure that such waivers are in fact voluntary, knowing, and informed. After a represented individual has been arrested or charged in a criminal proceeding or is named as a defendant in a civil law enforcement proceeding, the proposed rule requires that several steps be taken before any substantive discussions take place. First, the government attorney must inform the individual of his or her right to speak through his or her attorney and to have that attorney present for any communications with the government attorney. Second, the represented party must waive his or her right to counsel in such a way as to indicate that the waiver is voluntary, knowing and informed. If at all possible, the attorney for the government should obtain a signed written waiver. Third, the attorney for the government must bring the matter before the appropriate district court judge, magistrate or other tribunal of competent jurisdiction. The court should be asked for a determination: That the waiver satisfies the provisions of this rule; or that substitute counsel is in place and that counsel consents to the communication; or, in the alternative, that it is appropriate for the court to appoint counsel.

The rule does not, however, require that the waiver take place before the judge or magistrate. In exceptional circumstances, it may be impractical or unsafe to bring the defendant before a judge or magistrate to secure the waiver. In those cases, the tribunal must determine in advance of substantive discussions, based on the evidence before it, whether the waiver was made knowingly, intelligently and voluntarily.

As noted above, the initiation of *ex parte* contacts by represented parties frequently occurs in the context of the "fearful defendant" whose attorney has been chosen by a third party, often an individual above the defendant in the criminal hierarchy. Such a defendant may wish to cooperate with the government but may fear that his life or safety will be endangered if his attorney learns of the cooperation. Although the need for a mechanism by which a represented party can initiate contacts with the government is particularly acute in this context, paragraph (c) is not limited to this setting. Rather, the proper inquiry is whether the represented party's waiver of the right to counsel is voluntary, knowing, and informed—not whether the represented party has established some overriding justification for his or her decision.

Paragraph (d): Waivers at the Time of Arrest

Paragraph (c) of this section provides the general rule regarding how a represented party may waive any protections otherwise provided under this regulation. This paragraph provides for a more specific rule dealing with a waiver at the time of arrest.

This paragraph provides that a government attorney may communicate directly with a represented party without the consent of that party's counsel at the time of his or her arrest if the represented party has been fully informed of his or her Constitutional rights at that time and has waived them. The government attorney need not comply with any of the additional requirements of paragraph (c) in such a situation. However, it is generally prudent to obtain a written waiver at the time of arrest if possible.

This exception is intended to preserve the ability of government attorneys to interview individuals immediately following arrest as an effective and important law enforcement tool. A substantial body of law has developed regarding the post-arrest waiver of various Constitutional rights. The Department believes that the Constitutional requirements identified in that decisional law adequately protect represented individuals following arrest. Furthermore, the effectiveness of post-arrest interviews would be significantly curtailed if the procedural requirements of paragraph (c) applied. Accordingly, this paragraph is intended to preserve this investigative tool without adding any additional procedural requirements.

Paragraph (e): Investigation of Additional, Different or Ongoing Crimes or Civil Violations

This paragraph is similar to, but not identical with, § 77.7(d) of the previously published proposal.

The Sixth Amendment right to counsel is "offense-specific." *McNeil* v. *Wisconsin*, 111 S. Ct. 2204, 2207 (1991). Thus, a defendant whose Sixth Amendment rights have attached as to one offense remains subject to questioning, whether direct or covert, regarding uncharged crimes. *Id.*; *Maine* v. *Moulton*, 474 U.S. 159, 180 n.16 (1985); *United States* v. *Mitcheltree*, 940 F.2d 1329, 1342 (10th Cir. 1991); *United States* v. *Terzado-Madruga*, 897 F.2d 1099, 1111–12 (11th Cir. 1990); *United States* v. *Chu*, 779 F.2d 356, 368 (7th Cir. 1985); *United States* v. *Grego*, 724 F.2d 701, 703 (8th Cir. 1984). The proposed rule employs an analogous approach, permitting *ex parte* contacts with a represented party if the contacts involve the investigation of offenses as to which the represented party has neither been arrested nor charged in a criminal or civil law enforcement proceeding. The Department believes this approach is wholly consistent with DR 7–104 and Model Rule 4.2 and the cases interpreting them.

Accordingly, this section provides that communications may be made in the course of investigations of additional, different or ongoing criminal or unlawful activity, even though the individual is represented by counsel with respect to conduct for which he or she has already been arrested or charged. Such additional criminal or unlawful conduct is typically one of three varieties: (1) Conduct that is separate from the original wrongful conduct; (2) crimes that are intended to impede the trial of the charged crime or unlawful conduct, such as subornation of perjury, obstruction of justice, jury tampering, or murder, assault, or intimidation of witnesses; and (3) conduct that is a continuation of the charged crime, such as a conspiracy or scheme to defraud that continues past the time of indictment. The new or additional criminal or wrongful activity may have occurred in the past or may be ongoing at the time of the investigation.

By definition, communications pursuant to this exception will take place when the represented party is the subject of pending criminal or civil enforcement charges for which he or she is represented by counsel. Government attorneys must take extreme care to avoid violating the Sixth Amendment right to counsel whenever they invoke this exception in the criminal context. In particular, care must be taken to avoid the deliberate elicitation of incriminating information regarding any pending criminal charges.

Paragraph (f): Imminent Threat to Safety or Life

The Supreme Court has recognized that, in certain limited situations, otherwise applicable constitutional requirements may be suspended by the need to guard against threats to public safety. See *Warden* v. *Hayden*, 387 U.S. 294, 298–99 (1967) (warrantless search permissible when delay would endanger lives of officers and citizens); *New York* v. *Quarles*, 467 U.S. 649, 657 (1984) ("the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the [*Miranda*] prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination"). Paragraph (f) recognizes an analogous exception to the general prohibition against communications with represented parties in the absence of their counsel. It is the Department's intention that this exception be invoked only in rare circumstances and only for the purpose of protecting human life or safety.

The exception has three requirements: (1) The attorney for the government must have a good faith belief that the safety or life of any person is threatened; (2) the purpose of the communication must be to obtain information to protect against the risk of injury or death; and (3) the attorney for the government must, in good faith, believe that the communication is reasonably necessary to protect against such risk. These requirements are imposed to ensure that the exception is invoked only to protect human life or safety, and not as a routine matter in violent crime prosecutions. For example, the fact that potentially dangerous firearms have not been recovered would not in and of itself be sufficient under ordinary circumstances to constitute a threat to safety under this exception. Furthermore, the communication must be for the purpose of protecting human life or safety, and may not be designed to elicit testimonial evidence. However, information thus obtained may be used for any purpose consistent with Constitutional limitations.

Section 77.7 Civil and Criminal Enforcement; Represented Persons

As addressed in the discussion of § 77.3, individuals and organizations who are neither defendants nor arrestees are not "parties" within the meaning of this rule, and the general prohibition on *ex parte* contacts therefore does not apply. This section makes clear that attorneys for the government are authorized to communicate, directly or indirectly, with a represented person unless the contact is prohibited by some other provision of federal law. These communications are subject, however, to the restrictions set forth in §§ 77.8 and 77.9. Furthermore, proposed changes to the United States Attorneys' Manual included in this commentary will provide additional guidance to Department attorneys in such situations.

Section 77.8 Represented Persons and Represented Parties; Plea Negotiations

This section prohibits government attorneys from initiating or engaging in negotiations of certain specified legal agreements with any individual who the government attorney knows is represented by counsel, without the consent of that individual's counsel. Even when substantive discussions with a represented party or represented

person are permissible under these regulations, it ordinarily would be improper for a government attorney to initiate or negotiate a plea agreement, settlement, immunity agreement or any other disposition of a claim or charge in the absence of the individual's counsel. The one exception to this prohibition occurs when the communication is initiated by the represented person or represented party and the procedural safeguards provided for in § 77.6(c) are satisfied.

The Department believes that this section is vitally important for the preservation of the attorney-client relationship. One of the primary purposes informing Rule 4.2 and DR 7–104 is that an individual represented by counsel should be protected from overreaching by an attorney for an adversary. The Department believes the risk of such overreaching is greatest during negotiations over plea agreements, settlements and other key legal agreements. The training, experience and knowledge of the law possessed by an attorney is particularly valuable in such situations.

The prohibition contained in this section includes all discussions of the terms of a particular plea agreement, settlement agreement or other agreement covered by the section. However, this section does not prohibit an attorney for the government from responding to questions regarding the nature of such agreements, potential charges, potential penalties or other subjects related to such agreements during an otherwise permissible discussion. Nevertheless, an attorney for the government should take care in such situations not to go beyond providing information on these and similar subjects and should generally refer the represented person to his or her counsel for further discussion of these issues. The government attorney should also make it clear that he or she will not negotiate any agreement with respect to the disposition of criminal charges, civil claims or potential charges or claims or immunity without the presence or consent of counsel.

Section 77.9 Represented Persons and Represented Parties; Respect for Attorney-Client Relationships

When an attorney for the government communicates with a represented party pursuant to one or more of the exceptions listed in § 77.6, or with a represented person pursuant to § 77.7, the communication is nevertheless subject to the restrictions of this section.

Paragraph (a): Deference to Attorney-Client Relationship

DR 7–104(A)(1) and Rule 4.2 protect a represented party's right, if he or she so chooses, to communicate with his or her adversary only through counsel. The rules do not compel one to make that choice, and the represented party may elect to speak directly with the government despite his or her attorney's advice not to do so. As a further protective measure, federal courts have recognized that it is improper for an attorney for the government to disparage counsel for the represented party or otherwise to seek to disrupt the relationship between that party and his attorney. See, e.g., *United States* v. *Morrison*, 449 U.S. 361, 362, 367 (1981); *United States* v. *Weiss*, 599 F.2d 730, 740 (5th Cir. 1979); id. at 740–41 (Godbold, J., specially concurring). This paragraph codifies those basic principles by prohibiting communications that: (1) Attempt to elicit information regarding lawful defense strategies; (2) disparage the represented party's counsel; or (3) otherwise disrupt the attorney-client relationship. These prohibitions apply in every phase of criminal and civil enforcement investigations and proceedings.

However, the paragraph also accommodates an important exception to this prohibition. Courts have held that a government attorney may not permit legal proceedings to go forward if he or she is aware of a conflict of interest between a represented party and his or her lawyer. See *United States* v. *Iorizzo*, 786 F.2d 52, 59 (2d Cir. 1986). Under these circumstances, the attorney for the government ordinarily should move to disqualify the lawyer involved, if legal proceedings have already commenced. If it is not feasible to move for disqualification or otherwise challenge the representation, this paragraph allows an attorney for the government to communicate with the represented individual for the limited purpose of apprising the represented individual of the perceived conflict. However, any substantive discussion of the subject matter of the representation is permissible only insofar as it is authorized by some other provision of this rule.

In order to ensure that this provision is used only in rare circumstances, the rule would require prior authorization for such communications from the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney. The authorization should be in writing if at all possible. Furthermore, before providing approval, the authorizing officer must find: (1) A substantial likelihood of a conflict; and (2) that it is not feasible to obtain a court order on the matter.

Paragraph (b): Attorney-Client Meetings

The attendance of an undercover agent or a cooperating witness at lawful meetings of an individual and his or her attorneys is ordinarily an improper intrusion into the attorney-client relationship. The courts have recognized, however, that such attendance occasionally will be required when the operative is invited to participate and his or her refusal to do so would effectively reveal his or her connection to the government. See, e.g., *Weatherford* v. *Bursey*, 429 U.S. 545, 557 (1977); *United States* v. *Ginsberg*, 758 F.2d 823, 833 (2d Cir. 1985); *United States* v. *Mastroianni*, 749 F.2d 900, 906 (1st Cir. 1984). As the First Circuit has noted, a contrary rule "would provide the defense with a quick and easy alarm system to detect the presence of any informants, simply by inviting all known associates of defendants to a supposed defense strategy meeting." *Mastroianni*, 749 F.2d at 906.

Attendance at such meetings, however, intrudes into the attorney-client relationship and impairs the right of the defendant to a fair trial. Accordingly, this section provides that undercover agents or cooperating witnesses may participate in such meetings, but only when requested to do so by the defense and when reasonably necessary to protect their safety or life, or the confidentiality of an undercover operation. See Weatherford, 429 U.S. at 557 (informant went to meeting "not to spy, but because he was asked and because the State was interested in retaining his undercover services on other matters and it was therefore necessary to avoid raising the suspicion that he was in fact the informant whose existence [the defendant and his counsel] already suspected").

However, even when an undercover operative's attendance at such a meeting is authorized to protect his or her cover and safety, any information acquired regarding lawful defense strategy or trial preparation may not be communicated to government attorneys or otherwise used to the substantial detriment of the represented party. See Weatherford, 429 U.S. at 558; Ginsberg, 758 F.2d at 833; Mastroianni, 749 F.2d at 906. As a safeguard, this rule provides that such information should not be communicated to the attorneys for the government or law enforcement agents

who are participating in the trial of the pending criminal charges.

When there is reasonable cause to believe that the purpose of the meeting is not the lawful defense of the underlying charges, but the commission of a new or additional crime (such as bribery of a witness or subordination of perjury), attendance by informants or undercover agents at attorney-client meetings is permissible pursuant to § 77.6(e). The belief, however, must be based on reasonable cause, not mere suspicion or conjecture. See Mastroianni, 749 F.2d at 906. Furthermore, the prohibition against communication of lawful defense strategy to the prosecution should be observed if, in fact, such strategy is imparted to the informant or agent.

Government attorneys should give serious consideration to the extreme sensitivity of permitting agent and informant attendance at defense meetings. Agents and informants should be instructed to avoid participating in such meetings, and to minimize their participation when attendance is required, if it is possible to do so without arousing suspicion. Agents or witnesses who attend defense meetings should also be instructed to avoid taking any role in the shaping of defense strategy or trial preparations. Finally, agents and informants should be instructed to avoid imparting defense strategy or trial preparation information to any other law enforcement officials if reasonably feasible to do so.

Finally, this restriction applies only to law enforcement officials and cooperating witnesses who are acting as "agents for the government" at the time of the communication. If one of several co-defendants who attended an attorney-client defense strategy meeting later testifies for the government at trial, no violation will have occurred as long as the co-defendant was not a government agent at the time of the meeting. *United States* v. *Brugman*, 655 F.2d 540, 545–46 (4th Cir. 1981).

Section 77.10 Organizations and Employees

This section is similar in structure to § 77.13 of the previously published proposal. However, it includes several substantive changes based on comments received during earlier comment periods.

The issue addressed by this section—when should a communication with an employee or member of a represented organization be considered a communication with the organization itself—is one of the most difficult issues addressed by these regulations. It was also perhaps the most commented upon provision during the comment period. Several federal prosecutors commented that they regularly encounter attorneys who assert that they represent every individual in a large corporation or organization. Others stated that these blanket claims of representation extend to all the former employees as well. These prosecutors argued for a bright line rule to prevent such abuse and generally commented favorably on the earlier proposal. Others argued that the earlier proposal was too narrow in scope and would deprive corporations and other organizations of the effective assistance of counsel.

The Department believes that this section, and particularly the definition of "controlling individual" in § 77.10(a), strikes an appropriate balance, one that ensures government attorneys the ability to enforce federal law, while preserving the opportunity for corporations and other organizations to secure effective assistance of counsel.

Paragraph (a): Communications With Current Employees; Organizational Representation

This paragraph states that a communication with a current employee of an organizational party or person should be treated as a communication with the organization for purposes of this part only if the employee is a controlling individual. If a communication with a current employee is considered to be a communication with a represented organization under these rules (that is, if the communication is with a controlling individual), then that communication is subject to the same limitations that would apply if the communication were directly with the represented organization.

In accord with the basic structure of this part, which distinguishes between represented parties and represented persons, this paragraph effectively provides that when an organization is a represented party, an attorney for the government shall not communicate, or cause another to communicate (subject to the exceptions enumerated in § 77.6), with any controlling individual of the organization without the consent of the organization's attorney. In contrast, when an organization qualifies as a represented person, an attorney for the government may communicate, or cause another to communicate, with any controlling individual if the communication does not involve negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement, or other disposition of actual or potential criminal charges or civil enforcement claims, or sentences or penalties, as prohibited by § 77.8, and if the communication does not violate the provisions of § 77.9.

The definition of "controlling individual" is intended to encompass those individuals who typically are part of the organization's control group. A controlling individual under this definition must: (1) Be a current employee or member of the organization; (2) hold a high level position with the organization; (3) participate "as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter"; and (4) be known by the government to be engaged in such activities. This definition attempts to identify those limited number of individuals affiliated with the organization who actually are involved in determining the organization's position with regard to the legal proceeding or investigation.

DR 7–104 and Rule 4.2 are intended to protect the attorney-client relationship from unnecessary interference and to protect represented parties from overreaching by opposing counsel. Communications with those high-level individuals affiliated with or employed by an organization who are responsible for employing and directing the organization's counsel and for determining legal positions taken by the organization are the type of communications prohibited by DR 7–104. Accordingly, this paragraph defines "controlling individual" consistent with the principles underlying the disciplinary rules on *ex parte* contacts.

Of all the issues pertaining to 7–104(A)(1), the issue of organizational representation has engendered the greatest confusion and disagreement among the lower federal courts. Courts considering the question have applied a variety of modes of analysis, either singly or in combination. The Department believes the best approach is that adopted by those courts that have attempted to identify an organization's "control group." See, e.g., *Shealy* v. *Laidlaw Bros.*, 34 FEP Cases 1223, 1225 (D.S.C. 1984) (a corporate "party" under DR 7–104(A)(1) includes "a person whose employer's interests are, by virtue of his position of employment, so close to his own and to his heart that he could be depended upon in all events to carry out his employer's direction"); *B.H. by Monahan* v. *Johnson*, 128 F.R.D. 659, 663 (N.D. Ill. 1989) ("only 'those individuals who can bind it [the defendant] to a decision or settle controversies on its behalf' would be considered parties for purposes of DR 7–104"); *Frey* v. *Department of Health &*

Human Servs., 106 F.R.D. 32, 35 (E.D.N.Y. 1985) ("the Rule applies to those employees of a government agency who are the 'alter egos' of the entity, that is, those individuals who can bind it to a decision or settle controversies on its behalf"); *Fair Auto. Repair* v. *Car-X Serv. Systems*, 128 Ill.App.3d 763, 771, 471 N.E.2d 554, 560 (1984) (DR 7–104(A)(1) prohibits *ex parte* contacts with corporate defendant's "control group," defined as "those top management persons who had the responsibility of making final decisions and those employees whose advisory roles to top management are such that a decision would not normally be made without those persons' advice or opinion or whose opinions in fact form the basis of any final decision").

The Department believes that the "control group" approach most accurately reflects the values underlying DR 7–104(A)(1) and Rule 4.2. This approach properly seeks to identify those employees who exercise such sufficient authority within the organization that communications with them should be regarded as communications with the organization itself. The Department also believes that the alternative approaches would impose unacceptable constraints on federal law enforcement.

Paragraph (b): Communications With Former Employees; Organizational Representation

This paragraph authorizes communications with former employees of represented organizations. Because former employees do not direct the affairs of the organization and therefore cannot be considered members of the "control group" or any other controlling entity of an organization, communications with them are not considered communications with the organization for purposes of the proposed rule. This reasoning is consistent with the conclusion of the majority of federal courts that have held that DR 7–104(A)(1) does not bar communications with former employees of a represented corporate party. See, e.g., *Hanntz* v. *Shiley, Inc.*, 766 F. Supp. 258, 267 & n.8 (D.N.J. 1991); *Action Air Freight, Inc.* v. *Pilot Air Freight Corp.*, 769 F. Supp. 899, 904 (E.D.Pa. 1991); *Shearson Lehman Bros., Inc.* v. *Wasatch Bank*, 139 F.R.D. 412, 417–18 (D.Utah 1991); *Sherrod* v. *Furniture Center*, 769 F. Supp. 1021, 1022 (W.D. Tenn. 1991); *Dubois* v. *Gradco Systems, Inc.*, 136 F.R.D. 341, 345 n.4 (D.Conn. 1991); *Polycast Technology Corp.* v. *Uniroyal, Inc.*, 129 F.R.D. 621, 628 (S.D.N.Y. 1990). See also ABA Comm. on Ethics and Professional Responsibility, Formal Op. 359 (1991) ("Accordingly, it is the opinion of the Committee that a lawyer representing a client in a matter adverse to a corporate party that is represented by another lawyer may, without violating Model Rule 4.2, communicate about the subject of the representation with an unrepresented former employee of the corporate party without the consent of the corporation's lawyer."). But see *PPG Industries, Inc.* v. *BASF Corp.*, 134 F.R.D. 118, 121 (W.D.Pa. 1990); *Public Serv. Elec. & Gas* v. *Associated Elec. & Gas*, 745 F. Supp. 1037, 1042 (D.N.J. 1990).

Paragraph (c): Communications With Former or Current Employees; Individual Representation

This paragraph provides that if a former or current employee or a member of an organization retains his or her own counsel, the government shall provide the same protection to him or her that would be provided under this part to any other represented person or represented party. Communications with that individual are subject to the limitations set forth in this part. Although this section provides the general rule for such communications, paragraph (d) addresses the specific situation in which a controlling individual of a represented organization retains separate counsel.

This paragraph also provides that the government will not accept, for purposes of this rule, blanket claims by counsel that he or she represents all or a large number of employees of the organization. It is important to note that this provision is only relevant when the attorney for the government would be prohibited by some other provision of this part from contacting an individual falling under the broad claims of representation under question. For example, an attorney for the government may contact a low-level employee of a corporation, without consent of that employee's counsel or the corporation's counsel, regarding a matter for which the corporation has already been indicted as part of an undercover or overt factual investigation, if that individual has not been arrested or named as a defendant in a criminal or civil law enforcement proceeding. Therefore, the fact that an attorney has stated that he or she represents that individual will have no bearing on whether the communication is proper.

However, if a particular communication with an individual employee included in such a claim of representation would be improper under these regulations if he or she were in fact represented by counsel (for example, communications to negotiate a plea agreement), then this paragraph provides that a government attorney must first inquire whether the employee is in fact represented before undertaking substantive communications with the employee. As part of this inquiry, the government attorney is not required to disclose to the employee the fact that counsel has asserted that he or she represents the employee. If the employee indicates that he or she is not represented by counsel, it is proper for the government attorney to treat the employee as unrepresented. If the employee indicates that he or she is represented by counsel with regard to the relevant subject matter, the attorney for the government shall treat that employee as a represented person or represented party, and any further communications with that individual shall be governed by this part.

Paragraph (d): Communications With Separately Represented Controlling Individuals

This paragraph ensures that communications with a controlling individual of an organization that qualifies as a represented party are subject to basically the same limitations, regardless of whether the controlling individual has retained separate counsel on the same subject matter. Thus, this paragraph only applies in the circumstances in which a controlling individual of a represented organizational party retains separate counsel. In such circumstances, a government attorney may not communicate with the controlling individual without the consent of that individual's separate counsel unless the communication satisfies one of the exceptions contained in §§ 77.6 or 77.9 of this part. The paragraph also allows such communications if the individual does not qualify as a represented party, initiates the communication, and waives the presence of counsel. Thus, the same rules apply to contacts with controlling individuals of represented organizational parties who retain separate counsel as apply to controlling individuals of represented organizational parties who are not separately represented.

Paragraph (e): Communications With Unrepresented Controlling Individuals

This paragraph addresses a relatively narrow circumstance: when a controlling individual who is not individually represented by counsel initiates a communication with the government outside the presence of counsel for the organization. An attorney for the government may participate in such communications if:

(1) The controlling individual indicates that he or she is speaking exclusively in his or her personal capacity and not as a representative of the organizational party; and (2) he or she indicates that the waiver of counsel is voluntary, knowing and informed and, if willing, signs a statement to that effect. The fact that the controlling individual indicates that he or she is speaking in his or her personal capacity does not mean, however, that incriminating testimony received from the controlling individual cannot be used against the represented organization.

If the controlling individual is also a named defendant in a civil enforcement proceeding or has been arrested or charged in a criminal action, the requirements set forth in § 77.6(c) must be satisfied before any substantive communications are made.

Paragraph (f): Multiple Representation

This paragraph makes clear that the proposed regulations should not be construed as altering existing legal and ethical rules regarding the propriety of multiple representation.

Section 77.11 Enforcement of Rules Paragraph (a): Enforcement by Attorney General

In order to ensure consistency and uniformity in the interpretation of the proposed rule, this paragraph provides that the Attorney General shall have exclusive authority to enforce these regulations. Thus, neither state courts nor state disciplinary boards may impose sanctions on a Department attorney for violations of this rule or state or local rules governing communications with represented parties except as provided in § 77.12. This paragraph further provides the framework for investigating allegations that a Department attorney has violated these regulations. It provides that the Department's Office of Professional Responsibility ("OPR") shall have jurisdiction to investigate such allegations and that violations will be treated as matters of attorney discipline. See 28 CFR 0.39 (establishing and defining duties of OPR). It also makes clear that the Attorney General's determination as to whether a violation has occurred shall be final and conclusive except to the extent that the Department attorney enjoys a right of review provided by other laws.

Paragraph (b): No Private Remedies

This paragraph provides that the proposed regulations are not intended and will not create any substantive rights for any person other than an attorney for the government. In particular, a violation of the rule will not provide a basis for the dismissal of civil or criminal charges or for the suppression of evidence that is otherwise admissible. This provision accords with existing law. Traditionally, matters relating to communications with represented persons have been treated as matters of attorney discipline without granting substantive rights to defendants or any other persons. See, e.g., ABA Code of Professional Responsibility, Preliminary Statement; ABA Model Rules of Professional Conduct, Scope. Of course, when the communication with a represented person or represented party violates the Constitution, the federal courts retain the power to fashion appropriate remedies.

Section 77.12: Relationship to State and Local Regulation

Both DR 7–104 and Model Rule 4.2 provide that communications that are "authorized by law" are not prohibited by the rule. Virtually all the states have adopted some version of DR 7–104 or Model Rule 4.2 that includes an "authorized by law" exception. These proposed rules, as substantive regulations duly promulgated by the Attorney General pursuant to statutory authority, have the force and effect of law. See e.g. *Batterton* v. *Francis*, 432 U.S. 416, 425 n.9 (1977). Accordingly, communications with represented persons that are undertaken pursuant to these rules should be considered "authorized by law" within the meaning of rules adopted by the various states. Such communications will therefore be consistent with state rules wherever state bar authorities have adopted a rule containing the "authorized by law" exception. Furthermore, no conflict will arise between state and federal law in those jurisdictions with regard to communications with represented persons.

In those states that do not currently include an "authorized by law" exception or repeal current provisions, the proposed rule may conflict with their provisions governing communications with represented parties. The second sentence of this section provides that in those cases the proposed regulations will preempt the application of conflicting state and local rules as they relate to contacts by Department of Justice attorneys. The longstanding position of the Department is that the Supremacy Clause bars "any attempt by a state bar association to impose sanctions on a government attorney who is acting lawfully and in pursuance of his federal law enforcement responsibilities." See Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, 4B Op. O.L.C. 576, 601–02 (1980). It is clear that a Department regulation published after notice and comment constitutes "federal law." See, e.g., *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 295 (1979) ("It has been established in a variety of contexts that properly promulgated, substantive agency regulations have the 'force and effect of law' "). It is also clear that a properly promulgated Department rule is binding upon state authorities and supersedes contrary provisions of state law. The Supreme Court has recognized that "[f]ederal regulations have no less pre-emptive effect than federal statutes." *Fidelity Fed. Sav. & Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 153 (1982). Accord, e.g., *City of New York* v. *FCC*, 486 U.S. 57, 63 (1988) ("[t]he phrase 'Laws of the United States' [in the Supremacy Clause] encompasses both federal statutes themselves and federal regulations that are properly adopted in accordance with statutory authorization"); *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 698–700 (1984).

Accordingly, to the extent the proposed regulations conflict with state law, the regulations preempt the conflicting state law.

This section does, however, provide an important exception. If the Attorney General finds that a Department attorney has willfully violated these regulations, preemption will not apply. As a result, a government attorney who willfully engages in communications that violate these rules will be subject to disciplinary proceedings both by the Department and by the appropriate state disciplinary authorities.

IV. United States Attorneys' Manual

In addition to the promulgation of the proposed regulations discussed above, the Department proposes to add several new provisions to the United States Attorneys' Manual to provide additional guidance to Department attorneys when dealing with individuals or entities represented by counsel during criminal or civil law enforcement investigations and proceedings. Those provisions are set forth in full below as part of this commentary.

The decision to include some restrictions in the Manual while other restrictions are contained in the rule was an important one. In the process of determining what the appropriate Departmental policy should be, it became clear that any regulation would have to apply to a variety of circumstances, including: White collar and organized crime investigations,

complex conspiracy investigations, individuals whose counsel are paid by a third party, and individuals fearful of their counsel for various reasons. Accordingly, the Department determined that the regulations should be broad in scope and should provide unambiguous guidance that would not adversely affect federal law enforcement efforts. Thus, the regulations distinguish between the investigative period before indictment, arrest, or the filing of a complaint and the period after arrest or the commencement of formal proceedings. They also distinguish between communications that are part of a factual investigation and negotiations of plea agreements, settlements and similar legal arrangements. At the same time, the Manual revisions require that government attorneys consider the principles underlying the basic prohibitions in a much wider variety of circumstances.

The Department expects all Department attorneys involved in criminal or civil law enforcement proceedings to adhere to these provisions. Failure to do so will result in appropriate departmental discipline.

There are two especially important provisions that should be addressed.

First, § 9–13.240 prohibits a government attorney from communicating with a person known to be represented by counsel who the government attorney knows is a target of a federal criminal or civil enforcement investigation. The Manual provides several exceptions to this general prohibition, including the following: When the communication is initiated by the target; when the communication occurs at the time of arrest and the represented person has waived his or her Constitutional rights; when the government attorney believes the contact is necessary to protect against a risk to human life or safety; or when a senior Department official determines that exigent circumstances exist, making the communication necessary for effective law enforcement. In addition, § 9–13.220 provides an exception to the general prohibition if the communication is made in the course of an undercover investigation.

"Target" is defined as a "person as to whom the attorney for the government has substantial evidence linking that person to the commission of a crime or to other wrongful conduct and as to whom the attorney for the government anticipates seeking an indictment or naming as a defendant in a civil law enforcement proceeding." Because an individual who is a target of a federal investigation is typically in a clearly adversarial relationship with the federal government, the Department believes that the principles underlying DR 7–104 and Rule 4.2 are implicated and an extension of the prohibition contained in the rule is appropriate.

In its enforcement of this provision, the Department intends to give substantial deference to a federal attorney's good faith judgment regarding the likelihood that a particular person will ultimately become a defendant. Even if the attorney for the government believes that an individual will probably be named as a defendant, that individual is not considered a target until the government has actually obtained substantial evidence linking that individual to the commission of a crime or to unlawful conduct. The government attorney's uncorroborated belief that an individual will ultimately be named as a defendant is not enough. Thus, an individual is not considered a target under this rule until both the attorney for the government believes that he or she will probably be named as a defendant and substantial evidence has been obtained.

The second provision that should be noted is the approval procedure provided in § 9–13.250. Under that provision, before an attorney for the government communicates with any represented party or target, the government attorney should obtain the approval of the United States Attorney if the attorney is an Assistant United States Attorney, or the approval of another appropriate supervisor. The provision also permits contacts when prior approval is not feasible, and requires post-contact documentation.

Additions to the United States Attorneys' Manual

The entire text of the planned additions to the Manual follows:

The following new section is added to title 9, chapter 13.

9–13.200 Communications With Represented Persons

9–13.210 Generally

28 CFR part 77 generally governs communications with represented persons in law enforcement investigations and proceedings. This section sets forth several additional departmental policies and procedures with regard to such communications.

Department of Justice attorneys should recognize that communications with represented persons at any stage may present the potential for undue interference with attorney-client relationships and should undertake any such communications with great circumspection and care. This Department as a matter of policy will respect bona fide attorney-client relationships whenever possible, consistent with our law enforcement responsibilities and duties.

The rules set forth in 28 CFR part 77 are intended, among other things, to clarify the circumstances under which government attorneys may communicate with represented persons. They are not intended to create any presumption that communications are necessary or advisable in the course of any particular investigation or proceeding. Whether such a communication is appropriate in a particular situation is to be determined by the government attorney (and, when appropriate, his or her supervisors) in the exercise of his or her discretion, based on the specific circumstances of the individual case.

Furthermore, the application of this section, like the application of 28 CFR part 77, is limited to communications between Department of Justice attorneys and persons known to be represented by counsel during criminal investigations and proceedings or civil law enforcement investigations and proceedings. These provisions do not apply to Department attorneys engaged in civil suits in which the United States is not acting under its police or regulatory powers. Thus, state bar rules and not these provisions will generally apply in civil suits when the government is a defendant or a claimant.

Attorneys for the government are strongly encouraged to consult with appropriate officials in the Department of Justice when the application or interpretation of 28 CFR part 77 may be doubtful or uncertain. The primary points of contact at the Department of Justice on questions regarding 28 CFR part 77 and this section are the Assistant Attorneys General of the Criminal and Civil Divisions, or their designees.

9–13.220 Communications During Investigative Stage

Section 77.7 of title 28, Code of Federal Regulations, generally permits communications with represented persons outside the presence of counsel that are intended to obtain factual information in the course of criminal or civil law enforcement investigations before the person is a defendant or is arrested in a federal criminal case, or is a defendant in a federal civil enforcement proceeding. Such communications must, however, have a valid investigative purpose and comply with the procedures and considerations set forth below.

During the investigative stage of a case, an attorney for the government may communicate, or cause another to communicate, with any represented person, including a "target" as defined in section 9–13.240, concerning the subject matter of the representation if the communication is made in the course of an undercover investigation of possible criminal or wrongful activity. Undercover communications during the investigative stage must be conducted in accordance with 28 CFR § 77.2(f), and relevant policies and procedures of the Department of Justice, as well as the guidelines for undercover operations of the federal law enforcement agency conducting the investigation (e.g., the Attorney General's Guidelines on FBI Undercover Operations).

Overt communications during the investigative stage are subject to the procedures and considerations set forth in sections 9–13.230 - 9–13.233 and 9–13.240 - 9–13.242, below.

9–13.230 Overt Communications With Represented Persons

During the investigative stage of a criminal or civil enforcement matter, an attorney for the government as a general rule should communicate overtly with represented persons outside the presence of counsel only after careful consideration of whether the communication would be handled more appropriately by others. Attorneys for the government may not, however, cause law enforcement agents to make communications that the attorney would be prohibited from making personally.

28 CFR 77.8 prohibits an attorney for the government from initiating or engaging in negotiations of a plea agreement, immunity agreement, settlement, sentence, penalty or other disposition of actual or potential civil or criminal charges with a represented person without the consent of counsel. Discussion of the terms of a particular plea agreement, immunity agreement or other agreement covered by the rule is prohibited. However, the attorney for the government is not prohibited from responding to questions regarding the general nature of such agreements, potential charges, potential penalties or other subjects related to such agreements. In such situations, an attorney for the government should take care not to go beyond providing information on these and similar subjects, and generally should refer the represented person to his or her counsel for further discussion of these issues, as well as make clear that the attorney for the government will not negotiate any agreement with respect to the disposition of criminal charges, civil claims or potential charges or claims or immunity without the presence or consent of counsel.

9–13.231 Overt Communications With Represented Persons—Presence of Witness

An attorney for the government should not meet with a represented person without at least one witness present. To the extent feasible, a contemporaneous written memorandum should be made of all communications with the represented person.

9–13.232 Overt Communications With Represented Persons—Restrictions

When an attorney for the government communicates, or causes a law enforcement agent or other agent to communicate, with a represented person without the consent of counsel, the restrictions set forth in 28 CFR §§ 77.8 and 77.9 must be observed.

9–13.233 Overt Communications—Assurances Not To Contact Client

During the investigative stage, and absent compelling law enforcement reasons, an attorney for the government should not deliberately initiate an overt communication with a represented person outside the presence of counsel if the attorney for the government has provided explicit assurances to counsel for the represented person that no such communication will be attempted and no intervening change in circumstances justifying such communications has arisen.

9–13.240 Overt Communications With Represented Targets

Except as provided in section 9–13.241 or as otherwise authorized by law, an attorney for the government should not overtly communicate, or cause another to communicate overtly, with a represented person who the attorney for the government knows is a target of a federal criminal or civil enforcement investigation and who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such person. A "target" is a person as to whom the attorney for the government has substantial evidence linking that person to the commission of a crime or to other wrongful conduct and as to whom the attorney for the government anticipates seeking an indictment or naming as a defendant in a civil law enforcement proceeding. An officer or employee of an organization that is a target is not to be considered a target automatically even if such officer's or employee's conduct contributed to the commission of the crime or wrongful conduct by the target organization; likewise, organizations that employ, or employed, an officer or employee who is a target are not necessarily targets themselves.

9–13.241 Overt Communications With Represented Targets—Permissible Circumstances

An attorney for the government may communicate overtly, or cause another to communicate overtly, with a represented person who is a target of a criminal or civil law enforcement investigation concerning the subject matter of the representation if one or more of the following circumstances exist:

(a) Determination if Representation Exists. The communication is to determine if the target is in fact represented by counsel concerning the subject matter of the investigation or proceeding.

(b) Discovery or Judicial Administrative Process. The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a grand jury or trial subpoena, testimony before a grand jury, service of a summons and complaint, notice of deposition, taking of a deposition, administrative summons or subpoena or civil investigative demand.

(c) Initiation of Communication by Represented Person. The represented person initiates the communication directly with the attorney for the government or through an intermediary and, prior to the commencement of substantive discussions on the subject matter of the representation and after being advised by the attorney for the government of the represented person's right to speak through his or her attorney and/or to have the attorney present for the communication, manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed, and, if willing to do so, signs a written statement to this effect.

(d) Waivers at the Time of Arrest. The communication is made at the time of the arrest of the represented person, and he or she is advised of his or her constitutional rights and voluntarily and knowingly waives them.

(e) Investigation of Additional, Different or Ongoing Crimes or Wrongful Conduct. The communication is made in the course of an investigation of additional, different or ongoing criminal or wrongful conduct that is separate from or committed after the criminal or wrongful activity as to which the person is a target.

(f) Threat to Safety or Life. The attorney for the government believes that there may be a threat to the safety or life of any person; the purpose of the communication is to obtain or provide information to protect against the risk of harm; and the attorney for the government believes that the communication

is reasonably necessary to protect against such risk.

(g) Effective Performance of Law Enforcement Functions. The Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney: (i) Determines that exceptional circumstances exist such that, after giving due regard to the importance as reflected in 28 CFR part 77 and this section of avoiding any undue interference with the attorney-client relationship, the direct communication with a represented party is necessary for effective law enforcement; and (ii) authorizes the communication. Communications with represented parties pursuant to this exception shall be limited in scope consistent with the exceptional circumstances of the case and the need for effective law enforcement.

9–13.242 Overt Communications With Represented Targets Organizations and Employees

Overt communication with current high-level employees of represented organizations should be made in accordance with the procedures and considerations set forth in section 9–13.241 above, in the following circumstances:

(a) The current high-level employee is known by the government to be participating as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter of the communication; and

(b) the organization is a target.

9–13.250 Communications During Investigative Stage Office Approval Procedure

Before communicating, or causing another to communicate, with a target the attorney for the government knows is represented by counsel regarding the subject matter of the communication, the attorney for the government should write a memorandum describing the facts of the case and the nature of the intended communication. The memorandum should be sent to and approved by the appropriate supervisor before the communication occurs. In United States Attorney's Offices, the memorandum should be reviewed and approved by the United States Attorney. If the circumstances of the communication are such that prior approval is not feasible, the attorney for the government should write a memorandum as soon after the communication as practicable and provide a copy of the memorandum to the appropriate supervisor. This memo should also set forth why it was not feasible to obtain prior approval. The provisions of this section do not apply if the communication with the represented target is made at the time of arrest pursuant to section 9–13.241(d).

9–13.260 Enforcement of the Policies

Appropriate administrative action may be initiated by Department officials against prosecutors who violate the policies regarding communication with represented persons.

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The following new section is added to title 4, chapter 8.

4–8.1300 Communications With Represented Persons

Communications with represented persons in civil law enforcement investigations and proceedings are governed generally by the rules set forth in 28 CFR part 77 and by USAM 9–13.200 *et seq.*

* * * * *

V. Certifications

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866.

List of Subjects in 28 CFR Part 77

Government employees, Investigations, Law enforcement, Lawyers.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 77 to read as follows:

PART 77—COMMUNICATIONS WITH REPRESENTED PERSONS

Sec.

77.1 Purpose and authority.
77.2 Definitions.
77.3 Represented party; represented person.
77.4 Constitutional and other limitations.
77.5 General rule for civil and criminal enforcement; represented parties.
77.6 Exceptions; represented parties.
77.7 Represented persons; investigations.
77.8 Represented persons and represented parties; plea negotiations.
77.9 Represented persons and represented parties; respect for attorney-client relationships.
77.10 Organizations and employees.
77.11 Enforcement of rules.
77.12 Relationship to state and local regulation.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515(a), 516, 519, 533, 547.

§ 77.1. Purpose and authority.

(a) The Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards. The purpose of this part is to provide a comprehensive, clear, and uniform set of rules governing the circumstances under which Department of Justice attorneys may communicate or cause others to communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. This part ensures the Department's ability to enforce federal law effectively and ethically, consistent with the principles underlying Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, while eliminating the uncertainty and confusion arising from the variety of interpretations given to that rule and analogous rules by state and federal courts and by bar association organizations and committees. (Copies of the ABA Model Rule are available through Order Fullfillment Office, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611.

(b) This part is issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions in an appropriate and ethical manner as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

§ 77.2 Definitions.

As used in this part, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) *Attorney for the government* means the Attorney General; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, or Tax Division; any United States Attorney; any Assistant United States Attorney; any Special Assistant to

the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; or any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States. The term *attorney for the government* does not include any attorney employed by the Department of Justice as an investigator or other law enforcement agent who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

(b) *Person* means any individual or organization.

(c) *Organization* means any corporation, partnership, association, joint-stock company, union, trust, pension fund, unincorporated association, state or local government or political subdivision thereof, or non-profit organization.

(d) *Employee* means any employee, officer, director, partner, member, or trustee.

(e) *Cooperating witness or individual* means any person, other than a law enforcement agent, who is acting to assist the government in an undercover or confidential capacity.

(f) *Undercover investigation* means any investigation undertaken in good faith to fulfill law enforcement objectives, in which a person communicates with a federal, state or local law enforcement agent or a cooperating witness or individual whose identity as an official of the government or a person acting at the behest thereof is concealed or is intended to be concealed.

(g)(1) *Civil law enforcement proceeding* means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the police or regulatory powers of the United States to enforce federal laws, including, but not limited to, civil actions or proceedings brought to enforce the laws relating to:

(i) Antitrust;

(ii) Banking and financial institution regulation;

(iii) Bribery, kickbacks, and corruption;

(iv) Civil rights;

(v) Consumer protection;

(vi) Environment and natural resource protection;

(vii) False claims against the United States;

(viii) Food, drugs, and cosmetics regulation;

(ix) Forfeiture of property;

(x) Fraud;

(xi) Internal revenue;

(xii) Occupational safety and health;

(xiii) Racketeering; or

(xiv) Money-laundering.

(2) The term *civil law enforcement proceeding* shall not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand. An action or proceeding shall be considered "brought by the United States" only if it involves a claim asserted by the Department of Justice on behalf of the United States, whether the claim is asserted by complaint, counterclaim, cross-claim, or otherwise.

(h) *Civil law enforcement investigation* means an investigation of possible civil violations of, or claims under, federal law that may form the basis for a civil law enforcement proceeding.

§ 77.3 Represented party; represented person.

(a) A person shall be considered a "represented party" within the meaning of this part only if all three of the following circumstances exist:

(1) The person has retained counsel or accepted counsel by appointment or otherwise;

(2) The representation is ongoing and concerns the subject matter in question;

(3) The person has been arrested or charged in a federal criminal case or is a defendant in a civil law enforcement proceeding concerning the subject matter of the representation.

(b) A person shall be considered a "represented person" within the meaning of this part if circumstances set forth in paragraphs a (1) and (2) of this section exist, but the circumstance set forth in paragraph (a)(3) of this section does not exist.

§ 77.4 Constitutional and other limitations.

Notwithstanding any other provision of this part, any communication that is prohibited by the Sixth Amendment right to counsel, by any other provision of the United States Constitution, by any federal statute, by the Federal Rules of Criminal Procedure (18 U.S.C. App.) or by the Federal Rules of Civil Procedure (28 U.S.C. App.) shall be likewise prohibited under this part.

§ 77.5 General rule for civil and criminal enforcement; represented parties.

Except as provided in this part or as otherwise authorized by law, an attorney for the government may not communicate, or cause another to communicate, with a represented party who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such party.

§ 77.6 Exceptions; represented parties.

An attorney for the government may communicate, or cause another to communicate, with a represented party without the consent of the lawyer representing such party concerning the subject matter of the representation if one or more of the following circumstances exist:

(a) *Determination if representation exists.* The communication is to determine if the person is in fact represented by counsel concerning the subject matter of the investigation or proceeding.

(b) *Discovery or judicial or administrative process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including, but not limited to, the service of a grand jury or trial subpoena, testimony before a grand jury, service of a summons and complaint, notice of deposition, taking of a deposition, administrative summons or subpoena or civil investigative demand.

(c) *Initiation of communication by represented party.* The represented party initiates the communication directly with the attorney for the government or through an intermediary and:

(1) Prior to the commencement of substantive discussions on the subject matter of the representation and after being advised by the attorney for the government of the client's right to speak through his or her attorney and/or to have the client's attorney present for the communication, manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed and, if willing to do, signs a written statement to this effect; and

(2) A federal district judge, magistrate judge or other court of competent jurisdiction has concluded that the represented party has:

(i) Waived the presence of counsel and that such waiver is voluntary, knowing, and informed; or

(ii) Obtained substitute counsel or has received substitute counsel by court appointment, and substitute counsel has consented to the communication.

(d) *Waivers at the time of arrest.* The communication is made at the time of the arrest of the represented party and he or she is advised of his or her constitutional rights and voluntarily and knowingly waives them.

(e) *Investigation of additional, different or ongoing crimes or civil violations.* The communication is made in the course of an investigation, whether undercover or overt, of additional, different or ongoing criminal activity or other unlawful conduct. Such additional, different or ongoing criminal activity or other unlawful conduct may include, but is not limited to, the following:

(1) Additional, different or ongoing criminal activity or other unlawful conduct that is separate from or committed after the criminal activity for which the represented party has been arrested or charged or for which the represented party is a defendant in a civil law enforcement proceeding; or

(2) Criminal activity that is intended to impede or evade the administration of justice including, but not limited to, the administration of justice in the proceeding in which the represented party is a defendant, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault, or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution.

(f) *Threat to safety or life.* The attorney for the government in good faith believes that there may be a threat to the safety or life of any person; the purpose of the communication is to obtain or provide information to protect against the risk of injury or death; and the attorney for the government in good faith believes that the communication is necessary to protect against such risk.

§ 77.7 Represented persons; investigations.

Except as otherwise provided in this part, an attorney for the government may communicate, or cause another to communicate, with a represented person in the process of conducting an investigation, including, but not limited to, an undercover investigation.

§ 77.8 Represented persons and represented parties; plea negotiations.

An attorney for the government may not initiate or engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement, or other disposition of actual or potential criminal charges or civil enforcement claims, or sentences or penalties with a represented person or represented party who the attorney for the government knows is represented by an attorney without the consent of the attorney representing such person or party; provided, however, that this restriction will not apply if the communication satisfies § 77.6(c).

§ 77.9 Represented persons and represented parties; respect for attorney-client relationships.

When an attorney for the government communicates, or causes a law enforcement agent or cooperating witness to communicate, with a represented person or represented party pursuant to any provision of these regulations without the consent of counsel, the following restrictions must be observed:

(a) *Deference to attorney-client relationship.* (1) An attorney for the government, or anyone acting at his or her direction may not, when communicating with a represented person or represented party:

(i) Inquire about information regarding lawful defense strategy or legal arguments of counsel;

(ii) Disparage counsel for a represented person or represented party or otherwise seek to induce the person to forgo representation or to disregard the advice of the person's attorney; or

(iii) Otherwise improperly seek to disrupt the relationship between the represented person or represented party and counsel.

(2) Notwithstanding paragraph (a)(1) of this section, if the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney finds:

A substantial likelihood that there exists a significant conflict of interest between a represented person or party and his or her attorney; and that it is not feasible to obtain a judicial order challenging the representation, then an attorney for the government with prior written authorization from an official identified above may apprise the person of the nature of the perceived conflict of interest, unless the exigencies of the situation permit only prior oral authorization, in which case such oral authorization shall be memorialized in writing as soon thereafter as possible.

(b) Attorney-client meetings. An attorney for the government may not direct or cause an undercover law enforcement agent or cooperating witness to attend or participate in lawful attorney-client meetings or communications, except when the agent or witness is requested to do so by the represented person or party, defense counsel, or another person affiliated or associated with the defense, and when reasonably necessary to protect the safety of the agent or witness or the confidentiality of an undercover operation. If the agent or witness attends or participates in such meetings, any information regarding lawful defense strategy or trial preparation imparted to the agent or witness shall not be communicated to attorneys for the government or to law enforcement agents who are directly participating in the ongoing investigation or in the prosecution of pending criminal charges, or used in any other way to the substantial detriment of the client.

§ 77.10 Organizations and employees.

This section applies when the communication involves a former or current employee of an organization that qualifies as a represented party or represented person, and the subject matter of the communication relates to the business or affairs of the organization.

(a) *Communications with current employees; organizational representation.* A communication with a current employee of an organization that qualifies as a represented party or represented person shall be considered to be a communication with the organization for purposes of this part only if the employee is a controlling individual. A "controlling individual" is a current high level employee who is known by the government to be participating as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter.

(b) *Communications with former employees; organizational representation.* A communication with a former employee of an organization that is represented by counsel shall not be considered to be a communication with the organization for purposes of this part.

(c) *Communications with former or current employees; individual representation.* A communication with a former or current employee of an organization who is individually represented by counsel may occur only to the extent otherwise permitted by this part. However, a claim by an attorney that he or she represents all or a large number of individual current and/or former employees of an organization does not suffice to establish that those employees are represented persons or represented parties under this part. In such circumstances, prior to engaging in communications that would be prohibited under this part as a result of the individual representation, the attorney for the government shall communicate with the individual current or former employee to determine if in fact that employee is represented by counsel concerning the subject matter of the investigation or proceeding.

(d) *Communications with separately represented controlling individuals.*

When this part would preclude discussions with a controlling individual as defined in § 77.10(a) and the controlling individual has retained separate counsel on the relevant subject matter, an attorney for the government may communicate with such individual in the following circumstances:

(1) If the controlling individual's separate counsel consents;

(2) If the communication falls within one of the exceptions set forth in §§ 77.6 or 77.9; or

(3) In the case in which the individual does not qualify as a represented party, if the individual initiates the communication and states that he or she is communicating exclusively in his or her personal capacity and not on behalf of the represented organizational party, and manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed, and, if willing to do so, signs a written statement to this effect.

(e) *Communications with unrepresented controlling individuals.* Notwithstanding any other provision of this part, an attorney for the government may communicate with a controlling individual who is not individually represented as to the subject matter of the communication when the controlling individual initiates the communication and states that he or she is communicating exclusively in his or her personal capacity and not on behalf of the represented organizational party, and manifests that his or her waiver of counsel for the communication is voluntary, knowing, and informed, and, if willing to do so, signs a written statement to this effect.

(f) *Multiple representation.* Nothing in this section is intended or shall be construed to affect the requirements of Rule 44(c) of the Federal Rules of Criminal Procedure, or to permit the multiple representation of an organization and any of its employees, or the multiple representation of more than one such employee, if such representation is prohibited by any applicable law or rule of attorney ethics.

§ 77.11 Enforcement of this part.

(a) *Exclusive enforcement by Attorney General.* The Attorney General shall have exclusive authority over this part and any violations of it, except as provided in § 77.12. Allegations of violations of this part shall be investigated exclusively by the Office of Professional Responsibility of the Department of Justice, and shall be addressed when appropriate as matters of attorney discipline by the Department. The findings of the Attorney General or her designee as to an attorney's compliance or non-compliance with this part shall be final and conclusive except insofar as the attorney for the government is afforded a right of review by other provisions of law.

(b) *No private remedies.* This part is not intended to and does not create substantive rights on behalf of criminal or civil defendants, targets or subjects of investigations, witnesses, counsel for represented parties or represented persons, or any other person other than an attorney for the government, and shall not be a basis for dismissing criminal or civil charges or proceedings against represented parties or for excluding relevant evidence in any proceeding in any court of the United States.

§ 77.12 Relationship to state and local regulation.

Communications with represented parties and represented persons pursuant to this part are intended to constitute communications that are "authorized by law" within the meaning of Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, DR 7–104(A)(1) of the ABA Code of Professional Responsibility, and analogous state and local federal court rules. (Copies of the ABA Model Rules and Code are available through Order Fulfillment Office, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611.) In addition, this part is intended to preempt the application of state and local laws or rules to the extent that they relate to contacts by attorneys for the government, and those acting at their direction or under their supervision, with represented parties or represented persons in criminal and civil investigations and litigation. This part is designed to govern the conduct of attorneys for the government in the discharge of their duties to the extent that state and local laws or rules are inconsistent with this part. When the Attorney General finds a willful violation of any of the rules in this part, however, sanctions for the violation of this part may be applied, if warranted by the appropriate state disciplinary authority.

Dated: February 22, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–4510 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 177

[CGD02–93–036]

RIN 2115–AE47

Drawbridge Operation Regulations; Illinois River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking docket number, which was published Friday, January 7, 1994 (59 FR 986). This notice of proposed rulemaking proposes to amend a drawbridge regulation and add a new regulation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Background

This document corrects the docket number of the notice of proposed rulemaking to add a new drawbridge regulation which will allow the remote operation of the Chicago and Northwestern Transportation Company railway bridge at Pekin, Illinois.

Need for Correction

As published, the notice of proposed rulemaking contained an error in the docket number which would be misleading and is in need of correction. This action is needed because the published docket number had already been used for another rulemaking.

Correction of Publication

Accordingly, the publication on January 7, 1994, of the notice of proposed rulemaking (CGD02–93–003), which was the subject of FR Doc. 94–271, is corrected as follows: The Coast Guard docket number on page 986, third line from the top is corrected to read CGD02–93–036.

Dated: February 10, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Second Coast Guard District.

[FR Doc. 94–4764 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 14–16, 1994 from 9 a.m. to 5 p.m..

ADDRESSES: The Marriott Tyson's Corner, 8028 Leesburg Pike, Vienna, VA, (703) 734–3200.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4082, ROB–3, Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following items:

—Borrower Provisions (e.g.: Deferment, Forbearance)
—Repayment (e.g.: Standard, Graduated & Extended Plans)

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: February 25, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–4813 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–M

34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 17–18, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Marriot Tyson's Corner, 8028 Leesburg Pike, Vienna, VA, (703) 734–3200.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 4082, ROB–3, Washington, DC 20202–5100, telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include the following items:

—Procedures for Administrative Due Process
—Definition of Reserve Funds

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: February 25, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–4814 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL83–2–6284; FRL–4845–6]

Federal Highway Funding Assistance Limitations and Emissions Offset Requirements; Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed rule; withdrawal; cancellation of the public hearings.

SUMMARY: On January 24, 1994, the United States Environmental Protection Agency (USEPA) published a proposed rule proposing to impose sanctions on Illinois under the discretionary authority granted USEPA under the Clean Air Act as amended in 1990 (amended Act) for failure by the State to meet its commitment to adopt and submit a basic and enhanced motor vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision as required by the amended Act for the Chicago and East St. Louis ozone nonattainment areas. The Illinois

General Assembly passed the legislation required to support such a SIP revision and on January 18, 1994, Illinois Governor Edgar signed the legislation. Because of this favorable action, USEPA is withdrawing the January 24, 1994 proposed rule initiating the process to impose discretionary sanctions. The USEPA is also canceling the previously announced hearings scheduled for March 2, 1994, in Chicago and on March 4, 1994, in Collinsville.

DATES: The public hearings scheduled for March 2, 1994 and March 4, 1994 are canceled.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: On January 24, 1994 (59 FR 3540), USEPA published a proposed rule proposing to impose sanctions on Illinois under the discretionary authority granted USEPA under section 110(m) of the amended Act for failure by the State to meet its commitment to adopt and submit a basic and enhanced motor vehicle I/M SIP revision as required by the amended Act for the Chicago and East St. Louis ozone nonattainment areas. The USEPA had notified Illinois by letter dated December 30, 1993, of its finding that Illinois had failed to submit the required SIP revision.

The Illinois General Assembly subsequently passed the legislation required to support such a SIP revision and on January 18, 1994, Illinois Governor Edgar signed the legislation. Because of this favorable action, USEPA is withdrawing the January 24, 1994, proposed rule initiating the process to impose discretionary sanctions. The USEPA is also canceling the previously announced hearings scheduled for March 2, 1994, in Chicago and for March 4, 1994, in Collinsville. This withdrawal terminates the discretionary sanctions process initiated by the January 24, 1994, proposed rule. The mandatory sanctions process under Section 179 of the Act initiated by USEPA's December 30, 1993, finding that Illinois failed to submit the required SIP revision is not affected by this action. Under that process, USEPA must impose sanctions within 18 months of that December 30, 1993, finding of failure to submit unless Illinois adopts and formally submits a complete I/M SIP revision within 18 months of that failure to submit finding.

Dated: February 22, 1994.

William H. Sanders II,

Acting Regional Administrator.

[FR Doc. 94–4981 Filed 3–1–94; 12:12 pm]

BILLING CODE 6560–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0905–AE13

42 CFR Part 57

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans; Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would revise the regulations governing the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 777(b) of the Public Health Service Act (the Act), to implement amendments made by the Health Professions Extension Amendments of 1992 by: (1) Adding a definition for the term "Geriatric psychiatry" to implement the statutory requirement for the expansion of project support to include the training of physicians who plan to teach geriatric psychiatry; (2) adding a definition for the term "Relevant advanced training or experience" to implement the statutory requirement for dentists who are awarded a 2-year internal medicine or family medicine fellowship (Dentists must have completed postdoctoral dental training, including postdoctoral dental education programs or who have "relevant advanced training or experience".); and (3) removing a section in the regulations regarding the period of time for appointments to fellowships to allow for less restrictive requirements for those individuals who may benefit from further fellowship or retraining experience in a life time. Additionally, technical and ministerial revisions are being made to conform the existing regulations with the amendments made by the statute.

DATES: As discussed below, comments are invited. To be considered, comments must be received by April 4, 1994.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, room 8A–55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Neil H. Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–6853.

SUPPLEMENTARY INFORMATION: This proposed rule amends the existing regulations for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry, authorized under section 777(b) of the Public Health Service Act (the Act) (42 U.S.C. 294o). The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) amended and renumbered former section 789(b) of the Act (42 U.S.C. 295g–9(b)) to section 777(b).

Section 777(b) of the Act, as amended, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including traineeships and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine, geriatric dentistry, or geriatric psychiatry. programs supported by these grants emphasize the principles of primary care as demonstrated through continuity, ambulatory, preventive, and psychosocial aspects of the practice of geriatric medicine, dentistry, and psychiatry.

The proposed amendments made by the Health Professions Extension Amendments of 1992 (Pub. L. 102–408) to section 777(b) are described below, according to the section numbers and headings of the regulations they affect.

Section 57.4102 Definitions

The Department is proposing to add the following terms to this section:

"*Geriatric psychiatry*" means the prevention, diagnosis, evaluation and treatment of mental disorders and disturbances seen in older adults.

This definition is adapted from the definition used by the American Association of Geriatric Psychiatrists and is added to the section to

incorporate the statutory requirement for the expansion of project support to include the training of physicians who plan to teach geriatric psychiatry.

"*Relevant advanced training or experience*" means at least one of the following: (1) Completion of at least a 12-month graduate training program in a health-related discipline, the basic sciences, or education; or (2) a minimum of 2 years of clinical practice, of which at least 12 months were devoted in part to managing older dental patients in a hospital, long-term care facility, or other setting.

This definition was developed with consultation from an Ad Hoc Committee of Geriatric Dentists and with positive internal review. The definition is added to the section to incorporate the statutory requirement for the expansion of fellowship eligibility of dental fellows in the program.

Section 57.4111 Duration of fellowships.

The Department is proposing to remove this section from the regulations. The regulatory language currently reads:

> An appointment to a fellowship may be made for a period not to exceed 12 months. Fellowship assistance for participants in a 1-year fellowship program and a 1-year retraining program is limited to 12 months. Participants in 2-year fellowship programs may receive a second 12-month appointment for a total period of 24 months.

Public Law 102–408 no longer provides for a 1-year fellowship program. Further, the language regarding the period of time for appointments to a fellowship is unnecessarily restrictive to individuals who may benefit from further fellowship or retraining experience in a life time. For example, a faculty fellow who completed a 1-year retraining to have the skills required to incorporate geriatrics into course content and clinical rotations may discover 5 years later that another fellowship experience would provide the opportunity to develop research skills in geriatrics required to expand the scope and depth of practice-based geriatric research.

In addition to the changes proposed above, a number of technical, clarifying, and ministerial changes are included to conform the existing regulations with amendments made by Public Law 102–408. These changes affecting the program for Faculty Training Projects in Geriatric Medicine and Dentistry are being made to the regulations to:

1. Revise the section number of the Act from "789(b)" to "777(b)" wherever it appears in subpart PP, as renumbered, and the United States Code citation from "(42 U.S.C. 295g–9(b))" to "(42 U.S.C. 294o)", in accordance with Public Law 102–408.

2. Revise § 57.4101, entitled "To what projects do these regulations apply?", by adding the words "geriatric psychiatry" to reflect statutory language which expands project support to include the training of physicians who plan to teach geriatric psychiatry.

3. Revise § 57.4102, entitled "Definitions.", amend the following terms to:

a. Remove the definition of "*Council*" regarding the National Advisory Council on Health Professions Education, in accordance with Public Law 102–408. The statute repealed the Council effective October 1, 1992;

b. Revise the phrase "by an organized medical staff" to "by an organized health care staff" at the end of the definition of "*Extended care facility*" to clarify that staff of health care institutions includes nurses, physical therapists, social workers and other health care staff who provide "medically-prescribed skilled nursing care or rehabilitative services";

c. Revise the introductory text to the definition of "*Fellowship program*" by removing the reference to a 1-year fellowship program which is no longer a statutory provision for project support; and revise paragraph (2) of the definition to reflect new statutory requirements for the training of dentists who have "demonstrated a commitment to an academic career and who have postdoctoral dental education programs or who have relevant advanced training or experience"; and

d. Revise the section number of the Act in the definition of "School of medicine or school of osteopathic medicine" from "701(5)" to "799(1)(E)", in accordance with Public Law 102–408.

4. Amend § 57.4105, entitled "Project requirements.", to:

a. Revise paragraph (d) regarding the requirement that projects be based in a graduate medical education program by adding the words "or psychiatry" after the phase "or in a department of geriatrics" to reflect statutory language which expanded project support to include the training of physicians who plan to teach geriatric psychiatry. Paragraph (d) is further revised by removing the phase "in existence as of December 1, 1987" at the end of the sentence, in accordance with Public Law 102–408;

b. Revise paragraph (e) regarding the requirement that projects be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine by adding the words "or geriatric psychiatry", in accordance with Public Law 102–408; and

c. Revise the introductory text to paragraph (f) regarding the requirement that the project must provide fellows "with training in geriatrics and exposure to the physical and mental disabilities of" a diverse population of elderly individuals, to more appropriately reflect the language in Public Law 102–408.

5. Revise § 57.4106, entitled "How will applications be evaluated?", by:

a. Removing the reference to the National Advisory Council on Health Professions Education, in accordance with Public Law 102–408, in paragraph (a) introductory text and revising the introductory text to reflect current statutory language regarding the evaluation and recommendation process of awarding grant applications; and

b. Adding a comma and the words "psychiatry, or" after the words "geriatric medicine" in paragraph (a)(5) to reflect statutory language which expanded training to include geriatric psychiatry.

5. Redesignate § 57.4112, entitled "Termination of fellowships.", as § 57.4111, and § 57.4113, entitled "For what purposes may grant funds be spent?", as § 57.4112, and § 57.4114, entitled "What additional Department regulations apply to grantees?", as § 57.4113.

6. Redesignate § 57.4115, entitled "What other audit and inspection requirements apply to grantees?", as § 57.4114 and revise the section number "705" in the text to "798(e)", in accordance with Public Law 102–408.

7. Redesignate § 57.4116, entitled "Additional conditions.", as § 57.4115.

Regulatory Flexibility Act and Executive Order 12688

This proposed rule governs a financial assistance training grant program in which participation is voluntary. Because these rules make minor changes in an existing grant program, they will have no consequential effect on the economy, small businesses or small governments. Therefore, the Secretary certifies that this rule will not have a significant economic impact on small entities.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for Faculty Training Projects in Geriatric Medicine and Dentistry.

List of Subjects

Dental health, Education of the disadvantaged, Educational facilities,

Educational study programs, Grant programs—education, Grant programs—health, Medical and dental schools, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 93.156, Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

Dated: November 12, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: January 24, 1994.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 57, subpart PP is proposed to be amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The authority citation for subpart PP is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the PHS Act, as amended by Public Law 100–607, 102 Stat. 3136–3138 (42 U.S.C. 295g–9(b)); renumbered as sec. 777(b), as amended by Public Law 102–408, 106 Stat. 2052–54 (42 U.S.C. 294o).

2. Section 57.4101 is revised to read as follows:

§ 57.4101 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 777(b) of the Act (42 U.S.C. 294o) for the purpose of providing support for projects to train physicians and dentists who plan to teach geriatric medicine, geriatric psychiatry, or geriatric dentistry, including traineeships, and fellowships for participation in these programs.

3. Section 57.4102 is amended by removing the definition of "Council"; by amending the definition of "Extended care facility" by revising the phrase "by an organized medical staff" at the end of the sentence to read "by an organized health care staff"; by revising the section number of the Act "789(b)" in the definitions of "Fellow" and "Project director" to read "777(b)"; by revising the section number of the Act "701(5)" in the definition of "School of medicine or school of osteopathic medicine" to read "799(1)(E)"; by revising the definition of "Fellowship program"; and by adding the definitions of "Geriatric psychiatry" and "Relevant advanced training or experience" to read as follows:

§ 57.4102 Definitions.

* * * * *

Fellowship program means a 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for—

(1) Physicians who have completed a graduate medical education program in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and

(2) Dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience.

* * * * *

Geriatric psychiatry means the prevention, diagnosis, evaluation and treatment of mental disorders and disturbances seen in older adults.

* * * * *

Relevant advanced training or experience means at least one of the following: (1) Completion of at least a 12-month graduate training program in a health-related discipline, the basic sciences, or education; or (2) a minimum of 2 years of clinical practice, of which at least 12 months were devoted in part to managing older dental patients in a hospital, long-term care facility, or other setting.

* * * * *

4. Section 57.4105 is amended by revising paragraphs (d), (e), and the introductory text to paragraph (f) to read as follows:

§ 57.4105 Project requirements.

* * * * *

(d) The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics or psychiatry;

(e) The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine or geriatric psychiatry and be staffed, or enter into an agreement with an institution staffed, by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatrics;

(f) The project must provide fellows with training in geriatrics and exposure to the physical and mental disabilities of a diverse population of elderly individuals. The population must include: * * *

* * * * *

5. Section 57.4106 is amended by revising the introductory text to paragraph (a) and paragraph (a)(5) to read as follows:

§ 57.4106 How will applications be evaluated?

(a) Competing applications are reviewed by a panel of peer reviewers comprised primarily of non-Federal consultants whose recommendations are given to the Secretary. The Secretary will approve projects which best promote the purposes of section 777(b) of the Act. The Secretary will consider, among other factors:

* * * * *

(5) The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine, psychiatry, or dentistry.

* * * * *

§ 57.4111 [Removed]

6. Subpart PP is amended by removing § 57.4111, entitled *Duration of fellowships.*

§ 57.4112 [Redesignated as § 57.4111]

7. Section 57.4112, entitled *Termination of fellowships.*, is redesignated as § 57.4111.

§ 57.4113 [Redesignated as § 57.4112]

8. Section 57.4113, entitled *For what purposes may grant funds be spent?*, is redesignated as § 57.4112.

§ 57.4114 [Redesignated as § 57.4113]

9. Section 57.4114, entitled *What additional Department regulations apply to grantees?*, is redesignated as § 57.4113.

§ 57.4115 [Redesignated as § 57.4114 and Amended]

10. Section 57.4115, entitled *What other audit and inspection requirements apply to grantees?*, is redesignated as § 57.4114, and section number "705" in the text is revised to read "798(e)".

§ 57.4116 [Redesignated as § 57.4115]

11. Section 57.4116, entitled *Additional conditions.*, is redesignated as § 57.4115.

[FR Doc. 94–4901 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61; DA 94–178]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment and reply comment periods.

SUMMARY: The Private Radio Bureau issued a Public Notice soliciting additional comment and reply comment on written ex parte presentations received by the Federal Communications Commission from PacTel Teletrac, Southwestern Bell Mobile Systems, Inc. and Mobilevision in late January and early February 1994. Comments were due on or before February 25, 1994 and reply comments were due on or before March 7, 1994. This Order extends the period in which to comment on these ex parte presentations through March 15, 1994, and extends the reply comment period through March 22, 1994. This action provides commenters with additional time to account for alleged difficulty in obtaining the ex parte filings from the Commission and eliminates "confusion" over the scope of comments permitted by stating that comments may be filed on the "technical" issues as well as any other issues raised by these filings.

DATES: Comments must be filed on or before March 15, 1994. Reply comments must be filed on or before March 22, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau (202) 632–7125.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 24, 1994.
Released: February 25, 1994.

In the Matter of Amendment of part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61.

By the Chief, Private Radio Bureau:

1. In late January and early February 1994 the Commission received written ex parte presentations from PacTel Teletrac (PacTel), Southwestern Bell Mobile Systems, Inc. (SBMS) and Mobilevision concerning the licensing of Automatic Vehicle Monitoring (AVM) systems, currently under consideration in this docket.

2. On February 9, 1994, the Bureau issued a Public Notice soliciting additional comments and reply comments on these filings.[1] Comment was specifically solicited regarding whether Rand McNally Basic Trading Areas (BTAs)[2] should be used as Commission-defined service areas for the licensing of AVM systems, or whether, alternatively, Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) should be used as licensing boundaries.[3] The Public Notice established a due date of February 25, 1994 for comments and March 7, 1994 for reply comments.

3. On February 18, 1994, Metricom, Inc. (Metricom) requested additional time to respond to the ex parte filings specified in the Public Notice and requested that we clarify that interested parties may comment on the "technical issues" raised by these ex parte filings. Metricom bases this request on alleged difficulty in obtaining all of the ex parte filings from the Commission and on "confusion" over the scope of the comments requested.

4. Because of the apparent confusion on this question, we believe a short extension of time is warranted. Parties responding to the Public Notice may comment on the "technical issues" as well as any other issues raised by these filings.

5. For good cause shown, and pursuant to sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 303(r), *it is ordered that* the period of time for filing comments and reply comments on ex parte filings addressed in our Public Notice, DA 94–129, released on February 9, 1994, *is hereby extended.* Comments must be filed on or before March 15, 1994. Reply comments must be filed on or before March 22, 1994.

6. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments must be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

7. Ex parte filings, as well as all comments and reply comments in this proceeding, are available for public inspection as part of the record in PR Docket No. 93–61 during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, NW., room 246, Washington, DC 20554, telephone (202) 857–3800.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 94–4815 Filed 3–2–94; 8:45 am]

BILLING CODE 6712–01–M

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[1] Public Notice, DA 94–129, released February 9, 1994, 59 Fed. Reg. 7239 (February 15, 1994).

[2] See Rand-McNally Commercial Atlas and Marketing Guide 36–39 (123d ed. 1992).

[3] This additional period to file comments and reply comments on these specific issues did not in any way abrogate the right of any interested party to file ex parte comments on any aspect of this proceeding.

Notices

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 25, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

7 CFR Part 59, Regulations for Inspection of Eggs and Egg Products.

PY–38, PY–76, PY–155, PY–156, PY–214, PY–222, PY–240, PY–518–1.

Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Daily.

State or local governments; Businesses or other for-profit; Small businesses or organizations; 46,030 responses; 30,833 hours.

C. Sheilds Jones, Jr. (202) 720–3506.

Extension

- Food and Nutrition Service

Vendor Activity Monitoring Profile (VAMP) data.

Recordkeeping; Annually.

State or local governments; 81 responses; 578 hours.

Laurie Hickerson (703) 305–2715.

New Collection

- Agricultural Stabilization and Conservation Service

7 CFR 1427.100–109—Upland Cotton First Handler and Domestic User/Exporter Agreement and Payment Program—Addendum.

CCC–1045, 1046.

Recordkeeping; On occasion; Weekly.

Farms; Small businesses or organizations; 30,550 responses; 12,035 hours.

Janice Zygmont (202) 720–6734.

- Office of Operations

Procedure for Donation of Excess Research Equipment.

SF–122.

Recordkeeping; On occasion.

State or local governments; Non-profit institutions; 50 responses; 100 hours.

Linda W. Oliphant (202) 690–4434.

Reinstatement

- Soil Conservation Service

Application for Payment.

SCS–FNM–141.

On occasion.

Individuals or households; Farms; 18,600 responses; 4,650 hours.

Roy R. Twidt (202) 720–5904.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 94–4817 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Opportunity for Designation in the Denver (CO), East Indiana (IN), and Kansas Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and Kansas State Grain Inspection Department (Kansas), will end August 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 31, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Denver, main office located in Commerce City, Colorado, East Indiana, main office located in Muncie, Indiana, and Kansas, main office located in Topeka, Kansas, to provide grain inspection services under the Act on September 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Denver, East Indiana, and Kansas end on August 31, 1994.

The geographic area presently assigned to Denver, in the States of

Colorado, Nebraska, and Wyoming, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

The entire State of Colorado.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen and Platte Counties, Wyoming.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs, all in Laramie County, Wyoming (located inside Wyoming Department of Agriculture's area). Exceptions to Denver's assigned geographic area are the following locations inside Denver's area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

The geographic area presently assigned to East Indiana, in the States of Indiana and Ohio, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Indiana:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Stueben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

Darke County, Ohio.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio (located inside Lima Grain Inspection Service, Inc.'s, area).

The geographic area presently assigned to Kansas, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Kansas.

Interested persons, including Denver, East Indiana, and Kansas are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1994, and ending August 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4732 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Gibson City (IL), Central Illinois (IL), Indianapolis (IN), Springfield (IL), and Decatur (IL) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Gibson City Grain Inspection Department (Gibson City), Central Illinois Grain Inspection, Inc. (Central Illinois), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), Springfield Grain Inspection, Inc. (Springfield), and Decatur Grain Inspection, Inc. (Decatur), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1993, **Federal Register** (58 FR 51047), FGIS announced that the designations of Gibson City, Indianapolis, and Springfield Agencies end on March 31, 1994, and asked persons interested in providing official services in the geographic areas assigned to Gibson City, Indianapolis, and Springfield to submit an application for designation. Applications were due by October 29, 1993.

Indianapolis applied for designation in the entire area it is currently assigned. There were two applicants for the Gibson City area. Donald Swanstrom dba Gibson City Grain Inspection Department proposing to incorporate and do business as Gibson City Grain Inspection, Inc., applied for designation in the area currently assigned to Gibson City, except for: the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County (located inside Central Illinois Grain Inspection, Inc.'s, area).

Central Illinois Grain Inspection, Inc. (Central Illinois), applied for designation to serve the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County, in addition to the area they are already designated to serve. The Gibson City and Central Illinois agencies are contiguous official agencies.

There were two applicants for the Springfield area. Springfield applied for designation in the entire area currently assigned to it except for: Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s, area).

Decatur Grain Inspection , Inc. (Decatur), applied for designation to

serve Chestervale Elevator Company, Chestervale, Logan County, in addition to the area they are already designated to serve. The Springfield and Decatur agencies are contiguous official agencies.

FGIS requested comments on the applicants in the December 1, 1993, **Federal Register** (58 FR 63331). Comments were due by December 31, 1993. FGIS received one comment supporting the designation of Springfield by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Gibson City, Central Illinois, Indianapolis, Springfield, and Decatur are able to provide official services in the geographic areas for which they applied.

Effective April 1, 1994, and ending March 31, 1995, Gibson City is designated to provide official inspection services in the geographic area specified in the September 30, 1993, **Federal Register**, except for the area north of Highway 116, west of Highway 47, and southwest of the Southern Pacific Railroad; and Farm Service Arrowsmith, McLean County, Illinois.

Effective April 1, 1994, and ending May 31, 1996, Central Illinois is designated to provide official inspection services in the area north of Highway 116, west of Highway 47, and southwest of the Southern Pacific Railroad; and Farm Service Arrowsmith, McLean County, Illinois, in addition to the area they currently serve. Gibson City and Central Illinois are contiguous agencies.

Effective April 1, 1994, and ending March 31, 1995, Indianapolis is designated to provide official inspection services in the geographic area specified in the September 30, 1993, **Federal Register**.

Effective April 1, 1994, and ending March 31, 1997, Springfield is designated to provide official inspection services in the geographic areas specified in the September 30, 1993, **Federal Register**, except for Chesterfield Elevator Company, Chesterfield, Logan County (located inside Decatur's area).

Effective April 1, 1994, and ending December 31, 1996, Decatur is designated to provide official inspection services at Chesterfield Elevator Company, Chesterfield, Logan County in addition to the area they currently serve. Springfield and Decatur are contiguous agencies.

Interested persons may obtain official services by contacting Central Illinois at 309–827–7121, Decatur at 217–429–2466, Gibson City at 217–784–5411, Indianapolis at 317–782–8938, and Springfield at 217–522–5233.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4730 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Sioux City (IA) and Tischer (IA) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Sioux City Inspection & Weighing Service Company (Sioux City), and A. V. Tischer and Son, Inc. (Tischer).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 31, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1993, **Federal Register** (58 FR 69316), FGIS asked persons interested in providing official services in the geographic areas assigned to Sioux City and Tischer to submit an application for designation. Applications were due by January 31, 1994. There were three applicants. Sioux City and Tischer each applied for designation in the entire area currently assigned to them. The D. R. Schaal Agency, Inc. (Schaal), applied for designation to serve part of the Tischer area: Big Six Elevator, Burt, and West Bend Elevator Co., Algona, Kossuth County; Gold-Eagle Coop., Goldfield, and Clarion Farmers Elevator Cooperative, Wright County; Iowa, (located inside Schaal's area) in addition to the area they are already designated to serve. Tischer and Schaal are contiguous official agencies.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4728 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Michigan (MI) Agency to Serve Hillsdale and Branch Counties, Michigan

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Michigan Grain Inspection Services, Inc. (Michigan), to provide official inspection services under the United States Grain Standards Act, as amended (Act) in Hillsdale and Branch Counties in addition to the area they currently serve.

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 8, 1993, **Federal Register** (58 FR 52475), FGIS announced that Schneider Inspection Service, Inc. (Schneider), has asked that their designation be amended to remove Hillsdale and Branch Counties from their assigned geographic area. FGIS asked persons interested in providing official services in these counties to submit an application for designation. Applications were due by November 9, 1993. Michigan, the sole applicant, applied for designation in Hillsdale and Branch Counties in addition to the area currently assigned to them.

FGIS requested comments on the applicant in the December 3, 1993, **Federal Register** (58 FR 63910). Comments were due by January 3, 1994. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Michigan is able to provide official services in the geographic area for which they applied.

Effective April 1, 1994, and ending April 30, 1995, Michigan is designated to provide official inspection services in Hillsdale and Branch Counties, Michigan, in addition to the area they are currently serving.

Interested persons may obtain official services by contacting Michigan at 616–781–2711.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4731 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Sheppard-Griffin, Flathead National Forest, Tally Lake Ranger District, Flathead and Lincoln Counties, State of Montana; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of watershed and fisheries restoration activities in Sheppard and Griffin Creeks and their tributaries.

The area is located in the area west of Whitefish, Montana and north of the town of Marion, Montana.

The need for this proposal stems from vegetative conditions that have deteriorated due to insect and weather events and will have slow recovery if no action is taken. Current watershed and fisheries conditions do not fully support cold-water fisheries and aquatic life. These conditions, taken in combination with the vegetative conditions, will persist in the long-term.

The purpose of the project is to restore watershed and fisheries conditions in Sheppard and Griffin Creeks.

The proposals's actions to regenerate predominantly dead lodgepole pine stands and wind damaged stands, construct temporary roads and recondition roads necessary to access these stands, correct chronic sediment sources primarily by rehabilitation of roads not needed for future land management activities, remove sediment from stream pools, and stabilize stream channels are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

This EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January, 1986, which provide overall guidance of all land management activities on the Flathead National Forest.

Extensive scoping has been done for this project during the initial stages of preparation of an Environmental Assessment, and during the analysis of alternatives over the past fourteen months. The Forest Service has determined that an EIS will be prepared for this project. The Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. These comments will be used in preparing the Draft EIS.

DATES: Comments concerning the scope of the analysis should be received on or before April 18, 1994.

ADDRESSES: Submit written comments and suggestions or a request to be placed on the project mailing list to Bert Stout, District Ranger, Tally Lake Ranger District, Highway 93 West, Whitefish, MT 59937.

FOR FURTHER INFORMATION CONTACT: Doug Berglund, EIS Team Leader, Phone (406) 862–2508.

SUPPLEMENTARY INFORMATION: The need of the proposal is a result of a mountain pine beetle outbreak which has caused significant mortality and stands damaged by an intense storm which caused significant blowdown. In both conditions, if no action is taken, regeneration of conifers would occur slowly over several decades. This slow rate of vegetative recovery would result in slow recovery of watershed and fisheries conditions. Also, several chronic sources of sediment in Sheppard and Griffin Creeks are causing degradation of cold-water fisheries. Sections of many of the tributaries of Sheppard and Griffin Creeks are deficient in woody debris and native shrubs which is important in stabilizing stream channels and protecting fisheries habitat.

The purpose of the proposal is to restore watershed and fisheries conditions by a variety of management practices where existing conditions are not fully supporting identified beneficial uses of cold-water fisheries and aquatic life. Specifically, the purpose is to:

(1) Accelerate regeneration of conifer species in stands with high amounts of lodgepole pine mortality caused by mountain pine beetle and in stands with significant amounts of blowdown.

(2) Reduce chronic sediment sources in Sheppard and Griffin Creeks and their tributaries by rehabilitation and revegetation of existing roads.

(3) Improve fisheries habitat by sediment removal from pools.

(4) Stabilize stream channels lacking woody debris and native shrubs.

(5) Conduct management practices in a manner to provide economic opportunity and to provide a timber supply to the local lumber manufacturing industry.

Regeneration of primarily dead lodgepole pine stands is proposed on approximately 1520 acres, regeneration of wind damaged stands on approximately 115 acres, maintenance and minor intermittent reconditioning of approximately 55 miles of existing roads, construction of approximately 5 miles of temporary roads, rehabilitation of 13 miles of roads, placement of large woody debris intermittently in 39 miles of streamcourses, native shrub planting on approximately 55 acres and sediment removal at 15 sites in Sheppard, Griffin and Squaw Meadows Creeks.

The decision to be made is what, if anything, should be done in the Sheppard-Griffin area to: (a) Accelerate regeneration of primarily dead lodgepole pine stands and wind damaged mixed conifer stands, (b) rehabilitate sediment sources that are primarily roads not needed for long-term management, (c) stabilize stream channels by placement of large woody debris and planting native shrubs to reduce the erosive power of streamflow during peak flows, and (d) improve

fisheries habitat by sediment removal from pools.

The LRMP for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Most areas of proposed management activities for the Sheppard-Griffin project are within Management Area (MA) 15. Some activity is also planned in MA 17. Management Area 15 consists of lands where timber management with roads is economical and feasible. The management goal is to manage these lands for the long-term growth and production of commercially valuable wood products, as well as provide for soil and water protection, wildlife habitat, and roaded recreation opportunities. Management Area 17 includes adjacent forested riparian lands. The primary goal is to protect and maintain this riparian zone, including fish and wildlife habitat, while maintaining a sustained yield of timber. The proposal is designed to meet the Forest Plan standards and guidelines.

Public participation has occurred at various times during the analysis. Initially, scoping was done separately for the Sheppard project and the Griffin project, in November of 1991, and May of 1992, respectively. Since that time, the two projects have been combined into one analysis based on similarities in purpose, issues and close proximity. Two additional periods of time are identified for the receipt of comments on the analysis. One period will be during the 45 days after this notice is published in the **Federal Register**, and another during the 45-day review and comment period of the Draft EIS. Scoping at the local level has already commenced. If comments have been submitted, there is no need for additional comment. No public meetings are scheduled at this time.

Based on public scoping the following issues have been identified:

(1) There is concern how the vegetation restoration may affect wildlife, particularly big game species such as elk, deer and moose.

(2) Road construction and management are a concern because of the potential impact to water quality, wildlife and fisheries habitat and recreation use.

(3) Harvest methods used in vegetative restoration are a concern to many people, especially in regard to fragmentation of a forested landscape.

(4) There is a concern that vegetative restoration may result in further adverse effects on watershed and fisheries values.

The analysis is essentially complete and has included a full range of alternatives that respond to issues received from scoping over the past year. One of these is the "no-action" alternative, in which no management activities would take place. As a result of the scoping and analysis that has taken place to date, alternatives to the proposed action would include:

(1) Restoration of chronic sediment sources and unstable stream channels only. No restoration of dead lodgepole pine stands.

(2) Modify the proposed action to use existing roads only. No restoration of lodgepole pine stands in the drainages containing the most unstable stream channels.

(3) Modify the proposed action to emphasize big-game habitat effectiveness.

(4) Modify the proposed vegetative treatments to minimize fragmentation of old-growth management indicator species habitat.

The EIS will document the direct, indirect, and cumulative environmental effects of the alternatives. Past, present and reasonable foreseeable actions on both private and National Forest lands will be considered. The EIS will disclose the site-specific features that reduce or eliminate potential environmental impacts.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in May, 1994. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The public comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them, and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Following this comment period, the comments received will be analyzed, considered and responded to by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by July 1994. Joel Holtrop, Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901, is the responsible official for the preparation of the EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: February 18, 1994.

Bert Stout,

District Ranger, Tally Lake Ranger District, Flathead National Forest.

[FR Doc. 94–4787 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–11–M

Helena National Forest and Deerlodge National Forest Counties: Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher; State: Montana

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice; extension of public review period for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Draft Environmental Impact Statement.

SUMMARY: The period of Public Review for the Helena National Forest and Elkhorn Mountains portion of the Deerlodge National Forest Oil and Gas Leasing draft environmental impact statement (EIS) has been extended until March 31, 1994. The Forest Service and the Bureau of Land Management as joint lead agencies agreed to extend the time for public review an additional 30 days from March 1, 1994 to March 31, 1994.

DATES: This action is effective upon the publication of this notice.

ADDRESSES: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601; and Robert H. Lawton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Environmental Analysis Team Leader, Helena National Forest, as above, or phone: (406) 449–5201.

Dated: February 25, 1994.

Joel Marshik,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 94–4833 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

East Side Green River, P–1 Channel: SW Grady Way to SW 16th, King County, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Side Green River, P–1 Channel: SW Grady Way to SW 16th St. King County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower West 316 Boone Avenue, suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and flood prevention. The planned works of improvement include the construction of approximately 400 feet of channel that connects previously installed channels. The proposed project is part of the East Side Green River Watershed Project started in 1966. The P–1 connecting channel is part of the remaining segments to be installed according to the plan. The proposed project will have a low flow channel in the main channel. The low flow channel will have a 12-foot bottom width and the main channel, including the low flow channel, will be 65 feet wide. This proposed channel will be constructed adjacent to the existing natural drainage way. The natural drainage way will be managed as a wetland and wildlife area. It will share some of the flows with the proposed channel during high runoff periods. Trees, scrubs, and grass will be established in the wetland area and all disturbed areas of the proposed channel. These plantings will provide food and cover for small birds and mammals in addition to erosion control and bank stabilization.

The fish habitat components consist of placing several groups of boulders and root wads from trees to provide habitat for resting areas, hiding areas, and will diversify the path of the water flow.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: February 22, 1994.

Lynn A. Brown,

State Conservationist.

[FR Doc. 94–4790 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Industry Classification Questionnaire.

Form Number: Agency—BE–507; OMB—0608–0032.

Type of Request: Extension of a currently approved collection.

Burden: 600 respondents; 1 response per respondent per year; 300 reporting hours.

Average Hours per Response: ½ hour.

Needs and Uses: The survey is required in order to classify, by industry, information collected on related forms for U.S. direct investment abroad (i.e., Forms BE–577, BE–133B, and BE–133C). These data are needed, by country and industry, for compiling the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, for annual estimates of the U.S. direct investment position abroad, and for semi-annual estimates of property, plant, and equipment expenditures of majority-owned foreign affiliates. They are also needed to measure the economic significance of U.S. direct investment abroad, monitor changes in such investments, analyze its effect on the U.S. and foreign economies, and based upon this assessment, make informed policy decisions regarding U.S. investment abroad.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room H5310, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed

information collection should be sent to Paul Bugg, OMB Desk Officer, room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4906 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of Procurement.

Title: Revisions to the Commerce Acquisition Regulation (CAR) entitled "Insurance Requirements".

Form Number: Agency: N/A OMB #: New.

Type of Request: New

Burden: Reporting Requirement: 33 respondents totalling 33 hours. Average reporting time is one hour.

Needs and Uses: Commerce operates approximately 24 research ships. In contracts for constructing and maintaining these ships, the contractor must have certain kinds of insurance. This insurance is necessary to protect the multi-million dollar ships and the interests of the U.S. taxpayers. The information collected is used to verify that the contractor has acquired the levels of insurance necessary to protect the interests of the Government.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4905 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

[Docket No. 940121–4021]

Annual Survey of Communication Services

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1993 operating revenue and expenses are needed for the telephone, radio and television broadcasting, cable and pay television, and other communication services industries to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on communication services for the period between economic censuses. The latest economic census was conducted in 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Bureau of the Census needs reports only from a limited sample of communication firms in the United States. The probability of a firm's selection is based on payroll size. The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been approved by the Office of Management and Budget (OMB) under OMB approval control number 0607–0706 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: January 28, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–4980 Filed 3–1–94; 12:09 pm]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 021594H]

Atlantic Bluefin Tuna; Peer Review of the Scientific Basis of Management of the Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NOAA has requested that the National Research Council (NRC) undertake a technical review of the scientific basis of management of the fisheries for Atlantic bluefin tuna. This notice solicits comments pertaining to the review to be forwarded to the NRC.

DATES: Comments must be received by NMFS on or before March 18, 1994.

ADDRESSES: Comments should be directed to: Dr. Kevin Chu, Executive Secretary, ICCAT Advisory Committee, room 14247, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu (301)713–2276.

SUPPLEMENTARY INFORMATION: At the 1993 Annual Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the United States announced that it would undertake a peer review of the scientific basis of management of the fisheries for Atlantic bluefin tuna. To ensure that the review is independent and unbiased, NOAA has asked the NRC to undertake a technical review of this subject. In order to prepare for the 1994 Annual Meeting of ICCAT, the NRC has been asked to complete an approved report of its review by June 30, 1994.

NOAA has given the NRC the following general questions for the review to address:

- Are the current Standing Committee on Research and Statistics (SCRS) assessments of the status of eastern and

western Atlantic bluefin the most valid interpretation of the available data?

- Is uncertainty in the assessments adequately expressed?
- What is the status of the Atlantic bluefin tuna stocks, relative to the Convention's goal of managing tuna to achieve maximum sustainable yield?
- Does the available information support treating bluefin tuna as separate eastern and western management units (i.e., how much mixing is likely and is it enough to invalidate two separate management units)?

NOAA has stated that the list of questions should be considered preliminary. It has requested that the NRC provide an opportunity to receive the views of the public and that the list of issues addressed be refined and, if necessary, expanded based on that input.

By this notice, NMFS is soliciting comments on any matters that pertain to the peer review. All comments received by the closing date will be forwarded to the NRC for its consideration.

Dated: February 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–4911 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Finding of No Significant Impact for the Establishment of a Reserve of Ozone Depleting Substances

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Notice.

SUMMARY: An environmental assessment on the Establishment of a Reserve of Ozone Depleting Substances was prepared pursuant to the National Environmental Policy Act (NEPA) as amended (42 U.S.C. 4321 (*et seq*) and the Council on Environmental Quality Guidelines (40 CFR Parts 1500–1508). The environmental assessment concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. Interested parties may submit comments to the address listed below for a 30-day period from the date of this notice.

EFFECTIVE DATE: 25th of February 1994.

FOR FURTHER INFORMATION CONTACT: Mr, Jan Reitman, CAAE, Staff Director, Environmental and Safety Policy Office, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, (703) 274–6124.

SUPPLEMENTARY INFORMATION: DLA has been directed to establish a reserve of Ozone Depleting Substances (ODS) to ensure that supplies for mission-critical uses will be available. An environmental assessment has been prepared to address the proposed strategy for establishing the ODS Reserve, possible alternative approaches, environmental consequences of the proposed action, and measures recommended to mitigate potentially adverse effects. This environmental assessment has been prepared in accordance with Council on Environmental Quality (CEQ) regulations and DLA implementing regulation DLAR 1000.22, Environmental Consideration in DLA Actions.

The proposed action involves the establishment of a Defense Reserve to support mission-critical requirements for CFC refrigerants and halon fire extinguishing agents. CFC solvents may be maintained in the Reserve if requirements are fully justified. Although the Reserve may receive deposits from all sources within the DoD, material will be issued only to mission-critical systems and users as identified to the DLA by the Military Services. The establishment of the Reserve will give DoD the capability to centrally receive, recontainerize, recycle and reclaim ODS. This reclamation capability will be established at the Defense Distribution Depot Richmond, Virginia, which already has extensive operations involving compressed gas receipt, storage, and distribution and cylinder refurnishment. The Reserve will be located within structures currently used for cylinder storage and refurbishment and will require no new construction. DLA will institute a variety of safeguards including personnel training, equipment upgrades, and leak detection programs to maintain the inventory and avoid unnecessary emissions. Reserve operations will not require air emission, water discharge, or hazardous waste management permits.

DLA will manage inventory levels in order to ensure that excess quantities of materials are not maintained in the Reserve and will phase out materials when no longer needed for mission-critical purposes. Any excess will be disposed of in compliance with environmental regulatory requirements. New purchases of ODS will be necessary in order to establish inventories at levels which can be sustained through recovery and reclamation. The quantity of new ODS purchases will be validated in coordination with the DoD Inspector General. The total quantity of ODS expected to be acquired for the initial establishment of the Reserve will be less than the average quantity of ODS purchased annually by DoD in recent years. Specific measures have been identified in the assessment to mitigate potentially adverse effects which might occur during establishment or operation of the Reserve. The establishment of a Reserve and the initiation of central recovery, recycling and reclamation operations will allow DoD to conserve ODS inventories, maintain mission-critical systems which are dependent on ODS, and avoid the need for an exemption to the production phase out pursuant to Section 604(f) of the Clean Air Act Amendments.

The establishment of a defense Reserve for mission-critical ODS is not considered a major action significantly affecting the quality of the human environment or requiring the preparation of an Environmental Impact Statement. A public comment period regarding the environmental assessment will begin at the time of publication of this notice and will conclude 30 days following. Copies of the environmental assessment are available for inspection at the address listed above.

Dated: February 25, 1994.

Jan B. Reitman,

Staff Director, (Environmental and Safety Policy).

[FR Doc. 94–4782 Filed 3–2–94; 8:45 am]

BILLING CODE 3820–01–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Arroyo Pasajero Investigation, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is a feasibility investigation to identify and assess potential measures to provide additional flood protection for the study area including the cities of Coalinga and Huron, Lemoore Naval Air Station, surrounding agricultural land, and the California Aqueduct, and to prevent sediment and water contaminated with asbestos from entering the aqueduct. The feasibility investigation area includes the Arroyo Pasajero basin in southwest Fresno County. Measures to be investigated include enlarging the retention basin west of the aqueduct, constructing an overchute structure, upstream reservoirs, conducting local

levee and channel work, and implementing an asbestos hazard abatement treatment.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Mr. Robert Koenigs, Planning Division, Corps of Engineers, 1325 J Street, Sacramento, California, 95814–2922, telephone (916) 557–6712.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Corps of Engineers, and a non-Federal sponsor (California State Department of Water Resources) are conducting a feasibility investigation to identify and assess alternative measures for providing additional flood protection to the cities of Coalinga and Huron, to Lemoore Naval Air Station, to the California Aqueduct, and to agricultural lands, and for preventing sediment and water contaminated with asbestos from entering the aqueduct. In 1958 and 1969 major flooding occurred in the area causing over $5 million in property loss.

Alternatives

The feasibility report and EIS will address the full range of alternatives discussed in the 1992 reconnaissance report on the basin including evaluation of plans to:

(1) Enlarge the retention basin west of the California Aqueduct.

(2) Provide an overchute structure over the aqueduct or an aqueduct canal siphon and provide a retention basin on the east side of the aqueduct.

(3) Construct a channel from the aqueduct and/or the retention basin to a natural channel at the valley trough. Also included will be an evaluation of upstream reservoirs, local levees and channel work, the potential for groundwater injection, potential water treatment methods to permit Arroyo Pasajero runoff into the aqueduct, special asbestos hazard abatement treatment for construction, operation and maintenance requirements for any constructed facilities, and environmental mitigation and restoration. The No-Action alternative will also be explored during the study.

Scoping Process

a. A notice of initiation for the Arroyo Pasajero Investigation will be sent to public agencies, organizations, and individuals in the study area. This notice will invite those parties to participate in the scoping process for this investigation. This will include an opportunity for the public to identify the significant flood control problems, potential solutions, and resources within the study area which may be affected by a project. Responses to the notice, will be used in determining the scope of the feasibility report and accompanying environmental impact statement.

b. Significant topics that will be discussed in the DEIS include the hydrology of the basin; planning objectives; alternatives analysis; impacts on fish and wildlife resources, endangered species, vegetation, water quality, air quality, esthetics, cultural resources, and cumulative impacts of related projects in the study area. The potential for contamination of air and water resources by naturally occurring asbestos will also be addressed.

c. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. A public hearing will be held during the comment period. All interested persons are encouraged to respond to this notice and to provide scoping comments and a current address if they wish to be contacted about the DEIS.

Public Meeting

A public scoping meeting has been scheduled for Tuesday, March 29, 1994 at 7 p.m. in the Coalinga area to initiate coordination with local governmental representatives, elected officials, State and Federal agencies, special interest groups, and the general public.

Availability

The DEIS is scheduled to be available for public review and comment in mid 1997.

Gregory D. Showalter,

Alternative Army Federal Register Liaison Officer.

[FR Doc. 94–4784 Filed 3–2–94; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare Environmental Impact Statement for Permit Application for Proposed Activities at Bolsa Chica, Orange County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers is considering an application for section 404 and section 10 permits to conduct dredge and fill activities at Bolsa Chica near the City of Huntington Beach, Orange County, California. The proposed project incorporates components of residential housing and associated infrastructure, habitat restoration of the estuarine marsh, and modifications to the existing East Garden Grove-Wintersburg Flood Control Channel.

The primary Federal concern is the dredging and discharging of materials within waters of the United States, including wetlands, and potential significant impacts on the human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, ATTN: Bruce Henderson, P.O. Box 2711, Los Angeles, California 90053–2325.

SUPPLEMENTARY INFORMATION:

Project Site

The Bolsa Chica site consists of approximately 1,973 acres of land located in northwestern coastal Orange in southern California. Of the total acreage, approximately 1,312 acres consists of lowlands situated between two upland mesas (Bolsa Chica Mesa to the north and Huntington Mesa to the south).

The site is surrounded by residential neighborhoods to the north, east, and southeast, and by the Pacific Coast Highway (State Route 1) and Bolsa Chica State Beach to the southwest. At present the site is largely undeveloped and is traversed by numerous compacted dirt berm roads associated with ongoing oil production activities. A 300-acre State Ecological Reserve, of which 170 acres have been restored, is also located in the Bolsa Chica lowland adjacent to Pacific Coast Highway.

In February 1989, the U.S. Environmental Protection Agency determined that 927 acres of waters of the United States, including wetlands, are present at the site. Approximately 916 acres are the subject of the applicant's permit request.

Proposed Action

The applicant's proposed project is comprised of three primary components:

(1) Construction of residential housing and associated infrastructure on approximately 270 acres of the Bolsa Chica Mesa as well as approximately 194 acres of the lowlands (comprised of 119 acres of wetlands and/or waters of

the U.S. and 75 non-jurisdictional acres adjacent to existing homes;

(2) Consolidation and restoration of degraded wetlands and creation of new wetlands from on site non-jurisdictional areas;

(3) Modifications to the existing East Garden Grove-Wintersburg Flood Control Channel. The proposed wetlands restoration work includes the construction of a new non-navigable tidal inlet beneath Pacific Coast Highway and through Bolsa Chica State Beach.

The permit application states that completion of the residential construction component in the lowlands will enable the landowner to finance and complete the wetlands restoration component.

Issues

Potentially significant environmental issues associated with implementation of the applicant's proposed project to be addressed in the EIS include:

a. Geological issues including subsidence, seismic concerns and landform alteration.

b. Impacts to terrestrial and aquatic biological resources, including Federally listed threatened and endangered species.

c. Impacts to surface and ground water quality and hydrology.

d. Impacts to prehistoric and historic cultural resources.

e. Land use patterns, including recreation and coastal access.

f. Impacts to air quality.

g. Noise impacts.

h. Impacts to public services and utilities.

i. Impacts to aesthetic resources.

j. Oceanography and fishing impacts.

k. Impacts to local traffic circulation.

l. Socioeconomic concerns including population, housing and infrastructure costs and benefits.

m. Public health and safety concerns.

n. Cumulative impacts.

Alternatives

The EIS will consider an appropriate range of alternatives for the proposed project at Bolsa Chica. For purposes of this analysis, separate alternatives will be analyzed for each of the plan's three primary components, keeping in mind the overall project purpose. Because the applicant proposes to develop the Bolsa Chica Mesa regardless of any action in the lowlands, the following applies primarily to the applicant's permit application for that portion of the project in the lowlands. Accordingly, the following list of alternatives is set for in three categories: (I) Residential housing; (II) wetlands restoration; and (III) flood control modifications.

I. Residential Housing Component

1. Residential housing and associated road construction on 119 acres of degraded wetlands and 75 non-jurisdictional acres along the inland edge of the site (Applicant's Preferred Action). The applicant contends that this alternative will provide it with sufficient usable property in the lowland to enable it to restore and convey in perpetuity the balance of its lowland holdings (approximately 767 acres) to the County of Orange. This conveyed property would be restored by the applicant in accordance with one of the restoration alternatives listed in Section II below.

2. Residential development and construction of a navigable ocean entrance and public marina with associated commercial uses. Like alternative I.1, this alternative is intended to enable the applicant to restore and convey the remainder of the lowland to the County of Orange.

3. Residential development in the areas known as the Bolsa Pocket and Edward's Thumb. The Bolsa Pocket is an area situated between the East Garden Grove-Wintersburg Flood Control Channel and the base of the Bolsa Chica mesa. Edward's Thumb is an area situated in the northeast corner of the lowland. Like alternative I.1, this alternative is intended to enable the applicant to restore and convey the remainder of the lowland to the County of Orange.

4. Creation of wetlands mitigation bank in the lowland with no lowland residential development.

5. Acquisition of the lowland by a public entity or a non-profit organization and restoration by same in accordance with one of the restoration alternatives listed in Section II below. This alternative will be analyzed with and without the development of a public parkland area along the inland edge of the site. In either case, there would be no lowland residential development.

6. No action.

II. Wetlands Restoration Component

1. Full tidal restoration with construction of a non-navigable tidal inlet (Applicant's Preferred Action). This alternative includes the removal of many of the roads and oil drilling pads that traverse the Bolsa Chica lowland and requires significant excavation and discharge of fill in the central portion of the lowland in order to create a suitable tidal prism for enhancement of the ecosystem.

2. Muted tidal restoration without construction of a tidal inlet. This alternative differs in significant respects from alternative II.1 in that it would rely on an increased tidal exchange from the adjoining Huntington Harbour instead of the non-navigable inlet.

3. Minimal restoration without increased tidal action either from Huntington Harbor or from a new tidal inlet. The roads and drilling pads that traverse the lowland would largely be left intact. New water sources to the lowland would be created by breaching the California department of Fish and Game levee and the Freeman Creek corridor.

4. No action.

III. Flood Control Modifications

1. Modifications to the East Garden Grove-Wintersburg Flood Control Channel that involve removing approximately 1.2 acres of embankment dirt for purposes of widening the existing channel and discharge flow into the lowland area. (Applicant's Preferred Action).

2. Modifications to the flood control channel that involve excavating the Outer Bolsa Bay at the channel outlet.

3. No action.

IV. Plan Packages

Based on a preliminary review of a reasonable range of alternatives, the following plan packages have been identified for a more comprehensive review in the EIS. All of the following include residential development on the Bolsa Chica Mesa. It is anticipated that the final design may encompass one or more of the components described in sections I, II, and III, but not necessarily as described below.

1. Applicant's Preferred Action: Residential development in the lowlands adjacent to the existing homes (I.1); full tidal restoration (II.1); in-channel flood control modifications (III.1).

2. Residential development in the Bolsa Pocket and Edward's Thumb areas (I.3); minimal wetlands restoration (II.3); flood control modifications involving Outer Bolsa Bay (III.2).

3. Acquisition and restoration of the lowland by a public agency or nonprofit organization (I.5); muted tidal restoration (II.2); flood control modifications involving Outer Bolsa Bay (III.2). This alternative will be analyzed with and without the development of a public parkland area in the lowlands adjacent to the existing homes.

4. Creation of a wetlands mitigation bank (I.4); full tidal restoration (II.1); in-channel flood control modifications (III.1).

5. Residential development and creation of a public marina with a

navigable ocean entrance (I.2); full tidal restoration (II.1); in-channel flood control modifications (III.1).

6. No action (I.6); no action (II.4); no action (III.3).

Scoping Process

The Corps of Engineers invites input from other Federal, state, and local agencies, Native Americans, and other interested private organizations and individuals to comment on the scope of this EIS, including the range of alternatives and issues to be addressed. In addition, a public notice in area newspapers will be published for purposes of soliciting public comments so as to assess public concerns regarding the appropriate scope and preparation of the draft EIS.

Other related public environmental assessments that have been prepared for this project include the Draft Environmental Impact Report for the Bolsa Chica Project, prepared by the Orange County Environmental Management Agency (December 20, 1993).

The Corps of Engineers will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act, and with the State Office of Historic Preservation under the National Historic Preservation Act. Additionally, the EIS will assess the consistency of the proposed action with the Coastal Zone Management Act, as well as executive orders on wetlands and floodplain protection.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in late Spring 1994, and a Public Hearing will be held after its publication.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–4834 Filed 3–2–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Levisa Fork Basin Flood Damage Reduction Plan, Kentucky and Virginia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District, currently has underway a study of potential flood damage reduction alternatives for the Levisa Fork Basin of the Big Sandy River Drainage, Kentucky and Virginia. The possibility of significant environmental and socio-economic impacts as the result of the implementation of these potential flood damage reduction alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS) on the Levisa Fork Basin Flood Damage Reduction Plan, Kentucky and Virginia, to analyze these potential impacts.

DATES AND LOCATION: The Huntington District is scheduling a public scoping meeting on the Levisa Fork Basin Flood Damage Reduction Plan DEIS for 28 February 1994, at 6:30 p.m. The meeting will be held at the Birchleaf Elementary School in Birchleaf, Virginia. All interested parties are encouraged to attend and participate in this meeting. This meeting will be held to determine the scope and significant issues to be analyzed in depth in the DEIS. Notice of this meeting will be published in local papers. Written comments concerning the scope of the analysis must be received by 31 March 1994.

ADDRESSES: Planning Division, Huntington District Corps of Engineers, 502 8th Street, Huntington, West Virginia 25701–2070.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard G. Drum, (304) 529–5644 or Mr. Wallace E. Dean, (304) 529–5712.

1. Location and Description of Proposed Action

The project area includes those floodplain areas that would be affected by a recurrence of the April 1977 flood within the Levisa and Russell Forks of the Big Sandy River Basin in Kentucky and Virginia. These floodplain areas extend from the confluence of Indian Creek and Russell Fork in Dickerson County, Virginia downstream on the Russell Fork to the confluence of the Russell Fork and Levisa Fork at Millard, Kentucky (a distance of approximately 50 miles) and from the downstream extent of the incorporated limits of the Town of Grundy, Virginia on the Levisa Fork to Louisa, Kentucky a distance of approximately 138 miles (excluding the area included within the Government property boundary of the Fishtrap Lake project in Pike County, Kentucky). Also included are the floodplain areas located along tributaries of the Russell and Levisa Forks that would be affected by backwater flooding from a recurrence of the April 1977 flood including mainstream and tributaries a total of approximately 220 stream miles are being investigated under the study. Approximately 4,500 structures are located within the floodplain areas being investigated under this study.

2. Components of Proposed Action

A total of five (5) project alternatives have been formulated for reducing flood related damages in the Levisa Fork Basin. These five alternatives will be further studied under the authority of Section 202 of the Energy and Water Resources Development Appropriations Act of 1980 (Pub. L. 96–367) to determine the most cost-effective method of reducing flood related damages in the basin. Project alternatives being evaluated under this study include a flood control dam with permanent pool located approximately 4.6 miles upstream from the Town of Haysi, Virginia on the Russell Fork, a "dry" flood control dam (no permanent pool) located approximately 4.6 miles upstream from the Town of Haysi, Virginia on the Russell Fork, voluntary nonstructural measures (floodproofing by raising structures in-place, ringwalls or veneer walls or permanent relocation of floodplain structures to flood-safe sites), no action and a flood control dam with permanent pool located approximately 4.6 miles upstream of the Town of Haysi, Virginia on the Russell Fork, that would include seasonal storage to facilitate downstream whitewater recreation uses in the Breaks of the Russell Fork. Flood warning and emergency evacuation systems will be included for all floodplain areas where nonstructural measures are proposed.

3. Draft General Plan Supplement (GPS)

A draft General Plan Supplement (GPS) containing a summary of investigations with specific recommendations is currently scheduled for completion by February 1995, with a final report to be completed by January 1996. Public involvement will continue throughout the development of the DEIS in the form of workshops and information furnished to the local media. Federal, State, and local agencies, as well as, other affected and concerned organizations will be notified of all scheduled meetings through published notices in local newspapers and direct notification with concerned parties.

4. Potentially Significant Impacts

Several potentially significant impacts have been identified and studies have been designed and are presently underway to assess and qualify the significance of each. Potentially significant impacts are:

a. Impacts on the present aquatic and terrestrial resources.

b. Impacts on lifestyle and traditional values.

c. Impacts on cultural resources.
d. Socio-economic impacts.
e. Impacts on the possibility of Endangered and Threatened species being present in the project area.

In addition to the above potential impacts any significant impacts developed during the environmental impact analysis or brought out as part of the scoping meeting shall be addressed and presented in the DEIS.

5. The DEIS

The DEIS will be developed under guidance, requirements, and format in 40 CFR 1502.10, "Recommended Format". Consultation will be conducted with the U.S. Fish and Wildlife Service and Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act of 16 U.S.C. 661 *et seq.* (Pub. L. 85–624), the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (Pub. L. 93–205), the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat. 915), (Pub. L. 89–655), and the Preservation of Historic and Archaeologic Data (88 Stat. 174), (Pub. L. 93–291) and E.O. 11593. In addition, any other interested groups or organizations will be welcomed as active participants in the DEIS process. It is anticipated that the DEIS will be made available for public review during Fiscal Year 1995.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94–4789 Filed 3–2–94; 8:45 am]
BILLING CODE 3710–FM–M

Corps of Engineers

Notice of Open Meeting Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board

Date of Meeting: March 29, 1994

Place: U.S. Army Corps of Engineers, New Orleans District Office, Foot of Pyrtania Street on Leake Avenue, New Orleans, Louisiana 70118 (Tel: 504–862–2066)

Time: 8:30 a.m. to 4:30 p.m.

Proposed Agenda

AM Session

8:30 Registration
9:05 Welcoming Remarks and Introductions
9:15 Business Session
—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:45 Status of Inland Waterways Trust Fund
10:15 High Performance, Lower Cost Lock Projects
10:45 Break
11:15 Investment Prioritization Work Group Report
12:00 Lunch

PM Session

1:30 Major Rehabilitation Process Discussion
2:00 Inner Harbor Navigation Canal Lock and Gulf Intracoastal Waterway Studies
2:30 Gulf Intracoastal Canal Association Comments and Perspectives
2:45 Break
3:15 Public Comment Period
4:30 Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94–4788 Filed 3–2–94; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Clearance Request for Novation/ Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/ Change of Name Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 27.5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,000; responses per respondent, 1; total annual responses, 1,000; preparation hours per response, 458; and total response burden hours, 458.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: February 18, 1994.

Beverly Fayson,
FAR Secretariat.
[FR Doc. 94–4882 Filed 3–2–94; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award to the State of Nebraska, Governors' Ethanol Coalition

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The DOE, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), DOE intends to make a noncompetitive financial assistance award to the Governors' Ethanol Coalition, State of Nebraska Energy Office (Administrator), to support the development, production and distribution of an educational reference document for alternative fuels and vehicles. The coalition activities are jointly funded by DOE and nineteen cooperating states.

SUPPLEMENTARY INFORMATION: The Nebraska Energy Office (NEO) administers the program plan and grant for the Governors' Ethanol Coalition (GEC) consisting of nineteen states (IL, AR, NE, CO, HI, IN, IA, KS, KY, MI, MN, MO, MT, NM, ND, OH, SD, TX, WN). The GEC has requested funding for development, producing and distributing of a document entitled the "Clean Fuels Book" as a resource for educational organizations, legislators, policy makers, media, financial and other institutions interested in the clean fuels subject.

This award recognizes the need to assist states in adopting alternative fuels in transportation markets and accelerating the implementation of EPACT '92 activities. The results from the activity accomplished will be shared with the participating GEC states and DOE for replication in other states and projects. Due to their prior experience the GEC is uniquely qualified to continue the efforts associated with their assigned tasks. The grant application is being accepted because DOE knows of no other opportunity to conduct such a program by any other organization or entity.

The project period for the grant award is 12 months and is expected to begin in March 1994. DOE plans to provide funding in the amount of $25,000 for this effort.

FOR FURTHER INFORMATION CONTACT: John Stacy, Director, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., 14th Flr., Kansas City, MO 64106. (816) 426–5182 or FAX (816) 426–6860.

Issued in Chicago, Illinois on February 15, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–4740 Filed 3–2–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–24–000, et al.]

Energy Storage Partners, et al; Electric Rate and Corporate Regulation Filings

February 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Energy Storage Partners

[Docket No. EG94–24–000]

On February 2, 1994, Energy Storage Partners (Energy Storage), a limited partnership formed under the laws of the State of Minnesota, with offices at 34505 N. Scottsdale Road, Scottsdale, Arizona 85262, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Energy Storage states that it is proposing to construct, own and operate the Lorella Pumped Storage Project in Klamath County, Oregon. The Lorella Project will consist of a closed system pumped storage hydroelectric project. The powerhouse will contain four 250 MW pump turbines. The annual output is estimated to be between 1,050,000 and 1,927,000 MWH. The Lorella Project will be connected to the existing Pacific Intertie 500 Kv lines by means of a four-mile 500 Kv transmission line. Energy Storage states that upon completion the facility will be used for the generation of electric energy exclusively for sale at wholesale, and thus will be an eligible facility.

Energy Storage states that upon completion of the Lorella Project it will be exclusively in the business of being the owner and operator of an eligible facility and of selling energy at wholesale from the eligible facility. Energy Storage further states that no rate or charge for, or in connection with, the construction of the facility or for electric energy produced by the facility was in effect under the laws of any state as of the date of enactment of section 32 of the Public Utility Holding Company Act.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power and Light Co.

[Docket Nos. ER93–465–004 and ER93–922–002]

Take notice that on January 24, 1994, Florida Power and Light Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Missouri Public Service, a Division of UtiliCorp United, Inc.

[Docket No. ER94–25–000]

Take notice that on February 16, 1994, Missouri Public Service, a division of UtiliCorp United, Inc. ("MPS") tendered for filing an executed Amendatory Agreement No. 2 (the "Amendment") to the Transmission and Interconnection Agreement between MPS and Associated Electric Cooperative, Inc. ("AEC") dated August 24, 1988 (the "Agreement"). The Amendment provides for the addition of new points of delivery at Faucett and Orrick, Missouri. The Commission accepted the unexecuted Amendment via letter order dated November 12, 1993. MPS states that this filing does not change the terms, conditions or rates applicable to the service, but rather merely replaces the unexecuted Amendment with an executed Amendment.

A copy of the filing was served on AEC and the Missouri Public Service Commission.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Tenaska Power Services Co.

[Docket No. ER94–389–000]

Take notice that on Tenaska Power Services Company, on February 1, 1994, tendered for filing an amendment to its December 23, 1994, filing in this docket.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER94–467–000]

Take notice that PSI Energy, Inc. (PSI), on February 22, 1994, tendered for filing additional supporting information to the FERC Filing In Docket No. ER94–467–000 to comply with a FERC Staff Request.

Copies of the filing were served on Hoosier Energy Electric Cooperative, Inc. Southern Indiana Gas and Electric Company and Indiana Utility Regulatory Commission.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER94–516–000]

Take notice that on February 22, 1994, Public Service Company of Colorado tendered for filing additional information in the above-referenced docket.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Co.

[Docket No. ER94–645–000]

Take notice that the Notice of Filing issued on February 1, 1994 in Docket No. ER94–925–000 was an amendment in Docket No. ER94–645–000 and should have been issued under Docket No. ER94–645–000.

8. Northern States Power Co.

[Docket No. ER94–862–000]

Take notice that on February 17, 1994, Northern States Power Company tendered for filing an amendment to its December 30, 1993, filing in the above-referenced docket.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER94–955–000]

Take notice that on February 7, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 209. WRI states the purpose of the change is to provide generation deferral service to the City of Herington. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Herington and the Kansas Corporation Commission.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER94–956–000]

Take notice that on February 7, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 243. WRI states the purpose of the change is to provide generation deferral service to the City of Stafford. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Stafford and the Kansas Corporation Commission.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER94–958–000]

Take notice that on January 18, 1994, PSI Energy, Inc. (PSI) submitted for filing its sixth semi-annual report of requests for firm transmission service. PSI states that this report covers the period July 1, 1993 through December 31, 1993.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Electric Power Company, Inc.

[Docket No. ER94–965–000]

Take notice that on February 8, 1994, Vermont Electric Power Company, Inc. (VELCO) tendered for filing notification of the merger of Citizens Utilities Company with Franklin Electric Company, effective August 11, 1993.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4842 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2833–036, et al.]

Hydroelectric Applications [Public Utilities District No. 1 of Lewis County, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Approval of Amendment to Project's Fish and Wildlife Management Agreement

b. *Project No:* 2833–036.

c. *Date Filed:* February 7, 1994.

d. *Applicant:* Public Utilities District No. 1 of Lewis County.

e. *Name of Project:* Cowlitz Falls Project.

f. *Location:* Cowlitz River, Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary Kalich, Public Utilities District No. 1 of Lewis County, P.O. Box 330, Chehalis, WA 98532, (206) 748–9261.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* April 4, 1994.

k. *Description of Project:* Public Utilities District No. 1 of Lewis County, licensee for the Cowlitz Falls Project, requests approval of an amendment to its Fish and Wildlife Management Agreement with the Washington Department of Wildlife. The licensee proposes an off-site children's trout fishing derby as a substitution for the planting of warm water species in the diked subimpoundments.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–22–000.

c. *Date Filed:* January 14, 1994.

d. *Applicant:* Alyn and Mary Jane Rensink.

e. *Name of Project:* Rensink Hydro Project (WA).

f. *Location:* Unnamed Stream, near Hamilton, WA.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Alyn F. and Mary J. Rensink, 3610 Cape Horn Road, Concrete, WA 98237–9747, (206) 826–3132.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* April 4, 1994.

k. *Description of Project:* The proposed Rensink Hydro Project will consist of: (1) A 450-foot-long, 6-inch-diameter PVC pipe, with intake under water falling from an existing culvert; (2) a powerhouse containing a 10–12 kilowatt impulse turbine/generator; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating

capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy on site in a single-family recreational home.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Amendment of License.

b. *Project No:* 3255–011.

c. *Date Filed:* 12/23/93.

d. *Applicant:* Lyonsdale Associates.

e. *Name of Project:* Lyonsdale Hydroelectric Development Project.

f. *Location:* At the Burrows Paper Mill on the Moose River, Lewis County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a) - 825(r).

h. *Applicant Contact:* Kenneth A. Oriole, Project Manager, HYDRA–CO Enterprises, Inc., 100 Clinton Square, Suite 400, Syracuse, NY 13202–1049, (315) 471–2881.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* April 4, 1994.

k. *Description of Amendment:* Licensee proposes to raise project's reservoir level by 2 feet during winter months. This would be accomplished by replacing an existing 3-ft-high flashboards with 5-ft-high hinged flashboards on two sections of the project's dam, and by installing a 5-ft-high rubber dam on a third section of the dam. License is requesting the amendment to alleviate winter ice problems, which is affecting the project's electrical generation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11451–000.

c. *Date Filed:* December 27, 1993.

d. *Applicant:* Fall Line Hydro Company, Inc.

e. *Name of Project:* Horse Creek Project.

f. *Location: On Horse Creek, near North Augusta, Aiken County, South Carolina.*

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert A. Davis, III, Fall Line Hydro Company, Inc., P.O. Box 957265, Duluth, GA 30136, (404) 995–0891.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* April 18, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 800 feet long and 15 feet high; (2) an existing reservoir approximately 250 acres with a storage capacity of 1,700 acre-feet and a normal maximum surface elevation of 178 feet mean sea level; (3) a proposed penstock 4 feet in diameter and 85 feet long; (4) a proposed powerhouse with one proposed turbine-generator unit having a total installed capacity of approximately 220 kilowatts; (4) a proposed transmission line 100 feet long; and (5) appurtenant facilities. The average annual generation is estimated to be 1,156,300 kilowatthours. The estimated cost of the studies is $500. The owner of the dam is United Merchants and Manufacturers.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Subsequent License (see 18 CFR 16.2(d) for definition).

b. Project No. 2607–001.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Spencer Mountain Project.

f. *Location:* On the South Fork Catawba River in Gaston County, North Carolina, near the town of Gastonia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John E. Lansche, Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8125; Steve C. Griffith, Jr., Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8100.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842

j. *Comment Date:* April 18, 1994

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The existing project would consist of: (1) A 12-foot-high, 636-foot-long masonry and rubble low head dam with a crest elevation of 634.7 feet msl; (2) a 68-acre reservoir with a storage capacity of 166 acre-feet, at an elevation of 634.7 feet msl; (3) a 58.9-foot-long canal headworks, consisting of four 6-foot wide wood gates with a crest elevation of 641.9 feet msl; (4) a 53.8-foot-long canal spillway connected to the downstream side of the canal headworks, with a crest elevation of 634.7 feet msl; (5) a 30-foot-wide, 10-foot-deep, 3,644-foot-long open earthen canal; (6) a 32-foot-wide trashrack at powerhouse forebay; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long powerhouse containing two Francis-type turbines and horizontal generators each with a capacity of 320 kilowatts each, totaling 640 kilowatts; (9) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (10) two substations containing a 2.3/44-kV transformer; (11) a 3,300-foot-long, 44-kV transmission line tying into an existing line; and (12) related facilities.

The project generates on an average 2,581,000 kilowatthours of energy annually.

m. *Purpose of Project:* Project power is utilized by the Rutherford Electric Membership Cooperation, the city of Gastonia, and the applicant's customers.

n. This notice also consists of the following standard paragraphs: D9.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 2969–006.

c. *Date Filed:* February 1, 1994.

d. *Applicant:* Borough of Weatherly, Pennsylvania.

e. *Name of Project:* Francis E. Walter Dam Project.

f. *Location:* On the Lehigh River, in Luzerne and Carbon Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman P. Baron, P.E., Quad Three Group, Inc., 37 North Washington Street, Wilkes-Barre, PA 18701, (717) 427–8640.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* April 25, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Francis E. Walter Dam and Reservoir, as proposed to be modified and authorized by Congress, and would consist of the following new facilities: (1) A set of trashracks at the existing intake structure; (2) a 10-foot-diameter and 500-foot-long steel penstock; (3) a powerhouse containing two generating units for a total installed capacity of 10.31 MW; (4) a 67-foot-wide, 250-foot-long tailrace; (5) a 7.5-mile-long, 12.47-kV transmission line; and (6) appurtenant facilities. The average annual generation would be 56.1 GWh.

The applicant estimates that the cost of the studies under the terms of the permit would be $35,000. All power generated would be sold to a local utility company. The project lock and dam is owned and operated by the U.S. Army Corps of Engineers, District Engineer, U.S. Custom House, 2nd and Chesternut Streets, Philadelphia, PA 19106.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Surrender of License.

b. *Project No:* 9175–023.

c. *Date Filed:* February 3, 1994.

d. *Applicant:* Rivers Electric Co., Inc.

e. *Name of Project:* Eddyville Falls Hydroelectric Project.

f. *Location:* Located in Eddyville, in Ulster County, New York, at the existing Eddyville Falls Dam on Rondout Creek.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rivers Electric Co., Inc., Attn: Charles R. Pepe, P.O. Box 707, Alpine, NJ 07620, (201) 768–4040.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* April 7, 1994.

k. *Description of Proposed Action:* The licensee states that it is no longer feasible to construct the Eddyville Falls Hydroelectric Project because of unforeseen economic conditions. No construction has taken place.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. *Type of Application:* Declaration of Intention.

b. *Docket No:* EL94–32.

c. *Date Filed:* 02/10/94.

d. *Applicant:* Master Power Corporation, Inc.

e. *Name of Project:* Hills Mill Dam.

f. *Location:* On Sulphur Fork Creek, a tributary of the Red River, near the town of Adams, Tennessee, in Robertson County.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* John E. O'Bryan, Vice President, Master Power Corporation, Inc., 4324 Harmony Church Road, Adams, TN 37010, (205) 880–3383.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* April 8, 1994.

k. *Description of Project:* The proposed project would consist of: (1) A 40.8-acre-foot reservoir; (2) a 120-foot-long and 13-foot-high concrete gravity dam; (3) a small forebay; (4) two open flumes; (5) two turbine-generator units with an installed capacity of 240 kilowatts (Kw); (6) a proposed switchyard consisting of two 3-phase transformers, protective relaying, metering cubicles, and two load disconnect switches. The Switchyard will be paralleled through a 13-kilovolt (kV) connection to the Cumberland Electric Cooperative Distribution line; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To operate two 50,000-board-feet lumber drying dehumidification kilns. Power will be purchased from the Cumberland Electric Cooperative when needed and any excess power produced will be interchanged with the cooperative to offset power purchases.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street,

N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 18, 1994 for Project No. 2607–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 1, 1994 for Project No. 2607–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: February 25, 1994, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4843 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–228–000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

February 24, 1994.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co. and Columbia Gas Transmission Corp.

[Docket No. CP94–228–000]

Take notice that on February 14, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–228–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between ANR and Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and Columbia propose to abandon an exchange service pursuant to a Letter Agreement (agreement) between ANR and Columbia dated March 23, 1983, under ANR's Rate Schedule X–136 and Columbia's Rate Schedule X–115. ANR and Columbia state that the agreement provides for the exchange of up to 100,000 Mcf of natural gas per day at an interconnection in Paulding County, Ohio in the event of an emergency arising on either pipeline system.

ANR and Columbia state that ANR advised Columbia in a letter dated September 2, 1993, that ANR was exercising its right, with thirty days written notice by either party, to terminate the exchange service effective October 15, 1993.

No facilities are proposed to be abandoned herein.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP94–227–000]

Take notice that on February 14, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP94–227–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale Winnie Pipeline Company (Winnie) certain gas supply facilities located in Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests permission and approval to abandon its Lake Creek Lateral Gathering System by sale to Winnie. Trunkline states that the Lake Creek Lateral Gathering System extends from Trunkline's 24-inch mainline in Harris County, Texas, connects to the Mobil-Lake Creek Gas Plant in Montgomery County, Texas, and extends north of the plant to the East Lake Creek and North Lake Creek Fields in Montgomery County, Texas. Trunkline further states that it would sell the facilities to Winnie for a sum equal to the net depreciated book value of the facilities as of the date of closing, estimated to be $48,553. Trunkline also states that upon conveyance of the facilities to Winnie, Trunkline would close and lock the gate valve between the lateral and Trunkline's mainline.

Trunkline states that Winnie intends to operate the Lake Creek Lateral Gathering System as part of its intrastate system.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP93–564–001]

Take notice that on February 18, 1994, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed an amendment, pursuant to section 7(c) of the Natural Gas Act and section 215 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 385.215, to its July 19, 1993, application for a certificate of public convenience and necessity authorizing the Applicant to construct, own, and operate pipeline and related facilities at the United States-Canada International Boundary near St. Clair, Michigan (ANR Link), all as more fully set forth in the amendment and application which are on file with the Commission and open to public inspection.

The Applicant states that one aspect of its application is an interconnection between ANR Link and facilities of Michigan Consolidated Gas Company (MichCon). As originally contemplated in the application, MichCon would have constructed the necessary interconnection facilities with ANR Link. Subsequent to the filing of the original application, ANR and MichCon agreed that ANR would construct the interconnection facilities.

The Applicant further states that the purpose of this filing is to amend its application to make clear that ANR will construct the interconnection facilities at a total estimated cost of $14,602,531.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4844 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–140–000]

Black Marlin Pipeline Co.; Filing

February 25, 1994.

Take notice that on January 7, 1994, Black Marlin Pipeline Company (Black Marlin), requests approval to continue filing a FERC Form No. 2–A: Annual Report of Nonmajor Natural Gas Companies (Form 2A), even though Black Marlin's volumes transported for a fee now meet the criteria of a major natural gas company which would require the filing of a FERC Form No. 2: Annual Report of Major Natural Gas Companies (Form 2).

Black Marlin states that it believes the information provided on the Form 2A is sufficient, because: (1) Recent incremental volumes transported by the Company are primarily on behalf of an intrastate pipeline and, (2) additional Form 2 reporting and independent audit requirements would require extensive resources disproportionate to any benefits gained.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4848 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

Central Maine Power Co., et al.; Authorizations for Continued Project Operation

[Project Nos. 2329–000, et al.]

January 21, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c); and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31,

1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 21, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. December 10, 1991; Central Maine Power Company, licensee for the Wayman Project No. 2329–000; Kennebec River in Somerset County, Maine

2. September 27, 1991; James River-New Hampshire Electric, Inc., licensee for the Cross Project No. 2326–000; Androscoggin River in Coos County, New Hampshire.

3. December 23, 1991; Upper Peninsula Power Company, licensee for the Prickett Project No. 2402–000; Sturgeon River in Baraga County, Michigan.

4. December 10, 1991; Central Maine Power Company, licensee for the Gulf Island-Deer Rips Project No. 2283–000; Androscoggin River in Androscoggin County, Maine.

5. October 21, 1991; Wisconsin Electric Power Company, licensee for the White Rapids Project No. 2357–000; Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

6. December 27, 1991; Washington Water Power Company, licensee for the Meyers Falls Project No. 2544–000; Colville River in Stevens County, Washington.

7. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Arnold Falls Project No. 2399–000; Passumpsic River in Caledonia County, Vermont.

8. December 24, 1991; Niagara Mohawk Power Corporation, licensee for the Raquette Project No. 2330–000; Raquette River in St. Lawrence County, New York.

9. December 30, 1991; Thunder Bay Power Company, licensee for the Hillman Dam Project No. 2419–000; Thunder Bay River in Montmorency County, Michigan.

10. December 30, 1991; City of Watertown, New York, licensee for the Watertown Project No. 2442–000; Black River in Jefferson County, New York.

11. December 27, 1991; New England Power Company, licensee for the Deerfield River Project No. 2323–000; Deerfield River in Windham and Bennington Counties, Vermont and Franklin and Berkshire Counties, Massachusetts.

12. December 23, 1991; Beebee Island Corporation, licensee for the Beebee Island Project No. 2538–000; Black River in Jefferson County, New York.

13. December 20, 1991; Central Maine Power Company, licensee for the Weston Project No. 2325–000; Kennebec River in Somerset County, Maine.

14. December 4, 1991; Central Maine Power Company, licensee for the Rice Rips Project No. 2557–000; Messalonskee Stream in Kennebec County, Maine.

15. December 30, 1991; Bangor Hydro-Electric Company, licensee for the Stillwater Project No. 2712–000; Penobscot River in Penobscot, Maine.

16. December 17, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 5 Project No. 2583–000; Ganesee River Monroe County, New York.

17. December 17, 1991; Central Maine Power Company, licensee for the Project No. 2527–000; Saco River In York County, Maine.

18. December 17, 1991; Great Northern Paper Company, licensee for the Ripogenus Project No. 2572–000; West Branch Penobscot River in Piscataquis County, Maine.

19. November 29, 1991; Niagara Mohawk Power Corporation, licensee for the Black River Project No. 2569–000; Black River in Jefferson County, New York.

20. December 27, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 2 Project No. 2582–000; Genesee River in Monroe County, New York.

[FR Doc. 94–4845 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–2–000]

Columbia Gas Transmission Corp.; Petition for Declaratory Order

February 25, 1994.

Take notice that on February 18, 1994, Columbia Gas Transmission Corporation (Columbia) petitioned the Commission for an order declaring that Columbia's interest obligation with respect to the funds which Columbia has held in trust for its customers and the Gas Research Institute (GRI) in a restricted investment arrangement (RIA) is to pay its customers and GRI the interest actually earned on those funds. Columbia states that the funds consist of (i) certain refund amounts received by Columbia from its upstream pipeline suppliers; and (ii) certain surcharges collected by Columbia on behalf of GRI.

As previously ordered by the Bankruptcy Court and the Commission, Columbia states that it has deposited in the RIA (i) approximately $131.2 million in upstream pipeline supplier order No. 528 refunds received after Columbia's filing for bankruptcy on July 31, 1991 (post-petition); (ii) approximately $11.7 million in other upstream pipeline supplier refunds also received post-petition; and (iii) approximately $1 million in post-petition GRI collections. Columbia states that these funds were escrowed pending the outcome of litigation as to whether the funds are property of Columbia's bankruptcy estate or are held in trust by Columbia for its customers and GRI.

Columbia requests that the Commission issue an order declaring that Columbia's interest obligation with regard to the funds deposited and held in the RIA is to pay to its customers and GRI the interest actually earned on such funds, and not the interest rate prescribed by the Commission's regulation at 18 CFR 154.102(c)(2) (1993).

Columbia states that the filing has been served on Columbia's current customers, affected state commissions and public interest agencies, and the Gas Research Institute.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4849 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

Columbia Gas Transmission Corp.; Application

[Docket No. CP94–252–000]

February 25, 1994.

Take notice that on February 24, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–252–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas

facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia states that to ensure reliable operation of its pipeline facilities, Columbia has initiated a program to install pig launching and receiving facilities in segments of its existing storage fields which, in certain storage fields, would result in the need to replace short segments of pipeline to provide for a uniform pipe size between launchers and receivers.

As part of this program, Columbia says that it proposes to construct and operate approximately 0.8 mile of 16-inch pipeline to replace approximately 0.8 mile of 6-, 8-, 10-, 12- and 16-inch pipeline on its Line SL–2709, a bidirectional launcher and receiver, as well as various appurtenant facilities, located in Columbia's Medina Storage Field, Medina County, Ohio.

Columbia states that it does not request authorization for any new or additional service. Columbia further states that the estimated cost of the proposed construction is $686,400 and would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4850 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–26–000]

Distrigas of Massachusetts Corp.; Notice of Electronic Filing of FERC Gas Tariff

February 25, 1994.

Take notice that on February 17, 1994, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing on electronic media, its currently effective FERC Gas Tariff. DOMAC states that the purpose of this filing is to bring its Gas Tariff into conformance with the Commission's standards for electronic filings.

DOMAC states that in addition to the electronic version of DOMAC's currently effective tariff, DOMAC submitted for filing, the following tariff sheets:

Original Sheet No. 3
Twenty-Fourth Revised Sheet No. 3A
First Revised Sheet No. 29A
First Revised Sheet No. 33
Fourth Revised Sheet No. 53.

DOMAC states that these sheets have been edited to correct numbering errors and do not change the substantive content of the FERC Gas Tariff.

DOMAC states that copies of this filing were mailed to all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4851 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2385–000, et al.]

Finch, Pruyn and Co., et al.; Authorizations for Continued Project Operation

January 21, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license

under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 21, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. December 4, 1991; Finch, Pruyn and Company, licensee for the Glens Falls Project No. 2385–000; Hudson River in Warren County, New York.

2. December 18, 1991; Central Maine Power Company, licensee for the Bonney Eagle Project No. 2529–000; Saco River in York and Cumberland Counties, Maine.

3. December 4, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 160 Project No. 2596–000; Genesee River in Livingston County, New York.

4. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Gage Project No. 2397–000; Passumpsic River in Caledonia County, Vermont.

5. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Passumpsic Project No. 2400–000; Passumpsic River in Caledonia County, Vermont.

6. December 30, 1991; Rumford Falls Power Company, licensee for the Rumford Falls Project No. 2333–000; Androscoggin River in Oxford County, Maine.

7. December 27, 1991; Flambeau Paper Company, licensee for the Upper Hydro Project No. 2640–000; North Fork Flambeau River in Price County, Wisconsin.

8. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Taftsville Project No. 2490–000; Ottauquechee River in Windsor County, Vermont.

9. December 19, 1991; Central Vermont Public Service Corporation, licensee for the Cavendish Project No. 2489–000; Black River in Windsor County, Vermont.

10. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Pierce Mills Project No. 2396–000; Passumpsic River in Caledonia County, Vermont.

11. December 18, 1991; Northern States Power Company, licensee for the Superior Falls Project No. 2587–000; Montreal River in Iron County, Wisconsin.

12. December 19, 1991; Niagara Mohawk Power Corporation, licensee for the Hoosic Project No. 2616–000; Hoosic River in Rensselaer and Washington Counties, New York.

13. December 23, 1991; Northern States Power Company, licensee for the Hayward Project No. 2417–000; Namekagon River in Sawyer County, Wisconsin.

14. December 6, 1991; Niagara Mohawk Power Corporation, licensee for the Oswego Project No. 2474–000; Oswego River in Oswego County, New York.

15. December 19, 1991; Niagara Mohawk Power Corporation, licensee for the Hudson Project No. 2482–000; Hudson River in Saratoga County, New York.

16. November 25, 1991; Puget Sound Power and Light Company, licensee for the Snoqualmie Project No. 2493–000; Snoqualmie River in King County, Washington.

17. December 20, 1991; Northern States Power Company, licensee for the White River Project No. 2444–000; White River in Ashland County, Wisconsin.

18. December 20, 1991; Mead Corporation, licensee for the Escanaba River Project No. 2506–000; Escanaba River in Delta and Marquette Counties, Michigan.

19. December 9, 1991; Indiana Michigan Power Company, licensee for the Twin Branch Project No. 2579–000; St. Joseph River in St. Joseph and Elkhart Counties, Indiana.

20. December 27, 1991; Scott Paper Company, licensee for the Oconto Falls Project No. 2689–000; Oconto River in Oconto County, Wisconsin.

[FR Doc. 94–4846 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–142–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on February 22, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed on Appendix A of the filing, with an effective date of April 1, 1994.

FGT states that on June 16, 1993 FGT filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure a Stipulation and Agreement of Settlement (Settlement) resolving all issues in these proceedings except curtailment issues. On September 17, 1993, the Commission issued its Second Order on Compliance Filing and First Order on Rehearing (September 17 Order) finding that the Settlement with modifications as directed therein implemented the fundamental concepts underlying Order No. 636. The September 17 Order accepted the Settlement and approved the accompanying tariff sheets, with certain exceptions and modifications, directed FGT to refile final tariff sheets, and accepted such tariff sheets to be effective on October 1, 1993. Various parties requested rehearing of certain aspects of the September 17 Order.

On September 23, 1993, FGT filed its Third Revised Volume No. 1 which reflected the revisions required by the Commission's September 17 Order. The proposed effective date of the tariff was October 1, 1993.

In response to a motion filed September 7, 1993, by Peoples Gas System, Inc., on September 24, 1993, the Commission issued an order delaying implementation of FGT's Order No. 636 tariff until November 1, 1993.

On December 16, 1993, the Commission issued its Third Order on Compliance Filing and Second Order on Rehearing granting in part and denying in part the various requests for rehearing of the September 17 Order and directing FGT to make certain additional changes to its FERC Gas Tariff, Third Revised Volume No. 1. On January 18, 1994, FGT filed tariff sheets reflecting the changes in compliance with the December 16 Order. The instant filing proposes certain additional changes to FGT's FERC Gas Tariff, generally to correct minor errors and clarify certain provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4852 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2422–000, et al.]

James River—New Hampshire Electric, Inc., et al.; Authorizations for Continued Project Operation

January 24, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder.

The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 24, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. November 11, 1991; James River—New Hampshire Electric, Inc., licensee for the Sawmill Project No. 2422–000; Androscoggin River in Coos County, New Hampshire.

2. December 20, 1991; Edwards Manufacturing Company and the City of Augusta, Maine, licensee for the Edwards Project No. 2389–000; Kennebec River in Kennebec County, Maine.

3. December 26, 1991; the City of Eugene, licensee for the Walterville Project No. 2510–000; McKenzie River in Lane County, Oregon.

4. November 25, 1991; Central Maine Power Company, licensee for the Fort Halifax Project No. 2552–007; Sebasticook River in Kennebec County, Maine.

5. November 13, 1991; Central Maine Power Company, licensee for the North Gorham Project No. 2519–000; Presumpscot River in Cumberland County, Maine.

6. December 2, 1991; Wisconsin Electric Power Company, licensee for the Brule Project No. 2431–000; Brule River in Iron County, Michigan, and Florence County, Wisconsin.

7. December 20, 1991; Moreau Manufacturing Corporation, licensee for the Feeder Dam Project No. 2554–000; Hudson River in Saratoga and Warren Counties, New York.

8. December 23, 1991; Wisconsin Electric Power Company, licensee for the Pine Project No. 2486–000; Pine River in Florence County, Wisconsin.

9. December 26, 1991; Public Service Company of New Hampshire, licensee for the Ayers Island Project No. 2456–000; Pemigewasset River in Grafton and Belnap Counties, New Hampshire.

10. December 23, 1991; Niagara Mohawk Power Corporation, licensee for the School St. Cohoes Project No. 2539–000; Mohawk River in Schenectady County, New York.

11. December 24, 1991; Kennebec Water Power Company, licensee for the Moosehead Lake Project No. 2671–000; Kennebec River in Somerset County, Maine.

12. December 24, 1991; STS Hydropower, Ltd. and Dan River, Inc., licensees for the Schoolfield Project No. 2411–000; Dan River in Pittsylvania County, Virginia.

13. December 23, 1991; Citizens Utilities Company, licensee for the Clyde River Project No. 2306–000; Clyde River in Orleans County, Vermont.

14. December 24, 1991; Niagara Mohawk Power Corporation, licensee for the Raquette Project No. 2320–000; Raquette River in St. Lawrence County, New York.

15. December 17, 1991; Wisconsin Public Service Corporation, licensee for the Grand Rapids Project No. 2433–000; Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

16. December 27, 1991; Minnesota Power and Light Company, licensee for the St. Louis River Project No. 2360–000; St. Louis, Cloquet, Whiteface, Skunk, Beaver, and Otter Rivers in Carlton and St. Louis Counties, Minnesota.

17. December 17, 1991; Alabama Power Company, licensee for the Thurlow Project No. 2408–000; Tallapoosa River in Tallapoosa and Elmore Counties, Alabama.

18. December 17, 1991; Alabama Power Company, licensee for the Yates Project No. 2407–000; Tallapoosa River in Elmore and Tallapoosa Counties, Alabama.

19. December 26, 1991; Green Mountain Power Corporation, licensee for the Essex No. 19 Project No. 2513–000; Winooski River in Chittenden County, Vermont.

20. December 17, 1991; Great Northern Paper, Inc., licensee for the Penobscot Mills Project No. 2458–000; West Branch Penobscot River in Penobscot County, Maine.

21. December 11, 1991, Indiana Michigan Power Company, licensee for the Buchanan Project No. 2551–000; St. Joseph River in Berrien County, Michigan.

22. December 30, 1991, Thunder Bay Power Company, licensee for the Thunder Bay River Project No. 2404–000; Thunder Bay River in Alpena County, Michigan.

23. November 29, 1991, Niagara Mohawk Power Corporation, licensee for the Beaver River Project No. 2645–000; Beaver River in Lewis and Herkimer Counties, New York.

24. December 16, 1991, Niagara Mohawk Power Corporation, licensee for the E. J. West Project No. 2318–000; Sacandaga River in Saratoga County, New York.

[FR Doc. 94–4847 Filed 3–2–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RP94–143–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on February 22, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as a limited application under section 4 of the Natural Gas Act, Second Revised Sheet Nos. 237–A and 237–B to be part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of March 1, 1994.

National states that the proposed tariff sheets include approximately $144,000 associated with the balances in Account No. 191 and 186 as of December 31, 1993. Also, this filing includes $127,000 of stranded costs recorded in Account No. 858, which costs the Commission has authorized National to recover through limited section 4 filings.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4853 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–141–000]

Richfield Gas Storage System; Petition for Waiver

February 25, 1994.

Take notice that on February 9, 1994, Richfield Gas Storage System (Richfield) tendered for filing a petition pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission's 18 CFR 385.207, either for waiver or exemption from the requirement set forth at § 260.2 of the Commission's regulations to file the annual FERC Form No. 2–A report.

Richfield states that since the Form No. 2–A is due by March 31, 1994, and that the Commission may not act on the instant petition until after the Form 2–A is due to be filed, Richfield also requests that the Commission waive compliance with the Form No. 2–A filing requirement while consideration of Richfield's petition is pending.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4854 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–14–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on December 10, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Proposed to be Effective November 1, 1993

Revised 2nd Sub Original Sheet No. 34

Proposed to be Effective December 1, 1993

Second Revised Sheet No. 34

Texas Eastern states that this filing is submitted in light of the Commission's June 18, 1993 "Order on Compliance With Restructuring Rule" for Granite State Gas Transmission, Inc. (Granite State) in Docket Nos. RS93–1 *et al.*, (June 18 Order) and Texas Eastern's filing dated October 28, 1993, which reflects the base tariff rates applicable for the period December 1, 1993 through November 30, 1994, pursuant to the terms of the Stipulation and Agreement in Texas Eastern's Docket Nos. RP88–67 *et al.* (Phase II/PCBs) ("Year 4 PCB Filing").

Texas Eastern states that it is filing the tariff sheets for the purpose of reflecting that, pursuant to the June 18 Order, certain customers of Granite State became direct customers of Texas Eastern (Converting Customers),[1] effective November 1, 1993, by taking assignment of their respective service rights attributable to Granite State's service agreement as of October 31, 1993 with Texas Eastern under Texas Eastern's Rate Schedule FTS. Revised 2nd Sub Original Sheet No. 34 reflects the reallocation of contractual quantities under Rate Schedule FTS from Granite State to the Converting Customers. Second Revised Sheet No. 34 updates the Year 4 PCB Filing to reflect this same reallocation.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4855 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[1] The Converting Customers from Granite State under Rate Schedule FTS are Bay State Gas Company and Northern Utilities, Inc.

Federal Energy Regulatory Commission

[Docket No. CP93–667–004]

Valero Interstate Transmission Co.; Final Refund Report

February 25, 1994.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 31, 1994, as supplemented on February 1, 1994, tendered for filing a "Final Refund Report" as required by Ordering Paragraph E of the Commission's November 2, 1993, order in the above referenced docket which authorized the abandonment of Vitco's jurisdictional facilities and services effective January 1, 1994.

Vitco states that its "Final Refund Report" reflects a total amount of $519,572 payable to Vitco due to the net effects of (i) the overcollection and undercollection of gas costs in Account 191 and (ii) the balance remaining in Vitco's Take-or-Pay account.

Copies of the "Final Refund Report" were served on all parties listed on the service list in this docket.

Vitco requests that the Commission accept this "Final Refund Report" as being in compliance with Ordering Paragraph E. Vitco also requests a waiver of any Commission order or regulations which would prohibit this filing.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4856 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–196–000]

Williams Natural Gas Co.; ERRATA to Notice of Application

February 25, 1994.

In the notice issued February 15, 1994, (59 FR 8966, February 24, 1994), paragraph two, first sentence, change "88 miles" to "800 miles" so that the sentence reads:

WNG will convey approximately 800 miles of predominantly small diameter pipeline, 38,286 horsepower of compression, two drip control plants and various appurtenant facilities, all used to gather gas from approximately 700 wells in the states of Texas, Oklahoma, and Kansas.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4857 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4845–2]

Acid Rain Program: Allowance Tracking System

AGENCY: Environmental Protection Agency.

ACTION: Notice of opening for business of the Allowance Tracking System.

SUMMARY: The Environmental Protection Agency is announcing the commencement of operation of the Allowance Tracking System (ATS) on March 14, 1994. As of that date, EPA will record transfers of allowances between accounts in the ATS.

Subpart C of 40 CFR part 73 directs EPA to establish an allowance tracking system for the allocation, transfer, and use of SO_2 emissions allowances, as required by section 403(b) of the Clean Air Act. Section 403(b) specifically provides that allowance transfers are not effective, for purposes of compliance with the allowance holding requirements of the Acid Rain Program, until EPA receives and records a written certification of the transfer signed by a responsible official of each party to the transfer (e.g., a completed Allowance Transfer form). Subpart D of 40 CFR part 73 establishes the procedure by which EPA will record transfers of allowances to and from accounts established within the ATS.

An ATS unit account has been established for each utility unit that was allocated allowances under 40 CFR 73.10 (58 FR 15634, March 23, 1993) and general accounts have been established for those who have submitted an Allowance Account Information form. Allowances allocated to each unit as well as any allowances that were purchased at the 1993 EPA allowance auctions have been assigned unique serial numbers and placed in the appropriate unit and general accounts. ATS does not currently contain any additional allowances to which a utility may be entitled, such as those associated with Phase I compliance plans, the Conservation and Renewable Energy Reserve, Early Reduction Credits, and Phase I Extension. These additional allowances will be placed in the appropriate ATS accounts later this year, when the next version of ATS is completed.

All information in the ATS is publicly available. To receive instructions on how to place an information request, call the Acid Rain Hotline at the phone number listed below.

ADDRESSES: Any correspondence in this matter shall be sent to: U.S. Environmental Protection Agency, Acid Rain Division (6204J), Attn: Allowance Tracking System, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janice K. Wagner, Chief, Allowance Market Section, Acid Rain Division, (202) 233–9170 or by mail at the address above. To obtain written materials describing ATS or any of the forms mentioned above, call the Acid Rain Hotline at (202) 233–9620 and leave a message in the allowance system voice mailbox.

Dated: February 24, 1994.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Air and Radiation.

[FR Doc. 94–4924 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00148; FRL–4758–1]

Grants To Develop and Carry Out Authorized State Accreditation and Certification Programs for Lead-Based Paint Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability; solicitation of applications for financial assistance.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with states and territories which provide financial assistance for purposes of developing and carrying out authorized accreditation and certification programs for professionals engaged in lead-based paint activities pursuant to the Toxic Substances Control Act (TSCA), as amended by Title IV of the Residential Lead-Based Paint Hazard Reduction Act of 1992. EPA also intends to enter into cooperative agreements with federally-recognized Indian governing bodies to provide financial assistance for the development of similar accreditation and certification programs. The notice describes eligible activities, application procedures and requirements, and funding criteria. EPA anticipates that a minimum of $11,200,000 will be available during federal fiscal year 1994 (FY94) for awards to eligible recipients. There are no matching share requirements for this assistance. Subject to future budget limitations, EPA plans to provide this support on a continuing multi-year or program basis. All cooperative agreements will be administered by the appropriate EPA regional office. The Catalog of Federal Domestic Assistance number assigned to this new program is 66.707.

DATES: In order to be considered for funding during the FY94 award cycle, all applications must be received by the appropriate EPA regional office on or before May 1, 1994. EPA will make its award decisions and execute its FY94 cooperative agreements by September 30, 1994.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit VI of this notice.

SUPPLEMENTARY INFORMATION: TSCA section 404(g) authorizes EPA to award non-matching grants to states and territories to develop and carry out authorized programs for the accreditation of training programs for individuals engaged in lead-based paint activities, and the certification of contractors engaged in lead-based paint activities. To achieve authorization under Title IV of TSCA, programs must: (1) Be as protective of human health and the environment as the federal program established under TSCA section 402 or

406, or both, and (2) provide adequate enforcement. For states and territories that fail to obtain authorization within 2 years following promulgation of TSCA section 402 or 406 regulations, EPA must, by such date, administer and enforce a program for TSCA section 402 or 406.

Pursuant to Title IV of TSCA, EPA encourages states and territories to develop accreditation and certification programs for lead-based paint activities. EPA therefore recommends that eligible parties seek funding through the TSCA section 404(g) assistance program, which is now being implemented to help achieve these ends. EPA further recommends that eligible parties plan to utilize this grant support in a way that complements any related financial assistance they may receive from other federal sources, most notably funding from the U.S. Department of Housing and Urban Development (HUD). EPA will, however, seek to ensure that all federally-funded lead activities are undertaken in a coordinated fashion.

It is anticipated that forthcoming regulations mandated under sections 402 and 404 of TSCA will address the eligibility of federally-recognized Indian governing bodies to receive assistance under TSCA section 404(g). Until such time as these regulations are published, EPA intends to enter into cooperative agreements with Indian governing bodies pursuant to section 10(a) of TSCA for the development of programs similar to those funded under TSCA section 404(g). As a result, unless otherwise indicated, when used in this notice the term "states" includes Indian governing bodies.

EPA will work with prospective applicants to develop cooperative agreements which promote a variety of objectives deemed critical to the success of its national lead program. These include: (1) Permitting flexible approaches to reducing lead hazards, (2) developing a nationwide pool of qualified lead abatement professionals, (3) encouraging pollution prevention in lead-based paint activities, (4) promoting environmental justice in the reduction of lead exposures and the prevention of lead poisoning, (5) fostering the establishment of comprehensive and integrated lead management programs by states, territories and Indian governing bodies, and (6) promoting reciprocity among authorized programs in the training and certification of lead abatement professionals.

I. Eligibility

All states are eligible to apply for and receive assistance under section 404(g) of TSCA. The term "state," for purposes of eligibility, refers broadly to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States. Federally-recognized Indian governing bodies are eligible to apply for and receive assistance under section 10(a) of TSCA.

II. Authority

The "TSCA Title IV State Lead Grants Program" is a financial assistance program administered by EPA under authority of TSCA section 404(g). EPA plans to award all funds to Indian governing bodies under authority of TSCA section 10(a) during the first-year award cycle (FY94). Each of EPA's 10 regional administrators will be delegated the authority to enter into cooperative agreements with eligible states and Indian governing bodies.

III. Activities to be Funded Under Cooperative Agreements

EPA recognizes that when TSCA Title IV was enacted on October 28, 1992, states had widely varying capabilities for addressing lead hazards. Individual states will eventually fall within one of three broad categories of program development: (1) States without lead programs, (2) states with programs that are likely to qualify for authorization under TSCA section 402 that may need assistance in carrying out these programs, and (3) states with lead programs that will require modification before qualifying for authorization. Each state's need for assistance will vary, in part, according to the level of lead program development the state has attained. The type of program activity a given state seeks to pursue may also vary in a corresponding manner.

Although EPA generally supports all state activities aimed at developing or carrying out authorized state lead programs, the Agency does recognize certain priorities. Because few states currently have programs which parallel the forthcoming TSCA sections 402 and 406 standards, EPA's highest priority will be to support the development of new state programs. A second priority will be to support the continued implementation of existing state programs which are working toward timely authorization.

Although these priorities do not constitute the Agency's criteria for award determinations, EPA will consider these items in its cooperative agreement negotiations with applicants.

EPA has established three general funding categories that reflect the different status, or levels, of state lead program development. These are: (1) Level One - Develop New State Programs, (2) Level Two - Carry Out Authorized State Programs, and (3) Level Three - Carry Out Existing State Programs Which Do Not Yet Qualify For Authorization Under Title IV. Because the regulations required under TSCA sections 402 and 404 which would define the criteria for obtaining program authorization have not yet been promulgated, however, activities in only two of the three funding categories, Level One and Level Three, will be eligible for funding consideration during the FY94 award cycle. Activities in Level Two can only be considered after the TSCA sections 402/404 regulations have taken effect. Numerous examples of activities considered to be eligible for funding are described in a separate EPA publication entitled "Fiscal 1994 TSCA Title IV Cooperative Agreement Guidance" (January 1994) (the "grant guidance"). Copies of the grant guidance may be obtained through any of EPA's 10 regional offices at the addresses listed under Unit VI of this notice. It is important to note, however, that the examples presented in the guidance are not exhaustive, and applicants are not limited in their proposals to the listed tasks. Individual state program innovations are eligible and encouraged, so long as the proposed tasks relate to the purposes set forth in TSCA section 404(g) and fit within the Level One or Three funding category. These two funding categories are not mutually exclusive, and it is permissible for a state's work plan to combine elements from each.

IV. Selection Criteria

During the FY94 award cycle, EPA expects a minimum of $11,200,000 to be available for distribution to eligible applicants. The Agency will use a two-tiered system to allocate these funds. This system is aimed at achieving the broadest possible state participation, while at the same time, targeting areas with the greatest potential lead hazard and risk. It accomplishes this by providing for a tier-one distribution of "base funding," followed by a tier-two distribution of "formula funding," where additional funds are distributed based upon the relative lead burden estimated to exist within a state.

Each state (excluding territories and federally-recognized Indian governing bodies) that submits a qualifying proposal will be entitled to a base funding allotment of $100,000. In addition, base funding of up to $50,000

will be reserved for each of the five "territories" (used generically in this context) that have been administratively assigned to an EPA regional office and that have historically participated in EPA toxics cooperative agreement programs. These "base" territories include the U.S. Virgin Islands (Region 2), the Commonwealth of Puerto Rico (Region 2), the District of Columbia (Region 3), Guam (Region 9) and American Samoa (Region 9). The two remaining "non-base" territories, the Canal Zone and the Northern Mariana Islands, are also eligible to apply for funding up to $50,000 apiece, but are not considered in determining the base funding allotments. Base allotments are primarily intended to ensure that those states and base territories wishing to pursue authorization under TSCA section 404 will be guaranteed a minimum level of funding for this purpose. The maximum amount of base funding set-aside in FY94 will be $5,250,000. Any unsubscribed base funding will be added to the formula funds pool.

Once base funding allotments have been reserved for all eligible applicants, remaining funds will be treated as "formula funds." Before applying the lead burden formula, however, EPA will subtract from the formula account an amount not to exceed $50,000 for each Indian governing body and non-base territory not otherwise factored into the base funding apportionment. EPA cannot reliably predict the level of participation from Indian governing bodies and non-base territories; therefore, where these eligible parties do apply for funds, they will be assigned to an appropriate regional office for administrative oversight, and that regional office will become responsible for determining the appropriate level of funding. These parties, however, will not receive a formula ranking, and will not be eligible to compete for additional formula allocations based upon lead burden calculations.

As a third step, states and base territories with funding requirements exceeding their base allotments will then be apportioned additional sums based upon their relative lead burden. In calculating lead burden for the formula rankings, EPA used readily available data derived from the 1990 Census of Population and Housing, together with other data from HUD. The formula uses four factors to generate an estimate of the potential lead problem, or "lead burden," in each state. Two of these factors, the number of housing units with lead-based paint and the number of children under age 7, express the potential magnitude of the lead problem. The remaining two factors, the fraction of young children in poverty and the fraction of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each state and base territory is scored independently for each factor, and the four individual factor scores for the state or base territory are then summed to obtain an overall score for that state or base territory (a combined factor score). The combined factor scores of all states and base territories applying for formula funds (or amounts in excess of their base allotment) are then summed, and the percentage of the total sum represented by the individual state's or base territory's score is then identified. When the total formula funding available is then multiplied by the percentage score of an individual state or territory, the state's or base territory's ceiling formula allotment can be obtained. For example, assume that: (1) All 50 states but none of the base territories apply for formula allotments, (2) state X has a percentage score of 2 percent, and (3) a total of $4,000,000 in formula funding is available. In determining how much money to allot to state X, EPA would multiply $4,000,000 by .02. The product, $80,000, represents the maximum additional funding that could be awarded to state X to supplement its base allocation. State X would then qualify for up to $180,000 in total funding for the fiscal year ($100,000 in base funding + $80,000 in formula funding).

In general, the maximum, or ceiling, formula allotments will fluctuate inversely with the number of applicants. The greater the number of applicants, the lower the ceiling will tend to be, and vice versa. Formula allotments will be determined only after the annual application deadline has passed and EPA has full knowledge of the total amount of funds requested. If one or more states or base territories request formula fund amounts below their ceiling allotments, residual formula funds will be available. Where this situation develops, if there are still other states or base territories with unfunded needs, the formula will be run again. This procedure can be repeated until all formula funds have been fully allotted. The FY94 combined factor scores for each state and base territory, derived from the census data, are presented in the grant guidance along with a technical appendix (Appendix A) which explains the formula methodology in greater detail.

V. Submission Requirements

To be considered for funding, each application must include, at a minimum, the following forms and certifications which are contained in EPA's "Application Kit for Assistance": (1) Standard Form 424 (Application for Federal Assistance), (2) EPA Form 5700–48 (Procurement Certification), (3) Drug-Free Workplace Certification, (4) Debarment and Suspension Certification, (5) Disclosure of Lobbying Activities, and (6) a return mailing address. In addition to these standard forms, each application must also include a work program, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, and a schedule for their completion. Work programs are to be negotiated between applicants and their EPA regional offices to ensure that both EPA and state priorities can be addressed. In addition, every application from a state, territory or Indian governing body must clearly demonstrate how the proposed activities will lead to that state's pursuit of authorization. Finally, any applicant proposing the collection of environmentally related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. These requirements are more specifically outlined in the "Guidance Document for the Preparation of Quality Assurance Project Plans" (May 1993) published by EPA's Office of Pollution Prevention and Toxics. This document, as well as the application kits referred to above, may be obtained from EPA's regional offices.

VI. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA regional office in duplicate; one copy to the regional lead program branch and the other to the regional grants management branch. Early consultations are recommended between prospective applicants and their EPA regional offices. Because TSCA Title IV cooperative agreements will be administered at the regional level, these consultations can be critical to the ultimate success of a state's project or program.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA regional office. The mailing addresses and contact telephone

numbers for these offices are listed below.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565–3836 (Jim Bryson)
Region II: (New York, New Jersey, Puerto Rico, Virgin Islands), Building 5, SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837–3679. Telephone: (908) 321–6671 (Lou Bevilacqua)
Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107. Telephone: (215) 597–8322 (Fran Dougherty)
Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., NE, Atlanta, GA 30365. Telephone: (404) 347–1033 (Connie Landers)
Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), SP–14J, 77 W. Jackson St., Chicago, IL 60604. Telephone: (312) 886–7836 (David Turpin)
Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 12th Floor, Suite 2000, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 655–7577 (Jeff Robinson)
Region VII: (Iowa, Kansas, Missouri, Nebraska), TOPE/TSC, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551–7393 (Doug Elders)
Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 293–1442 (David Combs)
Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1128 (Jo Ann Semones)
Region X: (Alaska, Idaho, Oregon, Washington), Toxics Section, 1200 Sixth Ave., Seattle, WA 98101. Telephone: (206) 553–1985 (Barbara Ross)

The deadline for EPA's receipt of final FY94 applications is May 1, 1994. Once the application deadline has passed, EPA will process the formula funding calculations and determine the initial formula ceiling allocations. Final negotiations for the award of cooperative agreements can then proceed, but all FY94 agreements must be executed no later than September 30, 1994.

List of Subjects

Environmental protection, Grants, Lead, Training and Accreditation.

Dated: February 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–4893 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: 80 Acres at Canyon Lake, Comal County, Texas

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the "Canyon Lake Tract" located on the south side of Canyon Lake in Comal County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until June 1, 1994.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: Gloria Parker, Federal Deposit Insurance Corporation, 4440 Piedras Drive South, San Antonio, Texas 78228, Telephone (210) 731–2048, Fax (210) 737–1101.

SUPPLEMENTARY INFORMATION: The 80 acre undeveloped tract is located on the south side of Canyon Lake between San Antonio and Austin, Texas. It is approximately 16 feet northwest of the Canyon Springs Resort development and northwest of Lakeside Drive. The tract is across from Cranes Mill Park and Cranes Mill Marina. At the present time, the tract does not have legal access. A flowage easement along the lake frontage encumbers approximately 22 acres and the placement of permanent structures in this area is restricted.

Written notice of serious interest to purchase the property must be received on or before June 1, 1994 by Gloria Parker at the address above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government,

2. Agencies or entities of state or local government, and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notice of serious interest should be in the following form:

Notice of Serious Interest re: Canyon Lake Tract, Comal County, Texas

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes

Dated: February 25, 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–4888 Filed 3–2–94; 8:45 am]

BILLING CODE 6714–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, March 17, 1994 from 9 a.m. to 4:30 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) a draft paper on Accounting Concepts, (2) Cost Accounting issues and proposed concepts, and (3) Physical Property.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, Section 10(a)(2), 86 Stat 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: February 28, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–4907 Filed 3–2–94; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Sales Branch; Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration is changing the stocking requirement of SF 114D, Sale of Government Property—Amendment of Invitation for Bids/Modifications of Contract. This form is now authorized for local reproduction. You can request camera copy of SF 114D from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Collins, Sales Branch, (703) 308–0727.

DATES: Effective upon publication in the **Federal Register**.

Dated: February 22, 1994.

Lester D. Gray, Jr.,

Director, Property Management Division.

[FR Doc. 94–4883 Filed 3–2–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HA (Office of the Assistant Secretary for Health) and Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 58 FR 7140–1, February 4, 1993), and (47 FR 38409–24, August 31, 1982, as amended most recently at 58 FR 38871, November 4, 1993) respectively, are amended to reflect the transfer of the Beneficiary Medical Program from the Bureau of Primary Health Care, Health Resources and Services Administration, to the Office of the Surgeon General, Office of the Assistant Secretary for Health.

1. Office of the Assistant Secretary for Health

Under Section HA–20, Functions, Office of the Assistant Secretary for Health (HA), amend the functional statements as follows:

(a) Under the Office of the Surgeon General (HAN) delete the word "and" before function number (8) and change the period at the end of function number (8) to a semicolon and insert the following:

"and, (9) administers the Beneficiary Medical Program."

(b) Under the Division of Commissioned Personnel (HAN2) delete the word "and" before function number (5) and change the period at the end of function number (5) to a semicolon and insert the following:

"and, (6) administers the Beneficiary Medical Program."

2. Health Resources and Services Administration

Under Health Resources and Services Administration (HB) make the following changes:

(a) Under HB–000, Mission, delete function number 3 and renumber (4), (5) and (6) as (3), (4) and (5) respectively;

(b) Under HB–10, Functions, make the following changes:

(1) Under the Bureau of Primary Health Care (HBC) functional statement delete function number (5) and change function number (6) to read (5).

(2) Under the Bureau of Primary Health Care (HBC) delete the functional statement for the Division of Beneficiary Medical Programs (HBEC) in its entirety.

Sections HA–30 and HB–30, Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Bureau of Primary Health Care, Health Resources and Services Administration, and the Office of the Surgeon General, Office of the Assistant Secretary for Health, which were in effect immediately prior to the effective date of this reorganization will continue in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

This transfer is effective upon date of signature.

Dated: February 23, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4811 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–16–M

Food and Drug Administration

[Docket No. 93E–0327]

Determination of Regulatory Review Period for Purposes of Patent Extension; Imagent® GI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Imagent® GI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be

subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Imagent® GI. Imagent® GI (perflubron) is indicated for oral use with magnetic resonance imaging to enhance delineation of the bowel in order to distinguish it from adjacent organs and areas of suspected pathology. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Imagent® GI (U.S. Patent No. 3,975,512) from the Board of Trustees of the University of Illinois, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated September 23, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Imagent® GI represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Imagent® GI is 7,493 days. Of this time, 6,469 days occurred during the testing phase of the regulatory review period, while 1,024 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: February 8, 1973. The applicant claims February 9, 1973, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 8, 1973, which was 30 days after FDA's receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: October 25, 1990. The applicant claims June 18, 1990, as the date the new drug application (NDA) for Imagent® GI (NDA 20–091) was initially submitted. FDA refused to file this application and notified the applicant of this fact by a letter dated August 16, 1990. The completed NDA 20–091 was resubmitted on October 25, 1990, the initially submitted date.

3. *The date the application was approved*: August 13, 1993. FDA has verified the applicant's claim that NDA 20–091 was approved on August 13, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 2, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 30, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–4802 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0387]

Determination of Regulatory Review Period for Purposes of Patent Extension; Pirsue™ Aqueous Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Pirsue™ Aqueous Gel and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Pirsue™ Aqueous Gel (pirlimycin hydrochloride). Pirsue™ Aqueous Gel is indicated for lactating dairy cattle for treatment of clinical and subclinical mastitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Pirsue™ Aqueous Gel (U.S. Patent No. 4,278,789) from The Upjohn Co. and requested FDA's assistance in determining the patent's

eligibility for patent term restoration. In a letter dated November 14, 1993, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Pirsue™ Aqueous Gel represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Pirsue™ Aqueous Gel is 3,860 days. Of this time, 3,778 days occurred during the testing phase of the regulatory review period, while 82 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: February 17, 1983. The applicant claims March 8, 1983, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's official acknowledgment letter assigning a number to the INAD was February 17, 1983, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: June 21, 1993. The applicant claims June 17, 1993, as the date the new animal drug application (NADA) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to the NADA was June 21, 1993, which is considered to be the initial submission date for the NADA 141–036.

3. *The date the application was approved*: September 10, 1993. FDA has verified the applicant's claim that NADA 141–036 was approved on September 10, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,095 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 2, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 30, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–4801 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0021]

Schering-Plough Corp.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Schering-Plough Corp. The NADA provides for the use of Variton (diphemanil methylsulfate) Cream 2 percent. The firm requested the withdrawal of approval.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health, Schering-Plough Corp., P.O. Box 529, Kenilworth, NJ 07033, is the sponsor of NADA 9–997 for Variton (diphemanil methylsulfate) Cream 2 percent for topical use on dogs and cats. By a letter dated November 15, 1993, Schering-Plough Corp. requested withdrawal of approval of the NADA because it no longer manufactures or distributes the product.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 9–997 and all supplements and amendments thereto is hereby withdrawn, effective March 14, 1994.

Dated: February 23, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine

[FR Doc. 94–4799 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on March 28–30, 1994, 8:30 a.m. to approximately 5 p.m., at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland. Notice of the meeting room will be posted in the hotel lobby. The entire meeting will be open to the public, with attendance limited to space available.

Agenda

March 28: Biomedical Research.

March 29: Follow-up discussions on Translation Issues Health Care Reform.

March 30: Diabetes Translation Issues, including recommendations for a National Diabetes Education program.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–4806 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 94–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on March 28, 1994 at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on March 28 from 9 a.m. until approximately 10 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public March 28, from approximately 10 a.m. until adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Allen Dearry, or Carol Shreffler, Scientific Review Administrations, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact any of the above named Scientific Review Administrators in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93–114, Applied Toxicological Research and Testing; 93–115, Biometry and Risk Estimation; 93–894, Resource and Manpower Development, National Institutes of Health.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4808 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on March 15–16, 1994, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on March 15, and from 9 a.m. to adjournment on March 16. This will be the third and final meeting to determine the possibility of programs and activities of the National Library of Medicine, of individuals, of professional associations, and of other institutions that might be undertaken over the next 10 years to assure that our society benefits from the skills of medical librarians. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Susan Buyer.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4807 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on April, 22, 1994. The meeting will take place from 10 a.m. to 12 noon in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4791 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, March 25, 1994, Conference Room 100, Building 31C, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** January 27, 1994 (59 CFR 3866).

The meeting was cancelled due to a lack of travel funds, and will be rescheduled at a later date as a telephone conference call.

Dated: February 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–4803 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Cancellation of Meeting

Notice is given of the cancellation of a meeting of the National Institute on Drug Abuse which was published in the **Federal Register** on February 22, 1994 (59 FR 8481): the Extramural Science Advisory Board, NIDA, March 1–2, 1994, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting was cancelled due to a scheduling conflict. The meeting will be rescheduled.

Dated: February 25, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–4804 Filed 3–2–94; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.
Date of Meeting: March 17–18, 1994.
Place of Meeting: Omni-Shoreham Hotel, Washington, DC.
Time of Meeting: 9 am.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.
Date of Meeting: March 21, 1994.
Place of Meeting: Westwood Bldg, Rm319C, NIH, Bethesda, MD.
Time of Meeting: 1 pm.

Scientific Review Administrator: Dr. Teresa Levitin (301) 594–7141.
Date of Meeting: April 8, 1994.
Place of Meeting: Univ. of Texas, Houston, TX.
Time of Meeting: 8:30 am.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–4809 Filed 3–2–94; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, April 4–5, 1994, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on April 4 to adjournment on April 5. The topics for the meeting will include, among others, the electronic grant application development (EGAD), the DRG triage experiment, information on restructuring DRG study sections, and the clinical research study group. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, room 433, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 594–7265, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 594–7248, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: February 24, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–4805 Filed 3–2–94; 8:45 am]
BILLING CODE 4140–01–M

Public Health Service

Public Law 94–437, Indian Health Care Improvement Act; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities of the Indian Health Care Improvement Act, Public Law (Pub. L. 94–437), as amended, with the exception of the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation supersedes the delegation of June 20, 1977, from the Secretary to the Assistant Secretary for Health for the Indian Health Care Improvement Act, Public Law 94–437.

In addition, I ratify and affirm all previous actions taken by Public Health Service officials that, in effect, involved the exercise of the authorities contained in Public Law 94–437, and all subsequent legislative amendments to this Act, prior to the effective date of this delegation.

Previous redelegations of authority made to officials within the Public Health Service under Public Law 94–437 may continue in effect for no more than 90 days from the effective date of this delegation, provided they are consistent with this delegation.

Dated: February 22, 1994.
Donna E. Shalala,
Secretary.
[FR Doc. 94–4810 Filed 3–2–94; 8:45 am]
BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N–94–3724]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.
ACTION: Notice; Request for public comments.

SUMMARY: The proposed information collection requirement for a survey on the use of Community Development Block Grant (CDBG) funds in promoting the development of microenterprises, has been submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. This survey is to be used to prepare a report directed by Congress for HUD to complete in the Housing and Community Development Act of 1992 (Pub. L. 102–550, section 807(C)(4)).

The Department is soliciting public comments on the subject proposal for a period of seven (7) days. An expedited comment period is necessary to permit the collection of information needed for the report to Congress which is due by the end of April, 1994.

DATES: Comment due date: March 10, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal by March 10, 1994. Comments should refer to this proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410. Telephone: (202) 708–0050 (this is not a toll-free number). Copies of the proposed forms and other available documentation submitted to OMB may be obtained from Mrs. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 350). It is also requested that OMB complete its review within 30 days.

The notice lists the following information: (1) The Title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form numbers, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information collection, including respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and (9) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 35359d.

Dated: February 17, 1994.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

Submission of Proposed Information Collection to OMB

Proposal: Request for expedited approval of a survey needed to complete a report to Congress on the use of Community Development Block Grant (CDBG) Funds in promoting the development of microenterprises.

Office: Office of the Assistant Secretary for Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: In the Housing and Community Development Act of 1992 (Pub. L. 102–550), Congress directed that HUD report on the effectiveness of CDBG funds in promoting the development of microenterprises [Section 807(C)(4)]. This report is due to Congress the end of April, 1994 (within eighteen months after date of enactment of the Act). The report is to contain not only an analysis of the effectiveness of the use of CDBG funds in promoting the development of microenterprises, but a review of any statutory or regulatory provisions that impede such development.

A review of information available with the Department of Housing and Urban Development indicates that insufficient information is available to effectively respond to Congress' request. Two survey instruments have been prepared to be administered via telephone to the entire universe of CDBG grantees (both entitlements and states) and to a purposive sample of microenterprise intermediary organizations. This survey approach is expected to provide useful and usable data regarding both entities that fund microenterprises and those that do not as well as provide greater insights into an existing statutory and/or regulatory impediments.

Respondents: Units of general local governments and states receiving CDBG funds in Fiscal Year 1993 and a selected sample of 20 microenterprise intermediary organizations (taken from the 1992 Membership Directory for the Association for Enterprise Opportunity).

Frequency of Response: This is a one-time information collection effort.

Reporting Burden:

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Grantees	897	½ hour	448.5
Microenterprise Intermediary Organizations	20	½ hour	10.0
Total respondent burden ...	917	½ hour	458.5

Status: This is a one-time collection effort for a report to Congress.

Contact: Barbara Neal, HUD (202) 708–1577.

Dated: February 17, 1994.

Supporting Statement for Collection of Information Community Development Block Grant (CDBG) Microenterprise Report

Part A. Justification

1. Circumstances That Make the Collection of Information Necessary

Section 807(c)(4) of the Housing and Community Development Act of 1992 requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of CDBG funds in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes their development. A microenterprise is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. HUD does not require grantees to report on the size of the businesses receiving CDBG assistance and thus has only very limited information currently available on this issue.

2. Purpose and Use of the Information

This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Such information will contribute to a more accurate appraisal of microenterprise activities. If the survey is not conducted, the report to Congress will clearly fail to fully address all relevant statutory or regulatory provisions that serve to impede the effective use of CDBG funds for microenterprise activities.

3. Use of Information Technology to Reduce Burden

HUD computerized files of Grantee Performance Report (GPR) data had been used to determine a potential sampling frame of grantees for the survey. However, the information provided only limited facts that indicated a sampling frame of grantees would not provide adequate information for the report to Congress. In order to respond most effectively to the intent of the report, HUD needs information on grantees that fund microenterprises, those which do not and what, if any, impediments exist. The GPR data is not a reliable basis for providing this data.

4. Efforts to Identify Duplication

Efforts have been made to identify possible duplication and avoid it by reviewing GPR data files and

information available in reports by interest groups.

5. Availability of Similar Information

There is no systematic and uniform source of information about the effectiveness of CDBG assistance in promoting the development of microenterprises, nor about any existing statutory or regulatory impediments. Information on type of grantee (state, urban county, unit of general local government) and size of 1993 entitlement grant can be obtained through HUD's existing data base. Other than that, however, and as stated above, GPR data files provide limited information. They are most useful in identifying grantees that are making small dollar-value CDBG loans or grants to for-profit businesses. Such information suggests that these activities are to assist microenterprises. The GPR files do not, however, provide much qualitative information regarding the nature of the activities or any statutory or regulatory impediments that the respective grantees had to overcome in designing such activities. Reports prepared by microenterprise interest groups provide some information of this type, but it is limited. Perceived statutory or regulatory impediments identified by some of these entities need to be corroborated by obtaining information from actual practitioners.

6. Effort To Minimize the Burden for Small Entities

Most of the information collection does not involve small entities. Some of the nonprofit intermediary organizations responding to the survey, however, may have small staffs. Efforts have been made to minimize the burden for such entities in the following ways:

a. By making this a one-time information-collection effort;

b. By collecting the data through telephone interviews, rather than self-administered questionnaires. The survey is expected to take less than 30 minutes;

c. By designing the survey in a manner that will not require retrieving detailed activity information from case files or performing extensive calculations or analysis of data.

The overall purpose of the survey is to provide HUD with the most current, relevant information so that its required report to Congress may best address any impediments to using CDBG funds for the development of microenterprises. The input of small entities should serve to provide invaluable input as to any existing statutory and/or regulatory barriers that would serve to benefit all microenterprises.

7. Consequence of Less Frequent Information Collection

This is a one-time collection of information. Therefore, less frequent collection of data is not an issue.

8. Inconsistency With 5 CFR 1320.6

The proposed data collection plan is consistent with the guidelines set forth in 5 CFR 1320.6 (Controlling Paperwork Burdens on the Public—General Information Collection Guidelines). There are no circumstances that require deviation from these guidelines.

9. Consultation Outside of the Agency

HUD has discussed the type of information to be obtained through the survey with the National Community Development Association at the NCDA Legislative Conference on January 18, 1993. NCDA represents CDBG entitlement grantees.

10. Assurances of Confidentiality

The data requested is not considered to be of a confidential nature. No data on individual CDBG grantees or intermediary organizations will be made available outside the agency without the prior written consent of the appropriate party. The report to Congress will analyze and aggregate the data received and will not include identifiers linking back to individuals.

11. Questions of Sensitive Nature

There are no questions of a sensitive nature in this survey.

12. Estimated Cost to the Federal Government and to Respondents

	Number of respondents	×	Estimated hours	×	Average hourly rates	=	Total costs
Grantees (States and Local Governments)	897		½ hour		$15.00		$6,727.50
Microenterprise Intermediary Organizations	20		½ hour		10.00		100.00
Federal Government:							
Operational expenses (staff)			20		15.00		300.00
Printing							100.00
Postage							265.00
							665.00
Survey completion and analysis			575		15.00		8,625.00
							9,290.00

13. Respondent Burden

There will be two categories of respondents: CDBG grantees (states and entitlement) and microenterprise intermediary organizations. Two separate survey forms, one tailored for each group, have been designed. Telephone surveys will be administered to all 897 CDBG entitlement and state grantees and a selected sample of 20 respondents in the microenterprise intermediary organization category. Most of the survey questions are straight-forward and will not require much research or analysis by the respondents. Those questions dealing directly with perceived impediments to assisting microenterprises with CDBG funds will require the most time on the part of respondents. Still, the majority of respondents should be able to answer these questions with minimal research and preparation. Thus, it is anticipated that the phone survey will take each respondent approximately less than one-half hour to answer. The surveys will be mailed to the respondents in advance to familiarize them with the type of information being sought to complete the report to Congress.

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Grantees	897	½ hour	448.5

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Microenterprise Intermediary, Organizations	20	½ hour	10.0
Total respondent burden	917	½ hour	458.5

14. Reasons for Changes in Burden

This is a new information collection effort; therefore, this section is not applicable.

15. Publication for Statistical Use

HUD will analyze the information obtained through the surveys to determine common issues and problems encountered by community and economic development practitioners in undertaking microenterprise activities with CDBG funds. Data will be analyzed by grantee type, regional identity and size of grant in determining if common issues and problems exist. HUD will rely on the evaluation of the survey data in preparing its required report to Congress.

Assuming approval from OMB is received no later than March 15, 1994, the surveys would be mailed no later than March 18, 1994. The follow-up telephone survey is expected to begin March 24 and be completed no later than April 6, 1994. Analysis of the data and preparation of the report, pursuant to Section 807(c)(4) of the 1992 Act, would be completed by April 29, 1994 and forwarded to Congress thereafter.

Part B. Collections of Information Employing Statistical Methods

1. Potential Respondent Universe

Two target populations are of interest to this survey: CDBG grantees and microenterprise intermediary organizations. The data collection approach employs two, statistical methods: A universe of 897 CDBG grantees (states and entitlements) and a purposive sample of 20 microenterprise intermediary organizations. Telephone interviews for this group of 917 will be attempted and it is expected that 807 grantee and 18 intermediary organization interviews will be completed for a 90% response rate.

Target population	Target population size	Expected sample size	Expected response rate (percent)	Completed telephone interviews
Grantees	[1] 897	897	90	807
Microenterprise Intermediary Organizations	[1] 183	20	90	18

[1] Based on 1993 CDBG funding allocations.
[2] Based on 1992 Membership Directory for the Association for Enterprise Opportunity.

2. Procedures for Collection of Information

a. *Universe/Sample Stratification and Selection.* HUD intends to survey all CDBG grantees because of the need to have information on grantees that fund microenterprise organizations and those that do not; there is no sampling frame that provides this information prior to conducting the survey. For instance, if a sample of CDBG grantees was drawn and the survey indicated that few of these grantees funded microenterprises, it would provide little information to permit an analysis of the effectiveness of the use of CDBG funds in promoting the development of microenterprises.

A purposive sample of 20 intermediary organizations will be selected from those listed in the 1992 Association for Enterprise Opportunity Membership Directory. The sample will be selected on the basis of type of intermediary organization (cooperatives/non-profit enterprises, enterprise development organizations, financial intermediaries, and technical assistance providers/consultants) and geographic region to help ensure that the selected sample offers representation and variability on these characteristics.

b. *Estimation Procedure.* Not applicable.

c. *Degree of Accuracy.* Assuming a 90% response rate from grantees and that nonresponse is random, the grantee survey will yield very good estimates even if the proportion of grantees who fund microenterprises is small. The sample of intermediary organizations is not a statistical sample.

d. *Unusual Problems Requiring Specialized Sampling Procedures.* No specialized sampling procedures are required.

e. *Use of Periodic Data Collection Cycles to Reduce Burden.* This is a one-time data collection effort.

3. Methods to Maximize Response Rates

In an effort to maximize response rates, a copy of the survey instrument will be mailed to all respondents prior to the telephone survey in order to familiarize them with its content.

4. Tests of Procedures to be Undertaken

Input has been received from HUD's Office of Policy Development and Research (PD & R) in order to fine-tune the survey instrument and permit the collection of information needed for the report to Congress.

5. Persons Involved in the Survey

Individual consulted on the statistical aspect of the survey instrument: Kevin Neary, HUD's PD & R Program Evaluation Division (202–708–0574).

Individual responsible for completion of report: Barbara Neal, HUD's Office of Community Planning and Development, Entitlement Communities Division (202–708–1577).

Grantee Survey for HUD Microenterprise Report

Section 807(c)(4) of the Housing and Community Development Act of 1992 ("1992 Act") requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of Community Development Block Grant (CDBG) funds in promoting development of

microenterprises, including a review of any statutory or regulatory provision that impedes their development. This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Your participation is voluntary, but failure to respond will hurt HUD's ability to report accurately to Congress on the nature and extent of microenterprise activity in the CDBG program. Therefore, your participation is greatly appreciated.

This survey seeks to obtain information regarding any microenterprise assistance activities you may be undertaking with CDBG funds.

- A "microenterprise" is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.
- For the purposes of this survey, "microenterprise assistance activities" are those that are designed to promote the establishment and expansion of microenterprises, as such entities are defined above. Examples of such activities include:
  - Provision of training for persons interested in starting microenterprises.
  - Provision of technical assistance and training to existing microenterprises.
  - Provision of financial assistance to new and existing microenterprises.

Name of Grantee (Optional): _____

Type of Grantee (State, Urban County, Unit of Local Government): _____

Address, City, State, HUD Region: _____

Name of Contact Person & Phone Number (Optional) _____

1. Does your community use Community Development Block Grant (CDBG) funds for microenterprise assistance activities?

Yes _____ No _____ (If No, go to Q.8)

2. What national objective(s) is/are your CDBG-funded microenterprise assistance activities designed to meet? (Check all that apply.)

_____ Low/mod Area Benefit
_____ Low/mod Jobs
_____ Slum/Blight
_____ Urgent Need

3. a. Are your CDBG-assisted microenterprise activities run directly by the grantee or through a subrecipient or some other entity? (Check all that apply.)

_____ Grantee
_____ Subrecipient
_____ Other (Describe)

_____
_____
_____

b. If the activities are run through a subrecipient, please identify the nature of that entity (e.g., public non-profit agency, Community Development Corporation (CDC), Small Business Investment Company (SBIC), etc.). (Check all that apply.)

_____ Public non-profit agency
_____ CDC
_____ SBIC
_____ Other (Describe)

_____
_____
_____

4. What amount of CDBG funds has been budgeted in your most recent final statement for microenterprise assistance activities? _____

5. What percentage of your annual grant does the above amount represent? _____

6. Would you say the level of CDBG assistance you provide to microenterprises is

_____ To much (End of survey)
_____ About right (End of survey)
_____ Too little (Go to Q.7)

7. Is there anything about the CDBG statute or regulations that prevents you from assisting as many microenterprises as you would like?

_____ No
_____ Yes (Please describe)

_____
_____
_____

(End of Survey)

For respondents that answered "No" to Q.1, please answer Q.8 and Q.9.

8. Would you like to see your community use CDBG to support microenterprise development?

_____ No (End of survey)
_____ Yes

9. If "Yes" to Q.8, is there anything about the CDBG statute or regulations that prevents you from assisting microenterprises with CDBG funds?

_____ No
_____ Yes (Please describe)

_____
_____
_____

This mailing has been sent to familiarize you with the survey questions. An interviewer will contact you by telephone in the near future to obtain you responses. If you have any questions concerning this survey, please contact: Ms. Barbara Neal, Entitlement Communities Division, U.S. Department of Housing & Urban Development, room 7282, 451–7th Street, SW., Washington, DC 20410. Telephone Number: (202) 708–1577.

Survey of Intermediary Organizations HUD Microenterprise Report

Section 807(c)(4) of the Housing and Community Development Act of 1992 ("1992 Act") requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of Community Development Block Grant (CDBG) funds in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes their development. This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Your participation is voluntary, but failure to respond will hurt HUD's ability to report accurately to Congress on the nature and extent of microenterprise activity in the CDBG program. Therefore, your participation is greatly appreciated.

This survey seeks to obtain information regarding any microenterprise assistance activities you may be undertaking with CDBG funds.

- A "microenterprise" is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.
- For the purposes of this survey, "microenterprise assistance activities" are those that are designed to promote the establishment and expansion of microenterprises, as such entities are defined above. Examples of such activities include:
  - Provision of training for persons interested in starting microenterprises.
  - Provision of technical assistance and training to existing microenterprises.
  - Provision of financial assistance to new and existing microenterprises.

Name of Organization (Optional): _____

Address, City; State/HUD Region: _____

Name & Phone Number of Contact Person (Optional): _____

1. Does your organization use Community Development Block Grant (CDBG) funds for microenterprise assistance activities?

Yes _____ No _____ (If No, please go to Q.6)

2. What national objective(s) is/are your CDBG-funded microenterprise assistance activities designed to meet? (Check all that apply.)

_____ Low/mod Area Benefit
_____ Low/mod Jobs
_____ Slum/Blight
_____ Urgent Need

3. Please identify the nature of your entity (e.g., public non-profit agency, Community Development Corporation (CDC), Small Business Investment Company (SBIC), etc.). (Check all that apply.)

_____ Public non-profit agency
_____ CDC
_____ SBIC
_____ Other Please describe)

4. Would you say that the level of CDBG assistance you provide to microenterprises is

_____ Too much (End of survey)
_____ About right (End of survey)
_____ Too little (Please go to Q.5)

5. Is there anything about the CDBG statute or regulations that prevents you from assisting as many microenterprises as you would like?

_____ No
_____ Yes (Please describe)

(End of Survey)

For respondents that answered "No" to Q.1, please answer Q.6 and Q.7.

6. Would you like to see your organization use CDBG to support microenterprise development?

_____ No
_____ Yes

7. If "Yes" to Q.6, is there anything about the CDBG statute or regulations that prevents you from assisting microenterprises with CDBG funds?

_____ No
_____ Yes (Please describe)

This mailing has been sent to familiarize you with the survey questions. An interviewer will contact you by telephone in the near future to obtain your responses. If you have any questions concerning this survey, please contact: Ms. Barbara Neal, Entitlement Communities Division, U.S. Department of Housing & Urban Development, room 7282, 451–7th Street, SW., Washington, D.C. 20410. Telephone Number: (202) 708–1577.

[FR Doc. 94–4824 Filed 3–2–94; 8:45 am]
BILLING CODE 4210–29–M

Office of the General Counsel

[Docket No. N–94–3728; FR–3670–N–01]

Submission of Proposed Information Collection to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
Monica Hilton Sussman, Deputy General Counsel, (Finance and Regulations), GD, HUD Building, room 10214, 451 7th St., SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to two guide formats which specify the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, et seq. or in connection with the making of a capital advance under section 202 of the Housing Act of 1959, as amended, and section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, for supportive housing for the elderly and supportive housing for persons with disabilities.

The guide clearly articulates those matters upon which HUD requires an opinion from private counsel as well as those matters upon which confirmations are required. The guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion.

The section 202 and 811 programs currently have an OMB-approved Owner's Attorney's Closing Opinion, form HUD–90166–CA (2502:0470). However, the Department has decided that it would be beneficial to participants and their counsel to have similar formats for all loan and capital advance programs. The section 202 and 811 guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

To the extent that the new guides represent any "collection of information," the process is necessary to ensure the Department that the attorney representing the mortgagor or owner has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. The extent of due diligence expected to be performed under the guide is not substantially different from what HUD had anticipated under Form 1725 or Form HUD–90166–CA or from what qualified counsel, in fact, perform in conventional financing transactions.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35);

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the

proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1994.

Monica Hilton Sussman,

Deputy General Counsel (Finance and Regulations), GD.

Submission of Proposed Information Collection to OMB

Proposal: HUD Guide for Counsel to the Mortgagor and HUD Guide for Counsel to Owner.

Office: Office of the General Counsel.

Description of the Need for the Information and Its Proposed Use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: Guide.

Respondents: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 or section 811 projects which receive capital advances from HUD.

Frequency of Submission: As closings occur in connection with the aforementioned projects.

Reporting Burden:

	Number of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
700			1		1		700

Total Estimated Burden Hours: 700.

Status: New.

Contact: Joseph F. Lackey, Jr. OMB (202) 395–6880, Monica Hilton Sussman, HUD (202) 708–0636.

Dated: February 22, 1994.

Supporting Statement for Guide for Opinion of Mortgagor's Counsel and Guide for Opinion of Owner's Counsel

Justification

1. Under the various sections of Title II of the National Housing Act, the Secretary of the Department of Housing and Urban Development (HUD) is authorizing to insure mortgage loans upon certain multifamily rental housing projects and health care facilities (nursing homes, extended care facilities, board and care homes and hospitals). Under section 202 of the Housing Act of 1959, as amended, and section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, the Secretary of HUD is authorized to make capital advance for supportive housing for the elderly and supportive housing for persons with disabilities. Generally, the mortgages are defined as those "commonly given" in the various States; therefore, State and local law govern virtually the entire mortgage insurance transaction from the formation of the mortgagor entity to the making and securitization of the loan to the construction of the project is accord with local law. Consequently, prior to the making of a capital advance or endorsement of a mortgage note for insurance in connection with a multifamily rental project or a health care facility, it is imperative that HUD know the precise legal status of the mortgagor entity and of the realty and personalty which will comprise the security property. Inasmuch as the transaction is largely coordinated by the counsel to the mortgagor or owner (in the case of the section 202 and 811 programs), HUD has looked to such counsel for an opinion which provides comfort to the insured mortgagee and HUD regarding virtually all legal aspects of the transaction.

24 CFR 200.150 provides the regulatory authority for the collection of "all supporting documents" and "other exhibits as required by the terms of the commitment" once the conditions of the commitment for mortgage insurance have been met and the mortgage note is presented for endorsement by HUD. Similarly, 24 CFR 889.415 and 890.415 provide the regulatory authority for the requirements prior to initial closing and the preparation of the necessary documents including the attorney's opinion.

Although it is unclear that the rendering of a legal opinion is within the ambit of "the collection of information," HUD has determined that the more conservative approach is to treat the opinion as such and let OMB make a definitive determination.

2. The opinion is designed to provide HUD and the mortgagee with assurance that the mortgagor or owner entity has been validly formed, lawfully exists and that the security property and the construction thereupon comply with appropriate local laws such as building codes, zoning, etc. Further, the loan documents must comport with local law and practice and only an attorney licensed in the jurisdiction can complete such documents and provide HUD with the requisite assurance. It would be an enormous burden for HUD and the mortgagee, which often is a national entity, to perform such a legal analysis of the mortgagor or owner entity, the documents and the transaction. It is clear that without the assurance provide by the opinion, HUD and the mortgagee would be performing duplicative legal work and would extend considerably greater time and resources than the mortgagor's or owner's counsel, who would be conducting the analysis as a matter of course in representing the client/mortgagor.

3. None—The form passes from counsel to the mortgagor or owner to HUD and the mortgagee. We are not aware of any new technology which could be employed.

4. Since this is the only legal opinion required by HUD in connection with the transaction, we can find no evidence of duplication.

5. Only counsel for the mortgagor or owner is in a position to render the necessary opinion. HUD counsel do not have access to the mortgagor or owner entity in a fashion that would provide HUD counsel with all of the data and knowledge available to the mortgagor's or owner's counsel. Further, HUD counsel are not in a time management or bar membership position to legally opine as to organizations, real and personal property, local law, etc. which comprise a mortgage loan transaction.

6. HUD generally requires that the mortgagor or owner entity be a sole asset entity and sometimes the HUD-approved mortgagee might also be a small business; however, no burden falls upon these entities. The entire burden is upon the counsel to the mortgagor or owner to represent its client in the mortgage loan transaction. A small portion of such representation involves rendering a legal opinion which can be relied upon by HUD and the mortgagee.

7. Not applicable—The legal opinion, if collected at all, has to be collected prior to endorsement of the mortgage note by HUD. In the case of capital advances, the legal opinion has to be collected prior to initial closing.

8. Not applicable—It is questionable whether obtaining a legal opinion is really a collection of information.

9. An effort was made to consult with other federal governmental agencies involved in mortgage loans, state and local entities involved in HUD's mortgage insurance programs, trade organizations, attorneys in the private sector representing mortgagees and mortgagors and HUD field counsel. Numerous changes have been made to reflect input by all the aforementioned parties.

The guide format was probably developed shortly after enactment of the first multifamily provisions of the National Housing Act no later than the 1940s. The format had not been amended since 1966. Numerous disputes were arising in connection with the guide format (then designated FHA Form No. 1725) because private counsel were uncomfortable with what they regarded as an antiquated format which did not comport with modern opinions practice. Closings were delayed at great cost to HUD and the private sector. Efforts to revise the format were begun in the mid-1970s however no consensus was reached after two efforts to solicit comments from HUD field counsel.

The attached Guide represents the HUD central office decisions made after the input described above. Names and telephone numbers of those consulted can be provided. All consultation took place from December 1993 to date.

There were no major problems which could not be resolved by central office decision-makers.

Public and governmental comments received by HUD can be provided.

The section 202 and 811 programs currently have an OMB-approved Owner's Attorney's Closing Opinion, form HUD–90166–CA. However, the Department has decided that it would be beneficial to participants and their counsel to have similar formats for all loan and capital advance programs. The section 202 and 811 guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

10. No assurance of confidentiality was given.

11. No sensitive questions are addressed in the Guide.

12. The estimated annualized cost to the federal government of collecting and storing the opinion based upon an hourly rate of $20.00 per hour and a total of seven hours is $240.00. The opinion is one of many documents which is collected at each loan closing and is stored in the docket file which is maintained for the life of the project loan in the federal records center. For capital advances, the closing opinion would be kept in Field Office Docket. There is also the cost of review of the document by HUD field counsel. We estimate that this review should take approximately one-half hour and based upon an hourly rate of $24.00, the total cost would be $8400.00. Neither of these figures should change substantially from the previous total cost to the federal government under FHA Form No. 1725.

The total annualized cost to mortgagors or owners of retaining private counsel to prepare the opinion is estimated to be $122,500.00, which is based upon a total of 700 hours at an average cost per hour of $175.00. (Although one hour is expended completing the form, 100 to 150 hours are expended by mortgagor's or owner's counsel in representing the mortgagor or owner and a mortgage line item covers such typical total cost of approximately $20,000.00.)

13. The above estimates are based upon an estimated total of 700 multifamily rental project and health care facility loan closings per year, which is based upon last year's totals of approximately 500 FHA insured mortgage loan closings and 200 section 202 elderly closings. It is anticipated that the section 202 elderly closings will decrease and the FHA insured loan closings will increase by an off-setting amount. One legal opinion is required per closing. These estimates are based upon HUD's program staff experience in dealing with the aforementioned mortgage line item, the referenced loan closings and the experience of HUD personnel who have recently acted as counsel to mortgagors in the private sector.

14. Although the guide is longer than the form it replaces, there is no substantial difference in the amount of time which will be expended by the parties involved in the preparation, review and collection of the opinion. The use of word processing technology and its redlining capability will make it possible to handle the increased length without any significant increase in time expended. Further, the new guide, by providing more specific instructions, should resolve many conflicts which had created intolerable delays in many closings. Such delays often resulted in the involvement of central office legal staff thereby further increasing the workload upon all the involved parties to the mortgage loan or capital advance transaction.

15. Not applicable.

BILLING CODE 4210-01-M

TO BE REPLACED BY GUIDE TO BE REPLACED BY GUIDE TO BE REPLACED BY GUIDE

Capital Advance Program

Owner's Attorney's Closing Opinion

Under Section 202 of the Housing Act of 1959
or Section 811 of the National Affordable Housing Act

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No 2502-0470 (exp. ~~8/31/92~~)

Public Reporting Burden for this collection of information is estimated to average 0 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U S Department of Housing and Urban Development, Washington, D C 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0470), Washington, D.C. 20503 Do not send this completed form to either of these addresses.

Project Number | Project Name:

Location:

To HUD:

I am the attorney for the owner and have prepared or reviewed all of the documents in connection with the organization of the owner entity; together with the regulatory agreement, note, mortgage (deed of trust), use agreement, capital advance agreement, construction contract, assurance of completion, certifications and other collateral documents which have been submitted to and are being relied upon by HUD.

It is my opinion that:

1. The owner is a valid existing legal entity; it has authority to engage in the business contemplated by this transaction; all incorporation fees and taxes have been paid; all pertinent securities requirements have been met; the note, mortgage (deed of trust), use agreement, regulatory agreement and other collateral documents required by HUD to be executed by the owner have been executed by the person(s) authorized to execute the same and are instruments legally binding on the owner; and the mortgage (deed of trust) constitutes a valid first lien on the property herein described.

2. The building permit(s) has (have) been legally issued and construction in accordance with the plans and specifications is authorized by said permit(s).

   The proposed construction complies with all applicable zoning laws and requirements. There is no legal action pending or threatened, or proposed changes in zoning, which would prevent the construction from being completed in accordance with the plans and specifications.

4. There is no default under the Land Disposition Contract between _____ and _____ and the time within which construction must be completed under the loan agreement is within the time specified for completion in said Land Disposition Contract (this paragraph is required only in cases where the project is in an urban renewal area).

I hereby certify that satisfactory arrangements have been made for payment of my fees for legal services and that I will assert no claim or lien by reason of such services against the mortgaged premises, mortgage proceeds or income from said premises.

I hereby certify that I do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the owner and a development team member, my efforts will be directed exclusively towards serving the owner. I have submitted to HUD an Identity of Interest and Disclosure Certification.

I hereby agree that I will represent the owner, if it so desires, in connection with the final loan disbursement by HUD, in which event I will be entitled to the 25% payment now being withheld.

Except for the 25% being withheld (amounting to $ _____) I have been paid in full for my services and to the best of my knowledge, information and belief the owner is obligated to no other party on account of legal services, except that $ _____ is payable upon disbursement of the capital advance.

Attorney for the Owner:

TO BE REPLACED BY GUIDE

TO BE REPLACED BY GUIDE

FHA FORM NO. 1725
Rev. 8/66

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

GUIDE FORM OF MORTGAGOR'S ATTORNEY'S OPINION INITIAL CLOSING

Re: FHA Project No. _____
Project Name _____
Location _____

To Mortgagee and Federal Housing Commissioner:

I am the attorney for the mortgagor and have prepared or reviewed all of the documents in connection with the organization of the mortgagor entity; together with the regulatory agreement, note, mortgage (deed of trust), building loan agreement, construction contract, assurance of completion, certifications and other collateral documents which have been submitted to and are being relied upon by the Federal Housing Commissioner.

It is my opinion that:

1. The mortgagor is a valid existing legal entity; it has authority to engage in the business contemplated by this transaction; all incorporation fees and taxes have been paid; all pertinent securities requirements have been met; the note, mortgage (deed of trust), regulatory agreement and other collateral documents required by the Federal Housing Commissioner to be executed by the mortgagor have been executed by the person(s) authorized to execute the same and are instruments legally binding on the mortgagor; and the mortgage (deed of trust) constitutes a valid lien on the property therein described.

2. The building permit(s) has (have) been legally issued and construction in accordance with the plans and specifications is authorized by said permit(s).

3. The proposed construction complies with all applicable zoning laws and requirements. There is no legal action pending or threatened, or proposed changes in zoning, which would prevent the construction from being completed in accordance with the plans and specifications.

*4. There is no default under the Land Disposition Contract between _____ and _____ dated _____ *(insert reference including recording date)* ; and the time within which construction must be completed under the aforesaid building loan agreement is within the time specified for completion in said Land Disposition Contract.

I hereby certify that satisfactory arrangements have been made for payment of my fees for legal services and that I will assert no claim or lien by reason of such services against the mortgaged premises, mortgage proceeds or income from said premises.

(In cases where the mortgagor is a cooperative corporation, the following paragraphs should be substituted in lieu of the preceding paragraph:)

I hereby certify that I do not represent and have not represented any party or interest in connection with the above-referred-to housing project other than the mortgagor corporation, and that I do not have any financial interest in the project or the real estate upon which it is to be constructed other than the legal fee I have or am to receive from the mortgagor corporation.

I hereby agree that I will represent the mortgagor corporation, if it so desires, in connection with the final endorsement for mortgage insurance by the Department of Housing and Urban Development, in which event I will be entitled to the 25% payment now being withheld.

Except for the 25% being withheld (amounting to $_____) I have been paid in full for my services and, to the best of my knowledge, information and belief the mortgagor corporation is obligated to no other party on account of legal services.

_____
Attorney for Mortgagor

*Required only in cases where project is in an urban renewal area

92-3963-P Rev. 8/66 FHA-Wash., D. C.

BILLING CODE 4210-01-C

For use in FHA Insured Transactions
February 18, 1994.

Exhibit A To Opinion of Mortgagor's Counsel

Certification of Mortgagor

This Certification of Mortgagor is made the _____ day of _____, 19_____, by _____, (the "Mortgagor") for reliance upon by _____ (the "Mortgagor's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by "Mortgagor's Counsel") as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development ("HUD") of the $_____ loan (the "Loan") from _____ (the "Mortgagee") to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor or authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest in granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personalty] is located at the Property (as defined in the Opinion Letter) and the Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in

_____

4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [,except as identified on Exhibit [ ], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In witness whereof, the Mortgagor has executed this Certification of Mortgagor effective as of the date set forth above.

Mortgagor:

_____
_____
_____
_____
_____

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program
February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Guide for Opinion of Owner's Counsel

[To Be Typed on Firm Letterhead]

[Insert Capital Advance Initial Closing Date]

Re: Project Name _____
202 or 811 Project No. _____
Location _____

[Owner]
[Address]

Federal Housing Commissioner
[Insert Appropriate Field Office Address]

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ [Insert Name of Owner] (the "Owner"), a _____, [Insert Type of Entity] organized under the laws of the State of _____ [Insert State, Includes the District of Columbia and Puerto Rico] (the "Organizational Jurisdiction"), in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") in the amount of _____ Dollars ($_____) from HUD to the Owner. Such Capital Advance is being made pursuant to a Capital Advance Agreement dated as of the date hereof, by and between HUD and the Owner and will be used to construct, rehabilitate or acquire and maintain the captioned 202 or 811 project ("Project"), commonly known as _____ and located in _____ [Insert County and State] (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described on Exhibit _____ [Attach Legal Description] (together with all improvements and fixtures thereon) (the "Property"). The Capital Advance is being issued, pursuant to [Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston Gonzalez National Affordable Housing Act], a firm commitment dated _____ and which expires on _____ ("Commitment"). The Owner has requested that we [I] deliver this opinion and has consented to reliance by HUD in making the Capital Advance and has waived any privity between Owner and us [me]-in order to permit such reliance by HUD. We [I] consent to reliance on this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we [I] have prepared and or reviewed the following Capital Advance Documents, Organizational Documents and Collateral Documents (will be collectively referred to as "the Documents" unless expressly limited to a group of the above referenced documents) (numerical references in parenthesis following the Documents listed below are to HUD form numbers):

Capital Advance Documents

A. Before Initial Closing

1. Capital Advance Agreement (HUD 90167–CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD–92403–CA).
3. Direct Deposit Sign-up Form (SF 1199A).
4. Project Rental Assistance Contracts (PRAC) documents:
   a. Part I of Agreement to Enter into PRAC (HUD 90172A–CA);
   b. Part II of Agreement to Enter into PRAC (HUD 90172B–CA);
   c. Part I of the PRAC (HUD 90173A–CA); and
   d. Part II of the PRAC (HUD 90173B–CA).

B. Initial Closing

1. Firm Commitment for Capital Advance Financing (HUD–92432–CA) including reissued, revised or amended commitment.
2. Owner's Certificate (HUD 92433–CA).
3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.
4. Agreement and Certification (HUD 93566–CA).
5. Mortgage Note (HUD–93432–CA).
6. Mortgage (Deed of Trust) (HUD–90165–CA).
7. Regulatory Agreement (HUD–92466–CA).

8. Use Agreement (HUD 90163–CA).
9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

Organizational Documents

(Documents regarding Organization of Non-Profit Owner)

1. Approved and certified articles of organization (Certificate of Incorporation (HUD–91732A–CA)).
2. Certificate of Good Standing.
3. By-laws.
4. Incumbency Certificate.
5. Owner's I.R.S. Tax-Exemption Ruling.
6. Corporate Resolution.

Collateral and other Documents ("Collateral Documents")

1. Collateral Agreements, if any.
2. Security Agreement and UCC Financing Statement.
3. Title Policy.
4. Survey.
5. Surveyor's Report (HUD–92457).
6. Evidence of Zoning Compliance.
7. Building Permits.
8. Construction Contract:
a. Lump Sum (HUD 92442–CA) OR Cost Plus (HUD 92442A–CA), as appropriate;
b. Contractor's Requisition (HUD 92448); and
c. Construction Contract, Incentive Payment (HUD 92443–CA), if applicable.
9. Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328).
10. Assurance of Completion:
a. Performance/Payment Bond 100% Dual-Obligee (92452–CA; OR
b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR
c. Completion Assurance Agreement (HUD 92450–CA).
11. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167–CA) and HUD Amendment (HUD 90169–CA).
12. Real Estate Tax Exemption (if applicable).
13. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).
14. Land-Disposition Contract and Deed (required only for projects in urban renewal areas).
15. Insurance and fidelity bonds:
a. All applicable insurance policies per Property Insurance Requirements (HUD–90164–CA), including Property Insurance Schedule (HUD–92329); and
b. Blanket Fidelity Bond.
16. Assurance of Completion of Off-site Facilities, if applicable:
a. Off-site Bond (HUD 90177–CA); OR
b. Escrow Agreement for Off-site Facilities (HUD) 90170–CA).
17. Fair Housing
a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and
b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).
18. Assurance of Utility services (water, electricity, sewer, gas, heat etc.).
19. Additional Closing Requirements (State or local requirements).

In basing the opinions set forth in this opinion on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Owner, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Owner in any capacity including, but not limited to, in connection with the Capital Advance. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Capital Advance to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with this respective terms.

(b) Each person executing any of the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Owner (and any person executing any of the Documents on behalf of Owner) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and assigns will: (i) Act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Owner has title or other interest in each item of (i) real and (ii) tangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Capital Advance as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph not justified.

In rendering this, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the

Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion we [I] have, with your approval, relied as to certain matters of fact set forth in the Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

[To be used in cases where organizational documents were prepared by owner's attorney]

1. The Owner is a _____ [Insert Type of Entity] [for 202, Private Non-Profit Corporation and For 811, Institution or Foundation], duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit _____, is in good standing under the laws of the Organizational Jurisdiction and is qualified to do business as a foreign entity in the Property Jurisdiction.

2. The Owner has the power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary action by, or on behalf of, the Owner.

4. No authorization, consent, approval, or other action by, or filing with, any Organizational and Property Jurisdictions or federal court or governmental authority other than those that have been obtained, as disclosed on Exhibit _____, attached hereto, and those listed at Paragraphs _____ of this opinion [i.e., good standing certificate] are required in connection with the execution and delivery by the Owner of the Capital Advance Documents or Collateral Documents (where applicable) or the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitutes the valid and legally binding promises or obligations of the Owner, enforceable against the Owner in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

6. The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable statutes and regulations of HUD in effect on the date of the Firm Commitment.

[7. [Insert for Loans Involving Construction or Rehabilitation] To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, and executed by, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. [Insert if There is no Zoning Endorsement Incorporated into the Title Policy] The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

or

Based solely on the zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. [Use for New Construction or Substantial Rehabilitation in Cases Where HUD Does Not Receive a Certificate Directly from the Professional] Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ [Insert Proper Name of Local Land Records Office] of _____ [Insert County or City] of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a

security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be sued in Property Jurisdiction, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Security Instrument. Venue for any foreclosure proceeding under the Security Instrument may be had in Property Jurisdiction.

[16. [Applies to Cases Where the Land is Being Purchased From a Public Body] There is no default under the Public Entity Purchase Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Purchase Agreement. [Reliance is Permitted on the Basis of Knowledge and Owner's Certificate]

[17. [Applies to Cases Where the Project is in an Urban Renewal Area] There is no default under the Land Disposition Contract between _____ and _____, dated _____ and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Owner in each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Capital Advance, other than fees for legal services performed by us, payment for which has been provided; and we [I] agree not to assert a claim or lien against the Project, the Owner, the Capital Advance proceeds or income of the Project;

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Certificate and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 12 U.S.C. 4012a(a). [Insert if flood insurance is required: based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 12 U.S.C. 4012a(a).]

(f) we [I]] do not represent any development team member (as defined in 24 CFR part 889 (section 202) or 24 CFR part 890 (811 program) or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification;

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy;

(h) we [I] hereby agree that we [I] will represent the Owner, if it so desires, in connection with the final capital advance disbursement by HUD, in which event I will be entitled to the 25% payment now being withheld; and

(i) Except for the 25% being withheld (amounting to $_____) we [I] have been paid in full for my services and to the best of my knowledge, information and belief the Owner is obligated to no other party on account of legal services, except that $_____ is payable upon disbursement of the capital advance.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

_____

[Authorized Signature]

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Instructions to Guide for Opinion of Owner's Counsel

Explanatory Comments

The guide for this opinion has been prepared in view of the ABA Accord and various state law bar reports on opinion letters.

The Department regards the counsel to the Owner as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") from HUD to the Owner. Pursuant to 24 CFR part 24, 24.105(p), attorneys or others in a business relationship with the Owner are defined as "principals." Even though the Guide is quite different than its predecessor (HUD 90166–CA), such revision does not in any fashion relieve the counsel to the Owner of its obligations to its client and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Owner and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations,

procedures and directives of the Department pertaining to each transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the Capital Advance Program (most of which are HUD Form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited state law related exceptions, we expect that Owner's counsel will be able to follow the guide opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every opinion and it is essential that the guide be followed in both style and substance in order to ensure a timely closing.

The counsel to the Owner is expected to complete a draft opinion for submission to HUD field counsel ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (blacklined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of HUD's Office of General Counsel by field counsel along with an explanation as to the necessity for the deviation.

Brackets are used in the opinion letter to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The guide opinion contains some instructions and definitions and is largely self-explanatory; however, the following instructions and clarifications may be helpful. The numbers and letters used below relate to the paragraph numbers and letters in the guide opinion unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The opinion must be typed on the firm or single practitioner's letterhead and dated the date of the Capital Advance by HUD.
- Reference: Data regarding the project (name, HUD project number, and location must be accurate and inserted in the appropriate blanks.
- Addressees: The opinion must be delivered to HUD to establish the explicit right to rely on the opinion.
- Description of the Capital Advance: The Capital Advance amounts is the original principal amount of the Capital Advance unless a modification is necessitated in connection with the closing.

List of Documents

- In General: Each document executed in connection with the Capital Advance must be listed by its correct title. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction prior to submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the Capital Advance must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parens after each document.

All of the Documents must be reviewed. The following HUD guidelines should be followed in preparing or reviewing the Documents.

1. HUD Handbook 4571.5, Supportive Housing for the Elderly—Conditional Commitment—Final Closing, dated July 1992, should be followed. This Handbook provides copies of most of the Documents required by HUD to be used in the 202 Program Closings. Until HUD publishes a similar Handbook for the Supportive Housing for Persons with Disabilities Program, section 811 Capital Advance closings shall follow the 4571.5 Handbook.

2. All 202 and 811 Owners must adopt the model Certificate of Incorporation (HUD-91732-A-CA) except for Field Counsel modifications related to State law or modifications required by the Internal Revenue Service. All other modifications must be approved by HUD.

3. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personality pursuant to the Regulatory Agreement.

4. UCC searches: The UCC Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction. One or more UCC searches performed not more than 30 days prior to the date of the opinion of Owner's counsel must be made and retained by the field counsel in the Capital Advance file.

5. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

6. Survey: the survey must be signed, sealed and dated within 90 days of the closing.

7. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction.

8. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Capital Advance, they must be identified to the HUD field counsel as

well as details with respect to how such Financing Statements will be terminated at the time of closings.

9. If the Owner or any principal of the Owner is involved in any litigation, *all* such litigation matter(s) must be disclosed in writing to HUD field counsel. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel. As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

Acceptability of Counsel

• Owner's counsel must opine as to the law of the Property jurisdiction and the state of Owner's organization, if different from the Property jurisdiction. HUD requires that Owner's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Owner and another with respect to the real property and Capital Advance issues. A combination of the Owner's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Capital Advance Closing File. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The opinion may be signed by an authorized person of the law firm, in that person's name.

Owner's Certification

• A form of Owner's Certification is attached. The form represents the minimum amount of information that should be obtained from the Owner (but additions, revisions and rephrasing are acceptable so long as the Owner is certifying as to factual matters and not legal conclusions). The Owner's Certification must be dated the same date as the Capital Advance Documents.

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program

February 18, 1994.

Exhibit A To Opinion of Owner's Counsel

Certification of Owner

This Certification of Owner is made the _____ day of _____, 19_____, by _____, (the "Owner") for reliance upon by _____ (the "Owner's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Owner's Counsel") as a condition for the making of a capital advance by the Department of Housing and Urban Development ("HUD") in the amount of $_____ (the "Capital Advance") to the Owner. In connection with the Opinion Letter, the Owner hereby certifies to Owner's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Owner or authorizing the Capital Advance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Capital Advance as reflected in the Capital Advance Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Capital Advance Documents.

3. All tangible personal property of the Owner in which a security interest is granted under the Capital Advance Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personalty] is located at the Property (as defined in the Opinion Letter) and the Owner's [Chief Executive Office] [only place of business] [residence] is located in

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4. The execution and delivery of the Capital Advance Documents will not (i) cause the Owner to be in violation of, or constitute a default under the provisions of any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Owner, the Property, or any other properties of the Owner [except as identified on Exhibit ____, List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In witness whereof, the Owner has executed this Certification of Owner effective as of the date set forth above.

Owner:

_____

_____

_____

_____

_____

For use in FHA Insured Transactions

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Instructions to Guide for Opinion of Mortgagor's Counsel

Explanatory Comments

The guide for this opinion has been prepared in view of changes in opinion practice as reflected by the ABA Accord and various state law bar reports on opinion letters.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR part 24, 24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as "principals." Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

With limited state law related exceptions, we expect that Mortgagor's counsel will be able to follow the guide in rendering an opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every opinion for stylistic changes and it is essential that the guide be followed in both style and substance in order to ensure a timely closing.

The counsel to the Mortgagor is expected to complete a draft opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (blacklined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It is anticipated that the guide can be utilized in connection with all types of closings: Insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). Therefore, it is crucial that the correct options be selected in instances where choices are provided.

Brackets are used in the opinion letter to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The guide opinion contains some instructions and definitions and is largely self-explanatory; however, the following instructions and clarifications may be helpful. The numbers and letters used below relate to the paragraph numbers and letters in the guide opinion unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.
- Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.
- Addressees: The opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the opinion. The Mortgagee's counsel may be relying on the opinion for certain aspects of its opinion. If so, the opinion must also be addressed to counsel to the Mortgagee.
- Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.
- Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g. certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit number has been changed so that they are now preceded by a "9." However, HUD is in the process of changing to a standardized four digit number which should become effective in 1994.

A. Organizational Documents: All of the Organizational Documents must be reviewed.

1. In addition to reviewing the Organizational Documents listed in the opinion, the following HUD guidelines should be followed in preparing or reviewing the following organizational documents.

a. Corporate mortgagor—any form of corporate charter or articles of incorporation may be used which:

(1) Contains nothing inconsistent with the Regulatory Agreement,

(2) Gives the Mortgagor the powers necessary to operate the project and execute the note and mortgage, and

(3) Specifically authorizes the execution of the Regulatory Agreement.

Suggested charter provisions to accomplish the above are:

Purposes

(a) To create a private corporation to construct or to acquire a [rental housing project or health care facility] and to operate the same; (b) to enable the financing of the construction of such [rental housing project or health care facility] with the assistance of mortgage insurance under the National Housing Act; (c) to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation; (d) to acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of [the rental housing project or health care facility]; and (e) to borrow money, and issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien in furtherance of any or all of the objects of its business in connection with the [rental housing project or health care facility]

Powers

The corporation shall have the power to do and perform all things whatsoever set out in the PURPOSES section, and necessary or incidental to the accomplishment of said purposes.

The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement with the Secretary of Housing and Urban Development setting out the requirements of the Department.

b. Partnership Mortgagor—A copy of the partnership agreement should be

furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement and that the term of the partnership equals or exceeds the term of the Mortgage Loan. It should further contain a provision substantially as follows:

The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

c. Trust—any Trust Agreement before it is finally accepted generally should:

(1) Give the trustee the powers necessary to execute the note and mortgage;

(2) Specifically authorize the execution of the Regulatory Agreement;

(3) Contain nothing inconsistent with the Regulatory Agreement;

(4) Prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer of such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and

(5) Require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

G. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personalty pursuant to the Regulatory Agreement.

Q. UCC searches: The UCC search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

W. Survey: The survey must be signed, sealed and dated within 90 days of the closing.

LL. Bond documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. Moreover, all documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

OO. Docket search: The Docket search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

Opinions

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the opinion of Mortgagor's counsel. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the opinion as an exhibit. If the Mortgagor is an individual, paragraph one should be deleted from the opinion.

7. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. If

the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel. As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If the property is an elderly housing project or a health care facility or if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the opinion will be limited as shown.

One or more UCC searches performed not more than 30 days prior to the date of the opinion of Mortgagor's counsel must be made and retained by the field counsel in the loan file.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the opinion letter. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel

• Mortgagor's counsel must opine as to the law of the Property jurisdiction and the state of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The opinion may be signed by an authorized person of the law firm, in that person's name.

Mortgagor's Certification

• A form of Mortgagor's Certification is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Mortgagor's Certification must be dated the same date as the Loan Documents.

For use in FHA Insured Transactions

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Guide for Opinion of Mortgagor's Counsel

[To be typed on firm letterhead]

[Insert date of endorsement]

Re: Project Name _____
FHA Project No. _____
Location _____
Mortgagor _____

[Mortgagee]
[Address]

[Mortgagee's Attorney]
[Address]

Federal Housing Commissioner
[Insert Appropriate Field Office Address]

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ [Insert Name of Mortgagor] (the "Mortgagor"), a _____, [Insert Type of Entity] organized under the laws of the State of _____ [Insert State] (the "Organizational Jurisdiction"), in connection with a mortgage loan (the "Loan") in the [original/increased] principal amount of _____ Dollars ($_____) from _____ [Insert Name and Type of Mortgagee] (the "Mortgagee") to the Mortgagor. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/refinance] a loan secured by that certain [multifamily housing/hospital/extended care facility/nursing home/board and care] _____ located in _____ [Insert County and State] (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described on Exhibit _____ [Attach Legal Description] (together with all improvements and fixtures thereon) (the "Property"). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), pursuant to a commitment for insurance [of advances or upon completion or for refinancing] issued to Mortgagee by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] ("FHA Commitment"). The Loan is being funded from _____ [Describe Financing Source, e.g., tax-exempt bonds/mortgage backed securities guaranteed by GNMA/participation certificates, etc.] The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by Mortgagee's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and HUD in making and insuring, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, counsel to Mortgagee and HUD. We [I] consent to reliance on this opinion by Mortgagee, counsel to Mortgagee, and HUD.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

A. The [Describe Organizational Documents, e.g. for corporations: certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s); for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.] of the Mortgagor (collectively, the "Organizational Documents");

B. The FHA Commitment [and assignment(s) thereof, if any];

C. The Commitment executed by the Mortgagee and accepted by the Mortgagor, dated _____, (the "Loan Commitment");

D. The Regulatory Agreement (_____) [Insert Appropriate Form No.] by and between HUD and the Mortgagor, dated _____, (the "Regulatory Agreement");

E. The Note (_____) [Insert Appropriate Form No.] in the original principal amount of _____ Dollars ($_____) or in the increased principal amount of _____ Dollars ($_____) by Mortgagor in

favor of Mortgagee, dated _____, (the "Note");

F. [The Mortgage or Deed of Trust] (_____ [Insert Appropriate Form No.]), executed by Mortgagor for the benefit of Mortgagee, granting a security interest in the Property, dated _____, (the "Mortgage");

G. [Insert the Number of UCC's to be Filed] Uniform Commercial Code Financing Statements executed by the Mortgagor as debtor and naming the Mortgagee and HUD as secured parties or as their interests may appear, to be filed in _____, [Insert Location(s)] (the Filing Offices), upon the [Describe Events] (the "Financing Statements");

H. The Security Agreement by and between Mortgagor and the Mortgagee, granting a security interest under the Uniform Commercial Code, in those items of personality described therein, dated _____, (the "Security Agreement");

[I. [To be Inserted If the Mortgage is on a Leasehold Estate] The Ground Lease executed by _____, [Insert Lessor] as lessor and Mortgagor as lessee recorded in the land records of _____, dated _____, (the "Ground Lease").]

[J. [To be Inserted for Construction/Rehabilitation Loans] The Building Loan Agreement (2441) executed by Mortgagee and Mortgagor, dated _____, (the "Building Loan Agreement").]

[K. [To be Inserted for Construction/Rehabilitation Loans] The Construction Contract [Lump Sum (2442) or Cost Plus (2442–A)] executed by _____ (the "General Contractor") and Mortgagor, dated _____ (the "Construction Contract").]

L. The Mortgagee's Certificate (2434), executed by the Mortgagee, dated _____.

M. The Mortgagor's Certificate (2433), executed by the Mortgagor, dated _____.

N. The Agreement and Certification (3305 or 3305A or 3306 or 3306A), executed by the Mortgagor, dated _____.

O. The Mortgagor's Oath (2478), executed by the Mortgagor, dated _____.

P. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit _____ (the "Mortgagor's Opinion Certification").

Q. A search conducted by _____ dated _____ [no earlier than 30 days before this opinion] of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").]

S. The Title Insurance Policy issued by _____ [acceptable company under HUD's regulations], together with all endorsements, and naming HUD and the Mortgagee as insureds as their interests may appear, dated _____, (the "Title Policy").

T. The following documents evidencing zoning compliance, _____, [Describe all Documents Fully] (the "Zoning Certificate").

U. The building permit(s) issued on _____ by _____ (the "Building Permit").

V. The following permits, _____, [Describe Permits] which are required for the operation of the project, issued by _____ on _____ ("Other Permits").

W. [The Surveyor's Plat or Survey showing completed project], prepared by _____, dated _____, (the "Survey").

X. The Surveyor's Certificate (2457), executed by _____, dated _____, (the "Surveyor's Certificate").

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the "Deferred Note").]

Z. [The Performance Bond (2452) and/or the Payment Bond (2452–A)] issued by the General Contractor to secure the payment by/performance of _____ and running to _____ or the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the "Assurance of Completion").

AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ [Insert Design and/or Construction Architect] and Mortgagor, dated _____, (the "Owner-Architect Agreement").

[BB. The Off-Site Bond (2479) issued by _____ to secure the completion of off-site work by _____ and running to the Mortgagee and HUD or Escrow Agreement for Off-Site Facilities (2446) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilities").]

CC. The documents _____ [Describe Fully] assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services").

DD. The Contractor's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the "Cost Breakdown").

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD or Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

GG. The Contractor's Prevailing Wage Certificate (2403–A) executed by _____, dated _____, (the "Contractor's Prevailing Wage Certificate").

HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgagor and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the "Request for Endorsement"). [Modify as Appropriate for Insurance Upon Completion, Refinancings, Etc.]

[II. The Operating Deficit Escrow executed by _____, dated _____, (the "Operating Deposit Escrow").]

[JJ. The Repair Escrow executed by _____, dated _____, (the "Repair Escrow").]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ [List Documents in Accordance With Instructions] (the "Bond Documents").]

MM. The Good Standing Certificate(s) issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated _____ [Date Inserted Must be Within 30 Days of the Date of Endorsement], (the "Good Standing Certificate").

NN. The certificate executed by _____ [Insert Architect or Other Professional], dated _____, (the "Certificate").

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is

located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the "Docket Search").

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the opinions set forth in this opinion on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Document, other than the Mortgagor (and any person executing any of the Documents on behalf of the mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents, which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents (and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Mortgagor's Opinion Certification, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Mortgagor's Opinion Certification, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

[To be used in cases where organizational documents were prepared by mortgagor's attorney]

1. The Mortgagor is a _____ [Insert Type of Entity] duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.]

[Or, if the mortgagor is a trust]

The Mortgagor is _____ [Insert Name of the Type of Trust] duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

[And, if the general partner of a partnership mortgagor is an entity]

The general partner of the Mortgagor is a _____ [Insert Type of Entity], duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____

[Insert Type of Entity] in the Property Jurisdiction].

[To be used in cases, principally refinancing, where organizational documents were not prepared by mortgagor's attorney]

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], the Mortgagor is a _____ [Insert Type of Entity] validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

[Or, if the mortgagor is a trust]

The Mortgagor is _____ [Insert Name of the Type of Trust] validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

[And, if the general partner of a partnership mortgagor is an entity]

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [ ], the general partner of the Mortgagor is a _____ [Insert Type of Entity], validly existing and in good standing under the laws of _____ [Insert State] [and is qualified to do business as a foreign _____ [Insert Type of Entity] in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. No authorization, consent, approval, permit, or other action by, or filing with, any Organizational and Property Jurisdictions or federal court or governmental authority, other than those that have been obtained, as disclosed on Exhibit _____, attached hereto, and those listed at Paragraphs _____ of this opinion [i.e. good standing certificate] are required in connection with the execution and delivery by the Mortgagor of the Loan Documents or the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitutes the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. To be inserted when any or all of the loan documents are not HUD approved forms or when HUD approved forms have been revised or modified in connection with the loan] The execution and delivery and receipt of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or the applicable statutes and regulations of HUD in effect on the date of the FHA Commitment.

[7. Insert for loans involving construction or rehabilitation] To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by, and referred to in the Construction Contract (the "Plans and Specifications").]

8. [Insert if there is no zoning endorsement incorporated into the title policy] The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

or

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. Use for new construction or substantial rehabilitation in cases where the department does not receive a certificate directly from the professional] Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

[Use for refinancings] Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Mortgagor's Opinion Certification, the execution and delivery of the Loan Documents will not: (i) Cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Mortgagor's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [to be inserted when mortgagor is not a sole-asset mortgagor] or any other properties of the Mortgagor] [, except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ [insert proper name of local land records office] of _____ [Insert County or City] of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are

required to be filed in order to perfect the Mortgagee's security interest in the Personalty.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. [[For use only if mortgagor is a trust] The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property Jurisdiction].

[16. [Use in Cases Involving Bond Financing] Based solely on the opinion of _____ [Insert Bond Counsel], dated as of the date hereof and attached hereto as Exhibit _____, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. [Use in cases where the development of the property is governed by an agreement with a public entity] Based upon our knowledge and the Mortgagor's Opinion Certification, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Appendix _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagee or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely on the Surveyor's Certificate and the Surveyor's Plat, flood insurance [is or is not] required pursuant to 12 U.S.C. 4012a(a); [insert if flood insurance is required. Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 12 U.S.C. 4012a(a);] and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of Mortgagee, its counsel and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

[FR Doc. 94–4823 Filed 3–2–94; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–786696

Applicant: International Crane Foundation, Baraboo, WI

The applicant requests a permit to export 6 Japanese (*Grus japonensis*) and 6 white-naped (*Grus vipio*) crane eggs to Khinganski Nature Reserve, Russia, for the purposes of enhancement of propagation and survival of the species.

PRT–785943

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood and tissue samples obtained opportunistically from animals that have been immobilized by the Malaysian Wildlife Department for various management studies. The samples will be imported for scientific analyses to enhance the propagation and survival of the species and will be obtained from the following species: flat-headed cat (*Felis planiceps*), Temminck's cat (*Felis temminckii*), clouded leopard (*Neofelis nebulosa*), marbled cat (*Felis marmorata*), orangutan (*Pongo pygmaeus*), proboscis monkey (*Nasalis larvatus*), gibbons (*Hylobates muelleri*), Sumatran rhino (*Dicerorhinus sumatrensis*), helmeted hornbill (*Rhinoplax vigil*), saltwater crocodile (*Crocodylus porosus*), tomistoma (*Tomistoma schlegelii*), and Asian elephant (*Elephas maximus*).

PRT–785556

Applicant: Matson's Laboratory, Milltown, MT

The applicant requests a permit to import up to 47 teeth from woods bison (*Bison bison athabascae*) that were obtained opportunistically from legally hunted animals and/or animals found dead for age determination to enhance the survival of the species through population studies.

PRT–676811

Applicant: U.S Fish and Wildlife Service, Regional Director—Region 2

The applicant requests an amendment to their current permit to include take activities for Barton Springs salamander (*Eurycea sosorum*) for the purpose of scientific research and the enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–702631

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 1

The applicant requests an amendment to their current permit to include take activities for Pacific Pocket Mouse (*Perognathus longimembris pacificus*) for the purpose of scientific research and the enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–786662

Applicant: Dallas Zoo, Dallas, TX

The applicant requests a permit to import two captive-born male gorillas (*Gorilla gorilla gorilla*) from the Metropolitan Toronto Zoo, Ontario, Canada, for the purpose of enhancement of propagation and survival of the species.

PRT–785956

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood samples obtained opportunistically from the black caiman (*Melanosuchus niger*), Apaporis river caiman (*Caiman crocodilus apaporiensis*), Yacare caiman (*Caiman crocodilus yacare*), and broad-snouted caiman (*Caiman latirostris*) while they have been immobilized by Peruvian scientists for various management studies. The samples will be imported for scientific analyses to enhance the propagation and survival of the species

PRT–785185

Applicant: Columbus Zoo, Powell, OH

The applicant requests a permit to export a pair of orangutans (*Pongo pygmaeus*) to the Parque Zoological Nacional, Santo Domingo, Dominican Republic for educational display to enhance the survival of the species.

PRT–787373

Applicant: George A. Robinson, Houston, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by E.L. Pringle, "Huntly Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–785649

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood samples from chimpanzee (*Pan troglodytes*) and Pygmy chimpanzee (*Pan paniscus*), gorilla (*Gorilla gorilla*), Northern white rhinoceros (*Ceratotherium simum cottoni*), and African elephant (*Loxodonta africana*) for the purpose of scientific research and enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority; 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 25, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4825 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

File No. PRT–786616.

Applicant: Marine World Africa USA, Vallejo, CA.

Type of Permit: Take for public display.

Name and Number of Animals: Up to 6—Walrus (*Odobenus rosmarus*).

Summary of Activity to be Authorized: The applicant requests a permit to take (permanently remove) from the wild up to 6 young walrus (2 males and 4 females less than 2 years of age) that are orphaned during Native Alaskan subsistence hunting in Alaska. Animals will be flown to Marine World Africa USA for public display purposes.

Source of Marine Mammals for Research/Public Display: Wild walruses located in Alaskan waters near St. Lawrence Island, Little Diomede Island, King Island and the Barrow/Wainwright region.

Period of Activity: From 1994 through 1999.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4826 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Olympic Experimental State Forest Management and Research Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) and Washington State Department of Natural Resources (WDNR) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS). This notice is being furnished pursuant to the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) regulations (40 CFR 1508.22). The Service will consider a proposal to recommend that the Secretary of Interior (Secretary) approve a management and research plan for the Olympic Experimental State Forest upon its submission by the WDNR. The Secretary will determine whether the plan provides for the conservation of listed species within the plan area, under the general provisions of Public Law 102–436 title II and the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

To satisfy both Federal and State environmental policy act requirements, the Service and WDNR are conducting joint scoping processes for the preparation of an EIS. Interested agencies, organizations, and individuals are encouraged to provide written comments on the issues which should be addressed in the EIS, to the Service or WDNR.

DATES: Written comments regarding the scope of the EIS should be received on or before April 4, 1994.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Curt Smitch, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C, Suite 101, Olympia, WA 98501. Please refer to File No. 94–021101 on all comments.

FOR FURTHER INFORMATION CONTACT: Informational materials and comments received to date will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Washington Department of Natural Resources, 1111 Washington St. SE, Olympia, WA 98504–7001; for appointment call Mary Ellen Birli at 206–902–1353.

Scoping workshops may be scheduled as a further opportunity for interested persons to comment on the scope of the EIS. Interested persons may contact Mary Ellen Birli at 206–902–1353 to receive information about additional opportunities for participation.

SUPPLEMENTARY INFORMATION: An experimental forest for state-managed lands on the Western Olympic Peninsula was recommended in 1989 by the Commission on Old Growth Alternatives—a citizens' advisory group with broad representation. The stated purpose was twofold: To test innovative methods of forest management designed to produce a sustained level of timber harvest while simultaneously protecting and restoring the forest ecosystem. The Olympic Experimental State Forest includes all state-owned lands on the western Olympic Peninsula, north of the Queets River. It is located in Clallam and Jefferson counties and totals 264,000 acres of forest lands.

The listing of the northern spotted owl (*Strix occidentalis caurina*) as "threatened" under the Act in 1990, required that activities in the area proposed for the Olympic Experimental State Forest comply with section 9 of the Act which prohibits the "take" of listed species. Such prohibition limits the range of options for experimentation and research available on the experimental forest. See also 50 CFR 17.31(a).

In October 1992, Congress passed legislation (Pub. L. 102–436, title II) specifically addressing the Olympic Experimental State Forest. The purpose of the legislation is:

"To assist the experimental management and research program being conducted by the State of Washington on State-owned trust lands on the western Olympic Peninsula in order to contribute to the conservation of the northern spotted owl, old growth ecosystems and fishery resources and to provide for a sustainable supply of timber and trust income in a manner that is consistent with these conservation objectives."

The WDNR is proposing to develop a plan for the operation of an experimental forest on state managed lands on the Olympic Peninsula. This planning effort is encouraged by federal legislation (Pub. L. 102–436 Title II) that allows the WDNR to develop an integrated plan for species conservation, research, and commodity production across the 264,000 acres of state managed forested lands on the Olympic Peninsula. The plan is intended to enable the WDNR to implement an experimental management and research program while continuing some timber harvest in a way that is consistent with the Act. The plan is to provide necessary guidance in the implementation of cooperative research projects, monitoring programs, and forest land management. The plan will be developed in consultation with the Washington State Department of Wildlife and the University of Washington's Olympic Natural Resources Center.

The WDNR will seek federal approval of its plan as called for in Public Law 102–436 Title II and as necessary to meet the applicable requirements of the Act, as necessary. Upon submission of the plan and public review and comment, the Secretary shall determine whether the plan provides for the conservation of the northern spotted owl in the experimental forest and whether it is consistent with northern spotted owl recovery goals. If the WDNR's plan for the experimental forest is approved by the Secretary, actions to implement it will not be considered a prohibited "taking" of the northern spotted owl pursuant to Public Law 102–436, title II, section 204(d).

One issue to be examined during the scoping is the effect of the plan on other listed species, such as the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and bald eagle (*Haliaecetus leucorephalus*), and possible methods of addressing these effects under the Act. Another issue to be examined is the effect of the plan on anadromous fish stocks found in this part of the Olympic Peninsula.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, 42 U.S.C., and implementing regulations.

(Notice: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Olympic Experimental State Forest Management and Research Plan.)

Dated: February 24, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 94–4836 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–046–4210–03–04; AZA 7878]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On March 11, 1992, the following public lands in Pima County, Arizona, were included in a Notice of Realty Action (NORA) published in the **Federal Register** at 57 FR 48 (pp. 8672) as possible selected lands in an exchange. That Notice of Realty Action is hereby canceled for the lands listed below. Instead, the lands have been examined and found suitable for classification for lease or conveyance to the Tucson Unified School District as an

addition to Hohokam Middle School site under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq*).

Gila and Salt River Meridian, Arizona

T. 15 S., R. 13 E.,
Sec. 19, E½NW¼NE¼NW¼,
NE¼SW¼NE¼NW¼.
Containing 7.50 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning, and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the materials.

4. All valid existing rights documented on the official public land records at the time of patent issuance.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tucson Resource Area, 12661 East Broadway Boulevard, Tucson, Arizona 85748.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the District Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a school site addition. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use or uses of the lands, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school site addition.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 18, 1994.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 94–4783 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey; Idaho

The plats of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 23, 1994.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, subdivisions of sections 25 and 26, and the boundaries of certain mineral surveys, and the survey of certain lots in sections 25 and 26, Township 4 North, Range 18 East, Boise Meridian, Idaho, Group No. 874, was accepted February 18, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 30, Township 4 North, Range 19 East, Boise Meridian, Idaho, Group No. 874, was accepted February 18, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: February 23, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–4884 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–360]

Decision Not To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation To Add Two Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of certain devices for connecting computers via telephone lines.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting complainant Farallon Computing, Inc.'s ("Farallon") motion to amend the notice of investigation to add two respondents to the investigation.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of U.S. Letters Patent 5,003,579.

On January 18, 1994, complainant filed a motion to amend the notice of investigation to add the following respondents to the investigation: Ji-Haw Industrial Co. Ltd., of Taiwan ("Ji-Haw"), and Tri-Tech Instruments Co. Ltd., of Taiwan ("Tri-Tech"). In requesting this action, Farallon stated that the identities of the two additional proposed respondents were not revealed until after the institution of this investigation. The Commission investigative attorney supported the motion. On February 2, 1994, the ALJ issued an ID (Order No. 2) granting complainant's motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in

connection with this investigation are or will be available for inspection during the official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4859 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–641 (Final)]

Ferrosilicon From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of ferrosilicon,[2] provided for in subheading 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to § 735(b)(4)(A) of the Act, that critical circumstances do not exist with respect to ferrosilicon imports from Brazil; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective August 12, 1993, following a preliminary determination by the Department of Commerce that imports of ferrosilicon from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 26, 1993 (58 FR 45120). The hearing was held in Washington, DC, on September 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 18, 1994. The views of the Commission are contained in USITC Publication 2722 (February 1994), entitled "Ferrosilicon from Brazil: Investigation No. 731–TA–641 (Final)."

Issued: February 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4879 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–356]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Mitsubishi Electric Corporation (Japan) and Mitsubishi Electronics America, Inc.

In the Matter of certain integrated circuit devices processes for making same, components thereof, and products containing same.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 25, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4878 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–358]

Commission Determination To Adopt the Administrative Law Judge's Initial Determination Denying the Motion of Complainant for Temporary Relief

In the Matter of certain recombinantly produced human growth hormones.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (Commission) has determined to adopt the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation denying complainant Genentech, Inc.'s motion for temporary relief.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. The following firms were named as respondents: Novo Nordisk A/S of Denmark; Novo Nordisk of North America, Inc. of New York; ZymoGenetics, Inc. of Seattle, Washington (collectively, the Novo respondents); Bio-Technology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, the BTG respondents). The Commission also provisionally accepted Genentech's motion for temporary relief. *Id.* The Commission terminated the temporary relief proceedings as to the Novo respondents on the basis of a consent order. 58 FR 60672 (November 17, 1993).

The presiding ALJ held an evidentiary hearing on temporary relief from December 13–18, 1993. On January 26, 1994, the ALJ issued an ID denying Genentech's motion for temporary relief. On February 7, 1994, the parties filed written comments concerning the ID. Parties filed reply comments on February 11, 1994. No government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.24(e).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4877 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–198 (Sub-No. 1)]

Policy Statement on Motor Contract Requirements Under the Negotiated Rates Act of 1993

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Policy statement.

SUMMARY: The ICC is issuing a policy statement (set forth below) explaining and interpreting new statutory requirements governing the form and minimum contents for transportation agreements executed by motor contract carriers. These new requirements are in section 6 of the Negotiated Rates Act of 1993 (Pub. L. 103–180) and apply to contracts entered into after March 3, 1994. The Commission does not plan to issue a further decision unless the comments expose issues that require additional clarification.

DATES: This policy statement is effective on February 28, 1994. Comments are due on April 4, 1994.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. MC–198 (Sub-No. 1), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–6373. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Section 6 of the Negotiated Rates Act of 1993 (NRA), added new statutory requirements governing the form, minimum contents, and retention period for transportation agreements executed by motor contract carriers, as well as regulatory auditing and enforcement by the Commission of contract carriage requirements. By this policy statement, we discuss these new requirements and explain how we interpret certain of the new provisions.

Background

The new requirements are similar to our prior regulations at 49 CFR 1053.1 (1991 ed.). They required contract carriers to enter into bilateral written contracts that (*inter alia*): (a) Named the particular shipper or shippers involved, and (b) covered a series of shipments during a stated period of time in contrast to separate contracts of carriage governing individual shipments. A number of defunct carriers have sought to disavow their own contract carriage agreements by alleging technical noncompliance with those regulations.[1] In an effort to prevent such a misuse of its regulations, the Commission repealed those regulations, in Contracts for Transportation of Property, 8 I.C.C.2d 520 (1992) (*Contracts*), *app. pending sub nom. Central States Motor Freight Bureau, Inc.* v. *ICC*, Nos. 92–1258 *et al.* (D.C. Cir. argued June 12, 1992; petitioners' motions to dismiss as moot pending). In section 6 of the NRA, Congress adopted the essential requirements of the repealed regulations. Congress' stated objective was "to limit the potential for unwarranted future undercharge claims." H. Rep. 103–359, 103d Cong., 1st Sess. 10 (1993).

Requirements of Section 6 of the NRA

Section 6(a) of the NRA contains the new regulatory requirements to be codified at 49 U.S.C. 10702(c).[2] New section 10702(c)(1) of the Interstate Commerce Act requires that, for motor transportation contracts entered into after March 3, 1994 (i.e., 90 days after enactment of the NRA), there must be "a written agreement, separate from the bill of lading or receipt." This requirement is identical to the writing requirement in former 49 CFR 1053.1. It is important to remember that the signed agreement must be in place before the transportation begins.

New section 10702(c)(2) specifies the minimum contents of the agreements. Section 10702(c)(2)(A) requires that the agreement "identify the parties thereto." This requirement follows our requirement in former 49 CFR 1053.1 that the contract provide for transportation for a particular shipper or shippers. Signatories to the agreement must be persons authorized to bind the parties to the mutual undertakings described in the contract.

Section 10702(c)(2)(B) requires that the agreement "commit the shipper to tender and the carrier to transport a series of shipments." This reflects the longstanding definition at 49 U.S.C. 10102(15)(B), which limits contract carriage of freight to "transportation of property for compensation under *continuing agreements* with one or more persons" (emphasis added). A long line of Commission decisions addresses the meaning of "a series of shipments" in the context of a continuing agreement. See, e.g., Interstate Van Lines, Inc.—Extension—Household Goods, 5 I.C.C.2d 168, 185–86 (1988) (Interstate Van Lines). On the one hand, isolated shipments or so-called spot market transportation are not sufficient to satisfy the series of shipments standard. See, e.g., *Global Van Lines, Inc.* v. *ICC*,

[1] *See, e.g., General Mills, Inc.—Petition for Declaratory Order*, 8 I.C.C.2d 313 (1992), *aff'd sub nom. United Shipping Co.* v. *General Mills, Inc.*, Adv. No. 4–89–345 (Bankr. D. Minn. Aug. 27, 1992) (*In re United Shipping Co.*, No. BKY 4–88–533(D)), *aff'd*, No. 3–92–0668 (D. Minn. Dec. 24, 1992), *app. pending sub nom. The Bankruptcy Estate of United Shipping Company, Inc.* v. *General Mills, Inc.*, No. 93–1232MNST (8th Cir. argued Oct. 11, 1993).

[2] In sections 6(b) and 6(c) of the NRA, Congress amended 49 U.S.C. 11901(g) and 11909(b), respectively, to provide for civil and criminal penalties for violations of these new requirements.

804 F.2d 1293, 1300 (D.C. Cir. 1986). On the other hand, the standard can be met by a short-term agreement[3] or a so-called requirements contract that contemplates shipper tender and carrier transportation obligations for specified traffic regardless of its frequency or amount. In the first rulemaking to address the subject, the Commission made clear that "the contracts need not cover long periods of time or fixed amounts of traffic." Contracts of Contract Carriers, 1 M.C.C. 628 (1937). In determining whether an agreement meets the series of shipments standard, we will continue to be guided by the essential commitment between the parties that transportation be offered and accepted on a continuing basis. *See Zoneskip, Inc.* v. *UPS, Inc. and UPS of America, Inc.*, 8 I.C.C.2d 645 (1992) (*Zoneskip*), *aff'd sub nom. Zoneskip, Inc.* v. *United States*, 998 F.2d 1007 (table) (3d Cir. 1993).

Section 10702(c)(2)(C) requires that the written agreement "contain the contract rate or rates for the transportation service to be provided or being provided." Neither Congress nor the Commission has previously required that the particular rate be specified. In interpreting this new requirement, we must accommodate both the purpose of the NRA, in reforming contract carrier requirements, and the policy of the Motor Carrier Act of 1980 (1980 Act) of "remov[ing] many of the obstacles that (previously) kept motor contract carriers from realizing their full potential." H. Rep. 96–1069, 96th Cong., 2d Sess. 22 (1980), reprinted in 1980 U.S. Code Cong. & Ad. News 2283 ("House Report"). Our goal is to protect the integrity of contract carriage without harming contracting parties or competition.

Accordingly, we interpret this new requirement to mean that either a fixed rate or a methodology for determining the rate must be in or appended to the contract. This comports with the rate requirements for common carrier tariffs, as articulated in *Regular Common Conference* v. *United States*, 793 F.2d 376, 379 (1986) (RCCC), which require that a common carrier tariff show on the face of the tariff either the per-unit rate or how the per-unit rate is determined. For example, contracts for annual volume or incentive rates are permissible as long as an objective methodology for computing the rate is provided in the agreement itself. References may be made in the agreement to tariffs or other readily available publications or materials.

We believe the *RCCC* standard is appropriate for contract rates. Under this standard, the parties to the agreement can maintain pricing flexibility while achieving the Congressional goal of guarding against a future challenge to the existence or level of the contract rate. The price will be determinable without unduly interfering with the pricing of contract carriage services.

Finally, section 10702(c)(2)(D) requires that the agreement "(i) state that it provides for the assignment of motor vehicles for a continuing period of time for the exclusive use of the shipper; or (ii) state that the service is designed to meet the distinct needs of the shipper." This reflects the longstanding alternative statutory criteria for contract carriage at 49 U.S.C. 10102(15)(B) (i) and (ii). As we read this language, the agreement need not detail how it meets these statutory criteria, but rather simply must specify which of the two alternative statutory tests is met. We do not believe that Congress meant to make contract drafting an unduly burdensome task or to require a contract to contain legal argument. The requirement, however, does serve to remind parties of the statutory criteria that must be met to qualify as contract carriage.

Those criteria (dedication of equipment or distinct needs) are flexible, and how they are satisfied can be tailored to the particulars of each contracting situation. As interpreted by the Commission, "* * * assignment of equipment to the exclusive use of the shipper does not necessarily require that specific vehicles be used for one shipper to the exclusion of all others * * * [but] the contracting shippers must have primary access to the equipment, may view it as their own, and need not compete for its use among themselves or with others", *Continental Contr. Car. Corp. Ext.—Modif. of Permit*, 121 M.C.C. 882, 900 (1975).

The distinct needs alternative has been the subject of numerous Commission and court decisions. Distinct needs can be price and/or service features tailored to the customer's requirements. For example, the distinct needs of a shipper may be met if: "the new service is better tailored to fit the special requirements of a shipper's business, the length of its purse, or the select nature of the delivery service that is desired." *ICC* v. *J–T Transport Co.*, 368 U.S. 81, 93 (1961). Other services that have been found to meet distinct needs are: Special pickup and delivery requirements; special documentation requirements; shipper-carrier liaisons; specialized liability, claims, or credit terms; incidental transportation services; and special rate considerations. See, e.g., Interstate Van Lines, 5 I.C.C.2d at 187–89.

Transportation services that meet a contract customer's distinct needs need not be unique. They may be services that common carriers offer to their customers as well.[4] The issue is whether the services provided are tailored to meet the customer's distinct needs in the context of an on-going contractual relationship. See Zoneskip, 8 I.C.C.2d at 653–55.

Section 10702(c)(3) introduces a new requirement that written agreements for contract carriage must be retained by the carrier for the life of the agreement and for 3 years thereafter, and that a copy be made available to the Commission upon request. The latter requirement relates to the new statutory directive in section 10702(c)(4) that we "conduct periodic random audits to ensure that motor contract carriers are complying with [the requirements of section 10702(c)] and are adhering to the rates set forth in their agreements." We will be conducting these audits, on a random basis, beginning in May 1994.

To purchase a copy of the decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.] Environmental and Energy Considerations.

This action does not require environmental review because it does not have the potential for significant environmental impacts. 49 CFR 1105.6(c)(7).

Regulatory Flexibility Analysis

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), we need not make the small business impact examination required by the RFA. Nevertheless, we welcome any comments regarding the small entities considerations embodied in the RFA.

Decided: February 15, 1994

[3] As far back as 1937, the Commission found "an agreement to transport property extending for a week, with a further provision that it will continue from week to week until terminated, is an agreement for continuous transportation." Edward Webb, Jr. Contract Carrier Application, 1 Fed. Carr. Cas. (CCH) 7037 (1937).

[4] *Central & So. Motor Frt. Tariff Ass'n* v. *United States*, 757 F.2d 301, 311 & n.55 (D.C. Cir.), *cert denied*, 474 U.S. 1019, 106 S. Ct. 568 (1985) (decision that exempted motor contract carriers from our tariff filing requirements).

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4908 Filed 3–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in Clean Water Act Case: United States, et al. v. Wayne County, Michigan, et al.

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on February 11, 1994, a proposed Consent Decree in *United States, et al.* v. *Wayne County, Michigan, et al.* (Civ. No. 87–70992) was lodged in the United States District Court for the Eastern District of Michigan.

The United States filed the complaint commencing this enforcement action in 1987, under the Clean Water Act ("Act"), 33 U.S.C. Section 1251 *et seq.*, alleging violations of Act and the National Pollution Discharge Elimination System ("NPDES") Permit that applies to the waste water treatment plant ("Plant") owned and operated by Wayne County, Michigan, and located at 797 Central Ave, Wyandotte, Michigan. The State of Michigan is a co-Plaintiff, and fourteen units of local government served by the Plant are named as Defendants along with Wayne County.

The United States, State, and all Defendants are signatories to the proposed Consent Decree, under which the Defendants shall design, construct, operate, and maintain significant, additional facilities—construction of which is presently estimated to cost about $230 million. These facilities will improve both the quality and capacity of treatment provided by the Plant and also give the Plant significant transport and storage capacity—in the form of underground tunnels and above-ground equalization basins—for waste water that Plaintiffs believe is bypassed without treatment into the waters of the United States. The Decree also requires that Wayne County pay a civil penalty of $413,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Wayne County, Michigan, et al.*, DOJ Ref. #90–5–1–1–2766.

The proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West Lafayette Boulevard, Detroit, Michigan, and at the offices of the U.S. Environmental Protection Agency, Region 5, Office of Regional Counsel, 111 West Jackson Blvd., Chicago, Illinois. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–4785 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 92–54]

Stanley Alan Azen, M.D., Revocation of Registration

On May 19, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Alan Azen, M.D. (Respondent), of Los Angeles, California. The Order to Show Cause proposed to revoke Dr. Azen's DEA Certificate of Registration, AA8786329, under 21 U.S.C. 824(a)(2) and (a)(4), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on Los Angeles, California, beginning on January 6, 1993. On October 18, 1993, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

On November 2, 1993, the Respondent filed exceptions to Judge Bittner's opinion pursuant to 21 CFR 1316.66, and on November 18, 1993, the administrative law judge transmitted the record to the Acting Administrator. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent is an emergency room physician who received his medical degree in 1978 from Loma Linda University of Medicine in Loma Linda, California. Following an internship at the University of Southern California, and his service of two residencies in emergency medicine and internal medicine, Respondent worked at the Medical Center of North Hollywood from 1982 until 1991, and as of the date of the administrative hearing was employed at Pacifica Hospital in Los Angeles.

The administrative law judge found that on September 20, 1990, Los Angeles Police Department officers received a report that a woman had died at Respondent's home, apparently from a drug overdose. The administrative law judge found that when the officers arrived at the Respondent's residence, they were advised by the Respondent that the deceased was his girl friend, and that earlier in the evening Respondent and the deceased had consumed alcohol, smoked marijuana, and snorted cocaine.

One of the officers present at Respondent's house on that evening testified at the administrative hearing that the police officers found inside Respondent's home two 5- by 7-inch cards with white powder on them and four small straws in a trash can, powder on the bedboard, and glasses containing what appeared to be alcohol residue. The officer further testified that although the items were seized, to his knowledge, no tests were conducted on them.

The administrative law judge found that as a result of reports regarding the death of Respondent's girl friend, the Medical Board of California (Board) initiated an investigation of the Respondent. One of the Board investigators that participated in the investigation also testified at the administrative hearing. Interviews were conducted of various law enforcement officials, including the pathologist who examined the Respondent's deceased girl friend. The pathologist estimated that, at the time of the girl friend's death, there was approximately 20 times a fatal quantity of cocaine in her system, and, in addition, a large quantity of cocaine metabolites. The Board investigator also interviewed the Los Angeles County coroner, who found a large amount of cocaine in the deceased's personal property. The

coroner further stated that Respondent told the coroner that Respondent and the deceased commonly used cocaine and alcohol on their days off.

The Board investigator interviewed the sister of the deceased, who revealed to the investigator that she used cocaine with Respondent and the deceased on numerous occasions. The deceased's sister informed the Board investigator of her knowledge that Respondent sold cocaine and that she had purchased it from him in the past.

The Board investigator also interviewed two acquaintances of the Respondent, both of whom admitted purchasing cocaine from the Respondent on various occasions. One of the individuals stated that for a two to three year period, Respondent was his sole source of cocaine, that he purchased cocaine in half gram quantities from the Respondent, and that the Respondent made no profit from his sales. The individual went on to state that Respondent had a very high tolerance for cocaine, and carried a small vial of it with him, however he never saw Respondent use cocaine while working.

The Government also presented the testimony of a detective of the Narcotics Division of the Los Angeles Police Department regarding his conversations with the sister of the deceased. The sister told the detective that she purchased cocaine from the Respondent on several occasions; that Respondent sold cocaine to employees of the hospital where he was employed; and that her sister (the decreased) had access to the safe where Respondent kept his cocaine.

The administrative law judge found that in March 1991, the deceased's sister, acting as a confidential informant, attempted a controlled purchase of cocaine from the Respondent. Prior to going to Respondent's home on March 29, 1991, the detective searched the sister's clothing and car, and provided her with $100.00, however, the sister was not searched because there were no female officers on duty. The detective also conceded at the hearing that the informant's shoes were not searched, nor was there a search of the trunk or the engine compartment of her car.

The sister was observed going into Respondent's home where she remained for 20 to 30 minutes. After leaving Respondent's home, she met the detective at a pre-arranged location and turned over two containers of white powder, which later tested positive for cocaine. She told the detective that she paid the Respondent $60.00 for the cocaine.

On April 5, 1991, the Respondent was searched pursuant to a search warrant. The search revealed an amber glass vial that contained a white powder resembling cocaine. Respondent was then arrested, and allegedly stated to the arresting officer, that, "I'm just a recreational user. People don't go to jail for using cocaine." Respondent later stated, "its not my cocaine. I just store it for someone. He gives me cocaine for allowing him to store it in my house."

A search was then conducted of Respondent's house which revealed a safe which contained, among other things, two one-gram scales commonly used to weigh and package cocaine, a clear plastic bag containing a substance which was later confirmed to be two ounces of cocaine, as well as cocaine residue on various other items. A quantity of cocaine was also obtained after scraping screens, grinders, and scales found in the safe. In addition, 19 grams of marijuana were seized from the bedroom. Respondent was arrested and charged with the transportation and possession of cocaine.

On April 16, 1991, in the Municipal Court of Los Angeles Judicial District, a four-count felony complaint was filed against the Respondent charging him with the sale and possession of a controlled substance. Respondent pled *nolo contendere* to one felony count of simple possession of a controlled substance on November 15, 1991. The Superior Court of California, County of Los Angeles convicted Respondent and sentenced him to 180 days in county jail, and three years probation. A conviction following a plea of *nono contendere* is a "conviction" within the meaning of 21 U.S.C. 824(a)(2). *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2nd Cir. 1974).

The Respondent testified at the administrative hearing that he first experimented with marijuana and cocaine in the 1970's and became a regular cocaine user during the 1980's. Respondent further testified that during the years of his cocaine use, his house served as a gathering place for himself, his live-in girlfriend, her sister, as well as several of their friends.

Respondent testified that he never sold cocaine to anyone, and that those individuals that stated that Respondent sold them cocaine, all had a motivation to lie, and make Respondent appear responsible for his girlfriend's death.

Respondent testified that he briefly participated in the California Medical Board's diversion program for impaired physicians, however he stated that he was rejected from the program because of pending criminal charges against him. Respondent also testified to his participation in a drug rehabilitation program at the Betty Ford Clinic starting in April 1991, and that during his six months in the program he never tested positive for drugs.

After his conviction and as part of his probation, Respondent was enrolled in a drug rehabilitation program and was subjected to random urinalysis from November 1991 until December 1992. None of these random tests revealed drug use. Respondent's probation officer testified that she would recommend discontinuing drug testing for Respondent because he had met the criterion of six months of negative drug tests.

In December 1991, the Board investigator received a letter from a medical consultant for the Medical Board, advising that Respondent's case should be referred to the Office of the Attorney General for administrative action against Respondent's medical license. The consultant further stated that he considered Respondent's rehabilitative attempts insufficient to overcome his more than 20 year addiction to drugs. On April 1, 1992, the Medical Board filed an accusation against Respondent, and a supplement thereto was filed on May 26, 1992. The accusation alleged that Respondent was subject to disciplinary action for using, possessing and distributing cocaine. At present, no further action has been taken by the Board.

At the hearing in this matter, physicians who have supervised Respondent testified on Respondent's behalf. They testified to Respondent's professionalism and exemplary abilities.

Pursuant to 21 U.S.C. 824(a)(2), the Administrator may revoke a DEA Certificate of Registration if the registrant has been convicted of a felony relating to controlled substances. Pursuant to 21 U.S.C. 823(f) and 824(a)(4) the Administrator may revoke a registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

"(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that the Respondent had been convicted of a felony offense relating to controlled substances, and therefore grounds exist to revoke his DEA Certificate of Registration pursuant to 824(a)(2). In considering whether grounds exist to revoke Respondent's registration pursuant to 21 U.S.C. 824(a)(4), the administrative law judge found factors one, three, four and five listed in 823(f) relevant. Factor one is applicable by virtue of the California Medical Board's filing of an Accusation and Supplemental Accusation against the Respondent. Factor three is applicable to Respondent's felony conviction, and factors four and five were found relevant based upon Respondent's abuse and alleged unlawful sale of controlled substances, as well as the subsequent related criminal charges.

The administrative law judge concluded that the Government did not prove by a preponderance of the evidence that the Respondent sold cocaine to his girlfriend's sister on March 29, 1991. The administrative law judge made this determination based upon the fact that neither the deceased's sister nor her car was thoroughly searched prior to her entering Respondent's house; that the alleged purchase was neither seen nor heard by law enforcement personnel; and that the sister of the deceased had a reason to lie.

The administrative law judge found that the record clearly established that Respondent has abused controlled substances for many years. The administrative law judge also found that there was insufficient evidence to conclude that Respondent has recognized and dealt with the severity of his problem, or that he has progressed in his recovery to the extent that he should be permitted to continue to hold a DEA registration. Based upon evidence of Respondent's felony conviction and past drug abuse, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied.

The Respondent filed exceptions to the administrative law judge's recommendation. The Respondent argued in part: That the administrative law judge's recommendations were inconsistent with the testimony given by Respondent, particularly as it related to the duration of Respondent's use of cocaine and marijuana, and the extent of the use of cocaine by Respondent's friends and acquaintances while at his home; that although the administrative law judge concluded that the Government failed to establish that a controlled buy took place, the administrative law judge nevertheless made unnecessary references to events surrounding its occurrence; that the Respondent has demonstrated a lifelong commitment to drug rehabilitation based in part on his nearly three year successful participation in a strict and monitored regimen of random drug testing administered through the Probation Office of Los Angeles County; that based upon the legislative intent of the public interest amendment to the Controlled Substances Act, felony convictions are not per se violations since Respondent's crime did not involve abuse of prescription drugs; statements relied upon by the administrative law judge regarding Respondent's insufficient attempts at drug rehabilitation in light of his 20 year drug addiction, were based on faulty and incomplete evidence.

The Acting Administrator having considered the entire record adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling, in part. The Acting Administrator concurs with the Respondent's exception to the administrative law judge's finding of fact regarding testimony attributed to the Respondent of his friend's and acquaintances' daily partaking of food, drink, and cocaine while at Respondent's home. While the record is not clear as to the exact time Respondent starting using cocaine, it is clear that he abused drugs for a significant period of time. Additionally, the record does not support Respondent's allegations regarding the administrative law judge's reliance on factors involving the alleged controlled buy. Finally, the record does not show that the Respondent has demonstrated a life long commitment to drug rehabilitation, nor that the administrative law judge, in making her recommendation, unduly relied upon the conclusions of the California Medical Board consultant that the Respondent's rehabilitative attempts were insufficient to overcome his 20 year addiction to drugs.

Respondent further argued that his felony convictions are not per se violations since his crime did not involve improper prescribing of controlled substances. DEA Administrators have consistently held that controlled substance-related felony convictions need not involve the misuse of a DEA registration to justify revocation of the registration or denial of an application for registration. See *William H. Carranza, M.D.*, Docket No. 84–23, 51 FR 2771 (1986), *Paul Stepak, M.D.*, 51 FR 17556 (1986).

Respondent's history of non-compliance with the laws relating to controlled substances speaks for itself. The Respondent not only admitted to a long history of drug abuse, but he also admitted to using cocaine and marijuana with friends, including his use of these controlled substances on an occasion when his girlfriend died as a result of cocaine use. The totality of the facts leads to the conclusion that the continued registration of Dr. Azen would be inconsistent with the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA8786329, issued to Stanley Alan Azen, M.D., be and it hereby is, revoked, and any pending applications be, and they hereby are, denied. This order is effective March 3, 1994.

Dated: February 25, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–4886 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–09–M

Frank N. Beckles, M.D.; Revocation of Registration

On October 29, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Frank N. Beckles, M.D., of 923 E Street, SE., Washington, DC 20003. The Order to Show Cause proposed to revoke Dr. Beckles' DEA Certificate of Registration, BB0922674, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

The Order to Show Cause was served on Dr. Beckles on November 2, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Beckles. The Drug Enforcement Administration has received no response from Dr. Beckles or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Acting Administrator finds that Dr. Beckles has waived his opportunity for

a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Acting Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Acting Administrator finds that on January 9, 1991, the District of Columbia Department of Consumer and Regulatory Affairs, Board of Medicine (Board) issued to Dr. Beckles, a "Notice of Intent to Revoke License", and an amendment thereto, was issued on April 16, 1991. The notices alleged charges of professional incompetence, willful and careless disregard of the health, welfare, and safety of a patient, and failure to conform to the prevailing standards of acceptable medical practice.

Following a settlement conference on May 1, 1991, Dr. Beckles informed the Board of his intent to surrender his license to practice medicine, and on June 18, 1991, Dr. Beckles consented to surrender his license to practice medicine in the District of Columbia, effective June 30, 1991. As a result of Dr. Beckles' surrender of his medical license, on July 10, 1991, the Board ordered the revocation of Dr. Beckles' license to practice medicine, and ordered Dr. Beckles not to seek reinstatement of his license.

The Acting Administrator finds that as of July 10, 1991, Dr. Beckles' license to practice medicine in the District of Columbia has been revoked, and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Beckles' DEA Certificate of Registration must be revoked. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BB0922674, previously issued to Frank N. Beckles, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 3, 1994.

Dated: February 25, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94-4887 Filed 3-2-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canterbury Coal Co.

[Docket No. M-94-18-C]

Canterbury Coal Company, R.D. 1, Box 119, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.380(d)(5) (escapeways; bituminous and lignite mines) to its DiAnne Mine (I.D. No. 36-05708) located in Armstrong County, Pennsylvania. The petitioner proposes to bypass a return airshaft and direct its alternate or secondary escapeway past the return airshaft to the mine slope; and to instruct all personnel instructed on escapeway and escape procedures upon entering the mine. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Utah Fuel Co.

[Docket No. M-94-19-C]

Utah Fuel Company, P.O. Box 719, Helper, Utah 84526-0719 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Skyline Mine No. 1 (I.D. No. 42-01435); and its Skyline Mine No. 3 (I.D. No. 42-01566) both located in Carbon County, Utah. The petitioner proposes to continue utilizing the five-foot wide stairways at overcasts in the secondary escapeway which was installed prior to November 16, 1992. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Consolidation Coal Co.

[Docket No. M-94-20-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania has filed a petition to modify the application of 30 CFR 75.364(a)(2)(iii) (weekly examination) to its Buchanan No. 1 Mine (I.D. No. 44-04856) located in Buchanan County, Virginia. Due to deteriorating roof conditions in the Northeast bleeder system, traveling this area in its entirety would be unsafe. The petitioner proposes to establish bleeder evaluation points #1, #2, #3, #4, and #5 to monitor the air as it enters and exits the affected area; to relocate bleeder evaluation points #1 and #2 with each new longwall panel; to have a certified person examine for the quantity, quality and direction of the air on a weekly basis at each bleeder evaluation point and record the results of examinations in a book kept on the surface for inspection by all interested persons; and to maintain and monitor the evaluation points until the affected area is sealed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Murphy's Branch, Inc.

[Docket No. M-94-21-C]

Murphy's Branch, Inc., P.O. Box 185, Thorpe, West Virginia 24888 has filed a petition to modify the application of 30 CFR 75.364(b) (1) and (5) (weekly examination) to its No. 2 Mine (I.D. No. 46-07452) located in McDowell County, West Virginia. Due to deteriorating roof conditions in the No. 2 intake entry from the mine portal inby 1 break, the area cannot be traveled safely. The petitioner proposes to travel the airway up to the first crosscut which is 100 feet from the mine portal; to install man doors at the No. 1 crosscut between the No. 2 entry and both the No. 1 return entry and the No. 3 belt entry (secondary escapeway); to install a box check between the No. 1 and No. 2 crosscut in the No. 3 belt entry and then vent the belt air to the return in the No. 2 crosscut; to prohibit travel in the affected area; to examine the air quality inby the No. 1 crosscut in the No. 2 entry on a weekly basis and record the results in an appropriate book; and to provide training and self-contained self-rescuers to all employees. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Murphy's Branch, Inc.

[Docket No. M-94-22-C]

Murphy's Branch, Inc., P.O. Box 185, Thorpe, West Virginia 24888 has filed a petition to modify the application of 30 CFR 75.380(b)(1) and (f)(1) (escapeways; bituminous and lignite mines) to its No. 2 Mine (I.D. No. 46-07452) located in McDowell County, West Virginia. Due to deteriorating roof conditions in the No. 2 intake entry from the mine portal

inby 1 break, the area cannot be traveled safely. The petitioner proposes to travel the airway except for the 100 feet from the mine portal to the first crosscut; to install man doors at the No. 1 crosscut between the No. 2 entry and both the No. 1 return entry and the No. 3 belt entry (secondary escapeway); to install a box check between the No. 1 and No. 2 crosscut in the No. 3 belt entry and then vent the belt air to the return in the No. 2 crosscut; to prohibit travel in the affected area; to examine the air quality inby the No. 1 crosscut in the No. 2 entry on a weekly basis and record the results in an appropriate book; and to provide training and self-contained self-rescuers to all employees. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Mountain Coal Co.

[Docket No. M–94–23–C]

Mountain Coal Company, 555 Seventeenth Street, Denver, Colorado 80202 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification to allow the width of the alternate escapeway in the belt entry for each longwall panel to be maintained at a width of a minimum of 48 inches for a maximum distance of 1,050 feet immediately outby the stageloader; to designate the intake entry as the primary escapeway and the belt entry as the alternate escapeway with both escapeways on intake air and maintained to a minimum of 6 feet in width for their entire distance, except for a distance of maximum of 1,050 feet in the alternate escapeway beginning at the stageloader. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. AKZO Salt, Inc.

[Docket No. M–94–06–M]

AKZO Salt, Inc., 3846 Retsof Road, P.O. Box 91, Retsof, New York 14539 has filed a petition to modify the application of 30 CFR 57.19073 (hoisting during shift changes) to its Retsof Mine (I.D. No. 30–00662) located in Livingston County, New York. The petitioner proposes to continue to conduct hoisting operations during shift changes in strict compliance with the conditions of a previous variance that required the man cage to be completely enclosed, i.e., the gaps above and below the upper materials handling doors on both sides of the cage would be closed with metal plate at least 3/16-inch thick; to make future repairs to or replacements of the man cage and other components of the hoisting system in such a manner and to such specifications so as to ensure performance characteristics equivalent to or greater than those of the man cage in use at the time the variance was originally granted. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 4, 1994. Copies of these petitions are available for inspection at that address.

Dated: February 23, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–4909 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

[Docket No. NRTL–2–89]

American Gas Association Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Current Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the American Gas Association Laboratories' application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The American Gas Association Laboratories (AGA) previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 48166, 11/21/89), and was so recognized (see 55 FR 23312, 6/7/90).

Notice is hereby given that AGA's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the thirty-eight test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–2–89), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

The addresses of the laboratories covered by this expansion of recognition are:

American Gas Association Laboratories, Cleveland Laboratory, 8501 East Pleasant Valley Road, Independence (Cleveland), Ohio 44131; and,

American Gas Association Laboratories, Los Angeles Branch Laboratory, 1425 Grande Vista Avenue, Los Angeles, California 90023.

Final Decision and Order

Because the test standards AGA requested in its application for expansion of its accreditation were in a category different from those for which it was originally accredited, an on-site evaluation of the Cleveland Laboratory [Ex. 6A(1)] and a follow-up survey of the Los Angeles Branch Laboratory [Ex. 6A(2)] were conducted. The results were discussed with the applicant who responded with appropriate corrective action and clarification to the comments and recommendations made as a result of the survey of the Cleveland Laboratory [Ex. 6B]. The final on-site review report [Ex. 6] and the OSHA staff recommendation were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of AGA's application together with a positive preliminary finding was published in the **Federal Register** on September 3, 1993 (58 FR 47000–47001). Interested parties were invited to submit comments.

There were no responses to the **Federal Register** notice of the AGA

application and preliminary finding (Docket No. NRTL–2–89).

Based upon the facts found as part of the American Gas Association Laboratories original recognition, including details of necessary test equipment, procedures, and special apparatus of facilities needed, adequacy of staff, the application(s) and documentation submitted by the applicant (see Exhibit 5), the OSHA staff finding including the original on-site review report, as well as the evaluation of the current request (see Exhibit 6), OSHA finds that the American Gas Association Laboratories has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the American Gas Association Laboratories recognition is hereby expanded to include the 38 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 38 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

AGA has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 296—Oil Burners
ANSI/UL 353—Limit Controls
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 484—Room Air Conditioners
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Household Electric Ranges
ANSI/UL 873—Temperature-Indicating and -Regulating Equipment
UL 991—Tests of Safety-Related Controls Employing Solid-State Devices
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1096—Electric Central Air-Heating Equipment
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
ANSI/UL 1484—Residential Gas Detectors
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

Note—Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The American Gas Association Laboratories must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which: (1) Is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program; or (2) makes use of reciprocal testing from another non-NRTL.

The Occupational Safety and Health Administration shall be allowed access to AGA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If AGA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

AGA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, AGA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

AGA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

AGA will continue to meet the requirements for recognition in all areas where it has been recognized; and

AGA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on March 3, 1994, and will be valid until June 7, 1995, (a period of five years from the date of the original recognition, June 7, 1990), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 25th day of February, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4896 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the Canadian Standards Association for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 2, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the Canadian Standards Association (CSA) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition of the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire (Montreal), Quebec H9R 5E8, Canada.
Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond (Vancouver), British Columbia V6V 2N9, Canada.
Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada.
Canadian Standards Association, Moncton Facility, 40 Rooney Cresent, Moncton, New Brunswick E1E 4M3, Canada.
Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada.

CSA originally applied for recognition as an NRTL in 1989. In order to expedite the recognition procedure, CSA subsequently amended its application to allow the Agency to follow a multi-phase approach. Thus CSA requested initial recognition for its Rexdale (Toronto) facility only and requested that the scope of the application be limited to in-house testing only. CSA's Rexdale (Toronto) facility was accredited by OSHA as an NRTL on December 24, 1992 (57 FR 61452). The second phase of the CSA recognition involves the CSA facilities listed above and this recognition would also be limited to in-house testing only. It is contemplated that recognition of CSA's overseas facilities will be handled separately in a third phase in the future.

Regarding the merits of this application, the Canadian Standards Association contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

CSA's application contains sections dealing with background and history; the Certification and Testing (C&T) Division structure; affiliation including a statement of independence; personnel, including experience and expertise, training, a list of key personnel, position descriptions and resumes; the certification process, including testing and evaluation, certification, reports and records and the service agreement; the field services program, including follow-up inspections, re-examination testing and field monitoring; certification services, including prototype (model) certification; testing experience, including recognition by other bodies; control programs, including the quality assurance program, control of technical and quality records, handling and storage/packaging and shipping, and test procedures; laboratory test equipment and calibration of this equipment; facilities; and, finally, CSA's appeal process, the comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter.

Montreal (Pointe Claire) Facility

The Montreal (Pointe Claire) facility houses the Standards Sales, Finance and Administration, Quality Assurance, and the Certification and Testing Division of the Eastern Operations. Approximately 75 employees are located at this facility, which is owned by CSA and consists of a two-story building covering 23,000 square feet. About 5,500 square feet of floor space is allocated to product testing. The applicant has been at this location since 1982.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. There are continuous 24-hour alarm systems for fire and security, and entry is controlled for staff members entering the facility after hours.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the testing is either subcontracted to the Rexdale facility or the equipment is purchased as necessary. The calibration laboratory maintains inventory lists that identify over 4,000 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Montreal (Pointe Claire) facility, Ex. 10.A.(1).

Vancouver (Richmond) Facility

The Vancouver (Richmond) facility consists of some 56,600 square feet of owned office space of which 6,195 square feet is utilized for product testing. CSA has been at this new location since May 1992. There are some 110 employees located at this facility.

All necessary utilities are available at this site. There is a written procedure for the receipt retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection is provided by a sprinkler system, over 60 fire extinguishers, pull stations, and a fire detection system that is monitored 24 hours a day. Entry is controlled for staff members entering the facility after hours by an ADT card reader and alarm.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the equipment is purchased as necessary. The laboratory maintains inventory lists that identify over 500 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Vancouver (Richmond) facility, Ex. 10.A.(1).

Edmonton Facility

The Edmonton facility is under the direction of the Pacific Operations, which is headquartered in Vancouver.

CSA owns some 13,067 square feet of office space at the Edmonton Facility, of which 1,819 square feet are allocated for product testing. This location has been operational since 1985.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection is provided by a monitoring system that alerts the local fire department in the event of a fire, and entry is controlled for staff members entering the facility after hours, by means of an entry alarm system.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the equipment is purchased as necessary.

Annual operating budgets are designed to provide for funding of necessary testing equipment. The laboratory maintains inventory lists that identify over 300 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Edmonton facility, Ex. 10.A.(2).

Moncton Facility

The Moncton facility is under the direction of the Montreal facility as part of the Eastern Operations.

The facilities are leased and consist of approximately 6,750 square feet of office and laboratory space plus an annex of some 1,600 square feet of additional office space.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection of the facility is provided by an automatic fire sprinkler system located throughout the building, and entry is controlled for staff members entering the facility after hours. There is also a 24-hour alarm system.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the testing is subcontracted to the Rexdale facility or the equipment is purchased as necessary. Annual operating budgets are designed to provide for funding of necessary testing equipment. The laboratory maintains inventory lists that identify over 300 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Moncton facility, Ex. 10.A.(2).

Winnipeg Facility

The Winnipeg facility is under the direction of the Rexdale facility as part of the Central Operations.

The facility is leased and consists of some 10,000 square feet of space, of which approximately 4,000 square feet is allocated as a test laboratory. CSA has made use of this facility for about 35 years providing certification services in the electrical and mechanical fields.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire and burglar alarm systems are on line. Entry is controlled for staff members entering the facility after hours.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Winnipeg facility, Ex. 10.A.(2).

The applicant states that CSA is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant states further that the organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents are submitted as a part of the CSA up-to-date application to address the issue of independence. (See Ex. 2.K.).

The Canadian Standards Association claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias. The C&T Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certification programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—"Quality Assurance Policy Manual" (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibility for implementation of these policies.
—"Quality Assurance Manual" (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.
—"Divisional Quality Documents" (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

CSA claims that it has a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints and disputes shall be resolved, whenever possible, by those directly involved with the work. contested or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

The applicant states that it provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, or notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Marks. CSA establishes a comprehensive field services program to ensure that manufactured products bearing any of the CSA Marks continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspections;
Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;
—That the terms of the Agreement are met when the CSA Mark is used;
—Defects noted during previous inspections have been corrected;
—The manufacturer is aware of any new services, requirements, and effective dates;

The inspections are unaccounted and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the products can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are re-examined and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and produce feedback to the standards writing and certification process.

Background

According to the applicant, the Canadian Standards Association is an independent, not-for-profit organization governed by a Board of Directors selected by the membership, providing integrated services in the fields of standards development and conformity assessment. The Standards Division of CSA is responsible for the administration of the development of voluntary consensus standards. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services. The organization started out in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name.

The applicant states that during the last 70 years, CSA has developed more than 1,400 standards and codes which cover industrial and consumer products and services in a wide range of product areas. In 1940, CSA began to test and certify products and today is an international organization with more than 9,000 volunteer members from 20 countries representing, among others, consumers, and regulators. They are supported by a staff of approximately 1,000 employees.

Again according to the applicant, over 14,000 manufacturers worldwide use CSA's testing and certification services, and the CSA Certification Mark appears on over one billion products a year. CSA processes some 36,000 engineering projects, and the inspection staff makes follow-up visits to some 19,000 factories in almost 60 different countries, each year.

The Rexdale Facility contains the corporate headquarters, the Standards Division, the Finance and Administration Division, and the Certification and Testing Division. The Rexdale facility houses the Central Region Office and the headquarters of the Central Operations. Central Operations includes the Prairie Region (Winnipeg) and the Central Region (Rexdale). The explosion testing laboratory in Ottawa (under the control of the Canadian Department of Energy, Mines and Resources), where CSA performs explosion testing, is monitored out of the Central Region.

The Montreal (Pointe Claire) facility houses the Eastern Region Office and the headquarters of the Eastern Operations. Eastern Operations includes the Eastern Region (Pointe Claire) and the Atlantic Region (Moncton). The Eastern Region and Atlantic Region maintain testing and inspection facilities for Eastern North America.

The Vancouver (Richmond) facility houses the Pacific Region Office and the headquarters of the Pacific Operations. Pacific Operations include the Pacific Region (Richmond), and the Western Region (Edmonton). The Pacific Region and Western Region maintain testing and inspection facilities for Western North America.

Quality Assurance

The Certification and Testing Division's Engineering and Quality Assurance (EQA) Office reports to the Vice President in charge of the Certification and Testing Division. The Eastern, Central, and Pacific Operations as well as each of the Regional Offices has a Quality Assurance Office. The Regional Quality Assurance Offices have a reporting relationship with the respective Operations Quality Assurance Office, and with the EQA from the corporate headquarters.

The Regional Quality Assurance Offices are responsible for quality assurance at their respective facilities. The Operations Quality Assurance Offices are responsible for quality assurance not only of their respective operations but also of all of the regions within their operations. The Engineering and Quality Assurance Office is responsible for the Certification and Testing Division's quality assurance, including all Operations and Regions.

Document Structure

The Certification and Testing Division's (C&T) Divisional Director of Engineering and Quality Assurance (EQA) establishes the quality assurance philosophy for the three operations, the Eastern, Central, and Pacific. The EQA uses Divisional Quality Documents (DQD) to establish Quality Assurance Procedures, Certification and Testing Division Operating Procedures (CDOP) and so-called Test Packs to provide evaluation procedures for products submitted for testing, Technical Information Letters (TIL) to document technical interpretations of standards, and Engineering Policy Supplements (EPS) to provide policies.

Audit Structure

The CSA audit structure is multilevel. EQA audits the regions, the Operations Quality Assurance Office audits the regions, and the Regional Quality Assurance Offices perform self-audits. In addition, outside agencies such as the Standards Council of Canada (SCC) perform yearly audits which involve EQA representation during the audit. For example, Edmonton and Moncton were subjected to at least five audits, and Winnipeg at least four audits, since July of 1991. In addition, specific technical audits of each Region are performed by the Senior Technical Engineer from the concerned Operation's Quality Assurance Office.

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces

ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electrical Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Appliances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations

ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Display

ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Mental-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Insolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Preliminary Finding

The Canadian Standards Association addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel. The discrepancies noted by the survey teams in the on-site evaluations [Ex. 10.A.(1)] and in the extensive evaluations [Ex. 10.A.(2)] were adequately responded to by the applicant prior to the preparation of the survey report and are included as an integral part of the report.

With the preparation of the final survey reports of the Canadian Standards Association, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 10.A.).

Following a review of the application file and the on-site survey reports of the CSA Montreal and Vancouver facilities, and the evaluation of the Edmonton, Moncton, and Winnipeg facilities (based upon questionnaire responses, supportive documentation, and video tapes of each site depicting the facility, test equipment, typical procedures, files, and staff), the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory for the five above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association facilities for which accreditation was requested (Montreal, Vancouver, Edmonton, Moncton, and Winnipeg) can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 2, 1994, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Copies of the CSA application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, room N 2634,

Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of section 1910.7.

Signed at Washington, DC this 25th day of February, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4897 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–2–93]

Entela, Inc.; Application for Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Entela, Inc. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 2, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Entela, Inc. (ENT) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Entela, Inc., 3033 Madison, SE., Grand Rapids, Michigan 49548.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

Entela, Inc. states that its application documents demonstrate that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards. (See Ex. 2.A.).

The applicant states also that it shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services: (i) Implementation of control procedures for identifying the listed and labeled equipment or materials (see exhibit 2.A., appendix VII, and exhibit 2.H.).

(ii) Inspection of the run of such item at factories for product evaluation purposes to assure conformance with the test standards (see exhibit 2.A., appendix VIII, and exhibit 2.H.).

(iii) Conduction of field inspections to monitor and to insure the proper use of its identifying mark or labels on products (see exhibit 2.H.).

Entela claims that it is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes (see exhibit 2.B. and 2.J.).

The applicant also claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias, and for handling complaints and disputes under a fair and reasonable system (see exhibit 2.H. and 2.J.).

In summary, Entela, Inc. claims that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory.

Entela's Grand Rapids facility consists of two adjacent structures that each contain two buildings covering a total of 40,000 square feet. Approximately 20,000 square feet of floor space is allocated to product testing. The main reception area is housed in the main building, along with the conference room, main records storage area, the wet chemistry labs, small scale flammability test room, tensile test area, with the metallurgical laboratories located on the upper floor. The weathering and environmental aging chambers, administrative offices, and nuclear records storage area are located in a leased building attached to this main building. The third building contains the appliance test area, vibration and electronics laboratory. The fourth building contains the Quality Assurance Department, certain records storage, California flammability test chamber, fabrication shop, and a metrology laboratory.

Natural gas and city water and electricity are supplied to all of the buildings. Special utilities include liquid nitrogen which is stored outside the second building, and a de-ionized water system.

Environmental conditions are controlled in specific laboratory areas. The temperature and humidity variations in these laboratories are continuously monitored and recorded, as required by specific test requirements. There are temperature and humidity chambers to control and monitor environmental conditions for specific product testing.

The laboratory has a shipping and receiving department for receipt, retention, and disposal of samples for testing. Incoming samples are inspected and identified with numbered tags. All samples for one test have tags with the same number. Each unique tag number, the samples, and the purchase order, are reviewed, and the shipping/receiving clerk prepares a work order request, after which the samples are distributed to the test areas and copies of the work order distributed to the appropriate departments. A copy of each unique tag and work order is retained by the shipping and receiving department. Another copy of the work order is sent to the test department with the samples. The test department completes the work order when all product evaluations are accomplished, and returns it to the shipping and receiving department for sample disposition. The sample inventory and traceability information is kept in the shipping and receiving log, and work order information is maintained on a computer data-base. All storage locations for incoming samples are in the shipping and receiving areas, which are located indoors. The laboratory is automating the shipping and receiving numbering system so that the work order numbers are identical with the sample tags.

Each staff member wears an Entela photo I.D. Visitors can only enter via the

front lobby and are required to sign in on the visitor log. They are issued safety glasses and name tags by the receptionist and are escorted while on the premises. Other entrances are kept locked with limited access. Separate test and conference areas are available for those clients requiring confidentiality. The use of screens and partitions are also utilized in the laboratory.

Entela Inc. has recently upgraded their fire protection and security systems to include smoke detectors and proximity sensors. These are connected to the security system which dispatches local fire and police departments.

Test equipment is available to perform most measurement and testing in accordance with the identified test standards. Unavailable unique test equipment is purchased or leased through an Entela-approved source.

An inventory list identifies all pieces of equipment by the department number or location in the laboratory, gage number, instrument name, manufacturer, model and serial number, range of operation, calibration frequency, and the date the instrument was placed in service. Operational and calibration information is located in files in the Quality Assurance Office.

Test equipment is calibrated periodically depending upon the application, ranging from daily to once every three years. Electrical equipment is typically calibrated once per year, at a minimum. Adjustments are made to the calibration frequency via a corrective action report to address complaints or to ensure credible results. A written general procedure identifying the calibration history, records, and frequency of usage is utilized to determine any deviation from the equipment manufacturer's recommended or Entela's usual calibration intervals.

The Quality Assurance (QA) Department is responsible for maintaining the calibration database, the department monthly recall reports, and the procurement of calibration services. Each department is responsible for timely calibration and preventive maintenance of its equipment. The QA Department retrieves or locks out any equipment that is not turned in for calibration. New and repaired test equipment is calibrated prior to use. When a piece of equipment is received for repair or routine calibration, its "as received" calibration status is noted. This status is evaluated for its effect on testing that has been performed with that equipment to determine whether retesting is necessary.

Each item of test and measuring equipment is required to have a label that depicts its calibration status. For example, it may have a calibration label or may be labeled, "Before Each Use", "Out of Calibration", "Out of Service", or "For Reference Only". Calibration labels identify the date when last calibrated as well as the date for the next calibration.

Repair and Calibration records are maintained for the life of the equipment in the master calibration files and on the database computer (calibration). Calibration standards are traceable to NIST or to international standards bodies. Primary standards include: Gage and hardness blocks, laser interferometers, and chemical references.

The QA Department issues monthly calibration recall notices and preventive maintenance reports to each department based upon the master calibration database. The department managers are responsible for complying with any of the requirements noted in the report. The Quality Assurance manager will remove any non-calibrated equipment and place it in a locked storage area unless the equipment meets the criteria for extension of calibration.

A number of test and evaluation procedures were reviewed in various ongoing program areas. The specific ongoing programs the laboratory is involved with that identify the records required to be maintained for an investigation are followed. These programs use ANSI/UL Standards, ASTM test procedures, the Quality Control Manual, Third Party Certification Program (TPCP) Manual, Client Test Procedures, and Departmental Operational Procedures. These procedures contain construction or testing parameters to be met by the product being evaluated and, as required, the chronological order of evaluation. The staff responsible for safety testing generally consists of degreed engineers and chemists. In most instances, the test standard provided sufficient detail for laboratory personnel to conduct a step-by-step approach to develop repeatable and accurate test and evaluation data. Where appropriate, the test engineer provides a narrative report along with the test data to document compliance of a product with the standard. Standardized tests that are frequently run have a standard test data sheet available that contains the necessary information for the laboratory technician.

Sample test and evaluation procedures and reports for the NRTL Program activities were reviewed. These sample reports include narrative descriptions. The test procedure format and scope are identified in the Third Party Certification Program Manual, and describe the content and scope for the Standard Operational Procedure. The laboratory has developed a generalized processing procedure for the product classes of electrical appliances and lighting products in final form, and in draft form for flammability testing.

Several Standard Test Procedures (STPs) were reviewed in various program areas. Entela will develop and submit additional STPs, where necessary, prior to listing products related to these procedures. Specific program procedures and policies are developed by the individual departments and are audited twice per year by the President or Vice President of the laboratory. Management and the project manager are responsible for assuring that procedures are followed. These operating and testing procedures are determined by the work order which specifies which standard(s) and provisions are to be utilized. Operational procedures and policies are implemented through the training program at Entela, Inc. The master copy is located in the Standards Library, with controlled copies located in each department.

Present policy utilizes a technical committee and standards experts to determine the appropriate standard in evaluating a product. Standard interpretations are developed by consensus of the technical committee. The Project Manager distributes technical advisory letters describing standards policy on interpretation or deviation decisions to all parties affected. The laboratory personnel are members of various organizations which develop standards applicable to their on-going programs in the automotive, flammability, metallurgical, quality, electrical and chemical testing areas.

A technical committee and standards experts determine the appropriate standard or standards to be utilized in evaluating the product. Disagreements between the applicant and the laboratory regarding standards applicability are resolved using the Entela Inc. Third Party Certification Committee, technical experts, and input from the standards-writing organization. The decision of the laboratory regarding which standard is applicable is final.

The TPCP Manual addresses the interpretation of these standards and the appeals procedure available to a client, when there is a disagreement with that interpretation. The TPCP Committee interprets the section of the standards, which are also available for distribution to interested parties. Consumer inquiries and complaints are also addressed in the TPCP Manual.

Entela personnel serve on technical committees to enable them to be cognizant of changes to the standards with which they are involved. The laboratory is continuing to develop committee membership in various new product areas of interest.

Test procedures contain the following: Instructions on equipment; preparation of test samples; standard testing techniques; references to specific standards, including titles and dates; testing equipment and accuracies; precautionary statements for operator safety; test data obtained, measurement resolution and data recording time; ambient conditions and/or adverse environmental conditions; and acceptance criteria tests. These test procedures are reviewed annually and are approved by the technical department manager and the QA manager.

Sample test data sheets and attached work orders contain the following: Standard and clause numbers; product model number; measuring and test equipment I.D.; test date and report number, signature of tester/reviewer; and Q.A; ambient conditions; test observations and deviations; test data in the form of compliance, non-compliance, or the need for further review.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manual.

The certification reports contain the following: Name and location of submitter and factory; title, number, and date of standard use for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications, and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance. The Quality Assurance Manual and the Third Party Certification Program Manual identify the minimum information and reporting format required for an investigation. Most reports followed the required format. Entela has documented specific procedures for the recording of any deviations and the associated technical rationale, or for the modification of testing protocol.

The project manager, department manager, and test engineer, are responsible for the preparation and review of the final report. The test report is written by the test engineer or senior technician. The senior technician is also responsible for reviewing and signing the test data before it is reviewed by the project manager. A modified review process of data sheets and reports has been instituted to ensure that all signatures are in place and that any abnormalities or unusual test results are identified.

Listings are revised with replacement pages. A new report is prepared if extensive changes are required. Copies of the listing report are given to the customer and to jurisdictional authorities, where required, and placed in follow-up inspection files.

Standards updates are secured by maintaining update services for a variety of standards. For example, UL standards quarterly index update service is subscribed to and used to verify the latest edition of their standards.

The project manager is responsible for providing the test engineer with the latest revision of the appropriate standards. Superseded standards are archived in the library and labeled as such, superseded standards beyond 5 years are placed in filing boxes, labeled, and stored in records storage.

The NRTL Program checklist has been developed so that the file of a product listing is evaluated to assure its completeness through the project manager's review of the file and use of the file checklist.

Safety testing records (OSHA/NRTL) are to be stored with the nuclear files which are in a locked fireproof storage room in a fireproof filing cabinet in the third building. No flammability testing is conducted in this building. A procedure for control of files is in place to protect them from damage, theft, or records loss. Duplicate records are not stored off site.

The records are alphabetized by client. The verification and identification of test reports of listed products is accomplished through the use of the director of certified products. A label numbering system is to be utilized for the NRTL program that will take into account the various products, manufacturing sites, and variations of a model line.

The office manager is responsible for filing and maintaining these records. Procedures are in effect to distribute, recall, and revise test records.

The Quality Assurance System consists of separate but interrelated functional areas that report directly to the President or the Vice President of operations. The Quality Assurance Manager is responsible for the internal quality of the laboratory and its operations, and reports directly to the President of the laboratory. The director of Quality Assurance Services reports to the Vice President of Operations and is responsible for the various programs that address the client's preproduction qualifications, suppliers of laboratory services, follow-up program, manufacturing monitoring and quality assurance assessment. The individuals in the two positions assist each other in accomplishing the workload without interfering with their job requirements or the lines of authority. The Quality Manager is independent of operations and has the responsibility and authority for overseeing all activities related to the internal laboratory quality program.

An internal audit program performed every six months is in place on behalf of management to determine if all operations are complying with the requirements of the current quality systems, procedures, policy decisions, calibration programs, test procedures, and safety programs. This audit evaluates both the operational function and the quality assurance program at the same time, and is performed by the president or vice president of the laboratory. Personnel interviewed in the electrical and calibration areas were actively aware of the program. The corrective action reports and the corrective action logs showed no discrepancies.

Variations and discrepancies are addressed via a Corrective Action Report (CAR). CARs not finalized in an appropriate time frame are discussed at the directors' and managers' meetings and monitored by the laboratory President.

Entela, Inc. is devoting additional resources in the quality assurance area and will review weekly all open corrective action reports of problems and root cause analysis. A corrective action system is in place to document audit findings and to implement corrective actions with specified time limits.

Entela performs follow-up inspections at various facilities for other ongoing programs. Written procedures are in place for the various programs. For example, the TPCP Manual, which is presently used in the Government Services Administration (GSA) Furniture Certification Program, identifies the various steps, policies and procedures that will be used in the NRTL Program. A separate manual is presently used in Entela's Certified Automotive Parts Association (CAPA) Program. The Nuclear Program is covered under the Quality Manual.

The Entela, Inc. follow-up inspection procedure for the NRTL program

requires quarterly inspections on an unannounced basis at the manufacturing facility. This program is designed to assure that:

1. The Entela, Inc. mark is applied only to certified products;
2. That the terms of agreement are adhered to when the Entela Inc. mark is used;
3. Defects noted during previous inspections have been corrected;
4. Document control procedures and support staff training should provide the assurance that all facility assessment records are on file.

NRTL factory inspections will be performed at the rate of at least four inspections per factory per year. The frequency varies with product volumes, types of products, and the manufacturer's prior record.

When products fail to meet the requirements, the Quality Services Division takes action to either have the manufacturers correct the defect immediately, quarantine stock until the product can be reworked or reevaluated by the Entela testing engineer, or remove the Entela, Inc. mark from the product.

Entela, Inc. has a standard follow-up inspection form that will be used to document the findings at the manufacturing site. The inspector or inspecting engineer will use this form along with the follow-up inspection file for that manufacturing site and product to evaluate the product.

Entela, Inc. has a pre-qualification checklist for the evaluation of a manufacturing facility that will be used prior to the factory labeling of any products in the NRTL Program, as well as a Follow-Up Service Inspection Report. The TPCP Manual identifies the procedures required for the selection of product samples to test.

Entela, Inc.'s Quality Services Division will monitor products in the field, when prompted by either factory anomalies of complaints, and investigate field complaints. Entela, Inc. reserves the right to utilize safety related public notification and mandatory recall procedures. All consumer complaints are forwarded to the Quality Services Director, Vice President, or President, as appropriate.

Distribution of labels placed on products is controlled, requiring the manufacturer to obtain labels only from Entela. These labels are then cached in a locked storage room.

An organizational chart identifies key laboratory personnel and shows the relationship between administration, operation, and quality control. There are approximately 65 personnel in the Entela organization.

A written position description for each job title of personnel involved with product testing and evaluation includes the necessary education, training, technical knowledge, and the experience required for the position. The position description specified the extent and limitation of responsibility for the position. New position descriptions and training programs are in place for the follow-up inspection areas.

Written job descriptions are referenced in the Quality Control Manual for staff involved with product testing and evaluation. These job descriptions contain minimum requirements, education, technical knowledge and experience requirement for their respective position.

The President and Vice President of Operation, who have overall responsibility for the technical operations of the laboratory, have technical degrees. Personnel assigned to the TPCP have the necessary education, training, technical knowledge, and experience specified by their position description. Training logs reviewed in the electrical and in the calibration areas were current. Calibration training records showed that the calibration supervisor qualified his staff on each piece of equipment prior to any technician being allowed to perform independent calibrations. The training records identify each staff member and the test methods, procedures, and evaluations he or she is qualified to perform. Continuing education and training programs are held to instruct personnel on the proper methods of testing and evaluation. This documented training program incorporates appropriate test methods, equipment and operational procedures, product evaluations, inspections, and technical/engineering course work, and is updated annually.

The laboratory has a progressive performance appraisal system that provides for self-evaluation, peer-evaluation and supervisory-evaluation. The evaluation factors are both quantitative and qualitative. The laboratory also includes a company evaluation as a part of the employee program.

The laboratory has developed procedures that will enable it to accept components and materials tested and evaluated by another NRTL laboratory. These procedures include evaluating the listing report, and reserving the right to retest and audit the components as it deems necessary. Components tested and evaluated by Entela will fall under their follow-up service agreement. An approved source list has been revised to include company name, address, and area of expertise.

The TPCP identifies the circumstances when testing and evaluation of a product may be accomplished at the client's facility, such as when the equipment is large and not easily shipped or when specialized test facilities are required. The TPCP also identifies the general criteria for qualifying the manufacturer's facility to include the witnessing of the tests.

A procedure exists for the qualification of subcontractors for the supply of services in support of the laboratory functions. The laboratory maintains a listing of approved external testing sources for general laboratory support and a separate list for those suppliers that qualify under 10 CFR part 50 for the nuclear industry. This listing and any associated files has been reviewed for its completeness.

Background

The applicant states that Entela, Inc., was originally founded in 1974 as a Michigan Corporation called Entel Engineering Services (no longer in existence) specializing in structural steel inspection, with departments in structural engineering, field service inspection, asbestos inspection, and geotechnical engineering. In 1981, equipment and personnel were added to initiate an in-house materials laboratory. Through a continued growth commitment and dedication to meet its client's needs, the applicant states that it experienced dramatic growth, necessitating the formation of certification programs within Entela, Inc.

The services offered at Entela, Inc. (also doing business as Entela Laboratories, Inc., but one in the same company according to the applicant), include metals chemistry, simulated environmental testing, plastics/non-metals testing, product testing, electrical/electronics testing, metallurgy, mechanical engineering, third party certification programs, metrology, and calibration. As of this time, Entela, Inc. employs over 75 individuals and has two facilities, located in Grand Rapids, Michigan and Taipei, Taiwan. Presently, all testing is performed at the Grand Rapids facility, and only follow-up inspections are carried out in Taiwan.

Entela, Inc. desires recognition for testing and certification of products when tested for compliance with the following test standards:
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs

ANSI/UL 50—Electric Cabinets and Boxes
ANSI/UL 67—Electric Panelboards
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 94 [1]—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 141—Garment Finishing Appliances
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
UL 213—Rubber Gasketed Fittings for Fire Protection Service
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 325—Door, Drapery, Louver, and Window Operators and Systems
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508 [2]—Electric Industrial Control Equipment
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544—Electric Medical and Dental Equipment
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 817—Cord Sets & Power-Supply Cords
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 998—Humidifiers
ANSI/UL 1004 [3]—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1012—Power Supplies
ANSI/UL 1026—Electric Household Cooking and Food-Serving Equipment
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1230—Amateur Movie Lights
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1286—Office Furnishings
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1459—Telephone Equipment
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

[1] Exclusive of radiant panel testing.

[2] Limited to equipment of no greater than 500 amperes.

[3] Limited to motors rated no greater than one-half horsepower.

Preliminary Finding

Entela, Inc. addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report; a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; appeals procedure; typical calibration forms; and a copy of its Third Party Certification Manual and its Quality Assurance Manual. This QA Manual includes a description of its document control; identification and control of materials, parts, and components; inspection; test control; control of measuring and test equipment; inspection, test, and operating status; quality assurance records; and audits.

Nine major areas were examined in depth during the on-site laboratory evaluation: Facility; test equipment, calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the on-site evaluation were adequately responded to (Ex. 3.A.(2)) prior to the preparation of the final on-site evaluation (Ex. 3.A(1)). With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the Entela facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application the preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Entela, Inc. can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationality Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than (May 2, 1994), and must be addressed to the NRTL

Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the Entela, Inc. application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–93), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC, this 25th day of February 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4898 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on April 20–22, 1994 from 9 a.m. to 5 p.m. This meeting will be held in room M07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4828 Filed 3–2–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio/Audio Production Section) to the National Council on the Arts will be held on March 22–23, 1994. The panel will meet from 9 a.m. to 6:30 p.m. on March 22, 1994; and 9 a.m. to 5:30 p.m. on March 23, 1994. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

Portions of this meeting will be open to the public on March 22, 1994 from 9 a.m. to 9:30 a.m. for Introductory Remarks; and March 23, 1994 from 5 p.m. to 5:30 p.m. for a guideline discussion.

The remaining portions of this meeting from 9:30 a.m. to 6:30 p.m. on March 22, 1994; and 9 a.m. to 5 p.m. on March 23, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 23, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–4827 Filed 3–2–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INDIAN GAMING COMMISSION

Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710 (d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III

ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Chemehuevi Indian Tribe
Cheyenne-Arapaho Indian Tribes of Oklahoma
Crow Indian Tribe
Fort Mojave Indian Tribe
Keweenaw Bay Indian Community
Menominee Indian Tribe of Wisconsin
Oglala Sioux Tribe
Prairie Island Minnesota Mdewakanton Sioux Tribe
Red Cliff Band of Lake Superior Chippewas
Red Lake Band of Chippewa Indians
St. Regis Mohawk Tribe

Anthony J. Hope,

Chairman.

[FR Doc. 94–4816 Filed 3–2–94; 8:45 am]

BILLING CODE 7565–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33672; File No. SR–DTC–93–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to a Clarification of Rule 5

February 23, 1994.

On December 20, 1993, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–93–14) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to a clarification of DTC Rule 5. On December 29, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The purpose of the proposed rule change is to clarify the meaning of DTC Rule 5. On December 13, 1993, the Commission issued an order approving a proposed rule change by DTC relating to the eligibility of Rule 144A securities at DTC.[3] In the Rule 144A Order, among other things, was the statement that Rule 5, Section 1 of DTC's Rule requires DTC to determine whether "in light of the Federal securities laws, particularly the provisions of Rules 144, 144A, and 145, the securities, when deposited with DTC, may be lawfully transferred by book-entry."[4] DTC filed this proposed rule change in order to clarify that DTC Rule 5 does not require DTC to determine whether securities deposited at DTC may be transferred lawfully pursuant to Federal securities laws.[5]

II. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b) (3) (A) and (F).[6] Those sections require that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

Notwithstanding the language in footnote 22 of the Rule 144A Order, the Commission believes that DTC's interpretation of Rule 5 (*i.e.*, that Rule 5 does not require DTC to determine whether securities, when deposited at DTC, may be transferred lawfully by book-entry in light of Federal securities laws) is a plausible interpretation. Prior to making specific issues of Rule 144A securities eligible for DTC's book-entry delivery and other depository services, DTC, as part of its procedures, requires issuers and transfer agents to make certain representations.

These representations, together with DTC's periodic review to evaluate their effectiveness, serve to indicate that specific issues of Rule 144A securities are eligible for DTC services pursuant to the Rule 144A Order. The Commission is satisfied that DTC's interpretation of Rule 5, along with its procedures for the acceptance of Rule 144A securities, is consistent with DTC's obligations to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

III. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–93–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4864 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33671; File No. SR–DTC–93–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to An Increase in the Fixed Net Debit Cap Employed in the Depository Trust Company's Same-Day Funds Settlement System

February 23, 1994.

On December 1, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–93–13) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to increase the fixed net debit cap employed in DTC's same-day funds settlement ("SDFS") system. Notice of the proposal was published in the **Federal Register** on January 19, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

For each participant, DTC establishes a net debit cap in its SDFS system[3] in order to assure that DTC's liquidity resources are sufficient to complete settlement if an SDFS participant fails to settle its net debit obligation. Each participant's net debit in the SDFS system is limited throughout the processing day by a net debit cap that is the lesser of: (1) The adjustable net debit cap, which is a multiple of the participant's deposits to the SDFS participants fund, or (2) the fixed net debit cap.[4] The fixed net debit cap is set at 75% of: (1) the aggregate cash deposits to the SDFS participants fund and (2) DTC's internal and external lines

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33365 (December 21, 1993), 58 FR 68971.

[3] Securities Exchange Act Release No. 33327 (December 13, 1993), 58 FR 67878 (hereinafter Rule 144A Order).

[4] *Id.* n. 22 and accompanying text.

[5] In the near future, DTC plans to adopt and file with the Commission as a proposed rule change revisions to Rule 5 that will clarify further the meaning of the Rule.

[6] 15 U.S.C. 78q–1(b) (3) (A) & (F).

[7] 17 CFR 200.30–3(a)(12) (1990).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33457 (January 11, 1994), 59 FR 2887.

[3] For a detailed description of DTC's SDFS system, refer to Securities Exchange Act Release No. 26051 (August 31, 1988), 53 FR 34852 (File No. SR–DTC–88–06) (order granting permanent approval of the SDFS system).

[4] As of February 15, 1994, there were 238 participants in the SDFS program. The fixed net debit cap is the operative cap for twenty-two of these SDFS participants. Telephone conversation between Carl H. Urist, Deputy General Counsel, DTC, and Peter R. Geraghty, Attorney, Division of Market Regulation ("Division"), Commission (February 15, 1994).

of credit. The fixed net debit cap is currently set at $387 million.

DTC has on deposit approximately 72% of the commercial paper ("CP") outstanding in the U.S. and expects that virtually all CP outstanding in the U.S., except CP that is in direct issuers' proprietary book-entry systems, will be included in DTC's CP program sometime in 1994.

With the anticipated increase in volume of commercial paper settlements in its SDFS system, DTC is concerned that the fixed net debit cap at its current level could have the undesirable effect of temporarily blocking substantial numbers of book-entry deliveries. To prevent such occurrences, DTC has decided to increase its external committed lines of credit by $250 million in order to raise the fixed net debit cap of SDFS participants that elect to share DTC's cost of obtaining the increase in the external lines of credit. The $250 million increase in external lines of credit should raise the fixed net debit to approximately $574 million. DTC believes that the securities resources available to it to collateralize any borrowing it should have to make under the increased external lines of credit are more than adequate.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[6] The Commission previously acknowledged the risk reduction benefits of the net debit cap in the order granting permanent approval of DTC's CP program.[7] The Commission continues to believe that the net debit cap is a integral part of the risk reduction measures taken by DTC to protect the securities and funds in its SDFS system.

Section 17A(b)(3)(F) also requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that increasing the fixed net debit cap should help promote the prompt and accurate clearance and settlement of transactions in the SDFS system by decreasing the possibility that book-entry deliveries could be temporarily blocked from processing due to a participant exceeding its fixed net debit cap.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, of section 17A of the Act in particular, and of the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–93–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4863 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[5] DTC's line of credit agreements provide that any borrowing may be collateralized by securities in the account of a failing participant as well as by securities that have been deposited by DTC participants to the SDFS participants fund. On February 1, 1994, deposits to the SDFS participants fund included securities having a market value of approximately $627 million. Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jonathan Kallman, Associate Director, Division, Commission (February 1, 1994).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] For a detailed description and discussion of the SDFS system and the CP program's risk controls, refer to Securities Exchange Act Release No. 30986 (July 31, 1992), 57 FR 35856 (File No. SR–DTC–92–01) (order approving implementation of CP program).

[Release No. 34–33667; File Nos. SR–MCC–93–7 and SR–MSTC–92–14]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Notice of Filing of Proposed Rule Changes Relating To Establishment of a Risk Assessment Committee and Various Other Changes to MCC's and MSTC's Rules and By-Laws

February 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 17, 1993, and on December 23, 1993, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") respectively filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by MCC and MSTC. MCC amended its proposal on December 23, 1993, thereby making it virtually identical to that of MSTC. MCC made a clarifying amendment on January 3, 1994.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to change their Rules and By-Laws to: (1) Allow for the establishment of additional communities; (2) require MCC and MSTC to consult with at least one member of the Risk Assessment Committee before ceasing to act for a participant; (3) establish a Risk Assessment Committee; (4) modify their procedures relating to appeals; (5) add provisions relating to suits against MCC and MSTC and their employees; and (6) add a provision that requires MCC or MSTC participants, in certain circumstances, to pay MCC or MSTC all reasonable expenses they incur in defending a legal proceeding instigated by the participants.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and statutory basis for the proposed rule changes and discussed any comments received on the proposals. The test of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to amend various by-laws and rules of MCC and MSTC to define participants' rights and obligations more precisely and to give MCC and MSTC more flexibility and protection in dealing with violations of their respective rules. By-laws will be added to allow MCC and MSTC to establish committees either through their respective by-laws or rules or by the board of directors. Rules will be added to: (1) Establish a Risk Assessment Committee for MCC and MSTC; (2) require MCC and MSTC to consult with at least one member of the Risk Assessment Committee prior to ceasing to act for a participant; and (3) expand the types of events that permit MCC and MSTC to cease to act for a participant to any instance where a participant poses a financial risk to MCC or MSTC. These changes will provide

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser, (Attorney), Division of Market Regulation, Commission (December 30, 1993).

independent input to management in its decision-making process while still providing MCC and MSTC the flexibility to act quickly if necessary.

To clarify that MCC and MSTC have the authority to establish the new Risk Assessment Committee, the proposed rules will amend their by-laws to add a provision that expressly permits MCC and MSTC to establish committees by their rules or by-laws or through their boards of directors. The Risk Assessment Committee will hear all appeals under the applicable rules. The proposed rules specifically provide that prior participation by a member of the Risk Assessment Committee in any inquiry, consultation, examination, or investigation of the matter under appeal will not disqualify the Committee member from hearing the appeal. The proposed rules replace current rules which require the board of directors to appoint a panel to hear an appeal.

MCC and MSTC also will add provisions to their rules that will give them greater flexibility in the decision to cease to act for a participant. Specifically, these provisions will allow MCC and MSTC to cease to act for a participant if there are reasonable grounds to believe that the participant poses a financial risk to MCC or to MSTC even if the firm itself is not in financial difficulty. These provisions will provide MCC and MSTC more flexibility in reducing risk to themselves and to other participants.

The proposed rules also will mandate a formal standard of review to be applied in appeals beyond the Risk Assessment Committee review. Currently, either MCC's or MSTC's board may in its discretion reverse, modify, or remand for further consideration any decision adverse to an appellant. Under the proposed standard, neither board shall reverse, modify, or remand for further consideration any decision adverse to an appellant if the factual conclusions in the Risk Assessment Committee's decision are supported by substantial evidence and if the decision itself is not arbitrary, capricious, or an abuse of discretion.

Finally, the proposed rules add provisions relating to MCC's and MSTC's liability and suits filed against MCC and MSTC and their employees. The possibility of suit against individual staff members of MCC or MSTC acting on company business makes it impossible for such persons to perform properly their duties. The proposed rules will prohibit an MCC or MSTC participant from suing any officer, director, employee, or agent of MCC or MSTC, of the Chicago Stock Exchange, or of any of their affiliates, if such person is acting on the business of MCC, MSTC, the Exchange, or of any of their affiliates. These proposed rules will not prohibit a participant from suing MCC or MSTC as a result of the actions of these individuals; they merely will prohibit suits against individuals acting in their official capacities. The proposed rules also will limit MCC's and MSTC's liability to participants to situations where MCC or MSTC acted willfully or with gross negligence. Finally, the proposals will add new provisions that require an MCC or MSTC participant that fails to prevail in a legal proceeding instigated by that participant against MCC, MSTC, or any of its officers, directors, committee members, employees, or agents to pay MCC or MSTC all reasonable expenses, including attorneys' fees, incurred by MCC or MSTC in defending the proceeding if those expenses exceed $20,000.

The proposed rule changes are consistent with Section 17A of the Act in that they will facilitate the safeguarding of securities and funds which are in MCC's and MSTC's custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC believe that no burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR–MCC–93–7 and SR–MSTC–93–14 and should be submitted by March 24, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4865 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33668; File No. SR–MSTC–89–02]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change Relating To the Processing of Interchangeable Municipal Bonds Deposited in Registered Form

February 23, 1994.

On April 11, 1989, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–89–02) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On May 2, 1989, MSTC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on July 5, 1989, to solicit comments from interested persons.[3] No comments have been received by the Commission. This order approves the proposal.

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] As originally filed, MSTC requested that its proposal be declared immediately effective pursuant to section 19(b)(3)(A) of the Act. In the amendment, MSTC requested that its proposal be filed pursuant to Section 19(b)(2) of the Act. Letter from Jeffrey E. Lewis, Associate Counsel, MSTC, to Richard Konrath, Attorney, Division of Market Regulation, Commission (May 2, 1989).

[3] Securities Exchange Act Release No. 26970 (June 23, 1989), 54 FR 28136.

I. Description of the Proposal

The proposal establishes procedures for the deposit, processing, and withdrawal of the registered form of interchangeable municipal bonds at MSTC.[4] (Prior to this proposal, MSTC accepted the bearer form of interchangeable municipal bonds.) Deposits of the registered form of interchangeable municipal bonds are maintained along with deposits of the bearer form in MSTC's Bearer System and lose their registered identities. Interchangeable municipal bonds are eligible for deposit at MSTC only in the MSTC Bearer System.

The proposal also establishes procedures for the withdrawal of interchangeable municipal bonds from MSTC's Bearer System. A participant effecting a withdrawal of interchangeable municipal bonds from MSTC may request certificates in either bearer or registered form, and MSTC, while offering no guarantee, will attempt to fill such requests.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[5] Sections 17A(b)(3) (A) and (F) of the Act[6] require that a clearing agency be organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody and control or for which it is responsible. The Commission believes that this proposal is consistent with those sections of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions by providing an automated, centralized location where MSTC participants can maintain both the registered and bearer form of their interchangeable municipal bonds. Furthermore, MSTC's Bearer System, along with the modifications allowing for the processing of the registered form of interchangeable municipal bonds, has been designed to assure that MSTC fulfills its safeguarding obligations under the Act.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with those of section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the above-mentioned proposed rule change (File No. SR–MSTC–89–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4866 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33669; File No. SR–MSTC–93–13]

Self-Regulatory Organization; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change To Rescind Signature Distribution and Signature Guarantee Programs

February 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared mainly by MSTC, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change rescinds MSTC's Signature Distribution and Signature Guarantee Programs which have been rendered obsolete by Securities Exchange Act Rule 17Ad–15.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

On January 6, 1992, the Commission promulgated rule 17Ad–15 which permits transfer agents to reject signature guarantees from eligible guarantor institutions that are not part of a signature guarantee program as defined in Rule 17Ad–15. This new rule render's MSTC's Signature Distribution Program and Signature Guarantee Program obsolete. Therefore, to avoid costs that produce not benefits, MSTC seeks to eliminate its Signature Distribution and Signature Guarantee Programs and to delete MSTC Rule 5, Sections 1 and 2 which govern these programs.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

MSTC believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC has not solicited or received any comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

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[4] Interchangeable municipal bonds are municipal security issues that may be held in registered form or bearer form and may be converted from one form to the other.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.17Ad–15 (1993).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section and at the principal office of the MSTC. All submissions should refer to File No. SR–MSTC–93–13 and should be submitted by March 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4867 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33670; File No. SR–MSTC–93–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to the Limitation or Elimination of Directors' Liability

February 23, 1994.

On August 27, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–10) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] MSTC amended the filing on October 6 1993.[2] The Commission published notice of this proposed rule change in the **Federal Register** on January 5, 1994.[3] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal will limit or eliminate the potential monetary liability of MSTC directors to the fullest extent permissible under Illinois law.[4] The proposed change is based on Section 2.10(b)(3) of the Illinois Business Corporation Act, under which MSTC is organized. That section allows corporations to adopt provisions in their articles of incorporation that limit or eliminate the potential monetary liability of directors under certain circumstances.

General corporate law imposes a fiduciary duty of care upon each corporate director. This duty of care requires a director to exercise informed business judgment in good faith and to act with an honest belief that the action taken is in the best interest of the corporation. The proposal does not eliminate an MSTC director's duty of care but rather limits the personal liability of an MSTC director to MSTC or its shareholders should the director fail through negligence or gross negligence to satisfy his or her duty of care.[5]

The proposal does not limit a director's liability in instances where liability arises directly or indirectly as a result of a violation of federal securities laws. The proposal also does not eliminate equitable remedies such as rescission or injunctive actions. Moreover, it does not eliminate the liability of an officer of MSTC for actions taken in that capacity even if the officer is also a director. Finally, the proposal does not affect the liability of a director for acts or omissions that occurred prior to approval of the proposal.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and in particular with Section 17A(b)(3)(C)[6] of the Act in that it helps to ensure the fair representation of shareholders and participants in the administration of MSTC. By limiting or eliminating the potential monetary liability of MSTC directors for actions they take within the scope of their employment, the proposal should guarantee that qualified candidates are not discouraged from becoming MSTC directors. This should enable MSTC to maintain a variety of qualified candidates from which to choose directors and in particular should help MSTC retain directors who are fairly representative of MSTC's shareholders and participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–MSTC–93–10) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4868 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33673 ; File No. SR–NASD–93–42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approved Proposed Rule Change Relating to Asset-Based Sales Charge Disclosures by Money Market Mutual Funds

February 24, 1994.

On December 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 thereunder.[3] The rule change amends Article III, Section 26 of the Rules of Fair Practice ("Rules") to exempt certain money market mutual

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser [Attorney], Division of Market Regulation, Commission (October 5, 1993).

[3] Securities Exchange Act Release No. 33379 (December 23, 1993), 59 FR 640.

[4] Specifically, the proposal adds the following language to Article X of MSTC's Articles of Incorporation and to Article IV, § 1 of MSTC's By-Laws:

To the fullest extent that the Illinois Business Corporation Act, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

[5] MSTC's proposal limits a director's liability even if that director had been grossly negligent provided that the director exercised informed business judgment in good faith and acted with an honest belief that the action taken was in the best interest of the corporation. Because there has been no judicial interpretation on the scope of the applicable Illinois legislation, it is possible that an Illinois court may find as a matter of law that a director cannot act in a manner that is both grossly negligent and in good faith.

[6] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CRF 200.30–3(a)(12) (1993).

[1] The NASD originally filed the proposed rule change on August 3, 1993. On December 3, 1993, the NASD filed Amendment No. 1 in response to concerns raised by the Commission. Amendment No. 1 was reflected in the Commission's Notice of Filing, Securities Exchange Act Release No. 33362 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993). On February 9, 1994, the NASD submitted Amendment No. 2 which included a response to the comment letters received by the Commission and the results of the membership vote on the proposed rule change. The membership approved the rule change with 1,874 approving, 242 disapproving and 9 not voting, of all valid ballots received.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b-4 (1993).

funds from the disclosure required by Section 26(d)(4) of the Rules. In particular, the rule change exempts funds with annual asset-based sales charges equal to or less than .25 of 1% (25 basis points) of average net assets from the requirement to disclose in its prospectus that long-term shareholders may pay more than the economic equivalent of the permitted maximum frontend sales charges.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register**.[4] Three comments were received in response to the Commission release. This order approves the proposed rule change.

I. Introduction

On July 7, 1992, the Commission approved an NASD rule change concerning investment company sales charges.[5] As currently drafted, section 26(d)(4) of these new rules require any investment company assessing asset-based sales charges to disclose in its prospectus that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section."[6]

As the July 7, 1993 effective date for the NASD's new rule approached, the NASD received several applications for exemption from section 26(d)(4)'s disclosure requirement. The applicants sought the exemption based on their assessment that section 26(d)(4) requires the disclosure even if the statement may not be true for a particular mutual fund. According to the NASD, the applicants pointed out that in the case of a money market mutual fund, a high probability exists that the statement will be inaccurate because such funds generally have very low asset-based sales charges, and an investor would have to be a shareholder for an extremely long time before the disclosure would be accurate.

II. Description of the Rule Change

The NASD agreed with the arguments of the applicants and concluded that requiring funds to include disclosure statements in the situations identified by the applicants does not serve any identifiable purpose and does not advance any recognizable regulatory interest. Accordingly, the NASD filed a proposed rule change to amend section 26(d)(4) to exempt certain money market mutual funds from the disclosure requirement.[7] The exemption is limited to money market mutual funds with asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.

III. Comment Letters

As noted above, in response to the solicitation of comments, the Commission received three comment letters. The NASD responded to these comments in an amendment to the filing dated February 9, 1994[8] and a letter dated February 14, 1994.[9]

All three commenters supported the NASD's proposed exemption but suggested certain changes. Two commenters suggested that the exemption not be limited to money market mutual funds but also extend to any fund where the disclosure might be misleading or inaccurate.[10] One of these commenters suggested that the NASD establish a test to determine whether the disclosure would be required,[11] and the other recommended allowing the funds to assess the surrounding circumstances to determine whether disclosure would be necessary.[12] The third commenter argued that the disclosure should be expanded to include a statement that "short term shareholders will pay sales charges less than the maximum permitted by (the rules)."[13]

The NASD has determined not to incorporate the suggested changes and noted that it crafted the exemption for money market mutual funds because these funds typically charge low asset-based sales charges and have a relatively low return on investment. Thus, that an investor would pay the economic equivalent of the maximum permitted front-end sales charge is unlikely. In addition, in the NASD's assessment, the current tendency is for investors to use money market mutual funds for short-term purposes, for example, as checking accounts or temporary holding areas for investment funds and, therefore, these funds should be exempted from the section 26(d)(4) disclosure requirement.

IV. Discussion

The Commission believes that the NASD's rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the rule change is consistent with Section 15A(b)(6) of the Act.[14] This section requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The NASD adopted section 26(d)(4) with the intent of providing adequate disclosure to readers of prospectuses of investment companies assessing asset-based sales charges. While the current rule only states that shareholders may pay more than the economic equivalent of the maximum front-end sales charges, by creating an exemption from this disclosure requirement for money market mutual funds, the rule provides more accurate disclosure to readers of these prospectuses. With respect to money market mutual funds, the disclosure is unnecessary, potentially misleading and serves no regulatory or investor protection interest.

V. Conclusion

In conclusion, for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–93–42 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4869 Filed 3–2–94; 8:45 am]

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[4] Securities Exchange Act Release No. 33352 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993).

[5] *See* Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (July 13, 1992) (approving SR–NASD–90–69); NASD Manual, Rules of Fair Practice, Art. III, Sec. 26(d), (CCH) ¶ 2176.

[6] NASD Manual, Rules of Fair Practice, Art. III, Sec. 26(d)(4), (CCH) ¶ 2176.

[7] Securities Exchange Act Release No. 33352 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993).

[8] File No. SR–NASD–93–42, Amendment No. 2 (Feb. 9, 1994).

[9] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Feb. 14, 1994).

[10] Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Jan. 13, 1994) ("ICI Comment Letter") and letter from Robert L. Butler, President, Pioneer Funds Distributor, Inc. to Office of the Secretary, SEC (Jan. 10, 1994) ("Pioneer Comment Letter").

[11] Pioneer Comment Letter.

[12] ICI Comment Letter.

[13] Letter from Vern M. Clemenson, Saturna Capital, to Margaret H. McFarland, SEC (Jan. 10, 1994).

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 17 CFR 200.30-3(a)(12).

[Release No. 34–33678; File No. SR–NYSE–92–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 of a Proposed Rule Change Regarding an Information Memo on Odd-Lot Trading Practices

February 24, 1994.

I. Introduction

On May 19, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the Exchange's odd-lot limit order handling procedures. The Exchange addresses several potential abuses of the procedures through the issuance of an Information Memo to all Members and Member Organizations. On November 20, 1992, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment, as amended, in Securities Exchange Act Release No. 31615 (December 17, 1992), 57 FR 61137 (December 23, 1992). No comments were received on the proposal. On January 21, 1994, the NYSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4] For the reasons discussed below, this order approves the proposed rule change, as amended, including Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

In February 1991, the Exchange implemented changes to its odd-lot[5] order handling procedures.[6] The changes were intended to afford pricing benefits to members and member organizations' customers and to provide an inexpensive and efficient order execution system compatible with traditional odd-lot investing practices of smaller investors.

One change established the use of "Best Pricing Quote" for pricing odd-lot market orders. This assures that an odd-lot market order sent to the Exchange for execution will be priced on the basis of the best prevailing national market system quotation for that security.[7] The second change eliminated all differentials on odd-lot limit orders entered by member organizations through the Exchange's system for odd-lots.[8]

According to the NYSE, however, the efficiencies sought to be obtained by eliminating the differential charge on odd-lot limit orders would only be achieved if the odd-lot system was used in a manner consistent with traditional odd-lot investing practices of smaller investors rather than as a professional trading vehicle.

The Exchange has identified and informed its members about several practices that it believes are not consistent with traditional odd-lot investing practices and whose use constitutes an abuse of the odd-lot system. These practices include unbundling of round-lots for the purpose of entering odd-lot limit orders; failure to aggregate odd-lot orders into round lots; entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in the stock; and order entry practices intended to circumvent the round-lot auction market.[9]

The Exchange's proposal identifies additional types of odd-lot limit order trading which the Exchange believes are not consistent with traditional odd-lot investment activity and should not be permitted to use the odd-lot limit order service. Specifically, the proposal would preclude the use of the odd-lot limit order service,[10] for (1) index arbitrage, (2) other types of program trading,[11] or (3) any pattern of activity that would suggest day trading. Examples of this latter practice could include among other things, entering multiple off-lot limit orders to buy and sell the same security on the same day or odd-lot limit orders to buy and sell a group of stocks on the same day where it appears or is established that the intent is to capture the spread in these stocks by buying on the bid and selling on the offer.[12] Upon approval of this proposed rule change, the Exchange intends to advise its members and member organizations, through an Information Memo, that these types of trading practices may not be effectuated by means of the odd-lot limit order service.

In its filing the NYSE stated that the limitations on use of the odd-lot limit order system are intended to address specific types of trading activity, and are not intended to limit access to, or use of, the system by individual market participants or any class of market participants for any authorized use of the system.

Under the proposal member organizations will be expected to establish appropriate systems to monitor odd-lot activity to ensure that the practices noted in the Information Memo are not engaged in. The Information Memo makes clear that the Exchange intends to initiate appropriate regulatory action if it finds that member organizations have permitted such trading practices, either for proprietary accounts or for the accounts of customers.

III. Discussion

The NYSE's odd-lot order execution system is intended to provide efficient execution of odd-lot orders at the best prices available.[13] The Commission agrees with the NYSE that the odd-lot limit order trading practices identified in the proposed Information Memo are not consistent with traditional odd-lot limit order investing practices. Such practices could undermine the integrity

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated November 16, 1992. Amendment No. 1 clarified the Exchange's proposal by providing an example of a pattern of activity that could suggest day trading of odd-lot limit orders.

[4] Amendment No. 2, in addition to other clarifying amendments, defined the term "day trading" as used in the Information Memo to describe prohibited odd-lot limit order activity.

[5] An odd-lot market order is an order of less than a unit of trading to buy, sell, or sell short, which carries no further qualifying notations. The normal trading unit, or round lot, is 100 shares.

[6] See NYSE Rule 124 for a complete description of the NYSE's odd-lot order execution system.

[7] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991).

[8] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991).

[9] See NYSE Information memo No. 91–29, July 25, 1991. See also Securities Exchange Act Release No. 31048 (August 18, 1992), 57 FR 38706 (August 26, 1992). Odd-lot limit orders are executed upon the occurrence of the first round-lot transaction in the security, which is at or better than the specified limit, following receipt of the order by the odd-lot system. See NYSE Rule 124.

[10] Such trading would not be precluded from using the odd-lot system if odd-lot market orders were utilized. Also, such prohibitions do not extend to PRLs (part of round lots) because they are executed outside of the odd-lot system.

[11] The Exchange does permit odd-lot limit orders to be entered in conjunction with a program trade where such orders consist in the aggregate of a relatively small part of the overall program. The term program trading is defined in NYSE Rule 80A as either index arbitrage or any trading strategy involving the related purchase or sale of a group or basket of 15 or more publicly traded securities that have a total fair market value of $1,000,000 or more.

[12] The Exchange does recognize, however, that some types of buying and selling on the same day may be appropriate and cites as an example buying stock using an odd-lot limit order and subsequently entering a stop loss sell order against that position.

[13] See, Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 5660 (February 5, 1991).

of the system and contravene the odd-lot order system's purposes.

In this context, the Commission notes that the NYSE's odd-lot order trading system is predicated on the specialists' willingness to provide execution and price guarantees to odd-lot orders, the majority of which are entered for smaller retail accounts. These transactions are too small to be handled efficiently through the regular Exchange auction process. These orders generally are used by retail investors to buy or sell a small amount of stock and are not used in short term trading strategies. As a result, Exchange specialists are able to provide execution guarantees to odd-lot limit orders without charging an additional handling fee. The use of the system as a day trading vehicle or as part of program trades to capture the bid ask spread through odd-lot limit orders could reduce specialists' willingness to provide cost-efficient executions of odd-lot limit orders. Accordingly, it is reasonable for the NYSE to preclude use of its odd-lot limit order system for index arbitrage, program trading, and day trading. Ensuring the odd-lot limit order system is only utilized for the types of orders it was intended to accommodate will help to ensure the continued economic liability of the system which should ultimately benefit all investors consistent with section 6(b)(5) of the Act.

The NYSE has been careful in formulating the Information Memo to prohibit only those transactions that would abuse the odd-lot limit order execution guarantees. For example, the Information Memo does not preclude market participants from entering odd-lot market orders for index arbitrage, program trading, or day trading. Because the Commission believes the proposal clearly identifies and prohibits certain strategies that can result in abuse of the NYSE's odd-lot limit order system, yet still allows market participants to have such orders executed by entering odd-lot market orders rather than limit orders, the Commission believes that the proposal will not unfairly limit access to the NYSE's market.

The Commission finds good cause for accelerated approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 2 modifies the proposal to make certain technical and clarifying adjustments to the proposed rule change but leaves the overall structure and purpose of the proposal unchanged. We also note that no comments were received on the proposal as noticed.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 11A [14] and 6(b).[15] In particular, the Commission believes the proposal is consistent with the section 11A(a)(1)(C)(i) mandate that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions. The Commission further believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the proposal will ensure the continued pricing and execution efficiencies provided by the NYSE's odd-lot order system by identifying and prohibiting certain odd-lot limit order trading strategies that are not consistent with traditional odd-lot transactions.

V. Solicitations of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–13 and should be submitted by March 24, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [16] that the proposed rule change, including Amendment No. 2 on an accelerated basis, (SR–NYSE–92–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4870 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33866; File Nos. SR–OCC–94–01 and SR–ICC–94–01]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to the Cross-Netting of Foreign Currency Options and Futures

February 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 18, 1994, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–OCC–94–01 and SR–ICC–94–01) as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC, self-regulatory organizations ("SROs"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will eliminate the ability of a clearing member of both OCC and ICC ("joint clearing member") that has elected to cross-net its obligations arising from foreign currency options and futures to select ICC as its designated clearing organization ("DCO") in settling such obligations. Under the proposed rule changes, only OCC will be able to act as the DCO in settling such obligations.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, OCC and ICC have included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text

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[14] 15 U.S.C. 78k–1 (1988)

[15] 15 U.S.C. 78f(b) (1988).

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

of these statements may be examined at the places specified in Item IV below. OCC and ICC have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Cross-Netting Under Current Rules

Under OCC and ICC rules, a joint clearing member may elect to cross-net its OCC exercise and assignment settlement obligations in OCC-cleared foreign currency options ("OCC obligations") with its settlement obligations in ICC-cleared foreign currency futures ("ICC obligations") on the same foreign currency. Cross-netting occurs when OCC obligations settle on a date that also is a delivery date for ICC obligations. Because such dates coincide only one day each month, cross-netting is performed only one day each month.

Currently, a joint clearing member that has elected to settle by cross-netting may select either OCC or ICC as its DCO and will settle its cross-netted obligations with its DCO in accordance with the rules of the DCO. (OCC and ICC have virtually identical rules regarding the settlement of foreign currency obligations.) The DCO, in turn, performs its ordinary clearance and settlement activities and acts as agent for the opposite clearing organization in settling the cross-netted obligations.[2]

The agreement of one clearing organization to act as agent for the other is contained in the Mutual Agency Agreement for Foreign Currency Settlement ("Mutual Agency Agreement") between OCC and ICC. The Mutual Agency Agreement sets forth the rights and obligations of OCC and ICC in effecting cross-netted settlements and the effect of the default of a joint clearing member on such rights and obligations.

2. The Proposed Rule Changes

ICC no longer desires to be a cross-netting DCO, and therefore, OCC and ICC have proposed to eliminate the ability of a joint clearing member to select ICC as a DCO. These proposed rule changes will have no effect: (1) On the basic procedures under which cross-netted obligations are settled or (2) upon any joint clearing member because no joint clearing member has ever selected ICC as its cross-netting DCO.

To accomplish the proposed rule changes, OCC and ICC will amend OCC Rule 1605(c) and ICC Rule 1205(c). The two rules deal with the cross-netting of foreign currency obligations and will be modified to state that henceforth only OCC will be the DCO and effect the settlement of such obligations. OCC and ICC also will delete from OCC By-Laws Article XV, Section 1 and from ICC Rule 1202 the term and definition of "designated clearing organization."

OCC and ICC will replace the existing Mutual Agency Agreement between OCC and ICC with a proposed Agreement for Cross-Netting Foreign Currency Settlements ("Cross-Netting Agreement"). The proposed Cross-Netting Agreement, which is based on the Mutual Agency Agreement, has been drafted by OCC and ICC to implement the above-described rule changes. Specifically, the Cross-Netting Agreement provides: (1) That OCC and ICC will furnish a form notice by which a joint clearing member may elect to cross-net its OCC and ICC obligations and which will provide that only OCC will effect the cross-netted settlements; (2) that OCC agrees to act as agent for ICC in effecting cross-netted settlements with a joint clearing member; (3) that neither OCC nor ICC will change its rules relating to the margining and settling of foreign currency obligations without the consent of the other; and (4) the settlement, default, indemnity, and termination procedures.

Under the Cross-Netting Agreement, the settlement and default procedures will remain unchanged except that only OCC will be authorized to effect the cross-netting settlements. Likewise, the terms of indemnity between OCC and ICC will remain unchanged except for the fact that OCC will no longer indemnify ICC for actions taken by ICC as agent for OCC in effecting cross-netting settlements. Finally, the terms for terminating the Cross-Netting Agreement will remain unchanged except that the notice requirement between the two parties will be shortened from ninety days to thirty days.

OCC and ICC state the proposed rule changes are consistent with the Act and in particular with section 17A of the Act[3] in that the rule changes neither adversely affect the safeguarding of securities or funds in the custody or control of OCC or ICC or for which they are responsible nor significantly affect the rights or obligations of OCC, ICC, or those joint clearing members that have elected cross-netting.

B. Self-Regulatory Organizations' Statement on Burden on Competition

OCC and ICC believe that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

OCC and ICC have not solicited or received any comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to such period that the SROs consent, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of OCC and ICC. All submissions should refer to File Nos. SR–OCC–94–01 and SR–ICC–94–01 and should be submitted by March 24, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

[2] For a more detailed description of cross-netting, refer to Securities Exchange Act Release No. 24781 (August 6, 1987), 53 FR 30268 [File No. SR–OCC–86–14].

[3] 15 U.S.C. 78q–1 (1988).

[4] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4871 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Hillhaven Corporation, Inc., Common Stock, $0.15 Par Value; Preferred Stock Purchase Rights; 7¾% Convertible Subordinated Debentures) File No. 1–10426

February 25, 1994.

Hillhaven Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock, preferred stock purchase rights and convertible subordinated debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and preferred share purchase rights commenced trading on the NYSE at the opening of business on November 2, 1993 and concurrently therewith such securities were suspended from trading on the Amex.

In making the decision to withdraw its common stock and preferred share purchase rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and preferred share purchase rights and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before March 18, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4798 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

Valspar Corp.; Application To Withdraw From Listing and Registration

February 25, 1994.

In the matter of Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Valspar Corporation, Common Stock, $.50 Par Value) File No. 1–3011.

Valspar Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 8, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before March 18, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4797 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1957]

Extension of the Restriction on the Use of United States Passport for Travel To, In, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was so chaotic that American citizens there could not be considered safe from terrorist acts.

Although there continues to be improvement in the security situation, review of the situation there has led me to conclude that Lebanon continues to be an area "* * * where there is imminent danger to the public health or the physical safety of United States travelers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of six months unless extended or sooner revoked by Public Notice.

Dated: February 24, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–4830 Filed 3–2–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Katmailand, Inc. d/b/a Katmai Air for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–2–45) Docket 49328.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Katmailand, Inc. d/b/a Katmai Air fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 14, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49328 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: February 25, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–4895 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program; Capital City Airport, Lansing, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Capital Region Airport Authority, Lansing, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 29, 1993, the FAA determined that the noise exposure maps submitted by the Capital Region Airport Authority under part 150 were in compliance with applicable requirements. On January 21, 1994, the Assistant Administrator for Airports approved the Capital City Airport noise compatibility program.

All of the recommendations of the program were approved. A total of nine (9) measures were included in the Capital Region Airport Authority recommended program. Of the nine (9) measures, two (2) are listed as "Noise Abatement Plan Measures," two (2) are listed as "Program Management Measures," and five (5) are listed as "Land Use Management Plan." The FAA has approved all of the nine (9) measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Capital City Airport noise compatibility program is January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Capital City Airport, effective January 21, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The Capital Region Airport Authority submitted to the FAA in 1993 noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1990 and 1992. The Capital City Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 29, 1993. Notice of this determination was published in the **Federal Register** on July 26, 1993.

The Capital City Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1996. It was requested that the FAA evaluate and approve this material as a noise compatibility program as

described in section 104(b) of the Act. The FAA began its review of the program on July 27, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other then the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained nine (9) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective January 21, 1994.

Outright approval was granted for all nine (9) of the specific program elements. The nine (9) measures include: Informal Preferential Runway Use Program, Voluntary Compliance of Phase-Out of Stage 2 Aircraft, Airport Zoning, Environmental Review, Revision of Building Code, Real Estate Disclosure, Local Government Comprehensive Plans, Noise Abatement Officer, and Provisions for Revisions.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on January 21, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591,

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111,

Capital Region Airport Authority, Capital City Airport, Lansing, Michigan 48906.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, February 7, 1994.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 94–4874 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Boise Air Terminal, Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Boise Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John W. Anderson, A.A.E. at the following address: 3201 Airport Way, Boise, ID 83705.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Boise Air Terminal under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Simmons, (206) 227–2656; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Boise Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 18, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Boise was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 18, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1994.

Proposed charge expiration date: September 30, 1998.

Total estimated PFC revenue: $6,907,774.00.

Brief description of proposed project(s): Planning studies, taxiway safety improvements, Aircraft Rescue and Fire Fighting improvements, terminal safety improvements, air carrier capacity improvements, land acquisition and perimeter road, snow removal equipment safety improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators public or private charters in aircraft with a seating capacity of 10 or more. The application was prepared identifying Part 139; however, this was a typographical error. A letter notifying the carriers has been distributed and they may respond during the **Federal Register** comment period indicating their agreement/disagreement.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Boise Air Terminal.

Issued in Renton, Washington on February 18, 1994.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 94–4876 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: McDonough County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

Environmental Impact Statement (EIS) will be prepared for a proposed project in McDonough County, Illinois. The proposed project will evaluate bypass alternates in the area of Macomb, Illinois. Bypass alternates will consider possible connections of existing U.S. Route 67, U.S. Route 136, and proposed Illinois Route 336. The study area will encompass an area three miles south, five miles north, eight miles west, and five miles east of Macomb.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway Administration, Illinois Division, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622 Mr. Dale E. Risinger, District Engineer, Illinois Department of Transportation (IDOT), 401 Main Street, Peoria, Illinois 61602, Telephone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve traffic circulation around Macomb in McDonough County, Illinois. The proposed action involves the construction of a four-lane, access-controlled, divided highway. The length will be dependent on the results of the study and a chosen bypass location. The area being studied will encompass Macomb, Illinois for three miles to the south, five miles to the north, eight miles to the west, and five miles to the east.

The proposed action will support economic development in west-central Illinois by providing improved traffic circulation, safer and more efficient access to the urban area, a divided highway design for high operating speeds and system continuity from Quincy to Macomb. Primary environmental resources that may be impacted are local property tax income, agricultural land, and wetlands.

Alternatives under consideration include no action and a new four-lane, fully access-controlled facility on new alignment. Interchanges will be provided at major high-volume roadways. Several alignment alternatives will be evaluated for the proposed project to best serve traffic circulation to and around Macomb.

The scoping process undertaken as part of this proposed project will include distribution of a scoping information packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. A formal scoping meeting is not planned. Further details of the proposed project and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, a comprehensive public involvement program will be undertaken. A public meeting concerning the proposed action will be held in the study area prior to the public hearing. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public agency review and comment and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or IDOT contact persons.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 18, 1994.

James C. Partlow,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 94–4792 Filed 3–2–94; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Prince of Wales Island, Alaska

February 22, 1994.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement. Reference FHWA Notice 6640.19, April 27, 1993.

SUMMARY: The FHWA is issuing this notice to inform the public that an environmental impact statement (EIS) will not be prepared for a proposed road improvement project on Prince of Wales Island in Alaska. The scope of the proposed improvements to the North Prince of Wales Highway has been significantly reduced. An EIS will not be prepared because of the reduced potential for significant environmental impacts to result from this project.

FOR FURTHER INFORMATION CONTACT: Walter Langlitz, Project Manager, Federal Highway Administration/ Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98661, Phone: 206/696–7528.

SUPPLEMENTARY INFORMATION: The new project scope involves reconstruction of the section of North Prince of Wales Road between Coffman Cove junction (M.P. 68.78) and the Naukati junction (M.P. 76.75). This project will correct substandard road features such as narrow width, poor alignment, poor road surface, and unsafe roadside conditions in the project area. The Federal Highway Administration (FHWA) is considering two alternatives in addition to a "no action" alternative. One alternative would widen and realign this section to an 60 km/h (40 MPH) standard. The other alternative would widen and realign the section to a 80 km/h (50 MPH) standards. Both alternatives include resurfacing the roadbeds with gravel. This revised proposal is based on written comments and the results of public meetings held in 1993 regarding improvement of roads on Prince of Wales Island. Members of the public and agency representatives discussed potential alternatives and identified relevant issues at these meetings. Input received indicates there is not strong support at this time for new road construction on the east side of the island to meet the stated need. A Scoping Report is available from FHWA which documents the meetings held by FHWA and input received.

Issued on: February 23, 1994.

Richard Wasill,

Planning and Coordination Engineer, Federal Highway Administration.

[FR Doc. 94–4885 Filed 3–2–94; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The appended document, *Automotive Fuel Economy Program, Eighteenth Annual Report to the Congress*, was prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub.L. 92–513), as amended by the Energy Policy and Conservation Act (Pub.L. 94–163) which requires in pertinent part that each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part.

Issued: February 23, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

U.S. Department of Transportation

Automotive Fuel Economy Program

National Highway Traffic Safety Administration

Eighteenth Annual Report To The Congress

AUTOMOTIVE FUEL ECONOMY PROGRAM

EIGHTEENTH ANNUAL REPORT TO THE CONGRESS

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Section I: Introduction

This Eighteenth Annual Report to Congress summarizes the 1993 activities of the National Highway Traffic Safety Administration (NHTSA) regarding implementation of applicable Sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act of 1972 (15 U.S.C. 1901 *et seg.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1993 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing annual reports to Congress on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. Standards for light trucks were established by NHTSA for MYs 1979 through 1995. NHTSA set a combined standard of 20.6 mpg for light truck fuel economy standard for MY 1995. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1995

[In MPG]

Model year	Passenger cars	Light Trucks[1]		
		Two-wheel drive	Four-wheel drive	Combined[2,3]
1978	[4] 18.0	.....	.....	.....
1979	[4] 19.0	17.2	15.8	.....
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[9] 26.0	21.0	19.5	20.5
1988	[9] 26.0	21.0	19.5	20.5
1989	[10] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2
1992	[4] 27.5	.....	.....	20.2
1993	[4] 27.5	.....	.....	20.4
1994	[4] 27.5	.....	.....	20.5
1995	[4] 27.5	.....	.....	20.6

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

The Alternative Motor Fuels Act of 1988 (AMFA) (Pub. L. 100–494, October 14, 1988), amended the Motor Vehicle Information and Cost Savings Act under Section 513—Manufacturing Incentives for Automobiles. AMFA promotes the use of methanol, ethanol, and natural gas as transportation fuels, and it provides corporate average fuel economy (CAFE) incentives for the vehicles that can use alternative fuels. AMFA provides CAFE benefits for manufacturers who produce both dedicated and dual energy alternative fuel vehicles in MYs 1993 through 2004, and the benefits may be extended through MY 2008. Dual energy automobiles are capable of operating on alcohol and either gasoline or diesel fuel. Natural gas dual energy automobiles are capable of operating on natural gas and either gasoline or diesel fuel. A fleet including dual energy automobiles which meets the applicable range or dedicated alternative fuel automobiles qualify to have their CAFE calculated using a special procedure that considers the petroleum content of the alternative fuel. Under that procedure, a relatively high fuel economy figure is assigned the vehicles capable of operating on alternative fuels. Section 513 of the Motor Vehicle Information and Cost Savings Act of 1972, was revised by the Energy Policy Act of 1992, to expand the definition of manufacturing incentives for automobiles by including gaseous alternative fuels.

The Environmental Protection Agency (EPA) administers the fuel economy calculations for passenger vehicles, including alternative fuel vehicles. EPA will publish the final rules for alternative fuel vehicles which contain the special CAFE adjustments for these vehicles. The majority of the manufacturers of these alternative fuel vehicles described below are awaiting guidance from EPA to receive special CAFE credits.

In MY 1993, several manufacturers demonstrated the capability of producing alternative fuel vehicles. Although production of these passenger vehicles was not large, alternative fuels are advantageous in reducing hydrocarbon, carbon monoxide, and oxides of nitrogen emissions at a relatively low cost and providing higher octane ratings.

Ford is the only manufacturer that reported a special CAFE calculation for its flexible fuel passenger automobiles. A flexible fuel vehicle is capable of operating on alcohol, gasoline, or any combination of these fuels from the same tank and without the driver taking any additional actions. The following alternative fuel vehicles were produced in MY 1993:

- GM manufactured two alternative fuel vehicles: methanol (M85) and ethanol (E85) Luminas. GM projected producing a total of 500 of these flexible fuel vehicles. The M85 fuel has a content of 85 percent methanol fuel and 15 percent gasoline. The E85 fuel consists of 85 percent ethanol fuel and 15 percent gasoline. These vehicles have the flexibility to run either on the alternative fuels or gasoline.
- Ford included an alcohol flexible fuel passenger automobile in its MY 1993 fleet, which was reported in its midmodel year report. The Taurus, a midsize passenger car, achieved a fuel economy of 42.4 mpg when adjusted for the alternative fuel. Ford projected producing 2,000 of these flexible fuel passenger vehicles.
- Chrysler included two flexible fuel passenger vehicles, Spirit and Acclaim, in its MY 1993 fleet. Chrysler projected manufacturing a total of 5,427 of these vehicles. The fuel economy for both these flexible fuel passenger vehicles is 28.2 mpg, when operating on gasoline.

After Chrysler and GM receive special CAFE calculations for their alternative fuel vehicles, the current fuel economies of these companies will increase slightly. The relatively low volumes of these vehicles in the GM and Chrysler fleets will preclude any significant CAFE adjustment.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1992 were updated to include final EPA calculations, where available, since the publication of the *Seventeenth annual Report to the Congress*. These fuel economy achievements and current projected data for MY 1993 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.3 mpg in MY 1993. For MY 1993, CAFE values increased over MY 1992 levels for 15 of 21 passenger car manufacturers' fleets. (See Table II–1.) These 15 companies accounted for over 74 percent of the total MY 1993 production. Manufacturers continued to introduce new technologies, more fuel efficient models, and less fuel-efficient larger models. For MY 1993, the overall domestic manufacturers' fleet average fuel economy was the highest it has ever been with 27.7 mpg, exceeding the CAFE standard by 0.2 mpg. The overall domestic manufacturers' fleet average fuel economy is the closest it has been to that of the import manufacturers, differing by only 1.8 mpg. For MY 1993, Ford and GM raised their domestic passenger car CAFE 0.7 and 0.6 mpg, respectively, from their 1992 levels, while Chrysler fell 0.3 mpg below its MY 1992 level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER*

[Model Years 1992 and 1993]

Manufacturer	Model year CAFE (MPG)	
	1992	1993
Domestic:		
Chrysler	27.8	27.5
Ford	27.4	28.1
GM	26.8	27.4
Mazda	.....	29.2
Sales Weighted Average (Domestic)	27.1	27.7
Imported:		
BMW	24.0	25.2
Chrysler Imports	28.9	30.8
Daihatsu	41.3	.....
Fiat	22.5	23.7
Ford Imports	25.4	27.0
GM Imports	31.1	29.7
Honda	31.3	32.0
Hyundai	31.3	31.0
Isuzu	32.5	33.0
Kia	.....	31.7
Mazda	30.7	30.8
Mercedes-Benz	21.8	22.9
Mitsubishi	28.2	29.1
Nissan	29.4	29.0
Peugeot	25.0	.....
Porsche	22.4	22.5
Subaru	27.8	29.3
Suzuki	44.7	46.4
Toyota	28.8	28.8
Volvo	25.6	25.9
VW	29.2	27.0
Sales Weighted Average (Imported)	29.0	29.5
Total Fleet Average	27.9	28.3
Fuel Economy Standards	27.5	27.5

*Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed

Note: Some MY 1992 CAFE values differ from those used in the *Seventeenth Annual Report to the Congress* due to the use of final EPA calculations.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model years 1992 and 1993]

Manufacturer	Model year CAFE (MPG)	
	Combined	
	1992	1993
Captive Import:		
Chrysler Imports	21.0	24.4
Others:		
Chrysler	21.2	21.0
Daihatsu	26.7	.....
Ford	20.3	20.7
GM	20.2	19.8
Isuzu	20.8	21.8
Mazda	23.4	23.6
Mitsubishi	22.2	21.2
Nissan	23.9	23.8
PAS	18.6	18.5
Range Rover	16.3	15.4
Subaru	28.6	29.1
Suzuki	30.1	28.9
Toyota	21.9	21.8
UMC	19.0	18.8
VW	.....	21.0
Total Fleet Average	20.8	20.8
Fuel Economy Standard	20.2	20.4

Note: Some MY 1992 CAFE values differ from those used in the *Seventeenth Annual Report to the Congress* due to the use of final EPA calculations.

Mazda achieved 75 percent domestic content for its United States-built passenger cars to become the first foreign-based manufacturer with a domestic fleet. Overall, the domestic manufacturers increased their combined CAFE by 0.6 mpg over MY 1992 levels.

In MY 1993, the fleet average fuel economy for imported passenger cars increased by 0.5 mpg from the MY 1992 CAFE level. Import CAFE was 29.5 mpg in MY 1993. Thirteen of the 18 imported car manufacturers increased their CAFE values between MYs 1992 and 1993, including 6 of the 9 Asian importers. Figure II-1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1993.

The total light truck fleet CAFE remained constant at the MY 1992 CAFE level of 20.8 mpg. Figure II-2 illustrates the progress in total fleet CAFE from MY 1979 to MY 1993 for light trucks.

A number of passenger car and a few light truck manufacturers are projected not to achieve the levels of the MY 1993 CAFE standards. NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1993 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1994. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

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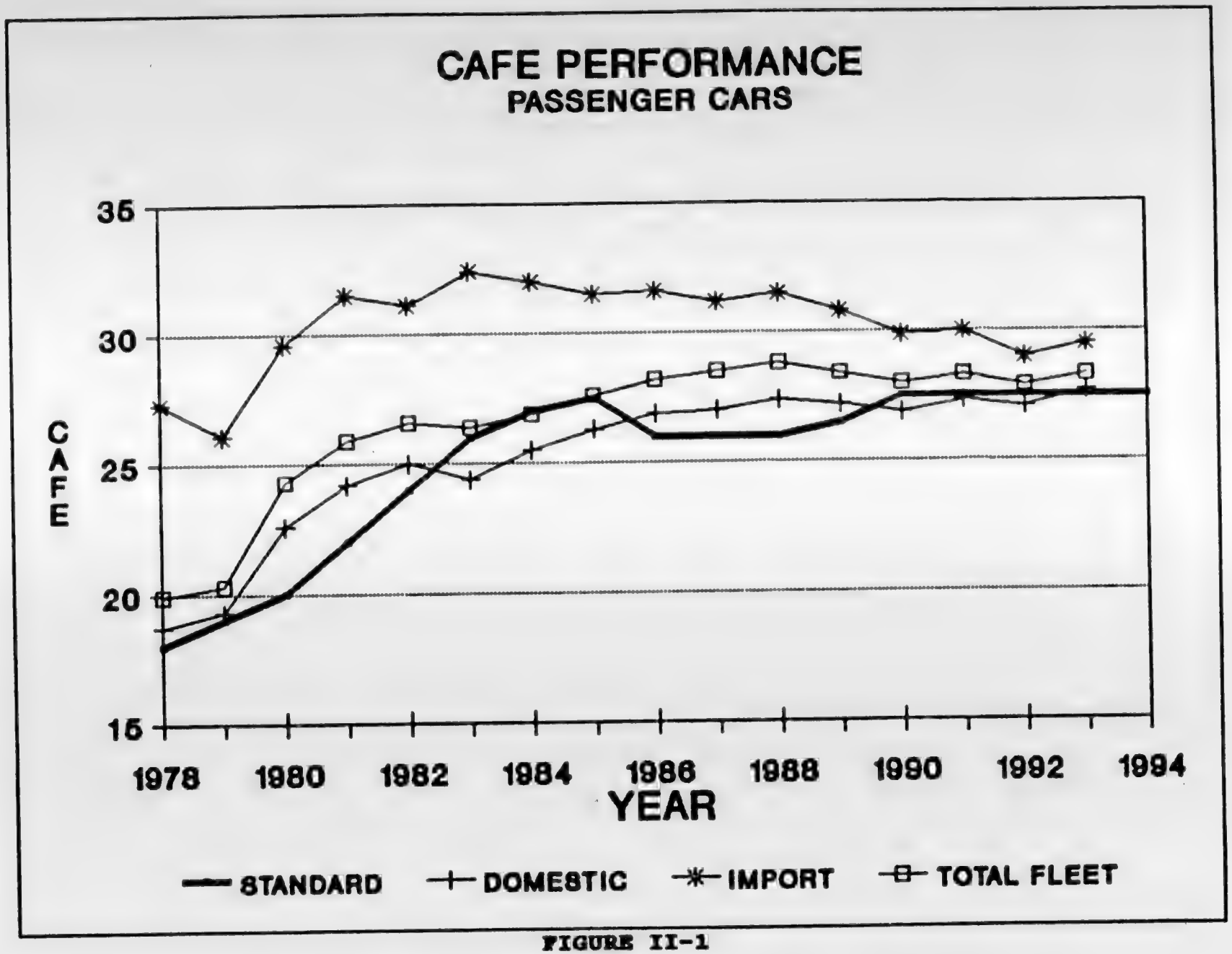
CAFE PERFORMANCE
PASSENGER CARS
CAFE
35
30
25
20
15
1978
1980
1982
1984
1986
1988
1990
1992
1994
YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

FIGURE II-1

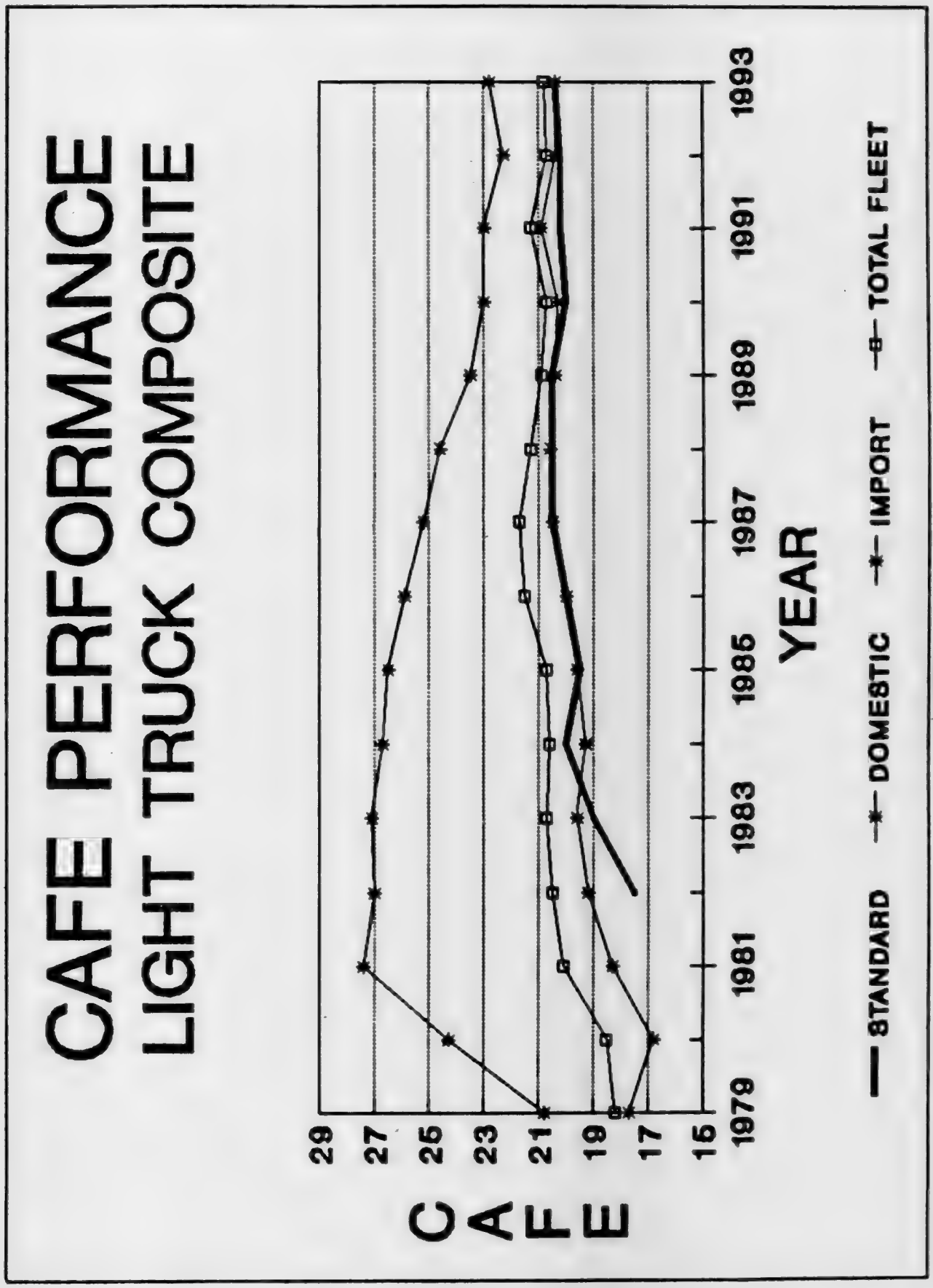

FIGURE II-2

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Fleet average fuel economy for all MY 1993 passenger cars combined and for all light trucks combined exceeded the levels of the MY 1993 standards.

Daihatsu terminated sales of its passenger cars and light trucks in the United States after MY 1992, the first major Asian manufacturer to do so. This manufacturer accumulated substantial CAFE credits during its 5-year marketing span in the United States, but the sales of this company's products reached such a low level that it apparently decided it was economically infeasible to remain.

While one Asian manufacturer exited the United States market, another, Kia Motors, entered. Kia, a South Korean manufacturer, produces the Sephia sedan. It planned to test market a few thousand in MY 1993, with sales slated for October 1993 at 50 dealerships. Kia Motors also builds the Festiva model for Ford.

Mazda reported a domestic passenger car fleet consisting of its 626 and MX6 model vehicles which are built in Flatrock, Michigan. These domestic-built vehicles do not appreciably affect the domestic fleet CAFE.

The characteristics of the MY 1993 passenger car fleet reflect a continuing trend toward increased consumer demand for higher performance cars. (See Table II–3.) Compared to MY 1992, the average curb weight for MY 1993 decreased 62 pounds for the domestic fleet and decreased 14 pounds for the imported fleet. The total new car fleet is 36 pounds lighter than it was in MY 1992, primarily because of the larger share held by the domestic fleet. From MY 1992 to MY 1993, horsepower per/100 pounds, a measure of vehicle performance, increased from 4.48 to 4.56 for domestic passenger cars and from 4.66 to 4.72 for imported passenger cars. The total fleet average for passenger cars increased from 4.56 in MY 1992 to 4.62 horsepower/100 pounds in MY 1993, the highest level in the 38 years for which the agency has data. Average engine displacement decreased from 192 to 184 cubic inches for domestic passenger cars and 139 to 136 cubic inches for imported passenger cars.

The size class breakdown shows an increased trend towards compact and midsize passenger cars and a decrease in subcompact and large passenger cars for the overall fleet. The domestic fleet shift is almost exclusively from subcompact and large passenger cars to compact and midsize passenger cars. The shift of imported cars to both the midsize and compact sizes is particularly pronounced. The imported share of the passenger car market declined slightly in MY 1993, but imported compact cars increased to 36.6 percent of the imported fleet in MY 1993 from just 32.0 percent in MY 1992 and now make up nearly 15 percent of the total new passenger car fleet.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1992 AND 1993

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1992	1993	1992	1993	1992	1993
Fleet Average Fuel Economy, mpg	27.9	28.3	27.1	27.7	29.0	29.5
Fleet Average Curb Weight, lbs	3007	2971	3108	3046	2875	2861
Fleet Average Engine Displacement, cu. in	169	164	192	184	139	136
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.56	4.62	4.48	4.56	4.66	4.72
Percent of Fleet	100	100	56.5	59.4	43.5	40.6
Segmentation by EPA Size Class, percent:						
Two-Seater	1.0	1.4	0.4	0.5	1.6	2.8
Minicompact	1.3	1.0	0.0	0.0	3.1	2.4
Subcompact*	25.9	23.0	15.3	14.4	39.6	35.4
Compact*	29.6	33.7	27.7	31.7	32.0	36.6
Midsize*	27.0	29.4	36.8	37.8	15.6	17.2
Large*	15.2	11.5	20.8	15.6	8.0	5.6
Percent Diesel Engines	0.06	0.04	0.0	0.0	0.14	0.09
Percent Turbo or Supercharged Engines	2.4	1.1	2.9	0.5	1.9	1.9
Percent Fuel Injection	100	100	100	100	99.8	100
Percent Front-Wheel Drive	84.4	84.4	87.7	86.0	80.1	82.1
Percent Automatic Transmissions	81.6	79.9	91.8	87.4	68.3	69.1
Percent Automatic Transmissions with Lockup Clutches	92.6	93.1	92.8	93.3	92.3	92.6
Percent Automatic Transmissions with Four or more Forward Speeds	70.2	77.2	60.9	69.2	86.3	91.9

*Includes associated station wagons.

The 0.6 mpg fuel economy improvement for the MY 1993 domestic passenger car fleet may be attributed to mix shifts and technology changes in the following: significant changes in engine design, decrease in average curb weight, and automatic transmissions with lockup torque converters and four forward speeds.

The 0.5 mpg increase average fuel economy for the MY 1993 imported passenger car fleet may be attributed to the same reasons as the domestic fleet improvements.

The domestic fleet had a dramatic decrease in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1992. Diesel engines were offered only on certain Mercedes Benz models during MY 1993.

Passenger car fleet average characteristics have changed significantly since the first year, MY 1978, of fuel economy standards. After substantial initial weight loss from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds; the passenger car fleet average curb weight stabilized at 2,800 to 3,000 pounds. Table II–4 shows that the MY 1993 passenger car fleet has nearly equal interior volume, higher performance, but over 40 percent fuel economy improvement compared to the MY 1978 fleet (see Figure II–3).

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

[Model Years 1978–1993]

Model year	Fuel economy (mpg)	Curb weight (lb.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ Weight (hp/100 lb.)
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2867	105	187	3.51
1981	25.9	2883	108	182	3.43
1982	26.6	2808	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2878	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2908	108	163	4.53
1991	28.3	2934	108	164	4.42
1992	27.9	3007	108	169	4.56
1993	28.3	2971	109	164	4.62

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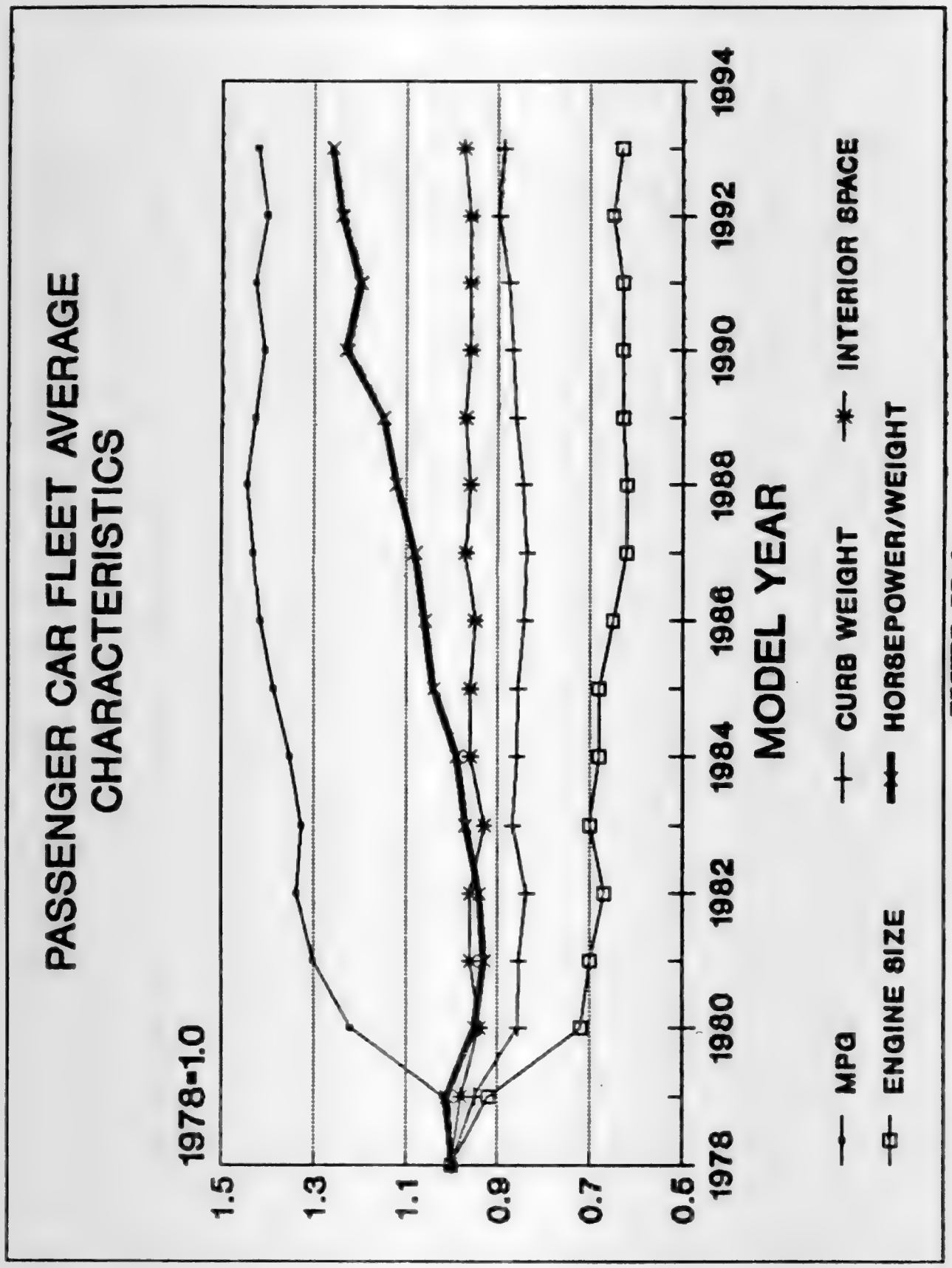

FIGURE II-3

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The passenger car fleet in MY 1993 averaged the highest horsepower-to-weight ratio recorded since 1955, the earliest year for which NHTSA has data.

The characteristics of the MY 1993 light truck fleet are shown in Table II–5. Since light truck manufacturers are not required to divide their fleets into domestic and import fleets based on the 75 percent domestic content threshold used for passenger car fleets (except for United States-based manufacturers with captive import fleets), the domestic and imported fleet characteristics in Table II–5 are estimated. NHTSA assumed foreign-based manufacturer's products would not meet the domestic content threshold, whether they were assembled in the United States, Canada, or another country. The exception is the assumption that the import-badged products of a domestic manufacturer's assembled plant were "domestic" (Mazda Navajo and Nissan Quest).

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1992 AND 1993

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1992	1993	1992	1993	1992	1993
Fleet Average Fuel Economy, mpg	20.8	20.8	20.5	20.5	22.5	22.8
Fleet Average Equivalent Test Weight, lbs.	4169	4201	4260	4284	3733	3727
Fleet average Engine Displacement, cu. in.	235	237	251	249	160	167
Fleet Average Horsepower/Weight Ratio, HP/100 lbs.	3.92	3.89	4.02	3.97	3.46	3.47
Percent of Fleet	100	100	82.7	85.1	17.3	14.9
Segmentation by Type, percent:						
Passenger Van:						
Compact	21.4	23.6	23.1	25.8	12.9	11.1
Large	0.6	0.3	0.7	0.4	.....	.....
Cargo Van:						
Compact	1.7	1.4	2.1	1.6	.....	.....
Large	5.4	4.7	6.5	5.6	.....	.....
Small Pickup*	14.2	7.9	13.8	6.6	16.6	15.7
Large Pickup*	31.3	34.2	30.5	33.4	35.3	39.2
Special Purpose	25.4	27.8	23.4	26.7	35.3	33.9
Percent Diesel Engines	0.09	0.07	0.11	0.09	.....	.....
Percent Fuel Injection	98.9	99.0	100	100	93.5	93.0
Percent Automatic Transmissions	72.2	76.2	78.9	82.5	40.3	39.9
Percent Automatic Transmissions with Lockup Clutches	98.1	98.6	98.8	99.1	91.2	92.3
Percent Automatic Transmissions with Four Forward Speeds	88.6	90.5	87.8	89.9	96.5	97.1
Percent 4-Wheel Drive	32.8	33.7	29.9	32.3	47.1	41.2

* Including Cab Chassis.

The average test weight of the total light truck fleet increased by 32 pounds over that for MY 1992. The stability of the 20.8 mpg CAFE level between MYs 1992 and 1993 may be attributed to the small increase in shares of compact vans and special purpose vehicles and the small increase in the use of lockup converter clutches and four forward speed automatic transmissions, offsetting the increased popularity of large pickups and heavier trucks. Diesel engine usage declined in light trucks to 0.07 percent in MY 1993 from 0.09 percent in MY 1992. The imported share of the MY 1993 light truck fleet decreased to 14.9 percent, 2.4 percent lower than MY 1992 and the lowest share since light truck fuel economy standards were established.

During MYs 1980 through 1993, CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MY 1988 through MY 1993, as average weight, engine size, and performance increased. During these years, light truck production increased from 1.9 million in MY 1980 to 4.6 million in MY 1993. Light trucks comprised nearly a third of the total light duty vehicle fleet production in MY 1993, almost double its share in MY 1980.

Figure II–4 illustrates that the light duty fleet (passenger cars and light trucks together) average fuel economy steadily increased in MY 1987, but subsequently has been below the MY 1987 level (see Table II–6). Light truck average fuel economy also declined, but the passenger car average fuel economy remained relatively constant for MYs 1987–1993. The overall decline illustrates the emergence of light trucks in the light duty fleet.

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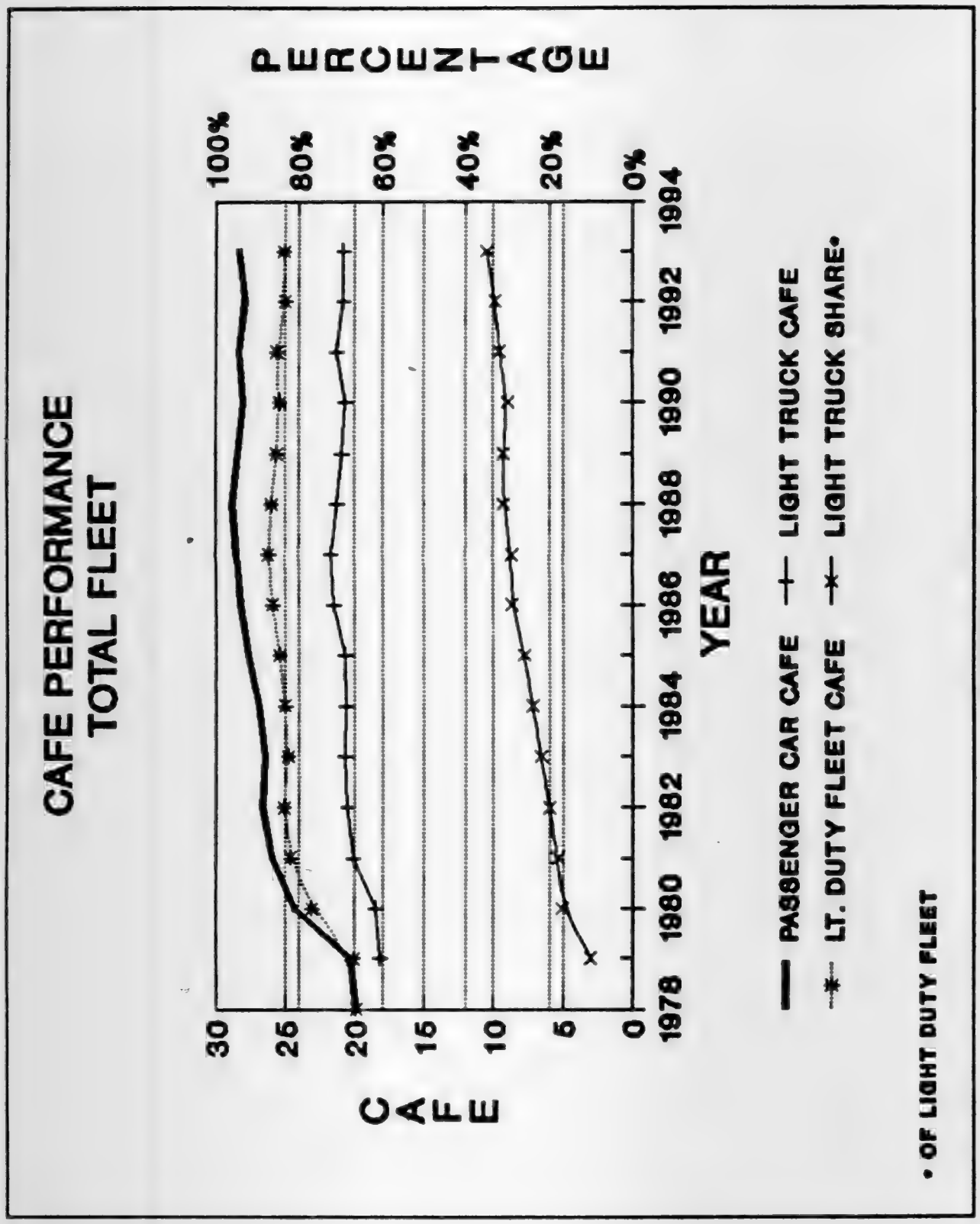

FIGURE II-4

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TABLE II–6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1993

[In MPG]

Model year	Domestic			Imported			Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined	
1978	18.7	.....	.....	27.3	.....	.....	.....
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	25.0
1983	24.4	19.6	23.0	32.4	27.1	31.5	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.8	25.9
1987	27.0	20.5	24.6	31.2	25.2	29.6	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	25.6
1990	26.9	20.3	23.9	29.9	23.0	28.5	25.4
1991	27.3	20.9	24.4	30.0	23.0	28.3	25.6
1992	27.1	20.5	23.9	29.0	22.5	27.6	25.0
1993	27.7	20.5	23.8	29.5	22.8	28.0	25.1

While the passenger car fleet fuel economy improved by 0.4 mpg from MY 1992 to MY 1993 and the light truck fleet was unchanged, the total fleet fuel economy for MY 1993 increased only 0.1 mpg over the MY 1992 level (25.0 mpg for MY 1992 and 25.1 mpg for MY 1993). This is attributed to increased sales of light trucks which have a total fleet fuel economy far less than passenger cars. The shift to light trucks for general transportation is an important trend in consumers' preference and has a significant fleet fuel consumption effect.

Domestic and imported passenger car fleet average fuel economies improved since MY 1978. In MY 1993, the domestic and imported passenger car fleet average fuel economies increased to 27.7 mpg and 29.5 mpg, respectively. This reflects an increase of 9.0 mpg since MY 1978 for domestic cars. For imported cars, the MY 1993 average fuel economy is only 2.2 mpg higher than that of MY 1978.

Domestic and imported light truck fleet average fuel economies improved since MY 1980. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised 85.1 percent of the total light truck fleet. For MY 1993, the domestic light truck fleet has an average fuel economy of 2.3 mpg lower than the imported light truck fleet. The imported light truck fleet fuel economy improved rapidly between MYs 1980 and 1981, but has been lower since then. For MY 1993, the imported light truck fleet fuel economy increased 0.3 mpg over MY 1992 to 22.8 mpg. A comparison of MYs 1993 to 1980 was done to avoid comparing the performance of the 0-6,000 pounds GVWR light truck fleet covered by the MY 1979 fuel economy standard to the performance of the 0–8,500 pounds GVWR fleets to which the standards apply for MY 1980 and beyond.

The gap between the average CAFEs of the imported and domestic manufacturers is smaller than in earlier years as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more four-wheel drive light trucks.

Based on a comparative analysis, since the enactment of CAFE standards for passenger cars for MY 1978, the total annual fleet fuel consumption, for both passenger cars and light trucks, has grown from 105.7 billion gallons (81.7 billion gallons for passenger cars + 24.1 billion gallons for 2-axle, 4-tire light trucks) in 1978 (Highway Statistics Summary to 1985, Table VM–201A) to 107 billion gallons (73.9 billion gallons for passenger cars + 33.1 billion gallons for light trucks) in 1992, the most current data (Highway Statistics Summary to 1992, Table VM–1). Over a 14-year period, total fuel consumption increased only 1.2 percent. Improvements in fuel economy have offset growth in the total number of light duty vehicles and in miles traveled per vehicle.

Both vehicle registrations and vehicle miles traveled increased from 1978 to 1992. The total fleet registration increased 27.7 percent from 143,904,787 (118,428,730 for passenger cars + 25,476,057 for light trucks) in 1978 to 183,746,571 (144,213,429 for passenger cars + 39,533,142 for light trucks) in MY 1992. Vehicle miles traveled increased during this period. In 1978, vehicle miles traveled totaled 1.426 trillion (1.147 for passenger cars + 0.279 for light trucks). It increased to 2.072 trillion for the total fleet (1.595 for passenger cars + 0.477 for light trucks) in 1992. This is an increase of over 45.3 percent.

In conclusion, although more vehicles are traveling more miles, fuel consumption by this total fleet (both passenger cars and light trucks) has increased only slightly.

Section III: 1993 Activities

A. Passenger Car CAFE Standards

The following synopsis describes litigation challenging NHTSA actions under the CAFE program.

Competitive Enterprise Institute (CEI) v. *NHTSA*, D.C. Circuit Court, No. 89–1422

This case challenged NHTSA's May 1989 decision to terminate rulemaking on whether to amend the MY 1990 passenger car CAFE standard. On February 19, 1992, in a 2–1 decision, the D.C. Circuit Court held that NHTSA failed to adequately evaluate the safety consequences of its decision to retain the MY 1990 passenger car CAFE standard of 27.5 mpg rather than proceeding with proposed rulemaking to reduce that model year's standard. The Court remanded the matter to NHTSA for further consideration. CEI filed a Motion for Attorney Fees which NHTSA opposed. On August 6, 1992, the Court issued an order deferring decision on CEI's fee motion until NHTSA acts on the Court's remand order. NHTSA's subsequent action on this remand order is discussed below.

Competitive Enterprise Institute v. *NHTSA*, D.C. Circuit Court, No. 93–1210

This case challenges NHTSA's January 15, 1993, decision (D.C. Circuit Court's remand in Case No. 89–1422) to again terminate the rulemaking it commenced to consider amending the MY 1990 passenger car CAFE standard. The petition for review was filed on March 15, 1993. Both sides filed preliminary papers, but the Court has not yet issued a briefing and argument schedule.

B. Light Truck CAFE Standards

NHTSA published a final rule establishing the MY 1995 light truck fuel economy standard on April 7, 1993 (58 FR 18019). NHTSA set a combined standard of 20.6 mpg for MY 1995, the highest CAFE standard the agency has ever established for light trucks. The rule also converted certain measurements into metric units, the agency's first occurrence of using metric conversion for regulations relating to fuel economy standards.

In the final rule for MY 1995 light trucks, NHTSA determined that GM is the "least capable" manufacturer with a combined fuel economy capability of 20.6 mpg.

NHTSA concluded upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above GM's capability would not justify the economic harm to the company and the economy as a whole. NHTSA projected that GM could not achieve a combined fuel economy level higher than 20.6 mpg for MY 1995. In contrast, NHTSA concluded that Chrysler and Ford can achieve CAFE levels of at least 20.6 mpg.

NHTSA selected 20.6 mpg for MY 1995 as the final combined standard to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against GM's opportunity as the "least capable" manufacturer with a substantial share of sales. Since GM produces more than 38 percent of all light trucks that are subject to the fuel economy standards, its capability significantly affects the level of the industry's capability and, therefore, the standard level.

A final rule for light truck fuel economy standards for MYs 1996 and 1997 is pending.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

During 1993, NHTSA acted on one low volume petition that was filed by Rolls-Royce. Rolls-Royce requested an alternative standard for its passenger cars for MYs 1995 and 1996. NHTSA issued a proposed decision to grant an alternative standard of 14.6 mpg for both model years (58 FR 41228 August 3, 1993).

D. Enforcement

Section 508(b)(1) of the Act imposes a civil penalty of $5 dollars for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With EPA completion of final CAFE computations for MY 1992 for most passenger car fleets, NHTSA initiated enforcement actions for manufacturers that did not meet the CAFE standard.

Table III–1 shows the most recent CAFE fines paid by manufacturers.

TABLE III–1.—CAFE FINES COLLECTED DURING FISCAL YEAR 1993

Model year	Manufacturer	Amount fined	Date paid
1989	Sterling	$588,195	07/93
1990	Fiat	705,220	05/93
	Sterling	162,000	07/93
	Fiat	796,575	05/93
	Mercedes-Benz	19,169,540	12/93
1991	Peugeot	192,660	12/92
	Vector	1,740	07/93
	Volvo	7,768,420	12/92
1992	Fiat	466,750	05/93
	Peugeot	58,375	09/93

The following synopsis describes an administrative adjudication involving NHTSA action under the CAFE program that is pending.

Chrysler Corporation, Docket 47414

On January 8, 1992, an Administrative Law Judge issued an initial decision and order recommending that NHTSA's complaint seeking a civil penalty of $1,371,420 for Chrysler's failure to comply with the MY 1984 domestic light truck fuel economy standard be dismissed without prejudice. He concluded that NHTSA could not interpret the extent to which predecessors or successors are included in the term "manufacturer" without issuing rules pursuant to section 501(8) of the Motor Vehicle Information and Cost Savings Act of 1972, but that Chrysler could not claim credits earned by American Motor Corporation, except under the terms of a properly adopted rule. Both parties filed Notices of Intention to appeal the initial decision to NHTSA's Administrator. On March 31, 1992, after a meeting to consider settlement proposals, the Administrator set aside the initial decision and terminated the enforcement proceeding, without prejudice, to permit NHTSA to prescribe regulations pursuant to section 501(8) of the Act.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Title III of the Department of Energy Act (15 U.S.C. 2704 *et seq.*) which directs the Secretary of Transportation to submit an annual

report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1993.

A. New Models

I. Passenger Cars

a. *Domestic.* The *domestic* manufacturers introduced and replaced several cars, as well as updated several previous passenger cars. Chrysler unveiled its new midsize LH models—the Chrysler Concorde, Dodge Intrepid, and Eagle Vision. These models are built on the new front-drive LH platform, the company's first new platform in 10 years. The main features included advanced technology, roomy interior, ride comfort, handling precision, safety, fuel economy, and power. The LH models' longitudinally mounted engines include a 153 horsepower (hp) overhead-valve (OHV) 3.3 liter (1) V–6 and a 214 hp single-overhead-cam (SOHC) 3.5L 24-valve V–6 (standard on some models, optional on others) developed especially for the LH line. Both engines are mated to only one transaxle: the 42LE automatic, a fully adaptive electronically controlled four-speed with torque converter lockup clutch. The low drag coefficient (0.31 C_D) of these models contributed to their fuel efficiency which averaged 24 mpg for MY 1993.

Also new to the Chrysler Eagle Talon, is a smaller 1.8L I–4 engine offered with either 5-speed manual or 4-speed automatic transmission and delivering an average fuel economy of 27 mpg.

The Plymouth Division offered a redesigned Colt coupe and sedan and Vista wagon with a new 1.8L 16 valve SOHC engine that produces 113 hp and a 2.4L 16 valve SOHC engine on the Vista only that produces 136 hp. The average fuel economy on the Colt's 1.5L 4-cylinder engine with a 5-speed manual transmission increased by 3 mpg city and 5 mpg highway over its MY 1992 counterpart.

Ford has two new models—the Lincoln Mark VIII sport luxury coupe and the Mercury Villager minivan (the latter is discussed later with the light trucks). The Mark VIII features an aerodynamic design style powered by a new aluminum double-overhead-cam (DOHC) V–8 engine and a new Ford "4R70W" 4-speed automatic transmission. The "4R70W" stands for 4-speed, rear-drive, 700 pound-feet torque capacity and wide ratio. The transmission's electronic and hydraulic controls work together to provide smooth shifts and torque-converter lock-up in third and fourth gear. This reduces the converter slippage and improves the fuel economy. The average fuel economy on this model is nearly 24 mpg compared with 22.3 mpg for the predecessor Mark VII model.

Ford redesigned the 2-door Probe for MY 1993 based on Mazda's latest MX–6. The Probe has a cab forward design and is powered by multivalve engines. The base model is equipped with a 115 hp 2L, 4-cylinder engine and the GT is powered by a 165 hp 2.5L V–6 engine. The average fuel economy on the 5-speed manual transmission has improved by 2 mpg over the MY 1992 model.

The limited-edition Ford Mustang Cobra specialty model featured a 230 hp version of the Mustang's 5L V–8 engine, a 5-speed manual transmission, 17-inch aluminum wheels, a spoiler, and ground effects trim. The average fuel economy improved by 1 mpg on the 4-speed automatic transmission version over the MY 1992 counterpart.

General Motors (GM) redesigned the Chevrolet Camaro and Pontiac Firebird. These two sport coupes received smoother lines and a more gradual profile. The base engine for these models is a new 3.4L V–6 engine. Fuel economy improves by 1 mpg over the 1992 model.

b. *Imports.* The *import* manufacturers also introduced a variety of new passenger cars and updates of their previous models for MY 1993. Audi introduced a new 90 series luxury/sport sedans for MY 1993 in front- and all-wheel drive. All models are powered by a 2.8L 172 hp DOHC V-6 engine. The 90S and CS have an average fuel economy of 23 mpg.

BMW replaced the 735i and 735iL with the 740i and 740iL for MY 1993. the 740i and the long-wheelbase 740iL (111.5 inches) are powered by a new 4.0L 32-valve V-8 and a new 5-speed automatic transmission that replaces the 3.5L MY 1992 engine. The V-8 is BMW's first new engine since MY 1985. The average fuel economy improved by 1 mpg over the MY 1992 counterparts. BMW improved the low-end torque and gas mileage for its 2.5L, inline six-cylinder engine used in the subcompact 3-series and the compact 5-series.

Honda introduced the Civic Del Sol which replaced the CRX. The Civic Del Sol is a sporty 2-seater with a 1.5L SOHC 4-cylinder engine mated to a 5-speed manual transmission with an average fuel economy of 43 mpg or a 4-speed automatic with an average of 39 mpg.

Hyundai's Scoupe gets a new Alpha engine, the first engine designed by Hyundai. The Alpha engine is a 1.5L 12 valve, multiport-fuel-injection (MFI) 4-cylinder engine. The engine has 14 percent more horsepower and torque than the engine it replaced. The average fuel economy improved by 1 mpg for the 5-speed manual transmission and 0.5 mpg for the 4-speed automatic transmission over its MY 1992 counterpart.

Jaguar, a Ford subsidiary, introduced two new models—the XJR-S and XJ12. The XJR-S is a limited edition equipped with a 312 hp engine. The MY 1993 XJS Jaguar coupe/convertible uses a 6-cylinder engine instead of a V-12, for the first time in 22 years. The highway rating for the convertible is 23 mpg, compared with 17 mpg for MY 1992. The XJ12 is a 301 hp model based on the XJ6 sedan with the engine compartment modified to fit a 6.0L 24-value V-12 engine. It has a 4-speed automatic transmission with both sport and normal shift modes.

Mercedes-Benz added a soft top, 4-seat convertible—the 300CE Cabriolet—and replaced the 400SE with a long-wheelbase version, the 400SEL. Mercedes introduced 22 new models for MY 1993, the most ever for the company, with emphasis on the 300 class, the Mercedes volume leader.

Four 300-class models get a new 24-valve engine that is bigger and more powerful than the old engine, yet gets better mileage. Better mileage means that the 400E loses a $1,300 gas guzzler penalty and the penalty on the 500E is cut in half to $1,300. both are powered by V-8 engines. The 300CE Cabriolet is based on the 300CE coupe and it is the first Mercedes 4-seat convertible for United States sale since 1971. The Cabriolet comes equipped with a 217 hp 3.2L 24 valve DOHC 6-cylinder engine mated to a 4-speed automatic transmission. The average fuel economy on this model is 20.5 mpg.

Mercedes-Benz also added a new 600 SEC coupe and 600 SL convertible. Both are powered by a 389 hp, 6.0L DOHC V-12 engine mated to a 4-speed automatic transmission with an average fuel economy of 15.7 mpg for the former and 17.1 mpg for the latter, both of which exceed the fuel economy achieved by the Mercedes sedan using the same engine.

Mitsubishi introduced a new wagon version of the Diamante, equipped with a 3.0L SOHV V-6 engine producing 175 hp. This vehicle is imported from Australia. Mitsubishi restyled the Mirage as a FWD, 2-door sporty coupe or a 4-door family sedan. The coupes have a 92 hp 1.5L SOHC 4-cylinder

engine and the sedans have a 1.8L 4-cylinder engine. the Mirage 1.5L 4-cylinder 5-speed transmission average fuel economy improved by 4 mpg over its MY 1992 counterpart. Mitsubishi claims that its ECI-Multipoint sequential fuel injection system and microprocessor-controlled ignition maximize responsive performance, combustion efficiency, and fuel economy (Automotive News, August 3, 1992).

Nissan introduced the Altima, an all-new FWD midsize sedan replacing the Stanza. It has a 150-hp 2.4L DOHC 4-cylinder engine coupled with either a 5-speed manual or 4-speed automatic transmission.

Saab, a GM subsidiary, expanded its 9000 model line by introducing the 9000CS 4-door hatchback and the 9000 aerodynamic hatchback. The 9000CS was powered by a naturally-aspirated 150 hp 2.3L I–4 or optional turbocharged 200 hp engine. The 4-speed automatic and the 5-speed manual each improved by 1 mpg over the MY 1992 model.

Subaru introduced the all-new Impreza, which comes in a choice of 4-door sedan and wagon models. The Impreza replaces the 8-year-old Subaru Loyale compact, although the Loyale station wagon will remain in the line. The Impreza is based on a shortened Legacy platform. The United States models are powered by a 1.8L, 110 hp 4-cylinder engine, essentially a smaller version of the 2.2L engine in the Legacy, and sharing its horizontally opposed arrangement. The fuel economy has improved by one tenth of a mile per gallon over the Loyale with automatic transmission.

Toyota restyled the Corolla and moved it from the sub-compact to compact EPA classification. The Corolla has a new 115 hp 1.8L 16 valve DOHC 4-cylinder engine and a 5-speed manual transmission. The average Corolla fuel economy improved by 1 mpg for MY 1993 over MY 1992. The Toyota Lexus division introduced the all-new GS300 with a 220 hp 3.0L 24-valve DOHC I–6 engine and an average fuel economy of 20.5 mpg.

Volvo introduced the 850GLT, the new front-wheel drive (FWD), sport sedan, powered by a transversely mounted 20-value 168 hp in-line 5-cylinder engine coupled with an all-new 5-speed manual or optional 4-speed automatic transmission designed to take up less space.

II. Light Trucks

a. *Domestic.* Chrysler's Ram passenger van/wagon was restyled in the front and received a redesigned 5.2L engine, along with an increase in horsepower to 230 from 190, improving the average fuel economy on the 4-speed automatic transmission by 1 mpg.

Ford introduced a new redesigned Ranger compact pickup for MY 1993. The Ranger offers a 3.0L V–6 engine replacing the previously standard 2.9L engine. The average fuel economy with the 4-speed automatic transmission improved by 0.1 mpg, and with the 5-speed manual transmission it improved by 0.5 mpg. The Villager FWD minivan was designed and engineered by Nissan Motor Company and produced at the Ford Avon Lake, Ohio, assembly plant for both Mercury and Nissan. It is the first minivan offered by the Lincoln-Mercury Division. The Villager is powered by a 150-hp 3L SOHC V–6 engine with sequential electronic fuel injection and a 4-speed automatic transmission. The Nissan version of the minivan is called the Quest.

b. *Imports.* Toyota introduced the all-new T-100 full-sized pickup truck for MY 1993. The all-wheel drive T-100 comes equipped with a 3.0L SOHC V–6 engine producing 150 hp mated to a 5-speed manual transmission with an average fuel economy of nearly 17 mpg. Compared to the Big 3 (GM, Ford, and Chrysler) pickups with 6-cylinder engines, Toyota's 6-cylinder has better fuel economy than any of the Big 3. GM is its closest competitor, being only one tenth of a mile per gallon behind.

Volkswagen, some 43 years after inventing the passenger van, introduced in the United States its first front-drive van, the Eurovan. The Eurovan has a box shape, as well as an optional "pop top" camper version. The Eurovan is powered by a new in-line, transverse-mounted, 2.5L five-cylinder engine. The 109-hp engine provides 21 percent more power and 20 percent more torque than its predecessor. The new design improved the vehicle's aerodynamics, providing a drag coefficient of 0.37.

B. Engine and Transmission Technology

Some manufacturers made significant improvements in engine technology for MY 1993. Chrysler's Dodge Intrepid, Chrysler Concorde, and Eagle Vision offer a 3.5L, 24-valve V–6 engine combined with a new 42LE electronic 4-speed transaxle to propel the LH cars. Chrysler claims that these are the most technologically advanced, responsive, and reliable powertrains in its history. This SOHC engine delivers a peak 214 hp at 5,800 revolutions per minute (rpm) and 221 foot-pounds (ft.-lbs.) of torque at 2,800 rpm.

Instead of using the usual transverse position of front-wheel-drive engines, Chrysler went longitudinal, or north-south, in part to allow for later adaptation of future rear-to or 4-wheel-drive versions.

Ford improved its MY 1993 Mark VIII with a new DOHC 32-valve all-aluminum version of its 4.6L modular V–8 engine. The engine is rated at 280 hp at 5,500 rpm, with a torque rating of 285 ft.–lbs. at 4,500 rpm, about 33 percent more power than the 4.6L SOHC engine in its 210 hp dual exhaust form. The new engine is the first DOHC, 4-valve V–8 engine mass produced by Ford, and the first Ford all-aluminum V–8 production engine. The engine features improved durability, quality and reliability, improved fuel efficiency through reduced friction and optimized combustion chamber design, and use of advanced technology in design and manufacturing.

GM's powerful, 2-door sporty coupes, the Chevrolet Camaro and Pontiac Firebird, were redesigned for MY 1993 with an OHV 3.4L 6-cylinder engine, that develops 160 hp at 4,600 rpm and 200 ft.-lbs. of torque at 3,600 rpm, an increase of 20 in both hp and ft.-lbs. of torque compared to last year. The added power is the result of a 2 millimeter (mm) increase in bore to 91.9 mm, a rise in compression ratio to 9:1 from 8.5:1 and the addition of sequential fuel injection in place of multipoint fuel injection.

GM's Chevrolet and GMC truck divisions have a new electronically controlled 4-speed automatic transmission in full-sized pickups. The new 4L 60–E transmission replaces the nonelectronic 4-speed unit.

The Geo Prizm has a Toyota-built electronically controlled 4-speed automatic with lockup torque converter. The new transmission is coupled to a 1.8L DOHC 4-cylinder engine delivering 115 hp at 5,600 rpm and 115 ft.-lbs. of torque at 4,800 rpm.

Honda's Acura Legend introduced a new 3.2L 24-valve V–6 engine. The difference in this engine over its predecessor is that the intake and exhaust timing, valve lift, and valve diameter are changed to achieve a 30-hp increase to 230 hp at 6,200 rpm, but with peak torque reduced to 206 ft.-lbs. at 5,000 rpm. Fuel economy is virtually unchanged.

Toyota's Land Cruiser received a new 4.5L DOHC 24-valve 1FZ–FE in-line 6-cylinder engine rated at 212 hp at 4,600 rpm and 275 ft.-lbs. of torque at 3,200 rpm. This is a 37 percent increase in horsepower over its MY 1992 counterpart, and the fuel economy improved by 0.5 mpg.

The Miller Cycle engine offers a 50-percent gain in torque over conventional engines and gets 10 percent to 15

percent better fuel economy. Mazda announced that it is ready to install a version of the Miller-cycle engine in a near-future high-compression, lean-system piston engine that combines lean burn and the M-Miller cycle. (The M denotes Mazda.) Mazda says the engine, which has a compression ratio of 12:1, will produce 50 percent greater torque than a standard engine. The M-Miller cycle uses a Lysholm compressor jointly developed by Mazda and Ishikawajima-Harima Heavy Industries Co. Ltd. (IHI) to boost initial intake pressure, but releases excess air as the piston begins its compression stroke. Mazda plans to introduce this technology in the United States on the Millenia model in the spring of 1994.

Interest in the 2-stroke engine is declining while interest in direct-injected (DI) gasoline 4-strokes is on the rise. With DI engines, the fuel is injected directly into the combustion chamber rather than the intake manifold, which is the general practice on fuel-injected gasoline engines. Reports of poor performance in early 2-stroke Ford Motor Company/Orbital field-test Fiesta models in Europe (Ward's Engine and Vehicle Technology Update, December 15, 1991, p.6) appear to be a factor.

Toyota indicates that the first DI gasoline engines—termed "incylinder injection" by Toyota—will reach the market in late 1993 and will account for over 25 percent of the Japanese manufacturer's gasoline automobile engines by the year 2012. Hyundai developed the company's first internally designed engine, a 1.5L 4-cylinder engine delivering 92 hp at 5,500 rpm and 97 ft.-lbs. of torque at 4,000 rpm. The compression ratio is 10:1. Hyundai's turbocharged version produces 115 hp at 5,500 rpm.

C . Electronics

Applications of electronics components in vehicles continues to rise. Some of the applications include 4-wheel steering, tire-pressure sensing, instrumentation, and in-car entertainment grouping, but the main concentration is in engine management, powertrain managment, antilock braking systems, air bags, air conditioning and, increasingly, suspension control.

Electronically controlled automatic transmissions now account for 33.9 percent of United States cars produced. The automobile manufacturers have advanced toward more sophisticated fuel injection systems. Sequential fuel injection installation rates rose to 43.3 percent in MY 1992, from 28.2 percent in MY 1991. Traction control systems are featured on 2.3 percent of United States-built passenger cars (Ward's Automotive Reports, April 19, 1993).

The role of sensors and sensing systems is becoming increasingly important in the automotive industry. Since the electronics market is growing in the safety and the information fields, the object of sensing will be expanding further in the future. Sensors and sensing technologies for future automotive systems can be categorized into three fields of applications—engine and powertrain control, safety and suspension control, and information exchange.

In engine and powertrain systems, sensors are required for combustion and engine output detection and control. Exhaust emissions and fuel consumption will be reduced simultaneously over the next decade. The primary objective of the sensors is to control engine and transmission paramenters, but sensing technology improvements are needed to determine limit conditions.

Combustion sensing will be an essential technology for engine control. Emissions are strongly dependent on the air/fuel (A/F) ratio, and the best fuel consumption is obtained when engine operation is in the lean burn fuel range. Except for oxides of nitrogen reduction, the lean fuel condition is best for both emissions and fuel consumption reductions. Since the engine's output and emissions are the results of combustion, direct monitoring of combustion is the key for controlling them.

D. Materials

For MY 1993, manufacturers selected sheet molding compound (SMC), plastics, aluminum, high-strength steel, powdered metal (P/M), and magnesium for a number of significant new component applications in their cars, vans, and pickup trucks. The reduced weight of these components contributed to improved fuel economy of the models using them.

SMC was once predicted to be headed for extinction, but continues to have steady growth in usage despite numerous setbacks. The SMC Automotive Alliance trade group forecasts an 18-percent gain in SMC use in MY 1993, from 147 million pounds to 173 million pounds, on North American-produced vehicles (*Ward's Auto World*, September 1992). New SMC applications continue to grow, including roof, doors, and a rear hatch on GM's Pontiac Firebird and Chevrolet Camaro sports cars, a unique plastic-and-steel-body hybrid. Ford's new Mark VIII hood is made of SMC for MY 1993.

Aluminum use in automobiles grew steadily, representing an estimated average of 178 pounds of the content of United States cars for MY 1993 (Ward's Auto World, September 1992). Most applications are in engine blocks and heads, transmission casings, steering systems, shock absorbers, bumper systems, and other non-structural components. Aluminum is used more not only for body panels but for structural components, as well.

Audi engineers say the body-in-white of the next generation V8 model (codenamed 300), which will feature an all-aluminum body and spaceframe, is half the weight of a conventional steel unit.

For the first time, an aluminum-head version of GM's 5.7L V–8 engine is used on vehicles other than the Corvette. The new F-body cars use castings from CMI International, Incorporated in Southfield, Michigan, to help reduce weight. Aluminum heads also are offered for the first time in the Oldsmobile Ciera and Buick Century 2.2L. The aluminum 2.2L I–4 engine replaces the 2.5L 4-cylinder cast iron engine.

Ford is by far the most aggressive United States manufacturer in its plans for aluminum usage, especially in body-panel applications. It uses about 350,000 aluminum hoods per year on large cars such as the Mercury Grand Marquis, Ford Crown Victoria, and Lincoln Town Car.

The cylinder heads for Chrysler's new 24-valve, 3.5L V–6 engine are also aluminum. These applications are currently being used in LH cars—Dodge Intrepid, Eagle Vision, Chrysler Concorde, New Yorker, and LHS—which use about 200 pounds of aluminum, compared with an industry average of less than 180 pounds.

Even as the use of plastics grew, steel continued as the primary material in United States-built family vehicles, comprising well over 50 percent of the weight of the average passenger car according to Ward's 1993 Automotive Yearbook. GM's Cadillac Division has a new steel-intensive Fleetwood, and Fleetwood Broughams use stainless steel on the lower side trim and plated stainless steel trim on all the wheel openings. The Nissan Altima and the Chrysler LH cars, each, use more than 1,500 pounds of steel per car (Ward's Auto World, September 1992). Steel increases to 1,900 pounds per vehicle for the new Mercury Villager and Nissan Quest minivans. Chrysler uses almost as much steel on its new Jeep Grand Cherokee wagon.

Applications for P/M grew steadily in recent years, and several new and

expanded applications were introduced in MY 1993, including the connecting rods used in GM's 5.7L V–8 engines. This marks the first time GM used P/M connecting rods in any of its North American powerplants. The new rods add 12 pounds of P/M per engine. The average United States-built car contains about 25 pounds of P/M. Ford currently is the industry leader in P/M applications; it has P/M connecting rods in two of its engines, a V–8 and the 1.9L 4-cylinder (Ward's Automotive Yearbook, 1993).

Magnesium use increased this model year when Chrysler added magnesium engine-accessory mounting brackets on its Jeep Grand Cherokee and LH cars. Ford, meanwhile, is expanding its use of magnesium steering-column parts, and GM is employing 18 pounds of magnesium components in its Northstar V–8 engines The average domestic vehicle contains about 6 pounds of magnesium (Ward's Auto World, September 1992).

United States manufacturers formed a research partnership, under the United States Council for Automotive Research (USCAR) direction, that will explore the use of new materials. The consortium, called the United States Automobile Materials Partnership (USAMP), will seek to reduce vehicle mass for improved fuel economy, emissions, reliability, safety, crashworthiness, and recyclability by expanding application of new materials.

USAMP states that to improve fuel economy 8–10 mpg through mass reduction in a 4,000-pound car, weight will have to be cut 1,000 pounds. USAMP targeted aluminum as the primary metal in its program to reduce vehicle mass though ceramics, engineered plastics, magnesium/titanium, and steel are also being studied.

E. Summary

Due to the stabilization of oil prices and supply, consumer demand in MY 1993 shifted slightly to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, increased the horsepower of its engines and shifted production mix to moderately larger cars. There were some considerable technical gains, particularly in lightweight material usage, that contributed to improved fuel economy for several models.

[FR Doc. 94–4571 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–59–M

Announcing the Third Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for March 21, 1994, from 10:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in room 8236 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

At the first meeting of the Crashworthiness Subcommittee on November 16, 1992, a Biomechanics Working Group and an Aggressivity and Compatibility Working Group were established to carry on a technical information exchange of ongoing research with the goal of presenting advice to the Crashworthiness Subcommittee.

This meeting of the Crashworthiness Subcommittee will include status reports by the Biomechanics Working Group and the Aggressivity and Compatibility Working Group as well as an update on related NHTSA biomechanics and crashworthiness research programs and progress.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: February 25, 1994.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 94–4894 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; DIAMOND STATE INSURANCE COMPANY

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code effective December 31, 1993. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35791 to reflect this addition:

DIAMOND STATE INSURANCE COMPANY. BUSINESS ADDRESS: Three Bala Plaza, East Suite 300, Bala Cynwyd, PA 19004. PHONE: (215) 664–1500. UNDERWRITING LIMITATION b/: $2,401,000. SURETY LICENSE c/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OK, OR, RI, SC, SD, TN, UT, VT, VA, WV, WY. INCORPORATED IN: Indiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, area in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Fund Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874–6696.

Dated: February 24, 1994.

Charles F. Schwan III,

Director Funds Management Division, Financial Management Service.

[FR Doc. 94–4793 Filed 3–2–94; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Exchange Program To Enhance the Quality of Public Administration in the Jordan, Lebanon, and Syria (Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop a multi-phased exchange program intended to enhance the quality of public administration in Jordan, Lebanon, and Syria.

Twelve to 15 public administrators from Jordan, Lebanon, and Syria, engaged in municipal management, the provision of social services, or educational administration, will travel to the United States for a six-week program in administration and management, combining a short but intensive introduction to management theory and practice and a month-long, hands-on internship in an appropriate American institutional structure.

Subsequently, two or three American public administrators will travel to each of the target countries to conduct workshops and follow-on training activities with the original participants and their colleagues.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–94–21.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on May 13, 1994. Faxed documents will not be accepted, nor will documents postmarked May 13, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–21, Office of Grants Management (E/XE), 301 Fourth Street SW.–room 336, Washington, DC 20547

CONTACT FOR INFORMATION: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), USIA, 301 Fourth Street SW., room 224, Washington DC 20547, fax (202) 619–4350, tel. (202) 619–5319, to request detailed application packages which include all necessary forms and guidelines for RFP proposals, including specific budget preparation. Please specify the name of USIA Program Specialist Thomas Johnston on all inquiries and correspondence.

Background/Objectives of This Program

Within the past two years, political and social evolution in the Middle East has produced democratic elections in Jordan and Yemen, the re-emergence of civil government in Lebanon, an agreement intended to bring about Palestinian self government and the responsibility for providing and administering social services that entails in Gaza and the West Bank, and the gradual emergence, in a number of heretofore closed political systems, of more responsive and accessible governmental institutions.

Essential to the success and fruition of these political experiments is the development, in each society affected, of responsible and responsive administration in public institutions and the perception, often absent in developing societies, of a public office as a public trust. The primary objective of this program is, initially, to instill in a group of public administrators, with responsibility for a variety of civil administrative and management functions, a sense of civil administration as a crucial element in the emergence of a viable civil culture, and secondly, to broaden and refine their ability to fulfill their duties and to contribute to the development of a cadre of enlightened, self-conscious, and responsible public administrators in their home countries.

Participants

Participants for the U.S. component of this exchange will include mid-level public administrators from various sectors health, education, housing, security, and general social welfare—from Jordan, Syria, and Lebanon, whose English-language skills are sufficient to enable them to function successfully during the U.S. internship phase of the program. Participants will be nominated through coordination among USIA, U.S. Information Service personnel in the region, and overseas partner institutions. USIA and the participating USIS posts retain the right to nominate all participants and to accept or reject participants recommended by grantee institutions.

American participants in the program, both those institutions which will host foreign public administrators in the United States and those individuals who will subsequently travel overseas as resource persons in the second component of the exchange, will be selected by the American grantee organization in consultation with the Office of Citizen Exchanges. The consultants travelling overseas should be fluent in the language of the country in which the seminar is presented or the American grantee organization should undertake to provide simultaneous interpretation.

USIS officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatic Considerations

Thematically, the program should: Analyze the current status of public administration in the participants' countries of origin and determine, in conjunction with USIS posts in these countries and with the administrators selected as participants, the needs to be addressed by the exchange; provide the participants both a general and a specific overview of the administration and management of public service-providing organizations in the United States, beginning with an historic perspective and a survey of the evolution of the civil service system in the context of a socially diverse and politically democratic country; conduct for the participants a short, intensive course, combining lectures with discussion, site visits, and interviews, in public administration theory and practice. This course should also offer an intensive orientation to the concept of public service as an indispensable building block in the structure of democratic society and to the perception of a public office as a public trust; and place the administrators in month-long internships appropriate to their fields of specialization and responsibility in their home countries.

Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life.

Beyond the immediate goals of this exchange, USIA is also interested in supporting programs which will lay the groundwork for new and continuing links between American and Middle Eastern educational institutions and professional organizations and which will encourage the further growth and development of democratic institutions.

The grantee organization will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare foreign public administrators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material to be sent to USIS offices overseas for distribution to participants. This material might include a tentative project outline with suggested goals and objectives, relevant background information, and information about American institutions and individuals involved in the exchange.

At the beginning of the U.S. portion of the program, the grantee should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture which will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home countries. Plans for the second component of the exchange should also be discussed at this time, and nominations should be accepted from the participants of American specialists who will be invited to conduct follow-up activities overseas.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements.

Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or "be hired" by the sponsoring institution. Internships should also have an American Studies/values orientation component at the beginning of the exchange.

The U.S. grantee institution should try to maximize cost-sharing in all facets of their program and to stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating internships will be more competitive if letters committing prospective host institutions to supporting these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this program should not exceed $180,000. However, organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs: 1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East, the Standard Government Travel Regulations per diem rates must be used.

3. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

4. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. Room rental: Generally should not exceed $250 per day.

6. Materials Development: Proposals may contain costs to purchase, develop and translate material for participants. USIA reserves the rights to these materials for future use.

7. One working meal per project: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

8. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in

accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please Note

All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of General Counsel or other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with USIA's contracting officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institutional Reputation/Ability

Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Evaluations of previous projects may also be considered in this assessment.

3. Project Personnel

Information provided regarding the thematic and logistical expertise of project personnel should be relevant to the proposal at hand. Resumes or C.V.s. should be summaries appropriate to the specific proposal and no longer than two pages each.

4. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area and its ability effectively to share information.

6. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen mutual understanding and should contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the American Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 25, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4829 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

NIS Linkage Program (NISLP)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional linkages between universities and

colleges in the United States and Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Ukraine. The purpose of this college and university linkages program is to foster curriculum development and teaching methodologies, and to modernize the administrative structure at institutions of higher education in these countries.

DATES: *Deadline for proposals:* Proposals must be received at the Academy for Educational Development by 5 p.m. Washington, DC time on May 2, 1994. Proposals received by the Academy after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked on May 2, 1994 but received at a later date. It is the responsibility of grant applicants to ensure that their proposal is received by the above deadline. Grants should begin no later than October 1, 1994.

ADDRESSES: Three originals, containing tabs A–U (see "Application Checklist" in program guidelines packet), and 10 copies, containing tabs A–D of the proposal are to be submitted by the deadline to: USIA NIS Linkage Program, c/o The Academy for Educational Development, 1875 Connecticut Ave., NW., Washington, DC 20009–1202.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, contact Mr. Chris Dwyer or Ms. Deborah Trent at (202) 619–5289 (tel), or (202) 401–1433 (fax), or write to the following address: Specialized Programs Unit (E/ASU), Attention: USIA/NIS Linkage Program, Office of Academic Programs, rm. 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

The NIS Linkage Program is authorized under the Freedom Support Act of 1992. Funding for this program is contingent upon receipt of FY 94 Foreign Operations Appropriation Bill funds. USIA administers annual university affiliations programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Agency seeks to support at least one linkage each in Armenia, Belarus, Kazakhstan, and Kyrgyzstan, and up to three linkages in Ukraine. Grants will be awarded for a period of two (2) years beginning October 1, 1994.

The NIS Linkage Program is separate from USIA's College and University Partnerships Program for the Russian Federation, the University Affiliations Program and the University Development Program in Business Management, announced annually in this publication. However, the Agency strives to achieve institutional and geographic diversity across all four linkage programs. Institutions planning to submit proposals for more than one competition should note that USIA will not fund the same project activities more than once.

The NIS Linkage Program is limited to the following specific academic disciplines: (1) Law; (2) business/economics; (3) education/continuing education/educational reform; (4) government/public policy/public administration; and (5) communications/journalism. Proposals should focus on curriculum, faculty, and staff development in one of these eligible disciplines. Administrative reform at the foreign partner institution should also be a program component.

Proposals must involve the development of new academic programs or the building and/or restructuring of an existing program. Feasibility studies to plan linkages will not be considered.

Participating institutions must exchange faculty and/or staff members for teaching/lecturing and consulting for periods of not less than one month. Each year at least one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role. E-mail communication should be established as part of the exchange.

Other activities which serve the purpose of this program include: Team teaching; visits by faculty to update academic and professional skills, observe teaching techniques and strengthen subject area expertise; expansion of library holdings; textbook development; development of audio-visual instructional materials; distance learning; the translation or reprinting of U.S. texts and other materials; and community outreach in conjunction with curriculum development. Institutional partners may include current MA, MS or PhD students in the exchange.

USIA will strive to achieve broad institutional and geographic diversity in awarding the grants. Participating institutions in the U.S. and relevant countries must maintain their faculty and staff on salary and benefits (with the sole exception of personnel assigned overseas for three or more consecutive months; see "Allowable Costs").

U.S. institutions are responsible for the submission of proposals and must collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with U.S. Information Service (USIS) offices in Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Ukraine. Preference will be given to proposals which demonstrate evidence of previous relations with the proposed foreign partner institution(s).

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this administrative burden, to USIA Clearance Officer, M/ADD, room 624, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 12/31/95.)

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Eligibility

In the U.S., participation in the program is open to two-year and four-year colleges and universities, including community colleges and graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. The Agency encourages proposals from eligible Historically Black Colleges and Universities and other institutions in the U.S. with at least 25% minority (Native American or Native Alaskan; Asian-American or Pacific Islander; African-American (or Black, non-hispanic); and Hispanic) student enrollment.

Participating U.S. institutions must be accredited by one of the following regional accrediting bodies: Middle States Association of Colleges and Schools; New England Association of Schools and Colleges, Inc.; North Central Association of Colleges and Schools; Northwest Association of Schools and Colleges; Southern Association of Colleges and Schools; or Western Association of Schools and Colleges. Institutions recognized only by national or state institutional

accrediting bodies are not eligible. U.S. universities and colleges applying under this program may collaborate with U.S. scholarly, professional, or international educational associations, foundations and organizations.

Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized or highly regarded independent research institutes. For proposals including a U.S. consortium, submission may be made by a member institution with authority to represent the consortium.

Participants representing U.S. institutions and traveling under USIA grant support must be U.S. citizens.

Participants representing foreign institutions must be citizens, nationals, or permanent residents of the country where the foreign institution is located. All foreign participant exchangees and programs must be in compliance with J–1 visa regulations. The proposal must note whether USIA has granted the U.S. institution authority to issue IAP–66 forms necessary to obtain J–1 visas.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. Funds requested from the Agency must not exceed $300,000. Grants awarded to institutions with less than four years of experience in conducting international exchange programs will be limited to $60,000. Specific guidelines for budget preparation are available in the application packet.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

1. Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

2. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

3. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

1. Preparation of basic financial statements and other accounting services; and

2. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Allowable Costs

—Travel: International and domestic (via American flag carriers). May include one planning trip with one participant per institution.
—Per diem and maintenance, including Lodging, meals and incidental expenses.
—Salaries and benefits for faculty assigned overseas for three or more consecutive months, not to exceed 20 percent of the total amount requested from USIA. USIA strongly encourages cost-sharing in this category and requires that salaries and benefits of all other faculty and staff participating in the project be maintained.
—Membership in U.S. professional associations and fees for attendance at professional conferences in the U.S. for foreign participants.
—Educational materials, including but not limited to: The translation and publication of instructional materials, collections to be placed in foreign partner institution libraries, hardware and software necessary to establish e-mail communication, and other computer equipment as needed. These costs may not exceed 25% of the total requested grant amount.
—Medical insurance for foreign participants during U.S. visits. Medical insurance is mandatory for all participants in J–1 visa exchange programs.
—Student exchanges: Travel, per diem/maintenance, memberships and conferences (foreign students only), educational materials, medical insurance, and other project costs for MA, MS or PhD student exchanges. Exchanges may include a maximum of four foreign students and two U.S. students per year.
—Other project costs, limited to: Interpreters, which may include graduate or PhD students; out-of-house administrative support in the foreign partner country; office supplies; and communications expenses (*i.e.*, telephone, facsimile, postage and delivery). The above costs may not exceed 10% of the total amount requested from USIA.

Note: Indirect costs are not allowable costs under the NIS Linkage Program.

Application Requirements

Proposals must be submitted by the deadline and must conform to the eligibility requirements and academic fields identified in this announcement. The proposal package must include three originals, containing tabs A–U (see "Application Checklist" in the guidelines packet), and 10 copies containing tabs A–D, as well as all required documentation. Proposals must also include the following documentation:

1. A narrative, not to exceed 20 double-spaced pages, including descriptions of institutions and participating academic departments or schools; a detailed description of the proposed linkage program, including names and qualifications of designated project directors; a statement of need for the proposed program; a detailed description of proposed activities, including who will travel, when, and where (a timetable is recommended); anticipated benefits to participating institutions; and a plan for institutional evaluation of the project.

2. Documentation of institutional support for the proposed linkage, including signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institutions, making specific reference to the NIS Linkage Program and committing the institutions to maintaining exchange participants on salary and benefits during the exchange. A general letter of support or an agreement between the participating institutions without reference to the NISLP and maintenance of salaries and benefits will not fulfill this requirement. A sample letter of endorsement and commitment is included in the application packet.

3. Academic resumes of participating faculty/staff from all involved institutions. Resumes must clearly indicate: Relevant overseas experience and language skills; relevant travel, publications, and research activities.

Note: All pages in excess of the two-page limit will be discarded.

Review Process

The NIS Linkage Program review process will be comprised of technical,

academic, and Agency reviews. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Technically eligible proposals will be forwarded to ad hoc panels of area and subject specialists who will weigh their academic merit, potential for fostering curriculum reform and development, and feasibility. Proposals recommended for funding by the ad hoc academic panels will be reviewed for relevance to Agency goals and the objectives of the Foreign Operations Appropriations Bill of 1994 by the Office of Academic Programs, the Office of Eastern Europe and the NIS, USIS offices and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and disciplinary expertise which make recommendations to the Agency based on the following criteria:

1. Academic merit of the proposal, as reflected by: A clear statement of program goals; a detailed project description; and a statement on how the proposed project will be implemented and evaluated.
2. Probable impact of the proposed linkage in achieving the goal of reforming educational administration and curricula at the foreign partner institution.
3. If the proposal involves an established, active linkage, evidence that the partners will engage in new, innovative activities.
4. Evidence that theme(s) of proposed project fit(s) field(s) stated in this announcement.
5. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.
6. Quality of scholarly and professional credentials/experience of participants in relation to the goals of the proposed exchange plan, including language proficiency.
7. Appropriateness of length of exchange visits, given project goals.
8. Evidence of strong institutional commitment by participating institutions, demonstrated in part by cost-sharing and letters of institutional support.
9. Evidence of mutual advancement of cultural and political understanding through development of individual and institutional ties.
10. Evidence from U.S. institutions of prior experience in the region and previous relations with proposed foreign partner institution(s).

Agency Review Criteria

Academic review panels will recommend proposals to USIA for further review. Agency review will be based on:

1. Academic quality, reflected in academic review commentary and recommendations.
2. Promise of long-term impact in achieving Agency/legislative objectives.
3. USIA and overseas post assessments of need and feasibility.
4. Cost-effectiveness.
5. Geographic and institutional diversity within the foreign country and among U.S. partner institutions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 24, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4689 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

Foreign Language and Area Studies—U.S. Students and Scholars; Request for Proposals

ACTION: Notice; request for proposals.

SUMMARY: The United States Information Agency (ASCI) requests proposals from non-profit organizations for programs or projects under the rubric of the FY 1994 "Near and Middle East Research and Training" program. Organizations shall conceive, develop and administer programs in cooperation with USIA that will assist American graduate students and post-doctoral scholars in North African, Middle Eastern and South Asian Studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two months to a full academic year abroad.

For the purpose of this program, the geographic area refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern and South Asian Affairs of the U.S. Department of State as of October 1991. Current eligible locales for overseas research are: Mauritania, Morocco, Tunisia, Egypt, Israel, Jordan, Saudi Arabia, Syria, Kuwait, United Arab Emirates, Bahrain, Oman, Qatar, Yemen, Pakistan, India, Sri Lanka, Bangladesh and Nepal. Proposals for Turkey will be accepted subject to final Congressional approval on pending appropriation bills. The funding of proposals for the above countries is subject to official security and/or travel restrictions.

DATES: Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 15, 1994. Faxed documents will not be accepted, nor will documents postmarked on April 15, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline. Grants should begin September 1, 1994 and end August 31, 1995.

ADDRESSES: The original and fourteen (14) copies of the completed proposal, including required forms and a budget should be submitted by the deadline to: U.S. Information Agency, Reference: NMERTA, Office of Grants Management (E/XE), room 357, 301 4th St. SW., Wahsington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Janey Cole or Ms. Nada Gunnoe, North Africa, Near East and South Asia Branch (E/AEN room 212), Academic Exchange Programs Division, U.S. Information Agency, 301 4th St. SW., Washington, DC 20547, telephone (202) 619–5368 to request detailed application packets which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 Fulbright-Hays Act. Through the Fulbright program USIA seeks to increase mutual understanding between the people of the United States and

people of other countries. Pursuant to the Agency's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Support is offered for two categories. Organizations may address one or both categories, but must submit a separate proposal for each category. Special emphasis will be given to social sciences and humanities.

Category A. Pre-doctoral students. Organizations that are awarded funding shall solicit and receive applications from American graduate students nationwide who seek to conduct overseas study and research on the Near and Middle East and South Asia. Eligible fields of study and research shall be open to students of all disciplines with a need or established interest in topics requiring study or research in the geographic area. Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate level academic programs.

Category B. Post-doctural scholars. Organizations that are awarded funding shall solicit and receive applications from American post-doctoral scholars nationwide who seek to conduct overseas study and research on the Near and Middle East and South Asia area. Eligible fields of study and research shall be open to scholars of all disciplines with a need or established interest in topics requiring study or research abroad. Eligibility shall be restricted to applicants who have a Ph.D. and who have post-doctoral college or university teaching experience.

Eligibility

Non-profit organizations with experience in international education, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to submit proposals.

Guidelines

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, selection process, orientation for participants, logistical and scheduling measures. A basic plan for post-program follow-up and evaluation should also be included. The proposal must be typewritten and double-spaced and cannot exceed fifteen pages, including budget attachments.

Proposed Budget

Funding for both Category A and Category B is estimated at $1,000,000 each. USIA expects to make up to 10 awards ranging from $60,000 to $350,000, each which includes program and administrative costs. A comprehensive line-item budget not to exceed $350,000 must be submitted with the proposal. (Grants awarded to eligible organizations with less than four years experience conducting international exchange activities will be limited to $60,000. Budget submissions from such organizations may not exceed this amount). The budget should list all sources of support for the program including both cash and in-kind contributions.

The budget guidelines apply to both categories above. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant funded items of expenditure may include, but are not limited to, the following:

—International travel (via American flag carrier);
—Domestic travel;
—Maintenance and per diem;
—Academic program costs (e.g. book allowance)
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker;
—Cultural enrichment expenses (admissions, tickets, etc.)
—In-country administration costs (e.g. publicity, recruitment and selection costs).

Administrative Costs—Not To Exceed 20% of the Requested Budget

—Administration (salaries, benefits);
—Communications (e.g. fax, telephone, postage);
—Office supplies;
—Other direct costs;
—Indirect costs.

Organizations should demonstrate substantial cost-sharing (dollar and in-kind support) in both program and administrative expenses, including overseas partner contributions.

USIA reserves the right to reduce, revise or increase budget proposals in accordance with the needs of the program. No grants funded under this program will include profit or fee. Please note: It is required that requested administrative funds, including indirect costs and administrative expenses for recruitment and orientation, not exceed 20 percent of the total amount requested from USIA.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost-sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of the audit that:

(1) Complies with the requirements of OMB Circular No A–133, Audits of Institutions of Higher Education and other Nonprofit Institutions.

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of the recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be forwarded to panels of USIA officers for advisory review. All eligible submissions will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting office.

Review Criteria

Technical by eligible proposals for this competition will be reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described in the application material available from USIA. Proposals should clearly demonstrate how the organization will meet the programs objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the proposal, including salary/benefits, should be kept to not more than 20 percent of the total budget. All budget items should be necessary and appropriate. Proposals should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Proposals should demonstrate potential for excellence and/or a track record of the organization's involvement in international education, particularly academic exchange.

5. Evaluation plan—Proposals should provide a plan for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Proposals should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the project activity strengthen long-term mutual understanding, include maximum sharing of information and views among participants, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties for collaborative teaching and research in the U.S. and the subject country.

8. Mutuality of benefits—Proposals should show evidence of strong mutual benefits to the U.S. and foreign institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this Request for Proposals does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of full proposals on or about July 1, 1994. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: February 17, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4588 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

College and University Development Program in Business Management for Selected Countries in Central and Eastern Europe

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: Subject to the availability of funds, The Bureau of Educational and Cultural Affairs of the United States Information Agency invites applications from accredited post-secondary U.S. educational institutions to conduct exchange programs with post-secondary educational institutions in Albania, Bulgaria, Croatia, Czech Republic, Slovak Republic, Macedonia, Hungary, Poland, Romania and Slovenia to develop curricula and teaching methodologies for foreign faculties in the field of business management.

DATES: Deadline for proposals: Proposals must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 29, 1994. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents which are postmarked on April 29, 1994, but received at a later date. It is the responsibility of all grant applicants to ensure that their proposals are received by the above deadline. Grants should begin not later than October 1, 1994 and must be a minimum of two years and a maximum of three years in length.

ADDRESSES: The original and 14 complete copies of the proposal should be submitted by the deadline to: U.S. Information Agency, Ref.: College and University Development Program in Business Management for Eastern and Central Europe (UDPBM), Grants Management Division, E/XE, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms as well as guidelines for preparing budgets, those interested should contact Ms. Robin Kline or Ms. Deborah Trent at (202) 619–5289, or write to the following address: Specialized Programs Unit, Office of Academic Programs, U.S. Information Agency, 301 4th Street SW., room 349, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Fiscal Year 1994 support for this program is provided under the Support for East European Democracies (SEED) Act. Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also maintain their scholarly integrity and meet the highest standard of academic excellence or artistic achievement.

Overview

Under the auspices of the SEED Act, USIA is offering this program to help foster greater expertise in business management in selected countries of the region. The specific purpose of this program is to assist Central and East European Countries in their transformation to free market economies through the development of business management training capabilities in academic institutions. Proposals that are extensions or enhancements of past or current relationships with a partner institution will be accepted.

Guidelines

Eligibility

Institutions: In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. U.S. colleges and universities or consortia applying under this program may collaborate with U.S. scholarly, professional, or international educational associations and organizations. Proposals from a consortium may be submitted by a single member institution with authority to represent the consortium. Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized and highly regarded independent research institutes.

Special Note: The Agency encourages proposals from eligible Historically Black Colleges and Universities

(HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of colleges/universities including such institutions are also strongly encouraged to apply.

Institutional Representatives: Each participant representing a U.S. institution, whose travel costs are covered under UDPBM funding, must be a U.S. citizen. Each participant representing a foreign institution must be a citizen, national, or permanent resident of the eligible foreign country in which the foreign partner institution is located.

Grant Activities

Grant activities must include placement of U.S. faculty at Central and East European institutions for in-country training of foreign faculty and for development of sustainable programs to educate future foreign business management teachers and business people. An important goal of the program is to create enduring linkages between the designated foreign institutions and U.S. colleges and universities. Targeted program activities may include: Faculty development and enrichment; curriculum design; modernization of the administrative structures within the foreign institution; outreach to the private sector; and direct teaching. U.S. and foreign participants may include post-graduate students on a "faculty track" who are currently involved in teaching at participating institutions (not to exceed 25% of all participants). Components for the development of college/university-to-private sector linkages and the development of appropriate materials are encouraged. Orientation, seminar, workshop and semester-long course formats will be acceptable. Visits to partner institutions by staff or consultants to plan joint projects may be funded under this grant but should be a relatively small part of the overall exchange. Preference will be given to proposals in which a U.S. faculty member is placed at the foreign partner institution for at least one academic year.

Courses developed may include, but are not limited to: Marketing, production management, economics, industrial relations, finance, accounting, and international business and business communications. Proposals should provide for a two-way exchange.

Exchange activities should include establishment of electronic communications between partner institutions and other networks.

Ineligibility

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein and in the application packet, including budgetary requirements.
2. The applicant is not an accredited U.S. two-year or four-year college or university;
3. The project does not constitute a direct partnership with a post-secondary business management program in Albania, Bulgaria, Croatia, Czech Republic, Slovak Republic, Hungary, Macedonia, Poland, Romania or Slovenia;
4. The project involves partnerships in more than one country;
5. The project does not seek to address the faculty, curriculum, and administrative aspects entailed in developing the business management program identified;
6. The project does not provide for in-country presence of U.S. faculty; or
7. The project includes profits or fee.

Proposed Budget

Subject to availability of funds, project awards to U.S. institutions will range from $50,000 to $300,000; USIA anticipates awarding approximately ten grants. The Agency reserves the right to reduce, increase or otherwise modify proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

Cost Sharing

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the USIA contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of an audit that:

1. Complies with the requirements of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;
2. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92-9; and
3. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

1. Preparation of basic financial statements and other accounting services; and
2. Preparation of the supplemental reports and schedules required by OMB Circular A-133, AICPA SOP 92-9, and the review of the supplemental schedule of indirect cost rate computation.

Allowable Costs

Program Costs

1. International travel (via U.S. flag carriers);
2. Domestic travel;
3. Maintenance (including lodging, meals and incidental expenses);
4. Educational materials (including books, reference materials, computers, costs related to workshops, seminars, etc.) not to exceed 35% of budget request;
5. Honoraria or compensation for in-country work, not to exceed $100 per day per person;
6. Visa fees for foreign participants;
7. Medical insurance for foreign participants during U.S. visits (U.S. project directors must ensure that all participants are covered by a comprehensive health insurance plan);
8. Salaries and benefits of U.S. participant(s) in residence at foreign partner institution for one academic year or longer. Total costs for the U.S. participant(s) in residence must not exceed 30 percent of the total budget.

Administrative Costs

(Not to exceed 20% of requested budget, including administrative expenses for orientation. Indirect costs must be cost-shared.)

1. Salaries and benefits;
2. Communications (e.g. fax, telephone, postage);
3. Office Supplies;
4. Other Direct Costs.

Applications must demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including overseas partner contributions. No grants funded under this program will include profit or fee.

Institutional Commitment

In making award decisions, USIA will focus especially on evidence of an

ongoing commitment by the U.S. partner to internationalizing its educational programs as well as a commitment by both partner institutions to the success of the particular exchange program. Each proposal must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institution(s) involved. The documentation may also be submitted in the form of a signed agreement by the same persons. Each agreement or letter of endorsement must describe the institution's commitment to an on-going partnership and make specific reference to the proposed program and how it will fit into and be supported by the institution's current activities in internationalizing its educational programs. Proposals must comment on how the partnership might be continued beyond the period of the grant award. If not submitted with original proposal, documentation of support from foreign institutions must be received by 5 p.m. Washington, DC time on May 13, 1994, addressed to Robin Kline or Deborah Trent, E/ASU, room 349, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions regarding institutional commitment and visas. All programs and foreign participants must be in compliance with J–1 visa regulations and the proposal must make reference to this requirement.

Review Process

Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. All eligible proposals will be reviewed at USIA by the Office of Academic Programs, appropriate geographic area office, and budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting office.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—including academic rigor, thorough conception of project (including a timeline of activities and identification of participants), potential to address partner needs, understanding of the needs of the partner institution, and proposed follow-up.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange; e.g., qualifications of program staff and participants, commitment of the institution's administration to internationalize its faculty outlook and curricula. Each proposal should clearly demonstrate how the institution will meet the program objectives and execute the program plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the establishment of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value to U.S.-partner country relations—the assessment by USIA's geographic area office of the potential impact and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Adherence of proposed activities to the criteria and conditions described above.

h. Institutional commitment as demonstrated by financial and in-kind support of the program.

i. Follow-on Activities—each proposal must provide a plan for follow-on activity (without USIA support) which ensures that the USIA-supported program is not an isolated event. Each proposal must clearly demonstrate long-term commitment from all partners.

j. Evaluation plan—proposals must provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Federal Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 31, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 24, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4690 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–91]

Section 304 Determination Acts, Policies and Practices of Brazil With Respect To the Protection and Enforcement of Intellectual Property Rights; Termination of Investigation and Revocation of Priority Foreign Country Status

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("Trade Act"); termination of investigation initiated under section 302 of the Trade Act, monitoring under section 306 of the Trade Act, and revocation of identification under section 182(c)(1)(A) of the Trade Act.

SUMMARY: The United States Trade Representative ("USTR") has made a positive determination pursuant to section 304(a)(1)(A)(ii). Since the Government of Brazil has undertaken measures to significantly improve the protection and enforcement of intellectual property rights and market access for persons relying on intellectual property rights and will take additional steps in the future in connection with its intention to implement the results of the Uruguay Round of multilateral trade negotiations including the Agreement on Trade-Related Aspects of Intellectual Rights, the USTR has decided to terminate this investigation and monitor implementation of these measures under section 306(a)(2).

In addition, the USTR has decided to revoke the Government of Brazil's identification as a priority foreign country under section 182 of the Trade Act, as amended, by section 1303 of the Omnibus Trade and Competitiveness Act of 1988.

DATES: This decision is effective as of Monday, February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Deputy Assistant USTR for Latin America and Caribbean Affairs (202) 395–5190, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864, or

Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 28, 1993, the USTR initiated an investigation of the Government of Brazil's (Brazil) acts, policies and practices concerning the protection and enforcement of intellectual property rights under section 302(b)(2)(A) of the Trade Act (19 U.S.C. 2412). See 58 FR 31788 (June 4, 1993). The investigation covered the issues that are the basis for Brazil's April 30, 1993, identification as a priority foreign country under section 182(a) of the Trade Act (19 U.S.C. 2242): (1) several areas in the patent law; (2) failure to provide copyright protection for software as a literary work, too short a term of protection for software and penalties for copyright infringement that are insufficient to deter piracy; (3) inadequate protection for trade secrets; (4) no protection for semiconductor masks works (layout designs); and (5) significant levels of copyright piracy and trademark counterfeiting. The original deadline for determinations under section 304(a)(1) of the Trade Act with respect to the investigation was November 28, 1993, but this was extended until February 28, 1994. See 58 FR 64351 (December 6, 1993).

In the context of the five rounds of discussions that took place during the investigation, Brazil indicated that it has undertaken and will undertake as part of its domestic reform efforts a number of actions to improve the protection of intellectual property in Brazil, and to provide greater market access for products relying on the protection of intellectual property. These include improvements in the areas of protection for trademarks, semiconductor mask works (layout designs), patents and computer programs; market access for computer programs; and improvements in the enforcement of intellectual property rights, including efforts regarding the importation of pirated and counterfeit goods and the penalties for infringement of intellectual property rights. Moreover, since initiation of this investigation, the Uruguay Round of multilateral trade negotiations has been successfully completed. Brazil has stated its intention to present the results of those negotiations for the approval of its Congress, including the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

On the basis of the measures that Brazil has undertaken and will take in the future, the USTR has decided to terminate this investigation. The USTR will monitor Brazil's implementation of these measures under section 306(a)(2) of the Trade Act. In addition, pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has decided that the information received warrants revocation of Brazil's identification as a priority foreign country.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–4904 Filed 3–2–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Interim audit report.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5041 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, March 29, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application by the New York Cotton Exchange for designation as a contract market in futures and option contracts for five currency cross rates and a related request by the New York Futures Exchange to recommence trading in five dormant currency futures contracts

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5042 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 29, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5043 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–4658.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 3, 1994, 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

Kerrey for President—Revision to Finding II.A. Excessive Contributions Resulting from Staff Advances.

DATE AND TIME: Tuesday, March 8, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, March 9, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: MCFL Rulemaking: Summary of Comments and Draft Final Rules.

DATE AND TIME: Thursday, March 10, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Future Meetings
Correction and Approval of Minutes
Final Audit Report on the 1992 Democratic National Convention Committee, Inc.
Advisory Opinion 1994–2: Berglin for United States Senate Volunteer Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–5052 Filed 3–1–94; 3:57 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 9, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that it be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding discounts on products and services for customers obtaining traditional banking products from affiliates.

Discussion Agenda:

2. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding appraisals of real estate. (Proposed earlier for public comment; Docket No. R–0803)

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5053 Filed 3–1–94; 3:58 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Wednesday, March 9, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5054 Filed 3–1–94; 3:58 pm]

BILLING CODE 6210–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

MEETING STATUS: Open.

DATE AND TIME:

Tuesday, March 22, 1994, 1:30–5:00 p.m.
Wednesday, March 23, 9:00 a.m.–5:00 p.m.
Thursday, March 24, 8:30 a.m.–3:00 p.m.

PLACE: Westin Peachtree Plaza, 210 Peachtree St., Atlanta, GA.

MATTERS CONSIDERED: The majority of the meeting is for orientation for Commissioners. Official NCLIS business, i.e., Chairperson's report, program planning, consideration of draft minutes, future meeting dates, committee structure, etc., will also be discussed.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: February 25, 1994.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 94–5005 Filed 3–1–94; 1:00 pm]

BILLING CODE 7527–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., March 10, 1994
9:00 a.m. to 5:00 p.m., March 11, 1994
9:00 a.m. to 12:00 p.m., March 12, 1994

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

MATTERS TO BE CONSIDERED: Grant applications, and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Grant application reviews, and portions of the business meetings.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–4947 Filed 3–1–94; 10:13 am]

BILLING CODE 6820–SC–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–07]

TIME AND DATE: March 7, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–312 (Second Remand) (Softwood Lumber from Canada)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: February 28, 1994

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4946 Filed 3–1–94; 9:20 am]

BILLING CODE 7020–02–P

Corrections

Federal Register

Vol. 59, No. 42

Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-084FR]

Extension of Date of Disposition of Undersized Dried Prunes Produced in California

Correction

In rule document 93-5788 beginning on page 13697, in the issue of Monday, March 15, 1993, make the following correction:

§ 993.150 [Corrected]

On page 13698, in the second column, in amendatory instruction 2, "amended by revising paragraphs (g)(1)(i)-(iii)" should read "amended by revising the first sentence".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions

Correction

In rule document 94-2145 appearing on page 5701 in the issue of Tuesday, February 8, 1994, make the following correction:

In the second column, in the part heading, in the third line, "of" should read "or".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 21

Special Calls

Correction

In rule document 94-2149 appearing on page 5702 in the issue of Tuesday, February 8, 1994, make the following correction:

In the second column, under **EFFECTIVE DATE:**, "February 7, 1994." should read "February 8, 1994."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

Correction

In rule document 94-2156 appearing on page 5527 in the issue of Monday, February 7, 1994, make the following correction:

PART 143—[CORRECTED]

In the third column, the **Authority:** citation should read "7 U.S.C. 9 and 15, 9a, 12a(5), and 13a."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 156

Registration of Broker Associations

Correction

In rule document 94-2161 beginning on page 5703 in the issue of Tuesday, February 8, 1994, make the following correction:

On page 5703, in the third column, under **EFFECTIVE DATE:**, "February 7, 1994." should read "February 8, 1994."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Bankruptcy

Correction

In rule document 94-2164 appearing on page 5704 in the issue of Tuesday, February 8, 1994, make the following correction:

PART 190—[CORRECTED]

In the second column, in the **Authority:** citation, in the first line, "7 U.S.C. 1a;" should read "7 U.S.C. 1a,".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-137-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-4261 appearing on page 9205 in the issue of Friday, February 25, 1994, the docket number was omitted and should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 165

[OPP-190001; FRL-4168-9]
RIN 2070-AB95

Standards for Pesticide Containers and Containment

Correction

In proposed rules document 94-2969 beginning on page 6712 in the issue of Friday, February 11, 1994, make the following correction:

On pages 6712 through 6789 (Part IV of the **Federal Register**), in the runninghead at the top of each page, "Vol. 26" should read "Vol. 59".

BILLING CODE 1505-01-D

federal register

Thursday
March 3, 1994

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 381

Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Products Are Used; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 93–008N]

RIN 0583–AB68

Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) has decided to pursue the development of amendments to the Federal poultry products inspection regulations to define and standardize, or establish other requirements for poultry products produced by mechanical deboning, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. FSIS has formed tentative positions on the provisions of such amendments. FSIS needs additional public input on the general approach and parameters of such rulemaking in order to help the regulation development process. FSIS is interested in receiving information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties prior to undertaking any such proposed rulemaking.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. John W. McCutcheon, (202) 720–2709. (See also "Comments" under **SUPPLEMENTARY INFORMATION**)

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket No. 93–008N. Any person desiring an opportunity for an oral presentation of views should make such request to Mr. John W. McCutcheon so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m., and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

Poultry products produced by mechanical deboning are characteristically finely comminuted (i.e., finely ground) in form and result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. The products are prepared from various materials, including necks, backs, and whole carcasses. These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin, and may contain kidneys, except when product is made from mature chickens or mature turkeys. Kidneys of mature chickens or turkeys may not be used as human food (9 CFR 381.65(d)).

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The Department's initial reaction was to consider the resulting product adulterated because of the amount of bone present and the physical size of the bone particles. By the mid-1960's, the industry had modified and improved the equipment used to produce poultry product by mechanical deboning such that product contained less than 1½ percent bone solids with an extremely small bone particle size. This prompted the Department to reevaluate its position. Widespread commercial production of products containing mechanically deboned poultry began in the early 1970's. By 1975, poultry product produced by mechanical deboning was being used as an ingredient in poultry and meat food products such as franks, bologna, salami, and rolls.

Today, poultry products produced by mechanical deboning are used in a wide variety of poultry products, including cooked poultry sausages (such as chicken frankfurters, turkey salami, and turkey bologna), poultry patties and nuggets (such as chicken patties and nuggets), and poultry baby foods. The level at which it is used has depended in part on technological capabilities and has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products. Poultry product produced by mechanical means is also used at up to 49 percent of the formulations of certain meat food products, e.g., beef and turkey chili, provided that it is identified in the product name as "turkey," "chicken," etc., and used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180).

Over the years, the poultry and meat food industries have also referred to poultry products produced by mechanical means as "comminuted (i.e., ground) poultry." Terminology such as "finely comminuted," "finely ground," and "mechanically deboned" have been used on poultry product labels to describe the form of the product according to 9 CFR 381.117(d).

Poultry products produced by mechanical means are subject to 9 CFR 381.117(d) relating to boneless poultry products. This regulation requires boneless poultry products to be labeled in a manner that accurately describes their actual form and composition. The product name must indicate the form of the product, e.g., emulsified or finely chopped, and the kind name of the poultry from which it is derived. If the product does not consist of natural proportions of skin and fat, as they occur in the whole carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to one percent.

Poultry products produced by mechanical deboning also are subject to 9 CFR 381.47(e). This regulation requires that rooms or compartments containing mechanical deboning equipment must be maintained at 50° F or less during the mechanical deboning of raw poultry.

Existing regulations do not distinguish between boneless poultry products produced by mechanical deboning and poultry products produced by traditional methods, e.g., hand-deboning using high-speed knives. Poultry product produced by mechanical deboning is declared in the ingredients statement of a product in which it is used, along with any other boneless chicken product used, as "chicken" where skin and fat are

included but not in excess of their natural proportions, or as "chicken meat" when such components are not included.

Report on Health and Safety of Mechanically Deboned Poultry

In 1976, the Department initiated an analytical program to obtain data on a number of nutrients and substances of potential health concern in poultry products produced by mechanical deboning. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry" (hereafter referred to as the 1979 health and safety report). An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The June 1979 report and the errata supplement are available for public inspection in the FSIS Hearing Clerk's office.) On June 29, 1979, the Department announced the availability of this report and encouraged interested members of the public to comment on its content. The Department also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical deboning and what means, if any, should be taken to implement the labeling recommendations in the report (44 FR 37965).

The Department received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. Of the 187 commenters that expressed a general opinion on the adequacy of the regulations concerning mechanically deboned poultry products, 175 were supportive. Some commenter stated that the regulations have effectively controlled the use of product produced by mechanically deboning over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically deboned poultry should be regulated the same as mechanically separated (species) (MS(S)) (then named mechanically processed (species) product).

GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry products produced by mechanical deboning and labeling requirements on products made with such poultry products as had been done for MS(S) and products made with MS(S). MS(S) is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5.

Improvements in Machinery for the Poultry Products Produced by Mechanical Deboning

The Agency has monitored the advances in the technology for mechanically deboning poultry products over the last decade. There have been improvements in the efficiency of the mechanical separation and removal of most of the bone from attached skeletal muscle and tissue of poultry carcasses and parts of poultry carcasses. Today, it has been estimated that roughly 700 million pounds of raw poultry materials are used to manufacture mechanically deboned poultry which is used, in turn, to formulate approximately 400 million pounds of poultry sausages (including franks, bologna, and salami), and 300 million pounds of poultry nuggets and poultry patties.[1] There have been major advances in mechanical deboning machinery in terms of the effectiveness of bone removal from skeletal muscle and other tissues of poultry carcasses and parts of carcasses. This has been accomplished through enhancements and modifications of the bone-removal devices that are part of the traditional mechanical deboning machines. There have been continued refinements of certain operational parameters of the machinery, e.g., the ability for operators to adjust the pressure needed to force ground poultry bones with adhering muscle and other tissues through screens to separate muscle and other tissues from bone, and the size of the apertures (i.e., holes) in the screens and sieves through which the ground bones, muscle, and other tissues are pushed. These improvements have resulted in the ability to decrease the bone solids that are a result of the mechanical deboning process for poultry to less than the one percent reflected in the current poultry products regulations (9 CFR 381.117(d)).

In 1969, the Department amended the regulations for poultry and poultry products inspection to, among other things, provide labeling requirements for boneless poultry products, including a prescribed bone solids content of not more than one percent (34 FR 13991). This limit was based on an evaluation conducted by the Department of the operating results in a series of poultry plants that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned product from nine commercial operations that used the three types of machines most often used in the process. The analyses showed that the equipment, at that time, could be operated under commercial conditions to produce boneless poultry that contained no more than one percent bone solids, on a raw weight basis, and the Department concluded that it was demonstrated that it was practical to limit the bone content in deboned poultry to one percent.

In light of the improvements that have occurred with regard to the machinery used to mechanically separate and remove most of the bone from the muscle and other tissues of poultry carcasses and parts of carcasses, FSIS recently conducted a study of the bone solids content of mechanically deboned poultry.[2] The percentage of bone solids content (determined by calcium analysis) in boneless poultry products produced by mechanically deboning was collected from approximately 50 plants during August 1993, and represented a sampling of over 2000 products. The data indicate that the mean bone solids content of the samples of these products was approximately 0.6 percent; generally, half of the percentages were above 0.6 percent and half were below 0.6 percent.

Prior Advance Notice of Proposed Rulemaking (ANPR)

On June 15, 1993, FSIS published an advance notice of proposed rulemaking (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is used. FSIS indicated it was considering the need for rulemaking that would establish regulations on the labeling of poultry product produced by

[1] Information provided by industry available for public inspection at the FSIS Hearing Clerk's office.

[2] Data available for public inspection at the FSIS Hearing Clerk's office.

mechanical deboning and products in which such poultry product is used.

Discussions of Comments on the ANPR

FSIS received 2744 comments in response to the ANPR, most of which were general reactions to the labeling issues. Two thousand five hundred and ninety comments were submitted by consumers, 113 by food manufacturers/distributors, 17 by food retailers, 14 by trade associations, 4 by individuals from the Federal government, 3 by academia, 2 by food consultants, and 1 by a law firm. The majority of the commenters responded to whether there was a need to identify mechanically deboned poultry (MDP) in the ingredients statement on the labels of meat and poultry products in which it is used as an ingredient.

One thousand four hundred and eighty-seven commenters supported identifying MDP in the ingredients statement on the labels of meat and poultry products in which it is used. These commenters include 1452 consumers, 8 food manufacturers/distributors, 17 food retailers, 4 trade associations, 4 individuals, one food consultant, and one law firm representative. The commenters provided the following general reasons why MDP should be identified on a finished meat or poultry product label. They stated that: (1) Consumers have a right to know that MDP is present in a product, (2) meat and poultry products should be labeled the same, i.e., there should be parity in labeling regulations, (3) MDP contains higher amounts of "calcium," "cholesterol," and/or "bone particles" and, therefore, should be identified, and (4) MDP should be identified because there is "a difference" between MDP and hand-deboned poultry. The eight food manufacturers/distributors and four consumers also stated that consumers should be made aware (through labeling) that MDP contains "kidneys," "sex glands," and "lungs." The food manufacturers/distributors also pointed out that mechanical deboning processes that crush or grind bones should be labeled as such, regardless of kind (i.e., species). Most of the food manufacturers/distributors encouraged FSIS to work with industry's scientific experts and the meat community to define "meat" and "poultry" through standards of "product safety and nutritional composition."

The remaining 1,257 commenters did not support identifying MDP in the ingredients statement on the labels of finished meat and poultry products for the following reasons: (1) The Agency's current policy should continue and MDP has a history of safe use for 25-plus years without labeling it as anything other than "chicken," "turkey meat," etc., (2) nutrition labeling will be a means of educating consumers about product composition and will address any concerns with regard to the nutrient qualities of the products they purchase, (3) listing MDP separately in the ingredients statement would mislead consumers into thinking they are purchasing products that are inferior to what they have (historically) purchased, (4) any changes in labeling regulations on MDP would only serve to confuse consumers into believing something "has been added to their products" when, in fact, no changes have been made, and (5) a change in labeling would result in a severe negative economic impact "on the entire poultry industry and U.S. economy, as well as many U.S. trading partners that now use these items as a food source." One food manufacturer stated that beef and pork are different species with obvious differences in bone mass, skeletal size, amount of calcification, and bone hardness, and, therefore, MDP should not be labeled the same as MS(S), which incorporates bone and the constituents of bone in the product. Some of the trade associations recommended that if MS(S) meets the same criteria for MDP in 9 CFR 381.117, it should be entitled to analogous labeling. Some of the trade associations also believe that MDP and MS(S) should not be defined by the process used to make them.

The academicians stated that the method of removal of meat tissue from bones of carcasses should not become part of the name of the product, and, as long as the end products are comparable and meet the "rules" for starting materials, composition, sanitation, etc., the method of processing should not become part of the product name. The commenters also stated that MDP is an excellent source of protein and calcium.

FSIS's Response to the Comments on the June 15, 1993, ANPR and Issues Regarding Poultry Products Produced by Mechanical Deboning

In its June 15, 1993, ANPR, FSIS solicited comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is based. FSIS did not receive any new data regarding the health and safety aspects of the use of such products, and, therefore, FSIS believes that there are no new health and safety concerns.

Although, many of the commenters of the June 15, 1993, ANPR raised concerns regarding the labeling of calcium and cholesterol contents of poultry product produced by mechanical deboning, the provisions of the nutrition labeling regulations (58 FR 632) published by FSIS, which are to be effective July 6, 1994, would be a means of educating consumers regarding certain nutrients and other components of processed meat and poultry products containing poultry product produced by mechanical deboning, including calcium and cholesterol. Calcium and cholesterol declaration becomes necessary on the labeling of most multi-ingredient poultry and meat products upon the effective date. These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the nutrients in poultry products. Such information will ensure that consumers are not mislead about the composition of products containing poultry products produced by mechanical deboning.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exemptions including products produced by small businesses and products in individually wrapped packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient, raw products, consumers will have information on calcium and cholesterol for most products purchased for consumption at home.

Regarding the comments FSIS received in response to its June 15, 1993, ANPR on the presence of kidneys in poultry products produced by mechanical deboning, FSIS requires the removal of kidneys of mature turkeys and chickens from their carcasses before the eviscerating operations during the slaughtering process (9 CFR 381.65(d)). Kidneys of mature poultry pose a potential health concern because of the possibility of the presence of certain heavy metals. Further, in regard to the comments made about lungs and sex glands, these are precluded from being present in "ready-to-cook" poultry (i.e.,

poultry subsequent to the slaughtering process) by the poultry products inspection regulations (9 CFR 381.1(b)(44)).

FSIS acknowledges that many of the reasons provided by commenters for maintaining the Agency's current policy on labeling poultry products produced by mechanical deboning are valid. However, a substantial number of comments reflect the consumer's "right to know" that poultry product produced by mechanical deboning is in their food because of the unexpected presence of bone. FSIS believes that these comments refer to the boneless poultry product produced by mechanical deboning which has greater than 0.6 bone solids content, but no more than one percent bone solids content.

FSIS is now considering issues in regard to the lack of a regulatory definition and standard for certain poultry products produced by mechanical deboning—products which are deemed to be similar to mechanically separated (species) (MS(S)), for which a regulatory definition and standard exist (9 CFR 319.5). ("Species" refers to the species of livestock, e.g., beef or pork.) MS(S) is defined as "any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses" and meeting the other provisions specified in 9 CFR 319.5. Provisions in the Federal meat inspection regulations provide, among other things, a definition and standard that classifies MS(S) as a meat food product and a requirement that MS(S) be separately identified in the ingredients statement of a meat food product in which it is used as an ingredient (9 CFR 317.2 (c) and (f), 319.1, and 319.5). FSIS's 1982 final rulemaking on MS(S) (47 FR 28214) indicates that the Agency determined that material differences in the consistency and the composition of MS(S) place it outside the scope of the product traditionally defined as meat (9 CFR 301.2(rr)), and that its differences are such that it should be defined as a distinctive standardized product. As such, it should be identified by a name that adequately differentiates it from meat, viz., MS(S). When MS(S) is used in meat food products, it must be separately listed in the ingredients statement by its standardized name, e.g., "mechanically separated beef (or pork)."

Over the years, the meat and poultry industries have referred to poultry produced by mechanical deboning as "mechanically deboned poultry" and "comminuted poultry," and have declared the product as poultry or poultry meat (e.g., "chicken" and "turkey meat") in the ingredients statement of the labels of products in which it is used as ingredients. Several red meat sausage manufacturers have alleged that, without a regulatory definition and standard for poultry products produced by mechanical deboning, a disparate situation exists between labeling certain poultry products produced by mechanical deboning and MS(S) which poses an unfair advantage for the manufacturers of poultry products and may deny consumers useful information.

FSIS has considered the appropriate course for addressing these issues, and has initiated two actions in response to them. FSIS is contemplating proposing regulations on poultry products produced by mechanical deboning, and is soliciting comments and requesting data on various tentative positions in this advance notice of proposed rulemaking. The other action is a proposal found elsewhere in this issue of the **Federal Register** which amends the Federal meat inspection regulations by amending the definition of meat to include, as meat, product derived from the advances in meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove attached skeletal tissue of livestock carcasses and parts of carcasses from livestock bones.

Purpose of the ANPR: FSIS's Intent to Pursue the Development of Amendments to the Federal Poultry Products Inspection Regulations to Define and Standardize, or Establish Other Requirements for Poultry Products Produced by Mechanical Deboning, Including Possible Provisions for Composition, Characteristics, and Use, and Requirements for Manufacturing and Labeling Such Products.

FSIS is considering, among other things, that certain poultry products produced by mechanical deboning, i.e., those with greater than 0.6 percent bone solids content, but no more than one percent bone solids content, be separately identified on the labels of products in which they are used as ingredients by a distinct name. However, because of the improvements in separating the bone from muscle and other tissues of poultry carcasses and parts of carcasses, FSIS is considering, among other things, that some boneless poultry products derived from mechanical deboning machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., "chicken" and "turkey meat." Until the Agency receives further data and information to support this position, it cannot take a firm position on the content of a proposed regulation on this topic. Therefore, FSIS is issuing this ANPR that provides an in-depth discussion, which follows, on the labeling of MDP, as well as other issues related to boneless poultry product produced by mechanical deboning, and expresses the Agency's tentative positions regarding these issues. It is FSIS's intent to obtain the information and data necessary to solidify its position regarding the labeling, use, and production of poultry products produced by mechanical deboning.

Tentative Positions

I. *Boneless poultry products produced by mechanical deboning with greater than 0.6 percent bone solids content* (Boneless poultry products produced by mechanical deboning with greater than 0.6 percent bone solids content are hereafter referred to as "MDP.")

A. Tentative position: Definition and standard of identity and composition. FSIS's tentative position is to prescribe a definition and standard of identity for the finely comminuted poultry product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses which has greater than 0.6 percent bone solids content. While whole carcasses sometimes are used, the starting materials for this type of processing frequently are parts of carcasses, such as frames, backs and necks, which contain relatively low proportions of skeletal muscle, or parts, such as breast frames, from which most of the skeletal muscle already has been removed by traditional deboning techniques. This product is commonly known in the poultry industry as mechanically deboned poultry or MDP.

The changes under consideration would include (1) amending the Federal poultry products inspection regulations by defining MDP as "mechanically separated (kind)," or another appropriate term, using limits for bone solids content and bone particle size, and criteria for protein quality, and requirements for labeling of the product in products in which it is used as an ingredient, and (2) amending the poultry products inspection regulations to require that such poultry products produced by mechanical deboning be kept at temperatures of 40 degrees F or below within 2 hours of the deboning operation. The resulting product differs from poultry products produced by traditional deboning techniques in its

highly comminuted and spread-like consistency and in its content of bone and associated tissue, as well as muscle, skin, and fat. These differences have a potential consequence for finished product microbiological quality and, thus, for health and safety. Therefore, certain handling requirements may be needed.

In view of the differences between MDP and boneless poultry derived by traditional methods (e.g., hand-deboning), it appears inappropriate to continue to include MDP within the category of "boneless poultry products" (9 CFR 381.117(d)). Instead, FSIS is considering defining it as a distinct poultry product ingredient and standardizing its characteristics under Subpart P of the poultry products inspection regulations (9 CFR part 381, subpart P).

FSIS's tentative position is that the boneless poultry products regulation (9 CFR 381.117(d)) no longer would apply to MDP. Consequently, the current restriction on bone solids content in this regulation—as enforced by limiting calcium content—would be included with other compositional requirements in a MDP standard. Product failing to meet the bone particle size, or protein quality requirements of the standard could be used only in producing poultry extractives, including fats, stocks, and broths, (i.e., processors would be permitted to employ acceptable procedures for extracting components such as fat, but such product resulting from the mechanical separation and removal process could only be used for further processing). Mechanically deboned poultry with a protein content of less than 14 percent and/or a fat content of more than 25 percent would be deemed to be product for processing. Moreover, as a standardized product, MDP would be differentiated from other poultry product ingredients; and it would be designated in the ingredient statements on finished product labels by the name specified in its definition and standard, in accordance with 9 CFR 317.2(c)(2) and (f)(1) and 381.118(a).

(1) *Tentative position: Product name.* FSIS's tentative position is to consider amending the Federal poultry products inspection regulations to define the standardized product that results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses by a distinctive name. FSIS is tentatively considering that "Mechanically Separated (Kind) (MS(K))" is an appropriate, nonmisleading name for this product. It appears to accurately and concisely describe the product, indicating the nature of the process by which and the kind of poultry from which it is made, distinguishing it from poultry product ingredients produced by traditional hand-deboning techniques. The name under consideration includes "(kind)" rather than "poultry" to make it clear that the kind of poultry (9 CFR 381.1(b)(40)) from which the product is made is specified (e.g., "Mechanically Separated Chicken").

As previously indicated, FSIS believes that MDP differs sufficiently from boneless poultry products produced by traditional hand-deboning techniques that it should be regulated as a separate, standardized ingredient. As such, this product would be defined by its own, distinctive name, and it would be referred to by that name in relevant regulations and in labeling. In this regard, FSIS is requesting public input on other names that would accurately and appropriately describe MDP as a distinct ingredient.

FSIS is aware that other descriptions have been associated with poultry products produced by mechanically deboning. In addition to the use of terminology such as "finely comminuted" poultry to specify the form of the product and "mechanically deboned" poultry, such product has been referred to as mechanically separated poultry within the meat and poultry industries. FSIS believes that where a primary distinguishing characteristic of a standardized product is its bone content, it would be inappropriate to define it by a name that includes the term "deboned" and use of this term in labeling might mislead consumers by implying such product contains no bone.

Persons commenting on this portion of the ANPR should be aware that FSIS does not consider that current familiarity with terminology or its appeal to consumers is dispositive on the question of what terminology is most likely to achieve its objectives for the name of a standardized product: instantaneous consumer familiarity and acceptance cannot and should not be expected when labels declare the presence of a product for the first time. However, consumer perceptions are important in determining whether or not terminology that is technically accurate nevertheless may be confusing or even misleading. When FSIS establishes a definition and standard for a product with respect to which a specified name is deemed appropriate, the product must be called by that name in labeling.

(2) *Tentative position: Bone solids content.* FSIS is considering that a definition and standard for MDP would incorporate the existing restriction on the bone solids content of mechanically deboned poultry products, viz., not more than one percent (9 CFR 381.117(d)). Because this restriction is enforced by limiting calcium content, FSIS is considering that the definition and standard for MDP should include maximum calcium content levels of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content—based on the weight of product that has not been prepared with heat treatment.

As previously discussed, FSIS adopted the one percent bone solids restriction after appraising the operating results in a series of poultry plants using mechanical deboning equipment, analyzing 485 samples of raw product, and concluding that existing equipment can be operated under commercial conditions to produce product which meets this limit (34 FR 13991, 13992). When processors applied the mechanical deboning technology to poultry products such as fowl frames that have been heat treated using various cooking methods, FSIS modified its procedures to take into account weight loss that can occur with cooking. Thus, the practice has been to permit an allowance for weight loss in order to reflect the bone solids content that would have been present if heat treatment has not occurred; and the adjusted level may not exceed one percent. The "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (section 6.010F, page 6–33),[3] currently includes procedures for different degrees of adjustment depending on whether conventional cooking methods (i.e., open kettle) or other heat treatment (e.g., pressure cooking) are used.

After evaluating data on substances of potential concern that may tend to concentrate in bone, the 1979 report on health and safety aspects of the use of mechanically deboned poultry did not recommend any change in the existing bone solids limit. (The report did, however, recommend limitations on the use of product made from fowl because of bone constituents like fluoride; FSIS's tentative position is to amend the poultry products inspection regulations accordingly, as discussed below.) Because enforcement is based on calcium content analyses, rather than direct measurements of bone solids, FSIS is considering that an amended regulation would include the maximum

[3] Document is available for public inspection at the FSIS Hearing Clerk's office.

amount of calcium permitted in determining whether mechanically deboned poultry is in compliance. As discussed below, FSIS is also considering that production under an approved quality control program is needed to assure that such product is manufactured to comply with regulatory requirements on a consistent basis and that implementation of a quality control program would increase the effectiveness of enforcement of the restriction on bone solids content.

FSIS has developed two different calcium content levels for this purpose. Both of these levels account for the fact that poultry tissues, other than bone, contain some calcium. The higher level—0.235 percent—reflects the greater proportion of calcium in the bones of mature chickens and turkeys as compared with young chickens (i.e., the lower ratio of bone solids to calcium). The lower level—0.175 percent—has been used by FSIS in enforcing the one percent restriction on product made from young chickens. Both of these calcium levels are equivalent to one percent bone solids using the conversion formulas for calculating bone solids from calcium on a weight basis.[4]

Since FSIS is considering proposing a definition and standard that includes potential types of mechanically deboned product, FSIS's tentative position is to allow 0.175 percent calcium as the maximum for all MDP that is made from poultry other than turkeys or mature chickens. FSIS is interested in receiving comments regarding the calcium levels applicable to MDP made from other kinds of poultry, e.g., ducks, geese, and guineas, especially calcium levels applicable to mature poultry.

In addition, the "Chemistry Laboratory Guidebook" (section 6.010F, page 6–33) has been revised to include a procedure that could be applied to mechanically deboned product made only in part from mature chickens. That procedure involves a determination of the relative mature and young chicken proportions when product is made from a combination of young and mature chickens. FSIS is considering, as discussed below, that production of MDP under an approved quality control program is necessary to assure consistent compliance with regulatory requirements, including the calcium content requirement utilized in restricting bone solids content. Therefore, as the discussion of the proposed quality control provision indicates, FSIS's tentative position is that, if mechanically deboned chicken is made from a combination of young and mature chickens, the application of any intermediate value between 0.175 and 0.235 percent in verifying compliance would be contingent upon an establishment's program for quality control including methods that support such value's appropriateness as a measure of a bone solids content to not more than one percent; and without such methods, the 0.175 percent limit should apply. FSIS wishes to receive comments on the determination of the calcium levels associated with MDP made from a combination of young and mature poultry.

The inclusion of these calcium content levels in the definition and standard FSIS is considering should not be misinterpreted as indicating a concern about the amount of the essential nutrient calcium that is provided by poultry and meat food products. FSIS agrees with the findings in the 1979 health and safety report that, even assuming all further processed poultry were made with mechanically deboned poultry (i.e., a far greater level of production and use than actually occurs), the projected calcium contribution such products would represent only a negligible increase in per capita daily intakes and cannot be considered hazardous, particularly since the dietary intake of a large sector of the population may be below the recommended level of calcium consumption.

(3) *Tentative position: Bone particle size.* FSIS is considering restricting the size of the bone particles in MDP to a maximum of less than 1.5 millimeter (mm) in the greatest dimension, but permitting up to 5 bone particles per 50 grams of MDP to be from 1.5 mm to less to 2.0 mm in the greatest dimension. The need to limit the size of bone particles in MDP has been acknowledged since the poultry industry began to use mechanical methods for manufacturing this product.

In the 1979 health and safety report, it was recommended that bone particle size be controlled to ensure that equipment type of processing does not result in unacceptably large fragments and concluded that, provided this is done, the bone particles in the product will not present any health hazard because of size or hardness.

FSIS is considering that it is appropriate to permit up to 5 particles per 50 grams of product to be from 1.5 mm to less than 2.0 mm as an acceptable defect in complying product. FSIS is requesting comments and information on the extent to which manufacturers should be required to control the production of mechanically separated poultry product to limit the size of bone particles. FSIS will consider any information submitted during the comment period on the size and distribution of bone particles that may occur with various mechanical deboning procedures conducted in accordance with good manufacturing practices (e.g., the extent to which deviations or nonconforming particles occur, and data substantiating the absence of potential health or finished product quality problems with such particles).

(4) *Tentative position: Protein quality.* FSIS is considering requiring that MDP meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulation on MS(S) (a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5) was published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility—corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990 (PDCAAS method).[5] The protein digestibility—

[4] The formula for calculating bone solids from calcium for poultry products is in the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (6.010F, page 6–33), and is available for public inspection at the FSIS Hearing Clerk's office.

[5] A copy of the document is available for public inspection in the FSIS Hearing Clerk's office.

corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption that the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is considering proposing a requirement that the protein in MDP have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. This value is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which is cross-referenced in its final nutrition regulations (58 CFR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition and from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth), and in turn, protects people other than young consumers. FSIS also believes that it may be appropriate to assure comparability of MDP with boneless poultry and poultry that is derived by hand-deboning in terms of the protein contributed to human dietary needs to maintain the quality and integrity of the poultry products supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is considering proposing that, for the purpose of measuring the protein quality of MDP, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of MDP" and "total amino acids present in MDP." Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present including isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. It is being considered that the essential amino acid content would be determined by methods given in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation."

FSIS believes that MDP found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[6]

The public should be aware that FSIS continues to have interest in investigations of protein quality which include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

(5) *Tentative position: Protein and fat contents.* FSIS is considering allowing for two categories of MDP for use in the formulation of poultry products and meat food products: (1) A category which meets minimum protein and maximum fat content requirements of not less than 14 percent and not more than 25 percent, respectively, and (2) a category designated "for processing" for which there are no protein or fat content requirements. As discussed below, it is contemplated that a wider range of use would be permitted for product containing not less than 14 percent protein and not more than 25 percent fat, than for product for processing.

Poultry products produced by traditional deboning techniques vary significantly in fat content, largely depending on the extent to which they include skin (with attached fatty tissue) and/or separable fat—the major sources of fat in poultry. A similar pattern was evident in the data on mechanically deboned poultry products reviewed in the 1979 health and safety report, although mechanically deboned product tended to contain more fat. This tendency is not surprising since mechanically deboned product frequently is prepared from necks, which have a higher skin content than other poultry parts, and/or backs, which have a higher skin content than other poultry parts, and because it can include bone marrow, which contains as much or more fat than skin.

While, as with fat content, there is considerable variability in the protein content of both mechanically deboned poultry and poultry products produced by traditional deboning techniques, in the data reviewed in the 1979 health and safety report on MDP, MDP generally contained less protein. In addition, the 1979 report found much higher moisture to protein ratios in mechanically deboned poultry, indicating considerable dilution of poultry product, possibly by ice.

Currently, the poultry products inspection regulations do not directly control the fat or protein content of poultry product ingredients. However, they do differentiate between "poultry meat" and "poultry," i.e., chicken meat and chicken, with the latter encompassing edible parts such as skin and fat not in excess of their natural proportions in addition to poultry meat. As skin (with attached fatty tissue) and separable fat are the places in which most of the fat in poultry products is found and poultry products are composed essentially of fat, protein, and moisture, these definitions have served, to some extent, to distinguish among poultry products in terms of their relative fat and protein contents. Moreover, these differentiations in fat and protein have consequences for the use of poultry product ingredients, since many of the standards of identity or composition for finished poultry products include minimum poultry meat requirements (9 CFR 381.167) and others limit skin and fat to natural proportions (9 CFR 381.160).

The goal FSIS is considering is to develop a regulatory approach that fulfills its responsibility to protect the public by maintaining the quality and integrity of the poultry and meat food product supply while continuing to permit flexibility in the composition of mechanically deboned poultry product, as well as in its use at various levels in a broad range of products. In FSIS's view, its responsibility to the public includes the objectives of preventing increases in the fat content of this portion of the food supply and preventing poultry product dilution that could result in the public no longer being able to rely on poultry products and meat food products as reasonably good sources of high quality dietary protein.

FSIS is considering that MDP should have a fat content of not more than 25 percent and a protein content of not less

[6] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the Expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clerk's office.

than 14 percent or it shall be deemed to be product for processing. If these views are adopted, the effect of this provision would be to impose no maximum on the fat content or minimum on the protein content of this ingredient where other regulatory provisions assure that the fat content of finished products does not exceed appropriate limits and protect against decreases in their protein content by establishing finished product content requirements. In such a product, it is contemplated that MDP could be used, regardless of its fat or protein content, in ingredient mixtures that accord with the standard for the finished product.

(6) *Tentative position: Quality control.* FSIS is considering that a quality control program is necessary to assure that establishments manufacture mechanically deboned poultry product that complies consistently with the tentative definition and standard that is being considered by FSIS. Utilization of such a program in producing the ingredient MDP would be a prerequisite for the approval of labels for products consisting of or containing MDP. The function of plant quality control is to restrict potential variability within the limits of the tentative requirements FSIS is considering by controlling the factors that can affect the resulting product's characteristics.

FSIS expects to require that MDP be produced under an approved plant quality control program. Also, FSIS is considering a requirement that the plant quality control program provide the controls and information necessary to assure that MDP manufactured under such a program meets any requirements established and that it will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will minimize inter-lot variation by maintaining the uniformity of starting materials and controlling the handling and processing of starting materials and resulting product.

Because it appears that this goal can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques and adheres to good manufacturing practice, FSIS contemplates requiring that an establishment conduct only limited analyses for protein quality and fat, and for MDP represented as containing not less than 14 percent protein and not more than 25 percent fat, to confirm that production is, in fact, under control. After it has been demonstrated that the quality control program is able to yield complying product, confirmatory analyses would be required only periodically, as long as the product is in compliance.

FSIS anticipates establishing basic parameters for the chemical analyses that must be performed to verify compliance with the requirements, e.g., defining production lots and sampling schedules, and the accepted methodology for performing analyses. FSIS wishes to receive comments on the parameters necessary for an adequate quality control program.

B. *Tentative position: Handling requirements.* Current regulatory requirements, including provisions for sanitation, operating procedures, and heat processing (9 CFR part 381, subpart H and I, and § 381.150), already provide the basic controls necessary to prevent spoilage and assure poultry product wholesomeness. However, because the mechanical deboning process presents greater opportunities for bacterial growth than traditional poultry product processing, FSIS is considering amending the poultry products inspection regulations to more specifically address the requirements for the various starting materials used for MDP and the resulting product.

Although the data reviewed in the 1979 health and safety report indicate that MDP products generally are acceptable from a microbiological standpoint, the data also show that where bacterial loads tend to be higher, it can be attributed to the starting material used. This is not surprising as common starting materials for mechanical deboning are products that remain after the removal of a substantial portion of skeletal muscle or other tissue (e.g., skin) from poultry carcasses or parts of carcasses. As a result, the resistance of the exposed surface area to microbial penetration has been reduced and the ratio of the surface area to the volume of total product which is exposed to contaminating influences has been increased. Higher microbial counts in MDP have been associated with the time and conditions of holding such starting materials.

Mechanically deboned poultry itself also presents opportunities for excessive microbiological growth because it consists of small particles which have a greater surface area than most poultry products and because during its preparation any microorganisms that are present are distributed throughout the product.

FSIS believes that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. FSIS is, therefore, considering that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is considering proposing handling requirements that would provide that material to be processed into MDP be processed within 2 hours from the time it is separated from the bones of poultry carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4 °C) or less, or held indefinitely at 0 °F (−18 °C) or less. Within 2 hours of the mechanical deboning operation, FSIS is also considering proposing that MDP be chilled to 40 °F (4 °C) or less, frozen at 0 °F (−18 °C) or less, or cooked. FSIS is further considering proposing that MDP be used as an ingredient in a poultry or meat food product directly after being processed, except that it may be held prior to such use for no more than 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18 °C) or less.

FSIS recognizes that different starting materials will be processed into MDP, i.e., poultry carcasses or parts of carcasses chilled and maintained in accordance with 9 CFR 381.66; unchilled poultry carcasses or parts of carcasses; and heat-treated poultry carcasses or parts of carcasses, and such carcasses or parts from which a substantial portion of skeletal muscle or other tissue has been removed. FSIS wishes to receive comments on whether specific handling requirements other than those being considered are appropriate for specific types of starting materials.

In addition, in order to avoid confusion about the parts or physical state of poultry that may be processed into MDP, FSIS is considering providing a definition of "poultry carcasses or parts of carcasses." The terms "poultry carcasses" or "parts of carcasses" would apply to whole carcasses or disjointed portions of such carcasses that are "ready-to-cook poultry" within the meaning of 9 CFR 381.1(b)(44) of the poultry products inspection regulations. In other words, the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs of the slaughtered poultry have been removed and such poultry is free from protruding pinfeathers and vestigial feathers and suitable for cooking without need of further processing.

FSIS is considering that adoption of the handling requirements discussed above would eliminate the need to require that the temperature of rooms or compartments in which equipment for mechanical deboning of raw poultry is operated be maintained at 50 °F or less. Thus, if the requirements FSIS is

considering are adopted, FSIS would need to rescind 9 CFR 381.47(e).

C. Tentative position: Limitations on use. FSIS's tentative position is to establish and codify limitations with respect to use of MDP in the formulation of poultry and meat food products. FSIS is contemplating imposing such restrictions based on the potential fluoride contribution of MDP made from fowl (i.e., mature female chickens) and the characteristics of MDP, including the kind of poultry from which it is made, its consistency, and its protein and fat contents. FSIS believes that such requirements are necessary to prevent potential health and safety problems, and to maintain the quality and integrity of the poultry and meat food product supply.

(1) *Tentative position: Kind of product limitation.* FSIS is considering that when a poultry product is required to be prepared from a particular kind or kinds of poultry (e.g., chickens), use of MDP of any other kind (e.g., mechanically deboned turkey) should not be permitted. This provision would assure that MDP made from a different kind of poultry is not used in a poultry product represented as containing ingredients from a particular kind or kinds of poultry.

The tentative definition and standard for MDP that FSIS is considering covers MDP prepared from any kind of poultry. FSIS is not considering, however, to permit use of MDP as an ingredient in any given poultry product regardless of the kind of poultry from which it is made. Such action would be inconsistent with existing regulatory requirements and interpretations and could, among other things, result in false or misleading labeling. For example, the definition and standard for (Kind) patties (9 CFR 381.160) requires that poultry product ingredients be "of the kind indicated" (e.g., turkey products in turkey patties). FSIS believes that in considering to amend the poultry products inspection regulations to provide for the use of MDP as a distinctive poultry product ingredient, this consideration should not abrogate this type of requirement (e.g., to permit use of mechanically deboned chicken in turkey patties).

(2) *Tentative position: Limitations on product made from fowl.* FSIS is considering that the use of mechanically deboned chicken made, in whole or part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) should not be permitted in baby, junior, or toddler foods. Also, FSIS is considering that it should not be permitted in combination with MS(S) to constitute more than 20 percent of the livestock and poultry product portion of any other poultry product or meat food product. These restrictions are based on the potential fluoride contribution of product made from fowl to dietary intakes. The 1979 health and safety report found only slight differences between the fluoride content of MDP made from poultry other than fowl and that of poultry products produced by traditional deboning techniques, but considerably higher amounts in MDP made from fowl.

FSIS believes that, in addition to prohibiting use of MDP made from fowl in baby (i.e., strained), junior, and toddler foods, MDP also should be limited in other foods, because infants also consume table foods, with most eating adult-type foods by age 2. This would limit the potential fluoride contribution to dietary intakes of other young children in high fluoride areas. FSIS believes that MDP made from fowl should be limited to a maximum of 20 percent of the livestock and poultry product portion of any poultry or meat food product.

(3) *Tentative position: Poultry product limitations.* FSIS is considering that the use of MDP should be limited in certain poultry products. FSIS is considering allowing MDP in the sauce portion or any dressing of poultry products and is soliciting comments on this use. FSIS is also soliciting comments on whether MDP should be allowed in poultry products for which there are standards of identity or composition (e.g., Boned (Kind)—Solid Pack, Boned (Kind) with Natural Juices, Shredded (Kind), (Kind) burgers, (Kind) A La Kiev and (Kind) Steak or Fillet).

MDP is a finely comminuted ingredient and FSIS considers its use to be inconsistent with the basic characteristics associated with poultry products that have been processed only to the extent of cutting or grinding or that are made from poultry products so processed, such as chicken breasts, turkey fillets, and chicken burgers, or shredded chicken. FSIS also considers its use to be inconsistent with the basic characteristics associated with poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat, such as roasted chicken, boned turkey with natural juices, chicken an la Kiev, and turkey ham. FSIS recognizes, however, that these types of products sometimes are prepared with components the characteristics of which are not inconsistent with those of MDP.

It is poultry meat—particular muscle(s)—that characterize cuts of poultry. The characteristics associated with a cut can be retained when trimmings removed during processing are reincorporated; and the association with the cut remains when there is chunking, chopping, or grinding of the muscle as in versions of turkey ham product (9 CFR 381.171). FSIS regards these processes as different than using product made by the mechanical deboning of accompanying bones. MDP does not, in FSIS's view, retain the characteristics of the cuts themselves. It appears inconsistent with the basic characteristics expected of products represented as having been made from a particular part of the poultry carcass, whether the muscle from that part is essentially intact or has been processed only to the extent of cutting or grinding, to include this finely comminuted ingredient.

The same preparation procedures used in making a turkey ham product can be applied to other cuts, such as turkey breast, for which definitions and standards have not been prescribed in subpart P of part 381 of the poultry products inspection regulations (9 CFR part 381, subpart P). Cured turkey breast and turkey ham products have in common their method of preparation and their association with a particular cut of poultry. They differ only in the cut of poultry product used. As this difference is not relevant to whether inclusion of MDP would be appropriate, FSIS believes that use of MDP should not be permitted in these products nor in products that are similar.

FSIS is interested in receiving comments on its views as to the products in which use of MDP or its use in anything but sauces and dressings should be prohibited as inconsistent with their basic characteristics, including data and other information on the effects of using MDP on the characteristics and quality of specific products. Persons who support allowing use of MDP in any of the poultry products covered in the above discussion should be aware that FSIS is interested in their views.

(4) *Tentative position: Limitations on product "for processing."* FSIS is considering that, in addition to complying with any applicable limitations discussed with regard to the requirements of the definitions and standards of identity or composition for particular poultry products and meat food products (9 CFR parts 319 and 381, subpart P thereto), use of MDP "for processing," i.e., MDP that has a protein content of less than 14 percent and/or a fat content of more than 25 percent, not be permitted in the formulation of a poultry product or meat food product

at levels above 2 or 3 percent because of the effect on finished product quality. FSIS is requesting comments regarding this approach and possible conditions for exceptions, e.g., when poultry and meat food products are subject to a regulatory definition and standard which establishes a minimum requirement for protein content and a maximum limit on fat content which ensure finished product quality.

FSIS also recognizes that MDP "for processing" may be used at very low levels (2 or 3 percent) as a binder—i.e., for a technological or functional purpose. FSIS is particularly interested in receiving comments on whether such product should be permitted for this purpose and, if so, in what products and under what conditions. For example, would it be adequate and appropriate to permit this type of use so long as it is limited to the 3 percent level in formulating processed product?

D. *Tentative position: Labeling.* FSIS expects to include special provisions for the labels of MDP and products in which it is used as an ingredient. If adopted, these provisions would supplement other, more general requirements for such labels (see 9 CFR parts 317 and 381, subpart N).

(1) *Tentative position: The product.* FSIS is considering the following possible labeling provisions for MDP: (a) The name of the product (e.g., "Mechanically Separated (Kind)," must be followed immediately by the phrase(s) "for processing" unless it has a protein content of not less than 14 percent and a fat content of not more than 25 percent, "made from fowl" unless it is not made, in whole or part, from mature female chickens (see 9 CFR 381.170(a)(1)(vi)), and "with excess skin" unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass (see 9 CFR 381.117(d)); (b) after any such required information, the name of the product may be followed by "without skin" and/or "without kidneys and sex glands" if it is made from poultry product that does not include skin and/or that does not include kidneys or sex glands; and (c) there must be appropriate descriptive terminology if heat treatment has been used in the preparation of such product. Because the characteristics specified are ones which would affect use of MDP, FSIS is considering that, in order to assure compliance with regulatory requirements and thereby prevent the adulteration and misbranding of finished poultry products and meat food products, it is necessary to provide for their clear identification on the label when MDP leaves the establishment at which it is manufactured (see 9 CFR 381.115).

As indicated previously, the regulations already require that information bearing on use—including deviations from the natural whole carcass proportion of skin as well as the fact of cooking—appear on the label of mechanically separated poultry product (9 CFR 381.117(d)). The presence of skin or its presence in excess of the natural whole carcass proportion would, as discussed previously, continue to affect product use if the regulations are amended. The use of heat treatment in the preparation of the product also would be of continuing relevance (9 CFR 381.157(a)). In addition, since the presence of poultry kidneys or sex glands can affect use (9 CFR 319.180(b)), a number of manufacturers of MDP not containing these parts currently choose to note this fact on the label. The other information that would be required is identification of product made from fowl and product for processing.

(2) *Tentative position: Finished poultry products and meat food products.* As indicated above in the discussion of FSIS's tentative position regarding the definition and standard for MDP, FSIS is considering that in view of the differences between MDP and poultry products produced by traditional hand-deboning techniques and the developments since its introduction, MDP should be regulated as a distinctive ingredient with standardized characteristics. Therefore, it is FSIS's tentative position to define such product by its own name, e.g., "Mechanically Separated (Kind)," that would be declared in the ingredient statements on finished product labels by the name specified in its definition and standard.

FSIS recognizes the importance of the identification of the calcium and cholesterol content of MDP to consumers who, according to the comments received on the June 15, 1993, ANPR, indicated a desire to know of the presence of calcium and cholesterol. FSIS wishes to point out that the effective date for its mandatory nutrition labeling regulations (9 CFR 317.309, 381.409) is July 6, 1994. These rules require mandatory declaration of calcium and cholesterol content on most processed meat and poultry products which will address this particular labeling concern. FSIS believes that nutrition labeling is the most appropriate vehicle for conveying a product's nutrient content, which includes calcium, cholesterol as well as other nutrient information.

Tentative Position

II. *Boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids.* FSIS is considering amending its current boneless poultry regulations to allow boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids to be classified as poultry or poultry meat if produced under the provisions of a quality control program that would require compliance with certain criteria for this product, e.g., protein quality, bone solids (calcium), and bone particle size. FSIS is also considering having handling requirements and limitations on use of boneless poultry products with 0.6 percent or less bone solids in certain products. Further, FSIS is considering that protein and fat content requirements would not be necessary, for such products, because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products when FSIS's nutrition labeling regulations become effective on July 6, 1994.

A. Tentative position: Product name and labeling. FSIS is contemplating amending the labeling regulations on boneless poultry products to change the allowable bone content for products currently labeled as poultry or poultry meat. The mechanical deboning machinery used to produce boneless poultry products has undergone significant changes since 1969. Over the years, there have been continued refinements in certain parameters, e.g., the ability to adjust the pressure and aperture size, resulting in far less than current allowance of no more than one percent bone solids for mechanically deboned poultry. According to an August 1993 study done by FSIS[7] regarding bone content of boneless poultry products produced by mechanical deboning, the average bone solids content was approximately 0.6 percent. The changes in mechanical deboning machinery have resulted in improved manufacturing processes. We believe it results in products which are comparable to "poultry" and "poultry meat" derived from hand-deboning.

FSIS is considering provisions that will enable boneless poultry products with 0.6 percent or less bone solids to be classified as poultry or poultry meat and labeled accordingly. It is FSIS's tentative view that these products need not be labeled to describe their form (i.e., consistency) by terms such as "emulsified" and "finely chopped."

[7] A summary report of the study is available for public inspection at the FSIS Hearing Clerk's office.

FSIS believes that the form of the product may not be important because these products are primarily used as ingredients in poultry and meat products, such as poultry sausages, which are themselves categorized as finished products that are "emulsified," "finely chopped," etc., in terms of texture. Therefore, FSIS wishes to receive comments on whether there is a need to include the term used to describe the form of the boneless poultry products with 0.6 percent or less bone solids, e.g., "emulsified," "finely ground," etc., in the ingredients statement of the product in which such product is used as an ingredient and whether these terms are important to the consumer.

(1) *Tentative position: Bone solids content.* FSIS is considering having the bone solids content of boneless poultry product with 0.6 percent or less bone solids be measured by calcium analysis with a maximum calcium content of not more than 0.147 percent in product made from turkeys or mature chickens or 0.111 percent in product made from other poultry. Both of these levels account for the fact that poultry tissues, other than bone, contain some calcium and that turkeys and mature chickens contain more calcium naturally than other poultry.

FSIS is considering, as discussed below, that production of boneless poultry products with 0.6 percent or less bone solids under an approved quality control program is necessary to assure consistent compliance with regulatory requirements, including the calcium content requirement utilized in restricting bone solids content.

The inclusion of these calcium content levels should not be misinterpreted as indicating a concern about the amount of the essential nutrient calcium that is provided by poultry and meat food products. FSIS considers that, even assuming all further processed poultry were comprised of boneless poultry with 0.6 percent or less bone solids, the projected calcium contribution of such product would represent only a negligible increase in per capita daily intakes and cannot be considered hazardous, particularly since the dietary intake of a large sector of the population may be below the recommended level of calcium consumption. For the new boneless poultry products with 0.6 percent or less bone solids, the calcium level would be significantly lower than mechanically deboned poultry.

(2) *Tentative position: Bone particle size.* FSIS is considering that the size of the bone particles in boneless poultry products with 0.6 percent or less bone solids should be restricted to a maximum of less than 1.5 millimeter (mm) in the greatest dimension, but permitting up to 5 bone particles per 50 grams of boneless poultry products with 0.6 percent or less bone solids to be from 1.5 mm to less than 2.0 mm in the greatest dimension.

FSIS's objective is that the limitation imposed be adequate to prevent any digestibility problems while not restricting the operation of equipment in accordance with the improved good manufacturing practices more than is necessary for this purpose or to protect finished product quality. Bone particle size should be controlled to ensure that equipment type or processing does not result in unacceptably large fragments and, provided this is done, the bone particles in the product will not present any health hazard because of size or hardness.

FSIS is considering that it is appropriate to permit up to 5 particles per 50 grams of product to be from 1.5 mm to less than 2.0 mm as an acceptable defect in complying product. FSIS is requesting comments and information on the extent to which manufacturers should be required to control the production of boneless poultry products produced by mechanical deboning that have 0.6 percent or less bone solids to limit the size of bone particles. FSIS will consider any information submitted during the comment period on the size and distribution of bone particles that may occur with various mechanical deboning procedures conducted in accordance with improved good manufacturing practices (e.g., the extent to which deviations or nonconforming particles occur, and data substantiating the absence of potential health or finished product quality problems with such particles).

(3) *FSIS tentative: Protein quality.* FSIS is considering proposing to require that boneless poultry products with 0.6 percent or less bone solids meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulations on MS(S) were published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility-corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990 (PDCAAS method).[a] The protein digestibility-corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption than the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is considering proposing a requirement that the protein in boneless poultry products with 0.6 percent or less bone solids have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. This value is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which is cross-referenced in its final nutrition regulations (58 CFR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition and from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth), and in turn, protects people other than young consumers. FSIS is also considering that it is appropriate to assure comparability of boneless poultry products with 0.6 percent or less bone solids with poultry that is derived by hand-deboning in terms of the protein contributed to human dietary needs to maintain the quality and integrity of the poultry products supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino

[a] A copy of the document is available for public inspection in the FSIS Hearing Clerk's office.

acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is considering proposing that, for the purpose of measuring the protein quality of boneless poultry with 0.6 or less bone solids, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of boneless poultry" and "total amino acids present in boneless poultry." Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present including isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. It is being considered that the essential amino acid content would be determined by methods given in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation."

FSIS believes that boneless poultry with 0.6 percent or less bone solids found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[9]

The public should be aware that FSIS continues to have interest in investigations of protein quality which include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

(4) *FSIS tentative position: Protein and fat contents.* FSIS is considering whether there is a need to establish minimum protein and/or maximum fat content(s) for boneless poultry products with 0.6 percent or less bone solids. FSIS has concluded that such action is not necessary because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products upon the effective date of the nutrition labeling regulations (58 FR 632). These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the nutrients in poultry products.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exceptions including products produced by small businesses and products in small packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient raw products, consumers will have information on protein and fat for most products purchased for consumption at home. Based on these considerations, FSIS maintains that there is no need to establish minimum protein and/or maximum fat contents for boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids.

(5) *Tentative position: Quality control.* FSIS believes that a quality control program is necessary to assure that establishments that manufacture boneless poultry products with 0.6 percent or less bone solids comply consistently with the criteria being considered. Utilization of such a quality control program in producing the boneless poultry products with 0.6 percent or less bone solids would be a prerequisite for the approval of labels for products consisting of or containing boneless poultry. The function of a quality control program is to restrict potential variability within the limits of FSIS's tentative requirements by controlling the factors that can affect the resulting product's characteristics.

FSIS expects to require that boneless poultry products with 0.6 percent or less bone solids be produced under an approved quality control program. Also, FSIS expects to require that the quality control program provide the controls and information necessary to assure boneless poultry with 0.6 percent or less bone solids will meet each of the requirements under consideration and will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will minimize inter-lot variation by maintaining the uniformity of starting materials and controlling the handling and processing of starting materials and resulting product.

Because it appears that this goal can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques and adheres to good manufacturing practices, FSIS plans to require that an establishment conduct only limited analyses for calcium, protein quality, and bone particles for boneless poultry products with 0.6 percent or less bone solids to confirm that production is, in fact, under control. After it has been demonstrated that the quality control program is able to yield complying product, confirmatory analyses would be required only periodically, as long as the product is in compliance.

FSIS anticipates establishing basic parameters for the chemical analyses that must be performed to verify compliance with the requirements, e.g., defining production lots and sampling schedules, and the accepted methodology for performing analyses. FSIS wishes to receive comments on the parameters necessary for an adequate quality control program.

B. Tentative position: Handling requirements. Current regulatory requirements, including provisions for sanitation, operating procedures, and heat processing (9 CFR part 381, subpart H and I, and § 381.150), already provide the basic controls necessary to prevent spoilage and assure poultry product wholesomeness. However, because the mechanical deboning process presents greater opportunities for bacterial growth than traditional poultry product processing, FSIS is considering amending the poultry products inspection regulations to more specifically address the requirements for the various starting materials used to manufacture boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids and the resulting boneless poultry product.

FSIS believes that potential bacterial hazards are diminished as long as

[9] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clark's office.

handling accords with good manufacturing practices. FSIS is, therefore, considering that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is considering proposing handling requirements that would provide that material to be processed into boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids be processed within 2 hours from the time it is separated from the bones of poultry carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4 °C) or less, or held indefinitely a 0 °F (−18 °C) or less. Within 2 hours of the mechanical deboning operation, FSIS is also considering proposing that boneless poultry with 0.6 percent or less bone solids be chilled to 40 °F (4 °C) or less, frozen to 0 °F (−18 °C) or less, or cooked. FSIS is further considering proposing that boneless poultry with 0.6 percent or less bone solids be used as an ingredient in a poultry or meat food product directly after being processed, except that it may be held prior to such use for no more than 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18 °C) or less.

FSIS wishes to receive comments on whether specific handling requirements other than those being considered are appropriate for specific types of starting materials. In addition, in order to avoid confusion about the parts or physical state of poultry that may be processed into boneless poultry with 0.6 percent or less bone solids, FSIS intends to provide a definition of "poultry carcasses or parts of carcasses." The terms "poultry carcasses" or "parts of carcasses" would apply to whole carcasses or disjointed portions of such carcasses that are "ready-to-cook poultry" within the meaning of 9 CFR 381.1(b)(44) of the poultry products inspection regulations. In other words, the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs of the slaughtered poultry have been removed and such poultry is free from protruding pinfeathers and vestigial feathers and suitable for cooking without need of further processing.

FSIS is considering that adoption of the handling requirements discussed above would eliminate the need to require that the temperature of rooms or compartments in which equipment for mechanical deboning of raw poultry is operated be maintained at 50 °F. or less. Thus, if the requirements FSIS is considering are adopted, FSIS would need to rescind 9 CFR 381.47(e).

C. Tentative position: Limitations on Use. At a level of 0.6 percent or less bone solids content there is no need for consumer concern regarding potential fluoride contribution of mechanically separated product made from fowl (i.e., mature female chickens).

(1) Tentative position: Kind of product limitation. FSIS's tentative position on amending the poultry products produced by mechanical deboning with 0.6 percent or less bone solids covers such product prepared from any kind of poultry. It is not, however, FSIS's intention to permit use of boneless poultry products with 0.6 percent or less bone solids as an ingredient in any given poultry product regardless of the kind of poultry from which it is made. Such action would be inconsistent with existing regulatory requirements and interpretations and could, among other things, result in false or misleading labeling.

FSIS intends to provide that when a poultry product is required to be prepared from a particular kind of kinds of poultry (e.g., chickens), use of boneless poultry products with 0.6 percent or less bone solids of any other kind (e.g., poultry product made from turkey) should not be permitted. This provision would assure that boneless poultry product made from a different kind of poultry is not used in a poultry product represented as containing ingredients from a particular kind or kinds of poultry.

(2) Tentative position: Limitation on product made from fowl. In the past, the Agency has had a policy of discouraging the use of MDP containing 1.0 percent or less bone solids content for use in baby, junior, and toddler foods because of concern for higher levels of fluoride present in the bones of mature poultry. However, FSIS believes that at the low level of 0.6 percent or less bone solids content there would be no reason to place a restriction on boneless poultry products with 0.6 percent or less bone solids for use in baby, junior, and toddler foods based on the potential fluoride contribution of product made from fowl to dietary intakes. Furthermore, there is research to indicate a very poor absorption of fluorine from bone particles coupled with a large body of research indicating beneficial effects of fluoride at lower levels. With the restriction of 0.6 percent or less bone solids content, levels of fluoride present would not present a health and safety concern.

FSIS anticipates permitting the use of boneless poultry products with 0.6 percent or less bone solids made, in whole or part, from fowl (mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) in baby, junior, or toddler foods. The Agency is interested in receiving comments and supporting scientific documentation if there are valid, scientific findings contradicting this view.

(3) *Tentative position: Poultry product limitations.* Because boneless poultry products with 0.6 percent or less bone solids is comminuted, i.e., finely ground, in form, FSIS is considering its use to be inconsistent with the basic characteristics associated with poultry products that have been processed only to the extent of cutting or grinding or that are made from poultry products so processed, such as chicken breasts, turkey fillets, and chicken burgers or shredded chicken. FSIS also considers its use to be inconsistent with the basic characteristics associated with poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat, such as roasted chicken, boned turkey with natural juices, chicken a la Kiev, and turkey ham. FSIS is interested in receiving comments on its views as to the products in which use of boneless poultry product produced by mechanical deboning with 0.6 percent or less bone solids or its use in anything but sauces and dressings should be prohibited as inconsistent with their basic characteristics.

FSIS's tentative position on limitations of use is intended to provide a mechanism for assuring that boneless poultry products with 0.6 percent or less bone solids is not an ingredient in products marketed as classes or cuts of raw poultry which have undergone additional preparation such as boning and/or cooking where regulatory standards currently do not address their poultry or poultry meat content (e.g., boneless turkey breasts), as well as where they do.

FSIS does not anticipate adopting any restrictions on the amount of boneless poultry products with 0.6 percent or less bone solids that can be used in poultry products, or meat food products, in which it is a permitted ingredient. However, standards for particular products may contain quantitative limits (e.g., the limit on the amount of poultry product ingredients permitted in cooked sausages such as frankfurters and bologna (9 CFR 319.180)) or other restrictions on the way in which various poultry product ingredients may be used.

(4) *Tentative position: Finished poultry products and meat food products.* As indicated previously, FSIS is considering proposing that boneless poultry product with 0.6 percent or less

bone solids should be classified as "poultry" or "poultry meat" and that it should be described accordingly. Although boneless poultry product with 0.6 percent or less bone solids is finely ground in form, it is expected that this product would be used as an ingredient in products which are, themselves, categorized as finely ground in texture, e.g., frankfurters and bologna. Therefore, FSIS is considering that when boneless poultry product with 0.6 percent or less bone solids is used as ingredient in a poultry or meat product, it should be declared by terms that accurately describe it as a poultry or poultry meat product, e.g., "chicken" and "turkey meat."

FSIS's tentative position is not to require special declaration of calcium and/or cholesterol content on labeling of a poultry or meat food product containing boneless poultry products with 0.6 percent or less bone solids because calcium and cholesterol declaration becomes necessary on the labeling of most multi-ingredient poultry and meat products upon the effective date of FSIS's nutrition labeling regulations (58 FR 632).

FSIS's tentative labeling provisions reflect FSIS's belief that nutrition labeling is the most appropriate place for calcium and cholesterol content information by requiring that the declaration of calcium and/or cholesterol content appear as part of any nutrition labeling that a poultry product or meat food product bears.

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

Done at Washington, DC on: February 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4892 Filed 3–2–94; 8:45 am]

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Thursday
March 3, 1994

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 301 and 318

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301 and 318

[Docket No. 94–003P]

RIN 0583–AB76

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by amending the definition of meat to include as meat product resulting from advanced meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove attached skeletal tissue from the bones of livestock carcasses and parts of carcasses, establishing the criteria for meat from advanced meat/bone separation machinery and meat recovery systems to assure consistency with the characteristics and composition of meat, and establishing requirements for the handling of meat derived from advanced meat/bone separation machinery and meat recovery systems, as well as the material from which it is derived. This action is being taken to update the definition of meat to acknowledge and include as meat product derived from the advances made in the modification of traditional mechanical means of separating meat from the bones of livestock and the development of advanced recovery systems that do not involve grinding, crushing, or pulverizing bones to remove the adhering skeletal tissue.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT:

John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Executive order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the FMIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the provisions of this rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not require either large or small establishments to use meat/bone separation machinery and meat recovery systems. Although there are initial costs involved with the purchase of machinery and establishing quality control programs, there are no apparent direct competitive advantages that large establishments would have over small establishments.

Paperwork Requirements

Manufacturers producing "meat" resulting from advances in meat/bone separation machinery that does not grind, crush, or pulverize bone in order to remove skeletal muscle tissues (i.e., meat) adhering to livestock bones would be required to develop and maintain a quality control program that provides the controls and information necessary to assure that the product will meet the requirements established for such product as proposed. The paperwork requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 94–003P. All written comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4:00 p.m., Monday through Friday.

Background

Introduction

The FMIA (21 U.S.C. 601 *et seq.*) requires that the Secretary of Agriculture administer an inspection program that assures consumers that meat and meat food products distributed in commerce and within designated States [1] are wholesome, not adulterated, and are properly marked, labeled, and packaged. Under the FMIA and regulations promulgated thereunder, FSIS provides mandatory inspection, except for certain exceptions, of meat and meat food products prepared for distribution in interstate and foreign commerce, as well

[1] Designated States are States that have failed to develop or are not effectively enforcing requirements at establishments, within their jurisdiction, for the slaughter of livestock and/or the preparation of products thereof, that are at least equal to those of subchapters I and IV of the FMIA. Once a State is designated, the provisions of subchapters I and IV of the FMIA apply to the operations and transactions of establishments that operate solely within the State.

as for distribution within designated States.

The Federal meat inspection regulations define meat in 9 CFR 301.2(rr) as follows:

> The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

The Federal meat inspection regulations also establish a definition and standard of identity for a meat food product called "mechanically separated (species)" (MS(S)) in 9 CFR 319.5. "Species" refers to the species of livestock, e.g., beef or pork. At various times, this product has also been called mechanically deboned meat and mechanically processed (species) product. This meat food product is defined as "any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses" and meeting the other provisions specified in 9 CFR 319.5. This provision and other provisions in the Federal meat inspection regulations provide, among other things, for: (1) A definition and standard that classifies MS(S) as a meat food product, (2) limitations on the amount of MS(S) that can be used in permitted products (viz., 20 percent of the livestock and poultry product portion of the product), (3) prohibitions on the use of MS(S) in certain products (e.g., baby food), (4) limitations on certain components of MS(S), e.g., bone particle size, bone content (measured as calcium content), protein quality, and a maximum fat content and minimum protein content, (5) requirements for handling and for the production of MS(S) under an approved quality control program, and (6) a requirement that MS(S) be separately identified in the ingredients statement of a meat food product (9 CFR 317.2 (c) and (f), 318.18, 319.5, and 319.6). FSIS's 1982 final rulemaking on MS(S) (47 FR 28214) indicates that the Agency determined that material differences in the consistency and the composition of MS(S) place it outside the scope of product traditionally defined as meat (9 CFR 301.2(rr)), and that its differences are such that it should be defined as a distinctive standardized product. As such, it should be identified by a name that adequately differentiates it from meat, viz., MS(S). When MS(S) is used in meat food products, it must be separately listed in the ingredients statement by its standardized name, e.g., "mechanically separated beef (or pork)."

FSIS is considering issues in regard to the lack of a regulatory definition and standard for certain poultry products produced by mechanical deboning—products which are deemed to be similar to MS(S). Poultry products produced by mechanical deboning result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. Over the years, the meat and poultry industries have referred to poultry product produced by mechanical deboning as "mechanically deboned poultry" and "comminuted poultry," and have declared the product as poultry or poultry meat (e.g., "chicken" and "turkey meat") on the labels of products in which they are used as ingredients.

Several red meat sausage manufacturers have alleged that without a regulatory definition and standard for poultry products produced by mechanical deboning, a disparate situation exists between labeling poultry products produced by mechanical deboning and MS(S) which poses an unfair advantage for the manufacturers of poultry products.

FSIS has considered the appropriate course for addressing these issues and has initiated two actions in response to them. FSIS is contemplating proposing regulations on poultry products produced by mechanical deboning, and will be soliciting comments and requesting data on various tentative positions in a notice that appears elsewhere in this issue of the **Federal Register**. The second action is the subject of this proposed rule which focuses on the meat product derived from the advances in meat/bone separation machinery and recovery systems that is comparable to "meat" as traditionally defined in 9 CFR 301.2(rr).

FSIS now believes that advances in meat/bone separation machinery and meat recovery systems, which do not grind, crush, or pulverize bone in order to remove skeletal muscle tissue adhering to bones of livestock (i.e., bones of cattle, sheep, swine, and goats) result in a product which, unlike MS(S), is comparable to "meat" as traditionally defined.

Since the 1970's, there has been increasing commercial production of processed meat products that are formulated with comminuted (i.e., ground) meat, e.g., hot dogs, in order to meet the demands of the market for such products. Most of the technology that has found commercial use will evolve in the form of improvements to meet the demands of consumers and industry. The demands of the industry have centered around the desire to harvest more usable protein, i.e., muscle tissue, and to find alternatives to recovering more usable protein, from livestock carcasses to meet consumer demands for the processed meat products formulated with skeletal muscle tissue obtained by mechanical removal. Mechanization also diminishes the economic implications of removing meat by hand caused by repetitive motion disorders for workers that hand-debone carcasses and parts of carcasses using knives, and by knife accidents. Industry data [2] indicate that over 300,000 cases of cumulative trauma disorder (e.g., Carpal Tunnel Syndrome) have occurred in the meat industry due to the strain of repetitive movements to remove meat from bones. The demands of the consumer and industry have resulted in improvements in meat/bone separation machinery and meat recovery systems to improve yields and, simultaneously, to make the process better ergonomically.

Over the past decade, FSIS has monitored the tremendous strides in modernizing the meat/bone separation machinery. FSIS believes that there are meat/bone separators and meat recovery systems that are fundamentally different than the machines used to manufacture MS(S). These differences occur in terms of the efficiency and effectiveness of the process of separating skeletal muscle tissue and bone.

The Removal of Muscle Tissue From Livestock Bones

Since the advent of automatic means of skeletal muscle tissue removal from bone using high-speed knives, e.g., the Wizard knife, machines that are classified as meat/bone separators have been developed that emulate the physical action of the high-speed knives. The advances in meat/bone separation have led to recovery systems that separate meat from bone without crushing, grinding, or pulverizing bones such that the meat is removed by shaving, pressing, or scraping the

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[2] Data received in comments from Longmont Foods and Butterball Turkey Company on Docket No. 93–008ANPR, "Labeling of Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Product is Used," (58 FR 33040) June 1993. These data are available for public inspection in the FSIS Hearing Clerk's office

muscle tissue from the bone surface similar to the action of the hand-held high-speed knives. Thus, this meat is obtained in much the same manner as that which is obtained using traditional hand-deboning techniques, where the bones emerge separately from the meat in the process, essentially intact and in natural physical conformation. For example, the most commonly used bones would include rib bones and loin bones and would be recognized as such when they emerge from the meat/bone separation machinery. FSIS believes that the description of the bones from which muscle tissue has been removed as "essentially intact" is consistent with the description of the bones resulting from the removal of muscle tissue by hand-deboning using knives, including high-speed mechanical knives, such as the Wizard knife. FSIS recognizes that even with the use of hand-operated knives, e.g., in the processing establishment, at the supermarket meat counter, or by the consumer, there is the possibility of shaving, pressing, or scraping close to the bone surface so as to unavoidably remove a minute amount of the bone's surface when meat is removed. FSIS believes that this is a normal occurrence because of the difficulty in exercising precision in hand-deboning operations, and, as such, it is still in conformance with good manufacturing practices that render products safe and wholesome. Because the bones emerge from the advanced meat/bone separators in their natural shape and structure, i.e., with the connective tissue linkages that normally occur in bones, FSIS maintains that they are in natural physical conformation. Furthermore, under FSIS's longstanding boneless meat inspection procedure for meat derived by hand-deboning techniques, it is expected that the finished comminuted (i.e., ground) meat product made from the meat removed from livestock bones contains no bone perceptible to sight or touch. This result would be expected for meat derived from the advanced meat/bone separation machinery and recovery systems.

In contrast, the mechanism of traditional mechanical deboning machines from which MS(S) results, involves mechanically separating and removing most of the bone from attached skeletal muscle of livestock through the application of high pressure to crush, grind, and pulverize bones from which most of the meat has already been removed, and then using high pressure to force the resulting paste through a sieve to separate bone particles and fragments that result from crushing and pulverizing bones during processing. Due to the mechanism of the machinery used to manufacture MS(S), bone and bone particles, including bone marrow, are incorporated into the finished product.

The regulation on MS(S) in 9 CFR 319.5 does not specify the type of equipment used to separate and remove bone because it is intended to cover the product manufactured by any such machinery that operates on the differing resistance of hard bone and soft tissue to passage through small openings, whether it employs sieves, screens, or other devices and whether or not bones are pre-broken before being fed into such equipment. However, the regulation on MS(S) is not intended to apply to whole pieces of muscle tissue which have been removed from livestock bones by mechanical or other means (47 FR 28223). FSIS has determined that the consistency of MS(S) and its content of bone, including bone marrow, and certain minerals, as well as muscle tissue, are materially different from those of "meat," and that these differences have potential consequences for finished product quality and for health and safety which are addressed by the regulations for MS(S) (9 CFR 318.18, 319.5, and 319.6) and supported by the Agency's 1979 report on the health and safety aspects of mechanically deboned meat.[3]

Starting Materials

The starting materials from which the meat from advanced meat/bone separation machinery and meat recovery systems results are intact livestock bones with adhering skeletal muscle and other soft tissue. While it has been reported that it is possible to use whole carcasses, the raw materials for this type of processing generally are parts of carcasses with skeletal muscle attached. Adhering skeletal muscle tissue usually varies in amount, depending on the anatomical origin and size of the bones. Typically, the livestock bones with adhering skeletal tissue applicable to the advances in meat recovery are those where the adhering tissue cannot be efficiently or effectively removed by traditional hand-deboning techniques, and the bones are of sufficient hardness and of appropriate size compatible with the operation of the advanced meat/bone separator/meat recovery system. It is FSIS's understanding that the advanced machinery is capable of handling medium to smaller size bones, e.g., rib bones, button bones, loin bones, and feather bones. The fact that no bone crushing, grinding, or pulverizing occurs limits the types of bones that are used. The bones must be hard enough to emerge from the process essentially intact and in natural physical conformation.

In the traditional mechanical deboning process, described in the 1982 final regulations on MS(S) (47 FR 28214), it is possible to use whole carcasses; however, generally, the raw materials for the conventional process are parts of carcasses from which most of the skeletal muscle already has been removed by traditional hand-deboning methods. With the mechanical deboning technology described in the regulations on MS(S), these bones are broken up and pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue.

Characteristics and Composition of Meat

FSIS believes that the resulting product derived from advanced meat/bone separation machinery and meat recovery systems is comparable to meat derived by hand-deboning techniques, including the use of mechanical knives and that, as such it warrants classification as "meat." FSIS believes that current relevant Federal meat inspection regulations on labeling meat should apply, and, as such, the "meat" derived from advanced meat/bone separation machinery and recovery systems may be described by any term that accurately reflects it as meat. Advanced meat/bone separation machinery and meat recovery systems apply a process mechanism that shaves, presses or scrapes adhering tissue from the surface of livestock bones. The machines do not grind, crush, or pulverize bones to separate muscle tissue, and the bones and the interconnecting soft tissues that link bones emerge from the process in a manner consistent with hand-deboning operations that use knives.

Meat products derived by advanced meat/bone separation are characterized by identifiable muscle fiber structure, visible differentiation of lean and fat, and components normally associated with and expected in meat obtained by hand-deboning. The advanced recovery systems produce distinct whole pieces of skeletal muscle tissue with a well-defined particulate size similar in consistency to (species) trimmings derived by hand-deboning and used to formulate processed meat products. The

[3] A copy of the report entitled, "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Final Report and Recommendations Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II. Background Materials and Details of Data" is available for public inspection in the FSIS Hearing Clerk's office.

color of the meat derived from these systems is similar to that of (species) trimmings.[4] As such, the meat derived from the advanced recovery systems conforms to the definition of "meat" because it has the functional and chemical characteristics of meat; there are no powdered bone or constituents of bone, e.g., bone marrow, that are not in conformance with the definition and expectation of meat or that which would render the product adulterated or misbranded under the regulations. It is FSIS's belief that, unlike MS(S), consumer expectations of "meat" are met with regard to the product obtained from the advances in meat/bone separation machinery and recovery systems, because the product's characteristics, in terms of appearance and texture, and its composition are similar to those of "meat," as currently defined in 9 CFR 301.2(rr).

In contrast, MS(S) differs from hand-deboned meat and the meat derived from advanced meat/bone separation due to its highly comminuted, spread-like consistency and its content of varying amounts of bone, including bone marrow, and certain minerals, as well as muscle tissue. MS(S) is amorphous and lacks the characteristic components seen in meat, e.g., muscle fiber, the presence of connective tissue fibers in the way they occur naturally, and distinct lean and fat components. These characteristics render the product materially different than meat.

The Proposal

FSIS is proposing to amend the definition of meat in the Federal meat inspection regulations (9 CFR 301.2(rr)) to include as meat product resulting from advanced meat/bone separation machinery and recovery systems, establish criteria for meat from advanced meat/bone separation machinery and recovery systems, and establish requirements for the handling of meat derived from advanced meat/bone separation machinery and recovery systems, as well as the material from which it is derived. FSIS is proposing these amendments to the Federal meat inspection regulations to update the definition of meat to include as meat product produced from advanced meat/bone separation machinery and recovery systems. It is FSIS's intent to recognize that (1) substantial advances have occurred with regard to the machinery for separating skeletal muscle of livestock carcasses and parts of carcasses from livestock bones, since the promulgation of rules on the production, use, and labeling of MS(S) and the products in which it is used as an ingredient, and that (2) the characteristics and composition of the meat from these advances are comparable to the product traditionally defined as "meat." In proposing the amendments, FSIS continues to fulfill its statutory responsibility to prevent the preparation and distribution in commerce of meat and meat food products which are adulterated or misbranded or not properly marked, labeled, or packaged.

1. Definition of Meat

The proposal would amend the definition of "meat" set forth in 9 CFR 301.2(rr) of the Federal meat inspection regulations to include as meat product, meeting certain criteria, that is derived from the mechanical separation of skeletal muscle tissue from the bones of livestock by using advanced mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning, i.e., essentially intact and in natural physical conformation such that they are recognizable as loin bones, rib bones, etc., when they emerge from the machinery.

As previously stated, FSIS believes that meat derived from advanced meat/bone separation machinery and recovery systems has the functional and chemical characteristics of "meat." This product is also comparable to meat derived by hand-deboning techniques, including mechanical high-speed knives. FSIS further believes that consumer expectations of "meat" are met with regard to the identity of the product, because the product's characteristics, in terms of appearance and texture, and its composition are similar to those of "meat," as currently defined in 9 CFR 301.2(rr). Therefore, FSIS is proposing to amend the definition of "meat" to include meat derived from advanced meat/bone separation machinery and recovery systems.

2. Criteria for Meat Derived From Advanced Meat/Bone Separation Machinery and Recovery Systems

The proposal would establish protein quality and calcium content criteria for meat derived from advanced meat/bone separation machinery and meat recovery systems and assure its compliance with such criteria through a quality control program in order to assure conformance with consumer expectations of "meat" and production of "meat" comparable to that obtained by hand-deboning techniques. A maximum calcium content (as a measure of bone solids) of not more than 0.15 percent or 150 mg/100 gm of product (within a tolerance of 0.03 percent or 30 mg) and a minimum protein quality requirement of a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent, or an alternative measure of at least 33 percent essential amino acids of the total amino acids present, would be established for the product.

FSIS has carefully considered whether there is a need to establish minimum protein and/or maximum fat content(s) for product derived from advanced meat/bone separation machinery and recovery systems. FSIS believes that such action is not necessary because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products upon the effective date of the nutrition labeling regulations which is July 6, 1994 (58 FR 632). These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the two nutrients in muscle meat that are the sole source of calories and are characteristic of the nutrient profile of meat. Such information will ensure that consumers are not misled about the composition of products containing meat obtained using advanced meat/bone separation machinery.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exceptions, including products produced by small businesses and products in individually wrapped packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient, raw products, consumers will have information on protein and fat for most products purchased for consumption at home. Furthermore, FSIS believes that the fat and protein contents of meat derived from advanced meat/bone separation machinery and

[4] Data provided to the Agency by Millbank Processing Machinery Inc., Englewood, Colorado, are available for public inspection in the FSIS Hearing Clerk's office.

recovery systems would be comparable to the fat and protein contents of meat derived from hand-deboning. Based on these considerations, FSIS maintains that there is no need to establish minimum protein and/or maximum fat contents for products derived from advanced meat/bone separation and recovery systems.

a. *Calcium content.* FSIS is proposing to include in the amendment to the definition of "meat," criteria on maximum calcium content (as a measure of bone solids content) of this meat to assure that the meat derived from advanced meat/bone separation machinery and recovery systems is both consistent with consumer expectations of "meat," e.g., beef trimmings, and comparable to "meat," as traditionally defined, that is used to formulate further processed meat food products. The criteria is a measure designed to ensure that bones are not crushed, ground, or pulverized during processing. The maximum calcium content of 0.15 percent or 150 mg/100 gm of product is supported by data submitted to FSIS for the product derived from advanced meat/bone separation machinery.[5] Furthermore, based upon analytical repeatability studies conducted by the Agency for calcium, FSIS proposes to establish a tolerance, i.e., allowance for statistical variability, of 0.03 percent or 30 mg/100 gm for individual samples.[6]

b. *Protein quality.* FSIS is proposing to require that meat derived from advanced meat/bone separation machinery and recovery systems meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulations on MS(S) were published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility-corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990.[7] The protein digestibility-corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption than the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is proposing to require that the protein in meat derived from advanced meat/bone separation and recovery systems have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. The protein digestibility-corrected amino acid score would be required to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" which is incorporated by reference in the proposed rule. The proposed protein digestibility-corrected amino acid score or not less than 40 expressed as a percent is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which FSIS cross-referenced in its final nutrition labeling regulations (58 FR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth) and, in turn, protects people other than young consumers. FSIS also believes it is appropriate to assure comparability of the meat derived from advanced meat/bone separation systems with that derived by hand-deboning to maintain the quality and integrity of the meat supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is proposing that, for the purpose of measuring the protein quality of meat derived from advanced meat/bone separation machinery and recovery systems, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of meat" and "total amino acids present in meat," i.e., an essential amino acid content of at least 33 percent of the total amino acids present in the meat. Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. The essential amino acid content would be required to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" which is incorporated by reference in the proposed rule.

FSIS continues to believe that meat found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[8]

The public should be aware that FSIS continues to have interest in investigations of protein quality which

[5] A summary report of data provided to FSIS on the calcium content of meat from advanced meat/bone separation machinery and recovery systems is available for public inspection in the FSIS Hearing Clerk's Office.

[6] A copy of an FSIS report containing data on the repeatability of analyzing calcium content (June 1992) is available for public inspection in the FSIS Hearing Clerk's Office.

[7] A copy of the document is available for public inspection in the FSIS Hearing Clerk's Office.

[8] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the Expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clerk's office.

include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

c. *Qualify control.* FSIS is proposing to require that meat derived from advanced meat/bone separation machinery and recovery systems be produced under an approved quality control program. FSIS believes quality control is necessary to assure that establishments manufacture meat from advanced meat/bone separation machinery and recovery systems that complies with the provisions of the proposed amendment of the definition of meat. Utilization of such a quality control program in producing this product would be prerequisite for the approval of labels for products consisting of or containing meat from advanced recovery systems. In other words, an approved quality control program would be necessary prior to the production of meat using advanced meat/bone separation machinery and recovery systems.

The function of a quality control program would be to restrict potential deviations from the prescribed definition of meat by controlling the factors that can affect conformance with the definition. Thus, it is proposed to require that the quality control program provide the controls and information necessary to assure that the meat from advanced meat/bone separation and recovery systems will meet each of the requirements of the regulations and will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will maintain the uniformity of starting materials and control the handling and processing of starting materials and resulting product. The methods of analysis for calcium and protein quality that are permitted and are intended to be used should be identified in the quality control system.

Under the proposal, the owner or operator of an establishment that intends to manufacture meat from advanced meat/bone separation machinery and recovery systems would request the Administrator of FSIS to approve the establishment's quality control program. The procedures and criteria for receiving such requests and assessing the adequacy of programs for quality control, as well as for terminating approval, would be those set forth in 9 CFR 318.4. These provisions provide guidance on the development and maintenance of appropriate quality control programs.

FSIS believes that with a quality control approach to preventing noncompliance from occurring, the need for testing the resulting product to assure compliance can be reduced and, consequently, the costs of production kept down. Moreover, the proposed quality control requirement builds on the control and information programs that processors use to predict and minimize the likelihood of manufacturing products that are inconsistent and of varying quality, and do not comply with regulatory requirements. Proposing to rely on a approved quality control program, rather than continual testing by processors, is a means for assuring that operations achieve compliance with the applicable proposed requirements and, thereby, prevents misbranding and adulteration of the resulting meat.

The goal of preventing misbranding and adulteration are key issues with regard to meat products produced by mechanical meat/bone separation, and can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques, and adheres to good manufacturing practices. FSIS believes that product exceeding the calcium limit should not be classified as meat because if it exceeds the proposed calcium limits, it would reflect unacceptable incorporation of bone in the product during processing. To ensure that product satisfies the calcium requirement, FSIS is proposing that a sample of at least one pound from each lot of production would be taken and analyzed for calcium. A lot would consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours The results from chemical analyses would be compared to the requirement of 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg. If statistical evidence exists that product may not be in compliance, then further sampling of the product will be required to demonstrate that the product is in compliance with requirements for meat derived from meat/bone separation and recovery systems.

It is proposed that statistical evidence of non-compliance exists when an individual analytical result is more than 0.03 percent (i.e., 30 mg) above the requirement, i.e., greater than 0.18 percent (i.e., 180 mg). (This tolerance is derived by equating it to three times the expected standard deviation (i.e., 0.1 percent) of the analytical procedure used by FSIS to measure the calcium contents in samples.)[9]

If any single analytical result is more than 0.18 percent, FSIS proposes that, before product from a production lot that is still at the establishment or one subsequently produced can be considered to be in compliance, at least three samples[10] from that lot must be taken and analyzed for calcium, either separately or as a composite (i.e., combining the three samples for analysis), at the option of the establishment. The average of the results or the composite result must comply with the requirement for calcium (i.e., less than or equal to 0.15 percent). Taking three samples from each lost would continue until five consecutive lots[11] have mean or composite results less than or equal to 0.15 percent. Individual results or an average of results would be rounded to the nearest 0.01 percent based on the precision of the methodology for measuring calcium. If the FSIS program official detects any results out of compliance, the program official may undertake normal compliance procedures.

FSIS believes that, if the statistical evidence indicates that a production lot is not in compliance with the calcium requirement, the lot must be labeled as MS(S) and meet the requirements for MS(S) in 9 CFR 319.5. In this situation, FSIS believes that the process is out of control, and there is the likelihood that too much calcium has been incorporated in the recovered meat, and, therefore, it should be identified as MS(S).

FSIS is proposing that at least one pound of product be sampled each week during production of a lot for conformance with protein quality criteria. Once three consecutive results from 3 production lots are in compliance with the criteria on protein quality (i.e., a protein digestibility-corrected amino acid score or essential amino acid content), sampling of production lots can be reduced to a monthly basis. After 6 months, sampling

[9] Data from a FSIS study are available for public inspection in the FSIS Hearing Clerk's office.

[10] Three samples, either analyzed as individual samples or as a composite sample (i.e., combining the three samples), are statistically representative for measuring calcium in a production lot.

[11] The provision for sampling five consecutive production lots is based on statistical sampling principles that ensure the process is in control and that mean or composite calcium results are less than or equal to the calcium requirement.

of production lots can be reduced to a quarterly basis.[12]

Subsequently, if samples are out of compliance, sampling each week would be repeated until the results are in compliance.

A major concern of FSIS is the assurance that consumers receive the quality of meat they expect in terms of the value of protein needed to sustain good nutrition. Therefore, FSIS is proposing that product from advanced meat/bone separation machinery and recovery systems that does not meet the requirements of the criteria for protein quality must be identified as "(species) fat" or "(species) connective tissue," and labeled in accordance with the applicable provisions in 9 CFR Part 317. Protein quality values less than the proposed criteria are comparable to those associated with "(species) fat" and "(species) connective tissue."

3. *Handling requirements.* FSIS is proposing to specify requirements for the handling of material that is to be processed into meat derived from advanced meat/bone separation machinery and recovery systems and for handling such product. FSIS is proposing that the handling of such material comply with the same provisions as are currently prescribed in 9 CFR 318.18 for handling material for mechanical processing.

FSIS believes that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. Because meat from advanced meat/bone separation machinery and meat recovery systems consists of particulates of muscle tissue having more surface area than whole muscle cuts, there is a greater potential for bacterial hazards. FSIS has, therefore, concluded that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is proposing to adopt the handling requirements prescribed in 9 CFR 318.18. These requirements would provide that material to be processed into meat derived from advanced meat/bone separation machinery and meat recovery systems be processed within 1 hour from the time it is cut or separated from livestock carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4°C) or less, or held indefinitely at 0°F (−18° C) or less. Meat from advanced meat/bone separation machinery and recovery systems must be used as an ingredient in a meat food product directly after being processed, except that it may be held prior to such use for no more 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18° C) or less.

[12] This sampling schedule ensures the statistical representation of the production lots is achieved in regard to measuring protein quality.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 318

Incorporation by reference, Meat inspection, Quality control, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR parts 301 and 318 as follows:

PART 301—DEFINITIONS

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 301.2 would be amended by revising paragraph (rr) to read as follows:

§ 301.2 Definitions.

* * * * *

(rr) *Meat.* (1) The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(2) The product derived from the mechanical separation of the skeletal muscle tissue from the bones of livestock using the advances in mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation such that they are recognizable, such as loin bones and rib bones, when they emerge from the machinery) which:

(i) Meets the criteria of no more than 0.15 percent or 150 mg/100 gm of product for calcium (as a measure of bone solids content) within a tolerance of 0.03 percent or 30 mg and meets the criteria of a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent or an essential amino acids content of at least 33 percent of the total amino acids present in the meat, as assured by an approved quality control program described in § 318.24 of this subchapter;

(ii) Is produced under an approved quality control program set forth in § 318.24 of this subchapter; and

(iii) Is handled in conformance with § 318.18 of this subchapter.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 318.18 would be revised to read as follows:

§ 318.18 Handling of certain material for mechanical processing.

Material to be processed into "Mechanically Separated (Species)" or meat derived from advanced meat/bone separation machinery and recovery systems shall be so processed within 1 hour from the time it is cut or separated from carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F. (4 °C.) or less, or held indefinitely at 0 °F. (−18 °C.) or less. "Mechanically Separated (Species)" or meat derived from advanced meat/bone separation machinery and recovery systems shall, directly after being processed, be used as an ingredient in a meat food product, except that it may be held prior to such use for no more than 72 hours at 40 °F. (4 °C.) or less or indefinitely at 0 °F. (−18 °C.) or less.

5. Part 318 would be amended by adding a new § 318.24 to read as follows:

§ 318.24 Compliance procedures for meat derived from advanced meat/bone separation machinery and recovery systems.

(a) The product resulting from the separating process shall not have a calcium content exceeding 0.15 percent or 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg, and it shall have a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent (except as modified in paragraph (b) of this section).

(b) An essential amino acid content of at least 33 percent of the total amino acids present in the meat derived from

advanced meat/bone separation machinery and recovery systems shall be accepted as evidence of compliance with the protein quality requirement set forth in paragraph (a) of this section. For purposes of this paragraph, essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content.

(c) A prerequisite for label approval for meat derived from advanced meat/bone separation machinery and recovery systems is that it shall have been produced by an establishment under an approved plant quality control program. The Administrator shall receive, evaluate, and approve requests for plant quality control in accordance with § 318.4(d) (1) and (2) and (e). Such a plant quality control system shall provide the controls and information necessary to assure that the product will meet the requirements described in § 301.2(rr)(2) of this subchapter and will enable establishment personnel and program employees to monitor the system for effectiveness. The system shall include a written description of the methods used by the establishment to maintain uniformity of the raw ingredients used in manufacturing the product and to control the handling and processing of the raw ingredients and the finished product, and shall contain provisions for chemical analyses of the product and other procedures to determine and assure compliance with the definition of the product. For purposes of this paragraph, a lot shall consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. All units of any lot must be available for inspection by program employees. The plant quality control program shall be subject to periodic review, and the approval of such program may be terminated in accordance with § 318.4(g).

(1) To verify the calcium content in meat derived from advanced meat/bone separation machinery and recovery systems, an analysis of a sample of at least one pound from each lot shall be performed by the operator of the establishment or his or her agent. Individual results from the chemical analyses shall be compared to the calcium limit, prescribed in paragraph (a) of this section, in order to demonstrate compliance. If compliance is not demonstrated, that is, if any single analytical result is more than 0.18%,[1 2] before product from a production lot that is still at the establishment or one that is subsequently produced can be considered to be in compliance, at least three samples from that production lot shall be taken and analyzed for calcium, either separately, or, at the option of the establishment, as a composite (i.e., combining the three samples for analysis). The average of the results or the composite result must be less than or equal to 0.15%. Taking three samples from each subsequently produced lot and analyzing them in order to demonstrate compliance shall continue until five consecutive lots have mean or composite results less than or equal to 0.15%. If the statistical evidence indicates that a production lot is not in compliance with the calcium limit, as prescribed in § 301.2(rr)(2) of this subchapter, the lot must be labeled as MS(S) and meet all of the requirements for MS(S) in § 319.5 of this subchapter.

(2) To verify the protein digestibility-corrected amino acid score or the essential amino acid content in meat derived from advanced meat/bone separation machinery and recovery systems, an analysis of a sample of at least one pound shall be performed by the operator of the establishment or his or her agency each week during production of a lot to assure that product will meet the requirements of § 301.2(rr)(2) of this subchapter. Once three consecutive results from three production lots are in compliance with the criteria on protein quality (i.e., a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent, as reflected in paragraph (a) of this section or an essential amino acid content of at least 33 percent of the total amino acids present, as reflected in paragraph (b) of this section), sampling of production lots can be reduced to a monthly basis. After 6 months, sampling of production lots can be reduced to a quarterly basis. Subsequently, if samples are out of compliance, sampling each week would be repeated until three consecutive results from three production lots are in compliance. The protein digestibility-corrected amino acid score and the essential amino acid content shall be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990. The "Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" as published by the Food and Agriculture Organization of the United Nations/World Health Organization is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. It is also available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Product resulting from the separating process which fails to meet the protein quality requirement in § 301.2(rr)(2) of this subchapter, shall be labeled as "(Species) fat" or "(Species) connective tissue."

[1] The value 0.18% was derived by multiplying by 3 the expected analytical standard deviation obtained by FSIS laboratories on the approved chemical procedure for measuring calcium which uses Ethylenediaminetetraacetic acid (EDTA) as provided in the "Official Methods of Analysis of the AOAC International" (formerly the Association of Official Analytical Chemists), 15th Ed. (1990).

[2] Individual or an average of results shall be rounded to the nearest 0.01% calcium.

Done at Washington, DC on: February 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4891 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–DM–M

federal register

Thursday
March 3, 1994

Part IV

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Friday, March 18, 1994, from 8 a.m. until 5 p.m.

ADDRESSES: The meeting will take place in the Thomas Jefferson Memorial Auditorium, at the Department of Agriculture South Building, 14th Street and Independence Avenue NW., Washington, DC 20500. The Wing 4 entrance on Independence Avenue in the middle of the building or the Wing 7 entrance at the corner of 14th Street and Independence Avenue should be used.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4625; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: niintia. doc.gov.

SUPPLEMENTARY INFORMATION: Current members of the Advisory Council on the National Information Infrastructure include:

Mr. Morton Bahr, President, Communications Workers of America, AFL–CIO.

Dr. Toni Carbo Bearman, Dean and Professor, School of Library and Information Science, University of Pittsburgh.

Ms. Bonnie L. Bracey, Teacher, Ashlawn Elementary School, Arlington County Public Schools.

Mr. John F. Cooke, President, The Disney Channel.

Ms. Esther Dyson, President, EDventure Holdings, Inc.

Dr. Craig I. Fields, Chairman and Chief Executive Officer, Microelectronics and Computer, Technology Corp.

Ms. Lynn Forester, President and Chief Executive Officer, FirstMark Holdings, Inc.

Honorable Carol Fukunaga, Senator, State of Hawaii.

Mr. Haynes G. Griffin, President and Chief Executive Officer, Vanguard Cellular Systems, Inc.

Dr. George H. Heilmeier, President and Chief Executive Officer, Bellcore.

Ms. Susan Herman, General Manager, Department of Telecommunications, City of Los Angeles.

Mr. James R. Houghton, Chairman and Chief Executive Officer, Corning Incorporated.

Mr. Stanley S. Hubbard, Chairman, President, and Chief Executive Officer, Hubbard Broadcasting.

Mr. Robert L. Johnson, President, Black Entertainment Television.

Dr. Robert E. Kahn, President, Corporation for National Research Initiatives.

Ms. Deborah Kaplan, Vice President, World Institute on Disability.

Mr. Mitchell Kapor, Chairman, Electronic Frontier Foundation, Inc.

Mr. Delano E. Lewis, President and Chief Executive Officer, National Public Radio.

Mr. Alex J. Mandl, Executive Vice President, AT&T and Chief Executive Officer, Communications Services Group.

Mr. Edward R. McCracken, President and Chief Executive Officer, Silicon Graphics, Inc.

Dr. Nathan P. Myhrvold, Senior Vice President, Advanced Technology, Microsoft Corporation.

Mr. N.M. (Mac) Norton, Jr., Attorney-at-Law, Wright, Lindsey, and Jennings.

Mr. Vance K. Opperman, President, West Publishing Company.

Ms. Jane Smith Patterson, Adviser to the Governor of North Carolina for Policy, Budget, and Technology, State of North Carolina.

Mr. Bert C. Roberts, Jr., Chairman and Chief Executive Officer, MCI Communications Corp.

Mr. John Sculley,

Ms. Joan H. Smith, Chairman, Oregon Public Utility Commission.

Agenda

1. *How Should the Advisory Council Define the NII?*
   Definition will be proposed and discussed.
2. *Mega-Project I: Access to the NII*
   Scope of project will be proposed and discussed.
3. *Council Priorities*
   Co-chairs will propose priorities and lead discussion.
4. *Council Administration and Logistics.*
5. *Discussion on Telecommunications Issues.*
6. *Public Discussion, Questions and Answers.*
7. *Next Meeting Date and Agenda Items.*

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Members of the public should bring a photo identification. The Wing 4 entrance on Independence Avenue in the middle of the building or the wing 7 entrance at the corner of 14th Street and Independence Avenue should be used.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above. Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through Bulletin Board Services at 202–501–1920. 202–482–1199, over the Internet at iitf.doc.gov. or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC. 20230; Telephone 202–482–1835.

Dated: February 28, 1994.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–4912 Filed 3–2–94, 8:45 am]

BILLING CODE 3510–60–M

federal register

Thursday
March 3, 1994

Part V

Department of Education

Fund for Innovation Education: Program—Partnerships for Standard-Based Professional Development of K–12 Educators; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standard-Based Professional Development of K–12 Educators

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary proposes an absolute priority for fiscal years 1994 and 1995 under the Fund for Innovation in Education (FIE): Innovation in Education Program to support innovative projects that provide K–12 teachers and other educators with sustained, high quality professional development opportunities that are aligned with challenging content and professional standards developed at the national, State or local levels. The intent of this priority is to enable school educators, working with appropriate university, community, and business partners, to create and maintain model learning environments that will help *all* students in elementary and secondary schools achieve challenging academic standards in subjects such as English, mathematics, science, history, geography, civics, foreign languages, and the arts.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to Bryan Gray, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: An essential step in achieving our National Education Goals is ensuring that we have high academic expectations for all students and that each student has the opportunity to fulfill those expectations. Current national, State, and local efforts to define high standards for what students should know and be able to do in the various subject areas provide a starting point for creating the type of learning opportunities that an education system of excellence must provide for all members of an increasingly diverse student population.

In order to provide learning opportunities where more rigorous and complex learning is expected of all students, teachers will need high-quality, career-long professional development programs. Other educators who help to create teaching and learning environments that better serve the academic and other needs of students will need similar high-quality professional development opportunities. Such educators might include school and district administrators, school and university-based teacher educators, curriculum and supervisory personnel, paraprofessionals/instructional aides, and members of school boards. To provide effective professional development programs for teachers and other educators, applicants must ensure that their proposed projects are aligned with high standards for student learning. Applicants should also consider related standards for teacher effectiveness and for the preparation, credentialling and continuing development of educators. More specifically, in designing policies and practices for professional development, applicants are urged to draw on relevant work, as appropriate, from groups such as the National Board for Professional Teaching Standards, the Interstate New Teacher Assessment and Support Consortium, and the National Council for the Accreditation of Teacher Education.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators from recruitment to retirement will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships. Finally, the design of professional development efforts must incorporate what is known about developing and managing high-performance school systems that support education excellence and equity.

The Secretary proposes to direct financial assistance to projects that develop new or further develop existing innovative partnerships of school, university, community, and other entities to establish and maintain high-quality, standards-based professional development programs for teachers and other educators. The purpose of these partnerships may be to improve the entire continuum of professional development or to focus on one or more points along that continuum (e.g., preservice, induction, inservice).

In accordance with recommendations in the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriation Act, the Secretary supports development of programs based on existing strategies, such as creating model professional development schools, or applicants' newly designed strategies. The Secretary also recognizes the need for professional development efforts, as identified in the Senate Report, that prepare educators for working with other human service professionals to address non-academic student/family problems (e.g., drugs, violence, nutrition, unemployment) as well as other conditions that place students at-risk for failure in school. The Secretary is particularly interested in projects that provide relevant development opportunities for educators who work in urban school communities.

The Secretary strongly encourages the development of challenging and feasible school-based collaborations that are based upon appropriate research results and exemplary teaching and professional development practices, as well as the contributions of expert school, higher education, and community practitioners. Emphases might include collegial strategies such as in-school mentoring for teachers; school-university teams integrating teacher preparation and school curriculum to effectively educate at-risk students; teacher sabbaticals to work in model schools; and practitioner-led inquiry and reform activities.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that design and implement innovative, high quality, standards-based preservice, induction and/or inservice professional development

programs for K–12 teachers and other educators.

Each project must involve one or more local education agencies (LEAs) working in partnership with one or more institutions of higher education (IHEs), and others such as State education officials and representatives from professional organizations, private schools, business, and the community, as appropriate. Programs and activities must be built upon relevant and current research including a demonstrated relationship between the professional development approach and lessons learned from relevant research and exemplary practice. A grounding in research findings must also be evident in the content of the professional development activities.

Required Activities

Each project must:

(a) Provide professional development opportunities that are aligned with challenging academic content standards for students as developed through voluntary national, State, and/or local efforts in one or more subjects such as English, mathematics, science, history, geography, civics, foreign languages, and the arts.

(b) Consider the implications of available professional standards such as those for beginning and expert teachers and other educators, as well as for teacher preparation, credentialling, and ongoing staff development as appropriate to the particular focus of the project.

(c) Establish an advisory committee composed of school and university practitioners; state education officials; parents; professional organization, community and business representatives; and others as appropriate. The advisory committee must guide the project activities to ensure a systemic approach including cross-institutional planning, coordination, and resource allocation.

(d) Evaluate the following aspects of the project:

(1) The degree to which the professional development content and strategies reflect relevant research and exemplary practice;

(2) The degree to which the project activities were actually implemented as compared to the original design; and

(3) The nature and impact of project outcomes related to improved teaching and increased student learning and development.

The evaluation must use state-of-the-art documentation and assessment approaches.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number: 84.215J Secretary's Fund for Innovation in Education: Innovation in Education Program)

Dated: February 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–4890 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–P

4

Thursday
March 3, 1994

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 157

Construction, Alteration, Activation, and Deactivation of Airports; *Final Rule*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Amendment No. 157–6]

RIN 2120–AE52

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments to final rule.

SUMMARY: On July 24, 1991, the FAA issued a final rule concerning part 157 of the Federal Aviation Regulations that deleted an impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports located within a specified distance from another airport; revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports; and clarified that telephone notice for certain emergency or unreasonable hardship situations be directed to the appropriate Airports District/Field Office or Regional Office. The final rule revised certain provisions contained in a previous amendment to this part before the effective date of that amendment. The final rule became effective on August 30, 1991. The public was invited to submit comments on the final rule by November 21, 1991. Based on the comments received, the FAA has determined that no further rulemaking action is necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1988, the FAA published a notice of proposed rulemaking (notice No. 88–15, 53 FR 39062) that addressed certain safety issues concerning the construction, alteration, activation, and deactivation of airports. On August 27, 1990, the FAA published a final rule (amendment No. 157–4, 55 FR 34994), based on the proposals contained in Notice No. 88–15 and the public comments to that notice. Amendment No. 157–4: (1) Established a requirement to provide notice to the Administrator prior to establishing or changing a traffic pattern or traffic pattern altitude; (2) defined a new term, "private use of public lands or waters;" (3) eliminated the term "personal use" as an airport use designation; and (4) revised the applicability section of part 157 regarding notice criteria.

Prior to Amendment No. 157–4, part 157 notice criteria applied to any proposal to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport except for those proposals involving: (1) Certain projects for which Federal aid had been requested, and (2) a "temporary" airport or aircraft landing or takeoff area. The term "temporary" meant that the airport or aircraft landing or takeoff area was intended to be used solely in visual flight rules (VFR) conditions for less than 30 days, with no more than 10 operations a day. Amendment No. 157–4 revised the temporary airports exclusion from the notice requirements of part 157. The amendment provided that only the following temporary airports and heliports would be excluded from the part 157 notice provisions: (1) Temporary private use airports for fixed-wing aircraft and ultralight vehicles that are located beyond specified distances from other airports, and (2) temporary private use heliports and helicopter landing areas that are located outside a control zone, a residential, business, or industrial area, and beyond specified distances from other airports and heliports.

After the publication of Amendment No. 157–4, and before its original effective date of February 27, 1991, the FAA received comments from aviation organizations and operators regarding the potential impact of the revised notice requirement for temporary airports and landing areas. To provide time to review and possibly revise Amendment No. 157–4, the FAA delayed its effective date until August 30, 1991 (Amendment No. 157–5, 56 FR 8674, February 28, 1991).

On July 24, 1991, the FAA published a final rule (Amendment No. 157–6, 56 FR 33994) that eliminated the impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports. Amendment No. 157–6 also revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports. The "intermittent use of a site" means that the site is used or intended to be used in VFR conditions for no more than three days in any one week with no more than 10 operations a day. Finally, Amendment No. 157–6 clarified that telephone notice for certain emergency or unreasonable hardship situations should be directed to the appropriate FAA Airports District/Field Office or Regional Office. Amendment No. 157–6 and Amendment No. 157–4 (with the revisions noted above) became effective on August 30, 1991.

The FAA invited comments on amendment No. 157–6. The FAA stated that the request for comments to Amendment No. 157–6 did not represent a reopening or reconsideration of the proposals in notice No. 88–15, or of the revisions resulting from amendment No. 157–4 that were not revised or otherwise affected by amendment No. 157–6. Therefore, issues relating to the notice requirement for a change to, or the establishment of an airport traffic pattern; the elimination of the term "personal use" as an airport use designation; and other changes resulting from amendment No. 157–4 will not be specifically addressed in this document.

Discussion of Comments

The FAA received eleven comments to amendment No. 157–6. Eight commenters address changes resulting from amendment No. 157–4 that were not revised or affected by amendment No. 157–6. As discussed above, such changes will not be discussed in this document.

One commenter does not believe that there was a need for regulations to require notice of temporary aircraft operations to and from a landing site that is not intended to be used as a permanent airport or heliport. Amendment No. 157–6 provides that notice of temporary airports and landing or takeoff areas would be required if the airport will be used (other than on an intermittent basis) for a period of more than 30 days, or if more than 10 operations will be conducted a day. The FAA believes that a level of activity in excess of 10 operations a day warrants closer examination for appropriate consideration of the potential impact to adjacent airspace users.

Several commenters believe that the 90-day advance notification requirement would cause economic hardship for certain operators, particularly emergency medical service and other helicopter operators.

Section 157.5(b)(1) provides that "in an emergency involving essential public service, public health, or public safety or when the delay arising from the 90-day advance notice requirement would result in an unreasonable hardship, a proponent may provide notice to the appropriate FAA Airport District/Field Office or Regional Office by telephone

or other expeditious means as soon as practicable in lieu of submitting FAA Form 7480–1." The FAA believes that this provision provides for adequate relief from the 90-day advance notice requirements for emergency medical service helicopter operations and other similar emergency or unreasonable hardship situations.

One commenter disagrees with the provision that excludes from the applicability section of part 157 a proposal involving the intermittent use of a site that is not an established airport. The commenter believes that the provision "lowers standards" pertaining to notice of construction, alteration, activation, or deactivation of landing areas. Further, the commenter believes that the change could provide a "loop hole" for operators whose landing intentions are to rustle cattle, transport drugs, or illegally dispose of chemicals. This provision was promulgated because there may be a number of reasons for multiple operations to a site with no intent to establish an airport within the meaning of part 157. For example, medical, firefighting, law enforcement, construction, logging, and agricultural functions may require repeated flights to and from an accident, incident, construction, or other temporary landing site. Certain construction, agricultural, and logging functions may not require the continuous use of a site over the course of the project but would instead involve occasional and infrequent return visits to the site. Prior to Amendment No. 157–4, proponents who intended to operate to and from a site on an intermittent or sporadic basis for more than 30 days were required to notify the FAA 90 days before conducting such an operation. Such notice would be required even in a situation involving only two operations to the same site when the return visit is conducted 30 or more days after the first operation. The FAA believes that the majority of such operations would not require or result in the establishment of an airport nor constitute an intent to establish an airport.

With regard to the commenter's concern that the intermittent-use exclusion could affect the ability to deter certain illegal activities, the primary purpose of part 157 is to establish notice requirements for the construction, alteration, activation, or deactivation of certain airport, heliport, and aircraft landing area proposals. Such notice provides the FAA with an opportunity to conduct an aeronautical study of an airport proposal to determine the effects of that proposal on neighboring airports, existing or contemplated traffic patterns at neighboring airports, and existing airspace environment and projected FAA programs. Further, the FAA studies the effects that existing or proposed man-made objects and natural objects within the affected area would have on the airport proposal. As such, part 157 is not intended or designed to assist law enforcement agencies or otherwise prevent or deter illegal activity. However, the FAA agrees with the commenter regarding the general need for reasonable measures to monitor and deter illegal activities. Accordingly, the FAA cooperates with agencies such as the United States Customs Service, the Federal Bureau of Investigation, the Department of Defense and other Federal and state agencies in support of their law enforcement and national security missions.

Conclusion

The FAA has determined, after carefully considering the comments submitted in response to amendment No. 157–6, that no further rulemaking action is necessary at this time. Amendment No. 157–6 remains in effect as prescribed by the July 24, 1991, final rule.

Issued in Washington, DC, on February 25, 1994.

Willie C. Nelson,

Assistant Division Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 94–4872 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

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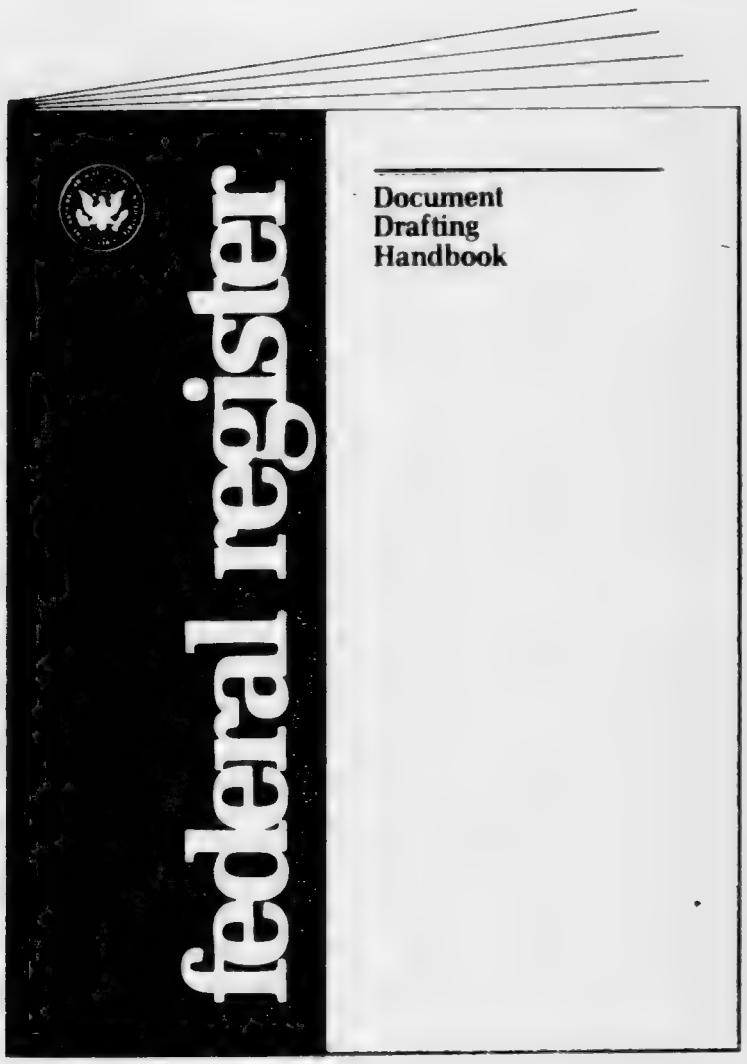

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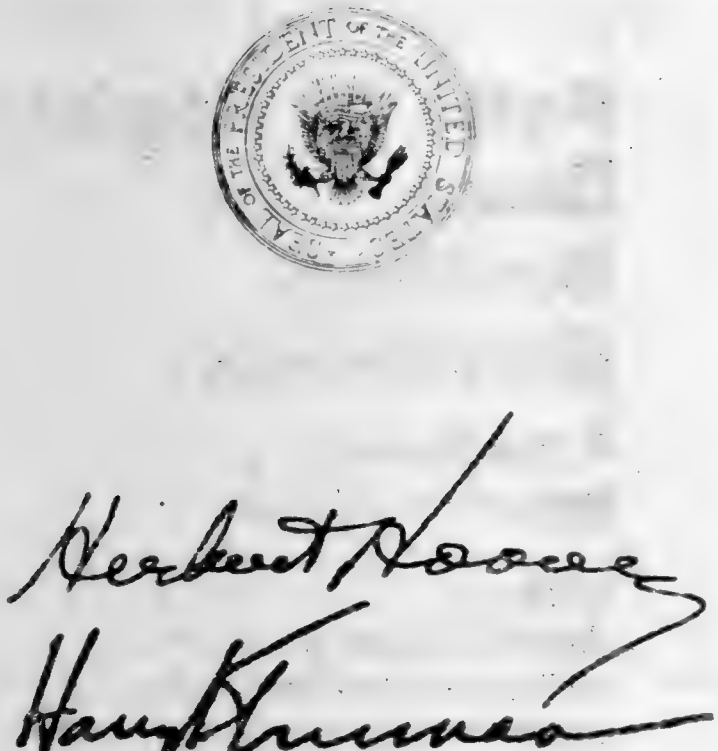

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Friday, March 4, 1994

Presidential Documents

Title 3—

The President

Proclamation 6652 of March 2, 1994

Save Your Vision Week, 1994

By the President of the United States of America

A Proclamation

Vision is a gift to be treasured. We often take our sight for granted and must be reminded that our eyes require adequate care and attention. At a time when new technologies are revolutionizing medicine, eye care continues to make dramatic progress. Many diseases or accidents that would have caused permanent blindness just a few decades ago can now be treated, with excellent prospects for full recovery. Eye care professionals learn more about proper eye care every year, discovering new ways to prevent disease and to minimize potential damage to our precious eyesight.

Despite our ever-increasing medical knowledge, however, thousands of Americans still suffer preventable vision loss each year. Proper eye care can significantly reduce the incidence of such needless tragedies, and I encourage all Americans to learn ways to minimize the risks of disease and injury to their eyes.

Having periodic eye examinations is an excellent way to invest in one's long-term health. Preventive eye care is always more efficient, more effective, and less expensive than dealing with an existing disease. A comprehensive eye examination allows an eye care professional the ability to identify a disease in its earliest stages and prescribe the treatment with the best chances for success.

Glaucoma, one of the leading causes of blindness in the United States, if diagnosed early, can be treated quite successfully. Though there are often no early warning symptoms of the disease, an eye care professional can detect the affliction during a regular examination and prescribe eye drops or other simple treatments to control the disease and save the patient's sight. I urge all people at high risk for glaucoma—African Americans over the age of 40 and everyone over the age of 60—to receive an eye examination through dilated pupils at least every two years.

People with diabetes are also at particularly high risk for preventable eye disorders. Such eye disease as diabetic retinopathy, which still blinds many people with diabetes in our Nation, can be stopped if it is diagnosed in time. By receiving an eye examination at least once a year, diabetics can do much to protect their vision.

Children, of course, should receive periodic eye examinations, starting when they are very young. Regular eye care at a tender age can identify otherwise hidden disorders, thus sparing the child a lifetime of visual impairment.

I encourage all Americans to take precautions to safeguard their vision throughout their lives. We must teach our children proper eye safety by example—wearing masks or goggles when we play in contact sports and using safety glasses when working with volatile chemicals or dangerous machinery.

To encourage everyone to make a concerted effort to protect the cherished gift of sight, the Congress, by a joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to issue a proclamation designating the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 6, 1994, as Save Your Vision Week. I urge all Americans to participate in this observance by making eye care and eye safety a priority in their lives. I invite eye care professionals, members of the media, and all public and private organizations committed to the important goal of sight protection to join in activities that will make Americans more aware of the steps they can take to protect their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5163
Filed 3–2–94; 3:35 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 837

RIN 3206–AF31

Recomputation of Congressional Annuities After Reemployment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to establish the method used to add cost-of-living adjustments (COLA's) to recomputed annuities of former Members of Congress who perform additional service after retirement as Members and the method for determining that cap on COLA's as it affects these former Members and under the Civil Service Retirement System. These regulations interpret section 8340 of title 5, United States Code, as it affects these computations.

EFFECTIVE DATE: April 4, 1994. These regulations apply to benefits based on reemployment that begins on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On November 10, 1993, we published (at 58 FR 59658) proposed regulations to establish the method used to add cost-of-living adjustments (COLA's) to recomputed annuities of former Members of Congress who perform additional service after retirement as Members and the method for determining the cap on COLA's as it affects these former Members under the Civil Service Retirement System. We received no comments on the proposed regulations.

E.O. 12291, Federal Regulation

I have determined that is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect former Members of Congress who are reemployed by the Government and their survivors.

List of Subjects in 5 CFR Part 837

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM amends 5 CFR part 837 as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

1. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468.

Subpart E—Retirement Benefits on Separation

2. Section 837.505 is added to read as follows:

§ 837.505 Cost-of-living adjustments on Member annuities.

(a) *Applying cost-of-living adjustments to recomputed Member annuities under CSRS.* A member annuity benefit that is recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed in an appointive position subject to CSRS, will include the cost-of-living adjustments under section 8340 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1).

(b) *Limitations on cost-of-living adjustments on recomputed Member annuities under CSRS.* For purposes of determining limitations on cost-of-living adjustments under section 8340(g) of title 5, United States Code, the final (or average) salary of a Member whose benefit has been recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed in an appointive position subject to CSRS, will be increased by adjustments in the rates of the General Schedule under subpart I of chapter 53 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1)

[FR Doc. 94–4921 Filed 3–3–94; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE46

Notification of Spent Fuel Management and Funding Plans by Licensees of Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives. The final rule requires that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1993, the NRC published in the **Federal Register** a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947).

1. Comments Received

The NRC received four comments on the proposed rule. Three of the four comments came from licensees or their representatives and supported the rule as proposed. These commenters agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three recommended that the rule amendments should apply only prospectively; that is, the rule should not apply to licensees whose power reactors have already permanently ceased operating. The commenters requested that the NRC allow licensees of these plants to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that the NRC add a statement to this effect to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking on including spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISFSI). The fourth commenter supported rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. NRC Response to Comments

The NRC responds as follows to the issues raised by the commenters:

(1) *The rule should only apply prospectively.*

NRC response: The NRC disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires all power plant licensees to submit decommissioning plans no later than 2 years after permanently ceasing operations regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the NRC believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.[1]

(2) *Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.*

NRC Response: The NRC disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

(3) *Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.*

NRC Response: The NRC agrees that part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. Spent fuel management and funding plans submitted in compliance with the amended § 50.54(bb) need not cover spent fuel while it is being stored in an ISFSI in compliance with part 72. The NRC will consider whether these provisions are adequate when it evaluates whether it is necessary to include spent fuel management and funding as part of decommissioning costs.

Finding of No Significant Environmental Impact: Availability

This final rule clarifies the timing of the submittal of plans for managing and providing funding for managing all irradiated fuel for those licensees whose power reactors are shut down prematurely. This action is required to coordinate the submittal of spent fuel management and funding plans with the submittal of decommissioning plans for prematurely shut down reactors. Because management and funding of spent fuel can have a significant impact on the method and timing of decommissioning, licensees should submit their plans for spent fuel management and funding to be consistent with the timing provisions for decommissioning plans in § 50.82(a) (i.e., no later than 2 years after permanent shutdown).

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Changes in the timing of the submittal of spent fuel management and funding for prematurely shut down power reactors would not alter the effect on the environment of the licensed activities considered in either the final spent fuel disposition rule (49 FR 34689; August 31, 1984) or the final decommissioning rule (53 FR 24018; June 27, 1988) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988). The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental

[1] In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an ISFSI onsite. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage facilities. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 1, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number [3150–0011].

Regulatory Analysis

On August 31, 1984, the NRC published a final rule, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licensees." (49 FR 34689). As part of this rule, the NRC required power reactor licensees to submit for NRC review and approval, no later than 5 years before expiration of the reactor operating license, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

On June 27, 1988, the Commission promulgated its final decommissioning rule (53 FR 24019). Section 50.82 of this rule provides that licensees of all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Section 50.82(b)(1)(iii) further provides that the proposed decommissioning plan submitted by the licensee should consider such factors as the "unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning safely * * *." The Commission requires licensees to submit decommissioning plans in a timely manner after they permanently cease operations at their facilities. The NRC's regulations recognize that a licensee's ability to plan properly and safely for decommissioning depends on a licensee's ability to manage and dispose of its spent fuel. Thus, the timing of requirements for submittal of plans for spent fuel management and storage should be consistent with the timing for submittal of decommissioning plans, including those for power reactors that have been shut down prematurely. Therefore, the NRC is amending 10 CFR 50.54(bb) to require each power reactor licensee to notify the NRC of its program to manage and provide funding for management of the irradiated fuel at its reactor either within 2 years after the licensee permanently ceases operation of its reactor or no later than 5 years before its reactor operating license expires, whichever occurs first. Licensees of nuclear power reactors that have already permanently ceased operations by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Although the timing of preparation and submittal of plans for management and funding of spent fuel would be formally advanced for licensees that shut down their power reactors prematurely, these licensees typically would have already evaluated spent fuel management and funding issues before submitting decommissioning plans required under 10 CFR 50.82. This rule merely makes 10 CFR 50.54(bb) submittal schedular requirements consistent with 10 CFR 50.82. Thus, there should be no substantive impact on power reactor licensees.

This final rule would not create substantial costs for other licensees. This final rule also will not significantly affect State and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect approximately 115 nuclear power reactor operating licenses. Nuclear power plant licensees do not fall within the definition of small businesses as defined in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (56 FR 56671, November 6, 1991).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this final rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

2. Section 50.54 is amended by revising paragraph (bb) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Licensees of nuclear power

reactors that have permanently ceased operation by April 4, 1994 are required to submit such written notification by April 4, 1996. Final Commission review will be undertaken as part of any proceeding for continued licensing under part 50 or part 72 of this chapter. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

* * * * *

Dated at Rockville, Maryland this 18th day of February, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–4956 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–09–AD; Amendment 39–8845; AD 94–05–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive visual inspections of wire bundles to detect damage due to chafing, and repair of damaged wires. This amendment revises the inspection and repair procedures, and provides a terminating action, which, if accomplished, will eliminate the need for the currently required inspections. This amendment is prompted by data that substantiates the need for new inspection and repair procedures. The actions specified by this AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–27–12, Amendment 39–8447 (57 FR 61255, December 24, 1992), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on June 3, 1993 (58 FR 31481). The action proposed to supersede AD 92–27–12 to require revised repetitive visual inspections of wire bundles to detect damage due to chafing, and repair or replacement of damaged wires; and to clarify the location of the affected wire bundles above the P6 panel. That action also would provide an optional terminating action for the repetitive visual inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests an extension of the compliance time for the proposed initial repetitive inspection of 120 days to 4,000 flight hours for Model 747–100 series airplanes, since its airplanes were not manufactured with BMS 13–51 type wire (Kapton insulated). The member points out that the description of the wire bundle failure which prompted issuance of AD 92–27–12 is typical for aromatic polyimid (Kapton insulated) type wire bundles. The member notes the similarity between that incident and the incident involving a Lockheed Model L–1011 series airplane that prompted the FAA to issue AD 84–04–01, Amendment 39–4815 (49 FR 6705, February 23, 1984). The member asserts that neither AD 92–27–12 nor this proposal compare the different failure modes and effects of aromatic polyimide (Kapton insulated) type wiring with other types of wire insulation. Finally, the member notes that the service history of Boeing Model 747–100 series airplanes indicates that there have been no reported wire bundle chafing problems in the area of concern.

The FAA does not concur on the basis of the following reasons:

The proposed AD addresses a potentially hazardous condition involving the manner in which certain wire bundles were installed in the affected airplanes. The type of insulation used on the wires is not directly relevant to the hazardous condition. It is the position of the FAA that the short circuit hazard will eventually occur on any Model 747–100, –200, or –300 series airplane with improperly installed wire bundles, regardless of the type of wire insulation. The intent of the proposed AD is to prevent the occurrence of a short circuit, not to alter the failure mode and/or effects of such a failure. The relevance of the type of wire insulation is limited to the amount of time required for the short circuit to occur, once chafing has begun. Types of wire utilizing harder, more abrasion resistant insulation will endure chafing for longer periods of time before occurrence of a short circuit. In this respect, Polyimide insulated wire could possibly be superior to softer types of wire insulation, such as Polytetrafluoroethylene (PTFE) insulated types of wire.

Further, the FAA points out that the Model L–1011 incident that prompted the issuance of AD 84–04–01 was not the direct result of the use of polyimide insulated wire. That incident was apparently due to "* * * mechanical damage to wire insulation due to continuing chafing * * *" This information was published with that AD in the **Federal Register** (49 FR 6705, February 23, 1984).

Additionally, the FAA has determined that the 120-day compliance time for the proposed initial repetitive inspection is justified when an additional hazard is considered, which was not present in the Model L–1011 incident. The Model L–1011 incident resulted in a smoke and fire hazard, due to an electrical fault of a window heat wire bundle. The loss of the window

heat function will not, in itself, result in an immediate safety of flight hazard. In the case of the Model 747 incident that prompted issuance of AD 92-27-12, the electrical fault resulted in the loss of numerous essential cockpit instruments necessary for continued safe flight and landing, in addition to the smoke and fire hazard.

Finally, the FAA disagrees that service experience should be used to justify a reduction of the frequency of the repetitive inspection intervals for Model 747-100 series airplanes. While the FAA does not dispute the commenter's claim regarding lack of in-service chafing incidents on the Model 747-100, the FAA points out that the wire bundles above the P6 panel are installed on all Model 747-100, -200, and -300 series airplanes in accordance with the same type design data. As a result, the FAA cannot establish that the wire bundle installation on Model 747-100 series airplanes has specific design features that preclude these airplanes from the potential hazardous condition. The FAA does recognize, however, that some of the airplanes affected by the proposed AD may not exhibit the wire bundle chafing problem. For this reason, paragraph (b)(2)(i) of the proposed AD provides for termination of the repetitive inspections on airplanes that successfully pass a wire bundle clearance inspection and measurement procedure.

ATA, on behalf of one of its members, requests that proposed paragraph (c) only cite the original issue of Boeing Service Bulletin 747-24A2186, dated January 14, 1993, since Revision 1, dated May 20, 1993, contains several typographical errors. The FAA partially concurs. The FAA clarifies that Revision 1 erroneously refers to military specification MIL-I-42852 and MIL-I-46853 insulating tapes in several paragraphs. MIL-I-46852 tape is the correct military specification number and should be inserted wherever MIL-I-42852 or MIL-I-46853 is identified. The FAA points out that Revision 1 of the service bulletin contains descriptive information not found in the original release of the service bulletin, which may assist operators in performing the optional wire bundle modification. The FAA has included a statement in paragraph (c) of this AD to clarify that MIL-I-46852 tape shall be utilized wherever MIL-I-42852 tape or MIL-I-46853 tape is specified, for those operators that incorporate Revision 1 of the service bulletin. Therefore, with this information included in the AD, the FAA considers that the service bulletin references are appropriate in paragraph (c) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 184 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,180, or $83 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, the number of work hours required to accomplish it would be approximately 1 per airplane, and the cost of required parts would be approximately $32 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8447 (57 FR 61255, December 24, 1992), and by adding a new airworthiness directive (AD), amendment 39-8845, to read as follows:

94-05-07 Boeing: Amendment 39-8845. Docket 93-NM-09-AD. Supersedes AD 92-27-12, Amendment 39-8447.

Applicability: Model 747 series airplanes, excluding Model 747-400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD restates the requirement for repetitive inspections contained in paragraphs (a) and (b) of AD 92-27-12. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs (a) and (b) of AD 92-27-12.

To prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane, accomplish the following:

(a) Within 15 days after January 8, 1993 (the effective date of AD 92-27-12, amendment 39-8447): Perform a visual inspection to detect damage due to chafing of the wire bundles that extend between the P6 and P7 panels at station 400, water line 385, right buttock line 15, at Stringer 2 on the right-hand side, 6 inches aft of the P6 panel. Pay particular attention to wire bundles W418, W718, W998, and other bundles that cross over these bundles. Repeat the inspection thereafter at intervals not to exceed 120 days until the inspection required by paragraph (b) of this AD is accomplished. If any damaged wire is found, prior to further flight, repair the wire in accordance with Boeing Standard Wiring Practices Document, D6-54446.

(b) Within the next 4,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Alert Service Bulletin 747-24A2186, dated January 14, 1993; or Revision 1, dated May 20, 1993.

(1) Perform a visual inspection to detect damage due to chafing of the wire bundles above the P6 panel around station 400, water line 385, right buttock line 25 in accordance

with the service bulletin. Pay particular attention to wire bundles W418, W718, W998, W1100, and W1362, and other bundles that cross over these bundles. Accomplishment of this inspection terminates the repetitive inspection requirements of paragraph (a) of this AD. If any damaged wire is found, prior to further flight, repair or replace the wire in accordance with Boeing Standard Wiring Practices Document, D6–54446.

(2) Measure the clearance between the wire bundles in accordance with the service bulletin.

(i) If the measured clearance between the wire bundles is 0.25 inch or greater: No further action is required by this AD.

(ii) If the measured clearance between the wire bundles is less than 0.25 inch: Repeat the inspection required by paragraph (b)(1) of this AD thereafter at intervals not to exceed 120 days.

(c) Installation of the wire modification in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993, or Revision 1, dated May 20, 1993, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD. Operators that incorporate Boeing Alert Service Bulletin 747–24A2186, Revision 1, dated May 20, 1993, shall utilize MIL–I–46852 tape wherever MIL–I–42852 tape or MIL–I–46853 tape is specified in that service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, measurement, and modification shall be done in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993; or Boeing Service Bulletin 747–24A2186, Revision 1, dated May 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4448 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–135–AD; Amendment 39–8820, AD 94–04–02]

Airworthiness Directives; Canadair Model Turboprop CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–215–6B11 series airplanes, that requires inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary; and the eventual replacement of all struts with new struts. This amendment is prompted by reports of failures of these rear engine mount struts due to cracking that was caused by rosette welds on the shank of the struts not achieving full weld penetration during manufacture. The actions specified by this AD are intended to prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL–215–6B11 series airplanes was published in the **Federal Register** on October 13, 1993 (58 FR 52931). That action proposed to require repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. That action also proposed to require the eventual replacement of all struts with new struts; such replacement would constitute terminating action for the visual inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, there are no Canadair Model CL–215–6B11 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD will be $550 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-02 Canadair: Amendment 39-8820. Docket 93-NM-135-AD.

Applicability: Model CL-215-6B11 series airplanes, serial numbers 1057, 1061, 1080, 1113 through 1115 inclusive, 1121, 1122, 1124, and 1125; turboprop versions only; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking in the rear engine mount struts, part number (P/N) 87110016-003, in accordance with Canadair Alert Service Bulletin 215-A3040, dated September 2, 1992.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, replace the engine rear mount strut with a new strut, P/N 87110016-009 or -011, in accordance with the service bulletin.

(b) Within 2 years after the effective date of this AD, replace all engine rear mount struts, with new struts, P/N 87110016-009 or -011, in accordance with Canadair Alert Service Bulletin 215-A3040, dated September 2, 1992. Such replacement constitutes terminating action for the inspections required by this AD.

(c) As of the effective date of this AD, no person shall install a rear engine mount strut, P/N 87110016-003, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with Canadair Alert Service Bulletin 215-A3040 dated September 2, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 4, 1994.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3104 Filed 3-3-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 93-NM-86-AD; Amendment 39-8844; AD 94-05-06]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires modification or replacement of designated passenger cabin floor panels. This amendment is prompted by a report that, during manufacture, the inserts that attach the floor panels to the seat tracks and floor beams were installed using sealant rather than required adhesive. The actions specified by this AD are intended to prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions.

DATES: Effective April 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on August 19, 1993 (58 FR 44150). That action proposed to require modification or replacement of designated passenger cabin floor panels.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the FAA withdraw the proposed rule. The commenter states that all U.S. operators and all but one non-U.S. operator have accomplished the modification or replacement specified in McDonnell Douglas MD-11 Service Bulletin 53-31, which is cited in the proposed rule, thereby ensuring that 9g crash

certification requirements are satisfied. The commenter adds that McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33, which are also cited in the proposal, were only included in the manufacturer's service program to ensure commonality between operators, but were not included in that program to return the aircraft to its original design intent. The commenter concludes that, since all U.S. operators have accomplished the actions described in McDonnell Douglas MD–11 Service Bulletin 53–31, there is no need for an AD. Further, the commenter believes that issuance of the AD would contradict the principles of Presidential Executive Order 12866 (Regulatory Planning and Review), and would cause an unjustifiable expense to operators.

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the preamble to the proposal, the FAA has determined that accomplishment of the modification or replacement described in McDonnell Douglas MD–11 Service Bulletin 53–31 is necessary to correct an unsafe condition described as loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions. Under existing bilateral airworthiness agreements, the FAA is obligated, through the AD process, to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and to provide instructions determined necessary to correct the unsafe condition addressed. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

However, upon consideration of data submitted by the manufacturer since issuance of the proposal, the FAA has determined that accomplishment of the modification or replacement specified in McDonnell Douglas MD–11 Service Bulletin 53–31 adequately addresses the unsafe condition, and that the actions described in McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33 are not necessary to address that unsafe condition. The FAA's original concern was that interchanging the floor panels could result in an unsafe condition under emergency landing conditions. However, based on the data received from the manufacturer, the FAA finds that its concern regarding floor panel interchangeability is addressed by part number controls; original panels are not interchangeable with reworked panels or new panels. In light of this, the FAA has removed paragraphs (b) and (c) from the final rule. In addition, references to McDonnell Douglas MD–11 Service Bulletins 53–32 and 53–33 have been removed from the applicability of the AD. The FAA also has revised the economic impact paragraph, below, to reflect the fact that all U.S. airplanes have accomplished the requirements of this AD.

One commenter requests that paragraph (a) of the proposed rule be revised to clarify that each individual panel may be reworked in accordance with Option I of McDonnell Douglas MD–11 Service Bulletin 53–31, or replaced in accordance with Option II of that service bulletin, rather than implying that all panels must be either reworked or replaced. The commenter also requests that the proposal be revised to indicate that installation of operator-manufactured panels with properly installed inserts are acceptable in lieu of production panels.

The FAA concurs. Paragraph (a) of this AD has been revised to indicate that the requirements of that paragraph may be accomplished by either reworking an individual panel in accordance with Option I of the service bulletin, or replacing an individual panel in accordance with Option II of the service bulletin. Paragraph (a) of the final rule also has been revised to specify that new panels that meet the original type design or FAA-approved equivalent panels are considered acceptable replacement panels.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 32 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that the requirements of this AD have been accomplished on all 20 airplanes of U.S. registry.

However, should an affected airplane be imported and placed on the U.S. Register in the future, the FAA has been advised that the manufacturer plans to provide required parts and to accomplish the required modification at no expense to operators. Therefore, there is no future economic cost impact of this rule on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–05–06 McDonnell Douglas: Amendment 39–8844. Docket 93–NM–68–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions, accomplish the following:

(a) Within one year after the effective date of this AD, modify or replace the passenger cabin floor panels designated in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993, in accordance with that service bulletin. The requirements of this paragraph may be accomplished by either reworking an individual panel in accordance

with Option I of the service bulletin, or replacing an individual panel in accordance with Option II of the service bulletin. New panels that meet the original type design or FAA-approved equivalent panels are considered to be acceptable replacement panels.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification or replacement shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4447 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–106–AD; Amendment 39–8839; AD 94–05–01]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011 series airplanes, that currently requires certain structural modifications and inspections. This amendment revises certain inspections required by the existing AD, and requires additional inspections and structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This action also reflects the FAA's determination that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective April 4, 1994.

The incorporation by reference of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035, R1–CN1, dated October 27, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of April 4, 1994.

The incorporation by reference of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 22, 1991 (56 FR 6556, February 19, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–05–05, Amendment 39–6878 (56 FR 6556, February 19, 1991), which is applicable to certain Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on December 4, 1992 (57 FR 57392). The action proposed to require certain structural modifications and inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter suggests that any new requirements or changes to AD's that address "collector" service bulletins (CSB) should be issued as new AD's, rather than supersedures of "old" AD's. The commenter suggests further that a "collector" AD should be issued annually to address any changes or additions to CSB's. The commenter believes that this proposed procedure would ease administrative and financial burdens to operators, particularly in the case of AD's that address CSB's, such as the proposed rule.

The FAA does not concur. The FAA's normal policy is to supersede an "old" AD by removing it from the system and adding a new AD in a case where substantive requirements must be added to the "old" AD. The FAA has determined that the changes made to the original issue of the CSB addressed in this AD are substantive, since changes have been made to certain accomplishment procedures and some new requirements have been added. The FAA finds that issuance of a supersedure is appropriate in this case to include those new or revised requirements.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA conduct a thorough review of AD 91–05–05 and this proposed rule to eliminate any references to service bulletins that are addressed in other existing AD's. The commenter contends that there is no justification for requiring operators to perform duplicate inspections and that such requirements are confusing to operators.

The FAA does not concur with the commenter's request to eliminate references to service bulletins addressed in this AD that are also addressed in other existing AD's. The FAA recognizes that certain service bulletins addressed in this AD have also been the subject of other existing AD's. However, the FAA has included references to such service bulletins in this AD only to require that operators accomplish those actions that will terminate the repetitive inspections required by other existing AD's. The FAA has also been informed by Lockheed of the necessity to revise Lockheed Service Bulletin 093–51–035

(referred to in this AD as the Collector Service Bulletin (CSB)) to fully address the required terminating actions for all affected airplanes. Subsequently, the FAA may consider further rulemaking to require that action be taken in accordance with that revised CSB; any duplicate requirements would then be eliminated by rescinding any existing AD's that address those duplicate requirements.

Two commenters suggest that the contents of the second "NOTE" in paragraph (d) of the proposal should appear in the final rule as two separate paragraphs, one to exclude the first three service bulletins cited and a second to exclude the fourth service bulletin. One of the commenters asks if a "NOTE" has legal status in an AD. Another commenter states that the actions described in the first three service bulletins should have been excluded from this AD, since such an exclusion appeared in AD 91–05–05.

The FAA concurs with the commenters' request to exclude the actions described in the service bulletins specified in the second "NOTE" in paragraph (d) of the proposal, since this was the intent of that "NOTE." The FAA clarifies that the material that appears in a "NOTE" is simply explanatory or informational. The FAA has removed the "NOTE" from the final rule and has revised paragraphs (a) and (d) to provide an exclusion of the actions described in the first three service bulletins referenced from the requirements of this AD. In addition, the actions specified in the fourth service bulletin referenced in the "NOTE" are addressed in another existing AD; this information has been specified in paragraph (d) of the final rule.

Two commenters request that paragraphs (a) and (b) of the proposal be revised to reference Table II of Lockheed Service Bulletin 093–51–035, in addition to Table I, since Table II contains interim inspection requirements. The FAA concurs, as its intent was to include these interim inspection requirements in the AD. Paragraphs (a) and (b) of the final rule have been revised accordingly.

Two commenters request that the proposed rule be revised to permit repairs to be accomplished "in accordance with FAA-approved repair procedures" and that paragraph (g) of the proposal be revised to explain the Designated Engineering Representative's (DER) authority, including any limitations, to approve minor changes to repairs done in accordance with the proposal. One commenter states that obtaining approval from the FAA often requires extended down time and unnecessary interruptions of scheduled service. The commenter believes that operators with in-house resources for obtaining FAA approval of repairs (i.e., DER's or organizations that hold a Special Federal Aviation Regulation (SFAR) 36 authorization) should be allowed to use those sources of FAA approval to return aircraft to service in an expeditious manner, particularly when repetitive inspections are being accomplished. The second commenter indicates that the CSB references approval of deviations to repairs and modifications by normal non-AD approval procedures.

The FAA does not concur. While DER's and SFAR 36-authorized organizations are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized currently to make the discretionary determination as to what the applicable requirement is. Further, where repair data do not exist, it is essential that the FAA have feedback as to the type of repairs being made. The FAA has determined that the Manager of the Atlanta Aircraft Certification Office should approve any such deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, the FAA is currently conducting a review of this policy and may consider revising it based upon the results of that review.

One commenter requests that the FAA revise paragraph (b) of the proposal to allow inspections to continue in accordance with the service bulletin revision levels specified in the original issue of the CSB, except for those inspections for which the procedures have been revised substantively in Revision 1 of the CSB. The commenter suggests that the excepted inspections should be addressed in a separate paragraph of the proposal and should be phased in over a period of time, rather than required as of the effective date of this AD. The commenter adds that any new inspection procedures required by this AD should have been discussed with the Airworthiness Assurance Working Group (AAWG) for these airplanes.

The FAA concurs partially. The intent of paragraph (b) is to require that, after the effective date of this AD, inspections be accomplished in accordance with the service bulletin revision levels listed in Revision 1 of the CSB. The AAWG endorsed that revision of the CSB at a conference held in November 1991. However, upon reconsideration, the FAA has determined that an acceptable level of safety can be maintained if operators are allowed a "phase-in" period to change over from accomplishing inspection procedures in accordance with the original issue of the CSB to accomplishing the updated inspection procedures specified in Revision 1 of the CSB. Therefore, the FAA has revised paragraph (b) of the final rule to allow a phase-in period of 12 months for operators with airplanes that are being inspected as of the effective date of this AD to make this change.

One commenter requests that the modification requirement specified in Lockheed Service Bulletin 093–53–237 be specifically excluded from the requirements of this AD, as recommended by the AAWG. The FAA concurs. Paragraphs (b) and (d) of the final rule have been revised to reference L–1011 Service Bulletin Change Notification 093–51–035, R1–CN1, dated October 27, 1992, which eliminates the modification specified in Lockheed Service Bulletin 093–53–237

Two commenters request that the proposal be revised to allow credit for modifications accomplished previously in accordance with the original issue of the CSB. One of the commenters points out that the only revised listing that appears in Table II of Revision 1 of the CSB is Lockheed Service Bulletin 093–53–233, which describes additional inspections to be conducted after accomplishing the modification specified in the service bulletin. This commenter states further that it was not the intent of the AAWG to mandate that modifications be accomplished in accordance with the latest issues of the service bulletins.

The FAA concurs. After accomplishing the modification described in Lockheed Service Bulletin 093–53–233, certain inspections are required. Those inspections are described in Lockheed Service Bulletin 093–53–238, which is listed in Table II of the revised CSB and required by paragraph (c)(1) of the final rule. The scope of the required inspections is dependent upon which version of Lockheed Service Bulletin 093–53–233 an operator accomplished; this issue is addressed under Lockheed Service Bulletin 093–53–233 in the "Remarks" section of Table II of the revised CSB.

The FAA finds that accomplishment of modifications in accordance with Table II of the original issue of the CSB may continue. Accordingly, paragraph

(e) of the proposal, which would have required certain structural modifications in accordance with the service bulletins listed in Table II of the CSB, has been removed from the final rule. The contents of the first sentence of the second "NOTE" that appeared in paragraph (e) of the proposal, which indicated that Lockheed Service Bulletins 093–57–184, Revision 6; 093–57–196, Revision 5; and 093–57–203, Revision 3; are addressed in paragraph (f) of the proposal, are specified in "NOTE 3" under paragraph (d) of the final rule.

In addition, paragraph (d) of the final rule has been revised to specify that modifications accomplished in accordance with Table II of either the original issue or Revision 1 of the CSB are acceptable for compliance with the requirements of that paragraph. Further, paragraphs (b)(2) and (c) of the final rule have been revised to specify that modification in accordance with paragraph (d) or (e) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of either the original issue or Revision 1 of the CSB constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

One commenter asks that the number of Model L–1011 series airplanes of the affected airplanes in the worldwide fleet be revised, since the actual number is larger than that reflected in the economic impact information specified in the proposal. The FAA concurs. The FAA has verified that the correct number of affected airplanes in the worldwide fleet is 241 and has revised the economic impact information, below, accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 241 Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 112 airplanes of U.S. registry will be affected by this AD. The actions required previously by AD 91–05–05 necessitate 1,200 work hours per airplane to accomplish, at an average labor rate of $40 per work hour. The cost for parts required by that AD is $52,000 per airplane. Based on these figures, the total cost of AD 91–05–05 to affected U.S. operators over an initial 5-year time period was estimated to be approximately $11,200,000, or $100,000 per airplane.

The actions required by this AD will require an additional 549 work hours per airplane to accomplish at an average labor rate of $55 per work hour. (Note that, in order to account for various inflationary costs in the airline industry, the FAA has increased the labor rate used in calculating the economic impact of this AD activity from $40 per work hour to $55 per work hour.) Required parts will cost approximately $21,000 per airplane. Based on these figures, the additional costs to U.S. operators with regard to the actions required by this AD is estimated to be $5,733,840, or $51,195 per airplane.

Based on the figures discussed above, the total cost impact of this AD action on U.S. operators is estimated to be $16,933,840, or $151,195 per airplane. The total cost impact figure(s) discussed above is based on assumptions that no operator has yet accomplished any of the requirements of either this new AD action or the previous AD, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6878 (56 FR 6556, February 19, 1991), and by adding a new airworthiness directive (AD), amendment 39–8839, to read as follows:

94–05–01 Lockheed Aeronautical Systems Company: Amendment 39–8839. Docket 92–NM–106–AD. Supersedes AD 91–05–05, Amendment 39–6878.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Collector Service Bulletin 093–51–035, Revision 1, dated December 16, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (d) of this AD restate the requirements of AD 91–05–05, Amendment 39–6878, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–05–05 have been accomplished previously, paragraphs (a) and (d) of this AD do not require those inspections and modifications to be repeated.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

(a) Within the threshold for inspections specified in the service bulletins listed in Tables I and II of Lockheed Service Bulletin 093–51–035, dated June 28, 1990 ("Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin"), or within one repetitive inspection period specified in those service bulletins after March 22, 1991 (the effective date of AD 91–05–05, Amendment 39–6878), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at intervals specified in the service bulletins listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990. The inspections specified in Lockheed Service Bulletins 093–57–184, Revision 4, dated May 16, 1990; 093–57–196, Revision 3, dated March 7, 1990; and 093–57–203, Revision 1, dated August 11, 1989; as listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, are excluded from the requirements of this AD.

(1) If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(b) Except as provided by paragraph (c) of this AD, the initial and repetitive inspections required by paragraph (a) of this AD that are performed after 12 months after the effective date of this AD must be done in accordance with the service bulletins listed in Tables I and II of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991 ("Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin;" hereinafter referred to as the "Collector Service Bulletin"), as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, at the thresholds and intervals specified in those service bulletins.

(1) If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(2) Modification in accordance with paragraph (d) or (e) of this AD or in accordance with the applicable service bulletin listed within the inspection portion of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(c) Within the threshold for inspections specified in the service bulletins listed in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, or within one repetitive inspection interval after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins. If cracks are found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with the FAA-approved repair procedures in the applicable service bulletin or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate. Modification in accordance with paragraph (d) or (e) of this AD, or in accordance with the applicable service bulletin listed within the inspection portion of the Collector Service Bulletin, constitutes terminating action for the individual inspection requirements of the applicable service bulletin.

(1) For Model L–1011–385 series airplanes, serial numbers 1013 through 1250, inclusive: Lockheed Service Bulletin 093–53–238, Revision 5, dated October 7, 1991.

(2) For Model L–1011–385 series airplanes, serial numbers 1002 through 1188, inclusive: Lockheed Service Bulletin 093–57–207, Revision 3, dated November 22, 1991.

(3) For Model L–1011–385 series airplanes, serial numbers 1131 through 1250, inclusive: Lockheed Service Bulletin 093–57–050, Revision 3, dated July 12, 1991.

(d) Structural modifications must be accomplished in accordance with the service bulletins listed in Table II of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, within the time limits specified in paragraph (d)(1) or (d)(2) of this AD, whichever occurs later. The actions specified in Lockheed Service Bulletins 093–57–184, Revision 4, dated May 16, 1990; 093–57–196, Revision 3, dated March 7, 1990; and 093–57–203, Revision 1, dated August 11, 1989; as listed in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, are excluded from the requirements of this AD. Lockheed Service Bulletin 093–52–155, Revision 1, dated October 23, 1989, is not addressed in this AD action.

(1) Prior to reaching the thresholds for modifications specified in Lockheed Service Bulletin 093–51–035, dated June 28, 1990, or Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992. Or

(2) Within 5 years or 5,000 flight cycles after March 22, 1991 (the effective date of AD 91–05–05, Amendment 39–6878), whichever occurs first.

Note 2: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

Note 3: Lockheed Service Bulletins 093–57–184, Revision 6; 093–57–196, Revision 5; and 093–57–203, Revision 3; all dated October 28, 1991, are addressed in paragraph (e) of this AD.

(e) Accomplish structural modifications in accordance with paragraph (e)(2) of this AD at the time specified in paragraph (e)(1) of this AD.

(1) Accomplish the structural modifications at the later of the following times:

(i) Prior to reaching the thresholds for modifications specified in Table II of the Collector Service Bulletin. Or

(ii) Within 5 years or 5,000 flight cycles after the effective date of this AD, whichever occurs first.

(2) Accomplish the structural modifications in accordance with the following service bulletins:

(i) For Model L–1011–385–1, serial numbers 1002 through 1051, inclusive: Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991.

(ii) For Model L–1011–385–1 series airplanes, serial numbers 1052 through 1245, inclusive: Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991.

(iii) For Model L–1011–385–3 series airplanes, serial numbers 1157 through 1250, inclusive: Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991. (Only the structural modification portion of the service bulletin is mandated by this action; the inspection portion of the service bulletin is not addressed in this AD action.)

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Lockheed Service Bulletin 093–51–035,

dated June 28, 1990; and Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992. The incorporation by reference of Lockheed Service Bulletin 093–51–035, Revision 1, dated December 16, 1991, as revised by L–1011 Service Bulletin Change Notification 093–51–035,R1–CN1, dated October 27, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Lockheed Service Bulletin 093–51–035, dated June 28, 1990, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 22, 1991 (56 FR 6556, February 19, 1991). Copies may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 4, 1994.

Issued in Renton, Washington, on February 17, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4129 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–48–AD; Amendment 39–8593; AD 93–11–01]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10 series airplanes. Among other things, the existing AD currently requires a modification of the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice reformation after deicing procedures have been accomplished, and a related revision to the Airplane Flight Manual (AFM). The actions specified in that AD are intended to prevent degradation of lift due to ice accumulation on the wing leading edge. This amendment corrects the instructional language in the required AFM revision related to operation of the system on the ground. This action is prompted by apparent confusion that this language has created among affected operators in attempting to comply with the rule.

DATES: Effective July 22, 1993. The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 22, 1993 (58 FR 33898, June 22, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On May 26, 1993, the FAA issued AD 93–11–01, Amendment 39–8593 (58 FR 33898, June 22, 1993), that is applicable to certain McDonnell Douglas Model DC–9–10 series airplanes. That AD superseded an existing AD that had required a revision to the FAA-approved Airplane Flight Manual (AFM) to specify that takeoff must not be initiated unless the flight crew verifies that a visual and physical check of the leading edge and upper wing surfaces have been accomplished and that the wing is clear of all ice, frost, and snow accumulation. AD 93–11–01 added a requirement to modify the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice from reforming after deicing procedures have been accomplished. The actions specified in that AD are intended to prevent degradation of lift due to ice accumulation on the wing leading edge.

Recently, the FAA has become aware of the fact that certain language contained in the required AFM limitation, relative to operation of the wing leading edge bleed air anti-ice system, has created confusion among affected operators when attempting to comply with the rule.

Specifically, paragraph (d)(2) of AD 93–11–01 requires that the Limitations Section of the AFM be revised to require that "the bleed air anti-ice system must be on whenever conditions exist or are anticipated, including on-ground operation." This phrase apparently has been interpreted to mean that operators must have the system on during the brief period during takeoff from aircraft rotation to about 100 feet above ground level where the extraction of engine bleed air for the anti-ice system penalizes second-segment climb performance. Such a performance penalty could be as much as 4,000 pounds, which is roughly equivalent to off-loading 20 passengers. One operator contends that a penalty of this magnitude cannot be absorbed by operators and makes operation of Model DC–9–10/–15 aircraft "economically not viable."

The purpose of the required AFM limitation was meant to ensure that the anti-ice system modification is used to provide the on-ground protection for which it is intended; the manner in which the system is normally operated during flight was not meant to be changed. The FAA acknowledges that the language of the AFM limitation as it appears currently in the AD could be interpreted to apply to both the ground and flight phases of airplane operation. Since this clearly was not the FAA's intent, the FAA has determined that it is appropriate to take action to correct the wording of the AFM limitation in AD 93–11–01 to specify that the bleed air anti-ice system must be on whenever icing conditions exist or are apparent, when on the ground, until immediately prior to commencement of takeoff roll.

This corrected wording will clearly indicate that the limitation applies only to operation of the system while the airplane is on the ground until prior to takeoff. The selection of the anti-ice system during takeoff has always been the pilot's decision, and the FAA intends that it continue to be so.

Additionally, another item that appeared in the preamble to AD 93–11–01 has apparently created some confusion. In that preamble, the FAA stated the following in its description of the unsafe condition:

> "The FAA notes that the description of the addressed unsafe condition, as discussed in the proposal, implied that the condition is a result of icing effects on both the wing upper surface and the wing leading edge. That language was inaccurate; the unsafe condition is likely to occur as the result of icing effects on the wing leading edge, not the wing upper surface."

The FAA has reconsidered this statement and finds that, while the modification of the wing leading edge bleed air anti-ice system required by AD 93–11–01 is effective only on ice forming on the wing leading edge, it would be misleading to state the unsafe condition addressed by that AD results only from that phenomenon. The unsafe condition addressed is that which is caused by ice contamination on the wing leading edge and upper surface; this condition can result in the degradation of wing lift, and can result in the airplane stalling at lower than normal angles-of-attack during takeoff. Therefore, the FAA hereby clarifies this point by replacing the previously used language with the following:

"The modification to the wing leading edge bleed air de-icing system, which is required by this AD, prevents ice/frost/snow from reforming on the wing leading edge only, after the airplane has been deiced. The wing leading edge area is the most critical from a loss of lift standpoint. However, because contamination on the upper surface of the wing can also impact lift and stall speeds, assurance that ice/frost/snow is not present on the wing leading edge and upper surface requires operation in accordance with the comprehensive requirements of Section 121.629(c) (Amendment 121–231) of the Federal Aviation Regulations (FAR), or the accomplishment of visual and physical (hands-on) inspections of both the leading edge and the wing upper surface as required by this AD."

Additionally, the address for obtaining copies of the referenced service material from the McDonnell Douglas Corporation has been corrected.

Action is taken herein to correct these errors and to correctly add the AD as an amendment to § 39.13 of the FAR (14 CFR part 39). The effective date of the rule remains July 22, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects wording in an existing rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Correction.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

93–11–01 McDonnell Douglas: Amendment 39–8593. Docket 92–NM–48–AD. Supersedes AD 92–03–01, Amendment 39–8155.

Applicability: Model DC–9–11, –12, –13, –14, –15, and –15F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift due to ice accumulation on the wing leading edge, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within 10 days after January 17, 1992 (the effective date of AD 92–03–01, Amendment 39–8155), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Wing De-icing Prior to Takeoff

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

[End of Cautionary Note]

The leading edge and upper wing surfaces must be physically checked for ice/frost when the airplane has been exposed to conditions conducive to ice/frost formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation. Icing/frost/snow conditions exist when the Outside Air Temperature (OAT) is below 6 degrees C (42 degrees F); and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by Federal Aviation Regulations Sections 91.527 and 121.629.

[End of Note]"

(b) Paragraph (a) of this AD does not apply to any airplane that is both operated in accordance with Federal Aviation Regulation (FAR) 121.629(c), Amendment 121–231, and modified in accordance with either paragraph (c)(1) or (c)(2) of this AD.

(c) Within 9 months after the effective date of this amendment, accomplish the procedures specified in either paragraph (c)(1) or (c)(2) of this AD:

(1) Modify the bleed air anti-ice system so that it can operate on the ground to prevent ice reformation on the wing leading edges after ground equipment has been utilized to properly deice the airplane, and to minimize the effect of undetected ice/frost/snow contamination. Accomplish the modification in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Install a supplemental on-ground wing leading edge ice protection system in accordance with McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992.

(d) Upon the accomplishment of the modification required by paragraph (c) of this AD, revise the AFM in accordance with either paragraph (d)(1) or (d)(2) of this AD:

(1) Revise the Limitations section to include appropriate operating procedures relative to operation of the modification required by paragraph (c) of this AD. These operating procedures must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Revise the Limitations section to include the following operating procedures relative to the operation of the modification required by paragraph (c) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

"Use of Bleed Air Anti-Ice System

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

[End Of Cautionary Note]

The bleed air anti-ice system must be on whenever icing conditions exist or are anticipated, when on the ground, until immediately prior to commencement of takeoff roll."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The installation of a supplemental on-ground wing leading edge ice protection system shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, as of July 22, 1993 (58 FR 33898, June 22, 1993). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4952 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the 3-month Canadian Bankers' Acceptance Futures Contract traded on the Montreal Exchange to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1993), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on July 20, 1988, 53 FR 28840 (July 29, 1988), authorizing certain option products traded on the Montreal Exchange to be offered or sold in the United States.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the 3-month Canadian Bankers' Acceptance Futures Contract Traded on the Montreal Exchange to be Offered or Sold in the United States Thirty Days after Publication of this Notice in the **Federal Register**.

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the Montreal Exchange to be offered or sold in the United States. 53 FR 28840 (July 29, 1988). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any Montreal Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

By letter dated February 9, 1994 the Montreal Exchange represented that it would be introducing an option contract based on the 3-month Canadian Bankers' Acceptance Futures Contract. The Montreal Exchange has requested that the Commission supplement its Initial Order and subsequent Order[2] authorizing Options on the Government of Canada Bond Futures by also authorizing the Montreal Exchange's Option Contract on the 3-month Canadian Bankers' Acceptance Futures Contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that the request for authorization to offer or sell an option contract on the 3-month Canadian Bankers' Acceptance Futures Contract should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988, and subject to the terms and conditions specified therein, the Commission hereby authorizes the Montreal Exchange's Option Contract on the 3-month Canadian Bankers' Acceptance Futures Contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**

Contract Specifications

Options on 3–Month Canadian Bankers' Acceptance Futures

Underlying Interest

One (1) 3-month Canadian Bankers' Acceptance Futures (BAX) contract representing C$1,000,000 principal of 3-month Canadian Bankers' Acceptances.

Description

A buyer of one option on 3-month Bankers' Acceptance Futures may exercise the option to assume a position in one 3-month Bankers' Acceptance Futures (BAX) contract (long position if the option is a call and short position if the option is a put) of a specified contract month at a specified strike price.

The seller of one option on 3-month Bankers' Acceptance Futures has the obligation of assuming, if the option is exercised by the buyer, a position in one 3-month Bankers' Acceptance Futures (BAX) contract (short position if the option is a call and long position if the option is a put) of a specified contract month at a specified strike price.

Price Quotation

Quoted in points where each .01 of a point (1 basis point) represents C$25. For example, a quote of 0.46 represents a total option premium of C$1,150 (i.e. 46 basis points×C$25).

Minimum Price Increment (Tick Size and Value)

0.01 point (also known as one tick)=C$25 per contract (same as for underlying futures).

Strike Prices

Strike prices are set at maximum 0.50 point intervals.* Two (2) in-the-money and two (2) out-of-the-money strike prices will generally be available (for example, if a specific BAX futures settlement price is 90, option strike prices may be set at 89, 89.50, 90, 90.50, 91).

* Strike prices of the nearest contract month may be set at .25 point interval.

Contract Months

Options available on the four nearest months in the BAX futures quarterly

[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1993), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] See 56 FR 3207 (January 29, 1991).

cycle, i.e. March, June, September and December.

Trading Hours

8:20 a.m. to 3 p.m. (EST/EDT)

Last Trading Day

Options trading shall terminate at the same date and time as the underlying futures contract, i.e. at 10:00 a.m. (EST/EDT) on the second London (U.K.) business day prior to the third Wednesday of the contract month.

Exercise

American style, i.e. buyers of futures options may exercise their options on any business day up to and including the expiration date (prior to the daily cut-off time). The Clearing Corporation assigns exercise notices to sellers of options according to a random selection process. In-the-money options are automatically exercised by the Clearing Corporation at expiry (unless otherwise instructed). The final settlement price of the underlying futures contract will be used as a reference to determine which options may be exercised automatically at expiry.

Expiration

The last trading day.

Minimum Margin Requirements

The minimum margin is subject to periodic changes.

Buyers of Options

- Premium must be paid in full when the option is bought.

Uncovered Writers of Options

- Market value of the option plus the margin required for the underlying futures contract less half of the amount that the option is out-of-the-money. Minimum: market value of the option plus 50% of the margin required on the underlying futures contract (futures speculator or hedger rate, as the case may be).

Options-Futures Spread

- Short Call-Long Futures or Short Put-Short Futures.
- The underlying market value of the option plus the margin required for the underlying futures contract less half of the amount that the option is in-the-money. Minimum: market value of the option plus 50% of the margin required on the underlying futures contact (futures speculator or hedger rate, as the case may be).
- Long Call-Short Futures or Long Put-Long Futures.
- The margin required is the greater of the market value of the option or the margin required on the futures contract.

Other Combinations

- Special rules apply to calculate margin requirements for other combinations.

Position Limits

The maximum number of options and underlying futures contract net on the same side of the market in all contract month combined which a person may own or control shall be as follows:

(a) For speculators: 5,000 futures equivalent contracts.

(b) For hedgers: The greater of 7,000 futures equivalent contracts or of such a limit to be established and published on a monthly basis by the Exchange based on 20% of the average daily open interest for all Canadian Bankers' Acceptance futures contract during the preceding three calendar months or such other position limits as may be determined by the Exchange.

For the purpose of calculating these limits, positions in the options contracts are aggregated with positions in the underlying futures contract. For aggregation purposes, the futures-equivalent of one in-the-money options contract is one futures contract and the futures-equivalent of one at-the-money option or out-of-the-money contract is half a futures contract.

Reporting Levels

300 options or 300 futures equivalent contracts for positions involving the option and the underlying futures contract.

Ticker Symbol

OBX.

Clearing Corporation

Trans Canada Options Inc.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

Appendix B to Part 30 [Amended]

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for the "Montreal Exchange" to read as follows:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
. .	. . .	. .
Montreal Exchange	Options on the 3-month Canadian Bankers' Acceptance Futures Contract.	1994; _____ FR _____
. .	. . .	. .

Issued in Washington, DC, on March 1, 1994.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 94–5044 Filed 3–3–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

[T.D. 93–96]

RIN 1515–AB31

Reporting Requirements for Vessels, Vehicles, and Individuals; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain editorial errors that appeared in a final rule document published in the **Federal Register** on December 21, 1993, regarding reporting requirements for vessels, vehicles, and individuals.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, (202) 482–6930.

SUPPLEMENTARY INFORMATION: On December 21, 1993, Customs published a document in the **Federal Register** (T.D. 93–96, 58 FR 67312), that amended the Customs Regulations to implement certain provisions of the Customs Enforcement Act of 1986, a part of the Anti-Drug Abuse Act of 1986, designed to strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illegal drug shipments. The regulatory changes pertained to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals, and informed the public regarding applicable penalty, seizure and forfeiture provisions for violation of the provisions.

The document removed considerable footnote material in part 4 of the Customs Regulations (19 CFR part 4). However, although the footnote material at the bottom of pages was removed, the superscript footnote-referencing designation in the regulatory text was not. This document corrects that error. This document also removes two other footnotes in Part 4—footnotes 92 and 118—that should have been removed, along with their superscript footnote-referencing designations, because the material they reference has been changed or deleted.

Further, one of the amendments in this document was to part 123, which required a revision to the then last sentence of § 123.0. Before T.D. 93–96 was published, however, another document, pertaining to the user fees Customs collects for certain services, was published on October 21, 1993 (T.D. 93–85, 58 FR 54271) that also amended part 123 by adding a new sentence at the end of § 123.0. This circumstance of another document (T.D. 93–85) adding a new last sentence to the same section being revised by T.D. 93–96, requires that the instruction in T.D. 93–96 be corrected to read that the next to the last sentence in § 123.0 be revised to read as indicated.

Correction of Publication

Accordingly, the publication on December 31, 1993 of the final regulations (T.D. 93–96), which were the subject of FR Doc 93–30908, is corrected as follows:

1. On page 67315, in the second column, the second instruction is corrected to read:

"Part 4 is amended by removing and reserving footnotes 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118; and removing the superscript footnote-referencing designations 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118 from the text."

2. On page 67317, in the second column, in § 123.0, the second instruction is corrected to read "Section 123.0 is amended by revising the next to the last sentence to read as follows:".

Dated: March 1, 1994.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 94–5024 Filed 3–3–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 91N–0291]

Medical Devices; Reclassification and Codification of the Daily Wear Soft and Daily Wear Nonhydrophilic Plastic Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is codifying the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register** FDA has issued an order of reclassification as required by the Safe Medical Devices Act of 1990 (the SMDA). This reclassification only applies to daily wear soft and daily wear nonhydrophilic contact lenses. Lenses intended for extended wear will remain in class III, as will contact lens accessories. The SMDA also requires FDA to put into place any regulatory safeguards that are necessary to provide reasonable assurance of the safety and effectiveness of the reclassified lenses. Thus, elsewhere in this issue of the **Federal Register**, in conjunction with the order reclassifying the devices, FDA is announcing the availability of a guidance document describing those safeguards in the form of evidence needed to demonstrate the substantial equivalence of new daily wear soft and daily wear nonhydrophilic contact lenses to lenses already marketed.

DATES: This codification becomes effective April 4, 1994. The reclassification action published elsewhere in this issue of the **Federal Register** is effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION: Under the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress classified all transitional devices (i.e., those devices previously regulated as drugs), including daily wear soft and daily wear nonhydrophilic plastic contact lenses, into class III (premarket approval). The SMDA (Pub. L. 101–629), reflecting congressional concern that many transitional devices were being over regulated in class III, directed FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classifications of those still remaining in class III to determine if the devices could be down classified into class II (special controls) or class I (general controls). The SMDA made further provision with respect to the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses. Section 4(b)(3)(A) of the SMDA provided that, notwithstanding the provisions for reclassification of other transitional devices, daily wear soft and daily wear nonhydrophilic plastic contact lenses would not be retained in class III unless FDA determined that the devices meet the

statutory criteria for a class III device. Further, if FDA did not determine that these contact lenses must remain in class III and publish such determination by November 28, 1993, in the **Federal Register**, then, under section 4(b)(3)(D) of the SMDA, FDA "shall issue an order placing the lenses in class II."

Both the language and legislative history of the SMDA make it clear that the reclassification of daily wear soft and daily wear nonhydrophilic contact lenses would occur as a matter of law unless FDA published a finding that the devices should remain in class III. FDA has not made such a finding: FDA believes that the safety and effectiveness of daily wear soft and daily wear nonhydrophilic plastic contact lenses can be ensured through specified special controls as authorized by the SMDA. As required by section 4(b)(3)(D) of the SMDA, therefore, FDA has issued an order reclassifying the devices from class III (premarket approval) into class II (special controls). This order appears elsewhere in this issue of the **Federal Register**. In conjunction with the order, FDA is also issuing a guidance document for premarket notifications for the reclassified contact lenses, entitled "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses."

Pending original and supplemental applications for premarket approval for daily wear soft or daily wear nonhydrophilic plastic contact lenses currently filed with the agency must be examined to identify: (1) Those that are no longer subject to premarket approval review and can be converted to 510(k)'s or withdrawn and resubmitted to FDA by the applicant to be evaluated through the 510(k) process; and (2) those which can be withdrawn by the applicant and are not required to be resubmitted and evaluated as a 510(k) prior to implementing the request. FDA review of affected premarket approval applications (PMA's) will be suspended until the respective sponsor amends its application, setting forth the status of the devices and the administrative actions requested to be taken regarding its application. Sponsors of PMA's affected by the reclassification should refer to the order published elsewhere in this issue of the **Federal Register** for information on actions necessary regarding any pending applications affected by the automatic reclassification.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully examined the costs and benefits of this action in accordance with the requirements of Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that the rule is not a significant rule as defined in Executive Order 12866. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The reclassification will reduce the regulatory costs to manufacturers of these lenses because the cost of complying with premarket notification requirements is substantially less than the cost of complying with premarket approval requirements.

Accordingly, the regulations at §§ 886.5916 and 886.5925 (21 CFR 886.5916 and 886.5925) are amended as set forth below.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority section for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 886.5916 is amended by revising paragraphs (b) and (c) to read as follows:

§ 886.5916 Rigid gas permeable contact lens.

* * * * *

(b) *Classification.* (1) Class II if the device is intended for daily wear only.

(2) Class III if the device is intended for extended wear.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before a device described in paragraph (b)(2) of this section may be commercially distributed. See § 886.3.

3. Section 886.5925 is amended by revising paragraphs (b) and (c) to read as follows:

§ 886.5925 Soft (hydrophilic) contact lens.

* * * * *

(b) *Classification.* (1) Class II if the device is intended for daily wear only.

(2) Class III if the device is intended for extended wear.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before a device described in paragraph (b)(2) of this section may be commercially distributed. See § 886.3.

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4696 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT14–1–5669; FRL–4843–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: The EPA is approving the State Implementation Plan revision submitted by the Governor of Montana on October 19, 1992 for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to satisfy the Federal mandate of the Clean Air Act to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. Since this is a voluntary program that does not impose any new regulatory burdens on small businesses, the EPA is proceeding with a direct final approval of this SIP revision. The rationale for this approval follows.

EFFECTIVE DATE: This rule will become effective on April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code 8ART-AP, EPA Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background of Revision

Implementation of the provisions of the Clean Air Act (Act), as amended in 1990, will require regulation of many

small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the Act requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved State Implementation Plan (SIP). In addition, the Act directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of Title V of the Act. In February 1992, the EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Montana has submitted a SIP revision to the EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Summary of Submittal

The State of Montana has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. House Bill (HB) 318 signed into law on April 23, 1993, provides authority for the Montana Department of Health and Environmental Sciences to establish a PROGRAM. The Montana Board of Health and Environmental Sciences held a public hearing on September 25, 1992 to consider and approve the PROGRAM, which will amend the Montana SIP to add Chapter 10 of Volume I. The Montana PROGRAM was submitted to the EPA by the Governor of Montana on October 19, 1992 as an addition to the Montana SIP. It was initially reviewed for administrative and technical completeness, and was deemed complete on April 19, 1993. The submittal was then reviewed for approveability by EPA Region VIII and EPA headquarters. One of the EPA headquarters reviewers, the Office of the Small Business and Asbestos Ombudsman (OSBO) did not concur on the Montana PROGRAM for the following reasons: (1) Insufficient designation of Small Business Ombudsman position in the Montana Department of Commerce (DOC) to make an effective decision; (2) No designated role for the SBAP to act as secretariat to the CAP and Ombudsman; (3) Manpower resources appear inadequate to support the SBAP, and there are no quantitative or qualitative or other support for the SBAP from the DOC or others; and (4) It is advantageous for the Ombudsman and the SBAP to both have a toll-free hotline to serve the public. The State addressed these issues in a letter dated January 3, 1994, and subsequently received the concurrence of the OSBO.

A. Small Business Assistance Program

The State has met the first PROGRAM element, the establishment of a SBAP to provide technical and compliance assistance to small businesses, by committing in its SIP revision Chapter 10.2.3 to establish a SBAP in the Montana Department of Health and Environmental Sciences, Air Quality Bureau. It will be administered by an environmental specialist. Chapter 10.2.3 describes the details of the SBAP, which meet the six requirements set forth in section 507(a), including such activities as: (1) "Provide information to small business stationary sources on compliance methods and technologies;" (2) "Provide information to small business stationary sources on ... pollution prevention and accidental release detection and prevention;" (3) "Assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;" (4) "Provide small business stationary sources timely notice of both their rights and obligations under this chapter;" (5) "Provide information ... regarding the availability of audits services which are useful for determining compliance status with the requirements of this chapter;" and (6) Consider " ... requests from small business stationary sources for modifications of work practices or technological methods of compliance."

B. Ombudsman

The State has met the second PROGRAM element, the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process, by locating the office of the Ombudsman in the Montana DOC as stated in Chapter 10.2.2 of its SIP revision.

C. Compliance Advisory Panel

The third PROGRAM element is the creation of a CAP to determine and report on the overall effectiveness of the SBAP. The CAP must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Act also delineates four responsibilities of the Panel:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(2) To periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [1];

(3) To review and assure that information for small businesses is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

The State has met these requirements by committing in Chapter 10.2.4 of its SIP revision to appoint the members of the CAP as stated above, and to designate to the CAP the four responsibilities listed in the Act.

D. Eligibility

Section 507(c)(1) of the Act defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

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[1] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The State of Montana has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the Act. This mechanism is contained in the State's Title V enabling legislation, HB 318, Section 1, which is Chapter 10.2.1 of the State's SIP revision.

The State of Montana has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the Act but do not emit more than 100 tpy of all pollutants. This provision is contained in Chapter 10.2.1 of the State's SIP revision.

The State of Montana has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. This provision in contained in Chapter 10.2.1 of the State's SIP revision.

III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Montana. This SIP revision implements each of the PROGRAM elements required by section 507 of the Act. Chapter 10.3 of the revision contains a schedule for implementation of the PROGRAM by November 15, 1994. The EPA is therefore approving this submittal.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subject in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: February 16, 1994.

Robert L. Duprey,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read asfollows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1389 is added to subpart BB to read as follows:

§ 52.1389 Small business stationary source technical and environmental compliance assistance program.

The Governor of Montana submitted on October 19, 1992 a plan to develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to the EPA on the program's effectiveness.

[FR Doc. 94–4991 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300313A; FRL–4747–8]

RIN 2070–AB78

Definitions and Interpretations; Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1(h) by adding definitions of the commodity terms "sorghum grain" and "sorghum fodder and forage." The amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station #1, 6th Floor, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: Section 180.1(h) (40 CFR 180.1(h)) provides a listing of general commodity terms and listing of EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. As noted in the proposal published in the **Federal Register** of November 24, 1993 (58 FR 62074), the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, requested that 40 CFR 180.1(h) be amended as follows: (1) To add the commodity term "sorghum (grain)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (grain),

sundangrass (seed crop), and hybrids of these grown for its seed]" to column B; and (2) to add the commodity term "sorghum (fodder, forage)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage]" to column B.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that it is appropriate to add definitions for the commodity terms "sorghum grain" and "sorghum fodder and forage" in 40 CFR 180.1(h). Therefore, the added definitions are established as set forth below.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended in the table therein by adding and alphabetically inserting the following commodities listings, to read as follows.

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * * * *	
Sorghum (grain)	*Sorghum spp.* [(sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed].
Sorghum (fodder, forage)	*Sorghum spp.* [(sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage)].
* * * * * * *	

* * * * *

[FR Doc. 94-4987 Filed 3-3-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3E4192/R2037; FRL-4756-3]

RIN 2070-AB78

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] in or on the raw agricultural commodity sugarcane. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

ADDRESSES: Written objections and request for a hearing, identified by the document control number, [PP 3E4192/R2037], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 22, 1993 (58 FR 67759), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 3E4192 to EPA on behalf of the Agricultural Experiment Stations of Florida and Hawaii. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of chlorpyrifos in or on the raw agricultural commodity sugarcane at 0.01 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in

the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.342(c) by adding and alphabetically inserting the raw agricultural commodity sugarcane and by revising paragraph (d) introductory text to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Sugarcane	0.01
* * * * *	

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on the following commodities:

* * * * *

[FR Doc. 94-4986 Filed 3-3-94; 8:45 am]

BILLING CODE 6560-60-F

40 CFR Part 180

[OPP-300308A; FRL-4756-2]

RIN 2070-AB78

Polyethylene Glycol-Polyisobutenyl Anhydride-Tall Oil Fatty Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This regulation was requested by ICI Americas, Inc.

EFFECTIVE DATE: This regulation becomes effective March 4, 1994.

ADDRESSES: Written objections or requests for a hearing, identified by the document control number, [OPP-300308A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Bldg. North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1993 (58 FR 68827), EPA issued a proposed rule to exempt from the requirement of a tolerance residues of polyethylene-glycol-polyisobutenyl anhydride-tall oil

fatty acid copolymer when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyetheylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
• • •	•	• • •
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (minimum number-average molecular weight 5,000)..	.....	Surfactant, dispersing agent, suspending agent, or related adjuvant.
• • •	•	• • •

* * * * *

[FR Doc. 94–4988 Filed 3–3–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 424

[BPD–610–F]

RIN 0938–AE06

Medicare Program; Diagnosis Codes on Physician Bills

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of section 1842(p) of the Social Security Act regarding diagnosis codes on physician bills. Under this final rule, each bill or request for payment for a service furnished by a physician under Medicare Part B must include appropriate diagnostic coding for the diagnosis or the symptoms of the illness or injury for which the Medicare beneficiary received care.

DATES: Effective date: This final rule is effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pat Brooks, R.R.A. (410) 966–5318.

SUPPLEMENTARY INFORMATION:

I. Background

Medical services are furnished to Medicare beneficiaries by providers, suppliers, physicians, and other specified practitioners. Title XVIII of the Social Security Act (the Act) defines the term physician. Under section 1861(r) of the Act, the term physician, subject to limitations concerning the scope of practice by each State and other provisions of title XVIII of the Act, means a doctor of—(1) Medicine or osteopathy; (2) Dental surgery or dental medicine; (3) Podiatry; (4) Optometry; or (5) Chiropractic.

Under provisions of section 1848(g)(4) of the Act, as added by section 6102(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 100–239), effective for services furnished on or after September 1, 1990, each physician must submit a standard claim form (HCFA–1500) directly to the Medicare carrier on behalf of the beneficiary, regardless of whether the physician provided the services on an assignment-related basis. (Under Medicare Part B, a physician may bill the patient directly for the physician's services, thus requiring the beneficiary to seek reimbursement from Medicare. Alternatively, under section 1842(b)(3)(B) of the Act, when a physician furnishes services on an assignment-related basis, the physician bills Medicare directly in exchange for the physician's agreement to accept the Medicare approved amount as payment in full. (Rules concerning assignment of claims are found at §§ 424.55, 424.56 and 424.70 *et seq.*) The HCFA–1500, which is also used by most third-party payers, including Medicaid and other Federal government health insurance programs, is, in effect, an itemized bill.

Before September 1, 1990, if a physician was not paid directly by Medicare for physician services, the physician either billed the Medicare beneficiary directly or billed another third-party payer. The beneficiary then sought payment from Medicare for expenses incurred in obtaining covered physician's services by submitting a Patient's Request for Medicare Payment (HCFA–1490 S) to the carrier. This form directs the beneficiary to attach itemized bills from his or her physician to the form. In limited cases, as provided under section 1842(b)(6)(B) of the Act and 42 CFR part 424 when a third party made payment to the physician, the third party sought reimbursement from Medicare for this payment by submitting a Request for Medicare Payment by Organizations which Qualify to Receive Payment for Paid Bills (HCFA–1490 U). We required the physician to fill out Part II of this form, which was similar to an itemized bill.

Previously, each bill or request for payment for physician services furnished to a Medicare beneficiary had to include, among other information, a narrative description of the diagnosis or the nature of the illness or injury for which the beneficiary received care. Although prior to April 1, 1989 there was no requirement for diagnostic coding (that is, a description of the diagnosis or the nature of the illness or injury in a numeric code), many physicians routinely provided this information. In addition, all physicians provided a narrative description of procedures, medical services, and supplies that were furnished to a beneficiary.

II. Legislation Requiring Diagnostic Coding

Section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), enacted July 1, 1988, added paragraph (p) to section 1842 of the Act. Under the provisions of section 1842(p)(1) of the Act, each bill or request for payment for physician services under Medicare Part B must include the appropriate diagnostic code "as established by the Secretary" for each item or service for which the Medicare beneficiary received treatment.

The conference report that accompanied Public Law 100–360 explained clearly the purpose of the requirement for physician diagnostic coding. After rejecting a Senate provision that would have required the use of diagnosis codes on all prescriptions, because they felt that the requirement would have been "unduly burdensome," the conferees agreed to require diagnostic coding for physician services under Part B. They explained their reasons for this requirement as follows: "This information would be available for immediate use for utilization review of physician services and could be used in the future to facilitate drug utilization review by merging Part B with drug claims data." H.R. Conf. Rep. No. 661, 100th Cong., 2nd Sess. 191 (1988).

Section 1842(p)(2) of the Act authorizes a denial of payment for a bill submitted by a physician on an assignment-related basis if it does not include the appropriate diagnostic coding.

Section 1842(p)(3) of the Act directs the Secretary to impose penalties if a physician who is not paid on an assignment-related basis fails to provide the appropriate diagnostic coding on the bill to the Medicare beneficiary. That is, section 1842(p)(3)(A) of the Act provides for a civil money penalty not to exceed $2,000 if the physician knowingly and willfully fails to provide the appropriate diagnostic coding. Section 1842(p)(3)(B) of the Act provides for a sanction under 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding. Section 1842(p)(3) of the Act does not prohibit the payment of an unassigned claim solely because the physician did not provide diagnosis codes. As explained in section I of the preamble, effective for services furnished on or after September 1, 1990, regardless of whether they provide services on an assignment related basis, physicians submit claim forms directly to the Medicare carrier. The provisions of section 1848 of the Act, as added by 6102(a) of Public Law 101–239, do not affect the penalties set forth in this rule for failure to include diagnostic coding on physician bills. This final rule

implements the provisions of section 1842 (p)(1) and (p)(2) of the Act.

III. Provisions of the Proposed Rule

On July 21, 1989 we published a proposed rule (54 FR 30558) to implement the provisions of section 1842(p)(1) of the Act. We proposed that each bill or request for payment for physician services under Part B would have to include appropriate diagnostic coding "as established by the Secretary," relating to the nature of the illness or injury for which the Medicare beneficiary received care.

As noted above, generally, physician services furnished directly to a beneficiary are paid under Medicare Part B. In addition, under the regulations set forth at subpart D of 42 CFR part 405, we make payments to hospitals under Part A for physician services related to the supervision and teaching of interns and residents who participate in the care of hospital inpatients. Also, the proposed rule did not apply to suppliers or other providers whose services are covered under Part B.

We proposed that a physician would be required to furnish diagnosis codes instead of the narrative description that was previously required. We proposed to deny payment for a bill or request for payment for physician services furnished on an assignment-related basis if the bill or request for payment does not contain the appropriate diagnostic coding. This would not be true for a claim for physician services not furnished on an assignment-related basis. In other words, if the beneficiary seeks Medicare reimbursement for payment for physician services, we proposed not to deny payment solely because the claim does not contain diagnosis codes. If enough information were provided to enable a carrier to process the claim, it would be processed without the diagnosis codes. As explained in section II of the preamble, section 1842(p)(3)(B) of the Act provides for a sanction under section 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding.

We proposed to use the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) as the most appropriate diagnostic coding system.

The ICD is a classification system developed by the World Health Organization (WHO) for recording morbidity and mortality information for statistical purposes, for indexing hospital records by diseases, and for storing and retrieving data. Effective with the Twentieth World Assembly of WHO, nomenclature regulations were adopted on May 22, 1967. Article 21(b)(2) of these regulations specifies that "members compiling mortality and morbidity statistics shall do so in accordance with the current revision of the International Statistical Classification of Diseases, Injuries and Causes of Death as adapted from time to time by the World Health Assembly. This Classification may be cited as the 'International Classification of Diseases'." The United States is signatory to the WHO's agreements, which include the above nomenclature regulations binding the United States to the use of the ICD system for official government health statistical purposes. The nomenclature regulations became effective on January 1, 1968.

The clinical modification of the ninth revision to ICD (that is, ICD–9–CM) is a coding system for reporting diagnostic information and procedures performed on patients in hospitals or other types of health care delivery systems.

ICD–9–CM was developed under the guidance of the National Center for Health Statistics (NCHS) to adapt the ninth revision of the ICD classification system to the needs of hospitals in the United States. The modifications were intended to provide a mechanism to present a clinical picture of the patient. Thus, ICD–9–CM codes are more precise than those included in ICD–9 since greater detail is needed to describe the clinical picture of a patient than for statistical groupings and trend analysis.

Effective January 1979, after nearly two years of development by numerous national experts on clinical technical matters, the ICD–9–CM became the single classification system intended for use by hospitals in the United States. This system replaced several earlier related but somewhat dissimilar classification systems. Once the ICD–9–CM classification system was in place, several errors and omissions were noted. Consequently, in September 1980 a second edition of ICD–9–CM was published. The preface to the second edition noted that the continuous maintenance of ICD–9–CM is the responsibility of the Federal government. The preface also stated that no future modifications to ICD–9–CM would be made by the Federal government without considering the opinions of representatives of major users of the classification system.

In September 1985, the ICD–9–CM Coordination and Maintenance Committee (the Committee) was formed. This is a Federal interdepartmental committee that maintains and updates the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by NCHS and HCFA. NCHS has primary responsibility for the ICD–9–CM diagnosis codes included in Volume 1—Diseases: Tabular List, and Volume 2—Diseases: Alphabetic Index. HCFA has primary responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the development of diagnosis and procedure codes by health-related organizations, organizations in the coding field, and other members of the public. During each Federal fiscal year (FY), the Committee holds three public meetings during which coding changes are discussed. Taking into account the public comments made at each meeting and the public correspondence received after each meeting, the Committee formulates recommendations, which must be approved by the co-chair agency heads, the Administrator of HCFA and the Director of NCHS, before adoption for general use. Coding changes approved by the Committee and agency heads are published annually in the **Federal Register**.

Only official volumes and addenda of ICD–9–CM are to be considered in the assignment of diagnosis codes for Medicare patients. HCFA is not responsible for mistakes made by businesses in the replication of these official volumes and addenda, which are then sold to the public. Official addenda have become effective on May 1, 1986, and subsequently on October 1 of each year from 1986 through the present. Another addendum, containing the Human Immunodeficiency Virus (HIV) Infection Codes, became effective for Medicare patients discharged on or after July 1, 1988.

Before publication of the proposed rule on July 21, 1989, the GPO exhausted its supply of previously published addenda and announced that it had no plans to reprint more copies. However, the private sector continues to publish changes to the ICD–9–CM coding system annually by October 1st.

The GPO also announced that it would no longer provide addenda except to subscription purchasers of the third edition. ICD–9–CM, third edition, was published in March 1989; automatic addenda updates expired in 1991. The third edition incorporates all addenda that were previously published. We stated in the July 21, 1989 proposed rule that if a physician had not yet obtained ICD–9–CM, second edition, and had not updated the set with the addenda, he or she should obtain the recently updated Volumes 1 and 2 (that include all the addenda) (54 FR 30560). The American Health Information Management Association (AHIMA), previously known as the American Medical Records Association (AMRA), the national professional association of medical records practitioners, and the American Hospital Association (AHA) have indicated that they intend to reprint these future addenda and make them available for sale.

The price for Volumes 1 and 2 of ICD–9–CM, fourth edition, is $65.00 for delivery within the United States and $81.25 for delivery outside of the United States. A purchaser must furnish an address other than a post office box because the volumes will be delivered only to a place of business or a residence. When ordering, the purchaser should enclose a check, money order, or Visa or Mastercard account name, number, and expiration date. Checks should be made out to the Superintendent of Documents.

Updated volumes 1 and 2 may be purchased by writing to the following address: ICD–9–CM, Fourth Edition, Volumes 1 and 2, P.O. Box 371954, Pittsburgh, PA 15250–7954. (Telephone orders may be placed through the GPO order desk at (202) 783–3238.)

Section 424.32 sets forth the basic requirements for all claims. (The term "claim" is used when referring to the regulatory language instead of the term "bill or request for payment".) In § 424.32(a), all claims (including those filed directly with Medicare by physicians, beneficiaries or other persons or entities for physician services furnished to Medicare beneficiaries) must be filed in accordance with HCFA instructions. Section 424.34 provides additional requirements for claims filed with Medicare by beneficiaries. Under § 424.34(b)(4), the itemized bill must include a listing of services in sufficient detail to permit determination of reasonable charges. We proposed to make the following changes to the regulations text:

- Revise § 424.32(a) to state specifically that a claim for physician services must include appropriate diagnostic coding using ICD–9–CM.
- Revise § 424.34(b)(4) to state specifically that an itemized bill furnished by a physician to a beneficiary for physician services must include appropriate diagnostic coding using ICD–9–CM.
- Add to § 424.3 the definition of ICD–9–CM, which means the International Classification of Diseases, Ninth Revision, Clinical Modification.

Coding and reporting requirements and instructions for diagnostic coding were developed in order to take into account circumstances unique to care furnished by physicians. These coding and reporting requirements and instructions for completing bills and requests for payment were developed before publication of the proposed rule and were distributed to the carriers on March 3, 1989. The carriers then mailed this information, in the form of a Medicare Bulletin, to the physicians whom they service. During preparation of these procedures and instructions, we consulted with the American Medical Association (AMA) and provided the AMA an opportunity to comment on the material.

In the proposed rule, we proposed a limited grace period during which payments would not be denied and sanctions would not be imposed for failure to use diagnosis codes. We provided for a 6-month grace period until October 1, 1989 to allow physicians and their office staff to obtain training and purchase books. On August 8, 1989, we notified carriers of the extension of the grace period through a memorandum from the HCFA Bureau of Program Operations. For the convenience of the reader, we published the coding and reporting requirements as an appendix to the proposed rule.

AHIMA offered nationwide training classes and training materials for physician office staff for ICD–9–CM diagnostic coding, as did the AMA.

Suggestions concerning modification of the ICD–9–CM codes, or additions to the existing codes, may be submitted in writing to the following address: National Center for Health Statistics, 6525 Belcrest Road,room 9–58, Hyattsville, MD 20782.

In this final rule, we are adopting the requirements as stated in the proposed rule without modification.

IV. Discussion of Public Comments

In response to the proposed rule, we received 35 timely items of correspondence. Comments were received from physicians, professional health-related organizations, universities and colleges, medical facilities, state governments, laboratories, durable medical equipment suppliers and pharmaceutical companies.

Although the majority of commenters were not opposed to the diagnostic coding requirement in general, they were concerned with certain aspects of the proposed rule.

A. Coding Issues

Comment: One commenter inquired about the possibility of an indefinite delay of the ICD–9–CM diagnostic coding requirement. Another commenter asserted that the diagnostic coding requirement should not be implemented until final regulations are published, which should allow for a training period of 60 days before any adverse actions.

Response: The original implementation date of April 1, 1989 was extended by a 60-day grace period to allow physicians and their office staffs to purchase coding books and to obtain coding training. This grace period was further extended until October 1, 1989, at which time we required all physicians to use ICD–9–CM codes on bills or requests for payment. On August 8, 1989, we notified carriers of the extension through a memorandum from the HCFA Bureau of Program Operations. In total, we allowed a 6-month grace period. We believe we provided a reasonable time period for physicians and their staffs to prepare for the new coding requirements.

Comment: The American Psychiatric Association disagreed with HCFA that the ICD–9–CM is the only classification system acceptable for Medicare claims. They urged HCFA to allow the use of the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised (DSM–III–R) coding system for mental disorders. The American Medical Association also supports the DSM–III–R coding system for use by psychiatrists.

Response: DSM–III–R was designed to be compatible with ICD–9–CM, but the two systems are not identical. Systems such as DSM–III–R address only certain types of diagnoses, and cannot be used universally by all types of practitioners to code all types of diagnoses on claims submitted to Medicare. In fact, ICD–9–CM provides for greater specificity in coding mental disorders that DSM–III–R. Within the "mental disorders" range (codes 290–319) there are an additional 218 specific codes available in ICD 9–CM that are not in DSM–III–R. Thus, we continue to believe that the ICD–9–CM system is the only comprehensive

diagnostic coding system that is suitable for Medicare claims.

Comment: The College of American Pathologists stated that the ICD–9–CM coding system is limited in its description of disease states. The commenter asserted that the Systematized Nomenclature of Medicine (SNOMED), which it publishes, is more specific.

Response: The SNOMED is an excellent coding system. However, as stated above, the Department of Health and Human Services is signatory to the WHO's nomenclature regulations binding the United States to use of the ICD for official government purposes. Even though ICD–9–CM has recognized limitations, it can be updated as the need arises via the ICD–9–CM Coordination and Maintenance Committee.

Comment: One laboratory recommended that the burden of furnishing the proper diagnosis codes be placed on the physician ordering a test rather than the supplier of the service. The commenter expressed a concern that the laboratory performing the test should not be held responsible for performing a test that Medicare later determines to be not medically necessary.

Response: The proposed rule and this final rule address the requirement for diagnostic coding of only physicians' bills. This new coding requirement does not apply to bills from laboratories (except for physician laboratory services—see § 405.556).

Comment: One commenter suggested that referring physicians provide a reason for the biopsy or referral. It requested that this practice be encouraged and emphasized through carrier communication with the physicians.

Response: We have always encouraged that the referring physician communicate the reason for the referral or specimen so the proper medical interpretation is made or test is performed. We will continue to encourage carrier to convey this message to the physician community.

Comment: Three commenters were concerned that providing for only four diagnostic codes on the form HCFA–1500 is insufficient in many cases to adequately describe a patient's condition.

Response: Since the implementation of the diagnostic coding requirement, we have received few complaints concerning the form HCFA–1500. Thus, we believe that four diagnosis codes are sufficient in most instances. We note that this regulation is not intended to change the structure of the form HCFA–1500. Moreover, our contractors' claims processing systems, as currently constructed, would not be able to accommodate more than four diagnosis codes on a single claim.

The use of codes instead of a narrative description should enhance the physician's ability to describe the patient's condition with greater precision. If there are cases where the use of four codes is not sufficient, we suspect that they would arise when more than one procedure has been performed (for example, psychological counseling provided to a trauma patient). In such cases, the physician could submit one claim for the procedure that relates to four or fewer diagnoses, and submit another claim for the other procedures with their attendant diagnoses.

Comment: The American Ambulance Association requested that the final rule specify that the coding requirements do not apply to ambulance services.

Response: This final rule provides only that each bill or request for payment for physician services must include diagnostic coding. These provisions do not apply to ambulance services.

Comment: One commenter interpreted the proposed rule to imply that physicians must now submit claims for services that they would not have normally billed under the previous guidelines. The commenter requested that HCFA clarify this point in the final rule.

Response: Although the ICD–9–CM coding system permits classification of many services for which specific codes could be used, the mere presence of an ICD–9–CM code does not, of itself, mean that a bill or request for payment must include the code for that service. If a physician generally would not have submitted a bill or request for payment for a particular service prior to the physician diagnostic coding requirement, the physician may not be required to submit a bill for that service under the new rules. For instance, HCFA did not mean to imply, under an example in the guidelines published in the proposed rule (54 FR 30564), that a bill should be submitted for a service for X.3, attention to surgical dressings and sutures, if this service is included in the surgeon's global charge. However, if this service is performed by another physician, unrelated to the surgeon, it might be appropriate for the second surgeon to use this code to describe the reason for the encounter.

Comment: One commenter suggested that HCFA clarify in the final rule whether the new regulations supersede or supplement individual carrier coding policies since there are conflicts between the new and old coding practices.

Response: The requirements in this final rule supersede any individual carrier coding policies. Those carrier coding policies have been changed to comply with the requirements of this final rule.

Comment: Both the AMA and the American Society of Internal Medicine stated that supplying codes for signs and symptoms without also supplying codes indicating diagnoses that the physician has ruled out will not accurately describe the patient's conditions and explain the reasons for the care provided. Another commenter recommended that we allow the use of "suspected" and "rule out" codes.

Response: The coding guidelines state that each visit must be coded to describe the specific reason that the patient sought care or treatment. The guidelines also state: "Do not code diagnosis documented as "suspected," "rule out," "probable," or "questionable" as if they are established. Rather, code the condition to the highest degree of certainty for that encounter/visit to reflect symptoms, signs, abnormal test results, or other reasons for the visit." To require coding of "probable," "suspected," "questionable," or "rule out" conditions as if the conditions existed would lead to significant overcounting of conditions. This inaccurate recording would distort data and would artificially distort disease statistics. Therefore, physicians should report diagnosis codes for symptoms and signs but should exclude codes for diagnoses that the physician either suspects or rules out.

Comment: Several commenters asked how they should code for situations in which a patient presents disabling symptoms but no diagnosis exists for the patient. They recommended that the diagnosis codes include codes for symptoms.

Response: Diagnosis codes should reflect the diagnosis, condition, problem, or other reason for the encounter or visit shown in the medical record to be chiefly responsible for the services provided. However, the carrier will also accept codes for symptoms when no other more definite code can be given to describe the reason for the visit of the patient. This is explained further in guideline number four of the Appendix—Claims Review and Adjudication Procedures, published with the proposed rule (54 FR 30564, July 21, 1989).

Comment: Two commenters suggested that correlating the ICD–9–CM diagnosis codes and the CPT–4 procedures codes

is a redundant effort since a procedure may be performed as the result of several conditions. They urged that the requirement be deleted.

Response: Correlating the narrative diagnosis and the CPT–4 procedure code is a requirement of the Medicare carrier, and has been a standard requirement for years. It has only been modified by the new physician diagnostic coding requirements. Physicians must now correlate the ICD–9–CM code, instead of the narrative, to the CPT–4 code.

Comment: One commenter stated that suppliers cannot be required to include diagnostic coding on Part B bills even though they often provide the diagnostic codes identified by the physician on bills for equipment and supplies.

Response: We have never required suppliers to include diagnostic coding on their Part B bills. Section 1842(p)(1) of the Act requires physicians, as defined in section 1861(r) of the Act, and subject to limitations concerning the scope of practice by each State and other provisions of title XVIII of the Act, to furnish diagnostic coding. That is, only doctors of medicine or osteopathy, dental surgery or dental medicine, podiatry, optometry, or chiropractic must furnish diagnostic coding. Durable medical equipment suppliers are not included in this requirement.

Comment: One commenter inquired why his or her carrier included messages in the explanation of the Medicare benefit worksheet regarding both diagnostic coding requirements (ICD–9–CM) and procedural coding requirements (CPT–4) since the proposed rule (54 FR 30559, July 21, 1989) stated that there is no current requirement for diagnostic coding.

Response: The statement on page 54 FR 30559 referred to the policy before implementation of section 1842(p)(1) of the Act that requires physician diagnostic coding instead of the written narrative that was previously required. We are now conforming the regulations to the previously issued administrative instructions.

The CPT–4 coding (part of the HCFA Common Procedural Coding System) describes physician services and supplies, not diagnoses. If either fields 23 or 24c on the form HCFA–1500 are blank, the carrier will communicate with the physician via the explanation of the Medicare benefit worksheet requesting completion of this information.

Comment: A commenter asserted that as an incentive all bills or requests for payment without ICD–9–CM codes should be rejected and that properly coded bills and requests for payment should be expedited.

Response: The Act specifically provides for denial of payment for a bill submitted by a physician on an assignment-related basis if it does not include the appropriate diagnostic code. For a claim for an item or service not submitted on an assignment-related basis, the Act authorizes the Secretary to impose a civil money penalty, not to exceed $2,000, against a physician seeking payment who knowingly and willfully fails to promptly provide the appropriate diagnostic coding on the bill to the Medicare beneficiary upon the request of the Secretary or a carrier. If the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the statutorily prescribed obligations, to include the requisite diagnostic codes, the physician may also be subject to administrative sanctions. However, the payment of an unassigned claim may not be prohibited solely because the physician has not furnished the diagnosis codes.

We considered, but rejected, the idea of expediting properly coded bills and requests for payment since we do not handle properly coded bills for Part A services in a special manner. Properly coding bills is a standard requirement to receive payment for services. However, payment would occur more quickly for properly coded bills because there would be no need for resubmission because of errors in coding.

Comment: A clinical laboratory stated that bills and requests for payment with diagnostic coding can be processed electronically at a much lower cost to Medicare than we projected in the proposed rule.

Response: The cost projections in the proposed rule for electronically processed claims are the expected costs for physicians to comply with the requirement for diagnostic coding on all bills and requests for payment rather than the costs of the carriers in processing the bills and requests for payment.

Comment: One association asked the implied meaning of the statement "* * * (diagnostic coding) could be used for prepayment screens" (54 FR 30559, July 21, 1989). The commenter asked where the ICD–9–CM and CPT–4 information is being collected and what future plans are being implemented for the use of the information. The association was informed by its carrier that the carrier does not believe the ICD–9–CM and CPT–4 codes will eventually be used for a prospective payment system for physicians.

Response: Billing information is compiled by each carrier and then electronically transmitted to HCFA's Bureau of Data Management and Strategy in Baltimore, Maryland. This Bureau is largely responsible for performing HCFA's mathematical and statistical programming and for managing HCFA's statistical data bases to support program decisions by various HCFA components. Current and possible applications for the ICD–9–CM and CPT–4 coding information include answering research queries from private sources, development of quality assurance monitoring mechanisms, assessment of the impact of proposals that affect health care financing programs, or special research and evaluation studies. The Bureau uses diagnostic coding information to design and develop periodic statistical tabulations to assess the characteristics of beneficiaries and the utilization and cost of program benefits. The CPT–4 codes also are now used for payment purposes under the fee schedule for physician services.

Comment: One commenter was concerned about the increased costs for manpower and the reformatting of her billing system associated with implementation of the diagnostic coding requirement.

Response: We cannot predict the increased costs or manpower that an individual office would incur as a result of the diagnostic coding requirement. However, in the impact analysis to this final rule, we discuss our estimate of the aggregate costs associated with coding training and ICD–9–CM coding books. Also, as discussed in the impact analysis, we now estimate that about 90 percent of physicians included diagnostic coding on bills before it was required by section 1842(p) of the Act. These physicians may not have experienced as significant an increase in costs as physicians who did not code before the requirement was established.

Comment: One commenter stated that since general practitioners care for the whole patient, it is sometimes difficult to find an applicable diagnosis even after looking through 2,000 pages of codes. The physician recommended that we allow three digit codes to be used for procedures for which physicians routinely charge less than $200.

Response: We are aware that general practitioners are responsible for coding a wide range of diagnoses. To determine the correct code, Volume 2, Index, must be consulted first. After the correct code has been determined, Volume 1 is then referenced to determine if there are other coding conventions that apply, such as "Includes" or "Excludes" notes.

We cannot accept the recommendation to allow the use of three digit codes in any circumstance where an applicable four or five digit code exists. Codes must be used to their highest level of specificity; this may include some three digit codes. If diagnoses are coded to the highest level, using the same data base for all bills and requests for payment will permit meaningful trend analysis and data comparisons.

Comment: Several commenters stated that the estimate of 1 minute to code a bill or request for payment is too short. The estimate does not consider the time a physician spends with office staff to select the correct diagnosis code.

Response: The estimate of 1 minute to code a bill or request for payment was made by AHIMA based on their professional coding experience and expertise. We believe that this is a realistic figure for several reasons. First, there are many physicians who are specialists, and who will use only a small portion of the coding manuals during their normal course of business. We anticipate that these physicians and their office staffs will quickly identify those parts of the coding books that apply to their practice. Additionally, many offices have developed reference lists pertaining to the codes frequently used in their particular practices. Once this list has been developed, very little physician involvement is required for the coding process.

The amount of time necessary for the physician to work with his or her clerical staff in the selection of the correct diagnosis code(s) was not factored into the estimate of 1 minute. That estimate reflected the use of the code book or reference list and the documentation process, whether manual or key entry. We anticipate that the diagnosis code(s) will become as familiar to the office staffs as the recording of the narrative diagnostic language, and that completion of the billing form will proceed as smoothly as it did prior to the implementation of this diagnostic coding requirement.

B. Patient Information and Confidentiality

Comment: The American Psychiatric Association (APA) stated that there may be instances when the diagnosis information provided to the patient (particularly in non-assigned claims) could have an adverse impact on the patient and course of treatment. The APA suggests that HCFA have an exceptions process that allows the physician to determine whether diagnosis information should be directly provided to the patient.

Response: We agree, and note that there is already an established procedure for such situations. The physician should file the form HCFA–1500 on behalf of the beneficiary as required by section 1848(g)(4) of the Act. The form should include the appropriate diagnostic codes and should be forwarded to the Medicare carrier. If a physician determines that diagnostic information should not be released directly to a patient, the physician may furnish bills to the patient without diagnostic information. In addition to psychiatric diagnoses, physicians also may choose to use this procedure for terminal illnesses or other conditions of a sensitive nature.

Comment: The APA expressed a concern that HCFA should have a mechanism in place to assure that diagnostic information is kept confidential and not released to third parties except when permitted by law. It recommended that the regulations be amended to include privacy protection.

Response: We share the APA's concerns about the confidentiality of patient information. To assure that the beneficiary is protected, when we release medical data, the data do not include any patient-specific identifiers. Patient-specific medical data in the custody of HCFA and its intermediaries and carriers are fully protected by the Privacy Act (5 U.S.C. 552a).

C. Utilization Review

Comment: A pharmaceutical company is concerned that utilization review of physician services and future drug utilization review may be less effective because of the limitation of four diagnostic codes on the bill or request for payment.

Response: Utilization review of physician services will be enhanced by the diagnostic coding requirement since the information can be categorized by code and made available for immediate use. At this time, we have no plans to implement a drug utilization review program using the diagnostic coding information on the form HCFA–1500. We will consider the effect of the four diagnostic code limitations if we propose a drug utilization review program.

Comment: One commenter questioned the possibility of the physician diagnostic coding requirement eventually becoming a tool to standardize physician practice patterns nationwide without physician input.

Response: The information obtained from the ICD–9–CM codes will be used for compiling statistical information. Any new requirements or procedures would not be implemented without physician input and, if appropriate, a notice of proposed rulemaking.

Comment: One commenter asserted that the ICD–9–CM coding system is a bulky, unreliable system for gathering data.

Response: The ICD–9–CM coding system was developed under the guidance of the National Center for Health Statistics for greater specificity in reporting illnesses and injuries in the United States. The ICD–9–CM coding system is the best system available for recording the diagnoses of Medicare beneficiaries. The system is not considered unreliable by most users; however, errors do occur as a result of physicians' incorrect application of the codes.

To help make the coding system meet the needs of all users, we welcome input from interested physicians, organizations and the public through the ICD–9–CM Coordination and Maintenance Committee meetings.

Comment: One commenter asked for the name of an agency that can give advice and answer questions concerning coding issues.

Response: The AHA is the official clearinghouse for questions concerning the ICD–9–CM system. They accept written questions and will provide a written reply. The AMA is also providing ICD–9–CM coding advice to its members through their CPT Clearing House Hotline (312) 464–4737. In addition, each carrier has designated a contact person to answer the concerns raised by the physicians they service We encourage close communication between a physician and the carrier to avoid coding problems.

Comment: Several commenters expressed concern that requiring coding to the fifth digit is burdensome and will require a more skilled person to properly code the diagnoses. One commenter stated that prior to the new physician diagnostic coding requirement, coding by physicians was generally limited to three digits.

Response: We did not anticipate a significant burden upon physicians as a result of coding to the fifth digit level when the proposed rule was published, and have not had complaints from the physician community since that time. We continue to believe that most physicians or their office staff create reference lists of diagnoses encountered most often. Since 1979, the ICD–9–CM coding system has been in use and has contained five digit codes. Thus, we do not agree that coding by physicians previously was limited to three digits.

Comment: One commenter asserted that it would be advantageous if the format requirements for submitting bills

or requests for payment are published with the proposed rule.

Response: The Medicare Carriers Manual explains how to fill out bills and requests for payment. Basically, the only format requirement for the diagnostic coding is to put each appropriate code in the space that is provided for those codes under the heading "Nature of Illness or Injury."

The form HCFA–1500 and accompanying sections of the Carriers Manual are already subject to public comment, pursuant to the Paperwork Reduction Act of 1980. In accordance with that Act, OMB reviews the form HCFA–1500 and its instructions at least once every 3 years. The Department publishes a notice in the Federal Register that informs the public of OMB's review and solicits comments for OMB's consideration in the course of its review.

Comment: The AMA stated that pathologists have expressed a concern that failure to list a second diagnosis after V72.6, Laboratory examination, may lead to medical necessity review problems. The AMA requested that we inform the carriers that V72.6 code meets the Medicare coding requirements.

Response: We agree that in many instances one code (V72.6) will explain the reason for the patient's encounter. Carriers should identify a way of determining the proper coverage policy issue through the use of a screen. We recommend that all laboratory claims begin with the code V72.6, Laboratory examination. However, by supplying a second code to describe the reason for the referral, the bill or request for payment can clearly be identified as referrals to evaluate symptoms, signs, or diagnoses, instead of being part of a routine physical examination that is not covered by Medicare.

Comment: One commenter inquired about how the "V" codes should be sequenced for diagnostic services on the bill or request for payment.

Response: Ancillary diagnostic services, which are coded beginning with a "V," are provided in laboratories and radiology offices if the patient's main reason for the visit is to get an x-ray, (V72.5, Radiological examination, not elsewhere classified), or to have a test conducted (V72.6, Laboratory examination.) The condition for which the patient sought treatment will be reflected in the additional diagnoses. In coding ancillary diagnostic services, it may be helpful to question the reason for the encounter. The reason for the encounter is that the patient visited the laboratory or radiology office to have either an analysis performed or an x-ray taken.

D. Training

Comment: One commenter stated that HCFA's estimate that 70 percent of physicians and office staff will need ICD–9–CM coding training is a gross underestimate.

Response: We do not believe that our estimate of 70 percent of physicians and office staff in need of coding training was too low. In fact, we believe that most physicians and office staff did not require coding training. Immediately after implementation of the diagnostic coding requirement, medical review at the intermediary level did not reveal significant coding problems. Since that time, the majority of physician bills using ICD–9–CM coding have passed intermediary edits for accuracy. In addition, many physicians did not need training since they submitted ICD–9–CM codes prior to April 1989 due to the requirements of third party payers for non-Medicare patients. We believe that the lack of coding problems indicates that, if anything, we may have overestimated the proportion of physicians and office staff that needed training.

Comment: One commenter suggested that HCFA require the Medicare carriers to provide ICD–9–CM training and technical assistance to physicians and providers.

Response: The Medicare carriers were required by HCFA to provide initial ICD–9–CM coding training prior to the April 1, 1989 implementation date. A National Carriers Training program was held in February 1989 in preparation for the training done in each State by each carrier. The National Carriers Training was conducted by AHIMA, with input on the program from the AMA. Subsequently, each carrier was responsible for conducting its own training program on a state-by-state basis. In many cases, carriers worked with the State medical societies in conducting the training. Diagnostic coding training for physicians and physician office staffs has been ongoing since the implementation of this requirement, especially through courses and sessions sponsored by the private sector. For further information concerning coding training, physicians can contact their State medical society, the AMA, AHIMA, their State component of the medical record or medical health information association, or their carrier.

E. Sanctions Process and Civil Money Penalties

Comment: One commenter indicated that the sanction provisions for noncompliance with the coding requirements are illogical since coding bills or requesting payment with ICD–9–CM codes is essentially a clerical function. The civil monetary penalties and sanction actions by the Office of Inspector General are perceived as excessive since clerical errors of omission and inaccurately coded diagnoses will be inevitable. Another commenter recommended that the sanctions process should not apply to the ICD–9–CM coding requirement.

Response: Coding is a task routinely delegated by physicians to billing clerks or staff. However, this delegation does not relieve the physician of the responsibility to submit bills or requests for payment that meet the requirements of the law.

Comment: One medical association questioned whether the carrier considers the remarks on the explanation of the Medicare benefit (EOMB) form an advisement of a violation (for not including diagnostic coding on a bill or request for payment) that will be referred to the OIG for investigation and possible sanctions. The commenter asked why the carrier includes a remark in the EOMB stating that they will process this claim but will not process future claims. The association suggests that the message on the EOMB should contain a more complete and accurate statement.

Response: Messages that appear on the EOMB have been revised and are more clear and explanatory. It is not our intent to put the beneficiary at risk by not paying a bill or request for payment lacking an ICD–9–CM code. For claims submitted by physicians who do not accept assignment, the carrier will process the bill or request for payment as usual, substituting a "dummy" code for the ICD–9–CM coding.

The carrier will collect physician-specific information about the quantity of the dummy codes generated per physician. When a threshold of ten bills or requests for payment is reached, the carrier is instructed to contact the physician in order to explain the necessity of providing diagnostic coding and to help with training. If the physician subsequently knowingly, willfully, and in repeated cases fails to supply the requested codes, the Office of the Inspector General may invoke a civil money penalty.

F. Availability of the ICD–9–CM

Comment: Two commenters expressed concern that the Government

Printing Office (GPO) does not stock a sufficient supply of the ICD–9–CM coding books, which results in a 4-to-8 week delay in receiving the books.

Response: ICD–9–CM books are in stock at the special address mentioned elsewhere in this preamble. We are aware of the potential demand and have an adequate supply. All orders are sent by priority mail.

V. Impact Analysis

Unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) . For purposes of the RFA, all physicians are considered to be small entities.

The statutory requirement that physicians use diagnostic coding has been in effect since April, 1989, and we believe that the vast majority of physicians were already using ICD–9–CM coding even before that time. Thus, the economic impact of this final rule on the physician community should be minimal.

In the proposed rule, we prepared a voluntary impact analysis and voluntary regulatory flexibility analysis because of our inability to quantify with any degree of precision the estimated costs of these provisions and the large number of physicians who were affected by the provisions of section 1842(p) of the Act. These provisions require that each bill or request for payment for a service furnished by a physician include appropriate diagnostic coding related to the illness or injury for which the Medicare beneficiary received treatment. Under section 1842(p) of the Act, a physician who is to be paid on an assignment-related basis will not be paid if he or she fails to include appropriate diagnostic coding on the bill. In this final rule we have revised the impact analysis based on public comment.

With one exception, any effects of this final rule will be a direct result of the legislative provisions in section 1842(p) of the Act. The exception is a result of the discretion that section 1842(p)(1) of the Act provides the Secretary in the choice of which system to use to code diagnoses. We chose to use ICD–9–CM because it is the only comprehensive coding system that includes all possible diagnoses for Medicare beneficiaries. For that reason, it is already widely used by physicians. Furthermore, we are already using ICD–9–CM in the Medicare program for classifying DRGs for payment under the inpatient hospital prospective payment system. Therefore, we believe that it is the easiest coding system for physician use.

Before April 1, 1989, physicians were not required to provide ICD–9–CM or any other type of diagnostic codes on their Medicare bills or requests for payment. Therefore, we believe that physicians who were not coding before the provisions of section 1842(p) of the Act were affected through increased paperwork, the cost of training themselves and their staff, and the probable need to purchase Volumes 1 and 2 of the ICD–9–CM, fourth edition.

As of December 31, 1986, there were 569,160 physicians practicing in the United States (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). In the proposed rule, we estimated that at least 30 percent of physicians used ICD–9–CM codes before the requirements of section 1842(p) were established, presumably because of requirements of other third party payers that ICD–9–CM diagnosis or procedure codes be used on their claims. Thus, we estimated that up to 70 percent of practicing physicians did not report codes before the requirement was established (that is, approximately 398,000 physicians).

In this final rule, we have revised our estimate of the number of physicians who reported ICD–9–CM codes before the requirements of section 1842(p) of the Act were established. As stated in section III of this preamble, we provided for a 6-month grace period following the statutory implementation date of April 1, 1989, during which no claims would be denied for lack of coding. The grace period ended on October 1, 1989. It has been our experience that, when grace periods are established, providers usually do not comply with the required provisions until the end of the grace period, presumably because of lack of training or need for a preparation period. In this case, however, approximately 90 percent of the claims were coded using ICD–9–CM during the first month of the grace period, and the compliance rate remained at approximately 90 percent for the duration of the grace period. Moreover, intermediary review of these claims revealed no significant coding problems. Since the number of physicians that complied with the coding requirement remained stable throughout the grace period, we believe that the number of physicians who reported codes during the grace period is indicative of the number of physicians who were reporting codes before the requirement was established. Therefore, we now estimate that approximately 90 percent of physicians reported ICD–9–CM codes before April, 1989 (that is, approximately, 512,000 physicians). The discussion below reflects this revised estimate.

If all the physicians who did not report ICD–9–CM codes before April 1989 needed new coding books, ICD–9–CM Volumes 1 and 2 at a cost of $65.00 per set, the total cost would have been approximately $3,700,000. In practice, however, we believe that not all of these physicians needed to purchase new coding books. For example, some physicians belonged to group practices, some worked for hospitals and do not have their own patients, and some already owned coding books. For purposes of this impact analysis, however, we assume that all physicians who did not code before April, 1989 purchased new coding books.

In the proposed rule, in calculating costs of training and coding for physicians who did not code before April 1989, we estimated the average wages of a physician's office staff person at $4.50 an hour. In response to the July 21, 1989 proposed rule, we received several comments stating that we had underestimated the average hourly wages for a physician's office staff member. We agree that our estimate of $4.50 per hour was too low. In this final rule, we are revising our estimate of the hourly rate based on comments received on the proposed rule and our examination of the hourly wages of physicians' office staff in the monthly publication "Employment and Earnings" (U.S. Department of Labor Bureau of Labor Statistics, "Employment and Earnings" Vol. 37, No. 4, April 1990, p. 131 (Washington, DC)). Our revised estimate of the typical wage for a staff person at the time the requirement was established is $9.65 per hour.

Based on claims data, we believe there were approximately 320.1 million physician claims processed for the period from April 1, 1989 to March 31, 1990. We estimated that the clerical cost of coding each claim was $0.16 for a total of $51,216,000 for the first year that the requirement was in effect. We arrived at the $0.16 figure by assuming an hourly rate of the typical physician's office staff person to be $9.65 per hour, as explained above. We believe that it takes 1 minute to code a claim, therefore $9.65 divided by 60 minutes results in a $0.16 cost per claim. However, we believe that 90 percent of the claims were being coded prior to April 1, 1989. Thus, 10 percent of the cost of coding claims (approximately $5,120,000) can

be attributed to the provision of section 1842(p) of the Act.

We anticipated that each physician that did not report ICD–9–CM codes before April 1, 1989 would either send one or more persons for training, or may have determined that formal training was not needed. Some of those physicians may not have sent any staff since they are in a group practice, (in which case, one staff member may represent several physicians), or because they work for hospitals (in which case they would not submit Part B claims.)

Below, in two examples, we are providing the extremes of estimated training costs using the same methodology as set forth in the impact analysis of the proposed rule. In the first example, we assume that all physicians who did not code prior to April 1989 sent, on average, one of their office staff to attend a half-day session sponsored by a national firm. We anticipated that the cost of such a training session could have been as high as $100.00. Thus, for this estimate, we are assuming a cost of $100.00. Furthermore, we assume the physicians paid an hourly rate of $9.65 per hour to their employees while they attended the coding session. Given these assumptions, we estimated training costs as follows:

(All estimates are rounded to the nearest $10,000.)

Half-day (4 hours) at $9.65 per hour=$38.60; $38.60×57,000 employees	$2,200,000
Session cost $100.00×57,000 employees	5,700,000
Total training costs	$7,900,000

In the second example, we assume that physicians who did not code before the requirement was established in April 1989 sent, on average, one of their office staff to coding sessions sponsored by carriers or insurance companies at no cost. Assuming that the office employee was paid $9.65 an hour, we estimated the total training costs as follows:

Half-day (4 hours) at $9.65 per hour=$38.60; $38.60×57,000 employees	$2,200,000
Session costs	0
Total training costs	$2,200,000

Below, we show the total estimated first year costs for the two examples.

- For the first example, the total estimated first year costs consisted of:

Coding costs	$5,120,000
Training	7,300,000
Books	3,700,000
Total	$16,720,000

- For the second example, the total estimated first year costs consisted of:

Coding costs	$5,120,000
Training	2,200,000
Books	3,700,000
Total	$11,020,000

Therefore, we estimate that first year training costs were between $11 million and $16 million. The cost of updated books will be an ongoing expense. Training costs will be recurring to the extent that staff turnover will occur. Coding costs will be ongoing. However, we believe that coding time and costs will probably be reduced with experience.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have an impact on a significant number of small rural hospitals.

This final rule was reviewed by the Office of Management and Budget.

V. Paperwork Reduction Act

Regulations at § 424.32(a) and § 424.34(b) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511). These regulations and the information collection and record keeping requirements apply to the requirement that a physician provide appropriate diagnostic coding on each bill or request for payment for a physician service furnished under Medicare Part B. Public reporting burden for this collection of information is estimated to average one minute per submitted Part B claim. This includes time spent reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. The information and record keeping requirements associated with this final rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (approval number 0938–0008).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

I. 42 CFR part 405, subpart E is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians

A. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834 (a) and (b), 1842 (b) and (h), 1848, 1861(b), (v), and (aa) 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m (a) and (b), 1395u (b) and (h), 1395 w-4, 1395x(b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

B. In § 405.512 paragraph (c) introductory text is republished and paragraph (c)(8) is revised to read as follows:

§ 405.512 Carriers' procedural terminology and coding systems.

* * * * *

(c) *Guidelines.* The following considerations and guidelines are taken into account in evaluating a carrier's proposal to change its system of procedural terminology and coding:

* * * * *

(8) Compatibility of the proposed system with the carriers methods for determining payment under the fee schedule for physicians' services for services which are identified by a single element of terminology but which may vary in content.

* * * * *

II. 42 CFR part 424 is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

A. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842 (b) and (p), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j),

1302, 1395f, 1395g(c), 1395n, 1395u (b) and (p), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ii)

Subpart A—General Provisions

B. In § 424.3, the introductory text is republished and a definition for "ICD–9–CM" is added in alphabetical order to read as follows:

§ 424.3 Definitions.

As used in this part, unless the context indicates otherwise—

ICD–9–CM means International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

Subpart C—Claims for Payment

C. In § 424.32, paragraph (a) is revised to read as follows:

§ 424.32 Basic Requirements for all claims.

(a) A claim must meet the following requirements:

(1) A claim must be filed with the appropriate intermediary or carrier on a form prescribed by HCFA in accordance with HCFA instructions.

(2) A claim for physician services must include appropriate diagnostic coding using ICD–9–CM.

(3) A claim must be signed by the beneficiary or the beneficiary's representative (in accordance with § 424.36(b)).

(4) A claim must be filed within the time limits specified in § 424.44.

* * * * *

D. In § 424.34, the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 424.34 Additional requirements: Beneficiary's claim for direct payment.

* * * * *

(b) *Itemized bill from the hospital or supplier.* The itemized bill for the services, which may be receipted or unpaid, must include all the following information:

* * * * *

(4) A listing of the services in sufficient detail to permit determination of payment under the fee schedule for physicians' services; for itemized bills from physicians, appropriate diagnostic coding using ICD–9–CM must be used. (For example, a bill for ambulance service must specify the pick-up and delivery points.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 1993

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4900 Filed 3–3–94; 8:45 am]

BILLING CODE 4120–01–P

Administration for Children and Families

45 CFR Part 233

Aid to Families With Dependent Children Increase In Stepparent Income Disregard

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the change in the stepparent earned income disregards for the Aid to Families with Dependent Children (AFDC) program as provided under section 13742 of the Omnibus Budget Reconciliation Act (OBRA) of 1993. This provision increases the stepparent earned income disregard from $75 to $90.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Discussion of Rule Provision

Pursuant to section 402(a)(31) of the Social Security Act (the Act) the income of an AFDC dependent child's stepparent who lives in the same home as the child is counted in the monthly determination of eligibility and the amount of assistance. This provision is applied in States that do not have laws of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. Section 402(a)(31) also provides for the disregard of certain portions of the stepparent's income in determining the amount to be counted, including the first $75 of the stepparent's monthly earned income.

Effective October 1, 1989, Public Law 100–485 amended section 402(a)(8)(ii) of the Act by increasing the standard work expense disregard for AFDC applicants and recipients from $75 to $90. However, it did not increase the comparable $75 earned income disregard for stepparents.

Thus, to be consistent, section 13742 of Public Law 103–66, the Omnibus Budget Reconciliation Act (OBRA) of 1993, amended section 402(a)(31)(A) of the Act by increasing the earned income disregard for stepparents from $75 to $90 per month. We have amended § 233.20(a)(3)(xiv)(A) to reflect this statutory change.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

The amendment to this regulation is being published as a final rule. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds the Notice of Proposed Rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement of the reasons for doing so in the rules issued.

The Department finds that there is good cause to dispense with a Notice of Proposed Rulemaking with respect to this change. Publication of this rule in proposed form would be unnecessary as the change simply implements the statutory provision and does not involve administrative discretion.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule has no costs and merely conforms the codified regulation to the statute.

Paperwork Reduction Act

This rule does not require any information collection activities and therefore no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of this final rule is on State governments and individuals. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs,

Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

Dated: November 20, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: February 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 233 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 (note).

2. Section 233.20 is amended by revising paragraph (a)(3)(xiv)(A) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(xiv) * * *

(A) The first $90 of the gross earned income of the stepparent;

* * * * *

[FR Doc. 94–4899 Filed 3–3–94; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 91–213, FCC 94–9]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order modifies certain features of the price cap regulatory system applicable to local exchange carriers (LECs) to complement the FCC's recent restructure of the LECs' local transport rates. Specifically, the order moves transport services, including all the transmission-related elements, the tandem switching charge, and the interconnection charge, out of the price cap basket for traffic sensitive services, and places them into a combined "trunking" basket containing transport and special access services. The order realigns the service categories and subcategories within the trunking basket, and adapts the pricing bands applicable to these categories and subcategories, to reflect the similarities between certain special access and flat-rated transport services, and to accommodate the new density zone pricing system that the Commission adopted for both special access and transport. These rule changes encourage the LECs to align their transport rates to reflect more closely how costs are incurred, thus promoting more efficient usage and deployment of the country's telecommunications networks, advancing competition in both the long-distance and local access markets, and ultimately reducing access charges and long-distance rates and stimulating the economy by increasing demand for these services.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202–632–1304.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order in CC Docket No. 91–213, adopted on January 19, 1994 and released on January 31, 1994. The complete text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St. NW., room 230, Washington, DC 20554.

Synopsis of Second Report and Order

1. The Commission adopts its proposal to remove the transport service categories from the traffic sensitive basket and place them into a combined basket that also contains special access services. The Commission renames this merged basket the "trunking basket." The Commission is placing the tandem switching charge in the newly formed trunking basket, and keeping it in the same service category as tandem-switched transport. The Commission is placing the interconnection charge service category in the trunking basket.

2. The Commission is adopting a modified version of its proposal in the Further Notice in this proceeding, 57 FR 54205 (Nov. 17, 1992), on the arrangement of service categories within the newly formed trunking basket. The Commission concludes that flat-rated transport (entrance facilities, direct-trunked transport, and dedicated signalling transport) should be incorporated into the corresponding special access service categories. Thus, demand for voice grade flat-rated transport will be assigned to the existing voice grade-WATS-metallic-telegraph service category in the current special access basket for the purposes of computing the service band index (SBI) and pricing bands for that category. Demand for DS1 and DS3 flat-rated transport will be assigned, respectively, to the DS1 and DS3 subcategories of the high capacity-DDS service category in the current special access basket for purposes of computing the SBIs and bands for those subcategories. Tandem-switched transport (including the tandem switching element) and the interconnection charge will be separate service categories in the trunking basket.

3. The Commission concludes that the density pricing zone subcategories within the flat-rated transport service category should be incorporated into the existing zone subcategories within the existing DS3 and DS1 special access subcategories, with one exception. In some cases, a LEC might implement density zone pricing for transport in a different tariff year than it implemented density zone pricing for special access. In such circumstances, the Commission will require LECs to retain separate zone bands for special access and flat-rated transport services until the end of the tariff year following the tariff year in which density pricing was implemented for the later service. After that time, the zone bands for special access and transport can be consolidated.

4. The Commission is not modifying the pricing bands applicable to the transport or special access service categories at this time. The service category bands constrain the LECs' ability to offset rate reductions in some categories with rate increases in other categories.

5. The Commission is setting forth the details of establishing the indexes and banding limits for the new trunking basket and the realigned service categories within that basket. First, the 2% upper and 5% lower bands for tandem-switched transport and the 0% upper band for the interconnection charge apply to changes from the initial rates for these services as of the transport rate restructure, regardless of whether the LECs raised or lowered their local transport rates prior to the rate restructure. ("Initial rates" refers to the rates that became effective as a result of the September 1, 1993 initial restructured transport tariff filing, or rates that subsequently go into effect as the result of the mid-course correction.) Thus, the LECs should set their initial bands and SBIs for the tandem-switched transport and interconnection charge service categories using the baseline of the initial restructured rate levels.

6. Because 47 CFR part 61 does not explicitly address the manner in which service categories are to be merged, the Commission adopts transition rules

governing how the initial banding limits and indexes should be set for the new trunking basket and the realigned service categories within that basket. The initial degree of pricing flexibility for the trunking basket will be set by taking into account both the pricing flexibility currently available in the special access basket and the pricing flexibility available in the traffic sensitive basket (which currently includes transport). Thus, while the pre-existing actual price index (API) for the special access basket will be used as the initial API for the trunking basket, the PCI for the trunking basket should be set as follows. LECs should calculate the ratio between the pre-existing PCI for the special access basket and the API for that basket, and the ratio between the pre-existing PCI for the traffic sensitive basket and the API for that basket. A weighted average of these ratios should be derived using the base period revenue weights of the special access and transport services included in the trunking basket, respectively. This weighted average should be multiplied by the pre-existing API for the special access basket to derive the PCI for the trunking basket. (Base period demand for flat-rated transport elements (i.e., demand for the 1992 base year) should correspond with the historical demand used in computing the initial interconnection charge. The rates used in this formula should be the rates effective on the date that the transport rate restructure became effective, or rates that subsequently go into effect as the result of the mid-course correction.)

7. Similarly, adjustments to the upper and lower pricing bands applicable to the existing voice grade and high capacity/DDS service categories and the DS1 and DS3 subcategories are necessary to reflect the incorporation of comparable flat-rated transport rate elements. While the SBIs for these categories are to remain the same, the upper and lower bands should reflect a weighted average of the pre-existing upper and lower bands for the special access services and the 5% upper and lower bands for the flat-rated transport services. This weighted average should be calculated using the base period revenue weights of the special access and transport services included in each service category and subcategory. A comparable procedure will be used to incorporate transport services into a density pricing zone category that has already been established for special access services (or vice versa).

8. The changes adopted in the order necessitate adjustments to the price cap indexes. Accordingly, the Commission directs all LECs subject to the price cap rules to recalculate their price cap indexes pursuant to the decisions in the order. The LECs should file such recalculated indexes with the Commission in a special filing not accompanied by rate changes. The Commission delegates authority to the Chief, Common Carrier Bureau, to specify the format and timing of this filing. In addition, such recalculated indexes should be used as the basis of any price cap filing that changes rates of services in the trunking or traffic sensitive baskets.

9. Finally, the Commission clarifies some miscellaneous implementation matters. First, the Commission clarifies that its decision in the Second Reconsideration Order, 58 FR 45266 (Aug. 27, 1993) (requiring use of historical demand for all components of the formula for computing the interconnection charge) applies only to price cap LECs. Rate-of-return LECs continue to be subject to 47 CFR 61.38 and 61.39, and should continue to use projected demand to set transport rates. Consistent with the First Reconsideration Order, 58 FR 41184 (Aug. 3, 1993), however, these projections should only forecast demand growth, and should *not* attempt to forecast IXCs' reconfigurations in response to the transport rate restructure. Second, due to the difficulty of applying non-premium charges to flat-rate transport elements, the Commission modifies its rules to clarify that non-premium charges must be established only for the interconnection charge, and not for the facility-based transport elements. Third, the Commission modifies the rules to clarify that the LECs must waive certain non-recurring charges for a six-month period following the effective date of their restructured transport tariffs. Finally, the Commission is making limited technical changes to 47 CFR part 69.

10. In the Further Notice in this proceeding, 57 FR 54205 (Nov. 17, 1992), the Commission certified that the proposed rule changes would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party disagreed with that analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Public Law No. 69–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

11. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 4(i) and (j), 201–205, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201–205, 220, and 403, parts 61 and 69 of the Commission's rules are Amended as set forth below.

12. *It is further ordered* that the policies and rules adopted herein *shall be effective* upon publication in the **Federal Register**. Because the initial restructured transport rates went into effect on December 30, 1993, thus allowing LECs subject to price cap regulation to propose rate changes that do not comply with the policies adopted herein in the absence of these rule changes, good cause exists to make these rules effective less than 30 days from publication in the **Federal Register**.

13. *It is further ordered* that the Chief, Common Carrier Bureau is delegated the authority specified herein.

List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements. Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

47 CFR parts 61 and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by redesignating paragraphs (jj) and (kk) as paragraphs (kk) and (ll), respectively, and adding a new paragraph (jj), to read as follows:

§ 61.3 Definitions.

* * * * *

(jj) *Tariff year.* The period from the day in a calendar year on which a carrier's annual access tariff filing is scheduled to become effective through the preceding day of the subsequent calendar year.

* * * * *

3. Section 61.42 is amended by removing paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(v); redesignating paragraphs (e)(1)(vi) and (e)(1)(vii) as paragraphs (e)(1)(iii) and (e)(1)(iv), respectively; revising paragraph (d)(3),

redesignated paragraph (e)(1)(iii), the introductory text of paragraph (e)(2), paragraph (e)(2)(i), paragraph (e)(2)(iii), and paragraph (e)(2)(iv); and adding paragraphs (e)(2)(v) and (e)(2)(vi), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(3) A basket for trunking services as described in §§ 69.110, 69.111, 69.112, 69.114, 69.124, and 69.125 of this chapter;

* * * * *

(e)(1) * * *

(iii) Data base access services; and

* * * * *

(2) The trunking basket shall contain such transport and special access services as the Commission shall permit or require, including the following service categories and subcategories:

(i) Voice grade entrance facilities, voice grade direct-trunked transport, voice grade dedicated signalling transport, voice grade special access, WATS special access, metallic special access, and telegraph special access services;

* * * * *

(iii) High capacity flat-rated transport, high capacity special access, and DDS services, including the following service subcategories:

(A) DS1 entrance facilities, DS1 direct-trunked transport, DS1 dedicated signalling transport, and DS1 special access services; and

(B) DS3 entrance facilities, DS3 direct-trunked transport, DS3 dedicated signalling transport, and DS3 special access services;

(iv) Wideband data and wideband analog services;

(v) Tandem-switched transport, as described in § 69.111 of this chapter; and

(vi) Interconnection charge, as described in § 69.124 of this chapter.

* * * * *

4. Section 61.47 is amended as follows:

a. Paragraphs (f) and (g) are redesignated as paragraphs (f)(1) and (f)(2).

b. Paragraph (h)(1) is redesignated as paragraph (g)(1).

(c) Paragraph (i) is redesignated as paragraph (g)(4).

d. Paragraphs (e)(2) and (e)(3) are redesignated as paragraphs (g)(2) and (g)(3) and are revised.

e. Paragraph (h) is revised.

f. Headings are added to paragraphs (f) and (g).

g. The designation (1) in paragraph (e) is removed and paragraph (e) is revised.

(h) Add the words "or subcategories" after the words "service categories" in paragraphs (a) and (b).

i. Add the words "or subcategory" after the words "service category" in paragraphs (a) and (c).

j. Remove the words "Notwithstanding paragraphs (e) and (f) of this section" from redesignated paragraph (f)(2) and add in their place "Notwithstanding paragraph (f)(1) of this section".

k. Remove the words "Notwithstanding paragraph (e) of this section," from redesignated paragraphs (g)(1) and (g)(4) and capitalizing the word "the" in each sentence when the phrase is removed.

As amended above, § 61.47 reads as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (f), (g), and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in its SBI, to an annual increase or decrease of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year.

(f) *Dominant interexchange carriers.*

* * * * *

(g) *Local exchange carriers—Service categories and subcategories.*

* * * * *

(2) The upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. The lower pricing band for the tandem-switched transport service category shall limit the annual downward pricing flexibility for this service category, as reflected in its SBI, to five percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

(3) The upper pricing band for the interconnection charge service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to zero percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for the interconnection charge.

* * * * *

(h) *Local exchange carriers—Density pricing zones.*

(1) In addition to the requirements of paragraphs (g)(1) and (g)(2) of this section, those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate separate subindexes in each zone for each of the following groups of services:

(i) DS1 entrance facilities, DS1 direct-trunked transport, DS1 dedicated signalling transport, and DS1 special access services;

(ii) DS3 entrance facilities, DS3 direct-trunked transport, DS3 dedicated signalling transport, and DS3 special access services;

(iii) Voice grade entrance facilities, voice grade direct-trunked transport, and voice grade dedicated signalling transport, and (if the Commission, by order, designates such services as subject to competition) voice grade special access;

(iv) Tandem-switched transport; and

(v) Such other special access services that the Commission may designate by order.

(2) The annual pricing flexibility for each of the subindexes specified in paragraph (h)(1) of this section shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year.

5. Section 61.48 is amended by revising paragraphs (g) and (h) and adding paragraph (i), to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(g) *Local Transport Restructure—Initial Rates.* Local exchange carriers subject to price cap regulation shall set initial transport rates, as defined in § 69.2(tt) of this chapter, according to the requirements set forth in §§ 69.108, 69.110, 69.111, 69.112, 69.124, and 69.125 of this chapter.

(h) *Local Transport Restructure—Price Cap Transition Rules—(1) Definitions.* The following definitions apply for purposes of paragraph (h) of this section:

Effective date is March 4, 1994.

Initial restructured rates are rates that are (or should have been) effective on the transport restructure date;

Revenue weight of a given group of services included in a basket, service category, or subcategory is the ratio of base period demand for the given service rate elements included in the basket, service category, or subcategory priced at initial restructured rates, to the base period demand for the entire group of rate elements comprising the basket, service category, or subcategory priced at initial restructured rates; and

Transport restructure date is the date on which local exchange carriers' initial transport rates, as defined in § 69.2(tt) of this chapter, became effective.

(2) *Trunking Basket PCI and API.* (i) On the effective date, the PCI value for the trunking basket, as defined in § 61.42(d)(3), shall be computed by multiplying the API value for the special access basket on the day preceding the transport restructure date, by a weighted average of the following:

(A) The ratio of the PCI value that applied to the special access basket on the day preceding the transport restructure date, to the API value that applied to the special access basket on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the trunking basket; and

(B) The ratio of the PCI value that applied to the traffic sensitive basket on the day preceding the transport restructure date, to the API value that applied to the traffic sensitive basket on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the trunking basket.

(ii) On the effective date, the API value for the trunking basket referred to in § 61.42(e)(2) shall be equal to the API value for the special access basket on the day preceding the transport restructure date.

(3) *Service Category and Subcategory Pricing Bands for Flat-Rated Transport and Special Access.* From the effective date through the end of the tariff year, the following shall govern instead of §§ 61.47(e) and 61.47(g)(1). The pricing bands established for the voice grade and high capacity service categories referred to in §§ 61.42(e)(2)(i) and 61.42(e)(2)(iii) and the DS1 and DS3 service subcategories referred to in §§ 61.42(e)(2)(iii)(A) and 61.42(e)(2)(iii)(B), shall limit the pricing flexibility of the service category or subcategory, as reflected in its SBI, as follows:

(i) The upper pricing band shall be a weighted average of the following:

(A) The upper pricing band that applied to the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the category or subcategory; and

(B) 1.05 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

(ii) The lower pricing band shall be a weighted average of the following:

(A) The lower pricing band that applied to the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the special access services included in the category or subcategory; and

(B) 0.95 times the SBI value for the special access services included in the category or subcategory on the day preceding the transport restructure date, weighted by the revenue weight of the transport services included in the category or subcategory.

(iii) On the effective date, the SBI value for the category or subcategory shall be equal to the SBI value for the corresponding special access category or subcategory on the day preceding the effective date.

(4) *Tandem-Switched Transport and Interconnection Charge SBIs.* On the effective date, the SBIs for the tandem-switched transport and interconnection charge service categories defined in § 61.42(e)(2) (v) and (vi) shall be assigned an initial value prior to adjustment of 100, corresponding to the initial restructured rates in those categories.

(5) *Tandem-Switched Transport and Interconnection Charge Service Category Pricing Bands.* From the effective date through the end of the tariff year, the following shall govern instead of § 61.47 (g)(2) and (g)(3):

(i) The upper pricing band for the tandem-switched transport service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to two percent, measured from the initial restructured rates for tandem-switched transport. The lower pricing band for the tandem-switched transport service category shall limit the downward pricing flexibility for this service category, as reflected in its SBI, to five percent, measured from the initial restructured rates for tandem-switched transport.

(ii) The upper pricing band for the interconnection charge service category shall limit the upward pricing flexibility for this service category, as reflected in its SBI, to zero percent, measured from the initial restructured rate for the interconnection charge.

(i) *Transport and Special Access Density Pricing Zone Transition Rules*—(1) *Definitions.* The following definitions apply for purposes of paragraph (i) of this section:

Earlier date is the earlier of the special access zone date and the transport zone date.

Earlier service is special access if the special access zone date precedes the transport zone date, and is transport if the transport zone date precedes the special access zone date.

Later date is the later of the special access zone date and the transport zone date.

Later service is transport if the special access zone date precedes the transport zone date, and is special access if the transport zone date precedes the special access zone date.

Revenue weight of a given group of services included in a zone category is the ratio of base period demand for the given service rate elements included in the category priced at existing rates, to the base period demand for the entire group of rate elements comprising the category priced at existing rates.

Special access zone date is the date on which a local exchange carrier tariff establishing divergent special access rates in different zones, as described in § 69.123(c) of this chapter, becomes effective.

Transport zone date is the date on which a local exchange carrier tariff establishing divergent switched transport rates in different zones, as described in § 69.123(d) of this chapter, becomes effective.

(2) *Simultaneous Introduction of Special Access and Transport Zones.* Local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on the same date, shall initially establish density pricing zone SBIs and bands pursuant to the methodology in § 61.47(h).

(3) *Sequential Introduction of Zones in the Same Tariff Year.* Notwithstanding § 61.47(h), local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on different dates during the same tariff year, shall, on the earlier date, establish

density pricing zone SBIs and pricing bands using the methodology described in § 61.47(h), but applicable to the earlier service only. On the later date, such carriers shall recalculate the SBIs and pricing bands to limit the pricing flexibility of the services included in each density pricing zone category, as reflected in its SBI, as follows:

(i) The upper pricing band shall be a weighted average of the following:

(A) The upper pricing band that applied to the earlier services included in the zone category on the day preceding the later date, weighted by the revenue weight of the earlier services included in the zone category; and

(B) 1.05 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

(ii) The lower pricing band shall be a weighted average of the following:

(A) The lower pricing band that applied to the earlier services included in the zone category on the day preceding the later date, weighted by the revenue weight of the earlier services included in the zone category; and

(B) 0.90 times the SBI value for the services included in the zone category on the day preceding the later date, weighted by the revenue weight of the later services included in the zone category.

(iii) On the later date, the SBI value for the zone category shall be equal to the SBI value for the category on the day preceding the later date.

(4) *Introduction of Zones in Different Tariff Years.* Notwithstanding § 61.47(h), those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date do not occur within the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in § 61.47(h), but applicable to the earlier service only.

(i) On the later date, such carriers shall use the methodology set forth in paragraphs (a) through (d) of § 61.47 to calculate separate SBIs in each zone for each of the following groups of services:

(A) DS1 special access services;

(B) DS3 special access services;

(C) DS1 entrance facilities, DS1 direct-trunked transport, and DS1 dedicated signalling transport;

(D) DS3 entrance facilities, DS3 direct-trunked transport, and DS3 dedicated signalling transport;

(E) Voice grade entrance facilities, voice grade direct-trunked transport, and voice grade dedicated signalling transport;

(F) Tandem-switched transport; and

(G) Such other special access services as the Commission may designate by order.

(ii) From the later date through the end of the following tariff year, the annual pricing flexibility for each of the subindexes specified in paragraph (i)(4)(i) of this section shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the tariff year preceding the tariff year in which the later date occurs.

(iii) On the first day of the second tariff year following the tariff year during which the later date occurs, the local exchange carriers to which this paragraph applies shall establish the separate subindexes provided in § 61.47(h)(1), and shall set the initial SBIs for those density pricing zone categories that are combined (specified in paragraphs (i)(4)(i)(A) and (i)(4)(i)(C), (i)(4)(i)(B) and (i)(4)(i)(D), and (i)(4)(i)(E) and (i)(4)(i)(G) of this section) by computing the weighted averages of the SBIs that applied to the formerly separate zone categories, weighted by the revenue weights of the respective services included in the zone categories.

§ 61.49 [Amended]

6. Section 61.49(c) is amended by removing the cite "§§ 61.47(e) and (f)" and adding, in their place, the cite "§ 61.47(e), (f)(1), (g), and (h)"; and by removing the cite "§ 61.47(g)" and adding in their place, the cite "§ 61.47(f)(2)".

7. Section 61.49(d) is amended by removing the cite "§ 61.47(e)" and adding, in their place, the cite "§ 61.47(e), (g), and (h)".

§ 61.58 [Amended]

8. Section 61.58(c)(3) is amended by removing the cite "§§ 61.47(e) and (f)" and adding, in their place, the cite "§ 61.47(e), (f)(1), (g), and (h)"; and by removing the cite "§ 61.47(g)" and adding in their place, the cite "§ 61.47(f)(2)".

9. Section 61.58(c)(4) is amended by removing the cite "§ 61.47(e)" and adding, in their place, the cite "§ 61.47(e), (g), and (h)".

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

§ 69.110 [Amended]

2. Sections 69.110(c)(1) and 69.110(c)(2) are amended by removing the words "to recover the costs" and adding, in their place, the words "for use".

§ 69.113 [Amended]

3. Section 69.113(a) is amended by removing the words "69.110, 69.111, 69.112".

4. Section 69.113(d) is amended by removing the words "Transport element or elements" and adding, in their place, the words "interconnection charge element".

5. Section 69.113(e) is amended by removing the words "transport or".

§ 69.126 [Amended]

Section 69.126 is amended by removing the words "May 1, 1994" and adding, in their place, the words "six months after the effective date of the tariffs introducing initial transport rates".

[FR Doc. 94–4672 Filed 3–3–94; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 218]

Filing of Tariff Adoption Publications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a regulation which establishes a 60-day deadline for the filing of adoption publications. The regulation is intended to remove any possible ambiguity with regard to the existing regulation, which requires that such publications be filed "promptly".

EFFECTIVE DATE: This regulation is effective April 3, 1994.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: By decision served December 8, 1993 (58 FR 64717, December 9, 1993), the

Commission requested public comments on the desirability of amending § 1312.20(h) (49 CFR 1312.20(h)) to require that adoption publications be filed not more than 60 days after consummation of the event giving rise to their filing. The existing regulation specifies that adoption publications should be filed prior to consummation, if possible; and that, if for some reason filing cannot be accomplished prior to consummation, they should be filed as soon as possible thereafter, *i.e.* "promptly". The new regulation will replace "promptly" with the more specific requirement that adoption publications be filed no later than 60 days after consummation of the transaction.

The regulation is not controversial. The National Bus Traffic Association, Inc. filed the only response to our notice of proposed rulemaking, and it supported the regulation.

Timely filing of adoption publications is important. Absent a new carrier's filing of its own tariffs or adoption of the former carrier's tariffs, any operations conducted by the new carrier violate 49 U.S.C. 10761(a), which prohibits service by a carrier unless "the rate for transportation or service is contained in a tariff that is in effect * * *". Thus, the failure to timely file either new tariffs or adoption publications can result in a violation of the statute. Additionally, users and potential users of transportation services have no way of determining from the tariff system the rates for the new carrier's services unless adoption publications or new tariffs have been filed. We will adopt the regulation as proposed.

As indicated in the notice of proposed rulemaking, the 60-day deadline is intended only as the maximum allowable time; it should not be viewed as an opportunity to delay filings beyond the consummation date. As stated in both the old and new regulations, adoption publications should be filed prior to the consummation date whenever possible.

Environmental and Energy Considerations

This rule revision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analyses

Pursuant to 5 U.S.C. 605(b), we conclude that this action will not have a significant economic impact on a substantial number of small entities. The action merely clarifies the timing of a one-time filing requirement already required by the Commission's regulations. Thus, no new substantive requirements are being imposed.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

Decided: February 18, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1312 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762 and 10767.

2. In § 1312.20, paragraph (h)(1) is revised to read as follows:

§ 1312.20 Transfer of operations—change in name and control.

* * * * *

(h) * * *

(1) The effective date of adoption publications is the date of consummation of the transaction for which such publications are required. Adoption publications shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter.

* * * * *

[FR Doc. 94–4982 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB89

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for 21 Plants From the Island of Hawaii, State of Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 20 plants: *Clermontia lindseyana* ('oha wai), *Clermontia peleana* ('oha wai), *Clermontia pyrularia* ('oha wai), *Colubrina oppositifolia* (kauila), *Cyanea copelandii* ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (haha), *Cyanea shipmanii* (haha), *Cyanea stictophylla* (haha), *Cyrtandra giffardii* (ha'iwale), *Cyrtandra tintinnabula* (ha'iwale), *Ischaemum byrone* (Hilo ischaemum), *Isodendrion pyrifolium* (wahine noho kula), *Mariscus fauriei* (no common name (NCN)), *Nothocestrum breviflorum* ('aiea), *Ochrosia kilaueaensis* (holei), *Plantago hawaiensis* (laukahi kuahiwi), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (loulu), *Tetramolopium arenarium* (NCN), and *Zanthoxylum hawaiiense* (a'e). The Service also determines threatened status for one plant, *Silene hawaiiensis* (NCN). All but eight of the taxa are endemic to the island of Hawaii, Hawaiian Islands; the exceptions were from the islands of Niihau, Kauai, Oahu, Molokai, Lanai, and/or Maui as well as Hawaii. The 21 plant taxa and their habitats have been variously affected or are currently threatened by competition, predation or habitat degradation from introduced species, habitat loss from development and other human activities, natural disasters and stochastic events. This rule implements the Federal protection provisions provided by the Act for these plants. One taxon, *Hesperocnide sandwicensis*, which had been proposed for listing with the above species, has been withdrawn from consideration as a result of additional information received indicating the species is more abundant than previously believed. A notice withdrawing the proposal is published in the **Federal Register** concurrently with this final rule.

EFFECTIVE DATE: This rule takes effect on April 4, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia Cyanea copelandii ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla,*

Cyrtandra giffardii, Cyrtandra tintinnabula, Hesperocnide sandwicensis, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiensis, Portulaca sclerocarpa, Pritchardia affinis, Silene hawaiiensis, Tetramolopium arenarium, and *Zanthoxylum hawaiiense* are endemic to or have the majority of their populations on the island of Hawaii, Hawaiian islands. Thirteen of these taxa are endemic to the Island of Hawaii; four additional taxa are now found only on Hawaii. One of these taxa is now or was previously also known from Niihau, one from Kauai, two from Oahu, four from Molokai, four from Lanai, and six from Maui.

The island of Hawaii is the southernmost, farthest east, and the youngest of the eight major Hawaiian Islands. This largest island of the Hawaiian archipelago comprises 4,038 square miles (mi) (10,458 square kilometers (km)), or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten rock deep within the Earth. As the Pacific Plate, a section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most active volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 13,796 feet (ft) (4,205 meters (m)) and Kohala at 5,480 ft (1,670 m), both extinct; Hualalai, at 8,271 ft (2,521 m), which is dormant and will probably erupt again; and Mauna Loa, at 13,677 ft (4,169 m) and Kilauea, at 4,093 ft (1,248 m), both of which are currently active and adding land area to the island. Compared to Kauai, which is the oldest of the main islands and was formed about 5.6 million years ago, Hawaii is very young, with fresh lava and land up to 0.5 million years old (Cuddihy and Stone 1990, Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983).

Because of the large size and range of elevation of the island, Hawaii has a great diversity of climates. Windward (northeastern) slopes of Mauna Loa have rainfall up to 300 inches (in) (118 centimeters (cm)) per year in some areas. The leeward coast, shielded by the mountains from rain brought by trade winds, has areas classified as desert and receiving as little as 7.9 in (20 cm) of rain annually. The summits of Mauna Loa and Mauna Kea experience snowfall each year, and Mauna Kea was glaciated during the last Ice Age (Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983, Wagner *et al.* 1990).

Plant communities on Hawaii include those in various stages of primary succession on the slopes of active and dormant volcanoes, some in stages of secondary succession following disturbance, and relatively stable climax communities. On Hawaii, vegetation is found in all classifications: Coastal, dryland, montane, subalpine, and alpine; dry, mesic, and wet; and herblands, grasslands, shrublands, forests, and mixed communities. The vegetation and land of the island of Hawaii have undergone much change through the island's history. Since it is an area of frequent volcanic activity, vegetated areas are periodically replaced with bare lava. Polynesian immigrants, first settling on Hawaii by 750 A.D., made extensive alterations in lowland areas for agriculture and habitation. European contact with Hawaii brought intentional and inadvertent introductions of alien plant and animal species. By 1960, 65 percent of the total land area of the island of Hawaii was used for grazing, and much land has also been converted to modern cropland (Cuddihy and Stone 1990, Gagne and Cuddihy 1990).

The 21 taxa included in this rule occur between sea level and 8,600 ft (0 and 2,260 m) in elevation in various portions of the island of Hawaii. A number of the taxa are also found in central Kauai (one taxon), in the Waianae Mountains of Oahu (one taxon), on eastern Molokai (three taxa), in central and southern Lanai (two taxa), and on east Maui (three taxa). Most of the species in this rule exist as remnant plants persisting in grazed areas or in higher elevations which have only recently been heavily invaded by alien plant and animal species. The taxa in this rule grow in a variety of vegetation communities (herbland, shrublands, and forests), elevational zones (coastal, lowland, montane, and subalpine), and moisture regimes (dry, mesic, and wet). One taxon is found in each of two coastal habitats: Dry shrubland and mesic forest. In lowland habitats, five taxa are found in dry forest, four in mesic forest, and two in wet forest. In montane habitats, one taxon is found in wet herbland, three taxa in dry shrubland, three in dry forest, four in mesic forest, and five in wet forest. In the subalpine area, one taxon is found in dry shrubland and two taxa in dry forest.

The land on which these 21 plant taxa are found is owned by various private parties, the State of Hawaii (including conservation district lands, forest reserves, natural area reserves, State parks, and the State seabird sanctuary), or is owned or managed by the Federal government (including a U.S. Fish and Wildlife Service refuge, a U.S. Army military reservation and a military training area, a National Park, and a U.S. Coast Guard lighthouse area).

Discussion of the 21 Taxa Included in This Rule and the One Taxon Withdrawn From Consideration for Listing

Rock (1957) named *Clermontia hawaiiensis* var. *grandis* on the basis of sterile specimens collected on the island of Hawaii in the 1950s. Later, after examining fertile material, he named the taxon *C. lindseyana* and also described a variety, var. *livida* (Rock 1962). The specific epithet commemorates Thomas Lindsey, a naturalist who brought the species to Rock's attention. St. John (1987a) described two other species, *C. albimontis* and *C. viridis*, but the author of the current treatment of the genus (Lammers 1990, 1991) considers St. John's species to fall within the range of *C. lindseyana* and recognizes no subspecific taxa.

Clermontia lindseyana of the bellflower family (Campanulaceae) is a terrestrial or epiphytic (not rooted in the soil) branched shrub or tree 8.2 to 20 ft (2.5 to 6 m) tall. The alternate, stalked, toothed leaves are 5 to 9 in (13 to 24 cm) long and 1.5 to 2.6 in (3.8 to 6.5 cm) wide. Two flowers, each with a stalk 0.4 to 1 in (1 to 2.5 cm) long, are positioned at the end of a main flower stalk 1 to 1.6 in (2.5 to 4 cm) long. The calyx (fused sepals) and corolla (fused petals) are similar in size and appearance, and each forms a slightly curved, five-lobed tube 2.2 to 2.6 in (5.5 to 6.5 cm) long and 0.4 to 0.7 in (0.9 to 1.8 cm) wide which is greenish white or purplish on the outside and white or cream-colored on the inside. The berries are orange and 1 to 1.6 in (2.5 to 4 cm) in diameter. This species is distinguished from others in this endemic Hawaiian genus by larger leaves and flowers, similar sepals and petals, and spreading floral lobes (Cuddihy et al. 1983, Lammers 1990, 1991).

Historically, *Clermontia lindseyana* was known from the island of Maui on the southern slope of Haleakala and from the island of Hawaii on the eastern slope of Mauna Kea and the eastern, southeastern, and southwestern slopes of Mauna Loa. One population of the species is known to be extant on State-owned land on Maui. This population

extends from Wailaulau Gulch to Manawainui Gulch and contains between 100 and 150 plants (Robert Hobdy, Department of Land and Natural Resources, *in litt.*, 1993). The 14 known populations on the island of Hawaii extend over a distance of about 53 by 13 mi (85 by 21 km). Populations are found near Laupahoehoe, in Piha, in Makahanaloa, near Puaakala, near Puu Oo, near Kulani Correctional Facility, near Kapapala, in Waiea Tract, near Kaapuna Lava Flow, and near Kahuku on privately and State-owned land. Approximately 125 to 175 individuals exist (Hawaii Heritage Program (HHP) 1991a1 to 1991a13). This species typically grows in *Acacia koa* (koa)- and *Metrosideros polymorpha* ('ohi'a)-dominated Montane Mesic Forests, often epiphytically, at elevations between 4,000 and 7,050 ft (1,220 and 2,150 m) (Gagne and Cuddihy 1990, HHP 1991a1 to 1991a13, Hawaii Plant Conservation Center (HPCC) 1991a, Lammers 1990, 1991). Associated species include *Coprosma* sp. (pilo), *Ilex anomala* (kawa'u), and *Myrsine* sp. (kolea) (HHP 1991a2, 1991a5, HPCC 1991a; Fern Duvall, Olinda Endangered Species Propagation Facility, pers. comm., 1992). The major threats to *Clermontia lindseyana* are competition from alien plant species such as *Passiflora mollissima* (banana poka) and *Pennisetum clandestinum* (Kikuyu grass), grazing and trampling by cattle (*Bos taurus*) and goats (*Capra hircus*), and habitat disturbance by feral pigs (*Sus scrofa*) (Cuddihy *et al.* 1983, HPCC 1991a, Pratt and Cuddihy 1991; F. Duvall and Arthur Medeiros, Haleakala National Park, pers. comms., 1992).

Clermontia peleana was first collected by John Lydgate at Hamakua, island of Hawaii, and listed as an unnamed variety of *C. gaudichaudii* by Hillebrand (1888). Rock later collected a specimen of the taxon near Kilauea, the volcano home of the Hawaiian goddess Pele, after whom he named the species (Rock 1913). Other names by which the species has been known include: *Clermontia gaudichaudii* var. *singuliflora* (Rock 1919b), *C. singuliflora* (Rock 1919b), *C. gaudichaudii* var. *barbata* (Rock 1919b), *C. clermontioides* var. *singuliflora* (Hochreutiner 1934); *C. clermontioides* var. *mauiensis*, a superfluous name (Hochreutiner 1934); and *C. clermontioides* var. *barbata* (St. John 1973). In the most recent treatment of the species (Lammers 1991), two subspecies of *C. peleana*, ssp. *singuliflora* and ssp. *peleana*, are recognized.

Clermontia peleana of the bellflower family is an epiphytic shrub or tree 5 to 20 ft (1.5 to 6 m) tall which grows on 'ohi'a, koa, *Cheirodendron trigynum* ('olapa), and *Sadleria* spp. (ama'u). The alternate, stalked, oblong or oval, toothed leaves reach a length of 3 to 8 in (8 to 20 cm) and a width of 1.2 to 2 in (3 to 5 cm). Flowers are single or paired, each on a stalk 1.2 to 1.8 in (3 to 4.5 cm) long with a main stalk 0.3 to 0.7 in (0.8 to 1.7 cm) long. Five small green calyx lobes top the hypanthium (basal portion of the flower). The blackish-purple (ssp. *peleana*) or greenish-white (ssp. *singuliflora*) petals, 2 to 2.8 in (5 to 7 cm) long and 0.3 to 0.5 in (0.8 to 1.3 cm) wide, are fused into a one-lipped, arching tube with five down-curved lobes. Berries of ssp. *peleana* are orange and 1 to 1.2 in (2.5 to 3 cm) in diameter; berries of ssp. *singuliflora* are unknown. This species is distinguished from others of the genus by its epiphytic growth habit; its small green calyx lobes; and its one-lipped, blackish-purple or greenish-white corolla (Lammers 1990, 1991).

Historically, *Clermontia peleana* ssp. *peleana* has been found only on the island of Hawaii on the eastern slope of Mauna Loa and the northeastern and southeastern slopes of Mauna Kea. Today, the taxon is found near Waiakaumalo Stream, by the Wailuku River, near Saddle Road, and between the towns of Glenwood and Volcano. The six known populations, which extend over a distance of about 12 by 5 mi (19 by 8 km), are located on State- and federally-owned land and contain a total of approximately eight known individuals (HHP 1991b1 to 1991b7). *Clermontia peleana* ssp. *singuliflora* was formerly found on the island of Hawaii on the northern slope of Mauna Kea and on East Maui on the northwestern slope of Haleakala, but the taxon has not been seen in either place since early in the century and is believed to be extinct (HHP 1991c1 to 1991c3, Wagner *et al.* 1990). This species typically grows epiphytically in Montane Wet Forests dominated by koa, 'ohi'a, and *Cibotium* spp. and/or *Sadleria* spp. (tree ferns) at elevations between 1,740 and 3,800 ft (530 and 1,160 m) (HHP 1991b1 to 1991b4, 1991b6, 1991b7, Lammers 1990, 1991). Associated species include 'olapa, *Melicope clusiifolia* (kolokolo mokihana), and *Scaevola chamissoniana* (naupaka kuahiwi) (HHP 1991b1; Warren L. Wagner, Smithsonian Institution, pers. comm., 1992). The major threats to *Clermontia peleana* are habitat disturbance caused by feral pigs and illegal cultivation of *Cannabis sativa* (marijuana), roof or black rat (*Rattus rattus*) damage, flooding, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (Bruegmann 1990, Center for Plant Conservation (CPC) 1990).

A sterile specimen of *Clermontia pyrularia* was first collected on Mauna Kea, island of Hawaii, during the United States Exploring Expedition of 1840 and 1841 and was named *Delissea obtusa* var. *mollis* by Gray (1861b). Later, Hillebrand (1888) collected fertile specimens of the taxon and named it *C. pyrularia*, referring in the specific epithet to the fruits, which are sometimes shaped like those of *Pyrus* (pear).

Clermontia pyrularia of the bellflower family, a terrestrial tree 10 to 13 ft (3 to 4 m) tall, has alternate toothed leaves 5.9 to 11 in (15 to 28 cm) long and 1 to 2 in (2.5 to 5 cm) wide with winged petioles. A cluster of two, three, or sometimes up to five flowers has a main stalk 1.1 to 2.4 in (2.8 to 6 cm) long; each flower has a stalk 0.3 to 0.8 in (0.8 to 2 cm) long. Five small green calyx lobes top the hypanthium. The white or greenish-white petals are covered with fine hairs, measure 1.6 to 1.8 in (4 to 4.5 cm) long, and are fused into a curved two-lipped tube 0.2 to 0.3 in (5 to 8 mm) wide with five spreading lobes. The orange berry is inversely ovoid or inversely pear-shaped. This species is distinguished from others of the genus by its winged petioles; its small, green calyx lobes; its two-lipped flowers with white or greenish-white petals; and the shape of its berry (Lammers 1990, 1991).

Historically, *Clermontia pyrularia* has been found only on the island of Hawaii on the northeastern slope of Mauna Kea, the western slope of Mauna Loa, and the saddle area between the two mountains. Today, the species is found near the Humuula-Laupahoehoe boundary, near Hakalau Gulch, near Kealakekua, and near Kaawaloa. The five extant populations, which extend over a distance of about 47 by 6 mi (76 by 10 km), are located on privately, State and federally owned land. Although the exact number of individuals is not known, it is likely that not more than five individuals exist (HHP 1991d1 to 1991d6). This species typically grows in koa- and/or 'ohi'a-dominated Montane Wet Forests and Subalpine Dry Forests at elevations between 3,000 and 7,000 ft (910 and 2,130 m) (HHP 1991d2 to 1991d5, Lammers 1990, 1991). Associated species include pilo, *Lythrum maritimum* (pukamole), and *Rubus hawaiensis* ('akala) (HHP 1991d2, 1991y). The major threat to *Clermontia pyrularia* is competition from alien grasses and shrubs in the forest understory and banana poka as well as stochastic extinction and/or reduced

reproductive vigor due to the small number of existing populations and individuals (HHP 1991d2).

Colubrina oppositifolia was first collected by Remy in the 1850s and was named in 1867 by Adolphe Theodore Brongniart (Mann 1867). The specific epithet describes the plant's opposite leaf arrangement. St. John (1979) called Oahu plants *C. oppositifolia* var. *obatae*, but no subspecific taxa are recognized in the current treatment of the genus (Wagner *et al.* 1990).

Colubrina oppositifolia of the buckthorn family (Rhamnaceae), a tree 16 to 43 ft (5 to 13 m) tall, has opposite, stalked, oval, thin, pinnately veined, toothless leaves with glands on the lower surface. Leaves measure 2.4 to 4.7 in (6 to 12 cm) long and 1.2 to 2.8 in (3 to 7 cm) wide in mature plants and are larger in seedlings. Ten to 12 bisexual flowers are clustered at the end of a main stalk 0.1 to 0.3 in (3 to 8 millimeters (mm)) long; each flower has a stalk about 0.07 to 0.1 in (2 to 3 mm) long which elongates in fruit. The five triangular sepals measure about 0.06 to 0.08 in (1.5 to 2 mm) long, and the five greenish-yellow or white petals are about 0.06 in (1.5 mm) long. The somewhat spherical fruit, 0.3 to 0.4 in (8 to 11 mm) long, is similar to a capsule and opens explosively when mature. This species can be distinguished from the one other species of the genus in Hawaii by its growth habit and the arrangement, texture, venation, and margins of its leaves (Wagner *et al.* 1990).

Historically, *Colubrina oppositifolia* was found on the island of Oahu in the central and southern Waianae Mountains and on the island of Hawaii in the following areas: The Kohala Mountains; the northern slope of Hualalai; and the western, southwestern, and southern slopes of Mauna Loa. Today, the species is known on Oahu in eastern Makaleha Valley, Mokuleia Forest Reserve, and Makua Valley; on Mt. Kaala; and near Honouliuli Contour Trail on privately and State-owned and federally managed land. The 6 extant populations on Oahu, which extend over a distance of about 9 by 4 mi (14 by 6 km), contain approximately 94 known individuals (HHP 1991e1, 1991e2, 1991e5, 1991e9 to 1991e12). On the island of Hawaii, there are 7 extant populations which extend over a distance of about 16 by 4 mi (26 by 6 km), are located on privately and State-owned land, and contain about 185 to 205 known individuals. The species occurs along the Mamalahoa Highway on the northern slope of Hualalai as well as in Kapua and Puueo in the southernmost portion of the island (HHP 1991e3, 1991e4, 1991e6 to 1991e8, 1991e13 to 1991e16). This species typically grows in *Diospyros sandwicensis* (lama)-dominated Lowland Dry and Mesic Forests, often on aa lava, at elevations between 800 and 3,000 ft (240 and 910 m). Associated species include *Canthium odoratum* (alahe'e) and *Reynoldsia sandwicensis* ('ohe) (HHP 1991e3, 1991e8, 1991e9, 1991e15, 1991e16, HPCC 1991b). The major threats to *Colubrina oppositifolia* are competition from alien plant species such as *Lantana camara* (lantana), *Pennisetum setaceum* (fountain grass), and *Schinus terebinthifolius* (Christmas berry); habitat disturbance by feral pigs; plant damage and death from black twig borer (*Xylosandrus compactus*); fire; damage and disturbance from military exercises; and limited regeneration (HHP 1991e4, 1991e8, 1991e9, 1991e15, 1991e16; Joel Q. Lau, The Nature Conservancy of Hawaii, pers. comm., 1992).

Rock (1917) named *Cyanea copelandii* to honor his collecting companion, M.L. Copeland, with whom he first collected the species in 1914 on the island of Hawaii (Rock 1917). St. John (1987b, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. copelandii*. The current treatment of the family (Lammers 1990), however, maintains the separation of the two genera, and plants found on the island of Hawaii are considered to be *C. copelandii* ssp. *copelandii*. Subspecies *haleakalaensis*, found on Maui, is not as rare.

Cyanea copelandii ssp. *copelandii* of the bellflower family is a shrub with a habit similar to that of a woody vine. The alternate, stalked, toothed leaves are 7.9 to 10.6 in (20 to 27 cm) long and 1.4 to 3.3 in (3.5 to 8.5 cm) wide and have fine hairs on the lower surface. Five to 12 flowers are clustered on the end of a main stalk 0.8 to 1.8 in (2 to 4.5 cm) long; each flower has a stalk 0.2 to 0.6 in (0.4 to 1.6 cm) long. The slightly hairy hypanthium is topped by five small, triangular calyx lobes. Petals, which are yellowish but appear rose-colored because of a covering of dark red hairs, are fused into a curved tube with five spreading lobes; the corolla is 1.5 to 1.7 in (3.7 to 4.2 cm) long and about 0.2 in (4 to 5 mm) wide. Berries are dark orange and measure 0.3 to 0.6 in (0.7 to 1.5 cm) long. This subspecies is distinguished from ssp. *haleakalaensis*, the only other subspecies of *Cyanea copelandii*, by its narrower leaves. The species differs from others in this endemic Hawaiian genus by its growth habit and the size, shape, and dark red pubescence of its corolla (Lammers 1990).

Cyanea copelandii ssp. *copelandii*, which has been collected only twice on the southeastern slope of Mauna Loa near Glenwood, was last seen in 1957. It is difficult to adequately survey the area because of vegetation density and the terrain. This population, located on State-owned land, was sighted recently enough that it is still considered extant and contains an unknown number of individuals (HHP 1991f; Thomas Lammers, Field Museum, pers. comm., 1992). This taxon often grows epiphytically and is typically found in Montane Wet Forests at elevations between 2,200 and 2,900 ft (660 and 880 m) (Lammers 1990). Associated species include tree ferns (HHP 1991f). The major known threat to *Cyanea copelandii* ssp. *copelandii* is stochastic extinction and/or reduced reproductive vigor due to the single known population.

Using sterile type material, Rock (1957) named *Cyanea carlsonii* to honor Norman K. Carlson, who first saw the taxon (Degener *et al.* 1969). Carlson cultivated a plant of the taxon in his garden, from which Rock later described the flowers and fruit (Rock 1962). Recently, St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonymy with *Delissea*, resulting in the new combination *Delissea carlsonii*, but Lammers (1990) retains both genera in the currently accepted treatment of the family. He also considers the taxon to be a subspecies of another species, resulting in the name *C. hamatiflora* ssp. *carlsonii* (Lammers 1988).

Cyanea hamatiflora ssp. *carlsonii* of the bellflower family, a palm-like tree, grows 9.8 to 26 ft (3 to 8 m) tall and has alternate stalkless leaves 20 to 31 in (50 to 80 cm) long and 3 to 5.5 in (8 to 14 cm) wide. Clusters of 5 to 10 flowers have a main stalk 0.6 to 1.2 in (1.5 to 3 cm) long; each flower has a stalk 0.2 to 0.5 in (0.5 to 1.2 cm) long. The hypanthium is topped with five small narrow calyx lobes. The magenta petals are fused into a one-lipped tube 2.3 to 3.1 in (6 to 8 cm) long and 0.2 to 0.4 in (0.6 to 1.1 cm) wide with five down-curved lobes. The purplish-red berries are topped by the persistent calyx lobes. This subspecies is distinguished from ssp. *hamatiflora*, the only other subspecies, by its long flower stalks and larger calyx lobes. The species differs from others in the genus by its growth habit, its stalkless leaves, the number of flowers in each cluster, and the size and

shape of the corolla and calyx (Lammers 1990).

Cyanea hamatiflora ssp. *carlsonii* is only known to have occurred at two sites on the island of Hawaii, on the western slope of Hualalai and the southwestern slope of Mauna Loa. These two extant populations, located on privately and State-owned land at Honuaulu Forest Reserve and Keokea, are about 28 mi (45 km) apart and contain approximately 19 individuals (HHP 1991g1, 1991g2, HPCC 1991c1 to 1991c3). This taxon typically grows in 'ohi'a-dominated Montane Wet Forests at elevations between 4,000 and 5,700 ft (1,220 and 1,740 m) (HHP 1991g1, 1991g2, Lammers 1990). Associated species include kawa'u, pilo, and *Myoporum sandwicense* (naio) (HHP 1991g1). The major threats to *Cyanea hamatiflora* ssp. *carlsonii* are competition from alien plant species such as banana poka, grazing and trampling by cattle, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991g2; Carolyn Corn, Hawaii Department of Land and Natural Resources (Hawaii DLNR), *in litt.*, 1991).

Based on sterile specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841, Gray (1861b) noted *Cyanea grimesiana* var. ? *citrullifolia*. Rock collected the plant in 1955 in the company of Herbert Shipman, after whom he named it as a species, resulting in *Cyanea shipmanii* (Rock 1957). St. John (1987b, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonomy with *Delissea*, resulting in *Delissea shipmanii*, but Lammers (1990) retains the species in the genus *Cyanea*.

Cyanea shipmanii of the bellflower family is an unbranched or few-branched shrub 8 to 13 ft (2.5 to 4 m) tall with small sharp projections, especially in young plants. The alternate, stalked leaves are 6.7 to 12 in (17 to 30 cm) long, 2.8 to 5.5 in (7 to 14 cm) wide, and deeply cut into 20 to 30 lobes per leaf. Flowers are covered with fine hairs and are clustered in groups of 10 to 15, the main stalk 0.4 to 1.2 in (1 to 3 cm) long and each flower stalk 0.4 to 0.6 in (1 to 1.5 cm) long. The hypanthium is topped with five small calyx lobes. The pale greenish-white petals, 1.2 to 1.4 in (3 to 3.6 cm) long, are fused into a curved five-lobed tube 0.1 to 0.2 in (3 to 4 mm) wide. The fruit is an ellipsoid berry. This species differs from others in the genus by its slender stems; stalked, pinnately lobed leaves; and smaller flowers (Lammers 1990).

Cyanea shipmanii has been known from only one population, located on the island of Hawaii on the eastern slope of Mauna Kea on privately owned land. When originally discovered, only 1 mature plant was found, with a total population size of fewer than 50 individuals (HHP 1991h). This species typically grows in koa- and 'ohi'a-dominated Montane Mesic Forests at elevations between 5,400 and 6,200 ft (1,650 and 1,900 m) (HHP 1991h, Lammers 1990). Associated species include kawa'u and kolea (HHP 1991h). The major threat to *Cyanea shipmanii* is stochastic extinction and/or reduced reproductive vigor due to the single existing population and the small number of known individuals.

Based on a specimen he collected in 1912 on Mauna Loa, island of Hawaii, Rock (1913) described *Cyanea stictophylla*, choosing the specific epithet to refer to the long and narrow leaves. Other names by which the taxon has been known include: *Cyanea palakea* (Forbes 1916), *C. quercifolia* var. *atropurpurea* (Wimmer 1953), *C. stictophylla* var. *inermis* (Rock 1957), and *C. nelsonii* (St. John 1976). St. John (St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species to the genus *Delissea*, the older of the two generic names, creating *D. nelsonii*, *D. palakea*, *D. quercifolia* var. *atropurpurea*, *D. stictophylla*, and *D. stictophylla* var. *inermis* (St. John 1987b). The separation of the two genera is maintained in the current treatment of the family (Lammers 1990), and all the above listed taxa are considered to fall within the range of variation of *C. stictophylla*.

Cyanea stictophylla of the bellflower family is a shrub or tree 2 to 20 ft (0.6 to 6 m) tall, sometimes covered with small, sharp projections. The alternate, stalked, oblong, shallowly lobed, toothed leaves are 7.8 to 15 in (20 to 38 cm) long and 1.6 to 3.1 in (4 to 8 cm) wide. Clusters of five or six flowers have main flowering stalks 0.4 to 1.6 in (1 to 4 cm) long; each flower has a stalk 0.3 to 0.9 in (0.7 to 2.2 cm) long. The hypanthium is topped with five calyx lobes 0.1 to 0.2 in (2 to 4 mm) long and 0.04 to 0.1 in (1 to 2 mm) wide. The yellowish-white or purple petals, 1.4 to 2 in (3.5 to 5 cm) long, are fused into an arched, five-lobed tube about 0.2 in (5 to 6 mm) wide. The spherical berries are orange. This species differs from others in the genus by its lobed, toothed leaves and its larger flowers with small calyx lobes and deeply lobed corollas (Lammers 1990).

Historically, *Cyanea stictophylla* was known only from the island of Hawaii on the western, southern, southeastern, and eastern slopes of Mauna Loa. Today, the species is known to be extant near Keauhou and in South Kona on privately owned land. The 3 known populations, which extend over a distance of about 38 by 10 mi (61 by 16 km), contain a total of approximately 15 individuals (HHP 1991i1 to 1991i3). This species, sometimes growing epiphytically, is found in koaand 'ohi'a-dominated Lowland Mesic and Wet Forests at elevations between 3,500 and 6,400 ft (1,070 and 1,950 m) (HHP 1991i1 to 1991i3, Lammers 1990). Associated species include tree ferns, *Melicope volcanica* (alani), and *Urera glabra* (opuhe) (HHP 1991i1 to 1991i3). The major threat to *Cyanea stictophylla* is grazing and trampling by feral cattle as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (F. Duvall, pers. comm., 1992).

Cyrtandra giffardii was first collected in 1911 on the island of Hawaii by Rock, who named the species to honor Walter M. Giffard, who collected a flowering specimen in 1918 (Rock 1919a).

Cyrtandra giffardii of the African violet family (Gesneriaceae) is a shrubby tree usually 10 to 20 ft (3 to 6 m) tall. The opposite, stalked, papery-textured, toothed leaves are usually 2.4 to 4.7 in (6 to 12 cm) long and 1 to 1.8 in (2.5 to 4.6 cm) wide and have a few tiny, coarse hairs on the upper surface. Clusters of three to five flowers have a moderate amount of short brown hairs throughout the cluster, a main stalk 1 to 1.4 in (2.5 to 3.5 cm) long, two linear bracts about 0.25 in (6 to 7 mm) long, and individual flower stalks 0.6 to 1.2 in (1.5 to 3 cm) long. The calyx, 0.1 to 0.4 in (3 to 9 mm) long, has an outer covering of short, soft brown hairs and is divided into five narrowly triangular lobes. The corolla consists of five fused white petals about 0.5 in (12 mm) long, with lobes about 0.08 to 0.1 in (2 to 3 mm) long. Only immature berries have been observed, and they were white and about 0.4 in (1 cm) long. Both this species and *Cyrtandra tintinnabula* are distinguished from others of the genus and others on the island of Hawaii by a combination of the following characteristics: The opposite, more or less elliptic, papery leaves; the presence of some hairs on the leaves and more on the inflorescences; the presence of three to six flowers per inflorescence; and the size and shape of the flowers and flower parts (Wagner *et al.* 1990).

Historically, *Cyrtandra giffardii* was found on the island of Hawaii on the northeastern slope of Mauna Kea near Kilau Stream and south to the eastern

slope of Mauna Loa near Kilauea Crater. The 3 extant populations on State-owned land are located near Kilau Stream, Stainback Highway, and Puu Makaala, extending over a distance of approximately 31 by 3 mi (50 by 5 km) and containing a total of about 14 to 20 plants (HHP 1991j1 to 1991j5; W. Wagner, pers. comm., 1992). This species typically grows in shady koa-, 'ohi'a-, and tree fern-dominated Montane Wet Forests at elevations between 2,400 and 4,900 ft (720 and 1,500 m) (HHP 1991j1 to 1991j3, HPCC 1991d1, 1991d2, Wagner *et al.* 1990). Associated species include other taxa of *Cyrtandra* (ha'iwale), *Hedyotis* spp., and *Perrottetia sandwicensis* (olomea) (HHP 1991j1 to 1991j3, HPCC 1991d1; W. Wagner, pers. comm., 1992). The major threats to *Cyrtandra giffardii* are habitat disturbance and plant damage by feral pigs as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations (Stone 1985; W. Wagner, pers. comm., 1992).

Based on a plant he collected in 1909 on Mauna Kea, island of Hawaii, Rock named *Cyrtandra tintinnabula*. The specific epithet describes the bell-shaped calyx of the plant (Rock 1919a).

Cyrtandra tintinnabula of the African violet family is a shrub 3.3 to 6.6 ft (1 to 2 m) tall with opposite, stalked, elliptical or oval, papery-textured leaves 5 to 10 in (13 to 26 cm) long and 2 to 4.8 in (5 to 12.3 cm) wide. Leaves, especially the lower surfaces, have yellowish-brown hairs. Flower clusters, densely covered with long soft hairs, comprise three to six flowers, a main stalk 0.4 to 0.7 in (1 to 1.8 cm) long, individual flower stalks 0.2 to 0.6 in (0.5 to 1.5 cm) long, and leaflike bracts. The green bell-shaped calyx is about 0.4 in (9 to 10 mm) long and has triangular lobes. The hairy white corolla, about 0.5 in (12 mm) long and about 0.2 in (5 mm) in diameter, is divided into five lobes, each about 0.1 in (3 mm) long. Fruit and seeds have not been observed. This species differs from *Cyrtandra giffardii* by its habit, its larger leaves, and its shorter flower stalks (Wagner *et al.* 1990).

Historically, *Cyrtandra tintinnabula* was found only on the island of Hawaii on the northern to the eastern slopes of Mauna Kea. Today, 3 populations of the species are known to occur on State-owned land extending over approximately 6 by 1 mi (10 by 3 km) from Kilau Stream to Honohina Gulch and containing approximately 18 known individuals (HHP 1991k1 to 1991k6). This species typically grows in dense koa-, 'ohi'a-, and tree fern-dominated Lowland Wet Forests at elevations between 2,100 and 3,400 ft (650 and 1,040 m) (HHP 1991k3, 1991k4, 1991k6, Wagner *et al.* 1990). Associated species include other kinds of ha'iwale and *Hedyotis* sp. The major threats to *Cyrtandra tintinnabula* are habitat disturbance and plant damage by feral pigs and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Based on a specimen collected on Mauna Loa by James Macrae in 1825, Weddell (1856 to 1857) described *Urtica sandwicensis*, choosing the specific epithet to refer to the Sandwich Islands, an older name for the Hawaiian Islands. Later (1869), he transferred the species to another genus, resulting in *Hesperocnide sandwicensis*.

Hesperocnide sandwicensis of the nettle family (Urticaceae) is an erect annual herb 8 to 24 in (20 to 60 cm) tall covered with coarse stinging hairs as well as shorter non-stinging hairs. The opposite, stalked, thin, toothed leaves are 0.6 to 3 in (1.5 to 7 cm) long and 0.4 to 1 in (0.9 to 2.5 cm) wide. Most of the small petalless flowers are male, but they are mixed with some female flowers in clusters 0.08 to 0.2 in (2 to 5 mm) long which originate in the leaf axils. Sepals of male flowers are fused into a four-lobed calyx about 0.02 in (0.5 mm) long which encloses four stamens. The calyx of the female flower, about 0.04 in (1 mm) long and enclosing an unstalked stigma, swells slightly in fruit and encloses a flattened achene (dry, one-celled, unopened fruit) about 0.04 in (1.1 mm) long. The only Hawaiian member of the genus, *Hesperocnid sandwicensis* is distinguished from other native Hawaiian genera of its family by its annual herbaceous habit and its stinging hairs. It is distinguished from the alien, naturalized species *Urtica urens* (dwarf nettle) by the lack of calyx lobes (Wagner *et al.* 1990).

Historically, *Hesperocnide sandwicensis* occurred on the island of Hawaii on the eastern and western slopes of Mauna Kea, the northern to western slopes of Mauna Loa, the Humuula Saddle between Mauna Kea and Mauna Loa, and the southeastern slope of Hualalai. Twelve extant localities are known, extending over a distance of approximately 38 by 15 mi (61 by 24 km) in much of the historic range of the species. It has not been seen on Hualalai for some time and is presumed extirpated there. Known populations now occur on or near the following areas: Puu Kanakaleonui, Puu Laau, Ahumoa Cone, Pohakuloa Training Area (PTA), and Sulphur Cone. Because the species is an annual plant, the total number of individuals varies with the time of year and amount of rainfall. At the time the proposed rule was written, several hundred to a thousand individuals were known from PTA, a State- and federally owned area of land which is managed by the U.S. Army. Other, smaller populations totalling approximately 80 to 130 plants were located on privately and State-owned land (HHP 1991l1 to 1991l7, HPCC 1991e; Robert Shaw, Colorado State University, pers. comm., 1992). Extensive surveys in 1992 and 1993 indicate the presence of tens of thousands of *Hesperocnide sandwicensis* in many populations on and near PTA (R. Shaw, *in litt.*, 1993). This species is clearly much more abundant than previously thought. This species typically grows in open *Sophora chrysophylla* (mamane)- and naio-dominated Subalpine Dry Forests at elevations between 5,840 and 8,600 ft (1,780 and 2,620 m) (Gagne and Cuddihy 1990, HHP 1991l1 to 1991l3, 1991l6, HPCC 1991e, Wagner *et al.* 1990). Associated species include *Asplenium fragile, Santalum paniculatum* ('iliahi), and the naturalized *Urtica urens* (HHP 1991l1, 1991l6; R. Shaw, pers. comm., 1992). Individual *Hesperocnide sandwicensis* plants and populations of plants are threatened by competition from alien grasses such as *Anthoxanthum odoratum* (sweet vernalgrass) and *Holcus lanatus* (common velvet grass); grazing by feral pigs, goats, and sheep (*Ovis aries*); habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991l6, HPCC 1991e; Ken Nagata, U.S. Department of Agriculture, pers. comm., 1992). However, *Hesperocnide sandwicensis* is maintaining large, reproductive populations throughout PTA in areas that are relatively secure from these threats. The thousands of plants found in and along lava flows are particularly unlikely to be threatened by feral herbivores, military activities, or competition from alien grasses (Loyal A. Mehrhoff, U.S. Fish and Wildlife Service, pers. observation, 1993). It is also unlikely that either natural or man-caused fires could destroy a significant percentage of the total populations. *Hesperocnide sandwicensis* fails to meet the definition of either an endangered or threatened species. Therefore, the Service has withdrawn *Hesperocnide sandwicensis* from consideration for endangered or threatened status (see notice of withdrawal of proposed rule published concurrently with this final rule).

Ischaemum byrone was first collected by James Macrae during the expedition

of the *Blonde* in 1825 and named *Spodiopogon byronis* by Trinius in 1832. The specific epithet refers to Byron's Bay, now called Hilo Bay, where this specimen was collected. Steudel (1855) transferred the species to the genus *Andropogon*, and in 1889, Hackel redescribed the species, naming it *Ischaemum lutescens*, a superfluous name. In 1922, Hitchcock published *Ischaemum byrone*, the currently accepted name (O'Connor 1990).

Ischaemum byrone of the grass family (Poaceae) is a perennial plant with creeping stems and erect stems 16 to 31 in (40 to 80 cm) tall. The uppermost sheaths (portions of leaves surrounding the stems) are often inflated and sometimes partially enclose the yellow to yellowish-brown racemes (flowering clusters). The hairless leaf blade (the flat extended part of the leaf) is 2.8 to 7.9 in (7 to 20 cm) long and 1.2 to 2 in (3 to 5 cm) wide; the uppermost blades are much smaller in size. Flowers, arranged in two or sometimes three digitate (originating from one point), elongate racemes 1.6 to 3.9 in (4 to 10 cm) long, consist of two types of two-flowered awned (having bristles) spikelets (subclusters of flowers). The fruit is a caryopsis (grain) about 0.1 in (3 mm) long. The only species of the genus found in Hawaii, *Ischaemum byrone* differs from other grasses in the State by its C_4 photosynthetic pathway; its digitate racemes; and its two-flowered, awned spikelets (O'Connor 1990).

Historically, *Ischaemum byrone* was found on Oahu at an unspecified location, on the northeastern coasts of Molokai and east Maui, and along the central portion of the eastern coast of the island of Hawaii. Extant populations still occur on Molokai, Maui, and Hawaii. Two populations on east Molokai are located about 2 mi (3 km) apart at the head of Wailau Valley and on Kikipua Point on privately owned land. Six populations on east Maui are found along approximately 16 mi (26 km) of coast on privately, State-, and federally owned land on Pauwalu Point, on Kalahu Point, near Hana, on Kauiki Head, and on the following offshore islets: Keopuka Islet, Mokuhuki Islet, and Puukii Islet. On Hawaii, the species is still found in two populations at Auwae and Kamoamoa on privately and federally owned land. The total distribution of the species includes 10 populations on 3 islands with approximately 1,200 to 2,200 individuals (HHP 1991m1 to 1991m10, 1991m12 to 1991m14), though the total number may be in the range of 5,000 individuals (R. Hobdy, *in litt.*, 1993). Because this species occupies lowland habitat, it is at high risk from development, alien weeds, and in the past, from alien ungulates. This species typically grows in Coastal Dry Shrublands among rocks or on basalt cliffs at elevations between sea level and 250 ft (0 and 75 m) (Gagne and Cuddihy 1990, O'Connor 1990). Associated species include *Bidens* spp. (ko'oko'olau), *Fimbristylis cymosa*, and *Scaevola sericea* (naupaka kahakai) (HHP 1991m5, 1991m7, 1991m9, 1991m11, HPCC 1991f). The major threats to *Ischaemum byrone* are competition from alien species such as *Digitaria ciliaris* (Henry's crabgrass) and habitat change from volcanic activity (HHP 1991m3, HPCC 1991f; Charles H. Lamoureux, Lyon Arboretum, pers. comm., 1992).

Isodendrion pyrifolium was first collected on Oahu during the United States Exploring Expedition in 1841 and was named by Gray in 1852. The specific epithet refers to the resemblance of the leaves of this species to those of *Pyrus* (pear). In his monograph of the genus, St. John (1952) named the following species, all of which are considered in the current treatment of the genus (Wagner *et al.* 1990) to be synonymous with *I. pyrifolium*: *I. hawaiiense*, *I. hillebrandii*, *I. lanaiense*, *I. molokaiense*, and *I. remyi*.

Isodendrion pyrifolium of the violet family (Violaceae), a shrub about 2.6 to 6.6 ft (0.8 to 2 m) tall, has persistent stipules (leaflike appendages on leaves) and alternate, stalked, elliptic or sometimes lance-shaped, papery leaves which measure 1 to 2.6 in (2.5 to 6.5 cm) long and 0.3 to 1.3 in (0.8 to 3.2 cm) wide. The solitary, bilaterally symmetrical, fragrant flowers have five lance-shaped sepals 0.1 to 0.2 in (3.5 to 5 mm) long with membranous edges fringed with white hairs and three types of clawed (with a narrow petiole-like base) greenish-yellow petals 0.4 to 0.6 in (10 to 15 mm) long with lobes about 0.2 in (4 to 5 mm) long. The three-lobed, 0.5 in (12 mm) long capsule opens to release olive-green seeds about 0.1 in (3 mm) long and about 0.08 in (2 mm) in diameter. This species differs from others in this endemic Hawaiian genus by its slightly smaller, greenish-yellow flowers and by the presence of hairs on the stipule midribs and leaf veins (Wagner *et al.* 1990).

Historically, *Isodendrion pyrifolium* was found at unspecified localities on Niihau, Molokai, and Lanai, as well as on Oahu in the central portion of the Waianae Mountains, on Maui in the northeastern to southwestern regions of the West Maui mountains, and on the island of Hawaii at the western base of Hualalai (HHP 1991n1 to 1991n5, Wagner *et al.* 1990). The species had not been collected since 1870 and was presumed extinct. However, in 1991, four plants were found on Hawaii at Kealakehe near Kona on State-owned land being developed for residential housing and a golf course (C. Corn, *in litt.* 1991; Francis Blanco, Hawaii Housing and Finance Development Corporation, and K. Nagata, pers. comms., 1992). In late 1992 and early 1993, 50 to 60 additional plants were found at this site (Evangeline Funk, Botanical Consultants, pers. comm., 1993). This species typically grows on dry sites in Lowland Dry to Mesic Forests at low elevations (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include 'iliahi, mamane, and *Waltheria indica* ('uhaloa) (Paul Weissich, Weissich and Associates, pers. comm., 1992). The major threats to *Isodendrion pyrifolium* are habitat conversion associated with residential and recreation development, competition from alien species such as fountain grass, fire, and stochastic extinction and/or reduced reproductive vigor due to the single known population and the small number of existing individuals (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992).

In 1920, Kuekenthal described *Cyperus fauriei* based on a specimen collected by Faurie on Molokai in 1910 (Wagner *et al.* 1989). Koyama (1990), in the current treatment of the genus, transferred the species to *Mariscus*, resulting in *M. fauriei*.

Mariscus fauriei of the sedge family (Cyperaceae), a perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 4 to 20 in (10 to 50 cm) tall, has leaves shorter than or the same length as the stems and 0.04 to 0.1 in (1 to 3.5 mm) wide. Three to 5 bracts, the lowest one 2.4 to 7.9 in (6 to 20 cm) long, are located under each flower cluster, which measures 0.8 to 1.6 in (2 to 4 cm) long and 1.2 to 3.9 in (3 to 10 cm) wide and is made up of 3 to 10 spikes (unbranched clusters of unstalked flowers). Each spike measures 0.3 to 1.2 in (0.8 to 3 cm) long and 0.3 to 0.4 in (8 to 10 mm) wide and is made up of compressed spreading spikelets, each comprising seven to nine flowers. Fruits are three-angled achenes about 0.05 in (1.2 mm) long and about 0.03 in (0.7 mm) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1990).

Historically, *Mariscus fauriei* was found on east Molokai, in the northwestern and southwestern portions of Lanai, and on the island of Hawaii on

the northern slope of Hualalai and the northwestern and southernmost slopes of Mauna Loa. A total of 3 extant populations and about 33 to 43 known individuals of the species are found on Molokai and Hawaii; the species is almost certainly extinct on Lanai now. One population of about 20 to 30 plants occurs on Molokai above Kamiloloa on State-owned land. Two populations located about 45 mi (72 km) apart are known on Hawaii on the Hualalai side of Mauna Loa and in the South Point area. The land is privately owned, and there are a total of about 13 known individuals on that island (HHP 1991o1 to 1991o8, HPCC 1991g; R. Hobdy, pers. comm., 1992). This species typically grows in lama-dominated Lowland Dry Forests, often on aa substrate, at elevations between 880 and 6,000 ft (300 and 1,830 m) (HHP 1991o8, HPCC 1991g, Koyama 1990). Associated species include alaba'e, *Peperomia* sp. ('ala'ala wai nui), and *Rauvolfia sandwicensis* (hao) (HHP 1991o8, HPCC 1991g). The major threat to *Mariscus fauriei* on Molokai is grazing and trampling by feral goats and axis deer (*Axis axis*), and on Hawaii, competition from alien species such as Christmas berry and *Oplismenus hirtellus* (basketgrass). On both islands, the species is faced with stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991o8, HPCC 1991g; R. Hobdy, pers. comm., 1992).

First collected on the island of Hawaii by Charles Pickering during the United States Exploring Expedition of 1840 and 1841, *Nothocestrum breviflorum* was named by Gray in 1862. He chose the specific epithet to refer to the short corolla of the flower of this species. In 1888, Hillebrand named var. *longipes*, but in the current treatment of the genus (Symon 1990), no varieties of the species are recognized.

Nothocestrum breviflorum of the nightshade family (Solanaceae), a stout tree 33 to 39 ft (10 to 12 m) tall with a trunk up to 18 in (45 cm) in diameter, has deciduous, alternate, stalked, oblong or elliptic-oblong, thick and papery-textured, toothless leaves which are 2 to 4.7 in (5 to 12 cm) long and 1.2 to 2.4 in (3 to 6 cm) wide. Numerous bisexual, radially symmetrical flowers are clustered at the ends of short spurs (branches with much shortened internodes) on individual stalks 0.2 to 0.4 in (4 to 10 mm) long. Each flower consists of a 0.2 to 0.4 in (6 to 11 mm) long, four-lobed tubular calyx split on one side and a greenish-yellow four-lobed corolla which barely projects beyond the calyx. The fruit, a somewhat spherical or oblong, orange-red berry about 0.2 to 0.3 in (6 to 8 mm) in diameter, is enclosed by the calyx. Seeds have not been observed. This species can be distinguished from others of this endemic Hawaiian genus by the leaf shape; the clusters of more than three flowers arranged on the ends of short branches; and the broad fruit enclosed by the calyx (Symon 1990).

Historically, *Nothocestrum breviflorum* was found only on the island of Hawaii from the southern portion of the Kohala Mountains; the northern slope of Hualalai; and the eastern, southern, and western slopes of Mauna Loa. Today, extant populations have been found in much of the species' historic range, from near Waimea, near Kiholo, in Puu Waawaa, in Hawaii Volcanoes National Park (HVNP) in Kipuka Ki and near Holei Pali, and in the South Point area. These 9 populations, which extend over a distance of about 63 by 41 mi (101 by 66 km), are found on privately, State-, and federally owned land and contain an estimated 53 known individuals (HHP 1991p1 to 1991p12; J. Lau and W. Wagner, pers. comms., 1992). This species typically grows in koa- and 'ohi'a- or lama-dominated Lowland Dry Forests and Montane Dry or Mesic Forests, often on as substrate, at elevations between 590 and 6,000 ft (180 and 1,830 m) (Gagne and Cuddihy 1990, HHP 1991p1, 1991p2, 1991p5, 1991p7, 1991p12, HPCC 1991h, Symon 1990). Associated species include 'iliahi, *Caesalpinia kavaiensis* (uhiuhi), and *Erythrina sandwicensis* (wiliwili) (HHP 1991p1, 1991p3, 1991p4, 1991p12, HPCC 1991h; W. Wagner, pers. comm., 1992). The major threats to *Nothocestrum breviflorum* are habitat conversion associated with residential and recreational development, competition from alien species such as Christmas berry, fountain grass, lantana, and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991p4, 1991p6, 1991p12, Lamb 1981; W. Wagner, pers. comm., 1992).

Ochrosia kilaueaensis was first collected by Forbes in 1915 and was named by St. John in 1978. The specific epithet refers to Kilauea, the type locality of the plant on the island of Hawaii. Based on a specimen collected in 1909 by Rock, St. John (1978) named *O. konaensis*. In the current treatment of the genus (Wagner *et al.* 1990), *O. konaensis* is considered synonymous with *O. kilaueaensis*.

Ochrosia kilaueaensis of the dogbane family (Apocynaceae) is a hairless tree 49 to 59 ft (15 to 18 m) tall with milky sap. The lance- or ellipse-shaped toothless leaves are arranged three or four per node, are 2.4 to 7.5 in (6 to 19 cm) long and 0.9 to 2.6 in (2.2 to 6.5 cm) wide, and have veins arising at nearly right angles to the midrib. Open clusters of numerous flowers have main stalks 1.8 to 2.5 in (4.5 to 6.3 cm) long, secondary branches 0.4 to 1 in (1.1 to 2.5 cm) long, and individual flower stalks 0.2 to 0.3 in (5 to 7 mm) long. Each flower has a five-lobed calyx about 0.4 in (10 to 11 mm) long and a trumpet-shaped greenish-white corolla with a tube 0.3 to 0.4 in (7 to 11 mm) long and lobes 0.5 to 0.6 in (12 to 15 mm) long. The fruit is a drupe (a fruit with a firm outer layer, a fleshy inner layer, and a stony inner layer surrounding a single seed) thought to be yellowish brown at maturity, 1.8 to 1.9 in (4.5 to 4.9 cm) long, and 0.9 to 1.1 in (2.4 to 2.9 cm) wide. This species is distinguished from other Hawaiian species of the genus by the greater height of mature trees, the open flower clusters, the longer flower stalks, and the larger calyx and lobes of the corolla (Wagner *et al.* 1990).

Historically, *Ochrosia kilaueaensis* has been collected on the northern slope of Hualalai and on the eastern slope of Mauna Loa. There is one known extant population located at Puu Waawaa on State-owned land and consisting of an unknown number of individuals (HHP 1991q1, 1991q2). This species typically grows in koa- and 'ohi'a- or lama-dominated Montane Mesic Forests at elevations between 2,200 and 4,000 ft (670 and 1,220 m) (Gagne and Cuddihy 1990, HHP 1991q1, 1991q2, Wagner *et al.* 1990). Associated species include 'aiea, kauila, *Gardenia brighamii* (nanu), and *Psychotria hawaiiensis* (kopiko) (HHP 1991q1). The major threats to *Ochrosia kilaueaensis* are competition from alien species such as fountain grass, browsing by feral goats, fire, and stochastic extinction and/or reduced reproductive vigor due to the single existing known population (Bruegmann 1990, CPC 1990).

Gray (1862) named *Plantago pachyphylla* var. *hawaiiensis* and *P. pachyphylla* var. *hawaiiensis* subvar. *gracilis* based on specimens collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 and by Remy in the 1850s, respectively. Leveille (1911) published *P. gaudichaudiana* based on another specimen from the island of Hawaii. In 1923, Pilger raised the taxon to specific rank, resulting in *P. hawaiensis*, and also published a new variety, var. *laxa* (Pilger 1937). The specific epithet refers to the island where the plant grows. In the current treatment of the genus, only

P. hawaiensis is accepted (Wagner *et al.* 1990).

Plantago hawaiensis of the plantain family (Plantaginaceae), a perennial herb which grows from a stout short stem, has thick, leathery, narrowly oval or oblong leaves located at the base of the plant which measure 3 to 8.7 in (7.5 to 22 cm) long and usually 0.6 to 1.3 in (1.5 to 3.2 cm) wide. The flowering stalk is 7.9 to 35 in (20 to 90 cm) long and is topped by a spike usually 5.9 to 9 in (15 to 23 cm) long. Each upward pointing flower, subtended by a single bract 0.08 to 0.1 in (2.1 to 2.6 mm) long, has a four-lobed calyx 0.06 to 0.09 in (1.6 to 2.2 mm) long and a trumpet-shaped corolla about 0.04 in (1 mm) long. The capsule, 0.1 to 0.2 in (2.6 to 4 mm) long and projecting from the calyx, opens to release four to six dull black seeds about 0.04 in (1 mm) long and winged on one end. This species is distinguished from other endemic and naturalized species of the genus in Hawaii by its perennial herbaceous habit; its thick leathery leaves; its upward pointing flowers; and its capsules which project from the calyx (Wagner *et al.* 1990).

Historically, *Plantago hawaiensis* was found only on the island of Hawaii on the southern slope of Mauna Kea; the northeastern, southeastern, and southern slopes of Mauna Loa; and the western slope of Hualalai. Today, the species is known to occur on the Humuula Saddle, in the Upper Waiakea Forest Reserve, and near the Keapohina Upland on privately and State-owned land. The four extant populations extend over a distance of approximately 14 by 4 mi (23 by 6 km). There are no more than 10 known individuals (HHP 1991r1 to 1991r6). This species typically grows in boggy conditions in Montane Wet Herblands or in Montane Dry Shrublands dominated by koa or 'ohi'a trees of short stature, or sometimes in lava cracks, at elevations between 5,900 and 6,400 ft (1,800 and 1,950 m) (HHP 1991r1, 1991r2, 1991r4, 1991r6, Wagner *et al.* 1990). The major threat to *Plantago hawaiensis* is stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations.

Portulaca sclerocarpa was first collected during the United States Exploring Expedition of 1840 and 1841 and was named by Gray (1854). The specific epithet refers to the hardened capsule.

Portulaca sclerocarpa of the purslane family (Portulacaceae), a perennial herb with a fleshy tuberous taproot which becomes woody, has stems up to about 7.9 in (20 cm) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-section, 0.3 to 0.8 in (8 to 21 mm) long, and about 0.06 to 0.1 in (1.5 to 2.5 mm) wide. Dense tufts of hairs are located in each leaf axil and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals are about 0.2 in (5 mm) long and have membranous edges. Petals are white, pink, or pink with a white base, about 0.4 in (10 mm) long, and surround about 30 stamens and an 8-branched style. The hardened capsules are about 0.2 in (4 to 4.5 mm) long, have walls 0.01 to 0.02 in (0.16 to 0.5 mm) thick, open very late or not at all, and contain glossy, dark reddish-brown seeds about 0.02 in (0.4 to 0.6 mm) long. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *Portulaca villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.* 1990).

Historically, *Portulaca sclerocarpa* was found on an islet off the south coast of the island of Lanai and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, the northwestern slope of Mauna Loa, and near Kilauea Crater. There is one extant population on Poopoo Islet off the coast of Lanai which contains about 10 plants (R. Hobdy, pers. comm., 1992). On Hawaii, 11 extant populations extend over a distance of about 54 by 32 mi (87 by 51 km) and are located on 3 cinder cones in the Nohonaohae area; at PTA near the Multi-Purpose Range Complex (MPRC); at Puu Anahulu; and near Puu Keanui and Puu Lehua on privately, State-, and federally owned land. The 11 populations on the island of Hawaii contain a total of approximately 72 to 122 individuals (Cuddihy *et al.* 1983, HHP 1991s1 to 1991s12; R. Shaw, pers. comm., 1992; R. Shaw, *in litt.*, 1993). This species typically grows in Montane Dry Shrublands, often on bare cinder and even near steam vents, at elevations between 3,380 and 5,340 ft (1,030 and 1,630 m) (Gagne and Cuddihy 1990, Wagner *et al.* 1990). Associated species include mamane and 'ohi'a (HHP 1991s1, 1991s8 to 1991s10, 1991s12, HPCC 1991i). The major threats to *Portulaca sclerocarpa* are competition from alien grasses such as fountain grass and *Andropogon virginicus* (broomsedge); trampling and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (HHP 1991s2, 1991s9, HPCC 1991i; R. Shaw, pers. comm., 1992).

Based on collections by Rock on the island of Hawaii, Beccari named *Pritchardia affinis* and three varieties: Var. *halophila* (misspelled as "holaphila"), var. *rhopalocarpa*, and var. *gracilis* (Beccari and Rock 1921). In the current treatment of the genus (Read and Hodel 1990), no subspecific taxa are recognized.

Pritchardia affinis of the palm family (Arecaceae) is a fan-leaved tree 33 to 82 ft (10 to 25 m) tall with pale or pinkish soft wool covering the underside of the petiole and extending onto the leaf blade. The wedge-shaped leaf has a green and smooth upper surface and a pale green lower surface with scattered yellowish scales. The branched, hairless flower clusters are located among the leaves. Each flower comprises a cup-shaped, three-lobed calyx; three petals; six stamens; and a three-lobed stigma. The spherical fruit is about 0.9 in (2.3 cm) in diameter. This species is distinguished from other species of *Pritchardia* by the long, tangled, woolly hairs on the underside of the petiole and the base of the lower leaf blade; the stout hairless flower clusters which do not extend beyond the wedge-shaped leaves; and the smaller, spherical fruit (Read and Hodel 1990).

Historically, *Pritchardia affinis* was found only on the island of Hawaii in the Kohala Mountains and along the western and southeastern coasts. Today, scattered individuals of the species can be found throughout much of the historically known coastal range at Kiholo, at Kukio, near Palani Road, on Alii Drive in Kailua, in Captain Cook, at Hookena, at Milolii, and at Punaluu. Most plants grow within areas of human habitation or development, and the trees may have been cultivated by Hawaiians or others rather than having occurred in these areas naturally. There are an estimated 50 to 65 known individuals at 8 or more localities which extend along about 110 mi (180 km) along the coast on privately and State-owned land (HHP 1991t1 to 1991t6; Norman Bezona, Hawaii Cooperative Extension Service, Brien Meilleur, Amy Greenwell Ethnobotanical Garden, and P. Weissich, pers. comms., 1992). This species typically grows in Coastal Mesic Forests at coastal sites or in gulches further inland at elevations between sea level and 2,000 ft (0 and 610 m), possibly associated with brackish water (HHP 1991t2, Read and Hodel 1990; C. Corn, pers. comm., 1992). Native associated species of this loulu are unknown, since all trees are found in cultivated zones, which have long been cleared of their native cover (B. Meilleur, pers. comm., 1992). The major threats to *Pritchardia affinis* are predation on seeds by roof rats, development of land where individuals

grow, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. In the past, the species' natural habitat was cleared for agriculture and housing, and feral pigs destroyed seedlings of the species, preventing regeneration (Beccari and Rock 1921, Hull 1980; C. Corn, pers. comm., 1992).

Gray (1854) mentioned an unnamed variety of *Silene struthioloides*, in reference to a specimen collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841. Sherff named this taxon *S. struthioloides* var. *gracilis* in 1946 and later elevated it to specific rank, resulting in *S. hawaiiensis* (1949). He chose the specific epithet to refer to the island where the plant is found.

Silene hawaiiensis of the pink family (Caryophyllaceae), a sprawling shrub with slanting or climbing stems 6 to 16 in (15 to 40 cm) long originating from an enlarged root, is covered with short, often sticky hairs. The stalkless narrow leaves are 0.2 to 0.6 in (6 to 15 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. Flowers are arranged in elongate clusters. Each flower has a stalk 0.1 to 0.2 in (3 to 6 mm) long; a five-toothed purple or purple-tinged calyx 0.4 to 0.6 in (11 to 14 mm) long; and five petals, greenish white above and maroon below, with a stalk-like base and a flat, two-lobed, expanded portion about 0.2 in (4.5 to 5.5 mm) long. The fruit is a capsule about 0.3 in (6.5 to 8 mm) long which releases pale brown seeds 0.02 to 0.03 in (0.4 to 0.7 mm) long. This species differs from others of *Silene* in Hawaii by its growth habit; its covering of short, often sticky hairs; the shape of its leaves; the arrangement of its flower clusters; and the color of its petals (Wagner *et al.* 1990).

Historically, *Silene hawaiiensis* was found only on the island of Hawaii from the western slope of Mauna Kea; the summit of Hualalai; Humuula Saddle; the northern, western, and northwestern slopes of Mauna Loa; and near Kilauea Crater. Today, over 50 populations are found in Hamakua District; on Humuula Saddle; at PTA, including inside MPRC; north of Puu Keanui; and in HVNP on privately, State-, and federally owned land. These populations extend over a distance of approximately 12 by 7 mi (19 by 11 km) and contain over 3,000 individuals (HHP 1991u1 to 1991u10, HPCC 1991j; R. Shaw, pers. comm., 1992, R. Shaw, *in litt.*, 1993). This species typically grows in Montane or Subalpine Dry Shrublands in decomposed lava and ash, but can be found on all ages of lava and cinder substrates, at elevations between 3,000 and 4,300 ft (900 and 1,300 m) and sometimes up to 8,500 ft (2,575 m) (Wagner *et al.* 1990; R. Shaw, *in litt.*, 1993). Associated species include *Dodonaea viscosa* ('a'ali'i), *Styphelia tameiameiae* (pukiawe), and *Vaccinium reticulatum* ('ohelo) (HHP 1991u6, HPCC 1991j; R. Shaw, pers. comm., 1992). Many populations of *Silene hawaiiensis* are threatened by competition with alien plant species, particularly fountain grass; grazing, browsing, and trampling by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and volcanic activity (HPCC 1991j). While the existing populations of *Silene hawaiiensis* are not in immediate danger of extinction, if these threats are not curtailed, the species will become endangered in the future.

Gray (1861a) named a plant collected on the island of Hawaii during the United States Exploring Expedition of 1840 and 1841 *Vittadenia arenaria*. Hillebrand (1888) transferred the species to the genus *Tetramolopium* and named a second variety, var. *dentatum*. In the current treatment of the genus (Lowrey 1986, 1990), two subspecies, ssp. *arenarium* and ssp. *laxum*, are recognized. Variety *confertum*, described by Sherff in 1934, is recognized (Lowrey 1986, 1990) as a variety of ssp. *arenarium*. Because of a recently recognized typification problem, ssp. *laxum* actually should be referred to as ssp. *arenarium*, leaving what was called ssp. *arenarium* without a published name (Laven *et al.* 1991).

Tetramolopium arenarium of the aster family (Asteraceae), an erect tufted shrub 2.6 to 4.3 ft (0.8 to 1.3 m) tall, is covered with tiny glands and straight hairs. The alternate, toothless or shallowly toothed leaves are more or less lance-shaped, 0.6 to 1.5 in (15 to 37 mm) long, and 0.1 to 0.4 in (3 to 9 mm) wide. Five to 11 heads (dense flower clusters) are grouped at the end of each stem. Each head comprises a bell-shaped structure of 20 to 34 bracts 0.1 to 0.2 in (2.5 to 5 mm) high and 0.2 to 0.4 in (4 to 9 mm) in diameter beneath the flowers; a single series of 22 to 45 white, male ray florets 0.05 to 0.09 in (1.3 to 2.2 mm) long; and 4 to 9 bisexual disk florets with maroon petals 0.12 to 0.17 in (3.1 to 4.4 mm) long. Fruits are compressed achenes 0.06 to 0.1 in (1.5 to 3 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species is distinguished from others of the genus by its erect habit; the presence and types of glands and hairs on the plant; the fewer heads per flower cluster; the larger, male ray florets; the fewer, bisexual, maroon-petalled disk florets; and the wider achenes (Lowrey 1990).

Historically, *Tetramolopium arenarium* was found on the island of Maui on the western slope of Halakeala and on the island of Hawaii from the Kohala Mountains, the northwestern slopes of Mauna Kea and Mauna Loa, and the slopes of Hualalai. Only one population is known today, and it occurs on Hawaii in Kipuka Kalawamauna at PTA on federally managed land. At last count (January 1993), there were 29 reproductive and 79 juvenile plants in a 660 by 200 ft (200 by 60 m) area (HHP 1991v1 to 1991v4, 1991w, HPCC 1990a, Laven *et al.* 1991; R. Shaw, pers. comm., 1992; R. Shaw, *in litt.*, 1993). This species typically grows in open 'a'ali'i-dominated Lowland or Montane Dry Forests at elevations between 2,600 and 4,900 ft (800 and 1,500 m) (Lowrey 1990). Associated species include 'a'ali'i, pukiawe, *Chamaesyce olowaluana* ('akoko), and *Dubautia linearis* (na'ena'e) (HPCC 1990a). The major threats to *Tetramolopium arenarium* are competition from alien plant species, particularly fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats, pigs, and sheep; habitat disturbance and damage to plants as a result of military exercises; fire; and stochastic extinction and/or reduced reproductive vigor due to the single existing population (Douglas *et al.* 1989, HPCC 1990a, Herbst and Fay 1979).

Hillebrand (1888) described *Zanthoxylum hawaiiense* based on a specimen collected on the island of Hawaii and also indicated an unnamed variety for a specimen collected on Lanai. Other names published for portions of this taxon include: *Z. bluettianum* (Rock 1913), *Z. hawaiiense* var. *citriodora* (Rock 1913), *Z. hawaiiense* var. *velutinosum* (Rock 1913), and *Z. hawaiiense* var. *subacutum* (St. John 1976). Some authors placed Hawaiian species in the genus *Fagara*, resulting in *F. hawaiiensis* (Engler 1896) and *F. bluettiana* (Engler 1931). Sherff (1958) named *F. hawaiiensis* var. *citriodora*, *F. hawaiiensis* var. *subacutata*, and *F. hawaiiensis* var. *velutinosa*, all of which are considered within the range of variation of *Z. hawaiiense* in the current treatment of the Hawaiian species (Stone *et al.* 1990).

Zanthoxylum hawaiiense of the rue family (Rutaceae), a thornless tree usually 10 to 26 ft (3 to 8 m) tall with a trunk up to 10 in (25 cm) in diameter, has alternate leaves comprising three leathery, triangular-oval or lance-shaped, gland-dotted, lemon-scented, toothed leaflets usually 1.3 to 3.9 in (3.4 to 10 cm) long and 0.6 to 2 in (1.5 to

5 cm) wide. The stalk of each of the two side leaflets has one joint, and the stalk of the terminal leaflet has two joints. Flowers are usually either male or female, and usually only one sex is found on a single tree. Clusters of 15 to 20 flowers 1.6 to 3.1 in (4 to 8 cm) long have a main flower stalk 0.8 to 2 in (20 to 50 mm) long and individual flower stalks 0.08 to 0.2 in (2 to 4 mm) long. Each flower has four narrowly triangular sepals about 0.04 in (1 mm) long and four hairless petals (possibly absent in male flowers) of an unknown color. The fruit is a sickle-shaped follicle (dry fruit that opens along one side) 0.3 to 0.4 in (8 to 10 mm) long, containing one black seed about 0.3 in (7 to 8 mm) in diameter. This species is distinguished from other Hawaiian species of the genus by its leaves, which are always made up of three leaflets of similar size; the presence of only one joint on some of the leaflet stalks; and the shorter follicle with a rounded tip (Stone *et al.* 1990).

Historically, *Zanthoxylum hawaiiense* was known to occur in the central portion of the island of Kauai; on east Molokai; in the central part of the island of Lanai; on east Maui on the southwestern and southern slopes of Haleakala; and on the island of Hawaii in the Kohala Mountains, on the northern slope of Hualalai, and on the northwestern slope of Mauna Loa. There is now one living individual known on Kauai in Kawaiiki Valley on State-owned land. On Molokai, three extant populations of the species occur on privately and State-owned and federally managed land in Kalaupapa National Historical Park (NHP), in Pelekunu Valley, and near Puu Kolekole. The Molokai populations extend over a distance of about 3 by 2 mi (5 by 3 km). Although the number of plants at one of the sites is uncertain, it is estimated that the three populations contain five plants. On Lanai, one population with an unknown number of individuals has been reported on privately owned property in Kaiholena Gulch. On east Maui, extant populations of *Z. hawaiiense* have been found in Kahikinui, above Lualailua, above Kanaio, and in Auwahi. These four populations extend over a distance of approximately 5 by 3 mi (8 by 5 km) and contain a total of fewer than ten plants. On the island of Hawaii, individuals are found at Puu Waawaa and at PTA on State-owned and federally managed land. These extant populations are located about 13 mi (21 km) apart and contain a total of about 150 plants (R. Shaw, pers. comm., 1993; R. Shaw *in litt.*, 1993). In summary, *Zanthoxylum hawaiiense* is currently located on 5 islands and consists of 11 populations and about 166 individuals (HHP 1991x1 to 1991x16; R. Shaw, pers. comms., 1991, 1993; R. Shaw, *in litt.*, 1993).

Zanthoxylum hawaiiense typically grows in 'ohi'a-dominated Lowland Dry or Mesic Forests, and Montane Dry Forests, often on aa lava, at elevations between 1,800 and 5,710 ft (550 and 1,740 m) (Gagne and Cuddihy 1990, Stone *et al.* 1990). Associated species include *Antidesma platyphyllum* (hame) on Kauai, *Pleomele auwahiensis* (hala pepe) on Molokai, *Streblus pendulinus* (a'ia'i) on Maui, and mamane and naio on the island of Hawaii (HHP 1991x1, 1991x5, 1991x9, 1991x11, HPCC 1990b; R. Shaw, pers. comm., 1992). A threat to *Z. hawaiiense* on Kauai is competition from alien plant species such as lantana and *Melia azedarach* (Chinaberry) (HHP 1991x11). On Molokai, competition with alien plant species, grazing, browsing, trampling, and habitat disturbance by feral goats are threats (HHP 1991x5; Lyman Perry, The Nature Conservancy of Hawaii, *in litt.*, 1993). On Maui, competition with Kikuyu grass, which forms a continuous mat in many areas, and grazing, browsing, trampling, and habitat disturbance by cattle and goats are threats (A. Medeiros, pers. comm., 1992; A. Medeiros and Lloyd Loope, Haleakala National Park, *in litt.*, 1993). The major threats to the species on the island of Hawaii are competition from alien plant species such as fountain grass; grazing, browsing, trampling, and habitat disturbance by feral goats and sheep; habitat disturbance and damage to plants as a result of military exercises; and fire (CPC 1990, HHP 1991x10, HPCC 1990b). In addition, the species is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii* (as *C. carlsonii*), *Cyanea shipmanii*, *Hesperocnide sandwicensis*, *Ischaemum byrone*, *Nothocestrum breviflorum* (as *N.* breviflorum var. *breviflorum*), *Portulaca sclerocarpa*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citriodora*) were considered to be endangered. *Cyrtandra giffardii*, *Silene hawaiiensis* (as *S. hawaiiensis* var. *hawaiiensis*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened. *Clermontia pyrularia*, *Isodendrion pyrifolium*, *Nothocestrum breviflorum* (as *N. breviflorum* var. *longipes*), and *Tetramolopium arenarium* (as *T. arenarium* var. *arenarium*, *T. arenarium* var. *confertum*, and *T. arenarium* var. *dentatum*) were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). In these notices, 10 of the taxa (including synonymous taxa) that had been proposed as endangered in the June 16, 1976, proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Clermontia*

lindseyana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea shipmanii, Hesperocnide sandwicensis, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, and *Zanthoxylum hawaiiense,* which were proposed as endangered in the June 16, 1976, proposed rule, were considered Category 1 candidates on all three notices of review; *Cyanea hamatiflora* ssp. *carlsonii* was considered a Category 1 taxon as *Cyanea carlsonii* in the 1980 and 1985 notices and as *Cyanea hamatiflora* ssp. *carlsonii* in the 1990 notice. *Cyanea stictophylla* and *Silene hawaiiensis* were considered Category 1 species in all three notices. In the 1980 and 1985 notices, *Isodendrion pyrifolium* and *Tetramolopium arenarium* were considered Category 1* species. In the 1990 notice, these two species were accorded Category 3A status, but because new information regarding their existence has become available, they were proposed in 1992 for listing. Category 1* taxa are those which are possibly extinct, and Category 3A taxa are those for which the Service has persuasive evidence of extinction. *Cyrtandra giffardii* appeared as a Category 2 species and *Clermontia peleana* as a Category 3C species in the 1980 and 1985 notices. *Ochrosia kilaueaensis* first appeared as a Category 2 species in the 1985 notice. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3C taxa are those which are more abundant than previously believed, and/or those that are not subject to any identifiable threat. Because new information provided support for listing, the above three species were conferred Category 1 status in the 1990 notice. The Service recognized *Cyanea copelandii* ssp. *copelandii, Cyrtandra tintinnabula, Mariscus fauriei, Plantago hawaiensis,* and *Pritchardia affinis* as Category 1 taxa for the first time in the 1990 notice.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final 1-year finding for these taxa.

On December 17, 1992, the Service published in the **Federal Register** (57 FR 59951) a proposal to list 22 plant taxa from the island of Hawaii as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Hawaii Plant Conservation Center, and observations of botanists and naturalists. The Service now determines 20 taxa primarily from the island of Hawaii to be endangered and 1 taxon from the island of Hawaii to be threatened, with the publication of this rule. One additional taxon has been withdrawn from consideration for listing.

Summary of Comments and Recommendations

In the December 17, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision on the proposal. The public comment period ended on February 16, 1993. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comments were published in the Honolulu Advertiser on January 4, 1993 and in the Hawaii Tribune Herald on January 6, 1993. Nine letters of comment were received. No requests for public hearings were received. Additional biological information contained in these comments has been incorporated into the final rule. Three letters provided only biological information and did not provide any comments on the proposed listing. Three letters provided both additional information and supported the listing of all 22 species as endangered species. One letter provided additional biological information and specifically recommended that three of the species not be listed as endangered or threatened. One letter suggested that it would be better to promote the horticultural use of a particular taxon rather than list it as endangered. These issues and the Service's response are discussed below:

Issue 1: Status of *Hesperocnide sandwicensis:* One respondent stated that this species should not be listed as an endangered or threatened plant, because there are a large number of individuals (possibly over 1 million), the taxon is widespread, the species is adapted to disturbance, there is an abundance of protected habitat, and there are few serious threats to its survival.

Service Response: At the time the proposed rule was written, the number of *Hesperocnide sandwicensis* was thought to range from several hundred to approximately 1,300 individuals. Extensive surveys in 1992 and early 1993 have documented tens of thousands of plants on lava flows between Mauna Loa and Mauna Kea (R. Shaw, *in litt.,* 1993). The Service has carefully considered the respondent's comments and concurs with his evaluation. Due to the location and large number of new populations and individuals now known, the Service is not including *Hesperocnide sandwicensis* in the final rule. This species is placed in category 3C of the Service's plant notice of review and is removed from the list of candidate species, although the Service will continue to monitor threats to the populations.

Issue 2: Status of *Pritchardia affinis:* One respondent suggested that an alternative to listing the species as endangered would be to promote the use of *Pritchardia affinis* for use as a culturally significant landscape plant.

Service Response: Designating *Pritchardia affinis* as an endangered species affords this taxon significant legal protection. While the use of species such as *Pritchardia affinis* for landscaping purposes may have important educational or cultural benefits, such plantings would not ensure the protection of the few remaining individuals in the wild.

Issue 3: Status of *Silene hawaiiensis:* One respondent stated that this species should not be listed as an endangered or threatened species, because the taxon is relatively common throughout its range (over 3,000 plants), the taxon is widely distributed, many populations are in protected areas, there are few serious threats to its survival, and there are significant taxonomic uncertainties regarding its status as a species.

Service Response: At the time the proposed rule was written, the number of *Silene hawaiiensis* was thought to be between 2,600 and 2,700 individuals in 17 populations. Despite extensive surveys in the area of PTA, the total number of known plants is still fewer than 4,000 individuals (R. Shaw, *in litt.,*

1993). While small populations of this taxon are found throughout the area between Mauna Loa and Mauna Kea, most populations are still threatened by fire, grazing, and disturbances. Fewer than 1,000 plants are known from well protected areas (Hawaii Volcanoes National Park). The most authoritative taxonomic treatment of Hawaiian *Silene* maintains this taxon as a valid species (Wagner *et al.* 1990). No published taxonomic studies since then have questioned the validity of *Silene hawaiiensis*. Based on the above information, the Service determines that *Silene hawaiiensis* is not now in danger of extinction, but that *Silene hawaiiensis* is likely to become endangered in the foreseeable future if the threats posed by fire, competition from alien plant species, and feral goats, pigs, and sheep are not curbed. Thus, this taxon is designated a threatened species.

Issue 4: Status of *Zanthoxylum hawaiiense:* One respondent questioned if it was possible to list this taxon as endangered only on the islands of Kauai, Molokai, Lanai, and Maui and not list it on the island of Hawaii because it is more common on Hawaii (possibly between 750 and 3,750 plants).

Service Response: The Act does not allow for the listing of plants in only a portion of their ranges. Consequently, a plant species is listed as endangered if it is in danger of extinction over all or a significant portion of its range. At the time the proposed rule was written, the number of *Zanthoxylum hawaiiense* was thought to be fewer than 75 individuals. Extensive surveys in the area of PTA have located approximately 150 individuals (R. Shaw, pers. comm., 1993). The respondent's figures of between 750 and 3,750 plants is based upon an extrapolation of plant densities on PTA to lower elevation areas which, in general, have been more affected by cattle grazing, goats, pigs, and fires. This type of extrapolation is not warranted, given the potential differences between the two areas. However, even if these estimates were correct, the species would still be in danger of extinction due to the presence, throughout its entire range, of uncontrolled threats such as fire; competition from alien plant species; and susceptibility to grazing, browsing, trampling, and habitat disturbance by feral goats and sheep. For these reasons, *Zanthoxylum hawaiiense* is determined to be an endangered species.

Summary of Factors Affecting the Species

After thorough review and consideration of all information available, the Service has determined that 20 plant taxa from the island of Hawaii should be classified as endangered species and 1 taxon from the island of Hawaii should be classified as threatened. One taxon has been withdrawn from consideration.

Procedures found at section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 21 taxa are summarized in Tables 1 and 2.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals	Disease insects	Alien plants	Limited numbers*
Clermontia lindseyana	CGPr		X	
Clermontia peleana	PR			X1
Clermontia pyrularia	r		X	X1,2
Colubrina oppositifolia	P	X	X	
Cyanea copelandii ssp. *copelandii*	r			X1,2
Cyanea hamatiflora ssp. *carlsonii*	Cr		X	X2,3
Cyanea shipmanii	r			X2,3
Cyanea stictophylla	Cr			X2,3
Cyrtandra giffardii	P			X2,3
Cyrtandra tintinnabula	P			X2,3
Ischaemum byrone	dg		X	
Isodendrion pyrifolium			X	X2,3
Mariscus fauriei	DG		X	X2,3
Nothocestrum breviflorum	C		X	X2,3
Ochrosia kilaueaensis	Gr	X	X	X1,2
Plantago hawaiensis		X	X	X1,2
Portulaca sclerocarpa	GPS		X	
Pritchardia affinis	R	P		X3
Silene hawaiiensis	GPS		X	
Tetramolopium arenarium	GPS		X	X2
Zanthoxylum hawaiiense	dG		X	X

Table 1. Key:
C/c=Cattle
D/d=Deer
G/g=Goats
P/p=Pigs
R/r=Rats
S/s=Sheep
X=Immediate and significant threat. Alien mammals shown in uppercase characters.
P=Potential threat. Alien mammals shown in lowercase characters.
*=No more than 100 known individuals and/or no more than 5 known populations.
1=No more than 10 known individuals.
2=No more than 5 known populations.
3=No more than 100 known individuals.

TABLE 2.—SUMMARY OF THREATS

Species	Fire	Natural disasters	Human impacts	Military
Clermontia lindseyana				
Clermontia peleana		X	X	
Clermontia pyrularia			P	
Colubrina oppositifolia	X		P	X
Cyanea copelandii ssp. *copelandii*			P	
Cyanea hamatiflora ssp. *carlsonii*				
Cyanea shipmanii				
Cyanea stictophylla				
Cyrtandra giffardii			P	
Cyrtandra tintinnabula				
Ischaemum byrone		X	X	
Isodendrion pyrifolium	X		X	
Mariscus fauriei				
Nothocestrum breviflorum	X		X	
Ochrosia kilaueaensis	X		P	
Plantago hawaiensis				
Portulaca sclerocarpa	X		P	X
Pritchardia affinis			X	
Silene hawaiiensis	X	X	P	X
Tetramolopium arenarium	X		P	X
Zanthoxylum hawaiiense	X		P	X

Key: X=Immediate and significant threat.
P=Potential threat.

These factors and their application to *Clermontia lindseyana* Rock ('oha wai), *Clermontia peleana* Rock ('oha wai), *Clermontia pyrularia* Hillebr. ('oha wai), *Colubrina oppositifolia* Brongn. ex H. Mann (kauila), *Cyanea copelandii* Rock ssp. *copelandii* (haha), *Cyanea hamatiflora* ssp. *carlsonii* (Rock) Lammers (haha), *Cyanea shipmanii* Rock (haha), *Cyanea stictophylla* Rock (haha), *Cyrtandra giffardii* Rock (ha'iwale), *Cyrtandra tintinnabula* Rock (ha'iwale), *Ischaemum byrone* (Trin.) Hitch. (Hilo ischaemum), *Isodendrion pyrifolium* A. Gray (wahinē noho kula), *Mariscus fauriei* (Kukenth.) T. Koyama (NCN), *Nothocestrum breviflorum* A. Gray ('aiea), *Ochrosia kilaueaensis* St. John (holei), *Plantago hawaiensis* (A. Gray) Pilg. (laukahi kuahiwi), *Portulaca sclerocarpa* A. Gray (po'e), *Pritchardia affinis* Becc. (loulu), *Silene hawaiiensis* Sherff (NCN), *Tetramolopium arenarium* (A. Gray) Hillebr. (NCN), and *Zanthoxylum hawaiiense* Hillebr. (a'e) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitat of the plants included in this rule has undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions; agricultural, commercial, and urban development; and military and recreational use. Natural disturbances such as flooding, landslides, and volcanic activity also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of plants and modification of habitat by introduced animals are the primary threats facing 18 of the 21 taxa included in this rule (See Table 1).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that the watershed could be conserved.

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on the island of Hawaii as well as on Kauai, Oahu, Molokai, and Maui, where some populations of these species occur. Feral ungulates trample and eat native vegetation and disturb and open areas. This causes erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990).

Fourteen taxa in this rule are directly threatened by habitat degradation resulting from introduced ungulates: 4 taxa are threatened by cattle, 1 taxon by deer, 7 taxa by goats, 8 by pigs, and 4 by sheep.

Axis deer (*Axis axis*), native to Sri Lanka and India, were first introduced to the Hawaiian Islands in 1868 as a game animal on Molokai, later to Oahu and Lanai, and finally to east Maui in 1960. Hunting of axis deer is allowed only on Molokai and Lanai during 2 months of the year (Hawaii DLNR 1985, Tomich 1986). The animal constitutes a threat to *Mariscus fauriei* on Molokai and a potential threat to *Ischaemum byrone* and *Zanthoxylum hawaiiense* on Molokai and Maui (HHP 1991x5, HPCC 1990b, Medeiros *et al.* 1986; R. Hobdy, pers. comm., 1992).

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. While small cattle ranches were developed on Kauai, Oahu, and west Maui, very large ranches of tens of thousands of acres were created on east Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned and considered Forest Reserve and/or Conservation District land. On Kauai, both sides of Waimea Canyon were supporting large

cattle ranching operations by the 1870s (Ryan and Chang 1985). Feral cattle roamed Oahu, but most were removed by the early 1960s; today only a few can be found in the northwestern part of the island (J. Lau, pers. comm., 1990). Feral cattle were formerly found on Molokai and Maui and damaged the forests there. Feral cattle can presently be found on the island of Hawaii, and ranching is still a major commercial activity there. Hunting of feral cattle is no longer allowed in Hawaii (Hawaii DLNR 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle becomes degraded to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986).

The habitats of many of the plants in this rule were degraded in the past by feral cattle, and this has had effects which still persist. Some taxa in this rule are still being directly affected by cattle. These include: *Clermontia lindseyana*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea stictophylla*, and *Nothocestrum breviflorum* (HHP 1991a1, 1991p4, 1991p5, HPCC 1990b, 1991a, 1991h; F. Duvall and A. Medeiros, pers. comms., 1992).

Goats (*Capra hircus*), a species originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Kauai, feral goats have been present in drier, more rugged areas since 1820; they still occur in Waimea Canyon. Goats have been on Oahu since about 1820, and they currently occur in the northern Waianae Mountains. On Molokai, goats degrade dry forests at low elevations. On Maui, goats have been widespread for 100 to 150 years and are common throughout the south slope of Haleakala (Medeiros *et al.* 1986). On Hawaii, goats damage low-elevation dry forest, montane parkland, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Clermontia lindseyana*, *Mariscus fauriei*, *Ochrosia kilaueaensis*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* are currently threatened by goats (Bruegmann 1990, CPC 1990, HHP 1991s5, 1991x5, HPCC 1990b; R. Hobdy, A. Medeiros, and R. Shaw, pers. comms., 1992), and *Ischaemum byrone* is potentially threatened by the animal (HHP 1991m11; R. Hobdy, pers. comm., 1992).

Sheep (*Ovis aries*) have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 3,300 ft (1,000 m)), including PTA, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of at least two previously listed endangered species as well as the following plant species included in this rule: *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (Cuddihy and Stone 1990, HHP 1991s4, HPCC 1990a, 1990b, Shaw *et al.* 1990, Stone 1985; K. Nagata and R. Shaw, pers. comms., 1992).

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping these plants to establish (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to one or more populations of the following taxa in this rule: *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, and *Tetramolopium arenarium* (Bruegmann 1990, CPC 1990, HPCC 1990a, 1991a, 1991d1, 1991d2; J. Lau, A. Medeiros, John Obata, Hawaii Plant Conservation Center, and W. Wagner, pers. comms., 1992).

Land development for housing and commercial activities threatens *Pritchardia affinis*, *Isodendrion pyrifolium*, and *Nothocestrum breviflorum* (C. Corn, K. Nagata, and P. Weissich, pers. comms., 1992). These threats range from specific, previously approved projects to more general development pressures affecting much of the leeward portion of the island of Hawaii. A State-sponsored housing development at the site of the only known population of *Isodendrion pyrifolium* is currently being modified to reduce its impact on this taxa. However, this modification is not finalized, and the development could still pose a significant threat to the long-term survival of the species.

Illegal cultivation of *Cannabis sativa* (marijuana) occurs in isolated portions of public and private lands in the Hawaiian Islands. This agricultural practice opens areas in native forest into which alien plants invade after the patches are abandoned (Medeiros *et al.* 1988). Marijuana cultivation is considered a threat to the integrity of the habitat of *Clermontia peleana* (Bruegmann 1990, CPC 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the taxa in this rule, but especially to *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, each of which has only 1 or 2 populations and a total of 10 or fewer known individuals. Any collection of whole plants or reproductive parts of any of these two species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. Disease or Predation

Axis deer, cattle, goats, or sheep have been reported in areas where populations of most of the taxa occur. As the taxa are not known to be

unpalatable to these ungulates, predation is a probable threat where those animals have been reported, potentially affecting the following taxa: *Clermontia lindseyana, Cyanea hamatiflora* ssp. *carlsonii, Cyanea stictophylla, Ischaemum byrone, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* The lack of seedlings of several of the taxa and the occurrence of some populations or taxa only in areas inaccessible to ungulates seem to indicate the effect that browsing mammals, especially cattle and goats, have had in restricting the distribution of these plants.

Of the four species of rodents that have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably roof or black rat (*Rattus rattus*), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent house mouse (*Mus musculus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply which supports rodent populations. Rodents damage fruit of *Pritchardia affinis* (Beccari and Rock 1921). It is probable that rats damage the fruit of *Ochrosia kilaueaensis*, which has fleshy fruits and occurs in areas where rats are found. Rats feed on *Clermontia peleana*, and, since rats are found in remote areas of most islands in Hawaii, it is likely that predation occurs on the other taxa of *Clermontia* and *Cyanea*, potentially affecting *Clermontia lindseyana, Clermontia pyrularia, Cyanea copelandii* ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii,* and *Cyanea stictophylla* (HPCC 1990a; J. Lau, pers. comm., 1990).

Black twig borer (*Xylosandrus compactus*) is a small beetle about 0.06 in (1.6 mm) in length which burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even the entire plant can be killed from such an infestation. Black twig borer is known to attack *Colubrina oppositifolia* and is a threat to this species (Cuddihy and Stone 1990, HHP 1991e9, 1991e16).

Pritchardia affinis is known to be susceptible to lethal yellows, which is a bacteria-like organism producing disease in many palms. This disease is not yet in Hawaii, but if it ever is accidentally introduced on plant material brought into the State, it is a potential threat to this species. Cultivated loulu specimens in areas outside Hawaii may be affected by the disease (Hull 1980).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

None of the 21 taxa in this rule are presently listed as an endangered species by the State of Hawaii. Fifteen of the 21 taxa in this rule have populations located on privately owned land. Two taxa, *Cyanea shipmanii* and *Cyanea stictophylla*, are found exclusively on private land. At least one population of each taxon except *Cyanea shipmanii, Cyanea stictophylla, Silene hawaiiensis,* and *Zanthoxylum hawaiiense* occurs on State land. *Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyrtandra giffardii, Cyrtandra tintinnabula,* and *Ischaemum byrone* each have one or more populations located in State parks, Natural Area Reserves, or the State seabird sanctuary, which have rules and regulations for the protection of resources (Hawaii DLNR 1981; HRS, sects. 183D–4, 184–5, 195–5, and 195–8). However, the regulations are difficult to enforce because of limited personnel. One or more populations of at least 18 of the 21 taxa included in this rule are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change that will occur on county or State land, will be funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). State and Federal agencies have programs to locate, eradicate, and deter marijuana cultivation, which is a threat to one of the taxa in this rule (CPC 1990). Despite the existence of various State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. These State laws

and regulations are therefore inadequate to protect the taxa that occur on State land. Listing of these 21 plant taxa would reinforce and supplement the protection available under the State Act and other laws. The Federal Endangered Species Act would offer additional protection to these 21 taxa because, if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small numbers of populations and individuals of most of these taxa increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. This constitutes a major threat to 15 of the 21 taxa included in this rule (See Table 1). Five of the taxa, *Cyanea copelandii* ssp. *copelandii*, *Cyanea shipmanii*, *Isodendrion pyrifolium*, *Ochrosia kilaueaensis*, and *Tetramolopium arenarium*, are known from a single population. Seven other taxa are known from only two to five populations. Fourteen of the taxa are estimated to number no more than 100 known individuals. Five of these taxa, *Clermontia peleana*, *Clermontia pyrularia*, *Cyanea copelandii* ssp. *copelandii*, *Ochrosia kilaueaensis*, and *Plantago hawaiensis*, number no more than ten known individuals.

One or more species of 12 introduced plants threaten 12 of the taxa in this rule. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes they inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following taxa are threatened by lantana: *Colubrina oppositifolia*, *Nothocestrum breviflorum*, and *Zanthoxylum hawaiiense* (HHP 1991e4, 1991e8, 1991e15, 1991e16, 1991p4, 1991p12, 1991x11, HPCC 1991b, 1991h). *Leucaena leucocephala* (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian islands, threatens *Nothocestrum breviflorum* (Geesnick *et al.* 1990, HHP 1991p12, HPCC 1991h). *Melia azedarach* (Chinaberry), a small tree widely cultivated and naturalized on most of the main Hawaiian Islands, threatens *Zanthoxylum hawaiiense* on Kauai (HHP 1991x11, Wagner *et al.* 1990). *Passiflora mollissima* (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light which reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Clermontia lindseyana*, *Clermontia pyrularia*, and *Cyanea hamatiflora* ssp. *carlsonii* (HHP 1991a3, 1991y, HPCC 1991c1 to 1991c3). After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands (Wagner *et al.* 1990). It threatens *Colubrina oppositifolia*, *Mariscus fauriei*, and *Nothocestrum breviflorum* (HHP 1991e8, 1991e15, 1991e16, 1991o8, 1991p12, HPCC 1991b, 1991g).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species which have become naturalized, 6 species threaten 11 of the 21 taxa in this rule. *Andropogon virginicus* (broomsedge) is a perennial, tufted grass which is naturalized on Oahu and Hawaii along roadsides and in disturbed dry to mesic forest and shrubland. This is a fire-adapted grass which threatens *Portulaca sclerocarpa* (Cuddihy and Stone 1990, HPCC 1991i, O'Connor 1990). *Digitaria ciliaris* (Henry's crabgrass) is an annual grass which forms thick mats. It has naturalized on all the main Hawaiian islands in lawns and pastures and threatens *Ischaemum byrone* (HPCC 1991f, O'Connor 1990). *Oplismenus hirtellus* (basketgrass) is a perennial grass which is naturalized in shaded mesic valleys and forests and sometimes in wet forests on most of the main Hawaiian Islands. *Mariscus fauriei* is threatened by basketgrass (HPCC 1991g, O'Connor 1990). *Pennisetum clandestinum* (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (Medeiros *et al.* 1986, O'Connor 1990, Smith 1985). Kikuyu grass is a threat to *Clermontia lindseyana*, and *Zanthoxylum hawaiiense* (HPCC 1991a; A. Medeiros, pers. comm., 1992). *Pennisetum setaceum* (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Fountain grass threatens one or more populations of the following taxa: *Colubrina oppositifolia*, *Isodendrion pyrifolium*, *Nothocestrum breviflorum*, *Ochrosia kilaueaensis*, *Portulaca sclerocarpa*, *Silene hawaiiensis*, *Tetramolopium arenarium*, and *Zanthoxylum hawaiiense* (HHP 1991p5, HPCC 1990a, 1991h; J. Lau and P. Weissich, pers. comms., 1992).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and are unable to recover well following a fire. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii; native shrubland can thus be converted to land dominated by alien grasses. The

presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Fire-adapted alien species can re-establish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Fires may result from natural causes, or they may be accidentally or purposely set by hunters, or military ordnance or personnel. Vegetation within PTA on the northwestern slope of Mauna Loa is particularly vulnerable to fire, as this is an area managed for recreational hunting and used for military training. The only known population of *Tetramolopium arenarium* occurs in Kipuka Kalawamauna, and to protect this area from fires, the U.S. Army has installed firebreaks and now redirects ordnance firing away from that kipuka. Planned military maneuvers are now being re-evaluated in light of several Category 1 and listed endangered species within the boundaries of PTA, and an Environmental Impact Statement is being prepared for the area in response to a court decision (Cuddihy and Stone 1990, U.S. Fish and Wildlife Service 1979; R. Shaw, pers. comm., 1992). Fire is a threat to one or more populations of the following taxa in this rule: *Colubrina oppositifolia, Isodendrion pyrifolium, Nothocestrum breviflorum, Ochrosia kilaueaensis, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense* (HHP 1991e15, 1991p5, HPCC 1990a, 1990b, 1991b, 1991h; J. Lau and K. Nagata, pers. comms., 1992).

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges and is often exacerbated by human disturbance and land use practices (See Factor A). Landslides produced by burrowing seabirds in an offshore islet population of *Ischaemum byrone* are a potential threat to that species (HHP 1991m10; R. Hobdy, pers. comm., 1992). Flooding is a threat to *Clermontia peleana*, which often grows in a riparian habitat (Bruegmann 1990, CPC 1990). A population of *Ischaemum byrone* is presumed to have been destroyed by volcanic activity, and another population is affected by drifting black sand (HHP 1991m3; C. Lamoureux, pers. comm., 1992). Some populations of *Silene hawaiiensis* are also considered to be threatened by volcanic activity (HPCC 1991j).

People are more likely to come into contact with taxa that have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following taxa have populations in recreational areas or close to roads or trails and are immediately or potentially threatened by human disturbance: *Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyrtandra giffardii, Ischaemum byrone, Nothocestrum breviflorum, Portulaca sclerocarpa, Silene hawaiiensis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.*

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to issue this final rule. Based on this evaluation, this rulemaking will list these 20 plant taxa as endangered: *Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea copelandii* ssp. *copelandii, Cyanea hamatiflora* ssp. *carlsonii, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Nothocestrum breviflorum, Ochrosia kilaueaensis, Plantago hawaiensis, Portulaca sclerocarpa, Pritchardia affinis, Tetramolopium arenarium,* and *Zanthoxylum hawaiiense.* One taxon is listed as threatened, *Silene hawaiiensis.* Fourteen of the taxa determined to be endangered number no more than about 100 individuals and/or are known from 5 or fewer populations. The 20 taxa are threatened by 1 or more of the following: habitat degradation and/or predation by axis deer, cattle, goats, insects, pigs, rats, and sheep; competition from alien plants; fire and natural disasters; human and military impacts; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these 20 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Although all populations of *Silene hawaiiensis* are threatened to some degree by fire, competition with alien plant species, predation by feral animals, and/or human activities, the widespread distribution of populations, rocky habitat, presence of population regeneration, and total numbers of plants reduces the danger that this species will become extinct in the near future. For these reasons, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *Silene hawaiiensis* is likely to become endangered in the foreseeable future if the threats are not curbed. As a result, *Silene hawaiiensis* fits the definition of a threatened species as defined in the Act.

Hesperocnide sandwicensis has been reassessed with regard to the five factors addressed above and the new information about the species' abundance and location. Although individual plants and populations of plants are threatened by competition from alien grasses, grazing by feral pigs, goats, and sheep, habitat disturbance and damage to plants as a result of military exercises, and fire, large reproductive populations located throughout PTA are relatively secure from these threats. The Service now finds that *Hesperocnide sandwicensis* fails to meet the definition of either an endangered or threatened species, and has withdrawn it from consideration for endangered or threatened status (see notice of withdrawal published concurrently in this **Federal Register**).

Critical habitat is not being designated for the 21 taxa included in this rule, for reasons discussed in the **Critical Habitat** section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered. The Service finds that designation of critical habitat is not presently prudent for these taxa. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a designation of critical habitat, would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of

protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. Designation of critical habitat for these taxa is not prudent at this time because such a designation would increase the potential for vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal recognition, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One or more populations of 10 of the taxa are located on federally owned and/or managed land: Four taxa are located in Hawaii Volcanoes National Park on the island of Hawaii and one taxon in Kalaupapa NHP on Molokai; six taxa are located on military lands, including one species on Makua Military Reservation on Oahu and five taxa on PTA on the island of Hawaii; two taxa are found in Hakalau Forest National Wildlife Refuge on the island of Hawaii; and a population of one taxon occurs at a U.S. Coast Guard lighthouse on Maui. Federal agencies that would become involved if any of their activities may affect these 21 taxa include the National Park Service, Department of Defense, Environmental Protection Agency, Fish and Wildlife Service, and the U.S. Coast Guard.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, 17.63, 17.71 and 17.72 for endangered and threatened plants set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plant species. With respect to the 20 plant taxa in this rule listed as endangered, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. With respect to the taxon listed as threatened, the provisions of 50 CFR 17.71, apply. These prohibitions, in part, make it illegal with respect to any endangered or theatened plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction. For plants listed as endangered, the Act prohibits the malicious damage or destruction of any such species on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement "of cultivated origin" appears on their containers.

The Act and 50 CFR 17.62, 17.63 and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. It is anticipated that few permits would ever be sought or issued. The taxa are not common in cultivation or in the wild, and only one taxon, *Pritchardia affinis*, is known to be in an active program of cultivation.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author

The author of this final rule is Loyal A. Mehrhoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Apocynaceae—Dogbane family:						
Ochrosia Kilaueaensis.	Holei	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Arecaceae—Palm family:						
Pritchardia affinis	Loulu	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Asteraceae—Aster family:						
Tetramolopium arenarium.	None	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Campanulaceae—Bellflower family:						
Clermontia lindseyana.	'Oha wai	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Clermontia peleana	'Oha wai	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Clermontia pyrularia	'Oha wai	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Cyanea copelandii ssp. *copelandii.*	Haha	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Cyanea hamatiflora ssp. *carlsonii.*	Haha	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Cyanea shipmanii	Haha	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Cyanea stictophylla	Haha	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Caryophyllaceae—Pink family:						
Silene hawaiiensis	None	U.S.A. (HI)	T	532	NA	NA
•	•	•	•	•	•	•
Cyperaceae—Sedge family:						
Mariscus fauriei	None	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Gesneriaceae—African Violet family:						
Cyrtandra giffardii	Ha'iwale	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Cyrtandra tintinnabula.	Ha'iwale	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Plantaginaceae—Plantain family:						
Plantago hawaiensis	Laukahi kuahiwi	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Poaceae—Grass family:						
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	E	532	NA	NA
•	•	•	•	•	•	•
Portulacaceae—Purslane family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Portulaca sclerocarpa	Po'e	U.S.A. (HI)	E	532	NA	NA
• • •	•	•	•	•	•	•
Rhamnaceae—Buckthorn family: *Colubrina oppositifolia.*	Kauila	U.S.A. (HI)	E	532	NA	NA
• • •	•	•	•	•	•	•
Rutaceae—Citrus family: *Zanthoxylum hawaiiense.*	A'e	U.S.A. (HI)	E	532	NA	NA
• • •	•	•	•	•	•	•
Solanaceae—Nightshade family *Nothocestrum breviflorum.*	'Aiea	U.S.A. (HI)	E	532	NA	NA
• • •	•	•	•	•	•	•
Violaceae—Violet family: *Isodendrion pyrifolium.*	Wahine noho kula	U.S.A. (HI)	E	532	NA	NA
• • •	•	•	•	•	•	•

Dated: February 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4841 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO–160–A71; DA–93–30]

Milk in the Middle Atlantic Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Middle Atlantic milk marketing order. The proposals would amend provisions dealing with pooling qualifications for distributing plants and cooperative reserve processing plants, producer milk diverted to nonpool plants, and the qualification of pool plants under more than one Federal order. Two of the proposals would authorize the market administrator to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions.

DATES: The hearing will convene at 9 a.m. local time on May 3, 1994.

ADDRESSES: The hearing will be held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania 19106, telephone (215) 923–8660.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania 19106, telephone (215) 923–8660, beginning at 9 a.m. on May 3, 1994, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small business.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Pennmarva Dairymen's Federation, Inc.

Proposal No. 1

Amend § 1004.7(a)(1) to exclude milk diverted as producer milk by either the plant operator or by a cooperative association from receipts used to calculate pool distributing plant qualification.

Proposal No. 2

Delete § 1004.7(a)(4), so that a plant changing from regulation under Order 4 to regulation under another Federal order will not be exempt from the provisions of § 1004.7(a)(3).

Proposal No. 3

Delete § 1004.7(f)(2) to leave the determination of which order should regulate a plant with route disposition in more than one Federal milk order to the provisions of § 1004.7(f)(1).

Proposal No. 4

Change from 30 percent to 25 percent the percentage of a cooperative association's member milk that must be

transferred from a cooperative-operated reserve processing plant to, or physically received from member producers at, pool distributing plants if the reserve processing plant is to qualify as a pool plant.

Proposal No. 5

Add a new paragraph § 1004.7(g) to allow the market administrator to increase or decrease the required percentage disposition or shipping requirements for pool qualification of distributing, supply or reserve processing plants at the market administrator's own initiative or at the request of interested parties.

Proposal No. 6

Amend § 1004.12(d) to more clearly define the pooling requirements for producer deliveries to pool plants and the status of producers whose marketing is interrupted by compliance with health regulations.

Proposal No. 7

Amend § 1004.12(d)(2)(i) to increase the permissible percentage of nonpool deliveries of member milk by a cooperative or federation of cooperative associations from a maximum of 50 percent of total volume of member milk to a maximum percentage of 55 percent.

Proposal No. 8

Add a new paragraph § 1004.12(g) to authorize the market administrator to increase or reduce the applicable shipping percentages of § 1004.12(d)(2)(i) and (ii).

Proposed by Johanna Dairies Incorporated

Proposal No. 9

Amend § 1004.12(d)(2)(ii) to increase the permissible percentage of nonpool deliveries for nonmember milk from a maximum of 40 percent of the total nonmember milk to a maximum percentage of 45 percent.

Proposed by Dairy Division, Agricultural Marketing Service

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Middle Atlantic marketing area, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture,
Office of the Administrator, Agricultural Marketing Service,
Office of the General Counsel,
Dairy Division, Agricultural Marketing Service (Washington office only),
Office of the Market Administrator, Middle Atlantic Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 25, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4919 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Parts 1744, 1753

Post-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans; Telecommunications System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its post-loan regulations for telephone borrowers to ease borrower reporting requirements and further clarify existing REA policy. In addition, REA proposes to amend the telecommunications system construction regulations to reflect minor technical changes such as moving the definitions section from one subpart to another.

DATES: Comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than May 3, 1994.

ADDRESSES: Submit written comments to Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue, SW., room 2832–S, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2238–S, at the address listed above, between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, III, Chief, Northeast Engineering Branch, Eastern Regional Division, at the address listed above, telephone number (202) 720–3299.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA telephone program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action liberalizes certain contract requirements by changing contract limits and allowing negotiation of fee schedules which further offsets economic costs.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section

3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for approval. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

The proposed rules are primarily aimed at further clarifying and relaxing existing REA regulations concerning post-loan and system construction policies and procedures. Further clarification of REA policy would ease borrower reporting requirements by clearly defining certain post-loan construction procedures, such as contract construction and closeout procedures.

In part 1744, subpart B is revised to explain what REA means by "in the interests of the Government". Also, definitions sections of subpart B and subpart C are combined into a single list of definitions, located in subpart B.

In part 1753, subpart B is revised to delete definitions which merely repeat those in subpart A. Also, a monthly construction progress reporting requirement is deleted because it contains information reported elsewhere.

Subparts F and I are revised to increase the maximum allowable dollar amount of the Form 773 contract. This requires miscellaneous revisions throughout part 1753.

Minor and technical corrections are made throughout part 1753.

Appendices A through F are revised to change the requirement to distribute certain documents to REA.

Specifically, Appendix A is amended by adding to the table the distribution of Seismic Safety Certifications, required by 7 CFR part 1792, to the contractor and REA.

Appendix B is amended by removing from the table the distribution of the Switching Diagram and Set of Drawings to REA, and to delete reference to REA Form 744 which has been replaced by REA Form 754.

Appendix C is amended by removing from the table the distribution of Final Key Maps and Final Central Office Area and Town Detail Maps to REA, and to reduce to one copy the number of other final documents required for REA.

Appendix D is amended to comply with the revisions proposed to Appendix C.

Appendix E is amended by removing from the table the distribution of Detail Maps and Key Maps to REA.

Appendix F is amended by adding to the table the distribution of REA Form 213, Buy American Certificate to REA.

List of Subjects

7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1753

Loan programs-communications, Telecommunications, Telephone.

For reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1744.40, paragraph (a)(3) is revised to read as follows:

§ 1744.40 Non-act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government. Generally, it would not be in the Government's interest if the accommodation or subordination is being requested to enable the borrower to avoid complying with such REA policies or procedures, as competitive bid procedures or purchasing equipment acceptable to REA, under 7 CFR part 1753.

* * * * *

§ 1744.21 [Amended]

§ 1744.61 [Removed and reversed]

3. The paragraph designations in §§ 1744.21 and 1744.61 are removed, the definition in § 1744.21 are put in alphabetical order, the definitions in § 1744.61 are transferred to § 1744.21 in alphabetical order, and § 1744.61 is removed and reserved.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.5, paragraph (b)(1) is revised to read as follows:

§ 1753.5 Methods of major construction.

* * * * *

(b) *Contract construction.* (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, award of the contract is subject to REA approval.

* * * * *

3. In § 1753.6, paragraph (b) is revised to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

* * * * *

(b) The borrower may use REA loan funds to finance nonstandard construction materials or equipment only if approved by REA in writing prior to purchase or commencement of construction.

* * * * *

4. In § 1753.8, paragraphs (a)(11)(ii), (a)(12)(i), (b)(2), (b)(3), and (b)(4) are revised, and paragraph (b)(5) is removed to read as follows:

§ 1753.8 Contract construction procedures.

(a) * * *

(11) * * *

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder, subject to REA approval. The borrower may award the contract immediately upon determination of the lowest responsive bidder if the following conditions are met:

(A) The project is included in an approved loan and adequate funds were budgeted in the loan and are available.

(B) All applicable REA procedures were followed, including those in the Notice and Instructions to Bid in the standard forms of contract.

* * * * *

(12) *Execution of contract:* (i) Upon approval by REA of the award of contract by the borrower, the borrower shall submit to REA three original counterparts of the contract executed by the contractor and borrower.

* * * * *

(b) * * *

(2) For negotiated purchases, borrowers shall use REA contract forms, standards, and specifications.

(3) For all contract forms except REA Form 773:

(i) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(ii) If REA approves the negotiated proposal, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(iii) If REA approves the contract, REA shall return one copy of the contract to the borrower and one copy to the contractor.

(4) For REA Form 773, the borrower is responsible for negotiating a satisfactory proposal, executing contracts, and closing the contract. See 7 CFR 1753, subparts F and I, for requirements for major and minor construction, respectively, on Form 773.

5. In § 1753.9, paragraphs (a) and (c) are revised to read as follows:

§ 1753.9 Subcontracts.

(a) REA construction contract Forms 257, 397, 515, and 525 contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

* * * * *

(c) As stated in contract Forms 257, 397, 515, and 525, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

* * * * *

6. In § 1753.16, paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as paragraphs (b)(4), (b)(5) and (b)(6), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 1753.16 Architectural services.

* * * * *

(b) * * *

(3) If the fee schedule has to be modified in order for the borrower to obtain adequate architectural services, the borrower shall obtain written REA approval of the revised fee schedule prior to executing contracts.

* * * * *

7. In § 1753.17, paragraph (e) is revised to read as follows:

§ 1753.17 Engineering services.

* * * * *

(e) The borrower shall obtain status of contract and force account proposal reports from the engineer once each month. The report shall show for each contract or FAP the approved contract or FAP amount, the date of approval, the scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of delays or other pertinent data relative to progress of the project. One copy of this report shall be submitted to the GFR.

* * * * *

8. In § 1753.25, a new paragraph (f)(4) is added to read as follows:

§ 1753.25 General.

* * * * *

(f) * * *

(4) 7 CFR 1792, subpart C, which requires that the building design comply with applicable seismic design criteria. Prior to the design of buildings, borrowers shall submit to REA a written acknowledgement from the architect or engineer that the design will comply.

* * * * *

9. In § 1753.26, paragraph (b) introductory text is revised, paragraph (c) is redesignated as paragraph (d), and new paragraph (c) is added to read as follows:

§ 1753.26 Plans and specifications (P&S).

* * * * *

(b) REA Contract Form 257 shall be completed as follows:

* * * * *

(c) The plans and specifications shall show the identification and date of the model code used for seismic safety design considerations, and the seismic factor used. See 7 CFR 1792, subpart C.

* * * * *

§ 1753.29 [Amended]

10. In § 1753.29, paragraph (a) is removed, and paragraphs (b), (c), (d), and (e) are redesignated as paragraphs (a), (b), (c), and (d).

11. In § 1753.30, paragraphs (b)(2)(i) and (c)(2) are revised to read as follows:

§ 1753.30 Closeout procedures.

* * * * *

(b) * * *

(2) * * *

(i) Arrange with its architect or engineer, contractor, and the GFR for final inspection of the project.

* * * * *

(c) * * *

(2) Complete, with the assistance of its architect or engineer, the documents listed in Appendix A that are required for the closeout of force account construction.

* * * * *

12. In § 1753.39, paragraph (g) is revised to read as follows:

§ 1753.39 Closeout documents.

* * * * *

(g) Final payment shall be made according to the payment terms of the contract.

* * * * *

13. In § 1753.46, paragraph (c) is added to read as follows:

§ 1753.46 General.

* * * * *

(c) The two contract forms which may be used for major outside plant construction are Form 515 and Form 773. Limitations on the applicability of these forms shall be as follows:

(1) Form 515 shall be used for major outside plant construction projects which will be competitively bid. The contract contains plans and specifications and has no dollar limitation. See §§ 1753.47, 1753.48 and 1753.49.

(2) A Form 515 contract which is for less than $200,000, may, at the borrower's option, be negotiated. See § 1753.48(b).

(3) Form 773 shall be used for major outside plant projects which may not be competitively bid, and which cannot be designed and staked at the time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. The Form 773 contract is limited to a maximum of $200,000. REA will not finance more than $400,000 in Form 773 contracts for a borrower in any twelve month period. This $400,000 limitation includes all major and minor construction performed under Form 773 contracts, and is determined by the date the Form 773 contract is executed. See § 1753.50.

14. In § 1753.49, paragraph (c)(3) is revised to read as follows:

§ 1753.49 Closeout documents.

* * * * *

(c) * * *

(3) Final payment shall be made according to the payment provisions of Article III of Form 515.

15. § 1753.50 is added to read as follows:

§ 1753.50 Construction by Form 773 contract.

(a) The borrower shall prepare the contract form and provide such details of construction as may be available. Compensation may be based upon unit prices, hourly rates, or another mutually agreeable basis.

(b) Neither the selection of the contractor nor the contract requires REA approval.

(c) Borrowers are urged to obtain quotations from several contractors before entering into a contract to be assured of obtaining the lowest cost.

(d) The borrower must ensure that the contractor selected meets all Federal and State requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work. See 7 CFR part 1788.

(e) The borrower shall finance major construction under the Form 773 contract with general funds and obtain reimbursement with loan funds when construction is completed and an executed Form 771 has been submitted to REA.

(f) If the contract exceeds $100,000, a contractor's bond shall be required. See 7 CFR part 1788.

(g) When the construction is completed to the borrower's satisfaction, the borrower shall obtain from the contractor a final invoice and an executed copy of REA Form 743, Certificate of Contractor and Indemnity Agreement.

(h) The closeout document for the Form 773 contract is REA Form 771. See § 1753.81 for the requirements for completing Form 771.

(i) An original and two copies of Form 771 shall be sent to the GFR. The GFR may inspect the construction, and will initial and return the original and one copy to the borrower.

(j) The original Form 771 shall be submitted with an FRS to REA only in conjunction with a request for an advance of loan funds for the work.

16. In § 1753.68, paragraph (d)(3)(iii) is revised to read as follows:

§ 1753.68 Purchasing special equipment.

* * * * *

(d) * * *

(3) * * *

(iii) Final payment shall be made according to the payment terms of the contract.

17. In § 1753.78, paragraph (a) is revised to read as follows:

§ 1753.78 Construction by contract.

(a) REA Form 773 shall be used for minor construction by contract. Compensation may be based upon unit prices, hourly rates, or another basis agreed to in advance by the borrower and the contractor. A single work project may require more than one contractor.

* * * * *

18. In § 1753.80, paragraph (a) is revised to read as follows:

§ 1753.80 Minor construction procedure.

(a) If the borrower performs minor construction financed with loan funds, the borrower's regular work order procedure shall be used to administer construction activities that may be performed entirely by a contractor under Form 773 contract, by work order, or jointly by work order and one or more contractors under Form 773 contracts. REA will not finance more than $400,000 in Form 773 contracts for a borrower in any twelve month period. This $400,000 limitation includes all major and minor construction performed under Form 773 contracts, and is determined by the date the Form 773 contract is executed.

* * * * *

19. Appendices A through F of part 1753 are revised to read as follows:

Appendices to Part 1753

APPENDIX A.—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

Form furnished by REA	Description	Use with		Prepared by			Number of copies	Distribution			
		Contract	Force account	Contractor	Architect/engineer	Borrower		Borrower	REA	Architect	Contractor
238	Construction or Equipment Contract Amendment (Submit to REA for approval, as required).	x			x		3		3		
181	Certificate of Completion (Contract Construction) [1].	x			x		3	1	1		1
181a	Certificate of Completion (Force Account Construction).		x		x		2	1	1		
231	Certificate of Contractor	x		x			2	1	1		
224	Waiver and Release of Lien (2 copies from each supplier).	x		x			2	1	1		
213	Certificate (Buy American).	x		x			1	1			
284	Statement of Architect's Fee.	x	x		x		3	1	1	1	
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Furnished. Show Cost (See Form 284).	x	x			x	3	1	1	1	

APPENDIX A.—DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS—Continued

Form furnished by REA	Description	Use with		Prepared by			Number of copies	Distribution			
		Contract	Force account	Contractor	Architect/engineer	Borrower		Borrower	REA	Architect	Contractor
	Inventory—List Materials and Services Furnished by Borrower Upon Which Architectural Services Were Not Performed Show Cost.	x	x	.....	.....	x	3	1	1	1	.....
(2)	"As Built" Plans and Specifications.	x	x	.....	x	.....	1	1	.....	.....	.....
	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, et cetera.	x	.....	x	.....	.....	1	1	.....	.....	.....
	Architect/Engineer Seismic Safety Certification.	x	x	.....	x	.....	3	1	1	.....	1

[1] Cost of Materials and Services Furnished by Borrower not to be Included in total Cost on Form 181.
[2] When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built Plans and Specifications.

APPENDIX B.—DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

Form furnished by REA	Description	Use with		Prepared by		Total No. of copies	Distribution		
		REA form 525	REA form 545	Contractor	Engineer		Borrower	Contractor	REA
238	Construction or Equipment Contract Amendment (Submit to REA for approval, if required, before following documents).	x	x	.....	x	3	.....	.....	3
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (If submitted, Form 744 is not required).	x	.....	x	x	4	2	1	1
517	Results of Acceptance Tests (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	x	.....	.....	x	2	1	1	.....
752a	Certificate of Completion—Not Including Installation.	.....	x	.....	x	3	1	1	1
224	Waiver and Release of Lien (Two copies from each supplier).	x	.....	x	.....	2	1	.....	1
231	Certificate of Contractor	x	.....	x	.....	2	1	.....	1
213	Certificate (Buy American)	x	x	x	.....	1	2	.....	1
	Switching Diagram, as installed	x	x	x	.....	2	2	.....	.....
	Set of Drawings (Each set to include all the drawings required under the Specification REA Form 522).	x	x	x	.....	2	2	.....	.....

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515

REA Form No.	Description	No. of Copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
724	Final Inventory	3	x	x	.....	1	1	1
724a	Final Inventory	3	x	x	.....	1	1	1
	Contractor's Board Extension (When required).	3	.....	.....	x	1	1	1

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515—Continued

REA Form No.	Description	No. of Copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
281	Tabulation of Materials Furnished by Borrower.	3		x		1	1	1
213	Certificate ("Buy American")	1	x		x	1		
	Listing of Construction Change Orders	2						1
224	Waiver and Release of Lien (Two copies from each supplier).	2	x	x	x	1		1
231	Certificate of Contractor	2	x		x	1		1
527	Final Statement of Construction	3	x	x		1	1	1
	Reports on Results of Acceptance Tests	2		x		1	1	
	Set of Final Staking Sheets	1		x		1		
	Tabulation of Staking Sheets	1		x		1		
	Treated Forest Products Inspection Reports or Certificates of Compliance (Prepared by inspection company or supplier).	1				1		
	Final Key Map (when applicable)	1		x		1		1
	Final Central Office Area and Town Detail Maps.	1		x		1		1

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT—LABOR AND MATERIALS, REA FORM 515

Sequence		By	Procedure
Step No.	When		
1.	Prior to completion of construction.	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.
2.	Upon completion of construction.	Borrower's Engineer	Prepares the following: 1 set of Key Maps, when applicable, which show work done under the construction contract marked with red pencil. 1 set of Detail Maps, which show work done under the construction contract marked with red pencil. 1 copy of Tabulation of Staking Sheets. 1 copy of tentative Final Inventory, REA Forms 724, 724a.
3.	After construction has been completed and acceptance tests made.	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection.
4	Upon receipt of letter from borrower's engineer.	GFR	Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time.
5.	When requested by the GFR.	REA Field Accountant	Audits REA Form 281, if borrower supplied part of the materials.
6.	Inspection date scheduled	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable). 1 set of "as constructed" Detail Maps. 1 copy of the List of Construction Change Orders. 1 set of Final Staking Sheets. 1 copy of Tabulation Staking Sheets. 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance. 1 copy of tentative Final Inventory REA Form 724, 724a. 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material. 1 copy of Report on Results of Acceptance Tests.
7.	During inspection	Borrower's Engineer	Issues instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8.	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9.	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.
10.	During inspection	Borrower's Engineer	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.
11.	Upon completion of inspection.	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Appendix C. Makes distribution of the copies of the documents as indicated in Appendix C. Forwards the documents for REA to the GFR.
12.	After reviewing final documents.	REA GFR	Reviews documents and distributes copies as indicated in Appendix C.

APPENDIX D.—STEP-BY-STEP PROCEDURE FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT—LABOR AND MATERIALS, REA FORM 515—Continued

Sequence		By	Procedure
Step No.	When		
13.	After signing final inventory.	Borrower	Prepares and submits Financial Requirement Statement, REA Form 481, requesting amount necessary to make final payment due under contract.
14.	On receipt of final advance.	Borrower	Promptly forwards check for final payment to contractor.
15.	During next loan fund audit review after final payment to contractor.	REA Field accountant	Makes an examination of borrowers construction records for (1) compliance with the construction contract and Subpart F and (2) REA Form 281, Tabulation of Materials Furnished by Borrowers, if any, for appropriate costs.

APPENDIX E.—DOCUMENTS REQUIRED TO CLOSE OUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

Item No.	REA form No.	Description on title of document	No. of copies required and distribution of documents		
			Total No.	Owner	REA
a.	817, 817a, 817b	Final inventory force account construciton and certificate of engineer	2	1	1
b.	213	Certificate, "Buy American" (as applicable—one from each supplier)	1	1	0
c.		Detail maps	1	1	0
d.		Key map if applicable	1	1	0
e.		Staking sheets	1	1	0
f.		Tabulation of staking sheets	1	1	0
g.		Treated forest porducts inspection reports, if applicable	1	1	0

APPENDIX F.—DOCUMENTS REQUIRED TO CLOSEOUT EQUIPMENT CONTRACTS

Form furnished by REA	Description	No. of copies		Prepared by				Distribution		
		Form 397	Form 398	Form 397		Form 398		Borrower	Contractor	REA
				Contractor	Engineer	Contractor	Engineer			
238	Construction or Equipment Contract Amendment (If required, submit to REA for approval before other closeout documents.).	3	3	.....	x	.....	x	.....	.....	3
396	Certificate of Completion—Special Equipment Contract (Including Installation).	3	.....	.....	x	.....	x	1	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).	.....	3	.....	x	.....	x	1	1	1
744	Certificate of Contractor and Indemnity Agreement.	2	.....	x	.....	.....	.....	1	.....	1
213	Certificate (Buy American)	2	2	x	.....	x	.....	1	.....	1
	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	2	2	x	.....	.....	x	1	.....	1
	Set of maintenance recommendations for all equipment furnished under the contract.	1	1	x	.....	x	.....	1	.....	.....

Dated: February 25, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–4858 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–701]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Availability of letters.

SUMMARY: The Department of Energy today gives notice that copies of three letters related to the "Background" statement in a pending notice of proposed rulemaking, 58 FR 67710 (December 22, 1993), have been placed in the Freedom of Information Reading Room for public inspection. That document contains proposed amendments to the existing test procedure applicable to clothes washers under 10 CFR part 430, subpart B, appendix J. Two of the letters involve an exchange of correspondence between the Department and the Whirlpool Corporation regarding the meaning of the existing test procedure. The third letter conveys copies of the first two letters to all clothes washer manufacturers.

ADDRESSES: Copies of the three letters may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507.

Issued in Washington, DC, February 28, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–5008 Filed 3–3–94; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: Currently federally insured credit unions that wish to maintain public unit and nonmember accounts in excess of 20 percent of their total shares must have a waiver request approved by the Regional Director. The waiver request must include a plan setting forth the intended sources and uses of the funds. The proposed amendments would change the amount of nonmember and public unit accounts that a credit union may maintain, without a waiver, to 20 percent of total shares or $1.5 million, whichever is greater. Credit unions accepting nonmember accounts in excess of 20 percent of total shares but not greater than $1.5 million would, as under the current rule, be required to develop a written plan and send it to the Regional Director. Prior NCUA approval, however, would no longer be required.

DATES: Comments must be postmarked by April 4, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board, as part of its ongoing program of regulatory review, proposes to revise the regulation under which federally insured credit unions maintain nonmember and public unit accounts. Federal credit unions (FCUs) are authorized by section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) to receive nonmember shares from other credit unions, from certain governmental entities ("public units") and, if the credit union has a "low-income" designation from NCUA, from other outside sources. These nonmember shares, and equivalent accounts authorized for federally insured state credit unions under the state law are defined by section 101(5) of the Act (12 U.S.C. 1752(5)) as "accounts" and "member accounts" for purposes of the various provisions of the FCU Act, including those establishing insurance coverage by the National Credit Union Share Insurance Fund (NCUSIF).

NCUA's current regulation on nonmember accounts requires any federally-insured credit union that wishes to accept nonmember accounts in excess of 20 percent of total shares to submit to NCUA a plan setting forth the intended use of the funds and obtain NCUA approval. This rule was imposed in December 1988 (53 FR 50918, 12/19/88) in response to mismanagement and misuse of nonmember accounts by some credit unions. Pursuant to § 741.6 of NCUA's Regulations, federally-insured state chartered credit unions must adhere to NCUA's requirements regarding nonmember accounts.

B. Discussion

In most credit unions, the only forms of nonmember accounts are public unit and credit union accounts. However, as described above, credit unions with a low-income designation from NCUA are authorized to accept nonmember accounts from any source.

When the current nonmember account rule was instituted, NCUA's concern with these accounts stemmed from abuses involving large sums of money, often in excess of the $100,000 limit. In order to attract and retain these accounts, some credit unions paid higher than market dividend rates. Large influxes of funds into credit unions caused asset/liability management problems that were often not within management's expertise to control. In some cases, the total amount of such account was far in excess of the amount necessary to meet the legitimate needs of the members and was used to fund high risk loans and questionable investments.

The imposition of the 20 percent limitation has virtually eliminated problems involving nonmember funds. As discussed more fully below, however, the process of requesting waivers, which has fallen almost entirely on low-income credit unions, has proven burdensome for some credit unions. The purpose of this proposal is to reduce that burden without significantly increasingly the risk to the credit union system and the NCUSIF.

As of June 1993, only 57 low-income credit unions out of 146 maintained

nonmember accounts. The total dollar amount of these accounts was approximately nineteen million, with the average dollar amount per low-income credit union approximately $339,000. Surveys indicate that low-income credit unions maintaining nonmember accounts are currently paying below market rates on the vast majority of these funds. It appears that most low-income credit unions, as most other credit unions, use nonmember accounts prudently and do not maintain excessive amounts of these funds.

NCUA recognizes that nonmember accounts can be crucial to a low-income credit union in meeting the fundamental purpose of a credit union: Promoting thrift and creating a source of credit for its members. Nonmember funds can be invested to provide earnings that are paid out to members in the form of dividends, and they can provide a source of much needed loan funds. Moreover, nonmember accounts can generate income that can be a source of badly needed capital.

Over the period from the adoption of the regulation in 1988 through June 1993, 50 of 59 waiver requests (85%) have been approved. This suggests that most waiver requests have been justified and acceptable to the regional director. Although a high percentage of the waivers have been approved, the procedure has proven burdensome for some credit unions. Given the small asset size of most credit unions, the 20 percent limit frequently requires waivers for small amounts of funds that pose very little risk to the credit union and the NCUSIF. Both credit unions and NCUA may be expending much more time and paperwork on waiver requests than safety and soundness requires.

Although the NCUA Board remains concerned with the potential misuse of nonmember accounts, the Board believes that a modification of the 20 percent limit may be justified. The Board is proposing the following changes to the rule.

It is proposed that a credit union be able to maintain permissible nonmember accounts up to 20 percent of total shares or $1.5 million, whichever is greater, before a waiver by the regional director is required. This change recognizes the benefit of a limitation on nonmember accounts but also allows a credit union to maintain a reasonable amount of nonmember accounts, up to $1.5 million, without requesting one or more waivers from the regional director.

As under the current rule, all credit unions accepting nonmember accounts in excess of 20 percent of total shares would be required to have a plan for the use of such deposits. Further, the plan would be submitted to the Regional Director for information. Prior NCUA approval would be required, however, only for amounts in excess of both 20% and $1.5 million.

The plan would describe how nonmember accounts will be used to serve the credit union's membership, i.e., by providing loanable funds to its members or through increased earnings. This requirement should ensure that federally-insured credit unions have a reasonable plan in place for the use of the funds. As under the current rule, the plan would provide for matching maturities of nonmember accounts with corresponding assets, or a justification for any mismatch; and provide for an adequate income spread between public unit and nonmember shares and corresponding assets. The credit union would submit the plan to the regional director, prior to receiving nonmember accounts in excess of 20 percent, for NCUA's information and monitoring. NCUA approval would not be required before the credit union accepts additional nonmember accounts, unless the aggregate amount exceeded both 20% of shares and $1.5 million.

The proposed amendments, if adopted, would allow small credit unions to receive significant amounts of nonmember shares, in relation to their total shares, without the prior NCUA approval that has been required since 1988. The Board is committed to working with these credit unions to ensure that nonmember funds are used in a safe and sound manner to benefit their membership. In this connection, the Board requests comment on whether periodic reporting on the sources and uses of nonmember shares, in excess of 20 percent of total shares, should be established. The Board may consider a monthly or quarterly reporting requirement or alternatively, revisions to the NCUA Call Report (NCUA Form 5300), to gather additional information on sources and uses of nonmember funds.

C. Request for Comments

The Board also requests comment on a related issue; the length of an approved waiver, in those cases where a waiver request and approval are still required. The regulation currently states in § 701.32(b)(2) that the waiver request will normally be for a two-year period. Although the Board believes this language provides the regional director with sufficient discretion to approve waivers for a shorter or longer period, the Board is requesting comment on whether a nondiscretionary time period for the waiver should be stated, possibly three years, or whether the waiver should be open-ended and only terminated upon action by the regional director or the credit union.

Paperwork Reduction Act

The proposed amendments do not change paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The revised rule is generally less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit credit unions by permitting them to maintain a larger amount of nonmember accounts before requesting a waiver from the Regional Director. Accordingly, the Board determines and certifies that this final rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The amendment applies to federally-insured state-chartered credit unions that accept public unit and nonmember accounts. The proposed rule would make it possible for a federally-insured credit union to accept a larger amount of nonmember deposits without requesting an exemption.

List of Subjects in 12 CFR Part 701

Credit unions, Nonmember accounts, Public units.

By the National Credit Union Administration Board on February 28, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. It is proposed that § 701.32(b) be amended by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(4)

through (b)(6) respectively, revising paragraph (b)(1) and the newly designated (b)(6), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

§ 701.32 Payments on shares by public units and nonmembers, and low-income designation.

* * * * *

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember accounts shall not, at any given time, exceed 20% of the total shares of the federal credit union or $1.5 million, whichever is greater.

(2) Before accepting any public unit or nonmember shares in excess of 20% of total shares, the board of directors must adopt a specific plan concerning the intended use of these shares. The written plan must include: (i) A statement of the credit union's need, sources and intended uses of public unit and nonmember shares;

(ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit to the Regional Director a written request including: (i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) The plan adopted by the credit union's board of directors concerning the use of public unit and nonmember shares;

(iii) A copy of the credit union's latest financial statement; and

(iv) A copy of the credit union's loan and investment policies.

* * * * *

(6) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the limits established pursuant to paragraph (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to paragraph (b)(1) of this section shall be accepted. Existing share certificates in excess of the limits established pursuant to paragraph (b)(1) of this section may remain in the credit union only until maturity.

[FR Doc. 94-4977 Filed 3-3-94; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-07-AD]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747-400 series airplanes. This proposal would require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. This proposal is prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which has revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-07-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2687; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-07-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-07-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general.

Based on the data gathered from this ongoing investigation, the FAA has issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, Amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes. This action was taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-flight thrust reverser deployment. In fact, previously there had been at least 29 incidents in which the thrust reverser installed on Model 747 series airplanes powered by Pratt & Whitney JT9D series engines deployed during flight and the airplane was still controllable. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Recently, however, Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results thus far indicate that Model 747–400 series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high speed climb or during cruise.

In light of this new information, the FAA has determined that certain inspections and functional tests of the thrust reverser control and indication system on Model 747–400 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747–400 series airplanes. Accomplishment of these inspections and functional tests is intended to reduce the exposure of the airplane to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The assessment of the thrust reverser system reliability of Model 747–100, –200, –300, SP, and SR series airplanes is continuing. The FAA may consider rulemaking action for those airplanes based upon the results of that assessment.

The FAA has reviewed and approved Boeing Service Bulletins 747–78–2112, dated November 11, 1993 (for Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines); 747–78–2113, dated November 11, 1993 (for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines); and 747–78–2115, dated October 28, 1993 (for Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines). These service bulletins describe procedures for various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. The actions would be required to be accomplished in accordance with the service bulletins described previously.

This proposed AD also would require that operators submit a report of initial inspection and test results to the FAA.

This is considered to be interim action until final action is identified for these airplanes, at which time the FAA may consider further rulemaking.

There are approximately 286 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines of U.S. registry would be affected by this proposed AD, that it would take approximately 48 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines is estimated to be $102,960, or $2,640 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Currently, there are no Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines on the U.S. Register. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it would require approximately 60 work hours to accomplish the proposed actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $3,300 per airplane.

Additionally, there are no Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines on the U.S. Register at this time. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it would require approximately 30 hours to accomplish the proposed actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $1,650 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–07–AD.

Applicability: All Model 747–400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) For Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines: Accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Service Bulletin 747–78–2112, dated November 11, 1993.

(1) Within 90 days after the effective date of this AD, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin; and perform a test of the lock mechanism of the center locking actuator in accordance with paragraph E. of the Accomplishment Instructions of the service bulletin. Repeat this inspection and test thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 6 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs A., B., D., and F. through M. of the Accomplishment Instructions of the Service Bulletin. Repeat these inspections and functional tests thereafter at intervals not to exceed 15 months.

(b) For Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines: Accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 747–78–2113, dated November 11, 1993.

(1) Within 90 days after the effective date of this AD, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser in accordance with paragraph B. of the Accomplishment Instructions of the service bulletin; and perform a continuity test of the position switch module of the center drive unit (CDU) and a cone brake test of the CDU in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin. Repeat the inspection and tests thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 6 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs A., D., F., G., H., and J. through M. of the Accomplishment Instructions of the Service Bulletin. Repeat these inspections and functional tests thereafter at intervals not to exceed 15 months.

(c) For Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines: Within 6 months after the effective date of this AD, and thereafter at intervals not to exceed 15 months, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs D. through K. of the Accomplishment Instructions of Boeing Service Bulletin 747–78–2115, dated October 28, 1993.

(d) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78–2112, dated November 11, 1993 (for Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines); 747–78–2113, dated November 11, 1993 (for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines); or 747–78–2115, dated October 28, 1993 (for Model 747–400 series airplanes powered by Rolls-Royce RB211–524G/H series engines); as applicable.

(e) Within 10 days after performing each initial inspection and test required by this AD, submit a report of the inspection and/or test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4953 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–212–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspection to detect cracking of certain fuselage longitudinal lap joints, repair of any cracking found, and replacement of the countersunk fasteners in those laps joints with protruding head fasteners. This proposal is prompted by a structural reassessment of Model 747 series airplanes. The actions specified by the proposed AD are intended to prevent skin cracking in the longitudinal lap joints of certain stringers, which can lead to rapid decompression of the airplane.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–212–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, the Boeing Commercial Airplane Group, manufacturer of Model 747 series airplanes, conducted a structural reassessment of these airplanes. The FAA has reviewed the results of this reassessment and has determined that the longitudinal lap joints of Stringer (S–)12 are critical to the structural integrity of these airplanes.

The upper skin in the S–12 longitudinal lap joints are made of waffle doublers that are hot bonded to skin panels. The S–12 longitudinal lap joints have three rows of countersunk fasteners. The depth of the countersink exceeds the thickness of the skin panel. If the waffle doubler disbonds from the skin panel, the resultant sharp edges at the longitudinal lap joint fasteners can cause fatigue cracking at the fastener holes.

Skin cracking in the longitudinal lap joints of S–12L and S–12R, if not detected and corrected, could result in rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2366, dated August 6, 1992, that describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracking of the skin around the fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1, and replacement of the countersunk fasteners in these longitudinal lap joints with protruding head fasteners.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive external HFEC inspections to detect cracking of the skin around the fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1, and replacement of the countersunk fasteners in these longitudinal lap joints with protruding head fasteners. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposal also would require repair of all cracking in accordance with procedures specified in the 747 Structural Repair Manual.

This proposal is applicable only to airplanes having line numbers 201 through 230. Since the tolerance specifications for the bonding process for airplanes manufactered after line number 230 were more stringent, those airplanes are not subject to the unsafe condition addressed by this proposed AD.

There are approximately 30 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed inspections on U.S. operators is estimated to be $11,220, or $935 per airplane.

The FAA estimates that it would take approximately 302 work hours per airplane to accomplish the proposed requirement to replace fasteners, and that the average labor rate is $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the proposed requirement to replace fasteners on U.S. operators is estimated to be $199,320, or $16,610 per airplane.

Based on the figures, above, the total cost impact of the proposed actions (cost of inspections added to the cost of replacement of fasteners) on U.S. operators is estimated to be $210,540, or $17,545 per airplane.

The FAA recognizes that the proposed replacement of fasteners would require a large number of work hours to accomplish. However, the 4-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the replacement of the fasteners to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14

CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–212–AD.

Applicability: Model 747 series airplanes, having line numbers 201 through 230 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform an external high frequency eddy current (HFEC) inspection to detect cracking of the skin at the upper row of countersunk fasteners in the longitudinal lap joints of Stringer (S–)12L and S–12R from station 520 to station 741.1, in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles until the replacement of fasteners required by paragraph (b) of this AD is accomplished.

(2) If any cracking is found, prior to further flight, repair in accordance with the 747 Structural Repair Manual. After repair, repeat the inspection at intervals not to exceed 4,000 flight cycles until the replacement of fasteners required by paragraph (b) of this AD is accomplished.

(b) Prior to the accumulation of 20,000 total flight cycles or within 4 years after the effective date of this AD, whichever occurs later, replace the countersunk fasteners in the upper row of the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1 with protruding head fasteners in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992. Replacement of these fasteners constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) Prior to the accumulation of 10,000 total flight cycles after replacement of the countersunk fasteners required by paragraph (b) of this AD, perform an external HFEC inspection to detect cracking of the skin at the upper row of protruding head fasteners in the longitudinal lap joints of S–12L and S–12R from station 520 to station 741.1 in accordance with Boeing Service Bulletin 747–53–2366, dated August 6, 1992.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, prior to further flight, repair in accordance with the 747 Structural Repair Manual. After repair, repeat the inspection at intervals not to exceed 3,000 flight cycles.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4954 Filed 3–3–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–213–AD]

Airworthiness Directives; Canadair Model CL–600–2B19 (Regional Jet) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–2B19 (Regional Jet) series airplanes. This proposal would require modification of the stall protection system (SPS) input wiring, a revision to the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start; and modification of the attitude and heading reference system (AHRS). This proposal is prompted by a report that the AHRS could send conflicting input to the stall protection computer (SPC) on the airplane. The actions specified by the proposed AD are intended to prevent the loss of stall warning protection on the airplanes.

DATES: Comments must be received by April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–213–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–600–2B19 series airplanes. Transport Canada advises that the attitude and heading reference system (AHRS) could send conflicting input to the stall protection computer (SPC) on these airplanes. When the AHRS sends input to the SPC, the left- and right-hand channels on the SPC receive and compare that input. The SPC has a built-in feature that compares lateral acceleration from these channels. When the SPC recognizes unequal lateral acceleration signals of 0.03g or higher, it will inhibit the stall horn, light, and stick push command, and an "SPS FAILURE" caution message will display on the primary flight display. Due to a build-up effect of AHRS tolerances, these unequal signals may be detected within the SPC at a roll rate within the normal flight envelope. This condition, if not corrected, could result in the loss of stall warning protection on the airplane.

Bombardier, Inc., has issued Regional Jet Canadair Alert Service Bulletin S.B. A601R–34–028, Revision 'A,' dated October 22, 1993, that describes procedures for modification of the stall protection system (SPS) input wiring. The modification involves removing the right channel input wires from the connection to the SPC, capping and stowing the removed wires, installing splices from the left-hand channel input to the right-hand channel connection of the SPC, and installing a ground jumper wire. Accomplishment of these wiring changes will prevent a build-up effect of AHRS tolerances and unequal signals between the left- and right-hand SPC channels. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–93–27, dated October 26, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the SPS input wiring. The modification would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD would also require revising the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start. Finally, this proposed AD would require modification of the AHRS to restore the dual AHRS inputs to the SPC. This modification would be required to be accomplished in accordance with a method approved by the FAA.

It should be noted that Canadian AD CF–93–27 requires that the flight crew be advised of the possibility of an inadvertent inhibition of the stall horn, light, and stick push command at a roll rate within the normal flight envelope, and that an "SPS FAILURE" caution message will be displayed on the primary flight display. The Canadian AD requires that when such a message is displayed, appropriate abnormal procedures in the AFM should be followed. However, the FAA's position in this regard is that it is not necessary to include a requirement in this proposed AD to direct the flight crew to follow existing AFM procedures.

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Canadair Limited: Docket 93–NM–213–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7026 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of stall warning protection on the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the stall protection system (SPS) input wiring, in accordance with Canadair Regional Jet Alert Service Bulletin A601R–34–028, Revision 'A,' dated October 22, 1993.

(b) Prior to further flight after accomplishment of the modification required by paragraph (a) of this AD, revise the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) by

inserting the following into the AFM as facing page 04–20–13 <FAA> to advise the flight crew that a pre-flight check of the slip/skid indications must be accomplished as a "Before Start" item. This may be accomplished by inserting a copy of this AD into the AFM.

"Change step (4) within paragraph E, Before Start, to read as follows:

(4) EFIS—Checked and Set

Check that no annunciations are displayed on EFIS

EFIS slip/skid indications—Normal

Indications of a one-half (1/2) symbol width lateral deviation should be interpreted as an AHRS failure.

Note

One-half (1/2) symbol width displacement corresponds to approximately one-half displacement on a conventional inclinometer.

EFIS—Set for Departure"

Note 1: Insertion of Canadair Regional Jet Airplane Flight Manual CSP A–012, Temporary Revision RJ/26, dated October 21, 1993, in the Normal Procedures section of the AFM is an acceptable method of compliance with the requirements of paragraph (b) of this AD.

(c) Within 6 months after the effective date of this AD, modify the attitude and heading reference system (AHRS) to restore the dual AHRS inputs to the stall protection computer (SPC), in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4955 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

RIN 1515–AB20

Petroleum Refineries in Foreign Trade Subzones

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document invites public comment on a proposed revision of the notice of proposed rulemaking published in the **Federal Register** on August 10, 1992 (57 FR 35530), which would add special procedures and requirements to the Customs Regulations governing the operations of crude petroleum refineries approved as foreign trade subzones. The proposed rule is necessary to implement a section of the Technical and Miscellaneous Revenue Act of 1988 which amended the Foreign Trade Zone Act to make specific provision for petroleum refinery subzones. Customs has significantly revised the initial notice of proposed rulemaking as a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Legal aspects: Cari Berdut, Entry Rulings Branch, (202–482–7040).

Operational aspects: Louis Hryniw, Office of Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1992 (57 FR 35530), Customs published a document in the **Federal Register**, proposing to amend the Customs Regulations to add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, 19 U.S.C. 81c(d), to make specific provision for petroleum refinery subzones.

Briefly, as stated in the August 10, 1992, notice of proposed rulemaking, the amendment obviates the need to determine exactly when and where in the manufacturing process crude and other feedstocks become other products. In so doing, it permits refiners as well as Customs to assess the relative value of such multiple products at the end of the manufacturing period from which such products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to given crude or other feedstocks introduced into production during the period, to the extent that such products were producible (could have been produced) therefrom in the quantities removed from the subzone.

By a document published in the **Federal Register** on September 14, 1992 (57 FR 41896), Customs extended the public comment period for the proposed rule until December 8, 1992. Subsequently, by a document published in the **Federal Register** on November 24, 1992 (57 FR 55198), Customs further extended the public comment period until February 8, 1993, and gave notice of a public meeting which was held on December 15 and 16, 1992, concerning the proposed amendments.

As a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice of proposed rulemaking and the public meeting, Customs has decided to significantly revise its initial notice, and is requesting additional public comment on the revised proposed rule.

The following discussion includes a summary of the various comments received in response to the August 10, 1992, notice of proposed rulemaking, together with an explanation and analysis regarding the sections proposed to be added, eliminated or further revised. The proposed rule as revised is thereafter set forth.

Discussion of Comments

Comment: Most commenters favor deletion of proposed § 146.92(a), involving the definition of "Assay".

Response: Customs agrees. Laboratory analyses are sufficient to verify feedstock characteristics and provide API gravity.

Comment: Most commenters indicated that the cumulative entry activity report defined in proposed

§ 146.92 (c) is only required in the Houston District and, therefore, favor its deletion because the information is already contained in the subzone activity report.

Response: Upon further consideration, Customs has determined to delete proposed § 146.92 (c), (d), (h) and (l), involving the report in question, as well as certain related reports, specifically, the duty and user fee report, the inventory disposition report, and the product shipment report, all of which were principally addressed in proposed § 146.96 which, as a result, is also deleted from the proposed rule.

Comment: Commenters indicated that the definition in proposed § 146.92(e) concerning "feedstock" should be expanded to include natural gas and other hydrocarbons to comply with EPA regulations.

Response: Customs agrees and has so modified the wording of proposed § 146.92(e) (now redesignated as § 146.92(b)).

Comment: Many commenters noted that proposed § 146.92(f) defining "final product" should also include products consumed in the zone.

Response: Customs agrees with this suggestion and has so changed proposed § 146.92(f) (now redesignated as § 146.92(d)).

Comment: Most commenters indicated that fungibility is already defined in § 146.1(b), and that a definition for this term is not needed in the proposed subpart if the assay requirement is deleted.

Response: Customs agrees. Proposed § 146.92(g) has been eliminated.

Comment: A majority of commenters propose that the "manufacturing period" coincide with the normal accounting cycle.

Response: After reviewing the comments, particularly those of the Congressional sponsors of the legislation, Customs is convinced that a literal interpretation of the statutory language would not be appropriate. Therefore, proposed § 146.92(i) (now redesignated as § 146.92(e)) dealing with this matter has been reworded. The definition allows an operator to make the attribution of a final product either during the period in which the final product was produced (even if not consumed or removed from the refinery subzone during that same period) or the period in which the final product was consumed or removed from the zone (even if the final product was made in a prior period). The selection of the method is at the operator's option, but once selected, the method must be used consistently.

Comment: Most commenters suggested that they should be permitted to use standard product values, based on published prices.

Response: Customs agrees that standard product values, based on published prices, may be utilized, but that this must be done on a consistent basis. Thus, proposed § 146.92(j) (now redesignated as § 146.92(g)), involving the price of products in the subzone, has been reworded.

Comment: Most commenters suggested rewording proposed § 146.92(n) which defined the "relative value" of products produced in the subzone.

Response: The definition of "relative value" proposed by the commenters has been included in proposed § 146.92(n) (now redesignated as § 146.92(i)) because it states the same information as the proposed regulation, albeit more succinctly.

Comment: Many commenters noted that, generally, the "time of separation" will coincide with the "manufacturing period".

Response: Customs agrees that the "time of separation" coincides with the "manufacturing period". Therefore, proposed § 146.92(p) (now redesignated as § 146.92(k)) defining the time of separation has been modified accordingly.

Comment: Most commenters favor deletion of proposed § 146.92(q) which defines the term "unique identifier" (UIN) because this term is already defined in § 146.1(b)(19).

Response: Customs agrees and, therefore, this definition has been deleted.

Comment: Most commenters proposed eliminating proposed § 146.93(a)(1) regarding the use of the UIN (unique identifier) because this matter is already covered elsewhere in part 146.

Response: Customs agrees that existing § 146.22 adequately addresses this matter, and, therefore, paragraphs (a), (a)(1) and (a)(2) of proposed § 146.93 have been eliminated.

Comment: A number of commenters suggested that proposed § 146.93(b)(1) be deleted because zone admittance is already covered in subpart C of part 146.

Response: Customs agrees. Proposed § 146.93(b)(1) has been deleted.

Comment: Most commenters suggest deletion of the requirement that domestic feedstock be assigned a UIN, as provided in proposed § 146.93(c)(1), because existing regulations do not require that a Customs Form (CF) 214 be filed on domestic feedstocks.

Response: Customs agrees that a CF 214 is not required, and, therefore, proposed § 146.93(c)(1) has been deleted. Nevertheless, it must be noted that a domestic feedstock must be assigned a UIN under existing regulations.

Comment: A few commenters suggested that references to T.D. 66–16 concerning the attribution of final product to given feedstock be eliminated from proposed § 146.93(d)(1) because this is already discussed elsewhere in the proposed regulations.

Response: Customs agrees and, therefore, the proposed language has been duly modified and the section redesignated as proposed § 146.93(a)(1). Also, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) dealing with attribution using alternative inventory control has been revised to make reference to the use of FIFO; the use of FIFO is illustrated in an Appendix which has been added to the revision of proposed subpart H. In addition, proposed § 146.93(d)(3) dealing with "stock in process" has been deleted, in concert with the deletion of this term from the definition section; in its place, a new proposed § 146.93(a)(2) makes reference to the use of actual production records in attributing product to feedstock.

Comment: Commenters suggested that produets consumed within the zone should be included in proposed § 146.93(e).

Response: This suggestion has been incorporated in proposed § 146.93(e) (now redesignated as § 146.93(b)).

Comment: Commenters objected to the language of proposed § 146.94(a) regarding the introduction of feedstock into the refining process because they believe it requires a direct identification system.

Response: The commenters have misread this section, the purpose of which is to establish the amount and identity of the feedstocks available for attribution during each manufacturing period. The proposed language has been modified to eliminate any such misunderstanding.

Comment: Most commenters suggested deletion of the sentence, "This date establishes the end of the manufacturing period.", in proposed § 146.94(b).

Response: Given the proposed definition of "manufacturing period" this suggested change has been adopted.

Comment: Commenters indicated that the language contained in proposed § 146.94(c) regarding the removal of product from a refinery subzone is specific to a calendar week. However, an accounting period may be greater than a week.

Response: While a manufacturing or accounting period may be greater than a week, there is no authority to permit a consumption entry covering products removed from a zone to exceed one week. Thus, the language of § 146.94(c) remains in substance as originally proposed. However, Customs will reevaluate the possibility of permitting monthly entries, in light of the Customs modernization portion of the recently passed North American Free Trade Agreement Implementation Act, particularly § 637.

Currently, a refiner who desires to make attributions on the basis of a monthly manufacturing or accounting period must attribute and make any required relative value calculation by attributing current removals or consumptions to final products that were produced in a prior manufacturing or accounting period. A refiner who reports removals and consumption on a weekly basis and who elects to attribute a final product that is removed or consumed, in the same week that it is produced, must make the appropriate attribution and relative value calculation for that week.

Comment: Commenters noted that attribution is more appropriately dealt with in proposed § 146.99 (now redesignated as proposed § 146.96), rather than in proposed § 146.95 titled "Feedstock inventories".

Response: Customs agrees with the comments that attribution can be dealt with more appropriately in proposed § 146.99 (now redesignated as § 146.96); therefore, proposed § 146.95 concerning feedstock inventories has been deleted. Proposed § 146.97 titled "producibility" is now renumbered as § 146.95.

Comment: Commenters suggested deleting the last sentence and four reports listed in proposed § 146.96 concerning a subzone activity report.

Response: As already stated above, this proposed section has been deleted in its entirety.

Comment: Commenters noted that proposed § 146.97(a) must provide for products consumed within the subzone.

Response: Customs agrees with the comments that proposed § 146.97(a) must provide for consumption within the zone. Therefore, appropriate language has been included in proposed § 146.97(a) (now redesignated as § 146.95(a)).

Comment: Comments indicated that, as currently worded, proposed § 146.98(a) is limited to operators using producibility.

Response: Proposed § 146.98(a) (now redesignated as § 146.93(c)) has been modified to avoid any misunderstanding in this respect.

Comment: Commenters stated that attributions are binding except for adjustments needed upon reconciliation.

Response: Proposed § 146.99(a) (now redesignated as § 146.96(a)) has been modified to address this concern. Reconciliation is limited to changes in amounts, and mathematical and clerical errors, but does not include changes in the identity of the feedstock.

Comment: Commenters noted that other inventory control methods are already covered in proposed § 146.93(d)(2), so there is no need for proposed § 146.99(c).

Response: Customs has decided to essentially revise former proposed § 146.99(c) and to make it the subject of a new § 146.97 regarding the approval of other recordkeeping systems for subzone oil refinery operations. As already noted above, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) has been revised to refer exclusively to the use of the FIFO method of inventory accounting.

Comment: Commenters also indicated that the proposed regulations do not take into account the three relative value methods listed in proposed § 146.98(b). Commenters also pointed out that the proposed regulation does not provide a mechanism to attribute consumption within the zone.

Response: Customs agrees and has determined to eliminate proposed § 146.98(b) from the revised proposed rule; and proposed § 146.98(c) is now redesignated as § 146.93(e). In addition, as previously emphasized, revised §§ 146.93, 146.95 and 146.96 now provide for consumption within the subzone. Moreover, Customs has decided to add an Appendix to proposed subpart H as revised in order to give detailed examples of attribution as well as the relative value calculation.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined to republish the proposal with the modifications noted and to allow interested persons an additional opportunity to submit comments on the proposal. Also, Customs has determined to add definitions in the revised proposed rule for "feedstock factor", "petroleum refinery", and "refinery operating unit", and to eliminate the definitions for "protection of the revenue" and "stock in process" formerly set forth in proposed § 146.92(m) and (o), respectively. Commenters on the original proposal need not resubmit their comments. They will be considered along with any new comments received in response to this notice.

Comments

In developing the final regulations, any written comments (preferably in triplicate) that are timely submitted to Customs will be given consideration, along with the comments already submitted in response to the August 10, 1992, notice of proposed rulemaking. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12866

For the reasons explained in the peamble to the prior notice of proposed rulemaking and to this document, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This proposed rule is not a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in §§ 146.93–146.97. The respondents would be businesses. The information is necessary in order to effectively supervise and control the activities of oil refineries operating in foreign trade subzones, and to ensure compliance with the requirements of law as well as the protection of the revenue.

The collection of information contained in this notice of proposed rulemaking has already been approved by the Office of Management and Budget (OMB) under 1515–0189, in connection with the prior notice of proposed rulemaking.

Estimated total annual reporting and/or recordkeeping burden: 18,824 hours

Estimated average annual burden per respondent and/or recordkeeper: 2,353 hours

Estimated number of respondents and/or recordkeepers: 8

Estimated annual frequency of responses: 52

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendment

For the reasons set forth in the preamble, it is proposed that part 146, Customs Regulations (19 CFR part 146) be amended as follows:

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–u, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

* * * * *

2. It is proposed to amend part 146 by adding a new subpart H thereto to read as follows:

Subpart H—Petroleum Refineries in Foreign Trade Subzones

Sec.

146.91 Applicability.
146.92 Definitions.
146.93 Inventory control and recordkeeping system.
146.94 Records concerning establishment of manufacturing period.
146.95 Producibility.
146.96 Methods of attribution.
146.97 Approval of other recordkeeping systems.

Appendix to Subpart H—Examples of Attribution and Relative Value

Subpart H—Petroleum Refineries in Foreign Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign trade zone or subzone. This subpart also applies only to feedstocks (crude petroleum and derivatives thereof) which are introduced into production in a refinery subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart.

§ 146.92 Definitions.

The following definitions are applicable to this subpart H:

(a) *Attribution.* "Attribution" means the association of a final product with its source material by application of:

(1) Actual operating records;

(2) Producibility under T.D. 66–16; or

(3) Other Customs approved method.

(b) *Feedstocks.* "Feedstocks" means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* "Feedstock factor" means the relative value of final products utilizing T.D. 66–16 (see § 146.92(h)), and which takes into account any loss or gain.

(d) *Final product.* "Final product" means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* "Manufacturing period" means a period selected by the refiner which shall not exceed a calendar month, for which attribution to a source feedstock must be made and, if required, a relative value assigned for every final product made, consumed in or removed from the refinery subzone.

(f) *Petroleum refinery.* "Petroleum refinery" means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product.* "Price of product" means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* "Producibility" is a method of attributing products to feedstocks for petroleum manufacturing in accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* "Relative value" means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Refinery operating unit.* "Refinery operating unit" means a unit in a refinery in which feedstock is processed such as a distillation tower, cracking tower or reformer.

(k) *Time of separation.* "Time of separation" means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* (1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which have been introduced into a refinery operating unit during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.96(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the Appendix to this subpart.

(4) *Feedstock not eligible for attribution.* Feedstock admitted into the refinery subzone, until it is introduced into a refinery operating unit in the subzone, is not eligible for attribution to any final product.

(b) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock introduced into a refinery operating unit during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (c) of this section.

(c) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(d) *Consistent use required.* The operator must use the selected method and the price of product consistently (see § 146.92(g)) of this subpart).

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock charged into a refinery operating unit.* The operator must record the date and amount of each feedstock charged into a refinery operating unit during each manufacturing period.

(b) *Final product consumed in or removed from subzone.* The operator

must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see Example II to Appendix to this subpart).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a nonprivileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods.*

(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§ 146.95 Producibility.

(a) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(b) *Attribution to product or feedstock not listed in T.D. 66–16.* For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate district director. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, Customs shall use the operator's actual operating records to determine attribution and any necessary relative value calculation.

§ 146.96 Methods of attribution.

(a) *Producibility.* (1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks introduced into a refinery operating unit during the current or a prior period. Attribution of the final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock, their relative values must be assigned.

Example. An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights)	20,000
Gasoline:	
Domestic Consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign) crude	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum Coke	10,000
Distillate	5,000
Petrochemicals	15,000
	105,000

There is a gain: 105,000 − 95,000=10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petroleum		Petro-chemical
				Coke	Distillate	
Class II PF Crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude	20,000	14,000	18,200	8,000	17,800	5,800

Relative value factors are calculated:

	Barrels	Value/barrels	Value	Feedstock factors
Gasoline	40,000	$25	$1,000,000	.9117
Jet Fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum Coke	10,000	10	100,000	.3647

	Barrels	Value/barrels	Value	Feedstock factors
Petrochemicals	15,000	40	600,000	1.4587
Gain	105,000		2,605,000	
	−10,000	2,605,000		
Total	95,000	[1]95,000		

[1] Equals $27.42 average value p/bbl.

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel	24,192	(20,291 feedstock attributed to Class III PF Crude.)
	10,808	—Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude.)
	5,000	—Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed.)
	25,000	
Petroleum Coke	8,418	(3,070 feedstock attributed to Class II PF Crude.)
	1,582	—Class III NPF Crude (attribution of 577 solely for purpose of accounting for the amount of NPF used).
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic.)
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude solely for purpose of accounting for the amount of NPF used).
	6,025	(8,789 feedstock attributed to Class III PF Crude.)
	10,000	

(b) *Actual production records.* An operator may use the actual refinery production records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's recordation conventions to the extent that the operator demonstrates that it actually uses the conventions in its refinery operations. Whatever convention is elected by the operator, it must be used consistently in order to be acceptable to Customs.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.97 Approval of other recordkeeping systems.

(a) *Approval.* An operator must seek approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

Appendix to Subpart H—Examples of Attribution and Relative Value

I. Attribution Using Producibility

Day 1

Transfer, within the refinery subzone, from one or more storage tanks to the crude distillation unit:

50,000 pounds privileged foreign (PF) class II crude oil
50,000 pounds PF class III crude oil
50,000 pounds domestic status class III crude oil

Day 20

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 20. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.D. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class

III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Transfer, within the refinery subzone, from one or more storage tanks to the crude oil distillation unit:

50,000 pounds PF status class I crude oil
50,000 pounds PF status class IV crude oil

Day 30

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights
10,000 pounds of kerosene for exportation

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that entered production on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This 30 choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that entered production on Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could 31 produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000—5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of 9,812 pounds of jet fuel (22,300 × .44). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. Attribution on a FIFO Basis

Day 1–5

Transfer, within the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds (119 barrels) of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

Day 10

Transfer, within the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6–15

Transfer, within the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

Day 16–20

Transfer, within the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) 34 Class III crude oil, equivalent to 50,000 pounds.

Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

Day 21–25

Transfer, within the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was irrecoverably lost as provided in § 146.53(c)(1)(iv) of this part, in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A lbs	B bbls	C $/bbl	D product value	E feedstock factor	F r.v. bbl	G dutiable bbl
Residual, Oil Po;	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor Gasoline	5,000	20	26.00	520	1.5682	31	31
Totals	50,000	153		2,487		150	150

A=Pounds Attributed.
B=Equivalent Barrels.
C=Price of Product.
D=B×C.
E=C/(Total of Column D/Attributed Crude BBLS).
Residual Oil Feedstock Factor=15.00/(2,487/150)=.9047.
F=B×E.
G=Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150 × .0525).

Relative value calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	Bbls	$/bbl	Product value	R.V. factor	R.V. bbl	Dutiable bbl
Jet Fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss	1,500	5	12.00	60	0.4902	2	0
Totals	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable. Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 28, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–5023 Filed 3–3–94; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH53–1–6092; FRL–4844–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On August 20, 1993, the Ohio Environmental Protection Agency (OEPA) submitted materials in response to requirements in part D of title I of the Clean Air Act for new source review in nonattainment areas. This submittal included no revisions to any Ohio regulations. Instead, the submittal described how Ohio intended to implement various applicable part D requirements, and presented a rationale that no revisions to State regulations would be necessary to satisfy these requirements. USEPA disagrees with this rationale and proposes to disapprove the State's submittal for failure to satisfy applicable requirements.

DATES: Comments on this proposed action must be received by April 4, 1994.

ADDRESSES: Comments should be submitted to William L. MacDowell at the Region 5 address. Copies of the State's submittals, the public comment letter, and USEPA's technical support document of November 9, 1993, are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 1993, the Ohio Environmental Protection Agency (OEPA) submitted a letter with attachments to the United States Environmental Protection Agency (USEPA) addressing new source review in nonattainment areas. USEPA notified OEPA on October 22, 1993, that it found this submittal complete. This submittal was intended to satisfy Clean Air Act requirements for new source review in nonattainment areas, particularly the new requirements established by the Clean Air Act Amendments of 1990.

Provisions for new source review in Ohio were included in the original State Implementation Plan (SIP) submitted on January 31, 1972, and replacement regulations submitted on June 6, 1973. The relevant regulations provided for best available control technology (BACT) and other requirements applied uniformly throughout the State. Subsequently, the Clean Air Act Amendments of 1977 provided for designations of areas as being in attainment or nonattainment of the air quality standards, and required a further State submittal to impose additional requirements (most notably lowest achievable emission rates (LAER) and offsets) for new sources in nonattainment areas. Ohio submitted relevant material on July 25, 1980, and September 25, 1980. USEPA conditionally approved these submittals on October 31, 1980, on the condition that Ohio submit regulations delineating requirements that new sources in nonattainment areas must meet.

Ohio submitted revised regulations on October 4, 1982, and January 24, 1983. These regulations impose nonattainment area new source permitting requirements by

incorporating appendix S to title 40 of the Code of Federal Regulations, part 51 (appendix S to 40 CFR part 51—"Emission Offset Interpretative Ruling") into the State regulations. USEPA granted limited approval to this submittal on September 8, 1993 (58 FR 47211), concluding that the regulation strengthened the SIP but did not fully satisfy the nonattainment area planning requirements established in 1977 in part D of title I of the Clean Air Act. Of particular concern were the exemptions of temporary sources and resource recovery facilities provided in appendix S (and thus incorporated by reference in the State rules) but not approvable under the criteria established in 40 CFR part 51, subpart I. By the time of this 1993 rulemaking, the Clean Air Act Amendments of 1990 had imposed further requirements for nonattainment area new source review. The State provided USEPA material concerning the new requirements on November 19, 1992, December 2, 1992, January 13, 1993, and April 26, 1993. USEPA notified the State on June 1, 1993, that these materials did not represent a complete submittal. The State then provided additional information on August 20, 1993, which USEPA found on October 22, 1993, to constitute a complete submittal. USEPA has conducted a full review and proposes to disapprove the submittal for failing to satisfy the current nonattainment area new source review requirements of part D of title I of the Clean Air Act.

The Clean Air Act Amendments of 1990 established numerous new requirements for new source review. Among the more significant of these requirements that apply to Ohio are provisions for specific emission offset requirements in ozone nonattainment areas, including specified minimum offset rations, for review of major new sources and major modifications for nitrogen oxides (NO_x) in ozone nonattainment areas, and for an alternative siting analysis for all nonattainment area pollutants. Additionally, the State plan must include provisions for proper calculation of offsets, provisions reflecting certain substantial restrictions on growth allowances, provisions for supplying from nonattainment new source review permits to USEPA's RACT/BACT/LAER Clearinghouse, provisions relating to rocket engines or motors, provisions relating to stripper wells, provisions relating to the definition of "stationary source" affecting the treatment of internal combustion engine sources, and provisions relating to temporary clean coal technology demonstration projects. [1]

The 1990 Amendments also specify various deadlines for submittal of SIP revisions to satisfy these requirements. For areas designated nonattainment for fine particulate matter, a plan satisfying the requirements of sections 173 and 189 was to be submitted by June 30, 1992. For areas designated nonattainment and classified as marginal or above for ozone, a plan satisfying the requirements of sections 173 and 182 was to be submitted by November 15, 1992. For areas designated nonattainment for carbon monoxide, a plan satisfying the requirements of section 173 was to be submitted by November 15, 1993. The State of Ohio has areas designated nonattainment for ozone and particulate matter, for which it was required to meet these SIP revision deadlines. The August 20, 1993, material was submitted in an effort to satisfy these requirements.

II. Review of State's Submittal

A. Review Relative to Pre–1990 Requirements

The State's recent submittal does not address new source review requirements that applied prior to the Clean Air Act Amendments of 1990. Therefore, the USEPA review of the State's plan relative to pre–1990 requirements published on September 8, 1993 (58 FR 47211), remains current. The September 8 notice granted limited approval on the basis of the strengthening effect of the 1982 regulations relative to the prior SIP, but found the State's plan to be insufficient to meet the pre–1990 new source review requirements. The 1982 regulations essentially incorporate appendix S of 40 CFR part 51 by reference. USEPA identified deficiencies relating to the exemptions from offset requirements for resource recovery facilities and temporary sources provided in appendix S and therefore incorporated by reference into Ohio's regulations. Since these deficiencies have not been addressed, the State's new source review program continues to fail to satisfy part D requirements.

The September 8 notice also noted that the provisions of appendix S, as incorporated by reference into Ohio's regulations, are not as explicit as the current requirements of subpart I of 40 CFR part 51 for annual, actual emissions offsets. Although USEPA interprets Ohio's regulations to require that federally enforceable actual emission offsets be obtained as a condition of any permit pursuant to part D, section 173(c requires that Ohio clarify that this requirement applies.

B. Review Relative to Post–1990 Requirements

The substance of Ohio's submittal of August 20, 1993, is a document entitled "Ohio EPA New Source Review State Implementation Plan—Requirements for Major New Sources in Nonattainment Areas." This document focuses on requirements established by the Clean Air Act Amendments of 1990 and identifies OEPA's plans for implementing these requirements. This document is referred to below as Ohio's statement of permitting criteria.

The State's submittal provides no new regulations to govern review of new sources in nonattainment areas. Instead, the submittal states that regulations adopted in 1974 provide the necessary authority to implement the new requirements for new source review, and that these SIP approved regulations in conjunction with the submittal's statement of permitting criteria should satisfy Clean Air Act requirements. Thus, a key question in this rulemaking is whether USEPA can approve this approach and enforce the intended permitting requirements.

The USEPA, in its technical support document, evaluated the adequacy with which Ohio's submittal satisfies selected key requirements. USEPA's review indicated that the statement of permitting criteria does not provide adequate specificity and clarity of criteria by which detailed implementation decisions would be made. The following discussion of sample requirements illustrates the basis for this conclusion.

The Clean Air Act Amendments of 1990 require that specified offset ratios for volatile organic compounds (VOC) emissions and presumptively for nitrogen oxides (NO_x) emissions must be obtained in ozone nonattainment areas. That is, any significant increase in potential emissions for either of these pollutants must be accompanied by an decrease in actual emissions that is larger by at least a specified ratio. Ohio's statement of permitting criteria includes: (1) A preliminary clause stating that "the following additional

[1] The amended Act also requires that new source review requirements apply to lower size sources in areas classified Serious or above, and in some cases requires new source review for particulate matter precursor sources in particulate matter nonattainment areas. However, Ohio presently has no areas classified Serious or above, and the requirement relating to particulate matter precursors will not apply if USEPA finalizes a determination proposed on August 3, 1993, that precursors do not contribute significantly to particulate matter violations.

requirements will be applicable," (2) an item 1 identifying "minimum required offset ratios," and (3) an item 4 noting that "NO_x . . . shall be treated as a nonattainment pollutant" in ozone nonattainment areas. No definition of offset ratio is provided, and so it is unclear what averaging time applies, whether offsets are to reflect allowable or actual emissions, whether all emission increases must be offset (e.g., fugitive and secondary emissions), where the offsets must occur, and whether interpollutant offsets are permissible. (Item 4 of Ohio's statement implies that NO_x offsets must come from the same county as the emission increases.) The statement also does not explicitly state that either VOC or NO_x offsets are required.

A second new requirement is that the other various major source requirements (e.g., lowest achievable emission rates) also apply to major sources of NO_x in ozone nonattainment areas, unless USEPA makes certain determinations that NO_x control would not be beneficial. Ohio implies the applicability of these requirements by making the above statement that NO_x is to be treated as a nonattainment pollutant. Ohio's statement continues that "[n]ew source applicants are required to meet the major new source definitions and major modifications thresholds as specified in the CAA." However, the Clean Air Act itself does not explicitly define "major new source" and does not specify major modification thresholds. Also, Ohio's statement could be read to require all sources to meet the size minimums for major new sources or major modifications. Ohio's statement continues: "For major modifications, these CAA requirements will be applicable to sources of NO_x greater than 40 tons per year." It is not clear whether Ohio intends this apparent reduction from 100 to 40 tons per year of the threshold of source sizes at which major modifications trigger new source review requirements.

Review of further requirements established by the 1990 Amendments is provided in the technical support document. The conclusion of USEPA's review is that the statement of permitting criteria does not address many of the questions that would arise in imposing the identified requirements.

C. Analysis of the Need for Regulations

The above examples clarify a central issue in this rulemaking, i.e. whether formal regulations are necessary to establish the requirements dictated by the Clean Air Act. Ohio's statement and the submittal cover letter present the State's position that existing Ohio statutes and regulations already require that the provisions of the amended Clean Air Act be met. Specifically, Ohio notes that its Rule 3745–31–05 requires that permits to install shall be issued only if the construction and operation will "not result in a violation of any applicable laws," which is defined to include the Clean Air Act including any amendments. Although Ohio proceeds to describe in general terms how it intends to apply the new requirements, the submittal cover letter expressly states that "the current, federally approved, Ohio SIP is adequate for fulfilling the requirements of a NSR SIP, and that no changes are necessary."

Ohio's position raises fundamental questions about the role of implementing regulations. In general, statutes present general criteria that must be met, whereas regulations define the specific requirements that apply in each circumstance. In limited circumstances a statute may be enforced without implementing regulations, but generally regulations are necessary to define the precise obligations of affected individuals and the precise criteria by which relevant decisions (e.g. determinations of compliance) will be made. The proper adoption of clearly defined criteria for making relevant decisions is essential to support these decisions. Therefore, in the absence of exhaustively detailed statutes, the adoption of detailed regulations is essential for successful program implementation.

In the case of new source review, the Clean Air Act identifies general provisions which are to be included in State plans. The State's statement of permitting criteria closely parallels the language in the Clean Air Act. As the above examples illustrate, Ohio's submittal fails to define many of the details of how these requirements would be implemented. In the absence of these details, a subject source could not be expected to know its obligations pursuant to these requirements, and could object to the imposition of the general requirements based on the failure of the State to pre-define the specific criteria that would be applied. Further, as a commenter noted when the State proposed its SIP revision, the statement of permitting criteria was not adopted according to the full procedures in Ohio for adoption of regulations, even though this statement is intended to serve purposes normally served by regulations. Consequently, the statement of permitting criteria lacks the specificity, the regulatory standing, and the assurance of being enforceable that are needed to satisfy Clean Air Act requirements.

III. This Action

USEPA's review indicates that Ohio's submittal does not clearly establish the specific criteria by which judgments in new source permitting will be made. Furthermore, by relying not on properly adopted regulations but rather on a general regulatory provision (requiring compliance with the Clean Air Act) in conjunction with a statement of permitting criteria, the State has failed to follow proper procedures to become authorized to impose specific, detailed permit conditions in accordance with the Clean Air Act requirements. In addition, the existing regulations exempt two types of sources which may not be exempted under applicable USEPA regulations. For these reasons, USEPA proposes to disapprove Ohio's submittal for failure to satisfy part D requirements.

Under section 179(a)(2), if USEPA takes final action to disapprove a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, USEPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to USEPA: highway funding restrictions, and a requirement for two-for-one offsets. The 18-month period referred to in section 179(a) would begin to run at the time USEPA publishes final notice of this disapproval. Moreover, the final disapproval would trigger the Federal Implementation Plan (FIP) requirement under section 110(c). Separate rulemaking is being conducted to identify which sanction would apply first and to address related issues on the application of sanctions, for example whether USEPA must publish final approval of a new submittal before the deficiency may be considered corrected.

Public comment is solicited on this proposed rulemaking action. Comments received by [Insert date 30 days from date of publication] will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), based on revised SIP processing review tables approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 7401–7671q.

Dated: February 14, 1994.

David Ullrich,

Acting Regional Administrator.

[FR Doc. 94–4992 Filed 3–3–94; 8:45 am]

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40 CFR Part 63

[AD–FRL–4846–6]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks: Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA is reopening the public comment period for the proposed national emission standards for hazardous air pollutants (NESHAP) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. As initially published in the **Federal Register** of December 16, 1993 (58 FR 65768), written comments on the proposed rule were to be submitted to EPA on or before February 14, 1994 (a 60-day comment period). The public comment period is being reopened and will end on March 18, 1994.

DATES: Comments. Comments must be received on or before March 18, 1994.

ADDRESSES: Comments should be submitted to the docket.

Docket. Docket No. A–88–02, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5420.

SUPPLEMENTARY INFORMATION: Several persons who intend to submit comments concerning the proposed NESHAP for chromium electroplating and anodizing operations have requested additional time to prepare their comments, beyond the 60 days originally provided. In consideration of these requests, EPA is reopening the comment period in order to give all interested persons the opportunity to comment fully. This reopening of the public comment period is necessary to ensure that interested parties have adequate time to provide the EPA with written comments on the proposed rule.

Dated: March 1, 1994.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–5131 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–4844–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to grant a petition submitted by Bethlehem Steel Corporation (BSC), Sparrows Point, Maryland, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in § 261.31 and § 261.32. This action responds to a delisting petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. The proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until April 18, 1994. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director,

Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by March 21, 1994. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–94–B8EP–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for BSC's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal in a regulated municipal solid waste landfill and to determine the potential impact of disposal of BSC's waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking an upfront delisting (*i.e.*, an exclusion based on data from waste generated from a bench-scale treatment process), ground-water monitoring data collected from the areas where the petitioner plans to dispose of the waste in the future are not necessary. Because the petitioned waste is not currently generated or disposed of, ground-water monitoring data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal sites and, thus, would serve no purpose. Therefore, the Agency did not request ground-water monitoring data.

BSC petitioned the Agency for an upfront exclusion (for waste that has not yet been generated) based on descriptions of the proposed stabilization process that will be used to treat BSC's dewatered filter cake, characterization of dewatered (unstabilized) filter cake, and results from the analysis of waste subjected to BSC's proposed stabilization process.

Similar to other facilities seeking upfront exclusions, this upfront exclusion (*i.e.*, an exclusion based on information characterizing the process and waste) would be contingent upon the analytical testing of the petitioned waste once stabilization is initiated at BSC's Sparrows Point facility. Specifically, BSC will be required to collect representative samples of stabilized filter cake to verify that the stabilization process is on-line and operating as described in the petition. The verification testing requires BSC to demonstrate that the proposed stabilization process, once on-line, will generate a non-hazardous waste (*i.e.*, a waste that meets the Agency's verification testing conditions).

From the evaluation of BSC's delisting petition, a list of constituents was developed for the verification testing conditions. Tentative maximum allowable leachable concentrations for these constituents were derived by back calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (*i.e.*, "delisting levels") are the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous, and managed as such sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Bethlehem Steel Corporation, Sparrows Point, Maryland.

A. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Sparrows Point, Maryland, is involved in the production of tin and chromium plated parts and steel strip. BSC petitioned the Agency to exclude its chemically stabilized wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see part 261, appendix VII).

BSC petitioned the Agency to exclude its stabilized filter cake because it does not believe that the waste, once generated, will meet the criteria of the listing. BSC claims that its treatment process will generate a non-hazardous waste because the constituents of concern in the waste are either not present or are in an essentially immobile form. BSC also believes that the waste will not contain any other constituents that would render the waste hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BSC's petition.

B. Background

On January 2, 1991, BSC petitioned the Agency to exclude its stabilized filter cake from the lists of hazardous

wastes contained in § 261.31 and § 261.32, and subsequently provided additional information to complete its petition. Specifically, BSC requested that the Agency grant an upfront exclusion (*i.e.*, an exclusion that applies to waste not presently generated) for dewatered filter cake that will be stabilized using lime kiln dust and powerplant fly ash at its Sparrows Point facility.

In support of its petition, BSC submitted: (1) Detailed descriptions of its manufacturing, waste treatment, and stabilization processes, including schematic diagrams; (2) Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, nickel, cyanide, zinc, and sulfide from representative samples of the dewatered (unstabilized) filter cake and the stabilized filter cake; (4) results from the EP Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the dewatered (unstabilized) filter cake, uncured stabilized filter cake, and the cured stabilized filter cake; (5) results from total oil and grease analyses from representative samples of the dewatered (unstabilized) filter cake and stabilized filter cake; (6) results from the Multiple Extraction Procedure (MEP, SW–846 Method 1320) for the eight TC metals (except for barium and selenium) and nickel from representative samples of the stabilized filter cake; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; (8) results from the TCLP analyses for the TC volatile and semivolatile organic compounds from representative samples of the dewatered (unstabilized) filter cake; and (9) results from total constituent analyses for hexavalent chromium from representative samples of dewatered (unstabilized) filter cake.

Similar to other facilities seeking upfront exclusions, once BSC's proposed stabilization system is on-line at its Sparrows Point, Maryland facility, BSC would be required to submit additional analytical data for the petitioned waste to verify that the on-line stabilization system meets the treatment capability of the stabilization process as described in the petition and the verification testing conditions specified in the exclusion (see Section F—*Verification Testing Conditions*).

BSC's Sparrows Point, Maryland facility is involved in electroplating operations producing tin and chromium plated parts and steel strip. Three plating lines contribute wastes to the wastewater treatment plant generating BSC's chromium high density filter cake, namely, a tin free steel-chromium type (TFSCT) plating line and two halogen tinning lines.

The TFSCT plating line is designed to deposit a layer of chromium on the steel strip with an additional outer protective covering of chromium oxides. The TFSCT plating line consists of five major sections: The Entry Section, the Pre-Treatment Section, the Plating Section, the Post-Treatment Section, and the Delivery Section. The purpose of the entry section is to join the ends of the steel coils in preparation for subsequent continuous processing in the following sections. The pre-treatment section cleans and prepares the steel to be plated. The strip passes through an electrolytic cleaning system, brush scrubber, and pickle and pickle rinse cells to remove oil, dirt, rust, and other foreign substances. In the plating section, the steel strip passes through the plater conditioner cell prior to entering the plating cell. The chromium and chromium oxide layers are electrolytically plated onto the steel strip. The steel strip is rinsed, after it leaves the plater, in the dragout and rinse cells. In the post-treatment section, the coated steel strip is washed, dried, and oiled prior to being coiled for shipping or storage. The oil film helps to prevent scratching of the coated strip during handling, serves as a lubricant for punching and forming operations, and retards oxidation and corrosion. The delivery section consists of the equipment required for strip tension control, storage, measurement and inspection, and shearing and winding into coils.

During the TFSCT plating process overflow chromic acid solution from the plater conditioner, overflow rinse waters from the dragout and rinse cells of the plater section, and overflow rinse waters from the final washer cell are sent to a sump (the chromium sump) which collects only chromium-bearing wastewaters. The collected wastewater is then pumped from the chromium sump to the chromium High Density Sludge (HDS) Wastewater Treatment Plant. In addition, if it is necessary to shut down the TFSCT plating line for repairs or in the event of a strip break, chromium-bearing wastewaters from the plater conditioner and plater section are sent to a storage tank for subsequent treatment via the chromium HDS wastewater treatment plant.

The two halogen tinning lines are designed to deposit a thin layer of tin on metal strip with an outer protective covering of a very thin film of chromium and chromium oxides. The two halogen lines also consist of five major sections: the Entry Section, the Pre-treatment Section, the Tin Plating Section, the Post-Treatment Section, and the Delivery Section. The purpose of the entry section is to join the ends of the coils in preparation for subsequent continuous processing in the following sections. The pre-treatment section cleans and prepares the metal strip to be plated. The metal strip is cleaned in a hot, alkaline solution. A brush scrubber removes loosened dirt and any remaining caustic film, then a sulfuric acid solution is used to remove metal oxides. A second brush scrubber removes the remaining acid film. In the plating section, the cleaned, prepared metal strip is electroplated with tin. In the tin plating unit, the strip rides on top of the halogen plating solution, while a series of soluble anodes below the surface provide the tin for plating. The metal strip is sprayed and rinsed, after it leaves the plater, to remove any residual plating solution. After being dried, the metal strip passes through the electrical induction reflow (melting) process where the plated tin is converted from a matte (as plated) finish to a bright finish. The post-treatment section consists of a chemical treatment tank and a washer. In the chemical treatment tanks sodium dichromate is used to produce a thin uniform chromium and chromium oxide layer on the tinned surface via cathodic electrolysis. The film serves to stabilize or "passivate" the tinned surface preventing the undesirable tin oxides from forming. This section is completed with a dryer, Trion oiler, and a bridle roll. The delivery section consists of the delivery looping tower, a bridle roll, inspection and a recoil area where the metal strip is cut and transferred to empty reels.

During the halogen tinning process, rinse waters from the chemical treatment washer are sent to the chemical treat sump and further pumped to the chromium HDS treatment system. This is the only wastewater entering the chromium HDS wastewater treatment system from the Halogen Tinning Lines.

The waste streams from the TFSCT plating (chromium sump) and Halogen Tinning (chemical treat sump) lines are combined in a 50,000-gallon storage tank. From the storage tank the wastewater is pumped to a 10,000-gallon reduction reactor where the pH of the wastewater is adjusted by the addition of sulfuric acid. In addition, liquid sulfur dioxide (SO_2) is added to

reduce hexavalent chromium to trivalent chromium. The reduced chromium wastewater is next transferred to a 7,000-gallon neutralization tank and mixed with lime and previously-precipitated solids. The wastewater then flows by gravity to a 1,200-gallon flocculator tank where a polymer is added to promote flocculation of the metal hydroxides. The neutralized wastewater, containing approximately 2–5 percent solids, is then sent through a 50-foot diameter gravity thickener, where thickened sludge is removed and subsequently dewatered by a rotary drum vacuum filter to 35–55 percent solids. The thickener effluent is filtered and the filtrate is discharged to the Tin Mill Canal for further wastewater treatment prior to discharge to a receiving surface water body. The filtrate from the vacuum filter and the filter backwash are returned to the flocculator tank. The dewatered filter cake is discharged to a collection hopper and currently shipped to/treated at a permitted hazardous waste treatment facility (Envirite Corporation, York, Pennsylvania) before disposal.

In its petition, BSC proposed to stabilize the dewatered filter cake using lime kiln dust and powerplant fly ash. This process is based on the pozzolanic reaction that adsorbs and/or encapsulates the heavy metals present in the chromium filter cake into a calcium-alumino-silicate matrix. Based on bench-scale studies of its proposed stabilization process, BSC proposed using 3 parts lime kiln dust, 2 parts powerplant fly ash to 5 parts dewatered filter cake (by weight) and 2 parts water to form the stabilized filter cake. Once delisted, BSC plans to dispose of the stabilized filter cake at an on-site to-be-constructed Subtitle D landfill.

BSC initially collected a total of four composite samples of its dewatered filter cake during a four-week period between April 1, 1988 and April 28, 1988. The samples were collected using a scoop as sludge was discharged from the end of the vacuum filter press. Each composite sample was comprised of grab samples collected over a period of approximately five days. Portions of the composite samples were then stabilized using lime kiln dust and powerplant fly ash in a bench-scale process. Specifically, 1,000 grams of dewatered filter cake were mixed with 600 grams of lime kiln dust, 400 grams of powerplant fly ash, and water and allowed to cure until air-dried.

BSC provided analysis results for samples of dewatered (unstabilized) filter cake, filter cake samples that had just been stabilized, and filter cake samples that were allowed to cure for 15 days. Four composite samples of dewatered (unstabilized) filter cake and four composite samples of stabilized filter cake samples were analyzed for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the eight TC metals, nickel, cyanide, zinc, sulfide, and total oil and grease content. Composite samples of dewatered (unstabilized) filter cake, uncured stabilized filter cake, and cured stabilized filter cake were also analyzed for EP Toxicity and TCLP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the eight TC metals (except for barium and selenium) and nickel.

On March 18, 1992, BSC submitted additional information which included results from the analysis of four composite samples of dewatered (unstabilized) filter cake. These samples were collected over a period of four weeks from January 15, 1992 to February 10, 1992. Using a stainless steel scoop, BSC collected grab samples from the middle and both ends of the filter drum to ensure a representative sample. Each daily composite sample was comprised of 5 grab samples. After the last grab sample was taken each day, the samples of filter cake were thoroughly mixed to form the daily composite. All four dewatered (unstabilized) filter cake composite samples were analyzed for total chromium, hexavalent chromium, and TCLP leachate concentrations of the TC volatile and semivolatile organic compounds.

BSC claims that due to consistent manufacturing and waste treatment processes, the analytical data obtained from the two sampling events are representative of any variation in the chemically stabilized wastewater treatment filter cake constituent concentrations. BSC further explained in its petition that the samples collected in January and February 1992 represent filter cake generated specifically when different combinations of the three plating lines were operating.

C. Agency Analysis

BSC used SW–846 Method 7000 to quantify the total constituent concentrations of arsenic, barium, cadmium, lead, nickel, selenium, silver, and zinc in the filter cake samples. BSC used an Agency approved Bethlehem Steel Standard Method [1] to quantify the total constituent concentration of chromium in the filter cake samples. BSC used SW–846 Method 3060 to digest the samples, and then followed Method 7195 to analyze/quantify hexavalent chromium concentrations in the dewatered (unstabilized) filter cake samples. BSC used "Determination of Mercury in Water By Gold-Film Analyzer", to quantify the total constituent concentration of mercury in the filter cake samples. BSC used SW–846 Method 9010 to quantify the total constituent concentration of cyanide in the filter cake samples. BSC used "Methods for Chemical Analysis of Water and Wastes" Method 376.1 to quantify the total constituent concentration of sulfide in the filter cake samples.

Using SW–846 Method 9071, BSC determined that its stabilized filter cake had a maximum oil and grease content of 0.099 percent; therefore, the leachate analyses did not have to be modified in accordance with the Oily Waste EP methodology (i.e., wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard leachate procedures, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample).

BSC used SW–846 Method 1310 (EP)/ Method 7000 to quantify the EP leachable concentrations of arsenic, cadmium, chromium, lead, mercury, nickel, and silver in the filter cake samples, and used modified SW–846 Method 1310 (using distilled waster, instead of acetate buffer, in the extraction) and Method 9010 to quantify the EP leachable concentration of cyanide in cured stabilized samples. BSC used SW–846 Method 1311 (TCLP)/Method 7000 to quantify the TCLP leachable concentrations of arsenic, cadmium, chromium, lead, mercury, nickel, and silver in the filter cake samples. BSC used SW–846 Method 1320 (MEP)/Method 7000 to quantify the MEP leachable concentrations of the TC metals (except for barium and selenium) and nickel in the cured stabilized filter cake.

Table 1 presents the maximum total constituent concentrations of the eight TC metals, nickel, cyanide, zinc, and sulfide for the dewatered (unstabilized) filter cake and stabilized filter cake.

[1] Bethlehem Steel Standard Method. "Methods of Sampling and Analysis Vol. I Iron and Steel" - Chromium by the Persulfate Oxidation Method. Additional descriptive information about this method is included in the RCRA public docket for today's notice.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) [1] FILTER CAKE

Constituents	Dewatered (unstabilized) filter cake	Stabilized filter cake
Arsenic	<2.0	52
Barium	<100	<100
Cadmium	0.55	0.50
Chromium (total)	240,000	55,000
Chromium (hexavalent)	45	.....
Lead	140	350
Mercury	0.087	0.091
Nickel	96	85
Selenium	<1.0	<1.0
Silver	<6.0	<6.0
Cyanide (total)	342	52
Zinc	120	90
Sulfide	220	160

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituents found in any sample of dewatered (unstabilized) filter cake and stabilized filter cake collected by BSC. The maximum level of a specific constituent in dewatered filter cake does not necessarily correspond to the maximum level of the constituent in stabilized filter cake. In addition, these levels do not necessarily represent the specific levels found in one sample.

Table 2 presents the maximum reported or calculated EP or TCLP leachate concentrations for the eight TC metals, nickel, cyanide (EP analysis only), and zinc. Table 3 presents the leachate concentrations obtained from the MEP leachate analysis performed on the cured stabilized filter cake.

The detection limits presented in Tables 1, 2, and 3 represent the lowest concentrations quantifiable by BSC when using the appropriate SW–846 or Agency-approved analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

BSC used SW–846 Method 1311 (TCLP) to leach, then followed Method 8260 and Method 8270 to quantify the leachable concentrations of the volatile and semivolatile organic compounds listed in Table 1 of § 261.24. Chloroform, the only detected organic constituent, was found at a maximum concentration of 0.0624 ppm (without blank correction) in BSC's dewatered (unstabilized) filter cake. Chloroform was also detected at a level of 0.0950 ppm in one of two method blanks; therefore, its presence in the waste is uncertain and may be attributed to laboratory contamination.

Last, on the basis of explanations provided by the petitioner, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22 and § 261.23.

TABLE 2.—MAXIMUM EP AND TCLP LEACHABLE CONCENTRATIONS (PPM) [1] FILTER CAKE

Constituents	Dewatered (unstabilized) filter cake	Uncured stabilized filter cake	Cured stabilized filter cake
EP Analysis Results:			
Arsenic	<0.02	0.03	<0.02
Barium	.....	.....	[2] <5.0
Cadmium	<0.02	<0.02	<0.02
Chromium	12.7	<0.05	<0.05
Lead	0.03	0.04	<0.01
Mercury	<0.002	0.004	<0.002
Nickel	0.30	0.14	0.10
Selenium	.....	.....	[2] <0.05
Silver	<0.05	<0.05	<0.05
Cyanide	.....	.....	<0.02
Zinc	.....	.....	[2] 4.5
TCLP Analysis Results:			
Arsenic	<0.02	<0.02	<0.02
Barium	.....	.....	[2] <5.0
Cadmium	<0.02	<0.02	<0.02
Chromium	31.2	<0.05	0.10
Lead	0.04	<0.01	<0.01
Mercury	<0.002	0.002	<0 002
Nickel	0.30	0.20	0.20
Selenium	.....	.....	[2] <0 05
Silver	<0.05	<0.05	<0 05
Zinc	.....	.....	[2] 4.5

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any sample of dewatered (unstabilized) filter cake, uncured stabilized filter cake and cured stabilized filter cake collected by BSC. The maximum level of a specific constituent in dewatered filter cake does not necessarily correspond to the maximum level of the constituent in uncured stabilized filter cake or cured stabilized filter cake. In addition, these levels do not necessarily represent the specific levels found in one sample.

[2] Calculated from the maximum total constituent level in stabilized filter cake samples by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of TCLP leaching solution) and a theoretical worst-case leaching of 100 percent.

TABLE 3—MEP [1] LEACHATE CONCENTRATIONS (PPM) CURED STABILIZED FILTER CAKE

Constituents	EP Extract	Days/Concentrations [2]								
		1	2	3	4	5	6	7	8	9
Arsenic	0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	
Cadmium	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02	<0 02

TABLE 3—MEP[1] LEACHATE CONCENTRATIONS (PPM) CURED STABILIZED FILTER CAKE—Continued

Constituents	EP Extract	Days/Concentrations[2]								
		1	2	3	4	5	6	7	8	9
Chromium	<0.05	<0.05	<0.05	0.13	0.05	0.08	<0.05	<0.05	<0.05	<0.05
Lead	0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Mercury	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002	<0.002
Nickel	<0.10	<0.10	0.10	<0.10	<0.10	<0.10	<0.10	<0.10	<0.10	<0.10
Silver	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Multiple Extraction Procedure (MEP) is a series of nine synthetic acid rain extractions, which simulates the hypothetical long-term leaching effects of acid rain.

[2] The highest concentration of each EP Tox metal found in each of the nine-day continuous extraction analyses of stabilized filter cake samples.

BSC submitted a signed certification stating that, based on the current annual generation rate of dewatered (unstabilized) filter cake, the maximum annual generation rate of stabilized filter cake will be 1,476 wet tons (approximately 1100 cubic yards, based on a bulk density of 1.34 tons per cubic yard). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. EPA accepts BSC's certified estimate of 1100 cubic yards per year of stabilized filter cake.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion. The Agency was present at BSC's Sparrow Point facility to observe the collection of dewatered (unstabilized) filter cake samples on January 23, 1992.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for BSC's chemically stabilized filter cake and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated BSC's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of BSC's petitioned waste.

For the evaluation of BSC's petitioned waste, the Agency used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract from BSC's stabilized filter cake. The Agency's evaluation, using a maximum annual waste volume estimate of 1100 cubic yards per year and the maximum reported or calculated EP, TCLP, or MEP leachate concentrations (see Tables 2 and 3), yielded compliance-point concentrations (see Table 4) that are orders of magnitude below the health-based levels used in delisting decision-making. Maximum leachable levels from both uncured and cured stabilized waste were below levels of concern.

TABLE 4.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) STABILIZED FILTER CAKE

Constituents	Compliance-point concentrations	Levels of regulatory concern[1]
Arsenic	0.0003	0.05
Barium	0.0521	2.0

TABLE 4.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) STABILIZED FILTER CAKE—Continued

Constituents	Compliance-point concentrations	Levels of regulatory concern[1]
Chromium	0.0014	0.1
Lead	0.0004	0.015
Mercury	0.00004	0.002
Nickel	0.0021	0.1
Selenium	0.0005	0.05
Zinc	0.0469	7.0

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," July 1992, located in the RCRA public docket for today's notice.

The maximum reported or calculated leachate concentrations of arsenic, barium, chromium, lead, mercury, nickel, selenium, and zinc in the stabilized filter cake yielded compliance point concentrations well below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, cadmium, silver, and cyanide) from BSC's waste because they were not detected in the leachate using the appropriate analytical test methods (see Tables 2 and 3). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

As also reported in Table 1, the maximum concentration of total cyanide in BSC's stabilized filter cake is 52 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed

52 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the stabilized filter cake is 160 ppm (see Table 1), the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket.

As noted previously, chloroform was detected in the TCLP extracts of unstabilized waste, and also in one of the method blanks. Thus, the presence of chloroform is uncertain and may be attributed to laboratory contamination. However, the Agency also used the EPACML to evaluate the mobility of chloroform detected in the extract from BSC's dewatered (unstabilized) filter cake as a worst-case analysis of this constituent. The Agency's evaluation, using a maximum annual waste volume estimate of 1100 cubic yards per year and a maximum leachate concentration of 0.0624 ppm, yielded a compliance-point concentration of 0.0006 ppm. Thus, even under these worst-case assumptions, this concentration is less than the delisting health-based level for chloroform of 0.006 ppm.

The Agency concluded, after reviewing BSC's processes and raw materials list, that no other hazardous constituents of concern, other than those tested for, are being used by BSC and that no other constituents of concern are likely to be present or formed as reaction products or by-products in BSC's waste. In addition, on the basis of explanations provided by BSC, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During its evaluation of BSC's petition, the Agency also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersal in particular, the Agency believes that exposure to airborne contaminants from BSC's stabilized waste is unlikely.

BSC's dewatered (unstabilized) filter cake is composed of metal hydroxides, primarily chromic hydroxide, which is one of the more stable wastes in the environment. BSC's dewatered filter cake will then be stabilized through the pozzolanic reaction of lime and fly ash, which adsorbs and binds the heavy metals present in the chromium filter cake into a calcium-alumino-silicate matrix, thereby rendering them essentially immobile. The stabilization product will ultimately cure into a concrete-like solid material. Therefore, EPA does not believe that airborne exposure to hazardous contaminants released from BSC's chemically stabilized filter cake is likely to present a hazard to human health. In addition, there are no significant volatile constituents of concern present in the filter cake for that could lead to airborne exposure to any organic constituent.

However, the Agency evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from BSC's waste in an open landfill. The results of this worst-case analysis indicated that no substantial present or potential hazard to human health from exposure to particulate emissions from BSC's waste is likely. A description of the Agency's assessment of the potential impact of BSC's waste, with regard to airborne dispersal of waste contaminants, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned wastes via a surface water route. Because BSC's waste will be stabilized in a solidified form, contamination of surface water is unlikely to occur through particulate runoff from a landfill containing the BSC's waste. The Agency also believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters.

Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in either the TCLP or MEP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP and MEP tests. The Agency believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first travelling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Significant releases to surface water through erosion and runoff of landfilled BSC's waste are unlikely due to the solidified concrete form of the waste. Furthermore, in the unlikely event that BSC's chemically stabilized filter cake reached surface water, the stabilized form of the waste would mitigate any impact. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP and MEP extraction data show that the metals in BSC's chemically stabilized filter cake are essentially immobile in aqueous solution. For example, the maximum leachable chromium level was 0.10 ppm, which is less than 0.0002% of the chromium present in BSC's chemically stabilized filter cake. Therefore, BSC's waste that might be released to surface water would be likely to remain undissolved. Finally, any transported constituents would be further diluted in the receiving surface water body due to relatively large flows of the streams/rivers of concern.

Based on the reasons discussed above, EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the Agency evaluated potential impacts on surface water if BSC's waste were released from a municipal solid waste landfill through run off and erosion (see the docket for today's proposed rule). The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The Agency, therefore, concluded that BSC's chemically stabilized waste is not a substantial present or potential hazard to human health and environment via the surface water exposure pathway.

E. Conclusion

The Agency believes that BSC's descriptions of its stabilization process and its characterization of waste composition, in conjunction with the proposed delisting testing requirements, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced, and thus, that BSC's petition for an upfront conditional exclusion should be granted. The Agency believes that the sampling procedures used by BSC were adequate, and that the samples are representative of the day-to-day variations in constituent concentrations found in the stabilized filter cake. The Agency believes that data submitted in support of the petition show that BSC's proposed stabilization process can render the dewatered filter

cake immobile and non-hazardous. In addition, under the testing provisions of the conditional exclusion, BSC will be required to re-treat or dispose of as hazardous any batch exhibiting extract levels at or above a specified level (*i.e.*, "delisting level") (see Section F—*Verification Testing Conditions*).

The Agency proposes to grant a conditional, upfront exclusion to Bethlehem Steel Corporation, located in Sparrows Point, Maryland, for the stabilized filter cake described in its petition as EPA Hazardous Waste No. F006. The Agency's decision to exclude this waste is based on process descriptions, characterization of dewatered (unstabilized) filter cake, and results from the analysis of waste subjected to BSC's proposed stabilization process. If the proposed rule is finalized, the petitioned stabilized filter cake, provided the conditions of the exclusion are met, will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

F. Verification Testing Conditions

As proposed, verification tests are to be conducted in two phases, initial and subsequent. The initial testing requirements apply to at least the first eight weeks that BSC stabilizes its dewatered filter cake as described in its petition. Upon approval by EPA, the subsequent testing requirements apply to the stabilized waste generated after the initial verification testing period. The proposed conditions also include an annual testing requirement.

If the final exclusion is granted as proposed, BSC will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the stabilized filter cake continues to meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by BSC. The Agency may choose to modify these proposed conditions based on comments that may be received during the public comment period for this proposed rule. This proposed exclusion for BSC's stabilized filter cake is conditional upon the following requirements:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA).

(A) *Initial Verification Testing:* During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake.

The Agency has determined, based on the generation rate of stabilized filter cake, that approximately eight weeks would be required for BSC to collect sufficient data to verify that a full-scale stabilization process is operating correctly. The proposed initial testing condition, if promulgated, will require BSC to collect a minimum of eight composite samples during the first eight weeks that BSC stabilizes its dewatered filter cake. The Agency believes that proposed initial verification testing is appropriate, because the volume of dewatered (unstabilized) filter cake to be generated daily is relatively small, and hazardous constituents in the filter cake become immobile after chemical stabilization. This initial testing condition would ensure that the full-scale treatment system is closely monitored during the start-up period. If the Agency determines that the data collected under this condition reveal that the treatment system is not being operated as described in BSC's petition, the exclusion will not cover the generated stabilized filter cake. If the Agency determines that the data obtained from the initial verification period demonstrates the treatment process is effective, EPA will notify BSC in writing that the testing conditions in (1)(A) may be replaced with the testing conditions in (1)(B).

The Agency believes that the concentrations of the constituents of concern in the stabilized filter cake may vary somewhat over time. Based on information BSC provided in its petition, total chromium concentrations in the dewatered (unstabilized) filter cake range from 7.75 percent to 24 percent. To ensure that BSC's stabilization process effectively handles the variation in chromium concentration in the dewatered filter cake, the Agency is proposing a subsequent verification testing condition. In addition to chromium, low leachable concentrations of lead and nickel were found in unstabilized and stabilized filter cake. Thus, the proposed subsequent testing would demonstrate that the stabilization process is operating as described in the petition and that the stabilized filter cake does not exhibit unacceptable levels of key toxic constituents (*i.e.*, chromium, lead, and nickel). Therefore, the Agency is proposing to require BSC to analyze monthly composites of the stabilized filter cake as described in Condition (1)(B).

(B) *Subsequent Verification Testing:* Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous.

The Agency is also proposing to require BSC to demonstrate, on an annual basis, that the characteristics of the petitioned waste remain as originally described. Therefore, the Agency is proposing to require BSC to analyze, on an annual basis, a representative composite sample of the stabilized filter cake for all Toxicity Characteristic (TC) constituents as described in Condition (1)(C).

(C) *Annual Verification Testing:* In order to confirm that the characteristics of the waste do not change significantly over time, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR § 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week.

The Agency believes that collecting monthly composite samples will ensure that BSC's stabilization process is not adversely affected by the potential variability in concentrations of chromium, lead and nickel. The data obtained from the annual recharacterization of the petitioned waste will assist EPA in determining whether the petitioned waste is more variable than originally described by the petitioner. The Agency also believes that the annual recharacterization of the petitioned waste is not overly burdensome to the petitioner and notes that these data will assist the petitioner in complying with § 262.11(c) which

requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (see § 261.24).

Future delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste, the volume of waste (including whether there is a fixed volume of waste), and other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (see *e.g.*, 56 FR 41286, August 20, 1991, and 56 FR 67197, December 30, 1991), may require more frequent and more extensive continuous batch testing.

(2) *Waste Holding and Handling*: BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all of the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA.

The purpose of Condition (2) is to ensure that stabilized filter cake which contains hazardous levels of specific constituents is managed and disposed of in accordance with Subtitle C of RCRA. Holding the stabilized filter cake until characterization is complete will protect against improper handling of hazardous material. The stabilized samples must be analyzed for the appropriate parameters, and must meet the appropriate delisting levels in Condition (3), in order for the waste to be excluded from the hazardous waste regulatory system.

The Agency selected the set of constituents specified in Condition (3) after reviewing information about the composition of BSC's unstabilized and stabilized F006 filter cake and descriptions of BSC's manufacturing and treatment processes. The analytes in Condition (3) include TC metallic constituents currently regulated under § 261.24 and nickel.

The Agency established the delisting levels by first back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML DAF of 96 for BSC's maximum annual stabilized waste volume of 1,100 cubic yards, *i.e.*, MAL=HBL × DAF. The calculated MALs were then compared with the maximum contaminant concentrations for the toxicity characteristic (*i.e.*, TC levels) shown in § 261.24, as § 260.22(d)(3) precludes delisting any waste that exhibits a characteristic. The delisting levels established in Condition (3) are the lesser of the calculated MALs and the TC levels. Delisting levels are set at the TC levels for selenium, barium, chromium, and silver.

(3) *Delisting Levels*: All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; nickel—9.6; lead—1.4; mercury—0.19; selenium—1.0; silver—5.0.

Condition (4) given below allows BSC to alter the stabilization process (*e.g.*, the stabilization reagents) from the process conditions identified during the initial verification testing under (1)(A). The Agency believes that this condition allows BSC a reasonable amount of flexibility to change and improve its process, but still requires BSC to notify EPA and to confirm that the process remains effective.

(4) *Changes in Operating Conditions*: After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (*e.g.*, stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage the waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled.

Condition (5) given below outlines the procedures BSC must follow in submitting data collected under the conditional exclusion to EPA. The certification statement that BSC must sign provides added assurance that data provided are accurate and complete.

(5) *Data Submittals*: Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS–333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

If made final, the proposed exclusion will apply only to the stabilized filter cake generated during the treatment of dewatered filter cake produced by BSC's Sparrows Point, Maryland facility. In addition, if made final the exclusion will apply only to the processes and waste volume (a maximum of 1100 cubic yards of stabilized filter cake generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered beyond the changes in operating conditions described in Condition (4), such that an adverse change in waste composition (*e.g.*, if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat stabilized filter cake generated either in excess of 1100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an

exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: January 26, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261, it is proposed to add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Bethlehem Steel Corporation	Sparrows Point, Maryland	Stabilized filter cake (at a maximum annual rate of 1100 cubic yards) from the treatment of wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule]. Bethlehem Steel (BSC) must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* During at least the first eight weeks of operation of the full-scale treatment system, BSC must collect and analyze weekly composites representative of the stabilized waste. Weekly composites must be composed of representative grab samples collected from every batch during each week of stabilization. The composite samples must be collected and analyzed, prior to the disposal of the stabilized filter cake, for all constituents listed in Condition (3). BSC must report the analytical test data, including a record of the ratios of lime kiln dust and fly ash used and quality control information, obtained during this initial period no later than 60 days after the collection of the last composite of stabilized filter cake. (B) *Subsequent Verification Testing:* Following written notification by EPA, BSC may substitute the testing condition in (1)(B) for (1)(A). BSC must collect and analyze at least one composite representative of the stabilized filter cake generated each month. Monthly composites must be comprised of representative samples collected from all batches that are stabilized in a one-month period. The monthly samples must be analyzed prior to the disposal of the stabilized filter cake for chromium, lead and nickel. BSC may, at its discretion, analyze composite samples more frequently to demonstrate that smaller batches of waste are non-hazardous. (C) *Annual Verification Testing:* In order to confirm that the characteristics of the waste do not change significantly over time, BSC must, on an annual basis, analyze a representative composite sample of stabilized filter cake for all TC constituents listed in 40 CFR 261.24 using the method specified therein. This composite sample must represent the stabilized filter cake generated over one week. (2) *Waste Holding and Handling:* BSC must store, as hazardous, all stabilized filter cake generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analyses demonstrate that the delisting levels set forth in Condition (3) are met. If the levels of hazardous constituents measured in the samples of stabilized filter cake generated are below all the levels set forth in Condition (3), then the stabilized filter cake is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any weekly or monthly composite sample equal or exceed any of the delisting levels set in Condition (3), the stabilized filter cake generated during the time period corresponding to this sample must be retreated until it is below these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The leachable concentrations for the constituents must be below the following levels (ppm): arsenic—4.8; barium—100; cadmium—0.48; chromium—5.0; lead—1.4; mercury—0.19; nickel—9.6; selenium —1.0; silver—5.0. (4) *Changes in Operating Conditions:* After completing the initial verification test period in Condition (1)(A), if BSC decides to significantly change the stabilization process (*e.g.*, stabilization reagents) developed under Condition (1), then BSC must notify EPA in writing prior to instituting the change. After written approval by EPA, BSC may manage waste generated from the changed process as non-hazardous under this exclusion, provided the other conditions of this exclusion are fulfilled.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Two weeks prior to system start-up, BSC must notify in writing the Section Chief, Delisting Section (see address below) when stabilization of the dewatered filter cake will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS–333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. The analytical data, including quality control information and records of ratios of lime kiln dust and fly ash used, must be compiled and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by EPA or the State of Maryland. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 94–4990 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC35

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposal To Determine the Hawaiian Plant Hesperocnide Sandwicensis an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list *Hesperocnide sandwicensis* (no common name), a plant endemic to the island of Hawaii, Hawaiian Islands, as an endangered species under the U.S. Endangered Species Act, as amended (Act). Additional field surveys have provided new information revealing that the species has a wider distribution than previously known. The Service has considered the additional information and determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the Service published in the **Federal Register** (57 FR 59951) a proposal to list 22 plant taxa from the island of Hawaii as endangered or threatened. *Hesperocnide sandwicensis* was included in this proposal. During the comment period on the proposal, additional information was received regarding *Hesperocnide sandwicensis* indicating that individuals are more numerous than previously believed (possibly over 1 million) and they face few serious threats. The Service has considered the new information and determined that the species does not warrant listing under the Act. A final rule listing the other 21 plant taxa included in the proposal is published in the **Federal Register** concurrently with this notice of withdrawal of *Hesperocnide sandwicensis*. The final rule contains more detailed information about the status of *Hesperocnide sandwicensis*.

Author

The primary author of this notice is Susan Lawrence, U.S. Fish and Wildlife

Service, 452 Arlington Square, 4401 North Fairfax Drive, Fairfax, Virginia 22203 (703/358–2105).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4840 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 940253–4053; I.D. 021494C]

RIN 0648–AG20

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (BSAI). This FMP amendment would establish the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. If this amendment is approved, existing regulations, which supersede State of Alaska (State) regulations that establish Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the BSAI, will be removed and reserved. This action is necessary for the effective management of the fishery having the smallest biomass and guideline harvest level (GHL) in the BSAI crab fisheries. This action is intended to promote management and conservation of crab and other fishery resources and to further the goals and objectives contained in the FMP for the Commercial King and Tanner Crab Fisheries of the BSAI.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn. Lori Gravel). Individual copies of Amendment 2 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) of this amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary of Commerce (Secretary) has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

Background

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and Secretary, defers management of the crab resources in the BSAI to the State. The FMP was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to resolve problems pertaining to management of the BSAI crab fisheries.

The State's Board of Fisheries (Board) formulates regulations to manage the crab fisheries under procedures specified in the State's Administrative Procedure Act. On February 8, 1993, the Board established Norton Sound in the BSAI as a superexclusive registration area for purposes of managing the Norton Sound red king crab fishery. The operator of any vessel registered in a superexclusive area would not be able to register the vessel in any other area during that registration year. This management measure was proposed to address the unique collection of problems that make fishery management difficult in Norton Sound. The problems are associated with conservation and management of a fishery with a small biomass, small guideline harvest level (GHL), and a stock on the edge of its geographic range, which makes it biologically sensitive. The problems include overcapitalization, short seasons, high management costs, and both over-harvest and under-harvest of GHLs. Historically, the fishery has been characterized by years with low levels of participation and fairly high catch rates followed by years with high levels of participation and low catch rates. A combination of factors has led to high participation, which is expected to continue into the future. These factors are primarily the overcapitalized crab fleet and participants' efforts to establish catch histories in the event individual fishing quotas (IFQs) are instituted. Superexclusive registration would be expected to create a management environment discouraging participation by large crab vessels and catcher/processors. Probable results are a slower-paced fishery, fuller attainment of GHLs, a longer season, and reduced administrative and enforcement costs.

The Alaska Crab Coalition (ACC) appealed the State's designation of Norton Sound as a superexclusive registration area. Following Secretarial review of the State's action, the Secretary issued an interim final rule that superseded State regulations establishing Norton Sound as a superexclusive registration area in the EEZ of the BSAI (58 FR 38727, July 20, 1993). This action was necessary because the Secretary had determined that designation of superexclusive registration areas was inconsistent with provisions of the FMP. The FMP contains three categories of management measures: (1) Specific Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP, and which may be freely adopted or modified by the State, subject to an appeals process or other Federal laws. Registration areas are listed as a Category 2 measure. Section 8.2.8 of the FMP specifies that king crab registration areas may be designated as either exclusive or nonexclusive. Designation of a registration area as superexclusive would require an FMP amendment and incorporation into the FMP as a Category 1 management measure.

In July 1993, the Council requested proposals for possible amendments to the FMP. On August 13, 1993, the Board submitted a proposal to designate

Norton Sound as a superexclusive registration area. This proposal was reviewed by the crab FMP plan team, which ranked it as a high priority and recommended it to the Council for consideration. At its September 1993 meetings, the Council recommended analysis of the Board's proposal. The Alaska Department of Fish and Game (ADF&G) and NMFS prepared a draft analysis for the proposed FMP amendment to designate Norton Sound as a superexclusive registration area. The draft analysis was reviewed by the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) during the Council's December 1993 meetings and adopted for public review. At its January 1994 meetings, the Council considered the testimony and recommendations of the AP, SSC, fishing industry representatives and the general public on the proposed action to designate Norton Sound as a superexclusive registration area. The Council adopted the proposed action under Amendment 2 to the FMP and requested NMFS to remove existing regulations at 50 CFR 671.20, which supersede existing State regulations designating Norton Sound as a superexclusive registration area.

Classification

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on small entities. Overall, superexclusive registration area designation likely will result in a transfer of participation and income from a predominantly large-vessel fleet to a predominantly small-vessel fleet. Twenty-six vessels registered and fished in Norton Sound in 1992, and Norton Sound crab contributed no more than 0.7 percent to any of these vessels' crab landings for the year. Norton Sound crab contributed no more than 1.6 percent of the total for any of the catcher/processors in 1990. Neither operators of individual vessels nor participants in the pre-1993 fleet were dependent on this fishery in terms of year-to-year participation or landings within any one year.

Not knowing the outcome of the ACC's appeal and Secretarial review, many vessel owners chose not to register for the Norton Sound fishery in 1993. Twenty-eight percent of the vessels that were registered were from the local region. A new fresh market for summer king crab was developed and resulted in higher ex-vessel prices than that received for crab that are processed and frozen. Local residents are maintaining plans to develop this market further. Most of the fishermen on the small vessels are expected to be unemployed if they do not participate in this fishery. The infusion of employment and income from the 1993 small vessel fishery was significant in the Nome area. The 1993 king crab fishery represented the largest fishery in the region in terms of income.

Superexclusive registration is predicted to result in an increase in retained revenues and possibly to improve market conditions for increasing overall revenues. It is expected to reduce industry compliance costs. The economic impact on small entities under the proposed action would not result in a reduction in annual gross revenues of more than 5 percent, annual compliance costs that increased total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 671 is proposed to be amended as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 671.20 [Removed and reserved]

2. Section 671.20 is removed and reserved.

[FR Doc. 94–4922 Filed 2–28–94; 4:22 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Wild and Scenic River Southern and Northern Advisory Councils; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Northern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 pm, Tuesday, March 22, 1994 at the Warren Public Library, Warren, PA.

The Southern Advisory Council will meet at 7 pm, Wednesday, March 23, 1994, at the Emlenton Civic Club, Emlenton, PA.

Both Councils will discuss (1) work on a newsletter informing the public of their progress to date and (2) also resource opportunities along the river.

Meetings are open to the public. A sign language interpreter will be provided if requested by March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Donna McDonald, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: February 23, 1994.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 94–5027 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will conduct a series of meetings with the public in Hawaii between March 28 and 31, 1994. These sessions have been scheduled on Kauai, Oahu, Molokai, Maui, and Hawaii to try to reach a broad range of community members. During these sessions, Task Force members will be inviting the public to share their ideas, concerns, and recommendations to help manage, protect, and use the tropical forests of Hawaii. The Task Force will also discuss relevant topics and review the position papers of the six working groups which drafted recommendations on Hawaii's Tropical Forests. All sessions are open to the public. Field trips will last approximately 4 hours. The public must provide their own transportation on the field trips and should bring rain gear and boots. A detailed meeting agenda is available on request

The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and the Interior.

DATES: Meetings will be held on March 28, 1994, on the island of Kauai. On March 29, 1994, concurrent sessions will be held on the islands of Molokai, Maui, and Hawaii. On March 30 and 31, 1994, meetings will also be held on the island of Oahu.

ADDRESSES: On March 28, on Kauai, a field trip will depart at 8:30 a.m. from the Kokee Museum Parking Lot located along Waimea Canyon Drive. A Task Force business meeting will be held from 2 p.m. to 5 p.m. in the Niihau Room at the Kauai Resort Hotel located at 3–5920 Kuhio Highway in Kapaa. An open house will be held from 7 p.m. to 9 p.m. in the Kauai Resort Hotel's Alii Room.

On March 29, on Molokai, a field trip will depart at 9:30 a.m. from the Homelani Cemetery at the beginning of the forestry road (a four-wheel drive vehicle is required). An open house will be held between 6 p.m. and 8 p.m. at the Kaunakakai School's Cafetorium located along Hwy 460, East Kaunakakai

On March 29, on Maui, a field trip will depart at 11 a.m. from the Kahului Department of Land and Natural Resources Baseyard (DLNR) located at 685 Haleakala Highway. An open house will be held between 6 p.m. and 8 p.m. at the Mauiwaena Intermediate School's Cafetorium located at 795 Onehee Avenue in Kahului.

On March 29, on the island of Hawaii, a field trip will depart at 9:45 a.m. from Kona (Captain Cook) at the Greenwell Park parking lot located across from Manago Hotel. An open house will be held between 6 p.m. to 8 p.m. in Kona at the Old Kona Airport located off Kuakini Highway, and between 7 p.m. to 9 p.m. in Hilo in the Moku'ola #2 Room at the Hilo Hawaiian Hotel located at 71 Banyan Drive.

On March 30, on Oahu, a field trip will depart at 11 a.m. from the Makiki Forestry Baseyard located at 2135 Makiki Heights Drive. An open house will be held between 6 p.m. to 8 p.m. at the Paki Hale located at 3840 Paki Avenue.

On March 31, on Oahu, the concluding Task Force business meeting will be held between 8 a.m. and 2 p.m. at the Ala Wai Golf Clubhouse, Second Floor, Diamond Head Room, located at 404 Kapahulu Avenue.

FOR FURTHER INFORMATION CONTACT: Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, Telephone: (808) 541–2628, FAX (808) 528–0556; after March 14, 1994: (808) 522–8230, FAX (808) 522–8236.

Dated: February 24, 1994.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 94–4917 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Aua Watershed, American Samoa

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); the Soil Conservation Service, Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Aua Watershed, American Samoa.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Pacific Basin Area, Soil Conservation Service, suite 602, GCIC Building, 414 W. Soledad Avenue, Agana, Guam, 96910, telephone (671) 472–4790.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Joan B. Perry, Director, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for residential flood prevention and water quality enhancement. Alternatives under consideration to reach this objective include levees, waterways, and animal waste disposal units.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held on April 14, 1994 to determine the scope of the evaluation of the proposed action. Further information on the proposed action or scoping meeting may be obtained from Joan B. Perry, Director, at the above address, or from Richard Hansen, District Conservationist, Soil Conservation Service, P.O. Box 4078, Pago Pago, AS 96799, telephone (684) 633–1031.

Dated: February 25, 1994.

Joan B. Perry,

Director, Pacific Basin Area.

[FR Doc. 94–4967 Filed 3–3–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than March 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping Duty Proceedings	Period
Australia: Canned Bartlett Pears (A–602–039)	03/01/93–02/28/94
Bangladesh: Shop Towels (A–538–802)	03/01/93–02/28/94
Brazil: Lead and Bismuth Steel (A–351–811)	09/28/92–02/28/94
Canada: Iron Construction Castings (A–122–503)	03/01/93–02/28/94
Chile: Standard Carnations (A–337–602)	03/01/93–02/28/94
Colombia: Certain Fresh Cut Flowers (A–301–602)	03/01/93–02/28/94
Ecuador: Certain Fresh Cut Flowers (A–331–602)	03/01/93–02/28/94
Finland: Rayon Staple Fiber (A–405–071)	03/01/93–02/28/94
France: Brass Sheet and Strip (A–427–602)	03/01/93–02/28/94
France: Lead and Bismuth Steel (A–427–804)	09/28/29–02/28/94
Germany: Brass Sheet and Strip (A–428–602)	03/01/93–02/28/94
Germany: Lead and Bismuth Steel (A–428–811)	09/28/92–02/28/94
Israel: Oil Country Tubular Goods (A–508–602)	03/01/93–02/28/94
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A–475–401)	03/01/93–02/28/94
Italy: Brass Sheet and Strip (A–475–601)	03/01/93–02/28/94
Japan: Ferrite Cores (of the Type Used in Consumer Electronic Products) (A–588–016)	03/01/93–02/28/94
Japan: Stainless Steel Butt-Weld Pipe Fittings (A–588–702)	03/01/93–02/28/94
Japan: Television Receivers, Monochrome and Color (A–588–015)	03/01/93–02/28/94
Mexico: Steel Wire Rope (A–201–806)	09/22/92–02/28/94
The Republic of Korea: Steel Wire Rope (A–580–811)	09/30/92–02/28/94
Sweden: Brass Sheet and Strip (A–401–601)	03/01/93–02/28/94
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A–583–803)	03/01/93–02/28/94
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (A–549–502)	03/01/93–02/28/94
The People's Republic of China: Chloropicrin (A–570–002)	03/01/93–02/28/94
The People's Republic of China: Ferrosilicon (A–570–819)	11/05/92–02/28/94
United Kingdom: Lead and Bismuth Steel (A–412–810)	09/28/92–02/28/94
Colombia: Certain Textile Mill Products (C–301–401)	05/18/92–12/31/93
Thailand: Certain Textile Mill Products (C–549–401)	05/18/92–12/31/93
Countervailing Duty Proceedings:	
Argentina: Certain Apparel (C–357–404)	01/01/93–12/31/93
Argentina: Certain Textile Mill Products (C–357–404)	01/01/93–12/31/93
Argentina: Leather Wearing Apparel (C–357–001)	01/01/93–12/31/93
Brazil: Certain Castor Oil Products (C–351–029)	01/01/93–12/31/93
Brazil: Cotton Yarn (C–351–037)	01/01/93–12/31/93
Brazil: Hot-Rolled Lead and Bismuth CSP (C–351–812)	09/17/92–12/31/93
Chile: Standard Carnations (C–337–601)	01/01/93–12/31/93
France: Brass Sheet and Strip (C–427–603)	01/01/93–12/31/93
France: Hot-Rolled Lead and Bismuth CSP (C–427–805)	09/17/92–12/31/93
Germany: Hot-Rolled Lead and Bismuth CSP (C–428–812)	09/17/92–12/31/93
India: Sulfanilic Acid (C–533–807)	02/24/93–12/31/93
Iran: In-Shell Pistachios (C–507–501)	01/01/93–12/31/93
Israel: Oil Country Tubular Goods (C–508–601)	01/01/93–12/31/93
Mexico: Certain Textile Mill Products (C–201–405)	01/01/93–12/31/93

Antidumping Duty Proceedings	Period
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/93–12/31/93
New Zealand: Carbon Steel Wire Rod (C–614–504)	10/01/92–09/30/93
Pakistan: Cotton Shop Towels (C–535–001)	01/01/93–12/31/93
Peru: Certain Textile Mill Products (C–333–402)	05/18/92–12/31/93
Peru: Certain Apparel (C–333–402)	05/18/92–12/31/93
South Africa: Ferrochrome (C–792–001)	01/01/93–12/31/93
Sri Lanka: Certain Textile Mill Products (C–542–401)	05/18/92–12/31/93
Sri Lanka: Certain Apparel (C–542–401)	05/18/92–12/31/93
Thailand: Certain Apparel (C–549–401)	01/01/93–12/31/93
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/93–12/31/93
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/93–12/31/93
United Kingdom: Hot-Rolled Lead and Bismuth CSP (C–412–811)	09/17/92–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3069–A of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Departments's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by March 31, 1994.

If the Department does not receive, by March 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: February 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–5036 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–801]

Antifriction Bearings From France; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France (56 FR 31748, July 11, 1991): *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–224, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on all issues. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–94), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France (56 FR 31748, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On September 1, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from France to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5032 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings From Germany; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany (56 FR 31692, July 11, 1991). *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–221, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on all issues. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–96), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany (56 FR 31692, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On September 2, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Germany to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A.Spetrini,

Acting Assistant Secretary For Import Administration.

[FR Doc. 94–5033 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings From Italy; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991). *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–225, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on the value added tax issue. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1993, the CIT in *Federal-Mogul Corp.* v. *United States*, (Slip Op. 93–95), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without

adjustment. On September 1, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Italy to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5035 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

(C–351–037)

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 3, 1994, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (59 FR 68). We have now completed that review and determine the net subsidy to be 0.30 percent ad valorem for all firms during the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent ad *valorem* is *de minimis*.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 68) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1992 through December 31, 1992, eight companies and the following seven programs: (1) Income Tax Exemption for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX (Carteira de Comercio Exterior) Working Capital Financing for Exports; (5) Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans); and (7) IPI (Tax on Industrialized Products) for Imports of Machinery or Equipment Under Decree Law 2324.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the eight companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was de minimis, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.30 percent *ad valorem* for all firms during the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1992 and on or before December 31, 1992.

The Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Because the net subsidy is *de minimis*, however, the cash deposit on such shipments will be zero. These instructions shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 25, 1994.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5037 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–307–810]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Phthalic Anhydride From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Cynthia Thirumalai, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or 482–4087, respectively.

SUPPLEMENTARY INFORMATION: On January 27, 1994, we published a preliminary negative countervailing duty determination pertaining to phthalic anhydride from Venezuela (59 FR 3842).

On January 28, 1994, in accordance with 19 CFR 355.20(c) (1993), we received a request from petitioner to align the due date for the countervailing duty determination with the date of the final antidumping duty determination in the investigation of phthalic anhydride from Venezuela. Accordingly, the final determination in this countervailing duty investigation is due not later than June 14, 1994.

This notice is published in accordance with 19 CFR 355.20(c)(3) (1993).

Dated: February 10, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5038 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–P

Texas A&M Research Foundation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93–107. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* November 16, 1993.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–5039 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–F

University of California, San Diego, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–030R. *Applicant:* University of California, San Diego, San Diego, CA 92121. *Instrument:* Wave Measuring Equipment. *Manufacturer:* Datawell, BV, The Netherlands. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides: (1) more reliable wave direction estimates at frequencies under 1.0 Hz and over 3.0 Hz with less variability within that range and (2) better wave spread estimates than comparable domestic equipment. *Advice Received From:* National Oceanic and Atmospheric Administration, June 14, 1993.

Docket Number: 93–148. *Applicant:* U.S. Department of Commerce, NOAA, Stennis Space Center, MS 39529-6000. *Instrument:* Sounder System, Model EK 500. *Manufacturer:* Simrad Subsea, Norway. *Intended Use:* See notice at 58 FR 68876, December 29, 1993. *Reasons:* The foreign instrument provides: (1) a split beam (quadrant) transducer, (2) echo integration and (3) a relational data base processor to assist species identification. *Advice Received From:* U.S. Fish and Wildlife Service, February 2, 1994.

The National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–5040 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket No. 940250–4050; I.D. 122893D]

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed List of Fisheries for calendar year 1994; request for comments.

SUMMARY: NMFS requests comments and further information on the proposed List of Fisheries for calendar year 1994 as well as several other actions associated with the Interim Exemption for Commercial Fishing under the Marine Mammal Protection Act (MMPA).

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Send comments to Dr. William W. Fox, Jr., Director, Office of Protected Resources, F/PR, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (Attn: Comments on Proposed List of Fisheries).

FOR FURTHER INFORMATION CONTACT: Victoria R. Credle, 301–713–2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish and annually update a List of Fisheries, along with a list of the marine

mammals and the number of vessels or persons involved in each such fishery, in three categories, as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood of, or no known, incidental taking of marine mammals.

Based on Congressional guidance, NMFS interpretation of the 1988 Amendments, public comment, and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). NMFS also published an interim rule governing the taking of marine mammals incidental to commercial fishing operations on May 19, 1989 (54 FR 21910), and a final rule governing reporting of the take of marine mammals incidental to commercial fishing operations on December 15, 1989 (54 FR 51718).

On June 14, 1993 (58 FR 32905), NMFS published the interim final List of Fisheries for 1993 and requested comments and information on the changes contained therein. All comments received were in support of the changes to the interim final List of Fisheries. A summary of the comments received are provided in the following section. Proposed revised changes for the 1994 List of Fisheries are based on the classification of fisheries as published in the 1993 interim final List of Fisheries.

The following criteria were used in classifying fisheries in the List of Fisheries:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20 day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20 day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA, requires the Assistant Administrator for Fisheries, NOAA, to annually publish and request comments on proposed revisions to the List of Fisheries to be effective for the next calendar year.

Comments Received on the 1993 Interim Final List of Fisheries

Thirteen comments were received in response to the request for comments on the interim final List of Fisheries for 1993. All of the comments received were in support of the changes published in the interim final List of Fisheries, and are summarized below.

Alaska Prince William Sound (Eshamy, Coghill, and Unakwik districts) Drift Gill Net Fishery and the Alaska Copper River and Bering River (adjacent to Prince William Sound) Drift Gill Net Fishery

Twelve comments were received supporting the split of the former Alaska Prince William Sound drift gill net fishery into two separate fisheries, based on the difference in take rates in the two areas. All comments received also supported the reclassification of the Alaska Prince William Sound (Coghill, Eshamy, and Unakwik districts) drift gill net fishery from Category I to Category II.

Atlantic, Caribbean, and Gulf of Mexico Tuna, Shark, and Swordfish Pair Trawl Fishery

One comment was received supporting the reclassification of the Atlantic, Caribbean, and Gulf of Mexico tuna, shark, and swordfish pair trawl fishery from Category II to Category I. The individual making the comment also suggested that all pair trawl fisheries be reclassified as Category I fisheries. NMFS is aware of only one other pair trawl fishery which operated for a short time in the Gulf of Maine, targeting groundfish. This fishery has been inactive following issuance of emergency regulations published on June 8, 1993 (58 FR 32062). Amendment 5 of the New England Groundfish Fishery Management Plan, approved on January 3, 1994, contains measures to continue the ban on the use of pair trawl gear in this fishery indefinitely. If new information is received regarding the use of pair trawl gear in other areas, further action will be taken on this recommendation.

Proposed Changes

1. *Recategorize* the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery from Category I (Table 1) to Category II (Table 2).

Many of the comments received on the 1993 interim final List of Fisheries indicated that the take rates given for the Alaska Copper River and Bering River (adjacent to Prince William Sound) drift gill net fishery were overestimated. Take rates were based on the total number of interactions, which included momentary interactions with the nets, e.g., animals brushing up against the net or swimming over it, as well as serious injuries, and mortalities. Many individuals submitting comments noted that if only those interactions resulting in serious injuries or mortalities were used to calculate take rates, the take rate would be much less than that reported in the interim final List. Therefore, NMFS has reviewed the observer data collected in this fishery and calculated a revised take rate of 0.56 marine mammal takes per 20 days of fishing, based on an estimated 252 serious injuries, and kills in 8,883 fishing vessel days. Based on the calculated take rate, NMFS proposes reclassification of the Alaska Copper River and Bering River (adjacent to Prince William Sound) drift gill net fishery from Category I to Category II.

2. *Recategorize* the WA, OR Lower Columbia River salmon drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from the two major fishing seasons (winter and fall) with approximately 6 percent coverage of fishing effort in winter 1991, 4 percent in fall 1991, 10 percent in winter 1992, 7 percent in fall 1992, and 7 percent in winter 1993.

Percent observer coverage for the fall 1993 fishery is currently being estimated, and will be completed after all landing data have been reviewed. Only one marine mammal mortality, a harbor seal, was observed in 3 years of observations in the fall fisheries (1991, 1992, and 1993), while a total of 28 marine mammal serious injuries or mortalities (24 harbor seals and four California sea lions) were observed over the course of 3 years of observations in the winter fisheries (1991 through 1993). Based on the observer data from 1991–winter 1993 (fall 1993 data analysis is underway), less than 0.5 marine mammals are taken per vessel per 20 days of fishing in this fishery. Based on this, NMFS proposes that the WA, OR Lower Columbia River salmon drift gill net fishery be recategorized from Category I to Category III.

3. *Recategorize* the WA Willapa Bay salmon drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from about 2 to 13 percent of the fishing effort since 1991. No marine mammal mortalities have been observed. Because the incidence of take is rare and does not meet the criteria for categorizing fisheries in Category I or II, NMFS proposes that the WA Willapa Bay salmon drift gill net fishery be recategorized from Category I to Category III.

4. *Recategorize* the WA Grays Harbor salmon set and drift gill net fishery from Category I (Table 1) to Category III (Table 3).

Marine mammal/fishery interaction and incidental take data have been collected in this fishery since 1991 under a marine mammal observer program that was completed at the end of calendar year 1993. Incidental take data have been collected by observers from about 4 to 10 percent of the fishing effort since 1991. Only one marine mammal mortality, a harbor seal, has been observed. Because the incidence of take is rare and does not meet the one take per vessel per 20 days criteria for categorizing fisheries in Category I or II, NMFS proposes that the WA Grays Harbor salmon set and drift gill net fishery be recategorized from Category I to Category III.

5. *Recategorize* all California gill net fisheries (except the CA Klamath River gill net fishery, Table 2), based on mesh size of net, by *adding* CA set and drift gill net fisheries that use a stretched mesh size of greater than 3.5 inches (8.9 cm) to Category I (Table 1), *adding* set and drift gill net fisheries that use a stretched mesh size of 3.5 inches (8.9 cm) or less to Category III (Table 3), *dropping* all other CA set and drift gill net fisheries, including: the CA thresher shark and swordfish drift gill net fishery (Table 1), the CA halibut set gill net fishery (Table 1), the CA soupfin shark, yellowtail, white sea bass set gill net fishery (Table 1), the CA white croaker, bonito, and flying fish gill net fishery (Table 2), and *redefining* the WA, OR, CA herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net fishery (Table 3) to include only WA and OR.

Since 1989, the categorization of gill net fisheries in California has been based on the species being targeted and the frequency of marine mammal mortality. Reviews of information on the rate of marine mammal mortality in a range of gill net mesh sizes indicate that larger mesh sizes (greater than 3.5 inches or 8.9 cm stretched mesh size) entangle marine mammals at a much higher rate than smaller mesh sizes (less than 3.5 inches or 8.9 cm stretched mesh size) (Miller 1983, Vojkovich 1987, 1988, 1989, Barlow *et al.* 1992). Observer placement in Category I fisheries, as required by the MMPA, could be achieved more effectively by evaluating the type of gear that will be used instead of the intended target species. Therefore, NMFS proposes that all California gill net fisheries (except the CA Klamath River fishery) be reclassified based on stretch mesh size, rather than by target species. Set or drift gill net vessels that use mesh sizes greater that 3.5 inches (8.9 cm), such as the CA thresher shark and swordfish drift gill net fishery (Table 1), the CA halibut set gill net fishery (Table 1), the CA soupfin shark, yellowtail, white sea bass set gill net fishery (Table 1) would remain in Table 1 and be subject to the requirements of a Category I fishery. Set or drift gill net vessels that use mesh sizes less than or equal to 3.5 inches (8.9 cm), such as the CA white croaker, bonito, and flying fish gill net fishery (Table 2), and the WA, OR, CA herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net fishery (Table 3) would be subject to the requirements for a Category III fishery.

6. *Recategorize* the GME Atlantic salmon aquaculture (net pen) fishery from Category III (Table 6) to Category II (Table 5).

Harbor seals and gray seals are known to interact with salmon net pens in the Gulf of Maine (GME), yet the rate at which interactions occur may be increasing based on stranding reports and communication with net pen owners and their representatives. Recently, the Maine Aquaculture Association appealed to NMFS to provide net pen owners with a means for limited intentional lethal taking of seals, indicating a 10 percent loss of salmon due to predation by seals. In their appeal, they noted that a "Predator Control Seminar" was held in Eastport, Maine, in April 1993 to discuss the effectiveness of non-lethal means of deterring seals. The group determined that although non-lethal deterrence efforts are being employed, "periodic intentional lethal take of individual seals is a necessary tool for the continued success of this industry."

Owners of salmon net pens have been subject to the reporting requirements of a Category III fishery, which require that all lethal takes of marine mammals be reported to NMFS within 10 days. However, only limited reports of seal mortalities due to salmon net pen operations have been received by NMFS since 1989. NMFS is concerned that the take rate of marine mammals in salmon net pen operations may be greater than previously estimated, and therefore proposes that the Gulf of Maine salmon net pen fishery be reclassified from Category III to Category II.

Literature Cited

Barlow, J., P. Perkins, and M. Beeson. 1992. Report on pinniped and cetacean mortality in California gillnet fisheries: 1990–1991. NMFS SWFC Admin. Rep. LJ–92–14.

Miller, D., M. Herder, and J. Scholl. 1983. California marine mammal-fishery interaction study, 1979–1981. NMFS SWFC Admin. Rep. LJ–83–13C.

Vojkovich, M., R. Reed, and K. Hieb. 1987 Progress report: Southern California nearshore gill and trammel net study, 1986. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Vojkovich, M., K. Miller, and R. Reed. 1988. Progress report: Southern California nearshore gill and trammel net study, 1987. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Vojkovich, M., K. Miller, and D. Aseltine. 1989. Summary of nearshore gill net observation data for 1988 and 1989. State of California, Resources Agency, Dept. of Fish and Game. Marine Resources Branch, Long Beach, CA.

Dated: February 25, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

[FR Doc. 94–4923 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 022594B]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Salmon Subcommittee of the Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet on March 7, 1994, at the Columbia River Red Lion Hotel's Clackamas Room, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111. The meeting will be held from 9 a.m. until 12 p.m. This meeting will immediately precede the SSC meeting announced in conjunction with the Council meeting scheduled for the week of March 7. The purpose of this meeting is to review proposed revisions to the methodologies to be used in the preseason planning process.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: February 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4995 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021894A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of Application for a Scientific Research Permit (P377B).

SUMMARY: Notice is hereby given that Dr. A. Rus Hoelzel, LVC, Bldg. 560, National Cancer Institute, Frederick, MD 21702, has applied in due form for a permit to import *Tursiops truncatus* skin samples for purposes of scientific research.

DATES: Written comments must be received on or before February 28, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Applicant proposes to import 100 skin samples taken from bottlenose dolphins that are collected by salvage from already dead animals and by biopsy darting. The samples will be imported from Namibia and South Africa. Morphological distinctions related to body size and cranial dimensions have been described between the nearshore and offshore forms of bottlenose dolphin.

In this study, the applicant proposes to investigate the genetic differentiation of nearshore vs offshore populations from Namibia and South Africa.

Dated: February 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4950 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

February 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6715. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65968, published on December 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool,

man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on March 7, 1994, you are directed to amend the directive dated December 13, 1993 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Romania:

Category	Adjusted twelve-month limit [1]
Sublevels in Group III:	
433/434	7,864 dozen.
435	7,289 dozen.
443	114,558 numbers.
444	39,039 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5030 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

February 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements to include certain part and merged categories.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on March 15, 1994, the existing export visa arrangement between the Governments of the United States and Macau is being amended to include the coverage of certain merged and part-categories, produced or manufactured in Macau and exported from Macau on and after March 15, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 46 FR 45979, published on September 16, 1981; and 52 FR 26719, published on July 16, 1987.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 16, 1981, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau for which the Government of Macau has not issued an appropriate visa.

Effective on March 15, 1994, you are directed to amend further the September 16, 1981 directive to include coverage of the following part and merged categories for goods exported on and after March 15, 1994:

Part-categories
359–C—Coveralls and overalls—only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010;
359–V—Vests—only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.
359–O—Other—all HTS numbers except those in Categories 359–C and 359–V.
659–C—Coveralls and overalls—only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
659–S—Swimwear—only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
659–O—Other—all HTS numbers except those in 659–C and 659–S.

Merged categories
331/831
333/334/335/833/834/835
333/335/833/835
336/836
347/348/847
350/850
351/851
359–C/659–C
445/446
625/626/627/628/629
633/634/635
638/639/838
641/840
642/842
645/646
647/648
652/852

Effective on March 15, 1994, you are directed to require an export visa for cotton and man-made fiber textile products in part-Categories 359–C, 359–V, 359–O, 659–C, 659–S and 659–O, produced or manufactured in Macau and exported from Macau on and after March 15, 1994.

Merchandise in the aforementioned merged categories may be accompanied by either the appropriate merged category visa, merged part-category visa, correct part-category visa or correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5031 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: April 4, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 17 and 27, 1993, January 3 and 7, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 65971, 68398, 59 FR 74 and 1002) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pallet, Wood
3990–00–NSH–0072
(Requirements for Federal Prison Industries, Inc., Washington, DC)

Cap Assembly, Plastic Water Can
7240–00–089–7312

Grommet
8140–01–063–7681

Services

Grounds Maintenance for the following U.S. Army Corps of Engineers Reservations:
Bavou Boeuf Lock, Berwick Lock, East/West Calumet Floodgates, Charenton Floodgate, Morgan City Vicinity, Louisiana

Janitorial/Custodial
INEL Electronic Technology Center (IETC), 1 Energy Drive, Idaho Falls, Idaho

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Paper, Teletypewriter Roll
7530–00–262–9178
7530–00–721–9691
7530–00–223–7969

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–5001 Filed 3–3–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 4, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 1, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 51319) of proposed addition to the Procurement List.

Comments were received from the current contractor in response to a Committee request for sales data. The contractor claimed that addition of these services to the Procurement List would have a tremendous impact on its employees in the Burlington, Vermont area, on its Vermont operations, and on the company as a whole. It noted that unemployment is high in the Burlington area, making it unlikely that the displaced workers would find other employment, and that non-Government-contract wages are lower. The contractor indicated that the contracts at issue are a large enough part of its Vermont operations that without them it would have to close its Vermont office and attempt to service its contracts in the area from its Massachusetts headquarters. It claimed that performance on those contracts would likely be impaired, and that performance problems would limit its ability to obtain Government contracts, which constitute the great majority of its business.

The contracts for the services proposed to be added to the Procurement List are only a very small portion of the contractor's total sales. Accordingly, loss of these contracts would not cause a severe adverse impact on the contractor's sales.

People with severe disabilities generally have unemployment rates exceeding 65 percent, considerably higher than the unemployment rate for people without disabilities in the Burlington, Vermont area. Consequently, the Committee believes that any potential loss of employment for the contractor's workers is outweighed by the actual creation of jobs for people with severe disabilities, who would have a much harder time finding other employment than the contractor's workers.

The Committee has taken into account the contractor's claims concerning the possible closing of its Vermont office and the effects this might have on its ability to perform its Government contracts and acquire others. However, the Committee, noting the speculative nature of these claims, does not believe they increase the impact of the small loss in sales which addition of these services to the Procurement List would have on the contractor sufficiently to constitute severe adverse impact on the contractor. After consideration of the material presented to it concerning

capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial for the following locations:
Federal Building, 11 Elmwood Avenue, Burlington, Vermont
Federal Building, 11 Lincoln Street, Essex Junction, Vermont
Social Security Administration Building, 58 Pearl Street, Burlington, Vermont

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–5002 Filed 3–3–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 4, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Bag, Sand, Cotton,
8105–00–965–2509,
NPA: Columbia Industries, Kennewick, Washington.

Military Resale Commodities

Broom, Fiber,
M.R. 952,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Broom, Patio,
M.R. 954,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Broom, Upright,
M.R. 951,
M.R. 953,
NPA: Industries for the Blind Inc., Milwaukee, Wisconsin

Broom, Whisk,
M.R. 910,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Brush, Bowl,
M.R. 917,
NPA: Alabama Industries for the Blind, Talladega, Alabama.

Brush, Duster,
M.R. 913,
NPA: The Lighthouse, Inc., Long Island City, New York.

Brush, Scrub,
M.R. 958,
M.R. 932,
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Services

Grounds Maintenance,
U.S. Army Reserve Center,
2000 North New Road,
Waco, Texas.
NPA: Heart of Texas Goodwill Industries, Waco, Texas.

Janitorial/Custodial,
Social Security Administration Building,
525 18th Street,
Rock Island, Illinois.
NPA: Alliance f/t Mentally Ill of Rock Island & Mercer County, Rock Island, Illinois.

Janitorial/Custodial,
R.B. Long Federal Courthouse,
777 Florida Street,
Baton Rouge, Louisiana.
NPA: Louisiana Industries for the Disabled, Baton Rouge, Louisiana.

Laundry Service,
Naval Hospital,
Oak Harbor, Washington,
NPA: Northwest Center for the Retarded, Seattle, Washington.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–5003 Filed 3–3–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Board on the Investigative Capabilities of the Department of Defense; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meetings is to receive briefings by many of the agencies potentially affected by the work of this Advisory Board and for discussion following the briefings. These meetings are open to the public

DATES AND TIMES: March 17, 1994 from 8:30 a.m.–5:30 p.m. and March 18, 1994 from 9 a.m.–12:15 p.m.

ADDRESSES: 1700 N. Moore Street, suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: February 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4918 Filed 3–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–22 March 1994.

Time of Meeting: 1215–1700 (21 March), 0800–1700 (22 March).

Place: Pentagon (21 March), Arlington, VA (22 March).

Agenda: The Army Science Board's panel on "Missile Shelf Life" will meet for discussions focused on the review of previously collected data concerning missile shelf life, meet with the sponsor to discuss his intent concerning the study, and develop a study plan. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5120 Filed 3–3–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11264 North Carolina]

Turbine Industries, Inc.; Availability of Draft Environmental Assessment

February 28, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing, unlicensed Coolemee Hydroelectric Project, located on the South Yadkin River, in the Town of Coolemee, Davie County, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 11264 to all comments. For further information, please contact Mary Glato, Environmental Coordinator, at (202) 219–2804.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4927 Filed 3–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14301T Colorado–62]

State of Colorado; NGPA Amended Determination by Jurisdictional Agency Designating Tight Formation

February 28, 1994.

Take notice that on February 24, 1994, the Colorado Oil and Gas Conservation Commission (Colorado) amended the notice of determination that was filed by the United States Department of Interior, Bureau of Land Management (BLM) in the above-referenced proceedings on September 2, 1993, pursuant to § 271.703(c)(3) of the Commission's regulations. The February 24, 1994 notice determined that a portion of the Corcoran-Cozzette Formation in Garfield County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA).

The February 24, 1994, amended notice of determination reduces the geographical area recommended for a tight formation designation. The amended area now covers only 48,274.78 acres; 23,974.20 acres or 49.66% are owned in Fee, and 24,300.58 acres or 50.34% are Federal Lands described as follows:

Township 6 South, Range 99 West
Sections 1–36: All

Township 6 South, Range 100 West
Sections 1–3, 10–15, 22–27, and 34–36: All

Township 7 South, Range 99 West
Sections 1–18: All

Township 7 South, Range 100 West
Sections 1–3, and 10–15: All

The notice of determination also contains Colorado's findings that the referenced portion of the Corcoran-Cozzette Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–4928 Filed 3–3–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–2—Certification Notice—129]

Bayside Cogeneration; Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Bayside Cogeneration, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public

inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in acccordance with section 201(d).

Owner & Operator: Bayside Cogeneration, L.P.

Location: 1400 Tidelands Avenue, National City, California.

Plant Configuration: Topping cycle cogeneration.

Capacity: 49.9 megawatts.

Fuel: Natural gas.

Purchasing Utilities: San Diego Gas & Electric.

Expected In-Service Dates: April 1, 1995.

Issued in Washington, DC, February 28, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5007 Filed 3–3–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4845–3]

National Environmental Education and Training Foundation, Inc. Announcement of New Appointments to the Board of Directors

The National Environmental Education and Training Foundation was created by Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following five appointments to the National Environmental Education and Training Foundation, Inc. Board of Directors. These appointees will join the seven current Board members, who include: Edward Bass, Chairman and CEO of Fine Line, Inc. and Chairman of Space Biospheres Ventures; Dr. James Crowfoot, Professor of Natural Resources and Urban and Regional Planning at the University of Michigan; Mark De Michele, President and CEO of Arizona Public Service Company; James Donnelley, Vice Chairman of the Board of R.R. Donnelley & Sons; Dr. Bonnie F. Guiton, Dean of the McIntire School of Commerce at the University of Virginia; Rebecca Rimel, Executive Director of the Pew Charitable Trusts; and Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company.

Great care has been taken to assure that these new appointees not only have the highest degree of expertise and commitment, but also bring to the Board diverse points of view relating to environmental education and training. Terms of office for the new appointees are: Mr. Parks, Mr. Krupp, Mr. Dach and Ms. Muyskens four year terms with possibility of an additional four year reappointment; Ms. Tabankin two years with possibility of an additional four year reappointment. The five new appointees are:

R. Ralph Parks—Mr. Parks is currently a General Partner, Investment Banking Division, Goldman Sachs & Company. From 1970 through 1980 he was Managing Director, Investment Banking Division, Merrill Lynch. He has a B.A. in History from Rice University and an M.B.A. from Columbia University School of Business.

Fred Krupp—Mr. Krupp is the Executive Director of the Environmental Defense Fund. He is also a member of the President's Council on Sustainable Development, serves on New York Governor Cuomo's Environmental Advisory Board, the Connecticut Fund for the Environment and the National Commission on Superfund. Mr. Krupp is a graduate of Yale University with a law degree from the University of Michigan.

Sarah Muyskens—Ms. Muyskens is a Management Consultant specializing in non-profits. She has worked at the Wilderness Society and the Environmental Defense Fund. Ms. Muyskens is on the Board of the Vermont Natural Resources Council and the Governor's Council of Environmental Advisors. Ms. Muyskens has a degree in British History from Yale University.

Leslie Dach—Mr. Dach is presently Executive Vice President/General Manager of Edelman Public Relations. He has over 15 years of experience in politics, lobbying, and press. While at Edelman he managed StarKist's announcement of its Dolphin Safe policy and a worldwide environmental communications policy for Johnson Wax. As a lobbyist, he worked for Audubon Society and the Environmental Defense Fund. He has also managed lobbying coalitions for the entire environmental movement on major pollution legislation. Mr. Dach has a B.S. in Biology from Yale and a M.P.A. from Harvard.

Margery Tabankin—Currently is the executive director of the Hollywood Women's Political Committee and the Barbara Streisand Foundation. Previously, Ms. Tabankin was an Institute of Politics Fellow at Harvard's John F. Kennedy School of Government and served as the executive director of the Arca Foundation and the director of VISTA. Ms. Tabankin has a B.A. in political science from the University of Wisconsin.

Dated: February 22, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–4914 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4708–9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly Receipt of Environmental Impact Statements Filed February 21, 1994 Through February 25, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940062, FINAL EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: April 03, 1994, Contact: William Johnstone (310) 297–1621.

EIS No. 940063, DRAFT EIS, AFS, CA, North Yuba Trail Construction Project, between Rocky Rest in Indian Valley to Goodyears Bar, Tahoe National Forest, Downieville Ranger District, Sierra County, CA, Due: April 18, 1994, Contact: Mary Furney (916) 478–6253.

EIS No. 940064, DRAFT EIS, UAF, CA, Travis Air Force Base (AFB) Realignment, Construction and Operation, David Grant Medical Center (DGMC), CA, Due: April 18, 1994, Contact: Jean Reynolds (618) 256–3067.

EIS No. 940065, DRAFT EIS, COE, FL, Central and Southern Florida (Canal 111 (C–111) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL, Due: March 28, 1994, Contact: Stephen Sutterfield (904) 232–1104.

EIS No. 940066, DRAFT EIS, COE, OH, Fernald Environmental Management Project (FEMP), Operable Unit 4 Remedial Investigation Feasibility Study, Implementation, City of Cincinnati, Butler and Hamilton Counties, OH, Due: April 20, 1994, Contact: Ken Morgan (513) 648–3131.

EIS No. 940067, FINAL EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements, I–70 in Fallowfield Township to PA–51 in Jefferson Borough, Funding, COE Section 404 Permit and NPDES Permit, Mon Valley, Washington and Allegheny Counties, PA, Due: April 04, 1994, Contact: Manuel A. Marks (717) 782–3461.

Dated: February 28, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–5029 Filed 3–3–94; 8:45 am]

BILLING CODE 6550–50–U

[ER–FRL–4709–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 14, 1994 Through February 18, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65218–ID

Rating EC2, Jenkins Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho and Adams Counties, ID.

Summary: EPA expressed environmental concerns on the Best Management Practices effectiveness and potential wetlands and air quality impacts. Additional information is requested to: clarify monitoring commitments, document wetland impacts and discuss air quality impacts to sensitive areas.

ERP No. D–AFS–L65219–ID

Rating EC2, Hazard Helicopter Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns on potential effects on water quality and air quality. Additional information was requested on proposed monitoring and prescribed burning.

ERP No. D–AFS–L65221–ID

Rating EC2, Hungry-Mill Timber Sales, Harvesting Timber and Road Construction, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns regarding water quality impacts. EPA requested additional information concerning water quality, wetlands and riparian areas, and monitoring.

ERP No. D–BLM–K65158–CA

Rating EO2, Clear Creek Management Area, Land and Resource Management Plan Amendment, Implementation, San Benito and Fresno Counties, CA.

Summary: EPA expressed environmental objections to the preferred alternative based on the potential human health risks posed by exposure to asbestos, a known human carcinogen. In addition, water quality, soils and unique biological resources in the area are degraded as a result of past and current human activities including mining and recreation. EPA urged BLM to minimize asbestos emissions by implementing aggressive management actions. EPA also recommended that measures be implemented by BLM to improve water quality, soil stability, and riparian and upland vegetation.

ERP No. D–DOE–C22002–NY

Rating EC2, Tonawanda Site, (Formerly Utilized Sites Remedial Action Program) Remedial Investigatior. and Feasibility Study for Residual Radioactive Contamination, Funding, City of Tonawanda, NY.

Summary: EPA had environmental concerns about insufficient analysis of the possible locations for the on-site encapsulation cell, potential aquifer contamination, long-term institutional controls and site monitoring arrangements, and the need for appropriate wetlands mitigation measures.

ERP No. DS–BLM–K60023–CA

Rating EO2, Rail-Cycle-Bolo Station Class III Nonhazardous Waste Landfill Project, Construction and Operation, Updated Information, Federal Land Exchange and Right-of-Way Grants, San Bernardino County, CA.

Summary: EPA expressed environmental objections based on potential impacts to air quality. Additional information is needed in the FEIS on air quality impacts, air quality mitigation, groundwater monitoring, waters of the US, hazardous waste, biological resources and wilderness areas.

Final EISs

ERP No. F–AFS–L60096–ID

Moyer Salt Timber Sale, Timber Harvest and Road Construction/ Reconstruction, Implementation, Salmon National Forest, Cobalt Ranger District, Lemhi County, ID.

Summary: EPA expressed environmental concerns regarding the lack of BMP effectiveness monitoring. EPA recommended that the Forest Service consider including a commitment to BMP effectiveness monitoring for water quality in the Record of Decision.

ERP No. F-BLM-L65127-AK

Fort Wainwright Maneuver Area, Resource Management Plan for Nonmilitary Uses, AK.

Summary: The final EIS did not resolve EPA's concerns regarding cumulative impacts analysis, monitoring or the relationship of this Resource Management Plan to other plans yet to be developed.

ERP No. F-BLM-L65128-AK

Fort Greely Maneuver Area and Air Drop Zone, Resource Management Plan for Nonmilitary Uses, AK.

Summary: The final EIS did not resolve EPA's concerns regarding cumulative impacts analysis, monitoring or the relationship of this Resource Management Plan to other plans yet to be developed.

ERP No. F-FHW-F40321-MI

US 23 Improvements, MI-13 to MI-65 and segments of Standish and Omer Cities, Funding, Section 404 Permit and NPDES Permit, Arenac County, MI.

Summary: EPA agreed with the recommended alternative for the project: Improvements on existing alignment; and was appreciative that this alternative will have the least impact, other than the No Action, on area of wetlands. Accordingly, concerns raised in our June 5, 1992 letter have been adequately mitigated.

Dated: February 28, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-5028 Filed 3-3-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4845-5]

Delaware: Final Determination of Adequacy of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of final determination of full program adequacy for the State of Delaware's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Delaware's MSWLF application and proposed a determination on November 15, 1993, that Delaware's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. As no comments or opposition to EPA's tentative determination were received, EPA is today issuing a final determination that the State of Delaware's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of Delaware shall be effective March 4, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher Luksic, mailcode (3HW53), telephone (215) 597-2842.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above.

B. State of Delaware

On October 7, 1993, Delaware submitted an application for adequacy determination for Delaware's MSWLF permit program. On November 15, 1993, EPA published a tentative determination of adequacy for all portions of Delaware's program. Further background on the tentative determination of adequacy appears at 58 FR 60199-60201, November 15, 1993.

A public comment period began on November 15, 1993, and ended on December 27, 1993. In this notice of

tentative determination, EPA announced that if there was sufficient public interest, a public hearing would be held on December 27, 1993. EPA Region III received no public comment or request for a public hearing, therefore, a public hearing was not held.

In the State's final application for adequacy determination, Delaware proposed revisions to those portions of their existing regulations which did not meet the Federal requirements in EPA's 40 CFR part 258. EPA tentatively determined in the November 15, 1993 **Federal Register** that once adopted as final regulation, Delaware's proposed regulations would ensure compliance with 40 CFR part 258. Delaware has made the regulatory changes specified in the November 15, 1993 **Federal Register**, and as listed below; the revised Delaware Regulations Governing Solid Waste (DRGSW) became effective on November 24, 1993.

Subpart A—General

Section 258.2 Definitions—Where appropriate, the State has adopted key terms and definitions which will more clearly ensure compliance with the 40 CFR part 258 Criteria. These key definitions have been included in section 3 of the DRGSW.

Subpart B—Location Restrictions

Section 258.10 Airport Safety—The State has amended Section 5.A.3. of the DRGSW to require that the Federal Aviation Administration (FAA) and affected airport(s) are notified of a proposed landfill located within 5 miles of an airport.

Section 258.11 Floodplains—Delaware has included the requirements and terms of this section in Section 5.A.4.a. of the DRGSW.

Sections 258.13 Fault Areas, 258.14 Seismic Impact Zones, and 258.15 Unstable Areas—The State has included the requirements and terms of these sections in Sections 5.A.4.h., 5.A.4.i., and 5.A.4.j., respectively, of the DRGSW.

Section 258.16 Closure of Existing MSWLF Units—Delaware has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

Section 258.20 Excluding Receipt of Hazardous Waste and § 258.26 Run-on/Run-off Control Systems—The State has amended Sections 5.I.2.l. and 5.F.2. of the DRGSW, to include the respective requirements of these sections.

Section 258.23 Explosive Gas Control—The State has amended Section 5.E.4. of the DRGSW to require the specific response actions of this section when critical levels of explosive gas are exceeded.

Subpart D—Design Criteria

Section 258.40 Design Criteria—The State has adopted EPA's performance standard for landfill design as specified in § 258.40(a)(1), (c) and (d) by amending Section 5.B.2. of the DRGSW to include these requirements.

Subpart E—Groundwater Monitoring and Corrective Action

Section 258.51 Groundwater Monitoring Systems—The State has adopted EPA's relevant point of compliance (150 meters), within which the downgradient monitoring wells must be located. Sections 5.G.2.b. and 5.G.4.g. of the DRGSW includes this requirement.

Section 258.53 Groundwater Sampling and Analysis Requirements—The State now requires, through amended DRGSW Section 5.G.3.a., that unfiltered groundwater samples be obtained except where turbidity cannot be controlled through careful well construction, development, and sampling. In addition, the State has adopted the data evaluation requirements found in subsections (e), (g), (h) and (i) of this section; these requirements are found in Section 5.G.4. of the DRGSW.

Section 258.54 Detection Monitoring—The State has adopted the requirements of this section into Sections 5.G.3.b. and 5.G.3.c. of the DRGSW, including the requirement that the owner/operators sample groundwater at least semi-annually for Appendix I parameters. Based on the results of groundwater and leachate monitoring, the State may modify the required list of groundwater monitoring parameters. In addition, the State has amended its regulations at Section 5.D.4.c. of the DRGSW to require leachate sampling with monthly analyses for indicator parameters and semi-annual analyses for Appendix II constituents.

Section 258.55 Assessment Monitoring—The State will proceed directly from Detection Monitoring to Corrective Measures Assessment.

Section 258.56 Corrective Measures Assessment—The required list of parameters for groundwater monitoring was expanded in the corrective measures assessment to include those Appendix II constituents deemed appropriate from the leachate monitoring data (See Section 5.G.6. of the DRGSW). During the corrective measures process there will be an opportunity for public input at the time of permit modification. A permit modification is required when corrective measures are deemed necessary.

Section 258.57 Selection of Remedy, and § 258.58 Implementation of Corrective Action—The State has adopted into regulation, the requirements of these sections into Section 5.G.8. of the DRGSW.

Subpart F—Closure And Post-Closure Care

Section 258.60 Closure Criteria—The State has amended their regulations at Section 5.H.2.b. to require that a geomembrane cover be used as part of a capping system where a MSWLF has been constructed with a geomembrane liner.

Subpart G—Financial Assurance Criteria

Section 258.70 Applicability and Effective Date—The State has amended their regulations to automatically remove the current financial assurance exemption for the Delaware Solid Waste Authority (DSWA), which currently manages all of Delaware's municipal solid waste. On April 9, 1995, the DSWA will be subject to the Federal financial assurance requirements adopted at Section 4.A.6.a. of the DRGSW.

Section 258.73 Financial Responsibility for Corrective Action—The State has adopted into regulation, at Sections 4.A.11.f. and 4.A.11.g. of the DRGSW, the requirements of this section.

C. Decision

Lacking public comment or opposition to EPA's tentative determination, I conclude that the State of Delaware's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Delaware is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered

to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Delaware's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 24, 1994.

William T. Wisniewski,

Acting Regional Administrator.

[FR Doc. 94–4993 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30359; FRL–4754–5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 4, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30359] and the registration/file symbol to: Public Response and Program Resources Branch, Field Operations Division (7506C), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Product Manager PM 22, Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing new active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient Not Included In Any Previously Registered Product

1. File Symbol: 432–TIG. Applicant: Roussel Uclaf Corporation, 95 Chestnut Ridge Road, Montvale, NJ 07645. Product name: Allercurb Plus. Insecticide/Fungicide. Active ingredients: Permethrin at 1.0 percent and imazalil sulfate at 0.15 percent. Proposed classification/Use: General. Domestic use indoors on textiles (ie. carpet, mattresses, pillow ticking, upholstery, drapes, etc.) for control of household mites and molds. (PM 22)

2. File Symbol: 707–EGG. Applicant: Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. Product name: RH-7592 2F. Fungicide. Active ingredient: Fenbuconazole; alpha [2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile at 22.8 percent. Proposed classification/Use: General. For use on ornamental plants. (PM 22)

II. Product Involving A Changed Use Pattern

EPA Reg. No.: 43813–6. Applicant: Janssen Pharmaceutica, 1125 Trenton Harbourton Road, Titusville, NJ 08560–0200. Product name: Fungazil 500 EC (formerly named Fungaflor). Fungicide. Active ingredients: Imazalil 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1*H*-imidazole at 44.6 percent. Proposed classification/Use: General. To include in its presently registered indoor nonfood use on chicken hatchery equipment, a domestic indoor use on carpets and carpet facing fiber. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 23, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–4989 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4845–4]

Draft Guidelines for Reproductive Toxicity Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of external review draft.

SUMMARY: This notice announces the availability of the external review draft of the "Guidelines for Reproductive Toxicity Risk Assessment" (EPA/600/AP–94/001). In 1988, EPA published separate Proposed Guidelines for Assessing Male Reproductive Risk (53 FR 24850–24869) and Proposed Guidelines for Assessing Female Reproductive Risk (53 FR 24834–24847). Following public comment, the EPA's Science Advisory Board (SAB) reviewed the proposed guidelines and recommended several changes, including combining the two guidelines. These draft guidelines have been prepared in response to the SAB and public comments and have been updated to reflect current scientific thinking in this area. In particular, the female component was expanded substantially but the original basic concepts were retained.

Since a number of changes have been made in this version of the guidelines from the original proposed guidelines, and due to the time elapsed since the proposals, EPA is asking for review and comment. This notice makes these draft guidelines available for public comment. Once comments are received, the guidelines will be reviewed by the EPA's Science Advisory Board before final publication.

DATES: The Agency will make the external review draft available on or about March 4, 1994. Comments must be submitted in writing and must be postmarked by April 18, 1994.

ADDRESSES: To obtain a single copy of this document, interested parties should contact the ORD publications office, CERI–FRN, U. S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; Tel: (513) 569–7562; facsimile (513) 569–7566. Please provide your name and mailing address and request the document by the title and EPA number.

This document also will be available for public inspection on the ORD Public Information Shelf of the EPA Headquarters Library, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Library hours are from 10 a.m. until 2 p.m., Monday through Friday, excluding Federal holidays.

Information submitted in response to this notice may be mailed to Dr. Eric D. Clegg, Reproductive and Developmental Toxicology Branch (8602), Human Health Assessment Group, Office of Health and Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Teitelbaum, Technical Liaison, Risk Assessment Forum (8101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743. (Copies of the document are not available at this address).

SUPPLEMENTARY INFORMATION: EPA is making available for public comment an external review draft of the Guidelines for Reproductive Toxicity Risk Assessment. Changes made based on previous public comment and SAB review include combining the separate guidelines for assessing male and female reproductive risk into a single document, integrating the hazard identification and dose-response sections, assuming as a default that an agent for which sufficient data are available on only one sex may also affect reproductive function in the other sex, expansion of the section on interpretation of female endpoints, and consideration of the benchmark dose approach for quantitative risk assessment.

Members of the public have the opportunity to submit written comments within the 45-day comment period. EPA will consider all comments received within that period.

Dated: February 23, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–4994 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4846–8]

Proposed Modification to Stipulated Settlement; Suit To Establish Schedule for Promulgation of Ozone Federal Implementation Plan for the Ventura Air Quality Management District Under Clean Air Act Section 110(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulated settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a Stipulation and Agreement of Settlement to modify a prior (March 13, 1991) Stipulation and Agreement of Partial Settlement, to establish a schedule by which EPA must propose and promulgate an ozone federal implementation plan ("FIP") for the Ventura Air Quality Management District pursuant to section 110(c) of the Clean Air Act, 42 U.S.C. section 7410(c), *Citizens to Preserve the Ojai* v. *EPA*, No. CV–88 00982 HLH (C.D. Cal.).

The parties to the litigation, desiring to settle the matter without extensive proceedings, entered into a joint Stipulation that obligates the EPA Administrator to sign a Notice of Proposed Rulemaking by February 14, 1994, and to sign a Notice of Final Rulemaking no later than February 14, 1995. The joint Stipulation has been approved by counsel for all parties.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed schedule.

Copies of the Joint Stipulation are available from Jerry Ellis, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5330. Written comments should be addressed to Jerry Ellis at the above address and must be submitted on or before April 4, 1994.

Dated: February 25, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–5127 Filed 3–3–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

First Chicago Corporation; Application to Engage in Certain Nonbanking Activities

This notice supplements a notice previously published. See First Chicago Corporation, 59 FR 9,215 (February 25, 1994).

First Chicago Corporation, Chicago, Illinois (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) (BHC Act) and § 225.23 of the Board's Regulation T (12 CFR 225.23), to engage *de novo* through its wholly owned subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois (Company), in the following nonbanking activities:

1. Underwriting and dealing in, to a limited extent, all types of debt securities, including sovereign debt securities, municipal revenue bonds, mortgage-related securities, consumer

receivable-related securities, commercial paper, corporate debt securities, convertible debt securities, and debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations;

2. Acting as agent in the private placement of all types of securities, and providing related advisory services;

3. Purchasing and selling all types of securities as a "riskless principal" on the order of customers;

4. Providing full-service securities brokerage services, pursuant to § 225.25(b)(15)(ii) of Regulation Y;

5. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions, pursuant to § 225.25(b) (4)(vi)(A)(2) of Regulation Y; and

6. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to commodity prices and commodity indices, and similar transactions.

Applicant seeks approval to conduct the proposed activities throughout the United States.

In a matter related to this proposal, Applicant seeks permission for an indirect foreign subsidiary of The First National Bank of Chicago, First Chicago Capital Markets Asia, Limited (FCCMA), to act as agent for Company, and to engage in marketing activities on behalf of Company, outside the United States in connection with the purchase and sale of securities that state member banks are authorized to underwrite and deal in under sections 5(c) and 16 of the Glass-Steagall Act (12 U.S.C. 335 and 24(7)). Applicant has stated that FCCMA is a corporation organized under the laws of Hong Kong which operates in accordance with the Board's Regulation K (12 CFR part 211).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 16, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5079 Filed 3–2–94; 10:14 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 922–3290]

American Institute of Habit Control, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Miami, Florida based company from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, DC 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of American Institute of Habit Control, Inc., a corporation, and Steven Present, individually and as an officer of said corporation.

File No. 922 3290.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Institute of Habit Control, Inc., a corporation, and Steven Present, individually and as an officer of said corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between American Institute of Habit Control, Inc., by its duly authorized officer, and Steven Present, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Institute of Habit Control, Inc., is a Florida corporation, with its principal office or place of business at 9655 South Dixie Highway, Miami, Florida 33156.

2. Proposed respondent Steven Present is the sole officer, director and shareholder of said corporation. He formulates, directs and controls the acts and practices of said corporation and his address is the same as that of said corporation.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the

Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.24 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For the purposes of this Order, "competent and reliable scientific evidence" shall men those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents American Institute of Habit Control, Inc., a corporation, its successors and assigns, and its officers, and Steven Present, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any smoking cessation program or weight loss program, including any such program that uses hypnosis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking: 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking.

B. Representing, directly or by implication, that ninety-seven percent of the participants who attend respondents' stop smoking seminars permanently abstain from smoking after those seminars, unless such is the case.

C. Making any representation, directly or any implication, about the relative or absolute performance or efficacy of any smoking cessation program or weight loss program, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

D. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey or report.

E. Misrepresenting, directly or by implication, the performance or efficacy of any smoking cessation program or weight loss program.

II

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

IV

It is further ordered that the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or of his affiliation with the corporate respondent. In addition, for a period of three (3) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment that involves a smoking cessation program or a weight loss program. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered that respondents shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials; and, for a period of three (3) years from the date of entry

of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of services of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from American Institute of Habit Control, Inc. (hereinafter "AIHC") and its President, Steven Present, marketers of the Present Seminar, a single, two-and-a-half-hour, group hypnosis session program for smoking cessation and weight loss. The Present Seminar is offered to the public nationwide by Steven Present at hotel locales.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) The likelihood of success in achieving the and maintaining abstinence from smoking cigarettes and weight loss; and (2) the effectiveness of proposed respondents' smoking cessation methods in leading consumers to abstain from smoking, including the effectiveness of proposed respondents' programs compared to other smoking cessation programs.

Success

The complaint against AIHC and Steven Present alleges that the proposed respondents made false claims and failed to possess a reasonable basis for other claims they made regarding the success of their seminar participants in quitting smoking and achieving and maintaining weight loss.Through advertisements placed in various media in advance of their seminars, proposed respondents represented that 97 percent of their seminar participants permanently abstain from smoking after attending those seminars. The complaint alleges that this claim is false.

Proposed respondents further represented through their advertisements that seminar participants: (1) Are cured of smoking addiction and permanently abstain from smoking cigarettes; (2) are cured of smoking addiction without experiencing withdrawal, stress or weight gain; and (3) achieve and maintain weight loss.

The Commission believes that these success claims for seminar attendees' smoking cessation, weight loss and maintenance of achieved weight loss are deceptive because proposed respondents at the time they made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in three ways. First, the order (Part I.C.) requires proposed respondents to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the performance or efficacy of any smoking cessation or weight loss program.

Second, the proposed order (Part I.B.) prohibits proposed respondents from representing that 97 percent of their seminar attendees permanently abstain from smoking after those seminars, unless that is the case.

Finally, the proposed order (Part I.E.) generally prohibits proposed respondents from misrepresenting the performance or efficacy of any smoking cessation or weight loss program.

Efficacy

The Commission's complaint further alleges that proposed respondents made false claims and failed to possess a reasonable basis for other claims they made regarding relative ability of their hypnosis program to lead consumers to quit smoking. AIHC and Steven Present represented through their advertising that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking; 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking. The complaint alleges that this claim is false, because the cited Report does not state that proposed respondents' hypnosis method is one of the most effective ways to stop smoking.

Proposed respondents further represented through their advertisements that their single-session, group hypnosis seminar is more efficacious for smoking cessation than other smoking cessation methods. The Commission believes that this comparative efficacy claim for proposed respondents' hypnosis program is deceptive because proposed respondents at the time they made the claim did not possess adequate substantiation for the claim.

To address these efficacy misrepresentations, the proposed order (Part I.A.) prohibits AIHC and Steven Present from representing that the U.S. Surgeon General, in the 1989 U.S. Surgeon General's Report on Smoking, Reducing the Health Consequences of Smoking: 25 Years of Progress, states that the group hypnosis method used by respondents is one of the most effective ways to stop smoking. The proposed order (Part I.D.) further generally prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or report. Finally, the order (Part I.C.) requires proposed respondents to possess and rely upon competent and reliable scientific evidence substantiating any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, before they make such a claim.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–4964 Filed 3–3–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0005]

Columbia Healthcare Corporation, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the respondents to divest the HCA Aiken Regional Medical Center, in South Carolina, to Commission-approved acquirers and to complete the divestiture within twelve months, or else consent to the appointment of a trustee to consummate the divestiture. In addition, the order would prohibit the respondents from acquiring or transferring, without prior Commission approval, any acute care hospital in the Augusta-Aiken area.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Oscar Voss, FTC/S3115, Washington, DC 20580. (202) 3262750.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of: Columbia Healthcare Corporation, a corporation, and HCA-Hospital Corporation of America, a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of HCA-Hospital Corporation of America ("HCA") by Columbia Healthcare Corporation ("Columbia"), and it now appearing that Columbia and HCA, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts;

It is hereby agreed by and between Columbia and HCA, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202.

2. Proposed respondent HCA-Hospital Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they may be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Columbia" means Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, as well as its directors, officers, employees, agents, representatives, parents, divisions subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of Columbia's divisions, subsidiaries, affiliates, and their respective successors and assigns.

B. "HCA" means HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, as well as its directors, officers, employees, agents, representatives, parents, divisions, subsidiaries, affiliates, and their respective successors and assigns, and the directors, officers, employees, agents, or representatives of HCA's divisions, subsidiaries, affiliates, and their respective successors and assigns.

C. "Respondents" means Columbia and HCA, collectively and individually.

D. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient

services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

H. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "Augusta-Aiken" means the three-county area consisting of the counties of Richmond and Columbia in Georgia and Aiken County in South Carolina.

J. "HCA Aiken Regional Medical Center" means the general acute care hospital currently owned and operated by HCA at 202 University Parkway, Aiken, South Carolina 29801, all of its title, properties, stock, rights, privileges, and other assets and interests, and all other related HCA assets and interests in Augusta-Aiken, of whatever nature, tangible and intangible, including without limitation all medical office buildings, other buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

K. "Commission" means the Federal Trade Commission.

II

It is further ordered that: A. Within twelve (12) months after the date this Order becomes final, respondents shall divest, absolutely and in good faith, HCA Aiken Regional Medical Center. HCA Aiken Regional Medical Center shall be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. A condition of approval by the Commission of the divestiture shall be a written agreement by the party or parties acquiring HCA Aiken Regional Medical Center that it will not sell for a period of ten (10) years from the date of the divestiture, directly or indirectly, through subsidiaries, partnerships or otherwise, without the prior approval of the Commission, HCA Aiken Regional Medical Center to any other person who operates, or will operate immediately following such sale, any other acute care hospital in Augusta-Aiken. The purpose of the divestiture required by this Order is to ensure the continuation of HCA Aiken Regional Medical Center as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's compliant.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondents have divested HCA Aiken Regional Medical Center or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of HCA Aiken Regional Medical Center and shall not cause or permit the destruction, removal or impairment of any assets or businesses of HCA Aiken Regional Medical Center, except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that: A. If respondents have not divested, absolutely and in good faith and with the prior approval of the Commission, HCA Aiken Regional Medical Center as required by Paragraph II of this Order within twelve (12) months after the date this Order becomes final, the Commission may appoint a trustee and respondents shall consent to the appointment of a trustee by the Commission to effect the divestiture required by Paragraph II of this Order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*) or any other statute enforced by the Commission, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking a civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals. If respondents have not opposed, in writing, the selection of any trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest HCA Aiken Regional Medical Center.

3. The trustee shall have eighteen (18) months from the date of approval of the trust agreement described in Paragraph III.B.8 of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; provided, however, that the divestiture period may only be extended two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to HCA Aiken Regional Medical Center, or any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for the divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of HCA Aiken Regional Medical Center. The divestiture shall be made in the manner set out in Paragraph II of this Order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or

entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a Court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the Court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on divestiture through the trustee.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the Court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain HCA Aiken Regional Medical Center.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, no respondent shall, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any acute care hospital in Augusta-Aiken; or

B. Permit any acute care hospital it operates in Augusta-Aiken to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Augusta-Aiken.

Provided, however, that no acquisition shall be subject to this Paragraph IV of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars ($1,000,000).

V

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Augusta-Aiken to be acquired by any other person (except pursuant to the divestiture required by Paragraph II of this Order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this Order, which agreement respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in respondents' possession or control relating to any matter contained in this Order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered that: A. Within sixty (60 days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this Order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

B. Annually, beginning on the first anniversary of the date this Order becomes final, and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this Order.

VIII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or affiliates, or any other change in respondents which may affect compliance obligations arising out of this Order.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Columbia Healthcare Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, and HCA-Hospital Corporation of America, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203 (collectively and individually referred to as "respondents"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on or about October 2, 1993, Columbia Healthcare Corporation entered into an agreement to acquire all of the voting stock of HCA-Hospital Corporation of America (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") which would require divestiture of HCA Aiken Regional Medical Center ("ARMC") in Aiken, South Carolina, the Commission

must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the assets and businesses of ARMC during the period prior to the issuance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of ARMC as described in Paragraph II of the Consent Order, and the Commission's right to seek to restore ARMC as a viable independent acute care hospital; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve ARMC as a viable independent acute care hospital pending its divestiture, and

(ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, respondents' entering into this Agreement shall in no way be construed as an admission by respondents that the Acquisition is illegal; and

Whereas, respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of ARMC as held separate pursuant to this Agreement, as follows:

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.c, they will comply with the provisions of paragraph 3 of this Agreement.

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Order, unless by that date the Commission has issued such Order; or

c. The day after the divestiture required by the Consent Order has been completed.

3. Respondents will hold the assets and businesses of ARMC as they are presently constituted separate and apart on the following terms and conditions:

a. ARMC, as it is presently constituted, shall be held separate and apart and shall be operated independent of respondents (meaning here and hereinafter, respondents excluding ARMC) except to the extent that respondents must exercise direction and control over ARMC to assure compliance with this Agreement.

b. Respondents shall not exercise direction or control over, or influence directly or indirectly, ARMC or any of its operations or businesses; provided, however, that respondents may exercise only such direction and control over ARMC as is necessary to assure compliance with this Agreement.

c. Respondents shall maintain the viability and marketability of ARMC and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single respondent director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3..h), respondents shall not permit any director, officer, employee, or agent of respondents to also be a director, officer or employee of ARMC.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, respondents shall not receive or have access to, or use or continue to use, any "material confidential information" of ARMC not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to respondents from sources other than ARMC, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

f. Respondents shall not change the composition of the management of ARMC except that the directors or members serving on the New Board or Management Committee of ARMC (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a–3.f hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraphs 3.h).

h. Respondents shall either separately incorporate ARMC and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or establish separate business ventures with articles of agreement covering the conduct of ARMC in accordance with this Agreement. Respondents shall also elect a new three person board of directors ("New Board") or Management Committee ("Management Commenttee") of ARMC. Respondents may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall include no more than one respondent director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to respondents or use it to obtain any advantage for respondents. Said director of the New Board or member of the Management Committee who is also a respondent director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subparagraph 3.e). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transaction exceeding $1,000,000 and carrying out respondents' responsibility to assure that ARMC is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters, that would involve a conflict of interest if respondents and ARMC were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of ARMC shall be retained separately in ARMC. If necessary, respondents shall provide ARMC with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for ARMC which have already been approved.

j. Should the Federal Trade Commission seek in any proceeding to compel respondents (meaning here and hereinafter respondents including ARMC) to divest ARMC, or to seek any other injunctive or equitable relief, respondents shall not raise any objection based upon the expiration of

the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondents also waive all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondents made to their principal officer, respondents shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondents and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondents relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, and agreement to a proposed consent order from Columbia Healthcare Corporation ("Columbia") and HCA-Hospital Corporation of America ("HCA"). The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of 100 percent of the voting stock of HCA would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

Both Columbia and HCA (the "respondents") own and operate acute care hospitals in various states, including acute care hospitals in a three-county urban area that includes the cities of Augusta, Georgia, and Aiken, South Carolina ("Augusta-Aiken"). The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for acute care hospital services in Augusta-Aiken. According to the complaint, Columbia owns and operates Augusta Regional Medical Center in Augusta, Georgia. HCA owns and operates HCA Aiken Regional Medical Center, located about 15 miles northeast of Augusta, Georgia in Aiken, South Carolina.

The consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the Augusta-Aiken hospital market. The complaint alleges that Columbia and HCA are competitors in the market for acute care hospital services in Augusta-Aiken. The Augusta-Aiken hospital market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have anticompetitive effects in the Augusta-Aiken hospital market, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of HCA Aiken Regional Medical Center in Aiken, South Carolina. The purpose of the divestiture is to ensure the continuation of HCA Aiken Regional Medical Center as an ongoing, viable acute care hospital independent of Columbia, and to remedy the lessening of competition in the Augusta-Aiken hospital market resulting from the acquisition.

The proposed order allows the respondents to divest HCA Aiken Regional medical Center to one or more acquirers with the prior approval of the Commission. Under the terms of the order, the required divestiture would be completed within twelve months of the date the order becomes final. If the required divestiture were not completed within the twelve-month period, the respondents would consent to the appointment of a trustee, who would have eighteen additional months to effect the divestiture. The hold separate agreement executed as part of the consent order requires the respondents, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of HCA Aiken Regional Medical Center.

The proposed order provides that approval by the Commission of the divestiture shall be conditioned upon the agreement by the acquirer that, for ten years from the date of the divestiture, it will not sell, without the prior approval of the Commission, HCA Aiken Regional Medical Center to another person operating (or in the process of acquiring) any other acute care hospital in the area.

The order would prohibit the respondents from acquiring any acute care hospital in Augusta-Aiken without the prior approval of the Federal Trade Commission. It would also prohibit the respondents from transferring, without prior Commission approval, any acute care hospital they operate in Augusta-Aiken to another person operating (or in the process of acquiring) an acute care hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of the respondents with those of any other acute care hospital in Augusta-Aiken, unless the respondents convinced the Commission that a particular transaction would not endanger competition in the Augusta-Aiken hospital market. The provisions would not apply to acquisitions or sales where the value of the transferred assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit the respondents from transferring all or any substantial part of any hospital in Augusta-Aiken to a non-respondent without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondents that their proposed acquisition would have violated the law, as alleged in the Commission's compliant.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part Columbia Healthcare Corp./HCA

Having reason to believe that the Columbia Healthcare Corporation's acquisition of HCA-Hospital Corporation of America may substantially lessen competition in the Augusta, Georgia-Aiken, South Carolina market, I concur in the decision to require divestiture of the Aiken Regional Medical Center. I dissent from the decision not to challenge the

transaction with respect to the Chattanooga, Tennessee market.

In Chattanooga, the merger will combine HCA's Parkridge Medical Center and Columbia's East Ridge Hospital in an already highly concentrated market. In 1985, after a full administrative hearing, the Commission ordered HCA to divest certain assets, including North Park Hospital, which has considerable similarity to East Ridge. Hospital Corporation of America, 106 F.T.C. 361, aff'd, 807 F.2d 1381 (7th Cir. 1986). Although some characteristics of the Chattanooga hospital market may have changed since 1985, I am not persuaded that the competitive situation is so fundamentally different to justify abandonment of the Commission's earlier position.

Dissenting Statement of Commissioner Deborah K. Owen In the Matter of Columbia Healthcare Corporation, et al.

The Commission is today issuing for public comment a proposed consent agreement in connection with the merger of two of the nation's largest hospital chains, Columbia Healthcare Corporation ("Columbia") and HCA-Hospital Corporation of America ("HCA"). The proposed consent agreement permits the merger to go forward, but requires the combined firm to divest one of its two hospitals in the Augusta, Georgia/Aiken, South Carolina area. I dissent from the decision to accept this consent agreement, principally because I do not find reason to believe that, after the merger, anticompetitive effects are likely in that geographic market.

I cannot, however, conclude with reasonable confidence that the proposed merger has no anticompetitive effects in any hospital market across the country. There is evidence (although incomplete) that in one market, the consolidation of the Columbia and HCA hospitals may create a monopoly that could injure consumers.

In that matter, one of the hospitals satisfies the statistical criteria for the hospital merger "safety zone" as set forth in the Statements of Enforcement Policy in the Health Care Area, adopted in September 1993 by the Department of Justice and the Federal Trade Commission (over my dissent).[1] Based on its size alone, the acquisition of this hospital has been declared by the federal enforcement agencies to be immune from antitrust review.[2]

This is not to suggest that the Commission is indifferent to the monopolization of all hospital markets. Last week, the Commission voted unanimously to authorize staff to file a preliminary injunction to prevent the merger to monopoly of the only two acute care hospitals in Pueblo, Colorado.[3] In Pueblo, the requirements of the hospital merger "safety zone" were not satisfied, so a full investigation and analysis of the likely competitive effects of the merger were undertaken, in accordance with the 1992 Horizontal Merger Guidelines.[4] In such a traditional analysis, the Commission considers whether the merging hospitals are economically viable, whether significant efficiencies may be achieved by combining the hospitals, whether these efficiencies are merger-specific, and whether cost savings are likely to be passed on to consumers in the form of lower prices or higher quality. Most critically, whether the anticipated efficiency benefits outweigh the substantial anticompetitive risks associated with the creation of a monopoly is also evaluated. Under a Guidelines analysis, the Commission's action in the Pueblo merger suggests a conclusion that the likely anticompetitive effects outweigh the possible efficiencies stemming from the merger.

The Commission did not, however, conduct a thorough investigation of the market in which the merger of Columbia and HCA may have created a monopoly. The Commission abandoned its traditional approach to merger analysis upon determining that the HCA hospital falls within the "antitrust safety zone."

In sum, the Antitrust Enforcement Policy Statements in the Health Care Area may have claimed their first casualty. Perhaps a full investigation would have demonstrated that the merger, though creating a monopoly, posed no anticompetitive problem. But we will never know at the level of confidence that consumers have a right to expect of us. I therefore dissent.

[1] Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) ¶ 13,150; Dissenting Statement of Commissioner Deborah K. Owen on DOJ/FTC Antitrust Enforcement Policy Statements in the Health Care Area (September 14, 1993).

[2] Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area, 4 Trade Reg. Rep. (CCH) ¶ 13,150 at 20,757:

> The Agencies will not challenge any merger between two general acute-care hospitals where one of the hospitals (1) has an average of fewer than 100 licensed beds over the three most recent years, and (2) has an average daily inpatient census of fewer than 40 patients over the three most recent years, absent extraordinary circumstances. This antitrust safety zone will not apply if that hospital is less than 5 years old.

It is not clear what constitutes "extraordinary circumstances" within the contemplation of the Policy Statement. The Commission's action today may, however, be viewed as implicit support for the proposition that a merger to monopoly does not qualify as an "extraordinary circumstance."

[3] Parkview Episcopal Medical Center, FTC File No. 931-0125.

[4] U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104 (Apr. 2, 1992).

[Dkt. 9252]

Sonic Technology Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California company and its officers from representing that any ultrasonic pest control device can eliminate rodent or flea infestations, and from misrepresenting the results of any scientific studies regarding their ultrasonic pest control products.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or David Newman, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of SONIC TECHNOLOGY PRODUCTS, INC. a corporation, and W. LOWELL ROBERTSON, individually and as an officer of said corporation, and BRIAN

PHILLIP JOBE, individually and as an officer of said corporation. Docket No. 9252.

This agreement, by and between Sonic Technology Products, Inc., a corporation, and W. Lowell Robertson and Brain Phillip Jobe, individually and as officers of Sonic Technology Products, Inc., and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly, *It is hereby agreed:*

1. Respondent Sonic Technology Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business located at 120 Richardson Street, suite C, Grass Valley, California 95945.

Respondents W. Lowell Robertson and Brain Phillip Jobe are officers of said corporation. Individually or in concert with others, they formulate, direct, and control the policies, acts, and practices of said corporation. Their office and place of business is the same as that of said corporation.

2. Respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that Sonic Technology Products, Inc., ("Sonic") a corporation, and W. Lowell Robertson and Brian Phillip Jobe, individually and as officers of said corporation, and their successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, offering for sale, sale, or distribution of the "PestChaser," the "Pestrepeller," or any other ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That the device can or will eliminate infestations of rodents;

B. That the device can or will eliminate or reduce infestations of fleas; or

C. That the device can or will repel fleas.

II

It is further ordered that respondents, their successors and assigns, and the corporate respondent's officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study or other scientific data.

III

It is further ordered that respondents, their successors and assigns, and the corporate respondent's officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any ultrasonic pest control device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the "PestChaser," the Pestrepeller," or any other ultrasonic pest control device will increase or assist the effectiveness of a user's efforts to eliminate or reduce infestations of rodents or other pests when the device is used in conjunction with other pest control methods, such as traps or poisons; or

B. Making, directly or by implication, any representation referring or relating to the performance or efficacy of any such device;

unless at the time of making such a representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean, for purposes of this Order, those tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results;

Provided, That nothing in Section III of this Order shall prevent respondents from truthfully representing, by use of the words "Registered in Canada," that

the Canadian Department of Agriculture has registered the PestChaser, Pestrepeller or any other ultrasonic pest control device, and permitted the sale of such device in Canada.

IV

It is further ordered that respondents shall, within thirty (30) days after the date of service of this order, send to each catalog company with whom respondents have done business since January 1, 1992, a copy of this order and a notice that the catalog company shall immediately cease using or relying upon any of respondent's advertising or promotional materials containing representations prohibited by this order.

V

It if further ordered that for three (3) years from the date that the representation to which they pertain is last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, or other materials in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VI

It is further ordered that for three (3) years from the date of issuance of this Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents demonstrating or relating to compliance with the terms of this Order, including but not limited to:

A. All advertisements, promotional materials, documents, or other materials relating to the offer of sale or sale of any ultrasonic pest control device; and

B. All consumer complaints and requests for refunds.

VII

It is further ordered that, for three (3) years from the date of issuance of this Order, the corporate respondent, its successors and assigns, and the individual respondents, shall cause a copy of this Order to be distributed to each purchaser of respondents' ultrasonic pest control devices for resale, to each present and future managerial employee of respondents, and to each present and future saleperson of respondents' products, whether they are independent sales agents or employees of respondents.

VIII

It is further ordered that, for five (5) years from the date of issuance of this Order, respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

IX

It is further ordered that, for five (5) years from the date of issuance of this Order, each individual respondent shall notify the Commission, by submitting a report, in writing, of any change in his residence or business address, occupation, place of business, or place of employment.

X

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Sonic Technology Products, Inc., a Nevada corporation, and W. Lowell Robertson and Brian Phillip Jobe, individually and as officers of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the labeling and advertising of the PestChaser, a plug-in device that is designed to emit sound in ultrasonic frequencies, *i.e.*, frequencies inaudible to the human ear. The Commission's complaint charges that respondents' advertising contained false and unsubstantiated representations concerning the PestChaser's alleged ability to affect rodents and fleas. Specifically, the complaint alleges that respondents falsely claimed that the PestChaser: (1) Eliminates rodent infestations; and (2) eliminates or reduces flea infestations, or repels fleas.

The complaint further alleges that respondents falsely represented that competent and reliable scientific tests have established that the above efficacy claims are true. The complaint also alleges that respondents lacked substantive for the claim that the PestChaser, when used in conjunction with other pest control methods, such as traps and poisons, will increase the effectiveness of the user's efforts to eliminate or reduce infestations of rodents or other pests.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondents from claiming that their ultrasonic pest control devices can or will: (1) Eliminate infestations of rodents; (2) eliminate or reduce infestations of fleas; or (3) repel fleas.

Part II of the proposed order prohibits respondents from misrepresenting the existence, validity, results, conclusions, interpretations or purpose of any test, study or other scientific data.

Part III of the proposed order requires respondents to possess competent and reliable scientific evidence for: (1) any claim that any ultrasonic pest control device will increase or assist the effectiveness of a user's efforts to eliminate or reduce infestations of rodents or other pests when the device is used in conjunction with other pest control methods; or (2) any representation referring or relating to the performance or efficacy of any ultrasonic pest control device. Part III further provides that, notwithstanding this requirement, respondents may truthfully represent, by use of the words "Registered in Canada," that the Canadian Department of Agriculture has registered their ultrasonic pest control device, and permitted the sale of such device in Canada.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to notify the Commission of certain changes in the business or employment of the named individual respondents.

The proposed order also requires respondents to distribute copies of the order to any catalog company with whom respondents have done business

since January 1, 1992, to present and future resellers of their ultrasonic pest control devices, and to their managerial employees and salespeople. Respondents must also file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–4966 Filed 3–3–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0441]

Medical Devices; Reclassification of the Daily Wear Soft and Daily Wear Nonhydrophilic Plastic Contact Lenses; Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order reclassifying daily wear soft and daily wear nonhydrophilic plastic contact lenses from class III (premarket approval) into class II (special controls). This reclassification is required by the Safe Medical Devices Act of 1990 (the SMDA). This reclassification only applies to daily wear soft and daily wear nonhydrophilic contact lenses. Lenses intended for extended wear will remain in class III, as will contact lens accessories. The SMDA also requires FDA to put into place any regulatory safeguards that are necessary to provide reasonable assurance of the safety and effectiveness of the reclassified lenses. Thus, FDA is announcing the availability of a guidance document entitled "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." The guidance sets forth the evidence that should be submitted to FDA to demonstrate the substantial equivalence of new daily wear soft and daily wear nonhydrophilic plastic contact lenses to lenses already marketed. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to codify the reclassification of the daily wear contact lens from class III (premarket approval) into class II (special controls).

DATES: The reclassification is effective March 4, 1994. Written comments on the guidance document may be submitted at any time.

ADDRESSES: Submit all amendments to pending premarket approval applications (PMA's), including the PMA or PMA supplement number, to the Food and Drug Administration, Center for Devices and Radiological Health, PMA Document Mail Center (HFZ–401), 1390 Piccard Dr., Rockville, MD 20850. Submit written requests for single copies of "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses" to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 or 800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–350), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION:

I. The Statutory Requirements

The SMDA (Pub. L. 101–629), which amended the medical device provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321–394) contained specific provisions on transitional devices (i.e., those devices regulated as drugs before the Medical Device Amendments of 1976 (Pub. L. 94–295) became law) (see section 520(l) of the act (21 U.S.C. 360j(l))). In 1976, Congress classified all transitional products, including daily wear soft and daily wear nonhydrophilic plastic contact lenses, into class III (premarket approval). Essentially the SMDA, reflecting congressional concern that many transitional devices were being over regulated in class III, directed FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classifications of those transitional devices that still remained in class III to determine if the devices could be down classified to class II (special controls) or class I (general controls).

Under section 520(l)(5)(B) of the act, FDA was to publish regulations by December 1, 1992, either leaving the transitional class III devices in class III or revising their classifications down to class I or class II. However, as permitted by section 520(l)(5)(c) of the act, the agency, in the **Federal Register** of November 30, 1992 (57 FR 56586), published a notice extending the period for issuing such regulations until December 1, 1993.

With respect to the reclassification of daily wear soft and daily wear nonhydrophilic plastic contact lenses, however, the SMDA makes further provision. Section 4(b)(3)(A) of the SMDA provides that notwithstanding the provisions for reclassification of other transitional devices, FDA shall not retain daily wear soft or daily wear nonhydrophilic plastic contact lenses in class III unless the agency determines that the devices meet the statutory criteria for a class III device. Moreover, if FDA has not determined that these contact lenses must remain in class III and published its finding by November 28, 1993, in the **Federal Register**, then under section 4(b)(3)(D) of the SMDA, FDA "shall issue an order placing the lenses in class II."

Both the language and legislative history of the SMDA make it clear that the reclassification of daily wear soft and daily wear nonhydrophilic contact lenses shall occur as a matter of law unless FDA published a finding that the devices should remain in class III. FDA has not made such a finding: FDA believes that the safety and effectiveness of daily wear soft and daily wear nonhydrophilic plastic contact lenses can be ensured through specified "special controls" as authorized by the SMDA. Therefore, the agency has not made and published any finding that daily wear soft and daily wear nonhydrophilic contact lenses must remain in class III.

II. Order

Therefore, as required by section 4(b)(3)(D) of the SMDA, FDA is issuing this order to all manufacturers of daily wear soft and daily wear nonhydrophilic contact lenses reclassifying their devices from class III (premarket approval) into class II (special controls). The devices being reclassified are contact lenses intended for daily wear that meet the following descriptions:

Rigid Gas Permeable Contact Lens. A rigid gas permeable contact lens is a device intended to be worn directly against the cornea of the eye to correct vision conditions. The device is made of various materials, such as cellulose acetate butyrate, polyacrylate-silicone, or silicone elastomers, whose main polymer molecules generally do not absorb or attract water.

Soft (Hydrophilic) Contact Lens. A soft (hydrophilic) contact lens is a device intended to be worn directly against the cornea and adjacent limbal and scleral areas of the eye to correct vision conditions or to act as a therapeutic bandage. The device is made of various polymer materials, the main polymer molecules of which absorb or attract a certain volume (percentage) of water.

III. Guidance

In addition to issuing this order as required by the SMDA, FDA is issuing a guidance document for premarket notifications for the reclassified contact lenses entitled, "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." This guidance sets forth the special controls that FDA has determined are needed to ensure the safety and effectiveness of daily wear plastic contact lenses. It also provides comprehensive directions to enable a manufacturer of a daily wear soft or daily wear nonhydrophilic plastic contact lens to submit a 510(k) premarket notification demonstrating substantial equivalence of the device to a legally marketed daily wear plastic contact lens (predicate device). Information on the battery of preclinical testing necessary to demonstrate substantial equivalence is included in the guidance. If the results of preclinical testing demonstrate the device to have new characteristics, clinical performance data may be needed to establish substantial equivalence. If clinical performance data are needed, the guidance document provides suggested methodologies (e.g., size and scope of the study) to be included in an investigational protocol.

The preclinical portion of the guidance document consists of manufacturing and chemistry, toxicology and microbiology sections outlining the type of testing that should be completed. Each section includes a summary of the basic requirements and suggested methods for meeting these requirements. Other elements of the guidance document include: (1) General information on the regulations and requirements for labeling contact lenses; (2) requirements that must be met prior to modifying a marketed contact lens; (3) suggested methodologies for meeting color additive requirements; (4) procedures for adding lens finishing laboratories for manufacturing and marketing of class II rigid gas permeable contact lenses; and (5) the procedure for implementing changes in packaging materials.

In the event that clinical trials are necessary, FDA emphasizes that manufacturers must conduct the trials in accordance with the Investigational Device Exemption regulations in 21 CFR part 812. At this time, FDA considers clinical studies of daily wear soft or daily wear nonhydrophilic plastic contact lenses to be nonsignificant risk investigations. FDA considers clinical studies of extended wear contact lenses to be significant risk investigations. Thus, for daily wear soft or daily wear nonhydrophilic plastic contact lenses, an institutional review board (IRB) approval is always necessary before initiating a clinical study, and an investigational plan and informed consent document must be presented to an IRB for review and approval. For extended wear contact lenses, the manufacturer must obtain both IRB and FDA approvals in accordance with 21 CFR part 812 before clinical testing can be initiated.

This guidance document will be discussed at the next meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee. The date, time, and place of this meeting will be announced in a future issue of the **Federal Register**.

IV. Transition Phase for Pending PMA's for Daily Wear Contact Lenses

Below, FDA discusses how it will deal with the pending original and supplemental PMA's involving daily wear soft or daily wear nonhydrophilic plastic contact lenses currently filed with the agency. As of today's date, all pending PMA applications will need to be examined to identify: (1) Those that are no longer subject to PMA review and can be converted to 510(k)'s or withdrawn and resubmitted to FDA by the applicant to be evaluated through the 510(k) process; and (2) those which can be withdrawn by the applicant and are required to be resubmitted and evaluated as a 510(k) prior to implementing the request. FDA will make all final decisions on converted PMA's based on 510(k) regulatory requirements as elaborated in the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses."

To ensure expeditious conversions, sponsors should review their pending PMA's and advise the agency as to what administrative action the sponsor believes needs to be taken regarding their pending applications affected by the automatic reclassification. FDA is suspending the review of each pending original and supplemental PMA affected in whole or in part by this reclassification order until the respective sponsor amends its application setting forth the status of the devices and the administrative actions requested to be taken regarding its application.

These administrative actions can include the following:

(1) For a pending PMA that involves only contact lenses covered by this reclassification, the sponsor may ask that its PMA application be converted, in total, to a 510(k) application.

The amendment to the PMA should include all of the necessary content requirements for a 510(k), thus making the application as complete as possible when it is converted to a 510(k). For example, if an applicant has a pending PMA supplement for a modification to a previously approved daily wear contact lens, and if this modification has been identified in the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses" as a change requiring submission of a 510(k), the applicant can amend this PMA with a request to convert it into a 510(k). PMA's converted to 510(k)'s under this order will retain their position in the review queue (if they are complete), and the review process will continue without further delay.

(2) For a pending PMA that involves both lenses that are covered by this reclassification and those that are not, the applicant should withdraw the portion of the application that addresses the reclassified lenses and resubmit it as a 510(k) application.

For example, if a pending PMA contains a request for a new or modified lens material for both a daily and extended wear contact lens, the applicant should withdraw the request for the daily wear lens and ask the agency to proceed with the review of that portion of the PMA involving the extended wear contact lens only. Pending PMA's that must, in part, be resubmitted as a 510(k) application will retain their position in the review queue if the applicant responds with the appropriate amendment and clearly states in the amendment that the daily wear contact lens portion of the PMA will be resubmitted as a 510(k) application.

Whichever option applies, the applicant should determine whether the previous request involving the daily

wear contact lens must be resubmitted and evaluated through the 510(k) process or be implemented without the need for submission of a 510(k). To make this determination, the applicant should consult the 510(k) procedures (21 CFR part 807) and the "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses." If the applicant determines that a 510(k) application is required, the sponsor should resubmit the application following the content and format requirements for 510(k) applications. The agency notes that preclinical and clinical data formerly required in the PMA may still be necessary to support a substantial equivalence determination. Preclinical and clinical data which is also contained in a pending PMA may be incorporated by reference in a 510(k) application. The applicant should include in the amendment the claim of substantial equivalence to their previously approved daily wear contact lens and a summary of the safety and effectiveness information or a statement that the applicant will make the safety and effectiveness information available to interested persons upon request.

In addition, sponsors should determine if there is information in the pending PMA that would not be needed when resubmitted as a 510(k) application. In making this determination, FDA cautions sponsors to review the regulations pertaining to releasability of information in PMA's and 510(k) applications before simply converting PMA's to 510(k) applications since the disclosure regulations may treat information in the applications differently. For this reason, a manufacturer may choose not to have the pending PMA converted to a 510(k) application, but instead choose to withdraw the pending application, purge it of unnecessary information that the sponsor might not want released, and resubmit the relevant data in a new 510(k) application.

If an applicant fails to submit an amendment as outlined above within 180 days, FDA will consider the pending PMA or PMA supplement to be voluntarily withdrawn. In such cases, the agency will notify the applicant by letter of the withdrawal. All amendments to pending PMA's shall include the PMA or PMA supplement number and shall be addressed to the PMA Document Mail Center (address above).

Additional questions regarding the administrative procedures resulting from this reclassification order should be directed to the PMA Staff (Kathy Lundsten, 301–594–2186), or to the Division of Ophthalmic Devices, Contact Lens Branch (David M. Whipple, 301–594–2205, or James F. Saviola, 301–594–1744).

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4697 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, February 4, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests).

1. Black Lung Clinic Program (42 CFR 55a) and Program Guidelines—0915–0081 (Extension)—The Health Resources and Services Administration uses the application information to determine applicants' eligibility for awards. The grantees are required to maintain patient treatment plans and a register of patients to ensure quality medical care. *Respondents:* State or local governments; *Non-profit institutions: Number of Respondents:* 14; *Number of Responses per Respondent:* 1; *Average Burden per Recordkeeper:* 3,000 hours; *Estimated Annual Burden:* 42,000 hours.

2. Special Volunteer and Guest Research Assignment—0925–0177 (Extension)—Form NIH–590 records names, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible National Institutes of Health approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments. *Respondents:* Individuals or households; *Number of Respondents:* 1,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .08 hour; *Estimated Annual Burden:* 80 hours.

3. Ethics and Human Genetics: A Survey of Approaches in the United States of America—New—This survey will be valuable in establishing research priorities in prevention and treatment of mental retardation, in developing training programs for professionals, and in developing guidelines and policy options for the orderly introduction of information generated by human genome research into biomedical practices. Participants include geneticists, physicians, and the public. *Respondents:* Individuals or households; Businesses or other for-profit; Small businesses or organizations; *Number of Respondents:* 2,901; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.712; *Estimated Annual Burden:* 2,065 hours.

4. Evaluation of the HHS Access to Community Care and Effective Services and Supports (ACCESS) Program—0930–0164 (Revision)—The Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, is requesting clearance for an evaluation study that will assess services integration (SI) approaches for homeless persons with severe mental illnesses. SI sites will be contrasted with comparison sites to assess the impact of SI. Case studies will describe approaches to SI processes by which SI takes place and factors that influence SI. *Respondents:* Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Clients	7,200	.7	.93 hours.
Service Providers	1,935	14	.15 hours

Estimated Total Annual Burden—8,799 hours.

5. Requests for Public Health Assessments—42 CFR part 90—0923–0002—(Extension)—This information collection provides a mechanism for the public to request that a public health assessment(s) be conducted by the Agency for Toxic Substances and Disease Registry at a site/location where there may be concerns that exposure to hazardous substances may be an issue. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 60; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .5 hours; *Estimated Annual Burden:* 30 hours.

6. Tissue Bank Survey—New—This survey is designed to assess public health benefits, evaluate agency resource needs, and consider industry and consumer impact of federal regulation. Information is required about current practices, number, resources, and size of operations of tissue banks processing bone for therapeutic use. *Respondents:* Non-profit institutions; *Number of Respondents:* 199; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2.6 hours; *Estimated Annual Burden:* 510 hours.

7. Congenital Syphilis Case Investigation and Reporting Form—0920–0128 (Extension-No Change) This data collection will provide a surveillance system for congenital syphilis (CS). The data will be used to monitor levels of disease, develop intervention strategies and evaluate ongoing efforts. *Respondents:* State or local governments; *Number of Respondents:* 65; *Number of Responses per Respondent:* 54; *Average Burden per Response:* .25 hours; *Estimated Annual Burden:* 875 hours.

8. Health Education Assistance Loan (HEAL) Program Forms—0915–0034 (Revision)—The forms are needed for lenders to make application to the health insurance program, to report accurately and timely on loan actions, including transfer of loans to a secondary agent, and to establish the repayment status of borrowers. This request is for revision of the Borrowers Status Form. *Respondents:* Individuals or household; businesses or other for-profit; non-profit institutions.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Lender Application HRSA Form 504	66	1	8 minutes.
Leinder's Manifest HRSA Form 505	31	141	5 minutes.
Loan Transfer Statement HRSA Form 507	66	123	10 minutes.
Borrower Status HRSA Form 508 (Borrower)	10,582	1	10 minutes.
Borrower Status HRSA Form 508 (Employer)	6,560	1.6	5 minutes.

Estimated Total Annual Burden—4,368 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: February 28, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–4978 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)
Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171
Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468
Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93)
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc.)
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
HealthCare/MetPath, 24451 Telegraph' Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414 (formerly: HealthCare/ Preferred Laboratories)
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631
Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894
National Health Laboratories Incorporated, 75 Rod Smith Place,, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory had its certification reinstated on February 2, 1994:

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

The following laboratory voluntarily withdrew from the Program on December 31, 1993:

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies)

The following laboratory voluntarily withdrew from the Program on February 14, 1994:

Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811

The following laboratory voluntarily withdrew from the Program on March 1, 1994:

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–4903 Filed 3–3–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, February 4, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Application for Special Age 72-or-Over Monthly Benefits— 0960–0096. The information on form SSA–19 is used by the Social Security Administration to determine if an applicant is entitled to special age 72 payments. The respondents are applicants for these payments.

Number of Respondents: 250
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 83 hours

2. Final Regulation Concerning Payments for Vocational Rehabilitation Services (OR–333F) and State Vocational Rehabilitation Agency Claim (SSA–199)—0960–0310. The information collected by means of this regulation and form will be used by the Social Security Administration to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether their claims for those services should be paid.

Number of Respondents: 90
Frequency of Response: On occasion
Average Burden Per Response: Varies: low=23 minutes, high=4 hours
Estimated Annual Burden: 8,588 hours

3. Claimant's Medications—0960–0289. The information on form HA–4632 is used by the Social Security Administration to compile a current list of medications used by a claimant. The list is provided to an Administrative

Law Judge (ALJ) who is considering the disability aspects of the claim. The affected public consists of claimants for disability benefits who have requested a hearing before an ALJ.

Number of Respondents: 223,742

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 55,936 hours

4. Representative Payee Report—0960–0068. The information on forms SSA–623 and 6230 is used by the Social Security Administration to determine if a person receiving Social Security benefits on behalf of someone else is using those benefits properly. The affected public is comprised of representative payees.

Number of Respondents: 4,329,360

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 1,082,340

5. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. The information on form SSA–8203 is used by the Social Security Administration to conduct high risk redetermination of Supplemental Security Income (SSI) recipients' eligibility and payment amount. The respondents are recipients of SSI who are selected for a redetermination.

Number of Respondents: 580,000

Frequency of Response: 1

Average Burden Per Response: 17 minutes

Estimated Annual Burden: 164,333 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 28, 1994.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 94–4862 Filed 3–3–94; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–73]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION:

In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.)

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–

2300; (703) 325–0474; (This is not a toll-free number).

Dated: March 4, 1994.

Jacquie M. Lawing.

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/04/94

Suitable/Available Properties

Buildings (by State)

California

Bldg. 50, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779320022
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use—storage.

Bldg. 25, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779320023
Status: Unutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use—child care center, secured area w/alternate access.

Bldg. 223
Naval Postgraduate School
Butler Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410014
Status: Unutilized
Comment: 8600 sq. ft., 2 story metal frame, most recent use—student study hall.

Bldg. 224
Naval Postgraduate School
Butler Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410015
Status: Unutilized
Comment: 6400 sq. ft., 1 story metal frame, most recent use—printing plant/academic lab.

Bldg. 500
Naval Postgraduate School
Bouldry Road
Monterey Co: Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779410016
Status: Unutilized
Comment: 7392 sq. ft., 1 story metal frame, most recent use—mechanical engineering lab, needs major rehab.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. T33 Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 1599, Sentry House
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410010
Status: Excess
Comment: 160 sq. ft., 1 story concrete frame, off-site use only.

Bldg. 1031, Marine Barracks
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Location: Enter Nimitz Gate, turn left onto South Avenue
Landholding Agency: Navy
Property Number: 779410011
Status: Excess
Comment: 640 sq. ft., 1 story, most recent use—storage, possible asbestos, off-site use only.

Bldg. 1034, Marine Barracks
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Location: Enter Nimitz Gate, turn left onto South Avenue
Landholding Agency: Navy
Property Number: 779410012
Status: Excess
Comment: 1184 sq. ft., 1 story, most recent use—barber shop, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq ft., 1 story bldg, most recent use-storage, structural deficiencies.

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1248 sq. ft., 1-story, most recent use—office building, off-site use only.

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12672 sq. ft., 2-story, most recent use—office building, off-site use only.

Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess
Comment: 1300 sq. ft., 1 story, most recent use—public works maintenance shop, on 2.55 acres.

North Carolina

Bldg. 014, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410046
Status: Excess
Comment: 12×76 mobile home w/addition, off-site use only.

Bldg. 032, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410047
Status: Excess
Comment: 960 sq. ft. double wide modular bldg., off-site use only.

Bldg. 033, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410048
Status: Excess
Comment: 1052 sq. ft., 1 story frame residence, off-site use only.

Bldg. 042, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410049
Status: Excess
Comment: 1257 sq. ft., 1 story frame, off-site use only.

Bldg. 051, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410050
Status: Excess
Comment: 1193 sq. ft., 1 story frame, off-site use only.

Bldg. 057, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410051
Status: Excess
Comment: 697 sq. ft., 1 story frame, off-site use only.

Bldg. 074, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410052
Status: Excess
Comment: 1220 sq. ft. mobile home, off-site use only.

Bldg. 075, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–

Landholding Agency: Navy
Property Number: 779410053
Status: Excess
Comment: 720 sq. ft. mobile home, off-site use only.

Bldg. 126, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410054
Status: Excess
Comment: 1504 sq. ft. mobile home w/ additions, off-site use only.

Bldg. 127, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410055
Status: Excess
Comment: 600 sq. ft. mobile home w/ additions, off-site use only.

Bldg. 130, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410056
Status: Excess
Comment: 1663 sq. ft., 1 story brick veneer residence, off-site use only.

Bldg. 133–1, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410057
Status: Excess
Comment: 460 sq. ft. mobile home, off-site use only.

Bldg. 133–2, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410058
Status: Excess
Comment: 500 sq. ft. mobile home, off-site use only.

Bldg. 133–3, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410059
Status: Excess
Comment: 352 sq. ft. mobile home, off-site use only.

Bldg. 139B, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410060
Status: Excess
Comment: 1095 sq. ft., 1 story frame residence, off-site use only.

Bldg. 142, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410061
Status: Excess
Comment: 985 sq. ft., 1 story brick veneer residence, off-site use only.

Bldg. 145, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410062
Status: Excess
Comment: 630 sq. ft., 1 story frame residence, off-site use only.

Bldg. 146, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410063
Status: Excess
Comment: 1137 sq. ft., 1 story brick veneer residence, off-site use only.

Land (by State)

Georgia

Naval Submarine Base,
Grid R–2 to R–3 to V–4 TO V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V.

Suitable/Unavailable Properties

Buildings (by State)

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft., 2 story, possible asbestos.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482

Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized

Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2475
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2501
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.
Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.
Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.
Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.
Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy

Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use-laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq ft., 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779019255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—dinning hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs on it.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area.

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area.

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area.

Bldg. 10535
Naval Security Group Activity

Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area.

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area.

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area.

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area.

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area.

California

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Propoerty Number: 779340003
Status: Unutilized
Reason: Secured Area

Morris Dam Test Facility Range
Azusa Co: Los Angeles CA 91702–
Landholding Agency: Navy
Property Number: 779410001
Status: Unutilized
Reason: Secured Area

Bldg. 31568
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779410013
Status: Unutilized
Reason: Secured Area.

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6118
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779330001
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other
Comment: Extensive Deterioration.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration.

Bldg. 989
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320025
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 990
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 996
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1026
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1028
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320029
Status: Unutilized

Reason: Extensive deterioration.

Bldg. S959
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320030
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S1
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330006
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S2
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330007
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S3
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330008
Status: Underutilized
Reason: Extensive deterioration.

Bldg. S7
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779330009
Status: Underutilized
Reason: Extensive deterioration.

Bldg. T–44
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 291, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1032, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1033, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 43, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 827, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410009
Status: Unutilized
Reason: Detached Latrine.

Illinois

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Unutilized
Reason: Secured Area.

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area.

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area.

South Wing—Building. No 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area.

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area.

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area.

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area.

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area.

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area.

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area.

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. Sh–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy

Property Number: 779410022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 001, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410036
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 004, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410037
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 011, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410038
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 016, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410039
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 49, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410040
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 056, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28445–
Landholding Agency: Navy
Property Number: 779410041
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 079 & 079B, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410042
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 085, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410043
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 139, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410044
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 147, Camp Lejeune
Marine Corps Base
Holly Ridge Co: Onslow NC 28455–
Landholding Agency: Navy
Property Number: 779410045
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area.

Texas

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway.

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway.

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway.

Bldg. 2498
Laguna Shores Housing Area

Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway.

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway.

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway.

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway.

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway.

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway.

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway.

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway.

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway.

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway.

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway.

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway.

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway.

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway.

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway.

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway.

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway.

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Underutilized
Reason: Secured Area.

Land (by State)

California

Salton Sea Test Range
ElCentro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area.

Land—Marine Corps Base
Camp Pendleton
Camp Pendleton Co: San Diego CA 92055–
Landholding Agency: Navy
Property Number: 779330003
Status: Underutilized
Reason: Secured Area.

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway.

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area.

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible.

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway.

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

[FR Doc. 94–4889 Filed 3–3–94; 8:45 am]

BILLING CODE 4210–29–M

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; Systems of Records

AGENCY: Inter-American Foundation (IAF).

ACTION: Notice of systems of records pursuant to Privacy Act of 1974.

IAF–1

SYSTEM NAME:

Conflict of Interest Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Foundation at GS–13 level and above, Foundation Representatives, contracting personnel, employees with regular contacts with contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Title; Date of Appointment; grade, home address; Employment and financial interests, position in organization, nature of financial interest; names and addresses of creditors, character of indebtedness; interests in real property, nature of interest, type of property and address, name, address, and nature of subject matter of other persons supplying information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house." Notwithstanding the above, access may also be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Files.

RETRIEVABILITY:

Manual. Identifier—Name.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Destroyed six years after employee departure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact the General Counsel. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORD SOURCE CATEGORIES:

Individual himself and people named by individual to supply information.

IAF–2

SYSTEM NAME:

Foundation Fellowship Application Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates who submitted applications in a fellowship competition for fellowship awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The application file contains such general personal information as home and work addresses and phone numbers, citizenship, date and place of birth, age, name and citizenship of spouse, social security number, number and ages of children, educational history, employment history, career information, travel experience, language capability, honors and publications, personal statement, letters of recommendation, grade transcripts, research/study prospectus, comments by Foundation staff and contracted evaluators. In addition, other general competition files provide scores by contracted evaluators of the individual candidate's application for fellowship award recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by contracted specialists for evaluating applications and Foundation staff for managing the fellowship competition. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention

of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Files.

RETRIEVABILITY:

Manual. Identifier—Name and Program.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Fellowship Assistant. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Learning and Dissemination. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Individual her/himself; educational institutions attended; letters of recommendation by people identified by individual; Foundation staff; contracted evaluators.

IAF–3

SYSTEM NAME:

Foundation Fellowship Grant Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Successful Candidates ("Fellows") who submitted applications and received fellowship grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to all information from the individual's application file, the grant file contains such documents as the grant agreement and amendments, financial and disbursement records, correspondence, grade transcripts, programmatic and financial reports, research reports, staff memoranda, and comments by contracted evaluators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by contracted specialists for evaluating grant progress and Foundation staff for managing the individual's grant. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier—Name, Grant Number, and Program.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Fellowship Assistant. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Learning and Dissemination. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Fellow her/himself; educational institutions attended; Foundation staff; contracted evaluators.

IAF–4

SYSTEM NAME:

Informal Personnel Files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Employment and Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

General personnel information including position descriptions, training records, request for notification of personnel action, notification of personnel action, performance plans on appraisals, time and attendance records, occupation, pay plan, service computation dates, date of birth, grade and salary, social security number,

home telephone number, resume, letters of recommendation, background investigation data for critical/sensitive, non-critical sensitive and security clearances, recommendation for performance recognition, employment staffing reports, handicap and race and national origin informal reports, informal notices of injury or occupational disease, records of requests for unemployment compensation payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information is used "in house" (non-routine uses) for personnel evaluation and management. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this syetem of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier—Name.

SAFEGUARDS:

Filed in locked, steel cabinets; records available to authorized persons only.

RETENTION AND DISPOSAL:

Destroyed after three years of inactivity. (Being negotiated.)

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above or Executive Vice President for Operations. Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in Rules Safeguarding Personal Information.

RECORD SOURCE CATEGORIES:

Individual himself; educational institutions; previous employers; letters of recommendations named by individual himself.

IAF–5

SYSTEM NAME:

Personnel Investigation Records.

SYSTEM LOCATION:

Personnel Security, Office of Personnel Management, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the agency.

b. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, and/or background, and consultants to agency programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files and/or background files which pertain to clearance investigations for Federal employment. These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, coworkers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; files relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended, creditors; reports of action after OPM or FBI section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for the purpose of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

c. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

d. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the

investigation, and to identify the type of information requested.

e. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

f. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

g. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

h. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are received by the name of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained in a steel file cabinet. The key to the steel cabinet is locked in other secured file cabinets that are rarely opened. All employees are required to have an appropriate background investigation before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. Log books which show the scheduling or completion of an investigation, and investigative files, if any, are retained for two years, plus the current year from the date of the most recent investigative activity. Other information which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.

b. Reports of action after OPM or FBI section 8(d) background investigation are retained for the life of the investigative file.

c. Notices of Security Investigations are retained for 20 years. All records are destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled Systems exempted from certain provision of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the U.S. Office of Personnel Management, FIPC, Boyers, PA 16018–0618 in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits.

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records.

The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment to their non-exempt records should contact the system manager in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name
b. Date of birth
c. Social Security Number
d. Signature
e. Any available information regarding the type of record involved
f. The category of covered individuals under which the requester believes he or she fits

RECORD SOURCE CATEGORIES:

Information contained in the system was obtained from the following categories of sources:

a. Applications and other personnel and security forms furnished by the individual

b. Investigative and other record material furnished by Federal agencies

c. Notices of personnel actions furnished by Federal agencies

d. By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, at 5 U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act. Application of exemption (k)(2) may be necessary to preclude the data subject's access to and amendment of the record.

c. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5),

permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identify of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identify of the source would be in confidence; or

2. Reveal the identify of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

IAF–6

SYSTEM NAME:

Payroll/Travel Accounting Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart Street, Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Payroll/Travel information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee pay records and official travel obligation/travel voucher records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Payroll records used for entry into IAF accounting system; travel documents used for expenditure of funds for travel advances, tickets, travel reimbursements. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records secured in locked files and made available only to authorized persons.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Accountant, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORD SOURCE CATEGORIES:

Individual him/her self.

IAF–7

SYSTEM NAME:

Inter-American Foundation—General Financial Records.

SYSTEM LOCATION:

Department of Energy (DOE), Germantown, Md Office; copies held by the Inter-American Foundation. (DOE holds records for the Foundation under Inter-Agency Agreement.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present IAF employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance sheets; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms; W2 forms; overtime requests; leave data; retirement records. Records are used by the IAF and DOE employees to maintain adequate payroll information for IAF employees and otherwise by the IAF and DOE employees for IAF employees who have a need for the records in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. generally and Pub. L. 91–175.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF USES:

Records are released to GAO for audits, to the Internal Revenue Service for investigation, and to private attorneys, pursuant to a power of attorney. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or

other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contact, or the issuance of a license, grantor or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(d) A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

(e) A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

POLICIES, AND PRACTICES FOR STORING, RETREIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper and microfilm.

RETRIEVABILITY:

Manual. Identifier—Social Security Number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Office, Office of Personnel, Vice President for Operations, Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President for Operations. Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

RECORD ACCESS PROCEDURES:

IAF access procedures are contained in 22 CFR part 1003.

CONTESTING RECORDS PROCEDURES:

Contesting Record Procedures are contained in 22 CFR part 1003.

RECORD SOURCE CATEGORIES:

The subject individual; the Inter-American Foundation.

IAF–8

SYSTEM NAME:

Personnel Budget Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203, Budget Office, Office of Administration and Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inter-American Foundation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee current and projected salaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Budget preparation, tracking, and reporting. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper and electronic files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records secured in locked files and made available only to authorized persons.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGERS AND ADDRESS:

Budget Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–9

SYSTEM NAME:

Accounts Payable.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203., Office of Administration and Finance, Accounting Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, both employees and others who are paid or due to be paid from Foundation's appropriations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to payments for travel, miscellaneous expenses, contractual services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used for entry into IAF'S accounting system. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of in accordance with the General Records Schedule issued by the Archivist of the United States.

SYSTEM MANAGER AND ADDRESS:

Chief Accountant, Office of Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above at Inter-American Foundation, Office of Administration and Finance, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–10

SYSTEM NAME:

Contract files—IAF.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals entering into contractual relationships with the IAF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts, Purchase Orders, bids, solicitations, and other records relating to the operations of the contract office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of contract activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING, OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Contracts under $25,000 destroyed three years after final payment. Contracts exceeding $25,000 destroyed six years after final payment.

SYSTEM MANAGER AND ADDRESS:

Contracting Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–10

SYSTEM NAME:

Automated Data Processing Management.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203, Office of Administration and Finance, ADP Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IAF employees and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to access to the IAF's computer system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used by ADP administrator for control of IAF employees and on-site contractors to access IAF's computer system. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic/Paper Files.

RETRIEVABILITY:

Electronic. Identifier: Name/Office group.

SAFEGUARDS:

Access authorized only to ADP Administrator.

RETENTION AND DISPOSAL:

Disposed of when individual leaves the agency.

System manager(s) and address:

Automated Data Processing Administrator, Office of Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above at Inter-American Foundation, Office of Administration and Finance, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–11

SYSTEM NAME:

Security Card Accountability Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued security cards for after hours entry into office space.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of those employees issued security cards for after hours entry into office space.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of security activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the

requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of upon the departure of the employee from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

General Services Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

IAF–12

SYSTEM NAME:

Credit Card Accountability Records.

SYSTEM LOCATION:

Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued Diners Club and Telephone Calling Cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of those employees issued Diners Club and Telephone Calling Cards for use in connection with official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house" for management of travel activities. Notwithstanding the above, access may also be gained to these records under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Manual. Identifier: Name.

SAFEGUARDS:

Records available to authorized persons only.

RETENTION AND DISPOSAL:

Disposed of upon the departure of the employee from the agency.

SYSTEM MANAGER AND ADDRESS:

General Services Officer, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

NOTIFICATION PROCEDURE:

Contact individual listed above, or Vice President, Administration and Finance, Inter-American Foundation, 901 N. Stuart St., Arlington, VA 22203.

RECORDS ACCESS PROCEDURES:

IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

CONTESTING RECORD PROCEDURES:

Contesting Records Procedures are contained in Rules Safeguarding Personal Information in IAF records.

RECORDS SOURCE CATEGORIES:

Individual him/her self.

Dated: February 28, 1994.

Evan M. Koster,

Privacy Act Officer.

[FR Doc. 94–4920 Filed 3–3–94; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–03–4210–05; IDI–29331]

Management Framework Plans, etc.; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent of prepare a planning amendment to the Little Lost/Birch Creek Management Framework Plan (MFP).

SUMMARY: The following described public land in Butte County, Idaho, will be examined for possible disposal by direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 5 N., R. 29 E.,
Sec. 4, NW¼SW¼
Sec. 5, NE¼SE¼.

The land described above contains 80 acres, more or less.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Butte County at fair market value. This action would provide Butte County with land for a bulky waste disposal site and transfer station. The public is invited to provide scoping comments on the issues that should be addressed in the planning amendment and environmental assessment. Planning criteria which will be used to prepare this planning amendment is available for review at the Bureau of Land

Management, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Dated: February 23, 1994.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 94–4968 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–GG–M

[WY–060–04–4210–05; WYW125255]

Realty Action; Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 57 N., R. 66 W.,
Sec. 27, lots 2, 3, 8, SW¼NW¼.
111.31 acres.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of an isolated parcel of public land. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcel will be offered by modified competitive sale to the adjoining landowners. The adjoining landowners will be required to submit proof of adjoining land ownership before a bid can be accepted.

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect of this notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality of political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11:00 a.m., May 25, 1994, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (WYW125255), Sale held May 25, 1994."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning June 22, 1994. Reoffered land will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. F.A. Bush, Inc. is the grazing lessee (GR–8412) and owner of the following authorized permanent range improvement: Project No. 4338, a fence. If any party, other than F.A. Bush, Inc., is the successful bidder on the land being offered for sale, that party shall be required to reimburse F.A. Bush, Inc. for the adjusted value of the range improvement and furnish proof to the Authorized Officer, Bureau of Land Management, Newcastle Resource Area, before conveyance can be made. If the bidder and grazing lessee are unable to agree on compensation for the range improvement, the authorized officer shall determine the adjusted value.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: February 25, 1994.

Donald Hinrichsen,

District Manager.

[FR Doc. 94–4969 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–22–M

[CO–050–4110–03]

Intent To Amend the Northeast Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Cañon City District as a cooperating agency with the U.S. Forest Service has prepared an environmental impact statement (EIS) for developing a management strategy on mountain plover. The EIS strategy deals primarily with lands within the Pawnee National Grassland Administrative Boundary. BLM is considering using information from the EIS to make decisions on lands outside the Administrative boundary for oil and gas leasing. Such a decision would be considered an amendment of the Northeast Resource Management Plan; and is in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600.

SUMMARY: The EIS analyzed different management strategies for the protection of mountain plover. The mountain plover has been nominated for listing as a threatened species under the Threatened and Endangered Species Act of 1973 as amended in 1982. The EIS provides new information for making oil and gas decisions on Federal mineral estate within areas considered to be important nesting and summer habitat of the mountain plover. Information in the EIS will be extended to cover lands with BLM-administered mineral estate, beyond the U.S. Forest Service boundaries, that meet the criteria defined in the EIS as mountain plover stronghold habitat. Stipulations for oil and gas leases on these lands will restrict oil and gas drilling and development activities during the period of April 10 to July 10. Because surface ownership of these lands is private, and the surface is subject to manipulation beyond the authority of the Bureau, a waiver will be considered for each lease stipulated for mountain plover protection at the time of application for development. The waiver will be granted if the lands have been rendered unsuitable habitat for plovers because of surface use by the private landowner. A waiver of the mountain plover stipulation does not affect any other existing protection stipulation that may apply to these lands.

DATES: Comments on the Bureau intention to apply the EIS analysis to the areas outside the U.S. Forest Service administrative boundaries will be accepted on or before April 4, 1994.

ADDRESSES: District Manager, Cañon City District Office, P.O. Box 2200, Cañon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Interested parties may request further information at the above address. A copy of the EIS may be obtained from the U.S. Forest Service at the Pawnee National Grasslands, 660 "O" Street, suite 4, Greeley, Colorado 80631–3033.

SUPPLEMENTARY INFORMATION: Plan monitoring information and the EIS indicate a need for this action to protect mountain plovers. Implementation of this decision is consistent with the Bureau goals of biological diversity and ecosystem management. BLM will work with private landowners, local, state, and Federal government agencies, and other land managers to protect the mountain plover.

The area covered by this plan amendment will include all BLM managed lands within Adams, Larimer, Logan, Morgan, Washington and Weld counties in the State of Colorado.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94–4970 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing the development and operation of a new marina and related facilities and services for the public at Crescent Bay on Lake Roosevelt at Coulee Dam National Recreation Area, for a period of 15 years from July 1, 1994, through June 30, 2009.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Interested parties should contact the Regional Director, Pacific Northwest Region, Concessions Division, 909 First Avenue, Seattle, Washington 98104–1060, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires/authorizes a construction and improvement program. The proposed development was previously addressed in the Environmental Assessment for the park's General Management Plan approved in May, 1980. An Environmental Assessment describing alternatives for developing a marina at Crescent Bay, Coulee Dam National Recreation Area was released in December, 1984. A subsequent Environmental Assessment (approved June 1988) augmented the existing Environmental Assessment for the General Management Plan by analyzing the effects of rental boats on Lake Roosevelt. Additional environmental documents, if required, will be the responsibility of the concessioner.

The Secretary will consider and evaluate all proposals received as a result of this notice. Proposals must be received by the Superintendent not later than on the one hundred and twentieth (120th) day following publication of this notice to be considered and evaluated.

Dated: February 24, 1994.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region.

[FR Doc. 94–4962 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–70–M

Availability of Draft Wild and Scenic River Eligibility Report and Environmental Assessment for the Upper Klamath River, OR

AGENCY: National Park Service, USDOI.

ACTION: Publication of draft report and environmental assessment for public comment.

SUMMARY: The National Park Service is publishing for public review and comment a draft study report and environmental assessment on designating the upper Klamath River, Oregon, into the National Wild and Scenic Rivers System. The National Park Service has found that the upper Klamath River is eligible for the national system and is recommending as the preferred alternative that the river be designated.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Copies of the draft report and environmental assessment are available for public inspection at: National Park Service, 909 First Avenue, 4th Floor, Seattle, Washington 98104–1060; National Park Service, 800 North Capitol Street, NW., suite 490, Washington, DC 20013–7127; and Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603. Hours of availability are between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Additional copies for review are located in the Klamath Falls, Medford, Ashland and Grants Pass, Oregon, libraries during normal hours of operation. Copies of the draft report and environmental assessment may be

obtained from Dan Haas, National Park Service, Pacific Northwest Regional Office, 909 First Avenue, Seattle, Washington 98104–1060, (206) 220–4079, ext. 3.

Comments should be directed to the National Park Service Pacific Northwest Regional Office, attention Dan Haas, at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Haas, National Park Service, Pacific Northwest Regional Office, 909 First Avenue, Seattle, Washington 98104–1060, (206) 220–4079, ext. 3.

SUPPLEMENTARY INFORMATION: On April 22 of 1993, Earth Day, Oregon Governor Barbara Roberts petitioned the Secretary of the Interior to add an 11-mile reach of the upper Klamath River to the National Wild and Scenic Rivers System. The section of river under consideration extends from the John C. Boyle Hydroelectric Powerhouse (river mile 220.3) downstream to the Oregon-California border (river mile 209.3). Under section 2(a)(ii) of the National Wild and Scenic Rivers Act (P.L. 90–542, as amended), the Secretary has the authority to add a river to the national system at the request of a state provided the state has met certain conditions and the river meets eligibility criteria. These preconditions are:

(1) The river is already designated into a state river protection system.

(2) The state has the ability to manage the river at no cost to the federal government, except for those lands already in federal ownership.

(3) The river has resources of regional or national significance and is free-flowing as defined by the Departments of the Interior and Agriculture.

(4) The state has adequate mechanisms in place to protect the resources for which the river is eligible in the first place.

Upon the request of a state governor to the Secretary, the National Park Service, acting for the Secretary, undertakes an evaluation of the state's request. The National Park Service requested the assistance of the Bureau of Land Management in the preparation of the report and environmental assessment. This was done for two reasons: (1) The Bureau manages 75% of the area under consideration and (2) the Bureau has conducted two previous assessments of the river—one for a congressionally authorized wild and scenic river study, and one as part of its normal resource management planning process. The Bureau of Land Management agreed to act as a cooperator in the preparation of the assessment.

As a result of the evaluation, the National Park Service has concluded that the state of Oregon has met all requirements to include the upper Klamath River in the national system and the river itself meets all eligibility criteria. The National Park Service is recommending as the preferred alternative that the Secretary designate the upper Klamath as a National Scenic River.

Dated: February 22, 1994.

John Reynolds,

Acting Director, National Park Service.

[FR Doc. 94–4963 Filed 3–3–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

March 1, 1994.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway, Inc.

(2) Box 4943, Syracuse, NY 13221.

(3) 333 Butternut Drive, DeWitt, NY 13214.

(4) Larry Clark, Box 4746, Syracuse, NY 13221.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4983 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–156 (Sub-No. 19X)]

Delaware and Hudson Railway Co., Inc.; Abandonment Exemption; in Saratoga and Warren Counties, NY

Delaware and Hudson Railway Company, Inc. (D&H), has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 38.00 miles of rail line known as the Adirondack Branch, between milepost 55.00, at Corinth, and milepost 94.96, at North Creek, in Saratoga and Warren Counties, NY.[1]

D&H has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) have been received, this exemption will be effective on April 3, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] D&H states that it plans to consummate this abandonment on or after February 1, 1994. Because the notice must be filed with the Commission at least 50 days before the abandonment/discontinuance is to be consummated, consummation cannot take place here before April 3, 1994. See 49 CFR 1152.50(d)(2).

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29[4] must be filed by March 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Timothy G. Mulcahy, Esq., CP Legal Services, P.O. Box 8002, 200 Clifton Corporate Parkway, Clifton Park, NY 12065.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

D&H has filed an environmental report which addresses the abandonment's effect, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 9, 1994. Interested persons may obtain a copy of the EA from SEA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 24, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4984 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–400 (Sub-No. 2X)]

Seminole Gulf Railway, Inc.—Abandonment Exemption—In Lee County, FL

Seminole Gulf Railway, Inc. as General Partner of Seminole Gulf Railway, L.P., d/b/a Seminole Gulf Railway, L.P. (Seminole Gulf) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon service on 3.55 miles of its Baker Spur Line located in Lee County, FL. The portion of line being abandoned extends eastward from the new proposed end of track at Engineering station 79+95 to the existing end of track Engineering station 267+62, a distance of 18,767 feet.

Seminole Gulf has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 3, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gordon H. Fay, 4110 Centerpointe Dr., Fort Myers, FL 33916.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Seminole Gulf has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 9, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4985 Filed 3–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202)

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[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Application for Asylum and Withholding to Deportation.

(2) I–589. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The information provided on this form is used by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) 80,000 annual responses at 3.5 hours per response.

(6) 280,000 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: March 1, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–5004 Filed 3–3–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Tuesday, March 22, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business are filled; (b) conducting comparative research of business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Tuesday, March 22, 1994, from 1 p.m. until 4 p.m. at the U.S. Department of Labor, room N3437 (A & B), 200 Constitution Avenue, NW., Washington, DC 20210.

AGENDA: The agenda for the meeting is as follows: Report By Subcommittee on research and Final Report, Discussion of Further Hearings, Discussion of Criteria for Perkins-Dole Award.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than March 14, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5020 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Illinois
IL93–20 (Feb. 19, 1993)
(IL94–20)

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Iowa
IA940053 (Mar. 4, 1994)
IA940054 (Mar. 4, 1994)
IA940055 (Mar. 4, 1994)
IA940056 (Mar. 4, 1994)
IA940057 (Mar. 4, 1994)
IA940058 (Mar. 4, 1994)
IA940059 (Mar. 4, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
MD940017 (Feb. 11, 1994)

Volume III

Georgia
GA940003 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940058 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940066 (Feb. 11, 1994)

Volume V

Illinois
IL940005 (Feb. 11, 1994)
IL940018 (Feb. 11, 1994)
Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940017 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940036 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
MI940049 (Feb. 11, 1994)

Volume V

None

Volume VI

Alaska
AK940003 (Feb. 11, 1994)
California
CA940001 (Feb. 11, 1994)
CA940002 (Feb. 11, 1994)
CA940004 (Feb. 11, 1994)
CA940027 (Feb. 11, 1994)
Colorado
CO940002 (Feb. 11, 1994)
CO940021 (Feb. 11, 1994)
Nevada
NV940001 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
OR940004 (Feb. 11, 1994)
Utah
UT940004 (Feb. 11, 1994)
UT940005 (Feb. 11, 1994)
UT940007 (Feb. 11, 1994)
Washington
WA940009 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th Day of February 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–4748 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–27,030]

ICD Drives, Inc. a/k/a Control Techniques, Inc., Grand Island and Tonawanda, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1992, applicable to all workers of ICD Drives, Inc., in Grand Island and Tonawanda, New York. The notice was published in the **Federal Register** on May 28, 1992 (57 FR 22492).

At the request of the State Agency the Department reviewed its certification. New information from the company shows that the Control Techniques is a successor-in-interest firm to ICD Drives, Inc. The same products are being produced with the same workers and in the same locations.

According, the Department is amending the certification to show the successor-in-interest firm, Control Techniques.

The amended notice applicable to TA–W–27,030 is hereby issued as follows:

All workers of ICD Drives, also known as a/k/a Control Techniques, Grand Island and Tonawanda, New York who because totally or partially separated from employment on or after March 3, 1991 are eligible to apply for

adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of February 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5014 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Parkway Fabricators (workers)	South Amboy, NJ	02/14/94	12/18/93	29,478	Rubber Skin Diving Suits.
Alcatel Data Networks (Workers)	Mt. Laurel, NJ	02/14/94	01/26/94	29,479	Circuit Boards.
Metacomet Mfg Co., Inc (Workers)	Fall River, MA	02/14/94	01/05/94	29,480	Belts.
Brown Shoe Co (UFCW)	Mountain Grove, MO.	02/14/94	01/24/94	29,481	Women's Shoes.
BASF Corp (Co)	Lowland, TN	02/14/94	02/03/94	29,482	Nylon & Polyester Textile Fibers, Etc.
Deer Creek Petroleum, Inc (Workers)	Valley Center, KS	02/14/94	02/01/94	29,483	Oil and Gas Exploration.
Landmark Oil Exploration, Inc (Workers).	Wichita, KS	02/14/94	02/02/94	29,484	Crude Oil.
Londontown Corp (ACTWU)	Hancock, MD	02/12/94	01/12/94	29,485	Men's & Ladies' Rainwear.
Magnesium Corp of America (Co)	Salt Lake City, UT	02/14/94	02/03/94	29,486	Magnesium.
Middleton Aerospace Corp (Co)	Middleton, MA	02/14/94	02/01/94	29,487	Jet Turbine Engine Hardware.
North American Refractories Co (Workers).	Cleveland, OH	02/14/94	02/01/94	29,488	Metallic and Refractory Systems.
Rowe International (UAW)	Whippany, NJ	02/14/94	01/27/94	29,489	Vending Machines.
Seli Manufacturing, Inc (Workers)	Scranton, PA	02/14/94	01/27/94	29,490	Bride Maid Dresses/Gowns.
Sheildalloy Metalurgical Corp (Workers)	Cambridge, MA	02/14/94	01/28/94	29,491	Vanadium Alloys.
U.S. Shoe Corporation (Co)	Beloit, WI	02/14/94	01/31/94	29,492	Men's & Womens' Footwear.
Andy Fashions (Workers)	Pittston, PA	02/14/94	02/04/94	29,493	Ladies' Dresses.
Aileen's (Workers)	South Hill, VA	02/14/94	02/02/94	29,494	Ladies' Tops, Pants Shirts.
S.B. Manufacturing Co., Inc (ILGWU)	Saddlebrook, NJ	02/14/94	01/25/94	29,495	Ladies' Intimate Apparel.
Electronix Servicenter (Co)	Irving, TX	02/14/94	09/29/93	29,496	Sold & Repaired VCR's, Computers, etc.
Brown Shoe Co (UFCW)	Selmer, TN	02/14/94	01/28/94	29,497	Women's Boots.
Brown Shoe Co (UFCW)	Charleston, MO	02/14/94	02/03/94	29,498	Cut Leather & Man-Made Uppers.
Brown Shoe Co (UFCW)	Caruthersville, MO	02/14/94	01/31/94	29,499	Women's Shoes.
Coordinated Apparel Group, Inc (Co)	McRae, GA	02/14/94	02/03/94	29,500	Boys' & Girl's Pants and Jeans.
Denim Finishers (ILGWU)	Middlesboro, KY	02/14/94	01/31/94	29,501	Denim Jeans, Skirts, Shorts.
Tococo, Inc (ILGWU)	Wilmore, KY	02/14/94	01/31/94	29,502	Denim Jeans, Skirts, Shorts.
Tococo, Inc (ILGWU)	Midway, KY	02/14/94	01/31/94	29,503	Denim Jeans, Skirts, Shorts.
Amerimark Building Products (USWA)	Gnadenhutten, OH	02/14/94	01/27/94	29,504	Painted, Coiled Aluminum.
Apertus Tech (Workers)	Eden Prairie, MN	02/14/94	02/02/94	29,505	Monitors and PC's.
B.C. Manufacturing (ILGWU)	Plains, PA	02/14/94	02/02/94	29,506	Dresses.
Maura Manufacturing (ILGWU)	Wilkes-Barre, PA	02/14/94	02/02/94	29,507	Ladies' Dresses.
J&R Wood Products (Workers)	Roseburg, OR	02/14/94	02/02/94	29,508	Hardwood Lumber, Wood Chips and Logs.
Wolverine Manufacturing, Inc (Workers)	Gaylord, MN	02/14/94	02/01/94	29,509	Men's, Ladies' Children's Outerwear.
Winters Industries (IAM)	Canton, OH	02/14/94	02/01/94	29,510	Manifolds for Vehicles.
Winters Industries (IAM)	Alliance, OH	02/14/94	02/01/94	29,511	Manifolds for Vehicles.
Drackett, Inc (Workers)	Urbana, OH	02/12/94	01/12/94	29,512	Cleaning Products.
Rosaria Sportswear, Inc (ILGWU)	Passaic, NJ	02/14/94	01/25/94	29,513	Ladies' Skirts and Pants.
Dowing Garment (Workers)	Plymouth, PA	02/14/94	02/04/94	29,514	Ladies' Dresses.
Glen Lyon Garment (Workers)	Glen Lyon, PA	02/14/94	02/04/94	29,515	Ladies' Dresses.
Kingston Fashions (Workers)	Kingston, PA	02/14/94	02/04/94	29,516	Ladies' Dresses.
Pittston Fashions (Workers)	Pittston, PA	02/14/94	02/04/94	29,517	Ladies' Dresses.
Throop Fashions (Workers)	Throop, PA	02/14/94	02/04/94	29,518	Ladies' Dresses.
Steward, Inc, ICD (Co)	East Ridge, TN	02/14/94	01/27/94	29,519	Ferrite Components for Computers.

[FR Doc. 94-5017 Filed 3-3-94; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,291; Simpson Timber Co., Korbel, CA

TA-W-29,315; S & S Cutting, Pittston, PA

TA-W-29,266; Owens Illinois, Inc., Huntington, WV

TA-W-29,273; Erving Health Care, New Brunswick, NJ

TA-W-29,333; CTS Connector Division, New Hope, MN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,093; Galdco Services, Inc., Ira, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,336; Willamette Industrial Forms Div., Beaverton, OR

Layoffs at the subject firm are attributable to a corporate decision to consolidate its operations resulting in the transfer of production from the subject plant in Beaverton, OR to another domestic plant.

TA-W-29,169; Wincup Holdings, Inc., Tinton Falls, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,144; Shiawassee Manufacturing Co., Owosso, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,302; Emerson Radio Corp., Princeton, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,468; Sensor Systems, Inc., Chatsworth, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,149; Duback Gas Co., Dubach, LA

TA-W-29,149A; Endevco, Inc., Houston, TX

TA-W-29,150; Duback Gas Co., (Clairborne Gas Plant), Lisbon, LA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,213; Smead Manufacturing Co., Hastings, MN

A certification was issued covering all workers separated on or after August 1, 1993.

TA-W-29,298; Lear Seating Corp., Morristown, TN

A certification was issued covering all workers separated on or after November 11, 1992.

TA-W-29,363; The American Olean Tile Co., Inc., Lansdale, PA

A certification was issued covering all workers separated on or after December 10, 1992.

TA-W-29,368; Gilligan & O'Malley, Latta, SC

A certification was issued covering all workers separated on or after December 22, 1992.

TA-W-29,295; Nestle Beverage Co., Sunbury, OH

A certification was issued covering all workers separated on or after November 23, 1992.

TA-W-29,258; General Electric Co., Columbia, TN

A certification was issued covering all workers separated on or after November 12, 1992.

TA-W-29,324; Berwick Knitwear, Inc., Holdenville, OK

A certification was issued covering all workers separated on or after December 3, 1992.

TA-W-29,346, TA-W-29,347; Pennington Seismic Exchange, Inc., Tulsa, OK and Oklahoma City, OK

A certification was issued covering all workers separated on or after November 23, 1992.

TA-W-29,364, TA-W-29,365; First Base, Inc., Bayshore, NY and Mitoro Industries, Bayshore, NY

A certification was issued covering all workers separated on or after December 10, 1992.

TA-W-29,331; Exolon-Esk Co., Tonawanda, NY OH

A certification was issued covering all workers separated on or after December 22, 1992.

TA-W-29,382; Coordinated Apparel Group, Inc., Metter, GA

A certification was issued covering all workers separated on or after December 20, 1992.

TA-W-29,259; Elder Manufacturing Co., Paragould, AR

A certification was issued covering all workers separated on or after November 9, 1992.

TA-W-29,357; Aerovox M., Inc., Glasgow, KY

A certification was issued covering all workers separated on or after December 13, 1992.

TA-W-29,397; Shell Oil Co., Shell Western E & P, Inc., (SWEPI), Bakersfield, CA

TA-W-29,397A; All other (SWEPI) Operations in The State of California

TA-W-29,398; Shell Oil Co., Shell Development Co., Martinez, CA

A certification was issued covering all workers separated on or after December 13, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II,

of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00013; Hubbell-Bell, Inc., Fogelsville, PA

A certification was issued covering all workers engaged in employment related to the production of electrical weatherproof products at Hubbell-Bell, Inc., Fogelsville, Pa separated on or after December 8, 1993.

NAFTA-TAA-00003; Simmons Upholstered Furniture, Inc., Vancouver, WA

A certification was issued covering all workers engaged in employment related to the sewing and cushion fill operations at Simmons Upholstered Furniture, Inc., Vancouver, Washington separated on or after December 8, 1993.

I further determine that all other workers at Simmons Upholstered Furniture, Inc., Vancouver, Washington, are denied eligibility to apply for NAFTA/TAA under section 250 of the Trade Act of 1974.

As a result, an investigation is currently in process under section 221 of the Trade Act. The number assigned to this investigation is TA-W-29,442.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours, or will be mailed to persons to write to the above address.

Dated: February 24, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-5016 Filed 3-3-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,134]

Utopia Spring Water Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Utopia Spring Water Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-29,134; Utopia Spring Water Houston, Texas (February 17, 1994)

Signed at Washington, DC, this 18th day of February, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94-5013 Filed 3-3-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103-182) are eligible to apply for NAFTA-TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 14, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 14, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Gandalf (Workers)	Cherry Hill, NJ	02/14/94	02/14/94	NAFTA-00026	Electronic Equipment.
ACI America, Inc., VVP America Mexico (ABGW).	Memphis, TN	02/14/94	02/14/94	NAFTA-00027	Flat Top Glass Tables.
McCreary Roofing Co. (Workers)	Erie, PA	02/15/94	02/15/94	NAFTA-00028	Roofing Materials.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wundies (Workers)	Williamsport, PA	02/17/94	02/16/94	NAFTA–00029	Ladies Underwear.
Dee Fashions, Inc. (Workers)	Centralia, PA	02/17/94	02/16/94	NAFTA–00030	Ladies Formal Wear.
Bus Industries of America (Workers).	Oriskany, NY	02/18/94	02/14/94	NAFTA–00031	Buses.
Niagara Frontier Tariff Bureau, Inc. (Co).	Buffalo, NY	02/18/94	02/16/94	NAFTA–00032	Tariff Research and Manuscripts.
Fisher-Price, Inc. (Co)	East Aurora, NY	02/18/94	02/16/94	NAFTA–00033	Toys.
Ferranti-Packard Transformers, Inc. (UEAMWOA).	Sheridan, NY	02/18/94	02/17/94	NAFTA–00034	Small to Medium Transformers.

[FR Doc. 94–5015 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00019]

North American Philips Lighting Co.; Fairmont, WV; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 4, 1994 in response to a petition filed by the International Union of Electrical, Radio and Machine Workers on behalf of the workers at North American Philips Lighting Company in Fairmont, West Virginia. The workers produce home and auto lighting products.

On January 31, 1994, all workers at North American Philips Lighting Company, Fairmont, West Virginia engaged in employment related to the production of home and auto lighting products who became totally or partially separated from employment on or after December 9, 1992 were certified as eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

In a letter dated February 15, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5018 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–30–M

Office of Federal Contract Compliance Programs

Reinstatement of Layton Construction Co., Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of reinstatement, Layton Construction Company, Inc.

SUMMARY: This notice advises that Layton Construction Company, Inc., has been reinstated as an eligible bidder on Federal contracts and subcontracts and federally-assisted construction contracts.

FOR FURTHER INFORMATION CONTACT: Leonard J. Biermann, Deputy Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–3325, Washington, DC 20210 (202–219–9475).

SUPPLEMENTARY INFORMATION: Layton Construction Company, Inc., Salt Lake City, Utah, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed February 25, 1994, Washington, DC.

Leonard J. Biermann,

Deputy Director, OFCCP.

[FR Doc. 94–5019 Filed 3–3–94; 8:45 am]
BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on March 22–23, 1994 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A–C, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

At this meeting, OSHA will consult with the Advisory Committee regarding the draft proposed rule for permit-required confined spaces in construction. In addition, the Advisory Committee will receive a report from its Priorities Work group and will make recommendations to OSHA regarding the Agency's goals and objectives for 1994. The Advisory Committee will also receive reports from the Engineering, Asphalt, Standards, and Targeting work groups.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC, this 28th day of February, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–5009 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Application of TUV Rheinland of North America, Inc. for recognition as a nationally recognized testing laboratory; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on the application of TUV Rheinland of North America, Inc. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: The last date for interested parties to submit comments is April 4, 1994.

ADDRESSES: For further information, or to send comments: Office of Variation Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On November 19, 1993, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** a notice of the application of TUV Rheinland of North America, Inc. for OSHA recognition as a nationally recognized testing laboratory pursuant to 29 CFR 1910.7 (58 FR 61101). The notice included a preliminary finding that TUV Rheinland of North America, Inc. (the applicant) could meet the requirements for recognition detailed in 29 CFR 1910.7 and it invited public comment on the application. Comments were requested by January 18, 1994.

On January 12, 1994, the American Council of Independent Laboratories, Inc. (ACIL) requested an extension of time in which to submit comments on the application of TUV Rheinland of North America, Inc. for recognition as an NRTL (Ex. 4–2). The ACIL claimed that its preliminary investigation had uncovered "substantial deficiencies" in the application and that more time was necessary to submit pertinent documentation related to the instant application. Issues raised by the ACIL include whether the applicant is completely independent from its parent organization and the nature of the applicant's operation. According to the ACIL, the resolution of the questions raised would require, among other things, the study and analysis of relevant German laws and requested some additional time, until March 18, 1994, to file its comments on the application of TUV Rheinland of North America, Inc.

The OSHA/NRTL staff has carefully reviewed the request for additional time in which to prepare comments on the issue of the applicant's independence. The concerns of the commentator may have merit; in any event the request for additional time appears to be reasonable under the circumstances and will be granted, although the length of time granted has been modified from the original request.

Therefore, the time in which to file comments on the application of TUV Rheinland of North America, Inc. to be recognized as an NRTL is hereby extended until April 4, 1994.

Copies of the TUV application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 1st day of March, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–5021 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

New Mexico State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of subpart DD to part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated January 20, 1994, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follows: Amendment to § 1910.146, Permit-Required Confined Spaces (58 FR 34845–34851, dated June 29, 1993); Amendment to 1910 General Industry Standards (58 FR 35308–35310, dated June 30, 1993); Amendment to 1926 Construction Standards (58 FR 35077–35306 and 35310–35311, dated June 30, 1993); Amendment to 1926 Construction Standards (58 FR 40468, dated July 28, 1993); and Amendment to 1928 Agricultural Standards to add and reserve new subparts J and L, and add a new subpart M, Occupational Health, consisting of § 1928.1027, Cadmium (58 FR 21787–21850, dated April 23, 1993).

These standards, contained in New Mexico Occupational Health and Safety Regulations OHSR 200, OHSR 300 and OHSR 400, were promulgated on December 10, 1993, in accordance with applicable State law.

The subject standards become effective February 18, 1994, and February 19, 1994, pursuant to New Mexico State Law, section 50–9–1 through 50–9–25.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of

Labor-OSHA, 525 Griffin Street, room 602, Dallas, Texas 75202; Office of the Secretary, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Ave., NW., room N3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason.

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation. The decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Dallas, Texas, this 9th day of February 1994.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 94–5011 Filed 3–3–94; 8.45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

In response to Federal standards amendments, the State has submitted by letters dated April 16, and October 16, 1992, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.1048, Formaldehyde, as published in the **Federal Register** (57 FR 2681) on January 23, 1992, (57 19262) on May 5, 1992, (57 FR 22290) on May 27, 1992, (57 FR 24701) on June 10, 1992, and (57 FR 27160) on June 18, 1992. The State's rules pertaining to Formaldehyde, contained in OAR 437–02–360(28), were adopted by reference on April 16, 1992, and October 13, 1992, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR–OSHA Administrative Orders 4–1992 and 12–1992. On March 24, 1991, and July 16, 1991, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance Mailing list, established pursuant to OAR 431–01–000 and to those on the Department's distribution list as their interest appeared. No written requests for a public hearing were received. The State's rules pertaining to Formaldehyde, contained in OAR 437–02–360(28), were originally adopted by reference and approved in the **Federal Register** on January 13, 1989 (54 FR 1461), with other amendments approved on April 26, 1991 (56 FR 19382).

By letter dated January 6, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State on its own initiative submitted a repeal of OAR 437–02–370, and adopted by reference § 1910.1025(e)(1), table 1, Lead Implementation Schedule. The State standard was adopted and became effective on December 7, 1992, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under OR–OSHA Administrative Order 14–1992. The State's Lead standard was originally approved in the **Federal Register** (54 FR 38300) on September 15, 1989. The change became necessary when on July 19, 1991, the U.S. Court of Appeals for the District of Columbia lifted the judicial stays of the Lead standard for all industries, except brass and bronze ingot production.

On its own initiative, the State has submitted by letter dated October 19, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a revision to State rules comparable to 29 CFR 1910.134, Respiratory Protection, as published in the **Federal Register** (39 FR 23671) on June 27, 1974. The State's original adoption of Respiratory Protection was promulgated as OAR 437, Chapter 22–69, and received **Federal Register** approval at 40 FR 50583 on October 30, 1975. The State's standard was subsequently recodified as OAR 437, Division 129, with **Federal Register** approval at 52 FR 27026 on July 17, 1987. The State has repealed OAR 437, Division 129, in its entirety, and has incorporated 29 CFR 1910.134, Respiratory Protection, by reference as OAR 437–02–1910.134. The State's readoption by reference also deleted General and Special Industry Safety and Health Standards, Revocation, as published in the **Federal Register** (43 FR 49748) on October 24, 1978, and Revocation of Advisory and Repetitive Standards as published in the **Federal Register** (49 FR 5322) on February 10, 1984. The State has also adopted one State-initiated rule at OAR 437–02–133 on air quality in respirators in lieu of 29 CFR 1910.134(d)(1), which updates the Compressed Gas Association Commodity Specification from G–7.1–1966 (as in the Federal rule) to G–7.1–1989. During the early period of Oregon's program, the State elected not to adopt by reference standards comparable to 29 CFR 1910.137, Electrical Protective Devices, 1910.138, Effective Dates, § 1910.139, Sources of Standards, and 1910.140, Standards Organizations. (These standards are at the end of 29 CFR 1910 subpart I, Personal Protective Equipment.) With this notice the State has chosen to do so, at OAR 437–02, Subdivision I. On March 22, 1993, the Notice of Proposed Revision of Rules was mailed to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for hearing; however, two written comments were received which recommended that the State retain its more specific language in some areas of the standard. The State's revision was adopted on July 29, 1993, with an effective date of September 15, 1993; through OR–OSHA Administrative Order 9–1993.

The State submitted by letter dated October 19, 1993, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards revision comparable to 29 CFR 1910.133, Eye and Face Protection, as published in the **Federal Register** (39 FR 23670) on June 27, 1974. The Oregon Eye and Face Protection Standard is contained in OAR 437–02–1910.133. The State's original standard was adopted as OAR 437 chapter 7, section 3, rules 5 through 12 on March 19, 1974, and received **Federal Register** approval (39 FR 38036) on October 25, 1974. The State standard was subsequently recodified without change as OAR 437 Division 50–025 and received **Federal Register** approval (52 FR 27077) on July 17, 1987. OAR 437, Division 50 has been repealed in its entirety. On March 22, 1993, the Notice of Proposed Revision of Rules was mailed to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436–90–505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for hearing; however, two written comments were received which recommended that the State retain its more specific language in some areas of the standard. The State's revision was adopted on July 29, 1993, with an effective date of September 15, 1993, through OR–OSHA Administrative Order 9–1993. The State has retained one State-initiated standard requiring eye protection for employees exposed to laser beams which was previously approved by OSHA. The renumbering changes for the State-initiated rule are as follows: Originally adopted as OAR 437–7–3–2, recodified as OAR 437–50–025(12), and readopted as OAR 437–02–130(2). The State's more stringent rule received **Federal Register** approval (39 FR 38036) on October 25, 1974 as part of Oregon's response to Federal OSHA's 29 CFR 1910.133, Eye and Face Protection, as published in the **Federal Register** (39 FR 23670) on June 27, 1974. The State has also retained a minor State-initiated rule at OAR 437–02–130(1), previously OAR 437–50–025(3), which requires eye and face protection equipment to be designed and used in accordance with ANSI Z87.1–1989.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, amendments and corrections, it has been determined that the State standard amendments for Formaldehyde, Lead, and Personal Protective Equipment are identical to the Federal standards. OSHA therefore approves these amendments. OSHA has also determined that the Respiratory Protection amendments are at least as effective as the comparable Federal amendments, as required by section 18(c)(2) of the Act. In addition, OSHA has determined that the differences between the State and Federal Respiratory Protection amendments are minimal and that the standards are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objection be submitted to the Assistant Secretary.

Regarding the Eye and Face Protection amendments, OSHA has determined that these amendments are at least as effective as the comparable Federal amendments, as required by section 18(c)(2) of the Act. With the adoption by reference of § 1910.133, the State's standard is now identical to the Federal, except for the retention of two State-initiated rules. One of these rules was approved in the **Federal Register** in 1974, and the other rule is minor. OSHA therefore approves the standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendment is as effective as the Federal standard which was promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendment was adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667].

Signed at Seattle, Washington, this 29th day of December 1993.

Richard S. Terrill,

Deputy Regional Administrator.

[FR Doc. 94–5010 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

Vermont State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable

Federal standards promulgated under section 6 of the Act. By letter dated December 2, 1993, from Barbara G. Ripley, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1910, 1915, 1926 and 1928, and subsequent amendments thereto, as described below:

(1) Correction to 29 CFR parts 1910, 1915, 1926 and 1928, Occupational Exposure to Cadmium; Correction; Final Rule (58 FR 21778, dated 4/23/93).

(2) Amendment and addition to 29 CFR 1926.62, Lead Exposure in Construction, Interim Final Rule (58 FR 26627, dated 5/4/93).

These standards became effective on November 19, 1993, pursuant to section 224 of State Law.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standard. It has been determined that the State standard is identical to the Federal standard, and is accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont, 05602; and the Office of State Programs, 200 Constitution Avenue, NW., room N–3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective March 4, 1994.

Authority: Sec. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 3rd day of January, 1994.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 94–5012 Filed 3–3–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–015]

National Environmental Policy Act; Lidar In-space Technology Experiment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq,), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and regulations (14 CFR part 1216 Subpart 1216.3), NASA has made a Funding of No Significant Impact (FONSI) with respect to the proposed Lidar In-space Technology Experiment (LITE) be managed by the NASA Langley Research Center, Hampton, VA. LITE involves testing the capabilities of a lidar (LIght Detection And Ranging) system to monitor atmospheric conditions from space. LITE hardware would be carried into orbit by a Space Shuttle mission launched from the Kennedy Space Center in Florida.

DATES: Comments on the FONSI must be provided in writing to NASA on or before April 4, 1994.

ADDRESSES: Comments should be submitted to Tricia Romanowski, Environmental Engineer, Environmental Engineering Branch, SSQRD, M/S 429, 5 Hunsaker Loop, NASA/Langley Research Center, Hampton, VA 23681.

The Environmental Assessment (EA) prepared for the proposed LITE which supports this FONSI may be examined by contacting the Freedom of Information Act Office at any of the following locations:

(a) NASA, Headquarters, Washington, DC 20546 (202–358–1764).

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(c) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(d) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5359).

(e) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(f) NASA, Kennedy Space Center, FL 32899 (407–867–2622).

(g) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(h) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(i) NASA, Marshall Space Flight Center, AL 35812 (205–544–4523).

(j) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the EA are available by contacting Tricia Romanowski, Environmental Engineer, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Tricia Romanowski, 804–864–7020.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the proposed LITE and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA is incorporated by reference in this FONSI.

NASA is proposing to test a lidar system in space for use in a global atmospheric monitoring program. The principal components of a lidar system are the laser transmitter module (LTM) and the telescope-receiver. The LTM shoots a pulsed laser beam into the atmosphere where much of the laser energy is absorbed by the atmosphere. Some of the energy is reflected back toward the telescope-receiver, while a small fraction passes through the atmosphere and reaches the Earth's surface. The energy reflected toward the telescope-receiver is used to assess meteorological conditions (e.g., cloud conditions) and atmospheric aerosols (e.g., atmospheric contaminants), and to monitor the ozone layer. NASA proposes to fly a lidar system as an attached payload on the Space Shuttle. The first flight is scheduled for the fall of 1994 as a 9-day mission to gain experience in operating a lidar system in a space environment and to evaluate the sensitivity of the lidar instrument for monitoring atmospheric conditions.

The proposed action and the No-Action Alternative (i.e., no space-based testing of a lidar system) were considered in the EA. The No-Action Alternative will not fulfill NASA's objective to advance atmospheric monitoring capabilities. Under the No-Action Alternative, it will not be possible to develop the technology for a space-based lidar atmospheric monitoring system, and it will be necessary to continue to rely on existing passive monitoring instruments which have limitations in assessing the vertical distribution of atmospheric constituents.

The proposed action is the normal operation of the LITE payload from

within the Space Shuttle cargo bay. The LITE payload will remain in the Shuttle cargo bay and will not produce any effluent which could escape the cargo bay during mission operations. The only feature of the LITE payload which will emerge from the cargo bay will be the laser beam.

The LITE LTM will produce laser energy in three wavelengths, one of which will be visible (pale green). The portion of the laser energy which will pass through the atmosphere will reach the Earth's surface in a series of circular "laser spots" as the Shuttle moves across the Earth's surface. The diameter of the spots will vary from 265 meters (870 feet) to 483 meters (1,585 feet). Exposure will occur only to persons who are within a laser spot. Each laser pulse will last for 20 nanoseconds. The planned mission orbits will be between 57 degrees north latitude and 57 degrees south latitude. Given the laser pulse rate and the Shuttle's orbiting velocity, a person cannot be within two consecutive laser spots.

A comprehensive safety analysis performed for the proposed LITE found minimal risk of skin or eye injury from operation of the LITE LTM. The maximum Radiant Exposure (RE) to a person within a laser spot was calculated to be more than a million times lower than the Maximum Permissible Exposure (MPE) for skin exposure and at least two orders of magnitude lower than the MPE for eye exposure for each of the three laser energy wavelengths. The cumulative effect or simultaneous exposure to multiple wavelengths was calculated to be at least two orders of magnitude lower than the MPE. RE to persons using binoculars to view the Shuttle from within a laser spot was calculated to be lower than the MPE. While RE to persons using a 165-mm (6.5-inch) telescope to view the Shuttle from within a laser spot was calculated to be equal to the MPE, there is still considerable safety factor in the MPE, since MPE's are established at exposures which are one to two orders of magnitude lower than the level of any known hazard.

A Phase I Flight Safety Review found that the LITE LTM lasers will not be hazardous to persons in aircraft and will not interfere with microwave, very-high-frequency, or ultra-high-frequency communications. A review by the U.S. Space Command Laser Clearinghouse found that the LITE lasers will not exceed the damage threshold to space systems.

No other potential environmental impacts were identified as a result of the environmental assessment. On the basis of the LITE EA and underlying reference documents, NASA has determined that the environmental impacts associated with this project will not individually or cumulatively have a significant effect on the quality of the environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Gregory M. Reck,

Acting Associate Administrator, for Advanced Concepts and Technology.

[FR Doc. 94–5025 Filed 3–3–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by April 4, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202) 682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 95/96 Arts Administration Fellows Program Application Guidelines.

Frequency of Collection: Triennially.

Respondents: Individuals.

Use: Guide instructions and applications elicit relevant information from individual arts administrators who apply in the for an eleven week residency fellowship in arts administration at the Endowment. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

Estimated Number of Respondents: 300.

Average Burden Hours Per Response: 3.8.

Total Estimated Burden: 1300.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–4944 Filed 3–3–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 14, 1994; 8 a.m. to 5 p.m.

Place: Room 310, National Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Peter Arzberger and Dr. Charles Keith, Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database Activities in the Biological Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4932 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

Date and Time

Monday, March 14, 1994 from 8:30 am–6 pm
Tuesday, March 15, 1994 from 8:30 am–6 pm
Wednesday, March 16, 1994 from 8:30 am–5 pm

Place: National Science Foundation, 4201 Wilson Blvd., room 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Program Director, Biological Instrumentation and Resources, room 615, National Science Foundation, Arlington, Virginia 22230, Telephone No. (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Plant Biology proposals as part of the election process for awards.

Reason of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4933 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Computer and Information Science and Engineering.

Date and Time: March 21–22, 1994; 8:30 am to 5 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Aubrey Bush, NCRI, National Science Foundation, room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide oversight review of the NCR Program.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4934 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 22, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, Design and Integration Engineering, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4935 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 22, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Pius Egbelu, Program Director, Operations Research and Production Systems, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4936 Filed 3–3–94; 8:45 a.m.]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 24, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Pius Egbelu, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Deployment Teaching Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4937 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacturing Systems (Code 1194)

In accordance with the Federal Advisory Committee Act (Public Law

92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design, Manufacturing Systems (Code 1194).

Date and Time: March 23, 1994, 8:30 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Faculty Internships Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4938 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis panel in Electrical and Communications Systems (1196).

Date and Time: March 22, 1994; 8:30 a.m. to 5 p.m.

Place: Rooms 310, 320, 370, 380, 390, and 3102, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence S. Goldberg, Acting Division Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: 703/306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications of NSF Young Investigators as part of the selection process for awards.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4939 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: March 23–24, 1994; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary F. Sladek, Assistant Program Director, 4201 Wilson Boulevard, room 907, Arlington, VA 22230 Telephone: (703) 306–1696.

Purpose of Meeting: To provide advice and recommendations concerning applications to the NSF–NATO Postdoctoral Fellowships in Science and Engineering (NATO).

Agenda: Review and evaluate NATO Program applications.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4940 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Industrial Innovation Interface (III).

Date and Time:

March 24, 1994; 8:30 a.m.—5 p.m.
March 25, 1994; 8:30 a.m.—3:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 580, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Ms. Carolyn J. Smith, Small Business Specialist, room 590, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (703) 306–1391.

Summary of Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support of research programs administered in the Division.

Agenda: March 24, 1994, 8:30 a.m.—12 noon. Review and discussion of current programs.

Division Reorganization.
Budget/Outlook for 1994/5.
Budget for FY 1995.
12 noon—1:30 p.m. Lunch.
1:30 p.m.—5 p.m. NSF/NASA SBIR Data Base.
Committee Worksessions on: (1) Commercialization Strategy, (2) Technological Opportunities into the Next Century.
March 25, 1994.
8.30 a.m.—12 noon. Individual Committee Member Reports on: Chemical Industry Outlook, Electronics Industry Outlook, Venture Capital Scene Today, National Governor's Association,
1:30 p.m.—3:30 p.m. Committee Report to the Division.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4941 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and Time: March 29–30, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1175, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Darleen Fisher, NCRI, National Science Foundation, room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for Research Initiation Awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4943 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communication, Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and Time: March 17, 1994; 8:30 am to 5 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Daniel Vanbelleghem, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the NSFNET Connections Program Announcement.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 28, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4942 Filed 3–3–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[DD–94–02]

U.S. Department of Energy

Hanford Site; Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of July 25, 1991, by F. Robert Cook, that the Director of the Office of Nuclear Material Safety and Safeguards exercise his authority to require a license application from the U.S. Department of Energy (DOE) with respect to certain high-level radioactive wastes, consisting of spent nuclear fuel generated at Nuclear Regulatory Commission-licensed nuclear reactors, stored at locations at the Hanford Site in the State of Washington. Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 was published in the **Federal Register** on September 12, 1991, (56 FR 46449).

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR § 2.206" (DD–94–02), which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–4957 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant, Unit No. 2

Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License No. DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland.

The licensee is implementing upgrades to the existing safety-related emergency diesel generators (EDGs) to increase their load capacity. The first part of this effort will be to upgrade Unit 1 EDG No. 11 during the upcoming Unit 1 refueling outage (RFO–11). This outage commenced on February 8, 1994, and is scheduled to be completed in early May 1994. To support this initial portion of the upgrades, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The Code of Federal Regulations at 10 CFR part 50, appendix A, General Criterion-2 (GDC–2), requires that: Structures, systems and components important to safety shall be designed to withstand the effects of natural phenomena such as * * * tornadoes, * * * without loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of the planned upgrade of the Unit 1 EDG No. 11. The effort will require temporary removal of a steel missile door which will expose portions of the support systems of EDG Nos. 12 and 21. These EDGs are required to be operable to support the operation of Unit No. 2 and require protection from the potential effects of postulated missiles generated by natural phenomena. The licensee indicates that the steel missile door will be removed 4 times during RFO–11. The licensee estimates that each of the missile door removals will last for about 24 hours which will result in a total removal time of about 100 hours during the scheduled 89 day outage.

The licensee is providing compensatory action to assure the safe operation of Unit No. 2 for the short periods of time during which the steel missile door will be removed. To encompass all severe weather conditions as defined in the plant site Emergency Response Plan Implementing Procedures 3.0, Attachment 18, a concerted effort will be made to reinstall the missile door if a tornado or hurricane watch is issued or if sustained winds are predicted to be greater than 35 miles/hour at the site. The only factor which would impede the reinstallation of the missile door would be to ensure the safety of the individuals performing the reinstallation.

Considering the existing design features and compensatory measure proposed by the licensee, the likelihood of damage to the exposed EDG support systems from postulated missiles generated by natural phenomena is minimal for the short periods of time that the protective door will be removed. Also, based on the compensatory measure provided, reasonable assurance exists that the ability to reinstall the missile door will be maintained prior to any severe

weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances as set forth in 10 CFR 50.12(a)(2)(v) exists. The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption request and has concluded that the EDG upgrades can only be conducted without the subject exemption during a period when both units are shut down.

Based on the above and on review of the licensee's submittal, as summarized in the Safety Evaluation, dated February 23, 1994, the NRC staff concludes that the likelihood of unacceptable damage to the exposed portions of the Unit No. 2 EDG support systems due to weather-induced missiles during the short duration exposures occurring in the exemption period is low.

Based on the low probability of unacceptable events, coupled with the compensatory measure which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: Calvert Cliffs Nuclear Power Plant, Unit No. 2, may operate without conforming to the requirements of GDC–2 as they apply to the exposed portions of the support systems for EDG Nos. 12 and 21 providing that the compensatory measure as described herein is in place for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (February 17, 1994, 59 FR 8033).

The subject Unit No. 1 EDG No. 11 upgrade GDC–2 exemption if effective from its date of issuance through May 15, 1994.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4958 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to the Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would increase the storage capacity of the spent fuel pool (SFP) from its current 1170 storage cells to 1632 storage cells. This would be accomplished by replacing 9 out of twelve of the existing high density fuel racks with 9 maximum density rack modules constructed of stainless steel and a neutron absorber material (boron carbide and aluminum-composite sandwich, product name "boral"). The proposed change would extend the date when full core discharge capacity is no longer available for Salem 1 from 1998 to 2008, and for Salem 2 from 2002 to 2012.

In addition, the proposed amendment would extend the decay time for refueling operations from 100 hours to 168 hours.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Public Service Electric and Gas Company] PSE&G has evaluated the following postulated accident scenarios:

1. A spent fuel assembly drop in the SFP
2. Loss of SFP cooling.
3. A seismic event.
4. An installation accident during reracking.

The Salem SFP has been analyzed considering fuel handling equipment, operating procedures, SFP cooling system, and seismic events. Reracking involves replacing 9 out of the 12 existing high density racks with 9 new maximum density racks. It does not require any system modifications or modifications to the cask handling crane, which by its physical location and design is prevented from moving over the SFP. Results confirm that the proposed modification does not increase the probability of the first three postulated accident scenarios.

NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," sections 5.1.1, 5.1.2, and 5.1.6, provide guidance for heavy load handling operations during spent fuel storage rack replacement. Section 5.1.2 lists (4) alternatives for assuring safe heavy load handling during a fuel storage rack replacement. Alternative (1) satisfies the control of heavy loads guidelines through the implementation of defense-in-depth measures. These measures ensure that the potential for a heavy load drop is extremely small. PSE&G intends to utilize the defense-in-depth concept during reracking activities.

NUREG–0554, "Single Failure Proof Cranes for Nuclear Power Plants," provides guidance for the design, fabrication, installation, and testing of highly reliable new cranes. NUREG–0612, Appendix C, "Modification of Existing Cranes," provides guidance for the implementation of NUREG–0554 at operating plants. We have evaluated anticipated fuel handling crane movements for compliance with the guidelines specified in alternative (1) of Appendix C, and determined that alternative (1) was satisfied based on the extremely small probability of a storage rack drop. The maximum weight of any storage rack and its associated handling tool is 17 tons. The fuel handling crane will be upgraded to a 20 ton lifting capacity and a design safety factor, with respect to ultimate strength, of five times the lifting capacity (i.e., 100 tons). The uprated fuel handling crane has ample safety factor margin for

storage rack movement. This applies to non-redundant load-bearing components. Special redundant lifting devices, which have a rated capacity sufficient to maintain safety factors, will be utilized for storage rack movements. Per NUREG–0612, Appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low. Additionally, a load drop analysis was performed to ensure the integrity of the pool structure. The analysis results were acceptable.

Based on the actions discussed above, the proposed modification does not increase the probability of an installation accident.

PSE&G evaluated the consequences of a spent fuel assembly drop in the SFP and determined that the criticality acceptance criterion, Keff less than or equal to 0.95, was not exceeded. The radiological consequences of a fuel assembly drop did not change significantly from those previously analyzed. The calculated doses are well within 10 CFR 100 requirements. A spent fuel assembly dropped on the racks, will not cause rack distortion that would prevent the performance of their safety function. Thus, the consequences of this postulated accident are not significantly changed from those previously evaluated.

The consequences of a loss of SFP cooling were evaluated. The evaluation concluded that sufficient time is available to establish an alternate means of cooling following a complete failure of the normal SFP cooling system. Calculations show that under a normal discharge scenario, if all indirect forced cooling paths (i.e., heat removal by heat exchangers) are lost at the instant the pool water reaches its maximum value, the pool will not begin bulk boiling for at least 4.61 hours. This time interval is sufficient to allow plant personnel to establish alternate heat removal methods. A piped cross-connection exists between Unit 1 and Unit 2's SFP heat exchangers. This allows for use of the opposite Unit's heat exchanger during emergencies, or when a given Unit's Service Water header or Component Cooling System are out-of-service. Thus, the consequences of this postulated accident are not significantly changed from those previously evaluated.

The new racks are designed and fabricated to meet applicable NRC requirements and industry standards. Seismic analyses were performed on the new racks and the existing racks using 3–D single rack (opposed phase motion) and Whole Pool Multi-Rack (WPMR) models. Kinematic and shear analyses conclude the existence of large margins of safety. The kinematic margin against rack-to-rack or rack-to-wall impact is at least 1.5 for all SFP racks. Maximum rack primary stresses, under [Safe Shutdown Earthquake] SSE conditions, are less than 50% of the allowable ASME Code value. Maximum supporting pool structure bending moments and thru-thickness shear, under factored load conditions, are less than 80% of the allowables. All racks (new and existing) are designed as free-standing racks, to ensure that rack and pool structure integrity is maintained during and after a seismic event. Thus, the consequences of a postulated seismic event are not increased from previously evaluated events.

The consequences of an installation accident were considered. All fuel in the SFP will have decayed for a minimum of (3) months prior to any heavy load movement in the SFP area. This allows sufficient time for decay of gaseous radionuclides in the fuel (gap activity). A postulated accidental gaseous release from all stored fuel assemblies would result in a potential offsite dose less than 10% of 10CFR100 limit. No equipment essential to safe reactor shutdown or employed to mitigate the consequences of an accident is located beneath, adjacent to, or within the area of influence of any load handling to support the SFP modification. Thus, the consequences of a postulated installation accident are not significantly increased from those previously evaluated.

The only postulated accident affected by decay time is a Loss of SFP cooling. The proposed increase in decay time prior to refueling operations is conservative and decreases the decay heat removal requirements. All thermal-hydraulic calculations used 168 hours as the assumed decay time and concluded that adequate heat removal capability existed. Thus, the probability and consequences of a loss of SFP cooling accident are not significantly increased from those previously evaluated.

Therefore, it may be concluded that the proposed changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed modification has been reviewed and analyzed for possible accidents. The criteria used in the analyses, design, and installation of the new spent fuel racks account for anticipated loadings and postulated conditions that may be imposed upon the structure during its lifetime, and is in conformance with established codes, standards, and specifications acceptable to the NRC.

Factors that could affect the SFP neutron multiplication factor have been addressed conservatively. PSE&G concluded that the maximum SFP neutron multiplication, with the addition of the maximum density racks, will not exceed the subcritically limit of Keff less than or equal to 0.95.

The increase in decay time prior to refueling operations reduces the initial heat load and SFP cooling equipments. The addition of new racks and associated spent fuel will produce an incremental heat load in the SFP. However, analysis has shown that the existing SFP cooling system is sufficient to absorb this incremental heat load. The peak bulk pool temperature will be maintained below the threshold value to preclude bulk boiling. The incremental heat load does not alter SFP cooling safety considerations from those previously reviewed and found acceptable.

Rack impact analysis was performed to investigate possible impact during seismic events (i.e., rack-to-rack and rack-to-wall impacts). The analysis concluded that the proposed SFP modification does not result in rack-to-rack impact in the cellular region or rack-to-wall impact during postulated seismic events.

The basic SFP reracking technology has been reviewed and approved by the NRC in numerous applications for spent fuel capacity increases. The safety function and operation of the SFP cooling system, makeup, and structural systems are unchanged by the modification. No new failure modes are created.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The safety function of the SFP and the racks is to preclude inadvertent criticality in a safe, specifically designed, underwater storage location for spent fuel assemblies that require shielding and cooling during storage and handling. The NRC Staff has established that the issue of margin of safety, when applied to reracking modifications, should address the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material, and structural considerations.

Assessment in these areas assures that the SFP and racks will withstand specified design conditions, without impairment of the structural integrity or performance of required safety functions.

The criticality analysis confirms that the new and existing rack designs meet the NRC acceptance criterion of Keff less than or equal to 0.95 under all conditions. The criticality analysis methods conform to applicable industry codes, standards, specifications and NRC guidance.

Keff calculations include uncertainties at a 95%/95% probability confidence level. Thus, the proposed amendment does not involve a significant reduction in the nuclear criticality margin of safety.

Conservative methods and assumptions were used to calculate the maximum fuel temperature and the increase in SFP water temperature. The thermal-hydraulic evaluation employed methods previously used to evaluate existing spent fuel racks. The results demonstrate that the temperature margins of safety are maintained. The proposed modification, with the fuel inventory, will increase the heat load in the SFP. However, the decay time prior to refueling operations was increased from 100 to 168 hours to reduce the initial SFP cooling requirements. Evaluation results indicate that the existing SFP cooling system can maintain the bulk pool water temperature at or below 149 F under normal discharge scenarios. The maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. Maximum local water temperatures, along the hottest fuel assembly, remain below the nucleate boiling condition. While no nucleate boiling is indicated for the standard storage condition, an assumption of 50% cell blockage results in a possible highly localized two-phase condition near the top of the fuel. Fuel clad thermal stresses remain less than 7000 psi, which is considerably lower than the endurance limit of the clad material. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or SFP cooling.

Maintaining the spent fuel assemblies in a safe configuration during normal and abnormal loadings is the primary safety function of the SFP and racks. Abnormal loading associated with an earthquake, a spent fuel assembly drop, or the drop of any other heavy object were considered. The mechanical, material, and structural design of the new spent fuel racks complies with applicable portions of the NRC OT Position Paper. Rack materials are compatible with the spent fuel pool environment and the spent fuel assemblies. The structural assessment of the new racks concluded that tilting and deflection or movement will not result in impact in the active fuel region during postulated seismic events. In addition, the spent fuel assemblies remain intact with no criticality concerns. Thus, there is no significant reduction in the margin of safety for mechanical, material and structural considerations.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d)

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) to 10 CFR 2.1101 *et seq*. Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer shall grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated April 28, 1993, and revisions to this submittal dated August 12, 1993, November 17, 1993 and February 2, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of February 1994.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5026 Filed 3–3–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statements of Claimed Railroad Service and Earnings.

(2) *Form(s) submitted:* UI–9, UI–23, ID–4F, ID–4U, ID–4X, ID–4Y, ID–20–1, ID–20–2, ID–20–4, ID–20–5, ID–20–7.

(3) *OMB Number:* 3220–0025.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number or respondents:* 5,725.

(9) *Total annual responses:* 5,725.

(10) *Average time per response:* .10096 hours.

(11) *Total annual reporting hours:* 578.

(12) *Collection description:* When the railroad service and/or compensation on the RRB's records is insufficient to qualify a claimant for unemployment or sickness benefits, the statements obtain information needed to reconcile the compensation and/or service on record with that claimed by the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and

Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–4971 Filed 3–3–94; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Red Rocks Centre and Springfield Green, Jefferson County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Red Rocks Centre, located in Morrison, and Springfield Green, located in Lakewood, Jefferson County, Colorado, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until June 2, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Jerry Williams, Resolution Trust Corporation, Valley Forge Field Office, P.O. Box 1500, Valley Forge, PA 19482–1500, (800) 782–6326; Fax (610) 650–0881.

SUPPLEMENTARY INFORMATION: The Red Rocks Centre property is located in southwest metropolitan Denver within the City of Morrison. The site contains wetlands, intermittent streams, undeveloped floodplains, and is adjacent to Bear Creek Park which is managed by the U.S. Army Corps of Engineers. The Red Rocks Centre property consists of approximately 170.4 acres of undeveloped land comprised of two tracts located north of Morrison Road. The site contains three small ravines and the topography drops sharply from the southern end to the north into a meadow area. The Red Rocks Centre property is located within ½ mile of the South Dinosaur Open Space Park and one mile from the Green Mountain Open Space Park managed by Jefferson County.

The Springfield Green property is located in southwest metropolitan Denver within the City of Lakewood. The site contains wetlands, has recreational value, and is adjacent to the Hayden Green Mountain Park managed by the City of Lakewood. The Springfield Green property consists of approximately 231.4 acres of undeveloped land comprised of 16 irregular shaped lots located south of Alameda Parkway. The site is moderately sloped with some steeper ravines. These properties are covered properties within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before June 2, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]

Federal Register Publication Date: _____ [insert **Federal Register** publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subject: Environmental protection.

Dated: February 28, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–4945 Filed 3–3–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33679; File No. SR–DTC–94–01]

Self-Regulatory Organization; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating To the Implementation of the Standing Instruction Database Feature of the Enhanced Institutional Delivery System

February 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 31, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of procedures for the Standing Instructions Database ("SID") feature of DTC's enhanced Institutional Delivery ("ID") system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The enhanced ID system concept was approved in an earlier Commission order. The order specified that each individual feature of the enhanced ID system would be the subject of a separate filing under Section 19(b)(1). Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving concept of enhanced ID system).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SID is a central repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information includes items such as the agent for an institutional customer, the agent's internal account number for the institutional customer, and interested parties. A broker-dealer can link its internal account numbers for its institutional customers to the internal account numbers at the institutions. When entering trade data into the ID system, a broker-dealer can simply refer to its internal account number in SID, and the ID system will extract the necessary information from SID (such as customer name, agent, interested parties, and settlement related information) and automatically will add the information to the confirmation. SID will eliminate the need for the broker-dealer to provide all such information each time that the broker-dealer enters trade data into the ID system.

SID is an optional feature for ID users. However, once a broker-dealer links its internal customer account number with account information furnished to SID by the institutional customer, data in SID will be used for certain fields in ID system processing, regardless of whether the broker-dealer submits data for those fields, when the broker-dealer submits trade data for that institutional customer's trades.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposed rule change will further automate the process by which securities transactions are cleared and settled.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

SID has been developed through widespread consultations with securities industry members. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–94–01 and should be submitted by March 25, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4998 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33663; File No. SR–GSCC–93–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Conditions for the Release of Confidential Data

February 23, 1994.

I. Introduction

On June 18, 1993, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the release of confidential data. Notice of the proposed rule change was published in the **Federal Register** on August 10, 1993.[2] On December 30, 1993, GSCC filed with the Commission an amendment ("Amendment No. 1") to the proposed rule change. Notice of Amendment No. 1 was published in the **Federal Register** on January 20, 1994.[3] No comments were received. This order approves the proposed rule change.

II. Description

Currently, GSCC Rule 29 provides that, absent valid legal process, GSCC will release clearing data[4] that is identifiable as to a member only to (1) that member, (2) the Commission upon request, (3) another self-regulatory organization, and (4) an "appropriate regulatory agency" as defined in Section 3(a)(34) (C) of the Act with regard to a member that is primarily regulated by such agency. The proposed rule change amends GSCC Rule 29 to permit GSCC to release clearing data to the Federal Reserve Bank of New York ("FRBNY") and to other third parties that perform a regulatory or oversight function related to the government securities marketplace.

An agreement between GSCC and the FRBNY controls the release of data to the FRBNY. The FRBNY has agreed to maintain member specific information in confidence, subject to certain exceptions. The FRBNY may share GSCC data with the members of the Interagency Working Group on Market

[1] 15 U.S.C. 78s(b) (1990)

[2] Securities Exchange Act Release No. 32710 (August 2, 1993), 58 FR 42584.

[3] Securities Exchange Act Release No. 33464 (January 12, 1994), 59 FR 3142.

[4] Clearing data is defined essentially to include any data relating to a member's trading activity that is held or produced by GSCC.

Surveillance[5] and may release GSCC data as required by law. The FRBNY also has agreed to follow certain procedures should third parties attempt to obtain release of GSCC data through the FRBNY.[6]

Before releasing data to third parties that perform a regulatory or oversight function related to the government securities market, GSCC must determine, and the Membership and Standards committee of the Board of Directors of GSCC must concur, that the following five conditions have been met. The requesting party must show a legitimate need for such data related to its market regulatory or oversight function. The data released by GSCC will be used solely for market regulatory or oversight purposes. The requesting party must make the request in writing and with sufficient specificity. With respect to member specific data, the member must be notified of the request and be given the opportunity to present GSCC with any objections to the release of data.[7] Finally, with respect to member specific data, the requesting party must show that it unsuccessfully attempted to obtain the data directly from the member.[8]

III. Discussion

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency be designed to protect investors and the public interest. The proposed rule change serves this goal by enhancing the surveillance of the government securities market.

As discussed in the Joint Report on Government Securities ("Joint Report"),[10] adequate surveillance of the government securities market is necessary to detect manipulation and address disorderly market conditions. In order to provide coordinated surveillance, the FRBNY was selected to collect and analyze a range of market data, which is transmitted promptly to the Federal Reserve Board, the Treasury, and the Commission. The FRBNY collects information from a variety of sources, including automated systems operated by vendors, daily telephone surveys of primary dealer operations, and weekly and daily reports of dealers. Their efforts provide additional safeguards to the government securities market. In addition, other government organizations have had the need to study the government securities market in order to evaluate suspicious activity in the market. GSCC, by providing data necessary to evaluate market activity, assists these organizations in the performance of their functions. Thus, the amendment furthers the protection of investors and the public interest.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, and particularly with Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4929 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[5] The Interagency Working Group on Market Surveillance is composed of representatives from the FRBNY, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the United States Department of the Treasury ("Treasury"), the Commission, and the Commodity Futures Trading Commission ("CFTC"). The FRBNY will provide each member of the working group with a copy of the agreement with GSCC and request confirmation that the other members will follow the procedures contained in that agreement.

[6] If the FRBNY is presented with a request under the Freedom of Information Act ("FOIA") (5 U.S.C. 552 (Supp. I 1993)), the FRBNY will decline requests for member specific information to the extent that the information is exempt from FOIA. If a FRBNY determination under FOIA is appealed, the FRBNY will notify GSCC to permit GSCC to raise an objection. If the information is requested under a subpoena or other form of legal process, the FRBNY will notify GSCC, if not prohibited by law. The FRBNY, however, will make its own determination whether it is required to comply with the disclosure request under the subpoena.

[7] This prerequisite does not apply if valid legal process prohibits GSCC from informing the member of the request for data.

[8] This prerequisite does not apply if valid legal process prohibits GSCC from informing the member of the request for data.

[9] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[10] U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, and Securities and Exchange Commission, Joint Report on the Government Securities Market (January 1992).

[Release No. 32698A; File No. SR–NYSE–93–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change; Correction

February 28, 1994.

In FR Document No. 93–18600, beginning on page 41539 for Wednesday, August 4, 1993, several sentences were incorrectly stated. The sentences below should be changed to clarify that the Series 7A Examination is applicable to floor members whose public business is limited to accepting orders from professional customers for execution on the trading floor. The first change below, however, should be made so that the sentence correctly cites the language deleted from the proposal.

The first sentence of footnote 3 in Column 1 on page 41540 is corrected to read " The NYSE deleted "generally" from Rule 345, Interpretation .02 in order to clarify that the intent of the proposed interpretation is that the Series 7(a) Examination is applicable to floor members engaged in public business with professional customers."

Column 1, page 41540, 8th line after the heading "I. Proposal" insert the word "public" after the word "accept".

Column 2, page 41540, the 13th line add the word "public" to the end of the line after the word "whose".

Column 1, page 41541, 23rd of line of the second full paragraph remove the word "solely" from the last sentence before the heading "IV. Conclusion".

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4930 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33686; File No. SR–NYSE–88–14]

Self-Regulatory Organizations; New York Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialist Post Wires

February 25, 1994.

I. Introduction

On April 25, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit a specialist unit, with Exchange approval, to use the telephone line at its trading post location to enter options or futures hedging orders through a member on the floor of an options or futures exchange. The proposed rule change was published for comment in Securities Exchange Act Release No. 25694 (May 12, 1988), 53 FR 17812 (May 18, 1988). No comments were received on the proposal.

II. Description of the Proposal

The Exchange proposes to amend NYSE Rule 36.30 which currently permits a specialist unit, subject to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

Exchange approval, to maintain a telephone line at its trading post location on the Floor to enable the unit to communicate with its off-Floor office or clearing firm. In addition the Rule prohibits the use of such telephones for the purpose of transmitting to the NYSE Floor orders for the purchase or sale of securities, but permits the use of the telephones to enter options or futures hedging orders (*i.e.*, orders entered to offset the risk of making a market in the underlying speciality stock) through the specialist unit's off-Floor office or clearing firm. The proposed amendment will add language to the Rule to expand permitted usage of telephone lines at the specialist posts to include, with Exchange approval, the entry of a specialist unit's options or futures hedging orders "through a member (on the floor) of an options or futures exchange."

III. Discussion

The adoption by the NYSE of subsection .30 to rule 36, along with other amendments to the rule, codified the Exchange's policy concerning members' use of telephones on the Floor that can be used to communicate with non-members located off-floor.[3] Such communication is permitted with certain specifically enumerated restrictions.[4]

The instant proposed rule change will amend subsection .30 by adding language that will enable a specialist unit to use a telephone linkage at the specialist post to enter options or futures hedging orders through a member (on the floor) of an options or futures exchange. This would be in addition to the current language of subsection .30 which permits entry of such orders through a telephone linkage to the specialist unit's off-floor offices or its clearing firm. The NYSE states that the purpose of this amendment is to provide a faster means for specialists to enter options or futures hedging orders and to expand a specialist's ability to enter such orders from its post location on the Exchange floor directly with a member on the floor of an options or futures exchange.

The Commission, in originally approving the use of options by specialists for hedging their specialty stocks, was sensitive to concerns over the potential for specialist frontrunning,[5] tape racing, or other abuses arising from the specialist's informational advantage.[6] In order to allay these concerns, the NYSE rule permitting options hedging by specialists places restrictions on the size, timing and purpose of the options transactions.[7] The proposal being approved does not affect the restrictions currently in place for placing options orders. The proposal only provides a more efficient means for specialists to relay hedging orders to options and futures exchanges. Further, the NYSE has implemented surveillance procedures to monitor specialists' use of options to ensure they are consistent with these restrictions. For example, specialists are required to submit Form 81–O to report their options transactions.[8] With respect to futures hedging orders, the NYSE through an agreement with the Chicago Mercantile Exchange, which currently trades futures on the Standard & Poor's ("S & P") 500, Midcap 400 and the Major Market Index, exchange information relating to futures transactions on these indexes in addition to options on any of the aforementioned index futures and stock programs.[9]

IV. Conclusion

The Commission has reviewed closely the proposed NYSE rule change and believes that it is consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commission believes that the proposed rule change is consistent with the requirement of section 6(b)(5) of the Act in that it will facilitate transactions in securities by providing specialists with the ability to hedge their positions more rapidly by enabling them to communicate directly with a member on the floor of an option or futures exchange. The current process, which forces the specialist to route a hedging order through an off-floor office or clearing firm, can make the execution of the hedging order more cumbersome and less timely. By improving the process by which specialists can transfer the risk of their market making responsibilities, specialists would be better able to fulfill these responsibilities.

Finally, the Commission believes that any potential for frontrunning, tape racing, or other abuses by specialists that may be created by the proposed rule change is minimal, due in most part to the restrictions placed on the specialists' options activity and the NYSE surveillance. In addition, as noted above, the NYSE has some access through its agreement with the CME, and as an ISG member, to receive information on orders entered by the specialist on stock index futures and options on stock index futures that should allow it to surveil for potential abuses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–88–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4999 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33692; File No. SR–Phlx–94–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Net Capital Requirements in Rule 703

February 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 28, 1994, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the

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[3] See Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988). Prior to the adoption of these amendments, rule 36 regulated the establishment of communication links only between a member or member organization's offices and the Exchange Floor.

[4] These restrictions include a ban on portable phones on the Exchange floor. On August 19, 1988, a petition for review of the Commission's June 23 Order approving SR–NYSE–87–18 was filed by William J. Higgens, a NYSE member, in the United States Court of Appeals for the Second Circuit. Petitioner Higgens objected to the Second Circuit. Petitioner Higgens objected to the Commission's approval of that portion of the NYSE's proposal that prohibits members from using portable telephone son the Exchange floor. On January 20, 1989, the Court of Appeals issued a decision rejecting Higgins' objections and affirming the Commission's June 23 Order. See *Higgins* v. *SEC*, 866 F.2d 47 (2nd Cir.

[5] With respect to futures, the Commission notes that the NYSE has adopted a policy that prohibits intermarket frontrunning between the NYSE equities market and any futures exchange. See Securities Exchange Act Release No. 27047 (July 19, 1989), 54 FR 31131.

[6] See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985).

[7] See NYSE Rule 105 and the NYSE's "Guidelines for Specialists Specialty Stock Option Transactions Pursuant to Rule 105."

[8] See NYSE Rule 104A.50 (requirement that specialists submit options data trading reports).

[9] We also note that surveillance information is also shared through the Intermarket Surveillance Group ("ISG"). ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, CME & CBT) joined the ISG as affiliate members in 1990.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Rule 703 (Financial Responsibility and Reporting) to correspond to recent Commission amendments to SEC Rule 15c3–1 ("SEC Net Capital Rule").[1] Pursuant to these amendments to the SEC Net Capital Rule, all specialists, except options market makers, who are currently exempt from the net capital requirements of Rule 703, will be subject to a minimum net capital requirement of $100,000.[2] As a result, the Exchange believes that the amendments to the SEC Net Capital Rule require the deletion of Phlx Rule 703(a) (iii), (iv), and (v). Currently Rule 703 (a) (iii), (iv), and (v) impose a minimum net liquid asset[3] requirement of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms which are both equity and options specialists.

The Exchange also proposes to amend Rule 703 to require each member organization and participant organization to notify the Exchange if it fails to maintain the minimum net capital required by the SEC Net Capital rule or it fails to maintain liquid assets in accordance with Phlx Rule 703. Specifically, the Exchange is proposing to add a new paragraph (v) to Phlx Rule 703(a) which would require a member organization or participant organization to promptly notify the Exchange if it ceases to be in compliance with the SEC Net Capital Rule or Phlx Rule 703(a) (iii) or (iv) (*i.e.*, former sections (a)(vi) or (a)(vii)).

Lastly, the Phlx proposes to amend paragraph (c)(vi) of Rule 703 to add the requirement that a floor broker's clearing agent guarantee orders entrusted on the floor with that floor broker, in addition to transactions and balances carried in the account.

[1] See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

[2] In addition, for certain purposes under the SEC Net Capital Rule, certain specialists will be exempt from the application of the rules haircut and undue concentration charges with respect to their specialty securities. *Id.*

[3] "Net liquid assets" is defined in Phlx Rule 703(b).

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments to received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 11, 1993, the Commission adopted amendments to its rules regarding minimum net capital requirements for broker-dealers. Specifically, the amendments to the SEC Net Capital Rule make all specialists, except options market makers, that previously were exempt from this rule under subparagraph (b)(1), subject to the rule. The amendments to the SEC Net Capital Rule will become effective on April 1, 1994.

The Phlx represents that the amendments to the SEC Net Capital Rule will have the following effects on Phlx specialists: instead of the current minimum net liquid assets requirements under Phlx Rule 703(a) of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms that act as both equity and options specialists, the SEC's minimum net capital requirement of $100,000 for dealer's would apply. As a result, existing paragraphs (iii)–(v) of Phlx Rule 703(a) are proposed to be deleted. Certain aspects of both the SEC Net Capital Rule and Rule 703 remain unchanged. Options market makers, who remain exempt from the net capital rule, continue to be subject to the financial requirements of Phlx Rule 703. New paragraph (a)(iii), which was previously paragraph (a)(vi), requires $25,000 in net liquid assets for market makers without a letter of guarantee; and new paragraph (a)(iv), which was previously paragraph (a)(vii), requires market makers with a letter of guarantee issued by a clearing member organization to maintain positive equity. In addition, Rule 703(a)(ii) continues to require net liquid assets of $25,000 upon admission.

With respect to the proposed notification requirement, new paragraph (v) of Rule 703(a) would require notification to the Exchange if a member organization or participant organization falls below the net capital requirement of the SEC Net Capital Rule or paragraphs (iii) or (iv) of Phlx rule 703(a).[4] Currently, Commission Rule 17a–11 requires, among other things, prompt telegraphic notice to a broker-dealer's designated examining authority, as well as the SEC, when a broker-dealer falls below its minimum net capital requirement pursuant to the SEC Net Capital Rule. This rule does not apply to options market makers, because they are exempt from the SEC Net Capital Rule. The Exchange's proposed notification provision would apply to all member organizations and participant organizations, including options market makers.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest, by amending Phlx Rule 703 to correspond to the Commission's recent amendments to the SEC Net Capital Rule. The Exchange also believes that the requirement that a floor brokers' clearing agent guarantee orders entrusted on the floor with that floor broker should promote just and equitable principles of trade as well as protect investors and the public interest by promoting liquidity and confidence in the credibility of floor broker orders, consistent with Section 6(b)(5) of the Act. In addition, the Exchange believes that the proposed notification requirement should prevent fraudulent and manipulative acts and practices and protect investors and the public interest by providing the Exchange with the ability to respond promptly to such notification, especially respecting options market makers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[4] A similar rule is in effect at the Chicago Board Options Exchange, Inc. ("CBOE"). See CBOE Rule 13.2.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–Phlx–94–04 and should be submitted by March 25, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5000 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 35–25994]

Filings Under the Public Utility Holding Company Act of 1935 ["Act"]

February 25, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 21, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy Initiatives, Inc. (70–8179)

Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 ("EII"), an indirect subsidiary of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a), and 10 of the Act and rule 50(a)(5) thereunder to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rule 45 thereunder.

By order dated September 7, 1993 (HCAR No. 25876) ("Order"), the Commission authorized EII to, among other things, acquire up to 3,000 shares of common stock ("Stock"), for a purchase price of $2,500 per share, of a nonassociate corporation ("Cogen Corp") engaged in the business of developing, owning and operating power projects in the United States and in foreign countries. Power projects may be qualifying facilities, exempt wholesale generators, or foreign utility companies.

In accordance with the Order, EII entered into a stock purchase agreement ("Stock Purchase Agreement") and related agreements and acquired 824 shares of class D voting common stock and 176 shares of class C nonvoting common stock from Cogen Corp. The Stock Purchase Agreement also provides that, subject to receipt of further Commission authorization, EII would purchase up to an additional 400 shares of Cogen Corp. class C nonvoting common stock, in order to provide Cogen Corp. with additional equity capital.

EII now seeks to acquire, from time to time through July 1, 1996, the additional 400 shares of class C nonvoting common stock ("Additional Shares"), $2,500 per share, for $1 million. The proceeds of the sale of the Additional Shares would be used by Cogen Corp. to fund ongoing project development expenses. EII's ownership of the Additional Shares would, together with the 3,000 shares of Stock authorized in the Order, be subject to terms and conditions of a stockholders agreement that delineates the powers of the shareholders of Cogen Corp.

As described in the Order, EII has an obligation to acquire, from time to time through July 1, 1996, an additional 2,000 shares of Stock. As security for that obligation, EII has deposited $2.5 million in cash into an escrow account. However, under the Stock Purchase Agreement, EII may substitute an irrevocable bank letter of credit ("LOC") for the cash escrow. EII represents that use of an LOC for this purpose may be less expensive than cash collateral.

Accordingly, EII proposes to enter into a letter of credit reimbursement agreement with a bank, which would provide an LOC to Cogen Corp. The reimbursement agreement would obligate EII to repay the issuing bank in the event of any draw on the LOC. The LOC would have a maximum fact amount of $2.5 million. Drawings on the LOC would bear interest at a rate not more than 5% above the prime rate as in effect from time to time. EII may be also required to pay fees not to exceed 1% annually of the LOC face amount. The LOC would have a final maturity of not later than July 1, 1996.

Ohio Valley Electric Corporation, et al. (70–8337)

Ohio Valley Electric Corporation ("OVEC") and Indiana-Kentucky Electric Corporation ("Indiana-Kentucky"), both located at P.O. Box 468, Piketon, Ohio 45661 and both electric public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding

company, have filed a declaration under Sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Indiana law requires that permitees of a solid waste landfill in the state satisfy certain financial responsibility standards. To satisfy such standards for its fly ash landfill at the Clifty Creek Plant, Indiana-Kentucky proposes to enter into a reimbursement agreement in connection with the issue of a letter of credit. The letter of credit would not exceed $10 million and would be for a one year term then renewable annually. Drawings under the letter of credit would bear interest at not more than two percent above the bank's prime rate. Indiana-Kentucky may pay an annual fee which would not exceed one percent of the face amount of the letter of credit.

OVEC proposes to indemnify the bank issuing such letter of credit for any payments, or to guarantee the obligation of Indiana-Kentucky to reimburse the bank of such payments. OVEC's obligation to the bank would be on the same terms as Indiana-Kentucky's obligation to the bank. OVEC would charge no fee to Indiana-Kentucky for such indemnity or guaranty.

EUA Energy Investment Corporation (70–8351)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts 02107, a non-utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

By order dated December 4, 1987 (HCAR No. 24515), as amended by order dated January 11, 1988 (HCAR No. 24515A) (collectively, "Orders"), EUA was authorized to organize and finance a new subsidiary corporation (named NewCo in the Orders, but chartered as EEIC) primarily for the purpose of participating in cogeneration and small power production facilities and in related activities. EEIC also was authorized to conduct certain energy or energy conservation research and to invest up to $2 million in the aggregate on such activities. Prior to acquiring an interest in any new business, EEIC is required to seek further Commission authorization.

EEIC proposes to invest a total of $275,000 to be paid as consideration for the acquisition of 9.9% of the common stock of Quality Power Systems, Inc., a Massachusetts corporation engaged in the manufacture, marketing and sale of uninterruptible power systems, utility interface front-end power supplies and other electric and electronic devices and equipment. EEIC further requests authorization to acquire without additional consideration such additional shares of the common stock of QPS as EEIC from time to time may be entitled to receive to maintain a 9.9% ownership interest in QPS.

EEIC also proposes to provide consulting services directly to QPS.

In accordance with a stock purchase agreement ("Stock Purchase Agreement") entered into on January 24, 1994, EEIC's investment would be used by QPS for the development and marketing of low harmonic distortion Uninterruptible Power Systems ("UPS") manufactured by QPS under a license to QPS by Digital Equipment Corporation ("DEC") pursuant to a license agreement between QPS and DEC. The Stock Purchase Agreement also imposes several affirmative obligations upon QPS to provide EEIC with certain financial and other reports, and it includes several negative covenants restricting the ownership and control of QPS.

The primary purpose of the UPS is to improve the quality of power supplied by an electric utility provider to its customers by reducing harmonic distortion at the interconnection between the utility and its customers. QPS achieves such quality enhancement using DEC's HA6000 product, a system developed by DEC to satisfy new requirements being imposed on power line conditioning equipment and uninterruptible power supplies by International Safety and Electrical Manufacturing Compliance Standards.

It is stated that use of the HA6000 technology will permit electric utilities in the New England region to reduce harmonic distortion in an extremely cost efficient manner by directing corrective attention specifically to customers whose equipment contributes to harmonic distortion at utility interconnections and by providing such customers with the lowest available rates on low maintenance modular units customized to such customers' respective needs. Customers who have no power quality complaints will not be required to contribute to such corrective efforts, yet will benefit from improved power servicing due to anticipated reductions in electric utilities' capacity requirements costs upon implementation of the HA6000 systems.

It is also stated that EEIC and QPS believe that the increasing use of automation for demand side and load management of energy needs and the proliferation of computers and other sensitive electronic equipment used by customers of electric utilities will necessitate enhanced reduction of harmonic feedback into the distribution systems of electric utilities.

Upon Commission approval of the proposed transactions, EEIC will enter into a stockholders agreement with QPS providing for EEIC's designation of one out of six director positions on the board of directors of QPS, with any vacancy in such position to be filled only by a subsequent designee of EEIC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4931 Filed 3–3–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1952]

United States International Telecommunications Advisory Committee; Meeting

The Department of State announces that an Ad-Hoc Working Group for the ITU Plenipotentiary Conference of the United States International Telecommunications Advisory Committee (ITAC) is holding meetings to prepare for the ITU Plenipotentiary Conference to be held September 19 to October 14, 1994 in Kyoto. Meetings will be held on March 8, April 4 and 26, 1994, at 10:30 am in room 1406, and on May 25, 1994 at 10:30 am in room 1105. All four of these meetings will take place at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agendas of the meetings will include discussions of issues pertaining to the Kyoto Plenipotentiary Conference, preparation for bilateral discussions on conference issues, administrative matters related to U.S. participation in the conference, and any other matters that may arise regarding preparation for the Plenipotentiary Conference.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of those interested in the ITU Plenipotentiary Conference issues, and wish to attend please call 202–647–0201—(fax 202–647–7407) not later 5 days before the meeting. Enter from the C Street Lobby. A picture ID will be required for admittance.

Dated: February 15, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU-Telecom Sector.

[FR Doc. 94–4972 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–45–M

Office of the Secretary

[Public Notice 1960]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travellers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemptions were in the national interest. The restriction was extended for additional one year periods on February 18, 1992 and February 23, 1993.

Although armed hostilities have ended, conditions in Iraq remain unsettled and hazardous. Regional conflicts continue in northern Iraq between Kurdish ethnic groups and Iraqi security forces. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions. Basic modern medical care and medicines may not be available to our citizens in case of emergency.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi border have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate.

In light of these circumstances, I have determined that Iraq continues to be a country "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991 who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner revoked or extended by Public notice.

Dated: February 26, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–4979 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–10–M

Office of the Under Secretary for Economic and Agricultural Affairs

[Public Notice 1954]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Lakehead Pipe Line Company, Limited Partnership (Lakehead), for a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct, connect, operate, and maintain at the U.S.-Canadian border near Neche, North Dakota a pipeline carrying crude oil and natural gas liquids. Lakehead Pipe Line Company, Limited Partnership, is a Delaware-limited partnership, with its principal office located in Duluth, Minnesota. The proposed new pipeline would be constructed in the right of way occupied by three existing oil pipelines owned and operated by Lakehead.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–4557.

Dated: February 7, 1994.

Joan E. Spero,

Under Secretary of State.

[FR Doc. 94–4973 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–07–M

Office of the Assistant Secretary for Economic and Business Affairs

[Public Notice 1953]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from MG Industries, Inc., for a permit, pursuant to Executive Order 12847 of May 17, 1993, to construct, connect, operate, and maintain at the U.S.-Mexican border near Otay Mesa Border Station, California, a pipeline carrying liquid argon. MG Industries, Inc. is a Delaware corporation with headquarters in Valley Forge, Pennsylvania, that manufactures and markets industrial gasses. MG Industries is a wholly owned subsidiary of Messer Griesheim GmbH, a German corporation with its principal office in Frankfurt, Germany. The proposed new pipeline would be constructed in the right of way occupied by two existing pipelines carrying liquid oxygen and liquid nitrogen that are owned and operated by MG Industries.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Donald E. Grabenstetter, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–4557.

Dated: February 8, 1994.

Daniel K. Tarullo,

Assistant Secretary of State.

[FR Doc. 94–4974 Filed 3–3–94; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Accelerated Schedule of Duty Elimination for Certain Goods Imported From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of effective date of previously proclaimed accelerated duty elimination under the United States-Canada Free-Trade Agreement.

SUMMARY: Presidential Proclamation 6579 of July 4, 1993 (58 FR 36839), implemented an accelerated schedule of duty elimination for certain goods originating in the territory of Canada pursuant to the United States-Canada Free-Trade Agreement. Section B of the

Annex to that Proclamation directed the U.S. Trade Representative to specify the effective date for the duty elimination on enumerated goods, to coincide with the date of implementation of the North American Free Trade Agreement (NAFTA), and to publish a notice in the **Federal Register**. The NAFTA entered into force between the United States and Canada on January 1, 1994.

Accordingly, notice is hereby given that the provisions of section B of the Annex to Proclamation 6579 are effective with respect to goods of Canada, under the terms of general note 12 to the Harmonized Tariff Schedule of the United States, that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202–355–3412).

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 94–4948 Filed 3–3–94; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 25, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49427.

Date filed: February 22, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 22, 1994.

Description: Application of Great Western Air, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 49181.

Date filed: February 24, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1994.

Description: Amendment No. 1 to the Application of Sportsflight Airways, Inc. pursuant to Section 401(d)(1) of the Act and subpart Q of the Regulations to engage in interstate and overseas air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4925 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Cities of Aberdeen and Hoquiam, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway construction project in Grays Harbor County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, 711 South Capitol Way, suite 501, Olympia, WA 98501, telephone: (206) 753–9555; or Gary Demich, District Administrator, District 3, Washington State Department of Transportation, P.O. Box 7440, Olympia, WA 98504, telephone: (206) 357–2659.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department will prepare an environmental impact statement (EIS) on a proposal to improve State Route 101 (SR 101) in Grays Harbor County, Washington. The proposed project would select and adopt a new highway alignment through the cities of Aberdeen and Hoquiam. The new alignment would begin at the intersection of State Route 12 (SR 12) and terminate at the intersection with State Route 109 (SR 109), a distance of approximately 8 miles.

This highway improvement is considered necessary to alleviate congestion, decrease delays, and improve safety. The SR 101 corridor through Aberdeen and Hoquiam is the main route between the metropolitan Puget Sound region, the Pacific Ocean beaches and the western Olympic Peninsula, leading to extremely high traffic volumes during peak tourist periods. Due to poor roadway geometrics, inadequate signal coordination, high volumes of port related truck traffic, and under utilization of the designated truck by-pass through the port industrial area, operational conflicts between heavy trucks and other vehicles result in severe congestion and delays. Accident rates are abnormally high through the Central Business District due to conflicts between through traffic and vehicles utilizing on-street parking. There are no alternate routes through the corridor. The proposed improvement would resolve congestion and safety concerns by improving truck access to Grays Harbor port facilities and providing an alternate corridor for through traffic.

Alternatives currently under consideration include (1) no action; (2) limited improvements to the existing alignment, (3) two which would construct a new Hoquiam River Bridge crossing with limited improvements to the existing alignment, (4) three separate new alignment alternatives, and (5) a multi modal alternative. Incorporated into and studied with the various alternatives will be design variations for new bridges over the Wishkah and Hoquiam Rivers and completion of the SR 101/SR 12 Interchange.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. These will also be sent to affected Indian Tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. Scoping meetings will be held in Aberdeen on March 23rd and 24th, 1994. Additional public meetings will be held prior to the release of the Draft EIS on the project. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments on the EIS. Public notice will be given of the time and place of these future meetings and the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure this, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed

action and the EIS should be directed to the FHWA at the address and phone number provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 23, 1994.

José M. Miranda,

Environmental Program Manager, Federal Highway Administration, Washington Division.

[FR Doc. 94–4975 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Lafayette and Ray Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lafayette and Ray Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Program Review Engineer, Federal Highway Administration, Division Office, P.O. Box 1787, Jefferson City, MO 65102 Telephone: (314) 636–7104; or Bob Sfreddo, Division Engineer, Design Division, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102 Telephone: (314) 751–2876.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Missouri Highway and Transportation Department, will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Route 13 in Lafayette and Ray Counties, Missouri. The proposed improvement would involve the reconstruction of Route 13 between the towns of Lexington and Richmond for a distance of approximately 13 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the replacement of an existing deficient bridge across the Missouri River and the construction of a new interchange with U.S. Route 24. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) improvement of the existing two-lane roadway to four lanes; (4) constructing a four-lane limited access highway on new location, and (5) constructing a four-lane fully access controlled highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

A scoping process has been initiated that is involving all appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings are being held to obtain comments from the local and regional community. The first meeting was held in Lexington in early January and was followed by a second meeting in early February, 1994. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MHTD at the addresses provided above.

Issued: February 18, 1994.

Donald L. Neumann,

Program Engineer, Jefferson City, Missouri.

[FR Doc. 94–4976 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Sumter County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Sumter County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve a segment of U.S. Highway 80 in Sumter County, Alabama. The improvements begin near the Alabama/Mississippi State Line at an existing four-lane road and extend approximately 33 kilometers (20.5 miles) to Alabama State Route (SR) 28 west of the Tombigbee River. U.S. 80 east of SR 28 is a two-lane facility on existing four lane right-of-way.

The improvements to the travel corridor are considered necessary to provide for the existing and projected traffic demand. The type of roadway being considered is a four-lane controlled access freeway. Alternatives under consideration include: (1) Alternate route locations, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A scoping meeting will be held in the Hightower Community Center, 615 Second Avenue, York, Alabama. The program will begin at 1:30 p.m. Central Standard Time on Thursday, March 3, 1994. A public involvement meeting will follow the scoping meeting. In addition, a public hearing will also be held. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1994.

Bill Van Luchene,

Acting Division Administrator, Montgomery, Alabama.

[FR Doc. 94–4949 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–29; Notice 2]

Am-Safe, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

Am-Safe, Inc. (Am-Safe) of Phoenix, Arizona, determined that some of its replacement seat belt assemblies fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," and filed an appropriate report pursuant to

49 CFR part 573, "Defect and Noncompliance Reports." Am-Safe also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 29, 1993, and an opportunity afforded for comment (58 FR 26032). This notice grants that petition.

Between January 1985 and the date it filed its petition, Am-Safe produced and distributed approximately 100,000 replacement seat belts which did not include the installation and maintenance instructions required by Standard No. 209.

Paragraph S4.1(k) of Standard No. 209, requires that:

> A seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *.

In addition, section S.4.1(1) requires that:

> A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened.

Am-Safe supported its petition for inconsequential noncompliance with the following:

No Evidence of Incorrectly Installed Seat Belts

> [Am-Safe believes] the simplistic mounting design of these seat belts make [sic] it improbable that any incorrect installations exist. Am-Safe, Inc. is unaware of any suggestions or allegations, in regards to motor vehicle safety, concerning seat belts that were incorrectly installed.

[Am-Safe Sophisticated Part Numbering System

> Seat belts are identified by a nine or ten digit part number. A typical seat belt part number is 502293–401–6. The 502293 defines the basic belt configuration such as a retractable or nonretractable lap belt. The –401 specifies the dimensions of [the] web and component cover lengths. The –6 is the color code when applicable. Permanently affixed labels have pertinent information to ensure the proper seat belt is ordered for replacement. This label includes the part number, manufacturing date, and name and phone number of the manufacturer. This accurate numbering system can be confidently used for proper seat belt replacement.

Simple Installation Procedures

> The seat belts in question are attached to the vehicle anchorage holes with existing mounting hardware. These assemblies require only one bolt for attachment of the buckle half and one bolt for the attachment of the connector half. The accomplish the installation of a replacement seat belt, the existing seat belt must first be removed from the vehicle. These steps are then reversed for proper installation of the replacement seat belt. The majority of these replacements are performed by individuals acquainted with seat belt installation, i.e.; seat manufacturers, transit but operators, and associated companies [which] perform seat belt installation on a regular basis. In addition, the design and construction characteristics of these seat belts reflect universal practices of operation and maintenance procedures.

Conclusion

> There is no evidence that any of the subject seat belts are incorrectly installed. These seat belts have been installed and are currently in service without incident making a recall impractical. The complex part numbering system used by Am-Safe, Inc. leaves little chance for error when ordering a replacement seat belt. In the majority of cases, installation was performed by companies with experienced [personnel] familiar with correct procedures. [In i]nstances where seat belts are knowingly distributed to the general public, Am-Safe, Inc. has always supplied appropriate instructions. [As a] result of this noncompliance, Am-Safe, Inc. now includes these instructions with all seat belts unless otherwise instructed by the vehicle manufactures. In conclusion, Am-Safe, Inc. believes that lack of instructions for seat belts that are currently in service is inconsequential as it relates to motor vehicle safety.

No comments were received on the petition.

With respect to the failure to provide installation instructions, the petitioner has argued that its parts ordering and shipping procedures ensure that the correct replacement parts are received by the dealer. Installation of the belts is a simple procedure, requiring only one bolt for the attachment of the buckle half and one bolt for the attachment of the connector half. These restraints are typically installed by persons who perform replacements on a regular basis. After reviewing these arguments, NHTSA concurs with them.

With respect to the failure to provide usage and maintenance instructions, the petitioner has argued that this information has always been provided with belts distributed to the general public. As for the belts covered by the petition, Am-Safe has concluded that since they are currently in service, lack of instructions for maintenance and use at this point is inconsequential as it relates to safety. With respect to this argument, NHTSA believes it more likely than not that instructions accompanying packaged belts will be discarded once the belts are installed. In addition, similar petitions from vehicle manufacturers have stated that maintenance and use instructions for belts are included in the operator's manuals of the vehicles in which the replacement belts have been installed. Given the fact that all seat belts must conform to Standard No. 209, NHTSA believes that there is such a sufficient similarity between belts of all manufacturers, whether used as original or replacement equipment, that the maintenance and use instructions in any specific vehicle operator's manual will be of general applicability.

For the foregoing reasons, the petitioner has met its burden of persuasion that the noncompliances herein described are inconsequential as they relate to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 28, 1994.

Barry Felrice,

Associated Administrator for Rulemaking.

[FR Doc. 94–4916 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the dates and locations of the next meetings and the agendas for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on April 7–8 in Chicago, Illinois. The April 7 portion of the meeting will be held at approximately 3:30 p.m. in a U.S. Customs Service conference room at O'Hare Airport. The April 8 business meeting of the Committee will be held at 9 a.m. at Motorola Corporation, Motorola Campus, 1297 East Algonquin Road, Schaumberg, Illinois.

The April 7 portion of the meeting, which will consist solely of briefings by

Customs officials regarding a pending study of Customs reorganization, will be closed. The portion of the April 8 meeting that will consist of a general discussion by Committee members of proposals for Customs reorganization, and their recommendations, will also be closed.

A subcommittee of the Advisory Committee will meet informally with representatives of the U.S. Customs Service reorganization team in the offices of Michael H. Lane, chairman of the reorganization team, at Customs Headquarters on March 21, 1994 to prepare for the discussion of reorganization at the Chicago session on April 7 and 8. This informal subcommittee meeting will also be closed.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: I hereby determine pursuant to 5 U.S.C. app. 2, 10(d) and Treasury Order No. 101–05 that the premature disclosure of the pending study and any proposals regarding the Customs Service's reorganization, would be likely to significantly frustrate the implementation of a proposed plan to reorganize the Customs Service. Therefore, it is in the public's interest that specific portions of the Committee's next meetings regarding the study and any proposals be closed as permitted by 5 U.S.C. 552b(c)(9)(B).

The Customs Reorganization Team has been soliciting and analyzing ideas for reorganizing the Customs Service to improve its efficiency and the quality of its service. These ideas are highly inchoate and have not received the endorsement of the Commissioner of Customs or the Treasury Department. The premature disclosure of this information would likely initiate speculation about site closings or site reductions resulting in precipitous actions by Customs Service employees and contractors as well as local residents and businesses. The premature disclosure of a proposal to close a site may cause site employees to relocate or resign and local contractors to eliminate services, thus frustrating the Customs Service's ability to later keep a site open when a reorganization plan is implemented.

The preliminary agenda to be considered during the meetings on April 7 and 8 1994 is as follows:

April 7, 1994: 3:30 p.m.: Customs Reorganization Team Findings (Closed Session).

April 8, 1994.

I. Closed Session (9 a.m.).

1. Customs Reorganization Team Findings.

II. Open Session (Approximately 11 a.m.).

1. North American Free Trade Agreement Implementation.

2. Customs Modernization Act Implementation.

2. Briefing and Discussion of U.S. Textile Program after the Uruguay Round with Ms. Rita Hayes, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, U.S. Department of Commerce.

With the exception of the closed portion indicated, the April 8 meeting is open to the public. However, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Theresa Manning at (202) 622–0220 no later than April 1, 1994. Details and confirmation of meeting room and time may be obtained from Ms. Manning.

Dated: March 1, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–5022 Filed 3–3–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Monday, March 21, 1994, at Techworld Plaza, 801 I Street, NW., Washington, DC. The meeting will be held in Room 946.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 535–7293, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to March 14, 1994.

Dated: February 17, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4960 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of System of Records—Veterans Mortgage Life Insurance-VA (53VA00)

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of system of records.

Notice is hereby given that the Department of Veterans Affairs (VA) is revising certain paragraphs in the system of records entitled, "Veterans Mortgage Life Insurance-VA" (53VA00) which is set forth on page 959 of the **Federal Register** Publication, "Privacy Act Issuances, 1991 Compilation, Volume II." The System Location, Routine uses of records maintained in the system, Storage, Safeguards, and Retention and Disposal paragraphs are being revised to reflect the transfer of certain responsibilities from a commercial life insurance company to the St. Paul, Minnesota VA Regional Office and Insurance Center and to make other minor changes.

Approval: February 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

1. The system of records identified as 53VA00, "Veterans Mortgage Life Insurance-VA" appearing on page 959 of the **Fedeal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II" is amended by eliminating the references to the Bankers Life Insurance Company of Nebraska. Notice of electronic record storage is added and minor changes to the Safeguards and Retention and disposal paragraphs are included as follows:

53VA00

SYSTEM NAME:

Veterans Mortgage Life Insurance-VA.

SYSTEM LOCATION:

Records (i.e., applications, VA special grant cards, correspondence, records of premium and interest payments and records on death cases) are maintained at the VA Regional Office and Insurance Center, St. Paul Minnesota, and the Benefits Delivery Center, Hines, Illinois. Address locations of VA facilities are listed at VA Apendix 1 at the end of this document.

* * * * *

2. In Routine Uses of records maintained in the system, including categories of users and the purpose of such uses, remove paragraph 5 and redesignate paragraph 6 as paragraph 5.

3. Revise Storage, Safeguards, and Retention and Disposal paragraphs to read as follows

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on automated computer files and on paper documents in manual account folders.

* * * * *

SAFEGUARDS:

All manual records at the VA Regional Office and Insurance Center are maintained in steel file cabinets, and access to the files is limited to authorized personnel only. Information in these records is restricted to those authorized persons on a "need to know" basis. Information on electronic media is protected by 'password' and other system safeguards.

RETENTION AND DISPOSAL:

Inactive mortgage life insurance records are placed in a closed file for seven years after the insured's death or until his/her 77th birthday, whichever comes first. Annually, those closed files are reviewed and destroyed as applicable. A record is considered inactive when any one of the following occurs: Mortgage paid in full, insured's 70th birthday, termination of veterans' ownership of the property securing the loan, payment of premiums discontinued by the veteran, entire contract or agreement discontinued, or failure to timely submit required statement.

* * * * *

[FR Doc. 94–4961 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01

Advisory Committee on Women Veterans; Availability of Biennial Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the biennial Report of the Department of Veterans Affairs' Advisory Committee on Women Veterans for 1992 has been issued. The Report summarizes activities of the Committee on matters relative to women veterans, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540; and Department of Veterans Affairs, Office of Environmental Medicine and Public Health, Techworld Plaza—room 436, 801 I Street, NW., Washington, DC 20001.

Dated: February 23, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4959 Filed 3–3–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION[1]

FCC To Hold Open Commission Meeting, Tuesday, March 8, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, March 8, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Application of Open Network Architecture (ONA) and Nondiscrimination Safeguards to GTE Corporation (CC Docket No. 92-256). Summary: The Commission will consider adoption of a *Report and Order* addressing whether to apply the ONA requirements and nondiscrimination safe-guards to GTE.

2—Common Carrier—Title: Rules and Policies Regarding Calling Number Identification Service-Caller ID (CC Docket No. 91-281). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* to establish federal policies and rules concerning interstate calling number identification services.

3—Office of Engineering and Technology—Title: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9, RMs-7981 and 8004). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* addressing issues raised in the Petitions for Clarification and Reconsideration of the Second Report and Order and Third Report and Order.

4—Office of Plans and Policy—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (pp Docket No. 93-253). Summary: The Commission will consider adoption of a *Second Report and Order* to prescribe regulations concerning competitive bidding procedures to select from among two or more mutually exclusive applications for initial licenses.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

[1] Note: The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meeting. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-5094 Filed 3-2-94; 11:47 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:03 p.m. on Tuesday, March 1, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Sale of Performing Commercial Real-Estate Secured Loans, Various Failed Depository Institutions Nationwide, Case No. 000-00033-94-BOD

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: March 2, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94-5116 Filed 3-2-94; 1:04 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published in the **Federal Register** on March 3, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, March 9, 1994.

CHANGES IN THE MEETING: Change in the status of an item: Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding discounts on products and services for customers obtaining traditional banking products from affiliates has been moved from the Summary Agenda to the *Discussion Agenda*.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 2, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-5106 Filed 3-2-94; 11:48 am]

BILLING CODE 6210-01-P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on March 10, 1994. The meeting will commence at 1 p.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771-1400.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of January 28, 1994 Meeting.
3. Consider and Act on Report from the Director of the Offices of Program Services and Program Evaluation, Analysis and Review.

a. Consideration of and Possible Action on January 29, 1988, Board Resolution Adopting Corporate Policy Regarding Individual Grantees' Failure to Produce Materials Requested By the Corporation.

4. Report on the Field Process to Consider Matters Pertaining to Monitoring, Evaluation and Support.

5. Consider and Act on Options Available to the Corporation With Regard to the National Community Services Act.

6. Report on the Request for Proposals for Funding of Law School Clinical Programs Pursuant to the Resolution Adopted by the Board of Directors on January 28, 1994.

7. Presentations By:

a. Jose Padilla, Executive Director, California Rural Legal Assistance, Regarding Issues Affecting the Delivery of Legal Services to Migrant Farmworkers;

b. Mary Trimble-Norris, Deputy Director, California Indian Legal Services, Regarding Issues Affecting the Delivery of Legal Services to Native Americans; and

c. Mary Burdick, Executive Director, the Western Center on Law and Poverty, Incorporated, Regarding Service Delivery and Program Funding.

8. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,
Corporate Secretary.

[FR Doc. 94–5073 Filed 3–1–94; 4:46 pm]
BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on March 10, 1994. The meeting will commence at 3 p.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of January 27, 1994 Meeting.

3. Presentations by Client Representatives Regarding Suggested Client Initiatives for Fiscal Years 1994 and 1995.

a. Ollie Cantos, Chair, American Federation of the Blind, Los Angeles, California.

b. Ronald Rosello, President, National Organization of Client Advocates.

4. Receipt and Review of Fiscal Year 1993 Audited Financial Statements for the Corporation.

5. Review of the Committee's Budget Review Guidelines, Including the Schedule of Committee Tasks and Events During Each Calendar Year.

6. Review and Possible Action on Expense and Revenue Report on the Corporation's Fiscal Year 1994 Consolidated Operating Budget Through January 31, 1994.

7. Consideration of Staff Report on the Corporation's Budget Request for Fiscal Year 1995.

8. Committee Chair's Report on Her March 8, 1994 Appearance Before the House Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies.

9. Consideration of and Possible Action on Submission of Additional Information to Congress Regarding the Corporation's Fiscal Year 1995 Budget Request.

10. Discussion of and Possible Action Regarding Committee Scheduling for Consideration of the Corporation's Fiscal Year 1996 Budget Mark and Budget Request.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: March 1, 1994.

Patricia D. Batie,
Corporate Secretary.

[FR Doc. 94–5074 Filed 3–1–94; 4:46 pm]
BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on March 11, 1994. The meeting will commence at 1 p.m.

PLACE: San Francisco Hilton & Towers, 333 O'Farrell Street, the Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session(s) held on January 8, 1994 and January 28, 1994. The Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) (5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (d) (e), and (f)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC, 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of January 28, 1994 Meeting.

3. Welcoming Remarks Offered by Quinton Kopp, State Senator, California Legislature.

4. Welcoming Remarks Offered by Margaret Morrow, President, California State Bar Association, and Laurie Zelon, Chair, Standing Committee on Legal Aid to Indigent Defendants, American Bar Association.

5. Presentation by Members of the California Legal Services Community.

6. Presentation by Richard Taylor, Jr., Chair, Project Advisory Group.

7. Chairman's and Members' Reports.

8. Consider and Act on Operations and Regulations Committee Report.

9. Consider and Act on Provision for the Delivery of Legal Services Committee Report.

a. Consideration of and Possible Action on January 29, 1988 Board of Directors Resolution Adopting Corporate Policy Regarding Individual Grantees' Failure to Produce Materials Requested by the Corporation.

10. Consider and Act on Audit and Appropriations Committee Report.

11. Consider and Act on Presidential Search Committee Report.

12. President's Report.

13. Inspector General's Report.

Closed Session:

14. Approval of Minutes of Executive Session of January 8, 1994.

15. Approval of Minutes of Executive Session Held on January 28, 1994.

16. Consultation by Board with the President on Internal Personnel and Operational Matters.

17. Consider and Act on Internal Personnel and Operational Matters.

18. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

Open Session:

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[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

19. Public Comment.
20. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5075 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on March 11, 1994. The meeting will commence at 9 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10 a.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on January 27, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

Closed Session:

2. Approval of Minutes of January 27, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

Open Session: (Resumed)

5. Approval of Minutes of January 27, 1994 Meeting.
6. Develop, Consider and Act on Plans Related to Reauthorization of the Corporation.
7. Consider and Act on Proposed Changes to the Corporation's Bylaws.
8. Consider and Act on Status Report on the Regulation Reform Effort.
9. President's Report.
10. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5076 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on March 12, 1994. The meeting will commence at 9 a.m.

PLACE: San Francisco Hilton and Towers, 333 O'Farrell Street, Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING: Open, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, consider prospective candidates for the position of President of the Corporation. In addition, the Committee will consider for approval the minutes of the executive session(s) held on January 28, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of January 28, 1994 Meeting.

Closed Session:

3. Approval of Minutes of January 28, 1994 Execution Session.
4. Consider, With Advisory Committee, Candidates for the Position of President of the Corporation.

Open Session:

5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–5077 Filed 3–1–94; 4:46 pm]

BILLING CODE 7050–01–M

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1 p.m., Wednesday, March 9, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Request for Comment: Section 701.21, NCUA's Rules and Regulations: Prohibited Fees.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5091 Filed 3–2–94; 10:04 am]

BILLING CODE 7535–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATES: The meeting will be held Wednesday, March 23, 1994, at 10 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: February 28, 1994.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 94–5162 Filed 3–2–94; 3:30 pm]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of March 7, 1994.

An open meeting will be held on Wednesday, March 9, 1994, at 9 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Wednesday, March 9, 1994, at 9 a.m., will be:

1. Consideration of a proposed release regarding the application of the antifraud provisions of the federal securities laws to municipal securities issuers and other market participants in connection with both primary offerings and continuing disclosure to the secondary market. For further information, please contact Ann D. Wallace at (202) 272–7282, Amy Meltzer Starr at (202) 272–3654, Vincent W. Mathis at (202) 272–3968, Division of Corporation Finance; Janet W. Russell-Hunter at (202) 504–2418, Division of Market Regulation.

2. Consideration of whether to propose amendments to Rule 15c2–12, which would make it unlawful for a broker, dealer, or municipal securities dealer (a) to act as an underwriter of an issue of municipal securities unless the issuer has agreed to provide annual financial information and notices of material events to a nationally recognized municipal securities information repository and (b) to recommend the purchase or sale of such a municipal security without having previously reviewed that information. For further information, please contact Catherine McGuire, Janet W. Russell-Hunter at (202) 504–2418, Division of Market Regulation; Amy Meltzer Starr at (202) 272–3654, Division of Corporation Finance.

3. Consideration of a proposed release amending Rule 10b–10 to require confirmation disclosure of: (a) The mark-up and mark-down in connection with a riskless principal transaction in debt securities, other than U.S. savings bonds and municipal securities; (b) the unrated status of a debt security; (c) the mark-up and mark-down in connection with a transaction in a small-cap NASDAQ or regional exchange-listed security; (d) the fact that a broker-dealer is not a member of SIPC; and (e) enhanced yield information with respect to collateralized debt securities.

In addition, consideration will be given to a proposed rule requiring confirmation disclosure of: (a) The mark-up and mark-down in connection with riskless principal transactions in municipal securities; and (b) the unrated status of a municipal security. For further information, please contact C. Dirk Peterson at (202) 504–2418, Division of Market Regulation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: March 2, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5180 Filed 3–2–94; 3:19 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 43
Friday, March 4, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4834-5]

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution (Stage I)

Correction

In proposed rule document 94-2695 beginning on page 5868 in the issue of Tuesday, February 8, 1994 make the following corrections:

§§ 63.422 and 63.423 [Corrected]

1. On page 5889, in the first column, in § 63.422(b), in the third line, and in § 63.423 in the last line, "February 8, 1997." should read (3 years after date of publication of the final rule in the **Federal Register**)".

§ 63.424 [Corrected]

2. On the same page, in the second column, in § 623.424(b)(2), in the last line, "August 8, 1994." should read "(180 days after date of publishing of final rule in the **Federal Register**.)"

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-4808-8]

National Emission Standards for Hazardous Air Pollutants Schedule for the Promulgation of Emission Standards Under Section 112 (e) of the Clean Air Act Amendments of 1990

Correction

In notice document 93-29513 beginning on page 63941 in the issue of Friday, December 3, 1993 make the following correction:

On page 63941, in the second column, in the **EFFECTIVE DATE:**, "December 3, 1994." should read "December 3, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F-0428]

PPG Industries, Inc.; Filing of Food Additive Petition

Correction

In notice document 94-60 appearing on page 590 in the issue of Wednesday, January 5, 1994 make the following corrections:

On page 590:

1. In the first column, the docket heading should read as set forth above.

2. In the second column, under the heading **ADDRESSES:**, in the fourth line, "rm. 10023," should read " rm. 1-23,".

3. In the same column, under the heading **FOR FURTHER INFORMATION CONTACT:**, in the second line, "(HFS09216)," should read "(HFS-216)," and the last line, should read "202-254-9500."

4. In the same column, under the heading **SUPPLEMENTARY INFORMATION:**, in the 9th line, "§ 1A176.200" should read "§ 176.200" and in the 11th line, "§ 1A176.210" should read "§ 176.210".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016b]

RIN 2115-AC69

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels

Correction

In proposed rule document 94-3519 beginning on page 8100 in the issue of Thursday, February 17, 1994 make the following corrections:

1. On page 8101, in the first column, in the first line, "EPIR" should read "EPIRB".

§ 25.26-10 [Corrected]

2. On page 8104, in the first column, in § 25.26-10(c)(1), in the second line, "minutes" should read "miles".

BILLING CODE 1505-01-D

Friday
March 4, 1994

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–90–201]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE or Department) to administer an energy conservation program for these products. The National Appliance Energy Conservation Act amendments require DOE to consider amending the energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts; and to consider establishing energy conservation standards for television sets.

DATES: Written comments on the proposed rule must be received by the Department by May 18, 1994. The Department requests 10 copies of the written comments and, if possible, a computer disk.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, beginning at 9:30 a.m. on April 5, 6 and 7, 1994.

Requests to speak at the hearing must be received by the Department no later than 4 p.m., March 25, 1994. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., March 29, 1994. The DOE panel will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 15 minutes.

ADDRESSES: The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC. Written comments, oral statements, and requests to speak at the hearing are to be submitted to U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–431, Energy Conservation Program for Consumer Products, Docket No. EE–RM–90–201, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–7140.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding see Section VI, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:
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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, by the National Appliance Energy Conservation Act, Public Law 100–12, by the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 [1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results that measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. Section 323 (b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323 (d)(1). Test procedures appear at 10 CFR part 430, subpart B.

The Federal Trade Commission is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bears a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the Federal Trade Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the Federal Trade Commission must require a different useful measure of energy consumption. Section 324(c). At the present time there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979, 52 FR 46888, December 10, 1987, and 54 FR 28031, July 5, 1989.

For each of the 12 covered products, the Act prescribes an initial Federal energy conservation standard. Section 325(b)-(h). The Act establishes dates of applicability for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within 3 to 10 years, also depending on the product. Section 325(b)-(h). After the specified period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency of a covered product. Section 325(l)(1). The Department's current review of standards is for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts and is considering establishing energy conservation standards for television sets. Section 325(g)(4)(A).

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(l)(2)(A).

Section 325(l)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, section 325(l)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure* * *."

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)-(c). Exemptions to this general rule include: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988 (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (Section 327(b)(3) and (f)(1)-(4)); (3) State regulations banning constant burning pilot lights in pool heaters (Section 327(b)(4)); and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (Section 327(b)(6) and 327(c)).

b. Background

The National Energy Conservation Policy Act required DOE to establish mandatory energy efficiency standards for each of the 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

The National Energy Conservation Policy Act provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended the Energy Policy and Conservation Act in part by: redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if any amended standard for fluorescent lamp ballasts is required.

The Energy Policy Act of 1992, which became law on October 24, 1992, addressed various commercial appliances and equipment.

As directed by the Act, DOE published an advance notice of proposed rulemaking with a 75-day comment period that ended December 12, 1990, for the eight products subject to today's rulemaking. 55 FR 39624, September 28, 1990. (Hereafter referred to as the September 1990 advance notice). The September 1990 advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to the Department's approach. The comments in response to the advance notice are addressed in Sections II and III of this notice.

II. General Discussion

a. Energy Descriptors

As discussed above, the Act established initial energy conservation standards for all of the covered products except television sets. Some of these standards were of a prescriptive form, such as the requirement of a no heat dry option for dishwashers, and others were performance standards, stated in terms of an energy descriptor, such as seasonal energy efficiency ratio for central air conditioners, annual fuel utilization factor for furnaces, etc. The intent of these standards, and the subsequent required DOE analyses and rulemaking regarding amending the standards, is to save energy. In conducting rulemakings and analyses required by the Act to determine if standards should be amended, the Department previously determined that the form of a standard may need to change in order to evaluate the efficiency standards. For example, the final rule issued for dishwashers changed the standard from the initial prescriptive standard to a performance standard based on an energy descriptor. 56 FR 22250, May 14, 1991. Additionally, the Department has determined in this rulemaking that energy descriptors may need to be changed when it is found they do not account for all of the energy or all types of energy consumed by an appliance. Not to change these energy descriptors would result in an incomplete analysis and could lead to standards being met by utilizing unaccounted energy resulting in products that might satisfy the energy descriptor but result in little or no total energy savings. Examples of unaccounted energy are the pilot light energy of a pool heater which is not accounted for by the current energy descriptor of Thermal Efficiency or the electrical fan energy of a gas furnace which is not accounted for by the current energy descriptor of the annual fuel utilization factor. Accordingly, the Department is proposing in today's notice to change the energy descriptors of the initial standards for direct heating equipment, mobile home furnaces, and pool heaters.

b. Test Procedures

For each product discussed in today's proposed rulemaking there is an applicable DOE test procedure to evaluate its energy efficiency.

A Notice of Proposed Rulemaking that would amend the test procedures for mobile home furnaces, direct heating equipment, and pool heaters was published in the **Federal Register** on August 23, 1993 (58 FR 44538); in addition, another Notice of Proposed

[2] The consumer products covered by the National Energy Conservation Policy Act included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

Rulemaking which includes amendments to the test procedures for clothes washers, water heaters, ranges and ovens is being published.

c. Technological Feasibility

1. General

For those products and classes of products discussed in today's notice, DOE believes that the efficiency levels analyzed, while not necessarily being realized in production, are technologically possible. The technological feasibility of the design options are addressed in the product-specific discussion. The Department's criteria for evaluating design options for technological feasibility are that the design options are already in use by the respective industry, or that research has progressed to the development of a prototype.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in considering any new or amended standards, to consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (l)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (max tech) design option was identified. The max tech level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units.[3] The Department believes that in identifying the max tech level a unit must be capable of being assembled, but not necessarily mass produced, by the effective date of the amended standards. Manufacturing ability is determined under economic justification. For example, in the November 1989 Final Rule, DOE concluded that evacuated panels for refrigerators was a technically feasible design option since refrigerators had been produced on a limited scale with this technology included. However, DOE concluded that this technology was not economically justified because the chemical industry would not be able to make sufficient quantities of the raw materials commercially available by the effective date of the standard.

The max tech levels were derived by adding energy-conserving engineering design options to the respective classes in order of decreasing consumer payback. For example, the max tech level for room air conditioners includes higher efficiency fan motors, which were added early, and variable speed compressors, which were added later because of their slower payback. A complete discussion of each max tech level, and the design options included in each, is found in the *Engineering Analysis*. See Technical Support Document, Chapter 3.

Tables 2–1 through 2–8 present the Department's max tech performance levels for all classes of the subject products:

TABLE 2–1.—ROOM AIR CONDITIONER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Energy efficiency ratio
With louvered sides less than 6,000 Btu	13.0
With louvered sides 6,000 to 7,999 Btu	12.1
With louvered sides 8,000 to 13,999 Btu	13.5
With louvered sides 14,000 to 19,999 Btu	13.6
With louvered sides 20,000 and more Btu	11.4
Without louvered sides less than 6,000 Btu	12.6
Without louvered sides 6,000 to 7,999 Btu	11.7
Without louvered sides 8,000 to 13,999 Btu	13.0
Without louvered sides 14,000 to 19,000 Btu	13.1
Without louvered sides 20,000 and more Btu	11.0
With reverse cycle, and with louvered sides	13.2
With reverse cycle, without louvered sides	12.7

TABLE 2–2.—WATER HEATER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Energy factor
Gas	.887 − (.001707 × Measured Storage Volume (in gals.)).
Oil	.835 − (.001707 × Measured Storage Volume (in gals.)).
Electric	2.597 − (.001172 × Measured Storage Volume (in gals.)).
Gas instantaneous.	.897.

TABLE 2–3.—DIRECT HEATING EQUIPMENT MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual efficiency
Gas wall fan type up to 42,000 Btu/hour	89.2
Gas wall fan type over 42,000 Btu/hour	89.9
Gas wall gravity type up to 10,000 Btu/hour	81.0
Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	81.7
Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	82.1
Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	82.9
Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	83.3
Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	83.8
Gas wall gravity type over 46,000 Btu/hour	84.4
Gas floor type up to 37,000 Btu/hour	88.6
Gas floor type over 37,000 Btu/hour	90.0
Gas room type up to 18,000 Btu/hour	85.9
Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	87.3
Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	88.1
Gas room type over 27,000 Btu/hour up to 46,000 Btu/hour	88.9
Gas room type over 46,000 Btu/hour	89.7

TABLE 2–4.—MOBILE HOME FURNACE MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual efficiency
Gas-fired	89.5
Oil-fired	85.8

TABLE 2–5.—KITCHEN RANGE AND OVEN MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Annual energy use
Electric oven, self-cleaning	209.2 kWh.
Electric oven, non-self-cleaning	157.3 kWh.
Gas oven, self-cleaning	1.42 MMBtu.
Gas oven, non-self-cleaning	1.07 MMBtu.
Microwave oven	228.2 kWh.
Electric cooktop, coil element	257.7 kWh.

[3] The baseline unit is the most commonly used combination of engineering design options which are found in appliances that meet the existing National Appliance Energy Conservation Act standards except for television sets where no National Appliance Energy Conservation Act standard exists. In the case of television sets, the baseline is represented by the typical 19/20" television with electronic tuning and remote control.

TABLE 2–5.—KITCHEN RANGE AND OVEN MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS—Continued

Product class	Annual energy use
Electric cooktop, smooth element	258.5 kWh.
Gas cooktop	1 6274 MMBtu.

TABLE 2–6.—POOL HEATER MAXIMUM TECHNOLOGICALLY FEASIBLE LEVEL

Product class	Annual efficiency
Gas-fired	95.7

TABLE 2–7.—FLUORESCENT LAMP BALLAST MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Product class	Efficacy factor
One F40 lamp	2.50
Two F40 lamp	1.28
Two F96 lamp	0.72
Two F96HO lamps	0.50
Three F40 lamps	0.87
Four F40 lamps	0.67
One F32T8 lamp	3.17
Two F32T8 lamps	1.58
Three F32T8 lamps	1.06
Four F32T8 lamps	0.76

TABLE 2–8.—TELEVISION SET MAXIMUM TECHNOLOGICALLY FEASIBLE LEVEL

Product class	Annual energy use (kWh/yr.)
Color 19″–20″ electronically tuned	138.5

The Department believes that these are the max tech levels from an engineering analysis standpoint. Each of the levels was evaluated in accordance with the economic justification factors specified in the Act to determine economic justification.

The Department evaluated each max tech level to determine if it would be economically justified at the time the standards would become effective. The Department rejected energy conservation standards that had unacceptable impacts on consumers or manufacturers (e.g., unusually long payback periods and substantially adverse impacts on manufacturers' returns on equity).

d. Energy Savings

1. Determination of Savings

The Department forecasted energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model, which forecasted energy consumption over the period of analysis for candidate standards and the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case. The base case represents the forecasts of outputs, e.g., prices, operating expenses, energy consumption, shipments, and manufacturer impacts in the absence of new or amended standards.

The Lawrence Berkeley Laboratory Residential Energy Model was used by DOE in previous standards rulemakings. The Lawrence Berkeley Laboratory Residential Energy Model is explained in the Technical Support Document accompanying this notice. (See Appendix B to that document for a detailed discussion of the Lawrence Berkeley Laboratory Residential Energy Model.) The Lawrence Berkeley Laboratory Residential Energy Model contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

COMMEND is the Commercial Energy End-Use Model. It was developed by the Electric Power Research Institute, to characterize energy end-use in the commercial sector. For this rulemaking, the Commercial Energy End-Use Model is being used to evaluate more stringent standards on fluorescent lamp ballasts, which are found principally in the commercial sector of the economy.

The market share calculations contain the following steps: potential purchasers may purchase any competing technology within an end-use, or none. For room air conditioners, fluorescent lamp ballasts, and television sets, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., F40T12 lamps, F96T12 lamps, etc., is specified exogenously. For the other products, along with the considerations above, the choice of fuel is modeled. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with the elasticities, to determine changes in sales volumes resulting from standards. Higher equipment prices will decrease sales volumes, while lower operating expenses will increase them. The net result depends on the standard level selected, and associated equipment prices and operating expenses.

The Lawrence Berkeley Laboratory Residential Energy Model and the Commercial Energy End-Use Model (for ballasts only) are used to project energy use over the relevant time periods for seven of these products with and without amended standards, and, in the case of televisions, with and without standards. By comparing the energy consumption projection at alternative standard levels with the legislated standards, the Department estimated the amount of energy projected to be saved during the period 1996–2030.[4] The energy saved is expressed in quads, i.e., quadrillions of British thermal units (Btu). With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. From data that remains rather constant over the years, the amount of electrical energy consumed at the site is less than one-third of the amount of source energy that is required to generate and transmit the site electrical energy.[5] Therefore, it is important to identify whether the electricity involved is site or source energy.

The Lawrence Berkeley Laboratory Residential Energy Model projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchasers to changes in residential energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. The Commercial Energy End-Use Model projections are dependent upon changes in commercial energy prices, future construction of

[4] Lawrence Berkeley-Laboratory Residential Energy Model and the Commercial Energy End-Use Model were programmed to analyze a single standard level or alternate standard levels over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2030.

[5] Energy Information Administration, Electric Power Annual 1987, Tables 25 and 82, DOE/EIA 0348(87), 1987.

commercial floorspace, responsiveness of building owners to future energy and equipment prices and to utility demand-side management programs, and options for improving the energy efficiency of lighting. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

2. Significance of Savings.

Under section 325(l)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (DC Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 1373.

e. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(l)(2)(B)(iii) states:

"If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified."

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then it is presumed that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

f. Economic Justification

As noted earlier, Section 325(l)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

1. Economic Impact on Manufacturers and Consumers

The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, and to determine the effects of standards on different-sized firms, the Department used a computer model that simulated hypothetical firms in the eight industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model, is explained in the Technical Support Document. *See* Technical Support Document, Appendix C. The Lawrence Berkeley Laboratory Manufacturer Impact Model provides a broad array of outputs, including shipments, price, revenue, net income, and short- and long-run returns on equity. An "Output Table" lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how returns on equity would be affected by a change in any one of the model's nine control variables.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 6 of the Technical Support Document. Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-cycle Costs.

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the life-cycle costs between the base and standards cases for the appliance classes analyzed. The life-cycle cost is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

The life-cycle cost was calculated for the range of efficiencies in the Engineering Analysis for each class in the year standards are imposed, using real consumer discount rates of 2, 6, and 10 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are taken from the 1991 Annual Energy Outlook of the Energy Information Administration. (DOE/Energy Information Administration—0383(91)). Appliance usage inputs are taken from the relevant test procedures.

3. Energy Savings

While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from revised standards. The Department used the Lawrence Berkeley Laboratory Residential Energy Model results, discussed earlier, in its consideration of total projected savings. The savings for the eight products are provided in Section IV of this notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the eight products under consideration in this rulemaking. That is, to the extent that comments, or the Department's own research, indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way, the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. See Technical Support Document, Chapter 7. The Department has also provided the Attorney General with copies of this notice and the Technical Support Document for her review.

6. Need of The Nation to Conserve Energy

The results of the environmental effects from each standard level for each product will be reported under this factor in the product specific discussion (Section IV) of this notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. The Secretary is seeking comments on two issues which may be considered in this rulemaking. The issues are (1) the incremental impact of appliance conservation standards on energy use, consumers, manufacturers and other factors (See the discussion regarding rebuttable presumption under General Analytical Comments) and, (2) the extent to which any proposed national efficiency standard is likely to disproportionally affect identifiable groups of consumers and whether the analysis should be modified to consider such impacts in the selection of efficiency standard levels (See the discussion regarding other comments under Product-Specific Comments for Direct Heating Equipment).

III. Discussion of Comments

The Department received 90 written comments in response to the September 1990, advance notice. These comments addressed all aspects of the analysis. In this section, the Department will present discussions of the general analytical issues raised by the comments, followed by discussions of the product-specific issues.

a. *General Analytical Comments*

Discount Rates

The Department's plans to use a 7 percent discount rate in the standards' analyses drew more comments than any other issue. (American Council for an Energy Efficient Economy, No. 6 at 6; Public Citizen, No. 7 at 4; Wayne Goode, No. 8 at 1; Ohio Sierra Club, No. 11 at 1; Natural Resources Defense Council, No. 13 at 5 and appendix; Rocky Mountain Institute, No. 15 at 1; Citizens Environmental Coalition Education Fund, Inc. No. 18 at 1; California Energy Commission, No. 24 at 2; Advance Transformer, No. 25 at 3; Whirlpool Corporation, No. 31 at 1; Northwest Power Planning Council, No. 32 at 2; Champaign County (IL) Board, No. 36 at 1; Washington Gas Light, Inc., No. 37 at 2; George Smith, No. 38 at 1; Lone Star Gas Co., No. 39 at 2; Florida Energy Office, No. 42 at 2; Sierra Club, No. 43 at 2; Ohio Office of the Consumers' Council, No. 60 at 7; Helen Satterthwaite, No. 67 at 1; Warren Widener, No. 78 at 1; and Martin Frost, No. 80 at 1).[7] Most of the comments asserted that the 7 percent rate was unjustifiably high, while several stated that a 7 percent or even higher rate was an appropriate rate for the various analyses.

Commentators seeking a higher rate focused on consumer impacts, while those advocating a lower rate generally pointed to societal benefits. These different perspectives are not easily captured in a single discount rate. The Department has reconsidered the issue, and has decided that multiple discount rates, with each pertaining to a different perspective, are warranted. These different rates (i.e., consumer, commercial and societal) are used to capture the impacts of the standards on different constituents. The consumer and commercial rates are used to calculate life-cycle costs for purchasers of residential and commercial products, respectively. The social discount rate is used to calculate the net present value of standards for the Nation as a whole. Separate rates, therefore, were used for the consumer sector, the commercial sector (since fluorescent lamp ballasts are purchased primarily by commercial firms), and for society as a whole. This discussion will describe the derivations of the consumer, commercial and social discount rates that were used in the different analyses.

1. *Consumer discount rate.* On November 17, 1989, DOE published a final rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, November 17, 1989), hereafter referred to as the November 1989 final rule. In the November 1989 final rule, DOE selected a 7 percent discount rate, based on a methodology derived from the Court of Appeals decision, *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (D.C. Cir 1985). As discussed in the November 1989 final rule, the applicability of the court decision changed somewhat with the passage of the Tax Reform Act of 1986 (Pub. L. 99-514). The Tax Reform Act phased out the deductibility of interest paid on consumer loans. Based on the revised methodology, DOE calculated a range of discount rates that consumers incur; this range is from less than 1 percent to slightly more than 15 percent. As explained in the November 1989 final rule, DOE selected 7 percent for the analysis for purposes of that rulemaking proceeding because it was near the mid-point of the potential consumer discount rates. In addition, DOE believes that the approach is reasonable in that it was related to the opportunity cost of money for purchasing consumer durables. As such, it was justified in terms of alternate consumer purchases that are foregone in order to finance the purchases of appliances.

In a subsequent final rule on energy conservation standards for dishwashers, clothes washers, and clothes dryers (56 FR 22250, May 14, 1991), hereafter referred to as the May 1991 final rule, the Department restated that the 7 percent rate was near the mid-point of the range of consumer finance rates for the purchase of appliances. It was further stated that if the Department could obtain data on the methods that consumers use to purchase appliances, it could develop a weighted-average, real, after-tax finance rate to use as a consumer discount rate in the analysis.

In its comments on the September 1990 advance notice, Whirlpool Corporation offered estimates of consumer financing of purchases of its equipment: 40 percent of retail sales are paid in cash; 35 percent use credit cards; 25 percent use retailer loans. These figures excluded new home construction, which accounts for approximately 25 percent of Whirlpool Corporation's total sales. (Whirlpool Corporation, No. 31 at 1–2 and Appendix 1.)

While Whirlpool Corporation represents only one source of data, the Department has no reason to believe that Whirlpool Corporation's customers differ from those of other manufacturers, and, therefore, accepted Whirlpool Corporation's estimates as representative.

These numbers were applied to the real, after-tax finance rates that are incurred by consumers, as reported in the November 1989 final rule. Those rates were estimated to be just over 3 percent for appliances purchased as part of a new home (whose finance rate is a tax-deductible mortgage interest rate), to slightly under 1 percent for cash purchases, to more than 15 percent for credit card purchases.

When these rates were applied to Whirlpool Corporation's estimates, the resulting weighted-average, real, after-tax rate incurred by consumers in appliance purchases was approximately 6 percent. The Department, then, used 6 percent for the consumer discount rate in the analyses, with sensitivities at 4 and 10 percent. The Department believes that this range of discount sensitivities will capture the real, after-

[7] Comments on the advance notice of proposed rulemaking have been assigned docket numbers and have been numbered consecutively.

tax rates that consumers encounter in financing the purchase of an appliance.

The Department recognizes however, that there remains considerable uncertainty in this estimate of the average consumer discount rate. There are numerous possible financial interactions that could be involved in the purchase of an appliance. For example, a credit card purchase could be paid in full within the customary billing grace period, thereby being exempt from finance charges, and, in effect, resembling a cash purchase. This would tend to put downward pressure on the weighted-average range of purchase financing choices. On the other hand, a cash purchase may actually be financed, indirectly, by an increase in credit card debt. This would tend to put upward pressure on the weighted-average range of purchase finance rates. Furthermore, this analysis does not take into account varying consumer perceptions of the value of reducing current consumption in favor of longer- term financial gains. For these reasons, the Department continues to solicit data that might provide a more complete basis for the derivation of a consumer discount rate used in these analyses.

Furthermore, while financing rates may indicate the direct financial impact to consumers of an investment in increased efficiency, they do not reflect either other types of investments available to them, or varying consumer perceptions of the value of reducing current consumption in favor of longer-term financial gains. For example, what value of energy savings does a consumer need to receive from an investment in an energy efficient refrigerator in order to justify reducing savings, increasing debt, or delaying the purchase of other consumer goods?

The costs of consumer financing does not indicate whether there are similar investment opportunities, available to most consumers, that produce higher rates of return. For example, are there home improvements or other investments that could be made by most consumers that would have higher rates of return than an investment in an energy-efficient appliance? Also, a consumer discount rate based on consumer financing expenses does not fully account for the risks of individual consumer investments in improved appliance efficiency. For example, the actual rates of return experienced by individual consumers may vary widely depending on energy prices, appliance usage and useful life.

Some have argued that implicit discount rates estimated through an examination of actual consumer purchases of appliances and related consumer equipment would be a better basis for the consumer discount rate used under this program. Various studies have indicated that these implicit discount rates range from 3 percent to as high as 100 percent (or more) for certain appliances. However, because implicit discount rates are based on actual consumer purchase behavior, they also reflect the extent to which the numerous potential market failures in energy efficiency investments occur, such as inadequate information, conflicting owner/renter incentives, and second party (builder/contractor) purchases. One of the major reasons why Federal appliance efficiency standards were originally established was to overcome these market failures regarding investment in energy efficiency. Consequently, DOE does not believe unadjusted (i.e., not corrected for potential biases) discount rates derived from actual consumer behavior should be used in evaluating the economic impact of proposed standards on consumers.

This conclusion appears to be supported by court rulings affecting the program. In *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1406 (DC Cir. 1985), the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct." The Department believes that the intent of the legislation which established the appliance standards program is to achieve energy savings which are being foregone because of market failures which distort consumer decision-making (and behavior) from investing in energy efficiency.

However, if information were available on the implicit discount rates revealed by consumer decision-making in the absence of any significant market-failure biases, it might provide a better basis for the discount rates to be used in assessing the impacts on consumers of proposed appliance efficiency standards. Another approach might be to examine the rate of return consumers would require from other fixed investments of comparable risk and liquidity. The Department solicits information on the results of any analyses that could support the derivation of discount rates using either of these approaches.

On the other hand, the nature of the appliance standards program may imply that a household average required rate of return, whether based on actual appliance purchase decisions (in the absence of potential market failure distortions) or on comparable investments, may understate the appropriate rate. Because the Act requires minimum standards, their effect is generally greater on the low-efficiency, low purchase-price end of the market, sometimes eliminating the lowest-priced models. To the extent that low-income households purchase a disproportionate share of these low-efficiency/low-price appliances, they will be disproportionately represented among the affected consumers.

At the same time, limited empirical research [8] suggests that these households exhibit higher-than-average discount rates (i.e., required rates of return) across all of their time-sensitive decisions, including (but not limited to) their appliance purchases. If, indeed, these households are disproportionately affected by standards, their discount rates would need to be given greater weight in determining the effects of alternative standard levels on consumers. The Department seeks comment on this issue.

Based on the information now available, it appears that the average consumer discount rate lies in the range of 4 to 10 percent. As discussed above, the Department has used a 6 percent consumer discount rate for the analyses in this rulemaking. The Department has conducted sensitivity analyses using the 4 to 10 percent range and will continue to solicit data and comments that would provide a better basis for the derivation of consumer discount rates.

2. *Commercial discount rate.* For a discount rate that would be applicable in the fluorescent ballast analysis, the Department believes that one based on consumer expenses is inappropriate; the rate should be based on costs in the commercial sector, since fluorescent lamp ballasts are purchased for use primarily in that sector. In developing a rate for use in the commercial sector, the Department considered a procedure similar to the procedure used to develop a consumer discount rate, and examined possible methods of financing purchases of more efficient lighting equipment. One such method would be to finance a loan. For the most credit-worthy customers, the prime rate of interest would be applicable. Tables 15 and 21 of the DRI/McGraw-Hill *Review of the U.S. Economy; Long-Range Focus; Winter 1990–91* presented forecasts of prime interest rates and percentage changes in the consumer price index (CPI) for each year between 1995 and

[8] Train, Kenneth, Discount Rates in Consumers' Energy-Related Decisions: A Review of the Literature; Energy, December 1985.

2015. During this period, the prime rate is expected to be fairly stable, ranging from 8.37 percent to 8.50 percent. The changes in the consumer price index are projected to range from 3.88 percent to 4.90 percent. The resulting real rates of interest are projected to range from 3.55 percent in 2014 to 4.64 percent in 1995, with a 21-year average of 3.85 percent.

Most companies, of course, are not eligible for prime-rate loans. For them, the terms of borrowing are generally less favorable. While DRI/McGraw-Hill does not forecast long-term, non-prime loan rates, some insight can be gained from how such loans rates differ from prime loan rates.

Based on a telephone conversation with the Federal Reserve System, DOE learned that most commercial loans were in the 6 percent to 15 percent range. Using the higher rate, 15 percent, and deducting the applicable changes in the consumer price index, the Department calculated real rates of interest ranging from 10.1 percent in 2014 to 11.2 percent in 1995, with a 21-year average of 10.46 percent.

Alternatively, the Department looked at the divergence of the 15 percent loans from the then current prime rate; such loans were 50 percent greater than the 10 percent prime rate prevailing in 1990. By applying a 50 percent increase to the projected prime interest rates, the Department obtained nominal rates of interest of 12.56 percent to 12.75 percent. After a deduction of the expected changes in the consumer price index, real rates of interest ranged from 7.76 percent to 9.87 percent, averaging 8.05 percent over the 21-year period.

Another possible financing mechanism would be for the corporation to finance the purchase of the more efficient equipment by displacing investment capital. In Table 8 of DRI/McGraw-Hill's forecasts, there are annual projections of the after-tax costs of financial capital for each year between 1995 and 2015. After converting the numbers to pre-tax costs, and after deducting the expected changes in the consumer price index, the Department obtained the respective real rates of interest. The costs of financial capital are projected to range from 11.61 percent in 1995 to 12.86 percent in 2015. The consumer price index rates forecasts are the same as before, and the resulting real finance rates range from 7.67 percent in 2000 to 7.96 percent in 2015, with the 21-year average being 7.86 percent.

Of the different possible means of companies paying for conservation improvements in lighting equipment, the range of real rates of interest is from 3.55 percent to 11.12 percent.

Economic theory suggests that in deriving a commercial discount rate, the Department should consider the opportunity costs of commercial investments that were foregone. Therefore, the Department also investigated real rates of return from commercial investment activities between 1961 and 1990. These data were compiled from Annual Statistical Digests of the Board of Governors of the Federal Reserve System. The variables that were examined were commercial trade credit, i.e., bankers acceptances; time deposits, i.e. certificates of deposits; U.S. Treasury securities; and commercial paper. During the 30-year period, the average real investment returns realized in the commercial sector ranged from 2.02 percent for bankers' acceptances (which constituted 70 percent of the investment dollars), to 2.29 percent for investments in Treasury securities (which constituted 9 percent of commercial investment dollars).

When more risky investments, such as tax-exempt (class B) and corporate (AA) bonds were examined, their real rates were 1.27 percent and 3.52 percent, respectively, over the 1970-to-1986 period. These real rates, too, were substantially outside of the purchase finance range. The real rates for such bonds in earlier years also fell below the purchase financing range of rates.

After considering the above, the Department elected to use four percent as the commercial discount rate. The Department believes that this rate approximates the real costs likely to be incurred by private businesses which are able to finance small additional investments in energy efficiency by reducing relatively liquid corporate investments, e.g., bankers' acceptances, or by obtaining loans at or near the prime interest rate, without diminishing their normal business investment.

However, if increasing investments in more energy efficient technology are assumed to displace other, more profitable business investments, or would require loans available only at more typical commercial interest rates, the approximate discount rate would be higher. For example, between 1980 and 1991, the real rates of return to nonfinancial corporations averaged between 7 and 8 percent based on data contained in Table 1.16 of the National Income and Product Accounts, as presented in the Department of Commerce's *Survey of Current Business* and, as noted above, real commercial interest rates often exceeded 7 percent.

The Department invites comment on the most appropriate methodology upon which to base the commercial discount rate and the best types and sources of data to use in the calculation of this rate.

3. *Social discount rate.* In identifying a discount rate that is appropriate for use in calculating benefits to the Nation as a whole, the Department must consider the opportunity costs of devoting more economic resources to the production and purchase of more energy-efficient appliances and fewer national resources to other alternative types of investment. It is not necessary, however, to determine the characteristics of specific classes of consumers or businesses directly impacted by the proposed standard. For these reasons, a broad measure of the average rates of return earned by economic investment throughout the United States is the most useful basis for a social discount rate.

Using this approach, the Office of Management and Budget prepared a Background on OMB's Discount Rate Guidance in November of 1992, containing an analysis of the average annual real rate of return earned on investments made since 1960 in nonfinancial corporations, non-corporate farm and non-farm proprietorships, and owner-occupied housing in the United States. The results of this analysis indicated that since 1980, the annual real rate of return for these categories of investments averaged slightly more than 7 percent, ranging from a low of about 4 percent for owner-occupied housing (which represented about 43 percent of total capital assets in 1991 of about $15 trillion) to a high of about 9 percent on non-corporate farm and non-farm capital (which represented about 23 percent of the total). Between 1960 and 1980, the average real rate of return on capital was higher, averaging about 8.5 percent in the 1970's and about 11.2 percent in the 1960's. As a result of this analysis, the Office of Management and Budget chose to designate 7 percent as the social discount rate specified in revisions to Office of Management and Budget Circular A–94 issued on November 10, 1992 (57 FR 53519). In that revised circular, Office of Management and Budget established, *inter alia*, discount rate guidance for benefit-cost analyses of regulatory programs that provide benefits and costs to the general public.

An alternative method for deriving such social discount rate might be broad measures of the costs of financing capital investments in the United States. One such measure is the Federal Government's cost of borrowing or the interest rate that is payable on long-term Government securities. Another might be the prime interest rate available to

major corporate borrowers. In order to derive a real discount rate from either of these measures the relevant interest rate would be adjusted for inflation.

With regard to long-term Government securities as an example, the nominal rates during June 1991 on Government securities maturing between the years 2000 and 2015 averaged 8.55 percent. Adjusted by long term forecasts of inflation, the rate would be approximately 4 percent. Because the Government borrowing rate most accurately reflects the direct cost to the Government of added investment, the Office of Management and Budget has used this approach as the basis for discount rates used in evaluating Federal investments which directly affect Federal costs (such as energy efficiency investments in Federal facilities). Using the prime interest rate or some combination of rates to reflect non-Federal financing costs would result in somewhat higher rates.

As indicated above, because the cost of financing additional capital investments does not reflect the full opportunity cost of shifting private investment from one area to another, it is not considered to be a good basis for deriving discount rates. For this reason, DOE is now proposing the use of a 7 percent social discount rate in National net present value calculations, although it will also perform sensitivity analyses at 4 percent and 10 percent. The Department seeks comment on appropriate discount rates for the analysis.

Life-Cycle Cost Analysis

Another consumer issue that drew a considerable number of comments was the suggestion that in its life-cycle cost analyses, the Department include any additional installation and maintenance expenses that may result from conservation standards. (Southern Gas Association, No. 4 at 10; Energen, No. 12 at 2; American Gas Association, No. 23 at 2; Florida Energy Office, No. 42 at 1; Southern Natural Gas Company, No. 46 at 1; Montana-Dakota Utilities Company, No. 54 at 4; Laclede Gas Company, No. 55 at 4; Oklahoma Natural Gas Company, No. 57 at 3; ENTEX, No. 58 at 4–5; Gas Research Institute, No. 59 at 1; Arkansas Western Gas Company, No. 64 at 7; Piedmont Natural Gas Company, No. 71c at 4; Public Service Company of North Carolina, Inc., No. 74 at 4; Southern California Gas Company, No. 79 at 1; and Louisiana Gas Service Company, No. 81 at 2).

In each of the consumer analyses, such as payback and life-cycle costs, the Department did include all incremental expenses caused by standards. For those design options entailing additional maintenance expenses (beyond the base case), the incremental maintenance expenses were included in the consumer price of the design option. Installation expenses that were specific to the design option and independent of the application were also included in the consumer price of the design option.

Regional and Other Variations in Impacts

Several comments recommended that the Department look at regional variations in usages of some climate-sensitive products, e.g., direct heating equipment. (Southern Gas Association, No. 4 at 10; United Texas Transmission Company, No. 26 at 3; Florida Energy Office, No. 42 at 1; Arkansas Western Gas Company, No. 64 at 3; and Minnegasco, No. 83 at 2.).

The standards analysis assumes that nationwide average appliance usage rates, energy prices, and efficiency applied to all consumers in all areas of the nation, although the Department recognizes that there exist large variations in each of these factors. However, the Department did conduct a sensitivity analysis on the life-cycle cost for energy prices by substituting various high and low regional prices for national prices. The results of these sensitivities are presented in the Technical Support Document. See Technical Support Document, Chapter 4. However, these sensitivity analyses were performed at the national level, and no effort is made to link them with any specific population groups.

The Department seeks information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups.

Usage

On a related issue, numerous comments suggested that the usage variables the Department should use are those that are calculated from field usage data. In addition, many of the comments provided estimates of annual operating expenses of several of the appliances, e.g. water heaters, direct heating equipment, and ranges and ovens. (Southern Gas Association No. 4 at 4; —— American Council for an Energy Efficient Economy, No. 6 at 2; Whirlpool Corporation, No. 31 at 17, 19; Washington Gas Light, No. 37 at 5; Lone Star Gas Company, No. 39 at 3; Gas Appliance Manufacturers Association, No. 40 at 8; Columbia Gas, No. 45 at 3; Southern Natural Gas Company, No. 46 at 1; Montana-Dakota Utilities Company, No. 54 at 3; Laclede, No. 55 at 4; Oklahoma Natural Gas Company, No. 57 at 3, 5; Association of Home Appliance Manufacturers, No. 61A at 36; Arkansas Western Gas Company, No. 64 at 6; Peoples Natural Gas Company, No. 65 at 1; Northern Minnesota Utilities, No. 68 at 1; Minnegasco, No. 83 at 2; and Flair, No. 85 at 2).

The Department appreciates the data it received. The Department also obtained data on unit energy consumption by appliance type, principally from utility companies. The Department reviewed the data received from all sources and generated what it believes are the best estimates of energy consumption which are contained in the proposed test procedure amendments for mobile home furnaces, direct heating equipment, pool heaters and kitchen ranges and ovens discussed above, and were used in the analyses for today's notice.

As noted above, regional energy prices were used in sensitivity analyses. Additionally, in the proposed test procedure amendments, the usage for mobile home furnaces and direct heating equipment have been modified from a national basis to a regional one to reflect the mostly regional distribution of these products.

Rebound Effect

Two comments raised the issue of rebound effects, which occur when an appliance that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement do not fully materialize. (American Council for an Energy Efficient Economy, No. 6 at 5; Washington Gas Light, No. 37 at 2). American Council for an Energy Efficient Economy commented that the consumer sees and reacts to his or her total utility bill, so any efficiency change in a particular product that has a small impact on his or her total utility bill should not affect usage behavior. Washington Gas Light suggested that usage elasticities should be decided by rigorous analyses of regional appliance usage characteristics.

In this rulemaking, the rebound effects assumed were: 30 percent for direct heating equipment and mobile home furnaces, 20 percent for room air conditioners, and 10 percent for ranges and ovens. These percentages represent the amounts by which the potential

energy savings from standards are reduced.

There is, however, an argument that the usage elasticities/rebound effects for at least some household uses of energy may be substantial. Within a household, the price elasticity of demand will be an average of the elasticities of demand for each end use, e.g. appliance. For example, suppose the price elasticity of demand at the household level is .3. If some levels of appliance usage (say refrigerators) are insensitive to price changes, i.e., zero elasticity, then at least one other use must have an elasticity in excess of .3.

If the usage elasticity for a product is identical to the price elasticity of demand for the energy the product uses, then it follows that the weighted average of the usage elasticities of all household uses must equal the household price elasticity of demand. Since the appliances subject to energy efficiency standards account for more than 80 percent of household consumption, it would be unlikely that all appliances would have usage elasticities less that the overall household price elasticity of demand.

According to the Energy Information Administration, the household price elasticity of demand for electricity is about .15 in the short run and upward of .7 in the long run. Thus usage elasticities, should, on average approximate these estimates. The Department seeks comments on this argument.

Marginal Electricity Rates

American Council for an Energy Efficient Economy, Natural Resources Defense Council, and Washington Gas Light all urged the Department to use marginal electricity rates rather than average ones. (American Council for an Energy Efficient Economy, No. 6 at 6; Natural Resources Defense Council, No. 13 at 18; and Washington Gas Light, No. 37 at 3). American Council for an Energy Efficient Economy and Natural Resources Defense Council both stated that since room air conditioners are run disproportionately during periods of peak utility load (when rates are the highest), the use of average electricity rates will undervalue the electricity savings from improved efficiency.

The Department agrees that use of average electricity prices can produce inaccuracies and does attempt to use energy prices specific to each end use. In the past, electricity rates have been assumed higher for air conditioning than for other end uses, based on survey data of consumer expenditures, disaggregated according to equipment ownership. The consumer analysis for this proposed rule continues to distinguish energy prices by end use, based on such survey results.

Washington Gas Light added that in addition to using marginal electricity prices, the Department should use the All-Ratepayers Test when measuring the cost effectiveness of a standard level. This test was developed by the California Public Utilities Commission, and it measures the impact of an action on all ratepayers, including non-participants in the conservation activity. (Washington Gas Light, No. 37 at 13).

In this program the Department examines the effect of energy conserved by each purchaser of a more efficient appliance, but does not examine the effects that the aggregate conservation effects would impose on the rates charged within a given utility. The impacts on any system's rates from increased energy standards would depend on the participation rates of its customers in the conservation activity and the particular financial position of the utility.

Several comments discussed the impact of energy conservation standards on low-income people. (Rocky Mountain Institute, No. 15 at 2; Southern Union Gas Company, No. 46 at 1; Laclede, No. 55 at 5; Oklahoma Natural Gas Company, No. 57 at 5; and Public Service Company of North Carolina, Inc., No. 74 at 5). While the Rocky Mountain Institute stated that with improved energy efficiency, the prices of used appliances could be expected to decline in the short run, the other comments all stated that the higher prices that would be caused by improved efficiency standards on new units would have price-increasing effects on used appliances and, therefore, be harmful for lower-income and elderly consumers on fixed incomes.

The Department conducted literature searches on purchasing and usage decisions in low-income households, to determine whether the inputs of the consumer analysis should be adjusted to account for differences between low- and average-income households. There was no information available on which to base any changes to the consumer analysis.

Lighting Prices

Another consumer issue was raised by Valmont Electric, which stated that new energy conservation standards on fluorescent ballasts would raise the retail prices of such ballasts, thereby impeding the conversion from incandescent lighting to fluorescent lighting. (Valmont Electric, No. 16 at 2).

Conversions from incandescent lighting to fluorescent lighting occurs principally through compact fluorescent bulbs, the ballasts of which are not included as part of the review of the legislated fluorescent ballast conservation standards. Any revised energy conservation standards on fluorescent ballasts will not affect the prices of compact fluorescent bulbs and thereby slow the conversion from incandescent to fluorescent lighting.

Heat Pump Water Heaters

On the issue of consumer acceptance of heat pump water heaters, Crispaire Corporation stated that studies show consumer satisfaction with them. (Crispaire Corporation, No. 19 at 1). In addition, the company provided attachments with estimates of unit energy consumption and annual performance factors for heat pump and resistance water heaters.

The Department appreciates the information provided and used the cited studies in developing data for the consumer analysis and forecasting efforts.

Appliance Lifetimes

Two comments discussed product lifetimes. Wisconsin Blue Flame Council stated that pilot lights decrease condensate, thereby extending the tank life of gas water heaters. (Wisconsin Blue Flame Council, No. 33 at 2).

The Department based product lifetimes on an analysis comparing recent replacement sales to historical shipments, and researched the effects of particular design options on product life.

Air Energy Heat Systems said that the lifetime of heat pumps for pool heaters is approximately the same as for air conditioning, if the water chemistry of the pool is maintained in proper balance. (Air Energy Heat Systems, No. 44 at 1).

The Department did not analyze heat pump pool heaters because no test procedure is available.

Modeling

There were several issues raised with regard to the forecasting efforts in the analyses. For example, Natural Resources Defense Council suggested that the Department model uncertainty, not point forecasts in economic growth and consumer choice and further suggested that the Department could model uncertainties in economic growth by modeling high-, mid-, and low-growth scenarios. (Natural Resources Defense Council, No. 13 at 35–36).

The Department recognizes that all forecasts contain uncertainties. The

principal method by which DOE has accounted for uncertainties has been through sensitivity analyses, which, in the past, have been performed on equipment prices, energy prices, projected equipment efficiencies and market discount rates (the last of which models uncertainties in consumer choices of efficiency).

The Department favors an explicit representation of the uncertainty in the forecasts. Clearly, the best representation would be a statistical treatment of the uncertainty in each of the important variables, including the coefficients used in the Lawrence Berkeley Laboratory Residential Energy Model. At this time, however, such a specification of the distribution of each of the variables and coefficients does not exist. As the Lawrence Berkeley Laboratory Residential Energy Model is updated, such distributions will be generated, which will allow the Department to work towards the capability to perform an uncertainty analysis in the model. Until then, the Department will model uncertainties with sensitivities.

On the other hand, Natural Resources Defense Council endorsed the Department's different assumptions used when calculating energy savings and net present value. (Natural Resources Defense Council, No. 13 at 36).

For this rulemaking, the Department maintained the current methodologies for calculating energy savings and net present value.

Ballast Energy; Use Forecasting

Advance Transformer Company recommended that the Department exclude fluorescent lamp ballasts from incorporation in the Lawrence Berkeley Laboratory Residential Energy Model because of their small number of sales in the residential sector. (Advance Transformer Company, No. 25 at 3).

The Department did exclude fluorescent lamp ballasts from incorporation in the Lawrence Berkeley Laboratory Residential Energy Model. Instead, the Department analyzed fluorescent lamp ballasts in the commercial sector using the Electric Power Research Institute end-use model and the Commercial Energy End-Use Model.

Television Sets

With regard to television power and usage forecasts, the Electronics Industries Association stated that television sets of newer vintage draw less power than those of older vintage. To support this, Electronic Industries Association presented data for the period 1967–1991. (Electronic Industries Association, No. 30 at 2).

Thomson Consumer Electronics, Inc. provided data on the energy consumption of color televisions by size, and asserted that the most important factor in energy usage is viewing habits, specifically, the number of concurrently operating televisions in a household, the number of daily operating hours for each receiver, and control settings, i.e., brightness and sound levels. (Thomson Consumer Electronics, Inc., No. 49 at 3–5).

The Department welcomes the additional data provided in the comments. The Department agrees that the energy consumption of a television set is a function of vintage. It was included in a previous analysis[9] and is included in the analysis for this proposed rule.

The Department also agrees that the number of television sets per household and number of viewing hours are determinants of energy usage, and included these factors in its forecasts. On the other hand, while the Department recognizes that control settings are important, it does not expect them to be different in the future than from today, and, therefore, it did not forecast them.

Lawrence Berkeley Laboratory Residential Energy Model

Two comments addressed the Lawrence Berkeley Laboratory Residential Energy Model methodology and documentation. Whirlpool Corporation stated that it had no strong concerns with the Lawrence Berkeley Laboratory Residential Energy Model at this time. (Whirlpool Corporation, No. 31 at 1). The Florida Energy Office said that the Department should document, well before the final rule, all model assumptions. In addition, the Florida Energy Office offered to provide Florida-specific data to the Department. (Florida Energy Office, No. 42 at 2, 6).

The Department will continue to use the basic Lawrence Berkeley Laboratory Residential Energy Model methodology, but will incorporate updates to data and coefficients for specific products as new analyses proceed. The model assumptions and data for this rulemaking are documented in the Technical Support Document accompanying this proposed rule.

[9] U.S. DOE Technical Support Document: Energy Conservation Standards for Consumer Products: Refrigerators, Furnaces, and Television Sets, DOE/CE–0239, November 1988.

Lawrence Berkeley Laboratory-Manufacturer Impact Model

1. *Modeling.* There were numerous comments on the manufacturer impact analysis. The Association of Home Appliance Manufacturers and Whirlpool Corporation made several suggestions for improving the modeling of manufacturer impacts.

The Association of Home Appliance Manufacturers suggested that the Department devote more modeling efforts to developing demand curves that are empirically verifiable. (Association of Home Appliance Manufacturers, No. 61A at 66).

In response, the Department notes that many of the demand curves used in the Lawrence Berkeley Laboratory-Manufacturer Impact Model were derived from those that were empirically estimated by Oak Ridge National Laboratory in 1976.[10] The Department recognizes that a project to update the demand curves could be useful, considering the age of the data currently being used. The Department does not believe that such data exist. However, the Department requests that if such data does exist that it be submitted as comment on today's proposed rule.

2. *Product mix.* The Association of Home Appliance Manufacturers stated that the Lawrence Berkeley Laboratory-Manufacturer Impact Model should, but does not, take into account the effect that standards have on the relative prices among product classes, which in turn will change the product mix demanded by the market. (Association of Home Appliance Manufacturers, No. 61A at 67).

The Department did take cross-elasticity effects into account in the analysis of water heaters (between electric and gas fuels) where they were particularly important, and will continue to look for instances where such effects may arise in order to take those effects into account as warranted. (See Technical Support Document, Volume F, Appendix B).

3. *Market power.* The Association of Home Appliance Manufacturers was critical of the way the Department models marketplace monopsony power, i.e., the market power of purchasers. In its critique, the Association of Home Appliance Manufacturers stated that the ability of manufacturers to pass on increased costs to the consumer is limited because their customers are primarily a group of large and sophisticated retailers who have

[10] Lin, Hirst, and Colon, Fuel Choices in the Household Sector, ORNL Report Con-3 Oak Ridge National Laboratory, 1976.

significant and increasing power in the marketplace, and who exert downward pressure on the retail prices of appliances. It further stated that the Lawrence Berkeley Laboratory-Manufacturer Impact Model attempts to model the situation by modeling a larger number of manufacturers than actually exist in the marketplace. The Association of Home Appliance Manufacturers said that no theoretical underpinnings were given for this assertion and that there is no reason why the predictions of this "false model" should have any resemblance to what actually transpires in the real world. (Association of Home Appliance Manufacturers, No. 61A at 67–68).

The Department believes that oligopsony power itself could probably be modeled analogously to oligopoly power. There is, however, no accepted theory on the modeling of an industry characterized by both oligopoly and oligopsony. Thus, DOE detailed the assumptions and relevant mathematical derivations of the approach in the aforementioned Technical Support Document for the final rule for dishwashers, clothes washers, and clothes dryers. The approach is to increase the number of firms input into the Lawrence Berkeley Laboratory-Manufacturer Impact Model until the markups that are actually observed in the marketplace are achieved; this is also an obvious implication of The Association of Home Appliance Manufacturers's comments that manufacturers' ability to pass on costs is limited. In fact, the most prominent comments from a review panel on the Lawrence Berkeley Laboratory-Manufacturer Impact Model indicated a concern that the modeling assumptions had gone too far in the direction of reduced markups.[11]

4. *Individual firm.* There were also three comments critical of the Department's modeling of an individual firm. It was argued that the use of a "typical firm" does not address the differential impacts of standards on companies, e.g., sizes, costs, niche markets. The Association of Home Appliance Manufacturers insisted that the Department could address the lack of data in performing this type of analysis by researching the economic literature or by developing an economic theory of how different classes of manufacturers would be affected by standards. Whirlpool Corporation suggested addressing the data problem by putting a range on the cost and margin data. (Advance Transformer, No. 25 at 3; Whirlpool Corporation, No. 31 at 1; Association of Home Appliance Manufacturers, No. 61A at 68–69).

The problem is essentially a lack of data. The Department's review of the economic literature offered no solution to this problem. The Department does analyze the cost and margin data (in addition to other parameters) by performing a sensitivity analysis where the Department changes those parameters (and others) in the model, and tests the sensitivity of the model's results.

During interviews conducted with manufacturers, the Department asked a series of questions covering the effects of firm size and specialization. To date, DOE has not been given information by the industry to draw conclusions about probable effects.

While it would be desirable to analyze the impact of standards on the distribution of firms in an industry, fundamentally, this requires detailed information on how individual firms differ from the norm.

Stating that the primary concern to manufacturers is the short-run industry impact from standards, Whirlpool Corporation and the Association of Home Appliance Manufacturers called for the Department to present greater focus on, or explanation of, short-run impacts. (Whirlpool Corporation, No. 31 at 1; Association of Home Appliance Manufacturers, No. 61A at 69–70).

There are limitations to such an analysis. While general impacts may be understood, the specific details of how each firm reacts at each point of the short-run adjustment process are beyond the ability of economic theory to elucidate. The Department believes that it has treated the short run properly by modeling it on the short-run impact of the downturn from a business cycle. In addition, in considering standard levels to propose, the Department did take explicit account of the short-run Lawrence Berkeley Laboratory-Manufacturer Impact Model results.

The Association of Home Appliance Manufacturers suggested that more detailed analysis of the impacts on individual firms and other areas should be done. The Association of Home Appliance Manufacturers commented that an analysis of how industry will fare, on average, belies the very serious effects that adjustment can have, especially if standards force a company in a small community to close. Therefore, it is important, the Association of Home Appliance Manufacturers believes, that DOE evaluate these potential short-term and individual company impacts. (Association of Home Appliance Manufacturers, No 61A at 70).

In the analyses to date, the Department has used industry profitability as the best single indicator of plant closures and other significant disruptions on manufacturers. Further, the primary impact variables of returns on equity, net income, revenue, price, and shipments have been presented as the best summary statistics with which to capture the significant impacts resulting from standards.

5. *Multiple standards.* In another comment, the Association of Home Appliance Manufacturers stated that firms face constraints on the share of their resources that can be devoted to meeting each new wave of conservation standards from DOE. The cumulative impact of each new rulemaking on manufacturers' resources must be considered in evaluating manufacturer impacts. (Association of Home Appliance Manufacturers, No. 61A at 70–72).

The Lawrence Berkeley Laboratory-Manufacturer Impact Model is designed to analyze the impact of standards on industry profitability for an individual appliance. To date, this has involved treating each manufacturer of a subject product as a separate company. Recognizing, however, that many of the manufacturers produce more than one appliance type subject to these rulemakings, and recognizing that those companies may have limited resources to comply with the requirements of all of the relevant regulations, the Department is presently seeking approaches to account for the cumulative effects on a multi-product company of the appliance conservation standards that it promulgates and requests comments in this regard.

6. *Variable costs.* On another manufacturer issue, Whirlpool Corporation criticized the Department's assumption that pricing relates only to variable costs. Whirlpool Corporation suggested, instead, that changes in fixed costs do have an impact on pricing in an industry. (Whirlpool Corporation, No. 31 at 1).

The Department acknowledges that firms may try to pass on fixed costs; however, standard economic theory concludes that even monopolists will find this unprofitable, and will eventually decide not to try it. The Department has seen no argument or evidence to the contrary. It is interesting to note that if Whirlpool Corporation were correct, the manufacturers who decided to do so would be impacted far more favorably by standards than the Lawrence Berkeley Laboratory-Manufacturer Impact Model predicted.

[11] Lawrence Berkeley Laboratory, Manufacturers Impact Model (MIM) External Review Panel Meeting, January 11, 1990.

Consumer Demand

Whirlpool Corporation stated the Department assumes that consumers will pay more for energy efficiency. Whirlpool Corporation claims studies have shown this has not been true. In support, Whirlpool Corporation supplied a list of 20 key buying factors from an August 1988 McKinsey study. Energy efficiency placed tenth in consideration for kitchen products. (Whirlpool Corporation, No. 31, at Attachment 2).

The Department notes that energy efficiency placed ahead of other factors such as "lowest price available among similar makes and models," "has an extended service agreement at a fair price," and "runs quietly." These results tend to support the Department's position that consumers are willing to pay for energy efficiency.

Rebuttable Presumption

For consideration of rebuttable presumptions, the Association of Home Appliance Manufacturers stated that incremental payback, not cumulative payback, are the appropriate payback for standards. (Association of Home Appliance Manufacturers, No. 61A at 64).

Since the legislation requires that payback be considered from a standard level compared to the base case, DOE believes that only cumulative payback may be used for the rebuttable presumption determination. Additionally, the other impacts of appliance conservation standards on energy use, consumers, manufacturers, and other factors were determined by comparing projections under the base case [12] with the projections under the proposed standards.

Standards Decision Making

Natural Resources Defense Council and the Rocky Mountain Institute addressed the Department's standards selection criteria. Both Natural Resources Defense Council and the Rocky Mountain Institute stated that in deciding the economic justification of standards, the Department should not be attempting to maximize the economic benefits to consumers, but should instead be maximizing energy savings. (Natural Resources Defense Council, No. 13 at 16; Rocky Mountain Institute, No. 15 at 2).

In response, the Department recognizes that the basic statutory direction to set standards is to achieve the "maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A). DOE notes that the economic impact of standards on consumers is only one of the factors the Department considers in reaching its decision to set conservation standards. Other factors include impacts on manufacturers and on national benefits and costs. However, regarding consumer benefits, while the minimum consumer life-cycle cost point is selected as a trial standard level, and in many cases, the most stringent standard level that the Secretary determined was economically justified coincided with that level, several of the proposed standard levels have life-cycle costs that exceed the minimum life-cycle cost. Thus, maximizing consumer benefits does not take precedence over maximizing energy savings.

Natural Resources Defense Council further stated that in deciding on standard levels, the Department must first consider the most stringent level of efficiency, i.e., the "max tech" level, and if it is economically justified, DOE must set the standard at that level. If it is not economically justified, DOE must then consider the next most stringent level, and if economically justified, set the standard at that level. (Natural Resources Defense Council, No. 13 at 17).

The Department does consider candidate standard levels in this manner. However, in making its determination as to whether a standard is economically justified, the Department considers both: The benefits and costs of the standard level under consideration relative to the base case; and how these benefits and costs compare to the benefits and costs of other standards analyzed by the Department in the technical support document for this rule.

Currently the costs and benefits of all candidate standard levels are analyzed in comparison to the base case. However, it is possible that more direct comparisons of the impacts of different standard levels may be useful. In light of the above, the Department specifically solicits comment on whether any incremental perspectives would be useful and valid in the determination as to whether a particular standard level is "economically justified."

The Florida Energy Office stated that after considering all relevant costs and benefits over the life of the appliance, the Department should set standards at the highest levels that are cost-effective to the nation. (Florida Energy Office, No. 42 at 1).

As stated above, consideration of the national costs and benefits of the impacts of candidate standard levels was one of the factors considered in this rulemaking. (See Technical Support Document, Chapter 8.)

External Costs and Benefits

A number of comments on the Advance Notice of Proposed Rulemaking urged the Department to consider the external costs and benefits in its economic analyses of the efficiency standards proposed in this Notice of Proposed Rulemaking. For example, the American Council for an Energy Efficient Economy suggested that DOE account explicitly for environmental costs in its economic analysis. (American Council for an Energy Efficient Economy, No. 6 at 6.) In addition, Public Citizen stated that the Department should include in its analyses all external costs and benefits, e.g., environmental quality, national security, and reduced energy imports. (Public Citizen, No. 7 at 4.)

The Sierra Club stated that the difference between "Consumer Analysis" and "Life-Cycle Cost Analysis" is difficult to ascertain. They urged DOE to evaluate, as part of the Consumer Analysis; (a) environmental external costs; and, (b) national security and balance-of-payments costs of increased/decreased oil consumption. (Sierra Club, No. 43 at 2.)

The Ohio Office of the Consumers' Council said that the consumer and utility analyses should include monetization of externalities (environmental and security) such as sulfur oxides, carbon monoxide, carbon dioxide, nitrogen oxides, particulate, and other air, water, and land use impacts of energy production and use. Such considerations should be consistent with current trends in state utility regulations. (Ohio Office of the Consumers' Council, No. 60 at 2.)

The Department recognizes that appliance standards may generate external societal benefits arising from reductions in oil imports, and emissions of SO_2, NO_x, and CO_2 and perhaps other pollutants. In this proposed rulemaking, as in previous rulemakings, the Department derives the quantities of oil savings and emissions reductions associated with the estimated energy demand reductions expected to result from the proposed standards, but does not attach any externality values to these benefits. In a separate Advance Notice of Proposed Rulemaking for three products (58 FR 47326, September 8, 1993), the Department has indicated

[12] The base case assumes implementation of the conservation standards that were set by the Act for central air conditioners and central air conditioning heat pumps and furnaces and by Department of Energy rulemaking in the case of refrigerators-freezers and freezers and small gas furnaces.

that it would be desirable to establish monetary values for these external benefits, if sound analytical bases can be found for doing so. The Department will attempt to develop and use such monetary values in the analysis of the likely impacts of updated standards for these three product categories. However, because there is no consensus on how to undertake the analysis underlying estimates of such environmental and energy security externalities, the Department is not yet able to set monetary values for such externalities accurately enough to be useful in the current rulemaking.

Standards

1. *Regional standards.* On another standards determination issue, the Association of Home Appliance Manufacturers stated opposition to the setting of regional standards for room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 22.)

The Department is not setting regional standards, but did conduct a sensitivity analysis on life-cycle cost for room air conditioners because their energy use is affected by climate. The sensitivity analysis considered regional energy prices and usage.

2. *Corporate average fuel economy.* The Rocky Mountain Institute stated that the Corporate Average Fuel Economy standards for appliances, like the Corporate Average Fuel Economy for automobiles, could allow for the gradual phase-in of technologies that are substantially different from the present, less-efficient technologies, e.g., horizontal-axis clothes washers and heat pump water heaters. (Rocky Mountain Institute, No. 15 at 3.)

The Department acknowledges that some stringent standard levels could involve radical industry manufacturing changes and recognizes that a Corporate Average Fuel Economy-type approach to such standards could help to ease industry's transition to producing these more efficient appliances. The Department believes, however, that the Act precludes that option since the statute requires any covered product to meet the energy conservation standard.

3. *Fuel switching.* Several of the comments in this area dealt with the standards selection criteria for specific products. For example, Peoples Natural Gas Company stated a concern that standards could unintentionally increase energy consumption by forcing a switch from gas water heaters to electric. Peoples Natural Gas Company recommended limiting standards-induced price increases to consumers for gas water heaters to 120 percent of the standards-induced price increases for electric resistance water heaters. Peoples Natural Gas Company contended that this would avoid switching from gas to electric by price-sensitive consumers, such as home builders and low-income homeowners. (Peoples Natural Gas Company, No. 28 at 1).

In response, the Department analyzed standard levels by the methodology proposed in the September 1990 advance notice, wherein fuel switching was accounted for as part of the Lawrence Berkeley Laboratory Residential Energy Model's forecasting of economic impacts. While some fuel switching did occur (electric water heaters are projected to increase their share of the market from 45.5 percent to 50.3 percent, as shown by Table 3.4 of Volume F of the Technical Support Document), the Department does not believe it occurred because of the relative equipment price increases since the price of electric water heaters are projected to increase much faster than that of gas, as presented in Section IV below. The Department ascribes the fuel switching that is projected to occur to the relative increase in the price of gas compared to electricity as shown in Table 5.5 of Volume A of the Technical Support Document.

Impacts on Manufacturers

The Association of Home Appliance Manufacturers contracted with Arthur D. Little, Inc. to prepare a report on the Department's analysis of top-loading, horizontal-axis clothes washers. In that report, entitled "Financial Impact of DOE Top-Loading Horizontal Axis Standards on U.S. Washing Machine Manufacturers," Arthur D. Little listed a number of criticisms of the Lawrence Berkeley Laboratory-Manufacturer Impact Model and suggested that the Department use a "Cash Flow Model," instead. (Association of Home Appliance Manufacturers, Nos. 61D and 61E). Although clothes washers have been dropped from this rulemaking, as discussed below, many of Arthur D. Little's comments have general applicability to the other appliances.

One of Arthur D. Little's criticisms of Lawrence Berkeley Laboratory-Manufacturer Impact Model involved that model's consumer preference assumptions. Arthur D. Little stated, "The combination of price and energy savings account for under two-thirds of the basis of selection. Thus, the Manufacturer Impact Model at best is taking into account a little less than two-thirds of the consumer's decision to purchase." Arthur D. Little concluded, "neglected features seriously distort the prediction of consumer's * * * well being." (Association of Home Appliance Manufacturers, No. 61E at 25.)

The Department intends to set standards that do not reduce consumer utility, a gauge of well being, by establishing product classes that protect utility. While utility is sometimes a matter of degree, instead of an open and shut case, the basic concept is the establishment of classes that protect a less efficient, but desirable, feature such as the through-the-door ice service for refrigerators. Since the establishment of classes is performed before the manufacturer impact analysis, it is appropriate for the Lawrence Berkeley Laboratory-Manufacturer Impact Model to assume there is no difference in consumer utility between an appliance meeting the different trial standard levels. Furthermore, since standards are intended to affect only an appliance's energy efficiency (which usually is positively related to price), modeling consumer response only to changes in those variables is reasonable.

The Arthur D. Little report was also critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model's treatment of market power issues. The report stated that the manufacturer analysis concludes that manufacturers can set their own prices because the manufacture of the product is concentrated in the hands of a small number of producers. (Association of Home Appliance Manufacturers, No. 61E at 27.) Furthermore, the report asserted that within the Lawrence Berkeley Laboratory-Manufacturer Impact Model, mark-up is countered only by a very weak consumer reaction, as measured by the elasticity of demand relative to the purchase price of the appliance and its operating expense. (Association of Home Appliance Manufacturers, *Id.*)

A major difference that exists in the manufacturer impact analysis performed for today's notice and typical manufacturer experience to increasing prices is that the analysis assumes that all manufacturers in the industry will have to increase prices to meet the standard. This is a very different scenario from an individual firm raising its prices independently from its competitors. To accomplish the analysis, the Lawrence Berkeley Laboratory-Manufacturer Impact Model uses two elasticities; an individual firm elasticity, which is used to establish price, and an industry elasticity, which is used to establish sales. The individual firm elasticity used by the Lawrence Berkeley Laboratory-Manufacturer Impact Model is greater than the industry elasticity, and is such that if a

firm raises prices it loses sales. It is this price elasticity faced by the individual firm that determines how much the firm can mark up price. However, the initial effect of this elasticity is tempered in the model by the fact that the firm's competitors are also raising prices until equilibrium is reached between increased costs to meet the standard and increased prices. The consumer reaction to this higher price is then calculated by the industry elasticity, which is the consumers' responsiveness to having the appliance or not, as opposed to buying it from a competing seller for less. Since the Department considers the whole industry to be affected by standards, a resulting rise in the general level of prices for an appliance would likely have a relatively weak aggregate consumer reaction.

In addition, the Department notes that in Arthur D. Little's own "cash flow" model, long-run sales of appliances are seemingly unaffected by price; Arthur D. Little has assumed there is no consumer reaction to price, or in other words, a price elasticity of zero.[13]

This assumption would imply that manufacturers were completely free to set price at any level they wanted.

Another area in which the Arthur D. Little report was critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model was in the treatment of dynamic adjustment issues. As Arthur D. Little's report stated, "To determine the impact on manufacturers, the Manufacturer Impact Model only examines two static cases * * * and misses important changes in the health of the industry [during the adjustment period]." (Association of Home Appliance Manufacturers, *Id.*).

The "two static cases" to which Arthur D. Little is referring are the base and standards cases. However, Arthur D. Little is incorrect in stating that these two cases are static. As is documented in the Technical Support Document, the Lawrence Berkeley Laboratory-Manufacturer Impact Model also computes a short-run analysis, the sole purpose of which is to assess the dynamic impact of standards, in addition to computing the long-run analysis to determine the impacts after those dynamic impacts have been absorbed. The dynamic effect that is captured with the Lawrence Berkeley Laboratory-Manufacturer Impact Model short-run analysis is the extra price competition that may occur when the quantity demanded is suddenly reduced by the standards-induced price increase. This dynamic effect generally results in lower profitability over the short-run, as compared to over the long-run, especially at the higher standard levels as reported in Section IV below. This effect is completely ignored by the Arthur D. Little model with its zero price elasticity. However, Arthur D. Little does address a different dynamic effect which the Lawrence Berkeley Laboratory-Manufacturer Impact Model does ignore.

The dynamic effect addressed by Arthur D. Little is the forward time-shifting of appliance purchases in anticipation of a standards-induced price increase. The Department has been aware of this for some time, but has not incorporated it into the Lawrence Berkeley Laboratory-Manufacturer Impact Model because of a lack of data on the extent of purchase time-shifting.

Additionally, the Department believes that any effect of time-shifting is initially positive and then negative. When appliances are bought in advance of standards, the initial effect probably would be to improve profits and cash flow. When the quantity demanded falls temporarily after standards, the effect probably would be to hurt profits and cash flow. These two effects very nearly should cancel over time. The Department notes that this result is in sharp contrast to the dynamic effect that the Lawrence Berkeley Laboratory-Manufacturer Impact Model does consider, which has a non-recoverable impact on the industry. Nonetheless, DOE agrees that time-shifting could bear further investigation and will evaluate whether the estimates supplied by Arthur D. Little on the magnitude of time-shifting can be of use.

Arthur D. Little also was critical of the Lawrence Berkeley Laboratory-Manufacturer Impact Model's inability to take into account (or try to predict) some of the consequences of the low profitability that the model sometimes predicts. In particular, its report points out that if the rate of profit did decline significantly in real terms, the industry would have a very hard time raising additional equity. Arthur D. Little points out that, in actuality, both owners and financial backers of firms would limit capital until expected return matched their required return. According to the comment, the Lawrence Berkeley Laboratory-Manufacturer Impact Model, therefore, "* * * sacrifices realism in modeling the relationship between expected return and the willingness of owners and financial backers to commit capital for retooling." (Association of Home Appliance Manufacturers, No. 61E at 27–28.)

The Department agrees with Arthur D. Little's statement regarding the difficulty that industry likely would have in raising capital as a consequence of significantly reduced profitability. Furthermore, it is true that the Lawrence Berkeley Laboratory-Manufacturer Impact Model is limited to estimating the impact of potential standards on an industry, whether positive or negative, as characterized by profitability. The model does not attempt to predict the specific forms of the damage and the complex reactions (inability to raise capital, failures of some firms, foreign buy-outs, mergers, capacity reductions, etc.) that could occur within a negatively affected industry. However, the Department does not believe that it is necessary to attempt to predict that sort of detail. Rather, DOE believes it is obligated not to set standards that would cause serious damage.

The Department believes that the magnitude of the hypothetical profit loss is a very good indicator of the magnitude of the impacts that will be imposed on the industry. When the Lawrence Berkeley Laboratory-Manufacturer Impact Model predicts a precipitous decline in profit, this should be interpreted as damaging to the industry. Indeed, in many cases, as discussed in Section IV below, the Lawrence Berkeley Laboratory-Manufacturer Impact Model does predict a sharp drop in profitability, and this prediction figures strongly in rejecting the standard in question.

Because of all the "deficiencies" in the Lawrence Berkeley Laboratory-Manufacturer Impact Model, Arthur D. Little's report suggested that the Department abandon the model, and proposed, instead, that the Department use a cash-flow model. The cash-flow model determines the economic impact of energy conservation standards on manufacturers by estimating the cash flows associated with meeting the standards, and calculating a value for those cash flows. (Association of Home Appliance Manufacturers, No. 61E at 19 and Appendix C.)

However, Arthur D. Little's cash-flow model submitted does not predict whether a manufacturing industry will or will not be hurt by standards. It

[13] This result may be found by examining Appendix C of the ADL report which contains the results of its cash flow model. In it, two cases are discussed: a constant volume case and a variable volume case. The distinction between the two is that in the former, production volume is assumed to be constant for each year, while in the latter, volume is constant for each year until 1997 (two years before standards when, presumably, sales rise in anticipation of higher prices) through 2003. The volume then goes back to the same constant level in 2004. Thus, the results indicate that consumers respond to the coming price increase, but after six years, their demand falls back to the original level, despite the higher price. Thus, aside from a short run effect over a six-year period, the price elasticity of demand is zero.

allows one to make various assumptions about the market's behavior, and then to predict the impact of those assumptions on cash flow; but, it tells nothing about the market's behavior. As a result, the Department notes that Arthur D. Little has run three scenarios with radically different implications for the industry, with no way to choose among them. The model is equally capable of processing the optimistic and the pessimistic scenario, but it does not have an expected scenario. The Department, therefore, does not believe that the cash flow model, as presented in Association of Home Appliance Manufacturers's comments, could serve to replace the Lawrence Berkeley Laboratory-Manufacturer Impact Model for use in the analyses of the impacts of appliance standards on manufacturers.

However, the Arthur D. Little report also stated that one of the key assumptions in the Lawrence Berkeley Laboratory-Manufacturer Impact Model is the proportion of costs that are fixed. The Arthur D. Little report went on to state that, "After interviewing all five domestic manufacturers, Arthur D. Little was unable to verify that the washing machine manufacturers have any sense as to the proportion of their costs which are long-term fixed costs * * *. Basing a model upon an assumption that is not empirically verifiable is a risky proposition." (Association of Home Appliance Manufacturers, *Id.*)

The Department agrees that one of the key assumptions in the Lawrence Berkeley Laboratory-Manufacturer Impact Model is the proportion of costs that are fixed and variable. The Department is sensitive to the claim that this key input parameter to the Lawrence Berkeley Laboratory-Manufacturer Impact Model is "completely alien to manufacturers." The Department would certainly consider alternate manufacturer impact models that utilize more known and verifiable inputs. However, to be an acceptable alternative model, the Department believes that such model would have to have forecasting ability similar in scope and sophistication as the Lawrence Berkeley Laboratory-Manufacturer Impact Model. As discussed above, the cash-flow model submitted by the Association of Home Appliance Manufacturers does not meet this test. Additionally, the Department would be interested in any analyses that indicate adverse manufacturer impacts at any of the proposed standard levels, as opposed to arguments over the severity of the adverse impact of rejected standard levels.

Impacts on Utilities

Several comments addressed the Department's proposed analysis of the impacts of energy conservation standards on electric utilities. Natural Resources Defense Council stated that the utility analysis needs to consider that under the base cases, there will be less forecasting certainty than would occur under new and revised standards, and a greater probability that utilities would misforecast electricity demand. (Natural Resources Defense Council, No. 13 at 32). The Ohio Office of the Consumers' Council also suggested that the utility analysis should consider the value of reduced uncertainty in utility forecasts as a result of standards. In addition, the Ohio Office of the Consumers' Council gave references to a methodology. (Ohio Office of the Consumers' Council, No. 60 at 6).

Increased demand certainty after standards is an effect that was not captured in the utility analysis. It results in substantial benefits to electric utilities, particularly when demand growth is rapid. These benefits accrue because demand growth is uncertain, and if the utility misforecasts demand, it may build too few or too many power plants. This risk of capital misallocation can be substantial in certain cases.

With regard to the appropriate measure of dollars to use in the utility impact analysis, Natural Resources Defense Council stated that "DOE needs to do the utility impact analysis in nominal dollar terms, using actual utility assumptions for depreciation and rate of return. Utility rates and finances are computed in nominal dollars, not real dollars, and this can have a dramatic impact on how new power plant construction will affect rates." (Natural Resources Defense Council, No. 13 at 32).

It is true that utilities calculate rates in nominal dollar terms. The Department, therefore, calculated utility impacts in both real and nominal dollars, in order to determine how adding an inflation factor would affect the results.

With regard to the Clean Air Act Amendments of 1990 (Pub. L. 101–549, November 15, 1990), Natural Resources Defense Council stated that utility expansion plans will need to be consistent with the Act, which will require more controls as the demand for electricity grows. Appliance standards will, all other things being held equal, make compliance with the Clean Air Amendments less expensive for utilities, as it allows them to meet the cap on emissions more easily. (Natural Resources Defense Council, No. 13 at 32, 35).

The utility analysis and the environmental analysis are consistent with the 1990 Clean Air Act Amendments. The Department collected forecasts of the value of marketable permits for sulfur, estimates of the other effects of the Clean Air Act Amendments, and assessments of future utility generation by fuel type. The Department assessed these estimates and assimilated them into the analysis. (See Technical Support Document, Environmental Assessment, Section 2).

The Florida Energy Office stated that capacity cost credit (for avoided capacity) should not be limited to combustion turbines but should match the load characteristics of the subject appliance, categorized into peaking, intermediate, and baseload groups. Air conditioners should be categorized according to their load duration characteristics. (Florida Energy Office, No. 42, at 2).

The Department agrees that load shape characteristics should be included in an assessment of air conditioner (and other appliances) avoided peak demand. The current utility analysis accounted for these effects. The Department investigated separating energy savings into peaking, intermediate, and baseload categories, to determine if this would have a significant effect on the results. The utility analysis assumed a combustion turbine proxy, which values all peak demand savings at the cost of a combustion turbine. This is the most widely used approach by U.S. utilities.

The Ohio Office of the Consumers' Council stated that the utility analysis should consider transmission and distribution capacity savings. (Ohio Office of the Consumers' Council, No. 60 at 5).

The Department agrees that transmission and distribution capacity savings should be included in the utility analysis, and did include them. Avoided transmission and distribution costs were based on the value assigned to this avoided transmission and distribution capacity by many different U.S. utilities.

Two commentators stated that off-peak water heaters (those that heat water only during off-peak hours) save energy, and that this should be included in the utility analysis. (National Regional Electric Cooperative Association, No. 17 at 1; Vaughn Manufacturing Company, No. 75 at 1).

In response, the Department notes that where utilities offer time-of-day rates, the economics of off-peak water heating change dramatically and may be

very attractive. However, the Department does not have the authority to require utilities to offer such rates, and believes the lack of these rates offered nation-wide precludes consideration of off-peak water heaters in a national standard.

Several comments discussed the impacts of appliance conservation standards on natural gas utilities. The Washington Gas Light, Inc. urged the Department to dedicate a similar level of analytical effort to the utility cost consequences of standards on natural gas appliances as it devotes to impacts on electric utilities from standards on electric appliances. (Washington Gas Light, Inc., No. 37 at 12).

The Department initially studied the potential impacts of standards on electric utilities and not natural gas utilities because there were more abundant data on the former. Furthermore, significantly more residential energy consumption is electricity rather than natural gas.

Nevertheless, the Department recognizes that for analytical completeness, it should conduct studies on the potential impacts of standards on natural gas utilities. Accordingly, DOE is now examining methodologies and data sources that will enable it to conduct such studies. The Department, therefore, welcomes submittals of relevant information and data in this regard.

Columbia Gas and the Montana-Dakota Utilities Company stated that conservation standards on gas appliances would result in a loss of natural gas sales, which, in turn, would lead to higher rates to all gas customers. (Columbia Gas, No. 45 at 5; Montana-Dakota Utilities Company, No. 54 at 3).

The Department does not accept the inevitability of that contention; a loss of gas sales may or may not increase rates. The actual effect depends on the cost structure of the gas utility. If avoided costs are larger than rates, then reducing sales would actually decrease rates. Without study of individual gas utility cost structures, no *a priori* conclusion in this regard can be drawn.

Lastly, four comments addressed the Department's planned analysis of environmental effects. Both the Southern Union Gas Company and Columbia Gas pointed out that the negative environmental effects from electric resistance water heaters are more severe than are the effects from natural gas water heaters. Columbia Gas stated that carbon dioxide emissions from electric resistance water heaters are 3.8 times higher than those from a minimum efficiency gas water heater. (Southern Union Gas Company, No. 22 at 2; Columbia Gas, No. 45 at 5). Also, the American Gas Association and Columbia Gas urged the Department to consider the environmental impact of the total energy delivery cycle, i.e., source energy, not just site consumption only. (American Gas Association, No. 23 at 3; Columbia Gas, No. 45 at 2).

The statements regarding the relative environmental impacts of gas and resistance electric water heating are generally correct. Furthermore, the Department does account for source energy (not just site energy) savings by including the fuel used by electric utilities and the consequent emissions in the utility impact assessment and environmental analysis. These effects are reported in Chapter 9 of the Technical Support Document accompanying this Notice.

b. Product-Specific Comments

1. Room Air Conditioners

Classes. In the September 1990 advance notice, DOE proposed 12 classes of room air conditioners. The product classes consist of four categories; units with side louvers, units without side louvers, units with reversing valve with side louvers, and units with reversing valve without side louvers. There are five class divisions by capacity within each of the two categories without reversing valves.

The California Energy Commission proposed a reduction in product classes from 12 to 4, eliminating the class divisions based on capacity. (California Energy Commission, No. 24 at 2). Whirlpool Corporation and Association of Home Appliance Manufacturers proposed two additional classes, a casement slider and a casement only room air conditioner. They stated that restricted geometry adversely impacts the potential new designs that can be applied to those types of room air conditioners. For example, rotary compressors could not be fitted into the casement units. (Whirlpool Corporation, No. 31 at 7; Association of Home Appliance Manufacturers No. 61A at 4). The American Council for an Energy Efficient Economy in its comments cited room air conditioners as an example where broad product classes have been properly selected. (American Council for an Energy Efficient Economy, No. 6, at 1).

There are several constraints placed on the design of room air conditioners. Because most room air conditioners are installed in double-hung windows, the size of the most typical double-hung windows becomes a significant factor in cabinet design and production. Every room air conditioner unit could be designed to optimize performance and efficiency as long as a specific cabinet could be built to best suit the unit's particular capacity and efficiency. Manufacturers cannot afford the luxury of optimizing every model they produce, so they limit their production of cabinets to three or four sizes. Because of space and configuration limitations, the larger capacity units for a given cabinet size will tend to be less efficient. For this reason the Department is rejecting the California Energy Commission proposal to ignore capacity in establishing classes.

The Department decided to adopt additional classes for casement slider and casement only room air conditioners. These units offer a unique utility to the consumer in that they offer a performance-related feature (fitting into casement windows) which other room air conditioners cannot provide. The Department believes that the size limitations imposed on casement units are more significant than those faced by typical double-hung window units. Since its performance-related feature justified a lower standard, separate product classes were established for casement slider and casement only units. Because of the small amount of empirical data on casement type units, the Department was unable to analyze these classes. As a result, the Department is not proposing any standards for them.

Design options. Both the Association of Home Appliance Manufacturers and Whirlpool Corporation provided detailed comments on each design option. (Association of Home Appliance Manufacturers, No. 61A at 5–22 and Whirlpool Corporation, No. 31 at 6–13). A number of the comments concerned design changes to improve heat exchanger (evaporator and condenser) performance. These improvements can be put into two categories; designs for increasing the heat transfer surface area and designs for increasing the heat transfer coefficients. The heat transfer surface area can be increased by any of the following methods: increasing the depth of the coil by adding vertical tube rows, increasing the frontal area of the coil by increasing the height or width, increasing the fin density, or adding a subcooler to the condenser coil. The heat transfer coefficients can be increased by using an enhanced fin design or grooved (rifled) refrigerant tubing. In addition, spraying condensate on the condenser can improve its heat transfer coefficient.

The Association of Home Appliance Manufacturers and Whirlpool Corporation commented that cabinet size could prevent or at least limit the

number of tube rows that could be added to increase the depth of the coil. In addition, they state that the effect of each successive tube row on system performance diminishes rapidly. The Association of Home Appliance Manufacturers also commented that compressor reliability could be affected. The addition of tube rows increases the internal volume of the system and, therefore, the amount of refrigerant required. Compressor reliability could be reduced as the compressor would be required to pump excess refrigerant. Whirlpool Corporation added that a thicker coil will increase air flow restriction and may actually reduce efficiency. (Association of Home Appliance Manufacturers, No. 61A at 9–10; Whirlpool Corporation, No. 31 at 8).

In the analysis of additional tube rows, the Department used engineering design data provided by room air conditioner manufacturers. The data were based on measurements taken from actual room air conditioner units and included information that specified the number of tube rows that could be added to the existing coils. The computer simulation model which was used in the analysis of room air conditioners considered the effect that additional tube rows have on the entire room air conditioner refrigerant system.

The Association of Home Appliance Manufacturers and Whirlpool Corporation commented that increasing the frontal area of the coil would require an increase in chassis size. Coils in existing room air conditioners are already so large that any useful increase would require an increase in the size of the cabinet. The incremental cost for such a change would be significant. Whirlpool Corporation added that an increase in frontal area reduces the water removal capability of the evaporator coil. (Association of Home Appliance Manufacturers, No. 61A at 10; Whirlpool Corporation, No. 31 at 7).

The Department agrees with the Association of Home Appliance Manufacturers's and Whirlpool Corporation's comments regarding the increase of the coil's frontal area. Any useful increase in performance would require that the cabinet size be increased as well. Manufacturers' cost data for this design were taken into consideration in the analysis. The computer simulation model takes into account the impact of increasing the coil frontal area on the evaporator's water removal capability.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation stated that there is a limit to how high the fin density can be increased before air flow becomes too restricted and adversely affects the efficiency of the unit. In addition, an increased fin density might prevent the proper drainage of condensate from the evaporator. The Association of Home Appliance Manufacturers added that dirt build-up is a serious concern in coil design. With a higher fin density, greater dirt build-up is likely to result in coil degradation and lower unit efficiency. (Association of Home Appliance Manufacturers, No. 61A at 11; Whirlpool Corporation, No. 31 at 8).

The Department solicited comments from room air conditioner manufacturers regarding the maximum allowable fin densities for a variety of evaporator and condenser coils. Their comments served as a guideline to how high fin densities could be increased for prospective coils. The computer simulation model is capable of calculating the effect that increased fin density has on the air-side pressure drop across the coil and, in turn, the power consumption of the fan motor.

In its comment concerning subcoolers, Association of Home Appliance Manufacturers asserted that subcoolers are not used unless it is impossible to achieve the needed subcooling without them. The Association of Home Appliance Manufacturers also stated that when a subcooler is needed, the available room in the chassis dictates the allowable length of the subcooler. (Association of Home Appliance Manufacturers, No. 61A at 12, 13). Whirlpool Corporation stated that a subcooler type that transfers heat from the refrigerant in the liquid line to the superheat exiting the evaporator is not practical in room air conditioners due to limited space within the cabinet. (Whirlpool Corporation, No. 31 at 10).

The Department understands the conventional practice used by manufacturers for incorporating subcoolers into room air conditioners. But the Department does not believe that this should prevent the design option from being considered. As long as the chassis of the particular unit is large enough to accommodate it, a subcooler will be considered as a way to improve a unit's performance. Engineering data supplied by manufacturers provided information on the maximum length of subcoolers which could be incorporated into a particular unit. The data were used to establish subcooler length for prospective room air conditioners.

Enhanced fin surfaces, such as wavy or slit patterns, improve the heat transfer capability of a coil by increasing the air-side heat transfer coefficient. In its comments regarding enhanced fin designs, the Association of Home Appliance Manufacturers stated that most manufacturers now use a wavy or "waffle" fin (Association of Home Appliance Manufacturers, No. 61A at 12). Additional improvement can be achieved through the use of "lanced" or "louvered" fins. The Association of Home Appliance Manufacturers expressed a concern that data based on work performed by manufacturers should be more heavily relied upon than data based on published research papers available in the public domain. The publicly available data seems to be either based upon theoretical analysis or research-type testing of simulated coil configurations. The Association of Home Appliance Manufacturers stated that the correlation between the data and actual performance results in room air conditioners is difficult to determine. (Association of Home Appliance Manufacturers, No. 61A at 13, 14). Whirlpool Corporation stated that air flow is reduced and air-side pressure drop across the coil is increased due to incorporating enhanced fin surfaces into coils. But Whirlpool Corporation added that enhanced fin designs provide significant improvement without substantial additional cost. (Whirlpool Corporation, No. 31 at 9).

The Department generally agrees with the comments made by Association of Home Appliance Manufacturers concerning enhanced fin design. Test data received from room air conditioner manufacturers and heat exchanger manufacturers are given more weight than theoretical analyses when deciding how much of an improvement should be given to the air-side heat transfer coefficients due to enhanced fin surfaces. The Department does not believe that the theoretical or research data available in the public domain should be dismissed entirely, and is using it as a check on the data received from manufacturers to determine if their information is reasonable. Improvements to the air-side heat transfer coefficients are input to the computer simulation model. With this information on improvements, the model is able to determine what effect enhanced fin surfaces have on the entire room air conditioner system.

Augmenting the smooth inside surface of refrigerant tubing with grooves increases the tube's refrigerant-side heat transfer coefficient. Grooved (rifled) tubing can therefore improve the heat transfer capability of a coil. The Association of Home Appliance Manufacturers' comments concerning grooved tubing are similar to the comments it gave regarding enhanced

fin surfaces. The Association of Home Appliance Manufacturers stated that data based on work performed by manufacturers should be more heavily relied upon than data provided by refrigerant tubing manufacturers. The Association of Home Appliance Manufacturers asserted that the data made available by tubing manufacturers are generally obtained under optimized conditions rather than under conditions representing actual application in room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 15). Whirlpool Corporation states that grooved tubing costs significantly more than smooth tubing but has a beneficial effect on system performance. (Whirlpool Corporation, No. 31 at 9).

As with enhanced fin surface data, the Department is giving more weight to data received from room air conditioner manufacturers when deciding how much improvement should be given to the refrigerant-side heat coefficients due to grooved tubing. The Department is using data made available by refrigerant tubing manufacturers as well as data provided by research papers in the public domain to compliment the data received from room air conditioner manufacturers. (See Technical Support Document, Volume H). Improvements to the refrigerant-side heat transfer coefficients are input as multipliers to the computer simulation model. With the multipliers, the model is able to determine what effect grooved tubing has on the entire room air conditioner system.

Whirlpool Corporation stated that it is standard practice to spray condensate produced by the evaporator onto the condenser coil. (Whirlpool Corporation, No. 31 at 9).

Because most, if not all, manufacturers incorporate the spraying of condensate into their room air conditioners, the Department did not analyze condensate spray as a design option. Baseline models for each of the product classes are assumed to include condensate spray in their designs.

Improving the air system efficiency can be accomplished either by increasing the fan or fan motor efficiency. In a room air conditioner, both the evaporator and condenser fans are driven by one fan motor. The Association of Home Appliance Manufacturers stated that increases in air system efficiency are limited because of the following: Configuration constraints due to the compact design of room air units; standardization of air system components because the industry's supply comes almost entirely from a single vendor; lower fan motor efficiencies that occur because the room air unit design is optimized at fan speeds other than the point of maximum motor efficiency; and air system designs which must limit noise levels. In addition, the Association of Home Appliance Manufacturers stated that fan motor efficiency is not expected to increase significantly by the year 1995. The Association of Home Appliance Manufacturers also stated that reductions in restrictions to air flow can be made only by increasing the space available for air flow. Major increases in cost would be associated with such a change as it would necessitate an increase in the chassis of the room air conditioner. (Association of Home Appliance Manufacturers, No. 61A at 16–19). Whirlpool Corporation repeated much of what the Association of Home Appliance Manufacturers stated and, in addition, stated that the use of separate fan motors would require significant redesign and increase the product cost. (Whirlpool Corporation, No. 31 at 11). Natural Resources Defense Council said that DOE should add improved air flow past coils as a design option. (Natural Resources Defense Council, No. 13 at 27). The American Council for an Energy Efficient Economy recommended that DOE treat fan and fan motor efficiency separately. (American Council for an Energy Efficient Economy, No. 6 at 3).

In its analysis of increasing the air system efficiency, the Department analyzed only improvements that could be made to the fan motor. The data from fan manufacturers did not provide information on the effect of different fan types on air system efficiency in a room air conditioner application. Therefore, the Department did not analyze improvements due to changes in the fan efficiency. The Department agrees with the Association of Home Appliance Manufacturers's comment regarding restrictions to air flow. Increasing the space available for air flow can be accomplished only by enlarging the chassis size. In the analysis of increased coil face areas where the cabinet size had to be increased, increases in system efficiency were assumed to be a result not only of the enlarged coil, but also the improvement in air flow resulting from the larger cabinet. Therefore, improvements in the air flow past the coils are inherently considered in the analysis of increased coil face areas. The Department utilized data obtained from fan motor manufacturers to determine efficiency increases and the associated incremental costs for improving the efficiency of fan motors.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation commented that most room air conditioner manufacturers use rotary compressors. Improvements beyond the currently available efficiency of 11.0 energy efficiency ratio are expected to be small. They also stated that higher efficiency scroll compressors might be suitable for larger capacity room air units. But use of scroll compressors would significantly increase the cost of room air conditioners. (Association of Home Appliance Manufacturers, No. 61A at 19, 20; Whirlpool Corporation, No. 31 at 11). Natural Resources Defense Council said that DOE should disaggregate the design option of improving the compressor efficiency into motor efficiency, volumetric efficiency, reduced mechanical resistance in pumps, and alternate compressor designs. (Natural Resources Defense Council, No. 13 at 27).

The Department took into account data from both room air conditioner and compressor manufacturers when determining the available efficiency increase in compressors. The data indicated that most room air conditioners use rotary compressors and that the maximum energy efficiency ratio for compressors of this type is 11.0. Other compressor types were also analyzed. New technologies for reciprocating compressors with capacities exceeding 17,000 Btu/h have pushed energy efficiency ratios past 11.0. These reciprocating compressors were considered for the two largest capacity classes of room air conditioners. Scroll compressors were also considered, but for the compressor capacities in the range used in room air conditioner units, energy efficiency ratios did not exceed 11.0. Compressor manufacturers indicated that there is a high probability that compressor energy efficiency ratios ranging from 11.5 to 12.0 would be available by the year 1995. Based on this information, compressor efficiencies of this magnitude were analyzed by the Department. In response to Natural Resources Defense Council's comment, compressor manufacturers increase compressor efficiency by improving the performance of these individual components. Data for the impact of component improvements are not available but, component improvements are reflected in higher compressor energy efficiency ratios. Therefore, the Department is analyzing the compressor as a whole rather than attempting to analyze individual components.

Other comments. The American Council for an Energy Efficient Economy proposed that DOE revise the room air conditioner test procedure to determine the energy savings on a

cycling rather than a steady state basis. If the test procedure cannot be revised during the rulemaking, the American Council for an Energy Efficient Economy recommended development of methods to estimate the benefits of design options which tend to improve efficiency under cycling conditions. (American Council for an Energy Efficient Economy, No. 6 at 2). On the other hand, the Association of Home Appliance Manufacturers and Whirlpool Corporation stated room air conditioners are not normally turned on for extended periods of time, and when they are turned on the (room and ambient) temperature is more likely to be high, reducing the amount of cycling. The current one-temperature test procedure adequately matches consumer usage patterns for room air conditioners. The Association of Home Appliance Manufacturers said that any change in the procedure will drive up the product cost and provide no benefit. It was the contention of the Association of Home Appliance Manufacturers and Whirlpool Corporation that design options such as variable speed compressors, electronic expansion valves, thermostatic cycling controls, and possibly use of alternative refrigerants that improve efficiency under cycling conditions will not result in any measurable efficiency improvements. The Association of Home Appliance Manufacturers stated that the addition of a cycling test must be justified by in-depth studies and field experiments to determine if the efficiency improvements such a revision would predict are cost-effective. (Association of Home Appliance Manufacturers, No. 61A at 6–8; Whirlpool Corporation, No. 31 at 12–14).

In response, the Department believes that some design options may improve efficiency under cycling conditions. The Department also agrees that before such design options are translated into test procedure credits, field tests would need to be conducted to provide evidence to support such credits. Therefore, for purposes of this rulemaking, cycling designs for room air conditioners will not be given test procedure credit.

Though no test procedure credit will be given to cycling designs, the Department believes that energy savings can be realized through the use of variable speed compressors. Energy savings for variable speed compressors have been estimated by extrapolating from results based on tests performed on central air conditioners. The extrapolated estimate is significantly lower than what test results indicate for central systems. A low estimate is used because room air conditioners probably cycle less than central systems. Cycling data for room air conditioners are not available.

There are some design options listed in the Advance Notice of Proposed Rulemaking which are theoretically possible, but for which experimental data or prototypes are not available. The impact of electronic expansion valves and thermostatic cycling controls on the efficiency of room air conditioners has not been analyzed because the Department was not able to obtain any data for these designs.

Both the Association of Home Appliance Manufacturers and Whirlpool Corporation made comments regarding replacement refrigerants for R–22. They commented that though research has identified refrigerant blends (non-azeotropic mixtures) that could improve the efficiency of room air conditioners, no prototypes have been developed that demonstrate this potential. In addition, changes would be required in room air conditioner systems, e.g., heat exchangers, in order for the unit to operate efficiently with the replacement refrigerant. (Association of Home Appliance Manufacturers, No. 61A at 8; Whirlpool Corporation, No. 31 at 15).

The Department agrees with the comments made by the Association of Home Appliance Manufacturers and Whirlpool Corporation regarding replacement refrigerants for R–22. Since no prototypes exist, the Department did not analyze replacement refrigerants as a design option for room air conditioners.

The Association of Home Appliance Manufacturers provided extensive comments regarding the computer simulation model used by the Department to analyze room air conditioners. The Association of Home Appliance Manufacturers proposed the following changes to the computer simulation model: (1) Modification of the compressor subroutine to model rotary compressors and to simulate reciprocating compressors better; (2) correction of the condensate spray subroutine to predict its effect on system performance better; (3) addition of correction factors to account for indoor/outdoor air leakage, short-circuiting of indoor air, and heat leakage through the divider wall; (4) addition of multiplication factors to modify coil heat transfer coefficients as a result of using enhanced fin surfaces; (5) addition of correction factors to modify such values as the compressor power and refrigerant mass flow rate in order to assist in calibrating the model to test data; and (6) addition of a psychometric heat balance routine to check that the results from the simulation model are thermodynamically consistent. In addition to making changes to the simulation model, the Association of Home Appliance Manufacturers requested that DOE calibrate the model to match industry test data for the baseline models chosen to represent each of the room air conditioner product classes. The Association of Home Appliance Manufacturers also requested that the room air conditioner industry be given the opportunity to conduct experiments to judge the models validity after the needed changes to the model were completed. The Association of Home Appliance Manufacturers also stated that manufacturers' data should be given significant weight in predicting the increases to efficiency due to design modifications. (Association of Home Appliance Manufacturers, No. 61A at 2,3). Whirlpool Corporation stated that it fully supports the Association of Home Appliance Manufacturers's recommended changes to the computer simulation model. (Whirlpool Corporation, No. 31 at 15).

The Department has made the changes to the simulation model that were proposed by the Association of Home Appliance Manufacturers. Simulation of baseline models were calibrated against test data submitted by manufacturers. The Department encourages the room air industry to test the validity of the simulation model and submit results in response to the standard levels being proposed in this rulemaking.

The Rocky Mountain Institute proposed that latent cooling be considered in room air conditioner energy savings, and that DOE investigate whether the spread between evaporator temperatures has been reduced to a minimum. (Rocky Mountain Institute, No. 15 at 4).

The computer simulation model used in the analysis of room air conditioners evaluated the thermodynamic performance of the refrigerant system. In this evaluation, the removal of latent heat was calculated. Minimization of the difference in evaporator inlet and outlet temperatures is an inherent consideration in heat exchanger and system design. This temperature difference was determined by the simulation model.

The Florida State Energy Office (FSEO) suggested that the Department consider classifying room air conditioners according to their load characteristics. (FSEO, No. 42 at 5, 6). The Association of Home Appliance Manufacturers stated that regional

standards could increase the product's cost by denying manufacturers the economy of large production runs and augment distribution problems by isolating inventories by region. (Association of Home Appliance Manufacturers, No. 61A at 22–25).

The Department assumes that the Florida State Energy Office comment concerns regional standards. The Department believes the program requires the setting of a national standard and is proposing therefore only a national standard for room air conditioners.

The Natural Resources Defense Council and the Florida State Energy Office proposed that DOE establish procedures that take into account the integration of room air conditioners and water heaters (heat recovery units). (Natural Resources Defense Council No. 13 at 29; FSEO No. 42 at 2,3).

Establishing standards and developing test procedures for appliances which serve two types of loads simultaneously is a very complex problem. The Department is in the process of developing standards and test procedures for combined central air conditioners and water heaters. However, because of the difficulty of running water lines to a remote room air conditioner location and the inherent heat losses from the hot water line, a room air conditioner/water heater configuration does not seem particularly appropriate. At this time, DOE will not establish a standard for room air conditioner/water heater systems.

The Natural Resources Defense Council, the Florida State Energy Office and the American Council for an Energy Efficient Economy stated that DOE should consider the cost of peak power in evaluating the cost effectiveness of room air conditioner standards. (Natural Resources Defense Council No. 13 at 18; Florida State Energy Office No. 42 at 5,6; American Council for an Energy Efficient Economy No. 6 at 7).

The price of electricity used for room air conditioners is the projected 1996 average residential electricity price from DOE Annual Energy Outlook 1991. Analysis of electricity price by end-use from data in the DOE/EIA 1987 Residential Energy Consumption Survey indicates that the average electricity price for residential air conditioning was the same as the national average residential electricity price (in other words, the end-use price multiplier is 1.00). Cost effectiveness to the consumer, e.g., life cycle cost, payback and cost of conserved energy, is evaluated according to the actual charges to the consumer.

The Fedders Corporation urged DOE to establish a minimum energy efficiency ratio for window air conditioners of 10.0, stating that this should be done to keep the industry competitive on a global basis. The Fedders Corporation also stated that existing technology clearly can support this minimum efficiency at small cost to manufacturers. (Fedders, No. 91 at 1).

The Association of Home Appliance Manufacturers responded to the Fedders Corporation's comment stating that the Association of Home Appliance Manufacturers was unclear as to which classes the Fedders Corporation was referring, and urging DOE to maintain and evaluate separate classes of room air conditioners. Furthermore, the Association of Home Appliance Manufacturers stated that the Fedders Corporation cannot accurately judge the technological and economic impacts of such a minimum energy efficiency ratio on other manufacturers. (Association of Home Appliance Manufacturers, No. 92 at 1).

The Department notes both comments and has analyzed each proposed class of room air conditioners separately, using all available cost and performance data. The results presented in today's notice as proposed minimum energy efficiency ratio's for room air conditioners range from 9.3 to 11.1, depending on size and configuration.

2. Water Heaters

Classes. There was considerable discussion about water heater product classes. Many comments came from gas utilities.

The American Gas Association urged DOE to adopt a source-based energy analysis and to recognize the importance of efficiency of the total energy delivery cycle. (American Gas Association, No. 23 at 3.)

The National Appliance Energy Conservation Act separates water heaters into three product classes by fuel type: Gas, electric and oil.[14] Also, the National Appliance Energy Conservation Act directs the Secretary to develop different standards for product classes within an appliance type if they "consume a different kind of energy from that consumed by other covered products within such type." [15] Therefore, the Department did not compare water heaters of different fuel types. However, the Department considered the effects of fuel-switching caused by the standards, as forecasted by the Lawrence Berkeley Laboratory Residential Energy Model.

The American Gas Association and many of the gas utilities proposed additional classes for gas water heaters based on several factors. These included the utility of having hot water if the power fails and the high cost of bringing electricity to locations without electric outlets near the water heater. The American Gas Association argued that a precedent already exists with ranges/ovens for separate product classes with or without an electric cord. (American Gas Association, No. 23 at 4–6.)

Several comments proposed that DOE establish four classes for gas water heaters: With and without draft hood, and with and without electric cord. (American Gas Association, No. 23 at 2; Southern Gas Association, No. 4 at 3; Lone Star Gas Company, No. 39 at 3; Southern Natural Gas Company, No. 46 at 2; LaClede Gas, No. 55 at 3; Equitable Resources, No. 72 at 1; Madison Gas & Electric, No. 77 at 1; Louisiana Gas, No. 81 at 1; United Texas Transmission, No. 26 at 2; Southern Union Gas Company, No. 22 at 1; Colorado Interstate Gas, No. 14 at 2; Wisconsin Gas Company, No. 33 at 1; South Carolina Electric and Gas Company, No. 34 at 2; Bay State Gas, No. 52 at 1; Arkansas Oklahoma Gas, No. 56 at 1; Providence Gas, No. 62 at 1; Southern Connecticut Gas, No. 63 at 1; Arkansas Western Gas, No. 64 at 4; ENTEX, No. 58 at 5; Essex County Gas, No. 69 at 1; K N Energy, No. 70 at 3; and Delta Natural Gas, No. 73 at 2.)

The Gas Appliance Manufacturers Association stated that DOE should recognize the particular utility and performance characteristics of conventional gas water heaters and preserve the availability of this product to the American consumer. (Gas Appliance Manufacturers Association, No. 40 at 3.)

Two gas utility companies proposed three product classes for gas-fired water heaters: with a draft hood with and without electric cord, and with electric cord (no designation on presence of draft hood). (Atlantic Gas Light Company, No. 29 at 2; and Energen, No. 12 at 4.)

Some gas utilities proposed two product classes for gas water heaters, namely, with and without electric cord. (Oklahoma Natural Gas Company, No. 57 at 1; and Northern Indiana Public Service, No. 48 at 2.)

The Arkansas Western Gas Company listed several benefits provided by a standing pilot in water heaters. These benefits include keeping the flue warm, helping maintain water temperature in the tank, providing a low-cost, fail-proof ignition system, allowing operation

[14] "Standards for Water Heaters; Pool Heaters; Direct Heating Equipment." *42 U.S.C. 6295(e).*

[15] "Special Rule for Certain Types or Classes of Products", *42 U.S.C. 6295 (n)(1)(A).*

during power outages, and low operating cost. (Arkansas Western Gas Company, No. 64 at 5.) Piedmont Natural Gas Company, Inc. urged the Department to evaluate fully the benefits of standing pilot ignition systems. Many citizens in North and South Carolina continued to have hot water and were able to cook after hurricane Hugo caused extensive power outages which lasted up to several weeks. (Piedmont Natural Gas Company, No. 71C at 2.)

The Department considered only one product class for gas-fired storage water heaters. The Department believes that designs that eliminate draft hoods or add electric cords do not change the utility of water heaters; therefore, these designs do not warrant inclusion in a separate class. These design options were evaluated solely on economic considerations. Additional installation cost to bring electricity to water heaters not close to outlets was included in the analysis of those design options. When condensation from mid-efficiency water heaters would damage masonry chimneys, the cost of relining or power venting was added to the installation costs.

The Department does not consider the utility of having hot water, or other amenities, during power outages adequate reason to develop separate product classes. Between 90 percent and 93 percent of residential electric customers experience no electricity outages longer than four hours per year.[16] Currently, central gas furnaces are not divided into product classes based on the use of electricity as proposed above for gas water heaters. Additionally, in this proposal, ranges/ovens are not divided into two product classes based on the use of electricity.

The Public Service Company of North Carolina, Inc. recommended that additional product classes be defined for gas-fired storage water heaters installed outside. (Public Service Company of North Carolina, Inc., No. 74 at 3).

The Department is not aware of any unique water heater design features that lead to any utility and lower energy efficiency that justifies a separate class. Therefore, the Department is not establishing a separate product class for gas-fired water heaters installed outside.

The Pacific Power and Edison Electric Institute supported three separate classes for electric water heaters (resistance, instantaneous, and heat pump). The Pacific Power stated that heat pump water heater efficiency depends upon climate and use patterns. (Pacific Power, No. 53 at 1, and Edison Electric Institute, No. 20 at 2). Peoples Natural Gas Company stated that heat pump water heaters should be promoted over electric resistance water heaters. (Peoples Natural Gas Company, No. 28 at 3).

Several comments proposed that heat pump water heaters be treated as a design option for electric storage water heaters, and not as a separate product class. (DEC International No. 3 at 1; Mr. Wayne Goode, No. 8 at 1; Mr. Joe Wilson, No. 10 at 1; American Council for an Energy Efficient Economy, No. 6 at 1; Natural Resources Defense Council, No. 13 at 21; Rocky Mountain Institute, No. 15 at 2; Crispaire, No. 19 at 1; Citizens Environmental Coalition Educational Fund, No. 24 at 3; Champaign County Board, No. 36 at 1; Northwest Power Planning Council, No. 32 at 1; Mr. George Smith, No. 32 at 2; Sierra Club, No. 43 at 2; and Mr. Warren Widener, No. 78 at 2). Northwest Power Planning Council proposed a separate product class for add-on heat pumps for water heaters. (Northwest Power Planning Council, No. 32 at 2).

The Natural Resources Defense Council argued that heat pump water heaters should not be a separate class. In its comments, the Natural Resources Defense Council acknowledged some arguments in favor of keeping them a separate class, such as the inability to operate at low temperatures, which the Natural Resources Defense Council claimed can be overcome with electric resistance backup; first hour rating, which the Natural Resources Defense Council stated can be overcome with a larger tank; and noise, which the Natural Resources Defense Council suggested can be overcome with more insulation. The Natural Resources Defense Council argued that these are economic considerations, not product utility considerations. (Natural Resources Defense Council, No. 13 at 22). On the other hand, Edison Electric Institute supported a separate product class for heat pump water heaters. Because of replacement market considerations, the heat pump compressor may have to be located outdoors, the air temperature must be greater than 45°F, sufficient air circulation is needed (500 cfm) or surrounding air space must be of sufficient volume (1000 ft^3), and there must be provision for condensate drainage. (Edison Electric Institute, No. 20 at 2).

The Gas Appliance Manufacturers Association stated that DOE should not analyze heat pump water heaters since their shipments are extremely low, totaling less than 0.05 percent of all electric water heater shipments. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department considered only one product class for electric storage water heaters. Heat pump water heaters were regarded as design options for electric storage water heaters. They provide the same utility as electric resistance storage water heaters. The Department agreed with the Natural Resources Defense Council that all of the issues regarding heat pump water heaters discussed above are economic in nature, and are treated as such in the analyses.

The Department decided a separate product class was not appropriate for add-on heat pumps. Since this type of heat pump is always used with a storage tank, there is no difference in the utility provided to the consumer.

No detailed information describing the location of electric water heaters in existing houses was provided. Lacking better data, DOE assumed sufficient volume of air circulation would be available to allow proper operation of heat pump water heaters. Most of the heat pump water heaters considered in this analysis are currently available. They are all equipped with freeze protection and have backup resistance elements. This permits operation under adverse conditions. Providing condensate drains was included in the installation costs for all heat pump water heaters.

The Department rejected the Gas Appliance Manufacturers Association's comment that heat pump water heaters not be considered in the analysis because of their low sales volume. The Department would agree with the Gas Appliance Manufacturers Association if heat pump water heaters warranted a separate class; however, since they are treated as a design option, DOE concluded that they warrant consideration. The effect on water heater manufacturers of standard levels requiring heat pump water heaters was considered in the manufacturing impact analysis.

The low heating rate of electric instantaneous water heaters presents a disadvantage with respect to their capability to provide a large quantity of hot water as rapidly as an electric resistance storage water heater. This difference justified two product classes (instantaneous and all other) for electric water heaters. There is little that can be done to improve the efficiency of electric instantaneous water heaters. Therefore, standards were not

[16] A.P. Sanghvi. 1990. *Cost-Benefit Analysis of Power System Reliability: Determination of Interruption Costs.* Prepared by RCG/Hagler/Bailly Inc. for Electric Power Research Institute EL–6791. vol 2, p 3–3.

developed for electric instantaneous water heaters.

Gas-fired instantaneous water heaters can provide unlimited amounts of hot water, but at limited rates. The Department judged this to be a significant difference in utility to the consumer. Gas instantaneous water heaters were, therefore, specified as a separate product class, and analyzed as such for standards.

United Technologies Carrier proposed a separate product class for a combined space and water heater. Electricity-using design options are viable for combination appliances, but would cause substantial increases in prices for gas water heater installations, and would inconvenience many customers. (United Technologies Carrier, No. 84 at 1). The Florida Governor's Office and the Northwest Power Planning Council proposed a product class for desuperheater water heaters. These are popular in Florida and use waste heat from air conditioners. Therefore, they operate only during the cooling season. (Florida Governor's Office, No. 42 at 6, and Northwest Power Planning Commission, No. 32 at 2).

Before the Department can consider combination space and water heating appliances and desuperheating water heaters for regulation, test procedures would have to be developed and adopted by DOE for such appliances. Furthermore, appliances that provide combined services will be examined during a forthcoming rulemaking on amended standards for central air conditioners and central air conditioning heat pumps.

Design options. There were many comments on the design options for water heaters. A discussion of these comments follows below.

The Southern Gas Association and other gas companies provided price estimates of more efficient water heater designs. For water heaters with energy factors of 0.63, 0.74, and 0.54, the American Gas Association estimated uninstalled prices of $667, $729, and $195, respectively. (Southern Gas Association No. 4 at 4; Energen Corp. and Alabama Gas Corp., No. 12 at 6; South Carolina Electric and Gas Co., No. 34 at 3; Montana-Dakota Utilities Co., No. 54 at 3; Oklahoma Natural Gas Company, No. 57 at 4).

The Columbia Gas provided a comparison of design options, energy factors and retail prices for four designs of efficiencies of gas water heaters. These were atmospheric draft/underfired (energy factor .54, $150-$350), atmospheric draft/subchamber (energy factor .62, $250-$500), forced draft/subchamber (energy factor .72, $600-$900), forced draft/immersed chamber (energy factor .82, $1300-$1800). (Columbia Gas, No. 45 at 3).

The Department used a retail price of $155.48 for the baseline model with an energy factor of .54. This is based on a factory cost of $95.63 supplied by the Gas Appliance Manufacturers Association. The 63 percent markup from factory cost to retail price was provided by the Lawrence Berkeley Laboratory-Manufacturer Impact Model. Installation expense used in the analysis for the baseline model was $126.12.

The Department included a standard venting, submerged combustion chamber water heater with heat traps, reduced heat leaks and R–16 insulation in the analysis, with an estimated energy factor of .57. At large-scale production, the submerged combustion chamber will not increase the factory cost.[17] The heat traps, reduced heat leaks, and R–16 insulation added $18.19 to the factory cost, for a total factory cost of $113.82. The Lawrence Berkeley Laboratory-Manufacturer Impact Model estimated a markup of about 57 percent for a total retail price of $179.22.

A model with an energy factor of .74 (calculated to have an energy factor of .71 using the proposed test procedure) was also included in the analysis. This unit has 2 inches of foam insulation surrounding a plastic tank, heat traps, indirect heating of the water, and electronic ignition. The Department estimated the factory cost of this unit at large-volume production to be $344.41. This estimate was based on an estimated 16 percent reduction in factory costs due to large-scale production. The retail price predicted by Manufacturer Impact Model was $612.96, with a 78 percent markup.

A water heater with forced draft and submerged combustion chamber was not analyzed. However, the Department did consider forced draft with increased baffling. An estimated incremental manufacturing cost of $312.50 was supplied by the Gas Appliance Manufacturers Association. Heat traps, reduced heat leaks, and R–16 insulation were also included on this unit for an energy factor of .67 (calculated to have an energy factor of .66 using the proposed test procedure). A total factory cost of $426.32 was used. A markup of 40 percent from the Lawrence Berkeley Laboratory-Manufacturer Impact Model was applied to arrive at a retail price of $596.83.

The Department was not aware of any existing designs or prototypes for water heaters with forced draft and immersed chambers. No analysis was done for this design option.

The Wisconsin Blue Flame Council cited an incremental unit cost of $150 to $200 to add automatic ignition devices and flue dampers to residential gas-fired water heaters. (Wisconsin Blue Flame Council, No. 33 at 33). Equitable Resources stated the additional cost for electrical safety controls to be approximately $20 to $50. (Equitable Resources, No. 72 at 2).

The Department used an incremental material cost of $49 for a spark ignition system, flue damper, 24-volt plug-transformer, and control relay.[18] Other factory costs were from the Gas Appliance Manufacturers Association data.

Design Options for Storage Water Heaters

The Rocky Mountain Institute stated that DOE should study insulated pressure relief valves, plastic drain pipes, and flexible anode rods. (Rocky Mountain Institute, No. 15 at 4). The Natural Resources Defense Council proposed that DOE evaluate thermal short circuits through insulation. Work performed by the California Energy Commission and the National Institute of Standards and Technology showed that the effective thermal resistance is often 50 percent or less than the thermal resistance calculated from the level of insulation. (Natural Resources Defense Council, No. 13 at 27).

Reduced heat leaks were included as one of the design options in the analysis of water heaters. The actual features of this design option were not specified. Measures that could be included in this design option were to eliminate thermal bridges from jacket to feed throughs, to eliminate voids in insulation, to insulate the pressure relief valve, to install plastic drain pipes, and to reduce the number of feed throughs by combining functions. These measures were not modeled separately.

The American Council for an Energy Efficient Economy proposed that vacuum panels be considered as a design option. (American Council for an Energy Efficient Economy, No. 6 at 3).

Vacuum insulation was considered as one of the design options for both gas-fired and electric storage water heaters.

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[17] This information was from Robert Cook who cited a study on projected costs done by A.O. Smith.

[18] Paul, D.D., Stickford, G.H., & Locklin, D.W *Assessment of Technology for Improving the Efficiency of Residential Gas Water Heaters, Second Interim Report*, June 3, 1991, Battelle, Columbus OH, prepared for Gas Research Institute.

[19] James E. Harris, *Test Results on the Effectiveness of Heat Traps on Water Heaters*, May 1982, Building Equipment Division, Center for Building Technology, National Bureau of Standards.

The Rocky Mountain Institute stated that DOE should study more accurate thermostats and pipe insulation. (Rocky Mountain Institute, No. 15 at 4).

The Department is not aware of any method to quantify energy savings from more accurate thermostats. Pipe insulation, which is not part of the water heater, was not considered as a design option because of concerns that it might not always be installed in the field.

The Pacific Power stated its research shows that heat traps add only 1 percent to an electric water heater's efficiency, not 5 percent as assigned in the previous DOE testing procedure for water heaters. (Pacific Power, No. 53 at 2).

The Department used data from a letter report prepared for DOE.[19] This report determined actual heat losses out of pipe fittings with and without heat traps. The letter reported that heat traps provide a savings of nine watts on the hot water outlet and seven watts on the inlet. Applied to the baseline model, this results in a 2.5 percent increase in energy factor.

Design Options for Gas-Fired Storage Water Heaters.

The Gas Appliance Manufacturers Association recommended that the multiple flues and submerged combustion chamber design options be combined into a single category to be called increased heat transfer surface. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department found enough difference in efficiency and cost between these designs to merit classification as individual design options. Water heaters currently on the market with submerged combustion chambers have recovery efficiencies of 85 percent, whereas currently available units with multiple flues have recovery efficiencies of 80 percent.

The Gas Appliance Manufacturers Association recommended that pulse combustion and condensation be simplified to condensation of flue gases. The essential efficiency improvement is to extract enough heat out of the flue gases, such that condensation occurs. (Gas Appliance Manufacturers Association, No 40. at 5).

The Department notes that manufacturing costs and actual efficiencies for design options that condense flue gases depend on the method of condensation. Therefore, pulse combustion was retained as a separate design option.

Northern Indiana Public Service recommended that pulse combustion and condensation of flue gases be eliminated as design options. While these designs are clearly feasible from a technical standpoint, cost considerations have proven to be insurmountable thus far. (Northern Indiana Public Service, No. 48 at 3).

Since pulse combustion and condensation of flue gas technologies are feasible, the Department cannot eliminate these design options, but has considered their cost impacts using the best available estimates of manufacturing cost.

The American Council for an Energy Efficient Economy proposed that flue dampers and intermittent ignition devices be treated as separate designs. (American Council for an Energy Efficient Economy, No. 6 at 3).

Because of concerns about contaminating indoor air with combustion products from the pilot light, the Department did not consider flue dampers as a separate design option.

The Natural Resources Defense Council proposed that DOE evaluate power combustion with intermittent ignition devices. (Natural Resources Defense Council, No. 13 at 27).

From the limited description of this design option, the Department assumed that the Natural Resources Defense Council was referring to a fan-assisted combustion system using electronic ignition with the fan before the combustion chamber. Part of the increase in efficiency from this design is caused by the fan restricting off-cycle air flow through the flue. This reduces off-cycle flue losses. The Department analyzed power vent with intermittent ignition devices, which is a fan-assisted combustion system with the fan after the combustion chamber. The reduction of flue losses would be similar to the reduction for the design option recommended by the Natural Resources Defense Council.

Northern Indiana Public Service also stated that for vent fans, the main energy-conserving value is the reduction of flue losses, and a thermal vent damper could be used to accomplish that reduction more simply. (Northern Indiana Public Service, No. 48 at 4).

The Department did not analyze vent dampers, which are above the draft hood, but did analyze flue dampers, which are below the draft hood, in conjunction with intermittent ignition devices as discussed above.

Oklahoma Natural Gas proposed that DOE analyze improved burner design, modulating controls, improved flue baffling and improved fill tube designs to reduce sediment buildup and temperature stacking of heated water. (Oklahoma Natural Gas, No. 57 at 2).

The Department was not able to obtain cost and efficiency data for improved burner design or fill tube designs. No analysis was done for modulating controls, because the Department is not aware of how this design would improve efficiency. Improved flue baffling was included as a design option.

Mr. Rajendra Narang provided patented items for improving the efficiency of gas and oil water heaters. These included preheat of combustion air, self-regulating fuel flow to the burner, lower heat input, combustion dampers, and better heat exchangers. (Narang, No. 82).

No data on potential energy efficiency improvements or incremental manufacturing costs were available for these design options. In addition, DOE was not able to develop any estimates on the cost or efficiency of these designs. Therefore, they were not included in today's proposed rule. The Department requests cost and efficiency data on these designs in order to evaluate them for inclusion in the final rule.

Pilot Light Design Options

The Gas Appliance Manufacturers Association stated that "reduced pilot light input rate" should not be considered as a design option because pilot inputs have been reduced to the optimal point. (Gas Appliance Manufacturers Association, No. 40 at 4).

The Department agrees with the Gas Appliance Manufacturers Association on this issue. Therefore, further reductions in pilot light input rate were not considered.

Northern Indiana Public Service stated that the elimination of a pilot light has a very small savings. (Northern Indiana Public Service, No. 48 at 4). Washington Gas Light Company noted that not all of the heat from a pilot light is wasted. (Washington Gas Light Company, No. 37 at 9).

The Department agrees that only a portion of the heat from a pilot light is wasted. In the analysis, DOE assumed 76 percent of the pilot light's energy went to maintaining water temperature. This is based on the theory that a pilot light would have the same efficiency as the recovery efficiency of the water heater. Therefore, only the 24 percent of the pilot light input available to be saved by an intermittent ignition device was included in the analysis.

[19] James E. Harris, *Test Results on the Effectiveness of Heat Traps on Water Heaters*, May 1982, Building Equipment Division, Center for Building Technology, National Bureau of Standards.

Design Options for Electric Storage Water Heaters

The National Rural Electric Cooperative Association stated that off-peak water heaters save energy. (National Rural Electric Cooperative Association, No. 17 at 1). Vaughn said that off-peak electric water heaters can save energy use by controlling time period elements are allowed to heat water. (Vaughn, No. 75 at 2).

The Department did include off-peak water heaters as a design option in the Engineering Analysis for electric water heaters. However, as stated above, the Department believes that the economics of this design option, in the absence of the nationwide availability of time-of-day rates, precludes using this design option in setting national standards.

Crispaire provided unit energy consumption and annual performance factors for heat pump water heaters and electric resistance water heaters. Crispaire also stated that its studies showed consumer acceptance of heat pump water heaters. (Crispaire, No. 19 at 2).

The Department included two existing models of heat pump water heaters in the analysis of electric water heaters. One was an E-Tech brand model manufactured by Crispaire. Energy consumption for this model was calculated from the energy factor derived from the DOE water heater test procedure in effect prior to October 17, 1990,[20] derated by 25 percent to account for estimated reductions due to the current test procedure relative to the previous test procedure. This derating value was based on estimated reductions of 15–20 percent from ETL Testing Laboratories,[21] 27 percent from the Gas Appliance Manufacturers Association,[22] and 30 percent from Electric Power Research Institute[23] simulation models. The Gas Appliance Manufacturers Association estimate was based on the difference between data supplied in support of the rulemaking and the least efficient heat pump water heater listed in its directory. This is a minimum estimate of the difference. The Department requests test data on heat pump water heaters, in accordance with the existing test procedures, for consideration in the final rule.

The Natural Resources Defense Council advised that increased jacket insulation and heat traps be evaluated for heat pump water heaters. (Natural Resources Defense Council, No. 13 at 27).

Heat pump water heaters were analyzed as a design option for electric storage water heaters. Increased jacket insulation and heat traps were also included as design options for this product class.

The Ohio Sierra Club commented that in many parts of the U.S., a solar water heating system is considerably more cost-effective than an electric water heater. (Ohio Sierra Club, No. 11 at 2).

The Department included solar pre-heating as a design option for electric storage water heaters. Baltimore, Maryland was used as the location for evaluating the solar water heating systems. Baltimore was chosen as the one site that most closely approximated the population-weighted average climate of the United States.

Design Options for Instantaneous Gas-Fired Water Heaters

The Gas Appliance Manufacturers Association commented that reducing the amount of water within instantaneous water heaters would reduce the heater's ability to provide sufficient heated water. The Gas Appliance Manufacturers Association further noted that instantaneous water heaters do not utilize flues to transfer heat to water. Design options which concern flue improvements are not applicable to instantaneous water heaters. (Gas Appliance Manufacturers Association, No. 40 at 5).

The Department agrees with the Gas Appliance Manufacturers Association on these issues. Reducing the amount of water in the heater and flue improvements were not considered in the analysis of instantaneous water heaters.

The Natural Resources Defense Council recommended that DOE consider an intermittent ignition device for instantaneous water heaters as a design option. (Natural Resources Defense Council, No. 13 at 27).

This design option was included in the analysis of instantaneous water heaters.

Reducing Water Heater Setpoint Temperature

Another comment on design options dealt with a design to limit the temperature of the hot water produced by a water heater. National Wildlife Federation proposed that DOE consider the promulgation of a design standard covering the factory setting of water heater temperature controls. It stated that 140°F water can cause burns, and reducing this temperature could lower accidents. In addition, the energy savings would be substantial. (National Wildlife Federation, No. 21 at 3).

The Department did not consider the hot water setting as a design option for water heaters. While it is true that reducing the hot water temperature will save energy at the water heater, hot wash cycles in clothes washers and dishwashers with 140°F water are required for certain conditions. All clothes washers and dishwashers would have to contain electric resistance booster heaters to maintain this utility. The use of these electric resistance booster heaters would mean that some water heating currently being performed by gas water heaters would be performed by electrical resistance heating with a corresponding loss in overall efficiency.

Other Comments. Fuel switching. One of the most discussed consumer issues involved the impact of increases in initial purchase price for gas water heaters, since standards could alter consumer fuel choice, resulting in increased electricity consumption at the expense of gas consumption, and increased environmental degradation. (Middle Tennessee Natural Gas Utility District, No. 1 at 1; Wisconsin Southern Gas Company, No. 9 at 1–2; Colorado Interstate Gas Company, No. 14 at 2; Peoples Natural Gas Company, No. 28 at 1; Wisconsin Blue Flame Council, No. 33 at 1–2; WGL, No. 37 at 5; Columbia Gas Distribution Company, No. 45 at 3; Northern Indiana Public Service Company, No. 48 at 4; ENTEX, No. 58 at 2; Peoples Gas Light and Coke Company (Peoples), No. 65 at 1; Mobile Gas Service Corporation, No. 66 at 2; Northern Minnesota Utilities, No. 68 at 1; Delta Natural Gas Company, Inc., No. 73 at 1; Public Service Company of North Carolina, Inc., No. 74 at 4; and Southern California Gas Company, No. 79 at 1).

Concern was expressed that if standards imposed on gas water heaters include automatic ignition, requiring electric service, there will be a sizeable increase in the prices of gas appliances. The comments argued that builders are concerned with initial purchase prices, not life-cycle costs; thus, a switch to electricity consumption will occur.

The Department is sensitive to fuel-switching issues. The Department incorporated available data about fuel shares in new housing and replacement markets, based on historical purchase patterns, in the Lawrence Berkeley

[20] Gas Applicance Manufacturers Association, Consumer's Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment, October 1990, pg 184.

[21] John Sabelli, ETL Labs. Phone conversation on 1/29/91.

[22] Consumers' Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment, GAMA, October 1990.

[23] Carl Hiller, Electric Power Research Institute. Phone conversation, 7/23/91.

Laboratory Residential Energy Model. Additional data to quantify the sensitivity in the market to first cost and to operating cost were obtained. Also, sensitivity analyses were performed in the forecast of shipments of water heaters.

The Department also notes that standards resulting in price increases on gas water heaters would cause switching to electric water heaters only if similar or greater price increases did not occur for efficiency improvements to electric water heaters, which is certainly not the case.

Supplying Electricity to Gas-Fired Storage Water Heaters

Several comments addressed inclusion of installation and maintenance expenses in the engineering analyses. The Southern Gas Association, American Gas Association, and Gas Appliance Manufacturers Association, among others, stated that installation (electric supply and venting alterations) and maintenance for gas water heater designs that would require electricity, such as intermittent ignition device, induced draft combustion, power venting, and condensing, must be included in the analyses. (Southern Gas Association, No. 4 at 10; American Gas Association, No. 23 at 3; and Gas Appliance Manufacturers Association, No. 40 at 8).

The American Gas Association, Southern Gas Association, and several other gas utilities gave estimates of costs for providing electric service to a water heater. For an existing appliance location, costs ranged from $75 to $200 and for new construction from $15 to $50. (American Gas Association, No. 23 at 5; Southern Gas Association, No. 4 at 3; Lone Star, No. 39 at 6; Energen, No. 12 at 5; Equitable Resources, No. 72 at 2; South Carolina Gas and Electric Company, No. 34 at 2, 3; Arkansas Western Gas Company, No. 64 at 5; ENTEX, No. 58 at 5; Public Service Company of North Carolina, No. 74 at 4; Oklahoma Natural Gas Company, No. 57 at 3.)

The Gas Appliance Manufacturers Association stated that installation expenses for electric service could double the installed price of the water heater. (Gas Appliance Manufacturers Association, No. 40 at 3). On the other hand, Flair said that in northern climates, the water heater most likely stands next to the furnace, which has an electrical supply readily and cheaply available to the water heater. Flair estimated that the average price of adding electricity is much less than the cost of the water heater. (Flair, No. 85 at 1).

The Department used a cost of $11.20 for the installer to add a small plug-in transformer and install low-voltage wiring to the water heater.[24] The Department assumed this would not require an electrician, and would allow the water heater to be installed a large distance from an existing outlet. This would provide sufficient power to run safety controls, spark ignition, flue damper, and a small venting fan. For design options, such as condensing flue gases, submerged combustion, and direct firing, which would require higher voltage, a charge of $100 was used as the installation price of providing electricity. This figure was presented to the Department by Southern Gas Association.

Modification of Existing Venting Systems

The Gas Appliance Manufacturers Association mentioned that for water heating systems to be compatible with existing venting systems, recovery efficiencies must be less than 82 percent. Gas Appliance Manufacturers Association further stated that elimination of the draft hood and installation of a new venting system for both a furnace and water heater would modify the installed price of the water heater by three to five times. (Gas Appliance Manufacturers Association, No.40 at 4). The Gas Research Institute said that additional expenses of altering venting systems are necessary for high-efficiency water heaters. Estimates of these expenses[25] were provided to the Department on a regional basis. (Gas Research Institute, No. 59 at 2–3).

The Washington Gas Light, Inc. indicated that "installing a water heater with a vent damper or power combustion into an existing masonry chimney . . . may result in the need to reline the chimney." The charge for this would be between $500 and $2000. (Washington Gas Light, Inc., No. 37 at 8). ENTEX estimated installing a new vent system in its service area would be approximately $260. (ENTEX, No. 58 at 5). Energen Corporation estimated the incremental cost of adding a new vent system at $125 to $175. (Energen, No. 12 at 6).

The charge for relining venting systems that were not type-B was added to the installation expense of all design options with recovery efficiencies above 80 percent that were not power vented. The Department used values of $408 for relining masonry chimneys, $85 for replacing vent connectors, and $75 for adding a sidewall venting system.[26]

Maintenance

Mississippi Valley and Energen stated that when an intermittent ignition device and flue damper or forced draft combustion are added to a gas water heater, it is likely that at least one of the following components (ignitor, fan motor, printed circuit board, fan relay system, or vent damper assembly) will fail and need service or replacement in the 10- to 12-year life of the water heater. (Mississippi Valley, No. 5 at 6; Energen, No. 12 at 8).

Among other comments on the engineering analysis of water heaters, Energen stated that reliability and functionality issues are most important in a total system-specific, real world situation. Issues such as venting materials, vent categories, common venting, vent-system condensation, corrosion, masonry chimney suitability, backdrafting, spillage, negative room pressure, combustion air management, construction clearances, vent termination requirements, heat or flame roll out, flammable vapors ignition, and others must be a significant part of the efficiency equation. (Energen, No. 12 at 9).

The limited data available on component lifetimes suggested failure would occur near the end of the service life of water heaters. Therefore, the Department did not include maintenance expenses in the analysis. The Department requests data on water heater lifetimes, component lifetimes and service costs for consideration in the final rule.

Baseline Model

The Southern Gas Association and other gas suppliers recommended baseline units and costs. (Southern Gas Association, No. 4 at 8). Energen said that the baseline unit should logically be a natural draft, non-powered unit upgraded to the highest field-proven technology level, including heat traps, advanced insulation techniques, sealing of the pilot light and/or main burner combustion cavity, piezo pilot ignitors, flue dampers and or advanced flue baffling. (Energen No. 12 at 8). Lone Star proposed that shipment data from the Gas Appliance Manufacturers Association be used for baselines. (Lone Star, No. 39 at 3).

The baseline model used in this analysis was established from data provided by the Gas Appliance Manufacturers Association who was

[24] Paul, D.D., Stickford, G.H., & Locklin, D.W. *Assessment of Technology for Improving the Efficiency of Residential Gas Water Heaters, Second Interim Report*, June 3, 1991, Battelle, Columbus OH, prepared for Gas Research Institute.

[25] Ibid.

[26] *Ibid.*

supplied with the data by manufacturers. The baseline represents a typical water heater that marginally meets the 1990 National Appliance Energy Conservation Act standards.

The baseline gas-fired storage water heater is a center flue, glass- lined steel tank with a standing pilot. It has a 40-gallon tank and 1-inch-thick foam insulation. Both the inlet and outlet are at the top of the tank. It has six feed throughs and no heat traps. It is bottom-fired with a three-inch central flue. The burner input is 34,000 Btu per hour. The pilot light input rate is 400 Btu per hour.

The baseline model for the electric water heater analysis is a glass-lined steel tank, with two 4,500-watt resistance elements. It has a 52-gallon tank and 2-inch-thick foam insulation. Both the inlet and the outlet are on top of the tank. It has eight feed throughs and no heat traps.

Measured Versus Rated Volume

The California Energy Commission proposed that the measured volume rather than the rated volume of water heaters be used in all analyses. (California Energy Commission, No. 24 at 3).

With regard to how the Department should set water heater conservation standards, the California Energy Commission proposed that any standard be expressed as EF = A + (B * V), and not as EF = A − (B * V), so that an exaggeration of volume, V, by manufacturers would result in a more stringent standard. (California Energy Commission, No. 24 at 3).

The California Energy Commission also argued that tolerances between rated and measured volumes of 5 percent and 10 percent, respectively, for gas and electricity water heaters volumes, are too high. (California Energy Commission, No. 24 at 2).

The energy conservation standards are in the form of equations that are a function of the volume of the water heater. A footnote refers to the volume as being rated volume. The DOE test procedure contains provisions to determine the measured or actual volume, but is silent on the rated volume which is established by the manufacturer. The tolerances to which the California Energy Commission are referring are those set by safety testing agency specifications and are not related to the energy efficiency program. In the vast majority of cases, the measured volume is lower than the rated volume. All of the 13 water heaters tested by the National Institute of Standards and Technology in support of the DOE test procedure had measured volumes below rated volumes. Furthermore, one out of six electric water heaters and one out of five gas water heaters tested by the National Institute of Standards and Technology exceeded the safety tolerances for rated volume. (55 FR 42166, October 17, 1990 and 54 FR 1893, January 17, 1989). To conduct the analysis which forms the basis for today's notice in an accurate manner, the actual volume had to be used. To be consistent with that analysis, the Department is proposing that the volume referred to in the efficiency equation be the actual or measured volume. The Department believes that the use of measured volume rather than rated volume in the calculation will eliminate this issue.

Definitions in Test Procedure and Conservation Standards

The California Energy Commission proposed that the coverage of the water heater test procedures and efficiency standards be consistent, i.e., the test procedure does not cover some classes and sizes of water heaters that otherwise would be covered by the efficiency standards. (California Energy Commission, No. 24 at 2–3).

Modifications to the test procedures for water heaters, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

Gas Research Institute Study

Energen urged DOE to evaluate thoroughly a study commissioned by the gas industry on cost/efficiency of water heater designs. (Energen, No. 12 at 9.)

The Department did review and use information from this Gas Research Institute study,[27] particularly cost data for installation and reventing. The study was also useful in categorizing standby losses.

3. Direct Heating Equipment

Classes. Among the comments on product classes, Southern Gas Association, Energen Corp. and Atlanta Gas Light Company proposed that direct heating product classes be expanded to separate each present class into two classes, one with and one without an electric cord. The division of product classes by capacity is not mentioned. Their arguments deal generally with economic and utility issues, i.e., the ability of products without an electric cord to provide heat if a power outage occurs, and the affordability of these products to lower-income people. (Southern Gas Association, No. 4 at 6; Energen, No. 12 at 12–13; and AGLC, No. 29 at 3). The California Energy Commission stated that there are too many product classes for this product and proposed three classes which are wall (fan and gravity), floor (fan and gravity), and room (fan and gravity). (California Energy Commission, No. 24 at 4).

As stated above, the Department does not believe that the ability of gas equipment to operate during electricity outages is a utility that requires separating the existing gravity product classes into those with and without a power cord. Instead, designs that use electricity are evaluated on their economic advantages and disadvantages. The Department has kept the four product class categories as designated by the National Appliance Energy Conservation Act. The categories are: fan-wall, gravity-wall, room, and floor. With respect to division by capacity, the Department kept the National Appliance Energy Conservation Act divisions during the engineering analyses. The current class divisions by capacity are necessary because of the manner in which direct heating equipment is evaluated by the DOE test procedure. The energy descriptor for this equipment, the annual fuel utilization efficiency, is a function of, among other things, the pilot fraction. The pilot fraction is defined as the energy input rate to the pilot light (Q_p) divided by the steady-state heat input rate to the heater (Q_{in}). As the pilot fraction decreases, the annual fuel utilization efficiency will increase. For each of the four categories of direct heating equipment (fan-wall, gravity-wall, room, floor), the pilot light input rate is constant. Thus, for heaters of two different capacities within the same category and with the same steady-state efficiency, the annual fuel utilization efficiency will always be higher for the larger capacity equipment. The division of classes by capacity is required to account for this relationship between the annual fuel utilization efficiency and the pilot fraction.

Design options. The Gas Appliance Manufacturers Association stated that gravity-type direct heating units provide a unique utility in that they operate during an electrical power outage. In addition, gravity-type equipment can be used where an external electrical source is not available. Because of these reasons, the Gas Appliance Manufacturers Association argued that design options requiring electricity should not be required for floor heaters, room heaters, or gravity wall furnaces. (Gas Appliance Manufacturers Association No. 40 at 6).

[27] *Ibid.*

As stated above, the Department does not believe that the ability of gas equipment to operate during electric outages is a utility that forecloses consideration of electricity-using design options for those appliances. Therefore, the Department considered, for economic justification, design options that would require electricity for gravity wall, floor, and room direct heating equipment.

With regard to electronic ignition systems, both Southern Gas Association and North Carolina Public Service Co. stated that adding an automatic ignition system and electronic controls would add significantly to the price of direct heating equipment. The Southern Gas Association said it would add $190 while North Carolina Public Service Co. stated it would add $150 to $200. (Southern Gas Association, No. 4 at 7; North Carolina Public Service Co., No. 74 at 5). The American Council for an Energy Efficient Economy said that intermittent ignition device and vent dampers should be considered separately. (American Council for an Energy Efficient Economy, No. 6 at 3).

The Department took into account all sources of available data when determining the cost of an electronic ignition system for direct heating equipment. Sources of data included manufacturers, suppliers, utilities, and published papers and reports. The electronic ignition design option was evaluated not only separately from any other design option, but also with other design options, including vent dampers.

The Gas Appliance Manufacturers Association commented that increased insulation does not improve the energy efficiency of room heaters since this equipment is located within the heated space. (Gas Appliance Manufacturers Association, No. 40 at 6).

The Department agrees with the Gas Appliance Manufacturers Association's comment and is not considering the increased insulation design option for room heaters or wall furnaces. Insulation is only applicable to floor furnaces as this equipment's intended installation is in an unconditioned crawl space.

The Gas Appliance Manufacturers Association also commented that two-stage or modulating burners reduce the energy efficiency of direct heating equipment. (Gas Appliance Manufacturers Association, No. 40 at 6).

The Department agrees with the Gas Appliance Manufacturers Association's comment. When incorporated into a typical gravity or forced-air direct heater, i.e., heaters that are currently being manufactured, two-stage and modulating burners actually reduce the energy efficiency of direct heating equipment. Two-stage and modulating burners which are currently manufactured regulate the gas flow but not the air flow. Excess air is induced at lower gas-flow rates, resulting in lower combustion efficiencies when compared to a normal or maximum gas flow rate. Because of this, typical heaters equipped with two-stage or modulating burners will always have a lower energy efficiency, as measured by the DOE test procedure, than heaters equipped with single-stage burners. The Department is not aware of any two-stage or modulating burners that regulate both the gas and air flow. The Department believes however, that it is possible to regulate the air flow being drawn into a two-stage or modulating burner if the direct heater is also equipped with a two-speed or variable-speed combustion fan, i.e., induced or forced draft system. With a multi-speed combustion fan, a low fan speed can be used to reduce the excess air that would normally occur at low gas flow rates. Thus, the steady-state efficiency that occurs at the high gas flow rate of a two-stage or modulating burner can be maintained at its lower gas flow rate. Since currently manufactured two-stage and modulating burners actually reduce energy efficiency in typical direct heating equipment, DOE is considering them as a design option only if they are incorporated into a heater already equipped with a multiple-speed induced or forced draft combustion system.

The American Council for an Energy Efficient Economy said that DOE should consider two-speed or variable-speed blowers. (American Council for an Energy Efficient Economy, No. 6 at 3).

The practical application of two-speed or variable-speed blowers is with two-stage or modulating burners. When heating loads are low, both the burner rate and the blower speed could be reduced. This would prevent cycling of the unit and reduce large fluctuations in room temperature. In addition, overall energy consumption could be reduced. As with two-stage and modulating burners, two-speed and variable-speed blowers will also be considered by the Department only on heaters already equipped with a multiple-speed induced or forced draft combustion system. This is because two-stage or modulating operation can improve system efficiency only if coupled with a device, i.e., a multi-speed combustion system that can regulate the air flow rate into a two-stage or modulating burner.

The North Carolina Public Service Co. suggested that DOE consider whether blowers can be used in direct heating equipment with self-generating pilots. (North Carolina Public Service Co., No. 74 at 5).

It is not clear to what North Carolina Public Service is referring, as it fails to define clearly in its comment which blower it is discussing and what a self-generating pilot is. A blower could be interpreted as either an air circulation fan or an induced or power draft fan. The self-generating pilot is probably some type of electronic ignition device. The Department has evaluated all of the above-mentioned design options and has determined that blowers of any type can be used with electronic ignition systems.

The Gas Appliance Manufacturers Association commented that for a replacement unit incorporating an increased heat exchanger surface area, condensate must be avoided in the existing vent system. This requirement results in limiting the combustion efficiency to 83 percent. (Gas Appliance Manufacturers Association, 40 at 7).

The Department agrees with the Gas Appliance Manufacturers Association's comment and considered venting issues in the analysis. Design options that increased the combustion efficiency over 83 percent require an additional installation charge to account for venting low-temperature flue gases and draining condensate.

Other comments. The Southern Gas Association, Energen, and the Atlanta Gas Light Company recommended baseline units for direct heating equipment. (Southern Gas Association, No. 4 at 8; Energen, No. 12 at 15,16; Atlanta Gas Light Company, No. 29 at 4).

The Department considered these comments regarding baseline units in the Engineering Analysis. Baseline unit efficiency levels for each of the direct heating product classes have been set at the standard levels established by the National Appliance Energy Conservation Act. Of the units currently produced, the National Appliance Energy Conservation Act minimum efficiency standards are representative of the efficiency levels that presently exist for most models.

Minnegasco said that installation and maintenance expenses for direct heating products are important, and that DOE must consider them. (Minnegasco, No. 83 at 3).

The Department has considered these expenses in the analysis of direct heating equipment. The increase in consumer expenses caused by a design option includes not only the increase in retail price, but also any additional installation and maintenance expenses

that result from incorporating that design option into the equipment.

Southern Gas Association contended that more efficient direct heating equipment would have a severe economic impact on lower-income and elderly consumers, and that low usage in Southern states should be evaluated. (Southern Gas Association, No. 4 at 7,10). Minnegasco also commented on the issue of low usage by urging DOE to consider regional usage when performing the engineering analysis. (Minnegasco, No. 83 at 2).

The Department has lowered its usage assumption by using the modified burner operating hours contained in the Notice of Proposed Rulemaking mentioned above for furnace test procedures. The proposed burner operating hours for direct heating equipment has been revised downward to account for the regional distribution of this product disproportionately to the southern half of the Nation. The Department has no data with which to measure the standards' impacts on elderly and lower-income consumers in determining whether a standard level is economically justified; however, DOE will consider the financial effect that the standard has on such consumers.

In the Advance Notice for this rulemaking, the Department described how it performs sensitivity analyses to help it understand the effects on the forecasted impacts because of changes in the exogenous variables and assumptions. (55 FR 39633).

Those sensitivities were developed at the national level, and no effort was made to link them with any specific population groups. With the exception of the direct heating equipment analysis discussed above, the standards analysis assumed that nationwide average appliance usage rates, energy prices, and efficiency applied to all consumers in all areas of the nation, although the Department recognized that there exist large variations in each of these factors. The Department seeks additional information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and, especially how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups.

4. Mobile Home Furnaces

Design options. The Gas Appliance Manufacturers Association stated that an intermittent ignition device design is not appropriate to mobile home furnaces. The Gas Appliance Manufacturers Association stated there is almost no flow through the heat exchanger during the off-cycle. If the intermittent ignition device failed, a gas-air mixture could build up and possibly lead to an explosion when the intermittent ignition device is activated. (Gas Appliance Manufacturers Association, No. 40 at 7).

The Department accepted Gas Appliance Manufacturers Association's comment and did not consider an intermittent ignition device plus vent damper as an engineering design for mobile home furnaces.

American Council for an Energy Efficient Economy proposed intermittent ignition devices and vent dampers be separately considered and that two-speed or variable-speed blowers be evaluated. (American Council for an Energy Efficient Economy, No. 6 at 4).

The Department has accepted these approaches. The intermittent ignition device with fan-forced combustion has been considered as one option, while the combustion box damper has been considered as a separate option. A combustion box damper has the same effect on efficiency as a vent damper for isolated combustion-type systems. Mobile home furnaces are required to have isolated combustion systems by the Housing and Urban Development code. Both two-stage and continuously modulated burners were included in the final list of design options.

Evcon commented that vent dampers are inappropriate designs because of damper location and isolated combustion design. (Evcon, No. 76 at 1).

The Department has considered combustion box dampers instead of vent dampers. The Department knows of no design considerations that would render combustion box dampers inappropriate.

Evcon also suggested that condensing designs and intermittent ignition devices are inappropriate because of excessive cost. (Evcon, No. 76 at 1–2).

The Department has incorporated the costs for materials, components, maintenance, and installation into the Engineering Analysis.

Evcon further commented that expense and noise problems exist with pulsed combustion furnaces. (Evcon, No. 76 at 1).

The Department acknowledges these points and notes that pulsed combustion is no longer on the list of design options. In eliminating this design option, the Department reasoned that non-pulsed combustion technology can achieve efficiencies equivalent to pulsed-combustion technology at a lower cost. This is particularly true for manufacturers having to pay patent royalties for pulse combustion technology. Manufacturing cost data from the manufacturers supported this conclusion.

Lastly, Evcon commented that corrosion and cost problems exist with two-stage and modulating burner designs. (Evcon, No. 76 at 2).

In the Engineering Analysis, the Department assumed that material costs (for the concentric flue/supply air assembly) would increase because of the need to design for possible intermittent condensation in two-stage non-condensing furnaces. Non-condensing modulating furnaces are not included in the present list of design options.

Other comments. Gas Appliance Manufacturers Association also commented that replacement furnaces must be able to fit into the same spaces as the units being replaced. (Gas Appliance Manufacturers Association, No. 40 at 7).

The Department does not believe that any of the studied design options would result in significant space problems.

Evcon also commented that American Society of Heating, Refrigerating, and Air-conditioning Engineers Standard 103–1982 is inadequate for the testing of various design options and urged that American National Standards Institute/ American Society of Heating, Refrigerating, and Air-conditioning Engineers Standard 103–88 be adopted. (Evcon, No. 76 at 2).

Modifications to the test procedures for furnaces, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

5. Kitchen Ranges and Ovens

Classes. The comments on classes for conventional ranges and ovens ranged from Aloha Systems Inc.'s recommendation that all electric cooktops be one product class to Association of Home Appliance Manufacturers's proposal to add several classes to those proposed in the Advanced Notice of Proposed Rulemaking. Specifically, the Association of Home Appliance Manufacturers recommended that DOE add, as classes, electric cooktops with grill/griddle without downdraft feature, and for gas cooktops—grill/griddle with downdraft feature, grill/griddle without downdraft feature with and without an electric cord, and warming/simmer burners. (Aloha Systems, Inc., No. 2 at 1; and Association of Home Appliance Manufacturers, No. 61A at 38).

Several comments supported the range/oven product classes that were listed in the Advanced Notice of Proposed Rulemaking. Four gas utilities,

Southern Gas Association, Energen, South Carolina Electric and Gas Company - Gas Operations, and the Oklahoma Natural Gas Co., all supported the classes selected by DOE for gas cooktops and gas ovens. (Southern Gas Association, No. 4 at 7; Energen, No. 12 at 14; South Carolina Electric and Gas Company - Gas Operations, No. 34 at 6; and the Oklahoma Natural Gas Co., No. 57 at 6).

The rest of the comments on range/oven product classes argued that the Department had proposed far too many different classes in the September 1990 advance notice. As mentioned, Aloha Systems, Inc. recommended a single product class for electric cooktops. The American Council for an Energy Efficient Economy, the Natural Resources Defense Council, the California Energy Commission, and the Ohio Office of the Consumers' Council all stated that there are too many classes for conventional ranges and ovens. (Aloha Systems, Inc. No. 2 at 1; American Council for an Energy Efficient Economy, No. 6 at 1; Natural Resources Defense Council, No. 13 at 25, California Energy Commission, No. 24 at 5; and Ohio Office of the Consumers' Council, No. 60 at 9). ENTEX proposed that the Department specify freestanding, drop-in, and slide-in ovens and wall ovens as one class. (ENTEX, No. 58 at 6). Whirlpool Corporation, a manufacturer of ranges and ovens, suggested that DOE not analyze those classes with low sales volumes, and instead restrict the analysis to the following nine classes: Electric cooktops with open coil elements; electric cooktops with solid disk elements; standard or catalytic electric ovens; self-cleaning electric ovens; conventional or sealed burner gas cooktops (with and without power cords); standard or catalytic gas ovens (with and without power cords) and self-cleaning gas ovens. (Whirlpool Corporation, No. 31 at 16). Association of Home Appliance Manufacturers stated that three of the classes listed in the Advanced Notice of Proposed Rulemaking for gas cooktops, conventional burners with electrical cords, conventional burners without electrical cords and sealed burners, should be consolidated into two classes, namely, conventional and sealed burners with electrical cords and conventional and sealed burners without electrical cords. (Association of Home Appliance Manufacturers, No. 61A at 47, 48).

After considering the comments and reviewing the data, the Department believes that many of the classes proposed in the September advance notice were not warranted on a utility and performance basis.

For this proposed rule, four product classes were considered for electric cooktops: Low or high wattage open (coil) elements, smooth cooktops, grill with or without downdraft feature, and griddle with or without downdraft feature. The baseline cooktop element selected for smooth cooktops is a solid disk element. As compared to open coil element cooktops, smooth cooktops are much easier to clean. Because cleanability is a consumer utility, the Department believes that a separate class is warranted for smooth cooktops. Induction cooking, halogen lamps, and radiant elements were considered as design options for smooth cooktops and assessed according to the economic characteristics of the particular design. Because of the small amount of empirical data on grill and griddle cooktops, the Department was unable to analyze these classes. In addition, the DOE test procedure is presently unable to measure grill or griddle energy consumption, and the Department has not proposed to include the testing of grills or griddles. As a result, the Department is not proposing any standard for these two classes.

Four product classes are now considered for gas cooktops: Conventional burners, grill with or without downdraft feature, griddle with or without downdraft feature, and warming/simmer burners. For other designs, the Department does not believe that significant utility issues exist, for example, in the ability of the appliance to operate during electric outages, which would require that classes be established into gas cooktops with and without electrical cords. Between 90 and 93 percent of residential electricity customers experience no electric outages longer than four hours per year.[26] Designs which use electricity were evaluated on their economic advantages and disadvantages. Other classes in the Advance Notice of Proposed Rulemaking (sealed and radiant burners) were considered as design options for conventional cooktops. There were no utility issues warranting separate classes for sealed and radiant burners. As with electric cooktops, because of the small amount of empirical data on grill and griddle cooktops and warming burners, the Department was unable to analyze these classes. In addition, the DOE test procedure is presently unable to measure grill, griddle or warming burner energy consumption, and the Department has not proposed to include the testing of grills, griddles or warming burners. As a result, the Department is not proposing any standard for these three classes.

Two product classes were considered for electric ovens: Standard ovens with or without catalytic linings and self-cleaning ovens. Oven types that were listed as classes in the September 1990 advance notice (forced convection for cooking, forced convection for cleaning, halogen lamp, and steam cooking with and without pressure) were considered as design options. The Department believes that no utility issues exist warranting additional classes beyond standard and self-cleaning ovens.

As with electric ovens, two product classes were considered for gas ovens: Standard ovens and self-cleaning ovens. Oven types that were listed as classes in the September 1990 advance notice (radiant burner and convection) were considered as design options. In addition, the Department does not believe that significant utility issues exist in the ability of the appliance to operate during electric outages, which would require that classes be established into those with and without electrical cords. Designs which use electricity are evaluated on their economic advantages and disadvantages.

As for microwave oven classes, both Whirlpool Corporation and Association of Home Appliance Manufacturers recommended that the Department limit its analysis to microwave ovens with and without browning elements, the classes which accounted for 96.8 percent of domestic shipments in 1989. (Whirlpool Corporation, No. 31 at 9; Association of Home Appliance Manufacturers, No, 61A at 30).

The Department rejected the proposals to limit the analysis to two product classes: conventional microwave ovens with and without browning elements. The Department combined these ovens into one class. Since the test procedure does not measure the energy use of the browning element, there is no need to separate these two kinds of ovens into classes; therefore, only one class of microwave ovens was analyzed.

Design options. There were numerous comments on the design options for ranges/ovens and microwave ovens. Natural Resources Defense Council recommended that DOE study (for ranges/ovens) reduction in thermal mass, catalytic burners, reflective surfaces, the biradiant concept, and improved magnetrons for microwave

[26] A.P. Sanghvi, 1990. *Cost-Benefit Analysis of Power System Reliability: Determination of Interruption Costs.* Prepared by RCG/Hagler/Bailly Inc. for Electric Power Research Institute EL–6791, vol 2, p3–3.

ovens. (Natural Resources Defense Council, No. 13 at 27–28). Aloha Systems, Inc. said that induction cooking is the most efficient method. (Aloha Systems, Inc., No. 2 at 1,2). American Council for an Energy Efficient Economy proposed that DOE evaluate the infrared jet gas burner for conventional ovens, and for microwave ovens, advanced transformer winding and core materials, and the high-efficiency electronic controller (which turns power on and off). (American Council for an Energy Efficient Economy, No. 6 at 4). The Rocky Mountain Institute proposed that DOE study improved controls that allow the resistance element to "coast" the food to completion. A reference to European tests was given, stating that this design requires a thermostat and temperature control knob and saves 20 percent or more of the energy. (Rocky Mountain Institute, No. 15 at 5). The Oklahoma Natural Gas Co. suggested that thermostatically controlled gas burners be replaced by various-sized (Btu/h input and dimensions) and manually controlled surface burners to accommodate different-size cookware. (Oklahoma Natural Gas Co., No. 57 at 6). The Association of Home Appliance Manufacturers provided comments on each design option for ranges/ovens and microwave ovens. (Association of Home Appliance Manufacturers, No. 61A at 30–62). Whirlpool Corporation supported the Association of Home Appliance Manufacturers' comments on ranges/ovens and microwave ovens. (Whirlpool Corporation, No. 31 at 16, 19).

For gas cooktops, the Association of Home Appliance Manufacturers stated that thermostatically controlled gas burners are not effective at controlling temperature. The sensing element which is designed to make contact with the cooking vessel will not allow effective control if the cooking utensil has an uneven bottom in the area where it is to be "sensed." In addition, since the electric sensing element will retain heat due to its mass, reaction times could be delayed, thus allowing wide swings in the thermostatically selected temperature. The DOE test procedure also cannot measure the effect of thermostatically controlled burners. (Association of Home Appliance Manufacturers, No. 61A at 54, 55.) The Association of Home Appliance Manufacturers stated that the performance of reflective surfaces is degraded significantly from reaction to cooking vapors, burnt-on spillovers and cleaning with abrasive pads. To maintain reflective surfaces it would be necessary to replace these expensive units periodically. The Association of Home Appliance Manufacturers felt that the energy savings from reflective surfaces are very small. (Association of Home Appliance Manufacturers, No. 61A at 56, 57.) With regard to insulation, the Association of Home Appliance Manufacturers stated it is occasionally used in gas cooktops where there are surface temperature problems on the surrounding structures. The insulation is attached outside of the burner box. Any other placement would impair utility, because the space underneath the countertop cooktop unit (that is designed to fit in drawers) would become significantly reduced.

The Association of Home Appliance Manufacturers also felt that the energy savings from insulation is very small. (Association of Home Appliance Manufacturers, No. 61A at 56, 57.) In its comments regarding product classes, the Association of Home Appliance Manufacturers, though it suggested that both conventional and sealed burners be considered as one class, stated that it is incorrect to assume that sealed burners are more efficient than conventional burners. Sealed burners obtain all of their secondary air from above the cooktop, which requires that either the grate height be raised or the burner be derated in order for it to be as efficient as conventional burners. (Association of Home Appliance Manufacturers, No. 61A at 47, 48.) The Association of Home Appliance Manufacturers stated that radiant burners should be considered as a product class rather than a design option and went on to state several problems with these burner types. Since radiant burners use a powered pre-mix burner, carbon monoxide control is more critical, and the burner flame can only be varied by 30 percent. Test work performed by the Gas Research Institute with the American Gas Association Laboratories on prototypes has revealed that low burner rate is difficult to maintain. This means that current prototypes would not meet American National Standards Institute standards. The Association of Home Appliance Manufacturers also stated that burner efficiency might be no better than conventional burners. (Association of Home Appliance Manufacturers, No. 61A at 49–51.)

The Department took into account all sources of available data when determining the cost and energy savings from thermostatically controlled burners, reflective surfaces, and sealed burners. Sources of data included the Association of Home Appliance Manufacturers, manufacturers, suppliers, and published papers and reports. Lack of any available data regarding catalytic burners, high efficiency electronic controllers, and insulation prevented the Department from analyzing these design options. The Department agrees with the Association of Home Appliance Manufacturers' comments regarding radiant gas burners. Because there is no prototype that works satisfactorily, it is not possible to determine if this design option is technologically feasible.

For electric open coil cooktops, the Association of Home Appliance Manufacturers stated that the contact conductance of open coil elements cannot be significantly improved. Manufacturers have worked together to improve the flatness of this element type, and have produced an element that is doing an excellent job. (Association of Home Appliance Manufacturers, No. 61A at 57, 58.) The reflective surface and insulation design options cause the same problems for electric open coil cooktops as for gas burners. See comments, supra, for gas cooktops. (Association of Home Appliance Manufacturers, No. 61A at 58.)

Manufacturers' data provided by the Association of Home Appliance Manufacturers and published reports [29] were used by the Department to analyze the effects from improved contact conductance and reflective surfaces. Cost data were also provided by these sources. The electronic controls referred to by the American Council for an Energy Efficient Economy and the Rocky Mountain Institute cannot be evaluated by the DOE test procedure. Different types of tests based on boiling water have been used to evaluate electronic controls. But boiling water tests have yet to be standardized by DOE as a method to rate cooktops. Therefore, this design option was not analyzed by the Department.

For electric smooth cooktops, the Association of Home Appliance Manufacturers's comments on product classes proposed separate classes for solid disk elements, radiant elements under glass, halogen elements under glass, and induction elements. The

[29] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No. 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 678, October 1989, M. Shepard, A.B. Lovins, J. Neymark, D.J. Houghton, and H.R. Heede, "The State of the Art: Appliances," Rocky Mountain Institute, Competitek, August 1990 Edition, and U.S. Department of Energy Engineering Analysis. DOE/CS–0166, June 1980.

Association of Home Appliance Manufacturers commented that though solid disk elements are inherently less efficient than open coil elements, they should be a separate class because of the additional utility in their ease of cleaning. (Association of Home Appliance Manufacturers, No. 61A at 39, 40). With regard to radiant and halogen elements under glass, the Association of Home Appliance Manufacturers commented that not only are these cooktops easy to clean because of their smooth surfaces, but additional work space is gained when the cooktop surface is not in use. The Association of Home Appliance Manufacturers also stated that the recommended cookware for halogen elements are metal pots and pans, since glass and ceramic cookware are not good heat conductors. (Association of Home Appliance Manufacturers, No. 61A at 40, 41). The Association of Home Appliance Manufacturers stated that since induction elements heat items by transferring electromagnetic energy, the glass or ceramic countertop under which they lie is unaffected and remains relatively cool. This also means that the cookware used with induction elements must be made from magnetic materials. The Association of Home Appliance Manufacturers listed the following advantages of induction cooking: fast response and control of heat source, ease of cleaning (since food spills do not burn onto the cooking surface), and the ability to heat utensils that are not flat. The Association of Home Appliance Manufacturers pointed out that because the DOE test procedure uses non-magnetic aluminum blocks, it is not suitable for testing induction elements. (Association of Home Appliance Manufacturers, No.61A at 41–43).

As stated in the discussion of product classes, the Department has established two classes for electric cooktops (open coil and smooth), and believes that radiant, halogen, and induction elements offer no consumer utility which prevents them from being analyzed as design options for smooth cooktops. Solid disk elements are treated as the baseline unit for smooth cooktops. Data provided by the Association of Home Appliance Manufacturers, cooktop manufacturers, suppliers, and a published report [30] were used in the analysis of smooth cooktops. Data were provided which evaluated radiant, halogen, and induction elements according to the DOE test procedure. The Department test results were obtained for induction elements by attaching a ferro-magnetic material to the aluminum test block. As with open coil elements, different types of tests based on boiling water have been used to evaluate electronic controls for smooth cooktops. But boiling water tests have yet to be standardized by DOE as a method to rate cooktops. Therefore, this design option was not analyzed by the Department.

In its comments on design options for gas and electric ovens, the Association of Home Appliance Manufacturers stated that since the DOE test procedure does not require maintaining heat in the oven over a period of time, improving the insulation in the cabinet will not show any energy savings. (Association of Home Appliance Manufacturers, No. 61A at 58). With regard to reduced vent size, the Association of Home Appliance Manufacturers stated that this design option should be considered only for electric ovens, not for gas ones. It then proceeded to state how any reductions in vent size will negatively impact cooking and baking performance as well as safety. (Association of Home Appliance Manufacturers, No. 61A at 58, 59). The Association of Home Appliance Manufacturers stated that, according to the DOE test procedure, existing instrumentation cannot measure the small energy efficiency gains that result from reducing conduction losses. (Association of Home Appliance Manufacturers, No. 61A at 59). As with cooktops, the Association of Home Appliance Manufacturers stated that reflective surfaces degrade quickly in ovens. This significantly reduces their impact on energy use over the life of the product. (Association of Home Appliance Manufacturers, No. 61A at 59, 60). The Association of Home Appliance Manufacturers asserted that oven thermal mass cannot be reduced. Further reductions in the gauge of the oven wall material may result in cracking and heat loss. (Association of Home Appliance Manufacturers, No. 61A at 60). The Association of Home Appliance Manufacturers stated that an oven separator to reduce oven thermal mass would pose potential safety problems due to improper installation, gas combustion considerations, and the handling of the separator by the consumer. No test procedure currently exists to certify the safety or performance of an oven using a separator. In addition, the Association of Home Appliance Manufacturers questioned the separator's utility, as consumers already use microwave and toaster ovens for small loads. The Association of Home Appliance Manufacturers also questioned whether the DOE test procedure could evaluate this design option. (Association of Home Appliance Manufacturers, No. 61A at 60–62).

For electric ovens, the Association of Home Appliance Manufacturers proposed separate product classes for forced convection ovens for cooking and cleaning, halogen lamp ovens, and steam cooking ovens. The Association of Home Appliance Manufacturers stated that due to unique operating characteristics a separate class should be adopted for convection ovens. (Association of Home Appliance Manufacturers, No. 61A at 45, 46). With regard to halogen lamp ovens, the Association of Home Appliance Manufacturers asserted that the baking performance is relatively poor compared to the characteristics of a conventional electric oven. But since it may have certain advantages for broiling applications, the Association of Home Appliance Manufacturers said it should be a separate class. (Association of Home Appliance Manufacturers, No. 61A at 46). Since no United States manufacturer is currently producing steam ovens and because the food products that can be cooked or baked by this oven type are limited, the Association of Home Appliance Manufacturers said it should be adopted as a separate class. (Association of Home Appliance Manufacturers, No. 61A at 47).

As stated in the discussion of product classes, the Department has established two product classes for electric ovens (standard and self-cleaning), and analyzed halogen lamp, convection, and steam cooking as design options for electric ovens. The design options commented on by the Association of Home Appliance Manufacturers and others have all been considered for electric ovens. This includes the biradiant oven concept that was referred to by the Natural Resources Defense Council. Data provided by the Association of Home Appliance Manufacturers, oven manufacturers, suppliers, and published reports [31] were

[30] M. Shepard, A.B. Lovins, J. Neymark, D.J. Houghton, and H.R. Heede, "The State of the Art: Appliances," Rocky Mountain Institute, Competitek, August 1990 Edition.

[31] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No. 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 678, October 1989, U.S. Department of Energy Engineering Analysis, DOE/CS–0166, June 1980, and D.P. DeWitt and M.V. Peart, "Bi-Radiant Oven a Low-Energy Oven System," Purdue University, prepared for Oak Ridge National Laboratory, April 1980, ORNL/Sub–

used in the analysis of electric ovens. Manufacturers' data supplied by the Association of Home Appliance Manufacturers were the only source of cost and efficiency data provided to analyze oven separators. The improved insulation and reduced vent size design options were analyzed only for standard electric ovens. Insulation improvement levels and vent size reductions for standard ovens were selected to bring their baseline unit to the same efficiency level as the baseline unit selected for self-cleaning ovens. The Department received no data that indicated that insulation could be improved beyond the baseline level for self-cleaning ovens. In addition, any further reductions in vent size were assumed to jeopardize both oven safety and cooking performance. The Department did not receive any energy-use or cost data concerning the halogen lamp and steam cooking design options, thus preventing them from being analyzed for electric ovens.

For gas ovens, the Association of Home Appliance Manufacturers proposed separate product classes for standard and self-cleaning convection ovens and radiant burner gas ovens. As with electric convection ovens, the Association of Home Appliance Manufacturers said the unique operating characteristics of the convection oven warrant a separate class. (Association of Home Appliance Manufacturers, No. 61A at 53). For radiant burner gas ovens, the Association of Home Appliance Manufacturers made reference to its comments on radiant burners for gas cooktops. (Association of Home Appliance Manufacturers, No. 61A at 53).

As stated in the discussion of product classes, the Department has established two product classes for gas ovens (standard and self-cleaning). The Department believes that convection and radiant burner gas ovens should be analyzed as design options. A separate class would be warranted if lower efficient design options had consumer utility relative to convection and radiant burner gas ovens. The design options commented on by the Association of Home Appliance Manufacturers and others have all been considered for gas ovens. The bi-radiant oven concept referred to by the Natural Resources Defense Council was determined to be applicable to electric ovens only.[32] Data provided by the Association of Home Appliance Manufacturers, manufacturers, suppliers, and published reports[33] were used in the analysis of gas ovens. Manufacturers' data supplied by the Association of Home Appliance Manufacturers were the only source of cost and efficiency data provided with which the Department could analyze oven separators. As with electric ovens, the improved insulation and reduced vent size design options were analyzed only for standard gas ovens. The Department did not receive any energy-use or cost data concerning the radiant burner gas oven, thus preventing it from being analyzed.

For microwave ovens, the Association of Home Appliance Manufacturers stated that high-grade stainless steel (or reflective material steel coating) would be more efficient than painted cold-rolled steel by approximately one percent. (Association of Home Appliance Manufacturers No. 61A at 30–33). The Association of Home Appliance Manufacturers stated that a small efficiency improvement may be available if fan air flow is increased or if motor energy consumption is decreased. (Id. at 32). The Association of Home Appliance Manufacturers said that magnetron efficiency has reached its maximum at 72 percent. (Id. at 33). The Association of Home Appliance Manufacturers stated that solid-state power supplies are not more efficient, but cost more. At low power levels, improved performance is expected because they eliminate the on/off cycling used by other power supplies. (Id. at 34). The Association of Home Appliance Manufacturers stated that there are no data available to suggest that solid-state microwave generators would increase the generating efficiency over the 70+ percent efficiency available in today's magnetrons. (Id. at 34). The Association of Home Appliance Manufacturers said that a modified wave guide may decrease energy absorption by one percent. (Id. at 35). The Association of Home Appliance Manufacturers stated that microwave oven models with fan-type stirrers use a cover over the fan to prevent inadvertent damage to the fan when inserting or removing food and to prevent degradation of the wave guide due to food splatter. While these ceramic stirrer covers may absorb some microwave energy, they are essential for protecting the stirrer and to prevent accumulation of food splatter inside the wave-guide. (Association of Home Appliance Manufacturers No. 61A at 35).

The Department has utilized the Association of Home Appliance Manufacturers's estimates for energy savings from improved magnetrons, reflective surfaces, modified wave guides, and more efficient fans. After considering the Association of Home Appliance Manufacturers's comments, the Department has also excluded solid-state microwave generators and modified food stirrers from its cost/efficiency tables. The Department has generated data for, and included a more efficient power supply in, its cost/efficiency analysis for microwave ovens.

Arkansas Western Gas said that maintenance and installation should be considered. (Arkansas Western Gas, No. 64 at 7).

Maintenance and installation costs were considered for ranges and ovens. The Department determined that the only design option which required additional maintenance costs was electronic ignition for gas cooktops. Using data obtained from electronic ignition manufacturers, the Department established a price for replacing malfunctioning electronic ignition devices. A retirement function based on data received from electronic ignition manufacturers and service technicians was used to establish the rate of failure of these control devices. With the retirement function and replacement cost, the expected maintenance expense was then determined.

Mr. Rajendra Narang provided patents for improving the efficiency of gas ranges/ovens. These included, for ovens: Combustion air preheated by discharge gases, heated discharge gases discharged only when combustion occurs, and circulation fans for better airflow; for cooktops: an efficient piloted ignition and flame containing burner rings to support pots and pans. (Narang, No. 82).

The Department was not able to assess the energy savings from most of the design options presented by Mr. Narang. (Circulation fans were analyzed, however.) Experimental data and simulation models were not available to allow evaluation of these design options.

Other comments. The Association of Home Appliance Manufacturers recommended that the usage assumptions for ranges/ovens be decreased to account for changes in

80/0082/1, ORNL/Sub–80/0082/2, ORNL/Sub–80/0082/3.

[32] D.P. DeWitt and M.V. Peart, "Bi-Radiant Oven a Low-Energy Oven System," Purdue University, prepared for Oak Ridge National Laboratory, April 1980, ORNL/Sub–80/0082/1, ORNL/Sub–80/0082/2, ORNL/Sub–80/0082/3.

[33] "Costing Analysis of Design Options for Residential Appliances and Space Conditioning Equipment," Lawrence Berkeley Laboratory, prepared by ADM Associates, Inc., Purchase No 4541710, December 1987, "Energy Efficient Electrical Product Knowledge Base," Canadian Electrical Association, prepared by ORTECH International, C.E.A. No. 821 U 678, October 1989, U.S. Department of Energy Engineering Analysis, DOE/CS–0166, June 1980.

lifestyles since the original usage values were estimated. The Association of Home Appliance Manufacturers said the reductions in energy use are from 68 to 74 percent for cooktops and ovens. (Association of Home Appliance Manufacturers, No. 61 at 38). Whirlpool Corporation stated that DOE should revise the test procedure to account for lower usage; the present test procedure overstates usage for cooktops and ovens by 70 and 76 percent, respectively. (Whirlpool Corporation, No. 31 at 17). The American Council for an Energy Efficient Economy also recommended that the usage values be updated. (American Council for an Energy Efficient Economy, No. at 2). Finally, Arkansas Western Gas said range use is down, and that gas use is so low (6Mcf) that any conservation item will have little effect. (Arkansas Western Gas, No. 64 at 6).

As stated previously, the Department has proposed revised test procedures for kitchen ranges and ovens. The Department used the proposed test procedure, including the more current field usage numbers, for the analyses in today's notice. The new annual useful cooking energy output values were determined to be 209.4 kWh for electric cooktops, 732.5 kBtus for gas cooktops, 35.5 kWh for electric ovens, and 124.2 kBtus for gas ovens.

With regard to potential microwave oven standards, the Association of Home Appliance Manufacturers contended that such standards would have an insignificant effect on energy consumption. (Association of Home Appliance Manufacturers, No. 61A at 29).

The Department analyzed quantitatively the energy-saving potential of standards on microwave ovens and found that significant savings are possible. (See Technical Support Document, Chapter 5).

With respect to the usage values for microwave ovens, Whirlpool Corporation stated that microwave energy use has increased significantly, and DOE should initiate a new study to determine a reasonable estimated energy use for microwave ovens. (Whirlpool Corporation, No. 31 at 19). Citing the Electronic Industries Association's estimated 100 kWh/yr usage for microwave ovens in 1987, the Association of Home Appliance Manufacturers stated that it was consistent with its 1976 data showing 75 kWh/yr usage because, although average family size has decreased, microwave oven use within the household has increased. (Association of Home Appliance Manufacturers, No. 61A at 27).

As with the usage number for conventional ranges and ovens, the Department used the proposed test procedure usage values for the analysis of microwave ovens. The Department obtained the proposed energy use values from several utility conditional demand studies resulting in the proposed usage value of 270 kWh/yr for microwave ovens.

Lastly, some comments urged changes in the ranges and ovens test procedure as well as the microwave oven test procedure. Aloha Systems, Inc. commented that the present test procedure using an aluminum block is not realistic, and that induction cooking cannot be evaluated with the present test procedure since that procedure requires iron pots and pans. (Aloha Systems, Inc., No. 2, at 2). Whirlpool Corporation and the Association of Home Appliance Manufacturers both urged the Department to change its microwave test procedure to the 1988 International Electrotechnical Commission test procedures for measuring microwave power and energy use. (Whirlpool Corporation, No. 31 at 18; Association of Home Appliance Manufacturers No. 61A at 25.)

Modifications to the test procedures for kitchen ranges and ovens, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

6. Pool Heaters

Classes. With regard to comments on pool heater classes, Southern Gas Association, Energen, South Carolina Gas and Electric, Laclede, and the Oklahoma Gas Co. proposed that an additional product class for pool heaters be established—gas pool heaters with automatic ignition. (Southern Gas Association, No. 4 at 8; Energen, No. 12 at 15; South Carolina Gas and Electric, No. 34 at 6; Laclede, No. 55 at 6; and Oklahoma Gas Company, No. 57 at 7.)

The Department believes there is no significant difference in consumer utility between gas-fired pool heaters which use electricity and those which do not. In addition, pool heaters are customarily installed adjacent to the pump and filter. Therefore, electricity will be readily available for the pool heater. The Department decided to keep gas-fired pool heaters as one class and to consider electricity-using design options as another design option. Accordingly, the installation and maintenance expenses (in addition to increased manufacturer costs) associated with design options using electricity were considered in the economic calculations.

Another product class issue dealt with heat pump pool heaters. Air Energy Heat Systems (Air Energy Heat Systems, No. 44 at 1) provided efficiency data. The company stated that coefficients of performance are available in the mid five's and will reach the low six's in the future.

The Department has adopted American National Standards Institute Standards Z21.56–1989 and Z21.56a–1990 as the test procedure for pool heaters. The American National Standards Institute standards apply to gas-fired pool heaters only, not electric resistance pool heaters or electric heat pump pool heaters. Since a test procedure does not exist for electric pool heaters, coefficients of performance data were not used in the analysis.

Design options. As for pool heater design options, the Gas Appliance Manufacturers Association argued that since pool heaters have "no flues," many of the design options listed in the Advanced Notice of Proposed Rulemaking are inappropriate, such as use of flue dampers, multiple flues, and increased flue baffling. (Gas Appliance Manufacturers Association, No. 40 at 5.)

Most pool heaters currently being manufactured pass the water through a heat exchanger pipe which is located inside a combustion chamber above the burner. This design does not have a flue, and would not benefit from design options to improve the flue. The Department agrees with Gas Appliance Manufacturers Association and is not considering these design options.

One company took issue with the Gas Appliance Manufacturers Association's comments about flue dampers not being an appropriate design for pool heaters. Flair said, "We know of several manufacturers who build boiler-type pool heaters equipped with flues." (Flair, No. 85 at 1.) Flair also recommended that the Department evaluate a water heater design option of automatic ignition with a flue damper for pool heaters. (Flair, No. 85 at 2.)

The Department is not aware of any residential pool heaters being manufactured currently with separate boilers or tanks that store water at elevated temperatures. Flue dampers are effective only at reducing standby losses from storage tanks. Therefore, flue dampers were not considered. Automatic ignition was included as a design option.

Other comments. One comment dealt with pool heater test procedure issues. The California Energy Commission stated new test procedures are needed for oil-fired, electric resistance, and heat pump pool heaters, and the gas-fired pool heater test needs to include

standby losses so that intermittent ignition devices are credited for increasing the energy factor. (Commission Energy Commission, No. 24 at 5.)

Modifications to the test procedures for pool heaters, which address these issues, are contained in the Notice of Proposed Rulemaking referenced above.

Lastly, one comment proposed that pool heaters be brought under the appliance labeling program. (California Energy Commission, No. 24 at 6).

In response, the Department notes that the appliance labeling program is administered by the Federal Trade Commission. It will be the Federal Trade Commission's decision, not the Department's, whether to bring pool heaters under labeling requirements.

7. Clothes Washers

In a final rule regarding standards for three types of appliances, including clothes washers, published in the **Federal Register** on May 14, 1991 (56 FR 22250), the Department announced that it was accelerating the second review of energy efficiency standards for clothes washers. In response to that notice, a number of energy-efficiency advocates and appliance manufacturers requested that the Department delay the second review until 1995–96.[34] The additional time was requested in order to allow manufacturers time to implement the standards imposed by the 1991 final rule and to fully evaluate new, more energy-efficient technologies such as top-loading horizontal-axis clothes washers. This additional time, manufacturers contend, will enable them to provide more meaningful and relevant comments on the next, legislatively required rulemaking. The Department considered the request, and by letter, dated February 26, 1992, notified the parties requesting the delay that the Department had determined that it will conduct the rulemaking on the later schedule, as requested.[35]

8. Fluorescent Lamp Ballasts

Classes. Several fluorescent ballast class issues were raised in the comments on the Advanced Notice of Proposed Rulemaking. One comment supported the Department's proposed classes. (Advance Transformer, No. 25 at 2). On the other hand, a number of comments recommended additional classes for fluorescent lamp ballasts based on the size and type of lamp for which the ballast is designed. One set of comments proposed adding three and four-lamp F40T12 ballasts and F32T8 ballasts as product classes. (American Council for an Energy Efficient Economy, No. 6 at 2; Public Citizen, No. 7 at 3; Natural Resources Defense Council, No. 13 at 26; Rocky Mountain Institute, No. 15 at 3; California Energy Commission, No. 24 at 6; Northwest Power Planning Council, No. 32 at 2; and Sierra Club, No. 43 at 2). Several comments proposed adding ballasts for compact fluorescent lamps as a product class. (Natural Resources Defense Council, No. 13 at 26; Rocky Mountain Institute, No. 15 at 3; Northwest Power Planning Council, No. 32 at 2; and Sierra Club, No. 43 at 2). Lastly, three comments proposed that dimming features on ballasts warrant a separate class, since such ballasts provide the utility to vary light output. (American Council for an Energy Efficient Economy No. 6 at 5; California Energy Commission, No. 24 at 7; Northwest Power Planning Council, No. 32 at 6).

In response, the Department has added three and four-lamp F40T12 ballasts and one, two, three, and four-lamp F32T8 ballasts to the list of product classes. These new classes will all have unique ballast efficiency factors. Compact fluorescent ballasts, however, are integrated with a lamp and sold as one package. As such, one cannot determine the efficiency of the ballast separate from the lamp. Although dimming ballasts do provide a unique utility to vary light output, the Department believes that such ballasts do not warrant a separate class. At full light output, their energy efficiency is expected to be equal to that of non-dimming ballasts. Therefore, any standard developed for non-dimming ballasts will apply to dimming ballasts operated at full light output.

Design options. The comments on the fluorescent lamp ballast design options consisted largely of suggestions of additional designs for the Department to consider. Certified Ballast Manufacturers stated that it feels there are only two design options, electromagnetic and electronic. (Certified Ballast Manufacturers, No. 47 at 2). Four comments proposed improvement of magnetic ballasts through the use of lower resistance conductors and low-loss silicone or amorphous steel core material. (American Council for an Energy Efficient Economy, No. 6 at 5; Valmont Electric, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Commission, No. 32 at 5). A number of comments suggested that design options which reduce energy use of magnetic ballasts through cathode (heater) cutout, including use of electronic controls (hybrid ballasts), be considered. (American Council for an Energy Efficient Economy, No. 6 at 5; Public Citizen, No. 7 at 3; Natural Resources Defense Council, No. 17 at 29; Valmont, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Council, No. 32 at 5). The California Energy Commission stated that instant start should be considered as one of the design options for magnetic ballasts. (California Energy Commission, No. 24 at 7). There were several comments regarding the consideration of levels of efficiency of electronic ballasts as design options such as instant start and use of integrated circuits. (American Council for an Energy Efficient Economy, No. 6 at 5; Public Citizen, No. 7 at 3; Sierra Club, No. 16 at 2; Natural Resources Defense Council, No. 17 at 29; Valmont, No. 16 at 1; California Energy Commission, No. 24 at 7; and Northwest Power Planning Council, No. 32 at 5]. Finally, three comments proposed that dimming capability (task tuning) be considered as a design option of electronic ballasts. (American Council for an Energy Efficient Economy, No. 6 at 5; California Energy Commission, No. 24 at 7; and Northwest Power Planning Commission, No. 32 at 5).

Dimming capability (task tuning) is addressed above in the product class discussion. The analysis treated cathode cutout and instant start for magnetic ballasts, as well as lower resistance conductors and low-loss steel cores, as design options. The Department also analyzed one efficiency level for instant start and one for rapid-start electronic ballasts. The Department concluded that the use of integrated circuits as a substitute for discrete components is common enough to be included in the initial electronic ballast design option.

Other comments. Two comments recommended that energy-efficient magnetic ballasts be used as the baseline for all product classes. (Valmont, No. 16 at 1; and Magnetek Universal, No. 35 at 1).

The Department agrees with these recommendations and used energy-efficient magnetic ballasts for the baseline units for all classes.

Several comments advised against the Department's considering standards to reduce the harmonic distortion of fluorescent lamp ballasts. (Valmont, No. 16 at 3; Advance Transformer, No. 25 at 4; Magnetek, No. 35 at 2; and National Electrical Manufacturers Association, No. 41 at 1). These comments contended that the harmonic distortions caused by fluorescent lamp ballasts, presently less than 30 percent, are not a serious problem, and that options designed to

[34] ACEEE, AHAM, NRDC, No. 89 at 1.

[35] J. Michael Davis, P.E., No. 90 at 1.

reduce such distortions would not be cost-effective. (Both magnetic and electronic ballasts generate harmonic distortion.)

The Department treated the harmonic content for electronic ballasts as acceptable for conventional, i.e., non-compact, ballasts and did not assign any additional cost to achieving reduced harmonic distortion.

With regard to the fluorescent ballast test procedure, Advance Transformer and the National Electrical Manufacturers Association stated that there is presently no test procedure for electronic ballasts. (Advance Transformer, No. 25 at 2; National Electrical Manufacturers Association, No. 41 at 2).

The Department used the present test procedure for magnetic ballasts to measure the ballast efficacy factor of electronic ballasts. The Department notes that the 60 hertz input power measurement and the light output measurement are the same, regardless of the type of ballast (low or high frequency). The Department believes that the existing test procedure is adequate to measure the ballast efficacy factor of electronic ballasts.

Three manufacturers provided energy savings estimates for various design options. Energy Advantage stated that 20 percent savings from electronic ballasts, compared to energy-efficient magnetic ballasts, are possible. In addition, this energy savings can be accomplished with up to a 50 percent increase in lifetime. (Energy Advantage, No. 27 at 1). Magnetek said that losses for a two lamp F40 electronic ballast can be reduced from 5–6 watts to about 3.5–4.5 watts, for a savings of 1.25–1.5 watts out of 56–58 watts, by substitution of an integrated circuit for discrete components. (Magnetek, No. 35 at 1). One other company, Valmont, provided energy savings tables for five ballast product classes, their maximum technologically feasible efficiencies, and the costs of achieving those efficiencies. (Valmont, No. 16 at 4–7).

The Department used some of the above data in combination with data from directories and other published data [36] to determine energy savings for various classes of fluorescent ballasts. (See Technical Support Document, Volume B). The Department found that 10–15 percent energy savings from electronic ballasts, relative to energy-efficient magnetic ballasts, are possible. The Department developed data that indicated larger energy savings are possible with electronic ballasts than were estimated by Valmont. This resulted in higher maximum technologically feasible efficiencies for all ballast product classes than provided by Valmont. The Department used incremental manufacturer costs that were specific to the energy efficiency gains estimated for each ballast product class studied, and, therefore, did not use the cost data provided by Valmont. A more detailed discussion of assumptions and analysis used for this product class are provided in the Technical Support Document. As for lifetimes of ballasts, the Department assumed the lifetime for an electronic ballast to be equal to that of a magnetic ballast, since no experimental data were received or found to differentiate their lifetimes.

Three manufacturers suggested that some combination of education and controls would be superior to standards in saving lighting energy use. Advance Transformer contended that fluorescent ballasts do not belong in the proposed rulemaking, and that improved education about lighting will accomplish more than standards. (Advance Transformer, No. 25 at 1). Magnetek and Certified Ballast Manufacturers both stated that controls, i.e., occupancy sensors, light feedback, daylighting, and automatic timers, can save more energy than can more stringent ballast standards. (Magnetek, No. 35 at 1; Certified Ballast Manufacturers, No. 47 at 2).

In response, the Department notes that the Act requires DOE to consider, in this rulemaking, more stringent fluorescent ballast standards and the concomitant energy savings therefrom. The Department considered such programs as alternatives to standards in the Regulatory Impact Analysis found in Section V of today's notice.

9. Television Sets

Classes. The Natural Resources Defense Council, Rocky Mountain Institute, and Thomson commented on television set class delineations. The Natural Resources Defense Council stated that separate classes may be needed for stereo sound, remote control, and other features. (Natural Resources Defense Council, No 13 at 24). Also, the Rocky Mountain Institute stated that it might make sense to differentiate on the basis of features like remote control, electronic tuning, and stereo sound. (Rocky Mountain Institute, No. 15 at 2).

Thomson stated that the large number of necessary variables or items used to classify television receivers, including, for example, feature content and screen size, would greatly complicate any attempt to categorize television receivers in order to establish meaningful energy usage guidelines. Thomson also said that many customer-preferred performance qualities, such as high picture brightness and high-quality stereo sound consume correspondingly higher levels of power than television sets that do not exhibit those qualities. There are other desirable, if not necessary, features, such as remote control and on-screen function displays, and federally mandated features, such as closed caption decoding, that may increase energy use. (Thomson, No. 49 at 3, 5).

The Electronic Industries Association stated that in 1989, 83 percent of color television sets sold to dealers reportedly included a remote control feature and that virtually all television sets use electronic tuning. (Electronic Industries Association, No. 30 at 3, 4).

In response to these comments, the Department established one class for color television sets with electronic tuning and remote control. However, the Department believes that the energy used to illuminate the screen is strongly affected by screen size and, therefore, has proposed standards for television sets that are a function of screen size. Furthermore, DOE believes that there is no need to separate classes according to stereo sound because the sound is not on during the efficiency test and therefore sound energy does not affect test procedure measurements.

The standard level analysis is based primarily on manufacturers' data for 19/20″ color television sets because recent manufacturer cost and energy use data for other screen sizes were very limited. The results of the analysis, based on the 19/20″ color television sets and the limited data available for other screen sizes ranging from 13.5″ to 33″, were then used to derive the proposed standards as a function of screen size.

Additionally, the Department did not consider standards for black and white television sets since their share of the market is rapidly decreasing and over 50 percent of those sold are designed for battery or battery-AC operation and are thus designed to minimize energy use.

Design options. Among the comments on television set design options, the Rocky Mountain Institute proposed that DOE consider all reasonable options for reducing standby power as well as operating power. One option would be

[36] R. Verderber, O. Morse, and F. Rubinstein, "Performance of Electronic Ballast and Controls with 34 and 40 Watt F40 Fluorescent Lamps," *IEEE Transactions on Industry Applications*, Vol. 25 No. 6, November 1989 and A. Loruss and K. Bowes, *Harmonic and Power Characteristics of Electronic Ballasts for Fluorescent Applications*, Northeast Utilities Service Company, Lab Test, June 1990; Directory of Certified Fluorescent Lamp Ballasts and Certified Luminaire Manufacturers, CEC, March 4, 1991.

to require a clearly labeled switch that would give consumers the choice of turning the set to standby or completely off. (Rocky Mountain Institute, No. 15 at 5).

The American Council for an Energy Efficient Economy suggested that DOE analyze use of a step down transformer rather than a resistance circuit for electronic tuning and new transformer materials with low core loss (amorphous alloys). The American Council for an Energy Efficient Economy also urged DOE to look at television sets in other countries, particularly Germany. (American Council for an Energy Efficient Economy, No. 6 at 3–4). The Natural Resources Defense Council proposed that DOE consider power supply efficiency improvement. (Natural Resources Defense Council, No. 13 at 38).

The Electronics Industry Association said that average remote control power is 4W, while some are as low as 2W; electronic tuning uses less than 1W, brightness sensor less than 1W. (Electronic Industries Association, No. 30 at 3–4). Thomson said that remote control uses 3–6W and that a brightness sensor consumes essentially no power in itself and offers no energy benefit not otherwise available to the consumer by using the customary picture control adjustments. (Thomson, No. 49 at 6, 7). The Electronic Industries Association provided data on voltage-regulating power supplies. It said that a change in the type of regulator from shunting to switching can save approximately six watts at an additional cost of $1.50. Other comments were provided for other design options, but no additional data were submitted. (Electronic Industries Association, No. 30 at 4).

The Department considered all comments on design options by analyzing standby power; power supply efficiency improvements, including voltage-regulating power supplies; and step down transformers for electronic tuning. These design options are shown in the cost/efficiency tables in the Technical Support Document. Data submitted by the Electronic Industries Association and previously submitted data from manufacturers were used to develop these tables. While a switch to allow consumers to turn off the remote control portion of the television (suggested by the Rocky Mountain Institute) would likely save some energy, the amount would be determined by consumer behavior and is not predictable. The Department discovered no data on improved transformer materials with low core loss nor any data on the energy use, as measured according to DOE test procedure, for the German models. The Department did develop data on Japanese models measured according to its test procedure. These data were included in the analysis.

Other comments. Several comments questioned the feasibility of establishing energy conservation standards for television sets. The Electronic Industries Association said that television set efficiency has improved over the years because manufacturers have been steadily limiting power to reduce internal heat. (Electronic Industries Association, No. 30 at 2). Thomson said there is little, if any, opportunity for further reductions in energy use. Thomson also said the major factors that influence energy use are controlled by the consumer: Operating hours, brightness, sound level, and control settings. (Thomson, No. 49 at 2–6). The Electronic Industries Association argued that efficiency standards would impede the development of high definition television. (Electronic Industries Association, No. 30 at 6). G&A Consultancy suggested that DOE "not place retarding restrictions upon television sets because precluding the television set's potential role as an energy control may inadvertently deny the American homeowner a far more valuable system of energy savings." (G&A Consultancy, No. 50 at 4).

The Department considered all these comments in the decision-making process for television set standards. With regard to such standards precluding the potential for a television set to become a home energy controller, it is the Department's belief that if television sets were transformed to home energy controllers, the nature of the appliance might have changed sufficiently for it to be considered a new appliance. If so, it would not be a covered product and subject to an energy conservation standard for television sets.

Two comments stated that standards are inappropriate for television sets, stating that they already are energy efficient, leaving little room for improvement. (Electronic Industries Association, No. 30 at 7; Thomson, No. 49 at 2).

The Department analyzed television set standard levels by the methodology proposed in the advance notice, thereby taking into account the costs and benefits of any potential efficiency improvements. The Department found that the efficiency of the typical television set can be improved.

IV. Product-Specific Discussion

a. Room Air Conditioners

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for room air conditioners. Table 4–1 presents the seven efficiency levels selected for analysis for the twelve classes of room air conditioners. Level 7 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4.1—STANDARD LEVELS ANALYZED FOR ROOM AIR CONDITIONERS

Product class	Baseline	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
With louvered sides less than 6,000 Btu	8.27	9.36	9.36	10.44	10.62	11.08	11.52	13.04
With louvered sides 6,000 to 7,999 Btu	8.45	9.32	9.32	9.79	9.79	10.25	10.74	12.14
With louvered sides 8,000 to 13,999 Btu	9.33	9.33	10.05	10.34	10.34	11.02	11.97	13.50
With louvered sides 14,000 to 19,999 Btu	9.00	9.00	10.09	10.09	10.37	11.13	11.13	13.58
With louvered sides 20,000 and more Btu	8.32	8.32	8.32	8.32	9.08	9.63	10.70	11.43
Without louvered sides less than 6,000 Btu ..	7.96	9.01	9.01	10.06	10.24	10.67	11.10	12.56
With louvered sides 6,000 to 7,999 Btu	8.15	8.15	9.22	9.43	9.43	9.98	10.35	11.69
Without louvered sides 8,000 to 13,999 Btu .	9.00	9.00	9.69	9.96	9.96	10.65	11.54	13.01
Without louvered sides 14,000 to 19,999 Btu	8.64	8.64	9.75	9.75	10.01	10.81	10.81	13.10
Without louvered sides 20,000 and more Btu	8.03	8.03	8.03	8.03	8.77	9.30	10.34	11.02
With reverse cycle and with louvered sides ..	8.71	8.71	9.83	9.83	10.10	10.75	12.11	13.22
With reverse cycle and without louvered sides	8.78	8.78	9.42	9.71	9.71	10.39	11.24	12.66

Rather than presenting the results for all classes of room air conditioners in today's notice, the Department selected a class of room air conditioners as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for room air conditioners is room air conditioners with side louvers, less than 6,000 BTU's per hour, which is one of the most prevalent classes of room air conditioners. For this representative class, trial standard levels 1 and 2 accomplish the above efficiency improvements from the baseline by enhanced evaporator and condenser fins and the use of a permanent split-capacitor fan motor; level 3 adds a subcooler and grooved tubes to both the evaporator and condenser coils; level 4 increases the compressor energy efficiency ratio to 11.0; level 5 increases the compressor energy efficiency ratio further to 11.5; level 6 increases the evaporator and condenser coil area; and level 7 adds a variable-speed compressor and brushless DC fan motor. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Section 1.4 of the Technical Support Document.

2. Payback Period

Table 4–2 presents the payback periods for the efficiency levels analyzed for the representative class of the product. For this representative class, standard levels 1 through 4 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of room air conditioners may be found in Tables 4.13 to 4.24 of the Technical Support Document.

TABLE 4–2.—PAYBACK PERIODS OF DESIGN OPTIONS FOR REPRESENTATIVE CLASS OF ROOM AIR CONDITIONERS

[In years]

Standard level	Payback period
1	1.01
2	1.01
3	1.71
4	1.82
5	3.50
6	5.30
7	16.07

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new room air conditioners under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.28 Quad
Level 2—0.62 Quad
Level 3—1.24 Quads
Level 4—1.42 Quads
Level 5—2.22 Quads
Level 6—3.06 Quads
Level 7—5.22 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. *Economic impact on manufacturers and consumers.* The per unit increased cost to manufacturers to meet the efficiency of levels 1 and 2 for the representative class is $3.81; to meet levels 3–7, the manufacturers' cost increases are $10.10, $11.75, $23.42, $50.24, and $210.24, respectively. See Technical Support Document, Table 1.6.

At those levels of efficiency, the consumer price increases are $4.77 for levels 1 and 2 and $13.64, $15.43, $32.55, $54.61, and $220.04 for standard levels 3–7, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at levels 1 and 2 is $5.12 for the representative class; standard level 3 would reduce energy expenses by $9.13; standard level 4 by $9.73; standard level 5 by $11.16; standard level 6 by $12.41; and standard level 7 by $16.10. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of room air conditioners show that revised standards would cause a prototypical manufacturer to have some reductions in short-run return on equity from the 8.6 percent return in the base case. Standard levels 1 through 7 are projected to produce short-run return on equity's of 8.5 percent, 8.5 percent, 8.4 percent, 8.4 percent, 8.4 percent, 5.2 percent and minus 4.3 percent, respectively. However, revised standards have little or no effect on the prototypical manufacturer's long-run return on equity. Standard levels 1 through 7 are projected to produce long-run return on equity's of 8.5 percent, 8.5 percent, 8.5 percent, 8.5 percent, 8.6 percent, 7.9 percent and 7.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels other than level 7, the max tech level, are less than the baseline unit. Of the seven candidate standard levels, a unit meeting level 4 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard levels 1 and 2 would cause reductions in life-cycle costs for the average affected consumer of $38.86 for the representative class of room air conditioner; standard level 3 would reduce average life-cycle costs by $54.75; standard level 4, by $56.68; standard level 5, by $53.47; and standard level 6, by $43.47. These life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. At standard level 7, the life-cycle costs are projected to increase $86.09, compared to the base case. See Technical Support Document, Table 4.13.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of room air conditioners. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The Net Present Value analysis, a measure of the net savings to society, indicates that for all classes of room air conditioners, standard level 1 would produce an NPV of $0.44 billion to consumers. The corresponding net present values for standard levels 2–6 are $0.82 billion, $1.59 billion, $1.68 billion, $1.85 billion and $1.32 billion, respectively. The net present value for standard level 7 is minus $4.70 billion. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption by room air conditioners.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of room air conditioners.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Room air conditioners use electricity directly. In 1987, 4.3 percent of residential sector source electricity (or 0.45 quads) was accounted for on a national basis by room air conditioners.

In addition, decreasing future electricity demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[37] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of room air conditioners at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 52,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by powerplants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 116,000 tons; 229,000 tons; 261,000 tons; 394,000 tons; 520,000 tons; and 777,000 tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 47,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 103,000 tons; 205,000 tons; 234,000 tons; 353,000 tons; 467,000 tons; and 698,000 tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 24 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–7, the reductions are 53 million tons; 105 million tons; 119 million tons; 181 million tons; 240 million tons; and 360 million tons, respectively. The highest peak annual reduction of these levels is 0.35 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 4.91 million barrels over the years 1996 to 2030. For standard levels 2–7, the reductions in oil imports are estimated to be 10.76, 21.5, 24.45, 37.14, 49.21 and 73.69 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 7 for amended room air conditioner standards.

Of the standard levels analyzed, level 7 would save the most energy (5.22 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all room air conditioners would incorporate improved and increased heat transfer devices and high efficiency and variable-speed fan motors and compressors. However, the payback at this standard level of 16.1 years for the representative class, and up to 23.9 years for other classes, exceeds the 15-year life of the product and causes life-cycle cost increases of $86 for the representative class, and up to $178 for other classes. This level also drives the short-run manufacturer return on equity from 8.6 percent to negative 4.3 percent.

The Department therefore concludes that the burdens of standard level 7 for room air conditioners outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 6. This standard level is projected to save 3.06 quads of energy. This level produces life-cycle cost savings compared to the base case of $43, with a payback of 5.3 years, which is slightly more than one third of the average product lifetime. However, this level causes payback as high as 9.1 years for other classes (over 60 percent of product life) and reduces manufacturer short-run return on equity from 8.6 percent to 5.2 percent, a

[37] The expected environmental impacts of the candidate standard levels were calculated prior to passage of the Clean Air Act Amendments of 1990 (CAAA, Pub. L. 101–549, November 15, 1990). As explained below, the CAAA will lower emissions of SO_2 and NO_2. Since appliance standards reduce the need for generation of electricity, they will cause lower emissions by powerplants of SO_2 and NO_2, thereby helping those utilities meet their required pollution reductions.

For SO_2, any emission reductions caused by appliance standards prior to the year 2000 will be part of much greater SO_2 reductions that are required by the CAAA. After the year 2000, SO_2 reductions achieved through appliance standards or any other means by those emitting SO_2 can be earned as credits. These are credits to emit an amount of SO_2 equivalent to the amount of the SO_2 reduction that created the credits. The new amendments allow those earning the credits either to sell them to others or to "bank" them for future use.

Therefore, after the year 2000, to the extent that appliance standards result in SO_2 credits being earned, and to the extent that such standards—induced credits are sold and used by others, the national SO_2 reductions from standards will not occur.

The new law also requires that utility boilers emit lower levels of NO_x and requires that additional actions to reduce emissions be taken in regions not now in compliance with Federal ambient air quality standards for NO_x or derivative pollutants, such as ground-level ozone. Because of these new requirements, the actual reductions in NO_x emissions likely to result from the appliance standards are very likely to be substantially less than the estimates made prior to the enactment of the Clean Air Amendments of 1990 and contained in this document.

With respect to CO_2, there are as yet no such regulatory constraints on national or regional emissions. However, efforts to comply with international commitments to stabilize CO_2 emissions, such as voluntary commitments by utilities and industries to reduce greenhouse gas emissions to 1990 levels by 2000, may result in constraints that are similar in nature to those for SO_2 and NO_2. If so, the reductions in CO_2 emissions estimated to result from the standards also may not be fully realized.

reduction of almost 40 percent. Also, at this standard level, some classes are assumed to incorporate variable-speed compressors, for which there is not a DOE test procedure. The Department believes that the development of such a test procedure would be a lengthy process which would probably delay the effective date of the standard for room air conditioners.

The Department therefore, concludes that the burdens of standard level 6 for room air conditioners outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for room air conditioners with standard level 5 for room air conditioners. The Department concludes that standard level 5 for room air conditioners saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.22 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 353,000 tons and 394,000 tons, respectively, or by as much as 0.18 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 181 million tons, or as much as 0.18 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 3.5 years for the representative class and no more than 7.0 years for any class. This standard is at or near the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $53 for the representative class. Additionally, the standard is expected to have essentially no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

b. Water Heaters

1. Efficiency Levels Analyzed.

The Department examined a range of standard levels for water heaters. Table 4–3 presents the efficiency levels selected for analysis for the four classes of water heaters. Electric and gas storage water heaters each have five efficiency levels that were analyzed, but were paired together to yield the eight combinations shown below. Level 8 corresponds to the highest efficiency level, max tech, considered in the engineering analysis for each class.

TABLE 4–3.—EFFICIENCY LEVELS ANALYZED FOR WATER HEATERS

(Energy factor)

Product class	Standard level								
	Baseline	1	2	3	4	5	6	7	8
Electric	0.86	0.90	0.93	1.77	1.89	1.89	2.54	2.54	2.54
Gas	0.54	0.54	0.55	0.57	0.57	0.58	0.58	0.60	0.82
Instan.	0.62	0.62	0.62	0.62	0.75	0.75	0.75	0.78	0.90
Oil	0.53	0.58	0.60	0.67	0.67	0.69	0.69	0.69	0.78

Rather than presenting the results for all classes of water heaters in today's notice, the Department selected two classes of water heaters as being representative, or typical, of the product, and is presenting the results only for those classes. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative classes. The representative classes for water heaters are electric storage water heaters and gas storage water heaters, which are the most prevalent classes of water heaters. For electric storage water heaters, trial standard level 1 accomplishes the above efficiency improvement from the baseline by the use of heat traps and by reducing heat leaks; level 2 increases the insulation level to R–25; at level 3 the insulation is reduced back to the baseline level of R–16, but an add-on heat pump is added; levels 4 and 5 increase the insulation back to R–25; and levels 6, 7 and 8 assume the use of an integral heat pump. For gas storage water heaters, trial standard level 1 is the same as the baseline, trial standard level 2 accomplishes the above efficiency improvement by the use of heat traps and by reducing heat leaks, levels 3 and 4 increase the insulation level to R–16, levels 5 and 6 increase the insulation level to R–25, at level 7 the insulation level is reduced back to R–16 but electronic ignition is added, and at level 8 the flue gases are assumed to condense. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Sections 1.5 and 1.6 of the Technical Support Document.

2. Payback Period

Table 4–4 presents the payback period for the efficiency levels analyzed for gas and electric storage water heaters. For gas water heaters, standard level 2 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year; for electric water heaters standard levels 1 through 5 satisfy the rebuttable presumption test.

TABLE 4–4.—PAYBACK PERIODS OF DESIGN OPTIONS FOR WATER HEATERS

(In years)

Standard level	Payback period	
	Gas	Electric
1	N/A	0.5
2	2.6	2.3
3	3.5	1.9
4	3.5	2.0
5	10.1	2.0
6	10.1	3.5
7	11.2	3.5
8	18.9	3.5

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new water heaters under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030,

the following energy savings would result for all classes of the product:

Level 1—0.09 Quad
Level 2—0.73 Quad
Level 3—32.10 Quads
Level 4—34.89 Quads
Level 5—34.99 Quads
Level 6—44.39 Quads
Level 7—45.85 Quads
Level 8—54.45 Quads

The Department finds that each of the increased standards Levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. *Economic impact on manufacturers and consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency for gas water heaters is zero since it is the same as the baseline; to meet level 2 the manufacturers' cost increase is $5.47, levels 3 and 4 are $18.19, levels 5 and 6 are $28.57, level 7 is $72.14, and level 8 is $358.23. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric water heaters is $5.32; to meet level 2 the manufacturers' cost increase is $14.33, level 3 is $201.82, levels 4 and 5 are $210.83, and levels 6 through 8 are $585.06. See Technical Support Document, Table 1.5, "Cost Data for Gas-Fired Storage Water Heaters" and Table 1.9, "Cost Data for Electric Storage Water Heaters."

At those levels of efficiency, the consumer price increases for gas water heaters are zero for level 1, since it is the same as the baseline, $7.35 for level 2, $24.05 for levels 3 and 4, $59.60 for levels 5 and 6, $108.55 for level 7 and $901.80 for level 8. For electric water heaters the consumer price increases are $6.85 for level 1, $42.04 for level 2, $361.36 for level 3, $394.38 for levels 4 and 5, and $834.31 for levels 6 through 8. See Technical Support Document, Tables 4.1 and 4.2.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is zero for a gas water heater because it is the same as the baseline; standard level 2 would reduce energy expenses by $2.87; standard levels 3 and 4 by $7.46; standard levels 5 and 6 by $9.20; standard level 7 by $13.32; and standard level 8 by $53.02. For electric water heaters standard level 1 would reduce energy expenses by $14.66, standard level 2 by $26.78, standard level 3 by $195.01, levels 4 and 5 by $207.13 and levels 6 through 8 by $250.79. See Technical Support Document, Tables 4.1 and 4.2.

The Lawrence Berkeley Laboratory-Manufacturers Impact Model results for all classes of water heaters show that any of the revised standards would cause a prototypical manufacturer to have negative short-run return on equity. This is caused in part by the very low base case return of 0.4 percent, indicative of an industry which is extremely price-competitive. The negative short-run return on equity's are especially severe at the three most stringent levels. Standard levels 1 through 8 are projected to produce negative short- run return on equity's of 0.2 percent, 0.3 percent, 3.3 percent, 3.5 percent, 3.7 percent, 17.1 percent, 18.1 percent and 31.7 percent respectively. However, revised standards will slightly increase the prototypical manufacturer's long-run return on equity at standard levels above level 2. Standard levels 1 through 8 are projected to produce long-run return on equity's of 0.4 percent, 0.4 percent, 0.8 percent, 0.8 percent, 0.8 percent, 1.6 percent, 1.7 percent and 1.9 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Furthermore, most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports. Also, DOE based its assumptions for the prototypical firm strictly on information regarding water heater manufacturers. The Department seeks comments on how to better characterize a prototypical firm when heat pump water heaters are included in the mix of products. For example, it may be that room air conditioner manufacturers become the system manufacturer, with the water heater tank becoming a purchased part. In that case, at those levels where heat pumps are assumed, it may be reasonable to introduce some of the financial characteristics of the room air conditioner industry since the heat pumps in question are very similar to room air conditioners.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels other than level 8, the max tech level, for gas water heaters are less than the baseline unit. Of the eight candidate standard levels, units meeting levels 4 and 5 have the lowest consumer life-cycle costs for electric water heaters and units meeting levels 3 and 4 have the lowest consumer life-cycle costs for gas water heaters. See Technical Support Document, Figures 4.2 and 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $70.39 for the representative class of electric water heaters with no impact on gas water heaters, which remain at the base case at this level; standard level 2 would reduce average life-cycle costs by $81.04 and $19.13 for electric and gas water heaters, respectively; standard level 3, by $974.88 and $29.81; standard level 4, by $1024.20 and $29.81; standard level 5, by $1024.20 and minus $3.77; standard level 6, by $907.99 and minus $3.77; standard level 7, by $907.99 and minus $13.12; and standard level 8, by $907.99 and minus $437.41. These life-cycle cost reductions indicate that no standard level, other than levels 5 through 8 for gas water heaters, would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.5 and 4.6.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of water heaters. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of water heaters, standard level 1 would produce a net present value of $0.19 billion to consumers. The corresponding net present values for levels 2–8 are $0.99

billion, $40.17 billion, $42.92 billion, $42.68 billion, $38.15 billion, $39.91 billion and $32.50 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of energy consumption for water heaters.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of water heaters.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Water heaters use electricity, gas, and oil directly. In 1987, 18.4 percent of residential sector source electricity (or 1.94 quads) and 30.7 percent of residential sector natural gas consumption (or 1.59 quads) were accounted for on a national basis by water heaters.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A [38]. Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of water heaters at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 17,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–8, the reductions are 145,000 tons; 5,381,000 tons; 5,885,000 tons; 5,890,000 tons; 7,796,000 tons; 7,823,000 tons; and 7,124,000 tons, respectively. The highest peak annual reduction of these levels is 3.58 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 14,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–8 the reductions are 118,000 tons; 4,890,000 tons; 5,338,000 tons; 5,336,000 tons; 6,995,000 tons; 7,086,000 tons; and 7,109,000 tons, respectively. The highest peak annual reduction of these levels is 3.57 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 7 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.02 percent. For standard levels 2–8 the reductions are 59 million tons; 2,607 million tons; 2,837 million tons; 2,845 million tons; 3,662 million tons; 3,747 million tons; and 4,113 million tons, respectively. The highest peak annual reduction of these levels is 4.14 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 1.6 million over the years 1996 to 2030. For standard levels 2–8, the reductions in oil imports are estimated to be 24.12, 605.97, 654.55, 677.03, 835.53, 842.83 and 786.97 million barrels, respectively.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 8 for amended water heater standards.

Of the standard levels analyzed, level 8 will save the most energy (54.45 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all electric water heaters will incorporate improved thermal characteristics and an integral heat pump, and all gas water heaters will incorporate improved thermal characteristics and condense the flue gases. However, the payback at this standard level of 18.9 years for gas water heaters exceeds the 14-year life of the product and causes life-cycle cost increases of $437 for gas water heaters, and up to $1,108 for other classes. This level also quadruples the first cost of electric and gas water heaters and drives the short-run manufacturer return on equity from 0.4 percent to negative 32.1 percent.

The Department therefore concludes that the burdens of standard level 8 for water heaters outweigh the benefits, and rejects the standard level.

The next two most stringent standard levels, 7 and 6, are projected to save 45.85 and 44.39 quads of energy, respectively. However, these levels also produce life-cycle cost increases for gas water heaters compared to the base case with payback of 11.2 and 10.1 years, which are more than two thirds of the average product lifetime. The first cost of electric water heaters at these levels is quadrupled from the base case and manufacturer short-run return on equity is reduced from 0.4 percent to negative 18.1 and negative 17.1 percent, respectively.

The Department therefore concludes that the burdens of standards level 7 and 6 for water heaters outweigh the benefits, and rejects these standard levels.

The next most stringent standard level is standard level 5. This standard level is projected to save 34.98 quads of energy. However, this level also produces a life-cycle cost increase for gas water heaters compared to the base case, with a payback of 10.1 years, which is more than two thirds of the average product lifetime.

The Department therefore concludes that the burdens of standard level 5 for water heaters outweigh the benefits, and rejects this standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act—imposed 1990 standard for water heaters with standard level 4. The Department concludes that standard level 4 for water heaters saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 34.87 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 5,336,000 tons and 5,890,000 tons, respectively, or by as much as 2.77 and 2.72 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 2,845 million tons, or as much as 2.93 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.0 and 3.5 years for electric and gas water heaters, respectively. This standard has the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $1,025 and $31 for electric and gas water heaters, respectively. Additionally, the standard is expected to double the prototypical manufacturer's long-run return on equity from 0.4 to 0.8 percent even

[38] See, footnote 37.

though the short-run return on equity is projected to drop to negative 3.5 percent. However, as stated previously, the Department believes that the requirement of heat pumps for electric water heaters will cause other manufacturers, with the stronger financial characteristics of room air conditioner manufacturers, to be drawn into the mix of manufacturers offering electric water heating systems. The Department believes that this mix of manufacturers would have a positive return on equity compared to that projected for existing water heater manufacturers.

The Department recognizes that establishing a standard for electric water heaters that essentially requires the use of heat pumps is a significant change for consumers and manufacturers. However, heat pump water heaters are not a technology that has to be developed; the product already exists in the marketplace. Additionally, the projected energy savings are very large and the forecasted benefits appear to outweigh the burdens. However, the magnitude of some of the changes, such as in first cost and product manufacturing, could make questionable some of the assumptions contained in the analysis and may warrant closer scrutiny. For example, as reported in the Technical Support Document, the Lawrence Berkeley Laboratory Residential Energy Model's computation of appliance turnover rate, i.e., the repair or replace decision, is based on industry data about historical annual shipments and does not explicitly consider the effects of increased first cost. A significant increase in first cost could distort this model. The Department assumes, however, that water heaters are typically replaced because of tank leaks which, because of design features such as glass-lined tanks and foamed-in-place insulation, are essentially non-repairable. Therefore, the Department believes that the impacts on the replacement rate, because of a substantial increase in first cost, is likely to be small. The Department welcomes comment on this assumption and other areas where it might be thought that the magnitude of the first cost increase or manufacturing changes might warrant additional or revised modeling assumptions.

Another possible area of concern regarding this proposed standard is whether heat pump water heaters are physically able to be installed in existing space in the replacement market. The heat pump itself will require some additional space, and as was discussed in the product specific comments regarding classes for water heaters, the Department assumed a sufficient volume would be available to allow air circulation for the proper operation of the heat pump. The Department believes that medium and larger sizes of water heater installations would typically have sufficient space, being usually installed in areas such as basements or garages. For space-restricted applications DOE believes that technical solutions, such as heat pumps with provisions for ducting air flow, are available as well as integrated space conditioning and water heating heat pumps, which are already on the market, and could be used if and when the central heat pump system is replaced. For very small size installations, such as under-the-counter types, where sufficient space for a heat pump may not be readily available or where the economics of a heat pump may not be justified because the water heating loads are well below average, the use of electric instantaneous water heaters would be an effective alternate. A lower limit on the size of electric storage water heaters that the proposed standard would cover may also be a way of minimizing the space and low load concerns. The Department believes there are technical solutions to require the use of heat pump water heaters wherever electric storage water heaters are now used and required. This view was supported at the Hot Water Heat Pump Workshop held in Breckenridge, Colorado on June 30 through July 2, 1993. The proceedings of the workshop are made a part of the record of this notice and are available from the Department's Freedom of Information Reading Room.

Other issues that may warrant further DOE analysis include consumer acceptance of possible increased noise from heat pump water heaters and anticipated increases in maintenance requirements in comparison to electric resistance water heaters. DOE is soliciting public comment on these issues, together with additional data or other information that might assist DOE in better assessing the impacts of this proposed standard on consumers and others.

Because the Department has little information on the space constraints for replacement water heaters or the frequency with which small water heaters experience low annual water heating loads, the cost-effectiveness analysis of the proposed standard does not explicitly consider these factors. The Department believes the analysis is sufficient but would attempt to expand it to include any information on these or other related factors that becomes available during the public comment period. Based on this possible revised analysis, DOE would consider modifying either the proposed standard level for electric water heaters or the definition of the class of water heaters covered by the standard. If the analysis warrants, DOE may establish different classes for two or more sizes of electric water heaters. The Department specifically invites public comment on this expanded analysis and the regulatory alternatives described.

c. Direct Heating Equipment

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for direct heating equipment. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, annual fuel utilization factor, does not include electrical consumption. For example, design options such as adding an induced draft fan improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher Annual Fuel Utilization Efficiencies with little or no net energy savings. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–5 presents the five efficiency levels selected for analysis for the 16 classes of direct heating equipment. Level 5 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–5.—STANDARD LEVELS ANALYZED FOR DIRECT HEATING EQUIPMENT

[Annual efficiency (percent)]

Product class	Standard level					
	Baseline	1	2	3	4	5
Gas wall fan type up to 42,000 Btu/hour	72.2	72.2	72.2	72.2	75.6	89.2
Gas wall fan type over 42,000 Btu/hour	73.4	73.4	73.4	73.4	76.4	89.9
Gas wall gravity type up to 10,000 Btu/hour	59.0	59.0	59.0	67.7	67.7	81.0
Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60.0	64.1	64.1	67.7	72.9	81.7
Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61.0	64.9	64.9	67.9	73.2	82.1
Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62.0	65.9	65.9	68.2	76.2	82.9
Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63.0	66.8	68.5	73.6	76.5	83.3
Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64.0	67.5	68.7	73.9	76.9	83.8
Gas wall gravity type over 46,000 Btu/hour	65.0	68.2	71.6	74.2	73.4	84.4
Gas floor type up to 37,000 Btu/hour	56.0	61.3	62.7	70.7	75.8	88.6
Gas floor type over 37,000 Btu/hour	57.0	69.3	70.0	70.0	78.8	90.0
Gas room type up to 18,000 Btu/hour	57.0	62.3	64.4	64.4	69.3	85.9
Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	58.0	65.0	67.4	69.9	74.8	87.3
Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	63.0	67.1	67.1	67.1	74.9	88.1
Gas room type over 27,000 Btu/hour up to 46,000 Btu/hour	64.0	67.8	71.2	71.2	76.2	88.9
Gas room type over 46,000 Btu/hour	65.0	68.3	71.5	71.5	77.5	89.7

Rather than presenting the results for all classes of direct heating equipment in today's notice, the Department selected a class of direct heating equipment as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for direct heating equipment is gravity wall heaters greater than 27 kBtu/hr but less than 46 kBtu/hr, which is one of the more prevalent classes of direct heating equipment. For this representative class, trial standard level 1 accomplishes the above efficiency improvement from the baseline by derating the burner by 20 percent, level 2 adds electronic ignition, level 3 adds a burner box damper, level 4 adds the use of an induced draft fan and electronic ignition to the baseline unit, and level 5 assumes condensation of the flue gases. Similar design options are used to achieve the above efficiencies for the other classes of direct heating equipment and are found tabulated in section 1.4 of the Technical Support Document.

2. Payback Period

Table 4–6 presents the payback period for the efficiency levels analyzed for the representative class of the product. For this representative class, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of direct heating equipment may be found in Tables 4.17 to 4.32 of the Technical Support Document.

TABLE 4–6.—PAYBACK PERIODS OF DESIGN OPTIONS FOR ROOM HEATERS OVER 46 KBTU/HR

[In years]

Standard level	Payback period
1	2.3
2	6.7
3	7.5
4	15.0
5	17.6

3. Significance of Energy Savings

To estimate the base case energy savings by the year 2030 due to revised standards, the energy consumption of new direct heating equipment under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.04 Quad
Level 2—0.21 Quad
Level 3—0.38 Quad
Level 4—0.23 Quad
Level 5—0.23 Quad

The above energy savings are smaller than anticipated because the Lawrence Berkeley Laboratory-Residential Energy Model predicts fuel switching from gas to electricity at trial standard levels 4 and above as shown in Table 3.3 of the Technical Support Document. However, the Department finds that the increased standards at levels 1 through 4 considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. The per-unit increased cost to manufacturers to meet the level 1 efficiency for the representative class is $8.60; to meet levels 2–5, the manufacturers' cost increases are $19.10, $51.80, $157.60, and $227.70, respectively. See Technical Support Document, Table 1.16.

At those levels of efficiency, the incremental consumer price increases are $24.93, $73.60, $171.34, $402.54, and $690.95 for standard levels 1–5, respectively. See Technical Support Document, Table 4.10.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $10.73 for the representative class; standard level 2 would reduce energy expenses by $17.32; standard level 3 by $29.53; standard level 4 by $35.43; and standard level 5 by $48.24. See Technical Support Document, Table 4.10.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of direct heating equipment show that revised standards would cause a prototypical manufacturer to have slight increases in short-run return on equity from the 7.4 percent in the base case except for the two most stringent levels where short-run return on equity plummets. Standard levels 1 through 5 are projected to produce short-run return on equity's of 7.6 percent, 7.7 percent, 7.6 percent, 5.2 percent and 0.9 percent, respectively. Revised standards have minimal effects on long-run return on equity. Standard levels 1 through 5 are projected to

produce long-run return on equity's of 7.4 percent, 7.4 percent, 7.3 percent, 7.4 percent and 7.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at standard levels 1 through 3 are less than the baseline unit. Of the five candidate standard levels, a unit meeting level 3 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.10.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $79.31 for the representative class of direct heating equipment. Standard levels 2 and 3 would reduce average life-cycle costs by $23.26 and $41.65, respectively. These life-cycle cost reductions indicate that standard levels 1 through 3 would not cause any economic burden on the average consumer. Standard levels 4 and 5 would increase average life-cycle costs by $132.40 and $296.32, respectively. See Technical Support Document, Table 4.26.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of direct heating equipment. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of direct heating equipment, standard level 1 would produce a net present value of $9 million to consumers. The corresponding net present values for levels 2–5 are $63 million, $113 million, negative $259 million, and negative $930 million, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, all standard levels, except level 5, will result in significant savings of energy consumption for direct heating equipment.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of direct heating equipment.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* In 1987, 6.1 percent of residential sector natural gas consumption (or 0.32 quad) was accounted for on a national basis by direct heating equipment.

In addition, decreasing energy use as a result of standards will usually decrease air pollution. However, in the case of direct heating equipment, projected fuel switching from gas to electric resistance heat causes the energy savings to be less than it otherwise would be, and at some of the trial standard levels the impact on the environment is negative, since it takes more primary energy to heat with resistance electric heat than with a gas furnace. See Technical Support Document, Appendix D of Volume A [39]. Evaluating standards for electric direct heating equipment might result in standards requiring the use of heat pump technology which would probably resolve this abnormality, but DOE has not considered adding standards for electric direct heating equipment in this proposed rule. The resulting impact on energy use because of fuel switching was considered in The Department's decision-making as discussed in the conclusion below.

Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2) at level 1. For all classes of direct heating equipment at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 5,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is close to 0 percent. For standard levels 2 and 3, the reductions are 20,000 tons and 32,000 tons, respectively. For standard levels 4 and 5, SO_2 emissions are projected to increase by 72,000 tons and 320,000 tons, respectively. The highest peak annual increase of these levels is 0.18 percent.

Standards at level 1 would result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be over 4,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants during that time in the United States is 0.01 percent. For standard levels 2 and 3, the reductions are 21,000 tons and 37,000 tons, respectively. For standard levels 4 and 5, NO_2 emissions are projected to increase by 27,000 tons and 184,000 tons, respectively. The highest peak annual increase of these levels is 0.13 percent.

Another consequence of the standards will be changes in (CO_2) emissions. For standard levels 1, over the years 1996 to 2030, the total estimated CO_2 reductions would be 2 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–4 the reductions are 14 million tons, 26 million tons, and 2 million tons, respectively. The highest peak annual reduction of these levels is 0.03 percent. For standard level 5, CO_2 emissions are expected to increase by 60 million tons with a highest peak annual increase of 0.10 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 1.1 million barrels over the years 1996 to 2030. For standard levels 2, the reductions in oil imports are estimated to be 3.5 and 6 million barrels, respectively; while for standard levels 4 and 5 are estimated to

[39] See footnote 37.

result in an increase in oil imports of 15.43 and 70.03 million barrels, respectively.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended direct heating equipment standards.

Of the standard levels analyzed, level 5 will save the most energy per unit but, because of fuel switching from gas to electric, this level actually causes an energy increase of 0.23 quad between 1996 and 2030. In order to meet this standard, the Department assumes that all direct heating equipment will be condensing with induced draft and electronic ignition. This level produces increased life-cycle costs compared to the base case for all classes of product and has payback which exceed the average product life for all but two classes. Additionally, this level reduces manufacturer short-run return on equity from 7.4 percent in the base case to 0.9 percent and has a negative net present value of $1.1 billion.

The Department therefore, concludes that the burdens of standard level 5 for direct heating equipment outweigh the benefits, and rejects the standard level.

The next most stringent standard level, level 4, is projected to have energy savings of 0.23 quad, but the savings here are also reduced by fuel switching. This level also produces life-cycle cost increases, compared to the base case, of $132 for the representative class, with similar increases for most classes. The payback at this level is 15.0 years for the representative class, equaling the average product life, with similar payback for most of the other classes. Additionally this level has a negative impact on the environment by increasing two of the three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard level 4 for direct heating equipment outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act—imposed 1990 standard for direct heating equipment with standard level 3. The Department concludes that standard level 3 for direct heating equipment saves a significant amount of energy and is technologically feasible and economically justified.

There would be a significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.38 quad of primary energy and are essentially not affected by fuel switching. The standard could have a slight positive effect on the environment by reducing the emissions of NO_2 by more than 37,000 tons and SO_2 by almost 32,000 tons by the year 2030. Furthermore, the standard is projected to reduce emissions of CO_2 by 26 million tons over the forecast period.

The technology that is necessary to meet this standard: derated burners, electronic ignition, and burner box dampers or induced draft, is presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.5 years, approximately one-half of the average product life. This standard is expected to result in a reduction in life-cycle cost of approximately $42. Additionally, the standard is expected to have little or no impact on the prototypical manufacturer's return on equity of 7.4 percent and has a net present value of $328 million. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

d. Mobile Home Furnaces

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for mobile home furnaces. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, annual fuel utilization factor, does not include electrical consumption. For example, to consider improvements in fan motor efficiency, the savings in electrical consumption would have to be accounted for in the descriptor. Furthermore, other design options (for instance, fan-assisted combustion) improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher annual fuel utilization factors with little or no net energy savings. Lastly, since annual fuel utilization factor is defined in the Act in terms of an isolated combustion system, there are steps that could be taken to obtain a higher annual fuel utilization factor, such as adding jacket insulation, which would have no impact on the efficiency of a furnace installed indoors. Since practically all mobile home furnaces are installed indoors, the current descriptor is not entirely appropriate for this rulemaking. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–7 presents the six efficiency levels selected for analysis for the two classes of mobile home furnaces. Level 6 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–7.—STANDARD LEVELS ANALYZED FOR MOBILE HOME FURNACES

[Annual efficiency (percent)]

Product class	Standard level						
	Baseline	1	2	3	4	5	6
Gas Fired	72.7	74.3	77.1	79.0	79.1	87.4	89.5
Oil Fired	72.8	74.7	74.7	76.5	76.5	83.2	85.8

Rather than presenting the results for all classes of mobile home furnaces in today's notice, the Department selected a class of mobile home furnaces as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for mobile home furnaces is gas fired mobile home furnaces, which is the most prevalent class of mobile home furnaces. For this representative class,

trial standard level 1 accomplishes the above efficiency improvement from the baseline by the use of improved fan motor efficiency, level 2 adds a burner box damper, level 3 adds an improved heat exchanger, level 4 substitutes fan-assisted combustion and electronic ignition for the burner box damper and improved heat exchanger, level 5 assumes condensing of the flue gases and level 6 adds continuous furnace modulation. Similar design options are used to achieve the above efficiencies for oil-fired mobile home furnaces and are found tabulated in Section 1.5 of the Technical Support Document.

2. Payback Period

Table 4–8 presents the payback period for the efficiency levels analyzed for the representative class of the product. For this representative class, standard levels 1 and 2 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of mobile home furnaces may be found in Tables 4.3 and 4.4 of the Technical Support Document.

TABLE 4–8.—PAYBACK PERIODS OF DESIGN OPTIONS FOR GAS FIRED MOBILE HOME FURNACES

[In years]

Standard level	Payback period
1	0.6
2	3.0
3	6.7
4	7.5
5	7.6
6	13.0

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new mobile home furnaces under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of the product:

Level 1—0.02 Quad
Level 2—0.05 Quad
Level 3—0.05 Quad
Level 4—0.03 Quad
Level 5—0.11 Quad
Level 6——0.02 Quad

The above energy savings are smaller than anticipated because the Lawrence Berkeley Laboratory-Residential Energy Model predicts fuel switching from gas to electricity at trial standard levels 2 and above as shown in Table 3.4 of the Technical Support Document. However, the Department finds that each of the increased standards levels considered above except for level 6, the max tech level, would result in a significant conservation of energy.

4. Economic Justification.

A. Economic Impact on Manufacturers and Consumers. The Department is refraining from publishing the per-unit increased cost to manufacturers to meet the trial standard levels for mobile home furnaces due to confidentiality considerations. The Department has determined that the data provided is confidential pursuant to 10 CFR 1004.11. There are only two manufacturers of this product, and they would provide data only if DOE agreed not to publish the data. Today's proposed rule is based upon the Department's consideration of these data, and others, e.g., data from component suppliers, as described in Section 1.5 of the Technical Support Document.

At the considered levels of efficiency, the consumer price increases are $5.74 for level 1 and $76.80, $186.35, $273.71, $569.32, and $1151.56 for standard levels 2–6, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $9.56 for the representative class; standard level 2 would reduce energy expenses by $25.71; standard level 3 by $35.54; standard level 4 by $44.96; standard level 5 by $83.20; and standard level 6 by $100.15. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of mobile home furnaces show that revised standards would cause a prototypical manufacturer to have some fluctuations in short-run return on equity from the 7.3 percent return in the base case, especially at the two most stringent levels. Standard levels 1 through 6 are projected to produce short-run return on equity's of 7.2 percent, 7.3 percent, 6.8 percent, 7.3 percent, 3.3 percent and 1.9 percent respectively. However, revised standards have little or minimal effect on the prototypical manufacturer's long-run return on equity. Standard levels 1 through 6 are projected to produce long-run return on equity's of 7.3 percent, 7.2 percent, 7.2 percent, 7.2 percent, 6.1 percent and 6.8 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. Life-cycle cost and net present value. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels other than level 6, the max tech level, are less than the baseline unit. Of the six candidate standard levels, a unit meeting level 5 has the lowest consumer life-cycle cost. See Technical Support Document, Figure 4.1.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $100.83 for the representative class of mobile home furnace; standard level 2 would reduce average life-cycle costs by $210.08; standard level 3, by $210.16; standard level 4, by $227.91; and standard level 5, by $358.96. These life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. At standard level 6, the average life-cycle costs are projected to increase by $34.33, compared to the base case. See Technical Support Document, Table 4.3.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax

rates that consumers would likely face in financing the purchase of mobile home furnaces. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of mobile home furnaces, standard level 1 would produce a net present value of $12 million to consumers. The corresponding 0net present values for standard levels 2–6 are all negative at $175 million, $839 million, $1.39 billion, $2.86 billion and $5.4 billion, respectively. See Technical Support Document, Table 3.6.

C. Energy savings. As indicated above, standards will result in significant savings of energy consumption for mobile home furnaces.

D. Lessening of utility or performance of products. As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of mobile home furnaces.

E. Impact of lessening competition. The determination of this factor must be made by the Attorney General.

F. Need to save energy. In 1987, 1.9 percent of residential sector natural gas consumption (or 0.1 quad) was accounted for on a national basis by mobile home furnaces.

In addition, decreasing energy use as a result of standards will usually decrease air pollution. However, in the case of mobile home furnaces, projected fuel switching from gas to electric resistance heat causes the energy savings to be less than it otherwise would be, and at most of the higher trial standard levels the impact on the environment is negative, since it takes more primary energy to heat with resistance electric heat than with a gas furnace. See Technical Support Document, Appendix D of Volume A.[40] Evaluating standards for electric mobile home furnaces might result in standards requiring the use of heat pump technology which would probably resolve this abnormality, but DOE has not considered adding standards for electric mobile home furnaces in this proposed rule. The resulting impact on energy use because of fuel switching was considered in The Department's decision-making as discussed in the conclusion below.

Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2) at level 1. For all classes of mobile home furnaces at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be approximately 1,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–6, SO_2 emissions are projected to increase by 5,000 tons; 29,000 tons; 54,000 tons; 122,000 tons; and 270,000 tons, respectively. The highest peak annual increase of these levels is 0.18 percent.

Standards at levels 1 and 2 would result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be over 1,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard level 2, the total estimated NO_2 reduction would be less than 1,000 tons. For standard levels 3–6, NO_2 emissions are projected to increase by 7,000 tons; 16,000 tons; 34,000 tons; and 87,000 tons, respectively. The highest peak annual increase of these levels is 0.05 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions at levels 1 and 2. For either of these levels, over the years 1996 to 2030, the total estimated CO_2 reduction would be approximately 1 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 3–6, CO_2 emissions are increased by 2 million tons; 8 million tons; 15 million tons; and 49 million tons, respectively. The highest peak annual increase of these levels is 0.05 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 0.75 million barrels over the years 1996 to 2030. Standard levels 2–6, are estimated to result in an increase in oil imports of 2.87, 18.14, 35.16, 77.82 and 174.02 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 6 for amended mobile home furnace standards.

Of the standard levels analyzed, level 6 will save the most energy per unit but, because of fuel switching from gas to electric, this level has negative overall energy savings (−0.02 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all mobile home furnaces will be condensing furnaces with full modulation. At nearly triple the purchase price to consumers, this level produces negative life-cycle cost savings compared to the base case of $154 and has a payback of 13.0 years, which is more than half of the average product lifetime. The level also reduces manufacturer short-run return on equity by over 70 percent and has a negative net present value of $8.9 billion, as well as increasing all three environmental atmospheric emissions studied.

The Department therefore, concludes that the burdens of standard level 6 for mobile home furnaces outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 5. This standard level is projected to save the most energy of any of the mobile home furnace trial standard levels, 0.11 quad, but the savings here are also reduced by fuel switching. This level produces the highest life-cycle cost savings compared to the base case of $239 and has a payback of 7.6 years, which is slightly more than one third of the average product lifetime. However, the level reduces manufacturer short-run return on equity by over 50 percent and has a negative net present value of $4.6 billion, as well as increasing all three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard level 5 for mobile home furnaces outweigh the benefits, and rejects the standard level.

The three next most stringent standard levels, 4, 3, and 2, are projected to have energy savings ranging from .03 to .05 quad, but the savings here are also reduced by fuel switching. These levels also produce life-cycle cost savings compared to the base case ranging from $108 to $210 with payback ranging from 7.5 to 3.0 years and have little or no impact on manufacturer return on equity. However, these levels all have negative net present values ranging from negative $1.39 billion to negative $.175 billion, as well as

[40] See footnote 37.

increasing one or more of the three atmospheric emissions studied.

The Department therefore concludes that the burdens of standard levels 4, 3 and 2 for mobile home furnaces outweigh their benefits, and rejects the standard levels.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for mobile home furnaces with standard level 1 for mobile home furnaces. The Department concludes that standard level 1 for mobile home furnaces saves a significant amount of energy and is technologically feasible and economically justified.

There would be small but significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.02 quad of primary energy and are essentially not affected by fuel switching. In addition, the standard could have a slight positive effect on the environment by reducing the emissions of NO_2 and SO_2 by as much as 1,000 tons each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 1 million tons over the forecast period.

The technology that is necessary to meet this standard, improved fan motor efficiency, is presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 0.6 years. This standard is expected to result in a reduction in life-cycle cost of approximately $102. Additionally, the standard is expected to have 'essentially no impact on the prototypical manufacturer's return on equity of 7.3 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on the two competitors.

e. Kitchen Ranges and Ovens

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for kitchen ranges and ovens. Table 4–9 presents the five efficiency levels that had been selected for analysis for the eight classes of kitchen ranges and ovens. Level 5 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–9.—STANDARD LEVELS ANALYZED FOR KITCHEN RANGES AND OVENS

[Annual energy use]

Product class	Standard level					
	Baseline	1	2	3	4	5
Electric ovens, self-cleaning (kWh)	346.7	346.7	328.7	287.3	266.8	209.2
Electric ovens, non-self-cleaning (kWh)	327.2	278.3	256.8	217.5	217.5	157.3
Gas ovens, self-cleaning (MMBtu)	2.16	2.16	1.98	1.89	1.64	1.42
Gas ovens, non-self-cleaning (MMBtu)	3.58	2.05	1.38	1.14	1.14	1.07
Microwave ovens (kWh)	270.0	239.0	236.0	233.3	230.0	228.2
Electric cooking top, coil element (kWh)	271.1	271.1	260.2	257.7	257.7	257.7
Electric cooking top, smooth element (kWh)	293.7	293.7	293.7	293.7	289.2	258.5
Gas cooking top (MMBtu)	3.89	3.76	1.71	1.63	1.63	1.63

For analytical purposes the Department segmented the above classes into three groups: Conventional ovens, conventional cooking tops and microwave ovens. Rather than presenting the results for all classes of ranges and ovens in today's notice, the Department selected a class or classes of ranges and ovens as being representative, or typical, of each group of the product, and is presenting the results only for those classes. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The results and conclusions for each group are presented separately below.

Efficiency levels analyzed for conventional ovens. The Department selected two classes of conventional ovens, non-self-cleaning electric ovens and non-self-cleaning gas ovens, as being representative of conventional ovens. For non-self-cleaning electric ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by improved door seals, reduced venting, reflective surfaces and by not having an oven door window; level 2 increases insulation; levels 3 and 4 add convection and reduced thermal mass, and level 5 adds improved insulation, reduced conduction losses, and an oven separator and is a biradiant oven. For non-self-cleaning gas ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating an electric ignition and by not having an oven door window; level 2 adds improved door seals, reduced venting, reflective surfaces and increased insulation; levels 3 and 4 add convection, reduced thermal mass and improved insulation, and level 5 adds an oven separator and reduced conduction losses.

Efficiency levels analyzed for conventional cooking tops. The Department selected two classes of conventional cooking tops, electric-coil cooking tops and gas cooking tops, as being representative of conventional cooking tops. For electric-coil cooking tops, trial standard level 1 remains at the baseline while level 2 accomplishes the above efficiency improvement from the baseline by improved heating element contact, level 3 adds reflective surfaces, and levels 4 and 5 for this class are the same as level 3. For gas cooking tops, trial standard level 1 accomplishes the above efficiency improvement from the baseline by having reduced burner excess air, level 2 adds electronic ignition, level 3 adds sealed burners and reflective surfaces, and levels 4 and 5 for this class are the same as level 3.

Efficiency levels analyzed for microwave ovens. The Department considers microwave ovens to comprise one class. For microwave ovens, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating a more efficient power supply, level 2 assumes a more efficient fan, in level 3 the wave guide is modified, level 4 assumes an improved magnetron, and level 5 adds reflective surfaces.

2. Payback Period for Conventional Ovens

Table 4–10 presents the payback period for the efficiency levels analyzed for the representative classes of conventional ovens. For both representative classes, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the

consumer will receive during the first year.

TABLE 4–10.—PAYBACK PERIODS OF DESIGN OPTIONS FOR CONVENTIONAL OVENS

[In years]

Standard level	Payback period	
	Gas	Electric
1	1.8	2.7
2	3.7	3.7
3	7.5	4.9
4	7.5	4.9
5	18.9	15.7

Payback period for conventional cooking tops. Table 4–11 presents the payback period for the efficiency levels analyzed for the representative classes of conventional cooking tops. For the gas representative class, standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–11.—PAYBACK PERIODS OF DESIGN OPTIONS FOR CONVENTIONAL COOKING TOPS

[In years]

Standard level	Payback period	
	Gas	Electric
1	1.7	N/A
2	7.0	5.2
3	10.1	9.8
4	10.1	9.8
5	10.1	9.8

Payback period for microwave ovens. Table 4–12 presents the payback period for the efficiency levels analyzed for microwave ovens. Levels 1 through 3 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–12.—PAYBACK PERIODS OF DESIGN OPTIONS FOR MICROWAVE OVENS

[In years]

Standard level	Payback period
1	2.1
2	2.3
3	2.9
4	7.4
5	13.0

3. Significance of Energy Savings for Conventional Ovens

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new conventional ovens under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of product:

Level 1—0.69 Quad
Level 2—1.41 Quads
Level 3—2.40 Quads
Level 4—2.69 Quads
Level 5—3.88 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

Significance of energy savings for conventional cooking tops. To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new conventional cooking tops under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result for all classes of product:

Level 1—0.02 Quad
Level 2—2.54 Quads
Level 3—2.68 Quads
Level 4—2.85 Quads
Level 5—3.04 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

Significance of energy savings for microwave ovens. To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new microwave ovens under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings would result:

Level 1—0.46 Quad
Level 2—0.57 Quad
Level 3—0.67 Quad
Level 4—0.77 Quad
Level 5—0.84 Quad

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. Conventional ovens. The per-unit increased cost to manufacturers to meet the level 1 efficiency for gas non-self-cleaning ovens is $5.92; to meet level 2, the manufacturers' cost increase is $14.40, levels 3 and 4 are $29.75, and level 5 is $61.64. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric non-self-cleaning ovens is $4.21; to meet level 2, the manufacturers' cost increase is $8.45, levels 3 and 4 are $19.11, and level 5 is $100.12. See Technical Support Document, Tables 1.9 and 1.11

At those levels of efficiency, the consumer price increase for gas non-self-cleaning ovens at level 1 is $13.84; to meet level 2, the cost increase is $36.56, levels 3 and 4 are $69.00, and level 5 is $161.09. For electric non-self-cleaning ovens the cost at level 1 is $8.84; to meet level 2, the cost increase is $18.73, levels 3 and 4 are $41.30, and level 5 is $213.80. See Technical Support Document, Tables 4.4 and 4.6.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $8.38 for gas non-self-cleaning ovens; standard level 2 would reduce energy expenses by $13.32; standard levels 3 and 4 by $14.82; and standard level 5 by $15.35. For electric non-self-cleaning ovens level 1 would reduce energy expenses by $4.22; standard level 2 by $6.07; levels 3 and 4 by $9.45; and level 5 by $14.63. See Technical Support Document, Tables 4.4 and 4.6.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of conventional ovens show that revised standards would have little or no effect on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 8.6 percent, 8.6 percent, 8.6 percent, 8.5 percent and 8.1 percent, respectively. Revised standards have similar effects on long-run return on equity. Standard levels 1 through 5 are projected to produce long-run return on equity's of 8.6 percent, 8.6 percent, 8.6 percent, 8.6 percent and 9.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same

financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

Conventional cooking tops. The per-unit increased cost to manufacturers to meet the level 1 efficiency for gas cooking tops is $0.78; to meet level 2, the manufacturers' cost increase is $15.57, and levels 3, 4 and 5 are $41.71. The per-unit increased cost to manufacturers to meet the level 1 efficiency for electric-coil cooking tops is zero, since for this class level 1 is the same as the baseline; to meet level 2, the manufacturers' cost increase is $2.28, and levels 3, 4 and 5 are $5.31. See Technical Support Document, Tables 1.4 and 1.6.

At those levels of efficiency, the consumer price increase for gas cooking tops at level 1 is $1.63; to meet level 2, the cost increase is $113.38 and levels 3, 4 and 5 are $168.08. For electric-coil cooking tops, the cost at level 1 is unchanged, since it is at the baseline; to meet level 2, the cost increase is $4.79, and levels 3, 4 and 5 are $11.24. See Technical Support Document, Tables 4.1 and 4.3.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $0.95 for gas cooking tops; standard level 2 would reduce energy expenses by $16.09 and standard levels 3, 4 and 5 by $16.68. For electric-coil cooking tops, level 1 would not reduce energy expenses since it is at the baseline; standard level 2 would reduce energy expenses by $0.93 and levels 3, 4 and 5 by $1.15. See Technical Support Document, Tables 4.1 and 4.3.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of conventional cooking tops show that revised standards would have slight impacts on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 8.6 percent, 8.4 percent, 8.6 percent, 8.7 percent and 8.7 percent, respectively. Revised standards have similar effects on long-run return on equity, with some increases at the higher standard levels. Standard levels 1 through 5 are projected to produce long-run returns on equity of 8.6 percent, 8.2 percent, 8.8 percent, 9.5 percent and 10.0 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

Microwave ovens. The per-unit increased cost to manufacturers to meet the level 1 efficiency for microwave ovens is $5.00; to meet level 2, the manufacturers' cost increase is $6.05; level 3 is $7.90; level 4 is $20.40; and level 5 is $36.80. See Technical Support Document, Table 1.15.

At those levels of efficiency, the consumer price increase for microwave ovens at level 1 is $5.49; to meet level 2, the cost increase is $6.78; level 3 is $9.14; level 4 is $25.38, and level 5 is $46.80. See Technical Support Document, Table 4.8.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $2.67 for microwave ovens; standard level 2 would reduce energy expenses by $2.93; standard level 3 by $3.16; level 4 by $3.44; and level 5 by $3.60. See Technical Support Document, Table 4.8.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for microwave ovens show that revised standards would have little effect, except at the max tech, on a prototypical manufacturer's short-run return on equity from the 8.6 percent in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 9.0 percent, 9.0 percent, 8.8 percent, 8.0 percent and 6.8 percent, respectively. Revised standards have almost no effect on long-run return on equity. Standard levels 1 through 5 are projected to produce long-run returns on equity of 8.6 percent, 8.6 percent, 8.6 percent, 8.7 percent and 8.8 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. Life-cycle cost and net present value. Conventional ovens. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels other than level 5, the max tech level, for electric non-self-cleaning ovens, are less than the baseline unit. Of the five candidate standard levels, units meeting level 3 or 4 have the lowest consumer life-cycle cost for electric non-self-cleaning ovens whereas for gas non-self-cleaning ovens, the lowest life-cycle cost occurred for a unit meeting level 2. See Technical Support Document, Tables 4.4 and 4.6.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $73.09 for the representative class of gas non-self-cleaning ovens; standard level 2 would reduce average life-cycle costs by $42.07; standard levels 3 and 4, by $26.37; while standard level 5 would result in an increase of $59.83. For the representative class of electric non-self-cleaning ovens, standard level 1 would cause reductions in life-cycle costs for the average consumer of $27.29; standard level 2 would reduce average life-cycle costs by $38.05; standard levels 3 and 4, by $53.25; while standard level 5 would result in an increase of $61.41. The life-cycle cost reductions indicate that no standard level, other than max tech, would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.12 and 4.14.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost

analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of conventional ovens, standard level 1 would produce a net present value of $1.20 billion to consumers. The corresponding net present values for levels 2–5 are $0.52 billion, $1.09 billion, $1.12 billion, and negative $2.38 billion, respectively. See Technical Support Document, Table 3.6.

Conventional cooking tops. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative classes, life-cycle costs at all standard levels are less than the baseline unit. However, it should be noted that for another class, electric smooth element cooking tops, there are life-cycle cost increases for units meeting levels 4 and 5. Of the five candidate standard levels, units meeting level 2 have the lowest consumer life-cycle costs for the representative classes. See Technical Support Document, Tables 4.1 to 4.3.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $8.96 for the representative class of gas cooking tops; standard level 2 would reduce average life-cycle costs by $66.08 and standard levels 3, 4 and 5, by $18.05. For the representative class of electric-coil cooking tops, standard level 1 would cause no change in life-cycle costs for the average consumer since it is the same as the baseline; standard level 2 would reduce average life-cycle costs by $5.69 and standard levels 3, 4, and 5 by $1.64. These life-cycle cost reductions indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Tables 4.9 and 4.11.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for all classes of conventional cooking tops, standard level 1 would produce a net present value of $10 million, whereas there would be net present value savings for levels 2–5 of $3.01 billion, $1.57 billion, negative $1.62 billion, and negative $3.39 billion, respectively. See Technical Support Document, Table 3.6.

Microwave ovens. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For microwave ovens, life-cycle costs at all standard levels other than level 4 and level 5, the max tech level, are less than the baseline unit. Of the five candidate standard levels, units meeting level 2 had the lowest consumer life-cycle cost for microwave ovens. See Technical Support Document, Table 4.8.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $14.15 for microwave ovens; standard level 2 would reduce average life-cycle costs by $14.77 and standard level 3 by $14.12. These life-cycle cost reductions indicate that standard levels 1 through 3 would not cause any economic burden on the average consumer. Standard levels 4 and 5 would increase average life-cycle costs by $.03 and $20.31, respectively. See Technical Support Document, Table 4.16.

The Department examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact. The Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of microwave ovens. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that for microwave ovens, standard level 1 would produce a net present value of $0.74 billion to consumers. The corresponding net present values for levels 2–5 are $0.78 billion, $0.70 billion, negative $0.67 billion, and negative $2.64 billion, respectively. See Technical Support Document, Table 3.6.

C. Energy savings. As indicated above, standards will result in significant savings of energy consumption for conventional ovens, conventional cooking tops and microwave ovens.

D. Lessening of utility or performance of products. As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of conventional ovens, conventional cooking tops, and microwave ovens.

E. Impact of lessening of competition. The determination of this factor must be made by the Attorney General.

F. Need of the nation to save energy. Conventional ovens. Conventional ovens use electricity and gas directly. In 1987, 4.0 percent of residential sector source electricity (or 0.42 quad) and 4.4 percent of natural gas consumption (or 0.23 quad) were accounted for on a national basis by conventional ovens.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[41] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of conventional ovens at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 51,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are

[41] See footnote 37.

expected to be emitted by power plants in the United States is 0.03 percent. For standard levels 2–5, the reductions are 92,000 tons; 202,000 tons; 239,000 tons; and 405,000 tons, respectively. The highest peak annual reduction of these levels is 0.20 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 67,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants during that time in the United States is 0.04 percent. For standard levels 2–5, the reductions are 130,000 tons; 249,000 tons; 287,000 tons; and 451,000 tons, respectively. The highest peak annual reduction of these levels is 0.24 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 46 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.05 percent. For standard levels 2–5, the reductions are 93 million tons; 165 million tons; 187 million tons; and 280 million tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Conventional cooking tops. Conventional cooking tops use electricity and gas directly. In 1987, 3.7 percent of source electricity (or 0.39 quad) and 5.0 percent of natural gas consumption (or 0.26 quad) were accounted for on a national basis by conventional cooking tops.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D.[42] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For all classes of conventional cooking tops at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be less than 500 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 30,000 tons; 17,000 tons; 156,000 tons; and 92,000 tons, respectively. The highest peak annual reduction of these levels is 0.07 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 1,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 151,000 tons; 151,000 tons; 255,000 tons; and 206,000 tons, respectively The highest peak annual reduction of these levels is 0.13 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 1 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–5, the reductions are 144 million tons; 150 million tons; 193 million tons; and 172 million tons, respectively. The highest peak annual reduction of these levels is 0.20 percent.

Microwave ovens. Microwave ovens use electricity directly. In 1987, 1.5 percent of source electricity (or 0.16 quad) were accounted for on a national basis by microwave ovens.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D.[43] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For microwave ovens at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 118,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 138,000 tons; 156,000 tons; 178,000 tons; and 190,000 tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 94,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 112,000 tons; 128,000 tons; 147,000 tons; and 158,000 tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 39 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by powerplants in the United States is 0.09 percent. For standard levels 2–5, the reductions are 48 million tons; 56 million tons; 65 million tons; and 71 million tons, respectively. The highest peak annual reduction of these levels is 0.12 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 12.74 million barrels over the years 1996 to 2030. For standard levels 2–5, the reductions in oil imports are estimated to be 21.33, 32.68, 51.88, and 63.07 million barrels, respectively.

5. Conclusion

Conventional ovens. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended conventional oven standards.

Of the standard levels analyzed, level 5 will save the most energy (3.88 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all conventional ovens will not have an oven door window and will incorporate improved door seals, reduced venting, reflective surfaces, increased and improved insulation, convection and an oven separator, and reduced thermal mass and conduction losses. Additionally, electric ovens would be biradiant, and gas ovens would incorporate an electronic ignition. However, the payback at this standard level of 18.9 years and 15.7 years for the gas and electric representative classes is roughly equal to the 19-year product life and ranges up to 55 years for other classes. At this standard level, all classes have increased life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for conventional ovens outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending

[42] See, footnote 37.

[43] See, footnote 37.

the National Appliance Energy Conservation Act-imposed 1990 standard for the conventional oven portion of kitchen ranges and ovens with standard level 4 for conventional ovens. The Department concludes that standard level 4 for conventional ovens saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.69 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 287,000 tons and 239,000 tons, respectively, or by as much as 0.15 and 0.12 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 187 million tons, or 0.20 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.5 years and 4.9 years for the representative gas and electric classes, respectively, with a payback no higher than 10.4 years, or roughly half of the 19-year product life, for any class. This standard has the lowest life-cycle cost for the electric representative class and is expected to result in a reduction in life-cycle cost of approximately $53 for that class. Life-cycle cost savings are $26 for the gas representative class and are positive for all other classes. Additionally, the standard is expected to have almost no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

Conventional cooking tops. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended conventional cooking top standards.

Of the standard levels analyzed, level 5 will save the most energy (3.04 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all representative classes of conventional cooking tops will have reflective surfaces. Additionally, electric-coil cooking tops would have improved element contact, and gas cooking tops would incorporate reduced burner excess air, electronic ignition and sealed burners. It should also be noted that the design options for the representative classes are the same for levels 5, 4 and 3,—i.e., max tech,— with the differences in those levels having to do with design options for electric smooth element cooking tops. At level 5, the max tech level for all classes, electric smooth element cooking tops require the use of induction elements. However, the payback at this standard level for electric smooth element cooking tops is 193 years, with a $550 increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for conventional cooking tops outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 4. This standard level is projected to save 2.85 quads of energy. As discussed above, the representative classes are still at their max tech level, while electric smooth element cooking tops require the use of halogen elements. The payback at this standard level for electric smooth element cooking tops is 890 years, with a $343 increase in life-cycle costs.

The Department, therefore concludes that the burdens of standard level 4 for conventional cooking tops outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 3. This standard level is projected to save 2.68 quads of energy. As discussed above, the representative classes are still at their max tech level, while electric smooth element cooking tops are at the baseline. The payback at this standard level for the representative gas and electric classes are 10.1 and 9.8 years, respectively, which slightly exceeds half of the product life. Additionally, the Department is concerned about the longevity of the design option, reflective surfaces, required to meet this standard level.

The Department therefore concludes that the questionable technology and economic burdens of standard level 3 for conventional cooking tops outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for the conventional cooking top portion of kitchen ranges and ovens with standard level 2 for conventional cooking tops. The Department concludes that standard level 2 for conventional cooking tops saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 2.54 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 151,000 tons and 30,000 tons, respectively, or by as much as 0.09 and 0.02 percent, respectively, by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 144 million tons, or 0.15 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 7.0 years and 5.2 years for the representative gas and electric classes, respectively, or roughly one-third of the 19-year product life. This standard lowers the life-cycle cost for the representative gas and electric classes by $66 and $6, respectively. Additionally, the standard is expected to have only a slight reduction of the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

Microwave ovens. Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5 for amended microwave oven standards.

Of the standard levels analyzed, level 5 will save the most energy (0.84 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all microwave ovens will have more efficient power supplies, fans and magnetrons; modified wave guides and reflective surfaces. However, the payback at this standard level of 13.0 years exceeds the 10-year product life, and this level produces increased life-cycle costs.

The Department therefore concludes that the burdens of standard level 5 for microwave ovens outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 4. This standard level is projected to save 0.77 quad of energy. However, the payback at this standard

level of 7.4 years is nearly three quarters of the product life and produces an increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 4 for microwave ovens outweigh the benefits, and rejects the standard level.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for the microwave oven portion of kitchen ranges and ovens with standard level 3 for microwave ovens. The Department concludes that standard level 3 for microwave ovens saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 0.67 quad of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 128,000 tons and 156,000 tons, respectively, or by as much as 0.10 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 56 million tons, or 0.10 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.9 years, which meets the rebuttable presumption test of economic justification. This standard is close to the lowest life-cycle cost for microwave ovens and is expected to result in a reduction in life-cycle cost of approximately $14. Additionally, the standard is expected to have almost no impact on the prototypical manufacturer's return on equity of 8.6 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

f. Pool Heaters

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for pool heaters. In reviewing the design options necessary to achieve those standard levels, the Department determined that a new energy descriptor was needed to adequately address some of the design options in the analysis because the current energy descriptor, Thermal Efficiency, does not include pilot light usage or electrical consumption. For example, to consider electronic ignition, the savings in pilot light gas consumption would have to be accounted for in the descriptor. Furthermore, other design options, for instance, fan-assisted combustion, improve thermal efficiency but, at the same time, increase overall electrical consumption which, unless accounted for in the energy descriptor, could lead to higher Thermal Efficiency with little or no net energy savings. Because of the above, the Department conducted the analysis, and is proposing the standards, in terms of a new energy descriptor, annual efficiency. The test procedure to determine this energy descriptor is contained in the previously mentioned Notice of Proposed Rulemaking. Table 4–13 presents the four efficiency levels that had been selected for analysis for pool heaters. Level 4 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–13.—STANDARD LEVELS ANALYZED FOR POOL HEATERS ANNUAL EFFICIENCY
[In percent]

Product class	Standard level				
	Baseline	1	2	3	4
Gas Fired	66.8	78.0	82.2	90.7	95.7

The Department considered one class of pool heaters, gas-fired pool heaters. For gas-fired pool heaters, trial standard level 1 accomplishes the above efficiency improvement from the baseline by incorporating an electronic ignition, level 2 assumes heat exchanger efficiency at the noncondensing limit, level 3 assumes condensing flue gases with a fan-assisted combustion system, and level 4 assumes condensing flue gases utilizing pulse combustion.

2. Payback Period

Table 4–14 presents the payback period for the efficiency levels analyzed. Standard level 1 satisfies the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–14.—PAYBACK PERIODS OF DESIGN OPTIONS FOR POOL HEATERS
[In years]

Standard level	Payback period
1	2.7
2	5.0
3	17.2
4	27.0

3. Significance of Energy Savings

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new pool heaters under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1996–2030, the following energy savings could result for each:

Level 1—0.07 Quad
Level 2—0.23 Quad
Level 3—0.58 Quad
Level 4—0.78 Quad

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers The per-unit increased cost to manufacturers to meet the level 1 efficiency is $39.39; to meet levels 2–4, the manufacturers' incremental cost increases are $95.05, $405.68, and $760.68, respectively. See Technical Support Document, Table 1.3, "Manufacturers Cost for Gas-Fired Pool and Spa Heaters."

At those levels of efficiency, the incremental consumer price increases are $87.13, $213.97, $1,025.41, and $1,839.60 for standard levels 1–4, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $32.77; standard level 2 would reduce

energy expenses by $42.51; standard level 3 by $59.53; and standard level 4 by $68.16. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for pool heaters show that revised standards would result in increases in a prototypical manufacturer's short-run return on equity from the 17.9 percent in the base case. Standard levels 1 through 4 are projected to produce short- run return on equity's of 18.0 percent, 18.4 percent, 19.7 percent and 19.9 percent, respectively. Revised standards have even greater increases in long- run return on equity. Standard levels 1 through 4 are projected to produce long-run return on equity's of 18.7 percent, 20.1 percent, 26.0 percent and 29.9 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For pool heaters, life-cycle costs at all standard levels other than level 3 and level 4, the max tech level, are less than the baseline unit. Of the four candidate standard levels, a unit meeting level 1 has the lowest consumer life-cycle cost. See Technical Support Document, Table 4.2.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average affected consumer of $231.13 and standard level 2 would reduce average life-cycle costs by $198.94. These life-cycle cost reductions indicate that standard levels 1 and 2 would not cause any economic burden on the average consumer. Standard level 3 would increase average life-cycle costs by $447.19, and standard level 4 would increase average life-cycle costs by $1,177.57. See Technical Support Document, Table 4.2.

While DOE examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of pool heaters. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $0.14 billion to consumers. The corresponding net present values for levels 2–4 are $0.13 billion, negative $1.09 billion, and negative $2.44 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for pool heaters.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of pool heaters.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* In 1987, 0.8 percent of residential sector natural gas consumption (or 0.04 quad) was accounted for on a national basis by pool heaters.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[44] Decreases in air pollution will occur for nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 4,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is less than 0.01 percent. For standard levels 2–4 the reductions are 12,000 tons; 31,000 tons and 41,000 tons, respectively. The highest peak annual reduction of these levels is 0.03 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 4 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.01 percent. For standard levels 2–4 the reductions are 12 million tons; 32 million tons and 43 million tons, respectively. The highest peak annual reduction of these levels is 0.04 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. Standard for pool heaters, standard levels 1–4, are not expected to affect oil consumption.

5. *Conclusion.* Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 4 for amended pool heater standards.

Of the standard levels analyzed, level 4 will save the most energy (0.78 quad between 1996 and 2030). In order to meet this standard, the Department assumes that all pool heaters will be condensing pulse combustion pool heaters. However, the payback at this standard level of 27.0 years exceeds the 15-year life of the product and causes life-cycle cost increases of $1,178.

The Department therefore concludes that the burdens of standard level 4 for pool heaters outweigh the benefits, and rejects the standard level.

The next most stringent standard level is standard level 3. This standard level is projected to save 0.58 quads of energy. However, the payback at this standard level of 17.2 years also exceeds the product's life and produces an increase in life-cycle costs.

The Department therefore concludes that the burdens of standard level 3 for pool heaters outweigh the benefits, and rejects the standard level.

[44] See, footnote 37.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act-imposed 1990 standard for pool heaters with standard level 2 for pool heaters. The Department concludes that standard level 2 for pool heaters saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996—2030, these savings are calculated to be 0.23 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 by as much as 12,000 tons, or 0.01 percent by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 12 million tons, or 0.02 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 5.0 years or one-third of the product life. This standard is expected to result in a reduction in life- cycle cost of approximately $199. Additionally, the standard is expected to increase the prototypical manufacturer's return on equity from 17.9 percent in the base case to 18.4 percent in the short run and to 20.1 percent in the long run. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

g. Fluorescent Lamp Ballasts

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for fluorescent lamp ballasts. Table 4–15 presents the three efficiency levels selected for analysis for the 10 classes of fluorescent lamp ballasts. Level 3 corresponds to the highest efficiency level, max tech, considered in the engineering analysis.

TABLE 4–15.—STANDARD LEVELS ANALYZED FOR FLUORESCENT LAMP BALLASTS

Product class	Standard level			
	Baseline	1	2	3
One F40 lamp	2.02	2.11	2.50	2.50
Two F40 lamps	1.09	1.15	1.28	1.28
Three F40 lamps	0.71	0.74	0.87	0.87
Four F40 lamps	0.55	0.57	0.67	0.67
Two F96 lamps	0.60	0.72	0.72	0.72
Two F96H0 lamps	0.40	0.50	0.50	0.50
One F32T8 lamp	2.57	2.71	2.97	3.17
Two F32T8 lamps	1.28	1.36	1.48	1.58
Three F32T8 lamps	0.85	0.90	1.00	1.06
Four F32T8 lamps	0.64	0.68	0.72	0.76

Rather than presenting the results for all classes of fluorescent lamp ballasts in today's notice, the Department selected a class of fluorescent lamp ballasts as being representative, or typical, of the product, and is presenting the results only for that class. The results for the other classes can be found in the Technical Support Document in the same sections as those referenced for the representative class. The representative class for fluorescent lamp ballasts is ballasts for two F40 lamps, which is the most prevalent class. For this representative class, trial standard level 1 accomplishes the above efficiency improvement from the baseline by assuming energy-efficient magnetic ballasts with a heater cutout; levels 2 and 3 correspond to efficiencies achieved by rapid start electronic ballasts. Similar design options are used to achieve the above efficiencies for the other classes, except that for the F–32 classes level 3 corresponds to efficiencies achieved by instant start electronic ballasts.

2. Payback Period

Table 4–16 presents the payback period for the efficiency levels analyzed for the representative class of fluorescent lamp ballast. For this representative class, standard levels 2 and 3 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year. Payback for all classes of fluorescent lamp ballasts may be found in Tables 4.11d–4.20d of the Technical Support Document.

TABLE 4–16.—PAYBACK PERIODS OF DESIGN OPTIONS FOR REPRESENTATIVE CLASS OF FLUORESCENT LAMP BALLASTS

(In years)

Standard level	Payback period
1	4.4
2	2.4
3	2.4

3. Significance of Energy Savings

To estimate the base case energy savings by the year 2030 due to revised standards, the energy consumption of new fluorescent lamp ballasts under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, Commercial Energy End-Use Model projects over the period 1996–2030, the following energy savings could result for each:

Level 1—13.7 Quads
Level 2—15.9 Quads
Level 3—17.0 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. The per-unit increased cost to manufacturers to meet the level 1 efficiency for the representative class is $2.00; to meet levels 2 and 3, the manufacturers' cost increase is $7.00. See Technical Support Document, Table 1.6.

At those levels of efficiency, the consumer price increases are $4.91 and $8.95 for standard levels 1 and 2/3, respectively. See Technical Support Document, Table 4.2.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $1.11 for the representative class; standard levels 2 and 3 would reduce energy expenses by $3.62. See Technical Support Document, Table 4.12a.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for fluorescent lamp ballasts show that revised standards would result in increases in a prototypical manufacturer's short-run return on equity from the 15.5 percent in the base case. Standard levels 1 through 3 are projected to produce short-run return on equity's of 23.7 percent, 24.5 percent and 24.7 percent, respectively. Revised standards are projected to slightly increase long-run return on equity. Standard levels 1 through 3 are projected to produce long-run return on equity's of 16.0 percent, 16.1 percent and 16.1 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. *Life-cycle cost and net present value.* A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For the representative class, life-cycle costs at all standard levels are less than the baseline unit. Of the three candidate standard levels, a unit meeting levels 2 or 3 had the lowest consumer life-cycle costs. See Technical Support Document, Table 4.2.

However, other than at the max tech level, consumers do not purchase units of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $7.48 for the representative class, and standard levels 2 and 3 would reduce average life-cycle costs by $30.23. These life-cycle cost reductions indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Table 4.12d.

While DOE examined the effect of different discount rates (2, 4, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of fluorescent lamp ballasts. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $22.3 billion to consumers. The corresponding net present values for levels 2 and 3 are $25.4 billion and $27.3 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for fluorescent lamp ballasts.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of fluorescent lamp ballasts.

E. *Impact of lessening of competition.* The determination of this factor must be made by the Attorney General.

F. *Need of the Nation to save energy.* Fluorescent lamp ballasts use electricity directly. In 1987, 27 percent of commercial sector source electricity (or 2.17 quads) was accounted for on a national basis by fluorescent lamp ballasts.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[45] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For fluorescent lamp ballasts at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be over 2,417,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 1.20 percent. For standard levels 2 and 3, the reductions are 2,797,000 tons and 2,986,000 tons, respectively. The highest peak annual reduction of these levels is 1.47 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 2,218,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 1.19 percent. For standard levels 2 and 3, the reductions are 2,566,000 tons and 2,739,000 tons, respectively. The highest peak annual reduction of these levels is 1.47 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 1,174 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States are 1.17 percent. For standard levels 2 and 3, the reductions are 1,358 million tons and 1,450 million tons, respectively. The highest peak annual reduction of these levels is 1.44 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 230.41 million barrels over the years 1996 to 2030. For standard levels 2 and 3, the reductions in oil imports are estimated to be 266.97 and 285.05 million barrels, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 3 for amended fluorescent lamp ballast standards.

Of the standard levels analyzed, level 3 will save the most energy (17.0 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all fluorescent lamp ballasts will be electronic rapid or instant start.

After carefully considering the analysis, the Department is amending the National Appliance Energy Conservation Act–1988 imposed 1990 standard for fluorescent lamp ballasts with standard level 3 for fluorescent

[45] See footnote 37.

lamp ballasts. The Department concludes that standard level 3 for fluorescent lamp ballasts saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2025, these savings are calculated to be 17.0 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 2,739,000 tons and 2,986,000 tons, respectively, or by as much as 1.47 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 1,450 million tons, or 1.44 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 2.4 years for the representative class and no more than 5.3 years for any class. This standard has the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $30 for the representative class. Additionally, the standard is expected to increase both the short- and long-run prototypical manufacturer's return on equity of 15.5 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

h. Television Sets

1. Efficiency Levels Analyzed

The Department examined a range of standard levels for color television sets. Table 4–17 presents the efficiency levels that have been selected for analysis. Level 3 corresponds to the highest efficiency level, max tech, considered in the engineering analysis. For level 3, the annual energy use in kWh per year can be expressed as E=20.5+6.1D, where D equals the screen size in inches.

TABLE 4–17.—STANDARD LEVELS ANALYZED FOR TELEVISION SETS

[Annual energy use]

Product class	Standard levels—KWH/YR			
	Baseline	1	2	3
19"/20" color TV sets	205	184	171	138.5

Trial standard level 1 accomplishes the above efficiency improvement from the baseline by reducing standby power usage to 2 watts; level 2 corresponds to an efficiency achieved by reducing standby power to 2 watts and by reducing the white and black screen power each by 6 watts; level 3 corresponds to an efficiency achieved by reducing the standby power to two watts, white screen power to 73 watts and black screen power to 41 watts.

2. Payback Period

Table 4–18 presents the payback period for the efficiency levels analyzed for 19"/20" color television sets. Standard levels 1 and 2 satisfy the rebuttable presumption test, i.e., the additional price of purchasing a product will be less than three times the value of the energy savings that the consumer will receive during the first year.

TABLE 4–18.—PAYBACK PERIODS OF DESIGN OPTIONS FOR TELEVISION SETS

[In years]

Standard level	Payback period
1	2.1
2	2.2
3	3.5

3. Significance of Energy Savings.

To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new television sets under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 19962030, the following energy savings would result for each:

Level 1—0.52 Quad
Level 2—1.28 Quads
Level 3—3.13 Quads

The Department finds that each of the increased standards levels considered above would result in a significant conservation of energy.

4. Economic Justification

A. Economic impact on manufacturers and consumers. The per-unit increased cost to manufacturers to meet the level 1 efficiency is $2.15; to meet levels 2 and 3 the manufacturers' cost increases are $3.65 and $10.25, respectively. See Technical Support Document, Table 1.4.

At those levels of efficiency, the incremental consumer price increases are $3.76, $6.39 and $19.37 for standard levels 13, respectively. See Technical Support Document, Table 4.1.

The per-unit reduction in annual cost of operation (energy expense) at level 1 is $1.81, standard level 2 would reduce energy expenses by $2.95 and standard level 3 by $5.71. See Technical Support Document, Table 4.1.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for television sets show that the prototypical manufacturer has a negative return on equity of 1.9 percent in the absence of standards and that standards cause slight but further reductions in both short- and long-run return on eqnity. Standard levels 1 through 3 are projected to produce negative short-run return on equitys of 2.0 percent, 2.0 percent and 3.3 percent, respectively. Long-run return on equitys are projected to be negative 1.9 percent, 2.0 percent and 2.2 percent, respectively. See Technical Support Document, Tables 5.1 and 5.2.

Most financial data of the type needed to characterize the prototypical manufacturer are generally not available because most real firms are subsidiaries or divisions of larger parent companies. Hence, DOE assumes that the prototypical firm has largely the same financial characteristics (e.g. debt-equity ratio, interest rate on debt, etc.) as parent firms. Financial data for the parent firms are based on publicly available sources such as Securities and Exchange Commission 10K reports and company annual reports.

B. Life-cycle cost and net present value. A life-cycle cost is calculated for a unit meeting each of the candidate standard levels. For color television sets, life-cycle costs at all standard levels are less than the baseline unit. Of the three candidate standard levels, a unit meeting level 3 has the lowest consumer life-cycle cost. See Technical Support Document, Table 4.1.

However, other than at the max tech level, consumers do not purchase units

of the same efficiency. At each candidate standard level, the Department determines the average change in life-cycle costs by considering only those consumers who are being forced by the standard to move from a lower efficiency unit to one which just meets the standard level being considered. This is done by assuming in the base case a distribution of purchases of units meeting the efficiencies of the various standard levels. The base case distribution is based on the distribution of current sales as a function of efficiency. As each standard level is examined, the change in life-cycle cost reported is the average change only for affected consumers. Under this scenario, standard level 1 would cause reductions in life-cycle costs for the average consumer of $10.97, standard level 2 would reduce average life-cycle costs by $14.52, and standard level 3 by $24.06. The lower life-cycle costs indicate that no standard level would cause any economic burden on the average consumer. See Technical Support Document, Table 4.2.

While DOE examined the effect of different discount rates (4, 6, and 10 percent) on the life-cycle cost curves and generally found little impact, the Department did not consider higher discount rates, since such rates would be beyond the range of real, after-tax rates that consumers would likely face in financing the purchase of television sets. Similarly, DOE did not consider different energy prices, including regional prices, in the life-cycle cost analysis. Since any standard is to be a national standard, DOE believed that national average energy prices were appropriate.

The net present value analysis, a measure of the net savings to society, indicates that standard level 1 would produce a net present value of $0.64 billion to consumers. The corresponding net present values for levels 2 and 3 are $1.35 billion and $1.67 billion, respectively. See Technical Support Document, Table 3.6.

C. *Energy savings.* As indicated above, standards will result in significant savings of electricity consumption for television sets.

D. *Lessening of utility or performance of products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of television sets.

E. Impact of lessening of competition. The determination of this factor must be made by the Attorney General.

F. *Need of the nation to save energy.* Television sets use electricity directly. In 1987, 2.1 percent of residential sector source electricity (or 0.22 quads) was accounted for on a national basis by television sets.

In addition, decreasing future energy demand as a result of standards will decrease air pollution. See Technical Support Document, Appendix D of Volume A.[46] Decreases in air pollution will occur for sulfur oxides (listed in equivalent weight of sulfur dioxide, or SO_2). For television sets at standard level 1, over the years 1996 to 2030, the total estimated SO_2 reduction would be 120,000 tons. During this time period, the peak annual reduction of SO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 261,000 tons and 599,000 tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Standards will also result in a decrease in nitrogen dioxide (NO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated NO_2 reduction would be 99,000 tons. During this time period, the peak annual reduction of NO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 225,000 tons and 528,000 tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 1996 to 2030, the total estimated CO_2 reduction would be 43 million tons. During this time period, the peak annual reduction of CO_2 emissions that are expected to be emitted by power plants in the United States is 0.07 percent. For standard levels 2 and 3, the reductions are 108 million tons and 263 million tons, respectively. The highest peak annual reduction of these levels is 0.29 percent.

Decreasing future electricity demand is also likely to result in reductions in the demand for oil used in electricity generation. Because virtually all sources of oil, on the margin, are foreign, any reductions in oil demand are likely to be reflected in reductions in oil imports. For standard level 1, the estimated decrease in oil imports is 8.86 million barrels over the years 1996 to 2030. For standard levels 2 and 3, the reductions in oil imports are estimated to be 22.05 and 53.88, respectively.

5. Conclusion

Section 325(l)(2)(A) of the Act specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 3 for amended television set standards.

Of the standard levels analyzed, level 3 will save the most energy (3.13 quads between 1996 and 2030). In order to meet this standard, the Department assumes that all television sets will have reduced standby power and reduced white/black screen power.

After carefully considering the analysis, the Department is establishing a standard for television sets. The Department concludes that standard level 3 for television sets saves a significant amount of energy and is technologically feasible and economically justified.

There would be significant energy savings at this level of efficiency. During the period 1996–2030, these savings are calculated to be 3.13 quads of primary energy. In addition, the standard could have a positive effect on the environment by reducing the emissions of NO_2 and SO_2 by 528,000 tons and 599,000 tons, respectively, or by as much as 0.29 percent each by the year 2030. Furthermore, the standard will reduce emissions of CO_2 by 263 million tons, or 0.29 percent, over the forecast period.

The technologies that are necessary to meet this standard are presently available. The Department finds the level to be economically justified. The consumer payback of this standard level is 3.5 years, which compares favorably with the 12-year product life. This standard has the lowest life-cycle cost and is expected to result in a reduction in life-cycle cost of approximately $24. Additionally, the standard is expected to have only a slight reduction in the prototypical manufacturer's return on equity of negative 1.9 percent. Since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors.

V. Environmental, Regulatory Impact, Takings Assessment, Federalism, and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Council on Environmental Quality regulations implementing the provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), and the

[46] See footnote 37.

Department's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021);

- Executive Order 12866 (58 FR 51735, October 4, 1993) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights;
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of Federal actions that would have a substantial direct effect on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**.

a. Environmental Review

The Department prepared an Environmental Assessment (DOE/EA–0819) on the proposed standards pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). The Environmental Assessment addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of the eight types of covered products: Room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts, and television sets.

A Finding of No Significant Impact was issued December 1992 and is being published elsewhere in today's **Federal Register**. Publishing the finding has been delayed along with the proposed rulemaking due to difficulties in resolving issues and coordinating with a related rulemaking. The Finding of No Significant Impact concludes that the proposed standards would result in no significant environmental impacts and that an environmental impact statement is not required.

The Environmental Assessment is published within the Technical Support Document and is available at the DOE Freedom of Information Reading Room at the address provided at the beginning of this notice.

b. Regulatory Impact Review

Executive Order 12866 (58 FR 51735, October 4, 1993) directs that, in proposing a significant regulatory action,[47] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could achieve substantially the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

The Department has determined that this proposed rule is a "significant regulatory action." Accordingly, the draft regulatory action has been prepared and submitted to the Office of Management and Budget. The Office of Management and Budget has reviewed the draft regulatory action under Executive Order 12866.

The regulatory review of the draft regulatory action is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the Technical Support Document, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives that were examined for these eight products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action

—Product labeling
—Consumer education

- Prescriptive Standards
- Financial Incentives

—Tax credits
—Rebates

- Voluntary Energy Efficiency Targets
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule.

If no new regulatory action were taken, then no new standards would be implemented for these eight products. This is essentially the "base case" for each appliance. In this case, between the years 1996 and 2030 there would be expected energy use of 443.6 quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and the Department's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by 5 percent for purchasers of these eight products. This resulted in energy savings equal to 1.7 quads, with expected consumption equal to 441.8 quads. The net present value is estimated to be $2.7 billion.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For these eight products, prescriptive standards are assumed to be implemented as standards at one level below the performance standards. The lower standards level entails slightly smaller expenditures for tooling and purchased parts. Consequently, the economic impacts that are expected before the implementation date should be slightly smaller for prescriptive standards. This

[47] "Significant regulatory action" means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise intefere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

resulted in energy consumption, between 1996 and 2030, of 389.2 quads, and savings of 54.3 quads. The net present value, in 1990 dollars, was $92.3 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased expense for higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a change from the base case, saving 3.7 quads with a net present value of $6.0 billion. Consumer rebates showed more sizable changes; they would save 4.5 quads with a net present value of $8.1 billion.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient models of these eight appliances. In this scenario, an investment tax credit of 20 percent was assumed. The tax credits to manufacturers had almost no effect; the energy consumption estimates are 442.8 quads with savings equal to 0.7 quad, and a net present value equal to $0.8 billion.

The impact of this scenario is so small because the investment tax credit was applicable only to the tooling and machinery costs of the firms. The firms' fixed costs and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an investment tax credit.

Two scenarios of voluntary energy efficiency targets were examined. In the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in 5 years. In the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the 5-year delay would result in energy consumption by these appliances of 388.0 quads, energy savings of 55.2 quads, and a net present value of $97.1 billion; the 10-year delay would result in 398.4 quads of energy being consumed, 44.8 quads being saved, and a net present value of $76.6 billion.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of the eight appliances to total an estimated 379.4 quads of primary energy over the 1996–2030 time period. Savings would be 64.1 quads, and the net present value would be an expected $108.7 billion.

As noted at the beginning of this section, none of the alternatives that were considered for these products would save as much energy as the proposed rule.

c. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.[48]

There are three parts of the appliance standards program that conceivably could be viewed as having "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts, does not constitute a "taking" of private property.

Similarly, the Department's possible validation testing does not constitute a "taking" within limitations described above.

Lastly, the impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of Executive Order 12630 pertain.

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department finds that today's proposed rule, if finalized, will not have a substantial direct effect on State governments. State regulations that may have existed on these eight products were preempted by the Federal standards established in the National Appliance Energy Conservation Act. States could petition the Department for exemption from such preemption, and none has done so. Today's Final Rule has no added effect on States. Thus, based on the foregoing, the Department finds that the preparation of a Federalism assessment for this rulemaking is not warranted.

The Act provides for subsequent State petitions for exemption from preemption, which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

e. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, eight different products and, hence, industries are being addressed. Regulatory flexibility issues will be discussed for the industries for which standards are being prescribed.

First, the energy conservation standard on those room air conditioner

[48] Executive Order 12630, March 15, 1988, Sec. 2.

manufacturers who could be considered small businesses will be discussed.

The room air conditioner industry is characterized by three firms with large market shares (accounting for nearly 75 percent of sales) and numerous firms sharing the remaining one-quarter of the market.

There are significant differences among the major firms. For this industry, the Department has learned that average cost has an inverse relationship to firm size. Thus, the industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, in more danger of failing or being bought out than will the large firms. Because of the greater precariousness of smaller firms, any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

From the point of view of competitiveness, a decrease in average profitability could speed up the process of consolidation, producing a less competitive industry, while an increase in average profitability could help maintain the current levels of competition. Either effect might well be temporary, because, in the long run, the number of firms should be determined by the industry's cost structure and by the way a single firm's elasticity of demand relates to the number of competing firms.

While some small firms have more energy efficient models than larger firms, and while some have more models of average efficiency, the impact of higher efficiency standards on small firms is likely to be mixed. If standards are technologically difficult to meet, however, they may hurt selected smaller firms the most, because smaller firms have less sophisticated research and development capabilities.

Secondly, the impact of the energy conservation standards on water heater manufacturers needs to be addressed.

Water heater manufacturing firms can be divided into two groups: those that compete on large sales volume products and those that compete in small, specialized markets. Small firms are generally forced to specialize in small market niches that offer some protection from the cost advantage that large firms hold when they can produce in volume. This effect can even be observed among the major producers, in the tendency of the smaller major producers to produce somewhat more specialized products.

Just like the room air conditioner industry, water heater manufacturing is characterized by economies of scale in production, and large firms generally tend to have average costs that are lower than those of small firms.

Although larger firms have a cost advantage because of economies of scale, the very small firms in the water heater manufacturing industry have found market niches in which to survive profitably. There are at least two small firms which manufacture standard electric resistance water heaters. In addition, there are also two small firms that manufacture heat pump water heaters. Therefore, if a very stringent efficiency standard for water heaters is mandated, one could expect that given the small margins in the industry, some small firms may have to leave the market. On the other hand, the small firms that specialize in higher efficiency models (such as heat pump water heaters) may experience a boom.

The small firms that sell niche products such as heat pump water heaters usually find that these markets have higher margins. As a result, it is possible that small firms would have an easier time passing through increased variable costs that result from standards, and thus may be more positively affected than large firms by standards. However, this prediction should be tempered by the observation that if standards are technologically difficult to meet, they may hurt selected smaller firms the most since, as noted above, smaller firms typically have less sophisticated research and development capabilities.

Thirdly, the direct heating equipment industry must be considered. This industry, too, is characterized by economies of scale in production, with larger firms having average costs that are lower than those of smaller firms. Here, too, there has been continuing consolidation over the past several decades.

The same points raised above about the implications of consolidation and competitiveness among water heater firms pertain to manufacturers of direct heating equipment as well.

Next, the mobile home furnace industry will be addressed. In this industry, two firms supply all the gas-fired mobile home furnaces. Since discussions with industry sources revealed that the market shares of the two firms are approximately 50 percent each, the Department believes that neither is a small firm on which standards could have a significant adverse impact.

The characterization of the kitchen ranges and oven industry (including microwave ovens) is similar to those industries previously discussed. This industry, too, displays economies of scale in production and increasing consolidation as the larger firms have been acquiring smaller ones for the past few decades.

Since many, if not most, of the energy conservation standards can be achieved without significant retooling of plant and equipment, it is probable that such standards will not have significant adverse impacts on the small firms.

The pool heater industry, too, is characterized by economies of scale in production, with the consequent price advantage that large firms have over smaller ones. This industry, though, is already highly concentrated, and apparently never had a large number of firms. Most of the firms manufacture gas-fired pool heaters as an adjunct to other larger lines of business, e.g., boilers, pool and swimming equipment, etc. It appears that there are no real niche markets. Nevertheless, since the proposed standards are generally not considered to be technologically difficult to meet, and since the forecasts are that all standard levels are profitable, the Department does not expect significant adverse impacts on small firms.

Another industry that shares the characterization of larger firms having cost advantages over smaller ones, i.e., that displays economies of scale, is the fluorescent lamp ballast industry. Here, too, there has been continuing consolidation over time, and presently, three firms produce 90 percent of the market.

Many (if not most) of the standard levels considered do not require significant retooling of plant and equipment. In fact, much of the industry is currently retooling in anticipation of future growth, which is due in part to demand motivated by demand-side management programs of electric utility companies. These factors, combined with the estimates that profitability will be higher at all standard levels, imply that there will probably not be significant adverse impacts on small firms.

Lastly, the impact of energy conservation standards on the television set industry is discussed. This industry also has undergone significant consolidation over the past few decades. Presently, as with most of the other

industries discussed above, the larger firms have cost advantages over the smaller ones.

Zenith is the only domestic television set manufacturer located in the U.S., and it has 13 percent of the market. Therefore, there really cannot be any adverse small firm impacts since, domestically, there is only one firm, and it is not small.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities."

In conclusion, for each of these eight industries, the Department finds that the standard levels proposed in today's Proposed Rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

VI. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 75 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments (with 10 copies) should be labeled both on the envelope and on the documents, "Eight Products Rulemaking (Docket No. EE–RM–90–201)," and must be received by the date specified at the beginning of this notice. 10 copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the DOE Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Eight Products Rulemaking (Docket No. EE–RM–90–201)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or telephoned in to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the approximate time they will be speaking.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 15 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to

disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d Issues Requested for Comment

As discussed above in today's notice, DOE has identified a number of issues where comments are requested. These issues include, but are not limited to, the following:

- The baseline units and the base cases;
- Consideration of incremental impacts of various standard levels;
- Market share elasticities;
- Usage elasticities, i.e., rebound effect;
- Appropriate discount rates, including those for residential and commercial consumer analyses (life-cycle cost and Lawrence Berkeley Laboratory-Residential Energy Model) and the use of a social discount rate (Lawrence Berkeley Laboratory-Residential Energy Model);
- Energy price forecasts;
- The characterization of prototypical firms for the manufacturer impact analysis (Lawrence Berkeley Laboratory-Manufacturer Impact Model);
- Efficiency forecasts for these products;
- Any lessening of product utility resulting from the addition of the design options identified;
- The effects on forecasts due to the use of national average energy prices and usage rates;
- The effects of standards on manufacturers' incentives to develop innovative products and product features;
- Any uncertainties in modeling, especially with regard to product usage, e.g., changes in usage rates as shown by survey data or changes in usage of features;
- Location of water heaters with respect to conditioned space;
- Lifetimes of appliances;
- Maintenance costs and failure rates of appliances and components;
- The possible expansion of DOE's economic analysis to include the variable effects of standards on identifiable sub-groups of consumers, and/or the incremental effects of standards relative to lower or higher standard levels; and
- Possible modifications or alternatives to LBL's Manufacturer Impact Model.

Many of these issues are not unique to this proposed rule and some, such as discount rates and modifications of the Lawrence Berkeley Laboratory Manufacturer Impact Model, have been raised in previous DOE public notice under the appliance conservation standards program or by public comments on these notices. Those issues and the possible expansion of DOE's economic analysis in several areas were raised in DOE's Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products, published on September 8, 1993 (58 FR 47326). DOE hopes that its conclusions in these areas for this rulemaking will serve as the basis for the development and promulgation of future appliance conservation standards, unless comments in future rulemakings make a persuasive case to the contrary.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, December 15, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

For the reasons set forth in the preamble part 430 of chapter II of title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.32 is amended by revising paragraphs (b), (d), (e), and (i) through (m) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective as of	
	January 1, 1990	[3 years after publication of Final Rule]
1. Without reverse cycle and with louvered sides less than 6,000 Btu	8.0	11.1
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu	8.5	10.3
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu	9.0	11.0
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu	8.8	11.1
5. Without reverse cycle and with louvered sides 20,000 and more Btu	8.2	9.6
6. Without reverse cycle and without louvered sides less than 6,000 Btu	8.0	10.7
7. Without reverse cycle and without louvered sides 6,000 to 7,999 Btu	8.5	9.9
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu	8.5	10.7
9. Without reverse cycle and without louvered sides 14,000 to 19,999 Btu	8.5	10.8
10. Without reverse cycle and without louvered sides 20,000 and more Btu	8.2	9.3
11. With reverse cycle, and with louvered sides	8.5	10 8
12. With reverse cycle, without louvered sides	8.0	10.4

* * * * *

(d) *Water heaters.*

Product class	Energy factor, effective as of		
	January 1, 1990	April 15, 1991	[3 years after publication of Final Rule]
1. Gas	0.62—(.0019×Rated Storage Volume in gallons).	0.62—(.0019×Rated Storage Volume in gallons).	0.64—(.0017×Measured Storage Volume in gallons).
2. Gas Instantaneous	N/A	0.62—(.0019×Rated Storage Volume in gallons).	0.75.
3. Oil	0.59—(.0019×Rated Storage Volume in gallons).	0.59—(.0019×Rated Storage Volume in gallons).	0.73—(.0017×Measured Storage Volume in gallons).
4. Electric	0.95—(.00132×Rated Storage Volume in gallons).	0.93—(.00132×Rated Storage Volume in gallons).	1.96—(.00117×Measured Storage Volume in gallons).

Note: Rated Storage Volume equals the water storage capacity of a water heater, in gallons, as specified by the manufacturer. Measured Storage Volume equals the water storage capacity of a water heater, in gallons, as measured in paragraph 6.1.1 of the test procedure.

(e) *Furnaces.*

Product class	Annual fuel utilization efficiency, effective as of January 1, 1992	Annual efficiency, effective as of [3 years after publication of Final Rule]
1. Furnaces (excluding classes noted below)	78	.....
2. Gas-Fired mobile home furnaces	[1] 75	74.3
3. Oil-Fired mobil home furnaces	[1] 75	74.7
4. Small furnaces (other than furnaces designed solely for installation in mobile homes), input rate less than 45,000 Btu/hour	78	.....
5. Boilers (excluding gas steam)	80	.....
6. Gas steam boilers	75	.....

[1] Effective as of September 1, 1990.

* * * * *

(i) *Direct heating equipment.*

Product class	Annual fuel utilization efficiency, effective as of January 1, 1990	Annual efficiency, effective as of 3 years after publication of Final Rule]
1. Gas wall fan type up to 42,000 Btu/hour	73	72.2
2. Gas wall fan type over 42,000 Btu/hour	74	73.4
3. Gas wall gravity type up to 10,000 Btu/hour	59	67.7
4. Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60	67.7
5. Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61	67.9
6. Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62	68.2
7. Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63	73.6
8. Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64	73.9
9. Gas wall gravity type over 46,000 Btu/hour	65	74.2
10. Gas floor type up to 37,000 Btu/hour	56	70.7
11. Gas floor type over 37,000 Btu/hour	57	70.0
12. Gas room type up to 18,000 Btu/hour	57	64.4
13. Gas room type over 18,000 Btu/hour up to 20,000 Btu/hour	58	69.9
14. Gas room type over 20,000 Btu/hour up to 27,000 Btu/hour	63	67.1
15. Gas room type over 27,000 Btu/hour up 46,000 Btu/hour	64	71.2
16. Gas room type over 46,000 Btu/hour	65	71.5

(j) *Kitchen ranges and ovens.*

Gas kitchen ranges and ovens with an electrical supply cord shall not be equipped with a constant burning pilot light. The standard is effective on January 1, 1990. The annual energy use of a kitchen range and oven shall be the sum of the annual energy use of any of the following components incorporated into the kitchen range and oven, and shall not exceed the allowable sum of energy usages for those components listed below.

Kitchen range and oven component	Annual energy use, effective as of [3 years after publication of Final Rule]
1. Electric ovens, self-cleaning	267 kWh
2. Electric ovens, non-self-cleaning	218 kWh
3. Gas ovens, self-cleaning	1.64 MMBtu
4. Gas ovens, non-self-cleaning	1.14 MMBtu
5. Microwave ovens	233 kWh
6. Electric cooktop, coil element	260 kWh
7. Electric cooktop, smooth element	294 kWh
8. Gas cooktop	1.71 MMBtu

(k) *Pool heaters.*

Product class	Thermal efficiency (percent), effective as of January 1, 1990	Annual efficiency (percent), effective as of [3 years after publication of Final Rule]
Pool heaters	78	82.2

(l) *Television sets.*

Product class	Annual energy use—kWh/yr, effective as of [3 years after publication of Final Rule]
1. Color—Screen size of 13.0 to 33 inches	20.5 + 6.1D

Note: D equals the screen size, in inches, as specified by the manufacturer.

(m) *Fluorescent lamp ballasts.* (1) Except as provided in paragraphs (m)(2) and (m)(3) of this section, each fluorescent lamp ballast designed—

(i) To operate at nominal input voltages of 120 or 277 volts;

(ii) To operate with an input current frequency of 60 Hertz; and

(iii) For use in connection with F32, F40, F96, or F96HO lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Product class	Ballast input voltage	Efficacy factor, effective as of	
		January 1, 1990	[3 years after publication of Final Rule]
1. One F40 lamp	120	[1] 1.805	[1] 2.50
	277	[1] 1.805	[1] 2.50
2. Two F40 lamps	120	[1] 1.060	[1] 1.28
	277	[1] 1.050	[1] 1.28
3. Two F96 lamps	120	[1] 0.570	[1] 0.72
	277	[1] 0.570	[1] 0.72
4. Two F96HO lamps	120	[1] 0.390	[1] 0.50
	277	[1] 0.390	[1] 0.50
5. Three F40 lamps	120	[2]	[1] 0.87
	277	....	[1] 0.87
6. Four F40 lamps	120	[2]	[1] 0.67
	277	....	[1] 0.67
7. One F32T8 lamp	120	[2]	3.17
	277	....	3.17
8. Two F32T8 lamps	120	[2]	1.58
	277	....	1.58
9. Three F32T8 lamps	120	[2]	1.06
	277	....	1.06
10. Four F32T8 lamps	120	[2]	0.76
	277	....	0.76

[1] Applies to T12 lamps only.
[2] Not applicable.

(2) The standards that are effective January 1, 1990, as described in paragraph (m)(1) of this section, do not apply to:

(i) A ballast which is designed for dimming or for use in ambient temperatures of 0°F or less, or

(ii) A ballast which has a power factor of less than 0.09 and is designed for use only in residential building applications.

(3) The standards described in paragraph (m)(1) of this section, effective [3 years after publication of Final Rule], do not apply to:

(i) A ballast which is designed for use in ambient temperatures of 0°F or less, or

(ii) A ballast which has a power factor or less than 0.90 and is designed for use only in residential building applications.

[FR Doc. 94–4586 Filed 3–3–94; 8:45 am]

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federal register

Friday
March 4, 1994

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 315, et al.
Offering and Governing Regulations for United States Savings Bonds; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 316, 317, 321, 330, 332, 342, 351, 352, and 353

Offering and Governing Regulations for United States Savings Bonds, Series E, EE, and H, HH, and Savings Notes; Issuing and Paying Agents; and Payment Under Special Endorsement

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This Final Rule amends the offering circulars for United States savings bonds and savings notes; the regulations governing savings bonds and notes; and the regulations governing activities of financial institutions and organizations serving as savings bond issuing and paying agents, to reflect the designation of five Federal Reserve Offices as savings bond processing sites. The changes are made to improve the efficiency of the processing of savings bond transactions. The regulations are further amended to reflect the fact that EZ CLEAR has become the only means by which savings bond paying agents may transmit and receive settlement for redeemed savings bonds and notes.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 219–3320.

SUPPLEMENTARY INFORMATION: As fiscal agents of the United States, Federal Reserve Banks and Branches perform a number of activities in support of the savings bond program, including issuing, redeeming, and reissuing savings bonds and notes. In recent years, both the Bureau of the Public Debt and Federal Reserve Offices have recognized that there would be benefits associated with consolidating certain savings bond activities. Since 1986, several activities have been consolidated, *e.g.*, issuing savings bonds for payroll savings plans based upon a master file data base, and maintaining savings bonds for employee thrift plans in book-entry accounts.

The Bureau and the Federal Reserve recognized that further consolidation would reduce operating costs, improve program management, and provide opportunities for more efficient use of technology, without any reduction in the level of service to bondowners and financial institutions serving as savings bond agents. Therefore, a Savings Bond Processing Study Team, composed of staff from both Public Debt and Reserve Offices, was formed to determine the optimum number of Reserve Office sites at which savings bond processing should be performed. The Team's recommendations formed the basis of the Bureau's decision to approve the changes in sites where consolidated savings bond processing would be performed. A listing of the consolidated processing sites is added to each of the following sections: 31 CFR 315.1, 316.12, 330.8, 332.12, 342.9, 352.13, and 353.1, the offering circulars and governing regulations for savings bonds and notes, and 31 CFR 317.9 and 321.25, the regulations governing the issue and redemption of savings bonds. Federal Reserve Offices, other than those newly listed, may continue to provide some savings bond services, but their activities will be phased out over the period prior to March 1, 1996.

Also, the regulations in 31 CFR part 317, also referred to as Department of the Treasury Circular, Public Debt Series No. 4–67, are being further amended to indicate that issuing agents are subject to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Finally, the regulations in 31 CFR part 321, also referred to as Department of the Treasury Circular No. 750, Fourth Revision, are being further amended to reflect the fact that submission of redeemed savings securities via EZ CLEAR has become the only means of transmitting and receiving settlement for such paid securities. The EZ CLEAR method of paid bond processing permits savings bond paying agents to transmit and receive settlement for redeemed securities in the same manner as for checks and other cash items. The reduction in separate processing has increased efficiency and reduced costs for the savings bond program.

Procedural Requirements

This Final Rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order No. 12866. The regulatory review procedures, therefore, do not apply.

Because this Final Rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Final Rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Parts 315, 316, 317, 321, 330, 332, 342, 351, 352 and 353

Bonds, Federal Reserve System, Government Securities.

Dated: February 22, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II, parts 315, 316, 317, 321, 330, 332, 342, 351, 352, and 353, are hereby amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 315.1 is amended as follows:

A. Paragraph (a) is amended by adding "in the list below" after "Federal Reserve Banks and Branches".

B. Paragraph (b) is revised to read as follows:

§ 315.1 Official agencies.

* * * * *

(b) Communications concerning transactions and requests for forms should be addressed to:

(1) A Federal Reserve Bank or Branch in the list below; the Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101; or the Bureau of the Public Debt, Washington, DC 20226.

(2)(i) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, Vt, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(ii) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

§ 315.31 [Amended]

3. In § 315.31, paragraph (d) is amended by adding "designated" before "Federal Reserve Bank".

§ 315.35 [Amended]

4. In § 315.35, paragraph (e) is amended by adding "designated" before "Federal Reserve Bank".

§ 315.39 [Amended]

5. In § 315.39, paragraph (b) is amended by adding "designated" before "Federal Reserve Bank or Branch" in the two places the phrase appears.

§ 315.40 [Amended]

6. In § 315.40, paragraph (a) is amended by adding "a designated" before "Federal Reserve Bank".

§ 315.41 [Amended]

7. Section 315.41 is amended by adding "designated" before "Federal Reserve Bank or Branch".

§ 315.56 [Amended]

8. In § 315.56, paragraph (a) is amended by adding "designated" before "Federal Reserve Bank".

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

1. The authority citation for part 316 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 316.3 [Amended]

2. Section 316.3, footnote No. 2, is amended by adding "designated" before "Federal Reserve Bank".

§ 316.6 [Amended]

3. In § 316.6, paragraph (c) is amended by adding "designated" before "Federal Reserve Banks".

§ 316.10 [Amended]

4. In § 316.10, paragraph (b) is amended by adding "referred to in § 316.12" immediately following "a Federal Reserve Bank or Branch".

5. Section 316.12 is revised to read as follows:

§ 316.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury in connection with the redemption and payment of Series E bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, such services will be phased out over the period prior to that date.

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 317.1 is amended as follows:

A. Paragraph (b) is revised to read as follows:

§ 317.1 Definitions

* * * * *

(b) *Federal Reserve Bank* refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9 (a).

* * * * *

B. Paragraph (c), first sentence, is amended by adding "designated" before "Federal Reserve Bank".

3. Section 317.3 is amended as follows:

A. Paragraph (a) is revised to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent

(a) *Execution of application agreement.* The applicant-organization shall obtain from, duly execute, and file with, a designated Federal Reserve Bank, an application-agreement form.

(1) The terms of each application agreement shall include the provisions prescribed by section 202 of Executive Order No. 11246, entitled "Equal

Employment Opportunity" (3 CFR, subchapter B, 42 U.S.C. 2000e note).

(2) The provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and regulations issued pursuant thereto (31 CFR part 1, subpart C).

* * * * *

B. Paragraphs (b), and (c) are amended by adding "designated" before "Federal Reserve Bank" in each paragraph.

§ 317.5 [Amended]

4. In § 317.5, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank" in each paragraph.

§ 317.6 [Amended]

5. In § 317.6, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank" in all places that it appears.

§ 317.7 [Amended]

6. Section 317.7 is amended by removing the word "a", before "Federal Reserve Bank" and replacing it with the words "the designated".

§ 317.8 [Amended]

7. Section 317.8 is amended by adding "designated" before "Federal Reserve Banks", in the first sentence.

8. The appendix to § 317.8 is amended as follows:

A. Subpart A, paragraph 2 (e) and paragraph 5 are amended by adding "designated" before "Federal Reserve Bank".

B. Subpart B, paragraph 1, is amended by adding "designated" before "Federal Reserve Bank".

C. Subpart B, paragraph 2 is amended by adding "designated" before "Federal Reserve Bank", at the end of the sentence.

D. Subpart B, paragraph 3, the introductory paragraph and paragraphs (a) and (b), are amended by adding "designated" before "Federal Reserve Bank" in where it appears.

E. Subpart D, paragraph 1, is amended by adding "designated" before "Federal Reserve Bank" at the end of the paragraph.

F. Subpart D, paragraph 2(b) is amended by adding "the designated" before "Federal Reserve Bank" in the title.

9. Section 317.9 is amended as follows:

A. Paragraph (b) is redesignated as paragraph (c) and the word "designated" is added before "Federal Reserve Banks", in the heading and in the introductory text.

B. Paragraph (a) is revised and a new paragraph (b) is added to read as follows:

§ 317.9 Role of Federal Reserve Banks.

(a) *Role as fiscal agents.* In their capacity as fiscal agents of the United States, the Federal Reserve Banks referred to below are authorized to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV, (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

* * * * *

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 321.1 is amended as follows:

A. Paragraph (f) is removed, and paragraphs (d) and (e) are redesignated paragraphs (e) and (f) respectively.

B. A new paragraph (d) is added and redesignated paragraph (f) is revised to read as follows:

§ 321.1 Definitions.

* * * * *

(d) *Central Site* refers to the Federal Reserve Bank of Cleveland, Pittsburgh Branch, EZ CLEAR Department.

* * * * *

(f) *Federal Reserve Bank or Branch* refers to the Federal Reserve Bank to which the agent is instructed to transmit redeemed securities; or to which the agent is instructed to forward securities for payment or other transactions, and includes parent Banks, Branches and Regional Check Processing Centers, as appropriate.

* * * * *

3. Section 321.2(b) is revised to read as follows:

§ 321.2 Eligible organizations.

* * * * *

(b)(1) An organization that desires to redeem securities must first qualify as a paying agent. An organization that has qualified and is serving as a paying agent must:

(i) MICR-encode data on securities accepted for payment,

(ii) Submit them directly to the Check Department of the appropriate Federal Reserve Bank or Branch or the Regional Check Processing Center, and

(iii) Receive payment of fees by ACH, or arrange to obtain one or more of these services from another financial institution.

(2) All presenting institutions, as defined in § 321.1, must qualify as savings bond paying agents and enroll in EZ CLEAR.

4. Section 321.3 is amended as follows:

A. Paragraph (a), introductory paragraph, is amended by removing "with, a Federal Reserve Bank an application-agreement form" and replacing it with "an application-

agreement with the appropriate Federal Reserve Office referred to in § 321.25".

B. The concluding text of paragraph (a) is amended by removing "of New York" and replacing it with "Branch in Buffalo, New York" and by removing "of San Francisco" and replacing it with "Kansas City".

C. Paragraph (b) is amended by adding "referred to in § 321.25" after "Federal Reserve Bank", removing "its district," and replacing it with "the Reserve Bank's geographical area, as shown in § 321.25,".

D. Paragraph (c) is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

E. Paragraph (d) is revised to read as follows:

§ 321.3 Procedure for qualifying and serving as paying agent.

* * * * *

(d) *Adverse action.* An organization will be notified by the appropriate Federal Reserve Bank referred to in § 321.25, in writing, if its application-agreement to act as paying agent is not approved.

§ 321.5 [Amended]

5. Section 321.5 is amended as follows:

A. Paragraph (a) is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

B. Paragraph (b) is amended by adding "referred to in § 321.25" after "Federal Reserve Bank".

6. In § 321.8, paragraph (d) is revised to read as follows:

§ 321.8 Redemption-exchange of Series E and EE savings bonds and savings notes.

* * * * *

(d) *Completion of transaction.* An agent shall transmit for settlement via EZ CLEAR securities redeemed on exchange and, at the same time, forward the exchange application (PD F 3253) and any additional cash needed to complete the transaction, to the Fiscal Agency Department of the servicing Federal Reserve Bank referred to in § 321.25. Securities redeemed on exchange may be commingled with cash redemptions in mixed or separately sorted cash letters."

* * * * *

7. In § 321.11, paragraph (f) is revised to read as follows:

§ 321.11 Payment.

* * * * *

(f) *Certification of request.* An agent is not required to complete the certification to the requests for payment on securities it redeems. When an agent transmits redeemed securities for settlement, as indicated in § 321.14 of this part, such agent shall be understood by such submission to have represented and certified that the identity of the presenter, and his or her entitlement to request payment, have been established in accordance with this part and the appendix hereto.

§ 321.13 [Amended]

8. Section 321.13 is amended as follows:

A. The first sentence is amended by adding "appropriate" after "and four-digit code number assigned by the".

B. The second sentence is amended by removing the word "a" before Federal Reserve Bank, at the end of the sentence and replacing it with "an appropriate".

9. Section 321.14 is revised to read as follows:

§ 321.14 Transmittal to and settlement by Federal Reserve Bank.

In accordance with Federal Reserve Bank instructions, a paying agent shall transmit with an EZ CLEAR cash letter securities redeemed for cash and on redemption-exchange, either directly or through a correspondent institution, to the Check Department of the appropriate Bank or Branch, or to a Regional Check Processing Center (RCPC). Upon receipt of the securities, the Bank, Branch, or RCPC will arrange for immediate settlement with the presenting institution. Such settlement shall be made by a credit to the presenting institution's Reserve or other clearing account in the total amount paid, as reflected on the cash letter, and shall be subject to adjustment via a charge or credit to that account if any discrepancy is subsequently discovered.

§ 321.20 [Amended]

10. Section 321.20 is amended by adding "referred to in § 321.25" after "any Federal Reserve Bank".

§ 321.22 [Amended]

11. Section 321.22, first sentence, is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

§ 321.23 [Amended]

12. In § 321.23, Paragraph (a) is amended as follows:

A. The phrase "referred to in § 321.25" is added at the end of the introductory paragraph after "available from a Federal Reserve Bank".

B. Paragraph (a)(1) is removed and paragraphs (a)(2) and (a)(3) are redesignated as (a)(1) and (a)(2), respectively.

13. Section 321.25 is revised to read as follows:

§ 321.25 Role of Federal Reserve Banks.

(a) The Federal Reserve Banks referred to below, as fiscal agents of the United States, shall perform such services in connection with this part as may be requested by the Secretary of the Treasury, or his designee. The Banks are authorized and directed to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

Appendix to Part 321 [Amended]

14. The appendix to part 321 is amended as follows:

A. Paragraph Number 4 is revised to read as follows:

* * * * *

4. *Paying agent code numbers.* [§§ 321.3(b) and 321.13] The appropriate Federal Reserve Bank will assign a four-digit code number to each agent it qualifies. A separate number will be assigned to each branch authorized to redeem and submit redeemed securities for its own account to a Federal Reserve Bank or Branch or to a Regional Check Processing Center. At the paying agent's request, only one four-digit code will be assigned for use by all of its branches. The presenting institution's ABA number will be used in the adjustment of discrepancies and in the computation and payment of fees for securities transmitted in separately sorted cash letters.

* * * * *

B. Paragraph 5 is amended by removing "the Federal Reserve Bank", and replacing it with "the appropriate Federal Reserve Bank referred to in § 321.25".

C. Paragraph 9(a), first sentence, is amended by adding "referred to in § 321.25" after "a Federal Reserve Bank".

D. Paragraphs 13(a), 13(b), 14(a), 14(b), 14(d), 18, 23(a), 23(d), 23(e) and 27 are amended by removing "Federal Reserve Bank" and replacing it with "the appropriate Federal Reserve Bank referred to in § 321.25", wherever found.

E. Paragraph 14(e) is revised to read as follows:

* * * * *

14. * * *

(e) *MICR-encoding of payment information.* [§ 321.13] An agent shall MICR-encode the redemption value in the "Amount" field on the face of each security or arrange to have this service performed by another financial institution. If the agent transmits securities in mixed cash letters, it must also MICR-encode the routing/transit number assigned to the Bureau of the Public Debt's savings bond activity in the "R/T" field on the face of all pre-October 1957 paper securities and those punch card securities on which it does not already appear. The Bureau's routing/transit number is 000090007. Care should be taken in repairing MICR-encoded items so as not to obliterate any data in surrounding MICR fields or elsewhere on the face of the security.

* * * * *

F. Paragraph 15 is revised to read as follows:

* * * * *

15. *Transmittal of securities to Federal Reserve Bank.* [§ 321.14] An agent shall transmit and receive settlement for redeemed securities via EZ CLEAR, i.e., the Check Department of a Federal Reserve Bank or Branch, or the Regional Check Processing Center. Redeemed securities may be transmitted in separately sorted or mixed cash letters to the Check Department of a Federal Reserve Bank or Branch, or to a Regional Check Processing Center, either directly, or via a parent office or correspondent institution. An agent shall transmit redeemed securities under cover of the appropriate transmittal document. Securities redeemed in exchange for Series HH bonds must be transmitted for settlement via EZ CLEAR at the same time as the exchange application (PD F 3253) and any additional cash needed to complete the transaction are forwarded to the Fiscal Agency Department of the servicing Federal Reserve Bank referred to in § 321.25. Securities redeemed on exchange may be commingled with cash redemptions in mixed or separately sorted cash letters."

* * * * *

G. Paragraph 16 is revised to read as follows:

* * * * *

16. *Transmittal of securities to Federal Reserve Bank via fiscal agency system.* [§ 321.14] The Fiscal Agency Department of a Federal Reserve Bank or Branch will not accept for settlement securities an agent has redeemed."

* * * * *

H. Paragraph 17(e)(2) is revised and new paragraphs (e)(3),(4) and (5) are added to read as follows:

17. *Transmittal of securities to Federal Reserve Bank via EZ CLEAR. [§ 321.14]*

(e) * * *

(2) *Audit and adjustment* [§ 321.14] The Bureau of the Public Debt will audit all redemption data received from the Central Site as promptly as possible. Each presenting institution will, in due course, be notified by the Bank of any adjustments required. The Bank will adjust via a charge or credit to the presenting institution's Reserve or clearing account any amounts previously credited to that account.

(3) *Requests for Adjustments.* Depositors who discover errors in their EZ CLEAR cash letters subsequent to deposit should allow sixty (60) calendar days from the date of their EZ CLEAR cash letter before requesting adjustments for the cash letter. This will allow sufficient time for the Treasury to classify the savings bonds, forward adjustments to the Central Site and for the Central Site to research and function adjustments to the depositor.

(4) *Separately Sorting Depositors* should submit adjustment requests directly to the Central Site Adjustments Department in correspondence. However, all requests for adjustments due to incorrect cash letter crediting should be directed to the servicing Federal Reserve Bank.

(5) *Mixed Depositors* should submit adjustment requests to their servicing Federal Reserve Bank.

* * * * *

I. Paragraph 18 is revised to read as follows:

* * * * *

18. *Record of securities paid.* [§§ 321.14 and 321.24] A record of the serial number and the amount paid for each redeemed security must be retained by the agent for one year so that settlement can be made if the security is lost in transit, and so that the agent can process any subsequent adjustment as described in paragraph 17(e)(2) above. For that purpose, agents are authorized to microfilm the face and back of each security they redeem. Such film records shall be kept confidential and prints therefrom may be made only with the permission of the Bureau of the Public Debt or an appropriate Federal Reserve Bank.

* * * * *

J. Paragraph 24 is amended as follows:

A. Paragraph (a) is removed.

B. The title and designation "(b) EZ CLEAR transmittals. [§ 321.23]" are removed from current paragraph (b); the beginning of the sentence is amended by removing "by the Federal Reserve Bank" after "Fees will be paid"; and, the second sentence is amended by adding "Federal Reserve" after "No fees will be paid for securities received by the".

K. Paragraph 25 is revised to read as follows:

* * * * *

25. *Claims on account of lost securities* [§ 321.24] If a security redeemed by an agent is lost, stolen, or destroyed while in the custody of the agent, or in transit prior to settlement or audit, relief will be considered, provided the security can be identified by serial number. [See paragraph 18 of this appendix regarding the maintenance of records of redeemed securities]. The presenting institution should resubmit a photocopy of the security to obtain settlement in accordance with established procedures. Questions concerning the established procedures should be referred to the servicing Federal Reserve Bank.

* * * * *

PART 330—REGULATIONS GOVERNING PAYMENT UNDER SPECIAL ENDORSEMENT OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 330 is revised to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Section 330.1 is amended as follows:

A. Paragraph (a) is revised to read as follows:

§ 330.1 Definition of terms.

* * * * *

(a) *Federal Reserve Bank or Bank* refers to the Federal Reserve Bank

providing savings bond services to the district in which a paying agent is located. See § 330.9.

* * * * *

B. Paragraph (c) is amended by removing "account directly to a Federal Reserve Bank" and replacing it with "are themselves directly accountable for such redemptions".

C. Paragraph (i) is amended by adding "designated" before "Federal Reserve Bank".

§ 330.2 [Amended]

3. In § 330.2, paragraphs (a) and (c) are amended by adding "designated" before "Federal Reserve Bank", each time it appears.

§ 330.3 [Amended]

4. In § 330.3, paragraphs (a) and (b) are amended by adding "designated" before "Federal Reserve Bank", each time it appears.

§ 330.4 [Amended]

5. Section 330.4 is amended by adding "designated" before "Federal Reserve Bank", in the introductory paragraph.

§ 330.6 [Amended]

6. In § 330.6, paragraph (c) is amended by adding "designated" before "Federal Reserve Bank".

7. Section 330.7 is amended by revising the last two sentences to read as follows:

§ 330.7 Payment or redemption-exchange by agent.

* * * * *

Securities so paid should be combined with other securities paid under that Circular and presented for settlement through EZ CLEAR. Securities redeemed by an agent in an exchange must be presented for settlement through EZ CLEAR separately from, but at the same times as, an exchange subscription and any remittance are forwarded to the Fiscal Agency Department of the appropriate Federal Reserve Bank.

§ 330.8 [Amended]

8. Section 330.8 is amended by adding "designated" before "Federal Reserve Bank", at the end of the first sentence.

9. Section 330.9 is revised to read as follows:

§ 330.9 Fiscal agents.

(a) The Federal Reserve Banks referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested by the Secretary of the Treasury, or his or her delegate, in connection with this part.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 332—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES H

1. The authority citation for part 332 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 332.10 [Amended]

2. Section 332.10 is amended by adding "referred to in § 332.12" immediately after "a Federal Reserve Bank or Branch".

3. Section 332.12 is revised to read as follows:

§ 332.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the reissue, redemption and payment of Series H bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY, (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 342—OFFERING OF UNITED STATES SAVINGS NOTES

1. The authority citation for part 342 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 342.7 [Amended]

2. In § 342.7, paragraph (a) is amended by adding the phrase "referred to in § 342.9", immediately following "any Federal Reserve Bank or Branch".

3. Section 342.9 is revised to read as follows:

§ 342.9 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, redemption and payment of savings notes.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 351.5 [Amended]

2. In § 351.5, paragraph (b)(1) is amended by adding "(see § 351.12)" after "Federal Reserve Banks".

§ 351.7 [Amended]

3. Section 351.7, paragraph (b) is amended by adding the phrase "referred to in § 351.12", immediately following "A Federal Reserve Bank or Branch".

4. Section 351.12 is revised to read as follows:

§ 351.12 Fiscal agents.

(a) Federal Reserve Banks and Branches referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, servicing and redemption of Series EE bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY, (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

1. The authority citation for part 352 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 352.2 [Amended]

2. In § 352.2, paragraph (h) is amended by adding "designated" before "Federal Reserve Banks".

§ 352.5 [Amended]

3. Section 352.5 is amended by adding "(see § 352.13)" after "Federal Reserve Banks".

§ 352.7 [Amended]

4. Section 352.7 is amended as follows:

A. Paragraph (b) is amended by adding "referred to in § 351.13" immediately following "a Federal Reserve Bank".

B. Paragraph (c) is amended by adding "referred to in § 351.13" immediately following "a Federal Reserve Bank".

5. Section 352.13 is revised to read as follows:

§ 352.13 Fiscal Agents.

(a) Federal Reserve Banks and Branches, referred to below, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or his or her delegate, in connection with the issue, servicing, and redemption of Series HH bonds.

(b)(1) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, MS (northern half), NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(2) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

PART 353—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES EE & HH

1. The authority citation for part 353 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 353.1 is amended as follows:

A. Paragraph (a) is amended by adding "in the list in paragraph (b) of this section" after "Federal Reserve Banks and Branches".

B. Paragraph (b) is revised to read as follows:

§ 353.1 Official agencies.

* * * * *

(b) Communications concerning transactions and requests for forms should be addressed to:

(1) A Federal Reserve Bank or Branch in the list below; the Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101; or the Bureau of the Public Debt, Washington, DC 20226.

(2)(i) The following Federal Reserve Offices have been designated to provide savings bond services:

Servicing office	Reserve districts served	Geographic area served
Federal Reserve Bank, Buffalo Branch, P.O. Box 961, Buffalo, NY 14240.	New York, Boston	CT, MA, ME, NH, NJ (northern half), NY (City & State), RI, VT, Puerto Rico and Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, P.O. Box 867, Pittsburgh, PA 15230.	Cleveland, Philadelphia	DE, KY (eastern half), NJ (southern half), OH, PA, WV (northern panhandle).
Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, VA 23261.	Richmond, Atlanta	AL, DC, FL, LA (southern half), MD, MS (southern half), NC, SC, TN (eastern half), VA, WV (except northern panhandle).
Federal Reserve Bank of Minneapolis, 250 Marquette Avenue, Minneapolis, MN 55480.	Minneapolis, Chicago	IA, IL (northern half), IN (northern half), MN, MT, ND, SD, WI.
Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, MO 64198.	Dallas, San Francisco, Kansas City, St. Louis.	AK, AR, AZ, CA, CO, HI, ID, IL (southern half), IN (southern half), KS, KY (western half), LA (northern half), MO, NE, NM, NV, OK, OR, TN (western half), TX, WA, WY, UT and GU.

(ii) Until March 1, 1996, other Federal Reserve Offices may continue to provide some savings bond services, but such services will be phased out over the period prior to that date.

* * * * *

§ 353.13 [Amended]

3. In § 353.13, paragraph (d), the introductory paragraph, is amended by adding "designated" before "Federal Reserve Bank", and removing "of the district" and replacing it with "or Branch".

§ 353.31 [Amended]

4. In § 353.31, paragraph (d) is amended by adding "designated" before "Federal Reserve Bank".

§ 353.35 [Amended]

5. In § 353.35, paragraph (c) is amended by adding "designated" before "Federal Reserve Bank or Branch".

§ 353.39 [Amended]

6. In § 353.39, paragraph (b) is amended by adding "designated" before "Federal Reserve Bank or Branch" in the two places the phrase appears.

§ 353.40 [Amended]

7. In § 353.40, paragraph (a) is amended by adding "a designated" before "Federal Reserve Bank".

§ 353.41 [Amended]

8. Section 353.41 is amended by adding "designated" before "Federal Reserve Bank or Branch".

[FR Doc. 94-4831 Filed 3-3-94; 8:45 am]
BILLING CODE 4810-40-P

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federal register

Friday
March 4, 1994

Part IV

Department of Transportation

Coast Guard

46 CFR Part 10, et al.

Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 16

[CGD 91-223]

RIN 2115-AE29

Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require chemical testing for use of dangerous drugs of all applicants for issuance or renewal of licenses, certificates of registry (CORs), or merchant mariner's documents (MMDs). This action is necessary to implement the requirements of the Oil Pollution Act of 1990 (OPA 90). Testing of applicants would increase maritime safety by providing an additional tool in the effort to promote a drug-free work place in the maritime industry.

DATES: Comments must be received on or before May 3, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-223), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Cratty, Project Manager, OPA 90 Staff, (202) 267-6740 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-223) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, and Jacqueline L. Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Background and Purpose

In recent years, several major oil spills from ships have occurred in waters under the jurisdiction of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, and the AMERICAN TRADER in coastal waters of California. These spills caused extensive damage, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380).

Among other things, OPA 90 introduces new safety measures relating to vessel operations. This notice of proposed rulemaking (NPRM) proposes regulations to implement sections 4101(a) and (b) of OPA 90, which amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, certificate of registry (COR), or merchant mariner's document (MMD) to have a test for dangerous drugs.

Under 46 CFR part 10, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers, and issues CORs to qualified staff officers such as pursers, medical doctors, and professional nurses.

Under the authority of 46 U.S.C. 7302, any person serving aboard most U.S.-flag merchant vessels of more than 100 gross tons operating on other than rivers and lakes must be issued an MMD by the Coast Guard. This document serves as a certificate of identification and service, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to a qualified tankerman.

The statutory language of OPA 90 refers to the testing of an individual for the use of dangerous drugs in violation of law or Federal regulation. Existing Coast Guard regulations are framed around the phrase "chemical test," which is already defined in 46 CFR 16.105. For the purposes of this NPRM, the chemical testing required of applicants for issuance or renewal of licenses, CORs, or MMDs relates only to the use of dangerous drugs.

Section 4103(a)(2) of OPA 90 amends 46 U.S.C. 2101 by adding "dangerous drug" to the list of general definitions and removes the definition of dangerous drugs from 46 U.S.C. 7503(a) and 7704(a). The definition of "dangerous drug" in section 4103(a)(2) of OPA 90 includes the term "controlled substance." Although "marijuana" is not specifically mentioned in the new definition, marijuana is a controlled substance under 21 U.S.C. 802, and is therefore covered by the definition of "dangerous drug." This NPRM would revise the definition of "dangerous drug" in 46 CFR 16.105 to conform it to the definition in 46 U.S.C. 2101, as amended by section 4103(a)(2) of OPA 90. This change has no substantive effect on the existing drug testing rules in 46 CFR part 16.

Currently, 46 CFR 16.220(b) provides exceptions to the periodic chemical test requirement when there has been a recent test for dangerous drugs or participation in a random test program. These exceptions were revised by a final rule published in the **Federal Register** on May 28, 1993 (58 FR 31104). The revised exceptions would apply to the new testing requirements.

Section 4102(b) and (c) of OPA 90 amends 46 U.S.C. 7107 and 7302 to limit the terms of CORs and MMDs to 5 years. On September 16, 1993 the Coast Guard published an NPRM in the **Federal Register** (58 FR 48572) entitled "Five-year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" (CGD 91-211) to implement the provisions of section 4102. Although the NPRMs for chemical testing and terms of validity both deal with the issuance and renewal of

merchant mariner's credentials, two separate documents have been issued for ease of review by the public. This NPRM proposes additional changes to update Coast Guard regulations, but it does not affect the regulatory amendments contained in the "Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" NPRM. In two places, 46 CFR 10.805(g) and 12.02–9(f), this NPRM contains proposed regulatory text that would follow after additions proposed in the "Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents" NPRM. One final rule may be issued combining the requirements for chemical testing and regulations for the terms of validity for CORs and MMDs.

Discussion of Proposed Amendments

OPA 90 requires all applicants for the issuance or renewal of licenses, CORs, or MMDs to have a chemical test for dangerous drugs. The proposed rules would apply the requirement to (1) an original issuance or a renewal of a license, COR, or MMD; (2) a raise in grade of a license or a higher grade of COR; and (3) the first endorsement on an MMD as an able seaman, qualified member of the engine department, or tankerman. Applicants meeting either of the exceptions contained in § 16.220 would be exempt from the chemical testing requirements. A chemical test for dangerous drugs would not be required for an MMD endorsement that does not require a new expiration date for the MMD or the duplicate issuance or replacement of valid licenses, CORs, or MMDs. If an applicant applies for multiple documentation transactions at one time, the application is treated as a single transaction and a single drug test will satisfy the drug testing requirements for all documentation transactions covered by the application.

In a supplemental notice of proposed rulemaking (SNPRM) published in the **Federal Register** on October 17, 1989 (54 FR 42624), the Coast Guard proposed to remove existing 46 CFR subpart 12.20 entitled "Tankerman," and replace it with a new part 13, "Tankermen and Persons in Charge of Transfer of Dangerous Liquid and Liquefied Gas." The Coast Guard is proposing to add chemical testing for dangerous drugs to the requirements for obtaining a tankerman endorsement on an MMD. Because the "Tankerman" rulemaking has not been finalized, the proposal to add drug testing requirements is set out as amendment to the existing requirements in 46 CFR subpart 12.20. The final rule will place the drug testing requirements in subpart 12.20 or a new 46 CFR part 13, as appropriate.

Periodic chemical testing for dangerous drugs is currently part of the physical examinations required for some merchant mariners. Entry-level ratings (46 CFR subpart 12.25), lifeboatmen (46 CFR subpart 12.10), and staff officers (46 CFR 10.801) do not require physical examinations. Existing § 16.220(a) states that, if a physical examination is required, the examination must include a chemical test for dangerous drugs. The applicant must provide the results of the chemical test for dangerous drugs to a Coast Guard Regional Examination Center (REC) where licensing and documentation transactions take place. The proposed rules would revise § 16.220(a) to base testing requirements on issuance or renewal transactions. Additionally, requirements for pilots who must undergo an annual physical examination would be moved to a new § 16.220(b) and a new reporting requirement is proposed for that section. Pilots who are not excepted from taking a chemical drug test as part of their annual physical would be required to provide drug test results to the REC where their license was last renewed.

The Coast Guard is soliciting comments specifically on two issues raised by this expansion of chemical testing requirements. The first issue relates to an unemployed, nonunion applicant who is required to have a chemical test for dangerous drugs. Under 46 CFR 16.370, which would not be amended by the proposed rules, individuals must have test results reviewed by a Medical Review Officer (MRO) selected by the employer or sponsoring organization. However, if an applicant does not hold a maritime-related job or belong to a union, there may be no MRO immediately available to the applicant for reviewing test results and providing appropriate certification. The Coast Guard is interested in receiving comments on whether this situation would pose a significant problem and requests suggestions on alternatives.

The second issue relates to inactive license renewals under 46 CFR 10.209(g). Under the proposed rules, applicants for inactive license renewals would not be required to undergo a chemical test for dangerous drugs. The Coast Guard seeks comments on the desirability of requiring applicants for inactive license renewals to meet the chemical testing requirements.

Regulatory Evaluation

This proposal is not major under Executive Order 12866, but is considered significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979) because of controversy surrounding chemical drug testing, substantial public interest, and the potential for litigation. A Regulatory Evaluation has been prepared for this rulemaking and is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Costs to Government

Federal Government costs attributable to implementation of these proposed regulations would be incurred by the 17 Coast Guard RECs. Each applicant is responsible for submitting chemical test results verified by a MRO during the "evaluation" phase of the merchant mariner credential transaction. The additional costs, for the "evaluation" phase, associated with receiving and handling test results on applicants for merchant mariner credentials will be minimal. The costs incurred as a result of this rulemaking are a relatively small percentage of the total costs of the "evaluation" phase, and do not warrant revision of the current fees for evaluation related to MMD, COR or licensing transactions.

Costs to Public and Respondents

Firms in the maritime industry and some individual respondents (applicants) would bear the prospective incremental costs of this rulemaking. These costs are addressed in the Regulatory Evaluation.

The cost projections assume that holders of MMDs will not apply for renewals and endorsements at the same time, and that holders of licenses will not apply for renewals and raises in grade at the same time. This approach guards against underestimating costs. However, the projections further assume that holders of licenses who also hold MMDs will renew licenses and MMDs together, and that the few holders of CORs and MMDs will apply for and renew CORs and MMDs together. The cost projections were adjusted to reflect the percentage of merchant mariners that will not have to take a drug test for the documentation transaction because they already participate in a random chemical testing program for dangerous drugs or they have passed a drug test within the previous 185 days. Computations show that the NPRM would subject an estimated additional 7,258 applicants for credentials each year to chemical testing for dangerous drugs. The annual cost to the public would total $439,000.

Benefits

The dollar value of direct and societal benefits derived from the proposed rule are not quantifiable, but may be substantial.

According to a 1987 report published by the National Institute of Drug Abuse, drug-free individuals—

(a) Suffer fewer accidents;

(b) File fewer workers' compensation claims;

(c) Use less sick leave; and

(d) Experience lower medical cost than drug users.

Historical data is insufficient to quantify benefits. However, should this program manage to save even one life per year at $2.5 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The costs to small entities will probably not be significant because the costs of the additional chemical testing for dangerous drugs will be borne primarily by individual applicants, and is less than $100 per occasion. Because it expects the impact of this proposal on small entities to be minimal, the Coast Guard certifies under 15 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in §§ 10.201, 10.202, 10.205, 10.207, 10.209, 10.805, 12.02–4, 12.02–9, 12.05–3, 12.10–2, 12.15–3, 12.20–1, 12.25–10, 16.105, and 16.220. The following particulars apply:

DOT No: 2115.

OMB Control No.: Formerly 2115–0574; Consolidated into 2115–0003.

Administration: U.S. Coast Guard.

Title: Collection of Commercial Vessel & Personnel Accident (Marine Casualty) Information (Forms CG–2692/2692A) and Programs for Chemical Drug & Alcohol Testing of Commercial Vessel Personnel, including Required Drug & Alcohol Testing following a Serious Marine Incident (Form CG–2692B).

Need for Information: Sections 7101 and 7302 of title 46, United States Code mandate that the Secretary require chemical testing of each applicant for the issuance or renewal of a license, COR, or MMD for use of a dangerous drug.

Proposed Use of Information: An applicant must submit proof of passing a chemical test for dangerous drugs or meet one of the exceptions from periodic testing in order to be considered for issuance or renewal of a license, COR, or MMD.

Frequency of Responses: This information must be collected whenever an applicant applies for or renews a license, COR, MMD, or when individuals (e.g., a pilot) are required to receive an annual physical examination.

Burden Estimated: The Coast Guard estimates that the total annual burden on merchant mariners will be $439,000. This estimate does not include the costs to the Coast Guard of administering the program. Again, these costs are incorporated into the "Draft Regulatory Evaluation and Regulatory Flexibility Assessment of Regulations Requiring Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of a license, COR, or MMD."

Respondents: The regulatory impact will fall on the estimated 7,258 merchant mariners not yet required to undergo periodic chemical testing for dangerous drugs.

Form(s): There are no forms applicable to this rulemaking.

Average Burden Hours Per Respondent: The average burden hours per respondent is 1.25 hours per year. The burden hours for all respondents total 9,072.5 hours annually.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is a procedural regulation without any direct environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 16

Drug testing, Marine safety Reporting and recordkeeping requirements. Safety, Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10, 12, and 16 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633, 31 U.S.C. 9701, 46 U.S.C. 2103, 7101; 49 CFR 1.45, 1.46; Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.201(a) is revised to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) In order to receive a license or certificate of registry, each applicant shall establish to the satisfaction of the Officer in Charge, Marine Inspection (OCMI), that he or she meets all the qualifications (respecting age, experience, training, citizenship, character references, recommendations, physical health, chemical testing for dangerous drugs, and professional competence) required by this part before

the OCMI issues a license or certificate of registry.

* * * * *

3. Section 10.202 is amended by revising the section heading and adding paragraph (i) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

* * * * *

(i) Each applicant for an original issuance or a renewal of a license or a certificate of registry, for a raise in grade of a license, or for a higher grade of certificate of registry shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. Any applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

4. Section 10.205 is amended by adding paragraph (j) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(j) *Chemical testing for dangerous drugs.* Each applicant shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

5. Section 10.207 is amended by adding paragraph (g) to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(g) *Chemical testing for dangerous drugs.* Each applicant for a raise in grade shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license.

6. Section 10.209 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

* * * * *

(h) *Chemical testing for dangerous drugs.* Each applicant for the renewal of a license or of a certificate of registry shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a license or certificate of registry.

7. Section 10.805 is amended by adding paragraph (g) to read as follows:

§ 10.805 General requirements.

* * * * *

(g) Each applicant for an original certificate of registry or a higher grade of certificate of registry, as described by paragraph (c) of this section, shall produce evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued a certificate of registry.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 continues to read as follows:

Authority: 14 U.S.C. 633, 31 U.S.C. 9701, 46 U.S.C. 2103, 2110, 7301, 7701, 49 CFR 1.46.

9. Section 12.02–4 is amended by adding paragraph (c) to read as follows:

§ 12.02–4 Basis for denial of documents.

* * * * *

(c) An applicant who fails a chemical test for dangerous drugs required by § 12.02–9 will not be issued a merchant mariner's document.

10. Section 12.02–9 is amended by adding paragraph (f) to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(f) Each applicant for an original issuance of a merchant mariner's document, the first endorsement as an able seaman, qualified member of the engine department, or tankerman, or a reissuance of a merchant mariner's document with a new expiration date shall present evidence of having passed a chemical test for dangerous drugs or qualifying for an exception from testing in § 16.220 of this subchapter.

PART 16—CHEMICAL TESTING

11. The authority citation for part 16 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

12. Section 16.105 is amended by revising the definition of "dangerous drug" to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

* * * * *

13. Section 16.220 is revised to read as follows:

§ 16.220 Periodic testing requirements.

(a) Except as provided by paragraph (c) of this section, an applicant for an original issuance or a renewal of a license or a certificate of registry (COR), a raise in grade of a license, a higher grade of COR, an original issuance of a merchant mariner's document (MMD), the first endorsement as an able seaman, qualified member of the engine department, or tankerman, or a reissuance of an MMD with a new expiration date shall be required to pass a chemical test for dangerous drugs. The applicant shall provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days prior to submission of the application.

(b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination. The individual shall provide the results of each test required by this section to the REC where the license was last renewed.

(c) An applicant need not submit evidence of passing a chemical test for dangerous drugs required by paragraph (a) or (b) of this section if he or she provides satisfactory evidence that he or she has—

(1) Passed a chemical test for dangerous drugs required by this part within the previous six months with no subsequent positive drug tests during the remainder of the six-month period; or

(2) During the previous 185 days been subject to a random testing program required by § 16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required by this part.

(d) An applicant is required to provide the results of only one chemical test for dangerous drugs when multiple documentation transactions are covered by or requested in a single application.

14. Section 16.260(b)(1) is revised to read as follows:

§ 16.260 Records.

* * * * *

(b) * * *

(1) Satisfy the requirements of §§ 16.210(b) and 16.220(c) of this part.

* * * * *

Dated: February 23, 1994.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 94–4767 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Friday
March 4, 1994

Part V

Environmental Protection Agency

40 CFR Parts 271 and 279
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 279

[EPA/530–Z–42–011; FRL–4845–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 10, 1992, EPA exempted used oil inserted into crude oil pipelines from the part 279 used oil management standards. EPA is today clarifying the existing pipeline exemption and expanding the exemption to other petroleum refinery applications. Today's document clarifies that the exemption from the used oil management standards did not intend to exclude used oil mixed with crude oil or natural gas liquids (hereinafter referred to as "crude oil") in pre-pipeline units (e.g., stock tanks, production separators) prior to being introduced into the crude oil pipeline. In addition, today's rule expands the used oil exemption to include transportation and/or storage of mixtures of small amounts of used oil (i.e., less than 1%) and crude oil that are destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking.

Today's rule exempts from the part 279 standards, used oil that is inserted into the petroleum refining facility process after distillation or catalytic cracking operations provided that the used oil meets the used oil specification prior to insertion.

Today's rule also exempts from the part 279 standards used oil that incidentally enters and is recovered from a refinery's hydrocarbon recovery system or wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refinery process.

In addition, today's rule expands the definition of transfer facility to allow used oil to be held more than 24 hours but less than 35 days prior to specified activities.

Finally, EPA is today amending the used oil processor standards to clarify that a specific set of on-site maintenance, filtering, and separation activities were not intended to be covered under the used oil processor standards. EPA is also correcting errors in regulations that appeared in the May 3, 1993, **Federal Register**.

EFFECTIVE DATE: April 4, 1994.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F–94–UOTA–FFFFF. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone (800) 424–9346 (toll free) or, in the Washington DC, metropolitan area at (703) 920–9810.

For information on specific aspects of this rule, contact Ms. Eydie Pines, telephone (202) 260–3509, U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority.
II. Background.
A Summary of Recent Regulatory Actions Pertaining to Used Oil.
1. Summary of May 20, 1992, **Federal Register** Notice.
2 Summary of September 10, 1992, **Federal Register** Notice.
3 May 3, 1993, and June 17, 1993 Correction Notices.
B. Summary of the 1985 Comments.
C. Summary of 1991 Comments.
III. Analysis of New Part 279 Provisions.
A. Summary of Comments from Interested Parties.
B Definition of petroleum refining facility, used oil re-refining facility.
C. Used Oil Introduced into Crude Oil Pipelines or Petroleum Refineries.
1. Used Oil Introduced into Crude Oil Pipelines.
2. Storage and Transportation of Mixtures of Used Oil and Crude Oil.
3. Used Oil Inserted into the Petroleum Refining Process without Prior Mixing and Mixtures of Greater Than One Percent Used Oil.
4. Used Oil Inserted Into the Petroleum Refining Process after Crude Distillation or Catalytic Cracking.
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Authority

The regulations promulgated today are issued under the authority of sections 1004, 1006, 2002(a), 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil recycling Act, as amended, 42 U.S.C. 6903, 6905, 6912(a), 6935, and 6974.

II. Background

A. Summary of Recent Regulatory Actions Pertaining to Used Oil

1 Summary of May 20, 1992, **Federal Register** Notice

On May 20, 1992, EPA published a final listing determination for used oils that are destined for disposal (see 57 FR 21524). The Agency determined that used oils destined for disposal did not have to be listed as a hazardous waste because used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous. EPA gave considerable attention, in reaching its determination, to the current Federal regulations that govern the management of used oils that are disposed, including the requirement for used oil that exhibits a characteristic of hazardous waste under subtitle C of RCRA.

The May 20, 1992, **Federal Register** notice also included a categorical exemption from the definition of hazardous waste in § 261.4 for non-terne-plated used oil filters that have been hot-drained to remove used oil.

EPA based this exemption on data submitted to the Agency indicating that these filters do not typically and frequently exhibit the toxicity characteristic.

2. Summary of September 10, 1992, **Federal Register** Notice

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated management standards for used oil, codified at 40 CFR part 279 (see 57 FR 41566). EPA determined that used oil destined for recycling did not have to be listed as a hazardous waste because the used oil did not meet the technical criteria for listing a waste as hazardous, particularly in light of the new management standards and other federal requirements which control the risks posed by improper management of used oil. The standards cover used oil generators, transporters, processors, re-refiners, off-specification burners and marketers. The standards included an exemption from the management standards for used oil placed directly in a crude oil pipeline.

3. May 3, 1993, and June 17, 1993 Correction Notices

On May 3, 1993, EPA published technical amendments and corrections to the May 20, 1992 and September 10, 1992, **Federal Register** Notices (see 58 FR 26421). On June 17, 1993, EPA corrected several errors in the May 3, 1993, notice (see 58 FR 33341).

B. Summary of the 1985 Comments Regarding Used Oil Mixed With Crude Oil Destined for Refineries

On November 29, 1985, EPA proposed to list all used oil as a hazardous waste (50 FR 49248). Commenters responded that used oil mixed with crude oil be exempt from such regulation because the small quantities of used oil mixed with crude oil posed no threat to the environment when refined with crude oil.

C. Summary of 1991 Comments

On September 23, 1991, EPA proposed that the two exemptions from subtitle C requirements promulgated in 1985 (see 40 CFR 261.6(a)(3) (v)–(viii)) for oil-bearing hazardous waste and fuels derived from these wastes, also apply to used oils. (56 FR 48026, 48042) EPA proposed exemptions from the used oil management requirements (whether or not EPA ultimately listed used oil as a hazardous waste) for: (1) Used oils that are reinserted as feedstocks at primary petroleum refineries; and (2) fuels derived from those used oils.

Commenters (mainly the primary petroleum refining industry) stated that if EPA chose to list used oil as hazardous waste, the Agency should exempt used oil that is reintroduced into the refinery process from hazardous waste or used oil management standards requirements. Commenters further stated that if EPA did not adopt this exemption, the entire refinery process could be subject to hazardous waste management requirements, including permits. Commenters stated that this would be unwarranted because the reintroduction of used oil into the refining process contributes only insignificant concentrations of metals to the crude oil or finished petroleum product. Other commenters stated that refiners that handle used oil should be subject to the same requirements for used oil management as are used oil re-refiners.

Commenters from the primary petroleum refining industry also stated that EPA should not limit the exemption to those instances where used oil is inserted before fluid catalytic cracking or distillation, since other conversion and distillation processes in the refinery would also remove, alter or immobilize impurities in the oil. They asserted that limiting the point of insertion could foreclose the future development of used oil recycling activities. These commenters also stated that limiting the insertion point could preclude refineries from accepting DIY oil. Commenters asserted that DIY oil might have to undergo certain pre-processing at refineries prior to its insertion into the refining process. They also asserted that under the proposed exemption, this pre-processing would not be exempt and would be a hazardous waste activity. Commenters stated that these activities are part of the refining process.

Commenters from the primary petroleum industry further stated that EPA should extend the exemption to apply to used oil inserted into the pipeline at marketing, E&P and pipeline facilities for use in the refinery process. They asserted that used oil recovered from oil and gas exploration and production is placed in pipelines and trucks and returned to the refinery from other petroleum facilities. Commenters stated that the recovered oils are useful, valuable raw materials that are reintroduced into the crude stream for their economic value.

III. Analysis of New Part 279 Provisions

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated standards in 40 CFR part 279 for the management of used oil under RCRA section 3014. Under § 279.10(g) of part 279, EPA granted an exemption for used oils introduced directly into crude oil pipelines from part 279 standards at the point at which they are introduced. EPA did not address the proposed exemptions for used oil inserted into the petroleum refining facility process either prior to or after crude distillation or catalytic cracking.

The American Petroleum Institute filed a petition for review of the September 10, 1992, rule, on December 8, 1992, raising the issue that EPA had not addressed the proposed exemptions for petroleum refining, production, and transportation in the September 10, 1992, final rule. Today's rule responds to comments and addresses outstanding issues related to used oil and petroleum refining facility processes.

A. Summary of Comments From Interested Parties

Today's rule was distributed in draft form for comment to the litigants and intervenors concerning the 1992 rule, and other concerned members of the regulated community, States, and environmental groups. The primary substantive comments received on the draft and EPA's responses to those comments are summarized below.

EPA received several comments from the petroleum industry on the exemption from part 279 for storage and transportation of mixtures of used oil and crude oil that contain less than 1% used oil and are destined for insertion into petroleum refining process. These commenters objected primarily to provisions in the draft final rule limiting the exemption to mixtures that contain less than 1% used oil. The commenters also objected to limiting the amount of used oil that can be directly inserted into the petroleum refining process to 1% of the crude oil process unit throughput at any given time. EPA has retained the 1% limit in both cases in today's final rule for reasons discussed in section III.B.2 of this preamble.

EPA received comments from used oil re-refiners (i.e., "secondary" petroleum industry—a type of used oil processor) regarding the regulatory status of petroleum refineries that receive used oil from off-site and store the used oil on-site before mixing it with crude oil. The draft rule proposed to regulate petroleum refining facilities as used oil transfer facilities in these circumstances. Commenters stated, however, that petroleum refiners that receive used oil from off-site pose the same potential concerns from receipt of

adulterated used oil and improper storage of used oil as re-refiners and should therefore be subject to the requirements for used oil processor/re-refiners prior to mixing. EPA agrees and has revised the draft rule accordingly. These changes are discussed in greater detail below.

EPA also received numerous comments on provisions clarifying what constitutes a used oil processor. Provisions contained in the draft document would have prohibited both on- and off-site burning of used oil generated from specified activities that EPA is today clarifying are not subject to the used oil processor standards. Commenters stated that the used oil generated from these activities would be suitable for burning in accordance with the part 279, subpart G standards and that burning should not be further restricted. In response to these comments, EPA has decided to allow on-site burning of the used oil generated from these activities but has retained the prohibition against off-site burning. The basis for this decision is discussed in section III.C of today's preamble.

B. Section 279.1—Definition of Petroleum Refining Facility

Today's rule establishes a regulatory definition for "petroleum refining facility." EPA believes it is necessary to define this term in order to provide a clear distinction between what the Agency considers to be and regulates as primary petroleum refining facilities and facilities that EPA considers to be used oil re-refiners for regulatory purposes. Under today's rule, "petroleum refining facility" is defined as follows:

> "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

A used oil re-refiner, in contrast, is a facility that processes used oil to produce lube base stocks and greases, industrial fuels, asphalt extenders, diesel like fuels, and other products.

EPA is aware that petroleum refiners and used oil re-refiners employ similar production processes and produce similar products. Consequently, the Agency has avoided defining these facilities in terms of the process steps employed to produce a finished product or the type of products produced. As defined by today's rule, petroleum refining facilities and used oil re-refining facilities differ primarily in the material that constitutes the primary initial feed to the process. In order for a facility to be considered a petroleum refining facility, the material fed to the front end of the refining process must be comprised primarily of crude oil. In order to be considered a used oil re-refiner, the material entering the front end of the process must be comprised primarily of used oil.

C. Section 279.10(g)—Used Oil Introduced Into Crude Oil Pipelines or Petroleum Refining Facilities

1. Section 279.10(g)(1)—Used Oil Introduced Into Crude Oil Pipelines

The September 10, 1992, final used oil regulations provided an exemption at § 279.10(g) from management standards for used oil that is placed directly into a crude oil pipeline (see 57 FR 41613). Today's rule replaces § 279.10(g) with § 279.10(g)(1) which clarifies the original intent of the pipeline exemption. Section 279.10(g) of the September 10, 1992, final rule provided that "Used oil that is placed directly into a crude oil, oil or natural gas pipeline is subject to the management standards of [part 279] only prior to the point of introduction into the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of [part 279]."

EPA is concerned that the phrase, "placed directly into a crude oil or natural gas pipeline," can be literally interpreted to apply more narrowly than the Agency had intended. EPA understands that it is standard practice to first mix small amounts of used oil, typically less than 1%, with crude oil in stock tanks, production separators or other tank units that are connected via pipeline to the petroleum refining facility (i.e., pre-pipeline units). It was not EPA's intent to exclude used oil that is mixed with crude oil in these pre-pipeline units from the § 279.10(g) pipeline exemption. Rather, EPA intended to include this practice within the meaning of "direct insertion." Because used oil is typically inserted into the petroleum pipeline through these pre-pipeline units, to exclude these units from the pipeline exemption would effectively render the exemption meaningless. Clearly this was not EPA's intent. Today's rule revises the language of the exemption to clarify that used oil may be inserted into the pipeline via pre-pipeline units (which contain crude oil) exempt from the requirements of part 279. It should be noted here that the § 279.10(g)(1) pipeline exemption established by today's rule is limited to pipelines that convey crude oil from off-site locations to the petroleum refining facility. The exemption does not apply to pipelines that convey crude oil from one on-site location within a petroleum refinery to another. If such on-site piping contains used oil, it is exempt only if it qualifies under §§ 279.10(g)(2)–(5) discussed below. Also, if processing of the used oil is performed prior to mixing with crude oil in these pre-pipeline units, such processing remains subject to the part 279, subpart F standards for used oil processors and re-refiners. Used oil that is generated and stored at the pipeline is subject to the used oil generator standards prior to mixing with crude oil. Used oil that is transported to the pipeline and immediately mixed with crude oil or stored for less than 24 hours prior to such mixing is subject to all Subpart E transporter standards except for § 279.45 which applies to transfer facilities. Used oil that is transported to and subsequently stored at the pipeline for more than 24 hours and less than 35 days prior to mixing with crude oil is subject to all the part 279, subpart E transporter/transfer facility requirements.

2. Section 279.10(g)(2)—Storage and Transportation of Mixtures of Used Oil and Crude Oil

Section 279.10(g)(2) of today's rule expands the used oil management standard exemption to include: (1) Mixtures of used oil and crude oil containing less than 1% used oil that are being stored at the petroleum refining facility or in discrete units remotely located from the pipeline, as long as the mixture is destined for the refinery and inserted prior to crude distillation or catalytic cracking; and (2) mixtures of used oil and crude oil containing less than 1% used oil that are being transported (via truck, rail, or vessel) to the petroleum refinery or the pipeline for insertion into the petroleum refining process prior to crude distillation or catalytic cracking. The former exemption provided at § 279.10(g) did not apply either to mixtures of used oil and crude oil that are stored at the petroleum refinery or in remotely located units, or to the transportation of mixtures of used oil and crude oil. The previous, more narrow exemption was based on the assumption that used oil was placed directly into the pipeline (or into units directly connected to the pipeline as previously discussed). EPA assumed that the mixing of used oil and crude oil occurred at the point at which used oil was inserted into the pipeline. EPA has since learned, however, that mixing frequently occurs at exploration and

production sites that are remotely located from the pipeline or the petroleum refinery.

For example, used oil generated during on- and off-shore drilling activities (e.g. from compressors, trucks and other heavy equipment) is routinely mixed with crude oil in units (e.g. production separators, seagoing vessels, stock tanks, etc.) located at the exploration and production site and then transported, as a mixture, to the pipeline or petroleum refining facility. Depending on the location of the drilling activities, the mixture of used oil and crude oil may need to be transported (by vessel, truck, rail, etc.) to a separate location for introduction into the pipeline or the petroleum refining facility. In the case of off-shore drilling sites for example, conveyance of the mixture may involve multiple modes of transportation (i.e., from the off-shore platform to land by vessel or pipeline and then to the crude oil pipeline by land-based transport). Today's exemption covers all modes of transportation of mixtures of used oil and crude or natural gas liquids, as long as the mixture contains less than 1% used oil and is destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking. In addition, today's exemption covers storage of mixtures of used oil and crude oil, provided that the mixture contains less than 1% used oil and is inserted into a petroleum refining facility process prior to crude distillation or catalytic cracking.

Used oil that is generated at exploration and production sites continues to be subject to used oil generator standards prior to being mixed with crude oil such that it is exempt under today's rule. Used oil that is generated off-site and transported to or stored at an exploration and production site is subject to the transporter and transfer facility standards, as applicable, up until the point at which the used oil is mixed with crude oil such that it is exempt under § 279.10(g)(2).

EPA is exempting mixtures of used oil and crude oil held in discrete units at a refinery or at remote locations because the Agency understands that the amount of used oil contained in these mixtures is extremely small relative to the large quantities of crude oil. In developing today's rule, EPA held numerous discussions with petroleum refinery industry representatives regarding the maximum amount of used oil contained in mixtures of used oil and crude oil that are destined for insertion into a petroleum refining process prior to crude distillation or catalytic cracking. Industry representatives repeatedly informed the Agency that used oil constitutes less than 1% of these mixtures. In gathering information for today's rule, EPA held conference calls with representatives from a number of petroleum refining companies (e.g., Mobil Oil Corporation and Phillips Petroleum Inc.,). The Agency also conducted several site visits, including visits to an Amoco refinery in Whiting, Indiana and a Mobil Oil Corporation refinery in Paulsboro, New Jersey. In each case, EPA was informed that used oil does not currently, and will not comprise greater than 1% of the crude oil/used oil mixture because of the sheer volumes of crude oil that are continuously being produced and processed relative to the amount of used oil that is generated at production sites or refineries. This recent information is consistent with comments submitted in response to the 1985 Used Oil Proposed Rule in which Exxon Company, USA stated that the average percentage of used oil in refinery feed stock streams is less than 0.02% and Texaco, Inc., indicated that used oil would constitute no more than 0.01% of the refinery input.

EPA does not believe it is necessary to apply the used oil management standards to the less than 1% fraction of used oil that is being held temporarily in discrete units or transported from those units to the pipeline or the petroleum refinery for recycling as part of a mixture that is composed overwhelmingly of crude oil. In essence, because of the high ratio of crude oil to used oil, EPA considers the mixture to be equivalent to crude oil for regulatory purposes. EPA's part 279 standards were designed to control those particular risks associated with the management of used oil (e.g., uncontrolled burning, improper storage practices by used oil handlers) pursuant to section 3014 of RCRA.

The reason for EPA's imposition of a 1% limit on the amount of used oil contained in mixtures of used oil and crude oil being stored or transported to a crude oil pipeline or petroleum refinery prior to insertion into the refining process is that, while we have determined that the small amounts of used oil that are being added to crude oil under current practices pose no incremental risk over normal crude oil, we have not evaluated whether larger amounts of used oil also pose no incremental risk. Given the information provided to EPA by the petroleum refining industry regarding the inherent limitations on the amount of used oil that is or should be contained in mixtures of used oil and crude oil (i.e., less than 1%), and given that EPA has received no information, either recently, or in response to previous rulemakings that provides basis for an alternative limit, the Agency sees no point in imposing a higher cap. Imposition of a higher cap could have the effect of encouraging mixing of used oil with crude oil that would not otherwise occur during the normal course of petroleum refining operations. Such an incentive might lead to increased incremental risk from management of large amounts of used oil, exempt from the part 279 standards, at petroleum refineries. EPA also concluded that a less precise limit (i.e., "*de minimis*" or "small amounts"), as was suggested by some commenters from the petroleum refining industry, would needlessly cause uncertainty, given that EPA was told repeatedly that amounts currently introduced are far less than 1%.

3. Section 279.10(g)(3)—Used Oil Inserted Into the Petroleum Refining Process Without Prior Mixing and Mixtures of Greater Than One Percent Used Oil

As previously stated, under today's rule, mixtures of used oil and crude oil containing less than 1% used oil that are transported to or stored at a petroleum refinery, and are introduced prior to crude distillation or catalytic cracking, are exempt from part 279 standards under § 279.10(g)(2). It is EPA's understanding, based on information received from petroleum industry representatives, that used oil can potentially be inserted directly into the petroleum refining process prior to crude distillation or catalytic cracking without either: (1) Mixing the used oil with crude oil feedstocks, or (2) pre-processing of the used oil to ensure that any contaminants in the used oil will not interfere with the refining process (e.g., contaminants fouling a catalyst, etc.). Based on this understanding, today's exemption also applies to used oil that is introduced directly into the petroleum refining process at a point prior to crude distillation or catalytic cracking as long as the used oil comprises less than 1% of the crude oil feed to a petroleum refining facility process unit at any given time. Again, because of the high ratio of crude oil to used oil, EPA considers these mixtures to be equivalent to crude oil for regulatory purposes. Therefore, the Agency believes that this activity would pose no significant increase in risk.

Used oil that is inserted directly into the petroleum refining process (at a volume of less than 1% of the crude oil process unit feed at any given time) is considered mixed, and therefore exempt

from part 279, at the point at which it enters the process. This exemption applies both to used oil generated at the petroleum refining facility where the used oil is being inserted, and to used oil generated off-site that is collected and transported to the petroleum refining facility for insertion into the refining process prior to crude distillation or catalytic cracking.

Used oil that is inserted into the petroleum refining process without first being mixed with crude oil feedstocks (e.g. in crude oil stock tanks) is subject to part 279 standards prior to insertion. Used oil that is generated on-site and then stored without prior mixing and used oil generated on-site that constitutes greater than 1% of a mixture of used and crude oil continues to be subject to the part 279, subpart C standards for generators. With the exception of used oil that is exempt from the part 279 standards because it constitutes less than 1% of a mixture of used oil and crude oil, used oil that is generated off-site and then transported to or stored at a petroleum refining facility, continues to be subject to the applicable part 279 requirements i.e., to the requirements for used oil transporters and transfer facilities while being transported and to the requirements for used oil processors upon receipt at the petroleum refining facility. Petroleum refining facilities that receive used oil from off-site for direct insertion into the petroleum refining process are subject to the used oil processor standards from the point at which they receive the used oil up until the point at which the used oil is inserted into the petroleum refining process. Finally, it is important to reiterate that the exemptions provided under both §§ 279.10(g)(2) and 279.10(g)(3) of today's rule apply at the point of mixing and only to mixtures that contain less than 1% of used oil.

Although petroleum industry representatives have raised concerns that a 1% limit on the amount of used oil that can be inserted directly into the petroleum refining process may be technology limiting, EPA has not received any information that would support this position, nor has the Agency received information to support an alternative level. The Agency believes that by limiting the amount of used oil that can be introduced directly into the refining process exempt from the used oil processing standards, it can better ensure against mixing only to avoid compliance with the part 279 processing standards. If information becomes available that the 1% limit is inhibiting used oil recycling, the Agency will consider whether any change to the rules is necessary.

In the draft rule, EPA proposed to regulate petroleum refining facilities that receive used oil from off-site as used oil transfer facilities prior to mixing. However, EPA agrees with comments on the draft rule that petroleum refining facilities that receive used oil from off-site pose the same potential concerns associated with receipt of adulterated used oil and improper storage of used oil as used oil re-refiners. Petroleum refining facilities that receive used oil from off-site may not have adequate information to ensure that the used oil has not not been improperly mixed with listed hazardous waste. Also, the volumes of used oil that may be managed require adequate planning for dealing with emergency releases. EPA has therefore revised the final rule to provide that petroleum refining facilities that receive and store used oil from off-site are subject to the used oil processor standards prior to mixing. The principal effect of this change is that petroleum refiners that receive used oil from off-site must prepare a waste analysis plan to ensure that the used oil has not been mixed with hazardous waste and must maintain an operating record to document compliance with the waste analysis plan. In addition, such refineries will have to adopt or amend emergency contingency plans to address used oil in accordance with § 279.52 of the used oil management standards.

4. Section 279.10(g)(4)—Used Oil Inserted Into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking

Under § 279.10(g)(4) of today's rule, used oil that is inserted into the petroleum refining process after crude distillation or catalytic cracking is exempt from the part 279 standards provided that the used oil meets the used oil specification prior to insertion. Used oil remains subject to part 279 standards up until its actual insertion into the petroleum refining process. As previously discussed, used oil generated on-site must be stored according to part 279, subpart C standards for used oil generators. Used oil generated off-site must be transported according to the part 279, subpart E standards for transporters and transfer facilities and stored according to the part 279, subpart F standards for used oil processor/re-refiners.

EPA's use of the terms "before" and "after" crude distillation or catalytic cracking is intended to distinguish between the initial part of the petroleum refining process where crude oil is the primary feedstock and is refined by undergoing crude distillation or catalytic cracking and the latter part of the petroleum refining process where crude oil residuals constitute the primary feed, and coke and asphalt are the primary products. Refinery processes that occur after crude distillation or catalytic cracking do not provide refining to the same extent as that which occurs as a result of crude distillation or catalytic cracking. Crude distillation or catalytic cracking is expressly designed to remove, alter, or otherwise immobilize contaminants in the normal course of the refining process. EPA has insufficient information on post-crude distillation or catalytic cracking units identified by commenters (e.g., asphalt towers, petroleum cokers), and is concerned about the possible environmental effects (e.g., air emissions, transfer of inorganics to asphalt or petroleum coke) of placing large amounts of off-specification used oil into the petroleum refining process without passing through the crude distillation or catalytic cracking units. In contrast, on-specification used oil may be burned in the same manner as virgin petroleum fuel in other situations, therefore it makes little sense to restrict its use as a feedstock to the petroleum coker (or in any other process "after" crude distillation or catalytic cracking).

It should be noted that if off-specification used oil is inserted into petroleum refining processes after crude distillation or catalytic cracking (e.g., a coker), the facility would be subject to the used oil processing requirements in part 279, subpart F. In addition, petroleum refining facilities that wish to insert on-specification used oil into the refining process after crude distillation or catalytic cracking and that are the first to claim that the used oil is on-specification (whether generated at the refinery, or at an off-site location), would be defined as marketers subject to the requirements for used oil marketers found in part 279, subpart H.

5. Section 279.10(g)(5)—Used Oil Captured by the Refinery's Hydrocarbon Recovery System or Wastewater Treatment System and Inserted Into Petroleum Refining Process

Section 279.10(g)(5) of today's rule exempts from the part 279 standards used oil that incidentally enters and is recovered from a petroleum refining facility's hydrocarbon recovery system or its wastewater treatment system (e.g., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refining

process. Oil (that may contain small amounts of used oil) that has been recovered from a refining facility's hydrocarbon recovery or wastewater treatment system is typically used as a feedstock in petroleum refining to produce more petroleum products. EPA understands that used oil, generated from routine refinery process operations and that incidentally enters a refinery's recovery or wastewater treatment system (e.g., drips, leaks, and spills from compressors, valves, and pumps), represents a small portion of the total oil that enters (and is then recovered from) the recovery or wastewater treatment system. Thus, the oil recovered from the system is more properly characterized as crude feedstock than used oil. Provided the used oil is inserted into the petroleum refining process, EPA believes that regulation under part 279 standards is unwarranted. This exemption from the part 279 standards does not extend to used oil which is intentionally introduced into a petroleum refinery's recovery or wastewater treatment system (e.g., pouring collected used oil into any part of the hydrocarbon recovery system, storm or process sewer system or into wastewater treatment units). Used oil may not be introduced to the refinery's hydrocarbon recovery or wastewater treatment system as a way to avoid meeting the conditions specified in § 279.10(g)(4).

For the purposes of the exemption in today's rule, the examples cited in the existing *de minimis* wastewater exclusion (§ 279.10(f)) provide guidance on what types of releases to a refinery's hydrocarbon recovery or wastewater treatment system would be considered "routine" or "incidental". The exemption is intended to cover losses from drippage, minor spillage, etc., that cannot be reasonably avoided. For example, used oil that has been collected from equipment or vehicle maintenance activities and intentionally introduced into a refinery's wastewater treatment system would not be exempt under § 279.1(g)(5) from the part 279 standards once recovered. Similarly, used oil that is generated off-site and is brought to the refinery may not be added to any portion of the refinery's wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), and still be exempt under § 279.10(g)(5) once recovered; such oil is clearly not "incidentally captured" by the refinery's wastewater treatment system. In fact, unless specifically exempted under § 279.10(g)(2) or § 279.10(g)(3) of today's rule, this type of activity would meet the definition of used oil processing under the existing used oil management standards (see 40 CFR 279.1).

Today's rule does not preclude intentional introduction of used oil in to the facility's recovered oil tanks. EPA is aware that used oil from both on- and off-site is often added directly to the petroleum refining facility's recovered oil tanks. Mixtures of used oil and recovered oil that contain greater than 1% used oil are regulated as used oil. Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process prior to crude distillation or catalytic cracking are exempt from the part 279 used oil management standards under § 279.10(g)(2). Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process after crude distillation or catalytic cracking are exempt from the part 279 standards (under § 279.10(g)(4)) only if the used oil meets the used oil specification prior to mixing with recovered oil.

6. Section 279.10(g)(6)—Stock Tank Bottoms

Section 279.10(g)(6) of today's rule exempts tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil from the part 279 standards. Like the actual mixtures of used oil and crude oil, the bottoms from these mixtures are expected to contain insignificant amounts of used oil. Therefore, the Agency does not believe that the bottoms from tanks (or other units) containing mixtures of used oil and crude oil should be subject to the used oil management standards. The tank bottoms are subject to all other applicable requirements, i.e., the § 262.11 requirement to determine if they are hazardous waste.

D. Used Oil Transportation

Section 279.1—Definition of Transfer Facility

Today's rule revises the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are not subject to the processor standards as a result of today's rulemaking. In the September 10, 1992 final rule, a transfer facility was defined as a transportation-related facility where shipments of used oil are held for more than 24 hours but less than 35 days during the normal course of transportation. Today's rule expands that definition to allow used oil to be held for more than 24 hours but less than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Under the amended definition, as discussed below in section F of this preamble, a site to which used oil from oil-bearing electrical transformers is transported for filtering prior to reuse would be considered a transfer facility under today's definition.

E. Section 279.20(b)(2)(ii)—Used Oil Processing by Generators and Transfer Facilities

Since the promulgation of the September 10, 1992, Used Oil Management Standards, a number of parties have raised concerns regarding the definition of used oil processor and the types of activities that are covered by that definition. The commenters are concerned that a broad construction of the term processor inappropriately includes a number of very basic on-site generator activities that the Agency did not intend to regulate under the used oil processor standards (e.g. reconditioning/maintenance to extend the life of used oil, separation of used oil from wastewater discharge, etc.). EPA agrees that activities such as these, when performed by the generator, were not intended to be covered under the used oil processor standards because used oil processing is not their primary purpose, as explained below in greater detail. In fact, too broad an interpretation of the processor definition may discourage environmentally beneficial recycling and waste minimization activities by imposing an unwarranted regulatory burden on owners and operators that EPA did not intend to regulate as used oil processors.

Therefore, today's rule revises the used oil management regulations to clarify the Agency's intent regarding the definition of a used oil processor by specifying those on-site maintenance, filtering, and separation activities that are not, and were not intended to be subject to the used oil processing standards. Under today's rule, generators [1] who only handle used oil in a manner specified under § 279.20(b)(2)(ii) are not processors provided that the used oil is generated on-site and is not being sent directly off-site to a burner of on- or off-specification used oil fuel. (Section 279.20(b)(2)(ii) also applies to collection

[1] A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations. For example, generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from households and "do-it-yourself" oil changes.

centers and aggregation points since these entities are regulated as generators.)

Activities that EPA did not intend to include under the definition of used oil processor are described below. EPA does not believe that the activities identified in § 279.20(b)(2)(ii) should be subject to the used oil processor standards because used oil processing is not the primary purpose of these activities i.e., the primary purpose of these activities is not to produce from used oil or to make it more amenable for the production of used oil derived products, and the Agency does not expect these limited activities will pose the same kinds of environmental problems that may occur at processor facilities. Instead, in these cases, the act of mixing, filtering, separating, draining etc., used oil by the generator constitutes a basic step that is incidental or ancillary to a primary activity which is distinct from used oil processing. It is important to note, however, that owners or operators who generate used oil as a result of any of the activities specified in § 279.20(b)(2)(ii) are considered used oil generators and are subject to the generator standards in subpart C.

EPA is allowing on-site but not off-site burning of used oil generated from designated on-site activities because the Agency believes that this approach best enables EPA to strike a reasonable balance between encouraging beneficial on-site reuse and recycling activities that should pose very limited risks, on one hand, and ensuring that activities undertaken primarily to make used oil more amenable for burning (i.e., used oil processing) are adequately controlled under the more stringent used oil processing standards.

The definition of a used oil processor is based on the purpose for which used oil is being filtered, separated, or otherwise reconditioned (i.e., whether the activity is designed to produce used oil derived products or to make used oil more amenable for the production of used oil derived products). The Agency is concerned that in situations where used oil is being filtered, separated or otherwise reconditioned and then sent to off-site burners, the purpose of the activity may prove difficult to discern and that consequently, § 279.20(b)(2)(ii) provisions may be used as a means to avoid compliance with the used oil processor standards (i.e., by persons who claim not to be used oil processors under the § 279.20(b)(2)(ii) provisions but whose primary purpose is to make the used oil more suitable for burning). Therefore, EPA believes it is necessary to adopt an objective measure of the purpose of the activity. The Agency believes that a prohibition against sending used oil generated from specified on-site activities to off-site burners provides the most practical and effective way to ensure that activities undertaken only to make used oil more amenable for burning are subject to the used oil processor standards.

1. Definition of Used Oil Processor

(A) Reconditioning used oil before returning it for reuse by the generator. Under today's rule facility owners or operators who clean, separate, or otherwise recondition used oil generated on-site and then reuse it are not considered used oil processors, provided that the reconditioned used oil is being reused by the owner or operator who generated it. Examples of activities covered under this category include filtering of metalworking fluids for reuse, and filtering and then replacing oil from oil-bearing transformers and turbines during routine maintenance.

Most manufacturing facilities have in place central filtration systems designed to remove contaminants from and extend the life of water-soluble metal working fluids (e.g., lubricants and coolants), used in machining, grinding, and boring equipment. These filtration systems are on-site systems that filter chips, metal fines, dirt, water, and other contaminants from cutting fluids, drawing lubricants and coolants used in machining operations. The filtration of these extraneous materials is designed to extend the life of the reusable coolants and lubricants and is incidental to the production process. Today's rule clarifies that this type of filtration activity is not subject to the used oil processing standards when the generator reuses the filtered oil.

Similarly, during regularly scheduled maintenance of oil-bearing transformers and turbines, the oil in the electrical equipment is removed so that repairs/maintenance can be performed. In some instances, the oil is filtered prior to replacement. The filtering of the used oil is done to extend the life of the used oil, not because the oil is no longer useful, and is therefore ancillary to the equipment repair and maintenance. While, under today's rule, the owner or operator would not be considered a processor in these cases, the draining of the used oil from the transformer constitutes generation of used oil so that the facility would be considered a used oil generator.

The Agency is aware that not all used transformer oil is drained and filtered in the field. Instead, the oil-bearing electrical equipment may be transported to a central location where the oil is removed, filtered, and replaced. Or, the used oil may be removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location where it is filtered and put back into electrical equipment. Under today's rule, in cases where electrical equipment containing used oil is transported to a central location, the transporter of the oil bearing electrical equipment would not be considered a used oil transporter. However, the owner or operator would become a generator at the point at which the used oil is drained from the equipment (i.e., at the site where the oil is drained and filtered).

In cases where the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location for filtering prior to replacement into electrical equipment, the owner or operator would become a generator in the field (i.e., at the point at which the used oil is drained). The person who then transports the used oil would also be considered a used oil transporter subject to the transporter standards. In these cases, the location at which the used oil is filtered would be considered a used oil transfer facility subject to the transfer facility standards in § 279.45, provided that the used oil is stored at the site for more than 24 hours and less than 35 days. If the used oil is filtered within 24 hours of being drained (i.e., during transport) only the part 279 standards for used oil transporters would apply. This filtering activity should not raise the kind of environmental concerns that would be present at used oil processors; essentially, the filtering is incidental to the transportation and storage and should not change a facility's regulatory status. As discussed in more detail below, today's rule provides that transporters of used oil that is removed from electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to the same use are not subject to the processor or re-refiner requirements in subpart F. In accordance with § 279.10(e), once the used oil has been reclaimed to the point where it is ready for reuse without further processing, it is not subject to regulation as used oil.

(B) *Separating used oil from wastewater to make wastewater acceptable for discharge or reuse.* Today's rule clarifies that oil/water separation activities designed to make wastewater acceptable for discharge or reuse are not subject to the used oil processor standards. Facilities often use oil/water separators to remove oil (which may contain used oil) from oil/

water mixtures collected from the facility's storm sewer, process sewer, sumps and other wastewater containment areas. These separation systems use chemical and physical methods to break the oil/water emulsion and recover oil from the wastewater in order to make the wastewater or storm water acceptable for discharge or reuse in compliance with local, state and federal regulations.

This type of pretreatment of wastewater containing oil is designed primarily to ensure that the wastewater meets established limits for water discharge to streams and POTWs, and not to produce used oil derived products or to make used oil more amenable for the production of used oil derived products. This type of oil/water separation activity is therefore not subject to the used oil processor standards as clarified under today's rule. It should be noted, however, that any used oil recovered from separator units would be subject to the used oil generator standards. It is also important to note that this provision applies only to used oil that is generated on-site. The provision would apply, for example, to simple oil water separation activities conducted (for purposes of wastewater discharge) by a used oil processor on wastewater which has been generated by that processor. However, persons who perform oil/water separation activities on oily wastewater received from off-site would be considered used oil processors.

(C) Using oil mist collectors to remove droplets of used oil from in-plant air to make plant air suitable for continued recirculation. As clarified under today's rule, the act of removing used oil from ambient air in the workplace is not subject to the used oil processor standards. At manufacturing facilities, droplets of used oil from machining operations are often dispersed into in-plant air. Oil mist collectors physically remove the small droplets of oil present in the ambient air. This activity is not subject to the used oil processing standards because it is intended primarily to make plant air suitable for continued recirculation and not to produce products from used oil or to make it more amenable for the production of used oil derived products. However, the oil removed from oil mist collectors is subject to the used oil generator standards.

(D) Removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil. Under § 279.10(c) of the used oil standards, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material are not used oil except when burned for energy recovery. Today's rule clarifies that the Agency does not consider the removal of used oil from materials containing or contaminated with used oil in order to remove excess oil in accordance with § 279.10(c) to be used oil processing. The production of used oil derived products is clearly not the primary reason for removing used oil from materials containing or contaminated with used oil. Instead, the activity is conducted primarily to clean the materials (e.g., machine tools, scrap metal, etc.) prior to reuse, recycling, or disposal and is therefore not subject to the used oil processing standards as clarified by today's rule. However, in removing the used oil from the materials, the owner or operator becomes a used oil generator subject to the Subpart C used oil generator standards.

(E) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater. Under § 279.23 of the used oil standards, used oil may be burned in a used oil-fired space heater under specified conditions, and provided that the space heater burns only used oil that the owner or operator generates and/or used oil obtained from household DIY oil changers. Prior to burning, the used oil must often be filtered to remove impurities. Today's rule clarifies that filtering of used oil for the purpose of removing contaminants prior to burning the used oil in a space heater is not considered processing of used oil.

EPA provided a regulatory exemption from the used oil burning standards for generators who burn used oil in on-site space heaters (in accordance with § 279.23) because the Agency believes that burning of small amounts of used oil in space heaters poses insignificant risks due to the small volume of used oil burned (see 50 FR 49194, Nov. 29, 1985). The Agency believes that, because of the small volumes of used oil involved, filtering, separating, or otherwise reconditioning used oil that is generated on-site prior to burning it in a space heater would also not pose significant risk. Therefore, although the purpose of the filtering activity in this case is to make the used oil more amenable for burning, because of the small amounts of used oil being filtered for this purpose, the Agency does not believe that imposition of the used oil processor standards is warranted. EPA is therefore adding a regulatory clarification (§ 279.20(b)(2)(ii)(F)) that the used oil processor standards do not apply to filtering of used oil prior to burning it in a space heater, provided that the used oil is generated on-site or obtained from households or "do-it-yourself" oil changes.

F. Section 279.41—Restrictions on transporters who are not also processors or re-refiners and changes to the definition of transfer facility.

Today's rule amends § 279.41 to provide that transporters of used oil that is removed from oil-bearing transformers and turbines and filtered by a transporter or at a transfer facility before being returned to its original use are not subject to the used oil processor and re-refiner requirements. As previously discussed, during routine maintenance of oil-bearing transformers and turbines (or similar equipment), the oil in the electrical equipment is removed so that repairs/ maintenance can be performed. In some cases, the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck (subject to the used oil transporter standards) to a central location where it is filtered and put back into electrical equipment. As discussed above, under today's rule the filtering of the used oil would not be considered used oil processing provided that the filtered oil is reused in the same or similar manner. And, in these cases (i.e., where the used oil is removed from the equipment and transported to a separate location for filtering), the location at which the oil is filtered would be considered a transfer facility provided that the used oil is stored for more than 24 hours and less than 35 days. If, as sometimes occurs, the used oil is filtered within 24 hours of being stored at the central location (i.e., during transport) the only applicable standards would be the part 279 standards for used oil transporters (i.e., the § 279.45 requirements for used oil storage at transfer facilities would not apply).

Section 279.41(c) of today's rule provides conforming changes to the used oil transportation standards to allow transporters or transfer facilities to filter the used oil without being subject to the used oil processor standards. It should be clearly noted, however, that if the used oil is stored at a site for more than 35 days, greater environmental concerns may be present, so the site would no longer be considered a transfer facility and the processor standards would apply.

In addition, this rule expands the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are exempt from or

performed pursuant to the part 279 standards as a result of today's rulemaking. Under today's revised definition, used oil can be held at a transfer facility for more than 24 hours but less than 35 days prior to an activity and performed pursuant to § 279.20(b)(2). As a result of this change, a site where used oil that has been drained from oil-bearing transformers and turbines is held for more than 24 hours and less than 35 days prior to being filtered for reuse would be considered a transfer facility.

G. Section 279.46—Tracking Today's rule revises the § 279.46 tracking requirements as they apply to rail transporters. Under amended § 279.46, a signature is not required on records of acceptance or records of delivery of used oil shipments that are exchanged between rail transporters. The Agency is making this change in response to comments submitted by the railroad industry regarding the impracticability of requiring signed receipts when used oil is transferred from one rail transporter to another. EPA is aware that rail cars are typically transferred from one railroad company to another without the face-to-face contact that occurs in, for example, the motor carrier industry. The Agency also recognizes that, unlike non-rail transporters, railroads rely on sophisticated electronic tracking and information systems for recording rail-to-rail transfer of cargo. Given these unique circumstances, and in light of the fact that 40 CFR 263.20(f) regulations for hazardous waste transporters do not include signature requirements for intermediate rail carriers, EPA agrees that the signature requirements are unduly burdensome and unnecessary when applied to intermediate used oil rail transporters. EPA is therefore revising the used oil regulations to eliminate the § 279.46 signature requirements between intermediate rail carriers.

H. Corrections to the Regulatory Language

1. Requirements for Enforcement Authority

The Agency published a correction notice on May 3, 1993, which amended several sections of the part 279 used oil management standards that were originally promulgated on September 10, 1992. In the May 3, 1993, correction notice, EPA incorrectly amended regulatory § 271.16, that addressed the requirements for States to have adequate criminal enforcement authority for hazardous waste. EPA amended the regulation to include enforcement authority for used oil handlers that manage used oil incorrectly, but EPA inadvertently deleted from § 271.16 enforcement authority for the improper management of hazardous waste. Therefore, today's rule corrects this section to include enforcement authority for the improper management of both hazardous waste and used oil.

2. Rebuttable Presumption

The final used oil regulations published on September 10, 1992, allow persons to rebut the presumption that used oil containing more than 1,000 ppm total halogens is a hazardous waste by using an analytical method from SW–846, Third Edition, to show that the used oil does not contain hazardous waste. In the regulations, the Agency provided information on the cost of SW–846, Edition III and how to obtain it. However, the Agency misquoted the cost of the document. The actual cost was $319.00 rather than $110.00 as quoted throughout the September 10, 1992, regulations. To avoid having to amend the regulations as a result of future changes in the cost of the document, the Agency is deleting reference to the cost of SW–846, Edition III from the used oil regulations.

3. Characteristic Hazardous Waste

Today's rule revises § 279.10(b)(2)(iii) by deleting reference to the listing status (under part 261, subpart D) of a hazardous waste that is mixed with used oil. This change is necessary to correct a contradiction in the regulations regarding applicability of the used oil management standards to mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C. In technical corrections to the used oil management standards published on May 3, 1993, (57 FR 26420), EPA amended § 279.10(b)(2) to correct an error in the September 10, 1992, standards regarding how these mixtures are regulated. At that time, conforming changes should have been, but were not made to § 279.10(b)(2)(iii). As amended by today's rule, § 279.10(b)(2)(iii) correctly provides that mixtures of used oil and hazardous waste that solely exhibits one or more hazardous waste characteristic and mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more subpart C hazardous characteristics are regulated as used oil if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability and the resultant mixture does not exhibit the characteristic of ignitability.

IV. State Authorization

As explained in the preamble to the May 3, 1993, Technical Correction to the September 10, 1992, rule, EPA is treating the majority of the final used oil management standards in the same manner as "non-HSWA" Subtitle C requirements. The used oil management standards became effective on March 8, 1993, only in those States and Territories that do not have RCRA base program authorization and on Indian lands. States are required to revise their Subtitle C base programs to adopt the new used oil requirements (including those promulgated in today's rule) by July 1, 1994, or by July 1, 1995, if a statutory change is necessary. See 58 FR 26420 and 57 FR 41605.

Authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). Except for the amendments made to § 279.20(b), the standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. The amendments made to § 279.20(b) merely provide clarification of the existing used oil regulations and are therefore not considered to be less stringent than the current Federal program. Therefore, with the exception of the provisions added at § 279.20(b)(2)(i), authorized States would not be required to modify their programs to adopt requirements equivalent to or substantially equivalent to the provision listed above.

V. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipient thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the "Executive Order."

OMB has exempted this regulatory action from E.O. 12866 review.

VI. Paperwork Reduction Act

The reporting and recordkeeping requirements of part 279 have been approved by OMB and generally assigned the control number 2050–0124 (See 58 FR 34374 (June 25, 1993)), which remains in effect. As today's rule does not impose any new such requirements, a separate information collection request was not prepared.

VII. Regulatory Flexibility Act

Today's rule does not impose any new regulatory requirements, and indeed, decreases the costs of compliance for a number of facilities. I therefore certify that today's rule will not have a significant impact or a substantial number of small entities.

VIII. Administrative Procedures Act

Today's rule takes final action on EPA's 1985 and 1991 proposals to exempt used oil inserted into primary refining processes from the used oil management standards. EPA did not address these issues in its September 10, 1992, final rule, and therefore those proposals remained outstanding until today's rule. Since these issues were fully addressed in those proposals, further public comment on today's rule is unnecessary. The other changes being made in today's rule either correct errors or clarify the language contained in the September 10, 1992 rule. No comment is necessary on these provisions.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: February 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.16 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 271.16 Requirements for enforcement authority.

(a) * * *

(3) * * *

(ii) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; or who makes any false statement, or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste). Criminal fines shall be recoverable in at least the amount of $10,000 per day for each violation, and imprisonment for at least six months shall be available.

* * * * *

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

3. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

4. In § 279.1 the definition of "Petroleum refining facility" is added in alphabetical order and the definition of "Used oil transfer facility" is revised to read as follows:

§ 279.1 Definitions.

* * * * *

Petroleum refining facility means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

* * * * *

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

§ 279.10 [Amended]

5. Section 279.10(b)(1)(ii) is amended by removing the phrase "for the cost of $110.00."

6. Section 279.10 is amended by revising paragraphs (b)(2)(iii) and (g) to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(2) * * *

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under § 261.21 of this chapter.

* * * * *

(g) *Used oil introduced into crude oil pipelines or a petroleum refining facility.* (1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking

are exempt from the requirements of this part.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of § 279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

* * * * *

7. Section 279.20 is amended by revising paragraph (b)(2) to read as follows:

§ 279.20 Applicability.

* * * * *

(b) * * *

(2) (i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with subpart F of this part.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewaters;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to § 279.10(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to § 279.23.

* * * * *

8. Section 279.41 is amended by adding paragraph (c) to read as follows:

§ 279.41 Restrictions on transporters who are not also processors or re-refiners.

* * * * *

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in subpart F of this part.

§ 279.44 [Amended]

9. Section 279.44(c) introductory text is amended by removing the phrase "for the cost of $110.00."

10. Section 279.46 is amended by revising paragraphs (a)(5) and (b)(5) to read as follows:

§ 279.46 Tracking.

* * * * *

(a) * * *

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) * * *

(5) (i) Except as provided in paragraph (b)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

* * * * *

§ 279.53 [Amended]

11. Section 279.53(c) introductory text is amended by removing the phrase "for the cost of $110.00."

§ 279.63 [Amended]

12. Section 279.63(c) is amended by removing the phrase "for the cost of $110.00."

[FR Doc. 94–4818 Filed 3–3–94; 8:45 am]
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Federal Register

Friday
March 4, 1994

Part VI

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program (TIIAP); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 940118-4018]

RIN 0660-AA04

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces the availability of funds for planning and demonstration projects to promote the goals of development and widespread availability of advanced telecommunications technologies; to enhance the delivery of social services and generally serve the public interest; to promote access to government information and increase civic participation; and to support the advancement of an advanced nationwide telecommunications and information infrastructure.

DATES: Applications for the TIIAP must be mailed or hand-carried to the address indicated below and received by NTIA on or before 5 p.m., May 12, 1994. NTIA anticipates that it will take between three to four months to process all applications and make final funding determinations.

ADDRESSES: Office of Telecommunications and Information Applications, Department of Commerce, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, NW., room H-4889, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Charles M. Rush, Acting Director of the Office of Telecommunications and Information Applications, Telephone: (202) 482-2048; fax: (202) 482-2156; e-mail: tiiap@ntia.doc.gov Information on the program may also be downloaded from the NTIA Bulletin Board. Modem should be set at either 2400 or 9600 baud, 8 data bits, 1 stop bit: (202) 482-1199.

SUPPLEMENTARY INFORMATION:

Authority

The National Telecommunications and Information Administration (NTIA), Department of Commerce, serves as the President's principal adviser on telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Public Law 102-538, 106 Stat. 3533, 47 U.S.C. 901-04 (1993).

The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Public Law 103-121, 107 Stat. 1153 (1993), provides the Department of Commerce $26 million in assistance for public telecommunications facilities under 47 U.S.C. 390-393A (1991), to be used for the planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety or other social services (notwithstanding the requirements of 47 U.S.C. 392 (a) and (c)).

Program Description

NTIA announces a competitive grant program, the TIIAP, created to advance the goals of the Administration's National Information Infrastructure (NII) initiative. Major goals of the NII initiative include: The promotion of private sector investment through appropriate tax and regulatory policies; the extension of universal service so that information is available to all at affordable prices, using the widest variety of appropriate technologies; the promotion of technological innovation and new applications; wider access to government information; and guarantees of information security and network reliability.

For details of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 FR 49025 (September 21, 1993). This document is available on Internet, in ASCII format through both FTP and Gopher. The FTP file name is "niiagenda.asc." Address: "ftp.ntia.doc.gov." Login as "anonymous". Use your e-mail address or guest as the password. Change directory to "pub." The Gopher address is "gopher.nist.gov." Login as "gopher." Choose the menu item "DOC Documents." Choose "ntiaagenda.asc."

The TIIAP will provide matching grants to state and local governments, non-profit health care providers, school districts, libraries, universities, public safety services, and other non-profit entities. Grants will be awarded after a competitive merit review process and will be used to fund projects to connect institutions to existing networks and systems, enhance communications networks and systems that are currently operational, establish new network capabilities, permit users to interconnect among different networks and systems, and bring more users on-line. Equally important, they will help leverage the resources and creativity of the private sector to devise new applications and uses of the NII. The success of these pilot projects will create an ongoing process that will generate more innovative approaches each year.

Funding Availability

Congress appropriated $26 million for competitive information infrastructure grants in fiscal year 1994 for the planning and construction of telecommunications networks for the enhancement of equal opportunity and the provision of educational, cultural, health care, public information, library, public safety or other social services. NTIA expects that the level of competition will be extremely high. The overall level of funding will place obvious limits on the amount of funding available for individual grants, although NTIA anticipates receiving a wide range of grant proposals.

Currently, there is pending legislation to authorize an infrastructure grant program for fiscal years 1995 and 1996 that would continue to advance the goals of the grant program described in this Notice for fiscal year 1994 funds. NTIA anticipates that the pending authorization legislation will, if enacted, prescribe standards fully consistent with the criteria set forth in this Notice (criteria that are set as a matter of NTIA's administrative discretion, consistent with NTIA's existing statutory authorities; see 47 U.S.C. 392 (1991)). Nevertheless, it must be emphasized that, until new authorizing legislation is enacted, NTIA cannot unequivocally state what specific criteria it will apply in evaluating grant applications for fiscal years 1995 and 1996. Accordingly, the criteria described below apply only to fiscal year 1994 project proposals.

Matching Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. NTIA will provide up to fifty per cent (50%) of the total project cost, unless extraordinary circumstances warrant a grant of up to seventy-five per cent (75%). A project will not be considered grantable unless the applicant can document a capacity both to supply matching funds, and to sustain the project beyond the period of the award. Cash matching is highly desirable; however, NTIA will allow in-kind matching on a case-by-case basis. Federal funds may not be used as matching monies. Grant funds under this program will be released in direct proportion to local matching funds raised and/or documented.

Type of Funding Instrument

The funding instrument for awards under this program shall be a grant.

Eligibility Criteria

The fiscal year 1994 grant cycle of the TIIAP is divided into two separate categories. Category One supports the efforts of all eligible applicants (state and local governments, as well as non-profit entities) to develop their information infrastructures through demonstration projects. NTIA considers this to be the principal funding category. Category Two focuses on planning grants, and is further divided into two subcategories. The first subcategory supports planning efforts that project a statewide, multi-state, or national impact. The second subcategory supports the planning efforts with an intrastate or local impact. State and local governments, as well as multi-state and/or non-profit entities are eligible to apply in all categories.

Award Period

Successful applicants will have between six and eighteen months to complete their projects. The actual time will vary depending on the complexity of any particular project. During the award period, NTIA has a duty to monitor and evaluate the projects it funds through the TIIAP. Typically, monitoring will involve site visits by NTIA staff and designated evaluators, informal telephone contact, and evaluation of the grantees' written reports. NTIA also expects that grantees, working with NTIA, will evaluate the results of their projects, and formalize and disseminate information about the lessons learned therefrom. Further information on NTIA's duty to monitor funded projects, as well as NTIA's evaluation expectations, is contained in the grant application kit.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or one hundred per cent (100%) of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88), shall be used in applying for financial assistance. The forms used in the Application are subject to the Paperwork Reduction Act, and have been cleared by the Office of Management and Budget under Control Numbers 0348–0043, 0348–0044, and 0348–0040. Application kits may be obtained by writing to the address listed in the **ADDRESSES** section above.

Project Funding Priorities

Funding under the TIIAP will be awarded to support projects that most effectively enhance economic opportunity, the provision of education, culture, health care, public information, library, public safety, social services, or other efforts to meet public needs; and that support the further development of a nationwide, high-speed, interactive infrastructure, incorporating the widest variety of information technologies. The number of proposals that will receive funding in each of the two categories will depend, in large measure, on the total number of applications that NTIA receives. Because the aggregate funding level of individual grants cannot be determined in advance, applicants must justify the amounts requested.

NTIA anticipates that approximately sixty per cent (60%) of the funds appropriated for this grant program will be devoted to demonstration projects, with approximately forty per cent (40%) of the funds devoted to planning grants for states, local governments, regional entities, and non-profit entities. Details of funding priorities within these categories are as follows:

Priority in Category One—Demonstration Projects

A priority for demonstration project grants is that the project develop a model that others can follow. An important element of this model is a plan for disseminating the knowledge gained as a result of carrying out the project. In NTIA's view, this nation's telecommunications infrastructure should reinforce the values of American democracy, and the TIIAP should support projects that empower citizens, promote equal opportunity, protect individuals' rights, and strengthen democratic institutions.

Therefore, within the context of this category, all applications in the public interest are candidates for support; however, principal consideration will be given to telecommunications and information applications that promote economic opportunity and the effective provision of education, health care, public safety, libraries, community information services, creation of information empowerment zones, and other approaches that foster public participation in the political process and civic life.

Priorities in Category Two—Planning Grants

Statewide, Regional, and National Planning Grants

Priority consideration will be given to projects whose impact will be statewide, regional (multi-state), or national. A component of this category will be support for states to engage in comprehensive telecommunications infrastructure planning, particularly those states that have not yet developed detailed strategies for their respective information infrastructures. NTIA will also consider, but with a lower priority, applications from states that have developed comprehensive plans, but seek further improvement in these plans. NTIA also encourages proposals from multi-state consortia, as well as from organizations, or coalitions of organizations, for regional or national telecommunications infrastructure planning.

Local and Intrastate Planning Grants

NTIA will deem most competitive those projects that clearly and demonstrably further the goals of this program at a community, county, or multi-county level. While the focus of this subcategory is local, NTIA encourages collaborations among counties, communities, and public and private organizations at the local or regional level, as well as coordination with state agencies involved with telecommunications infrastructure planning and implementation.

Evaluation Criteria

A. General Criteria

As a network of networks, the telecommunications component of the National Information Infrastructure will never be a single entity. In fact, telecommunications networks and systems in the United States have been growing and evolving for more than a century. This trend will continue (and supporting it is a primary policy goal of the NII initiative), driven by technological innovation, market forces, and the elaboration of increasingly sophisticated and varied information delivery systems throughout the world. Applicants should be aware of this trend, and configure their proposed projects to take advantage of existing and emerging standards for interoperability.

The success of any grant program depends upon its ability to fund only those projects that are well thought out and comprehensively planned.

Therefore, no funds will be expended under this program unless the project demonstrates the most economic and efficient use of scarce Federal resources. Other general criteria that all applicants should address are:

1. Technical Considerations

A major goal of the NII is the integration of networks. The TIIAP will not foster stand-alone, "dedicated networks," that are incapable, for either technical or practical reasons, of interconnecting with other networks and systems. In part, applicants will be judged on the extent to which they plan to coordinate information infrastructure activities in their state, in neighboring states, or in the region. Applicants should address the technical aspects of their information infrastructure projects. Proposals should address interconnectivity, the capacity of one system to easily transfer digital information to another system, at the state, regional, national, and international level, as appropriate. Whether the information infrastructure will be expandable is another important issue. The standards, codes, and protocols that will allow for interoperability should be addressed in this section. Finally, the capacity for interactivity should be described in detail.

2. Partnerships

NTIA will look favorably on joint applications from partnerships of two or more entities. For this reason, applicants should be aware of other relevant information infrastructure projects in the state or region. To the extent possible, applicants should plan to coordinate their projects with other relevant projects.

3. Innovation and Experimentation

An overriding goal of the TIIAP is to foster innovation and experimentation in the uses and benefits that accrue from information infrastructure, while at the same time rewarding those projects which display innovative approaches to the problem of ensuring individual privacy. For this reason, the program will carefully assess projects from the perspective of technology or technologies deployed, current applications supported, and the potential for growth in the range of services provided. As noted above, NTIA expects applicants to consider carefully the status of the existing infrastructure; however, applicants should be willing, when appropriate, to experiment with new uses and applications of the information infrastructure supported under this program.

4. Privacy

As noted above, NTIA expects applicants to consider carefully safeguards for the privacy of the information flowing through the information infrastructure funded through this grant program. While not mandating specifics, NTIA expects applicants to demonstrate a high level of respect for the privacy of users' information and data. Applicants proposing projects dealing with individually identifiable information will be required to prescribe mechanisms for protecting individual privacy. In addition, NTIA expects applicants to comply fully with all applicable privacy laws.

5. Eliminating Disparity of Access

One of the key roles for government in the NII is to promote equity of access, so that the information age does not create information "haves" and "have nots." Applicants should address how they intend to support the goal of promoting widespread access, and eliminating or reducing disparities in access, to the information infrastructure, consistent with the scope of the project. For purposes of this grant cycle, NTIA will look favorably on proposals that enable ordinary Americans to learn how to use, or benefit from, information infrastructure, without unreasonable burden or expense. Applicants should also consider how to train end-users in the use of information technologies. This section should address questions such as:

How will the applicant's proposal help ensure end-user ease of access to the telecommunications infrastructure?

How will the planning or implementation process encourage community development?

How will the planning or implementation process address the issue of access to the information infrastructure by minorities, disadvantaged, or otherwise under-served populations?

6. Role of Existing Information Infrastructure

By a variety of measures, the United States' existing information infrastructure is the most advanced in the world. Therefore, if an applicant requests support to construct new transmission capacity, there should be a clear discussion of why utilization of existing networks and systems cannot be relied upon efficiently and economically to meet the project's needs. A proposal should address whether incorporation of existing information infrastructure into the overall plan is feasible. Under this section, applicants should address questions such as:

What information infrastructure is currently available to the applicant? How can commercial and non-commercial providers of telecommunications and information services help the applicant meet its information needs?

7. Accommodation of Future Technology and Flexibility

As communications and information technologies rapidly evolve and improve, existing technology can quickly become obsolete. For this reason, all applicants should consider how they intend to address this issue. The capacity for upgrades and improvements, as well as the flexibility to accommodate changes in the volume or types of uses, should be considered from the beginning of any planning or development process.

8. Contribution to the Formation of the National Information Infrastructure

Applicants should explain how their proposed projects can make a contribution to the development of the National Information Infrastructure. Some questions that an applicant could consider are:

What applications and services are being provided through the existing information infrastructure?

How will the project ensure connectivity to other systems outside the immediate state or community?

What monitoring or evaluation plan will be utilized?

B. Specific Evaluative Criteria

1. Category One—Demonstration Projects

a. *Eligibility.* This category is open to any state or local government, or any non-profit entity. For purposes of this notice, a "local government" is any branch of government below the state level. This term also includes special purpose subdivisions, or government-funded entities that have responsibilities beyond the political boundaries of a single state, and Indian Tribal governments. A "non-profit" entity is any foundation, association, or corporation, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. This is the same definition used in 47 U.S.C. 397 (1991).

b. *Evaluative criteria.* A major criterion under this category will be the capability of the applicant actually to carry out the proposed project and/or the applicant's ability to deliver the proposed service or services. In addition to the general evaluative criteria set forth above, applicants for

demonstration projects should address the following criteria in their applications: (1) *Connection to end-users.* In formulating their proposals, applicants should be mindful of the needs of eventual end-users. Any system or network proposed for NTIA funding should include capacity for providing a range of information services, consistent both with the mission of the entity and the present and future requirements of end-users. Questions applicants might address are:

To what degree does the project duplicate other services available to users in the projected service area?

To what degree does the project include provisions for multifunctional activities—such as education, health care, community information services, etc.—and access to related information sources?

Will the project be structured to respond to increased demands for services from users?

(2) *Efficiency and economy.* In this era of limited fiscal resources, it is essential that each dollar be spent in the most efficient and economical manner possible. Some questions that the applicant might consider under this criterion are:

Is the proposed acquisition of information infrastructure, with NTIA grant funds, the most efficient and economical?

Why is the applicant's choice of technology the most appropriate to the proposal?

How will the system or equipment funded by NTIA be maintained? Is its operation assured for a reasonable amount of time after installation?

How does the applicant intend to deal with rapidly changing technology and issues of obsolescence?

What role will available commercial services play in the proposed project?

(3) *End-user support.* A large barrier to more successful utilization of information infrastructure is the end-user's inability to employ it. Therefore, applicants should consider how end-users will be trained to use the equipment and network. Some questions that the applicant might address are:

Are there specialized training requirements for the system?

Who is best qualified to provide the training?

Can end-users use the system to produce and disseminate information, as well as gain access to information?

Is the system or network user friendly, so that it does not discourage new users, or those who are not "computer literate?"

c. *Financial information.* Grant funds may be spent on purchase of telecommunications infrastructure equipment, long-term lease of services, end-user support, and other expenses reasonably related to the project.

2. Category Two—Planning Grants

Statewide, Regional, and National Planning Grants

a. Eligibility

For purposes of this section—Statewide, Regional, and National Planning Grants—eligible applicants are any of the fifty states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, America Samoa, and the Marianas Islands, as well as multi-state consortia, coalitions of organizations, or national entities.

b. Evaluative Criteria

In addition to the general evaluative criteria set forth above, applicants for planning projects should address the following criteria in their applications: (1) *Objectives.* Proposals should be consistent with the long range NII objective of fostering seamless, multi-functional networks. Accordingly, applicants should consider the concept of "interoperability," the view that every system, no matter its level of sophistication or geographic extent, is part, ultimately, of a global communication system that allows one end-user to communicate "transparently" with another end-user, irrespective of distance or time.

(2) *End-users.* In their proposals, applicants should identify the end-users of the information infrastructure. Considerations of numbers of users, the diversity of anticipated end-users, and what social good the applicant expects from implementation of its plan may help determine what strategies states will adopt. Under this section, applicants could address questions such as:

How will the widespread availability of telecommunications and information infrastructure capabilities be promoted within the proposal?

How should the costs of ensuring adequate access be allocated? Will the plan stimulate demand for new telecommunications services? How will the plan address the needs of previously disenfranchised potential users?

What steps are necessary to ensure end-user ease of access? What are the respective roles of the state and private sector in taking these steps?

(3) *Incorporation of broad input.* There are many individuals and sectors of society with a stake in the information infrastructure. How an applicant intends to incorporate their opinions and concerns into the final plan is crucial to the eventual successful implementation of the plan. Applicants should address how they intend to incorporate comments from the public into the planning process. The breadth and depth of representation, including a balanced representation of rural and urban, professional, socioeconomic, ethnic, cultural and other relevant interests, is important. Some questions for an applicant to address under this section are:

To what extent will the applicant work to promote public/private partnerships?

What procedures will ensure that individuals and entities can provide input?

What state and national agencies and private sector entities will be involved, and at what levels?

What monitoring or evaluation plan will be utilized?

c. *Financial information.* Grant funds may be spent on information collection, salaries, travel, lodging, and other expenses reasonably related to planning activities.

Local and Intrastate Planning Grants

a. Eligibility

This section supports development of planning and/or implementation strategies of local governments, intrastate multi-community or multi-county entities, and local non-profit organizations.

b. Evaluative Criteria

Many of the evaluative criteria applied to the previous planning grant category—questions of interoperability, identification of end-users, and incorporation of broad input—are germane to Local and Intrastate Planning Grant applications.

(1) Objectives

Although the focus of this subcategory is considerably less "global" than for Statewide, Regional, and National Planning Grants, proposals in this subcategory should nevertheless exhibit the same consistency with the long range NII objective of fostering seamless, multi-functional networks. Accordingly, questions of interoperability and connectivity should be carefully considered.

Within the context of this subcategory, a number of questions become especially relevant:

What provisions in the plan have been made to address crucial "last mile" connectivity questions?

Is sufficient technical and operational expertise available at the local level to ensure efficient planning and subsequent implementation?

Will service provider and/or end-user acceptance of new or expanded telecommunications services present any special difficulties?

(2) Formation of Partnerships

NTIA will consider favorably applications that demonstrate a

partnership among groups of communities or entities for the purpose of pooling and leveraging resources. This does not mean that these groups should come together merely for the purpose of obtaining a federal grant. This partnership or coalition should demonstrate that it will continue to function and operate effectively once the NTIA grant is concluded.

Can the local resources of national or regional organizations, both public and private, be enlisted in support of the planning effort?

What unique linguistic, social, cultural, political, or economic impediments exist locally that might hinder the planning effort?

(3) Innovation and Experimentation

Information infrastructure has evolved and been used in unanticipated ways. Similarly, many of the most valuable telecommunications services (such as the Internet) and facilities now in use were once experimental. NTIA is seeking applications for planning grants that will foster and encourage experimentation with use of NII technologies at the grass roots level, build the capacity of the public to participate in the emerging NII, or address specific objectives underlying the deployment of the NII as identified in the Agenda for Action (September 21, 1993). For this reason, projects supported under Category Two should be those that are more likely to lead to the development of innovative methods, practices, or policies that will ensure that the NII activities reach a broad population. The objective is to build both the technical and human infrastructure needed to make the NII useful to citizens. These plans can serve as models for similar projects that are most likely to lead to the development of systems, projects, and policies that can stimulate similar initiatives in other areas of the country.

(4) Support

Applicants should clearly define the administrative or institutional support that has been generated to advance any planning effort.

Can national sources of public and private funding be leveraged in support of a local planning effort?

Since many local initiatives tend to rely heavily in the initial stages on volunteer energies, how will questions of continuity be addressed?

c. Financial Information

Grant funds may be spent on information collection, salaries, travel, lodging, and other expenses reasonably related to planning activities.

Selection Procedures

Categories of projects warranting support under the TIIAP are described above. The priorities described at the beginning of each specific category sets out those types of projects that NTIA is most interested in supporting. These criteria will enable NTIA to ascertain the competitiveness of projects within certain priorities.

All applications will be subject to a thorough peer review process. Panels composed of individuals fully conversant with the technical and operational aspects of advanced telecommunications technologies and services will review the proposals and make non-binding recommendations to the agency. The final decision on successful applications will be made by the Assistant Secretary for Communications and Information, who also administers NTIA. All applicants should address the general criteria described above, regardless of the category to which they are applying. Specific criteria apply only within that category (i.e., a local government should not address the specific criteria for State Planning). While all criteria carry equal weight, not all criteria will be equally applicable to every proposal. Even if the applicability or lack of applicability of a particular criterion may appear obvious, an applicant should take care to explain why that criterion does not apply to its proposal.

Other Information

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal financial assistance awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of Department of Commerce or NTIA to cover pre-award costs.

No Obligation For Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce. Receipt of a TIIAP grant, however, will not eliminate the recipient from consideration for future funding.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: 1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department of Commerce are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided: 1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more that $100,000, and loans and

loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

Larry Irving,

Assistant Secretary for Communications and Information.

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Last List February 25, 1994

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103d Congress, 2d Session, 1994

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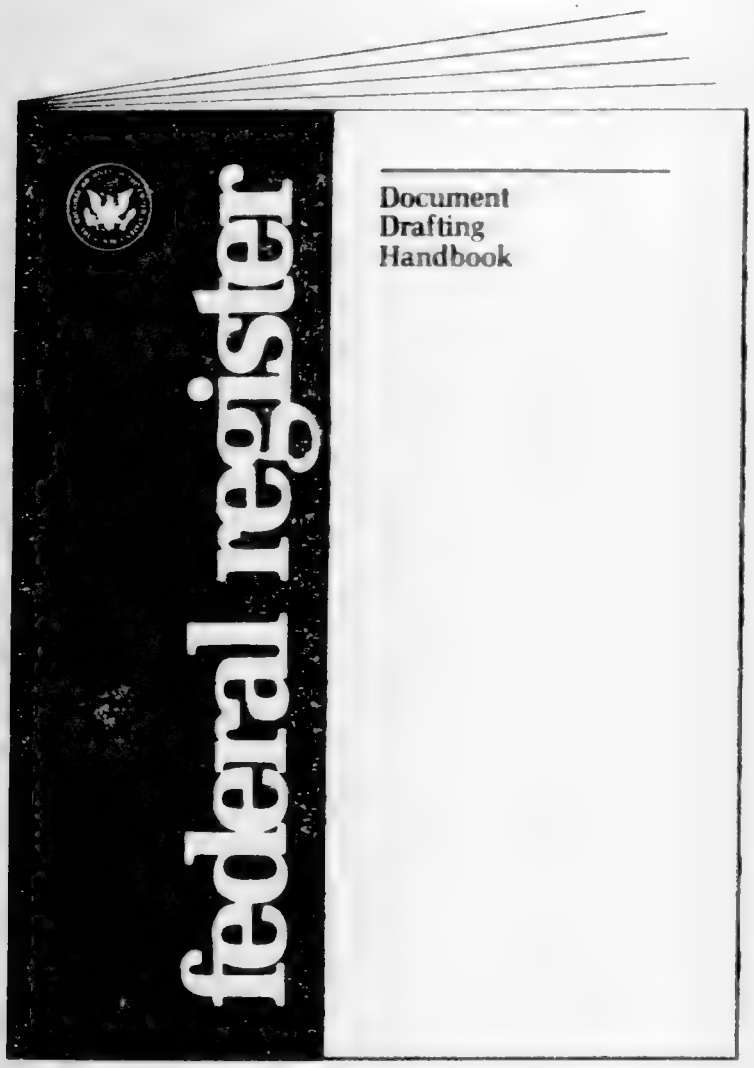

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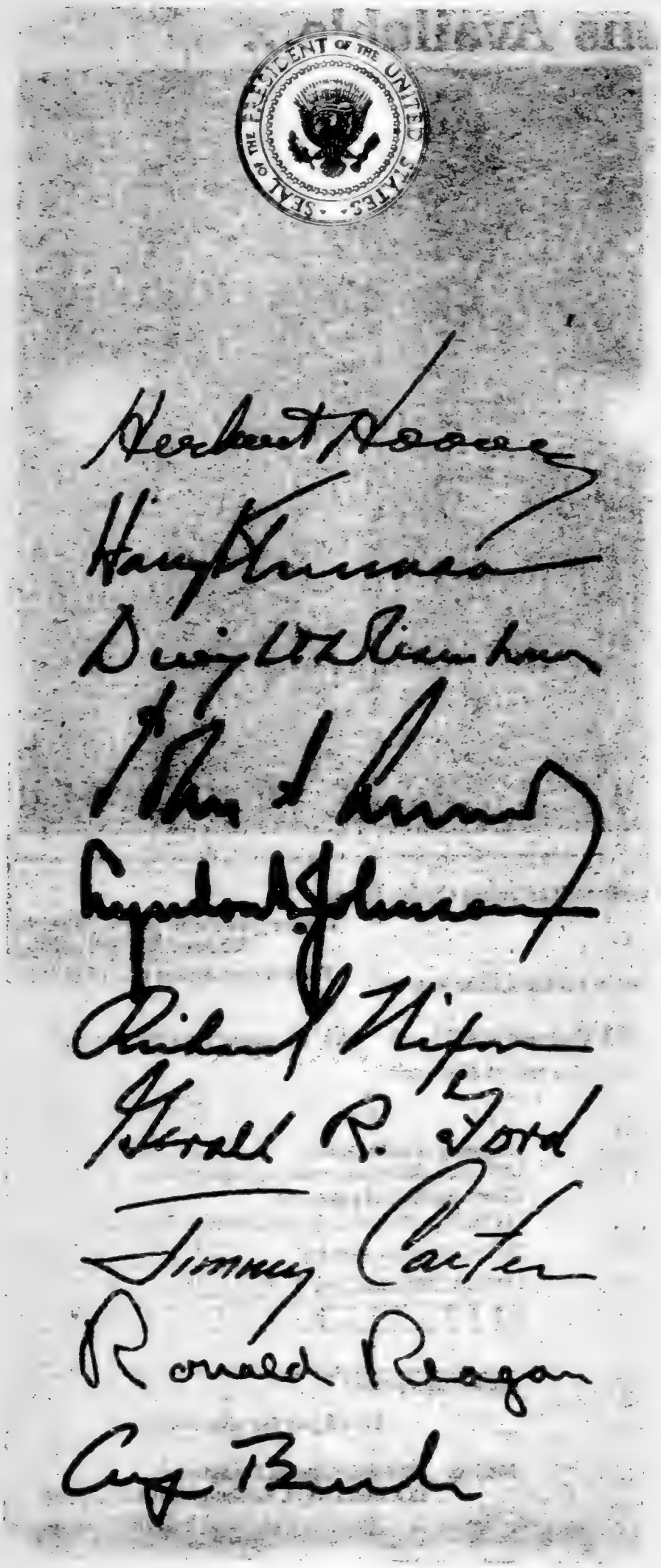

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Monday, March 7, 1994

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

RIN 0580–AA14

United States Standards for Soybeans

AGENCY: Federal Grain Inspection Service, Agriculture.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the U.S. Standards for Soybeans to: report the percentage of splits in tenths percent; reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the U.S. Sample grade aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight; reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0; eliminate the grade limitation on purple mottled or stained soybeans and establish a special grade, Purple Mottled or Stained, in the standards; eliminate the grade limitation on soybeans that are materially weathered; clarify the reference to Mixed soybeans in the standards; and establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0624–S, Box 96454, Washington, DC 20090–6454. Telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580–0013.

Background

On July 2, 1991, FGIS proposed in the **Federal Register** (56 FR 30342) to revise the U.S. Standards for Soybeans by (1) changing minimum test weight per bushel from a grade determining factor to a nongrade determining factor; (2) reducing the foreign material limits for grades U.S. Nos. 1 and 2 to 0.5 and 1.0 percent, respectively; (3) reducing the grade limits for splits to 5.0, 10.0, 15.0, and 20.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans, respectively; (4) reporting the percentage of splits in tenths percent; (5) reducing the tolerance for stones from eight to four and eliminating the aggregate weight option; (6) reducing the tolerance for pieces of glass from two to zero; (7) eliminating the grade limitation on purple mottled or stained soybeans and establishing a special grade, Purple Mottled or Stained, in the standards; (8) eliminating the grade limitation on soybeans that are materially weathered; (9) creating a new grade and associated grade limits for U.S. Choice soybeans; (10) clarifying the reference to Mixed soybeans in the standards; (11) establishing a cumulative total for factors which may cause a sample to grade U.S. Sample grade; and (12) reporting the oil and protein content on all official lot inspection certificates for export soybean shipments. FGIS further proposed to revise inspection plan tolerances for soybeans based on the proposed changes.

Comment Review

FGIS received 1,770 comments during the 60-day comment period: 1,418 from soybean producers, 236 from grain handlers, 35 from foreign firms and associations, 5 from university researchers, 1 from Congress, and 75 from miscellaneous sources.

FGIS also received 99 comments after the close of the comment period: 69 from soybean producers, 20 from grain handlers, 1 from a foreign association, 4 from Congress, and 5 from miscellaneous sources.

On the basis of comments received during the comment period and other available information, FGIS is implementing seven of the proposed changes in the soybean standards. The following paragraphs address comments received regarding the proposed changes.

Minimum Test Weight Per Bushel (TW)

FGIS received 84 comments (64 supporting and 20 opposing) on the proposal to change TW from a grade determining factor to a nongrade determining factor.

Those supporting the proposal commented that TW is not a good indicator of the oil and meal yield of processed soybeans. They contended that other factors adequately reflect the quality of soybeans for grade purposes. Those opposing the proposal, however, indicated that they rely upon TW in making volume determinations and as a rough indicator of overall soybean quality. One commentor representing an association of grain handlers opposing the proposal stated that:

Grade determining factors should not be limited only to end-use values. Grain handlers depend on soybean grades to reflect other issues including storability. We believe that test weight is an important overall quality factor to both handlers and processors. Deleting test weight as a grade factor would be inappropriate and misleading.

Furthermore, those opposed contended that a change in the status of TW will create confusion among soybean importers given present trading and marketing practices.

While, as stated in the proposal, some question the value of TW as a grade determining factor (Refs. 1 and 2), it is evident from the comments that many in the industry do rely upon its grade determining status, especially in view of present trading and marketing practices. Considering its important use within the soybean industry, FGIS has determined that TW should be retained as a grade determining factor to facilitate trade. Since the status of TW will remain unchanged, it will be unnecessary to move TW from table 17 to table 18 of § 800.86 of the regulations as proposed. If, at a later date, more information is presented and/or the importance of TW as a grade determining factor diminishes, FGIS will reconsider the status of TW.

Foreign Material (FM)

The majority of commentors chose only to comment on the proposal to reduce the FM limits for grades U.S. Nos. 1 and 2 to 0.5 and 1.0 percent, respectively. Of the total 1,770 comments received, 1,763 or 99.6 percent commented on the FM proposal. Of these comments, 1,654 or 93.8 percent opposed the proposal with 1,312 or nearly 80 percent of the opposition coming from the State of Illinois. The vast majority of comments in opposition came in a form letter which claimed that:

(1) Under the proposed standards 88 percent of the 1988 soybean crop and 80 percent of the 1989 soybean crop would have been graded lower than U.S. No. 1;

(2) The proposed FM change will reduce the amount of money soybean growers will receive for their soybeans;

(3) Foreign buyers should use contract specifications to communicate their need for FM levels other than those specified in the standards;

(4) Domestic processors have not complained about FM levels; and

(5) It would be "wise" to await the results of the grain cleaning study before the FM levels are changed.

Individual producer comments from other States did not reflect similar opposition. In fact, producer comments from other States totaled 103 with 66 supporting and 37 opposing the proposal. Furthermore, individual views of some Illinois farmers appeared to contradict the claims of the form letter. Several farmers commented that increased FM levels occur during handling after the farmer delivers the soybeans to market.

The American Farm Bureau Federation, the nation's largest general farm organization, and the American Soybean Association, representing approximately 31,000 soybean farmers in 29 States, supported the reduced foreign material limits proposed for grades 1 and 2. In general, they contend lower FM limits will (1) make U.S. soybeans more competitive in the export market and (2) promote incentives to improve quality.

Two hundred thirty-three of the two hundred thirty-six comments received from grain handlers, individuals, and large trade associations opposed the proposal regarding FM. Three grain handlers did not address the FM proposal. Grain handlers contended that the United States' declining share of the world soybean market is directly related to U.S. farm and trade policies which have discouraged domestic soybean production and encouraged foreign buyers to diversify their soybean sources. They further contend that if the price is competitive and the intrinsic quality meets the customer's specifications, then the soybean FM level can be negotiated as part of the contract terms. These commenters contend that revising the FM limits in the soybean standards will not necessarily result in cleaner exported soybeans. Rather, they believe economic market forces will determine whether lower FM limits are shipped. Thus, grain handlers conclude that lowering FM limits will increase handling costs resulting in lower bids to farmers while doing nothing to increase the U.S. share of the soybean export market.

In contrast to grain handlers, all 35 comments received from foreign buyers of U.S. soybeans supported the proposed FM grade limits. These foreign buyers represent more than 60 percent of the U.S. export soybean market. The Japan Oilseed Processors Association (JOPA) and the EC Seed Crushers' and Oil Processors' Federation (FEDIOL), which represent the major foreign users of U.S. soybeans, stated that a FM reduction in U.S. soybeans is necessary to prevent further weakening of the U.S. export soybean market share. As stated in the proposal, when asked what guarantees would be given to increase exports if the FM limits were lowered, a FEDIOL representative responded: "The only guarantee is that the EEC will buy fewer soybeans from the U.S. if FM content remains at current levels." This opinion was reaffirmed in the written FEDIOL comment on the proposal and during the testimony of a FEDIOL representative at an October 29, 1991, Senate hearing on "Reducing Foreign Material Limits in Official Soybean Standards: Economic and Competitive Impacts." The concerns of the foreign buyers have also been expressed through foreign complaints filed with FGIS. Over the past decade, foreign material has been a steady source of complaints by foreign buyers of U.S. soybeans.

In summary, producers have expressed differing opinions regarding the FM proposal; elevator operators and others merchandizing and handling soybeans have voiced strong opposition to the proposal; and foreign buyers of U.S. soybeans have just as strongly supported the proposal. A similar mixed opinion was expressed by the FGIS Advisory Committee which voted eight to six to support the proposed FM change during a September 1991 meeting.

Due to the mixed opinions expressed both in the comments received and by the FGIS Advisory Committee, FGIS has decided not to finalize the FM limits.

Further, in June 1990, FGIS funded a 3-year study through the USDA Economic Research Service to determine the costs and benefits of marketing cleaner wheat, corn, barley, sorghum, and soybeans. In addition to identifying and quantifying the benefits and costs of cleaning grain, the study will assess the need to establish new or revise current factors, including FM, as related to grain cleanliness. After the study is completed, FGIS will review this matter to determine whether further changes to the standards should be proposed.

Splits

FGIS received 97 comments (16 supporting and 81 opposing) on the proposal to reduce the grade limits for splits. Those supporting the proposal indicated that the current limits for splits are rarely met, and, therefore, the grade limits are of little value. Those opposed stated that:

(1) Research/data is lacking to justify a reduction of the magnitude proposed;

(2) Splits are not a discount factor in the domestic soybean market;

(3) The level of split soybeans has never been a major cause for complaints about U.S. soybean exports; and

(4) The inverse relationship of moisture and splits could give incentive to increase moisture in order to reduce breakage.

As originally stated in the proposed rule, FGIS believes that storability and oil quality may be enhanced by a reduction in the amount of splits in a lot of soybeans. FGIS, however, does not want to encourage an increase in moisture of soybeans to inhibit splitting. Accordingly, FGIS will not change the grade limits for splits.

Finally, the percentage of splits in soybeans has traditionally been reported in whole percents with fractions of a percent being disregarded. Consequently, a soybean sample with 10.9 percent splits would be reported as 10.0 percent. FGIS proposed that the percentage of splits in soybeans be reported to the nearest tenth percent in accordance with procedures set forth in section 810.104 of the standards to better reflect normal rounding procedures. Those opposed (12 comments) offered no reason for their opposition. Those in favor (35 comments) of the proposal generally agreed with FGIS' reasoning. Therefore, in accordance with the rationale set forth in the proposal, FGIS will revise the soybean standards to report the percentage of splits in soybeans to the nearest tenth percent.

Stones

FGIS received 45 comments (29 supporting and 16 opposing) on the proposal to reduce the U.S. Sample grade criteria for stones from eight or more to four or more and to eliminate the U.S. Sample grade aggregate weight criteria. Those opposing the proposal offered no justification for their opposition. Of the 29 commenters who supported the proposal, 16 supported the proposal as stated and 13 supported the proposal in part. Those who partially supported the proposal suggested that the number of stones be reduced and that the aggregate weight criteria be maintained and reduced. They indicated that aggregate weight must be maintained so that size is qualified. One commenter summarized this position by stating:

> * * * We request that an aggregate weight limit for stones (0.1 percent) be retained to prevent minuscule, inconsequential stone particles from adversely affecting grade determinations.

The following definition for stones is given in § 810.102(c) of the Official United States Standards for Grain.

> Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

The definition of stones prevents the potential for sand or other similar particles from being classified as stones. Based on the comments received, however, FGIS believes that sufficient concern exists that a soybean lot could be downgraded due to the presence of a few minuscule stones. At processing facilities, minuscule stones are typically removed prior to crushing. FGIS believes, therefore, that the presence of a few minuscule stones should not function as a downgrading factor. A reduced weight limitation in combination with a count limitation will serve to prevent a few small stones from affecting the grade. FGIS, therefore, is revising the soybean standards to reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the aggregate weight option from more than 0.2 percent by weight to more than 0.1 percent by weight.

Glass

FGIS received 69 comments (53 supporting and 16 opposing) on the proposal to reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0. One commentor effectively summarized the views of those who opposed the proposal to reduce the tolerance for pieces of glass from 2 to 0. He stated that he had:

> * * * A philosophical problem specifying a zero tolerance for factors not considered dangerous to human health and safety.

Glass has a harmful effect on a soybean quality and processing. One commentor supporting the proposal contended that:

> There is no reason for glass to be in soybeans, and if it is there, it should be identified at any level.

FGIS agrees that glass may adversely affect soybean quality and processing. Furthermore, pieces of glass are rarely found in soybeans and rarely cause a sample to grade U.S. Sample grade. FGIS believes that this change will create an incentive to maintain the current quality of soybeans in the future while having minimal economic impact on the current market. Accordingly, FGIS is revising the soybeans standards to reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0.

Purple Mottled or Stained Soybeans

FGIS received 75 comments (52 supporting and 23 opposing) on the proposal to eliminate the grade limitation on purple mottled or stained soybeans and establish a special grade, Purple Mottled or Stained. Most of the opposing commentors offered no rationale for their opposition. One commentor suggested that purple mottled or stained soybeans affect both the free fatty acid content of the oil and the dehulling process. FGIS has found no data or any other source supporting this statement. Rather, those who supported FGIS' proposal generally agreed with the justification as presented in the proposed rule. FGIS stated therein that the fungus that causes purple mottling or staining colonizes only the seed coat of the soybean. Neither the fungus nor the resultant discoloration reduces kernel, oil, or feed quality. As a result of this information and the comments received, FGIS will revise the soybean standards to eliminate the grade limitation for purple mottled or stained soybeans.

Those who supported the FGIS proposal to eliminate the grade limitation also supported the proposal to establish a special grade, Purple Mottled or Stained, in the soybean standards. FGIS and these commenters are in agreement that aesthetic factors, such as purple mottled or stained, are important to some customers and, therefore, have an associated economic value. Therefore, to satisfy the needs of these specific customers, FGIS will revised the soybean standards to include a special grade, Purple Mottled or Stained.

Materially Weathered Soybeans

FGIS received 70 comments (53 supporting and 17 opposing) on the proposal to eliminate the grade limitation on soybeans that are materially weathered. Most of those opposed to the proposal offered no rationale for their opposition. One commentor, however, stated the following:

> We feel you are sending out the wrong message here. What you appear to be saying is that FGIS is not concerned about the appearance of our beans. Granted it doesn't come into play very often but when it does it is a very descriptive and meaningful term.

FGIS disagrees with the above statement for two reasons: (1) FGIS is concerned about both the quality and appearance of U.S. soybeans, and (2) since the last soybean standards review in 1985, FGIS has rarely found the need to limit the grade due to the amount of materially weathered soybeans. The limitation on damaged kernels appears to be an adequate control on overall damage so as to nullify the use for the materially weathered grade limitation. Therefore, FGIS does not view "materially weathered" as a meaningful and descriptive term. As stated in the proposed rule and by many of the supporting commentors, the factor limits for the other damages adequately convey quality. FGIS is therefore revising the standards to eliminate the grade limitation on soybeans that are materially weathered.

Edible Grade Soybeans

FGIS received 69 comments (33 supporting and 36 opposing) on the proposal to create a new grade and associated grade limits for U.S. Choice soybeans. Those supporting the proposal either generally supported all changes or stated that they were not opposed to the proposed change. One commenter stated that a new grade for edible soybeans may satisfy a specific niche within the market. Those opposed generally stated that the edible soybean market is small and that each purchaser has very specific needs. One commenter who opposed the proposal specifically stated the following:

> * * * I do not believe that consensus exists on what factors or factor limits best describe "edible-grade" soybeans. Variability of current contract specifications for food-grade soybeans suggests that reaching consensus on a single grade is unlikely or even impossible. Because food-grade soybean buyers and processors are currently able to purchase soybeans meeting their specific needs through their contract specifications, we suggest that a separate grade is unnecessary and perhaps even misleading and confusing.

FGIS agrees that the edible soybean market is very specialized. Since specific needs vary, not only from country to country, but from buyer to buyer within a country, FGIS agrees that the market can be best served through contractual specifications. FGIS, therefore, will not revise the standards to offer a new grade for edible soybeans.

Mixed Soybeans

FGIS received 64 comments (49 supporting and 15 opposing) on the proposal to clarify the reference to Mixed soybeans in the standards. Those opposing the proposal were generally opposed to many or all of the proposed changes without offering specific reasons. Those who were in favor of the proposed change agreed with FGIS that the reference to Mixed soybeans is simply to clarify the soybean standards. As a result, FGIS will amend § 810.1604, Grades and grade requirements for soybeans, to include a reference to Mixed soybeans. "Soybeans of other colors" have been and will continue to be disregarded as a factor in Mixed soybeans.

Cumulative Sample Grade Factors

FGIS received 71 comments (56 supporting and 15 opposing) on the proposal to establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade. Those opposing the proposal did not offer any specific rationale for their position. Many of the supporters simply stated that they did not oppose the proposal. As stated in the proposal, FGIS believes that a cumulative total limit will better identify quality by designating a combination of deleterious material, animal filth, and toxic substances as U.S. Sample grade. Accordingly, FGIS is revising the soybean standards to establish the cumulative total Sample grade criteria as proposed.

FGIS will also revise the third footnote of the grade chart in § 810.1604, Grades and grade requirements for soybeans, as proposed for clarity. The revision states that only the number of stones, and not the weight of stones, will be considered in calculating the cumulative total for factors which may cause a sample to grade U.S. Sample grade. The third footnote is revised to read as follows:

> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

Oil and Protein

FGIS received 86 comments (58 supporting and 28 opposing) on the proposal to report the oil and protein content on all official lot inspection certificates for export soybean shipments. Those opposing the proposal generally commented that any cost associated with mandatory oil and protein testing should be borne by those who request the service. The commenters further stated that mandatory testing would result in an unwarranted cost for all in the marketing system. One commenter opposing the proposal stated that:

> Buyers and sellers should have the marketing flexibility to determine through contract, if, which and how soybean oil and protein determinations should be made.

Another commenter stated that in the first quarter of the 1990/91 marketing year, 37 percent of foreign buyers had not requested oil and protein testing by FGIS. "Thus, the market is responding to the availability of the service, which FGIS appropriately provides." Yet another commenter suggested that mandating tests for oil and protein at export would create dual standards for domestic and export sales of soybeans.

Those who supported the proposal, however, contended that the current method of reporting oil and protein only upon request puts the burden upon the buyer. One commenter supporting the proposal stated that:

> I believe we can increase our competitive advantage in world markets by providing this information automatically.

Another commenter stated that not only could the U.S. improve its competitive position, but mandatory reporting will generate market signals that will help improve the composition of U.S. soybeans and thus make them more competitive.

While, as stated in the proposal, FGIS recognizes that oil and protein tests provide important information regarding soybean quality, it is evident that many in the industry are satisfied with the upon-request status of the tests. For the first half of the 1992/93 marketing year, FGIS inspected 66 percent of export soybeans for oil and protein content. The number of requests indicates that foreign purchasers and/or exporters are effectively requesting oil and protein tests, as needed, within the framework of the current inspection system. Therefore, at this time, FGIS believes that mandatory testing would place an unnecessary burden on the inspection system and would provide some foreign purchasers with unnecessary information. If, at a later date, more information is presented which indicates that mandatory oil and protein testing at export would facilitate marketing, FGIS will reconsider the status of oil and protein testing.

The proposed revisions of § 810.102, Definition of other terms to add sections (c) oil and (d) protein and redesignate sections (c), (d), and (e) as (e), (f), and (g) will be unnecessary because FGIS will not report oil and protein content on all official lot inspection certificates for export soybean shipments.

Miscellaneous Changes

FGIS proposed to revise the format of the grade chart in § 810.1604, Grades and grade requirements for soybeans, to improve the readability of the grade chart. FGIS also proposed to revise the authority citation for part 810. No comments were received on these proposals and, as a result FGIS will revise the soybean standards in this regard as proposed.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected by a statistically-based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. No changes in the breakpoints as proposed will be necessary because FGIS will not revise the FM grade limits for U.S. Nos. 1 and 2 soybeans, establish a new grade for U.S. Choice soybeans, nor revise the grade limits for splits.

Final Action

On the basis of these comments and other available information, FGIS has decided to revise the soybean standards as proposed with the exception of the reduction in the FM grade limits for U.S. Nos. 1 and 2, the change in TW from a grade determining factor to a nongrade determining factor, the reduction in the grade limits for splits, the elimination of the aggregate weight option for stones, the creation of a new grade for U.S. Choice soybeans, and the reporting of oil and protein content on all official lot inspection certificates for export soybean shipments.

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revision becomes effective September 1, 1994. This effective date will coincide with the beginning of the 1994 crop year and facilitate domestic and export marketing of soybeans.

References

(1) Hill, L.D., "Changes in the Grain Standards Act," Grain Grades and Standards, 113–184.

(2) West, V.I., "How Good Are Soybean Grades?," Illinois Farm Economics, No. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.

List of Subjects in 7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867 as amended (7 U.S.C. 71 *et. seq.*)

Subpart I—United States Standards for Soybeans

2. In § 810.104 the first sentence of paragraph (b) is revised to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded. * * *

* * * * *

3. Section 810.1604 is revised to read as follows:

§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U.S. Nos.			
	1	2	3	4
	Minimum pound limits of:			
Minimum test weight per bushel	56.0	54.0	52.0	49.0
	Maximum percent limits of:			
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	3.0	5.0	8.0
Foreign material	1.0	2.0	3.0	5.0
Splits	10.0	20.0	30.0	40.0
Soybeans of other colors [1]	1.0	2.0	5.0	10.0
	Maximum count limits of:			
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	0	0	0	0
Stones [2]	3	3	3	3
Unknown foreign substance	3	3	3	3
Total [3]	10	10	10	10

U.S. Sample grade Soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or
(c) Are heating or of distinctly low quality.

[1] Disregard for Mixed soybeans.

[2] In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.

[3] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

4. Section 810.1605 is amended by designating the text as paragraph (a) and by adding paragraph (b).

§ 810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* * * *

(b) *Purple mottled or stained soybeans.* Soybeans with pink or purple seed coats as determined on a portion of approximately 400 grams with the use of an FGIS Interpretive Line Photograph.

Dated: February 28, 1994.

David R. Galliart,

Acting Administrator.

[FR Doc. 94–5067 Filed 3–4–94; 8:45 am]

BILLING CODE 3410–EN–M

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD55

Malting Barley Assessment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the malting barley assessment which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 105B of the Agricultural Act of 1949, as amended (the 1949 Act). The amendment made by this interim rule will set the malting barley assessment rate at 2.5 percent for the 1993 through 1995 crops of barley. This action is taken to immediately improve the competitive position of U.S. barley producers and eliminate the distortions the assessment has on barley marketings and production.

DATES: Interim rule effective March 7, 1994. Comments must be received on or before April 6, 1994, in order to be assured of consideration.

ADDRESSES: Submit comments to the Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–4418. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3740, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Sronce, Director, Grains Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by the Department, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Feed Grain Production Stabilization—10.055.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments set forth in this interim rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Comments

For the 1991 and 1992 crops of barley the assessment has been established at 5 percent. For the 1993 through 1995 crops of the barley the assessment will be established at 2.5 percent. This action is taken to immediately improve the competitive position of U.S. barley producers and eliminate the distortions the assessment has on barley marketings and production. Accordingly, the provisions of this interim rule are effective upon publication in the **Federal Register**. Comments are requested within 30 days of publication and will be scheduled for review so that a final document discussing comments received can be published in the **Federal Register**.

Statutory Background

In accordance with section 105B(p) of the 1949 Act, the Secretary is required to levy an assessment on producers of malting barley that are participating in the barley production adjustment program for each of the 1991 through 1995 crop years. The Secretary is required to establish such assessment at no more than 5 percent of value of malting barley produced on program payment acres on the farm and the production per acre on which the assessment is based shall not be greater than the farm program payment yield.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, 7 CFR part 1413 is amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STABLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows.

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.110, paragraph (b) is revised to read as follows:

§ 1413.110 Malting barley.

* * * * *

(b)(1) The assessment rate per bushel for the 1991 and 1992 crops of barley will be the smaller of:

(i) 5 percent of the:

(A) State weighted average market price of malting barley produced on the farm in those States where average market prices are available from the National Agricultural Statistics Service, or

(B) The national average market price in all other States, or

(ii) The final deficiency payment rate.

(2) The assessment rate per bushel for the 1993, 1994, and 1995 crops of barley will be 2.5 percent.

* * * * *

Signed at Washington, DC on February 28, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94-4996 Filed 3-4-94; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-28-AD; Amendment 39-8830; AD 94-04-10]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the bottom joint fittings and modification of these new bottom joint fittings, the main landing gear (MLG) rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. This amendment is prompted by full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, which revealed cracks in the MLG rear spar fitting. The actions specified by this AD are intended to prevent loss of the structural integrity of the MLG attachments.

DATES: Effective April 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on August 3, 1993 (58 FR 41210). (A correction of the rule was published in the **Federal Register** August 9, 1993 (58 FR 42361).) That action proposed to require replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rules as proposed.

The Air Transport Association (ATA), on behalf of one of its members, requests that paragraph (a) of the proposed AD be revised to include Fokker Service Bulletin Change Notification (SBCN) SBF100-57-020/01, dated February 4, 1993, as an additional source of service information. This commenter states that, since one operator has already begun the proposed modification, that operator would have to request an alternative method of compliance if the SBCN is not incorporated into the final rule. The FAA concurs. This SBCN makes certain minor corrections and clarifications to Fokker Service Bulletin SBF100-57-020, dated April 27, 1992. Therefore, paragraph (a) of the final rule has been revised to include this SBCN as an additional source of appropriate service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest required the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 27 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $186,420, or $3,585 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-10 Fokker: Amendment 39-8830. Docket 93-NM-28-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11390 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the main landing gear (MLG) attachments, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings, or within one year after the effective date of this AD, whichever occurs later, replace the bottom joint fittings and modify these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes in accordance with Fokker Service Bulletin SBF100–57–020, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification (SBCN) SBF100–57–020/01, dated February 4, 1993, and SBCN SBF100–57–020/02, dated April 20, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement and modification shall be done in accordance with Fokker Service Bulletin SBF100–57–020, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification SBF100–57–020/01, dated February 4, 1993, and Fokker Service Bulletin Change Notification SBF100–57–020/02, dated April 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc. 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1994.

Issued in Renton, Washington, on February 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3753 Filed 3–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM94–11–000]

Deletion of Definition

Issued March 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In 1991, the Commission adopted regulations which included a subsection setting forth a definition of "fishway." Section 1701 (b) of the Energy Policy Act of 1992 vacated that definition. The Commission, by this final rule, is implementing the mandate of Congress by deleting the subsection from its regulations.

EFFECTIVE DATE: The final rule is effective March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this documents during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Discussion

In 1991, the Commission adopted § 4.30(b)(9)(iii) of its regulations,[1] setting forth a definition of "fishway." Section 1701(b) of the Energy Policy Act of 1992 vacated that definition.[2] Accordingly, the Commission, by this final rule, is implementing the mandate of Congress by deleting § 4.30(b)(9)(iii) from its regulations.

II. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[4] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

III. Environmental Statement

Issuance of this rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[5] This rule is clarifying and corrective and thus falls within the categorical exemptions provided in the Commission's regulations. Neither an environmental impact statement nor an environmental assessment is required.[6]

IV. Information Collection Statement

Office of Management and Budget (OMB) regulations require that OMB

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[1] See Order No. 533, III FERC Stats. & Regs. ¶ 30,921 (1991), 56 FR 23108 (May 20, 1991); Order No. 533–A, III FERC Stats. & Regs. ¶ 30,932 (1991), 56 FR 61137 (Dec. 2, 1991). Commissioner (now Chair) Elizabeth Anne Moler dissented with respect to the definition of "fishway." See III FERC ¶ 30,921 at pp. 30,171–73 and ¶ 30,932 at pp. 30,372–73.

[2] Public Law 102–486, 106 Stat. 2776–3133 (October 24, 1992). Section 1701(b), provides in pertinent part as follows:

(b) Clarification of Authority Regarding Fishway.—The definition of the term "fishway" contained in 18 CFR 4.30(b)(9)(iii), as in effect on the date of enactment of this Act, is vacated without prejudice to any definition or interpretation by rule of the term "fishway" by the Federal Energy Regulatory Commission for purposes of implementing section 18 of the Federal Power Act * * *.

[3] 5 U.S.C. 601–602.

[4] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[5] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[6] See 18 CFR 380.4(a)(2)(ii).

approve certain information collection requirements imposed by agency rule.[7] This rule contains no information collection requirements and is not subject to OMB approval.

V. Administrative Findings and Effective Date

This final rule is purely ministerial in nature. It implements the mandate of section 1701(b) of the Energy Policy Act of 1992 by physically deleting from the Commission's regulations a paragraph thereof, § 4.30(b)(9)(iii), that Congress explicitly vacated. Prior notice and comment under section 4 of the Administrative Procedure Act[8] are therefore unnecessary. The Commission is taking this action at this time, and finds good cause to make this rule effective immediately upon issuance, because title 18 of the Code of Federal Regulations will next be reprinted based on the regulations in effect on April 1, 1994. This rule therefore is effective March 1, 1994.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 4 of chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 4.30 [Amended]

2. In § 4.30, paragraph (b)(9)(iii) is removed.

[FR Doc. 94–5055 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–P

[7] 5 CFR part 1320.

[8] 5 U.S.C. 553(b).

18 CFR Part 271

[Docket No. RM91–8–004]

Order Qualifying Certain Tight Formation Gas for Tax Credits

Issued March 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying extension request.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order denying the request to extend the April 30, 1994 deadline for jurisdictional agencies to submit their Natural Gas Policy Act well determinations to the Commission.

EFFECTIVE DATE: This final rule is effective March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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Order Denying Extension Request

Issued March 1, 1994.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

In Order No. 539[1] the Commission initially established a June 30, 1993 deadline for jurisdictional agencies to submit well category determinations to the Commission in light of the repeal of title I of the Natural Gas Policy Act of 1978 (NGPA) effective January 1, 1993. The Commission believed that this would provide sufficient time for an orderly end to the determination program. However, in response to requests by jurisdictional agencies for extensions of the deadline, the Commission extended that deadline on three different occasions in order to allow jurisdictional agencies additional time to process and submit their determinations to the Commission. First the Commission extended the deadline until September 30, 1993, for all jurisdictional agencies;[2] then until April 30, 1994, for certain specified jurisdictional agencies;[3] and later until April 30, 1994, for all jurisdictional agencies.[4]

On January 25, 1994, a number of offices of the Bureau of Land Management, United States Department of the Interior (BLM) in two states[5] requested the Commission to further extend the April 30, 1994 deadline[6] until August 31, 1994. In support of the request, BLM stated that their pending workload was extremely heavy and the extension was necessary to ensure that all applications were properly reviewed. BLM claimed that this situation had developed because of a number of factors, such as the extreme weather and road conditions which caused delays in well completions and pipeline gathering systems; the increased number of applications after the issuance of Order No. 539–C; and the difficulties that producers have had in completing their wells to provide the necessary paperwork to BLM. BLM also asserts that there is the likelihood that there will be numerous preliminary negative determinations and appeals by applicants protesting those determinations which BLM will have to review before BLM can issue the final determinations.

In Order No. 539–B, issued on April 15, 1993, the Commission stated that it was desirable to conclude the determination process as soon as possible and, accordingly, the Commission stated that it "will not grant any extension beyond April 30, 1994."[7] The April 30, 1994 deadline allowed jurisdictional agencies 16 months after the repeal of title I of the NGPA to process applications and submit the determinations to the Commission. Moreover, since April 15, 1993, agencies have been on notice that

[1] Qualifying Certain Tight Formation Gas for Tax Credits, FERC Statutes & Regulations, ¶ 30,940 (1992); 57 FR 13009 (April 15, 1992).

[2] Order No. 539–A, FERC Statutes & Regulations ¶ 30,947 (1992); 57 FR 31123 (July 14, 1992).

[3] Order No. 539–B, FERC Statutes & Regulations ¶ 30,968 (April 15, 1993); 58 FR 19607 (April 15, 1993).

[4] Order No. 539–C, FERC Statutes & Regulations ¶ 30,973 (1993); 58 FR 38528 (July 19, 1993).

[5] The New Mexico State offices in Santa Fe and Albuquerque, and the Wyoming State offices in Cheyenne, Rawlins, and Rock Springs.

[6] Since the April 30, 1994 deadline falls on a Saturday, the deadline is May 2, 1994.

[7] FERC Statutes & Regulations ¶ 30,968 at 30,834.

there would be no further extensions of the April 30, 1994 deadline. The Commission believes that it has allowed jurisdictional agencies sufficient time to complete the processing of applications while at the same time ending the determination program within a reasonable time after the repeal date of January 1, 1993. Accordingly, the Commission denies BLM's request.

The Commission Orders

The request of BLM for extension of the April 30, 1994 deadline for jurisdictional agencies to submit well category determinations to the Commission is denied.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-5095 Filed 3-4-94; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 90C-0453]

Listing of Color Additives Exempt From Certification; Synthetic Iron Oxide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of synthetic iron oxide in human food. This action is in response to a petition filed by Teepak, Inc.

DATES: Effective April 7, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections by April 6, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS-207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 11, 1991 (56 FR 1197), FDA announced that a color additive petition (CAP 0C0228) had been filed by Teepak, Inc., P.O. Box 11925, Columbia, SC 29211. The petition proposed that the color additive regulations in § 73.1200 *Synthetic iron oxide* (21 CFR 73.1200) be amended to provide for the safe use of synthetic iron oxide as a color additive in human food, specifically in sausage casings. The petition was filed under section 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e). The agency erred in citing the specific section number to be amended as § 73.1200 because that section is in Subpart B—Drugs of part 73 (21 CFR part 73); the amendment is more accurately placed in § 73.200 (21 CFR 73.200) in Subpart A—Foods. The agency finds, however, that because the regulatory action was described properly in the notice, the error in citation will not mislead anyone and an amended notice is not necessary.

Based on data contained in the petition and other relevant information, FDA concludes that the petitioned use of synthetic iron oxide as a color additive in human food is suitable and safe. The agency, therefore, is amending § 73.200 to provide for the use of synthetic iron oxide as a color additive in human food.

The existing regulation for food use of synthetic iron oxide in § 73.200 contains a set of specifications for heavy metals which FDA established when it listed the color additive for use in dog and cat food (33 FR 9953, July 11, 1968). However, it is the agency's policy to limit human exposure to heavy metal contaminants in food to the lowest levels possible. Therefore, for human food use, the agency is restricting the levels for lead, arsenic, and mercury in synthetic iron oxide to no more than 10 parts per million (ppm), 3 ppm, and 1 ppm, respectively.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 6, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 is revised to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.200 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 73.200 Synthetic iron oxide.

(a) * * *

(2) Color additive mixtures for food use made with synthetic iron oxide may contain only those diluents that are suitable and that are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* (1) Synthetic iron oxide for human food use shall conform to the following specifications:

Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 10 parts per million.
Mercury (as Hg) , not more than 1 part per million.

(2) Synthetic iron oxide for dog and cat food use shall conform to the following specifications:

Arsenic (as As), not more than 5 parts per million.
Lead (as Pb), not more than 20 parts per million.
Mercury (as Hg), not more than 3 parts per million.

(c) *Uses and restrictions.* (1) Synthetic iron oxide may be safely used for the coloring of sausage casings intended for human consumption in an amount not exceeding 0.10 percent by weight of the finished food.

(2) Synthetic iron oxide may be safely used for the coloring of dog and cat foods in an amount not exceeding 0.25 percent by weight of the finished food.

* * * * *

Dated: February 25, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5128 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Carbonyl Iron Powders

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to delete the restriction on the acquisition of carbonyl iron powders, which required that all carbonyl iron powders be manufactured in a facility located in the United States or Canada.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9151 of the Fiscal Year 1993 Defense Appropriations Act (Pub. L. 102–396) required that all carbonyl iron powders be manufactured in a facility located in the United States or Canada. Section 9151 applied only to Fiscal Year 1993. A similar restriction was not included in the Fiscal Year 1994 Defense Appropriations Act.

The Director, Defense Procurement, issued Departmental Letter 94–001, February 14, 1994, to delete the restriction on the acquisition of carbonyl iron powders from the Defense Federal Acquisition Regulation Supplement (DFARS Case 94–D301).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies but is not expected to have a significant impact on a substantial number of small entities because it removes a statutory restriction on the acquisition of carbonyl iron powders, and the restriction is no longer in effect.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR subpart 1.3.

PART 225—FOREIGN ACQUISITION

225.7014 [Removed and Reserved]

2. Section 225.7014 is removed and reserved, and sections, 225.7014–1, 225.7014–2, and 225.7014–3 are removed.

PART 252—SOLICITAITON PROVISIONS AND CONTRACT CLAUSES

252.225–7023 [Removed and Reserved]

3. Section 252.225–7023 is removed and reserved.

[FR Doc. 94–4880 Filed 3–4–94; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Parts 247 and 252

Defense Federal Acquisition Regulation Supplement; Reflagging and Repair Work

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to restrict performance of reflagging or repair work on any vessel utilized under a time charter contract to performance in the United States or its territories.

DATES: *Effective Date:* February 25; 1994; *Comment Date:* Comments on the interim rule should be submitted to the address shown below on or before May 6, 1994 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845. Please cite DFARS Case 93–D313 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 315 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) places restrictions on reflagging or repair work on any vessel utilized under a time charter contract.

The Director, Defense Procurement, issued Departmental Letter 94–002, February 25, 1994, to provide that all time charter solicitations and contracts for the use of a vessel for the transportation of supplies must include a clause which restricts performance of reflagging or repair work to performance in the United States, or its territories, unless a waiver has been granted by the Secretary of Defense.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it restricts performance of reflagging or repair work to performance within the United States or its territories. This restriction is limited to

all time charter solicitations and contracts for the use of a vessel for the transportation of supplies. An initial Regulatory Flexibility Analysis has therefore not been performed. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–D313 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and (FAR) 48 CFR part 1, subpart 1.3.

PART 247—TRANSPORTATION

2. Section 247.571 is amended by redesignating paragraph (c) as paragraph (e) and by adding paragraphs (c) and (d) to read as follows:

247.571 Policy.

* * * * *

(c) Except as provided in paragraphs (d) and (e) of this section, any vessel used under a time charter contract for the transportation of supplies shall have all reflagging or repair work, as defined in the clause at 252.247–7025, performed in the United States or its territories.

(d) The Secretary of Defense may waive the requirement described in paragraph (c) if the Secretary determines that such waiver is critical to the national security of the United States.

* * * * *

3. Section 247.573 is amended to add paragraph (d) as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations/contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(d).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.247–7025 is added to read as follows:

252.247–7025 Reflagging or Repair Work.

As prescribed in 247.573(d), use the following clause:

Reflagging or Repair Work (Feb 1994)

Any work performed on a vessel used in the performance of this contract that enables the vessel to meet applicable standards to become a vessel of the United States or to convert the vessel to a more useful military configuration shall be performed in the United States or its territories.

(End of clause)

[FR Doc. 94–4881 Filed 3–4–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Hungerford's Crawling Water Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Hungerford's crawling water beetle (*Brychius hungerfordi* Spangler) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973 as amended. The species is a small, rare beetle that lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. This species is threatened by the rarity of the type locality in association with alteration of its stream habitat as a result of beaver dam management. Other potential contributing factors include fisheries management, logging, impoundment, bank stabilization, stream pollution and general stream degradation.

EFFECTIVE DATE: April 6, 1994.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Robert Adair, Chief, Division of Endangered Species (see **ADDRESSES** above) at 612/725–3276.

SUPPLEMENTARY INFORMATION:

Background

Hungerford's crawling water beetle, *Brychius hungerfordi*, was first identified by Spangler in 1954 (Spangler 1954). The bettle is a member of an uncommon genus in the Family Haliplidae and Order Coleoptera. It can be distinguished from all other beetles as follows (from Wilsmann and Strand 1990):

Brychius hungerfordi is a small (4.20 mm), distinctive, yellowish brown beetle with irregular dark markings and longitudinal stripes on the elytra, each of which is comprised of a series of fine, closely spaced and darkly pigmented punctures. Males tend to be smaller than females. In Spangler's (1954) original series, specimens ranged from 3.70 mm in length and 1.90 mm in width (a male) to 4.35 mm in length and 2.25 mm in width (a female). Males are characterized by thickened tarsal segments of the front legs with small tufts of hair on the first three segments. *B. hungerfordi* can be differentiated from all other Haliplidae in Michigan by the shape of its pronotum, the sides of which are nearly parallel for the basal ⅔ (Hilsenhoff and Brigham, 1978) and are widened mid-laterally.

This small, rare beetle lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. The disjunct distribution of this species suggests that it is a relict from glacial periods when cool, fast moving streams were more prevalent and the beetle was more widespread. It is speculated that human activities such as fish management, logging, beaver control management, dredging, stream pollution, and general stream degradation have contributed to the reduction of its habitat (Wilsmann and Strand 1990).

On May 22, 1984, the Service published in the **Federal Register** (49 FR 21664) its first listing of invertebrate animal species being considered for

listing under the Act (Animal Notice of Review) which included the Hungerford's crawling water beetle. Hungerford's crawling water beetle appeared again in the January 6, 1989, Animal Notice of Review (54 FR 544) as a Category 2 species. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again listed as Category 2 in the November 21, 1991, Animal Notice of Review (56 FR 58804). However, given the research by Wilsmann and Strand (1990), it should have been listed as a Category 1 at that time. The listing priority is 2. The research results of Wilsmann and Strand indicate that the species occurs in only three vulnerable, isolated locations and should receive protection of the Act. The Service analyzed the status survey, as well as other information, and determined that the beetle is facing serious threats and should be protected as an endangered species.

All of the sites where the beetles have been found are characterized by moderate to fast stream flow, good stream aeration, inorganic substrate, and alkaline water conditions. Streams like those in which *B. hungerfordi* occur are common in the Great Lakes States. Although these areas have been extensively surveyed for invertebrates in the last 30 years, no additional populations have been discovered (Wilsmann and Strand 1990). Roughley (1989a) surveyed 30 to 40 potential locations in Ontario and 5 sites in Michigan. The survey resulted in the discovery of the only known *B. hungerfordi* population in Canada. White (1989b) surveyed portions of lower and upper Michigan, Hilsenhoff and Brigham (1978) surveyed Wisconsin, and Wallace (Brigham 1982) surveyed Minnesota and southern Canada without finding any new populations of *B. hungerfordi*. Strand (1989) surveyed streams in Emmet, Cheboygan, Presque Isle, Montmorency, and Otsego counties and found *B. hungerfordi* in 15 of 128 sampling stations. Of these, 14 occurred near the type location in the East Branch of the Maple River and so were effectively from the same population. The remaining site, in the East Branch of the Black River, was the only new population that has been found in the United States since the species was discovered.

The largest population presently occurs in the East Branch of the Maple River in a pristine portion of stream on the boundary of the University of Michigan Biological Station. This population is estimated to include 200 to 500 individuals while the other two populations are thought to be much smaller (White 1986b, Wilsmann and Strand 1990). The East Branch of the Maple River is a small stream surrounded by forest with a partially open canopy so sunlight reaches the water. The stream is cool (15–20° C) with a relatively fast flowing current (>50 cm per second) and a substrate of limestone gravel and rock (White 1986b). The forest is intact, the beaver population is healthy, and their dams function to stabilize water levels so the riffles below the dams remain predictable from year to year (Wilsmann and Strand 1990). At the Black River site, the beetles occur in a moderately fast current in fairly shallow water. The site in Ontario has been degraded by road construction and the beetles occur in the riffles below an old millrace. The swift currents in these locations maintain a mineral substrate.

White (1986) concluded that the East Branch of the Maple River at the type locality provides fast-flowing, deep riffles, and *Cladophora* attached to larger rocks coupled with a lack of fast-water water-column predators (i.e., trout). Although some trout exist in the East Branch of the Maple River, it is speculated that warm summer water temperatures (>25° C) force the population to remain in Lake Kathleen except during cooler months of the year. Because adult beetles must swim to the surface for air, they are vulnerable to predation by fish, tadpoles and other aquatic insects (Hickman 1931; Wilsmann and Strand 1990).

The life history of *B. hungerfordi* is not known. The beetles are thought to live longer than one year and to overwinter as larvae in the dense aquatic vegetation at the stream's edge (Wilsmann and Strand 1990). As with other Haliplidae, larvae probably go through three instar phases and pupate in the moist soil above the water line (Hickman 1929; White, Brigham, and Doyen 1984). Adults and larvae are seldom captured together and they appear to inhabit different microhabitats in the stream. Adults are more apt to be found in stronger currents, foraging for algae on gravel and stones. Both adults and larvae are herbivorous but very little is known about their specific dietary requirements or feeding adaptations (White 1986a, 1986b). Wilsmann and Strand (1990) reported, "The small size of *B. hungerfordi* adults prevented direct observation of food ingestion. However, it is likely that they scrape food material from rocks by grasping with their tarsal claws and scraping with their distally flattened and single notched mandibles which are slightly medially cupped. This speculation is based on observations of the beetles crawling from rock to rock, stopping occasionally to grip a rock for varying lengths of time."

Compared to other Haliplidae, the adults are strong swimmers and they obtain oxygen by swimming to the surface or crawling to the water line at the edge of the stream. Larvae obtain oxygen directly from the water and are found in association with dense mats of vegetation (*Chara, Nitella,* or *Cladophora*) which offer protection and foraging. The growth form of this vegetative cover may be more important than the plant composition (Brigham 1990, pers comm. in Wilsmann and Strand 1990).

There is no evidence that *B. hungerfordi* has a dispersal flight. No adults have been found at blacklight stations, and the adults seem unusually reluctant to fly. This was observed during Wilsmann and Strand's (1990) survey when *B. hungerfordi* were removed from the water for 30 minutes and did not attempt to fly. An unexpected result given that most other aquatic insects would have attempted to fly after this period of desiccation. It is possible, therefore, that if this species disperses by flying, it is during a very brief period of time in the spring. The primary mode of dispersal appears to be movement within the stream system.

Summary of Comments and Recommendations

In the March 2, 1993, proposed rule (58 FR 12013), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in 6 Michigan newspapers.

Four written comments and three responses via telephone were received from the following: Michigan Department of Natural Resources, Algonquin Group (Michigan's Mackinac Chapter of the Sierra Club), Dr. Wayne Owen of Idaho, Mr. Robert Almquist of Ohio, Michigan Department of Natural Resources, U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and Isle Royale National Park, Michigan. Comments supporting the proposal were received from the Michigan Department of Natural Resources, Algonquin Group Michigan's Mackinac Chapter of the Sierra Club, Dr. Wayne, Owen of Idaho, and Mr. Robert Almquist of Ohio. Three

comments provided thoughts about the species but did not take a position on the listing.

The primary issue raised was the need to obtain additional information regarding the species' distribution, life history, and threats to afford adequate protection and management. The information is necessary to clarify and/or substantiate the threats stated in the proposed rule as sources responsible for the species' decline. Specifically stating the role of fish management, beaver dam removal and dredging as primary threats for the decline of the species was speculative, based on incomplete data and not substantiated by the references cited. If managed appropriately, some of the threats may be beneficial to the continued existence and management of *B. hungerfordi* and its habitat.

The Service recognizes the need for further surveys and studies on the life history, distribution and ecology of the species. The Service considered all comments received and has incorporated them into this final rule as appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Hungerford's crawling water beetle *Brychius hungerfordi* should be classified as an endangered species. Section 4(a)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Hungerford's crawling water beetle (*B. hungerfordi* Spangler) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Although natural succession in the type locality is not completely understood, it appears, that human activities in or near the habitat can speed up succession and subsequent loss of the Hungerford's crawling water beetle. For example, removal of existing beaver dams upstream from *B. hungerfordi* populations poses as significant threat to the beetle. The downstream side of beaver dams serve as a riffle and aeration site because they retain sediments and organic material, raise water temperatures, and modify nutrient cycling, decomposition dynamics, and riparian zone structure and composition. The highest density locations of *B. hungerfordi* are below beaver dams or immediately below structures that provide similar conditions to those found downstream from beaver impoundments (Wilsmann and Strand 1990).

Potential threats that may result in modification of the species habitat include certain fish management activities such as removal or introduction of fish, stream side logging and heavy siltation resulting from logging, impoundment, bank stabilization with structures creating an artificial shoreline, stream pollution, and general stream degradation. In Michigan, one site already has been impounded downstream by a dam, and the Ontario site has been impounded upstream (Roughley 1989b). The Service recognizes that further research and surveys are required since much is not known about the distribution, ecology and the effects of the potential threats on the species.

Given the rapid rate of recreational development and the demands for fish, wildlife, and forest management in northern Michigan, unknown populations of *B. hungerfordi* could easily be extirpated before they are discovered, increasing the need to protect existing populations. Because only three small populations of this species are known to exist, loss of even a few individuals could extirpate the species from some locations (Wilsmann and Strand 1990) and thus severely affect the continued existence of the species.

The Michigan Department of Natural Resources issued a permit allowing the construction of an experimental stream facility on the East Branch of the Maple River. The applicant amended the initial proposal such that the location was moved to an area where the beetles are not known to occur on the Maple River.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Recent research efforts have involved mostly capture and release rather than collecting, and the few collections that have been made are housed in appropriate museum collections. The species will continue to draw scientific interest and collection should be regulated. However, because of the species' rarity, there is the possibility that amateur scientific collections could occur.

C. Disease or Predation

Little is known about these factors, but there are no indications at this time that they may be contributing to the decline of *B. hungerfordi*.

D. The Inadequacy of Existing Regulatory Mechanisms

B. hungerfordi is currently listed as endangered under Michigan's Endangered Species Act (P.A. 203 of 1974, as amended). Any taking of this species, including harassment, is unlawful without a permit. The Michigan Department of Natural Resources also implements section 404 of the Clean Water Act. This section allows Michigan to regulate placement of fill material in waters of the United States. The Montmorency County site, including a mile of upstream and downstream buffer, is in a State forest but is not protected from fish management activities. The aforementioned legislation allows significant regulatory oversight on a wide variety of activities that should prevent taking of this species and habitat loss and alteration. The Emmet County site is in mixed ownership and is not protected. The Canadian population is not protected and the land surrounding it is in mixed ownership. The Federal Endangered Species Act would offer additional protection to this species by increasing the protection for the two Michigan sites, encouraging habitat protection for the species on private lands, and influencing impoundment development which very likely would involve Federal funds.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only three populations of *B. hungerfordi* increases the potential for extinction from stochasitc events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species.

Both Michigan sites are in the Cheboygan watershed and could potentially be affected by any changes upstream in the watershed such as in Van Creek, the upper portion of the East Branch of the Maple River, Town Line Creek, Foch Lakes Flooding Creek, Rattlesnake Creek, and the upper portion of the East Branch of the Black River. Changes could include agricultural pesticide pollution, siltation, or stream bed modification. Because two of the three known populations occur immediately

downstream from a roadway, accidental events, such as chemical spills, pose a threat (Wilsmann and Strand 1990). The cumulative effects of road salt runoff also poses a threat to this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *B. hungerfordi* as endangered. Only three relatively small populations of this species are known to exist and these populations occur on sites threatened with habitat loss or destruction. In addition, all of these populations are in need of long-term management.

Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) The specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for Hungerford's crawling water beetle is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking; or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. As discussed under Factor A in the Summary of Factors Affecting the Species, the information on the biology of the Hungerford's crawling water beetle is lacking to permit specific identification of its critical habitat.

The Service will initiate a concerted effort to obtain the information needed to determine critical habitat for Hungerford's crawling water beetle. Designation of critical habitat must be completed within two years of the date of this rule, unless the designation is not prudent. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under section 4(b)(2) of the Act.

It should be emphasized that critical habitat designation does not necessarily affect all Federal activities. Where appropriate, the impacts will be addressed during consultation with the Service as required by section 7(a)(2) of the Act, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It, also, is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Carlita Shumate (see **ADDRESSES** section), 612/725–3276.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, set forth below.

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under *Insects*, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
Insects							
.	.	.	.	.	.	.	.
Beetle, Hungerford's crawling water.	*Brychuis hungerfordi*	U.S.A. (MI), Canada	NA	E	533	NA	NA
.	.	.	.	.	.	.	.

Dated: February 9, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–5119 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 930809–3209; I.D. 021594F]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: NMFS issues this interim rule to reduce for 60 days the size of the offshore area where the summer flounder fishery must use an approved turtle excluder device (TED) in any net that is rigged for fishing, by moving the northern boundary from 37°05′ N. latitude (Cape Charles, VA) to 35°46.1′ N. latitude (Oregon Inlet, NC). The southern boundary of the offshore area (the North Carolina-South Carolina border) remains the same. The purpose of this action is to relieve an unnecessary restriction on fishermen in the summer flounder fishery while continuing to provide protection to endangered and threatened sea turtles.

DATES: This rule is effective March 1, 1994. Comments on this rule must be submitted by March 31, 1994.

ADDRESSES: Direct comments on this rule and requests for copies of the Environmental Assessment prepared for this rule to: Dr. William Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Acting Chief, Endangered Species Division (301/713–2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893–3366), or Doug Beach, Chief, Protected Species Program, NMFS Northeast Region (508/281–9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). According to the 1990 report on the decline of sea turtles, published by the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which include the summer flounder bottom trawl fishery, constitute the second largest source.

NMFS has taken action to require the use of TEDs in the bottom trawl fishery for summer flounder from 37°05′ N. latitude (Cape Charles, VA) southward to 33°35′ N. latitude (North Carolina-South Carolina border), referred to as the "summer flounder fishery-sea turtle protection area" and to require vessels to carry an observer, if requested to do so. These requirements were initially

effective November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992), were extended from December 16, 1992, through January 14, 1993 (57 FR 60135, December 18, 1992), were modified and extended from January 7, 1993, through February 8, 1993 (58 FR 4088, January 13, 1993), and were extended from February 10, 1993, through April 10, 1993 (58 FR 5884, February 16, 1993). On September 20, 1993, an interim final rule was published requiring year-round TED-use by participants in the bottom trawl fishery for summer flounder in the summer flounder fishery-sea turtle protection area defined above (58 FR 48797, September 20, 1993). The specific requirements, their background and rationale, comments and responses to comments, and summaries of pertinent biological opinions were included in the cited **Federal Register** publications and are not repeated here.

Recent Events

NMFS' continuing review of the available information regarding the temporary TED requirement under the ESA in the summer flounder bottom trawl fishery indicates that conditions continue to necessitate the use of TEDs in some of the waters off North Carolina. Sea turtles and bottom trawling continue to co-occur in these waters based on observations of turtles, both at sea and from strandings on ocean beaches.

NMFS and the U.S. Coast Guard are continuing to conduct cooperative enforcement activities in the waters off of North southern Virginia and North Carolina. NMFS has determined that compliance with the TED-use requirement has been good.

NMFS has determined, based on past interactions between sea turtles and the summer flounder fishery, that bottom trawl nets without TEDs can capture and kill sea turtles at a rate comparable with that of the shrimp trawl fishery along the southern U.S. Atlantic coast, where TED use is now required at all times. Based on this information, the use of TEDs should be a required conservation measure throughout most of the summer flounder fishing season.

In December 1991 and January 1993, based on available information, including the relatively cooler waters observed north of Cape Hatteras, NMFS moved the northern boundary of the turtle conservation zone where restricted tow times were required. The northern boundary was moved from Cape Charles, VA, to Oregon, Inlet, NC, effective December 27, 1991 (57 FR 213, January 3, 1992) and January 7, 1993 (58 FR 4088, January 13, 1993).

Recent data acquired by satellite sensors indicate that sea surface temperatures off the coast of North Carolina north of Oregon Inlet are less than 10 °C. NMFS has found, based on reports from observers aboard trawlers and from the scientific literature, that the probability of sea turtle captures declines to near zero when surface water temperatures fall below 10 °C. This decline is apparently related to decreased turtle abundance and/or activity in cold waters.

Therefore, based on recent data regarding ocean water temperature north of Oregon Inlet, turtle stranding information, and sea turtle conservation measures that are currently in effect, the potential threat to turtles within the northern boundary of the TED-use area from Cape Charles, VA, to Oregon Inlet, NC, has diminished since the onset of the summer flounder season. While there is a small risk to sea turtles associated with moving the northern boundary of the TED-use area southward, NMFS has determined that this risk is minimal and will not jeopardize the continued existence of endangered and threatened sea turtles.

The September 20, 1993, interim rule requiring year-round TED-use in the summer flounder fishery-sea turtle protection area will continue to protect sea turtles from summer flounder fishery interactions until NMFS issues a permanent rule.

The present action modifying the size of the summer flounder fishery-sea turtle protection area will be applicable for 60 days, unless NMFS determines that it should be modified or that other action is required, based on comments received on this rule or on events in the fishery.

Comments on NMFS' 1993 Actions Reducing the Size of the Summer Flounder-Sea Turtle Protection Area by Lowering the Northern Boundary to Oregon Inlet

One comment was received from the Center for Marine Conservation (CMC), which supported a permanent TED-use requirement in the fishery from Cape Charles, VA, to the southern border of North Carolina, and opposed the reduction of the area to Oregon Inlet, NC. Further, CMC supported an observer requirement on summer flounder vessels north to Cape Cod, Massachusetts, and observers in all fisheries in order to determine the full extent of sea turtle and fishery interactions.

Response: NMFS' actions to move the northern boundary south to Oregon Inlet and to maintain it there were based on available data regarding turtle distribution and fishing activity. Past data essentially mirror present data which indicate that the potential threat to sea turtles north of Oregon Inlet diminishes substantially by the beginning of January, but trawling without TEDs south of Oregon Inlet continues to pose a threat. NMFS will not require the use of restricted tow times in the offshore waters north of Oregon Inlet because the likelihood of turtle capture is remote due to the decreased presence and activity of turtles in the cold waters.

However, NMFS will continue to monitor conditions north of Oregon Inlet to assess the risk of capture from trawlers not using TEDs. Cooperative efforts between NMFS and the North Carolina Division of Marine Fisheries will increase stranding monitoring efforts through periodic aerial coverage of the beaches.

If NMFS determines that incidental capture of turtles is occurring, or is likely to occur, conservation measures will again be imposed. Such measures will include the use of TEDs.

Under this interim rule, NMFS may place observers on summer flounder vessels operating inside and outside of the summer flounder fishery-sea turtle protection area. It is NMFS' intention to require the use of TEDs in all areas where the distribution of turtles and trawling overlap, and where there is an incidental take of turtles, as a permanent conservation measure in this fishery. NMFS recognizes that the use of TEDs is the most effective and easily enforceable turtle conservation measure. However, the required use of TEDs during the last two summer flounder fishing seasons has brought to light certain problems. These problems relate to the strength of TEDs and their ability to withstand the sometimes excessive clogging with bycatch (most often schools of dogfish) or bottom debris encountered under certain conditions, especially north of Oregon Inlet during cold water periods. Flounder trawls are made of heavier mesh, and are pulled at much faster speeds than shrimp trawls, which greatly increases the stresses on the TED caused by large accumulations of bycatch. NMFS is continuing to seek improved TEDs for this fishery. On October 20, 1993, NMFS approved an improved Flounder TED for bottom trawl nets, developed in cooperation with the North Carolina Division of Marine Fisheries, Sea Grant, and summer flounder fishermen.

Sea Turtle Conservation Measures

This interim rule does not supersede the September 20, 1993, interim rule requirement (58 FR 48797) that owners

and operators of summer flounder bottom trawlers in the summer flounder-sea turtle protection area use an approved TED in each net that is rigged for fishing. The present action does, however, similar to a prior action last season (58 FR 8554, February 16, 1993), modify for a 60-day period the northern boundary of the summer flounder-sea turtle protection area by relocating it southward to Oregon Inlet, NC. The modified summer flounder-sea turtle protection area includes all offshore waters seaward of the COLREGS (International Regulations for Preventing Collisions at Sea, 1972) demarcation line, bounded on the north by a line along 35°46.1′ N. latitude (Oregon Inlet) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border).

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary action will continue to conserve sea turtles and at the same time reduce unnecessary regulatory burdens on summer flounder fishermen. The AA has further determined that incidental takings of sea turtles during summer flounder bottom trawling are unauthorized unless those takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder bottom trawl fishery managed under the Fishery Management Plan for Summer Flounder Fishery (FMP) and Amendment 2 to the FMP was issued on August 10, 1992. That incidental take statement allows for the documented lethal take of 18 sea turtles: Three in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles. A supplemental biological opinion was prepared for the September 20, 1993, action (which established the TED-use requirement in the summer flounder fishery from Cape Charles, VA to the North Carolina-South Carolina border). NMFS has also prepared a supplemental biological opinion for this temporary action and has authorized a take, by death or injury, of two endangered Kemp's ridley, hawksbill, green, or leatherback turtle, or six loggerhead turtles during the applicable 60-day period of this action.

This rule will require summer flounder trawlers, whether operating inside or outside of the summer flounder fishery-sea turtle protection area, to carry an observer if selected by the Director, NMFS Southeast Region, or the Director, NMFS Northeast Region. NMFS will cooperate with the North Carolina Division of Marine Fisheries in the placement of observers. If observer reports or other information indicate that the authorized incidental take level is met or exceeded, NMFS will take other necessary measures to protect turtles.

Classification

The AA has determined that this interim rule is consistent with the ESA and other applicable law.

This rule is not subject to review under E.O. 12866.

The AA prepared an environmental assessment (EA) for the final rule to protect sea turtles (57 FR 57348, December 4, 1992). A supplemental EA prepared for previous identical actions concludes that there will be no significant impact on the human environment. A copy of the EA prepared for this interim rule is available (see **ADDRESSES**).

The AA finds there is good cause to waive opportunity for prior notice and opportunity for comment under section 553(b)(B). The AA finds that prior notice and opportunity for comment is unnecessary, impracticable, and contrary to the public interest because fishermen will be unnecessarily disadvantaged by the delay without any benefit in the protection of sea turtles. Because this interim rule relieves a restriction, a 30-day delayed effective date is not necessary.

Because prior notice and opportunity for comment is not required for this action, under section 603(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

Dated: March 1, 1994.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definition for "*Summer flounder fishery-sea turtle protection area*" is revised to read as follows:

§ 217.12 Definitions.

* * * * *

Summer flounder fishery-sea turtle protection area means:

(1) All offshore waters, bounded on the north by a line along 37°05′ N. latitude (Cape Charles, VA) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border), except as provided in paragraph (2) of this definition.

(2) Applicable from March 1, 1994 through May 2, 1994, all offshore waters, bounded on the north by a line along 35°46.1′ N. latitude (Oregon Inlet, NC) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border).

* * * * *

[FR Doc. 94–5051 Filed 3–1–94; 4:33 pm]

BILLING CODE 3510–22–P

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50 CFR Part 625

[Docket No. [940262–4062; I.D. 012194A]]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1994 summer flounder fishery.

SUMMARY: NMFS issues this notification of final specifications to implement the commercial catch quota and other restrictions for the 1994 summer flounder fishery. The intent of this notification is to comply with implementing regulations for this fishery that require the Secretary of Commerce (Secretary) to publish measures for the upcoming fishing year that will prevent overfishing of the summer flounder resource.

EFFECTIVE DATE: March 2, 1994.

ADDRESSES: Copies of the Environmental Assessment prepared for this action are available from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799. Copies of supporting documents used by the Monitoring Committee are available from David R. Keifer, Chairman, Summer Flounder Monitoring Committee, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and

South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 outlines the process for determining the annual commercial catch quota and other restrictions for the summer flounder fishing year. Pursuant to § 625.20, certain management measures have been adopted for calendar year 1994 to ensure achievement of the appropriate fishing mortality rate. These measures include: (1) A coastwide harvest limit of 26,675,934 million pounds (12.1 million kg); (2) a coastwide commercial quota of 16,005,560 million pounds (7.3 million kg); (3) a coastwide recreational harvest limit of 10,670,374 million pounds (4.8 million kg); (4) a minimum commercial fish size of 13 inches (33 cm)(no change from present minimum); (5) a minimum mesh size of 5–1/2-inch (14.0-cm) diamond or 6-inch (15.2 cm) square (no change from present minimum); and (6) a minimum recreational fish size of 14 inches (35.6 cm)(no change in present minimum). These measures are unchanged from the proposed specifications, which were published in the **Federal Register** on December 7, 1993 (58 FR 64393). Recreational catch data for 1993 are not yet available, and the Committee will consider modifications to the recreational possession limit and recreational season after a review of that information.

Table 1 presents the 1994 commercial quota (16,005,560 million pounds (7.3 million kg)) apportioned among each state according to the percentage shares specified by Amendment 4 to the FMP (58 FR 49937; September 24, 1993). These state allocations do not reflect the adjustments required under § 625.20 if 1993 landings exceed the quota for any state. A notification of allocation adjustment will be published in the **Federal Register** if such an adjustment is necessary, after final 1993 commercial landing values are available.

TABLE 1.—1994 STATE COMMERCIAL QUOTAS

State	Share (percent)	1994 Quota (pounds)
ME	0.04756	7,612
NH	0.00046	74
MA	6.82046	1,091,653
RI	15.68298	2,510,149
CT	2.25708	361,258
NY	7.64699	1,223,943
NJ	16.72499	2,676,928
DE	0.01779	2,847
MD	2.03910	326,369
VA	21.31676	3,411,867
NC	27.44584	4,392,860

Comments and Responses

Comments were received on the proposed management measures from Seafarers International Union of North America (SIU) and the Atlantic Coast Conservation Association of Virginia (ACCA). Comments concerning the recommended 1994 management measures are addressed below.

Comment: The SIU believes that the recommended commercial quota is overly conservative and was adopted without question by the Council.

Response: The summer flounder stock assessment was intensively reviewed in October 1992 and May 1993 by the Southern Demersal Working Group, which is composed of biologists from both Federal and state agencies. The Council staff's initial recommendation of management measures was based on the assessment, which concluded that the resource is at a low biomass level and is overexploited. This initial recommendation was reviewed and debated by the Summer Flounder Monitoring Committee (Committee), the Council's Demersal Species Committee, and the ASMFC's Policy Board before adoption of the management measures by the Council and ASMFC.

Comment: The SIU believes that the proposed quota ignores the fact that fishing mortality in 1993 was below the 0.53 target.

Response: The basis for the SIU comment is unclear. In the absence of actual data for 1993, the assessment used as the basis of the 1994 quota recommendation makes several assumptions that the SIU may have misinterpreted to be statements of fact. These assumptions are: That the target fishing mortality is not exceeded, the overall 1993 quota is not exceeded, discards do not increase, and all landings are reported. All of these assumptions are incorporated into the specified quota level.

Comment: The SIU believes that the estimates of discard mortality in the analysis are too high. It cites a study conducted by the Commonwealth of Massachusetts that showed a 94-percent survival rate for summer flounder.

Response: The Massachusetts study provides data of interest to the Committee and to NMFS, and there is interest in further study. However, the study was limited in both scope and sample size, and the results cannot be extrapolated to the summer flounder commercial fishery as a whole.

Comment: The SIU believes that the Council should consider a higher commercial quota, in part because the SIU believes that data indicate that the stock was recovering before implementation of the current management measures.

Response: The assessment results indicate that recruitment has improved since 1988, but that it remains at or below an average level. The fishery is dependent upon incoming recruitment because of the limited number of ages of fish in the population. Given the uncertainty of stock size estimates for 1993, the assessment recommends a cautious strategy in setting the 1994 quota.

Comment: The SIU believes that the target fishing mortality rate for 1996 of F_{max} will not be 0.23. The SIU believes that the management measures enacted under the FMP during the period 1993 through 1995 will result in a recalculated F_{max}, which will be higher. Therefore, SIU believes that the Council should not be influenced by concern about the 1996 reduction in target fishing mortality rate.

Response: F_{max} is a biological reference point, which could require recalculation if the production parameters of the stock change significantly. The production parameters to consider are growth rate, natural mortality rate, and partial recruitment. There is no evidence of change in any of these parameters, but partial recruitment will be monitored in case change occurs in response to the implementation of the management measures in the FMP. If change is detected and determined to be both significant and sustained, recalculation of F_{max} could be required. Unless such change occurs, the target fishing mortality specified in the FMP for 1996 is 0.23. It is appropriate for the Council to consider this when establishing annual management measures.

Comment: The ACCA opposes any increase in the commercial quota for 1994 because it believes Amendment 2 requires the Council and NMFS to err in favor of resource conservation if there is uncertainty about the status of the resource.

Response: Amendment 2 requires the Council, ASMFC, and NMFS, to adopt management measures that balance the probability of reaching the target fishing mortality rate against reasonable impacts on the industry. The commercial quota was set after an

examination of stock projections for 1994 that were conducted using low, mean, and high estimates of recruitment and the number of age-1 fish. The adopted management measures are based upon the low estimate of recruitment in order to proceed conservatively due to several sources of uncertainty in the assessment.

Comment: The ACCA questions the way in which state survey data were used to estimate age-0 fish. They believe the assessment should have relied on the Virginia Institute of Marine Science (VIMS) index, which indicates poor recruitment.

Response: The stock assessment incorporates the results of five state surveys to estimate age-0 fish. Each of the state surveys is limited in area and indicates recruitment trends locally. The overall analysis combines all of the surveys and produces a moderate estimate that is lower than the mean over the past 5 years. The uncertainty concerning this estimate is one of the reasons cited by the Council and ASMFC for the conservative quota adopted.

Comment: The ACCA questions the assumption that the 1993 commercial quota will not be exceeded and states that the 1994 quota should not be set until final 1993 landings figures are available. ACCA supports the FMP provision that requires state landings in excess of the 1993 quota to be deducted from state quota allocations for 1994.

Response: The FMP requires the Summer Flounder Monitoring Committee to make a recommendation concerning management measures for the upcoming year by August 15. Clearly, the Council was aware that it would be impossible to incorporate landings data from one year into the recommendations for the following year. The assumption that the 1993 quota is not exceeded is not unreasonable since the FMP requires weekly dealer reports and gives NMFS the authority to close states to the landing of summer flounder when a state quota is attained. If final 1993 landings exceed a state quota, the 1994 state quota will be decreased by the overage amount.

Comment: The ACCA believes the 1994 quota recommendation does not take into account the additional reduction in target fishing mortality that the FMP requires in 1996.

Response: As stated in the proposed specifications, a conservative quota level was selected for 1994 in part in anticipation of the FMP requirement for reduction of the target fishing mortality rate to 0.23 in 1996. If a conservative quota level is implemented in 1994, and if recruitment in 1993/94 exceeds the assumed level, then spawning stock biomass is expected to increase at a rate faster than estimated. Larger stock sizes in 1996 would allow for a quota level that would minimize the impacts of the additional reduction on fishermen.

Classification

This action is authorized by 50 CFR part 625.

List of Subjects in 50 CFR Part 625

Fisheries, reporting and recordkeeping requirements.

(**Authority:** 16 U.S.C. 1801 *et seq.*)

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–5125 Filed 3–2–94; 3:28 pm]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 931076–4052; I.D. 030194A]

RIN 0648–AD33

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on Tuesday, March 1, 1994 (59 FR 9872), which implements Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP).

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Murphy, Northeast Regional Office, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Need for Correction

This document corrects the minimum-mesh net size requirement to be 5½ inches (13.97 cm), rather than 6 inches (15.24 cm), for the Gulf of Maine/Georges Bank regulated mesh area and the Stellwagen Bank/Jeffreys Ledge juvenile protection area from March 1, 1994, through March 31, 1994. The minimum mesh size requirement for these two areas will become 6 inches (15.24 cm) beginning April 1, 1994. The Regional Director determined on February 25, 1994, that fishermen need additional time to come into compliance with a larger minimum mesh requirement of 6 inches (15.24 cm).

Correction of Publication

Accordingly, the publication on March 1, 1994, of the final rule, which was the subject of FR Doc. 94–4610, is corrected as follows:

1. On page 9874, under the "**SUPPLEMENTARY INFORMATION**" caption, in the second column, before the heading, "Comments and Responses", add the following heading and paragraph: Delay of 6-inch (15.24-cm) Minimum Mesh Requirement.

The 6-inch minimum mesh requirements in the Gulf of Maine/Georges Bank regulated mesh area (see § 651.20(a)(2)) and the Stellwagen Bank/Jeffreys Ledge juvenile protection area (see § 651.20(a)(5)) are effective beginning April 1, 1994, with a minimum mesh requirement of 5½ inches (13.97 cm) from March 1 through March 31, 1994. The Regional Director determined on February 25, 1994, that fishermen need additional time to come into compliance with a larger minimum mesh requirement of 6 inches (15.24 cm).

§ 651.20 [Corrected]

2. On page 9893, third column, in § 651.20(a)(2), line 2, after the phrase "area, shall be", insert the following: "5½ inches (13.97 cm) from March 1, 1994, through March 31, 1994, and beginning April 1, 1994,".

3. On page 9894, third column, in § 651.20(a)(5), introductory text, last line, after the words "net gear", and before the period, add the words: "except that from March 1, 1994, through March 31, 1994, the minimum mesh requirement shall be 5½ inches (13.97 cm) square mesh (hung on the square) in the last 140 bars of the codend and extension piece of all mobile net gear."

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–5078 Filed 3–2–94; 11:22 am]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 920461–4061; I.D. 021594E]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a technical amendment that updates directed

fishing standards to reflect changes in Gulf of Alaska (GOA) target species categories. These changes resulted from the annual specification process for GOA groundfish and must be incorporated into the directed fishing standards to maintain the intent of these regulations to limit bycatch amounts of certain groundfish species closed to directed fishing.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Regulations at § 672.20(a)(2) authorize the Secretary of Commerce to split or combine target species categories during the annual specification process for purposes of establishing Total Allowable Catch (TAC) amounts under § 672.20(c)(1). Under this authority, the final 1991 specifications for GOA groundfish (56 FR 8723, March 1, 1991) established shortraker/rougheye rockfish and Pacific ocean perch (POP) as two separate TAC categories when it removed these species from the species group "other rockfish." Separate TAC categories were also established for northern rockfish in the final 1993 specifications (58 FR 16787, March 31, 1993) by removing this species from the "other rockfish" category and for rex sole in the final 1994 specifications (59 FR 7647, February 16, 1994) when this species was removed from "deep water flatfish." The new TAC categories resulted in inadvertent changes to the directed fishing standards, at § 672.20(g), that were not consistent with the intent of these regulations.

This technical amendment updates and clarifies the regulations pertaining to the directed fishing standards to reflect these new target species categories. Paragraphs § 672.20(g)(1)(i)(A); (g)(1)(ii); (g)(2); and (g)(4)((ii) are updated to add "rex sole" to the same grouping as deep water flatfish; and at § 672.20(g)(1)(ii) and (g)(4)(ii), "other rockfish" and thornyhead rockfish are updated to read "other rockfish of the genera *Sebastes* and *Sebastolobus*." Reasons for these changes follow.

Under the existing regulations at § 672.20(g)(1)(ii) and (g)(4)(ii), the operator of a vessel is engaged in directed fishing for demersal shelf rockfish if the operator retains at any particular time during a trip demersal shelf rockfish in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, "other rockfish," and thornyhead rockfish, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

The intent of the existing regulations was to set a directed fishing standard for demersal shelf rockfish at 1 percent of the aggregate amount of deep water species, including deep water flatfish and "other rockfish," because demersal shelf rockfish are less likely to be caught as bycatch in deep water fisheries. However, when northern rockfish, shortraker/rougheye, and POP rockfish species were removed from the complex of "other rockfish" and rex sole was removed from the deep water flatfish complex they then, under the directed fishing standards (§ 672.20(g)), became part of the "all other fish species" designation against which demersal shelf rockfish can be retained at a rate of up to 10 percent. This percentage is inconsistent with the intent of the directed fishing standard to limit demersal shelf rockfish bycatch to minimal amounts in the deep water fisheries. Therefore, consistent with the intent of the original regulation, the technical amendment would ensure that northern rockfish, shortraker/rougheye rockfish, POP, and rex sole would remain in the category against which demersal shelf rockfish can be retained up to 1 percent.

The existing regulations at § 672.20(g)(1)(i)(A) and (g)(2) present a similar situation for rex sole. The directed fishing standard for sablefish, at paragraph (g)(1)(i), is 15 percent of the aggregate amount of deep water flatfish, flathead sole, and rockfish of the genera *Sebastes* and *Sebastolobus* retained at the same time on the vessel during the same trip, plus 5 percent of the total amount of all other fish species retained at the same time on the vessel during the same trip. When rex sole was removed from the category of deep water flatfish, which formed part of the grouping against which sablefish can be retained at an amount up to 15 percent, it then became part of the default group against which sablefish can be retained at an amount up to 5 percent. The intent was not for rex sole to be grouped with the "all other fish species" category, against which sablefish can be retained at reduced amounts.

The same situation involving rex sole occurs in paragraph (g)(2). The existing regulations state that an aggregate amount of rockfish of the genera *Sebastes* and *Sebastolobus*, except demersal shelf rockfish, can be retained at the same time on the vessel during the same trip at up to 15 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, and other rockfish species for which directed fisheries are open and 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip. The intent of the regulation was not for rex sole to be grouped with the "all other fish species" category. Therefore, consistent with the intent of the original regulations, the new category of "rex sole" will be specified in the same grouping as deep water flatfish and other deep water species.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(d)(3) of the Administrative Procedure Act, that good cause exists for waiving the 30-day delayed effectiveness period for this action. Because this technical amendment makes only minor, non-substantive changes to existing regulations, notice and public comment, thereon, and a delay in the effective date would serve no purpose. This rule updates the directed fishing standards and does not cause a change in any fishing practices.

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraphs (g)(1)(i)(A), (g)(1)(ii), (g)(2), and (g)(4)(ii) are revised to read as follows:

§ 672.20 General limitations

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) 15 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, and rockfish of the genera *Sebastes* and *Sebastolobus* retained at the same time on the vessel during the same trip; plus

* * * * *

(ii) Demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf

rockfish caught using trawl gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish of the genera *Sebastes* and *Sebastolobus*, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

(2) Rockfish of the genera *Sebastes* and *Sebastolobus*, except demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for rockfish if he retains at any particular time during a trip an aggregate amount of rockfish species for which a directed fishery closure applies except for demersal shelf rockfish, that is equal to or greater than the sum of 15 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish species for which directed fisheries are open, retained at the same time on the vessel during the same trip, and 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip.

* * * * *

(4) * * *

(ii) Demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using hook-and-line gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish of the genera *Sebastes* and *Sebastolobus*, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

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[FR Doc. 94–5088 Filed 3–4–94; 8:45 am]

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Proposed Rules

Federal Register
Vol. 59, No. 44
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4845–7]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of ethylene oxide (EO) from existing and new commercial sterilization and fumigation operations. The proposed national emission standards for hazardous air pollutants (NESHAP) implement section 112(d) of the Clean Air Act (Act). The intent of the proposed standards is to protect public health by requiring existing and new major sources and existing area sources to control emissions to the level achievable by the maximum achievable control technology (MACT), and by requiring new area sources to control emissions using generally available control technology (GACT).

DATES: *Comments.* Comments must be received on or before May 6, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 4, 1994, a public hearing will be held on April 12, 1994, beginning at 10 a.m.

Request to Speak at Hearing. Requests to present oral testimony must be received by April 4, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (LE–131), Attention, Docket No. A–88–03, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons interested in requesting a hearing, verifying that a hearing will be held, or wishing to present oral testimony should contact Ms. Lina Hanzely, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673 by the dates specified above.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Ethylene Oxide Emissions from Commercial Sterilization/Fumigation Operations—Background Information for Proposed Standards, NTIS number PB 93–226744, EPA–453/D–93–016." Electronic versions of the BID as well as this proposed rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed contact the systems operator at (919) 541–5384.

Docket. Docket No. A–88–03, containing supporting information used in developing the proposed standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, Ground Floor, 401 M Street SW., Washington, DC 20460. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David Markwordt at (919) 541–0837, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of EO, contact Dr. Nancy Pate at (919) 541–5347, Pollutant Assessment Branch, Emission Standards Division (MD–13) at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. List of Categories and Subcategories.
II. Background.
III. NESHAP Decision Process.
  A. Source of Authority for NESHAP Development.
  B. Criteria for Development of NESHAP.
  C. Maximum Achievable Control Technology Floor Determination and Process of Developing Regulations for Major and Area Sources.
IV. Summary of Proposed Standards.
  A. Source Categories to be Regulated.
  B. Pollutant to be Regulated.
  C. Affected Emission Points.
  D. Format of the Standards.
  E. Proposed Standards.
  F. Impacts of the Standards.
  G. Certification of Compliance.
  H. Monitoring Requirements.
  I. Reporting and Recordkeeping Requirements.
V. Summary of Environmental, Energy, and Economic Impacts.
  A. Facilities Affected by these NESHAP.
  B. Air Impacts.
  C. Water, Solid Waste, and Noise Impacts.
  D. Energy Impacts.
  E. Cost Impacts.
  F. Economic Impacts.
VI. Rationale.
  A. Selection of Pollutants and Source Category for Control.
  B. Selection of Emission Points to be Covered by the Standards.
  C. Selection of the Basis and Level of Proposed Standards for Major Sources.
  D. Selection of the Basis and Level of Proposed Standards for Area Sources.
  E. Selection of the Format of the Proposed Standards.
  F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements.
  G. Selection of Recordkeeping and Reporting Requirements.
  H. Operating Permit Program.
  I. Selection of Emission Test Methods.
  J. Solicitation of Comments.
VII. Administrative Requirements.
  A. Public Hearing.
  B. Docket.
  C. Executive Order 12866.
  D. Paperwork Reduction Act.
  E. Regulatory Flexibility Act.
  F. Miscellaneous.

The proposed regulatory text is not included in this **Federal Register** notice,

but is available in Docket No. A–88–03 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the EPA's Technology Transfer Network (TTN). See the DOCKET section of this preamble for more information on accessing TTN.

I. List of Categories and Subcategories

Section 112 of the Act requires that the EPA evaluate and control emissions of hazardous air pollutants (HAP). The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP. The initial list of major and area source categories to be regulated was published in the **Federal Register** on July 16, 1992 (57 FR 31576).

The source categories for which standards are proposed today are commercial EO sterilization and fumigation operations. Standards for both major and area sources of EO from commercial sterilization and fumigation operations are presented in today's proposed regulation. The commercial EO sterilization and fumigation source category consists of commercial operations that use EO in the sterilization of medical equipment supplies and in miscellaneous operations as a sterilant for heat- or moisture-sensitive materials or as a fumigant to control microorganisms or insects. A variety of materials are sterilized or fumigated with EO including medical equipment, pharmaceuticals, cosmetics, spices, books, artifacts, and beehives.

Approximately 188 commercial EO sterilization and fumigation facilities are in operation in the U. S., emitting an estimated 1,070 megagrams per year (Mg/yr) [1,180 tons per year (ton/yr)] of EO. Because all of the EO used for sterilization and fumigation is emitted following the sterilization process, the uncontrolled EO emissions from a facility are equal to the amount of EO used by that facility. Approximately 25 commercial sterilization and fumigation facilities each use 9,070 kilograms per year (kg/yr) [10 ton/yr] or more of EO and would, considering actual emissions, be considered major sources under section 112. Approximately 21 facilities use 9,070 kg/yr (10 ton/yr) or more of EO, but control the majority of EO emissions, emissions from the sterilization chamber vent, and would not be required to install additional controls on this emissions point. Of the remaining 142 known facilities, approximately 68 would be regulated as area sources under this proposed regulation. Approximately 74 of the smallest area sources would not be regulated.

II. Background

In 1985, the EPA published a **Federal Register** notice titled "Assessment of Ethylene Oxide as a Potentially Hazardous Air Pollutant" (50 FR 40286). In this notice, the EPA stated that it intended to list EO as a HAP under section 112 of the Act. The EPA then initiated an extensive information-gathering effort resulting in the development of the 1986 commercial sterilization data base as well as cost, industry profile, and other background information. In May 1988, the EPA presented a status report of the project to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). Both NAPCTAC members and members of the public provided comments on the draft BID that was presented at that time.

In December 1988, work on the draft rule was temporarily suspended (although technical work continued) until the Agency responded to an appellate court ruling (*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F 2d at 1148 (DC Cir. 1987)) that the EPA must revise its NESHAP risk management policy so as to base decisions totally on health risk and to consider cost and technological feasibility only after the safe level of exposure has been set. As an interim activity, in March 1989, the EPA issued an Alternative Control Technology document (EPA–450–3/89–007) that presents technical information to be used by State and local agencies in developing strategies for reducing emissions of volatile organic compounds (VOC) (e.g., EO) from sterilization and fumigation operations.

With the passage of the 1990 Amendments to the Act, regulatory development activities resumed. The 1990 Amendments significantly changed the NESHAP decision-making process under section 112. Section 112 of the Act requires the EPA to develop technology-based standards for source categories that emit HAP. This process is explained in section III of this preamble. The EPA is proposing to regulate EO emissions from commercial sterilization and fumigation operations under authority of section 112 of the amended Act.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Title III of the 1990 Amendments was enacted to reduce the amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from certain industries that generate these emissions. Section 112(b) contains a list of HAP, which are the specific air toxics used to identify the source categories to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. A list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576). This list included both major and area commercial EO sterilization and fumigation sources.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112 of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors. (As described in section III.C. of this preamble, the MACT floor is the minimum stringency level for MACT standards, and is determined according to section 112(d) of the Act.) The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures that: 1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h); or

5. Are a combination of the above (section 112(d)(2)).

To develop NESHAP, the EPA collects information concerning the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of

emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and cost limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

C. Maximum Achievable Control Technology Floor Determination and Process of Developing Regulations for Major and Area Sources

The EPA must set MACT standards for each of the source categories listed under section 112(c) of the Act that contain major sources. Such standards must be set at a level at least as stringent as the "floor." Congress provides certain very specific directives to guide the EPA in the process of determining this regulatory floor. As described below, area sources may be regulated with either a MACT standard or a GACT standard. A GACT standard is not required to be as stringent as the MACT floor.

For MACT, Congress specified that the EPA shall establish standards that require "the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *" (the Act, section 112(d)(2)). In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (the Act, section 112(d)(3)). Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (the Act, section 112(d)(3)).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set a MACT standard that is no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (the Act, section 112(d)(1)).

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards that provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for area source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. An area source is "any stationary source of HAP that is not a major source." As stated previously, MACT is required for major sources. If all or some portion of the sources emit less than 9.1 Mg/yr (10 tons/yr) of any one HAP (or less than 22.7 Mg/yr [25 tons/yr] of total HAP), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the Agency considers the achievable reduction in emissions of HAP (and possibly other pollutants that are co-controlled), the cost impacts, energy impacts, and other environmental impacts of the alternatives above the floor. The objective is to achieve the maximum degree of emission reduction without unreasonable impacts

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods, and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the standard.

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

These proposed standards would regulate emissions of EO from existing and new commercial sterilization and fumigation operations using 907 kg/yr (1 ton/yr) of EO or more. The commercial sterilization and fumigation source categories cover the use of EO as a sterilant and fumigant in the production of medical equipment and supplies and in miscellaneous sterilization and fumigation operations at both major and area sources. The facilities affected by these proposed standards include, but are not limited to, medical equipment suppliers (SIC 3841 and 3842); pharmaceutical suppliers (SIC 2831, 2833, 2834, and 5122); other health-related industries (SIC 2211, 2821, 2879, 3069, 3079, 3569, 3677, 3693, 3999, and 5086); spice manufacturers (SIC 2034, 2035, 2046, 2099, and 5149); contract sterilizers (SIC 7218, 7399, and 8091); and laboratories (0279, 7391, 7397, 8071, and 8922). These commercial sterilization facilities use EO as a sterilant for heat- or moisture-sensitive materials and as a fumigant to control microorganisms or insects. Materials may be sterilized at the facility that produces or uses the product or by contract sterilizers (i.e., firms under

contract to sterilize products manufactured by other companies).

B. Pollutant To Be Regulated

Section 112(b) of the amended Act lists EO as a HAP. Ethylene oxide is emitted from commercial EO sterilization and fumigation operations in significant quantities. The nationwide emissions from all commercial EO sterilization and fumigation facilities are approximately 1,070 Mg/yr (1,180 ton/yr).

C. Affected Emission Points

One of the affected emission points is the sterilization chamber vent(s) at existing and new commercial EO sterilization and fumigation operations. This vent is the emission point for EO evacuated from the sterilization chamber following sterilization. The EO is removed from the sterilization chamber via a series of air washes. As explained in section VI.B. of this preamble, a component of this emission point is the emissions from any vacuum pump drain used to evacuate the chamber during these air washes.

The second emission point affected by this proposed regulation is the chamber exhaust vent(s). Prior to unloading the sterilization chamber, the chamber door is automatically cracked, and the chamber exhaust is activated. The chamber exhaust evacuates EO-laden air from the sterilization chamber prior to unloading and while the chamber is being unloaded (and reloaded). The chamber exhaust enables facilities to meet U.S. Occupational Safety and Health Administration (OSHA) workplace exposure standards; not all facilities have or need chamber exhaust vents.

The third emission point affected by this proposed regulation is the aeration room vent(s) at existing and new major source commercial EO sterilization and fumigation operations. Aeration rooms or chambers are used to allow further diffusion of residual EO from the sterilized products prior to shipping in order to comply with U.S. Food and Drug Administration (FDA) residual EO guidelines. Exhaust from these aeration rooms or chambers is emitted through the aeration room vent.

D. Format of the Standards

A percent reduction format in the form of a mass reduction determination was selected for the proposed standard for the sterilization chamber vents. This format provides flexibility to the owner or operator in the use of any technology or operational practice that achieves the same level of reduction.

A concentration-based format was selected for the proposed standard for the chamber exhaust and aeration room vents: parts per million of EO emitted per unit volume of air. This format is desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Additionally, because the inlet concentrations from the aeration room vents are relatively low, and the outlet concentrations of some of the controlled aeration room vents approach the levels of detection for EO, some facilities may not be able to demonstrate compliance with an "equivalent" percent reduction requirement.

E. Proposed Standards

A summary of today's proposed standards is listed in Table 1.

TABLE 1.—PROPOSED STANDARDS, NATIONAL COSTS, AND EMISSION REDUCTIONS FOR MAJOR AND AREA SOURCES

Vent type	EO use cut-off, kg/yr (ton/yr)	Standard	Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM
Sterilizer vent	907 (1)	99 percent reduction	950 (1,050)	3.8
Chamber exhaust	907 (1)	5,300 ppmv maximum concentration	0	0
Aeration room	9,070 (10)	1 ppmv maximum concentration	48 (53)	2.6

Included in this table are applicability cutoffs based on annual EO use, descriptions of the standards, and the estimated impacts associated with these proposed standards for each type of vent.

Owners or operators of existing commercial EO sterilization and fumigation operations would be required to install the control technology needed to comply with the proposed standards within 2 years after the effective date of the standard. Owners or operators of new commercial EO sterilization and fumigation operations that have commenced construction or reconstruction after the standards are proposed, and before the final standards are promulgated, would be required to have installed the control technology needed to comply with the proposed standards upon startup. Owners or operators of new commercial EO sterilization and fumigation operations that have commenced construction or reconstruction after the standards are promulgated would be required to comply with all requirements upon startup.

F. Impacts of the Standards

The nationwide impacts presented below are the impacts the standards would have on existing operations. The growth rate in the source categories covered by these standards is projected to be approximately zero. A more detailed discussion on how these impacts were calculated can be found in Chapters 6 through 8 of the Background Information Document (see **ADDRESSES** section).

The nationwide emission reduction beyond the baseline resulting from these standards would be 1,000 Mg/yr (1,100 tons/yr). The nationwide annual costs beyond baseline would be $6.4 million. Except for contract sterilizers, most facilities are not expected to face significant increases in the total costs of producing sterilized goods. Although contract sterilizers will face greater production cost increases, their business volume is expected to increase as other types of facilities opt to switch from in-house sterilization to contract sterilization to avoid the costs of regulation. No closures are anticipated as a result of compliance with these standards. The energy, solid waste, and water impacts attributable to the use of these control technologies are expected to be minimal (see sections V.C. and D. of this preamble for a more detailed discussion of these impacts).

G. Certification of Compliance

The tests required under the proposed standards include initial performance testing of control equipment installed on the sterilization chamber vents, and aeration room vents at affected EO commercial sterilization and fumigation operations. The schedule for performance testing is provided in § 63.7 of the proposed General Provisions. The initial performance test is required 120 days after the effective date of the standards or after startup for a new facility, or 120 days after the

compliance date specified for an existing facility.

H. Monitoring Requirements

The owner or operator of a commercial EO sterilization and fumigation operation controlling emissions from the sterilization chamber vent through the use of an acid-water scrubber would be required to monitor the ethylene glycol concentration in the scrubber liquor. Owners or operators controlling emissions from the sterilization chamber vent through the use of catalytic oxidation would be required to monitor the change in temperature across the catalyst bed.

The owner or operator of a commercial EO sterilization and fumigation operation would be required to measure the concentration of EO in the sterilization chamber immediately before the chamber exhaust is activated. Owners or operators of commercial EO sterilization and fumigation operations would be required to continuously monitor the concentration of EO being emitted from the aeration room vent at the outlet to the environment.

I. Reporting and Recordkeeping Requirements

Owners or operators of commercial EO sterilization and fumigation operations using 907 kg (1 ton) or more of EO in any consecutive 12-months would be required by the proposed General Provisions of part 63 of 40 CFR to submit an initial notification report. For new sources, the EO use information must be an estimate of expected use during the first consecutive 12 months of operation. Owners or operators of new sources would be required to submit the initial notification report within the timeframes specified in § 63.9 of 40 CFR part 63, subpart A, according to the type of new source classification. For existing sources, the notification report must specify the amount of EO used in the previous consecutive 12 months as well as the information required under § 63.9 of 40 CFR part 63, subpart A. Owners or operators of existing sources would be required to submit the initial notification report within 45 calendar days after the effective date of the standards or within 45 days of the month in which a facility exceeds the annual applicability cutoff.

Owners or operators of any affected commercial EO sterilization and fumigation operation would be required to submit a report indicating their intention to conduct a performance test at least 75 days before the scheduled date of the test. This report must be accompanied by a site test plan. Once the performance test is approved and conducted properly, a report containing the test results must be submitted within 30 days after completion of the test.

Owners or operators of affected commercial EO sterilization and fumigation operations consistently using less than 9,070 kg (10 tons) of EO during 12 consecutive months would be required to maintain records of a 12-month rolling average of EO use. Owners or operators of commercial EO sterilization and fumigation operations who previously used less than 9,070 kg (10 tons) of EO but whose EO use within a consecutive 12 months equaled or exceeded 9,070 kg (10 tons) would be required to submit an initial notification and all related "new source" reports for the aeration room standard unless the facility was existing prior to the affected date of the standards.

Owners or operators of commercial EO sterilization and fumigation operations subject to these standards would be required to report when their operations exceeded levels specified in the standards, and therefore violated the respective standard. The reports would be due by the 30th day following the end of each quarter in which excess emissions occurred. These reports would contain the date and time of the violation, the conditions and duration of the violation, and the steps taken to correct the violation and return the device to proper operation.

Owners or operators of commercial EO sterilization and fumigation operations would be required to retain all information related to their initial performance test, compliance with the standards, and the test methods for a minimum of 5 years.

V. Summary of Environmental, Energy, and Economic Impacts

A. Facilities Affected by These NESHAP

There are approximately 188 existing commercial EO sterilization and fumigation facilities throughout the country. Approximately 18 percent of this total have already installed emission control equipment on sterilization chamber vents to comply with OSHA, State, or local requirements, and would not have to install additional control equipment to meet the proposed standards. Approximately 51 percent of the 47 commercial EO sterilization and fumigation major sources have installed emission control devices. About 83 existing commercial EO sterilization and fumigation facilities have uncontrolled sterilization chamber vents (or have sterilization chamber vents that are controlled at an efficiency insufficient to meet this proposed standard) and would be required to install control equipment on sterilization chamber vents under today's proposed standards. No commercial EO sterilization and fumigation operations contained in the EPA's commercial sterilization data base control emissions from the chamber exhaust vent. Approximately 114 facilities will be required to meet the 5,300 parts per million by volume (ppmv) concentration standard for emissions from the chamber exhaust vent. The 47 major sources would be required to control emissions from the aeration room vent. Sixteen of these facilities are known to have already installed control equipment to meet State or local permitting requirements and would not be required to install additional controls. About 31 existing commercial EO sterilization and fumigation facilities have uncontrolled aeration room vents (or have aeration room vents that are controlled at a concentration insufficient to meet this proposed standard) and would be required to install control equipment on aeration room vents. (Additional information on the status of control in this industry is found in the docket for this rulemaking effort.)

Based on the projected zero growth rate of the commercial sector, it is estimated that the only newly constructed commercial EO sterilization and fumigation facilities covered by the proposed standards during the 5-year period from 1992 to 1997 would be facilities replacing those facilities that have retired.

B. Air Impacts

The proposed standards would reduce nationwide emissions of EO from existing commercial EO sterilization and fumigation facilities by about 93 percent in 1997 compared to the emissions that would result in the absence of the proposed standards. In the absence of a regulation, existing commercial EO sterilization and fumigation operations are projected to emit 1,070 Mg (1,180 tons) of EO in 1997. Under the proposed standards, these facilities are projected to emit 72 Mg (79 tons) of EO, a reduction of approximately 1,000 Mg (1,100 tons). The standard for sterilization chamber vent emissions accounts for a nationwide reduction of 950 Mg (1,050 tons) of EO, and the standard for aeration room vent emissions accounts for a nationwide reduction of 48 Mg (53 tons). There is no expected change in emissions from chamber exhaust vents

because the intent of the standard for these vents is to prevent any emissions increases.

C. Water, Solid Waste, and Noise Impacts

The water quality impact associated with these proposed standards is small. The impact of the proposed standards on water quality would result from ethylene glycol in the wastes generated by the acid-water scrubbers. Ethylene glycol is generated when the EO exhaust stream contacts and then reacts with the acid-water solution in this type of scrubber. When this solution is spent, the scrubber tank is emptied, and a fresh acid-water solution added. Each tank typically holds about 833 liters (L) (220 gallons (gal)) of a 10 percent (by volume) aqueous sulfuric acid (H_2SO_4) solution, which is neutralized with 50 percent (by weight) caustic (NaOH) before the tank is drained. The amount of ethylene glycol solution generated by existing sources as a result of this proposed regulation is expected to be 2,120 cubic meters per year (m^3/yr) (561,000 gallons per year (gal/yr)). However, there are several operations offering no-credit, no-cost (except for shipping) ethylene glycol recovery; it is anticipated that the nationwide wastewater impacts will be lower than 2,120 m^3/yr (561,000 gal/yr).

The solid waste impact due to the proposed standards is small. Catalytic oxidation is used at some facilities as a control technology for both sterilization chamber vents and aeration room vents. The catalyst beds are typically returned to the control device manufacturer for regeneration where the spent catalyst is landfilled. The spent catalyst is not classified as a hazardous waste. However, control technologies utilizing acid-water scrubbers, which have no solid waste impacts, are used at the majority of facilities. Therefore, it is expected that the solid waste impacts will be minimal.

There are no noise impacts associated with these proposed standards.

D. Energy Impacts

The national energy impacts associated with these proposed standards are small. The total increase in annual electricity use resulting from the proposed standards in 1997 would be about 0.1 gigawatt hours per year (GWh/yr). This increased electricity use attributed to existing sources results from the operation of control devices used in complying with the emissions standards for the sterilization vent and aeration room vent. The average electricity requirements for a typical operation affected by these standards are projected to increase 110 kilowatt hours/yr (KWh/yr) as a result of the proposed standards. Because a zero net growth rate is projected for these industries, no increase in energy use is expected to result from these proposed standards for new sources.

E. Cost Impacts

Under the proposed NESHAP, the nationwide annualized costs for existing commercial EO sterilization facilities would increase by about $6.4 million beyond baseline based on an analysis of the application of controls to all existing facilities not currently controlled to the level of the standards. The levels of controls specified in the standards comprise the regulatory baseline. Because any new sources would be replacing existing sources, costs attributable solely to new sources are not anticipated.

To comply with the proposed emission standards, the initial capital cost incurred by a typical uncontrolled existing source such as a large commercial EO sterilization and fumigation operation using 68,000 kg/yr (75 ton/yr) of EO would be about $310,000 for controlling the sterilization chamber vent emissions and about $270,000 for controlling the aeration room vent emissions. The annualized cost incurred by this typical source to operate the control devices would be about $100,000 to control the sterilization chamber vent emissions and about $74,000 to control the aeration room vent emissions.

F. Economic Impacts

The analysis of economic impacts indicated that the commercial EO sterilization and fumigation facilities subject to these proposed standards would not experience significant economic impacts. Due to OSHA requirements limiting worker exposure and existing State regulations, the industry trend is toward increased control of EO emissions; thus, the level of control required by these standards is, in many cases, already in place.

The proposed standards will have the potential to affect many contract sterilizers in two ways. First, because sterilization is nearly the entire "product" for contract sterilizers, the proposed standards will probably cause a more pronounced increase in contract sterilizers' production costs as compared to the cost increase for other facilities affected by the standards. However, the proposed standards will likely also result in an increased demand for contract sterilization services. Because contract sterilizers on average have larger chambers than the other industry groups and use more EO, the per-unit cost of the proposed standards is lower for contract sterilizers than for the other groups. The contract sterilizers' lower per-unit control costs are therefore, expected to result in additional business if firms in the other affected industries switch from in-house sterilization to contract sterilization.

The controls required under the proposed standards will increase sterilization costs in the other affected industry groups. However, sterilization costs are generally very small relative to the total cost of producing sterilized products in these industries. Consequently, the proposed standards will not significantly increase production costs for most medical device suppliers, other health-related manufacturers, spice manufacturers, or pharmaceutical manufacturers. Some facilities may choose to switch from in-house to contract sterilization to avoid any direct regulatory impacts.

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standards.

A. Selection of Pollutants and Source Category for Control

Section 112(c)(1) as amended authorizes the Administrator to publish a list of all categories and subcategories of major sources and area sources of the HAP listed in section 112(b), ethylene oxide is one of these listed HAP. For the categories and subcategories the Administrator lists, emission standards are to be established pursuant to section 112(d).

A list of source categories to be regulated was published on June 16, 1992 (57 FR 31576). Both major and area commercial EO sterilization and fumigation sources were listed.

B. Selection of Emission Points To Be Covered by the Standards

For EO commercial sterilization and fumigation operations, the source consists of three emission points. The standards address all three of these emissions points, which are: (1) The sterilization chamber vent (i.e., the vent of the vacuum pump gas/liquid separator), (2) the chamber exhaust vent, and (3) the aeration room vent.

A component of the sterilization chamber vent at some EO commercial sterilization and fumigation operations is a once-through, water-ring vacuum pump that results in EO emissions from wastewater. The use of a closed-loop, recirculating vacuum pump drain, a technology used at many EO

commercial sterilization and fumigation operations, would eliminate these EO drain emissions (i.e., the EO that would be emitted via the drain would instead be emitted via the sterilization chamber vent). Thus, to prevent these wastewater emissions, the Agency is including any emissions from a vacuum pump drain as emissions from the sterilization chamber vent.

C. Selection of the Basis and Level of Proposed Standards for Major Sources

1. New Source MACT Floor Determination

The following discussion presents the Agency's determination of the MACT floor for each of the three source types at new major source commercial EO sterilization and fumigation operations. Additional information on this analysis is found in the docket for this rulemaking.

a. *Sterilization chamber vent.* The greatest sterilization chamber vent emission reduction by similar existing sources is the reduction of 99 percent of emissions. Therefore, this emissions reduction comprises the MACT floor for new commercial EO sterilization and fumigation operations.

b. *Chamber exhaust vent.* It is possible that chamber exhaust vent emissions could be controlled with existing technology. However, despite the presence of regulations in some States (e.g., California) that require emission reductions from this emission source, the EPA's database does not contain any existing chamber exhaust vents that are routed to a control device. Therefore, the MACT floor for new source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The new source MACT floor for chamber exhaust vents is a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources. The EPA is soliciting comments and data regarding demonstrated control technologies for this source.

c. *Aeration room vent.* The best controlled aeration room vent at a similar source utilizes control technologies that reduce emissions to 1 ppmv at most. This level of control therefore comprises the MACT floor for aeration room vents at new commercial EO sterilization and fumigation operations.

2. Existing Source MACT Floor Determination

The following discussion presents the Agency's analysis that led to the determination of MACT floors for each of the three source types at existing commercial EO sterilization and fumigation operations. Additional information on this analysis is found in the docket for this rulemaking.

a. *Sterilization chamber vent.* In the EPA's commercial sterilization data base, 24 of 47 major source facilities (51 percent) have control devices (catalytic oxidizers and acid-water scrubbers) for their sterilization chamber vent emissions that achieve an emissions reduction of 99 percent. These control devices are used across a range of industry categories and for a wide range of facility sizes (from 3.7 m^3 to 280 m^3 (130 ft^3 to 10,000 ft^3) cumulative chamber size). No control devices capable of achieving greater emission reductions were found. Therefore, a 99-percent reduction was selected as the MACT floor for these existing emissions sources.

b. *Chamber exhaust vent.* As is the case for the new source MACT floor, there are no existing chamber exhaust vents routed to a control device. Therefore the MACT floor for existing source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The existing source MACT floor for chamber exhaust vents is therefore a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources.

c. *Aeration room vent.* There are approximately 16 major sources (34 percent) known to have controlled aeration room vent emissions. The MACT floor for aeration room vents at existing commercial EO sterilization and fumigation operations using 9,070 kg (10 ton) or more of EO in a consecutive 12-months is therefore a reduction of emissions to a maximum concentration of 1 ppmv.

3. Development of Regulatory Alternatives

a. *New sources.* The regulatory alternatives developed for new major sources incorporate the regulatory approaches described in section V.C. of this preamble as well as the MACT floors discussed above. In addition, these alternatives incorporate technologies that achieve an emission reduction beyond that of the MACT floors. These regulatory alternatives are listed in Table 2.

TABLE 2.—MAJOR SOURCE REGULATORY ALTERNATIVES FOR NEW AND EXISTING SOURCES

Reg. alt.	Control levels			Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM	Cost effectiveness, $/Mg ($/ton)
	Sterilizer vent	Aeration room vent	Chamber exhaust vent			
A	≥99 percent mass reduction.	<1 ppmv outlet concentration.	≥99 percent mass reduction.	830 (910)	5.5	6,600 (6,000)
B*	≥99 percent mass reduction.	<1 ppmv outlet concentration.	<5,300 ppmv outlet concentration.	800 (880)	4.3	5,400 (4,900)

*Regulatory Alternative B represents the MACT floor for existing sources as well as the best controlled similar source (i.e., MACT) for new sources.

The nationwide emission reduction and cost data in Table 2 are based on existing sources.

(1) *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from new commercial EO sterilization and fumigation of major sources. This alternative would require

the installation of control devices on all three emission sources—the sterilization chamber vent, chamber exhaust vent, and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). As discussed in the MACT floor analysis, the Agency is unaware of any demonstrated controls in use on a chamber exhaust vent. However, for purpose of this analysis, a model control device was evaluated.

(2) *Regulatory alternative B.* This regulatory alternative reflects the application of MACT floor controls on the three emissions sources. Regulatory alternative B represents a reduction in emissions of EO from new commercial EO sterilization and fumigation sources that is less stringent than regulatory alternative A. The difference is that instead of reducing emissions from the chamber exhaust vent, the owner or operator would be required to not exceed "status quo" emissions.

(3) *Selected regulatory alternative.* In determining MACT, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative B as the basis for today's proposed standards for new sources. In the case of the sterilization chamber and aeration room vents, the Agency is unaware of a technology that achieves a demonstrated emissions reduction beyond the MACT floor controls. For chamber exhaust vents, the high costs coupled with the relatively low emissions reduction associated with controlling the existing sources (more than $40,000 per Mg) indicates that requiring this level of control would also impose overly-burdensome costs on new sources and would be inconsistent with § 112(d) of the Act where the Administrator is required to consider the costs of any controls beyond the MACT floor.

b. *Existing sources.* Regulatory alternatives were also developed for existing commercial EO sterilization and fumigation operations. These regulatory alternatives are listed in Table 2 and are identical to the regulatory alternatives developed for new sources. As with new sources, these regulatory alternatives reflect the application of the MACT floor controls to these major sources as well as the application of control technologies more stringent than the MACT floor.

(1) *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from commercial EO sterilization and fumigation major sources. This alternative would require the installation of control devices on all three emission points—the sterilization chamber vents, chamber exhaust vents, and aeration room vents—at all major source commercial EO sterilization and fumigation operations. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv emissions limit for aeration room vents).

(2) Regulatory alternative B. Regulatory alternative B represents a reduction in emissions of EO from commercial EO sterilization and fumigation sources that is less stringent than regulatory alternative A. This alternative represents the MACT floor for existing major sources.

(3) *Selected regulatory alternative.* As with the determination of MACT for new sources, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative B as the basis for today's proposed standards for existing sources. The incremental cost effectiveness of moving from regulatory alternative B to regulatory alternative A is $40,000 per Mg. The Administrator determined that this additional burden was excessive given the relatively low additional emission reduction achieved by the more stringent alternative. Regulatory alternative B therefore provides MACT-level controls while not imposing overly burdensome costs on the regulated community.

D. Selection of the Basis and Level of Proposed Standards for Area Sources

In developing standards for area sources, the Administrator first determined that area sources using less than 907 kg/yr (1 ton) would not be required to control emissions from any of the emissions points. The Administrator based this decision on a number of factors discussed herein including the low emissions of sources below this cutoff (1.5 percent of nationwide emissions or approximately 14 Mg/yr (15 ton/yr) of EO) and the high cost effectiveness (more than $50,000 per Mg) that is anticipated if just the emissions from the sterilization chamber vent were controlled at a 99-percent reduction limit. The data represent an increasing cost effectiveness at facilities using smaller quantities of EO. Because of these analyses, the Administrator decided not to regulate facilities using less than 907 kg/yr (1 ton/yr) of EO.

For area sources using 907 kg/yr (1 ton/yr) of EO or more, the Agency evaluated MACT as the bases for regulations of new and existing sources. For new area sources, GACT was also evaluated as a basis for the standards. The potential approaches and corresponding levels of control for new and existing sources are shown in Table 3.

TABLE 3.—POTENTIAL REGULATORY APPROACHES AND CONTROL LIMITS EXAMINED BY THE AGENCY FOR NEW AND EXISTING AREA SOURCES

Emissions point	Control limits		
	New area sources		Existing area sources
	GACT	MACT floor	MACT floor
Sterilization chamber vent	99% emission reduction	99% emission reduction	99% emission reduction.
Chamber exhaust vent	5,300 ppmv emission limit	5,300 ppmv emission limit	5,300 ppmv emission limit.
Aeration room vent	No controls required	1 ppmv emission limit	No controls required.

1. New Area Sources

As shown in table 3, the best performing area source (i.e., new source MACT floor) reduces emissions from the sterilization chamber vent by 99 percent, does not control emissions from the chamber exhaust vent but would prevent increases in emissions from this vent by requiring an emissions

limit of 5,300 ppmv, and reduces emissions from the aeration room vent to a maximum of 1 ppmv. Because impact data for existing area sources indicate an incremental cost effectiveness of over $110,000/Mg ($100,000/ton) associated with requiring controls on aeration room vents for area sources, the Administrator rejected MACT as a basis for the new area source standards. The Administrator employed her authority under section 112(f) of the Act to base the standards for new area sources on GACT.

As shown in table 3, GACT for new area sources results in a 99 percent reduction in emissions from the sterilization chamber vent, an emissions limit of 5,300 ppmv for emissions from the chamber exhaust vent, and no control for emissions from the aeration room vent. These requirements would result in a nationwide cost effectiveness of $10,900 per Mg ($9,900 per ton) for existing area sources. Based on these data from existing sources, the Administrator determined that the projected costs of compliance of requiring these controls for new sources was justified given the anticipated reductions in emissions.

2. Existing Area Sources

The following discussion presents the Agency's analysis that led to the determination of MACT floors for each of the three source types at existing area source commercial EO sterilization and fumigation operations.

a. *Sterilization chamber vent.* In the EPA's commercial sterilization data base, 8 of 67 area source facilities (12 percent) using 907 kg/yr (1 ton/yr) or more of EO have control devices (catalytic oxidizers and acid-water scrubbers) for their sterilization chamber vent emissions that achieve an emissions reduction of 99 percent. No devices were found which exceed this level of control. Therefore, a 99-percent reduction was selected as the MACT floor for these vents at existing area source commercial EO sterilization and fumigation operations.

b. *Chamber exhaust vent.* As is the case for the major source MACT floor at existing sources, there are no existing chamber exhaust vents routed to a control device. Therefore the MACT floor for existing area source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The existing area source MACT floor for chamber exhaust vents is therefore a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources.

c. *Aeration room vent.* There are 2 of 68 area sources (3 percent) using 907 kg/yr (1 ton/yr) or more of EO known to have controlled aeration room vent emissions. When the emissions reduction of the best performing 12 percent of these existing area sources is averaged, a 25 percent control efficiency would be required. Because this 25 percent emissions reduction does not correspond to any known control technology, the median (94th percentile) of the best performing 12 percent control technology was used to determine the MACT floor. This median source is uncontrolled. Therefore, the MACT floor for aeration room vents at existing area source commercial EO sterilization and fumigation operations is no control.

d. *Selected basis.* The Administrator determined that there was no justification to reject MACT as the basis for regulating existing area sources. In making this decision, the Administrator noted that if additional data were made available to the Agency showing a controlled MACT floor for aeration room vents, there could be sufficient justification to reject MACT. Such a decision would be based on the high cost effectiveness coupled with the relatively low emissions reduction associated with controlling aeration room vents.

In making the decision to base the standards for existing area sources on MACT, the Administrator also noted that the Agency would be required to perform a residual risk analysis under section 112(f) of the Act. The Administrator requests comment on the weight that this requirement (to perform a residual risk analysis) should carry in determining the basis for area source standards. For example, where MACT and GACT would require the same level of control (as in this case), is it permissible to call the standard GACT for area sources in order to exempt those sources from the requirements of 112(f)?

3. Development of Regulatory Alternatives for Existing Area Sources

The regulatory alternatives developed for existing area sources incorporate the regulatory approaches and MACT floors described in section V.D. of this preamble. In addition, these alternatives incorporate technologies that achieve an emission reduction beyond that of the MACT floors. These regulatory alternatives and their nationwide emission reduction and cost impacts are listed in table 4.

TABLE 4.—AREA SOURCE REGULATORY ALTERNATIVES FOR EXISTING SOURCES.

Reg. Alt.	Control levels			Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM	Cost effectiveness, $/Mg ($/ton)
	Sterilizer vent	Aeration room vent	Chamber exhaust vent			
A	≥99 percent mass reduction.	<1 ppmv outlet concentration.	≥99 percent mass reduction.	206 (227)	4.3	20,900 (19,000)
B	≥99 percent mass reduction.	<1 ppmv outlet concentration.	<5,300 ppmv outlet concentration.	(222)	3.0	15,000 (14,000)
C	≥99 percent mass reduction.	No control	<5,300 ppmv outlet concentration.	193 (213)	2.1	10,900 (9,900)

a. *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from existing commercial EO sterilization and fumigation area sources. This alternative would require the installation of control devices on all three emission sources—the sterilization chamber vent, chamber exhaust vent, and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). As discussed in the MACT floor analysis for these area sources, the Agency is unaware of any demonstrated controls in use on a chamber exhaust vent. However, for

purpose of this analysis, a model control device was evaluated.

b. *Regulatory alternative B.* This regulatory alternative reflects the installation of control devices on two of the emission sources—the sterilization chamber vent and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). No controls would be required for the chamber exhaust vents, however increases in these emissions would be disallowed by the use of an emissions cap of 5,300 ppmv.

c. *Regulatory alternative C.* This regulatory alternative reflects the application of MACT floor controls on the three emissions sources. Control devices would only be required for the sterilization chamber vent. No controls would be required for the chamber exhaust vent or aeration room vent, however increases in emissions from the chamber exhaust vent would be disallowed by the use of an emissions cap of 5,300 ppmv.

d. *Selected regulatory alternative.* In determining MACT for existing area sources, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative C as the basis for today's proposed standards for existing sources. Although the cost effectiveness for MACT is relatively high, in this case the MACT approach was not rejected in favor of GACT because of the high toxicity of EO; one pound of EO is roughly equivalent in cancer potency to 15 pounds of benzene. In addition to being a probable carcinogen, EO is also associated with severe noncancer health effects.

In the case of the sterilization chamber vents, the Agency is unaware of a technology that achieves a demonstrated emissions reduction beyond the MACT floor controls. For aeration room and chamber exhaust vents, the high costs of requiring controls for these vents are overly burdensome (more than $110,000 per Mg ($100,000 per ton) incremental cost effectiveness associated with the control of aeration room vents under the next most stringent Regulatory Alternative). These high costs, coupled with the relatively low emissions reduction associated with controlling these vents, are inconsistent with section 112(d) of the Act where the Administrator is required to consider the costs of any controls beyond the MACT floor.

E. Selection of the Format of the Proposed Standards

1. Alternative Formats Considered

Consistent with section 112(d)(2) of the amended Act, the EPA considered performance-based formats for the standards. The Agency also considered alternative formats for the three emissions sources addressed in today's proposed regulation.

a. *Sterilization chamber vent emissions.* Two formats consisting of concentration limits and percent reduction (efficiency) were considered for regulating emissions from the sterilization chamber vent. These formats addressed the varying EO concentrations and air flow rate characteristics associated with these batch sterilization and fumigation operations.

(1) *Concentration limit format.* Standards based on a specified EO concentration at the control device outlet (e.g., outlet concentration requirement) are desirable because they require measurement at only one point in the process. However, outlet concentration was deemed to be an inferior format for the sterilization vent standard because outlet concentration alone is not a direct measure of the performance of the control devices used by this industry for control of this vent. Outlet concentration depends on the inlet concentration and flow rate of air through the control device. Because these are batch operations, the inlet concentrations and the flow rates may vary significantly during the sterilization cycle.

Another reason a concentration format was not chosen for sterilization vent emissions is that the EPA lacks sufficient test data to establish a credible concentration limit that could be met by the industry as a whole and that would represent equivalent levels of control by all sources. The EPA could calculate a nationwide (or even plant-specific) concentration limit based on standard sterilization parameters, but (as discussed below) such a limit would have to be based on an assumed control device efficiency. Because the purpose of the outlet concentration standard format is to be a reliable indicator of control device efficiency, this method is inferior to other methods.

(2) *Percent reduction format.* The EPA also considered a percent reduction format for the sterilization chamber vent standard. Although other methods of assessing percent reduction were considered (notably the comparison of inlet and outlet concentrations), the Agency determined that a mass-based reduction measurement of efficiency was the most effective for sterilization chamber vent emissions. This format was the only alternative that was feasible given the variable operating conditions of these batch operations. This mass-based measurement involves a compliance test where the outlet EO concentration and gas flowrate are measured in order to calculate the mass of EO at the outlet.

Additionally, the inlet mass is determined through the measurement of the flowrate and concentration or by knowing the amount of EO charged to the chamber and chamber operating conditions.

b. *Chamber exhaust vent emissions.* Two formats consisting of concentration limits and emission calculation were considered for regulating emissions from chamber exhaust vents.

(1) *Concentration limit format.* A format based on a specified EO concentration in the sterilization chamber immediately prior to activating the chamber exhaust would be desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Owners or operators of commercial EO sterilization and fumigation facilities could easily monitor this concentration and reduce the EO concentration inside the sterilization chamber below this level by performing air wash cycles as needed (the exhaust from these air wash cycles would exit via the sterilization chamber vent and would be considered to be emissions from the sterilization chamber vent emission point).

(2) *Emissions calculation format.* During the development of these NESHAP, the Agency developed calculations that could be used to estimate chamber exhaust vent emissions. The Agency used actual test data as well as hypothetical situations to calculate the concentrations of EO remaining in the sterilization chamber after a certain number of air washes. These calculations assumed that EO behaved as an ideal gas and that a reasonable number of air wash chamber evacuations were performed (reasonable being dependent upon the type of sterilant gas and the product being sterilized). The concentrations of EO emitted from the chamber exhaust vent were consistently found to be less than 2 percent of the original concentration of EO charged to the chamber when this reasonable number of air evacuations was performed. The Agency used these data to develop a regulatory format whereby an owner or operator of a commercial EO sterilization and

fumigation operation could meet the chamber exhaust standard by performing the calculated number of chamber evacuations before engaging the chamber exhaust. Additional information on the development of this format is found in the docket for this rulemaking.

The Agency noted that this format would be sufficient for commercial EO sterilization and fumigation operations that sterilized similar materials on a routine basis. However, because the calculated number of air evacuations to be performed depends on the materials to be sterilized, the Agency believes that this format would not be realistic for operations that sterilize a variety of materials. The Agency therefore did not select this format. The Agency is, however, soliciting comment on the use of this format as an alternative to the selected concentration-based format for commercial EO sterilization and fumigation operations that sterilize similar materials on a routine basis.

c. *Aeration room vent emissions.* Two formats, percent reduction and concentration limit, were considered for regulating EO emissions from the aeration room vent. The Administrator is requesting specific comment on the format selected for the aeration room vent and any test data regarding emissions from this vent.

(1) *Percent reduction format.* As with the format for the sterilization chamber vent standard, the EPA considered a percent reduction format for the standard for aeration room vents. However, the Agency believes that this format is not appropriate because the EO concentrations at the outlet of the control device could theoretically be below the limits of detection for EO and might, therefore, inaccurately measure the efficiency of a control device. Aeration room EO concentrations are typically 20 to 30 ppmv. Because of these low inlet EO concentrations, the outlet EO concentrations from a control device required to perform at the same efficiency as a control device for the sterilization chamber vent emissions could not be measured given the level of detection for EO. The Agency therefore determined that this percent reduction format was inappropriate for the aeration room vent standard.

(2) *Concentration limit format.* A concentration format based on the EO concentration at the control device outlet is desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Even though outlet concentration was deemed to be an inferior alternative for the sterilization vent standard, it is appropriate for the aeration room vent standard because of the less variable operating conditions. Because the outlet concentration depends on the inlet concentration when scrubbers are used, and the inlet concentrations do not vary significantly in the data available, the Administrator believes that an outlet concentration limit is an appropriate format for this emission source. This format also has the advantage that the concentration limit selected, 1 ppmv, approaches the limit of detection for EO, and would comprise the default outlet emission concentration if used to determine the percent emission reduction.

2. Formats Selected

The percent reduction format, in the form of a mass reduction, was selected as the format of the standard for the sterilization chamber vent emissions. The Administrator determined that this format was technically achievable and provided a sufficient indicator of performance while also not imposing prohibitive costs on the owners or operators subject to the standard.

A concentration limit format was selected as the format of the standards for the chamber exhaust vent and aeration room vent emissions. The Administrator determined that the use of the concentration limit format for these vents would provide the most accurate measurement of the performance of the control devices. The EO concentrations typically encountered in the aeration room vents (i.e., relatively low inlet EO concentrations and outlet EO concentrations approaching the limits of detection) precluded the use of the percent reduction format. In the case of the chamber exhaust vents, the Administrator determined that the variability of materials sterilized or fumigated would preclude the use of the emissions calculation format for many commercial EO sterilization and fumigation operations. However, as mentioned previously, the Agency is soliciting comment on the use of this format for chamber exhaust vents.

F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements

The proposed regulation contains compliance provisions that require owners or operators to conduct an initial performance test to demonstrate compliance with the proposed standards. As a means of demonstrating compliance with the sterilization chamber vent standards following this initial performance test, the owner or operator must also establish source-specific parameters based on the type of control device used at that operation to control emissions from the sterilization chamber vent. The Administrator determined that these provisions were necessary to meet the enhanced monitoring provisions established in section 114(a)(3) of the Act.

The provisions for enhanced monitoring contained in the Act as amended in 1990 give the Administrator the authority to promulgate regulations requiring compliance certification and enhanced monitoring by the owners or operators of all stationary sources. Consistent with the legislative history of the 1990 Amendments, the Agency has interpreted this new statutory authority as linking the data obtained from enhanced monitoring and compliance so that enhanced monitoring would be used to determine whether compliance was continuous. The Agency has therefore defined enhanced monitoring as monitoring conducted for the purpose of determining continuous compliance with emission limitations and standards. By requiring the use of enhanced monitoring, it will be possible to determine compliance on a continuous basis. Although the term "continuous" generally means at all times, the Agency has determined that less frequent measurements or determinations of compliance can ensure continuous compliance. The potential variability of the emissions or parameters is a primary factor in establishing the frequency of measurements. If the potential variability is high, measurements must be done frequently or even continuously. If the potential variability is low, measurements may be done less frequently at prescribed intervals. In any event, the monitoring must be capable of detecting deviations with sufficient reliability and timeliness to determine whether compliance with applicable standards is continuous.

1. Sterilization Chamber Vent

As part of the compliance provisions of the proposed regulation, all owners or operators of commercial EO sterilization and fumigation operations subject to the sterilization chamber vent standard would be required to demonstrate compliance with the 99-percent emission reduction standard through a direct calculation of the emissions reduction. During this demonstration of compliance with the sterilization chamber vent standard, owners or operators of commercial EO sterilization and fumigation operations would also be required to establish site-specific monitoring parameters. These site-specific parameters depend on the type

of emission control systems installed at the source. Owners or operators complying with the sterilization chamber standard through the use of acid-water scrubbers would be required to establish a maximum concentration of ethylene glycol in the scrubber liquor when emissions from the vent are in compliance with the 99-percent emissions reduction standard. Subsequent operation of the affected sterilization source with an ethylene glycol concentration in the scrubber liquor in excess of the baseline ethylene glycol concentration shall constitute a violation of the sterilization chamber vent standard.

Owners or operators complying with the sterilization chamber standard through the use of catalytic oxidation would be required to establish a temperature baseline of the change in temperature across the catalyst bed when emissions from the vent are in compliance with the 99-percent emissions reduction standard. Operation of the affected sterilization source during any period when the temperature change across the catalyst bed varies from the baseline temperature change in excess of ±5.6°C (±10°F) shall constitute a violation of the sterilization vent standard. Owners or operators complying with the sterilization chamber standard through the use of another control technology would be required to obtain approval from the Administrator for their monitoring protocols.

Once the parameters to be monitored were selected, the mechanism for determining the limits for these parameters was investigated. The Agency considered establishing a nationwide limit for these parameters but after consultation with control device vendors is proposing that each commercial EO sterilization and fumigation operation, during the initial compliance demonstration, establish site-specific limits for the appropriate control device. The Administrator determined that site-specific determination of these compliance limits would address the variabilities in operating conditions and designs of individual control devices.

2. Aeration Room Vent

Owners of operators of commercial EO sterilization and fumigation operations subject to the aeration room vent standard would be required to monitor the concentration of EO being emitted from the aeration room vent (after any control device). Operation of the sterilization source in excess of the 1 ppmv EO concentration limit shall constitute a violation of the aeration room standard. This requirement provides a direct measurement of compliance with the standard and is in keeping with the principles established for enhanced monitoring.

3. Chamber Exhaust Vent

Under today's proposed regulation, owners or operators of commercial EO sterilization and fumigation operations subject to the chamber exhaust standard would be required to monitor the concentration of EO in the sterilization chamber immediately prior to the operation of the chamber exhaust (i.e., at the completion of the sterilization cycle and immediately prior to the opening of the chamber door for unloading and subsequent loading of the chamber). Operation of the affected sterilization source in excess of the 5,300 ppmv EO concentration shall constitute a violation of the chamber exhaust vent standard. This requirement provides a direct measurement of compliance with the standard and is in keeping with the principles established for enhanced monitoring. Because the chamber exhaust is an integral part of a batch operation, true continuous monitoring of the vent is not necessary. In addition, because of the nature of this emissions point, the maximum concentration of EO that could be emitted from this emission point would be measured during under this monitoring approach.

G. Selection of Recordkeeping and Reporting Requirements

Section 114 of the amended Act authorizes the EPA to require sources to monitor, test, keep records, and make reports. The proposed standards would require an owner or operator to submit the following four types of reports: 1. Initial Notification; 2. Notification of Compliance Status; 3. Periodic Reports; and 4. Other reports.

The purpose and contents of each of these reports are described in this section. The proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the Agency, an Agency regional office, a State agency, or other entity that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the proposed General Provisions (subpart A) of 40 CFR part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

1. Initial Notification

The proposed standards would require owners or operators who are subject to today's proposed standards to submit an Initial Notification. This report notifies the agency of applicability for existing facilities or of construction for new facilities as outlined in § 63.5 of the proposed General Provisions. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due within 45 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation of today's proposed rules, whichever is later.

The Initial Notification must include a statement as to whether the source can achieve compliance by the specified compliance date. If an existing source anticipates a delay that is beyond its control, it is important for the owner or operator to discuss the problem with the regulatory authority as early as possible. Pursuant to section 112(i) of the Act, the General Provisions contain provisions for a 1-year compliance extension to be granted by the Administrator on a case-by-case basis. This report will also include a description of the parameter monitoring system intended to be used. Finally, the owner or operator of commercial EO sterilization and fumigation operations would be required to include in this report the amount of EO used within the previous consecutive 12 months. For new sources, this report would include the amount of EO expected to be used during the first consecutive 12 months of operation.

2. Notification of Compliance Status

The Notification of Compliance Status (NCS) would be submitted no later than 30 days after the facility's initial performance test. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of the initial performance test and the establishment of the control device baseline monitoring parameters. The submission of the performance test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures, and has performed all calculations correctly.

Included in the performance test report submitted with the NCS would be the calculation of the operating parameter values for the selected

operating parameters to be monitored. The notification must include the data and rationale to support these parameter values as ensuring continuous compliance with the emission limits.

3. Periodic Reports

Periodic reports are required to ensure that the standards continue to be met. An exceedance of any of the regulatory standards during any quarter following the applicable compliance date would require that a report of noncompliance be submitted by the 30th day following the end of each quarter in which excess emissions occurred. These reports would include information on the violations such as when any of the monitored operating parameters were outside the required values (e.g., an ethylene glycol concentration in excess of the baseline ethylene glycol concentration, or a catalyst bed temperature below the baseline oxidation temperature).

4. Other Reports

There are also a limited number of other reports required under the proposed standards. In a few cases it is necessary for the facility to provide information to the regulatory authority shortly before or after a specific event. For example, notification before a performance test is required to allow the regulatory authority the opportunity to have an observer present (as specified in the proposed General Provisions to part 63). This type of reporting must be done separately from the periodic reports because some situations require a shorter term response from the reviewing authority.

Reports of start of construction, anticipated and actual startup dates, and modifications, as required under §§ 63.5 and 63.9 of the General Provisions, are entered into the Agency's Aerometric Information Retrieval System (AIRS) and are used to determine whether emission limits are being met.

Records required under the proposed standards are generally required to be kept for 5 years. General recordkeeping requirements are contained in the proposed General Provisions under § 63.10(b). These requirements include records of malfunctions and maintenance performed on the air pollution control systems and the parameter monitoring systems. Monitoring data from parameter monitors will provide a record of compliance with the emissions standards. Owners or operators of affected facilities who use less than 9,070 kg/yr (10 tons/yr) would be required to maintain records of a 12-month rolling average of EO use. These records are required to document that the facility is below the EO use applicability threshold for the aeration room standard.

H. Operating Permit Program

Under title V of the amended Act, all sources subject to standards promulgated under section 112 will be required to obtain an operating permit unless otherwise exempted. As discussed in the rule establishing the operating permit program published on July 21, 1992 (57 FR 32251), this new permit program would include in a single document all of the emission limits, monitoring, recordkeeping, and reporting requirements that pertain to a single source. All applicable requirements of these standards will ultimately be included in the source's title V operating permit. The permit will contain Federally enforceable conditions with which the source must comply. Once a State's permit program has been approved, each commercial EO sterilization and fumigation facilities within that State must apply for and obtain an operating permit. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the Regional Office. The addresses for the Regional Offices and States will be included in the proposed General Provisions for 40 CFR part 63 standards.

I. Selection of Emission Test Methods

The proposed test methods found in the regulation have been developed for use with the proposed standards. During the development of these test methods, input was received from the regulated community and trade associations (including the Health Industry Manufacturers Association (HIMA)). Other information for these test methods was developed from tests of existing commercial EO sterilization and fumigation operations. Additional input for these proposed test methods was obtained from test methods developed by States for their air pollution control programs. In developing these proposed methods, the Agency has attempted to provide owners or operators of commercial EO sterilization and fumigation facilities with as much flexibility as possible by offering several equivalent methodologies for determining the certification and compliance parameters.

The proposed method for sterilization chamber vents would establish a procedure for determining the efficiency of the control device used to achieve the 99-percent emission reduction required by the proposed standard for these vents. This method includes instructions for determining the amount of EO charged to the sterilization chamber, remaining in the chamber after the first evacuation cycle, at the inlet to the control device, and emitted from the control device. These data are used to determine the efficiency of the control device during a compliance test.

Specifications for replication of these methods are also provided.

Methods are also provided for determining the site-specific monitoring parameters to be used in determining compliance with the sterilization chamber vent standard. These methods depend on the type of control device used to control emissions of the sterilization chamber vent (i.e., acid-water scrubber or catalytic oxidation).

The proposed methods for chamber exhaust and aeration room vents are based on a measurement of EO concentrations. The methods for measuring these concentrations are contained in § 7.2 of Test Method 18, 40 CFR part 60, appendix A.

J. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. The proposed standards were developed on the basis of information available. The Administrator specifically requests factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. In addition, the Administrator is specifically requesting factual information and comments in the following areas:

1. Selection of MACT as the Basis for the Area Source Standards

a. Selection of Regulatory Approach for Area Sources

The Agency is requesting comment on whether the application of section 112(f) should be a factor in deciding whether to apply MACT of GACT to an area source category. In addition, the Agency is requesting data on the existence of controls on aeration room vents at area sources.

b. MACT Floor Determination

The EPA does not believe that the interpretation of the MACT floor would change the proposed standards in this package. However, the EPA is considering more than one interpretation of the statutory language concerning the MACT floor for existing

sources and is soliciting comment on them in another rulemaking. This solicitation is being made in a reopening of the comment period for the national emission standards for hazardous air pollutants from the synthetic organic chemical manufacturing industry. Please refer to that rulemaking (Docket No. A–90–19) for further information or to comment on the issue.

2. Chamber Exhaust Vent MACT Floor

It is possible that chamber exhaust vent emissions can be controlled using existing technologies such as acid-water scrubbers or catalytic oxidizers, because EO concentrations in this vent stream are higher and exhaust rates are potentially lower than in aeration room vent streams, which are controlled at many facilities. However, despite the presence of State regulations (e.g., California's) that require emission reductions from chamber exhaust vents, the EPA's database does not contain any existing chamber exhaust vents that are routed to a control device and for which emission reductions are demonstrated. On this basis, the Administrator determined that the MACT floor for new and existing sources is a zero level of control because no single best controlled "similar" source could be found. The Administrator solicits comments and data regarding demonstrated control technologies for this source.

3. Format of Chamber Exhaust Vent Standard

The Agency considered an alternative format to the proposed concentration limit format for the chamber exhaust vent standard. The Agency used actual test data as well as hypothetical situations to calculate the concentration of EO remaining in the sterilization chamber after a certain number of air washes. These calculations assumed that EO behaved as an ideal gas and that a reasonable number of air wash chamber evacuations were performed given the type of sterilant gas and the product being sterilized. Under these scenarios, the concentration of EO in the chamber exhaust gas was consistently less than 2 percent of the original concentration of EO charged to the chamber. These data were then used to develop a regulatory format whereby an owner or operator could meet a standard of maintaining the concentration of EO in the chamber exhaust at less than 2 percent of the original EO charge by performing a calculated number of air washes before engaging the chamber exhaust.

The advantage of this format is that it would not require the owner or operator to monitor the actual concentration of EO in the chamber exhaust. However, because the calculated number of air evacuations to be performed depends on the materials to be sterilized, this format could be onerous for those facilities that sterilize numerous materials using differing sterilization protocols. The Agency is soliciting comment on the use of this format as an alternative to the proposed concentration-based format.

4. Monitoring Parameters

During the selection of the sterilization chamber vent monitoring parameters, the Agency investigated several possible parameters for the two types of control devices typically used to control EO emissions. In consultation with control device vendors, the regulated community, and State regulators, the Agency determined that the parameters selected (ethylene glycol concentration for acid-water scrubbers and temperature across the catalyst bed for catalytic oxidizers) would provide suitable indicators of performance. However, the Agency is soliciting comment and data on the correlation between these parameters and the performance of the control devices.

The Agency is also soliciting comment on the monitoring requirements for the chamber exhaust vent and aeration room vent standards that specify direct measurement of the EO concentration. Specifically, the Agency is requesting comment on the practicality of requiring these direct measurements, and solicits alternative monitoring requirements that would also provide the required indication of compliance for these standards.

5. Emissions Averaging

During the development of today's proposal, the EPA considered including an emissions averaging approach but did not identify any viable alternatives. The EPA would be interested in pursuing the development of an averaging alternative if such an alternative would be protective of the environment and, as expected, lower the cost of achieving any particular emission reduction. A possible benefit of an averaging approach is that it may provide sources greater flexibility in achieving emission reductions that may also translate into cost savings for the source. The Agency is interested and requests data and comments that could be used to develop an emission averaging alternative in the final rule.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the amended Act. Persons wishing to make oral presentation on the proposed standards for EO emissions from commercial EO sterilization and fumigation operations should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–88–03.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in developing this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents readily so that they can effectively participate in the rulemaking process and (2) to serve as the official record in case of judicial review (except for interagency review materials (the Act, section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information-collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1666.01), and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, U. S. Environmental Protection Agency, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 338 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2136), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked, "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because: (1) In all industry categories except the contract sterilization industry, there is not a substantial number of small entities, and (2) contract sterilizers should experience an increase in demand for their services as other facilities switch from in-house to contract sterilization. As a result, contract sterilizers will not be adversely impacted by the proposed rule.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

Statutory Authority: The statutory authority for this proposal is provided by sections 101, 112, 114, 116 and 301 of the Clean Air Act, as amended; 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrotor.

[FR Doc. 94–5149 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–12, RM–8419]

Radio Broadcasting Services; Sebastian, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by T & M Communications, requesting the allotment of Channel 240C3 to Sebastian, Florida, as that community's first local aural transmission service. Channel 240C3 can be allotted to Sebastian in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 240C3 at Sebastian are North Latitude 27–49–00 and West Longitude 80–28–12.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Meyer, Faller, Weisman & Rosenberg, 4400 Jenifer Street, NW., suite 380, Washington, DC 20015 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nacy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–12, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or

2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5097 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–13, RM–8431]

Radio Broadcasting Services; Agana, GU

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Inter-Island Communications, Inc. requesting the allotment of Channel 275C to Agana, Guam, as that community's sixth local aural transmission service. Channel 275C can be allotted to Agana in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 275C at Agana are North Latitude 13–28–27 and West Longitude 144–44–52.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–13, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5098 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–14, RM–8426]

Radio Broadcasting Services; Van Wert, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Van Wert Radio seeking the allotment of Channel 282A to Van Wert, Ohio, as the community's second local FM service. Channel 282A can be allotted to Van Wert in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.7 miles) east, at coordinates North Latitude 40–53–09 and West Longitude 84–26–17, to avoid a short-spacing to Station WLBC–FM, Channel 281B, Muncie, Indiana. Canadian concurrence in the allotment at Van Wert is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Esq., Miller & Miller, P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–14, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5099 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–16, RM–8432]

Radio Broadcasting Services; Belle Fourche, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ultimate Caps, Inc., seeking the allotment of Channel 271C3 to Belle Fourche, SD, as the community's second local FM transmission service. Channel 271C3 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 44–40–18 and West Longitude 103–51–00.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Karl Grimmelmann, Vice President, Ultimate Caps, Inc., P.O. Box 787, Belle Fourche, SD 57717 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–16, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5100 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–15; RM–8411]

Radio Broadcasting Services; Ravenswood and Elizabeth, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by MediaCom, Inc., proposing the reallotment of Channel 291A from Ravenswood to Elizabeth, West Virginia, as that community's first local aural transmission service, and the modification of Station WRZZ(FM)'s license accordingly. Channel 291A can be allotted to Elizabeth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 291A at Elizabeth are North Latitude 39–03–48 and West Longitude 81–23–43. Since Elizabeth is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 25, 1994 and reply comments on or May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Oldender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015–2003 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 94–15, adopted February 2, 1994, and released, March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5101 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Public Hearing on Proposed Designation of Critical Habitat for the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed designation of critical habitat for the Louisiana black bear, *Ursus americanus luteolus*. The Louisiana black bear occupies the Tensas and Atchafalaya River basins with possible remnant numbers is the lower Mississippi River Delta and the bluffs south of Vicksburg, Mississippi. The proposed critical habitat areas are limited to forest within the Tensas and Atchafalaya River basin and south of U.S. Highway 90, west from the lower Atchafalaya River along

the coastline to the Vermillion Parish line, north to Highway 14, thence east to U.S. Highway 90. This hearing will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened through April 4, 1994. The public hearing will be held from 6 to 10 p.m. on March 23, 1994.

ADDRESSES: The public hearing will be held in the auditorium of the New Iberia Senior High School, 1301 E. Admiral Doyle Drive, New Iberia, Louisiana. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species. Although the Service found that designation of critical habitat was not prudent in the proposed rule of June 21, 1990 (55 FR 25341) for listing the Louisiana black bear as threatened, in the final rule listing the Louisiana black bear as threatened, published on January 7, 1992 (57 FR 588), the Service changed its earlier finding by determining that designation of critical habitat was prudent but not then determinable. A proposal to designate three areas as critical habitat was published in the **Federal Register** on December 2, 1993 (58 FR 63560). The actual critical habitat within these areas is limited to forestland.

Section 4(b)(5)(E) of the Endangered Species Act requires that a public hearing be held on proposed designation of critical habitat if requested within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received during the allotted time period from Robert Lamar Boese, the Honorable Bill Tauzin, Pietro L. Pipari, and Henry Stickler.

Anyone expecting to make an oral presentation at the hearing is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period originally closed on March 2, 1993. In order to accommodate the public hearing, the Service reopens the public comment period. Written comments may now be submitted through April 4, 1994, to the office in the **ADDRESSES** section.

Author

The primary author of this notice is Wendell A. Neal (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: February 25, 1994.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 94–5114 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 030194B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (NEFMC), in cooperation with the Mid-Atlantic Fishery Management Council (MAFMC), will hold preliminary hearings to inform interested parties and receive comments on proposals to amend the Northeast Multispecies Fishery Management Plan (FMP). In response to concerns expressed by the NEFMC's Industry Advisory Committee about the emergence of a juvenile silver hake (whiting) fishery, the NEFMC intends to hold public hearings this spring on a set of management objectives and alternatives to meet those objectives. The NEFMC seeks input on the development of the public hearing document from interested parties who have not had the opportunity to comment at FMP development meetings in the New England area.

DATES: Written comments should be sent by March 8, 1994 (see **ADDRESSES**). The hearings will be held at 7 p.m. on Monday, March 7, 1994; and at 7 p.m. on Tuesday, March 8, 1994.

ADDRESSES: Comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906. Additional information can be obtained from the NEFMC at the above address, or from the Mid-Atlantic Fishery Management Council, Federal Bldg., room 2115, 300 South New Street, Dover, DE 19901–6790.

Public hearings will be held on March 7 at the South Wall Fire House, West Atlantic Avenue at Route 34, Wall, NJ, (908) 223–2150; and on March 8 at the Gurney's Inn, Old Montauck Highway, Montauck, NY, (516) 668–2345.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The NEFMC staff will provide materials for the hearings to the MAFMC. The MAFMC will distribute the materials to interested parties and provide other support for the hearings. They will also forward all comments to the NEFMC. After the NEFMC's Groundfish Committee reviews the scoping hearing comments, a public hearing document will be prepared. Interested members of the public should contact either the MAFMC or the NEFMC office for further information (see ADDRESSES).

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at (617) 231–0422 at least 5 days prior to the meeting date.

Dated: March 1, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–5092 Filed 3–2–94; 11:22 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 59, No. 44

Monday, March 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Milk Specialties Company of Dundee, Illinois, an exclusive field of use license to S.N. 07/822,505; S.N. 07/921,173; S.N. 08/122,949; and S.N. 08/166,779 each entitled "Probiotic for Control of Salmonella." Notice of availability for S.N. 07/822,505 was published in the **Federal Register** on March 30, 1992. Notice of availability for S.N. 07/921,173 was published in the **Federal Register** on December 14, 1992. S.N. 08/122,949 is a division of and S.N. 08/166,779 is a continuation-in-part of S.N. 07/921,173.

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of these inventions to the U.S. public. The prospective exclusive field of use license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: February 24, 1994.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 94–5066 Filed 3–4–94; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Federal Fisheries Permits – Southwest Region.

Agency Form Number: No designated Form Number.

OMB Approval Number: 0648–0204.

Type of Request: Revision of a currently approved collection.

Burden: 163 hours.

Number of Respondents: 290.

Avg Hours Per Response: Approximately 30 minutes per application.

Needs and Uses: Permit data are collected to identify fishery participants and their vessels in the crustacean precious corals, bottomfish and seamount groundfish, and pelagics fisheries of the Western Pacific Region. Information obtained through permits are essential for fishery management. They are also an effective enforcement tool. The collection includes a request for a new longline "limited entry" permit and "appeal" process.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 23, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–5109 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Federal Fisheries Permits — Northwest Region.

Agency Form Numbers: None Assigned.

OMB Approval Number: 0648–0203.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 406 hours.

Number of Respondents: 956.

Avg Hours Per Response: Approximately 20 minutes.

Needs and Uses: Fishermen wanting to conduct experimental fishing off Washington, Oregon, and California must apply for a permit and file reports. Those fishermen having limited entry permits must annually renew them to remain valid. Any permit leased or sold must be reported. Permits are also issued for processing vessels over 125 feet. This information is needed for the orderly management of the groundfish fishery.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Federal Fisheries Permits — Southeast Region.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0205.

Type of Request: Extension of a currently approved collection.

Burden: 2,737 hours.

Number of Respondents: 8,867.

Avg Hours Per Response: Approximately 20 minutes.

Needs and Uses: Fishing permits are an integral part of the management of fisheries in the Southeast. Permits are used to identify fishermen, for control, and for information dissemination. The permit application forms associated with this family of forms are necessary for issuing fishery permits.

Affected Public: Businesses or other for–profit organizations; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Logbooks — Southeast Region Family of Forms.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0016.

Type of Request: Revision of a currently approved collection.

Burden: 23,867 hours.

Number of Respondents: 2,307 (approximately 40 responses per respondent).

Avg Hours Per Response: Ranges between 20 and 30 minutes.

Needs and Uses: This request is to amend the existing logbooks requirements to require certain economic data be provided. The data will be used for cost/benefit analysis, as well as for economic profitability profiles and trade and import tariff decisions.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion and after each set of trips.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 25, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–5110 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–CW–F

Agency Information Collection Under Review by the Office of Management and Budget (OMB); Expedited Review

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the International Trade Administration of DOC.

Title: Paris Air Show Evaluation Interview.

Form Number: Agency—N/A; OMB—0625—.

Type of Request: New Collection—Expedited Review.

Burden: Estimated 150 respondents, 188 burden hours, average minutes per response—45 minutes.

Needs and Uses: This collection will be used in an evaluation of the DOC's role in supporting the U.S. aerospace industry at the biennial Paris Air Show. Its results will affect whether and how the Department allocates resources to this event to best support industry interest.

Affected Public: Businesses and other for profit, Other U.S. government agencies, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

A copy of the evaluation interview is published below. Any questions can be directed to Edward Michals, DOC Clearance Officer, 202–482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

OMB No. 0625 _____

Expires:

Paris Air Show Evaluation Survey

This survey is authorized by law (15 U.S.C. 1512 171 et seq., 15 U.S.C. 171 et seq.) While you are not required to respond, your cooperation is needed to make the results of this evaluation comprehensive, accurate, and timely. In order to reduce any time burdens that a person-to-person survey would entail, this survey is being faxed to you for your responses. We request that you complete your response within two working days of its receipt, and request that you return your responses by Fax to the Survey Group, International Trade Administration, Department of Commerce at (202) 482–3113. Should you need clarification of any of the questions, please call the Survey Group at 202–482–2835 or Fax your question to the above Fax number, including the name of a contact person and their telephone number.

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Reports Clearance Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625——), Washington, DC 20503.

The following will be faxed to the respondents as a cover to the survey.

Introduction

- In recent years the Department of Commerce (DOC) has organized and managed the USA National Pavilion at the Paris Air Show with its permanent staff and relied upon others commissioned by the DOC to perform certain other well-defined tasks.
- We are currently evaluating the full range of options for funding and operating the USA National Pavilion in the future. Specifically, we are interested in determining the best allocation of tasks, as laid out in question 2, involved in sponsoring the Pavilion between our staff and other sources.
- Our purpose is to determine your views on the appropriate role, if any, of the U.S. Government in the USA National Pavilion. We are interested in your opinions and ideas on how tasks should be divided between DOC staff and others commissioned by the DOC.

• Answers to the following questions will help produce a set of options and recommendations that will be presented to senior management of the International Trade Administration (ITA) of the DOC. The decisions of International Trade Administration management will affect the role of DOC in future Paris Air Shows.

• All answers to the evaluation will be kept strictly confidential.

Paris Air Show Evaluation

1. In what venue(s) did your company participate in past Paris Air Shows? (Circle)

Participation	Years				
USA National Pavilion	1993	1991	1989	1987	1985
Private Sector Group Organizer	1993	1991	1989	1987	1985
Individual Participation	1993	1991	1989	1987	1985
Did not Exhibit	1993	1991	1989	1987	1985
Do not Know	1993	1991	1989	1987	1985

2. Please rate the following facilities and services on their importance in meeting your company's goal at the Paris Air Show. Please use these categories: Not Important=1, Important=2, Essential=3, or No Opinion/Did not use=4. (Circle)

Facilities:				
Exhibiting in a pavilion of U.S. companies	1	2	3	4
Business Center (Phones, Fax, Printers, PC's)	1	2	3	4
Press Center (Briefing Rooms & Staff	1	2	3	4
American Embassy Business Information Center	1	2	3	4
Adjacent Outdoor Display Area	1	2	3	4
Exhibitors' Lounge	1	2	3	4
Full-Service Pavilion Restaurant	1	2	3	4
Private Meeting Rooms	1	2	3	4
Services:				
Exhibit Designer/ Building Contractor On-Site	1	2	3	4
Catering Services On-Site	1	2	3	4
Multilingual Translation Services On-Site	1	2	3	4
24 Hour Security	1	2	3	4
Trade-Only Access (No Public Visitors)	1	2	3	4
Exhibitors' Briefing Book (Market Research Info)	1	2	3	4
Follow-Up & After Show Support	1	2	3	4

Can you think of any programs or services other than the ones I have just listed which would be of interest to your company at the Paris Air Show?

3. Please rate the following programs, services, and events offered by DOC at the USA National Pavilion. How valuable are the following services to your company at the Paris Air Show?

Advocacy—Active written/oral support by the DOC on behalf of your company in a major international procurement or competition. Example: Letter from the Secretary or personal meeting/appearance by the Secretary on your behalf.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Business Counseling—Market information provided to U.S. companies. Example: This includes private sector or government contacts, regulatory updates, non-tariff barriers to trade.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

U.S. Ambassador's Reception—Reception sponsored by the U.S. Government at the American Ambassador's residence, Paris, France. Example: 1993 reception hosted by the Deputy Chief of Mission Avis Bohlen.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Senior Government Official at Opening of USA National Pavilion—President's Official Representative to the Paris Air Show. Example: Secretary of Commerce Ronald H. Brown at the 1993 Paris Air Show Opening.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Promotional Support—DOC assistance in arranging visits by foreign government/buyer delegations to the Paris Air Show.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

4. What would be the position of your company with respect to having a private firm recruit firms for participation in the USA National Pavilion? Recruitment has been performed by DOC staff.

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed

Why? _____

5. What would be the position of your company with respect to having the management of the USA National Pavilion handled by a private firm under an agreement with the DOC? The USA National Pavilion is currently organized and managed by DOC staff.

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed

Why? _____

6. Are there any specific tasks that you believe must not be performed by private firms at the USA National Pavilion? What are they? Why?

7. In the context of the USA National Pavilion, what tasks do you believe are performed best by private firms? Why?

8. What would be the position of your company with respect to using a private firm to operate the press center and the publicity campaigns that are currently performed by DOC staff?

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed
Why? _____

9. What would be the position of your company with respect to using a private firm to provide the market support services that are currently performed by DOC staff?
☐ Favor ☐ Indifferent ☐ Opposed
☐ Strongly Favor ☐ Strongly Opposed
Why? _____

10. What would be the position of your company with respect to having a private firm handle the Foreign Buyer Delegation and VIP Services programs that are currently performed by DOC staff?
☐ Favor ☐ Indifferent ☐ Opposed
☐ Strongly Favor ☐ Strongly Opposed
Why? _____

11. Foreign Buyer Delegation and VIP Service programs are available to all U.S. aerospace companies participating in the Paris Air Show. Through these programs U.S. executives have the opportunity to meet with foreign delegations (government and private) at receptions held in the USA National Pavilion lounge.

- Were you aware of the Foreign Buyer Delegations and VIP Services offered by the USA National Pavilion before today? ☐ Yes ☐ No
- How effective do you believe that the Foreign Buyer Delegations and VIP Services are in providing opportunities for business contacts with foreign officials and companies during the Paris Air Show?

☐Highly effective ☐ Moderately effective ☐ Not effective

- In what ways could the Foreign Buyer Delegations and VIP Services be improved at future Paris Air Shows?

_____

12. How influential are the programs and services provided by DOC at the USA National Pavilion in your decision on where you will exhibit at the Paris Air Show?
☐ Highly influential ☐ Moderately influential ☐ Not influential

- Name the three programs or services that are the most influential (in a positive sense) in your decision where to exhibit.

Most influential _____
Least influential _____

- Name the programs or services offered by DOC that are not influential in your decision on where to exhibit.

_____

[FR Doc. 94–5160 Filed 3–4–94; 8:45 am]
BILLING CODE 3510–CW–M

National Oceanic and Atmospheric Administration

[I.D. 030194C]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; reopening of comment period.

SUMMARY: NMFS is reopening public comment through March 11, 1994, on proposed Amendment 32 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and is requesting comments from the public. Amendment 32 would establish a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) in the Gulf of Alaska (GOA). This action is being taken to allow additional time for review and consideration of information contained in the 1993 Gulf Triennial Survey Results for POP (Triennial Survey). The Triennial Survey represents the best available information on the status of POP stocks in the GOA.

DATES: Comments should be submitted on or before March 11, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska.

Copies of Amendment 32 and the environmental assessment (EA) and economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

Copies of the Triennial Survey are available from Dr. William Aron, Director, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., BIN C15700, Bldg. 4, Seattle, WA 98115–0070. The document is also available in the Miscellaneous Section on the NMFS Alaska Region's electronic bulletin board at 907–586–7259.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, NMFS, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS issued a **Federal Register** notice (59 FR 295, January 4, 1994) announcing that the North Pacific Fishery Management Council (Council) had submitted Amendment 32 to the FMP for Secretarial review and requested public comments over a 60-day period, ending March 7, 1994. Due to a miscalculation in the comment period deadline of March 7, a correction was subsequently issued on February 2, 1994 (59 FR 4978). The document corrected the date for the comment period from March 7, 1994 to February 28, 1994 (59 FR 4978).

Amendment 32 would establish a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) (*Sebastes alutus*) in the GOA. This amendment is necessary to improve conservation and management of POP and is intended to further the goals and objectives of the FMP. Additional information is contained in the **Federal Register** notice, which announced the availability of Amendment 32 for public comment.

NMFS has received a request for an extension of the comment period to allow time for consideration of the Triennial Survey. NMFS agrees that information contained in this document related to POP should be considered prior to the final decision by the Secretary of Commerce (Secretary). Therefore, NMFS is reopening the comment period through March 11, 1994. The Secretary will consider the public comments received during both comment periods in determining whether to approve Amendment 32.

Copies of the amendment may be obtained from the Council (see **ADDRESSES**). Copies of the Triennial Survey are available (see **ADDRESSES**).

Dated: March 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–5126 Filed 3–2–94; 3:28 pm]
BILLING CODE 3510–22–P

[I.D. 022494B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of emergency permit No. 890 (P46B).

SUMMARY: Notice is hereby given that The New England Aquarium, Central Wharf, Boston, MA 02110–3399 has been issued a permit to take up to 2 right whales (*Eubalaena glacialis*) for purposes of enhancing the survival or recovery of the species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: On February 25, 1994, the NMFS issued an emergency permit pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act to authorize the permit holder to attach a radio tag by suction cup to one sick or injured right whale calf (*Eubalaena glacialis*) or its mother, in order to monitor their movements and progress. In accordance with 50 CFR 222.24(e), the Director, Office of Protected Resources, waived the standard 30-day comment period due to the emergency nature of the request. The Marine Mammal Commission reviewed the permit application and recommended that the emergency permit be issued.

On Tuesday, February 22, 1994, the New England Aquarium aerial survey team observed a right whale mother and calf 10 miles off the coast near Jacksonville, Florida. The aerial team reported that the calf's tail flukes were curled and limp, and completely white, probably from the loss of all skin and due to loss of circulation. There were no obvious causes, but the tail stock area was difficult to assess from the airplane. On Wednesday, February 23, 1994, the New England Aquarium requested a permit to attach a radio tag by suction cup to the calf or its mother, in order to monitor their movements and progress. Because the right whale population is currently at such critically low levels that the survival of every individual could be important to the survival of the population as a whole, and due to the time-critical nature of the request, the National Marine Fisheries Service issued an emergency permit pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act to authorize the requested activities.

Issuance of this permit as required by the Endangered Species Act of 1973 was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: February 25, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 94–5111 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

March 2, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 635 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4039, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 2, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1994 and extends through January 31, 1995.

Effective on March 9, 1994, you are directed to amend the directive dated January 24, 1994 to reduce the limit for Category 635 to 227,554 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5158 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 2, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

[1] The limit has not been adjusted to account for any imports exported after January 31, 1994

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 611 is being increased by application of swing, reducing the limit for Categories 359–S/659–S to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 2, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on March 9, 1994, you are directed to amend further the directive dated May 25, 1993, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
359–S/659–S [2]	1,033,336 kilograms.
611	4,809,344 square meters.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5159 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2)of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22–23 March 1994.

Time of Meeting: 0830–1600 (22 March), 0900–1600 (23 March).

Place: Bethesda MD, & Pentagon (22 March), Arlington, VA (23 March).

Agenda: The Army Science Board's Ad Hoc Study on "Innovations in Artillery Force Structure" will hold a meeting of the Panel Members. This meeting will be hosted by the Director, Concepts Analysis Agency and Office of the Deputy Chief of Staff for Intelligence on 22 March, and the National Guard Bureau on 23 March 1994. The intent of the meeting is to present general and specific information to the panel pertaining to artillery force structure development within the hosting agencies. It will consist of classified and proprietary briefings dealing with force structure initiatives, artillery related studies and analysis, and field artillery weapon systems. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S. C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5122 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23 March 1994.

Time of Meeting: 0700–1700.

Place: Pentagon, Washington, DC.

Agenda: The 1994 Army Science Board Summer Study on "Technical Architecture for Army C4I" will discuss Assessment of Commercial Information Processing and Telecommunications Technology. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5123 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 March 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5124 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Research, Development, and Demonstration of Metal Casting Research To Increase the Competitiveness of the U.S. Foundry Industry

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Solicitation for Financial Assistance: Metal Casting Competitiveness Research Program.

SUMMARY: Notice is hereby given that pursuant to Public Law 101–425, Department of Energy Metal Casting Competitiveness Research Act of 1990, the U.S. Department of Energy (DOE) Idaho Operations Office (ID), is seeking applications for cost-shared research and technology development in the U.S. metal casting industry. The objective is to promote the competitiveness and energy efficiency of the U.S. metal casting industry through major gains in manufacturing productivity; remediation technologies; process cost reduction; and product quality improvement. This is a complete solicitation document. No other solicitation will be issued for this Metal Casting Competitiveness Research Program.

DATES: The deadline for receipt of applications is April 29, 1994.

ADDRESSES: Applications shall be submitted to: [Number DE–PS07–94ID13293] J.O. Lee, Contracting Officer; Contracts Officer; Procurement Services Division; U.S. Department of Energy; Idaho Operations Office; 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562.

FOR FURTHER INFORMATION CONTACT: Trudy Thorne, Contract Specialist, (208) 526–9519.

SUPPLEMENTARY INFORMATION:

Background

The U.S. metal casting industry has been losing its competitive position in the domestic marketplace relative to imported castings for a number of years. The domestic metal casting industry, with costs which are typically 40 to 50 percent for charge materials, 20 to 30 percent for labor, and 15 to 20 percent for energy, is generally at a disadvantage when compared to most foreign competitors. In addition, many foreign competitors obtain R&D assistance funded by their governments. Moreover, they are not required to meet stringent environmental regulations, while the ability of the U.S. metal casting industry to compete is adversely affected because of the expense of complying with rules and regulations intended to protect the environment and the work place. These advantages often outweigh the additional transportation and distribution costs incurred by foreign competitors entering the U.S. market for metal castings. A technically advanced and viable metal casting industry is essential to the competitiveness of many American industries. Many metal casting companies lack the resources to conduct metal casting research alone due to the fragmented nature of the industry.

In order to improve the competitiveness and energy efficiency of the U.S. metal casting industry, the Office of Industrial Processes (OIP) of the DOE has sponsored a R&D program titled Metal Casting Competitiveness Research Program (MCCRP). As part of this program, this solicitation for federal financial assistance applications is being issued.

Project Description

DOE anticipates awarding approximately two to eight Cooperative Agreements as a result of this solicitation provided applications received meet or further the objectives of Public Law 101–425 and funds are available. Federal funds appropriated for this solicitation are approximately $1,900K. The Catalog of Federal Domestic Assistance Number for this program is 81.078. Each award will make available federal funds to a project on a cost-sharing basis, but the federal funding contribution will not exceed 50 percent of the total cost of a research project. Under Cooperative Agreements it is anticipated there will be substantial involvement by DOE.

DOE suggests, but does not require, a multi-phase approach and projects may be initiated at the bench (Phase I), laboratory (Phase II), or pilot-scale (Phase III), levels. The period of performance for Phase I is anticipated to be 12 months. At the end of Phase I, provided satisfactory progress has been made and funds are available, DOE may award a continuation of work to undertake further development if the participant demonstrates a continuing need for federal assistance, shows sufficient progress in the research effort in Phase I, has completed Phase I in compliance with a mutually agreed management plan, and identifies the new research planned.

The thrust of the Program is directed towards R&D which will improve the competitive position and energy efficiency of the U.S. metal casting industry, defined as the industries identified by codes numbered 3321, 3322, 3324, 3325, 3363, 3364, 3365, 3366, and 3369, in the Standard Industrial Classification manual published by the Office of Management and Budget in 1987. Utilizing the recommendations of the DOE Metal Casting Industrial Advisory Board, and in accordance with the objectives of Public Law 101–425, the below listed priority research subject areas have been identified. Applicants should focus their effort on the seven subject areas identified with an asterisk (*), which have the highest priority. One, or more, of the lower priority listed subjects may be included in the proposed research. Proposals for research in areas not included in the list below will not be considered. Applications should explain why industry is not already performing the proposed research and why DOE funding is appropriate.

Metal Casting Research Priorities

This solicitation is to be focused on the following metal casting research priorities identified by the industry and the Industrial Advisory Board.

1. Solidification and Casting Technologies:

* a. Dimensional control of castings.
* b. Clean cast metal technology.
c. Expendable pattern casting technology

2. Modeling and Design:

* a. Computer integrated processing methods for productivity and quality improvements such as Computer Aided Design (CAD), Computer Aided Engineering (CAE), Computer Aided Manufacturing, (CAM), and Computer Integrated Manufacturing (CIM).

3. Processing Technologies and Design for Energy Efficiency, Material Conservation, Environmental Protection, or Industrial Productivity:

a. Energy Efficiency:
* (1) Melting Furnace Optimization.
b. Material Conservation:
* (1) Casting process improvements for lightweight and thin-wall components of aluminum, and magnesium etc.
c. Environmental Protection:
* (1) Sand reclamation.
* (2) Characterization and remediation of waste streams.
d. Industrial Productivity:
(1) Gating system removal technologies

4. Other Areas of Research:

a. On-line process control and sensors for molding, melting, and coremaking.
b. Improved melting process for casting purposes.

Proposal Requirements

Each proposal must contain the following:

1. Demonstrated support of the metal casting industry by describing:
a. How industry has participated in deciding what research activities will be undertaken;

b. How industry will participate in the evaluation of the applicant's progress in research and development activities; and

c. The extent to which industry funds are committed to the applicant's proposal.

2. Demonstrate a commitment for matching funds from non-federal sources, which shall consist of:

a. Cash, and/or

b. As determined by DOE, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

3. Provide a single or multiyear management plan that outlines how the research, development, and technology transfer activities will be carried out and administered; The management plan that shall:

a. Outline the research, development, and technology transfer activities expected to be performed;

b. Outline who will conduct those research activities;

c. Establish the duration of each task and over which the research activities will take place; and

d. Define the overall program management and direction by:

1. Identifying managerial, organizational and administrative procedures and responsibilities;

2. Outlining how the coordination of research and development between the individuals and organizations involved will be achieved;

3. Demonstrating how implementation and monitoring of the progress of research project after receipt of funding from the Secretary will be achieved;

4. Demonstrating how recommendations and implementations on modifications to the plan, if any, will be achieved; and

5. Providing sufficient rationale to support the project costs.

4. State the annual cost of the proposal and a breakdown of those costs per each task and each individual performing the work;

5. A critical review of existing and emerging technologies, relevant patents, on-going research, and practices, and a description of the hurdles that must be overcome to ensure commercial viability and commercialization of the proposed technologies;

6. Justify the project with an initial economic evaluation indicating the potential for a significant reduction in manufacturing cost and/or a significant improvement in product value resulting from the proposed research;

7. Identify the technical hurdles for commercialization and how they will be addressed; and

8. Evidence of having the facilities and equipment capable of conducting at least laboratory scale testing or demonstration of metal casting or related processes.

Note: Underlying assumptions along with detailed calculations to support the claimed economic and energy efficiency benefits must be included in the application.

Qualified Applicants

The following entities are qualified to respond to this solicitation:

a. An educational institution;

b. A consortium of educational institutions;

c. A consortium of educational institution(s) with one or more of the following: Government-owned laboratories, private research organizations, nonprofit institutions, or private firms;

That is located in a region where the metal casting industry is concentrated.

Proposal Evaluation

a. *Application Deadline:* The deadline for receipt of applications is April 29, 1994. Only applications which are timely in accordance with 10 CFR 600.13, will be evaluated. Late applications will be handled in accordance with 10 CFR 600.13.

b. *Selection of Proposals:* Only those proposals which meet all of the requirements of this solicitation will be considered for selection. Selections will be made in accordance with the following selection criteria and programmatic considerations:

Criterion 1—The research proposal demonstrates a thorough knowledge of the metal casting industry by highlighting its technology needs, barriers to their development and commercialization, and provides a credible management plan to achieve, and evidence to support, the benefits identified in the proposed research.

Criterion 2—The research proposal offers technology which is based upon sound scientific, environmental, and engineering principles, are technically feasible and cost effective, have practical industrial application, and will provide the greatest benefits per dollar invested in U.S. metal casting industry competitiveness and job creation and/or retention.

Criterion 3—The research proposal identifies a viable mechanism to facilitate the transfer of the technology to the metal casting industry at the earliest practicable time;

Criterion 4—The research proposal contains evidence of strong support by the metal casting industry by identifying significant industry involvement in preparation of the proposal and in performing the research activities; and

Criterion 5—The extent of the financial commitment of non-Federal sources to the research activities.

c. *Weighting of Criteria:* Selection criterion (given under F.b. above) Criterion 1 is weighted 60% of the total score. Criteria 2, 3, 4, and 5 are weighted equal, each one being 10% of the total score.

d. *Programmatic Selection Considerations:* In conjunction with the evaluation results and rankings of individual proposals, the Government will make selections for negotiations and planned awards from among the highest ranking proposals utilizing the following programmatic considerations:

(1) To the greatest extent possible and subject to available appropriations, selection decisions will ensure that at least one applicant is selected from each of the four census regions of the country where the metal casting area is concentrated.

(2) It is desirable to implement each research and development project as a continuing collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the metal casting industry engaged in its practical, daily operations and experienced in the application of advanced metal casting processes.

(3) To the maximum extent possible, the research and development activities should be conducted on the premises of the industrial participants in the proposed projects.

(4) It is desirable that a dominant portion of the proposed research focus on improving metal casting processes and the application of emerging advanced technologies in the typical U.S. metal casting company.

(5) Proposals that have the potential to save significant energy and provide significant cost benefits are preferred.

e. *Merit Reviews:* All Applications will be evaluated under the Office of Conservation and Renewable Energy Merit Review of Discretionary Financial Assistance Applications Review Procedures for Solicited Proposals. Selections for negotiations are expected to be made May 31, 1994, and financial assistance awards are expected to be made by August 31, 1994.

Conditions, Instructions, and Notices

General Conditions

The applications will be evaluated in accordance with the applicable DOE Financial Assistance Rules, Code of Federal Regulations Title 10, Chapter II, Subchapter H, part 600, and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. DOE reserves the right to support or not to support any, all, or any part of any application. All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

Instructions for Preparation of Applications

Each application in response to this solicitation should be prepared in one volume. One original and six copies of each application are required. The application facesheet is the Standard

Form 424. The application is to be prepared for the complete project period.

a. *Proprietary Proposal Information:* Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant.

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA.

The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

b. *Budget:* A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support contingent upon satisfactory progress and availability of funds. The project period may be divided into several budget periods. Each application must contain Standard Forms 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page. The proposal should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down per task and per year. Every cost item should be justifiable and further details of the costs may be required if the proposal is selected for the award. It is essential that requested details be submitted in a timely manner for the actual award. Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The destination and purpose of budgeted travel and its relation to the research, should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

c. *Cost:* In the event there are multiple projects proposed in a submittal, a separate cost proposal should be included for each project proposed for funding. The cost proposal should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as a verification of the proposed cost share can be performed.

Notices to Applicants

a. *False Statements:* Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

b. *Application Clarification:* DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

c. *Amendments:* All amendments to this solicitation will be mailed to recipients who submit a written request for the application forms.

d. *Applicant's Past Performance:* DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

e. *Commitment of Public Funds:* The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

f. *Effective Period of Application:* All applications should remain in effect for at least 180 days from the closing date.

g. *Availability of Funds:* The actual amount of funds to be obligated in each fiscal year will be subject to availability of funds appropriated by Congress to carry out the purposes of the Act (Pub. L. 101–425).

h. *Assurances and Certifications:* DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package which will be provided to you upon written request.

i. *Preaward Costs:* The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award.

j. *Patent Rights:* Pursuant to the direction in Section 9 of Public Law 101–425, applicants are advised that patent rights will be treated in accordance with Chapter 18, Title 35 of the United States Code.

k. *Loans under DOE Minority Economic Impact (MEI) Loan Program:* Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

l. *Environmental impact:* The applicant shall include a listing, discussion and existing documentation if the project/activity has the possibility of involving, generating or resulting in changes to any of the following: (1) Air Pollutants—released or discharged into the atmosphere through point or fugitive sources; (2) Liquid Effluent—any waste stream discharged; (3) Solid Waste—nonradioactive, nonhazardous solid waste; (4) Radioactive Waste—waste containing <2 nCi/g; (5) Hazardous Waste—RCRA hazardous per 40 CFR 261.3 and polychlorinated biphenyls (PCBs); (6) Mixed Waste—combination of radioactive and hazardous waste; (7) Chemical Storage/Use—define species, uses and estimates volumes; (8) Petroleum Products Storage—define product, volume, use and type of storage; (9) Asbestos Waste—define friability, estimated volume, and if project is renovation or demolition; (10) Water Use/Diversion—withdrawal of groundwater or diversion or withdrawal of surface water; (11) Sewage System—all pipes, tanks, treatment structures; disposal areas, etc. for collection, treatment, and disposal of sewage; (12) Clearing/Excavation—removal of surface debris, vegetation, and other changes in soil surface features; (13) Construction/Renovation; (14) Excess Noise Levels—ambient noise level name, near proposed project/activity; (15) Pesticide Use—identify pesticide name, target organism, use area, application rate, method, and applicator; (16) Radiation Exposures—radiation levels at or near the proposed project/activity.

The discussion shall address the following questions. Will this action contribute to a cumulative impact with on-going activities? Is this action related to a proposed action with potentially significant impacts? Will the project create uncertain, unique, or unknown risks? Will the project require siting, construction, or expansion of a waste facility? Will the project impact a RCRA-regulated unit or facility? Will the project threaten or violate any statute, regulation, or DOE Order? Will the project require any federal, state, or local permits, approvals, etc.? Has this action/area been previously assessed under NEPA? Will the action take place in an area of previous or on-going disturbance? Will the action have any socioeconomic concerns? Will the project adversely affect any of the following environmentally sensitive resources? (1) Threatened/Endangered Species; (2) Wildlife/Vegetation; (3) Soils/Erosion; (4) Cultural/Historical; (5) Wilderness/Scenic Areas; (6) Prime/Unique Farmland; (7) Wild/Scenic Rivers; (8) Lakes/Floodplains/Wetlands; (9) Domestic/Groundwater; (10) Air Resources/Quality. Discussions shall include how all environmental impacts will

be mitigated. If an environmental impact cannot be mitigated, what are the direct and indirect, short term and long term adverse effects that can not be avoided?

In order to receive a copy of the application package, please submit a written request or fax to the following address.

U. S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401–1562, Attn: Trudy Thorne MS–1221, Fax No. (208) 526–5548

The Procurement Request No. is 07–94ID13293.000. To facilitate handling, please place the Procurement Request No. on the fax or outside of the package containing your request for the application forms:

Solicitation: DE–PS07–94ID13293.

Dated: February 25, 1994.

J.O. Lee,

Acting Director, Procurement Services Division.

[FR Doc. 94–5139 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office, Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE Nevada Operations Office (DOE/NV) announces that pursuant to the Department of Energy's Financial Assistance Rules 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance grant to support a forum for the discussion of radiation hazards and regulations, and to promote uniform standards for the protection of the public, patients, workers, and the environment.

FOR FURTHER INFORMATION CONTACT: Peter Mueller, Emergency Management Division, DOE Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518, (702) 295–1777.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Conference of Radiation Control Program Directors (CRCPD).

The CRCPD was formed as the professional association of state and federal radiation control agencies. CRCPD has approximately 50 committees that address specific aspects of radiation control, as well as task forces that are formed to address particular, current problems. The DOE/NV's interests are shared by the committee on radioactive material transportation, natural radioactivity contamination, radioactive waste management, emergency response planning, state laboratory accreditation, federal facilities, resource recovery and radioactivity, decontamination and decommissioning, ionizing measurements, information dissemination, and suggested state regulations.

Eligibility for the award of this grant is being limited to CRCPD because of their unique qualifications in this field.

The project period of this grant is for 5 years and will commence on March 15, 1994, through March 14, 1999. The total estimated cost of this award is $50,000.

Issued in Las Vegas, Nevada, on February 18, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–5133 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–M

Hydrogen Technical Advisory Panel Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Tuesday, March 22, 1994, 1 p.m.–5:30 p.m., Wednesday, March 23, 1994, 8:45 a.m.–3:45 p.m.

Place: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004, Telephone (202) 638–5900, Fax (202) 638–1594.

FOR FURTHER INFORMATION CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–1506.

SUPPLEMENTARY INFORMATION:

Purpose

The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Tuesday, March 22, 1994

1 p.m.—Introductions and Opening Comments. J. Birk
1:15 p.m. DOE Status Report (including program integration suggestions). R. Eaton
1:45 p.m. Discussion of DOE Report. All
2:15 p.m. Aircraft Program Recommendation. A. Bain
2:45 p.m. Aircraft Program Discussion/Action. All
3:15 p.m. Break.
3:45 p.m. A Smooth Hydrogen Transition (LNLL). B. Schock
4:15 p.m. Discussion of Transition. All
4:45 p.m. Public Comments (5-minute rule). Public
5:30 p.m. Adjournment.

Wednesday, March 23, 1994

8:45 a.m. DOE Demonstration Program Outline. N. Rossmeissl
9:15 a.m. Discussion Demonstration Program. All
10 a.m. Sustainable Energy Centers: A Near-Term Path to Renewable Hydrogen. Senator Tom Harkin
10:30 a.m. Break.
11 a.m. Discussion DOE Demonstration Program (continued).
12 p.m. Lunch.
1 p.m. Election of Chairman. All
- Expressions of Interest
- Nominations
- Ballot Election

1:15 p.m. Safety Issues/Suggestion. Zalosh
1:45 p.m. Discussion of Safety. All
2:15 p.m. International Report (Recent IEA activities). Hoagland/Eaton
2:45 p.m. Discussion International Report. All
3:15 p.m. Round Table.
3:45 p.m. Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (e.s.t.) Tuesday, March 15, 1994, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Official at the address shown above before 5 p.m. (e.s.t.) Tuesday, March 15, 1994, to assure that it is considered by Panel members during the meeting.

Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–5134 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP94–31–002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 24, 1994, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Substitute First Revised Sheet No. 358
Substitute Original Sheet No. 358A

CNG states that the purpose of the filing is to comply with the Commission's February 9, 1994, letter order in this proceeding. CNG states that it is removing tariff language that would have allowed it to offset certain supplier refunds received after March 31, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules of Practice and Procedure 18 CFR 385.211. All protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5056 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–21–000]

Northern Natural Gas Co.; Suspension of Comments

March 1, 1994.

Take notice that the initial and reply comments dates established at the technical conference held in this proceeding on January 26, 1994, are suspended until further notice to allow the parties the opportunity to further discuss the possibility of settlement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5057 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–6–000 and RP94–64–000]

Northern Natural Gas Co; Technical Conference

March 1, 1994.

Take notice that at 9:30 a.m. on Tuesday, March 22, 1994, the Commission staff will convene a technical conference in the above-captioned proceedings. Any discussion and/or review of confidential data will be restricted to those parties who have signed a confidentiality agreement.[1]

The technical conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5058 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–147–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 1994:

Third Revised Sheet No. 59
Third Revised Sheet No. 60
First Revised Sheet No. 61
Frist Revised Sheet No. 62
First Revised Sheet No. 65

Northern states that such tariff sheets are being submitted to propose a reduction in the number of mileage indicator districts (MIDS) Northern uses to assess transportation and fuel charges.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5059 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–149–000]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

March 1, 1994.

Take notice that on February 28, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act, new and revised tariff sheets in Second Revised Volume No. 1 and First Revised Volume No. 1–A of its FERC Gas Tariff. PGT states that the primary and alternate tariff sheets revised rates for its transportation services and reflect other changes to the FERC Gas Tariff. Second revised Volume No. 1 and First Revised Volume No. 1–A. PGT states that the revised rates reflect an increase of approximately $22.6 million over present rates. An effective date of April 1, 1994 is proposed for the revised tariff sheets.

PGT states that it is submitting this general rate case in compliance with the Settlement Agreement approved by the Commission in Docket No. RS92–46–000, which requires PGT to file a rate case pursuant to section 4 of the National Gas Act within fourteen months of the commencement of restructured services on PGT's system in order to provide a forum for the resolution of whether rates applicable to PGT's shippers should be determined on an equalized basis.

In this regard, PGT states that the primary tariff sheets submitted reflect

[1] The Commission staff is not required to sign a confidentiality agreement.

rates per mile of haul that have been equalized through rolled-in cost allocation so that the only difference in charges from firm service will reflect the distance the gas is transported. PGT requests that the Commission order an expedited procedural schedule that will allow this issue to be resolved (and rates implemented) by the end of the suspension period. PGT states that the current regime of vintaged rates is irreparably harming PGT's shippers because the substantial rate disparities that exist under vintaged pricing severely impair the ability of shippers subject to surcharges to release capacity as contemplated by Order No. 636, *et seq.* In the event the Commission is unable to resolve this issue by the end of the suspension period, PGT requests authority to implement its proposed equalized rates at the end of the suspension period (subject to refund) pursuant to an escrow arrangement, which is more fully discussed in PGT's filing. PGT states that, in the event the Commission does not grant either request, it is submitting alternate tariff sheets reflecting the continuation of vintaged pricing to become effective pending the Commission's final determination on its primary tariff sheets.

PGT states that the annual cost of service underlying the proposed rates is $216,925,450, which is based on the twelve months of actual experience ending October 31, 1993, adjusted for known and measurable changes occurring during the nine-month period ending July 31, 1994. As more fully set forth in PGT's filing, this annual cost of service reflects updated operation and maintenance expenses; an overall rate of return of 9.24%, based on a capital structure consisting of 65.5% debt and 34.5% equity, a cost of debt of 7.26%, and a cost of equity of 13.00%; updated plant costs; updated depreciation expenses that reflect an increase in the depreciable basis and a change in the depreciation rate for transmission plant due to an extension of the useful life for older transmission plant to 2023, and revised negative salvage value rates; and adjustments to tax expenses.

PGT states that it has not changed the method of Straight-Fixed Variable cost classification and rate design the Commission approved, most recently in PGT's restructuring proceeding in Docket No. RS92–46–000. PGT further states that it has also continued to design and bill the firm reservation charges on the basis of contract demand, and allocated costs and designed rates on a strict mileage basis using contract demand and commodity units. In addition, PGT states that it is fully allocating its total cost of service between interruptible and firm transportation service and designing its rates to recover the allocated costs.

PGT states that it is submitting certain tariff modifications to afford shippers additional flexibility, including overrun service for all firm and interruptible shippers under Rate Schedules FTS–1 and ITS–1; to permit shippers to determine the length of the bidding period for all subject capacity releases; to streamline the number of release types; to shorten the time period to effectuate a Rapid Release; and to add a reservation charge credit provision and clarifying and updating other provisions of PGT's open-access tariff.

PGT states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5096 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–000]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, proposed tariff sheets listed on the Appendix to the filing, with a proposed effective date of March 27, 1994.

PGT states that the purpose of this filing is the establishment of HUB Services to be provided at receipt/delivery points on its system, particularly at its major market centers and pipeline interconnects at Kingsgate, British Columbia, Stanfield, Oregon and Malin, Oregon. PGT will offer new Parking and Authorized Imbalance Service under new Rate Schedules PS–1 and AIS–1 respectively. PGT proposes an effective date of March 27, 1994 for the new services.

PGT further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5060 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–148–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 the following tariff sheets to be effective April 1, 1994:

First Revised Sheet No. 125
First Revised Sheet No. 236
First Revised Sheet No. 237
First Revised Sheet No. 241
First Revised Sheet No. 247
First Revised Sheet No. 251
First Revised Sheet No. 252
First Revised Sheet No. 253
First Revised Sheet No. 295
First Revised Sheet No. 303
First Revised Sheet No. 304
First Revised Sheet No. 313
First Revised Sheet No. 321
First Revised Sheet No. 322
First Revised Sheet No. 331
First Revised Sheet No. 337
First Revised Sheet No. 338
First Revised Sheet No. 339
First Revised Sheet No. 346
First Revised Sheet No. 347
First Revised Sheet No. 353
First Revised Sheet No. 354

Southern states that the purpose of this filing is to revise its transportation tariff in two respects that will further streamline the nomination, confirmation and scheduling procedures. The first is to revise its nomination form to obtain from each shipper a ranking of its receipts and deliveries to be used in the event its corresponding delivery or receipt nominations cannot be confirmed or scheduled. This will reduce the manual processing Southern currently performs and will help advance the goal to notifying all parties of their scheduled nominations within normal business hours. The second change is to remove the requirement that shippers appoint parties who are aggregating gas supplies (supply poolers) as their agents for submitting receipt point detail on their behalf. As a result of formalizing pooling arrangements on Southern's system, this step is no longer necessary and will eliminate paperwork that has been slowing down the nomination process.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 8, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5061 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–042]

Tennessee Gas Pipeline Co.; Compliance Filing

March 1, 1994.

Take notice that on February 24, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, effective November 1, 1993:

Second Substitute Alternate First Revised Sheet No. 177
Second Substitute First Revised Sheet No. 178

Tennessee states that this filing is in compliance with the Commission's February 9, 1994, order in the above-referenced proceeding. Second Substitute Alternate First Revised Sheet No. 177 has been revised to include the flexibility provision in the Receipt and Delivery Points section for NET customers. Second Substitute First Revised Sheet No. 178 reflects the correction of a typographical error.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5063 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–166–002]

Tennessee Gas Pipeline Co.; Compliance Filing

March 1, 1994.

Take notice that on February 24, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's February 9, 1994, order in this proceeding:

Second Revised Sheet No. 319
First Revised Sheet No. 319A
First Revised Sheet No. 319B
First Revised Sheet No. 319C

Tennessee states that the February 9, 1994, order accepted Tennessee's proposed tariff Sheets to establish a mechanism for resolving transportation imbalances that remain outstanding after implementation of restructuring on the Tennessee system. The tariff sheets have been modified to: (1) Remove Tennessee's proposed cash-out imbalance resolution mechanism; (2) include modifications that Tennessee proposed during a technical conference in this proceeding; and (3) remove accounting provisions relating to imbalance resolution.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5062 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–146–9000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

March 1, 1994.

Take notice that on February 24, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to which tariff sheets are enumerated in appendix A to the filing. The tariff sheets are proposed to be effective as set forth in appendix A to the filing.

TGPL states that on August 4 and October 18, 1993, and January 7, 1994, TGPL submitted compliance filings (collectively hereinafter "Compliance Filings") in its Docket No. RS92–86 Order No. 636 restructuring proceeding which included, among other things, revisions to Rate Schedules GSS, LSS and LG–A. Such revisions were accepted (or are currently pending acceptance) to be effective November 1, 1993. During the restructuring process, on August 13, 1993, TGPL filed revisions to Rate Schedules GSS and LSS (August 13 Filing) to implement the terms of a Stipulation and Agreement between TGPL and its Rate Schedules GSS and LSS customers reflecting changes to TGPL's Rate Schedules GSS and LSS service necessitated by changes to the service rendered by CNG to TGPL under CNG's Rate Schedule GSS. TGPL's August 13 Filing was accepted to be effective October 1, 1993, pursuant to an OPPR letter order issued October 5, 1993 in Docket Nos. RS92–86–007 et al. (October 5 Order).

TGPL states that the instant filing is required in order to integrate the tariff revisions which were accepted by the October 5 Order to be effective October 1, 1993 and the tariff revisions under Rate Schedules GSS and LSS approved effective November 1, 1993 (or currently

pending approval) in TGPL's Order No. 636 restructuring proceeding. In addition, the instant filing is necessary to order to conform the tariff sheets which set forth the rates for service under such rate schedules (i.e. sheet nos. 27 and 28A) to ensure consistency with the revised provisions of such rate schedules occasioned by Commission acceptance of the aforementioned Compliance Filings and the August 13 Filing.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5065 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–144–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in Proposed FERC Gas Tariff

March 1, 1994.

Take notice that on February 22, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Second Revised Sheet No. 23, which tariff sheet is proposed to be effective April 1, 1994.

On June 19, 1991, the Commission issued its "Order Approving Settlements As Modified And Issuing Certificates" in Docket Nos. CP88–391–004 et al. (June 19 Order), which approved with certain modifications TGPL's June 22, 1990 Settlement filed in Docket Nos. RP87–7–000 et al. (Rate Settlement) and TGPL's September 17, 1990 Settlement filed in Docket Nos. CP88–391 et al. (GIC Settlement). Pursuant to Article III of the GIC Settlement, there shall be individual periodic renegotiations of the Firm Service Fee not more frequently than annually. Specifically, either party (Buyer or Seller) may request that the Firm Service Fee be renegotiated effective April 1, 1994, and annually thereafter as set forth in exhibit A, section 3(d) of the Form of Service Agreement.

TGPL states that the purpose of the instant filing is to eliminate the current Firm Service Fee of $5.80 under Rate Schedule FS and, in lieu thereof, provide a reference to exhibit A, section 3(d) of the FS Service Agreement in recognition that effective April 1, 1994 such fee is individually negotiated.

TGPL states that on this date TGPL mailed copies of the instant filing to its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5064 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals; Week of February 4 Through February 11, 1994

During the Week of February 4 through February 11, 1994, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 4 through Feb. 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 29, 1993	Texaco/Owens Cartage Company, Anniston, AL.	RR321–149	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The December 8, 1993 Dismissal Letter (Case No. RF321–15587) issued to Owens Cartage Company would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Feb. 3, 1994	Standard Oil (Amoco)/Indiana, Indianapolis, IN.	RM21–265	Request for modification/rescission in the Standard Oil (Amoco) second stage refund proceeding. *If Granted:* The March 7, 1986 and January 5, 1985 Decisions and Orders (Case Nos. RQ21–272 and RQ21–221) issued to Indiana would be modified regarding the state's Application for Refund submitted in the Standard Oil (Amoco) second stage refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 4 through Feb. 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 7, 1994	Eugene Maples, Hopkins, SC	LFA–0354	Appeal of an information request denial. *If Granted:* The January 24, 1994 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Eugene Maples would receive access to certain documents.
Do	Ewing Oil Company, Hagerstown, MD	LEE–0084	Exception to the reporting requirements. *If Granted:* Ewing Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	General Cooperative Association, Colorado City, AZ.	LEE–0085	Exception to the reporting requirements. *If Granted:* General Cooperative Association would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Midstream Fuel Services, Inc., Mobile, AL.	LEE–0083	Exception to the reporting requirements. *If Granted:* Midstream Fuel Services, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	R.V. Ratts, Inc., Hurst, TX	LEE–0082	Exception to the reporting requirements. *If Granted:* R.V. Ratts, Inc. would not be required to file Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves."
Do	Texaco/North Jensen Texaco, Port St. Lucie, FL.	RR321–148	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The January 11, 1994 Dismissal Letter (Case No. RF321–14800) issued to North Jensen Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Feb. 8, 1994	Contishipping, Division of Continental Grain, Los Angeles, CA.	RR272–126	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If Granted:* The May 17, 1993 Dismissal Letter (Case No. RF272–25150) issued to Contishipping, Division of Continental Grain would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Do	Gifford-Hill & Company, Inc., Los Angeles, CA.	RR272–125	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The May 20, 1993 Dismissal Letter (Case No. RF272–38282) issued to Gifford-Hill & Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Crude Oil proceeding.
Do	Texaco/M&M Transportation Company, Earlington, KY.	RR321–150	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The October 28, 1993 Decision and Order (Case No. RF321–17431) issued to M&M Transportation Company would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of February 4 to February 11, 1994]

2/4/94 thru 2/11/94	Texaco oil refund applications received	RF321–20147 thru RF321–20222.
2/4/94 thru 2/11/94	Crude oil refund applications received	RF321–95115 thru RF321–95123.

[FR Doc. 94–5138 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 22 Through November 26, 1993

During the week of November 22 through November 26, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Complaint of Discrimination

Complainant, 11/23/93, LDA–0001, LDA–0002

The OHA investigated a Complaint of Discrimination filed against the DOE by an employee who was not selected for the position of Director of DOE's Office of Human Resources. The Complainant alleged discrimination on the basis of race, sex and age, and retaliation for filing a previous Complaint of Discrimination. In its determination, the OHA pointed out that the agency has the discretion to choose among qualified candidates so long as the decision is not premised on an unlawful factor. As a result of the investigation, the OHA found that the ultimate selectee for the position was chosen because the selecting official was familiar with her work and believed that she was the outstanding candidate. The OHA concluded that the selection was not based upon any improper factor.

Accordingly, the OHA denied the claim for relief.

Refund Applications

State of Maine, 11/23/93, RF272–74169

The DOE issued a Decision and Order granting an Application for Refund filed by the State of Maine (Maine) in the Subpart V crude oil refund proceeding. The state applied on behalf of all specified state agencies. The DOE rejected Objections filed by Phillip P. Kalodner, council for utilities, transporters, and manufacturers, in regard to this Application. In this Decision, Maine was granted a refund of $77,374.

Texaco Inc./Doc's Texaco Service, Texaco Inc./Baden Texaco, 11/22/93 RF321–10696, RF321–10891

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning Applications for Refund that were filed in the Texaco refund proceeding by Doc's Texaco (Doc's) and Baden Texaco (Baden). In that Decision, we stated that Doc's and Baden purchased their Texaco refined petroleum products on an indirect basis from suppliers who themselves had filed Applications for Refund in the Texaco proceeding and who had proved that they absorbed most of Texaco's overcharges. Therefore, Baden and Doc's were granted refunds to the extent that their respective suppliers passed through Texaco's overcharges. Baden was granted a refund of $3,010 and Doc's was granted a refund of $196.

Texaco Inc./Keith's Texaco, Keith's Texaco, 11/24/93, RF321–18823, RF321–18824

The DOE issued a Decision and Order denying one Application for Refund and granting another Application for Refund filed by Keith Hughes in the Texaco Inc. Subpart V special refund proceeding on behalf of two Texaco outlets Mr. Hughes operated. Mr. Hughes' Application on behalf of Keith's Texaco on Marion Street (Case No. RF321–18824) lacked acceptable purchase volume information; rather, the purchase volume advanced in the Application was based solely on the applicant's memory with no supporting documentation. The DOE has previously decided that an applicant's memory is not an acceptable means of establishing a purchase volume. Thus, Mr. Hughes' Application for Refund for Keith's Texaco on Marion did not meet the criteria set forth in the Decision and Order implementing the Texaco Subpart V special refund proceeding and was denied accordingly. On the other hand, Mr. Hughes' Application for Refund for Keith's Texaco on Boston Street met (Case No. RF321–18823) the criteria set forth in the *Texaco* Decision and Mr. Hughes was granted a refund of $1,068 (representing $778 principal and $290 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/E–Z Serve, Inc	RF304–4878	11/24/93
E–Z serve of Calif., Inc	RF304–4880	
Atlantic Richfield Company/Pete's Arco et al	RF304–14007	11/23/93
Atlantic Richfield Company/Wonder Chemical Corporation et al	RF304–14405	11/24/93
Blasig's Produce et al	RF272–91139	11/22/93
City of Texarkana, Arkansas	RF272–69192	11/23/93
Gulf Oil Corporation/87 Gulf	RF300–20071	11/22/93
Saunders Oil Company	RF300–20072	
Shell Oil Company/Bernie's Shell	RF315–10185	11/23/93
Superior Printing, Inc. et al	RF272–81806	11/23/93
Texaco Inc./Joe C. Lovett et al	RF321–14227	11/24/93
Texaco Inc./Johnson's Texaco et al	RF321–1641	11/23/93
Texaco Inc./Lone Tree Texaco et al	RF321–19000	11/24/93
Texaco Inc./Meltonis Texaco et al	RF321–14441	11/22/93
Texaco Inc./V & H Service et al	RF321–14091	11/23/93
Toombs County, Georgia et al	RF272–85088	11/24/93
United Parcel Service of America, Inc	RF272–93086	11/23/93
Womeldorf Trucking, Inc	RF272–93134	

Dismissals

The following submissions were dismissed:

Name	Case No.
Big Springs Service Center	RF321–8514
Bradford Community Unit School District 1	RF272–81476
Chilton ISD	RF272–81416
Culberson County ISD	RF272–81233
Duncan Unified School District 2	RF272–81397
Earl's Texaco Service	RF321–8512
Eastport Union Free School	RF272–81585
Forgione's Service Station	RF321–8498
Gas for Less Texaco	RF321–8507
Glen Hill Service Station	RF321–8510
Gooden & Son Texaco	RF321–8517
Grayslake CC. School District	RF272–81614
Ladysmith-Hawkins School District	RF272–82347
Layton Davis Texaco Station	RF321–8471
M.S.A.D. 8	RF272–81367
Majewski Texaco Service	RF321–8497
Merit Oil Co.	RF321–8464
Mount Pleasant Community School	RF272–81404
New Hartford Community School	RF272–81368

Name	Case No.
Northeast Bradford School District	RF272–81323
Paul's Service Station	RF321–8449
Pearson Auto Service	RF321–8506
Pequot Filling Station	RF321–8480
R&S Self-Service	RF321–8448
Rodgers Arco	RF304–14452
Roybal's Texaco Service	RF321–8455
Rusty's Texaco	RF321–8483
Sabol's Service Station	RF321–8468
Tenafly School District	RF272–81620
Vallejo City Unified	RF272–81517
Vogt's Texaco	RF321–8489
Walnut Creek Elementary	RF272–81607
Wheeler County School District	RF272–81429
Whitley's Texaco	RF321–8534

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of
a.m. and 5 p.m., except federal holidays. They are also available in *Energy Management:* Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5137 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of October 18 Through October 22, 1993

During the week of October 18 through October 22, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

R.L. Morse, 10/18/93, LFA–0322

Mr. Richard L. Morse filed an Appeal from a denial by the Office of Intergovernmental and External Affairs (OIEA), Albuquerque Operations Office (AL), Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Los Alamos Area Office and the Albuquerque Field Office had conducted reasonable searches in response to Mr. Morse's request, and that all responsive documents had been released to him. The Appeal was, therefore, denied. Important issues that were considered in the Decision and Order were (i) how to determine the existence of a document about which Mr. Morse provided some evidence in the Appeal, and (ii) the documentation of verbal information provided to the Los Alamos Area Office in the course of a security clearance investigation.

Request for Exception

Texport Oil Company, 10/19/93, LEE–0047

Texport Oil Company (Texport) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Texport was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms, and because the firm is a "certainty unit," it could not be granted relief from filing. Accordingly, exception relief was denied.

Refund Applications

Gulf Oil Corporation/S&L Auto Wash, 10/18/93, RF300–16848

The DOE has issued a Decision and Order granting in part and denying in part an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of S&L Auto Wash (S&L). Throughout most of the consent order period the now defunct S&L was under joint ownership. However, this application was submitted on behalf of one partner, Mr. Steve Sopko. In this Application, Mr. Sopko has requested a refund for 100 percent of the Gulf products purchased by S&L during the consent order period. In considering his Application, the DOE found that his partner's ownership interest had ended with the appointment of a court ordered receiver on April 17, 1974. Accordingly, Mr. Sopko was granted a refund for 50 percent of the Gulf purchases made before that date and 100 percent of S&L's Gulf purchases made on or after that date.

Texaco Inc./Energy Refunds, Inc., 10/20/93, RF321–19876

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application that was filed in the Texaco refund proceeding by Energy Refunds, Inc. (ERI), a privately owned filing service. In that Decision, the DOE determined that ERI should be granted a payment of $1,879. This determination was based on the fact that, although a previous refund granted to an ERI client had been rescinded by the OHA and the refund ordered repaid, this repayment obligation was satisfied entirely by ERI, with no reimbursement from the client. A subsequent Application for Refund was filed by ERI on behalf of the client, and this application was also granted by the OHA. ERI requested that the payment on this refund claim be made to ERI, and not to the client. In view of the fact that the client had retained the original refund and the repayment obligation was satisfied solely by ERI, the DOE determined that ERI's request should be granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Mitschele Contracting Co. Inc. et al	RF304–14091	10/20/93
Atlantic Richfield Company/Schwerman Trucking Company	RF304–14058	10/18/93
Baltic School Dist. No. 49–1 et al	RF272–80633	10/20/93
Beacon Oil Company/Gas-O-Teria	RF238–70	10/19/93
Bolivar Central Schools	RR272–116	10/18/93
Butz Oil Company, Inc	RF272–90784	10/22/93
City of Adrian, Michigan et al	RF272–88403	10/20/93
City of Ypsilanti et al	RF272–91202	10/18/93
Crescent Refining & Oil Co./Cargill, Inc	RF347–8	10/20/93
Cargill, Inc	RF347–9	
Dixie Beer Distributors, Inc	RF272–81377	10/20/93
Elliot Company	RF272–73784	10/20/93
Elliot Company	RD272–73784	
Franklin County, PA et al	RF272–89049	10/20/93
Gulf Oil Corporation/Massey's Gulf et al	RF300–21066	10/21/93
Gulf Oil Corporation/Neshaminy School District et al	RF300–20507	10/20/93
Gulf Oil Corporation/Oil Products, Inc	RF300–21296	10/22/93
Gulf Oil Corporation/Speed Car Wash, Inc	RF300–21064	10/18/93
H–K Contractors, Inc	RF272–14150	10/21/93
H–K Contractors, Inc	RD272–14150	
Hamilton-Wenham Reg. Sch. Dist et al	RF272–85276	10/19/93
Hobart Sales & Service et al	RF272–09501	10/21/93
Metropolitan Petroleum & Fuel/Denbe Corp	RF349–5	10/20/93
Pird Gas	RF349–6	
Shell Oil Company/Hill City Oil Co., Inc	RF315–8202	10/20/93
Shell Oil Company/Jim's Shell Service	RF315–8450	10/18/93
Shell Oil Company/Smith's Shell Service	RF315–8712	10/18/93
Shell Oil Company/Whitaker Oil Co	RF315–8927	10/20/93
Southwest Health Center, Inc	RF272–87691	10/22/93
Texaco Inc./Briggs Transportation Co. et al	RF321–13240	10/20/93
Texaco Inc./Hayes Texaco	RF321–19936	10/20/93
Texaco Inc./Mitchell's Texaco et al	RF321–19021	10/22/93
Texaco Inc./Paul Jay Haight & Co., Inc. et al	RF321–10528	10/21/93
Texaco Inc./Stevenson Texaco et al	RF321–17069	10/18/93

Dismissals

The following submissions were dismissed:

Name	Case No.
American Standard, Inc	RF272–92695
Bourbon County	RF272–85264
Central Arkansas Transit Authority	RF272–90193
Chelsea School District	RF272–81754
City of Buchanan	RF272–85280
Columbus County Hospital	RF272–90121
Dalzell School District 98	RF272–80650
Days Inn of America	RF300–14697
Downtown Shell & Tire Service	RF315–10157
Dulce School District	RF272–80649
Fairfield Home Oil Company	RF300–21265
Francis & Market Texaco	RF321–14494
Gas Stop Pop Shoppe	RF321–14493
Giroux Brothers Transport, Inc	RF272–89451
Hancock County	RF272–85257
Home Oil Company, Inc	LEE–0046
Honey Dew Truck Stop	RR300–105
Inmont Corporation	RF300–21602
Jackson County, Kansas	RF272–86727
L.E. Shifflet	RR300–234
Mobil-Teria Catering Company	RF272–90116
Putnam County RI	RF272–80642
R.F. White Company, Inc	RR300–239
River Dell Regional H.S. Dist.	RF272–89298
Rolla School District	RF272–89280
Sketchley Services, Inc	RF300–20653
State Oil Service, Inc	RF309–1145
The Blue Ox Coop	RF272–88785
Village of Northfield	RF272–89292
Warrenton-Hammond School District 30	RF272–82001

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5135 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decisions and Orders; Week of January 3 Through January 7, 1994

During the week of January 3 through January 7, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issuance of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Request for Exception

Marbob Energy Corporation, Artesia, New Mexico, LEE–0066 Reporting Requirements

Marbob Energy Corporation filed an Application for Exception from the requirement that it file Form EIA–23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden born by similar reporting firms. Accordingly, on January 7, 1994, the DOE issued a Proposed Decision and Order tentatively determining that the exception request should be denied.

Miller's Bottled Gas, Inc., Bowling Green, Kentucky, LEE–0059 Reporting Requirements

Miller's Bottled Gas, Inc. (Miller's) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Miller's to be temporarily exempted from filing Form EIA–782B. On January 5, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Paulson Oil Company, Chesterton, Indiana, LEE–0060 Reporting Requirements

Paulson Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on January 7, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–5136 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order by the Office of Hearings and Appeals; Week of February 7 Through February 11, 1994

During the week of February 7 through February 11, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

Rockford Grain Growers, Rockford, Washington, Reporting Requirements

Rockford Grain Growers (Rockford) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Rockford to be exempted from filing Form EIA–782B. On February 10, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 94–5140 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of February 7 Through February 11, 1994

During the week of February 7 through February 11, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Rockwell International Corporation, 2/9/94, LFA–0348

Rockwell International Corporation (Rockwell) filed an Appeal from a determination issued to it by the Office of Budget and Administration of the Office of Environment, Safety and Health (EH) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the individual searches performed by the various branches of EH were adequate as to the documents actually searched for. The DOE did determine, however, that other portions of the agency could have responsive documents and that some portions of EH may not have searched for all possible responsive documents. The DOE also found that because of the multitude of individual determination letters, the DOE had not issued a sufficient determination on all portions of Rockwell's request and that there had not been a final agency response. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Freedom of Information and Privacy Branch of the Reference and Information Management Division of the DOE Office of Administrative Services (FOI Branch) to determine which other branches of the DOE, if any, may have responsive documents, and to have those branches initiate a search for any such documents. In addition, the FOI Branch was instructed, on remand, to issue a new determination specifying which portions of the request had been responded to, were being responded to for the first time, and which could not be responded to because the documents were unavailable. Finally, for particular DOE documents which Rockwell specifically alleges are in the custody of the Government Accounting Office (GAO) but are not found in any new searches, on remand the FOI Branch should obtain copies from the GAO and review the documents for release under the FOIA.

Requests for Exception

Radio oil Company, 2/8/94, LEE–0062

Radio Oil Company (Radio) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering Radio's request, the DOE found that the firm was not suffering gross inequity or serious hardship. The DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed with the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Radio's Application for Exception.

Rand Oil Co., 2/10/94, LEE–0053

Rand Oil Co. (Rand) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was suffering a gross inequity because of the medical condition of the owner. Accordingly, on November 18, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be granted in part and that Rand should be exempt from filing Form EIA–782B for two years. Since a Notice of Objection was not filed, this Decision and Order was issued in final form.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Chambers County et al	RF272–85134	02/10/94
Enron Corp./Mangum Oil & Gas Corp	RF340–91	02/08/94
Kern Oil & Refining Co.	RF340–101	
Fayette County School District et al	RF272–80685	02/08/94
Fife School Dist., Washington et al	RF272–88183	02/10/94
Gulf Oil Corporation/Robert L. Yancey	RF300–21772	02/08/94
Jackson Public Sch. Dist. et al	RF272–81877	02/10/94
Pennwalt Corp. D/B/A/ Elf Atochem, North America, Inc	RF272–13486	02/07/94
Pennwalt Corp. D/B/A/ Elfatochem, North America	RF272–13486	
Redman Homes et al	RF272–90529	02/08/94
Texaco Inc./Nassaney Service Stations et al	RF321–4345	02/07/94
Texaco Inc./Northwest Oil Company, Inc.	RF321–19482	02/07/94
Texaco Inc./Truck Trailer Equip. Co. et al	RF321–19504	02/07/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Burgess Texaco Station	RF321–19455
Cabrillo Shell Service	RF315–6798
City of Portland	RF272–88133
City of Thomson	RF272–88398
Elk Point Public Schools	RF272–88620
Harrison Oil Co.	RF300–19533
Jim's Main Street Shell	RF315–8893
John's Texaco Service Center	RF321–8482
Loving School District	RF272–80017
Montana Agricultural Experiment Station	RF272–88739
Oxy USA, Inc.	LRZ-0024
Ozark Truck Plaza	RF321–2403
R & J Arco	RF304–15226
Russell Farms	RF300–19762
Sandpoint Motor Co.	RF321–19614
Utilities, Manufacturers & transporters	LRR–0014

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5141 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Boulder Canyon Project Notice of Rate Order No. WAPA–58–1

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order—Boulder Canyon Project annual power rate adjustment.

SUMMARY: Notice is given of the approval by the Administrator of Western Area Power Administration (Western) of Rate Order No. WAPA–58–1 and Rate Schedule BCP–F4/2 placing the proposed decreased power rates for the Boulder Canyon Project (BCP) into effect.* The methodology utilized in Rate Order WAPA–58 requires that Western modify the BCP rates, either an increase or decrease, on an annual basis. These BCP rates will remain in effect until they are superseded.

The proposed rates for BCP power are based on a composite rate of 12.62 mills per kilowatthour (mills/kWh). The composite rate consists of an energy charge of 6.31 mills/kWh and a capacity charge of $1.07 per kilowatt per month ($/kW/month).

The Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, approved the existing BCP rate methodology on an interim basis, effective on January 1, 1993 [57 FR 61074; December 23, 1992]. The Federal Energy Regulatory Commission (FERC) approved the methodology for the BCP rate on a final basis by Order dated November 3, 1993.

A comparison of the existing and annual BCP rates follows:

	Existing rates (FY 1993)	Annual rates (FY 1994)*
Rate Schedule ..	BCP–F4/1	BCP–F4/2
Composite Rate (mills/kWh)	14.56	12.62
Energy Rate (mills/kWh)	7.28	6.31
Capacity Rate ($/kW/month)	$1.28	$1.07

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The BCP rates will be reviewed annually.

DATES: Rate Schedule BCP–F4/2 will be placed into effect beginning on February 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Acting Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457 (602) 352–2521.

Ms. Deborah Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618.

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place power rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to FERC.

These power rates are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR Part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (10 CFR Part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986, the procedures for public participation in rate adjustments for power and transmission service marketed by Western (10 CFR Part 903) published in the **Federal Register** at 50 FR 37835 on September 18, 1985, and the DOE financial reporting policies, procedures,

*WAPA's Administrator has been empowered as part of DOE's 1992 rate filing with FERC to approve the annual rates. See, 57 FR 61076; December 23, 1992 and 57 FR 62318 December 30, 1992.

and methodology (DOE Order No. RA 6120.2 dated September 20, 1979).

During the 90-day comment period, Western received nine written comments. In addition, six speakers commented during the August 31, 1993, public comment forum. All comments and responses are addressed in the rate order.

Rate Order No. WAPA–58–1 (Rate Schedule BCP–F4/2) approving and placing the BCP proposed rates into effect is issued and approved on a final basis.

Issued in Golden, CO, February 4, 1994.

William H. Clagett,

Administrator.

Order Approving and Placing the Boulder Canyon Project Power Rates Into Effect

In the matter of Western Area Power Administration Annual Rate Adjustment for Phoenix Area Office Boulder Canyon Project.

[Rate Order No. WAPA–58–1]

February 4, 1994.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary) acting by and through the Administrator of the Western Area Power Administration (Western).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place power rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

The ratesetting methodology used in this rate order was approved and confirmed on a final basis by the Federal Energy Regulatory Commission on November 3, 1993, in WAPA–58. Western is required to modify the Boulder Canyon Project power rate, either an increase or a decrease, on an annual basis. This ratesetting methodology uses an approved rate formula, along with an annual public participation process, for the Boulder Canyon Project through September 30, 1997. As long as Western adheres to this rate formula and public process, as outlined in WAPA–58, there is no requirement to seek additional approval from the Federal Energy Regulatory Commission.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1941 General Regulations: General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, May 20, 1941.

1984 Act: Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619 *et seq.*).

$/kW/month: Monthly charge for capacity (usage—$ per kilowatt per month).

Additions: A unit of property constructed or acquired which enhances or improves a project or system and which is properly allocated to power or the joint features allocated to power.

Adjustment Act: Boulder Canyon Project Adjustment Act, July 19, 1940 (43 U.S.C. 618 et seq.).

Annual Rate: A rate revision recommended to the Administrator of Western for approval on an annual basis. The Annual Rate adjustments are approved by the Administrator of Western.

BCP: Boulder Canyon Project.

BCP Handout: A document prepared for the public information forum.

Capacity Rate: Shown in the PRSS as a $/kW/year charge. Billed on a $/kW/month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.

Colorado River Basin Project Act: The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501 *et seq.*).

Colorado River Dam Fund (CRDF): A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.

Composite Rate: Combination of an energy rate and a capacity rate, which is expressed in mills/kWh.

Conformed Criteria: Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.

Cost Evaluation Period (CEP): The first 5 future years in the PRSS, starting with the first future year of costs and revenue estimates.

Contractors: The Boulder Canyon Project Power customers.

Crosswalk: A reconciliation between a project PRSS and the Western and Reclamation financial statements.

CSRS: Civil Service Retirement System.

Current PRSS: The PRSS included in this rate order based on the existing BCP rates.

DOE: Department of Energy.

DOE Order No. RA 6120.2: An order dealing with power marketing administration financial reporting.

E&OC: Engineering and Oversight Committee consisting of members from BCP Contractors, Western, and Reclamation. Their function is to establish a regular review process of Western's and Reclamation's planned O&M, additions, and replacements.

EIS: Environmental Impact Statement.

Energy Rate: Expressed in mills per kWh. Applied to each kWh made available to each Contractor.

FY 1992 Ratebase PRSS: FY 1992 Revised PRSS.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year.

Guide Service: This is service provided to the visitors for tours at the Hoover Dam site.

GWh: Gigawatthour.

Hoover Dam: The dam on the Colorado River which forms Lake Mead.

Hoover Rates Committee: The Hoover Power Rates Methodology Review Standing Committee made up of BCP Contractors, Western, and Reclamation who developed the new proposed ratesetting methodology (Settlement Agreement).

Interior: U.S. Department of the Interior.

kW: Kilowatt.

kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.

kWh: Kilowatthour.

LCRBDF: Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.

Master Schedule: This is an 18-month schedule of projected BCP hydrology.

mills/kWh: Mills per kilowatthour.
Multiproject Costs: These are costs for facilities being charged to one project that benefit other projects.
MW: Megawatt.
MWh: Megawatthour.
NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
OMB: Office of Management and Budget.
O&M: Operations and maintenance.
P–DP: Parker-Davis Project.
Project Act: The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617 *et seq.*).
PRSS: Power Repayment Spreadsheet Study.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
Reclamation's 1986 General Regulations: General Regulations for Power Generation, Operation, Maintenance, and Replacement at BCP, Arizona/Nevada 43 CFR Part 431 (51 FR 23960, July 1, 1986).
Replacements: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.
Replacement Study: The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will reoccur in future years at a similar high level with years in between tending to be at lesser level of replacement.
Secretary: Secretary of Energy.
Schedule A: Boulder Canyon Project Contractors that receive capacity and energy. Contractors are Arizona Power Authority (APA), Boulder City, Burbank, Colorado River Commission of Nevada (CRC), Glendale, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Pasadena, and Southern California Edison.
Schedule B: Boulder Canyon Project Contractors that receive Hoover capacity and energy and who also advanced the funds for the Uprating Program. These Contractors include Anaheim, APA, Azusa, Banning, Burbank, CRC, Colton, Glendale, Pasadena, Riverside, and Vernon.
Schedule C: Both the Schedule A and Schedule B Contractors (All Contractors).
Settlement Agreement: See Hoover Rates Committee.
Treasury: Secretary of the Department of the Treasury.
Uprating Contractors: Contractors who contributed to advance of funds for financing the upgrading of the BCP system (see Schedule B definition).
Uprating Credits: The payments/credits that are returned to the Uprating Contractors in repayment for the advancement of funds.
Uprating Program: Non-federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.
Western: Western Area Power Administration, DOE.
Western's 1986 General Regulations: General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR Part 904 (51 FR 43124, November 28, 1986).
Working Capital Fund: Reserve of funds contributed by the Contractors to be used when the Colorado River Dam Fund has no money available.

Effective Date

The existing approved ratesetting methodology is effective January 1, 1993, through September 30, 1997.

The rates in Rate Schedule BCP–F4/2 will be in effect on a final basis beginning February 1, 1994. The methodology utilized in WAPA–58 requires that Western modify the BCP rate, either an increase or decrease, on an annual basis. For all other FYs of the ratesetting methodology approval period (through 1997) the rates will be set in accordance with the approved ratesetting methodology and placed into effect by the Administrator of Western.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of the power rates. It is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on August 17, 1993 (58 FR 43631), officially announcing the proposed annual BCP power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

2. A letter was mailed to all BCP customers and other interested parties on August 10, 1993, providing a copy of the BCP PRSS and Supporting Schedules and announcing a public information forum and a public comment forum.

3. At the public information forum held on August 31, 1993, Western and Reclamation representatives explained the need for the BCP rate adjustment in greater detail and answered questions.

4. The public comment forum was also held on August 31, 1993, to give the public an opportunity to comment for the record. Six people representing customers and customer groups made oral comments.

5. On September 29, 1993, a **Federal Register** notice was published (58 FR 50916) formally announcing that the consultation and comment period would be extended through October 18, 1993, for the proposed Annual Rate review process for the BCP.

6. Due to the need for additional time to respond to some of the questions asked by the BCP customers in the August 31, 1993, public information forum, Western again extended the consultation and comment period. On October 26, 1993, a **Federal Register** notice was published (58 FR 57598) formally announcing that the consultation and comment period would be extended through November 15, 1993.

7. A letter was mailed to all BCP customers and other interested parties on October 18, 1993, providing a copy of the BCP revised PRSS and Supporting Schedules and announcing an informal customer meeting. The informal meeting was held on November 4, 1993, in Phoenix, Arizona. At this informal meeting, Western and Reclamation representatives discussed the revised PRSS, Supporting Schedules, and summary of the changes.

8. Nine written comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended November 15, 1993.

Project History

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the express purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system; (2) improving navigation of the Colorado River and its tributaries; (3) regulating the Colorado River, while providing storage and delivery of the stored water

for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized Treasury to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million were allocated to flood control.

Construction of the Hoover Dam, formerly known as Boulder Dam, began in 1930, and the first generating unit of the power plant went into service in 1937. Upon completion of the project facilities, power sales commenced, in accordance with the provisions of the Project Act, to Contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Adjustment Act. The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987; to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequently and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the 1941 General Regulations for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP Contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase in the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP Contractors to Reclamation. Funds advanced would be returned to these Contractors through credits on their monthly power bills. The 1984 Act provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also required that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge is to be transferred to the LCRBDF.

Under the 1984 Act, BCP's power was sold to 15 Contractors located in the States of Arizona, California, and Nevada, in accordance with the Conformed Criteria.

Due to the numerous requirements set out in the 1984 Act and the earlier division of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. These regulations are cited herein as Reclamation's 1986 General Regulations and Western's 1986 General Regulations, and they supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Spreadsheet Studies

PRSS are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order No. RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover: (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects or States.

Existing and Annual Rates

A comparison of the existing and annual BCP rates follows:

	Existing rates (FY 1993)	Annual rates (FY 1994)
Power Rate Schedule	BCP–F4/1	BCP–F4/2*
Composite Rate (mills/kWh)	14.56	12.62
Energy Rate (mills/kWh)	7.28	6.31
Capacity Rate ($/kW/month)	$1.28	$1.07

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The BCP rates will be reviewed annually.

Certification of Rates

Western's Administrator has certified that the BCP rates placed into effect herein are the lowest possible consistent with sound business principles, pursuant to the ratesetting methodology agreed to by the BCP Contractors, Western, and Reclamation. The BCP rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The proposed BCP rates have been updated from the BCP rates originally proposed in the customer package sent out on August 10, 1993, and **Federal Register** notice dated August 17, 1993. The changes to the FY 1993 Ratebase PRSS are as follows:

—The actual figures for FY 1992 were used rather than the projected figures. The adjustments for FY 1992 that had been reflected in FY 1994 were removed.
—FY 1994 Working Capital Fund was adjusted to zero. It was reduced because of the current year CRDF carry-over balance.
—The most recent uprater credit schedules received from the Contractors were used for FY 1994 and out years.
—FY 1993 figures have been adjusted to actual.
—The Visitor Facilities completion date was moved to FY 1996.
—Circular reference in the supporting schedule LOANS10F.WK1 eliminated. No change to output.
—The projected Total Energy Sales (MWh) for FY 1999 through the end of the study were changed to a constant of 4,527,001 MWh.
—Title on PRSS changed from "Boulder Canyon Project FY 1993 Power Repayment Study Spreadsheet" to "* * * Spreadsheet Study."
—Corrected Column 14 formula for FY 1994 and out-years. It did not change any figures.
—Deleted working column to far right of spreadsheet. It did not change any figures.
—Corrected the energy and capacity and the FY 1992 adjustment in "Other Revenue" to reconcile with the crosswalk numbers for FY 1992.
—On Supporting Schedule ACTFINAL.WK1 (E–1, E–2), added summary pages of principal payments. This will serve as an easy-to-read tool of what is being paid off in any particular year.
—On Supporting Schedule LOANS10F.WK1, added an adjustment (page F–1). Also, the amortization period was changed back to 10 years instead of 9 years.

—On Supporting Schedule REQFINAL.WK1 (G–1), the principal payment in FY 1993 was corrected and now ties with the PRSS.
—In column 27 in FY 2017, the $5,045,030 adjustment (PRSS to CRDF) was credited. (This is reflected in FY 2018 in column 14.) This was done to repay the customers at the end of their contract.
—In columns 21 and 25, the formula used to determine the Annual Rate for this rate adjusts the rate for FY 1994 over the remainder of FY 1994. This is assuming the effective date of the rate is February 1, 1994.
—Changed the file reference title at the bottom of the PRSS to [RATEBASE.WK1].
—Revised the CSRS costs as submitted in memorandum dated September 7, 1993.

The existing and FY 1994 annual revenue requirements for the BCP are as follows:

	Revenue requirements	
	Existing BCP rates (FY 1993)	Annual BCP rates (FY 1994)*
Revenue Requirements	$49,992,504	$47,894,340

*The proposed BCP rates are to be in effect beginning February 1, 1994.

The methodology utilized in WAPA–58 requires that Western modify the BCP rate, either an increase or decrease, on an annual basis.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

BOULDER CANYON PROJECT COMPARISON OF 5-YEAR RATE PERIOD (FY 1994–98) REVENUES AND EXPENSES
[$1,000]

	FY 1992 PRSS 1994–98	FY 1993 PRSS 1994–98	Difference
Revenues:			
Energy Sales	$138,790	$133,803	($4,987)
Capacity Sales	138,790	133,803	(4,987)
Water Sales	2,250	2,250	0
Other Revenue	6,360	13,280	6,920
CRDF Carry-Over Balance	0	2,803	2,803
Total Revenues	286,190	285,939	(251)
Revenue Distribution:			
Operation & Maintenance	108,525	113,072	4,547
Payment to States	3,000	3,000	0
Other Expenses	9,634	16,488	6,854
Annual Uprating Payments	89,741	80,491	(9,250)
Annual Replacement	17,655	22,740	5,085
Interest	43,139	39,168	(3,971)
Principal Payments	11,661	11,468	(193)
Working Capital Fund	2,835	(488)	(3,323)
Total	286,190	285,939	(251)

Basis for Rate Development—BCP

The FY 1994 annual BCP rates are designed to maintain a 50/50 split between revenue earned from energy and capacity rates. The cost to individual customers will vary, because of differences in their supplies and loads.

The BCP Annual Rate consists of a 6.31 mills/kWh energy rate and $1.07/kW/month capacity rate effective February 1, 1994. The ratesetting methodology approval period is through September 30, 1997.

Comments

During the 90-day comment period, Western received nine written comments. In addition, six speakers commented at the August 31, 1993, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Arizona Municipal Power Users' Association (Arizona)
Arizona Power Authority (Arizona)
Vernon, City of (California)
Colorado River Commission of Nevada (Nevada)
Irrigation & Electrical Districts' Assoc. of Arizona (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Metropolitan Water District of Southern California (California)
Overton Power District No. 5 (Nevada)/Valley Electric Association (Nevada)
Utility Resource Services (Arizona)

Representatives of the following organizations made oral comments:

Arizona Power Authority (Arizona)
Colorado River Commission of Nevada (Nevada)
Los Angeles, City of, Department of Water and Power (California)
Irrigation & Electrical Districts Association of Arizona (Arizona)
Overton Power District No. 5/Valley Electric Assoc. (Nevada)
Pioneer Chlor Alkali Company (Nevada)

Most of the comments received at the public meetings and in correspondence dealt with the PRSS, capitalized investments, annual expenses, working capital, other revenue, ratesetting, capitalized deficits, and audits. All comments were considered in developing the proposed BCP rates.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Boulder Canyon Comments

Power Repayment Spreadsheet Study

Comment: Substitute the real figures for FY 1992 in place of the projected figures. You would then have a true

carry-forward figure in FY 1992 and an estimated carry-forward figure at the end of FY 1993. It might have a substantial effect upon the numbers for FY 1994.

Response: The actual figures for both FY 1992 and FY 1993 have been utilized rather than the projected figures. The adjustments for FY 1992 that were reflected in FY 1994 were removed.

Comment: The customer believes as a result of the discrepancies we saw in the numbers a new PRSS should be run with the best available data.

Response: A revised PRSS was prepared and mailed to the BCP Contractors on October 18, 1993. Both a printed copy and diskette copy of the PRSS, along with a summary of changes to the original PRSS, were provided. On November 4, 1993, Western held an informal workshop with the BCP Contractors to discuss this revised PRSS.

Comment: Concern has been expressed that the PRSS does not reflect the most recent budget estimates for BCP operation, maintenance, and replacement expenses.

Response: The PRSS, upon which this rate adjustment is based, reflects the most current budget estimates for all costs associated with operation, maintenance, and replacement expenses in the BCP.

Comment: Establish a BCP recordkeeping system to provide a correlation between BCP actual and budgeted expenditures to the data shown in the PRSS.

Response: Western is in the process of implementing a recordkeeping system to correlate actual expenditures to budgeted expenditures. This system will be in place prior to Western revising rates for FY 1995.

Comment: In FY 1994, column 7, debt service interest expense, and column 8, capitalized deficit interest expense, did not sum to column 9, total interest expense.

Response: Due to a spreadsheet linking problem, the correct values did not properly transfer to the PRSS only in FY 1994. Western made corrections to the link between the supporting schedules and the PRSS to correct this problem.

Comment: Some Contractors expressed concern that Western deviated from the 5-year moving window methodology for the BCP. Some stated they believed the new methodology should operate very much like the rate mechanism that was in place prior to June 1, 1987.

Response: Western believes that it is adhering to the 5-year moving window methodology that was set forth in the September 15, 1992, Settlement Agreement. At the end of each year, differences between projected values and actual values are calculated and reflected in the PRSS. Any net differences, either positive or negative, are carried forward to the next year, as shown in column 14 of the PRSS.

The PRSS, upon which this rate adjustment is based, embodies all of the principles set forth in the September 15, 1992, Settlement Agreement. The new ratesetting methodology, as set out in this Settlement Agreement, was never intended to operate in the same fashion as the ratesetting process utilized prior to June 1, 1987.

Comment: There appears to be approximately an $11-million surplus that is pure and simple getting averaged out in the 5-year rate window process. It bears reminding that WAPA–58 represented an attempt to come up with a rate mechanism which was similar to the rate mechanics in the pre-1987 era. It is clear that the rate mechanism in that pre-1987 era trued up the cost immediately. This mechanism bears no resemblance to the pre-1987 process on the true-up mechanics.

Response: There is no $11-million surplus in the 5-year ratesetting period (cost evaluation period) for this rate process. If there was an under- or over-collection of revenues in any year, this would be carried forward to the next year. Thus, this under/over-collection would be numerically reflected in both the next year's rate calculation, as well as in the 5-year moving window rate calculation. While the WAPA–58 rate mechanism is somewhat similar to the pre-1987 rate mechanism, it is significantly different, because the WAPA–58 rate methodology reflects the 5-year moving window concept, as agreed to by the BCP Contractors, Reclamation, and Western in the September 15, 1992, Settlement Agreement.

Comment: A customer believes that annual uprater payments of column 3 should reflect the new debt service schedules that follow the uprating bonds used by the Arizona Power Authority and Colorado River Commission. The customer is also not so sure that the correct figures are being used for the Colorado River Commission and for the Southern California Public Power Authority.

Response: The revised annual uprater schedules are currently reflected in FY 1993 and in the out-years in the latest PRSS.

Comment: Some Contractors have requested that a new PRSS be run which would reflect the correction of historical data and the correction of mathematical errors.

Response: The PRSS, upon which this rate adjustment is based, has been corrected to fix these identified problems. These issues were all addressed in the Public Information Forum data requests which were mailed to the BCP Contractors on October 18, 1993. These issues were also addressed at length during the informal workshop held on November 4, 1993.

Comment: A customer is concerned that the FY 1992 true-up, as implemented here, does not reflect the intent of the FY 1992 rate formula, much less meet the lowest possible rate standard, which all such rates are supposed to meet.

Response: The FY 1992 projected values have been revised to actual values. (The adjustment had previously been shown in FY 1994.)

Comment: A customer is concerned about the huge variations between projected and actual expenditures, as well as significant differences between the PRSS and various other sources of data, as officially reported by both Reclamation and Western. Also such concerns are heightened by the continued failure of Western to comply with the independent project audit requirements.

Response: Over the past several years, various Contractors have raised the issue that several actual expenditures (most notably O&M expenses) have continually been less than projected. This is predominately due to the reduced actual hydrology of the BCP. The BCP is an "available receipts project" in that it cannot commit or spend money that is not in the Colorado River Dam Fund. Because power revenues are the only source of revenue to the CRDF, if the actual hydrology is less than anticipated, reductions in expenditures are necessary to keep from overspending the CRDF. To a large extent, the only way to reduce expenditures, without deferring the payment of Uprating Credits, is in the reduction of either O&M expenses or in annual replacements.

In regard to the concern over the significant differences between the PRSS and various sources of data, as reported by both Reclamation and Western, these differences have been explained in the data response mailed to the BCP Contractors on October 18, 1993. Although it appeared that significant differences did exist in the data, reconciliation data sheets that were supplied by Reclamation indicated that all data originated from a common data source and that differences were due to the particular forum the numbers

were prepared for, rather than any inherent difference in the data.

In regard to the concern over the lack of an independent audit, Western is conducting an annual audit on BCP, as part of the Western-wide audit process. FERC specifically addressed the audit issue in its Order approving WAPA–58 and found Western's procedures to be in compliance with requirements.

Rate Process

Comment: The authority for final confirmation and approval is exclusively reserved for FERC for any proposed change in BCP rates.

Response: On November 3, 1993, FERC issued an Order Confirming and Approving Rates on a Final Basis for the BCP which stated "As to the annual rate adjustments, Western's customers should be able to monitor the operation of the formula rate when they take part in Western's annual public participation proceedings held when it proposes Annual Rate adjustments according to the formula. This annual proceeding should provide the customers an opportunity to monitor both compliance with the formula rate as well as to voice any concerns about the magnitude of the rate adjustment." Western has indicated to the BCP Contractors that it intends to follow the same rate process as in the past, except that the approval process will conclude with the signature of Western's Administrator. Informational copies of the BCP rate order package will be submitted to DOE and to FERC. The current rate formula is approved through September 30, 1997. For BCP rates to become effective on or after October 1, 1997, Western will have to seek further approval of DOE and FERC.

Comment: A customer requests acknowledgement that the Annual Rate adjustments process is one of a number of issues which is subject to resolution by the BCP Implementation Agreement being negotiated.

Response: The Annual Rate adjustment process is one of the issues which is subject to resolution by the BCP Implementation Agreement being negotiated. The rate adjustment process filed in WAPA–58 and accepted by FERC resulted from the Settlement Agreement of September 15, 1992, among the BCP Contractors, Reclamation and Western. This same group of Contractors is again back at the negotiating table, attempting to resolve certain related issues which, if resolved, will possibly require modification of the rate methodology implemented in WAPA–58.

Comment: A customer supports a postponement in the rate process.

Comment: Desire to delay implementation of a 5-percent rate reduction for the BCP.

Response: As a result of comments made during the August 31, 1993, public information forum and public comment forum, Western extended the comment and consultation period and has postponed implementation of the Annual Rates until February 1, 1994.

Comment: A customer recommends that Western strictly adhere to the requirements of 10 CFR Part 903 by noticing the place, time, and date of the required public comment forum in the **Federal Register** at least 30 days in advance of the meeting.

Comment: The customer suggests for future Annual Rate adjustments and thereafter, Western should provide a public comment period that is longer than 30 days, as presented in the August 17, 1993, **Federal Register** notice. The customer suggests a 90-day public comment period for all future Annual Rate adjustments.

Response: Western acknowledges that the BCP Contractors were provided only 21 days advance written notice of the public comment forum that concerned the BCP rate process. However, the BCP Contractors were orally informed on July 30, 1993, of the proposed August 31, 1993, BCP public comment forum. This announcement was made and the proposed meeting date was discussed with the BCP Contractors at a BCP Settlement Negotiations meeting in Las Vegas at McCarran Airport. Representatives of all the BCP Contractors were in attendance.

Western is in the process of preparing a schedule of all the various activities that comprise a rate process, along with the timing of said events. This schedule is targeted for completion in early 1994 and will be provided to all Western's customers when completed. Because the BCP rates will be modified on an annual basis, at least until September 30, 1997, the BCP Contractors will know well in advance when various activities concerning the BCP rate process will occur.

Comment: A customer suggests that public information forums and public comment forums for future Annual Rate adjustments not be scheduled on the same day.

Response: In the future, Western will not conduct public information forums and public comment forums on the same day.

Comment: A customer requests that Western prepare a decision document summarizing all comments received during the public comment period and Western's and Reclamation's responses to those comments. This decision document should be distributed to all BCP Contractors and interested parties before implementing the proposed Annual Rate adjustment.

Response: As part of Western's rate process, a rate order package is prepared which, among other items, contains a summary of all of the comments received during both the public comment forum and the consultation and comment period. Western's responses to these comments are also part of this rate order package. This package is presented to Western's Administrator, and to DOE and FERC for informational purposes. This information is also published in the **Federal Register** and a copy of the material is sent by Western to its customers. This entire process takes place prior to implementation of the revised rates. In the future, distribution to the BCP Contractors will take place once Western's Administrator approves the annually revised rates, which will normally be prior to the implementation of said rates.

Ratesetting

Comment: A uniform, predictable program for the development of databases and rate studies in support of Annual Rate adjustments should be prepared, complete with the dates by which specific information will be provided to the Contractors, with reference to the specific sources of information to be used for all data presented in the power repayment study.

Response: As previously indicated, Western is in the process of preparing a schedule of all the various activities that comprise a rate process, along with the timing of said events. This schedule is targeted for completion in early 1994 and will be provided to all Western's customers when completed. Because the BCP rates will be modified on an annual basis, at least until September 30, 1997, the BCP Contractors will know well in advance when various activities concerning the BCP rate process will occur.

As also previously indicated, Western is in the process of developing a record-keeping system to correlate actual expenditures to budget projections. The combination of the detailed schedule and the proposed record-keeping system should provide both: (i) Advance notice to the BCP Contractors of all BCP rate activity and (ii) continuity and consistency of data.

Comment: Some Contractors have requested that the rate study be revised to recognize that the rate over the first 4 months of FY 1994 was equal to the Rate Order No. WAPA–58 rate, resulting

in an increase in forecast revenues in FY 1994.

Response: Western has revised the rate as appropriate to reflect: (i) A February 1, 1994, implementation date and (ii) the rate methodology specified in WAPA–58. The effect was to further reduce the Annual Rate in recognition of higher revenues for the first 4 months of FY 1994.

Comment: The third to the last paragraph of the **Federal Register** notice implies that the Delegation Order No. 0204–108 addresses not only rates but also ratesetting methodology. Western's paraphrase of the delegation order in the **Federal Register** notice is not correct since the delegation order only uses the word "rates" and not the words "ratesetting methodology." Customer raises this point now because of the importance it places on the need to ensure that the process authorized under Delegation Order No. 0204–108 is not construed to constitute a change in regulations governing a setting of rate without being accompanied by appropriate steps which must precede any change of regulations governing the establishments of rates by a power marketing administration.

Response: The customer is correct in that the words "ratesetting methodology" are not specifically referenced in Delegation Order No. 0204–108. However, 10 CFR 903.2(l) states that "rate means the monetary charge or formula for computing such a charge for any electric service provided by the PMA, including but not limited to charges for capacity (or demand), energy, or transmission service; * * *." Additionally, in the context of the BCP Settlement Agreement among the BCP Contractors, Reclamation, and Western, the rates being proposed for the BCP are dependent upon the methodology. There has been no change in regulations, or implied change in regulations, concerning the establishment of rates by Western.

Comment: Some Contractors indicate that because they do not participate in the budget formulation process, they believe that the formalization of the E&OC is necessary to assure them an opportunity to provide input prior to the development of the Western and Reclamation budgets.

Response: Both Western and Reclamation are committed to work with the Contractors through the E&OC to ensure that all entities are informed and have the opportunity to review budgetary expenditures, along with providing input on the project activities and costs that will impact the BCP rates. Additionally, Western is currently working with the customers in the development of its Ten-Year Engineering Plan. At the December 15, 1993, Ten-Year Engineering Plan meeting, Reclamation's representative indicated she would recommend that a similar process be initiated by Reclamation's management.

Comment: One customer is concerned that BCP rates are not the lowest possible rate to consumers consistent with sound business practice as required under the prescribed standards. And the use of such a formulary rate adjustment mechanism will not provide, and has not provided, the proper incentives to assure efficient and economic operation of the project. This formulary rate adjustment mechanism is similar to the prior pinch-point methodology, which also did not provide incentive for efficient and economic operations at the BCP.

Response: As indicated in a response to a similar comment in the WAPA–58 Rate Order, Western is of the opinion that the approved rate methodology sets rates at the lowest possible cost consistent with both sound business principles and with the principles outlined by the BCP Settlement Agreement of September 15, 1992. The Annual Rate covered in this rate order reflects a significant decrease in costs and suggests that the Annual Rate process and the EO&C are in fact promoting strong incentives for efficient and economic operations.

Comment: The subject ratemaking methodology constitutes an automatic adjustment clause within the meaning of and as governed by PURPA and that such automatic adjustment clause has not been implemented in accordance with the very precise and prescribed procedures established by PURPA.

Response: The Public Utility Regulatory Policies Act of 1978 (PURPA) states at 16 U.S.C. 2612(a) that:

> This chapter applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatthours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

Electric utility is defined to include Federal agencies which sell electric energy. Of the 15 BCP Contractors, the Metropolitan Water District, purchases more than 500 million kWh during any calendar year which is for purposes other than resale. As a result, the BCP is subject to PURPA.

With regard to automatic adjustment clauses, the PURPA states at 16 U.S.C. 2623(b)(2), that "[n]o electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 2625(e) of this title."

Section 2625(e) states that:

> (1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—
>
> (A) Such clause is determined, not less often than every 4 years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and
>
> (B) Such clause is reviewed not less often than every 2 years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.
>
> (2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy or other items).
>
> (3) As used in this subsection and section 2623(b) of this title, the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

The current formula for sales from the BCP was agreed to by all of the Contractors, Western, and Reclamation in a Settlement Agreement dated September 15, 1992. The methodology set out in this Agreement was approved by FERC on November 3, 1993.

The stated PURPA purpose of automatic adjustment clauses in sections 2625(e)(1) (A) and (B) is to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies. In this particular case, the initial reason that annual review and adjustment was determined to be the preferred methodology was that the Contractors

wanted Western to be able to react on an annual basis to any over- or under-collections of revenues. The methodology set out in the September 15, 1992, Settlement Agreement establishes that Western look at the higher of the 5-year average or the first year of revenue requirements on an annual basis and make appropriate adjustments. As a result, sections 2625(e)(1) (A) and (B) do not apply in our case.

Section 2625(e)(3) applies in cases where an increase or decrease comes about without prior hearing. In our case, there have been numerous information and comment forums allowing for the presentation of both written and oral comments. BCP Contractors were provided an opportunity to be heard and many of their comments caused Western to make changes to some of the calculations that were used in determining the rate. Paragraph (3) does not require an evidentiary hearing as does paragraph (e)(1)(A). As a result, section 2625(e)(3) is inapplicable, because the BCP Annual Rate adjustment is not an automatic adjustment pursuant to an "automatic adjustment clause".

FERC stated in its Order Confirming and Approving Rates on a Final Basis that "[r]ather than rely on a stated rate to recover the costs projected in a power repayment study, Western now proposes a formula rate which will compute project costs annually and revise the BCP capacity and energy charges accordingly. In implementing the formula rate, Western will present annually to Reclamation and the BCP power purchasers (Contractors) * * * its analysis of the revenue that the then-effective BCP capacity and energy charges would produce for the next FY as compared to the forecasted annual revenue requirement for the next FY. If such revenues are greater or less than the forecasted annual revenue requirement, Western will adjust the capacity and energy charges * * *. Western will hold public participation proceedings prior to implementing any rate adjustment required by these annual reviews."

In summary, the annual adjustment clause of the new methodology was negotiated among Western, Reclamation, the Contractors, and other interested parties; the Settlement Agreement and the new methodology were approved by FERC with comment by the Contractors and other interested parties; and Western has had and will continue to have annual public processes which allow for review and input by the Contractors and other interested parties prior to implementation of any Annual Rate adjustments. PURPA is not applicable to the BCP annual adjustment because the purpose of the adjustment is not the purpose established by PURPA, and the Contractors and the public at large have been provided with the opportunity to be heard.

WAPA–58 Concerns/Issues

Comment: One customer requests that its intervention protest in WAPA–58 be a continuation of preservation of those issues in this proceeding.

Response: These comments have been responded to in the record for WAPA–58.

Comment: A customer would like its oral comments made on September 10, 1992, its written comments submitted on September 25, 1992, and its motion to intervene and protest filed under Docket EF 93–5091–000 considered a part of these comments today as if set out here in full.

Response: These comments have been responded to in the record for WAPA–58.

Comment: A concern was expressed that the August PRSS contained some data which had changed since the PRSS was prepared in support of Rate Order WAPA–58. Specifically, the August PRSS shows a significant reduction in the projected generation output for the BCP.

Response: Reclamation prepares a generation forecast each year to be used in support of the BCP PRSS. The generation forecast prepared for the 5-year ratesetting period is based upon the most current hydrological information available at the time the forecast is made. The data presented in the August PRSS reflects the impact upon project generation resulting from the water release limitation imposed as a result of the flooding in Arizona and the most recent water scheduling changes for the Central Arizona Project. The average annual generation for the 5-year ratesetting period reported in the PRSS prepared in support of Rate Order WAPA–58 was 4,083 GWh. The average annual generation for the 5-year ratesetting period reported in the August PRSS was 4,033 GWh. This represents an annual reduction of approximately 50 GWh per year, or about 1 percent.

Capitalized Deficit

Comment: Some Contractors have requested Western to amortize the capitalized deficit expense over the remainder of the current contract period, which ends in FY 2017, rather than over the 10-year period utilized in the PRSS.

Response: Western addressed this issue in Rate Order WAPA–58. In that rate order response, Western noted that standard practice is to repay capitalized deficits over a 5-year period. Due to the size of the deficit, Western believed it was appropriate to extend the payment over a 10-year period.

In FERC's Order confirming and approving WAPA–58 it stated:

> The agreement speaks broadly about "item(s) of debt" and does not speak directly to capitalized deficits. Thus, the claim that Western has violated the terms of the agreement does not appear to be justified. * * * The choice of the Administrator to amortize capitalized deficits over ten years is a reasonable approach to accommodate a phase-in of the formula rate that Western has proposed here.

Hydrology—S

Comment: Western has continued to fail to account for unloaded synchronized generation. Customer believes that is a component that needs to be addressed at some point and would like to see that included in the PRSS.

Response: Western addressed this issue in the WAPA–58 Rate Order. Both Western and Reclamation believe that unloaded synchronized generation has been properly addressed in the PRSS. Both Western and Reclamation are agreeable to meeting with the Contractors to resolve this issue.

Capitalized Investments

Comment: A Contractor inquired about the repayment period associated with the flood control debt, in light of the fact that a Bureau of Reclamation Inspector General audit report recommended use of a repayment period of 30 years.

Response: For the purposes of this PRSS, and pending the final resolution of Reclamation audit recommendations, Western believes the repayment period for flood control should remain at 50 years.

Comment: Some Contractors have indicated that they believe Western has erred in the application of revenue toward the repayment of investment, specifically with regard to the repayment of the highest interest bearing investments.

Response: The application of revenue toward repayment of the highest interest bearing debt, as portrayed in the PRSS, is in complete agreement with the ratesetting methodology established by the September 15, 1992, Settlement Agreement.

During the development of the ratesetting methodology, the Contractors were adamant about the amount of

investment to be repaid and the order in which these investments were to be repaid. As a result, amortization schedules were developed for each investment which depicted the portion of the investment to be repaid by the end of the current contract period FY 2017. To satisfy the concern expressed by the Contractors that they would not pay more than their share of each specific investment, it was agreed that repayment would be limited to the amount shown on the amortization schedule. Therefore, repayment was to be accomplished by applying revenues toward the retirement of the highest interest bearing investment, up to the limit established by the amortization schedule for the investment.

In FERC's Order confirming and approving WAPA–58 it stated:

> Western adopted the formula rate at the behest of its customers, whose rights to Boulder Canyon Project power expire in 2017. The formula rate is designed to ensure that these customers pay only their fair share of the cost of the facilities whose service lives extend past that year. Rather than prioritize repayment by interest rate, the formula rate amortizes repayment of each financial obligation over the service life of its associated facility. Western and the Contractors state, and we agree, that this method assures intergenerational equity, whereas repayment by interest rate alone could result in the entirety of some Federal investments being paid by pre-2017 customers.

Both Western and Reclamation believe that the application of principal is consistent with the language contained in the Settlement Agreement. Following development of the PRSS, which was based upon the language contained in the Settlement Agreement, Western made a presentation to the BCP Contractors which included a point-by-point analysis of each item in the Settlement Agreement and how the item had been implemented in the PRSS. The application of principal was thoroughly discussed and agreed to. The only disagreement to the application methodology was expressed by a consultant to the Arizona Power Authority (APA)—who was not present during the settlement negotiations (other representatives of the APA who were present during these discussions were in agreement with the methodology proposed by Western).

Comment: Some Contractors have expressed concern that the increase in the weighted average interest for the Visitor Facilities is in error.

Response: Reclamation has verified that the weighted average interest rate used for the Visitor Facilities is correct.

Comment: A customer requests leveling expenditures as much as possible.

Response: Both Western and Reclamation believe that expenditures should be levelized to the extent possible. Reclamation has taken an extensive look at its O&M and replacements program and in the future will be proposing a more levelized expenditure for these two items. Also, as indicated previously, Reclamation is investigating utilization of a process similar to Western's Ten-Year Engineering Plan process to allow more participative input from the BCP Contractors.

Programmable Master Supervisory Control System

Comment: Some Contractors have expressed a concern over the methodology used to allocate the costs associated with the programmable master supervisory control installed at Hoover.

Response: Optimization modeling studies conducted by Reclamation indicated that the majority of the improvement in operating efficiency will benefit the Contractors at Hoover. Generators at Parker-Davis (P–DP) are rarely, if ever, used for load following; therefore, there will be only a moderate improvement in the efficiency of the P–DP system. The major share of plant improvement will benefit Hoover. The allocation of costs among Hoover, Parker, and Davis is reflective of the benefits received at each installation.

Annual Expense—O&M

Comment: Some Contractors have requested an explanation of Reclamation's cost item captioned A&GE (nonutility water).

Response: The Administrative and General Expense budget line includes such items as general expenses (i.e., salaries, surcharges, travel, materials, and supplies); some Regional and Denver administrative charges; services; a portion of security charges; union activities; and equal employment opportunity activities. These items are all associated with BCP administrative activities.

Comment: Some Contractors expressed concern over the apparent discrepancy in the data presented in the August PRSS, the April 15, 1993, letter by Reclamation, and in material presented to the E&OC.

Response: These issues have been discussed in-depth by Western in its public information data responses. The nature of the documents are such that they cannot be directly comparable. For example, the O&M figures used in the April 15th letter do not include the Civil Service Retirement costs. However, the April 15th letter does include the undelivered orders associated with O&M. The information presented at the E&OC does not include these costs as they are necessary for repayment purposes only, but are not the type of data normally presented for E&OC purposes.

Comment: Some Contractors have expressed concern that the O&M budget estimates are consistently higher than the actual cost incurred.

Response: Reclamation has reduced the budget line for Operation by approximately $1 million beginning in FY 1994. This reduction was made because of a reanalysis of historical costs and future requirements. All line items included in the estimated O&M budget will be closely monitored and adjusted, if necessary.

Comment: An interested party requested an explanation of the reallocation of O&M costs by Reclamation as they relate to the security costs at Hoover.

Response: This issue was dealt with in detail in the data response prepared following the public information forum. Briefly, that response indicated that all security costs had historically been charged to operations. As a result of the reallocation, beginning in FY 1992, security costs were distributed to Uprating, Visitor Facilities, and Guide Service. The reallocation of the expense associated with the security cost occurred in FY 1992 and therefore, had no impact on any other historical year. The effect of the reallocation has been included in the budget documents which support the FY 1993 PRSS.

Annual Expense—Replacements

Comment: Some Contractors have expressed concern over the variation in the projected replacement costs presented in the PRSS.

Response: This issue has been discussed with the Contractors in detail at both the public information forum and at the most recent E&OC meeting. This issue was also addressed in Rate Order WAPA–58. In addition, both Reclamation and Western are making every effort to stabilize fluctuations in projected replacement costs for the 5-year moving window (cost evaluation period). The constant replacement cost shown after the 5-year window reflects an average of all replacement costs forecasted by Western's replacement study through the end of FY 2045.

Western and Reclamation have agreed to use the replacements study average for the out years in the PRSS. The replacement study represents higher

replacement costs at the beginning and end of the repayment period with the in-between years having lower replacement costs.

Comment: A question was asked as to why undelivered orders for replacements were included in the PRSS and excluded for operations.

Response: Actual FY 1992 expenditures for the Replacement Program were $5,884,561. For purposes of the PRSS, it was necessary to add the change in Undelivered Orders of $1,651,592 for a total of $7,536,153. The recording of Undelivered Orders (costs incurred with the completion of a material, supplies or services contract, which have not totally been billed to or paid by Reclamation) is consistent with standard governmental accounting practices. When the Undelivered Orders are satisfied, any over/under expenditure of funds will be reflected as a change in future years' Undelivered Orders amount. This process assures that the costs subject to repayment remain accurate without the potential for duplication or omission.

Comment: The question was asked why contributions for replacements of $659,000 were removed from PRSS revenues and effectively capitalized when actual expenditures for replacements are expensed and not capitalized.

Response: Because the historical years' data displayed in the PRSS reflects actual generation, revenues, and costs, Reclamation and Western are continuing to correlate the data reflected in the historical years with the actual financial data. As this process has continued, certain adjustments have been and are being made either to the financial records, the PRSS, or to both, to accomplish this correlation. This process is commonly referred to as the "Crosswalk." The adjustment to the PRSS reflects Reclamation's and Western's continuing effort to correlate the data reflected in the historical years to the actual historical financial records.

Comment: One Contractor indicated that for the purposes of projecting the annual cost associated with future replacements, Western should assume that Reclamation is successful in receiving appropriations, and that the annual cost for replacements should be equal to the amortized cost of replacements beginning with FY 1995.

Response: With the exception of the investment made for "air slots," Reclamation has historically been unable to obtain appropriations for replacements. To assume that such appropriations could be obtained in the future, when they could not be obtained in the past, would not reflect prudent fiscal responsibility on the part of either Western or Reclamation. Western is required to establish rates which will assure the repayment to Treasury of all costs which are incurred by the project. Therefore, until instructed otherwise by Reclamation, Western will continue to portray the costs associated with replacements as an annual expense.

Comment: One Contractor submitted a report to Reclamation specifically addressing the levelization of replacement spending at the BCP by Reclamation.

Response: Reclamation discussed the issue of stabilizing replacement costs at the most recent E&OC meeting held during November 1993. Reclamation and Western are making every effort to stabilize the fluctuations in the projected replacement costs.

Expenses—Other Expenses

Comment: Some Contractors requested further explanation of the increases from the prior PRSS in both Other Revenues, column 16, and Other Expenses, column 3.

Response: Other Revenues, column 16, reflects revenues collected through the guide service (tours), and must be sufficient to recover the costs of providing that service. On January 1, 1993, Reclamation increased the fee for guide service from $1 to $2. Further increases in guide service fees are anticipated in conjunction with the new Visitor Facilities.

Other Expenses, column 3, also reflect the costs of unfunded Civil Service Retirement, multiproject costs, as well as increased costs in providing the guide service. Considerable detail has been provided to the BCP Contractors on all of these issues. In addition, the issue of multiproject costs is one of the items being discussed in the current draft Settlement Agreement negotiations. As part of the Settlement Agreement, which is yet unsigned, Western has agreed to prepare detailed procedures for the calculation of multiproject costs and to prepare and present to the BCP E&OC all revisions to multiproject costs, prior to their insertion into future PRSS. In addition, Western's Phoenix Area Office (PAO), as part of a quality improvement initiative, formed a Process Improvement Team which has recently prepared a report on the multiproject cost process. Once the report has been reviewed by the PAO Quality Council, any accepted recommendations will be reflected in future calculations of multiproject costs.

Comment: A Contractor contends that multiproject costs for FY 1993 and FY 1994 should be removed from the revenue requirements for the BCP because agreed-upon procedures, analyses, and justification have yet to be developed. Also, new rates for the other projects have not been implemented to reflect additional revenues from BCP and the financial records for the BCP do not indicate that monies collected were actually transferred to P–DP or Pacific-Northwest Pacific-Southwest Intertie Project in FY 1993.

Comment: Regarding column 3, Other Revenues, a Contractor believes Western's estimate of multiproject costs of $442,016 for FY 1993 should be deleted since the P–DP and the Pacific-Northwest Pacific-Southwest Intertie Project will not begin to reflect multiproject benefits in their rates until FY 1994.

Response: Column 3 is entitled Other Expenses, not Other Revenues. Western believes that the FY 1993 expenditure of $442,016 is proper, because the current P–DP and Pacific-Northwest Pacific-Southwest Intertie Project's rate studies reflect revenue transfers of this amount from BCP in FY 1993. The appropriate revenue transfers have been made in all three projects, beginning in FY 1993.

Working Capital

Comment: In Rate Order No. WAPA–58, Western and Reclamation agreed to make the sum of column 6, Working Capital, and the carry-over balance of FY 1992, equal to $7.5 million. The sum of Working Capital and the carry-over balance in the August PRSS equals $7,846,238. The customer believes that a $346,238 reduction is in order.

Comment: Several questions have been raised with regard to the issue of working capital already recovered by Western and Reclamation.

Comment: Several Contractors asked if the working capital fund would be returned to the Contractors at the end of the contract period. They also requested that the $5 million PRSS to CRDF adjustment be treated as part of the working capital balance.

Response: Western will make adjustments to the PRSS to ensure that the sum of the "carry-over balance" and "working capital" equals $7.5 million. Western has always intended that all working capital would be returned to the BCP Contractors and the PRSS has been revised accordingly.

While Western and Reclamation are not in agreement with the BCP Contractors that the $5 million PRSS to CRDF adjustment is part of the working capital balance, they are both in agreement that any monies left over in the Colorado River Dam Fund at the end of the current contract period will be refunded to the current BCP Contractors. The issue related to this

adjustment should tend to resolve itself as the lag between the delivery of power and subsequent billing and collection for the power sale is reduced. The adjustment is necessary to prevent the PRSS from applying revenues toward repayment which are not available to the CRDF as a result of the lag in collection. This adjustment is unrelated to the working capital fund.

Comment: A working capital allowance is not needed to operate the project.

Response: The February 13, 1992, letter sent to Western and Reclamation by the Colorado River Commission of Nevada, on behalf of all the BCP Contractors indicated that a working capital fund of $7.5 million should be created. Western and Reclamation created a mechanism whereby this fund would be created through rates in 1993 and 1994. This mechanism was modified by the BCP Contractors, Western, and Reclamation and incorporated into Rate Order WAPA–58, which recently received approval from FERC.

Engineering and Oversight Committee

Comment: Several Contractors maintain that it is critical that the E&OC continue to function and thrive and that Western, Reclamation, and the BCP Contractors continue to strengthen the communication processes of the E&OC in order to provide the BCP Contractors the opportunity and means to provide input to Western and Reclamation on issues relating to BCP.

Response: Western and Reclamation agree that the E&OC should continue to function and provide a meaningful communication process among the BCP Contractors, Reclamation and Western. The continuation of the E&OC, along with an expansion of functions to be undertaken by the E&OC, is one of the issues being negotiated in the Settlement Agreement negotiations among the BCP Contractors, Western and Reclamation.

Comment: A Contractor has indicated that the E&OC could be a forum to discuss ways to handle Hoover's resources in a changing operating environment and that a real effort could be made towards developing principles of a rate process that are mutually agreeable to all parties.

Response: Several BCP Contractors have made statements, both at rate forums and E&OC meetings, that the E&OC is not meant to be a substitute for the review of data in a rate process. While Western and Reclamation support the efforts of the E&OC and are willing to work with the BCP Contractors to improve the operation and to lower the costs of the BCP, they are both in agreement that the efforts of the E&OC should be complementary and supportive to the rate process, and not a part of the rate process.

Uprating Credits

Comment: The proposed PRSS does not address the credit carry forward incurred after May 19, 1992. The mechanism for repaying such credit carry forward should be established and expressed in the PRSS. (In reference to amount financed by the APA bond issue * * *) Western will be paying interest on the APA bond issue which covered credit carry forward. It would be inequitable to pay such interest to APA and not to the other Schedule B Contractors.

Response: The proposed PRSS does address the credit carry forward incurred after May 19, 1992. The "Group 3" debt that was created in order to pay "Group 1" and "Group 2" debt is reflected in the Uprating Credits for FY 1995, 1996, and 1997. One third of this "Group 3" debt will be recovered in each of the years 1995, 1996, and 1997. The "Group 4" debt, which is the amount of Uprating Credits that certain of the Schedule B Contractors cannot take because their billed amount for electric service is less than their Uprating Credits, is reflected in the annual Uprating Credit amounts. (The amount of Uprating Credits shown in column 4 of the PRSS is exactly equal to the total of all the Uprating Credit schedules submitted by the Schedule B Contractors—which is exactly equal to the Uprating Credits applied to power bills plus monies retained by Reclamation to satisfy "Group 4" debt.)

In regard to the amount financed by the APA bond issue, or any other bond issue, Western is bound by contract to issue credits in the amounts submitted by the Contractors for Uprating Credits. While it is true that Western is in effect paying interest on credit-carry-forward debt for APA and not for other Schedule B Contractors, the other Schedule B Contractors who issued bonds could go through the same refinancing process that APA did and obtain interest on their carry-forward debt. The Schedule B Contractors who did not issue bonds could not utilize this mechanism to obtain interest on their portion of carry-forward debt.

In order to obtain and proceed with a unified position, in regard to the payment of interest on credit-carry-forward debt, Western issued a position paper on December 17, 1993, which proposed a methodology for payment of interest on credit-carry-forward debt. Once all BCP Contractors have responded, Western will issue either a final unified position statement (if all BCP Contractors are in agreement) or a summary of position statements (if one or more of the BCP Contractors are not in agreement).

Comment: Review and make adjustments as appropriate to the future uprate credit payments.

Response: According to section 6.5.5 of the BCP contracts, by October 1 of each year, the Schedule B Contractors are to provide Western and Reclamation with a credit schedule with respect to each billing period for the remaining term of the contract. The Uprating Credit payments utilized in the PRSS are a summation of the individual schedules sent to Western by the Schedule B Contractors and are the same schedules utilized by Western in determining the credits to apply to the individual monthly power bills.

Comment: Western should follow through with the establishment of procedures which assure that the determination and application of Uprating Credits is consistent with the electric service contract.

Response: Western believes that it is currently adhering to the provisions of the electric service contracts in regard to the determination of Uprating Credits, the application of said credits, and the overall administration of the Uprating Credit program.

Total Energy Sales

Comment: What is the rationale for the increase from an annual constant of 4,062,000 MWh to 4,552,000 MWh for the period 1999–2045?

Response: The generation shown during the cost evaluation period is based upon the most current hydrology studies conducted in support of the PRSS. The generation shown beyond the cost evaluation period reflects the contract amount of 4,527,001 MWh. The generation level of 4,552,000 MWh was given to Western in error.

Visitor Facilities

Comment: A recommendation was made that Reclamation develop and implement plans to obtain additional funds from sources other than the BCP Contractors.

Response: Reclamation is continuing to explore and evaluate a variety of options which may provide additional revenue that could be used to aid in the repayment of the Visitor Facilities costs.

Comment: A recommendation was made that the amount included in the estimated completion cost of the Visitor Facilities for anticipated claims by the construction Contractor be removed

from the repayment obligation of the BCP Contractor.

Response: Reclamation instructions require that the total estimated cost of the project be shown. This includes such items as anticipated claims and modifications. Reclamation's Commissioner has requested a full audit of the Visitor Facilities costs. Once that audit is completed, Western will evaluate appropriate changes, if any, to those costs.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or EIS.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSS, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 89009; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The BCP rates herein are approved and placed into effect by the Administrator of Western. An informational copy will be submitted to FERC.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I confirm and approve, effective February 1, 1994, Rate Schedule BCP–F4/2.

Issued in Golden, CO, February 4, 1994.

William H. Clagett,

Administrator.

Approved for Legal Sufficiency.

Michael S. Hacskaylo,

General Counsel.

Boulder Canyon Project; Schedule of Rates for Power Service

Effective (In accordance with approved ratesetting methodology): February 1, 1994, that being the first day of the February 1994 billing period.

Available: In the marketing area served by the Boulder Canyon Project (BCP).

Applicable: To power customers served by the BCP supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: The base charge capacity rate is $1.07/kW/month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

The base charge energy rate is 6.31 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge: The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge energy and capacity rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 94–5142 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4844–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for the Surface Coating of Plastic Parts for Business Machines (subpart TTT)–(EPA ICR No. 1093.04; OMB No. 2060–0162). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that surface coat plastic parts for business machines must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test and the results of this test. Owners or operators are also required to submit compliance reports semiannually; when the source is out of compliance with the applicable emission limitations they must report quarterly.

Owners or operators are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. They must also maintain records of the results of each monthly performance test.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is

installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 2.3 hours per response for reporting and 84 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that coat plastic parts for business machines.

Estimated No. of Respondents: 323.

Estimated No. of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 29,444.

Frequency of Collection: One-time, quarterly and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5152 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4845–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Flexible Vinyl and Urethane Coating and Printing—Information Requirements (subpart FFF)—(EPA ICR No. 1157.04; OMB No. 2060–0073). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that use flexible vinyl and urethane for coating and printing must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test, and the results of this test. Semiannual reports of excess emissions are also required.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. In addition they must keep records of the continuous measurements of control device operating parameters. Where a capture system and an incinerator are used, the calculated daily volume of VOC solvent recovered must be recorded. In addition, where thermal incineration is used, owners or operators must install, calibrate, and maintain temperature measurement devices downstream of the exhaust gases; where catalytic incineration is used, they must install, calibrate and maintain these devices both upstream and downstream.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 7 hours per response for reporting and 63 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that use flexible vinyl and urethane for coating and printing.

Estimated No. of Respondents: 8.

Estimated No. of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 632.

Frequency of Collection: One time and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–5153 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4844–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Recordkeeping and Reporting for Lead Acid Battery Manufacturing (subpart FF)–(EPA ICR No. 1072.04; OMB No. 2060–0081). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of lead acid battery manufacturing facilities must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance

test and the results of this test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Owners or operators of affected facilities using scrubbers are required to install, calibrate, maintain, and operate a monitoring device that measures and records pressure drop across the scrubbing system. Owners or operators must maintain a file of these measurements, and retain the file for at least two years.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 42.6 hours per response for reporting and 87.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: The owners or operators of Lead Acid Battery Manufacturing facilities.

Estimated No. of Respondents: 3.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,540.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5154 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4841–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0226.10; Interim Sewage Sludge Permit Application Form; was approved 01/27/94; OMB No. 2040–0086; expires 08/31/95.

EPA ICR No. 1001.05; Polychlorinated Biphenyls (PCB's): Exclusions, Exemptions, and use Authorizations; was approved 01/28/94; OMB No. 2070–0008, expires 01/31/97.

EPA ICR No. 1128.04; Information Requirements for Secondary Lead Smelters—NSPS Subpart L; was approved 01/31/94; OMB No. 2060–0080; expires 01/31/97.

EPA ICR No. 1655.01; Gasoline Detergent Additives Rule; was approved 02/03/94; OMB No. 2060–0275; expires 02/28/97.

EPA ICR No. 1571.04; General Hazardous Waste Facility Standards; was approved 10/20/93; OMB No. 2050–0120; expires 10/31/96.

EPA ICR No. 1572.03; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types; was approved 10/20/93; OMB No. 2050–0050; expires 10/31/96.

EPA ICR No. 1573.04; Part B Permit Application, Permit Modifications and Special Permits; was approved 10/20/93; OMB No. 2050–0009; expires 10/31/96.

EPA ICR No. 0261.11; Notification of Hazardous Waste Activity; was approved 09/24/93; OMB No. 2050–0028; expires 09/30/96.

OMB Disapproval

EPA ICR No. 1611.01; National Emissions Standard for Hazardous Air Pollutants for Chromium Electroplating and Anodizing Operations, Reporting and Recordkeeping Requirements; was not approved 01/28/94.

OMB Extension of Expiration Dates

EPA ICR No. 0857.05; Polychlorinated Biphenyls (PCBS): Manufacturing, Processing, and Distribution in Commerce Exemptions; expiration date was extended to 07/31/94.

EPA ICR No. 0866.03; Quality Assurance Specifications and Requirements; expiration date was extended to 08/31/94.

Dated: February 25, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–5155 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4844–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Wool Fiberglass Insulation Manufacturing (subpart PPP) Information Requirements–(EPA ICR No. 1160.04; OMB No. 2060–0114). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that manufacture wool fiberglass insulation must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test and the results of this test. Semiannual reports of excess emissions are also required.

Owners or operators are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. They must also maintain daily records of the continuous measurements of control device operating parameters. Where a wet scrubbing control device is used, the owner or operator must measure the gas pressure drop across each scrubber

and the scrubbing liquid flow rate to each scrubber at least once every four hours. Where a wet electrostatic precipitator control device is used, the owner or operator must measure the primary and secondary current and voltage in each electrical field and the inlet water flow rate at least once every four hours. Records of these measurements must be kept at the source for a period of 2 years.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 9.2 hours per response for reporting and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that manufacturer wool fiberglass insulation.

Estimated No. of Respondents: 46.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 3,680.

Frequency of Collection: One-time and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 25, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–5151 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4843–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Region VII Section 114 Request for Date of Purchase Information for New Source Performance Standards Subpart OOO- Affected Facilities (EPA ICR No. 1677.01). This is a request for review of a new information collection.

Abstract: Under the authority of section 114 of the Clean Air Act, EPA Region VII will seek information from approximately 125 Missouri sources in the crushed stone, refractory clay, portland cement, and agricultural lime industries. The facilities emit particulates during the crushing, sizing, conveying, and storing of rock (nonmetallic minerals). EPA needs information on the type of facilities owned, date of acquisition, and date of any performance tests conducted for facilities potentially subject to NSPS Subpart OOO. EPA will use the information to determine the compliance status of these sources.

Burden Statement: The public reporting burden for this one-time collection of information is estimated to range from 1 to 2.5 hours per response for reporting. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Nonmetallic mineral processing plants in Missouri.

Estimated No. of Respondents: 125.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 312.5 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division,

[FR Doc. 94–5156 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4846–3]

Hawaii: Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Hawaii for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (c)(1)(B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

Approved State permit programs provide interaction between the State and MSWLFs owners and operators regarding site-specific permit conditions. Only those owners or operators located in States with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Hawaii applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Hawaii's application and made a tentative determination that all portions of Hawaii's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. EPA has determined that Hawaii's revised requirements are adequate to ensure compliance with the Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on any determination to approve a State's MSWLF program, EPA Region IX has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing EPA Region IX or calling the contact given below within 30 days of the date of publication of this notice, EPA Region IX will hold a hearing on the date given below in the "DATES" section. EPA Region IX will notify all persons who express such interest or who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section. Representatives from the Hawaii Department of Health will participate in the public hearing on this subject, if one is held.

DATES: All comments on Hawaii's application for a determination of adequacy must be received by USEPA by the close of business on April 29, 1994.

ADDRESSES: Copies of Hawaii's application for adequacy determination are available during the hours of 9 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Hawaii Department of Health, Solid Waste Program, 5 Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; or USEPA Region IX Library, 75 Hawthorne Street, 13th floor, San Francisco, California 94105, telephone (415) 744–1510. Written comments should be sent to Greg Wilmore, mail code H–3–1, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Greg Wilmore, mail code H–3–1, phone (415) 744–2093.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribe landfill permit programs.

EPA intends to approve State MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" permit programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

B. State of Hawaii

On October 8, 1993, Hawaii submitted an application for program adequacy determination. EPA Region IX reviewed Hawaii's application and tentatively determined that all portions ensure compliance with the revised Federal Criteria. EPA proposes to fully approve Hawaii's MSWLF program. The State of Hawaii has the authority to enforce the requirements of the Revised Federal MSWLF Criteria at all MSWLFs in the State, and, according to its application, will have sufficient staff to carry out compliance and monitoring activities.

The public may submit written comments on EPA's tentative determination until April 29, 1994. Copies of Hawaii's application are available for inspection and copying at the location indicated in the "ADDRESS" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on April 18, 1994 at 9 a.m. in the Prince Kuhio Federal Building, fifth floor conference room t5124, 300 Ala Moana Blvd., Honolulu, HI. For information on how to express interest in a public hearing, see the last paragraph of the "SUMMARY" section.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Hawaii's program. EPA will make a final decision on whether or not to approve Hawaii's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: February 24, 1994.

Nora McGee,

Acting Regional Administrator.

[FR Doc. 94–5157 Filed 3–4–94; 8.45 am]

BILLING CODE 6560–50–F

[FRL–4846–5]

Nevada; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Nevada's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B) requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945 (c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

EPA-approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Nevada applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Nevada's application and issued for public comment a tentative determination that Nevada's permit program is adequate to assure compliance with the revised MSWLF Criteria. Based on a thorough review of Nevada's municipal solid waste landfill program and the fact that no comments were received from the public, EPA is today issuing a final determination that Nevada's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Nevada shall be effective on March 7, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Ms. Rebecca Jamison, Mailcode H–3–1, telephone (415) 744–2099.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States or Tribes to develop "adequate" permit programs to impose several minimum standards. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements.

On June 24, 1993, Nevada submitted an application for adequacy determination for Nevada's MSWLF permit program. On December 30, 1993, EPA published a tentative determination of adequacy for all portions of Nevada's program. Further background on the tentative determination of adequacy appears at 58 FR 69362 (December 30, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received no comments nor a request for a public meeting on this determination.

The State of Nevada has the authority to enforce the requirements of their municipal solid waste landfill program at all MSWLFs in the State, with the exception of those located on Tribal Lands.

B. Decision

In the tentative determination, EPA proposed to approve specified parts of Nevada's program for which existing State law was adequate to ensure compliance with the Federal criteria. At that time, EPA also proposed to approve all of Nevada's program if draft revised requirements submitted by Nevada were adopted before EPA's final determination and effective on or before the relevant effective dates of the Federal Criteria. On January 27, 1994 EPA received the final adopted revisions to Nevada's MSWLF permit program. After reviewing these revisions, I conclude that they are identical to the draft revision and that Nevada's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on March 1, 1994. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6945.

Dated: February 17, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–5150 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–04]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements; Order To Show Cause

Section 8 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707, requires the filing of tariffs with the Federal Maritime Commission ("Commission") by common carriers by water and conferences in the foreign commerce of the United States showing all rates, charges, classifications, rules and practices. Section 8 of the 1984 Act further provides that the Commission may by regulation prescribe the form and manner in which tariffs shall be filed. Section 17 of the 1984 Act, *id.* app. 1716, authorizes the Commission to prescribe rules and regulations necessary to carry out the 1984 Act.

The Commission instituted Docket No. 90–23, Automated Tariff Filing and Information System ("ATFI"), to establish regulations governing the conversion of tariff filing to an electronic system. Proposed Rules were issued on September 9, 1991 (56 FR 46,044) and Interim Rules were issued on August 12, 1992 (57 FR 36,248) and January 4, 1993 (58 FR 25). The rules issued in Docket No. 90–23 are codified in 46 CFR Part 514. This new part modifies and combines all non-obsolete tariff regulations of 46 CFR Parts 515, 550, 580 and 581, and establishes regulations to facilitate and implement the conversion of tariffs to ATFI.[1]

On December 17, 1992, the Commission issued Supplemental Report No. 3 and Notice ("Supplemental Report No. 3") (57 FR 59,999) in Docket No. 90–23. Supplemental Report No. 3 prescribed the schedule by which entities serving specific trades must convert tariff data into ATFI, and defined the geographic areas subject to each ATFI filing time frame ("window"). It also provided that tariffs which are not filed in ATFI by the close of the applicable filing window are subject to cancellation by order of the Commission in a show-cause proceeding, unless temporarily exempted.

In January, 1993, the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL") mailed Information Bulletin No. IB 4–93 to over 4,000 firms. This Bulletin included the schedule of filing windows and a statement regarding cancellation of unconverted tariffs by show-cause order. Supplemental Report No. 4 in Docket No. 90–23, issued in May 1993, again advised the public of the filing schedule and that failure to file in ATFI would subject entities to a proceeding for the cancellation of tariffs.

The first filing window closed on June 4, 1993. On September 28, 1993, carriers failing to register for and file their Worldwide, Asian and South Pacific scope tariffs in ATFI or file a petition for temporary extension of the filing deadline were subject to an Order to Show Cause in Docket No. 93–19, Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System (ATFI) Filing Requirements (58 FR 50550). By Order issued January 12, 1994 (59 FR 1737), the applicable paper tariffs or portions of tariffs of 67 of these carriers were cancelled.

The 228 carriers listed on Attachement A to this Order had registered in ATFI and/or had obtained a temporary extension of the ATFI window until September 7, 1993. However, the carriers have not, to date, filed an ATFI tariff.

Now Therefore, It Is Ordered that pursuant to section 11 of the 1984 Act, 46 U.S.C. 1710, the entities listed in the Attachment to this Order are directed to show cause, within 45 days after the publication of this Order in the **Federal Register**, why the Commission should not cancel their tariffs or portions of tariffs currently on file with the Commission with Worldwide, Asian and South Pacific scope for failure to conform to the requirements of section 8 of the 1984 Act, 46 CFR part 514, and Supplemental Reports Nos. 2, 3, and 4 issued in Docket No. 90–23;

It Is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the entities listed in the Attachment;

It Is Further Ordered, That this Order be published in the **Federal Register**.

By the Commission.

Joseph C. Polking,

Secretary.

Attachment A

A. Burghart Shipping Co., Inc.
A.W. Fenton Company, Inc., The
AA Forwarding, Inc.
Africa Mid-East Line
African Atlantic Steamship Limited
AFS Freight Management (HK) Ltd.
Air 7 Seas Transport Logistics, Inc.
Air Sea Worldwide Logistics Ltd.
Alaska Cargo Transport, Inc.
Alliance Shippers, Inc.
Allied Pickfords U.S.A., Inc.
Almar International Forwarders, Inc.
Amana Express International, Inc.
American Cargo International, Inc.
American Exhibition Services International, Inc.
American Freight Lines International, Inc.
American International Forwarding, Inc.
American Ocean Freight Services, Inc.
American Orient Forwarding Company
American Overseas Air Freight, Inc.
Aries International, Inc.
Armen Cargo Services, Inc.
Arrowpac, Inc.
ASG Forwarding, Inc.
Assurance International Forwarder, Inc.
Atlas Freight Consolidators, Inc.
Auto Shipping International, Inc.
Bangladesh Shipping Corporation
Benelux Maritime Agencies N.V.
Berry International, Inc.
Blue Eagle Consolidation Services GMBH
Blue Star Pace Ltd.
Boss International, Inc.
Brisley Transport, Ltd.
Bronson and Sandy, Inc.
C.V.S. Enterprises, Inc.
Canal Barge Company, Inc.
Cargo Shippers International, Inc.
Cargo Transport, Inc.
CDM International
Certain Shipping Limited
Chavez Bogdanski Cincinello International, Inc.
Chesapeake Bay Shipping and Warehousing, Inc.
China National Chartering Corporation
China Resources Transportation & Godown Co. Ltd.
Choice Transportation Services, Inc.
Chu Kong Shipping Co., Ltd.
Cizzon International, Inc.
CL Consolidators Services Ltd.
Combi Maritime Corporation
Con-Carriers Ltd.
Con-Trand Services, Inc.

[1] Section (b)(1) of Public Law 102–582 requires all tariffs and essential terms of service contracts to be filed electronically with the Commission. 106 Stat. 4900, 4910–11.

Container Services International, Inc.
Conti Line, Inc.
Corporate World Relocation International, Inc.
Cross Ocean International, Inc.
CWI Container Line, Inc.
D.C. Worldwide Transport Co., Inc.
D.I.F. Inc.
Daiichi Chuco Kisen Kaisha
Dal Farra Company, Inc.
Dallas Shipping Corporation
Damco Maritime Corp.
Danmar Lines, Ltd.
Darrell J. Sekin & Co.
Dragon Shipping Limited
Dyna Transport, Inc.
Dynamic Freight Services Ltd.
Ellerman Lines Plc
Equipment Interchange Discussion Agreement
Ever Strong Services Ltd.
Everbest Container Line, Inc.
Exacta International
Exbo Shipping Company
Exx-Ortz International, Inc.
F.A.R. Freight Services, Inc.
Famous Freight Forwarding (S) Pte Ltd.
Far East Enterprising Co. (H.K.) Ltd.
Fast Cargo U.S. (LA), Inc.
FFS Freight International, Inc.
Fisher Transport, Inc.
Flamingo International, Inc.
Formosa Container Line, Inc.
Fortune Network Ltd.
Freight-Trans International Co., Ltd.
Galaxy Freight Service Ltd.
Gamma Freight Forwarding, Inc.
Geographical Freight Services, Inc.
Global Logistics, Inc.
Golden Fortune Shipping Company Limited
Grace Navigation, Inc.
Grand Express International, Inc.
H. Abbe International, Inc.
H.T. Cargo Incorporated
Hohenstein & Company, Inc.
Hwa-Hsin USA Inc.
I.F.S. Lines, Inc.
Independent Cargo Express, Inc.
Industrial Maritime Carriers, Inc.
Innovative Freighting, Inc.
Inter-Shipping Chartering Co.
Interconex, Inc.
Intermodal Systems Limited
International Link Service Inc.
Intersped Systems Inc.
Islands International Consolidators, Inc.
ISS Express Lines Inc.
ITL Shipping Co., Inc.
JG International
J–Mar Overseas Transport, Inc.
Jagremar Marine, Inc.
Jagro Customs Brokers & International Freight Forwarders, Inc.
Jardine Transport Services (China) Ltd.
John Cassidy & Sons, Inc.
Jose G. Flores, Inc.
Kamden International Shipping, Inc.
Keymost International, Inc.
Kohsho USA, Inc.
Kyowa Shipping Co., Ltd.
Leader Freight System Inc.
Liberty Pacific Searoad Pty Ltd.
Liberty Shipping International Inc.
Logistics International Management Services, Ltd.
Lynden Air Freight, Inc.
Magellan's Navigator, Inc.
Mainfreight International Limited
Makoto Overseas Services Co., Ltd.
Market Pioneer International, Corp.
Matlack International, Inc.
Matrix Consolidators Inc.
Max Gruenhut Gmbh
Mayflower Transit, Inc.
MCC (Mercantile Europe) S.A.
MCC–Mercantile Europe Ltd.
Meisner Enterprises, Inc.
Mercantile Singapore Pte. Ltd.
Mercator Shipping Ltd.
Meridian Worldwide Forwarding
Metzger Und Richner Transport Ag.
Miami Worldwide Forwarders, Inc.
Montgomery Tank Lines, Inc.
Multi-Modal International, Inc.
Naigai Nitto America Inc.
Navix Azuma Container Service Co., Ltd.
Newport Ocean Consolidator Inc.
Nexus International Express, Inc.
NJR Consolidators, Inc.
Norton Line Inc., The
Norvanco International, Inc.
Novo Express International, Inc.
Novocargo USA, Inc.
Ocean Links Intl. USA Inc.
Oceans Development Corporation
OCI Ocean Services, Inc.
Overbruck International Inc.
Pacific Champion Service Corp.
Pacific Forum Line (NZ) Limited
Pacific Ocean Express, Inc.
Pan Ocean Shipping Company, Ltd.
Pangaea Enterprises
Phoenix Shipping 1986, Inc.
Phoenix U.S.A., Inc.
Poler International Travel and Cargo Agency, Inc.
Pro-Speed Shipping, Inc.
Prof. Technology International, Inc.
Profit Cargo Service Co., Ltd.
Pyramid Shipping Inc.
Rail Van, Inc.
Refrigerated Container Carriers Pty, Ltd.
Rose International Inc.
Ross Freight Company, Inc.
Rusflot Shipping Line N.V.
Saga Transport (USA) Inc.
Sagawa World Express, Inc.
Sam Young Sunpak Inc.
Samson Transport Company A/S
Samson Transport Company, Inc.
Sanwa Line Inc.
Sargent, Kenneth E.
SBA Consolidators, Inc.
Sea Cargo International Inc.
Sea Traders Line, Inc.
Sea World Services Inc.
Sea-Link Corporation
Seaborne Lines, Inc.
Seajet Express (USA), Inc.
Selship International LTD.
Sentry Household Shipping, Inc.
Seven C's Transport Inc.
Shipping Services Company, Inc.
Sky Marine International, Inc.
Splosna Plovba P.O.
Steve Zamarripa, Inc.
Strand Freight System Inc.
Supertrans International, Inc.
T M C Line
TDY International Freight Services, Inc.
Thai Maritime Navigation Co. Ltd.
Tyhssen Haniel Logistic Gmbh
TKM Overseas Transport Inc.
Top Harbour Limited
Top Harbour Shipping Ltd.
Trade Air, Inc.
Tradewind Connections, Inc.
Trans-Freight Inc.
Translink Pacific Shipping Limited
Transpacific Tech Ltd.
Trinity Liner Agencies Ltd.
Trust Forwarder & Consolidator, Inc.
U.C.S. Group Inc.
U.C.T International, Inc.
U.S. Consolidators International Corp.
UAL Universal Africa (USA) Lines N.V. (N.A.)
Union Star Line
Unitainer System Forwarder Inc.
United Asiatic Co., Ltd.
United Shipping Agency, Inc.
United Transport Tankcontainer, Inc.
United Van Lines, Inc.
Unitrans, Inc.
Velvet Marine Contractors, Inc.
VEN-American Carriers, Ltd.
VTG Vereinigte Tanklager Und Transportmittel Gmbh GB Tankcontainer
Wing Lee Shipping Co.
World Class Freight, Inc.
World Express Shipping, Transportation and Forwarding Services, Inc.
Zonn Agency

[FR Doc. 94–5093 Filed 3–4–94; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Smoke-Free Workplace

AGENCY: Office of the Assistant Secretary for Health HHSD.

ACTION: Notice.

Tobacco smoking has long been recognized as a major cause of death and disease. The Surgeon General has concluded that tobacco use causes cancer and is an important risk factor for heart disease. Tobacco smoking is estimated to be responsible for in excess of 400,000 deaths per year in the United States

Exposure to Environmental Tobacco Smoke—commonly known as second-hand smoke—also poses a serious health risk. The Government has concluded that exposure to environmental tobacco smoke is responsibile for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds of thousands of children and adults.

A report issued by the Surgeon General in 1988 states that nicotine, the active drug in tobacco, is a toxic and addictive substance. Environmental tobacco smoke is potentially toxic to those persons who are exposed to it. In view of these facts, the Department of Health and Human Services has

implemented a smoke-free workplace policy for all of its employees.

It is the mission of the Public Health Service to protect and advance the physical and mental health of the American people. PHS fulfills this mission in part by acting to prevent and control the abuse of dangerous and addictive substances (alcohol and drugs) and by coordinating with States, local governments and other Federal agencies to protect the public from exposure to toxic substances. PHS also provides national leadership for the prevention and control of environmentally related health problems. Therefore, while PHS recognizes that many organizations are already providing a smoke-free environment, PHS believes that it is crucially important to the health of the nation to widen the smoke-free workplace practice.

It is the policy of PHS to strongly encourage all recipients of PHS grants to provide a smoke-free workplace and promote the non-use of tobacco products. It is also the policy of PHS to encourage those recipients which already have a smoke-free workplace and promote the non-use of tobacco products to continue such practices.

Consistent with the usage in HHS General Administration Manual Chapter 1–60, dated August 25, 1987, and a memorandum from the Assistant Secretary for Health, dated February 17, 1988, PHS defines the term "smoke-free workplace" to mean office space (including private offices and other work space), laboratory space, patient clinical areas, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias, and other public space.

In order to assess the extent to which organizations are already providing a smoke-free environment, the Public Health Service is interested in ascertaining the extent to which PHS grantee organizations currently provide a smoke-free workplace. New and competing continuation grant applications will be modified to request information on whether or not applicant organizations currently provide a smoke-free workplace and/or promote the non-use of tobacco products.

Dated: February 8, 1994.

Philip R. Lee, M.D.,

Assistant Secretary for Health.

[FR Doc. 94–5107 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–17–M

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 8:30 a.m.–5:30 p.m., April 14, 1994. 8:30 a.m.–3:30 p.m., April 15, 1994.

Place: The Westin Peachtree Plaza Hotel, Confederate Room, Peachtree at International Boulevard, Atlanta, Georgia 30343.

Status: The entire meeting will be open to the public.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The agenda will include an update on Superfund reauthorization and will also focus on other issues of concern to ATSDR, including an overview of risk assessment in public health practice; the science base for ATSDR Minimal Risk Levels, Environmental Media Evaluation Guides, and Significant Human Exposure Levels; an overview of ATSDR Health Assessments and discussion on whether they should be more risk based; criteria for evacuation of communities; and the role and expectations of the ATSDR Board of Scientific Counselors.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: February 28, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 94–5112 Filed 3–4–94; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

Method Development for Airborne Mycobacterium Tuberculosis; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Method Development for Airborne Mycobacterium Tuberculosis.

Time and Date: 1 p.m.–5 p.m., March 29, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to conduct an open meeting for a peer review of a NIOSH project entitled "Method Development For Airborne Mycobacterium Tuberculosis." This project concerns the investigation of proposed sampling and analytical methodology for monitoring exposure to airborne *Mycobacterium* tuberculosis, using molecular biology analytical techniques. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Millie P. Schafer, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R7, Cincinnati, Ohio 45226, telephone 513/841–4362.

Dated: February 28, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5113 Filed 3–4–94; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Antiviral Drugs and Nonprescription Drugs Advisory Committees

Date, time, and place. May 19, 1994, 3:30 p.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, 4:30 p.m. to 6 p.m.; Lee L. Zwanziger, Mae Brooks, or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should notify the contact person before May 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. Those persons or groups presenting views on this topic at the public hearing before the Commissioner of Food and Drugs, earlier the same day, need not make a second presentation because views presented in the earlier meeting will be taken into consideration in this joint advisory committee meeting.

Open committee discussion. The committees will discuss jointly the issues and concerns relating to over-the-counter availability of acyclovir for the treatment of recurrent genital herpes, taking into consideration the views expressed at the public hearing scheduled earlier the same day. (See a notice of public hearing on the proposed switch of acyclovir from prescription to over-the counter status published elsewhere in this issue of the **Federal Register**.)

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 1, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5129 Filed 3–2–94; 2:55 pm]

BILLING CODE 4160–01–F

[Docket No. 94N–0006]

Proposed Switch of Acyclovir from Prescription to Over-the-Counter Status; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding the proposed over-the-counter (OTC) availability of orally administered acyclovir. The purpose of the hearing is to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers, on the issues and concerns relating to the proposed OTC availability of acyclovir for the acute and suppressive management of recurrent genital herpes.

DATES: The public hearing will be held on Thursday, May 19, 1994, from 8 a.m. to 3 p.m. Submit written notices of participation and comments by April 29, 1994. Written comments will be accepted until June 20, 1994.

ADDRESSES: The public hearing will be held at the Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD 20857. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number 94N–0006. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

I. Background

SUPPLEMENTARY INFORMATION: Acyclovir is a synthetic purine nucleoside analogue with in vitro inhibitory activity against herpes simplex viruses 1 and 2 and varicella zoster virus. An oral formulation of acyclovir was approved in 1985 with initial indications for the treatment of first episode and recurrent genital herpes. Since 1985, FDA has also approved the oral formulation of acyclovir for the treatment of herpes zoster and chickenpox, and for the suppression of recurrent genital herpes.

Burroughs-Wellcome has discussed publicly its intention to seek approval for a supplemental new drug application (NDA) to switch acyclovir from prescription to OTC status (e.g., at the July 1993 International Herpesvirus Workshop). Burroughs-Wellcome has also discussed publicly that this application is currently under review at FDA (e.g., at the October 1993 Interscience Conference on Antimicrobial Agents and Chemotherapy).

The proposed switch would apply only to 200-milligram capsules with proposed indications for the acute and suppressive management of recurrent genital herpes. If the supplemental NDA is approved, acyclovir would be the first systemically administered antimicrobial agent available without prescription in the United States, and it would also be the first OTC product for the treatment of a sexually transmitted disease.

II. Scope of the Hearing

In light of the many complex scientific and public health issues raised by this application, FDA is soliciting broad public participation and comment on the potential merits and disadvantages of this proposed switch. The agency encourages investigators with information relevant to this switch, as well as other interested persons, to respond to this notice. Examples of issues that are of interest to the agency include the following: (1) The implications of unrestricted availability of acyclovir for the transmission and asymptomatic shedding of herpes simplex virus; (2) the incidence and clinical significance of acyclovir-resistant herpes simplex virus; (3) the ability of patients to self-diagnose genital herpes (i.e., without consultation with a physician); (4) the potential for misuse for unapproved OTC indications (such as for chickenpox, shingles, and other viral illnesses); (5) the potential for adverse effects on the fetus; and (6) general issues of safety (and the incidence of adverse drug events) during widespread, unrestricted use. In addition, FDA is actively seeking the views of professional and consumer groups regarding the implications of this application for their constituent populations.

Elsewhere in this issue of the **Federal Register**, FDA is announcing a joint meeting of the Antiviral and the Nonprescription Drugs Advisory Committees under 21 CFR part 14. This meeting will allow FDA to receive comments from the advisory committee members as well as the general public. Those persons or groups presenting views at the public hearing before the Commissioner need not make a second presentation at the advisory committee meeting, because views presented in the earlier hearing will be taken into consideration in the joint advisory committee meeting.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with the relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) prior to April 29, 1994. To ensure timely handling, any outer envelope should be clearly marked with the docket number 94N–0006 and the statement "Acyclovir Hearing." Groups should submit two copies. The notice of participation should contain the person's name, address, telephone number, affiliation if any, brief summary of the presentation, and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, it will be placed on file in the Dockets Management Branch under the docket number 94N–0006.

Under § 15.30 the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until June 20, 1994. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by June 20, 1994.

Dated: March 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5130 Filed 3–2–94; 2:55 pm]

BILLING CODE 4160–01–F

National Institutes of Health

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes

of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in a limited field of use to practice the inventions embodied in U.S. Patent 5,262,359 (formerly U.S. Patent Application 07/611,088), entitled "Method of Propagating Human Paramyxoviruses Using Continuous Cell Lines" to Baxter Diagnostics Inc.—Bartels Division having a place of business at Bellevue, Washington. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be for the field of reagents for in vitro diagnostics. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to cell lines (NCI-H292) useful for propagating difficult to grow viruses such as parainfluenza and mumps. The availability of U.S. Patent Application 07/611,088 for licensing was published in the April 3, 1991 edition of the **Federal Register**.

ADDRESSES: Requests for a copy of the above identified patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: February 18, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5087 Filed 3–4–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in a limited field of use to practice the inventions embodied in U.S. Patent Application 07/965,916, entitled "Immunization Against Neisseria Gonorrhoea" to Virus Research Institute, Inc. having a place of business at Cambridge, Massachusetts. The patent application has been continued, with additional data and claims, in U.S. Patent Application 08/145,682, entitled "Immunization Against Neisseria Gonorrhoea and Neisseria Meningitides." The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be for the field of vaccines against Neisseria Gonorrhoea. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to novel immunization methods and compositions useful in protecting against Neisseria Gonorrhoea and Neisseria Meningitides infections. In particular, the invention claims parenteral component priming-oral immunization methods and compositions of matter useful in practicing these methods.

The availability of U.S. Patent Application 07/965,916 for licensing was published in the April 15, 1993 edition of the **Federal Register**. The availability of U.S. Patent Application 08/145,682 for licensing has not previously been published.

ADDRESSES: Requests for a copy of the above identified patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). A signed confidentiality agreement will be required to receive copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: February 18, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5086 Filed 3–4–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. N–94–3728; FR–3670–N–02]

Submission of Proposed Information Collection to OMB; Technical Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice—technical correction.

SUMMARY: On March 3, 1994 (59 FR 10144), the Department published a Notice of Submission of Proposed Information Collection to OMB, which omitted the comment due date. This notice provides that the comment due date is March 14, 1994.

DATES: Comment due date: March 14, 1994 (for Notice of Submission of Proposed Information Collection to OMB published at 59 FR 10144.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal, the text of which appears at 59 FR 10144 (March 3, 1994). Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Monica Hilton Sussman, Deputy General Counsel, (Finance and Regulations), GD.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a guide format which specifies the components of a legal opinion required

by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, *et seq.* The **Federal Register** Notice of Submission of Proposed Information Collection to OMB for this purpose was published on March 3, 1994 (59 FR 10144), but omitted the comment due date of March 14, 1994. This Notice corrects the Notice of Submission of Proposed Information Collection to OMB at 59 FR 10144 by providing the omitted comment due date of March 14, 1994.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 3, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-5700-10]

Change in Public Room Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice changes the hours the Public Room of the Utah State Office will be open for filing of applications and other documents and inspection of records. The office hours will be 8 a.m. to 4 p.m., Monday through Friday, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

EFFECTIVE DATE: May 6, 1994.

ADDRESSES: Bureau of Land Management, 324 South Main, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: M. Scott Packer, BLM Utah State Office, P.O. Box 45155, Salt Lake City, UT 84145-0155, (801) 539-4126.

G. William Lamb,

Associate State Director.

[FR Doc. 94-5050 Filed 3-4-94; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-135-4191-03; GP4-048]

Availability of Draft Lamefoot Mine Environmental Impact Statement Supplement to the Kettle River Key Project Expansion FEIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Lamefoot Mine environmental impact statement supplement to the Kettle River Key Project Expansion FEIS.

SUMMARY: The proposed Lamefoot Mine project is located in north central Washington in Ferry County on the western slope of the Kettle River Mountain Range seven miles northeast of the town of Republic. The Proposed Action consists of extracting gold ore by a long hole open stoping mining technique, loading the ore into underground trucks and transporting it to the surface, transferring it to highway trucks, and hauling it to the existing Key Mill via State and county roads approximately 9 miles distant. The ore will be processed by the conventional carbon-in-leach method. The processed ore will be stored at an existing tailings impoundment located on private land.

Waste rock will be deposited in temporary waste storage piles at the Lamefoot site. Upon completion of the commercial mining phase, the waste rock will be hauled underground and used as back fill to provide ground support and reduce impacts on groundwater quality.

Reclamation plans include the use of topsoil, seeding and if necessary fertilization, to minimize erosion until vegetation has been successfully established. Reclamation objective is to restore wildlife habitat lost or disturbed as a result of the project. The proposed Action is BLM's preferred alternative.

Copies of the Draft EISS will be available for review at the libraries in Coleville, Republic, Okanogan, Tonasket and Spokane, Washington. In addition, copies will also be available for review in the following BLM locations:

Office of Public Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240.

Public Affairs Office, 1300 NE. 44th Avenue, Portland, Oregon 97213.

Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

Wenatchee Resource Area, 1133 N. Western Avenue, Wenatchee, WA 98801.

At the following Forest Service locations:

Colville National Forest, 695 S. Main Street—Federal Building, Colville, WA 99114.

Republic Ranger District, P.O. Box 468, 180 N. Jefferson, Republic, WA 99166.

Tonasket Ranger District, P.O. Box 466, Tonasket, WA 98855.

Okanogan National Forest, P.O. Box 950, 1240 2nd Avenue S., Okanogan, WA 98840.

DATES: Written comments on the Draft EISS must be submitted or postmarked no later than May 6, 1994. A public meeting will be held in Republic, Washington at the Frontier Inn on April 12, 1994 from 4 p.m. to 7 p.m.

ADDRESSES: Written comments on the document should be sent to Ann Aldrich, Border Resource Area Manager, Spokane District, East 4217 Main Avenue, Spokane, Washington 99202.

FOR FURTHER INFORMATION CONTACT: Ann Aldrich, Border Resource Area Manager, Spokane District Office, E. 4217 Main Avenue, Spokane, Washington 99202.

SUPPLEMENTARY INFORMATION: Three alternatives to the Proposed Action were analyzed for the Lamefoot Project. Alternative 1 is the No Action Alternative under which Echo Bay would not receive approval to develop the Lamefoot Project and would be required to carry out reclamation in accordance with the conditions specified in the approved Exploration Plan of Operations. Surface disturbance associated with the exploration/development program and existing surface facilities would not be increased.

Alternative 2 is an alternate method for introducing back fill materials to the underground workings. Drop passes at the base of the back fill borrow area would allow underground access to the workings without crossing the Wolfe Camp Road. Front end loaders would dump back fill materials into the drop pass, by a grated loading chute, and into a truck. Following truck loading, back fill materials would be hauled down an access ramp to the underground workings and placed as described in the Proposal.

Alternative 3 is an alternate ore transportation route utilizing Highway 21 and the Fish Hatchery Road. This route would provide a shorter haul distance than the proposed Old Kettle Falls Road (formerly the Cooke Mountain Road) route. However, local residents have expressed concerns about increased noise, dust, and traffic along the Fish Hatchery Road if it is used for mine-related traffic.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in May 1994. An open house was held in Republic, Washington on May 20, 1994 and mailings were conducted to solicit comments and ideas. Comments presented throughout the process have been considered in the Draft EISS.

Authority: 40 CFR 1500; 43 CFR 3809.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–5115 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The owner/developer of a mixed single and multiple family residential development known as Caribe, Caribe East and Caribe West (Caribe) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Perdido Key beach mouse, *Peromyscus polionotus trissyllepsis* incidental to construction of Caribe on suitable habitat located north of Alabama Highway 182, at the westernmost end of Perdido Key, Alabama.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. The Service is soliciting data on *Peromyscus polionotus trissyllepsis* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before April 6, 1994.

ADDRESSES: Persons wishing to review the application, HCP and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Jackson Mississippi Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–787698 in such comments:

Assistant Regional Director (ES), U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 200, Atlanta, GA 30345, (telephone 404/679–7110, FAX 404/679–7081)

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above Jackson, Mississippi, Field Office, or Rick G. Gooch at the above Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: Peromyscus polionotus trissyllepsis is a subspecies of the common oldfield mouse Peromyscus polionotus and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of Peromyscus polionotus trissyllepsis is from Perdido Key, Alabama, to Pensacola Bay, Florida. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The depth of the habitat from the beach inland varies depending on the configuration of the sand dune system and the vegetation. Generally, these habitat zones are considered as primary dune (dunes immediately fronting the beach) supporting sea oats and other widely scattered grasses, an interdune area consisting of other grasses, and sedges, and a secondary dune zone supporting small trees and shrubs. Carribe proposes to construct a mixed single/multiple family residential development on ± 28 acres of land located north of Alabama Highway 182, at the westernmost end of Perdido Key, Baldwin County, Alabama. Caribe is immediately north of and across the highway from Gulf State Park (Perdido Unit), a designated critical habitat of Peromyscus polionotus trissyllepsis. Initial construction of roads and utilities and subsequent development of individual homesites and community use facilities may result in death of or injury to Peromyscus polionotus trissyllepsis incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development and secondary impacts to adjacent critical habitat (e.g., increased human foot-traffic, and introduction of house cats and house mice) may reduce the availability of feeding, shelter, and nesting habitat or harass extant Peromyscus polionotus trissyllepsis populations.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of habitat for Peromyscus polionotus trissyllepsis and exposure of the applicant under section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The delisting of the Peromyscus polionotus trissyllepsis as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the Caribe and the Service. The HCP attached with the permit is modified to the maximum extent practicable. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, placement of berms and fences, controls on residential outdoor lighting, storage and maintenance of trash and garbage in scavenger proof containers, establishment of a Gulf State Park Management Fund to enhancement management of the adjacent critical habitat, and distribution of educational materials to construction personnel and residents. The HCP also provides a funding mechanism for these mitigation measures.

Dated: February 14, 1994.

Warren T. Olds, Jr.,

Assistant Regional Director, Ecological Services.

[FR Doc. 94–5132 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

Managing Migratory Bird Subsistence Hunting in Alaska; Proposed Strategy for Regulating the Spring and Summer Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of revised draft environmental assessment.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (Service) has revised and is reissuing the draft environmental assessment (EA) evaluating alternatives for resolving the problem of ongoing

spring and summer migratory bird subsistence hunting. Hunting in Alaska occurs during the closed period specified by the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds (Convention). This Convention was executed by Great Britain on behalf of Canada, and is referred to in this Notice and the EA as the U.S.-Canada Convention, or simply the "Convention." The revised draft EA, which tentatively selected a strategy of modifying the Convention to allow a regulation hunt during the closed period, is available from the Service upon request at either the addresses provided below (See **ADDRESSES:** and/or **FOR FURTHER INFORMATION CONTACT:**).

DATES: Comments on this Notice must be received by April 21, 1994.

ADDRESSES: Comments regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240, or Regional Director (MBC), Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments received on this Notice will be available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203, or, for those comments originating within Alaska, 3rd Floor, room 3387, 1011 Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240 (703/358–1714), or Mr. Robin West, Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786–3423).

SUPPLEMENTARY INFORMATION: Subsistence hunting of migratory birds for cultural and nutritional purposes occurs in the far northern areas of Alaska and Canada as a customary and traditional activity during what is otherwise the closed period, between March 10 and September 1. (As used herein, and in the EA, subsistence hunting, unless otherwise noted, means spring and summer harvest of migratory birds, not other subsistence activities occurring in Alaska and Canada.) Currently, this closed period is required by the Convention and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the terms of the Convention. Apparently, the framers of the Convention were aware of migratory bird subsistence hunting activity but unaware of the extent to which it was needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for this particular subsistence use, with the result that much of the current subsistence hunting activity is illegal. However, restricting subsistence hunting to a time period outside of that in which birds are available neither provides equitable access to the resource nor accommodates customary and traditional uses. Because the Service recognizes the legitimate need for equitable access to the migratory bird resource for subsistence purposes, regulatory strategies have been under evaluation which would bring about successful resolution of the problem.

The Service's completed revised draft EA addresses the problem of illegal subsistence hunting of migratory birds in Alaska, and tentatively selects strategy for resolving it. This revised draft EA evaluates five alternatives for dealing with regulation of migratory bird subsistence hunting, which are: (1) Take no action (status quo) (2) expand the existing base of cooperative agreements; (3) enforce the current terms of the Convention; (4) modify the Convention to allow subsistence take; and (5) modify the Migratory Bird Treaty Act to allow subsistence take, without modifying the Convention. The Service's preliminarily identified preferred alternative is for a modified Convention that allows a regulated harvest during a portion, but not all, of the currently closed period (Item 4, above). The revised EA also identifies "action modifiers" which could be used to further specify the course the Service would take in order to bring about a regulated migratory bird subsistence hunt. The "action modifiers" include such factors as who in Alaska would be able to participate, in what areas, what use could be made of birds and byproducts, which bird species' eggs would be eligible for harvest and other management option constraints that would be imposed upon users.

On Friday, August 13, 1993, the Service published the initial Notice of Availability of the draft EA in the **Federal Register** (58 FR 43119). The comment period for the first draft of the EA closed on October 12, 1993. Many comments were provided to the Service within the comment period specified, and many were received after the comment period had closed. The Service has accepted all of the letters of comment received to date on the revised EA, and has factored these views into revisions of the text and other features of the EA. In addition, the comment views that represent the more salient issues, have been addressed in the Responses provided in Appendix E of the EA.

During the course of the comment period that closed on October 12, 1993, and since, the Service received 54 comments on the EA; 51 of these comments are from outside the Service. One of the most common comments received was a request to expand the EA to incorporate additional materials on such subjects as the migratory bird subsistence hunting situation in Canada and more detailed information on the demographics and harvest situation in Alaska. The Service is acceding to the request for a second draft and has made many modifications and improvements in the EA document that are responsive to the public's requests.

The Service invites comments on the revised draft EA. Comments provided on the revised EA will enable the Service to evaluate its selection of a strategy to resolve the problem. The final decision on selection of a strategy will be provided to the public in the Service's final Notice of Record of Decision, which will be published in the **Federal Register**.

Dated: March 2, 1994.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 94–5102 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, April 4, 1994.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Town Gymnasium, Winter Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held December 6, 1994.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.

4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5046 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Thursday, March 24, 1994.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Old Business.
5. Superintendent's Report.
6. Mission and Vision Statements.
7. Nauset Light Relocation.
8. Public Use Survey.
9. New Business.
10. Agenda for next meeting.
11. Date for next meeting.
12. Communications/Public Comment.
13. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5047 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Missouri National Recreational River Advisory Group; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, March 30, 1994; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Upper Elkhorn Natural Resources District, 301 N. Harrison (Highway 281), O'Neill, Nebraska.

The agenda topics for the meeting consist of an update on the status of the Missouri Recreational River General Management Plan presented by the National Park Service including draft management and draft boundary alternatives; discussion and advisory group response; the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The advisory commission was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: February 23, 1994.

F.A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 94–5045 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on May 12, 13, and 14, 1994, in Rapid City, SD. The Committee will meet at the Hilton Inn, 445 Mount Rushmore Road, Rapid City, SD. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute. The matters to be discussed at this meeting include the status of the inventory and identification process conducted under sections 5 and 6 of the statute and the development of regulations implementing the statute, particularly sections reserved for civil penalties and a sample inventory.

The Committee also is soliciting recommendations from members of the public regarding: 1) the disposition of culturally unidentifiable human remains in museum or Federal collections; and 2) the disposition of unclaimed human remains and cultural items from Federal or tribal lands.

Culturally unidentifiable human remains are those in museum or Federal

agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined. Unclaimed human remains and cultural items are those intentionally excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, for which, after following the process outlined in section 3 of the statute (25 U.S.C. 3002), no lineal descendant or Indian tribe has made a claim. The Committee is responsible for recommending specific actions for developing a process for disposition of unidentified human remains and unclaimed human remains and cultural items.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, D.C. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: February 28, 1994.

Francis P. McManamon,

Departmental Consulting Archeologist andChief, Archeological Assistance Division.

[FR Doc. 94–5161 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–F

Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, March 24, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m. at the Sudbury Town Hall, in Sudbury, MA. Driving directions are as follows: Sudbury Town Hall is located on the north side of Route 27, east of the Rte. 27/Concord Road intersection. From the east, take Rte. 27 west from Route 20 in Wayland. Town Hall is on the right approx. 1.5 mile past the Sudbury River. From the north, take Concord Rd. or Pantry Brook Rd. south off Rte. 117. Turn left at Rte. 27. Town Hall is on the left just past the intersection.

The agenda for the meeting will be:

I. Welcome and introductions, approval of minutes from 1/27/94 meeting.
II. Brief questions and comments from public.
III. Subcommittee Reports—Subcommittee Chairs.
  A. Water Resources Subcommittee: Water Resources Study and Recreation Task Force.
  B. River Conservation Planning Subcommittee.
  C. Public Participation Subcommittee.
IV. Issues of Local Concern.
V. Opportunity for public questions and comments.
VI. Other Business.
  A. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5048 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 26, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 22, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Hieroglyphic Canyon Site, Address Restricted, Apache Junction vicinity, 94000269

COLORADO

Denver County

US National Bank, 817 17th St., Denver, 94000264

Jefferson County

Quaintance Block, 805 13th St., Golden, 94000261

IDAHO

Idaho County

Carey Dome Fire Lookout, 9 mi. N of USFS Burgdorf Guard Station, Burgdorf vicinity, 94000268

Chinese Cemetery, 0.5 mi. NW of Warren Wagon Rd. at Bemis Cr., Warren vicinity, 94000270

Warren Guard Station, Building 1206, Address Restricted, Warren vicinity, 94000271

IOWA

Linn County

Marion Carnegie Public Library, 1298 7th Ave., Marion, 94000260

MASSACHUSETTS

Essex County

Salem Willows Historic District, Roughly, Columbus, Bay View, Beach and Fort Aves., Salem, 94000265

NEW YORK

New York County

Parker, Charlie, House, 151 Charlie Parker Pl. (Avenue B), New York, 94000262

OHIO

Belmont County

Belleview Heights, 65100 Candlewick Ln., Belaire, 94000259

Delaware County

Crist Tavern Annex—Millworkers Boarding House (Historic Mill-Related Resources of Delaware and Liberty Townships MPS), 2966 Olentangy River Rd., Delaware vicinity, 94000277

SOUTH CAROLINA

Richland County

Simkins, Modieska Monteith, House, 2025 Marion St., Columbia, 94000263

TEXAS

Harris County

Heyne, Fred J., House, 220 Westmoreland Ave., Houston, 94000266

UTAH

Millard County

Desert Experimental Range Station Historic District, 2.5 mi. N of US 21, 42 mi. W of Milford, Milford vicinity, 94000267

WYOMING

Albany County

Centennial Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), Off WY 130 NW of Centennial, Medicine Bow NF, Centennial vicinity, 94000273

Keystone Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), W of Albany, Medicine Bow NF, Albany vicinity, 94000275

Carbon County

Brush Creek Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), WY 130 E of Saratoga, Medicine Bow NF, Saratoga vicinity, 94000276

Converse County

La Prele Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), SW of Douglas, Medicine Bow NF, Douglas vicinity, 94000272

[FR Doc. 94–5121 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33685; File No. SR–MCC–93–09]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Clearing Corporation Relating to the Definition of Settlement Price

February 25, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1993, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared mainly by MCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MCC's definition of the term "settlement price," which is set forth in Article I, Rule 1 of MCC's Rules. For text of rule change, see Exhibit A.

[1] 15 USC 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to amend the definition of the term settlement price, which is set forth in Article I, Rule 1 of MCC's Rules. The term settlement price, as used in MCC's Rules, is used to determine daily mark-to-market credits or payments, as well as to value settling trades. The definition of settlement price must be uniform among clearing corporations in order for the interfaces between them to function smoothly in the settlement of transactions. This proposed change, in conjunction with a recently proposed change to the rules of the National Securities Clearing Corporation ("NSCC"), will conform MCC's definition of settlement price to actual practice and to NSCC's definition.

MCC believes that the proposed rule change is consistent with Section 17A of the Act in that it will facilitate the prompt and accurate clearance and settlement of securities transactions.[2]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received any comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section and at the principal office of MCC. All submissions should refer to File No. SR–MCC–93–09 and should be submitted by March 28, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[2] 15 U.S.C. 78q–1 (1988).

[3] 17 CFR 200.30–3(a)(12) (1993).

Exhibit A

Additions Are Italicized; Deletions Are [Bracketed]

Article I. Definitions and General Provisions

Rule 1. Definitions

The term "Settlement Price," as used on any Business Day in respect of any Security, means the closing price (rounded to the nearest one hundredth (1/100) of a dollar) of such Security on the principal stock exchange on which such Security is listed on the last previous day on which there were trades on such exchange in such Security; or, if such Security is not listed on any exchange, a price determined in such manner as the Corporation may from time to time prescribe, based on [reported trades in or quotations for] *the last sale price for* such Security *in such market as the*

Corporation shall deem appropriate, for trades on the business day prior to the day such price is used. If no closing price or last sale price is available for the business day prior to the day such price is used, then such price shall be such price as the Corporation shall deem appropriate [on the over-the-counter market on the last previous day with respect to which such trade or quotations, as the case may be, were reported]. Notwithstanding the foregoing, the Corporation may fix the "settlement price" of a Security at such amount (including zero) as it deems necessary and appropriate in the circumstances to protect the respective interests of the Participants and the Corporation (a) whenever trading in such Security has been suspended by order of the Securities and Exchange Commission or by any securities exchange on which such Security is listed or by any other authority having power to suspend trading in such Security, (b) to reflect a dividend or other distribution on such Security, or (c) in other appropriate circumstances.

[FR Doc. 94–5068 Filed 3–4–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–33693; International Series Release No. 638; File No. SR–PHLX–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Quote Spread Parameters for Long-Term Foreign Currency Options

February 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," and Floor Procedure Advice ("Advice") F–6, "Option Quote Spread Parameters" to: (1) Establish quote spread parameters for long-term foreign currency options ("FCOs"); (2) revise the quote spread parameters for options on the French franc; and (3) revise the quote spread parameters for cross-rate FCOs. Specifically, the PHLX proposes to establish the following quote spread parameters for long-term FCOs: for options on the British pound, bidding and/or offering so as to create differences of no more than $.0100 between the bid and the offer for each option contract for which the bid is $.1500 or less and no more than $.0150 where the bid is more than $.1500; for options on the French franc, bidding and/or offering so as to create differences of no more than $.00100 between the bid and the offer for each option contract where the bid is $.01500 or less and no more than $.00150 where the bid is more than $.01500; for options on the German mark and Swiss franc, bidding and/or offering for each option contract so as to create differences of no more than $.0030 where the bid is $.0500 or less and no more than $.0050 where the bid is more than $.0500; and for options on the Japanese yen, bidding and/or offering for each option contract so as to create differences of no more than $.000040 where the bid is $.000500 or less and $.000070 where the bid is over $.000500.

The text of the proposal is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to adopt quote spread parameters for long-term FCOs. Quote spread parameters, also referred to as bid/ask differentials, govern the width of market quotations; [1] specifically, maximum widths between the bid and ask for PHLX options are mandated by PHLX Rule 1014(c). The Exchange notes that although a violation of the maximum quote spread may result in a fine,[2] the quote spreads are not applicable during fast market conditions, pursuant to Advice F–10, "Extraordinary Market Conditions."[3]

Currently, FCOs are generally subject to the quote spread parameters that appear in Exchange Rule 1014 as well as Advice F–6. The PHLX has traded long-term FCOs since 1992, when PHLX Rule 1012 was amended to permit the listing of options with an expiration of up to 36 months in the future.[4] The Long-Term FCO Approval Order stated specifically that long-term FCOs would not be subject to existing quote spread parameters because, at that time, no basis had been determined for establishing reasonable prices for longer term FCOs as a result of the lack of historical pricing. Currently, long-term FCOs become subject to Advice F–6 once there is less than twelve months remaining until expiration.

Currently, the PHLX trades four long-term FCOs: British pound, German mark, French franc, and Japanese yen.[5] The PHLX proposes to codify specific parameters in order to demonstrate consistency in quote width to FCO customers and to prevent overly wide quotes. The proposed parameters for long-term FCOs would be wider than the quote spread parameters applicable to regular FCOs (FCOs with less than 12 months to expiration) due to the lack of historical pricing in pricing an option with 12 to 36 months to expiration. Accordingly, the PHLX proposes to add these quote spread parameters to Advice F–6 and to Exchange Rule 1014(c)(ii).

The PHLX is also proposing minor changes to Exchange Rule 1014, including adding headings and punctuation. In addition, the PHLX proposes to correct the parameters for cross-rate FCOs, which appear in the

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[1] For example, if the maximum quote spread for a Canadian dollar options is $.0005 where the bid is $.0050 or less, then the following is an acceptable quotation: .0020–.0025.

[2] Violations of Advice F–6 may result in the issuance of a fine pursuant to the Exchange's minor rule violation enforcement and reporting plan.

[3] Advice F–10 states that in the interest of a fair and orderly market, two floor officials may declare a "fast market," during which displayed quotes are not firm and the volume guarantees of Advice A–11, "Responsibility to Make Ten-Up Markets," are not applicable; nevertheless, best efforts are required to display quotes and fill orders.

[4] *See* Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (order approving File No. SR–PHLX–91–30) ("Long-Term FCO Approval Order").

[5] Although the PHLX has not yet listed a long-term option on the Swiss franc, the PHLX is proposing a long-term quote spread parameter because it would be identical to the proposed quote spread parameter applicable to the long-term German mark option.

incorrect base currency, and for French franc options, which cannot be quoted in odd numbers due to system limitations. Specifically, for options on the French franc, the PHLX proposes to establish a maximum quote spread of $.00014 where the bid is $.00250 or less; $.00024 where the bid is between $.00252 and .00750; and $.00034 where the bid is over $.00750.

With respect to cross-rate options, the PHLX states that the original quote spread parameters were incorrect because the bids, which determine the quote spread, should be based on bids relating to the first currency. Under the current rule, for British pound/German mark cross-rate options, if the bid is .0100 German marks or less, the maximum quote spread is .0015 German marks. The PHLX states that this has proved incorrect and incompatible with the parameters commonly employed by traders to quote the British pound/German mark cross-rate option for two reasons: (1) The range of bids did not correspond to the ranges previously used for British pound quotes;[6] and (2) the actual parameters (.0015, .0025 and .0035 German marks) proved to be too narrow in view of the unique pricing and settlement of cross-rate options. Thus, for British pound/German mark cross-rate options, the PHLX proposes the following parameters: Bidding and/or offering to create differences of no more than .0030 German marks between the bid and the offer where the bid is .0250 German marks or less; no more than .0050 German marks where the bid is more than .0250 but does not exceed .0750 German marks; and no more than .0070 German marks where the bid is more than .0750 German marks.[7]

For German mark/Japanese yen cross-rate options, the PHLX proposes the following parameters: Bidding and/or offering to create differences of no more than .12 Japanese yen between the bid and the offer where the bid is .40 Japanese yen or less; no more than .16 Japanese yen where the bid is more than .40 but does not exceed 1.60 Japanese yen; and no more than .20 Japanese yen where the bid is more than 1.60 Japanese yen.

For British pound/Japanese yen options, the PHLX proposes to establish the following parameters: Bidding and/or offering to create differences of no more than .0030 Japanese yen between the bid and the offer where the bid is .0250 Japanese yen or less; no moore than .0050 Japanese yen where the bid is more than .0250 but does not exceed .0750 Japanese yen; and no more than .0070 Japanese yen where the bid is more than .0750 Japanese yen. The Exchange proposes to correct the cross-rate parameters both in the text of Exchange Rule 1014 as well as in Advice F–6 in order to facilitate the efficient trading and quoting of the relevant cross-rate options, as well as to inform members and customers of the maximum quote spread parameters.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the PHLX believes that established quote spread parameters for long term FCOs should prevent overly wide quotes and foster uniformity in quote width, consistent with section 6(b)(5). In addition, the PHLX believes that the correction to cross-rate quote spread parameters should promote just and equitable principles of trade by providing a more feasible bid/ask differential, which, in turn, should facilitate trading in those options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes is reason for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(a) By other approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5069 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33694/February 28, 1994]

B.A.T. Industries, p.l.c., Sponsored American Depositary Receipts

The American Stock Exchange Inc. ("Amex" or "Exchange") has filed an application pursuant to rule 12f–2(b) under the Securities Exchange Act of 1934 ("Act")[1] for a determination that the above-mentioned stock is substantially equivalent to the unsponsored American Depositary Receipts ("unsponsored ADRs") representing American Depositary Shares ("ADS"), in turn representing ordinary shares of B.A.T. Industries, p.l.c. ("B.A.T." or "Company") currently admitted to unlisted trading privileges on the applicant Exchange.

According to the Exchange, the ordinary shares of B.A.T. were admitted to unlisted trading privileges on the Amex on June 27, 1921. The shares were thereafter converted to unsponsored ADR form in March 1928, and those

[6] The range of bids that determine the quote spread parameters applicable to British pound options is: $.0250 or less, $.0251 to $.0750, and over $.0750.

[7] Although the PHLX has not yet listed the British pound/Japanese yen option, the same inconsistency with British pound bid ranges requires correction and the quote spread parameters were also proposed too narrowly.

[1] 17 CFR 240.12f–2 (1993).

unsponsored ADRs are presently trading on the Amex.

According to the Exchange, the Company is proposing to consolidate these unsponsored ADRs into one sponsored ADR pursuant to an arrangement with the Bank of New York. The sponsored ADR represents an ADS evidencing two B.A.T. ordinary shares of nominal value of 25 pence each. The unsponsored ADRs similarly represented an ADS evidencing one B.A.T. ordinary share. The Exchange states that the change does not alter the capitalization of B.A.T. and is, if anything, beneficial to the rights of the ADR holders.

The Commission having duly considered this matter, and having due regard for the maintenance of fair and orderly markets and the protection of investors, finds that the above-mentioned sponsored ADRs are substantially equivalent to the unsponsored ADRs theretofore admitted to unlisted trading privileges.

It is ordered, pursuant to sections 12(f) of the Act and rule 12f–2(b) thereunder, that the above-mentioned application of the Amex is hereby granted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5108 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20100; File No. 812–8682]

Lincoln Benefit Life Company, et al.

February 28, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account (the "Account") and Lincoln Benefit Financial Services, Inc. (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemption from Section 22(d) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to allow Lincoln Benefit to waive, under certain circumstances, the contingent deferred sales charge that would otherwise be imposed on certain flexible premium individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on November 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 25, 1994 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Carol S. Watson, General Counsel, Lincoln Benefit Life Company, 134 South 13th Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Lincoln Benefit, a stock life insurance company organized under the laws of Nebraska, is a wholly owned subsidiary of Allstate Life Insurance Company. Allstate Life Insurance Company is an Illinois corporation wholly owned indirectly by The Allstate Corporation. Approximately 80.1% of the common stock of The Allstate Corporation is indirectly owned by Sears, Roebuck & Co.

2. The Account, established by Lincoln Benefit on August 3, 1992 as a segregated asset account under Nebraska law, serves as a funding medium for the Contracts. The application states that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–66786), for the Account.

3. Lincoln Financial, a wholly owned subsidiary of Lincoln Benefit, is the distributor of the Contracts. Lincoln Financial is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are available for retirement plans which qualify for federal tax advantages under the Internal Revenue Code and for those plans which do not qualify for advantageous treatment. The Contracts require a minimum initial premium payment of $1,200. Additional premium payments must be in amounts of at least $100.

5. Purchase payments may be allocated, according to a Contract owner's instructions, to one or more of the subaccounts of the Account. Upon annuitization, Contract owners may select from a number of variable or fixed annuity options. If the owner of a Contract dies prior to the annuity date and the Contract is in force, a death benefit is payable under the Contract.

6. One transfer among subaccounts is permitted monthly without charge. For each transfer among subaccounts in excess of once monthly, a transfer fee of $25 is assessed. The transfer fee is deducted from Contract values which remain in the subaccount or subaccounts from which the transfer is made. Applicants represent that the transfer fee is designated to be at cost with no margin included for profit. Lincoln Benefit is currently waiving this fee.

7. Applicants impose an annual Contract maintenance charge of $25 per Contract year. Applicants guarantee that this charge will not increase and state that the charge reimburses Lincoln Benefit for expenses incurred in maintaining the Contracts. This charge will be deducted on each Contract anniversary prior to the annuity date, but is not imposed during the annuity period. If a Contract is surrendered, the charge is assessed as of the surrender date without proration.

8. Lincoln Benefit deducts an administrative expense charge equal to an annual effective rate of .15% of the net asset value of the subaccount. The application states that this charge will compensate Lincoln Benefit for administering the Contracts and the Account. This charge is assessed during both the accumulation and the annuity periods. Applicants state that the Contract maintenance charge and the administrative expense charge are designed, in the aggregate, to be at cost with no margin included for profit.

9. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed on certain surrenders or withdrawals of Contract value. No Sales Charge is

applied on annuitization or on the payment of a death benefit unless the settlement option chosen is payment over a period certain of less than five years. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. To the extent that the Sales Charge does not cover all sales commissions and other promotional or distribution expenses. Applicants state that Lincoln Benefit may use any of its corporate assets, including potential profit from the mortality and expense risk charge, to make up the shortfall.

10. Lincoln Benefit will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Lincoln Benefit for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25 charge is attributable to mortality risks, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risks charge is insufficient to cover actual costs and assumed risks, Lincoln Benefit will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Lincoln Benefit. If Lincoln Benefit realizes a gain from the charge for mortality and expense risks, the amount of such gain may be used in the discretion of Lincoln Benefit.

11. Applicants state that the mortality risks borne by Lincoln Benefit consist of: (a) Bearing the risk that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (b) waiving the Sales Charge upon the death of a Contract owner; and (c) providing a death benefit prior to the annuity date. Applicants state that the expense risk assumed by Lincoln Benefit is the risk that the costs of administering the Contracts and the Account will exceed amounts received by Lincoln Benefit through imposition of the Contract maintenance charge and the administrative expense charge.

12. Where available under applicable state law, Applicants offer a Confinement Waiver benefit. The Confinement Waiver benefit provides that any applicable Sales Charge will be waived where the following conditions are satisfied:

a. The Annuitant must be confined to a Long Term Care Facility or a Hospital for at least 60 consecutive days. Confinement must begin after the Issue Date;

b. The Contract owner must request the withdrawal no later than 90 days following the date that confinement has ceased. Written proof of confinement must accompany the withdrawal request; and

c. For confinements in a Long Term Care Facility, confinement must be prescribed by a Physician and be Medically Necessary.[1]

Applicants' Legal Analysis

1. Pursuant to section 6(c) of the 1940 Act, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Pursuant to section 6(c), Applicants request that the Commission issue an order to provide exemptive relief set forth below.

2. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c–8 adopted under the 1940 Act permits variable annuity separate accounts to impose a deferred sales charge. Although Rule 6c–8, unlike proposed Rule 6c–10, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c–8 (again unlike proposed Rule 6c–10) does not provide an exemption from section 22(d). Applicants recognize that the proposed waiver of the Sales Charge in connection with the Confinement Waiver benefit could be viewed as causing the Contracts to be sold at other than a uniform offering price. Rule 22d–1 is not directly applicable to Applicants' proposed waiver of the Sales Charge because that Rule has been interpreted as granting relief only for scheduled variations in front-end loads, not deferred sales load such as the Sales Charge.

3. Rule 22d–2 under the 1940 Act exempts registered variable annuity accounts, their principal underwriters, dealers and their sponsoring insurance companies from section 22(d) to the extent necessary to permit variations in the sales load or in any administrative charge or other deductions from the purchase payments, provided that such variations reflect differences in costs or services, are not unfairly discriminatory and are adequately described in the prospectus. Applicants, however, do not represent that the Confinement Waiver benefit reflects differences in sales costs or services, and, for that reason. Applicants do not rely on Rule 22d–2 for the requested relief, even assuming that Rule 22d–2 does apply to deferred sales load.

4. Nonetheless, Applicants submit that the proposed waiver is consistent with the policies of section 22(d) and the rules promulgated thereunder. One of the purposes of section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, in jurisdictions where the Confinement Waiver benefit is permitted by state law, the benefit will be available to any Contract owner if the annuitant under the Contract becomes confined to a hospital or long term care facility for 60 days or more, and, therefore, the benefit will not unfairly discriminate among Contract owners. Moreover, Applicants argue that the benefit is advantageous to Contract owners by permitting any such owner, upon a triggering of the Confinement Waiver benefit, to surrender the Contract without imposition of the Sales Charge. Applicants further state that the Confinement Waiver benefit will not result in dilution of the interests of any other Contract owner. Finally, Applicants argue that waiving the Sales Charge under such circumstances will not result in the occurrence of any of the abuses that section 22(d) is designed to prevent.

5. Applicants represent that the Confinement Waiver benefit meets the substantive requirements of Rule 22d–1 in that Applicants specifically represent that: (a) The Confinement Waiver will be uniformly available to all eligible (as described in paragraph four above) Contract owners except where prohibited by state law; and (b) that the Confinement Waiver benefit will be adequately described in the Account's prospectus for the Contracts. Applicants

[1] Capitalized terms used but not defined in this paragraph twelve. shall have the meanings assigned such terms in the application.

also note that there are no existing Contract owners since the public offering of Contracts has not yet commenced.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5070 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20048A; No. 811–1671]

The Travelers Fund B for Variable Contracts

February 28, 1994.

On February 1, 1994, the Securities and Exchange Commission issued a notice of an Application for an Order under Section 8(f) of the Investment Company Act of 1940 ("1940 Act") (Rel. No. IC–20048). The notice stated that interested persons had until January 28, 1994 to request a hearing on this application. This corrects the prior notice, which should have stated that interested persons had until 5:30 p.m. on February 28, 1994 to request a hearing on this application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5071 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1959]

Determinations Under the Arms Export Control Act and the Foreign Assistance Act of 1961

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended (the "Act"), notice is hereby given that the Under Secretary of State for International Security Affairs has made a determination pursuant to section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: February 16, 1994.

Robert L. Gallucci,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94–5103 Filed 3–4–94; 8:45 am]

BILLING CODE 4710–25–M

Bureau of Political-Military Affairs

[Public Notice 1958]

Imposition of Chemical and Biological Weapons Proliferation Sanctions Against Entities in Thailand

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that three entities in Thailand have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182), and Executive Order 12851 of June 11, 1993, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. W & M Limited Partnership (AKA W & M Engineering, the Wintrade Company, and the Winman Company) (Thailand),
2. SPC Supachoke (AKA Super Trade) (Thailand),
3. The Handle Group Company (Thailand).

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any of the sanctioned entities; and

(B) Import Sanction.—The importation into the United States of products produced by any sanctioned entity shall be prohibited.

These sanctions apply not only to the entities described above, but also to their divisions, subunits, and any successor entities. The sanctions shall commence on February 8, 1994. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: February 27, 1994.

Robert L. Gallucci,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94–5104 Filed 3–4–94; 8:45 am]

BILLING CODE 4710–10–M

RESOLUTION TRUST CORPORATION

Interim Statement of Policy Regarding Procedures To Be Used With Regard to Claims Based Upon Acts or Omissions of the Receiver

AGENCY: Resolution Trust Corporation.

ACTION: Interim statement of policy.

SUMMARY: This Policy sets forth the Resolution Trust Corporation's current procedures for considering administrative claims based upon acts or omissions of the Corporation as receiver. This Policy reflects the Corporation's current policy that it does not consider these claims to be subject to the published bar date for filing claims with the Corporation as receiver and sets forth the circumstances under which the Corporation will consider these claims to be timely filed.

EFFECTIVE DATE: This interim policy is effective March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Counsel, at (202) 736–3034. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Purpose

The purpose of this Policy is to set forth the Resolution Trust Corporation's current procedures for considering claims filed pursuant to 12 U.S.C. 1821(d) (3) through (13) based upon acts

or omissions of the Corporation as receiver.

2. Scope and Applicability

This Policy sets forth the Corporation's current procedures for considering claims filed pursuant to 12 U.S.C. 1821(d) (3) through (13) based upon acts or omissions of the Corporation as receiver, including, but not limited to, any claim based upon an agreement of the receiver, any claim based upon an act or omission of the receiver with respect to an executory agreement or unexpired lease of the institution, and any claim based upon a repudiation by the receiver of any agreement or lease. As more fully set forth later, this Policy applies only to claims that were not in existence as of the date of the receiver's appointment and that rely for their existence upon an act or omission of the receiver.

3. Background

12 U.S.C. 1821(d)(13)(D) deprives all courts of jurisdiction over, *inter alia*, any claim or action seeking payment from, or a determination of rights with respect to, the assets of an insured depository institution for which the Corporation has been appointed receiver and any claim relating to any act or omission of the Corporation as receiver, unless the claims process described in 12 U.S.C. 1821(d) has first been complied with.

The legislative history of 12 U.S.C. 1821(d) reveals that the dual purpose behind requiring exhaustion of claims before suit can be filed is: (1) To minimize costs to the receivership estate and to the legitimate claimants who share in the distributions from the estate, and (2) to minimize the burden on federal courts by avoiding needless litigation. H.R. Rep. No. 101–54(I), 101st Cong., 1st Sess. 2, reprinted in 1989 U.S.C.C.A.N. at 215. These purposes are fulfilled by requiring that the receivership claims process be exhausted with respect to post-receivership claims before suit can be filed, since litigation and its accompanying burden on the receivership estate and the courts can be avoided if the receiver is given an initial opportunity to allow meritorious claims outside of litigation.

Thus, both the literal terms of 12 U.S.C. 1821(d)(13)(D) and the purposes of the statute make it clear that no suit can be maintained against the Corporation as receiver based upon any act or omission of the Corporation as receiver unless and until the claims process has been pursued.

As of June 30, 1993, the Corporation held approximately 785,000 assets, such as real estate, mortgages and deeds of trust, and commercial and consumer loans. The Corporation, as receiver, has entered into and will continue to enter into numerous contracts for the sale of these assets. In addition, the Corporation, as receiver, enters into many other contracts relating to its operations. Further, many additional claims arise relating to the conduct of receivership affairs.

Because of the number of contracts that the Corporation enters into as receiver and because the Corporation, as receiver, acts in a wide variety of ways, disputes necessarily arise between the Corporation and other persons. In order to fulfill the purposes of the claims process set forth in 12 U.S.C. 1821(d), the Corporation is promulgating this Policy to set out the procedures for considering claims based upon acts or omissions of the Corporation as receiver.

4. Policy Regarding the Applicability of the Claims Process (12 U.S.C. 1821(d)(3)–(13)) to Claims Based Upon Acts or Omissions of the Receiver

a. Definition of "Post-Receivership Claim"

A "Post-Receivership Claim" means any claim based upon any act or omission of the Corporation as receiver, including, but not limited to, any claim based upon an agreement of the receiver, any claim based upon an act or omission of the receiver with respect to an executory agreement or unexpired lease of the institution, and any claim based upon a repudiation by the receiver of any agreement or lease; provided, however, that Post-Receivership Claims shall include only claims that were not in existence as of the date of the receiver's appointment and that rely for their existence upon an act or omission of the receiver; a Post-Receivership Claim shall not include any claim in existence as of the date of the appointment of the receiver, regardless of whether the claim was then contingent, unliquidated, not matured or not known or discovered.

b. Applicability

This Policy shall apply only to Post-Receivership Claims.

c. Inapplicability of General Bar Date

The bar date established pursuant to 12 U.S.C. 1821(d)(3)(B)(i) and 1821(d)(5)(C) for filing claims against a receivership (the "General Bar Date") does not apply to any Post-Receivership Claim and the receiver will not time bar any Post-Receivership Claim for failure to be presented to the receiver by the General Bar Date.

5. Procedures with regard to Post-Receivership Claims

a. Notice to File Claims

Whenever the Corporation as receiver becomes aware that any party may have a Post-Receivership Claim (and whenever the receiver repudiates any contract or lease), it shall be the policy of the Corporation as receiver to mail a notice to the party requiring that any claim the party may have be filed, together with proof, no later than 90 days after the notice is mailed.

b. Consideration of Post-Receivership Claims

The Corporation as receiver will consider timely any Post-Receivership Claim filed with the receiver provided that:

(1) If the receiver mails a notice pursuant to paragraph 5(a) above, the claim is filed by the date specified in the notice, which shall be 90 days after the date the notice is mailed; or

(2) If the receiver does not mail a notice pursuant to paragraph 5(a) above, the claim is filed no later than the 30th day after the Corporation first publishes notice of its intention to terminate the receivership.

Otherwise, the claim will be considered untimely and will be disallowed as such by the receiver, the disallowance will be final and in no event will any distribution ever be made on the claim.

6. Limitations of Actions

No person shall have any right to bring any action to direct or compel the Corporation to take any action contemplated by this Policy, or to pursue any claim or cause of action based on the alleged failure of the Corporation or any person acting on its behalf to take any action whatsoever under this Policy.

By order of the Deputy Chief Executive Officer.

Dated at Washington, DC this 1st day of March 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–5089 Filed 3–4–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Montauk, Suffolk County, NY, et al.

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Montauk, located on Pine Neck Landing, Suffolk

County, New York, and Winter's Landing, located in north central Spotsylvania County, Virginia, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until June 6, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Montauk Property:

Mr. Jerry McDonnell, Resolution Trust Corporation, Valley Forge Field Office, P.O. Box 1500, Valley Forge, PA. 19482–1500, (800) 782–6326; Fax (610) 631–3703.

Winter's Landing Property:

Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue NE., Marquis One Tower, 10th Floor, Atlanta, GA. 30303, (404) 230–6594; Fax (404) 225–5092.

SUPPLEMENTARY INFORMATION: The Montauk property is located on Pine Neck Landing at 7 Widgeon Lane, East Quogue, Suffolk County, New York. The site contains wetlands, an undeveloped floodplain, and is located within the Tiana Beach (F13) Unit of the Coastal Barrier Resources System. The Montauk property consists of approximately 2.5 acres of undeveloped land bordered to the east by residential housing and to the south by Shinnecock Bay. The site is tree covered and flat.

The Winter's Landing property is located in north central Spotsylvania County, Virginia, approximately eight miles southwest of Interstate Highway 95 and the Route 3 interchange. The site is situated in an undeveloped floodplain on the eastern shore of the Ni River Reservoir which is managed by the Spotsylvania County Parks and Recreation Department. The Winter's Landing property consists of approximately 489.4 acres of undeveloped land and is irregular in shape with frontage on Route 612, Route 625, and Route 714. The topography is gently rolling with a mix of open fields and heavily wooded areas. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before June 6, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: March 1, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–5090 Filed 3–4–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0017.
Form Number: ATF F 6 Part I (5330.3A).
Type of Review: Extension.
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.
Description: This information collected is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. Used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1512–0092.
Form Number: ATF F 5100.31 (1648/1649/1650).
Type of Review: Extension.
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products.

Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,300 hours.

OMB Number: 1512–0138.

Form Number: ATF F 5120.20 (2605).

Type of Review: Extension.

Title: Certification of Tax Determination-Wine.

Description: Wine that has been manufactured, produced, bottle or packaged in bulk containers in the U.S. and then exported, may have the revenue tax already paid or determined on the refunded to the exporter. The form validated from the producing winery that the wine was produced in the U.S. and was taxpaid on withdrawal from bond.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5080 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0081.

Form Number: FFIEC 031, 032, 033 and 034.

Type of Review: Revision.

Title: (MA)—Reports of Condition and Income (Interagency Call Report).

Description: National banks file reports pursuant to 12 U.S.C. 161 and other statutes. Data are used to evaluate and monitor the financial condition and earnings performance of individual banks as well as the entire banking industry.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 3,400.

Estimated Burden Hours Per Respondent: 36 hours, 54 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 501,840 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5081 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1029.

Form Number: IRS Form 8693.

Type of Review: Reinstatement.

Title: Low-Income Housing Credit Disposition Bond.

Description: Form 8693, Low-Income Housing Credit Disposition Bond, is needed per Internal Revenue Code (IRC) section 42(j)(6) to post bond and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 13 minutes.

Learning about the law or the form: 13 minutes.

Preparing, copying, assembling and sending the form to the IRS: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,100 hours.

OMB Number: 1545–1233.

Regulation ID Number: IA–14–91 Final.

Type of Review: Extension.

Title: Adjusted Current Earnings.

Description: This regulation affects business and other for-profit institutions. This information required by the IRS to ensure the proper application of 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of § 1.56(g)–1(r) of the regulations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour

Frequency of Response: Other (once only).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5082 Filed 3–4–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0086.

Form Number: PD F 5262.

Type of Review: Extension.

Title: Reinvestment Request for Treasury Notes and Bonds.

Description: This form is used to request the reinvestment of a Treasury note or bond at maturity, to cancel a reinvestment request or change a reinvestment that was previously requested.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 140,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 14,000 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5083 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0137.

Form Number: ATF F 5150.22.

Type of Review: Extension.

Title: Application for an Industrial Alcohol User Permit.

Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). The form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 850.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,700 hours.

OMB Number: 1512–0469.

Form Number: None.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 25012) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF–236) (51 FR 34706) establishing the threshold for declaration of sulfites in alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,787.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1512–0482.

Form Number: ATF Reporting Requirement 5100/1.

Type of Review: Extension.

Title: Labeling and Advertising Requirements under the Federal Alcohol Administration Act.

Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcoholic beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5084 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–31–P

Office of Thrift Supervision

[No. 94–17]

Capital and Accounting Standards; Annual Report to Congressional Committees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our annual report to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives identifying the differences between the capital and

accounting standards used by the Office of Thrift Supervision (OTS) and the capital and accounting standards used by the other Federal banking agencies (Banking Agencies).

Our report contains two attachments. Attachment I, "Summary of Differences in Capital Standards," identifies and explains the reasons for differences in the capital standards applied by OTS from those capital standards applied by the Banking Agencies. Attachment II, "Summary of Differences in Accounting Practices," identifies and explains the reasons for the major differences between OTS and the Banking Agencies in supervisory reporting practices that affect their respective capital standards.

Despite some differences, the capital and accounting rules of OTS generally parallel those of the Banking Agencies (collectively, the "Agencies"). Many of the differences are a result of either statutory requirements (*e.g.*, goodwill) or historical differences between the banking and thrift industries (*e.g.*, investment authorities, mutual form of organization). Moreover, the Agencies continue to work together to minimize the differences.

The capital standards of OTS comply with the statutory requirement of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), which provides that OTS standards be no less stringent than the standards applied to national banks.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accountant, Accounting Policy, (202) 906–5650; John F. Connolly, Program Manager for Capital Policy, (202) 906–6465; Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Attachment I

Summary of Differences in Capital Standards

FDICIA requires a report to Congress on the differences in the bank and savings association capital standards. Below is a summary of the differences.

A. Major Differences

1. Interest Rate Risk Component

Interest Rate Risk Component: OTS adopted an interest rate risk component to its risk-based capital rule, which is effective January 1, 1994. Under the new rule, institutions with an above normal level of interest rate risk will be subject to a capital charge commensurate with their risk exposure. The Banking Agencies intend to adopt an interest rate risk component in 1994. The interest rate risk component adopted by OTS will differ from that which is expected to be adopted by the Banking Agencies in important respects, namely, the methodology used to measure interest rate exposure and the data used to measure exposure.

Reason for OTS Difference: Because interest rate risk is a significant risk to savings associations, OTS believes that it is important to use a relatively sophisticated model to measure the interest rate risk exposure of individual institutions. OTS believes that it is particularly important to use a model that is capable of measuring the option component in mortgages and the effect of financial derivatives on an institution's overall interest rate risk exposure. As a consequence, OTS uses an option-based pricing model to measure exposure and collects detailed financial data on a reporting form that was designed to provide the financial data that OTS needs to measure exposure.

2. Core Capital

Core Capital Requirement: The leverage ratio requirements of the Office of the Comptroller ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Board of Governors of the Federal Reserve System ("FRB") are tied to Tier 1 capital. These requirements set the minimum leverage ratio rule requirement at 3 percent plus at least 100 to 200 basis points (depending on the CAMEL ratings). The OTS has proposed to adopt a leverage ratio rule conforming with the leverage ratios of the other bank regulatory agencies.

During 1992, the Agencies adopted uniform prompt corrective action regulations, as mandated by section 131 of FDICIA. These regulations require the establishment of specific capital categories based on risk-based capital ratio and leverage ratio measures. The Prompt Corrective Action ("PCA") rules of the Agencies, including the OTS, require compliance with a 4 percent leverage ratio for associations to be in the "adequately capitalized" category.

Goodwill: FIRREA requires "qualifying supervisory goodwill" to be included in core capital under the OTS capital rule through December 31, 1994. The Banking Agencies, in general, do not allow goodwill to be included in calculating core capital.

Reason for OTS Differences: FIRREA requires that the OTS capital rule include a limited amount of qualifying supervisory goodwill in core capital until December 31, 1994 (HOLA 5(t)(3)(A)).

3. Subsidiaries

Subsidiary (general): OTS defines a subsidiary as a 5 percent or greater ownership interest in an entity. The OTS requires consolidation of any subsidiary with the insured institution if the subsidiary is considered to be controlled by the insured institution under generally accepted accounting principles ("GAAP") (except for those engaged in activities impermissible for national banks, as described below). If an association owns a 5 percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below. For the Banking Agencies, subsidiaries are generally consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (see exception for depository institutions).

Reason for OTS difference: Savings associations, particularly state-chartered institutions, have in the past been allowed to invest in a more expansive list of subsidiaries and equity investments than national banks. OTS has adopted its more stringent policy of requiring pro-rata consolidation of ownership interests of 5 percent or greater, but not constituting GAAP control, because it better reflects the risk that may be posed by such subsidiaries.

Subsidiaries ("impermissible"): FIRREA and the OTS capital rule require the deduction from capital of investments in and loans to subsidiaries that engage in activities not permissible for a national bank. FIRREA originally provided for a five year phase-out of such investments and loans that were made prior to April 13, 1989. In 1992, the Director of OTS was given discretionary authority to extend the phase-out period until mid-1996 for investments in certain real estate subsidiaries provided the conditions contained in the statute are satisfied. During the phase-out period, the percentage of assets corresponding with the non-deducted portion of the assets is consolidated. The Banking Agencies may require deduction on a case-by-case basis.

The FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from a member bank's capital. The FDIC similarly deducts investments in, and unsecured advances to, securities subsidiaries and mortgage banking subsidiaries.

Reason for OTS difference: Although savings associations may own subsidiaries that engage in activities that are prohibited for national banks, the

Home Owners' Loan Act ("HOLA") requires the deduction of investments and loans to such subsidiaries, in accordance with a statutorily prescribed phase-out period. (HOLA 5(t)(5)).

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent association. In deducting investments in and advances to certain subsidiaries from the parent association's capital, the OTS expects the parent savings association to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary, consistent with FIRREA's mandate.

The deduction of investments in and extensions of credit to impermissible subsidiaries is consistent with, but more broadly applicable than, the FRB's and FDIC's treatment of securities subsidiaries and the FDIC's treatment of mortgage banking subsidiaries.

Consolidation of the remaining assets of the impermissible subsidiaries is required to ensure that sufficient capital is held by savings associations during the phase-out period.

Subsidiaries ("permissible—minority ownership"): The OTS rule requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The bank regulators generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS Difference: OTS believes that its treatment is appropriate and that sufficient capital should be held against the risks of such investments. OTS believes associations are better protected from the economic risk presented by their subsidiaries by requiring capital to be held against the amount of the subsidiaries' assets rather than only assessing an 8 percent capital charge against an institution's investment in such nonconsolidated subsidiaries.

Subsidiaries (lower-tier depository institutions): Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired on or after May 1, 1989 (except if it engages only in activities permissible for a national bank, in which case it is consolidated). OTS requires consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of the risk-based capital regulations, the Banking Agencies generally consolidate majority-owned banking and finance subsidiaries.

Reason for OTS Difference: OTS's policy addresses its concerns about (i) "double-leveraging" of the parent association's capital and (ii) incentives to minimally capitalize lower-tier depository institutions. It also ensures that OTS capital standards are at least as stringent as those imposed on banks. (HOLA 5(t)(5)(A),(C),(E)).

4. *Equity Investments:* OTS requires associations to deduct equity investments from their capital over a five year transition period. Bank regulators allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In March 1993, OTS issued a final rule that provides parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts (primarily stock of the Federal Home Loan Mortgage Corporation ("FHLMC"), stock of the Federal National Mortgage Association ("FNMA"), and certain loans with equity characteristics) that are permissible for national banks would be placed in the 100 percent risk weight category.

Reason for OTS Difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk of these investments. This policy is intended to result in such investments being either divested or "pushed down" into subsidiaries, where savings associations can limit their liability and attempt to attract partial market funding for the subsidiaries. The OTS will address the safety and soundness of equity investments of thrifts that are permissible for national banks through the same capital and supervisory approach used by the Banking Agencies.

5. *20 Percent Risk-Weight for High Quality MBS:* OTS includes agency securities (*i.e.*, issued by FNMA or FHLMC) in the 20 percent risk-weight category. OTS also places high-quality, private-issue, mortgage-related securities (*i.e.*, eligible securities under the Secondary Mortgage Market Enhancement Act ("SMMEA")) in the 20 percent risk-weight category. These private-issue mortgage-backed securities represent interests in residential or mixed use real estate and are rated in one of the two highest investment grade rating categories by a nationally recognized rating agency. Generally, the Banking Agencies place private-issue MBS in the 50 percent or 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to take the high credit quality of these securities into account in risk-weighting these securities.

6. *Qualifying Multi-family Mortgage Loans:* OTS allows certain low-risk multi-family mortgage loans (*i.e.*, buildings with 5–36 units, maximum 80 percent loan-to-value ratios and minimum 80 percent occupancy rates) to qualify for the 50 percent risk-weight category. The Banking Agencies currently place all multi-family mortgage loans in the 100 percent risk-weight category.

OTS and the Banking Agencies are in the process of issuing final rules to implement section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 ("RTC Act"), by reducing the risk weight of multi-family mortgage loans meeting the specified statutory and regulatory criteria to the 50 percent risk weight.

The RTC Act requires OTS and the Banking Agencies to place multi-family mortgage loans in the 50 percent risk weight category if they meet the following criteria: (1) The loan is secured by a first lien, (2) the ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate), (3) the annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate), (4) the amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years, (5) all principal and interest payments have been made on time for a period of not less than one year, and (6) meets other prudential underwriting criteria imposed by the Banking Agencies.

Reason for OTS Difference: Policy decision to assess a lower capital charge on such loans and securities in accordance with the requirement of Section 618(b). OTS is working with the Banking Agencies to implement the

statutory mandate on a uniform interagency basis.

7. Intangible Assets: The final rule on the capital treatment of intangible assets adopted by the OTS generally is consistent with the rules adopted by the Banking Agencies. The final OTS rule, however, contains a grandfathering provision and a transition provision for purchased mortgage servicing rights included in capital prior to adoption of the revised final rule.

The OTS rule also contains a grandfather provision allowing continued inclusion of core deposit premiums included in associations' capital on the effective date of the final rule. These core deposit premiums were previously includable in capital pursuant to temporary OTS guidance if an association's management determined that they passed a three-part test and the amount included did not exceed 25 percent of core capital. The new rule requires the deduction of nongrandfathered core deposit premiums from capital.

Reason for OTS Difference: Policy decision to permit purchased mortgage servicing rights and core deposit premiums to be included in capital if they were previously included pursuant to OTS rule or policy.

8. Recourse Arrangements

Assets Sold with Recourse (Non-Mortgage): If a savings association sells non-mortgage assets with recourse (where the transaction is treated as a sale under GAAP), OTS (i) considers it a sale, and (ii) requires capital to be held against the total amount of the loans sold with recourse through the use of the 100 percent off-balance sheet conversion factor. If a bank sells a non-mortgage asset with recourse (even when the transaction is treated as a sale under GAAP), it is not considered a sale by the Banking Agencies.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale. The OTS policy is designed to ensure that sufficient capital is available to absorb the risk associated with the recourse obligation.

Assets Sold with Recourse (Mortgages—Private Transactions): If savings associations sell mortgage assets with recourse to private entities and the transaction is treated as a sale under GAAP, OTS follows the same policy as it follows regarding sales of non-mortgage assets. Under this policy, OTS (i) considers the transaction a sale and (ii) requires capital to be held under the risk-based capital computations through the use of the 100 percent off-balance sheet conversion factor.

Banks that sell pools of residential mortgages to private entities with recourse generally are required to hold the full amount of capital against the mortgages sold regardless of the amount of recourse retained and the treatment of the transaction for regulatory reporting purposes.

The rules of the FRB and OCC, however, provide that no capital is required against pools of 1- to 4- family mortgages sold to private entities with "insignificant recourse" (*i.e.*, less than expected losses) for which a specific non-capital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.)

If "*significant*" recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets. The FDIC follows this approach for all sales with recourse; the FDIC has not adopted an "insignificant recourse" policy.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS, in general, follows GAAP in determining whether a transaction is a sale. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

Assets Sold with Recourse (Limited Recourse): For risk-based capital purposes only, the OTS limits the capital required on mortgage and non-mortgage assets sold with recourse (that are treated as sales under GAAP) to the lesser of (i) the maximum contractual liability under the recourse arrangement or (ii) the "normal" capital charge on the off-balance sheet assets.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets, which is limited to an association's maximum contractual liability under such arrangements.

Recourse servicing: Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not "own" the underlying assets, they have a contingent liability and are subject to losses on those loans. OTS requires associations to hold capital against the underlying loans posing economic risk for the associations. The Banking Agencies do not assess capital on the underlying loans but only on the amount of the servicing rights.

Reason for OTS difference: Policy decision to assess capital on underlying loans to buffer associations from risk of loss on such loans.

9. *Purchased Subordinated Securities*: Savings associations are required to hold capital against the amount of subordinated securities and all more senior securities regardless of whether the subordinated securities were originated by the institution or purchased from other parties. Banks are only required to hold capital against the amount of more senior securities if the institution originated and sold the underlying loans. The Banking Agencies do not require banks to hold capital against securities senior to acquired subordinated securities if a bank did not originate and sell the underlying loans.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

10. *Consequences of Failure to Meet Capital Standards:* The PCA provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The PCA provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on institutions' capital ratios. Section 131 imposes various sanctions and restrictions on institutions in the lower three PCA categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The Agencies issued a joint preamble and parallel rules implementing PCA.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the PCA provisions to the extent possible. The HOLA provisions do not apply to banks.

Reason for OTS Difference: The Agencies have adopted uniform rules implementing the PCA provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA 5(t)(6)).

B. Minor Differences

1. *1.5 Percent Tangible Capital Requirement:* OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS Difference: FIRREA requires OTS to establish a tangible capital requirement of at least 1.5 percent of assets (HOLA 5(t)(2)(B)). 2.

2. *Collateralized Mortgage Obligations ("CMO") Tranches:* In its final interest

rate risk rule, OTS eliminated the placement of stripped securities and certain collateralized mortgage obligations in the 100 percent risk weight category because of interest rate risk sensitivity. The interest rate risk component will address this risk directly. OTS is keeping residual securities in the 100 percent risk-weight in light of the risks associated with residual securities.

The Banking Agencies vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of principal loss risk is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk weighted at 100 percent (others generally at 20 percent); FDIC undertakes a case-by-case review.

Reason for OTS Difference: Policy decision to address the interest rate risk of these securities by imposing capital charge in accordance with interest rate risk rule. The risks involved with residual securities warrant their continued placement in the 100 percent risk weight.

3. *Pledged Deposits/Nonwithdrawable Accounts:* OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion in core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The Banking Agencies do not address this issue since these instruments do not exist in the banking industry.

Reason for OTS Difference: Policy decision to treat items that offer equivalent protection to the insurance fund and the institution in the same way.

4. *Qualifying Single Family Mortgage Loans:* In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value ("LTV") ratio (unless they have private mortgage insurance ("PMI") bringing the LTV ratio down to 80 percent). The Banking Agencies require "prudent, conservative" underwriting without specific LTV ratio requirements.

Reason for OTS Difference: Policy decision to make explicit what OTS believes is generally "prudent and conservative"; the Banking Agencies have indicated to OTS that they may use the 80 percent LTV ratio in examiner guidance.

5. *Loans to Individual Purchasers for the Construction of Their Homes:* OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics.

Reason for OTS difference: Policy decision to include such loans in standard treatment of 1–4 family mortgage loans, as does the OCC.

6. *Holding of First and Second Liens on Home Mortgages by the Same Institution:* The FDIC, FRB, and OTS generally treat first and second liens held by the same institution as single loans if there are no intervening liens. The OCC generally places second liens in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision generally to treat combined loans same as single loans. Second mortgages (depending on their characteristics) should be placed in the 50 percent risk weight if both loans are held by the same institution, there are no intervening liens, and they meet the criteria for qualifying mortgage loans.

7. *Rules on Maturing Capital Instruments ("MCI"):* OTS and the Banking Agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity. Bank regulators use a five year amortization rule.

Reason for OTS Difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

8. *Limitation on Subordinated Debt:* The Banking Agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS Difference: Policy decision to encourage issuance of supplementary capital.

9. *Non-residential Construction and Land Loans:* OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The Banking Agencies place the whole loan amount in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high LTV ratio land loans and nonresidential construction loans present particularly high levels of risk.

10. *FSLIC/FDIC-covered Assets:* OTS places these assets in the zero percent risk-weight category. The Banking Agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS notes that these government guaranteed obligations are supported by a "backup" call on the United States Treasury.

11. *Mutual Funds:* In general, OTS establishes the risk weighting for mutual funds on the asset with the highest capital requirement actually held by the mutual fund. The Banking Agencies base their capital charge on the highest risk-weighted asset that is a permissible investment by the mutual fund. OTS allows, on a case-by-case basis, "pro-rata" risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). The Banking Agencies do not allow banks to pro-rate mutual fund investments between risk-weight categories.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that allowing institutions to pro-rate their investments and focus on actual assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets in which the mutual fund invested.

12. *Capital Requirement on Holding Companies:* FRB applies the risk-based capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS Difference: OTS policy decision to not impose capital requirements on corporate entities that do not pose a risk to the deposit insurance fund.

13. *Agricultural Loan Losses:* The Banking Agencies, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be "included" in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS Difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

14. *Income Capital Certificates ("ICCs") and Mutual Capital Certificates ("MCCs"):* OTS allows inclusion in

supplementary capital. Because these items do not exist in the banking industry, the Banking Agencies do not address them.

Reason for OTS Difference: ICCs/MCCs are counted as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

15. *Restrictions on Hybrid Capital Instruments*: The Banking Agencies' capital rules contain certain restrictions on hybrid capital instruments (priority of debt, etc.). OTS does not have these restrictions in its capital rule (rather, they are elsewhere in OTS regulations or policy statements).

Reason for OTS Difference: Policy decision to retain flexibility to adapt to innovations in capital instruments. (There is no difference in practice.)

Attachment II

Summary of Differences in Accounting Practices

Differences by each agency in accounting or supervisory reporting practices may cause differences in the amount of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends. A summary of these differences is presented below.

1. Futures and Forward Contracts

OTS practice is to follow generally accepted accounting principles ("GAAP"). In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract is to be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains and losses in accordance with GAAP.

The Banking Agencies do not follow GAAP, but require that banks report changes in the market value of futures contracts even when used as hedges in the current period's income statement. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

2. Excess Servicing Fees

OTS practice is to follow GAAP in valuing excess servicing fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The Banking Agencies follow GAAP for residential mortgage loan pools. For all other loans (including individual residential mortgage loans), the Banking Agencies do not follow GAAP. In those cases, they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

3. In-Substance Defeasance of Debt

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The Banking Agencies do not follow GAAP. The Banking Agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

4. Sales of Assets with Recourse

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale if (i) the transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the Banking Agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution (i) retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs: Government National Mortgage Association, FNMA, and FHLMC. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales under the rules of the FRB and OCC if the transferring institution does not retain a significant risk of loss on the assets transferred.

5. Negative Goodwill

OTS permits negative goodwill to offset goodwill reported as an asset.

The Banking Agencies require that negative goodwill be reported as a liability, not netted against goodwill assets.

6. Push-Down Accounting

OTS requires push-down accounting when there is at least a 90 percent change in ownership.

The Banking Agencies require push-down accounting when there is at least a 95 percent change in ownership.

7. Offsetting of Amounts Related to Certain Contracts

OTS practice is to follow GAAP. It is a general accounting principle that the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists. FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts" (FIN 39), effective in 1994, defines right of setoff and specifies that four conditions must be met to net assets and liabilities, as well as off-balance sheet instruments.

The three Banking Agencies are planning to adopt FIN 39 solely for on-balance sheet items arising from off-balance sheet derivatives. The Call Report's existing guidance generally prohibits netting of assets and liabilities.

8. Specific Valuation Allowance for and Charge-offs of Troubled Loans

Prior to September 30, 1993, OTS required specific valuation allowances or charge-offs for troubled loans based on the net realizable value of the collateral. Effective September 30, 1993, OTS issued a revised policy that requires charge-offs or specific valuation allowances against a loan when its book value exceeds its "value," as defined. The "value" is either the present value of the expected future cash flows discounted at the loan's effective interest rate, the observable market price of the loan, or the fair value of the collateral. This revised policy, which is similar to the requirements of FASB Statement No. 114, narrows the differences between banks and thrifts.

The Banking Agencies generally consider real estate loans, where repayment is expected to come solely from the collateral that secures the loan, to be "collateral dependent." For such a loan, any portion of the loan balance that is not adequately secured by the value of the collateral, and that can be clearly identified as uncollectible, should be charged off. This approach is consistent with GAAP applicable to banks.

Dated: February 23, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–5049 Filed 3–4–94; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 44

Monday, March 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 9803.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Tuesday, March 8, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has canceled the meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5293 Filed 3–3–94; 3:18 pm]

BILLING CODE 6351–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 7

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Fuels Corp.—Petition for Review of LBP–93–25 (Tentative)
(Contact: Cecilia Carson, 301–504–1625)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Supplemental Ethics Regulations (Tentative)
(Contact: John Szabo, 301–504–1610)

2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Week of March 21—Tentative

There are no meetings scheduled for the Week of March 21.

Week of March 28—Tentative

Thursday, March 31

10:00 a.m.
Briefing by Nuclear Energy Institute (NEI) (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: 301–881–7040)

Friday, April 1

10:00 a.m.
Briefing on Low Level Radioactive Waste Performance Assessment Development Plan (Public Meeting)
(Contact: John Greeves, 301–504–3334)

ADDITIONAL INFORMATION:

By a 4–0 vote on February 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of 'Issuance of Final Rule Reinstating Nonprofit Educational Exemption and Denial of Petition for Rulemaking' and 'Sacramento Municipal Utility District—Licensing Board's Second Prehearing Conference Order, LBP–93–23' " be held on March 1, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: March 2, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–5232 Filed 3–3–94; 12:23 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 59, No. 44

Monday, March 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 940119-4019; I.D. 123093G]

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

Correction

In notice document 94-2417 beginning on page 5179 in the issue of Thursday, February 3, 1994, make the following correction:

On page 5180, in the first column, under **ADDRESSES**, beginning in the fifth line, remove the phrase "the Gulf of Mexico and South Atlantic may be obtained from".

BILLING CODE 1505-01-D

DEPARATMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 931070-4010; I.D. 100493A]

RIN 0648-AF84

Reef Fish Fishery of the Gulf of Mexico

Correction

In rule document 94-3176 beginning on page 6588 in the issue of Friday, February 11, 1994, make the following corrections:

1. On page 6588, in the second column, under **EFFECTIVE DATE**, in the first line, "March 14, 1994" should read "March 9, 1994".

2. On page 6590, in the first column, in the fourth full paragraph, in the last line, "March 14, 1994" should read "March 9, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1400LI-94; AG Order No. 1854-94]

RIN 1115-AC30

Extension of Designation of Liberia Under Temporary Protected Status Program

Correction

In notice document 94-4742 beginning on page 9997 in the issue of Wednesday, March 2, 1994, in the second column, under **EFFECTIVE DATES**, in the fourth and fifth lines, "March 3, 1994" and "April 4, 1994" should read "March 2, 1994" and "April 1, 1994" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 18, 1994

Correction

In notice document 94-4577 appearing on page 9800 in the issue of Tuesday, March 1, 1994, in the second column, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8508]

RIN 1545-AE26

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

Correction

In proposed rule document 93-31928 beginning on page 12 in the issue of Monday, January 3, 1994, make the following corrections:

1. On page 13, in the third column, in the first full paragraph, in the fourth line, "The" should read "the".

§ 1.1367-1 [Corrected]

2. On page 15, in the 3rd column, in § 1.1367-1(c)(2), in the 11th line, insert a period after "year"; and in the 19th line, replace the comma with a semicolon.

§ 1.1367-2 [Corrected]

3. On page 17, in the second column, in § 1.1367-2(d)(1), in the eighth line from the bottom, insert a period after "corporation".

§ 1.1368-1 [Corrected]

3. On page 19, in the second column, in § 1.1368-1(d), in the second line, "(l) General treatment of distribution." should read "(1) *General treatment of distribution.*"

§ 1.1368-2 [Corrected]

4. On page 21, in the third column, in § 1.1368-2(d), in the second line, "(l)" should read "(1)".

§ 1.1368-3 [Corrected]

5. On page 22, in the third column, in § 1.1368-3, replace the dash with a minus sign in the following places:

a. In *Example 2* (iii), in the fourth line from the bottom.

b. In *Example 3* (ii), in the fifth and ninth lines.

c. In *Example 3* (iv), in the fourth line.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG29

Claims Based on Chronic Effects of Exposure to Vesicant Agents

Correction

In proposed rule document 94-1484 beginning on page 3532 in the issue of Monday, January 24, 1994, make the following correction:

§ 3.316 [Corrected]

On page 3534, in the second column, in § 3.316(b), the last line should read "(See § 3.303)."

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS

38 CFR Part 4

RIN 2900-AE11

Schedule for Rating Disabilities; Genitourinary System Disabilities

Correction

In rule document 94-1045 beginning on page 2523 in the issue of Tuesday, January 18, 1994, make the following correction:

§ 4.115a [Corrected]

On page 2528, in § 4.115a, in the table, in the first entry under "Obstructed voiding", in the second line, "characterization" should read "catheterization".

BILLING CODE 1505-01-D

Monday
March 7, 1994

Part II

Federal Reserve System

12 CFR Part 205

Electronic Fund Transfer; Final Rule, Proposed Rule and Proposed Official Staff Interpretation

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0829]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, pursuant to its authority under sections 904(c) and (d) of the Electronic Fund Transfer Act, to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The final rule applies Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the act. In particular, periodic account statements are not required if account balance information and written account histories are made available to benefit recipients by other specified means. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

DATES: *Effective date:* February 28, 1994. *Compliance date.* To provide adequate time to prepare for compliance, the Board has delayed mandatory compliance until March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program and provide rules that govern these and other electronic transfers. The regulation sets rules for the issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Government Programs Involving Electronic Delivery of Benefits

The federal government, in conjunction with state and local agencies, is working to expand electronic delivery of government benefits both for direct federal benefit programs and for federally funded programs that are state administered. An electronic benefit transfer (EBT) system functions much like a private-sector EFT program. Benefit recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and access benefits through electronic terminals. For cash benefits such as Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), the programs may use existing private-sector ATM networks as well as POS terminals to disburse benefits. For food stamp purchases, the programs use POS terminals in grocery stores. In some cases the POS equipment is dedicated solely to the EBT program, while in others it also is used for private-sector transactions.

For many state and local agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. Federal legislation that took effect April 1, 1992, provided new impetus for the use of EBT, authorizing the states to use electronic delivery of food stamp benefits in place of paper coupons. States previously could seek approval to use EBT for food stamp benefits only on a demonstration basis. Currently, about 30 states have EBT programs in different stages of operation or development.

In November 1993, the Clinton administration established a Federal Electronic Benefits Task Force. The group's assigned task is to develop and implement a nationwide system for the electronic delivery of benefits from government programs, pursuant to a recommendation from the National Performance Review. In December, the EBT Task Force wrote to the Federal Reserve Board, expressing the federal agencies' commitment to providing consumer protection for EBT recipients, and noting at the same time the need for program integrity and accountability for public funds. The EBT Task Force asked that the Board provide a three-year delay in the effective date if the Board should ultimately decide to apply Regulation E to EBT programs. The EBT Task Force stated that this delay was necessary for implementing EBT in accordance with Regulation E; among other things, the agencies needed the time to collect and evaluate comparative loss data at EBT test sites, data that they could then use as the basis for seeking legislative authorization and funding to pay for replacing benefits lost due to unauthorized transfers.

(2) Discussion

Board Authority

The Federal Reserve Board has a broad mandate under the EFTA to determine coverage when electronic services are offered by other than traditional financial institutions. Section 904(d) provides that in the event EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall ensure that the act's provisions are made applicable to such persons and services.

The legislative history of the EFTA provides guidance on the Board's authority to determine if particular services should be covered by the act, based on whether transfers are initiated electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the act's basic objectives. A Senate Banking Committee report noted that the statutory delegation of authority to the Board enables the Board to examine new services on a case-by-case basis, thereby contributing substantially to the act's overall effectiveness. The Congress contemplated that, as no one could foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply. See S. Rep. No. 915; S. Rep No. 1273, 95th Cong., 2d Sess. 25–26 (1978).

In February 1993 the Board published a proposal to amend Regulation E to cover EBT programs, with certain modifications. 58 FR 8714, February 17, 1993. The Board believes that a number

of factors support Regulation E coverage of EBT programs. EBT recipients use the same kinds of access devices and electronic terminals in conducting transactions as do consumers of EFT services in general. Indeed, in EBT systems that piggyback on existing EFT networks, the terminals used are one and the same. The transactions themselves, such as cash withdrawals and purchases, are also similar.

To obtain benefits, recipients insert a magnetic-stripe card into a terminal that reads the encoded information, and enter a PIN to verify their identity. The terminal communicates with a database to ascertain that a recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available in an amount sufficient to cover the requested transaction. In cash benefit programs, the recipient receives a cash disbursement; in the case of food stamp benefits, the recipient's allotment is charged and the merchant's account credited for the amount of the food purchase. From a recipient's viewpoint, an EBT system functions much the same as if the recipient had an ordinary checking account with direct deposits of government benefits and with ATM and POS service available to access the benefits.

The Board believes that the strong similarity of EBT systems and other EFT services, the act's legislative history, and the language of the EFTA and Regulation E support coverage of EBT programs under the act and regulation. Therefore, the Board has determined that EBT programs must comply with the requirements of Regulation E as modified by this final rule, pursuant to its authority under 904(c) and (d) of the EFTA.

The Board's action, amending the regulation, supersedes an interpretation in the Official Staff Commentary to Regulation E (12 CFR part 205, supp. II). The commentary stated that an electronic payment of government benefits was not a credit or debit to a "consumer asset account" because the account was established by a government agency rather than the consumer (the recipient). The Board has reexamined that interpretation, and has concluded that a sufficient basis does not exist for excluding these accounts from Regulation E's coverage.

The act defines the term "account" to mean "a demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes * * *." Regulation E uses substantially the same wording, and refers to "other consumer asset account." The reference to "consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The EFTA's coverage is not limited to traditional depository institutions, but may extend to any person (including a government agency) "* * * who issues an access device and agrees with a consumer to provide electronic fund transfer services." In the case of EBT programs, the Board's action will affect primarily government agencies that administer EBT programs and issue EBT cards to benefit recipients for accessing benefits, or that arrange for such services to be provided. The revised rule will affect only indirectly most depository institutions and other private-sector entities.

Board's Proposal

While the Board proposed general coverage of EBT under the EFTA, the proposal published in February 1993 modified certain documentation requirements, recognizing differences between EBT and EFT systems. A periodic statement would not be required if information about account balances and account histories were otherwise made available to consumers. In addition, modifications were proposed in the rules on the issuance of access devices, initial disclosures, and the notices on error resolution procedures, to tailor the requirements to EBT programs.

The Board received approximately 175 comment letters on its proposal from a broad range of commenters. About 125 commenters—including state and local agencies that provide benefits, federal agencies, financial institutions, and a bank trade association—opposed the Board's proposal. Many of them requested an exemption for EBT programs from the Regulation E liability and error resolution rules. They asserted that full application of Regulation E would increase the costs of delivering benefits to the point that offering EBT might not be economically feasible, because EBT programs may be only marginally cost-effective even without factoring in Regulation E compliance costs. They expressed the view that the expected advantages of EBT might not be realized if Regulation E were to apply, and that its application would hinder the introduction or expansion of EBT programs.

In place of the Board's proposal, the majority of the commenters supported recommendations given to the Board in May 1992 by an interagency steering committee established within the federal government to coordinate EBT efforts among program agencies. Agencies represented on that group included the Treasury Department's Financial Management Service, the Agriculture Department's Food and Nutrition Service, the Health and Human Services Department's Social Security Administration and Administration for Children and Families, the Office of Management and Budget, and other federal agencies that have an interest in planning for EBT systems. The steering committee's proposal primarily differed from the Board's proposal in that benefit recipients would be liable for unauthorized transfers subject to certain conditions, and the error resolution requirements would not apply if an agency maintained "efficient, fair, and timely procedures" for resolving errors and disputes, including an appeals process.

Anticipating public opposition to Regulation E coverage, the Board in the proposal indicated that commenters should offer explanations of why modifications in the regulatory requirements were needed, together with specifics such as data on costs. Approximately 35 commenters included estimates of the additional cost they believed would be imposed by Regulation E. In some cases the estimates were quite detailed. A few estimates were based on agency experience with the replacement of lost or stolen cards in EBT programs. Most of the cost estimates were based on loss and fraud experience under existing paper-based benefit programs (such as mailed AFDC checks and mailed food coupons). Nationwide, one group estimated the projected costs due to Regulation E, in worst-case scenarios, to be between $164 million and $986 million annually.

Many commenters suggested that private-sector financial institutions differ from government agencies in ways that relate to how compliance costs can be borne. For example, financial institutions can control their costs by selecting the customers to whom they are willing to offer EFT services, while program agencies must accept all who qualify for the benefit program. If a customer of a financial institution is suspected of engaging in fraud, the institution can terminate the account relationship. In a like situation, an agency could shift a recipient from EBT back to the paper-based system, but commenters believe it may not be feasible to operate dual systems.

Similarly, commenters noted, private-sector institutions handle losses related to the Regulation E customer-liability limitations by spreading the losses over their entire customer base in the form of

increased fees or reduced interest paid. Agencies cannot do so, and thus losses would have to be paid out of tax revenues, or, where permitted, by reducing benefits. If neither method is available, then the EBT program would be eliminated or cut back.

Approximately 35 commenters supported the Board's proposal. This group included advocacy groups for benefit recipients, financial institutions, a bank trade association, and individuals. These commenters agreed with the premise that the same rules should apply to both EBT recipients and EFT users in the general public, and that both government and private-sector organizations offering EFT services should be subject to the same rules.

Some commenters in this group called for even greater consumer protection for EBT recipients than would be provided by existing Regulation E. For example, one advocacy group argued that the regulation should prohibit mandatory EBT programs. Other commenters urged the Board to require disputed amounts to be provisionally credited to the consumer's account within one business day (instead of 10 business days for ATM transactions, or 20 business days for POS transactions, as allowed by existing Regulation E). A coalition of consumer groups suggested that the limits on liability for unauthorized transactions are too high in the EBT context, and that, for example, the $50 liability that can be imposed even if a recipient promptly reports a lost or stolen debit card should be reduced or eliminated.

Final Action on Proposal

After a review of the comments, further analysis, and a weighing of policy considerations, the Board has adopted a final rule pursuant to its authority under 904 (c) and (d) of the EFTA. The Board's action requires EBT programs to comply with the requirements of Regulation E as modified by this final rule. The Board continues to believe that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts of coverage, specifically in the areas of liability for unauthorized transfers and error resolution, but believes that the cost data presented to support exemptions in these areas were not definitive.

The Board has provided a delayed implementation date, making compliance optional until March 1, 1997, in keeping with a request received in December 1993 from the Federal EBT Task Force. As discussed above, the EBT Task Force, which represents all the major agencies with large individual benefit programs, asked for the three-year delay so that agencies could develop and implement a nationwide system for delivering multiple-program benefits in compliance with Regulation E.

The Board's modified rules for EBT programs are limited to programs for disbursing welfare and similar government benefits. Some of the military services, as well as certain private-sector employers, have installed ATMs through which salary and other payments can be made in a manner similar to EBT systems. Such systems remain fully covered by Regulation E.

In bringing EBT accounts within the scope of the EFTA's definition of "account," the Board does not take a position about the legal status of the funds for any other purpose. For example, legal ownership of the funds in EBT accounts (by the recipient or a state, for instance) is not affected by this rulemaking.

Some commenters asked for clarification on whether the Board viewed specialized types of programs, such as Medicaid, or programs using different technology (specifically, smart card programs) as covered by the EFTA and Regulation E. The Board believes that when a consumer can access funds in an account using electronic means, Regulation E is applicable. The Board believes that Medicaid programs do not involve an account within the meaning of Regulation E, given that benefits under these programs are not made available to the consumer in terms of a dollar amount available to be accessed by the consumer, as is the case in EBT programs such as AFDC, SSI, and food stamps.

With regard to smart card systems, the Board has issued a proposal to review Regulation E, also published in today's **Federal Register**, that solicits comment on the question of coverage of smart card systems in general (both public and private sector). Any determination made on coverage of smart cards in the review could apply to EBT smart card programs.

(3) Explanation of New § 205.15

Section 205.15—Electronic Fund Transfer of Government Benefits

A new section is added to the regulation to specifically address the rules on the electronic fund transfer of government benefits. Agencies are generally required to comply with all applicable sections of the regulation. Section 205.15 contains the modified rules for EBT programs on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Paragraph (a)—Government Agency Subject to Regulation

Paragraph (a)(1)

The act and regulation define coverage in terms of "financial institution." Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. The substance of paragraph (a)(1), which defines when a government agency is a financial institution for purposes of the act and regulation, is unchanged from the proposal. Editorial changes have been made for clarity.

Paragraph (a)(2)

The term "account," which is defined generally in § 205.2(b), is defined for purposes of § 205.15 to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section would include use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. For purposes of this section, government benefits include cash benefits such as AFDC and SSI and noncash benefits such as benefits under the food stamp program.

Paragraph (b)—Issuance of Access Devices

Under § 205.5, debit cards, PINs, and other access devices may not be issued except in response to a consumer's request or application for a device, or to replace a device previously accepted by the consumer. Financial institutions are permitted to issue unsolicited access devices in limited circumstances under § 205.5(b). The general prohibition against unsolicited issuance is intended to protect a consumer against the issuance of an access device that could be used to access the consumer's funds without the consumer's knowledge and approval or without the consumer's being informed of the terms and conditions applicable to the device.

The Board's final rule makes clear that in the case of EBT, an agency may

issue an access device to a recipient without a specific request. A recipient of government benefits is deemed to have requested an access device by applying for benefits that the agency disburses or will disburse by means of EBT. The Board believes that it is unlikely that a government agency would issue an access device without the recipient's being made aware that the way to access benefits is by use of the device and that to safeguard benefits the device must be protected. Moreover, given that initial disclosures would be provided during training, the recipient will be informed of the account's terms and conditions.

The Board does recognize, however, commenters' concerns about the need for agencies to verify the identity of the consumer receiving the device before it is activated. As in the case of the private sector, an issuing agency will have to verify the identity of the consumer by a reasonable means before a device is activated. Reasonable means include methods of identification such as a photograph or signature comparison.

Some commenters expressed concern about the statutory prohibition against the compulsory use of EFT and its implications for EBT programs. Section 913 of the EFTA prohibits requiring a consumer to establish an account at a particular institution for receiving electronic fund transfers as a condition of employment or receipt of government benefits. This prohibition does not prevent an agency from requiring benefits to be delivered electronically.

In EBT programs, agencies do not require recipients to open or maintain bank accounts at a particular institution for the electronic receipt of government benefits. This is the case even when an agency enters into an arrangement with a single financial institution that then serves as the agency's financial intermediary. Consequently, the Board believes that the prohibition against compulsory use is not an impediment to mandatory EBT programs. Nevertheless, pursuant to its authority under section 904(c) of the EFTA, the Board has determined that a government agency with a mandatory EBT program should ensure that recipients of cash benefits have access to other electronic options (for example, direct deposit of benefits to an existing bank account or to an account established by the recipient for that purpose).

Paragraph (c)—Alternative to Periodic Statement

Regulation E requires financial institutions to provide periodic statements for an account to or from which EFTs can be made. Periodic statements are a central component of Regulation E's disclosure scheme. But as long as other means of obtaining account information are available to benefit recipients, the Board believes that periodic statements are not absolutely necessary for EBT programs due to the limited types of transactions involved, particularly given the expense of routinely mailing monthly statements to all recipients. Moreover, requiring periodic statements could impede the effort to eliminate paper and move toward a fully electronic system. Most commenters supported the Board's proposal to exempt government agencies from the requirement if the agency furnishes the consumer with other means of accessing account information.

Under the proposal, agencies were to provide balance information by means of an electronic terminal, balance inquiry terminal, or a readily available telephone line, and to make available a written account history upon request. The final rule contains these alternatives with modifications that respond to the comments.

To make balance information readily available, the proposal also would have required that the terminal receipt show the balance available to the consumer after the transfer. A number of commenters stated that this requirement would be difficult for some EBT systems to implement because existing ATM networks may not be capable of providing current account balances at all times. Commenters suggested that giving consumers access to balance information by other means (such as telephone or balance inquiry terminals) would achieve the same purpose. Accordingly, the final rule does not require that terminal receipts include the account balance as long as a consumer can access balance information by the other means set forth in paragraph (c) of this section.

A number of commenters urged that agencies should not make telephone access the only method by which a recipient can obtain an account balance. Taking these comments into consideration, the Board has modified the final rule. The final rule requires, in addition to a telephone line, at least one alternative method (such as a balance inquiry terminal) for access to balance information.

Commenters suggested that the telephone line be toll-free and available on a 24-hour basis. For EFT systems generally, the Board interprets a readily available telephone line to mean at least a local or toll-free line available during standard business hours. The Board believes that the same interpretation is appropriate for EBT systems, although an agency may of course choose to provide recipients with a 24-hour line.

Commenters requested that the Board provide certainty by clarifying how a consumer may request a written account history and the time period for compliance. The final rule clarifies that a request may be either written or oral, that the history should cover the 60 calendar days preceding the request date, and that the history should be provided promptly upon request. In addition, commenters asked for clarification about whether an agency could charge for written account histories or other disclosures required by the regulation. The Board believes that imposing fees in such instances would be contrary to public policy.

The Board had solicited comment on whether more complex EBT systems developed in the future (for example, systems allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present. Several commenters encouraged the Board not to address the issue at this time, but to delay a decision until performance under the final rule can be assessed. Accordingly, the Board has deferred taking a position at this time.

Paragraph (d)—Modified Requirements

Paragraph (d)(1)—Initial Disclosures

Section 205.7 requires that written disclosures of the terms and conditions of an EFT service be given at or before the commencement of the service. Three disclosures have been modified for EBT programs. Under paragraph (d)(1)(i), government agencies must disclose the means by which the consumer may obtain account balance information, including the telephone number for that purpose. The disclosures will explain the ways in which balance information will be made available. (See model disclosure form A(12) below.) Under paragraph (d)(1)(ii), agencies must disclose that the consumer has the right to receive a written account history, upon request, and must provide a telephone number for obtaining the account history. This disclosure substitutes for the disclosure of a summary of the consumer's right to a periodic statement under § 205.7(a)(6) of the regulation. Under paragraph (d)(1)(iii), agencies must provide an error resolution notice substantially similar to model disclosure form A(13) rather than the notice currently contained in § 205.7(a)(10).

Paragraph (d)(2)—Annual Error Resolution Notice

Section 205.8(a) of the regulation requires that financial institutions provide a notice in advance of certain adverse changes to terms that were disclosed in the initial disclosures. No modification has been made for EBT programs. Consequently, agencies will have to provide a notice for certain changes in terms, such as in transaction limitations. Other changes, such as a decrease in the amount of a consumer's benefits, continue to be governed only by the agencies' program rules.

Section 205.8(b) of the regulation requires financial institutions to provide periodic error resolution notices to consumers, either annually or with each monthly account statement. In substitution for these notices, paragraph (d)(2) requires agencies to provide an error resolution notice substantially similar to model disclosure form A(13). The notice is to be provided annually.

Paragraph (d)(3)—Limitations on Liability

Section 205.6 of the regulation limits a consumer's liability for unauthorized transfers. If the consumer notifies the account-holding institution within two business days after learning of the loss or theft of a debit card, the consumer's liability is limited to $50. If notification is not made until after two business days, liability can rise another $450 for transfers made after two business days, for a total of $500. If the consumer does not notify the institution until more than 60 days after a periodic statement is sent showing an unauthorized transfer, the consumer's liability is unlimited for unauthorized transfers occurring after the 60th day and before notification.

The Board believes that the EFTA generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicited comment on potential costs associated with implementing the liability rules for EBT programs and why such implementation would present a greater burden for government agencies than that experienced by financial institutions. Commenters submitted data on the expected cost impact of Regulation E on EBT programs, specifically on costs related to the limitations on consumer liability for unauthorized transfers and error resolution requirements; as discussed earlier, however, the Board believes the data are not definitive. Under the final rule, therefore, the limits on liability for unauthorized use, the error resolution requirements, and most other provisions of Regulation E would apply to EBT.

The Board recognizes the concerns about the potential cost impact of coverage, especially in regard to unauthorized use because of the potential for abuse through fraudulent claims. The Board believes, however, that through the leadership of the Federal Electronic Benefits Task Force, which has the goal of developing a nationwide system for delivering government benefits electronically, it should be possible for the agencies to implement cost-effective procedures that will help minimize the risk of fraudulent claims and potential abuse of EBT systems.

The Board notes in particular that Regulation E does not mandate an automatic replacement when a claim of lost or stolen funds is made. In the case of EBT as in the private sector, the agency would investigate the claim, consider the available evidence, and exercise judgment in making a determination about whether the transfer was unauthorized or was made by the recipient or by someone to whom the recipient gave access. The Board does not underestimate the difficulties that these investigations may pose for EBT program agencies. But the Board also believes that practical ways can be found, within the scope of Regulation E, that will enable EBT administrators to control potential losses.

The operational procedures developed to minimize risk will need to address some aspects of EBT that are different from the commercial setting—such as the fact that program agencies, unlike private sector institutions, may not be able in cases of suspected fraud or abuse simply to terminate their relationship with the recipient. Some of the measures that federal agencies have inquired about, which may be compatible with the special requirements of EBT, relate to aspects of the relationship that are not addressed by Regulation E. Thus their implementation would not conflict with regulatory requirements. Some of these include putting recipients on restricted issuance systems—requiring, for instance, that the recipient call in advance for authorization before each access to benefits, or restricting the sites at which the recipient could obtain benefits, or crediting the recipient's benefits in weekly increments rather than the full monthly amounts. Or the agency could appoint a representative payee, or place the recipient on a backup paper-based benefit payment system. Imposing these or other limitations may not be desirable from either an agency's or the recipients' perspective except in circumscribed situations. But if found to be cost-effective, such measures represent some possible approaches for dealing with recipients who show themselves to be irresponsible in their use of the EBT system.

In regard to recurring claims for the replacement of benefits, EBT agencies may not establish a presumption that, because a recipient has filed a claim in the past, the recipient's assertion of a second claim of unauthorized withdrawals can be automatically rejected. On the other hand, depending on the circumstances, it would not be unreasonable for the agency, in making its determination about the validity of a claim, to give weight to the fact that a particular recipient within a certain period of time has previously filed a claim, or multiple claims, of stolen funds. The Board believes that these are just some of the areas in which the Federal EBT Task Force can be helpful in setting operating guidelines and procedures.

Regulation E provides that a consumer may bear unlimited liability for failing to report within 60 days any unauthorized transfers that appear on a periodic statement. Because EBT recipients will not receive periodic statements, under the Board's proposal the 60 days would have run from the transmittal of a written account history provided upon the consumer's request. The final rule differs somewhat in that the 60-day period also can be triggered when the consumer obtains balance information via a terminal or telephone or on a terminal receipt.

Paragraph (d)(4)—Error Resolution

Section 205.11 of Regulation E sets certain time limits within which a consumer must file a notice of an alleged error. Under the Board's proposal for EBT, government agencies were to comply with the error resolution procedures in § 205.11 in response to an oral or written notice of error from the consumer received no later than 60 days after the consumer obtained a terminal receipt or a written account history on which the alleged error was reflected. The final rule differs somewhat, in that error resolution procedures can be triggered by any information provided to the consumer under paragraph (c).

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 is revised to read as follows:

Authority: 15 U.S.C. 1693.

2. Section 205.15 is added to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(a) by providing:

(i) *Account balance information.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in substitution for the periodic statement disclosure required by § 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.7(a)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b) (2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

3. Appendix A to part 205 is revised by adding sections A(12) and A(13) to read as follows:

Appendix A to Part 205—Model Disclosure Clauses

* * * * *

Section A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories (§ 205.15(d)(1) (i) and (ii))

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at [an ATM][a POS terminal]][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

Section A(13)—Disclosure of Error Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4681 Filed 3–2–94; 12:38 pm]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0830]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to revise Regulation E, which implements the Electronic Fund Transfer Act. The proposal stems from the Board's review of Regulation E pursuant to its policy of periodically reviewing all of its regulations. The Board's review considered ways the regulation could be simplified to ease the burdens imposed on financial institutions, consistent with the Board's responsibility for implementing the act, and considered also whether the regulation could more effectively carry out the purposes of the act. The proposal contains several substantive revisions, including changes to the existing exemptions for securities or commodities transfers and for preauthorized transfers to or from accounts at small institutions. In addition, the proposal includes changes intended to make Regulation E more consistent with the requirements of other regulations governing deposit accounts. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating all of the footnotes. In conjunction with the proposed revisions to the regulation, the Board also has proposed revisions to the staff commentary published elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments should refer to Docket No. R–0830 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Mary Jane Seebach, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR part 205) provide rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

The Board's policy under its Regulatory Planning and Review (RPR) program calls for periodic review of each Board regulation. The RPR program has four goals: to clarify and simplify the regulatory language; to amend the regulation to reflect technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. In keeping with that policy, the Board has made a detailed review of Regulation E to determine whether it can be simplified to ease compliance burdens for financial institutions, while meeting the Board's responsibility for implementing the consumer protections of the EFTA.

Based on its review, the Board now proposes revisions to Regulation E. While certain substantive revisions have been made to the regulation (see the section-by-section discussion below), the proposal leaves most of the regulatory provisions substantively unchanged. The regulation closely follows the language of the statute, which contains detailed requirements in most areas, and major changes to the regulation are not possible unless the act itself is amended. Therefore, the Board is soliciting comment on whether specific legislative revisions to the EFTA are necessary and achievable without imposing a significant adverse impact on consumer protections.

The proposal simplifies the language and format of each section of the regulation to state the requirements more clearly. All of the footnotes have been either integrated into the text of the regulation or moved to the proposed staff commentary, making the regulation itself less cumbersome to use. The proposed regulation is shorter than current Regulation E by about fifteen percent, a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to the commentary. In addition to commenting on the proposed changes, the Board requests specific suggestions, as well as rationale, for additional changes to the regulation that would facilitate compliance.

(2) Proposed Regulatory Revisions

The following discussion covers the proposed revisions to Regulation E section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change in the regulatory requirements; where these changes are self-evident from reading the proposed text itself, they are not discussed.

Section 205.1—Authority and Purpose

The proposal simplifies the current section. Discussion of the Congressional findings has been deleted. Coverage issues currently addressed in § 205.1(b) have been moved to § 205.3.

Section 205.2—Definitions

Paragraph (b)(2)

The proposal incorporates the exemption for trust accounts (currently § 205.3(f)) into the definition of account. The definition more closely tracks the statutory language contained in section 903(2) of the EFTA.

Paragraph (d)—Business Day

The act and regulation define business day as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. This currently requires that each financial institution determine when its offices are "carrying on substantially all business functions." Using its exception authority under section 904(c) of the EFTA, the Board proposes to change the definition so that it will mirror that used in Regulations CC (12 CFR part 229) and DD (12 CFR

part 230). Those regulations define a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). The Board believes compliance with the multiple regulations that govern deposit accounts would be simplified if similar definitions were used and solicits comment on whether such a change will reduce burden without adversely affecting consumer protections.

Paragraph (g)—Financial Institution

The Board proposes to simplify the definition of financial institution (currently § 205.2(i)) by eliminating references to both state and federal institutions. Instead, the definition would include "a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer." This is not intended as a substantive change in coverage.

Paragraph (h)—Person

The proposal adds a definition of "person," incorporating language from Regulations B (12 CFR 202.2(x)) and Z (12 CFR 226.2(a)(22)). The term is used in several places in the regulation, most notably in § 205.3(a), defining the regulation's coverage, and in § 205.10(e) on compulsory use.

Section 205.3—Coverage

The proposal includes a new section defining the regulation's coverage. The Board solicits comment on whether having a self-contained section on coverage would facilitate use of the regulation.

Paragraph (a)—General

The proposal clarifies that the regulation applies to any EFT that authorizes a financial institution to debit or credit a consumer's account. It also incorporates the discussion of coverage currently addressed in § 205.1(b).

Paragraph (b)—Electronic Fund Transfer

The definition of "electronic fund transfer" (currently § 205.2(g)), which is central to determining coverage under the regulation, has been moved into the coverage section. A minor change to the definition of an EFT makes clear that the term includes transfers initiated through a computer or through magnetic tape. This change is proposed because a strict reading of the current regulation might lead to the unintended conclusion that an EFT does not include transfers initiated through a computer not involving tape. The definitions of "preauthorized electronic fund transfer" and "unauthorized electronic fund transfer" remain in the definitions section.

Questions have arisen about Regulation E coverage of smart cards. Generally, smart cards are plastic cards that have the capacity to either compute or communicate information. At one time, it was believed that smart card systems were not subject to Regulation E because no account existed within the definition of the act or regulation. With advances in smart card technology, that assumption is less clear. Increasingly more uses are available for smart cards. The Board believes that smart cards are subject to Regulation E if the cards are used to access an account. A similar analysis might be applied to value-added or prepaid cards.

The determination about whether smart cards and value-added cards are subject to the regulation has implications both for the private and public sectors. For example, any determination made on coverage of smart cards in the review could apply to electronic benefit transfer system programs. (See Docket No. R–0829 elsewhere in today's **Federal Register** in which the Board deferred to the review of Regulation E for discussion of smart cards and its implication on electronic benefit transfer systems.) The Board solicits comment on the coverage of smart cards.

Paragraph (c)—Exclusions From Coverage

The proposal's expanded section on coverage retains the exemptions currently contained in § 205.3. Including these exemptions with the definition of "electronic fund transfer" more closely tracks the statutory provisions. In addition, the Board believes having both coverage and exemption provisions in one section would facilitate the determination of whether compliance with the regulation is required. The paragraph contains several proposed revisions to current exemptions.

Paragraph (c)(3)—Wire Transfers

The proposal amends the exemption for wire transfers currently contained in § 205.3(b) to clarify that it exempts transfers through Fedwire (or similar wire transfer systems) and not all transfers through the Federal Reserve Communications System. The proposed amendment does not represent a substantive change in the scope of the exemption. Rather, it would correct the reference to more accurately reflect the statutory intent.

Paragraph (c)(4)—Securities and Commodities Transfers

The Board proposes to revise the exemption for certain securities and commodities transfers. When the current exemption was initially adopted, the Board omitted the requirement that the purchase or sale be through a broker-dealer registered with the Securities Exchange Commission (SEC). The intent of this change was to broaden the scope of the exemption to include securities transactions made by mutual funds and pension and profit-sharing plans. The Board noted at the time that existing federal laws and the regulations of the SEC and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provided protections to consumers that were consistent with the requirements of the EFTA and Regulation E.

As currently written, however, the exemption does not extend to a transfer for the purchase or sale of securities if the securities (for example, municipal securities) are not regulated by the SEC, even if the transfer is executed by a broker-dealer who is regulated by the SEC. In keeping with the statutory language, the proposed change would exempt transfers involving unregulated securities if the purchase or sale is transacted by a broker-dealer regulated by the SEC or a futures commission merchant regulated by the CFTC. The Board believes that the regulation of broker-dealers and futures commission merchants offers sufficient protection of payment transfers for consumers and that the application of the protections in Regulation E would only duplicate available safeguards.

The Board proposes to extend the exemption to all securities or commodities held in book-entry form by Federal Reserve Banks on behalf of the Treasury Department and other federal agencies (for example, Treasury Direct issues). Currently a transfer to purchase Treasury securities is technically covered by Regulation E because it is not regulated by the SEC or the CFTC and, when purchased from the Federal Reserve Banks, is not purchased or sold by a registered broker-dealer. The Board believes there is adequate regulation of transfers that involve Federal Reserve Banks and federal agencies, offering sufficient consumer protection (see 31 CFR part 370, regulations governing payments by the automated clearing house method on account of United States securities).

The Board solicits comments on whether these proposed changes strike

the appropriate balance between facilitating greater use of EFTs for securities transactions and providing adequate consumer protection.

Paragraph (c)(7)—Small Institutions

The Board proposes to increase the current-asset size cutoff of the small institution exemption in current § 205.3(g). Section 904(c) of the EFTA gives the Board authority to modify the requirements imposed by the regulation on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small institutions and that such modifications are consistent with the purposes and objective of the act. In 1982, the Board exempted preauthorized transfers to or from accounts at financial institutions with assets of less than $25 million. The regulation exempts the preauthorized transfers as a class of transfers, and not the financial institutions themselves. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those other services. For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements. In addition, the institution must comply with provisions of the act that apply to the financial institution's conduct rather than to the exempted transfers. For example, the prohibition against compulsory use of EFTs in section 913 of the act—in regard to credit or employment (see discussion below in § 205.10(e))—remains applicable.

When the Board adopted the exemption in 1982, many small institutions that did not offer EFT services such as ATM access benefitted from the exemption. Given the growth in assets of financial institutions in the past ten years, increasing the asset-size cutoff of the exemption to $100 million could reduce burden without lessening the extent of consumer protection originally provided. Because many small institutions now offer a variety of EFT services, it appears that only a limited number of institutions would be exempted from Regulation E under the proposed increase. The Board solicits comment on the proposed increase in the exemption level. In addition, the Board requests comment on other ways the burden on small institutions could be reduced without sacrificing the consumer protections intended by the act.

Questions have been raised about the impact of Article 4A of the Uniform Commercial Code (UCC) on the small institution exemption. In the revised commentary to Regulation E, the Board clarifies that Article 4A is not applicable to the preauthorized transfers that qualify for the small institution exemption. Article 4A applies primarily to large-dollar commercial wire transfers made, for example, via Fedwire, CHIPs, SWIFT, and Telex. Section 4A–108 excludes any transaction that is subject to the EFTA from coverage under Article 4A. The question is whether the transfers initiated by small financial institutions that take advantage of the regulatory exemption may be subject to the requirements of Article 4A as a consequence. For example, would a direct deposit to a consumer account at a small bank be covered by Article 4A if exempt from Regulation E? The Board regards these preauthorized transfers as remaining subject to certain requirements of the EFTA, and therefore not covered by Article 4A. The Board solicits comment on whether specific language is needed in the regulation to clarify this issue.

The Board proposes deleting footnote 1a, which refers to sections 913, 915, and 916 of the EFTA. Section 913 places restrictions on the compulsory use of EFTs. For example, an institution may not condition the extension of credit on repayment by preauthorized debit. The statutory language from section 913 has been incorporated in proposed § 205.10(e). Sections 915 and 916 provide for civil and criminal liability, respectively, for violations of the EFTA. References to sections 915 and 916 are contained in proposed § 205.3(c)(5)(ii). The Board has also added cross-references to § 205.10 and sections 915 and 916 in the appropriate paragraphs to replace footnote 1a.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

Current § 205.4 describes certain requirements under the regulation. The Board proposes to consolidate the general disclosure requirements currently dispersed throughout the regulation in this section. In addition to adding paragraph (a), the proposal contains various editorial changes including a reordering of the section; no substantive change is intended.

Paragraph (a)—Form of Disclosures

The proposal incorporates the format requirements for disclosures currently found in §§ 205.7(a) and 205.9. The Board interprets these requirements as generally applying to all disclosures, in addition to the terminal receipts and periodic statements required by the regulation. The phrase "in a form the consumer may keep" would replace the wording "the financial institution shall make available to the consumer a written receipt of the transfer(s) * * *." currently contained in § 205.9(a). The proposed change is consistent with language in Regulation Z (12 CFR 226.17(a)) and Regulation DD (12 CFR 230.3(a)), for example. The Board does not consider this to be a substantive change, as the proposed language is drawn from the current commentary.

The paragraph also incorporates language currently in § 205.9(e) that permits an institution to use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of the regulation.

Section 205.5—Issuance of Access Devices

The proposal contains extensive editorial changes to this section, including the addition of headings to help distinguish the rules for solicited and unsolicited issuance of access devices.

The proposal deletes the obsolete language in current § 205.5(a)(3), a paragraph that grandfathered renewals of pre-1979 access devices from the requirements of the section. In addition, the Board proposes to move the provisions relating to the Truth in Lending Act (TILA) contained in current § 205.5(c) to proposed § 205.12 to simplify the regulation by placing all references to TILA in the same section. (See the discussion of § 205.12 below.)

Footnote 1b, which provides guidance on issuance of an access device for a joint account, has been deleted from the regulation and moved to the commentary.

Section 205.6—Liability of Consumer for Unauthorized Transfers

Section 205.6 specifies the rules governing consumer liability for unauthorized use. The proposal significantly revises the section in an effort to simplify the text and make it easier to understand.

The Board proposes moving explanatory or illustrative material to the commentary. This includes the parenthetical in current § 205.6(a)(2), which provides examples of how a financial institution may identify the consumer to whom an access device is issued; § 205.6(b)(3), which explains the relationship between the various tiers of liability; and examples of extenuating circumstances that would permit delayed notification by consumers in current § 205.6(b)(4). The provisions in current § 205.6(d) concerning the

relation to the TILA now appear in proposed § 205.12.

Paragraph (a)—Conditions for Liability

The current regulation appears to condition consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). The commentary, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers (Q6–1). The Board interprets section 909 of the EFTA as precluding consumer liability for unauthorized transfers not involving an access device until 60 days after transmittal of the periodic statement reflecting the transfer. At that time, the consumer could be subject to unlimited liability for those transfers occurring after the 60 days.

The proposal incorporates the current commentary position that a consumer could be held liable for unauthorized EFTs that did not involve an access device. The Board believes a consumer cannot, however, be held liable for unauthorized transfers occurring before the 60-day period expires.

The proposed section slightly alters the current rule by requiring that a financial institution provide all of the disclosures required by § 205.7 in order to impose liability on the consumer. Currently § 205.6(a)(3) requires that only three of the disclosures from § 205.7 be provided before a consumer can be held liable for unauthorized transfers. The Board believes this proposed change would not impose a significant additional burden as institutions must initially provide *all* of the disclosures to comply with § 205.7(b). The Board solicits comment on whether this change increases the risk of liability for institutions.

Paragraph (b)—Limitations on Amount of Liability

Proposed paragraph (b) incorporates the substance of current paragraphs (b) (limitations on amount of liability) and (c) (notice to financial institution). In addition, the proposal spells out more clearly each of the three tiers of a consumer's liability ($50, $500, or unlimited). Subheadings provide further clarification.

Section 205.7—Initial Disclosures

The proposal includes structural and editorial changes to this section. To provide greater clarity, text has been organized into separate paragraphs on timing and content of disclosures, and subheadings have been added to make the section easier to understand. Format requirements have been moved to proposed § 205.4(a).

The provision in current § 205.7(a)(1), giving financial institutions the option of informing the consumer about the advisability of promptly reporting lost or stolen access devices, has been moved to the commentary.

The Board proposes to move the error resolution notice from current § 205.7(a)(10) to appendix A (Model Form A–3), to streamline the regulation and place all model disclosures together.

The proposal deletes as obsolete current § 205.7(b) regarding disclosures for accounts that predate the statute.

Paragraph (a)(3)—Business Days

As described in the supplemental information to paragraph (d), the Board proposes to change the definition of business day to mean a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Accordingly, initial disclosures would have to include the revised definition of business day to assist consumers in understanding the timing provisions of the liability and error resolution rules under the regulation.

Section 205.8—Change in Terms Notice; Error Resolution Notice

The proposal makes two substantive changes in this section. In addition, the Board proposes to restructure the requirements of § 205.8 and add subheadings to make it easier to understand.

Paragraph (a)(1)—Prior Notice Required

Section 905(b) of the EFTA requires a financial institution to notify a consumer in writing at least twenty-one days before the effective date of certain adverse changes in terms or conditions contained in the initial disclosures. The Truth in Savings Act (TISA) (12 U.S.C. 4301) also requires institutions to provide a change in terms notice for deposit accounts. Section 266(c) of TISA requires a notice 30 days before the effective date of any adverse change in terms or conditions. In the proposed official staff interpretation of Regulation DD, the Board stated that if a financial institution changes a term that also triggers a change in terms notice under Regulation E, the institution may use the timing rules of Regulation E for sending the notice to affected consumers (see 59 FR 5543, February 7, 1994). The Board proposes to use its exception authority under the EFTA to extend the timing of the change-in-terms notice in Regulation E to 30 days to coincide with the timing requirements of Regulation DD in order to facilitate compliance with the requirements of both regulations. The Board solicits comment on whether it is preferable to retain the flexibility offered by the two different timing requirements.

Paragraph (a)(2)—Prior Notice Exception

Currently, prior notice is not required when an immediate change in terms is needed to maintain or restore the security of an EFT system or account. If a change is made permanent, however, a financial institution must notify the consumer "on or with the next regularly scheduled periodic statement or within 30 days" of the change if disclosure would not raise security concerns. In certain circumstances, periodic statements are sent on a quarterly basis, and thus the consumer might not receive notification for up to ninety days after the change. The Board proposes to substitute a more specific timing rule for this subsequent notice. Under the proposal, if the change is made permanent, a financial institution must provide written notice within 45 days of the change unless disclosure raised security concerns. The Board requests comment on the proposed timing requirement.

Paragraph (b)—Error Resolution Notice

The Board proposes to move the alternate error resolution notice, which an institution may give with each periodic statement in place of the longer annual notice, from current § 205.8(b) to appendix A (Model Form A–3). This will streamline the regulation and place all model disclosures in one location.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

The proposed section contains a number of editorial revisions and two substantive changes. New paragraphs and headings have been added to better organize the text concerning the timing and contents of disclosures. As noted earlier, disclosure format requirements have been moved to § 205.4. Current paragraph (e), concerning use of abbreviations, was also moved to § 205.4.

The Board proposes to move footnote 2, which permits a financial institution to make receipts available through a third party, to the commentary.

The proposal deletes two obsolete paragraphs, (f) and (g), which dealt with receipts from terminals purchased prior to 1980 and delayed effective dates for certain periodic statements.

Paragraph (a)(1)—Amount

The current regulation allows financial institutions *other* than the account-holding institution to include a charge for the transfer in the total amount of the transfer, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal. The proposal makes two changes. First, it would permit all financial institutions (including the account-holding institution) to include the charge in the total amount of the transfer, if the appropriate disclosures are made. Second, it would permit institutions to display the fee on or at the terminal—meaning either on a sign or on the ATM screen itself. The Board solicits comment on whether consumers would need added protections if the fee is displayed on the screen, for example, allowing the consumer to cancel the transaction after the fee is disclosed.

Paragraph (a)(3)—Type

This paragraph corresponds to current paragraph (a)(3) regarding disclosure of types of transfer and accounts. The examples included in the current paragraph have been moved to the proposed commentary.

Currently the regulation requires that a financial institution uniquely identify each account on the terminal receipt if more than one account of the same type may be accessed by a single access device. Footnote 3 provided an exception for instances in which the terminal is incapable of uniquely identifying each account, as well as for transactions at terminals purchased or ordered by the financial institution prior to 1980. The portion of the footnote which permits financial institutions to exclude identification of the type of account if the access device may access only one account at a terminal has been incorporated into the text of the proposed regulation at § 205.9(a)(3). The remainder of the footnote has been deleted as obsolete.

Paragraph (a)(4)—Identification

Currently, the regulation requires that financial institutions disclose on terminal receipts a number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer (§ 205.9(a)(4)). The Board proposes to delete the reference to a number or code that uniquely identifies the "consumer initiating the transfer" as superfluous. The Board believes that the remaining identification requirements sufficiently identify the consumer.

Paragraph (a)(5)—Terminal Location

This paragraph incorporates the substance of current § 205.9(b)(1)(iv). The detail contained in the current regulation which specifies appropriate location descriptions has been moved to the commentary.

The proposal deletes footnotes 5, 6, and 8 from the regulation. Footnote 5 allows institutions to omit the name of the state on terminal receipts for transfers occurring at terminals within 50 miles of the institution's main office. Footnotes 6 and 8 refer back to the text of footnote 5. The proposal incorporates this exception into the regulatory text. Footnote 5 also allows institutions to omit the name of the city and state if all of the terminals are located in the same city, and to omit the name of the state if all of the terminals are located in the same state. These exceptions have been deleted as obsolete, since most institutions that offer ATM access belong to networks operating on an interstate basis. Accordingly, few if any financial institutions are able to take advantage of the exception provided by the footnote. The Board solicits comment on whether these latter exceptions are still used by institutions.

The rules regarding terminal identification on the receipt have been slightly modified. Section 205.9(b)(1)(iv)(C) allows financial institutions to identify the terminal location by using the name of the entity at whose place of business the terminal is located, including identifying the name of the financial institution. Footnote 7 requires, however, that if the institution owns or operates terminals at more than one location, the terminal location must be identified on the periodic statement. Therefore, if an institution owns only one terminal (and does not belong to a network) it could identify the terminal using its own name. The proposal provides that the receipt and the periodic statement may provide the terminal location by giving the name of the institution if it is other than the account-holding institution. In the previous example, the institution would have to provide either a street address or a generally accepted name for the location. The Board believes this change makes the provision available to more institutions, since very few institutions own and operate only one terminal and do not belong to a network. The Board solicits comment on whether this imposes a burden on small institutions, and also on whether the change adversely reduces consumer information.

Paragraph (a)(6)—Third Party Transfer

Proposed paragraph (a)(6) incorporates the substance of current paragraph (a)(6). The excluded language, describing the use of codes or circumstances when the name of the payee cannot be duplicated by the terminal, has been incorporated into the proposed commentary.

Paragraph (b)—Periodic Statements

Paragraph (b)(1)—Transaction Information

The regulation requires financial institutions to disclose on the periodic statement either the location of the terminal as it appeared on the receipt or, if a code or terminal number was used to identify the location, both the code and a description of the location as specified in the regulation (§ 205.9(b)(1)(iv)). The proposed regulation simplifies the rule by not requiring a restatement of the code in addition to the location description (see the discussion in paragraph (a)(5) above). Proposed paragraph (b)(1)(iv) also incorporates the substance of footnote 4a, which provides that a financial institution need not identify the terminal location for transactions that involve the deposit of cash, checks, drafts, or similar paper instruments at electronic terminals.

Footnote 4 currently permits financial institutions to provide certain information on documents that accompany the periodic statement; and it permits the use of codes, if explained on either the statement or the accompanying documents. The footnote has been deleted and the substance moved to the proposed commentary. Footnote 9 allows an institution to omit the identification of third parties from periodic statements if their names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote has been deleted and the substance moved to the proposed commentary.

Paragraph (b)(3)—Fees

Currently, § 205.9(b)(3) makes clear that a periodic statement required by Regulation E need not disclose any finance charge imposed under 12 CFR 226.7(f). The proposal eliminates the reference from the regulation, and moves the substance to the commentary.

Regulation DD requires institutions that provide periodic statements to itemize by type and amount certain fees imposed during the statement period (§ 230.6(a)(3)). Currently, § 205.9(b)(3) of Regulation E requires the disclosure of any fee that was assessed against the

account during the period for EFTs. The commentary to Regulation E (Q9–31) allows fees to be shown as a total dollar figure or to be itemized in part or in full, at the institution's option. Under Regulation DD, the Board has provided that institutions may follow the more flexible rules in Regulation E for fees associated with EFTs even though Regulation DD otherwise requires a more specific disclosure. The Board solicits comment on whether regulatory burden would be eased if the disclosure requirement in Regulation E mirrored the requirement in Regulation DD (see 12 CFR 230.6(a)(3)).

Paragraph (c)—Exceptions to the Periodic Statement Requirements for Certain Accounts

The proposal incorporates current paragraphs (c), (d), (h), and footnote 9a in revised § 205.9(c), pertaining to those circumstances in which a periodic statement is not required (for example, for a passbook account that can be accessed electronically only by preauthorized transfers to the account). No substantive change is intended.

Paragraph (d)—Documentation for Foreign-Initiated Transfers

Proposed paragraph (d) incorporates the essence of current paragraph (i) without substantive change.

Section 205.10—Preauthorized Transfers

The Board has reformatted this section and has added subheadings. The proposed section contains a substantive change from the current regulation and a new paragraph on compulsory use.

Paragraph (a)—Preauthorized Transfers to Consumer's Account

Section 205.10 sets forth general requirements for preauthorized transfers. The regulation currently requires that when a consumer's account will be credited by a preauthorized transfer from the same payor at least once every 60 days, the institution must credit the funds to the account as of the day the funds are received; this requirement would be deleted from the regulation as obsolete. The Board believes that mandating when funds must be credited to an account is no longer necessary since other regulations address both when funds must be made available to the consumer and when interest must be paid on the deposit (see Regulation CC, 12 CFR part 229; Treasury regulations, 31 CFR part 210; and ACH association rules). The Board solicits comment on whether there is a need to maintain the requirement in the regulation.

Paragraph (b)—Written Authorization for Preauthorized Transfers From Consumer's Account

The requirement that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the consumer's authorization to be a writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This proposed expansion addresses developments in electronic services, such as home banking. The broader interpretation of a "writing" would include, for example, electronic authorization by the consumer recorded on a computer memory unit. The Board believes this broader interpretation is consistent with the requirement in section 907 of the EFTA that the authorization be in writing. The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. In addition, the Board solicits comment on other examples that might constitute "similarly authenticated" for purposes of this section. The Board notes that the revised requirement for a signed writing makes clear that only the consumer could produce the written authorization and not, for example, a third-party merchant on behalf of the consumer.

Paragraph (e)—Compulsory Use

Section 913 of the statute places certain restrictions on compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits. The current regulation mentions the prohibition against compulsory use in footnote 1a, which references a financial institution's continuing duty to comply with section 913. The proposed paragraph is a counterpart to the statutory provision and would clarify that the provision applies to other persons (such as employers) and not just to financial institutions.

Section 205.11—Procedures for Resolving Errors

The Board proposes to reformat this section and add subheadings to facilitate compliance. The editorial revisions, with one exception, are not intended to make substantive changes.

Provisions contained in three footnotes have been moved to the proposed commentary: Footnote 10, which permits an institution to prescribe procedures for giving an error notice; footnote 11, which defines an agreement for purposes of § 205.14; and footnote 12, which allows institutions to use a periodic statement to inform consumers that no error has occurred.

The provisions in current paragraph (i) relating to the TILA have been moved to proposed § 205.12.

Paragraph (c)—Time Limits and Extent of Investigation

Proposed paragraph (c) combines current paragraphs (c) and (d)(2) of § 205.11 concerning investigation of errors. The regulation currently requires a financial institution to provide the consumer with a written explanation, within the prescribed time period (either 10 business days or 45 calendar days), if an error occurred. If an error did not occur and the financial institution is operating under the 45-calendar-day rule, the institution has three additional days to notify the consumer of its findings. Section 908 of the EFTA makes clear the extra time is available when no error occurred, but is silent on the availability of extra time when an error is found (see the discussion in paragraph (e) below).

To facilitate compliance, the Board proposes to use its exception authority under section 904(c) to permit institutions to give notice within three business days of concluding its investigation regardless of the procedure being followed and whether or not an error has been found. The statutory language contained in section 908(d) lends itself to such an interpretation, and the Board believes the change will facilitate compliance with the section without any significant loss of consumer protection.

Paragraph (d)—Procedures if Financial Institution Determines No Error or Different Error Occurred

As discussed in the preceding paragraph, the Board proposes to allow institutions to provide notice within three business days of concluding an investigation, regardless of which time period is being followed.

Section 205.12—Relation to Other Laws

The proposed section contains the various references to the TILA and Regulation Z currently dispersed throughout Regulation E. The section also includes the standards applied by the Board in granting a state law preemption or in making an exemption determination.

Paragraph (a)—Relation to Truth in Lending

The Board proposes to consolidate all references from §§ 205.5, 205.6, and 205.11 to compliance with both the TILA and the EFTA in a single paragraph. The Board believes

consolidating these references in one section will facilitate compliance.

Paragraph (b)—Preemption of Inconsistent State Laws

Current § 205.12(a) and (b) are incorporated in proposed paragraph (b), with numerous editorial revisions.

Paragraph (c)—State Exemptions

Proposed paragraph (c) contains the rules the Board applies in granting a state exemption.

Section 205.13—Administrative Enforcement; Record Retention

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations, and record retention. With the exception of the record retention requirements, the proposal moves much of this information to the appendices.

Paragraph (b)—Record Retention

Certain provisions of the act and regulation apply to persons other than financial institutions (for example, the compulsory use provisions of section 913, which apply to all employers). The proposal differs from the current rule by limiting the record retention requirements to financial institutions, rather than covering "any person subject to the act and regulation." The Board solicits comment on whether this proposed change will produce an adverse impact on enforcement activities.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

The Board proposes substantial editorial revisions to this section to simplify the text. Text has been reorganized into appropriate categories and subheadings added for greater clarity. Footnote 13 regarding delayed effective dates has been deleted as obsolete. The Board solicits comment on other ways the section could be simplified to facilitate compliance with the regulation.

Section 205.15—Electronic Fund Transfer of Government Benefits

The Board has issued a final rule in regard to the coverage by the EFTA and Regulation E of government benefits that federal, state, and local governments disburse to recipients by means of electronic benefit transfer (EBT) programs. (See Docket No. R–0829 elsewhere in today's **Federal Register**.) Having just issued that final rule, the Board is not incorporating the provisions governing EBT programs, contained in a new § 205.15, in this proposal.

Appendix A—Model Disclosure Clauses and Forms

Most of the model disclosure clauses contained in appendix A remain unchanged. As noted earlier, the error resolution notices currently contained in §§ 205.7 and 205.8 have been moved from the regulation into appendix A to streamline the regulation (see Model Form A–3).

Appendix B—Administrative Enforcement

Appendix B lists the federal enforcement agencies responsible for enforcing Regulation E for particular classes of institutions.

Appendix C—Issuance of Staff Interpretations

The proposal includes a new appendix to replace current § 205.13(b) pertaining to requests for and issuance of staff interpretations of Regulation E. Much of the information contained in the current regulation, describing issuance of staff interpretations, has been deleted. The Board will continue to rely on the publication of interpretations in the official staff commentary as the primary means of interpreting the regulation. Specifically, and in keeping with the practice that has been in place for years, the proposal deletes any reference to unofficial staff interpretations that are in writing, limiting written interpretations to those that appear in the staff commentary, as revised. The Board believes this to be the most efficient and useful way to facilitate compliance.

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0830. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a hard copy version.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452–3245.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and recordkeeping requirements.

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693.

2. Sections 205.1 through 205.14 are revised to read as follows:

§ 205.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this regulation is the protection of individual consumers engaging in electronic fund transfers.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a)(1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(2) An access device becomes an *accepted access device* when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

(b)(1) *Account* means a demand deposit (checking), savings, or other

consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) *Business day* means any day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(e) *Consumer* means a natural person.

(f) *Electronic terminal* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(g) *Financial institution* means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

(h) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(i) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(j) *State* means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of the above.

(k) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employees.

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, the part applies to financial institutions. For purposes of §§ 205.10(b), (d), (e) and 205.13 of this part, the part applies to any person.

(b) *Electronic fund transfer.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

(1) Point-of-sale transfers;

(2) Automated teller machine transfers;

(3) Direct deposits or withdrawals of funds;

(4) Transfers initiated by telephone; and

(5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(c) *Exclusions from coverage.* The term electronic fund transfer does not include:

(1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization services.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument which does not directly result in a debit or credit to a consumer's account.

(3) *Wire transfers.* Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or federal agency.

(5) *Automatic transfers by account-holding institution.* Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that:

(i) Is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution; and

(ii) Does not take place under a telephone bill-payment plan or other written agreement in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

§ 205.4 General disclosure requirements; jointly offered services.

(a) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of the part.

(b) *Additional information; disclosures required by other laws.* Information or disclosures required by other laws (such as the Truth in Lending Act or the Truth in Savings Act) may be combined with the disclosures required by this part.

(c) *Multiple accounts and account holders.*—(1) *Multiple accounts.* If a consumer holds more than one account at a financial institution, the institution may combine the required disclosures into a single statement.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, the financial institution need provide only one set of the required disclosures and it may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. An institution that provides electronic fund transfer services under an agreement with other institutions need make only those disclosures required by §§ 205.7 and 205.8 of this part that are within the purview of its relationship with the consumer for whom it holds an account.

§ 205.5 Issuance of access devices.

(a) *Solicited issuance.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, which means the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by a complete disclosure, in accordance with § 205.7 of this part, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution verifies the consumer's identity by a reasonable means (such as by photograph, fingerprint, personal visit, or signature comparison).

§ 205.6 Liability of consumer for unauthorized transfers.

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b) of this part. If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* The extent of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time.

(3) *Periodic statement; timely notice not given.* If the consumer fails to report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time. If an access device is involved, the consumer's liability may also extend to the amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution*—(i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not an employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission by any other usual means to the institution. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer involving the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or the agreement.

§ 205.7 Initial disclosures.

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* The following disclosures shall be provided, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 of this part or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d) of this part.

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c) of this part.

(8) *Liability of institution.* A summary of the financial institution's liability to

the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to the notice concerning error resolution contained in appendix A of this part.

§ 205.8 Change in terms notice; error resolution notice.

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer at least 30 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(b) of this part if the change would result in:

(i) Increased fees;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or an account. If such a change is made permanent and disclosure would not jeopardize the security of the system or account, the financial institution shall notify the consumer in writing within 45 days of the change.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the error resolution notice set forth in appendix A of this part. Alternatively, an institution may include an abbreviated notice substantially similar to the error resolution notice set forth in appendix A on or with each periodic statement required by § 205.9(b) of this part.

§ 205.9 Receipts at electronic terminals; periodic statements.

(a) *Receipts at electronic terminals.* A financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account or accounts to or from which funds are transferred. The type of account may be omitted if the access device used may access only one account at that terminal.

(4) *Identification.* A number or code that uniquely identifies the consumer's account or the access device used to initiate the transfer.

(5) *Terminal location.* The location or an identification of the terminal where the transfer is initiated (such as a code or terminal number). The location shall include the city and state (the state may be omitted for terminals that are within 50 miles of the account-holding institution's main office) or foreign country and one of the following:

(i) The street address;

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For accounts to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account or accounts to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location in a form set forth in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account to which the statement pertains.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under § 205.10(a)(1)(iii) of this part.

(c) *Exceptions to the periodic statement requirements for certain accounts*—(1) *Preauthorized transfers to accounts.* A financial institution need not send a monthly periodic statement for accounts that may only be accessed by preauthorized transfers to the account if:

(i) *Passbook accounts.* The financial institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the institution sends the periodic statement quarterly.

(2) *Intra-institutional transfers.* If an electronic fund transfer is initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account and by intra-institutional transfers described in paragraph (c)(2), but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1).

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this regulation if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 205.11 of this part.

§ 205.10 Preauthorized transfers.

(a) *Preauthorized transfers to consumer's account*—(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after it occurs;

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Telephone.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice if the payor gives the consumer positive notice that the transfer has been initiated.

(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment*—(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

(d) *Notice of transfers varying in amount*—(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send written notice of the amount and date of the transfer to the consumer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

§ 205.11 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types included.* The term "error" means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with § 205.9 or § 205.10(a) of this part; or

(vii) The consumer's request for documentation required by § 205.9 or § 205.10(a) of this part or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.

(2) *Exclusions.* The term "error" does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) *Notice of error from consumer*—(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph(a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that was requested under paragraph (a)(1)(vii) of this section, the notice is timely if received by the financial institution within 60 days of transmitting the requested information.

(c) *Time limits and extent of investigation*—(1) *Ten-day period.* A financial institution shall promptly investigate and determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days after receiving a notice of error, provided the institution:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and it has satisfied the requirements of § 205.6(a) of this part, the institution may withhold a maximum of $50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) It requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T (credit by brokers and dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days of completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The applicable time periods in this subsection shall be 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

(i) Was not initiated within a state; or

(ii) Resulted from a point-of-sale debit card transaction.

(4) *Investigation.* With the exception of transfers covered by § 205.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph if it determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of the investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. The institution shall, upon request, promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notice; and honor items as specified in the notice. The institution need only honor items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except that the institution shall investigate an error asserted by the consumer following receipt of information requested under paragraph (a)(1)(vii) of this section.

§ 205.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined under Regulation Z (12 CFR 226.12(a)(2), footnote 21), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions only under a preexisting agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; and

(iii) A consumer's liability for an unauthorized electronic fund transfer and the investigation of an alleged error that involves an extension of credit, if the extension of credit occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z, which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) The issuance of a credit card that is also an access device, except as provided in paragraph (a)(1)(ii) of this section.

(b) *Preemption of inconsistent state laws*—(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of any state, financial institution, or other interested party, whether the act and this regulation preempt state law relating to electronic fund transfers. Only those state laws that are inconsistent with the act and this regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this regulation if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and the regulation if it:

(i) Requires or permits a practice or act prohibited by the federal law;

(ii) Provides for consumer liability for unauthorized electronic fund transfers that exceed the limits imposed by the federal law;

(iii) Allows longer time periods than the federal law for the investigation and correction of errors alleged by a consumer, or fails to require the crediting of the consumer's account during the investigation of errors as set forth in § 205.11(c)(2)(i) of this part; or

(iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the federal law.

(c) *State exemptions*—(1) *General rule.* Any state may apply to the Board for an exemption from the requirements of the federal law for any class of electronic fund transfers within the state. The Board shall grant an exemption if the Board determines that:

(i) Under state law that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) When an exemption has been granted, the requirements of the applicable state law shall constitute the requirements of the federal law, for the purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

§ 205.13 Administrative enforcement; record retention.

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in appendix B of this part.

(b) *Record retention*—(1) A financial institution shall retain evidence of compliance with the requirements imposed by the act and this regulation for a period of not less than two years. Records may be stored by use of

microfiche, microfilm, magnetic tape, or any other method capable of accurately retaining and reproducing information.

(2) A financial institution having actual notice that it is the subject of an investigation or an enforcement proceeding by an agency charged with monitoring compliance with the act and this regulation, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by court or agency order.

§ 205.14 Electronic fund transfer service provider not holding consumer's account.

(a) *Electronic fund transfer service providers subject to regulation.* An electronic fund transfer service provider that does not hold the consumer's account qualifies as a financial institution subject to this regulation if it:

(1) Issues an access device to a consumer;

(2) Provides electronic fund transfer service to the consumer by allowing the access device to be used to access the consumer's account held by another financial institution; and

(3) Has no agreement with the account-holding institution regarding service involving that access device.

(b) *Compliance by electronic fund transfer service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The electronic fund transfer service provider shall provide the disclosures and documentation required by §§ 205.7, 205.8, and 205.9 of this part that are within the purview of its relationship with the consumer, but need not furnish a periodic statement to the consumer under § 205.9(b) of this part if the service provider:

(i) Issues a debit card (to be used by the consumer to initiate electronic fund transfers) bearing the service provider's name and an address or telephone number for consumer inquiries or for consumers to give notice of error;

(ii) Provides the consumer a notice concerning transactions made with the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) Provides, on or with the receipts required by § 205.9(a) of this part, the address and telephone number to be used for an inquiry, or to give notice of an error, to report the loss or theft of the debit card;

(iv) Transmits to the account-holding institution the information specified in § 205.9(b)(1) of this part in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) Extends the time period set forth in § 205.6(b) (1) and (2) of this part for notice of loss or theft of a debit card, from two business days to four business days after the consumer learns of the loss or theft; and

(vi) Extends the time periods set forth in §§ 205.6(b)(3) and 205.11(b)(1)(i) of this part for reporting unauthorized transfers or errors, from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution*—(i) *Extension of error notification period.* The electronic fund transfer service provider shall extend by a reasonable time the period specified in § 205.11(b)(1)(i) of this part in which notice of an error must be received if a delay resulted from the initial attempt by the consumer to notify the account-holding institution.

(ii) *Disclosure of provisional credit.* The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 205.11(c)(2)(ii) of this part.

(iii) *Error occurred.* If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 205.11(c)(2)(i) of this part.

(iv) *No error occurred.* If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall then notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part. If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the act and this regulation with respect to electronic fund transfers made by the electronic fund transfer service provider except as follows:

(1) The account-holding institution shall provide a periodic statement describing each electronic fund transfer involving transactions initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) The account-holding institution shall provide, upon request, information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part.

3. Appendices A and B are revised, and Appendix C is added to part 205 to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

A–1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
A–2—Model Clauses for Initial Disclosures (§ 205.7(b))
A–3—Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))
A–4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))

A–1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

Financial institution may add validation instructions here

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

Financial institution may add validation instructions here

A–2—Model Clauses for Initial Disclosures (§ 205.7(b))

(a) *Consumer Liability (§ 205.7(b)(1)).* (Tell us AT ONCE if you believe your [card] [code] has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more the $50 if someone used your [card][code] without your permission. (If you believe your [card] [code] has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can

prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

(c) *Business days (§ 205.7(b)(3)).* For purposes of these disclosures, our business days include every day other than Saturday, Sunday or one of the federal holidays.

(d) *Transfer types and limitations (§ 205.7(b)(4))*—(1) *Account access.* You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Limitations on frequency of transfers.*—(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Limitations on dollar amounts of transfers*—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) *Fees (§ 205.7(b)(5))*—(1) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge.* We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality (§ 205.7(b)(9)).* We will disclose information to third parties about your account or the transfers you make:

(1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

(g) *Documentation (§ 205.7(b)(6))*—(1) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, [we will let you know if the deposit is [not] made.] [the person or company making the deposit will tell you every time they send us the money] [you can call us at [insert telephone number] to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement [unless there are no transfers in a particular month. In any case you will get the statement at least quarterly].

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

(h) *Preauthorized payments (§ 205.7(b)(6), (7) and (8))*—(1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. [We will charge you [insert amount] for each stop-payment order you give.]

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. [You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.]

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) *Financial institution's liability (§ 205.7(b)(8)).* If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- There may be other exceptions stated in our agreement with you.

A–3—Model Forms for Error Resolution Notice

1. Initial and annual error resolution notice §§ 205.7(b)(10) and 205.8(b))

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

2. Error resolution notice on periodic statements § 205.8(b)

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need

more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

A–4—Model Form for Service-Providing Institutions § 205.14(b)(1)(ii)

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

Appendix B to Part 205—Federal Enforcement Agencies

The following list indicates which Federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks, and Federal branches and Federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency where the institution is located.

State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act

Federal Reserve Bank serving the District in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Division of Consumer Affairs, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Brokers and Dealers

Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

Retailers, Consumer Finance Companies, Certain Other Financial Institutions, and all others not covered above

Federal Trade Commission, Electronic Fund Transfers, Washington, DC 20580.

Appendix C to Part 205—Issuance of Staff Interpretations

Official Staff Interpretations

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4680 Filed 3–2–94; 12:38 pm]

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0831]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Official Staff Interpretation.

SUMMARY: The Board is publishing for comment a proposal to revise the official staff commentary to Regulation E (Electronic Fund Transfers). This proposal is part of the Board's current review of Regulation E. The commentary interprets the requirements of Regulation E in order to facilitate compliance by financial institutions that offer electronic fund transfer services to consumers. The proposed revisions change the question and answer format to a narrative one in order to make the commentary easier to use and to conform it with the format of the Board's other staff commentaries. It also includes interpretative provisions previously contained in the regulation that were more explanatory in nature. The proposal includes additional interpretations on matters not previously addressed.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments should refer to Docket No. R–0831 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). In 1981, the Board published an official staff commentary to Regulation E. The commentary substitutes for individual official staff interpretations and is designed to facilitate compliance and provide protection from civil liability, under section 915(d)(1) of the act, for financial institutions that act in conformity with it.

The question and answer format of the present commentary was designed to make compliance easier by providing specific answers, in nontechnical language, to commonly asked questions. The Board proposes to replace the current approach with a narrative format, similar to other commentaries issued by the Board. The proposed change is intended to provide more general applicability, as the current format usually relies on specific factual situations and often restricts the scope of an interpretation.

The order of comments in the proposal corresponds with the new sections in the regulatory proposal. Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets.

The proposed commentary incorporates text that was moved from the regulation because it is more explanatory in nature than regulatory. In addition, a number of comments would be deleted as obsolete. The Board solicits comment on whether deleting any of these comments creates confusion as to the Board's current interpretation of a particular matter.

The section-by-section description that follows points out those provisions that differ in some significant way from the current commentary. Similarly, those portions of the current regulation that would be moved to the commentary are also discussed. Comments in the existing commentary will be referred to as "questions" and will be cited by the section number and the number of the question. For example, Q2–11 would be the citation for question number 11 in the commentary to § 205.2. As the substance of many questions does not change in the new format, those comments are not specifically discussed. At the beginning of each section of the proposed commentary is a listing that matches existing comments with the proposed new commentary provisions. It also provides a listing of comments that would be deleted from the commentary, comments that are new, and comments that would be moved to other sections.

(2) Form of Comment Letters

Comment letters should refer to Docket No. R–0831. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

(3) Explanation of Proposed Revisions

Section 205.2—Definitions

New	Old
(a)–1	Q2–1.
(b)–1	Q2–2, Q2–3, Q2–4, Q2–5, Q2–5.5.
(b)–2	Q3–20, Q3–21.
(d)–1	Q2–8.
(f)–1	Q2–25.5, Q2–23.
(f)–2	Q2–24.
(f)–3	Q2–25.
(k)–1	Q2–26.
(k)–2	Q2–27.
(k)–3	Q2–27.
(k)–4	Q2–28.

Comments Deleted

Q2–6: Business day—substantially all business functions
Q2–7: Business day—duration
Q2–9: Business day—short hours
Q2–22: Electronic terminal—telephone bill payment

Paragraph 2(b)(2)

In the regulatory proposal, the exemption for trust accounts has been incorporated into the definition of account. Accordingly, Q3–20 (custodial agreements) and Q3–21 (trust accounts) would be included in this section. The change mirrors the statutory definition of account.

(d) Business Day

The regulatory proposal includes a new definition of business day. Currently, the term is defined as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. The proposal defines a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Q2–6, Q2–7 and Q2–9 provide guidance on interpreting "substantially all business functions" and would be deleted as obsolete.

(k) Unauthorized Electronic Fund Transfer

Proposed comment (k)–2 incorporates Q2–27, which provides that when the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the consumer notifies the financial institution that transfers by that person are no longer authorized. The Board solicits comment on whether financial institutions should be required to disclose a consumer's liability in this instance as part of the initial disclosures of § 205.7. While institutions are required to provide a summary of the consumer's liability under § 205.6 in the initial disclosures, the current model clauses do not refer to this type of situation.

Section 205.3—Coverage

New	Old
(a)–1	New (revised Q9–15).
(a)–2	New (foreign applicability).
(b)–1	Q2–11, reverses Q2–16, Q2–18, Q2–19, Q2–21.5.
(b)–2	Q2–10, Q2–12, Q2–21.
(c)(2)–1	Q3–1.
(c)(3)–1	Q3–3.
(c)(3)–2	New (UCC Article 4A/wire transfer).
(c)(3)–3	New (similar fund transfer systems).
(c)(4)–1	New (securities exemption).
(c)(4)–2	Q3–3.5, Q3–3.6, new (margin call).
(c)(5)–1	Q3–8, Q3–9, Q3–10, Q3–11, Q3–12.
(c)(5)–2	Q3–13.
(c)(6)–1	Q3–14, Q3–15, Q3–16, Q3–19.5.

New	Old
(c)(6)–2	Q3–17, Q3–18, Q3–19, new (facsimile machine).
(c)(7)–1	New (UCC Article 4A/small institutions).

Comments Deleted

Q2–12.5: Fund transfer—withholding of income tax on interest
Q2–12.6: Fund transfer—EBT
Q2–13: Fund transfer—withdrawal at another institution
Q2–14: Fund transfer—check truncation
Q2–15: Fund transfer—payee information, nonelectronic form
Q2–17: Fund transfer—ACH
Q2–20: Fund transfer—preauthorized debits by paper drafts, ACH
Q3–2: Wire transfer—instructions on magnetic tape
Q3–4: Telephone transfer plans—applicability of intrainstitutional exemption
Q3–5: Compulsory use—preauthorized loan payments
Q3–22: Small institutions exemption—grace period

Comments Moved

Q3–6, Q3–7, and Q3–7.5 (see proposed commentary to § 205.10(e))
Q3–20 and Q3–21 (see proposed commentary to § 205.2)

Section 205.3 of the proposed regulation is a new section on the regulation's coverage. It includes the existing language on the scope of Regulation E, as well as the definition of EFT and the exemptions from the regulation.

3(a) General

To correspond with the regulatory proposal, the commentary proposal consolidates existing and new comments on the regulation's coverage. Q9–15, which specifies when periodic statements are required, also details the types of accounts subject to the requirements of the regulation and has been incorporated into comment (a)–1.

Proposed comment (a)–2 is new. It explains the application of Regulation E in situations involving foreign-based financial institutions, consumers who are not U.S. citizens, or both. Language for this proposed comment was modeled upon the commentary to Regulation Z on foreign applicability (12 CFR part 226, supp. I, comment 1(c)–1). The Board requests comment on whether the scope of the proposed comment offers sufficient coverage of foreign-related EFTs.

(b) Electronic Fund Transfer

In the regulatory proposal, the definition of "electronic fund transfer" (currently § 205.2(g)) has been incorporated into the coverage section as the definition is central to determining coverage under the regulation. The proposed commentary reflects this change and consolidates in this section the majority of questions pertaining to EFTs. A number of comments have been deleted due to a change in Board position. For example, Q2–12.6 deals with the electronic payment of government benefits and states that such transfers are not subject to Regulation E. As the Board has adopted amendments to Regulation E extending coverage to electronic benefit transfer programs established by federal, state, or local government agencies, Q2–12.6 has been deleted (see Docket No. R–0829 in today's **Federal Register**).

Proposed comment (b)–1 provides examples of EFTs subject to Regulation E. The comment incorporates Q2–19, and reverses Q2–16 to achieve consistency. Q2–16 states that credits to consumers' accounts made by a composite check accompanied by a magnetic tape containing payee information are not EFTs for purposes of Regulation E. Q2–19, on the other hand, states that debits made to consumer accounts by use of a magnetic tape containing consumers' billing information will be considered EFTs covered by the regulation even if all the debits are combined on one composite check sent to the payee. The proposed comment treats both credits and debits to consumer accounts by use of composite checks as EFTs.

Proposed comment (b)–2 provides examples of EFTs that are not covered by the regulation. The comment generally states that any payment that does not debit or credit a consumer asset account is not an EFT. It also incorporates Q2–10 and Q2–12. Q2–10 provides that a EFT excludes not only payments made by check, draft, or similar paper instrument at an electronic terminal, but also payments in currency since they do not debit or credit a consumer's account. Q2–12 provides that payroll allotments are transfers not covered by Regulation E; an example is a sum designated by the consumer to be deducted from payroll to repay a debt of the consumer. This amount is deducted before a deposit is made to the consumer's account and so the payroll allotment is not a debit to a consumer asset account.

(c) Exclusions From Coverage

The regulatory proposal incorporates the exemptions from current § 205.3 into the expanded section on coverage. The Board believes having coverage and exemption provisions in one section simplifies the analysis of whether or not compliance with the regulation is required.

Two new comments address the relationship of Regulation E to Article 4A of the Uniform Commercial Code (UCC). Article 4A provides comprehensive rules governing the rights and responsibilities arising from wire transfers. It applies primarily to large-dollar, commercial wire transfers made via Fedwire, Clearing House Interbank Payments Systems (CHIPS), Society for Worldwide Interbank Payments Systems (SWIFT) and Telex.

(c)(3) Wire Transfers

UCC § 4A–108 provides that Article 4A does not cover a fund transfer any part of which is governed by the EFTA. In drafting Article 4A, the National Conference of Commissioners on Uniform State Laws stated that if a fund transfer is made in part by Fedwire and in part via automated clearinghouse (ACH), because the EFTA applies to the ACH part of the transfer, Article 4A does not apply to any part of the transfer. Institutions that offer Fedwire services have been concerned that these transfers would lose the legal certainty offered by complying with the requirements of Article 4A if some part of the transfer was subject to the EFTA. This concern must be balanced with the potential of subjecting consumers to full liability for unauthorized transfers merely because some part of the transfer, which would ordinarily be covered by Regulation E, was made via Fedwire.

In 1990, the Board adopted a comprehensive revision of subpart B to Regulation J (55 FR 40791, October 5, 1990). Regulation J (12 CFR part 210) specifies the rules applicable to funds transfers handled by Federal Reserve Banks. To ensure that the rules for all funds transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A–107 to determine that subpart B, including the provisions of Article 4A, applies to all funds transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B.

Even with this relief, the Board has received questions about the effect of dual coverage. For example, if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer would be covered by both Regulation E and Article 4A. UCC section 4A–202 encourages verification of the authenticity of a Fedwire

payment order pursuant to a "security procedure" established by agreement between the customer and a receiving bank. Putting such an agreement in writing could be deemed to constitute a telephone transfer plan for purposes of Regulation E. The Board believes that if an institution offers Fedwire payments as a service to consumers and does not make the service available in conjunction with a telephone plan subject to Regulation E, then the protections of Article 4A are applicable to the transfer. Proposed comment (c)(3)–2 explains that if the service is offered as a product separate from the more typical telephone bill-payment or other prearranged plan, then any security procedure followed to establish an agreement will not be deemed to create a telephone plan subject to Regulation E.

The wire transfer exemption extends to any transfer of funds through Fedwire or through a similar fund transfer system. Comment (c)(3)–3 provides examples of such systems.

(c)(4) Securities and Commodities Transfers

The Board has proposed to revise the current exemption for certain securities and commodities transfers contained in § 205.3(c). The exemption would apply to a transfer for the purchase or sale of securities or commodities, even if the security or commodity is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission so long as it is sold by a registered broker-dealer or futures commission merchant (for example, municipal securities). Proposed comment (c)(4)–1 provides additional clarification on this point.

Proposed comment (c)(4)–2 provides examples from the current commentary of covered and exempt securities transfers (Q3–3.5 and Q3–3.6). The comment also contains a new example of an exempt transfer, that of a telephone order to exercise a margin call. The Board believes that the exercise of a margin call is so closely linked to the purchase or sale of securities as to come within the purview of the exemption. The Board solicits comment on what additional examples may be needed to illustrate the extent of this exemption.

(c)(6) Telephone-Initiated Transfers

Proposed comment (c)(6)–2 incorporates examples contained in the current commentary of covered transfers under a written plan (Q3–17, Q3–18 and Q3–19). The proposal also contains a new example, use of a facsimile machine to initiate a transfer. The Board has received questions about plans in which the consumer uses facsimile paper designed to look like a paper "draft" to initiate a transfer sent via facsimile machine. The EFTA's definition of EFT includes any transfer through a "telephonic instrument." The Board considers a facsimile machine to be the functional equivalent of a telephone. Since it is a telephone, it is inconsequential whether information about the transfer is transmitted orally or by facsimile. The Board requests comment on this interpretation and solicits additional examples of both covered and exempt transfers.

(c)(7) Small Institutions

Proposed comment (c)(7)–1 clarifies that Article 4A is not applicable to transfers exempt from Regulation E under the small institution exemption. As noted above, the drafters of Article 4A considered the EFTA and Regulation E to be mutually exclusive. The Board has been asked whether preauthorized transfers by small institutions (currently, institutions with assets under $25 million) which are largely exempt from Regulations E are thus subject to the requirements of Article 4A by virtue of the exemption (for example, a direct deposit to a consumer's account at a small bank). As noted in the proposed comment, the Board regards the transfers as generally subject to the EFTA, and therefore not covered by Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

New	Old
(a)–1	Q7–3, Q9–4.
(a)–2	New (revises Q7–4).

Comments Deleted

Q4–1: Shared system—scope of disclosures
Q4–2: Shared system—disclosures on behalf of another institution
Q4–3: Multiple accounts and account holders (clarified in § 205.4(c)(1) of proposed regulation)

The Board's regulatory proposal includes both general disclosure requirements and special requirements for providing the various disclosures in a revised § 205.4.

(a) Form of Disclosures

The Board has consistently interpreted the format requirements currently contained in §§ 205.7(a) and 205.9 as generally applicable to all of the disclosures required by the regulation. Comments incorporating Q7–3 and Q9–4 have been moved to this section of the commentary to provide additional guidance on disclosure requirements.

Currently, Q7–4 provides that Spanish language disclosures satisfy the requirement that disclosures be readily understandable so long as disclosures in English are given to consumers who request them. Proposed comment (a)–2 provides that disclosures may be made in languages other than English, if the disclosures are available in English upon request. This is consistent with the new disclosure requirements in Regulation DD (see 12 CFR 230.3(b)).

Section 205.5—Issuance of Access Devices

New	Old
1	Q5–1.5.
(a)(1)–1	New (footnote 1b to current § 205.5(a)(1)).
(a)(2)–1	Q5–1, Q5–2.
(a)(2)–2	Q5–3.
(b)–1	Q5–6, Q5–7.
(b)–2	Q5–4.5.
(b)–3	Q5–5.
(b)–4	Q5–8.

Comment Deleted

Q5–4: Renewal or substitution—pre-February 8, 1979 device

Comments Moved

Q5–9, Q5–10 (see proposed commentary to § 205.12)

Section 205.5 provides the rules for issuance of access devices. The substance of existing commentary provisions have been incorporated into the proposal, with one addition.

(a) Solicited Issuance

(a)(1)

Footnote 1b to current § 205.5(a)(1) provides that financial institutions may issue an access device to each joint account holder for whom the requesting account holder specifically requests an access device. The footnote would be deleted from the regulation and moved to comment (a)(1)–1.

Section 205.6—Liability of Consumer for Unauthorized Transfers

New	Old
(a)–1	Q6–4, new (current § 205.6(a)(2)).
(a)–2	Q6–3.
(b)–1	Q6–5 (revised).
(b)–2	Q6–6.5.
(b)(1)–1	Q6–5 (revised).
(b)(1)–2	Q6–6 (revised).
(b)(2)–1	Q6–5 (revised).
(b)(3)–1	Q6–5 (revised).
(b)(3)–2	Q6–5 (revised).
(b)(4)–1	New (current § 205.6(b)(4)).
(b)(5)–1	Q6–7.

New	Old
(b)(5)–2	New (notice from third party).
(b)(5)–3	Q6–8.

Comment Deleted

Q6–1: Unauthorized transfers—access device not involved

Q6–2: Failure to disclose business days

Comments Moved

Q6–9, Q6–10, and Q6–11 (see proposed commentary to § 205.12)

(a) Conditions for Liability

The current regulation conditions consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). Q6–1, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers. The Board has incorporated the current commentary into the regulatory text. Accordingly, Q6–1 has been deleted.

Current § 205.6(a)(2) of the regulation requires that the institution provide a means of identifying the consumer to whom the access device is issued. The regulation currently provides example of such permissible means; this explanatory language has been moved to proposed comment (a)–1.

Current § 205.6(a)(3) of the regulation requires institutions to disclose certain information to the consumer before imposing liability for unauthorized EFTs involving the consumer's account. The information required to be disclosed is already part of the initial disclosures under § 205.7. The regulatory proposal to this section requires that an institution have complied with § 205.7(b) before imposing liability. Accordingly, Q6–2, which pertains to these disclosures, has been deleted.

(b) Limitations on Amount of Liability

Q6–5 provides examples of when the liability rules apply. Material from Q6–5, in revised form, has been incorporated into the commentary to paragraph (b).

(b)(4) Extension of Time Limits

Current § 205.6(b)(4) provides examples of what constitutes extenuating circumstances for purposes of delaying notification to the institution that an access device has been lost or stolen. The examples have been deleted from the proposed regulation and moved to comment (b)(4)–1.

(b)(5) Notice to Financial Institution

The Board has received questions about whether notice from a third party is sufficient under § 205.6. Proposed comment (b)(5)–2 indicates that such notice is considered adequate if it is communicated by a third party on the consumer's behalf.

Section 205.7—Initial Disclosures

New	Old
(a)–1	Q7–1.
(a)–2	Q7–2.
(a)–3	Q7–6.5.
(a)–4	Q7–6, new (timing of disclosures).
(a)–5	Q7–6.5.
(a)–6	Q7–5.
(b)(1)–1	Q7–8.
(b)(1)–2	Q7–7.
(b)(1)–3	New (current § 205.7(a)(1)).
(b)(2)–1	Q7–19, Q7–20.
(b)(4)–1	Q7–11.
(b)(4)–2	Q7–11.5.
(b)(4)–3	Q7–10.
(b)(5)–1	Q7–12, 7–13.
(b)(5)–2	Q7–14, 7–15.
(b)(5)–3	Q7–15.5.
(b)(9)–1	Q7–16, 7–17.
(b)(10)–1	Q7–18.
(b)(10)–2	Q7–18.5.

Comments Deleted

Q7–9: Summary disclosure of rights

Comments Moved

Q7–3, Q7–4 (see proposed commentary to § 205.4)

(a) Timing of Disclosures

Proposed comment (a)–4 expands on Q7–6, which discusses the addition of new EFT services. The current commentary requires financial institutions to provide disclosures for the additional service if it is subject to terms and conditions different from those previously described in the initial disclosures; the commentary is silent, however, as to when such disclosures should be provided. The proposed comment requires that such disclosures be given either when the consumer contracts for the new service or before the first EFT is made using the new service.

(b) Content of Disclosures

Current § 205.7(a)(1) gives financial institutions the option of including advice about promptly reporting the loss or theft of the access device or other unauthorized transfers in the summary of the consumer's liability. This language has been deleted from the proposed regulation and moved to comment (b)(1)–3.

Section 205.8—Change in Terms Notice; Error Resolution Notice

New	Old
(a)–1	Q8–6.
(a)–2	Q8–3, Q8–5.
(a)–3	Q8–4.
(a)–4	Q8–2.
(a)(2)–1	New (45 calendar days to send notice).
(b)–1	Q8–8.

Comments Deleted

Q8–1: Terms requiring change in terms notice

Q8–7: Error resolution notice—no periodic statements sent

(a) Change in Terms Notice

(a)(2) Prior Notice Exception

Proposed comment (a)(2)–1 addresses circumstances when financial institutions are required to send a subsequent notice upon making a permanent change in terms related to security. The Board proposes to extend the time period in which financial institutions must send such notice to 45 days (from the current 30 days) to allow institutions to more easily use the periodic statement as a vehicle of the consumer notice.

Section 205.9—Receipts at Electric Terminals; Periodic Statements

New	Old
(a)–1	Q9–1.
(a)–2	New (footnote 2 to current § 205.9(a)), Q9–2.
(a)–3	Q9–3.5.
(a)–4	Q9–5.
(a)–5	Q9–6.
(a)–6	Q9–4.
(a)(1)–1	New (displaying amount of fee on ATM screen).
(a)(2)–1	Q9–7.
(a)(3)–1	New (current § 205.9(a)(3)).
(a)(3)–2	New (footnote 3 to current § 205.9(a)(3)), Q–9, 9–10.
(a)(3)–3	Q9–8.
(a)(3)–4	New (current § 205.9(a)(3)), Q9–37.
(a)(3)–5	Q9–36, Q9–27.
(a)(4)–1	New (identification among accounts held by, or access devices issued by an institution).
(a)(5)–1	Q9–38.
(a)(5)–2	Q9–40.
(a)(5)(i)–1	New (current § 205.9(b)(1)(iv)(A)).
(a)(5)(ii)–1	New (current § 205.9(b)(1)(iv)(B)).
(a)(5)(iii)–1	New (current § 205.9(b)(1)(iv)(C)).
(a)(6)–1	Q9–13, new (current § 205.9(a)(6)).
(a)(6)–2	Q9–14.
(b)–1	Q9–19, 9–20.
(b)–2	New (defining periodic cycle).

New	Old
(b)–3	Q9–17.
(b)–4	Q9–18.
(b)–5	Q9–21.
(b)–6	Q9–23, new (footnote 4 to § 205.9(b)(1)).
(b)(1)–1	Q9–25.
(b)(1)(i)–1	Q9–35.
(b)(1)(iii)–1	Q9–36.
(b)(1)(iv)–1	Q9–40.5.
(b)(1)(v)–1	Q9–28.
(b)(1)(v)–2	Q9–30.
(b)(1)(v)–3	Q9–41.
(b)(1)(v)–4	Q9–43.
(b)(1)(v)–5	Q9–44.
(b)(1)(v)–6	New (footnote 9 to current § 205.9(b)(1)(v)).
(b)(3)–1	Q9–31.
(b)(3)–2	Q9–31.5.
(b)(3)–3	New (current § 205.9(b)(3)).
(b)(4)–1	Q9–32.
(b)(5)&(6)–1	Q9–33.
(c)–1	Q9–50.
(d)–1	Q9–51.

Comments Deleted

Q9–3: Receipts—information displayed on screen
Q9–10.5: Receipts—type of account, interchange system
Q9–11: Receipts—unique identifier
Q9–12: Receipts—terminal location
Q9–16: Periodic statements—frequency
Q9–24: Periodic statements—accompanying documents
Q9–29: Periodic statements—multiple transferees
Q9–34: Periodic statements—telephone numbers
Q9–39: Receipts/periodic statements—location code
Q9–42: Receipts/periodic statements—intermediate party
Q9–45: Passbook updates—when required
Q9–46: Passbook accounts—telephone notice alternative
Q9–47: Passbook updates—discarding of data
Q9–48: Passbook updates—periodic transmittals
Q9–49: Quarterly statements—compliance with regular requirements

Comments Moved

Q9–4 (see proposed commentary to § 205.4)
Q9–15 (see proposed commentary to § 205.2)
Q9–26 (see proposed commentary to § 205.11)

The Board has proposed a number of editorial revisions to § 205.9 such as adding new paragraphs and headings to better organize the text concerning timing and content of disclosures. A number of comments have been deleted from the proposed commentary to this section. Many of the current questions are very fact specific, and believed to be unnecessary in the revised commentary. No substantive changes are intended.

(a) Receipts at Electronic Terminals

Footnote 2 to current § 205.9(a) allows an account-holding institution to make terminal receipts available through third parties. The footnote would be deleted from the regulation and moved to comment (a)–2.

(a)(1) Amount

Current § 205.9(a)(1) provides that financial institutions other than the account-holding institution may include a fee for a transfer in the amount of the transfer if the fee is disclosed on the receipt and on a sign posted on or at the terminal. The regulatory proposal would modify these requirements and allow the account-holding institution to take advantage of the exception. In addition, proposed comment (a)(1)–1 provides that the requirement to display the amount of a transaction fee "on or at the terminal" could be met by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration. The Board requests comment on whether the proposed changes provide adequate notice to the consumer.

(a)(3) Type

Current § 205.9(a)(3) requires disclosure of the type of transfer and the type of consumer's account to or from which funds are transferred. It also provides examples of descriptions for such accounts. The examples would be deleted from the regulation and moved to comment (a)(3)–1. In addition, § 205.9(a)(3) provides generic descriptions for accounts that are similar in function. These examples would also be deleted from the regulation and incorporated with the substance of Q9–37 in proposed comment (a)(3)–4.

Footnote 3 to current § 205.9(a)(3) provides an exception to the requirement to disclose the type of transfer and account if the consumer can access only one account at a particular time or terminal. The exception would be deleted from the regulation and the substance moved to comment (a)(3)–2.

(a)(4) Identification

Proposed comment (a)(4)–1 clarifies that an identifying number or code that uniquely identifies the consumer's account or access device—among all accounts held by an institution or access devices issued by an institution—is sufficient to meet the requirements of the regulation.

(a)(5) Terminal Location

The current regulation includes detailed guidance for specifying the terminal location on both the receipt and periodic statement (see current § 205.9(b)(1)(iv)). While the substantive requirement to disclose the location remains unchanged, the illustrative language would be moved to comments (a)(5)(i)–1, (a)(5)(ii)–1, and (a)(5)(iii)–1.

(a)(6) Third Party Transfer

Current § 205.9(a)(6) requires that the name of any third party to or from whom funds are transferred be disclosed on the receipt. It also provides guidance on the use of codes and an exception to the disclosure requirement when the name of the payee cannot be duplicated by the terminal. This secondary information would be deleted from the regulation and moved to comment (a)(6)–1.

(b) Periodic Statements

Current § 205.9(b) provides that periodic statements must be sent for each monthly or shorter cycle in which an EFT has occurred, but at least quarterly if no transfer has occurred. As the Board believes that few institutions send a statement (for Regulation E purposes) for a cycle shorter than one month, the regulatory proposal has deleted reference to a "shorter cycle." The reference would be moved to comment (b)–1.

Proposed comment (b)–2 provides additional guidance on what is considered a cycle for purposes of Regulation E. The comment requires that financial institutions provide relevant information for the cycle or period since the last statement was issued. The Board has adopted a similar approach in the proposed commentary to Regulation DD (see 59 FR 5536, February 7, 1994). For example, if an institution may issue quarterly statements in March, June, September, and December and the consumer initiates an EFT in February, an interim statement would be provided. The comment indicates that the statement should provide information for the months of January and February. The regularly scheduled March statement would provide information only about the month of March. The proposed Regulation DD commentary provides that disclosures given on the interim statement cannot be repeated on the regularly scheduled statement. In the example above, the March statement could not repeat information disclosed on the February statement. The Board solicits comment on whether the same

approach should be adopted in Regulation E.

Footnote 4 to current § 205.9(b)(1) permits financial institutions to provide certain periodic statement disclosures on documents that accompany the statement; it also permits institutions to use codes for the disclosures if they are explained either on the statement or accompanying documents. The footnote would be deleted from the regulation and the substance moved to comment (b)–6.

Paragraph 9(b)(1)(v)

Footnote 9 to current § 205.9(b)(1)(v) provides that a financial institution need not identify on the periodic statement third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote would be deleted from the regulation and the substance moved to comment (b)(1)(v)–6.

(b)(3) Fees

Section 205.9(b)(3) provides that financial institutions must disclose the amount of any fees other than a finance charge imposed under Regulation Z, 12 CFR 226.7(f) that were assessed against the account during the statement period for EFTs. The reference to finance charges would be deleted from the regulation and moved to comment (b)(3)–3

Section 205.10—Preauthorized Transfers

New	Old
(a)(1)–1	Q10–5, Q10–6.
(a)(1)–2	Q10–1.
(a)(1)–3	Q10–7.
(a)(1)–4	Q10–8, Q10–9, New (reverses part of Q10–7).
(a)(1)–5	Q10–10.
(a)(1)–6	Q10–12.
(a)(1)–7	Q10–11.
(b)–1	Q10–17, New (example of preexisting authorization).
(b)–2	Q10–18.
(b)–3	Q10–18.6.
(b)–4	Q10–18.5.
(b)–5	New (similarly authorized).
(c)–1	Q10–19.
(c)–2	Q10–19.5.
(d)(1)–1	Q10–21.
(d)(2)–1	new (range).
(e)(1)–1	Q3–7, Q3–7.5.
(e)(1)–2	New (repayment of overdrafts).
(e)(2)–1	Q3–6.

Comments Deleted

Q10–2: Notice of credit—when receipt guaranteed
Q10–3: Notice provided by payor
Q10–4: Notice provided by payor—form
Q10–13: Preauthorized credits—availability of funds
Q10–14: Preauthorized credits—posting schedule
Q10–15: Preauthorized credits—funds received prior to agreed crediting date
Q10–16: Preauthorized debits—preexisting authorizations
Q10–20: Ten–day notice of varying debits—preexisting authorizations
Q3–5: Compulsory use—preauthorized loan payments

Section 205.10 sets forth the substantive and disclosure requirements for authorizing preauthorized transfers to and from a consumer's account. The Board has proposed to expand this section to include guidance on the prohibitions against compulsory use, and corresponding commentary has been added. The section contains several new interpretations, as discussed below.

(a) Preauthorized Transfers to Consumer's Account

Regulation E currently requires financial institutions that receive preauthorized transfers to credit the funds to the consumers account as of the day the funds are received. The regulatory proposal would delete this requirement as obsolete. Accordingly, Q10–13,10–14, and Q10–15 also have been deleted.

(a)(1) Notice by Financial Institution

Section 906(b) of the EFTA and current § 205.10(a)(1) of the regulation provide that when a payor credits a consumer's account by preauthorized EFT at least once every 60 days, the account–holding institution must inform the consumer either that the transfer has or has not occurred or provide a phone number for the consumer to use to verify the transfer. Q10–7 provides that the absence of a deposit entry on a periodic statement can serve as notice that a preauthorized transfer has not occurred. Proposed comment (a)(1)–4 reverses the current position and states that the absence of a deposit entry is not negative notice. The Board believes the requirement is an affirmative duty to provide notice either positively or negatively.

(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Proposed comment (b)–1 incorporates Q10–17, which provides that a financial institution or designated payee does not need to obtain new authorizations before shifting from a paper-based to an electronic debiting system. The proposed comment also provides that a successor payee or institution may rely on a preexisting authorization to debit payments from the consumer's account, for example when an institution purchases the mortgage servicing rights from a party that previously obtained the consumer's authorization. The Board solicits comment on other instances in which a new authorization may not be necessary.

The requirement in current § 205.10(b) that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the authorization to be a signed writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This enhancement addresses developments in electronic services, such as home banking. Proposed comment (b)–5 provides an example of a consumer's authorization that is "similarly authenticated." The comment provides that for a home banking system to satisfy the requirement, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (either from the consumer's printer or from the payee). The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. For example, should the commentary require that the authorization remain in the institution's computer memory and be available to the consumer through the home banking device until it is modified or terminated? Should the commentary explicitly require that the authorization may only be provided by the consumer (by using a personal identification code) and not by a payee on the consumer's behalf? How would this change affect the stop payment rules under § 205.10(c)? The Board solicits comment on these and other issues related to the requirements of a written authorization under this section.

The Board solicits comment on two issues that have not been discussed previously in the commentary. The Board has received inquiries about telephone-initiated transfers when the consumer provides an account number to the caller and authorizes a draft or an ACH debit to be submitted against the consumer's account. The Board believes such transfers are EFTs since they are initiated by telephone and authorize the debiting of the consumer's account. The transfers are not "preauthorized transfers," however, and the rules regarding written authorization by the consumer thus are not applicable. The Board solicits comment on whether this type of transfer poses sufficient

consumer risk as to warrant special provision in the regulation or commentary.

The Board has also received questions on what are appropriate means for obtaining a consumer's authorization for preauthorized transfers. For example, the Board has been asked whether sending the consumer a check which incorporates in the endorsement an authorization for the financial institution to automatically debit the consumer's account on a monthly basis is a legitimate method for obtaining the consumer's authorization. The Board solicits comment on whether the commentary or regulation should address such format issues.

(d) Notice of Transfers Varying in Amount

(d)(2) Range

Proposed comment (d)(2)–1 provides guidance on what is an acceptable range for purposes of this section. The comment provides that an acceptable range is one that could plausibly be anticipated by the consumer. For example, if the consumer's monthly payment is approximately $50, providing a range between zero and $10,000 does not seem reasonable. The Board solicits comment on how financial institutions currently determine such a range, as well as reaction to the proposed analysis.

(e) Compulsory Use

(e)(1) Credit

The regulatory proposal incorporates the statutory restrictions against compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits into § 205.10(e). The questions pertaining to compulsory use in the current commentary (under § 205.3) have, for the most part, been incorporated into the commentary proposal. The regulatory proposal also incorporates the substance of footnote 1a to § 205.3 into proposed § 205.10(e)(1), which provides that a financial institution may require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. The commentary proposal includes a new comment (e)(1)–2 which allows an institution to use the exception even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. For example, in addition to overdraft protection, a consumer may be able to obtain cash advances directly from the credit line without going through a checking account. The Board believes that the exemption applies to such plans and that it is not practicable to distinguish between extensions of credit triggered under such plans because of the overdraft mechanism versus those advanced to the consumer by some other means.

Section 205.11—Procedures for Resolving Errors

New	Old
(a)–1	Q9–26.
(a)–2	Q11–2.
(a)–3	Q11–3.
(a)–4	Q11–4.
(b)(1)–1	Q11–8, new (example added).
(b)(1)–2	New (required submission of an affidavit).
(b)(1)–3	Q11–5.
(b)(1)–4	Q11–6.
(b)(1)–5	Q11–7.
(b)(1)–6	New (footnote 10 to current § 205.11(b)(1)(i)).
(b)(2)–1	Q11–9, new (provisional crediting).
(c)–1	New (provide notices either orally or in writing).
(c)–2	Q11–10.
(c)–3	New (strengthens Q11–31).
(c)–4	New (current § 205.11(d)(3)).
(c)–5	Q11–20, new (footnote 12 to current § 205.11(e)(2)).
(c)–6	New (current § 205.11(e)(1)), Q11–19.
(c)–7	New current § 205.11(d)(1).
(c)(2)(i)–1	New (current § 205.11(c)(3)).
(c)(3)–1	Q11–11.5.
(c)(4)–1	Q11–13.
(c)(4)–2	Q11–14.
(c)(4)–3	Q11–16.
(c)(4)–4	New (footnote 11 to current § 205.11(d)(1)).
(d)–1	Q11–17.
(d)(1)–1	Q11–25.
(d)(2)–1	Q11–23.
(d)(2)–1	Q11–24.
(e)–1	Q11–30.

Comments Deleted

Q11–1: Transfers—initiated by institution
Q11–11: Deadlines for investigation of error
Q11–12: Request for documentation—facsimile or photocopy
Q11–15: Scope of investigation—preauthorized credits
Q11–18: Crediting of interest
Q11–21: Written explanation—timing
Q11–22: Debiting of recredited funds—items to be honored
Q11–26: Documents relied on—privacy issue
Q11–27: Documents relied on—no information on relevant tapes
Q11–28: Withdrawal of error notice
Q11–29: Withdrawal of error notice

Comments Moved

Q11–32, Q11–33 (see proposed commentary to § 205.12)

Section 205.11 sets forth the regulation's procedures for error resolution. The regulatory proposal reformatted the section to facilitate compliance and the commentary provisions have accordingly been assigned. The proposed commentary contains several new comments, most of which have been removed from the regulation.

(b) Notice of Error From Consumer

(b)(1) Timing; Contents

Section 908 of the EFTA and § 205.11 of the regulation require institutions to investigate and make a final determination as to a consumer's allegation of an error within either 10 business days or 45 calendar days. Financial institutions have asked whether they can delay initiating or completing an investigation pending receipt of an affidavit related to the alleged error. Proposed comment (b)(1)–2 prohibits institutions from delaying their investigation until a consumer has produced the affidavit. The Board believes that permitting delay would allow institutions to circumvent the investigation procedures currently mandated by the act and regulation.

Footnote 10 to current § 205.11(b)(1)(i), which permits a financial institution to prescribe procedures for giving notice of an error, would be deleted from the regulation and the substance moved to comment (b)(1)–6.

(b)(2) Written Confirmation

Q11–9 provides that a financial institution does not have to have referral procedures for forwarding a written confirmation of error that is sent to the wrong address. Proposed comment (b)(2)–1 further provides that institutions operating under the 45-calendar-day rule need not provisionally credit the consumer's account when the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) Time Limits and Extent of Investigation

As noted in § 205.4, most disclosures required by Regulation E must be in writing and in a form the consumer may keep. Proposed comment (c)–1 provides that financial institutions may give the notices required by § 205.11 either orally or in writing, unless otherwise indicated in the section. This exception would not apply to a consumer's request for documentation pursuant to proposed § 205.11(a)(1)(vii).

Q11–31 articulates the Board's concern that charging consumers for the

financial institution's compliance with the regulation's error resolution procedures might have a chilling effect on the good faith assertion of errors. The Board believes that as the EFTA specifically grants the consumer error-resolution rights, institutions must avoid any deterrent to exercising such rights. To clarify its position, the Board proposes to add comment (c)–3 to explicitly prohibit institutions from charging consumers for error resolution. The Board solicits comment on the impact of such a prohibition on institutions and consumers.

Current § 205.11(d)(3) provides that a financial institution may correct an error in the amount or manner alleged by the consumer without complying with the investigation requirements of this section if it complies with all other requirements of § 205.11. The provision would be deleted from the regulation and moved to comment (c)–4.

Footnote 12 to current § 205.11(e)(2) allows financial institutions to provide the notice of correction on the periodic statement that is mailed or delivered within the time limits specified in the section. The footnote would be deleted from the regulation and moved to comment (c)–5.

Current § 205.11(e)(1) provides that if a financial institution determines an error occurred, it must correct the error including, where applicable, the crediting of interest and the refunding of any fees or charges imposed. This language would be deleted from the regulation and combined with the substance of Q11–19 in comment (c)–6. The comment would also clarify that the requirement only applies to fees imposed by the institution versus those imposed by third parties.

Paragraph (c)(2)(i)

Current § 205.11(c)(3) provides examples of when a financial institution must comply with all requirements of § 205.11 except the provisional crediting requirements. While the examples have been retained in the regulatory proposal, the language requiring compliance with other requirements of the section would be deleted and moved to comment (c)(2)(i)–1.

(c)(4) Investigation

Footnote 11 to current § 205.11(d)(1) provides examples of what does and does not constitute an agreement for purposes of this section. The explanatory language would be deleted from the regulation and moved to comment (c)(4)–4.

Section 205.12—Relation to Other Laws

New	Old
(a)–1	Q6–9, Q6–10, Q6–11, Q11–32, Q11–33.
(a)–2	Q5–9, Q5–10.
(b)–1	Q12–1, new (compliance without Board determination).
(b)–2	New (current preemption of Michigan law).

The regulatory proposal has consolidated the references to the Truth in Lending Act and Regulation Z in § 205.12. The section would also contain the rules the Board applies in determining the preemption of inconsistent state laws or in granting a state exemption. The commentary provisions have been consolidated in this section as well.

(b) Preemption of Inconsistent State Laws

Proposed comment (b)–1 incorporates Q12–1, which provides that state law may be preempted even if the Board has not issued a determination. The comment also notes that financial institutions are not protected from liability for failing to comply with state law in the absence of a preemption determination by the Board.

Proposed comment (b)–2 incorporates into the commentary an official staff interpretation preempting certain provisions of Michigan's EFT statute. Future preemption determinations would also be included in the commentary.

Section 205.13—Administrative Enforcement; Record Retention

New	Old
(b)–1	Q13–2.

Comments Moved

Q13–1 (see proposed commentary to appendix A)

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations and record retention. The regulatory proposal moved much of the detail pertaining to these topics to the appendices. With one exception, no substantive change was intended. As noted above, the information describing issuance of staff interpretations would be deleted from the regulation, including any reference to unofficial staff interpretations (which the Board no longer issues in writing). Information about procedures for the official commentary is set forth in a new appendix C.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

New	Old
(a)–1	Q14–1, Q14–2.
(a)–2	Q14–3.
(b)–1	New (formerly § 205.14(a)(1).
(b)(1)–1	Q14–4.
(b)(2)–1	Q14–6.
(c)(1)–1	Q14–7.

Comment Deleted

Q14–5: Periodic statement—issuance of card

Section 205.14 details the requirements for financial institutions that issue access devices and provide EFT services to consumers even though the consumers' accounts are held by a second institution.

(b) Compliance by Electronic Fund Transfer Service Provider

Current § 205.14(a)(1) provides that the service-providing institution shall reimburse the consumer for unauthorized EFTs in excess of the limits set by § 205.6. This provision would be deleted from the regulation and moved to comment (b)–1.

Section 205.15—Electronic Fund Transfer of Government Benefits

Proposed comments interpreting the requirements of this section will be published at a later date.

Appendix A—Model Disclosure Clauses and Forms

Old	New
Q13–1	Appendix A–1.

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693.

2. In part 205, Supplement I would be revised to read as follows:

Supplement I to Part 205—Official Staff Interpretations

Section 205.2—Definitions

(a) Access device

1. *Examples.* The term access device includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer to or from

a consumer account. The term does not include magnetic tapes or other devices used internally by a financial institution to initiate electronic transfers.

(b)(1) Account

1. *Consumer asset accounts.* The term consumer asset account includes:

- Club accounts, such as Christmas or vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
- A retail repurchase agreement (repo) which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

The term "consumer asset account" does not include:

- Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 205.2(b)(2).
- Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.
- Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph (b)(2)

1. *Bona fide trust agreements.* The term bona fide trust agreement is not defined by the act or regulation. Therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of this part.

(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight and notice is effective even if given outside normal business hours. The regulation does not require, however, that telephone lines be available on a 24-hour basis.

(f) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

- A consumer uses a debit card at a public telephone to pay for the call.
- A consumer initiates a transfer by the equivalent to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E if a debit card is used to initiate the transaction.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of the consumer's access device (using the consumer's personal identification number, for example) are electronic fund transfers and are subject to other requirements of the regulation. If the access device is used only for identification purposes or for determining the account balance, the transfers are not electronic fund transfers for purposes of the regulation.

(k) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes the access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery, fraud.* An unauthorized electronic fund transfer includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An electronic fund transfer at an automated teller machine (ATM) is an unauthorized transfer if the consumer is induced by force to initiate the transfer.

Section 205.3—Coverage

(a) General

1. *Accounts covered.* The requirements of the regulation apply only to accounts for which an agreement for electronic fund transfer services to or from the account has been entered into between:

- The consumer and the financial institution (including accounts for which an access device has been issued to the consumer, for example);
- The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

The fact that membership in an automated clearing house requires a participating financial institution to accept electronic fund transfers to accounts at the institution does not make every account of that institution subject to the regulation.

2. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer electronic fund transfer services to residents of any state (including resident aliens). It covers any account located in the United States through which electronic fund transfer services are offered to a U.S. resident. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered or based in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the electronic fund transfer services are offered in connection with an account held by the consumer in a state as defined in § 205.(j).

(b) Electronic Fund Transfer

1. *Fund transfers covered.* The term electronic fund transfer includes:

- A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for electronic fund transfers to or from the account to which the deposit is made.
- Any transfer sent via an automated clearing house. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.
- A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.
- A transfer resulting from a debit-card transaction, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

2. *Fund transfers not covered.* The term electronic fund transfer does not include:

- A payment that does not debit or credit a consumer asset account, such as payroll allotments to a creditor to repay a credit extension that are deducted from salary payments and not from consumer accounts, or any payment made in currency by a consumer to another person at an electronic terminal.
- A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

(c) Exclusions From Coverage

(c)(2) Check Guarantee or Authorization Services

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

(c)(3) Wire Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer via an automated clearing house (ACH) after receiving funds via Fedwire or a similar network, the transfer by the ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of the UCC section 4A–202, which encourages that Fedwire payment orders be verified pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately and apart from any

telephone bill-payment or other prearranged plan normally subject to Regulation E.

3. *Similar fund transfer systems.* Examples of fund transfer systems similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), and Telex.

(c)(4) Securities and Commodities Transfers

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Examples of exempt and nonexempt transfers.* The exemption applies to a transfer involving:

- A transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

The exemption does not apply to a transfer involving:

- A debit card that accesses a money market mutual fund and that the consumer uses for purchasing goods or services or obtaining cash.
- A payment of interest or dividends into the consumer's account, for example, from a brokerage firm or from a Federal Reserve Bank (for government securities).

(c)(5) Automatic Transfers by Account-Holding Institution

1. *Automatic transfers exempted. The exemption applies to:*

- Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.
- Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.
- Electronic fund transfers between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.
- Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

(c)(6) Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:

- A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer
- A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of Regulation D (12 CFR part 204) reserve requirements.
- An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

- An employee of the financial institution completes the transfer manually, for example, by means of a debit memo or deposit slip.
- The consumer is required to make a separate request for each transfer.
- The consumer uses the plan infrequently.
- The consumer initiates the transfer via a facsimile machine.

(c)(7) Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer electronic fund transfer services other than preauthorized transfers must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject, however, to sections 913, 915, and 916 of the act and § 205.10(e) and are therefore exempt from UCC Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

(a) Form of Disclosures

1. *General.* Although no particular rules govern such matters as type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

Section 205.5—Issuance of Access Devices

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations in this section.

(a) Solicited Issuance

Paragraph (a)(1)

1. *Joint account.* For joint accounts, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

Paragraph (a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, new disclosures or a change-in-terms notice are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaced the original financial institution (for example, through a corporate merger or acquisition) or that has acquired accounts or assumed the operation of an electronic fund transfer system.

(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as a combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution has satisfactorily verified the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on the consumer for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device" under the regulation. A card-PIN combination can be treated as an accepted access device once the card and PIN have been used by the consumer.

3. *Functions of PIN.* If an institution issues a personal identification number at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* A financial institution may use other means, not just those listed in the regulation, to verify the consumer's identity. However, if an institution fails to correctly verify the consumer's identity, even if reasonable means were used, and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

Section 205.6—Liability of Consumer for Unauthorized Transfers

(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued including but not limited to:

- Electronic or mechanical confirmation (such as a PIN).
- Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized electronic fund transfers depending on the situation. A consumer may be liable for (1) up to $50; (2) up to $500; or (3) an unlimited amount. More than one tier

may apply to a given situation because each corresponds to a different (sometimes overlapping) time period.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on the ATM card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

(b)(1) Timely Notice Given

1. *$50 limit applies.* The basic liability limit is $50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

(b)(2) Timely Notice Not Given

1. *$500 limit applies.* The second tier of liability is $500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In the example above, assume an unauthorized transfer for $100 was made on Tuesday, and another unauthorized transfer for $600 occurred on Thursday. As the consumer is liable for the amount of the loss that occurred within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurred after the first two business days and before the consumer gives notice, the consumer's total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer in this example). But if $600 was taken on Tuesday and $100 was taken on Thursday, the consumer's maximum liability would be $150.

(b)(3) Periodic Statement; Timely Notice Not Given

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent and up to 60 days following is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account that were made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be held liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, assume a consumer's account has been electronically debited for $200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. If, however, in addition to the $200 transaction, the consumer's account is debited without authorization for $400 on the 61st day after transmittal of the statement and the consumer fails to notify the institution of the unauthorized transfers until the 62nd day, the consumer is liable for the full $400.

(b)(4) Extension of Time Limits

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

(b)(5) Notice to Financial Institution

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide an account number or card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

Section 205.7—Initial Disclosures

(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later signs up for an electronic fund transfer service if the electronic fund transfer agreement is between the consumer and a third party who will initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions required to be disclosed differ from those previously given. If, on the other hand, the electronic fund transfer agreement is directly between the consumer and the account-holding institution, the disclosures must be given in close proximity to the event requiring disclosure, for example, signing up for a service.

2. *Lack of prenotification of direct deposit* In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both must complete a Form 1199A (or comparable form providing notice to the institution) and the institution can make disclosures at that time. If an institution has not received advance notice that direct deposits are to be made to a consumer's account, the institution must provide the required disclosures as soon as reasonably possible after the first direct deposit is made, unless the institution has previously given disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting electronic fund transfers in a financial institution where the consumer already maintains an account that provides for electronic fund transfer services, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of new electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures pertaining to the additional service must be given. The disclosures must be provided either when the consumer contracts for the new service or before the first electronic fund transfer is made using the new service.

5. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (providing access to terminals operated by other institutions in the system), new disclosures are required for any additional services not previously available to consumers if the terms and conditions for the additional services differ from those previously disclosed.

6. *Disclosures covering all electronic fund transfer services offered.* An institution may provide disclosures covering all electronic fund transfer services that it offers, even if

some consumers have not arranged to use all services.

(b) Content of Disclosures

(b)(1) Liability of Consumer

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized electronic fund transfers, it need not provide liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only electronic fund transfers from an account are preauthorized transfers, an institution must disclose that liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement in order to impose liability on the consumer. The institution must also disclose the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

(b)(2) Telephone Number and Address

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of:

- Reporting the loss or theft of an access device or possible unauthorized transfers;
- Inquiring about the receipt of a preauthorized credit;
- Stopping payment of a preauthorized debit; and
- Giving notice of an error.

The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement." However, an institution must provide a specific telephone number and address on or with the disclosure statement for reporting a lost or stolen access device or a possible unauthorized transfer.

(b)(4) Types of Transfers; Limitations

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, however, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that certain daily withdrawal limitations apply and need not disclose that the limitations may not always be enforced (such as during periods when its ATMs are "off-line").

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make electronic fund transfers must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute EFTs in excess of those limits must disclose the restriction as a limitation on the frequency of electronic fund transfers.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

(b)(5) Fees

1. *Disclosure of fees.* A per-item fee for electronic fund transfers must be disclosed even if the same fee is imposed on nonelectronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document. In the latter case, the statement must refer to the accompanying document.

2. *Fees also applicable to non-electronic fund transfer.* An institution is required to disclose all fees that are attributable to electronic fund transfers or the right to make them. Fees that are relevant to both electronic and nonelectronic transfers (for example, minimum balance fees, stop-payment fees or account overdrafts) may, but need not, be disclosed. An institution is not required to disclose fees for inquiries at an ATM since no transfer of funds is involved.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be separately disclosed.

(b)(9) Confidentiality

1. *Information provided to third parties.* The institution must describe the circumstances under which any information relating to an account to or from which electronic fund transfers are permitted, not just information concerning those electronic transfers, will be made available to third parties. The term "third parties" includes affiliates such as other subsidiaries of the same holding company.

(b)(10) Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A. An institution may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), substitute substantive state law requirements affording greater consumer protection than Regulation E, or use different wording so long as the substance of the notice remains the same.

2. *Exception from provisional crediting.* If a financial institution takes advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS debit-card transactions), it must disclose these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T must disclose accordingly.

Section 205.8—Change in Terms Notice; Error Resolution Notice

(a) Change in Terms Notice

1. *Form of notice.* No specific form or wording is required for a change in terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

- Closing some of an institution's ATMs
- Cancellation of an access device

3. *Limitations on transfers.* When the initial disclosures omit details essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits when the initial disclosures were given and it now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. (See also § 205.7(b)(4) and the related commentary.)

4. *Change in telephone number or address.* A change in terms notice is not required when a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, but the change must be disclosed under § 205.6 as a condition of imposing liability on the consumer for unauthorized transfers. (See also § 205.6(a) and the related commentary.)

(a)(2) Prior Notice Exception

1. *Notice of permanent change included in periodic statement.* If a change under this paragraph is made permanent, the financial institution may include the written notice to the consumer on or with a periodic statement sent within 45 calendar days of the permanent change.

(b) Error Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice under the old method.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be "made available." A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include

promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer must not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed, for example, if the ATM is out of currency or the consumer decides not to complete the transfer.

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as the terminal running out of paper or the mechanism jamming, no violation results if the financial institution maintains procedures reasonably adapted to avoid such an error.

6. *Individual transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

(a)(1) Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration.

(a)(2) Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

(a)(3) Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account to or from which funds are transferred include "withdrawal from checking," "transfer from savings to checking," or "payment from savings."

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one account at terminals operated by institutions other than the account-holding institution, or to access only one account when the terminal is off-line. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, the exception is still available.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited, the receipt can identify the account as "withdrawal from other account."

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a "withdrawal from checking."

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

(a)(4) Identification

1. *Unique identification.* A number or code used by a financial institution to identify the consumer's account or the access device used to initiate the transfer need be unique only within that financial institution.

(a)(5) Terminal Location

1. *Location code.* A code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

Paragraph (a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph (a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph (a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

(a)(6) Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under this regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular period. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Defining a cycle.* Financial institutions must provide relevant information for the cycle or period since the last statement was issued. For example, an institution regularly issues quarterly periodic statements at the end of March, June, September and December. If the consumer initiates an electronic fund transfer in February, an interim statement would be provided. The interim statement should provide relevant information for the period since the last statement was issued, (the months of January and February in this example). The regularly scheduled statement would provide information from the date of the interim statement.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Customer pickup.* A financial institution may permit, but may not require, consumers to call for their periodic statements.

5. *Periodic statements limited to electronic fund transfer activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may comply with the periodic statement requirement by providing a statement that reflects only the electronic fund transfers and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See § 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

- Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

(b)(1) Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to insure the integrity of data obtained from another institution, a merchant, or other third parties, independent verification of the data for each transfer is not required for purposes of the periodic statement disclosures.

Paragraph (b)(1)(i)

1. *Incorrect deposit amount.* If the financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify

the consumer about the discrepancy. The periodic statement reflecting the deposit may either show the correct amount of the deposit, or the amount entered by the consumer along with the institution's adjustment.

Paragraph (b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing the type of transfer. It is sufficient to show the amount of the transfer in the debit or the credit column if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph (b)(1)(iv)

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity which owns or operates the terminal, plus the city and state.

Paragraph (b)(1)(v)

1. *Recurring payments by government agency.* The third-party name for recurring payments from federal, state or local governments need not list the particular agency. For example, "U.S. gov't" or "N.Y. sal" will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio."

4. *Account-holding institution as third party.* Transfers to the account-holding institution, by ATM for example, must show the institution as the recipient, unless other information on the statement, for example, "loan payment from checking," clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the "dba" (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

(b)(3) Fees

1. *Disclosure of fees.* The fees disclosed may include fees for electronic fund transfers and for other non-electronic services and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for electronic fund transfer services, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

(b)(4) Account Balances

1. *Opening and closing balances.* The opening and closing balances in the consumer's account must reflect both electronic fund transfers and other account activity.

(b)(5) Address and Telephone Number for Inquiries

(b)(6) Telephone Number for Preauthorized Transfers

1. *Telephone number.* A single telephone number, preceded by the "direct inquiries to" language, will satisfy the requirements of § 205.9(b)(5) and (6).

(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign initiated transfers. For example, even though the institution may not be able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

Section 205.10—Preauthorized Transfers

(a) Preauthorized Transfers to Consumer's Account

(a)(1) Notice by Financial Institution

1. *Content.* No specific language is required in the notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* The financial institution may use separate methods of notice for different types or series of preauthorized transfers. The institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* With a negative-notice system, a financial institution must provide notice if payment is not received by the close of the second business day. If preauthorized transfers cease, the institution should send negative notices following at least three separate missed payments; or it may notify the consumer earlier that it believes the transfers have stopped and that it will no longer send negative notices. The absence of a deposit entry will not serve as negative notice for purposes of a negative-notice system.

5. *Telephone notice.* If a financial institution uses the telephone notice option, it should be able in most instances to verify during a consumer's initial telephone inquiry whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt answer. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting merely because the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting is to occur by paper means. A new authorization also need not be obtained when a successor institution begins collecting payments. For example, when an institution acquires the servicing rights for a mortgage loan, it may rely on the original preauthorized transfer authorization.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate this regulation when a third-party payee fails to obtain the authorization in writing or to give a copy to the consumer; rather, it is the third-party payee who is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized electronic fund transfers be authorized by the

consumer "only in writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a form to permit preauthorized transfers from the consumer's account and require the consumer to sign and return one, while retaining the second copy.

5. *Similarly authenticated.* An example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization via a home computer. For a home banking system to satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (such as by printing it on the consumer's printer or by the payee's making a copy for the consumer).

(c) Consumer's Right To Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order, for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume.

2. *Revocation of authorization.* Once the financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation by requiring, for example, a copy of the consumer's revocation as written confirmation to be provided within fourteen days of an oral notification. If the institution does not receive the required written confirmation within the fourteen-day period, it may pay subsequent debits to the account.

(d) Notice of Transfers Varying in Amount

(d)(1) Notice

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate this regulation if the designated payee fails to provide notice of varying amounts.

(d)(2) Range

1. *Range.* Financial institutions that elect to provide the consumer with a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide a range that could plausibly be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

(e) Compulsory Use

(e)(1) Credit

1. *Loan payments.* Creditors may not require repayment of loans by electronic means. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

- Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.
- Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

2. *Overdraft.* The provision allowing institutions to require the automatic repayment of an overdraft credit plan applies even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

(e)(2) Employment or Government Benefit

1. *Payroll.* Employers are subject to the act's prohibition against compulsory use of electronic fund transfers as a condition of employment. For example, a financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution. An employer may, however, require direct deposit of salary by electronic means if employees are given a choice of institutions that would receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash.

Section 205.11—Procedures for Resolving Errors

(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, the consumer's request for the terminal location or other information triggers the error resolution procedures. The financial institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of electronic fund transfer was credited to the account, without asserting an error, the error resolution procedures do not apply.

2. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures of this section when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

3. *Error asserted after account closed.* The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

4. *Request for documentation or information.* Requests for documentation or other information must be treated as errors unless it is clear that the request by the consumer is only for duplicate copies for tax or other record-keeping purposes.

(b) Notice of Error From Consumer

(b)(1) Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a social security number or other unique means of identification.

2. *Requirement of an affidavit.* While a financial institution may require the consumer to sign an affidavit relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the affidavit.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply only when a notice of error is received from the consumer. If the financial institution itself discovers and corrects an error, it need not comply with the procedures.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

(b)(2) Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) Time Limits and Extent of Investigation

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its

investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *No charge for error resolution.* The financial institution may not impose charges for any aspect of the error-resolution process, including charges for documentation or investigation.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of § 205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. Whether such a mailing will be prompt enough to satisfy the requirements of this section must be determined by the institution, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it shall correct the error (subject to the liability provisions of § 205.6 (a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/electronic fund transfer transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in § 205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally credited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph (c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of the section.

(c)(3) Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions include all debit card transactions, including those for cash only, at merchants' point-of-sale terminals. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location. POS debit card transactions also include mail and telephone orders.

(c)(4) Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time frame.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted in executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions occurring under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement. But an agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both paragraphs (c) and (d) of this section, as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

(d)(1) Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must translate the applicable data into readable form, for example, by printing it and explaining any codes.

(d)(2) Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under this section. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

Section 205.12—Relation to Other Laws

(a) Relation to Truth in Lending

1. *Determining applicable regulation.* For transactions involving access devices that also constitute credit cards, the applicability of Regulation E versus Regulation Z depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction only debits a checking account (with no credit extended), the comparable provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as 12 CFR 226.13(d) and (g) of Regulation Z. As a result, a consumer might be liable for up to $50 under Regulation Z and, in addition, for $50, $500, or an unlimited amount under Regulation E.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. *Preemption determination.* Effective March 30, 1981, the Board has determined that certain provisions in the state law of Michigan are preempted by the federal law:

- Section 5(4)—Definition of unauthorized use. This provision is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.
- Section 14—Consumer liability for unauthorized use of an account. This provision is inconsistent with § 205.6 and is less protective of the consumer than the

federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

• Section 15—Error resolution. This provision is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved in 45 days.

• Sections 17 and 18—Receipts and periodic statements. These provisions are preempted because they are inconsistent with § 205.9. The provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

Section 205.13—Administrative Enforcement; Record Retention

(b) Record Retention

1. *Requirements.* To evidence compliance, a financial institution should be able to establish that its procedures reasonably ensure the consumer's receipt of required disclosures and documentation.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device (a debit card or a code, for example) to a consumer with which the consumer can initiate transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this electronic fund transfer service. If the service provider does not issue an access device to the consumer, it does not qualify for the treatment accorded by this section. For example, this section does not apply to an institution that initiates preauthorized payroll deposits on behalf of an employer to the consumer's account at another institution. By contrast, this section does apply to an institution that issues a code for initiating telephone transfers from a consumer's account at another institution (provided the account-holding institution does not have an agreement with the other institution regarding the service). This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* An ACH agreement under which members agree to honor each other's electronic fund transfer cards constitutes an "agreement" for purposes of this section.

(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized electronic fund transfers that exceed the consumer's liability limits in § 205.6.

(b)(1) Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in the regulation does not have to issue periodic statements. A service provider that does not meet the condition need only include information on periodic statements sent to the consumer about transfers initiated with the access device it has issued.

(b)(2) Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the electronic fund transfer service provider must investigate and resolve the error as set forth in the regulation. If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

(c) Compliance by Account-Holding Institution

Paragraph (c)(1)

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(c)(1).

Appendix A—Model Disclosure Clauses and Forms

1. *Review of forms.* Neither the Board nor its staff will review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(b)(2), and (b)(3), 205.6(a), 205.7, and 205.14(b)(1)(ii). Section 915(d)(2) of the statute provides that use of these clauses in conjunction with other requirements of the regulation will protect a financial institution from liability under sections 915 and 916 of the act to the extent that the clauses accurately reflect the institution's electronic fund transfer services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits. Model Clauses A–(2) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

Supplement II to Part 205 [Removed]

3. Supplement II to Part 205 is removed.

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4682 Filed 3–2–94; 12:38 pm]

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federal register

Monday
March 7, 1994

Part III

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Alpha-ethyltryptamine Into Schedule I; Proposed Rule and Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Alpha-ethyltryptamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to place alpha-ethyltryptamine (α-ET) into Schedule I of the Controlled Substances Act (CSA). This proposed action by the DEA Acting Administrator is based on data gathered and reviewed by the DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution, and possession of α-ET.

DATES: Comments must be submitted on or before April 6, 1994.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On March 12, 1993, the Administrator of the DEA published a final rule in the **Federal Register** (58 FR 13533) amending § 1308.11 of title 21 of the Code of Federal Regulations to temporarily place α-ET into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of α-ET was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of α-ET which would expire on March 12, 1994, may be extended to September 12, 1994. This extension is being ordered by the DEA Acting Administrator in a separate action.

The DEA has gathered and reviewed the available information regarding the trafficking, actual abuse and the relative potential for abuse for α-ET. The Acting Administrator has submitted this data to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Acting Administrator also requested a scientific and medical evaluation and a scheduling recommendation for α-ET from the Assistant Secretary for Health.

Chemically α-ET is α-ethyl-1H-indole-3-ethanamine or 3-(2-aminobutyl) indole. It is also known as etryptamine or Monase (brand name, acetate salt). In the early 1960's, it was marketed by the Upjohn Company as an antidepressant in the United States. After less than one year of marketing, Upjohn withdrew its New Drug Application when it became apparent that α-ET administration was associated with agranulocytosis. The Food and Drug Administration (FDS) has notified the DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug, and Cosmetic Act for α-ET. A search of the scientific and medical literature revealed no indications of current medical use of α-ET in the United States.

In animal studies, α-ET has a pharmacological profile similar to other Schedule I controlled substances. In drug discrimination paradigms, α-ET fully substituted for both 1-(2,5-dimethoxy-4-methylphenyl)-2-aminopropane (DOM) and 3,4-methylenedioxymethamphetamine (MDMA). In a behavioral paradigm that distinguishes between stimulants, classical hallucinogens and MDMA-like substances, α-ET closely resembles MDMA. Recent data indicate that α-ET, like MDMA, may be toxic to serotonergic neurons. In human studies, α-ET's most prominent effect was an immediate feeling of exhilaration and intoxication at an oral dose of 150 mg.

DEA first encountered α-ET in 1986 at a clandestine laboratory in Nevada. Several exhibits of α-ET have been analyzed by DEA and state forensic laboratories since 1989.

Individuals in Colorado and Arizona have purchased several kilograms of this substance from chemical supply companies. It has been distributed and sold primarily to high school and college students. Trafficked as "ET" or "TRIP", it has been touted as an MDMA-like substance. The death of a nineteen year old female in Arizona was attributed to α-ET toxicity. Illicit use has been documented in both Germany and Spain. In Germany, α-ET has been sold as "Love Pearls" or "Love Pills" and its abuse has been associated with a number of deaths. At least one death has been attributed to α-ET abuse in Spain.

The Acting Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exist to propose and to support that α-ET be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative. In the event that comments, objections, or requests for a hearing raise one or more issues which the Administrator finds warrants a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Acting Administrator of the DEA hereby certifies that proposed placement of α-ET into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of a substance with no currently accepted medical use in the United States.

This proposed rulemaking is not a significant regulatory action for the purposes of Executive Order (E.O.)

12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of E.O. 12866, § 3(d)(1).

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Acting Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by redesignating the existing paragraphs (d)(12) through (d)(29) as (d)(13) through (d)(30) and adding a new paragraph (d)(12) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(12) Alpha-ethyltryptamine.....7249

Some trade or other names: etryptamine; Monase; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; α-ET or AET

3. Section 1308.11 is further amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as (g)(4).

Dated: February 28, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5202 Filed 3–4–94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Alpha-ethyltryptamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of alpha-ethyltryptamine (α-ET) in Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of α-ET is due to expire on March 12, 1994. This notice will extend the temporary scheduling of α-ET for six months or until rule making proceedings are completed, whichever occurs first.

EFFECTIVE DATE: March 12, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On March 12, 1993, the Administrator of the DEA published a final rule in the **Federal Register** (58 FR 13533) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place α-ET into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of α-ET was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services, or on the petition of any interested party. Such proceedings regarding α-ET have been initiated by the Acting Administrator.

Therefore, the temporary scheduling of α-ET, which is due to expire on March 12, 1994, may be extended until September 12, 1994, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Acting Administrator hereby orders that the temporary scheduling of α-ET be extended until September 12, 1994, or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first.

The Acting Administrator of the DEA hereby certifies that extension of the temporary placement of α-ET into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the extension of temporary control of a substance with no currently approved medical use in the United States.

The six month extension of α-ET in Schedule I of the CSA is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12866, § 3(d)(1). This regulation responds to an emergency situation posing an imminent hazard to the public safety and is essential to criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: February 28, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5203 Filed 3–4–94; 8:45 am]

BILLING CODE 4410–09–M

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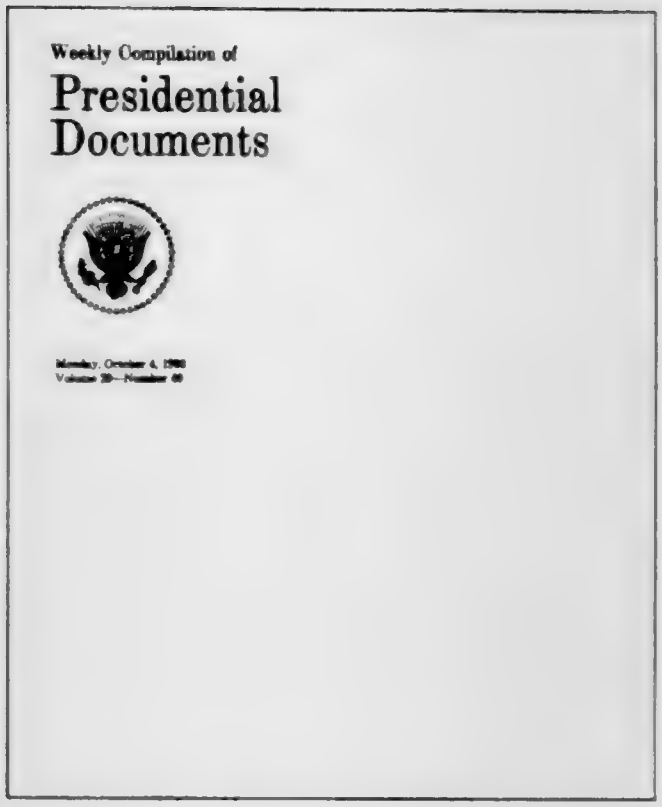

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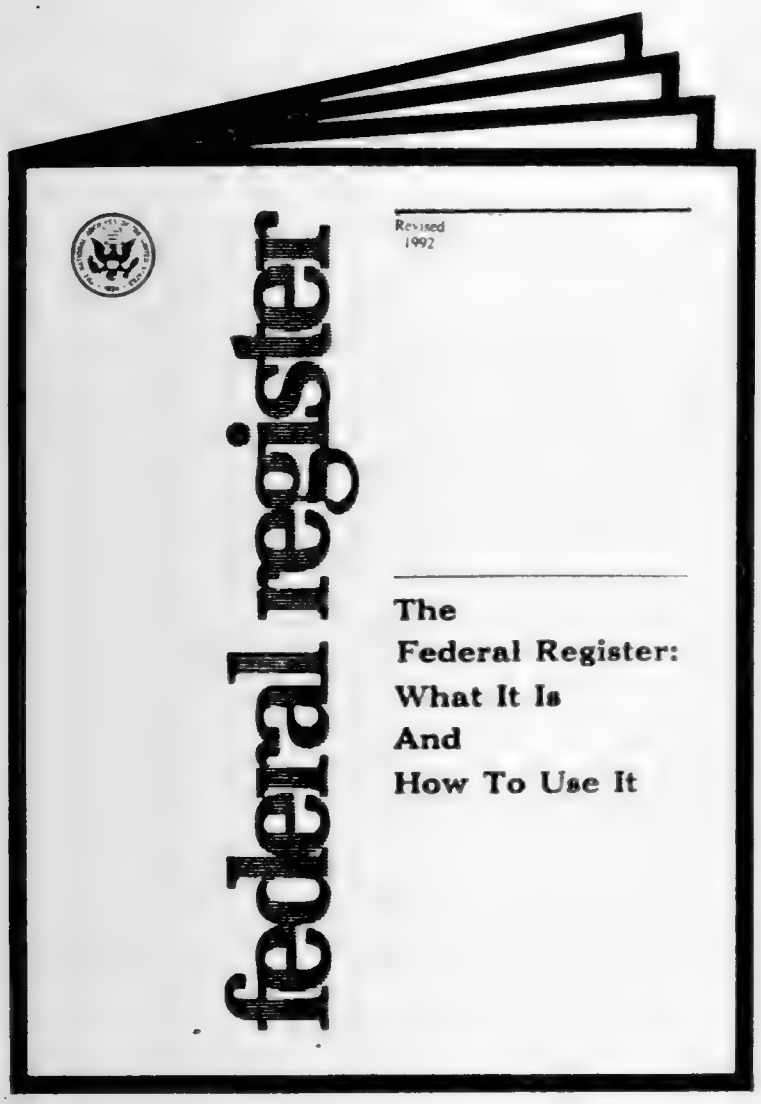

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6653 of March 2, 1994

American Red Cross Month, 1994

By the President of the United States of America

A Proclamation

Over a century ago, Clara Barton founded the American Red Cross to provide hope, compassion, and care to victims of catastrophe and destruction. Today over 150 countries uphold the idea of neutral and impartial assistance to all people in times of great pain, disaster, or war. In 2,600 chapters across the United States, and on 200 U.S. military installations around the world, over 1.4 million American Red Cross volunteers and more than 23,000 paid staff work diligently to save lives and to assist those in crisis.

It is fitting that in this month, which celebrates the coming of spring and the rebirth of nature, we take the time to acknowledge the many outstanding accomplishments of the American Red Cross. As the Honorary Chairman of this praiseworthy organization, I am proud to commend everyone who is associated with its life-saving efforts. The dedicated members of this organization have enabled thousands of people who thought hope had abandoned them to experience new and bright beginnings. Since 1881 the American Red Cross has helped millions who have entered its doors seeking shelter, food, financial assistance, training, and most important, compassion.

The last 12 months will go down in history as a litany of disasters of every description, from the Midwest floods to the California fires and earthquakes to the winter storms that gripped a large part of the country. The American Red Cross rose to each challenge in its usual timely and efficient manner, restoring hope for so many in need. The Red Cross is in the business of responding to disasters, large and small, 365 days a year It also provides blood to hospital patients, who otherwise might not survive

For many, the Great Flood of 1993 did not become a frightening headline until well into the summer. For the American Red Cross, however, the floodwaters had been a serious concern since early spring. Nine months after the flooding started, over 20,000 Red Cross workers had participated in the relief operation, more than 2.8 million meals had been served, and approximately 35,000 families had received assistance from Red Cross caseworkers.

While thousands of Red Cross workers helped victims recover from the floodwaters in the Midwest, Red Cross personnel in California faced a different challenge—fire. Hundreds of families fleeing the raging California fires found haven in Red Cross shelters. Fire victims were provided comfort and strength as they tried to rebuild their lives out of the ashes.

As 1993 came to a close and many of us began preparing for holiday meals, the Red Cross also was preparing meals—for cold and hungry people, victims of the winter storms that lashed out across the Nation. Once again, feeding vans were busily dispensing hot coffee and sandwiches, comfort and hope. The Red Cross set up over 100 shelters in 6 states, bringing security and warmth to those in need.

The year 1994 began with nature's awesome display of power, tearing Southern California asunder in the Northridge earthquakes. Again the Red Cross was there to help those left homeless and hungry.

Thanks to the American Red Cross blood program, thousands receive life-giving donations and are able to enjoy one more birthday, one more anniversary, one more day of sunshine. The American Red Cross collects, processes, and distributes more than half the Nation's blood supply—all while ensuring that it is the safest in the world. Over 6 million times last year, donors came to the Red Cross to give the gift of life to others.

Through the network of the International Red Cross and Red Crescent Movement, families around our globe were able to locate and communicate with loved ones with whom they had lost contact due to wars or refugee movements. Prisoners of war saw hope come into their cells in the form of a Red Cross emblem. American Red Cross delegates called such places as Armenia, Croatia, and Cambodia home last year as they brought medical care, skilled relief workers, food, and reassurance to countries suffering from the ravages of disaster, disease, and war.

The Red Cross has earned our abiding respect, and we look forward to seeing its symbol of hope continue to shine brightly across this great land. A very grateful Nation thanks the American Red Cross for a job extremely well done.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1994, as "American Red Cross Month." I urge all Americans to continue their generous support of the Red Cross and its chapters nationwide through contributions of time, funds, and blood donations.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc 94-5417
Filed 3-4-94, 12:28 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6654 of March 2, 1994

Women's History Month, 1994

By the President of the United States of America

A Proclamation

When author Zora Neale Hurston was growing up in Eatonville, Florida, at the beginning of the century, her mother encouraged her to "jump at the sun"—to set lofty goals—even if she were not certain to reach them. In many ways, Zora did "jump at the sun," writing books, articles, and plays that have earned her a place among America's finest writers and anthropologists. Her mother's words became a powerful metaphor for her life, and Zora's brilliant works reflect the vibrant history of the many women whose lives she studied.

Zora Neale Hurston might never have imagined that women would one day have the opportunity to take her mother's teaching literally. But from Sally Ride to Mae Jemison to Kathryn Sullivan, astronauts have soared closer to the sun than most humans ever dreamed. As we celebrate Women's History Month, 1994, Americans take special pride in the scope of women's achievements, exemplified by the daring spirit of these pioneering individuals. We watched in awe recently as astronaut Sullivan performed complex repairs on the Hubble space telescope by the light of the rising sun. And we shared her happiness as she basked in the love of her family at the end of a successful mission. From author to astronaut to able parent, women have embraced a myriad of challenging roles throughout our Nation's history.

But America has not yet fulfilled its promise of equality for all people. While more women than ever now hold public office in our country, more women than ever must also bear sole responsibility for caring for their families. We rely on women's knowledge and expertise in every aspect of life, and yet we as a society fail to provide many of our families the care and support they so desperately need. We take satisfaction in knowing that women have gained equality under the law, but we must also recognize the ways in which true equality is still only a dream. Zora's "sun" eludes our grasp. This month, we rededicate ourselves to reaching it.

On this occasion, we celebrate the lives of women too long missing from our history books. We listen to the voices of women too long absent from our national memory. Most important, we look forward to a day when society need not remind itself to note the extraordinary accomplishments of women. We dream of a time when, in passing the lessons of this generation from teacher to student, from parent to child, we tell a story of women and men working side by side. We will say that it took all people, striving together, to build a just and compassionate world of liberty, charity, and peace.

The Congress, by Public Law 103–22, has designated March 1994 as "Women's History Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1994 as Women's History Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember throughout the year the rich and varied contributions that women make to our world.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5418
Filed 3–4–94; 12:29 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6655 of March 3, 1994

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Ukraine as a beneficiary developing country for purposes of the Generalized System of Preferences ("GSP").

2. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule ("HTS") the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Ukraine" in alphabetical order in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-5441
Filed 3-4-94; 2:15 pm]
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Editorial note: For the President's message to Congress on trade with Ukraine, his news conference with Ukrainian President Leonid Kravchuk, the Joint Statement on Development of U.S.-Ukrainian Friendship and Partnership, and the Joint Statement on Economic and Commercial Cooperation, see issue 9 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Executive Order 12901 of March 3, 1994

Identification of Trade Expansion Priorities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2171, 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

Section 1. *Identification.* (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1994 and 1995, the United States Trade Representative ("Trade Representative") shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the **Federal Register**, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;
(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;
(3) the medium-term and long-term implications of foreign government procurement plans; and
(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

Sec. 2. *Initiation of Investigation.* Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act with respect to all of the priority foreign country practices identified.

Sec. 3. *Agreements for the Elimination of Barriers.* In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) of the Act (19 U.S.C. 2413(a)) with respect to an investigation initiated by reason of section 2 of this order, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly

as possible or, if that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

Sec. 4. *Reports.* The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

Sec. 5. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

William J. Clinton

THE WHITE HOUSE,
March 3, 1994.

[FR Doc. 94–5434
Filed 3–4–94; 1:24 pm]
Billing code 3195–01–P

Editorial note: For the President's statement on this Executive order, see issue 9 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–137–1]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are providing that ratites and hatching eggs of ratites may not be imported into the United States unless specified identification and recordkeeping requirements regarding their origin and movement are met in the country of export. This action is necessary to help ensure that ratites and hatching eggs of ratites that could pose a disease risk to poultry and livestock in the United States are not imported into this country.

DATES: Interim rule effective March 8, 1994. Consideration will be given only to comments received on or before May 9, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–137–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5907.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation of certain animals and birds, including ostriches and other flightless birds known as ratites, and their hatching eggs, to prevent the introduction of communicable diseases of livestock and poultry.

Section 92.101 of the regulations imposes general restrictions on the importation of ratites and hatching eggs of ratites, including the requirement that they be produced by a pen-raised flock and, in the case of ratites, be maintained in a pen-raised flock. This requirement is necessary to help ensure that ratites imported into the United States are not wild-caught birds that may have been exposed to communicable diseases and that may not have a known health history.

Section 92.103(a) of the regulations requires that an application to import ratites or hatching eggs of ratites specify the number of ratites or hatching eggs intended for importation. Section 92.103(a)(2)(iii) provides that a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless a representative of the Animal and Plant Health Inspection Service (APHIS) has visited the premises where the flock of origin is kept within the 12-month period before the intended importation, and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation.

Section 92.104 requires that ratites or hatching eggs of ratites imported into the United States be accompanied by a certificate that certifies, among other things, that the flock of origin is pen-raised and the ratites covered by the certificate were produced by and maintained in that flock. These provisions are necessary to help ensure that ratites and hatching eggs that are not produced by a pen-raised flock, and that consequently pose a potential health risk, are not brought into the flock and subsequently imported into the United States.

However, based on our experience enforcing the regulations, we have found that, even with the requirements described above, it can sometimes be difficult to monitor the number of ratites and hatching eggs being exported from certain flocks. We believe this difficulty in monitoring has led to occasions where smuggled or wild-caught ratites or hatching eggs of such ratites have been brought into a flock, then imported into the United States, purportedly as a pen-raised part of that flock.

The regulations in § 92.106(b) contain requirements for the quarantine of ratites and hatching eggs of ratites upon arrival in the United States. Although we consider these requirements for quarantine to be effective in identifying and preventing the entry of ratites with communicable diseases, the increased risk presented by smuggled or wild-caught ratites jeopardizes the health of other ratites in quarantine and unnecessarily increases the risk of the entry of a ratite with a communicable disease.

Therefore, in this interim rule, we are establishing provisions that require identification of all ratites and hatching eggs of ratites in flocks from which ratites or hatching eggs of ratites are intended for importation into the United States, and that require strict monitoring and recordkeeping of the number of ratites and hatching eggs produced in, brought into, or exported from a flock. These requirements, discussed below, will help ensure that only ratites and hatching eggs of ratites pen-raised on approved premises are imported into the United States.

We are requiring in § 92.101(b)(3)(i)(B) (newly added in this interim rule) that each ratite produced in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States be identified with an identification number by means of a microchip implanted in the pipping muscle at 1-day of age. We are also requiring that each ratite added to the flock from outside the flock be identified by means of microchip upon arrival in the flock, and that each ratite already in the flock as of the effective date of this interim rule be identified before the next visit to the premises by an APHIS representative under § 92.101(a)(2)(iii) (discussed above).

Unlike our requirement for the 1-day-old chicks, however, we are not requiring that the microchip be implanted in any specified location on the older birds.

The microchip identification required by this interim rule will make possible a cross-referencing system by which the Department and the national government of the country from which the ratites are to be exported can help ensure that only ratites and hatching eggs of ratites from pen-raised flocks on approved premises are imported into the United States.

We are requiring microchip identification, rather than some other form of identification, because we have determined that it is the most effective and humane form of identification for ratites. External forms of identification such as tags can be easily removed or switched. This is less likely to happen with an imbedded microchip. Because of the thin hide of a ratite, we do not consider hot-iron branding to be effective or humane.

Based on importations to date, we expect virtually all ratites imported into the United States to be those required to be microchipped at 1-day of age. The pipping muscle, located behind the head of a ratite chick, is enlarged at the time of hatching to assist the chick in breaking through the shell. Requiring the microchip to be implanted in the same place for each such ratite will facilitate our reading of the microchips and make it easier to determine if a ratite has been identified (discussed below under the heading "Microchip Readers"). Because the pipping muscle decreases in size as a ratite grows, it would not be practicable to require that it be the site of implantation for older ratites. However, as noted above, we expect few older ratites to be imported into the United States, and are therefore not requiring that such ratites be microchipped at any particular location on their body.

As part of the cross-referencing system made possible by the microchip identification, we are requiring that the country from which ratites or their hatching eggs are exported have in place procedures and requirements, discussed below, for monitoring the number of ratites or hatching eggs of ratites produced on each premises over a set production season. (We are adding to the regulations a definition of production season, discussed below under the heading "Definition of Production Season.")

Under § 92.101(b)(3)(i)(I) of this interim rule, a production ceiling for each premises must be set. The ceiling is to be calculated jointly by a full-time salaried veterinary officer of the national government of the country of export and the APHIS representative who visits the premises prior to an import permit being issued. The ceiling is based on the number of eggs that the ratites in the flock can reasonably be expected to produce over a given production season. The ceilings established will take into account not only the number of ratites in the flock, but also factors such as the age and the type of the ratites. Establishing this ceiling will help prevent ratites and hatching eggs of ratites from being "laundered" through the flock for importation into the United States.

Under § 92.101(b)(3)(i)(C) of this interim rule, on the date that each hatching egg is produced in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States, the hatching egg must be marked in indelible ink with the date of production.

Under § 92.101(b)(3)(i)(D) of this interim rule, the owner or manager of a premises from which ratites or hatching eggs of ratites are intended for importation into the United States is required to maintain on a daily basis registers listing the following: (1) Number of live ostriches hatched in the flock, added to the flock, or removed from the flock, including microchip identification number; (2) number of eggs produced in the flock and date of production, and number of eggs removed from the flock and date of production; and (3) number of eggs in incubator/hatcher and date of production. The owner or manager of the premises must submit a copy of the registers to the National Veterinary Service of the country of export on a quarterly basis. When the national government receives these registers, it must in turn submit a copy to the APHIS Administrator on a quarterly basis.

Under § 92.101(b)(3)(i)(F) of this interim rule, the national government of the country of export, using these registers, must maintain a registry of premises. In this registry, the national government is required to list each ratite according to its microchip number. The national government is also required to maintain a count of hatching eggs of ratites produced on the premises. Under § 92.10(b)(3)(i)(G) of this interim rule, no premises may be added to the registry until a veterinary officer of the national government or an employee of that government responsible for the protection of fish and wildlife visits the premises and determines that all ratites and hatching eggs of ratites on the premises are identified as required.

Under § 92.101(b)(3)(i)(J) of this interim rule, the country from which the eggs are exported must also conduct random inspections of premises that have been added to the registry. These inspections must be conducted at least twice for each production season for each premises, and must be carried out either by a veterinary officer of the national government of the country of export or an employee of that government responsible for the protection of fish and wildlife. The inspector must determine whether all ratites and hatching eggs of ratites are identified as required, and will use the markings on the eggs to determine whether the number of eggs in the flock are within the ceiling established for the flock. Ratites or hatching eggs not identified as required will be ineligible for the export certificate required under § 92.104(a) of the regulations (discussed below). The results of these inspections, as well as the results of the initial inspection described in the preceding paragraph, must be recorded on the copy of the quarterly reports that the country of export must send to the Administrator. Based on this information, APHIS will deny or withdraw an import permit for ratites or hatching eggs of ratites from any premises on which all ratites and hatching eggs are not marked as required.

These requirements, taken together, will make it easier to detect incidence of birds or eggs being smuggled onto a premises. The initial visit to the premises, described above, along with the calculation of a production ceiling, will establish how many ratites are on the premises and the number of hatching eggs they can reasonably be expected to produce. The registers, microchip identification, and subsequent site inspections will help ensure that the number of ratites and hatching eggs on or leaving the premises are consistent with those initial calculations.

Under this interim rule, the Department and the national government of the country of export will be able to monitor the number of ratites and eggs exported from the flocks to the United States by means of the health certificate required under § 92.104 of the regulations. Under the existing regulations, this certificate must accompany ratites or hatching eggs of ratites imported into the United States. It is issued by a full-time salaried veterinary officer of the national government of the exporting country. Under the existing regulations, it contains information regarding the health of the flock, and the origin and

handling of ratites and hatching eggs of ratites imported into the United States.

In this interim rule, we are adding to §§ 92.104 (c) and (d) the requirement that a certificate contain the certification that the flock from which ratites or hatching eggs of ratites are exported has not exceeded the ceiling on production established under this interim rule. We are also requiring that the certificate indicate the number of ratites or hatching eggs of ratites being shipped to the United States. By comparing this information with the information on the registers and with the ceiling on production calculated under this interim rule, both the Department and the national government of the country of origin will be able to determine the number of ratites and hatching eggs left available for export during a given production season. We are also requiring that the certificate indicate that all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B).

We recognize that flock owners may wish to replenish or increase their breeding stock by bringing ratites into the flock from another flock. In order to account for birds being added to the flock, we are requiring in § 92.101(b)(3)(i)(G) that each premises from which ratites or hatching eggs of ratites are exported to the United States receive approval from the National Veterinary Service of that country before ratites are added to the premises from outside the premises. We are also requiring that the national government provide that ratites may not be added to a flock during a production season. This restriction is necessary to facilitate the quota system established by this interim rule.

Microchip Readers

We are also providing that, as a condition of importing ratites into the United States, the person intending to import the ratites provide the APHIS veterinary inspector at the intended port of entry with a reader capable of reading the microchip identification of each of the ratites. This will enable APHIS to determine whether the ratites are identified as required. Importing ratites not properly identified, and not providing a reader capable of reading the microchips, will be a violation of the regulations and the ratites will be refused entry.

Denial or Withdrawal of Import Permit

Section 92.103 of the existing regulations requires, among other things, that an importer apply for and obtain an import permit from APHIS before importing ratites or hatching eggs of ratites into the United States. We are providing in this interim rule that a permit will be denied or withdrawn if the importer or a person responsibly connected with the importer's business, or the operator of the farm of the flock of origin, or a person responsibly connected with the owner of the flock of origin, is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

For the purposes of the regulations, a person shall be deemed to be responsibly connected with the importer's business or the owner of the flock of origin if such person has an ownership, mortgage, or lease interest in the physical plant of the importer's business or the farm of the flock of origin, or if such person is a partner, officer, director, holder or owner of 10 per centum or more of the voting stock of the importer's business or the farm of the flock of origin, or is an employee of the importer or the owner of the flock of origin.

These provisions regarding denial or withdrawal of a permit are based on those set forth in § 92.106(c)(6) regarding the denial of approval and removal of approval of a commercial bird quarantine facility. We consider these provisions necessary to reduce the risk that attempts will be made to import smuggled birds into the United States.

We are also setting forth in § 92.103(a)(2)(vii) provisions that provide for the notification of persons who have a permit denied or withdrawn, and that provide such persons, upon request in the case of a dispute of material facts, the opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding.

Definition of Pen-Raised

We are also amending the definition of pen-raised in § 92.100, to provide that a flock will not be considered to be pen-raised if ratites captured in the wild are added to it after the effective date of this interim rule. As discussed earlier in this interim rule, wild-caught ratites pose a significant risk of having been exposed to communicable diseases, and may not have a known health history. Adding such ratites to an otherwise pen-raised flock significantly increases the chances of disease being transmitted to other ratites in the flock. However, prior to the publication of this interim rule, we had no reliable mechanism for determining whether wild-caught ratites had been brought into a flock. With the establishment of the identification and monitoring provisions of this interim rule, we now are able to make such a determination. Therefore, we are amending the definition of pen-raised as described above, to help ensure that ratites exposed to ratites captured in the wild are not imported into the United States.

Definition of Production Season

In this interim rule, we use the term production season. We are defining production season to mean that period of time, usually approximately 9 months each year, from the time ratites in a flock begin laying eggs until the ratites cease laying eggs. Ratites by nature follow a set cycle for laying eggs, and, for reasons of health and productivity, must be given a period of rest between "production seasons." In most cases, a production season lasts approximately 9 months, but this may vary according to factors such as the type, age, and geographical location of the ratites.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to help ensure that ratites imported into the United States, and ratites hatched from ratite hatching eggs imported into the United States, do not transmit diseases to poultry and livestock in the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

This interim rule requires that foreign producers of ratites or ratite hatching eggs intended for importation into the

United States maintain registers of ratites and hatching eggs on their premises and update them daily. It also requires that ratites in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States be identified with a microchip. Additionally, it requires that ratite hatching eggs in the flock be marked with indelible ink.

At present, 29 ratite farms in 7 countries are approved to ship ratites or ratite hatching eggs to the United States. The number of approved foreign farms varies each month due to annual recertification requirements. There are 2,000 to 3,000 ratite farms in the United States. Virtually all of them are small businesses, as are the approximately 20 domestic entities that currently import ratites and ratite hatching eggs into the United States.

We anticipate that requiring APHIS-approved ratite producers to maintain registers and update them daily will have a negligible impact on the domestic ratite market. However, the identification requirements in this interim rule are expected to increase slightly the cost of importing ratites and ratite hatching eggs. Requiring that ratite hatching eggs be marked with indelible ink is expected to increase operational costs of foreign producers by about $0.50 per egg. Requiring each live ratite to be identified by microchip is expected to cost foreign producers about $6.35 per ratite. Foreign producers will likely increase their prices to cover the cost of proposed identification requirements.

If the cost of identifying each ratite and ratite hatching egg is passed along to United States buyers, the identification and marking requirements in this interim rule will increase the cost of importing ratites and ratite hatching eggs by an average of $3.00 each. Current market prices for ratites released from quarantine in the United States range from $1,565 for a 45-day-old ratite chick to $50,000 for an adult ratite.

We estimate that the requirements of this interim rule will increase annual costs to foreign producers by approximately $198,375. We expect that a total of approximately 52,500 ratites and hatching eggs of ratites will be imported into the United States in 1994. Of these, we estimate that approximately 23 percent will survive quarantine, with a total value of approximately $34,543,425. Therefore, the estimated cost of the requirements of this interim rule will be less than .6 percent of the retail value of ratites released from quarantine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A to Part 92—[Amended]

2. In part 92, Subpart A—Birds, footnotes 2 through 13 and the references to them are redesignated as footnotes 3 through 14, respectively.

3. In § 92.100, the definition of *pen-raised* is revised, and a definition of *production season* is added to read as follows:

§ 92.100 Definitions.

* * * * *

Pen-raised. Cared for in a fenced enclosure, such that the ratites are kept apart from wild ratites, poultry, and other animals; can be readily observed, and be restrained for inspection and treatment. A flock is not considered to be pen-raised if ratites captured in the wild have been added to it after March 8, 1994.

* * * * *

Production season. That period of time, usually approximately 9 months each year, from the time ratites in a flock begin laying eggs until the ratites cease laying eggs.

* * * * *

4. Section 92.101 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 92.101 General prohibitions; exceptions.

* * * * *

(b) * * *

(3)(i) Except for ratites imported as zoological birds, ratites and hatching eggs of ratites shall not be imported into the United States unless the following conditions are met: (A) The ratites or hatching eggs are produced by a pen-raised flock, and, in the case of ratites, maintained in a pen-raised flock;

(B) Each ratite produced in the flock is identified with an identification number by means of a microchip implanted in the pipping muscle at 1-day of age, each ratite added from outside the flock is identified in like manner upon arrival in the flock, except that the microchip need not be implanted in the pipping muscle, and each ratite already in the flock as of March 8, 1994 is identified in like manner, prior to the next visit to the flock premises by an APHIS representative under § 92.103(a)(2)(iii), except that the microchip need not be implanted in the pipping muscle;

(C) On the date it is produced, each hatching egg produced in the flock is marked in indelible ink with the date of production.

(D) The owner or manager of the premises from which the ratites or hatching eggs are intended for importation into the United States maintains on a daily basis a register listing the following: (*1*) Number of live ratites hatched in the flock or added to the flock, and number of live ratites removed from the flock, and the microchip number for each of these ratites;

(*2*) Number of eggs produced in the flock and date of production, and

number of eggs removed from the flock and date of production; and

(3) Number of eggs in incubator/hatcher and date of production;

(E) The owner or manager of the premises submits a copy of the registers to the National Veterinary Service of the country of export on a quarterly basis. The country of export in turn submits a copy of the registers to the Administrator on a quarterly basis; [2]

(F) The country from which the ratites or hatching eggs are exported to the United States maintains a registry of premises that wish to export ratites or hatching eggs of ratites to the United States, that lists each ratite according to the microchip number required under paragraph (b)(3)(i)(D) of this section, and also maintains a count of hatching eggs of ratites produced on or added to the premises;

(G) Before a premises is added to the registry, either a veterinary officer of the national government of the country of export, or an employee of that government responsible for the protection of fish and wildlife, visits the premises and determines that all ratites and hatching eggs of ratites are identified as required under paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) of this section.

(H) The country from which the ratites or hatching eggs of ratites are exported to the United States requires each premises from which ratites or hatching eggs of ratites are exported to the United States to receive approval from the National Veterinary Service of that country before ratites are added to the premises from outside the premises, and also prohibits the addition of ratites to a flock during production seasons;

(I) The country from which ratites or hatching eggs of ratites are exported to the United States establishes a maximum number of hatching eggs of ratites that may be produced on each premises over a set production season. The ceiling for each premises is calculated jointly by a full-time salaried veterinary officer of the national government of the country of export and the APHIS representative who conducts the site visit required under § 92.103(a)(2)(iii);

(J) The country of export conducts random inspections of each premises intending to export ratites or hatching eggs of ratites to the United States, at least twice during each production season, to ensure that all ratites and hatching eggs of ratites on the premises are identified as required under paragraphs (b)(3)(i)(D) and (b)(3)(i)(E) of this section. These inspections must be conducted by either a veterinary officer of the national government of the country of export or an employee of that government responsible for the protection of fish and wildlife. If any ratites or hatching eggs are not identified as required, the country of export must not issue the export certificate required under § 92.104(a). The country of export must record, on the copy of the quarterly report required to be sent to the Administrator under paragraph (b)(3)(i)(E) of this section, whether all ratites and hatching eggs are identified as required;

(K) The country of export requires each premises on which ratites or hatching eggs of ratites intended for export to the United States are kept to submit to the National Veterinary Service of that country a copy of the certificate required under § 92.104(a);

(L) The person intending to import ratites into the United States provides the APHIS veterinary inspector at the intended port of entry with a reader capable of reading the microchip implanted in each of the ratites.

* * * * *

5. In § 92.103, new paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), and (a)(2)(vii) are added to read as follows:

§ 92.103 Import permits for birds [*]; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) * * *

(iv) A permit to import ratites or hatching eggs of ratites will be denied or withdrawn if an inspection of the premises of the flock or origin, carried out by the national government of the country of export under § 92.101 (b)(3)(i)(G) and (b)(3)(i)(J), indicates that the ratites and hatching eggs are not identified and marked as required under §§ 92.101 (b)(3)(i)(B) and (b)(3)(i)(C).

(v) A permit will be denied or withdrawn if: (A) The importer or a person responsibly connected with the importer's business is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

(B) The operator of the farm of the flock of origin, or a person responsibly connected with the owner of the flock of origin, is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

(vi) For the purposes of this section, a person shall be deemed to be responsibly connected with the importer's business or the owner of the flock of origin if such person has an ownership, mortgage, or lease interest in the physical plant of the importer's business or the farm of the flock of origin, or if such person is a partner, officer, director, holder or owner or 10 per centum or more of the voting stock of the importer's business or the farm of the flock of origin, or is an employee of the importer or the owner of the flock of origin.

(vii) A permit may be denied or withdrawn at any time by the Administrator, for any of the reasons provided in paragraphs (a)(2) (ii), (iii), (iv), or (v) of this section. Before such action is taken, the importer or the operator of the farm of the flock of origin will be informed of the reasons for the proposed action and, upon request in case of a dispute of material facts, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding. However, withdrawal of a permit shall become effective pending final determination in the proceeding, when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the importer or the operator of the farm of the flock of origin. In the event of oral notification, written confirmation shall be given to the importer or the operator of the farm of the flock of origin as promptly as circumstances permit. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

* * * * *

6. Section 92.104 is amended by redesignating paragraphs (c)(12) and (c)(13) as paragraphs (c)(15) and (c)(16), and by adding new paragraphs (c)(12), (c)(13), and (c)(14), and paragraphs

[2] Copies should be mailed to Administrator, c/o Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[*] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (50 CFR parts 14 and 17) should be consulted.

(d)(8), (d)(9), and (d)(10) to read as follows:

§ 92.104 Certificate for pet birds, commercial birds, zoological birds, and research birds.

* * * * *

(c) * * *

(12) The number of ratites contained in the shipment;

(13) That the number of ratites and hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling established under § 92.101(b)(2)(iii)(I);

(14) That all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B);

* * * * *

(d) * * *

(8) The number of hatching eggs contained in the shipment;

(9) That the number of ratites hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling established under § 92.101(b)(2)(iii)(I); and

(10) That all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B).

Done in Washington, DC, this 1st day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–5164 Filed 3–7–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–145–AD; Amendment 39–8847; AD 94–05–09]

Airworthiness Directives; Beech Model 400A Airplanes Equipped With Certain Tosington Cabin Seat Frames

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A airplanes, that requires an inspection to detect fatigue-related cracking in certain cabin seat frames; measurement to determine gap size between the bearing shafts and certain seat frames; and repair, if necessary. This amendment is prompted by in-service inspection reports of fatigue-related cracking radiating outward from the bushings welded into the cabin seat frames. The actions specified by this AD are intended to prevent separation of the cabin seat frames from their bases during an emergency landing.

DATES: Effective April 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Tosington Enterprises, Inc., 2261 Madera Road, Simi Valley, California 93065. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laurence Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita ACO, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes was published in the **Federal Register** on November 8, 1993 (58 FR 59223). That action proposed to require a one-time visual inspection to detect fatigue-related cracking in certain cabin seat frames; measurement to determine gap size between the bearing shafts and certain seat frames; and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 41 Beech Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,595, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–05–09 Beech Aircraft Corporation: Amendment 39–8847. Docket 93–NM–145–AD.

Applicability: Model 400A airplanes; serial numbers RK–1 through RK–40 inclusive, and RK–45; equipped with Tosington Cabin Seat Frames having serial numbers prior to 5606, on which Modification Kit Number 303–307 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the cabin seat frames from their bases during an emergency landing, accomplish the following: (a) Within 200 hours time-in-service after the effective date of this AD, perform a visual inspection to detect fatigue-related cracking extending radially outward from the bushings welded into the cabin seat frames, in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993. If any cracking is found, prior to further flight, repair by welding in accordance with the service bulletin.

(b) Within 200 hours time-in-service after the effective date of this AD, measure the gap size between the bearing shaft and the lower aft and/or forward seat frames in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993.

(1) If the gap size is 0.32 inch or greater, prior to further flight, repair by reinforcing the cabin seat frame in accordance with the service bulletin.

(2) If the gap size is less than 0.32 inch, no further action is required

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, repairs, and measurement shall be done in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Tosington Enterprises, Inc., 2261 Madera Road, Simi Valley, California 93065. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 7, 1994.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4951 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–NM–65–AD; Amendment 39–8802; AD 94–02–04]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the airworthiness directive (AD) number for the above-captioned AD that was published in the **Federal Register** on Tuesday, February 1, 1994 (59 FR 4567). A typographical error in the processing of the document resulted in two AD's having the same AD number. In all other respects, the original document is correct.

DATES: Effective March 3, 1994.

The incorporation by reference of Boeing Service Bulletin 727–53–0197, Revision 1, dated April 9, 1992, as listed in the regulation is approved by the Director of the Federal Register as of March 3, 1994 (59 FR 4567, February 1, 1994).

FOR FURTHER INFORMATION CONTACT: Phil Forde 206–227–2771.

SUPPLEMENTARY INFORMATION: A final rule Airworthiness Directive (AD), applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on Tuesday, February 1, 1994 (59 FR 4567), with an effective date of March 3, 1994. As published, that AD contained a typographical error: The AD number for that rule was shown incorrectly as "94–04–04," rather than the correct AD number of "94–02–04." Because of this error, two AD's were published with the same AD number. This document corrects the AD number of amendment 39–8802 to 94–02–04. Since none of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington, on March 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5240 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–77–AD; Amendment 39–8840; AD 94–05–02]

Airworthiness Directives; Fokker Model F–28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, that requires the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Effective April 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F–28 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 9, 1993 (58 FR 59418). That action proposed to require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take an average of approximately 7 work hours per basic task to accomplish the 77 basic tasks called out in the Fokker Corrosion Prevention and Control Program (CPCP) Document; this represents a total average of 539 work hours (this figure includes not only inspection time, but access and closure time as well). The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the 4-year average inspection cycle is estimated to be $1,363,670, or $29,645 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–05–02 Fokker: Amendment 39–8840. Docket 93–NM–77–AD.

Applicability: Model F–28 Mark 1000, MK 2000, MK 3000, and MK 4000 series airplanes (does not include Model MK 0100 series airplanes), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Fokker Document SE–253, "F–28 Corrosion Control Program," including all revisions through September 15, 1992, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM–113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note 3: The FAA recommends that priority for implementing the corrosion prevention and control program, specified in this AD, be given to older aircraft and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in section 2.4 of the Document in accordance with the procedures of the Document and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 4: A "basic task," as defined in section 2.4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

Note 5: Airplane "areas" are those items listed in columnar form in the "ACTION" statement of each task, as listed in the Document.

Note 6: Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD.

Note 7: Where non-destructive inspection (NDI) methods are employed, in accordance with section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in section 2.4 of the Document as follows: (i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT, or no later than one Repeat Inspection Time (RIT) interval measured from a date one year after the effective date of this AD, whichever occurs later.

(ii) For airplane areas that have exceeded the IIT for a particular basic task as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iii) Notwithstanding paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of this AD.

Note 8: This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

Note 9: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F–28 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following: (A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F–28 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 10: Notwithstanding the provisions of Section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA (ref. **Note 2** of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F–28 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to Fokker of such findings, in accordance with section 2.5 of the Document.

Note 11: Reporting to the FAA of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(k) The basic tasks shall be done in accordance with Fokker Document SE–253 "F28 Corrosion Control Program," revised through September 15, 1992, which contains the following list of effective pages:

Task No.	Page No.	Revision level shown on page	Date shown on page
Introduction			
	1–2, 5–8, 10–15, 17–19	3	Jan. 1, 1992.
	3–4, 9, 16, 20, 25	3–1	Sept. 15, 1992.
	21–24, 26	1	Jan. 1, 1992.
Corrosion inspections			
010–00	010/01	3	Jan. 1, 1992.
020–00	020/01		
030–00	030/01		
040–00	040/01		
050–00	050/01		
100–00	100/01		
110–00	110/01		
120–00	120/01		
120–01	120/02		
130–00	130/01		
130–01	130/02		
140–00	140/01		
140–01	140/02		
150–00	150/01		
160–00	160/01		
200–00	200/01		
250–00	250/01		
250–01	250/02		
250–02	250/03		
250–03	250/04		
270–00	270/01		
280–00	280/01		
290–00	290/01		
290–01	290/02		
290–02	290/03		
290–03	290/04		
290–04	290/05		
300–00	300/01		
300–01 cont.	300/03		
300–02	300/04		
400–00	400/01		
410–00	410/01		
420–00	420/01		
520–00	520/01		
520–01	520/02	3	Jan. 1, 1992
520–02	520/03		
530–00	530/01		
537–00	537/01		
537–01	537/02		
537–02	537/03		
538–00	538/01		
538–01	538/02		
538–02	538/03		
540–00	540/01		
556–00	556/01		
560–00	560/01		
570–00	570/01		
570–01	570/02		
570–02	570/03		
570–03	570/04		
700–00	700/01		
710–00	710/01		
720–00	720/01		
730–00	730/01		
740–00	740/01		
750–00	750/01		
760–00	760/01		
800–00	800/01		
810–00	810/01		
810–01	810/02		
820–00	820/01		
910–00	910/01		
910–02	910/03		
920–00	920/01		
920–01	920/02		

Task No.	Page No.	Revision level shown on page	Date shown on page
930–00	930/01		
940–00	940/01		
950–00	950/01		
980–00	980/01		
300–01	300/02	3–1	Sept. 15, 1992.
300–03	300/05		
560–01	560/02		
820–01	820/02		
910–01	910/02		
920–02	920/03		
940–01	940/02		
980–01	980/02		
Appendix A			
	1–11	3	Jan. 1, 1992.
Appendix B			
	1	3–1	Sept. 15, 1992.
Appendix C			
	1–3	3	Jan. 1, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on April 7, 1994.

Issued in Renton, Washington, on February 18, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4277 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No 94–ACE–05]

Modification of Class D Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Waterloo Municipal Airport, Waterloo, Iowa, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Waterloo Municipal Airport Traffic Control Tower (ATCT), Waterloo, Iowa.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Waterloo control zone was in effect 24 hours a day, 7 days a week. However, the Waterloo ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Waterloo ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Waterloo Municipal Airport, Waterloo, Iowa. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Waterloo ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as

the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE IA D Waterloo, IA [Revised]

Waterloo Municipal Airport, IA
(lat. 42°33'25" N, long. 92°24'01" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Waterloo Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5263 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–07]

Modification of Class D Airspace; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Cape Girardeau Municipal Airport Traffic Control Tower (ATCT), Cape Girardeau, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Cape Girardeau control zone was in effect 24 hours a day, 7 days a week. However, the Cape Girardeau ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Cape Girardeau ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Cape Girardeau ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(lat. 37°13'31" N, long. 89°34'14" W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Cape Girardeau Municipal Airport. This Class D airspace area

is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5264 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–08]

Modification of Class D Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Columbia Regional Airport, Columbia, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Columbia Regional Airport Traffic Control Tower (ATCT), Columbia, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Columbia control zone was in effect 24 hours a day, 7 days a week. However, the Columbia ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Columbia ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Columbia Regional Airport, Columbia, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Columbia ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71 1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Columbia, MO [Revised]

Columbia Regional Airport, MO
(lat. 38°49'05" N, long. 92°13'11" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Columbia Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region

[FR Doc. 94–5265 Filed 3–7–94 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–04]

Modification of Class D Airspace; Forbes Field, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Topeka Forbes Field, Topeka, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field Airport Traffic Control Tower (ATCT), Topeka, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Topeka Forbes Field and ATCT control zones were in effect 24 hours a day, 7 days a week. However, the Topeka Forbes Field ATCT will become a part-time facility in the near future with hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Topeka Forbes Field, Topeka, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE KS D Topeka, Forbes Field, KS [Revised]

Topeka Forbes Field, KS
(lat. 38°57'01" N, long. 97°39'51" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5266 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–03]

Modification of Class D Airspace; Philip Billard Municipal Airport, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Topeka Philip Billard Municipal Airport, Topeka, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard Municipal Airport Traffic Control Tower (ATCT), Topeka, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Topeka Philip Billard Municipal Airport control zone was in effect 24 hours a day, 7 days a week. However, the Topeka Philip Billard ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Topeka Philip Billard Municipal Airport, Topeka, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard ATCT. I find that notice and public procedure under 5

U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE KS D Topeka, Philip Billard Airport, KS [Revised]

Topeka Philip Billard Municipal Airport, KS
(lat. 39°04'06" N, long. 97°37'21" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5267 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Nos. 91–ANM–14, 91–ANM–16, 19–ANM–17, 93–ANM–1, 93–ANM–2, 93–ANM–3, and 93–ANM–5]

Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 7, 9, and 10, 1993, the Federal Aviation Administration (FAA) published final rules altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E Airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These actions support the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rules' effective date until May 15, 1994.

EFFECTIVE DATE: Effective March 8, 1994, the effective date of the final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, 58 FR 47635, as postponed at 58 FR 60552, and corrected at 59 FR 1472, 59 FR 5080 and 59 FR 6217 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federals airways, and jet routes to support the new Denver International Airport airspace reconfiguration. On January 11, 1994, a correction was published on Airspace Docket No. 91–ANM–14 to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO. Additionally, on February 3 and 10, 1994, corrections were published on J–54 in Airspace Docket No. 91–ANM–16 to reinstate a segment from Cherokee, WY, to Laramie, WY. The official opening of the Denver International Airport has been delayed until May 15, 1994. Accordingly, the effective date of the related final rules should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of Airspace Docket No. 93–ANM–1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93–ANM–2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93–ANM–3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93–ANM–5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO (58 47373; September 9, 1993); Airspace Docket No. 91–ANM–14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993) and the final rule correction (59 FR 1472; January 11, 1994); Airspace Docket No. 91–ANM–16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993) and the final rule corrections (59 FR 5080; February 3, 1994) and (59 FR 6217; February 10, 1994); and Airspace Docket No. 91–ANM–17 altering VOR

Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993) are delayed from March 9, 1994, to 0601 VTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-5291 Filed 3-7-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AWA-3]

RIN 2120-AE46

Alteration of the Denver Class B Airspace Area; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. On January 20, 1994, a correction to the final rule was published to correct certain airport reference point and navigational aid (NAVAID) coordinates for the new airport, and to reflect that the Denver Very High Frequency Omnidirectional Range (VOR) has been upgraded to a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date until May 15, 1994.

EFFECTIVE DATE: March 8, 1994, the effective date of the final rules at 58 FR 48722, as postponed at 58 FR 60552 and corrected at 59 FR 2953 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. Subsequently, on November 17, 1993, a delay of effective date was published and on January 20, 1994, a correction to the final rule was published to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport, and to reflect that the Denver VOR has been upgraded to a VOR/DME facility. The official opening of the Denver International Airport has now been delayed until May 15, 1994. Accordingly, the effective date of the alteration and correction of the related Class B airspace area should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of the final rule altering the Denver, Co, Class B airspace area (58 FR 48722; September 17, 1993), as delayed by a final rule at 58 FR 60552, November 17, 1993, and the effective date of the final rule correction (59 FR 2953; January 20, 1994) are delayed from March 9, 1994, to 0601 UTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-5290 Filed 3-7-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-20]

Alteration of Jet Route J-171; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J-171 from Tobe, CO, to Hugo, CO. This action accommodated the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date until May 15, 1994.

EFFECTIVE DATE: Effective March 8, 1994, the effective date of the Final Rule at 59 FR 1619 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J-171 from Tobe, CO, to Hugo, CO, to accommodate the new Denver International Airport airspace reconfiguration. The official opening of the Denver International Airport has been delayed until May 15, 1994. Accordingly, the effective date of this jet route alteration should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of the final rule altering the Jet Route J-171, (59 FR 1619; January 12, 1994) is delayed from March 9, 1994, to 0601 UTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-5292 Filed 3-8-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ACE-02]

Modification of Class D Airspace; Salina, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Salina Municipal Airport, Salina, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an

operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Salina Airport Traffic Control Tower (ATCT), Salina, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Salina control zone was in effect 24 hours a day, 7 days a week. However, the Salina ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Salina ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Salina Municipal Airport, Salina, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Salina ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE KS D Salina, KS [Revised]
Salina Municipal Airport, KS
(lat. 38°47′30″ N, long. 97°39′03″ W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.9-mile radius of Salina Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5268 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ACE–09]

Modification of Class D Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Joplin Regional Airport, Joplin, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Joplin Regional Airport Traffic Control Tower (ATCT), Joplin, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Joplin control zone was in effect 24 hours a day, 7 days a week. However, the Joplin ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Joplin ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Joplin Regional Airport, Joplin, Missouri. The

purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Joplin ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Joplin, MO [Revised]
Joplin Regional Airport, MO
(lat. 37°09'02" N, long. 94°29'54" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Joplin Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5269 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–10]

Modification of Class D Airspace; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Springfield Regional Airport, Springfield, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect to this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Springfield Regional Airport Traffic Control Tower (ATCT), Springfield, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Springfield control zone was in effect 24 hours a day, 7 days a week. However, the Springfield ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Springfield ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Springfield Regional Airport, Springfield, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Springfield ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Springfield, MO [Revised]
Springfield Regional Airport, MO
(lat. 37°14'39" N, long. 93°23'13" W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of Springfield Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–6270 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–06]

Modification of Class D Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Grand Island, Central Nebraska Regional Airport, Grand Island, Nebraska, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Grand Island, Central Nebraska Regional Airport Traffic Control Tower (ATCT), Grand Island, Nebraska.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Grand Island control zone was in effect 24 hours a day, 7 days a week. However, the Grand Island ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Grand Island ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Grand Island, Central Nebraska Regional Airport, Grand Island, Nebraska. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Grand Island ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE NE D Grand Island, NE [Revised]
Grand Island, Central Nebraska Regional Airport, NE
(lat. 40°58'03" N, long. 98°18'31" W)

That airspace extending upward from the surface to and including 4,300 feet MSL within a 4.4-mile radius of Central Nebraska Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dated and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5271 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 93–ASO–2]

Establishment of Restricted Area R–3008D, and Amendment of Restricted Areas R–3008A, R–3008B, and R–3008C; Grand Bay Weapons Range, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–3008D above existing Restricted Areas R–3008A, R–3008B, and R–3008C at the Grand Bay Weapons Range, Moody Air Force Base (AFB), GA. The new restricted area is required to accommodate high altitude/high angle weapons delivery training at the Grand Bay Weapons Range. In addition, the designated controlling agency for Restricted Areas R–3008A, R–3008B, and R–3008C is changed from FAA, Jacksonville ARTCC to U.S. Air Force, Valdosta Approach Control. Further, this action amends the title of the using agency for Restricted Areas R–3008A, R–3008B, and R–3008C to reflect the current organizational name.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) to establish Restricted Area R–3008D above the existing Grand Bay Weapons Range Restricted Areas R–3008A, R–3008B, and R–3008C, located at Moody AFB, GA (58 FR 41214). In addition, the FAA proposed to change the designated controlling agency for the existing Restricted Areas R–3008A, R–3008B, and R–3008C from FAA, Jacksonville ARTCC to Valdosta Approach Control.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The proposed amendment, as published in the notice, incorrectly listed the proposed controlling agency for all four restricted areas as "FAA, Valdosta Approach Control." Valdosta Approach Control is a military-operated air traffic control facility, rather than FAA, and has been delegated controlling agency responsibility for the Grand Bay Weapons Range by the Jacksonville ARTCC. This action corrects the controlling agency title to read "U.S. Air Force, Valdosta Approach Control." Although not described in the notice, this action also amends the title of the using agency for the existing Restricted Areas R–3008A, R–3008B, and R–3008C by deleting the word "Tactical" from the title to reflect the current organizational name. Except for the changes noted above, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–3008D at the Grand Bay Weapons Range to extend the vertical limits of the range to but not including flight level 230. As a result of experience gained in Operation Desert Storm, the U.S. Air Force determined that it was necessary to expand air-to-surface weapons delivery profiles to include high altitude/high angle deliveries. This action provides the necessary vertical airspace to accommodate these current training requirements. In addition, this action changes the controlling agency for all Grand Bay Weapons Range restricted areas from "FAA, Jacksonville ARTCC" to "U.S. Air Force, Valdosta Approach Control." By letter of agreement between Jacksonville ARTCC and the U.S. Air Force, the FAA has delegated the affected airspace to Valdosta Approach Control. Finally, this action deletes the word "Tactical" from the name of the current using agency for R–3008A, R–3008B, and R–3008C in order to reflect the correct organizational name.

Environmental Review

In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.30 [Amended]

2. In each of the designations in § 73.30 listed below, remove the words "FAA, Jacksonville ARTCC" for the controlling agency and insert, in their place, the words "U.S. Air Force, Valdosta Approach Control." Also, in each of the designations listed below amend the title for the using agency by deleting the word "Tactical" to reflect the current organizational name.

R–3008A Grand Bay Weapons Range, GA
R–3008B Grand Bay Weapons Range, GA
R–3008C Grand Bay Weapons Range, GA

3. Add the following designation in § 73.30 to read as follows:

R–3008D Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 31°04′01″ N., long 83°01′00″ W.; to lat.30°51′01″ N., long 83°01′00″ W.; to lat. 30°51′01″ N., long 83°08′00″ W.; to lat. 30°53′31″ N., long 83°09′00″ W.; to lat. 30°56′51″ N., long 83°10′00″ W.; to lat. 30°57′36″ N., long 83°11′05″ W.; to lat. 30°59′13″ N., long 83°10′00″ W.; to lat. 31°02′01″ N., long 83°09′00″ W.; to lat. 31°04′01″ N., long 83°08′00″ W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to but not including FL 230.

Time of designation. 0700–1900 local time, Monday–Friday, other times by NOTAM six hours in advance.
Controlling agency. U.S. Air Force, Valdosta Approach Control. Using agency. U.S. Air Force, 347th Fighter Wing, Moody AFB, GA.

Issued in Washington, DC, on February 24, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5272 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD08–94–003]

RIN 2115–AE47

Drawbridge Operation Regulations; Humble Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of a drawbridge over the Humble Canal, from March 7 through May 4, 1994. This deviation requires the Louisiana Department of Transportation and Development (LDOTD) to close the bridge for a continuous 59-day period. The purpose of the closure is to allow LDOTD to stabilize and strengthen the bridge so that the South Terrebonne Parish Tidewater Management & Conservation District will be able to haul dirt and heavy equipment for the construction of a hurricane protection levee south of the bridge.

EFFECTIVE DATES: The period of deviation begins on Monday, March 7, 1994, and continues through Wednesday, May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Rose A. Payne, Bridge Program Manager, Eighth Coast Guard District. Telephone number (504) 589–2965.

SUPPLEMENTARY INFORMATION: The only economic consequences involve the rerouting of navigation presently using Humble Canal. However, an alternate route is available via Bayou Terrebonne and Lake Barre. This deviation is for the purpose of providing a specific time frame to commence construction of a hurricane protection levee for many residents living in the low areas of South Terrebonne Parish.

This deviation from normal operating regulations is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, §§ 117.35 and 117.37.

Dated: February 23, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–5278 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–94–005]

Special Local Regulations for Marine Events; Nations Bank Town Point Air Show; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements special local regulation for the Nations Bank Town Point Air Show. The event will consist of an air show with aerobatics and fly-bys. The regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 become effective according to the dates and times listed below.

Friday: July 15, 1994
Closure: 8:45 pm–9:30 pm
Saturday: July 16, 1994
Closure: 11:30 am–12:15 pm; 1:00 pm–1:45 pm; 2:30 pm–3:15 pm; 4:00 pm–4:45 pm
Sunday: July 17, 1994
Closure: 11:30 am–12:15 pm; 1:00 pm–1:45 pm; 2:30 pm–3:15 pm; 4:00 pm–4:45 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, Virginia 23703–2199 (804) 483–8559.

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT R.B. Birthisel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The Norfolk Festevents, Ltd. submitted an application to hold the Nations Bank Town Point Air Show. The air show will be held in the Elizabeth River in the Town Point area between the Naval Hospital and Portside. Since many spectator vessels are expected to be in the area to watch the air show, the regulations in 33 CFR 100.501 are being implemented. The waterway will be closed according to the dates and times listed under effective dates. Since the waterway will not be closed for extended periods at a time, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g).

Dated: February 24, 1994.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–5281 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Louisville 94–003]

RIN 2115–AA97

Safety Zone; Ohio River Miles 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area to prevent potential environmental and safety hazards associated with commercial vessels transporting cargoes regulated under title 46 Code of Federal Regulations subchapters D and O, while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on February 24, 1994, at 7 a.m. EST. It will terminate at 6 p.m. EST on March 11, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Phillip Ison, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Phillip Ison, Project Officer, Marine Safety Office, Louisville, Kentucky, and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a regulation now as the situation presents an immediate hazard to navigation, life, and property.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night during periods of high water from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–013 is added, to read as follows:

§ 165.T02–013 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on February 24, 1994, at 7 a.m. EST. It will terminate at 6 p.m. EST on March 11, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by title 46 Code of Federal Regulations subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: February 23, 1994, 3 p.m. EST.

W.J. Morani, Jr.,

Commander, Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 94–5280 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

RIN 2115–AA97

COTP Corpus Christi, TX 94–006 Safety Zone Regulation; Gulf Intracoastal Waterway, Matagorda Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety zone is needed to prevent vessels from grounding on the shoal areas near the narrowed channels.

Entry into this zone is restricted to single wide loaded tows, empty tows may transit through the safety zone double wide. All vessels are restricted to one way traffic between green buoy 89 and green buoy 115.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m., on February 15, 1994. It terminates at 12:01 a.m., April 15, 1994, or upon completion of dredging by the Army Corps of Engineers, whichever is earliest.

FOR FURTHER INFORMATION CONTACT: ENS S. Montoya at telephone number (512) 888–3195, or at United States Coast Guard Marine Safety Office, P.O. Box 1621, Corpus Christi, Texas, 78403.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to reduce the risk of vessel groundings and potential pollution incidents.

Drafting Information

The drafters of this regulation are ENS S. Montoya, Chief, Waterways Management Section, and CAPT R. J. Reining, Commanding Officer, U.S. Coast Guard Marine Safety Office, Corpus Christi, Texas, and CDR D. Dickman, Project Counsel, Eighth Coast Guard District, Legal Office, New Orleans.

Discussion of Regulation

The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety

zone is needed to prevent vessels from grounding on the shoal areas near the narrowed channels. Entry into this zone is restricted to single wide loaded tows, empty tows may transit through the safety zone double wide. All vessels are restricted to one way traffic between green buoy 89 and green buoy 115.

Regulatory Evaluation

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation regulatory policies and procedures" (44 FR 11034: February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available by contacting Commander (mps), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396.

This regulation is issued under to 33 U.S.C. 1225 and 1231, as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation: In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T08–006 is added to read as follows:

§ 165.T08–006 Safety Zone: Gulf Intracoastal Waterway, Matagorda Bay.

(a) *Location.* The following area is a safety zone: A safety zone exists in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455, including the entire width of the channel.

(b) *Regulations.* (1) The Gulf Intracoastal Waterway between buoys 89 and 115 is restricted to one way traffic. Before transiting between buoys 89 and 115, a vessel must establish radio communications with all other vessels in the area that are restricted to the maintained channel, to establish which vessel will transit through the safety zone. A vessel may not transit between buoys 89 and 115, without prior approval of the Captain of the Port, unless it has an agreement with the other vessels in the area.

(i) No vessel may meet or pass another vessel between buoys 89 and 115.

(ii) Any vessel meeting another vessel, between buoys 89 and 115, that is restricted in its ability to maneuver outside the maintained channel, must either move to outside the maintained channel, if it is able, or back up until it is east or west of the buoys.

(2) Between mile marker 455 and mile marker 475 of the Gulf Intracoastal Waterway:

(i) A tow consisting of any loaded barges may only transit if made up in a single wide configuration.

(ii) A tow consisting of only empty barges may transit if made up of either a single wide or double wide configuration.

(3) Permission to deviate from these regulations may only be obtained from the Captain of the Port, Corpus Christi, Texas. Permission can be obtained by calling the Chief, Waterways Management Section, U.S. Coast Guard Marine Safety Office, Texas, at telephone number (512) 888–3162 or 3195.

(c) *Effective date.* This section becomes effective at 12:01 a.m., on February 14, 1994. It terminates at 12:01 a.m., April 15, 1994, or upon completion of dredging by the Army Corps of Engineers, whichever is earliest.

Dated: February 14, 1994.

Robert J. Reining,

Captain, Coast Guard, Captain of the Port, Corpus Christi, Texas.

[FR Doc. 94–5279 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 963

Rules of Practice in Proceedings Relative to Violations of the Pandering Advertisements Statute

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule makes several technical amendments to reflect organizational changes resulting from the Postal Service's recent restructuring.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Aspell (202) 268–5438.

SUPPLEMENTARY INFORMATION: As a result of Postal Service restructuring, Customer Services District Managers have become the successor officials to Field Division General Managers/ Postmasters for, among other things, performing certain administrative functions under the pandering advertisements statute, 39 U.S.C. 3008. One of these functions is issuing violation complaints pursuant to 39 U.S.C. 3008(d). The statute provides for an administrative hearing if duly requested by the person against whom a complaint has been issued. The procedural rules for the conduct of such a hearing are contained in 39 CFR part 963.

Amendment of part 963 is needed to substitute references to the Customer Services District Manager for references to the Field Division General Manager/ Postmaster. An additional amendment also is needed to update the citation to the Postmaster General's delegation of authority, pursuant to which the rules of practice in part 963 are issued by the Judicial Officer.

List of Subjects in 39 CFR Part 963

Administrative practice and procedure, Advertising, Postal service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 963 as specifically set forth below:

PART 963—[AMENDED]

1. The authority citation for part 963 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3008.

§ 963.1 [Amended]

2. Section 963.1 is amended by removing "224.1(c)(4)" from the parenthetical citation at the end of the section and adding in its place "226.2(e)(1)".

§ 963.2 [Amended]

3. Section 963.2 is amended by adding "Customer Services District

Manager" after removing "Field Division General Manager/Postmaster", and adding "(hereinafter, "Manager")" after removing "(hereinafter, "Postmaster")".

§ 963.3 [Amended]

4. Section 963.3(a) is amended by adding the word "Manager" after removing the word "Postmaster" wherever it appears, and by removing the ZIP Code at the end of the paragraph and adding the new ZIP Code "20260–6100".

5. Section 963.3(c) is amended by adding the word "Manager's" after removing the word "Postmaster's".

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94–5242 Filed 3–7–94; 8:45 am]

BILLING CODE 7710–12–M

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI14–02–6138; FRL]–4841–8]

Approval and Promulgation of an Emission Statement Program; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving the State Implementation Plan (SIP) revision request submitted by the State of Michigan on November 16, 1992, supplemented October 25, 1993, and February 7, 1994, for the purpose of implementing an emission statement program for stationary sources within the Detroit, Grand Rapids, and Muskegon ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Clean Air Act (Act) requirements for an emission statement program as part of the SIP for Michigan.

DATES: This action will be effective May 3, 1994 unless notice is received by April 7, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments on this rulemaking should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support documents, and public comments received are available at the following address:United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 16, 1992, the Michigan Department of Natural Resources (MDNR) submitted to the USEPA rules and reporting forms requiring emission statements (annual emission reports). Michigan's submittal to USEPA comprised Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions. On September 23, 1993 the USEPA proposed to disapprove the November 16, 1992 submittal in the **Federal Register** (58 FR 49463–49464). The MDNR amended its reporting forms, and submitted the 1993 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions to USEPA on October 25, 1993. In addition, the MDNR provided a summary of its program along with an implementation strategy. The emission statement submittal addresses the emission statement requirements which are found at Section 182(a)(3)(B) of the Act.

Section 182(a)(3)(B) of the Act states that, within 2 years, States in which ozone nonattainment areas classified marginal or worse are located must submit revisions to their SIPs to require the owners or operators of stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) to provide States with statements, in a form acceptable to the USEPA, showing actual emissions of NO_x and/or VOC from those sources. The first emission statements must be submitted to the States within 3 years of the enactment of the 1990 Clean Air Act Amendments, by November 15, 1993. Subsequent statements are to be submitted annually thereafter. These statements must contain certifications of accuracy.

Section 182(a)(3)(B)(ii) of the Act specifies that the States may waive the emission statement requirements for any class or category of sources which emit less that 25 tons per year if the States, in their submissions of base year emission inventories or periodic emission inventories (required to be submitted to the USEPA every 3 years), provide for the reporting of the emissions from the exempted source classes or categories and if the reported emissions are determined using emission factors acceptable to the USEPA.

II. Analysis of State Submittal

The criteria used to review the submission are found in USEPA's draft *Guidance on the Implementation of an Emission Statement Program*, July 1992. Four criteria have been established for approvability. One, the State should require sources emitting NO_x or VOC in all ozone nonattainment areas to submit emission statements before November 15, 1993 and annually thereafter. Two, when requesting emission statement data from sources of NO_x or VOC, the State should require: (a) Certification of data accuracy; (b) source identification information; (c) operating schedule; (d) emissions information; (e) control equipment information; and (f) process data. Three, the pollutants being reported (NO_x and VOC) and accompanying terminology should be clearly identified and defined. Four, the State should commit to provide emission statement data and updates to USEPA.

After reviewing Michigan's submission against the above criteria, no deficiencies were found. MDNR requires sources of VOC or NO_x in ozone nonattainment areas to submit emission statement data. The State notifies sources of this requirement in the State's reporting forms. The forms request proper certification of data accuracy along with emission statement data. The emission reporting forms define the applicable terms necessary to complete the forms. The State is committed to submitting emission statement information to USEPA via the Aerometric Information Retrieval System (AIRS) as expeditiously as possible. A detailed analysis of the SIP is found in three technical support documents dated June 3, 1993, September 14, 1993, and November 18, 1993.

III. Implications of Action

Based upon USEPA's evaluation of Michigan's November 16, 1992 and supplemental October 25, 1993 submittal, USEPA is approving the emission statement submission as a revision to the Michigan ozone SIP. Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future

request for revision of any SIP. The USEPA shall consider each request for revision of the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (EO) 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989. 54 FR 2214–2225. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions, 54 FR 2222, from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive ORder 12291 on September 30, 1993.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(93) On November 16, 1992, the Michigan Department of Natural Resources submitted Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions as the States emission statement program. Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965.

(i) Incorporation by reference.

(A) Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965.

3. Section 52.1174 is amended by adding paragraph (b) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(b) Approval—On November 16, 1992, the Michigan Department of Natural Resources submitted Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions as the States emission statement program. Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965. These rules have been incorporated by reference at 40 CFR 52.1170(c)(93). On October 25, 1993, the State submitted the 1993 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions, along with an implementation strategy for the State's emission statement program.

[FR Doc. 94–5226 Filed 3–7–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 81–059a]

RIN 2115–AB91

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an interim final rule published on April 18, 1990, (55 FR 14792), the Coast Guard amended the regulations concerning the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. The rulemaking implemented National Transportation Safety Board (NTSB) recommendations for the establishment of personnel qualifications and manning regulations for MODUs. These minimum standards were intended to ensure that licensed individuals on board MODUs are qualified to deal with specific marine safety matters. This rule adopts the interim final rule with minor changes.

EFFECTIVE DATE: This rule is effective on April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Eulitt, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Paul W. Eulitt, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 8, 1983, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Licensing of Officers and Operators and Registration of Staff Officers" in the **Federal Register**, (48 FR 35920), proposing to completely revise the licensing regulations in part 10 of title 46 Code of Federal Regulations. Included in the NPRM were proposed rules formalizing the requirements for MODU industry licenses.

As a result of comments received concerning the licensing and manning requirements for MODU's, the Coast Guard published a separate supplemental notice of proposed rulemaking (SNPRM) on October 24, 1985, (50 FR 43366) addressing these issues.

An interim final rule (IFR) was published on October 16, 1987 (52 FR 38660). Comments received in response to this IFR indicated a need to re-address several issues related to MODU licensing and manning. A notice suspending the IFR's effective date was published on February 28, 1989 (54 FR 8334).

A second SNPRM published May 17, 1989 (54 FR 21246), proposed to revise the offshore installation manager qualifications and MODU manning levels. It also proposed a procedure by which unlicensed individuals currently serving in positions requiring licenses could obtain the required credentials.

A second IFR published on April 18, 1990, (55 FR 14792), adopted the second SNPRM with minor changes and permitted the public the opportunity to submit additional comments on this rulemaking. The Coast Guard received 5 letters commenting on the IFR.

A public hearing was not requested and one was not held.

Background and Purpose

Public Law 96–378 (codified as 46 United States Code 7101(d)) requires the establishment, where possible, of suitable career patterns, service and qualifying requirements, and substitution of training time and courses of instruction for sea service on deck or in the engine department. This places responsibilities on the Coast Guard for modifying many sections of our licensing regulations.

The Coast Guard has long recognized the need for special licenses adapted to the unique operations associated with MODUs. In response to a number of major marine casualties on U.S. flag MODUs, investigations were conducted by the NTSB and the Coast Guard marine boards of investigation. These investigations concluded that current Coast Guard regulations did not adequately address the unique characteristics inherent in the offshore oil drilling industry. These investigation reports recommended that the Commandant of the Coast Guard promulgate personnel qualification and manning regulations for MODUs. Therefore, the Coast Guard, with industry assistance proposed regulations enabling personnel serving in the offshore drilling industry to qualify for licenses.

The purpose of this rulemaking is to adopt as final the IFR published in the **Federal Register** (55 FR 14792) on April 18, 1990, entitled "Licensing of Officers and Operators for Mobile Offshore Drilling Units". This rulemaking also makes minor changes adopting recommendations provided in the comments received to the IFR.

Discussion of Comments and Changes

The Coast Guard appreciates the effort expended by the offshore drilling industry and other interested parties in commenting on this rulemaking. As addressed below, several commenters expressed similar opinions on specific issues.

1. Time Limitation for Conversion of Existing MODU Licenses

Two comments indicated that the IFR was unclear as to how long a holder of a license could convert an existing Master or Mate MODU license to either one of three licenses: (1) Offshore Installation Manager (OIM); (2) Barge Supervisor (BS); or (3) Ballast Control Operator (BCO). The holder of an "old" MODU license will continue to be able to convert the "old" MODU license as long as the holder comes forward prior to the end of the one year grace period after the expiration of their existing license (five years from the date of issue) and the holder provides the appropriate required training certificates. Thus, a license can be converted at any time after July 1, 1990, until the license lapses. Once the license has lapsed, an applicant must follow the procedures for re-issuance of a license and comply with the new requirements.

These same two comments also expressed a concern that license holders would not get the word about converting to the "new" MODU license prior to expiration of their "old" license. Comments requested that the Coast Guard notify all MODU license holders by letter of their opportunity to convert their "old" license. The Coast Guard believes that the holder of a license has the responsibility for the timely renewal of a license and believes it would be inefficient for the Coast Guard to attempt to contact and inform all license holders about this rulemaking. However, the Coast Guard intends to publish articles in "Proceedings of the Marine Safety Council" as well as in industry magazines and newsletters addressing changes published in the **Federal Register** on licensing requirements. Also, the Coast Guard will keep the membership of the National Offshore Safety Advisory Committee advised of initiatives effecting the licensing requirements for industry personnel.

2. Stability Courses

Two comments were received regarding the applicant's requirement to complete a training course on MODU stability. One comment requested a waiver of the requirement to complete a stability training course for applicants until July 1, 1995, similar to what had been done with the MODU survival suit/craft training. When this comment was received, the Coast Guard had not yet developed specific guidelines for MODU stability courses. Since publication of the IFR, the Coast Guard developed MODU stability course guidelines and approved numerous MODU stability training courses sufficient to meet the demand of the industry. Therefore, the Coast Guard is retaining the requirement for individuals to complete approved MODU stability training prior to converting or obtaining an original MODU license. The second comment suggested that since specific MODU stability course guidelines had not been developed, the Coast Guard should accept certificates of completion from all presently approved MODU stability courses to satisfy this requirement. The Coast Guard agrees and will accept a certificate from an applicant to meet the licensing requirement for the successful completion of a presently approved MODU stability course.

3. Licensing and Manning Requirements for Tension Leg Platforms (TLPs)

The Coast Guard received a comment which requested that all requirements for licensing and manning of TLPs be suspended until specific TLP requirements could be developed. Essentially, the TLP is a site specific buoyant outer continental shelf facility securely and substantially moored so that it cannot be moved without special effort and not intended for periodic relocation. In contrast, a MODU is a buoyant vessel not site specific and capable of getting underway under its own power without assistance to an alternate site. Even though there are some significant differences between a MODU and a TLP, a TLP still has characteristics of conventional MODUs. Although the TLP is a new and unique offshore facility, the Coast Guard considers it a vessel and believes it inappropriate to altogether suspend licensing and manning requirements for TLPs. Due to the limited number of TLPs presently in operation, the local Officer in Charge of Marine Inspection (OCMI) will continue to consider TLP manning on a case by case basis.

Therefore, an individual assigned on board a TLP will continue to be required to hold an endorsement for TLPs on an existing MODU license until specific sea service and training requirements can be developed.

The Coast Guard will review on a case by case basis the qualifications and training recommendations to determine whether there is a need to require specific license and manning regulations for TLPs. Because of the unit's unique mooring design, a stability training course specific to TLPs or, when in the operating mode, a weight distribution and tendon tension monitoring training may be more appropriate than conventional stability training for a TLP license. However, when a TLP is underway, a licensed individual is required to have completed an appropriate stability training course for the position held.

4. Service Requirement on Self-Propelled Vessels for MODU Engineer Licenses

One comment requested that the Coast Guard delete the self-propelled service requirement on MODUs for engineering licenses. The Coast Guard disagrees and believes that engineers must have propulsion machinery experience to ensure the safety of self-propelled MODUs operating in a marine environment. Therefore, the requirement for a portion of the sea service time for a license as engineer (MODU) will continue to include experience assigned to self-propelled units fitted with propulsion machinery.

The Coast Guard recognizes the difficulty some applicants experience in obtaining the required self-propelled service Therefore, the Coast Guard is adopting a provision in this rule to enable those applicants unable to meet the service requirement for self-propelled units to be issued a license limited to non-self-propelled units.

If an applicant has obtained the total sea service required to qualify for a MODU engineering license without having satisfied that portion of the service required on board self-propelled or propulsion assisted units, then the OCMI may allow those individuals to complete a modified examination and if successfully passed be issued a license limited to non-self-propelled units. Upon presentation of the required self-propelled sea service and completion of any examination deficiencies, the non-self-propelled limitation may be removed.

5. Acceptance of Foreign Training Courses

Three comments were received urging the "acceptance" of foreign training courses. Suggestions recommended that either a joint Coast Guard/industry panel be created as a mechanism for review and acceptance of foreign courses or accept those training programs which have received approval by the foreign coastal state administration where the course is offered. Previously, the Coast Guard has required the industry to demonstrate that a shortage exists of domestically located Coast Guard approved courses and the economic justification is sufficient to allow for approval or acceptance of courses overseas. The Coast Guard has been reluctant to approve courses offered overseas because it has neither the oversight authority or resource capability to conduct an approval program for courses offered worldwide.

Recognizing the introduction of international standards for seafarers and the increased level of U.S. maritime industry activity overseas, the Coast Guard may consider the acceptance of foreign courses similar to domestically approved courses. The Coast Guard will study the appropriateness of accepting or approving foreign training courses when it conducts the next review of the course approval process. Consideration will be given to ensure that sufficient resources are allocated to properly perform the oversight responsibilities of a foreign course acceptance/approval program.

6. Unlimited Master Examination Requirement for OIM Endorsements

One comment requested that the Coast Guard not require the holder of a license as "Master, oceans, any gross tons" to complete additional examination requirements in order to obtain an OIM endorsement. The Coast Guard agrees that the professional competence of an individual who has obtained an unlimited license as master has already been successfully established to the satisfaction of the Coast Guard. Therefore, an unlimited licensed master who possesses the minimum sea service for any of the various OIM endorsements, and completes the required Coast Guard approved courses, is qualified to have the appropriate endorsement added to the license without examination.

7. MODU License Application Evaluation Offices

In order to keep evaluations consistent, the IFR restricted MODU license application approvals to the Coast Guard Regional Examination Center (REC) in New Orleans until July 1, 1992. Although no comments were received regarding MODU license evaluation offices, applications may now be submitted for evaluation and examinations administered at any REC.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A full regulatory evaluation was prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G–LRA–2/36) [CGD 81–059a], Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, from 8 a.m. to 3 p.m.

The costs associated with this rulemaking are primarily related to the training of MODU personnel. It requires individuals serving in certain responsible positions aboard MODUs (self-propelled or non-self-propelled) to obtain a Coast Guard issued license or endorsement that authorizes them to serve in those positions. Individuals assigned to these positions on MODUs will have to meet licensing qualifications which include specific length of service experience on board MODUs, completion of training courses, physical standards and a professional examination. The training and qualifications contained in this rule, were strongly recommended by the National Transportation Safety Board and supported by the mobile offshore drilling industry and the international community.

The costs associated with licensing and qualification of the personnel in positions of responsibility on MODUs are relatively insignificant when compared to typical MODU construction costs and operating fees. Implementation of this requirement will not increase manning requirements on MODUs but rather set a standard for training and level of experience for licensed individuals assigned to MODUs. Most drilling companies already require high standards of experience and training for individuals serving aboard their mobile offshore units. Therefore, since this rulemaking does not require any major expenditures by the maritime industry, consumers, Federal, state or local governments, it is not expected to have a significant economic impact.

Small Entities

This rule applies to licenses for individuals only. The effect will formalize the requirements to attend industry-specific training. Such training was optional for individuals serving aboard MODUs. Because this rule is essentially procedural and will permit the drilling companies to operate according to current, long-standing industry practice, the economic impact of this action is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. Individuals seeking MODU licenses will be required to apply for a license and provide certificates as evidence of having successfully completed the required training. The certificate will be supplied by the training facilities which provide the course(s). The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB has approved them. The section numbers are in § 10.107, and §§ 10.470, 10.472, 10.474, 10.542, and 10.544 and the corresponding OMB approval number is OMB Control Number 2115–AB91. The time required to comply with this requirement is inconsequential.

Federalism

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule adopts a new licensing structure for licensed officers aboard MODUs and provides for safe manning of these vessels. This action was necessary to establish personnel qualifications and manning regulations for this type of vessel particular to the offshore drilling industry. Compliance with these minimum standards will ensure that properly trained and qualified individuals are on board MODUs to perform the daily marine safety related matters. The Coast Guard is preempting any state action addressing this same subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule is procedural in nature and permits the affected vessels to continue to operate according to current industry practice. Therefore, this rule is included in the categorical exclusion in subsection 2.B.2.1, "Administrative actions or procedural regulations and policies which clearly do not have any environmental impact." A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 10 and Part 15

Marine safety, Navigation (water), Reporting and record keeping requirements, Seamen, Vessels and mobile offshore drilling units.

In consideration of the foregoing, the interim rule amending 46 CFR parts 10 & 15 which was published at 55 FR 14792 on April 18, 1990, is adopted as a final rule with the following changes.

1. Section 10.542 is amended by adding paragraph (c) to read as follows:

§ 10.542 License for chief engineer (MODU).

* * * * *

(c) If an applicant successfully completes a modified examination and possesses the total required sea service for a license as chief engineer (MODU), but does not possess the required sea service on board self-propelled or propulsion assisted units, the OCMI may issue the applicant a license limited to non-self-propelled units. The OCMI may remove the limitation upon presentation of satisfactory evidence of the required self-propelled sea service and completion of any additional required examination.

2. Section 10.544 is amended by adding paragraph (c) to read as follows:

§ 10.544 License for assistant engineer (MODU).

* * * * *

(c) If an applicant successfully completes a modified examination and possesses the total required sea service for a license as an assistant engineer (MODU), but does not possess the required sea service on board self-propelled or propulsion assisted units, the OCMI may issue the applicant a license limited to non-self-propelled units. The OCMI may remove the limitation upon presentation of the satisfactory evidence of the required self-propelled sea service and completion of any additional required examination.

3. Section 10.903 is amended by redesignating existing paragraphs (b)(1) through (b)(3) as (b)(2) through (b)(4) respectively and by adding a new paragraph (b)(1) to read as follows:

§ 10.903 Licenses requiring examinations.

* * * * *

(b) * * * (1) Master ocean any gross tons when adding an endorsement as Offshore Installation Manager.

* * * * *

Dated: March 1, 1994.

A.E. Henn,

Rear Admiral, Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–5277 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 543

[Docket No. 93–46; Notice 2]

RIN 2127–AE66

Motor Vehicle Theft Prevention; Exemption From Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the agency regulation on exempting high theft motor vehicle lines from parts marking by limiting the number of high theft lines that may be exempted. For each model year through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles. For the four year period that begins with model year 1997 and ends with model year 2000, a manufacturer may petition for an exemption for one additional line of its passenger motor vehicles for each year. This final rule conforms the regulation to amendments made by the "Anti Car Theft Act of 1992" to Title VI ("Theft Prevention") of the Motor Vehicle Information and Cost Savings Act.

DATES: *Effective date:* This rule is effective on April 7, 1994.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 7, 1994.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

1. Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) (Theft Act), added title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard" (Theft Prevention Standard). Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 605 of title VI permits manufacturers to petition NHTSA to exempt high theft vehicle lines from the Theft Prevention Standard. To be exempted, a high theft line must satisfy two conditions. First, a line must be equipped with an antitheft device as standard equipment on the entire line for which its manufacturer seeks an exemption. Second, NHTSA must determine that such antitheft device is likely to be as effective as parts marking in reducing and deterring motor vehicle theft. As originally enacted, section 605 allowed the agency to grant an exemption for not more than two lines of any manufacturer for the initial model year (model year 1987) to which the vehicle theft prevention standard applies, and two additional lines of any manufacturer for each subsequent model year.

Regulations governing the granting of exemptions are set forth in 49 CFR part 543, "Exemption from Vehicle Theft Prevention Standard." Part 543 sets out procedures for manufacturers to follow in preparing and submitting petitions for exemption from the parts marking requirements of part 541. It also sets forth procedures for NHTSA to follow in processing those petitions and determining whether they should be granted.

2. Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, amended title VI of the Cost Savings Act. Title VI was amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Before the amendment of title VI, "passenger motor vehicle" was defined to include passenger cars only.

The redefinition means that certain light-duty truck lines and multipurpose passenger vehicle lines may now be determined to be likely high theft vehicles, and thus, may be subject to the parts marking requirements of the Theft Prevention Standard. If the lines are designated as high theft lines, manufacturers of certain light-duty trucks and multipurpose passenger vehicle lines may, under the procedures in part 543, petition for exemption of these lines from the parts marking requirements.

The title VI amendment giving rise to this final rule restricts the number of exemptions from parts marking that may be granted to any manufacturer of high theft passenger motor vehicle lines. As a result of the amendments to section 605(a)(2) of title VI, the agency may continue to grant exemptions for two high theft lines per manufacturer per year, from the present through MY 1996. However, for the next four years, title VI states that:

> For MY 1997 through MY 2000, (NHTSA) may grant such an exemption for not more than 1 additional line of any manufacturer * * *

Amended title VI also states that, after MY 2000, the granting of any further exemptions would be contingent on a determination by the U.S. Attorney General on whether the antitheft devices are an effective substitute for parts marking in substantially inhibiting vehicle theft. The Attorney General's determination must be made by December 1999. See section 602(f)(5) of title VI.

Notice of Proposed Rulemaking

On July 1, 1993, NHTSA published in the **Federal Register** (58 FR 35422) a notice of proposed rulemaking (NPRM) to make part 543 consistent with the new statutory restrictions on the number of exemptions from the parts marking requirements of part 541. The agency proposed to amend part 543 to state the number of vehicle lines for which a manufacturer may petition for exemption for each model year through MY 2000.

More specifically, NHTSA proposed that for each model year through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles, and that for each model year from model year 1997 through model year 2000, a manufacturer may petition for exemptions for only one additional line of its passenger motor vehicles. NHTSA noted that the statutory language is more ambiguous about the number of exemptions that may be granted for model years 1997 through 2000 than for the years preceding that period. For guidance in resolving this ambiguity, the agency consulted the legislative history of the ACTA. The agency viewed the legislative history as "strong evidence" that Congress intended to permit each manufacturer to petition NHTSA to grant an exemption for only one additional line of its passenger motor vehicles from parts marking for each of model years 1997 through 2000.

NHTSA did not propose to address exemptions for model years after MY 2000, since any such exemptions are contingent upon the Attorney General's determination to be made in 1999.

Finally, NHTSA proposed a minor amendment to reflect the fact that petitions can be submitted under part 543 for light-duty trucks and multipurpose passenger vehicles, as well as passenger cars.

Public Comments and Final Rule

In response to the NPRM, NHTSA received three comments. The comments were submitted by the American Automobile Manufacturers Association, (AAMA), the Ford Motor Company (Ford), and Chrysler Corporation (Chrysler). AAMA and Ford each commented that they believe the proposed changes to Part 543 conform to the Congressional intent of the ACTA.

In its comment, Chrysler did not recommend any changes in the proposed regulatory text, but made several observations. First, that company noted that it offers antitheft devices as standard equipment on two of its low theft lines and that, under the ACTA, those two lines must have their low theft status reviewed by NHTSA. Chrysler stated that if these lines were to be determined to be high theft, it could lose a year's allocation of exemptions from the parts marking requirements. The agency notes that Chrysler's understanding is correct, and that the result is a logical consequence of the combination of the statutory mandate to review the low theft status of existing lines and the statutory limitation on the number of additional exemptions.

Second, Chrysler stated that it agrees with NHTSA that since the ACTA now includes within its scope certain multipurpose passenger vehicles and light duty trucks, these vehicles should also be eligible for exemption from parts marking.

Third, Chrysler stated that it questions the rationale for limiting parts marking exemptions. That company noted that in order to be exempted from parts marking, an antitheft device must be determined to be at least as effective as parts marking in deterring auto theft. Chrysler stated that it would seem that the ACTA should promote and encourage the inclusion of anti-theft devices as standard equipment on as many vehicle lines as possible in lieu of parts marking. That company argued that the ACTA's exemption limitation may have the practical and real effect of discouraging manufacturers from including antitheft devices as standard equipment on a wider array of vehicle lines. Chrysler stated that the ACTA should have increased the number of annual exemptions allowed and thereby encourage a broader base of vehicles equipped with effective antitheft devices offered as standard equipment.

NHTSA notes that nothing in the ACTA prevents manufacturers from including antitheft devices as standard equipment on all of their vehicles. The statutory limitation on number of exemptions means only that, in some cases, parts marking could be required even if a high-theft line is equipped with an effective antitheft device. While NHTSA understands that Chrysler disagrees with the ACTA's limitation on the number of additional exemptions, the agency must follow the statute as enacted by Congress.

Based on the information set forth above, and in light of the fact that none of the public commenters recommended changes in the proposed regulation, NHTSA is adopting as final the regulatory text proposed in the NPRM.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined not to be "significant" other either. This rule simply sets forth amendments conforming part 543 to the amendments to title VI. The rule itself has no impacts on the manufacturers of passenger motor vehicles. The agency has also determined that the economic and other impacts of this rule are so minimal that a full regulatory evaluation is not required.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. As already noted, this rule simply sets forth amendments conforming part 543 to the amendments to title VI. The rule itself will have no impacts on the manufacturers of passenger motor vehicles or on small organizations or governmental units that purchase passenger motor vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this rule for manufacturers to submit petitions for exemption from parts marking to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 543 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0542 ("Petitions for exemption from the vehicle theft prevention standard") and has been approved for use through July 31, 1995.

5. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, 49 CFR part 543 is amended to read as follows:

PART 543—[AMENDED]

1. The authority citation for part 543 continues to read as follows:

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

2. Section 543.5(a) is revised to read as follows:

§ 543.5 Petition: General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of part 541 of this chapter. For each of model years 1997 through 2000, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541 of this chapter.

* * * * *

3. Section 543.6(a) introductory text is republished for the convenience of the reader and paragraph (a)(1) is revised to read as follows:

§ 543.6 Petition: Specific content requirements.

(a) Each petition for exemption filed under this part must include:

(1) A statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which an exemption is sought;

* * * * *

Issued on: March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5188 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 59, No. 45
Tuesday, March 8, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–03–AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes. This proposal would require modification of the latch hook installation for the number two cockpit window frame. This proposal is prompted by reports of the flight crew executing rejected takeoffs (RTO) and air turnbacks (ATB) due to false "closed" indications for the number two cockpit window. The actions specified by the proposed AD are intended to prevent unlatched (not completely closed) number two cockpit windows and the resultant execution of RTO's and ATB's by the flight crew.

DATES: Comments must be received by May 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

Recently, the FAA has received several reports from an operator of Boeing Model 757–200 series airplanes that the flight crew executed rejected takeoffs (RTO) due to the number two cockpit window failing to close completely. In two of these incidents, the RTO's were initiated at 120 knots. As a result, this operator developed special procedures to ensure that these windows were latched prior to each flight. However, these procedures proved to be ineffective, as evidenced by the subsequent execution of four additional RTO's.

Further, several operators of Boeing Model 767 series airplanes recently reported that the flight crew executed air turnbacks (ATB) due to false "closed" indications for the number two cockpit window. Although the latch indicator showed "closed," the number two cockpit window was not completely latched, which resulted in noise in the cockpit.

Investigation into the cause of these unlatched windows revealed that, although the latch handle, which operates a flexible cable that moves four latch cams on the upper, lower, and aft edges of the window frame, may be moved to the "latched" (closed) position, the latch cams may not fully engage the latch posts.

The latch handles must be in the "unlatched" (opened) position to permit the window to travel to the fully closed position. By rotating the latch handle 180 degrees to the "latched" position, the latch cams on the window frame should engage the latch stud on the body of the window frame to prevent the window from opening and to lock the window closed. If the windows do not close completely, cabin pressurization and speed limits will be adversely affected during RTO's and ATB's.

This condition, if not corrected, could result in the flight crew executing RTO's and ATB's due to unlatched (not completely closed) number two cockpit windows.

The FAA has reviewed and approved Boeing Service Bulletin 757–56–0007, dated May 6, 1993 (for Model 757 series airplanes), and Boeing Service Bulletin 767–56–002, dated August 30, 1985, as amended by Notice of Status Change (NSC) Number 767–56–0002 NSC 1, dated July 3, 1986 (for Model 767 series airplanes), that describe procedures for modification of the latch hook installation for the number two cockpit window frame. This modification entails adding a cam latch hook to the window frame; removing a bolt and nut from the window post; and installing a

bolt, spacer, and nut on the window post to strike and move the latch hook away from the latch cam when the window is closed. (The number two cockpit window on the Model 757 and 767 series airplanes are similar in design.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the latch hook installation for the number two cockpit window frame. The actions would be required to be accomplished in accordance with the applicable service bulletin and NSC described previously.

There are approximately 640 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 409 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $997,960, or $2,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–03–AD.

Applicability: Model 757 series airplanes having line positions 1 through 534 inclusive, and Model 767 series airplanes having line positions 1 through 114 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent unlatched (not completely closed) number two cockpit windows and the resultant execution of rejected takeoffs and air turnbacks by the flight crew, accomplish the following: (a) Within 18 months after the effective date of this AD, modify the latch hook installation for the number two cockpit window frame in accordance with Boeing Service Bulletin 757–56–0007, dated May 6, 1993 (for Model 757 series airplanes); or Boeing Service Bulletin 767–56–0002, dated August 30, 1985, as amended by Notice of Status Change Number 767–56–0002 NSC 1, dated July 3, 1986 (for Model 767 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5241 Filed 03–07–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 92–ASW–35]

Proposed Establishment of Class E Airspace: Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Osceloa, AR. The development of a new Nondirectional Radio Beacon (NDB) Runway (RWY) 19 standard instrument approach procedure (SIAP) utilizing the Osceola NDB has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E Airspace for aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–35, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–222–5591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Intersted parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "addresses". Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–35." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) be submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace extending upward from 700 feet AGL, located at Osceola, AR. The development of a new NDB RWY 19 SIAP utilizing the Osceola NDB has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E Airspace for aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

The coordinates for this airspace docket are based on North American Datum 83. Class E Airspace areas are published in paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E Airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW AR E2 Osceola, AR [New]

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport and within 2.5 miles each side of the 014° bearing from the Osceola RBN extending from the 6.4-mile radius to 7.0 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on February 15, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–5273 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Statement of Policy or Interpretation; Proposed Enforcement Policy for Art Materials

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed statement of enforcement policy.

SUMMARY: In 1988, Congress enacted the Labeling of Hazardous Art Materials Act which mandated a labeling standard and certain other requirements for art materials. Based on its experience enforcing these requirements, the Commission is proposing a statement of enforcement policy to more clearly apprise the public of its intended enforcement focus.

DATES: Comments on the proposal should be submitted not later than May 9, 1994.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East West Highway, Bethesda, Maryland, telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Mary Toro, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; , telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION:

A. Background

In 1988 Congress amended the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1277, when it enacted the Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277, concerning the labeling of art materials to warn of potential chronic hazards. LHAMA mandated a voluntary standard, ASTM D 4236, with certain modifications, as a mandatory Commission rule under section 3(b) of the FHSA.

On October 9, 1992, the Commission issued a notice in the **Federal Register**

that codified the standard as mandated by Congress. 57 FR 46626. (At that time, the Commission also issued guidelines for determining when a product presents a chronic hazard and a supplemental regulatory definition of the term "toxic" that explicitly included chronic toxicity.) The standard is codified at 16 CFR 1500.14(b)(8).

LHAMA and the standard it mandated provide certain requirements for art materials. Under these requirements, the producer or repackager of an art material must submit the product's formulation to a toxicologist who will review the formulation to determine if the art material has potential to produce chronic adverse health effects through customary or reasonably foreseeable use. If the toxicologist does determine that the art material has this potential, the toxicologist will recommend appropriate hazard labeling, and the producer or repackager must use suitable labeling on the product. The producer or manufacturer of the art material must submit to the Commission the criteria the toxicologist uses to determine whether the producer/repackager's product presents a chronic hazard and a list of art materials that require chronic hazard labeling. If no chronic hazard labeling is needed, a conformance statement indicating that the product has been reviewed in accordance with the standard as required must appear on or with the product. The standard, which is set forth at 16 CFR 1500.14(b)(8), and section 2(p) of the FHSA, 15 U.S.C. 1261(p), provide further information on the content of appropriate labels and the conformance statement.

B. The Scope of "Art Materials"

These requirements apply to "art materials" as broadly defined in LHAMA. Excluding pesticides, drugs, devices, and cosmetics subject to other federal statutes, the term art material means "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The definition applies to art materials intended for users of any age. *Id.* 1277(b)(2).

When the Commission issued the final rule implementing the LHAMA provisions on October 9, 1992, it recognized that the statutory definition of art material could be interpreted to reach far beyond the common perception of the meaning of that term. Accordingly, the Commission identified three categories of products that could be art materials under this statutory definition. The Commission stated in that notice that it would not enforce the requirements against tools, implements, and furniture that were used in the process of creating a work of art but do not become part of the work of art (called "category 3 products" in the October 9, 1992 notice). Examples of stated items that might fall into this category were drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

The Commission also delineated two general categories of products which could fall within the statutory definition and against which the Commission would enforce the LHAMA requirements. These were products which actually become a component of the work of art (e.g., paint, canvas, inks) (previously "category 1 products") and products closely and intimately associated with the creation of an art work (e.g., brush cleaners, solvents, photo developing chemicals) (previously "category 2 products").

These distinctions have been unsatisfactory in the practical enforcement of the LHAMA requirements. These categories, and enforcement policies based on the categories, may lead to determinations that are inconsistent. Thus, the Commission is reconsidering its enforcement of the LHAMA requirements against certain products. This interpretation would supersede the enforcement policy stated in the October 9, 1992 notice and other related interpretations.

To concentrate on art materials that are more likely to present a risk of chronic health effects, the Commission will focus its enforcement on items that have traditionally been considered art materials, such as paints, inks, solvents, pastes, ceramic glazes, and crayons and that may present a risk of chronic injury. This enforcement policy will not compromise public safety because there is virtually no risk of chronic health effects with the types of products and materials that the Commission will not enforce against. Also, even if such products presented such a risk, the Federal Hazardous Substances Act, 15 U.S.C. 1261(p), requires cautionary labeling for any article intended or packaged for household use if it contains a hazardous substance. This includes, but is not limited to, art materials that, under reasonably foreseeable conditions of purchase, storage, or use, may be used in or around the household. Unless expressly exempted, children's articles are banned under the FHSA if they are or contain a hazardous substance. The Commission believes that the public interest will be better served by this exercise of enforcement discretion because the staff can use its resources to pursue enforcement actions against those art materials that present the greatest risk.

The Commission will not enforce against the following types of products.

(1) The Commission will not take enforcement action against general use products which might incidentally be used to create art, unless a particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Examples of such general use products are common wood pencils, pens, markers, and chalk. For enforcement purposes, the Commission presumes that these types of items are not art materials. The presumption can be overcome, however, by evidence that such an item is intended for specific use in creating art. Factors the Commission will consider to determine the status of such items include how the items are packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art material uses are likely to be art materials), how they are marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where they are sold (e.g., products sold in an art supply store are likely to be art materials).

(2) The Commission will not take enforcement action against tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, and air pumps for air brushes. In this policy statement the Commission expands the scope of what were referred to as "category 3" art materials in the October 9, 1992 notice. Based on the Commission's enforcement experience, the Commission will consider some items that it previously categorized as closely and intimately associated with creation of a work of art (previously "category 2" products) to be tools, implements and furniture. The Commission believes that these items (brushes, kilns, and molds) are better characterized as tools and implements against which the Commission will not enforce the LHAMA requirements. The Commission believes this revised interpretation is more consistent with the purposes of LHAMA.

(3) The Commission will not take enforcement action against the surface materials to which an art material is applied. Examples are coloring books and canvas. In many instances, an art material is applied to a surface such as

paper, plastic, wood, or cloth. These surfaces continue to be components of the work of art and thus art materials, but are now characterized as products against which the Commission will not enforce the LHAMA requirements.

(4) The Commission will also refrain from taking enforcement action against the following specifically enumerated materials: paper, cloth, plastic, film, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal. Several of these materials are often used as a surface for art work while others are used to create the work of art itself. Regardless of use, the Commission will not enforce the LHAMA requirements against them.

The guidance given in (3) and (4) above does not apply if the processing or handling of a material exposes users to chemicals in or on the material in a manner which makes those chemicals susceptible to being ingested, absorbed through the skin, or inhaled. For example, paper stickers marketed or promoted as art materials often have an adhesive backing that users lick. The act of licking the backing can result in the ingestion of chemicals, and LHAMA requirements should be complied with. For self-adhesive stickers, on the other hand, which present little risk of exposure, the staff will generally refrain from enforcement unless there is reason to believe that the nature of a particular sticker and its intended use presents a genuine risk of exposure to a potential chemical hazard either by ingestion or absorption. Another example involves plastic. If the artistic use for which the plastic is intended requires heating or melting it in a manner that results in the emission of chemical vapors, LHAMA requirements apply.

C. Craft and Hobby Kits and Supplies

1. Kits

In enforcing LHAMA, the Commission has encountered the question of the applicability of LHAMA requirements to certain craft or hobby kits. The basic issue centers on the meaning of the term "work of art". In previous letters to industry the staff has advised that the determination depends on whether the end product produced from the kit would be primarily functional or aesthetic. If the former were true, the staff has said that the end product would not be a work of art and none of the components would be art materials. If the latter were true, the end product would be a work of art and all of the components of the kit would be art materials. This distinction proved difficult for practical enforcement, and has resulted in some inconsistent enforcement results. For example, if paints that were included in a kit to make a working model airplane were also included in a paint-by-number set, under the staff's previous interpretation, the Commission would enforce the LHAMA requirements against the paints in the second kit, but not in the first, even though they are the same paints.

The Commission has considered this anomaly, as well as the purpose of LHAMA to alert consumers to the potential dangers associated with products used in the creation of art. As explained below, the Commission believes that its LHAMA enforcement should include both (1) kits to make items for display and (2) kits which involve decorating an item, regardless of the end use of the item created. Models and similar kits to make hobby or art/craft items can have dual purposes, both functional and for display. In addition, when a consumer creatively decorates a functional object, it arguably becomes a work of art just as decorated canvas or paper would be. Therefore, the Commission believes that materials for decorating and assembling models and art/craft items come within the reach of LHAMA. The Commission believes that the following interpretation is more workable than the previous one and is consistent with the intent of Congress.

For kits that include materials to decorate products whether the products are functional, for display, or both, the Commission will enforce the LHAMA requirements against materials in the kit that are intended to decorate or assemble an item in the kit, i.e., traditional art materials, such as, paints, crayons, colored pencils, adhesives, and putties even if the finished product is a toy or other item whose primary use may be functional. Thus, for a kit that contains a plastic toy or a paint-by-number board, and paints to decorate the toy or board itself, or adhesives to assemble the toy, the Commission will expect the paints and adhesives in both cases to meet all the LHAMA requirements, but would not enforce the requirements against the plastic toy or the board, even though the toy or board may technically be classified as an art material.

For kits that package an item that would be subject to enforcement under this policy together with an item that would not, any necessary chronic hazard statements or labeling, including any required conformance statement, must appear on the outer container or wrapping of the kit and must specify the item to which the statement or labeling refers. Any conformance statement must be visible at the point of sale. Any required chronic hazard warning label must be on the immediate package of the item that is subject to LHAMA as well as on accompanying literature where there are instructions for use. See 16 CFR 1500.125. When packaged within a point of sale package, i.e. a kit, which obscures the warning statement, the point-of-sale package must bear the label statement specified in 16 CFR 1500.14(b)(8)(i)(E)(9)(ii).

2. Separate Supplies

The Commission will enforce LHAMA requirements against materials intended to decorate art and craft, model and hobby items, such as paints, even if they are sold separately and not part of a kit. Similarly, paints or markers intended for decorating clothes will be considered art materials for enforcement purposes since they are intended for decorating clothing, even though the resulting item, the garment, has a functional purpose. Note that as explained in section B above, the Commission would not enforce the requirements against the surface upon which the art material is applied, regardless of the primary use of the finished product.

The status of glues, adhesives, and putties will depend on their intended use. Some illustrative examples follow. Glues which are marketed for general repair use only would not be art materials, and the Commission will not enforce the LHAMA requirements against them. Glue sticks for glue guns which are for art or craft use would be considered art materials. Spray adhesives and rubber cements will normally be considered art materials unless they are marketed for some specialty non-art use. School pastes and glues will also be considered art materials.

D. Environmental Considerations

The Commission has considered whether issuance of this proposed enforcement statement will produce any environmental effects and has determined that it will not. The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules and safety standards ordinarily have little or no potential to affect the human environment, and therefore, do not require an environmental impact statement or environmental assessment. The Commission believes that, as with such standards, this proposed enforcement policy would have no adverse impact on the environment.

E. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires agencies to prepare

proposed and final regulatory analyses describing the impact of a rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that this proposed enforcement statement will have little effect on businesses in general or on small businesses in particular. Accordingly, the Commission preliminarily concludes that its enforcement statement concerning the labeling of hazardous art materials would not have any significant economic effect on a substantial number of small entities.

F. Authority

Section 10 of the FHSA gives the Commission authority to issue regulations for the efficient enforcement of the FHSA. 15 U.S.C. 1269(a). This provision authorizes the Commission to issue statements of enforcement policy in which the Commission explains how it intends to enforce a Commission requirement.

G. Effective Date

Since this notice proposes an interpretative rule/statement of enforcement policy, no particular effective date is required by the Administrative Procedure Act. 5 U.S.C. 553(d)(2). The Commission recognizes, however, that as to items against which the Commission previously stated that it would not enforce LHAMA, manufacturers will need time to bring their products into compliance. Any final policy regarding such items would apply to products manufactured or imported an appropriate period, such as six months, or more after publication in the **Federal Register**. The Commission believes that this is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. As to those items where this policy relieves a restriction, the effective date would be immediate.

List of Subjects in 16 CFR Part 1500

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons given above, the Commission proposes to amend 16 CFR 1500.14 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1277.

2. Section 1500.14(b)(8) is amended by adding a new paragraph (b)(8)(iv) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the Act.

* * * * *

(b) * * *

(8) * * *

(iv) Policies and Interpretations.

(A) For purposes of enforcement policy, the Commission will not consider as sufficient grounds for bringing an enforcement action the failure of the following types of products to meet the requirements of § 1500.14(b)(8)(i) through (iii).

(*1*) Products whose intended general use is not to create art (e.g., common wood pencils, and single colored pens, markers, and chalk), unless the particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Factors the Commission would consider in making this determination are how an item is packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art materials uses are likely to be art materials), how it is marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where it is sold (e.g., products sold in an art supply store are likely to be art materials).

(*2*) Tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, air pumps for air brushes, kilns, and molds.

(*3*) Surface materials to which an art material is applied, such as coloring books and canvas, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled.

(*4*) The following materials, whether used as a surface or applied to one, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the material in a manner that makes that chemical susceptible to being ingested, absorbed, or inhaled: paper, cloth, plastics, films, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal.

(B) For purposes of enforcement policy, the Commission will enforce against materials such as, but not limited to, paints, crayons, colored pencils, glues, adhesives, and putties, if such materials are sold as part of an art, craft, model, or hobby kit. The Commission will enforce the LHAMA requirements against paints or other materials sold separately which are intended to decorate art, craft, model, or hobby items. Adhesives, glues, and putties intended for general repair are not subject to LHAMA. However, the Commission will enforce the LHAMA requirements against adhesives, glues, and putties sold separately (not part of a kit) if they are intended for art, craft, model, or hobby uses. This subparagraph (B) applies to products manufactured or imported six months or more after these regulations are published in the **Federal Register**.

(C) Nothing in this enforcement statement should be deemed to alter the requirement of the Federal Hazardous Substance Act that any hazardous substance intended or packaged in a form suitable for household use must be labeled in accordance with section 2(p) of the Act.

Dated: March 1, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–5289 Filed 3–7–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Cast Iron Soil Pipe

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition filed on behalf of domestic interested parties concerning the country of origin marking requirements for cast iron soil pipes used primarily to convey waste water. Currently, Customs has permitted the importation of such pipes if they are marked to indicate their country of origin by cast-in-mold letters on the lips or edges or hubs of the pipes. The petition requests that Customs adopt a new rule under which the marking of all cast iron soil pipes would have to appear on the barrel of

the pipe by paint stenciling in order to be considered conspicuous and legible and in compliance with the special marking requirements for pipes and tubes set forth at 19 U.S.C. 1304(c). Public comment is solicited regarding the application of these marking requirements to imported cast iron soil pipe.

DATES: Comments must be received on or before 60 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC. 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dinerstein, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service (202) 482–7010.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and part 175, Customs Regulations (19 CFR part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the domestic interested party. This document provides notice that domestic interested parties are challenging a marking decision made by Customs.

The petitioners are The American Brass & Iron Foundry and Charlotte Pipe and Foundry Company. Both of these entities are domestic interested parties within the meaning of section 516(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product.

Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98–573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching or engraving. 19 U.S.C. 1304(c). In 1986, Congress enacted Public Law 99–514 which amended 19 U.S.C. 1304(c) to authorize alternative methods of marking if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four prescribed methods. The amendment, codified at 19 U.S.C. 1304(c)(2), provides that in such case, "the article may be marked by an equally permanent method of marking such as paint stenciling or in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles."

The petitioners contend that in order for the marking of the imported pipes to be considered conspicuous and legible and be in accordance with 19 U.S.C. 1304(c), they must be marked on their barrels by paint stenciling. Customs presently has no requirement for cast iron soil pipe to be marked in any particular location or that any method other than those specified in 19 U.S.C. 1304(c) be used to mark the pipe. Customs has allowed cast iron pipe to be marked on its side or lip with cast-in-mold letters. Counsel for the petitioners maintains that such marking is not conspicuous or legible and therefore is not in compliance with the requirements of the 19 U.S.C. 1304. It is alleged that the ultimate purchasers of the soil pipe, general contractors or plumbing subcontractors, are usually unable to determine the country of origin of the pipe because the marking is not conspicuous or legible. Petitioners have furnished several letters and statements from plumbing contractors attesting that it is important for them to know the country of origin of the soil pipe they install, but often they are unable to tell its country of origin.

Counsel for the petitioners contends that it is not technically and commercially feasible to conspicuously and legibly mark cast iron soil pipes by any of the four methods mentioned in 19 U.S.C. 1304(c)(1). Accordingly, petitioners argue that Customs should apply 19 U.S.C. 1304(c)(2) and require that cast iron soil pipes be marked by paint stenciling.

Previously, the petitioners requested a ruling on whether a sample soil pipe was legally marked. The marking was on the side or lip or hub of the pipe in cast-in-mold letters. Customs concluded that the marking was sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304 and that marking duties should not be assessed against entries of this merchandise. (Headquarters Letter 734818, March 31, 1993.) Petitioners believe that this determination is incorrect and challenge it. They claim that because the country of origin marking is at the end of the pipe, it is hard to find and in a location where users of the pipes do not expect to find such information. It is further represented that it is the American pipe industry's practice to put the important information about pipes on their barrels The petitioners also point out that the markings are difficult to read because of the small surface area at the end of the pipes, the minimal thickness of the raised lettering, lack of color contrast, and because often a tar coating covers the lettering. The petition also states that the pipes are often stored in large stacks and that the ultimate purchaser would have to lift the end of each pipe to examine the marking, but this is usually not feasible because the pipes are heavy and delivered in large quantities.

We invite comments from the public as to whether marking on imported cast iron soil pipes by cast-in-mold letters on the side of pipe is sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304. We also seek comments as to whether the pipes can be conspicuously and legibly marked through one of the four methods mentioned in 19 U.S.C. 1304(c)(1), or if paint stenciling on the barrel of the pipe must be used to achieve a conspicuous and legible marking.

Comments

Pursuant to § 175.1(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4 p.m. at Regulations Branch, suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC 20229. Appointments to inspect the petition and comments can be made by contacting the Regulations Branch at 202–482–6970.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal drafter of this document was Mr. Robert Dinerstein, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

George J. Weise,

Commissioner of Customs

Approved: February 11, 1994

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–5262 Filed 3–7–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC98

Supplemental Security Income for the Aged, Blind, and Disabled; Elimination of Waiting Period for Termination of Couple Status

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 8012(a) of the Omnibus Budget Reconciliation Act changed the definition of the term "eligible spouse" as it is used in the supplemental security income (SSI) program. Under the former definition of "eligible spouse," members of an SSI eligible couple who began living apart could not be treated as individuals for SSI eligibility and payment purposes during the first 6 months following the month in which they began living apart. The statutory change eliminated the 6-month waiting period. The proposed rule would revise the definition of "eligible spouse" contained in the regulations as well as make a number of other conforming changes. Finally, the rule would eliminate provisions in the regulations pertaining to eligible couples living apart.

DATES: To be sure that your comments are considered, we must receive them no later than May 9, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–0869 or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 966–0512.

SUPPLEMENTARY INFORMATION: Section 1614(b) of the Social Security Act (the Act), as in effect until October 1, 1990, defined an eligible spouse as "an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months." One effect of this definition was to create a 6-month waiting period before the members of an eligible couple, who began living apart, could be treated as individuals for SSI purposes.

Section 8012 of Public Law 101–239 (the Omnibus Budget Reconciliation Act of 1989) eliminated the 6-month waiting period by revising the definition of an eligible spouse. Effective October 1, 1990, "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that eligible individual on the first day of the month, or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under the SSI program during the month, at the time the application or request is filed.

The proposed rule revises the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c) to reflect section 8012 of Public Law 101–239.

The legislative history does not indicate that Congress intended to treat couples who are temporarily separated as individuals. Therefore, the rule also provides in § 416.1801(c) that an individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

In addition to revising the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c), a number of other sections in the regulations are being revised to eliminate provisions which refer to the prior rule for terminating eligible couple status based on a 6-month period of living apart. These sections are as follows:

- Section 416.305(b)(1) is being revised to remove language regarding the eligible spouse living apart from the eligible individual for a period of 6 months.
- Section 416.412 is being amended by using more precise language in the first sentence when referring to a member of an eligible couple temporarily residing in a medical care facility.
- Section 416.414 is being revised to specify that the computations in paragraphs (b)(2) and (b)(3) are applicable only when one or both members of an eligible couple are temporarily absent from home per § 416.1149(c)(1). As their absence is temporary, they are not separated.
- Section 416.430, which deals with essential person increments, is being revised by removing language regarding when the members of an eligible couple live apart and adding language to explain how to pay a couple when one member is temporarily absent and subject to the $30 payment limit while an inpatient at a medical facility where Medicaid is paying more than half the cost of care. The reference to § 416.531 is also being changed to § 416.413.
- In § 416.432, a portion of the introductory language and paragraphs (a) and (b) are being removed. The removed material concerns members of an eligible couple who have separated.
- Section 416.532(e), which provides for essential person increments when members of an eligible couple live apart, is being removed.
- In § 416.554, the last sentence of the text and example three regarding separated members of an eligible couple are being revised.
- In § 416.1130(c), the last sentence, which refers to members of an eligible couple who have different living arrangements, is being removed.
- In § 416.1147, paragraphs (a) and (d) are being removed and the remaining paragraphs are being revised and redesignated (a), (b), (c), and (d) respectively. The deleted material deals with valuation of in-kind support and maintenance for a member of an eligible couple who is separated from his or her spouse.
- Section 416.1802(b) is being revised to remove language referring to computation of benefits for separated members of an eligible couple.
- Section 416.1806 is being revised to contain rules on who will be considered

the individual's spouse, if more than one person would qualify.

• Section 416.1811 is being removed as a result of the revision to § 416.1806. The cross-reference to § 416.1811 in § 416.1101 (definition of "spouse") is also being removed.

• Section 416.1830(a)(1) is being revised to provide that, if the members of an eligible couple begin living apart, they will be treated as individuals beginning with the month following the calendar month they stopped living together.

• In § 416.1832(c) and (d), the cross-references to § 416.1806(b) and (c) respectively are being revised to refer to § 416.1806(a)(2) and (a)(3) respectively. This change is necessitated by the revision we are making to § 416.1806.

• Section 416.1832(d) is being revised to provide that, if a marital relationship has been found to exist solely because a man and woman are living together and leading others to believe that they are husband and wife, such marital relationship will be considered to end as of the date the man and woman stop living together.

Enactment of section 8012(a) of Public Law 101–239 has made the following Social Security Rulings (SSRs) obsolete: 76–28, 76–41, and 88–11c.

Regulatory Procedures

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This proposed regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income).

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: January 13, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: February 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart A is revised to read as follows:

Authority: Secs. 1102 and 1601–1634 of the Social Security Act; 42 U.S.C. 1302 and 1381–1383c; sec. 212 of Pub. L. 93–66, 87 Stat. 155 and sec. 502(a) of Pub. L. 94–241, 90 Stat. 268.

2. In § 416.120, paragraph (c)(14) is revised to read as follows:

§ 416.120 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.* * * *

(14) "Eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

* * * * *

3. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1611 and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, 1383(a), (d), and (e).

4. In § 416.305, paragraph (b) introductory text is republished and paragraph (b)(1) is revised to read as follows:

§ 416.305 You must file an application to receive supplemental security income benefits.

* * * * *

(b) *Exceptions.* You need not file a new application if—

(1) You have been receiving benefits as an eligible spouse and are no longer living with your husband or wife;

* * * * *

5. The authority citation for subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple, neither of whom is temporarily residing in a medical care facility as described in § 416.1149(c)(1) nor is a qualified individual (as defined in § 416.221), shall be payable at the rate of $6,048 per year ($504 per month) after rounding, effective for the period beginning January 1, 1986. This rate is the result of a 3.1 percent cost-of-living adjustment (see § 416.405) to the December 1985 rate. For the period January 1, 1985, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,856 ($488 per month). For the period January 1, 1984, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, Section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. In § 416.414, the paragraph headings for paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) * * *

(2) *Eligible couple both of whom are temporarily absent from home in medical care facilities as described in § 416.1149(c)(1).* * * *

(3) *Eligible couple with one spouse who is temporarily absent from home as described in § 416.1149(c)(1).* * * *

* * * * *

8. Section 416.430 is revised to read as follows:

§ 416.430 Eligible individual with eligible spouse; essential person(s) present.

(a) When an eligible individual with an eligible spouse have an essential person (§ 416.222) living in his or her home, or when both such persons each has an essential person, the increase in the rate of payment is determined in accordance with §§ 416.413 and 416.532. The income of the essential person(s) is included in the income of the couple and the payment due will be equally divided between each member of the eligible couple.

(b) When one member of an eligible couple is temporarily absent in accordance with § 416.1149(c)(1) and § 416.222(c) and either one or both individuals has an essential person, add the essential person increment to the

benefit rate for the member of the couple who is actually residing with the essential person and include the income of the essential person in that member's income. See § 416.414(b)(3).

9. Section § 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status which involves the formation or dissolution of an eligible couple (for example, marriage, divorce), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual, the benefit amount for each person shall be determined individually for each month beginning with the first month after the month in which the dissolution occurs. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to § 416.410 or § 416.413 and § 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules when in-kind support and maintenance is involved.

(b) When two eligible individuals become an eligible couple, the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple according to § 416.412 or § 416.413 and § 416.414 and applying the requirements in § 416.420(a).

10. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g).

§ 416.532 [Removed]

11. In § 416.532, paragraph (e) is removed.

12. Section 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery would be *against equity and good conscience.* Adjustment or recovery is considered to be *against equity and good conscience* if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself. In addition, adjustment or recovery is considered to be *against equity and good conscience* for an individual who is a member of an eligible couple that is legally separated and/or living apart, on a 6-month trip, for that part of an overpayment not received, but subject to recovery under § 416.570.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case, recovery would be considered "against equity and good conscience."

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered "against equity and good conscience."

Example 3: Mr. and Mrs. Smith—members of an eligible couple—separate in July. Later in July, Mr. Smith receives earned income resulting in an overpayment to both. Mrs. Smith is found to be without fault in causing the overpayment. Recovery from Mrs. Smith of Mr. Smith's part of the couple's overpayment is waived as being *against equity and good conscience.* Whether recovery of Mr. Smith's portion of the couple's overpayment can be waived will be evaluated separately.

13. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

§ 416.1110 [Amended]

14. In § 416.1101, the parenthetical reference in the definition of "*Spouse*" which reads "(See §§ 416.1806 through 416.1811)" is revised to read "(See § 416.1806)."

15. In § 416.1130, paragraph (c) is revised to read as follows:

§ 416.1130 Introduction.

* * * * *

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145.

16. Section 416.1147 is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household through-out a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2).

(d) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month that one of you is in the medical institution (§ 416.211(b)). We value any food, clothing, or shelter received by the

one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

17. The authority citation for subpart R continues to read as follows:

Authority: Secs. 1102, 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383 (d)(1) and (e).

18. In § 416.1801(c), the definition of "eligible spouse" is revised to read as follows:

§ 416.1801 Introduction

* * * * *

(c) * * *

Eligible spouse means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who was living in the same household with that person on—

(i) The date of filing an application for benefits (for the month of an application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months.

An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

* * * * *

19. In § 416.1802, paragraph (b) is revised to read as follows:

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

* * * * *

(b) *If you have an eligible spouse*—(1) *Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

* * * * *

20. Section 416.1806 is revised to read as follows:

§ 416.1806 Whether you are married and who is your spouse.

(a) We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(1) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(2) We have decided that either of you is entitled to husband's or wife's Social Security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(3) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

(b) If more than one person would qualify as your husband or wife under paragraph (a) of this section, we will consider the person you are presently living with to be your spouse for SSI purposes.

§ 416.1811 [Removed]

21. Section 416.1811 is removed.

22. In § 416.1830, paragraph (a) is revised to read as follows:

§ 416.1830 When we stop considering you and your spouse an eligible couple.

* * * * *

(a) The calendar month after the month you stopped living with your eligible spouse, or

* * * * *

23. In § 416.1832, paragraphs (c) and (d) are revised to read as follows:

§ 416.1832 When we consider your marriage ended.

* * * * *

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1806(a)(2); or

(d) You and your spouse stop living together, if we considered you married only because of § 416.1806(a)(3).

[FR Doc. 94–4910 Filed 2–7–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 626

Office of the Assistant Secretary for Veterans' Employment and Training

20 CFR Part 1005

Job Training Partnership Act: Veterans' Employment Programs Under Title IV, Part C; Removal of Regulations

AGENCY: The Employment and Training Administration and the Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration and the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) propose to remove regulations for Veterans' Employment Programs authorized under title IV, part C, of the Job Training Partnership Act. Removal of the regulations is proposed because of the reduced number of states applying for state formula allocated monies, and the need to improve the delivery of services. Upon removal as proposed, a more competitive process will be established to increase effectiveness and the efficiency of the program.

DATES: Written comments must be received no later than April 7, 1994. Draft copies of the proposed rule were provided to States at an earlier date.

ADDRESSES: Comments shall be addressed to the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Mr. Hary P. Puente-Duany, Office of Veterans' Employment, Reemployment and Training, room S–1316.

FOR FURTHER INFORMATION CONTACT: Mr. Hary P. Puente-Duany at (202) 219–9110 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Training Partnership Act (JTPA) establishes programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the United States work force and enhancing the productivity and competitiveness of the Nation. General

program requirements for JTPA programs are set forth at JTPA section 141.

Pursuant to title IV, part C, of JTPA, the Secretary of Labor conducts programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. These programs are described at JTPA section 441. The programs are administered through the Assistant Secretary of Labor for Veterans' Employment and Training, who conducts the programs through grants, contracts, and cooperative agreements with public agencies and private non-profit organizations.

The Department of Labor (DOL) issued regulations at 20 CFR part 1005 to more specifically define the manner in which the funds from this program would be disbursed. See 54 FR 39354 (September 26, 1989); and 48 FR 49198 (October 24, 1983). Program administration will be greatly enhanced as the result of the elimination of these regulations by increasing competition and lowering administration costs through larger grant amounts.

Part 1005 identifies the process used to provide grant funds to states for Federal training programs for veterans. At the conclusion of this rulemaking, it is anticipated that for Program Year 1994 (July 1, 1994, through June 30, 1995), a Solicitation for Grant Applications (SGA) will be developed and disseminated, in lieu of regulations for the title IV–C programs. The present formula-based annual grants will be replaced by multi-year competitive grants. This will result in fewer grants of greater dollar value, and will enable recipients of the grants to extend expanded service(s) to eligible veterans. Eligibility for grant application will be based on the statute and the Solicitation for Grant Applications.

Since the inception of Veterans' Employment Programs, the funding available for distribution to the States has decreased, thus making the "formula grants to States" process less efficient and less effective, compared to other JTPA titles and similar programs. In Program Year 1992, only 38 States participated in the JTPA title IV–C program. Many smaller States elected not to participate rather than receiving the minimum allocation of $55,000. By having larger competitive grants, services can be targeted to those eligible veterans in the "most needed" areas. Greater customer satisfaction is expected to be realized.

Immediate results will manifest themselves in the form of: Eliminated regulations; larger, but fewer grants; replacement of the "old" SGA process with SGA's that can be renewed, modified or changed as deemed necessary and drawn to incorporate by reference the essential parts and requirements of the JTPA and the Departmental JTPA regulations. See, *e.g.*, 20 CFR parts 627 and 636; and 29 CFR parts 96–98. It will be possible for JTPA title IV–C programs to be created to better enhance and complement other JTPA programs that do not focus on veterans' services, while continuing efforts to improve the targeting of employment and training services to eligible veterans who face serious barriers to employment. Larger multi-year grants will allow for enhancement of the quality of services provided and the outcomes attained by strengthening program activity through increased efficiency in the management of grants, improving the linkages between services provided and local labor market needs, and ensuring the provision of a coherent system of outcome-oriented human resource services through changes in the direction and focus of the Veterans' Employment Programs to eligible veterans.

It is important to complete all tasks necessary to remove the present JTPA title IV–C regulations to have appropriate authority and flexibility to announce and issue an SGA for program year 1994, in the manner detailed above.

This rulemaking supersedes that portion of the rulemaking announced at 56 FR 5124 (February 7, 1991) that related to JTPA title IV–C programs. In the comment period on that proposed rule (February 7 through April 8, 1991) no substantive comments were received with respect to the proposals related to JTPA title IV–C regulations.

Proposed Rule

Accordingly, it is proposed that title 20, Code of Federal Regulations, be amended as follows:

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for part 626 continues as follows:

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Public Law 100–418, 102 Stat. 1107; 29 U.S.C. 179i(e).

§ 626.2 [Amended]

2. Section 626.2 is amended by removing from paragraph (a) the phrase ", with the exception of the veterans' employment program's chapter IX regulations of the Office of the Assistant Secretary for Veterans' Employment and Training, which are set forth as part 1005 of title 20".

§ 626.3 [Amended]

3. Section 626.3 is amended by removing from paragraph (a) the phrase "and part 1005 of chapter IX (Veterans' employment programs under title IV, part C of the Job Training Partnership Act)".

§ 626.4 [Amended]

4. Section 626.4 is amended:

a. By removing from the introductory text the citation "and 1005"; and

b. By removing from the consolidated table of contents the entry for part 1005 of chapter IX.

CHAPTER IX—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 1005—VETERANS' EMPLOYMENT PROGRAMS UNDER TITLE IV, PART C OF THE JOB TRAINING PARTNERSHIP ACT (REMOVED)

5. Part 1005 of Chapter IX is removed.

Signed at Washington, DC, this 2nd day of March, 1994.

Douglas Ross,

Assistant Secretary for Employment and Training

Preston M. Taylor, Jr.,

Assistant Secretary for Veterans Employment and Training

[FR Doc. 94–5229 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success standards and

statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This document sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. on April 7, 1994. If requested, a public hearing on the proposed amendment will be held on April 4, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on March 23, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual under "**FOR FURTHER INFORMATION CONTACT.**"

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 North Lincoln, suite 107, Oklahoma City, OK 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated February 17, 1994 (Administrative Record No. OK–959.01), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 936.16 (a) through (i). Oklahoma proposes to amend the Bond Release Guidelines that are referenced in subsections 816.116(a) and 817.116(a)(1) of the Oklahoma rules. Specifically Oklahoma proposes to revise the Bond Release Guidelines at subsection I.E.3.b to require ground cover sufficient to control erosion for approved commercial or industrial land uses; subsection I.F.3.d to require, on areas previously disturbed by mining, that ground cover be at least 70 percent and sufficient to control erosion; subsection I.F.5.b to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities shall meet water quality effluent limitations; subsections II.B.2.d and III.B.2.d to reference appendix O for the method for calculating a technical success standard for productivity on, respectively, pastureland and grazingland; subsection V.B.2.c to reference appendix P for the method for calculating a technical success standard for productivity of row crops on prime farmland cropland, subsection V.B.2.d to add criteria regarding the selection of test plots for demonstrating success of productivity on prime farmland cropland; subsection V.B.2.e to reference appendix O for the method for calculating a technical success standard for productivity of grain or hay crops on prime farmland cropland; subsection VI.B.2.e to reference appendices P and Q for the methods for calculating technical success standards for productivity of, respectively, row crops and grain or hay crops on nonprime farmland cropland; appendix A to add the definition of "initial establishment of permanent vegetative cover;" appendices J and P to correct typographical errors; and appendix V, to add a technical document reference. In addition, Oklahoma submitted a letter, dated February 1, 1994, from the U.S. Soil Conservation Service that was intended to provide concurrence with appendix R concerning the repair of rills and gullies as a normal husbandry practice.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.s.t. on March 23, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the date and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 28, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–5225 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14–93–003]

RIN 2115–AA98

Anchorage Ground; Pacific Ocean (Mamala Bay), Honolulu Harbor, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to eliminate the existing anchorage ground for nitrate laden vessels off Honolulu Harbor and establish four new anchorage grounds. The purpose of the regulation is to provide safe anchorage grounds for commercial vessels off Honolulu Harbor.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Fourteenth Coast Guard District, Prince Kalanianaole Federal building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850–4982, or may be delivered to room 9139 at the above address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is (808) 541–2315.

The Fourteenth Coast Guard District Aids to Navigation Branch maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 9139 at the above address.

FOR FURTHER INFORMATION CONTACT: Lt S.S. Beckerman, (808) 541–2315.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD14–93–003) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander, Aids to Navigation Branch at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lt S.S. Beckerman, Project Manager, and Cdr B.N. Durham, Project Counsel.

Background and Purpose

The anchorage for nitrate laden vessels off Honolulu Harbor is a hold over from World War II and is no longer needed. It encompasses much of the area available for commercial vessels to anchor off Honolulu Harbor. Eliminating the no longer needed nitrate laden anchorage would free up the area to establish four new anchorages and provide for better usage of the area available for anchoring. This proposal was initiated at the request of the State of Hawaii. The District Engineer, U.S. Army Corps of Engineers, has been contacted and has no objection to the issuance of this regulation.

Discussion of Proposed Amendments

Under existing state regulations, all vessels are prohibited from anchoring off Waikiki and to the east of Waikiki. These regulations protect the beaches from potential oil spills which could damage the local tourist industry. The area west of Waikiki off Honolulu Harbor provides the only suitable anchorage area available for commercial vessels. With the exception of the nitrate laden vessel anchorage, vessels are currently anchoring in the area proposed. This proposal would bring the regulations in line with current practice.

Reguatory Evaluation

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The only effect of this regulation is to formally establish anchorage grounds for commercial vessels off Honolulu Harbor in areas where they presently anchor. The proposed regulation will not restrict access to any fairway or channel, or limit access to any facility or area previously accessible to vessels. The primary intent of the proposed regulation is to designate anchorages for commercial vessels off Honolulu Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.235 is revised to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii.

(Datum: NAD 83)

(a) *The anchorage grounds*—(1) *Anchorage A.* The waters bounded by the arc of a circle with a radius of 350 yards with the center located at:

Latitude	*Longitude*
21°16'57" N	157°53'12" W

(2) *Anchorage B.* The waters bounded by a line connecting the following coordinates:

Latitude	*Longitude*
21°17'06" N	157°54'40" W; to
21°17'22" N	157°54'40" W; to
21°17'22" N	157°54'19" W; to
21°17'06" N	157°54'19" W; thence back to
21°17'06" N	157°54'40" W

(3) *Anchorage C.* The waters bounded by the arc of a circle with a radius of 450 yards with the center located at:

Latitude	*Longitude*
21°17'09" N	157°54'55" W

(4) *Anchorage D.* The waters bounded by the arc of a circle with a radius of 450 yards with the center located at:

Latitude	*Longitude*
21°17'21" N	157°55'20" W

(b) *The regulations.* (1) Anchors must be placed inside the anchorage areas.

(2) The anchorages are general anchorages for commercial vessels.

(3) No bunkering operations or vessel to vessel transfer of oil in bulk of any kind is permitted within Anchorage A. Anchorage A should be used only if Anchorages B, C, and D are full.

(4) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of navigation and with safe navigation practice.

Dated: February 22, 1994.

H.B. Gehring,

Commander, 14th CG District.

[FR Doc. 94–5282 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Southeast Alaska 94–002]

RIN 2115–AA97

Safety Zone; Crescent Harbor, Sitka, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Crescent Harbor. The safety zone would protect life, limb and property during the annual Independence Day fireworks display. The fireworks are launched from a barge or waterfront facility, creating a safety hazard. Annual notice of these regulations would be published in the Local notices to Mariners.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–002] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under **ADDRESSES.**

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purpose

The community of Sitka, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a barge or waterfront facility in Crescent Harbor. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. § 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing polices. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1707 is added to read as follows:

§ 165.1707 Crescent Harbor, Sitka, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: the waters in Crescent Harbor within a 100 yard radius of the vessel or waterfront facility located at 57°02′54″ N, 135°19′32″ W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the Local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast, Alaska.

Dated: February 1, 1994.

G.D. Powers,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5283 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Southeast Alaska 94–001]

RIN 2115–AA97

Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Juneau Harbor. The safety zone would protect life, limb and property during the annual Independence Day fireworks display. The fireworks are launched from a barge or waterfront facility, creating a safety hazard. Annual notice of these regulations would be published in the Local Notices to Mariners.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names

and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–001] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under **ADDRESSES**.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purpose

The City and Borough of Juneau, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a barge or waterfront facility in Juneau Harbor. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1706 is added to read as follows:

§ 165.1706 Gastineau Channel, Juneau, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: the waters in Juneau Harbor within a 100 yard radius of the vessel or waterfront facility located at 58°17′41″ N, 134°24′22″ W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the Local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

Dated: February 1, 1994.

G.D. Powers,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5284 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–92–004]

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulation concerning the safety zone required around LPG vessels moored at the LPG facility in the Port of Providence. The amendment would reduce the distance a vessel must moor from an LPG vessel at the LPG facility in the Port of Providence, from 400 feet to 200 feet. This action is necessary to eliminate unnecessary economic hardship on the commercial shipping industry. Reduction of the required empty pier space from 400 feet to 200 feet fore and aft of LPG vessels will continue to provide the necessary level of safety and will also provide the space necessary to respond effectively to an LPG emergency.

DATES: Comments must be received on or by June 6, 1994.

ADDRESSES: Comments should be mailed to the Commanding Officer,

Marine Safety Office, 20 Risho Avenue, East Providence, RI 02914–1215, or may be delivered to the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 435–2300. The Marine Safety Office maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Timothy W. Pavilonis at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG Timothy W. Pavilonis, Project Officer, Marine Safety Office Providence, and LCDR J. Stieb, Project Counsel, First Coast Guard District Legal Office.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD01–92–004) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

The Coast Guard published a notice of Proposed Rulemaking, CGD01–92–004, on June 4, 1992. As a result of this NPRM, one comment was received. Since then, the project officer was reassigned and Marine Safety Office Providence was relocated. During this time period, the docket was misplaced. This Supplemental Notice of Proposed Rulemaking is being published to provide additional opportunity for public comment. No information is presently available concerning the comment previously received. The rule is the same as it was initially proposed, but now contains a new comment period and a new address and phone number for Marine Safety Office Providence, and updated drafting information.

Background and Purpose

The regulations contained in 33 CFR 165.121 outline safety zones required for LPG vessels visiting the Port of Providence under a variety of conditions. The regulations establish safety zones around LPG vessels at anchor, transiting Narragansett Bay, while moored at the LPG facility, Port of Providence, and around the shoreside manifold during LPG transfer operations. The proposed amendment only concerns the safety zone required around LPG vessels moored at the LPG facility, Port of Providence.

33 CFR 165.121(a)(3) establishes a 50 foot safety zone around a moored LPG vessel and also requires that no vessel may moor within 400 feet of an LPG vessel moored at the facility. Industry personnel have continually expressed dissatisfaction with the 400 foot requirement, contending that it places an unnecessary economic burden on the industry involved in and affected by LPG evolutions.

Coast Guard research into the issue has shown that prohibiting vessels from mooring within 400 feet from LPG vessels at the LPG facility is excessive and unnecessary. The safety zone established around a moored LPG vessel is 50 feet. Since the LPG vessel is considered safe from ignition sources at a minimum of 50 feet, a 200 foot separation from other moored vessels provides both ignition source protection and adequate space for shoreside and waterside firefighting or emergency tug assistance.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal on all entities because the result of the amendment will be one of deregulation, making the present regulations less restrictive. If the amendment has any effect, it will be a positive effect on impacted entities. Reduction of the safety zone around moored LPG vessels from 400 feet to 200 feet will benefit the LPG facility economically in that the total pier space for which they must pay to meet the regulations is reduced from a total of 800 feet to 400 feet. This will also benefit the port of Providence economically in that more pier space will be available for other ships to moor while an LPG vessel is in port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects that this proposal will not have a significant economic impact on any entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the

docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.; 49 CFR 1.46.

2. Section 165.121 is amended by revising paragraph (a)(3) to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) * * *

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG facility, Port of Providence; a safety zone within 50 feet around the vessel. No vessel shall moor within 200 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

* * * * *

Dated: February 22, 1994.

H.D. Robinson,

Captain, Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–5285 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Southeast Alaska 94–003]

RIN 2115–AA97

Safety Zone; Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Tongass Narrows, Ketchikan, Alaska. The safety zone will protect life, limb and property during Independence Day fireworks displays. The fireworks are launched from a barge at the northern most tip of Pennock Island, creating a safety hazard. Annual notice of these regulations would be published in the Local Notices to Mariners.

DATES: Comments must be received on or before May 9,.1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–003] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under ADDRESSES.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purposes

The community of Ketchikan, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a vessel at the northernmost point of Pennock Island. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that you business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see ADDRESSES) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section

2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(2), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1708 is added to read as follows:

§ 165.1708 Tongass Narrows, Ketchikan, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: The waters in Tongass Narrows within a 100 yard radius of the barge located at 55° 20′ 20″ N, 131° 39′ 36″ W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

Dated February 1, 1994.

G.D. Power,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5286 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–4846–4]

Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification.

SUMMARY: On September 14, 1993 EPA published a proposed rulemaking entitled "Land Disposal Restrictions (LDRs) for Newly Identified and Listed Hazardous Wastes and Hazardous Soil" (58 FR 48092). A portion of that proposed rule addressed RCRA alternative land disposal restrictions that would specifically apply to soils that are subject to regulation under RCRA subtitle C because they exhibit a hazardous characteristic, or contain listed hazardous wastes. In addition, the proposal would have codified the "contained in" policy for contaminated media.

On November 12, 1993 EPA extended the comment period for these specific provisions of the September 14, 1993 proposal, to March 15, 1994. EPA has subsequently decided that these regulatory proposals should be addressed as part of the Hazardous Waste Identification Rule (HWIR) for contaminated media, rather than as part of the original LDR rule. This supplemental document is intended to clarify the Agency's intentions with regard to finalizing these specific provisions, and reiterate EPA's original request for data relating to treatment of hazardous soils.

DATES: Comments and data on the LDR alternative treatment standards for hazardous soils and the codification of the contained-in policy, as described in the September 14, 1993 proposed rule, will be most useful to the Agency if submitted on or before March 15, 1994.

ADDRESSES: The public must send an original and two copies of their written comments to the EPA Docket (mail code 5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–92–CS2P-FFFF on your comments. The RCRA Docket is located in room 2616 at the above address, and is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or 412–9810 locally. For information on this supplemental notice, contact Carolyn Loomis in the Corrective Action Programs Branch, Office of Solid Waste (mail code 5303W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308–8626.

SUPPLEMENTARY INFORMATION:

I. The Hazardous Waste Identification Rule for Contaminated Media

The Hazardous Waste Identification Rule for Contaminated Media, which is being developed by EPA in concert with the States and with affected stakeholders, is intended to create a comprehensive regulatory framework within RCRA subtitle C that will apply to the management of contaminated media that are managed as part of remediation activities. This HWIR rule is intended to replace the existing regulatory system under RCRA, which heretofore has regulated the management of hazardous contaminated media in much the same way that "as generated" hazardous wastes are regulated.

Through the public dialogue process, a conceptual framework has been developed for this rule. As currently envisioned, a major component of the HWIR rule would involve the establishment of treatment standards for soils (and possibly other media) that would be subject to HWIR requirements. This would include soils that are highly contaminated (i.e., contaminated at levels above a specified "bright line" threshold level), while contaminated soils that are less highly contaminated would be subject to more flexible, site-specific management requirements established by the overseeing regulatory agency.

EPA currently intends to use the HWIR rulemaking as the vehicle for establishing treatment standards for hazardous soils. Thus, those provisions of the September 14, 1993 proposal addressing treatment standards for contaminated soil will not be promulgated with the remaining portions of the LDR rules proposed in September, 1993. Although the HWIR rule for contaminated media is being developed on a less accelerated schedule than the LDR rules, EPA believes that it is appropriate to address the issue of setting treatment standards for soils that are contaminated above the "bright line" within the broader framework of the HWIR rule, since such

treatment requirements are expected to be an integral part of that rule. Addressing these requirements within the HWIR rule will thus allow EPA, the States and others participating in the process to carefully examine the various options for setting soil treatment standards with the context of that broader regulatory framework. EPA notes that the deadline for final rulemaking imposed on some elements of the September 14, 1993 proposal by the proposed consent decree in *EDF* v. *Browner* (D.D.C., C.A. No. 89–0598) does not apply to the soil treatment standards.

It should be understood that by deferring these provisions of the LDR proposal to the HWIR rulemaking effort, hazardous soils will continue to be subject to the LDR standards that apply to the hazardous wastes with which the soils are contaminated. When the LDR rules that were proposed in September, 1993 are finalized, the LDR treatment standards that apply to the wastes addressed in that rule will also apply to soils that contain those wastes, as has been the case in previous LDR rulemakings. It should also be noted, however, that existing provisions for LDR treatability variances will remain in effect, and that EPA has determined that treatability variances from waste-specific LDR standards are generally appropriate for contaminated soil and debris (see 55 FR 8759–8760, March 8, 1990; 40 CFR 260.44(h)).

II. Request for Data

In the preamble to the LDR proposal, the Agency solicited comment on the soil treatment data which were used by the Agency as the basis for that proposal. In adddition, new data on soil treatment were solicited, particularly data pertaining to treatment levels that have been achieved or that could be achieved by application of various technologies to different matrices of soil types and contaminants. EPA recognizes the importance of collecting as much of this type of data as possible; such additional data may be very valuable in evaluating various approaches for establishing soil treatment standards under the HWIR rule. EPA therefore reiterates its request for such additional soil treatment data. The data should be provided to the Agency at the address provided at the beginning of this notice; the Agency will be able to make best use of data that are submitted by March 15, 1994. EPA notes that the public will have another full opportunity to comment on proposed treatment standards for contaminated soils when EPA publishes the HWIR proposal.

III. Codification of the Contained-In Policy

In the September 14, 1993 proposal, EPA also proposed to codify its longstanding "contained-in" policy. This policy addresses the RCRA regulatory status of media—including soils—that are contaminated with (i.e., that "contain") listed hazardous wastes. EPA believes that the contained-in concept is one of the key issues that must be addressed in the development of a comprehensive regulatory framework for management of contaminated media. Thus, the Agency has decided to also defer this provision of the proposal to the HWIR rulemaking. Comments on the proposed codification of the contained-in policy are solicited, however, and will be considered as part of the HWIR rulemaking process. Comments provided by March 15, 1994 will be most useful to the Agency in evaluating how the contained-in concept may be addressed in the context of the HWIR rulemaking.

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6924.

Dated: March 1, 1994.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 94–5147 Filed 3–7–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–94; Notice 2]

RIN 2127–AE47

Federal Motor Vehicle Safety Standards; Antilock Brake Systems for Light Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking; notice to extend comment period.

SUMMARY: In response to a petition submitted by Advocates for Highway and Auto Safety, this notice extends the comment period for an advance notice of proposed rulemaking (ANPRM) that seeks comments about the need to require antilock brake systems on passenger cars and other light vehicles. NHTSA believes that commenters need more time to formulate their responses given the complexity of the issues and the agency's delay in docketing the Preliminary Economic Assessment (PEA). Accordingly, the agency has decided to extend the comment period from March 7, 1994 to April 6, 1994.

DATES: Comments on the advance notice of proposed rulemaking, Docket 93–94, Notice 1, must be received on or before April 6, 1994.

ADDRESSES: Comments should refer to Docket No. 93–94, Notice 1 and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Rulemaking, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION: On January 4, 1994, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (59 FR 281). The notice requested comments regarding the braking performance of passenger cars and other light vehicles and the need to require antilock brake systems (ABS) on these vehicles. The ANPRM posed questions about the desirability of a requirement that light vehicles be equipped with ABS, including questions about such a requirement's anticipated safety benefits, potential regulatory approaches and anticipated performance requirements and test procedures, the requirement's applicability, its schedule for implementation, and the anticipated costs. The notice specified that comments had to be submitted on or before March 7, 1994.

Advocates for Highway and Auto Safety (Advocates) petitioned the agency to extend the comment period an additional 30 days. Advocates stated that they needed additional time to respond to the rulemaking in a timely manner since the preliminary economic assessment (PEA) had yet to be submitted to the public docket when it contacted the agency in late January.

After reviewing the petition, NHTSA agrees with the petitioner that extending the comment closing date is desirable, given that a variety of complex issues are raised in the notice addressing whether the agency should propose to require that light vehicles be equipped with antilock brake systems. In addition, the agency believes that the petitioner and other commenters need more time to review the PEA since many questions in the ANPRM address the costs and benefits of this rulemaking. An extension of the comment period will allow the petitioner and other commenters more

time to better address the issues raised in the ANPRM.

Based on the above considerations, the agency concludes that there is good cause to extend the comment period an additional 30 days and that this decision is consistent with the public interest. Accordingly, the agency has decided to extend the comment period until April 6, 1993.

Issued on: March 2, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5189 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 59, No. 45
Tuesday, March 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tusayan Land Exchange, Kaibab National Forest, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposed land exchange in the Kaibab National Forest. The EIS will examine the environmental impacts of implementing the proposed action and alternatives, including no-action.

DATES: Comments concerning the scope of the analysis should be received in writing by May 30, 1994.

ADDRESSES: Send written comments to Tusayan Exchange, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046.

RESPONSIBLE OFFICIAL: Forrest Carpenter, Deputy Regional Forester for Resources, Southwestern Region, 517 Gold Avenue SW, Albuquerque, New Mexico 87102, is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Questions about the EIS should be directed to Dennis Lund, Forest Lands Staff Officer, (602) 635–2681.

SUPPLEMENTARY INFORMATION: The nature and scope of the decision to be made is to determine whether or not to exchange certain selected Federal lands in the Tusayan Ranger District, Kaibab National Forest, for certain offered private parcels within the Tusayan Ranger District, Kaibab National Forest.

Some of the selected Federal lands considered for exchange are not designated in the Kaibab Forest Plan as base-for-exchange (lands available for private ownership through exchange). The proposed action would require the designation of additional base-for-exchange lands which will require an amendment to the Kaibab Forest Plan.

The proposed action involves the following lands:

Approximate location	Acres
Offered Private Lands within the Kaibab National Forest:	
T28N, R3E, Section 15	150.00
T28N, R4E, Sections 5 and 8	120.00
T28N, R6E, Section 23	160.00
T29N, R6E, Sections 5, 6 and 8	279.15
T30N, R3E, Sections 28, 29, 33 and 34	173.54
T29N, R3E, Sections 3 and 4	21.12
T30N, R5E, Sections 29 and 30	146.31
T30N, R2E, Sections 14 and 23	160.00
Total Offered Private Lands	1,210.10
Selected Federal Lands within the Kaibab National Forest:	
T29N, R2E, Sections 1 and 2	720.00
T30N, R2E, Sections 25, 35 and 36	640.00
T29N, R3E, Section 32	40.00
Total Selected Federal Lands	1,400.00

The Forest Service and the exchange proponent have jointly described a parcel of Federal land comprising approximately 1,360 acres (selected Federal lands in T29N, R2E and T30N, R2E) from which a final, smaller sized parcel of land of approximately 640 acres will be selected as exchange property. The precise acreage will be determined by appraisal.

The EIS will consider a range of alternatives, including the proposed action and no-action alternative. Other alternatives could include various combinations of offered private lands and selected Federal lands.

Public participation, or scoping (40 CFR 1501.7), will be important throughout the analysis. The Forest Service, as lead agency, will be seeking information, comments and assistance from Federal, State and local agencies, as well as other individuals and organizations who may be interested in or affected by the proposed land exchange. The Forest Service will notify interested publics of opportunities to participate through meetings, personal contacts and written comment. The scoping process will include preparation of an informational mailing, solicitation of written comments and public scoping meetings, according to the following schedule:

Date	Time	Location
Saturday, March 19	10 am–2 pm	Havasupai School, Supai, Arizona.
Wednesday, March 23	2 pm–6 pm	Cameron Chapter House, Cameron, Arizona.
Thursday, March 24	10 am–Noon	Hopi Civic Center, Second Mesa, Arizona.
Tuesday, March 29	4 pm–8 pm	Hualapai School, Peach Springs, Arizona.
Monday, March 28	2 pm–6 pm	Tuba City Chapter House, Tuba City, Arizona.
Tuesday, April 19	Noon–8 pm	Little America, 2515 East Butler, Flagstaff, Arizona.
Wednesday, April 20	Noon–8 pm	Moqui Lodge, Highway 64/180, Tusayan, Arizona.
Tuesday, April 26	Noon–8 pm	Holiday Inn Express, 831 W. Bill Williams Avenue., Williams, Arizona.
Wednesday, April 27	Noon–8 pm	Embassy Suites Hotel, 1515 North 44th Street, Phoenix, Arizona.

Input received at the public scoping meeting and from the informational mailing will be used in preparation of the draft and final EIS to:

1. Identify potential environmental issues, including significant issues to be analyzed in depth in the EIS;

2. Identify alternatives to the proposed action that will address the significant environmental issues;

3. Identify environmental effects of the proposed action and alternatives that will require analysis in the EIS, and;

4. Determine potential cooperating agencies and task assignments.

Preliminary issues which have been identified include the socioeconomic impacts of the proposed exchange on surrounding communities, as well as at the county and State levels, the

availability of water for development of the selected Federal lands and the impact of any proposed development on existing water users, impacts on the management of and visitation to Grand Canyon National Park, impacts to National Forest resources and management including fire, recreation, cultural, wildlife and threatened and endangered species.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by February 1995. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The final EIS is expected to be completed by October 1995. In the final EIS, the Forest Service will respond to comments and responses received during the comment period on the draft EIS. The Responsible Official will decide which, if any, of the alternative will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations in 36 CFR part 215.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cor. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 2, 1994.

William M. Lannan,

Forest Supervisor, Kaibab National Forest.

[FR Doc. 94–5236 Filed 3–7–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on Wednesday, March 23, 1994, at the Charlotte-Mecklenburg government Center, room 270–271, 600 E. 4th Street in Charlotte, North Carolina 28202. The purpose of this meeting is: (1) To discuss the status of the Commission and SACs; (2) to hear reports on civil rights progress and/or problems in the State; (3) to discuss the current project on racial tensions in North Carolina; and, (4) to discuss racial tensions in the Charlotte community with representatives and leaders.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr. at 919–380–0071 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–5191 Filed 3–7–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on Wednesday, March 30, 1994 at the Red Lion Inn Seatac, 18740 Pacific Highway South, Seattle, Washington 98118. The purpose of the meeting is to review current civil rights developments in the State, and plan future project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bill Wassmuth or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–5192 Filed 3–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–94]

Foreign-Trade Zone 114; Peoria, IL Application for Subzone Status; Revere Ware Corporation Plant (Stainless/Aluminum Cookware) Clinton, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council for the Peoria Area, grantee of FTZ 114, Peoria, Illinois, requesting special-purpose subzone status for the stainless steel and aluminum household cookware manufacturing plant of the Revere Ware Corporation (Revere), located in Clinton, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 15, 1994.

The Revere plant (800,000 sq.ft./48 acres/430 employees) is located at 1000 South Sherman Street in Clinton (Dewitt County), Illinois, some 55 miles southeast of Peoria. The facility is used to produce household cookware and bakeware (e.g., pots, pans, bowls). The production process involves cutting, shaping and coating raw stainless steel and aluminum with copper or non-stick compounds, polishing, and handle attachment. Material inputs purchased from abroad include stainless steel coils and circles and aluminum coils (duty rate range: 3.0%—10.1%), which represent some 25–50 percent of the finished products' material value.

Zone procedures would exempt Revere from Customs duty payments on the foreign materials used in export production. On its domestic sales, Revere would be able to choose the duty rates that apply to finished cookware (3.4%) for the foreign materials noted above. The application indicates that the savings from zone procedures would help the company improve the international competitiveness of the Illinois plant.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Greater Peoria Airport, 1900 S. Maxwell Road, Peoria, IL 61607.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: February 15, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–5185 Filed 3–7–94; 8:45 am]

BILLING CODE: 3510–DS–P

[Docket 7–94]

Foreign-Trade Subzone 59A; Lincoln, NE; Request for Expanded Manufacturing Authority; Kawasaki Motors Manufacturing Corporation, U.S.A., Plant (Industrial Robots)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), operator of FTZ Subzone 59A, KMM plant, Lincoln, Nebraska, requesting authority to manufacture industrial robots under zone procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 24, 1994.

Subzone 59A was approved by the FTZ Board in 1980 with activity granted for the manufacture of motorcycles, jet skis, and four wheel all terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). An application for expansion of the subzone is currently pending (Doc. 56–93, 58 FR 63335, 12–1–93) and an application for authority to manufacture utility work trucks (Doc. 4–94, 59 FR 2592, 1–18–94).

KMM is now requesting subzone authority to manufacture certain automated industrial robots (6 axis) for the U.S. market and export. Foreign-sourced components and subassemblies comprise approximately 80 percent of the finished robots' material value and include: Plastic parts, rubber belts, fasteners, metal fittings, air pumps/compressors, data processing equipment, optical readers, valves and switches, electric motors and transformers, transmissions/gear boxes, controllers, diodes, transistors, semiconductors, liquid crystal devices, lasers, and measuring instruments (duty rate range: Free—20%). The application indicates that all steel mill products will be sourced domestically.

Zone procedures would exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rate that applies to the finished industrial robots (HTSUS# 8479.89.9049, duty rate 3.7%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve KMM's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 11133 "O" Street, Omaha, Nebraska 68137.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: February 24, 1994.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 94–5186 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 685]

Expansion of Foreign-Trade Zone 138 Franklin County, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Rickenbacker Port Authority, grantee of Foreign-Trade Zone No. 138 (Columbus, Ohio area), for authority to expand its existing general-purpose zone at the Rickenbacker international Airport, Franklin County, Ohio, adjacent to the Columbus Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 24, 1993, (Docket 27–93, 58 FR 35427, 7/1/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of February 1994.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 94–5303 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–827]

Postponement of Preliminary Antidumping Duty Determination; Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Cynthia Thirumalai, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4105 or 482–4087, respectively.

Postponement

We have determined this investigation to be extraordinarily complicated due to the large number of producers and resellers. We have also determined that respondent parties to the proceeding are cooperating in this investigation. Accordingly, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 353.15(b), we are postponing the date of the preliminary determination until no later than June 8, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: February 28, 1994.

Joseph Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 94–5304 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–822]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick or David J. Goldberger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0186 or 482–4136, respectively.

Preliminary Determination

We preliminarily determine that Class 150 stainless steel threaded pipe fittings (SST pipe fittings) from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on August 23, 1993 (58 FR 45482, August 30, 1993), the following events have occurred: On September 16, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

In September and October 1993, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Enlin Steel Corporation (Enlin), Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), and Yih Tai Industries Co., Ltd. (Yih Tai), respectively. Enlin, Ta Chen, and Yih Tai accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). In response to submissions regarding the reporting of certain product characteristics, the Department issued a revised appendix V of the antidumping duty questionnaire to the respondents in November 1993.

Enlin, Ta Chen, and Yih Tai submitted sales questionnaire responses in October and November 1993. The Department issued supplemental sales questionnaires in December 1993; the responses to these supplemental questionnaires were received in January 1994.

On December 2, 1993, petitioners in this investigation, Capital Manufacturing Company and Alloy Stainless Products Co., Inc. (petitioners), requested that the Department postpone the preliminary determination in accordance with section 733(c)(1) of the Act. We granted this request and postponed the date of the preliminary determination until not later than March 1, 1994, in accordance with 19 CFR 353.15(c) (58 FR 65577, December 15, 1993).

On December 16, 1993, in accordance with 19 CFR 353.31(c)(1)(i), petitioners filed a timely allegation of sales below the cost of production (COP). At the Department's request, petitioners filed a supplement to their COP allegation on January 12, 1994. During December 1993, and January 1994, we received comments from Enlin and Yih Tai objecting to the information contained in the petitioners' allegation.

On February 7, 1994, the Department issued a cost of production/constructed value (Section D) questionnaire to Enlin, Ta Chen, and Yih Tai, as the Department had reasonable grounds to believe or suspect that all three companies had sold SST pipe fittings in the home market or third-country at prices which were below their respective costs of production. On February 18, 1994, Yih Tai requested that the Department reconsider its decision to initiate a sales-below-cost investigation of Yih Tai's Canadian sales.

Because the Section D responses are not due until after the preliminary determination, we will address the issue of whether respondents were selling subject merchandise in the home market or third-country at below cost prices in our final determination.

Standing

On January 3, 1994, in accordance with 19 CFR 353.31(c)(2), Yih Tai filed a timely allegation that petitioners lack standing in this investigation. Under section 732(b)(1) of the Act, in order to have standing to file an antidumping petition, a petitioner must be an "interested party." Section 771(9)(C) of the Act defines the term "interested party," in relevant part, as "a manufacturer, producer, or wholesaler in the United States of the 'like product.'" Yih Tai has alleged that, based on the fact that petitioners only "finish" SST pipe fittings which are made from castings, the petitioners' activities are insufficient to qualify them as interested parties. However, petitioners have far more extensive production activities with respect to SST pipe fittings made through methods of manufacture other than casting. Given the Department's previous decision that all SST pipe fittings, whether finished or unfinished, and regardless of method of manufacture, constitute one category of such or similar merchandise, the Department concludes that petitioners qualify as interested parties (see September 29, 1993, Memorandum from David Binder to Richard W. Moreland). Therefore, petitioners have standing under section 732(b)(1) of the Act. We note that the ITC has found that the value that petitioners add to castings is sufficient

to qualify them as producers of the like product.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, Yih Tai and Enlin requested on February 10 and February 18, 1994, respectively, that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension in the event of an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Based on U.S. import statistics, Yih Tai and Enlin both account for a significant portion of the POI exports of the subject merchandise.

Therefore, we are postponing the final determination for this investigation until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

The products covered by this investigation are Class 150 SST pipe fittings, defined as cast or forged stainless steel products used to connect pipe sections with an ability to withstand normal pressure service (150 pounds per square inch (psi) at 350 degrees Fahrenheit and 300 psi at –20 to 150 degrees Fahrenheit) as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. Included in the scope of this investigation are both finished and unfinished Class 150 SST pipe fittings of any size. Unfinished Class 150 SST pipe fittings are defined as those products that have been advanced after casting or forging, but which require threading and machining to finish the fittings; finished Class 150 SST pipe fittings are defined as those products that have been formed in the shape of elbows, tees, reducers, etc. and have been further advanced after casting or forging, and require no further processing to be acceptable as a finished product to the end user. Class 150 SST pipe fittings are composed of alloys including, but not limited to, 304 and 316, and are manufactured in the shape of 90-degree elbows, 45-degree elbows, street elbows, tees, crosses, couplings, reducing couplings, half-couplings, caps, square head plugs, hex head plugs, hex bushings, unions, locknuts, and welding spuds. Excluded from the scope of investigation are SST pipe fittings manufactured in the shape of nipples.

The products under investigation are currently classifiable under subheadings 7307.19.9030, 7307.19.9060, 7307.19.9080, 7307.22.1000, 7307.22.5000, and 7307.29.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Period of Investigation

The period of investigation (POI) is January 1 through June 30, 1993.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise. All three respondents reported that they sold merchandise in the home market or third-country market identical to that sold in the United States. Accordingly, none provided difference in merchandise (difmer) information in their sales listings. For a small number of U.S. sales reported by Enlin, however, our examination of the questionnaire response indicated that identical matches did not exist. Because Enlin did not report difmer information, we were precluded from identifying similar merchandise for comparison with these sales under section 771(16) (B) or (C) of the Act. Therefore, in accordance with section 776(c) of the Act, we applied best information available (BIA) in determining the margins for these sales. As BIA, in accordance with normal practice, we applied the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrational calculated margin for any other sale of merchandise of the same class of kind made by the Department in this investigation. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France, 58 FR 37131, July 9, 1993.) We determined the highest non-aberrational calculated margin by selecting the highest margin, after excluding those margins which were substantially higher than the vast majority of other margins calculated.

Fair Value Comparisons

To determine whether sales of the respondents to the United States were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For each respondent, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. In addition, for Ta Chen, where certain sales to the first unrelated purchaser took place after importation into the United States, we also based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

We made company-specific adjustments as follows:

A. Enlin

For Enlin, we calculated purchase price based on CIF or C&F prices to unrelated customers in the United States. In accordance with section 772(d)(1)(B) of the Act, we increased U.S. price by the amount of import duties imposed by Taiwan on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to the United States.

B. Ta Chen

For Ta Chen, we calculated purchase price based on FOB Taiwan, FOB U.S. port or delivered prices to unrelated customers in the United States. We calculated ESP based on delivered prices to unrelated customers in the United States. For ESP transactions, we made deductions, where appropriate, for the following movement charges in accordance with section 772(e) of the Act: foreign inland freight, ocean freight, marine insurance, foreign brokerage, U.S. customs fees, U.S. customs broker charge, containerization expense, harbor construction fees and U.S. inland freight. We also made deductions, where appropriate, for credit expenses, bank charges, and indirect selling expenses, including inventory carrying expenses and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. v. United States*, 834 F.Supp. 1391 (CIT 1993). We also deducted the amount of tax due solely to price deductions in the original tax base. For discussion of this adjustment see Final Results of Administrative

Review: Certain Industrial Forklifts from Japan, (59 FR 1374, January 10, 1994) and Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, (58 FR 68865, December 29, 1993).

C. Yih Tai

For Yih Tai, we calculated purchase price based on CIF prices to unrelated customers in the United States. No deductions were either claimed or made.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, for each respondent we compared the volume of home market sales of the subject merchandise to the volume of third-country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was not viable for sales of SST pipe fittings made by either Enlin or Yih Tai. Based on their respective questionnaire responses, Canada was selected as the third-country market basis for FMV for both Enlin and Yih Tai. We found that the home market was viable for sales of SST pipe fittings by Ta Chen.

We made company-specific adjustments as follows:

A. Enlin

We calculated FMV based on CIF or FOB prices, inclusive of packing, to unrelated customers in Canada. Enlin reported that all Canadian sales were made at the same level of trade as that of its U.S. customers. Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and letter of credit fees. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, ocean freight, marine/air insurance, foreign brokerage and handling, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

We added the amount of import duties imposed by Taiwan on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to Canada. Because Enlin did not include the per-unit amount of these uncollected duties in its sales listing, we added to FMV the amount reported for the U.S. comparison sale as best information available.

For both U.S. and third-country sales, we recalculated the imputed credit expenses for those sales that had missing payment and/or shipment dates. These recalculations were made based on the weighted-average difference between payment and shipment dates for those sales which were both shipped and paid during the POI.

B. Ta Chen

We based FMV on home market, ex-factory and delivered prices, inclusive of packing, to unrelated customers. We included in FMV the amount of the VAT included in the home market. As discussed for USP, we also calculated the amount of tax that was due solely to the inclusion of price deductions in the original tax base (in this case, five percent of the sum of any adjustments, expenses, and charges that were deducted from the tax base). We deducted this amount from the FMV after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that could cause the creation of a dumping margin even where pre-tax dumping is zero.

We compared U.S. sales to home market sales made at the same level of trade, where possible, in accordance with 19 CFR 353.58. Where we were not able to match at the same level of trade, we made comparisons without regard to level of trade.

For purchase price comparisons, we made deductions, where appropriate, for discounts. Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, ocean freight, marine insurance, foreign brokerage, U.S. customs fees, U.S. customs broker charge, containerization expenses, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

For ESP comparisons, we made deductions, where appropriate, for discounts and foreign inland freight. We also deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

For both U.S. and home market sales, we made the following recalculations to circumstance-of-sale adjustments: We recalculated credit expenses because the expenses reported in Ta Chen's sales listing were inconsistent with the methodology explained in the narrative portion of its submissions. We recalculated indirect selling expenses to include selling expenses not originally included in the sales listing. Finally, we recalculated inventory carrying expenses to correct the price bases, interest rates, and the appropriate time in inventory, based on information contained in Ta Chen's questionnaire responses.

C. Yih Tai

We calculated FMV based on CIF prices, inclusive of packing, to unrelated customers in Canada. Yih Tai reported that all Canadian sales were made at the same level of trade as that of its U.S. customers.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for difference in credit expenses, letter of credit fees, and interest revenue. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, foreign brokerage, ocean freight, marine insurance, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

Because commissions were paid on Canadian but not on U.S. sales, in accordance with 19 CFR 353.56(b)(1), we deducted the weighted-average third-country commission amount from FMV. We then added to FMV as a circumstance-of-sale adjustment the lesser of either (1) the amount of the weighted-average commissions paid on third-country sales; or (2) the sum of the indirect selling expenses on U.S. sales. U.S. indirect selling expenses included inventory carrying expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SST pipe fittings from Taiwan, except those of Ta Chen and Yih Tai, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the

estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Enlin Steel Corporation	1.25
Ta Chen Stainless Pipe Co., Ltd.	0.00 (*de minimis*)
Yih Tai Industries Co., Ltd	0.15 (*de minimis*)
All Others	1.25

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

A hearing, if requested, will be held on June 16, 1994, at 1 p.m. at the U.S. Department of Commerce in room 3708. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 7, 1994, and rebuttal briefs no later than June 14, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination not later than 135 days after the publication of this notice.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5305 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–508–604]

Industrial Phosphoric Acid From Israel; Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioners, the Department of Commerce is conducting administrative reviews of the antidumping duty order on industrial phosphoric acid from Israel. The review of Rotem Fertilizers, Ltd. (Rotem) is being terminated following the Department's determination in the final results of the changed circumstances review that Rotem is successor to Negev Phosphates Ltd. (Negev), a company that was revoked from the antidumping duty order. Thus, Rotem is no longer covered by the antidumping duty order since Negev's revocation has been applied to Rotem. See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review; (59 FR 6944; February 14, 1994). These reviews cover one manufacturer/exporter of this merchandise to the United States, and the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993.

The company under review, Haifa Chemicals (Haifa), did not have shipments to the United States during the review period.

Therefore, we are using the rate found for this company in the last administrative review for cash deposit purposes. We preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the rate determined for this company in the previous administrative review of this order. See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Administrative Review, (57 FR 36471; August 25, 1992).

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1992 and August 3, 1993, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (57 FR 36063 and 58 FR 41239) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987) for the August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993, fifth and sixth review periods, respectively. FMC Corporation and Monsanto Company, the petitioners, requested administrative reviews covering the fifth review period on August 28, 1992 and the sixth review period on August 12, 1993. We initiated the fifth review on September 28, 1992 (57 FR 44551) and the sixth review on September 30, 1993 (58 FR 51053). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by these reviews are shipments of industrial phosphoric acid (IPA). This merchandise is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Haifa Chemicals, Ltd., an Israeli manufacturer/exporter to the United States of IPA, and sales to the United States during the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993. We are terminating the review as to Rotem Fertilizers, (Rotem) because, subsequent to the initiations of these reviews, Rotem was determined to be the successor to Negev (59 FR 6944; February 15, 1994), a company that was revoked from the antidumping duty order on March 23, 1992 (56 FR 10008). Accordingly, Negev's revocation has been applied to Rotem.

Haifa reported that it did not have any shipments of the subject merchandise to the United States during the review periods. We subsequently confirmed with the United States Customs Service that there were no entries of this merchandise to the United States by Haifa during these review periods. Therefore, we used the rate found in the previous review of this company for cash deposit purposes. Because Haifa did not respond to the Department's questionnaire in that review, it was assigned a rate of 6.82 percent, the

highest margin for a company under the order.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer, is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the "all other" rate will remain at 1.77 percent as established in the final notice of the original investigation of this case.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions it is appropriate to apply the "all others" rate from the original investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed antidumping duty orders for the purposes of establishing cash deposits in all current and future adminstrative reviews. The "all others" rate in the original investigation was 1.77 percent.

These deposit requirements, when imposed, shall remain in effect until the publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated February 28, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5306 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–601]

Stainless Steel Cooking Ware From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 27, 1993, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. The review covers one manufacturer/exporter of this merchandise to the United States and the period January 1, 1990 through December 31, 1990. We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner. Based on our analysis of these comments, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Crumbie or Michael J. Heaney, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1993, the Department published in the **Federal Register** (58 FR 50347) the preliminary results of the administrative review of certain stainless steel cooking ware from the Republic of Korea (52 FR 2139, January 20, 1987). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this administrative review are certain stainless steel cooking ware from the republic of Korea. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.00. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless

steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope is stainless steel kitchen ware. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers Namil Metal Company, Ltd. (Namil), and the period January 1, 1990 through December 31, 1990 (POR).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from the petitioner, Farberware, Inc. (Farberware).

Comment 1: Farberware states that, in the computer program for the preliminary results, the Department incorrectly adjusted for differences in the physical characteristics of similar third-country and U.S. products by subtracting total cost of manufacturing for third-country merchandise, expressed in the computer program as "TDCOM," from the cost of manufacturing for U.S. products, expressed in the computer program as "USCOM," to determine the difference in merchandise (DIFMER) adjustment. Farberware maintains that TDCOM and USCOM include both variable and non-variable manufacturing costs for third-country and U.S. merchandise, respectively.

Farberware argues that the Department should, in accordance with its established practice, revise the preliminary results computer program to compare third-country variable cost of manufacturing, expressed in the computer program as "TDVARCOM," to U.S. variable cost of manufacturing, expressed in the computer program as "USVARCOM".

Department's Position: We agree with Farberware. As is consistent with our practice, we based our adjustment for the DIFMER on the differences in variable cost of manufacture (COM) between similar third-country and U.S. products.

Comment 2: Farberware argues that the DIFMER adjustment was very substantial for many third-country comparison models. Farberware asserts that even after the Department changes the computer instructions to calculate the DIFMER using variable COM rather than total COM, many of the DIFMER adjustments may be in excess of 20 percent of the total COM of the U.S. merchandise being compared.

In addition to limiting the DIFMER adjustment to differences in the variable cost of manufacture, Farberware urges the Department to adhere to its general practice and to use constructed value (CV) as the basis for determining foreign market value (FMV) for those comparisons in which the DIFMER adjustment exceeds 20 percent of the total COM of the U.S. merchandise being compared.

Department's Position: We agree with Farberware. Where the difference in variable COM between a third-country model and a U.S. model exceed 20 percent of the total COM of the U.S. merchandise, in our final results, we used CV as the basis for FMV.

Comment 3: Farberware maintains that the Department's choice of the best information available (BIA) in the preliminary results of review is inappropriate. (The Department used the highest rate from a previous review as BIA to calculate margins for sales for which Namil provided no model-match or CV data. As BIA, the Department used the dumping margin of 1.69 percent as was established in the administrative review of Namil's sales which covered the period January 1, 1989 through December 31, 1989.)

Farberware maintains that the Department asked Namil in a supplemental questionnaire regarding sales during the period of review to provide similar third-country matches for all sales to the United States, and to provide CV data for United States sales for which there were no similar matches. Because Namil failed to provide a revised computer tape product concordance file and failed to provide the requested CV data, Farberware suggests that the Department use as BIA the highest margin the Department calculates for any U.S. sale for Namil in the final margin calculation of this administrative review.

Thus, Farberware argues that the Department should apply the highest margin calculated for any U.S. sale by Namil to the total net value of all sales to the United States of those U.S. transactions for which there was no model match or CV information.

Department's Position: We agree with Farberware that BIA should be applied to those sales for which no model match or CV information has been provided by Namil. However, we maintain that the Department's choice of BIA in the preliminary results of administrative review was appropriate.

In accordance with section 776(c) of the Tariff Act, we use BIA in cases where a party refuses or is unable to produce information requested in a timely manner and in the form required. In cases where a firm is deemed cooperative, but fails to supply certain FMV information (*e.g.*, corresponding home market sales within the contemporaneous period or constructed value data for a few U.S. sales), we apply a BIA rate to the particular U.S. transactions involved. In such situations, we use as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or if the firm has never been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al, Final Results of Antidumping Duty Administrative Review, 58 FR 39729, 39739 July 26, 1993).

Namil responded to our questionnaire. Namil, however, failed to provide either (1) such or similar third-country matches or (2) constructed value information for some of its U.S. sales during the period of review. Since Namil attempted to cooperate, we applied a rate of 1.69 percent, the highest rate ever applicable to Namil for the subject merchandise (See Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 56 FR 38114, August 12, 1991), to U.S. sales for which Namil failed to give either model-match or CV information.

Comment 4: Farberware disagrees with the Department's preliminary decision to exclude from its analysis those U.S. sales for which Namil submitted a gross price of zero. Farberware further states that Namil never explained why these sales had a gross price of zero.

Farberware maintains that the zero gross price has never been shown to represent anything other than the actual price charged for these U.S. sales. Thus, Farberware argues that the Department should include all reported U.S. sales with a gross price of zero in the calculation of Namil's dumping margin in the final results of review.

Department's Position: We agree with Farberware and have included these sales in our calculations.

Comment 5: Farberware argues that the Department treated U.S. direct selling expenses, expressed as "DIRECTP" in the computer program, incorrectly by deducting DIRECTP from FMV instead of adding it to FMV.

Farberware states that the Department's standard practice in purchase price comparisons is to add U.S. direct selling expenses to FMV.

Department's Position: We agree with Farberware. The revised computer program instructions have corrected this clerical error. In these final results, we added U.S. circumstance-of-sale adjustments to FMV, as is our standard practice in purchase price comparisons.

Comment 6: Farberware maintains that the Department failed to deduct the direct selling expenses of "letter of credit advice." expressed as "LCADV"in the computer program, and "marine insurance expense," expressed as "MARINST" in the computer program, from the net prices used in the sales below cost test. Farberware states that such a deduction should be made because the selling, general, and administrative expenses reported by Namil and included in our sales below cost test were net of all direct selling expenses.

Department's Position: We agree with Farberware. In our final results, we have deducted letter of credit and marine insurance expenses from the net prices used in the sales below cost test.

Final Results of Review

As a result of our review, we have determined that a dumping margin exists for the period as follows:

Manufacturer/exporter	Time period	Margin (percent)
Namil Metal Co., Ltd	1/1/90–12/31/90	1.06

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or with drawn from warehouse, for consumption, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for the reviewed company will be the rate determined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be the "all others" rate established in the LTFV investigation, as discussed below.

On May 25, 1993, the United States Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once a company is assigned an "all others" rate, that rate can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for the correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 8.10 percent, the "all others" rate established in the final notice of the LTFV investigation by the Department (52 FR 2139, January 20, 1987).

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, we will instruct the Customs Service to subtract the level of export subsidies as determined in Certain Stainless Steel Cooking Ware from the Republic of Korea; Countervailing Duty Order, 52 FR 2140 (January 20, 1987), which is 0.78 percent *ad volorem*, from the dumping margin for assessment and cash deposit purposes. There have been no reviews conducted since the publication of the countervailing duty order.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5184 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P–M

[C–301–601]

Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 7, 1993, the Department of Commerce ("the Department") published the preliminary results of its administrative review and intent not to terminate the suspended countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1988 through December 31, 1990 and seven programs. On January 31, 1991, the Government of Colombia ("GOC") requested termination of the suspended investigation based on abolishment of the programs for a period of at least three years, in accordance with 19 CFR 355.25(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three consecutive years. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all

the comments received, we determine that the GOC and producer/exporters of miniature carnations have complied with the terms of the suspension agreement. However, we also determine that the GOC has not abolished each program for a period of at least three consecutive years. Therefore, we determine that the GOC has not met all the requirements for termination of the countervailing duty suspended investigation on miniature carnations as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a suspended countervailing duty investigation based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce's current policy that administrative reviews must be requested and conducted for each of the three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. However, the request for termination in this case predates the above policy, and we nevertheless have examined a three-year period in order to determine whether termination is appropriate. We invited interested parties to comment on these results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jeanene Lairo, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–2243, respectively

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1993, the Department published in the **Federal Register** the preliminary results of its countervailing duty administrative review and intent not to terminate the suspended investigation on miniature carnations from Colombia (58 FR 52269). (See Suspension of Countervailing Duty Investigation; Miniature Carnations from Colombia, 52 FR 1353 (January 13, 1987).) We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope and Review

Imports covered by this review are shipments of miniature carnations from Colombia. During the review period, the merchandise covered by this suspension agreement is classified under Harmonized Tariff Schedule ("HTS") item numbers 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review ("POR") covers January 1, 1988 through December 31, 1990, and seven programs: (1) Tax Reimbursement (Certificate Program Certificado de Reembolso Tributario (CERT program)); (2) The Fund for the Promotion of Export Loans (working and fixed-capital) ("PROEXPO"); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; and (7) Research and Development.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the petitioner, the Floral Trade Council ("FTC") and the GOC, we held a public hearing on December 3, 1993. Comments 1 through 10 also pertain to the Final Results of Countervailing Duty Administrative Review and Intent not to Terminate Suspended Investigation; Roses and Other Cut Flowers from Colombia which is being published concurrently with this notice.

Comment 1. The FTC alleges that the GOC has not abolished certain programs covered under the suspended investigations for a period of three consecutive years as required under 19 CFR 355.25(a)(1)(i). The FTC asserts that elimination of Colombian flower exporters' eligibility to receive countervailable subsidies on exports of fresh cut flowers to the United States is insufficient grounds for termination. The FTC also contends that the regulation permits the Department to terminate only when the government has abolished all programs benefitting the merchandise, not merely the eligibility of exports of a particular category of merchandise. Finally, the FTC argues that the Department should consider the entire program in deciding whether to terminate the suspended investigation.

The GOC asserts that the Department's preliminary determination was erroneous for several reasons. First, the GOC contends that if the program remains in existence but has been abolished for the subject merchandise, termination is required. In the case of the CERT program, the GOC asserts that the Department correctly focused on whether or not the subject merchandise remains eligible to receive benefits under the subsidy programs found countervailable. Thus, the GOC asserts that the Department failed to consistently apply the correct legal standard for program abolition in its analysis of PROEXPO, Plan Vallejo, and the air freight rates program, since the subsidy programs have been abolished with regard to the subject merchandise and there is no likelihood the countervailable programs will be reinstated or new programs substituted. (See Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (December 15, 1986).)

Department's Position: The Department's regulations at 19 CFR 355.25(a)(1)(i) state that the Secretary may terminate a suspended investigation if the Secretary concludes that "the Government of the affected country has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable." A program is effectively abolished when the government of the affected country has eliminated, by law, the eligibility of producer/exporters of the subject merchandise for the countervailable program. The regulation does not require that a program be abolished for merchandise other than subject merchandise in order for the Department to terminate the suspended investigations under this provision.

In the case of CERT, Decree 107, issued by the GOC in January 1987, set the level of CERT payments at zero for exports of the subject merchandise to the United States. Because, as a matter of law, the GOC has made the producer/exporters ineligible for any benefits on the subject merchandise by setting their CERT rate to zero, for a period of three consecutive years, we determine that the program has been abolished for three years.

In the case of PROEXPO, the program has not been abolished for the subject merchandise since flower exporters are eligible to receive loans for exports to the United States which may or may not be at preferential rates, although they did not receive preferential PROEXPO loans during the POR. (See Comment 8, below). For Plan Vallejo, the program has not been abolished for the subject merchandise for a period of three consecutive years because the GOC did not eliminate eligibility for the subject merchandise by law until April 1991. (See Comment 9, below.) Because the GOC failed to meet the abolition standard in 19 CFR 355.25(a)(1)(i) for Plan Vallejo and PROEXPO, we will not terminate the suspended investigations.

Comment 2: The FTC contends that the Department verified that, although, "in 1988, the Central Bank made no CERT payments for shipments of the subject merchandise, * * * there were applications for CERT payments in 1988." The FTC contends that the verification report does not indicate whether signatories to the suspension agreements submitted these applications. Consequently, the FTC alleges that this is a possible *prima facie* breach of the suspension agreements and should result in a finding of non-compliance.

The GOC contends that in addition to flowers being ineligible to receive any subsidies under the CERT program during the POR, no flower grower or exporter received CERT rebates on the subject merchandise.

Department's Position: We disagree with the petitioner. At verification, the Department determined that none of the companies examined had used the CERT program during the POR. We have already found that for the roses and other cut flowers agreement producer/exporters were in compliance during the 1988 period and that for the miniature carnations agreement producer/exporters were in compliance during the 1988 and 1989 periods.

While applications from a few producer/exporters did occur, the companies applying constituted an insignificant portion of the subject companies. In 1988, only seven out of approximately 400 flower companies applied for CERT payments. The number of companies applying for CERT benefits in 1989 and 1990 were two and five respectively. (See verification exhibits C–6, C–7, C–13, and C–21.) Moreover, we have verified that no countervailable benefits were received under CERT, despite any applications made. Although applications for CERT benefits are technically inconsistent with the suspension agreements, the Department considers these acts inconsequential as specified under 19 CFR 355.19(d). Consequently, for the purposes of the final results, we determine that the signatories were in compliance with the suspension agreements during the POR.

Comment 3: FTC asserts that two signatories may have received CERT rebates on U.S. flower exports. FTC contends that the questionnaire responses in the 1990–91 administrative review of the antidumping duty order indicate that two Colombian signatories to the suspension agreements, Flores de la Sabana ("Sabana") and Las Amalias, S.A. ("LASA") may have received CERT rebates for U.S. exports.

FTC asserts that in its constructed value questionnaire response, Sabana stated that its internal sales taxes are not included in the cost of materials because the GOC refunds those taxes because the final product is sold outside of the country. Petitioner states that Sabana also submitted in a supplemental response a page of its bookkeeping records for the month of April 1990 that included the line item "CERTs."

Petitioner also contends that LASA reported that it was "entitled to a rebate for value added tax * * * paid to suppliers and contractors for installations for flowers that are exported. During the period of review, LASA received rebates * * *" FTC claims that according to LASA, "the rebates cover all products exported." Finally, FTC states that LASA's public version of its consolidated balance sheet dated December 31, 1990 includes the line item "CERTs."

The GOC asserts that no CERT rebates were paid with respect to exports of subject merchandise. The GOC notes that its questionnaire responses and the Department's verification report indicate that no subject merchandise received CERT payments.

The GOC contends that the documents indicate that two producers received refund or exemption of value added tax paid on materials used in the production for exportation. In addition, the GOC states that refund of prior stage value added taxes are entirely permissible and non-countervailable. The GOC cites Countervailing Duties; Notice of Proposed Rulemaking, 19 CFR 355.44(i)(4)(i), F.R. 23366, 23369, 23380, 23382 (May 31, 1989) ("Proposed CVD Rules"); General Agreement on Tariffs and Trade ("GATT") Subsidies Code, item (h). Finally, the GOC claims that the FTC has failed to demonstrate any link between value added tax rebates and the CERT export certificate program.

The GOC asserts that the bookkeeping records of both companies cited by FTC—Sabana and Las Amalias—contain a line item entry for CERTs only because they received CERTs for their flower exports to third countries.

Department's Position: We disagree with petitioner and with respondent in part. The information described in petitioner's case brief pertains to the antidumping administrative review and would normally have been considered submitted untimely on the record of these reviews. However, because a substantial period of time has passed since the petitioner's January 1993 and August 1993 submissions on LASA and Sabana, we will consider petitioner's comments on this issue for these final results.

As we stated in our response to Comment 2, the Department verified that none of the signatories had used the CERT program for the subject merchandise during the POR. Petitioner's remarks concerning line items titled "CERT" in Sabana's consolidated balance sheet and rebates for exports are consistent with the fact that the program is still in effect for exports to third countries. However, the Department reviewed GOC documentation for all three years of the POR which indicated there were no countervailable CERT benefits given on exports of the subject merchandise to the United States and corroborated the GOC information at verification of three other companies. Consequently, for the purposes of the final results, we determine that the signatories were in compliance with the suspension agreements during the POR, and that we will not conduct any further investigations or verifications with regard to Sabana and LASA during this POR. (See also Comment 4, below.)

As to the GOC's claim that refunds of value-added taxes are entirely permissible and non-countervailable, the Department's position is that refund of prior stage value added taxes upon export are permissible and non-countervailable only to the extent such refund does not exceed the amount of prior stage indirect taxes levied on goods that are physically incorporated in the export product. (See § 355.44(i)(4)(i) of the Proposed CVD Rules.) In the present case, because CERT rates were set at zero, no taxes were refunded.

Comment 4: The FTC contends that the Department's verification of the CERT program for three Colombian producer/exporters was inconclusive. First, the FTC asserts that the Department failed to address how Agropecuria Cuernavaca listed export destinations based on the sales ledger if destination was not recorded. Furthermore, petitioner contends that the customers' identity are insufficient to indicate the final destination, where there are innumerable companies trading flowers on consignment.

Second, the FTC states that since Minispray was incorporated in 1989 and made its first sale in May 1990, it is hardly representative of the Colombian flower producer/exporters.

Third, the FTC claims that with respect to Floramerica, the Department should have investigated whether a CERT payment for the merchandise exported to Germany was actually for merchandise exported to the United

States. The FTC requests that the Department explain how it determined that the CERT payment was actually for a shipment to Germany, and not the United States. The FTC asserts that the GOC should have questioned the CERTs reported by Floramerica on its U.S. sales.

Finally, the FTC requests that the Department either (1) conduct a further investigation and verification or (2) presume that Colombian growers received CERT rebates on U.S. flower exports. In support of their argument the FTC cites *Federal-Mogul Corp.* v. *United States*, 17 CIT _____, Slip Op. 93–180 (Sept. 14, 1993); and *Freeport Minerals (Freeport-McMoran Inc.)* v. *United States*, 776 F.2d 1029, 1032–33 (Fed. Cir. 1985).

The GOC contends that the Department fully verified the non-receipt of CERT certificates on floral exports for the United States. Also, the GOC claims that its records showed no CERT payments being made to Floramerica with respect to its exports to the United States. The GOC asserts that a Floramerica internal worksheet erroneously listed a U.S. CERT payment which the company demonstrated to the Department verifiers was actually made for a shipment to Germany.

The GOC claims that the suspension agreements only obligate Colombian growers and exporters to renounce CERT benefits on shipments of the subject products exported, directly or indirectly, from Colombia to the United States and that the U.S. countervailing duty law generally concerns itself only with bounties or grants benefitting merchandise exported to the United States.

Department's Position: We agree with the respondent. The Department verified that producer/exporters of the subject merchandise did not receive any CERT payments. We were satisfied that the GOC's records and procedures meet their obligations under the suspension agreements to ensure that no benefits ensue to producer/exporters. At verification, from documentation provided by the GOC, we traced all CERT payments received by Agropecuria Cuernavaca during the POR to their exports of the merchandise to third countries. We verified that all CERT payments are recorded in an internal report which tracks CERT payments on a yearly basis and that no payments were for shipments of subject merchandise. We further verified that the GOC requires documentation that the shipment does not go to a country for which CERT payments are not available. In the case of Minispray, it was fully operating during the POR, thereby making the company a legitimate and representative Colombian flower producer and we verified it did not receive CERT payments for exports of the subject merchandise. In the case of Floramerica, we verified that the company received no CERT payments for exports of the subject merchandise during the POR. The Floramerica report indicating a CERT payment for a U.S. shipment was the result of a clerical error by the company. Based on an official GOC export document and other company documents reviewed during the Floramerica verification which included the destination and importer, we verified the shipment in question went to Germany and not to the United States. (See verification exhibit F–6). Finally, the Department will not conduct a further investigation or verification of the information the FTC submitted on LASA and Sabana. (See Comment 3, above.)

Comment 5: The FTC contends that the Department's verification reports revealed an inability on the part of the GOC to monitor compliance with the terms of the suspension agreements and the CERT program, in particular.

In addition, the FTC contends that the verification reports do not establish that the Central Bank or Customs collect information on the intermediate and ultimate destinations of exports. Therefore, the FTC argues that the GOC is unable to certify that CERT payments were made for shipments to third countries. In addition, the FTC asserts that since the documents are prepared by the exporters, they do not offer any objective support that CERT payments were made only for third-country exports. In support of their position, the petitioner cites *Asociacion Colombiana de Exportadores* v. *U.S.*, 704 F. Supp. 1114, 1117 (CIT 1989).

The GOC argues that the Department is not required to investigate unsupported allegations and that the GOC is under no obligation to disprove these allegations.

Department's Position: Contrary to petitioner's assertions, we have determined that the agreements have been effectively monitored by the GOC during the POR. During verification, the Department reviewed documentation provided by companies and by the Banco de la Republica, including applications and records of official government approval and disapproval for CERT payments listed by individual companies for exports to various countries during the POR. (See verification exhibits C–7, C–13, C–18, and C–21.) The Department also examined export manifests and other shipping documents to determine destinations of shipments receiving CERT rebates and verified that no shipments of subject merchandise received CERT rebates. The export manifests which indicated the country of destination for the merchandise matched documents verified at the companies. (See verification exhibit AC–3A.) Consequently, we determine that the GOC has adequately monitored the agreements and has provided the Department the relevant reports in accordance with the terms of the agreements.

Comment 6: The FTC contends that certain shipments received CERT rebates which may have been reshipped to the United States from the Netherlands Antilles and Panama. The FTC also questions the GOC's decision to reduce the CERT rebate rate for exports to the Netherlands Antilles and Panama to zero. Finally, the FTC questions whether shipments having received CERT payments actually traveled the entire distance to Canada and Europe, etc. as indicated on the export documentation. The FTC alleges that the Department did not confirm that third country exports receiving CERT payments were not actually unloaded at Miami port.

The GOC argues that the Department is not required to investigate unsupported allegations and that the GOC is under no obligation to disprove these allegations.

Department's Position: During verification, the Department examined export documents to determine destinations of shipments receiving CERT rebates and verified that no shipments of subject merchandise received CERT rebates. There is no evidence in the questionnaire response, in documentation reviewed by the Department at verification, or anywhere else on the record to support an allegation of transhipment through third countries or of unloading of flowers in the United States.

Comment 7: The FTC contends that the Department should determine that flower exports to the U.S. continue to benefit from CERT rebates on third country exports and that the CERT program still exists. Thus, the FTC contends that the benefit received benefits the whole company's production, including production exported to the United States. In support of their position, petitioner cites Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations, 49 FR 17988, 17996 (April 26, 1984); Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil, 56 FR 26977, 26987 (June 12, 1991); and

British Steel Corp. v. *United States*, 605 F. Supp. 286, 293–95 (CIT 1985).

The GOC contends that the suspension agreements obligate signatories to renounce CERT payments "on shipments of the subject products exported, directly or indirectly, from Colombia to the United States." The GOC claims that Colombian producer/exporters are under no obligation to renounce CERT benefits to third countries.

The GOC further asserts that U.S. countervailing duty law generally concerns itself with only bounties or grants benefitting subject merchandise (i.e. merchandise shipped to the United States). In support of their claim, the GOC cites Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (Dec. 15, 1986); Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 52 FR 48846, 48847–8 (Dec. 28, 1987); and Final Affirmative Countervailing Duty Determination; Miniature Carnations from Colombia, 52 FR 32033, 32036 (Aug. 25, 1987).

Finally, the GOC contends that by having export subsidies to third countries, there is an incentive for Colombian exporters to shift exports from the United States to third countries. Consequently, the GOC argues that flowers sold in the United States in no way benefit from CERT rebates.

Department's Position: As stated in the final results of the 1983–1985 administrative review of this case (Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 52 FR 48847 and 48848 (Comments 2 and 4)(December 28, 1987)), it is the Department's position that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise. (See § 355.47(b) of the *Proposed CVD Rules*.) The Department has verified that Colombian exporters only received CERT payments based on exports to countries other than the United States. CERT payments benefit only those shipments to which they are tied, not shipments of subject merchandise. It is the Department's policy that we will not allocate benefits tied to a product not under investigation over a product under investigation unless we have a clear reason to believe that such a benefit encourages the production or export to the United States of the product under investigation. (See *Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (Comment 1)(January 9, 1987), and *Certain Fresh Cut Flowers From Israel; Final Affirmative Countervailing Duty Determination*, 52 FR 3316 (Comment 9)(February 3, 1987). We have no such evidence in this case. We determine, therefore, that the signatories have not violated the suspension agreements.

We disagree with the FTC that *Silicon Metal from Brazil* is germane to this review. The issue in that antidumping case involved the allocation of financing cost for new furnaces that could produce the subject merchandise. While it is true that money is fungible, subsidies on exports to third countries do not provide benefits to exports to the United States if the subsidies are tied to specific non-subject merchandise destined for third countries. The FTC's reliance on *Certain Carbon Steel Products from Brazil* is misplaced because in that case, although we found the IPI tax rebate was a subsidy benefitting all production including exports, we did not find that it was tied to specific exports to individual countries. In the case of CERT payments, we were able to determine that payments were clearly tied to particular countries.

Comment 8: FTC contends that the Department should compare the interest rates received on PROEXPO loans to commercial benchmark interest rates available on comparable loans during the POR. FTC also argues that the Department applied outdated benchmark interest rates, inconsistent with the Department's practice. In support of its position, FTC cites the *Proposed CVD Rules; Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium*, 58 FR 37273, 37288–89 (July 9, 1993); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315, 37322–23 (July 9, 1993); *Oil Country Tubular Goods from Argentina—Preliminary Results of Countervailing Duty; Administrative Review*, 56 FR 50,855 (October 9, 1991); *Preliminary Affirmative Countervailing Duty Determination: Bulk Ibuprofen from India*, 56 FR 66432 (December 23, 1991); *Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia*, 56 FR 67276, 67277 (December 30, 1991); *Rice from Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 57 FR 8437, 8439 (March 10, 1992); and *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT 1985).

FTC argues that the Department should instead apply periodically reconstructed benchmarks that reflect, for short-term loans, comparable commercial financing on a nation-wide and non-sector specific basis and, for long-term loans, the firm's other commercial loans taken out in the same year or the national average interest rate. FTC asserts that if the Department were to apply benchmarks chosen in the 1989 miniature carnations review it is likely that certain Colombian producers/exporters received PROEXPO loans at preferential rates. (See *Asociacion Colombiana de Exportadores* v. *United States*, 704 F. Supp. 1114, 1122 (CIT 1989.) Furthermore, the FTC contends that the Department should apply effective, rather than nominal benchmark rates. Finally, the FTC argues that if "established benchmarks" rather than reconstructed benchmarks are used in the final results, the Department should use its established benchmark methodology to determine benchmarks for each of the 1988, 1989, and 1990 periods. FTC contends that the Department should confirm the primary source of financing by reviewing source documents.

The GOC contends that the signatories fully complied with the suspension agreements because during the POR it rendered flower growers ineligible for a countervailable PROEXPO benefit by setting the PROEXPO interest rates for flower growers not just at but above the benchmark interest rates established by the Department. In addition, the GOC asserts that the suspension agreements require their signatories not to renounce PROEXPO loans *per se*, but only to renounce the preferential interest rates. The GOC claims that, under the agreements, the Department establishes the benchmark interest rates, and that the agreements only obligate the renouncing producers and exporters to refinance existing loans and obtain new loans on non-preferential terms at or above the relevant benchmark interest rate determined by the Department. Thus, the GOC argues that continued receipt by flower growers of PROEXPO loans at the Department-established rates not only is permitted under the suspension agreements but is expressly contemplated.

The GOC also asserts that the Department erred because it defined "the program" at issue as all PROEXPO loans, including PROEXPO loans at non-preferential and thus non-countervailable rates.

The GOC contends the effect was that no flower grower could receive a PROEXPO loan at a preferential interest rate, irrespective of the destination to which it shipped its flowers, and even if it did not export at all. Consequently,

GOC asserts that the Department erred in its preliminary results of review because it appears to have defined "the program" at issue as all PROEXPO loans, including PROEXPO loans at non-preferential and thus non-countervailable rates.

Department's Position: The Department set the benchmark rates applicable to the POR in 1987. Although we determined on April 8, 1991 that the benchmark for PROEXPO should be changed, we stated that "any changes to short-term and long-term benchmark interest rates for this suspension agreement should be set prospectively." See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review, 56 Fed. Reg. 14240 (April 8, 1991). Consequently, the Department cannot reset the benchmarks for these suspension agreements in the middle of an administrative review. Had the Department changed the benchmark interest rates during the POR it would have imposed undue burdens on the signatories to the suspension agreements to comply with the changed benchmark rates. Since suspension agreements are forward looking, the terms and conditions should not be retroactively changed during the POR.

At verification, the Department examined documentation that indicated that PROEXPO charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received PROEXPO loans on terms consistent with the suspension agreements. Consequently, we have determined that signatories were in compliance with the terms of the suspension agreements for the PROEXPO program. Since PROEXPO loans were above the benchmark rates, the Department determines that the GOC did not confer any countervailable benefits through the PROEXPO program during the POR. The Department finds that signatories complied with the suspension agreements' benchmarks and avoided countervailable benefits during the POR, resulting in a situation analogous to non-use for the PROEXPO program by signatories.

However, the GOC has not abolished the PROEXPO program for the subject merchandise as required by 19 CFR 355.25(a)(1)(i). In the case of the CERT program, the GOC has changed the law to eliminate subsidies and would have to change the law again in order to confer any future countervailable benefits for the subject merchandise through the CERT program. In other words, the GOC would have to take a specific action in the future (e.g., passing a new law or repealing the old law) in order for any possible countervailable benefits to occur in the future. As the PROEXPO program is now structured, PROEXPO loans granted at interest rates at or above the current benchmarks could constitute countervailable subsidies if the commercial interest rate falls below the benchmark specified by the suspension agreements. In such a case, producer/exporters would be eligible for countervailable benefits under PROEXPO without the GOC taking specific action to change the program (as would be the case with the CERT program). Thus the GOC has failed to eliminate the subsidy by abolishing PROEXPO because loans under the program may in future constitute countervailable subsidies without further GOC action. Consequently, we determine that PROEXPO has not been abolished for the subject merchandise as required by 19 CFR 355.25(a)(1)(i), and the Department will not terminate the suspended investigations.

Comment 9: The GOC asserts that it rendered flower growers ineligible for any countervailable subsidy under the Plan Vallejo program for capital equipment. Consequently, the GOC asserts that it has satisfied the Department's requirement for abolishing programs "for the merchandise" found to confer countervailable benefits. The GOC contends that the Department's preliminary determination is not in accordance with law because it appears to require that Plan Vallejo as a whole be abolished rather than simply that it be abolished for the merchandise.

Department's Position: We disagree with the GOC. The GOC only formalized its policy of not providing subsidies on the subject merchandise by abolishing the Plan Vallejo program for the subject merchandise in April 1991, after the POR. At verification, the Department reviewed documentation that indicated that no flower producer/exporters received Plan Vallejo benefits for the subject merchandise during the POR. (See verification exhibits PV–4 and PV–5.) However, while producer/exporters did not receive any benefits under Plan Vallejo, they were eligible for benefits because the GOC had not changed its law to abolish the program. Consequently, we determine that the program has not been abolished for the subject merchandise for a period of three consecutive years as required by 19 CFR 355.25(a)(1)(i), and the Department will not terminate the suspended investigations.

Comment 10: The GOC argues that because they have not only met their obligations under side letters provided in connection with the suspension agreements, but have also exceeded them by taking steps to reduce, phase out, or eliminate the programs as a whole, there is no likelihood that countervailable subsidies will be substituted or replaced. To support their arguments petitioner cites the following: 19 CFR 355.25(a)(1); *Manufacturas Industriales de Nogales, S.A. v. United States*, 666 F. Supp. 1562 (CIT 1987); and Leather Wearing Apparel from Mexico; Final Results of Administrative Review of Countervailing Duty Order, 50 FR 6024 (February 13, 1985).

The FTC claims that the existence of potentially countervailable subsidies increases the likelihood of the reactivation of the programs or their substitution with other countervailable programs after termination. In the case of CERT, the GOC may simply issue another decree to change the CERT rate on the subject merchandise. As for PROEXPO, the FTC asserts that the Department's review cannot establish the likelihood of PROEXPO's reinstatement or substitution after termination.

Department's Position: Because we have found that the Plan Vallejo and PROEXPO programs have not been abolished during the POR, the conditions of 19 CFR 355.25(a)(1)(i) have not been met, and we will not terminate the suspension agreements. Therefore, it is unnecessary for us to address the question of the likelihood of benefits resuming.

Final Results of Review

After considering all of the comments received, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1990. However, we will not terminate the suspension agreement In order for us to terminate the suspension agreement the GOC must have abolished all programs for a period of three consecutive years which is not the case with Plan Vallejo and PROEXPO.

This administrative review and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 94–5307 Filed 3–7–94; 8.45 am]

BILLING CODE 3510–DS–P

[C–301–003]

Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 7, 1993, the Department of Commerce ("the Department") published the preliminary results of its administrative review and intent not to terminate the suspended countervailing duty investigation on roses and other cut flowers from Colombia. The review covers the period January 1, 1988 through December 31, 1990 and eight programs. On January 31, 1991, the Government of Colombia ("GOC") requested termination of the suspended investigation based on abolishment of the programs for a period of at least three consecutive years, in accordance with 19 CFR 355.25(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three consecutive years. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the GOC and the producer/exporters of roses and other cut flowers have complied with the terms of the suspension agreement. However, we also determine that the GOC has not abolished each program for a period of at least three consecutive years. Therefore, we determine that the GOC has not met all the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a suspending countervailing duty investigation based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce's current policy that administrative reviews must be requested and conducted for each of the three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. However, the request for termination in this case predates the above policy. Therefore, although no review was requested for 1989, we nevertheless have examined a three-year period in order to determine whether termination is appropriate. We invited interested parties to comment on these results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jeanene Lairo, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1993, the Department published in the **Federal Register** the preliminary results of its countervailing duty administrative review and intent not to terminate the suspended investigation on roses and other cut flowers from Colombia (58 FR 52272). (See Roses and Other Cut Flowers From Colombia; Suspension of Investigation, 48 FR 2158 (January 18, 1983); and Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (December 15, 1986).) We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope and Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the review period, the merchandise covered by this suspension agreement is classified under Harmonized Tariff Schedule ("HTS") item numbers 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review ("POR") covers January 1, 1988 through December 31, 1990, and eight programs: (1) Tax Reimbursement Certificate Program (Certificate Program Certificado de Reembolso Tributario ("CERT" program)); (2) The Fund for the Promotion of Export Loans (working and fixed-capital) ("PROEXPO"); (3) Plan Vallejo; (4) Air Freight Rates; (5) Free Industrial Zones; (6) Export Credit Insurance; (7) Countertrade; and (8) Research and Development.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the petitioner, the Floral Trade Council ("FTC"), and the GOC, we held a public hearing on December 3, 1993. Several issues raised by interested parties in this review are not case-specific but pertain both to this administrative review and the countervailing duty administrative review and intent not to terminate the suspended investigation on miniature carnations from Colombia. The comments submitted by interested parties concerning issues common to both these reviews of suspended investigations are summarized and addressed in the Final Results of Countervailing Duty Administrative Review and Intent Not to Terminate Suspended Investigation; Miniature Carnations from Colombia which is being published concurrently with this notice. The following comment is specific only to this administrative review on roses and other cut flowers from Colombia.

Comment: The GOC contends that it was under no obligation to abolish the air freight rate "program" since the Department never found it countervailable and since there was never any subsidy on the merchandise conferred by air freight rates. Furthermore, the GOC argues that the Department's inclusion of air freight rates in the 1983 roses suspension agreement was not carried forward into the 1986 revised suspension agreement. Thus, consideration of air freight rates under the suspension agreement is no longer in effect. The GOC contends that the air freight rate "program" is in fact not a program because the Departmento Administrativo de la Aeronautica Civil ("DAAC") only sets minimum and maximum permissible air freight rates. The GOC argues that the Department has agreed with the respondent that the establishment of minimum and maximum rates "does not confer countervailable benefits."

The FTC asserts that the Department has the discretion to consider the continued existence of a potentially countervailable program even if that program is not specifically found to be countervailable in the suspension agreement. The FTC asserts that during the POR, the GOC was unable to establish that the actual air freight rates were competitively priced. Furthermore, the FTC asserts that the GOC did not submit comparative air freight rates or export statistics to third countries. Consequently, as best information

available, the FTC contends that the Department should presume air freight maximums limited competitive rates contrary to the terms of the suspension agreement.

Department's Position: While we agree with petitioner that the Department has discretion to consider a potentially countervailable program, we disagree with the FTC's assertion that the GOC has violated the suspension agreement. The DAAC minimum/maximum rates were established in 1981, prior to negotiation of the suspension agreement. At verification we found that the rates negotiated between the flower producers and air freight carriers were between the DAAC minimum/maximum rates permitted under the suspension agreement. There is no evidence that these negotiated rates limited competitive air rates. In addition, at verification, we examined documentation and determined the rates negotiated were between the minimum/maximum negotiated rates. Consequently, we determined that the GOC is not in violation of the suspension agreement.

With regard to abolition of this program, the Department agrees with the GOC in part. The Department's regulations at 19 CFR 355.25(a)(1)(i) require the GOC to abolish all programs for the subject merchandise that "the Secretary has found countervailable." Although the Department has found the air freight rate program subject to the suspension agreement (see Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 55 FR 53584 (Comment 4) (December 31, 1990)), we have never found the air freight rates program to be a countervailable subsidy. Therefore, under the conditions set by 19 CFR 355.25(a)(1)(i) the GOC is not required to abolish the program in order to meet the requirements for termination of the suspension agreement.

Final Results of Review

After considering all of the comments received, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1990. However, we will not terminate the suspension agreement. In order for us to terminate the suspension agreement the GOC must have abolished all programs which is not the case with PROEXPO and Plan Vallejo.

This administrative review and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-5308 Filed 3-7-94; 8:45 am]

BILLING CODE 3510-05-P

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Nancy Hale, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, room B-256, Gaithersburg, MD 20899; Fax 301-869-2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 92-002

Title: Methods of Reducing Wear on Silicon-Carbide Ceramic Surfaces

Description: New NIST lubricants dramatically reduce the friction coefficient of silicon-carbide ceramics, thereby minimizing wear. Lubrication is critical to the successful use of moving ceramic parts in a variety of applications.

NIST Docket No. 92-012

Title: Improved Voltage Comparator with Reduced Settling Time

Description: NIST researchers have developed a technique for improving the accuracy of voltage measurements produced by sampling comparators. The technique reduces waveform distortion and dramatically reduces settling time (i.e., the time it takes to make an accurate measurement following an abrupt input change).

NIST Docket No. 92-026

Title: Device and Method for Providing Accurate Time and/or Frequency

Description: The accuracy of clocks and oscillators can be enhanced using NIST technology for predicting random errors based on past performance. Using the NIST technology, for example, the accuracy of an inexpensive stopwatch can be improved by a factor of 20.

NIST Docket No. 92-039

Title: Exposure of Lithographic Resists by Metastable Rare Gas Atoms

Description: Existing lithography techniques can produce semiconductor features as small as 2 nanometers, but a new NIST approach might result in even smaller features. The NIST technique would use metastable rare gas atoms to expose a lithographic resist.

NIST Docket No. 93-002

Title: Process for the Preparation of Fiber-Reinforced Ceramic Matrix Composites

Description: NIST researchers have developed a technique for fabricating improved composites using fibers coated with a ceramic matrix material. The coating technique makes it possible to achieve controlled, uniform positioning of fibers within a ceramic matrix.

NIST Docket No. 93-025

Title: Photoionization Mass Spectroscopy Flux Monitor

Description: The NIST technology offers improved control for "growing" semiconductor materials by molecular beam epitaxy. The invention simultaneously monitors flux characteristics of many gaseous species being deposited on a substrate.

Dated: February 24, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-5243 Filed 3-7-94; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 030294A]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agenda revision.

SUMMARY: An agenda for public meetings of the Pacific Fishery Management Council (Council) and its advisory entities, which are scheduled to meet on March 7-11, 1994, was published in the **Federal Register** on

February 22, 1994, (59 FR 8458–8459). The following change is made to the agenda. All other information originally published remains unchanged.

Agenda Revision

Under "Other Meetings" at 59 FR 8459 in the original notice, the Council's Groundfish Permit Review Board is extending its meeting for one additional day. The meeting will continue on March 8, in order to accommodate the review of additional appeals. The location of the meeting remains unchanged at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352.

Dated: March 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–5182 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: April 11–15, 1994, from 9 a.m. to approximately 5 p.m. each day.

ADDRESSES: The meeting will be held at the Ramada Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia, 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Rober K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(b)(2) of the Indian Education Act, the Council is directed to reviewed applications for assistance and to make recommendations to the Secretary of Education with respect to their approval. The duly authorized Proposal Review Committee of the Council will meet in closed session staring at approximately 9 a.m. and will end at approximately 5 p.m. each day during the proposal review session. The agenda will include reviewing grant applications for assistance for programs authorized by subparts 1, 2, and 3 of the Indian Education Act of 1988 including applications for (1) Discretionary grants to Indian Controlled Schools; (2) Educational Services for Indian Children; (3) Educational Personnel Development Projects; and (4) Educational Services for Indian Adults.

The discussion during the review process may disclose sensitive information about applicants, qualifications of proposed staff, funding level requests and the names and comments of expert reviewers. Such discussion are likely to disclose trade secrets, commercial or financial information obtained from a person, and is privileged or confidential and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

Records are kept of all Council proceedings, and are available for public inspection. A summary of activities of this closed meeting which are informative to the public consistent with the policy of title 5 U.S.C. 552b shall be available for public inspection within 14 days of the meeting at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: February 17, 1994.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 94–5200 Filed 3–7–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL94–30–000, et al.]

Metropolitan Edison Company, et al; Electric Rate and Corporate Regulation Filings

February 28, 1994.

Take notice that the following filings have been made with the Commission.

1. Metropolitan Edison Co.

[Docket No. EL94–30–000]

Take notice that on December 22, 1994, Metropolitan Edison Company (Met-Ed) tendered for filing a request for waiver from Sections 35.14 and 35.19a of the Commission's regulations to allow Met-Ed to pass back to its wholesale customers certain refunds, including interest, in accordance with the proposed refund described in its filing. Met-Ed states that the refunds relate to prior overpayments of fees to the Department of Energy for the eventual disposal of spent nuclear fuel.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Co.

[Docket No. ER93–94–001]

Take notice that on February 16, 1994, Northeast Utilities Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Co.

[Docket No. ER93–862–000]

Take notice that on August 12, 1993, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an initial Rate Schedule for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Thereafter, in response to discussions with Commission Staff, PSE&G on December 22, 1993, mailed for filing a First Supplement to said Rate Schedule.

In response to further discussions with Commission Staff, PSE&G on February 17, 1994, tendered for filing the Second Supplemental Agreement by

and between PSE&G and Part Ridge which addresses FERC inquiries, defines terminology, and explains methodology.

Copies of the filing were served upon Park Ridge, the New Jersey Board of Regulatory Commissioners, and the New Jersey Department of the Public Advocate.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket Nos. ER94–48–000 ER94–912–000]

Take notice that on February 23, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement under NUSCO's Transmission Tariff No. 2. This Service Agreement provides for non-firm transmission to the NU System Companies for their power sales to others. In particular, in these dockets, the Service Agreement will provide for transmission service for the NU System Companies' sales to the New York Power Authority (NYPA). NUSCO states that its filing is in accordance with the Commission's filing requirements and that a copy of the filing has been mailed to NYPA.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER94–328–000]

Take notice that on February 23, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and the New York Power Authority (NYPA) dated February 16, 1994, providing for the terms and conditions of loss compensation for control area transactions.

The effective date of April 1, 1994 is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Co.

[Docket No. ER94–623–000]

Take notice that on February 17, 1994, Pennsylvania Power & Light Company (PP&L) supplemented its original filing in the above docket by tendering for filing as initial rate schedules one borderline service agreement with New York State Electric & Gas Corporation (NYSEG). In accordance with the Commission's recently announced policy on the filing of jurisdictional service agreements effective as of May 19, 1964. PP&L states that the borderline sales are based on state commission approved retail rates.

PP&L states that copies of the filing were served on NYSEG.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Indianapolis Power & Light Co.

[Docket No. ER94–974–000]

Take notice that on February 15, 1994, Indianapolis Power & Light Company (IPL), tendered for filing proposed changes in its FERC Rate Schedule No. 21. The proposed changes would increase revenues from jurisdictional sales and service by approximately $57,500 based on the twelve-month period ending December 31, 1992.

The rate schedule supplement consists of Amendment No. 4 to the Agreement dated as of October 9, 1986, which sets forth the rates, charges, terms and conditions for wholesale electric service to Boone County Rural Electric Membership Corporation (Boone REMC). Amendment No. 4 increases the rate, revises appropriate contract language reflecting said assignment, and extends the existing Agreement for a successive term of 15 years. The Agreement would otherwise terminate December 10, 1993.

The only customer affected by this filing is Wabash Valley, which has executed said Amendment No. 4 and has concurred in this filing.

Copies of this filing were sent to Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER94–977–000]

Take notice that on February 18, 1994, Public Service Company of Colorado (Public Service) filed with the Commission amendments to its Power Supply Agreement (PSA) with Holy Cross Electric Association, Inc. (Holy Cross), which is on file as Public Service Rate Schedule FERC No. 52. The changes are to lower the demand charge for Full Requirements Service under the PSA from $13.08 per Kw of billing demand to $11.53 per Kw of billing demand and to specify the loss factor used for transactions under Article 5.4 of the PSA, which provides for Economy Energy purchases, as 4.6% (Public Service previously used 6%). Both amendments are proposed to be effective as of April 15, 1992, (requesting waiver for good cause shown), although Public Service requests that the decrease in the demand charge be conditioned on final FERC action (other than rejection) of the Transmission Integration and Equalization Agreement (TIE Agreement) between Public Service and Holy Cross, which was filed by Public Service in another docket, and the TIE Agreement being given an effective date of April 15, 1992. Due to the relationship between the TIE Agreement and the proposed decrease in the demand charge under the PSA, Public Service also requests that the two proceedings be consolidated.

Public Service states that copies of the filing have been served on Holy Cross, the Colorado Office of Consumer Counsel, and the Colorado Public Utilities Commission.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Colorado

[Docket No. ER94–978–000]

Take notice that on February 18, 1994, Public Service Company of Colorado (Public Service) filed with the Commission the Transmission Integration and Equalization Agreement (TIE Agreement) between Public Service and Holy Cross Electric Association, Inc. (TIE Agreement). The TIE Agreement provides for the integration of the Public Service and Holy Cross Electric Association, Inc. (Holy Cross) transmission facilities, the creation of an integrated Public Service/Holy Cross transmission system, and a mechanism whereby the two parties share the costs of the integrated system in accordance with the loads each places on the integrated system. Public Service requests that the TIE Agreement be effective as of April 15, 1992, and requests waiver of the Commission's notice requirements for good cause shown. Public Service also requests that this proceeding be consolidated with another Public Service filing, which proposes two amendments to the Power Supply Agreement between Public Service and Holy Cross, on file as Public Service Rate Schedule FERC No. 52. Public Service states that consolidation is appropriate due to the relationship between the TIE Agreement and one of the proposed amendments to Rate Schedule No. 52.

Public Service states that copies of the filing have been served on Holy Cross, the Colorado Office of Consumer Counsel, and the Colorado Public Utilities Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER94–979–000]

Take notice that on February 22, 1994, Portland General Electric Company (PGE) tendered for filing an amendment to the Grizzly Construction Trust Agreement Between the Bonneville Power Administration (BPA) and Portland General Electric Company (PGE).

PGE has served copies of this filing on the Bonneville Power Administration and the Oregon Public Utility Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Co.

[Docket No. ER94–980–000]

Take notice that on February 22, 1994, Portland General Electric Company (PGE) tendered for filing an alternate point of delivery for service under Contracts with the cities of Burbank (PGE Rate Schedule FERC No. 77) and Glendale (PGE Rate Schedule FERC No. 78), California. PGE requests waiver of the notice provisions of 18 CFR Part 35.3 to allow service at the new point of delivery effective February 16, 1994, because of extraordinary circumstances created by the California earthquake of January 17, 1994.

PGE has served copies of this filing on the cities of Burbank and Glendale, and on the Oregon Public Utility Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Co.

[Docket No. ER94–982–000]

Take notice that on February 22, 1994, Central Illinois Public Service Company (CIPS) submitted for filing the First Amendment, dated January 5, 1994 (First Amendment), to the Power Supply and Transmission Service Agreement, dated January 9, 1992 (Agreement), between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley). At Wabash Valley's request, the First Amendment provides that Wabash Valley will take service under levelized demand charges for an additional two years beyond the period for levelized rates contemplated in the presently effective Agreement.

CIPS seeks an effective date of January 1, 1994 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Wabash Valley, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co.

[Docket No. ER94–983–000]

Take notice that on February 22, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Great Bay Power Corporation (Great Bay) under the NU system Companies' Transmission Service Tariff No. 2.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Co.

[Docket No. ER94–984–000]

Take notice that on February 23, 1994, Montaup Electric Company (Montaup) filed a credit of $2,283,256.23 under its Purchased Capacity Adjustment Clause (PCAC) to true up the amounts billed in 1993 under a forecast billing rate to conform with actual purchased capacity costs. The credit will appear in bills for January 1994 service rendered for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company in Rhode Island, contract demand service to its affiliate Newport Electric Corporation in Rhode Island, and contract demand service to non-affiliates: Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Electric Power Co., L.P.

[Docket No. ER94–995–000]

Take notice that on February 28, 1994, Northern Electric Power Co., L.P. ("Northern Electric") tendered for filing a Third Amendment to the Power Purchase Agreement dated June 24, 1992, on file with the Commission as Rate Schedule, FERC No. 1. According to Northern Electric, the Third Amendment makes several minor changes to the Rate Schedule which are being made at the request of the lenders providing construction financing for the Hudson Falls hydroelectric project. Northern Electric further states that the changes correct typographical errors; replace the site description with a corrected site description; incorporate *force majeure* provisions of the Interconnection Agreement for the Hudson Falls project into the Power Purchase Agreement; and provide a waiver by the purchasing utility of any rights it may have, outside the Power Purchase Agreement, to limit its power purchase obligations under the Power Purchase Agreement. Northern Electric further states that the Interconnection Agreement is being submitted due to the incorporation of its *force majeure* provisions into the Power Purchase Agreement, and is not itself jurisdictional.

Comment date: March 10, 1994, in accordance with Standard Paragraph E at the end of this notice..

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5207 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER92–429–002, et al.]

Torco Energy Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 25, 1994.

Take notice that the following filings have been made with the Commission:

1. Torco Energy Marketing, Inc.

[Docket No. ER92–429–002]

Take notice that on January 18, 1994, Torco Energy Marketing, Inc. filed certain information as required by the Federal Energy Regulatory Commission's September 7, 1989 order in this proceeding, 48 FERC ¶ 61,294 (1989). Copies of the Torco Energy Marketing, Inc. filing are on file with the Commission and are available for public inspection.

2. IES Utilities, Inc.

[Docket No. ER94–971–000]

Take notice that on February 14, 1994, IES Utilities, Inc. (IESU) tendered for filing a Notice of Cancellation for Iowa

Southern Utilities Company (ISU) FERC Rate Schedules No. 34, 37, and 46, and for Iowa Electric Light and Power Company FERC Rate Schedule 48. IESU is the renamed surviving corporation resulting from the December 31, 1993, merger of ISU and IE. IESU requests an effective date of January 1, 1994, for all of the proposed cancellations.

A copy of the filing was served upon the Iowa State Utilities Board.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Jeffrey J. Burdge

[Docket No. ID–2484–001]

Take notice that on December 17, 1993, Jeffrey J. Burdge (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director
Pennsylvania Power & Light Company.
Director
Dauphin Deposit Corporation.
Director
Dauphin Deposit Bank & Trust Company.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Richard A. Liddy

[Docket No. ID–2811–000]

Take notice that on December 22, 1993, Richard A. Liddy (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director
Union Electric Company.
Director, President and Chief Executive Officer
General American Life Insurance Company.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5208 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2378–001 Virginia]

Appalachian Power Co.; Availability of Environmental Assessment

March 2, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Reusens Project, located on the James River in Amherst and Bedford Counties, Virginia, near the city of Lynchburg, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2376–001 to all comments. For further information, please contact Kim A. Nguyen, Environmental Coordinator, at (202) 219–2841.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5209 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–237–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

February 25, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company and Arkla Energy Resources Company

[Docket No. CP94–237–000]

Take notice that on February 18, 1994, El Paso Natural Gas Company (El Paso) P.O. Box 1492 El Paso, Texas 79978 and Arkla Energy Resources Company (AER) 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–237–000, a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service provided pursuant to El Paso's Rate Schedule X–52 and AER's Rate Schedule XE–52, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by orders issued June 25, 1979, in Docket Nos. CP79–155 & CP79–243 El Paso and AER, successor-in-interest to Arkansas Louisiana Gas Company and Arkla Energy Resources, a division of Arkla, Inc. were authorized to exchange natural gas pursuant to an agreement dated December 29, 1978 as amended, between them. The agreement, it is said, provided for the transportation and delivery on an exchange basis of natural gas in Hemphill, Roberts, and Wheeler Counties, Texas, and Beckham, Caddo, Custer, Ellis, Roger Mills, and Washita Counties, Oklahoma.

El Paso and AER state that this arrangement is no longer required by either party and has been terminated pursuant to mutual written agreement of the parties.

No facilities are proposed to be abandoned herein.

Comment date: March 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP94–231–000]

Take notice that on February 16, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–231–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install facilities at an additional delivery point for Missouri Gas Energy (MGE) to accommodate the delivery of gas transported by WNG, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to construct and operate a 2-inch tap and measuring, regulating and appurtenant facilities on

WNG's Ottawa-Sedalia 12-inch line in Johnson County, Missouri, for deliveries of gas to MGE to supply a new housing development. It is estimated that the construction cost would be approximately $16,860, for which WNG would be reimbursed by MGE. It is stated that the facilities would be used for the delivery of up to 90 Mcf of natural gas on a peak day and 3,800 Mcf on an annual basis in the first year and 340 Mcf on a peak day by the third year. It is stated that the volumes proposed for delivery are within MGE's existing entitlement.

Comment date: April 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP94–243–000]

Take notice that on February 22, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–243–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade an existing meter station under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the subject existing meter station is called the Orlando Meter Stations and is used to measure gas deliveries to Peoples Gas System, Inc. (Peoples). FGT proposes to upgrade the meter station by installing a high pressure rotary meter and related appurtenant facilities. The meter station is located at milepost 6.7 on FGT's 6-inch Orlando Lateral in Orange County, Florida. FGT also states that Peoples shall reimburse it for all costs relating to the proposed upgrade which is estimated to be $11,500.

It is further stated that the proposed upgrade would not change the certificated levels of service currently being provided to Peoples by FGT. Nor would the proposed upgrade increase contractual gas quantities. Therefore, the proposed upgrade would not impact FGT's peak day or annual deliveries. The present and proposed quantity to be delivered at the Orlando division is: up to 32,520 MMBtu per day and up to 8,808,900 MMBtu per year. It is stated that the end-use would be residential, commercial, and industrial.

Comment date: April 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5210 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–240–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

February 28, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.; Sunterra Gas Gathering Co.

[Docket No. CP94–240–000]

Take notice that on February 22, 1994, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, and Sunterra Gas Gathering Company (Sunterra), Alvarado Square, Albuquerque, New Mexico 87158–2612, filed in Docket No. CP94–240–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a production area natural gas exchange service between El Paso and Sunterra, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso and Sunterra propose to abandon a production area gas exchange service pursuant to a Composite Supplemental Agreement to a Gas Purchase Agreement (agreement) between El Paso and Sunterra dated May 1, 1975, under El Paso's Rate Schedule X–13 and Sunterra's Rate Schedule No. 2.[1] El Paso and Sunterra state they have agreed to terminate the agreement, in a Letter Agreement dated October 27, 1993, effective October 31, 1993, with any imbalances to be resolved by December 31, 1993. El Paso and Sunterra state that there are no existing imbalances under the agreement to be abandoned.

No facilities are proposed to be abandoned herein.

Comment date: March 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Co.

[Docket No. CP94–245–000]

Take notice that on February 23, 1994, Southern Natural Gas Company

[1] The exchange was part of Sunterra's Rate Schedule No. 2 authorizing Sunterra's jurisdictional sales for resale. Sunterra's Rate Schedule No. 2 is no longer subject to regulation since the Wellhead Decontrol Act of 1989 deregulated first sales contracts terminated after July 26, 1989.

(Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–245–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a point of delivery for an existing customer under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to provide service to Alabama Gas Corporation (Alagasco) at a new point of delivery by use of existing measurement facilities that Southern previously used to serve the Lamar County Gas District. Southern states that the service will enable Alagasco to serve a new commercial customer. In addition, Southern states that it will not have to construct any new facilities in order to serve Alagasco at the proposed delivery point. It is stated that the average daily flow to the proposed delivery point will be 3 Mcf per day of natural gas.

Comment date: April 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Co. of America and ANR Pipeline Co.

[Docket No. CP94–246–000]

Take notice that on February 23, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–246–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon exchange services, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that authority is requested for: (1) Natural to abandon an exchange service with ANR authorized in Docket No. G–10057 and performed under Natural's Rate Schedule X–7;

(2) Natural to abandon an exchange service with ANR authorized in Docket No. CP69–251, as amended, and performed under Natural's Rate Schedule X–21;

(3) Natural and ANR to abandon an exchange service authorized in Natural's Docket No. CP75–202, as amended, and ANR's Docket No. CP75–205, as amended, and performed under Natural's Rate Schedule X–58 and ANR's Rate Schedule X–44; and

(4) Natural and ANR to make up imbalances attributable to the above exchange agreements at the existing interconnections specified in such exchange agreements and/or other transportation and/or exchange agreements between them or at more convenient interconnections located on their systems, or alternatively, by offsetting such imbalances among each other or with imbalances under other transportation and/or exchange agreements between them.

It is stated that pursuant to a gas exchange agreement between Natural and ANR dated March 6, 1956, (1956 Agreement), Natural's Rate Schedule X–7, Natural and ANR exchanged during periods of emergency, volumes of natural gas in Bureau County, Illinois pursuant to authorization granted in Docket No. G–10057.

It is also stated that pursuant to an exchange agreement dated January 15, 1969, as amended (1969 Agreement), Natural's Rate Schedule X–21, Natural and ANR exchanged up to 125,000 Mcf of natural gas per day in Cameron Parish, Louisiana and Hansford and Wheeler Counties, Texas pursuant to authorization granted in Docket No. CP69–251, as amended.

It is further stated that pursuant to an exchange agreement dated November 13, 1974, as amended (1974 Agreement), Natural and ANR exchanged up to 10,000 Mcf of natural gas per day in Hansford and Wheeler Counties, Texas and Beaver, Caddo and Woodward Counties, Oklahoma pursuant to authorization granted in Natural's Docket No. CP75–202, as amended, and in ANR's Docket No. CP75–205, as amended.

Moreover, it is stated that pursuant to a letter agreement between Natural and ANR dated August 20, 1993, Natural and ANR agreed to terminate the 1956, 1969 and 1974 Agreements effective December 1, 1993. Therefore, Natural and ANR requested in the present joint application, authority for: (1) Natural to abandon an exchange service with ANR authorized in Docket No. G–10057 and performed under Natural's Rate Schedule X–7;

(2) Natural to abandon an exchange service with ANR authorized in Docket No. CP69–251, as amended, and performed under Natural's Rate Schedule X–21;

(3) Natural and ANR to abandon an exchange service authorized in Natural's Docket No. CP75–202, as amended, and ANR's Docket No. CP75–205, as amended, and performed under Natural's Rate Schedule X–58 and ANR's Rate Schedule X–44; and

(4) Natural and ANR to make up imbalances attributable to the 1956, 1969 and 1974 Agreements at the existing interconnections specified in such exchange agreements and/or other transportation and/or exchange agreements between them or at more convenient interconnections located on their systems, or alternatively, by offsetting such imbalances among each other or with imbalances under other transportation and/or exchange agreements between them.

Comment date: March 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission,

file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5211 Filed 03–07–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–150–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised First Revised Sheet No. 9
Second Substitute First Revised Sheet No. 13
Second Substitute First Revised Sheet No. 16
First Revised First Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.3 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective March 1, 1994.

ANR states that all of its Volume No. 1 customers and interested state commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5212 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–6–003 and RP94–64–003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that to resolve the issue of allocating Stranded 858 costs to Rate Schedule GS-T customers, the parties in the captioned dockets have agreed that Northern should modify its tariff to provide that any allocation of Stranded 858 costs will incorporate the weighted average peak day contract entitlement for GS-T customers. Such weighted average peak day will be derived by taking the weighted average of the underlying Rate Schedule GS peak contract entitlements that were in effect prior to November 1, 1993. Additionally, parties have agreed that Northern will determine the monthly Stranded 858 bill for GS-T customers by multiplying the GS-T Stranded 858 rate component by the lower of: (i) The weighted average GS-T peak contract entitlement; or (ii) the actual GS-T volume moved under a customer's GS-T contract. Such calculation will be made for each day of a given month, and the monthly Stranded 858 amount will be the total of these daily calculations. Therefore, Northern has filed Third Revised Sheet No. 245 and First Revised Sheet No. 246 to establish this modification effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5214 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–7–002 and RP94–65–003]

Northern Natural Gas Co., Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that to resolve the issue of allocating Gas Supply Realignment (GSR) costs to Rate Schedule GS–T customers, the parties in the captioned dockets have agreed that Northern should modify its tariff to provide that any allocation of GSR costs will incorporate the weighted average peak day contract entitlement for GS–T customers. Such weighted average peak day will be derived by taking the weighted average of the underlying Rate Schedule GS peak contract entitlements that were in effect prior to November 1, 1993. Additionally, parties have agreed that Northern will determine the monthly GSR bill for GS–T customers by multiplying the GS–T GSR rate component by the lower of: (i) The weighted average GS–T peak contract entitlement; or (ii) the actual GS–T volume moved under a customer's GS–T contract. Such calculation will be made for each day of a given month, and the monthly GSR amount will be the total of these daily calculations. Therefore, Northern has filed First Revised Sheet No. 248 to establish this modification effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. All protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5215 Filed 3–7–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94–152–000]

Northern Border Pipeline Co.; Petition for Limited Waiver of Tariff Provisions

March 2, 1994.

Take notice that on February 28, 1994, Northern Border Pipeline Company (Northern Border) hereby petitions the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to extend the time period to June 30, 1994 in which firm shippers have to discharge the Tender Deficiencies accumulated during the pipeline outage on Foothills Pipe Lines Ltd.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5213 Filed 3–7–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93–165–001]

OkTex Pipeline Co.; Place Tariff Sheets In Effect

March 2, 1994.

Take notice that on February 16, 1994, OkTex Pipeline Company (OkTex) filed a request to place into effect on March 1, 1994, Original Volume No. 1, Third Revised Sheet No. 5.

OkTex states that on August 6, 1993 OkTex filed with the Commission Second Revised Tariff Sheet No. 5. By order issued September 3, 1993, the Commission accepted and suspended the tariff sheet for five months to become effective February 5, 1994, subject to refund and conditions, and ordered a public hearing to be held.

OkTex states that the rates reflected in Third Revised Tariff Sheet No. 5, are lower than those accepted in the September order in anticipation of a settlement offer which will be filed.

OkTex states that it has served the foregoing document upon each person designated on the official service list compiled by the Secretary.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5216 Filed 3–7–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94–153–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 18, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets as reflected on Appendix A to the filing.

The subject tariff sheets bear an issue date of February 28, 1994 and a proposed effective date of April 1, 1994.

Panhandle states that this filing is necessary to recover a portion of certain additional take-or-pay settlement and contract reformation costs in accordance with the Commission's Order No. 528 cost-sharing and recovery mechanism. The proposed tariff sheets reflect a volumetric surcharge of 0.19¢ per Dt. to effectuate the recovery of 75% of approximately $2.4 million of take-or-pay settlement and contract reformation costs related to gas purchase arrangements with various producer suppliers. Panhandle proposes to recover these amounts over a two year period commencing April 1, 1994 and terminating on March 31, 1996. The volumetric surcharge is applicable to all volumes transported by Panhandle (including volumes transported under Storage Related Transportation), with two limited exceptions. The volumetric surcharge on transportation volumes shall not be applied to:

(i) Volumes of gas withdrawn from storage, to the extent the surcharge was applicable to the transportation of the corresponding volumes into storage; or

(ii) Volumes of gas transported on any portion of the Panhandle system for one Shipper,when title to such gas passes to another Shipper of gas for immediate redelivery and subsequent transportation on the Panhandle system.

Panhandle further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5217 Filed 3–7–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94–4–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is April 1, 1994.

Panhandle states the filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First

Revised Volume No. 1. The revised tariff sheets filed reflect the following changes to the Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;
(2) a .06% increase in the Field Zone Fuel Reimbursement Percentage;
(3) No change in the Market Zone Fuel Reimbursement Percentage;
(4) No change in the Field Area Storage Percentages; and
(5) No change in the Market Area Storage Percentages.

Panhandle states that copies have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5218 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–253–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

March 2, 1994.

Take notice that on February 25, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–253–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace an existing 3" meter tube with a 4" tube in order to more accurately measure the volumes received for the account of the City of Parsons, Tennessee, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it currently transports natural gas on a firm basis to the City of Parsons pursuant to a firm gas transportation agreement and that the current capacity being delivered exceeds the flow rate that can be accurately measured by the existing 3" meter facility. Additionally, Tennessee states that in order to improve the measurement accuracy of this facility, it proposes to replace the existing meter tube with a 4" meter tube at Meter No. 2–0055–1, the Parsons Sales station located in Decatur County, Tennessee. Tennessee states that the replacement of these facilities will not increase the contracted delivery quantity under this contract, that the facility will be located on an existing right-of-way that the cost of renovating this facility is estimated to be $9,000 which cost will be borne by Tennessee.

Tennessee also states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to the City of Parsons. Tennessee further states that the replacement of this existing meter is not prohibited by its currently effective tariff and that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to any of Tennessee's customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5219 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–151–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994 Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 USC Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) which Texas Eastern states it incurred as a consequence of implementing Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in Section 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order issued April 22, 1993 (April 22 Order), September 17, 1993 (September 17 Order) and December 17, 1993 (December 17 Order) in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001. Texas Eastern states that Order No. 636 and the April 22, September 17 and December 17 Orders permit Texas Eastern to file this limited Section 4 filing to continue recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred since the date of its previous quarterly filing, plus carrying charges through February 28, 1994, totalling $19,106,544. Additional interest of $352,922 at the current FERC annual rate of 6.00% is added for carrying charges from March 1, 1994 to the projected payment dates. The proposed effective date of the filing is April 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions, as well as current interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5221 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–27–000]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that it is filing the tariff sheets to modify Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, necessary to reflect a permanent capacity release transaction executed under Texas Eastern's Rate Schedule FT–1. The release was from North Attleboro Gas Company to CNG Gas Services to be effective December 17, 1993. Texas Eastern states that it posted the capacity release transaction on the LINK® System in accordance with Section 3.14 of Texas Eastern's General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

The tariff sheets are proposed to be effective December 17, 1993. Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5220 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–16–000]

UtiliCorp United Inc.; Application

March 2, 1994.

Take notice that on February 25, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under Section 204 of the Federal Power Act seeking authorization to extend or enter into a replacement Reimbursement Agreement and a Pledge Agreement to secure a long-term letter of credit in the amount of not more than $7.3 million. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5222 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection;

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 7, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–541
3. 1902–0066
4. Gas Pipeline Certificates: Curtailment Plan
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
9. 25 respondents
10. 1 response
11. 256 hours per response
12. 6,400 hours
13. FERC–541 is required to determine the just and reasonableness of allocation methods used by jurisdictional pipelines to allocate remaining gas supplies during curtailment periods. It is necessary for the determination that such methods of allocation are not unduly

discriminatory between persons, localities, or classes of service.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, March 2, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–5253 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 94–10–NG]

Age Refining, Inc.; Order Granting Blanket Authorization To Import Natural Gas and Liquefied Natural Gas From Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting AGE Refining, Inc. (AGE) authorization to import up to 219 Bcf of natural gas and up to 219 Bcf of liquefied natural gas from Mexico over a two-year term, beginning on the date of first delivery.

AGE's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5260 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–09–NG]

Direct Energy Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Direct Energy Marketing Inc. blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5259 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–08–NG]

Tarpon Gas Marketing Ltd.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tarpon Gas Marketing Ltd. blanket authorization to import up to 100 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after April 6, 1994.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5258 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–06–NG]

Wisconsin Gas Co.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Gas Company (Wisconsin Gas) authorization to import from ProGas Limited up to 35,105 Mcf per day of Canadian natural gas over an eight-year period ending November 1, 2002.

Wisconsin Gas' order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5257 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed; Week of January 21 Through January 28, 1994

During the Week of January 21 through January 28, 1994, the appeals and applications for other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date receipt by an aggrieved person of actual notice, whichever, occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 21 to Jan. 28, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan 24, 1994	Joyce E. Economus, Portland, OR	LFA–0350	Appeal of an information request denial. If Granted: Joyce E. Economus would receive a complete copy of a report by an outside investigator concerning alleged management problems at the Bonneville Power Administration.
Jan. 28, 1994	Texaco/Bradley's Texaco, Easton, Md	RR321–144	Request for modification/rescission in the Texaco refund proceeding. If Granted: The October 2, 1991 Dismissal Letter (Case No. RF321–5033) issued to Bradley's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 21 to Jan. 28, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/21/94	Bill's Arco	RF304–15444
01/21/94	Lou-Jak Trucking Service	RC272–226
01/13/94	New Richmond SD	RA272–56
01/18/94	Indianapolis Baptist School	RF272–95103
01/21/94 thru 01/28/94	Texaco Oil Fund Applications Received	RF321–20064 thru RF321–20115

[FR Doc. 94–5254 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed; Week of February 11, Through February 18, 1994

During the Week of February 11 through February 18, 1994, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 11 through Feb. 18, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 14, 1994	Chevron U.S.A., Inc., Washington, DC	LRR–0015	Request for modification/rescission. If Granted: The December 8, 1993 Decision and Order (Case No. LRD–0010) issued to Chevron USA, Inc. would be rescinded and the firm would not be required to submit the entire consolidated corporate income tax returns of Chevron Corporation and Chevron's parent for the years 1980 and 1981.
Do	Hunt Oil Company, Pierce, ID	LEE–0086	Exception to the reporting requirements. If Granted: Hunt Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Kenneth H. Besecker, Martinez, GA	LFA–0355	Appeal of an Information Request Denial. If Granted: The February 4, 1994 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and Kenneth H. Besecker would receive access to the records he requested.
Do	Lotepro Corporation, Philadelphia, PA	LFA–0356	Appeal of an Information Request Denial. If Granted: The January 14, 1994 Freedom of Information Request Denial issued by the SSC Project Office would be rescinded, and Lotepro Corporation would receive access to requested copies of the proposal evaluations, minutes, and files pertaining to the procurement of the Sactor Refrigeration System.

REFUND APPLICATIONS RECEIVED
[Week of Feb. 11 through Feb. 18, 1994]

Received	Name of firm	Case No.
2/11/94 thru 2/18/94	Texaco Oil refund applications received	RF321–20223 thru RF321–20305
2/14/94	Al Tech Specialty Steel Corp	RF272–95124
2/14/94	Commonwealth Edison Company	RF342–325
2/15/94	Elmo L. Sorrels	RC272–227
2/15/94	Husky Oil Company	RF304–15445
2/15/94	Husky Oil Company	RF304–15446
2/15/94	United AG Service, Inc.	RF272–95125
2/17/94	Biorite Oil Co., Inc.	RF300–21773
2/17/94	Frank & Leo's Auto Service	RF304–15447

[FR Doc. 94–5255 Filed 3–7–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of December 6 through December 10, 1993

During the week of December 6 through December 10, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Eugene Maples, 12/08/93; LFA–0335

Eugene Maples filed an Appeal from a determination issued by the DOE's Chicago Operations Office (Chicago Operations) in response to a request from Mr. Maples under the Freedom of Information Act (FOIA). Mr. Maples sought documents concerning an Inspector General's audit entitled Selected Aspects of the State of South Carolina's Management of Petroleum Violation Escrow Settlement Funds. In considering the Appeal, the DOE found that Chicago Operations did not properly consider the public interest in disclosure of the responsive documents. Accordingly, the Appeal was granted and the determination remanded to Chicago Operations for a new determination.

Jon Berg, 12/06/93; LFA–0330

Jon Berg filed an Appeal from a partial denial by the DOE's Office of Inspector General of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that some of the information that had initially been withheld under Exemptions 6 and 7 should have been released to the public. The DOE found that a more selective redaction would allow additional information to be released without revealing the identities of individuals. The DOE further found that this result was supported by an October 4, 1993 Memorandum for Heads of Departments and Agencies from Attorney General Janet Reno.

MSE, Incorporated, 12/06/93; LFA–0338

MSE, Inc., a government contractor, appealed a denial by the DOE's Office of Inspector General (OIG) of its request for documents pertaining to an OIG investigation into allegations that MSE engaged in improper activities. In considering the Appeal, the DOE found that the OIG's investigation was ongoing and that its claim of potential witness tampering was supported by a deposition from a former MSE employee (whistleblower) who maintained that MSE was likely to retaliate against witnesses. In view of the allegation of possible reprisals, the DOE found that the OIG properly withheld the requested documents pursuant to Exemption 7(A) and that release was not in the public interest so long as the risks from premature release remain unabated. Accordingly, MSE's Appeal was denied.

Westinghouse Hanford Company, 12/09/93; LFA–0336

Westinghouse Hanford Company (WHC) filed a Motion for Reconsideration of the DOE's September 24, 1993 Decision issued to the Hanford Education Action League (HEAL), which required the DOE's Richland Field Office (Richland) to release WHC Internal Audit Reports to HEAL under the Freedom of Information Act (FOIA). In considering the Motion, the DOE affirmed its September 24, 1993 determination that the Internal Audit Reports were not properly withheld under Exemption 4 and therefore should be released to the public. The central issue considered in the Decision and Order was whether the Internal Audit Reports were voluntarily submitted to the DOE. The DOE found that the audit reports were not "voluntarily" submitted and therefore applied the National Parks test instead of the Critical Mass test in order to determine whether the documents were "confidential" for the purposes of FOIA Exemption 4.

Motion for Discovery

Economic Regulatory Administration, 12/08/93; LRD–0010

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Discovery pursuant to a Decision and Order issued by the DOE on August 24, 1993, in connection with a Proposed Remedial Order (PRO) proceeding, Case No. LRO–0004, involving Chevron U.S.A. Inc. (Hearing Order). In the Hearing Order, the DOE determined that an evidentiary hearing should be convened in order to more fully examine a factual issue presented in the PRO proceeding involving the amount of revenue actually received by Chevron as a result of its participation in the DOE Tertiary Incentive Program, 10 CFR 212.78, during the period January 1980 through January 27, 1981. In its Motion for Discovery, the ERA requested responses to interrogatories and production of documents, which it claimed are necessary in order to prepare adequately for the evidentiary hearing. In considering the discovery request, the DOE determined that a substantial portion of the information sought by the ERA is relevant and material, would likely add meaningfully to the ERA's cross-examination of the witnesses and, in any event, should be included in the record of the PRO proceeding. Accordingly, the ERA's Motion for Discovery was granted in part. In addition, the DOE determined that certain party intervenors in the PRO proceeding, *viz.* a group of Utilities, Transporters and Manufacturers, and a consortium of State governments, should be granted limited participation at the evidentiary hearing.

Refund Applications

Browning-Ferris, Inc., 12/07/93; RF272–56110, RD272–56110

The DOE issued a Decision and Order concerning an Application for Refund

filed by Browning-Ferris, Inc. (BFI), in the subpart V crude oil refund proceeding. The DOE determined that the refund claim be denied, because BFI's parent corporation, Browning-Ferris Industries, Inc., executed a Claim Form and Waiver in connection with the Surface Transporters Escrow proceeding. By executing the Claim Form and Waiver, Browning-Ferris Industries, Inc., waived its rights and those of its subsidiaries and affiliates, including BFI, to seek a refund in any subpart V proceedings, including the crude oil proceeding. Therefore, the DOE determined the BFI's right to seek a refund in the subpart V crude oil proceeding had been waived and DOE denied the BFI Application. In addition, a consortium of States and Territories of the United States (States) filed a Statement of Objections to the Application. The DOE did not consider the Objections because the Application was denied. The DOE dismissed as moot the Motion for Discovery filed by the States.

Eastman Kodak Co., 12/07/93; RF272–21246, RD272–21246

The DOE issued a Decision and Order granting an Application for Refund filed by Eastman Kodak Co., in the subpart V crude oil refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $2,318,850. In granting the Application, the DOE determined that paraxylene, mineral oil and heptane were covered products eligible for a refund. The DOE also found that Kodak's presumption of end-user injury was rebutted with respect to its purchases of propane derived from natural gas. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury with respect to the remainder of the Application. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury.

Quintana Energy Corp./Texas Utilities Fuel Company, 12/06/93; RF332–11

Texas Utilities Fuel Company (TUFCO) submitted an Application for Refund in the Quintana Energy Corporation refund proceeding. The DOE determined that TUFCO was entitled to a refund of $155,179 under the presumption of injury for public utilities for Quintana product that it purchased and consumed. This refund was subject to reporting requirements and a dollar-for-dollar passthrough. With respect to Quintana product that it resold, the DOE found that the public utilities' presumption of injury does not apply. However, the DOE found that TUFCO had proved that it was injured with respect to Quintana product that it purchased and resold during the period February 1975 through June 1976. Accordingly, the DOE granted TUFCO an additional refund of $317,397 for this product. The total refund granted to TUFCO was $472,576.

Texaco Inc. A & W Texaco, 12/07/93; RR321–135

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Warren Valenta, the owner of A & W Texaco, in the Texaco Inc. special refund proceeding. In a Decision and Order issued on September 15, 1993, the DOE granted Mr. Valenta a refund of $2,243 based on fifty percent of A & W's allocable share from March 1973 through June 1978, the period during which Mr. Valenta operated the business as an equal partner, and one hundred percent of its allocable share for the remainder of the consent order period. In his Motion for Reconsideration, Mr. Valenta argued that because the July 1978 partnership dissolution agreement assigned all of A & W's assets, accounts receivable and liabilities to him, he should be entitled to the entirety of any refund granted for A & W's purchases prior to the dissolution agreement. Because the DOE distributes refunds in order to remedy the effects of alleged regulatory violations, it presumes that the owner or owners of businesses that purchased product from a consent order firm directly experienced the impact of any overcharges. The DOE found that Mr. Valenta had not submitted any evidence that challenged its presumption, or that demonstrated that Mr. Valenta's partner divested himself of the right to a refund.

Texaco Inc./Energy Sales, Inc., 12/10/93; RF321–19989

On November 18, 1993, the DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by David Montgomery on behalf of Energy Sales, Inc. (ESI), a Texaco jobber. ESI is dissolved and Mr. Montgomery claimed to own 75 percent of its corporate stock at the time of dissolution. Accordingly, the DOE granted Mr. Montgomery 75 percent of ESI's refund. Subsequently, another individual informed DOE that he owns some of the ESI stock that Mr. Montgomery claims to own. Under these circumstances, the DOE found that the refund granted to Mr. Montgomery on behalf of ESI should be rescinded until the ownership of the firm can be clarified.

Texaco Inc./Vancouver Oil Co., 12/10/93; RF321–4174

The DOE issued a Decision and Order denying an Application for Refund filed on behalf of Vancouver Oil Co. in the Texaco Inc. special refund proceeding. The DOE found that the applicant, the "new" Vancouver Oil Co., purchased only specifically enumerated assets from the "old" Vancouver Oil Co., the entity in operation during the price control period. Since the applicant did not purchase the stock of the "old" Vancouver Oil Co., and a potential oil overcharge refund was not listed amongst the assets purchased, the DOE found that the applicant, Vancouver Oil Co., had not obtained the right to a refund from the original corporation and consequently was not entitled to a refund in the Texaco proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Andrew Southern	RC272–221	12/09/93
Atlantic Richfield Company/Frank Smets *et al*	RF304–14035	12/08/93
Atlantic Richfield Company/Regional Transit Service, Inc	RF304–15410	12/10/93
Atlantic Richfield Company/Superior Tire, Incorporated *et al*	RF304–14457	12/08/93
Browning-Ferris Industries of TN	RC272–219	12/10/93
Camp Hill School District *et al*	RF272–83055	12/09/93
Continental Cheese Co., Inc	RC272–220	12/09/93
E.I. Dupont De Nemours & Co., Inc.—Cape Fear Plant	RF272–91302	12/06/93
Farmers Co-op Oil Co	RF272–88686	12/10/93
Farmers Union Oil Co	RF272–88698	
Gulf Oil Corporation/Harry's Gulf	RF300–14351	12/06/93
Gulf Oil Corporation/Tiger Oil & Heating Company *et al*	RF300–21202	12/06/93

J. Blanton	RC272–222	12/10/93
Port Authority of New York and New Jersey	RF272–63670	12/09/93
Shell Oil Company/Andy Saberi	RF315–8435	12/06/93
Moffet Shell	RF315–8436	
Delaware Shell	RF315–8437	
Ralston Shell	RF315–8438	
Clark Shell	RF315–8439	
Folsom Shell	RF315–8440	
Bay Shell	RF315–8441	
Andy's Shell #1	RF315–8442	
Andy's Shell #1	RF315–8443	
St. Cabrini Nursing Home *et al*	RF272–90005	12/06/93
Texaco Inc./Callis Texaco *et al*	RF321–14591	12/09/93
Texaco Inc./College Texaco *et al*	RF321–18866	12/07/93
Texaco Inc./Sorrells Texaco *et al*	RF321–6517	12/10/93

Dismissals

The following submissions were dismissed:

Name	Case no
Apex Management	RF321–12883
Apex Management	RF321–12884
Delavan Darien School District.	RF272–81232
Duane's Texaco	RF321–16190
Earl L. Elliott Co., Inc	RF321–2586
Farris Texaco	RF321–3481
Gold Beach UHS District 001.	RF272–80721
Grubbs Texaco	RF321–16187
H&B Texaco Service #1	RF321–16317
H&B Texaco Service #2	RR321–77
H&B Texaco Service #3	RF321–16318
Holyoke School District	RF272–81663
Horton's Service Station	RF321–8500
Iuka Separate School District.	RF272–80066
John Massey Service Station.	RF321–8469
Kamack ISD	RF272–81261
Kirksville School District R–III.	RF272–80727
Lakeland School Corp	RF272–81353
Letchworth Central School—Gainesville.	RF272–81761
Lexington R-V School District.	RF272–81749
Lofton's Texaco	RF321–16185
Lynn School District	RF272–81661
Man's Texaco	RF321–16930
Mid-Continent Truck Stop	RF321–19082
Milton-Union Ex. Vill. School District.	RF272–81759
Orange Grove ISD	RF272–81230
Owens Cartage Company	RF321–15587
Roanoke County Public Schools.	RF272–81617
Roseland Elementary	RF272–81568
Sach's Texaco	RF321–16931
Simpson County Schools	RF272–81685
Sujdak's Bottled Gas Co	RF272–91509
Uinta County School District No 4.	RF272–81373
Whitener Gulf Service	RF300–15821

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5258 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of January 10 Through January 14, 1994

During the week of January 10 through January 14, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Marlene Flor, 1/11/94; LFA–0343

Marlene Flor (Flor) filed an Appeal from a determination issued to her by the Albuquerque Field Office (AFO) of the Department of Energy (DOE). The determination denied a Request for Information which Flor submitted under the Freedom of Information Act. Flor requested a three page document allegedly transmitted with a facsimile cover sheet dated April 22, 1992. Additionally, Flor requested a copy of any analyses which had been created regarding an anonymous letter the Personnel Security Operations Division of the AFO received on or about April 12, 1991. In its determination letter, the AFO stated that it could not find any document which may have been attached to the facsimile cover sheet. Additionally, the AFO stated that only one analysis had been created regarding the anonymous letter and it had already been provided to Flor. In considering the Appeal, the DOE found that an adequate search had been conducted in response to Flor's request. Accordingly, Flor's Appeal was denied.

Implementation of Special Refund Procedures

A–1 Exxon, Half-Moon Bay Exxon, Redhill Mobil & Towing, 1/13/94; LEF–0086, LEF–0087, LER–0088

The DOE issued a Decision and Order implementing special refund procedures to distribute $10,089.18, plus interest, which A–1 Exxon, Half-Moon Bay Exxon, and Redhill Mobil & Towing (the remedial order firms) remitted to the DOE pursuant to March 8, 1982 (for A–1 Exxon and Half-Moon Bay Exxon) and March 29, 1982 for Redhill Mobil & Towing) Remedial Orders. The DOE determined that it would distribute the fund in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of the remedial order firms' violations of Federal petroleum pricing regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, Elwood Chevron Service, 1/13/94; LEF–0081, LEF–0082, LEF–0083, LEF–0085

The DOE issued a Decision and Order implementing special refund procedures to distribute $5,784.33, plus accrued interest, which Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service (the consenting firms) remitted to the DOE pursuant to settlements reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively. The DOE determined that it would distribute the funds in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of the consenting firms' alleged violations of

Federal petroleum pricing regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Clark/Tri-Par Oil Co. Inc., 1/12/94; RF342–8

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Tri-Par Oil Co., Inc., (Tri-Par) in the Apex Oil Co./Clark Oil & Refining Corp. (Clark) special refund proceeding. Tri-Par was an independent retailer/seller of refined petroleum products and an occasional purchaser of Clark products during the refund period. Tri-Par was initially identified as a spot purchaser due to its sporadic purchases of Clark product. However, Tri-Par submitted additional evidence to show that it had consistently purchased gasoline from three primary suppliers, one of which was Clark. Tri-Par experienced difficulty in obtaining petroleum products, and for much of the refund period limited gasoline sales to its base period customers. In 14 of the 19 months when Tri-Par relied on Clark supplies, Clark's prices were, on average, 18.4% higher than those of the other suppliers. These factors indicated that Tri-Par did not make selective, discretionary purchases from Clark on the spot market. Tri-Par was considered a regular purchaser of Clark gasoline during the period from August 1973 to June 1976. Accordingly, Tri-Par was granted a principal refund of $1,207. However, the DOE received no evidence that the distillates which Tri-Par obtained from Clark were not purchased on a spot or discretionary basis. Thus, the DOE did not grant Tri-Par a refund for those purchases.

Texaco Inc./Ciruli Oil Company, 1/13/94; RR321–11

The DOE issued a Decision and Order concerning a Motion for Reconderation filed Ciruli Oil Company. The DOE had previously denied two duplicate Applications for Refund filed by the firm, because its owner, Mr. Ciruli, had wrongly stated on one application that he had not filed any other application in the Texaco proceeding. The DOE found that Mr. Ciruli was confused by the multiple application forms that he had received from two filing services. The DOE concluded that he did not intend to file duplicate applications. Consequently, the DOE granted the Motions for Reconsideration and approved a refund.

Texaco Inc./State Oil Company, 1/13/94; RF321–8105, RF321–8106

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by State Oil Company on behalf of two Texaco retail outlets that it operated. Both of these outlets purchased Texaco products indirectly through Texaco jobbers. One outlet purchased from McWhirter Distributing (McWhirter) and the other from Cook & Cooley, Inc. (C&C). The DOE explained that where the supplier who purchased directly from Texaco has not demonstrated that it absorbed any of the Texaco overcharges, customers of that supplier are entitled to refunds under the procedures used for direct purchasers. The DOE noted that McWhirter did not claim to have absorbed Texaco's overcharges in its refund application. Accordingly, the DOE granted a refund to the outlet supplied by McWhirter based upon that outlet's full purchase volume from that supplier.

C&C in its refund application had demonstrated that it absorbed all of Texaco's overcharges for its purchases of premium and unleaded gasoline, and 58 percent of its purchases of regular gasoline. Accordingly, the DOE found that the outlet which purchased from C&C was entitled only to a refund based upon 42 percent of its regular gasoline purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Brenfleck Fuel Co. *et al*	RF304–13741 ...	01/13/94
Atlantic Richfield Company/Lew & Ben's Arco Service *et al*	RF304–4888	01/13/94
Central A & M Community Unit District	RF272–79514 ...	01/12/94
Central Motor Express, Inc	RF272–75995 ...	01/10/94
Farmers Cooperative Co. *et al*	RF272–91283 ...	01/14/94
Gulf Oil Corporation/Bergeron Oil Service, Inc *et al*	RF300–19550 ...	01/10/94
Gulf Oil Corporation/C.J. Meade & Sons, Inc	RF300–18470 ...	01/12/94
Gulf Oil Corporation/Carolina Mills, Inc *et al*	RF300–20020 ...	01/13/94
Gulf Oil Corporation/Ramco Oil Co., Inc	RF300–20719 ...	01/14/94
Town & Country Service Station Inc	RF300–20902 ...	.....
Gulf Oil Corporation/Val Cap, Inc	RF300–20693 ...	01/12/94
John Swett Unified School District *et al*	RF272–80630 ...	01/14/94
Knott County Board of Educa. Elgin Local School District	RF272–79433, RF272–83294.	01/14/94
New Bedford Seafood Co-Operative Assoc., Inc	RF272–87692 ...	01/11/94
Oneida County, New York *et al*	RF272–77310 ...	01/14/94
Prather's Linen & Uniform Service	RC272–223	01/11/94
Preble-Shawnee Local School District	RF272–83361 ...	01/10/94
Shell Oil Company/301 Shell	RF315–8780	01/14/94
Shell Oil Company/Airport Terminal Services, Inc	RF315–9408	01/14/94
Midcoast Aviation, Inc	RF315–9418	.....
Shell Oil Company/Red Carpet Car Wash	RF315–10003 ...	01/11/94
St. Peter's Church and School	RC272–224	01/14/94
Texaco Inc./Chandler & Martin Texaco	RF321–18934 ...	01/14/94
Texaco Inc./Phil's Texaco Service *et al*	RF321–14207 ...	01/14/94
The Transport Co. of Texas *et al*	RF272–80029 ...	01/11/94
Village of Milford, Michigan *et al*	RF272–88157 ...	01/10/94
Whirlpool Corporation	RR272–119	01/11/94

DISMISSALS

The following submissions were dismissed:

Name	Case No.
Allenstown School District	RF272–81612
Allied Supermarkets	RF321–5517
Beacon Distributing of Tulare County.	RF238–137
Beacon Merced	RF238–130
Blackburn Service Station	RF321–17982
Carsonville-Port Sanilac SD.	RF272–80389
Cedar Grove-Belgium Area Schools.	RF272–83556
Chinigois Service	RF321–17976
Commodity Warehouse	RF321–16092
Dollarway School District	RF272–81348
Duke & Lee's	RF321–17831
Dunn's Texaco	RF321–14279
Esser's Texaco	RF321–17979
Francis Sales & Service	RF315–309
Funari Texaco Service	RF321–17986
Harrod Concrete & Stone Co.	RF272–91429
Heard Texaco	RF321–14667
Ideal Basic Industries	RF321–6535
Kautzman Service	RF321–17978
Koenig Company	RF272–91430
Lafourche Parish School Board.	RF272–81486
Lew's Arco	RR304–61
Milne-Kelvin Grove School District 91.	RF272–81713
Mountain Gulf	RF300–14218
Nabors Texaco Service	RF321–17991
Necanicum Truck Stop	RF321–14603
North Jensen Texaco	RF321–14800
Oak Park Elementary School District 97.	RF272–83354
Ollie R. Brest Texaco	RF321–5579
One Stop Gulf	RF300–19396
Orlando Perea	RF321–13791
Randall Bros	RF300–19127
Redding Petroleum, Inc	RF238–131
Romarco Corp	RF272–91326
Salami's Truck Center	RF321–17995
Salyer Texaco	RF321–13814
Sedalia Texaco & Grocery	RF321–17977
Tri-Service Company, Inc	RF300–14317
Wenona Community Unit School District 1.	RF272–81734
Yachats Texaco	RF321–13992

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5261 Filed 3–7–94, 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of January 17 Through January 21, 1994

During the week of January 17 through January 21, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Deborah L. Abrahamson, 1/21/94, *LFA–0344*

Deborah L. Abrahamson filed an Appeal from a determination issued by the Office of Personnel in response to the remand from this Office of an Appeal which Ms. Abrahamson had submitted under the Freedom of Information Act (FOIA). In that determination, the Office of Personnel released some documents and withheld one document pertaining to the position of Management Analyst at the Superconducting Super Collider Project Office (SSCPO), a position for which she had been a candidate. Further, the Office of Personnel withheld a portion of one document. In addition, Ms. Abrahamson questioned the adequacy of the Office of Personnel's search for information, claiming that additional information should exist. The DOE determined that the Office of Personnel's withholding of the one document in full on the basis of Exemption 5 of the FOIA was proper. The DOE also determined that the portion of the other document that was withheld was not responsive to Ms. Abrahamson's request and, therefore, properly withheld. Finally, the DOE determined that the Office of Personnel's search was reasonably calculated to uncover any information requested by Ms. Abrahamson. Therefore, the Appeal was denied.

Refund Applications

Northeast Petroleum Industries/ Massachusetts, 1/13/94, *RM25–264*

The DOE issued a Decision and Order approving a Motion for Modification of a previously-approved second-stage refund plan filed by the Commonwealth of Massachusetts (Massachusetts). In its Motion, Massachusetts requested the authority to use $30,000 of its uncommitted Northeast Petroleum Industries second-stage refund monies to fund a pair of projects intended to expand the use of alternatives fuels in the Commonwealth. The DOE affirmed the timely restitutionary benefits of the plan to promote alternative fuel use. The DOE also identified the proposed recipients of those benefits (the people of Massachusetts) as a substantial segment of injured consumers of refined petroleum products. The Massachusetts plan was thus found to satisfy the criteria for a second-stage refund restitutionary program. Accordingly, Massachusetts's Motion for Modification was approved.

Texaco, Inc./Poweram Oil Company, Inc., 1/19/94, *RF321–14580*

The DOE issued a Decision and Order granting an Application for Refund filed by Poweram Oil Company, Inc. (Poweram) in the Texaco Inc. special refund proceeding. Poweram sought a refund equal to its full allocable share for its purchases of Texaco motor gasoline and middle distillates. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing the status of its cumulative banked gasoline and middle distillate costs at the end of the respective "banking" regulation periods, and a competitive disadvantage analysis for its Texaco purchases of each grade of motor gasoline and for middle distillates. The data submitted showed that Poweram had accumulated sufficient banks from September 1975 to April 1980 for motor gasoline and from January 1975 to June 1976 for middle distillates to justify a full volumetric refund for those periods, and that the firm experienced a substantial competitive disadvantage as a result of its Texaco purchases. The DOE also determined that Poweram was entitled to a refund based on its motor gasoline purchases from April 1980 through January 1981, its regular motor gasoline purchases in March 1973, its premium motor gasoline purchases in March, April, May and September 1973, and its middle distillate purchases in March and April 1973. The total refund amount granted was $172,932 ($125,340 principal and $47,592 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals

Lakeland School Corporation	RR272-122	01/21/94
Lithium Corporation of America	RF272-23095	01/21/94
Lithium Corporation of America	RD272-23095	
Milford Central School	RC272-225	01/21/94
New Richmond School District	RA272-56	01/21/94
Texaco Inc./Stephen Beagley *et al*	RF321-6523	01/21/94
Texaco Inc./Transportation Supplies, Inc	RF321-14700	01/21/94
Transportation Supplies, Inc	RF321-17372	
Webster County *et al*	RF272-87652	01/21/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Riverview School District ...	RF272-80002

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-5309 Filed 3-7-94; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders; the Office of Hearings and Appeals Week of January 24 through January 28, 1994

During the week of January 24 through January 28, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John W. Osenbaugh, 1/27/94, LFA-0346

John W. Osenbaugh filed an Appeal from a determination issued by the National Renewable Energy Laboratory Area Office (NREL) of the Department of Energy in response to a request from Mr. Osenbaugh under the Freedom of Information Act (FOIA). Mr. Osenbaugh sought documents concerning the production of fuel from switchgrass. In considering the Appeal, the DOE found that NREL performed an adequate search for relevant documents, did not withhold under Exemption 4 cost and pricing information for switchgrass, and met the requirements of 10 CFR § 1004.5(b)(5). Accordingly, the Appeal was denied in all respects.

Ron Vader, 1/27/94, LFA-0347

Ron Vader filed an Appeal from a determination issued by the Richland Field Office (Richland) in response to a request for information that he submitted under the Freedom of Information Act (FOIA). Mr. Vader requested information concerning a "hearing" held regarding the accidental entrance of several Walla Walla University students, including Mr. Vader, onto DOE's Hanford site in December 1976. In its determination, Richland concluded that it did not have information responsive to Mr. Vader's request. Mr. Vader appealed, claiming that the search that Richland conducted was inadequate and Richland must have some record of the hearing about which he was requesting information. The DOE determined that the search was adequate and that any information Richland may have had would have been destroyed pursuant to the Records Inventory and Disposition Schedule. Therefore, the Appeal was denied.

Taylor, Newsome, Tinkham & Cole, P.C., 1/27/94, LFA-0345

Taylor, Newsome, Tinkham & Cole, P.C. (Taylor), filed an Appeal from a determination issued by the Oak Ridge Field Office (Oak Ridge) in response to a request for information Taylor submitted under the Freedom of Information Act (FOIA). Taylor sought information concerning contracts awarded to Research Triangle Institute, including agreements entered into by Martin Marietta Energy Systems, Inc. (MMES) on behalf of the DOE. In its determination, Oak Ridge concluded that it did not have information responsive to Taylor's request and anything that may have been held by MMES would not be agency documents and therefore not within the scope of the FOIA. Taylor appealed, claiming that the search Oak Ridge conducted was inadequate and that the provision in the contract between MMES and DOE that stated that all procurement documents were the property of MMES violated 5 U.S.C. § 552. The DOE determined that the search was adequate and the validity of the contract provision that Taylor was questioning was outside the jurisdiction of a FOIA Appeal. Therefore, the Appeal was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arkla, Inc	RF272-28017	01/26/94
Atlantic Richfield Company/Broadway ARCO *et al*	RF304-14295	01/25/94
Atlantic Richfield Company/City of Bell Gardens *et al*	RF304-14212	01/25/94
Beacon Oil Company	RF272-93025	01/27/94
Duffie Monroe & Sons Company	RF272-93026	
Beacon Oil Company/Ernie's Beacon	RF238-148	01/27/94
Beacon Oil Company/Steve's Beacon Service	RF238-149	01/25/94
Bukovatz 66	RF272-90942	01/25/94
Gateway School District *et al*	RF272-80652	01/25/94
Gulf Oil Corporation/Cornell Young Co	RF300-19291	01/27/94
Gulf Oil Corporation/Harold's Gulf, Inc	RF300-15267	01/27/94
Harold's Gulf, Inc	RF300-16373	
Gulf Oil Corporation/Ottawa Oil Company	RF300-19924	01/27/94
Gulf Oil Corporation/Wexwell Corporation	RF300-20086	01/25/94
Wexwell Corporation	RF300-21769	

Wexwell Corporation	RF300–21770	
R.J. Glass, Inc	RF272–77610	01/25/94
Shell Oil Company/Arrow Transportation Company	RF315–10102	01/26/94
Shell Oil Company/Union Oil Co. of California	RF315–9175	01/26/94
Texaco Inc./Ellis Robertson Corporation	RR321–50	01/25/94
Ellis Robertson Co., Inc	RF321–14027	
Ellis Robertson Co., Inc	RF321–14028	
Ellis Robertson Co., Inc	RF321–14029	
Texaco Inc./Roebuck Plaza Texaco *et al*	RF321–15838	01/25/94
Texaco Inc./Rollins Oil Co. *et al*	RF321–10530	01/25/94

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Fontana	RF272–85367
City of Henderson, TN	RF272–85295
Clinton County	RF272–85292
Fredonia Texaco	RF321–18681
Hickory County	RF272–85316
John Smith Texaco	RF321–18641
New Castle Area School District.	RF272–80018
Steve's Get & Go Market	RF238–124
Vickery's Texaco	RF321–8447

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5310 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces procedures for the disbursement of $17,816.72, plus accrued interest, in crude oil price violation amounts obtained by the DOE pursuant to a Remedial Order issued on April 3, 1980, to Warwick Oil Corporation (Case No. LEF–0117). The OHA has determined that the funds obtained from the remedial order firm, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Accordingly, 40 percent of the funds will be remitted to the federal government, another 40 percent to the states, and 20 percent will be initially reserved for the payment of claims by injured parties.

DATE AND ADDRESS: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refunds" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1994. Any party who has previously filed an Application for Refund should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $17,816.72, plus accrued interest, obtained by the DOE pursuant to a Remedial Order issued to Warwick Oil Corporation (Warwick) on April 3, 1980. In the Remedial Order, the DOE found that, during the period January 1976 through November 1977 Warwick charged prices for crude oil which exceeded the maximum prices that the firm was permitted to charge under Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from Warwick in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). In accordance with the MSRP, the OHA has determined that 80 percent of the Warwick crude oil overcharge amounts, plus accrued interest, will be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

Also under the terms of the MSRP, the DOE has determined that the remaining 20 percent of the Warwick crude oil overcharge funds will be initially reserved for the payment of claims by injured parties. The specific requirements which an injured party must meet in order to receive a refund are set out in section III of the Decision. Claimants who meet these specific requirements will be eligible to receive their share of all available crude oil overcharge funds based on the number of gallons of covered petroleum products which they purchased during the price control period.

Applications for Refund must be postmarked no later than June 30, 1994. As stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another application for refund in the crude oil proceedings. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 1, 1994.

Name of Firm: Warwick Oil Corp.
Date of Filing: November 16, 1993.
Case Number: LEF–0117.

On November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds received pursuant to a Remedial Order issued by the DOE to Warwick Oil Corporation (Warwick), a crude oil producer. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations described in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these remedial order funds.

I. Background

The DOE issued a Remedial Order to Warwick on April 3, 1980, concluding that the firm had violated the Federal petroleum price regulations in its sales of crude oil from the Hanks Company lease at prices that exceeded maximum lawful prices. Warwick has since remitted $17,816.72 in compliance with the Remedial Order, to which interest has subsequently accrued. These funds continue to be held in an interest-bearing escrow account maintained at the Department of the Treasury.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, See Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–4507, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the Warwick remedial order funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute those funds.

III. Refund Procedures

On December 15, 1993, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the remedial order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 58 FR 67405 (December 21, 1993). More than 30 days have elapsed and the OHA has received no substantive comments concerning the proposed procedures for the distribution of the remedial order funds. Consequently, the procedures will be adopted as proposed.

A. Crude Oil Refund Policy

The funds obtained pursuant to the Warwick Remedial Order should therefore be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987) (April 10 Notice).

The April 10 notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973, through January 27, 1981, crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See, *e.g.*, *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

These standard crude oil refund procedures will be used to distribute the monies in the Warwick Remedial Order fund. We have chosen to initially reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refunds in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act 3003(b)(2), 15

U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The DOE has established June 30, 1994, as the current deadline for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that applicants that filed their claims before June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See, e.g., *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we have determined that the remaining 80 percent of the crude oil overcharge amounts subject to this Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by Warwick Oil Corporation may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $17,816.72 (plus interest) from the Warwick Oil Corporation subaccount (Account Number 640C00375Z), pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $7,126.69 (plus interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $7,126.69 (plus interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $3,563.34 (plus Interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5311 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 25, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0049.

Title: Restricted Radiotelephone Operator Permit and Temporary Restricted Radiotelephone Operator Permit.

Form Number : FCC Form 753.

Action: Extension of currently approved collection.

Respondents: Individuals or households.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 65,000 responses; 0.33 hours average burden per response; 21,450 hours total annual burden.

Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 753 aids the Commission in determining whether the applicant possesses these qualifications. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications of the license. If the data were not collected, it would be impossible to identify the person to whom the license were issued nor to determine whether that person possessed the qualifications required for the issuance of the license.

OMB Number: 3060–0127

Title: Assignment of Authorization.

Form Number : FCC Form 1046.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 6,000 responses; 0.83 hours average burden per response; 498 hours total annual burden.

Needs and Uses: In accordance with FCC rules, to assign authorization of radio station to another entity, the assignor must in writing, assign all right, title and interest of the authorization to the other entity. The Commission uses the data to determine if assignment of authorization submitted with the application will meet the rule requirements for issuance of a station authorization.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–5230 Filed 3–7–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before May 9, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2602.

Type: Extension of 3067–0024.

Title: General Admissions Application and National Fire Academy Roster of Course Completion.

Abstract: NFA and EMI use FEMA Form 75–5, General Admissions Application, to admit applicants to courses and programs offered at NETC. Applicants complete FEMA Form 75–5 and send it to the Office of Admissions. The application is used by NETC personnel to determine eligibility for courses and program offered by NFA or EMI. Information from the application is maintained in the Student Record System.

FEMA Form 75–9, National Fire Academy Roster of Course Completion, is used to admit applicants to NFA off-campus courses. Because applications to off-campus courses are handled by the State and local sponsoring agency, the amount of information required on the General Admissions Application is not needed. Academy Roster of Course Completion, is used and filled in when the class is conducted. If FEMA Form 75–9 were not used, there would be no central record of attendance information for NFA off-campus courses.

Type of Respondents: Individual or households, State or local governments, Federal agencies or employees, Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,700 hours.

Number of Respondents: Application—33,000; Roster—15,000.

Estimated Average Burden Time per Response: Application—9 minutes; Roster—3 minutes.

Frequency of Response: Other—Each time a student applies to an NFA or EMI course.

Dated: February 25, 1994.
Wesley C. Moore,
Director, Administrative Services Division.
[FR Doc. 94–5244 Filed 3–7–94; 8:45 am]
BILLING CODE 6718–01–M

[FEMA–1011–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1011–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from a severe winter ice storm on February 9–10, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Desha, Drew, Lee, Lincoln, Monroe, Ouachita and Phillips Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,
Director.
[FR Doc. 94–5245 Filed 3–7–94; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–1012–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1012–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from a severe winter ice storm on February 10–12, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Disaster Unemployment Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Bienville, Claiborne, Lincoln, Union, and Webster Parishes for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director

[FR Doc. 94–5246 Filed 3–7–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1010–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1010–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from a severe winter ice storm and flash flooding on February 9–11, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin J. Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Madison, Marshall, Maury, McMinn, McNairy, Meigs, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Robertson, Rutherford, Scott, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 94–5247 Filed 3–7–94; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee and Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings:

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 1 p.m.–5 p.m., March 23, 1994. 8:30 a.m.–12:30 p.m., March 24, 1994.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include a summary of the December meeting, a summary of the meeting of the Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control, an Update on CLIA implementation, and discussion of CLIA information and education plans, and discussion of the status of the Accurate and Precise Testing Subcategory. Agenda items are subject to change as priorities dictate.

Name: Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control.

Time and Date: 8:30 a.m.–12 noon, March 23, 1994.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will advise CLIAC on issues related to proficiency testing, quality assurance, and quality control.

Matters To Be Discussed: The subcommittee will discuss the following

proficiency testing sample grading issues: the use of peer group versus referee results to determine target values; and the 80 percent versus 90 percent consensus to determine gradability of proficiency testing samples. Agenda items are subject to change as priorities dictate.

Interested parties are encouraged to make an oral presentation to the subcommittee regarding the use of peer group versus referee results to determine target values and the 80 percent versus 90 percent consensus to determine gradability of proficiency testing samples. Requests should be submitted in writing to the contact person listed below by close of business, March 15, 1994. The request should include the name, address, and telephone number of the participant; the approximate time needed; and an indication of which of the issues will be addressed. Depending on the number of requests, up to 10 minutes will be allowed for each oral presentation.

Contact Person for Additional Information: John C. Ridderhof, Dr. P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop G–25, Atlanta, Georgia 30341–3724, telephone 404/488–7660.

Dated: March 2, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5237 Filed 3–7–94, 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announced the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 9 a.m.–5 p.m., March 28, 1994. 8:30 a.m.–4:30 p.m., March 29, 1994.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Closed 9 a.m.–1:30 p.m., March 28; Open 1:30 p.m.–5 p.m., March 28; Open 8:30 a.m.–4:30 p.m., March 29.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: This meeting will convene in closed session from 9 a.m. to 1:30 p.m. on March 28, 1994. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The full committee will then vote on a funding recommendation. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463. Following the closed session, the full committee will discuss updates from the National Center for Injury Prevention and Control (NCIPC) and other federal agencies, the prevention of bicycle-related head injuries, and how we can work together to prevent bicycle head injuries.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4031.

Dated: March 2, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5238 Filed 3–7–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee Meeting; Postponement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Food Advisory Committee scheduled for March 9 and 10, 1994. The meeting was announced by a notice in the **Federal Register** of March 1, 1994 (59 FR 9760). FDA plans to reschedule this meeting.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727.

Dated: March 3, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5337 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. D–94–1054; FR–3675–D–01]

Redelegation of Authority

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice implements the reorganization of the Department of Housing and Urban Development (HUD) field structure for the Office of General Counsel. First, this notice changes the titles of each of the ten Regional Counsels to Assistant General Counsel for the new geographical areas established under the reorganization to which the Assistant is assigned. All redelegations of authority now in effect to HUD Regional Counsel published in the Federal Register are modified to read Assistant General Counsel for the relevant geographical area. Second, this notice provides that each Assistant General Counsel for the new geographical areas will be selected by, will report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to the implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area. Finally, this notice redelegates to the Assistant General Counsel for each geographical area several authorities presently residing at HUD headquarters. These authorities include the following: the authority to authorize the Department of Justice to issue Temporary Restraining Orders in cases under Title VIII of the Civil Rights Act of 1968 without review or concurrence by the General Counsel; the authority to settle Fair Housing cases from the area without approval by the General Counsel (In both of the above cases, however, the Assistant General Counsel for the geographical area who exercises this authority shall inform and give copies of the above actions taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing); the authority to approve secondary financing for projects under section 202 of the National Housing Act; and the authority to settle multifamily bankruptcies.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel for Equal Opportunity and Administrative Law, Department of Housing and Urban Development, room 10244, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202)

708–2203. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of the HUD field structure to improve HUD's performance and provide the Department's customers, members of the public and program beneficiaries, more efficient service and less bureaucracy. This notice implements the reorganization of the HUD field structure for the Office of General Counsel.

First, this notice changes the titles of each of the ten Regional Counsels to Assistant General Counsel for the new geographical areas under the reorganization. Specifically, the titles are changed as follows: The Regional Counsel for Region I is changed to the Assistant General Counsel for New England; the Regional Counsel for Region II is changed to the Assistant General Counsel for New York/New Jersey; the Regional Counsel for Region III is changed to the Assistant General Counsel for the Mid-Atlantic; the Regional Counsel for Region IV is changed to the Assistant General Counsel for the Southeast; the Regional Counsel for Region V is changed to the Assistant General Counsel for the Midwest; the Regional Counsel for Region VI is changed to the Assistant General Counsel for the Southwest; the Regional Counsel for Region VII is changed to the Assistant General Counsel for the Great Plains; the Regional Counsel for Region VIII is changed to the Assistant General Counsel for the Rocky Mountains; the Regional Counsel for Region IX is changed to the Assistant General Counsel for the Pacific/Hawaii; and the Regional Counsel for Region X is changed to the Assistant General Counsel for the Northwest/Alaska. All redelegations of authority now in effect to HUD Regional Counsel published in the **Federal Register** are modified to read Assistant General Counsel for the relevant geographic area.

Second, this notice provides that the Assistant General Counsel for each new geographical area will be selected by, report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and the Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area.

Third, this notice redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 103.500 to authorize the Department of Justice to issue Temporary Restraining Orders in case under Title VIII of the Civil Rights Act of 1968. This authority is redelegated without stipulation that the referrals must be reviewed or issued with the concurrence of the General Counsel. This notice also redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 104.925 to settle Fair Housing cases. This authority is also redelegated without stipulation that a decision to settle must be approved by the General Counsel. In both of the above cases, however, the Assistant General Counsel for the geographical area who exercises this authority shall inform and give copies of the above actions taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing.

This notice also redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority to approve secondary financing for projects under section 202 of the National Housing Act; and the authority to settle multifamily bankruptcies.

Accordingly, the General Counsel takes the following actions:

Section A. Title Change

The titles of each of the ten Regional Counsels are hereby changed to Assistant General Counsel for the new geographical areas under the reorganization. Specifically, the titles are changed as follows:

(1) The Regional Counsel for Region I is changed to the Assistant General Counsel for New England;

(2) The Regional Counsel for Region II is changed to the Assistant General Counsel for New York/New Jersey;

(3) The Regional Counsel for Region III is changed to the Assistant General Counsel for the Mid-Atlantic;

(4) The Regional Counsel for Region IV is changed to the Assistant General Counsel for the Southeast;

(5) The Regional Counsel for Region V is changed to the Assistant General Counsel for the Midwest;

(6) The Regional Counsel for Region VI is changed to the Assistant General Counsel for the Southwest;

(7) The Regional Counsel for Region VII is changed to the Assistant General Counsel for the Great Plains;

(8) The Regional Counsel for Region VIII is changed to the Assistant General Counsel for the Rocky Mountains;

(9) The Regional Counsel for Region IX is changed to the Assistant General Counsel for the Pacific/Hawaii; and

(10) The Regional Counsel for Region X is changed to the Assistant General Counsel for the Northwest/Alaska.

All redelegations of authority now in effect to HUD Regional Counsel published in the **Federal Register** are modified to read Assistant General Counsel for the relevant geographical area.

Section B. Selecting, Reporting and Evaluation Responsibilities

The Assistant General Counsel for each new geographical area will be selected by, report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and the Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area.

Section C. Authority Redelegated

(1) The General Counsel hereby redelegates to each Assistant General Counsel for the new geographical areas the authority set out in 24 CFR 103.500 to authorize the Department of Justice to issue Temporary Restraining Orders in cases under Title VIII of the Civil Rights Act of 1968. This authority is redelegated without stipulation that the referrals must be reviewed or issued with the concurrence of the General Counsel. The Assistant General Counsel for each new geographical area who exercises this authority shall inform and give copies of authorizing documents to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing.

(2) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 104.925 to settle Fair Housing cases. The Assistant General Counsel for each new geographical area who exercises this authority shall inform and give copies of the settlement documents taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation,

and the Assistant General Counsel for Fair Housing.

(3) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographical area the authority to approve secondary financing for projects under Section 202 of the National Housing Act.

(4) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographic area the authority to settle multifamily bankruptcies.

Section D. No Further Redelegation

The authority redelegated to the Assistant General Counsel for each new geographical area under Section C may not be further redelegated pursuant to this redelegation.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 1, 1994.

Nelson A. Díaz,

General Counsel.

[FR Doc. 94–5183 Filed 3–7–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Tennessee Yellow-Eyed Grass for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Tennessee yellow-eyed grass (*Xyris tennesseenis*. Fourteen populations are known to occur, including 8 in Alabama (Franklin, Bibb, and Calhoun Counties), 2 in Georgia (Bartow and Whitefield Counties), and 4 in Tennessee (Lewis County). Populations are located in spring meadows or along small streams. With the exception of three sites which occur all or partially on Federal lands (Calhoun County, Alabama), sites are on privately owned lands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 15, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is Tennessee yellow-eyed grass (*Xyris tennesseensis*). This plant occurs in spring meadows or along small streams in Alabama, Georgia, and Tennessee. All sites feature nearly permanent moisture regimes, open, sunny conditions, and calcareous bedrock (shale, limestone, dolomite) or thin calcareous soils. Tennessee yellow-eyed grass was listed as endangered in 1991 due to its limited distribution, and loss or decline in populations due to drainage and conversion of habitat to agricultural fields and from timbering.

The objective of this proposed plan is to delist Tennessee yellow-eyed grass. Delisting will be considered when there are 15 adequately protected and managed, self-sustaining populations of the species distributed throughout the historical range. Actions needed to reach this goal include: (1) Protecting and managing populations, (2) surveying for new populations, (3) investigating potential management techniques, (4) conducting research on this species' ecological requirements and life history, and (5) maintaining plants and seed *ex situ*.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 15, 1994.

Robert Bowker,

Field Supervisor.

[FR Doc. 94–5193 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–65–M

Geological Survey

Nevada; Hydrogeochemical Studies Program; Contribution Acceptance From Marigold Mining Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from Marigold Mining Company a contribution of $10,000 to support hydrogeochemical studies of the chemical mobility of gold and ore-related elements in ground-water systems associated with buried gold deposits in northern Nevada that are being conducted by scientists in the Branch of Geochemistry.

DATES: This notice is effective immediately.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Denver Federal Center, MS–973, P.O. Box 25046, Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Dr. David Grimes of the U.S. Geological Survey, Branch of Geochemistry, at the

address given above; telephone 303/236–5510.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 94–5194 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CA–059–4930–10–4503]

Preparation of an Amendment to the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.5–5, notice is hereby given that the Redding Resource Area of the Ukiah District, Bureau of Land Management, will prepare an amendment to the Redding Resource Management Plan. The purpose is to evaluate the effect of withdrawing certain public land from locatable mineral entry, and to use other certain public land for exchange rather than transfer to the U.S. Forest Service.

DATES: Written comments on this proposed amendment will be accepted on or before April 7, 1994.

ADDRESSES: Comments should be sent to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002, Attn: RMP Amendment.

FOR FURTHER INFORMATION CONTACT: Francis Berg at the aforementioned address or call (916) 224–2100.

SUPPLEMENTARY INFORMATION: It has been determined from new data and an alteration in circumstances that an amendment to the Redding Resource Management Plan (RMP) be initiated. The purpose is (1) To evaluate the effect of withdrawing acquired property within the Sacramento River Management Area from locatable mineral entry (8 miles north of Red Bluff, Tehama County), and (2) to evaluate the proposal of using public land formerly designated for transfer to the U.S. Forest Service in an exchange (NE¼, Sec. 12, T. 25 N., R. 2 E., M.D.M.).

An Environmental Assessment (EA) will be prepared to evaluate the effect of this amendment. An interdisciplinary team will complete the EA for this proposed amendment. The scoping process for this EA will include: (1) Identification of specific issues; (2) identification of alternatives; and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained.

Mark Morse,

Area Manager.

[FR Doc. 94–5195 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–40–M

[ES–960–9800–02] ES–046660, Group 84, Arkansas

Filing of Plat of the Dependent Resurvey, Corrective Dependent Resurvey and Subdivision of Sections

The plat, in seven sheets, of the dependent resurvey of the south, east and north boundaries; the corrective dependent resurvey of a portion of the west boundary; the dependent resurvey of the subdivisional lines; and the survey of the subdivision of sections 3, 6, 15, 21, 27, 28, 29, 31, 32, 33, and 34, in Township 14 North, Range 21 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 22, 1994. The survey was made upon request submitted by the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 22, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy

Dated: February 28, 1994.

Carson W. Culp, Jr.,

State Director

[FR Doc. 94–5196 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–GJ–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1129X)]

Consolidated Rail Corporation—Abandonment Exemption—in Chester County, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 6.1 miles of line from approximately milepost 11.4 (the east side of Morehall Road in Cedar Hollow, PA) to approximately milepost 17.5 (approximately 1,500 feet west of Route 100 in Exton, PA), in Chester County, PA.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 28, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market St., P. O. Box 41416, Philadelphia, PA 19101–1416.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 11, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5235 Filed 3–7–94; 8:45 am]

BILLING CODE FR 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Agrico Chemical Company, at al.*, Civil Action No. 93–23–C, was lodged on February 15, 1994 with the United States District Court for the Northern District of Florida, Pensacola Division.

This case concerns a former fertilizer manufacturing facility at the intersection of Interstate 110 and Fairfield Drive in Pensacola, Florida, known as the Agrico Chemical Company Superfund Site (the "Site"). Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of all past and future costs incurred and to be incurred by the United States at the Site, and injunctive relief for the Site, namely, implementation of the remedy selected by EPA in a Record of Decision ("ROD") dated September 29, 1992. The ROD provides for remediation of contaminated sludge and soils for Operable Unit 1 ("OU1") at the Site.

Defendants Agrico Chemical Company, a division of Freeport-MacMoRan Resource Partners Limited Partnership, and Conoco, Inc., a wholly owned subsidiary of E.I. Du Pont de Nemours and Company, Inc., (collectively, the "Settling Defendants") have agreed in the proposed Consent Decree to pay the United States $232,907.22 for past response costs incurred at the Site, as well as all future costs of overseeing the implementation of the Remedial Action of OU1. The Settling Defendants have also agreed to implement the remedy selected by EPA for the Site. The cost of the selected remedy is approximately $10,700,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Agrico Chemical Company, at al.*, DOJ Ref. #90–11–2–863.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $43.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments (ROD, Statement of Work and Site map) or a check in the amount of $19.25, a copy of the proposed Consent Decree without those attachments.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–5197 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. Alcan Foil Products et al.

In accordance with Departmental Policy, 28 CFR 50.7 and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Alcan Foil Products, et al.*, Civil Action No. 91–44 (E.D. Ky), was lodged with the United States District Court for the Eastern District of Kentucky on February 16, 1994. This action was brought under section 107 of CERCLA, 42 U.S.C. 9607. The Consent Decree provides that defendants Gene Holloway will pay $90,000 and Cintech Industrial Coatings, Inc. will pay $35,000 of the past costs incurred by the United States Environmental Protection Agency for response activities at the Custom Industrial Services site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to this action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Alcan Foil Products, et al.*, D.O.J. Ref. No. 90–11–2–547.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 110 West Vine Street, suite 400, Lexington, Kentucky 40507; the Region IV office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. The proposed Consent Decree package consists of a 16 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $4.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 94–5198 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sierra Environmental Group, Inc.*, Civil Action No. C2–93–248, was lodged on January 31, 1994 with the United States District Court for the Southern District of Ohio. The consent decree settles an action brought in 1993 to enforce the work practice requirements of the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M (1989). The civil penalty amount, $7500, is based in part on financial information submitted by the defendant. The decree calls for defendant to comply with the asbestos NESHAP and to require worker training in asbestos removal and inspection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sierra Environmental Group, Inc.*, DOJ Ref. No. 90–5–2–1–1520.

The proposed consent decree may be examined at the Office of the United States Attorney, 280 North High Street, Fourth Floor, Columbus, Ohio 43215; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–5199 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 92–62]

Allan L. Gant, D.O.; Denial of Application

On June 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Allan L. Gant, D.O. (Respondent), of Richwood, West Virginia, proposing to deny his application for DEA registration as a practitioner. The statutory basis for seeking the denial of the application was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause alleged that in May 1990, while employed at the Richwood Medical Center, the Respondent admitted diverting to his personal use three 20 mg. bottles of injectable Demerol, a Schedule II controlled substance, and a bottle of injectable Valium, a Schedule IV controlled substance, from the stocks of that medical center; Respondent admitted in his personal history provided to a hospital treatment center in May 1990 that he had abused Demerol, a Schedule II controlled substance, during the period from at least 1984 until at least 1988; while in in-patient attendance at a rehabilitation facility in April 1990, Respondent self-administered Demerol which he had smuggled into that facility; and on June 5, 1990, he voluntarily surrendered his DEA Certificate of Registration, AG9806108, for cause.

Respondent, acting pro se, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was conducted in Charleston, West Virginia, on January 21, 1993.

On November 4, 1993, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, in which she recommended that the Respondent's application for registration be denied. On December 6, 1993, the administrative law judge transmitted the record to the Acting Administrator. The Respondent subsequently filed exceptions to the opinion, which were received by the administrative law judge on December 9, 1993, and forwarded to the Acting Administrator on December 13, 1993. Although not timely filed, the Acting Administrator has included the Respondent's exceptions in the record. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is an osteopath and is licensed and practices in West Virginia. Respondent is a Vietnam veteran, who testified that he sustained severe wounds and suffers from post-traumatic stress disorder as a result of his war experience. The Respondent testified that due to complications from his war wounds during 1986 to 1988, he began to self-administer Demerol to a point where he was using 300 mg. to 400 mg. two to four times daily.

The administrative law judge found that testimony and documents indicated that in September 1988, the Respondent, after a morphine overdose, was admitted to a Charleston hospital, and was subsequently treated by physicians at the Veterans Administration Hospital in Clarksburg for opiate dependence. In November 1988, he was transferred to the Preston Memorial Hospital and was released to the Shawnee Hills Outpatient Clinic. Respondent voluntarily discontinued his care in January 1989.

In April 1990, syringes and a bottle containing opiates were found in Respondent's personal effects, and while at an in-patient recovery center, Respondent self-injected Demerol which he had smuggled into that facility. Subsequently, in May 1990, the Chief Administrator of Richwood Medical Center, where the Respondent was employed, found three 20 mg. bottles of injectable Demerol and a bottle of injectable Valium missing from stocks. The Respondent admitted to his employer that he had taken them for his own use. Respondent was again admitted to Preston Memorial Hospital on May 24, 1990, but apparently refused to stay in the program and was discharged on June 4, 1990. The Respondent surrendered his previous DEA registration on June 5, 1990.

There was testimony at the administrative hearing that the Respondent was regularly ordering non-controlled injectable pain medications in his current private practice. The Respondent testified that they were the only type of analgesic that were appropriate and available for administration to his patients whom he saw both in his office setting and in the emergency room.

The Respondent also testified that he occasionally attended Alcoholics Anonymous meetings, but that he did not belong to Narcotics Anonymous or any impaired physician program because they were too far away. The Respondent submitted a letter from an addiction specialist physician who concluded that there was no medical, legal, or ethical reason why the Respondent should not be able to prescribe controlled drugs.

The administrative law judge found that the Secretary for the West Virginia Board of Osteopathy (Board), testified on behalf of the Board at the administrative hearing, that the Board was aware of the Respondent's problem with narcotics abuse and knew he had entered two rehabilitative programs but failed to successfully complete either. In addition, the Board had written to the Respondent and strongly urged him to enter a substance abuse program, and at the time of the hearing it was the Board's opinion that the Respondent should not receive a DEA Certificate of Registration.

The Respondent contended that the State licensing board had never indicated its opposition to his registration. He also stated that he was subject to regular urine testing by the Board and that he had not abused controlled substances in three years.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors shall be considered. (1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found factors one, two, four and five relevant. Judge Bittner found as to factor one, that the State of West Virginia Board of Osteopathy recommended that Respondent not be given a DEA registration; as to factor two, the Respondent admitted personal use of Demerol and morphine; as to factor four, the Respondent self-administered controlled substances in violation of State and Federal law; and as to factor five, his drug abuse history and the status of his recovery were relevant to the public health and safety.

The administrative law judge found that the Respondent's testimony did not indicate that he had admitted or accepted the severity and nature of his drug dependency problem. Although the Respondent testified that this experience with surrendering his previous DEA registration had pushed him into earnest rehabilitation, Judge Bittner found that in the absence of evidence that Respondent is prepared and able to commit to a more aggressive recovery program, that his risk of relapse is substantial. The administrative law judge concluded that the Respondent is not yet ready to discharge the responsibilities inherent in a DEA registration, and recommended that if Respondent were to demonstrate in the future that he has made the requisite commitment, that his application for registration should be considered in a more favorable light.

The Respondent, in his December 6, 1993 letter, responding to the administrative law judge's opinion, objected to the testimony of the Government counsel (apparently a reference to the post-hearing brief filed by the Government, since there was no testimony presented by counsel); and the lack of weight ostensibly accorded to a letter from the addiction specialist submitted on his behalf. The Respondent also argued that he could not be a threat to the public since his medical practice was under scrutiny and any controlled substances administered in his practice would be handled by nurses. The Respondent also alleged that a Government witness had committed perjury and that Government investigators had lied to him or had engaged in underhanded tactics. The Acting Administrator finds nothing that would lend support to any of these contentions or allegations by the Respondent.

The Acting Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The Acting Administrator finds that the Respondent's registration is inconsistent with the public interest, and his pending application for registration must be denied. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of Allan L. Gant, D.O., be, and it hereby is, denied. This order is effective March 8, 1994.

Dated: March 1, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5204 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, April 21, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday, April 21, 1994 from 4 p.m. until 6 p.m. at the Sheraton, 777 St. Clair Avenue, Cleveland, Ohio 44114.

Agenda: The agenda for the meeting is as follows:

Review of Hearing Schedule
Discussion of Research
Discussion of Perkins-Dole Award

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than April 7, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor,

200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5252 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Open Site Hearing

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a public hearing of the Commission which is to take place on Friday, April 22, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The hearing will be held on Friday, April 22, 1994 from 9 a.m. until 6 p.m. in the Cleveland City Council Chambers, 601 Lakeside Avenue, 2nd floor, Cleveland, OH 44114.

Agenda: The agenda for the hearing is as follows:

9 a.m. Opening Remarks.
9:30 Welcome by Mayor and other government officials.
9:45–12:30 Witnesses.
12:30–1:45 Lunch break.
2–5 Witnesses.
5–6 p.m. Open public session.

Public Participation: The hearing will be open to the public. Seating will be available on a first-come, first-serve basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than April 7, 1994, if special accommodations are needed.

Individuals or organizations wishing to testify orally must provide written testimony in advance of the hearing. Send twenty (20) copies of testimony, postmarked on or before April 4, 1994, to: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

The written testimony must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) Oral comments are limited to 10 minutes, written testimony may be longer.

(4) The issues that will be addressed.

(5) Twenty (20) copies of testimony. (Testimony may be longer in length than oral comments.)

This information is needed to properly develop a hearing schedule. As many people as time allows will be permitted to testify. To provide all interested parties an opportunity to present their views in the public hearing, and answer questions from Commissioners.

Issues: Testimony should highlight successful initiatives and/or recommendations for addressing the areas discussed below. The Commission is especially interested in hearing about procedures, practices and systems that have been put in place to make sure that goals are achieved in work force diversity.

Recruitment: What systems are in place to ensure that external recruiting for decisionmaking positions will produce a pool of applicants which includes minorities and women? Similarly, does the process for considering promotion of current employees to decisionmaking positions ensure consideration of minorities and women?

Developmental practices and credential building experiences: How are minorities and women ensured that they will be given the kinds of experiences that will make them competitive for decisionmaking positions, including not only advanced education, but also developmental assignments such as to corporate committees and task forces, special projects, etc.

Accountability for equal employment opportunity responsibilities: How are senior level executives, line managers, and corporate decision makers held accountable for EEO responsibilities?

Compensation systems: How is the total compensation package including bonuses, stock options and other incentives evaluated for fairness for minorities and women? How is the appraisal system/performance rating system protected from subjective decisions which impact compensation? Do management and supervisory compensation system depend upon or reward managers' achieving work force diversity goals, and, if so, how does that work?

Placement patterns: What kind of monitoring is done to ensure that minorities and women are placed in the line positions that will provide better opportunity for promotion to decisionmaking positions?

Testimony on successful initiatives may include discussion of the elements above and how other factors are combined to create a complete initiative resulting in the advancement of minorities and women.

A videotape may be made of the hearing. A transcript of the hearing will be made.

Materials submitted at this hearing should not have been submitted at any previous or subsequent Glass Ceiling Commission hearings.

Those individuals or organizations wishing to submit written statements, but not testify orally, should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210. Written statements should be postmarked on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue., NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5250 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Job Training Partnership Act: Farmworker Housing Assistance Program; Availability of Funds for Technical Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; clarifications; reopening of application period.

SUMMARY: On December 27, 1993, the Department of Labor, Employment and Training Administration (ETA), published a notice in the **Federal Register** at 58 FR 68441, announcing the availability of funds and a solicitation for grant applications (SGA/DAA–94–002) (SGA) to conduct demonstration projects for the Housing Assistance Program. Corrections and clarifications to that notice were published on February 1, 1994. 59 FR 4723–4726. All information and forms required to submit an application are contained in the February and December notices. This notice is to provide clarifications regarding the eligibility of applicants and the application process, the number of option years, and to extend the closing date of the SGA.

DATES: The period for accepting applications for grant award(s) under the SGA is reopened effective February 25, 1994. The closing date for receipt of applications is April 7, 1994, at 2 p.m. (Eastern Time) at the address published in the SGA at 58 FR 68441 (December 27, 1993).

FOR FURTHER INFORMATION CONTACT: Ms. Irene Taylor-Pindle or Ms. Shirley Horton, Division of Acquisition and Assistance. Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This SGA is clarified as follows:

1. *Eligible Award Recipients.* Eligible participants for funds under the SGA include public organizations and private nonprofit organizations authorized by their charter or articles of incorporation to provide housing assistance services to the migrant and seasonal farmworker community. Consortia of eligible applicants as well as applicants representing a single area may also apply. The Department of Labor will consider all applicants based on their merit. ETA plans to make multiple awards from this solicitation.

2. *Option to Extend.* Based on the grantee successfully completing work under this solicitation, the availability of funds, and the needs of the Department, this grant may be extended for up to two option years.

3. *Funding Level.* The total amount available for this solicitation will be up to $3,000,000.

Signed at Washington, DC, this 24th day of February 1994.

James C. Deluca,

Grant Officer, ETA.

[FR Doc. 94–5251 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–21; Exemption Application No. D–9464, et al.]

Grant of Individual Exemptions; Ashley Construction, Inc. Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ashley Construction, Inc. Retirement Plan (the Plan) Located in Hidden Hills, CA

[Prohibited Transaction Exemption 94–21; Exemption Application No. D–9464]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the Loan) by the Plan of an amount that will not exceed $350,000 to Ashley Construction, Inc. (the Employer), a party in interest with respect to the Plan; and (2) the personal guarantee of the Employer's obligations under the Loan by Michael F. Ashley (Mr. Ashley), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan; (c) the Loan is secured by a first deed of trust on certain real property (the Property), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan; (d) the Employer's obligations under the Loan are personally guaranteed by Mr. Ashley; (e) the fair market value of the Property remains at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan; (f) an independent, qualified fiduciary determines on behalf of the Plan that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; and (g) the independent, qualified fiduciary monitors compliance with the terms and conditions of the exemption and the Loan throughout the duration of the transaction, taking any action necessary

to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66034.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Avram A. Jacobson, M.D. Employee Profit Sharing Plan (the Profit Sharing Plan) and the Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan (the Money Purchase Plan; Collectively, the Plans) Located in Beverly Hills, CA

[Prohibited Transaction Exemption 94–22; Application Nos. D–9470 through D–9473]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain works of art (the Art Work) by the Plans to Avram A. Jacobson, M.D., a sole proprietor and disqualified person with respect to the Plans.

This exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plans are not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Art Work is appraised by qualified, independent appraisers; (4) the sale price for the Art Work reflects the greater of either: (a) The original amount paid by the Plans at the time of acquisition; or (b) its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Dr. Jacobson will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 5, 1994 at 59 FR 599.

For Further Information Contact: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al. (the Plans) Located in Minneapolis, MN

[Prohibited Transaction Exemption 94–23; Application Nos. D–9424 through D–9430]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) a series of purchases by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust) of shares of common stock (the Common Stock) of Cargill, Incorporated (Cargill), a party in interest with respect to the Plans and the Master Trust; (2) the Master Trust's holding of the Common Stock; and (3) the acquisition, holding, and exercise by the Master Trust of an irrevocable put option (the Put Option) with respect to the Common Stock; provided that the following conditions are satisfied:

(A) The Master Trust pays no more than the fair market value of the Common Stock on the date of each acquisition;

(B) The Master Trust's interests for all purposes with respect to the Common Stock are represented by a qualified, independent fiduciary for the duration of the Master Trust's holding of any of the Common Stock;

(C) Prior to each acquisition of Common Stock by the Master Trust, the independent, qualified fiduciary must determine on behalf of the Plans and the Master Trust that the proposed acquisition is appropriate for and in the best interests of the Plans and the Master Trust;

(D) The independent fiduciary will take whatever action is necessary to protect the Master Trust's rights, including, but not limited to the exercise of the Put Option, if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate;

(E) The independent fiduciary retains the right under the Put Option to require Cargill, at any time, to purchase some or all of the Common Stock from the Master Trust for the greater of: (1) the price of the Common Stock on the date of the Master Trust's acquisition of the Common Stock, or (2) the fair market value of the Common Stock as of the date the Put Option is exercised;

(F) Cargill's obligations under the Put Option remain secured by an escrow account containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Common Stock; and

(G) Subsequent to each acquisition, none of the Plans in the Master Trust will have more than 10 percent of the fair market value of its assets invested in the Common Stock.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from the date this Final Grant is published in the **Federal Register** with respect to the Master Trust's acquisition of the Common Stock. The Master Trust may hold the Common Stock pursuant to the terms of the exemption subsequent to the end of the five year period.

Comments

In the Notice of Proposed Exemption, the Department invited interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by December 13, 1993. The Department received over 50 telephone inquiries from interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction does not affect the calculation of pension benefits or the Plans' obligation to make benefit payments.

The Department received a total of 31 written comments with 7 of those comments containing a request for a hearing.[1] Three commentators stated that they did not understand the proposed exemption or how it would affect their pensions. One commentator expressed concern about the impact of the exemption on his retirement benefits but did not specifically object to the exemption. Three interested persons encouraged the Department to grant the exemption. The remaining commentators were opposed to the granting of the exemption.

The interested persons who were opposed to the granting of the exemption expressed concerns about the following subjects: (1) The security of their retirement benefits under the Plans and the current funding status of the Plans; (2) the possibility that the acquisition of the Common Stock would be detrimental to the Plans because it would decrease the liquidity and diversification of the Plans' investment portfolio; (3) the perceived lack of

[1] Because the exemption provides relief from section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

independence on the part of the qualified appraiser, independent fiduciary and Plan trustees; (4) the alleged payment of fees to the independent fiduciary and the independent appraiser by the Master Trust; (5) the prudence of allowing the Plans to invest in the Common Stock, including questions concerning the past investment performance and the current value of the Common Stock; and (6) the belief that the Plans' interests were not adequately protected by the escrow account (the Escrow) established by Cargill to safeguard the Plans' investment in the Common Stock.

State Street (the Plans' independent fiduciary), D&P (the qualified appraiser) and the applicant all submitted separate responses to the relevant portions of these comments.

With regard to the security of retirement benefits under the Plans, the applicant and State Street explain that all of the Plans invested in the Master Trust are defined benefit plans, the benefits of which are pre-determined by a formula. It is represented, therefore, that any decreases in the value of an asset held in the Master Trust should not adversely affect the amount or timely payment of benefits under any of the Plans. The applicant responds to the concerns over the funding status of the Plans by pointing out that the Plans, in the aggregate, have been overfunded since 1988. The applicant represents that as of December 31, 1992, the Plans, in the aggregate, were overfunded by approximately $46 million.

With respect to concerns that investment in the Common Stock may jeopardize the diversification or liquidity of the Plans' investments, the applicant represents that Cargill has established mechanisms to assure that the Plans' investment portfolio will remain diversified in compliance with section 404 of the Act and that the investment in the Common Stock is prudent and does not jeopardize the Plans' liquidity. In this regard, the applicant states that the Plans' Investment Committee determines the types of investments that are appropriate to assure that the Master Trust investments are diversified and sufficiently liquid. Furthermore, State Street represents that in reaching its conclusion that the Common Stock would be a prudent investment for the Plans, it relied upon the determination of the Investment Committee that such an investment would be consistent with the overall investment policy of the Plans. State Street represents that, prior to each proposed acquisition of Common Stock, State Street will review the Master Trust's asset allocation schedule and the Investment Committee's determinations regarding the diversification and liquidity requirements of the Plans. If, following such review, State Street believes that the Investment Committee's conclusions are not reasonable, State Street will not allow the Master Trust to consummate the proposed acquisition of the Common Stock.

State Street also represents that the Put Option provides the Master Trust with a substantial degree of liquidity because it enables the independent fiduciary to require Cargill to purchase up to 100% of the Common Stock held by the Master Trust at any time. In addition, State Street notes that the valuation method used by D&P takes into account the fact that the Common Stock is not publicly traded. Finally, the conditions of the exemption prohibit the Plans from investing more than 10% of the fair market value of their assets in the Common Stock and provide that the exemption will expire 5 years from the date it is granted. After the expiration of the exemption, the applicant would have to apply for another exemption in order to allow the Master Trust to acquire additional shares of the Common Stock.

The applicant has responded to each of the comments questioning the independence of the parties selected to represent the interests of the Plans. The applicant explains that, contrary to the commentator's assertion, the trustees of the plan are not employees or former employees of Cargill. As stated in the Proposed Exemption, the Trustee is the Boston Safe Deposit and Trust Company. The applicant also explains, that, contrary to the commentator's assertion, D&P was selected as the qualified appraiser by State Street, not by Cargill. D&P represents that, other than serving as a financial advisor to State Street in matters relating to Cargill qualified plans, D&P has no ongoing business relationship with Cargill. Finally, in response to a comment questioning State Street's independence from Cargill, State Street represents that its existing business relationships with Cargill are clearly de minimis and will in no way undermine its ability to serve as the independent fiduciary. Cargill represents that it selected State Street to represent the interests of the Plans and the Master Trust because of State Street's expertise and extensive experience in serving as an independent fiduciary for ERISA retirement plans, including plans with investments in employer securities.

The applicant counters the allegation by one of the commentators that the holders of Common Stock would retain indirect control over the shares they sold to the Master Trust, by explaining that State Street will have complete management authority and control over any and all rights relating to the Common Stock.

In response to the commentator who objects to having the Master Trust pay the fees of State Street and D&P, the applicant states that Cargill, not the Master Trust, has agreed to pay those fees in order to avoid depleting the Masters Trust's assets.

In its response to the comments concerning the past investment performance and the current value of the Common Stock, D&P has explained why neither of the methods mentioned in the comments is an appropriate method for measuring the value of the Common Stock. According to D&P, comparing the performance of the Common Stock with the S&P 500 index is inappropriate because the Common Stock is not publicly traded and because such a comparison fails to recognize the value of the Put Option to the Plans. D&P explains that, unlike the securities making up the S&P 500, the Common Stock is an asset which has both upside investment potential and downside protection. D&P also asserts that a comparison of the dividend yield of the Common Stock versus other investments is inappropriate. D&P explains that dividend yield is typically calculated as dividends as a percentage of stock price. Although Cargill has paid dividends on its Common Stock, Cargill's historical dividend yield is not know because its Common Stock is not publicly traded and has not been regularly valued. State Street represents that, in making its investment decision, not just the current dividend, but also the expected total return of the Common Stock is considered. In this regard, D&P has determined that that Cargill's expected total long term compound annual return on investments (dividends plus capital appreciation) is in the range of 11 to 13 percent per annum.

As noted in the Proposed Exemption, since there is no public market for the Common Stock, D&P has relied primarily on an analysis of comparable, publicly traded companies in assessing the fair market value of the Common Stock. D&P represents that the comparable company method of valuation is generally accepted in the financial and investment community and is regularly used by bankers, investment bankers and other financial advisors in negotiating a transaction between a buyer and seller of a closely held company.

After consultation with D&P, State Street represents that it is satisfied that the Common Stock will be priced in a manner which is competitive with the public market prices of comparable public equity securities and that the expected total annual rate of return reflected in such pricing is in line with that of comparable public equity securities and the S&P 500 generally. In addition, State Street is satisfied that, when the incremental downside protection, and the resultant reduction in risk provided by the Put Option is taken into account, the Common Stock becomes favorably priced as compared to alternative investments. Significantly, State Steet notes that, because D&P will value the Common Stock without taking into consideration the Put Option granted to the Master Trust, the incremental value added by the Put Option will not be reflected in the purchase price paid by the Master Trust for the Common Stock.

With regard to complaints that the Escrow covers only 25% of the amount payable to the Master Trust upon exercise of the Put Option, State Street represents that, under the circumstances of this transaction, the Escrow provides adequate protection to the Master Trust. State Street asserts that the Escrow is adequate in view of (1) the size, financial strength and creditworthiness of Cargill relative to the amount of its potential obligations under the Put Option and (2) the independent fiduciary's right to exercise the Put Option at any time that it determines that such an exercise is necessary to protect the interests of the Plans.

Finally, the applicant represents that comments referring to an alleged offer by Cargill to sell stock to salaried employees in June, 1992 are incorrect. Cargill represents that no such offer ever took place. Cargill does note, however, that shares of the ESOP common stock are automatically allocated to eligible members of the Cargill, Incorporated Partnership Plan pursuant to the terms of that plan.

Seven of the interested persons who commented on the proposed exemption requested a public hearing. The Department has considered the concerns expressed by the commentators and the applicant's written responses addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments and the responses thereto, the Department has decided to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on October 29, 1993, at 58 FR 58194.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC this 3rd day of March 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–5248 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9295, et al.]

Proposed Exemptions; Lone Star Industries, Inc. Master Retirement Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lone Star Industries, Inc. Master Retirement Trust (the Master Trust) Located in Chicago, IL

[Application No. D–9295]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, effective September 10, 1990, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) the lease (the Lease) by the Master Trust of a certain parcel of real property (the Property) located in Rancho Cordova, California, to RMC Lonestar (RMC), a party in interest with respect to plans participating in the Master Trust (the Plans);

(b) the obligations and guarantees to the Master Trust by Lone Star Industries, Inc. (LSI), a party in interest with respect to the Plans, arising under the terms of the Lease on the Property, subsequent to the assignment by LSI of its leasehold interest in the Property to RMC; and

(c) the payment in the amount of $6,000,000 by LSI to the Master Trust in exchange for a release of LSI's obligation to perform under the terms of a certain yield guarantee agreement (the Guarantee Agreement) signed December 18, 1992, by LSI and the Master Trust; provided that the conditions set forth in section II below are met.[1]

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) the Bankruptcy Court for the Southern District of New York (the Bankruptcy Court) enters an order confirming the modified amended consolidated plan of reorganization filed by LSI and its affiliates, pursuant to Chapter 11 of the Bankruptcy Code;

(b) the obligations and guarantees of LSI to the Master Trust under the Lease are assumed by LSI and continue after the plan of reorganization is confirmed by the Bankruptcy Court;

(c) LSI pays the $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the **Federal Register**;

(d) Morrison, Karsten, Ramzy & Arthur, Inc. (MKRA), acting as independent qualified fiduciary on behalf of the Master Trust (the I/F), has negotiated, reviewed, and approved the transactions, and has determined that the transactions were feasible, in the interest of, and protective of the participants and beneficiaries of the Plans invested in the Master Trust, as of the effective date of this exemption;

(e) MKRA at the time of its appointment was unrelated to LSI, RMC, and any other parties involved in the Lease and will at all times remain independent of such parties;

(f) the provisions of the amendment to the Lease, as described in paragraph 11 below, executed in December 1992 (the First Amendment) become effective on the date that the grant of this exemption is published in the **Federal Register**;

(g) the terms of the Lease, as modified by the First Amendment, are at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiations with an unrelated third party under similar circumstances;

(h) from September 10, 1990, to June 1, 1993, the Northern Trust Company (the Trustee), an independent party with respect to LSI, RMC, and their affiliates, managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease;

(i) from June 1, 1993, MKRA managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease, and MKRA or its successors, will act as I/F with respect to the Property and will monitor and enforce the provisions of the Lease as long as such Property is leased to a party in interest;

(j) MKRA or its successors will monitor the fair market value of the Master Trust in order to insure that the fair market value of the Property will at no time exceed twenty percent (20%) of the total fair market value of the assets of the Master Trust;

(k) LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred with respect to the ownership of the Property by the Master Trust, and in the future, the Master Trust will incur no fees in connection with the transactions, other than fees paid to the trustee and to the investment manager; and

(l) LSI has filed Forms 5330 and paid the excise taxes with respect to the Lease of the Property for years 1987–1989 and will file Forms 5330 and pay the excise taxes for the period after December 31, 1989, and before the effective date of this exemption.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective as of September 10, 1990.[2]

Summary of Facts and Representations

1. The Plans are pension plans sponsored by LSI and its subsidiaries.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Department is not proposing exemptive relief for the prohibited transactions described herein prior to September 10, 1990. In this regard, it is represented that LSI on July 31, 1990, filed an excise tax return on Forms 5330 for plan years 1987, 1988, and 1989 and paid the excise taxes with respect to the Property for years 1987–1989. It is also represented that LSI will file Forms 5330 and pay the excise taxes for the period after December 31, 1989, and before the effective date of this proposed exemption.

LSI, a corporation whose stock is publicly traded on the New York Stock Exchange, engages in the mining, processing, and distributing of sand, gravel, and crushed stone. In addition, LSI is a major source of ready-mixed concrete and precast concrete products and is a leading importer of cement and clinker. During 1987, LSI had net sales of $760.8 million and a net profit of $57.2 million. Since December 31, 1987, LSI has been one of two general partners, each of whom own a fifty percent (50%) interest in RMC, a California general partnership. Prior to that time, LSI and a wholly owned subsidiary together owned a hundred percent (100%) interest in RMC. RMC, with principal offices in Pleasanton, California, also engages in mining operations.

2. On January 1, 1979, the Master Trust was established, to provide for the commingled investment of the assets of Plans sponsored by LSI and its affiliates. As of June 30, 1992, there were nine (9) such Plans participating in a Master Trust, covering approximately 5,917 individual participants. As of the same date, the total value of the assets held by the Master Trust was approximately $88,223,000 of which approximately $29 million was held in a segregated fund for the benefit of LSI's Salaried Employees Pension Plan. Of the remaining $59 million, approximately $55 million was held for the benefit of the pension plans for hourly employees of LSI, and an additional $4 million was held for the benefit of the pension plans for salaried employees of LSI. It is represented that, as of June 30, 1992, a value for the Property of approximately $8,340,000 was included in and constituted approximately 14.1% of the $59 million dollar figure. Until June 1, 1993, when MKRA was appointed as Property manager, the Northern Trust Company, as the Trustee of the Master Trust, had discretionary authority over the management of the Property.

3. The Property consists of approximately 800 acres in Rancho Cordova, California located twelve (12) miles east of downtown Sacramento, California, and adjacent to Mather Air Force Base. Most of the Property is unimproved land currently being mined by RMC for sand, gravel, stone, clay, or other materials, exclusive of gold or gold tailings (the Aggregates), pursuant to the Lease between the Master Trust and RMC. It is anticipated that approximately 100 acres of the Property containing the plant site will not be mined.

4. The Master Trust acquired the Property from LSI on December 20, 1983, for a purchase price of $5,706,016, and simultaneously leased the Property back to LSI. It is represented that the Property was part of a larger tract of real estate (the Tract) which under California law could not then be subdivided or separately conveyed to the Master Trust. Accordingly, the Master Trust acquired from LSI an undivided 62.8% interest, while LSI, respectively, retained 37.2% interest in the Tract.[3] Subsequently, during 1984, applicable provisions of California law necessary to subdivide the Tract were satisfied, and the Master Trust became the sole owner and lessor of the Property.

It is represented that the Property was "qualifying employer real property," as defined in section 407(d)(4) of the Act, when acquired by the Master Trust in 1983, because the Master Trust held other parcels of real estate which were then leased to LSI or its affiliates and which qualified as "employer real property," as defined in section 407(d)(2) of the Act.[4] The applicant asserts that the sale and leaseback of the Property between the Master Trust and LSI until 1986 were exempt from the prohibited transaction restrictions by reason of section 408(e) of the Act.[5]

5. By 1986, except for the Property, the Trustee had disposed of all other parcels of real estate in the Master Trust which were leased to LSI or its affiliates. Accordingly, the Property became the only parcel of "employer real property," as defined by section 407(d)(2) of the Act, which remained in the Master Trust. As the sole remaining parcel of "employer real property" held in the Master Trust, the applicant represents that the Property may have, at that time, no longer constituted "qualifying employer real property," because the "substantial number" requirement, as set forth in section 407(d)(4)(A) of the Act, may no longer have been satisfied. As a result, the exemption for the Lease provided by section 408(e) may no longer have been available.

6. As stated in paragraph 4 above, LSI entered into the Lease of the Property with the Master Trust on December 20, 1983. On January 1, 1987, the Trustee of the Master Trust approved the assignment by LSI of the Lease of the Property to RMC, and the Master Trust began to Lease the Property to RMC rather than LSI. Notwithstanding the assignment of the leasehold interest of LSI to RMC, it is represented that LSI was not released from its obligations under the Lease, nor were the terms of the Lease between LSI and the Master Trust altered by the assignment of the Lease.

The Lease provides that its term shall end on December 31, 2003, unless sooner terminated. The Trustee has the right to terminate the Lease on certain portions of the Property prior to December 31, 2003, effective on specified dates, provided RMC is given at least six months prior written notice of such effective termination date. Under certain circumstances, the Lease also gives the Trustee the right to terminate such Lease with respect to any portion of the Property which is not continuously mined or quarried during specified periods.

It is represented the Trustee recognized the need to maintain a fair market rental throughout the duration of the Lease. Accordingly, the rental rate under the terms of the Lease are based on royalties to be paid to the Master Trust to compensate primarily for the removal of the Aggregates from the Property and the subsequent sale of such Aggregates. In this regard, under the terms of the Lease, the royalty on the Aggregates was set in 1983 at thirty cents ($.30) per ton; provided that in any lease year the lessee pays no less than seven percent (7%) of the net

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[3] The Department is expressing no opinion as to whether the acquisition and holding by the Master Trust of a partial interest in the Tract in which LSI owned the remaining interest violated section 406 of the Act, nor is the Department offering relief for such transaction. Further, the Department is not proposing relief for any violation of section 404 of the Act which may have arisen as a result of any of the transactions described herein.

[4] As set forth in relevant part below, section 407(d)(2) of the Act defines the term, "employer real property," as real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. Section 407(d)(4) of the Act defines the term, "qualifying employer real property," as parcels of "employer real property"—(A) if a substantial number of the parcels are dispersed geographically; (B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; (C) even if all of such property is leased to one lessee (which may be an employer, or an affiliate of an employer); (D) if the acquisition and retention of such property comply with the provisions of this part (other than section 404(a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section). The Department is expressing no opinion, herein, whether the Property at any time constituted "qualifying employer real property" within the meaning of section 407(d)(4) of the Act.

[5] Section 408(e) of the Act provides, in pertinent part, that sections 406 and 407 shall not apply to the acquisition or lease by a plan of "qualifying employer real property," as defined in section 407(d)(4) of the Act, if specified conditions are satisfied. Among these conditions are that such acquisition or lease is for adequate consideration, that no commission is charged with respect thereto, and, in the case of an acquisition or lease of "qualifying employer real property" by a plan which is not an "eligible individual account plan," as defined in section 407(d)(3) of the Act, that the lease or acquisition is not prohibited by section 407(a) of the Act. The Department is expressing no opinion herein as to whether the sale and leaseback of the Property satisfied the conditions, as set forth under section 408(e) of the Act.

realized income from the sale of such Aggregates. For each year during the term of the Lease, commencing in the second year, the Lease also provides that the royalty on Aggregates is subject to a four percent (4%) yearly increase, compounded annually. For example, in the second year of the Lease, the royalty on the Aggregates increased from the initial 30 cents per ton to 31.2 cents per ton of Aggregates. In addition, the Lease provides that for each ton of gold or gold tailings extracted from the Property the lessee shall pay a royalty equal to 33⅓% of the net realized income from the sale of such gold or gold tailings. It is represented that all the terms of the Lease are triple net and provide for the lessee to pay for all taxes, maintenance, and insurance.

Notwithstanding the level of production or sale of Aggregates or gold by the lessee, the Lease also provides for certain minimum guaranteed annual payments of royalties by the lessee starting in the sixth year (1989) and ending in the fifteenth year (1998) of the Lease. In this regard, the Lease provides that these minimum guaranteed royalties increase by $25,000 annually through 1998. For example, the terms of the Lease established the minimum guaranteed royalty amount at $375,000 for 1989 and at $600,000 in 1998, the fifteenth year of the Lease. It is represented that the royalty payments actually made by RMC have exceeded the minimum guaranteed royalty amounts for the years 1989 through 1992. As indicated in paragraph 6 above, despite the assignment of the leasehold on the Property to RMC, LSI at all times remains primarily liable to the Master Trust for the continuing obligations and guarantees, including the minimum guaranteed royalties specified under the Lease.

As originally contemplated by LSI and the Master Trust, although the Lease term extended until 2003, the guarantee of minimum annual royalty payments by LSI was not to extend beyond 1998. Such amounts are not guaranteed by LSI, because it was originally anticipated that the reserves of the Aggregates on the Property would be exhausted by 1998. Nevertheless, it is represented that provision was made to continue the Lease beyond 1998 in the event there was sufficient production or sale of the Aggregates from the Property during the five-year period from 1999 to 2003.

7. In an attempt to obtain a prohibited transaction exemption from the Department for the ongoing Lease, MKRA, a registered investment advisor under the Investment Advisors Act of 1940, was appointed by LSI in June 1990 to serve as the I/F to the Master Trust with respect to the Lease. MKRA was appointed to determine whether the continued holding of the Property by the Master Trust and the leasing of the Property to RMC was in the best interests of the Plans. In doing so, MKRA was to evaluate the Lease and to determine whether the terms of the Lease provided a fair market rental return to the Master Trust. In this regard, MKRA was authorized to engage an independent appraiser, as needed. It is represented that, if MKRA were to conclude that the continuation of the Lease was not in the best interests of the participants of the Plans, MKRA was to notify and consult with LSI with respect to such findings and to negotiate independently any changes to the terms and conditions of the Lease, as would be necessary for MKRA to determine that such continued holding of the Property and leasing of such Property to RMC would be in the best interests of the participants of the Plans.

On June 1, 1993, MKRA assumed further responsibilities in addition to its duties as I/F. In this regard, LSI appointed MKRA to serve as investment manager for the Property on behalf of the Master Trust. MKRA's duties in this regard include monitoring and enforcing the terms of the Lease. These duties had previously been performed by the Trustee. MKRA maintains offices located in Santa Rosa, California and specializes in the management and disposition of distressed and under performing real estate assets for tax-exempt and non-exempt institutional clients. MKRA is independent in that it is unrelated to any of the parties involved in the Lease.

MKRA's qualifications include managing, as of 1990, approximately $40 million in assets involving a variety of property types located throughout the West and the Southwest. Further, it is represented that MKRA is familiar with land value trends in the Sacramento area and has an excellent network of contacts there for appraisal, geological, and real estate transaction information. In this regard, with respect to the highly specialized operations on the Property, MKRA interviewed and consulted with independent third parties active in the sand and gravel industry in the Sacramento or San Francisco Bay areas.

8. In a report dated September 10, 1990, MKRA stated that the Lease needed to be modified in several respects. MKRA determined, among other modifications, that the Master Trust should receive a "put option" (the Put Option) which would require LSI to purchase the Property from the Master Trust at the end of the Lease at a cash price that, when considered with all royalties and earlier disposition proceeds, if any, received by the Master Trust over the life of the investment, would generate a twelve percent (12%) internal rate of return on the Property for the Master Trust. Provided this modification and others were made, MKRA concluded that the continued holding of the Property by the Master Trust and the leasing to RMC would be in the best interests of the Plans.

9. MKRA's conclusion was based, in part, on its review, among other materials, of the annual reports and related financial information of LSI and RMC and the presumption that LSI and RMC were and would remain sufficiently creditworthy to honor the recommended Put Option and thereby assure the Master Trust a 12% market yield for the Property as leased. However, on December 10, 1990, while the application for exemption was under consideration by the Department, LSI filed a petition to reorganize under Chapter 11 of the United States Bankruptcy Code.

As a result of LSI's petition in Bankruptcy Court, MKRA raised concerns as to: (1) LSI's ability to perform under the Put Option; and (2) the viability of such Put Option, without modification, to serve as a reliable yield guarantee device. In response, LSI requested that MKRA further determine whether the continuation of the Lease to RMC would remain in the best interests of participants and beneficiaries of the Plans, given the fact that LSI had filed a petition for reorganization in Bankruptcy Court.

10. In order to make this analysis, MKRA engaged in an extensive review and analysis of the Property, including obtaining an additional evaluation of the soil conditions on the Property. In this regard, MKRA hired Jo Crosby and Associates (Crosby), a geotechnical consultant located in Mountain View, California. Crosby's report, issued in December 1992, updated the observations and conclusions of its two prior reports, dated February 22, 1991, and September 18, 1991, which had addressed the ability of the Property to support future commercial development upon completion of the mining operations. In addition, Crosby reviewed the status of the mining operation, and RMC's proposed plans for completion of the quarrying, and assessed the validity and costs of previously recommended soil remediation measures.

In its December 1992 report, Crosby stated that remediation of 525 acres of quarry floor would cost $7,000 per acre, plus up to $1,500 per acre for

geotechnical engineering, and supervision for a total cost of from $3,150,000 to $4,462,500. With respect to approximately 180 acres of the Property to be quarried in the future, Crosby estimated remediation would cost $5,200 per acre, plus $1,000 per acre for engineering and supervision, if certain recommendations were followed.

While remediation of the Property to enable commercial development at the termination of the Lease would have a high cost, paying this price would be optional to the then Property owner. There are no regulatory requirements to engage in so extensive a remediation. In fact, with regard to soil remediation of the Property upon completion of the mining, it is represented that the State of California does not have any requirements. However, the County of Sacramento requires upon completion of mining: (1) The rough grading of slopes—no greater than two feet horizontal to one foot vertical, (2) the seeding of such slopes within one year of the completion of mining, (3) the encouragement of natural growth in reclaimed areas, and (4) the maintenance of reclaimed areas free of derelict machinery and materials. In this regard, the Lease requires the lessee to reclaim portions of the Property that it has mined in accordance with the requirements of the law, and those of the Property Use Permit dated May 9, 1975, as revised on August 8, 1983. The lessee is also obliged to remove all improvements, fixtures, and equipment from the Property at the end of the Lease term. It is represented that RMC has complied with these reclamation requirements in all areas where mining has been completed.

11. After reviewing the information described in the paragraph above, MKRA concluded that continuing the Lease would be in the best interests of the participants of the Plans provided the Lease was amended, and LSI agreed to certain modifications in the guaranteed rate of return. Accordingly, LSI, the Trustee, and MKRA signed, in December 1991, a letter of understanding, and subsequently, on December 18, 1992, signed the final Guarantee Agreement, first mentioned in paragraph (b) of section I above. Though the Guarantee Agreement was executed by LSI, MKRA, and the Trustee, the agreement would only become effective upon approval by the Bankruptcy Court and was also conditioned on the Department granting LSI's application for exemption from the prohibited transaction provisions of the Act.

The Guarantee Agreement provided for a guarantee by LSI to the Master Trust of a fourteen percent (14%) annual internal rate[6] of return on $5,706,000, the purchase price paid by the Master Trust for the Property in 1983. It is represented that MKRA increased the internal rate of return to fourteen percent (14%) from the twelve percent (12%) it had previously recommended, due to changes in market conditions for institutional investment in real estate. The guaranteed return was to be provided either through a "put" of the Property to LSI or through the payment by LSI of a yield guarantee amount, subject to a $10,000,000 limit on LSI's liability. In order to secure the guaranteed return, LSI, under the terms of the Guarantee Agreement, was required to: (1) Post an irrevocable letter of credit in a form satisfactory to the Master Trust, or (2) deposit in an escrow account either cash (initially in the amount of approximately $6,700,000 but subject to annual adjustments) or liquid securities meeting pre-specified requirements in terms of investment grade and quality.

Further, the Guarantee Agreement required LSI to contribute, beginning in 1995, or if earlier, upon completion of payments to creditors pursuant to a confirmed plan of reorganization, up to $200,000 per year, subject to certain limiting conditions, which would be used to prepare and implement a program of soil remediation on the Property. Under the terms of the Guarantee Agreement, LSI had the right to purchase the Property at the higher of its fair market value or an amount necessary to provide the Master Trust with its 14% internal rate of return. If the purchase were to occur prior to December 31, 1998, LSI was required to pay an "early purchase premium" of up to $1 million to exercise this right. However, the Master Trust could offer the Property for sale to LSI without the "early purchase premium" at the higher of the fair market value of the Property or an amount necessary to provide the Master Trust with the 14% internal rate of return.

In connection with the Guarantee Agreement, LSI also agreed to the First Amendment to the Lease on the Property. As indicated in paragraph (f) of section II above, the First Amendment to the Lease will become effective on the date the grant of this proposed exemption is published in the **Federal Register**. The First Amendment will provide: (1) For notice to the Master Trust at least twelve months in advance of the monthly due date for non-guaranteed minimum annual royalties of RMC's intent not to pay such royalties to the Master Trust,[7] (2) for a limitation on the increase in the number of acres on the Property used as settlement ponds, and (3) for access to the Property by the Master Trust for soil remediation activities. In addition, the First Amendment deleted section 25 of the Lease which had provided LSI with a "right of first opportunity" to purchase the Property should the Master Trust determine to sell to third parties and corrected a typographical error in the language under section 23 of the Lease, with respect to the remedies available to the Master Trust in the event RMC, as lessee, attempted to occupy the Property or any part of the Property after termination of either the Lease or the lessee's right to possession of the Property.

12. Subsequently, LSI determined that, in lieu of its performance under the Guarantee Agreement, it would prefer to make a cash payment to the Master Trust. LSI believes such payment will increase the level of funding for the Plans and will assist in negotiations occurring in bankruptcy with the Pension Benefit Guaranty Corporation (the PBGC), respecting, among other things, potential underfunding of the Plans, and PBGC's contingent claims should the Plans be terminated with insufficient assets to satisfy benefit liabilities.

Accordingly, after discussions with MKRA and the Trustee of the Master Trust, in a letter dated July 9, 1993, LSI offered to pay the Master Trust $6,000,000 (the Proposed Offer), if the Master Trust would give up certain rights, as set forth in the Guarantee Agreement. In this regard, acceptance of the Proposed Offer is contingent upon: (a) the $6,000,000 payment being approved by the Bankruptcy Court; (b) the Department issuing a final administrative exemption; (c) the Trustee withdrawing all claims currently pending before the Bankruptcy Court filed on behalf of the Master Trust relating to or arising from the ownership of the Property by the Master Trust and the leasing of the

[6] It is represented that internal rate of return is defined as the rate of return at which the discounted future cash flows, including the reversion, equal the initial cash outlay (in this instance the initial purchase price of $5,706,016). The internal rate of return is also defined as the discount rate at which the net present value of a series of cash flows, including the initial investment outflow (investment amount) and the reversion, is zero.

[7] In the event such minimum non-guaranteed annual royalties are not paid, the Master Trust, as lessor, may at its election, upon not less than ten days written notice to RMC, the lessee, terminate the Lease and all of RMC's rights thereunder.

Property;[8] (d) the Master Trust providing LSI, RMC, their affiliates, officers, directors, and employees, and all fiduciaries of the Master Trust with a complete release of any claims against such parties based on the Lease of the Property to LSI or to RMC which may have been deemed to be a prohibited transaction under section 406 of the Act or section 4975 of the Code or which may involve a breach of fiduciary duty under section 404 of the Act;[9] and (e) the Master Trust releasing LSI from all obligations under the terms of the Guarantee Agreement. Notwithstanding the release of LSI from its obligations under the Guarantee Agreement, it is represented that the First Amendment to the Lease, which provides for the notice to the Master Trust of non-payment of certain royalties, the limitation on settlement ponds, access by the Master Trust for remediation activities on the Property, the deletion of the "right of first opportunity" for LSI to purchase the Property, and correction of certain typographical errors in the Lease, as described in paragraph 11 above, will become effective on the date this proposed exemption is granted.

13. MKRA has determined that the acceptance by the Master Trust of the Proposed Offer is feasible, in the interest of and protective of the participants and beneficiaries of the Plans, provided the Bankruptcy Court approves the $6 million dollar payment and provided that the obligations of LSI, as set forth under the Lease, will continue unaffected and will become obligations of LSI upon confirmation of a plan of reorganization. In this regard, MKRA has opined that the $6,000,000 cash payment, if received by April 30, 1994, will produce in combination with the Lease an overall transaction which is (i) superior to that produced by the Guarantee Agreement, (ii) is feasible, in the best interest of, and protective of the beneficiaries of the Master Trust, and (iii) is equal or superior to transactions which could be negotiated with unrelated third parties.

MKRA offers the following reasons for this opinion regarding the Proposed Offer:

(a) MKRA asserts that the Proposed Offer completely eliminates the risk of capital recovery and achievement of a current fair market yield. MKRA calculates that the Proposed Offer will generate an internal rate of return of 11.02%, assuming the $6,000,000 cash payment is received on or before April 30, 1994. MKRA explains that this means that from commencement of the Lease through 1993, the Master Trust will have received total consideration in an amount equal to its original investment of $5,706,000 plus an annual yield on that investment of 11.02% for each year during the term of the Lease through April 30, 1994—even if the Master Trust does not receive royalty payments or any reversionary amount for the Property subsequent to receipt of the $6 million dollar payment. MKRA concludes that, as the Proposed Offer eliminates the risk of recovery of capital, an internal rate of return of 11.02% represents a yield equal or superior to the current market yield required by pension funds. In the opinion of MKRA, such current market yield ranges from nine to ten percent (9% to 10%) on investments, such as single tenant properties leased for periods of ten (10) or more years on an absolute net basis to AAA-rated tenants.

(b) MKRA asserts that with the Proposed Offer there is greater opportunity for enhanced yield in excess of the fourteen percent (14%) rate of return provided for under the Guarantee Agreement. In analyzing the Guarantee Agreement, MKRA calculated that in order to generate an annual fourteen percent (14%) rate of return, the Property would have to have a reversionary value of $14,656,000 (only $10 million of which under the Guarantee Agreement would have been guaranteed by LSI) upon the expiration of the Lease in 1998. In analyzing the Proposed Offer, MKRA asserts that if the $6,000,000 cash payment were to be made by April 30, 1994, the reversionary value of Property in 1998 would only need to be $3,475,000 to generate a fourteen percent (14%) internal rate of return for the Master Trust. MKRA states in a letter dated January 27, 1994, that as of December 31, 1993, the estimated fair market value of the fee simple estate interest in the Property is $5,750,000. Because the current fair market value of the Property, as determined by MKRA, exceeds the $3,475,000 value which MKRA calculates would be needed in 1998 to generate a fourteen percent (14%) internal rate of return, MKRA concludes that the Proposed Offer produces an enhanced opportunity for the investment in the Property by the Master Trust to produce an internal rate of return in excess of fourteen percent (14%).

(c) MKRA asserts that under the terms of the Proposed Offer, a yield in excess of 11.02% is assured to the Master Trust. In this regard, MKRA explains that every dollar of reversionary value, and future royalties paid for the Property in excess of zero will produce a yield in excess of the 11.02% rate of return generated by royalties received to date by the Master Trust, plus the $6,000,000 cash payment. Notwithstanding the soils remediation issues that exist for the Property, MKRA expresses certainty that the Property will have some value upon expiration of the Lease. In this regard, MKRA explains that the acreage representing the plant site will not be mined, and accordingly, the value of that portion will not be affected. According to MKRA, the 100 acres on the Property representing the plant site have a current fair market value of approximately $1,200,000, as of January 27, 1994. Thus, MKRA states that, even if all of the areas which are mined and require remediation prior to future development prove to be valueless, the Property would still have a value of approximately $1,200,000, subject to future market conditions, when the Lease terminates. Assuming a $1,200,000 reversionary value for the

[8] It is represented that on October 15, 1991, the Trustee, on behalf of the Master Trust, filed a proof of claim in the Bankruptcy Court against LSI. The proof of claim alleges contingent liability of LSI to the Master Trust as a result of the continuation of the Lease and as a result of possible violations of the prohibited transaction restrictions of the Code and the Act. In addition, it is represented that the Trustee and the PBGC each filed contingent claims to cover the possibility of funding deficiencies or unfunded pension liabilities in the pension plans sponsored by LSI. In this regard, on October 15, 1991, the PBGC filed three separate proofs of claim against LSI. The PBGC's claims consist of: (1) a claim for $196,129 based on the alleged failure of the debtors to pay annual premiums; (2) a claim for $2,318,288 based upon the alleged failure of the debtors to meet minimum funding requirements in the event of the termination of certain plans; and (3) a contingent claim for $61,066,255 based on the potential liability should such plans be terminated with insufficient assets to satisfy all benefit liabilities.

[9] The Department notes that the decisions affecting the Master Trust made by the fiduciaries, including the Trustee and MKRA, are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. Section 404 of the Act requires that a fiduciary of a plan must act prudently, solely in the interest of the participants and beneficiaries of such plan, and for the exclusive purpose of providing benefits to such participants and beneficiaries. In this regard, the Department notes that in order to act prudently in determining to release the above-described claims and to accept the Proposed Offer on behalf of the Master Trust, the fiduciaries must consider, among other factors, the consequences of that decision in relation to those of alternative courses of action.

The Department is expressing no opinion, herein, whether any provision of part 4, subtitle B, title I of the Act will be violated by the decision of the Master Trust to provide a complete release of all claims against LSI, RMC, their affiliates, officers, directors, and employees, and any other fiduciaries of the Master Trust. In this regard, the Department notes that no relief from sections 406 and 407 of the Act is provided, herein, for transactions other than those specifically described in section I(a)–(c) of this proposed exemption. The Department further notes that the Plans' release of claims in connection with the Lease transaction does not affect the Department's ability to take any action that it deems appropriate.

Property and receipt of the $6,000,000 cash payment by April 30, 1994, MKRA calculates that upon expiration of the Lease the Property will have generated a 12.18% internal rate of return. In the opinion of MKRA, such a rate of return is well in excess of market yield requirements for comparable investments.

14. In summary, the applicant represents that the subject transactions satisfy the criteria for exemption, as set forth in section 408(a) of the Act because:

(a) LSI will pay $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the **Federal Register**;

(b) MKRA, acting as I/F on behalf of the Master Trust, has negotiated, reviewed, and approved the transactions, and has determined that the transactions were feasible, in the interest of, and protective of the participants and beneficiaries of the Plan invested in the Master Trust, as of the effective date of this exemption;

(c) the terms of the Lease, as modified by the First Amendment, are represented to be at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiation with an unrelated third party under similar circumstances;

(d) MKRA, as I/F on behalf of the Master Trust, has managed the Property, and MKRA or its successors, will act as independent investment manager of the Property and will enforce the provisions of the Lease; for as long as such Property is leased to a party in interest;

(f) MKRA or its successors will monitor the fair market value of the Master Trust in order to insure that the fair market value of the Property will at no time exceed twenty percent (20%) of the total fair market value of the assets of the Master Trust; and

(g) LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred with respect to the ownership of the Property by the Master Trust, and in the future, the Master Trust will incur no fees in connection with the transactions, other than fees paid to the trustee and to the investment manager.

For Further Information Contact: Angelena C. Le Blanc, of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Wally L. Morgan IRA (the IRA) Located in Dallas, TX

[Application No. D–9581]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of three 50% undivided interests (the Interests) in each of three parcels of unimproved land (the Parcels) by the IRA to Wally L. Morgan (Mr. Morgan), a disqualified person with respect to the IRA; provided that the following conditions are satisfied: [10]

(a) The proposed sale will be a one-time cash transaction;

(b) The IRA in this transaction will receive the aggregate current fair market value of the three 50% Interests as established at the time of the sale by an independent qualified appraiser;

(c) The IRA will pay no expenses associated with the sale; and (d) Mr. Morgan as the sponsor of the IRA will be the only individual affected by the transaction.

Summary of Facts and Representations

1. The IRA is an individual retirement account which was established on October 12, 1987. Mr. Morgan is the sponsor of the IRA. As of March 31, 1993, the IRA had net assets valued at $627,414. The principal assets of the IRA consisted of those obtained as a result of rollover distributions from the Information Retrieval Method Inc. Employees Profit Sharing Plan (the Plan), which was terminated in October, 1987. It is represented that no additional contributions have been made to the IRA.

2. Part of the distributions from the Plan rolled over into the IRA consisted of the three 50% undivided Interests in the three Parcels of unimproved land. Parcel I contains 1.2436 acres and is located at the southeast corner of Denton Drive and Carlisle Street in Denton County, Texas. Parcel II contains .959 acres and is located at 483 Bennett Lane, and Parcel III contains .923 acres and is located at 500 Bennett Lane, Denton County, Texas. Parcel II is located on the north side of Bennett Lane and Parcel III is located on the south side of Bennett Lane. The remaining 50% undivided interests in the Parcels are held as an asset in Jack Brandenburger's IRA. Mr. Brandenburger has no relationship to Mr. Morgan or to Mr. Morgan's IRA.

3. The Parcels were originally acquired from unrelated parties by the Plan in three separate cash transactions. Specifically, Parcel I was acquired on August 15, 1984, for $95,059.83. Parcel II was acquired on January 20, 1984, for $54,450. Parcel III was acquired on December 16, 1983, for $69,397.14. It is represented that the Parcels were acquired as vacant land and remain undeveloped. Upon the termination of the Plan in October 1987, the aggregate fair market value of the Parcels was determined by three independent real estate brokers at $284,550, and, therefore, the three 50% Interests had a value of $142,275.

4. The Parcels were appraised on September 28, 1993 (the Appraisal), by Ted Brooks, MAI, an independent and qualified appraiser with Noyd & O'Connell, Incorporated (Mr. Brooks). In establishing the fair market value of the Parcels, Mr. Brooks relied on the direct sales comparison approach to value, and determined that the fair market value of Parcel I was $22,000, for Parcel II the fair market value was $21,000, and for Parcel III the fair market value was $20,000. Therefore, the aggregate fair market value for the Parcels as of September 28, 1993, was $63,000, and, as such, the three 50% Interests had an aggregate fair market value of $31,500. Mr. Morgan represents that the Parcels are not encumbered by any debt, and that no other disqualified person or related party owns or has owned land adjacent to the Parcels. Mr. Morgan further maintains that the Parcels were never used by any disqualified person.

5. It is represented that the proposed transaction is in the best interest and protective of the IRA because the transaction will enable the IRA to divest itself of a non-income producing asset that has depreciated in value since original acquisition and will provide the IRA with liquidity. The transaction is protective of the IRA because as a result of the sale the IRA will receive the current fair market value of the three 50% Interests established at the time of the sale by an independent qualified appraiser.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

[10] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(b) the IRA in this transaction will receive the current fair market value of the three 50% Interests established at the time of the sale by an independent qualified appraiser;

(c) the IRA will pay no expenses associated with the sale;

(d) the sale will provide the IRA with liquidity; and

(e) Mr. Morgan as the sponsor of the IRA will be the only individual affected by the transaction.

Notice to Interested Persons

Because Mr. Morgan is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Potter Law Firm Retirement Plan (the Plan) Located in Tyler, TX

[Application No. D–9617]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of a certain one-half undivided interest in real property (the Property) by the Plan to Potter, Minton, Roberts, Davis & Jones, P.C., (the Employer) a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the proposed transaction; (3) the Plan receives as consideration the greater of either the fair market value of the property as determined by an independent appraiser on the date of the Sale, or receives all the funds expended by the Plan in acquiring and maintaining the Property; and (4) the trustee of the Plan has determined that the proposed Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, designated as a profit sharing plan, with 29 participants and beneficiaries and total assets of approximately $3,169,000, as of September 30, 1993. The Employer and NationsBank of Texas, N.A., located in Dallas, Texas, as trustee (the Trustee), are co-fiduciaries of the Plan.

The Employer, which sponsors the Plan, is a Texas professional corporation engaged in the practice of law and is located in Tyler, Texas.

2. The Property consists of an undivided one-half interest in 86.751 acres of unimproved land, subject to no zoning restrictions, located in the E. Stephensen Survey, A–940, Smith County, Texas. It is described as 40 percent wooded with the remainder open with a scattering of large trees. There is 512 feet of frontage on County Road 383. A year-round creek borders on the back of the Property. Utilities are available in the area of the location of the Property.

The Property was acquired by the Plan for the consideration of $67,232.02 on February 6, 1985, from a Mr. and Mrs. Jack N. Zorn, who are unrelated persons with respect to the Plan and the Employer. The Trustee represents that the Plan incurred expenses totalling $9,185.56 in maintaining the Property from the date of purchase in 1985 through 1993, consisting of property taxes, appraisal fees, mowing charges, and other expenditures. No income has been received by the Plan from its ownership of the Property.[11]

The Trustee has had the Property appraised each year. The last appraisal was on January 25, 1994, by James E. Justice, MAI of Real Estate Appraisal Services, Inc., Tyler, Texas, who determined that the fair market value of the entire Property was $100,000. One year earlier, Mr. Justice, in an appraisal of the Property on January 15, 1993, determined that the fair market value of the entire Property was $110,000.

3. The applicant represents that at the time the Plan purchased its interest in the Property in 1985 real estate prices had been increasing, and the fiduciaries of the Plan expected that after a few years the property could be sold for a profit. However, the applicant represents that the real estate market declined in activity and values during the years following the acquisition of the Property by the Plan, resulting in the Plan also incurring expenses with no correlating income.

The owner of the other one-half undivided interest in the Property, Mr. Herbert Buie, as trustee of an unrelated trust, has stated that there is no objection by him to the Plan selling its interest in the Property to the Employer. Furthermore, Mr. Buie states that he has no interest in purchasing the Plan's interest in the Property and knows of no one that desires to purchase the Plan's interest.

Three local realtors, PreJean Real Estate, Burns & Noble, and Simmons, all of Tyler, Texas, stated in separate documents that there is no market for the one-half undivided interest in the Property owned by the Plan, and further, that there is difficulty in obtaining financing for the purchase of a fractional interest in unimproved land.

4. The Employer, as the applicant, proposes to purchase the Property from the Plan for either the higher of the fair market value of the Property, or for the sum of all the expenditures the Plan incurred in acquiring and maintaining the Property. The applicant and the Trustee represent that the Property is an illiquid investment for the Plan, which is depreciating in value and incurring expenses while producing no income for the Plan. Further, the applicant and the Trustee find that the investment prevents the Plan from utilizing a computerized daily accounting system which would allow each participant to select an individual asset mix.[12]

The applicant represents that numerous inquiries have been made with the co-owner and the local realtors regarding the marketability of the Property. The applicant has concluded that there is no purchaser in the forseeable future of the Plan's one-half interest in the Property. In addition, the Trustee represents that the transaction is appropriate and in the best interest of the Plan and its participants and beneficiaries.

The applicant represents that the Plan will not incur any expenses from the proposed Sale of the Property or from obtaining an exemption from the prohibited transaction provisions of the Act.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any

[11] The Department notes that the decisions to acquire and hold the Property are governed by fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the acquisition and holding of the Property.

[12] In this proposed exemption the Department expresses no opinion as to whether the Plan will satisfy the requirements of section 404(c) of the Act.

expenses incidental to the Sale; (c) the Plan will receive as consideration for the Sale the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or will receive all of the funds expended by the Plan in obtaining and maintaining the Property; (d) the Sale will permit the Plan to reinvest illiquid assets into income producing, liquid assets; and (e) the Plan will avoid the expenses and risks involved in retaining and developing the Property.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 3rd day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–5249 Filed 3–7–94; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–016]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: March 21–22, 1994, 8:30 a.m. to 5:30 p.m.; and March 23, 1994, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 300 E Street, SW., 5th Floor Conference Room, MIC–5, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence J. Caroff, Code SZF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0351.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Overview of Office of Space Science Status.
—Office of Life and Microgravity Sciences and Applications Outlook.
—Office of Mission to Planet Earth Outlook.
—Office of Management and Budget Outlook.
—Strategic Planning.
—Divisional Reports.
—Subcommittee Reports.
—Discussion and Writing Groups.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–5227 Filed 3–7–94; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01786; License No. 19–00296–10]

National Institutes of Health; Receipt of Petition Under 10 CFR 2.206

Notice is hereby given that by Petition dated December 2, 1993, Arlene S. Allen, on behalf of the North Bethesda Congress of Citizens Associations, Inc. (North Bethesda Congress or Petitioner) requested that the Nuclear Regulatory Commission take action with regard to the National Institutes of Health (NIH). Petitioner requests that: (1) The NRC suspend License Condition 24, which permits NIH to dispose of licensed materials by incineration, pending resolution of two regulatory issues, specifically completion of an environmental report or environmental assessment regarding incineration of radioactive waste at the NIH Bethesda campus and monitoring to ensure that radioactive effluent releases are within regulatory limits; (2) the NRC provide Petitioner with a copy of the NRC environmental assessments and/or safety evaluations which provide the bases for License Condition 21, which excepts NIH from the sanitary sewer system limits of 10 CFR 20.303(d), and for License Condition 28, which approves the low level radioactive waste storage facility at NIH's Poolesville campus; and (3) the NRC provide Petitioner with a copy of future correspondence between the NRC and NIH regarding the Petition.

Petitioner asserts as bases for these requests that: NIH has not completed or submitted to the NRC an environmental report regarding radiolcgical releases from incinerators at the Bethesda campus, and the NRC has not issued an environmental assessment or impact statement regarding NIH radiological emissions, as required by the National

Environmental Policy Act of 1969 and 10 CFR 51.21, 51.45 and 51.60(b); licensing the disposal of radioactive waste by incineration is a federal action subject to the NEPA process; because releases from the NIH incinerators are capable of exceeding regulatory limits and will increase over the next few years, and because total radiological emissions from NIH are sufficient to warrant environmental analysis, the continued burning of radioactive waste by NIH without an environmental report and environmental assessment are in noncompliance with NRC environmental regulations; although NRC CITED NIH for its failure to adequately monitor radioactive effluents and NIH committed to install instrumentation for continuous monitoring as a corrective action for having exceeded its yearly radioactive effluent release limit to unrestricted areas for 1987, no continuous monitoring for radioactive airborne effluents exists for the NIH incinerator stacks, it is not clear that the box monitoring system installed by NIH adequately detects radioactive waste, and small amounts of iodine continue to be identified in the incinerator ash, indicating that medical waste still gets into the incinerators; and it is unclear that NIH methods to assess radioactive effluent releases at the incinerators satisfy regulatory requirements and provide assurance that part 20 limits are being met.

Petitioner's request for suspension of NIH's authorization to dispose of licensed material by incineration pending resolution of the regulatory concerns raised by the Petition was denied by letter dated February 24, 1994. In the letter it was noted that NIH has permanently discontinued operation of two of their three incineration units, and they plan to temporarily discontinue operation of the third unit within the next month or two to upgrade the scrubber system in that unit and to produce an environmental study.

The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of February, 1994.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–5234 Filed 3–7–94; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; Site Assessment for Critical Facilities, Seismic Faulting, Update on the ESF and Repository Design, Saturated Zone Hydrology, and Ground-Water Travel Time—April 11–12, 1994, Reno, NV

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its spring meeting April 11–12, 1994, in Reno, Nevada. The meeting, which is open to the public, will be held at the Peppermill Hotel, 2707 S. Virginia St., Reno, Nevada 89502; telephone (702) 826–2121, fax (702) 826–5205. Major topics at the two-day meeting will include site assessment for critical facilities, seismic faulting discoveries/mapping at Yucca Mountain, saturated zone hydrology at Yucca Mountain, ground-water travel time, and an update on the status of activities regarding the exploratory studies facility and the repository design.

On April 11, presentations will focus on site assessment and licensing of critical and other controversial facilities in the United States and several other countries. The main purpose of the day's sessions will be to define any lessons learned that may be useful to the Department of Energy (DOE) in the planning of, and to the Board in the evaluation of, the Yucca Mountain program. Presentations will cover a variety of facilities, including the proposed Martinsville (Illinois) low-level radioactive waste site, the successful siting of a hazardous waste facility in Alberta (Canada), the proposed Gorleben high-level radioactive waste site in Germany, the Waste Isolation Pilot Project in New Mexico, the Diablo Canyon nuclear power plant in California, and the proposed Auburn Dam in California. At the end of the day, presenters, the Board, and DOE managers will participate in a round-table discussion of the issues raised during the day and their applicability to the Yucca Mountain project.

On January 12, the morning sessions will include presentations on recent investigations of the Ghost Dance fault and the Sundance fault: What information has come to light? What is its significance with respect to Yucca Mountain geology and the proposed repository? What are future plans to investigate these features at the surface and in the underground? In addition, the Board will hear a brief update on progress at the exploratory studies facility. Most of the day will be devoted to a review of saturated zone hydrology at Yucca Mountain including the role of the saturated zone in waste isolation. Among other presentations, the DOE will discuss regulatory criteria for ground-water travel time. A round-table discussion of the issues raised in presentations on saturated zone hydrology and ground-water travel time will end the day's schedule.

The Board has invited representatives of the DOE and its contractors, the U.S. Geological Survey, Sandia National Laboratories, and the state of Nevada, along with representatives from a variety of projects and programs worldwide to make presentations and participate in the round-table discussions.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning May 24, 1994. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473; (FAX) 703–235–4495.

Dated: March 2, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board

[FR Doc. 94–5223 Filed 3–7–94; 8:45 am]

BILLING CODE 6820–AM–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Request for Proposals: Correction

AGENCY: Prospective Payment Assessment Commission.

ACTION: Correction Notice.

Correction: In the notice document 94–3838 beginning on page 8488 in the issue of Tuesday, February 22, 1994, the issuance date of RFP 02–94–ProPAC was incorrect. The notice should read that RFP 02–94–ProPAC wil be issued on or about March 14, 1994.

Dated: March 2, 1994.

Donald A. Young,

Executive Director.

[FR Doc. 94–5239 Filed 3–7–94; 8:45 am]

BILLING CODE 8820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33697; File No. SR–NASD–93–58]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Handling of Customer Limit Orders

March 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing an Interpretation to the Rules of Fair Practice to require that member firms not trade ahead of their customers' limit orders in their market making capacity. The Interpretation would make it a violation of just and equitable principles of trade for member firms to hold unexecuted customer limit orders and trade ahead of those orders in the firm's market making capacity without filling the orders under the specific terms and conditions with which the orders had been accepted.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an Interpretation to the Rules of Fair Practice that would make it a violation of just and equitable principles of trade for member firms that hold unexecuted customer limit orders to trade ahead of those orders in the firm's market making capacity. In July 1993, the NASD solicited member comment on eliminating a disclosure safe harbor for members trading ahead of customer limit orders.[1] In September 1993, the Board reviewed comments received from members and others and took action to eliminate the disclosure safe harbor and to replace it with a prohibition against members' trading ahead of their own customer limit orders.

The issue of limit order protection in the NASDAQ market was brought to the forefront in 1985 when a customer alleged that a member firm had accepted his limit order, failed to execute it, and failed to discharge its fiduciary duties by trading ahead of the customer's order. In the Manning decision, the NASD found that upon acceptance of a customer's limit order, a member undertakes a fiduciary duty and cannot trade for its own account at prices more favorable than the customer's limit order unless clear disclosure is provided and there is an understanding by the customer as to the priorities that will govern the order. The SEC affirmed the NASD decision.[2] After input from a number of members, the NASD proposed a "safe harbor" for members to fulfill their fiduciary obligations with disclosure when the customer's account was first opened and periodically thereafter.[3] The language set out in the proposed safe harbor put customers on notice that the firm accepting a limit order would execute that order only when the inside bid or offer on Nasdaq reached the limit price and that the member might, in its market making capacity, trade ahead of that order. The membership approved the proposed language, and the NASD submitted the rule to the SEC.[4]

In July 1993, the NASD Board of Governors reviewed the handling of limit orders in NASDAQ securities and concluded that the continuation of the disclosure exception appeared inappropriate. Because of the significance of this change to The NASDAQ Stock Market, a notice was issued soliciting input on how elimination of the safe harbor would impact the operation of member firms and the treatment of investors' orders. The NASD also solicited comment on what if any unintended effects or unacceptable consequences would ensue if rules prohibiting trading ahead of customer limit orders were imposed on member firms. Specifically, comment was requested on the impact of applying the requirements on integrated broker-dealers handling their own customer order flow; on customer limit orders received from other member firms (so-called member-to-member trades); and on market liquidity.

In response to the notice, the NASD received 29 comment letters from members and trade associations, including the Security Traders Association ("STA"), STA of New York ("STANY"), and Securities Industry Association ("SIA"). The vast majority of comments supported elimination of the disclosure safe harbor for market makers trading ahead of their own retail, or "commission paying," clientele. Commenters noted that elimination of the safe harbor would level the playing field for investors, enhance the image of The NASDAQ Stock Market, and instill greater confidence with investors that their NASDAQ limit orders would be handled fairly. Some commenters noted that the NASD should distinguish between retail and institutional customer limit orders, so that a market maker's ability to commit capital to large institutional orders would not be impaired by a narrow reading of "trading ahead." Members believed that the new rule language might interfere with a market maker's ability to commit capital to large institutional orders as filling these orders might necessarily involve a trading strategy to cover short positions or to buy stock along with the institution that on its face might appear to be trading in front of those or other customer limit orders. Other commenters believed that distinguishing between institutional and

[1] See Notice to Members 93–49 (July 23, 1993).

[2] In the Matter of E.F. Hutton & Co., Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473.

[3] See Notice to Members 90–37 (June 1990).

[4] SR–NASD–89–10 (March 16, 1989). With submission of this rule proposal, the NASD, under separate cover, is withdrawing SR–NASD–89–10.

retail customers was not necessary because the proposed rule language that allows members to establish specific terms and conditions on each order adequately covers handling of institutional orders.

Many commenters, including STA, SIA and STANY, argued that the NASD should draw a distinction between orders from a member's own customers and orders from another broker/dealer. They pointed out that unlike an integrated firm which may charge a mark-up or commission to its customers, the only profit potential for orders received from other members lies in trading revenues derived from the spread. If the effect of the NASD's proposed rule were to require a market maker to satisfy a limit order sent from another broker/dealer when the market maker traded at the same price, these commenters agreed that the NASD would be in effect forcing the market makers to handle the order at no profit or indeed at a loss net of processing costs. These commenters also argued that alternative means of compensating market makers, such as sharing the order entry firm's commission, were infeasible given the structure of the NASDAQ market. As a result, these commenters argued that extension of the Interpretation to member-to-member orders would dramatically reduce market maker commitment. Further, several members argued that by extending the requirements to other members' customer limit orders, the NASD would be inappropriately expanding the requirements of a fiduciary in the securities markets.

Many also commented on the new rule's potential for unintended consequences on market liquidity, including a significant increase in limit orders as opposed to market orders, loss of market maker commitment, wider spreads and increased volatility. Members pointed out that the NASD had not yet fully explored the economic ramifications of the new requirements and noted that further economic analysis should be undertaken prior to rulemaking.[5]

After full consideration of the concerns articulated in the comment process, the NASD is proposing to eliminate the disclosure safe harbor for member firms that hold their own customer limit orders and trade ahead of those orders and to make such actions a violation of just and equitable principles of trade. The language of the Interpretation establishes that a member holding its customers' limit order may not continue to trade its market making position without executing that limit order under the specific terms and conditions that the customer understands and accepts. If the member does trade ahead of its customer, it will be in violation of article III, section 1 of the Rules of Fair Practice regarding just and equitable principles of trade.

The NASD believes that it is inappropriate to distinguish between the limit order protection provided fee-paying, or retail customers, and non-fee paying, institutional clientele. The NASD recognizes, however, that filling institutional-sized orders generally involves best-effort commitments and trading strategies other than a straight acceptance of a limit order. Firms accepting institutional orders on a best-efforts basis, that may involve trading to a cover short position or buying stock along with the institution, would not be in violation of the rule as long as the firm maintains a clear understanding with its institutional clientele of the terms under which the order is being executed. Accordingly, the NASD does not distinguish between institutional and retail customers in the Interpretation because the proposed language that allows members to establish specific terms and conditions on each order clearly encompasses institutional orders. This language recognizes that institutions generally do not leave standard limit orders with market makers. Instead, in return for the willingness of member firms to put up substantial capital to provide liquidity for large orders, institutions generally only hold market makers to a best-efforts standard in attempting to execute their order at a specific price. The ability of the member firm and the institution to reach agreement on the terms and conditions of the order would allow them to negotiate these arrangements without subjecting the member firm to the requirements of the proposed rule.

Further, the NASD has determined to temporarily defer application of the Interpretation to member-to-member orders in order to avoid any unintended consequences from a broader application of the rule. The NASD will form a special task force to examine ramifications of extending limit order protections to include member-to-member transactions. The task force will analyze the effect of the proposal on market liquidity, volume of limit orders, market maker commitment, spreads and volatility. The NASD believes that the issues raised by customer limit orders passed from one member firm to a second member firm are very complex. Dealers that trade as "wholesale" market makers, whether exclusively or as a part of an integrated firms' business, have profit potential only in the trading revenues received—they do not rely on commissions or commission equivalents as revenue to support their trading activities. Relying on pure trading profit and loses is unique to a dealer market and cannot be compared to a specialist that executes transactions for members on an exchange while charging a fee for that service. Accordingly, requiring a market maker to execute such limit orders any time it trades for its own account at the same price effectively eliminates any opportunity for that market maker to profit on that trade. The NASD is concerned that the economic implications for market makers and the potential impact on liquidity and spreads in the NASDAQ stock market have not fully been reviewed. For these reasons, the NASD will form a task force composed of diverse industry and investor interests to review the issues raised by limit orders passed from one member to another.

In the Interpretation, the NASD also emphasizes that brokers forwarding orders to dealers for execution continue to be subject to their duties of best execution. Firms owe fiduciary duties of best execution to their customers and the NASD emphasizes that order entry firms should continue to routinely monitor the handling of their customer limit orders for quality of execution.

The NASD believes that elimination of the safe harbor for a broker/dealer's own customer orders is squarely in line with the original Manning decision which was premised on a firm's fiduciary duty not to trade ahead of its own customer order.[6] Feedback from members commenting on the new rules indicates that integrated market makers on the whole do not trade ahead of their own customer orders, and accordingly, eliminating the safe harbor would not materially or adversely affect the way these market makers conduct their business today.

Finally, as the handling of customer limit orders entails duties that are not subject to a disclosure safe harbor,

[5] Some members also argued that procedural due process was being by-passed by framing the new requirement as an Interpretation to the just and equitable principles of trade standards of Article III, Section 1 of the NASD Rules of Fair Practice. The NASD notes that these comments misconstrue the regulatory process involved with NASD Interpretations. All NASD Interpretations are submitted to the SEC for review, publication in the Federal Register and public comment prior to SEC action.

[6] In this regard, the NASD Interpretation on the obligation to protect the firm's customer limit orders will also apply to firms that control or are controlled by another member firm, e.g., where the order entry firm is a broker that owns or controls the executing dealer.

nothing in the rule compels market makers to accept limit orders from their customers or from other broker/dealers.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The new requirement ensures protection of investor's limit orders when placed with market making firms and enhances the quality of the marketplace. The affirmative obligation for firms to protect their customer limit orders and to give them standing over their own market making activity also enhances opportunities for price improvement which is a benefit for public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited in Notice To Members 93–49 and the content of those comments are summarized in the description of the rule proposal in part II(A) above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will: A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In this regard, the Commission notes that in the recently issued Market 2000 study, the Division of Market Regulation recommends that the NASD revise its proposal to prohibit broker-dealers from trading ahead of all customer limit orders for NASDAQ/NMS securities.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5205 Filed 3–7–94; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–916]

Application and Opportunity for Hearing; Treasure Island Finance Corporation and Treasure Island Corporation

March 2, 1994.

Notice is hereby given that Treasure Island Finance Corporation and Treasure Island Corporation (the "Applicants") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting the Applicants from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons, not later than March 28, 1994, may submit to the Commission in writing his or her views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasoning for such request, and the issued of fact or law raised by the application which he or she desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5206 Filed 3–7–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

El Paso District Advisory Council; Public Meeting

The U.S. Small Business Administration El Paso District Advisory Council will hold a public meeting from 9 a.m. to 11:30 a.m. on Thursday, March 24, 1994, at the State National Bank, 221 N. Kansas Street, Old El Paso Room, 7th floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway Blvd. West, suite 320, El Paso, Texas 79935–4996, (915) 540–5586.

Dated: February 24, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–5275 Filed 3–7–94; 8:45 am]

BILLING CODE 8025–01–M

Dallas/Fort Worth District Advisory Council; Public Meeting

The U.S. Small Business Administration Dallas/Fort Worth Distict Advisory Council will hold a public meeting at 9 a.m. on Wednesday, March 30, 1994, in the Forum Room of

the South Campus, Tarrant County Junior College, 5301 Campus Drive, Fort Worth, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 4300 Amon Carter Blvd., suite 114, Fort Worth, Texas 76155, (817) 885–6500.

Dated: February 24, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–5276 Filed 3–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1955]

Claims for Property Located in Albania

On July 28, 1993, the Department of State published a notice that Albania had enacted two laws concerning return of expropriated or confiscated properties in Albania. Law No. 7698, which addressed non-agricultural properties, set a deadline of November 15, 1993 for submitting claims. That deadline has been extended to March 31, 1994. Law No. 7699, which addressed agricultural properties, set a deadline of May 15, 1994 for submitting claims. That deadline has not been changed.

General information concerning the Albanian laws can be obtained from the previous notice at Volume 46 of the **Federal Register,** page 40461. Further information must be obtained from the Government of Albania. Claimants are advised that the Department of State does not have information other than that contained in the previous Federal Register notice and in the text of the laws. Copies of the Albanian laws may be obtained by writing or telephoning the State Department at the following address: Office of International Claims and Investment Disputes, Office of the Legal Adviser, 2100 K Street, NW., Washington, DC 20037–7180, telephone (202) 632–6686.

Dated: February 24, 1994.

Sean D. Murphy,

Deputy Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 94–5201 Filed 3–7–94; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–016]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to review tank vessel cleaning facility operations and evaluate the technical and safety aspects of potential control technologies which will allow these facilities to meet air quality emissions standards. The meeting will be open to the public.

DATES: The meeting will be held on April 19 and 20, 1994, from 8:30 a.m. to 5 p.m. daily. Written material should be submitted no later than April 11, 1994.

ADDRESSES: The meeting will be held at the offices of the American Bureau of Shipping, 16855 Northchase Drive, Houston, Texas, 77060. Personnel attending the meeting should report to the main floor reception area for direction to the meeting room. Written material should be submitted to LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2§ 1 et seq.

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires states to achieve and maintain a 15% reduction in their Volatile Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual states. States are presently developing methods to achieve required compliance levels. One state recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the state at the tank vessel cleaning facility. It is anticipated other states will develop similar regulations as a means of complying with the CAA Amendments for their states. The purpose of this meeting is to conduct a detailed review of tank vessel cleaning facility gas-freeing and tank cleaning operations in order to evaluate potential control technologies that will allow these facilities to meet air quality emissions standards while ensuring a high level of safety for facility and vessel personnel is maintained. As a result of this review, the Subcommittee will develop recommendations for revising existing safety guidelines for tank vessel cleaning facilities.

Dated: February 24, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–5287 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–015]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Friday, April 8, 1994, from 1:30 p.m. to 4:30 p.m. Written material should be submitted not later than March 25, 1994.

ADDRESSES: The meeting will be held in Room 4234, of the NASSIF Building, 400 7th Street SW., Washington, DC. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2307.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda will include discussion of the following topics:

(1) Clean Air Act of 1990;

(2) ISM Code Implementation for the Offshore Industry;

(3) Periodic Verification of Lightship;

(4) Revision of Subchapter "L" on OSVs and Liftboats;

(5) IMO Items Affecting the Offshore Industry;

(6) Coast Guard Regulatory Process Improvements; and

(7) National Pollution Fund Center Activities.

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under ADDRESSES, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than March 25, 1994.

Dated: February 24, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-5288 Filed 3-7-94; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Revision of the 1958 United Nations Economic Commission for Europe Agreement Regarding the Regulation of Motor Vehicle Equipment and Parts

AGENCY: National Highway Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that NHTSA and the U.S. Environmental Protection Agency (EPA), on behalf of the United States Government, will participate in negotiations regarding a proposed revision to the 1958 United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts. The Agreement provides procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal recognition of such regulations. Regulations adopted by Contracting Parties govern the approval of motor vehicles and equipment for sale in those countries.

The United States is a member of the UN/ECE, but is not a Contracting Party to the 1958 Agreement. Depending on the outcome of these negotiations, it may be appropriate for the United States to become a Contracting Party to the Agreement as it may be revised. However, a decision has not yet made regarding that course of action.

Notwithstanding the revised Agreement's goal of harmonization of motor vehicle standards, were the United States to become a Contracting Party, it would not adopt a regulation that would lower the level of protection provided by current U.S. domestic safety and environmental standards. Further, there would be no change in the process by which Federal Motor vehicle regulations are adopted and put into effect in the United States. These regulations would continue to be promulgated pursuant to legislation enacted by Congress and through rulemaking proceedings conducted under the Administrative Procedure Act and any other applicable statute. Thus, a regulation under the proposed revision to the 1958 Agreement could be adopted by the United States only if the relevant Federal agency complies with these requirements.

FOR FURTHER INFORMATION CONTACT: Mr. Frances J. Turpin, Director, Office of International Harmonization, National Highway Traffic Safety Administration, room 5220, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2144; or Mr. Thomas M. Baines, Senior Technical Advisor, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, telephone (313) 668-4366. Copies of the 1958 Agreement and of the proposed revision to the Agreement are available from Mr. Turpin or Mr. Baines upon request.

Telephone inquiries addressing safety standard issues should be directed to Mr. Turpin and those concerning environmental standard issues should be directed to Mr. Baines.

SUPPLEMENTARY INFORMATION: This notice announces that NHTSA and EPA will participate, on behalf of the United States Government, in negotiations regarding a proposed revision to the 1958 United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (the "1958 Agreement" or the "Agreement"). The Agreement is administered by the Working Party on the Construction of Vehicles (WP29), a subsidiary group of the ECE. Negotiations concerning the proposed revision of the Agreement involve countries that are Contracting Parties to the 1958 Agreement and other interested countries, such as the United States.

The 1958 Agreement

The 1958 Agreement provides procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal acceptance of approvals issued under these regulations. Regulations adopted by Contracting Parties pursuant to the Agreement govern the approval of motor vehicles and motor vehicle equipment for sale in those countries. The Agreement was originally intended to address safety standards but has since been amended to encompass environmental (air and noise pollution emission) and energy standards. The United States is a member of the UN/ECE, but is not a Contracting Party to the Agreement.

The goal of the Agreement and of WP29 is to promote harmonization of motor vehicle regulations and otherwise to facilitate trade in motor vehicles and motor vehicle equipment. The Agreement provides a mechanism of Contracting Parties to develop harmonized motor vehicle regulations, and for reciprocal acceptance of approvals issued under these regulations. The Agreement requires compliance with regulations through type approval (i.e., testing or witness of testing by a government-designated authority and government approval), the system generally used by European countries.

Under the Agreement, any two or more Contracting Parties wishing to adopt a regulation may propose a draft regulation for annexation to the Agreement. The draft regulation enters into force as a regulation annexed to the Agreement with respect to each Contracting Party that has declared its intention to adopt it. A Contracting Party that has adopted an annexed regulation is allowed to grant type approvals for motor vehicle equipment and parts covered by the regulation and is required to accept the type approval of any other Contracting Party that has adopted the same regulation. Regulations under the Agreement are required to include test methods and conditions for granting type approvals.

A Contracting Party may choose not to adopt any regulation annexed to the Agreement. The regulation would therefore have no effect on the Contracting Party. The Agreement also contains a mechanism for a Contracting Party, upon notice, to adopt a regulation after it has been annexed to the Agreement or to stop applying a regulation that it has already adopted.

An amendment to an annexed regulation may be proposed by any Contracting Party that is applying the regulation. The proposed amendments may be vetoed, however, by the Contracting Party that is applying the regulation.

The effectiveness of the 1958 Agreement is demonstrated by the integration of a single market in motor vehicles within the member States of the European Union (EU) and the fact that 23 European countries have become Contracting Parties, including 11 EU member States. Furthermore, the Agreement has led to the annexation of approximately 90 ECE regulations concerning passenger cars, light trucks, heavy trucks, trailers, mopeds and motorcycles, public service vehicles, and other vehicle types. These regulations have been adopted to varying degrees by the Contracting Parties.

The major benefit of the Agreement has been harmonization of safety and environmental regulations relating to new motor vehicles and motor vehicle equipment in Europe. Over the past 36 years, numerous European national motor vehicle regulations have been used as the basis for establishing ECE regulations that have subsequently been adopted by the Contracting Parties pursuant to the Agreement and incorporated into their respective regulatory systems.The reciprocal recognition of type approvals among Contracting Parties applying the regulations has facilitated trade in motor vehicles and equipment throughout Europe. In recent years, the ECE/WP29 forum has been used to harmonize ECE regulations and EU Directives.

The United States is a member of the ECE, and on this basis has been participating as a technical advisor in the work of WP29 and its subsidiary bodies over the past decade. By such participation, the United States has been able to keep itself informed about European motor vehicle safety and environmental regulatory developments. This participation has also encouraged a certain degree of compatibility among the technical standards contained in United States and European motor vehicle safety and environmental regulations. The United States and relevant European countries have fostered such compatibility while adhering to the substantive and procedural requirements of their respective regulatory systems. With respect to vehicle standards in the United States, these requirements include the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. section 1381 *et seq.*), the Clean Air Act, as amended (42 U.S.C. section 7401 *et seq.*), the Noise Control Act, as amended (42 U.S.C. section 4901 *et seq.*), the Motor vehicle Information and Cost Savings Act, as amended (15 U.S.C. section 2001 *et seq.*), and the Administrative Procedure Act, as amended (5 U.S.C. section 551 *et seq.*).

The United States has not, however, become a Contracting Party to the 1958 Agreement because the United States has not wished to incur the Agreement's reciprocal acceptance obligations nor develop its regulations in a common European regulatory development forum. One of the reasons for this position is that the Agreement is premised on the use of a type approval system for the regulation of motor vehicles and equipment. The United States relies generally on a self-certification system to regulate motor vehicle safety and noise, pursuant to statute. Under this system, the manufacturers are responsible for compliance with the applicable standards (subject to verification testing), but need not obtain a certificate of conformity before introducing vehicles into commerce. The United States air emissions regulatory program is based on type approval, since manufacturers must obtain a government certification of conformity to introduce their vehicles into commerce. However, the U.S. air emissions regulatory program is not compatible with the European system because responsibilities and authorities are assigned differently, including responsibility for testing vehicles, interpreting regulations, and issuing certificates of conformity. In addition, the U.S. air emissions program does rely to some extent on manufacturer test data, which is characteristic of a self-certification system.

Conversion of these United States regulatory programs to a European-style system would require additional legislation. Such a change would not necessarily contribute to achieving current statutorily-mandated United States vehicle regulatory goals. Neither the relevant Federal regulatory agencies nor other interested parties have sought this change.

If the United States were currently a Contracting Party to the 1958 Agreement, the U.S. would have to invoke Article 1(6) of the Agreement, which allows a country to become a Contracting Party without adopting the regulations then annexed to the Agreement. This would be necessary because the United States is unable to adopt regulations under this Agreement in the absence of additional conforming legislation that resolves the conflict between the United States self-certification system and the requirement in Article 2 of the Agreement for a type approval system.

Proposed Revision to the 1958 Agreement

Efforts are under way to revise the 1958 Agreement in ways that might make it appropriate for the United States to consider becoming a Contracting Party. The efforts began in 1989, when WP29 issued a mission statement announcing the goal of promoting worldwide harmonization of motor vehicle regulations. Participants in WP29 agreed that serious consideration should be given to revising the Agreement given the many changes that had occurred in the field of motor vehicle regulation since 1958, including the establishment of different vehicle standards programs in various countries around the world (e.g., the United States, Canada, Japan, and Australia), the accelerated rate of change in automotive technology and design, the globalization of the motor vehicle industry and market, and the creation of an integrated market among EU member states.

In 1990, WP29 decided to develop a revised Agreement which would seek to promote worldwide harmonization of motor vehicle regulations and would encourage membership by other countries, particularly the United States, Japan, Canada, and Australia. This latter goal was to be accomplished primarily by revising the Agreement so that type approval would not be mandatory for Contracting Parties.

One of the most significant changes under the proposed revision to the Agreement (the "proposed revision") would be to limit the application of the provisions regarding type approval to those Contracting Parties who choose to promulgate motor vehicle regulations on the basis of a type approval system. Thus, a type approval regulatory system would no longer be a precondition to a country being able to become a Contracting Party and thereby participating in the Agreement. Since a number of non-European countries are members of or participate in activities of the ECE, the possibility of these countries (including the United States) becoming Contracting Parties provides an opportunity to create a forum for promoting compatibility among motor vehicle regulations on a wider scale than currently exists. As Contracting Parties, these non-European countries would gain the right to vote and to propose new regulations as well as changes in existing ones.

Other major changes contained in the proposed revision involve the procedures for annexing a regulation to the Agreement and for amending an annexed regulation. WP29 views the provision in the current Agreement allowing two or more Contracting parties to add a new regulation as an impediment to harmonization because the provision makes it too easy to adopt a regulation that is to be applied by only a small number of Contracting Parties.

Conversely, the current procedures for amending a regulation annexed to the Agreement are considered to be burdensome because any one Contracting Party that has adopted the regulation has the right to veto the proposed amendment. This amendment process may impede the ability of the regulatory development process to respond to technological changes in a timely manner.

The proposed revision would, on the one hand, make it more difficult for a new regulation to be annexed to the Agreement and, on the other hand, make it easier to amend an already-annexed regulation. The proposed revision to the Agreement provides for an Administrative Committee composed of all Contracting Parties. A proposed regulation would be "established" if ⅔ of the Committee members present at a meeting so vote. (At least half of the total number of Contracting Parties would have to be present at such meeting for the vote to be taken.) All Contracting Parties would be notified of the Committee decision. The regulation would be considered adopted as a regulation annexed to the Agreement unless, within 6 months of such notification, at least ⅓ of the Contracting Parties have communicated their disagreement with the regulation. If the requisite number of Contracting Parties did not communicate their disagreement in a timely manner, the annexed regulation would enter into force for all Contracting Parties that did not communicate their disagreement.

The proposed revision also changes the way in which an annexed regulation may be amended. An amendment to an already-annexed regulation would be "established" if ⅔ of the Administrative Committee members from countries applying the regulation present at a meeting so vote. (At least half of the total number of Contracting Parties that have adopted the regulation would have to be present at such meeting for the vote to be taken.) All Contracting Parties that have adopted the regulation would be notified of the Committee decision. The amendment would be considered adopted unless, within 6 months of such notification, at least ⅓ of the Contracting Parties that have adopted the regulation have communicated their disagreement with the amendment. If the requisite number of Contracting Parties did not communicate their disagreement in a timely manner, the amendment would be binding upon those Contracting Parties that have adopted the regulation and have not declared their disagreement with the amendment.

The proposed revision also provides that, if at least 20 percent of the Contracting Parties that have adopted the regulation declare that they wish to continue applying the unamended regulation, the unamended regulation would be regarded as an option to the amended regulation and would be incorporated formally as such in the regulation. Further, the proposed revision allows countries to enforce more stringent standards than those contained in the annexed regulations by either electing not to adopt any particular regulation annexed to the Agreement, or, if the country has in fact adopted a particular regulation and has failed to have the regulation amended, by ceasing to apply the regulation upon one year's notice.

In addition, while the Agreement addresses the regulation of "motor vehicle equipment and parts," the proposed revision to the Agreement provides for the regulation of "wheeled vehicles, equipment and parts." The proposed revision, however, does not recognize other classes of products that are mobile sources of air pollutants, such as off-highway engines.

Possible U.S. Action Concerning the Proposed Revised Agreement

The United States is considering whether it should become a Contracting Party to the proposed revised Agreement. In considering this option, NHTSA and EPA note that the Agreement does not explicitly recognize any regulatory and enforcement system (such as that of the United States) other than a type approval system, notwithstanding a provision of the proposed revision which implicitly gives a Party that adopts a regulation the option of electing not to implement that regulation through a type approval system. NHTSA and EPA believe that if the United States is to consider becoming a Contracting Party to the proposed revision, explicit recognition in the revised Agreement of the United States motor vehicle safety and environmental regulatory/enforcement system is necessary so that regulations promulgated under the United States system would have a status equal to that of the European regulatory/enforcement system under the Agreement. It is unclear under the proposed revision what the relationship and obligations would be among those Contracting Parties that implement regulations through a type approval system and those Contracting Parties that implement the same regulations through other regulatory enforcement systems, such as a self-certification system.

In addition, explicit recognition of non-type approval regulatory enforcement systems in the proposed revision could encourage countries that do not already have a regulatory system that addresses motor vehicle safety and environmental standards to consider adoption of one of those systems. If, as the proposed revision currently stands, only the type approval system is explicitly recognized, countries that currently do not have a regulatory system would be more likely to respond in either of two ways. They would be likely to adopt the type approval system or to develop completely novel systems. If the former occurs, the type approval system could become so widely adopted that there would be increasing pressure on countries using other regulatory/enforcement systems to convert to a type approval system. If the latter occurs, there could be a proliferation of different novel regulatory/enforcement systems.

As with all United States regulations, a regulation under the proposed revision to the Agreement could not be adopted by any Federal agency unless there is domestic legislation to authorize such adoption and the agency follows the rulemaking procedures of the Administrative Procedure Act (APA) and any other applicable statute. Since the APA requires the appropriate Federal agency to solicit and consider public comments in promulgating regulations, the United States cannot agree in advance to adopt a proposed or annexed ECE regulation as a final rule.

Thus, if the United States were to become a Contracting Party to the proposed revision, the United States could not accept a regulation proposed for annexation by other countries unless the regulation is identical to a regulation already adopted by the United States or is proposed and adopted through the United States rulemaking procedures described above. It would therefore vote against "establishment" of the regulation, indicate its disagreement with the annexation of the regulation, or elect not to adopt the regulation in the event of annexation. Further, notwithstanding the fact that the Agreement is being revised to promote compatibility of motor vehicle standards, the United States would not

adopt a regulation that would lower the level of protection provided by current U.S. domestic safety and environmental standards.

Under the revision as proposed, the United States would probably not be able to have its regulations adopted by Contracting Parties and annexed to the Agreement. The United States could not propose a regulation for annexation unless the regulation is identical to a regulation already adopted by the United States. The test procedures in United States regulations are premised partially or wholly on a self-certification system and therefore, unless a self-certification system were explicitly recognized in the proposed revision to the Agreement, a U.S. safety regulation would, in all likelihood, not be accepted by the requisite number of Contracting Parties. This is because the regulation might not be enforceable through a type approval system. However, explicit recognition of other enforcement systems could, for example, allow for different enforcement options within an annexed regulation. For air and noise pollution emissions regulations also, the regulatory systems of the current Contracting Parties are also sufficiently different from the U.S. systems so that the current Contracting Parties would not be likely to accept regulations proposed by the United States for the same reason.

Issued on: March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5181 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC 2; OTS No. 4247]

American Savings, FSB, Muster, IN; Final Action; Approval of Conversion Application

In notice document 94–2510 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5166 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 8; OTS No. 4282]

Bay Ridge Federal Savings Bank, Brooklyn, NY; Final Action; Approval of Conversion Application

In notice document 94–2516 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5167 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–18; OTS No. 02925]

First Federal Savings and Loan Association of Barrington, Barrington, Il; Approval of Conversion Application

Notice is hereby given that on February 23, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Barrington, Barrington, Illinois, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5165 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–1–M

[AC 11; OTS No. 2639]

First Missouri Federal Savings and Loan Association, Brookfield, MO; Final Action; Approval of Conversion Application

In notice document 94–2519 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5168 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 4; OTS No. 0189]

Great Financial Federal, Louisville, KY; Final Action; Approval of Conversion Application

In notice document 94–2512 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5169 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 1; OTS No. 2013]

Landmark Federal Savings Association, Dodge City, KS; Final Action; Approval of Conversion Application

In notice document 94–2509 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5170 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 3; OTS No. 1145]

Lexington Federal Savings Bank, Lexington, KY; Final Action; Approval of Conversion Application

In notice document 94–2511 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5171 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 10; OTS No. 6149]

Mid-Central Federal Savings Bank, Wadena, MN; Final Action; Approval of Conversion Application

In notice document 94–2518 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5176 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 5; OTS 5 No. 1004]

Mishawaka Federal Savings, Mishawaka, IN; Final Action; Approval of Conversion Application

In notice document 94–2513 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5175 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 9; OTS No. 0214]

Permanent Federal Savings Bank, Evansville, IN; Final Action; Approval of Conversion Application

In notice document 94–2517 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5174 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 7; OTS No. 5201]

Pioneer Savings and Loan Association, F.A., Roslyn, NY; Final Action; Approval of Conversion Application

In notice document 94–2515 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5173 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 6; OTS No. 3103]

Reliance Federal Savings Bank, Garden City, NY; Final Action; Approval of Conversion Application

In notice document 94–2514 beginning on page 5481, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5172 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program and Reserve Member Stipend Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 6, 1994.

SUPPLEMENTARY INFORMATION:

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program and Reserve Member Stipend Program.

a. VA Form 10–0003, Health Professional Scholarship Program Application for Award.

b. VA Form 10–0003a, Health Professional Scholarship Program Academic Verification.

c. VA Form 10–0003b, Health Professional Scholarship Program Contract.

d. VA Form 10–0003c, Reserve Member Stipend Program Application for Award.

e. VA Form 10–0003d, Reserve Member Stipend Program Academic Verification.

f. VA Form 10–0003e, Reserve Member Stipend Program Contract.

g. VA Form 10–0003f, Recommendation of Reserve Unit Commanding Officer.

2. The information collected on these forms is used to determine eligibility/suitability of student applicants desiring to receive an award offered through the Department of Veterans Affairs Health Professional Scholarship Program.

3. Individuals or households.

4. 6,000 hours.

5. 2 hours.

a. VA Form 10–0003—1½ hours.

b. VA Form 10–0003a—15 minutes.

c. VA Form 10–0003b—10 minutes.

d. VA Form 10–0003c—1½ hours.

e. VA Form 10–0003d—15 minutes

f. VA Form 10–0003e—10 minutes.

g. VA Form 10–0003f—30 minutes.

6. Annually.

7. 3,000 respondents.

[FR Doc. 94–5179 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: 38 CFR 21.7653(d)—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 7, 1994.

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7653(d)—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7653(d), requires educational institutions to report when they have terminated the enrollment of reservists due to unsatisfactory conduct, progress or attendance. The information will be used to determine when to terminate benefits to these reservists.

3. Businesses or other for-profit—Non-profit institutions—Small businesses or organizations.

4. 517 hours.

5. 5 minutes.

6. On occasion.

7. 6,215 respondents.

[FR Doc. 94–5177 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 6, 1994.

Dated: March 1, 1994.

By direction of the Secretary

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7654, requires reservists training under the Montgomery GI Bill to verify their enrollment each month. The information will be used to determine the proper monthly payments to be made to these students.

3. Individuals or households.

4. 67,258 hours.

5. 5 minutes.

6. On occasion.

7. 115,300 respondents.

[FR Doc. 94–5178 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59 No. 45
Tuesday, March 8, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 10, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A Approval of Minutes

B New Business

1 Regulations

a. Debt Collection [Collection of Claims Owed the United States; 12 CFR Part 608] (Final)

Closed Session *

A. Reports

1. OSMO Quarterly Report

B. New Business

1. Enforcement Actions

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5457 Filed 3–4–94; 3:10 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held March 10, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public. The matter to be considered at the meeting is:

Open Session

A. Reports

1 FCSBA Quarterly Report

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5458 Filed 3–4–94; 3:08 pm]

BILLING CODE 6705–01–P

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 15, 1994

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32248, *Hanson Natural Resources Co.—Non-Common Carrier Status—Petition for a Declaratory Order*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350; TDD (202) 927–5721.

Dated: March 4, 1994.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5233 Filed 3–3–94; 12:24 pm]

BILLING CODE 7035–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6298—Aircraft Accident Summary Report: Continental Express, EMB–120, N24706, Pine Bluff, Arkansas, April 29, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 94–5420 Filed 3–4–94; 1.25 pm]

BILLING CODE 7533–01–M

Federal Register

Tuesday
March 8, 1994

Part II

Department of Agriculture

Forest Service

36 CFR Part 254
Land Exchanges; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596–AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the requirements that are applicable to the land exchange activities of the Forest Service. The principal provisions of the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. The intended effect is to fully implement the authorities granted by the Federal Land Exchange Facilitation Act of August 20, 1988.

EFFECTIVE DATE: This rule is effective April 7, 1994.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Specialist, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1361.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, the Forest Service and the Bureau of Land Management published separate proposed rules (56 FR 49948–49977) for implementing the amendments to section 206 of the Federal Land Policy and Management Act of 1976, made by the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716).

The purpose of the Act is to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes of more efficient management; to secure important objectives of resource management, enhancement, development, and protection; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

The proposed rules also incorporated other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. A 60-day public comment period was provided.

Summary of Public Comments Received and Agency Response to Comments

The Forest Service and BLM received comments from 58 sources including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the Forest Service and BLM. The analysis of comments pertaining to the Forest Service rule, and the corresponding responses and changes are discussed as follows. Editorial and grammatical corrections also have been made as necessary

General Comments

Comment. Two respondents stated that the timeframes in the rule are too lengthy, particularly those related to the initiation and review process.

Response. The time periods specified in various sections of the rule were either imposed by the Federal Land Exchange Facilitation Act or are administratively necessary to comply with the Forest Service's public participation and environmental analysis procedures. However, the Forest Service and BLM have made further adjustments in their scheduling requirements in order to develop more uniform final regulations and to reduce the time periods wherever possible.

Comment. One respondent felt that streamlining the process to expedite exchanges may promote rapid disposal of Federal holdings in urban areas and forego revenue-making opportunities on those properties. It was further suggested that a process for mid-course review, at the highest departmental levels, should be built into the regulations.

Response. The land management agencies generally do not administer lands for intense development in urban areas. Moreover, each exchange opportunity must be analyzed on an individual basis. Certain high value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay and inefficiency. Therefore, this suggestion was not adopted.

Comment. It was pointed out by one reviewer that there is no provision in the rule for conducting public hearings.

Response. In conjunction with the written notification requirements in §§ 254.8 and 254.13 of the final rule, the authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings or meetings is considered unnecessary.

Comment. One respondent suggested that the rule require the preparation of an "environmental values document" to compare relative ecological values to be exchanged.

Response. All resource values associated with the lands involved in an exchange are examined through an environmental analysis completed pursuant to Council on Environmental Quality regulations at 40 CFR parts 1500–1508 and Forest Service directives (FSM 1950; FSH 1909.15). Therefore, a separate "environmental values" document is not required.

Specific Comments

Section 254.1—Scope and applicability. One respondent suggested that paragraph (b) of this section of the proposed rule should give a specific citation to the Small Tracts Act regulations. This suggestion has been adopted in the final rule.

Two parties commented on paragraph (c) of this section of the proposed rule, which would permit application of the rule to land exchanges in Alaska to the extent the regulations did not conflict with the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. One suggested separate regulations for such exchanges, similar to the Small Tracts Act situation. The other felt the rule should allow the authorized officer to depart from this rule to the degree consistent with the Alaska National Interest Lands Conservation Act. These suggestions have not been adopted. Paragraph (c) provides the authorized officer the latitude allowed by law to pursue land exchanges in Alaska and is unchanged from the language of the proposed rule.

Three comments were received on paragraph (d) of this section of the proposed rule. One respondent recommended that, in the name of uniformity, once the final rule is adopted all exchanges should be subject to the new regulations. Another suggested changing the provision

related to proceeding with exchanges under prior agreements from "may" to "shall". The third asked for clarification on the handling of exchanges begun prior to this rule. In response, the rule has been revised to clearly state that, unless the parties agree otherwise, any written agreement based on prior regulations shall continue in accordance with that procedure.

Paragraph (e) of the proposed rule provided that the boundary of the national forest be automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended. There were two suggested changes to paragraph (e). One response recommended adding the clause "upon acceptance of title by the authorized officer," as a condition upon the automatic extension of the boundary. The other questioned both the apparent limitation and expansion of Weeks Act authority that the current wording suggests. Both recommended removing the words "by exchange" and made an observation that the Weeks Act refers only to acquired lands within the exterior boundaries of national forests. The recommendation to delete the words "by exchange" was adopted. However, the reference to acceptance of title by the authorized officer would be inconsistent with § 254.16 of the rule and, therefore, was not adopted.

Section 254.2—Definitions. Two respondents suggested that the term "eminent domain" not be used in the definition of "acquisition" because of the negative implication associated with condemnation and the erosion of private property rights. This suggestion was not adopted, because this is the standard definition used by the Forest Service to explain the various methods available to the Secretary of Agriculture to acquire land on behalf of the United States. It should be noted that § 254.3(a) of the rule states that land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Moreover, the Forest Service typically acquires land through exchange, purchase, or donation. Condemnation is rare and is considered as a last resort for acquisition.

One respondent recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such an agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. This revision was not considered necessary or appropriate to a definition, as § 254.4(a) and (b) of the final rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the definition of that term as used in the Small Tracts Act regulations at 36 CFR 254.31. This recommendation was adopted.

One reviewer recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted, because § 254.10(a) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s), which takes into account all factors which might influence the value of the estate to be conveyed.

One respondent stated that the definition of "highest and best use" in the proposed rule might be too broad and recommended that the phrase "and present uses of adjacent property" be added after the words "based on market evidence". The definition in the proposed rule is that used throughout the appraisal profession. The uses of nearby properties are always considered by the appraiser in determining highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, this suggestion was not adopted.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. This revision is not necessary. Market value is applicable to property as though it were in private ownership and anything that may affect value is considered by the appraiser.

One respondent asked if the mineral leasing laws referred to in the definition of "mineral laws" include mineral resources on Weeks Act lands. In response, the definition has been revised to make clear that the mineral laws apply only to those lands reserved from the public domain for National Forest purposes.

It also was recommended that the definition of "party" be revised to recognize States as full parties to an exchange. This change is not necessary. The definition in the proposed rule clearly recognized the States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One respondent recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws and further suggested adding the phrase "or by operation of law" after the word Secretary. This recommendation was not adopted. The purpose of segregation is to avoid the appropriation of long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from entry under both the public land laws and the mineral laws, and the term has long been interpreted to cover both types of entry. The term "by operation of law" would add nothing because this authority already lies with the Secretary.

Another reviewer indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The Department disagrees. The regulations only require the qualified appraiser to determine if the Federal lands exceed $150,000. Although a full appraisal report is not needed, the appraisal analysis must meet the minimum standards contained in the Uniform Standards.

One reviewer suggested adding definitions for "resource values" and "management objectives" in order to clarify the determination of public interest that must be made under § 254.3(b). The Department agrees that a definition of "resource values" would be helpful and has included the term in the definition section. However, a definition of "management objectives" was not included, as the generic term is of widespread common usage.

It also was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the determination of public interest, agreement to initiate an exchange, and assumption of costs. This suggestion was not adopted. Section 254.3(b) of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 254.7 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 254.3(g) requires that an environmental analysis be prepared. This analysis ensures that environmental values such as cultural resources are not overlooked in the determination of public interest.

Section 254.3—Requirements.

(a) *Discretionary nature of exchanges.* One respondent recommended that this paragraph be amended to clarify that the discretionary authority of the Secretary

in determining public and State interests is subject to public review. This suggestion was not adopted, as § 254.3(b) of the rule requires consideration of the needs of State and local residents, and § 254.13 of the rule sets forth the requirements for public notice of decisions and subsequent review. Therefore, paragraph (a) is adopted without change from the proposed rule.

(b) *Determination of public interest.* Extensive comments were received on this paragraph. One respondent suggested that protection of watersheds be added as a factor in the determination of public interest. This suggestion has been adopted.

Proposed paragraph (b) provided that the authorized officer may complete an exchange only after a determination that the public interest will be well served. It was suggested that the term "best served" be used, instead of "well served". However, the term "well served" is retained in the final rule, because it is the term used in section 206(a) of the Federal Land Policy and Management Act of 1976.

The same respondent pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested the rule include a list of lands would be acquired and suggested the rule include a list of lands most desirable. It would be impracticable to list in these regulations all the types of lands that would be acquired through exchange, due to the variety of resources on involved lands and the variety of objectives and circumstances that lead to initiation of exchange proceedings. Identification of types of lands suitable for exchange is more appropriate during the land and resource management planning process.

One respondent stated that use of the phrase "accommodation of land use authorizations" as one of the factors to be considered in a public interest determination was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. This suggestion was adopted by expanding on the term "authorized uses" in § 254.4(c)(4) of the rule to include grants, permits, easements, or leases and by providing a cross reference to this provision in § 254.3(b).

One respondent recommended that paragraph (b) emphasize the management and development of private lands as a factor to consider in determining public interest and suggested working for inclusion into the final rule. Additionally, two respondents recommended that this paragraph include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. In response to these comments, paragraph (b) has been revised in the final rule to include consideration of the opportunity "* * * to meet the needs of State and local residents and their economies * * *," thus emphasizing the importance of these criteria in the determination of public interest. Additionally, it should be noted that the "Notice of Exchange Proposal" at § 254.8 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns they may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal would be considered in the development of an environmental analysis. The environmental analysis and related studies would serve as the basis for the "Notice of Decision" at § 254.13 of the rule, and this decision and all supporting documents would be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary, since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality, or other resources. No change was made in the final rule to accommodate this suggestion, since all potential impacts must be considered in the environmental analysis pursuant to paragraph (g) of this section, and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government wrote that the Regional Coal Team should be provided the opportunity for full participation in reviewing any exchange proposal. The Department agrees. Notice and review procedures are set out in § 254.8 of the final rule. When processing exchanges involving coal, the appropriate Regional Coal Team will have an opportunity to review the exchange; however, it is impracticable to list in § 254.8 all the appropriate entities that should be given review opportunities.

One respondent suggested that the provision of the proposed rule that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be deleted or limited to those uses of conveyed Federal lands that conflict with management objectives of "adjoining" Indian Trust lands that were established formally prior to the exchange proposal. This suggestion has been partially adopted by making clear that the intended use of conveyed Federal land will not "substantially conflict with established" management objectives (§ 254.3(b)(2)(ii) of the final rule).

The local government respondent also suggested that as a condition of exchange, the Federal lands that may be used for landfills which may affect air quality must use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). The environmental analysis conducted pursuant to paragraph (g) of this section of the rule should consider all potential impacts and measures their effects by whatever standards are appropriate. Rather then defining specific technologies in this rule, the appropriate method of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods. Therefore, the suggestion has not been adopted in the final rule.

In order to consider the objective of meeting the needs of State and local residents, one respondent suggested that this paragraph be revised to require that an exchange be consistent with the zoning and the land use element of the general plan for adjacent non-Federal lands and include a land use consistency determination by each local agency with land use (planning and zoning) authority over adjacent lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in paragraph (h) of this section of the rule. Since those bodies would have jurisdiction over lands conveyed to non-Federal ownership, it would be meaningless to include in the rule that the use of the conveyed lands must be consistent with local zoning.

Five respondents felt that the proposed requirement that the land exchanged into non-Federal ownership must be used or managed to conform to

or enhance adjacent Federal lands uses was costly, inequitable, unfair, or could otherwise limit exchange opportunities. However, this paragraph of the proposed rule simply required the authorized officer to consider the intended uses as part of the public interest determination. The language of paragraph (b)(2) of this section of the proposed rule did not imply control over future uses or place any requirement on the management of the land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to paragraph (h) of this section of the final rule. It would not be in the public interest to convey Federal lands if the intended uses were to create substantial management conflicts on adjacent Federal lands; therefore, this provision is retained in the final rule as one of the findings the authorized officer must be able to make in order to determine that the public interest is well served by the exchange.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis should not be placed on non-commodity resources. Paragraph (b) of this section of the rule is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 254.2 of the final rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. In response, cultural resources is now specified as a resource to consider in reaching a public interest determination.

Another party wanted "promotion of multiple-use values" changed to "continuation of multiple-use values". The language of the proposed rule has been retained, because it is the language used in section 2(a)(1) of the Federal Land Exchange Facilitation Act of 1988 in which Congress finds that land exchange is an important tool for "the promotion of multiple-use values".

One respondent felt that the regulation "guts" the entire public interest test set forth in the Federal Land Policy and Management Act of 1976, by mandating that regardless of the Secretary's determination of public interest, an exchange must not occur if the specified conditions are not met. That respondent recommended deletion of this section. The Department disagrees. Section 206(a) of the Federal Land Policy and Management Act of 1976 provides a listing of considerations to be included in any public interest determination. That listing includes "better Federal land management and the needs of state and local people." In addition to the substantive changes made in response to comments received, paragraph (b) of the final rule has been subdivided into paragraphs (b)(1)–(b)(3) for ease of use and reference.

(c) *Equal Value Exchanges.* One respondent recommended that this paragraph of the rule be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the Alaska National Interest Lands Conservation Act." This recommendation cannot be adopted. Section 206(b) of the Federal Land Policy and Management Act of 1976 requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

Finally, it was suggested that a cross reference to the provisions for approximately equal value exchanges in § 254.11 of the rule be included in this paragraph. This suggestion was adopted.

(d) *Some State exchanges.* Four respondents recommended that this paragraph of the rule be amended to allow for interstate exchanges. This suggestion cannot be adopted, because section 206(b) of the Federal Land Policy and Management Act of 1976 requires that the Federal and non-Federal lands involved in an exchange must be located in the same State.

(e) *Congressional designations.* It was suggested that in the phrase "upon acceptance of title by the United States," the words "United States" be replaced with "authorized officer." This change would not be legally correct, since title may be accepted in the name of the United States by means other than formal acceptance by an authorized officer. (See § 254.16(a) of the final rule.)

(f) *Land and resource management planning.* Several reviewers felt the proposed rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. No change in the rule is necessary to be responsive to this concern. Agency land and resource management plans can be amended to recognize new information or changes in conditions.

Another respondent felt that the regulations should not require that land use plans specifically authorize exchange of Federal land in question, stating that the land use plan could not foresee all exchange proposals. The proposed rule did not require that a land and resource management plan specifically authorize an exchange—only that an exchange proposal be consistent with the goals and objectives of the plan. This criterion is a requirement of the National Forest Management Act and agency policy, and, therefore, is retained in the final rule.

Concern was also expressed that there was nothing in the regulations on identifying non-Federal lands for exchange; this respondent called for involving the private landowner from the beginning. This suggestion was not incorporated in the final rule, because land and resource management plans identify areas or specific tracts of non-Federal lands which the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to pursue land exchanges. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

Sometimes BLM lands are identified as needed to complete a land exchange involving non-Federal lands which would be suitable for National Forest System purposes. One respondent suggested that BLM lands suitable for such exchanges be identified in the BLM planning process. No change was made in the rule to respond to this question. Land and resource management plans for National Forest System lands do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiation between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using the criteria specified in 43 CFR 2200.0–6(b).

(g) *Environmental analysis.* One respondent pointed out that this paragraph of the proposed rule suggested that the public is not invited to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations and Forest Service environmental analysis policy and procedure already address public notice and comment on environmental documents; therefore, it is not necessary to repeat these opportunities in this rule. In addition, § 254.8 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments which shall be

considered in the environmental analysis of the proposed exchange.

Finally, a concern was expressed that compliance with section 106 of the National Historic Preservation Act is not mentioned. It would be impracticable to list in this paragraph all the statutory and regulatory requirements that must be considered in an environmental analysis. Cultural resources is only one of the many significant resources which must be considered. This rule does not limit or exclude any resources from consideration.

(h) *Reservations or restrictions in the public interest.* Several respondents questioned the authority and need to use reservations or restrictions in the conveyance of Federal land. Two comments regarding authority focused on perceived conflicts between the Federal Land Exchange Facilitation Act and the Federal Land Policy and Management Act of 1976. One comment suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another comment suggested conveying partial interests to third parties, in lieu of reservations or restrictions. Two respondents were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. One respondent suggested that the first sentence be deleted, since covenants create continuing administrative burdens for agencies and invite reciprocal restrictions.

Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) and other statutory authorities provide for the use of reservations or restrictions, and the Department is unaware of any conflicts between FLPMA and the Land Exchange Facilitation Act. Identification of a need for reservations or restrictions begins with an agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest, and if so, confirm whether reservations or restrictions are needed. The final rule allows alternative methods to protect resources other than reservations or restrictions, such as third party participation. Although reservations or restrictions may place burdens on both the Federal and non-Federal parties, the effects of reservations or restrictions would be considered by each party prior to a decision to proceed.

A major utility company representative expressed the thought that the United States could retain title to, or administration of, lands involved in an exchange that are subject to rights-of-way. This is correct, the authority to reserve and retain any rights and interests, including rights-of-way permits, easements, or grants, when it is in the public interest, is provided in paragraph (h) of this section of the final rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies including the State Historic Preservation Officer. Covenants and restrictions may be developed to protect any Federal interests, including cultural resources, and consultation with appropriate Federal and State agencies occurs as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

One respondent stated that the Federal Land Policy and Management Act of 1976 exempts land exchange patents from including terms, covenants, or conditions. This is not correct. Section 206 of the Federal Land Policy and Management Act of 1976 supplements other existing Forest Service land exchange authorities and specifically provides authority to exchange an interest in land of less than fee estate. The authority to convey less than fee estate confers authority to accept terms and impose covenants, conditions, and reservations as determined by the Secretary as needed to protect the public interest.

Three respondents suggested the United States retain a mineral royalty when exchanging Federal land. There is no statutory authority requiring the reservation of a royalty interest.

One comment suggested that if Federal property has public interests so critical that they should be retained then the lands should not be exchanged. That is certainly a true statement and is the basis for turning down many proposals for land exchanges. However, in some cases both parties may be willing to accept reservations or covenants to protect critical interests, in order to make tenable an exchange that would otherwise be untenable.

(i) *Hazardous substances.* One respondent suggested that the agencies require "hold harmless agreements" when conveying Federal lands affected by hazardous substances to a "potentially responsible party." While "hold harmless agreements" are desirable, it is necessary to maintain the option for providing "hold harmless agreements" in negotiating land exchanges of critical public importance, in order to avoid discouraging non-Federal parties who are unable to assume such liability.

One respondent pointed out a perceived inconsistency in the requirements for notification for private parties and the Federal government. The notice to the private party requires that "known" storage, release, or disposal of hazardous substances be addressed, whereas, the private party must notify the government of "known or suspected * * *" The respondent favored the broader application but suggested that, in any case, they should be consistent. The Department agrees. The rule has been revised to require both parties to give notice of only "known" storage, release, or disposal, in accordance with the minimum standard of the Environmental Protection Agency regulations at 40 CFR Part 373.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but would not require such on Federal lands and recommended that the provisions be made consistent. This suggestion has been adopted. Paragraph (h)(1) of the final rule also requires the authorized officer to determine whether hazardous substances are present on the Federal lands.

Several respondents proposed that the private parties only be required to provide a broad "hold harmless" indemnification if the government will reciprocate. This suggestion cannot be adopted. Under 42 U.S.C. 9620, the United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also to warrant in the conveyance document to other than a "potentially responsible party" that the United States will be responsible for any further cleanup necessary.

Another respondent stated that a "hold harmless agreement" may not protect Federal interests from cleanup liability imposed by a third party. This comment is correct. A "hold harmless agreement" would not relieve the United States of any appropriate liability; however, it would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would, in fact, establish the United States as an "innocent purchaser" in every case. In many cases, courts recognize that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules, Inc.* v. *U.S. EPA*, 938 F.2d 276, DC Cir. 1991) that the United States is responsible for

hazardous substances on Federal land regardless of ownership at the time the substances were present, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. This suggestion was adopted and the phrase was deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of hazardous substances on the Federal lands to be conveyed. The first sentence of paragraph (i)(1) of § 254.3 was modified to include reference to this requirement.

It should be noted that the Community Environmental Response Facilitation Act (106 Stat. 2174) was signed into law on October 19, 1992, about one year after the proposed land exchange rules were published in the Federal Register. The procedural requirements of this statute, which amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)), will be followed to the extent applicable to land exchanges, and the agencies will consider whether there is a need for future rulemaking in connection with this new law.

(j) *Legal description of properties.* One respondent said that property description by legal survey is sometimes difficult and suggested that the rule be amended to provide for use of a map as an alternative. This suggestion cannot be adopted. Department of Justice standards and Public Land Survey System laws do not permit use of a map reference as a legal description of lands.

Coordination with State and local governments. It was suggested that the Forest Service add a paragraph on Coordination with State and Local Governments similar to that included in the BLM proposed rule. In response, the final rule was amended at § 254.8(a) to specifically provide for notifying State and local governments of proposed exchanges. In addition, § 254.13(a)(2) of the final rule also provides for Forest Service notice to State and local governments when a decision is made to proceed with an exchange.

Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision to require a consistency review by the State government. Paragraph (h) of this section of the rule states that the lands conveyed out of Federal ownership shall be subject to local government laws, regulations, and zoning, and § 254.8 provides for notification of State and local governments. These provisions afford State and local governments full opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on a proposed exchange. Therefore, no additional reference to local plans and ordinances was felt to be needed in this final rule.

Section 254.4—Agreement to initiate an exchange. A representative of an environmental group suggested a provision requiring full public input and, also, specifying that the National Environmental Policy Act (NEPA) process must begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of § 254.8 of the rule. Additional public input opportunities will be dependent upon the level of NEPA analysis and documentation, which, in turn, is dependent upon the complexity of each exchange proposal. Generally, the NEPA process is begun soon after an agreement to initiate is executed.

Another respondent suggested that the agreement to initiate should additionally detail who would be responsible for costs incurred to date in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with paragraph (f) of this section and § 254.14(d) of the rule, which provide that there are no obligations or reimbursement requirements in exchanges which are terminated short of a binding exchange agreement.

One respondent questioned if a non-Federal party were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of BLM, would that party be required to indicate as a part of the proposal document that the offered land is covered by a Forest Plan showing the land is essential to the programs of the National Forest Sytem? No; the non-Federal party would have no responsibility to determine whether the acquisition of the non-Federal land is consistent with the land and resource management plan. This would be a Federal responsibility.

Another respondent suggested adding language requiring the authorized officer to meet with the non-Federal party and discuss proposed exchanges to the extent necessary prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe the rule needs to be burdened with such a requirement. Such advance meetings and discussions are commonplace and necessary to reach the point of entering an agreement to initiate. However, a meeting is not always needed, especially where a proposal is clearly infeasible or without merit.

One respondent suggested language requiring the prospective parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to evaluate the feasibility of an exchange proposal. However, its use should remain discretionary, due to the added cost and to the fact that such an estimate by an appraiser is not always needed to estimate relative values of properties to be exchanged.

One comment suggested that the preliminary estimate of value should reflect the intended use of the lands, thus eliminating the potential for unwarranted, substantial ("windfall") profits by the non-Federal landowner. This suggestion was not adopted. The appraisal process cannot be used to identify windfall profits. However, in preparing any estimate of value, an appraiser must take into consideration all probable uses of the property, including the proposed or intended use Appraisal standards require that these uses be legal, economically feasible, and physically possible and that appraisals reflect the highest and best use (i.e., the most profitable use) of the property. The intended use may not always be the highest and best use of the property, the value of which, nevertheless, must be considered in arriving at the estimated land values. To disregard an important element of information that may influence market value would be improper.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. This suggestion was not adopted. A standard form listing all the information necessary to determine the feasibility of a Federal land exchange is impracticable because the information required depends upon the particular situation.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the involved lands

may occur at any time during the process, identification of all lands which might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: a citation of the exchange authority; a statement regarding the need for segregation of the Federal lands once the exchange is started; and identification of the status which the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate U.S. officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of the exchange upon which agreement must be reached, rather, they are administrative processes and considerations that occur in analyzing a proposed exchange. Therefore, this suggestion is not included in the final rule.

Two respondents suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion cannot be adopted.

One industry representative had dual concerns that all known uses be identified in the "agreement to initiate" and that right-of-way grants be specifically identified as an authorized use. Paragraph (c) of § 254.4 was amended to adopt this recommendation, in order to assure that all affected parties can be considered and notified.

Another industry respondent pointed out that proposed § 254.4(c)(7) would require documentation of any agreed upon compensation of assumed costs which are normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 254.7 of the rule gives a partial listing of costs for which compensation may be made, but it would be inappropriate to assign responsibility in this rule, as responsibilities may vary between localities. The assignment of responsibility is best made by the authorized officer, in accordance with local common practices.

Another respondent suggested that the requirement of paragraph (c)(11) of this section of the proposed rule, regarding relocation of tenants on involved non-Federal lands, should apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The application of relocation benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, 4651) applies only to qualified displaced parties on acquired non-Federal lands. Under paragraph (c)(3) of this section of the rule, there is a requirement to identify any legitimate users of the involved Federal lands authorized to occupy those lands. Section 254.15(c)(2) of the rule specifies the measures required to protect such authorized users.

Two parties asked that paragraph (c)(11) also be used to establish the sequence and timelines for other required reports or clearances. The requirement that the agreement provide a timeline is already specified in paragraph (c)(5) of this section; the sequence of preparing or approving required reports is subject to negotiation and agency administrative procedures.

Another respondent recommended deleting the entire second sentence of paragraph (d) of this section of the proposed rule, which provided that, in the absence of current market information reliably supporting values, the parties may agree to use other acceptable and commonly recognized methods to estimate values. This respondent said that this provision is "inconsistent with" and would "eviscerate" § 254.9 of the rule. To the contrary, this provision is identical to the provision of § 254.9(b)(3) of the rule. This provision allows the use of other methods to determine the value of unique properties, for which there are no comparable sales.

Several respondents questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal as provided in paragraph (g) of this section of the proposed rule. One of the parties recommended deleting this paragraph. Another felt there should be no appeal if the non-Federal party withdraws. The final rule retains paragraph (g) as proposed. As provided by § 254.4(c) of the rule, an agreement to initiate an exchange is nonbinding on all parties. An administrative appeal opportunity is, therefore, illogical and meaningless. However, pursuant to § 254.13, final notices of decision of the Federal authorized officer are appealable.

Section 254.5—Assembled land exchanges. This section of the proposed rule addressed procedures to be followed when an entity has assembled non-Federal parcels from multiple ownerships and offers the assembled parcels for exchange as one transaction. Several States expressed concern that under the proposed regulations States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values, when compared with an assembled multiple ownership exchange. States or any other landowners may qualify for assembled land exchanges and the valuation procedures discussed in § 254.9(b), if they assembled the offered non-Federal parcels from multiple ownerships, in accordance with the terms of an agreement to initiate. This provision of the final rule did not change from the proposed.

Section 254.6—Segregative effect. This section of the proposed rule provided for withdrawal of Federal lands and interests in lands from entry under public land and mineral laws for up to 5 years when a proposal is made to exchange Federal lands. One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." This rule provides no additional segregation authority, but merely allows segregation by record notation in lieu of publication in the **Federal Register**. It is true that the Federal Land Exchange Facilitation Act only allows for segregation from appropriation under the mining laws. However, public land law segregation to protect the Federal and non-Federal parties from competing lands actions during consideration of an exchange is authorized by section 204(b) of the Federal Land Policy and Management Act of 1976; that authority was not rescinded by the Federal Land Exchange Facilitation Act. Segregation of lands provides stability which allows appraisal of values and processing toward conveyance without disruption from subsequent entry onto the Federal lands. Accordingly, this provision was retained in the final rule.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt

that the holder of a right-of-way should have the ability to renew during the period of segregation. The rule would not prohibit such renewal. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 254.2 of the rule deal with the disposal of National Forest lands reserved from the public domain. Rights-of-way are not disposal actions and, therefore, are not affected by the segregation.

Section 254.7—Assumption of costs. This section of the proposed rule sets out those costs the authorized officer may assume without compensation and how parties may be compensated for assumption of costs normally borne by the other party. Thirty-one comments were received on this section of the proposed rule. A major concern of the respondents related to the criteria in paragraph (b) that determine if the authorized officer can compensate the other parties for assumption of costs or assume the costs without compensation from the other parties. They felt these criteria placed unwarranted limitations on the exercise of the cost compensation authority granted by the Federal Land Exchange Facilitation Act. The Act requires the Secretary to determine if it is in the public interest to make adjustments to values by compensating the non-Federal party for assuming certain costs. Therefore, it is necessary in the rule to establish when Federal compensation or assumption of costs is in the public interest. Failure to do so would provide an environment that could foster arbitrary, capricious, and inconsistent decisions. These criteria are retained without change in the final rule to ensure that compensation for costs assumed is in the public interest.

A concern was expressed that cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Cash equalization funds are appropriated and made available to the Forest Service in a general fund for use in any qualifying land exchange. Therefore, Federal cash equalization needs seldom delay case processing.

One respondent suggested that compensation be allowed whenever it is in the best interest of both parties, rather than on an "exceptional basis." Mutual interest is an essential ingredient of every land exchange; however, the government must be concerned with the aggregate effect of cost compensation. Without a limitation on Federal cost assumption compensation, the United States taxpayer could end up paying disproportionate costs in the aggregate for land exchange. Therefore, the Department believes the "exceptional circumstance" limitation is appropriate and necessary to protect the public interest and it has been retained in the final rule.

It appeared to one respondent that there was no restriction on the adjustment of relative values, other than the 25 percent cap, to adequately protect the government from bearing undue costs. In fact, however, the Federal Land Exchange Facilitation Act states that the amounts to be compensated must be reasonable and must accurately reflect the value of the cost and service. This wording is incorporated in paragraph (b)(1) of this section of the rule as one of the five criteria that must be met before compensation can be paid. Each exchange has specific circumstances, so anything other than general restrictions could impede an exchange, which would be counter to the intent of the Act. The five criteria contained in paragraph (b), along with the 25 percent limitation of § 254.12, offer the authorized officer reasonable parameters for ensuring that Federal assumption of costs or compensation for costs assumed by other parties is in the public interest.

It was suggested that the term "in the public interest" be defined. A public interest determination involves many factors, as described in § 254.3(b) of the rule. However, for purposes of assumption of non-Federal costs without compensation and for compensation of non-Federal parties who assume Federal processing costs, § 254.7(b) of the rule sets forth the circumstances under which such purposes are deemed to be in the public interest. Therefore, this suggestion was not adopted.

A suggestion was made to spell out which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 254.4(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two respondents stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. There are many requirements involved in a land exchange. Section 254.4(c)(6) of the rule requires an assignment of responsibility for performance of required functions and for costs associated with processing an exchange in the agreement to initiate. NEPA documentation is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to make sure that the costs associated with the cultural resources survey, mitigation including excavation, reports, and coordination with the State Historic Preservation Officer (SHPO), are considered. This was adequately covered in the proposed rule and is retained in the final rule at § 254.7(a)(2) which states that parties may agree to make adjustments in relative values to cover costs which include cultural resource surveys and mitigation.

One reviewer suggested clarifying paragraph (b) is as it applies to agreement to initiate provisions under paragraph (a) of this section of the rule. The criteria for compensation or assumption of costs listed in paragraph (b) should be determined by the authorized officer, documented in either the agreement to initiate or in a separate document, and made part of the case record file for that land exchange.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that paragraph (b) of this section of the proposed rule attempted to combine compensation to the non-Federal party with compensation for Federal costs and, thus, was vague. Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be unnecessary to require compensation of the non-Federal party as a standard matter of practice. In every exchange case, the authorized officer is required to establish which party has the responsibility for accomplishing and paying for each step of the exchange process. Those processes and their costs which are the responsibility of the United States will be borne by the Forest Service, unless the non-Federal party voluntarily agrees to assume them.

Section 254.8—Notice of exchange proposal. Several respondents requested that the regulation specifically state that the State government be notified at the time of the notice of exchange rather than waiting until the notice of decision. One of these also requested that the congressional delegation be included in this notice of exchange proposal. These recommendations were adopted and are included in paragraph (a) of this section of the final rule.

A right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice to all authorized users, including right-of-way holders, was specified in

paragraph (a) of this section of the proposed rule and is retained in the final rule.

One respondent questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers, or in a single newspaper that covers several counties, as needed to notify the public.

One respondent suggested that paragraph (a)(4) of proposed § 254.8 be revised to make it clear that public comments regarding the environmental impacts of the proposed exchange are being sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of the proposed rule stated that comments would be sought from the public and that timely comments would be considered in the environmental analysis of the proposal; however, the language was not as clear as it might be. Therefore, in the final rule, paragraph (a)(4) has been revised to make clear that the public is invited to submit any comments on or concerns about the exchange proposal, including advising the agency on any liens or other encumbrances or claims related to the lands. Paragraph (b) then links receipt of these comments to the environmental analysis. As previously noted, additional opportunity for public input during environmental analysis will be offered as appropriate. A primary purpose of the notices of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate such notification, the properties must be described legally. However, the authorized officer may include additional information, as appropriate, for ease of identifying the lands. Information regarding intended uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified first of a proposed exchange when the parties enter into an agreement to initiate and again when a decision is reached.

Two respondents suggested that the notice to authorized users should be by certified mail. However, this suggestion was not adopted; the authorized officer needs the freedom to choose the best and most appropriate means to notify authorized users, including certified mail.

A State government official requested that notice be given by **Federal Register** publication. Although **Federal Register** notice would reach groups on a national scale, newspaper publication is a more effective way to reach most interested and potentially affected persons and groups. This, in combination with the direct notice requirements of paragraph (a), will ensure effective notice. Additional requirements to give notice in the **Federal Register** would be administratively burdensome, costly, and redundant.

One respondent expressed confusion as to how the notice of exchange proposal relates to forest plan notices. Unless the proposed exchange requires a land and resource management plan amendment or revision, the notice of exchange proposal has no relationship to land and resource management planning.

In addition to the changes made in response to comments, paragraph (a) was revised in the final rule to explicitly require that the notice of exchange proposal include the deadline for comments to be received and the name, title, and address of the official to whom comments should be sent and from whom additional information may be obtained.

Some respondents suggested that minor modifications to the notice of exchange, for example, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values, not previously published, will require republication. This was a provision of the proposed rule and is retained in the final rule.

Section 254.9—Appraisals. A respondent expressed concern with the reference to the Uniform Appraisal Standards for Federal Land Acquisitions, since those standards are focused on acquisition under threat of condemnation; the respondent recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. This recommendation cannot be fully adopted. The Federal Land Exchange Facilitation Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Land Acquisitions" to the extent practical. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Uniform Standards of Professional Appraisal Practice regarding appraisal standards, which the Appraisal Institute has adopted, have been incorporated in § 254.9 of this rule.

Two professional appraisal organizations suggested that BLM and the Forest Service adopt the Uniform Standards of Professional Appraisal Practice to assure consistency and quality in appraisals. The Uniform Standards of Professional Appraisal Practice include standards for all categories of appraisal, including real and personal property, and are more general than the Uniform Federal Standards. The Uniform Appraisal Standards for Federal Land Acquisitions set detailed requirements for the act or process of estimating value. Since the Uniform Standards of Professional Appraisal Practice define an appraisal report differently from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in § 254.2 of the rule. The standards are consistent with the Uniform Standards of Professional Appraisal Practice and incorporate the Government-wide Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0–16–038050–2 and the Department of Transportation standards of appraisal (49 CFR part 24, subpart B).

(a) *Appraiser qualifications.* Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two believed requiring all appraisers to be State certified or licensed was impractical and possibly premature, since many States have not fully enacted their appraisal certification laws. One of the two suggested that State certification or licensing should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision.

Eighteen States currently require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for Federally

regulated financial agencies to be certified or licensed. In some States, appraisers not involved in Federally related financial transactions may voluntarily become certified or licensed.

Federal real estate appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, for purposes of supporting uniform national standards for appraisers, it is important that agency appraisers be qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems resulting from uneven progress by the States in implementing certification or licensing requirements, the final rule has been revised to require qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Consequently, the agency will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted State regulatory requirements in other States as established by each agency.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. This official suggested that the rule be revised to clearly indicate that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers in Federal land exchanges must meet standards generally comparable to State training and experience qualifications as established by the Forest Service and BLM.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., a State agreement to accept State certification and licenses issued by other States. This person felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue, not a matter under Forest Service or BLM jurisdiction. Therefore, the rule was not revised to address reciprocity.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three persons suggested this was unfair and that instead, the parties should agree on selection of the appraiser. The authorized officer must approve the appraiser agreed upon and selected by the parties. As provided in § 254.4 of the proposed rule and retained in the final rule, the parties, in arranging for appraisals, must agree on the selection of a qualified appraiser.

One person interpreted the first sentence in paragraph (a)(1) of this section of the proposed rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the paragraph be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

(b) *Market value.* Paragraph (b) of § 254.9 of the proposed rule set out standards to guide appraisers. A respondent suggested that paragraph (b)(1)(iii) be modified to require that consideration of prices paid for similar properties be limited to properties "in the same general location as the subject property." This limitation would severely restrict an appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic, or other resource values, for which comparable property transactions may be beyond the general location of the subject property; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in paragraph (b)(1)(iii) of this section of the proposed rule be expanded to include watershed and archaeological values. This suggestion was not adopted. It is impracticable to list all resource values to be considered by the appraiser, and the list is merely suggestive, not all inclusive. The phrase "and other resource values or amenities" covers all other resources that may have value in the private competitive market, including watershed and archaeological values.

A reviewer suggested that paragraph (b)(1)(iv) of this section of the proposed rule be revised to require the appraiser to consider water rights along with timber and mineral interests. The reviewer noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." This suggestion was adopted.

Several comments were received indicating an apparent conflict between instructions in paragraphs (b)(1)(v) and those in (b)(1)(vi) of this section of the proposed rule, regarding how to appraise multiple properties in an assembled exchange. Paragraphs (b)(1)(v) and (vi) of the proposed rule were combined into paragraph (b)(1)(v) of the final rule to clarify that if stipulated in an agreement to initiate, lands assembled from multiple ownerships can be appraised separately.

Several people commented on proposed paragraph (b)(1)(vii), which would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this paragraph "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent further stated that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response, the Department believes these are valid points and has removed this provision from the final rule.

A mining industry association suggested that this paragraph of the rule include a statement that appraisers should disregard any increase in value to Federal lands resulting from a non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted, since the appraiser must take into consideration all potential buyers and uses of the property, including possible purchase by adjacent property owners. The value estimation should reflect motivational factors evident in similar transactions, i.e., sales of abutting lands.

One respondent thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. This person suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This contingency was already provided for in proposed paragraph (b)(2) of this

section, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained as paragraph (b)(3) in the final rule.

One reviewer suggested reliance on the "departure" provisions of the Uniform Standards of Professional Appraisal Practice, which would permit an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income). This suggestion was not adopted, as the principal direction for Federal appraisals comes from the Uniform Appraisal Standards for Federal Land Acquisitions, which specifies the direct comparison or market approach as the preferred approach. The Uniform Standards of Professional Appraisal Practice supplements the Federal standards.

In addition to the changes made in response to comments, paragraphs (b)(1)(vi)(A), (B) have been redesignated in the final rule as paragraphs (b)(2)(i), (ii) for clarity. Paragraph (b)(2) is thus redesignated as (b)(3) in the final rule.

(c) *Appraisal report standards.* Three respondents expressed concern that language contained in paragraph (c)(5) of this section of the proposed rule was vague and could subject appraisers to open-ended liability regarding disclosure of potentially hazardous environmental conditions. Upon review, the Department agrees with these comments. As a result, this provision has been modified to require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One person expressed concern over the lack of sufficient safeguards against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not reliable indicators that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay a land exchange. The need for two appraisals should be determined by the parties involved in an exchange and should be based on the complexity of the appraisal.

One respondent observed that parties to an exchange would be required to invest considerable time and expense in conducting studies, appraisals, and title clearance before an informed decision could be made whether to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. This suggestion was not adopted. The parties must agree to pursue an exchange early in the process, in an agreement to initiate, before incurring any significant investment of time and expense. However, until a binding exchange agreement is entered all parties are subject to loss of their investments if any party decides that the proposed exchange is no longer feasible. The signing of a binding exchange agreement pursuant to § 254.14 fixes the agreed upon values and commits the parties to continue until the transaction is completed. This avoids last-minute changes in values and other elements of the exchange which could jeopardize the stability that is necessary for closing any real estate transaction.

Another person suggested that paragraph (c)(10)(ii) of this section of the proposed rule, requiring all appraisers to certify that they personally examined all comparable sales, could be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. This suggestion was not adopted. It is a long-standing requirement of Federal appraisal standards and a requirement of the Uniform Standards of Professional Appraisal Practice that an appraiser must make a personal on-site examination of the comparable sales to perform an accurate comparative analysis.

(d) *Appraisal review.* There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although additional education and experience are always desirable, the standards set forth in paragraph (a) of this section of the rule are adequate in that they require the appraiser to possess the minimum qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Other comments suggested that the review appraiser should be an agency employee and that the reviewer should be appointed by the authorized officer. These suggestions were not adopted. Paragraph (a) of this section of the final rule would allow reviewers to be employees or contractors of the Federal or non-Federal exchange parties, to provide for those situations when it is in the public interest to use a qualified non-Federal review appraiser. Additionally, it should be noted that the authority to review appraisals is delegated by the Secretary to the Chief Appraiser, instead of to the authorized officer, to maintain the independence of the valuation process from the exchange negotiation process.

Section 254.10—Bargaining; arbitration. Sixteen comments were received on this section of the proposed rule objecting to: (1) Appointment of an arbitrator by the Secretary; (2) allowing an arbitration decision to be binding for a period not to exceed 2 years; (3) allowing the agency 180 days for review of the appraisal; and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments, as these provisions are specific requirements of section 3 of the Federal Land Exchange Facilitation Act.

One person felt this section should clarify who would pay the costs of arbitration. This suggestion was not adopted. First, the costs of arbitration may be addressed in an agreement to initiate. Second, if the parties have not reached prior agreement on paying arbitration costs, the rules of the American Arbitration Association, which the Exchange Facilitation Act specifies must be used, provide for the assignment of costs.

Section 254.11—Exchanges at approximately equal value. One respondent felt the $150,000 limit was too high and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act of 1988.

Section 254.12—Value equalization; cash equalization waiver. One respondent stated that the rule should provide safeguards against windfalls, asserting that non-Federal parties acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. This suggestion was not adopted, as section 206(b) of the Federal Land Policy and Management Act of 1976 established sufficient restrictions to limit the use of cash equalization payments in land exchanges to the minimum necessary.

One respondent stated that BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with BLM. This recommendation cannot be adopted. The Exchange Facilitation Act's prohibition on waiver of payment of cash equalization applies only to the Secretary of Agriculture.

It was suggested that the 25 percent limitation not be applied in Alaska and that the guidance of the Alaska National Interest Lands Conservation Act should be used instead. This is already accommodated in § 254.1(c) of the rule, which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act, except to the extent to which the rules conflict with provisions of those Acts.

Two respondents were concerned about the 25 percent limitation imposed by the regulations. One felt this limitation is not in compliance with the Federal Land Policy and Management Act of 1976 and the Federal Land Exchange Facilitation Act, and that while section 206(b) of the Federal Land Policy and Management Act of 1976 limits equalization to 25 percent of the value of the Federal lands, the Exchange Facilitation Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting the ability to complete exchanges with this provision. The Exchange Facilitation Act provides discretionary authority to the Secretary to adjust relative values to compensate for costs assumed in accordance with terms of the Agreement to Initiate. In accordance with § 254.7 of the rule, such compensation will be made by cash equalization payment under authority of section 206(b) of the Federal Land Policy and Management Act of 1976, and therefore, will be subject to the 25 percent limitation of that authority.

Section 254.13—Approval of exchange; notice of decision. A State agency felt that notification to States will occur too late as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposal sent to State and local governments, and others, under § 254.8 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before the appraisal(s) and environmental analysis.

One respondent recommended that the Forest Service appeal regulations be amended to incorporate land exchange decisions as appealable actions. This recommendation was not adopted. Land exchange decisions are subject to Forest Service appeal regulations at 36 CFR part 217 and part 251, subpart C. This section of the land exchange rules merely informs readers of the applicability of the appeal regulations.

In response to a reviewer who asked when the appeal period would begin, paragraph (b) of this section of the rule was revised to be consistent with the administrative appeal regulations which specify that the appeal period begins after publication of a notice of the decision.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the associated increased workload. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. The second notice is equally important; it provides notice of the final decision on the proposal and affords the opportunity for appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before completion of an exchange. Paragraph (a) of § 254.14 of the rule addresses that contingency. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which serves to lock in the appraised values.

Section 254.14—Exchange agreement. One respondent suggested that an appraisal could be reviewed and approved in advance of an exchange agreement. No change in the rule is needed. The appraisal is always reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 254.15—Title standards. One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degree of warranty. Since this rule does not change established methods of conveyance, this suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as Department of Justice title standards.

One respondent suggested that this section be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. This suggestion was not adopted. While the parties to an exchange may include general terms concerning case closing matters in an agreement to initiate, title acceptance is dependent upon instructions, requirements, and conditions which can be set forth only at the end of the exchange process, rather than at the beginning. The requirements for title acceptance are presented in § 254.16 of the rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion could not be adopted. Agency policy (Forest Service Manual 5430.3) requires that property acquired by the United States cannot contain reservations or outstanding rights that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) of this section of the rule should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated. This paragraph of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon the removal of any personal property.

Several respondents felt the proposed rule did not provide sufficient protection for existing third party special uses of Federal land following an exchange of title. As previously noted, § 254.4 of the rule was revised to address authorized uses in the agreement to initiate. Further, agency policy (Forest Service Manual 5403.1 and 5430.3) requires recognition and protection of authorized third party uses to the extent appropriate, although, if in the public interest, the regulations at 36 CFR 251.60(b) provide for termination or revocation of special-use authorizations if the involved lands are transferred out of Federal ownership.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace the Federal authorization. This suggestion was not adopted. The United States has no general authority to require a non-Federal exchange party to offer any alternative use arrangement to the holder of a Federal special-use authorization. However, if the exchange party offers to continue the terms of an existing permit, then the termination or

revocation of the Federal permit to facilitate an exchange is more justifiable. Although a land exchange party and an authorized user may agree to a permanent right of use, the users are generally granted authorizations with terms similar to the Federal authorizations by the non-Federal exchange party.

Three comments offered by the ski industry stated that lands occupied by a ski area should not be exchanged without the specific consent of the permittee. This suggestion was not adopted, as holders of ski area permits are afforded the same consideration as is afforded other types of special-use holders. Federal special-use authorizations of all types are revoked or terminated to facilitate a land exchange of the involved Federal lands only when it is found to be in the public interest. In such case, the agency will encourage the non-Federal exchange party to reach agreement with the holder of a Federal special-use authorization to furnish privileges equal to those enjoyed by the user under the Federal permit.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. To adopt this suggestion would require amendment of the agency's appeal rule. Moreover, it is unlikely to be in the best interest of a third party user to appeal if the same use and substantially same conditions have been offered. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected generally, would not jeopardize the consummation of an exchange. However, the agency believes that the third party user should retain the right to an administrative appeal to protect the third party's interests.

An industry respondent requested that the regulation clarify that (1) a mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. In recognition of the unique rights of holders of Federal mineral leases, paragraph (a)(2) of § 254.15 of the rule has been revised to apply only to non-mineral leases.

Another comment from the business sector was that the regulation should permit only those reservations to be placed on the Federal land that were first specified in the agreement to initiate. However, after an agreement to initiate is entered, additional rights and reservations may be identified that must be recognized. Therefore, the rule does not adopt this comment.

A respondent suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses on the involved Federal lands.

Section 254.16—Case closing. It was suggested that paragraph (a) of this section of the rule refer to patents or "other documents of conveyance." However, patents and deeds are the only forms of conveyance by the Federal government.

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. The Department agrees. This section has been revised to clarify that acceptance of title occurs upon recordation and that the segregation period for the acquired non-Federal lands terminates midnight of the 90th day after recordation.

A reviewer suggested specifying that the authorized officer accept title and that the date of acceptance be noted on the land records. This suggestion has been partially adopted. Paragraph (b) of § 254.16 of the final rule has been rewritten to state that title acceptance occurs upon recordation, rather than by action of the authorized officer, and provides for notation of the date of acceptance.

One respondent felt that "Case Closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation in addition to title acceptance. Therefore, the more general title of "Case Closing" was retained.

It was suggested that paragraph (b) of this section of the rule add the regulatory citation for withdrawal. A citation to 43 CFR part 2300 has been added.

Two respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. Paragraph (b) has been revised to clarify that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process had been completed. This is correct but no change was needed in the rule. Title does not transfer until any administrative appeal has been resolved, and the deed has been recorded.

A State government respondent suggested that a time constraint be placed on the Office of the General Counsel review. This is undesirable and impracticable. Legal review of complicated title issues can be time consuming, but it is a critical step in any land exchange.

Concern was expressed that in paragraph (a) of this section of the rule the word "only" reverses the meaning and intent of Section 3(a) of the Act and should be deleted. As previously noted, this paragraph has been revised in the final rule and this problem has been eliminated through the rewording.

Section 254.17—Information requirements. The agreement to initiate an exchange and the exchange agreement required by §§ 254.4 and 254.14 of the rule represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in an agreement to initiate an exchange and an exchange agreement.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320, the Forest Service requested, in conjunction with the publication of the first proposed rule, and, on August 3, 1989, received, approval from the Office of Management and Budget (OMB) for the information to be addressed in an agreement to initiate or an exchange agreement. The information collection was assigned OMB Control No. 0596–0105 and was approved for use through June 30, 1992. On May 1, 1992, the Forest Service requested approval of an extension of the information collection. That approval was granted by OMB on June 11, 1992. The information collection has now been approved for use through June 30, 1995.

Regulatory Impact

The rule has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant rule. The rule contains minimum procedures necessary to implement the Exchange Facilitation Act. The rule will not have an effect of $100 million or more on the economy; will not substantially increase prices or costs for consumers, industry, or State or local governments; nor will it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The rule has been considered in light of Executive Order 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessment activities which are consensual in nature between the United States and non-Federal parties. Exchanges are consensual, and, therefore, do not raise takings issues. Accordingly, no further consideration of takings implications were deemed necessary in this rule.

Moreover, this rule has been considered regarding the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant impact on a substantial number of small entities.

Section 31b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 254

Land Exchanges, National forests

Therefore, for the reasons set forth in the preamble, part 254 of Title 36 of the Code of Federal Regulations is hereby amended by revising subpart A to read as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

Sec.

254.1 Scope and applicability.
254.2 Definitions.
254.3 Requirements.
254.4 Agreement to initiate an exchange.
254.5 Assembled land exchanges.
254.6 Segregative effect.
254.7 Assumption of costs.
254.8 Notice of exchange proposal.
254.9 Appraisals.
254.10 Bargaining; arbitration.
254.11 Exchanges at approximately equal value.
254.12 Value equalization; cash equalization waiver.
254.13 Approval of exchanges; notice of decision.
254.14 Exchange agreement.
254.15 Title standards.
254.16 Case closing.
254.17 Information requirements.

Subpart A—Land Exchanges

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, 1716, and 1740; and other applicable laws.

§ 254.1 Scope and applicability.

(a) These rules set forth the procedures for conducting exchanges of National Forest System lands. The procedures in these rules may be supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

(b) These rules apply to all National Forest System exchanges of land or interests in land, including but not limited to minerals, water rights, and timber, except those exchanges made under the authority of Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i) (36 CFR part 254, subpart C), and as otherwise noted. These rules also apply to other methods of acquisition, where indicated.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621), or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which the parties have agreed in writing to initiate prior to April 7, 1994, will proceed in accordance with the rules and regulations in effect at the time of the agreement.

(e) Except for exchanges requiring cash equalization payments made available through the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460[1]9), the boundaries of a national forest are automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), provided the acquired lands are contiguous to existing national forest boundaries and total no more than 3,000 acres in each exchange.

(f) Exchanges under the Weeks Act of March 1, 1911, or the General Exchange Act of March 20, 1922, may involve land-for-timber (non-Federal land exchanged for the rights to Federal timber), or timber-for-land (the exchange of the rights to non-Federal timber for Federal land), or tripartite land-for-timber (non-Federal land exchanged for the rights to Federal timber cut by a third party in behalf of the exchange parties).

(g) Land exchanges involving National Forest System lands are authorized by a number of statutes, depending upon the status (conditions of ownership) of such lands and the purpose for which an exchange is to be made. The status of National Forest System land is determined by the method by which the land or interests therein became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges assume the same status as the Federal lands conveyed.

(h) The Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701), is supplemental to all applicable exchange laws, except the cash equalization provisions of the Sisk Act of December 4, 1967, as amended (16 U.S.C. 484a).

§ 254.2 Definitions.

For the purposes of this subpart, the following terms have the meanings set forth in this section.

Acquisition means the attainment of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

Adjustment to relative values means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

Agreement to initiate means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by consent of the parties or terminated at any time upon written notice by any party.

Appraisal or appraisal report means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

Approximately equal value means a comparative estimate of value of the lands involved in an exchange which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

Arbitration is a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

Assembled land exchange means an exchange of Federal land for a package of multiple ownership parcels of non-Federal land consolidated for purposes of one land exchange transaction.

Authorized officer means a Forest Service line or staff officer who has been delegated the authority and responsibility to make decisions and perform the duties described in this subpart.

Bargaining is a process other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

Federal lands means any lands or interests in lands, such as mineral and timber interests, that are owned by the United States and administered by the Secretary of Agriculture through the Chief of the Forest Service, without regard to how the United States acquired ownership.

Hazardous substances are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

Highest and best use means an appraiser's supported opinion of the most probable and legal use of a property, based on market evidence, as of the date of valuation.

Lands means any land and/or interests in land.

Market value means the most probable price in cash, or terms equivalent to cash, which lands or interest in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

Mineral laws means the mining and mineral leasing laws applicable to Federally owned lands and minerals reserved from the public domain for national forest purposes and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), but not the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Outstanding interests are rights or interests in property held by an entity other than a party to an exchange.

Party means the United States or any person, State, or local government who enters into an agreement to initiate an exchange.

Person means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated. No Member of Congress may participate in a land exchange with an agency of the United States, as set forth in 18 U.S.C. 431–433.

Public land laws means that body of non-mineral land laws dealing with the disposal of National Forest System lands administered by the Secretary of Agriculture.

Reserved interest means an interest in real property retained by a party from a conveyance of the title to that property.

Resource values means any of the various commodity values or non-commodity values, such as wildlife habitat and aesthetics, contained within land interests, surface and subsurface.

Secretary means the Secretary of Agriculture or the individual to whom responsibility has been delegated.

Segregation means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

Statement of value means a written report prepared by a qualified appraiser in conformance with the minimum standards of the Uniform Standards of Professional Appraisal Practice that states the appraiser's conclusion(s) of value.

§ 254.3 Requirements.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.

(1) *Factors to consider.* When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of existing or planned land use authorizations (§ 254.4(c)(4); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

(2) *Findings.* To determine that an exchange well serves the public interest, the authorized officer must find that—

(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and

(ii) The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

(3) *Documentation.* The findings and the supporting rationale shall be documented and made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange must be located within the same State.

(e) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by the Secretary of the Interior by exchange under the authority granted by the Federal Land Policy and Management Act of 1976, as amended, which are within the boundaries of any unit of the National Forest System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any other system established by Act of Congress; or the boundaries of any national conservation area or national recreation area established by Act of Congress, immediately are reserved for and become a part of the unit or area in which they are located, without further action by the Secretary of the Interior, and, thereafter, shall be managed in accordance with all laws, rules, regulations, and land resource management plans applicable to such unit or area.

(f) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part 219). Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

(g) *Environmental analysis.* After an agreement to initiate an exchange is signed, the authorized officer shall undertake an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Forest Service environmental policies and procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the authorized officer shall consider timely written comments received in response to the exchange notice published pursuant to § 254.8 of this subpart.

(h) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(i) *Hazardous substances.*

(1) *Federal lands.* The authorized officer shall determine whether hazardous substances are known to be present on the Federal lands involved in the exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands in the contract agreement and in the conveyance document, pursuant to 40 CFR part 373 and 42 U.S.C. 9620. For purposes of this section, the notice of hazardous substances on involved Federal lands in an agreement to initiate an exchange or an exchange agreement meets the requirements for notices established in 40 CFR part 373. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a) and participated as an owner, or in the operation, arrangement, generation, or transportation of the hazardous substances found on the Federal land, the conveyance document from the United States must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substances remaining on the property has been taken before the date of transfer and that any additional remedial action found necessary after the transfer shall be conducted by the United States, pursuant to 42 U.S.C. 9620(h)(3). The conveyance document must also reserve to the United States the right of access to the conveyed property if remedial or corrective action is required after the date of transfer. Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement as referenced in 42 U.S.C. 9607(e) whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any hazardous substances known to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless agreement" shall be included in an exchange agreement, pursuant to § 254.14 of this subpart.

(j) *Legal description of properties.* All lands subject to an exchange must be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(k) *Special review.* Except as provided in this paragraph, land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight review, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). However, minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight, provided the general concept of and basis for the acquisition remain the same.

§ 254.4 Agreement to initiate an exchange

(a) Exchanges may be proposed by the Forest Service or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands proposed for exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. A qualified appraiser must prepare the preliminary estimate.

(c) If the authorized officer agrees to proceed with an exchange proposal, all prospective parties shall execute a nonbinding agreement to initiate an exchange. At a minimum, the agreement must include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by a party, other than the United States and State and local governments, that such party is a citizen

of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 254.7 of this subpart;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands (§ 254.3(i) and § 254.14);

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 254.5 of this subpart;

(11) A statement as to the arrangements for relocation of any tenants occupying non-Federal lands pursuant to § 254.15 of this subpart;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 217 or 36 CFR part 251, subpart C.

§ 254.5 Assembled land exchanges.

(a) Whenever the authorized officer determines it is to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

(c) An assembled land exchange arrangement must be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

(d) Value of the Federal and non-Federal lands involved in an assembled land exchange arrangement shall be estimated pursuant to § 254.9 of this subpart.

§ 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management (BLM) to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect terminates as follows:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published in the **Federal Register** by the appropriate BLM State Office, if a decision is made not to proceed with the exchange or upon removal of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

§ 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest as specified in paragraph (b) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) Subject to the limitation in paragraph (c) of this section, the parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: land surveys; appraisals; mineral examinations; timber cruises; title searches; title curative actions; cultural resource surveys and mitigation; hazardous substance surveys and controls; removal of encumbrances; arbitration, including all fees; bargaining; cure of deficiencies preventing highest and best use of the land; conduct of public hearings; assemblage of non-Federal parties from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) As a condition of an agreement to initiate, the authorized officer may agree to assume without compensation costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

(5) There are no other practicable means available to the authorized officer for meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12(b) of this subpart.

§ 254.8 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish legal descriptions of any lands that may be excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0–16–038050–2 when appraising the values of the Federal and non-Federal lands involved in an exchange.

(a) *Appraiser qualifications.*

(1) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual agreeable to all parties and approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(2) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may establish appraiser qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.*

(1) In estimating market value, the appraiser shall:

(i) Determine the highest and best use of the property to be appraised;

(ii) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(iii) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market;

(iv) Consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property; and

(v) If stipulated in the agreement to initiate in accordance with § 254.4 of this subpart, estimate separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 254.5 of this subpart. In this case, the appraiser also must estimate the value of the Federal and non-Federal properties in a similar manner.

(2) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(i) The various interests contribute their full value (pro rata) to the value of the whole; and

(ii) The valuation is compatible with the highest and best use of the property.

(3) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes must contain the following minimum information:

(1) A summary of facts and conclusions;

(2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(3) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(5) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through the normal research which would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(6) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

(9) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(10) A certification by the appraiser to the following:

(i) The appraiser has personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(ii) The appraiser has personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) The appraiser has no present or prospective interest in the appraised property; and

(iv) The appraiser has not received compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.*

(1) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in paragraph (a) of this section. Statements of value prepared by agency appraisers are not subject to this review.

(2) The review appraiser shall determine whether the appraisal report:

(i) Is complete, logical, consistent, and supported by market analysis;

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

(iii) Reasonably estimates the probable market value of the lands appraised.

(3) The review appraiser shall prepare a written review report, containing at a minimum:

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

(iv) A certification by the review appraiser to the following:

(A) The review appraiser has no present or prospective interest in the property which is the subject of the review report; and

(B) The review appraiser has not received compensation that was contingent upon approval of the appraisal report.

§ 254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following:

(1)(i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s), at the initiative of either party, must be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it must be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange must determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision is limited to the value estimate(s) of the contested appraisal(s). An arbitrator may not include in an award decision recommendations regarding the terms of a proposed exchange, nor may an arbitrator's award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 254.11 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value upon a determination that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and accepted by an authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer, not the non-Federal party, determines whether the Federal and non-Federal lands are approximately equal in value and must document how the determination was made.

§ 254.12 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or excluding lands; and/or

(2) Use cash equalization, after making all reasonable efforts to equalize values by adding or deleting lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 254.7 of this subpart may not exceed 25 percent

of the value of the Federal lands to be conveyed.

(c) The Secretary of Agriculture may not waive cash equalization payment due the United States, but the parties may agree to waive cash equalization payment due the non-Federal party. The amount to be waived may not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less.

(d) A cash equalization payment may be waived only after the authorized officer certifies, in writing, that the waiver will expedite the exchange and that the public interest will be best served by the waiver.

§ 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice must include:

(i) The date of decision,

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, and individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision shall be subject to appeal as provided under 36 CFR part 217 or, for eligible parties, under 36 CFR part 251, subpart C.

§ 254.14 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 254.13 of this subpart. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement must contain the following:

(1) Identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete an exchange;

(2) Inclusion of the terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) The agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided.

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) The exchange proposal receives any required Secretarial approval;

(5) No objections are raised during any required congressional oversight;

(6) In the event of an appeal under 36 CFR part 217 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

(7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to, land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, an action taken by the parties prior to consummation of an exchange does not create any contractual or other binding obligations or rights enforceable against any party.

§ 254.15 Title standards.

(a) *Title evidence.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) *Title encumbrances.*

(1) *Non-Federal lands.*

(i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and

the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands pass simultaneously and are deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner must be met. The minimum requirements and conditions necessary for recordation include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands;

(2) The issuance of title evidence as of the date of recordation which conforms to the instructions and requirements of the USDA Office of the General Counsel's preliminary title opinion; and

(3) Continuation searches disclosing no matters of record that would require any change in the aforementioned title evidence as issued.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically are segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records must be noted accordingly. Thereafter, the lands will be open automatically to operation of the public land laws and mineral laws, except to the extent otherwise provided by law, unless action is taken pursuant to 43 CFR part 2300 to initiate a withdrawal within the 90-day period.

§ 254.17 Information requirements.

The requirements governing the preparation of an agreement to initiate in § 254.4 of this subpart and an exchange agreement in § 254.4 of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been approved for use pursuant to 5 CFR part 1320 and assigned OMB Control Number 0596–0105.

Dated: February 18, 1994.

Adela Backiel,

Deputy Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94–4997 Filed 3–7–94; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Parts 905 and 968

Public and Indian Housing Amendments to the Comprehensive Grant Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R–94–1700; FR–3517–P–01]

RIN 2577–AB32

Public and Indian Housing Amendments to the Comprehensive Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to existing regulations to simplify and expedite the Comprehensive Grant Program (CGP) planning and funding process for public housing agencies (PHAs) and Indian housing authorities (IHAs) that own or operate 250 or more public or Indian housing units.

DATES: Comments due date: April 22, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. to 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For questions concerning public housing agencies contact Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, room 4138, telephone (202) 708–1800, or (202) 708–0850 (voice/TDD).

For questions concerning Indian housing authorities contact Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, room 4140, telephone (202) 708–1015, or (202) 708–0850.

The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (The telephone numbers listed above are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0157.

II. Background

Section 14 of the United States Housing Act of 1937 (42 U.S.C. 14371) ("the Act"), as amended by section 119 of the Housing and Community Development Act of 1987 (the "1987 Act") and Cranston-Gonzalez National Affordable Housing Act of 1990 ("NAHA"), established the Comprehensive Grant Program (CGP), which was designed to govern the modernization needs of PHAs and IHAs that own and operate 250 or more public or Indian housing units. PHAs and IHAs that own and operate fewer than 250 public or Indian housing units are governed by the Comprehensive Improvement Assistance Program (CIAP).

(The reader should note that, hereafter, for ease of discussion, the preamble to this proposed rule uses the terms "public housing" to refer to both public and Indian housing, and "HAs" or "housing agency," to refer to both PHAs and IHAs, unless otherwise stated. In addition, the term "development" is used to refer to "low-income projects," as defined at section 3(b)(1) of the Act.)

The Department promulgated regulations for the CGP and CIAP at 24 CFR parts 905 and 968, and these regulations have governed the modernization of public and Indian housing assisted under the Act. On February 14, 1992, the Department published the final rule for the CGP at 57 FR 5514. The February 14, 1992 rule amended the CIAP at 24 CFR part 968, subpart B, to limit its applicability to HAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in Federal Fiscal Year (FFY) 1993); added a new subpart C to part 968, which sets forth the new CGP for HAs that own or operate a total of 500 or more public housing units (250 or more units beginning in FFY 1993); and revised both the CIAP and CGP programs for purposes of implementing various technical and substantive program amendments contained in sections 509 (b) through (f) of the NAHA.

On March 15, 1993, the Department published an interim rule for CIAP at 58 FR 13916 for HAs with less than 250 units in FFY 1993 and minor technical corrections for CGP. The CIAP interim rule was published in response to public comment requesting both streamlining and simplification and was also based on experience gained through program review/audit and monitoring.

III. Simplification of CGP

A. Administrative Actions

The primary goal for CGP is to provide greater discretion and responsibility to HAs in carrying out their modernization programs, thereby returning it to local control. The published CGP rule and the CGP Handbook 7485.3 were designed to meet this objective. Following their publication, the Department has explored additional measures to simplify the program and to increase the flexibility, responsibility and authority at the HA level beyond that provided for in the regulation and Handbook. It is the Department's intent that this be an on-going process that will result in simplifying the program and providing maximum flexibility to HAs. It is expected that this increased flexibility to HAs will foster increased accountability by the HAs to residents and the local government thereby ensuring local control of the program. HAs will then demonstrate this local control and involvement with their submission of materials for the partnership process.

Additionally, the Department is concerned about the need to accelerate the obligation of CGP funds. In order to contribute to the economic recovery of this Nation, the Secretary has established, as an initiative, the acceleration of the obligation and expenditure of CGP funds.

Unless there are very substantial reasons to the contrary (including but not limited to litigation, strikes, necessity to redesign work already bid, and toxic substances), HUD expects that CIAP/CGP funds will be obligated within two years of receipt (*i.e.*, within two years from the execution of the ACC amendment) and expended in three years from the execution of the ACC amendment. Some HAs have suggested that the timeframe for tracking an HA's obligation/expenditure of funds should begin with the date the HA has access to LOCCS/VRS (Line of Credit Control System/Voice Response System). HUD has made provisions for fast tracking the ACC execution and Field Offices are advised to put the required information into LOCCS/VRS as soon as the documents are executed.

HUD has attempted to streamline the ACC amendment process. As noted in

notice PIH 93–10 (entitled Expediting Fiscal Year (FY) 1993 Comprehensive Grant Program (CGP) Funding for Public and Indian Housing Authorities (HA) that had an Approved Comprehensive Plan in FY 1992), issued March 10, 1993, the ACC amendment is prepared by the HUD Field Office program staff, reviewed by the HUD Field Counsel and forwarded to the HA for signature. Unless required by State or local law or the HA by-laws, the Executive Director is permitted to sign and return the ACC amendment without a Board Resolution. HAs are encouraged to consider amending their by-laws (where permitted under law) so that a Board Resolution is not required or, if a Board Meeting is not imminent, the HA may consider conducting a telephone Board Meeting to authorize the signing of the ACC amendment.

HAs are also required to execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which HAs are obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD is proposing to eliminate the requirement for Declarations of Trust for Mutual Help units. Because of the nature of the Mutual Help program (homeownership) and the burden which this requirement places on Field Counsel and IHAs (e.g., locating legal descriptions or surveys for trust land when the IHA's and HUD's interest is only a leasehold), HUD has reviewed and discussed this issue with Field Counsel and finds that HUD's interest is sufficiently protected without the further requirement of a Declaration of Trust.

HUD is also aware of several problems which HAs have encountered during the first year of operation of LOCCS/VRS and will meet with HAs and industry groups to work out any remaining problems with LOCCS/VRS. Currently, LOCCS/VRS is not set up to accommodate fungibility between budget line items. Modifications will be made to the LOCCS/VRS software to allow fungibility.

The HA estimated time frames (target dates) for obligation and expenditures are reflected in its implementation schedule. The Department proposes in this rule at 24 CFR 905.669(d) and 24 CFR 968.315(d) that all formula funding should be obligated within two years of allocation unless a longer period is originally approved by HUD. HAs may self-execute a time extension because of HUD delay or for other reasons outside of the HA's control. The time periods for obligation and expenditure of modernization funds are also proposed to be taken into account in HUD's determination of an HA's continuing capacity and reasonable progress. See §§ 905.687 and 968.345.

If the HA fails to obligate funds within this period, they may be subject to an alternative management strategy which may involve third-party oversight of the modernization function. Before HUD would invoke this remedy, HUD would provide technical assistance to the HA and work with the HA to correct deficiencies. Furthermore, HUD would only require such action after a corrective action order had been issued and the HA failed to comply with the order. HUD could then issue a corrective action order for an alternative management strategy. The HA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that decision. HUD Headquarters shall render a written decision on an HA's appeal within 60 calendar days of the date of its receipt of the HA's appeal.

HUD's role in expediting the allocation of modernization funds is to reduce its time for review and approval of the CGP annual submission. This will enable HAs to have funding earlier in the FFY. HUD issued its first guidance on expedited review and submission on February 4, 1993 in Notice PIH 93–5 which was provided to HAs. The notice also indicated that HUD would be developing additional time saving measures. The notice provided for accelerated submission by HAs in advance of originally established dates and accelerated review and approval by HUD of the documents required for FFY 1993 CGP funding. Notwithstanding the statutory 75-day review period, HUD would review and approve documents as soon as possible. It was anticipated that this approach would be continued in FY 1994 as part of HUD's ongoing efforts to expedite use of available modernization funds.

The Department issued additional guidance on expediting FFY 1993 CGP funding in notice PIH 93–10, issued March 10, 1993. This Notice provided that if large HAs (with 500 or more units) meet specified criteria, HUD will reduce the time for its review and approval of the FFY 1993 Annual Submission from a maximum of 75 days to 14 days wherever possible. The expedited review by HUD and subsequent prompt signing of the Annual Contribution Contract (ACC) Amendment by the HA would result in HAs having access to FFY 1993 CGP funds two to five months sooner than anticipated. In turn, these funds would be available to HAs to engage in modernization activities that will spur local economies and provide needed improvements for low-income developments.

The basis for the Department's expedited review for large HAs (with 500 or more units) was the HAs' Comprehensive Plan (including the Five-Year Action Plan) which was reviewed and approved by HUD in FFY 1992 and which is the basis of the FFY 1993 Annual Statement.

B. Regulatory Actions

Based on extensive review of CGP regulations and procedures and comments from HAs and their interest groups, it was determined that revisions to the CGP regulations were necessary to further simplify and improve the CGP process so HAs could more readily expedite CGP funding.

To expedite the CGP review and approval process, as well as provide HAs with additional flexibility in implementing the program, changes are needed in the following areas: Fungibility of work-items within the Five-Year Action Plan, notification of formula amounts, timing of meetings with residents and the annual public hearing, and appeals of formula amounts. This section will discuss each of these issues and the specific regulatory amendments. The Department requests comments on these issues and amendments within 45 days. The Department has shortened this time period to ensure that needed changes can be effective as soon as possible while providing an opportunity for notice and comment before these changes become effective.

The major change being proposed in this rule is the concept of full fungibility of work items identified in an HA's Five-Year Action Plan. Full fungibility permits the HA to substitute any work item in the approved Five-Year Action Plan using the current FFY funds, without any further HUD approval. For example, if an HA has proposed kitchens at Development A in the first year of the Plan, and for some reason, the HA cannot do that work item, the HA may substitute roofs at Development B which appears in year four of the Five-Year Action Plan.

Under current rules, HAs have rolling Five-Year Action Plans, but only spend CGP funds for work items in their one or two year Annual Statements. Major changes (*i.e.*, additions, deletions or modifications of work items cumulatively totaling 10 percent or more of a HA's annual grant allocation, excluding emergencies) require prior HUD approval. Any changes with respect to work items cumulatively

totaling less than 10 percent of an HA's annual grant, excluding emergencies, do not require prior HUD approval, so long as the work is covered under the HA's Five-Year Action Plan. See §§ 905.102 and 968.305.

In this proposed rule, HUD intends to continue the rolling base of the Five-Year Action Plan, but allow full fungibility of work items (*i.e.*, interchangeability) in any of the five years. HUD also intends to eliminate the concept of "major change" and major change reviews.

In order to permit full fungibility of work items in the Five-Year Action Plan, the level of detail with regard to the work items must be consistent. Currently, work items are described as major work categories (*e.g.*, kitchens at $100,000) in the out years of the Five-Year Action Plan and in greater detail in the Annual Statement (*e.g.*, kitchen cabinets in 100 units at $75,000 and kitchen floors in 100 units at $25,000). This proposed rule would eliminate the requirement for two separate documents (Annual Statement and Five-Year Action Plan) and incorporate the required information in one document, which is a modified version of the current Five-Year Action Plan and submitted with the Annual Submission. The work to be accomplished in each of the five years will be identified on an individual Work Statement for that year. The work items will be identified as major work categories, and include only quantity and total cost (*e.g.*, 100 kitchens at $100,000). This is more detail than currently required for the out years (quantity) but less than for the current Annual Statement (no detail on individual work items).

Requiring HAs to only describe a major work category with quantity and cost without specifying work items is in keeping with the statutory intent of granting more flexibility to HAs and eases the transition to full five year fungibility. Additionally, this approach will ease the level of effort with regard to the HAs' submissions to HUD, and reduce HUD's upfront review of the HAs' proposed activities. However, HAs must plan in detail and maintain documentation in their files to support the work activities proposed. The level of detail in the Five-Year Action Plan for administrative and management improvement costs would have to be sufficient enough for HUD to make a determination of eligibility. For example, only mentioning "training" is insufficient. The HA must describe the training and how it relates to physical improvements or identified management needs. When the HA completes its Performance and Evaluation Report, it will describe the work activities completed in more detail (*e.g.*, the Five-Year Action Plan's description of 100 kitchens totaling $100,000 would be described in the Performance and Evaluation Report as kitchen cabinets—$50,000, kitchen floors—$20,000 and kitchen windows—$30,000). Since the level of detail in the Five-Year Action Plan is such that HUD will not be able to determine if the work that will be performed as a part of the major work category (*e.g.*, kitchens) is an eligible item, HAs would have to repay ineligible costs discovered during review of the Performance and Evaluation Report.

These revised procedures result in a minimal level of detail in the HAs' submission to HUD. The HA should be cognizant that additional detail will be necessary for meaningful local government and resident participation. The Department proposes that HAs simply summarize their progress and uses of previous year funds for resident review in their public notice of advance meeting for residents (no particular format is prescribed and HAs are not required to describe by development or work item). A greater level of detail should be supplied to residents at the advance meetings and public hearings or upon request to enable them to understand the HA's plans or progress on past activities.

It has been suggested by the New York City Housing Authority that they could provide greater detail in all years of the Five-Year Action Plan so that the information would mirror the Performance and Evaluation Report. The Department is concerned that this would be administratively burdensome for all HAs. If an HA wants to submit a Five-Year Action Plan in a different format, a waiver would be needed. Section 14 of the Act does not differentiate between types of submissions to be made by HAs participating in the CGP, irrespective of their size. Nevertheless, HUD believes that larger HAs will be benefitted, along with all other HAs participating in the CGP, as a result of the simplified program submission requirements contained in this proposed rule.

It is the Department's intent that HAs use fungibility in a prudent manner to make changes where necessary. It is anticipated that HAs will plan realistically for a five-year period in consultation with residents and the local government. HUD expects HAs to generally conform their work to items in the current year's Work Statement and to use fungibility only if necessary to substitute items in year one to efficiently and effectively expend its funding. However, fungibility of the work items (not dollars) in the plan should be used by the HA to make necessary changes without further HUD approval so as not to impede HA efforts to timely obligate and expend funds. Fungibility of work items but not dollars means that HAs may move items from one year to another but will receive no increase in funding if they do so. The grant amount for a particular FY is set forth in the ACC amendment and remains unchanged by shifts in work items.

Except for emergencies, the HA must consult with residents to the extent practicable, on significant changes (such as changes in scope of work) or whenever it moves work items within the approved Five-Year Action Plan. The HA must retain documentation of that consultation in its files. The Department requests comments on the level of consultation with residents regarding "significant changes." In this proposed rule, the Department has left this matter to the discretion of the HA. The Department has eliminated the concept of major change wherein the HA must obtain prior HUD approval when changes are made above an established threshold. The Department is requesting comment on the establishment of a threshold based on dollar amount, percentage of grant or type of work involved.

As a result of allowing full fungibility of work items, the following changes have been made:

(1) Eliminate major change reviews (An HA can expend the funds on any work item in the Five-Year Action Plan without HUD approval. If the HA plans to expend funds on a work item that is not in the Five-Year Action Plan, even though it appears in the Physical or Management Needs Assessment, prior HUD approval is required. However, emergency work would not require amendment to the Work Statement for year one, but must be reflected on the year-end Performance and Evaluation Report.);

(2) Require HAs to amend annual work statements to reflect changes resulting from fungibility;

(3) Eliminate the optional two-year Annual Statement;

(4) Require HAs to identify changes in current year Five-Year Action Plan from the previous year Five-Year Action Plan when making annual submissions; and

(5) Require the same level of detail for each year of the Five-Year Action Plan in order to allow full fungibility with the Work Statement for year one of the Five-Year Action Plan (the Work Statement for year one is being substituted for what is currently referred

to in the CGP rule and statute as the Annual Statement).

The Department is proposing to increase the percentage limitation on management improvements from 10 to 20 percent of the annual grant for all HAs. The Department believes that HA needs to provide adequate security, undertake various resident initiatives activities, and sustain completed physical improvements, warrant this increase. However, the Department is interested in knowing from commenters what other management improvement needs are pressing and whether the increased percentage limitation is sufficient or warranted based on HA experience. In addition, the Department strongly encourages that HAs use at least 5% of their management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements. Other eligible items could include coordination of delivery of social services and youth apprenticeship programs directly related to carrying out the modernization work. HAs will not be permitted without prior HUD approval to exceed the 20 percent cost limitation for management improvements in any year unless they are high PHA performers or IHAs that are determined by the Field Office to be high performing. PHAs that have been designated as high performers overall (not only high performers in modernization) by the Public Housing Management Assessment Program (PHMAP) or IHAs determined by the Field Office to be high performing and which have administrative capability under § 905.135 may exceed the cost limitation on management improvements only, without prior HUD approval. See §§ 905.666(m) and 968.310(m). This provision reflects HUD's intent to provide incentives and relief from HUD oversight to HAs that are consistently well-managed. Guidance on determining high performing IHAs will be provided in the revised CGP Handbook. The Department requests suggestions regarding criteria that can be used to determine high performing IHAs.

The Department has retained the 7% limit on administrative costs, but has excluded in-house asbestos testing efforts from the 7% limit. The Department suggests that its position on asbestos should be the same as that for lead-based paint. The proposed regulation has been modified to exclude such in-house testing from the 7% cost limitation. Further, it has been clarified that general administrative costs associated with the administration of Field Office-approved force account work are included in the cost limitations for administrative costs (account 1410). The actual force account labor costs including direct supervision are charged to the appropriate account for the work being performed, e.g., dwelling structures (account 1460). In addition, it should be noted that Field Offices continue to have the authority to permit administrative costs higher than 7% for justifiable reasons such as high administrative costs resulting from a large percentage of force account work. The Department requests comments on the advisability of higher administrative cost caps and examples of where they would be warranted.

HAs currently delay holding annual advance meetings with residents and the public hearing until the presumptive estimate is provided by HUD. This has resulted in delaying the submission of documents required for access to the funding until later into the FFY. This proposed rule would permit the separation of the planning process and the funding process. HAs, residents, local government officials and others may work on the plan early in the fiscal year, preferably in conjunction with other planning related to the operating budget or other activities affecting residents. Planning is to be an ongoing process, and not necessarily a part of the funding cycle process.

To expedite the funding process, the Department will offer HAs the option to hold the required annual advance meeting for residents and the required annual public hearing for the next year's grant using the formula amount for the current FFY as the planning level for the coming year. See §§ 905.672 and 968.320. In recognition of the possibility that funding levels may change, HAs are encouraged to use the last year's level with variations around that level as planning targets (*e.g.*, if last year's funding is 10% more or less, some developments will be rehabilitated, but others will not). This would allow HAs to start the planning process five months earlier (July rather than December) and the reservation and use of FFY 1995 funds could be made earlier in the FFY. At the resident meeting and public hearing, the HA would discuss any changes to the Five-Year Action Plan, including the new fifth year and a discussion of HA progress in prior approved programs. The draft Performance and Evaluation Report should also be discussed at that time if available. HAs would also explain that the funding level shown is not the actual amount for the coming year, but has been used for planning purposes, and that the Five-Year Action Plan will be adjusted when the formula amount is known. Additionally, the HA will explain which items or developments will be added or deleted to adjust for the next year's formula amount and that any added items will come from the Five-Year Action Plan. This will enable HAs to quickly make necessary adjustments to the plan when the formula amount is known. HAs must also assure that all work items are reflected in the Physical Needs Assessments and Management Needs Assessments. HAs not pursuing advance planning would be permitted to wait until after receipt of their formula amount for FFY 1995, *i.e.*, the beginning of the next fiscal year, and then hold the advance meeting and public hearing. However, this would delay the annual submission, and as a result, the FFY 1995 funds would not be available until much later in the FFY.

The current regulation requires HAs, within 30 calendar days of the date of HUD's notice of estimated funding level, to provide written notice to each of the democratically elected presidents of resident organizations of the developments covered by the comprehensive plan. HAs have encountered problems in making distinctions regarding who is to be notified (*e.g.*, determining whether presidents of resident organizations have been democratically elected and assuring that all affected resident organizations have been notified). The Department wants to promote full and adequate notice of this funding to all interested parties (*e.g.*, residents, duly elected resident organizations, local government officials and other interested parties). It is proposed that public notice (which would effectively include all interested parties, especially duly elected resident organizations) should be provided, and the method of notification would be determined by the HA.

The public notice can take various formats based upon local circumstances and resources. The CGP Handbook will provide examples of ways to provide effective public notice (*e.g.*, newspaper announcements, resident cable TV programs, posted notices or written announcements). The public notice would provide notice of the advance meeting to be held with the residents, notice of the public hearing, and the following information: summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount whichever the HA elects); a summary of the CGP requirements; the estimated time frames for completion of the

required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under CGP.

Additionally, HUD will no longer prescribe by regulation that there must be three weeks between the advance meeting and the public hearing, but will require that the meeting should be sufficiently in advance of the public hearing to allow for appropriate feedback. See §§ 905.672(b)(4) and 968.320(b)(4). The resident partnership process provides a vehicle for an ongoing dialogue between HAs and residents throughout the planning process. HUD has made this change in response to concerns that the timing and frequency of these meetings should be determined by local conditions and left up to local judgement, rather than determined by an arbitrary time limit. Rather than have the Department state the number of meetings required before the public hearing, HUD believes that in order to achieve maximum resident involvement in the process, the number of meetings should be determined by the HAs and residents of those authorities.

In order to reduce the HAs' and HUD's administrative burden and to streamline the process, HUD has eliminated the requirement to provide a presumptive formula estimate. See existing §§ 905.669(b) and 968.315(b). As a result, HAs will not be required to amend the Five-Year Action Plan and/or Work Statement during a FFY because of differences in the presumptive estimate and final formula amount. HUD intends to provide only one formula amount in a FFY, and this will eliminate burdens for both HAs and HUD. This change would also encourage HAs to make Annual Submissions as soon as they receive their formula amount for the FFY. See proposed §§ 905.669 and 968.315.

A related change to the notification of formula funding is the timing of the submission of appeals and the adjustment from successful appeals and a change to the appeals based on the formula amount. Currently, HAs may appeal the presumptive formula estimates based upon unique circumstances or error. Any adjustments to the formula allocation resulting from such successful appeals are made from the subsequent years' appropriation of funds, except for appeals based upon error where there are no issues in dispute (such appeals will result in adjustments made from the current year's allocation of funds). Currently, HAs may also appeal HUD's determination of final formula amounts. Any adjustments resulting from such successful appeals are made from the current year's allocation of funds to the greatest extent feasible. Currently, mod troubled PHAs may appeal their reduced formula allocations and any adjustment resulting from such successful appeals are made in the current year's allocation of funds. See §§ 905.669 and 968.315.

Since HUD does not plan to provide a presumptive formula notice, there is no need for an appeal based on a presumptive formula amount. HAs would not lose any of their current procedural rights to appeal. However, for purposes of consistency, all appeals must be submitted within 60 days after notification of the formula award. HAs may appeal the formula amount on the basis of error or unique circumstances or the reduced formula amount (applies to mod troubled PHAs only). Adjustments resulting from successful appeals based on error or unique circumstances will be made in subsequent FFYs. A mod troubled PHA will be advised of its full formula and its reduced formula amount. If it successfully appeals the reduced amount, it will get full funding in the same FFY. If it does not appeal or its appeal is unsuccessful, the difference between its full funding and its reduced funding will be redistributed to other HAs in the following FFY. However, such PHAs are entitled to credits for this temporary loss of funding.

Currently, the Executive Summary encompasses four components, each a separate document: (1) Summary of Preliminary Estimated Costs; (2) Strategy Statement; (3) Statement of Developments with Comprehensive Modernization in Progress; and (4) Description of Resident Partnership and Summary of General Issues. The Executive Summary is submitted to HUD with the original Comprehensive Plan and resubmitted every sixth year when the Plan is updated. This rule proposes to eliminate the requirement for an Executive Summary with four components. Instead, the HA would submit the following: (1) Summary of Preliminary Estimated Costs and (2) Description of Resident Partnership and Summary of General Issues with each submission of the Comprehensive Plan (initial year and every sixth year). The Department suggests that the Strategy Statement and the Statement of Developments with Comprehensive Modernization in Progress provided information that was essential for the initial implementation of the program but will not be needed when the Plan is updated in year six. Also, the provision for a Summary of General Issues with each annual submission is retained.

The Department is proposing two incentives for PHAs and IHAs. As previously mentioned, PHAs that are high performers under PHMAP and IHAs that are determined to be high performing by the Field Office would not have a cap on management improvements. The second incentive is the elimination of prior HUD approval for force account labor. The Department recognizes that the basis for being entitled to the force account labor incentive is different for IHAs than for PHAs. IHAs have, by necessity, developed significant expertise in the use of force account labor, due to the remoteness of some Indian housing units as well as the shortage of available contract labor. In acknowledgment of IHAs' successful experience with force account labor, the Department is proposing that prior HUD approval be required only of PHAs that are not high performers under PHMAP and IHAs which are designated high risk under § 905.135 or for all HAs where stipulated by a notice of deficiency or corrective action order.

HAs, which are required to obtain prior approval, will continue to indicate the use of force account on their annual submission and it may be approved as part of the funding process, or HAs may request HUD approval for force account labor at any time. HUD will be eliminating the Handbook requirement and modifying section 107(d) of the Annual Contributions Contract that requires HUD approval of force account work for high performers under PHMAP or IHAs that are not designated as "high risk".

Another concern of many HAs is the use of total development cost (TDC) in § 905.672(d)(4) and § 968.320(d)(4). For demolition and new construction, TDCs are currently used to assess whether modernization is more expensive than new development. Since few HAs are performing comprehensive modernization (*i.e.*, total modernization), the cost of such modernization will rarely if ever exceed TDC. If it does, the HA must justify reasons for desiring to modernize the development. In addition, existing regulations require a new evaluation every sixth year when the Five-Year Action Plan is updated. This evaluation does not capture all past modernization as was done in comprehensive modernization, but it is rather a single point in time assessment.

Rather than imposing an arbitrary measurement of costs (*i.e.*, hard costs of 90 percent or less of TDC), the Department proposes to eliminate TDC

for reasonable cost and replace it with the HA's determination of reasonable cost determined on a major work-item basis. HAs would be required to keep documentation in its file to support its reasonable cost determinations. It is suggested that the HA use a National Guideline adjusted to reflect local conditions (or if applicable, regional versions of National Guidelines) such as R.S. Means Index, the Dodge Report and Marshall and Swift. All work items must meet cost reasonableness which will also be accomplished by using part 85 procurement procedures and OMB Circular A–87. An IHA is also allowed to substitute estimates of cost reasonableness based upon recent past bidding experience for the National Guidelines mentioned above. In its annual review of HA performance, HUD will review the HA's cost reasonableness determinations. The Department specifically requests comments on this proposal.

It should also be noted that many IHA's with large numbers of homeownership (Mutual Help) units are performing comprehensive modernization on a widespread basis. The Department is considering retaining the TDC limitations as the basis for establishing reasonable costs for IHAs. Comments are specifically requested on applying these limits only to IHAs.

The Department is often asked about the extent to which CGP funds may be expended on non-viable units (*e.g.*, units scheduled for demolition) to maintain the habitability until residents can be relocated. The current regulation provides that where an HA's analysis of a development, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the HA shall not expend CGP funds for the development, except for emergencies. See §§ 905.672(d)(4)(ii) and 968.320(d)(4)(ii). This proposed rule adds an additional exception for "essential non-routine maintenance necessary to maintain habitability until residents can be relocated." The HA must specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 970). Any routine maintenance work must be performed using operating subsidy. The CGP Handbook will provide additional guidance in this area.

The Department is also proposing to lift its limitation on the $75 million reserve for emergencies and natural disasters. Currently, the Department limits the use of this reserve to HAs participating in the CGP (see §§ 905.601(b), 905.667, 968.103(b) and 968.312). The Department proposes to permit smaller HAs (participating in the CIAP) (with less than 250 units) to also apply for emergency and natural disaster funds from this reserve. HAs under the CIAP may also continue to receive assistance for emergencies and disasters in accordance with the existing CIAP requirements and procedures. HAs participating in CGP must first use their annual formula allocation of CGP funds, any other unobligated CIAP or CGP funds, or replacement reserve, for emergencies before they can apply for funds from the $75 million reserve. HAs participating in CIAP must use all other funds available, including residual receipts and unobligated CIAP (and there must be no moderization funds available for the remainder of the fiscal year) for emergencies before they can apply for funds from the $75 million reserve. In addition, HAs participating in CIAP must also have the emergency modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. Although funding for repair and replacement needs which arise from natural and other disaster is not required to be repaid, HAs are required to repay funding for emergencies, from future allocations, where available. The provisions for repayment by HAs participating in CGP have not been changed. HAs participating in CIAP would also be required to repay funding for emergencies, if funds become available; however, they would not be required to apply for a future CIAP grant to repay the reserve account.

C. Miscellaneous Technical Proposed Changes

Numerous incorrect regulatory references would be corrected. The method for counting new development units (in order to determine the HA's program size) would be clarified to reflect actual development procedures (*i.e.*, count the increase in units reaching DOFA (date of full availability) and under ACC amendment). See §§ 905.601(k)(2)(i) and 968.103(k)(2)(i). The annual submission of activities and expenditures would consist of the Five-Year Action Plan with a Work Statement for each of the five years, local government statement and other miscellaneous documents outlined in §§ 905.678 and 968.330. Annual resident and local government participation would be clarified by noting that annual advance meetings with residents and annual public hearings are required. See §§ 905.678(d)(2) and (3) and 968.330(d)(2) and (3).

D. Handbook Changes and Clarifications to Existing Procedures

HUD plans to prepare handbook page changes that will provide guidance on the revised procedures and examples of the types of documentation that would be acceptable to HUD and provide a revised Five-Year Action Plan form (sample completed document will be provided). The Handbook will also provide guidance on the required interrelationship between management improvements and identified management needs. In addition, it will clarify that even HAs that are high performers under PHMAP will have management needs.

The CGP Handbook will also revise the environmental review procedures to require that HUD must conduct an environmental review in accordance with 24 CFR part 50 of all proposed actions identified in the Five-Year Action Plan. This change is required because of the proposed full fungibility of work items. In addition, the level of detail in the annual work statements must be sufficient for HUD to perform environmental reviews, as applicable, with respect to the various work items.

The level of Field Office review will also be discussed in the Handbook with an emphasis on ways to improve and reduce unnecessary areas for review. Handbook guidance will also include the following:

(1) Ways to achieve more effective resident participation/consultation;

(2) Discussion of limits on modernization after a decision has been made that certain buildings should be demolished or disposed of (keeping buildings habitable as long as they are occupied);

(3) How to receive HUD approval for amendments to annual submission;

(4) Examples of valid delays outside HA control which may extend the time for performance;

(5) The exemption from the continuing capacity review for delays caused by LOCCS/VRS;

(6) Ways to enhance fungibility by expending the oldest money first and closing out older programs; and

(7) Discussion of emergency work items.

Several questions regarding existing requirements would not be affected by this proposed rule and have been raised by program participants. Although the purpose of this preamble is to discuss changes proposed, some of the following issues are significant and may interfere with successful program implementation. Many of these issues involve procurement. HAs should refer to the new Procurement Handbook for

Public Housing Agencies and Indian Housing Authorities, 7460.8 REV–1. HUD has also issued PIH notice 93–50 on expediting procurement and contracting in Public and Indian Housing.

It should be noted that procurement thresholds cannot be imposed without appropriate procedure (notice of deficiency and/or correction action order). Advance procurement planning is one of the most important actions that an HA can take to speed up the procurement process. For example, an HA is encouraged to prepare solicitations for services prior to ACC execution even though contracts cannot be awarded until funds are available. HAs may also solicit for an indefinite quantity contract where separate orders are issued to the selected architect/engineer firm for each service as the need arises or an HA can issue a solicitation for several architect/engineer firms to provide services on an as required basis rather than merely one firm. HAs may also join in intergovernmental agreements. HAs that possess the capability may continue to perform in-house A & E.

In addition to the sealed bid method, HAs may use the competitive proposals method to perform modernization work. This method has been successfully used in public housing development (known as "turnkey") for many years. The competitive proposals method may, particularly for larger contracts, speed up the modernization process. This can be accomplished by developing a Request for Proposals (RFP) that places a substantial amount of the responsibility for modernization work with a contractor/developer. Using the turnkey method as a model, the HA would execute a fixed price contract in which the developer would be responsible for all designs of specific work items identified in the RFP, soliciting and contracting (in the developer's name) for construction work, contract administration and construction inspection. The contract could either provide for progress payments, as in the sealed bid method, or a lump sum payment after successful completion of all work, as in the turnkey method. The advantages to the two payment systems are: (1) With progress payments the developer does not have to obtain large amounts of outside financing and the overall costs should, therefore, be less; or (2) with the lump sum payment upon completion of construction, the developer has a significant incentive (financing costs) to complete construction quickly. The HA should hire an inspecting architect or engineer to inspect the developer's work to ensure that it complies with the contract documents and to otherwise protect the HAs interests.

E. Other HUD Initiatives

Many HAs and Field Office have difficulties with the 2530 Previous Participation. This process assures the Department that persons debarred, suspended, determined to be ineligible or voluntarily excluded are not participating in this program. This process is part of a larger system at HUD and Government-wide. See 24 CFR part 24, subpart E. The Department is taking steps to improve this system and expedite access to the system for all HAs. The Department has also budgeted in FY 1994 for the development of an automated system which would allow HAs to directly access HUD's 2530 system.

HUD also plans to work with HA interest groups in updating the maximum space guidelines for administrative, maintenance and community space.

Users of LOCCS/VRS have requested that HUD eliminate the percent limitation on monthly drawdowns for standard performers. HUD has been working with the Comptroller, Inspector General and Treasury on ways to improve this system and will consider this and other users' recommendations. As a result of this proposed rulemaking, HUD will also be incorporating into the system the ability for five-year fungibility.

HAs and their interest groups have requested clarification and expansion of eligible and ineligible work items. HUD currently provides examples of ineligible physical and management improvement work items in the CGP Handbook at paragraph 4–19. HUD will consider additional recommendations from HAs and their interest groups.

The PHMAP rule has received many public comments which are now being reviewed. The modernization indicator is being revised to cover CGP. The CGP Audit Guide is under review by OMB.

F. Economic Opportunities for Low- and Very Low-Income Persons

Section 3 of the Housing and Urban Development Act of 1968 (section 3) requires that to the "greatest extent feasible," opportunities for training and employment arising in connection with HUD programs be given to lower income persons residing within the unit of local government or the metropolitan area as determined by the Secretary. It also requires that to the "greatest extent feasible," contracts for work to be performed in connection with any such project" be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project." Existing regulations implementing these requirements appear at 24 CFR part 135. PHAs participating in the CGP program are required to comply with section 3. See 24 CFR § 968.110(a).

Section 3 was amended by section 915 of the Housing and Community Development Act of 1992, to require that HAs and their contractors and subcontractors, make their "best efforts," consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons the training and employment opportunities generated by development assistance (section 5 of the Act), operating assistance (section 9 of the Act), and modernization grants (section 14 of the Act). Section 3, as amended, also requires that HAs and their contractors and subcontractors, make their "best efforts," consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance, operating assistance and modernization grants, to business concerns that provide economic opportunities for low- and very low-income persons.

HUD has published a proposed rule to implement the amendments to section 3 by the Housing and Community Development Act of 1992. See 58 FR 52534, dated October 8, 1993. The Secretary is committed to furthering economic opportunities to low- and very low-income persons covered by section 3. Until section 3 as amended, is implemented by regulations, HUD intends to advance the current requirements of section 3 as provided in 24 CFR part 135. For CGP, HUD intends to require through the letter transmitting the FY 1994 presumptive estimate, that each HA use good faith efforts and provide anticipated projections of the contracts, jobs and training to section 3 residents as a result of the FY 1994 funding.

By FY 1995, HUD expects to have an effective final rule implementing the amended section 3. For CGP, this proposed rule proposes that HAs certify as to compliance with section 3 and provide anticipated projections based on best efforts of the contracts, jobs and training to section 3 residents with their annual submissions. See

§§ 905.672(d)(7)(xviii) and 968.320(d)(7)(xviii). The Department also plans to require that HAs report their section 3 results annually (in one report covering all affected HUD programs administered by the HA). HAs would be required to keep files to support their annual submissions and annual reports along with their section 3 program plan. HUD would monitor each HA's section 3 efforts (not merely numbers of contracts, jobs or training) as part of the annual HUD review. HA comments on these proposed CGP provisions or alternative actions to support section 3 in CGP are requested.

EO 12866 Statement

This proposed rule was reviewed and approved by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993. Any changes made to the proposed rule as a result of that review process are clearly identified in the docket file, which is open for public inspection in the office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule provides revisions to the existing CGP under which HAs receive modernization assistance from HUD on the basis of a formula. HUD does not anticipate a significant economic impact on small entities since HAs will continue to carry out their modernization activities by entering into contracts for the work as they now do.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5 p.m. weekdays) in the Office of the Rules Docket Clerk, room 10272, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. The revised CGP is consistent with federalism principles since it reduces unnecessary burdens on HAs. While the program is revised, the primary change is only in the way that HUD processes and reviews HA modernization activities, and not the modernization activities. Since participation by HAs is discretionary, this proposed rule lacks the direct and substantial effects on HAs required for a policy with federalism implications under the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns. The proposed rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to revising program procedures for HAs applying for discretionary grants.

Regulatory Agenda

This proposed rule was listed as item 1647 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on October 25, 1993 (58 FR 56402, 56451) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Anti-Lobbying

On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a prohibition mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. IHAs established by an Indian Tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR parts 905 and 968 as set forth below:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 would be revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437u, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

§ 905.102 [Amended]

2. Section 905.102 would be amended by removing the definitions for *Annual statement* and for *Major changes.*

3. Section 905.601 would be amended by revising paragraph (b); by removing the reference to "§ 905.669(b)(2)" in paragraph (h) and inserting in its place "§ 905.669(b)"; by adding three sentences to the end of paragraph (j); and by revising paragraph (k)(2)(i), to read as follows:

§ 905.601 Allocation of funds under section 14.

* * * * *

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds, are set forth in § 905.667.

* * * * *

(j) *Calculation of number of units.* * * * New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) * * *

(2) * * *

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

* * * * *

4. Section 905.666 would be amended by revising paragraphs (a)(1) through (a)(3), (f)(1)(iii), and (m) to read as follows:

§ 905.666 Eligible costs.

(a) * * *

(1) Undertaking activities described in its approved Five-Year Action Plan under § 905.672(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

(3) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

* * * * *

(f) * * *

(1) * * *

(iii) A management improvement requires more funds than the IHA may use under its 20% limit for management improvements, and the IHA needs to save a portion of subsequent year(s) grants, to fund the work item;

* * * * *

(m) *Cost limitation.* (1) Notwithstanding the full fungibility of work items in § 905.675(c), an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD, or unless the IHA is determined by the Field Office to be high performing and have administrative capacity under § 905.135. To the maximum extent feasible, HAs should use management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements.

(2) Notwithstanding the full fungibility of work items in § 905.675(c), an IHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead-based paint or asbestos testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by state, tribal or local law, unless specifically approved by HUD. In the case of an IHA whose jurisdiction covers an unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the IHA's developments for CGP-related business, as specifically approved by HUD. (For purposes of this paragraph, "an unusually large geographic area" means an area served by an IHA whose offices are physically separated from the majority of its developments by distances that require overnight travel and/or travel by air or other commercial carriers, *e.g.*, a statewide IHA with developments in multiple localities; a regional IHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.);

* * * * *

5. Section 905.667 would be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 905.667 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* An IHA (including an IHA that is not considered to be administratively capable under § 905.135) may obtain funds at any time, for any eligible emergency work item as defined in § 905.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 905.102) (for IHAs participating in CIAP), from the reserve established under § 905.601(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 905.601(e) and (f), other unobligated modernization funds, and its replacement reserves under § 905.666. Emergency reserve funds may not be provided to an IHA partipating in CIAP that has the necessary funds available from any other source, including unobligated CIAP (and no CIAP modernization is available for the remainder of the fiscal year) and residual receipts. IHAs participating in CIAP must also have the emergency modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. An IHA is not required to have an approved comprehensive plan under § 905.672 before it can request emergency assistance from this reserve.

* * * * *

(3) *Repayment.* An IHA that receives assistance for its emergency needs from the reserve under § 905.601(b) must repay such assistance from its future allocations of assistance, where available. For HAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 905.601 (e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

* * * * *

6. Section 905.669 would be amended by adding three sentences to the end of paragraph (a)(1); by revising paragraphs (b) and (c); by adding a new paragraph (d); and by adding the OMB control number to the end of the section, to read as follows:

§ 905.669 Allocation of assistance.

(a) * * *

(1) * * * On an annual basis, HUD will transmit to the IHA the formula characteristics report which reflects the data that will be used to determine the IHA's formula share. The IHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

* * * * *

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 905.601 (e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its formula amount and provide instruction on annual submission in accordance with §§ 905.672(a) and 905.678;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA must indicate what is unique, and specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 905.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 905.135, HUD may designate the IHA high risk. If the IHA is designated high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of allocation or such longer period approved by HUD. If the IHA fails to obligate funds within this period, they may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 905.687 and the IHA failed to comply with the order. HUD could then issue an alternative management strategy in a correction action order. An IHA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 60 calendar days of the date of its receipt of the IHA's appeal.

(Approved by the Office of Management and Budget under control number 2577–0157)

7. Section 905.672 would be amended by revising paragraphs (a), (b)(2)(i), (b)(3) through (b)(5), (c)(2), (d)(1), (d)(2)(i)(E), (d)(4), (d)(5)(i), (d)(5)(iii), (d)(6)(i), (d)(6)(ii), (d)(7)(v), (d)(7)(viii), and (d)(7)(xv); by adding a new paragraph (d)(7)(xviii); and by revising paragraphs (e)(2) through (e)(4), to read as follows:

§ 905.672 Comprehensive Plan (including Five-Year Action Plan).

(a) *Submission.* HUD shall notify IHAs of the requested date for submitting or updating a Comprehensive Plan. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan or they may wait for the annual HUD notification of formula amount under § 905.669(b)(1).

(b) * * *

(2) * * *

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Work Statements for each year. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

* * * * *

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the IHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(4) *Advance meeting for duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of the section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, duly elected resident organizations, local government officials, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of

residents, local government officials, and other interested parties.

(c) * * *

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide and a specific description of the IHA's process for maximizing the level of participation by residents.

* * * * *

(d) * * *

(1) *Summaries.* An IHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs IHA-wide; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the IHA's response to the general issue. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

(2) * * *

(i) * * *

(E) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 905.666(d)(3).

* * * * *

(4) *Demonstration of long-term physical and social viability*—(i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost. The IHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (*e.g.*, kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. Where necessary, HUD will review the IHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.* Where an IHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 905, subpart M).

(5) *Five-Year Action Plan*—(i) *General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as State, local and tribal governments. All activities specified in an IHA's Five Year Action Plan are contingent upon the availability of funds, and the work items are fungible, *i.e.*, interchangeable;

* * * * *

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) * * *

(i) The IHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 905.672 (b) and (c);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

* * * * *

(7) * * *

(v) The proposed activities, obligations and expenditures in the Five-Year Action Plan/Annual Submission are consistent with the proposed or approved Comprehensive Plan of the IHA;

* * * * *

(viii) The IHA has provided to HUD any documentation that the Department has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 905.120 (a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Submission, until the IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

* * * * *

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with 24 CFR 905.672(b), 905.678(d), and 905.684, and has given full consideration to the priorities and concerns of tribal government and residents, including comments which were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

* * * * *

(xviii) The IHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) * * *

(2) *Amendments to needs assessments.* The IHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Submission, that are not reflected in its current needs assessments (except in the case of emergencies). If the bases for the needs assessment have changed substantially, an IHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 905.678(b), or at any other time. These amendments shall be reviewed by HUD in accordance with § 905.675;

(3) *Six-year revision of Comprehensive Plan.* The physical and management needs assessments, and the summaries listed in § 905.672(d)(1) are required to be revised only every sixth year, although the IHA may elect to revise some or all of these more frequently. Every sixth year, an IHA must submit to HUD, as a part of its Annual Submission, a complete revision of its Comprehensive Plan.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan. Notwithstanding the new fifth year, the IHA shall identify changes in work categories from the previous year Five-Year Action Plan when making this annual submission.

* * * * *

8. In § 905.675, paragraph (b)(1) would be amended by inserting "and § 968.103" after the reference to "§ 905.601" and before the period; by revising paragraph (c); and by adding the OMB approval number to the end of the section, to read as follows:

§ 905.675 HUD review and approval of comprehensive plan (including action plan).

* * * * *

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA shall have full fungibility of work items (may undertake any of the work items) identified in any of the five years of the approved Five-Year Action Plan without further HUD approval. Actual uses of the funds are to be reflected in the IHA annual Performance and Evaluation Report for each grant. See § 905.684. Except for emergencies, the IHA shall consult, to the extent practicable, the residents on significant changes (such as changes in scope of work) whenever it moves work items within the approved Five-Year Action Plan. Documentation of that consultation is to be retained in IHA files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.687. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Approved by the Office of Management and Budget under control number 2577–0157)

9. Section 905.678 would be revised to read as follows:

§ 905.678 Annual submission of activities and expenditures.

(a) *General.* The Annual Submission consists of a Five-Year Action Plan with a Work Statement for each of the five years and an implementation schedule for the current year, local government statement, materials demonstrating the partnership process, and other miscellaneous documents outlined in this section. For planning purposes, an IHA may use either the amount of funding received in the current year or the formula amount provided in HUD's notification under § 905.669(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. The Work Statement for the first year of the Five-Year Action Plan is intended to provide a statement of the activities and costs that the IHA plans to undertake, in whole or in part, with the assistance to be provided by HUD in that year. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 905.672(d)(5)(i).

(b) *Submission.* After considering the amount of HUD assistance under paragraph (a) of this section, and estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission in accordance with instructions provided by HUD.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) It is complete in all significant matters; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance finding.

(2) The IHA has submitted any additional information or assurances required as a result of HUD monitoring findings of inadequate IHA performance, audit findings, and civil rights compliance findings. If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 905.672(e), in consultation with officials of the appropriate governing body (or, in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and especially duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the IHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed

amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns and discuss the current status of prior approved programs. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.*, after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes and preparing the draft Performance and Evaluation Report. It must also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which items may be added or deleted to adjust for the formula amount and that any added items will come from the Five-Year Action Plan.

(e) *Contents of Work Statement.* The Work Statement for each year must include, for each development or on an IHA-wide basis for management improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with a general description of work items;

(2) The cost for each work item, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for or any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to local differences;

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by the IHA in its needs assessments;

(6) Any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 905.120 (a) and (b);

(7) Other information, as specified by HUD; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 905.672(d)(7).

(f) *Additional submissions with Annual Submission.* An IHA must submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 905.672(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 905.675(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 905.672(d)(7).

(h) *Amendments to Annual Submission.* The IHA shall advise HUD of all changes to the IHA's approved Work Statement for year one in its Performance and Evaluation Report submitted under § 905.684. Any additional work items (changes which add work items), except for emergency work, must be within the IHA's approved Five-Year Action Plan or receive prior HUD approval.

(i) *Extension of time for performance.* An IHA may revise the target dates for fund obligation and expenditure in the approved Annual Submission whenever any valid delay outside the IHA's control occurs, as specified by HUD. Such revision is subject to HUD review under § 905.687(a)(2) as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* An IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

(Information collections requirements have been approved by the Office of Management and Budget under control number 2577–0157)

10. Section 905.681 would be amended by revising paragraph (a) introductory text and paragraph (b), to read as follows:

§ 905.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment or grant agreement with the IHA for year one of the Plan, the IHA shall undertake the modernization activities and expenditures set forth in its approved

Work Statement for year one or substitute work items from within the approved Five-Year Action Plan, subject to the following requirements:

* * * * *

(b) *Fund requisitions.* To request modernization funds against the approved Work Statement for year one, the IHA shall comply with requirements prescribed by HUD.

* * * * *

11. Section 905.684 would be amended by revising the section heading and paragraphs (a) and (b)(2); by removing paragraph (b)(3); by redesignating paragraphs (b)(4) through (b)(7) as paragraphs (b)(3) through (b)(6), respectively; and by revising newly designated paragraphs (b)(4) and (b)(6), to read as follows:

§ 905.684 IHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Five-Year Action Plan. The IHA must make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) * * *

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Submission under § 905.678(h);

* * * * *

(4) The current status of the IHA's obligations and expenditures and specifying how the IHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

* * * * *

(6) A resolution by the IHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, to local government officials, or furnished upon their request.

* * * * *

12. Section 905.687 would be amended as follows: by revising paragraphs (a)(1)(i), (a)(2)(i)(A), and (a)(3)(ii); by adding a new paragraph (a)(3)(iii); by revising paragraph (e)(2); by redesignating paragraph (e)(6) as (e)(8); by redesignating paragraphs (e)(4) and (e)(5) as (e)(5) and (e)(6); by revising redesignated paragraph (e)(5); by redesignating the second paragraph (e)(3) as (e)(4); and by adding a new paragraph (e)(7) to read as follows:

§ 905.687 HUD review of IHA performance.

(a) * * *

(1) * * *

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review an IHA's schedules which are provided with its Annual Submission for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

* * * * *

(2) * * *

(i) * * *

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule, except in circumstances beyond the IHA's reasonable control.

* * * * *

(3) * * *

(ii) With respect to the management condition of the IHA, whether the IHA is making reasonable progress in implementing, the work items (specified in its annual submission and Five-Year Action Plan), necessary to eliminate the deficiencies identified in its management needs assessment; and

(iii) In determining whether the IHA has made reasonable progress, HUD will take into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule. The IHA must demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD approved implementation schedule) has resulted from factors beyond the IHA's reasonable control.

* * * * *

(e) * * *

(2) Submit schedules for completing the work identified in its Work Statements and report periodically on its progress on meeting the schedules;

* * * * *

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

* * * * *

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 905.669(d)); and

* * * * *

PART 968—PUBLIC HOUSING MODERNIZATION

13. The authority citation for 24 CFR part 968 would continue to read as follows:

Authority: 42 U.S.C. 1437d, 1437l; 42 U.S.C. 3535(d).

14. Section 968.103 would be amended by revising paragraph (b); by adding three sentences to the end of paragraph (j); and by revising paragraph (k)(2)(i), to read as follows:

§ 968.103 Allocation of funds under section 14.

* * * * *

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under part 905 of this title and part 968, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The

requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.312.

* * * * *

(j) *Calculation of number of units.* * * * New development units that are added to an PHA's or IHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) * * *

(2) * * *

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

* * * * *

§ 968.305 [Amended]

15. Section 968.305 would be amended by removing the definitions for *Annual statement* and for *Major changes.*

16. Section 968.310 would be amended by revising paragraphs (a)(1), (a)(2), (f)(1)(iii), and (m); and by removing the reference to "paragraph (g)" in paragraph (a)(3) and inserting in its place "paragraph (f)", to read as follows:

§ 968.310 Eligible costs.

(a) * * *

(1) Undertaking activities described in its approved Five-Year Action Plan under § 968.320(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

* * * * *

(f) * * *

(1) * * *

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements, and the PHA needs to save a portion of subsequent year(s) grants, to fund the work item;

* * * * *

(m) *Cost limitation.* (1) Notwithstanding the full fungibility of work items in § 968.325(c), a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as a high performer under PHMAP. To the maximum extent feasible, HAs should use management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements.

(2) Notwithstanding the full fungibility of work items in § 968.325(c), a PHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead-based paint or asbestos testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by state or local law, unless specifically approved by HUD. In the case of a PHA whose jurisdiction covers an unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the PHA's developments for CGP-related business, as specifically approved by HUD. (For purposes of this paragraph, "an unusually large geographic area" means an area served by a PHA whose offices are physically separated from the majority of its developments by distances that require overnight travel and/or travel by air or other commercial carriers, *e.g.*, a statewide PHA with developments in multiple localities; a regional PHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.);

* * * * *

17. Section 968.312 would be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 968.312 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in § 968.305 (for PHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 968.205) (for PHAs participating in CIAP), from the reserve established under § 968.103(b). However, emergency reserve funds may not be provided to a PHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 968.103 (e) and (f), other unobligated modernization funds, and its replacement reserves under § 968.310(a)(3). Emergency reserve funds may not be provided to a PHA participating in CIAP that has the necessary funds available from any other source, including unobligated CIAP (and no CIAP modernization is available for the remainder of the fiscal year) and residual receipts. PHAs participating in CIAP must also have the modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. A PHA is not required to have an approved comprehensive plan under § 968.320 before it can request emergency assistance from this reserve.

* * * * *

(3) *Repayment.* A PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its future allocations of assistance, where available. For PHAs participating in the CGP, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under § 968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a PHA's succeeding years' formula allocations.

* * * * *

18. Section 968.315 would be amended by revising the section heading; by adding three sentences to the end of paragraph (a)(1); by revising paragraphs (b), (c)(1) and (c)(5); by adding a new paragraph (d); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.315 Allocation of assistance.

(a) * * *

(1) * * * On an annual basis, HUD will transmit to the PHA, the formula characteristics report which reflects the data that will be used to determine the PHA's formula share. The PHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the PHA's data before the formula is run for the current FFY.

* * * * *

(b) *HUD notification of formula amount; appeal rights*—(1) *Formula amounts notification.* After HUD determines a PHA's formula allocation under § 968.103 (e) and (f) based upon the PHA, development, and community characteristics, it shall notify the PHA of its formula amount and provide instruction on annual submission in accordance with §§ 968.320 and 968.330;

(2) *Appeal based upon unique circumstances.* A PHA may appeal in

writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The PHA must indicate what is unique, and specify the manner in which it is different from all other PHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an PHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the PHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The PHA may appeal on the basis of error the correctness of data in the formula characteristics report. The PHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the PHA's request within 60 calendar days of the date of its receipt of the PHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *Reduced formula allocation for PHAs designated as mod troubled under PHMAP*—(1) *Notification.* After a PHA is designated as a mod troubled agency under PHMAP (24 CFR part 901), HUD shall inform the PHA that its funding may be limited under this subpart because of its designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CGP, CIAP and MROP for each of the preceding three FFYs for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2)(ii) of this section. In addition, HUD will provide the PHA with information on its full formula allocation under § 968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in each of the preceding three FFYs and its full formula allocation.

* * * * *

(5) *Reallocation of funds withheld from mod troubled PHAs.* Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is designated as a mod troubled agency under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs under 24 CFR part 905 (subpart I) which have been determined to be administratively capable, in accordance with § 905.135 of this chapter, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated in the next FFY based upon the relative needs of these PHAs and IHAs, as determined under the formula.

* * * * *

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of allocation or such longer period approved by HUD. If the PHA fails to obligate funds within the approved time period, they may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 968.345 and the PHA failed to comply with the order. HUD could then issue an alternative management strategy in a corrective action order. A PHA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that order. HUD Headquarters shall render a written decision on a PHA's appeal within 60 calendar days of the date of its receipt of the PHA's appeal.

(Approved by the Office of Management and Budget under control number 2577–0157)

19. Section 968.320 would be amended by revising the section heading; by revising paragraphs (a), (b)(2)(i), (b)(3) through (b)(5), (c)(2), (d)(1)(i), (d)(1)(ii), (d)(2)(i)(E), (d)(4), (d)(5)(i), (d)(5)(iii), (d)(6)(i), (d)(6)(ii), (d)(7)(v), (d)(7)(viii) and (d)(7)(xv); by adding a new paragraph (d)(7)(xviii); by revising paragraphs (e)(2) through (e)(4); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.320 Comprehensive Plan (including Five-Year Action Plan).

(a) *Submission.* HUD shall notify PHAs of the requested date for submitting or updating a Comprehensive Plan. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan or they may wait for the annual HUD notification of formula amount under § 968.315(b)(1).

(b) * * *

(2) * * *

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Work Statements for each year. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

* * * * *

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the PHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of the section, a meeting for residents and duly elected resident organizations at which the PHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, local government officials, and other interested parties, to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) * * *

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development

and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents.

* * * * *

(d) * * *

(1) *Summaries.* A PHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs PHA-wide; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

* * * * *

(2) * * *

(i) * * *

(E) In addition, the PHA shall provide with respect to vacant or non-home buyer-occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.310(d)(3).

* * * * *

(4) *Demonstration of long-term physical and social viability*—(i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost. The PHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (*e.g.*, kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. Where necessary, HUD will review the PHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.* Where a PHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 970).

(5) *Five-Year Action Plan*—(i) *General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the PHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the PHA is using for planning purposes, plus the PHA's estimate of the funds that will be available from other sources, such as State and local governments. All activities specified in an PHA's Five-Year Action Plan are contingent upon the availability of funds, and the work items are fungible, *i.e.*, interchangeable;

* * * * *

(iii) *Procedure for maintaining current Five-Year Action Plan.* The PHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) * * *

(i) The PHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 968.320(b)(1) and (2);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs (as evidenced by its Comprehensive Housing Affordability Strategy under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

* * * * *

(7) * * *

(v) The proposed activities, obligations and expenditures in the Five-Year Action Plan/Annual Submission are consistent with the proposed or approved Comprehensive Plan of the PHA;

* * * * *

(viii) The PHA has provided to HUD any documentation that the Department has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Submission, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

* * * * *

(xv) The PHA has complied with the requirements governing local government and resident participation in accordance with 24 CFR 968.320(b) and (c), 968.330(d), and 968.340, and has given full consideration to the priorities and concerns of local government and residents, including comments which were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

* * * * *

(xviii) The PHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) * * *

(2) *Amendments to needs assessments.* The PHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Submission that are not reflected in its current needs assessments (except in the case of emergencies). If the bases for the needs assessment have changed substantially, a PHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 968.330(b), or at any other time. These amendments shall be reviewed by HUD in accordance with § 968.325;

(3) *Six-year revision of Comprehensive Plan.* The physical and management needs assessments, and the summaries listed in § 968.320(d)(1) are

required to be revised only every sixth year, although the PHA may elect to revise some or all of these more frequently. Every sixth year, a PHA must submit to HUD, as a part of its annual submission, a complete revision of its Comprehensive Plan.

(4) *Annual revision of Five-Year Action Plan.* Annually, the PHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan. Notwithstanding the new fifth year, the PHA shall identify changes in work categories from the previous year Five-Year Action Plan when making this Annual Submission.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0157)

20. Section 968.325 would be amended by revising the section heading and paragraph (c); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.325 HUD review and approval of Comprehensive Plan (including Five-Year Action Plan).

* * * * *

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the PHA, until such time as the PHA submits, and HUD approves, an amendment to its plan. The PHA shall have full fungibility of work items (may undertake any of the work items) identified in any of the five years of the approved Five-Year Action Plan without further HUD approval. Actual uses of the funds are to be reflected in the PHA annual Performance and Evaluation Report for each grant. See § 968.340. Except for emergencies, the PHA shall consult, to the extent practicable, the residents on significant changes (such as changes in scope of work) or whenever it moves work items within the approved Five-Year Action Plan. Documentation of that consultation is to be retained in PHA files. If HUD determines as a result of an audit or monitoring findings that a PHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 968.345. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Approved by the Office of Management and Budget under control number 2577–0157)

21. Section 968.330 would be amended by revising paragraphs (a), (b), (c) introductory text, (c)(2), (d), (e) introductory text, (e)(1), (e)(8), (f), (g)(1), (g)(2) introductory text, (g)(2)(i), (h), (i), and (j); by adding a new paragraph (k); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.330 Annual Submission of activities and expenditures.

(a) *General.* The Annual Submission consists of a Five-Year Action Plan with a Work Statement for each of the five years and an implementation schedule for the current year, local government statement, materials demonstrating the partnership process, and other miscellaneous documents outlined in this section. For planning purposes, a PHA may use either the amount of funding received in the current year or the formula amount provided in HUD's notification under § 968.315(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. The Work Statement for the first year of the Five-Year Action Plan is intended to provide a statement of the activities and costs that the PHA plans to undertake, in whole or in part, with the assistance to be provided by HUD in that year. The Work Statement for all five years will be at the same level of detail so that the PHA may interchange work items as discussed in § 968.320(d)(5)(i).

(b) *Submission.* After considering the amount of HUD assistance under paragraph (a) of this section, and estimating how much funding will be available from other sources, such as State and local governments, and determining its activities and costs based on the current FFY formula amount, the PHA shall submit its Annual Submission in accordance with instructions provided by HUD.

(c) *Acceptance for review.* Upon receipt of an Annual Submission from a PHA, HUD shall determine whether:

* * * * *

(2) The PHA has submitted any additional information or assurances required as a result of HUD monitoring findings of inadequate PHA performance, audit findings, and civil rights compliance findings. If the PHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* A PHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 968.320 (b) and (c), in consultation with officials of the appropriate governing body (or, in the case of a PHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and especially duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the PHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(2) *Advance Meeting with residents.* The PHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The PHA will provide residents with information concerning the contents of the PHA's Five-Year Action Plan (and any proposed amendments to the PHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The PHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns and discuss the current status of prior approved programs. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* PHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.*, after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If a PHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes and preparing the draft Performance and Evaluation Report. It must also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which items may be added or deleted to adjust for the formula amount and that any added items will come from the Five-Year Action Plan.

(e) *Contents of Work Statement.* The Work Statement for each year must include, for each development or on a PHA-wide basis for management improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with a general description of work items;

* * * * *

(8) A PHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 968.320(d)(7).

(f) *Additional submissions with Annual Submission.* A PHA must submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 968.320(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 968.325(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the PHA's approved Comprehensive Plan;

* * * * *

(h) *Amendments to Annual Submission.* The PHA shall advise HUD of all changes to the PHA's approved Work Statement for year one in its Performance and Evaluation Report submitted under § 968.305. Any additional work items (changes which add work items), except for emergency work, must be within the PHA's approved Five-Year Action Plan or receive prior HUD approval.

(i) *Extension of time for performance.* A PHA may revise the target dates for fund obligation and expenditure in the approved Annual Submission whenever any valid delay outside the PHA's control occurs, as specified by HUD. Such revision is subject to HUD review under § 968.345(a)(2) as to the PHA's continuing capacity. HUD shall not review as to a PHA's continuing capacity any revisions to a PHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of trust.* A PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

(Approved by the Office of Management and Budget under control number 2577–0157)

22. Section 968.335 would be amended by revising paragraph (a) introductory text and paragraph (b), to read as follows:

§ 968.335 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment or grant agreement with the PHA for year one of the Plan, the PHA shall undertake the modernization activities and expenditures set forth in its approved Work Statement for year one or substitute work items from within the approved Five-Year Action Plan, subject to the following requirements:

* * * * *

(b) *Fund requisitions.* To request modernization funds against the Work Statement, the PHA shall comply with requirements prescribed by HUD.

* * * * *

23. Section 968.340 would be amended by revising paragraphs (a) and (b)(2); by removing paragraph (b)(3); by redesignating paragraphs (b)(4) through (b)(7) to read paragraphs (b)(3) through (b)(6), respectively; by revising the newly designated paragraphs (b)(4) and (b)(6); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.340 PHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which a PHA has received assistance under this subpart, the PHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Five-Year Action Plan. The PHA must make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) * * *

(2) An explanation of how the PHA has used the CGP funds to address the

needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Submission under § 968.330;

* * * * *

(4) The current status of the PHA's obligations and expenditures and specifying how the PHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

* * * * *

(6) A resolution by the PHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the PHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, to local government officials, or furnished upon their request.

24. Section 968.345 would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(2)(i)(A), and (a)(3)(ii); by adding a new paragraph (a)(3)(iii); by revising paragraphs (e)(2) and (e)(4); by redesignating paragraph (e)(7) to read paragraph (e)(8); by adding a new paragraph (e)(7); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.345 HUD review of PHA performance.

(a) * * *

(1) * * *

(i) In making this determination, HUD will review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review a PHA's schedules which are provided with its Annual Submission for purposes of determining whether the PHA has carried out its modernization activities in a timely manner;

(ii) HUD will review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations. This review should also include a review of the PHA's section 3 (of the Housing and Urban Development Act of 1968) past performance.

(2) * * *

(i) * * *

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the PHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule, except in circumstances beyond the PHA's reasonable control.

* * * * *

(3) * * *

(ii) With respect to the management condition of the PHA, whether the PHA has achieved, or is making reasonable progress towards implementing the work items specified in its annual submission and Five-Year Action Plan which are designed to address deficiencies identified through PHMAP, audits, or HUD reviews; and

(iii) In determining whether the PHA has made reasonable progress, HUD will take into account the level of funding available and whether the PHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule. The PHA must demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD approved implementation schedule) has resulted from factors beyond the PHA's reasonable control.

* * * * *

(e) * * *

(2) Submit schedules for completing the work identified in its Work Statements and report periodically on its progress on meeting the schedules;

* * * * *

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

* * * * *

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 968.315(d)); and

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0157)

Dated: March 2, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–5146 Filed 3–7–94; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Designation of Critical Habitat for the Threatened Loach Minnow and Spikedace; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC24

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Threatened Loach Minnow (Tiaroga cobitis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the loach minnow (*Tiaroga cobitis*) under the authority of the Endangered Species Act of 1973, as amended (Act). The loach minnow, a small fish, was listed as a threatened species under the Act on October 28, 1986 (51 FR 39468); however, final designation of the proposed critical habitat was postponed at that time. Critical habitat is now being designated in approximately 257 kilometers (km) (159 miles (mi)) of portions of the Gila River in Grant and Catron counties, New Mexico; the San Francisco and Tularosa rivers and Dry Blue Creek, Catron County, New Mexico; the San Francisco and Blue rivers and Campbell Blue Creek, Greenlee County, Arizona; and Aravaipa Creek in Graham and Pinal counties, Arizona. Federal actions that may affect the areas designated as critical habitat are now subject to consultation with the Service, pursuant to section 7(a)(2) of the Act.

DATES: The effective date of this rule is April 7, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 3616 West Thomas, Suite 6, Phoenix, Arizona 85019. Copies of the "Analysis of the Economic Impacts of Designating Critical Habitat for *Tiaroga cobitis* (Loach Minnow)," August 12, 1992, are also available for inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above-address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

The loach minnow is a small, slender, elongated fish less than 80 millimeters (3 inches) long. It is olivaceous in color with an oblique terminal mouth and eyes markedly upward-directed. This species is found in small to large perennial streams, using shallow, turbulent riffles with primarily cobble substrate and swift currents (Minckley 1973, Propst *et al.* 1988, Rinne 1989, Propst and Bestgen 1991). Recurrent flooding is very important to loach minnow survival in keeping the substrate free of embedding sediments and helping it maintain a competitive edge over invading non-native fish species (Minckley and Meffe 1987, Propst *et al.* 1988).

The loach minnow was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. The loach minnow was once locally common throughout much of the Verde, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying suitable habitat in both the mainstreams and perennial tributaries, up to about 2,200 meters (m) (7,200 feet (ft)) elevation. Because of habitat destruction and competition and predation by non-native fish species, its range and abundance have been severely reduced. It is now restricted to approximately 35 km (22 mi) of Aravaipa Creek and approximately 1.5 km (1 mi) of Turkey Creek, a tributary of Aravaipa Creek, Graham and Pinal counties, Arizona; approximately 120 km (74.5 mi) of the upper Gila River, upstream from the Middle Box canyon, through the Cliff/Gila Valley, and the area of the confluence of the West, East, and Middle forks, Grant and Catron counties, New Mexico; approximately 166 km (103 mi) of the San Francisco and Tularosa rivers, Catron County, New Mexico; approximately the lower 1.5 km (1 mi) of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico; approximately 95 km (59 mi) of the Blue River and Campbell Blue and Dry Blue creeks, Greenlee County, Arizona; and 38 km (23.5 mi) of the East and North forks and mainstem of the White River, Navajo County, Arizona (Barber and Minckley 1966, Silvey and Thompson 1978, U.S. Department of Agriculture 1979, Britt 1982, Propst *et al.* 1985, Propst *et al.* 1988, Propst 1988 to 1992, Papoulius 1989, Minckley *et al.* 1990 to 1992, Propst and Bestgen 1991, Bettaso 1992 to 1993). This present range is only 17 percent of the historic range of 2,600 km (1,600 mi) of river.

Critical habitat is being designated for approximately 257 km (159 mi) on rivers currently occupied by loach minnow. Land ownership along the critical habitat area is mixed and is as follows (distances and conversions are approximate):

Aravaipa Creek—The Bureau of Land Management (BLM) administers 10 km (6 mi) of the critical habitat as part of the designated Aravaipa Canyon Wilderness. Thirteen km (8 mi) of the critical habitat above and below the Wilderness, previously owned by the Defenders of Wildlife's Whittell Trust, is now owned by The Nature Conservancy (TNC) and managed as a nature preserve. About 1 km (0.5 mi) of stream is on privately owned inholdings located within the Preserve.

Gila River—Twenty-eight km (17.2 mi) of privately owned land lie along the critical habitat in most of the Cliff/Gila Valley, in the area near Gila Hot Springs, and along the East Fork. Two km (1.2 mi) of land along the critical habitat upstream from the town of Gila is owned by TNC. The New Mexico Department of Game and Fish owns land along 6 km (3.8 mi) of the critical habitat on the West and Middle forks of the Gila River. The New Mexico State Land Office owns land along 0.5 km (0.2 mi) of the critical habitat in the Cliff/Gila Valley. The National Park Service's Gila Cliff Dwellings National Monument lies along 1 km (0.5 mi) of the critical habitat on the West Fork. This Monument is currently being administered by the U.S. Forest Service. The U.S. Forest Service, Gila National Forest, administers the remaining 55.5 km (34 mi) of the critical habitat in the Gila River with sections flowing through three special use areas—the Gila Wilderness, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area.

San Francisco and Tularosa Rivers—The Gila National Forest administers 27 km (16.8 mi) of the two rivers in the critical habitat. Privately owned lands occur as scattered inholdings in National Forest lands along 18 km (11.2 mi) of the critical habitat in both rivers.

Blue River and Campbell and Dry Blue Creeks—The critical habitat is almost entirely contained within the Apache-Sitgreaves National Forest, with 75 km (46.5 mi) of forest lands and 20 km (12.5 mi) of private inholdings.

The loach minnow is included on the State lists of threatened and endangered species in Arizona and New Mexico (Arizona Game and Fish Dept. 1988, New Mexico State Game Comm. 1990). It was included as a Category 1 candidate species in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 1 includes those taxa for which the Service currently has substantial biological information on hand to support listing the species as endangered or threatened. A proposed rule to list this species as threatened

with critical habitat was published on June 18, 1985 (50 FR 25380). The final rule listing the loach minnow as a threatened species was published on October 28, 1986 (51 FR 39468). The proposed critical habitat designation was not made final at the time of listing but was postponed to allow for gathering and analysis of economic data.

Summary of Comments and Recommendations

In the June 18, 1985, proposed rule (50 FR 25380) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on August 19, 1985, but was reopened on October 7, 1985 (50 FR 37703), to accommodate the public hearings, and remained open until November 8, 1985. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Courier in Prescott, Arizona; in the Eastern Arizona Courier in Safford, Arizona; and in the Daily Press in Silver City, New Mexico, on July 5, 10, and 13, 1985, respectively. One hundred eleven letters of comment were received from 108 separate parties and are summarized below. Six requests for a public hearing were received. Public hearings were held in Silver City, New Mexico; Safford, Arizona; and Phoenix, Arizona, on October 7, 8, and 9, 1985, respectively. Interested parties were notified of those hearings, and notices of the hearings were published in the **Federal Register** on September 17, 1985 (50 FR 37703); in the Silver City, New Mexico, Daily Press on September 24, 1985; in the Phoenix, Arizona, Arizona Republic on September 26, 1985; in the Prescott, Arizona, Courier on September 27, 1985; and in the Safford, Arizona, Eastern Arizona Courier on October 2, 1985. Thirty-five comments pertaining to the proposed critical habitat were received at these hearings and are also summarized below.

Seventy-seven letters of comment were received in support of the proposed critical habitat, 21 in opposition to the proposal, and an additional 13 which expressed neither support nor opposition or which furnished economic information regarding the effects of the proposal. The 3 public hearings were attended by 107 people, with 32 oral or written statements given—16 in support of the proposed critical habitat, 13 in opposition, and 3 neither in support nor opposition. In addition, three other parties asked questions regarding the proposed critical habitat. The hearings accepted formal oral and written statements and also included an informal question and answer session.

Many of the comments addressed concerns regarding specific water-development or flood-control projects. These comments will not be addressed here unless they requested or resulted in specific changes to the rule or to the rule procedure. Economic information supplied in these comments was incorporated into the economic analysis on proposed critical habitat (Souder 1992). That analysis is available upon request, as are copies of hearing transcripts and all letters received during the comment period (see **ADDRESSES** section).

Comments in support of the proposed critical habitat were received from the American Society of Ichthyologists and Herpetologists, Arizona Game and Fish Department, Arizona Nature Conservancy, Arizona State University Wildlife Society Chapter, Arizona Wildlife Federation, Audubon Society Appleton-Whittell Research Ranch, Defenders of Wildlife, Desert Fishes Council, George Whittell Wildlife Trust, International Union for the Conservation of Nature and Natural Resources (now known as the World Conservation Union), Maricopa Audubon Society, New Mexico Nature Conservancy, Northern Arizona Paddlers Club, Prescott Audubon Society, Rio Grande Chapter of the Sierra Club, Southern New Mexico Conservation Coalition, Southern New Mexico Sierra Club, The Nature Conservancy's Rocky Mountain Natural Heritage Task Force, Tucson Audubon Society, U.S. Bureau of Land Management, Yuma Audubon Society, 3 members of the New Mexico Interstate Stream Commission, and 63 biologists and private citizens.

Comments in opposition to the proposed critical habitat were received from the Arizona Cattle Growers Association, Arizona Division of Emergency Services, Arizona Mining Association, City of Prescott, Congressman Jim Kolbe of Arizona, Coronado Resource Conservation and Development Board, County of Greenlee, Gila Fish and Gun Club, Gila Valley Natural Resource Conservation Board, Graham County Board of Supervisors, Grant County Chamber of Commerce, Hooker Dam Association, New Mexico State Engineer Office, Phelps Dodge Corporation, Pleasanton Eastside Ditch Company, Southwest New Mexico Industrial Development Corporation, Town of Safford, Town of Silver City, Town of Thatcher, U.S. Forest Service, U.S. Soil Conservation Service New Mexico State Office, Upper Gila River Association, and six private citizens.

Nonsubstantive comments or comments containing only economic information were received from the Arizona State Clearinghouse, Federal Emergency Management Agency, Federal Highway Administration, New Mexico Game and Fish Department, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Environmental Protection Agency, U.S. Soil Conservation Service Arizona State Office, and two private citizens.

Summaries of all substantive comments addressing the issue of critical habitat for the loach minnow are provided in the following discussion. Comments of similar content are grouped in a number of general issues with the Service's response to those issues and comments.

Issue 1: Three commenters recommended that additional areas be included in the designation of critical habitat. Two commenters recommended that the critical habitat designation be changed to include the watersheds of the rivers being designated, as well as the rivers themselves.

Dr. Dean Hendrickson questioned why the proposed critical habitat does not include several areas where loach minnow occur in the San Francisco River (above the mouth of the Blue River) nor the population in the White River

Response: The Service believes that the inclusion of the entire watershed in a critical habitat designation for this fish is not necessary to provide adequate protection for the species. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the loach minnow. Any Federal activities in the watersheds of streams designated as critical habitat that would affect the critical habitat would be subject to section 7 of the Act. The Service recognizes that limiting the proposed critical habitat to only the stream itself may not clearly indicate the importance of the streambanks and channel to the maintenance of the critical habitat. Therefore, future revision of the critical habitat to include a portion of the riparian zone or floodplain may be considered. Such a revision would require an additional proposed rule and public comment period.

The Service is considering future revision of the critical habitat designation for loach minnow to include other areas occupied by the species as well as unoccupied areas that

may be critical to recovery of the species. The population in the White River was believed to have been extirpated at the time of the proposed designation of critical habitat and was therefore not included in the proposal. Additional information on the distribution and status of the White River habitat and population is now available and the Service believes that portions of the East and North forks and mainstem White River may qualify for addition to the critical habitat designation. Populations of loach minnow found in the areas of stream not included in the critical habitat are nevertheless protected under the jeopardy provisions of section 7 and the prohibitions of section 9 of the Act.

Issue 2: Four of the commenters recommended that the area of the Gila River that was being considered in 1985 for damming or other water development under the Bureau of Reclamation's (Reclamation) Upper Gila Water Supply Study (UGWSS) be excluded from the critical habitat designation. Such an exclusion could be made under the provisions of section 4(b)(2) of the Act, which provides that the Secretary of the Interior may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless the failure to designate such area as critical habitat would result in the extinction of the species. The four commenters stated that the benefits of the water supply, flood control, and other associated economic and recreational benefits of the UGWSS, and Conner Dam in particular, far outweigh the benefits of critical habitat. One commenter also suggested that areas presently unoccupied by loach minnow in the Gila River and other streams could be designated as critical habitat to replace the excluded UGWSS area. The commenter suggested that such unoccupied areas could then be modified and managed to provide habitat for loach minnow and then stocked with captive-reared loach minnow to provide increased populations and habitat for the species.

Response: Planning for the UGWSS was suspended in 1987 (U.S. Bureau of Reclamation 1987a, 1987b) due to various economic, environmental, and water supply factors. Further planning was deferred until the year 2010 when it is predicted the need for the water supply will occur. Prior to that suspension, discussions between the Bureau of Reclamation and the Service on tentative alternatives for the UGWSS study indicated that development of the required water supply would likely be possible without adversely modifying the proposed critical habitat. Therefore, no economic or other impacts were anticipated to the UGWSS and no economic benefits would accrue from exclusion from critical habitat designation of the Conner Dam and Reservoir area, or any other area being considered under the UGWSS.

Regarding the suggestion to replace occupied areas in the critical habitat designation with unoccupied areas of the Gila River—the Service is considering a possible future revision to the critical habitat which may contain some presently unoccupied areas as potential recovery habitat. However, this would be an addition to the critical habitat, not a substitution. The Service does not believe it would further the conservation of the species to remove from the protection of critical habitat designation areas known to support long-term populations of loach minnow and replace them with areas which do not currently support loach minnow, but which, with human manipulation, might support loach minnow in the future. However, the primary unoccupied area identified by the commenter as a replacement for the occupied areas is the canyon wilderness between Mogollon Creek and the East Fork Gila River (above the Cliff/Gila Valley), which probably never supported loach minnow and does not appear to contain potential habitat for recovery of the species. The knowledge, expertise, and physical capability do not exist to modify such areas of non-suitable habitat into suitable habitat for loach minnow. In addition, such modification might cause major irreparable harm to other native fish and aquatic organisms, riparian plant and wildlife communities, and wilderness values.

Issue 3: Two commenters requested that critical habitat be limited to areas that would not hinder the construction of flood-control facilities for the areas of Clifton, Duncan, and Safford, Arizona. As in Issue 2, this request for exclusion of specific areas was made under the provisions of section 4(b)(2) of the Act.

Response: The economic analysis (Souder 1992) did not show there to be significant economic or other benefits of excluding any area for flood control. Such a limitation of critical habitat is not expected to be necessary to allow for flood-control measures on the Gila and San Francisco rivers. Any such projects or activities, if they are federally funded, authorized, or carried out, would be subject to the provisions of section 7 regarding both the survival of the loach minnow and the adverse modification or destruction of its critical habitat. The Service expects that alternatives and plan modifications formulated through consultation will allow adequate flood-control measures to be taken while safeguarding the species and its habitat.

Issue 4: One commenter recommended limiting designated critical habitat to areas that would not prevent the stocking of sport fish. The commenter pointed out that many of the non-native fish identified as predators on loach minnow, such as catfish and trout, provide recreation for local residents and create revenue from sport fishing recreation. As in Issues 2 and 3, this request for exclusion of specific areas is made under the provisions of section 4(b)(2) of the Act.

Response: The designation of critical habitat as proposed is not expected to have significant effects on recreational fishing. The Arizona Game and Fish Department (AGFD) does not stock game fish in any of the waters proposed as critical habitat for loach minnow. The New Mexico Department of Game and Fish (NMGF) stocks only rainbow trout (*Oncorhynchus mykiss*) into or near the critical habitat for loach minnow. Game fish are being stocked by AGFD, NMGF, and the Service into waters connected to the proposed critical habitat. These stockings must comply with section 7 consultation requirements for their effects on the loach minnow, and designation of critical habitat is not expected to change the outcome of those consultations.

Issue 5: The Pleasanton Eastside Ditch Company, of Glenwood, New Mexico, requested that its stretch of river be excluded from critical habitat.

Response: The Pleasanton area of the San Francisco River was not part of the proposed designation of critical habitat and is not a part of this final designation. Therefore, no exclusion can or need be made.

Issue 6: Three commenters recommended that various management techniques, such as habitat improvements, predator control, and reintroduction of loach minnow from the Service's Dexter National Fish Hatchery, be implemented for loach minnow in lieu of listing and designating critical habitat.

Response: Habitat improvement practices, including predator control, cannot substitute for the listing of a species which meets the criteria for threatened or endangered status or for designation of its critical habitat, unless such practices will alleviate all threats to the species to the point where it no longer requires listing or critical habitat designation. Many of the threats to the loach minnow cannot be alleviated by

habitat improvements but can be controlled through designation of critical habitat and through the provisions of sections 7 and 9 of the Act. Too little is known about the specific habitat needs of the loach minnow to ensure that habitat improvement practices and reintroductions would secure the survival of this fish. Habitat enhancement and reintroduction are measures that are being considered in the recovery of this species. Extensive study will be needed to ensure the success of such work.

The Dexter National Fish Hatchery does not presently maintain stocks of loach minnow. Facility space is limited, and priority is given to species whose survival depends heavily upon artificial propagation, a point the loach minnow has not yet reached. Placement of stocks of loach minnow into that facility may be considered in the future; however, a number of years are often needed to develop the techniques required to successfully propagate a given species in captivity, thus precluding use of captive stock in alleviating the immediate need for listing and critical habitat designation. In addition, reintroductions may be more likely to succeed if the reintroduction area is protected through designation as critical habitat.

Issue 7: A commenter expressed concerns regarding the value of designating critical habitat when there is a significant threat to the loach minnow from predatory and competitive non-native fish species. The commenter believed that the designation of critical habitat without a management and statutory effort to control undesirable introduced fish species is not justified.

Response: The existence of threats to a listed species from other organisms, such as non-native fishes, does not relieve the Service of its responsibility to protect the species' habitat. The loach minnow faces extensive threats to its habitat and will benefit from the designation of critical habitat. The Service is presently working with the State Game and Fish departments and other agencies on solutions to controlling the introduction and spread of non-native fish species, including game fish.

Issue 8: Three commenters objected to the deferral of analysis of economic and other impacts of critical habitat designation until the time of the final rule. They believed such analysis should be done prior to the proposal and contended that deferral is "improper both legally, procedurally and in failing to follow reasonable and necessary rulemaking steps," is "certainly unreasonable and probably illegal," and does not allow the public access to essential information needed to comment on the impacts and review the adequacy of the Service's analysis. They further contended that a Regulatory Impact Analysis, under Executive Order 12291, must be prepared for the critical habitat proposal.

Response: The economic analysis (Souder 1992) of the proposed loach minnow critical habitat designation was prepared following the publication of the proposed rule and prior to the final decision on the proposed critical habitat designation. This procedure is based upon the specific requirement of the Act exempting listing actions from economic considerations. When a listing and critical habitat designation are proposed concurrently, as is required (with certain exceptions) by the Act, the economic analysis is not conducted prior to proposal to avoid illegally influencing or delaying the listing. Because Executive Order 12291 was rescinded on September 30, 1993 (58 FR 51735), a Regulatory Impact Analysis is not required.

Issue 9: Three commenters stated that an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA), should be prepared for this critical habitat proposal. They contended that the 1981 6th Circuit Court of Appeals' *Pacific Legal Foundation* v. *Andrus* decision, which found that an EIS is not required for listings under the Endangered Species Act, is not applicable to the current critical habitat proposal. Their reasons for this contention include—the *Pacific Legal Foundation* v. *Andrus* decision addressed only listing and not critical habitat designation, the Act now requires the consideration of economic and other relevant impacts of specifying an area as critical habitat, and the Act also now requires the Secretary of the Interior to determine whether the benefits of excluding an area from critical habitat designation outweigh the benefits of specifying such area as part of the critical habitat.

Response: The Service's position on NEPA compliance for any regulations adopted pursuant to section (4)(a) of the Act (listing, critical habitat designation, reclassification, delisting) is set forth in the **Federal Register** of October 25, 1983 (48 FR 49244). In addition to *Pacific Legal Foundation* v. *Andrus*, the Service's position on NEPA compliance is based on the recommendation of the Council on Environmental Quality, the fact that the Act stipulates a process to be followed in promulgating such rules and limits Secretarial discretion in altering the critical habitat designation, and on the experience of 10 years of preparation of Environmental Assessments on section 4(a) actions. In those 10 years, 120 Environmental Assessments were prepared, none of which resulted in a finding of significant impact and consequent preparation of an EIS.

Analysis of economic impacts for critical habitat designations is required by Executive Order 12866 and section 4(b)(2) of the Endangered Species Act, and the Service has prepared an economic analysis in compliance with those authorities. When the economic analysis is added to the administrative record generated through the public comment process, it provides the functional equivalent of NEPA documentation and satisfies the information-gathering, analytical, and environmental goals of NEPA.

Issue 10: Three commenters recommended that, in assessing the economic impacts of proposed critical habitat, the Service should consider the cumulative effects of all past species listings and critical habitat designations and all such actions that are or may be under consideration in the area to be affected by proposed critical habitat. They believed that the economic effects caused by past and future actions for other species are relevant in determining economic and other impacts in the proposed critical habitat area.

Response: In assessing the impacts of a critical habitat designation, the Service considers in its baseline the cumulative effects resulting from earlier listings and critical habitat designations to the extent that such effects can be determined. Effects of this critical habitat designation were calculated incrementally above the baseline of other species listings and critical habitat, as well as other environmental and land-management regulations. Consideration is limited to known impacts and does not include theoretical or hypothetical impacts. Currently, the only other federally listed species present in streams in which the loach minnow is found are the threatened spikedace (*Meda fulgida*) and endangered razorback sucker (*Xyrauchen texanus*). The endangered bald eagle (*Haliaeetus leucocephalus*) occurs near some loach minnow habitat but is not expected to contribute to cumulative effects for the loach minnow. No existing critical habitat designations are located in any of the areas being designated as loach minnow critical habitat. Designation of critical habitat in areas of loach minnow-

occupied streams and adjacent floodplains and riparian vegetation has been proposed for the spikedace and the southwestern willow flycatcher (*Empidonax traillii extimus*). Expected impacts of designation for the flycatcher are not yet available but will be detailed in the economic analysis for that proposal. Expected impacts of designation for the spikedace become available with the publication of final critical habitat for that species, concurrent with this rule (in this separate part of the **Federal Register**). Cumulative effects may be expected only in areas of non-overlap where alternative sites for projects may be affected by one species in one area and the other species in other areas or from differences in constituent elements for the southwestern willow flycatcher as compared to the fishes.

Issue 11: One commenter questioned the inclusion of the Middle Box in proposed critical habitat. The commenter based the question on a report by the Service's Albuquerque Ecological Services Field Office (USFWS 1985), which stated that the area of the Middle Box (proposed site of Conner Dam and Reservoir) has the lowest habitat value for aquatic species and general ecology in the portion of the Gila River from Mogollon Creek downstream through the Red Rock area. The report also stated that the greatest habitat value to the native fishes is found in the Cliff/Gila/Riverside Valley. That valley has a large concentration of existing manmade structures. The commenter asked for a clarification of the apparent contradiction between the low habitat rating of the Middle Box and its inclusion in the proposed critical habitat, and of the apparent contradiction between the high habitat rating of the Cliff/Gila/ Riverside Valley and the statements in the proposed rule regarding the adverse effects of human activities on loach minnow habitat.

Response: The Middle Box does provide less overall general aquatic habitat quality and diversity than other stretches. The critical habitat proposed for the loach minnow does not include any of the Middle Box proper; however, the upper end of the Middle Box "reach" (as defined by the 1985 Service report) supports a large number of loach minnow. That area is included in the critical habitat. The comparatively high habitat value of the Gila/Cliff/ Riverside Valley is not inconsistent. All manmade structures are not equally destructive of habitat values. Most of the structures in the Gila/Cliff/Riverside area are small and have localized impacts on the aquatic habitat. In the localized areas of those impacts, loach minnow are scarce or do not exist.

Issue 12: The Graham County (Arizona) Manager asked if the designation of critical habitat will affect the availability of Federal money for studies by the Bureau of Reclamation and U.S. Army Corps of Engineers on dam projects in the area.

Response: Designation of critical habitat will not automatically alter or stop any studies or projects in the area. Rather, any project that is federally funded, authorized, or carried out will be subject to the provisions of section 7 of the Act. These provisions are explained in this final rule. Studies or projects can be carried out by the Bureau of Reclamation or Corps of Engineers if those studies or projects do not destroy or adversely modify critical habitat or jeopardize any listed species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the loach minnow (*Tiaroga cobitis*) in the following areas (distances and conversions are approximate):

1. Aravaipa Creek, Graham and Pinal counties, Arizona. Twenty-four km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

2. Gila River, Grant and Catron counties, New Mexico. Four sections of river totaling 93 km (57 mi) in length. The first section is 37 km (23 mi) long and extends from the north side of St. Peter's Rock (south boundary of sec. 21, T.17S., R.17W.) upstream to the confluence with Mogollon Creek. A second section, of 11.5 km (7 mi), extends up the West Fork from its confluence with the East Fork to the west boundary of sec. 22, T.12S., R.14W. A third section, of 18 km (11 mi), extends up the Middle Fork from its mouth to the confluence with Brothers West Canyon. The fourth section is 26 km (16 mi) long and extends up the East Fork from the confluence with the West Fork to the north boundary of sec. 11, T.12S., R.13W.

3. San Francisco River, Catron County, New Mexico, and Greenlee County, Arizona. Two sections of river totaling 21 km (13 mi) in length. The first section is 15 km (9 mi) long and extends from the U.S. Highway 180 bridge upstream to Kelly Flat. The other section is 6 km (4 mi) long and extends from the confluence with Hickey Canyon upstream to the confluence with the Blue River.

4. Tularosa River, Catron County, New Mexico. Twenty-four km (15 mi) of river from the confluence with Negrito Creek upstream to the town of Cruzville.

5. Blue River, Greenlee County, Arizona, and Catron County, New Mexico. Seventy-eight km (48 mi) of river from its confluence with the San Francisco River upstream to the confluence of Dry Blue Creek and Campbell Blue Creek.

6. Campbell Blue Creek, Greenlee County, Arizona, and Catron County, New Mexico. Fourteen km (9 mi) of stream from its junction with Blue River upstream to the confluence with Coleman Creek.

7. Dry Blue Creek, Catron County, New Mexico. Three km (2 mi) of stream from its confluence with the Blue River upstream to the springs located in sec. 32, T.6S., R.21W.

The Service is required to base critical habitat proposals on the best available scientific information (50 CFR 424.12). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following—(1) space for individual growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

The areas being designated as critical habitat for the loach minnow possess the necessary factors for survival, growth, and reproduction of the species. Several areas currently occupied by the loach minnow were not included in the 1985 proposal for various reasons.

Although these areas were not proposed for designation as critical habitat, they are considered important for the long-term survival and recovery of the loach minnow. The Service is considering revising critical habitat in the future to add these areas. In addition, the Service is considering adding certain unoccupied areas considered vital for recovery of the species.

Maintenance of the widely separated populations found in the Gila, San Francisco, Tularosa, White and Blue rivers and in Aravaipa Creek as independent entities is critical to buffer against threats to each individual population. Each of the remnant populations proposed for critical habitat designation has unique characteristics which contribute to ensuring this species' future. Genetic studies in progress indicate that the populations are genetically distinctive (Tibbets 1992). The Aravaipa Creek population is the only remnant of the south-central portion of the loach minnow's historic range and is under the most protective land management. The Blue River (including Campbell and Dry Blue creeks and the San Francisco River below the mouth of the Blue) is remote and at present is also relatively secure from major threats, although damaged by past degradation. It is the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat. The West and Middle forks of the Gila River have a relatively low degree of habitat threat and may contribute genetically to the Cliff/Gila Valley population. The Cliff/Gila population is the largest existing population of loach minnow and, although faced with numerous threats, may represent the "core" population of the species. Habitat losses in the San Francisco and Tularosa rivers have resulted in a highly fragmented loach minnow population in those streams; however, the distribution of remaining habitat in those rivers may provide valuable information on habitat requirements of the loach minnow and the causes of the loach minnow's decline.

When designating critical habitat for a species, the Service also considers primary constituent elements of critical habitat, which may include, but are not limited to, the following—roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types. The areas being designated as critical habitat for loach minnow will provide the following constituent elements or will be capable, with rehabilitation, of providing them. Loach minnow constituent elements have been expanded from the proposed rule. The primary constituent elements include:

—Permanent, flowing, unpolluted water;
—Habitat for adult fish with moderate to swift flow velocities (15–100 centimeters (cm) (0.5–3 ft) per second) in shallow water (3–40 cm (0.1–1.5 ft) deep) with gravel, cobble, and rubble substrates;
—Habitat for juveniles with moderate to swift flow velocities (15–100 cm (0.5–3 ft) per second) in shallow water (3–40 cm (0.1–1.5 ft) deep) with sand, gravel, cobble, and rubble substrates;
—Habitat for larval stage with slow to moderate flow velocities (0–30 cm (0–1 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with sand, gravel, and cobble substrates and abundant instream cover;
—Habitat for spawning with slow to swift flow velocities (3–85 cm (0.1–2.75 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with uncemented cobble and rubble substrate;
—Low amounts of fine sediment and substrate embeddedness;
—Riffle, run, and backwater components in the habitat;
—Low to moderate stream gradient (generally 0.5–1.5 percent);
—Water temperatures in the approximate range of 4–30° C (40–85° F) with natural diurnal and seasonal variation;
—Abundant aquatic insect food base;
—Periodic flooding;
—A natural, unregulated hydrograph;
—Few or no predatory or competitive non-native species present;
—A healthy, intact, riparian community; and
—Moderate to high bank stability.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would alter the natural flow regime in Aravaipa Creek or the San Francisco, Tularosa, Blue, or upper Gila rivers could adversely affect the critical habitat. Such activities include, but are not limited to, groundwater pumping, impoundment, and water diversions. Any activity that would alter watershed characteristics of the Aravaipa Creek or upper Gila, San Francisco, Tularosa, or Blue River watersheds could adversely affect the critical habitat. Such activities include, but are not limited to, vegetation manipulation, timber harvest, road construction, prescribed burning, livestock grazing, mining, and urban or suburban development. Any activity that would alter the channel morphology in Aravaipa Creek, the San Francisco, Tularosa, Blue, or upper Gila rivers could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, deprivation of substrate source, destruction and alteration of riparian vegetation, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed disturbances. Any activity that would alter the water chemistry in Aravaipa Creek or the San Francisco, Tularosa, Blue, or upper Gila Rivers could adversely affect the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release (non-point). Any activity that would introduce, spread, or augment non-native fish species in the Gila River basin could adversely affect the critical habitat. Such activities include, but are not limited to, stocking of game fish, use of live bait fish, stocking for biological control, aquaculture, dumping of pet or aquarium fish, construction and operation of canals, and interbasin water transfers.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of all additional relevant information obtained during the public comment period and public hearings. All additional information received has been addressed in the "Summary of Comments" section of this rule or in the economic documents prepared on the rule. The economic analysis (Souder 1992) is available upon request; its conclusions are summarized in the "Summary of Economic Analysis" section of this rule.

Available Conservation Measures

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a

listed species or destroy or adversely modify its critical habitat. If a Federal action may affect the listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities on Bureau of Land Management lands on Aravaipa Creek are expected to be affected by designation of critical habitat for loach minnow. The Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural resource values, including loach minnow. However, if existing or increased recreational use within the canyon results in streambank degradation and increased sediment or pollution load in the stream then section 7 consultation may be necessary.

On U.S. Forest Service lands on the Gila, San Francisco, Tularosa, and Blue rivers, little effect on Federal activities is expected as a result of this rule. Section 7 consultations for grazing, mining, timber harvest, recreation, or other activities affecting loach minnow critical habitat would now address effects to the critical habitat in addition to effects to the loach minnow itself. The primary effect anticipated by the U.S. Forest Service is possibly increased administrative costs due to consultation requirements. Designation of critical habitat may result in some increases in mitigation needs for various land use activities.

Water development on the upper Gila River, under the Bureau of Reclamation's Central Arizona Project (CAP), Upper Gila Water Supply Study, may be affected by this rule. An informal conference (USFWS 1986) and an uncompleted formal consultation pursuant to section 7 have been conducted on this CAP project and its likelihood to jeopardize the survival of the loach minnow and adversely modify the proposed critical habitat. No current proposals exist for CAP water development in any areas of the designated critical habitat. The potential for designation of critical habitat to affect future water-development plans is dependent upon the level and type of adverse effects to the loach minnow and its habitat. Those effects would depend upon the location, size, method, and other specifics of the proposed water development. If major adverse effects on critical habitat are expected, changes in water-development plans may be required. However, only those changes in addition to any changes required as a result of section 7 consultation on the species would be attributable to critical habitat.

Known Federal activities on private lands that might be affected by this rule would be future flood control funded by the Federal Emergency Management Agency or carried out by the Soil Conservation Service or the U.S. Army Corps of Engineers, future highway and bridge construction funded, authorized, or carried out by the Federal Highway Administration, or future federally funded irrigation projects. Private activities within the stream channels that may require permits under sections 402 and 404 of the Clean Water Act may also be affected by this rule. Effects are expected to be limited to administrative costs for section 7 consultation and costs for altering proposed projects to minimize or avoid effects to loach minnow and its critical habitat.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that designation of critical habitat for the loach minnow will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior (Secretary) may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. The Secretary has delegated this authority to the Director of the Service. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude any critical habitat.

The economic analysis (Souder 1992) of the potential impacts of critical habitat designation for the loach minnow concluded that economic impacts are expected on only three Federal actions—Federal Emergency Management Agency (FEMA) cost-shares to rebuild irrigation diversions after major flood events; additional fencing and alternative water developments to prevent cattle grazing in the riparian zones on the National Forest; and limited preventive measures at developed recreation sites. The estimated maximum identifiable added costs are $406,500 ($150,000 of which is attributable to the 84 km (52 mi) of river that forms part of the critical habitat designated for both the loach minnow and spikedace). With the exception of $8,412 in local cost-share for FEMA-eligible irrigation diversion reconstruction (should a flood occur), any added costs would be to the Federal government. The Director of the Service has not found it necessary to exclude from designation any of the areas proposed for designation on the basis of economic effects.

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Author

The primary author of this rule is S.E. Stefferud (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.95(e) by adding critical habitat of loach minnow in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * * *

Loach Minnow (*Tiaroga cobitis*)

Arizona:

1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

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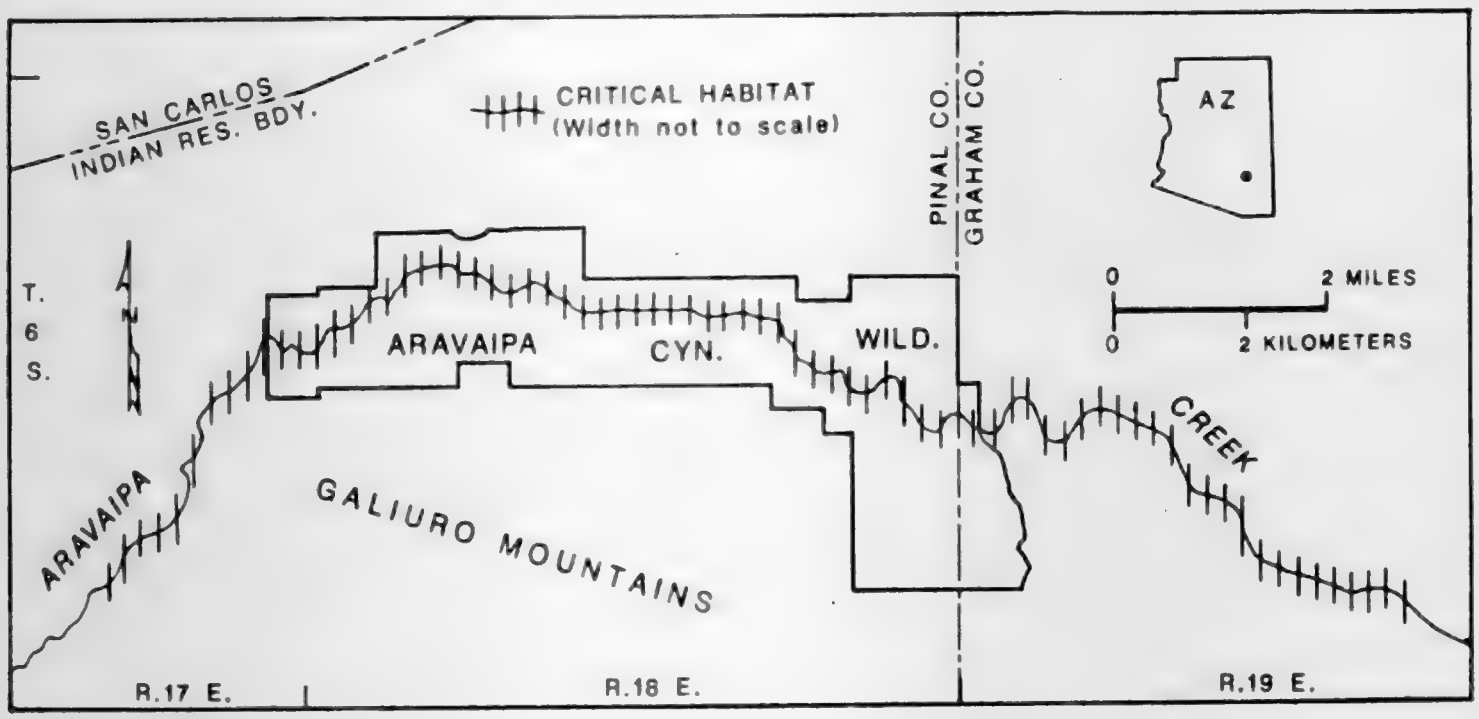

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2. *Greenlee County:*

a. Blue River, approximately 78 km (48 mi) of river, extending from the confluence with the San Francisco River (SE¼ sec. 31, T.2S., R.31E.) upstream to the confluence of Campbell Blue and Dry Blue creeks (SE¼ sec. 6, T.7S., R.21W.) in Catron County, New Mexico.

b. Campbell Blue Creek, approximately 14 km (9 mi) of stream, extending from the confluence with the Blue River (SE¼ sec. 6, T.7S., R.21W.) upstream to the confluence with Coleman Creek (SW¼ of the NE¼ sec. 32, T.4 ½N., R.31E.). Approximately 0.7 km (0.5 mi) of this stretch is located in Catron County, New Mexico.

c. San Francisco River, approximately 6 km (4 mi) of river, extending from the confluence with Hickey Canyon (west boundary of sec. 12, T.3S., R.30E.) upstream to the confluence with the Blue River (SE¼ sec. 31, T.2S., R.31E.).

New Mexico:

1. *Catron County:*

a. Dry Blue Creek, approximately 3 km (2 mi) of stream, extending from the confluence with the Blue River (SE¼ sec. 6, T.7S., R.21W.) upstream to the west boundary of the SE¼ sec. 32, T.6S., R.21W.

b. San Francisco River, approximately 15 km (9 mi) of river, extending from the U.S. Highway 180 bridge (NE¼ of the SW¼ sec. 8, T.1OS., R.20W.) upstream to the east boundary sec. 14, T.9S., R.20W.

c. Tularosa River, approximately 24 km (15 mi) of river, extending from the confluence with Negrito Creek (SW¼ of the NW¼ sec. 19, T.7S. R.18W.) upstream to the town of Cruzville (south boundary sec. 1, T.6S., R.18W.).

d. Middle Fork Gila River, approximately 18 km (11 mi) of river, extending from the confluence with the West Fork (SW¼ sec. 25, T.12S., R.14W.) upstream to the confluence with Brothers West Canyon (NE¼ sec. 33, T.11S., R.14W.).

2. *Grant and Catron Counties:*

a. East Fork Gila River, approximately 26 km (16 mi) of river extending from the confluence with the West Fork (center of sec. 8, T.13S., R.13W.) upstream to the north boundary of sec. 11, T.12S., R.13W.

b. West Fork Gila River, approximately 11.5 km (7 mi) of river extending from the confluence with the East Fork (center of sec. 8, T.13S., R.13W.) upstream to the west boundary sec. 22, T.12S., R.14W.

3. *Grant County:* Gila River, approximately 37 km (23 mi) of river, extending from the south boundary sec. 21, T.17S., R.17W. upstream to the confluence with Mogollon Creek (NE¼ sec. 31, T.14S., R.16W.).

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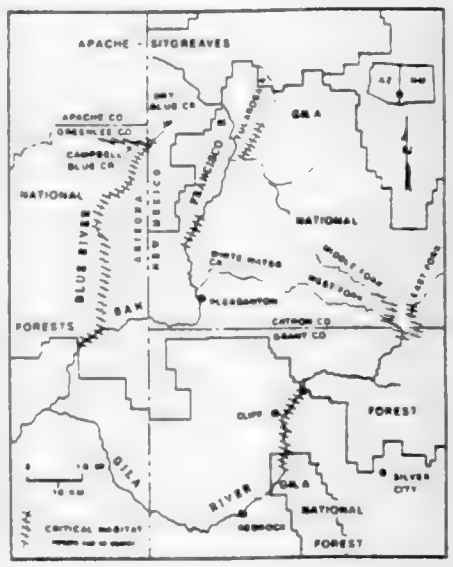

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Known constituent elements, for all areas of critical habitat, include permanent, flowing, unpolluted streams with low to moderate gradient supporting adequate areas of moderate to swift velocities and shallow depths, over gravel, cobble, and rubble substrates with little fine sediment. Adequate areas of slower velocities, shallower depths, and abundant cover are required for early life stages. Known constituent elements for all areas also include periodic flooding; a natural, unregulated hydrograph; healthy riparian vegetation; moderate to high bank stability; and an absence of or few non-native fishes present.

* * * * *

Dated: February 2, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-5117 Filed 3-7-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC24

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Threatened Spikedace (Meda fulgida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the spikedace (*Meda fulgida*) under the

authority of the Endangered Species Act of 1973, as amended (Act). The spikedace, a small fish, was listed as a threatened species under the Act on July 1, 1986 (51 FR 23769); however, final designation of the proposed critical habitat was postponed at that time. Critical habitat is now being designated in a total of approximately 154 kilometers (km) (95 miles (mi)) of portions of the Gila River in Grant and Catron counties, New Mexico; the Verde River in Yavapai County, Arizona; and Aravaipa Creek in Graham and Pinal counties, Arizona. Federal actions that may affect the areas designated as critical habitat are now subject to consultation with the Service, pursuant to section 7(a)(2) of the Act.

DATES: The effective date of this rule is April 7, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 3616 West Thomas, suite 6, Phoenix, Arizona 85019. Copies of the "Analysis of the Economic Impacts of Designating Critical Habitat for *Meda fulgida* (Spikedace)," August 12, 1992, are also available for inspection, by appointment, during normal business hours at the same location.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

The spikedace is a small, slim fish less than 80 millimeters (3 inches) long. It is characterized by very silvery sides and spines in the dorsal and pelvic fins. This species is found in moderate to large perennial streams, where it inhabits shallow riffles with sand, gravel, and rubble substrates and moderate to swift currents as well as swift pools over sand or gravel substrates (Barber *et al.* 1970, Propst *et al.* 1986, Rinne 1991). Recurrent flooding is very important in maintaining the habitat of the spikedace and also helps it maintain a competitive edge over invading non-native fish species (Propst *et al.* 1986, Minckley and Meffe 1987).

The spikedace was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. It is the only species in the genus *Meda*. The spikedace was once common throughout much of the Verde, Agua Fria, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying suitable habitat in both the mainstreams and moderate gradient perennial tributaries, up to 1,800 to 1,900 meters (m) (5,900 to 6,200 feet (ft)) elevation. Because of habitat destruction and competition and predation by non-native fish species, its range and abundance have been severely reduced, and it is now restricted to approximately 31 km (19 mi) of Aravaipa Creek in Graham and Pinal counties, Arizona; approximately 108 km (67 mi) of the upper Gila River in the Middle Box canyon, the Cliff/Gila Valley, and the lower end of the West, East, and Middle forks in Grant and Catron counties, New Mexico; approximately 57 km (35 mi) of the Verde River from the lower end of the Chino Valley downstream to near the mouth of Sycamore Canyon in Yavapai County, Arizona; and approximately 40 km (25 mi) of Eagle Creek in Greenlee County, Arizona (Minckley 1973, Anderson 1978, Barrett *et al.* 1985, Bestgen 1985, Propst *et al.* 1986, Marsh *et al.* 1990, Propst 1988 to 1992, Minckley *et al.* 1990 to 1992, Bettaso 1992 to 1993). This present range is only 9 percent of the historic range of 2,600 km (1,600 mi) of river.

Critical habitat is being designated for approximately 154 km (95 mi) on rivers currently occupied by spikedace. Land ownership along the critical habitat area is mixed and is as follows (distances and conversions are approximate):

Aravaipa Creek—The Bureau of Land Management (BLM) administers 10 km (6 mi) of the critical habitat as part of the designated Aravaipa Canyon Wilderness. Thirteen km (8 mi) of the critical habitat above and below the Wilderness, previously owned by the Defenders of Wildlife's Whittell Trust, is now owned by The Nature Conservancy (TNC) and managed as a nature preserve. About 1 km (0.5 mi) of stream is on privately owned inholdings located within the Preserve.

Gila River—The BLM administers 4.5 km (2.8 mi) of the Gila River critical habitat, just downstream from the mouth of the Middle Box canyon. This is part of a designated Area of Critical Environmental Concern, a special use designation of the BLM. Twenty-five km (15.5 mi) of land along the critical habitat in most of the Cliff/Gila Valley and in the area near Gila Hot Springs are privately owned. Two km (1.2 mi) of land along the critical habitat upstream from the town of Gila is owned by TNC. The New Mexico Department of Game and Fish administers land along 6 km (3.8 mi) of the critical habitat on the West and Middle forks of the Gila River. The New Mexico State Land Office owns land along 0.5 km (0.2 mi) of the critical habitat in the Cliff/Gila Valley. The National Park Service's Gila Cliff Dwellings National Monument lies along 1 km (0.5 mi) of the critical habitat in the West Fork. This Monument is currently being administered by the U.S. Forest Service. The U.S. Forest Service, Gila National Forest, administers the remaining 34 km (21 mi) of the critical habitat in the Gila River with sections flowing through three special use areas—Gila Wilderness, Lower Gila River Bird Habitat Management Area, and Gila River Research Natural Area.

Verde River—Forty-one km (25.5 mi) of spikedace critical habitat on the Verde River is located in the Prescott National Forest administered by the U.S. Forest Service. Fifteen km (9 mi) of privately owned land is located along the critical habitat below Sullivan Lake or as a few private inholdings along critical habitat within the U.S. Forest Service lands. The State of Arizona has 4 km (2.5 mi) of scattered State lands located along the river below Sullivan Lake.

The spikedace is included on the State lists of threatened and endangered species in Arizona and New Mexico (Arizona Game and Fish Dept. 1988, New Mexico State Game Comm. 1990). It was included as a Category 1 candidate species in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 1 includes those taxa for which the Service currently has substantial biological information to support listing the species as endangered or threatened. The Service was petitioned on March 14, 1985, by the American Fisheries Society (AFS) and on March 18, 1985, by the Desert Fishes Council (DFC) to list the spikedace as threatened. Because the species was already under active petition by AFS, the DFC petition was accepted only as a letter of comment. Evaluation of the AFS petition by the Service revealed that the petitioned action may be warranted. Finding that the petitioned action was warranted, the Service published a proposed rule to list this species as threatened with critical habitat on June 18, 1985 (50 FR 25390). The final rule listing the spikedace as a threatened species was published on July 1, 1986 (51 FR 23769). The proposed critical habitat designation was not made final at the time of listing but was postponed to allow for gathering and analysis of economic data.

Summary of Comments and Recommendations

In the June 18, 1985, proposed rule (50 FR 25390) and associated notifications, all interested parties were requested to submit factual reports or

information that might contribute to the development of a final rule. The original comment period closed on August 19, 1985, but was reopened on October 7, 1985 (50 FR 37703), to accommodate the public hearings, and remained open until November 8, 1985. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Courier in Prescott, Arizona; in the Eastern Arizona Courier in Safford, Arizona; and in the Daily Press in Silver City, New Mexico, on July 5, 10, and 13, 1985, respectively. One hundred twelve letters of comment were received from 109 separate parties and are summarized below. Six requests for a public hearing were received. Public hearings were held in Silver City, New Mexico; Safford, Arizona; and Phoenix, Arizona, on October 7, 8, and 9, 1985, respectively. Interested parties were notified of those hearings, and notices of the hearings were published in the **Federal Register** on September 17, 1985 (50 FR 37703); in the Silver City, New Mexico, Daily Press on September 24, 1985; in the Phoenix, Arizona, Arizona Republic on September 26, 1985; in the Prescott, Arizona, Courier on September 27, 1985; and in the Safford, Arizona, Eastern Arizona Courier on October 2, 1985. Thirty-six comments pertaining to the proposed critical habitat were received at these hearings and are also summarized below.

Seventy-eight letters of comment were received in support of the proposed critical habitat, 21 in opposition to the proposal, and an additional 13 which expressed neither support nor opposition or which furnished economic information regarding the effects of the proposal. The 3 public hearings were attended by 107 people, with 33 oral or written statements given—16 in support of the proposed critical habitat, 14 in opposition, and 3 neither in support nor opposition. In addition, three other parties asked questions regarding the proposed critical habitat. The hearings accepted formal oral and written statements and also included an informal question and answer session.

Many of the comments addressed concerns regarding specific water-development or flood-control projects. These comments will not be addressed here unless they requested or resulted in specific changes to the rule or to the rule procedure. Economic information supplied in these comments was incorporated into the economic analysis on proposed critical habitat (Souder 1992). That analysis is available upon request, as are copies of hearing transcripts and all letters received during the comment period (see **ADDRESSES** section).

Comments in support of the proposed critical habitat were received from the American Society of Ichthyologists and Herpetologists, Arizona Game and Fish Department, Arizona Nature Conservancy, Arizona State University Wildlife Society Chapter, Arizona Wildlife Federation, Audubon Society Appleton-Whittell Research Ranch, Defenders of Wildlife, Desert Fishes Council, George Whittell Wildlife Trust, International Union for the Conservation of Nature and Natural Resources (now known as the World Conservation Union), Maricopa Audubon Society, New Mexico Department of Game and Fish, New Mexico Nature Conservancy, Northern Arizona Paddlers Club, Prescott Audubon Society, Rio Grande Chapter of the Sierra Club, Southern New Mexico Conservation Coalition, Southern New Mexico Sierra Club, The Nature Conservancy's Rocky Mountain Natural Heritage Task Force, Tucson Audubon Society, U.S. Bureau of Land Management, Yuma Audubon Society, 3 members of the New Mexico Interstate Stream Commission, and 63 biologists and private citizens.

Comments in opposition to the proposed critical habitat were received from the Arizona Cattle Growers Association, Arizona Division of Emergency Services, Arizona Mining Association, City of Prescott, Congressman Jim Kolbe of Arizona, Coronado Resource Conservation and Development Board, County of Greenlee, Gila Fish and Gun Club, Gila Valley Natural Resource Conservation Board, Graham County Board of Supervisors, Grant County Chamber of Commerce, Hooker Dam Association, New Mexico State Engineer Office, Phelps Dodge Corporation, Southwest New Mexico Industrial Development Corporation, Town of Safford, Town of Silver City, Town of Thatcher, U.S. Forest Service, U.S. Soil Conservation Service New Mexico State Office, Upper Gila River Association, and six private citizens.

Nonsubstantive comments or comments containing only economic information were received from the Arizona State Clearinghouse, Federal Emergency Management Agency, Federal Highway Administration, Salt River Project, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Environmental Protection Agency, U.S. Soil Conservation Service Arizona State Office, and two private citizens.

Summaries of all substantive comments addressing the issue of critical habitat for the spikedace are provided in the following discussion. Comments of similar content are grouped in a number of general issues with the Service's response to those issues and comments.

Issue 1: Four commenters recommended that additional areas be included in the designation of critical habitat. Two commenters recommended that the critical habitat designation be changed to include the watersheds of the rivers being designated, as well as the rivers themselves.

Drs. Dean Hendrickson and Paul Turner recommended that the critical habitat designation be extended downstream in the Gila River to include the area between Red Rock, New Mexico, and the mouth of the Middle Box. Dr. Hendrickson's 1983–84 work (under contract with the U.S. Bureau of Reclamation) and that of Propst *et al.* (1986) and Anderson (1978) documented a large population of primarily larval and juvenile spikedace in the Red Rock to Middle Box area. He believes that the area may be an important nursery area for spikedace and may contribute significantly to upstream populations through upstream migration. The area would be affected by future water development in the Cliff/Gila Valley upstream.

Response: The Service believes that inclusion of the entire watershed in critical habitat designation for this fish is not necessary to provide adequate protection for the species. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the spikedace. Any Federal activities in the watersheds of streams designated as critical habitat that would affect the critical habitat would be subject to section 7 of the Act. The Service recognizes that limiting the proposed critical habitat to only the stream itself may not clearly indicate the importance of the streambanks and channel to the maintenance of the critical habitat. Therefore, future revision of the critical habitat to include a portion of the riparian zone or floodplain may be considered.

In the area of the Gila River between Red Rock and the mouth of the Middle Box, the majority of spikedace are located at the mouth of the Middle Box and are included in the critical habitat as proposed. The remainder are downstream from the critical habitat area but are nevertheless protected under the jeopardy provisions of section 7 and the prohibitions of section 9 of the Act. The area from the mouth of the Middle Box to the Arizona/New Mexico

border is considered to be potential recovery area for the spikedace and may be considered for addition to the critical habitat in future revision of the designation. Revision would require that an additional proposal be published in the **Federal Register**.

Issue 2: Four of the commenters recommended that the area of the Gila River that was being considered in 1985 for damming or other water development under the Bureau of Reclamation's Upper Gila Water Supply Study (UGWSS) be excluded from the critical habitat designation. Such an exclusion could be made under the provisions of section 4(b)(2) of the Act, which provides that the Secretary of the Interior may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless the failure to designate such area as critical habitat would result in the extinction of the species. The four commenters stated that the benefits of the water supply, flood control, and other associated economic and recreational benefits of the UGWSS, and Conner Dam in particular, far outweigh the benefits of critical habitat. One commenter also suggested that areas presently unoccupied by spikedace in the Gila River, the East Fork of the Gila River, and other streams could be designated as critical habitat to replace the excluded UGWSS area. The commenter suggested that such unoccupied areas could then be modified and managed to provide habitat for spikedace and then stocked with captive-reared spikedace to provide increased populations and habitat for the species.

Response: Planning for the UGWSS was suspended in 1987 (U.S. Bureau of Reclamation 1987a, 1987b) due to various economic, environmental, and water supply factors. Further planning was deferred until the year 2010 when it is predicted the need for the water supply will occur. Prior to that suspension, discussions between the Bureau of Reclamation and the Service on tentative alternatives for the UGWSS study indicated that development of the required water supply would likely be possible without adversely modifying the proposed critical habitat. Therefore, no economic or other impacts were anticipated to the UGWSS and no economic benefits would accrue from exclusion from critical habitat designation of the Conner Dam and Reservoir area, or any other area being considered under the UGWSS.

Regarding the suggestion to replace occupied areas in the critical habitat designation with unoccupied areas of the Gila River—the Service is considering a possible future revision to the critical habitat which may contain some presently unoccupied areas as potential recovery habitat. However, this would be an addition to the critical habitat, not a substitution. The Service does not believe it would further the conservation of the species to remove from the protection of critical habitat designation areas known to support long-term populations of spikedace and replace them with areas which do not currently support spikedace, but which, with human manipulation, might support spikedace in the future. However, the primary unoccupied area identified by the commenter as a replacement for the occupied areas is the canyon wilderness between Mogollon Creek and the East Fork Gila River (above the Cliff/Gila Valley), which probably never supported spikedace and does not appear to contain potential habitat for recovery of the species. The knowledge, expertise, and physical capability do not exist to modify such areas of non-suitable habitat into suitable habitat for spikedace. In addition, such modification might cause major irreparable harm to other native fish and aquatic organisms, riparian plant and wildlife communities, and wilderness values.

Issue 3: Two commenters requested that critical habitat be limited to areas that would not hinder the construction of flood-control facilities for the areas of Clifton, Duncan, and Safford, Arizona. As in Issue 2, this request for exclusion of specific areas was made under the provisions of section 4(b)(2) of the Act.

Response: The economic analysis (Souder 1992) did not show there to be significant economic or other benefits of excluding any area for flood control. Such a limitation of critical habitat is not expected to be necessary to allow for flood-control measures on the Gila and San Francisco rivers. Any such projects or activities, if they are federally funded, authorized, or carried out, would be subject to the provisions of section 7 regarding both the survival of the spikedace and the adverse modification or destruction of its critical habitat. The Service expects that alternatives and plan modifications formulated through consultation will allow adequate flood-control measures to be taken while safeguarding the species and its habitat.

Issue 4: One commenter recommended limiting designated critical habitat to areas that would not prevent the stocking of sport fish. The commenter pointed out that many of the non-native fish identified as predators on spikedace, such as catfish and trout, provide recreation for local residents and create revenue from sport fishing recreation. As in Issues 2 and 3, this request for exclusion of specific areas is made under the provisions of section 4(b)(2) of the Act.

Response: The designation of critical habitat as proposed is not expected to have significant effects on recreational fishing. The Arizona Game and Fish Department (AGFD) does not stock game fish in any of the waters proposed as critical habitat for the spikedace. The New Mexico Department of Game and Fish (NMGF) stocks only rainbow trout (*Oncorhynchus mykiss*) into or near the critical habitat for spikedace. Other fish currently being stocked into spikedace critical habitat are the endangered Colorado squawfish (*Ptychocheilus lucius*) and the endangered razorback sucker (*Xyrauchen texanus*), both native to the Gila River basin. Game fish are being stocked by the AGFD, NMGF, and the Service into waters connected to the proposed critical habitat. These stockings must comply with section 7 consultation requirements for their effects on spikedace, and designation of critical habitat is not expected to change the outcome of those consultations.

Issue 5: Three commenters recommended that various management techniques, such as habitat improvements, predator control, and reintroduction of spikedace from the Service's Dexter National Fish Hatchery, be implemented for spikedace in lieu of designating critical habitat.

Response: Habitat improvement practices, including predator control, cannot substitute for designation of critical habitat, unless such conservation measures alleviate threats to the species to the point where it no longer requires listing or critical habitat designation. Many of the threats to the spikedace cannot be alleviated by habitat improvements but can be controlled through designation of critical habitat and through the provisions of sections 7 and 9 of the Act. Too little is known about the specific habitat needs of the spikedace to ensure that habitat improvement practices and reintroductions would secure the survival of this fish. Habitat enhancement and reintroduction are measures that are being considered in the recovery of this species. Extensive study will be needed to ensure the success of such work.

The Dexter National Fish Hatchery does not presently maintain spikedace stocks. Facility space is limited, and priority is given to species whose survival depends heavily upon artificial propagation, a point the spikedace has

not yet reached. Placement of stocks of spikedace into that facility may be considered in the future; however, a number of years are often needed to develop the techniques required to successfully propagate a given species in captivity, thus precluding the use of captive stock in alleviating the immediate need for critical habitat designation. In addition, reintroductions may be more likely to succeed if the reintroduction area(s) are protected through designation as critical habitat.

Issue 6: Two commenters expressed concerns regarding the value of designating critical habitat when there is a significant threat to the spikedace from predatory and competitive non-native fish. One commenter believed that the designation of critical habitat without a management and statutory effort to control undesirable introduced fish species is not justified. The other commenter believed that critical habitat designation for the spikedace in the Gila River is futile because of the impending extinction of the spikedace due to displacement by the non-native red shiner (*Cyprinella* (formerly *Notropis*) *lutrensis*).

Response: The existence of threats to a listed species from other organisms, such as non-native fishes, does not relieve the Service of its responsibility to protect the species' habitat. The spikedace faces extensive threats to its habitat and will benefit from designation of critical habitat. The Service is presently working with the State Game and Fish departments and other agencies on solutions for controlling the introduction and spread of non-native fish species, including game fish. Although the red shiner appears to displace the spikedace in some locations and is considered a serious range-wide threat to the spikedace, the red shiner populations in the Gila River have remained small since their initial invasion in the early 1980's. A key factor in controlling the displacement of spikedace by red shiner is the protection and enhancement of the habitat. Thus, designation of critical habitat is expected to be valuable in controlling the threat from red shiner.

Issue 7: Three commenters objected to the deferral of analysis of economic and other impacts of critical habitat designation until the time of the final rule. They believed such analysis should be done prior to the proposal and contended that deferral is "improper both legally, procedurally and in failing to follow reasonable and necessary rulemaking steps," is "certainly unreasonable and probably illegal," and does not allow the public access to essential information needed to comment on the impacts and review the adequacy of the Service's analysis. They further contended that a Regulatory Impact Analysis, under Executive Order 12291, must be prepared for the critical habitat proposal.

Response: The economic analysis (Souder 1992) of the proposed spikedace critical habitat designation was prepared following the publication of the proposed rule and prior to the final decision on the proposed critical habitat designation. This procedure is based upon the specific requirement of the Act exempting listing actions from economic considerations. When a listing and critical habitat designation are proposed concurrently, as is required (with certain exceptions) by the Act, the economic analysis is not conducted prior to proposal to avoid illegally influencing or delaying the listing. Because Executive Order 12291 was rescinded on September 30, 1993 (58 FR 51735), a Regulatory Impact Analysis is not required.

Issue 8: Three commenters stated that an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA), should be prepared for this critical habitat proposal. They contended that the 1981 6th Circuit Court of Appeals' *Pacific Legal Foundation* v. *Andrus* decision, which found that an EIS is not required for listings under the Endangered Species Act, is not applicable to the current critical habitat proposal. Their reasons for this contention include—the *Pacific Legal Foundation* v. *Andrus* decision addressed only listing and not critical habitat designation, the Act now requires the consideration of economic and other relevant impacts of specifying an area as critical habitat, and the Act also now requires the Secretary of the Interior to determine whether the benefits of excluding an area from critical habitat designation outweigh the benefits of specifying such area as part of the critical habitat.

Response: The Service's position on NEPA compliance for any regulations adopted pursuant to section (4)(a) of the Act (listing, critical habitat designation, reclassification, delisting) is set forth in the Federal Register of October 25, 1983 (48 FR 49244). In addition to *Pacific Legal Foundation* v. *Andrus*, the Service's position on NEPA compliance is based on the recommendation of the Council on Environmental Quality, the fact that the Act stipulates a process to be followed in promulgating such rules and limits Secretarial discretion in altering the critical habitat designation, and on the experience of 10 years of preparation of Environmental Assessments on section 4(a) actions. In those 10 years, 120 Environmental Assessments were prepared, none of which resulted in a finding of significant impact and consequent preparation of an EIS.

Analysis of economic impacts for critical habitat designations is required by Executive Order 12866 and section 4(b)(2) of the Endangered Species Act, and the Service has prepared an economic analysis (Souder 1992) in compliance with those authorities. When the economic analysis is added to the administrative record generated through the public comment process, it provides the functional equivalent of NEPA documentation and satisfies the information-gathering, analytical, and environmental goals of NEPA.

Issue 9: Three commenters recommended that, in assessing the economic impacts of proposed critical habitat, the Service should consider the cumulative effects of all past species listings and critical habitat designations and all such actions that are or may be under consideration in the area to be affected by proposed critical habitat. They believed that the economic effects caused by past and future actions for other species are relevant in determining economic and other impacts in the proposed critical habitat area.

Response: In assessing the impacts of a critical habitat designation, the Service considers in its baseline the cumulative effects resulting from earlier listings and critical habitat designations to the extent that such effects can be determined. Effects of this critical habitat designation were calculated incrementally above the baseline of other species listings and critical habitat, as well as other environmental and land-management regulations. Consideration is limited to known impacts and does not include theoretical or hypothetical impacts. Currently, the only other federally listed species present in streams in which the spikedace is found are the threatened loach minnow (*Tiaroga cobitis*), the endangered razorback sucker (*Xyrauchen texanus*), and a nonessential experimental population of the Colorado squawfish (*Ptychocheilus lucius*). Nonessential experimental status provides protection equivalent to that for a proposed species, which includes only limited section 7 protection and thus has little or no economic or other impacts. The endangered bald eagle (*Haliaeetus leucocephalus*) occurs near some spikedace habitat but is not expected to contribute to cumulative effects for the spikedace. No existing critical habitat

designations are located in any of the areas being designated as spikedace critical habitat. Designation of critical habitat in areas of spikedace-occupied streams and adjacent floodplains and riparian vegetation has been proposed for the loach minnow, the razorback sucker, and the southwestern willow flycatcher (*Empidonax traillii extimus*). Expected impacts of designation for the sucker and flycatcher are not yet available but will be detailed in the economic analyses for those proposals. Expected impacts of designation for the loach minnow become available with the publication of final critical habitat for that species, concurrent with this rule (in this separate part of the **Federal Register**). Cumulative economic impacts may be expected only in areas of non-overlap where alternative sites for projects may be affected by one species in one area and the other species in other areas or from differences in constituent elements for the southwestern willow flycatcher as compared to the fishes.

Issue 10: One commenter questioned the inclusion of the Middle Box in proposed critical habitat. The commenter based the question on a report by the Service's Albuquerque Ecological Services Field Office (USFWS 1985), which stated that the area of the Middle Box (proposed site of Conner Dam and Reservoir) has the lowest habitat value for aquatic species and general ecology in the portion of the Gila River from Mogollon Creek downstream through the Red Rock area. The report also stated that the greatest habitat value to the native fishes is found in the Cliff/Gila/Riverside Valley. That valley has a large concentration of existing manmade structures. The commenter asked for a clarification of the apparent contradiction between the low habitat rating of the Middle Box and its inclusion in the proposed critical habitat, and of the apparent contradiction between the high habitat rating of the Cliff/Gila/ Riverside Valley and the statements in the proposed rule regarding the adverse effects of human activities on spikedace habitat.

Response: The Middle Box does provide less overall general aquatic habitat quality and diversity than other stretches. However, there are large numbers of spikedace at the upper end of the Middle Box and at its mouth. The short unoccupied stretch between those two areas is too small to be omitted from the critical habitat for biological reasons and provides an essential element to the critical habitat by providing a channel for water, fish, and gene flow between the two segments. Alteration or loss of that connection would likely result in extirpation of spikedace in the lower area. The comparatively high habitat value of the Gila/Cliff/ Riverside Valley is not inconsistent. All manmade structures are not equally destructive of habitat values. Most of the structures in the Gila/Cliff/Riverside area are small and have localized impacts on the aquatic habitat. In the localized areas of those impacts, spikedace are scarce or do not exist.

Issue 11: The Graham County (Arizona) Manager asked if the designation of critical habitat will affect the availability of Federal money for studies by the Bureau of Reclamation and U.S. Army Corps of Engineers on dam projects in the area.

Response: Designation of critical habitat will not automatically alter or stop any studies or projects in the area. Rather, any project that is federally funded, authorized, or carried out will be subject to the provisions of section 7 of the Act. These provisions are explained in this final rule. Studies or projects can be carried out by the Bureau of Reclamation or Corps of Engineers if those studies or projects do not destroy or adversely modify critical habitat or jeopardize any listed species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the spikedace (*Meda fulgida*) in the following areas (distances and conversions are approximate):

1. Aravaipa Creek, Graham and Pinal counties, Arizona. Twenty-four km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

2. Verde River, Yavapai County, Arizona. Fifty-seven km (35 mi) of river extending from 1 km (0.5 mi) below the confluence with Sycamore Creek upstream to Sullivan Lake.

3. Gila River, Grant and Catron counties, New Mexico. Three sections of river totaling 73 km (45 mi) in length. The first section is 50 km (31 mi) long and extends from the mouth of the Middle Box canyon upstream to the confluence with Mogollon Creek. A second section, of 11.5 km (7 mi), extends up the West Fork from its confluence with the East Fork to the west boundary of sec. 22, T.12S., R.14W. The last section is 11.5 km (7 mi) long and extends up the Middle Fork from its mouth to the confluence with Big Bear Canyon.

One change in the critical habitat originally proposed for spikedace has been made in this final rule. Sycamore Creek, a tributary of the Verde River in Yavapai County, Arizona, has been removed from the final critical habitat designation as a result of new biological information received. The lower 1.5 km (1 mi) of Sycamore Creek was included in the proposed critical habitat due to erroneous data on the presence of spikedace. No records of spikedace in Sycamore Creek are known; thus potential habitat there is limited to the mouth of the creek.

The Service is required to base critical habitat proposals on the best available scientific information (50 CFR 424.12). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following—(1) space for individual growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

The areas being designated as critical habitat for the spikedace possess the necessary factors for survival, growth, and reproduction of the species. Several areas currently occupied by the spikedace were not included in the 1985 proposal for various reasons. Although these areas were not proposed for designation as critical habitat, they are considered important for the long-term survival and recovery of the spikedace. The Service is considering revising critical habitat in the future to add these areas, including the occupied area recommended for inclusion as critical habitat in the recovery plan for the species (USFWS 1991). In addition, the

Service is considering adding certain unoccupied areas considered vital for recovery of the species.

Maintenance of the widely separated populations found in the Gila and Verde rivers and in Aravaipa Creek as independent entities is critical to buffer against threats to each individual population. Each of the remnant populations proposed for critical habitat designation has unique characteristics which contribute to ensuring this species' future. Genetic studies in progress indicate that the populations are genetically distinctive (Tibbets 1992). The Aravaipa Creek population is one of only two remnants of the south-central portion of the spikedace's historic range and is under the most protective land management. The Verde River population is the only remnant of the northern portion of the historic range. The upper Verde River is unusual in its relatively stable thermal and hydrologic regime and the spikedace population there is the most genetically distinct, possibly to the subspecific or specific level. The West and Middle forks of the Gila River have a relatively low degree of habitat threat and may contribute genetically to the Cliff/Gila Valley population. The Cliff/Gila population is the largest existing population of spikedace and, although faced with numerous threats, may represent the "core" population of the species.

When designating critical habitat for a species, the Service also considers the primary constituent elements of critical habitat, which may include, but are not limited to, the following—roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types. The areas being designated as critical habitat for spikedace will provide the following constituent elements or will be capable, with rehabilitation, of providing them. Spikedace constituent elements have been expanded from the proposed rule. The primary constituent elements include:

—Permanent, flowing, unpolluted water;
—Habitat for adult fish with slow to swift flow velocities (0–100 centimeter (cm) (0–3 ft) per second) in shallow water (3–38 cm (0.1–1.25 ft) deep) with shear zones where rapid flow borders slower flow, areas of sheet flow at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;
—Habitat for juveniles with slow to moderate flow velocities (0–60 cm (0–2 ft) per second) in shallow water (3–70 cm (0.1–2.25 ft) deep) with moderate amounts of instream cover;
—Habitat for larval stage with slow to moderate flow velocities (0–30 cm (0–1 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with abundant instream cover;
—Sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and substrate embeddedness;
—Pool, riffle, run, and backwater components in the habitat;
—Low stream gradient (generally 0.5–1.5 percent);
—Water temperatures in the approximate range of 1–30° C (35–85° F) with natural diurnal and seasonal variation;
—Abundant aquatic insect food base;
—Periodic flooding;
—A natural, unregulated hydrograph;
—Few or no predatory or competitive non-native species present;
—A healthy, intact, riparian community; and
—Moderate to high bank stability.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would alter the natural flow regime in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect critical habitat. Such activities include, but are not limited to, groundwater pumping, impoundment, and water diversions. Any activity that would alter watershed characteristics of the Aravaipa Creek or upper Gila or Verde River watersheds could adversely affect the critical habitat. Such activities include, but are not limited to, vegetation manipulation, timber harvest, prescribed burning, road construction, livestock grazing, mining, and urban or suburban development. Any activity that would alter the channel morphology in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, deprivation of substrate source, destruction and alteration of riparian vegetation, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed disturbances. Any activity that would alter the water chemistry in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release (non-point). Any activity that would introduce, spread, or augment non-native fish species in the Gila River basin could adversely affect the critical habitat. Such activities include, but are not limited to, stocking of game fish, use of live bait fish, stocking for biological control, aquaculture, dumping of pet or aquarium fish, construction and operation of canals, and interbasin water transfers.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of all additional relevant information obtained during the public comment period and public hearings. All additional information received has been addressed in the "Summary of Comments" section of this rule or in the economic documents prepared on the rule. The economic analysis (Souder 1992) is available upon request; its conclusions are summarized in the "Summary of Economic Analysis" section of this rule.

Available Conservation Measures

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities on Bureau of Land Management lands on Aravaipa Creek are expected to be affected by designation of critical habitat for spikedace. The Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural resource values. However, if existing or increased recreational use within the canyon results in streambank degradation and increased sediment or pollution load in the stream, then section 7 consultation may be necessary.

On U.S. Forest Service lands on the Gila and Verde rivers, little effect on

Federal activities is expected as a result of this rule. Section 7 consultations for grazing, mining, timber harvest, recreation, or other activities affecting spikedace critical habitat would now address effects to the critical habitat in addition to effects to the spikedace itself. The primary effect anticipated by the U.S. Forest Service is possible increased administrative costs due to consultation requirements. Designation of critical habitat may result in some increases in mitigation needs for various land use activities.

On Bureau of Land Management lands on the upper Gila River, little or no effect is expected on present Federal activities because the area is designated as an Area of Critical Environmental Concern, which requires management to protect natural resource values.

Water development on the upper Gila and upper Verde rivers, under the Bureau of Reclamation's Central Arizona Project (CAP), may be affected by this rule. One informal section 7 conference (USFWS 1986) and two formal section 7 consultations (one completed (USFWS 1990) and one not completed) have been conducted on CAP projects and their likelihood to jeopardize the survival of the spikedace and adversely modify the proposed critical habitat. No current proposals exist for CAP water development in either area. The potential for designation of critical habitat to affect future water-development plans is dependent upon the level and type of adverse effects to the spikedace and its habitat. Those effects would depend upon the location, size, method, and other specifics of the proposed water development. If major adverse effects on critical habitat are expected, changes in water-development plans may be required. However, only those changes in addition to any changes required as a result of section 7 consultation on the species would be attributable to critical habitat.

Known Federal activities on private lands that might be affected by this rule would be future flood control funded by the Federal Emergency Management Agency or carried out by the Soil Conservation Service or the U.S. Army Corps of Engineers, future highway and bridge construction funded, authorized, or carried out by the Federal Highway Administration, or future federally funded irrigation projects. Private activities within the stream channels that may require permits under sections 402 and 404 of the Clean Water Act may also be affected by this rule. Effects are expected to be limited to administrative costs for section 7 consultation and costs for altering proposed projects to minimize or avoid effects to spikedace and its critical habitat.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that designation of critical habitat for the spikedace will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior (Secretary) may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. The Secretary has delegated this authority to the Director of the Service. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude any critical habitat.

The economic analysis (Souder 1992) of the potential impacts of critical habitat designation for spikedace concluded that economic impacts are expected on only three Federal actions—Federal Emergency Management Agency (FEMA) cost-shares to rebuild irrigation diversions after major flood events; additional fencing and alternative water developments to prevent cattle grazing in the riparian zones on the National Forest; and limited preventive measures at developed recreation sites. The estimated maximum identifiable added costs are $150,000 (all of which is also attributable to critical habitat designated for the loach minnow, since the two species share 84 km (52 mi) of critical habitat). With the exception of $8,412 in local cost-share for FEMA-eligible irrigation diversion reconstruction (should a flood occur), any added costs would be to the Federal government. The Director of the Service has not found it necessary to exclude from designation any of the areas proposed for designation on the basis of economic effects.

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Author

The primary author of this rule is S.E. Stefferud (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.95(e) by adding critical habitat of spikedace in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

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Spikedace (*Meda fulgida*)

Arizona

1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

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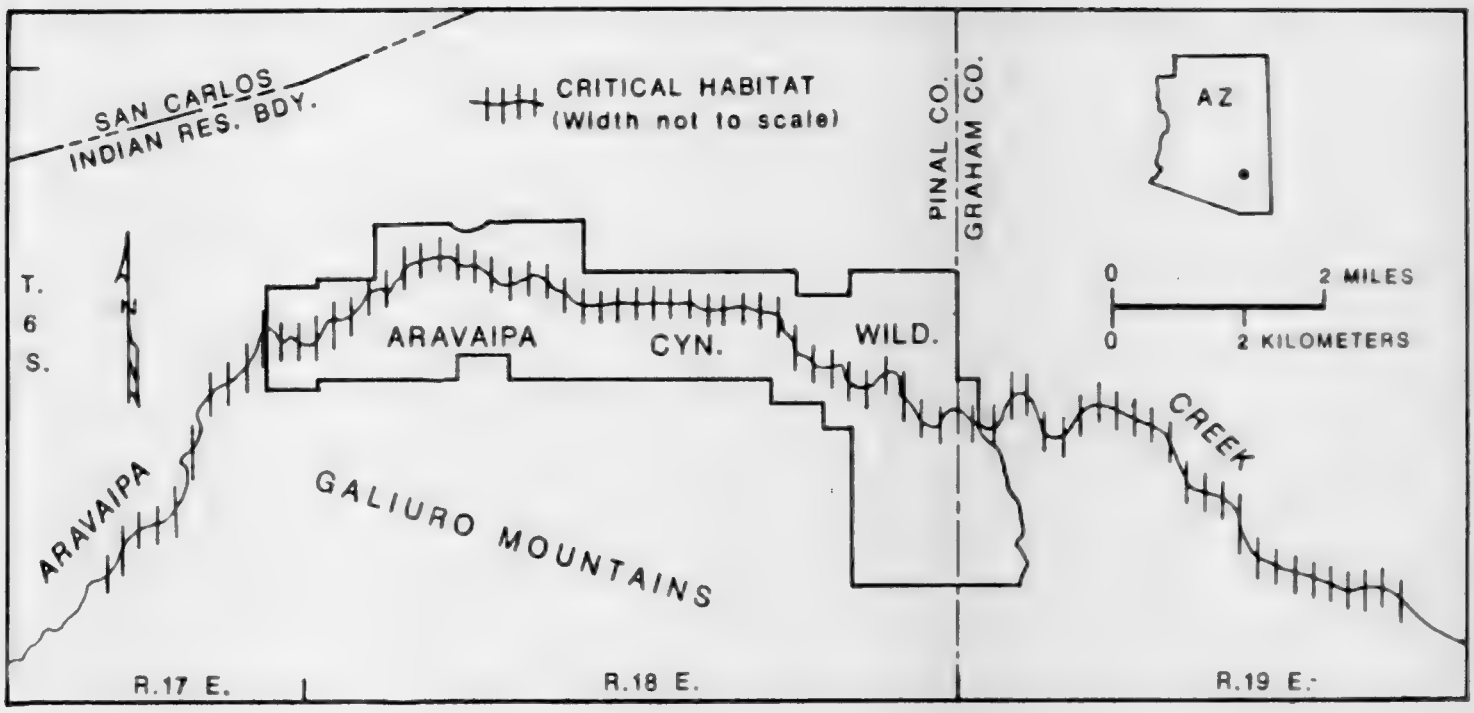

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2. *Yavapai County:* Verde River, approximately 57 km (35 mi) of river, extending from about 1 km (0.5 mi) below the confluence with Sycamore Creek (south boundary of the NW¼ sec. 17, T.17N., R.3E.) upstream to the Sullivan Lake dam (NE¼ of the NW¼ sec. 15, T.17N., R.2W.).

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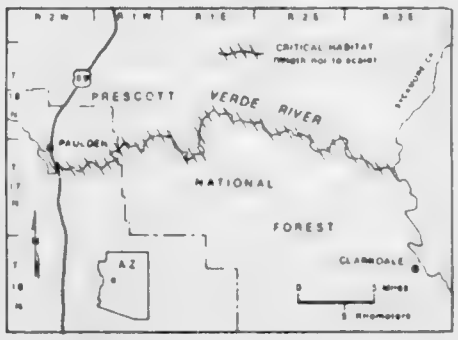

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New Mexico

1. *Grant County:* Gila River, approximately 50 km (31 mi) of river, extending from the mouth of the Middle Box canyon (NW¼ of the SW¼ sec. 23, T.18S., R.18W.) upstream to the confluence with Mogollon Creek (NE¼ sec. 31, T.14S., R.16W.).

2. *Grant and Catron Counties:* West Fork Gila River, approximately 11.5 km (7 mi) of river, extending from the confluence with the East Fork (center of sec. 8, T.13S., R.13W.) upstream to the west boundary sec. 22, T.12S., R.14W.

3. *Catron County:* Middle Fork Gila River, approximately 11.5 km (7 mi) of river, extending from the confluence with the West Fork (SW¼ sec. 25, T.12S., R.14W.) upstream to the confluence with Big Bear Canyon (NW¼ sec. 2, T.12S., R.14W.).

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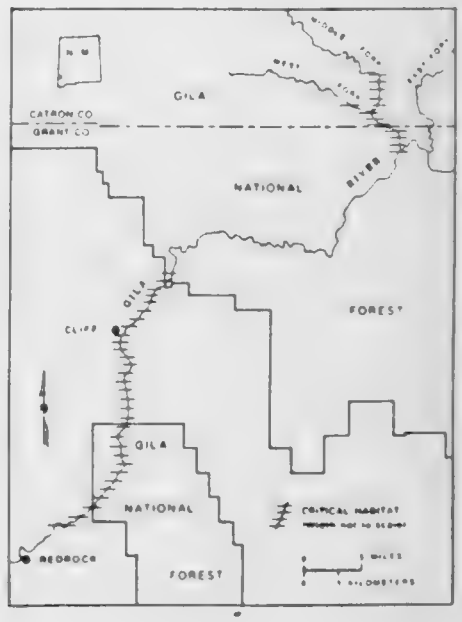

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Known constituent elements, for all areas of critical habitat, include permanent, flowing, unpolluted streams with low to moderate gradient supporting adequate areas of shear zones, sheet flows, and other appropriate habitat with slow to swift velocities and shallow depths, over sand, gravel, and cobble substrates with low to moderate amounts of fine sediment. Adequate areas of slower velocities, shallower depths, and abundant cover are required for early life stages. Known constituent elements for all areas also include periodic flooding; a natural, unregulated hydrograph; healthy riparian vegetation; moderate to high bank stability; and an absence of or few non-native fishes present.

* * * * *

Dated: February 2, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-5118 Filed 3-7-94; 8:45 am]

BILLING CODE 4310-55-P

federal register

Tuesday
March 8, 1994

Part V

Department of Education

Educational Research and Development Centers Program; Final Priority for Fiscal Years 1994 and 1995; Notice

DEPARTMENT OF EDUCATION

Educational Research and Development Centers Program, Final Priority for Fiscal Years 1994 and 1995

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces a priority for fiscal years 1994 and 1995 under the Educational Research and Development Centers Program. The Secretary takes this action to support a national research and development center or centers to study the education of children and youth placed at risk of educational failure. The priority is intended to increase knowledge related to improving educational practices that address an important national need.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW, room 610, Washington, DC 20208–5573. Telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Educational Research and Development Centers Program, authorized under section 405 of the General Education Provisions Act (20 U.S.C. 1221e), supports sustained educational research and development activities, including those designed to generate knowledge that increases the capacity of the Nation's education system to provide all children and youth with equal educational opportunities to achieve academic excellence. The program helps to advance the National Education Goals, which emphasize the importance of improving the quality of education for children and youth (1) who are most at risk of educational failure, or (2) whose educational achievement falls seriously short of their educational potential.

Using guidance provided from such sources as the recent National Academy of Sciences' report on Research and Education Reform: Roles for the Office of Educational Research and Improvement (1992) and public comments provided by researchers, policymakers, and practitioners, the Secretary seeks to provide support for national research and development centers designed to conduct sound and coherent education research programs on important topics.

The Secretary believes that deliberate, sustained, and coordinated initiatives should be undertaken to improve the social and educational conditions that threaten the learning of many educationally disadvantaged children and youth, in urban and rural settings. (Readers should note that, as used in this notice—including the priority—the term "students" means children and youth in educational systems, programs, or settings.)

In the course of developing this final priority, the Secretary has followed legally mandated procedures for rulemaking. In addition, the Secretary has, through the Office of Educational Research and Improvement (OERI), engaged in other information gathering activities designed to ensure identification of the kinds of research needed to improve the education of all students who are at risk of school failure or whose academic performance does not meet high standards. The following statement describes in chronological order all the activities undertaken by the Secretary to obtain public comments and other information that have been taken into account in developing this final priority.

On January 27, 1993, the Secretary published a notice in the **Federal Register** (58 FR 6267) inviting public comments on "research needed to improve the education of students who are at risk of educational failure or substantially below average academic achievement." The notice did not propose a priority, but solicited comments to be considered by OERI in determining what priority, if any, should be proposed with respect to this subject area. The notice requested that written comments from the public be submitted by March 1, 1993.

In June 1993, staff of OERI met with appropriate officials from the Departments of Health and Human Services, Justice, Labor, Agriculture, and Housing and Urban Development, and the National Science Foundation to discuss the subject of the January 27 **Federal Register** notice.

On October 4, 1993, the Secretary published in the **Federal Register** (58 FR 51690) a proposed priority to govern any competition for a national research and development center or centers to study the education of children and youth at risk of educational failure. In the October 1993 notice the Secretary also stated the availability of a draft of a background document to be used to provide additional suggestions to prospective applicants about addressing the mission of the planned center, and the priority. The notice invited written public comments—to be submitted by November 18, 1993—on the proposed priority and the related background document. On October 4 and 5, immediately after publication of the proposed priority, OERI convened a meeting of non-Federal researchers, practitioners, policymakers, and parents to discuss the proposed priority and the background document.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 45 parties submitted written comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Two commenters recommended that the Department cancel its plans to make an award for a research and development center that would address this priority. They believed that the prospective center's work would duplicate research already under way at other national research and development centers supported by OERI or at other locations supported by various Federal agencies and private foundations. They felt that the proposed center's findings would not be used to improve the educational system, because the center would not collaborate with laboratories or clearinghouses or with practitioners in schools.

Twenty-three commenters wrote to express general support for establishing a center addressing the priority, and an overwhelming majority of other comments received made specific recommendations regarding the research activities that this type of center should conduct, implying these commenters' support for such a project.

Discussion: The Secretary does not believe that a center carrying out the priority will duplicate research already under way or completed. The Secretary will make an award only if convinced that the applicant's proposed work promises to make significant contributions to the field. Centers are required by regulation to collaborate with other national research and

development centers, laboratories, and clearinghouses. Centers are also required to ensure that information developed as a result of their research and development activities, including new educational methods, practices, techniques, and products, will be appropriately disseminated.

Changes: None.

Comments: Twelve commenters recommended dropping the use of the term "at-risk students." They believed that the term implied blaming students for being in circumstances for which the students are not responsible and that labelling students in this way has negative consequences for the students. The commenters suggested adopting a term that shifted the emphasis to the conditions or institutions that produce the risk of educational failure, such as poverty, abuse, violence, poor health, limited English proficiency, and schools that contain barriers to educational success.

Discussion: The Secretary does not wish to imply that children and youth should be considered responsible for the conditions in which they live and over which they have no control. Families, communities, schools, and society at large all may have contributed to the adverse conditions faced by many children and youth, along with circumstances outside of anyone's control. At the same time, the Secretary believes, as several commenters noted, that it is important to realize that there are children and youth whose individual qualities enable them to succeed despite the difficult obstacles they face.

Changes: The Secretary has dropped the term "at-risk students" from the priority, replacing it with a term that draws attention to conditions that place children and youth at risk and, thereby, make it especially difficult for them to attain educational success.

Comments: Fifteen commenters recommended that the priority identify more specifically the population or populations of children and youth placed at risk of educational failure. The commenters identified some 17 populations of children and youth that individual commenters felt needed improvements in their opportunities to learn and attain educational success. Examples of these identified population groups included children who are poor, those from diverse cultural backgrounds, and adolescents. Many of the comments referred to the need to concentrate the limited resources of the center on one or another of these populations.

Discussion: The comments reflect a variety of different views about which population or populations of children and youth placed at risk of educational failure the center's work should focus on and what research knowledge would be most helpful to improving their education. In many instances individual children and youth fall into several of the recommended population categories; for example, young children with disabilities living in rural poverty. The Secretary believes that, taken together, the comments do not reflect one way of population identification that is clearly best. The Secretary believes that better applications will result if applicants are allowed to propose and justify what population or populations will be studied in their proposed center's research and development activities.

Changes: None.

Comments: Ten commenters recommended that the priority place a greater emphasis on activities related to development. The commenters felt that current research knowledge was underused. They also felt that by carrying out certain development-related activities researchers and educators could improve their understanding of how to use knowledge gained from research to implement successful educational practices in numerous settings.

Discussion: The Secretary believes that development activities are an integral part of the work of research and development centers and that these activities constitute very important means to improve education. The Secretary also believes that the priority gives proper attention to the role of development activities by twice explicitly requiring development activities and by requiring the center to contribute to the capacity of educational systems to provide students with equal opportunities to learn.

Changes: None.

Comments: Six commenters recommended various changes in the description of the methods and kinds of research activities to be carried out by a center. These commenters recommended requiring the center to carry out research syntheses and secondary analyses of data collected by the National Center for Education Statistics (NCES) and to do basic research, applied research, and development work. They suggested that syntheses of existing research serve to consolidate what is known about an educational problem and to guide further research and development of successful practices. The commenters also pointed out that secondary analyses of NCES databases offer the opportunity to examine a variety of research questions using data about large population samples in a timely, inexpensive manner. The recommendation that the center do basic and applied research and development activities was based on the commenters' view that all of these functions can contribute to improving education.

One commenter supported—as appropriate for a center—the kinds of research and development activities described in the priority.

Discussion: The Secretary believes that syntheses sometimes serve an important function in the development of research project designs and in the creation of improvements in practice. The Secretary expects that a research and development center will include syntheses as part of its activities, but only if syntheses are not already available. Likewise, the Secretary expects research and development centers to use analyses of existing NCES databases in their research projects if these analyses would contribute to the center's research objectives. The Secretary notes that research and development centers are not the only means through which the Department supports both syntheses and secondary analyses of data collected by NCES.

The Secretary also believes that the priority adequately represents the view that basic research, applied research, and development activities all play a legitimate role in the mission of research and development centers.

Changes: None.

Comments: Four commenters raised questions about the priority's requirement that the center conduct at least one definitive research study, questioning the use of the term "definitive" in the priority. The commenters doubted whether it was realistic to expect a center to conduct this type of study and whether any study could guarantee the elimination of bias.

Two other commenters supported this provision in the priority, one of them suggesting that the center could conduct several definitive research studies.

Discussion: The Secretary understands the term "definitive research study" to refer to a study whose design, size, scope, and technical rigor are such that its findings cannot be ignored by the research community. These studies exert a major influence on subsequent research, development, policy, and practice in their topic area for a substantial period of time. The priority's requirement that a project conduct one or more definitive research studies is meant to reflect the Secretary's position that research and

development centers are especially well-suited to carry out these activities, which require significant commitments of researchers' expertise, resources, and institutional support over a sustained period of time.

The Secretary does not expect definitive studies to bring all research in a particular topic area to a close, nor does the Secretary believe that any research study's design can make it entirely invulnerable to later review and criticism on the basis of questionable or false assumptions that had been taken for granted by the leading researchers in the field. The Secretary does believe, however, that a center should commit to at least one research project sufficient efforts and resources to preclude leading experts from identifying any significant limitations in the design of the project.

Changes: None.

Comments: Six commenters recommended that the center should require researchers and practitioners to collaborate with each other in the various stages of designing and implementing the center's research and development activities. The commenters felt that this collaboration could improve the direction of educational research.

Discussion: The Secretary believes that practitioners can play an important and meaningful role in the work of research and development centers. The instructions to prospective applicants in the application package encourage the proposed center to develop in its activities interaction between researchers and practitioners. Thus, applicants are encouraged to describe in their application proposals how they plan to approach the creation, design, and development of research projects.

Changes: None.

Comments: Three commenters recommended that the priority refer to a comprehensive concept of educational success, including not only academic achievement, but also qualities such as creativity, personal and civic responsibility, self-reliance, and social competence. The commenters felt that these qualities are important and integral features of educational success and are implicit in the National Education Goals.

Discussion: The Secretary believes that such a concept of educational success is entirely consistent with the priority. The Secretary encourages applicants to identify and justify the elements of educational success implied in the design of their proposed research and development activities. The Secretary expects that applicants' concepts of educational success will contribute to the merits of their proposals.

Changes: None.

Comments: Thirty-two commenters recommended changes in the proposed priority's five topics for research and development activities. The commenters recommended adding topics, replacing topics, dropping topics, and either widening or narrowing the focus of the center's research. The Secretary also received numerous comments agreeing with the proposed topics.

Recommendations to drop topics or narrow the focus of the center's research were based on the opinion that the recommended change would give the center's work greater coherence, that a particular topic did not deserve the center's attention, or that the Department should be more specific about what the center should study. Recommendations to add topics or widen the center's focus were based on the opinion that the five proposed topics omitted important research issues, or that the state of existing research knowledge did not warrant the priority's being so directive.

Examples of specific research topics or questions recommended by commenters included the following: an alternative set of topics using students, teachers and classrooms, schools, and systems as the units of analysis in one systematic, coherent approach; identifying practical solutions, including alterable factors such as the school and classroom environment, links between schools, families, and communities, and other school innovations; analyzing the effects of children's health, physiological development, and nutrition on their education; understanding what cognitive and personal characteristics children bring to the learning environment; studying student motivation and incentives to learn; examining the effects of violence on children and youth and their education; investigating the relationship between teachers' gender and ethnicity and student outcomes, in light of current trends in teacher recruitment and student characteristics; studying applied learning experiences that enable students to understand abstract ideas in a practical context; and examining the relationships between resources and achievement. All of these suggestions and others were put forward on the basis of their potential to increase the understanding of what might improve educational opportunities for students placed at risk of educational failure.

Discussion: The Secretary recognizes that there is merit to many of the topics recommended for inclusion. In fact, the Secretary believes that many of these recommendations fall within the scope of the priority's topics and could be the subject of the center's research projects. The Secretary recognizes, also, the need to modify the proposed priority in order to clarify and give sharper focus to the final priority.

Changes: The Secretary has modified the priority's topics to give greater prominence to instructional arrangements, to drop the study of fade-out effects as a separate topic, to reduce the number of topics overall, and to clarify the meaning of some of the topics. The Secretary is also using the comments to revise the guidance included in the application package to provide additional suggestions to prospective applicants about addressing the mission and priority of the center.

Comments: Four commenters recommended that the center be required to collaborate or coordinate with other centers and institutions supported by the Department—e.g., laboratories and clearinghouses—in order to achieve the greatest practical benefit from the center's work.

Discussion: The Secretary believes that research and development centers should work with federally supported institutions and other entities to maximize the impact that their activities may have on improvements in the educational system. The Secretary believes that laboratories and clearinghouses certainly fit the description of the kinds of institutions with which centers should work. Instructions in the application package identify ways in which a proposed center is required to collaborate with these types of entities.

Changes: None.

Comments: Eight commenters recommended that the priority include dissemination activities in the center's functions; e.g., serving as a clearinghouse and developing dissemination strategies. One commenter stressed the importance of integrating research and dissemination activities in order to increase their effectiveness. Another commenter recommended an information system that is readily available to the classroom teacher. One commenter felt that the center should concentrate on developing dissemination strategies but should not devote significant resources to actually performing dissemination activities because other institutions could perform that function.

Discussion: The Secretary believes that dissemination plays an integral role in research and development activities that promise to have a positive impact on improving education. The Secretary

believes that the particular types of dissemination activities that will best accomplish this objective depend on (1) the nature of the research knowledge being generated and (2) the potential users of this knowledge. Instructions in the application package include guidance related to the center's responsibilities for dissemination.

Changes: The Secretary has amended the priority to explicitly identify dissemination as a part of the center's work.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

The educational needs of children and youth placed at risk of educational failure.

Under this priority, the Secretary supports one or more national research and development centers that—

- Conduct research and development activities concerning the educational needs of children and youth placed at risk of educational failure because of economic, community, and family factors, and personal experiences, including the lack of adequate school and other educational resources;
- Contribute to increasing the capacity of educational systems to provide all students with equal opportunities to learn and achieve educational success;
- Use research methods in some of their studies that involve advanced or innovative quantitative or qualitative techniques of sampling, data gathering, conceptualization and measurement of variables, data analyses, and interdisciplinary perspectives;
- Conduct one or more definitive research studies that have national implications and that will inform policy or practice across the nation; i.e., use large representative samples and rigorous scientific techniques that preclude biased results and support generalizable, replicable findings concerning the education of sizable populations of children or youth placed at risk of educational failure;
- Include research and development activities related to two or more of the following topics:

(a) Understanding how individual cognitive and emotional characteristics of children or youth placed at risk of educational failure affect how these children or youth respond to their social and educational circumstances.

(b) Creating personalized and caring educational environments.

(c) Identifying effective ways of organizing schools, classrooms, and instructional arrangements.

(d) Understanding how best to integrate all educational programs and staff development into a coherent learning environment for students placed at risk of educational failure; and

- Document, report, and disseminate their research activities in ways that will allow others to use the research results.

Applicable Program Regulations: 34 CFR parts 706 and 708.

Program Authority: 20 U.S.C. 1221e.

Dated: March 3, 1994.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94-5301 Filed 3-7-94; 8:45 am]

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Federal Register

Tuesday
March 8, 1994

Part VI

Department of Education

Education Research and Development Centers Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117D]

Education Research and Development Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support research and development centers to conduct research and related activities.

Eligible Applicants: The following are eligible for a new award under this program: institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

Deadline for Transmittal of Applications: June 8, 1994.

Applications Available: March 17, 1994.

Available Funds: This Center will be awarded as a cooperative agreement. In fiscal year 1994, $700,000 is available for the first year of funding for a national research and development center to study the education of students placed at risk of educational failure. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds and needs as reflected in the approved application.

First Year Funding: $4.7 Million
Second Year Funding: $5.0 Million
Third Year Funding: $5.0 Million
Fourth Year Funding: $6.0 Million
Fifth Year Funding: $7.0 Million
Five Year Total: $27.7 Million

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; (b) the regulations for this program in 34 CFR parts 706 and 708; and (c) the regulations in 34 CFR part 97.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 708.11.

The program regulations in 34 CFR 706.20 (b) and (d) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition the Secretary distributes the 10 points as follows:

Technical Soundness (34 CFR 708.11(d)). Ten points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610, Washington, DC 20208–5573. Telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1221e.

Dated: March 3, 1994.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–5302 Filed 3–7–94; 8:45 am]

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Tuesday
March 8, 1994

Part VII

Department of Education

34 CFR Parts 75 and 693

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 693

RIN 1840–AB79

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the new National Early Intervention Scholarship and Partnership (NEISP) Program in accordance with the provisions in chapter 2, subpart 2, part A, title IV, of the Higher Education Amendments of 1992, enacted July 23, 1992, (Pub. L. 102–325) (1992 amendments), which amended the Higher Education Act of 1965 (HEA). These proposed regulations for the NEISP Program specify the role of the Secretary and the responsibilities of the States in the administration of the program. The proposed regulations also specify the State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's application to participate in the program.

DATES: Comments must be received on or before April 7, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fred H. Sellers, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel Sullivan, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary proposes regulations to implement the National Early Intervention Scholarship and Partnership (NEISP) Program, a new program authorized under the amended HEA. The Secretary also proposes a technical amendment to insert a reference to the NEISP Program into 34 CFR 75.60 of the regulations for the Direct Grant Programs. The Secretary proposes to make technical amendments in a separate notice of proposed rulemaking to insert references to the NEISP Program into the appropriate sections of 34 CFR part 668 of the Student Assistance General Provisions regulations. The NEISP Program provides States with Federal financial incentives to establish or maintain a program with matching State-originated funds. It provides for: (1) A scholarship component that, to the extent possible, guarantees the financial assistance necessary for eligible low-income students who graduate from high school to attend an institution of higher education, and (2) an early intervention component that uses State-wide resources, both government and private, to provide additional counseling, financial aid counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school. These proposed regulations specify the role of the Secretary and the responsibilities of the States in administering the NEISP Program. The proposed regulations also specify State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's plan for participating in the program.

Section 404C of the amended HEA provides that a participating State shall demonstrate to the satisfaction of the Secretary that the State will provide comprehensive mentoring, tutoring, outreach, and other academic and counseling services to students participating in programs under this chapter who are enrolled in preschool through grade 12. The Secretary believes that these services should be provided as early in a student's schooling as necessary to be effective. By way of example, some currently successful programs begin with classroom students at the preschool or elementary school level. However, in order to provide services at any point in a student's education, under this program the Congress also permits a State to assist students through the twelfth grade, including pre-freshman summer programs. The Secretary finds that a State should take into account existing comparable services within the State to avoid duplicating existing administrative entities and services. Therefore, under § 693.20(h) of the proposed regulations, when establishing its early intervention component, a State would be required to coordinate its efforts with existing Federal, State, local and private programs offering these services; for example, the Talent Search, Upward Bound, and Student Support Services programs and Educational Opportunity Centers, collectively known as the Federal TRIO programs.

The NEISP Program's early intervention component supports National Education Goals 2 (High School Completion), 3 (Student Achievement and Citizenship), and 4 (Science and Mathematics). The NEISP Program's scholarship component also supports National Education Goal 5 (Adult Literacy and Lifelong Learning).

Some areas in which the proposed regulations clarify or amplify the statutory requirements are explained below.

Definitions

Section 693.5(b) of the proposed NEISP Program regulations defines the terms "academic year," "award year," and "institution of higher education" as they are defined in section 481 of the HEA. These amendments to section 481 of the HEA require that the Secretary amend definitions in the Student Assistance General Provisions regulations in 34 CFR part 668. When the Secretary publishes final regulations amending these definitions, he also will amend the definitions in § 693.5(b) in the NEISP Program regulations to reference those changes.

Name of State Program

Under § 693.10(b)(2) of the proposed regulations, the Secretary proposes to require that each State desiring to participate in the program must, as a part of its plan to carry out the program, agree to name its State program the "[State name] National Early Intervention Scholarship and Partnership Program," which can be referred to as the "[State name] NEISP Program," and to name recipients of scholarships as "[State name] National Partnership Scholars." These requirements are in accord with the changes made in the 1992 amendments that require recipients of title IV, HEA student financial assistance to understand clearly that they are recipients of financial assistance provided by the Federal Government. In addition, the Secretary believes that naming recipients "[State name] National Partnership Scholars" will enhance student motivation and participation in the program by providing the prestige and recognition of a student's accomplishments that are associated with being a recipient of a national scholarship.

State Plan and Application

Section 404B of the amended HEA requires each State to submit a plan to the Secretary for review and approval that describes how the State will carry out the NEISP Program. The plan, as described in the program statute, prescribes the information and data each State must submit to the Secretary in order for the Secretary to approve the State's participation in the NEISP Program. The Secretary finds that, while some of the information required under section 404B will have to be submitted each year the State participates in the program, a significant amount of the information and data required for the State plan will have to be reported only once, in the initial fiscal year that the State wants to participate in the program. Under the proposed regulations, once a State plan has been approved by the Secretary, in subsequent fiscal years the State will not be required to submit a State plan for the review and approval of the Secretary unless the State, at its own initiative or the Secretary's initiative, must make changes to the previously approved State plan.

Therefore, to simplify and reduce the amount of reporting burden on the States, the Secretary proposes the following—

(1) For the first fiscal year that a State wants to participate in the NEISP Program, a State shall submit to the Secretary a one-time State plan containing all the information and data required under §§ 693.10, 693.11, 693.12, 693.13, and 693.20 of the proposed regulations; and

(2) In each subsequent fiscal year that a State wants to continue to participate in the NEISP Program, the State shall submit for the review and approval of the Secretary an annual application containing the information and data as required under § 693.13 of the proposed regulations.

State Agency Responsible for Administering the Program

Under the plan to administer the program required by section 404B of the amended HEA, the Secretary proposes in § 693.10(b)(1) that the Governor of each State designate the State agency that will be responsible for carrying out the NEISP Program. In doing so the Governor must designate the State agency that administers the State Student Incentive Grant (SSIG) Program, the State educational agency, or another agency that the Secretary approves. The Secretary believes that requiring the Governor of a State to designate an agency within his or her State to be responsible for the NEISP Program will ensure that program funds are allocated to an appropriate and responsible State agency and is consistent with other Federal and State-administered student financial aid programs, such as the SSIG Program.

Federal Funds Supplementing, Not Supplanting, State and Local Funds

Section 404B(b)(3) of the amended HEA requires each State in its State plan to propose provisions designed to assure the Secretary that funds provided under this part will supplement and not supplant funds expended for existing State and local early intervention and postsecondary education scholarship programs. Under § 693.13(a)(4), the Secretary proposes that on its annual application each State provide the supporting documentation to assure the Secretary that the amount of funds the State is projecting to provide under its NEISP Program for that fiscal year exceeds the amount of funds the State expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year two years prior to the fiscal year in which the State first received funds under this program.

Allotment Requirements

Section 404B(d) of the amended HEA requires that from the State's allotment calculated under section 404D, the Secretary shall disburse an amount to each State equal to no more than one-half of the total amount the State documented that it expended on its NEISP Program for the same fiscal year The Secretary proposes to collect that expenditure information from each participating State by means of an annual performance report, authorized under 34 CFR 80.40 of the Education Department General Administrative Regulations, to be submitted after the end of each NEISP Program award year

However, to be able to allot funds to eligible States at the beginning of each award year, under § 693.21(b) of the proposed regulations the Secretary will disburse to each eligible State an amount from that State's allotment equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for the fiscal year as reported on its annual application under § 693.13(a) of the proposed regulations. Under § 693.21(c) of the proposed regulations, when the Secretary disburses an NEISP Program allotment to a State on the basis of the total funds the State projects that it will expend on the NEISP Program in a fiscal year, the State may actually expend from its Federal allotment no more than one-half of the total amount of funds the State actually expends under its NEISP Program for that fiscal year.

Uses of Funds

Section 404C(b)(1) of the amended HEA requires that the Secretary shall establish by regulation criteria for determining whether comprehensive mentoring, counseling, outreach, and supportive services programs may be used to meet the requirements in section 404C(a) of the amended HEA. The Secretary proposes to provide that information in §§ 693.11, 693.13, and 693.20 of these proposed regulations.

Scholarship Funds

There is no provision for an administrative cost allowance under the scholarship component of the NEISP Program. Therefore, each participating State shall expend all Federal and State matching funds in the NEISP Program's scholarship component on scholarship assistance for NEISP Scholars.

Scholarship Amount

Section 404D(b) provides a formula for a minimum scholarship amount to be awarded to each recipient and also requires each participating State to establish its own maximum scholarship amount. The maximum scholarship amount, however, may not, when combined with a student's Federal Pell Grant award, all other Federal student financial assistance, and any other grant or scholarship assistance, exceed the student's cost of attendance. The Secretary proposes to implement these requirements under § 693.12 (e) and (g) of the proposed regulations.

Priority on Awarding Scholarships to Recipients of Federal Pell Grants

Section 404D(e) of the program statute requires that the Secretary ensure that each State place a priority on awarding NEISP Program scholarships to recipients of Federal Pell Grants. The Secretary proposes to implement this requirement in §§ 693.3(b) and 693.12(c) of these regulations. Under § 693.3(b), the Secretary believes that requiring States to award NEISP Program scholarships to low-income students attending institutions of higher education participating in the Federal Pell Grant Program helps ensure that States will place a priority on awarding NEISP Program scholarships to Federal Pell Grant recipients. The Secretary believes that the majority of institutions of higher education that participate in the Federal student financial assistance programs are participating in the Federal Pell Grant Program. As a result, the Secretary believes that requiring NEISP Program scholarships be awarded

to students attending institutions participating in the Federal Pell Grant Program will not unfairly limit educational options to NEISP scholarship recipients.

Under § 693.12(c) of the proposed regulations, the Secretary is ensuring that States place first priority on awarding NEISP Program scholarships to Federal Pell Grant recipients by requiring the States to award NEISP Program scholarships to students who have the most financial need as demonstrated by having the lowest expected family contributions and who also are recipients of Federal Pell Grant awards. The Secretary believes that these proposed regulatory requirements, while not specifically required under the statute, are consistent with the intent of the program.

Targeting Early Intervention Services to Priority Students

Section 404C(a) of the program statute requires a State to demonstrate to the Secretary the methods by which the State will target services on priority students. The Secretary proposes to implement this requirement in § 693.20(a)(2)(v) of these regulations. The Secretary plans to provide States with extensive flexibility in adopting methods for targeting services on priority students. A State must provide in its State plan a clear description of the methods a State will use to target services to priority students. Methods proposed by the State must be based on the latest available State data. Methods for targeting services on priority students may include targeting by elementary and secondary schools with high concentrations of priority students within the State, by appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State, or by other methods proposed by a State and approved by the Secretary.

Discretionary Grant Competition

Section 404E(a) of the program statute requires the Secretary to award grant funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000. The Secretary proposes to implement this requirement in § 693.22 of these regulations.

The Secretary proposes to conduct a grant competition for the States by means of a notice published annually in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, 693.13, and 693.20 and the selection criteria with point values listed for each criterion in § 693.22.

The Secretary is seeking to select the best possible State programs for the limited amount of discretionary grant funding available. Therefore, the Secretary believes that, if two States have similarly rated applications, the tiebreaker criteria in § 693.22(c)(4) (comprehensive State-wide early intervention and postsecondary educational scholarship program, comprehensive long-term mentoring and advising, and State grant funds for students' postsecondary education) are essential elements for States to provide to fulfill the purposes of the program.

The Secretary believes that equivalent selection criteria in § 693.22 for the scholarship component are unnecessary. The program statute and §§ 693.10 and 693.12 of the proposed regulations provide States with sufficient information concerning the scholarship component requirements and how ED will review and approve a State's plan and application under a discretionary grant competition. However, the Secretary notes that he has included in the selection criteria in § 693.22 consideration of availability of State grant aid available to National Partnership Scholars if the scholarship component is not funded. Further, the Secretary is requesting comment concerning the extent to which he should require State standards or guidelines to ensure that State scholarships will support and be available to eligible students for an extended period.

Evaluation Report

Section 404F of the program statute requires each State receiving an allotment under this part to prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The Secretary proposes to implement this requirement in § 693.52 of these regulations. The report must summarize and evaluate the States' activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students' progress throughout each student's participation in the program.

The biennial evaluation report of the early intervention component of the program must at a minimum include, but is not limited to, information on the program objectives that produce useful data and that are quantifiable; the effectiveness of the State's program in meeting the purposes of the program; the effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary educational enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education; the barriers to the effectiveness of the program and recommendations for changes or improvements to the program; the cost-effectiveness of the program; the extent to which the student recipients comply with the requirements of the program; key program information listed on an annual and biennial basis; other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and any other information required by the Secretary to carry out the evaluation report function.

Allowable and Nonallowable Costs

The proposed allowable and nonallowable costs in §§ 693.50 and 693.51 are consistent with similar programs such as the Federal TRIO (e.g., Upward Bound, Educational Opportunity Centers, Student Support Services) programs.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information requirements, if any, are identified and explained elsewhere in this preamble under the heading

Paperwork Reduction Act of 1980

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not affect small entities. State and State agencies are not "small entities" under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 693.10, 693.11, 693.12, 693.13, 693.20, 693.22, and 693.52 of the NEISP Program proposed regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The public reporting burden for the information collection required under §§ 693.10, 693.11, 693.12, 693.13, 693.20, and 693.22 of these proposed regulations is estimated to average 1,400 hours per State response for approximately 57 respondents for a total burden of 79,800 hours for the first year of participation by all States. The reporting burden for the information collection required under § 693.52 of these proposed regulations is estimated to average 1 hour per State response for approximately 57 respondents for a total burden of 57 hours.

Organizations and individuals desiring to submit comments on the information collection requirements contained in these proposed regulations should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

The NEISP Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for the NEISP Program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration.

List of Subjects in 34 CFR Part 693

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.272, National Early Intervention Scholarship and Partnership Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending part 75 and by adding a new part 693 as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 75.60 [Amended]

2. In § 75.60, paragraph (b)(1) is amended by adding the term "National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21, *et seq.*)," after "(20 U.S.C. 1070a, *et seq.*),".

3. A new part 693 is added to read as follows:

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Subpart A—General

Sec.

693.1 What is the National Early Intervention Scholarship and Partnership Program?
693.2 Who is eligible to participate under this program?
693.3 What kinds of activities may be assisted under this program?
693.4 What regulations apply to this program?
693.5 What definitions apply to this program?

Subpart B—How Does a State Obtain a Grant?

693.10 What must a State do to obtain a grant under this program?
693.11 What requirements must be met by the State under the program's early intervention component?
693.12 What requirements must be met by the State under the program's scholarship component?
693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

Subpart C—How Does the Secretary Make a Grant to a State?

693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program?
693.21 How does the Secretary allot funds to a State?
693.22 How does the Secretary allot funds to States on a competitive basis?

Subpart D—How Does a Student Participate in the Early Intervention Component under the NEISP Program?

693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

Subpart E—How Does a State Award a Scholarship to a Student?

693.40 What are the requirements for a student to receive a scholarship under this program?

Subpart F—What Postaward Conditions Must Be Met by a State?

693.50 What are allowable costs attributable to administration of the early intervention component?
693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

693.52 What requirements must a State meet in preparing and submitting an evaluation report?

Authority: 20 U.S.C. 1070a–21 through 1070a–27, unless otherwise noted.

Subpart A—General

§ 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a–21)

§ 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of §§ 693.10, 693.11, 693.12, 693.13, 693.20, 693.21, and 693.22 are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of § 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of § 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under § 693.21 or § 693.22 to—

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including pre-freshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

§ 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary school
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period
EDGAR
Secretary
State

(b) *Definitions in Section 481 (a) and (d) of the HEA.* The following terms used in this part are defined in section 481 of the HEA:

Academic year
Award year
Institution of higher education

(c) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR 600.1.* The following term used in this part is defined in 34 CFR 600.1:

Recognized equivalent of a high school diploma

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

At-risk student means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

Disadvantaged student means a student who is either

(1) A low-income individual who is also a first-generation college student, or

(2) A student with disabilities.

Early intervention program means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

First-generation college student means—

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Limited proficiency in English with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

Low-income individual means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who is considered to be a low-income resident by the State in which he or she lives.

Postsecondary education means a program of education beyond the secondary school level.

Priority student means any student within a State in preschool through grade 12 who is eligible—

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

Scholarship means an award made to an individual under this part.

Secondary school, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

State educational agency (SEA), as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

Student with a disability, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

Subpart B—How Does a State Obtain a Grant?

§ 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under the NEISP Program.

(b) The Secretary approves a State plan that—

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either—

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program,";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both—

(i) An early intervention component meeting the requirements under § 693.11 as evaluated by the Secretary under the criteria in § 693.20; and

(ii) A scholarship component meeting the requirements under § 693.12;

(4) Describes the administrative plan for implementing the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will—

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in § 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) Conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in § 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under § 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in § 693.13.

(Authority: 20 U.S.C. 1070a–22 and 1070a–26)

§ 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to § 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12, including, but not limited to, the following kinds of activities—

(1) A continuing system of mentoring and advising that—

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as—

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of this section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as—

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Pre-freshman summer programs that—

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including—

(A) instruction in remedial, developmental, or supportive courses;

(B) counseling, tutoring, or orientation; and

(C) grant aid to students to cover pre-freshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the pre-freshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.

(2) Elementary or secondary schools.

(3) Institutions of higher education.

(4) Public and private agencies.

(5) Nonprofit and philanthropic organizations.

(6) Businesses.

(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV of the HEA.

(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.

(9) Religious organizations.

(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a–23)

§ 693.12 What requirements must be met by the State under the program's scholarship component?

A State shall provide for a scholarship component that—

(a) As described in the State's plan approved by the Secretary under § 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in § 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by—

(1) Selecting those eligible students with the lowest expected family contributions as calculated under part F of title IV of the HEA who will also receive Federal Pell Grants; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students with the lowest expected family contributions who will not receive Federal Pell Grant awards;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under § 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of—

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to § 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describes to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a–24)

§ 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

(a) Each State desiring to participate in the program under this part shall submit an application annually through the State agency designated to administer the NEISP Program under § 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including—

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as—

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term

mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to § 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under § 693.10(b).

(b) The Secretary waives the requirement in § 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a–22)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program?

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under § 693.10(b)(3)(i) meets the requirements of § 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows—

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under § 693.13(b).

(d) *Adequacy of resources:* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who

enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component—

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in § 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under § 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.*

(1) The Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers under § 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a-23)

§ 693.21 How does the Secretary allot funds to a State?

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under § 693.10 and an approved application under § 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in § 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds the State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a-25)

§ 693.22 How does the Secretary allot funds to States on a competitive basis?

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, 693.13, and 693.20, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d).

(4) In the final selection of similarly rated applications, the Secretary

considers the extent to which a State provides—

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including—

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including—

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i) (A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994–95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11) (ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary—based on information contained in one or more of the following: performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, previous State matching funds, and the application under consideration—considers information that shows—

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under §693.13(a)(1).

(Authority: 20 U.S.C. 1070a–25)

Subpart D—How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

§ 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under § 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom—

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance, at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a–23)

Subpart E—How Does a State Award a Scholarship to a Student?

§ 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component of this program, a student must—

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under § 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside of the State; and

(e)(1) Have participated in the early intervention component of the program under this part; or

(2) Be a student whom the State documents as having successfully participated in a Federal TRIO program funded under chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the appropriate Federal TRIO program in which the student participated.

(Authority: 20 U.S.C. 1070a–24)

Subpart F—What Postaward Conditions Must Be Met by a State?

§ 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board—computed on a weekly basis—not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if—

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a–22)

§ 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as—

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources not included in the State plan under § 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in § 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a–22)

§ 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to—

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a–26)

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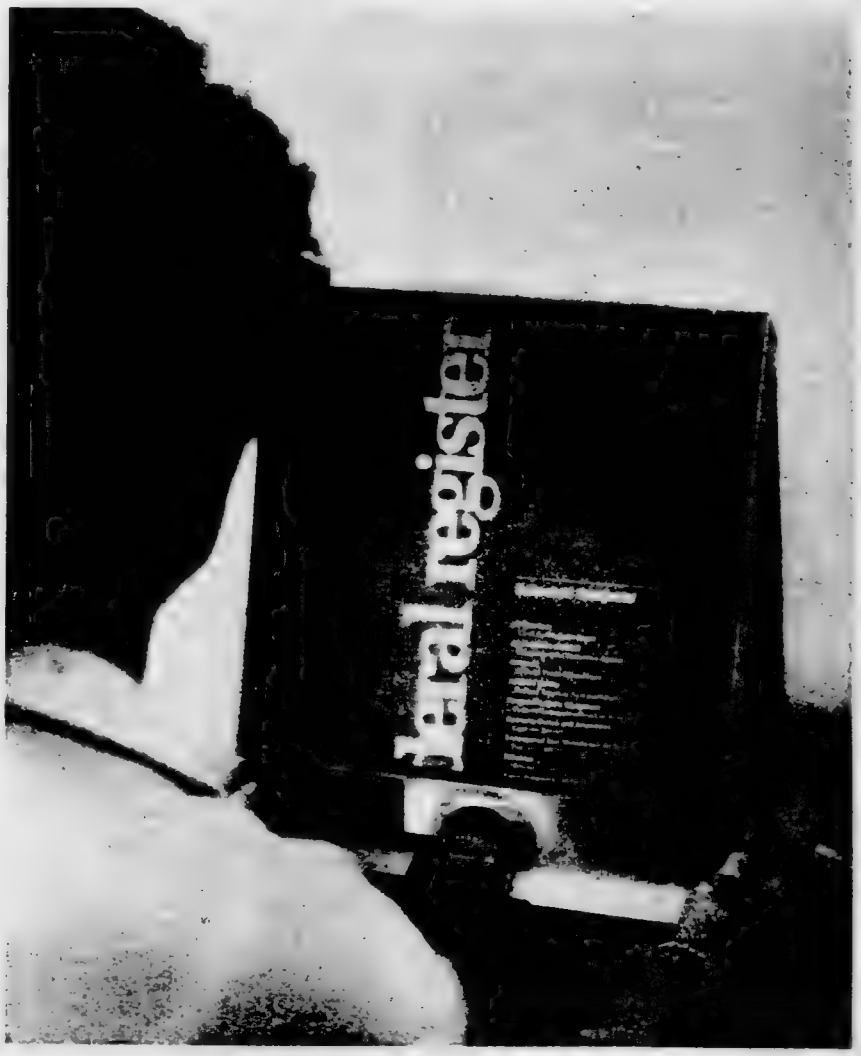

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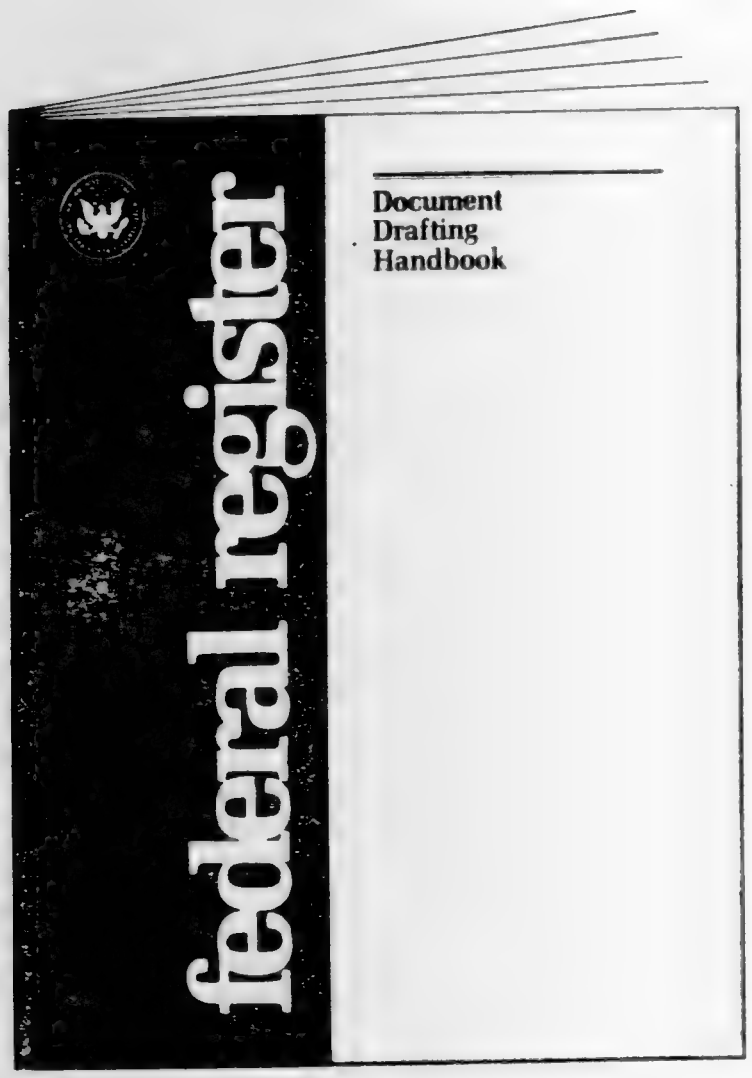

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3–9–94
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federal register

Wednesday
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD53

Tobacco; Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Section 1106 of the Omnibus Budget Reconciliation Act of 1993 (1993 Act) amends sections 106, 106A, and 106B of the Agricultural Act of 1949 (the 1949 Act) to require, with respect to burley or flue-cured tobacco imported in 1994 and subsequent years, that the importer pay a "no-net-cost" assessment (which insures against loss in the cost of the federal tobacco price support program) and to require, with respect to the 1994 through 1998 crops of tobacco, that an importer of any kind or type of tobacco remit a nonrefundable marketing assessment to the Commodity Credit Corporation (CCC) on each pound of tobacco imported. The final rule adopted by this document addresses the amount of assessments, the remittance of assessments, penalties for failure to remit or timely remit assessments, importer reporting requirements, the retention of records by importers of tobacco, the examination of records and reports pertinent to importers, and the penalty for failure to keep records and make reports.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7562.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This program/activity is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collection requirements contained in these regulations (7 CFR part 1464) have been approved by the Office of Management and Budget (OMB) through December 31, 1996, and assigned OMB No. 0560–0148. Public reporting burden for the collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0148), Washington, DC 20503.

A. Background: Statutory Provisions and General Provisions of the Interim Rule

(1) Budget Deficit Marketing Assessment (BDMA) on Imported Tobacco

Section 1106 (b) (1) of the 1993 Act amended section 106 of the 1949 Act by adding a new paragraph (h) to require, effective for each of the 1994 through 1998 crops of tobacco, that importers of tobacco produced outside the United States shall remit to CCC a nonrefundable BDMA in an amount equal to the product determined by multiplying the number of pounds of tobacco imported by the sum of the respective per pound marketing assessments imposed on purchasers of

domestic burley tobacco and domestic flue-cured tobacco pursuant to section 106 (g) of the 1949 Act. Currently, section 106 (g) of the 1949 Act imposes a marketing assessment of one half of one percent of the respective national price support levels for price supported tobacco on any purchaser who purchases the respective kind of such tobacco from any of the 1991 through 1995 crops. The amended section 106 provides that the importer of tobacco shall remit the BDMA at such time and in such manner as prescribed by the Secretary. As indicated in the interim rule, the national price support level for burley tobacco for the 1993–1994 marketing year is $1.6830 per pound and the national price support level for flue-cured tobacco for the 1993–1994 marketing year is $1.5770 per pound. Because one half of one percent of the applicable national price support level is .8415 cent for burley tobacco and .7885 cent for flue-cured tobacco, the interim rule provided, effectively, that the assessment would be 1.6300 (.8415 + .7885) cents per pound or 3.5935 (1.6300 × 2.2046) cents per kilogram for tobacco imported during the period January 1 through June 30, 1994. This assessment, by the terms of the statute, applies to all imported tobacco. For this assessment and the more limited no-net-cost assessment, the interim rule provided that imported tobacco, for purposes of the assessments, would be any tobacco which is imported as unmanufactured tobacco. The interim rule defined unmanufactured tobacco to be that which has not been converted into a product ready for use by consumers. Further, amended section 106 provides that any importer who fails to remit the BDMA on imported tobacco shall be liable, in addition to any assessment or late payment charge due, for a marketing penalty on the quantity of tobacco as to which such failure occurs, at a rate per pound equal to 37.5 percent of the sum of the average market prices for burley and flue-cured tobacco for the year immediately preceding the year in which such tobacco was imported. The interim rule provided that the necessary market price determinations would be made on the basis of prices for the domestic marketing years ending in the calendar year preceding the year of the importation. The average market prices per pound for burley and flue-cured tobacco for the 1992–1993 marketing year were $1.8150 and $1.7260, respectively. Accordingly, under the interim rule, the penalty that would be applicable with respect to the failure of an importer to remit any BDMA on imported tobacco entered for consumption into the commerce of the United States during 1994 would be $1.3279 ($1.8150 + $1.7260= $3.5410 × .3750=$1.3279) per pound or $2.9275 ($1.3279 × 2.2046) per kilogram. The penalty would be in addition to the amount due on the BDMA together with late payment charges. The rule provided that such penalty would be assessed after the importer was notified of the pending assessment of the penalty and has been afforded an opportunity for a hearing before the Director, Tobacco and Peanuts Division, ASCS, with respect to such assessment.

(2) No-Net-Cost Assessments on Imported Burley or Flue-Cured Tobacco

Pre-existing provisions of sections 106A and 106B of the 1949 Act impose on domestic producers of any kind of tobacco for which domestic quotas are in place as established under the Agricultural Adjustment Act of 1938 (the 1938 Act), as well as on purchasers of domestic burley and domestic flue-cured tobacco, "no-net-cost assessments" to insure against losses in the operation of the federal price support program for tobacco.

Subsections 1106 (b)(2) and (3) of the 1993 Act amended sections 106A and 106B of the 1949 Act to require that each importer of burley or flue-cured tobacco pay a no-net-cost assessment on each pound of burley or flue-cured tobacco that is imported by such importer. The pre-existing provisions of section 106A of the 1949 Act allow, for covered tobaccos, for the establishment of no-net-cost Funds whereas section 106B provided, alternatively, for no-net-cost Accounts. These Funds or Accounts are operated in cooperation with producer marketing associations which perform various functions in connection with the administration of the price support program. Sections 106A and 106B alternatively refer to producer inputs into the Fund or Account as "contributions" or "assessments." The interim rule provided, pursuant to the 1993 Act amendments, that the importer of burley or flue-cured tobacco would be required to pay into the respective account or fund for the applicable producer association an amount equal to the sum of the current producer and purchaser no-net-cost assessments or contributions for the respective kind of tobacco. That is, for imported flue-cured tobacco, for example, the importer would be required to pay a no-net-cost assessment equal to the amount of the combined current no-net-cost assessments or contributions paid by purchasers of domestic flue-cured tobacco and by producers of domestic flue-cured tobacco.

For the 1993–1994 domestic burley marketing year, the producer assessment is .1585 cent per pound and the purchaser assessment is 2.6585 cents per pound. With respect to domestic flue-cured tobacco marketed during the 1993–1994 marketing year, the producer assessment is .2115 cent per pound and the purchaser assessment is 2.2115 cents per pound. For that reason, under the terms of the interim rule, the Importer No-Net-Cost Assessment (INNCA) on burley tobacco imported during the 1993–1994 marketing year after December 31, 1993, would be 2.8170 (.1585+2.6585) cents per pound or 6.2104 (2.8170×2.2046) cents per kilogram, and the INNCA on flue-cured tobacco imported during the 1993–1994 marketing year after December 31, 1993, would be 2.4230 (.2115+2.2115) cents per pound or 5.3417 (2.4230×2.2046) cents per kilogram. The interim rule noted that corresponding to the beginning of new marketing years for domestic burley and flue-cured tobacco, the INNCA will likely change on July 1 of each year for imported flue-cured tobacco and on October 1 of each year for imported burley tobacco. The interim rule noted, though misidentifying in one instance which section was which, that the 106B amendments, unlike those for section 106A, expressly limited the importer INNCA's to the combination of the producer and purchaser payments for the "respective" kind of domestic tobacco (burley or flue-cured tobacco). The rule set out, however, the determination that even where section 106A applies, that the assessment would not be the sum of the producer and purchaser current assessments for both domestic burley and flue-cured tobacco together but only the sum of the assessments for the respective kind of tobacco imported by the importer.

The 1993 Act provides that the INNCA be paid at such time and in such manner as may be prescribed by the Secretary and provides for a marketing penalty in addition to the INNCA, against any importer who fails to timely remit the INNCA. The penalty rate set by the statute is 75 percent of the average market price for the respective tobacco for the preceding year. The interim rule provided that such determinations would be made using market prices from the preceding marketing year which for tobacco imported after December 31 of the 1993–1994 marketing year for the respective domestic tobaccos would be $1.3613 ($1.8150×.75) per pound or $3.0011 ($1.3613×2.2046) per kilogram

for burley tobacco and $1.2945 ($1.7260×.75) per pound or $2.8539 ($1.2945×2.2046) per kilogram for flue-cured tobacco. The interim rule provided that such penalties would be assessed after the importer has been notified of the pending assessment of the penalty and has been afforded an opportunity for a hearing before the Director, Tobacco and Peanuts Division, ASCS.

B. Discussion of Comments

Fifteen letters of comment were received in response to the December 23, 1993, interim rule. The January 10, 1994, revision was limited to correcting an oversight with respect to the establishment of an effective date for the rule. The comments have been grouped under 14 subjects, except for one general comment which is also addressed below. Respondents included the following: five tobacco manufacturing companies, four tobacco suppliers, one exporter association, one customs broker, one international commission, one tobacco association, one producer-owned tobacco loan association, and one international accounting firm.

(1) Kind of Tobacco Covered and Amount of the Assessments

Four comments addressed these matters. Three commenters suggested that BDMA should not be applicable to Turkish and Oriental tobacco, or to stems and by products. One commenter suggested that importers should not pay an INNCA equal to that of domestic producers and purchasers. Other comments relating to the coverage of the rule are set out and responded to under the heading below relating to the "unmanufactured tobacco" definition.

The comments summarized above do not involve policy determinations but are controlled by the statutory provisions involved as set out here and in the interim rule. Accordingly, no adjustment has been made in the rule.

(2) Refunds

Eleven comments were received on this topic. Six commenters suggested that tobacco imported for the purpose of processing and reexporting should be exempted from the collection of assessments. Two commenters suggested that assessments on imported tobacco should not be collected until pesticide residue analyses are completed and cleared. One commenter recommended that refunds be to a successor in interest where the tobacco has been transferred. One commenter stated that the "Prompt Payment Act" (31 U.S.C. 3901 *et seq.*) should apply to all refunds. One commenter recommended that imports in *de minimis* amounts be exempt from the collection of assessments.

The interim rule itself allowed for refunds of assessments on tobacco brought into the United States solely for the purpose of processing and subsequent delivery as unmanufactured tobacco to a customer outside the United States. Delaying collection until the actual disposition of the tobacco would be unworkable, would jeopardize collections, and would be contrary to the language and coverage of the statute. However, to address the concerns of the commenters, the final rule redefines the point at which the tobacco is considered to be "Entered" into the United States (and thus imported) to be for tobacco which is entered through the United States Customs Service (Customs Service), the point at which the tobacco has been released by the Customs Service for entry (direct entry or bonded warehouse withdrawals) for consumption into the commerce of the United States. Therefore, tobacco imported under the Customs Service's bonded warehouse provisions, and not withdrawn for consumption into the commerce of the United States, would not be subject to assessments. For unmanufactured tobacco that has been entered for consumption and subsequently reexported as unmanufactured tobacco, assessment refunds will be made and will be, under the revised provisions of the final rule, based on the entry weight as identified on Customs Service Form CF7501 or CF7505, or other Customs Service documentation as determined to be appropriate. Refund documentation, including proof of export, will be required consistent with the Customs Service's "duty drawback" procedures under section 313(a) of the Tariff Act of 1930, as amended, and implementing Customs Service regulations.

With respect to pesticide analysis on imported tobacco, a refund will be permitted upon appropriate proof of reexportation or destruction of tobacco determined to be contaminated with nonapproved pesticides. All requests for refunds (supported with Customs Service "duty drawback" documentation) must be forwarded to the Director, Tobacco and Peanuts Division, ASCS.

These procedures will allow for importer refunds and for using Customs Service's records and normal commercial records of the import/export business community. Also, the modified rule makes allowances for payments to successors in interest.

The "Prompt Payment Act" will be applied, as applicable, for all refunds and payments. Said charges, as may accrue, would be due only from the time the refund is due, not from the time the assessment was paid on the entry of the tobacco. Because this is strictly an administrative matter, there is no reference to the "Prompt Payment Act" in the final rule.

The final rule adopts a *de minimis* exemption. Specifically, imports of 5 kilograms or less will be exempt from any importer BDMA or INNCA in order to accommodate industry needs to import small quantities of tobacco for samples, research, and other purposes. This will also eliminate the administrative burden that would result in small amounts of tobacco being imported, tracked, and assessments collected.

To further accommodate importers who may have a need to import small quantities of tobacco, CCC, in conjunction with the Customs Service, will establish $250 as the minimum monetary level of the value of the incoming tobacco, as determined by Customs Service, at which an entry of tobacco will be considered a "formal" entry of tobacco with respect to the application of Customs Service regulations and procedures. All other tobacco imports will be considered as "informal" entries under Customs Service regulations and procedures. However, the BDMA and INNCA's will be due on both "formal" and "informal" entries except for such quantities exempt under the *de minimis* exemption.

(3) Collection of Importer Assessments

Nine comments were received relating to this subject. Five commenters recommended that the Customs Service collect all importer assessments. One commenter recommended payment of assessments within 10 workdays of release of the tobacco by the Customs Service. One commenter recommended quarterly collection of assessments with payment due 30 days following the end of each calendar quarter. One commenter recommended that CCC accept tape or disk filings of requested data. One commenter recommended allowing one check per assessment remittance.

As stated in the interim rule, it is USDA's intent to continue working toward the goal of having the Customs Service collect all 1993 Act importer assessments. The final rule has been adapted to correspond with Customs Service regulations and the Customs Service collection schedule of 10 workdays from the date of entry for

consumption. At the present time, however, it is not possible to have collections made by the Customs Service. Tape or disk filings will not be accepted because the agency is not equipped to handle such filings and the long-term effort for expediting the handling of the assessments will be to have them collected by the Customs Service. For that reason, and because of the additional cost and difficulty of enforcement which would be involved, the suggestion for quarterly payments has not been adopted. Rather, the payment schedule will conform, to the extent practicable, with the 10 workday time period normally allowed for Customs Service collections. However, this final rule amends the interim rule to reduce the administrative burden on importers by allowing importers, with respect to the assessments covered by this rule, to submit one remittance covering all tobacco assessments then due.

(4) Form CCC–100

Five comments were received relating to this subject. Two commenters recommended that the CCC–100 should allow for reporting multiple entries. One commenter recommended that CCC allow importers to electronically generate the CCC–100. Two commenters recommended clarification as to when and where to remit assessments.

Based on the comments received, CCC–100 has been revised. The CCC–100 has been modified to allow reporting multiple entries and will also serve as the importers deposit ticket for remitting assessments. Electronically-generated hard copy CCC–100's will be accepted by CCC. Information on the back of the revised CCC–100 will provide instructions for completing the form, including when and where to remit assessments. Also, detailed information on filing procedures will be available from the Director, Tobacco and Peanuts Division, ASCS. Because the form is for administrative purposes and further amendments to the form may be needed as the program becomes operational, it has been determined that the form should not be made a formal attachment to the rule. Copies of the revised form will be mailed to known importers of tobacco.

(5) Assessment Rates on Kilogram Basis

Two commenters recommended that the assessment rates be established on a per kilogram basis. As metric measures appear to be standard measures for imports, references in pounds in the rule have been changed to references in kilograms.

(6) "Unmanufactured Tobacco" Definition

One commenter complained that the interim rule definition of "unmanufactured tobacco" would result in the BDMA applying to all imports and only to domestically produced burley and flue-cured tobacco. Two commenters recommended that this rule should, in addition to covering tobacco classified under Chapter 2401 of the Harmonized Tariff Schedule (HTS) of the United States, also cover select classifications of Chapter 2403 of the HTS. Two commenters recommended clarification regarding the remittance of assessments for undifferentiated mixes or blends of burley, flue-cured, and Oriental tobacco.

With respect to the coverage of BDMA, the application of the rule to all imported tobacco is statutory. Assessments for domestic tobacco are beyond the scope of this rulemaking and are also provided for by statute.

"Unmanufactured tobacco" was defined in the interim rule to be any tobacco that is not processed and packaged as a consumer tobacco product. For greater specificity, "unmanufactured tobacco" is defined in this final rule to include tobacco falling under Chapter 2401 of the HTS and select import classifications identified under Chapter 2403 of the HTS, namely: 2403912000, 2403914050, 2403914070, 2403990050, 2403990065, and 2403990070. These select Chapter 2403 classifications are explicitly, under the modified rule, considered as unmanufactured tobacco as they involve tobacco not processed and packaged as a consumer tobacco product.

Importers who import unmanufactured undifferentiated mixes or blends of burley, flue-cured, Oriental, or other tobacco which are generated from the manufacturing of cigarettes or other processes, will be required to remit INNCA's based on the compositional breakdown of each kind of tobacco contained in such mixes or blends. Subject to audit and correction, the remittance of INNCA must be accompanied by an accurate report from the importer's commercial records and supporting documentation from the suppliers of the number of kilograms of each kind of tobacco in the mix or blend. This is strictly an INNCA issue due to limited coverage of INNCA. The importer BDMA covers all tobacco and thus the entire mix or blend, regardless of particular relative amounts of the combined kinds of tobaccos.

(7) "Entered" and "Entry Date" Definitions

Three comments were received relating to this subject. Two commenters recommended redefining the term "Entered" (with respect to the entry of tobacco in the United States) to be consistent with Customs Service definition for "Entered". One commenter recommended redefining the term "Entry date" (for the same purpose) based on the commenter's view that the interim rule definition was not clear on the application of the rule when there was no official release date for the tobacco.

This final rule redefines "Entered" to be consistent with Customs Service practice for the reasons given above. Under the amended definition, tobacco will be treated as having "Entered" the United States if the tobacco has been released by the Customs Service for entry (directly or from bonded warehouse withdrawals) for consumption into the commerce of the United States, unless the tobacco is brought into the country illegally or not under the control of the Customs Service, in which case the date of physical entry into the territory of the United States will be considered the time at which the tobacco was imported. Also, for consistency with normal import practice and greater clarity, the term "Entry date" has been redefined to mean that date on which the tobacco was released by Customs Service for consumption into the commerce of the United States unless the tobacco entered the United States without such a release, in which case the entry date shall be the date such tobacco physically entered the United States. The official "Entry date", when there is one, should be identifiable from Customs Service Forms CF7501 (direct entry) and CF7505 (bonded warehouse withdrawals) and other Customs Service documentation.

(8) Prohibition of Use, Processing or Marketing of Tobacco for Which the Assessments Have Not Been Paid

Four commenters recommended deleting the interim rule's provision that the "use, processing, or marketing of tobacco in the commerce of the United States of any tobacco for which an assessment required by this subpart is due, is prohibited". That provision was designed to reflect the terms of the statute, facilitate the collection of the assessments, allow for greater consistency, and insure full collection as required by the statute. Because of the time period allowed for payment in the final rule, this provision has been

revised to prohibit any knowing use, processing, or marketing of tobacco where assessments due on the tobacco have not been timely remitted.

(9) Late Payment and Penalties

Three comments were received relating to this subject. One commenter wanted assurance that the date of all assessments and late payments for imported tobacco would be the same for "importers and domestic producers, purchasers and operators". The same commenter further indicated that producers of quota tobacco were exempt from marketing penalties whereas all importers' tobacco could be penalized for failing to make payments. One commenter recommended that the rights for reconsideration and appeal should not be limited only to assessments being paid timely.

Domestic producers and purchasers pay assessments the day the tobacco is marketed. Importers have 10 workdays to remit assessment payments after the date of entry for consumption into the commerce of the United States. With respect to domestic producers, penalties also apply to producers of quota tobacco under certain conditions. For example, marketings in excess of the farm's effective quota or false identification of tobacco subjects the affected producer to a marketing penalty, while importers are only penalized for failure to timely remit the required assessments. In any event to the extent there are differences in penalties, those differences are principally statutory and differences in payment dates reflect differing marketing conditions and practices. With respect to appeals, the interim rule allowed for appeals relating to any adverse determination of the amount of any assessment due or any marketing penalty. While that provision would appear to be broad enough to cover all substantive disputes regarding the application of the regulations to particular cases, a slight revision has been made to clarify its coverage.

(10) Crediting of INNCA

Three commenters recommended that all INNCA collected on imported tobacco be credited to the applicable purchaser no-net-cost accounts. While those comments will be taken into account with respect to the administration of the overall tobacco program, these comments are outside the scope of this rulemaking.

(11) Trade Secrets and Confidential Information

One commenter recommended amending the interim rule to include language addressing trade secrets and confidential information. It is the intent of the agency that reports, certifications, and other information furnished by the importers under this rule shall be kept confidential by all employees of the USDA to the full extent allowed by law. As that matter is administrative, rather than regulatory, no adjustment has been made to the rule.

(12) "Importer" Definition

One commenter recommended redefining "Importer" to be consistent with the Customs Service definition. By virtue of the change in the definitions dealing with the entry of tobacco into the United States, the definition of "Importer" should be, to the extent practicable, consistent with the Customs Service's definition.

(13) Assessment Rates on Green Weight Basis

One commenter recommended that the importer assessment rates should be applied on the basis of green weight (domestic farm weight). Currently, there are approximately 65 tobacco entry classifications identified under Chapters 2401 in addition to select classifications of Chapter 2403 of the HTS of the United States (1994) which are applicable to assessment collections. BDMA and INNCA's will be collected on many classifications of tobacco as unmanufactured tobacco can be imported in forms varying from a green weight basis to homogenized or reconstituted tobacco. To accurately establish green weight equivalents, an analysis of the various stages of processing would have to be made and a separate conversion factor established for arriving at the green weight equivalent for each HTS classification. This would require an announcement of approximately 65 BDMA and INNCA rates for entries under both HTS Chapters 2401 and select classifications under 2403. The statute does not demand use of a green weight basis, but rather applies the assessments simply to "tobacco", and presumes the administration of an effective, workable program applied with as much certainty as possible. The establishment of these various rates would create an undue administrative burden as well as onerous requirements on all persons involved. Accordingly, under the rule, the BDMA and INNCA's will, in accordance with legislation, be determined and collected on tobacco in the form in which it is imported.

(14) Records Retention

Three comments addressed the length of time for which records are required to be maintained under § 1464.107 of the interim rule. That section provides that records shall be retained for a period of three years following the date of entry of such tobacco. The commenters objected, however, to the additional provision in that section to the effect that the destruction of such records at the end of that period would be at the party's own risk on the ground that these records could never be destroyed. That was not the intent and the rule has been modified to avoid that suggestion. However, it remains the case that in certain circumstances, a reasonably prudent person will retain certain records beyond the three year period, such as when there is ongoing dispute or special circumstances raising questions about compliance. The rule, as modified, specifies that the burden of establishing compliance shall be on the importer.

(15) General Comments

One comment questioned whether or not the references in the rule to marketing assessments and to budget deficit assessments were the same. As indicated, the rule covers two assessments, one being the BDMA on all imported tobacco and the other being INNCA's on imported burley and flue-cured tobacco. One comment questioned the classifications applicable to domestic and imported tobacco. With respect to classifications of tobacco, domestic flue-cured and imported flue-cured tobacco would have similar characteristics. This would be true for all domestic classifications of tobacco for which there are corresponding import classifications. One comment stated that the sum of the BDMA is higher on imported tobacco than on domestic tobacco. The legislation sets the BDMA on imported tobacco as the sum of the marketing assessments that are imposed on purchasers of domestic burley and flue-cured tobacco. For domestic tobacco, there is also a producer assessment. Hence, the assessments are comparable. In any event, any differences are statutory. One comment stated that the method of calculating INNCA or contributions results in higher import assessments than for domestic tobacco. The legislation sets the INNCA on imported burley or flue-cured tobacco as the sum of the current producer and purchaser no-net-cost assessments or contributions on the domestic production of the respective kind of tobacco. The assessments should be the same. In any event, the formula is statutory. One comment objected that assessment rates on domestic burley and flue-cured tobacco benefit from changing once every 12 months versus twice a year on

imported tobacco. The assessment rates on imported tobacco change twice a year only because, statutorily, they are a combination of the rates for two domestic tobaccos with different marketing years.

Because there have been a number of modifications to the interim rule published in the **Federal Register** on December 23, 1993 (58 FR 68017), as corrected on January 10, 1994 (59 FR 1274), it has been determined that the regulations should, in this rule, be set out in their entirety, as modified.

List of Subjects in 7 CFR Part 1464

Assessments, Loan programs/agriculture, Price support program, Tobacco, Warehouses.

For the reasons set out in the preamble, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

2. Part 1464 is amended by revising subpart B to read as follows:

Subpart B—Importer Assessments

Sec.

1464.101 Definitions.
1464.102 Budget deficit marketing assessment.
1464.103 Importer no-net-cost assessments.
1464.104 Remittance of importer assessments.
1464.105 Refund of assessments.
1464.106 Marketing penalties.
1464.107 Recordkeeping.
1464.108 Reconsideration and appeal.

Subpart B—Importer Assessments

§ 1464.101 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

(b) *Terms.* For purposes of this subpart, the following terms shall have the following meanings unless otherwise indicated.

Customs Service. The United States Customs Service of the United States Department of the Treasury.

De minimis special entries. Imports of unmanufactured tobacco when the total importation at any time or on any date is 5 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Entered. Tobacco shall be considered to have entered the United States when the tobacco has been released by the Customs Service for entry (direct entry or bonded warehouse withdrawal) for consumption into the commerce of the United States, unless the tobacco is brought into the country outside the control of the Customs Service, in which case the tobacco will be considered to have entered the United States when such tobacco physically enters the territory of the United States.

Entry date. The date on which the tobacco was released by Customs Service for consumption into the commerce of the United States, unless the tobacco enters commerce in the United States without such a release, in which case the entry date shall be the date such tobacco physically entered the territory of the United States.

Imported tobacco. Effective January 1, 1994, any unmanufactured tobacco, including Oriental and Turkish tobacco, that was not produced in the United States but has entered the United States.

Importer. A person who owns or controls such tobacco at the time at which the tobacco entered the United States.

Person. An individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, when applicable, a State, a political subdivision of a State, or any agency thereof.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product, including, but not limited to, any tobacco classifiable under the Harmonized Tariff Schedule of the United States (HTS) in existence as of January 1, 1994, under Chapter 2401 of the HTS or under classifications 2403912000, 2403914050, 2403914070, 2403990050, 2403990065, and 2403990070 of Chapter 2403 of the HTS.

§ 1464.102 Budget deficit marketing assessment.

(a) *General.* The importer of any unmanufactured imported tobacco shall pay a budget deficit marketing assessment on each kilogram of such imported tobacco if such tobacco is imported during any of the 1994 through 1998 calendar years, except for separate lots of *de minimis* special entries.

(b) Amount of assessment. The budget deficit marketing assessment required by this section shall be the amount determined by multiplying the number of kilograms of imported tobacco by the sum, converted to per kilogram basis, of the marketing assessment imposed in accordance with § 1464.11 on purchasers of domestically produced burley tobacco and domestic flue-cured tobacco, respectively, for the marketing year for those domestic tobaccos during which the imported tobacco was imported.

§ 1464.103 Importer no-net-cost assessments.

(a) *General.* The importer of any unmanufactured imported burley or flue-cured tobacco shall pay a no-net-cost assessment on each kilogram of such tobacco that is imported after December 31, 1993, regardless of the form in which it is imported and regardless of whether it is mixed or blended with other tobacco, except for *de minimis* special entries.

(b) *Amount of assessment.* The amount of the no-net-cost assessment which shall apply under this section shall be the amount determined by multiplying:

(1) For imported burley tobacco, the number of kilograms of such tobacco by the sum, converted to per kilogram basis, of the no-net-cost producer and purchaser contributions or assessments as implemented pursuant to subpart A for domestic burley tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

(2) For imported flue-cured tobacco, the number of kilograms of such tobacco by the sum, converted to a per kilogram basis, of the no-net-cost producer and purchaser contribution or assessments as implemented pursuant to subpart A for domestic flue-cured tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

§ 1464.104 Remittance of importer assessments.

(a) *Where to remit.* A person making a remittance shall follow instructions on the reverse side of form CCC–100.

(b) *When to remit.* (1) Importer assessments shall be remitted within 10 workdays after the date on which the imported tobacco is entered.

(2) Notwithstanding the requirement in paragraph (b)(1) of this section, importer assessments remitted not later than April 10, 1994, for tobacco that is entered during the period January 1, 1994, through March 31, 1994, shall be considered to be timely remitted.

(c) *Instructions.* Remittances must be made in accordance with instructions on form CCC–100.

(d) *Documentation.* Unless the Director shall direct otherwise, in writing, each remittance of an importer assessment shall be accompanied by form CCC–100, Importer Entry and Assessment Worksheet, and as applicable, Customs Service Form CF7501 or CF7505, or other Customs Service documentation that, based on the documentation and codes normally required or used by the Customs Service, includes the following with respect to each entry of imported tobacco:

(1) Entry filer code/entry number,

(2) Importer of record number,

(3) Importer of record name and address,

(4) Ultimate consignee number,

(5) Entry date,

(6) District/port of entry,

(7) Harmonized Tariff Schedule Number,

(8) Quantity entered (net weight in kilograms),

(9) Entry type (formal or informal), and

(10) Amount remitted.

(e) *Late payment charge.* Any importer who fails to timely remit any assessment required by this subpart shall be subject to a late payment charge. Such late payment charge shall be calculated and assessed in accordance with part 1403 of this chapter, or successor regulations, and shall be in addition to any penalty due or other charge due.

§ 1464.105 Refund of assessments.

Assessments paid on imported tobacco may be refunded if the person importing such tobacco establishes, to the satisfaction of the Director, that the tobacco on which the assessment was paid has been reexported as unmanufactured tobacco or destroyed in an unmanufactured state. Assessment refunds will be based on entry weight as identified on Customs Service Form CF7501 or CF7505, or other documentation or data as required by the Director or found by the Director to be appropriate. Additional refund documentation, including proof of export, will be required consistent with the "duty drawback" provisions administered by the Customs Service pursuant to section 313(a) of the Tariff Act of 1930, as amended. Persons seeking a refund shall submit their request and documentation to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Where deemed appropriate, the Director may, in writing, allow the use of substitute documentation and permit payments to successors in interest where the reexporter and importer are not the same. Where exporter and importer are not the same, refunds shall be to the importer unless the importer, in writing, notifies the Director that the payment should be made to the exporter.

§ 1464.106 Marketing penalties.

(a) *Failure to remit assessments.* An importer who fails to timely remit an assessment in accordance with this subpart shall be subject to a marketing penalty.

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to timely remit a budget deficit marketing assessment in accordance with the provisions of this subpart, such importer shall be subject to a marketing penalty, in addition to any budget deficit marketing assessment or other sum due and any late payment charges, at a rate equal to 37.5 percent of the sum of the per kilogram average market prices (calculated to the nearest whole cent) of domestic flue-cured and domestic burley tobacco for the respective domestic tobacco marketing year that ends during the calendar year immediately preceding the calendar year during which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(2) *Importer no-net-cost assessment.* With respect to assessments referred to in § 1464.103, if an importer of burley or flue-cured tobacco fails to timely remit a no-net-cost assessment in accordance with the provisions in this subpart, such importer shall be liable, in addition to any no-net-cost assessment or other sum due and any late payment charges, to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of domestic tobacco (burley or flue-cured) for the respective domestic tobacco marketing year in which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(b) *Exception to marketing penalty.* A marketing penalty otherwise required by this paragraph may be forgiven if the assessment for which nonpayment of the penalty could be assessed is remitted not later than 15 calendar days after the date otherwise required for the remittance by this subpart.

(c) *Notification of marketing penalty.* Before a marketing penalty is assessed, the importer shall be notified of the pending assessment and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be before, the Director or designee.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable under the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and that such reduction would not damage the tobacco program or the administration of this part.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; other remedies.* The knowing use, processing, or marketing of tobacco in the commerce of the United States of any tobacco for which an assessment or related charge required or provided for by this subpart is past due, is prohibited. The penalties and other remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco. The burden of establishing compliance with this part shall be on the importer of the tobacco.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such importer's control that may be relevant to imported tobacco that is subject to an assessment in accordance with this subpart or otherwise relevant to the administration of this subpart. Upon a failure to provide access or records, the Director may presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request the Director to reconsider any determination of the amount of any assessment due, any marketing penalty assessed, or other adverse determination rendered in accordance with this subpart. Any request for reconsideration shall be made within 15 calendar days of the date of the notification of such assessment, marketing penalty, or adverse determination. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division, ASCS. Any such appeal shall be handled in accordance with the provisions of 7 CFR part 780.

Signed at Washington, DC on March 2, 1994.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–5224 Filed 3–8–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–03]

RIN 1557–AB14

Risk-Based Capital: Multifamily Housing Loans

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to amend the risk-based capital guidelines to include in the 50% risk weight category certain loans secured by qualifying multifamily residential properties, to clarify that privately-issued mortgage-backed securities (MBS) may qualify for a 50% risk weight, provided the MBSs are secured by qualifying multifamily residential property loans, and to provide that the portion of a multifamily residential property loan that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. This final rule does not make any changes with respect to the capital treatment of multifamily residential property loans sold subject to forms of recourse other than on a *pro rata* loss sharing basis. The OCC believes that the issue of non-*pro rata* recourse for multifamily residential property loans is best addressed in a comprehensive manner by the banking agencies in the Federal Financial Institutions Examination Council (FFIEC) study on recourse.

The purpose of this final rule is to permit national banks to hold less capital against certain loans secured by qualifying multifamily residential property. This final rule implements the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The OCC also believes that this final regulation will help developers, including nonprofit developers, to provide low- and moderate-income multifamily housing.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Hemming, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; James Wright, Community Development Specialist, Community Development Division, (202) 874–4930; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Elizabeth Milor, Financial Economist, Regulatory and Statistical Analysis, (202) 874–5240; or Ronald Shimabukuro, Senior Attorney, Banking Operations and Assets Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC's risk-based capital guidelines were adopted in 1989 (codified at 12 CFR part 3, appendix A). See 54 FR 4168 (January 27, 1989). The risk-based capital guidelines establish capital requirements based on the credit risk profiles of the assets and off-balance sheet activities of a financial institution. The risk-based capital guidelines implement the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement) and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

The risk-based capital guidelines assign all assets to the 100% risk weight category unless an asset specifically qualifies for some lower risk weight category. See 12 CFR part 3, appendix A, section 3(a)(4). Under the current risk-based capital guidelines, loans secured by a first lien on multifamily rental properties are risk weighted at 100%. However, a loan secured by a first mortgage on a one-to-four family residential property may qualify for a 50% risk weight.[1] See 12 CFR part 3, appendix A, section 3(a)(3)(iii).

The purpose of this final rule is to implement section 618(b) of RTCRRIA, Public Law 102–233, 105 Stat. 1761 (December 12, 1991), and section 305(b)(1)(B) of FDICIA, Public Law 102–242, 105 Stat. 2236 (December 19, 1991), by lowering the risk weight for certain qualifying multifamily housing loans to 50%. Section 618(b) of RTCRRIA required regulations to be implemented by April 10, 1992. Because of the nature of the issues involved and the need to coordinate this final rule with the FRB, the FDIC and the Office of Thrift Supervision (OTS), this final rule could not be promulgated by that deadline.

The main purpose of RTCRRIA was to recapitalize the Resolution Trust Corporation. However, RTCRRIA also contains provisions relating to the capital treatment of certain single-family and multifamily residential property loans. Specifically, section 618(b) of RTCRRIA requires the OCC to promulgate regulations assigning a 50% risk weight, with certain conditions, to loans secured by multifamily residential properties.

Under section 618(b)(1)(B) of RTCRRIA, in order for a multifamily residential property loan to qualify for a 50% risk weight: (1) The loan must be secured by a first lien on a multifamily residential property consisting of five or more dwelling units, (2) if the loan has a rate of interest that does not change over the term of the loan, then (A) the loan-to-value ratio cannot exceed 80%, and (B) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to the annual debt service on the loan cannot be less than 120%, (3) if the loan has a variable rate, then: (A) The loan-to-value ratio cannot exceed 75%, and (B) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to the annual debt service on the loan cannot be less than 115%, (4) the amortization of principal and interest occurs in not more than 30 years, (5) the loan must have a minimum original maturity for repayment of principal of not less than seven years, (6) the loan must have been

[1] Under section 3(a)(3)(iii) of this appendix A residential property may be either owner occupied or rented; however, the mortgage cannot be more than 90 days past due, on nonaccrual or restructured.

performing according to its terms for at least one year, and (7) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency.

Section 618(b)(1) or RTCRRIA also provides that any security collateralized by a qualifying multifamily residential property loan shall be considered as a loan or security within the 50% risk weight category. In addition, section 618(b)(2) of RTCRRIA requires that the portion of any loan fully secured by a first lien on a multifamily housing property that is sold by a bank subject to a *pro rata* loss sharing arrangement shall be treated as a sale to the extent that loss is incurred by the purchaser of the loan. Furthermore, section 618(b)(3) of RTCRRIA directs the OCC to amend its risk-based capital guidelines to take into account other loss sharing arrangements to determine the extent to which such loans should be treated as sold. In addition to the requirements in RTCRRIA, section 305(b)(1)(B) of FDICIA, among other things, requires the OCC to revise the risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages.

The OCC published a notice of proposed rulemaking (NPRM) on September 17, 1992. Consistent with sections 618(b) of RTCRRIA and 305(b)(1)(B) of FDICIA, the NPRM proposed to include in the 50% risk weight category certain loans secured by qualifying multifamily residential properties. In addition, the NPRM proposed that MBSs also qualify for a 50% risk weight provided the MBSs are secured by qualifying multifamily residential property loans. Consistent with the current OCC policy on recourse arrangements, the NPRM also proposed that the portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. As for multifamily residential property loans subject to recourse other than on a *pro rata* loss sharing arrangements, the NPRM did not propose to adopt any special non-*pro rata* recourse rule specifically for multifamily residential property loans at that time.

Discussion

In the NPRM, the OCC requested comments on several specific issues related to the implementation of section 618(b) of RTCRRIA. The OCC received nine comments in response to the NPRM. Comments were received from trade associations representing both the banking and housing industries, as well as from financial institutions. One commenter opposed the NPRM, while the eight other commenters generally indicated support. After careful consideration of all the comments, the OCC adopts this final rule to amend the risk-based capital guidelines to include in the 50% risk weight category certain loans secured by qualifying multifamily residential properties. This final rule is substantially similar to the rule as proposed in the NPRM. Any significant changes from the proposed rule are discussed below.

A. 50% Risk Weight for Multifamily Housing Loans

This final rule amends the risk-based capital guidelines to include in the 50% risk weight category certain loans fully secured by a first lien on multifamily residential properties. Specifically, loans secured by multifamily residential properties may qualify for a 50% risk weight subject to the following conditions:

(1) The loan must be secured by a first mortgage on a multifamily residential property consisting of five or more dwelling units;

(2) The original amortization of principal and interest must not exceed 30 years;

(3) The original minimum maturity for repayment of principal must not be less than seven years;

(4) All principal and interest payments must have been made on a timely basis in accordance with the terms of the loan for at least one year immediately preceding the risk weighting of the loan in the 50% risk weight category;

(5) The loan cannot be otherwise 90 days or more past due, or carried in nonaccrual status;

(6) The loan must be in accordance with applicable lending limit requirements and prudent underwriting standards; and

(7) If the rate of interest does not change over the term of the loan, then the current loan amount must not exceed 80% of the current value of the property, as measured by either the value of the property at origination of the loan (which is the lower of the purchase price or the value as determined by the initial appraisal, or if appropriate, the initial evaluation) or the most current appraisal, or if appropriate, the most current evaluation, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 120%; or

(8) If the rate of interest changes over the term of the loan, then the current loan amount must not exceed 75% of the current value of the property, as measured by either the value of the property at origination of the loan (which is the lower of the purchase price or the value as determined by the initial appraisal, or if appropriate, the initial evaluation) or the most current appraisal, or if appropriate, the most current evaluation, and in the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan must not be less than 115%.

As indicated above, most of the commenters indicated general support for the NPRM; however, two commenters questioned whether multifamily housing loans should be permitted to qualify for the 50% risk weight category considering the greater delinquency rates on multifamily residential properties compared to single-family owner-occupied residential properties. The OCC shares this concern. However, the 50% risk weight is mandated by section 618(b) of RTCRRIA, and as discussed in the NPRM, the OCC believes that subject to the conditions imposed by this final rule, a 50% risk weight for multifamily housing loans can be justified.

1. Definition of Multifamily Residential Property

In the NPRM, the term "multifamily residential property" was defined as residential property [2] consisting of five or more dwelling units. The NPRM did not place any upper limit on the number of units that could be in a multifamily residential property. However, in view of the OTS risk-based capital rules, which limit qualifying multifamily residential property to 5 to 36 units, see 12 CFR 567.1(v) and 567.6(a)(1)(iii)(B), the OCC requested specific comments on whether a similar limit on the number of units should be adopted.

The OCC received five comments on this issue. All five commenters opposed any restriction on the number of units for qualifying multifamily residential property. Several commenters noted the absence of any evidence suggesting that multifamily residential properties with a large number of units pose an

[2] 12 CFR part 3, appendix A, section 1(c)(21) defines residential property to mean houses, condominiums, cooperative units, and manufactured homes but does not include boats or motor homes, even if used as a primary residence.

inherently greater risk than those with fewer units.

The OCC agrees with these commenters. At this time there is no evidence to justify any limitation on the total number of units for qualifying multifamily residential properties. Consequently, the OCC adopts the definition of multifamily residential properties without any restriction on the maximum number of units. As for regulatory uniformity with the OTS, the OCC notes that the OTS is presently considering deletion of the 36 unit restriction on qualifying multifamily residential property for savings and loan associations. See 57 FR 40143 (September 2, 1992).

In addition, this final rule further clarifies the definition of multifamily residential property by adding a separate definition for multifamily residential property. In the NPRM, multifamily residential property was not separately defined, but instead the NPRM made reference to the current definition of residential property. The new definition in this final rule is not intended to change the meaning of multifamily residential property. The purpose of the new definition is to make clear that while multifamily residential property would include apartment buildings, condominiums, cooperatives, and other similar structures primarily for residential use, it would not include such facilities as nursing homes and hospitals. Because multifamily residential property is defined as property primarily for residential use, this definition also clarifies that some limited commercial use would be permitted. Therefore, a commercial establishment, such as a convenience store located in an apartment building, would not automatically disqualify the apartment building as a multifamily residential property.

2. 80% Occupancy Rate

In the NPRM, the OCC proposed an additional 80% occupancy rate requirement, which would have required that the multifamily residential property securing the loan have a sustained average annual occupancy rate of at least 80% of the total units. The OCC received 3 comments on this issue. All of the commenters generally believe that the 80% occupancy rate requirement was unnecessary because of the annual net income requirement which requires timely payment of all principal and interest for one year and the loan-to-value requirements. As one commenter explained, any decrease in income resulting from declining occupancy would be reflected in the annual cash flows and would be captured by the annual net income requirement. In addition, the commenter also indicated that the 80% occupancy requirement only relates to the degree of physical space leased and is not dispositive of the ability to service the debt.

The OCC has considered these comments and agrees with the commenters. Therefore, the 80% occupancy requirement has been removed from this final rule. The OCC agrees that a high occupancy rate, in itself, does not guarantee sufficient cash flow to service the debt. The OCC believes that the annual net income requirement in conjunction with the loan-to-value requirements and the 90-day past due requirement should provide sufficient prudential safeguards. In addition, the OCC believes that removing the 80% occupancy requirement will also benefit developers renovating older buildings for low- and moderate-income occupants. These developers frequently encounter difficulty in achieving 80% occupancy during project startup. Removal of the requirement will enable more loans for these types of projects to qualify for the 50% risk weight.

3. One-Year Timely Payment Requirement

As required by section 618(b)(1)(B)(iii)(III) of RTCRRIA, the NPRM required that all principal and interest payments have been made on a timely basis in accordance with the terms of the loan for at least one year before the multifamily residential property loan can qualify for the 50% risk weight. In addition, for prudential reasons, the OCC proposed to require that the multifamily residential property loan could not be more than 90 days past due or on nonaccrual status.

This final rule adopts both the one-year timely payment requirement and the 90-day past due requirement. With respect to the one-year timely payment requirement, this final rule clarifies that the one-year timely payment requirement must be satisfied in the year immediately preceding the risk weighting of the loan in the 50% risk weight category. It also should be noted that the one-year timely payment requirement is a one-time only requirement. Once the multifamily residential property loan has performed in accordance with its terms for at least one year immediately preceding the risk weighting of the loan in the 50% risk weight category, the loan may continue to qualify for the 50% risk weight without any further regard to that requirement. Unlike the one-year timely payment requirement, the 90-day past due requirement is an ongoing requirement. As such, the OCC does not believe that it is necessary to apply the one-year timely payment requirement on a continuous basis.

It also should be noted that this final rule slightly changes the wording of the 90-day past due requirement. In the NPRM this requirement was stated as a loan "not more than 90 days past due." This final rule revises the wording of the 90-day past due requirement to a loan "not otherwise 90 days or more past due." Under this revised language, a loan would be considered past due on the ninetieth day, instead of the ninety-first day. Adoption of this language will make the 90-day past due requirement in the risk-based capital guidelines more consistent with the Instructions to the Reports of Condition and Income (Call Report).

4. Loan-to-Value Requirements

In the NPRM, the OCC expressed concern that sections 618(b)(1)(B)(ii) (I) and (II) of RTCRRIA are unclear as to when the specified loan-to-value ratios for qualifying multifamily residential property loans would have to be satisfied. The OCC requested comment on the application of these loan-to-value requirements. Specifically, the OCC requested comment on: (1) Whether a multifamily residential property loan that does not satisfy the loan-to-value requirements at the time of origination should be permitted to do so at some later time, and (2) whether a multifamily residential property loan that satisfies the loan-to-value requirements at the time of origination, but subsequently does not, thereafter should be ineligible for a 50% risk weight.

The OCC received four comments on this issue. Three commenters supported the reclassification of multifamily residential property loans into the 50% risk weight category if the loans subsequently satisfy the loan-to-value requirements. However, these commenters did not believe that multifamily residential property loans that already qualify for the 50% risk weight category should be reclassified in the 100% risk weight category even if the loans subsequently failed to satisfy the loan-to-value requirements. The commenters generally believed that once a multifamily residential property loan qualifies for the 50% risk weight category, any deterioration in the loan-to-value ratio should be addressed through the loan loss reserve and not through reclassification of the loan to the 100% risk weight category. One commenter specifically expressed caution against establishing a regulatory

requirement for the periodic reappraisal of multifamily residential property that would determine if the loan can continue to qualify for the 50% risk weight category.

The OCC agrees that a multifamily residential property loan that does not satisfy the loan-to-value requirements at the time of the origination of the loan should be permitted to do so at some later time. Therefore, this final rule has been changed to make clear that multifamily residential property loans that do not satisfy the appropriate loan-to-value ratio at origination, may still qualify for the 50% risk weight category if the loan-to-value requirements are satisfied subsequently. However, the OCC does not believe that once a multifamily residential property loan qualifies for the 50% risk weight category the loan should never be reclassified into the 100% risk weight category if the loan subsequently fails to satisfy the loan-to-value requirements or any other relevant requirement. Such treatment would be inconsistent with the general principles and application of the risk-based capital guidelines.

Under the risk-based capital guidelines, an asset may qualify for a lower risk weight only if all requirements imposed for that risk weight have been satisfied. The requirements generally must be met continuously and not only on a one time basis. Failure to satisfy the requirements for a lower risk weight could be indicative of an increase in risk for that asset. Therefore, the risk-based capital guidelines would properly require more capital to be held against that asset. For these reasons, the OCC believes that a multifamily residential property loan, like any other asset under the risk-based capital guidelines, may be reclassified into the 100% risk weight category if the loan subsequently fails to satisfy the requirements established by this final rule.

The OCC agrees that any deterioration in a multifamily residential property loan also should be managed through the loan loss reserve. However, this does not mean that multifamily residential property loans that no longer satisfy the loan-to-value ratio requirements should continue to have the benefit of a preferential risk weight. While the loan loss reserve and the capital requirements strive to achieve similar results, the purpose of the two are distinct. The loan loss reserve recognizes estimated inherent losses, whereas the risk-based capital guidelines recognize relative risk in the portfolio.

In the NPRM the loan-to-value ratio calculation was based on the ratio of the loan amount at origination to the appraised value of the multifamily residential property. Limiting the calculation of the loan-to-value ratio requirement to the loan amount at origination suggested that the loan-to-value ratio was a static requirement. However, the loan-to-value ratio requirement is intended to be an ongoing requirement, which must be satisfied on a continuous basis in order for a multifamily residential property loan to qualify for the 50% risk weight. Therefore, this final rule makes clear that the calculation of the loan-to-value ratio requirement is not limited to the loan amount at origination and the initial appraised value of the property, but instead is based on both the current loan amount outstanding and the current value of the property. In determining the current value of a multifamily residential property, the final rule specifies that current value may be measured by either the value of the property at origination of the loan (which is the lower of the purchase price or the value as determined by the initial appraisal, or if appropriate, the initial evaluation) or the most current appraisal, or if appropriate, the most current evaluation.

Two points should be emphasized. First, while appraisals serve an important role in the determination of the loan-to-value ratio, this is not to imply that periodic appraisals are required. Rather, the OCC believes that with prudent management of the loan portfolio, a bank would be aware of changes in market conditions which could negatively impact the loan-to-value ratio. Second, in some instances a less formal evaluation of the multifamily residential property may be more appropriate than a full appraisal.

In addition to the loan-to-value requirements, sections 618(b)(1)(B)(ii) I and II of RTCRRIA also specified certain net operating income-to-debt service coverage ratios that must be satisfied. The OCC recognizes that certain multifamily residential properties developed as low- to moderate-income multifamily housing may not be able to generate sufficient income to satisfy the net operating income-to-debt service requirements. The OCC believes that organizations that develop low- to moderate-income multifamily residential properties may meet the net operating income-to-debt service requirements by generating sufficient cash flows to provide comparable protection to the institution. Therefore, this final rule permits other forms of debt service coverage that generate sufficient cash flows to provide comparable protection to the institution to be considered for multifamily residential property loans, if the purpose of the loan is for the development or purchase of residential property primarily intended to provide low- to moderate-income housing. Forms of comparable debt service coverage that may be considered include, but are not limited to, special operating reserve accounts or special operating subsidies provided by federal, state, local or private sources. However, the OCC does reserve the right to review, on a case-by-case basis, the adequacy of any other form of comparable debt service coverage relied on by the bank.

5. Other Legal Requirements and Prudent Underwriting Standards

In addition to the requirements specified by section 618(b) of RTCRRIA, the NPRM also proposed that a multifamily residential property loan must be in accordance with applicable lending limit requirements and prudential underwriting standards. This final rule does not contain any reference to the legal lending limit. As explained in the NPRM, the reference to the legal lending limit was intended to impose an additional prudential requirement by using the legal lending limit as a proxy for a general concentration limitation.

The OCC still believes that any particular multifamily residential property loan must be within the legal lending limit and that the overall concentration of multifamily residential property loans by any bank should be reasonable and not excessive. However, after further consideration of this issue, the OCC believes that a specific reference in the risk-based capital guidelines to the legal lending limit is unnecessary. The legal lending limit already would apply to all loans, including multifamily residential property loans provided for in this final rule.

6. Treatment of Refinanced Loans

This final rule amends the risk-based capital guidelines to clarify the treatment of multifamily residential property loans that have been refinanced by the borrower. This final rule clarifies that the prior payment history of a refinanced loan and previous net operating income of the multifamily residential property are considered in determining whether the one-year timely payment requirement and the annual debt service requirement have been satisfied. Specifically, this final rule provides that if the loan was refinanced by the borrower then: (1) All principal and interest payments on the loan being refinanced, which were made

in the preceding year prior to refinancing, shall apply in determining the one-year timely payment requirement, and (2) the net operating income generated by the property in the preceding year prior to refinancing shall apply in determining the applicable annual debt service ratio requirements.

The OCC believes that a multifamily residential property loan that otherwise would qualify for the lower 50% risk weight category under this final rule should not be disqualified simply because the loan has been refinanced by the borrower. The OCC generally believes that a multifamily residential property loan that has been refinanced by the same borrower typically would not result in any increase in risk with respect to either the one-year timely payment requirement or the applicable annual debt service ratio requirement. Therefore, under this final rule, if a borrower refinances a multifamily residential property loan that previously qualified for the 50% risk weight category, the refinanced loan generally should not be disqualified by virtue of the one-year timely payment requirement or the applicable annual debt service ratio requirement.

7. Optional Capital Treatment

One commenter expressed concern that the final rule should be amended to make clear that the lower 50% risk weight category, with its attendant requirements for multifamily residential property loans, is optional and not mandatory. The OCC agrees, and reiterates that a bank can always decide to risk weight any asset in a higher risk weight category. As explained by the commenter, this could be particularly relevant to a multifamily residential property loan where a bank might determine that it would be more prudent to keep the loan in the 100% risk weight category than having to justify a 50% risk weight at some later date.

8. Credit Enhancements

One commenter suggested that credit enhancements, such as letters of credit, certificates of deposit, and other enhancements provided by the borrower, should be considered in determining whether a multifamily residential property loan qualifies for the lower 50% risk weight. As an example, the commenter cited the situation where a borrower may offer some credit enhancement to cover an income shortfall. The OCC agrees that in some instances credit enhancements should be considered in determining the proper risk weight of multifamily residential property loans. Under the current risk-based capital guidelines, claims that otherwise would be required to be in a higher risk weight category may qualify for a 20% risk weight if supported by a credit enhancement such as a financial guarantee-type letter of credit from an OECD financial institution. Therefore, to a degree, credit enhancements issued by OECD financial institutions are already considered. However, as with other types of credit enhancements generally issued by private sector entities, the OCC does not believe that a lower risk weight for multifamily residential property loans supported by credit enhancements issued by non-OECD financial institutions is warranted at this time. See 54 FR 4168, 4172 (January 27, 1989).

9. Cooperative Housing

One commenter raised the issue of whether the 50% risk weight for multifamily residential property loans would include a cooperative housing loan in which the master mortgage is a joint obligation of the shareholders in the cooperative. The OCC believes that the final rule, as adopted, would include loans to cooperatives.

As discussed above, this final rule provides a separate definition of multifamily residential housing which includes both condominiums and cooperatives. Therefore, a loan consisting of a master mortgage on a cooperative would be included within the definition of a multifamily residential property loan and would qualify for the 50% risk weight category, if the loan otherwise satisfies the requirements of this final rule. It should be noted, however, that with respect to the debt service requirement, this final rule would also permit other forms of debt service coverage to be considered, if the other form of debt service coverage generates sufficient cash flows to provide comparable protection to the institution.

As explained by one commenter, the unique structure of financing for cooperative housing would normally make it impossible for the cooperative borrower to satisfy the debt service requirements in the conventional sense. The OCC does not believe that a cooperative housing loan should be automatically disqualified from the 50% risk weight category for this reason alone. Therefore, this final rule would also permit comparable debt service coverage to be considered for cooperative housing loans as well as loans for the development or purchase of multifamily residential property housing intended to provide low- to moderate-income housing.

B. Mortgage-Backed Securities

This final rule amends the risk-based capital guidelines to clarify that privately-issued mortgage-backed securities (MBS) may qualify for a 50% risk weight, if at the time of origination of the MBSs, the MBSs are secured by or otherwise represent a sufficiently secure interest in qualifying multifamily residential property loans. Absent this change in the risk-based capital guidelines, MBSs secured by multifamily residential property loans generally could never have qualified for a 50% risk weight.

As explained in the NPRM, section 3(a)(3)(iv) of RTCRRIA of the current risk-based capital guidelines would assign a risk weight to privately issued MBSs based on the risk weight of the underlying mortgage loans at the time of origination of those loans. Under this final rule all loans secured by a multifamily residential property are assigned to the 100% risk weight at origination, and may be reassigned to the 50% risk weight only after one year, if the loans satisfy the one-year timely payment requirement and are not otherwise 90 days or more past due or on nonaccurual status. Thus, MBSs secured by multifamily residential loans would all be assigned to the 100% risk weight category absent any change to the risk-based capital guidelines.

In the NPRM the OCC requested specific comment on the proper treatment for MBSs secured by qualifying multifamily residential property loans. The OCC received two comments on this issue. Both of the commenters supported the proposed change.

As required by section 618(b) and for prudential reasons, the OCC believes that multifamily residential property loans should be required to perform in accordance with the terms of the loans for at least one year before qualifying for the lower 50% risk weight. However, the OCC does not believe that this requirement should prohibit MBSs secured by multifamily residential property loans from ever qualifying for the 50% risk weight. Consequently, the OCC adopts this final rule to amend section 3(a)(3)(iv) of this appendix A to permit MBSs to qualify for a 50% risk weight if fully secured by or otherwise represent a sufficiently secure interest in qualifying multifamily residential property loans that have performed in accordance with their terms for at least one year and the loan is not otherwise 90 days or more past due, or on nonaccrual status.[3] The OCC believes

[3] Generally, once a MBS qualifies for a lower risk weight, the MBS would not have to be reclassified

that permitting MBSs to qualify for the 50% risk weight will benefit low- to moderate-income housing projects. The lower 50% risk weight will enhance the attractiveness of these MBSs. As a result, this should assist in the expansion of the secondary market for the sale of loans on low- to moderate-income multifamily properties.

C. Recourse Arrangements

This final rule amends the risk-based capital guidelines to permit the portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement to be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. This amendment is required by section 618(b)(2) of RTCRRIA, which provides that any loan fully secured by a first lien on a multifamily housing project that is sold subject to a *pro rata* loss sharing arrangement shall be treated as sold to the extent that loss is incurred by the purchaser of the loan.[4] In addition, the OCC notes that while sales treatment is required by section 618(b)(2) of RTCRRIA for that portion of multifamily residential property loans sold on a *pro rata* loss sharing basis, this amendment is consistent with, and merely restates the current OCC policy on assets sold with recourse on a *pro rata* basis as applied to multifamily residential property loans. Under the risk-based capital guidelines, the definition of the sale of assets with recourse is adopted from the definition contained in the Instructions to the Call Report. See 12 CFR part 3, appendix A, section 3(b)(1)(iii) (footnote 14). Specifically, the Instructions to the Call Report state:

[I]f the risk retained by the seller is limited to *some fixed percentage of any loss* that might be incurred and there are no other provisions, resulting in retention of risk, either directly or indirectly, by the seller, the maximum amount of possible loss for which the selling bank is at risk (the stated percentage times the sale proceeds) shall be reported as a borrowing and the remaining amount of the assets transferred reported as a sale.

See Call Report, Glossary—Sale of Assets: Interpretation and illustrations of the general rule ¶ 2, A–50 (5–89). Therefore, the sale of a loan fully secured by a first lien on a multifamily residential property is accorded sales treatment and is not treated as recourse to the extent that loss is shared proportionately by the purchaser of the loan.

Section 618(b)(3) of RTCRRIA also requires the OCC to take into account other loss sharing arrangements (besides *pro rata* loss sharing arrangements) for the purpose of determining the extent to which multifamily residential property loans shall be treated as sold.

As for other recourse arrangements (not on a *pro rata* basis), the OCC has decided not to adopt any rule for other loss sharing arrangements specifically relating to the sale of multifamily residential property loans at this time. As explained in the NPRM, the OCC, as part of the Federal Financial Institutions Examination Council (FFIEC), is currently studying the overall treatment of asset sales with recourse. See 55 FR 26766 (June 29, 1990). In this context, the OCC will also be considering the possible adoption of other recourse arrangements for the sale of multifamily residential property loans. Until the FFIEC study is complete, the OCC believes that any adoption of other recourse arrangements specifically for the sale of multifamily residential property loans would be premature.

In the NPRM, the OCC requested specific comment on this issue. The OCC received two comments. Both commenters generally supported the proposed rule on recourse based on a *pro rata* loss sharing arrangement. However, with respect to other loss sharing arrangements, one commenter believed that the proposed rule did not fully satisfy the requirement in section 618(b) of RTCRRIA to take into account other risk sharing arrangements.

The OCC has reviewed the statutory requirement in section 618(b) of RTCRRIA and believes that the OCC has discretion with respect to the adoption of other loss sharing arrangements. In pertinent part, section 618(b) provides that the OCC shall amend the regulations to take into account other loss sharing arrangements for the purposes of determining the extent to which such loans shall be treated as sold. The OCC believes that section 618(b) of RTCRRIA only requires that the OCC determine the extent to which multifamily residential property loans sold on a non-*pro rata* recourse basis should be afforded sales treatment but that section 618(b) of RTCRRIA does not automatically require sales treatment for such loans. In this regard, the OCC believes that the capital treatment of multifamily residential property loans sold on a non-*pro rata* basis should be considered in a comprehensive manner by the banking agencies in the broad context of the FFIEC recourse study.

D. Section 305(b)(1)(B) of FDICIA

Section 305(b)(1)(B) of FDICIA, among other things, requires the OCC to revise the risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages. This final rule satisfies the requirement of section 305(b)(1)(B) of FDICIA. As indicated by the table published in the NPRM, the overall credit risk for multifamily residential property loans is significantly greater than the credit risk for qualifying single-family residential property loans. While multifamily residential property loans generally may have more credit risk than single-family residential property loans, the OCC believes that multifamily residential property loans merit a 50% risk weight if they are well-secured, demonstrate consistent good performance, conform with prudent underwriting standards and otherwise satisfy the requirements imposed by this final rule.

E. Impact on Low- and Moderate-Income Multifamily Housing

In implementing this final rule, the OCC is particularly concerned with the impact of this amendment on low- and moderate-income multifamily housing. In the NPRM, the OCC requested comment on whether the proposed rule would assist organizations in their ability to provide low and moderate-income multifamily housing (rehabilitated or new construction). The OCC received five comments on this issue. Three of the commenters believed that the proposed rule would provide a needed stimulus to the housing sector and the economy. However, one commenter expressed concerns about credit allocation through bank capital requirements. Another commenter indicated support for sound minority and low- and moderate-income mortgage lending but cautioned against using the capital rule as the only means to accomplish those goals.

The OCC has carefully considered these comments and basically agrees with the commenters. The OCC believes that this final rule strikes a balance between the support for affordable housing and prudent lending.

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to the 100% risk weight category unless it subsequently fails to perform as provided for in the agreement. Similarly, MBSs secured by multifamily residential property loans that qualify for the 50% risk weight category would not have to be reclassified to the 100% risk weight category even if the underlying multifamily residential property loans subsequently fail to satisfy the requirements for the 50% risk weight, provided that the MBSs themselves continue to perform as agreed and are not otherwise 30 days or more past due.

[4] Section 618(b)(2) of RTCRRIA further defines *pro rata* loss sharing arrangement as an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a *pro rata* basis.

F. Technical and Conforming Amendments

In addition to the substantive changes, this final rule makes two technical and conforming amendments to the risk-based capital guidelines. First, the cross-references to section 3(a)(3)(iv) in the introductory text and footnote 10 of section 3 are revised to cross-reference section 3(a)(3)(vi). This amendment is necessary to correct an error created when a new paragraph was added to section 3(a)(3) relating to residential construction loans secured by presold homes. See 57 FR 40302 (September 3, 1992). These cross-references should refer to the paragraph on privately issued mortgage-backed securities and not to the paragraph on residential construction loans.

Second, the wording of the 90-day past due requirement is changed to conform to the language adopted elsewhere in this final rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This final rule reduces the amount of capital required to be maintained by national banks for qualifying multifamily residential property loans. While the exact overall impact of this final rule will depend on the amount of qualifying multifamily residential property loans that are held by any particular bank, the OCC does not believe that lowering the capital requirements for these types of loans should significantly impact national banks, regardless of size. In addition, while this final rule would apply to all national banks, this final rule should not have a disproportionate effect on small banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action. This final rule will reduce the amount of capital required to be maintained by national banks for qualifying multifamily residential property loans. Although the exact overall impact of this final rule will depend on the amount of qualifying multifamily residential property loans held by any particular bank, the OCC does not believe that lowering the capital requirements for these types of loans should significantly impact national banks. Additionally, the OCC believes that this final rule will generally benefit banks and the housing industry by reducing somewhat the cost of bank operations and by encouraging multifamily housing lending.

Immediate Effective Date

Section 4(c) of the Federal Administrative Procedure Act (12 U.S.C. 553(d)) requires a final rule to be published 30 days prior to its effective date unless the agency provides otherwise for good cause found and published with the rule. This amendment to the capital adequacy rule is needed immediately to foster lending for the reconstruction of multifamily housing in areas of the country recently devastated by natural disaster. For this reason, the OCC finds good cause to waive the usual 30-day delay in effectiveness of a final rule. Accordingly, this final rule is effective immediately upon publication in the **Federal Register**.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 3—AMENDED

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1831n note, 3907, and 3909.

2. In appendix A, section 1, paragraphs (c)(14) through (c)(28) are redesignated as paragraphs (c)(15) through (c)(29), respectively, and a new paragraph (c)(14) is added to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 1 Purpose, Applicability of Guidelines, and Definitions

* * * * *

(c) * * *

(14) *Multifamily residential property* means any residential property consisting of five or more dwelling units including apartment buildings, condominiums, cooperatives, and other similar structures primarily for residential use, but not including hospitals, nursing homes, or other similar facilities.

* * * * *

Appendix A—[Amended]

3. In Appendix A, section 3, paragraph (a)(3)(v) is redesignated as paragraph (a)(3)(vi), the introductory text of newly designated paragraph (a)(3)(vi) is revised, a new paragraph (a)(3)(v), including new footnotes 11a and 11b, is added, the last sentence in the second paragraph of the introductory text of section 3 and the last sentence in footnote 10 in paragraph (a)(2)(vii) are amended by replacing the phrase "section 3(a)(3)(iv) of this appendix A" with the phrase "section 3(a)(3)(vi) of this appendix A", and the first sentence in paragraph (a)(3)(iii) is amended by replacing the phrase "not more than 90 days past due," with the phrase "not otherwise 90 days or more past due,", to read as follows:

* * * * *

Section 3 Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(v) Loans secured by a first mortgage on multifamily residential properties :[11a]

(A) The amortization of principal and interest occurs in not more than 30 years;

(B) The minimum original maturity for repayment of principal is not less than 7 years;

(C) All principal and interest payments have been made on a timely basis in accordance with the terms of the loan for at least one year immediately preceding the risk weighting of the loan in the 50% risk weight category, and the loan is not otherwise 90 days or more past due, or on nonaccrual status;

(D) The loan is made in accordance with all applicable requirements and prudent underwriting standards;

(E) If the rate of interest does not change over the term of the loan:

(I) The current loan amount outstanding does not exceed 80% of the current value of the property, as measured by either the value of the property at origination of the loan (which is the lower of the purchase price or the value as determined by the initial appraisal, or if appropriate, the initial evaluation) or the most current appraisal, or if appropriate, the most current evaluation; and

(II) In the most recent fiscal year, the ratio of annual net operating income generated by

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[11a] The portion of multifamily residential property loans that is sold subject to a *pro rata* loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. The portion of multifamily residential property loans sold subject to any loss sharing arrangement other than *pro rata* sharing of the loss shall be accorded the same treatment as any other asset sold under an agreement to repurchase or sold with recourse under section 3(b)(1)(iii) (footnote 14) of this appendix A.

the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120%;[11b]

(F) If the rate of interest changes over the term of the loan:

(I) The current loan amount outstanding does not exceed 75% of the current value of the property, as measured by either the value of the property at origination of the loan (which is the lower of the purchase price or the value as determined by the initial appraisal, or if appropriate, the initial evaluation) or the most current appraisal, or if appropriate, the most current evaluation; and

(II) In the most recent fiscal year, the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115%; and

(G) If the loan was refinanced by the borrower:

(I) All principal and interest payments on the loan being refinanced which were made in the preceding year prior to refinancing shall apply in determining the one-year timely payment requirement under paragraph (a)(3)(v)(C) of this section; and

(II) The net operating income generated by the property in the preceding year prior to refinancing shall apply in determining the applicable debt service requirements under paragraphs (a)(3)(v)(E) and (a)(3)(v)(F) of this section.

(vi) Privately-issued mortgage-backed securities, *i.e.* those that do not carry the guarantee of a government or government-sponsored agency, if the privately-issued mortgage-backed securities are at the time the mortgage-backed securities are originated fully secured by or otherwise represent a sufficiently secure interest in mortgages that qualify for the 50% risk weight under paragraphs (a)(3) (iii), (iv) and (v) of this section,[12] provided that they meet the following criteria:

[11b] For the purposes of the debt service requirements in sections 3(a)(3)(v)(E)(II) and 3(a)(3)(v)(F)(II) of this appendix A, other forms of debt service coverage that generate sufficient cash flows to provide comparable protection to the institution may be considered for (a) a loan secured by cooperative housing or (b) a multifamily residential property loan if the purpose of the loan is for the development or purchase of multifamily residential property primarily intended to provide low- to moderate-income housing, including special operating reserve accounts or special operating subsidies provided by federal, state, local or private sources. However, the OCC reserves the right, on a case-by-case basis, to review the adequacy of any other forms of comparable debt service coverage relied on by the bank.

[12] If all of the underlying mortgages in the pool do not qualify for the 50% risk weight, the bank should generally assign the entire value of the security to the 100% risk category of section 3(a)(4) of this appendix A; however, on a case-by-case basis, the OCC may allow the bank to assign only the portion of the security which represents an interest in, and the cash flows of, nonqualifying mortgages to the 100% risk category, with the remainder being assigned a risk weight of 50%. Before the OCC will consider a request to risk weight a mortgage-backed security on a proportionate basis, the bank must have current information for the reporting date that details the composition and cash flows of the underlying pool of mortgages.

* * * * *

4. In appendix A, table 1 is amended by adding paragraph 5 to Category 3 to read as follows:

* * * * *

TABLE 1—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

* * * * *

Category 3: 50 Percent

* * * * *

5. Assets secured by a first mortgage on multifamily residential properties.

* * * * *

Dated: January 14, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–5385 Filed 3–8–94; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans (Definition of Major Source of Employment)

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration is revising on an immediate basis the definition of "major source of employment." Effective for any disaster commencing on or after January 1, 1994, a major source of employment will mean a concern which has one or more locations in the Disaster Area which, individually or in the aggregate, employed at least 10 percent of the work force of the commuting area of a community located within the Disaster Area, not including any area more than 50 miles away from the community; or employed at least 5 percent of the work force in an industry within the Disaster Area and also employed a certain minimum number of people in the Disaster Area; or employed at least 250 people in the Disaster Area. This revision is being undertaken on an emergency basis and is therefore published as an interim final rule.

DATES: This rule is effective March 9, 1994. Comments must be received on or before May 9, 1994.

ADDRESSES: Comments should be submitted to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael E. Deegan, Office of Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The Small Business Act (Act) limits the total amount of disaster assistance a business borrower may receive from the Small Business Administration (SBA) in connection with any one disaster to $1.5 million unless the borrower is a major source of employment (MSE) in the Disaster Area and SBA, in its discretion, waives the $1.5 million limitation. 15 U.S.C. 636(c)(6). "Major source of employment" has never been defined in the Act; instead, SBA has provided a definition in its regulations. 13 CFR 123.3.

On December 9, 1993, SBA revised its definition of major source of employment to mean a concern which has one or more locations in the Disaster Area which, individually or in the aggregate, (a) employed at least 10 percent of the work force of the commuting area of a community located within the Disaster Area, not including any area more than 50 miles away from the community (Text #1); or (b) employed at least 10 percent of the work force in an industry within the Disaster Area and also employed a certain minimum number of people in the Disaster Area (Test #2); or (c) employed at least 1,000 people in the Disaster Area (Text #3). 58 FR 64672. The revision was intended to ensure that loans in excess of $1.5 million would be made available only to concerns that were large enough to assist in maintaining the economic viability of the Disaster Area.

SBA reaffirms its intention to grant MSE waivers only under those circumstances where a large loan is necessary to permit a location to reopen or stay open in order to avoid substantial unemployment in the Disaster Area. SBA has come to believe, however, that substantial unemployment can result when a concern that has fewer employees than required by the criteria in the current MSE definition is forced to close its doors. Accordingly, SBA is relaxing the threshold so that more companies will be eligible for an MSE waiver, although the waiver will still only be granted if it is necessary to avoid substantial unemployment in the Disaster Area.

SBA is satisfied with Test #1 of the MSE definition at the present time. Test #2, however, may unfairly exclude large employers from qualification as an MSE when a disaster occurs in a large urban area or one that is dominated by one or several industries. In such locations, a concern which employs less than the required 10 percent of the work force in an industry in the Disaster Area (see Text #2 above) may, nevertheless, be a major employer in that area. In fact, in

the thirteen years since the 10 percent test has been in the regulations, an average of only one concern per year has requested MSE status under Test #2. Because the standard may be overly restrictive, SBA has decided to reduce the proportion of the work force in the industry that is required to be employed by the concern under Test #2. Under today's interim final rule, a business employing at least 5 percent of the work force in an industry in the Disaster Area will be permitted to qualify as a major source of employment under Test #2. The provision is modified accordingly, and is effective for all disasters commencing on or after January 1, 1994. A concern seeking MSE status under Test #2 must still satisfy the second requirement of the test, which requires that a minimum number of people be employed by the concern (50 for non-manufacturing firms, 150 for manufacturing firms).

Large businesses seem to have found it even more difficult to qualify as a major source of employment under Test #3 of the definition, which requires the employment of 1,000 people in the Disaster Area. In the last thirteen years, no company has been afforded MSE status under the provision. SBA has decided that the standard set forth in Test #3 is too strict. Experience in communities affected by disasters has convinced SBA that firms with at least 250 employees are regarded as significant employers by their communities. Firms of this size are wooed by state and local development officials because they are recognized as major employers with the potential to significantly impact job creation in a community. SBA is therefore amending Test #3 to being it into conformance with the general view of the size of a "major" employer. Effective for all disasters commencing on or after January 1, 1994, a concern will be able to qualify as a major source of employment under Test #3 if it employs at least 250 people in the Disaster Area. The number of companies meeting this test will still be small; according to 1990 census data, only 0.67% of U.S. business establishments employ at least 250 people.

No other changes to the definition are necessary at this time.

Applicants for MSE waivers are reminded that qualification of a concern as a major source of employment does not mean that such concern is automatically eligible for disaster assistance in excess of $1.5 million. SBA has the discretion to lend a major source of employment more than $1.5 million only if the concern's damaged location is out of business or in imminent danger of going out of business as a result of the disaster and the loan is necessary to permit the location to reopen or stay open in order to avoid substantial unemployment in the Disaster Area. The MSE must also have exhausted all of its own funds and all available Credit Elsewhere. See 13 CFR 123.28 (1994).

SBA is adopting the new MSE definition effective upon publication pursuant to 13 CFR 123.1(b) which authorizes emergency changes in the regulations governing its disaster assistance program, and 5 U.S.C. 553(b)(B) which permits publication of regulations in final form without notice or comment when an agency finds that good cause exists for publication in final form on an emergency basis, and that notice and comment is impracticable, unnecessary or contrary to the public interest. In this regard, the public interest in seeing to it that the new standards are effective as to the recent California earthquake disaster makes the utilization of notice and comment rulemaking impracticable.

SBA is soliciting comments on this interim final rule, and will consider both the comments received and the Agency's experience with the new definition of major source of employment before issuing a final rule. In particular, SBA will review the continuing usefulness of Test #2 of the definition in light of the relaxation of Test #3 accomplished by this interim final rule. If SBA's experience indicates that Test #1 and the newly-revised Test #3 are sufficient to identify the concerns that are truly major sources of employment, Test #2 will be eliminated from the definition.

Compliance With Executive Orders 12866, 12612, and 12778; Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, will not constitute a major or significant rule. SBA has made this determination based upon the fact that even though this rule will loosen the criteria for qualification as a major source of employment, SBA does not expect that the number of applicants for MSE status will increase significantly. On August 12, 1993, the Act was amended to increase from $500,000 to $1.5 million the aggregate amount of disaster assistance a business borrower could receive from SBA, unless the borrower qualified as a major source of employment. Pub. L. 103–75. When non-MSEs became eligible for disaster assistance of up to $1.5 million, the relevance of the MSE exception was significantly diminished. Loans between $500,000 and $1.5 million are now available without regard to status as a major source of employment. Moreover, while this rule will allow more companies to be eligible for large loans, the number of companies expected to fall into that category will be too small to cause this to be a significant regulatory event.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement.

(Catalog of Federal Domestic Assistance Program No. 59.008, Small Business)

List of Subjects in 13 CFR Part 123

Disaster, Physical disaster and economic injury loans.

For the reasons set forth above, part 123 of title 13 of the Code of Federal Regulations is amended to read as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.3 is amended by revising, the definition of "Major Source of Employment" to read as follows:

§ 123.3 Definitions.

* * * * *

Major Source of Employment: (a) For disasters commencing on or after January 1, 1994, a concern which has one or more locations in the Disaster Area which, individually or in the aggregate, (1) employed 10 percent or more of the entire work force of the commuting area of a geographically

identifiable community, no larger than a county; *Provided* That the commuting area shall not extend more than 50 miles from such community; or (2) employed 5 percent or more of the work force in an industry within the Disaster Area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the Disaster Area or, if the concern is a manufacturing concern, employed no less than 150 employees in the Disaster Area; or (3) employed no less than 250 employees within the Disaster Area.

(b) For disasters commencing on or after October 1, 1983, employees of concerns sharing common business premises shall be aggregated to determine *major source of employment* status for a non-profit applicant owning such premises.

* * * * *

Dated: February 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–5432 Filed 3–8–94; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising on an immediate basis its present prohibition on making economic injury disaster loans available to small business concerns engaged in investing in real or personal property (see 13 CFR 123.41(b)(2). This regulation would provide a limited exception to that prohibition which would permit economic injury assistance to be made available to concerns investing in either commercial or residential real property which is rented to a third party or intended to be rented to a third party. This revision is being undertaken on an emergency basis and is therefore published as a final rule.

DATES: This rule is effective March 9, 1994.

ADDRESSES: Comments should be submitted to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael E. Deegan, Office of Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Pursuant to section 7(b)(2) of the Small Business Act, 15 U.S.C. 636(b)(2), SBA is authorized to make disaster loans available as it may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster, if SBA determines that the concern has suffered a substantial economic injury as a result of such disaster.

In implementing this statutory mandate, SBA has promulgated regulations (see 13 CFR 123.40 *et seq.*), among which is 13 CFR 123.41(b)(2) which enumerates a number of types of business concerns which are ineligible for economic injury assistance. Among such concerns are those which invest in commercial or residential real property that is to be held for the purpose of obtaining rental income. These types of businesses have historically been ruled ineligible for SBA's business loan and economic injury disaster loan assistance because they have been viewed, as a matter of policy, to be passive investment businesses not involved in the operation of a going commercial business activity.

SBA has determined that this restriction on the eligibility of businesses engaged in the rental of real property is no longer warranted for economic injury disaster assistance because of the unique practical implications on real estate rental that flow from disaster situations, notwithstanding the passive nature of the business activity of such concerns. In this regard, disasters commonly damage a significant share of the rental real properties in a disaster area, causing shortages of available residential and commercial rental space. At the same time, disaster victims (including homeowners, renters and businesses) displaced from their own damaged properties are forced to hastily seek rental of suitable alternatives. They enter a market with a suddenly constricted supply of rental properties due to the disaster. The combination of these factors often leads owners of vacant, undamaged rental property to increase rents, which in turn forces residential and commercial renters to pay rental rates above what their budgets can reasonably afford.

Under SBA's physical disaster assistance program, the owners of disaster damaged rental real property can borrow the amount of their uninsured losses from SBA to help fund repairs of physical damages. However, until the repairs are completed and the tenants return, the landlords experience a period of negative cash flow while mortgage payments and operating expenses continue without rental receipts. Many landlords, especially the small ones, cannot maintain solvency through such a period.

Notwithstanding these circumstances, unlike most other businesses, such landlords are not presently eligible for SBA economic injury disaster loans, which are intended by law to help small businesses meet ordinary and necessary operating expenses and pay fixed debts until resumption of normal operations after a disaster. Because the inability of small landlords to obtain economic injury assistance from SBA poses a direct obstacle to their ability to return their disaster damaged rental units to the residential and commercial market, it also compounds the difficulties faced by renters in the aftermath of disasters. This practical reality along with the acute needs within a disaster area for an adequate supply of affordable residential and commercial rental property justify extending economic injury eligibility to rental real property owners.

This amendment provides a limited exception to the present rule which prohibits economic injury disaster assistance to all concerns investing in real property. It does not affect the provisions of SBA's present regulations (13 CFR 120.102–8) which prohibit eligibility for business loan assistance for such businesses and, it does not permit economic injury disaster assistance for businesses which merely invest in real property for sale and investment. Only concerns which invest in real property for rental purposes will be eligible for SBA economic injury disaster assistance under this revision. Those who cannot demonstrate that their property was rented or intended to be rented at the time of the occurrence of the disaster will continue to be ineligible for the assistance. In reviewing applications for economic injury assistance for rental property owners, the remaining SBA eligibility and credit standards that currently apply to all other small businesses eligible for an economic injury disaster loan will be used.

SBA is establishing this limited exception effective upon publication pursuant to 13 CFR 123.1(b) which authorizes emergency changes in the regulations governing its disaster assistance program, and 5 U.S.C. 553(b)(B) which permits publication of regulations in final form without notice of comment when an agency finds that good cause exists for publication in final form on an emergency basis, and that notice and comment is impracticable, unnecessary or contrary to the public interest. In this regard, the public interest in seeing to it that the new limitations are effective as to the recent

California earthquake disaster makes the utilization of notice and comment rulemaking impracticable.

Compliance With Executive Orders 12866, 12612, and 12778; Regulatory Flexibility Act, 5 U.S.C. 601, et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule. SBA has made this determination based upon the fact that even though this rule would potentially increase the universe of eligible applicants for economic injury disaster assistance, it would not, in and of itself, increase the gross amount of disaster assistance available to those who are eligible. Individual applicants will still be governed by all other eligibility requirements for SBA economic injury disaster assistance and will remain eligible for assistance to the extent of verifiable loss as present regulations provide.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement.

List of Subjects in 13 CFR Part 123

Disaster, Physical disaster and economic injury loans.

For the reasons set out above, pursuant to sections 5(b)(6) and 7(b)(2) of the Small Business Act, title 13, part 123 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for part 123 continues to read as follows:

Authority: Sec. 5(b)(6), 7(b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c,) (f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.41(b)(2)(ix) is revised to read as follows:

§ 123.41 General provisions.

* * * * *

(b) * * *

(2) * * * (ix) concerns investing in property—see § 120.102–8; *Provided however*, that for any disaster occurring on or after January 1, 1994, concerns investing in real property that was being held for rental at the time of the occurrence of the disaster are eligible to apply for these loans.

* * * * *

Dated: February 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–5433 Filed 3–8–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–43]

Establishment of Class D Airspace: Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Spinks Airport in Fort Worth, TX. Airspace reclassification, effective September 26, 1993, discontinued the use of the term "airport traffic area," replacing it with the designation "Class D Airspace." While Spinks Airport has an operating control tower, it did not have a control zone. As a result of airspace reclassification, the requirement for two-way radio communication with the control tower at Fort Worth Spinks Airport lapsed. The intended effect of this action is to provide adequate Class D airspace to contain instrument flight rules (IFR) operations and required two-way radio communications at Spinks Airport in Fort Worth, TX.

EFFECTIVE DATE: 0901 U.T.C., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On December 7, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Spinks Airport, Fort Worth, TX, was published in the **Federal Register** (58 FR 64387).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received. The first commenter objected to the existence of the airport traffic control tower (ATCT) at Spinks Airport. The ATCT at Spinks Airport is a non-federal facility operated by private contract for the city of Fort Worth. The proposed action was to establish Class D airspace at Spinks Airport. The question of whether or not ATCT should be operated at Spinks Airport is beyond the scope of this action. The second commenter objected to the imposition of the additional operating requirements of Class D airspace on those operators at Luck Field, Rafter J, Branson Farm, and Sycamore Strip airports. The commenter stated that a large community of antique and experimental aircraft without electrical systems operated in the south Fort Worth area. The FAA concurs that, to the extent possible, satellite airports should be excluded from the Class D surface area at Spinks Airport. Therefore, in this final rule, the proposed Class D airspace is revised to exclude Branson Farm, Sycamore and the Flying L airports from the Spinks Class D surface area. It is not feasible to exclude Luck and Rafter J airports from the Class D airspace surface area due to their close proximity to the Spinks Airport. However, operators at those airports may contact the Spinks Airport Traffic Control Tower (ATCT) at 817–447–1837 to negotiate a letter of agreement between the Spinks ATCT and the operator. This agreement would allow the operators of aircraft without electrical systems to continue to operate in the Class D airspace. Additionally, the coordinates for the Spinks Airport were updated and some descriptive information in the narrative portion of the rule for the Class D airspace at Fort Worth Spinks Airport was added to indicate that the tower is operated part-time. Except for these changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Spinks Airport in Fort Worth, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW TX D Fort Worth Spinks, TX [New]

Forth Worth Spinks Airport, TX
(lat. 32°33'55" N., long. 97°18'30" W.)
Forth Worth, Sycamore Strip, TX
(lat. 32°37'43" N., long. 97°21'13" W.)
Branson Farm Airport
(lat. 32°31'00" N., long. 97°22'01" W.)
Flying L Airpark
(lat. 32°32'15" N., long. 97°07'51" W.)

That airspace extending upward from the surface to but not including 2500 feet MSL within a 4.1-mile radius of Forth Worth Spinks Airport excluding that airspace within a 1-mile radius of Sycamore Strip; excluding that airspace within a 1-mile radius of Branson Farm Airport; excluding that airspace within a 1-mile radius of the Flying L Airpark. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on February 25, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–5414 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–59]

Modification of Class D Airspace: Roswell, NM, and Establishment of Class E Airspace Extension to Class D Surface Area: Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace and establishes a Class E extension to the Class D surface area at Roswell, NM. This action amends a previous airspace action that established a 14.8 NM Class D airspace extension to the Class D surface area for Roswell, NM. Because the arrival extension is greater than two miles, it should have been classified as Class E airspace. However, it was incorrectly classified as Class D airspace. The intended effect of this action is to reclassify the Class D airspace extension at Roswell, NM, to a Class E airspace extension to contain instrument approach procedures and to provide adequate Class D airspace to contain IFR operations and require two-way radio communications at Roswell Industrial Air Center.

EFFECTIVE DATE: 0901 U.T.C., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On January 14, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace and to establish a Class E extension to the Class D surface area at Roswell, NM, was published in the **Federal Register** (59 FR 2316).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 and Class E airspace areas designated as an extension to a Class D surface area are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D Airspace and establishes a Class E extension to the Class D surface area at Roswell, NM.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW NM D Roswell, NM [Modify]

Roswell Industrial Air Center, NM
(lat. 33°05″ N., long. 104°31′50″ W.)

That airspace extending upward from the surface to and including 6,200 feet MSL within a 5-mile radius of Roswell Industrial Air Center. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004: Class E Airspace Areas Designated As an Extension to a Class D Surface Area

* * * * *

ASW NM E4 Roswell, NM [New]

Roswell Industrial Air Center, NM
(lat. 33°18′05″ N., long. 104°31′50″ W.)

That airspace extending upward from the surface within 3.7 miles each side of the Chisum very high omni-directional radio range/tactical air navigation (VORTAC) 290° radial extending from the 5.0-mile radius to 14.8 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on February 15, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–5416 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 27583; Amendment No. 91–238]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 19, 1994, the FAA published a final rule to amend appendix D, part 91 of the Federal Aviation Regulations to accurately reflect the name of the new Denver, Colorado, airport. The new Denver International Airport, which will replace the Denver Stapleton Airport, was scheduled to open in March 1994. Opening of the Denver International Airport has been postponed to May 15, 1994. In view of the postponement, this action delays the rule's effective date until May 15, 1994.

EFFECTIVE DATE: Effective March 9, 1994, the effective date of the final rule at 59 FR 2918, as corrected at 59 FR 6547, is delayed until May 15, 1994.

FOR FURTHER INFORMATION CONTACT:

Ms. Ellen Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: On January 19, 1994, the FAA published a technical amendment intending to indicate in sections 1 and 3 of appendix D, 14 CFR part 91 that, on March 9, the new Denver International Airport will open, replacing the Stapleton International Airport (Amendment No. 91–236; 59 FR 2918). In the amendment, however, the FAA inadvertently indicated that the word "Stapleton" should be replaced with the word "International." The FAA issued a correcting amendment on February 11, 1994 (59 FR 6547).

The official opening of the Denver International Airport has now been delayed until May 15, 1994. Accordingly, the effective date of the technical amendment, as subsequently corrected, should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedures are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 9, 1994, the effective date of the final rule amending the name of the new Denver, Colorado, airport in appendix D of 14 CFR part 91 (59 FR 2918; January 19, 1994) and the effective date of the final rule correction (59 FR 6547, February 11, 1994) are delayed from March 9 to May 15, 1994.

Issued in Washington, DC, on March 4, 1994.

Willis C. Nelson,

Assistant Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5459 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 772, 773, 774, 778, 786, 787, and 799

[Docket No. 940124–4024]

RIN 0694–AA66

Commerce Control List; Items Controlled for Nuclear Nonproliferation Reasons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. The items on the CCL that are subject to nuclear nonproliferation controls are referred to as the Nuclear Referral List (NRL). This interim rule amends a number of Export Control Classification Numbers (ECCNs) on the CCL in order to make the NRL conform more closely with the items contained in the Annex to the "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology" (the Annex) published by the International Atomic Energy Agency and adhered to by the United States and other subscribing governments. The subscribing governments have agreed to establish export licensing procedures for the transfer of items identified on the Annex.

This rule also establishes a new General License GNSG that permits certain items subject to nuclear nonproliferation controls to be exported under general license to a number of countries whose governments have subscribed to the Annex.

DATES: This rule is effective March 9, 1994. Comments must be received by April 8, 1994.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1: Jeff Tripp—(202) 482–1309
Category 2: Surendra Dhir—(202) 482–5695
Category 3: Robert Lerner—(202) 482–1641

Category 4: Joseph Young—(202) 482–0706
Category 5: Dale Jensen—(202) 482–0730
Category 6: Joseph Chuchla—(202) 482–1641
Categories 7 and 9: Bruce Webb—(202) 482–3806
Category 8: Steve Clagett—(202) 482–8550

For questions on the nuclear nonproliferation policies and requirements in the EAR, contact Andrew Parr, Office of Technology and Policy Analysis, Telephone: (202) 482–2342.

SUPPLEMENTARY INFORMATION:

Background

This rule amends a number of entries on the Commerce Control List (CCL) by revising the items that are subject to nuclear nonproliferation controls, i.e., the Nuclear Referral List (NRL). As more fully described in § 778.2 of the EAR, NRL items are defined as those "that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export". The changes made by this rule are intended to revise the NRL to conform more closely with the items contained in the Annex to the "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology" (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex.

Sections 771.2(c)(7) and 778.3 prohibit the use of any general license, except General License GTDA or General License G-DEST as it applies to ECCN 0A98I, to effect the export of any commodity, software, or technology where the exporter knows or has reason to know that the items being exported will be used directly or indirectly in any of the nuclear activities described in these sections. Exports of commodities to Canada or to any country listed in Supplement No. 2 to part 773 are excluded from this prohibition.

This interim rule revises the list of prohibited nuclear activities contained in § 771.2(c)(7) and § 778.3, and the licensing factors contained in § 778.4, to be consistent with the "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology" (the Guidelines). Section 778.3 is revised to include prohibitions against "nuclear explosive activities" and "unsafeguarded nuclear fuel-cycle activities", as defined in the Guidelines, and § 771.2(c)(7) is revised to refer exporters to the prohibitions in § 778.3. The licensing factors in § 778.4 are revised to conform with the licensing factors contained in the export licensing procedures required by the Guidelines.

This rule establishes an end-user certification requirement that applies to individual validated license applications to export items subject to nuclear non-proliferation controls. Prior to submitting an application for such items, the exporter is required to obtain and retain on file a statement on the importer's letterhead and signed by the importer, or on a Form BXA–629P (Statement by Ultimate Consignee and Purchaser), where appropriate, certifying that the items will not be used in any of the nuclear activities described in § 778.3 and that prior written authorization will be obtained from the Office of Export Licensing before such items are transferred or reexported, unless the items are destined for Canada or would be eligible for export from the United States to the new country of destination under General License GNSG as described below.

This rule establishes a new General License GNSG that permits items (i.e., commodities, software, and technical data) that are controlled for nuclear non-proliferation reasons to be exported to countries whose governments have subscribed to the Annex (NSG member countries). Not all items controlled for nuclear nonproliferation reasons are eligible for export to these countries. Items that are controlled for national security reasons (i.e., items controlled by entries ending in the code letter "A") are not eligible for export under General License GNSG to Bulgaria, Poland, Romania, or Russia. Items that are subject to missile technology controls (see § 778.7) are not eligible for export to any destination under this general license. In addition, items that are controlled for nuclear non-proliferation reasons are no longer eligible for export under General Licenses GFW, GCT, GLV, GTDR, or GTDU, but must meet the eligibility requirements for General License GNSG, instead. This change will significantly increase the validated license requirements for items that were previously eligible for export under General Licenses GFW or GTDR (including GTDR without written assurance, i.e., GTDU), but will result in only a small increase in validated license requirements for items that were previously eligible for General License GCT. Items that are eligible for export under General License GNSG are indicated in the GNSG paragraph for each CCL entry that contains eligible items. Entries that contain no eligible items do not have a GNSG paragraph.

Section 774.2 is amended to authorize permissive reexports of items eligible for General License GNSG to, among, and from Canada and countries eligible for General License GNSG, except reexports to Bulgaria, Poland, Romania, or Russia of items controlled for national security reasons and reexports to countries listed in Supplement No. 4 to part 778.

This rule adds the following countries to Supplement No. 3 to part 773 (Computer—Consignee Destinations (List B)): Bahrain, Egypt, Hungary, Kuwait, Malawi, Qatar, Saudi Arabia, South Africa, and the Yemen Arab Republic. These changes are made because these countries are parties to the Nuclear Nonproliferation Treaty.

While this rule maintains nuclear nonproliferation controls on most of the items that were previously included on the Nuclear Referral List, there are a few significant deletions. ECCN 3A52B (previously 3A52E) is amended to revise nuclear non-proliferation controls on oscilloscopes and transient recorders, resulting in a significant decrease in the number of such items that remain subject to these controls. As a result of this change, Supplement No. 4 to part 773 is amended to remove the entry for ECCN 3A52, which described oscilloscopes with lower performance levels that were eligible for the distribution license procedure. Most of the oscilloscopes previously listed in Supplement No. 4 are no longer controlled by ECCN 3A52B. Paragraph (l) of Supplement No. 1 to part 773 is revised to remove the reference to the oscilloscopes previously listed in Supplement No. 4, thereby making all oscilloscopes and transient recorders that are currently controlled by 3A52B ineligible for the special license procedures.

This rule significantly expands the kinds of technology that are subject to nuclear non-proliferation controls. The Nuclear Suppliers Group has agreed to establish export licensing procedures for the transfer of technology required for the development, production, or use of any commodity listed on the NSG Annex. Previously, only a limited amount of technology required a validated license for nuclear non-proliferation reasons. The NSG member countries have agreed not to control technology that is publicly available or that arises during or as a result of fundamental research. Such technology continues to be eligible for export in

accordance with the requirements for General License GTDA (see § 779.3).

Only a limited amount of software is subject to nuclear nonproliferation controls. As agreed by the member countries of the Nuclear Suppliers Group, the only software that is subject to nuclear nonproliferation controls is software specifically identified in the NSG Annex.

While this rule significantly increases the validated license requirements for certain commodities and technology, the fact that other member countries of the Nuclear Suppliers Group have agreed to implement equivalent export licensing procedures for these items should limit the economic impact on U.S. exporters.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before March 23, 1994 may be exported under the previous general license provisions up to and including April 6, 1994. Any such items not actually exported before midnight April 6, 1994, require a validated export license in accordance with this regulation.

Summary of ECCNs Added, Revised, or Removed by This Rule

The following listing is intended to serve as a guide to the revisions to the Commerce Control List contained in this rule. It is not a complete summary of all the CCL changes made by this rule. Specific questions concerning these changes should be answered by referring to the actual entries in the CCL.

I. The following ECCNs are amended to revise the items subject to nuclear nonproliferation controls:

1A44B Crucibles made of materials resistant to liquid actinide metals
1A45B Specialized packings for use in separating heavy water
1A46B Aluminum and titanium alloys in the form of tubes or solid forms
1A47B Maraging steel
1B50B Furnaces
1C19A Items on the International Atomic Energy List (e.g., zirconium, nickel powder, lithium, beryllium, wet-proofed platinized catalysts, hafnium)
1C51B High purity bismuth
1C52B High purity calcium
1C53B High purity magnesium
1C54B Alpha-emitting radionuclides
1C55B Helium isotopically enriched in the helium-3 isotope
1C56B Chlorine trifluoride
1C57B Boron and boron compounds
2A19A Commodities on the International Atomic Energy List—NP controls are retained only on 2A19.b (neutron generator systems) and 2A19.c (valves)
2A52B Vacuum pumps
2B01A Numerical control units
2B06A Dimensional inspection or measuring systems or equipment
2B50B Spin-forming and flow-forming machines
2B51B Centrifuge rotor fabrication, assembly, and straightening equipment
2B53B Centrifugal multiplane balancing machines
2D01A Software for equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09
2D19A Software for 2A19
2E01A Technology for 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, 2B09, 2D01, or 2D02
2E02A Technology for 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09
2E03A Other technology—NP controls added to 2E03.a.1 and a.3
3A43B Switching devices
3A46B Firing sets and high-current pulse generators
3A48B Multistage light gas gun or other high-velocity gun systems
3A49B Denotators and multipoint initiation systems
3A50B Inverters, converters, frequency changers, and generators
3A51B Mass spectrometers
6A02A Optical sensors—NP controls removed
6A05A Lasers
6A43B Cameras and components not controlled by 6A03—includes radiation-hardened television cameras previously controlled by 2A50.f (6A43.c)
6A44B Photomultiplier tubes
6E01A Technology for development of items controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03—NP controls added
6E02A Technology for production of items controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05—NP controls added
9B26B Other vibration test equipment—to clarify that NP controls apply to 9B26.a
9D24B Software, n.e.s., for the "development", "production", or "use" of propulsion systems and equipment controlled by 9A21, 9A22, 9A23, 9B21, 9B25, 9B26, or 9B27, and "software", n.e.s., for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07
9E21B Technology for the "development", "production", or "use" of equipment controlled by 9A21, 9A22, 9B21, 9B23, 9B24, 9B25, 9B26, or 9B27, or "software" controlled by 9D24, and technology for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07

II. The following ECCNs are amended to revise the countries subject to nuclear nonproliferation controls:

1C10A "Fibrous and filamentary materials"
1A50E Parts made of tungsten, tungsten carbide, or tungsten alloys—now controlled by 1A50B
2B08A Assemblies, units or inserts specially designed for machine tools, or for equipment controlled by 2B06 or 2B07
2B09A Printed circuit boards with mounted components and software therefor capable of upgrading numerical control units, machine tools, or feed-back devices
3A01A Electronic devices and components

III. The following ECCNs are amended to revise the items and countries subject to nuclear nonproliferation controls:

1B51E Instruments capable of measuring pressures—now controlled under 1B51B
1C50B Fibrous and filamentary materials not controlled by 1C10
2B41E Numerically controlled machine tools not controlled by 2B01—now controlled by 2B41B
3A41E Capacitors not controlled by 3A01.e.2—now controlled by 3A42B
3A42E Superconducting solenoidal electromagnetics—now controlled by 3A42B
3A52E Oscilloscopes—now controlled by 3A52B

IV. The following new ECCNs are added to control items listed in the Annex, but not previously controlled on the CCL:

1B41B Filament winding machines not controlled by 1B01
1B42B Electromagnetic isotope separators
1B52B Water-hydrogen sulfide exchange tray columns
1B53B Hydrogen-cryogenic distillation columns
1B54B Ammonia synthesis converters
1B58B Facilities or plants, and related equipment, for the production, recovery, extraction, concentration, or handling of tritium
1B59B Pumps for circulating solutions of diluted or concentrated potassium amide catalyst
1C49B Platinized catalysts not controlled by 1C19.e
1C58B Tritium, tritium compounds, and mixtures containing tritium
1C59B Radium-226
1D41B Software not controlled by 1D01, for filament winding machines controlled by 1B41
1D50B Software for computer control and monitoring systems for furnaces controlled by 1B50.b
1E19A Technology for equipment or materials controlled by 1B16, 1B17, or 1C19
1E40B Technology for the "use" of certain filament winding machines controlled by 1B01.a

1E41B Technology for items controlled by 1A44, 1A45, 1A46, 1A47, 1A50, 1B41, 1B42, 1B50, 1B51, 1B52, 1B53, 1B54, 1B58, 1B59, 1C48, 1C49, 1C50, 1C51, 1C52, 1C53, 1C54, 1C55, 1C56, 1C57, or 1C58

2A44B Specialized instruments for hydrodynamic experiments

2A48B Valves not controlled by 2A19.c that are made of or lined with aluminum, aluminum alloy, nickel, or alloy containing 60 percent or more nickel

2D41B Software for numerically controlled machine tools controlled by 2B41

2E40B Technology for the "use" of hot "isostatic presses" controlled by 2B04, dimensional inspection or measuring systems or equipment controlled by 2B06.a, b, or c, robots and "end-effectors" controlled by 2B07.b, or equipment controlled by 2B08 or 2B09

2E41B Technology for numerically controlled machine tools controlled by 2B41

2E44B Technology for specialized instruments for hydrodynamic experiments controlled by 2A44

2E48B Technology for valves controlled by 2A48

2E50B Technology for 2A52, 2A53, 2B50, or 2B51 (other technology in this entry previously controlled by 2E50C or 2E52B)

3A53B High-voltage direct current power supplies

3A54B Direct current high-power supplies

3A55B Flash x-ray generators and electron accelerators not controlled by 3A01—electron accelerators were previously controlled by 2A54B

3E40B Technology for items controlled by 3A41, 3A42, 3A43, 3A44, 3A46, 3A48, 3A49, 3A50, 3A51, 3A52, 3A53, 3A54, or 3A55—technology for mass spectrometers (3A51) was previously controlled by 3E51B

3E41B Technology for the use of flash discharge type X-ray systems, including tubes, controlled by 3A01.e.5

6A50B Lasers, laser amplifiers, and oscillators

6E40B Technology for the use of equipment controlled by 6A03 or 6A05 for NP reasons

6E41B Technology for equipment controlled by 6A43, 6A44, or 6A50

V. Certain items previously controlled by the following ECCNs are removed from the CCL:

1A49E Tantalum sheet

2A55B Compressors and blowers

2B40B Vibration test equipment

2B46B Dimensional inspectional systems or devices not controlled by 2B06

2B54B Mechanical testing devices for simultaneous centrifugal and vibrational testing

2D46C Software for equipment controlled by 2B46

3A45E Pulse amplifiers

3A47E Electronic equipment for time delay generation or time interval measurement

3D51B Software for mass spectrometers (3A51)

6A42B Electron tubes

VI. The following ECCNs are removed from the CCL and some or all of the items previously controlled by these entries are transferred to other ECCNs:

1A51E Corrosion-resistant sensing elements for pressure-measuring equipment—moved to 1B51B

1B19A Plants specially designed for the production of uranium hexafluoride—moved from 1B19.a to 1B16A

Electrolytic cells for the production of fluorine—moved from 1B19.b to 1B16A

2A54B Electron accelerators—moved to 3A55B

2D50C Software for equipment controlled by 2A50 or 2A51—software for 2A50 now controlled by 2D50B; software for 2A51 is no longer controlled on the CCL

2D53C Software for equipment controlled by 2B50—now controlled by 2D50B

2E50C Technology for equipment controlled by 2A50 or 2A51—now controlled by 2E50B

2E52B Technology for equipment controlled by 2A52 or 2B53—now controlled by 2E50B (2A52 has been completely revised, so the technology is different from that previously controlled by 2E52B)

3E51B Technology for mass spectrometers (3A51) is now controlled by 3E40B

VII. Certain items previously controlled by the following ECCNs are transferred to other ECCNs:

2A50B Radiation hardened TV cameras previously controlled by 2A50.f are transferred to 6A43.c

VIII. Commerce will retain unilateral nuclear nonproliferation controls on the following items until multilateral agreement is reached or until other agencies assume jurisdiction:

1A48B Depleted uranium

1B19A Plants specially designed for the production of uranium hexafluoride—moved from 1B19.a to 1B16A

2A49E The following items, previously controlled by 2A50 and requiring a validated license to Country Groups QSTVWYZ, now require a validated license only to Country Groups S & Z, South African military and police, and countries listed in Supplement No. 4 to Part 778:

Generators, turbine generator sets, steam turbines, heat exchangers, and heat exchanger type condensers previously controlled by 2A50.c and process control systems therefor

2A50B Reactor and power plant simulators and analytical models for reactor and power plant simulators previously controlled by 2A50B

Commodities previously controlled by 2A50B that are specially designed or prepared for use with nuclear power plants

Process control systems, except those controlled by 2A49E, intended for use with nuclear reactors

2A51B Piping, fittings, and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium

2A53B Pumps designed to move molten metals by electromagnetic forces

2D49E Software for equipment controlled by 2A49E

2E49E Technology for equipment controlled by 2A49E

4A01A Electronic computers that are radiation-hardened, specially designed for operation at extreme temperatures, or capable of performing functions exceeding the limits of the "information security" entries in Category 5 (NP controls apply to computers with a CTP of 500 Mtops or more to countries listed in Supplement No. 4 to part 778)

4A02A Hybrid computers (NP controls apply to computers with a CTP of 500 Mtops or more to countries listed in Supplement No. 4 to part 778)

4A03A Digital computers (NP controls apply to computers with a CTP of 500 Mtops or more to countries listed in Supplement No. 4 to part 778)

IX. ECCN 2B24B is revised to transfer to new ECCN 2B44B any items that are controlled for NP reasons only. The items remaining in 2B24 are subject to both NP and MT controls. ECCNs 2D44B and 2E44B are added to control software and technology for the items transferred to new ECCN 2B44B.

Rulemaking Requirements

1. This rule was reviewed by the Office of Management and Budget under Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0006, 0694–0010, 0607–0018, 0694–0015, 0694–0021, 0694–0023, and 0694–0064.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed

rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close April 8, 1994. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Parts 771, 772, 773, 774, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 771, 772, 773, 774, 778, 786, 787, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 771, 772, 774, 786, 787, and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR parts 773 and 778 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 771—[AMENDED]

1. Section 771.2(c)(7) is revised to read as follows:

§ 771.2 General provisions.

* * * * *

(c) * * *

(7) The exporter knows, or has reason to know, that the commodity will be used in any destination other than Canada and the countries listed in Supplement No. 2 to part 773 of this subchapter, either directly or indirectly in any of the activities described in § 778.3(b) of this subchapter, whether or not the commodity is specially designed or modified for such activities;

* * * * *

§§ 771.4, 771.6, 771.9, 771.10, 771.12, 771.18 [Amended]

2. Sections 771.4, 771.6, 771.9, 771.10, 771.12, and 771.18 are amended by redesignating footnotes 4 through 6 and footnotes 8 through 13 as footnotes 2 through 4 and footnotes 5 through 10, respectively.

3. Section 771.24 (formerly reserved) is added to read as follows:

§ 771.24 General License GNSG.

(a) *Scope.* A general license designated GNSG is established authorizing exports to eligible countries of commodities, software, and technology described in paragraph (c) of this section. Exports may be made under General License GNSG only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the Export Administration Regulations (15 CFR parts 730–799).

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Australia, Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, the Federal Republic of Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russia, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom. Canada is also a member of the Nuclear Suppliers Group, but generally there is no license requirement for shipments to Canada (see § 770.3 of this subchapter).

(c) *Eligible commodities, software, and technology.* The commodities, software, and technology that are eligible for export under this General License GNSG are indicated in the GNSG paragraph under the Requirements heading for each entry on the CCL that contains eligible items. Entries that contain no eligible items do not have a GNSG paragraph. Items that are subject to the missile technology controls described in § 778.7 of this subchapter are not eligible for General License GNSG. Items controlled for national security reasons (i.e., entries that end in the code letter "A") are not eligible for shipment under General License GNSG to Bulgaria, Poland, Romania, or Russia. All shipments under General License GNSG are subject to the prohibitions contained in § 771.2(c) except that the prohibitions in § 771.2(c)(2) do not apply to Russia for commodities, software, and technology controlled by entries that do not end in the code letter "A".

(d) *Restrictions on items re-directed enroute.* Items exported under the provisions of this section may not be re-directed enroute to a new country of destination without prior authorization from the Office of Export Licensing, U.S. Department of Commerce, unless the new ultimate country of destination is also a GNSG-eligible country.

(e) *Export clearance*—(1) *Shipper's Export Declaration.* When making a shipment that contains items eligible for General License GNSG, the exporter must place the general license symbol "GNSG" in the appropriate space on the SED.

(2) *Destination Control Statement.* In accordance with § 786.6 of this subchapter, the exporter is required to enter an appropriate Destination Control Statement on all commercial documents (e.g., the bill of lading, the airway bill, and the commercial invoice) covering an export from the United States under General License GNSG. In using the destination control statements listed in § 786.6(d) of this subchapter, Statement Nos. 1 and 2 may be completed to show the eligible countries listed in paragraph (b) of this section, instead of an individual country of destination, and Statement No. 2 may be completed to show distribution or resale in the eligible countries listed in paragraph (b) of this section.

(f) *Recordkeeping requirements.* Records of transactions involving exports under General License GNSG must be maintained in accordance with the recordkeeping requirements of § 787.13 of this subchapter.

PART 772—[AMENDED]

1. Section 772.4(a)(1)(iv) is revised to read as follows:

§ 772.4 How to apply for a validated license.

(a) * * *

(1) * * *

(iv) *Supporting documents.* Supplement No. 1 to part 772 contains instructions on how to prepare export license applications when supporting documents are required. Part 775 of this subchapter provides general guidance on when supporting documents are required for export license applications. Section 778.2 of this subchapter describes the end-user certification that is required for license applications containing items that are subject to nuclear non-proliferation controls.

* * * * *

2. Supplement No. 1 to part 772 is amended by revising Item 2b to read as follows:

Supplement No. 1 to Part 772—Instructions for Preparing Applications for a Validated License

* * * * *

Item 2b. Identify document(s) on file by placing an (X) in the appropriate block(s). Documents for Country Groups S and V (except the People's Republic of China) that may be retained on file by the applicant in accordance with part 775 of this subchapter, and end-user certificates for applications containing items subject to nuclear non-proliferation controls (§ 778.2(b) of this subchapter) that may be retained on file for Country Groups S and V, are to be retained by the applicant consistant with the provisions of § 787.13 of this subchapter. Applicants retaining end-user certificates on file for Country Groups S and V, in accordance with § 778.2(b) of this subchapter, must check the block marked "Other" in Item 2b and enter the words "Nuclear certification on file" in Item 15 (Additional Information). If the certification is made on the the Form BXA–629P, instead of the importer's letterhead, the applicant must also check the block marked "BXA–629P" in Item 2b. Except where specifically authorized in this paragraph or elsewhere in the regulations in this subchapter (i.e., the Export Administration Regulations), supporting documentation must be submitted with the application.

* * * * *

PART 773—[AMENDED]

Supplement No. 1 to Part 773 [Amended]

1. Supplement No. 1 to part 773 is amended by removing paragraph (l)(3).

Supplement No. 3 to Part 773 [Amended]

2. Supplement No. 3 to part 773 is amended by adding in alphabetical order the countries "Bahrain", "Egypt", "Hungary", "Kuwait", "Malawi", "Qatar", "Saudi Arabia", "South Africa", and "Yemen Arab Republic".

Supplement No. 4 to Part 773 [Amended]

3. Supplement No. 4 to Part 773 is amended by removing the entry for ECCN 3A52.

PART 774—[AMENDED]

1. Section 774.2 is amended:

a. By revising paragraph (i)(3);

b. By revising paragraph (j); and

c. By revising paragraph (k)(1); and

d. By adding a new paragraph (n) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(i) * * *

(3) The commodities being reexported are not subject to:

(i) Nuclear nonproliferation controls (see the Reason for Control paragraph for the appropriate ECCNs); or

(ii) Foreign policy controls on crime control and detection instruments and equipment described § 776.14 of this subchapter; and

* * * * *

(j) Reexports of commodities, except commodities subject to nuclear nonproliferation controls (see the Reason for Control paragraph for the appropriate ECCNs), from a COCOM participating country, Austria, Finland, Hong Kong, Sweden, Ireland, New Zealand, or Switzerland to the People's Republic of China that:

(1) Are licensed for shipment by that country; and

(2) Meet the requirements set forth in Advisory Notes for the People's Republic of China or for Country Groups Q, W, and Y in the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter).

(k) * * *

(1) *Except:*

(i) Supercomputers;

(ii) Commodities subject to nuclear nonproliferation controls (see the Reason for Control paragraph under the appropriate ECCNs); and

(iii) Electronic, mechanical or other devices, as described in ECCN 5A80, primarily useful for surreptitious interception of wire or oral communications.

* * * * *

(n) Reexports of commodities, software, and technology eligible for General License GNSG (see § 771.24 of this subchapter) to, among, and from Canada and countries eligible for General License GNSG, except:

(1) Reexports from countries that are not members of COCOM of

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[2] See § 774.9 for effect on foreign laws.

commodities, software, or technology controlled by entries that end in the code letter "A" to destinations in Country Groups Q, W, Y, and the People's Republic of China;

(2) Reexports to Country Group Z and countries listed in Supplement No. 4 to part 778 of this subchapter.

PART 778—[AMENDED]

1. Sections 778.2, 778.3, and 778.4 are revised to read as follows:

§ 778.2 Nuclear-related commodities, software, and technology (The Nuclear Referral List).

(a) *Commodities, software, and technology controlled for nuclear reasons.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 required the President to publish procedures concerning export controls on items under the jurisdiction of the Department of Commerce that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export. Those entries on the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter) that have "NP" in the "Reason for Control" paragraph contain items that could be of significance for nuclear explosive purposes and are therefor subject to validated licensing requirements and the procedures established under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. The procedures established pursuant to section 309(c) are reprinted in Supplement No. 1 to this part 778. The items on the Commerce Control List that are subject to nuclear non-proliferation controls are referred to as "The Nuclear Referral List" and include items contained in the Annex to the "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology" (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex. In addition, any item not on the Nuclear Referral List that requires a validated license for reasons other than short supply and is intended for a nuclear related end-use or end-user is also subject to these procedures. The entries on the Commerce Control List indicate the countries for which validated licenses are required.

(b) *End-user certification.* Prior to submitting an application to export commodities, software, and technology subject to nuclear non-proliferation controls, the exporter must obtain and retain on file, in accordance with the requirements of § 787.13 of this subchapter, a statement on the importer's letterhead and signed by the importer, or on a Form BXA–629P (Statement by Ultimate Consignee and Purchaser), when required by § 775.2 of this subchapter, certifying the following (as used in the following certification, the term "replicas" refers to items produced abroad based on a physical examination of the item originally exported, matching it in all critical design and performance parameters):

(1) The items to be exported, or replicas thereof, will not be used in any of the activities described in § 778.3; *and*

(2) Written authorization will be obtained from the Office of Export Licensing, U.S. Department of Commerce, prior to reexporting the items or replicas, unless they are destined for Canada or would be eligible for export from the United States to the new country of destination under General License GNSG (see § 771.24 of this subchapter).

(c) *Processing of applications.* Applications for the export of commodities and technical data described in paragraph (a) of this section will be processed in accordance with the interagency review procedures established pursuant to section 309(c) of the Nuclear Non-Proliferation Act reprinted as Supplement No. 1 to this part, and the applicable provisions of the regulations in this subchapter.

§ 778.3 Additional validated license requirements for exports with certain nuclear end-uses.

(a) *Additional validated license requirements.* In addition to the validated license requirements for commodities and technical data referred to in § 778.2 of this subchapter, a validated license is required for the following.

(1) *Technology.* A validated license is required for exports to all destinations, including Canada, of any technical data not exportable under the provisions of General License GTDA (except "operation technical data" and "sales technical data" for export to and use in Canada or the countries listed in Supplement No. 2 to part 773 of this subchapter) where the exporter knows or has reason to know that the data will be used directly or indirectly in the activities listed in paragraph (b) of this section.

(2) *Commodities and software.* A validated license is required for exports to all destinations, except Canada and the countries listed in Supplement No. 2 to part 773 of this subchapter, of any commodity, or any software not exportable under the provisions of General License GTDA, where the exporter knows or has reason to know that the commodity or software will be used directly or indirectly in the activities listed in paragraph (b) of this section, whether or not the item is specially designed or modified for such activities.

(3) *Exporters informed by BXA.* BXA may inform an exporter, either individually or through amendment to the regulations in this subchapter, that an individual validated license is required because BXA has determined that there is an unacceptable risk of use in or diversion to any of the activities described in paragraph (b) of this section. The absence of any such notification does not excuse the exporter from compliance with the validated license requirements of this section.

(b) *Activities requiring a validated license.* The validated license requirements described in paragraph (a) of this section apply to any of the following activities:

(1) *Nuclear explosive activities.* Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device;[1] [2]

(2) *Unsafeguarded nuclear activities.* Activities including research on or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation, when it contains any source or special fissionable material (regardless of whether or not it contains such material

[1] Commodities and technical data specifically designed or specifically modified for use in designing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, commodities and technical data specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[2] Also see § 779.5(e) of this subchapter for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

at the time of export), or where any such obligation is not met;

(3) *Safeguarded and unsafeguarded nuclear activities.* Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities: [3]

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

§ 778.4 Export licensing factors.

To fulfill the considerations set forth in § 778.1, the following factors are among those used to determine what action should be taken on individual applications subject to §§ 778.2 and 778.3:

(a) Whether the commodities, software, or related technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(b) The significance for nuclear purposes of the particular commodity, software, or technology;

(c) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(d) The types of assurances or guarantees against use for nuclear explosive purposes or proliferation given in the particular case;

(e) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(f) Whether an application for a license to export to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general or validated license to unauthorized activities;

(g) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 778.3; and

(h) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(1) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), or to a similar international legally-binding nuclear nonproliferation agreement;

(2) Whether the importing country has all of its nuclear activities, or nuclear facilities or installations that are operational, or being designed or constructed, under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(3) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(4) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of nonproliferation;

(5) The degree to which the government of the importing country cooperates in nonproliferation policy generally (e.g., willingness to consult on international nonproliferation issues);

(6) Intelligence data on the importing country's nuclear intentions and activities.

PART 786—[AMENDED]

§ 786.6 [Amended]

1. Section 786.6(a)(1)(ii) is amended by adding the term "GNSG," immediately following the term "GFW,".

2. In § 786.6(c)(2), the phrase "General License GCT" is revised to read "General Licenses GCT and GNSG" everywhere it appears.

PART 787—[AMENDED]

787.13 [Amended]

1. Section 787.13(c) is amended by adding the reference "771.24," immediately following the reference "771.22," in the second sentence.

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

The following amendments are made to Supplement No. 1 to § 799.1:

1. In Category 1, ECCNs 1A44B, 1A45B, 1A46B, 1A47B, and 1A48B are revised, ECCNs 1A49E, 1A50E, and 1A51E are removed, and a new ECCN 1A50B is added immediately following ECCN 1A48B, as follows:

1A44B Crucibles made of materials resistant to liquid actinide metals.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Crucibles with a volume greater than 150 ml, but less than 8 liters, and made of or coated with any of the following materials having a purity of 98% or greater:

a.1. Calcium fluoride (CaF_2);

a.2. Calcium zirconate (*metazirconate*) (Ca_2ZrO_3);

a.3. Cerium sulfide (Ce_2S_3);

a.4. Erbium oxide (*erbia*) (Er_2O_3);

a.5. Hafnium oxide (*hafnia*) (HfO_2);

a.6. Magnesium oxide (MgO);

a.7. Nitrided niobium-titanium-tungsten alloy (approximately *50% Nb, 30% Ti, and 20% W*);

a.8. Yttrium oxide (*yttria*) (Y_2O_3);

a.9. Zirconium oxide (*zirconia*) (ZrO_2);

b. Crucibles with a volume greater than 50 ml, but less than 2 liters, and made of or lined with tantalum having a purity of 99.9% or greater;

c. Crucibles with a volume greater than 50 ml, but less than 2 liters, and made of or lined with tantalum (having a purity of 98% or greater) coated with tantalum carbide, nitride, boride, or any combination thereof.

1A45B Specialized packings for use in separating heavy water from ordinary water that are made of phosphor bronze mesh or copper (both chemically treated to improve wettability) and are designed for use in vacuum distillation towers.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1A46B Aluminum and titanium alloys in the form of tubes or solid forms (including forgings) with an outside diameter of more than 75 mm (3 inches).

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0

[3] Such activities may also require a specific authorization from the Secretary of Energy pursuant to section 57.b(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR part 810.

GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Alloys in the form of tubes or solid forms (including forgings) with an outside diameter of more than 75 mm (3 inches), as follows:

a. Aluminum alloys capable of an ultimate tensile strength of 460 MPa (0.46×10^9 N/m²) or more at 293 K (20 °C);

b. Titanium alloys capable of an ultimate tensile strength of 900 MPa (0.9×10^9 N/m²) (130,500 lbs./in²) or more at 293 K (20 °C).

Technical Note: Alloys "capable of" a specified tensile strength include those having that strength at the time of export, as well as those capable of attaining that strength as a result of heat treatment.

1A47B Maraging steel capable of an ultimate tensile strength of 2050 MPa (2.050×10^9 N/m²) (300,000 lbs./in²) or more at 293 K (20 °C), except forms in which no linear dimension exceeds 75 mm (3 inches).

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP, MT (see Note)
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* MT (see Note)

Note: MT controls apply to maraging steels controlled by this ECCN that also meet the specifications of ECCN 1A27.

Technical Note: Steels "capable of" a specified tensile strength include those having that strength at the time of export, as well as those capable of attaining that strength as a result of heat treatment.

1A48B Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Note 1: Depleted uranium fabricated into commodities solely to take advantage of high density unrelated to radioactivity (e.g., aircraft, ship or other counterweights; and shipments of 1,000 kilograms or less in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials; is controlled by ECCN 1A96G.

Note 2: Depleted uranium in fabricated forms for use in munitions requires export authorization from the U.S. Department of State, Office of Defense Trade Controls (see Supp. No. 2 to part 770 of this subchapter).

Note 3: All forms of depleted uranium not specifically described in ECCN 1A48 or in Notes 1 and 2 of this ECCN require export authorization from the Nuclear Regulatory Commission (see 10 CFR Part 110).

1A50B Parts made of tungsten, tungsten carbide, or tungsten alloys (greater than 90% tungsten) having a mass greater than 20 kilograms and a hollow cylindrical symmetry (including cylinder segments) with an inside diameter greater than 10 cm. (4 in.), but less than 30 cm. (12 in.), except parts specifically designed for use as weights or gamma-ray collimators.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

2. In Category 1, ECCN 1B01A is amended by revising the Requirements section and the Related ECCNs note immediately following ECCN 1B01A is revised to read as follows:

1B01A Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, NP (see Notes)
GLV: $0 for 1B01.a; $5,000 for all other items
GCT: Yes, except MT and NP (see Notes)
GFW: No
GNSG: No

Notes: 1. MT controls apply to all items described in this entry, except those in 1B01.d.4.

2. NP controls apply to the following items:

a. Filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater; and

b. Coordinating and programming controls and precision mandrels for these filament winding machines.

* * * * *

Related ECCNs: See 1B21B for MT controls on equipment, not controlled by 1B01A, for the production of fibers, prepregs, preforms, or composites. See 1B41B for NP controls on filament winding machines not controlled by 1B01A.

3. In Category 1, new ECCNs 1B16A and 1B17A are added immediately following ECCN 1B03A to read as follows:

1B16A Plants for the production of uranium hexafluoride (UF6) and specially designed or prepared equipment (including UF6 purification equipment), and specially designed parts and accessories therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NS, NP (items appear on International Atomic Energy List)
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

Note: See 10 CFR part 110 for nuclear plants subject to the export licensing authority of the Nuclear Regulatory Commission (i.e., fuel fabrication facilities, enrichment facilities, reprocessing facilities, and heavy water production facilities).

1B17A Electrolytic cells for the production of fluorine with a production capacity greater than 250 grams of fluorine per hour, and specially designed parts and accessories therefor.

Requirements

Validated License Required.
QSTVWYZ
Unit: $ value
Reason for Control: NS, NP (items appear on International Atomic Energy List)
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

4. In Category 1, ECCN 1B19A is removed.

5. In Category 1, new ECCNs 1B41B and 1B42B are added immediately following ECCN 1B30B, to read as follows:

1B41B Filament winding machines not controlled by 1B01, controls, and mandrels.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No

GFW: No
GNSG: Yes

List of Items Controlled

a. Filament winding machines not controlled by 1B01:

a.1. In which the motions for positioning, wrapping, and winding fibers are coordinated and programed in two or more axes;

a.2. Specially designed to fabricate composite structures or laminates from fibrous and filamentary materials; and

a.3. Capable of winding cylindrical rotors with diameters equal to or greater than 75 mm (3 in.) and less than or equal to 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater;

b. Coordinating and programing controls for filament winding machines controlled by 1B01.a or 1B41.a;

c. Precision mandrels.

1B42B Electromagnetic isotope separators designed for, or equipped with, single or multiple ion sources capable of providing a total ion beam current of 50 mA or greater.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Notes: 1. This ECCN controls separators capable of enriching stable isotopes, as well as those for uranium. A separator capable of separating the isotopes of lead with a one-mass unit difference is inherently capable of enriching the isotopes of uranium with a three-unit mass difference.

2. This ECCN controls separators where the ion sources and collectors are in the magnetic field and separators where the ion sources and collectors are external to the magnetic field.

3. A single 50 mA ion source will produce less than 3 g of separated HEU per year from natural abundance feed.

Note: See 10 CFR Part 110 for isotope separators subject to the export licensing authority of the Nuclear Regulatory Commission.

6. In Category 1, ECCN 1B50B is revised to read as follows:

1B50B Vacuum and controlled environment furnaces.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Vacuum or controlled environment (inert gas) induction furnaces capable of operation above 850° C and having induction coils 600 mm (24 in.) or less in diameter and power supplies specially designed for induction furnaces with a power supply of 5 kW or more;

b. Vacuum and controlled atmosphere metallurgical melting and casting furnaces, as follows, and specially configured computer control and monitoring systems therefor:

b.1. Arc remelt and casting furnaces with consumable electrode capacities equal to or greater than 1,000 cm^3; *and* less than or equal to 20,000 cm^3, and capable of operating with melting temperatures above 1,700° C;

b.2. Electron beam melting and plasma atomization and melting furnaces with a power of 50 kW or greater and capable of operating with melting temperatures above 1,200° C.

Note: This ECCN does not control furnaces designed for semiconductor wafer manufacturing or processing (see ECCN 3B96).

7. In Category 1, ECCN 1B51E is removed and a new ECCN 1B51B is added immediately following ECCN 1B50B, to read as follows:

1B51B Instruments designed for vacuum service that are capable of measuring absolute or differential pressures to an accuracy of plus or minus 1 torr in the pressure range of 0 to 100 torr absolute where all whetted surfaces, including pressure sensing elements, are constructed of or protected by corrosion-resistant materials such as nickel, nickel alloys, phosphor bronze, stainless steel, aluminum, or aluminum alloys and specially designed or modified component parts therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

8. In Category 1, new ECCNs 1B52B, 1B53B, 1B54B, 1B58B, and 1B59B are added immediately following ECCN 1B51B, to read as follows:

1B52B Water-hydrogen sulfide exchange tray columns constructed from fine carbon steel (such as ASTM A516) with a diameter of 1.8 m (6 ft.) or greater and made to operate at a nominal pressure of 2 Mpa (300 psi) or greater.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Note: This ECCN does not control columns specially designed or prepared for the production of heavy water. See 10 CFR Part 110 for heavy water production equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

Technical Note: Internal contactors of the columns are segmented trays with an effective assembled diameter of 1.8 m (6 ft.) or greater, such as sieve trays, valve trays, bubble cap trays, and turbogrid trays designed to facilitate countercurrent contacting and constructed of materials resistant to corrosion by hydrogen sulfide/water mixtures, such as 304 L or 316 stainless steel.

1B53B Hydrogen-cryogenic distillation columns.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Hydrogen-cryogenic distillation columns having all of the following characteristics:

a. Designed to operate at internal temperatures of −238° C (35 K) or less;

b. Designed to operate at internal pressure of 0.5 to 5 Mpa (5 to 50 atmospheres);

c. Constructed of fine-grain stainless steels of the 300 series with low sulfur content or equivalent cryogenic and H_2-compatible materials; *and*

d. With internal diameters of 1 m or greater and effective lengths of 5 m or greater.

Note: See 10 CFR part 110 for heavy water production equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

1B54B Ammonia synthesis converters.

Requirements

Validated License Required:
QSTVWYZ

Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Note: The ammonia synthesis converters controlled by this ECCN are ammonia synthesis units in which the synthesis gas (nitrogen and hydrogen) is withdrawn from an ammonia/hydrogen high-pressure exchange column and the synthesized ammonia is returned to that column.

1B58B Facilities or plants, and related equipment, for the production, recovery, extraction, concentration, or handling of tritium.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Facilities or plants for the production, recovery, extraction, concentration, or handling of tritium, and related equipment as follows:

a. Hydrogen or helium refrigeration units capable of cooling to −250° C (23 K) or less, with heat removal capacity greater than 150 watts;

b. Hydrogen isotope storage and purification systems using metal hydrides as the storage or purification medium.

Note: This ECCN 1B58B does not control tritium compounds. Tritium is subject to the export licensing authority of the Nuclear Regulatory Commission.

1B59B Pumps for circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH_2/NH_3).

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Pumps for circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH_2/NH_3), with all of the following characteristics:

a. Airtight (i.e., hermetically sealed);

b. Operating pressure, as follows:

b.1. For concentrated potassium amide solutions (1% or greater), operating pressure of 1.5 to 60 MPa [15 to 600 atmospheres (atm)]; *or*

b.2. For dilute potassium amide solutions (less than 1%), operating pressure of 20 to 60 MPa [200 to 600 atmospheres (atm)]; *and*

c. A capacity greater than 8.5 m^3/h (5 cubic feet per minute).

Note: See 10 CFR Part 110 for heavy water production equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

9. In Category 1, ECCN 1C10A is amended by revising the Requirements section to read as follows:

1C10A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NS, NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

* * * * *

10. In Category 1, the Related ECCNs note that follows ECCN 1C10A is amended by revising the reference "1C50E" to read "1C50B".

11. In Category 1, ECCN 1C19A is revised to read as follows:

1C19A Items on the International Atomic Energy List (e.g., zirconium, nickel powder and porous nickel metal, lithium, beryllium metal, wet-proofed platinized catalysts, and hafnium).

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NS, NP (see Notes)
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

Notes: 1. Zirconium metal, alloys, or compounds in shipments of 5 kg or less are controlled for NP only.

2. Shipments of more than 200 kg of zirconium foil or strip having a thickness not exceeding 0.10 mm are controlled for NS only.

List of Items Controlled

a. Zirconium, as follows:

a.1. Zirconium metal;

a.2. Alloys containing more than 50% zirconium by weight;

a.3. Compounds in which the ratio of hafnium content to zirconium content is less than 1 part to 500 parts by weight;

a.4. Manufactures of zirconium metal, alloys, or compounds described in 1C19.a.1, a.2, or a.3;

a.5. Waste and scrap from zirconium metal, alloys, compounds, or manufactures thereof controlled by 1C19.a.1, a.2, a.3, or a.4;

Note 1: This ECCN 1C19 does not control zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm (0.004 in.), in shipments of 200 kg or less.

Note 2: This ECCN does not control zirconium tubes. Zirconium metal and alloys in the form of tubes or assemblies of tubes, specially designed or prepared for use in a reactor are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

b. Nickel powder and porous nickel metal, as follows:

b.1. Powder with a nickel purity content of 99% or more and a mean particle size of less than 10 micrometers measured by the ASTM B 330 standard;

b.2. Porous nickel metal produced from materials controlled for export by 1C19.b.1, *except* single porous nickel metal sheets not exceeding 930 cm^2 intended for use in batteries for civil applications;

Note: 1C19.b.2 controls porous nickel metal manufactured from nickel powder, described in 1C19.b.1, that has been compacted and sintered to form a metal material with fine pores interconnected throughout the structure.

c. Lithium (isotopically enriched in lithium-6), as follows:

c.1. Metal, hydrides, or alloys containing lithium enriched in the 6 isotope (^6Li) to a concentration higher than the one existing in nature (7.5% on an atom percentage basis);

c.2. Any other materials containing lithium enriched in the 6 isotope (including compounds, mixtures, and concentrates), *except* lithium enriched in the 6 isotope incorporated in thermoluminescent dosimeters;

d. Beryllium, as follows:

d.1. Beryllium metal;

d.2. Alloys containing more than 50 percent beryllium by weight;

d.3. Compounds containing beryllium;

d.4. Manufactures of beryllium metal, alloys, or compounds described in 1C19.d.1, d.2, or d.3;

d.5. Waste and scrap from beryllium metal, alloys, compounds, or manufactures thereof described in 1C19.d.1, d.2, d.3, or d.4;

Note: 1C19.d does not control metal windows for X-ray machines or oxide shapes in fabricated or semi-fabricated forms

specially designed for electronic component parts or as substrates for electronic circuits.

e. Wet-proofed platinized catalysts specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for heavy water production;

f. Hafnium, as follows:

f.1. Hafnium metal;

f.2. Alloys and compounds of hafnium containing more than 60 percent hafnium by weight;

f.3. Manufactures of hafnium metal, alloys, or compounds described in f.1 or f.2.

Advisory Note 1: (Not eligible for General License GFW) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the PRC of the following:

a. Finished parts made of zirconium metal or alloys, specially designed for an identified civil research or power reactor facility, provided that:

1. None of the parts contains fissile materials; and

2. The importing country has agreed to the application of the Safeguards of the International Atomic Energy Agency (IAEA) in connection with the nuclear reactor facility;

b. Contained zirconium metal, or parts made therefrom, in individual shipments not exceeding 100 kg, when intended for use in, or in support of, an identified civil research or power reactor facility, in connection with which it is contemplated that IAEA Safeguards would be applied.

N.B.: The provisions of this Advisory Note 1 notwithstanding, current law prohibits approval to nuclear production or utilization facilities in the People's Republic of China.

Advisory Note 2: (Not eligible for General License GFW) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the PRC of nickel powder in uncompacted powder form for non-nuclear civil applications.

N.B.: The provisions of this Advisory Note 2 notwithstanding, current law prohibits approval to nuclear production or utilization facilities in the People's Republic of China.

12. In Category 1, ECCN 1C50E is removed and new ECCNs 1C49B and 1C50B are added immediately following ECCN 1C31B, to read as follows:

1C49B Platinized catalysts not controlled by 1C19.e that are specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for heavy water production.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C50B "Fibrous and filamentary materials" not controlled by 1C10.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP, FP (see Note)
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Note: FP controls apply to Iran and Syria for the items described in 1C50.b.

List of Items Controlled

"Fibrous and filamentary materials" not controlled by 1C10, as follows:

a. Carbon or aramid "fibrous and filamentary materials" having:

a.1. A "specific modulus" of 12.7×10^6 m or greater; *or*

a.2. A "specific tensile strength" of 23.5×10^4 m or greater;

b. Glass "fibrous and filamentary materials" having:

b.1. A "specific modulus" of 3.18×10^6 m or greater; *and*

b.2. A "specific tensile strength" of 7.62×10^4 m or greater;

c. Composite structures in the form of tubes with an inside diameter greater than 75 mm (3 in.), but less than 400 mm (16 in.), made with "fibrous and filamentary materials" described in 1C50.a or b.

Note: Specific modulus is the Young's modulus in N/m^2 divided by the specific weight in N/m^3, measured at a temperature of 23±2° C and a relative humidity of 50±5 percent. Specific tensile strength is the ultimate tensile strength in N/m^2 divided by specific weight in N/m^3, measured at a temperature of 23±2° C and a relative humidity of 50±5 percent.

13. In Category 1, ECCNs 1C51B, 1C52B, 1C53B, 1C54B, 1C55B, 1C56B, and 1C57B are revised and new ECCN 1C58B is added immediately following ECCN 1C57B to read as follows:

1C51B High purity (99.99% or greater) bismuth with very low silver content (less than 10 parts per million).

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C52B High purity calcium containing both less than 1,000 parts per million by weight of metallic impurities other than magnesium and less than 10 parts per million of boron.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C53B High purity magnesium containing both less than 200 parts per million by weight of metallic impurities other than calcium and less than 10 parts per million of boron.

Requirements

Validated License Required:
QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C54B Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, including compounds and mixtures containing these radionuclides with a total alpha activity of 1 curie (37 GBq) per kilogram or greater, and equipment containing these radionuclides.

Requirements

Validated License Required:
QSTVWYZ
Unit: Millicuries
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Note: This ECCN does not control devices that contain less than 100 millicuries (3.7 GBq) of alpha activity per device.

Note: See 10 CFR part 110 for alpha-emitting radionuclides subject to the export licensing authority of the Nuclear Regulatory Commission.

1C55B Helium isotopically enriched in the helium-3 isotope, in any form, whether or not mixed with other materials, or contained in any equipment or device, except products or devices containing less than 1 g of helium-3.

Requirements

Validated License Required:
QSTVWYZ
Unit: Liters
Reason for Control: NP
GLV: $0
GCT: No

GFW: No
GNSG: Yes

1C56B Chlorine trifluoride (ClF_3).

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C57B Boron and boron compounds, mixtures, and "loaded" materials in which the boron-10 isotope is more than 20% by weight of the total boron content.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

1C58B Radium-226.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Note: This ECCN does not control radium contained in medical applicators.

14. In Category 1, a new ECCN 1C93F is added immediately following ECCN 1C88D, to read as follows:

1C93F Fibrous and filamentary materials, not controlled by 1C10 or 1C50, for use in composite structures and with a specific modulus of 3.18 x 10^6 m or greater and a specific tensile strength of 7.62 x 10^4 m or greater.

Requirements

Validated License Required: SZ, Iran, Syria, South Africa military and police
Unit: Kilograms
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

15. In Category 1, ECCN 1D01A is revised to read as follows:

1D01A "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 1B01, 1B02, 1B03, 1B16, 1B17, or 1B18.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, NP (see Notes)
GTDR: Yes, except MT and NP (see Notes)
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes: 1. MT controls apply to software for the "development", "production", or "use" of equipment controlled by 1B01 (except 1B01.d.4 and 1B01.f) and 1B18.a.

2. NP controls apply to software for the "development", "production", or "use" of filament winding machines described in 1B01.a that are capable of winding cylindrical rotors with diameters between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater.

16. In Category 1, new ECCNs 1D41B and 1D50B are added immediately following ECCN 1D23B to read as follows:

1D41B "Software", not controlled by 1D01, specially designed or modified for the "development", "production", or "use" of filament winding machines controlled by 1B41.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

1D50B "Specially designed software" for computer control and monitoring systems specially configured for vacuum and controlled atmosphere metallurgical melting and casting furnaces controlled by 1B50.b.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

17. In Category 1, ECCN 1D93F is revised to read as follows:

1D93F "Software" specially designed for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50.b or 1C93F.

Requirements

Validated License Required: SZ, Iran, Syria, and South Africa military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes

18. In Category 1, ECCN 1E01A is revised and a Related ECCNs paragraph is added immediately following ECCN 1E01A to read as follows:

1E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 1A01.b, 1A01.c, 1A02, 1A03, 1B01, 1B02, 1B03, 1B18, 1C01, 1C02, 1C03, 1C04, 1C05, 1C06, 1C07, 1C08, 1C09, 1C10, or 1C18.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, NP, MT, FP (see Notes)
GTDR: Yes, *except* NP, MT, and FP (see Notes)
GTDU: No
GNSG: Yes, except Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes: 1. NP controls apply to exports to all destinations of technology for the "development" or "production" of the following:

a. Filament winding machines controlled by 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater;

b. "Fibrous and filamentary materials" controlled by 1C10.

2. MT controls apply to technology for items controlled for missile technology reasons by 1A02 or 1B01 (except 1B01.d.4 and f).

3. FP controls apply to all technology described in this entry for Iran and Syria. FP controls apply to technology for items controlled by 1B18.a for the Republic of South Africa only.

Related ECCNs: See 1E40B for NP controls on technology for the "use" of filament winding machines controlled by 1B01.a.

19. In Category 1, new ECCN 1E19A is added immediately following ECCN 1E02A to read as follows:

1E19A Technology according to the General Technology Note for the "development", "production", or "use" of equipment or materials controlled by 1B16, 1B17, or 1C19.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS, NP (see Note)
GTDR: No
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

Note: NP controls apply to technology for the "development", "production", or "use" of plants controlled by 1B16, equipment controlled by 1B17, or materials controlled by 1C19.

20. In Category 1, new ECCNs 1E40B and 1E41B are added immediately following ECCN 1E25B, as follows:

1E40B Technology for the "use" of filament winding machines controlled by 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

1E41B Technology for the "development", "production", or "use" of items controlled by 1A44B, 1A45B, 1A46B, 1A47B, 1A48B, 1A50B, 1B41B, 1B42B, 1B50B, 1B51B, 1B52B, 1B53B, 1B54B, 1B58B, 1B59B, 1C49B, 1C50B, 1C51B, 1C52B, 1C53B, 1C54B, 1C55B, 1C56B, 1C57B, or 1C58B or for the "use" of items controlled by 1C10.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP, FP (see Note)
GTDR: No
GTDU: No
GNSG: Yes

Note: FP controls apply to Iran and Syria for technology for the "development", "production", or "use" of glass "fibrous and filamentary materials" controlled by 1C50.b.

21. In Category 1, ECCN 1E94F is revised to read as follows:

1E94F Technology for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C93F or fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria, and South Africa military and police
Reason for Control: FP
GTDR: No
GTDU: Yes

22. In Category 2, ECCNs 2A19A, 2A50B, 2A51B, 2A52B, and 2A53B are revised, new ECCNs 2A44B, 2A48B, and 2A49E are added immediately following ECCN 2A19A, and ECCNs 2A54B and 2A55B are removed, to read as follows:

2A19A Commodities on the International Atomic Energy List (e.g., power generating and/or propulsion equipment, neutron generator systems, and valves for gaseous diffusion separation process).

Requirements

Validated License Required:
QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NS and NP (see Note)

GLV: $0

GCT: No

GFW: No

GNSG: Yes for 2A19.b and c, except to Bulgaria, Poland, Romania, or Russia

Note: NP controls apply to items described in 2A19.b or c.

List of Items Controlled

a. Power generating and/or propulsion equipment specially designed for use with military nuclear reactors;

Notes: 1. 2A19.a does not control conventional power generating equipment that, although designed for use in a particular nuclear station, could in principle be used in conjunction with conventional systems.

2. 2A19.a does not affect the controls maintained by the Office of Defense Trade Controls, Department of State, as indicated in ITAR Category VI, Part e.

b. Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction, and specially designed parts *and components* therefor;

c. Valves, specially designed or prepared for gaseous diffusion separation process, that are wholly made of or lined with aluminum, aluminum alloys, nickel, or alloy containing 60 percent by weight or more nickel, 40 mm (1.6 in.) or more in diameter, with bellows seals, and specially designed parts and components therefor.

Note: See 10 CFR Part 110 for specially designed or prepared valves for gaseous diffusion separation process subject to the export licensing authority of the Nuclear Regulatory Commission.

Advisory Note: Licenses are likely to be approved for exports to satisfactory end-uses in Country Groups QWY and the People's Republic of China of neutron generator systems, including tubes, controlled by 2A19.b, provided that they are for civil use.

N.B.: The provisions of this Advisory Note notwithstanding, current law prohibits approval to nuclear production or utilization facilities in the People's Republic of China.

2A44B Specialized instruments for hydrodynamic experiments.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Specialized instruments, as follows, for hydrodynamic experiments:

a. Velocity interferometers for measuring velocities in excess of 1 km per second during time intervals less than 10 μs (e.g., VISARs, doppler laser interferometers, DLIs);

b. Manganin gauges for pressures greater than 100 kilobars; *or*

c. Quartz pressure transducers for pressures greater than 100 kilobars.

2A48B Valves not controlled by 2A19.c that are 5 mm (0.2 in.) or greater in diameter, with a bellows seal, wholly made of or lined with aluminum, aluminum alloy, nickel, or alloy containing 60 percent or more nickel, either manually or automatically operated, and specially designed parts and accessories therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Note: See 10 CFR part 110 for valves subject to the export licensing authority of the Nuclear Regulatory Commission.

2A49E Generators and other equipment specially designed, prepared, or intended for use with nuclear plants.

Requirements

Validated License Required: SZ, South African military and police, and countries listed in Supp. 4 to part 778 of this subchapter
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor;

b. Process control systems intended for use with the equipment controlled by 2A49.a.

Note: See 10 CFR part 110 for nuclear equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

2A50B Equipment related to nuclear material handling and processing and to nuclear reactors.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Reactor and power plant simulators and analytical models for reactor and power plant simulators, models or mock-ups;

b. Process control systems, except those controlled by 2A49.b, intended for use with nuclear reactors;

c. High density (lead glass or other) radiation shielding windows greater than 0.3 m (1 ft.) on a side and with a density greater than 3 g/cm^3 and a thickness of 100 mm or greater, and specially designed frames therefor;

d. Casks that are specially designed for transportation of high level radioactive material and that weigh more than 1,000 kg;

e. Remote manipulators that provide mechanical translation of human operator actions by electrical, hydraulic, or mechanical means to an operating arm and terminal fixture that can be used to provide remote actions in radiochemical separation operations and "hot cells". The manipulators have a capability to penetrate 0.6 m or more (2 ft. or more) of a cell wall or, alternatively, bridge over the top of a cell wall with a thickness of 0.6 m or more (2 ft. or more);

f. Commodities, parts and accessories specially designed or prepared for use with nuclear plants (e.g., snubbers, airlocks, reactor and fuel inspection equipment), except items licensed by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110.

Note: See 10 CFR part 110 for nuclear equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

2A51B Piping, fittings, and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

Requirements

Validated License Required: QSTVWYZ
Unit: Kgs. for pressure tubes, pipes, and fittings; Number for valves; $ value for parts
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Piping, fittings, and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium, as follows:

a. Pressure tube, pipe, and fittings of 200 mm (8 inches) or more inside diameter, and suitable for operation at pressures of 3.4 MPa (500 psi) or greater;

b. Pipe valves having all of the following characteristics:

b.1. A pipe size connection of 8 inches or more inside diameter;

b.2. Rated at 1,500 psi or more;

c. Parts, n.e.s.

Note: See 10 CFR part 110 for piping, fittings, and valves subject to the export licensing authority of the Nuclear Regulatory Commission.

2A52B Vacuum pumps with an input throat size of 38 cm (15 in.) or greater with a pumping speed of 15,000 liters/second or greater and capable of producing an ultimate vacuum better than 10^{-4} Torr (0.76×10^{-4} mbar).

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Note: The ultimate vacuum is determined at the input of the pump with the input of the pump blocked off.

Note: See 10 CFR part 110 for vacuum pumps for gaseous diffusion separation process subject to the export licensing authority of the Nuclear Regulatory Commission.

2A53B Pumps designed to move molten metals by electromagnetic forces.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

23. In Category 2, ECCN 2B01A is revised to read as follows:

2B01A "Numerical control" units, "motion control boards" specially designed for "numerical control" applications on machine tools, machine tools, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NS and NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

List of Items Controlled

Technical Notes: 1. Secondary parallel contouring axes, e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis, are not counted in the total number of contouring axes.

Note: Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

2. Axis nomenclature shall be in accordance with International Standard ISO 841, 'Numerical Control Machines—Axis and Motion Nomenclature'.

a. "Numerical control" units for machine tools, as follows, and specially designed components therefor:

a.1. Having more than four interpolating axes that can be coordinated simultaneously for "contouring control"; *or*

a.2. Having two, three or four interpolating axes that can be coordinated simultaneously for "contouring control" and:

a.2.a. Capable of "real-time processing" of data to modify, during the machining operation, tool path, feed rate and spindle data by either:

a.2.a.1. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

a.2.a.2. "Adaptive control" with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process; *or*

a.2.b. Capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; *or*

a.2.c. Capable, without modification, according to the manufacturer's technical specifications, of accepting additional boards which would permit an increase above the control levels specified in 2B01, in the number of interpolating axes that can be coordinated simultaneously for

"contouring control", even if they do not contain these additional boards;

Note: 2B01.a does not control "numerical control" units if:

a. Modified for and incorporated in uncontrolled machines; *or*

b. Specially designed for uncontrolled machines.

b. "Motion control boards" specially designed for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of "real time processing" as described in 2B01.a.2.a; *or*

b.3. Capable of receiving and processing CAD data as described in 2B01.a.2.b;

c. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes:

c.1. Machine tools for turning, grinding, milling or any combination thereof that:

c.1.a. Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

c.1.b. Have any of the following characteristics:

c.1.b.1. Two or more contouring rotary axes;

Technical Note: The c-axis on jig grinders used to maintain grinding wheels normal to the work surface is not considered a contouring rotary axis.

c.1.b.2. One or more contouring "tilting spindles";

Note: 2B01.c.1.b.2 applies to machine tools for grinding or milling only.

c.1.b.3. "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

Note: 2B01.c.1.b.3 applies to machine tools for turning only.

c.1.b.4. "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

c.1.b.5. The "positioning accuracies", with all compensations available, are less (better) than:

c.1.b.5.a. 0.001° on any rotary axis; *or*

c.1.b.5.b.1. 0.004 mm along any linear axis (overall positioning) for grinding machines;

c.1.b.5.b.2. 0.006 mm along any linear axis (overall positioning) for turning or milling machines; *or*

Note: 2B01.c.1.b.5 does not control milling or turning machine tools with a positioning accuracy along one axis, with all compensations available, equal to or greater (worse) than 0.005 mm.

Technical Note: The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

a. Test conditions (paragraph 3):

1. For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

2. The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

3. Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

4. Power supply for slide drives shall be as follows:

a. Line voltage variation shall not exceed ±10% of nominal rated voltage;

b. Frequency variation shall not exceed ±2 Hz of normal frequency;

c. Lineouts or interrupted service are not permitted.

b. Test program (paragraph 4):

1. Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

Note: In the case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

2. Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

3. Axes not being measured shall be retained at mid travel during test of an axis.

c. Presentation of test results (paragraph 2): The results of the measurement must include:

1. Positioning accuracy (A); *and*

2. The mean reversal error (B).

c.1.b.6.a. A "positioning accuracy" less (better) than 0.007 mm; *and*

c.1.b.6.b. A slide motion from rest for all slides within 20% of a motion command input for inputs of less than 0.5 micrometer;

Technical Note: Minimum increment of motion test (slide motion from rest): The test is conducted only if the machine tool is equipped with a control unit the minimum increment of which is less (better) than 0.5 micrometer. Prepare the machine for testing in accordance with ISO 230.2 paragraphs 3.1, 3.2, 3.3. Conduct the test on each axis (slide) of the machine tool as follows:

1. Move the axis over at least 50% of the maximum travel in plus and minus directions twice at maximum feed rate, rapid traverse rate or jog control;

2. Wait at least 10 seconds;

3. With manual data input, input the minimum programmable increment of the control unit;

4. Measure the axis movement;

5. Clear the control unit with the servo null, reset or whatever clears any signal (voltage) in the servo loop;

6. Repeat steps 2 to 5 five times, twice in the same direction of the axis travel and three times in the opposite direction of travel for a total of six test points;

7. If the axis movement is between 80% and 120% of the minimum programmable input for four of the six test points, the machine is controlled. For rotary axes, the measurement is taken 200 mm from the center of rotation.

Note 1: 2B01.c.1 does not control cylindrical external, internal, and external-internal grinding machines having all of the following characteristics:

a. Not centerless (shoe-type) grinding machines;

b. Limited to cylindrical grinding;

c. A maximum workpiece outside diameter or length of 150 mm;

d. Only two axes which can be coordinated simultaneously for "contouring control"; *and*

e. No contouring c axis.

Note 2: 2B01.c.1 does not control machines designed specifically as jig grinders having both of the following characteristics:

a. Axes limited to x, y, c and a, where the c-axis is used to maintain the grinding wheel normal to the work surface and the a-axis is configured to grind barrel cams; *and*

b. A spindle "run out" not less (not better) than 0.0006 mm.

Note 3: 2B01.c.1 does not control tool or cutter grinding machines having all of the following characteristics:

a. Shipped as a complete system with "software" specially designed for the production of tools or cutters;

b. No more than two rotary axes that can be coordinated simultaneously for "contouring control";

c. "Run out" (out-of-true running) in one revolution of the spindle not less (not better) than 0.0006 mm total indicator reading (TIR); *and*

d. The "positioning accuracies", with all compensations available, are not less (not better) than:

1. 0.004 mm along any linear axis for overall positioning; *or*

2. 0.001° on any rotary axis.

c.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for "contouring control";

c.3. Electrical discharge machines (EDM) of the non-wire type that have two or more rotary axes that can be coordinated simultaneously for "contouring control";

c.4. Machine tools for removing metals, ceramics or composites:

c.4.a. By means of:

c.4.a.1. Water or other liquid jets, including those employing abrasive additives;

c.4.a.2. Electron beam; *or*

c.4.a.3. "Laser" beam; *and*

c.4.b. Having two or more rotary axes that:

c.4.b.1. Can be coordinated simultaneously for "contouring control"; *and*

c.4.b.2. Have a "positioning accuracy" of less (better) than 0.003°.

Technical Note: Machines capable of being simultaneously coordinated for "contouring control", in two or more rotary axes or one or more tilting spindles, remain controlled regardless of the number of simultaneously coordinated contouring axes that can be controlled by the "numerical control" unit attached to the machine.

24. In Category 2, ECCN 2B04A and the Related ECCNs paragraph immediately following ECCN 2B04A are revised to read as follows:

2B04A Hot "isostatic presses", as follows, and specially designed dies, moulds, components, accessories and controls therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NS, MT, NP

GLV: $0

GCT: No

GFW: No

GNSG: No

List of Items Controlled

a. Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; *and*

b. Having:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500° C); *or*

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

Technical Note: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

Related ECCNs: See 2B24B for MT/NP controls on "isostatic presses" not controlled by 2B04A. See 2B44B for NP controls on "isostatic presses not controlled by 2B04A or 2B24B.

25. In Category 2, ECCNs 2B06A, 2B07A, 2B08A, and 2B09A are revised to read as follows:

2B06A Dimensional inspection or measuring systems or equipment.

Requirements

Validated License Required: QSTVWYZ

Unit: Number

Reason for Control: NS and NP (see Note)

GLV: $0

GCT: Yes for 2B06.d only

GFW: No

GNSG: Yes for 2B06.a, b, and c, *except* to Bulgaria, Poland, Romania, or Russia

Note: NP controls apply to items described in 2B06.a, b, or c.

List of Items Controlled

a. Computer controlled, "numerically controlled" or "stored program controlled" dimensional inspection machines, having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A one dimensional length "measurement uncertainty" equal to or less (better) than (1.25+L/1,000) micrometer tested with a probe with an "accuracy" of less (better) than 0.2 micrometer (L is the measured length in mm);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear measuring instruments having any of the following characteristics:

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems with both of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; *or*

b.1.c. Measuring systems having both of the following characteristics:

b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure:

b.1.c.2.a. A "resolution" over their full scale of 0.1 micrometer or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2+L/2,000) micrometer (L is the measured length in mm);

b.2. Angular measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B06.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

c.1. "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; *and*

c.2. "Angular position deviation" equal to or less (better) than 0.02°;

d. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

Technical Notes: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine described in 2B06 is controlled if it exceeds the control threshold anywhere within its operating range.

3. The probe used in determining the "measurement uncertainty" of a dimensional inspection system shall be as described in VDI/VDE 2617 Parts 2, 3, and 4.

4. All measurement values in 2B06 represent permissible positive and negative deviations from the target value, i.e., not total band.

Note: This ECCN does not control measuring interferometer systems, without closed or open loop feedback, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

2B07A "Robots", and specially designed controllers and "end-effectors" therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS and NP (see Note)

GLV: $5,000, except $0 for NP (see Note)

GCT: Yes, except NP (see Note)

GFW: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Note)

Note: NP controls apply to robots and "end-effectors" that are controlled by 2B07.b or that are specially designed or rated as radiation hardened to withstand greater than $5x10^4$ grays (Si) ($5x10^6$ rad (Si)) without operational degradation, and to specially designed controllers therefor.

List of Items Controlled

a. Capable in real time of full three-dimensional image processing or full three-dimensional scene analysis to generate or modify "programs" or to generate or modify numerical program data;

Note: The scene analysis limitation does not include approximation of the third dimension by viewing at a given angle, or

limited grey scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

b. Specially designed to comply with national safety standards applicable to explosive munitions environments (i.e. meeting electrical code ratings for high explosives); *or*

c. Specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (i.e., non-nuclear industry) ionizing radiation.

2B08A Assemblies, units or inserts specially designed for machine tools, or for equipment controlled by 2B06 or 2B07.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS and NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

List of Items Controlled

a. Spindle assemblies, consisting of spindles and bearings as a minimal assembly, with radial ("run out") or axial ("camming") axis motion in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

b. Linear position feedback units, e.g., inductive type devices, graduated scales, infrared systems or "laser" systems, having with compensation an overall "accuracy" less (better) than $(800 + (600 \times L \times 10^{-3}))$nm (L equals the effective length in mm of the linear measurement);

c. Rotary position feedback units, e.g., inductive type devices, graduated scales, infrared systems or "laser" systems, having with compensation an "accuracy" less (better) than 0.00025°;

d. Slide way assemblies consisting of a minimal assembly of ways, bed and slide having all of the following characteristics:

d.1. A yaw, pitch or roll of less (better) than 2 seconds of arc total indicator reading (reference: ISO/DIS 230–1) over full travel;

d.2. A horizontal straightness of less (better) than 2 micrometer per 300 mm length; *and*

d.3. A vertical straightness of less (better) than 2 micrometer over full travel per 300 mm length;

e. Single point diamond cutting tool inserts, having all of the following characteristics:

e.1. Flawless and chip-free cutting edge when magnified 400 times in any direction;

e.2. Cutting radius from 0.1 to 5 mm inclusive; *and*

e.3. Cutting radius out-of-roundness less (better) than 0.002 mm total indicator reading (TIR) (also peak-to-peak).

Note: This ECCN does not control measuring interferometer systems, without closed or open loop feedback, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

2B09A Specially designed printed circuit boards with mounted components and software therefor, or "compound rotary tables" or "tilting spindles", capable of upgrading, according to the manufacturer's specifications, "numerical control" units, machine tools or feed-back devices to or above the levels specified in ECCNs 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, and 2B08.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS and NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

26. In Category 2:

a. ECCNs 2B24B, 2B50B, 2B51B, and 2B53B are revised;

b. ECCNs 2B40B, 2B41E, 2B46B, and 2B54B are removed; and

c. New ECCNs 2B41B and 2B44B are added immediately following ECCN 2B24B to read as follows:

2B24B "Isostatic presses" not controlled 2B04A and specially designed dies and molds, and controls therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: MT and NP
GLV: $0
GCT: No
GFW: No
GNSG: No

List of Items Controlled

"Isostatic presses" having all of the following characteristics:

a. Capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater;

b. Designed to achieve and maintain a controlled thermal environment of 600 °C or greater; and

c. Possessing a chamber cavity with an inside diameter of 254 mm (10 in.) or greater.

Technical Note: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

2B41B "Numerically controlled" machine tools for vertical or horizontal turning, milling or boring not controlled by ECCN 2B01A.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Numerically controlled machine tools for vertical or horizontal turning, milling, or boring that, according to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled for export under ECCN 2B01A (even if not equipped with such units at the time of delivery) and that have:

a. Two or more axes that can be coordinated simultaneously for contouring control; and

b. Capable of machining diameters of 2 m or greater.

2B44B "Isostatic presses", not controlled by 2B04A or 2B24B, capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and molds, and controls therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Technical Note: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

2B50B Spin-forming and flow-forming machines and precision rotor-forming mandrels.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Spin-forming and flow-forming machines that:
a.1. According to the manufacturer's technical specifications, can be equipped with "numerical control" units or a computer control; *and*
a.2. Have two or more axes that can be coordinated simultaneously for "contouring control";
b. Precision rotor-forming mandrels designed to form cylindrical rotors of inside diameter between 75 mm (3 in.) and 400 mm (16 in.).

Note: The only spin-forming machines controlled by this ECCN 2B50B are those combining the functions of spin-forming and flow-forming.

2B51B Centrifuge rotor fabrication, assembly, and straightening equipment and bellows-forming mandrels and dies.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Rotor assembly equipment (e.g., precision mandrels, clamps, and shrink fit machines) for assembly of gas centrifuge rotor tube sections, baffles, and end caps;
b. Rotor straightening equipment for alignment of gas centrifuge rotor tube sections to a common axis;

Technical Note: The rotor straightening equipment controlled by 2B51.b normally will consist of precision measuring probes linked to a computer that subsequently controls the action of, for example, pneumatic rams used for aligning the rotor tube sections.

c. Bellows-forming mandrels and dies for producing single-convolution bellows (bellows made of high-strength aluminum alloys, maraging steel, or high-strength filamentary materials) that have all of the following dimensions:
c.1. 75-mm to 400-mm (3-in. to 16-in.) inside diameter;
c.2. 12.7 mm (0.5 in.) or more in length; *and*
c.3. Single convolution depth of more than 2 mm (0.08 in.).

Note: This ECCN does not control centrifuge rotor tube sections, baffles, bellows, and end caps. These items are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

2B53B Centrifugal multiplane balancing machines, fixed or portable, horizontal or vertical.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Centrifugal multiplane balancing machines, fixed or portable, horizontal or vertical, as follows:
a. Designed for balancing flexible rotors having all of the following characteristics:
a.1. A length of 600 mm (24 in.) or more;
a.2. A swing or journal diameter of 75 mm (3 in.) or more;
a.3. Mass capability from 0.9 kg (2 lb.) to 23 kg (50 lb.); *and*
a.4. Capable of balancing speed of more than 5,000 rpm.
b. Designed for balancing hollow cylindrical rotor components, and having all of the following characteristics:
b.1. A journal diameter of 75 mm (3 in.) or more;
b.2. Mass capability from 0.9 kg (2 lb.) to 23 kg (50 lb.);
b.3. Capable of balancing to a residual imbalance of 0.010 kg-mm/kg per plane or better; *and*
b.4. Belt drive type.
27. In Category 2, ECCN 2D01A is revised to read as follows:

2D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, and NP (see Notes)
GTDR: Yes, except MT and NP (see Notes)
GTDU: No
GNSG: Yes for software for 2B01, 2B06 .a, .b, and .c, 2B07, and 2B09 (see Notes), *except* to Bulgaria, Poland, Romania, or Russia. "Software" (including documentation) for "numerical control" units must be:
a. In machine executable form only; *and*
b. Limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.

Notes:

1. MT controls apply to "software" specially designed or modified for the "development", "production", or "use" of equipment described in 2B04.
2. NP controls apply to "software" described in this ECCN for the "development", "production", or "use" of equipment described in ECCNs 2B01, 2B04, 2B06 .a, .b, and .c, 2B07, and 2B09. Specially designed "software" for the systems described in 2B06.c includes "software" for simultaneous measurements of wall thickness and contour.

28. In Category 2:
a. ECCNs 2D19A and 2D24B are revised;
b. ECCNs 2D46C, 2D50C, 2D52B, and 2D53C are removed; and
c. New ECCNs 2D41B, 2D44B, 2D49E, 2D50B, and 2D53B are added immediately following ECCN 2D24B to read as follows:

2D19A "Software" for the "development", "production", or "use" of equipment controlled by 2A19.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, NP (see Note)
GTDR: No
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

Note: NP controls apply to Country Groups QSTVWYZ for "software" for the "development", "production", or "use" of neutron generator systems and valves described in 2A19 .b and .c, respectively.

2D24B "Software" for the "development", "production", or "use" of commodities controlled by 2B24.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT and NP
GTDR: No
GTDU: No
GNSG: No

2D41B "Software" specially designed or modified for the "development", "production", or "use" of "numerically controlled" machine tools controlled by ECCN 2B41B.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes, provided that "software" (including documentation) for "numerical control" units is:
a. Exported in machine executable form only; *and*
b. Limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.

2D44B "Software" for the "development", "production", or "use" of commodities controlled by 2B44.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2D49E "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 2A49E.

Requirements

Validated License Required: SZ, South African military and police, and countries listed in Supp. 4 to Part 778
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D50B "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 2A50 or 2B50.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2D53B "Software" specially designed or modified for the "development", "production", or "use" of centrifugal balancing machines controlled by 2B53.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

29. In Category 2, ECCNs 2E01A and 2E02A are revised and Related ECCNs paragraphs are added immediately following ECCNs 2E01A and 2E02A to read as follows:

2E01A Technology according to the General Technology Note for the "development" of equipment or "software" controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, 2B09, 2D01, or 2D02.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, NP (see Notes)
GTDR: Yes, except MT and NP (see Notes)
GTDU: No
GNSG: Yes for NP, *except* technology for 2B04 (see Notes) and *except* Bulgaria, Poland, Romania, or Russia

Notes: 1. MT controls apply to technology for the "development" of commodities controlled by 2B04.

2. NP controls apply to technology for the "development" of commodities controlled by 2B01, 2B04, 2B06.a, .b, and .c, 2B07.b and .c, 2B08, and 2B09 and technology for the "development" of "software" controlled by 2D01 for NP reasons.

Related ECCNs: See 2E40B for NP controls on technology for the "use" of equipment controlled by 2B04, 2B06.a, b, or c, 2B07.b, 2B08, or 2B09.

2E02A Technology according to the General Technology Note for the "production" of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, NP (see Notes)
GTDR: Yes, except MT and NP (see Notes)
GTDU: No
GNSG: Yes for NP, *except* technology for 2B04 (see Notes) and *except* Bulgaria, Poland, Romania, or Russia

Notes: 1. MT controls apply to technology for the "production" of commodities controlled by 2B04.

2. NP controls apply to techology for the "production" of commodities controlled by 2B01, 2B04, 2B06.a, .b, and .c, 2B07.b and .c, 2B08, and 2B09.

Related ECCNs: See 2E40B for NP controls on technology for the "use" of equipment controlled by 2B04, 2B06.a, b, or c, 2B07.b, 2B08, or 2B09.

30. In Category 2, ECCN 2E03A is amended by revising the Requirements section to read as follows:

2E03A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, NP (see Note)
GTDR: Yes, *except* 2E03.a.1, a.3, b, and d
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for 2E03.a.1 and a.3 only (see Note)

Note: NP controls apply to technology described in 2E03.a.1 or a.3.

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31. In Category 2, ECCN 2E19A is revised to read as follows:

2E19A Technology for the "development", "production", or "use" of equipment controlled by 2A19.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, NP (see Note)
GTDR: No
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia

Note: NP controls apply to Country Groups QSTVWYZ for technology for the "development", "production", or "use" of neutron generator systems and valves described in 2A19.b and c, respectively.

32. In Category 2, ECCN 2E24B is revised, ECCNs 2E50C and 2E52B are removed, and new ECCNs 2E40B, 2E41B, 2E44B, 2E48B, 2E49E, 2E50B, 2E51B, 2E52B, and 2E53B are added immediately following ECCN 2E24B, as follows:

2E24B Technology for the "development", "production", or "use" of commodities controlled by 2B24.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT, NP
GTDR: No
GTDU: No
GNSG: No

2E40B Technology for the "use" of hot "isostatic presses" controlled by 2B04, dimensional inspection or measuring systems or equipment controlled by 2B06.a., b, or c, robots and "end- effectors" controlled by 2B07.b, or equipment controlled by 2B08 or 2B09.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E41B Technology for the "development", "production", or "use" of "numerically controlled" machine tools controlled by 2B41 or for the "use" of equipment controlled by 2B01.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E44B Technology for the "development", "production", or "use" of specialized instruments for hydrodynamic experiments controlled by 2A44 or "isostatic presses" controlled by 2B44.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E48B Technology for the "development", "production" or "use" of valves controlled by 2A48.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E49E Technology for the "development", "production" or "use" of equipment controlled by 2A49.

Requirements

Validated License Required: SZ, South African military and police, and countries listed in Supp. 4 to Part 778
Reason for Control: NP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E50B Technology for the "development", "production" or "use" of equipment controlled by 2A50 or 2B50.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E51B Technology for the "development", "production" or "use" of equipment controlled by 2A51 or 2B51.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E52B Technology for the "development", "production" or "use" of equipment controlled by 2A52.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

2E53B Technology for the "development", "production" or "use" of equipment controlled by 2A53 or 2B53.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

33. In Category 3, ECCN 3A01A is amended by revising the Requirements section to read as follows:

3A01A Electronic devices and components.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NS, MT, NP (see Notes)
GLV: $1,500: 3A01.c; $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f; $5,000: 3A01.a, 3A01.b.4 to b.7
GCT: Yes, except 3A01.a.1 and 3A01.e.5 (see Notes)
GFW: Yes, except 3A01.a.1, 3A01.b.1 and b.3 to b.7, 3A01.c to f
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for 3A01.e.5 only (see Notes)

Notes: 1. MT controls apply to 3A01.a.1.
2. NP controls apply to 3A01.e.5.

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34. In Category 3:
a. ECCNs 3A41E, 3A42E, 3A45E, and 3A47E are removed;
b. New ECCNs 3A41B and 3A42B are added immediately following ECCN 3A22B;
c. ECCNs 3A43B, 3A44B, 3A46B, 3A48B, 3A49B, 3A50B, and 3A51B are revised;
d. ECCN 3A52E is removed; and
e. New ECCNs 3A52B, 3A53B, 3A54B, and 3A55B are added immediately following ECCN 3A51B, as follows:

3A41B Capacitors not controlled by 3A01.e.2.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Capacitors with a voltage rating greater than 1.4 kV having all of the following characteristics:
a.1. Energy storage greater than 10 J;
a.2. Capacitance greater than 0.5 μF; *and*
a.3. Series inductance less than 50 nH; or
b. Capacitors with a voltage rating greater than 750 V having both of the following characteristics:
b.1. Capacitance greater than 0.25 μF; *and*
b.2. Series inductance less than 10 nH.

Note: The energy storage capacity (E) is determined by the formula: $E=\frac{1}{2} CV^2$. The capacitance (C) must be in farads, and the voltage (V) in volts for the formula to give an answer in joules (J). Normally high-voltage capacitors are measured in microfarads or nanofarads.

3A42B Superconducting solenoidal electromagnets other than those described in 3A01.a.3.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Superconducting solenoidal electromagnets with all of the following characteristics:
a. Capable of creating magnetic fields of more than 2 T (20 kilogauss);
b. Having an inner diameter greater than 300 mm (12 in.);
c. Having a length divided by diameter (L/D) greater than 2; and
d. Capable of creating a magnetic field uniform to better than 1% over the central 50% of the inner volume.

Note: 3A42B does not control magnets that are specially designed for and exported as

parts of medical nuclear magnetic resonance (NMR) imaging systems. Such parts may be exported in separate shipments from different sources, provided that the related export control documents clearly specify that the parts are for the medical NMR imaging systems that are being exported.

3A43B Switching devices.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Cold-cathode tubes (including gas krytron tubes and vacuum sprytron tubes), whether gas filled or not, operating similarly to a spark gap, containing three or more electrodes, and having all of the following characteristics:

a.1. Anode peak voltage rating of 2500 V or more;

a.2. Anode peak current rating of 100 A or more; and

a.3. Anode delay time of 10 microseconds or less;

b. Triggered spark-gaps having an anode delay time of 15 microseconds or less and rated for a peak current of 500 A or more;

c. Modules or assemblies with a fast switching function having all of the following characteristics:

c.1. Anode peak voltage rating greater than 2,000 V;

c.2. Anode peak current rating of 500 A or more; *and*

c.3. Turn-on time of 1 μs or less.

3A44B High-speed pulse generators with output voltages greater than 6 volts into a less than 55-ohm resistive load, and with pulse transition times less than 500 picoseconds (defined as the time interval between 10 percent and 90 percent voltage amplitude).

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

3A46B Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A49).

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Explosive detonator firing sets designed to drive multiple detonators of the type controlled under ECCN 3A49B;

b. Modular electrical pulse generators (pulsers) designed for portable, mobile, or ruggedized use (including xenon flash-lamp drivers) having all the following characteristics:

b.1. Capable of delivering their energy in less than 15 μs;

b.2. Having an output greater than 100 A;

b.3. Having a "risetime" of less than 10 μs into loads of less than 40 ohms;

Technical Note: "Risetime" is defined as the time interval from 10 percent to 90 percent current amplitude when driving a resistive load.

b.4. Enclosed in a dust-tight enclosure;

b.5. No dimension greater than 25.4 cm (10 in.);

b.6. Weight less than 25 kg (55 lb.); *and*

b.7. Specified for use over an extended temperature range (−50 °C to 100 °C) or specified as suitable for aerospace use.

3A48B Multistage light gas gun or other high-velocity gun systems (coil, electromagnetic, electrothermal, or other advanced systems) capable of accelerating projectiles to 2 kilometers per second or greater.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

3A49B Detonators and multipoint initiation systems (exploding bridge wire, slapper, etc.).

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

a. Electrically driven explosive detonators of the types described as "exploding bridge" (EB), "exploding bridgewire" (EBW), "exploding foil," or "slapper" (see the Technical Note following this List for a more detailed description);

b. Arrangements using single or multiple detonators designed to nearly simultaneously initiate an explosive surface (over greater than 5,000 mm^2) from a single firing signal (with an initiation timing spread over the surface of less than 2.5 μs).

Technical Note: The detonators controlled by this ECCN 3A49B utilize a small electrical conductor (bridge, bridgewire, or foil) that explosively vaporizes when a fast, high-current electrical pulse is passed through it. In nonslapper types, the exploding conductor starts a chemical detonation in a contacting high-explosive material such as PETN (pentaerythritoltetranitrate). In slapper detonators, the explosive vaporization of the electrical conductor drives a "flyer" or "slapper" across a gap, and the impact of the slapper on an explosive starts a chemical detonation. The slapper in some designs is driven by magnetic force. The term "exploding foil" detonator may refer to either an EB or a slapper-type detonator. Also, the word "initiator" is sometimes used in place of the word "detonator."

Note: Detonators using only primary explosives, such as lead azide, are not controlled by this ECCN 3A49B.

3A50B Inverters, converters, frequency changers, or generators having all of the characteristics described in this entry.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Inverters, converters, frequency changers, or generators having all of the following characteristics:

a. A multiphase output capable of providing power of 40 W or more;

b. Capable of operating in the frequency range between 600 and 2,000 Hz;

c. Total harmonic distortion below 10 percent; *and*

d. Frequency control better than 0.1 percent.

Note: Frequency changers specially designed or prepared to supply "motor stators" (see Technical Note) and having the characteristics described in 3A50.b and d, together with a total harmonic distortion of less than 2 percent and an efficiency of greater than 80 percent, require export authorization from the Nuclear Regulatory Commission (see 10 CFR Part 110).

Technical Note: "Motor stators" are specially designed or prepared ring-shaped

stators for high-speed multiphase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600 Hz to 2,000 Hz, and a power range of 50 VA to 1,000 VA. The stators consist of multiphase windings on a laminated low-loss iron core comprising thin layers typically 2.0 mm (.008 in.) thick or less.

3A51B Mass spectrometers.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Mass spectrometers capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor, as follows:

a. Inductively coupled plasma mass spectrometers (ICPMS);

b. Glow discharge mass spectrometers (GDMS);

c. Thermal ionization mass spectrometers (TIMS);

d. Electron bombardment mass spectrometers that have a source chamber constructed from or lined with or plated with materials resistant to UF_6;

e. Molecular beam mass spectrometers that:

e.1. Have a source chamber constructed from or lined with or plated with stainless steel or molybdenum and have a cold trap capable of cooling to 193 K (−80 °C) or less; *or*

e.2. Have a source chamber constructed from or lined with or plated with materials resistant to UF_6; *or*

f. Mass spectrometers equipped with a microfluorination ion source designed for use with actinides or actinide fluorides.

Note: Specially designed or prepared magnetic or quadrupole mass spectrometers that have the following characteristics and are capable of taking "on-line" samples of feed, product, or tails from UF_6 gas streams require export authorization from the Nuclear Regulatory Commission (see 10 CFR part 110):

a. Unit resolution for mass greater than 320;

b. Ion sources constructed of or lined with nichrome or monel or nickel-plated;

c. Electron bombardment ionization sources;

d. Having a collector system suitable for isotopic analysis.

3A52B Oscilloscopes, transient recorders, and specially designed components therefor.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Oscilloscopes, transient recorders, and specially designed components therefor (e.g., plug-in units, external amplifiers, preamplifiers, sampling devices, and cathode ray tubes (CRTs)) having any of the following characteristics:

a. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;

Technical Note: Bandwidth as used in 3A52.a is the band of frequencies over which the deflection on the CRT does not fall below 70.7% of that at the maximum point measured with a constant input voltage to the oscilloscope amplifier.

b. Modular analog oscilloscope systems having either of the following:

b.1. Mainframes with a bandwidth of 1 GHz or greater; or

b.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;

c. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;

d. Digital oscilloscopes and transient recorders using analog-to-digital conversion techniques capable of storing transients by sequentially sampling one-shot input signals at successive intervals of less than 1 nanosecond (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution, and storing 256 or more samples.

3A53B High-voltage direct current power supplies capable of continuously producing, over a time period of 8 hours, 20,000 V or greater with a current output of 1 amp or greater and with a current or voltage regulation better than 0.1 percent.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

3A54B Direct current high-power supplies capable of continuously producing, over a time period of 8 hours, 100 V or greater with a current output of 500 amps or greater and with a current or voltage regulation better than 0.1 percent.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

3A55B Flash x-ray generators and electron accelerators not controlled by 3A01.

Requirements

Validated License Required:
QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NP
GLV: $0
GCT: No
GFW: No
GNSG: Yes

List of Items Controlled

Flash x-ray generators and pulsed electron accelerators with a peak energy of 500 keV or greater, as follows, except accelerators that are component parts of devices designed for purposes other than electron beam or x-ray radiation (electron microscopy), and those designed for medical purposes:

a. Having an accelerator peak electron energy of 500 keV or greater, but less than 25 MeV (million electron volts), and with a figure of merit (K) of 0.25 or greater:

a.1. Where K is defined as: $K = 1.7 \times 10^3 V^{2.65} Q$;

a.2. Where V is the peak electron energy in million electron volts; and

a.3. Where Q is:

a.3.a. The total accelerated charge in coulombs, if the accelerator beam pulse duration is less than or equal to 1 microsecond;

a.3.b. The maximum accelerated charge in 1 microsecond, if the accelerator beam pulse duration is greater than 1 microsecond;

Note: Q equals the integral of "i" with respect to "t", over the lesser of 1 microsecond or the time duration of the beam pulse ($Q=\int i dt$), where "i" is beam current in amperes and "t" is time in seconds.

b. Having an accelerator peak electron energy of 25 MeV or greater and a peak power greater than 50 MW.

Note: Peak power = (peak potential in volts) × (peak beam current in amperes).

Technical Notes: 1. Time duration of beam pulse: In machines based on microwave

accelerating cavities, the time duration of the beam pulse is the lesser of 1 microsecond or the duration of the bunched beam packet resulting from one microwave modulator pulse.

2. Peak beam current: In machines based on microwave accelerating cavities, the peak beam current is the average current in the time duration of a bunched beam packet.

3. The formula for "K" can be expressed as a table that shows the accelerated charge "Q", which is related to a specific energy "V" for K = 0.25. Any device for which "Q" exceeds the value in the table is subject to control under this ECCN 3A55B.

V (MeV)	Q (coulomb)
0.50	920.0×10^{-6}
0.75	320.0×10^{-6}
1.0	150.0×10^{-6}
3.0	8.0×10^{-6}
5.0	2.0×10^{-6}
8.0	0.6×10^{-6}
10.0	0.3×10^{-6}
15.0	0.1×10^{-6}
20.0	0.05×10^{-6}
25.0	0.03×10^{-6}

35. In Category 3, ECCN 3D01A is revised to read as follows:

3D01A "Software" specially designed for the "development" or "production" of equipment controlled by 3A01.b to 3A01.f, 3A02, and 3B01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, NP (see Note)
GTDR: Yes, except 3A01.e.5 (see Note)
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for "software" for 3A01.e.5 only (see Note)

Note: NP controls apply to "software" for the "development" or "production" of items controlled by 3A01.e.5.

36. In Category 3, ECCN 3D51B is removed.

37. In Category 3, ECCN 3E01A is revised to read as follows:

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, and NP (see Notes)
GTDR: Yes, except MT and NP
GTDU: No
GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for technology for 3A01.e.5 only (see Notes)

Notes: 1. MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.

2. NP controls apply to technology specially designed for the "development" or "production" of items described in 3A01.e.5.

3. 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.11, having both of the following characteristics:

1. Using technology of one micrometer or more; *and*

2. Not incorporating multi-layer structures.

N.B.: This Note 3 does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

38. In Category 3, new ECCNs 3E40B and 3E41B are added immediately following ECCN 3E22B to read as follows:

3E40B Technology for the "development", "production", or "use" of items controlled by 3A41, 3A42, 3A43, 3A44, 3A46, 3A48, 3A49, 3A50, 3A51, 3A52, 3A53, 3A54, or 3A55.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

3E41B Technology for the "use" of flash discharge type X-ray systems, including tubes, controlled by 3A01.e.5.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NP
GTDR: No
GTDU: No
GNSG: Yes

39. In Category 3, ECCN 3E51B is removed.

40. In Category 4, ECCNs 4D01A and 4D02A are revised to read as follows:

4D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT, FP (see Notes)
GTDR: Yes, except MT and FP, and except "software" specially designed or modified to support technology for supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes
GTDU: No

Notes: 1. MT controls apply to "software" specially designed or modified for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02, and 4A03.

2. FP controls apply to all destinations except Australia, Japan, New Zealand and members of NATO, for "software" specially designed or modified for the "development", "production", or "use" of computers for computerized fingerprint equipment.

3. FP controls apply to all destinations, except Japan, for "software" specially designed or modified for the "development", "production", or "use" of supercomputers (see § 776.11 of this subchapter).

4D02A "Software" specially designed or modified to support "technology" controlled by 4E01 or 4E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT, FP (see Notes)
GTDR: Yes, except MT and FP, and except "software" specially designed or modified to support technology for supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes
GTDU: No

Notes: 1. MT controls apply to "software" specially designed or modified to support technology for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02 and 4A03

2. FP controls apply to all destinations, except Japan, for "software" specially designed or modified to support technology for the "development", "production", or "use" of supercomputers (see § 776.11 of this subchapter).

41. In Category 4, ECCN 4E01A is revised to read as follows:

4E01A Technology, according to the General Technology Note, for the "development", "production", or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, FP (see Notes)
GTDR: Yes, except MT and FP, and except technology for supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes
GTDU: No

Notes: 1. MT controls apply to certain items controlled by 4A01, 4A02, 4A03, 4D01, or 4D02. See *Reason for Control* paragraphs in these entries to determine which items are subject to MT controls.

2. FP controls apply, for all destinations *except* Australia, Japan, New Zealand, and members of NATO, to technology for the "development", "production", or "use" of computers controlled by 4A03 for computerized fingerprint equipment.

3. FP controls apply to all destinations, except Japan, for technology for the "development", "production", or "use" of supercomputers (see § 776.11 of this subchapter).

42. In Category 6, ECCNs 6A02A and 6A03A are amended by revising the Requirements section of each ECCN and the Related ECCNs paragraph that follows ECCN 6A03A is revised to read as follows:

6A02A Optical Sensors.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NS, FP, and MT (see Notes)

GLV: $3,000, except $0 for 6A01.a.1, a.2, a.3, and c

GCT: Yes, except MT and FP (see Notes)

GFW: No

Notes:

1. FP controls for regional stability apply to items controlled by 6A02.a.1, a.2, a.3, and c (see § 776.16(b) of this subchapter).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

3. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

* * * * *

Related ECCNs: * * *

6A03A Cameras.

Requirements

Validated License Required: QSTVWYZ

Unit: Number

Reason for Control: NS, FP, and NP (see Notes)

GLV: $1,500, except $0 for 6A03.a.2 through a.5 and b.1

GCT: Yes, except FP and NP (see Notes)

GFW: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Note)

Notes: 1. FP controls for regional stability apply to items controlled in 6A03.b.3 and b.4.

2. NP controls apply to items described in 6A03.a.2, a.3, a.4, a.5, or b.1.

* * * * *

Related ECCNs: See 6A43B for NP controls on cameras and components not controlled by 6A03A.

43. In Category 6, ECCN 6A05A is amended by revising the Requirements section and a Related ECCNs paragraph is added immediately following ECCN 6A05A to read as follows:

6A05A "Lasers", components and optical equipment, as follows

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NS, NP (see Note)

GLV: $0 for NP items (see Note); $3,000 for all other items

GCT: Yes, except NP (see Note)

GFW: Yes, except NP (see Note), for items in Advisory Notes 5.3 and 5.4

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Note)

Note: NP controls apply to lasers described in 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, and d.2.c.

* * * * *

Related ECCNs: See 6A50B for NP controls on lasers, laser amplifiers, and oscillators not controlled by 6A05A.

44. In Category 6, ECCN 6A42B is removed, ECCNs 6A43B and 6A44B are revised, and a new ECCN 6A50B is added immediately following ECCN 6A44B to read as follows:

6A43B Cameras and components not controlled by ECCN 6A03A.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NP

GLV: $0

GCT: No

GFW: No

GNSG: Yes

List of Items Controlled

a. Mechanical rotating mirror cameras having recording rates or writing speeds, as follows:

a.1. Mechanical framing cameras with recording rates greater than 225,000 frames per second;

a.2. Streak cameras with writing speeds greater than 0.5 mm per microsecond;

a.3. Parts for cameras described in 6A43.a.1 and a.2, including synchronizing electronics specially designed for this purpose and specially designed rotor assemblies (including turbines, mirrors, and bearings);

b. Electronic streak and framing cameras and tubes, as follows:

b.1. Electronic streak cameras capable of 50 ns or less time resolution and streak tubes therefor;

b.2. Electronic (or electrically shuttered) framing cameras capable of 50 ns or less frame exposure time;

b.3. Framing tubes and solid state imaging devices for use with cameras described in 6A43.b.2, as follows:

b.3.a. Proximity focused image intensifier tubes having a photocathode deposited on a transparent conductive coating to decrease photocathode sheet resistance;

b.3.b. Gated silicon intensifier target (SIT) vidicon tubes, where a fast system allows gating the photoelectrons from the photocathode before they impinge on the SIT plate;

b.3.c. Kerr or pockel cell electro-optical shuttering; *or*

b.3.d. Other framing tubes and solid-state imaging devices having a fast-image gating time of less than 50 ns specially designed for cameras controlled by 6A43.b.2;

c. Television cameras specially designed or rated as radiation-hardened to withstand greater than 5×10^4 grays (Si) without operational degradation and specially designed lenses used therein.

6A44B Photomultiplier tubes.

Requirements

Validated License Required: QSTVWYZ

Unit: Number

Reason for Control: NP

GLV: $0

GCT: No

GFW: No

GNSG: Yes

List of Items Controlled

Photomultiplier tubes having the following characteristics:

a. An anode pulse rise time of less than 1 ns; *and*

b. A photocathode area of greater than 20 cm^2.

6A50B Lasers, laser amplifiers, and oscillators.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories

Reason for Control: NP

GLV: $0

GCT: No

GFW: No

GNSG: Yes

List of Items Controlled

a. Argon ion lasers with greater than 40 W average output power operating at

wavelengths between 400 nm and 515 nm;

b. Neodymium-doped (other than glass) lasers:

b.1. Having an output wavelength between 1,000 nm and 1,100 nm, being pulse-excited and Q-switched with a pulse duration equal to or greater than 1 ns, and having a single-transverse mode output having an average output power exceeding 40 W;

b.2. Operating at a wavelength between 1,000 nm and 1,100 nm and incorporating frequency doubling giving an output wavelength between 500 nm and 550 nm with an average power at the doubled frequency (new wavelength) of greater than 40 W;

c. Tunable pulsed dye laser amplifiers and oscillators, except single mode oscillators, with an average power output of greater than 30 W, a repetition rate greater than 1 kHz, a pulse width less than 100 ns, and a wavelength between 300 nm and 800 nm;

d. Alexandrite lasers with a bandwidth of 0.005 nm or less, a repetition rate of greater than 125 Hz, and an average power output greater than 30 W operating at wavelengths between 720 nm to 800 nm;

e. Pulsed carbon dioxide lasers with a repetition rate greater than 250 Hz, an average power output of greater than 500 W, and a pulse of less than 200 ns operating at wavelengths between 9,000 nm and 11,000 nm;

Note: 6A50.e does not control the higher power (typically 1 kW to 5 kW) industrial CO_2 lasers used in applications such as cutting and welding, since such lasers are either continuous wave or are pulsed with a pulse width of more than 200 ns.

f. Para-hydrogen Raman shifters designed to operate at 16 μm output wavelength and at a repetition rate greater than 250 Hz.

45. In Category 6, ECCNs 6E01A and 6E02A and the Related ECCNs paragraphs following ECCNs 6E01A and 6E02A are revised to read as follows:

6E01A Technology according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

Requirements

Validated License Required:
QSTVWYZ

Reason for Control: NS, MT, NP, and FP (see Notes)

GTDR: Yes, except MT, NP, and FP (see Notes)

GTDU: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes:

1. MT controls apply to technology for the "development" of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or c, or 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for regional stability apply to technology for the "development" of items controlled by 6A02.a.1, a.2, a.3, or c (see § 776.16(b) of this subchapter).

3. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "development" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

4. NP controls apply to technology for the "development" of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c., a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

Related ECCNs: See 6E21B for MT controls on technology for the "development" of equipment controlled by 6A22, 6A28, 6A29, or 6A30. See 6E40B for NP controls on technology for the "use" of cameras or lasers controlled by 6A03 or 6A05, respectively. See 6E41B for NP controls on technology for the "development", "production", or "use" of cameras or lasers controlled by 6A43 or 6A50, respectively.

6E02A Technology according to the General Technology Note for the "production" of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

Requirements

Validated License Required:
QSTVWYZ

Reason for Control: NS, MT, NP, and FP (see Notes)

GTDR: Yes, except MT, NP, and FP (see Notes)

GTDU: No

GNSG: Yes, *except* Bulgaria, Poland, Romania, or Russia, for NP only (see Notes)

Notes:

1. MT controls apply to technology for the "production" of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or c, or 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for regional stability apply to technology for the "production" of items controlled by 6A02.a.1, a.2, a.3, or c (see § 776.16(b) of this subchapter).

3. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "production" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

4. NP controls apply to technology for the "production" of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c., a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

Related ECCNs: See 6A22B for MT controls on technology for the "production" of equipment controlled by 6A22, 6A28, 6A29, or 6A30. See 6E40B for NP controls on technology for the "use" of cameras or lasers controlled by 6A03 or 6A05, respectively. See 6E41B for NP controls on technology for the "development", "production", or "use" of cameras or lasers controlled by 6A43 or 6A50, respectively.

46. In Category 6, new ECCNs 6E40B and 6E41B are added immediately following ECCN 6E23B to read as follows:

6E40B Technology for the "use" of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c., a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

Requirements

Validated License Required:
QSTVWYZ

Reason for Control: NP

GTDR: No

GTDU: No

GNSG: Yes

6E41B Technology for the "development", "production", or "use" of equipment controlled by 6A43, 6A44, or 6A50.

Requirements

Validated License Required:
QSTVWYZ

Reason for Control: NP

GTDR: No

GTDU: No

GNSG: Yes

47. In Category 9, ECCN 9B26 is revised to read as follows:

9B26B Other vibration test equipment.

Requirements

Validated License Required:
QSTVWYZ

Unit: $ Value

Reason for Control: MT, NP (see Note)

GLV: $0 for 9B26.a; $3000 for 9B26.b

GCT: No

GFW: No

GNSG: No

Note: NP controls apply to vibration test equipment and feedback or closed loop test equipment described in 9B26.a.

List of Items Controlled

a. Vibration test equipment using digital control techniques, and feedback or closed loop test equipment therefor, capable of vibrating a system at 10 g RMS or more between 20 Hz and 2,000 Hz and imparting forces of 50 kN (11,250 lbs.) or greater.

Note: The term "digital control" refers to equipment, the functions of which are, partly

or entirely, automatically controlled by stored and digitally coded electrical signals.

b. Environmental chambers and anechoic chambers:

b.1. Environmental chambers and anechoic chambers capable of simulating the following flight conditions:

b.1.a. Altitude of 15,000 meters or greater; or

b.1.b. Temperature of at least minus 50 degrees C to plus 125 degrees C; and either

b.1.c. Vibration environments of 10 g RMS or greater between 20 Hz and 2,000 Hz imparting forces of 5 kN or greater, for environmental chambers; or

b.1.d. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N per square meter) or with a rated power output of 4 kiloWatts or greater, for anechoic chambers.

48. In Category 9, ECCN 9D24B is revised to read as follows:

9D24B "Software", specially designed or modified for the "development", "production", or "use" of propulsion systems and equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, and "software", n.e.s., specially designed or modified for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: MT, NP (see Note)
GTDR: No
GTDU: No
GNSG: No

Note: NP controls apply to "software" for the "development", "production", or "use" of vibration test equipment and feedback or closed loop test equipment controlled by 9B26.a.

49. In Category 9, ECCN 9E21B is revised to read as follows:

9E21B Technology for the "development", "production", or "use" of equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, or "software" controlled by 9D24, and technology for the "use" of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: MT, NP (see Note)
GTDR: No
GTDU: No
GNSG: No

Note: NP controls apply to technology for the "development", "production", or "use" of vibration test equipment and feedback or closed loop test equipment controlled by 9B26.a.

Supplement No. 3 to § 799.1 [Amended]

50. Supplement No. 3 to § 799.1 (Definitions) is amended by adding the following definitions in alphabetical order to read as follows:

Supplement No. 3 to § 799.1 Definitions

* * * * *

Part program (Cat. 2)—An ordered set of instructions that is in a language and in a format required to cause operations to be effected under automatic control and that is either written in the form of a machine program on an input medium or prepared as input data for processing in a computer to obtain a machine program (Ref. ISO 2806–1980).

* * * * *

Positioning accuracy (Cat. 2)—The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

a. Test conditions (paragraph 3):

1. For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the pre-measurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

2. The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

3. Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

4. Power supply for slide drives shall be as follows:

a. Line voltage variation shall exceed ±10% of nominal rated voltage;

b. Frequency variation shall not exceed ±2 Hz of normal frequency;

c. Lineouts or interrupted service are not permitted.

b. Test program (paragraph 4):

1. Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

Note: In case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

2. Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

3. Axes not being measured shall be retained at mid travel during test of an axis.

c. Presentation of test results (paragraph 2): The results of the measurement must include:

1. Position accuracy (A); and

2. The mean reversal error (B).

* * * * *

Sensors (Cat. 6)—Detectors of a physical phenomenon, the output of which (after conversion into a signal that can be interpreted by a controller) is able to generate "programs" or modify programmed instructions or numerical program data. This includes "sensors" with machine vision, infrared imaging, acoustical imaging, tactile feel, inertial position measuring, optical or acoustic ranging or force or torque measuring capabilities.

* * * * *

Supplement No. 1 to § 799.2 [Amended]

51. Supplement No. 1 to § 799.2 (Interpretations) is amended by removing and reserving Interpretation 1.

Dated: February 25, 1994.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 94–4875 Filed 3–3–94; 1:32 pm]
BILLING CODE 3510–DT–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–7046; 34–33702; File No. S7–18–87]

Short Selling in Connection With a Public Offering

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announced the permanent adoption of rule 10b–21 under the Securities Exchange Act of 1934. The Commission adopted rule 10b–21 on a temporary basis in 1988. Rule 10b–21 is designed to prevent manipulative short sales of an equity security in anticipation of a public offering by prohibiting the covering of such short sales with securities purchased in the offering. The Commission has determined to remove the "Temporary" designation from rule 10b–21 because the rule continues to serve an important purpose in preventing manipulative conduct during offerings.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Senior Special Counsel, or Elisa A. D. Metzger, Attorney-Adviser, at (202) 272–2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In August 1988, the Commission adopted on a temporary basis rule 10b–

21(T)[1] ("rule 10b–21(T)" or "rule") under the Securities Exchange Act of 1934 ("Exchange Act"),[2] which is designed to prevent manipulative short selling of securities in anticipation of a public offering of the same securities.[3] The rule prohibits a person from selling short an equity security (and any security of the same class) that is being offered for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act")[4] from the time that the registration statement is filed until the securities are available for sale, if such short sale is covered with offered securities purchased from a broker-dealer participating in the offering.[5]

The NASD Petition and the adoption of the rule by the Commission were based on concerns relating to certain short selling prior to a public offering. Short sales immediately prior to an offering of a security may result in a decrease in the price of the security and consequently a lower offering price. The short sellers may then seek to cover their short positions and realize a profit by purchasing securities in the offering at the reduced price. Persons selling short in anticipation of a public offering are not subject to the usual market risk because they can cover their short position from a pool of securities obtainable from identifiable sources at a fixed, and generally lower, price. This type of short selling, coupled with covering from the offering, adversely affects issuers. A decrease in price resulting from these unlawful short sales deprives the issuer of offering proceeds that would have been realized had the market not been subject to such short selling. This activity can be detrimental to the capital raising process.[6]

II. Experience Under the Rule

The Commission's staff prepared a statistical analysis of non-initial public offerings of securities listed for quotation on the NASD's NASDAQ system and listed for trading on the New York Stock Exchange, Inc. ("NYSE") during the period from January 1, 1986 through December 31, 1990. The staff concluded that there was no statistical evidence that rule 10b–21(T) had an impact on stock price patterns around the time of offerings.

While statistical evidence of the impact of rule 10b–21(T) on pre-offering price performance is not dispositive, the NASD, NYSE and American Stock Exchange, Inc. continue to support the rule. These self-regulatory organizations have implemented surveillance systems that are designed to detect questionable market activities, including those involving short sales, prior to an offering. Others also have commented favorably on rule 10b–21(T) in other contexts.[7]

The Commission does not have any evidence that the Rule adversely affects legitimate market activities. The Rule does not proscribe short selling at any time, nor does it prohibit the covering of short sales with securities purchased in the open market. Moreover, the Rule does not prevent using securities acquired in a public offering to cover short sales effected before the registration statement was filed. The Rule is narrowly drawn to impede only the particular practice of short selling in anticipation of a public offering and covering those short sales with securities purchased in the offering. The Commission views such short sales as manipulative and destructive of capital formation activities by issuers. For these reasons, the Commission has determined to remove the "Temporary" designation from the rule.[8]

III. Effects on Competition

Section 23(a)(2) of the Exchange Act[9] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the revision in light of the standard cited in section 23(a)(2) and believes that permanent adoption of the rule will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Authority and Text of Rule Amendment

List of Subjects in 17 CFR Part 240

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by revising the specific authority for § 240.10b–21(T) to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

Section 240.10b–21 also issued under 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), 78w(a), and 78dd(a);

* * * * *

§ 240.10b–21(T) [Amended]

2. Section 240.10b–21(T) is amended by removing the "(T)" following the section number.

Dated: March 2, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5374 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] 17 CFR 240.10b–21(T).

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 26028 (August 25, 1988), 53 FR 33455 ("Adopting Release"). The Commission adopted the Rule in response to a petition for rulemaking ("NASD Petition") filed by the National Association of Securities Dealers, Inc. ("NASD"). See also Securities Exchange Act Release No. 24485 (May 20, 1987), 52 FR 19885 ("1987 Proposing Release").

[4] 15 U.S.C. 77a *et seq.*

[5] The rule also applies to equity securities sold pursuant to Regulation A under the Securities Act. See 17 CFR 239.90.

[6] See Adopting Release, 53 FR at 33456.

[7] See Letter from John F. Olson, Chair Federal Regulation of Securities Committee and Robert Todd Lang, Chair Subcommittee on Proxy Solicitations and Tender Offers, American Bar Association, to Jonathan G. Katz, Secretary, SEC (October 4, 1991); Letter from Guy W. Adams, Hecco Ventures Management Inc., to Jonathan G. Katz, Secretary, SEC (August 22, 1991); and Letter from Sullivan & Cromwell, to Jonathan G. Katz, Secretary, SEC (August 22, 1991) regarding Concept Release on Public Disclosure of Material Short Positions, Securities Exchange Act Release No. 29278 (June 7, 1991) 56 FR 27280. These letters are publicly available for inspection and copying in File No. S7–20–91 in the Commission's Public Reference Room.

In response to the 1987 Proposing Release, the Commission received 36 comment letters, the majority of which supported the adoption of the Rule. These comment letters, as well as a summary of the comment letters prepared by the Division of Market Regulation, are available for public inspection and copying at the Commission's Public Reference Room. See File No. S7–18–87.

[8] The Commission previously solicited comment on adoption of the rule on a permanent basis. Since removing the "Temporary" designation does not in any way alter the Rule substantively or procedurally, the Commission is not seeking comment on this change.

[9] 15 U.S.C. 78w(a)(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 85F–0176]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Synthetic Petroleum Wax

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of synthetic petroleum wax prepared by copolymerization of ethylene with linear (C_3 to C_{12}) alpha-olefins in or on food. This action is in response to a petition filed by Petrolite Corp.

DATES: Effective March 9, 1994; written objections and requests for a hearing by April 8, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 17, 1985 (50 FR 20625), FDA announced that a food additive petition (FAP 5A3849) had been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119–1897, proposing that § 172.888 *Synthetic petroleum wax* (21 CFR 172.888) be amended to provide for the safe use in or on food of synthetic petroleum wax prepared by copolymerization of ethylene with higher alpha olefins.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive is more accurately described as synthetic petroleum wax prepared by copolymerization of ethylene with linear (C_3 to C_{12}) alpha-olefins. The agency also concludes that the proposed food use of this additive is safe and that § 172.888 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 8, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.888 is amended by revising paragraph (a) to read as follows:

§ 172.888 Synthetic petroleum wax.

* * * * *

(a) Synthetic petroleum wax is a mixture of solid hydrocarbons, paraffinic in nature, prepared by either catalytic polymerization of ethylene or copolymerization of ethylene with linear (C_3 to C_{12}) alpha-olefins, and refined to meet the specifications prescribed in this section.

* * * * *

Dated: February 25, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5321 Filed 3–8–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 88F–0199]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-octene copolymers, ethylene-octene-hexene copolymers, ethylene-octene-butene copolymers, ethylene-octene-propylene copolymers, and ethylene-octene-4-methylpentene-1 copolymers, which contain not less than 80 weight percent of polymer units derived from ethylene, as articles or components of articles for use in contact with food. This action is in response to a petition filed by the Dow Chemical Co.

DATES: Effective March 9, 1994; written objections and requests for a hearing by April 8, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and

Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 24, 1988 (53 FR 23798), FDA announced that a food additive petition (FAP 8B4091) had been filed by the Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, proposing that the food additive regulations be amended in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene-octene copolymers, ethylene-octene-hexene copolymers, ethylene-octene-butene copolymers, ethylene-octene-propylene copolymers, and ethylene-octene-4-methylpentene-1 copolymers, which contain not less than 75 weight percent of polymer units derived from ethylene, as articles or components of articles for use in contact with food.

The notice stated that the copolymers, which are the subject of this action, would contain not less than 75 weight percent of polymer units derived from ethylene. Upon review of the data presented in the petition and subsequent amendments, FDA determines that the subject copolymers should contain not less than 80 weight percent of polymer units derived from ethylene. The attached order reflects this change.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additives is safe and that the regulations in § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 8, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended by adding a new paragraph (a)(3)(i)(*e*), and in the table in paragraph (c) by redesignating item "3.1" in the first column as item "3.1a" and revising it, and by adding a new item "3.1b" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*e*) Olefin basic copolymers manufactured by the catalytic polymerization of ethylene and octene-1, or ethylene, octene-1, and either hexene-1, butene-1, propylene, or 4-methylpentene-1 shall contain not less than 80 weight percent of polymer units derived from ethylene.

* * * * *

(c) * * *

Olefin Polymers	Density	Melting point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
• •	•	•	•	• •
3.1a Olefin copolymers described in paragraph (a)(3)(i) of this section for use in articles that contact food except for articles used for packing or holding food during cooking; except olefin copolymers described in paragraph (a)(3)(i)(*e*) of this section and listed in item 3.1b of this table.	0.85–1.00 ...	.....	5.5 pct at 50° C	30 pct at 25° C
3.1b Olefin copolymers described in paragraph (a)(3)(i)(*e*) of this section for use in contact with food only under conditions of use D, E, F, G, and H described in § 176.170(c) of this chapter, Table 2.	0.9–1.00	.....	Do.	Do.
• •	•	•	•	• •

* * * * *

Dated: February 28, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5320 Filed 3–8–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 90

[DoD Instruction 7045.18]

Collection of Indebtedness Due the United States

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR part 90 concerning collection of indebtedness. This part has served the purpose for which it was intended and is no longer valid.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: L. M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155, (703) 697–4111.

SUPPLEMENTARY INFORMATION: Department of Defense information on this subject may be found in DoD 7000.14–R, Volume 5. This document may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Part 90

Claims, Government employees, Military personnel, Wages.

PART 90—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 90 is removed.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5330 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300319A; FRL–4760–2]

RIN 2070–AB78

Alkyl (C_{12}–C_{20}) Methacrylate-Methacrylic Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of alkyl (C_{12}–C_{20}) methacrylate-methacrylic acid copolymer when used as an inert ingredient (stabilizer; component of spray drift retardant) in pesticide formulations applied to growing crops only. Allied Colloids, Inc., requested this regulation.

EFFECTIVE DATE: This regulation becomes effective March 9, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300319A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1994 (59 FR 1700), EPA issued a proposed rule that gave notice that Allied Colloids, Inc., P.O. Box 820, Suffolk, VA 23434, had submitted pesticide petition (PP) 4E4277 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of alkyl (C_{12}–C_{20}) methacrylate-methacrylic acid copolymer when used as a stabilizer or component of spray drift retardant in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined

in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, by amending paragraph (d) in the table therein by adding and alphabetically inserting the following inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • •	•	• • •
Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer; minimum molecular weight 11,900..	.....	Stabilizer; component of spray drift retardant.
• • •	•	• • •

* * * * *

[FR Doc. 94-5296 Filed 3-8-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300318A; FRL-4760-3]

RIN 2070-AB78

Maleic Acid Monoethyl Ester-Vinyl Methyl Ether Copolymer, Maleic Acid Monoisopropyl Ester-Vinyl Methyl Ether Copolymer, Maleic Acid Monobutyl Ester-Vinyl Methyl Ether Copolymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for residues of maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monoisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer when used as inert ingredients (seed-coating adhesives, gels, and antitranspirants) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. International Specialty Products requested this regulation.

EFFECTIVE DATE: This regulation becomes effective March 9, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300318A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1994 (59 FR 1702), EPA issued a proposed rule that gave notice that International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, had submitted to EPA the following pesticide petitions (PPs): (1) 3E4243, maleic acid monoethyl ester-vinyl methyl ether copolymer; (2) 3E4248, maleic acid monisopropyl ester-vinyl methyl ether copolymer; and (3) 3E4247, maleic acid monobutyl ester-vinyl methyl ether copolymer requesting that the Administrator pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing exemptions from the requirement of a tolerance for residues of these copolymers when used as inert ingredients (seed-coating adhesives, gels, and antitranspirants) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemptions will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, by amending paragraphs (c) and (e) in the tables therein by adding and alphabetically inserting the following inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
. . . . .		
Maleic acid monoethyl ester-vinyl methyl ether copolymer, CAS No. 25087-06-3, minimum average molecular weight 46,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monoisopropyl ester-vinyl methyl ether copolymer, CAS No. 31307-95-6, minimum average molecular weight 49,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monobutyl ester-vinyl methyl ether copolymer, CAS No. 25119-68-0, minimum average molecular weight 52,000..	.....	Seed-coating adhesive, gel, and antitranspirant.
. . . . .		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
. . . . .		
Maleic acid monoethyl ester-vinyl methyl ether copolymer, CAS No. 25087-06-3, minimum average molecular weight 46,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monoisopropyl ester-vinyl methyl ether copolymer, CAS No. 31307-95-6, minimum average molecular weight 49,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monobutyl ester-vinyl methyl ether copolymer, CAS No. 25119-68-0, minimum average molecular weight 52,000..	.....	Seed-coating adhesive, gel, and antitranspirant.
. . . . .		

[FR Doc. 94–5295 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300317A; FRL–4760–4]

RIN 2070–AB78

Cross-linked Polyurea-Type Encapsulating Polymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations for application to animals. Zeneca Ag Products requested this regulation.

EFFECTIVE DATE: This regulation becomes effective March 9, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300317A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1994 (59 FR 1704), EPA issued a proposed rule that gave notice that Zeneca Ag Products, P.O. Box 751, Wilmington, DE 19897, had submitted pesticide petition (PP) 3E4269 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations for application to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
. . . . .	. . . . .	. . . . .
Cross-linked polyurea-type encapsulating polymer	.....	Encapsulating agent
. . . . .	. . . . .	. . . . .

[FR Doc. 94–5294 Filed 3–8–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 185

[OPP–300238A; FRL–4635–9]

RIN No. 2070–AB78

Dicofol; Revocation of Food Additive Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the food additive tolerance for residues of the pesticide dicofol (1,1-*bis*[*p*-chlorophenyl)-2,2,2-trichloro-ethanol) in or on dried tea. This action is being taken because EPA has determined that this food additive regulation is inconsistent with the Delaney Clause in section 409 of the Federal Food, Drug, and Cosmetic Act.

EFFECTIVE DATE: This final rule is effective May 9, 1994.

ADDRESSES: Written objections, requests for a hearing, and/or requests of stays identified by the document control number, OPP-300238A, must be submitted by April 8, 1994 to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk shall be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Niloufar Nazmi, Special Review Branch (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Westfield Building, 2800 Jefferson Davis Hwy., Arlington, VA, Telephone: (703)-308-8028.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Introduction

Dicofol is used to control mites on tea grown outside of the United States. Although dicofol is not registered for use on tea in the U.S., a food additive regulation of 45 ppm (parts per million) has been established to cover residues on imported tea. In 1989, the State of California, Natural Resources Defense Council (NRDC), Public Citizen, the AFL-CIO, and others petitioned the EPA to revoke several food additive regulations, including dicofol on dried tea, arguing that the food additive regulations at issue violated the Delaney Clause in the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq). EPA proposed to revoke this food additive regulation (see the **Federal Register** of October 4, 1991 (56 FR 50466)) based on its determination that this food additive regulation is inconsistent with the Delaney Clause because dicofol induces cancer in animals and this regulation permitted exposure to dicofol residues posing a greater than *de minimis* cancer risk. Comments have been filed in response to EPA's preliminary determinations and are addressed in this document.

B. Statutory Background

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of the maximum permissible levels of pesticides in foods, which are referred to as "tolerances" (21 U.S.C. 346(a), 348). Without such tolerances or exemptions from tolerances, a food containing pesticide residues is "adulterated" under section 402 of the FFDCA and may not legally be moved in interstate commerce (21 U.S.C. 342). Monitoring and enforcement are carried out by the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA).

Under section 408 of the FFDCA, tolerances or exemptions from tolerances are established for pesticide residues in raw agricultural commodities (RAC). In setting these tolerances under the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" by considering, among other things, the following: the necessity for the production of an adequate, wholesome, and economical food supply; additional ways in which the consumer may be affected by the pesticide; and the usefulness of the pesticide for which a tolerance is being sought. (21 U.S.C. 346a(b)). EPA has interpreted section 409 as authorizing food additive regulations (sometimes referred to as section 409 tolerances) for pesticide residues in processed foods. Under EPA policy, a food additive regulation is needed if the concentration of the pesticide residue in a processed food, when ready to eat, may be greater than the tolerance prescribed for the RAC from which the processed food is derived, or if the processed food is treated or comes in contact with a pesticide, such as in storage facilities. If the pesticide residue level results from treatment of the RAC and is at or below the section 408 tolerance level of the RAC which is being processed, the "flow-through" provision of FFDCA section 402 provides that the section 408 tolerance covers the pesticide residues in both the RAC and resulting processed commodities.

Before a food additive regulation may be established, section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include: (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney Clause, which specifically provides that, with limited exceptions, no additive is deemed safe if it has been found to induce cancer in man or animals. (21 U.S.C. 348(c)(5)).

Before a pesticide may be sold or distributed, it must be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects on the environment." (7 U.S.C. 136a(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." (7 U.S.C. 136(bb)).

C. Regulatory Background

A food additive regulation of 45 parts per million (ppm) for dicofol residues in dried tea is codified at 40 CFR 185.410. There is no associated section 408 tolerance for any raw form of tea from which the dried tea is derived.

As mentioned above, in 1989 EPA was petitioned to revoke certain food additive regulations, including dicofol on dried tea, on the grounds that the regulations were inconsistent with the Delaney Clause. EPA responded to the

petition by stating the Agency would propose revocation unless adequate data on residues and processing were submitted to show the lifetime cancer risk for humans is no greater than *de minimis* (55 FR 17568, Apr. 25, 1990). Although additional data were submitted for dicofol on tea, EPA concluded the data submitted were not adequate to demonstrate a *de minimis* risk, and thus the Agency stated it would take action to revoke the food additive regulation for dicofol on dried tea (56 FR 7750, Feb. 25, 1991).

EPA proposed to revoke the food additive regulation for tea in the **Federal Register** of October 4, 1991 (56 FR 50466). The proposal was issued because available data showed the food additive regulation for dicofol on dried tea was inconsistent with the Delaney Clause of the FFDCA, that is because dicofol induces cancer in animals and the regulation permitted exposure to dicofol residues posing a greater than *de minimis* cancer risk.

In a separate notice, EPA also requested public comment on an EPA assessment of dicofol's carcinogenicity (56 FR 67269, Dec. 30, 1991). On December 4, 1991, EPA's Carcinogen Review and Verification Effort (CRAVE) met to discuss the carcinogenicity of dicofol. CRAVE made a tentative finding that dicofol should be classified in Group C (possible human carcinogen) under EPA's Cancer Assessment Guidelines, pending review by EPA's Office of Health and Environmental Assessment (OHEA). While there were differing conclusions about whether it would be appropriate to develop a quantitative estimate of human cancer risk, CRAVE, OHEA, and EPA's Office of Pesticide Programs all agreed that dicofol should be classified in Group C.

On July 8, 1992, the Ninth Circuit court rejected EPA's interpretation of the Delaney Clause as subject to a *de minimis* exception and set aside EPA's order responding to the petition filed by the State of California and others. *Les v. Reilly*, 968 F. 2d 985 (9th Cir. 1992) *cert. denied*, 113 S. Ct. 1361 (1993). The court ruled that food additive regulations are barred for any pesticides that have been found to induce cancer in animals or humans, regardless of the level of risk.

The manufacturers of dicofol, Rohm and Haas Co. and Makhteshim-Agan America, Inc. (MAA), recently petitioned EPA to establish a section 408 tolerance for the raw agricultural commodity, "plucked tea." EPA is currently reviewing this petition. In a related matter, EPA published a notice in the February 5, 1993 **Federal Register** requesting comments an a range of issues related to regulating pesticide residues in both raw and processed commodities. EPA's final position on several of these issues (such as determining when a food is "ready-to-eat" within the meaning of the Delaney Clause and coordinating tolerances in raw foods when Delaney bars residues in resulting processed foods) could affect the regulatory status of dicofol residues in or on various forms of tea.

II. Response to Comments

Comments were submitted on both the proposed revocation and the CRAVE meeting minutes (Ref. 1) by both manufacturers of dicofol. These comments, which were submitted prior to the Ninth Circuit court's decision, generally criticize EPA's decision to revoke dicofol under a *de minimis* interpretation of the Delaney Clause. These comments address whether the risk associated with dicofol dietary exposure should be quantified, the magnitude of the risk posed to humans, and dicofol residues in various forms of tea. Because of the Ninth Circuit court's decision, the only issue relevant to today's final revocation is whether dicofol has been found to induce cancer in man or animals. However, for the completeness of EPA's record, the Agency has responded, at least briefly, to all significant comments. Moreover, as noted above, EPA may consider some of the information submitted in comments in future actions related to regulating dicofol residues in or on tea.

Comment: In its submission dated October 25, 1991 (Ref. 2), Rohm and Haas Co. contends that EPA would not consider "low end," or unquantified Group C, carcinogens as animal carcinogens if the data base and weight of the evidence used were insufficient. In support of their contention that dicofol met this exception to consideration under the Delaney Clause, they cite the following paragraph from EPA's policy notice on the Delaney Paradox:

> * * * a pesticide may be classified in Group C because the data on whether the chemical is an animal carcinogen are limited or uncertain, e.g., if the data are equivocal, unreliable, or subject to significant doubt, or if only benign tumors occurred. If the Agency determines that the weight of the evidence does not support treating the chemical as an animal carcinogen, the Agency will not treat the chemicals as falling within the Delaney clause bar. The Agency will, of course, in any such determination, set forth the reasons for its judgement. For example, a pesticide may be classified as belonging in Group C because the pesticide is associated with an increase in tumors in only one sex of one species with a lack of a clear dose/response relationship. Assuming that mutagenic data are negative and that structure/activity analysis shows no association with known carcinogens, the Agency generally would consider such a pesticide to be at the 'low' end of the Group C range. It is doubtful that the Agency would require a quantification of the carcinogenic risk, and in such a case, the Delaney clause would not be deemed applicable.

(53 FR 4112-13, October 19, 1988).

Rohm and Haas concludes their argument by saying that EPA made a final determination that the animal data on dicofol are limited and insufficient for risk assessment purposes.

EPA's response: This comment raises the only issue that was not rendered irrelevant by the *Les v. Reilly* decision: whether dicofol induces cancer within the meaning of the Delaney Clause. EPA believes the quoted language from the Delaney paradox notice has only limited relevance here because that notice dealt primarily with EPA's interpretation of the Delaney Clause as subject to a *de minimis* exception. In any event, EPA does believe it is necessary to carefully examine pesticides classified in group C of the Cancer Assessment Guidelines to determine whether they meet the Delaney Clause's induce cancer standard. In construing the "induce cancer" standard as to animals, EPA continues to follow a weight of the evidence approach. As regards animal carcinogenicity, EPA, in general, agrees with FDA's explanation of the term "induce cancer":

> The carcinogenicity of a substance in animals is established when administration in adequately designed and conducted studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, a combination of benign and malignant) neoplasms in treated animals compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological conclusion, but a biological conclusion is not determined by the statistical results.

(52 FR 49577, Dec. 31, 1987).

Dicofol has been shown to produce a statistically significant increase of hepatocellular adenomas and combined hepatocellular adenomas and carcinomas in male mice (B6C3F1) at two doses tested (Ref. 3). There was also a statistically significant positive trend of adenomas and combined adenomas and carcinomas. Although the background incidence of hepatocellular adenomas in male B6C3F1 mice is generally high (Ref. 4), there were no hepatocellular adenomas in the concurrent control animals. In addition,

as noted, there was a statistically significant increase for adenomas and combined adenomas and carcinomas at both tested doses, and there was a statistically significant positive trend for adenomas and combined adenomas and carcinomas. EPA believes combining adenomas and carcinomas is appropriate for this type of tumor. These study results show that dicofol induces cancer in animals. In its weight of the evidence determination, EPA considered two 2-year bioassays in two strains of rats which were negative as to carcinogenicity (Ref. 5), mutagenicity data (Ref. 6), and structure activity comparisons (Ref. 7). None of the information, including the negative cancer studies, is of such weight that it affects EPA's determination that the increased incidence of adenomas and combined adenomas and carcinomas in male mice was the result of exposure to the test compound.

Comment. Substantial comments and data were presented by both manufacturers on the issue of whether dicofol residues on tea posed a *de minimis* cancer risk. Rohm and Haas presented analyses and data in support of their contention that a quantitative risk assessment was not appropriate for dicofol. MAA presented data regarding the residues of dicofol in both dried and brewed tea.

EPA's response: The question of whether it is appropriate to do a quantitative cancer risk assessment for dicofol has proven a difficult one for EPA. As explained in the preamble of the proposed revocation, EPA's position on this issue has shifted several times. Following issuance of the proposal and in light of the new data supplied by Rohm and Haas, EPA has held two meetings of the CRAVE committee on dicofol and the Office of Pesticide Programs Cancer Assessment Peer Review Committee met to reconsider dicofol. Nonetheless, the issue of whether a quantitative cancer risk assessment for dicofol is appropriate has not been fully resolved. For the purpose of responding to comments, however, EPA is willing to state that, regardless of what risk numbers are calculated by a quantitative assessment, the weight of the qualitative evidence on cancer indicates that dicofol poses no greater than a negligible cancer risk to humans. Additionally, EPA has examined the residue data submitted by MAA and concluded that the anticipated residues of dicofol in brewed tea are 0.005 ppm. The previous risk assessment for dicofol on dried tea was based on the assumption of 45 ppm dicofol in tea. Use of the newer, more realistic residue assumption in a quantitative risk assessment for dicofol would lower the estimated upper-bound lifetime cancer risk by approximately five orders of magnitude. All of this suggests that had the court allowed a *de minimis* interpretation in *Les v. Reilly*, EPA would not be finalizing this revocation.

Comment: MAA argued that it was inappropriate for EPA to proceed with a revocation of a FFDCA tolerance before giving pesticide registrants a formal opportunity under FIFRA to produce data showing that the risks posed by the pesticide use are *de minimis*.

EPA's response: This comment is made moot by the fact that MAA now has submitted residue data, which has been examined by EPA. Nonetheless, EPA would like to make clear that under the FFDCA the burden of establishing the safety of a food additive regulation rests with the proponent of the regulation. 40 CFR 179.91; *Environmental Defense Fund v. Department of Health, Education, and Welfare*, 428 F.2d 1083, 1092 n.27 (D.C. Cir. 1971). Where EPA has insufficient data to support an existing FFDCA tolerance regulation, the fact that it had explicit authority under a separate statute to require submission of data does not require EPA to leave this inadequately supported regulation in force until it has requested and reviewed the information.

Comment: The United Planters' Association of Southern India argues that the revocation of the section 409 tolerance for dicofol would have a severe economic impact on the tea growers and exporters of India since dicofol plays a crucial role in mite control. In addition, UPASI states that the growers will be faced with difficulty because they must choose not to treat the tea plants with dicofol or separate the dicofol treated teas from the rest in warehouses and on the fields.

EPA's response: India is a large producer of tea, but less than one-third of the tea produced in India is exported to the U.S. EPA proprietary data (1987) indicate that alternative chemicals are used in India more than dicofol for control of mites; specifically, less than 30% of tea grown in India is treated with dicofol. Availability of alternatives should eliminate the economic hardship that would otherwise be felt by growers and exporters. Even if the impact of not using dicofol were significant on current users, the impact on world tea markets and prices would probably be negligible because the percent of tea crop treated with dicofol and exported to the U.S. appears to be less than ten percent. In any event, under the Ninth Circuit Court's ruling of the Delaney Clause, consideration of benefits is not authorized.

III. Revocation of the Food Additive Regulation for Dicofol on Dried Tea

EPA is revoking the food additive regulation of 45 ppm for residues of dicofol in dried tea based on EPA's determination that this food additive regulation is inconsistent with the Delaney Clause of the FFDCA because EPA has determined dicofol induces cancer in mice. EPA's proposal was based, in addition to the "induce cancer" finding, on the grounds that the cancer risk posed by dicofol on tea was greater than *de minimis*. The decision in *Les v. Reilley*, however, has clarified that the only issue involving cancer under the Delaney Clause is whether or not the pesticide induces cancer, not the magnitude of the cancer risk. Accordingly, EPA is not basing this revocation on the magnitude of dicofol's cancer risk.

IV. Procedural Matters

A. Filing of Objections and Requests for Hearings

Any person adversely affected by this final rule may file written objections to the final rule, and may include with any such objection a written request for an evidentiary hearing on the objection. Such objections must be submitted to the Hearing Clerk on or before April 8, 1994. A copy of the objections and hearing requests filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. Regulations applicable to objections and requests for hearings are set out at 40 CFR parts 178 and 179. Those regulations require, among other things, that objections specify with particularity the provisions of the final rule objected to, the basis for the objections, and the relief sought. Additional requirements as to the form and manner of the submission of objections are set out at 40 CFR 178.25. The Administrator will respond as set forth in 40 CFR 178.30, 178.35, and/or 178.37 to objections that are not accompanied by a request for evidentiary hearing.

A person may include with any objection a written request for an evidentiary hearing on the objection. A hearing request must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. Additional requirements as to the form and manner of submission of requests for an evidentiary hearing are set out at 40 CFR 178.27. Under 40 CFR 178.32(c), the

Administrator, where appropriate, will make rulings on any issues raised by an objection if such issues must be resolved prior to determining whether a request for an evidentiary hearing should be granted. The Administrator will respond to requests for evidentiary hearings as set forth in 40 CFR 178.30, 178.32, 178.35, 178.37, and/or 179.20. Under 40 CFR 178.32(b), a request for an evidentiary hearing on an objection will be granted if the objection and request have been properly submitted and if the Administrator determines that the material submitted show: (1) There is a genuine and substantial issue of fact for resolution at a hearing; (2) there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor; and (3) resolution of one or more of the factual issues in the manner sought by the person requesting the hearing would be adequate to justify the action requested.

Any person wishing to comment on any objections or requests for a hearing may submit such comments to the Hearing Clerk on or before April 25, 1994.

B. Effective Date and Stays of Effective Date

EPA proposed to make this revocation effective 30 days following publication in the **Federal Register** of this document. EPA received no comment on this issue other than speculation by Rohm and Haas and MAA that this would disrupt the tea market. EPA has extended the period 30 days to allow for consideration of petitions regarding a stay of the effective date.

This final rule shall become effective May 9, 1994. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be submitted to the Hearing Clerk on or before April 8, 1994. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule and the specific food additive regulation as to which the stay is sought, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. If a petition for a stay is submitted, EPA will automatically stay the effective date of the final rule as to the particular regulation for which the stay is sought for such time as is required to review the stay petition. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) the petitioner's case is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests.

Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice.

If a stay petition is submitted, EPA will publish a notice of receipt in the **Federal Register**, stating that the effective date of this final rule is stayed pending EPA consideration of the stay request. Any affected person may submit objections to a stay request to the Hearing Clerk on or before 15 days from the publication in the **Federal Register** of the notice of receipt of a stay request. Any decision lifting the stay will be published in the **Federal Register**.

V. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order, i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1989 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that any economic impact on small businesses, small governments, or small organizations would be minor since there are many sources of tea that are not treated with dicofol. The U.S.-based businesses most affected would be tea importers, who could turn to alternative sources for untreated tea. In support of this conclusion, the October 4, 1991 proposal stated that information shows that between 1987 and 1991, there were no detections of dicofol in 11 samples tested by the FDA, and that the precentage of the tea crop treated appears to be only around 10 percent. EPA has no new information on sampling to show otherwise.

Even if the Agency determined that significant economic impacts would occur with respect to small businesses, EPA would be revoking this food additive regulation because the Delaney Clause does not permit the consideration of economic factors. Thus there is no alternative course of action that would mitigate whatever economic impact, if any, might result from the revocation of the food additive regulations for dicofol on dried tea.

C. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

VI. References

All references and copies of **Federal Register** documents cited in section II of this document are available for viewing in the Office of Pesticide Program's Public Docket under control number 300238A. The docket is located in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: 703-305-5805. The docket is open from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

Copies of the references without an associated Master Record Identification (MRID) number are available to any person. Disclosure of the references identified by an MRID number are subject to the limitations imposed by section 10 of FIFRA.

Copies of the references also are available by writing to: Freedom of Information Office (A-101), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Disclosure of the references under the Freedom of Information Act are subject

to the same limitations as outlined above.

1. Schoeny, Rita, Summary Report, December 3-4 meeting of EPA's Carcinogen Risk Verification Effort (CRAVE), dated January 16, 1992.

2. Comments submitted on the proposed revocation from Rohm and Haas Co. submitted by Robert H. Larkin of Rohm and Haas; dated October 25, 1991.

3. National Cancer Institute, 1978, Bioassay of Dicofol for Possible Carcinogenicity, CAS No. 115-32-2. Carcinogenisis Report Series 90-1978. As updated by letter from Dr. Maronpot of the National Toxicology Program to J.A. Moore, April 5, 1985.

4. Haseman, J.K., J. Huff, G.A. Borman (1984). "The Use of Historical Control Data in Carcinogenicity Studies in Rodents." *Toxicol. Pathol.*, 12:126-135.

5. Hazelton, G.A., D.C. Harris, 1989. Dicofol (Kelthane MF miticide). Twenty-four month dietary chronic oncogenicity test in rats. Rohm and Haas, #86R-190. March 29, 1989. MRID No. 411500-01.

6. In Vitro Forward Mutation (CHO/HGPRT). MRID No. 40042049. In Vitro Cytogenetics (CHO). MRID No. 40042051.

7. Brown, M.A., J.E. Casida (1987). "Metabolism of a Dicofol Impurity alpha-chloro DDT, but not Dicifol or Dechlorodicofol, to DDE in Mice and a Liver Microsomal System." *Xenobiotica.*, 17(10):1169-1174. Accession No. 256328.

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 1, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C 346a and 348.

§ 185.410 [Removed]

2. By removing § 185.410 *Bis(p-chlorophenyl)-2,2,2-trichloroethanol.*

[FR Doc. 94-5422 Filed 3-8-94; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amendment 35]

RIN 3090-AE98

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1994 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 1994, and applies for RIT allowance payments made on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

List of Subjects in 41 CFR Part 302-11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302-11 is amended to read as follows:

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165.

2. Appendixes A, B, C, and D to part 302-11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302-11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1993

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1993.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,289	$28,621	$11,017	$39,541	$14,584	$51,229	$7,740	$26,145
28	28,621	60,303	39,541	85,315	51,229	103,223	26,145	52,226
31	60,303	.....	85,315	.....	103,223	.....	52,226	.....

APPENDIX B TO PART 302–11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1993

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1993.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.8	4.4	5.25	7
If single status [3]	4.4	5.25	6.5	7
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	4	8	11
If single status [3]	6	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	4.5	4.5	4.5	4.5
8. Delaware	6	7.6	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	6.5	7.8	8.2	8.2
If single status [3]	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	8.8	9.98	9.98
17. Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	4.5	7	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	6
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	6.282	9.423	10.47	11.517
If single status [3]	8.376	10.47	10.47	11.517
28. Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31 New Jersey	2	2.5	3.5	7
If single status [3]	2	5	6.5	7
32. New Mexico	3.8	5.9	7.7	8.5
If single status [3]	5.8	7.7	8.5	8.5
33. New York	5	7.875	7.875	7.875
If single status [3]	7.875	7.875	7.875	7.875
34. North Carolina	6	7	7	7.75
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	7.5
37. Oklahoma	5	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island		(See footnote 4)		
If single status [3]		(See footnote 5)		
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont				

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
If single status [3]		(See footnote 6) (See footnote 7)		
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island (for other than single status) is 27.5 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 32 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$49,999; 27.55 percent of Federal income tax liability for employees whose earned income amounts are between $50,000–$74,999; and 25.05 percent of Federal income tax liability for employees whose earned income amounts are $75,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Rhode Island (for single status) is 32 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 27.55 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$74,999; and 25.05 percent of Federal income tax liability for employees whose earned income amounts are $75,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[6] The income tax rate for Vermont (for other than single status) is 28 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 31 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$74,999; and 34 percent of Federal income tax liability for employees whose earned income amounts are $75,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[7] The income tax rate for Vermont (for single status) is 28 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 31 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$49,999; and 34 percent of Federal income tax liability for employees whose earned income amounts are $50,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1994

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, or 1993.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,492	$30,068	$11,603	$43,304	$15,846	$55,773	$7,738	$27,855
28	30,068	67,256	43,304	97,172	55,773	115,653	27,855	58,980
31	67,256	134,936	97,172	155,995	115,653	167,653	58,980	86,842
36	134,936	273,705	155,995	284,250	167,653	277,401	86,842	142,545
39.6	273,705	.....	284,250	.....	277,401	.....	142,545	.....

APPENDIX D TO PART 302–11—PUERTO RICO TAX TABLES FOR RIT ALLOWANCE

* * * * *

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1993

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	.....	.....	$25,000

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
25	.....	$25,000	.....	.....
36	$25,000	.....	$25,000	.....

Dated: February 9, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc 94-5448 Filed 3-8-94; 8:45 am]

BILLING CODE 6820-24-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-769-FC]

RIN 0938-AG34

Medicare Program; Changes to the Requirement for Annual Physician Acknowledgement of Physician Attestation Responsibilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: Existing Medicare regulations require a hospital to obtain, on an annual basis, from each attending physician, a signed acknowledgement that the physician understands the penalty for misrepresenting the information on an attestation statement relating to principal and secondary diagnoses and major procedures performed on patients. This final rule with comment period eliminates the requirement for an annual acknowledgement statement and instead requires that a physician sign an acknowledgement statement only upon being granted admitting privileges at a hospital. The purpose of this change is to reduce the paperwork burden associated with processing claims under Medicare.

DATES: *Effective Date:* This final rule is effective on April 18, 1994.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 9, 1994.

ADDRESSES: Mail written comments (an original and three copies) to the following Administration, Department of Health and Human Services, Attention: BPD-769-FC, P.O. Box 7517, Baltimore, MD 21207-0517.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 309-, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-769-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements mail a copy of comments to:

Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Beverly Christian, (410) 966-4616.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1886 (d) and (g) of the Social Security Act (the Act) establish prospective payment systems for payment of the operating and capital-related costs of acute hospital inpatient stays under Medicare part A (Hospital Insurance). Under these prospective payment systems, payment for the operating and capital-related costs of inpatient hospital services furnished by hospitals subject to the systems (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment systems are located in 42 CFR part 412. Subpart C of part 412 sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment systems.

Under section 1866(a)(1)(F) of the Act, in order to receive payment under the Medicare program, a hospital must enter into an agreement with the Utilization and Quality Control Peer Review Organization (PRO) in the hospital's area, for the peer review of Medicare services furnished by the hospital. PROs are independent Statewide physician organizations that are required under section 1153 of the Act, among other contractual responsibilities, to review services provided, or proposed to be provided, to Medicare beneficiaries. The purpose of the review is to ensure that Medicare payment is made only for services that are medically necessary, are provided in the most appropriate setting, and meet professionally accepted standards of quality. Section 1866(a)(1)(F)(i) of the Act requires PROs to validate the diagnostic information provided by hospitals.

The regulations concerning the review of the validity of diagnostic information are set forth at 42 CFR 412.46. Section 412.46(a) requires that the patient's attending physician must attest in writing to the diagnostic and procedural information to be reviewed by the PROs before a claim is submitted. The physician's attestation is part of the medical record and includes a signed and dated statement in which the

physician certifies that the narrative descriptions of the principal and secondary diagnoses made, and procedures performed, are accurate and complete. This requirement is designed to ensure that the diagnostic and treatment information used for claims payment is correct.

Section 412.46(c) requires physician acknowledgement of the attestation responsibilities. Specifically, § 412.46(c) now requires that, when a claim is submitted, the hospital has on file a current signed and dated acknowledgement statement from the attending physician that the physician has received a notice from the hospital stating the consequences of misrepresenting, falsifying, or concealing essential information required for payment. This acknowledgement must have been completed within the year prior to the submission of the claim. The physician acknowledgement requirement is designed to ensure that, if a physician is prosecuted for attesting to false information, the government can prove that the physician had notice that false attestation is a criminal action. If the hospital does not have such a document on file, Medicare payment may be denied. Section 412.46(d) requires that, at least every 3 months, the PRO review a random sample of discharges during the period since the last review to verify that the diagnostic and procedural coding, used by the hospital for DRG assignment, is substantiated by the corresponding medical records.

As part of the validation of DRG assignments, PROs are responsible for reviewing attestation and acknowledgement statements. The review of attestation statements is administratively simple. As described above, hospitals submit attestation statements with each medical record. Therefore, PROs generally review the statement at the same time that they validate diagnostic and procedural information. Under 42 CFR 466.85, PROs have final and binding authority to issue determinations or changes as a result of DRG validation.

The present method for maintaining and validating acknowledgement statements is much more complicated administratively. Under current HCFA enforcement procedures, which are listed in an attachment to the PRO Scope of Work (SOW), PROs verify if a hospital has on file a current signed physician acknowledgement statement for each physician who has privileges at that hospital. The instructure we have developed for this PRO review are an attempt to strike a balance between our desire to pay for medical care provided by hospitals and our need to ensure compliance by physicians and hospitals with regulations that serve as the basis for payment of Medicare trust fund dollars under the prospective payment systems.

Annually, each PRO examines a sample of acknowledgement statements from each hospital under its review to determine whether a current signed and dated acknowledgement is on file for each physician sampled. Depending on the percentage of errors (that is, acknowledgement statements that are missing, incomplete, incorrect or noncurrent) that the PRO finds, it may take a variety of actions. These actions include:

- Reviewing the hospital's complete file of acknowledgement statements.
- Giving the hospital a limited period of time in which to obtain an appropriate acknowledgement statement.
- Issuing denials but reopening cases for which the hospital has a reasonable explanation.
- Denying claims associated with acknowledgement statements that are missing or unacceptable.

The PRO considers the hospital's past history when determining which action is appropriate to take.

II. Provisions of the Final Rule With Comment Period

Under the current regulations, physicians and hospitals have experienced difficulties in meeting the physician acknowledgement requirements. Physicians have expressed concern that the requirement produces unnecessary paperwork, increases costs, and is time consuming.

Hospitals have found that the maintenance of acknowledgement statements for annual inspection by the PRO presents an administrative problem of great complexity. Only the smallest facilities are able to have all of their physicians sign the statement on the same day each year. For all others, a window of opportunity must be afforded. This means that gaps in the signing of the statement are almost certain to occur. For example, if a hospital informs its physicians that they must sign the statement between November 15 and December 31 (a reasonable period of time for a large facility), and the physicians comply, there would be 47 days on which the statements could actually be signed. For the hospital, that would mean up to 47 different dates on which those statements would expire. Tracking these dates, and ensuring compliance for the next year, becomes a problem of extensive complexity and expense, especially given the limited resources of most hospital medical records departments.

Hospitals have objected to this administrative responsibility of ensuring that the annual acknowledgements are signed prior to the expiration of the previous year's statements. Also, hospitals are concerned about the possibility of the loss of revenues for cases in which they have provided appropriate care to patients, but have failed to get new statements signed on a timely basis, a process they view as a technicality. In addition, smaller hospitals have faced possible closure because of the fiscal impact of failing to comply with the requirement for annual signatures.

PRO have had two major problems with the validation of acknowledgement statements. First, the review process itself is burdensome in terms of the time and resources it consumes, particularly when a PRO must examine a hospital's complete file. In addition, the process has the potential of causing the denial of seemingly inordinate sums of money. The funds denied have the potential to close the doors of some smaller hospitals, thus denying needed access to care for Medicare beneficiaries.

The review of acknowledgement statements is, particularly in larger hospitals, a detailed, lengthy activity. Moreover, since PRO reviewers are professionally trained health care personnel, requiring them to perform acknowledgement review (a clerical task) is a misuse of resources.

The PROs are extremely reluctant to deny significant funds to a hospital for failure to meet a paperwork requirement. Lack of correct acknowledgement statements does not, in and of itself, mean that a hospital gives poor care or that it has utilization or DRG problems. Specifically, it does not imply that improper diagnostic and procedural coding to achieve incorrect DRG assignment and payment has occurred during the periods of missing, incorrect, or incomplete acknowledgement statements.

Our objective in making a change to the regulations is to reduce the "hassle factor" relating to the paperwork burden associated with processing claims under Medicare. We believe that the regulations should be revised to assure the validity of diagnostic information in a manner that is less burdensome to hospitals, physicians, and PROs, and that avoids the necessity of imposing sometimes substantial fiscal penalties in cases where diagnostic information is accurate, and the medical record has the necessary physician attestation, but the

acknowledgement statement is out of date.

In 1992, the DHHS Advisory Committee on Medicare-Physician Relationships (Gary Committee) recommended that the annual physician acknowledgement requirement be discontinued and that we modify the requirement to provide that: (1) A one-time acknowledgement signature be submitted when a physician is granted admitting privileges at a hospital; (2) the signature be kept on file by the hospital; and (3) existing acknowledgements signed by physicians already on staff would be considered to be in effect permanently.

We have considered both the Gary Committee's recommendation and several other options to ameliorate the present problems with acknowledgement statements. These include:

- Eliminating the statement altogether. This would eliminate all problems with compliance, but would not provide evidence that the physician was made aware of the penalties involved in misrepresenting, falsifying, or concealing the required information.
- Lengthening the period of time between statement updates. This would solve some of the procedural problems but could exacerbate the problem of inordinate penalties by greatly increasing the number of claims liable to denial.
- Placing the acknowledgement statement with the attestation statement. This is an administratively simple approach, and in fact was our policy for a short period of time a the outset of the implementation of the prospective payment system. However, it proved to be extremely unpopular with the physician community and was replaced with the current requirement in our August 31, 1984, final rule (49 FR 34759.)
- Shifting the monitoring requirement to the fiscal intermediaries. This would place a claims processing requirement with the entity that processes the claims and would prevent the accumulation of large numbers of claims liable to denial. It would not alleviate the hospitals' problems in acquiring signatures, but would alert the hospital immediately if a signature had expired.

After considering all of these options, we have decided to remove the requirement that the acknowledgement be completed within the year prior to the submission of the claim and replace it with the requirement that the acknowledgement be completed by the physician at the time he or she is granted admitting privileges at that particular hospital or before or at the time the physician admits his or her first patient. The hospital must continue to keep these signatures on file. Acknowledgements currently on file are considered to be in effect as long as the physician has admitting privileges in the hospital. Accordingly, the PRO review of acknowledgement statements will be reduced to physicians granted new admitting privileges.

We are recommending this change because our years of experience with this provision have revealed continuing physician discontent with the procedures, a time-consuming annual burden on hospitals in obtaining timely statements, and a significant administrative burden on PROs that validate them. There is evidence that this essentially "paper" requirement is sometimes enforced inconsistently, and we know from experience that inadvertent administrative lapses could cause significant financial burdens for hospitals that have provided medically necessary and appropriate care to the patients whose claims are subject to denial based on lack of an appropriately executed acknowledgement statement. We believe that this requirement's current level of burden to physicians, hospitals, and PROs can be substantially reduced without significantly impairing the effectiveness of the warning or its usefulness in cases where prosecution is necessary.

Although we are requiring that the statements be completed by a physician only once for each hospital at which the physician has admitting privileges, we intend to remind physicians annually of the penalties attached to misrepresentation, falsification, and concealment of information required for the payment of Federal funds. The vehicle for this reminder is under consideration.

III. Impact Statement

Unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612).

The changes we are making to the regulations will reduce both hospital and PRO administrative costs. Hospitals will be relieved of a time-consuming annual burden in obtaining timely statements, and the possibility of significant financial burdens caused by inadvertent administrative lapses due to claims subject to denial based on lack of an appropriately executed acknowledgement statement. Under the present system, we estimate that a typical hospital spends several hundred hours a year tracking and chasing down missing physician signatures, and that PROs spend many hours in each hospital checking for signatures and dealing with gaps and missing signatures. Currently, there are over 6,000 hospitals participating in the Medicare prospective payment system, and some 300,000 physicians whose signatures must be tracked and updated each year, so total costs to the economy may well be in the range of $10 million to $20 million a year for the annual acknowledgment requirement. Under the revised system, PRO review will be significantly reduced to only those physicians granted new staff privileges. Also, since we anticipate fewer instances of hospital noncompliance under the revised requirements, we anticipate that PROs rarely, if ever, will need to intensify review of 100 percent of acknowledgements in hospitals, or take actions to deny payment, based on violations of the physician attestation requirement.

While the effects of this rule are a small fraction of administrative costs in each hospital, the elimination of the requirement for annual physician acknowledgements represents a significant reduction in governmental "red tape" for hospitals, physicians, and PROs. We have determined, and the Secretary certifies, that this final rule will not have a significant economic effect on a substantial number of small entities; thus, we are not preparing an analysis for the RFA.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact statement if a final rule will have a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the FRA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic effect on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866 this regulation was reviewed by the Office of Management and Budget.

IV. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We believe that this final rule with comment period will alleviate the time-consuming annual burden on hospitals to obtain updated physician acknowledgement statements, the administrative burden on PROs to validate them, and the physician discontent with the procedures. Moreover, we believe that this requirement's current level of burden to physicians, hospitals, and PROs can be substantially reduced without significantly impairing the effectiveness of the warning or its usefulness in cases where prosecution is necessary. This rule reduces rather than imposes burdens, and we believe that the individuals and organizations being affected by these changes are best served by immediate action. We believe that notice and comment is both unnecessary and contrary to the public interest.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue a final rule in this instance. We are providing a 60-day period for public comment on this rule.

B. Information Collection Requirements

Regulations at § 412.46(c) contain information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Current § 412.46(c) requires that, when a claim is submitted, hospitals have on file a current signed and dated acknowledgment from each attending physician that the physician has received a notice from the hospital that explains the physician attestation requirement and the penalties applicable for misrepresenting, falsifying, or concealing essential information required for payment. Hospitals must ensure that physician acknowledgements are completed within 1 year prior to the submission of the claim. This requirement has imposed substantial annual paperwork costs on hospitals, which must repeatedly check signature dates and secure timely physician signatures on acknowledgement statements to ensure that, for payment purposes, no part of a year is unaccounted for by each physician's acknowledgment statement.

Under this final rule, we are requiring under revised § 412.46(c) that the acknowledgment statements be signed only at the time that the physician is granted admitting privileges at a particular hospital, or before or at the time the physician admits his or her first patient, rather than on an annual basis. Unlike the current requirement, we estimate that the residual system will impose on physicians and hospitals a shared one-time burden of only 5 minutes per acknowledgement for each physician that gains admitting privileges. The hospital must continue to keep these signatures on file. Since acknowledgements currently on file are considered to be in effect as long as the physician has admitting privileges in the hospital, the burden on PROs to review acknowledgement statements also will be reduced substantially to cover only physicians that are newly granted admitting privileges.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

C. Public Comments

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV, part 412, is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

Subpart C—[Amended]

B. In § 412.46, paragraph (c) is revised to read as follows:

§ 412.46 Medical review requirements; DRG validation.

* * * * *

(c) *Physician acknowledgement.* (1) In addition, when the claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 16, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: December 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–5315 Filed 3–7–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–49; Notice 4]

RIN 2127–AE29

Federal Motor Vehicle Safety Standards, Electric Vehicles Controls and Displays; Windshield Defrosting and Defogging Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts minor amendments to the Federal Motor Vehicle Safety Standard on windshield defrosting and defogging systems that make the systems more appropriate for electric powered motor vehicles. This document also announces the agency's decision not to adopt similar minor amendments that were proposed for controls and displays for electric powered vehicles. The reason for this decision is that standardization does not appear necessary at the present time for motor vehicle safety.

DATES: The effective date of the final rule is September 6, 1994. Petitions for reconsideration of the final rule must be received not later than April 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Gary R. Woodford, Special Projects Staff, Office of Rulemaking NHTSA (202–366–4931).

SUPPLEMENTAL INFORMATION: On January 15, 1993, NHTSA issued a notice of proposed rulemaking (NPRM) proposing minor amendments of Federal motor vehicle safety standards on controls and displays and windshield defrosting and defogging systems (58 FR 4644). The proposal was issued to make these standards more appropriate for electric powered vehicles (EVs), and to put any necessary standards in place as soon as possible to support the safe introduction and operation of EVs. To delay rulemaking until significant production of EVs actually begins could not only fail to prevent avoidable safety problems, but also disrupt and impede the development and commercialization of EVs. The reader is referred to the NPRM for an extensive discussion of the background leading to the proposal.

Towards this goal, NHTSA identified two Federal motor vehicle safety standards whose modification appeared to be desirable to facilitate introduction of EVs.

1. Standard No. 101, *Controls and Displays*

The regulatory issue was whether a gauge and symbol should be required to indicate battery energy level to inform drivers about the vehicle's remaining range capability before recharging is necessary. General Motors had stated that the European agencies have agreed to use the ISO battery symbol to indicate electrical power reserve and requested NHTSA's concurrence to use it.

As NHTSA noted in the NPRM, it believes that EV manufacturers will provide a "range indicator" or "state-of-charge" indicator similar to the fuel gauge on a conventionally powered vehicle, without a regulatory requirement that they do so. In the agency's tentative view, the method of measuring state-of-charge should be left to the manufacturer, as the accuracy of current systems varies widely at this stage of the art. However, NHTSA proposed that the state-of-charge indicator (whether a gauge or otherwise) contain an illuminated telltale with the word "RECHARGE", and the ISO battery symbol (identical to the one presently specified to indicate "electrical charge" and used in nonelectric vehicles), which would illuminate when the electrical energy remaining in the battery system contains less than 25 percent of full charge. NHTSA invited specific comments as to whether a value other than 25 percent would be more appropriate. NHTSA asked for comments on whether use of the ISO symbol to indicate a state-of-charge warning would be confusing given its present use to indicate "electrical charge" in conventionally powered vehicles. It also asked whether an alternative symbol, such as the outline of a household electrical plug, might be desirable.

Comments on the proposal were received from Chrysler Corporation, Volkswagen of America, Inc. (VW), General Motors Corporation (GM), Toyota Motor Corporate Services of North America, Inc. (Toyota), Ford Motor Company, Mitsubishi Motors Corp., and American Honda Motor Co. (Honda).

The comments indicated that manufacturers intend to offer a state-of-charge indicator with a means for the operator to determine when battery recharging is necessary. However, four of the five manufacturers who commented on the issue disagreed with use of the battery symbol for a low state-of-charge warning since it has already acquired a meaning for operators of conventional vehicles. Only GM supported use of the symbol. Two of the three commenters on the issue opposed use of the word "recharge", though it was supported by GM. Chrysler commented that use of the word might cause an operator to feel that an immediate recharge was necessary. VW believes that use of the word is inappropriate because the need for a recharge can be determined from the state-of-charge indicator.

These comments indicate that manufacturers will offer a state-of-charge indicator and that a Federal regulation requiring them to do so is unnecessary. Given the diversity of opinion as to appropriate wording and/or symbols, the agency is choosing at the present time not to impose a regulatory requirement for identification of a low the state-of-charge, recognizing that any wording or symbol chosen by an EV manufacturer will be explained in the operator's manual.

Finally, although NHTSA did not propose regulatory language that a low state-of-charge warning activate when the state-of-charge reached 25 percent of capacity, it asked for comments on the appropriateness of this value, and on alternative values. All seven commenters recommended that the activation level of a low state-of-charge warning be determined by the vehicle manufacturer, with six rejecting the 25 percent level, and the seventh merely conceding that it "may be adequate." These comments will be taken into consideration should NHTSA decide to explore this subject further in the further.

For the reasons discussed above, NHTSA has decided not to adopt the amendments to Standard No. 101 that were proposed in Notice 3.

2. FMVSS No. 103, *Windshield Defrosting and Defogging Systems*

One provision of Standard No. 103 requires the defrosting and defogging system of a vehicle to be capable of melting a specific amount of windshield ice within a specified time period after allowing time for engine warm-up. NHTSA believed that the reference to engine warm-up is inappropriate for EVs in general and might need revision. In accordance with recommendations from industry, NHTSA proposed that the warm-up procedure should be the one that the manufacturer recommends for cold weather starting. Specifically, it proposed that the manufacturer's cold weather warmup procedure be followed by vehicles equipped with a heating system (other than a heat exchanger type system that uses the engine's liquid coolant as a means to supply the heat to the heat exchanger). These changes

would be made to the demonstration procedures in S4.3(a) and S4.3(b).

Comments were received from GM, Chrysler, Ford, VW, and Toyota. GM, VW and Ford supported the proposed amendments as adequate and appropriate.

Chrysler supported the proposal as well. It brought to NHTSA's attention the fact that the EV equipped with an electrical resistance heater, and tested at rest in a cold room facility, would have an abundance of electrical power available and could easily meet most defrost performance requirements. However, it noted that when the same vehicle is operating under normal road load conditions, the defrost/heat system may not have the same battery energy available since the propulsion system may utilize a large amount of power. Chrysler cautioned that these factors must be considered before establishing precise defrost/defogging system requirements for EVs. In its opinion, judging EV defroster performance "will require unique testing procedures that must be relatively elaborate and formalized to ensure that vehicle performance meets the regulatory intent of the standard." It observed that these procedures could be formulated by knowledgeable industry personnel working through an organization such as the SAE.

NHTSA concurs with Chrysler's comments and encourages the industry, either through SAE or other industry organizations, to explore this issue. At present, Standard No. 103 allows the defrosting and defogging system to be tested with the vehicle in neutral gear. EVs equipped with electric resistance heaters, which draw power from the vehicle propulsion batteries, may incur a degradation in performance under road load conditions or under less than full state-of-charge conditions. Currently, the agency has no information to determine the extent to which any such degradation may exist, or the extent to which it may impede vehicle safety. Moreover, the agency has no information on the number of EVs that will employ electric resistance heaters or use auxiliary combustible fuel heaters. To a large extent, EV technology is still in the developmental state. Therefore, NHTSA will monitor this issue for possible future rulemaking, and encourages the industry to explore it as well.

Toyota also supported the proposed amendments, but suggested that three pre-test conditions be adopted. Under these conditions, testing would be initiated with the battery at full charge, and the battery would be charging until defrost/defog testing is started. However, the battery should not be included in the −18 degrees C soak time as currently specified by the test procedure of SAE Standard J902 incorporated by reference in Standard No. 103. NHTSA appreciates Toyota's comments but believes that manufacturers are likely to begin defrost/defog testing with the battery at its maximum state of charge, and the battery will be charging until testing begins. Thus, no further regulatory language appears called for. The agency disagrees with Toyota's contention that the battery should not be included in the soak time because a temperature of −18 degrees C replicates the real world conditions under which some EVs are likely to be operated. Thus, NHTSA will not consider Toyota's suggestion as a candidate for future rulemaking.

Taking into consideration the foregoing remarks, NHTSA is amending S4.3 (a) and (b) of Standard No. 103 exactly as proposed, with a single exception. The present reference speed in S4.3(b)(2)(ii) is 25 m.p.h. The NPRM incorrectly stated it as 15 m.p.h. There was no intention to propose a reference speed of 15 m.p.h., and the final rule correctly states it as 25 m.p.h.

Effective Date

The amendments are effective September 6, 1994.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under E.O. 12866 "Regulatory Planning and Review", and the Department of Transportation regulatory policies and procedures. This action has been determined to be not "significant" under either, and has not been reviewed by OMB under E.O. 12866. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. The purpose of the rule is to clarify several existing requirements applicable to all motor vehicles so that they may, in recognition of the different characteristics of EVs, be more appropriate for EVs. The rule makes no change in the cost of compliance for EVs.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and it has been determined that the notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has determined that the notice will not have a significant effect upon the environment for the purposes of the National Environmental Policy Act. There is no environmental impact associated with the rulemaking action since it clarifies the applicability of an existing Federal motor vehicle safety standard to EVs. To the extent that the rulemaking action will facilitate the production of EVs, it may result in a net positive benefit to the environment.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Although some EV manufacturers may be small businesses within the meaning of the Regulatory Flexibility Act, these manufacturers are already required to comply with the Federal motor vehicle safety standards that the rulemaking action is intended to clarify. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new EVs should not be impacted. The notice clarifies some existing requirements that EVs must meet. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR part 1.50.

§ 571.103 [Amended]

2. Paragraphs S4.3 (a) and (b) of § 571.103 are revised to read:

S4.3 Demonstration procedure * * *

(a) During the first 5 minutes of the test:

(1) For a passenger car equipped with a heating system other than a heat exchanger type that uses the engine's coolant as a means to supply the heat to the heat exchanger, the warm-up procedure is that specified by the vehicle's manufacturer for cold weather starting, except that connection to a power or heat source external to the vehicle is not permitted.

(2) For all other passenger cars, the warm-up procedure may be that recommended by the vehicle's manufacturer for cold weather starting.

(b) During the last 35 minutes of the test period (or the entire test period if the 5-minute warm-up procedure specified in paragraph (a) of this section is not used),

(1) For a passenger car equipped with a heating system other than a heat exchanger type that uses the engine's coolant as a means to supply the heat to the heat exchanger, the procedure shall be that specified by the vehicle's manufacturer for cold weather starting, except that connection to a power or heat source external to the vehicle is not permitted.

(2) For all other passenger cars, either—

(i) The engine speed shall not exceed 1,500 r.p.m. in neutral gear; or

(ii) The engine speed and load shall not exceed the speed and load at 25 m.p.h. in the manufacturer's recommended gear with road load.

* * * * *

Issued on March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5187 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 940368–4068; I.D. 030294C]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS issues this emergency interim rule to provide alternatives to the minimum ring size required for Atlantic sea scallop dredges by amendment 4 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) and its implementing regulations. Through April 30, 1994, participants in the fishery must comply with either the scallop meat-count requirement or corresponding shell-height requirement that existed prior to the implementation of amendment 4, or to the ring-size requirement implemented under amendment 4. The intent is to provide relief to fishermen who may have been unable to obtain the required rings, which are not currently available in sufficient quantities to supply the industry.

EFFECTIVE DATES: March 4, 1994 through April 30, 1994.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, NMFS, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was prepared by the New England Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and approved by NMFS. Regulations implementing amendment 4 were published January 19, 1994 (59 FR 2757), and became effective March 1, 1994. In addition to other management measures, amendment 4 eliminated the average meat-count standard previously in effect to protect small scallops. The meat-count standard was most recently established at 33 meats per pound (59 FR 2777, January 19, 1994), which corresponds to a minimum shell height of 3 11/16 inches (94 mm). In its place, to reduce the number of juvenile scallops that would be retained and subjected to unnecessary mortality through elimination of the meat-count standard, amendment 4 imposed a minimum inside diameter ring size for scallop dredges of 3¼ inches (83 mm) in 1994 and 1995.

Because they were unable to predict whether amendment 4 would be approved, suppliers of scallop dredge rings were reluctant to purchase, and have available, sufficient numbers of the required rings as of March 1, 1994. As a result, not all scallop vessel owners have been able to purchase the required rings; therefore, they are unable to comply with the regulations implementing amendment 4 now in effect. These circumstances have made it impossible for such vessels to fish.

To provide relief to scallop fishermen unable to acquire the larger dredge rings, and to provide protection to juvenile sea scallops, this emergency rule allows vessels to comply with either the 3¼ inch (83 mm) minimum ring-size requirement, or an average 33-meat-count requirement (or the corresponding minimum shell-height standard) through April 30, 1994. By May 1, 1994, all scallop dredge vessels must comply with the minimum ring-size requirement. It is anticipated that the circumstances necessitating this emergency action will have been alleviated by that date.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This rule is not subject to review under Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The AA finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment under the provisions of section 553(b) of the Administrative Procedure Act (APA). Further, because this rule relieves a restriction, under section 553(d) of the APA, there is no need to delay for 30 days the effective date of these regulations.

List of Subjects in 50 CFR 650

Fisheries, Reporting and recordkeeping requirements.

Dated: March 3, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 650 is temporarily amended from March 4, 1994, through April 30, 1994, as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 650.9, paragraphs (b)(13) and (c)(14) are suspended and paragraphs

(b)(25), (b)(26), (c)(8), and (c)(9) are added to read as follows:

§ 650.9 Prohibitions.

* * * * *

(b) * * *

(25) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30(a).

(26) Fail to comply with the alternatives provided in § 650.30(a), if in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fishing under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(c) * * *

(8) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30(a).

(9) Fail to comply with the average meat-count standard or minimum shell-height standard alternatives provided in § 650.30(a), if in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fishing for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30.

* * * * *

3. Section 650.20 is suspended.

4. In § 650.21, paragraph (b)(3)(i) is suspended and paragraph (b)(3)(iv) is added to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(b) * * *

(3) * * *

(iv) For 1994 and 1995, the inside diameter ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3¼ inches (83 mm), except as provided in § 650.30.

* * * * *

5. A new § 650.30 is added to subpart B to read as follows:

§ 650.30 Alternatives to dredge minimum ring-size requirements.

(a) From March 4, 1994, through April 30, 1994, scallop dredge vessels may, as an alternative to dredge minimum ring-size requirements contained in § 650.21(b)(3)(iv), comply with one of the standards in paragraphs (a)(1) or (a)(2) of this section. (1) The average meat count for shucked Atlantic sea scallops must not exceed 33 meats per pound (per 0.45 kg).

(2) The shell height for in-shell Atlantic sea scallops must not be less than 3 11/16 inches (94 mm).

(b) *Compliance and sampling.* Compliance with the specified meat-count and shell-height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows: (1) *Shucked meats (average meat count).* The Authorized Officer will take 1-lb (0.45 kg) samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 1-lb samples be examined as a sample group. A sample group fails to comply with the standard if the average meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be deemed in violation of this regulation if the sample group fails to comply with the standard.

(2) *Scallops in the shell (minimum shell height).* The Authorized Officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(3) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 L) of Atlantic sea scallops in the shell must offload all fish each day within the applicable 12-hour offloading period as specified below:

State of offloading	Penod
ME, NH, NC, SC, GA, & FL.	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA, & PA.	6 a.m. to 6 p.m.

(4) All other vessels not covered by paragraph (b)(3) of this section, landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops, must offload the scallops within the applicable offloading period specified in paragraph (b)(3) of this section.

(5) *Presumption.* Fish not offloaded from vessels subject to the provisions of paragraph (b)(3) of this section, and shucked Atlantic sea scallops not offloaded from vessels subject to the provisions of paragraph (b)(4) of this section, during the offloading period, must remain on the vessel until the following offloading period. There shall be a presumption of unlawful offloading for any such catch that is observed or identified on such a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

[FR Doc. 94-5367 Filed 3-4-94; 11:48 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 46
Wednesday, March 9, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[FV-93-959-2PR]

Onions Grown in South Texas—Regulation of Red Onions and Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with a request for comments.

SUMMARY: This proposed rule would establish requirements for red variety onions grown in South Texas under Marketing Order 959. In recent years, shipments of poor quality red onions have appeared in the marketplace and have adversely affected grower prices. This rule would tend to improve grower prices by providing more desirable quality red onions for consumers. This rule also would extend the termination date of the order's regulatory period from May 20 to June 15 of each year. More late season onions are being grown in a portion of the production area, increasing the need for marketing order quality requirements over a longer time period. Regulating onions from the production area through June 15 would help make more desirable onions available to markets.

DATES: Comments must be received by March 24, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC, 20090–6456, telephone: (202) 690–0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposal will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 38 handlers of South Texas onions who are subject to regulation under the marketing order and 97 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At its November 9, 1993 meeting, the South Texas Onion Committee (committee) recommended, under the authority of § 959.52(c) of the order, that red varieties of onions be regulated and also that the termination date of the regulatory period for all varieties of regulated onions be extended from May 20 to June 15 of each year.

Red varieties of onions have been exempt from regulation since the inception of Marketing Order No. 959. The quantities of such onions produced have usually represented a small portion of the total annual production in the marketing order's regulated area. However, red variety acreage has increased significantly in recent seasons. Moreover, the committee reports that poor quality red onions grown in the production area have appeared in the marketplace from time to time.

The impact on the industry is two-fold. Poor quality red onions diminish consumer confidence in the better quality red onions, leading to fewer sales and lower returns to growers. In addition, a less favorable consumer opinion of red variety onions often leads to lower sales for all onions grown in the production area, including yellow and white varieties which now enjoy an

excellent reputation with receivers and consumers.

Red onions, like yellow onions and white onions, are varieties of *Allium cepa*, and are therefore covered by the same U.S. standards referenced in § 959.322(h). Because of this, regulatory requirements set forth in § 959.322 applicable to yellow and white varieties of onions are appropriate for red varieties also. The committee believes that by regulating red onions in the same fashion as yellow and white onions, that consumers can be assured of buying better quality red onions. Thus, increased consumer confidence should result in improved returns to growers. In addition to grade and size requirements, the committee also recommended that red varieties be subject to the same pack, container, inspection, assessment, and safeguard requirements as yellow and white varieties. In this way, red, yellow, and white onions would be regulated to the same extent.

The second recommendation concerns the length of the regulatory period for shipments of onions from the regulated area. Currently, order regulations are in effect from March 1 through May 20 each year. District 2 (Laredo-Winter Garden) is in the northern part of the production area and has a shipping season that extends from May to well into June. This district is comprised of the Counties of Zapata, Webb, Jim Hogg, DeWitt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit and LaSalle. In the 1980's, District 2 production was declining and industry members asked to be relieved from the marketing order requirements after May 20 each season, instead of the June 15 date in effect at that time. By May 20, shipments from District No. 1 in the southern part of the production area usually are finished. Thus, effective for the 1989 and subsequent seasons, the termination date for the regulatory period was advanced for the entire production area from June 15 to May 20 (54 FR 8519, March 1, 1989).

However, committee records indicate an increase in onion shipments from District 2 during the past three years. The committee stated that it is the desire of the producers in District 2 that onions regulated under the marketing order once again be regulated during the May 20 through June 15 period. Shipments from this district typically account for 10 to 12 percent of the production area total, and the committee believes that grade, size, container, and other order requirements are necessary to maintain the quality of South Texas onions that receivers and consumers have become accustomed to. Extension of the regulatory period would not affect District 1 handlers as shipments from that district normally are completed by mid-May.

Currently, handlers may not package or load onions on Sunday during the period March 1 through May 20 of each season. The committee recommended not changing this requirement. After May 20, District 2 handlers would be competing with unregulated shipments from other areas such as California. Permitting District 2 handlers to package and ship whenever they can find buyers would help to reduce the competitive advantage of handlers shipping from outside the regulated area.

This action was unanimously recommended by the committee, and should ensure that consumers are provided with quality onions, including red varieties, during the entire South Texas shipping period.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for onions under a domestic marketing order, imported onions must meet the same or comparable requirements, subject to concurrence by the United States Trade Representative. Because this rule would establish grade, size, quality and maturity requirements on red onions and would change the regulatory period under the South Texas onion marketing order, corresponding changes would be needed in the onion import regulation. Such changes would be addressed in a separate onion import rule.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0074.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because any changes to the regulations, if adopted, should be in effect as soon as possible. The marketing period begins March 1. All comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 959.322, the introductory paragraph is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 15, no handler shall handle any onions unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

* * * * *

Dated: March 4, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–5559 Filed 3–8–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of

information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by April 11, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on February 28, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27371.

Petitioner: Mr. Gerald A. Silver/ Homeowners of Encino.

Regulations Affected: 14 CFR 91.119 (b) and (c).

Description of Rule Change Sought: To limit helicopter operations below the minimums prescribed in § 91.119 (b) and (c) to helicopters operated by any municipal, county, state, or federal authority for emergency services, rescue operations, police or fire protection.

Petitioner's Reason for the Request: The petitioner(s) feel the helicopter noise problem, created by low flying helicopters overflying his/their community conducting sightseeing tours (particularly at night), real estate caravan flybys to show homes to prospective customers, and other short distance business travel, is a flagrant abuse of the constituency represented by the petitioner(s). It is a recurring and ongoing problem that has not been, heretofore, relieved by means of a pilot/ industry cooperative endeavor.

[FR Doc. 94–5411 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–33]

Proposed Revision of Class E Airspace; Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace at Refugio, TX, to exclude that airspace within a 2 NM radius of Rooke Field, TX, from the 700 feet above ground level (AGL) Class E airspace located at Mellon Ranch, Refugio, TX. Class E airspace was developed to contain aircraft operations into the Mellon Ranch Airport, Refugio, TX. This airspace overlies Rooke Field located approximately 6 nautical miles (NM) west of the Mellon Ranch Airport. A request from operators at Rooke Field was made to exclude the airspace within a two NM radius of Rooke Field from the Mellon Ranch Class E airspace. The intended effect of this proposal is to exclude that airspace within a two NM radius of Rooke Field from the Mellon Ranch Class E Airspace and to revoke that portion of the Mellon Ranch Class E airspace that is no longer needed to contain aircraft executing the special instrument approach procedure (SIAP) at Refugio, Mellon Ranch Airport, TX.

DATES: Comments must be received on or before April 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–33, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5595.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–33." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 feet AGL Class E airspace located at Refugio, TX. A request from operators at Rooke Field was made to exclude the airspace within a two nautical mile (NM) radius of Rooke

Field from the Mellon Ranch Class E airspace. The intended effect of this proposal is to exclude that airspace within a two NM radius of Rooke Field from the Mellon Ranch Class E Airspace and to revoke that portion of the Mellon Class E airspace that is no longer needed to contain aircraft executing the special instrument approach procedure (SIAP) at Refugio, Mellon Ranch Airport, TX. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E2 Refugio, TX [Revised]

Refugio, Mellon Ranch Airport, TX
(lat. 28°16'51" N., long. 97°12'41" W.)
Mellon Ranch RBN
(lat. 28°16'48" N., long. 97°12'21" W.)
Refugio, Rooke Field, TX
(lat. 28°17'37" N., long. 97°19'23" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mellon Ranch Airport and within 2.7 miles each side of the 345° bearing from the Mellon Ranch RBN extending from the 6.6-mile radius to 7.4 miles north of the airport and within 2.7 miles each side of the 145° bearing from the Mellon Ranch RBN extending from the 6.6-mile radius to 7.4 miles south of the airport, excluding that airspace within a 2-mile radius of Refugio, Rooke Field, TX, and excluding that airspace within the Rockport, TX, Class E airspace.

* * * * *

Issued in Fort Worth, TX on February 15, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–5415 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

March 3, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of filings and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received reports from three industry Working Groups relating to standards for Electronic Bulletin Boards. Working Group 4 submitted a report on communication protocols and operational logistics, Working Group 5 filed a report detailing its proposal for common company codes, and Working Group 1 filed a report containing proposals relating to an electronic index of purchasers, operationally available capacity, and cost issues. The Commission is affording interested persons an opportunity to file comments on these filings.

DATES: Comments due by March 14, 1994.

ADDRESSES: Comments should be filed at: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.
Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE, Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE, Washington DC 20426.

Take notice that on February 1, 1994, Working Group 4 filed its report on communication protocols and operational logistics and Working Group 5 filed a report detailing its proposal for common company codes. On February 23, 1994, Working Group 1 filed a report containing proposals relating to an electronic index of purchasers, operationally available capacity, and cost issues.

Any person desiring to submit comments on these filings should file such comments with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 on or before March 14, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-5399 Filed 3-8-94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO28-1-5815, CO36-1-6302; FRL-4847-4]

Clean Air Act Approval and Promulgation of PM-10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, EPA is proposing approval of the State implementation plan (SIP) submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The SIP was submitted on February 24, 1993 and December 9, 1993 to satisfy certain federal requirements for an approvable nonattainment area PM-10 plan for Pagosa Springs, Colorado. In addition, EPA is proposing to approve the PM-10 contingency measures for the Pagosa Springs nonattainment area, which were included in the State's December 9, 1993 submittal.

EPA is also proposing to amend the nonattainment area boundary for the Pagosa Springs nonattainment area to include some of the surrounding suburban area of Pagosa Springs. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Pagosa Springs airshed.

DATES: Comments on this proposed action must be received in writing by April 8, 1994.

ADDRESSES: Written comments should be addressed to:

Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

SUPPLEMENTARY INFORMATION:

I. Background

Pagosa Springs, Colorado was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Pagosa Springs).) The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this notice on the Colorado moderate PM-10 SIP for the Pagosa Springs nonattainment area submitted on February 24, 1993 and on December 9, 1993, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992. (See section 189(a) of the Act.) Revisions to satisfy these requirements were submitted by the State on January 14, 1993, and EPA will be taking action on these requirements in a separate **Federal Register** notice. Such States also were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13543-13544.) The State adopted contingency measures for Pagosa Springs in November of 1993, and those measures were included in the State's December 9, 1993 SIP submittal. Along with proposing action on the moderate PM-10 nonattainment area SIP requirements which were due to EPA on November 15, 1991, EPA is also proposing action on these contingency measures in this notice.

II. Proposed Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, EPA is proposing to grant approval of the Pagosa Springs PM-10

[1] The 1990 Amendments to the Clear Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

attainment plan, which was due to EPA on November 15, 1991 and submitted by the State on February 24, 1993 and on December 9, 1993. EPA is also proposing to approve the PM–10 contingency measures for Pagosa Springs, which were due to EPA on November 15, 1993 and submitted by the State on December 9, 1993. EPA believes the PM–10 attainment plan and contingency measures for Pagosa Springs meet all of the applicable requirements of the Act.

In addition, EPA is proposing to amend the nonattainment area boundary for the Pagosa Springs nonattainment area to include some of the surrounding suburban area of Pagosa Springs. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Pagosa Springs airshed. (See section 110(k)(6) of the Act.)

Since the Pagosa Springs PM–10 attainment plan was not submitted by November 15, 1991 as required by section 189(a)(2)(A) of the Act, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit the SIP and notified the Governor in a letter dated December 16, 1991. (See 57 FR 19906 (May 8, 1992).) After the initial Pagosa Springs PM–10 SIP was submitted on February 24, 1993, EPA found the submittal to be complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated April 23, 1993. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

A. Analysis of State Submittals

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

After providing more than 30 days of prior public notice, the State of Colorado held a public hearing on November 19, 1992 to entertain public comment on the implementation plan for Pagosa Springs. The plan for Pagosa Springs was subsequently adopted by the State and submitted by the Governor by letter dated February 24, 1993 as a proposed revision to the SIP. EPA received the submittal on February 26, 1993.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V (1992). The submittal was found to be complete, and a letter dated April 23, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

On December 9, 1993, the State submitted a revision to the Pagosa Springs PM–10 SIP, which contained contingency measures, additional control measures, and a revised demonstration of attainment because the initial attainment demonstration in the State's February 24, 1993 submittal did not conform to EPA modeling policy. This revision was submitted pursuant to a November 12, 1993 public hearing, for which the State again provided more than 30 days of prior public notice. After receiving the submittal on December 14, 1993, EPA found the December 1993 submittal to be administratively and technically complete, and a letter dated February 15, 1994 was forwarded to the Governor indicating the completeness of the submittal.

In this action, EPA proposes approval of the State of Colorado's PM–10 SIP submittals for Pagosa Springs, including the PM–10 contingency measures submitted with the December 1993 submittal, and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of such an inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventory must be received with the submission (see 57 FR 13539).

In its February 24, 1993 submittal the State of Colorado submitted a winter season emissions inventory for the base year of 1988. A winter season emissions inventory was calculated because the highest PM–10 concentrations have occurred in the winter season in Pagosa Springs. The emissions inventory was generally calculated using EPA's "Compilation of Air Pollution Emission Factors" (AP–42) with the exception of the sanding emissions, which were calculated using emission factors developed for the Denver PM–10 SIP at EPA's recommendation. EPA had previously commented that the AP–42 default emission factors for re-entrained road dust from paved roads likely underestimated the emissions from this source category for high elevation mountain towns, such as Pagosa Springs. The State, therefore, included a commitment in the Pagosa Springs SIP to conduct a silt loading study in Pagosa Springs during the winter of 1992–1993 and to use that study to improve the emissions inventory and verify the adequacy of the attainment and maintenance demonstration.

The State fulfilled its commitment by submitting a revised emissions inventory on September 20, 1993. The results of the silt loading study confirmed that emissions from re-entrained road dust from paved roads in Pagosa Springs were much higher than the AP–42 default emission factors, as was suspected by EPA. The final emissions inventory showed that re-entrained road dust from paved roads contributes 78 percent to the total emissions in the area. Other sources of emissions include re-entrained road dust from unpaved roads (20 percent), residential wood burning (2 percent), and tailpipe emissions and coal burning stoves (0.1 percent). Only one permanent stationary source was identified in the area, and its emissions were insignificant (less than 1 ton per year).

EPA has reviewed the revised emissions inventory and believes it generally appears to be accurate and comprehensive. Therefore, EPA is proposing to approve the emissions inventory because it provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

172(c)(3) and 110(a)(2)(K) of the Act.[3] For further details, see the Technical Support Document (TSD) accompanying this notice.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the Act). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

In the State's February 24, 1993 submittal, the State identified re-entrained road dust from unpaved roads as the primary contributor to the nonattainment area problem in Pagosa Springs. The State chose to control this source category by requiring the paving of 6 miles of unpaved gravel roads, and the attainment analysis provided in the submittal showed that this control measure was adequate for Pagosa Springs to demonstrate attainment of the PM–10 NAAQS by December 31, 1994. However, as discussed in Section II.A.2. of this notice, the State revised the emissions inventory for the area based on silt loading studies conducted during the 1992/1993 winter season, which showed that re-entrained road dust from paved roads was the primary contributor to the PM–10 emissions in the area, rather than from unpaved roads. Also, as more fully discussed in Section II.A.4. of this notice, the State did not follow EPA modeling policy in the demonstration of attainment provided in the February 1993 SIP submittal. When the State revised the analysis to conform with EPA policy, the results showed that the area could not demonstrate attainment of the PM–10 NAAQS without the adoption of additional control measures. Thus, on December 9, 1993, the State submitted additional PM–10 control measures for re-entrained road dust from paved roads for the Pagosa Springs nonattainment area, as well as a demonstration of attainment consistent with EPA modeling policy which showed that the control measures adopted would result in the Pagosa Springs area attaining the PM–10 NAAQS in 1994. (For further details, see the TSD accompanying this notice.)

Thus, the State's submittals provide that the PM–10 source categories of re-entrained road dust from paved and unpaved roads will be controlled as follows:

Source	Control	Benefit towards reducing PM–10 emissions
Re-entrained road dust from paved roads.	Specs for 1% fines content of street sanding materials.	Fines content of 1% results in a 75% reduction in emissions due to fines content of sanding materials.
	Reduction in the amount of sanding materials applied (by 10% in 12/93–11/95 and by 15% beginning in 12/95).	Combining the 75% reduction with a 10% reduction in the amount of street sanding materials applied results in an overall reduction of 67.7% from the applicable roads in this source category. Combining this with a 15% reduction beginning in 12/95 results in an overall reduction in 69.1% from the applicable roads in this category.
Re-entrained road dust from unpaved roads.	Paving of six miles of unpaved gravel roads.	No credit taken for this provision.

The State did not take credit for the paving of six miles of gravel roads due to the results of the silt loading studies conducted during the 1992/1993 winter and the subsequent revised emissions inventory. Specifically, the emission factor used for calculating re-entrained road dust from paved roads, based on the results of a Pagosa Springs-specific study, was actually greater than the emission factor used for calculating re-entrained road dust from unpaved gravel roads. This is likely due to the fact that the State did not develop a Pagosa Springs-specific emission factor for gravel roads, as was done for paved roads; the State simply relied upon EPA default methods for determining emissions from unpaved roads. Since, using these emission factors, the paving of gravel roads is projected to result in a slight increase in PM–10 emissions, the State declined to take credit for the paving of gravel roads towards reducing PM–10 emissions. Nevertheless, the State decided to retain the road paving provision because the State believes that it will result in an overall reduction in PM–10 emissions. See the TSD for further information. EPA believes it is reasonable for the State to retain the road paving measure in light of the potential uncertainty of emissions reductions in this instance due to the State's relying on EPA default methods for determining re-entrained road dust emissions from unpaved gravel roads.

All of these requirements will be implemented through Section I. of the Colorado regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements." The requirements for street sanding material specifications and for the reduction in sanding material applied, found in Sections I.C. and I.D. of the State regulation, pertain to the major State highways through town and must be complied with beginning December 1, 1993. The State of Colorado has received verbal notification from the Colorado Department of Transportation that these measures have been implemented in the Pagosa Springs nonattainment area since December 1, 1993. Control of this source category is expected to result in an estimated overall reduction of 4997 lb/day of PM–10 emissions in the area. Section I.B. of the State regulation requires 3 7/10 miles of unpaved gravel roads to be paved by December 10, 1993, and an additional 2 3/10 miles of unpaved gravel roads to be paved by December 31, 1994. The Town of Pagosa Springs completed the paving of 3 7/10 miles of unpaved gravel roads by the end of the summer of 1992.

In order to comply with the State's Administrative Procedures Act, the revisions to this regulation pertaining to the street sanding controls, which were adopted on November 12, 1993, did not become effective until December 30, 1993. However, since these provisions were required to be implemented by December 1, 1993, the State adopted an emergency rule on November 12, 1993 to make the new provisions in the State's nonattainment area regulation effective December 1, 1993. So, until the State's regulation became effective, this emergency rule (which is identical to the State nonattainment area regulation) applied beginning December 1, 1993.

For an area that demonstrates attainment by the applicable attainment date, the implementation of otherwise available control measures is not "reasonably" required by RACM if such

[3] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

control measures would not expedite attainment. (see 57 FR 13543) Control of other PM–10 emissions in the area, such as residential wood combustion (which contributes 2 percent) and tailpipe emissions and coal burning stoves (which contribute 0.1 percent), was not required because the implementation of such controls would not have further advanced the attainment date in the area.

Similarly, RACM (including RACT) did not require the adoption of otherwise available control measures for stationary sources in the Pagosa Springs nonattainment area because point source emissions in the Pagosa Springs area are de minimis (see 57 FR 13540) and control of such sources would not expedite attainment and maintenance of the PM–10 NAAQS.

There are also other Statewide control measures that already apply in the Pagosa Springs area, which will help curb PM–10 emissions in the Pagosa Springs nonattainment area. Specifically, Colorado Regulation No. 4 requires new wood stoves to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b), and Colorado Regulation No. 3 regulates the construction and modification of stationary sources of PM–10.[4] These measures will help to reduce emissions from new stationary source growth and residential wood combustion. However, EPA is not proposing action on Regulations No. 3 and 4 because EPA has previously approved these regulations in separate notices. For further information, see the TSD accompanying this notice.

A more detailed discussion of the individual source contributions, their associated control measures, and an explanation as to why certain available control measures were not implemented can be found in the TSD. The EPA has reviewed the State's explanation and associated documentation and has concluded that it adequately justifies the control measures to be implemented. The implementation of Pagosa Springs' PM–10 control strategy is projected to result in the attainment of the PM–10 NAAQS by December 31, 1994. Therefore, by this notice, EPA is proposing to approve Colorado's SIP submittals for the Pagosa Springs nonattainment area as meeting the RACM including RACT requirement. However, EPA is not proposing action on Regulations No. 3 and 4 because EPA has previously approved these regulations in separate actions (see the TSD for further information).

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

EPA regulations provide that attainment be demonstrated by means of a proportional model or dispersion model or other procedure shown to be adequate and appropriate for such purposes. (see 40 CFR 51.112(a)) EPA policy recommends that the preferred approach for estimating the air quality impacts of emissions of PM–10 is to use receptor modeling in combination with dispersion modeling. On July 5, 1990, EPA issued guidance providing that, in certain situations, it may be more appropriate to rely on a receptor modeling demonstration alone as the basis for the attainment demonstration (see July 5, 1990 memo to Regional Air Branch Chiefs from Robert D. Bauman, Chief of SO_2/Particulate Matter Programs Branch and Joseph Tikvart, Chief of Source Receptor Analysis Branch). Pagosa Springs meets the criteria discussed in the July 5, 1990 memo to justify using receptor modeling alone.

The State originally planned to use this approach in its initial SIP submittal and attainment demonstration. However, after further review, the State determined that the chemical mass balance (CMB) data available at the time which would be used in the receptor modeling was inadequate and decided to base the attainment and maintenance demonstration on simple emissions rollback modeling. Emissions rollback modeling involves using the ratio of the design day ambient concentration to the design day emissions and projecting future concentrations. However, EPA policy allows the use of other methods of demonstrating attainment, such as emissions rollback modeling, only in certain limited circumstances which were not met by this area. (See March 4, 1991 memorandum from John Calcagni, Director of EPA's Air Quality Management Division, and William G. Laxton, Director of EPA's Technical Support Division, entitled "PM–10 SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas.")

Because the State did not follow EPA policy in calculating the attainment demonstration for Pagosa Springs, the State included a commitment in the Pagosa Springs PM–10 SIP to conduct revised CMB analyses on all filters greater than 100 $\mu g/m^3$, as well as to calculate a revised emissions inventory based on a silt loading study in Pagosa Springs, and to use this information to assess the adequacy of the SIP. If the revised demonstration showed that additional control measures were needed, the State committed to propose such additional control measures to the Colorado Air Quality Control Commission (AQCC) for adoption by August 31, 1993.

On July 28, 1993, the State submitted its preliminary analysis of the revised attainment and maintenance demonstrations using receptor modeling (based on the revised CMB data and emissions inventory), which indicated that the area could not demonstrate timely attainment and maintenance of the PM–10 NAAQS without the adoption of additional control measures. Subsequently, consistent with the State's commitment, the State proposed additional PM–10 control measures for the Pagosa Springs area to the AQCC on August 16, 1993. These measures were adopted on November 12, 1993 and were submitted for approval in the SIP on December 9, 1993. The December submittal included a revised attainment and maintenance demonstration which utilized receptor modeling coupled with emissions rollback modeling.

The attainment and maintenance demonstrations presented in the December 9, 1993 submittal indicated that the NAAQS for PM–10 would be attained in 1994 in the Pagosa Springs area and maintained through December 31, 1997. The 24-hour PM–10 NAAQS is 150 $\mu g/m^3$, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.) The demonstration provided in the December 9, 1993 submittal predicted a 24-hour design concentration in the attainment year of 1994 of 139 $\mu g/m^3$. The demonstration also predicted a 24-hour design concentration in 1997 of 139 $\mu g/m^3$. Thus, the State's attainment and maintenance demonstrations showed that the control measures adopted for the Pagosa Springs area would

[4] The State is required by the amended Clean Air Act to adopt a revised new source review permit program for the construction and operation of new and modified stationary sources. See section 189(a)(1)(A). This SIP revision, submitted by the State on January 14, 1993, was due independent of the November 15, 1991 moderate PM–10 nonattainment area SIP requirements addressed in this action and will be addressed in a separate notice. See section 189(a)(2)(A) of the Act.

adequately result in attainment and maintenance of the 24-hour PM–10 NAAQS. Since no violations of the annual PM–10 NAAQS have been monitored in the Pagosa Springs area since 1987 and since the demonstration provided in the December 1993 SIP submittal for Pagosa Springs clearly shows attainment and maintenance of the 24-hour PM–10 NAAQS, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. The control strategy used to achieve these design concentrations is summarized in Section II.A.C. of this notice entitled "RACM (including RACT)." For a more detailed description of the attainment demonstration and the control strategy used, see the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Pagosa Springs nonattainment area, as revised in September of 1993, indicates that exceedances of the NAAQS are attributable chiefly to particulate matter emissions from area sources, mainly re-entrained road dust from paved and unpaved roads. In addition, the emissions inventory for this area did not reveal any major stationary sources of PM–10 precursors. Consequently, EPA is proposing to find that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Pagosa Springs. The consequences of this proposed finding are to exclude these major stationary sources from the applicability of PM–10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this notice. Note that while EPA is proposing to make a general finding for this area, this proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) of the Act as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In implementing the quantitative milestone and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP submittals should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1) of the Act). The State of Colorado's PM–10 SIP submittals for Pagosa Springs indicate that the control measures adopted will result in an annual incremental reduction of 912 tons/year (4997 lb/day) of PM–10, and the State's December 9, 1993 submittal demonstrated that this annual incremental reduction will result in attainment of the PM–10 NAAQS by December 31, 1994.[5] Therefore, EPA believes the Pagosa Springs PM–10 SIP submittals satisfy the initial quantitative milestone and RFP requirements.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

[5] The emissions reduction progress made prior to the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone achievement date) will satisfy the first milestone requirement (57 FR 13539). The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

The control measures contained in this SIP submittal are addressed above under Section II.A.3. entitled "RACM (including RACT)." These requirements, which are included in Section I. of the State regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements," apply to the types of activities identified in that discussion including re-entrained road dust from both paved and unpaved roads. The State regulation provides that these control measures apply throughout the Pagosa Springs PM–10 nonattainment area.

Consistent with the attainment demonstration previously described, the SIP and State regulation require that all affected activities for which the State is taking credit towards demonstrating attainment must be in full compliance with the applicable SIP provisions by December 1, 1993. In addition to the applicable control measures, this includes the applicable recordkeeping requirements which are addressed in the supporting information. Compliance with certain measures, such as the 1 percent fines limit with regard to sanding material used, must be determined in accordance with appropriate test methods. The regulation provides that compliance with the 1 percent fines limit will be determined in accordance with the American Society for Testing Materials (ASTM) "Standard Method for Sieve Analysis of Fine and Coarse Aggregate." EPA believes this method is appropriate for determining compliance with this provision.

The attached TSD contains further information on enforceability requirements including: a description of the rules contained in the SIP and the source types subject to them, test methods, and reporting and recordkeeping requirements. EPA has reviewed the State's nonattainment area regulation for enforceability and has determined that it meets all of the criteria included in the September 23, 1987 Potter Memorandum.

As discussed in Section II.A.3. above, there are also Statewide regulations that will impact the emissions of PM–10 in the Pagosa Springs nonattainment area. These regulations include Colorado Regulation No. 4, which requires all wood stoves sold after July 1, 1991 to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b), and Colorado Regulation No. 3, which requires construction permits for new or modified stationary sources. EPA previously reviewed Colorado Regulations Nos. 3 and 4 at the

time these regulations were approved by EPA as part of the SIP, and determined that these regulations met the enforceability criteria of the September 23, 1987 Potter Memorandum (see the TSD for information on EPA approvals of these regulations).[6]

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the AQCC. In addition, Colorado statute provides that the APCD shall enforce against any "person" who violates the emission control regulations of the AQCC, the requirements of the SIP, or the requirements of any permit. The definition of "person" includes, among others, any "municipal corporation, county, city and county or other political subdivision of the State," such as the Town of Pagosa Springs. Civil penalties of up to $15,000 per day per violation are provided for in the State statute for any person in violation of these requirements, and criminal penalties are also provided for in the State statute. Thus, the APCD has adequate enforcement capabilities to ensure compliance with the Pagosa Springs PM–10 SIP and the State regulations. The TSD contains further information on the Statewide regulations, enforceability requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–13512 and 13543–13544. These measures were required to be submitted by November 15, 1993 for the initial moderate PM–10 nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's core attainment control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. The State's December 9, 1993 revision to the Pagosa Springs PM–10 SIP included the following contingency measure: Section I.E. of the State regulation entitled "Nonattainment Areas—State Implementation Plan Specific Regulations for Local Elements" requires the Town of Pagosa Springs to sweep all traffic lanes of the major State highway through town as soon as practical following each sanding event using vacuum sweepers that are at least 34 percent effective. The Town is required to implement these provisions within two months of an EPA determination that the Pagosa Springs PM–10 nonattainment area failed to attain the PM–10 NAAQS by the statutory deadline of December 31, 1994 or failed to make RFP. EPA believes this is an adequate timeframe for implementation.

After review of the contingency measure described above, EPA believes they are adequate to meet the requirements of section 172(c)(9) of the Act. Therefore, EPA is proposing to approve the PM–10 contingency measure for the Pagosa Springs PM–10 nonattainment area. For further information, see the TSD accompanying this notice.

9. Revisions to the Nonattainment Area Boundary

The Pagosa Springs nonattainment area boundary is currently defined as the town limits of Pagosa Springs in 40 CFR 81.306. See 56 FR 56694 (November 6, 1991). However, on June 20, 1991, the State adopted a more inclusive boundary for the Pagosa Springs PM–10 nonattainment area, which included the town limits and some additional areas along the San Juan River and along U.S. Highway 160 outside the town limits. This revised boundary was submitted with the February 24, 1993 Pagosa Springs PM–10 SIP submittal. The submittal provided a demonstration showing that the revised boundary represented the reasonable Pagosa Springs airshed by considering the local topography, meteorology, and land use practices.

The information available at the time that the Pagosa Springs PM–10 nonattainment area was promulgated did not indicate that the boundary should include the surrounding suburban areas. However, the subsequent information presented in the SIP persuasively demonstrated that the revised nonattainment area boundary submitted with the SIP more accurately represents the Pagosa Springs airshed. See, e.g., 57 FR 56762, 56763 (November 30, 1992). Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to expand the Pagosa Springs PM–10 nonattainment area boundary in 40 CFR 81.306 to include some additional suburban area surrounding the Town of Pagosa Springs. The proposed legal definition of the revised Pagosa Springs nonattainment area is as follows:

Township 35N & Range 2W: Sections 13, 14, 15; Section 23 NE, N½ SE; Section 24 all except SWSW; Section 25 N½ NE, NENW.
Township 35N & Range 1W: Section 18 W½.

EPA is proposing to replace the boundary description currently in 40 CFR 81.306 with this revised boundary.

III. Implications of This Action

EPA is proposing to approve the plan revisions submitted to EPA for the Pagosa Springs PM–10 nonattainment area on February 24, 1993 and December 9, 1993. Among other things, the State of Colorado has adequately demonstrated that the Pagosa Springs moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. EPA is also proposing to approve the PM–10 contingency measures for Pagosa Springs, which were submitted with the December 9, 1993 SIP revision.

As noted, on January 14, 1993, the State submitted revisions to its permit program for the construction and operation of new and modified major stationary sources of PM–10 to comply with the amended Act. EPA will be taking action on these requirements in a separate **Federal Register** notice.

Lastly, EPA is proposing to amend the nonattainment area boundary for the Pagosa Springs nonattainment area to include some of the area surrounding Pagosa Springs.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this notice, EPA will consider any comments received by April 8, 1994.

V. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Region Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which

[6] Note that the current version of Colorado Regulation No. 3 approved by EPA does not meet all of the applicable requirements of the amended Act. As discussed in footnote number 4, the State submitted revisions to Regulation No. 3 in January 1993 which are being evaluated by EPA. EPA will act on that submittal in a separate notice.

superseded Executive Order 12291 on September 30, 1993.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

VII. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 1, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–5423 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 63

[AD-FRL–4846–1]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Pulp and Paper Production; and Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks: Determination of MACT "Floor."

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: On December 31, 1992 (57 FR 62608), the EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The initial public comment period closed on April 19, 1993, but EPA subsequently reopened the comment period for 30 days on October 15, 1993 (58 FR 53478) to take additional comment on certain issues. In the final action regarding the December 31, 1992 proposal, which was signed on February 28, 1994, EPA deferred taking final action regarding provisions applicable to medium storage vessels due to the need to resolve an issue of statutory interpretation of section 112(d)(3)(A) of the Act. With this notice, EPA reopens the comment period to request additional comment on the appropriate interpretation of this statutory provision and the effect of that interpretation on the appropriate control requirements for medium storage vessels. The maximum achievable control technology (MACT) "floor" decision that EPA will make in this rulemaking will have broad precedential effect, and will presumptively be followed in subsequent MACT rulemakings, including the pulp and paper and chromium electroplating rulemakings. EPA plans to take final action regarding the provisions applicable to medium storage vessels within 90 days of publication of this notice.

DATES: Comments must be received on or before April 8, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the EPA's Air and Radiation Docket and Information Center (6102), ATTN: Docket Number A–90–19, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Dockets. The following dockets contain supporting information used in developing the proposed provisions. Docket Number A–90–19 contains information specific to emissions averaging and general information used to characterize emissions and control costs for the industry and Docket A–90–21 contains information on storage vessels. These dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 410 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: On technical issues, Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5299. For further information on the legal issue addressed in this notice, contact Michael S. Winer, Assistant General Counsel, Air and Radiation Division (2344), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone number (202) 260–7606.

SUPPLEMENTARY INFORMATION: On December 31, 1992 (57 FR 62608), EPA proposed certain standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes that are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The proposed rule is commonly referred to as the hazardous organic NESHAP or HON. In a separate notice, EPA is taking final action on virtually all aspects of that proposal but is deferring final action regarding the portion of the emission standards for emissions from one of the types of emission points covered by the proposal, medium storage vessels. The reason EPA is deferring final action regarding regulation of medium storage vessels is to reopen the comment period to take comments regarding the nature of the "floor" under section 112(d)(3)(A) and the appropriate level of control for medium storage vessels. Consequently, for purposes of this rulemaking, the

Agency will consider only comments limited to the interpretation of the language in section 112(d)(3)(A) regarding the establishment of the "floor" and whether the control requirements for medium storage vessels previously proposed by EPA would be appropriate in the event those proposed controls were to be determined to be more stringent than the floor.

In other proposals regarding MACT standards, EPA has noted the possibility of two interpretations of the language in section 112(d)(3)(A) and (B) requiring that EPA set standards no less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources" if there are at least 30 sources in a category or "the average emission limitation achieved by the best performing 5 sources" if there are fewer than 30 sources in a category. (See 58 FR 66078 (December 17, 1993) (pulp and paper); 58 FR 65768, 65770 (December 16, 1993) (chromium electroplating).) In essence, the difference between the two interpretations is that one would result in the floor being established at the level of control that represents the average (the mean, median, or other appropriate statistical measure of central tendency) level of control achieved by the best performing 12 percent of existing sources, which would be generally equivalent to the 94th percentile of sources, while the other would result in the floor being the average level of control achieved by the source at the 88th percentile if all sources were ranked from the most controlled (100th percentile) to the least controlled (1st percentile).

The first interpretation is based on grouping the words "average emission limitation achieved by" together in a single phrase and asks what is the "average emission limitation achieved by" the best performing 12 percent (or best performing 5 sources in the case of section 112(d)(3)(B)). This interpretation places the emphasis on "average." It would correspond to first identifying the best performing 12 percent of the existing sources, then determining the average emission limitation achieved by these sources as a group (i.e., generally the level of control achieved by the 94th percentile).

The second interpretation groups the words "average emission limitation" into a single phrase and asks what "average emission limitation" is "achieved by" all members of the best performing 12 percent. In this case, the "average emission limitation" might be interpreted as the average reduction across HAPs emitted by an emission point over time. Under this interpretation, EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the average limit that is "achieved" by all sources within the group (i.e., the average level of control achieved by the 88th percentile source or the level of control achieved by the fifth source among the top five in the case of section 112(d)(3)(B)).

The two possible interpretations are also described in detail in the proposals regarding the pulp and paper MACT standard (see 58 FR 66136–137 (December 17, 1993), and the chromium electroplating MACT standard (see 58 FR 65768, 65770 (December 16, 1993).

As described in section V.C.1. of the preamble to the final HON rule signed February 28, 1994, EPA has reevaluated and revised the medium storage vessel data base since the December 31, 1992 proposal. EPA's revised data base indicates that, for medium storage vessels, 6 percent of the vessels are controlled with either a 90-percent efficient control device or an internal floating roof (IFR) or external floating roof (EFR) with a continuous seal. All of the controlled medium-sized vessels contained liquids with vapor pressures of 13.1 kPa (1.9 psia). The arithmetical average, or mean, characteristics of the top 12 percent of the medium vessels would not represent the performance of any known technology. However, if the median were used to represent the average, the floor would require control of vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) or greater by either a 90-percent efficient control device or an IFR or EFR with a continuous seal. This is the same vapor pressure that was identified in the December 31, 1992 proposal. With the revised data base, however, if the floor is established at the average level of control achieved by the 88th percentile source, the floor would require no control. (At the time of the December 31, 1992 proposal, EPA had determined that about 30 percent of medium storage vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) or higher were controlled with the reference technology. Thus, at that time, either of the two interpretations of the statutory language regarding the establishment of the floor would have resulted in the floor being established at the level at which the control requirements were proposed.)

EPA solicits comment on the proper interpretation of the statutory language regarding the establishment of the floor. EPA also solicits comment on whether the portion of the emission standard concerning medium storage vessels proposed in the December 31, 1992 HON proposal is appropriate if those proposed controls were to be determined to be more stringent than the floor, rather than to be at the floor as EPA believed at the time of that proposal. EPA intends to take final action regarding the provisions applicable to medium storage vessels within 90 days of the publication of this notice.

The MACT "floor" decision that EPA will make in this rulemaking will have broad precedential effect, and will presumptively be followed in subsequent MACT rulemakings, including the pulp and paper and chromium electroplating rulemakings. Consequently, commenters on the pulp and paper and chromium electroplating proposals should submit any comments they may have on the legal issue to the HON docket. EPA will consider comments on this issue already submitted in those rulemakings if they are resubmitted to the HON docket, but will not consider them in this proceeding for any purpose other than addressing the legal issue regarding the interpretation of the floor provisions of section 112(d)(3).

Dated: February 28, 1994.

Carol M. Browner,

The Administrator.

[FR Doc. 94–5419 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02–24 1A]

RIN: 1004–AB80

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Onshore Oil and Gas Order No. 4 originally issued February 24, 1989 (54 FR 8086), and made effective August 23, 1989. This proposed revision would reorganize the Order to make it more logical in sequence, remove unnecessary provisions, resolve internal inconsistencies identified in the Order, and amend or clarify certain provisions. These changes are based on more than 4 years of experience in implementing

the Order, and on suggestions from the public and internal personnel.

DATES: Comments should be submitted by May 9, 1994. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stuart Cerovski, (307) 332–7822.

SUPPLEMENTARY INFORMATION: Order No. 4, Measurement of Oil, implements and supplements requirements set forth in 43 CFR 3162.7–2 relating to the measurement of oil produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as oil produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses oil measurement by tank gauging, by positive displacement metering systems, and by other methods acceptable to and approved by the authorized officer of the Bureau of Land Management (BLM). Through the implementation of the existing Order, several provisions of the Order were identified as being in need of clarification or amendment, and some provisions relating to oil measurement need to be updated.

No amendments are proposed to the existing definitions in Section II. of the Order. However, it is proposed to add one new definition (Light Ends), which supports and clarifies the amendments proposed in Section III.C.1.

An additional reference to the standards and recommended practices of the American Petroleum Institute (API) would be included to update the Order. This reference, "Chapter 18, Section 1—Custody Transfer, First Edition, September 1990—Measurement Procedures for Crude Oil Gathered From Small Tanks by Truck," would be added to appropriate provisions of the Order.

It is proposed to remove all requirements that instrument standards be traceable to the standards of the National Institute of Standards and Technology (formerly the National Bureau of Standards). This applies to gauging tapes, instruments used to determine oil gravity, and thermometers (woodbacks) used for determining tank temperatures, and to certifications of accuracy by independent testing facilities. The rationale for removing these provisions is a determination, based on experience of BLM field personnel and discussions with operators and manufacturers' representatives, that compliance with them cannot be achieved by any practical and cost effective means. However, the requirement that manufacturers warrant that such equipment has been made in conformity with the applicable specifications of the National Institute of Standards and Technology would be retained. Any measurement equipment whose accuracy is questioned and found inadequate, based on observation of defects by BLM personnel, would be required to be replaced.

All proposed changes in Order No. 4 are amendments and additions intended to enhance operator understanding of BLM's requirements for the proper measurement of oil produced from or for the benefit of Federal and Indian (except Osage) leases. The following is a section-by-section discussion of the proposed revisions in the Order.

III.C.1. and III.C.1.a. would be amended to clarify the nature and intent of the existing requirement for vent line-valves and/or pressure vacuum thief hatches. As proposed, the Order would require, in the absence of an approved variance, all crude oil storage tanks to be equipped with vent line-valves and/or pressure vacuum thief hatches to prevent the loss of light ends and the resultant decrease in the quantity, quality, and value of the crude oil.

III.C.2. would be amended to remove the present requirement that tank gauge volumes be corrected for scale or high bottoms in accordance with API RP 2556, because adjustments in that regard are inexact. If high bottoms or scaling on a sales tank occurs, the tank should be cleaned prior to further use.

III.C.3. would be amended to clarify the use of the two presently cited standards in API Chapter 8, and also would add Chapter 18, Section 1—Custody Transfer, First Edition, September 1990, as a new reference. This would allow all methods of oil sampling without prior approval, provided that the method used meets the applicable API standards of practice.

III.C.3.b. would be amended to state more specifically the proper practice for retrieving oil samples from a sales tank for determining the physical properties thereof. The proposed changes are necessary to provide adequate instruction in the Order without the need for an operator to refer to API standard practices for sampling. Tanks of 1,000 barrels or less capacity would require the use of the two-sample method and tanks of greater than 1,000 barrels capacity would require the use of either the two-sample method or the three-sample method depending on the height of the fluid level in the tank. Moreover, the proposed revision would allow an operator the option, with respect to tanks of 1,000 barrels or less, of using one representative sample from the middle of the oil column for gravity determinations.

III.C.4. would be amended to provide for the use of hand gauging tapes to be the only acceptable method for gauging tank volumes. Any other method of gauging, as referenced in the applicable API standards, would not be accepted in the absence of prior approval by the authorized officer of a request for a variance. This would ensure the proper installation and use of any alternative method of tank volume measurement.

III.C.6. would be amended to provide for the use of cup case thermometers as the only acceptable method for obtaining tank temperature. Any other method of obtaining tank temperature, as addressed in applicable API standards or any new industry innovations, would require the prior approval of a variance request by the authorized officer to ensure proper installation and use. The proposal would not limit tank temperature measurements by thermometer only, as other types of temperature measurement instruments could be used if the authorized officer agrees that the alternative method would ensure proper temperature measurements and approves a request for a variance. Language would also be added to ensure that temperature measurements are made at the same time that opening and closing gauges are taken.

III.D.2.*l.* would be amended to include a new provision that would allow, without prior approval, the use of an electronic temperature averager (ETA) to record the temperature of oil sold through a positive displacement metering system. Any type of electronic temperature compensator (ETC) that meets the minimum requirements specified would be authorized in accordance with the proposed revision. It is also proposed to add a new Section III.D.3.c.(3) that would require that an ETA or ETC be checked for accuracy each time the related meter is proven.

III.D.3.a.(2) would be replaced in its entirety with minimum requirements for meter proving. Positive displacement meters are required to be in good working order to measure the product as accurately as mechanically possible. Since the devices used in proving are expected to be more accurate than the meters being proven, that level of

accuracy is required to be verified on a regular basis. As these devices are used in all types of operating environments for proving meters measuring oils of differing characteristics, the proposed section would impose stringent calibration requirements for provers.

III.D.3.c.(1) and III.D.4.a. would be amended to clarify the differences among repeatability problems during proving, meter malfunctions, and excessive meter factor deviations, and to specify corrective actions appropriate to the identified problem.

III.D.5.b. would be added as a new section that would require the immediate application of a newly obtained meter factor to the production sold after the the date when the meter is proved. In other words, the new meter factor would be used from that date forward until such time as a subsequent proving establishes a different meter factor.

A new Section III.E. would be added to incorporate the documentation requirements for the removal of crude oil from storage facilities now included in Onshore Oil and Gas Order No. 3, Site Security. This consolidation should enhance operator understanding of requirements of the Order. These requirements will be removed from Order No. 3 when it is next revised. Existing sections III.E. and F. would be redesignated III.F. and G., respectively.

The existing Order No. 4 provides in Section III.E.2. that an application is required to be submitted to the authorized officer and written approval obtained prior to any off-lease measurement facility being installed and operated. It is proposed to add off-lease storage to this section in order to conform with the regulations at 43 CFR 3162.7–2, and to set forth the required contents of applications for approval of off-lease measurement and/or storage facilities.

It is proposed to add a new Section III.H. to establish standards relating to the commingling of oil production, both on the surface and in a wellbore, and to set forth the required contents of applications for approval to commingle oil production.

Other changes proposed are editorial corrections to accommodate the new sections addressed above and slight wording modifications to add emphasis and clarity to the requirements of the Order.

The principal authors of this proposed rule are Stuart Cerovski, Petroleum Engineer, Lander Resource Area; Vince Balderaz, Supervisory Petroleum Engineering Technician, Carlsbad Resource Area; Joe Delozier, Supervisory Petroleum Engineering Technician, Caliente Resource Area; A.L. Schweighart, Supervisory Petroleum Engineering Technician, Worland District Office; Sherry Thompson, Petroleum Engineer, Colorado State Office; and Darrell Self, Petroleum Engineering Technician, Tulsa District Office, assisted by the staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The principal small entities affected by this rule will be the oil and gas lessees and operators known as "independents." The standards prescribed by the American Petroleum Institute, upon which this rule is based, are equally applicable to all prudent oil and gas operations, regardless of size. The Order would impose no new standards, and certain proving requirements would be removed. The Order would not require a substantial amount of additional information or monitoring. Some additional equipment may be required in certain cases, but the total cost of these changes would not be significant. Costs to the public should not increase at all as a result of the Order.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. There would be no taking of private property without due process. Failure to abate violations in a timely manner could result in assessments under the Mineral Leasing Act and/or penalties under the Federal Oil and Gas Royalty Management Act, and possible lease cancellation if the failure continues, but not without due process. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the proposed rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in Sections 1(a) and 2(b)(2) of Executive Order 12788.

The information collection requirements contained in Part 3160 that relate to this proposed Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands-mineral resources, mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: February 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

For the reasons stated above, and under the authorities cited below, it is proposed to amend part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations, as set forth below:

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a–396q., 397, 398, 398a– 398e, 399; 43 U.S.C. 1457; see also 40 Op. Atty. Gen. 41; 40 U.S.C. 471 *et seq*.; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*; and 25 U.S.C. 2101 *et seq.*

2. Section 3164.1 is amended by revising the table in paragraph (b) to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

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(b) * * *

Order No./Subject	Effective date	Federal Register reference	Supersedes
1. Approval of Operations	Nov. 21, 1983	48 FR 48916 and 48 FR 56226.	NTL–6.
2. Drilling Operations	Dec. 19, 1988	53 FR 46798	None
3. Site Security	Mar. 27, 1989	54 FR 8060	NTL–7
4. Measurement of Oil	[*30 days after date of publication*]		None.
5. Measurement of Gas	[date to be supplied upon publication of No.5].		None.
6. Hydrogen Sulfide Operations	Jan. 22, 1991	55 FR 48958	None.
7. Disposal of Produced Water	Oct. 8, 1993	58 FR 47354	NTL–2B.

Note: Numbers will be assigned sequentially by the Washington Office, Bureau of Land Management, as additional Orders are prepared for publication and added to this table.

The Appendix—text of Oil and Gas Order reads as follows:

Appendix—Text of Oil and Gas Order No. 4

Note: This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 4

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
II. Definitions.
III. Requirements.
A. Required Recordkeeping.
B. General.
C. Oil Measurement by Tank Gauging.
D. Oil Measurement by Positive Displacement Metering System.
E. Documentation for Removal of Crude Oil from Storage Facilities.
F. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.
G. Determination of Oil Volumes by Methods Other than Measurement.
H. Commingling of Production.
IV. Variances from Minimum Standards. .

Onshore Oil And Gas Order No. 4

Federal and Indian Oil and Gas Leases—Measurement of Oil

I. Introduction

A. Authority. This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management (BLM) and is implemented by the onshore oil and gas operations regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director, BLM, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of all Federal and restricted Indian oil and gas leases that have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at § 3162.4–1 Well records and reports; § 3162.4–2 Samples, tests, and surveys; § 3162.7–1 Disposition of production; § 3162.7–2 Measurement of oil; § 3162.7–5 Site security on Federal and Indian (except Osage) oil and gas leases; and Subpart 3163—Noncompliance, Assessments, and Penalties.

B. Purpose. One purpose of this Order is to establish the requirements and minimum standards for the measurement of oil, and to provide standard operating practices for oil storage and handling facilities by the methods authorized in 43 CFR 3162.7–2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to and approved by the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the correct royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope. This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order also is applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of the unit or communitization agreement to the contrary.

II. Definitions

A. *Authorized officer* means any employee of the BLM authorized to perform the duties described in Groups 3000 and 3100.

B. *Barrel (bbl)* means 42 standard United States gallons of 231 cubic inches each.

C. *Business day* means any day, Monday through Friday, excluding Federal holidays.

D. *Cpl.* means the correction factor for the effect of pressure on liquid.

E. *Cps.* means the correction factor for the effect of pressure on steel.

F. *Ctl.* means the correction factor for the effect of temperature on liquid.

G. *Cts.* means the correction factor for the effect of temperature on steel.

H. *INC* means incident of noncompliance, which serves as a Notice of Violation under 43 CFR subpart 3163.

I. *Lessee* means a person or entity holding record title in a lease issued by the United States.

J. *Light* ends means those lighter hydrocarbons such as, but not limited to, gasoline, light kerosene, heptane, and natural gasoline.

K. *Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income.

L. Minor violation means noncompliance that does not rise to the level of a "major violation."

M. *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

N. *Operator* means any person or entity, including but not limited to the lessee or operating rights owner, that has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof.

O. *Oil,* for the purpose of this Order, means any liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate or oil from tar sands that is measured as a liquid.

O.1. *Clean oil/Pipeline oil* means crude oil or condensate that is acceptable to purchasers.

O.2. *Slop oil* means crude oil that is of such quality that it is not acceptable to purchasers and requires special treatment other than that which can be provided economically with the existing or modified facilities or by portable equipment, and is usually sold to oil reclaimers.

O.3. *Waste oil* means crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment, cannot be sold to reclaimers, that has been determined by the authorized officer to have no economic value, and for which no royalty is due.

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, and other similar records for 6 years after the date generated or, if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary of the Interior or appropriate delegate from the obligation to maintain them. The authorized officer may request these records any time

within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General

The regulations at 43 CFR 3162.7–2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to BLM jurisdiction, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to and approved by the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales or removal and for allocation purposes, in order that the Federal Government and Indian mineral owners will receive the proper royalties due under the governing oil and gas leases.

When an infraction of the minimum standards in this Order is discovered, it will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer is present when an operator discovers a malfunction or does not use correct procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken.

A major violation, as defined in this Order, will generally require an immediate shut-in of the metering device. However, where irreparable damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

The intent of these minimum standards is to ensure that when equipment malfunctions occur that could result in inaccurate measurement, that proper corrective actions are taken, the authorized officer notified, and a report is submitted. An equipment failure that is discovered by the operator and promptly corrected will not be considered a violation. However, equipment failures that are not corrected are considered violations, and a partial list is as follows:

Failure to install equipment properly.

Failure to repair or correct an equipment malfunction properly or in a timely manner.

Failure to submit a report when an alternate method of measurement is used for sales.

Failure to submit other required reports in a timely manner.

Failure to adhere to the minimum standards and procedures specified in this Order.

The use of improper equipment or procedures, when discovered, will be considered a violation, and an INC will be issued.

When improper procedures are witnessed by the authorized officer, immediate corrective action will be required. The use of such improper procedures will still be considered a violation, but in the event that proper procedures are then used, as required by this Order, prior to completing the operation, calibration, or proving, the violation will be considered properly corrected. In this case, although the violation will be documented in BLM's files, no formal INC will be issued.

All sales and allocation facilities shall meet the minimum standards prescribed in this Order, unless covered by a valid variance.

Meter facilities constructed in accordance with the API standards in effect at the time of installation shall not be required automatically to retrofit to meet revised API standards. The BLM will review any revised API standards and, when deemed necessary, will amend the Order through the rulemaking process.

Any variances from these requirements and minimum standards shall be in accordance with Section IV. of this Order.

A violation of a minimum standard established by this Order shall be abated within the time period specified in this Order. Unless stated otherwise, all abatement periods shall be measured from the date of notification by the authorized officer.

Where abatement is required "prior to sales or removal," this means that necessary actions shall be taken so that no oil may be sold or removed beyond the measurement point until it can be properly measured.

If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR subpart 3163.

C. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and by measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges obtained shall be used with the applicable tank calibration chart (tank table) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Before gauging, samples shall be taken of the oil to determine the API oil gravity and the sediment and water content. As the opening and closing gauges are taken, the opening and closing temperature of the oil in the tank shall be obtained. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60°F.

The following requirements and minimum standards shall be met in accordance with API Standard 2545 (ANSI/ASTM D 1085), Method of Gauging Petroleum and Petroleum Products, 1965 (Reaffirmed in 1987), and ANSI/ASTM D 1250, Tables 5A and 6A.

1. Tanks and Production Equipment. All oil storage tanks used for oil sales by tank gauging shall be properly equipped for such gauging, using the API Recommended Practices for Setting, Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1, 1986. Tanks also shall be connected, maintained, and operated to comply with the site security regulations, 43 CFR 3162.7–5, and Onshore Oil and Gas Order No. 3. Tanks and production equipment shall meet the following requirements:

a. All oil tanks and vessels shall be equipped and maintained in such a manner as to minimize potential shrinkage and gravity loss from the evaporation of light ends to the atmosphere. Equipment may include, but is not limited to, vent-line valves and pressure-vacuum thief hatches.

Violation: Major.

Corrective Action: Replace or repair defective equipment or install any necessary equipment.

Abatement Period: 30 days.

b. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practices.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

c. Pursuant to API Standard 2545 (ANSI/ASTM D 1085), Method of Gauging Petroleum and Petroleum Products, October 1965 (Reaffirmed August 1987), each tank shall be equipped with a gauging reference point, with the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch.

Violation: Minor.

Corrective Action: Affix a gauging reference point in the gauging hatch and stamp on bench-mark plate or stencil on tank near gauging hatch.

Abatement Period: 30 days.

2. Sales Tank Calibrations. Each oil storage tank used for sales shall be accurately calibrated for tank gauging, using the API Standard 2550 (ANSI/ASTM D 1220), Method for Measurement and Calibration of Upright Cylindrical Tanks, 1965 (Reaffirmed August 1987). The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method known as "tank calibration," and in accordance with the above-referenced API standard.

Violation: Minor.

Corrective Action: Make capacity determination and develop an appropriate capacity table.

Abatement Period: 60 days.

b. A sales tank shall be recalibrated if it is relocated or repaired or the capacity is changed through denting, damage, or the installation or removal of interior components, or otherwise.

Violation: Minor.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period: 60 days.

c. Calibration charts (tank tables) shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit requested tables to authorized officer.

Abatement Period: 30 days.

3. Oil Sampling. Sampling of oil to be sold from a sales tank is required and shall be conducted to yield a representative sample of the oil for purposes of determining the physical properties of the oil, as addressed in C.5. and C.7. of this Section, following the API Standards in Chapter 8, Section 1—Manual Sampling (ASTM D 4057), October 1981 (Reaffirmed August 1987), for thief or tap sampling; or Chapter 8, Section 2—Automatic Sampling, April 1983 (Reaffirmed August 1987), for automatic sampling; or, Chapter 18, Section 1—Custody Transfer, First Edition, September 1990, for tanks of 1,000 barrels or less in capacity. The sampling shall meet the following minimum standards:

a. All samples shall be taken from the contents of the sales tank prior to gauging, after allowing the tank contents to settle for at least 30 minutes following isolation of the tank.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

b. Samples for determining the gravity and the sediment and water content of the oil in sales tanks of 1,000 barrels or less in capacity shall be obtained by the two-sample method. For gravity determinations on tanks of 1,000 barrels or less in capacity, one representative sample from the middle of the oil column may be used. For tanks greater than 1,000 barrels in capacity, samples for determining gravity shall be a composite using the two-sample method or, if the oil column is greater than 15 feet, the three-sample method.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. Sales Tank Gauging. Gauging of the oil sales tank is required using gauging tapes warranted by the manufacturer as having been made in conformity with the applicable specifications of the National Institute of Standards and Technology. Other methods of gauging may be approved by the authorized officer provided these meet or exceed the standard of measurement accuracy achievable by a gauging tape. Gauging tapes shall be used to measure the contents of the tank accurately, following API Standard 2545 (ANSI/ASTM D 1085), Method of Gauging Petroleum and Petroleum Products 1965 (Reaffirmed August 1987), or Chapter 18, Section 1—Custody Transfer, First Edition, September 1990. Gauging shall meet the following minimum standards:

a. Gauging shall be accomplished using gauging tapes made of steel or corrosion-resistant material with the graduations clearly legible and not be kinked or spliced. Gauging tapes shall be maintained in good working condition.

Violation: Major.

Corrective Action: Replace tape.

Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires two identical gauges to the nearest ⅛ inch for tanks with a capacity of 1,000 barrels or less, and two identical gauges to the nearest ⅛ inch for tanks with a capacity of more than 1,000 barrels.

Violation: Major.

Corrective Action: Repeat gauging until two identical readings are obtained.

Abatement Period: Prior to sales or removal.

c. The proper bob for innage gauging or outage gauging shall be used in accordance with the above-referenced API Standard 2545.

Violation: Major.

Corrective Action: Repeat gauging using proper bob.

Abatement Period: Prior to sales or removal.

5. Oil Gravity. Tests for oil gravity are required using instruments warranted by the manufacturer as having been made in conformity with the applicable specifications of the National Institute of Standards and Technology. All such tests shall be conducted in accordance with the API Manual of Petroleum Measurement Standards, Chapter 9—Density Determination (ASTM D 1298–80) 1961, and ASTM D 287–82, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). Tests shall be performed on a representative sales tank oil sample obtained following API Manual of Petroleum Measurement Standards, Chapter 8.1—Manual Sampling of Petroleum and Petroleum Products (ASTM D 4057), October 1981 (Reaffirmed August 1987), or Chapter 18, Section 1—Custody Transfer, First Edition, September 1990, for tanks of 1,000 barrels or less in capacity. Gravity tests shall meet the following minimum standards:

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.

Corrective Action: Obtain sample from sales tank and determine oil gravity.

Abatement Period: Prior to sales or removal.

b. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Correction Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the observed gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

d. Temperatures shall be measured and recorded to the nearest 1° F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 1° F.

Abatement Period: Prior to sales or removal.

e. Liquid density (gravity) will be measured and recorded to the nearest 0.1° API gravity, making any necessary meniscus correction. The observed gravity shall be corrected to 60° F., using Table 5A, Generalized Crude Oils, Correction of Observed Gravity, to API gravity at 60° F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.1° API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. Tank Temperature. Determination of the temperature of oil contained in a sales tank is required using a thermometer warranted by the manufacturer as having been made in conformity with the applicable standards of the National Institute of Standards and Technology. All such determinations shall be made in accordance with API Standard 2543, Method of Measuring the Temperature of Petroleum and Petroleum Products (ANSI/ASTM D 1086) October 1965 (Reaffirmed August 1987), or Chapter 18, Section 1—Custody Transfer, First Edition, September 1990. Temperatures shall be taken with a cup case thermometer at the time of the opening and closing gauges. Other methods for obtaining tank temperatures may be approved by the authorized officer provided that these meet or exceed the standard of measurement accuracy achievable by a cup case thermometer. The use of cup case thermometers shall meet the following minimum standards:

a. Cup case thermometers shall be no less than 12 inches in length, graduated in 1° F., and be equipped with a cup case assembly.

Violation: Major.

Corrective Action: Use above-specified temperature measurement equipment.

Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation. The tank temperature shall be taken by immersing the thermometer to the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for a minimum of 5 minutes, and then read and recorded to the nearest 1° F.

Violation: Major.

Corrective Action: Replace thermometer or repeat measurement, as prescribed.

Abatement Period: Prior to sales or removal.

7. Sediment and Water Content. Determinations of the sediment and water content of oil contained in sales tanks, using samples obtained in accordance with Sections III.C.3. and III.C.5.a. hereof, is required following the API Manual of Petroleum Measurement Standards, Chapter 10—Sediment and Water in Crude Oils by the Centrifuge Method (Field Procedure), Second Edition, May 1988 (ASTM 96–88), or Chapter 18, Section 1—Custody Transfer, First Edition, September 1990, for tanks of 1,000 barrels or less in capacity, and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with

the procedures described in the above-referenced API standards, shall be heated to at least 140 °F. if asphaltic-based oil, or to at least 160 °F., if paraffin-based oil, prior to centrifuging.

Violation: Major.

Corrective Action: Repeat procedures using the defined standards.

Abatement Period: Prior to sales or removal.

b. The heated sample shall be whirled in the centrifuge for not less than 5 minutes and, at the conclusion of centrifuging, the temperature shall be a minimum of 115 °F. without water-saturated diluent, or a minimum of 125 °F. with water-saturated diluent.

Violation: Major.

Corrective Action: Repeat test, as prescribed.

Abatement Period: Prior to sales or removal.

c. The combined volume of sediment and water at the bottom of the 100 ml. centrifuge tube shall be read:

(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.

(2) To the nearest 0.1 ml. if above the 1 ml. graduation.

(3) Estimated to the nearest 0.0025 ml. if the volume is less than 0.1 ml.

The sediment and water volume in the centrifuge tube so determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API standards, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat test as specified or repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

D. Oil Measurement by Positive Displacement Metering System

Oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net standard volume and quality, while also providing for fail-safe and tamper-proof operations in accordance with the regulations at 43 CFR 3162.7–5 and Onshore Oil and Gas Order No. 3.

A positive displacement meter is one that registers the volume passing through said meter by a system that constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Specification 11N for Lease Automatic Custody Transfer (LACT) Equipment, 1988, and API Manual of Petroleum Measurement Standards, Chapter 6—Metering Assemblies, Section 1, LACT Systems, February 1981 (Reaffirmed August 1987). LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. LACT Unit Components and General Operating Requirements

a. As a minimum, each LACT unit shall include all of the following listed components:

(1) Charging pump and motor.

(2) Sampler, composite sample container, and mixing system.

(3) Strainer.

(4) Positive displacement meter.

(5) Meter proving connections.

(6) Meter backpressure valve and check valve.

(7) Air eliminator.

(8) Diverter valve or shut-off valve.

(9) Sediment and Water Monitor.

(10) Automatic Temperature/Gravity Compensator (ATC or ATG) or Electronic Temperature Recorder.

Violation: Major: a.1., 2., 4., 5., 6., and 10.

Corrective Action: Install component.

Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., 8., and 9.

Corrective Action: Install component.

Abatement Period: 30 days.

b. All components of a LACT unit shall be accessible for reasonable inspection by the authorized officer.

Violation: Minor.

Corrective Action: Provide authorized officer with means of access to LACT.

Abatement Period: 30 days.

c. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that results in the use of an alternate method of measurement.

Violation: Minor.

Corrective Action: Notify authorized officer of alternate method used.

Abatement Period: By 5th business day following use of alternate method.

d. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and sediment and water (S&W) content shall meet the same requirements and minimum standards specified in this Order for determining the gravity and S&W content of oil sold or removed by the tank gauging method of measurement (Section III.C.5. and C.7.).

Violation: Major.

Corrective Action: Report tests for gravity and S&W content per Section III.C.5. and C.7. minimum standards.

Abatement Period: Prior to sales or removal.

2. Operating Requirements for LACT Unit Components. All required LACT unit components shall be operated to satisfy the following minimum standards:

a. Charging pump and motor. The LACT unit shall include an electrically driven pump rated for a discharge pressure and rate that are compatible with the rating for meter used and be sized to assure turbulent flow in the LACT main stream piping.

Violation: Major.

Corrective Action: Install properly designed pump and motor.

Abatement Period: Prior to sales or removal.

b. Sampler. The sampler probe shall extend into the center ⅓ of the flow piping in a vertical run at least 3 pipe diameters downstream of any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Install component properly.

Abatement Period: Prior to sales or removal.

c. Composite Sample Container. The composite sample container shall be capable of holding the sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor, and the container shall be emptied upon completion of each sample withdrawal.

Violation: Major.

Corrective Action: Install component properly, and empty after each sample withdrawal.

Abatement Period: Prior to sales or removal.

d. Mixing System. The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of the sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

e. Strainer. The strainer shall be made of corrosion-resistant material of a mesh size no larger than ¼ inch, shall be constructed so that it may be depressurized, opened, and cleaned, and shall be installed upstream of the meter.

Violation: Minor.

Corrective Action: Replace with properly designed strainer and/or install properly

Abatement Period: 30 days.

f. Positive Displacement Meter. The meter shall register the volume of oil passing through it utilizing a system that constantly and mechanically isolates the flowing oil into segments of known volume, and be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace or repair meter or non-resettable totalizer.

Abatement Period: Prior to sales or removal.

g. Meter Proving Connections. All meter proving connections shall be installed downstream from the LACT meter, with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Relocate the prover loop downstream from LACT meter, and install block and bleed valve, as specified.

Abatement Period: Prior to proving LACT.

h. Back Pressure and Check Valves. The back pressure valve and check valve shall be installed downstream from the LACT meter and meter proving connections.

Violation: Major.

Corrective Action: Install back pressure valve and check valve downstream from LACT and meter proving connections.

Abatement Period: Prior to sales or removal.

i. Air Eliminator. The air eliminator shall be installed and prevent air/gas from entering the meter.

Violation: Minor.

Corrective Action: Install air eliminator.

Abatement Period: 30 days.

j. Diverter Valve/Shut-off Valve. The diverter valve/shut-off valve shall be activated by the S&W monitor so that the valve moves to divert flow to the clean oil discharge only when it receives a positive signal, or provide a shut-off valve configured to shut off oil delivery upon failure to receive a positive signal from the S&W Monitor.

Violation: Minor.

Corrective Action: Install diverter/shut-off valve.

Abatement Period: 30 days.

k. Sediment and Water (S&W) Monitor. The S&W Monitor shall be an internally plastic-coated capacitance probe, no smaller in diameter than the skid piping, and shall be mounted in a vertical pipe located upstream from the diverter/shut-off valve and the meter.

Violation: Minor.

Corrective Action: Install S&W monitor.

Abatement Period: 30 days.

l. Automatic Temperature/Gravity Compensators (ATC or ATG) and Electronic Temperature Recorders. Automatic Temperature Compensators shall be sized according to the characteristics of the fluid being measured. If an Electronic Temperature Averager is used in lieu of an ATC or ATG, it shall be installed in accordance with the manufacturer's specifications and shall meet the following minimum standards:

(1) The temperature shall be recorded at least once per barrel put through the positive displacement meter.

(2) The accuracy of the temperature probe shall be at least ±0.5 °F. over the probe's operating range.

(3) The temperature shall be recorded to the nearest 0.1 °F. with a count accuracy of ±1 percent.

(4) A backup power source shall be available to preserve all data in case of a failure of the primary power source.

(5) The reset switch and internal circuitry shall be encased in a boxed enclosure having the capability of being sealed.

(6) The temperature averager shall be equipped with a printer output for maintaining permanent records.

Violation: Major.

Corrective Action: Install properly sized ATC or ATG or properly sized electronic temperature averager.

Abatement Period: Prior to sales or removal.

3. Sales Meter Proving Requirements. LACT positive displacement meters shall be proved periodically. Meter provings shall follow API Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems, 1978, and shall meet the following minimum standards.

a. The types of meter provers to be used and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API-recognized meter provers.

Violation: Minor.

Corrective Action: Prove again with acceptable meter prover.

Abatement Period: 30 days.

(2) If a pipe or tank prover is used, the operator shall provide documentation to demonstrate that the prover has been calibrated within the last 12 months. The documentation shall include the unique number assigned to and inscribed on the prover. The calibration documentation for a pipe or tank prover shall show the certified volume as determined by the water draw method. The allowable tolerance for calibrating a pipe or tank prover shall be within 0.0002 (0.02 percent).

If a master meter is used, the operator shall provide documentation of the most recent calibration report for said master meter. The calibration report shall show that the master meter has been calibrated in accordance with API requirements within the last 90 days, demonstrate that the master meter has an operating factor within the range from 0.9900 to 1.0100, and that 5 consecutive runs were matched within a tolerance of 0.0002 (0.02 percent).

Violation: Minor.

Corrective Action: Provide required calibration certification.

Abatement Period: Prior to proving.

b. Minimum Proving Frequency: For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair, and if proven adequate, at least quarterly thereafter unless a longer period is approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving and prove meter.

Abatement Period: Within 10 business days.

(1) In the event that the total throughput of a meter exceeds 100,000 bbls. per month, then proving shall be accomplished monthly.

Violation: Minor.

Corrective Action: Prove meter on a monthly basis.

Abatement Period: By the 10th business day after notification by the authorized officer.

(2) The operator shall notify the authorized officer at least 10 business days prior to proving a sales or allocation meter.

Violation: Minor.

Corrective Action: Notify authorized officer prior to the next scheduled proving.

Abatement Period: At least 10 business days prior to the next scheduled proving.

c. Establishing the Operating Meter Factor. (1) At least five consecutive runs shall match within a tolerance of 0.0005 (0.05 percent) between the highest and lowest readings. This required repeatability shall be achieved prior to establishing a meter factor and completing the meter proving report.

Violation: Major.

Corrective Action: Notify authorized officer and re-prove the meter.

Abatement Period: 10 business days.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Compute meter factor using arithmetic average of the 5 consecutive runs.

Abatement Period: Prior to completion of proving.

(3) If the LACT is equipped with an electronic temperature averager, the accuracy of the averager shall be compared with a mercury thermometer over the operating range of the averager.

Violation: Major.

Corrective Action: Conduct the required temperature recording accuracy comparison.

Abatement Period: Prior to the completion of proving.

(4) Meter factor computations shall also include the correction factor for the effect of pressure on steel (Cps.) for provers; the correction factor for the effect of temperature on steel (Cts.) for provers; the correction factor for the effect of temperature on liquid (Ctl.); and the correction factor for the effect of pressure on liquid (Cpl.). The Cps. and Cts. correction factors shall be determined using the API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, 1981, or latest revised API standard. The Ctl. correction factor shall be obtained from the API Standard 2540, Chapter 11.1, Volume I (ASTM D 1250–80), Table 6A, 1980, or latest revised API standard, and the Cpl. correction factor shall be obtained from the API Manual of Petroleum Measurement Standards, Chapter 11.2.1, or the latest revised API standard.

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to the completion of meter proving.

(5) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050, unless the deviation can be justified to the satisfaction of the authorized officer.

Violation: Minor.

Corrective Action: Replace/repair/re-prove meter or justify to authorized officer deviation from the specified range of 0.9950 to 1.0050.

Abatement Period: Prior to the completion of meter proving.

4. Excessive Meter Factor Deviation. Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of a meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the operator shall submit, for approval by the authorized officer, a report of the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction. In the event a malfunction occurred, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and re-proven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor.

Malfunction meter factors shall be clearly indicated on the proving report, and the

report shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments. The minimum standards for evidence of a meter malfunction, and corrective action required, are as follows:

a. Deviation in the meter factor shall not exceed ±0.0025 since the last proving of the meter unless explained by changed conditions, i.e., temperature, gravity, or flowrate.

Violation: Minor.

Corrective Action: Replace or repair the meter and make appropriate volume adjustments. If the operator determines that no meter malfunction occurred, a report stating the reasons supporting that determination shall be submitted to the authorized officer for approval. If a malfunction did occur, the meter shall remain out of service until repaired or replaced and a new meter factor is established. Applicable volume adjustments, reports, and other information shall be submitted to the authorized officer.

Abatement Period: Within 10 business days after the initial proving of the repaired or new meter.

b. A meter factor shall not exceed 1 percent above or below unity, i.e., outside of the range from 0.9900 to 1.0100.

Violation: Minor.

Corrective Action: Make proper adjustments and note on proving report.

Abatement Period: Prior to the completion of meter proving.

5. Meter Reporting Requirements. All meter provings, meter failures, and volume adjustments following a meter malfunction shall be reported to the authorized officer, as follows:

a. Meter Proving Reports. The meter proving report shall be filed on one of the forms set out in API Manual of Petroleum Measurement Standards, Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters, 1981 (Reaffirmed August 1987). Any similar format is acceptable provided all required data are included and a proper calculation sequence is maintained.

Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Each meter proving report shall be filed with the authorized officer no later than 10 business days following the meter proving.

Violation: Minor.

Corrective Action: Submit proper proving report to authorized officer.

Abatement Period: File with authorized officer no later than the 10th business day following notification by the authorized officer.

b. Meter Factor Effective Date. The date on which a meter is proved shall be used as the effective date of the meter factor until the next factor is established.

Violation: Minor.

Corrective Action: Apply the effective meter factor to the appropriate run ticket sales volume.

Abatement Period: Within 10 business days.

E. Documentation of the Removal of Crude Oil From Storage Facilities

1. Transfers by Tank Gauging

The run ticket, as a minimum, shall include the following:

a. The name of the seller.

b. The Federal or Indian lease number or Indian agreement number or, if appropriate, the communitization agreement number, or unit agreement name and number and the participating area identification.*

c. The location of the tank by quarter-quarter section, section, township, and range, or other location description methods acceptable to the authorized officer.

d. The unique tank number and capacity.

e. The unique run ticket number.

f. The date(s) of the transaction.

g. The opening gauge and opening oil temperature.*

h. The closing gauge and closing oil temperature.*

i. The API gravity at 60 °F or observed gravity and temperature.*

j. The observed sediment and water (S&W) percentage.*

k. The number of each seal removed.

l. The number of each seal installed.

m. The signature of the purchaser's representative.

n. The signature of the operator's representative made within 2 business days after the sale or removal.

Violation: Minor (unless marked by asterisk).

Corrective Action: Submit the missing information.

Abatement Period: Within 7 business days of notice.

Violation: Major (if marked by asterisk).

Corrective Action: Submit a complete, correct run ticket.

Abatement Period: Within 3 business days of notice.

2. Transfers by LACT

The run ticket, at a minimum, shall include the following:

a. The name of the seller.

b. The Federal or Indian lease number or Indian agreement number or, if appropriate, the communitization agreement number, or unit agreement name and number and the participating area identification.*

c. The location of the tank(s) by quarter-quarter section, section, township, and range, or other location description methods acceptable to the authorized officer.

d. The meter's unique identification number.

e. The opening and closing dates.

f. The opening and closing meter readings.*

g. Effective meter factor(s).

h. The observed sediment and water (S&W) percentage.*

i. The API gravity at 60 °F or observed gravity and temperature.*

j. The signature of the purchaser's representative.

k. The signature of the operator's representative made within 2 business days after the sale or removal.

Violation: Minor (unless marked by asterisk).

Corrective Action: Submit the missing information.

Abatement Period: Within 7 business days of notice.

Violation: Major (if marked by asterisk).

Corrective Action: Submit a complete, correct run ticket.

Abatement Period: Within 3 business days of notice.

3. Transfers by Truck

When a single truckload constitutes a complete sale or removal, the minimum information required to be in the driver's possession includes the following:

a. The name of the seller.

b. The Federal or Indian lease number or Indian agreement number or, if appropriate, the communitization agreement number, or unit agreement name and number and the participating area identification.

c. The location of the tank(s) by quarter-quarter section, section, township, and range, or other location description methods acceptable to the authorized officer.

d. The unique tank number(s) if by tank gauging and/or the unique identification number of the LACT meter(s) involved.

e. The date(s) of the transaction.

f. The approximate volume of oil on board.

g. The name of the first purchaser or destination.

When multiple truckloads are involved in a sale or removal, only the driver of the last truck is required to have the documentation listed in paragraphs a. through g. on board. All other drivers shall have in their possession appropriate documentation in the form of a trip log or manifest.

Violation: Major.

Corrective Action: Discontinue trucking operation until the required documentation is provided.

Abatement Period: Immediately.

F. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Any method of oil measurement other than tank gauging or positive displacement metering system requires the prior approval of the authorized officer based on applicable API standards. Other measurement methods include, but are not limited to, turbine metering systems, measurement by calibrated tank truck, measurement by weight, and net oil computer.

The requirements and minimum standards for oil measurements by an alternate method on the lease, unit, unit participating area, or communitized area, or by either an authorized or an alternate method of measurement at a location off the lease, unit, unit participating area, or communitized area, are as follows:

1. Measurement on the Lease, Unit, Unit Participating Area or Communitized Area

An application for approval of an alternate oil measurement method shall be submitted to the authorized officer, and written approval obtained, before any such alternate oil measurement method is utilized. An operator requesting approval of any alternate oil sales measurement system shall submit

performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer to demonstrate that the proposed alternate oil sales measurement system will meet or exceed the objectives of the applicable minimum standard(s) or will not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired alternate method of oil measurement.

Abatement Period: Prior to sales or removal.

2. Measurement and/or storage at a Location off the Lease, Unit, Unit Participating Area, or Communitized Area. a. An application for off-lease measurement and/or storage shall be submitted to the authorized officer and written approval obtained before any such off-lease oil measurement and/or storage facilities are installed or operated. The application for written approval of off-lease measurement and/or storage shall justify the intended off-lease location of the measurement and/or storage facilities before approval will be granted. No additional approval as to the oil measurement method is required, provided that measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Applications for off-lease measurement and/or storage of oil produced from the same formation and same source (lease, or unit area, or unit participating area, or communitized area) shall be justified by valid environmental, topographic, or economic concerns, or any combination thereof (e.g., environmental problems that preclude the cost effective construction of an on-lease measurement and/or storage facility; better access to all weather roads, pipeline connections, and truck loading points; or increased production value through reduction of transportation costs). In addition to the above justification, the application shall be accompanied by the following:

(1) A map showing the single source (the lease, unit area, unit participating area, or communitized area), and the well(s) thereon producing from the same formation, for which approval is sought for an off-lease measurement and/or storage facility; and

(2) A schematic diagram that clearly shows and identifies all equipment and piping that will be used for this purpose, both on and off the source.

No additional wells from the same source shall be added to an approved off-lease measurement and/or storage facility without the authorized officer's prior concurrence. Oil produced from wells located on other sources or produced from different formations on the same source may not be combined with the oil production at an approved off-lease measurement and/or storage facility without the prior written approval of the authorized officer to commingle the production pursuant to Section III.H.

Violation: Minor.

Corrective Action: Submit application for written approval of off-lease measurement.

Abatement Period: Within 20 business days.

b. If oil measurement and/or storage is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by an alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the off-lease measurement and/or storage facilities, shall also demonstrate the acceptability of the proposed alternate measurement method, pursuant to Section III.F.1.

Violation: Major.

Corrective Action: Include in the application for approval of off-lease measurement justification of the desired method of measurement.

Abatement Period: Prior to sales or removal.

G. Determination of Oil Volumes by Methods Other Than Measurement

Pursuant to 43 CFR 3162.7–2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil that is classified as slop oil or waste oil. No slop or waste oil may be sold or otherwise disposed of without prior approval from the authorized officer.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel, or elsewhere, may be classified or disposed of as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition or demonstrate the economic infeasibility thereof.

Abatement Period: Within 10 business days.

2. Following the approved sale or disposal of slop or waste oil, the operator shall notify the authorized officer within 20 days as to the volume sold or disposed, and the method used to compute the volume.

Violation: Major.

Corrective Action: Submit complete report of sale or disposal.

Abatement Period: Within 24 hours of the notification by the authorized officer that the report has not been received.

H. Commingling of Production

Pursuant to 43 CFR 3162.7–2, oil production from different formations on the same source (lease, unit area, unit participating area, communitized area), or from the same formation but from a different source, may not be commingled with one another on the surface without the prior written approval of the authorized officer.

1. Application for approval to commingle oil production on the surface shall provide a detailed explanation of the proposed operation and the necessity for doing so, and be accompanied by:

a. A map showing, as appropriate, all leases, unit areas, unit participating areas, communitized areas, and the wells thereon that will contribute oil production to the commingled storage facility;

b. A schematic diagram that clearly shows and identifies all equipment and piping to be used for this purpose;

c. The estimated monthly quantity and quality of the oil to be contributed by the well(s) on each source;

d. Details of the method proposed for allocating production and related revenues back to each contributing source;

e. A statement that all working and basic royalty owners in the involved sources have been notified of the proposed commingling;

f. Calculations showing that the royalty value attributable to the involved Federal and/or Indian lease(s) will not be reduced if the commingling is approved; and

g. If the reason for the application is to avoid the premature abandonment of all or a majority of the wells involved, a detailed economic evaluation supporting that reason shall be included.

No additional wells or sources may be added to an approved commingled facility without the prior written approval of the authorized officer.

Violation: Major.

Corrective Action: Submit application for approval to commingle or to add wells, formations, or sources to an approved commingled facility.

Abatement Period: Prior to sales or removal.

2. Applications for approval to commingle oil production from different formations in a single wellbore shall provide a detailed explanation as to the necessity for doing so and shall include:

a. A map showing all wells for which approval is sought for wellbore commingling and the source (lease, unit area, unit participating area, communitized area) on which each such well is located;

b. The estimated monthly quantity and quality of the oil to be contributed by each formation in each well;

c. Details of the method proposed for allocating the production and related revenues back to each formation in each well; and

d. Calculations showing that the royalty value attributable to the Federal and/or Indian leases involved will not be reduced if the wellbore commingling is approved.

Violation: Minor.

Corrective Action: Submit application for approval of wellbore commingling.

Abatement Period: 20 days.

IV. Variances From Minimum Standards

An operator may request the approval of the authorized officer for a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which

the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or will not adversely affect royalty income or production accountability. In addition, approval may be given orally by the authorized officer before the operator initiates actions that require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be granted.

The authorized officer, on his/her motion, also may issue NTLs (Notices to Lessees) that establish modified standards or variances for specific geographic areas of operations.

After notice to the operator, the authorized officer also may require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

Attachment

I. Sections from 43 CFR subparts 3163 and 3165 (not included with the **Federal Register** publication).

[FR Doc. 94–5316 Filed 3–8–94; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93–305; DA 94–173]

Proposal To Establish a Vanity Call Sign System in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the period for filing comments in this proceeding 59 FR 558 (1/5/94) which proposes to implement a vanity call sign system in the amateur service. The extension of time is necessary so that organizations can evaluate the input of their members, adopt a position, and prepare their comments. The effect of the extension is to compile as complete a record as possible and one which will reflect the views of the amateur community.

DATES: Comments due April 21, 1994. Reply comments due May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Amendment of the Amateur Service Rules To Implement a Vanity Call Sign System; Order Extending Time for Comments

[PR Docket No. 93–305]

Adopted: February 23, 1994.
Released: March 1, 1994.

By the Chief, Private Radio Bureau:

1. On January 26, 1994, The American Radio Relay League, Inc. (ARRL) requested that the time for filing comments in the above-captioned proceeding be extended from March 7, 1994, to and including April 21, 1994.

2. In its request, ARRL states that it needs time, beyond that available under the current comment deadline, to evaluate the input of its members. Further, ARRL states that after such evaluation is complete, it requires time to adopt a position and prepare its comments. According to ARRL, the importance of a proceeding concerning call sign selection warrants the requested extension of time.

3. The Commission does not routinely grant extensions of time. In this instance, however, it is desirable that the record be as complete as possible and that it reflect the views of the amateur community concerning the proposed vanity call sign system. Accordingly, *it is ordered*, that the deadline for filing comments in this proceeding *is extended* to and including April 21, 1994, and that the deadline for filing reply comments *is extended* to and including May 23, 1994.

4. This action is taken pursuant to the authority found in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and in §§ 0.131(a) and 0.331 of the Commission's Rules, 47 CFR 0.131(a) and 0.331.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–5317 Filed 3–8–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 940366–4066; I.D. 021494E]

RIN: 0648–AF39

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures proposed in Amendment 5 to the Fishery Management Plan for the American Lobster Fishery (FMP). Amendment 5 is intended to eliminate or prevent overfishing of American lobsters through adoption of a management program in the exclusive economic zone (EEZ) with anticipated complementary management action in state waters through state initiatives. This proposed rule would: Maintain the current 3¼-inch (8.26-cm) minimum carapace length, thus rescinding the scheduled increases in the minimum size limit promulgated through Amendment 2 to the FMP; establish a new data collection system through a mandatory, uniform logbook; establish a 5-year limitation on issuance of new Federal vessel permits; establish new permit requirements; establish a framework process to develop a stock rebuilding program in response to overfishing; and revise the definition of overfishing.

DATES: Comments on the proposed rule must be received on or before April 18, 1994.

ADDRESSES: Comments on the proposed rule, Amendment 5, or its supporting documents should be sent to Richard Roe, Director, Northeast Region, National Marine Fisheries Service, 1 Blackburn Dr., Gloucester, MA 01930. Mark the outside of the envelope "Comments on American Lobster Plan".

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Director, Northeast Region, NMFS (address listed above), and the Office of Management and Budget (OMB) (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of Amendment 5, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA),

and the draft supplemental environmental impact statement (DSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council (Council), Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097. Copies of the Finance Handbook may be obtained from Mr. Joseph Giza, Chief, Fiscal Policy and Quality Assurance Branch, NOAA Financial Management Division, Caller Service No. 8025, 20020 Century Boulevard, Germantown, Maryland 20874, telephone 301–443–8795.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The FMP was implemented on September 7, 1983. The FMP established a minimum carapace length for American lobster taken from the EEZ of 3$^3/_{16}$ inches (8.1 cm), effective January 1, 1985. Amendment 2 increased the minimum carapace length to 3$^5/_{16}$ inches (8.41 cm) in four $^1/_{32}$-inch (0.79-cm) increments, effective January 1, 1988, 1989, 1991, and 1992, respectively. Two of the four scheduled increments were implemented. In 1991, the minimum carapace length was to increase to 3$^9/_{32}$ inches (8.33 cm). Due to major disruptions in the lobster market, the states of Maine, Massachusetts, and Rhode Island decided not to conform the minimum carapace length in their waters to the scheduled EEZ minimum length. If the Federal carapace length had increased in 1991, these state actions would have created enforcement and management problems due to the inconsistency between the minimum lengths for lobsters taken from state waters and those taken from EEZ waters. Also, the Mitchell Amendment to the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1857) prohibited the shipment, transport, sale or purchase, in interstate or foreign commerce, of any whole live lobster, regardless of where taken, that is smaller than the minimum length for lobsters taken from the EEZ. That amendment had the effect of banning the interstate transport or export of lobsters, harvested legally in state waters, that are smaller than the Federal minimum length for EEZ lobsters.

Amendment 4, implemented on December 27, 1991 (57 FR 214), addressed the above problems by maintaining the minimum carapace size for American lobster at 3¼ inches (8.26 cm) through December 26, 1993, when it would increase to 3$^9/_{32}$ inches (8.33 cm). The intent of the amendment was that the Council would develop a comprehensive amendment during the 2-year period to replace the minimum-length increases, provide consistent management of the American lobster resource throughout its range, and reduce the risk of overfishing. Amendment 4 required that if, prior to December 26, 1993, the Council transmitted a comprehensive amendment, then NMFS would change the date, by regulatory amendment, upon which the 3$^9/_{32}$-inch (8.33-cm) minimum carapace length would become effective (December 27, 1993) to the 146th day after the date on which the amendment was transmitted. On December 23, 1993, the Council submitted Amendment 5. As a result of this action, on December 28, 1993, a final rule was published in the **Federal Register** (58 FR 68555) that delayed increasing the minimum carapace length to 3$^9/_{32}$ inches (8.33 cm) until May 18, 1994.

Amendment 4 also proposed a definition of overfishing, with a preliminary indication that overfishing may be occurring in the offshore stock. The most recent stock assessment of American lobster has confirmed that the overall resource is in an overfished condition.

Amendment 5 to the FMP was prepared by the Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), under the provisions of the Magnuson Act. At the December 7–8, 1993, Council meeting, the Council voted to approve Amendment 5 for submission to NMFS. A notice of availability inviting comments on a draft supplemental environmental impact statement (DSEIS) for Amendment 5 was published in the **Federal Register** February 4, 1994 (59 FR 5428). The public comment period for the DSEIS will end on March 20, 1994.

Proposed Management Measures

Amendment 5 proposes to maintain the minimum carapace length in the EEZ at the current size of 3¼ inches (8.26 cm) to remain consistent with the minimum carapace size for all the major lobster-producing states from Maine through New York. This amendment also proposes to change the management strategy for lobster by imposing a limitation on the issuance of new federal lobster permits and, in year 2 of the amendment, establishing a stock rebuilding program in four management areas in the EEZ. The four management areas are: Gulf of Maine Inshore; Southern New England Inshore; Middle Atlantic Inshore; and Offshore. In response to public comment, the Council has determined that a seaward boundary line of the Southern New England Inshore area, which is contiguous with part of the Offshore area, should not be proposed until the Effort Management Teams (EMTs) for these areas jointly consider the issue and make a recommendation to the Council. Long Island Sound, under the jurisdiction of the coastal states and not part of the EEZ, is not specifically part of the Southern New England Inshore area. However, since Amendment 5 was developed as a joint effort by the Council and ASMFC, Long Island Sound might be established under ASMFC regulations as a separate management area.

The Council has proposed a division of the lobster fleet into three vessel permit categories and the immediate establishment of a quota for all vessels that qualify under the permit limitations and operate any gear other than lobster pots.

In addition, the Council is proposing that the minimum dimensions of the lobster trap escape vent width size change from 6 inches (152.4 mm) to 5¾ inches (146.1 mm) (consistent with the state of Maine regulations). The current size requirements for lobster trap escape vents (1$^7/_8$ inches by 6 inches (47.6 mm by 152.4 mm) for rectangular vents and 2$^3/_8$ inches (60.3 mm) for circular vents) were intended to provide the maximum escapement of sublegal lobsters consistent with 100% retention of legal lobsters. Most escape vents snap into or are wired into the trap over an opening cut in the meshes. Others are hinged on the bottom edge and fastened with degradable fasteners at the top edge and serve as a ghost panel if the trap is lost. Regardless of the panel design, the 6-inch (152.4-mm) width requirement requires removal of four wires horizontally and either one wire or two vertically, depending on whether the panel is also to serve as the ghost panel. Industry representatives have stated that the removal of the fourth wire weakens the trap unnecessarily while not significantly affecting escapement of sublegal size lobsters. The Council's Plan Development Team examined this issue and concluded that reducing the escape vent width would not change the escapement/retention levels of traps based on the criteria established in Amendment 3. This measure will not entail any financial impacts since existing panels will meet the new requirement and may continue to be

used until they would normally be replaced.

The American lobster resource would be considered recruitment overfished when, throughout its range, the fishing mortality rate (F) results in an estimated egg production per recruit of 10 percent or less of the egg production of a non-fished population ($F_{10\%}$). The estimated level of fishing mortality in the Gulf of Maine area for the period 1989 to 1991 was F=0.65, and has been significantly increasing at a rate of 5.5 percent per year since 1983. $F_{10\%}$ is estimated to be 0.52, indicating that fishing mortality rates need to be reduced 20 percent or more in the Gulf of Maine area to prevent overfishing. For the Georges Bank and Offshore areas, the estimated level of fishing mortality for the period 1989 to 1991 was between F=0.17 and F=0.36 and has been declining since 1985. $F_{10\%}$ is estimated to be 0.44, indicating that this segment of the resource may not be overfished, but is probably fully exploited. In the South Cape Cod/Long Island areas, the estimated fishing mortality rates have been very high, ranging from F=1.12 to F=1.59, without any significant trend for the period 1986 to 1991. $F_{10\%}$ for these areas is estimated to be 0.68, indicating that overfishing is occurring and that F needs to be reduced approximately 50 percent to prevent overfishing. Since overfishing is occurring in both the Gulf of Maine area and South Cape Cod/Long Island areas, while the Georges Bank and Offshore areas are fully exploited, F for the aggregated resource exceeds the overfishing level and the stock is currently in an overfished condition.

Because the lobster resource has been determined to be overfished, Amendment 5 includes a 5-year rebuilding program for the Gulf of Maine segment of the resource and a 10-year rebuilding program for the Southern New England inshore resource by reducing the fishing mortality rate by 5 percent per year for both areas starting in year 2 of the plan.

To achieve these reductions, Amendment 5 includes a stock rebuilding program within each of the four management areas. This rebuilding program would be developed during year 1 and could include any of the framework measures specified under § 649.44(d). These measures could be applied to all segments of the harvesting sector within each management area.

To determine which of these measures would be implemented in each of the management areas, Amendment 5 would establish an Effort Management Team (EMT) for each of the management areas. The EMTs would be comprised of a core group of representatives from NMFS, the states, and the Council, which would participate on all of the EMTs, and a group of area-specific industry representatives that would participate only on the EMT for their area. Each EMT would establish a stock rebuilding program for its area and make recommendations to the Council (through the Council's Lobster Committee), no later than 6 months following the implementation of Amendment 5. The Council would then initiate development of a stock rebuilding program for each area within 1 year of implementation of Amendment 5. This delay will provide the opportunity for fishermen within each area to reach a consensus as to which options listed in § 649.44(d) should apply in their respective management area.

Also in the amendment are new permitting requirements for vessel operators and dealers, and mandatory reporting requirements for dealers and vessel owners. The need for mandatory reporting has become increasingly clear to NMFS, the Council, and the industry over the last couple of years. As a result, the Mid-Atlantic and New England Councils are now including standardized reporting requirements in all recent amendments to FMPs.

The Council has proposed three limited access permit categories for vessels engaged in the commercial lobster fishery, by gear type. To be issued a limited access permit vessels would qualify based on the following: Permits would be issued to vessels that held a valid Federal American lobster permit and landed lobsters prior to March 25, 1991, (date of publication of the control date) or to vessels or individuals that held a Federally endorsed state permit and landed lobsters prior to March 25, 1991. The Council has proposed that the moratorium be limited to 5 years. The Council would conduct a formal review of the effects of the moratorium during year 3 to determine whether this action is consistent with the stock rebuilding program.

To accommodate the recreational fleet, the Council is proposing that all party and charter boats engaged in the recreational fishery for lobster in the EEZ, and divers on vessels for hire, be exempt from the need to obtain a limited access permit provided that no lobsters are sold and that no more than six lobsters per person on board the vessel are landed or possessed.

Amendment 2 to the FMP contained a provision that allowed states with lobster permits to enter into an agreement with NMFS, permitting them to endorse an individual's state lobster permit for lobster fishing in the EEZ. Vessel owners who obtained this endorsement from the state did not have to get a Federal lobster permit to fish in the EEZ. The Council, in Amendment 5, proposed a limited access permit criterion that would allow any holder of a state license endorsed for fishing in the EEZ that was obtained after the control date and has been held continuously since 1991, to qualify for the limited access permit, if the license holder can document lobster landings of at least 1,000 lbs (453.6 kg) in 1991 or 1992, and if the state issuing the Federal endorsement has failed to notify applicants of the control date. The Council reasoned that notification of the control date may not have been consistent from state to state and that it was necessary to accommodate vessel owners that may not have been notified by the state. This measure was disapproved by NMFS on February 14, 1994, based on national standard 4 of the Magnuson Act, which requires that management measures not discriminate against residents of different states. This proposal would allow a resident of one state, who entered the fishery after the control date, to obtain a limited access permit while the resident of another state in similar circumstances would be excluded. The control date was published in the **Federal Register** and also received wide publication in the commercial fishing press. Any additional notification was supplementary to this notification.

First-Year Restrictions

The stock rebuilding measures to be proposed by the regional EMTs would not be implemented until year 2 of this amendment. There is the potential for significant increases in fishing mortality during the first year through displaced effort from the multispecies and scallop fisheries. Therefore, the Council has proposed limiting in the first year of plan implementation the total catch of all vessels that qualify under the moratorium and operate any gear other than lobster pots to 4.5 million lbs (2.04 million kg), which corresponds to 8 percent of the total landings of lobsters in 1992. If the total catch by such vessels reaches 6 percent of the 1992 catch level of 3.35 million lbs (1.52 million kg) during the course of the year, then all vessels would be limited to 100 lobsters, by count, per day or per trip, whichever is longer, for the remainder of the year. The restriction would not apply in year 2 because the framework process would be effective then.

Stock Rebuilding Program

The Council would initiate development of the Stock Rebuilding Program by soliciting recommendations from the EMTs. With Council approval of the recommended management measures, public hearings would be held to receive comments on the proposed Stock Rebuilding Program. After consultation with the Council and ASMFC, and upon their recommendation, the Regional Director would promulgate appropriate regulations to implement the Stock Rebuilding Program within 1 year after the date of implementation of Amendment 5. The delay in the starting date for the Stock Rebuilding Program of up to 1 year would provide the opportunity for fishermen within each Management Area to reach a consensus as to which of the options listed above should apply in their respective Management Area.

The Council and ASMFC, through consultation with the ASMFC Lobster Scientific Committee during the stock assessment process and with the EMT, would continue to monitor the effectiveness of the Stock Rebuilding Program and to ensure, to the extent possible, that regional measures (within a Management Area) do not shift impacts from one Management Area to another. The plan monitoring effort would also make annual determinations whether the program is making adequate progress in meeting the goal of eliminating any overfishing. If it is determined that the initial specification of the Stock Rebuilding Program is inadequate to meet the goal of the program, then the Council, in consultation with ASMFC, would consider additional measures according to the procedure outlined above. After Council action, with public hearings, the Regional Director, in consultation with the Council and ASMFC, would promulgate appropriate regulations as may be necessary to modify the Stock Rebuilding Program.

Changes From Existing Regulations

For clarity and convenience of the public, 50 CFR part 649 would be revised in its entirety as published in this proposed rule. Sections 649.1 and 649.3 would be revised only slightly from existing regulations. More extensive revisions would be made to §§ 649.2, 649.4, 649.8 (currently § 649.6), 649.9 (currently § 649.7), 649.20, and 649.21. Sections 649.5, 649.6, 649.7, 649.22, 649.23, 649.24, 649.25, 649.41, 649.42, 649.43, and 649.44 of this proposed rule are either entirely new or incorporate portions of existing regulations.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by the Council within 15 days of the receipt of a proposed amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a DSEIS for Amendment 5 describing the possible impacts on the environment as a result of this rule. A copy of the DSEIS may be obtained from the Council (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA) that concludes that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The proposed measures would not result in a reduction of annual gross revenues of more than 5 percent. Annual compliance costs are not expected to increase total costs by more than 5 percent and are not expected to be substantially higher for small, as compared to large, business entities. They will not force more than 2 percent of small business entities to cease business operations. A copy of the IRFA may be obtained from the Council (see **ADDRESSES**).

This proposed rule contains three new collection-of-information requirements and three revisions to existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements are:
1. Vessel logbooks, OMB Approval No. 0648–0212, (5 min./response);

2. Dealer permits, OMB Approval No. 0648–0202, (5 min./response);

3. Operator permits, OMB Approval No. 0648–0202, (1 hour/response).

Revisions to the existing requirements are: 1. Dealer purchase reports, OMB Approval No. 0648–0229, (2 min./response);

2. Vessel permits, appeal of denied permit, OMB Approval No. 0648–0202, (3 hours/response);

3. Vessel permits, appeal of permit category, OMB Approval No. 0648–2020, (5 hours/response).

Send comments regarding these burden estimates or any other aspect of these proposed collection-of-information requirements, including suggestions for reducing the burdens, to Richard Roe, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

The effects of all fisheries on threatened and endangered species were considered in an Endangered Species Act (ESA) consultation conducted for the implementation of the Marine Mammal Exemption Program in 1988. The resulting Biological Opinion (NMFS, 1988) found that fisheries may affect, but are not likely to jeopardize, the continued existence of any population of listed species. A formal consultation on the lobster fishery and the management measures implemented by this proposed rule is being conducted according to section 7 of the ESA. The Biological Opinion concluding the consultation will be completed prior to submission of the Final Supplemental Environmental Impact Statement and final rule. The preliminary findings suggest that the lobster fishery may affect endangered and threatened species, but is not likely to jeopardize the continued existence of any listed populations. Incidental takes of endangered and threatened whales and sea turtles have been documented and are listed in the DSEIS. Most of the documented takes have not resulted in mortalities. Management actions implemented through the proposed rule, including mandatory reporting through a uniform logbook, will improve monitoring capabilities and effort estimates.

This rule is not subject to review under Executive Order 12866.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: March 3, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is proposed to be revised to read as follows:

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

Sec.
649.1 Purpose and scope.
649.2 Definitions.
649.3 Relation to other laws.
649.4 Vessel permits.
649.5 Operator permits.
649.6 Dealer permits.
649.7 Recordkeeping and reporting.
649.8 Vessel identification.
649.9 Prohibitions.
649.10 Facilitation of enforcement.
649.11 Penalties.

Subpart B—Management Measures

649.20 Minimum size and landing requirements.
649.21 Gear identification and marking, escape vent, and ghost panel requirements.
649.22 Possession restrictions and target quota.
649.23 Transfer at sea.
649.24 Restrictions on trawl gear while in the trap fishery.
649.25 Experimental fishing exemption.

Subpart C—Stock Rebuilding Program and Framework Adjustments to Management Measures

649.41 Purpose and scope.
649.42 Stock rebuilding program requirements and time frame.
649.43 First-year framework specifications.
649.44 Framework specifications after year 1.

Figures to Part 649

Figure 1—Standard Tetrahedral Corner Radar Reflector.
Figure 2—American Lobster Management Areas Established for the Purposes of Regional Lobster Management.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 649.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the American Lobster Fishery (FMP), which was prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), and approved by the Assistant Administrator for Fisheries, NOAA. Red crab fishing gear, which is fished deeper than 200 fathoms (365.8 m), is gear not capable of taking lobsters, and is not subject to the provisions of this part.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

American lobster or *lobster* means the species *Homarus americanus*.

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

Council means the New England Fishery Management Council.

Dealer means any person who receives American lobsters for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

Dive vessel means any vessel carrying divers engaged in recreational fishing for a per capita fee or a charter fee.

Effort Monitoring Team (EMT) means a group of technical experts made up of representatives from the Council, NMFS, the appropriate states, and an appointed group of American lobster industry representatives, per management area, to each EMT.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

Fishery Management Plan (FMP) means the Fishery Management Plan for American Lobsters, as amended.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster 12 months after a trap has been abandoned or lost.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Lobster Plan Development Team (PDT) means a team of technical experts appointed by the Council.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

Party/charter boat means any vessel carrying recreational fishing persons or parties for a per capita fee or for a charter fee.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Recreational fishing means fishing that is not intended to, nor does it result in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats and dive boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Reporting month means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 hours local time on Sunday; and ending at 2400 hours local time the following Saturday.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for American lobsters.

Scrubbing is the forcible removal of eggs from a berried female American lobster.

Sixth tail segment is that tail segment closest to the fan of an American lobster's tail with the segment length measured along the dorsal center line with the tail flexed.

Transfer means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another vessel.

Trawl means gear consisting of a net that is towed and is capable of catching American lobsters, including Danish and Scottish seine gear.

Trip is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

Vessel registered length means the registered length specified on the U.S. Coast Guard documentation for a vessel or on the state registration for a vessel not required to be documented under chapter 123 of title 46 U.S.C., if the state-registered length is verified by an authorized officer.

V-notched American lobster means any American lobster bearing a V-shaped notch in the right (underside of the lobster down and tail toward the viewer) flipper next to the middle

flipper or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

V-shaped notch means a straight-sided triangular cut, without setal hairs, as least 1/4 inch (0.64 cm) in depth and tapering to a point.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). A whole American lobster may have one or both claws missing.

§ 649.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Nothing in these regulations shall supersede more restrictive state management measures for American lobsters.

§ 649.4 Vessel permits.

(a) *Limited access American lobster permits.* Any vessel of the United States that fishes for, possesses, or lands American lobster, in or harvested from the EEZ; except party, charter and dive boats that possess six or fewer American lobsters per person aboard the vessel, and recreational vessels and vessels that fish exclusively in state waters for American lobsters; must have been issued and carry on board a valid Federal limited access American lobster permit.

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access American lobster permit for 1994, a vessel must meet one of the following criteria: (A) The vessel or vessel owner had been issued a Federal American lobster permit, or a Federally endorsed state American lobster permit and landed American lobsters prior to March 25, 1991; or

(B) The vessel was under written agreement for construction or for re-rigging for directed American lobster fishing as of March 25, 1991, and the vessel was issued a Federal American lobster permit and landed American lobster prior to March 25, 1991; or

(C) The vessel is replacing a vessel that meets any of the criteria set forth in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access American lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access American lobster permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access American lobster permit.

(iii) A limited access American lobster permit for 1994 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access American lobster permit after 1994, a vessel must have been issued a limited access American lobster permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access American lobster permit for the preceding year. If more than one vessel owner claims eligibility to apply for a limited access American lobster permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access American lobster permit.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(4) *Notification of eligibility for a limited access permit.*

(i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria in paragraph (a)(1) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access American lobster permit by submitting the information described in paragraphs (a)(1) through (3) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(6) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access American lobster permit will be issued to the vessel.

(5) *Permit categories.* Each vessel issued a limited access American lobster permit under the criteria specified in paragraph (a) of this section shall be assigned to and must fish under one or more of the three permit categories listed in paragraphs (a)(5) (i) through (iii) of this section, whenever the vessel fishes for, possess, or lands American lobster in or from the EEZ, based on the eligibility and operating criteria specified below. Limited access American lobster permits will indicate which category or categories the vessel may fish under. A vessel assigned to Category A or B may also qualify for and fish under Category C, if it meets the eligibility and operating criteria specified.

(i) *Category A vessel permit.* A vessel that cannot document that it landed at least 300 lbs (136.1 kg) of American lobster on at least one trip prior to May 25, 1991, must have on board a valid Category A permit at any time it possesses or lands American lobster harvested with fishing gear other than lobster traps;

(ii) *Category B vessel permit.* A vessel that can document that it landed at least 300 lbs (136.1 kg) of American lobster on at least one trip prior to May 25, 1991, must have on board a valid Category B permit at any time it possesses or lands American lobster harvested with fishing gear other than lobster traps;

(iii) *Category C vessel permit.* A vessel must have on board a valid Category C permit at any time it possesses or lands American lobster harvested exclusively with lobster traps. A vessel fishing under this category may have fishing gear other than lobster traps on board the vessel, if such gear is disabled and not available for immediate use for the entire fishing trip as specified in § 649.24.

(6) *Appeal of denial of limited access American lobster permit or of permit category assignment.* (i) Any applicant denied a limited access American lobster permit or any applicant who believes he/she is assigned to an incorrect American lobster permit category, may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal: (A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision

within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) *Recommendations to the Regional Director by a hearing officer.* A hearing officer shall be appointed by the Regional Director to review the initial decision. The hearing officer shall make findings and a recommendation to the Regional Director, which shall be advisory only.

(v) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(b) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable State or local requirements. If a requirement of this part and a management measure required by State or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(c) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access American lobster permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, and settlement sheets.

(d) *Information requirements.* In addition to applicable information required to be provided by paragraph (c) of this section, an application for a limited access American lobster permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f)(1) of this section.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (a)(6) of this section, the Regional Director shall issue a Federal American lobster vessel permit within 30 days of receipt of the application unless: (i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 649.7; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (a)(1)(iii) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a)(1) and (2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A Federal American lobster permit must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(k) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Limited access American lobster permit renewal.* To renew or apply for a limited access American lobster permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. For example, to receive a limited access American lobster permit

for 1996, vessel owners must apply by December 31, 1995. Failure to renew a limited access American lobster permit in any year bars the renewal of the permit in subsequent years.

(p) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

§ 649.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 649.4, or any operator of a vessel fishing for, in possession of, or landing American lobsters in or from the EEZ; except party, charter, and dive boats that possess on board six or fewer American lobsters per person aboard the vessel, recreational vessels, and vessels that fish exclusively in state waters for American lobsters; must carry on board a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 649.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A Federal operator permit must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 649.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the

Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 649.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A Federal dealer permit must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person, or other business entity, to which it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 649.7 Recordkeeping and reporting.

(a) *Dealers*—(1) *Weekly report.* Dealers must send a report of lobster purchases by mail to the Regional Director, or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which lobsters are landed or received; dates of purchases; pounds; price; and port landed. If no lobsters are purchased during the week, a report so stating must be submitted.

(2) *Inspection.* Upon request by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(3) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for 1 year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(4) *Submitting reports.* Reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no lobsters are purchased during a week, a report so stating must be submitted.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel holding a Federal American lobster permit under § 649.4 shall maintain, on board the vessel, and submit an accurate daily fishing log report for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds, by species of all species landed and discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of each reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 649.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25

ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under chapter 123 of title 46 U.S.C.

(c) *Numerals..*The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall: (1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 649.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a limited access American lobster permit under § 649.4 to do any of the following: (1) Retain on board, land, or possess at or after landing, American lobsters that fails to meet the carapace length standard specified in § 649.20(b). All American lobsters will be subject to inspection and enforcement, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

(2) Retain on board, land or possess any American lobster or parts thereof in violation of the mutilation standards specified in § 649.20(c).

(3) Retain on board, possess, or land any berried female American lobster specified in § 649.20(d).

(4) Remove eggs from any berried female American lobster, or to possess or land any such lobster from which eggs have been removed.

(5) Retain on board, land or possess any V-notched female American lobsters throughout the range of the stock.

(6) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked, vented, and panelled in accordance with the requirements specified in § 649.21.

(7) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 649.7(b).

(8) Fish for, possess, or land American lobsters unless the operator of the vessel has been issued an operator's permit under § 649.5, and the permit is on board the vessel and is valid.

(9) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 649.4(k) or § 649.5(k).

(10) Make any false statement in connection with an application under § 649.4 or § 649.5.

(11) Fail to affix and maintain permanent markings as required by § 649.8.

(12) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters unless the dealer has a valid Federal Dealer's Permit issued under § 649.6.

(13) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove, or otherwise transfer American lobsters or fish from one vessel to another vessel.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel with a Category A American lobster permit as described under § 649.4(a)(5)(i) to do any of the following: (1) Land or possess on board the vessel more than the possession limit specified in § 649.22.

(2) Land or possess on board the vessel more than 100 American lobsters in any one calendar day.

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel with a Category B American lobster permit as described under § 649.4(a)(5)(ii), to land, or possess on board the vessel, American lobsters in excess of the Category B possession limit established according to the publication of an interim final rule in accordance with the process under § 649.22(c).

(d) In addition to the prohibitions specified in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel that has not been issued a limited access American lobster permit as described under § 649.4(a), to do any of the following: (1) Possess on board a vessel or land American lobsters harvested in or from the EEZ unless the vessel is a party/charter or dive boat and there are six or fewer American lobsters per person on such boats and the lobsters are not sold, traded or bartered.

(2) [Reserved]

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b) and (c) of this section, it is unlawful for any person to do any of the following: (1) Possess on board a vessel or land American lobsters unless: (i) The American lobsters were harvested by a vessel that has been issued and carries on board a valid limited access American lobster permit under § 649.4; or

(ii) The American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters; or

(iii) The American lobsters were harvested by a party/charter or dive vessel that possesses six or fewer American lobsters not intended for trade, barter or sale per person aboard the vessel.

(2) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel unless the vessel has been issued a valid Federal limited access American lobster permit under § 649.4, or the American lobsters were harvested by a vessel without a Federal American lobster permit that fishes for American lobsters exclusively in state waters;

(3) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, offload, cause to be offloaded, sell or transfer American lobsters from a fishing vessel issued a Federal limited access American lobster permit, whether on land or at sea, as an owner or operator, without accurately preparing and submitting, in a timely fashion, the documents required by § 649.7.

(4) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, offload, cause to be offloaded, sell or transfer; American lobsters harvested in or from the EEZ whether on land or at sea, as an owner or operator, without accurately preparing and submitting, in a timely fashion, the documents required by § 649.7, unless American lobsters were harvested by a party/charter or dive vessel that possesses six or fewer, per person aboard the vessel, American lobsters not intended for sale, trade, or barter.

(5) Purchase or receive American lobsters, or attempt to purchase or receive American lobsters, whether on land or at sea, as a dealer without accurately preparing, submitting and retaining, in a timely fashion, the documents required by § 649.7;

(6) Land, offload, remove, or otherwise transfer, or attempt to land,

offload, remove or otherwise transfer, American lobsters from one vessel to another unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters;

(7) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from a fishing vessel, unless in possession of a valid dealer's permit issued under § 649.6;

(8) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, American lobsters caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 649.4, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters;

(9) Purchase, possess or receive for commercial purpose from a vessel or attempt to purchase, possess or receive for commercial purposes, American lobsters from a vessel in excess of any possession or landing limit applicable to such vessel under § 649.22.

(10) To be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal American lobster permit under § 649.4, without having been issued and possessing a valid operator's permit issued under § 649.5.

(11) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part;

(12) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobsters;

(13) Make any false statement on any report required to be submitted or maintained under § 649.7; or

(14) Violate any provision of this part, the Magnuson Act, or any regulation, permit, or notification issued under the Magnuson Act or these regulations.

(15) Possess or land any American lobsters harvested in or from the EEZ in violation of § 649.20.

(f) Any person possessing, or landing American lobsters at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer, is subject to all of the prohibitions specified in paragraphs (a), (b) and (c) of this section, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters or are from a party/charter or dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel and the lobsters are not intended for sale, trade, or barter.

(g) *Presumption.* American lobsters that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or American lobsters that are possessed by a dealer, are presumed to be harvested from the EEZ. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal American lobster permit and fishing exclusively for American lobsters in state waters will be sufficient to rebut the presumption.

(h) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b), will be *prima facie* evidence that such American lobsters were taken or imported in violation of these regulations. Evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

§ 649.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 649.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 649.20 Minimum size and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed at or after landing by vessels issued a Federal American lobster permit, is 3¼ inches (8.26 cm).

(c) *Mutilation.* (1) It is unlawful for any person to remove meat or any body appendage from any American lobster harvested in or from the EEZ before landing, or to have in possession on board any American lobster part other than whole lobsters.

(2) It is unlawful for any owner, operator or person aboard a vessel issued a Federal American lobster permit to remove meat or any body appendage from any American lobster before landing, or to have in possession on board any American lobster part other than whole lobsters.

(d) *Berried females.* (1) Any berried female American lobster harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female American lobster harvested or possessed by a vessel issued a Federal American lobster permit must be returned to the sea immediately.

(e) *Scrubbing.* (1) No person may remove extruded eggs attached to the abdominal appendages from any female American lobster harvested on or from the EEZ.

(2) No owner, operator or person aboard a vessel issued a Federal American lobster permit may remove extruded eggs attached to the abdominal appendages from any female American lobster.

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

(a) *Identification.* All lobster gear deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification: (1) A number assigned by the Regional Director; and/or

(2) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Marking.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster pot trawls are to be marked as follows: (1) Lobster pot trawls of three or fewer pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east to and including south) of an American lobster trawl must be marked with a radar reflector only. Standard tetrahedral corner radar reflectors (see Figure 1 of this part) of at least 8 inches (20.32 cm) (both in height and width and made from metal) must be employed.

(3) No American lobster pot trawl shall exceed 1.5 nautical miles (2.78

km) in length as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas: (i) *Gulf of Maine gear area.* All waters of the EEZ north of 42°20′ N. latitude seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank Gear Area.* All waters of the EEZ south of 42°20′ N. latitude and east of 70°00′ W. longitude or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England Gear Area.* All waters of the EEZ west of 70°00′ W. longitude, east of 71°30′ W. longitude at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic Gear Area.* All waters of the EEZ, west of 71°30′ W. longitude and north of 36°33′ N. latitude at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* All American lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, as specified under § 649.4, must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) The specifications for escape vents are as follows:

(i) A rectangular portal with an unobstructed opening not less than 1⅞ inches (4.76 cm) by 5¾ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2⅜ inches (6.03 cm) in diameter.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the **Federal Register** any other type of acceptable escape vent that the Regional Director finds to be consistent with paragraphs (c)(1) (i) and (ii) of this section.

(d) *Ghost panel.* Lobster traps not constructed entirely of wood must contain a ghost panel.

(1) The specifications of this requirement are as follows:

(i) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(ii) The panel must be constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.

(iii) The door of the trap may serve as the ghost panel if fastened with a material specified in paragraph (d)(1)(ii) of this section.

(iv) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the **Federal Register**, any other design, mechanism, material, or specification not described in the regulations in this part that serves to create an escape portal not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(e) *Enforcement action.* Unidentified, unmarked, unvented, or improperly vented American lobster traps will be seized and disposed of in accordance with the provisions of part 219 of this title.

§ 649.22 Possession restrictions and target quota.

(a) Owners or operators of vessels not issued a Federal American lobster permit, except party, charter, and dive boats that possess six or fewer American lobsters per person aboard the vessel, recreational vessels, and vessels fishing for American lobsters exclusively in state waters, are prohibited from possessing on a vessel or landing American lobsters harvested in or from the EEZ. Owners or operators of vessels not issued Federal American lobster permits are prohibited from selling, bartering, or trading or attempting to sell, trade, or barter American lobsters harvested by the vessel in or from the EEZ.

(b) Owners or operators of vessels with a Category A American lobster limited access permit, as specified under § 649.4, are prohibited from possessing or landing more than 100 American lobsters, by count, per trip, regardless of length, or per calendar day if more than one trip is made in a calendar day, while fishing with or harvested by gear other than lobster traps.

(c) In 1994, when the Regional Director determines that the commercial landings of American lobster by owners or operators of vessels with Category A and B American lobster limited access permits using gear other than lobster traps, as specified under § 649.4, will exceed 3.35 million lbs (1.52 million kg) (75 percent of the target quota) he/she shall implement the following vessel landing quota as an interim final rule: All vessels issued Federal American lobster permits shall be prohibited from possessing or landing more than 100 American lobsters, by count, per trip, regardless of length, or per calendar day if more than one trip is made in a calendar day, while fishing with or harvested by gear other than American lobster traps.

§ 649.23 Transfer at sea.

(a) Owners or operators of vessels permitted under § 649.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All persons are prohibited from transferring or attempting to transfer American lobsters harvested in or from the EEZ from one vessel to another vessel.

§ 649.24 Restrictions on trawl gear while in the trap fishery.

(a) To possess or land American lobster as a Category C vessel, to possess any gear other than American lobster traps, including but not limited to trawl gear, that is capable of catching American lobsters and is aboard the vessel, such gear must be disabled so that it is incapable of catching American lobsters. Nets or gear other than lobster traps that conform to one of the following specifications and that can be shown not to have been in recent use and not available for immediate use is considered to be disabled:

(1) Gear stowed below deck, provided:

(i) It is located below the main working deck from which the gear is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the gear, if trawl gear;

(iii) It is fan-folded (flaked) and bound around its circumference if it is trawl gear.

(2) Gear stowed and lashed down on deck, provided: (i) It is fan-folded (flaked) and bound around its circumference if trawl gear;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net, if trawl gear.

(3) A net or other gear that is on a reel and is covered and secured, provided: (i) The entire surface of the gear is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net, if trawl gear; and

(iii) The codend is removed from the net and stored below deck, if trawl gear.

(4) Nets or other gear that are secured in a manner authorized in writing by the Regional Director.

§ 649.25 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the American lobster resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not: (1) Have a detrimental effect on the American lobster resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Stock Rebuilding Program and Framework Adjustments to Management Measures

§ 649.41 Purpose and scope.

The purpose of this subpart is to specify the requirements and framework procedures for implementing the Stock Rebuilding Program, intended to eliminate overfishing in any resource areas.

§ 649.42 Stock rebuilding program requirements and time frame.

(a) *General.* (1) The Council shall have 1 year from [insert effective date of the final rule] to submit management measures to achieve the objectives of the FMP. The measures must be designed to achieve the FMP objectives for reducing fishing mortality in 5 years for the stock in the Gulf of Maine segment of the fishery and 10 years for the Southern New England segment of the stock. Such measures may be submitted through the Magnuson Act amendment process or through the first-year area management framework specifications in § 649.44.

(2) In developing such management measures the Council shall submit management measures to reduce fishing mortality in each of four management areas specified in paragraph (b) of this section. These management measures shall be implemented according to the first-year area management framework specifications in § 649.43.

(3) If the Council has not submitted management measures sufficient to achieve the objectives of the FMP on or before [insert date 1 year from effective date of the final rule], the Secretary shall determine, according to provisions of 16 U.S.C. 1854(c), whether to prepare an amendment to the FMP.

(b) *Management areas.* The Stock Rebuilding Program to be submitted by the Council shall be developed based on the status of stock of American lobsters and management considerations for each of the areas described and defined in this paragraph (b).

(1) *Area 1. Near-shore EEZ Waters of the Gulf of Maine.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
A	44°04′ N.	67°19′ W. and northward along the irregular U.S.-Canada Maritime Boundary to the territorial sea.
B	43°03′ N.	70°00′ W.
C	42°14′ N.	70°00′ W.
D	42°08′ N.	69°55′ W.
E	42°06′ N.	70°04′ W.

(2) *Area 2. Near-shore EEZ Waters of Southern New England.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
E	42°06′ N.	70°04′ W.
D	42°08′ N.	69°55′ W.
F	41°10′ N.	69°06′ W.
G	40°46′ N.	71°34′ W.
H	41°06′ N.	71°43′ W.

(3) *Area 3. EEZ Offshore Waters.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and westerly of the U.S.-Canada Maritime Boundary:

Point	Latitude	Longitude
A	44°04′ N.	67°19′ W. and northward along the irregular U.S.-Canada Maritime Boundary to the territorial sea.
B	43°03′ N.	70°00′ W.
C	42°14′ N.	70°00′ W.
D	42°08′ N.	69°55′ W.
F	41°10′ N.	69°06′ W.
G	40°46′ N.	71°34′ W.
J	40°13′ N.	72°44′ W.
K	38°39′ N.	73°24′ W.
L	38°12′ N.	73°55′ W.
M	37°12′ N.	74°44′ W.
N	35°41′ N.	75°10′ W.
O	35°15′ N.	75°28′ W.

(4) *Area 4. Near-shore Waters of the Middle Atlantic.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
I	41°05′ N.	71°49′ W.
H	41°06′ N.	71°43′ W.
G	40°46′ N.	71°34′ W.
J	40°13′ N.	72°44′ W.
K	38°39′ N.	73°24′ W.
L	38°12′ N.	73°55′ W.
M	37°12′ N.	74°44′ W.
N	35°41′ N.	75°10′ W.
O	35°15′ N.	75°28′ W.

(c) *Effort Management Teams (EMT).* (1) The Council shall establish EMTs for each area specified in paragraph (b) of this section for the purpose of making recommendations to the Council on management measures to achieve the objectives of the FMP.

(2) Members of each EMT shall be appointed by the Council, in consultation with appropriate states and NMFS. Members of the EMT shall consist of a group of technical representatives that serve on each EMT and a group of representatives from the lobster industry, based on their geographical affiliation with an EMT. The Council may decide the number of representatives and operating procedures of the EMTs.

(3) No later than [insert date 6 months from effective date of final rule], each EMT shall report its recommendations for management measures for the stock rebuilding program for the area it represents to the Council.

§ 649.43 First year framework specifications.

(a) On or before [insert date 6 months from effective date of final rule], each EMT shall submit its recommendations for management measures for the area it represents to the Council.

(b) After receiving the recommendations of the EMTs, the Council shall determine what management measures are necessary for each management area in order to achieve the objectives of stock rebuilding specified in the FMP. For the management measures the Council determines are necessary to meet FMP objectives, the Council shall provide appropriate rationale and economic and biological analysis of the determinations. The Council shall make

these determinations over the span of at least two Council meetings and provide the public with advance notice of and opportunity to comment on the determinations and the analyses before making final recommendations to be submitted to NMFS. The Council's recommendation on necessary management measures must come from one or more of the following categories:

(1) Minimum-size changes;
(2) A maximum-size limit;
(3) Trap limits;
(4) Seasonal closures of one or more management areas;
(5) Closed areas or zones within a management area;
(6) Restrictions on allowable fishing time;
(7) Restrictions on allowable catches;
(8) Permitting restrictions;
(9) Additional restrictions on gear;
(10) Overfishing definition;
(11) Any other management measures currently included in the FMP.

(c) After developing necessary management measures and receiving public testimony, the Council shall make a recommendation to the Regional Director on or before [insert date 1 year from effective date of final rule]. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered: (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(d) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information: (1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (c) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(e) Nothing in this section is meant to diminish the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

§ 649.44 Framework specifications after year 1.

(a) Annually, upon request from the Council, the Regional Director will provide the Council with information of the status of the American lobster resource, based on the most recent stock assessment report.

(b) The Council and ASMFC, through consultation with the ASMFC Lobster Scientific Committee within the stock assessment process and with the EMT, shall continue to monitor the effectiveness of the Stock Rebuilding Program and to ensure, to the extent possible, that regional measures (within a Management Area) do not shift costs from one Management Area to another.

(c) In addition, the Council's Plan Development Team (PDT) for American lobster shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(d) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments to, or additional, management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and EMT recommendations, or at any other time, if the Council determines that adjustments to, or additional, management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) Minimum-size changes;
(2) A maximum-size limit;
(3) Trap limits;
(4) Seasonal closures of one or more management areas;
(5) Closed areas or zones within a management area;
(6) Restrictions on allowable fishing time;
(7) Restrictions on allowable catches;
(8) Permitting restrictions;
(9) Additional restrictions on gear;
(10) Overfishing definition;
(11) Any other management measures currently included in the FMP.

(e) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(f) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's

recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(g) Nothing in this section shall impair the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

BILLING CODE 3510-22-P

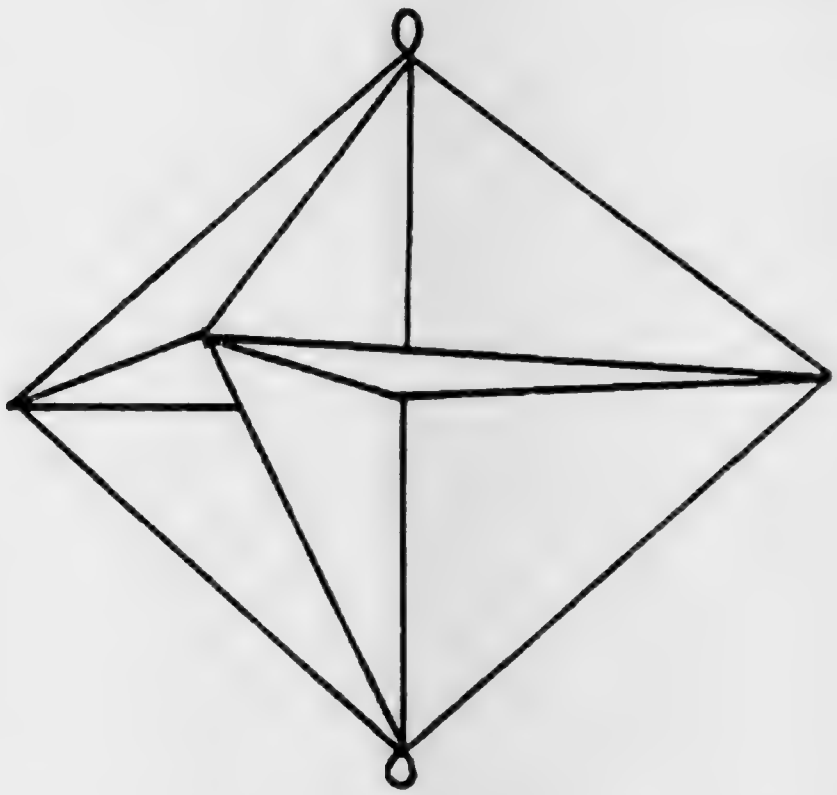

Figure 1 to Part 649.—Standard Tetrahedral Corner Radar Reflector.

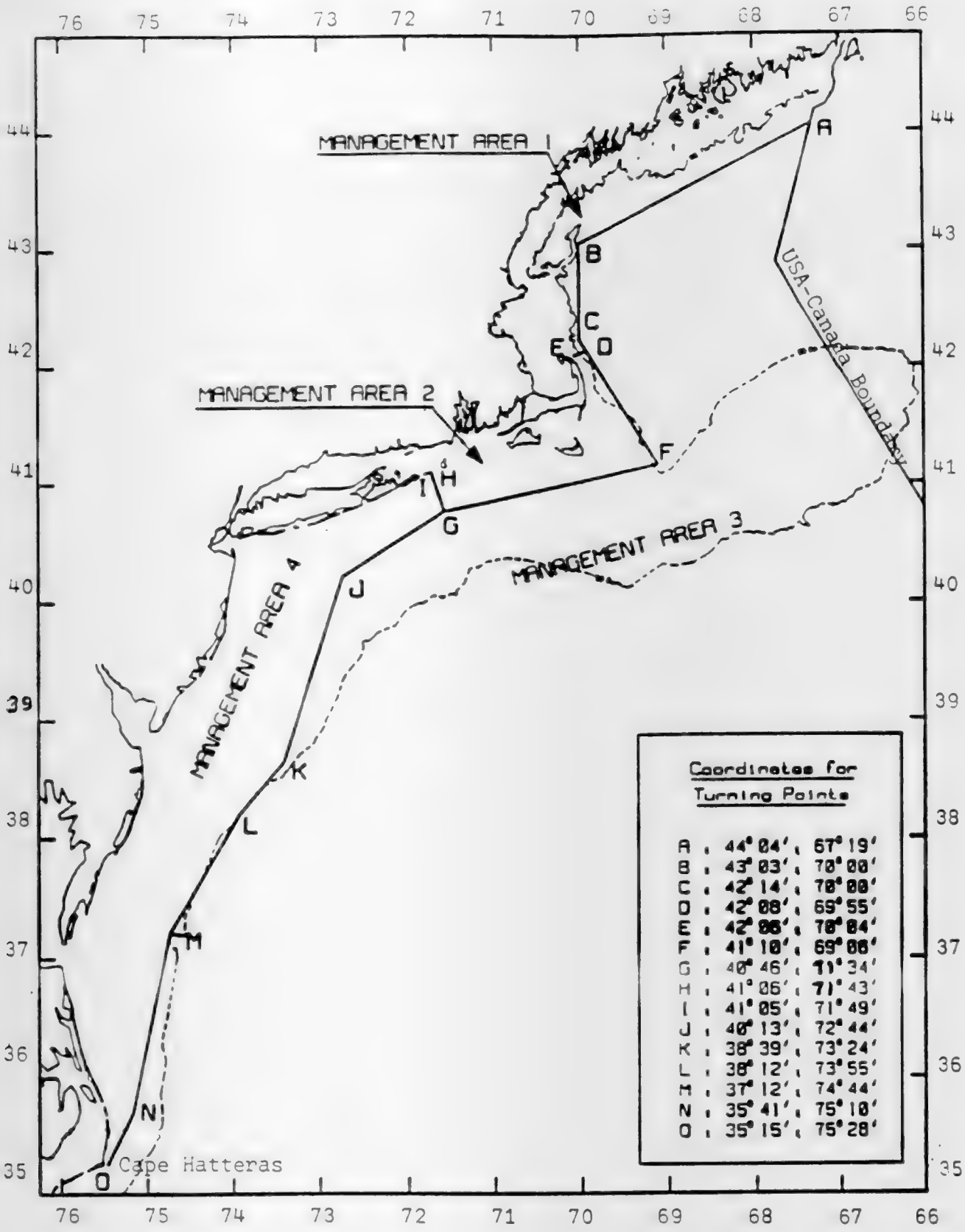

Figure 2 to Part 649.—American lobster Management Areas established for the purposes of regional lobster management.

[FR Doc. 94–5314 Filed 3–4–94; 10:39 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 59, No. 46
Wednesday, March 9, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 94–003–1]

Declaration of Emergency Because of Asian Gypsy Moth in North Carolina

An exotic pest, the Asian gypsy moth, has been introduced into the Eastern United States. An infestation has been found in North Carolina.

The Asian gypsy moth is capable of devastating forests, woodlands, and residential landscapes. This Asian strain has different behavioral characteristics than the European gypsy moth, which has been devastating northeastern forests in the United States. Unlike the flightless European female gypsy moth, Asian females can fly long distances, and larvae feed on certain conifers as well as hardwoods. The ability of the Asian female to fly complicates management strategies. It is necessary to detect and eradicate new infestations at the earliest possible stage, before they begin to spread widely.

The economic impact of Asian gypsy moth establishment in the United States would be devastating, severely disrupting the multibillion dollar timber and forest products industry. Parks, woodlands, and residential landscapes would be threatened. Pesticide usage and annual control costs would increase. Foreign countries would embargo products from infested areas. U.S. exporters of agricultural commodities would lose markets worth millions of dollars, diminishing the international competitiveness of the United States. If Asian gypsy moth does become established in the Eastern United States, economic losses due to defoliation of both hardwoods and conifers could exceed $1 billion over the next 40 years.

The North Carolina Department of Agriculture, in cooperation with the Animal and Plant Health Inspection Service (APHIS) and the Forest Service (FS), has established a survey and eradication project team. This team has developed a coordinated, cooperative survey and eradication plan. Implementation of this plan will cost approximately $9.45 million over a 3-year period.

For this Asian gypsy moth survey and eradication project to succeed, State cooperators need an immediate pledge of financial support. APHIS will share the costs of survey and eradication activities on State and private lands with the State of North Carolina.

APHIS, the lead Federal agency in the Asian gypsy moth project, has insufficient funds to meet the needs of the proposed program. Once funded, however, APHIS can proceed with the detection and eradication program that will eliminate the Asian gypsy moth infestations now in the United States. The cooperative Asian gypsy moth program will detect and identify Asian gypsy moth-infested areas, control and prevent the spread of Asian gypsy moths to noninfested areas of the United States, and eradicate Asian gypsy moths in the infested areas.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the timber, forest products, and nursery industries of this country, and I authorize the transfer and use of such sums as I may deem necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to detect and identify Asian gypsy moth-infested areas, to control and prevent the spread of Asian gypsy moths to noninfested areas in the United States, and to eradicate Asian gypsy moths wherever they may be found in the continental United States.

All necessary congressional notification will occur immediately.

Effective Date: This declaration of emergency shall become effective on February 25, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–5440 Filed 3–8–94; 8:45 am]

BILLING CODE 3410–34–M

Food and Nutrition Service

Food Stamp Program; Recommendations for Improvements to Food Stamp/SSI Joint Processing

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public recommendations for consideration by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) and the Social Security Administration (SSA) of the Department of Health and Human Services (HHS) to improve the Supplemental Security Income (SSI)/Food Stamp Program joint processing system. Joint processing requirements are set forth in sections 11 of the Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011 *et seq.*). Sections 11 (i) and (j) require SSA to inform applicants for, and recipients of, SSI payments of the benefits under the Food Stamp Program, that food stamp applications are available in SSA offices, and that "pure" SSI household food stamp applicants can simultaneously apply for both SSI and food stamps at SSA offices if they choose to do so. 7 U.S.C. 2020 (i), (j).

State food stamp agencies, upon receipt of an SSA-completed food stamp application, are required to certify food stamp households eligible for food stamps utilizing information contained in SSA records where practical and (with some few exceptions) may not require households to have another face-to-face interview for determining food stamp-eligibility. The purpose of this process is to provide "one-stop shopping" to clients of both programs.

Based on recommendations received, we will consider publishing criteria and requesting proposals for specific demonstration projects.

DATES: Recommendations will be accepted if postmarked no later than June 7, 1994.

ADDRESSES: Send recommendations to Dwight Moritz, Chief, Program Design Branch, Food and Nutrition Service, 3101 Park Center, room 720, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Dan Woodhead, Supervisor, Certification Policy Interpretation Section, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 305–2497, FAX (703) 305–2454 or Garth Dence, Chief, State

Supplementation and Related Programs Branch, Division of Payment Policy, Office of Supplemental Security Income, 6401 Security Boulevard, Woodlawn, Maryland 21235, telephone (410) 965–9872.

SUPPLEMENTARY INFORMATION: Under joint processing, SSA staff conducting SSI interviews are required to screen potential SSI food stamp applicants to determine if they currently receive or recently applied for food stamps. SSA staff then determine whether applicants who do not receive food stamps want to complete a food stamp application with SSA (either in the field office or by telephone). SSA staff can provide joint processing service only to "pure" SSI households. A "pure" SSI/Food Stamp household is one in which all members are applicants for or recipients of SSI payments. SSA offices are required to forward completed food stamp applications to local food stamp offices within one work day of receipt of a signed food stamp application.

Local food stamp office staff, upon receipt of an SSA-completed food stamp application, are required to process the application and certify food stamp eligibility within 30 days. Applicants who are entitled to expedited service must be processed within 5 days from the date the application is received at the correct State agency office. Food stamp workers generally may not require SSI/food stamp household applicants to have another face-to-face interview. They may, however, recontact applicants by telephone, written correspondence, and/or home visits to obtain information needed to complete an application and certify food stamp eligibility if such data are missing from the application, are not contained in SSA records, or are questionable.

Review of the Current Process

Over the years, problems have been identified with the joint processing of food stamp applications in SSA offices. Some of the problems, such as poor communication between agencies of two different departments and misunderstanding of each other's policies have been addressed through training and management action. However, more fundamental problems are the result of caseload and processing factors that cannot be changed. These factors have caused SSA and FNS to look at alternatives to the current system of joint processing as a means of providing better service to our mutual program clients.

There have been two recent reports addressing concerns with joint processing. In August 1992, the SSI Modernization Project published its "Final Report of the Experts." A majority of experts supported two approaches for improving the "linkage" between the Food Stamp and SSI Programs. One option is to have SSA offices complete a short-form food stamp application for all interested SSI/Food Stamp clients. The other option is to eliminate automatic (categorical) eligibility for food stamps when the SSI Federal benefit rate reaches the poverty line. In September 1992, the General Accounting Office (GAO) issued a report entitled "Social Security: Need for Better Coordination of Food Stamp Services for Social Security Clients," which documented that joint processing has not worked well in improving the coordination of food stamp services for SSI clients as contemplated by section 11 of the Act.

Problems With Joint Processing

1. Few Food Stamp Applications

There is a perception that SSA offices process fewer food stamp applications than they should. By law, SSA is only required to process food stamp applications for SSI clients who are members of a "pure" SSI household and who choose to file for food stamp benefits at an SSA office. Other SSI clients in mixed households who want to apply for food stamps are referred to local food stamp offices to file for food stamp benefits.

The client populations served by the two programs are similar to one another, e.g., they have limited resources and income. However, the large volume of SSI household applicants envisioned at the outset of the program who would simultaneously apply for SSI and food stamps at SSA offices has never materialized. Anecdotal data indicate that one reason for this may be that States often refer clients who already receive food stamps directly to SSA to file for SSI. Another reason is that a relatively small percentage of applicants residing in pure SSI households want to file for food stamps at SSA. Data recently obtained by SSA in a national 1-day study of all individuals contacting SSA offices about SSI showed that only one-fourth of SSI applicants and recipients lived in pure SSI households. Most of them already participated in the Food Stamp Program, had a food stamp application pending, or preferred filing at the local food stamp office because they wanted expedited service or for other reasons. About 14 percent of pure SSI household members did not want to participate in the Food Stamp Program. Fewer than 3 percent of pure SSI household members wanted to file an application at an SSA office.

2. SSA's Telephone Application Process

Another problem in joint processing is that more and more SSI applicants are utilizing SSA's telephone service option, where an SSI and food stamp application are completed over the telephone rather than requiring individuals to have a face-to-face interview in the SSA office. The completed SSI and food stamp applications are sent to the individual for signature. The applicants are given the option of returning the signed food stamp application to the local food stamp office (for faster service) or returning it to SSA along with the SSI application. There are concerns that applicants may not follow through and send applications to local food stamp offices; the applicants may not send necessary documentation to determine food stamp eligibility; and/or food stamp offices may require these individuals to have another (face-to-face) interview. On the other hand, returning applications to SSA further delays the food stamp application process.

3. Incomplete Food Stamp Applications

SSA can only rarely provide all the food stamp data and documentation local food stamp offices need to certify food stamp eligibility without having to recontact individuals. When joint processing legislation was passed, it was envisioned that, after SSA offices forwarded food stamp applications to local food stamp offices, States would utilize SSA's State data exchange (SDX) files in most situations to determine food stamp eligibility rather than recontact individuals. However, that process never worked well for States and has therefore not fulfilled expectations in the joint application process.

SSA does not gather and verify any medical expense data in the SSI process and therefore this information does not appear on the SDX. Neither does it gather shelter expense information for the bulk of those persons in pure SSI households (most pure SSI households consist of one person). All such data are unique to the Food Stamp Program. If the food stamp applicant does not have this information and supporting documentation with him/her at the time SSA completes an application, food stamp offices have to recontact the individual.

Local food stamp offices often must recontact individuals to obtain and verify resource and income data (which is also needed for SSI purposes) because it has not been supported on the food stamp application or on SSA's SDX tape

within the timeframe in which States must certify households as food stamp eligible. To understand the problem, it is important to understand how the SSI application process has evolved and currently works.

When joint processing was implemented, development of information on income, resources, living arrangements and other nondisability eligibility factors was done in a single fashion for the entire SSI claims workload. For both aged and disabled applicants, SSA field offices obtained complete eligibility information and documentation regarding these factors at the initial application interview and during the following weeks. For disability claims, development of the disability portion of the claim, which involves a State's determining whether the claimant is disabled, occurred simultaneously with the SSA nondisability claim development. If the State's action took over 90 days to complete, for those claims where disability was found, the SSA office had to update the nondisability information it had previously obtained.

For aged claims this process made sense; there was no reason to delay development of eligibility information. However, for disability claims, simultaneous development of disability and nondisability information resulted in wasted SSA effort—developing nondisability information for claimants found not to be disabled, and for claims where the disability decision took a long time, revisiting and updating nondisability information previously obtained.

To more effectively manage its field office resources, SSA changed its processing of SSI disability claims, which now comprise the majority of SSI claims. Since the preponderance of SSI applications are for the disabled (90 percent) and of those the majority are deferred (74 percent), processing of most SSI claims involves the deferral of the nondisability development until after the State makes a disability determination. For claimants found to be disabled, nondisability information is obtained only once. For SSA, this is cost-effective management of its SSI disability process.

The problem for joint processing is that at the initial SSI disability application interview, SSA does not obtain the complete nondisability information that is needed for the food stamp eligibility determination. SSA's process calls for obtaining only allegations and the documentation in the applicant's possession at the time of the initial interview. SSA does not do complete nondisability development, if at all, for several months. The information pertinent to determining food stamp eligibility is therefore not available when it is needed, and must be obtained by the food stamp office.

A requirement that compounds the problem for food stamp applications taken in SSA offices is that the FNS regulations require SSA offices to transmit any food stamp applications and supporting documentation to the food stamp office within one working day of the application interview. This requirement virtually guarantees the incompleteness of food stamp applications and documentation obtained by SSA offices.

4. New Food Stamp Requirements

Compounding these structural problems are additional requirements being implemented by food stamp agencies which were not anticipated when joint processing was created. For example, some States are requiring photo-ID cards to enhance security, others are issuing personal identification numbers (PINs) for automated delivery of Authorization to Participate (ATP) cards, and yet others are implementing electronic benefit transfer (EBT) systems, which require issuance of PINs, and also require training sessions for recipients. These initiatives, by design, add a face-to-face meeting requirement—one that arguably is prohibited by section 11(i) of the Act.

Another barrier is that more and more States are moving to an on-line automated application process. Food stamp offices are inclined to ask pure SSI food stamp household applicants to reapply for food stamps at local food stamp offices to accommodate their automated systems rather than transfer information from a paper application completed by the SSA.

Conclusion

SSA and FNS agree with the aforementioned GAO report that the coordination of food stamp services for SSI clients that Congress intended via the joint processing legislation has not worked well. We are working to improve our performance. However, we also agree with the GAO's conclusion that, even if all our responsibilities under the current process were adequately carried out, systemic barriers which minimize our prospects for significant service improvement exist under the current system and are increasing. We are, therefore, exploring alternatives to the current process that have the potential to provide better service to SSI/food stamp household applicants while maintaining the cost effectiveness of both programs. SSA and FNS are soliciting recommendations on alternative ways to improve service and recommendations for possible projects to demonstrate their feasibility. Responders are invited to indicate their interest in participating in such demonstration projects as well.

Instructions for Making Suggestions

There are no specific formats for submitting recommendations; however, submissions should include:

—A reference to this notice;
—A clear description of how the recommended change should work;
—A description of how the recommended change would solve particular problems with the current joint processing system;
—A reference to any prior relevant research or other efforts that support the recommendations; and
—Possible options for conducting demonstration projects including duration, cost estimates, and location.

Recommendations should be brief. Five pages or less are preferred since it is not necessary to provide extensive background on the individual or organization making the recommendation. Please submit original and one copy of the document.

Dated: February 26, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–5376 Filed 3–8–94; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Wild and Scenic Rivers Study Report and Legislative Environmental Impact Statement; Lolo National Forest; Lewis and Clark, Mineral, Missoula, Powell, Ravalli and Sanders Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service is gathering information to prepare an environmental impact statement (EIS) on the suitability of eight previously identified river segments for inclusion in the National Wild and Scenic Rivers System. The eight rivers were found eligible for consideration as Wild and Scenic Rivers in the 1991 Amendment 12 to the Lolo National Forest Plan. All river segments are within the boundaries of the Lolo National Forest except for the Clark Fork, which meanders in and out of the boundary several times. The Forest Service will evaluate all eight rivers under one process and will develop alternatives within a range of "no rivers suitable" to

"all rivers suitable and recommended for designation."

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed. The proposed study will occur during fiscal years 1993 and 1994. The final EIS and preferred alternative will be forwarded to the United States Congress for a decision.

DATES: Comments concerning the scope of the analysis should be received in writing by April 15, 1994.

ADDRESSES: Send written comments to Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59801.

FOR FURTHER INFORMATION CONTACT: Robert Meuchel, Program Officer for Planning, (406) 329–3804.

SUPPLEMENTARY INFORMATION: Amendmnet 12 to the Lolo Forest Plan identifies nine rivers within the Forest that are eligible for inclusion in the National Wild and Scenic Rivers System. This study and EIS will determine the suitability of eight of these rivers and will contain the Agency's recommendation to Congress. The rivers included in this study are stretches of Cache Creek, the Clark Fork, Clearwater River, Morrell Creek, North Fork Blackfoot River, Rattlesnake Creek, South Fork Lolo Creek and West Fork Fish Creek. The ninth river, Rock Creek, will be studied for suitability in a joint effort with the Deerlodge National Forest.

Scoping

The public will have opportunities to learn more about and comment on the rivers analysis through periodic information sheets and other scoping methods arranged between May 1993 and March 1994. Scoping will be focused in the communities of Missoula, Ninemile, Plains, Seeley Lake and Superior, Montana. The first scoping notice was sent in a May 1993 information package to people on the rivers planning mailing list and to media serving the host communities.

The lead agency is the Forest Service. Cooperation with State agencies will be sought and this may add length to the study river stretches.

The responsible official is the Secretary of Agriculture, Administration Building, 12th Street, SW., Washington, DC 20250.

The draft EIS will be completed in June 1994. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be complete by December 1994. The Secretary will consider the comments, responses, and environmental consequences discussed in the final EIS and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic River System. The President forwards his recommendations for inclusion to Congress. The decision on inclusion of a river in the National Wild and Scenic River System rests with the United States Congress.

Dated: March 3, 1994.

Orville L. Daniels,

Lolo Forest Supervisor.

[FR Doc. 94–5398 Filed 3–8–94; 8:45 am]

BILLING CODE 3410–11–M

Mormon Ridge Winter Range Restoration Project

AGENCY: Forest, Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service is considering various alternatives to improve winter range on Mormon Ridge, which is 10 air miles southwest of Missoula, Montana. Alternatives include the aerial application of herbicides to control invasive exotic species such as spotted knapweed (*Centaurea maculosa*) and harvesting smaller trees to restore the area to a more open, park-like condition that existed prior to extensive fire suppression. The area under consideration encompasses approximately 900 acres.

DATES: Comments concerning the scope of the analysis should be received in writing by April 20, 1994.

ADDRESSES: Send written comments to District Ranger, Missoula Ranger District, Building 24–A Fort Missoula, Missoula, MT 59801.

FOR FURTHER INFORMATION CONTACT: Andy Kulla, Project Team Leader, (406) 329–3962.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Missoula Ranger District of the Lolo National Forest in Missoula County, Montana. This EIS will tier to the Lolo Forest Plan (February 1986) which provides the overall guidance to achieve the desired future condition for this area.

The proposed action has two primary goals. The first is to improve winter range forage production for deer and elk. The invasion of noxious weeds such as knapweed and the increased tree cover has reduced forage production. The second goal is to restore a mix of forest conditions that more closely resembles the forest structure that existed prior to extensive fire suppression and timber harvest. Fire suppression, while successful in reducing the number of fires, has increased the risks of catastrophic fire and insect and disease outbreaks. If we restore a more open, park-like condition we can reduce these risks, as well as, improve the site for wildlife species dependent on older ponderosa pine.

The process used in preparing the Draft EIS will include:

1. Identification of potential issues.

To date we have identified these issues:

What is the existing condition compared to the potential condition of the winter range?

How can we coordinate our activities with neighboring landowners?

What are the effects of using herbicides?

What should we do to reduce the dense stands of small trees?

How do nearby agricultural operations affect elk and deer?

How much can prescribed and natural fire improve the winter range?

Are native or introduced grasses available that can crowd out knapweed and leafy spurge?

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Identification of reasonable alternatives.

5. Identification of potential environmental effects of the alternatives.

6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register**. The Lolo Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The potentially affected area is within the following management areas:

Management Area 19: Consists of lands designated as important winter range for deer and elk. The management goal is to optimize this winter range and to provide for dispersed recreation.

Management Area 18: Consists of lands designated as important winter range that will be managed to attain a proper balance of cover and forage for big game through regulated timber harvest. Goals for these lands are to optimize forage production and to maintain healthy stands of timber while considering the needs of big game.

Management Area 26: Consists of portions of the forest's critical elk summer habitat lying outside of wilderness and roadless areas. The management goals are to maintain or improve elk habitat through specifically prescribed vegetation manipulation and to provide for other resource objectives if they are consistent with elk management in this area.

Management Area 23: Consists of timber lands on south-facing slopes that are visible from major roads and other high-use areas. These lands are important winter ranges. The management goals allow only small changes to the visual character of the lands while providing optimal cover: forage rations for big game and maintaining healthy stands of timber.

Management Area 14: Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian-dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One will be the "no-action" alternative, which would allow no vegetation manipulation or noxious weed treatment. Other alternatives will examine various methods of weed treatment (including aerial application of herbicides) and vegetation manipulation (including harvest of smaller diameter trees on the site). The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The first period occurs during the next 45 days and the second period is during the review of the draft Environmental Impact Statement.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The draft environmental impact statement (DEIS) is expected to be available for public review in October, 1994. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by March, 1995. The Forest Service will respond to the comments received in the FEIS. The Missoula District Ranger, who is the responsible official for this EIS, will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: February 18, 1994.

Dave Stack,

District Ranger, Missoula Ranger District, Lolo National Forest.

[FR Doc. 94–5322 Filed 3–8–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022494A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Receipt of Three Applications for Scientific Research Permits and Two Applications for Modifications to Scientific Research Permits.

Notice is hereby given that the National Biological Survey (P45L and P45M) and the NMFS Northwest Fisheries Science Center (P770#66) have applied in due form for permits, and the National Biological Survey and the Columbia River Inter-Tribal Fish Commission (CRITFC) have applied in due form for modifications to Permits 817 (P45K) and 825 (P513), respectively, to take listed species of Snake River salmon, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The National Biological Survey is requesting two permits. The first request (P45L) is for authorization to take listed juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) in research activities in order to characterize spawning and rearing habitat in the Snake River and rearing habitat in the mainstem Columbia River reservoirs, and to describe factors influencing their migratory behavior. The applicant requests this authorization for a duration of three years.

The second request from the National Biological Survey (P45M) is for authorization to take scale samples from listed juvenile Snake River spring/summer chinook salmon (*O. tshawytscha*) that would be lethally taken under a separate authorization. The purpose of the research is to study the impacts of bacterial kidney disease on survival of spring/summer chinook salmon stocks. The applicant requests this authorization for a duration of five years.

The NMFS Northwest Fisheries Science Center requests authorization to take listed juvenile Snake River spring/summer and fall chinook salmon while conducting scientific research to assess the incidence of gas bubble disease in selected aquatic biota of the Columbia River basin during episodes of high spill volumes. The applicant requests this authorization for a duration of five years.

The National Biological Survey has also applied for a modification to Permit 817 to increase the number of listed juvenile Snake River fall chinook salmon authorized to be Passive Integrated Transponder (PIT) tagged in order to estimate migration timing to Lower Monumental Dam. A similar increase was authorized for 1993. The applicant requests this authorization for a duration of three years.

The CRITFC has applied for a modification to Permit 825 to change two of the existing projects in their permit and to add two new projects. The proposed changes are for increased capture and PIT tagging of listed juvenile Snake River spring/summer chinook salmon in order to collect additional life history information and to better evaluate the hydropower systems operations and flow regimes. The two new projects include (1) the take of listed adult Snake River spring/summer chinook salmon in order to develop an accurate escapement estimation method for Secesh River summer chinook that does not interfere with, trap, or impede adult migratory fish, and (2) the take of listed juvenile Snake River spring/summer and fall chinook salmon to measure the outmigration timing, growth rates, and survival of spring/summer and fall chinook salmon in the Clearwater River. The applicant requests this authorization for the duration of five years.

Written data or views, or requests for a public hearing on these applications should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503–230–5400).

Dated: February 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–5442 Filed 3–8–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and Applicable Form: Quarterly "Check It Out" Checklist for Non-appropriated Fund Facilities, Air Force Form 3588.

Type of Request: New collection.

Number of Respondents: 97.

Responses Per Respondent: 4.

Annual Responses: 388.

Average Burden per Response: 1 hour.

Annual Burden Hours: 388.

Needs and Uses: The information collected hereby constitutes the quarterly review of non-appropriated fund (NAF) dining facilities, required by Air Force Policy Directive 40–1, "Health Promotion." It is used to measure compliance with the requirements of the Air Force's "Check It Out" nutrition education program. NAF facility managers are mainly members of the public.

Affected Public: Businesses or other for-profit; Federal agencies or employees.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5331 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Good Neighbor Survey.

Type of Request: New collection.

Number of Respondents: 700.

Responses per Respondent: 1.

Annual Responses: 700.

Average Burden per Responses: 0.8 hours.

Annual Burden Hours: 56.

Needs and Uses: The Air Force Materiel Command wishes to determine if it is being a good neighbor in the 14 locations where its bases are located. Each base would invite local community people to the base for an informal gathering where the six question survey would be administered. The information collected hereby will additionally be used to determine future community relations actions.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5332 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title and Applicable Form: Nutritional Assessment of Dietary Intake; Air Force Form 2572.

Type of Request: Existing collection in use without an OMB control number.

Number of Respondents: 12,000.

Responses Per Respondent: 1.

Annual Responses: 12,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 3,000.

Needs and Uses: Air Force Form 2572 is used to record food intake on all inpatients and some out patients receiving therapeutic diets, and those receiving a regular diet when requested by the health care provider. The diet counselor analyzes the information, records the analysis on the reverse side of the form, writes a progress note to the physician and files the AF 2572 in the patient's medical record.

Affected Public: Individuals or households; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5333 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

U.S. Pacific Command; Intent To Prepare an Environmental Impact Statement for Proposed Actions at Bellows Air Force Station, Waimanalo, HI

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Pacific Command, announces its intent to prepare an Environmental Impact Statement (EIS) for proposed actions at Bellows Air Force Station (AFS), Waimanalo, Hawaii.

The actions to be covered in the EIS form a land use plan and development of Bellows AFS that: (1) Provide contiguous land, beach, and water areas of sufficient size and configuration to meet Marine Corps and other military training requirements; (2) provide a site for military family housing; and (3) provide new construction and improvements to existing recreational assets within the present recreation area. The EIS will analyze reasonable alternatives to meet these objectives and assess their separate and cumulative environmental impacts.

There are three major action components to the land use plan. The first is reconfiguration of training areas at Bellows AFS, which includes expansion into the site now occupied by communication facilities. Currently, training activities at Bellows AFS include amphibious landings, inland maneuver and tactics by foot and vehicle, engineer/motor transport training, use of pyrotechnics and blank ammunition, helicopter operations and support, and military operations in urban terrain. However, the existing acreage and figuration of the training area does not meet Marine Corps training standards. To achieve established standards for these and other types of training, additional land area at Bellow AFS is required. The reallocation of about 500 acres from other areas at Bellows AFS to training use will help meet these requirements. Alternatives include use of other locations other than at Bellows AFS, other training configurations at Bellows AFS (for example, movement through different areas), use of other types of equipment, and no action.

An alternative within the training component to the land use plan is the use of approximately 130 acres of the newly redesignated training area at Bellows AFS by the Hawaii Army National Guard. The National Guard has plans to relocate its existing Hawaii

Military Academy training facilities from the existing site to 130 acres, thereby using the Air Force communication building as a replacement facility. The Hawaii Army National Guard also has a long-range proposal to establish a youth training center in the communication area. All of the 130 acres would be available for joint use by the military, and the beach front area would continue to be open to the public.

The second component to be covered in the EIS is provision of a site sized for 250 military family housing units, with a potential for expansion up to a maximum of 500 units. Two alternative sites at Bellows AFS are being considered, as well as sites other than at Bellows AFS and no action.

Improvement of recreational facilities and activities is the third component of the land use plan and developments. The acreage presently designated for recreational use, as well as existing public access to the beach at Bellows AFS, would be retained. Specific recreational facilities would be improved or newly constructed within the existing recreation areas of Bellows AFS. Alternatives include relocating or reducing recreational facilities proposed for construction, changing the locations designated for recreation to permit other uses such as training, and no action.

Additional infrastructure and base facilities would be constructed to support the planned land use and development of Bellows AFS. This would include roads, parking, water and sewage systems, and warehouse or administrative buildings.

Environmental issues to be addressed will include, but not be limited to, effects on cultural resources, terrestrial and aquatic habitats, threatened or endangered species, water quality, infrastructure, traffic, noise, and the socioeconomic environment. Direct, indirect, and cumulative impacts will be analyzed, and mitigation measures will be developed as required.

The U.S. Pacific Command will initiate a scoping process to identify significant issues related to the proposed actions for study in EIS, and to identify and notify interested and affected parties of the EIS process. Two public scoping meetings will be held:

March 30, 1994, 7 p.m., Waimanalo Elementary & Intermediate School Cafeteria, 41–1330 Kalanianaole Highway, Waimanalo, Hawaii

March 31, 1994, 7 p.m., Washington Intermediate School Cafeteria, 1633 S. King Street, Honolulu, Hawaii

The meeting will open with a short presentation on the purpose of the actions and the alternatives to be evaluated, followed by a period for public comment. It is important that interested agencies, individuals, and organizations take this opportunity to identify environmental concerns that should be addressed. To allow time for all views to be shared, each speaker will be limited to five minutes for oral comments.

Interested parties are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. Scoping comments should clearly describe specific issues or topics that the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than April 15, 1994, to Mr. Stanley Uehara (Code 232), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860; telephone (808) 471–9338; fax (808) 474–4890.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5334 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Acquiring Defense Software Commercially will meet in open session on March 29–30, 1994 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, suite 175, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review current DoD software acquisition regulations, DoD acquisition experiences with selected software-intensive systems, and contractor acquisition experiences with DoD and commercial software-intensive systems.

Persons interested in further information should call Ms. Virginia Castor at (703) 614–0212.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5335 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Tracked Vehicle Industrial Base

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Tracked Vehicle Industrial Base held meetings in closed session on March 7–8 and will hold meetings in closed session on March 24–25, 1994 at SAI, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the Congressional issues concerning the public and private industrial base for tanks and tank engines. The Task Force should study the viability of the tank and tank engine industrial base and propose a definitive plan of action, cost estimates, and cost effectiveness trade-off analyses and an implementation schedule for Congressional review.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: March 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5336 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Laboratory Management

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Laboratory Management will meet in closed session on March 25–26, and April 18–19, 1994 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop a strategy for restructuring and substantially reducing the size of the

defense laboratory infrastructure while simultaneously maintaining its generic capabilities and improving product quality.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: March 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5409 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Service; Conference

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: April 24–27, 1994 (Summarized agenda follows).

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202 (703) 418–1234.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Sunday, April 24, 1994, 7 a.m.–8 p.m.

Conference Registration (Former Members and Conference Participants)
No host Working Breakfast (current DACOWITS members only)
Official Opening Ceremony
Briefings
1. Army Ceremonial Units
2. Standing Committee on Military and Civilian Women video "Sexual Harassment in the Workplace"
Get Acquainted Luncheon (current DACOWITS members, military representatives, legal advisors, and liaisons only)
Subcommittee Sessions
Social

Monday, April 25, 1994, 8 a.m.–10 p.m.

Subcommittee sessions and OSD Reception and Dinner (By Invitation Only).

Tuesday, April 26, 1994 8 a.m.–4 p.m.

Committee Training Session and Field Trip to Coast Guard Yard, Baltimore, MD (By Invitation Only)

Wednesday, April 27, 1994, 7:30 a.m.–11 a.m.

No-host Working Breakfast (current DACOWITS members only)
Individual Review of Resolutions
General Business Session
Installation Visit Reports; Presentations by members of the public.
OSD Luncheon (By invitation only).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN or Captain Karl L. Everett, Plans and Communications Officer, DACOWITS and Military Women Matters, USD (Personnel and Readiness) 4000 Defense Pentagon, room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

(1) Members of the public will not be permitted to attend official OSD Luncheon; Field Trip; or OSD Reception and Dinner.

(2) All business sessions will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 13.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Wednesday, April 27, 1994 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by April 13 and make available 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy either before or by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS members for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to rely to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: March 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5408 Filed 3–8–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement on the Proposed Realignment of the Naval Surface Warfare Center, White Oak Detachment, Silver Spring, MD

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of the Naval Surface Warfare Center (NSWC), White Oak Detachment, Silver Spring, Maryland. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) and the specific 1993 base closure and realignment decisions which became effective in September 1993.

The proposed action involves the relocation of personnel and activities from Naval Sea Systems Command (NAVSEASYSCOM) Headquarters, Arlington, Virginia, to NSWC White Oak.

In order to meet the facility and operational requirements of NAVSEASYSCOM, the realignment will require 900,000 to 1,300,000 square feet of facilities at NSWC White Oak. These facility and operational requirements will be met through the utilization of existing space (renovation of buildings) and/or new construction of facilities, such as administrative buildings, parking areas, and other support facilities. Approximately 4,000 employees will be relocated to NSWC White Oak.

Alternatives addressed in the EIS will focus on means of meeting realignment

requirements at NSWC White Oak, including alternative construction site locations. The EIS will discuss environmental impacts resulting from the construction and operation of facilities as well as expected associated impacts to the local communities resulting from the relocation of military/civilian personnel. Major environmental issues that will be addressed in the EIS will include, but not be limited to, impacts on cultural resources, terrestrial and aquatic habitats, storm water runoff, noise, and air quality. Other impacts to be considered will include impacts to community services, such as school capacity, infrastructure, and traffic. Cumulative impacts associated with the realignment of personnel and activities to the region around NSWC White Oak will be considered.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on March 31, 1994, beginning at 7:30 p.m. at the auditorium in the main building complex at Naval Surface Warefare Center, White Oak, Silver Spring, Maryland. This meeting will be advertised in local and regional newspapers.

A brief presentation will precede requests for public comment and identification of additional scoping items. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during preparation of the EIS. In the interest of available time, each speaker will be asked to limit his/her oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Engineering Field Activity Chesapeake, Naval Facility Engineering Command, Building 212, Washington Navy Yard, Washington, DC 20374–5018, (Attn: Mike Bryan Code 20N), telephone (202) 433–3387. All comments must be received no later than April 16, 1994.

Dated: March 4, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–5403 Filed 3–8–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2466–002 Virginia]

Appalachian Power Co.; Availability of Final Environmental Assessment

March 3, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Niagara Hydroelectric Project, located on the Roanoke River in Roanoke County, Virginia, near the city of Roanoke, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5401 Filed 3–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 553–005 Washington]

City of Seattle, WA; Availability of Draft Environmental Assessment

March 3, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Skagit River Hydroelectric Project, located on the Skagit River in Whatcom County, Washington, near the city of Marblemount, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix "Skagit River Hydroelectric Project, FERC No. 553–005" to all comments. For further information, contact Mr. James Hunter at (202) 219–2839.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5402 Filed 3–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2311–001; 2327–002]

James River-New Hampshire Electric, Inc.; Amendment to Applications

March 3, 1994.

On November 29, 1993, James River-New Hampshire Electric Inc., (Applicant) filed an application to amend its applications for new licenses for the Gorham Hydroelectric Project, FERC No. 2311–001, and the Cascade Hydroelectric Project, FERC No. 2327–002.

For the Gorham Project, the Applicant is deleting its request to replace two existing generating exciters with a new 1.3 MW capacity unit. The project would continue to operate with no modification, and have a total capacity of 4.8 MW.

For the Cascade Project, the Applicant is deleting its request to add the Pulsifer Rips expansion which would have resulted in an increase of 13.2 MW to the project. The project would continue to operate with no modification and have a total capacity of 9.0 MW.

Both projects as originally proposed have been addressed in the Final Environmental Impact Statement (FEIS) for the Androscoggin River issued November 12, 1993. We are providing an opportunity for additional interventions and for entities to reconsider their terms, conditions,

prescriptions and comments submitted previously with respect to these two applications. Comments and/or petitions for intervention will be due 30 days from the date of issuance of this notice with response comments due 45 days from the date of issuance.

Copies of the applications and amendments are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at James River-New Hampshire Electric, Inc., 50 Main Street, Berlin, NH 03570–2489, or by calling (603) 752–4600.

The applicant contact for these projects is Mr. George W. Hill, 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600. Contact Ms. Julie Bernt at (202) 219–2814 for questions relating to this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5400 Filed 3–8–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88–26–010]

Transwestern Pipeline Co.; Tariff Filing

February 9, 1994.

Take notice that on January 31, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 11th Revised Sheet No. 73, proposed to become effective February 1, 1994.

Transwestern states that the above-referenced tariff sheet is being filed by Transwestern to modify section 19 of the General Terms and Conditions of its FERC Gas Tariff to reflect certain organizational changes pursuant to which Transwestern no longer shares an operating employee with its sales marketing division.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheet submitted by it to become effective February 1, 1994.

Transwestern states that copies of the filing were served upon all of Transwestern's gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–5379 Filed 3–8–94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF–591; FRL–4755–8]

DowElanco and the American Cyanamid Co.; Amended Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from DowElanco and the American Cyanamid Co. a number of amendments to previously issued petitions for various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-7830.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268-1189, and the American Cyanamid Co., P.O. Box 0400, Princeton, NJ 08543-0400, amended notices of filing under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for food additive petitions (FAP) that originally appeared in the **Federal Register** of June 10, 1992 (57 FR 24644, June 10, 1992) as follows:

1. *FAP 2H5634*. DowElanco submitted the original petition that appears at page 24647 in the **Federal Register** of June 10, 1992 (57 FR 24647) and proposed to amend 40 CFR part 185 by establishing a food additive petition to permit combined residues of the soil microbicide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine] and its metabolite, 6-chloropicolinic acid, in or on wheat bran at 2 parts per million (ppm) and wheat shorts at 1 ppm. DowElanco has amended the petition to propose amending 40 CFR part 185 to establish tolerances for the chemical in or on wheat, bran at 3 ppm and wheat, milled fractions (except flour) at 2 ppm. The proposed analytical method for determining residues is Method ACR 77.16.

2. *FAP 2H5638*. The American Cyanamid Co. submitted the original petition that appears at page 24647 in the **Federal Register** of June 10, 1992 (57 FR 24647) to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the herbicide difenzoquat (1,2-dimethyl-3,5-diphenyl-1*H*-pyrazolium ion), derived from application of the difenzoquat methyl sulfate salt and calculated as the cation in or on barley milled fractions (except flour), and wheat milled fractions (except flour) at 1.0 ppm. The amended petition proposes to amend 40 CFR part 185 to establish a tolerance for the chemical for wheat, bran at 0.25 ppm and to amend 40 CFR part 186 to establish a tolerance for the chemical for wheat, shorts at 0.25 ppm, barley, hulls at 1.0 ppm, and barley, bran at 1.0 ppm. The proposed analytical method for determining residues is Method ACR 77.16.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: February 25, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5297 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180923; FRL 4763–9]

Receipt of Application for Emergency Exemption to Use Oxytetracycline; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan State Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide oxytetracycline (CAS 79–57–2) to control fire blight on up to 5000 acres of apples in Van Buren, Kent and Newaygo counties. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180923," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the bactericide, oxytetracycline, available as Terramycin (EPA Reg. No. 618–104) from Merck and Company, Incorporated, to control fire blight, caused by *Erwinia amylovora*, on up to 5000 acres of apples in Van Buren, Kent and Newaygo counties. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, fire blight is not new to the commercial fruit production in Michigan. The bactericide commonly used to control fire blight has been streptomycin. However, since 1990, resistance in the pathogen *Erwinia amylovora* has reduced the effectiveness of streptomycin for fire blight control. The Applicant claims that none of the registered pesticides is effective against this disease and that, without an effective control, growers will incur a significant economic loss during the 1994 growing season.

Under the proposed exemption a maximum of 25,000 lbs of formulated product could be used (5,000 acres × 1 lb. per acre × 5 applications = 25,000 lbs) if blight-conducive weather occurred throughout the bloom period on all 5,000 acres. A 60–day preharvest interval will be observed. In addition, livestock will not feed on the crop by-product or graze on the treated orchards. Applications would be made between April 1, 1994, and July 1, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of oxytetracycline on apples have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Michigan State Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 2, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5421 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice; publication of notices of systems of records, and proposed new routine uses.

SUMMARY: This notice proposes new routine uses for two of the Equal Employment Opportunity Commission's systems of records and proposes a change to one routine use found in ten of its systems of records. This action also makes non-substantive changes in the title of some system managers or the name and address of the office in which systems are located to reflect internal EEOC reorganizations. This notice republishes EEOC's notices for its internal and Governmentwide systems of records in one issue of the **Federal Register** so that an accurate and complete text of the notices is available for use by individuals and by agency Privacy Act officers.

DATES: The non-substantive changes are effective on March 9, 1994. The proposed new and amended routine uses will become effective, without further notice, on May 9, 1994, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC

20507. Copies of this notice are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies be obtained from the Publications Center by calling 1–800–699–3362.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Associate Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission last published its systems notices in 1991. To be in conformance with case law, the Commission is proposing to amend one of the routine uses found in ten of its notices regarding disclosing information to comply with a subpoena. As presently written, this routine use allows the system manager to provide information when served with a subpoena, even if the Government is not a party to the litigation or to the administrative proceeding. In light of *Doe* v. *Stephens*, 851 F.2d 1457 (D.C. Cir. 1988) and *Doe* v. *DiGenova*, 779 F.2d 74 (D.C. Cir. 1985), the Commission has decided that the issuance of a subpoena by itself no longer qualifies as a valid routine use under subsection (b) of the Privacy Act. Therefore, the Commission will no longer make disclosures in response to a subpoena unless the Government is a party to the judicial or administrative proceeding. In those situations where the Government is not a party to the proceeding, records may be disclosed if a judge has actually signed the subpoena. In those cases, the disclosure will be made in accordance with subsection (b)(11) of the Privacy Act.

Other changes in this notice are the deletion of two routine uses and addition of two other routine uses to one system of records and the addition of a routine use to another system of records.

A brief description of the major changes follows:

EEOC–1 Age and Equal Pay Act Discrimination Case Files. Routine use "f" is amended as described above.

EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files. Routine use "f" is amended as described above.

EEOC–5 Correspondence and Congressional Inquiries. Routine use "b" is amended as described above.

EEOC–7 Employee Pay and Leave Records. Routine use "j" is amended as described above.

EEOC–8 Employee Travel and Reimbursement Records. Routine use "f" is amended as described above.

EEOC–9 Claims Collection Records. Routine uses "k" and "l" are removed. The Commission received comments from the Internal Revenue Service indicating that the disclosures permitted under them are overly broad. After reviewing the routine uses, EEOC has determined that routine uses "k" and "l" are not necessary. In addition, EEOC proposes to add two new routine uses to this system to permit disclosure of claims collection records to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service to conduct computer matching programs to locate federal employees who owe debts to the U.S. Government under EEOC programs.

EEOC–10 Grievance Records. Routine "d" is amended as described above.

EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Expected Service. Routine use "f" is amended as described above.

EEOC–12 Telephone Call Detail Records. Routine use "c" is amended as described above.

EEOC–13 Employee Identification Cards. Routine use "c" is amended as describe above.

EEOC/GOVT–1 Equal Employment Opportunity in the Federal Complaint and Appeal Records. Routine use "b" is amended as described above. In addition, the Commission proposes to add a routine use permitting disclosure of EEO complaint and appeal records in response to a request for discovery or for appearance of a witness, when the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding. The Commission believes that the addition of this routine use will facilitate resolution of discrimination complaints in the Federal Government.

The proposed routine uses noted above meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

In addition to the changes noted above, the Commission has amended several system notices to reflect current office names and has amended appendix A to reflect current addresses of Commission offices.

A complete list of all EEOC systems of records is published below. The complete text of the notices follows.

For the Commission.

Tony E. Gallegos,

Chairman.

EEOC Systems of Records

EEOC–1 Age and Equal Pay Act Discrimination Case Files.
EEOC–2 Attorney Referral List.
EEOC–3 Title VII and Americans with Disabilities Act Discrimination Case Files.
EEOC–4 Biographical Files.
EEOC–5 Correspondence and Congressional Inquiries.
EEOC–6 Employee Assistance Program Records.
EEOC–7 Employee Pay and Leave Records.
EEOC–8 Employee Travel and Reimbursement Records.
EEOC–9 Claims Collection Records.
EEOC–10 Grievance Records.
EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.
EEOC–12 Telephone Call Detail Records.
EEOC–13 Employee Identification Cards.
EEOC–14 Employee Parking Records.
EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

EEOC–1

SYSTEM NAME:

Age and Equal Pay Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge or complaint of discrimination was filed (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the records compiled during the investigation of age and equal pay discrimination cases. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation

such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 635; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act or Equal Pay Act.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their representatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, and Title VII cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed (see appendix A).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–2

SYSTEM NAME:

Attorney Referral List.

SYSTEM LOCATION:

All District Offices (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys who represent plaintiffs in employment discrimination litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of civil rights litigation experience, state and federal bar admission, whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept, and whether the attorneys speak a foreign language fluently.

AUTHROITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–4(g); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms and index cards.

RETRIEVABILITY:

Indexed alphabetically by names of the attorneys.

SAFEGUARDS:

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets.

RETENTION AND DISPOSAL:

Files are reviewed and updated annually.

SYSTEM MANAGER AND ADDRESS:

Regional Attorney at each District Office (see appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the individual whose records are requested; (2) mailing address to which reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

EEOC–3

SYSTEM NAME:

Title VII and Americans With Disabilities Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge of discrimination was filed (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964 or the Americans With Disabilities Act of 1990, or both.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records compiled during the investigation of race, color, religion, sex, and national origin discrimination cases and cases of discrimination against individuals with disabilities. These records include:

a. Documents submitted by charging party, such as charge of discrimination, personal interview statement, medical records and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, EEO data, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charges, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analyses of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2000e–5, –8 and –9; 42 U.S.C. 12117; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:

1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;

2. Persons or organizations filing on behalf of an aggrieved person provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII or the Americans With Disabilities Act, or both.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose pertinent information to the appropriate federal, state or local agencies responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, Title VII and Americans With Disabilities Act cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases

are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsection (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

EEOC–4

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners, General Counsels and Commission officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 2000e–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used.

a. To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in locking metal file cabinets available to office employees.

RETRIEVABILITY:

Indexed by last name of the Commissioner, General Counsel or Commission official.

SAFEGUARDS:

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays.

RETENTION AND DISPOSAL:

Maintained permanently.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

EEOC–5

SYSTEM NAME:

Correspondence and Congressional Inquiries.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Charging parties, members of the general public, members of Congress and current and former EEOC employees who write letters to EEOC seeking information or assistance whose inquiries are referred to the Office of Communications and Legislative Affairs for response.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Inquiries from Members of Congress, the White House and members of the general public, including current and former EEOC employees.

b. EEOC responses to the above inquiries.

c. Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 2000e–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file cabinets and on computer tape.

RETRIEVABILITY:

Correspondence from members of Congress is indexed alphabetically by the last name of the member. General correspondence are indexed alphabetically by the last name of the individual making the inquiry or on whose behalf the inquiry is made. Computer entries are retrievable by name of author of a letter, by name of person or office referring letter to the Office of Communications and Legislative Affairs, by subject, by key word, by reference number, by name of person to whom assigned, and by dates assigned, due and answered.

SAFEGUARDS:

Files are kept in locking metal cabinets in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays. Computer information is coded with access limited to employees of the Office of Communications and Legislative Affairs and the Office of Information Systems Services.

RETENTION AND DISPOSAL:

Correspondence is maintained for three years from the date of the last correspondence and then destroyed. Correspondence control information is maintained in the computer for four years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Members of Congress, their staffs, the White House, charging parties, members of the general public, current and former EEOC employees.

EEOC–6

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Employee Assistance Program contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees who have been referred to or contacted the Employee Assistance Program because of personal problems, emotional problems, or alcohol or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain information relating to individuals counseled by the Employee Assistance Program including supervisor's referral (if the employee was referred by the supervisor), documentation of visits to employee counselors (federal, state, local government, or private), and notes or records made by the counselor of discussions held with the employee or with the physician, therapist or health care professional of the employee. In addition, records in this system may include documentation of treatment by a therapist at a federal, state, local government, or private institution, summary information produced at case closure, and other documents deemed pertinent to the provision of program services to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and –3; 290ee–1 and –3; 5 U.S.C. 7901; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to authorized personnel of the contractor that administers the EEOC Employee Assistance Program.

b. To disclose information to medical personnel to meet a bona fide medical emergency.

c. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Commission, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Commission having a bona fide need for them or to the person to whom they pertain is rarely made because disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited to comply with the restrictions of the regulations regarding the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–3 and 290ee–3. Records pertaining to the physical and mental fitness of employees are, as a matter of Commission policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name of employee.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to Employee Assistance Program personnel.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee has ceased contact with the counselor or until the employee's separation or transfer, whichever comes first.

SYSTEMS MANAGER(S) AND ADDRESSES:

Administrator, Employee Assistance Program, Office of Management, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507; Field Office Directors (see appendix A).

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the appropriate system manager. Such person should provide his or her full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The employee or members of the employee's family;

b. Persons to whom the employee has been referred for assistance;

c. Commission officers and employees;

d. Program counselors.

EEOC–7

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

All locations listed in appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance cards and forms; leave records (includes employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advanced) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); thrift savings plan participation, deductions for medicare, FICA, taxes, life and health insurance, union contributions, charitable contributions, savings allotments and bond issuance and bond balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

b. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate

whether the authority of the jurisdiction to tax their employee is based on place of residence, place of employment, or both.

c. To disclose copies of executed city tax withholding certificates to a city pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520) in response to a written request from an appropriate city official.

d. To disclose the social security number only, in the absence of a withholding agreement, to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a note.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

g. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

h. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

i. To disclose officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

j. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic tape and in file folders.

RETRIEVABILITY:

Indexed by an assigned employee code.

SAFEGUARDS:

Access to these records is limited to employees whose official duties require such access.

RETENTION AND DISPOSAL:

The records are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of each Commission Office (See Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information: (1) Name; (2) social security number; (3) mailing address to which the response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Official personnel folder, data submitted by employees and data submitted by the offices where the individuals are or were employed.

EEOC–8

SYSTEM NAME:

Employee Travel and Reimbursement Records.

SYSTEM LOCATION:

All locations listed in appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes travel orders, travel vouchers, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

d. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

e. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms.

RETRIEVABILITY:

Indexed alphabetically by name, social security number, and/or chronologically by event and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms.

RETENTION AND DISPOSAL:

These records are destroyed in accordance with GSA General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office where employed (see appendix A). The individual should provide his or her full name, date of birth, social security number and mailing address.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Bills, receipts and claims presented by employees and original data generated by the Commission.

EEOC–9

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

These records are located in the Finance Management Division, Financial and Resource Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is indebted to the United States as a result of his or her interaction or financial activities with the Commission or another federal agency including, but not limited to, any current or former Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains:

a. *Case Files.* These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counterclaims, judgments and documents evidencing payment or compromise of the debt.

b. *Internal Revenue Service (IRS) Mailing Address Index.* Consists of cards containing the name or other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this information was received from the IRS, and the purpose to which the information has been put.

c. *Index on Disclosures to Consumer Reporting Agencies.* Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type of information reported.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR parts 91–93, 101–105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To disclose information to appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

c. To disclose information to another federal agency for the purpose of collecting a debt owed to the Commission by an individual through salary offset or administrative offset undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

d. To disclose information to another federal agency for the purpose of collecting a debt owed to that agency by an individual through salary offset or administrative offset undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

e. To disclose a debtor's name and social security number to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

f. To disclose mailing addresses obtained from the IRS to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs.

the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

j. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

k. To disclose information to the Defense Manpower Data Center, Department of Defense, to secure computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or administrative or salary offset procedures.

l. To disclose information to the U.S. Postal Service to secure computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the voluntary provisions of the Debt Collection Act of 1982 (Pub. L. No. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on microfiche and index cards.

RETRIEVABILITY:

These records are indexed by the name of the individual and social security number. The records may be retrieved by either of these indexes.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such assess and to those persons indicated in the listing of routine uses above.

RETENTION AND DISPOSAL:

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management and Resource Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Under the Debt Collection Act, individuals are notified if claims collection records are maintained on them in accordance with statutory procedures for salary offset, administrative offset, and disclosing information to a consumer reporting agency. Individuals may also contact the System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by or from:

a. The individual on whom the record is maintained;

b. Other Federal agencies;

c. Personnel, payroll, travel records, contract records or other records;

d. Administrative hearings;

e. Court records;

f. Consumer reporting agencies.

EEOC–10

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

These records are located in Human Resources Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 and in other headquarter offices and field offices where the grievances were filed (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted grievances to the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM) (5 CFR part 771) and EEOC Order No. 570.003, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that EEOC has or may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 7121.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose

of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are shredded or burned 3 years after closing the case.

SYSTEM MANAGER(S) AND ADDRESS:

If the grievance is pending at or was never raised beyond the office level, the system manager is the head of the office. (See appendix A.) In all other situations, the system manager is the Director, Employee and Labor Management Relations Division, Office of Management, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (a) Name; (b) approximate date of closing of the case and kind of action taken; (c) organizational component involved.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By testimony of witnesses;

c. By agency officials;

d. From related correspondence from organizations or persons.

EEOC–11

SYSTEM NAME:

Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.

SYSTEM LOCATION:

These records are located in Human Resources Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 or in the headquarters and field offices in which the actions have been taken.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former nonpreference eligible, excepted service Equal Employment Opportunity Commission (EEOC) employees against whom an adverse action has been proposed or taken and who have not completed two years of current and continuous service in the same or similar positions. (This system covers only those adverse action files not covered by OPM/GOVT–3.)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions for employees who are nonpreference eligibles in the excepted service and who do not have two years of continuous service in their positions. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, reports, and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names or social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action are disposed of 4 years after the closing of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Employee and Labor Relations Division, Office of Management, and Directors of Field Offices (see appendix A).

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed action are provided access to all documents supporting the notice. They may also contact the personnel office where the action was proposed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name

b. Approximate date of closing of case and kind of action taken

c. Organizational component involved.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By witnesses;

c. By agency officials.

EEOC–12

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Resource Management Division of Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW., Washington, DC 20507, and each field office listed in appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally EEOC employees) who make long distance telephone calls from EEOC telephones and individuals who received telephone calls placed from or charged to EEOC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of EEOC telephones to place long distance calls; records indicating the assignment of telephone numbers to employees; records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the EEOC, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To disclose to a telecommunications company providing telecommunications support to permit servicing the account.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the National Archives and Records Administration's General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507 and the Directors of the field offices listed in appendix A.

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) telephone number (office number if Commission employee); (4) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibilities for placement of specific long distance calls.

EEOC–13

SYSTEM NAME:

Employee Identification Cards.

SYSTEM LOCATION:

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW., Washington, DC 20507 and each of the field offices in appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification cards that include name, signature, social security number, date of issue and photograph, and list of all persons who possess current identification cards. In addition, for Headquarters staff, numbered proximity cards and list of all persons with their assigned proximity card numbers, all doors controlled by the proximity cards and all persons permitted access to each door.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

44 U.S.C. 3101; 41 CFR 101–20.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to other government agencies and to the public whether an individual is a current employee of the EEOC.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts at EEOC headquarters and on the premises of the contractor responsible for monitoring the system.

RETRIEVABILITY:

Records are retrieved by employee name, by identification number, and , for Headquarters staff, by proximity card number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed upon termination of employment relationship.

SYSTEM MANAGERS AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507 and the Directors of the field offices listed in appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee and, for Headquarters staff, from his or her use of the assigned proximity card.

EEOC–14

SYSTEM NAME:

Employee Parking Records.

SYSTEM LOCATION:

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW., Washington DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EEOC employees who apply for or have been assigned parking spaces in the Headquarters building and members of their car pools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for parking space form and addendum form for members of car pools containing employee name, office, home address and telephone number, office, home address and telephone number, office telephone number, description of vehicle, signature and date, and list of employees with their assigned spaces.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 41 C.F.R. 101–20.1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information in response to a request for discovery or for the appearance of a witness, to the extent that the information disclosed is relevant to the subject matter involved in the pending judicial or administrative proceeding.

c. To disclose information in a proceeding before a court or adjudicative body to the extent the information is relevant and necessary to the proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of upon termination of employment relationship or earlier release of assigned parking space.

SYSTEM MANAGERS AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) assigned parking space number or approximate data of application; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

EEOC/GOVT–1

SYSTEM NAME:

Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

SYSTEM LOCATION:

Equal employment opportunity complaint files are maintained in an Office of Equal Employment Opportunity or other designated office of the agency or department where the complaint was filed. EEO Appeal files (including appeals from final negotiated grievance decisions involving allegations of discrimination) and petitions for review of decisions of the Merit Systems Protection Board are maintained in the Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507 and in EEOC field offices (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for federal employment and current and former federal employees who contact an EEO counselor or who file complaints of discrimination or reprisal with their agency, or who file appeals on EEO complaints, petitions for review of decisions of the Merit Systems Protection Board, or appeals of final decisions in negotiated grievance actions involving allegations of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents compiled during the pre-complaint counseling and the investigation of complaints filed under section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the Equal Pay Act and all appeals.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000e–16 (b) and (c); 29 U.S.C. 204(f) and 206(d); 29 U.S.C. 633(a); 29 U.S.C. 791; Reorg. Plan No. 1 of 1978, 43 FR 19607 (May 9, 1978); Exec. Order No. 12106, 44 FR 1053 (Jan. 3, 1979).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Within the agency or department where the complaint of discrimination or reprisal was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has appealed an EEO complaint or final negotiated grievance decision to the EEOC or petitioned the EEOC to review a decision of the Merit Systems Protection Board, the system manager of the appeal or petition file is the Director, Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

Appendix A

Albuquerque Area Office (Phoenix District), 505 Marquette, NW., Suite 900, Albuquerque, New Mexico 87102–2189.

Atlanta District Office, Citizens Trust Bank Building, Suite 1100, 75 Piedmont Avenue, NE., Atlanta, Georgia 30335.

Baltimore District Office, City Cresent Building, 10 S. Howard St., 3rd Fl., Baltimore, Maryland 21201.

Birmingham District Office, 1900 3rd Avenue, North, Suite 101, Birmingham, Alabama 35203–2397.

Boston Area Office (New York District), 1 Congress Street, 10th Floor, Boston, Massachusetts 02114.

Buffalo Local Office (New York District), 6 Fountain Plaza, Suite 350, Buffalo, New York 14203.

Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212–2708.

Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

Cincinnati Area Office (Cleveland District), 525 Vine Street, Suite 810, Cincinnati, Ohio 45202–3122.
Cleveland District Office, 1660 West Second Street, Suite 850, Cleveland, Ohio 44113–1454.
Dallas District Office, 207 S. Houston St., 3rd Fl., Dallas, Texas 75202–4726.
Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203.
Detroit District Office, 477 Michigan Avenue, Room 1540, Detroit, Michigan 48226–9704.
El Paso Area Office (San Antonio District), The Commons, Building C, Suite 100, 4171 North Mesa Street, El Paso, Texas 79902.
Fresno Local Office (San Francisco District), 1265 West Shaw Ave., Suite 103, Fresno, California 93711.
Greensboro Local Office (Charlotte District), 801 Summit Avenue, Greensboro, North Carolina 27405–7813.
Greenville Local Office (Charlotte District), SCN Building, Suite 530, 15 South Main Street, Greenville, South Carolina 29601.
Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, Suite 404, P.O. Box 50082, Honolulu, Hawaii 96813.
Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
Indianapolis District Office, 101 W. Ohio St., Suite 1900, Indianapolis, Indiana 46204–4203.
Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201.
Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106.
Little Rock Area Office (Memphis District), 425 W. Capitol Ave., 6th Fl., Little Rock, Arkansas 72201.
Los Angeles District Office, 255 E. Temple, 4th Fl., Los Angeles, California 90012.
Louisville Area Office (Indianapolis District), 600 Martin Luther King Jr. Place, Suite 268, Louisville, Kentucky 40202.
Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.
Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132–2491.
Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203–2292.
Minneapolis Local Office (Milwaukee District), 330 S. Second Ave., Suite 430, Minneapolis, Minnesota 55401–2224.
Nashville Area Office (Memphis District), 50 Vantage Way, Suite 202, Nashville, Tennessee 37228.
Newark Area Office (Philadelphia District), 1 Newark Center, 21st Fl., Newark, New Jersey 07102–5233.
New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, Louisiana 70113–9936.
New York District Office, 7 World Trade Center, 18th Fl., New York, New York 10048–0948.
Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510.
Oakland Local Office (San Francisco District), 1301 Clay Street, Suite 1170–N, Oakland, California 94612–5217.
Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
Phoenix District Office, 4520 North Central Avenue, Suite 300, Phoenix, Arizona 85012–1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, Room 2038–A, Pittsburgh, Pennsylvania 15222.
Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
Richmond Area Office (Baltimore District), 3600 West Broad Street, Rm. 229, Richmond, Virginia 23230.
San Antonio District Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229–3555.
San Diego Area Office (Los Angeles District), 401 B Street, Suite 1550, San Diego, California 92101.
San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.
San Jose Local Office (San Francisco District), 96 North 3rd St., Suite 200, San Jose, California 95112.
Savannah Local Office, 410 Mall Blvd., Suite G, Savannah, Georgia 31406.
Seattle District Office, Federal Office Building, 909 First Ave., Suite 400, Seattle, Washington 98104–1061.
St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63108.
Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602.
Washington Field Office, 1400 L Street, NW., Suite 200, Washington, DC 20005.

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BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Low Power Television and Television Translator Filing Window

AGENCY: Federal Communications Commission.

ACTION: Notice of filing window.

SUMMARY: This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. The filing window will be subject to certain geographic restrictions on the filing of applications for new low power television and television translator station construction permits. This notice sets forth the geographic restrictions and the filing procedures, including when and where to file and the applicable application form to be used, and information concerning application filing fees.

DATES: Applications will be accepted for filing from April 11, through April 15 1994.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau (202) 632–3894.

SUPPLEMENTARY INFORMATION:

Limited Low Power Television/ Television Translator Filing Window From April 11, 1994 Through April 15, 1994

March 3, 1994.

Commencing April 11, 1994, and continuing to and including April 15, 1994, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations (LPTV).

Filing Locations

All LPTV applications that are subject to the payment of a fee must be filed at the Pittsburgh, Pennsylvania locations specified herein. Those LPTV applicants that are fee exempt, as explained later in this Public notice, must file their applications directly with the Federal Communications Commission at the location specified herein.

Geographic Restrictions

This filing window is subject to geographic restrictions on the filing of applications for new station construction permits. The Commission will permit only new station applications that specify transmitting antenna site coordinates (geographic latitude and longitude) located more than 161 kilometers (100 miles) from the reference coordinates of the cities listed in Attachment I to this notice. These restrictions are necessitated by the Commission's proceeding on Advanced Television Systems (ATV) and the large number of low power television and television translator stations already authorized in and around these metropolitan areas.[1]

[1] In 1987, the Commission imposed a freeze on full-service television applications and allotments in the vicinity of these urban areas. 52 FR 28346 (July 29, 1987). This freeze did not apply to low power TV and TV translator applications. The Commission then reasoned that, because of their secondary status, continued authorizations of these stations would not restrict its spectrum planning options in the ATV proceeding. See also First Report and Order in the ATV proceeding, MM Docket No. 87–268, 5 FCC Rcd 5627 (1990). Since then, however, numerous low power TV and TV

Continued

Applications for new stations that specify sites within the restricted areas, except as provided below, will be considered unacceptable for filing and will be returned to applicants without refund of any fee required to be submitted with their applications. The Commission will consider requests for waiver of the geographic restrictions based on terrain shielding. Such waivers will be granted only in cases where applicants demonstrate that their proposed facilities are completely shielded by terrain barriers from the applicable television market areas.[2] The spectrum requirements for ATV systems will weigh heavily against the granting of requests for waiver of the restrictions based on reasons other than terrain shielding. Geographic restrictions will not apply to the filing of applications for major changes in authorized facilities or in construction permit applications now pending at the Commission. Major change applications may be filed in this window for all station locations.[3]

translator stations have been authorized in and around these urban areas; areas for which available broadcast spectrum for future ATV systems is most limited. It is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service TV stations for ATV use. The restriction against additional new stations in and around these urban areas is intended to minimize the extent to which low power TV and TV translator service to the public may be disrupted. In this regard, low power TV and TV translator stations continue to have secondary status with regard to the introduction of ATV service. The geographic restrictions herein are comparable to those imposed in the 1987 television freeze; taking into account the typical differences in levels of full-service TV and low power TV station operating power.

[2] Through this extension of the Commission's policy on terrain shielding (see Policy Statement, 3 FCC Rcd 2664, reconsideration granted in part, 3 FCC Rcd 7105 (1988)), opportunities will not be foreclosed for additional low power TV and TV translator service in locales that are completely insulated from the applicable urban TV markets due to substantial terrain obstructions; for example, large mountain ranges in the Western States. Requests for terrain-related waivers must be supported by detailed profiles of the terrain in all pertinent directions toward the applicable urban market areas. Profiles should be prepared in accordance with the guidelines given in the Commission's terrain Policy Statement. In the context of geographic filing restrictions, the scope of terrain shielding waivers will not be limited to those applications that are not mutually exclusive with other applications. Prospective applicants are cautioned that such waivers will not be granted in cases where proposed facilities are only partially shielded from the list market areas or in cases of marginal terrain shielding; for example, due to rolling hills.

[3] The need for major changes in authorized facilities often is compelled by unforeseen and unavoidable circumstances such as the loss or unsuitability of a station's antenna site. Commission authorization of such changes may be vital to preserving an existing low power TV or TV translator service. Allowance for major changes also will facilitate the construction and operation of unbuilt and planned stations for which considerable resources may have been expended. Fairness dictates that station projects now underway be given the opportunity to be completed.

Five-Application Limit

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the April 11–April 15, 1994, window. This restriction does not apply to major change applications.

Applications Requiring a Fee

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. Such applicants must complete and attach to their original applications the Fee Processing Form (FCC Form 155) and a remittance of $425.00 for the requisite fee. The February 1988 edition of FCC Form 346 is to be used during this window period.[4] See 53 Fed. Reg. 15225 (April 28, 1988). FCC Forms 346 and 155 can be obtained by calling the FCC's Forms Distribution Center at Telephone No. (202) 632–FORM and leaving your request on the answering machine provided for this purpose.

For applications requiring a fee, the Commission will utilize the facilities of a Treasury Department lockbox bank. These filings can be made, either by mail or by person, at the following locations only:

If mailed—Federal Communications Commission, Low Power Television Window Filing, P.O. Box 358992, Pittsburgh, PA 15251–5992.

If hand-delivered—Federal Communications Commission, Low Power Television Window Filing, Three Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA 15259, Attn: Wholesale Lockbox Shift Supervisor.

Mailed applications must be actually received no later than April 15, 1994. Hand-carried or couriered applications can be delivered at the Three Mellon Bank Center location at any time during the window period up through 11:59 p.m. on Friday, April 15, 1994. Submissions tendered after 11:59 p.m. on Friday, April 15, 1994, will not be accepted. Detailed instructions to get to this location are included in this Public notice as Attachment II. An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, a "stamp receipted copy" will be furnished by the lockbox bank facility provided the applicant clearly identifies the copy to be stamped, and the filing is submitted with the "stamp receipted copy" on top of the original application package. Requests for "stamp receipted copies" must include a stamped, self-addressed envelope of sufficient size to accommodate the stamp receipted copy to be returned. If the "stamp receipted copy" is submitted in any other format or the envelope is not of sufficient size, it will not be stamped and returned. For hand-carried or couriered applications delivered to the Three Mellon Bank Center location, bank personnel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requester. Only one piece of paper per individual application will be stamped for receipt purposes.

As noted above, a separate fee payment of $425.00, attached (but not stapled) to the Fee Processing Form (Form 155) of each original application, must be submitted for each new station or major change application filed during this window. Applicants required to submit the Fee Processing Form are instructed to enter "MOL" as the Fee Type Code in response to Column (A) of section I of that form. The Fee Multiple for applicants in this low power television window is "0001" and that number should be entered in Column (B), section I, FCC Form 155. A single fee payment for multiple applications will not be accepted.

Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. Also, checks six months or older will not be accepted. Do not send cash.

Applications submitted without a required Fee Processing Form, with insufficient or inappropriate payments, or without any payments will be

[4] OMB has approved a revised Form 346. However, since the revised form is not yet available, the February 1988 edition of Form 346 remains in use.

dismissed and returned to the applicant without processing. See section 1.1107 of the Commission's Rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of the FCC Form 346 will be rejected and returned to the applicant.

Applications Not Requiring a Fee

Governmental entities are exempt from the $425.00 fee. As defined by the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full-service television broadcast station licensees seeking to make major changes in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. A licensee or permittee of a low power television or television translator station, which is filing a major change application and which earlier obtained either a fee refund because of a NTIA facilities grant for that station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of section 73.621 of the Commission's Rules, is similarly exempt from payment of the $425.00 fee. See section 1.1112 of the Commission's Rules. To avail itself of any fee exemption an applicant must indicate its eligibility by checking the most appropriate box on page 1 of FCC Form 346 (February 1988 edition). Again, the FCC Form 346 can be obtained by calling the FCC Forms Distribution Center at Telephone No. (202) 632–FORM.

Filing of LPTV windows applications not requiring the payment of a fee can be made either by mail or by person, at the following locations only:

If mailed—Federal Communications Commission, Low Power Television Window Filing, room 222, 1919 M Street NW., Washington, DC 20554.

If hand-delivered—Federal Communications Commission, Secretary's Office, room 222, 1919 M Street NW., Washington, DC 20554.

Mailed applications must be actually received no later than April 15, 1994. Hand-carried or couriered applications can be delivered daily during the filing window at the Secretary's Office from 8 a.m. to 5:30 p.m. Applications tendered after 5:30 p.m. on Friday, April 15, 1994, will not be accepted.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at Telephone No. (202) 632–3894.

Attachment I—Reference Coordinates for Areas Not Eligible for New Station Applications (Source of Coordinates: Section 76.53 of FCC Rules)

	Latitude[2]	Longitude[2]
New York, NY	40–45–06	73–59–39
Los Angeles, CA	34–03–15	118–14–28
Chicago, IL	41–52–28	87–38–22
Philadelphia, PA	39–56–58	75–09–21
San Francisco, CA	37–46–39	122–24–40
Boston, MA	42–21–24	71–03–25
Detroit, MI	42–19–48	83–02–57
Dallas, TX[1]	32–47–09	96–47–37
Ft. Worth, TX[1]	32–44–55	97–19–44
Washington, DC	38–53–51	77–00–33
Houston, TX	29–45–26	95–21–37
Cleveland, OH	41–29–51	81–41–50
Pittsburgh, PA	40–26–19	80–00–00
Seattle, WA[1]	47–36–32	122–20–12
Tacoma, WA[1]	47–14–59	122–26–15
Miami, FL	25–46–37	80–11–32
Atlanta, GA	33–45–10	84–23–37
Minneapolis, MN[1]	44–58–57	93–15–43
St. Paul, MN[1]	44–56–50	93–05–11
Tampa, FL	27–56–58	82–27–26
St. Petersburg, FL[1]	27–46–18	82–38–16
Saint Louis, MO	38–37–45	90–12–22
Denver, CO	39–44–58	104–59–22
Sacramento, CA[1]	38–34–57	121–29–41
Stockton, CA[1]	37–57–30	121–17–16
Indianapolis, IN	39–46–07	86–09–46
Hartford, CT[1]	41–46–12	72–40–49
New Haven, CT[1]	41–18–25	72–55–30
Portland, OR	45–31–06	122–40–35
Milwaukee, WI	43–02–19	87–54–15
Cincinnati, OH	39–06–07	84–30–35
Kansas City, MO	39–04–56	94–35–20
Charlotte, NC	35–13–44	80–50–45
Nashville, TN	36–09–33	86–46–55
Columbus, OH	39–57–47	83–00–17
New Orleans, LA	29–56–53	90–04–10

[1] City is part of a hyphenated television market.

[2] Degrees-minutes-seconds.

Attachment II

Directions to Three Mellon Bank Center

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh. Go through the Fort Pitt tunnels and across the Fort Pitt Bridge. Follow signs to Parkway East (Monroeville). Travel approximately ¼ of a mile to the Grant Street Exit (Exit 3). Proceed on Grant Street to 6th Street. Make a left on 6th Street, go one block, make another left onto William Penn Way. The street address is 525 William Penn Way. Enter building at designated entrance and follow signs.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3). Proceed on Grant Street to 6th Street. Make a left on 6th Street, go one block, make another left onto William Penn Way. The street address is 525 William Penn Way. Enter building at designated entrance and follow signs.

Parking

Parking is available in several parking garages which are within two blocks of Three Mellon Bank Center. Kaufman Department Store garage is located on Smithfield Street; and Mellon Square Garage is on 6th Avenue (across from the Alcoa Building). There is also a loading area located behind One Mellon Bank Center on Ross Street.

Federal Communications Commission.

Keith A. Larson,

Chief, Low Power Television Branch.

[FR Doc. 94–5387 Filed 3–8–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Disclosure of Off-Balance-Sheet Derivatives

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is proposing to revise the information reported on certain off-balance-sheet activities in the Consolidated Reports of Conditions and Income (Call Report). Schedule RC–L, "Off-Balance-Sheet Items," would be expanded to distinguish between the notional (or par) value data for futures, forwards, written options, purchased options, and swaps, for commodity and equity products, as well as interest rate and foreign exchange contracts as currently required. Written and purchased options would be separated into exchange-traded and over-the-counter contracts. All banks would be required to report these data.

In Schedule RC–L banks, with greater than $100 million in assets would also be required to report gross positive and negative fair values for interest rate, foreign exchange, commodity, and

equity derivative contracts. These fair value data would be reported separately for derivative contracts accounted for a on a mark-to-market or lower-of-cost-or-market (LOCOM) basis and for derivative contracts accounted for on an accrual or hedge accounting basis. In addition, banks with greater than $100 million in assets would be required to report a single net current credit exposure (with respect to legally enforceable bilateral netting agreements) across all derivative contracts and counterparties.

Also, for banks with greater than $100 million in assets, Schedule RI, "Income Statement," would be changed for the addition of three memoranda line items. In one memoranda item, banks would be required to report income related to off-balance-sheet instruments accounted for on a mark-to-market or LOCOM basis. In the remaining memoranda line items, banks would be required to report the impact on their net interest income of off-balance-sheet instruments accounted for on an accrual or hedge accounting basis.

Changes to Schedule RC–L would be implemented for the September 30, 1994 Call Report. Changes to Schedule RI would be implemented for the March 31, 1995 Call Report.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Comments should be directed to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037. (Fax number (202) 634–6556.)

FOR FURTHER INFORMATION CONTACT: Curtis Wong, Capital Markets Specialist, Federal Deposit Insurance Corporation (202) 898–7327; Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation (202) 898–8906; Gerald A. Edwards, Jr., Assistant Director-Division of Banking Supervision and Regulation, Federal Reserve Board (202) 452–2741; Charles Holm, Project Manager, Federal Reserve Board (202) 452–3502; Mark Winer, Director of Regulatory and Statistical Analysis, Office of the Comptroller of the Currency (202) 874–5240; Karen Epps, Professional Accounting Fellow, Office of the Comptroller of the Currency (202) 874–5180.

SUPPLEMENTARY INFORMATION:

Background

The size and scope of banks' activities in off-balance-sheet derivatives has grown substantially over the last several years. Off-balance-sheet derivatives can give rise to risks and rewards that may not be reflected in amounts recognized on a bank's balance sheet. Generally, under the current Call Report requirements, explicit disclosures about off-balance-sheet derivative financial instruments by all banks are limited to the notional (or par) values of all contracts and positive replacement costs of contracts subject to risk-based capital requirements. Larger banks will shortly provide certain limited additional disclosures related to off-balance-sheet derivatives. The banking agencies believe that current Call Report requirements for off-balance-sheet contracts need to be improved to provide better information on the nature and extent of these activities and the risk exposures of individual banks and the banking system.

In developing these proposed changes to the Call Report, the banking agencies have been mindful of other major reporting changes anticipated in the near future. For example, when the revisions to risk-based capital standards for the measurement of interest rate risk mandated by section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) are implemented, significant changes may be required to the Call Report. These changes will primarily focus on the exposure for changes in a bank's economic value caused by changes in interest rates. In addition, the Basle Supervisors' Committee has undertaken a project which may result in an explicit capital charge for market risk in bank trading activities and expanded reporting of derivative maturities.

Based upon these possible future changes, the banking agencies have focused the disclosures recommended below on items that are not addressed by the current proposals on interest rate and market risk. Hence, the banking agencies believe that any future changes to off-balance-sheet derivative reporting caused by these proposals will supplement rather than replace the information specified below.

In addition, the banking agencies have noted that much of the information requested in these proposed Call Report changes is available through bank examinations. However, the collection of recommended disclosures in the Call Report would enhance the agencies' ability to monitor financial derivatives activities between examinations. Disclosure through the Call Report would also enhance the agencies' ability to analyze data that would be provided across the industry, at consistent points in time and in a consistent manner.

Description of Proposed Call Report Changes to Schedule RC–L

Schedule RC–L of the Call Report, "Off-Balance-Sheet Items," contains information about bank financial commitments which, for accounting purposes, may not be reported on the balance sheet. Data currently reported in items 1–10, items 14 and 15 and in the Memoranda section of Schedule RC–L would remain the same under this proposal. The format and nature of data reported in items 11–13 would be changed beginning with the Call Reports filed for September 30, 1994.

Separate line items would be provided for the reporting of gross notional (or par) values of outstanding futures, forwards, swaps, exchange-traded written options, exchange-traded purchased options, over-the-counter written options, and over-the-counter purchased options. These data would be reported for interest rate, foreign exchange, commodity and equity contracts. Although the format of notional (or par) value reporting on Schedule RC–L has been revised, disclosure on a gross basis is unchanged from current reporting in items 11–13 and all banks would continue to report notional (or par) value data.

Spot foreign exchange contracts, which are now reported as a component of item 11b, "Commitments to purchase foreign currencies and U.S. dollar exchange," would be reported in a new Schedule RC–L item separate from off-balance-sheet derivative contracts.

Banks with foreign offices or with total assets of $100 million or more that file the FFIEC 031, 032 and 033 report forms would be required to report additional information about these off-balance-sheet derivative contracts. Banks would report the gross positive fair values and gross negative fair values of interest rate, foreign exchange, commodity and equity contracts for (i) contracts accounted for at market value or LOCOM, and (ii) contracts accounted for on a hedge or accrual basis. Reporting on a "gross basis" means that no netting of contracts would be permitted.

Banks that file the FFIEC 031, 032 and 033 report forms would also be required to report a single net current credit exposure, with respect to legally enforceable bilateral netting agreements across all derivative contracts and counterparties. The amount would be derived through an analysis performed on an individual counterparty basis. First, the bank would determine whether a legally enforceable bilateral netting agreement is in place. If such an agreement is in place, the fair value of

all applicable contracts with that counterparty would be netted to a single amount. If such an agreement is not in place, the total of all contracts with that counterparty that have positive fair values would be determined. The bank would then report the sum of (i) net positive fair values associated with counterparties for which legally enforceable bilateral netting agreements are in place and (ii) the positive fair values of all contracts for which a legally enforceable bilateral netting agreement is not in place.

Consistent with current risk-based capital guidelines, the amount of the bank's single net current credit exposure would exclude foreign exchange contracts with an original maturity of 14 calendar days or less, interest rate or foreign exchange contracts that are traded on an exchange requiring the daily cash settlement of any variations in the market value of the contracts, and written option contracts.

Description of Proposed Call Report Changes to Schedule RI

Banks that file the FFIEC 031, 032 and 033 report forms currently report income (including market value gains) from off-balance-sheet derivatives which are held for dealing or trading purposes or which are otherwise accounted for at market or LOCOM in the noninterest income category of Schedule RI, "Income Statement." Such amounts are primarily reported in items 5c and 5f(2), "Trading gains (losses) and fees from foreign exchange transactions" and "All other noninterest income," respectively.

It is proposed that a new Schedule RI Memoranda item be created and captioned, "Income from off-balance-sheet derivative instruments accounted for at market value of LOCOM." In this memoranda item, banks would report the sum of all amounts reported in Schedule RI noninterest income and noninterest expense items which were recognized from off-balance-sheet derivative transactions, including market value gains and losses.

In addition, for banks that file the FFIEC 031, 032 and 033 report forms, a change is proposed to capture data regarding the amount of off-balance-sheet derivative income and expense included in net interest income. Under current practice, many banks report periodic net settlements for many swaps and other amounts related to off-balance-sheet instruments accounted for on the hedge or accrual basis as components of the interest income or interest expense Call Report line items to which they relate. For example, if a swap is intended to hedge interest rate risk on commercial loans, the bank may report the income or expense associated with new settlement accruals on that swap in the income statement item for "Interest and fee income on commercial loans" in Schedule RI of the Class Report. The FFIEC is not proposing to change this existing reporting practice.

It is proposed that a Schedule RI Memoranda item be created and captioned, "Impact on net interest income of off-balance-sheet activities." Data on this impact would then be collected in two subitems: one called, "Net increase (decrease) to interest income," and another called, "Net (increase) decrease to interest expense." In the first memoranda item, banks would report the net sum of all amounts reported in Schedule RI interest income items which were recognized from off-balance-sheet derivative transactions. In the second memoranda item, banks would report the net sum of all amounts reported in Schedule RI interest expense items which were recognized from off-balance-sheet derivative transactions.

All of these changes to Schedule RI would first be effective in Call Reports filed for March 31, 1995.

Accounting for Off-Balance-Sheet Derivative Financial Instruments

Several of the reporting changes proposed to Schedules RC–L and RI distinguish between off-balance-sheet derivative financial instruments that are accounted for on a market value or LOCOM basis and those accounted for on a hedge or accrual basis. This proposal would not change the accounting methods prescribed in the Call Report instructions for futures, forwards and standby contracts. The proposed reporting changes collect supplemental information on such contracts in accordance with the accounting methodology that is applied by the bank of Call Report purposes.

Purpose of Additional Data Requested

Notional and Par Value Data

Notional (or par) value data as currently reported in Schedule RC–L provide valuable information regarding the scope and volume of individual bank and banking system off-balance-sheet derivative activities. However, notional (or par) value data provide little information about the risks to which individual banks and the banking system may be exposed.

The separate reporting proposed for futures, forwards and options distinguishes between exchange-traded and over-the-counter (OTC) derivative transactions. Information about the volume of off-balance-sheet derivative transactions that are exchange-traded versus OTC will provide additional insight as to credit, liquidity and systemic risk exposures.

Current and potential credit exposure can be of greater concern for OTC derivative contracts, because futures and options exchanges generally limit the performance period of their contracts to one day through daily mark-to-market and cash settlement of positions as well as margin provisions. In addition, the exchanges (through their clearing members) hold collateral in an amount approximately equal to the potential one-day change in the value of the contract at the beginning of each trading day. Therefore, exchange-traded contracts generally contain relatively little credit exposure.

However, there is not a perfect distinction between counterparty credit exposure on exchange-traded and OTC contracts. Contracts traded on foreign exchanges may be subject to less restrictive margin or collateral requirements than those traded on U.S. exchanges. Further, in today's marketplace, many OTC contracts have collateral and margin requirements. Although these distinctions have limitations, the banking agencies believe these data may provide some additional information on counterparty credit risk. In conjunction with the additional fair value and net counterparty credit exposure data discussed below, this information will enhance supervisory understanding of off-balance-sheet derivative credit risk in individual banks and across the banking system.

Information breakouts between exchange-traded and OTC derivatives would also enhance supervisory understanding of a bank's liquidity risk. Though both exchange and OTC markets contain liquid and illiquid contracts, exchange-traded contracts are generally considered to be more liquid. Given the margin requirement for exchange-traded contracts and the potential liquidity constraints that could occur from large positions in these instruments, this information would also enhance the supervisory understanding of banks' funding risk.

Systemic risk is the risk that failure or default by a market participant or group of participants will cause more widespread disruption throughout the financial markets. A key to the assessment of systemic risk is the identification of the exposure of individual banks to specific markets. Therefore, the notional (or par) values of exchange-traded and OTC positions by type would enhance supervisory understanding of an institution's

exposures to systemic problems that might develop in a particular market.

The banking agencies believe that notional (or par) value data on exchange-traded and OTC contracts are readily available in conjunction with the bank's day-to-day management of derivative activities. This information will assist the banking agencies in identifying for follow-up action those banks that have significantly expanded their off-balance-sheet activities, focused their off-balance-sheet activities in a new direction, or have entered into derivatives activities that might otherwise adversely impact the capital and liquidity of that institution.

Fair Value Data

As discussed above, notional (or par) value data currently collected provide insight as to the nature and extent of off-balance-sheet derivative activities for both individual banks and across the banking system. Off-balance-sheet derivative fair values would provide valuable data for aggregate banking system and individual bank comparison as to credit risk exposures and future cash flow and income exposures, which may not be reflected on the balance sheet.

In conjunction with the notional (or par) value data summarized above, positive fair value data, in combination with the negative fair value data, would enhance insight regarding the bank's exposures to systemic problems that might develop in a particular market.

Fair value data provide insight as to the credit exposure and credit provided by the bank to the marketplace and therefore is also an indicator of the bank's current vulnerability to potential problems in the derivative markets. For credit risk purposes, the gross positive fair value represents the maximum losses a bank could incur if all of its counterparties defaulted and there was no netting of contracts or underlying collateral. This is similar to the carrying value of a bank's loans which represents the maximum loss the bank could incur on its loan portfolio if all counterparties (borrowers) defaulted and the loans were not collateralized. Such information is especially valuable to supervisors when a bank is in danger of failure. In addition, negative fair value data provide information about the market's exposure to that bank.

Gross positive and negative fair value data highlight capital exposures arising from off-balance-sheet derivative activities for contracts accounted for on a hedge or accrual basis. For these contracts, fair values would provide better information than currently is reported on deferred or otherwise unrecognized gins and losses in bank's balance sheet. These amounts reflect future contributions to or demand on the bank's capital. This information will assist the banking agencies in identifying for follow-up action those banks that have significantly expanded their off-balance-sheet activities, focused their off-balance-sheet activities in a new direction, or have entered into derivatives activities which might otherwise significantly impact the capital of that institution.

Banks with assets greater than $150 million are currently required to disclose data regarding the fair value of their off-balance contracts under Statement of Financial Accounting Standards No. 107, "Disclosures about Fair Value of Financial Instruments" (SFAS 107). Under the FDIC's regulations implementing Section 36 of the Federal Deposit Insurance Act, as added by Section 112 of FDICIA, insured depository institutions with assets greater than $500 million are required to file annual audited financial statements containing the SFAS 107 fair value disclosures with the banking agencies. However, this audited financial statement requirement may be satisfied for subsidiaries of holding companies through audited financial statements of the consolidated holding company. Thus, data in those consolidated financial statements would not be available, for supervisory purposes, on an individual bank basis. In addition, the methods used to calculate or summarize the SFAS 107 disclosures may not be consistent from one institution to the next.

For institutions subject to SFAS 107, fair value data are expected to be readily available. In addition, the banking agencies believe these data to be readily available for use by banks in the day-to-day management of their derivatives activities.

Net Credit Exposure Data

The use of legally enforceable bilateral netting agreements which provide protection in case of bankruptcy may significantly reduce the credit risk exposure of bank's derivative positions. Most large banks compute such netted exposures for internal credit risk management purposes. These data would be collected in anticipation of a possible change in the netting rules for risk-based capital purposes. In addition, this information will provide a more accurate estimate of the credit exposure from off-balance-sheet derivative contracts.

Income Statement Data

Current income statement reporting practices for off-balance-sheet derivatives make it difficult to perform meaningful analyses of such instruments. Analyses cannot be performed because the income statement data for derivatives are combined with other, often unrelated amounts. The memorandum disclosures proposed for off-balance-sheet derivative income statement data would provide supervisory insight as to the nature of such activities and about exposures to a bank's capital.

Reporting the income data related to off-balance-sheet derivative contracts accounted for on a mark-to-market or LOCOM basis in a separate memoranda item would provide an indication of the earnings contribution of such activities in relation to other trading activities. In addition, with the reporting of net interest income amounts in separate memorandum items, the banking agencies will learn the impact of such amounts on the net interest margin. When monitoring such data on a period-to-period basis in comparison to changes in market rates, these would provide supervisory insight as to the nature, extent and effectiveness of off-balance-sheet derivatives used for risk management.

Information reported in certain of the proposed memoranda items would provide supervisory insight regarding the components and variability of a bank's net interest margin. Monitoring these data over time would provide better information on the sensitivity of a bank's net interest margin to market rate changes and whether off-balance-sheet activities have increased, decreased or stabilized the bank's earnings.

Request for Comment

The FFIEC is requesting comment on all aspects of the proposed revised reporting requirements for off-balance-sheet derivative contracts, especially the availability of information, cost and time required to implement these changes. In particular, the FFIEC solicits comments on the following:

The FFIEC specifically requests comment on the availability of notional (or par) value data separated between exchange-traded and OTC contracts, the availability, on an individual bank basis, of fair value data separated between off-balance-sheet contracts accounted for at market value or LOCOM and contracts accounted for on a hedge or accrual basis, and the availability of net counterparty credit exposure data. The FFIEC requests

comment on the feasibility of providing such data for the September 30, 1994 Call Report. If the proposed effective data for this reporting is not feasible, please comment on how soon thereafter such data would be available.

In addition, the FFIEC requests information about the specific methodologies used by banks to determine fair values of the various types of off-balance-sheet contracts. To the extent such information is available in annual financial statement disclosures made under SFAS 107, please provide a copy of such disclosures.

The FFIEC specifically requests comment on the availability of the amounts of off-balance-sheet derivative income and expense associated with contracts accounted for at market value or LOCOM and of the amounts of off-balance-sheet derivative income and expense included in net interest income. The FFIEC requests comment on the feasibility of providing such data for the March 31, 1995 Call Report. If the proposed effective date for this reporting is not feasible, please comment on how soon thereafter such data would be available.

The FFIEC is proposing to collect information on income from two broad categories of derivatives. The first category involves income from derivatives that are accounted for on a mark-to-market or LOCOM basis. The second category involves income from derivatives that are accounted for on the hedge or accrual basis. Should the income and expense associated with derivatives that hedge a balance sheet position that is accounted for at market value or LOCOM be reported in the first category or the second category?

The FFIEC seeks comment on whether information should be obtained on the separate financial results of off-balance-sheet derivative transactions which impact equity capital accounts rather than the income statement. Please provide information about the nature and extent of such activities in banks.

The FFIEC also invites comment on the use of $100 million in total assets as the size threshold for requiring banks to provide the proposed fair value, net counterparty credit risk and income statement data in the Call Report. The FFIEC has considered combining the asset size criterion together with a threshold considering the notional (or par) value of the bank's outstanding off-balance-sheet contracts. Such combined reporting criteria would focus on the bank's off-balance-sheet risk exposure. The FFIEC requests comment on what amounts should be used in such a combined threshold.

Interagency Policy Statement on Changes in Regulatory Reporting Requirements

In May 1992, the FFIEC adopted a policy calling upon the agencies to announce prior to the end of each year all reporting changes that will take effect in the following year. Exceptions can be made to this policy when a majority of the members of the FFIEC determines that reporting changes are necessary for safety and soundness reasons. The FFIEC has determined that the proposed changes to Schedule RC–L, which would take effect as of September 30, 1994, are needed on safety and soundness grounds as indicated in the preceding discussion on the purpose of the additional data.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the current Reports of Condition and Income required of all insured commercial banks and FDIC-supervised savings banks have been submitted to, and approved by, the U.S. Office of Management and Budget (OMB). (OMB Control Numbers: for FDIC, 3064–0052; for FRB, 7100–0036; and for OCC, 1557–0081.) The final version of the proposed changes that are the subject of this request for comment, which will be developed after consideration of the comments received, will be submitted by each agency to OMB for its review.

The proposed changes to the Call Report are illustrated as follows:

Dated: March 3, 1994.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

BILLING CODE 6210–01–M

PROPOSED AMENDMENTS TO CALL REPORT DERIVATIVES DISCLOSURES

Amendments to Schedule RC-L

Breaks-out equity and other commodity contracts

Break-out Exchange-Traded and OTC

Greater than $100 M

	TYPE OF OFF-BALANCE-SHEET INSTRUMENT			
	Interest Rate Contracts	Foreign Exchange Contracts **	Equity Derivative Contracts	Other Commodity Contracts
Gross Amounts (e.g. notional amounts)				
a. Futures				
b. Forwards				
c. Exchange Traded Options				
i) Written				
ii) Purchased				
d. OTC Traded Options				
i) Written				
ii) Purchased				
e. Swaps				
Contracts Reported on MTM or LOCOM Basis:				
a. Gross Positive Fair Value				
b. Gross Negative Fair Value				
Contracts Reported on Accrual Basis:				
a. Gross Positive Fair Value				
b. Gross Negative Fair Value				

Net Credit Exposure (reflecting legally enforceable bilateral netting agreements)	

Amendments to Schedule RI Memoranda

Income from off-balance-sheet instruments accounted for at MTM or LOCOM	
Impact on net interest income of off-balance-sheet activities: a. Net increase (decrease) to interest income ..... b. Net (increase) decrease to interest expense	

** Spot foreign exchange is to be collected as a separate off-balance-sheet item.

[FR Doc. 94–5378 Filed 3–8–94; 8:45 am]
BILLING CODE 6210–01–C

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Serv Pak International, Inc., 1331 Royal Lane, Dallas, TX 75261. Officers: Roland Sue Whelpley, President/Treasurer, Sharon Ellershaw, Executive Vice President, Marsha K. West, Secretary.

Suanna Widjaja Rossi & Robert William Rossi, dba Neptune Forwarding Co., 1713 Vickers Circle, Decatur, GA 30030. (partnership).

CFT Cargo, Incorporated, 6621 NW 8th Ave., Miami, FL 33166. Officers: Luis N. Eraso, President, Martin Elena Eraso, Vice President.

Gallagher Transfer & Storage Co., Inc., 2401 Elysian Fields Ave., New Orleans, LA 70117. Officers: Robert S. Maloney, President/Stockholder.

Friendly Forwarding Services, Inc., 2789 NW. 82nd Ave., Miami, FL 33122. Officers: Juan Carlos Esquivel, President, Robert Esquivel, Vice President, Jesus E. Esquivel, General Manager.

Phoenix International Business Logistics, Inc., 3620 Shoreline Drive, Portsmouth, VA 23703. Officers: Margaret A. Walker, President.

By the Federal Maritime Commission.

Dated: March 3, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94-5383 Filed 3-8-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CBT Corporation; Formation of, Acquisition by, and Merger of Bank Holding Companies; and Acquisition of Nonbanking Companies

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received at the Reserve Bank or the offices of the Board of Governors not later than April 1, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CBT Corporation, Paducah, Kentucky; to merge with, or in the alternative, to acquire at least 19.9 percent of BMC Bankcorp, Inc., Benton, Kentucky, and thereby indirectly acquire Bank of Marshall County, Benton, Kentucky, and Graves County Bank, Inc., Wingo, Kentucky.

In connection with the application, Applicant has also applied to acquire United Commonwealth Bank, FSB, Murray, Kentucky, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5388 Filed 3-8-94; 8:45 am]

BILLING CODE 6210-01-F

Community Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Bancshares, Inc., North Wilkesboro, North Carolina; to engage *de novo* through its subsidiary, Community Mortgage Corporation of North Carolina, Statesville, North Carolina, in originating, holding, servicing and brokering mortgage loans under a variety of plans through a joint venture pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5389 Filed 3–8–94; 8:45 am]

BILLING CODE 6210–01–F

Corestates Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 1, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Corestates Financial Corp., Philadelphia, Pennsylvania; to acquire Rittenhouse Financial Services, Inc., Radnor, Pennsylvania, and thereby engage in providing investment advice to any other person pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire BancFirst Corporation, Decatur, Alabama, and BancFirst, Decatur, Alabama, and thereby engage in operating a federally-chartered savings bank and engage in only those activities permitted pursuant to § 225.25(b)(9); and in the sale and issuance of credit life insurance in connection with loans and extensions of credit made by the thrift pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

Board of Governors of the Federal Reserve System, March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5390 Filed 3–8–94; 8:45 am]

BILLING CODE 6210–01–F

Van A. Dukeman, et al; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94–2306) published on page 4923 of the issue for Wednesday, February 2, 1994.

Under the Federal Reserve Bank of Chicago heading, the entry for Van A. Dukeman is revised to read as follows:

1. Van A. Dukeman, David J. Downey, George T. Shapland, and Gregory B. Lykins, all of Champaign, Illinois; to acquire, as a group 33.19 percent of the voting shares of BankIllinois, Financial Co., Champaign, Illinois, and thereby indirectly acquire Bank of Illinois in Champaign, Illinois.

In addition, Messrs. Downey, Shapland, Lykins, and Dukeman, have entered into an agreement with Mr. August C. Meyer, Jr., who owns or controls in various capacities 50.04 percent of BankIllinois, which agreement will govern, among other things, the voting and disposition of all of the shares of BankIllinois stock owned by the parties to the agreement for a period of up to ten years.

Comments on this application must be received by March 23, 1994.

Board of Governors of the Federal Reserve System, March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5391 Filed 3–8–94; 8:45 am]

BILLING CODE 6210–01–M

Fleet Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 1, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to merge with Sterling Bancshares Corporation, Waltham, Massachusetts, and thereby indirectly acquire Sterling Bank, Waltham, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Corestates Financial Corp., Philadelphia, Pennsylvania; to merge with Independence Bancorp, Inc., Perkasie, Pennsylvania, and thereby indirectly acquire Bucks County Bank and Trust Company, Perkasie, Pennsylvania; Cheltenham Bank, Cheltenham, Pennsylvania; Lehigh Valley Bank, Bethlehem, Pennsylvania; and Third National Bank and Trust Company of Scranton, Scranton, Pennsylvania.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marquette National Corporation, Chicago, Illinois; to acquire 100 percent

of the voting shares of Orland State Bank, Orland Park, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. AMBANC, Inc., Vincennes, Indiana; to acquire 100 percent of the voting shares of Lincolnland Bancshares, Inc., Casey, Illinois, and thereby indirectly acquire The Bank of Casey, Casey, Illinois.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Payne County Bank Employee Stock Ownership Plan, Perkins, Oklahoma; to become a bank holding company by acquiring 50.1 percent of the voting shares of Payne County Bancshares, Inc., Perkins, Oklahoma and thereby indirectly acquire The Payne County Bank, Perkins, Oklahoma.

Board of Governors of the Federal Reserve System, March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5392 Filed 3–8–94; 8:45 am]

BILLING CODE 6210–01–F

Matthew and Bennett Lindenbaum, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Matthew and Bennett Lindenbaum, trustees for 1994 Garden State Trust , to acquire up to 24.9 percent of Garden State Bancshares, Inc., Jackson, New Jersey, and thereby indirectly acquire Garden State Bank, Jackson, New Jersey.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Batrus & Co., as nominee of P. Dunmire trust, to retain 39.80 percent; Batrus & Co., as nominee of S.E. Dunmire trust, to retain 10 percent; Paul L. Dunmire, deceased, as trustee for Philip L. Dunmire, pursuant to Uniform Gifts to Minors Act, to retain 0.20 percent; Philip L. Dunmire, to retain 0.25 percent; C. Edward and Nancy Dunmire, to retain 0.25 percent of the voting shares of Peoples Financial Corp., Inc., Ford City, Pennsylvania, and thereby indirectly acquire Peoples Bank of Pennsylvania, Ford City, Pennsylvania; New Bethlehem Bank, New Bethlehem, Pennsylvania; Merchants National Bank of Kittaning, Kittaning, Pennsylvania.

C. Federal Reserve Bank of Atlanta, (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Floyd F. and Helen L. Porter, Trustees of Tennessee Classics P.S., Inc., Gallatin, Tennessee, to each acquire at least 10 percent of the voting shares of Independent Bankshares Corporation, Gallatin, Tennessee, and thereby indirectly acquire First Independent Bank, Gallatin, Tennessee.

Board of Governors of the Federal Reserve System, March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5393 Filed 3–8–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), The Head Start Bureau of the Administration for Children and Families (ACF) is requesting clearance from the Office of Management and Budget (OMB) for instruments to be used to conduct a national descriptive study of the characteristics of families served by Head Start Migrant Programs. This study will provide essential descriptive data on the characteristics of the families presently being served by Migrant Head Start Programs; the availability and coordination of services related to serving Head Start migrant families; and a national estimate of the number of children of migrant farmworkers who are eligible for Head Start services.

ADDRESSES: Copies of the information collection may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Descriptive Study of the Characteristics of Families Served by Head Start Migrant Programs.

OMB No.: New request.

Description: The Migrant Head Start Program currently funds 26 programs in 18 States and serves a unique population which requires a service delivery system different in some respects from that utilized by regular Head Start programs. In addition to poverty and seasonal employment, migrant families often lack education, adequate housing, transportation, health care, child and family services and social, nutritional and legal services. Within this unique context, and keeping the mobility factor in mind, Migrant Head Start grantees have developed creative program designs (full-day center based, home-based, and family day care) and diverse service delivery models to meet the multiple needs of low-income migrant families.

This descriptive study is intended to: (1) Provide information on the characteristics of the families presently being served by Migrant Head Start programs; (2) document availability and coordination of services related to serving Head Start migrant families; and (3) provide a national estimate of the number of children of migrant farmworkers who are eligible for Head Start services. The information will be used by the Administration on Children, Youth and Families to determine program policies as the Head Start Program continues to expand.

Annual Number of Respondents: 1419–1461

Frequency: 1.00

Average Burden Hours Per Response: 0.75–3

Total Burden Hours: 1559–1590.5.

Dated: February 25, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–5324 Filed 3–3–94; 8:45 am]

BILLING CODE 4184–01–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an extension of currently approved information collection titled: "Application for Fiscal Year 1994 Funds for Family Preservation and Family Support Services." This request was approved on an emergency basis under OMB Control Number 0980–0258 for use through April 18, 1994.

ADDRESSES: Copies of the information collection request may be obtained from Edward E. Saunders, of the Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Applicaton for FY 1994 Funds for Family Preservation and Family Support Services.

OMB No.: 0980–0258.

Description: New legislation in the Omnibus Budget Reconciliation Act (OBRA) of 1993 authorizes entitlement funding to States and certain Indian Tribes and Tribal organizations for family preservation and family support services. One major purpose of family preservation services is to help alleviate family crises that otherwise might lead to the foster care placement of children, e.g., intensive in-home services, respite care, and services for adoptive parents. One major purpose of family support services is to provide preventive services to families to help alleviate stress (e.g., to prevent child abuse), increase parents' child-rearing abilities and parenting skills, and assist families to use other available community resources.

Annual Number of Respondents: 92

Annual Frequency: 1

Average Burden Hours Per Response: 144

Total Burden Hours: 13,248

Dated: February 25, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–5323 Filed 3–8–94; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 88D–0067]

Manufacture of In Vitro Diagnostic Products; Current Good Manufacturing Practice Final Guideline; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice: extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 11, 1994, the comment period on a final guideline entitled "Guideline for the Manufacture of In Vitro Diagnostic Products" that contains production practices which are acceptable to FDA for ensuring the safety and effectiveness of in vitro diagnostic products. This action is being taken to ensure adequate time for the preparation and submission of comments on the final guideline.

DATES: Written comments by April 11, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Z. Frank Twardochleb, Center for Devices and Radiological Health, (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4586.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 10, 1994 (59 FR 1402), FDA announced the availability of a final guideline entitled "Guideline for the Manufacture of In Vitro Diagnostic Products." The guideline contains production practices which are acceptable to FDA for ensuring the safety and effectiveness of in vitro diagnostic products. Manufacturers of in vitro diagnostic products may find the information in the guidelines useful in developing procedures that comply with the current good manufacturing practice regulations for these products.

Interested person were invited to comment by March 11, 1994. FDA received one request to extend the comment period for 45 days. The comment stated that this timeframe would provide sufficient time to gather the necessary data to respond in a scientific and meaningful way.

FDA agrees in part with this request and is extending the comment period for 30 days to ensure adequate time for the preparation of comments. FDA believes that an extension of more than 30 days is unnecessary. Therefore, written comments received by April 11, 1994, will be considered by FDA during its review.

Interested persons may, on or before April 11, 1994, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday thru Friday.

Dated: March 3, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5449 Filed 3–8–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health on March 16–17, 1994 at the Fairmount Hotel, 950 Mason Street, San Francisco, California 94108.

The meeting will be open to the public from 8:30 a.m. to recess on March 16; and from 8:30 a.m. to adjournment on March 17. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda,

Maryland 20892 (301/496–5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: March 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–5492 Filed 3–8–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Demonstration Grant Program for Residential Treatment for Women and their Children

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration, (SAMHSA), HHS.

ACTION: Fiscal Year (FY) 1994 Awards for Approved but Unfunded FY 1993 Applications and Supplemental Awards to Currently Funded Grantees Under CSAT's Demonstration Grant Program for Residential Treatment for Women and their Children.

SUMMARY: This notice provides information to the public that CSAT is providing approximately $5 million in FY 1994 for up to four new awards to applicants who were recommended for approval but not funded in FY 1993 due to a lack of available funds, and for up to two supplemental awards to currently funded grantees under its Demonstration Grant Program for Residential Treatment for Women and their Children. This notice is not a request for applications.

The supplemental awards will be made to grantees, funded in FY 1993, who serve Native American women and their children. This additional funding responds to a Congressional Committee on Appropriations report encouraging CSAT to expend funds for programs to combat Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE) among Native American populations, through the provision of treatment of women who have dependent children.

These new and supplemental awards for the Demonstration Grant Program for Residential Treatment for Women and their Children will be made under the authority of section 510 of the Public Health Service Act, as amended (42 U.S.C 290bb–3).

The Catalog of Federal Domestic Assistance number for this program is 93.102.

Contact for additional information: Maggie Wilmore, Chief, Women and Children's Branch, Center for Substance Abuse Prevention, 5600 Fishers Lane (Rockwall II), Rockville, MD 20857, Telephone: (301) 443–8160.

Dated: March 1, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 94–5319 Filed 3–8–94; 8:45 am]

BILLING CODE 4162–20–P

Center for Mental Health Services; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services National Advisory Council in April 1994.

The meeting of the Center for Mental Health Services National Advisory Council will include an orientation of new members, a discussion of the mission and programs of the Center, administrative announcements and program developments.

A summary of the meeting and/or a roster of council members may be obtained from: Gloria Yockelson, Committee Management Officer, Center for Mental Health Services, room 18C–07, Parklawn Building, Rockville, Maryland 20857, telephone number (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council

Meeting Dates: April 12–13, 1994

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814

Open: April 12–13, 9 p.m.–5 p.m.

Contact: Anne Mathews-Younes, Ed.D., room 11C–26, Parklawn Building, Telephone (301) 443–3606.

Dated: March 2, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–5318 Filed 3–8–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3731; FR–3608–N–01]

Fiscal Year 1994; Office of Housing Notice of Funding Availability (NOFAs) Plan for Publication, Application Processes, and Awards Announcements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Schedule of Office of Housing NOFAs for Fiscal Year 1994.

SUMMARY: It is the goal of the Office of Housing to develop and implement its funding programs in a manner that will assure that persons who require government assistance receive that assistance as rapidly as possible. At this time, the Office of Housing anticipates that it will publish announcements for ten funding programs in Fiscal Year (FY) 1994. This document sets forth scheduling information in relation to each of the NOFA programs, as well as the dollar amounts appropriated for each.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Directives Management Officer, Office of Management Services, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1694; TDD (202) 708–4594.

SUPPLEMENTARY INFORMATION:

A. An Accelerated Process That Works for the Public

In keeping with Secretary Cisneros' objective to make HUD programs as efficient and responsive to public needs as possible, the Office of Housing has developed and/or refined its internal procedures to accelerate the NOFA process. Among other things, the Office has sought to effectuate its internal NOFA development process early in the fiscal year; provide the public with early notice of the programs that are forthcoming; and eliminate redundancies in the application review process.

Providing the public with early notice of, and information about, forthcoming programs should prove beneficial to entities that need lead time to do planning of their own. In some instances, the mere knowledge of what NOFA program competitions will be available, will enable entities to focus limited resources on a particular

competition. Streamlining the Office's application and review process is implicit in the fundamental purpose of the Department's mandate to assist Americans in need.

Section B. of this notice sets forth a schedule that identifies, for each Office of Housing NOFA, the approximate appropriation (estimated at this time), projected month of publication, number of days within which applications will be due, and the month within which awards are expected to be issued. (For NOFAs that have already been published, the actual date of publication is listed.) These schedules are projections that reflect the Office's best estimate for publication at this time. It is possible that a given NOFA publication may occur sooner or later than currently anticipated. Should this occur, the timing of a subsequent stage in the NOFA process may be affected as well.

B. NOFA Schedule: FY 1994

For each NOFA listed in this notice, the (rounded) appropriation is listed and time periods within which three actions are anticipated to occur, as follows:

(1) **Federal Register** Publication: This is the month within which the NOFA is targeted for publication in the **Federal Register**. These projections, while not a certainty, reflect reasonable expectations based on developmental activity to date.

(2) Application Due Date: Each published NOFA will advise the public of the amount of time within which applications must be submitted. The number of days for submission, starting from the date of a NOFA's publication, will vary among NOFAs (given each NOFA's particular requirements). The nature of an application may vary among programs as well, but each NOFA and its application form will provide specific guidance to the applicant on how to proceed.

(3) Award Announcements: This is the month within which the Office anticipates that funding awards will be announced.

FY 1994 NOFA SCHEDULE

Office of Housing

NOFA title	Appropriations (millions)	Federal Register Publication	Days for applications submission	Awards
Drug Elimination FR–3576	12	Jan. 20, 1994	80	Jun. 1994.
Single Family Counseling FR–3604	12	Mar. 1994	45	May 1994.
Supportive Housing for the Elderly (202) FR–3589	1,068	Feb. 2, 1994	90	Jul. 1994.
Supportive Housing for Persons with Disabilities (811) FR–3590	345	Feb. 2, 1994	90	Jul. 1994.
Preservation Technical Assistance FR–3473	50	Mar. 1994	60	Aug. 1994.
LMSA FR–3599	104	Jan. 20, 1994	45	Jul. 1994.
Flexible Subsidy FR–3601	126	Jan. 13, 1994	45	Jul. 1994.
Congregate Services FR–3630	25	Apr. 1994	90	Sep. 1994.
Preservation Support Grant FR–3613	6	Apr. 1994	60	Sep. 1994.
Sec. 8 Community Investment (Pension Fund) Demonstration Program—FR–3623.	100	Mar. 1994	30	May 1994.

C. Information on Specific NOFAs

Office of Housing NOFAs advise the public about the program that is the subject of the NOFA publication, and indicate the name of one or more employees who may be contacted for further information.

Dated. February 18, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–5407 Filed 3–8–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Environmental Impact Statement (EIS) for the Proposed Infrastructure Improvements to the Institute of Marine Science (IMS) Located in Seward, AK

AGENCY: Office of the Secretary, Interior (DOI).

ACTION: Notice of intent to prepare an EIS.

SUMMARY: The DOI, on behalf of the Exxon Valdez Oil Spill (EVOS) Trustee Council, hereby gives notice it intends to prepare an EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) for the proposed infrastructure improvements to the IMS in Seward, Alaska. The EIS will evaluate the proposed project, the no action alternative, and other reasonable alternatives identified during the scoping process. Scoping will be accomplished by correspondence, through public and agency scoping meetings, and through meetings with interested persons and groups.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Nancy Swanton, EIS Project Manager for the Proposed Infrastructure Improvements to the IMS, 949 E. 36th Ave., room 603, Anchorage, AK 99508–4302.

DATES: Written comments should be sent to Nancy Swanton by April 11, 1994. Comments also will be accepted at public scoping meetings in Seward from 7 p.m. to 9:30 p.m. on March 22, 1994, and in Anchorage from 7 p.m. to 9:30 p.m. on March 24, 1994, locations indicated below.

FOR FURTHER INFORMATION CONTACT: A project information newsletter will be available at the public scoping meetings or can be obtained by contacting Nancy Swanton at (907) 271–6622 (voice) or (907) 271–6507 (fax). The newsletter will describe in more detail the proposed project, possible alternatives, and the EIS process. If you wish to be placed on the mailing list to receive further information as the EIS process develops, also contact Nancy Swanton at the above address, fax, or telephone number.

PUBLIC SCOPING MEETINGS: Comments and suggestions will be solicited at public scoping meetings to be held:

March 22, 1994, Seward, IMS K.M. Rae Building, 125 Third Avenue, 7 to 9:30 p.m.
March 24, 1994, Anchorage, Trustee Council Meeting Room, 645 G Street, 7 to 9:30 p.m.

These scoping meetings will include a brief presentation about the proposed project and the NEPA process. They also will provide an opportunity for interested persons to make comments on environmental issues and

alternatives to be considered in the EIS. All comments received will be made part of the administrative record and will be considered as part of the EIS process.

SUPPLEMENTARY INFORMATION: The DOI, on behalf of the EVOS Trustee Council, is preparing an EIS on a proposal to construct infrastructure improvements to the IMS in Seward, Alaska. The EVOS Trustee Council is comprised of the designees of the Administrator for the National Oceanic and Atmospheric Administration, the Secretary of the Department of Agriculture, the Secretary of the DOI, and the Commissioner of the Alaska Department of Fish and Game (ADF&G), the Commissioner of the Alaska Department of Environmental Conservation, and the Alaska Attorney General. The EVOS Trustee Council is responsible for decisions relating to the assessment of injuries, uses of the joint restoration funds, and all restoration activities relating to the proposed project.

The scoping process will help determine the scope issues and possible alternatives to be addressed in the EIS. Scoping will be conducted consistent with NEPA guidelines. On behalf of the Trustee Council, the DOI will serve as the lead agency on the EIS. The ADF&G will be the primary coordinating agency on behalf of the State of Alaska.

Scoping

The DOI, on behalf of the EVOS Trustee Council, invites interested individuals, organizations, and Federal, State, and local agencies to participate in defining the alternatives to be evaluated in the EIS, and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments can be made verbally at the public scoping meetings or in writing (see Contact and Dates sections above for location and time of scoping meetings and name and location for sending written comments). During scoping, comments should focus on identifying specific issues and alternatives to be evaluated in the Draft EIS. A NEPA team comprised of interested State and Federal Agencies and the project consultants will evaluate the comments and produce a scoping report which will summarize the comments and identify the environmental issues and alternatives that will be addressed in the Draft EIS. Additional opportunity to comment on environmental issues and alternatives will be provided upon completion of the Draft EIS.

Project Purposes, Historical Background, and Project Description

Improvements to the existing infrastructure at the IMS in Seward are required to improve the Trustee Council's capabilities to restore marine mammals, marine birds, and the ecosystem injured by the Exxon Valdez oil spill. The improvements are intended to help focus and carry out a long term research and monitoring program for he EVOS area as part of an overall restoration plan.

The Seward Marine Center, which is the site of the proposed project, has been operated by the University of Alaska Fairbanks (UAF), IMS since 1970. The IMS operates a program that consists of vessel operations, research, and education. The existing laboratory has the only running seawater system in the northern Gulf of Alaska region and a variety of marine biological and medical research is undertaken through the UAF research and graduate student training program. The areas of study include oceanography, marine biology, physiology, and ecology.

The proposed improvements are to be located in the adjacent to the existing Seward Marine Center. The research component would consist of approximately 39,000 square feet of interior space made up of wet and dry laboratories, staff offices, library, and building support systems for studies of marine mammals, marine birds, and other marine life. There would also be approximately 50,000 square feet of exterior space containing a wave barrier, outdoor research habitat, tanks, and pools for pinnipeds, sea otters, and marine bird species. The outdoor and indoor facilities will be supported by an upgraded life support system using sea water from Resurrection Bay. Additionally, a two-person research submersible and 130 foot research vessel/tender would be stationed at the existing Seward Marine Center dock and an upgraded warehouse facility.

It is anticipated that approximately 20,000 square feet of additional interior space will be constructed adjacent to the research institute for public education and visitation activities. This component would consist of lobby and viewing areas, interpretive exhibits, administrative offices, public restrooms, and a gift shop. Revenue from public education and visitation would be used to help offset the operational costs of the proposed improvements.

Overall, it is anticipated that the total project capital budget would be approximately $47,000,000 of which approximately $25,000,000 would come from the EVOS Trustee Council joint restoration funds. The EVOS Trustee Council would not fund the public education/visitation component of the project.

Alternatives

The EIS will consider a no-action alternative and other alternatives developed during the scoping process. These will include but are not limited to alternatives concerning the location of the proposed improvements in Seward and the scope and nature of the research and public education/visitation components of the project.

Probable Effects

The NEPA team will evaluate potential environmental, social, and economic impacts of the alternatives in the EIS. Potential impacts include, but are not limited to, changes in traffic patterns, changes in the social environment, changes in land use and aesthetics, changes in local intertidal biota resulting from construction of a wave barrier, changes in recreation and tourism patterns, and conformance to city planning and zoning requirements. The impacts will be evaluated both for the construction period and for the life of the project. Measures to mitigate adverse impacts will be addressed.

Procedures

A Draft EIS will be prepared based on the scoping report. The Draft EIS should be available in late June 1994 for public and agency review and comment; and public hearings will be held. A Final EIS will be prepared to address any comments on the Draft EIS.

Dated: March 4, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish, Wildlife, and Parks.

[FR Doc. 94-5394 Filed 3-8-94; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Land Management

[CA-010-4210-05; CACA 31354; 1-001-60-GP4-010-09]

Realty Action: Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land has been examined and found suitable for classification for lease or conveyance to the State of California under the provisions of the Recreation and Public Purposes (R&PP) Act as amended (43 U.S.C. 869 et seq.). The State of California, Yosemite High

School District and Coarsegold Elementary School District in Madera County proposes to utilize the land for construction of a new learning center.

Mount Diablo Meridian

T. 8 S., R. 21 E.,
Sec. 32: Lot 6
Sec. 33: Lot 12, 13
Containing 61 acres more or less.

Upon publication of this notice in the **Federal Register** the above land is segregated from settlement, location and entry under the public land laws and from the mining laws—except for lease or conveyance under the Recreation and Public Purposes Act.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

SUPPLEMENTARY INFORMATION: The lease/patent would be subject to the following terms, conditions and reservations: (1) Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior; (2) a right-of-way for ditches and canals constructed by the authority of the United States; (3) all minerals shall be reserved to the United States; (4) Any other reservations that the authorized officer determines appropriate to ensure proper management of Federal lands and interests therein.

ADDRESSES: Interested parties may submit comments concerning the classification and/or the School District's R&PP application to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630; comments must be received no later than 45 days from the date of publication of this notice in the **Federal Register**.

Dated: February 28, 1994.

Robert E. Beehler,

Area Manager.

[FR Doc. 94–5446 Filed 3–8–94; 8:45 am]

BILLING CODE 4310–40–M

[UT–060–04–5440–10–J063; UTU–72686]

Realty Action In Carbon County, UT; Airport Conveyance of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU–72686, airport conveyance of public lands in Carbon County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, has been found suitable for conveyance to Carbon County, Utah pursuant to section 516 of the Airport Airway and Improvement Act of September 3, 1982, as amended, (96 Stat. 692; 49 U.S.C. 2215).

Salt Lake Meridian, Utah

T. 14 S., R. 10 E.,
Section 12, W½NE¼NE¼, E½NE¼NW¼NE¼, SE¼NW¼NE¼, NW¼SE¼NE¼, W½SW¼SE¼NE¼.
The described land aggregates 50.00 acres more or less.

Publication of this notice in the **Federal Register** segregates the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Terms, Conditions and Covenants Applicable to the Conveyance are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation, and maintenance of the airport.

2. A right-of-way will be reserved for ditches and canals constructed by authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to the following:

a. A right-of-way, Serial Number UTU–21372, to PacifiCorp dba Utah Power and Light Company its successors or assignees, for a powerline, under authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

b. A right-of-way, Serial Number UTU–067467, to Questar Pipeline Company its successors or assignees, for a natural gas pipeline under authority of Section 28 of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Stat. 576).

c. Oil and gas lease, Serial Number UTU–57355, to J. L. Harden III, his successors or assignees, under authority of the Mineral Leasing Act of 1920 as amended and supplemented (30 U.S.C. 181 *et seq.*).

4. At the discretion of the Secretary of Transportation, the land shall revert to the United States in the event that the land is not developed for airport or airway purposes or used in a manner inconsistent with the terms of the conveyance. If only a portion of the land conveyed is not developed for airport purposes, or used in a manner inconsistent with the terms of the conveyance, only that particular part shall, at the discretion of the Secretary, revert to the United States.

5. A detailed list of covenants required by the Federal Aviation Administration to be included in the patent document is available for review at the offices listed below.

COMMENTS: On or before April 25, 1994, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands and the terms and conditions of the conveyance may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: February 16, 1994.

Roger Zortman,

District Manager.

[FR Doc. 94–5447 Filed 3–8–94; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–940–4210–10; CACA 7449, CACA 7798, CACA 8043, CAS 837, CAS 080122]

Proposed Continuation of Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 382.31 acres within the Stanislaus National Forest for 20 years. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before June 7, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION:

1. CAS 837

The land is described as follows:

Mount Diablo Meridian, T. 3 N., R. 16 E., sec. 35, SW¼SE¼.

The area described contains 40 acres in Tuolumne County.

The purpose of this withdrawal is to protect the Mi-Wok Ranger Station.

2. CACA 8043

The land is described as follows:

Mount Diablo Meridian, T. 3 N., R. 15 E., sec. 29, A portion of lots 1, 2, 3, and 8, NW¼SE¼.

The area described contains 7.06 acres in Tuolumne County.

The purpose of the withdrawal is to protect the Ackerson Meadow Administrative Site.

3. CAS 080122

The land is described as follows:

Mount Diablo Meridian, T. 3 S., R. 19 E., sec. 13, S½N½ lot 13, S½N½ lot 14, S½N½ lot 15; sec. 14, NE¼NE¼SW¼, E½W½NE¼SW¼, W½SE¼NE¼SW¼, NW¼SE¼SE¼, W½NE¼SE¼SE¼, N½SW¼SE¼SE¼, NE¼NE¼SW¼SE¼; sec. 20, W¼SW¼NE¼SW¼, S½NW¼SW¼; sec. 22, E½SE¼ lot 11, N½SW¼ lot 12 (formally described as E½SE¼ lot 2, N½SW¼ lot 4); sec. 23, S½NW¼NW¼NW¼, NW¼NW¼SW¼NW¼, W½SW¼NW¼NW¼, W½E½SW¼NW¼NW¼ (except 1.25 acre tract in the NW¼NW¼SW¼NW¼, W½SW¼NW¼NW¼), sec. 30, W½NW¼ lot 2, E½NE¼ lot 3, N½SE¼ lot 3, E½SW½ lot 3.

The area described contains 145.25 acres in Mariposa County.

The purpose of this withdrawal is to protect areas within the Merced River Recreation Areas and Administrative Site.

4. CACA 7798

The land is described as follows:

Mount Diablo Meridian, T. 1 S., R. 17 E., sec. 27, N½SW¼, N½SE¼SW¼, NW¼SE¼, NW¼SW¼SE¼; sec. 33, W½SE¼NE¼.

The area described contains 170 acres in Tuolumne and Mariposa Counties.

The purpose of the withdrawal is to protect the Tuolumne and Jawbone Ranger Stations.

5. CACA 7449

The land is described as follows:

Mount Diablo Meridian, T. 3 S., R. 18 E., sec. 3, W½SW¼SW¼.

The area described contains 20 acres in Mariposa County.

The purpose of the withdrawal is to protect the Kinsley Guard Station.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: February 23, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–5326 Filed 3–8–94; 8:45 am]

BILLING CODE 4310–40–P

Bureau of Reclamation

Privacy Act of 1974—Alteration of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to alter a notice describing a system of records managed by the Bureau of Reclamation to add two new routine uses and one additional category of individuals covered by the system. The notice being altered, which is published in its entirety below, is "Acreage Limitation—BOR–31," previously published on December 26, 1984 (49 FR 50115) as "Acreage Limitation—Interior, Reclamation–31."

The new routine uses proposed for BOR–31 allow for: (1) The disclosure to the Internal Revenue Service for the purpose of reporting the existence of "illegal Federal irrigation subsidies," as defined by the Internal Revenue Code, and (2) the disclosure to lending institutions for the purpose of acquiring information needed by the lender to complete the certification and reporting requirements of the Reclamation Reform Act of 1982 (RRA) for involuntarily acquired irrigable or irrigation land.

The new category of individuals covered by the system proposed for BOR–31, pursuant to amendments to the RRA, as included in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), is operators of land subject to the acreage limitation provisions of Reclamation law.

All other changes proposed for BOR–31 are editorial in nature, clarify and update existing statements, and reflect organizational, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register**: To wit, in BOR–31, the existing system name is revised in accordance with current agency practice regarding form of system name; an explicit statement has been included regarding disclosure of system data to consumer reporting agencies; the existing categories of records in the system statement is revised to more clearly identify the types of records maintained in the system; the existing retrievability statement is revised to reflect current indexing capabilities; the existing retention and disposal statement is revised to provide the public with more specific information regarding approved agency retention and disposal practices; the existing system record source categories statement is revised to more clearly identify current sources of system data; and the existing location statement and existing system manager(s) and address statements are revised to reflect the current organizational structure of the Bureau of Reclamation as well as changes in addresses of specific system managers. For ease of use, organizational and address changes are reflected in a revision of the appendix to the Department's compilation of system of records notices, Part XVI of which is replaced in its entirety and included below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations have been given notice of this proposed alteration.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the new, intended uses of the information in this system of records. The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045. Comments received within 40 days of publication in the **Federal**

Register (April 18, 1994), will be considered. The notice shall be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: February 16, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/BOR–31

SYSTEM NAME:

Acreage Limitation—Interior, BOR–31.

SYSTEM LOCATION:

(1) Bureau of Reclamation, Denver Office, PO Box 25007, Denver, CO 80225–0007.

(2) Applicable Regional and Project Offices (addresses are listed in Part XVI of the appendix).

(3) District offices in which subject individuals submitted certification and reporting forms (addresses, if not known, may be obtained from the applicable regional office or the Denver Office).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals that directly or indirectly own or lease land that is subject to the acreage limitation provisions of Reclamation law, and individuals that operate such land.

Note: Records pertaining to corporate or other commercial entities are also maintained in the system. Only records pertaining to individuals are protected by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

For owners, lessees, and operators: Names; addresses; and telephone numbers.

For owners and lessees: Federal Employer's Identification Numbers; Social Security Numbers; citizenship status; status pursuant to Reclamation law; legal descriptions or assessor parcel numbers; deeds; contracts or agreements relative to the transfer of land ownerships, including excess land sales and pertinent details of such sales; signature authorization documents; power-of-attorney documents; irrevocable elections; terms and effective dates of leases; leases; lease/purchase options; trust agreements; partnership agreements; and corporate resolutions.

For farm operators: Farm operating agreements; type of services provided; acreage operated by farm operators; and other pertinent details.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Act of 1902, as amended and supplemented (43 U.S.C. 371), especially sections 206, 224(c), 224(g), and 228 of the Reclamation Reform Act of 1982, (43 U.S.C. 390aa).

PURPOSE:

The primary purpose of the system is to obtain from landowners and lessees written information on their landholdings that is pertinent to their compliance with the acreage limitation and full-cost-pricing provisions of Reclamation law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data collected is used by district and Bureau of Reclamation personnel to determine compliance with Reclamation law.

Disclosures outside the Department of the Interior may be made pursuant to 43 CFR 2.56 and: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, lease, license, contract, grant or other agreement to appropriate Federal, State, tribal, territorial, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, regulation, rule, order, lease, license, contract, grant, or other agreement; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To non-Federal auditors under contract with the Department of the Interior to perform audits relating to the acreage limitation program; (5) To the Internal Revenue Service for the purpose of reporting the existence of "illegal Federal irrigation subsidies" as defined by Section 90 of the Internal Revenue Code; and (6) To lending institutions for the purpose of acquiring information needed by the lender to complete the certification and reporting requirements of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa) for involuntarily acquired irrigable or irrigation land.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and, where automated, on magnetic media.

RETRIEVABILITY:

Manual records are retrieved by district and/or landholder name, by assessor parcel number, by excess land sale number, and/or by acreage limitation topic (e.g., trusts, farm operators, etc.). Automated records are retrieved by district identification number, sale number, landholder name, operator name, Social Security Number (if available), Federal Employer's Identification Number, telephone number, address, and/or identifying property characteristics, such as an assessor's parcel number.

SAFEGUARDS:

Records are maintained with safeguards in accordance with requirements of 43 CFR 2.51 and 2.52 for manual and computer records.

RETENTION AND DISPOSAL:

Certification and reporting forms (including verification forms) are retained for 3 years, at a minimum. The most current fully completed certification and reporting forms are maintained on file with the most current verification form, in accordance with 43 CFR 426.10(h). All other records are retained in compliance with Bureau of Reclamation retention schedules that have been approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Unless directed otherwise in this notice, inquiries regarding records in this system should be addressed to the System Manager, BOR–31, at the appropriate regional office or at the Denver Office of the Bureau of Reclamation. See Part XVI. of the appendix for addresses.

NOTIFICATION PROCEDURE:

For inquiries regarding the existence of their own certification and reporting forms, individuals shall contact the district(s) in which they have filed forms. For inquiries regarding the

existence of other records in the system, individuals shall contact the System Manager, BOR–31, at the appropriate office as listed in Part XVI. of the appendix. Requests for notification of the existence of records shall be in writing, signed by the requester, and in compliance with the content requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

For requests for access to their own certification and reporting forms, individuals shall contact the district(s) in which they have filed forms. For requests for access to other records in the system, individuals shall contact the System Manager, BOR–31, at the appropriate office as listed in Part XVI. of the appendix. Requests for access to records shall be in writing, signed by the requester, and in compliance with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

For requests for amendment of their own certification and reporting forms, individuals shall contact the district(s) in which they have filed forms. For requests for amendment of other records in this system, individuals shall contact the System Manager, BOR–31, at the appropriate office as listed in Part XVI. of the appendix. Requests for amendment of records shall be in writing, signed by the requester, and in compliance with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, certain Federal agencies, State and local governmental units, and land appraisers.

Appendix

This appendix contains the address of facilities of the Department of the Interior. It is to be used in conjunction with notices describing Privacy Act systems of records.

Part XVI. Bureau of Reclamation

A. *Headquarters Offices*

Washington Office, Bureau of Reclamation, 18th and C Streets NW, Washington DC 20240–9997
Denver Office, Bureau of Reclamation, PO Box 25007, Denver CO 80225–0007
Administrative Service Center, Bureau of Reclamation, 7301 West Mansfield Avenue, Denver CO 80235–2230

B. *Regions and Field Offices*

Pacific Northwest Regional Office, Bureau of Reclamation, 1150 North Curtis Road, Boise ID 83706–1234
Bend Construction Office, 20310 Empire Avenue, B3, Bend OR 97701–3512
Central Snake Projects Office, 214 Broadway, Boise ID 83702–7298
Columbia Basin Project Office, 32 C Street NW, Ephrata WA 98823
Columbia Basin Job Corps Center, Building 2402, 6739 24th Street, Moses Lake WA 98837–3246
Columbia River Coordination Office, 911 NE 11th Street, Room 125, Portland OR 97232–4169
Fort Simcoe Job Corps Civilian Conservation, 40 Abella Lane, White Swan WA 98952–9801
Global Climate Change Response Program, c/o Medfordd Irrigation District, 1340 Myers Lane, Medford OR 97501–3646
Grand Coulee Project Office, PO Box 620, Grand Coulee WA 99133–0620
Hungry Horse Project Office, Hungry Horse Powerplant, Hungry Horse MT 59919
Marsing Civilian Conservation Center, Route 1, Marsing ID 83639–9801
Minidoka Project Office, 1359 Hansen Avenue, Burley ID 83318–1821
Umatilla-Yakima Construction Office, 3701 River Road, Yakima WA 98902–2058
Yakima Project Office, 1917 Marsh Road, Yakima WA 98901–2058
Mid-Pacific Regional Office, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento CA 95825–1898
North Central California Area Office, 7794 Folsom Dam Road, Folsom CA 95630–1799
South Central California Area Office, 2666 North Grove Industrial Drive, Suite 106, Fresno CA 93727–1551
Kesterson Field Office, 22301 Gun Club Road, Gustine CA 95322
New Melones Lake, 6850 Stud Horse Flat Road, Sonora CA 95370
Willows Office, 1140 West Wood Street, Willow CA 95988–2615
Los Banos Field Station, 18785 Creek Road, Los Banos CA 93635–9605
Northern California Area Office, Shasta Dam, Redding CA 96003–9445
Delta Area Office, Mountain House & Kelso Roads, Route 1, Box 35, Byron CA 94514–9614
Klamath Project Office, 6600 Washburn Way, Klamath Falls OR 97603–9365
Lahontan Basin Projects Office, 705 North Plaza Street, Carson City NV 89701–4015
Fallon Field Office, 2674 Harrigan Road, Fallon NV 89406–8940
Lake Berryessa Recreation Office, 5520 Knoxville Road, Napa CA 94558–9649
Trinity River Basin Area Office, 3 Horseshoe Lane, Weaverville CA 96093
Lower Colorado Regional Office, Bureau of Reclamation, 400 Railroad Avenue, PO Box 61470, Boulder City NV 89006–1470
Arizona Projects Office, 23636 North Seventh Street, Phoenix AZ 85024–3801
Waddell Field Division, 23636 North Seventh Street, Phoenix AZ 85024–3801
Roosevelt Field Division, 23636 North Seventh Street, Phoenix AZ 85024 –3801
Tucson Division, 5025 West Ina Road, Tucson AZ 85743–9751
Lower Colorado Dams Project Office, Highway 93, Hoover Dam, Boulder City NV 89005
Davis Dam Field Division, Davis Dam, Bullhead City AZ 86430–8902
Parker Dam Field Division, PO Box 878, Parker Dam CA 92267–0878
Southern California Office, 27710 Jefferson Avenue, Suite 201, Temecula CA 92590–2628
Yuma Projects Office, 7301 Calle Agua Salada, Yuma AZ 85366
Upper Colorado Regional Office, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City UT 84147–0568
Albuquerque Projects Office, 505 Marquette NW., Suite 1313, Albuquerque NM 87102–2162
Alamosa Field Division, 10900 Highway 160 East, Alamosa CO 81101–9518
Chama Field Division, 193 North Pinon Drive, Chama NM 87520–0426
Carlsbad Office, PO Box 1356, Carlsbad NM 88221–1356
Socorro Field Division, PO Box VV, Socorro NM 87801–0678
Collbran Civilian Conservation Center, RR No. 1, Box 12, Collbran CO 81624–9702
Cortez Projects Office, 60 South Cactus, Cortez CO 81321–3074
Glen Canyon Field Branch, PO Box 1477, Page AZ 86040–1477
Curecanti Field Branch, 1820 South Rio Grande Avenue, Montrose CO
Flaming Gorge Field Branch, PO Box 278, Dutch John UT 84023–0278
Fontenelle Dam and Powerplant, Kemmer WY 83101–9701
Durango Projects Office, 835 East Second Avenue, Durango CO 81301–5475
Grand Junction Projects Office, 2764 Compass Drive, Grand Junction CO
Navajo Indian Irrigation Project Office, 501 Airport Drive, Suite 107, Farmington NM 87401–2646
Provo Projects Office, 302 East 1860 South, Provo UT 84606–6154
Jordanelle Field Engineering Division, 575 North Main Street, Heber UT 84032–0520
Rio Grande Projects Office, 700 East San Antonio Street, Room B–318, El Paso TX 79901–7010
Elephant Butte Power and Storage Division, HC 30, Box 312, Truth or Consequences NM 87901–9802
San Luis Valley Project Office, 10900 Highway 160 East, Alamosa CO 81101–9518
Weber Basin Civilian Conservation Center, RFD No. 6, Ogden UT 84405–9605
Great Plains Regional Office, Bureau of Reclamation, Federal Office Building, 316 North 26th Street, Billings MT 59101–1362
Belle Fourche Projects Office, 209 Dartmouth, Newell SD 57760–0226
Bighorn Basin Projects Office, 702 Yellowstone Avenue, Cody WY 82414
Eastern Colorado Projects Office, 11056 West County Road 18E, Loveland CO 80537–9711
Missouri-Souris Projects Office, 304 East Broadway Avenue, Federal Building (Old Post Office), Bismarck ND 58502
Harvey Construction Field Branch, Highway 52 West, Harvey ND 58341
Oakes Field Office, Highway 1 South, Oakes ND 58474
Missouri-Souris Projects Office, Field Office, 810 West Fifth Street, Pierre SD 57501–1306

Montana Projects Office, 2525 Fourth Avenue North, Billings MT 59101–1317
Nebraska-Kansas Projects Office, Federal Building, 203 West Second Street, Grand Island NE 68801–5907
North Loup Construction Office, North Highway No. 11, Ord NE 68862
North Platte River Project Office, 705 Pendell Boulevard, Mills WY 82644
Oklahoma-Texas Projects Office, 420 West Main Street, Suite 630, Oklahoma City OK 73102–4435
Austin Reclamation Field Office, Federal Building, 300 East Eighth Street, Room 801, Austin TX 78701–3225.

[FR Doc. 94–5329 Filed 3–8–94; 8:45 am]
BILLING CODE 4310–94–M

Geological Survey

National Water-Quality Assessment Program Symposium

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Symposium on the National Water-Quality Assessment (NAWQA) Program.

SUMMARY: Notice is hereby given of a symposium on the National Water-Quality Assessment (NAWQA) Program sponsored by the U.S. Geological Survey. The proposed agenda for the meeting includes presentations by Federal officials on the U.S. Geological Survey (USGS) NAWQA Program followed by a panel discussion of emerging water-quality issues and related water-information needs in the year 2000. The panel will include Congressional staff, Federal, State, and county representatives, and the public sector.

The USGS NAWQA Program is designed to assess historic, current, and future water-quality conditions in representative river basins and aquifers nationwide. One of the primary objectives of the program is to describe relations between natural and human factors and water-quality conditions and to define those factors that most affect water quality in different parts of the Nation. The linkage of water quality to environmental processes is of fundamental importance to water-resource managers, planers, and policy makers. Recent NAWQA findings will be presented that provides a strong and unbiased basis for better decisionmaking for those responsible for managing our water resources, including the United States Congress, Federal, State, and local agencies, environmental groups, and industry. Information from the NAWQA Program also will be useful for targeting research, monitoring, and regulatory priorities in cost effective ways.

DATES: The symposium will convene at 9 a.m. on Wednesday, April 6, 1994, and will adjourn at 4 p.m.

ADDRESSES: The Washington Court on Capitol Hill, 525 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: P. Patrick Leahy, Chief, NAWQA Program; 413 National Center; Reston, Virginia 22092 Telephone: (703) 648–5012; Fax: (703) 648–5722.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. However, seating space is limited. Persons wishing to attend are asked to call the NAWQA Program office at (703) 648–5716 no later than noon, April 1, 1994, to help assure adequate seating space.

Dated: February 25, 1994.

Philip Cohen,

Chief, Water Resources Division.

[FR Doc. 94–5325 Filed 3–8–94; 8:45 am]
BILLING CODE 4310–31–M

National Park Service

Chesapeake & Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held at 1 p.m., Saturday, March 12, 1994, at the Hancock Maintenance Shop of the C&O Canal National Historical Park, 441 East Main Street, Hancock, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland.
Ms. Anne L. Gorner, Cumberland, Maryland.
Ms. Elise B. Heinz, Arlington, Virginia.
Mr. George M. Wykoff, Jr., Cumberland, Maryland.
Mr. Rockwood H. Foster, Washington, DC.
Mr. Barry A. Passett, Washington, DC.
Mrs. Jo Reynolds, Potomac, Maryland.
Ms. Nancy C. Long, Glen Echo, Maryland.
Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia.
Dr. James H. Gilford, Frederick, Maryland.
Mr. Edward K. Miller, Hagerstown, Maryland.
Mrs. Sue Ann Sullivan, Williamsport, Maryland.
Mr. Terry W. Hepburn, Hancock, Maryland.
Mr. Laidley E. McCoy, Charleston, West Virginia.
Ms. Jo Ann M. Spevacek, Burke, Virginia.
Mr. Charles J. Weir, Falls Church, Virginia.

The agenda for the meeting includes a review of the park land retention program, vegetation concerns in the Oldtown area, and Superintendent's report.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: February 25, 1994.

Chrysandra Walter,

Acting Regional Director, National Capital Region.

[FR Doc. 94–5369 Filed 3–8–94; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–645 Final]

Certain Calcium Aluminate Cement and Cement Clinker From France; Revised Schedule for the Subject Investigation

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: Effective November 1, 1993, the Commission

instituted the subject investigation and established a schedule for its conduct (58 FR 67809, December 22, 1993). Subsequently, the Commission received a letter, dated January 26, 1994, from counsel for Lehigh Portland Cement Company, the petitioner in this investigation, requesting that the Commission reschedule its hearing from March 24, 1994 to March 31, 1994. The Commission is revising its schedule in the investigation in response to petitioner's request.

The Commission's new schedule for the investigation is as follows: the prehearing staff report will be placed in the nonpublic record on March 18, 1994; requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 22, 1994; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 24, 1994; the deadline for filing prehearing briefs is March 25, 1994; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 31, 1994; and the deadline for filing posthearing briefs is April 7, 1994.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: March 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–5439 Filed 3–8–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–1 (Sub-No. 240X), Chicago and North Western Transportation Company—Abandonment Exemption—in Bellwood, Cook County, IL. EA available 3/3/94.

Comments on the following assessment are due 30 days after the date of availability:

None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5444 Filed 3–8–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket Nos. AB–55 (Sub-No. 478X); AB–290 (Sub-No. 138X)]

CSX Transportation, Inc.—Abandonment Exemption—In Bell County, KY, and Claiborne County, TN; Norfolk Southern Railway Co.—Discontinuance of Trackage Rights Exemption—In Bell County, KY, and Claiborne County, TN

CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NS) have filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights for CSXT to abandon and NS to discontinue trackage rights over approximately 1.46 miles of rail line between milepost MR–221.0 near Gravity Yard and milepost MR–222.46 at Fork Ridge, in Bell County, KY, and Claiborne County, TN.

CSXT and NS have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance of service shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 8, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 29, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202; James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CSXT and NS have filed an environmental report which addresses the effects of the abandonment and discontinuance of trackage rights, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 14, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 3, 1994.

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-Of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5445 Filed 3–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Leading Indicators Crime Information Survey System.
(2) None. Office of Justice Programs/Bureau of Justice Statistics.
(3) Quarterly.
(4) State or local governments. The Department of Justice is committed to developing a national violent crime initiative for federal, state and local law enforcement. As a first step, this new indicators system will detect and monitor chronic and emerging violent crime trends on a quarterly basis as reported bu 21 law enforcement agencies across the country.
(5) 84 annual responses at 2.0 hours per response.
(6) 168 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: March 3, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–5382 Filed 3–8–94; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Report of Complaint
(2) I–847. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This form may be used by the public to register formal complaints of misconduct by United States Border Patrol Employees.
(5) 250 annual responses at .25 hours per response
(6) 62.5 annual burden hours
(7) Not applicable under section 3504(h)

Public comment on this item is encouraged.

Dated: March 4, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–5436 Filed 3–8–94; 8:45 am]

BILLING CODE 4410–10–M

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Metropolitan Detention Center in Houston, TX

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a new Metropolitan Detention Center (MDC) is needed in its system. The Bureau of Prisons will evaluate five proposed sites located in Houston, Texas for construction of the MDC.

The proposed sites are:

(A) Block 71—a 1.45 acre site encompassing an entire city block extending from Texas Street on the north, Caroline Street on the south,

Capitol Street on the east and Austin Street on the west. Presently the site is utilized as at-grade parking.

(B) Block 76—a 1.45 acre site encompassing an entire city block extending from Capitol Street on the north, Rusk Street on the south, LaBranch Street on the east and Austin Street on the west. Presently the site is utilized as at-grade parking.

(C) Block 77—a 1.45 acre site encompassing an entire city block extending from Capitol Street on the north, Rusk Street on the south, Austin Street on the east and Caroline Street on the west. Presently the site is utilized as at-grade parking.

(D) Block 43—a 1.43 acre site encompassing an entire city block extending from Preston Street on the north, Prairie Street on the south, Travis Street on the east and Milam Street on the west. Presently the site is utilized as at-grade parking.

(E) Hadley-Franklin Block—a 1.43 acre site encompassing an entire city block extending from Calhoun Street on the north, Pierce Elevated on the south, Louisiana Street on the east and Milam Street on the west. Presently the site is utilized as at-grade parking, and is the location of Adrian's Restaurante.

The Federal Bureau of Prisons proposes to construct a 500 unit detention facility for individuals who are awaiting trial, sentencing, or have other business before the United States District Court. As such, the facility is considered an extension of the Federal judiciary and law enforcement activity in Houston, Texas.

It is anticipated that the proposed sites are of sufficient size to provide space for housing, programs, services and support areas as well as administration, parking and staff training.

The Process

In the process of evaluating the five sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held in the Houston Downtown Library's Julia Ideson Building Auditorium at 2 p.m. on March 22, 1994. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of public information meetings will be held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by:

K. Bradley Wiggins, Site Selection and Environmental Review Specialist, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534, (202) 514–6470.

Dated: March 3, 1994.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 94–5381 Filed 3–8–94; 8:45 am]

BILLING CODE 4410–05–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–017]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: March 31, 1994, 8 a.m. to 6 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/554–0501).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Strategic Planning
—Fiscal Year 94–95 Program Update

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–5384 Filed 3–8–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted a preliminary annual fee rate of 0.6% (.006 for calendar year 1994. The rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Cindy Altimus, National Indian Gaming Commission, 1850 M Street, NW., suite 250, Washington, DC 20036; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating Class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the Class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and this rate are effective for calendar year 1994. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of the first quarter of 1994 (March 31), and quarterly thereafter.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

[FR Doc. 94–5377 Filed 3–8–94; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8948]

Shieldalloy Metallurgical Corp.; Intent To Establish Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) is intending to establish a local public document room (LPDR) for records pertaining to the decommissioning of the Shieldalloy Metallurgical Corporation (Shieldalloy) site near Cambridge, Ohio.

Among the factors the NRC will consider in selecting a location for the collection are:

(1) Whether the institution is an established document repository with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron work space, and copying and micrographic equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The accessibility of the library to the handicapped;

(6) The proximity of the library to the Shieldalloy, Cambridge, Ohio, site.

Public comments are requested on libraries in the vicinity of the Cambridge, Ohio, site that might be considered for selection as the location for this NRC local public document room collection.

The comment period expires April 8, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further information you may contact Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone 301–492–4344 or Toll-Free 1–800–638–8081.

Dated at Bethesda, Maryland, this 4th day of March, 1994.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–5386 Filed 3–8–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group will meet at the time and place shown below:

DATES: March 22, 1994, 9 a.m.

PLACE: U.S. Office of Personnel Management (OPM) Conference Center, room 1350, 1900 E Street, NW., Washington, DC.

AGENDA: The focus of the March 22nd meeting will be a final report to the Director, OPM, on the activities by the Advisory Group and its three subcommittees to enhance the employment of students and graduates from HBCU's in the Federal Government.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Chief, Recruiting Policy Division, Office of Personnel Management, Room 6332, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. This is the final meeting of the Advisory Group, which sunsets in June 1994. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views.

Persons wishing to address the Advisory Group orally at the meeting should submit a written request no later than the close of business on March 11, 1994. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–5370 Filed 3–8–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33707; File No. SR–MCC–94–02]

Self-Regulatory Organization; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Fee Relating to the Automatic Securities Loan Program

March 3, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on February 7, 1994, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MCC, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposes to amend a portion of its Services and Schedule of Charges by adding a fee to its Automatic Securities Loan Program ("ASLP").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose for the proposed rule change is to establish a fee for the ASLP for MCC participants who are institutional participants of MSTC (as that term is defined in MSTC's rules).

[1] 15 U.S.C. 78s(b)(1) (1988).

This fee reflects a charge of 55% (rather than the 50% charged to other participants). This charge is higher for institutional participants of MSTC than for other participants for MCC who are not also institutional participants of MSTC because institutional participants of MSTC are not charged Auto Stock Loan receive and Auto Stock Loan delivery fees of $0.75 per transaction. The $0.75 MSTC fee only applies to participants (are opposed to institutional participants) of MSTC.

MCC believes that the proposed rule change is consistent with Section 17A of the Act [2] in that it provides for the equitable allocation of reasonable fees and other charges among participants using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes that the proposed rule change will neither have an impact on competition nor impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(e)(2) thereunder [4] because the proposal establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–94–02 and should be submitted by March 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5397 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78q–1 (1988).

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e)(4) (1993).

[Release No. 34–33706; File No. SR–NYSE–92–37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and No. 2 to Proposed Rule Change Relating to Entry of Limit at the Close Orders

March 3, 1994.

I. Introduction

On December 23, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 13 to permit the entry of limit at the close ("LOC") orders to offset published imbalances of market at the close ("MOC") orders. On September 8, 1993, the NYSE submitted Amendment No. 1 to the proposed rule change in order to conform the filing with the recent amendments to the Exchange's auxiliary closing procedures.[3] On September 29, 1993, the NYSE submitted Amendment No. 2 to the proposed rule change in order to clarify certain terms used in the original filing.[4]

The proposed rule change, together with Amendments No. 1 and No. 2, was published for comment in Securities Exchange Act Release No. 32994 (September 30, 1993), 58 FR 52126 (October 6, 1993). No comments were received on the proposal. This order approves the proposed rule change, including both amendments, contingent upon the NYSE submitting to the Commission a satisfactory Information Memorandum.

II. Description of the Proposal

NYSE rule 13 currently defines an "at the close order" as a market order to be executed in its entirety at the closing price. The Exchange proposes to amend this rule to provide that an "at the close order" also will include a limit order for execution at the closing price. The NYSE proposal will enable a member firm to enter a LOC order, pursuant to such procedures regarding time of order entry and cancellation as the NYSE periodically will establish,[5] only to offset a published imbalance of MOC orders in that stock.[6] The initial LOC

[5] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 3, 1993 ("Amendment No. 1").

[4] See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 29, 1993 ("Amendment No. 2").

[5] See *infra*, note 16.

[6] Presently, the NYSE utilizes two sets of closing procedures, one for expiration days (as defined below) and one for all other trading days, pursuant to which specialists may be required to disseminate MOC order imbalances of 50,000 shares or more. Amendment No. 2, *see supra* note 4, clarifies that the term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

On expiration days, the NYSE's auxiliary closing procedures establish a 3:40 p.m. deadline for (1) the entry of MOC orders related to a trading strategy involving an expiring index derivative product and 92) the cancellation or reduction of any MOC order. Moreover, in the pilot stocks (as defined below, (see *infra* note 9), the specialist must, as soon as practicable after 3:40 p.m., disseminate any MOC order imbalance of 50,000 shares or more; thereafter, MOC orders in the pilot stocks may be entered only to offset a published imbalance. See Securities Exchange Act Release No. 32868 (September 10, 1993), 58 FR 48687 (September 17, 1993) [File No. SR–NYSE–93–33] (approving modifications to auxiliary closing procedures and extending pilot program until October 31, 1994). Amendment No. 1, see *supra* note 3, made conforming changes to the original LOC order filing.

On other trading days, the specialist must, as soon as practicable after 3:45 p.m., disseminate any MOC order imbalance of 50,000 shares or more in (1) the pilot stocks and (2) any stock being added to or dropped from certain stock indexes (or, with Floor Official approval, from other stock indexes). For non-expiration days, a published imbalance (or the lack thereof) does not preclude the entry or cancellation of any MOC order on either side of the

Continued

order entry and cancellation times are set forth below.

The Exchange will modify its automated order routing system to accept the new LOC order type, and anticipates that the necessary system changes will be completed in spring 1994.[7] At that time, the NYSE will initiate LOC order entry, on a 15-month pilot basis,[8] in five of the so-called "pilot stocks."[9] According to the NYSE, the initial stocks will be selected based on their having a level of market activity and trading interest that suggests LOC orders would be a useful investment vehicle;[10] other stocks will be added, during the 15-month period, as the NYSE gains experience with this pilot program.[11]

In terms of the procedures for handling LOC orders, the NYSE proposes to establish a 3:55 p.m. deadline for their entry. On expiration days, LOC orders will be irrevocable after 3:40 p.m. (except in the event of a legitimate error); on other trading days, cancellation of LOC orders will be prohibited after 3:55 p.m. (except in the event of a legitimate error).[12] In addition, the NYSE will notify its electronic display book, such that LOC orders will be prioritized relative to other LOC orders by time of entry, but will be required to yield priority to all conventional limit orders on the specialist's book at the same price. Under these procedures, LOC orders at the closing price (as opposed to a better price) will not be guaranteed an execution.

The Exchange believes that, with respect to expiration days, the pilot to permit the use of LOC orders on a limited basis, as described above, should be viewed as an interim measure to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. The NYSE states that the basis for the proposed rule change is Section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[13] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations, with the support of the Commission, have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. As recently amended,[14] these procedures establish a simultaneous 3:40 p.m. deadline for the entry of expiration-related MOC orders and for the cancellation or reduction of any MOC order. The procedures allow the NYSE to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a market dislocation which could make member firms and their customers unwilling to acquire significant positions.

After careful review, the Commission preliminarily has concluded that LOC orders should provide the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances arising from the liquidation of index derivative related positions. As a practical matter, the Commission believes that the new LOC order type will appeal to certain market participants who otherwise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for curbing excess price volatility at the close.[15]

The Commission also finds that the NYSE has established appropriate procedures for the handling of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those

market. *See* Securities Exchange Act Release No. 31291 (October 6, 1992), 57 FR 47149 (October 14, 1992) (File No. SR–NYSE–92–12).

[7] The NYSE has represented that, before initiating LOC order entry, it will submit to the Commission a letter (1) stating that the modifications to its SuperDot system have been tested and are fully operational and (2) informing the Commission of the start-up date for this pilot program. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on January 28, 1994.

[8] See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated August 25, 1993.

[9] For purposes of LOC order entry, the term "pilot stocks" refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

[10] The NYSE has represented that, before initiating LOC order entry, it will submit to the Commission a letter containing the names of the five stocks. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on January 28, 1994.

[11] The NYSE has represented that, at such time as stocks are added to this pilot program, it will submit to the Commission a letter containing the names of the stocks. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on January 28, 1994. The Commission notes that the total number of pilot stocks (as defined above, *see supra* note 9), and thus the maximum number of stocks which could be selected for LOC order entry, is presently 62.

[12] As noted above, member firms will be able to enter LOC orders only to offset a published imbalance of MOC orders in that stock. Under the NYSE's closing procedures, *see supra* note 6, MOC order imbalances of 50,000 shares or more must be disseminated as soon as practicable after 3:40 p.m. on expiration days and after 3:45 p.m. on other trading days. LOC order entry will be permitted thereafter.

[13] 15 U.S.C. § 78f(b) (1988).

[14] For further discussion of the NYSE's auxiliary closing procedures, see supra, note 6.

[15] Furthermore, the Commission notes that LOC orders could allow the NYSE to accomplish this goal without diminishing any benefit to investors from trading strategies which rely on MOC orders to guarantee a fill at the closing price.

procedures.[16] Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In addition, the Commission believes that the proposed 3:55 p.m. deadline for LOC order entry strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies. Similarly, in the Commission's opinion, the prohibition on cancelling LOC orders on expiration days is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of expiration-related order flow and its potential impact on the closing price.

The Commission is approving LOC order entry on a 15-month pilot basis, beginning with five of the pilot stocks, contingent upon the NYSE submitting to the Commission a satisfactory Information Memorandum.[17] As long as some index derivative products continue to expire based on closing stock prices on expiration days, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potentially large imbalances that can be engendered by firms unwinding index derivative related positions. During the pilot program, the Commission expects the NYSE to monitor the effectiveness of its LOC order procedures.

The Commission therefore requests that the NYSE submit a report to the Commission, by the date 12 months after the start-up date for LOC order entry, describing its experience with the pilot program. At a minimum, this report should contain the following data for each expiration day during that 12-month period: (1) The names of all LOC pilot stocks as of that expiration day (including both the initial five stocks and any pilot stocks added thereafter); (2) for all LOC pilot stocks which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., the names of those stocks and the size of the imbalance; (3) for each stock listed in (2) above, the size of the MOC order imbalance at 4:00 p.m. and an appropriate measure of the size of conventional limit order and LOC order interest, on the opposite side of the market from the imbalance, at 4 p.m.; (4) for each stock listed in (2) above, (i) the price of the transaction effected closest in time to 3:40 p.m., the price of the last regular way trade and the closing price, (ii) the change in price of the closing transaction, measured as a percentage, from the last regular way trade and from the transaction effected closest in time to 3:40 p.m. (iii) historical data analyzing price volatility for the same stock on expiration days prior to the implementation of this pilot program; and (5) the average price volatility for all stocks listed in (2) above as compared to the average price volatility for all other pilot stocks. The NYSE report also should contain, for one week per calendar quarter (including at least one week with no expiration days) the data described herein, as modified to reflect the MOC procedures for non-expiration days. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval of the pilot procedures also should be submitted to the Commission, by the date 12 months after the date for the start-up of LOC order entry, as a proposed rule change pursuant to section 19(b) of the Act.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–92–37) is approved on a 15-month pilot basis, contingent upon the NYSE submitting to the Commission a satisfactory Information Memorandum.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5396 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

[16] While Rule 13, as amended, provides the NYSE with discretion in establishing the procedures for LOC order entry and cancellation, the Commission expects that any modification to the procedures described herein will be submitted to the Commission as a proposed rule change pursuant to section 19(b) of the Act.

[17] The NYSE has agreed to the Information Memorandum being a prerequisite for the implementation of its LOC order pilot program. Telephone conversation between Robert McSweeney, Senior Vice President, Market Surveillance, NYSE, and Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, on February 2, 1994.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Cheyenne Software, Inc., Common Stock, $0.01 Par Value) File No. 1–9189

March 3, 1994.

Cheyenne Software, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Exchange, the Company has determined to withdraw the listing and registration of the Common Stock on the PSE. The Common Stock will continue to be listed on the American Stock Exchange, Inc. ("Amex").

The Company's desire to withdraw its securities from listing on the Exchange is a cost-cutting measure. A listing on the Exchange costs the Company approximately $1,000 per year. The Company also incurs certain administrative costs related to copying and forwarding to the Exchange all of the Company's filings with the Commission. The Company provides such filings to the Amex, and to similarly send such material to the Exchange is an additional burden in light of the easy access by stockholders and potential stockholders to such materials from other sources.

Any interested person may, on or before March 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5373 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20107; 812–8588]

Goldman Sachs Equity Portfolios, Inc. et al.; Application

March 2, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Goldman Sachs Equity Portfolios, Inc. ("Equity Portfolios"), Goldman Sachs Trust ("Bond Trust"), Goldman Sachs Institutional Liquid Assets ("Institutional Liquid Assets)", Financial Square Trust ("Financial Square Trust"), Centerland Funds ("Centerland"), Trust for Credit Unions and Paragon Portfolio ("Paragon"), (collectively, the "Funds"), Goldman, Sachs & Co. ("Goldman Sachs"), and Goldman Sachs Funds Management, L.P. ("Funds Management").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain investment companies to issue multiple classes of shares and assess a contingent deferred sales charge ("CDSC"). The order would supersede four prior orders (the "Prior Orders") and would permit certain Funds to issue an unlimited number of classes and expand the types of expenses that may be allocated to a particular class.

FILING DATES: The application was filed on September 17, 1993, and amended on December 6, 1993 and February 3, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 28, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants; 32 Old Slip, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a Massachusetts business trust, except that Equity Portfolios is a Maryland corporation. The Funds are registered management investment companies under the Act that have multiple series. Certain series of the Funds currently offer more than one class of shares under the Prior Orders.[1]

2. Each Fund, other than Paragon and certain series of Centerland, has entered into an investment advisory contract with Goldman Sachs, Goldman Sachs Asset Management, a separate operating division of Goldman Sachs, or Funds Management. Certain series of the Funds also pay Goldman Sachs Asset Management International, an affiliate of Goldman Sachs, and certain series of Centerland also pay, or expect to pay in connection with new series of such Fund, Boatmen's Trust Company or Kleinwort Benson International Investment Limited, an advisory or subadvisory fee.

3. Paragon, on behalf of Paragon Treasury Money Market Fund, has entered into an investment advisory contract with Goldman Sachs. Premier Investment Advisers, Inc. ("Premier") acts as investment adviser to each of the existing series of Paragon, other than Paragon Treasury Money Market Fund. Boatman's Trust Company acts as investment adviser to certain series of Centerland. Premier acts as subadviser to Paragon Treasury Money Market Fund. Goldman Sachs acts as administrator to each of Paragon's series.

4. Goldman Sachs Asset Management acts as administrator to all of the series of Equity Portfolios and Financial Square Trust, to four series of Bond Trust and to certain series of Centerland. Callahan Credit Union Financial Services Limited Partnership acts as administrator to all the series of Trust for Credit Unions, and Boatmen's Trust Company acts as administrator to certain of the series of Centerland. Goldman Sachs also acts as principal underwriter of each Fund.

5. The Prior Orders permit certain Funds to issue multiple classes of shares and assess a CDSC. Applicants request an order that would expand the investment companies eligible to rely on the Prior Orders to include Trust for Credit Unions and Paragon, permit the Funds to issue an unlimited number of classes, and expand the types of expenses that may be allocated to a particular class. Applicants request that the exemption be extended to future funds for which Goldman Sachs or any entity controlling, controlled by or under common control with Goldman Sachs acts as investment adviser or distributor.

A. The Multiple Class Distribution System

1. Applicants request an order to permit each Fund to issue an unlimited number of classes of shares. The classes would be identical in all respects except: Any such class (a) may be subject to a distribution plan adopted under rule 12b–1, a share-holder services plan and/or an administration plan (collectively, the "Plans") and may make different payments pursuant to such Plans ("Plan Payments") and relating to obtaining shareholder approval of a distribution plan (or an amendment to such plan); (b) may bear different "Class Expenses" (as described below); (c) may bear a different name or designation; (d) will have exclusive voting rights with respect to any Plan adopted exclusively with respect to such class; (e) may have different exchange privileges; and (f) may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order.

2. Under an administration plan, a Fund (or Goldman Sachs) would enter into servicing agreements ("Service Agreements") with affiliated and unaffiliated financial institutions, broker-dealers and securities professionals ("Service Organizations") capable of providing support services to the customers of such Service Organizations who beneficially own

[1] Goldman Sachs Equity Portfolios, *et al.*, Investment Company Act Release Nos. 19241 (Jan. 26, 1993), (notice) and 19288 (Feb. 23, 1993) (order). Institutional Liquid Assets, *et al.*, Investment Company Act Release Nos. 17420 (Apr. 11, 1990) (notice) and 17479 (May 8, 1990) (order). Financial Square Trust, *et al.*, Invsetment Company Act Release Nos. 18282 (Aug. 20, 1991) (notice) and 18319 (Sept. 17, 1991) (order). Centerland, *et al.*, Investment Company Act Release Nos. 18050 (Mar. 18, 1991) (notice) and 18101 (Apr. 16, 1991) (order).

shares of the Funds offered pursuant to such Plan. Under a shareholder services plan, a Fund (or Goldman Sachs) would enter into Service Agreements with Service Organizations concerning the provision of account administration services to the customers of such Service Organizations who beneficially own shares of the Funds offered pursuant to such Plan.

3. The Funds may establish a "Limited Institutional Class" which will be offered only to one or more of the following six categories of investors: (a) Unaffiliated benefit plans such as qualified retirement plans, with respect to which a trustee is vested with investment discretion as to plan assets, other than individual retirement accounts and self-employed retirement plans; (b) tax exempt retirement plans of Goldman Sachs and its affiliates; (c) unit investment trusts sponsored by sponsors affiliated with the Fund's adviser, subadviser, administrator or principal underwriter; (d) banks and insurance companies purchasing for their own accounts; (e) investment companies not affiliated with the Fund's adviser, subadviser, manager, administrator or principal underwriter; and (f) endowment funds, foundations or non-profit organizations.

4. Under the proposed multiple class system, certain expenses may be attributable to a Fund, but not to a particular series thereof ("Fund Expenses"). Fund Expenses may be allocated among the series of each Fund based on the relative aggregate net assets of such series. Expenses that are attributable to a particular series, but not a particular class thereof, will be allocated daily to each class based on relative net assets.

5. Each class of shares may generally be exchanged only for shares of a class with similar characteristics in another Fund. Such exchanges will be allowed only between Funds that are within the same "group of investment companies" as that term is defined in rule 11a–3 under the Act. However, exchanges may, at the discretion of the trustees, be permitted among classes if (a) a shareholder ceases to be eligible to purchase shares of the original class by reason of a change in the shareholder's status or if another class would have been more appropriate for such shareholder if such class existed at the time of the shareholder's initial investment or (b) the terms of such exchange do not result in the imposition of duplicative sales charges. Exchanges also may be permitted from any class to certain money market funds that have neither a Plan nor a CDSC. The exchanges will comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants also request an exemption to permit the Funds to assess a CDSC on certain redemptions of shares and to permit the Funds to waive, defer, or reduce any CDSC with respect to certain types of redemptions. Under a CDSC arrangement, the amount of a CDSC, if any, charged to a shareholder of a Fund would depend on the number of months or years that had elapsed since the shareholder purchased the CDSC class shares that were being redeemed. Any CDSC would be imposed on the lesser of the net asset value of the redeemed shares at the time of purchase or the net asset value of the redeemed shares at the time of redemption. No CDSC would be imposed with respect to: (a) The portion of redemption proceeds attributable to increases in the value of an account above the net cost of the investment due to increases in the net asset value per share; (b) shares acquired through reinvestment of income dividends or capital gain distributions; or (c) CDSC class shares held for more than a specified number of months or years after the purchase order for such shares was accepted. Any front-end load, CDSC, or 12b–1 fees imposed by the Funds would comply with section 26(d) of Article III of the Rules of Fair Practice of the NASD.

2. Applicants request the authority to waive or reduce any CDSC in any of the following circumstances: (a) In connection with redemptions of shares purchased by (i) Goldman Sachs, its affiliates or their respective officers, partners, directors or employees (including retired employees and former partners), any partnership of which Goldman Sachs or any of its affiliates is a general partner, any investment adviser, subadviser, manager, administrator or principal underwriter (if other than Goldman Sachs) of the Funds ("Other Affiliated Parties"), their affiliates or their respective officers, partners, directors or employees (including retired employees and former partners), any trustee or officer of the Funds and designated family members of any of the above individuals ("designated family members" means any of the following: spouses, children, parents, parents of spouses, spouses of parents, grandparents, grandchildren, siblings, spouses of siblings, siblings of spouses, spouses of children, children of siblings, spouses of siblings' children, aunts, uncles, cousins, spouses of aunts, uncles and cousins and trusts, estates and private foundations created by or for the benefit of the individual or designated family members as to which the individual acts as trustee or retains investment discretion); (ii) qualified retirement plans of Goldman Sachs, Other Affiliated Parties or any of their affiliates; (iii) trustees or directors of investment companies for which Goldman Sachs or an affiliate acts as sponsor; (iv) any employee or registered representative of an authorized dealer and their "designated family members;" (v) institutional investors, including insurance companies, broker-dealers, discretionary accounts of investment advisers with at least $100 million under management for the last twelve months and business entities that have either gross assets of at least $100 million or publicly traded securities outstanding; (vi) banks, trust companies or other types of depository institutions; (vii) any state, county or city, or any instrumentality, department, authority or agency thereof, which is prohibited by applicable investment laws from paying a sales charge or commission in connection with the purchase of shares of the Funds; (viii) pension and profit sharing plans, pension funds or other benefit plans sponsored by state and municipal governments and by business entities, provided that any such plan (1) has total assets of at least $25 million under management or (2) is prohibited by law from paying a sales load or commission; (ix) Taft-Hartley plans, provided any such plan has a minimum of $25 million under management; and (x) qualified nonprofit organizations, foundations and endowments; (b) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if the redemption is made within one year of death or disability of a shareholder; (c) in connection with distributions from retirement plans that are not subject to any penalties under the Code; (d) in connection with redemptions of shares by shareholders with accounts in excess of a specified minimum dollar amount and additional reductions or waivers of the CDSC occurring in connection with redemptions of shares by shareholders with accounts in excess of certain additional break-points; (e) pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; and (f) pursuant to a systematic withdrawal plan.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act, that would exempt the funds from sections 18(f)(1), 18(g) and 18(i) of the Act to permit the

issuance of an unlimited number of classes. Applicants believe that the multiple class system does not raise any of the legislative concerns that section 18 was designed to ameliorate. The proposal does not involve borrowings and does not affect the existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of a Fund since all such shares will participate in a Fund's appreciation, income and expenses with the exception of the Plan Payments and Class Expenses. The proposed allocation of expenses and voting rights relating to the Plans is equitable and would not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c), that would exempt the funds from sections 2(a)(32), 2(a)(35), 22(c), 22(d) of the Act and rule 22c–1 thereunder, to permit the Funds to assess, waive, reduce or defer a CDSC with respect to certain redemptions of shares. Applicants believe that the imposition of the CDSC on CDSC class shares of the Funds is fair and in the best interests of their shareholders.

Applicant's Conditions

1. Each class of shares will represent interests in the same portfolio of investments of a Fund or a series, and be identical in all respects except as set forth below. The only differences among the classes of shares of the same Fund or series will relate solely to: (a) The impact of certain Class Expenses, which will be limited to any or all of the following expenses determined by the trustees to be attributable to a specific class of shares: (i) transfer agent fees (including the incremental cost of monitoring any CDSC) attributable to a specific class of shares; (ii) expenses related to preparing, printing, mailing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class; (iii) SEC and state Blue Sky registration fees incurred by a specific class of shares; (iv) the expenses of administrative personnel and services required to support the shareholders of a specific class; (v) litigation or other legal expenses relating to a class of shares; (vi) trustees' fees or expenses incurred as a result of issues relating to a specific class of shares; (vii) accounting, audit and tax expenses relating to a specific class shares; and (viii) fees and other payments made, other than pursuant to a Plan, to entities performing services for a particular class, including account maintenance, dividend disbursing or subaccounting services or administration of a dividend reinvestment or systematic investment or withdrawal plan; (b) expenses payable by a class pursuant to a Plan with respect to such class; (c) the voting rights related to any Plan affecting a specific class of shares, except as provided in condition 16 below; (d) exchange privileges; (e) the conversion features; (f) class designations; and (g) any additional incremental expenses subsequently identified that should properly be allocated to one class which shall be approved by the SEC pursuant to an amended order.

2. The trustees of the Funds, including a majority of the non-interested trustees, will approve the multiple class system. The minutes of the meetings of the trustees of the Funds regarding the deliberations of the trustees concerning, and their approval of, the multiple class system will reflect in detail the reasons for the trustees' determination that the proposed multiple class system is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of Class Expenses that will be allocated to a class and any subsequent changes thereto will be reviewed and approved by a vote of the trustees, including a majority of the non-interested trustees. Any persons authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the trustees, and the trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. Any distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase shares of the Limited Institutional Class be sold only shares of the Limited Institutional Class, rather than any other class of shares offered by the Fund.

5. The Shareholder services plans and administrative plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12(b)–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. On an ongoing basis, the trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the classes of shares. The trustees, including a majority of the non-interested trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser and distributor of the Funds will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the investment adviser and distributor of the Funds, each at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

7. The trustees will receive quarterly and annual statements concerning the amounts expended under each shareholder services, administration and distribution plan and the related Service Agreement complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time, for their respective Funds. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be paid in the same amount, except that Plan Payments and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants filed with the application as exhibit C that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and

allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following a request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the American Institute of Certified Public Accountants (the "AICPA") and the ongoing reports will be "reports on policies and procedures placed in operations and tests of operation effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the ICPA from time to time.

10. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in the immediately preceding condition and will be concurred with by the Expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in the immediately preceding condition. The applicants agree to take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectus of each Fund, or if applicable, the prospectus of each class of shares of a Fund, will include a statement to the effect that any person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the multiple class system will be set forth in guidelines which will be furnished to the trustees.

13. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares, other than the Limited Institutional Class, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Limited Institutional Class will be offered solely pursuant to a separate prospectus. The prospectus for the Limited Institutional Class will disclose the existence of the Fund's other classes, and the prospectus for the other classes will disclose the existence of the Limited Institutional Class and will identify the persons eligible to purchase shares of such class. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except the Limited Institutional Class. Advertising materials reflecting the expenses or performance data for the Limited Institutional Class will be available only to those persons eligible to purchase the Limited Institutional Class. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares, except the Limited Institutional Class, separately.

14. The applicants acknowledge that the grant of the relief requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to the distribution, administration or shareholder services plans in reliance on the exemptive order.

15. Any class of shares ("Purchase Class") with a conversion feature will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If the Fund implements any amendment to its distribution plan (or, if presented to shareholder, adopts or implements any amendment of the non-rule 12b–1 shareholder services plan or administration plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such Purchase Class shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6, any additional cost associated with the creation, exchange or conversion of New Target Class or New Purchase Class shall be borne solely by the investment adviser or distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Plan and the relationship of such Plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, IC–16619 (November 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5374 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20110; File No. 811–5305]

Northbrook Variable Life Separate Account

March 3, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Northbrook Variable Life Separate Account.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 27, 1993.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on March 28, 1994. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 3100 Sanders Road, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Barry E. Simmons or Michael V. Wible, Special Counsel, (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant, registered as a unit investment trust under the 1940 Act, is a separate investment account of Northbrook Life Insurance Company ("Northbrook Life"). On September 30, 1993, the Applicant filed a notice of registration and a Form N–8B registration statement under the 1940 Act, and a registration statement on Form S–6 under the Securities Act of 1933 (the "1933 Act"). The 1933 Act registration statement was declared effective on April 14, 1988. No public offering was ever made.

2. No distribution has been made, or will be made, in connection with the winding-up of Applicant's affairs. The Applicant has no security holders and no known debts or other outstanding liabilities, and is not a party to any litigation or administrative proceeding.

3. The Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5395 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Rowe Furniture Corporation, Common Stock, $1.00 Par Value) File No. 1–10226

March 3, 1994.

Rowe Furniture Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on January 18, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before March 24, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5375 Filed 3–8–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2690; Amdt. 2]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective February 22, 1994, to extend the filing deadline of February 25, 1994 for applications for physical damage as a result of this disaster to April 26, 1994.

All other information remains the same, i.e., the termination date for filing applications for economic injury is July 28, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 28, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–5431 Filed 3–8–94; 8:45 am]

BILLING CODE 8025–01–M

Jackson District Advisory Council; Public Meeting

The U.S. Small Business Administration Jackson District Advisory Council will hold a public meeting from 9 a.m. until 12:30 p.m. on Friday, April 8, 1994 in the Jackson District Office, Jackson, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, suite 400, Jackson, Mississippi 39201, (601) 965–5371.

Dated: March 2, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–5430 Filed 3–8–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–94–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 28, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26721.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.63.
Description of Relief Sought/ Disposition: To extend Exemption No. 5450 to continue to permit the petitioner's member airlines to continue to train, check, and qualify crew members under applicable sections of part 121.

Docket No.: 26753.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.49(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 5492 to continue to allow the member airlines of the Regional Airlines Association to retest applicants who fail a required written or practical test without waiting the required 30 days.

Docket No.: 27586.
Petitioner: NorthState Aviation Inc.
Sections of the FAR Affected: 14 CFR 135.25(b).
Description of Relief Sought/ Disposition: To permit the petitioner to provide its Cessna-441 to Mercy Air Ambulance on an as needed basis when one of Mercy Air Ambulance's aircraft is undergoing required maintenance, thus the petitioner would not have exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications.

Docket No.: 27589.
Petitioner: Airborne Express Air, Inc. (ABX).
Sections of the FAR Affected: 14 CFR 121.343(c) and 121.305(j).
Description of Relief Sought: To allow ABX to continue operating until January 1, 1995, 11 YS–11 aircraft that are not equipped by October 17, 1994, with a third gyroscopic bank-and-pitch indicator (artificial horizon) and by May 26, 1994, with an approved flight recorder that uses a digital method to record 11 aircraft performance parameters.

Docket No.: 27595.
Petitioner: Garlick Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 36.1(a)(4).
Description of Relief Sought: To allow the petitioner to certificate under Type Certificate H13WE certain Restricted Category helicopters that do not meet part 36 noise requirements.

Dispositions of Petitions

Docket No.: 26152.
Petitioner: Sierra Academy of Aeronautics and Sierra Academy of Aeronautics and Technical Institute (Sierra).
Sections of the FAR Affected: 14 CFR 141, Appendix f (C) (III) (a)(2) (i) and (ii).
Description of Relief Sought/ Disposition: To amend Exemption No. 5245 to permit Sierra to graduate students enrolled in its approved commercial helicopter course prior to the issuance of Exemption No. 5245b, with 80 hours of flight instruction in helicopters and 70 hours of directed solo training in helicopters.

Grant, February 25, 1994, Exemption No. 5245C

Docket No.: 26667.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 121.411(a)(2), (a)(3), and (b)(2); 121.413 (b),(c), and (d); and 121 Appendix H.
Description of Relief Sought/ Disposition: To permit the petitioner, without holding an air carrier operating certificate, to continue to train part 121 certificate holders, pilots, flight engineers, and check airmen in initial, transition, upgrade, differences, and recurrent training requirements of subpart N and the employment requirements of appendix H of part 121.

Grant, February 24, 1994, Exemption No. 5408A

Docket No.: 27529.
Petitioner: Airway Transport.
Sections of the FAR Affected: 14 CFR 91.607.
Description of Relief Sought: To allow the petitioner to carry 40 parachutists in its DC–3 aircraft.

Grant, February 18, 1994, Exemption No. 5846

Docket No.: 27615.
Petitioner: Air Ukraine Airline.
Sections of the FAR Affected: 14 CFR 129.18.
Description of Relief Sought: To allow the petitioner to operate a reserve Ilyushin IL–62M aircraft not equipped with an approved traffic alert and collision avoidance system (TCAS II) to accompany the aircraft carrying

President Kravchuk of the Ukraine on his March 3, 1994 flight to the United States. The aircraft will depart the United States on or about March 7, 1994.

Grant, February 22, 1994, Exemption No. 5847

[FR Doc. 94–5410 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 11 through April 14, 1994, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, Room 9ABC, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy E. Halpin, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from April 11 through April 14, 1994, at the Federal Aviation Administration, Room 9ABC, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 8, 1994. The next quarterly meeting of the FAA ATPAC is planned to be held from July 11–14, 1994, in Denver, CO. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 3, 1994.

Timothy E. Halpin,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 94–5412 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jefferson County Airport, Beaumont, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Byron Broussard, Manager, Jefferson County Airport at the following address: Mr. Byron L. Broussard, Jefferson County Airport, 2748 Viterbo Road, Box 9, Beaumont, Texas 77705.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to Jefferson County Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Forth Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 16, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 15, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1994.

Proposed charge expiration date: January 31, 1997.

Total estimated PFC revenue: $633,386.00.

Brief description of proposed project(s): Projects to (Imposed and Use) PFC's; Airport Planning Studies; Land Acquisition/Easements and Perimeter Fencing; Taxiway Safety Improvements; Runway Safety Improvements; and Access Road Safety Improvements.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA's regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents, germane to the application in person at Jefferson County Airport.

Issued in Fort Worth, Texas, on February 16, 1994.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 94–5413 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on March 9 in room 600, 301 4th Street, SW., Washington, DC. from 9:15 a.m. to 12 p.m.

From 9:15 a.m. to 10:30 a.m. the Commission will hold a panel discussion on public diplomacy in Russia. The panelists are Ms. Anne Sigmund, Director, Office of East European and NIS Affairs, USIA; Dr. Stephen Grant, Chief, Russia, Ukraine, and Commonwealth Research Branch, USIA, Mr. Eric Johnson, Communications Coordinator, Internews, and Ms. Rosemary DiCarlo, Director of Democratic Initiatives, Office of the Coordinator for U.S. Assistance to the NIS, Department of State. At 11:15 a.m. the Commission will meet with Mr. Les Jin, USIA's General Counsel, to discuss implications of the pending USIA reauthorization bill and other matters.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: March 3, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–5380 Filed 3–8–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 46
Wednesday, March 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5490 Filed 3–7–94; 9:19 am]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

March 18, 1994, 9:45 a.m., Closed Session
March 18, 1994, 10:00 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public

Part of this meeting will be closed to the public

MATTERS TO BE CONSIDERED:

Friday, March 18, 1994

Closed Session (9:30 a.m.–9:55 a.m.)
—Minutes from February Meeting
—Grants and Contracts
Open Session (10:00 a.m.–11:50 a.m.)
—Minutes from February Meeting
—Chairman's Report
—Director's Report
—Program Approval
—Reports from Committees
—Briefing: Directorate for Computer and Information Science and Engineering
—Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–5606 Filed 3–7–94; 1:09 pm]

BILLING CODE 7555–01–M

Corrections

Federal Register

Vol. 59, No. 46

Wednesday, March 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF86–1014–006 and EL94–27–000]

Newark Bay Cogenerating Partnership, L.P.; Filing

Correction

FR notice document 94–3439 beginning on page 7251, in the issue of Tuesday, February 15, 1994, was published in error and should be removed.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–4828–7]

List of Regulated Substances for Accidental Release Prevention Under Section 112(r) of the Clean Air Act as Amended; Risk Management Programs for Chemical Accident Release Prevention Under Section 112(r)(7) of the Clean Air Act as Amended

Correction

FR document 94–1557 was published in the issue of Monday, January 31, 1994, beginning on page 4500. This document was a request for information on proposed exemptions from the list of regulated substances and on the impact of proposed accident prevention requirements. It was published in the Notices section of the **Federal Register**. It should have appeared in the Proposed Rules section.

In addition, the CFR citation should be added to the heading of the document as set forth above.

BILLING CODE 1505–01–D

Federal Register

Wednesday
March 9, 1994

Part II

Environmental Protection Agency

40 CFR Part 745

Lead; Requirements for Hazard Education Before Renovation of Target Housing; Proposed Rule

Lead Hazard Information Pamphlet; Notice of Availability; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62131; FRL–4637–5]

RIN 2070–AC65

Lead; Requirements for Hazard Education Before Renovation of Target Housing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: As mandated by Title IV of the Toxic Substances Control Act, EPA proposes requirements to ensure that owners and occupants of target housing fully understand the potential hazards of lead-based paint exposure before certain renovations are begun on that housing. Specifically, before renovating target housing for compensation, renovators would be required to provide an EPA lead hazard information pamphlet to the owners and occupants of the housing. In addition to providing general information on the health hazards associated with lead, this information pamphlet would advise owners and occupants to take appropriate precautions to avoid exposures to lead-contaminated dust and lead-based paint debris that is sometimes generated during renovations.

DATES: Written comments in response to this proposed rule must be received on or before May 9, 1994. If persons request an opportunity for oral comment, EPA will consider holding an informal hearing in Washington, DC. The exact date, time, and location of such a hearing, if held, will be announced in the **Federal Register**. Requests for oral comment must be received by April 8, 1994. EPA will decide whether to hold such a hearing by April 28, 1994.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE–G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments on this proposed rule should be identified by the docket number OPPTS–62131. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551. For technical information contact: Charles Franklin, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1781, Fax number: 202–260–0770.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed rule is issued under the authority of section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2686(b). TSCA was amended in 1992 to add Title IV, entitled Lead Exposure Reduction, by section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550.

II. Background

A. Legal Background

In 1992, Congress, recognizing the need to control the hazards of exposure to lead-based paint, passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102–550 ("the Act"). Congress recognized that lead-poisoning is a particular threat to children under age 6, and emphasized the needs of this vulnerable population within the Act. The stated purposes of the Act are: (1) To develop a strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible; (2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; (3) to encourage effective action to prevent childhood lead-poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care; (4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; (5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards; (6) to reduce the threat of childhood lead-poisoning in housing owned, assisted, or transferred by the Federal Government; and (7) to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards (section 1003 of the Act).

Actions under some sections of the Act are to be developed and administered by the Department of Housing and Urban Development (HUD), some by EPA, and some jointly accomplished by both agencies. Several of the sections call for EPA consultation with other Federal agencies. Section 1021 of the Act amends TSCA (15 U.S.C. 2601, *et seq.*) by adding Title IV, entitled "Lead Exposure Reduction."

Today's proposed rule is issued under the authority of section 406(b) of TSCA's Title IV. Section 406(b) directs EPA to issue requirements for the provision of a lead hazard pamphlet (developed under section 406(a)) to owners and occupants of target housing before persons performing renovation work for compensation begin such activities.

Below is a more detailed discussion of several related provisions of the Act which provides context for many of the decisions made during the development of this proposed rule.

Section 406(a) of TSCA requires EPA to publish, after consultation with HUD and the Department of Health and Human Services (HHS), and after notice and an opportunity for public comment, a pamphlet on lead and the hazards of exposure to lead-based paint in the home. The availability of this pamphlet for public comment is published elsewhere in this issue of the **Federal Register**. Following the 60–day comment period, EPA will incorporate comments as appropriate and announce the availability of the revised final version of the pamphlet in the **Federal Register**. In addition to outlining health effects and symptoms of lead exposure, section 406(a) requires that this pamphlet contain information on the potential hazards of renovating dwellings containing lead-based paint; recommend the performance of an inspection or risk assessment for lead-based paint before beginning renovations in target housing; suggest precautionary measures for protecting occupants during renovations in homes containing lead-based paint; and identify Federal, State, and local sources of information on lead and lead-based paint.

Section 402(c)(1) of TSCA directs EPA to issue guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead when performed in target housing, public buildings constructed before 1978, and commercial buildings.

Section 401 of TSCA provides a general definition of a lead-based paint

hazard. Congress directed EPA under section 403 to issue regulations defining this term more specifically.

Section 404 of TSCA directs EPA to develop an application process for those States or Tribes which seek to administer and enforce the standards, regulations, and requirements established under sections 402 and/or 406. Section 404 also directs EPA to develop and issue a Model State Program for use by States/Tribes pursuing authorization under these provisions. The authorization process for States and Tribes will be proposed by EPA in a separate rulemaking in the **Federal Register**, including specific definitions for the terms "State" and "Tribe." This proposed rule does, however, include information on the model State/Tribal program for the provisions required under section 406.

Two sections of the *Residential Lead-Based Paint Hazard Reduction Act of 1992* also require the dissemination of EPA's lead hazard pamphlet that is being developed pursuant to section 406(a) of TSCA. First, section 1018 requires EPA and HUD to promulgate joint regulations for disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The section 1018 regulations include the requirement that the lead hazard pamphlet be given to prospective purchasers or lessees. Section 1018 requirements will be proposed by EPA and HUD in a joint rulemaking in a future issue of the **Federal Register**. Second, section 1012 amends section 302 of the *Lead-Based Paint Poisoning Prevention Act* (42 U.S.C 4822) to require the provision of EPA's lead hazard information pamphlet to purchasers and tenants of Federally-assisted housing by the Secretary of HUD. The section 1021 requirements are being developed by HUD as a separate initiative.

B. Lead Background

1. *Lead and lead-based paint.* Lead is a soft, bluish metallic element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is nonbiodegradable, and has been known since antiquity for its adaptability in making various useful items. In modern times it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. From the turn of the century through the 1940's, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 60's as latex paints (which are generally lead-free) became more widespread. Although the Consumer Product Safety Commission (CPSC) banned lead-based paints from residential use in 1978 (paint currently may not have greater than .06 percent lead by weight), HUD estimates that 75 percent of the houses built in the United States before 1978 contain some lead-based paint (Ref. 3). By current estimations, approximately 57 million homes may contain lead-based paint (Ref. 3). This lead-based paint may pose a potential hazard to the occupants under some conditions.

2. *Lead hazards.* Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure is especially harmful to children, fetuses, and women of childbearing age. Results of recent studies suggest that lead's adverse effects occur at blood-lead levels previously thought to be safe; in fact, there does not yet appear to be a discernable threshold for the adverse effects of lead on the young.

Lead poisoning has been called "the silent disease" because its effects often occur gradually and imperceptibly, showing no obvious symptoms. Over time, low levels of lead in the bloodstream can cause learning disabilities, interfere with growth, cause permanent hearing and visual impairment, and cause other damage to the brain and nervous system. In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also affect fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States"(Ref. 1).

Although the percentage of children with elevated blood-lead levels has declined over the last 20 years with the reduction of lead in gasoline, millions of U.S. children still have levels of lead in their blood high enough to seriously threaten their health (Ref. 1).

Lead-based paint poses a health threat through various routes of exposure. Children under age 6 may ingest lead-based paint chips from flaking walls, window wells, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. In some cases, cleaning and renovation activities can actually increase the threat of lead-based paint exposure by dispersing fine lead dust particles in the air and over accessible household surfaces. Both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities.

III. Definitions

To implement the section 406 requirements, a number of terms need to be defined. This section will provide the proposed regulatory definition first in quoted text followed by an explanation of the definition's source. Where possible, EPA has drawn definitions directly from Title IV of TSCA. In cases where the statute either failed to define terms necessary for the rule or did not provide a complete enough definition, EPA is proposing appropriate definitions, along with an explanation of their sources and discussion of relevant issues. EPA is accepting comment on all definitions not taken directly from the statute.

Unless otherwise indicated, all definitions will be located in Subpart A at 40 CFR 745.3 (Definitions). Definitions not included in Subpart A would be applicable only to the specific subpart in which they appear, in this case, Subpart F.

a. *Act* means the Toxic Substances Control Act (TSCA), 15 U.S.C. 260 *et seq.*

b. *Administrator* means the Administrator of the Environmental Protection Agency.

c. *Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

EPA developed this definition by modifying a definition provided in HUD's September 1990, version of *Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.* While EPA is proposing this definition for use under the section 406 regulatory requirements, which only addresses target housing, this definition would potentially be applicable to other rulemakings required pursuant to TSCA Title IV and the Residential Lead Based Paint Hazard Reduction Act (Pub. L. 102–550). The modifications to HUD's definition were necessary to broaden the scope of "common area" to meet the requirements of other rulemakings which may refer to many types of buildings.

d. *Dwelling unit* means a single, unified combination of rooms designed for use as a dwelling by one family.

EPA is proposing to use the same definition promulgated by HUD in a final rule published in the **Federal**

Register of August 17, 1993 (58 FR 43522).

e. *EPA* means the Environmental Protection Agency.

f. *Lead-based paint* means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

This definition appears in section 401(9) of TSCA.

g. *Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects in pregnant women or young children.

This definition appears in section 401(10) of TSCA.

h. *Multi-family housing* means a housing property consisting of more than four dwelling units.

EPA has drawn this definition from section 544 of Title V of the Community Housing and Development Act of 1992 (Pub. L. 102–550). The provisions of Title V are directed at HUD and do not specifically address EPA mandates. However, as EPA and HUD will both be involved in developing regulations involving lead-based paint in housing (including multi-family housing), EPA believes that its definition should be consistent with both current and future Federal lead-based paint regulations.

i. *Owner* means any individual, partnership, corporation, or trusteeship that has legal right of possession of residential property, or any person legally authorized to represent that individual, partnership, corporation, or trusteeship.

EPA intends to use this definition to clarify that the owner of the housing should be considered the individual possessing and managing a property, rather than a bank or other loan-related organization. EPA invites comment on this definition.

j. *Person* means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, any Indian tribe, and any department, agency, or instrumentality of the Federal government.

EPA is proposing to use the same definition of person as used by EPA's Asbestos program in 40 CFR 763.63(1), (with the additional reference to Indian tribe) to clarify that these many types of entities are also regulated parties.

k. *Residential dwelling* means (a) a single-family dwelling, including attached structures such as porches and stoops, or (b) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

This definition appears in section 401(14) of TSCA.

l. *State* has the same meaning as in section 3 of the Toxic Substances Control Act.

m. *Target housing* means any housing constructed prior to 1978, except 0-bedroom dwellings, or housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the dwelling). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

This definition is provided in section 401(17) of TSCA. The Act excludes housing constructed after 1978 since lead-based paint was banned by CPSC from all residential use after that date.

EPA interprets the term "0-bedroom dwelling" to mean any dwelling in which the living area is unseparated from the sleeping area. Under this definition, efficiencies and studio apartments, loft space, and single-room dormitory units would be exempt from the requirements of this proposed rule unless children under 6 years of age reside or may reside in the unit.

As directed in the statute, the exclusions for 0-bedroom dwelling, elderly housing, and handicapped housing do not apply to any housing in which children under 6 years old reside or are expected to reside.

EPA also considered whether Congress intended to include hotels, motels, inns, and other commercial lodging facilities in the term "housing." Although not specifically stated, EPA believes it is reasonable to interpret that Congress' intent was to distinguish residential housing from commercial lodging facilities. Specifically, the definition of target housing intends to capture housing designed for long-term or continuous residence (e.g., apartments, condominiums, and houses), as opposed to lodging facilities offering temporary accommodations (e.g., hotels and motels). Given the high frequency and short duration of transactions, EPA believes it is impractical to apply the requirements of this subpart to rental transactions in motels, hotels, and other commercial lodging facilities. In cases where families with children under 6 years of age might rent or purchase such units as long-term residences, however, EPA believes it is consistent with the statute for those establishments to be considered target housing under this subpart's requirements.

EPA requests comment on this definition as it relates to the requirements under section 406 of TSCA.

n. *TSCA* means the Toxic Substances Control Act (15 U.S.C. *et seq.*)

This definition appears in section 401(9) of TSCA.

o. *Renovation* means the modifying of any existing structure, or portion thereof, where exposure to the hazards of lead-based paint may result, unless the activity is performed as part of a lead abatement program by a certified contractor, or unless otherwise regulated by EPA in Subpart G.

Section 406(b) of TSCA directs EPA to issue regulations governing any person who performs for compensation, a renovation of target housing. Because the statute fails to define "renovation," EPA has sought to develop a definition that is both consistent with existing regulations and effective in addressing the exposure prevention goals of the statute. EPA is primarily concerned with activities that may disturb existing lead-based paint, and which may pose a potential hazard to owners and occupants of the housing. Although such a distinction is not explicitly stated in the language of section 406(b), EPA believes that such a distinction is consistent with the hazard reduction goal of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title IV of TSCA.

EPA is considering a number of approaches to defining the term, and requests comment on each approach in terms of which could be most effectively used (individually or in combination) to define "renovation" for this rulemaking. The approaches being considered include:

1. *Definition modeled after EPA's Asbestos Program.* EPA's preferred option, as proposed in the regulatory text, is to use a general definition drawn from language used by EPA's Asbestos program. In 40 CFR 763.121(b), EPA regulations define renovation as "Modifying of any existing structure, or portion thereof, where exposure to airborne asbestos may result." By replacing references to asbestos with lead-based paint, EPA's proposed definition provides a flexible framework for identifying which activities would be regulated pursuant to the section 406(b) requirements.

Despite the clear statutory distinction between "renovation activities" and "lead-based paint activities", EPA recognizes that many of the activities identified in the renovation definition may also be performed as part of lead-based paint abatement programs. In cases where the activities being performed meet the definition of a lead-based paint abatement or lead-based paint activity, EPA intends for the activities to be regulated under the more comprehensive section 402(a) standards and requirements, and has therefore included an exemption for any activity separately regulated under the more stringent regulations to be issued in Subpart G. The regulations governing performance of lead-based paint activities will be proposed in a separate notice in the **Federal Register** in the future. At that time, EPA will propose specific definitions for lead-based paint activities and abatements, and will request further comment.

One drawback of such a general definition is that it does not provide an objective way of identifying which activities are of concern. This lack of specificity may pose a problem for the regulated community in complying with the rule and for the government in effectively enforcing it. For that reason, EPA believes that this general definition may need to be strengthened by the incorporation of additional criteria, as offered below.

2. *Develop list of specific activities of concern.* Recognizing the need for specific information on what activities are defined as renovations, EPA is considering incorporating a list of regulated activities into the definition. Section 402(c) of TSCA directed EPA to conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities. In mandating this study, Congress clearly did not intend for the results to be used as the basis for developing the TSCA section 406 renovation regulations- -the deadline for completion of the study is a full 12 months after the deadline for promulgation of the final section 406 regulations. Nevertheless, as the activities under study represent EPA's preliminary determination regarding the universe of activities that may be of concern, EPA believes that they comprise a logical set of activities for consideration as renovation activities. The activities being studied were chosen based on discussions with experts familiar with the renovation and remodeling industry, and include the following:

(1) Paint removal (e.g., floor refinishing and stairs refinishing).

(2) Surface preparation for painting (both interior and exterior).

(3) Removal of large structures other than roof (e.g., walls, ceiling, large surface replastering, major replumbing, room additions).

(4) Window replacement.

(5) Enclosure of interior painted surfaces (e.g., wallpapering).

(6) Enclosure of exterior painted surfaces (e.g., siding).

(7) Removal of carpet or other floor coverings (e.g., linoleum).

(8) Repairs or additions with isolated small surface disruption (e.g., carpentry, replacement of lead painted fixtures, installation of light fixtures, electrical repair and rewiring, plumbing repair, insulation addition, furnace cleaning, ceramic tile installation, counter top replacement, door replacement, storm window installation, and window repair).

(9) Roofing replacement and repair.

(10) Exterior soil disruption (e.g., landscaping, deck additions, sewer/water line replacement or repair, basement waterproofing, garage repair, concrete/brick/masonry work, driveway/walk installation, and septic tank/cesspool replacement).

These activities represent a range of activities that may be performed during "renovation and remodeling." Although section 406(b) refers specifically to "renovations" only, EPA believes that the commonly used meanings of the two terms do not significantly differ and that any of the listed activities could be conducted as part of a renovation program. Therefore, pending evidence to the contrary, all of the activities noted above could potentially merit inclusion under EPA's definition of renovation.

EPA is requesting comment (and data, if available) regarding which activities should (or should not) be included in any definition of renovation. Based on the comments EPA receives, as well as any new or additional relevant information EPA collects, EPA may define some or all of the activities listed above as renovation activities specifically regulated by the final rule. EPA also may include additional activities, if appropriate, in the final rule's definition of renovation, and requests comments on whether some activities of concern may be absent from the current list.

3. *Use the Occupational Safety and Health Administration's (OSHA) list of construction tasks.* EPA is considering using the construction tasks identified by OSHA as offering some risk of lead-exposure to workers to identify renovation activities that could result in lead exposure to housing occupants. These tasks were identified in the interim final rule entitled "Lead Exposure in Construction" (58 FR 26590, May 4, 1993). EPA requests comment on whether such tasks adequately reflect the activities conducted during housing renovations.

4. *Identify specific job classifications.* EPA is considering using specific job classifications that involve performing remodeling or renovation activities that may exacerbate the risk of lead-based paint exposure in target housing as a basis for identifying regulated activities. EPA has considered several ways that specific worker classifications could be identified.

One approach would be to base the listing on the worker classifications included in EPA's study under TSCA section 402(c). These classifications are being studied to measure the levels of exposure to lead-based paint stemming from the renovation activities. The current classifications being studied include: Painters; floor refinishing contractors; plaster/drywall contractors; exterior siding contractors; window replacement contractors; electricians; plumbers; roofers; linoleum/tile contractors; carpet installers; cabinet installers; heating/AC contractors; carpenters; insulation contractors; basement waterproofing contractors; bathroom remodelers; kitchen remodelers; landscaping/excavation contractors; and historic renovation contractors. These classifications were developed through discussions with experts and professionals familiar with the renovation and remodeling industry.

In identifying specific job classifications, EPA is also considering linking the above classifications to Standard Industrial Classification (SIC) Codes for the business, to ensure a common standard of identification. If EPA could identify specific SIC codes that performed renovations involving target housing and potential lead-based paint exposure, then such a classification would provide a clear method for identifying regulated parties. Currently, the Agency does not prefer this option because of concerns that many workers and firms may conduct activities that spill over into activities that don't affect lead-based paint, raising questions of how closely SIC codes would track the performance of renovations in housing involving lead-based paint. In addition, many individuals engaged in renovation activities may perform many different tasks covering several job

classifications, further clouding issues of enforcement and compliance.

Regarding the whole question of identifying job classifications, EPA requests comment on what trades are missing from, or inappropriate for, the list above and whether any such list could be practically applied.

5. *Identify all home improvement activities within a specified cost range.* Another option being considered is to target all renovation, remodeling, and home improvement activities within a specific cost range (for example, any home improvement costing over $250 would be considered a renovation). While this option provides a simple scheme for identifying regulated activities, it does not necessarily focus on relevant activities. Because some inexpensive renovation activities may pose a significant exposure hazard, EPA is concerned that such a definition could result in the omission of activities that are thought to be high risk but low in cost.

6. *Identify all home improvement activities within a specified size.* EPA is also considering basing the definition of renovation on the size of a job. For example, size could be measured by the number of square feet of painted surface disturbed, the number of different painted surfaces disturbed, or simply the total area of the dwelling undergoing modification. EPA's main concern with this option is that some activities while localized to a very small area, might release significant amounts of lead-based paint or lead-based paint, and that such a criterion might fail to capture the activities of concern. However, as it could potentially provide a simple method for identifying regulated transactions, EPA requests comments on the feasibility of such an approach.

p. *Renovator* means any person who performs for compensation a renovation of target housing or public buildings.

Although Title IV of TSCA does not provide a definition of renovator, section 406(b) specifically identifies the regulated community as "each person who performs for compensation a renovation of target housing."

EPA recognizes that in many large multi-family dwellings or public buildings, renovation activities may be performed by maintenance staff retained by the owner of the building. Because these individuals would still be performing such activities for compensation (through salary or retainer), EPA would consider such individuals as renovators for the purpose of this proposed rule.

IV. Regulatory Requirements

A. Lead Hazard Information Pamphlet

Section 406(b) directs the Administrator to promulgate regulations "to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation." Section 745.87 of the regulatory text would require renovators to provide owners and heads-of-households occupying target housing with copies of the pamphlet: *Lead-Based Paint: Protect Your Family* before beginning renovations.

Recognizing that many target housing units may be occupied by families other than the dwelling owner, as in the case of rental housing, EPA proposes to require the renovator to provide the pamphlet to the head of each household occupying the unit(s) being renovated, as well as to the person requesting and paying for the renovation work. This interpretation is supported by the language in section 406(b), which explicitly states that the pamphlet must be provided to the owner and occupant of such housing.

In addition, because some housing may be managed by an individual or firm on behalf of the owner, the regulations would allow such an agent to represent the owner for the purposes of the provisions of this proposed rule.

Finally, EPA recognizes that there may be some types of renovations that will occur in "emergency situations" requiring action before all occupants can be notified and before they can fully comply with these notification requirements. EPA requests comment on identifying these situations and on what may be an appropriate way to address them under these regulations.

The final pamphlet will be available to the public and the regulated community through the Government Printing Office (GPO) for a nominal fee for both individual and bulk purchases. EPA is also encouraging person's to make their own reproductions of the pamphlet, and will make a limited number of camera-ready copies of the final pamphlet available to organizations that wish to print copies for private distribution. Any copies reproduced for use in complying with this rulemaking, however, must be copied in full, and may not revise or delete material from the pamphlet except to add or revise State or local sources of information. EPA requests comment on other mechanisms for distributing the pamphlet to the general public and the regulated community.

As required by section 406(a) of TSCA, EPA will, in consultation with HHS and HUD, revise the pamphlet as necessary to maintain its technical accuracy. Following each change, EPA will issue notice of the revised version's availability in the **Federal Register**.

B. Acknowledgement

To help ensure the timely notification of owners and occupants regarding the potential hazards of renovation activities in target housing, § 745.87 would require that renovators obtain a signed, dated acknowledgement from each owner and head of household occupying the renovated housing, indicating that the person had received the pamphlet on the given date. The proposed acknowledgement text would state:

I have received the pamphlet, *Lead-Based Paint: Protect Your Family*, and am aware of the potential health risks associated with renovating housing containing lead-based paint.

The statement would be signed and dated by the housing owner and heads of households occupying the housing and would be retained by the renovator. This acknowledgement could exist as a separate sheet or as a part of each sales/service contract or agreement. EPA proposes to require that the acknowledgement text be printed in at least 12-point type to ensure that the text is readable and noticeable.

Recognizing the importance of reaching non-English speaking residents of target housing, EPA is proposing requirements to address renovations performed in predominantly non-English speaking areas. If the parties use a written service contract or agreement, and if the service contract or agreement is in a language other than English, then the acknowledgment would have to be in the same language as the contract or agreement. The Agency proposes this provision as a necessary measure in achieving a more equitable Federal lead-based paint program.

EPA is requesting comment on these provisions, including whether the alternative language provisions provide an appropriate level of protection to non-English speaking occupants of target housing.

C. Renovations in Multi-Family Dwellings

EPA has also considered the issue of regulating renovation activities that occur in buildings containing many separate housing units. Such dwellings pose additional challenges because, depending on the type of renovation being conducted, as the number of units in the dwelling increase, pamphlet

distribution may be increasingly difficult for renovators. At the same time, since many multi-family dwellings (defined for this proposed rulemaking as housing properties consisting of more than four dwelling units) may have been built before lead-based paint use was restricted, these dwellings may pose lead-based paint hazards to occupants if renovations are conducted without care.

EPA has considered two issues regarding renovations in multi-family dwellings: Renovations conducted within specific units of a multi-family dwelling, and renovations performed in common areas of the multi-family dwelling.

1. Renovations in individual units. EPA believes that renovations performed within specific units of multi-family dwellings should be treated in the same manner as single-family dwellings (housing properties containing less than five dwelling units): the owner and occupants should be notified and provided a pamphlet in advance of commencement of renovation activities. The Agency sees no rationale for distinguishing between the two regarding the risks of exposure.

During large-scale or long-term renovations to units in multi-family housing, EPA proposes the following clarification. In cases where an owner employs a renovator to conduct renovations in several different housing units within a multi-family dwelling, EPA would still require the renovator to (1) Provide the occupants of each unit undergoing renovation with a copy of the pamphlet and (2) maintain signed acknowledgements from each affected head-of-household. The renovator could fulfill his/her obligations regarding the owner, however, by providing one pamphlet and maintaining one signed acknowledgment covering all renovations performed throughout the dwelling, rather than by repeating the same owner-notification activities for each unit or area renovated.

2. Renovations in common areas. EPA also believes that for the purposes of the section 406(b) rule, a practical distinction should be made between renovation activities in common areas of multi-family dwellings and renovations within specific living areas of the dwellings. Since renovation activities may occur in various hallways or lobbies of a building on a frequent basis, it could be impractical to require a renovator to provide all occupants with a new pamphlet before the commencement of each renovation, especially in dwellings with larger numbers of residential units. Such a requirement would be difficult to implement and enforce, and would likely lead to non-compliance.

EPA still believes that it is important that occupants be informed of renovations in common areas as they occur to provide warning of potential lead-based paint hazards and to ensure their ability to take appropriate precautions. Therefore, under § 745.87, EPA proposes to require that before conducting target renovation activities in common areas of multi-family target housing, the renovator would be required to notify, in writing, all occupants of the dwelling of the intended renovation and to make the EPA pamphlet *Lead-Based Paint: Protect Your Family* available upon request. This notification would be required to include: The general nature and location(s) of the planned renovation activities; the expected starting and ending dates of the planned renovation activities; and a statement of how the occupant can obtain the lead hazard information pamphlet from the renovator.

EPA recognizes that in some cases, large renovations could take an extended period of time or cover several different common areas of a multi-family dwelling. In that case, if the initial notification provides accurate information on the scope of renovations planned in the various areas, with an accurate schedule of their performance, then that initial notification would be sufficient to meet the requirements of this proposed rulemaking. If the scope, location, or timeframe of the activities change in a way not reflected in the original notification, then the renovator would be obligated to provide updated information in an additional notification process. This updated information is necessary to ensure that owners and occupants can, if necessary, adequately protect themselves from exposure to the hazards of lead-based paint.

Notification activities could be performed by the renovator or by the owner of the dwelling on behalf of the renovator. The notification process could be accomplished by distributing a letter or flyer containing the required information to each head of household occupying the housing. Even if the owner agreed to perform the notification activities, however, the responsibility to assure compliance would still rest with the renovator, as required by section 406(b).

D. Recordkeeping Requirements

Section 407 of Title IV of TSCA gives EPA the authority to promulgate recordkeeping and reporting requirements that are necessary to implement Title IV effectively. EPA is using this authority to propose the following requirements to ensure compliance and to aid EPA in its enforcement of the provisions in this proposed rule.

Under EPA's proposed § 745.90, renovators would be required to keep, for 3 years after completion of the renovation, specific records documenting compliance with the rule.

If all renovation activities occur in private areas of target housing units, these records would include:

1. The address/location of the renovated target housing. This information is important for EPA compliance monitoring and enforcement actions.

2. A list of all heads of households occupying the renovated target housing unit(s) at the commencement of renovations. Because the rule would require that both the owners and occupants of target housing receive the pamphlet, EPA is proposing to require retention of this list as a record of the persons that should have received the pamphlet. EPA is focusing on occupants of the housing at the commencement of renovations recognizing that individuals who become occupants after renovations have begun would have already received the pamphlet under the requirements being developed pursuant to section 1018 of the Lead-Based Paint Hazard Reduction Act of 1992.

3. Copies of the signed and dated acknowledgements from each housing owner and each head of household occupying the renovated unit(s). EPA proposes to require this record as the primary proof of compliance with the regulation. In cases where EPA began an enforcement action based on a tip or complaint, the acknowledgement form would be a crucial record in establishing compliance with the rule.

In the case of renovation activities performed in common areas of multi-family target housing, the renovator would still be required to maintain the following records:

1. The address/location of the renovated target housing.

2. Signed and dated acknowledgements from the owner(s) of the target housing requesting the renovation.

3. A signed and dated statement describing the steps performed by the renovator or owner to notify all occupants of the intended renovation activities and to provide the lead hazard information pamphlet upon request. EPA is proposing not to require specific language for the statement, provided that it clearly indicates: The dates between which renovation activities took place; the general nature of the

renovation activities conducted; and the measures taken to notify all occupants of the planned renovation activities as outlined in the proposed § 745.87. This statement would be signed and dated by the owner as well as the renovator.

4. Copies of any letter or flyer sent to the occupants of the housing as part of the notification process.

These records would be retained by the renovator for 3 years after completion of the renovation as proof of compliance.

EPA requests comment on whether the proposed recordkeeping requirements are reasonable, too stringent, or not stringent enough, and whether there may be other more effective recordkeeping requirements or mechanisms to facilitate compliance monitoring.

V. Enforcement

Failure or refusal to comply with any provision of the final rule would be a violation of TSCA section 409, subjecting the violator to penalties under TSCA section 16 (15 U.S.C. 2615). These penalties include the following:

1. *Civil penalties.* Any person who violates a provision of the final rule would be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

2. *Criminal penalties.* Any person who knowingly or willfully violates any provision of the final rule would, in addition to any civil penalty, be subject upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than 1 year, or both.

VI. State/Tribal Administration and Enforcement of Section 406(b)

Section 404(a) of TSCA directs EPA to develop an application process for those States or Tribes which seek to administer and enforce the standards, regulations, and requirements established under sections 402 and/or 406. Section 404(b) states that the Administrator may approve such an application only after finding that the State/Tribal program is at least as protective of human health and the environment as the Federal program established according to the mandate of section 402 or 406 of TSCA, and that it provides adequate enforcement. The procedures for submitting a State/Tribal application will be proposed in a separate **Federal Register** notice in the future.

For State and Tribal implementation purposes, EPA recognizes a distinction between section 406(a), the development of a lead hazard information pamphlet, and regulatory requirement section 406(b), for distribution of the pamphlet. Since the pamphlet must be developed in consultation with HHS and HUD, for use in other rules in other sections of the Residential Lead-Based Paint Hazard Reduction Act of 1992, EPA will limit the authorization of State/Tribal programs to administration of section 406(b). EPA believes that the authority to develop a lead hazard information pamphlet cannot be delegated to States or Tribes, given the dependence of many agencies on the pamphlet, and the need for uniformity in several statutory sections of the Act.

VII. Model State Program

To support State and tribal efforts to develop an authorized program, section 404(d) of TSCA directs EPA to promulgate a model State program which may be adopted by any State which seeks to administer and enforce the provisions of sections 402 and 406 of TSCA. Given that section 404(b) requires authorized State programs to be at least as protective as the Federal program, the Agency expects that a State program seeking authorization, would resemble, in significant respects, the Federal program, and further, that the regulations proposed in §§ 745.80 through 745.99 would serve as an appropriate model for such a State program. Therefore, the Agency is at this time proposing these regulations as the model program.

Section 745.87 contains procedures and requirements for the provision of EPA's lead hazard information pamphlet to owners and occupants of target housing by renovators. The proposed § 745.90 contains recordkeeping requirements necessary to monitor and enforce compliance with the requirements.

This model will be especially useful to the many States that do not currently have notification requirements in residential housing. The Agency believes that adoption of this program would effectively increase the awareness of owners and occupants of target housing regarding the issues associated with renovating housing with lead-based paint. However, the State program need not duplicate the Federal program in order to receive authorization from EPA. A State may choose to develop its own program, and it would be evaluated to determine if it is as protective as the Federal program.

VIII. Procedures for Requesting a Public Hearing

If persons request time for oral comment, EPA will consider holding an informal hearing in Washington, DC. Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT and must be received by EPA by April 8, 1994. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each one of the areas to be addressed. Organizations which do not file written comments will not be allowed to participate at the hearing.

EPA will decide whether to hold a hearing by April 28, 1994.

IX. Rulemaking Record

A record for this proposed version of the rule has been established under docket number "OPPTS–62131." The public record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public version of the record (which does not contain confidential business information) is located in the TSCA NCIC, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

The draft of the proposed rule submitted by the Administrator to OMB review prior to proposal will also be contained in the docket, as will the drafts of the final rule submitted for review before promulgation.

The following list of documents were used by the Agency in developing this regulation and can be found in the docket. Other documents, including those submitted with written comments from interested parties, will be included in the docket following the publication of this proposal in the **Federal Register**.

1. Alliance to End Childhood Lead Poisoning, *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report.* October 6, 7, 8, 1991. (pp. A1-A10)

2. DOL, OSHA, *Lead Exposure in Construction; Interim Final Rule.* May 4, 1993.

3. EPA, *Lead Poisoning and Your Children.* EPA/800-B-92-0002, September 1992

4. EPA, DRAFT: *Reducing Exposure to Lead in the Home; An Action Guide for Families.* (January 1992).

5. U.S. Government Printing Office. *Code of Federal Regulations* July 1, 1992. (40 CFR 763.121)

6. U.S. Government Printing Office. *Code of Federal Regulations* July 1, 1992. (40 CFR 763.63(1))

7. U.S. Congress. *The Residential Lead-Based Paint Hazard Reduction Act of 1992* (Pub. L. 105-550).

8. HHS, PHS, CDC, *Preventing Lead Poisoning in Young Children; A Statement by The Centers For Disease Control.* October 1991.

9. HHS, PHS, ATSDR, *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress.* July 1988. (pp. 1-16)

10. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice.* April 18, 1990.

11. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint: A Threat to Your Children.* U.S. GPO: 1993-351-568. January 1993.

X. Confidential Business Information

While EPA does not anticipate the receipt of much (if any) confidential business information in connection with this proposed rule, a person may assert a claim of confidentiality for any business information, including all or portions of written comments, submitted to EPA in connection with this proposed rule. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, EPA will place the information in the public record for this rulemaking without further notice to that person.

XI. References

1. Alliance to End Childhood Lead Poisoning, *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report.* October 6, 7, 8, 1991.

2. DOL, OSHA, *Lead Exposure in Construction; Interim Final Rule.* (May 4, 1993).

3. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice.* April 18, 1990.

XII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is "significant" because it raises novel policy issues arising out of its legal mandate in the Residential Lead-Based Paint Hazard Reduction Act.

EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with its proposed lead information disclosure rule for renovation activities. EPA finds that the proposed rule will not have an effect on the economy of $100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA estimates the overall costs to affected entities to be $59,700,000. This estimate includes costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, and materials costs. EPA estimates that the provisions of the rule as proposed would add about $5.00 to the cost of each transaction.

A copy of the RIA is available in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), for review and copying (see Unit IX of this preamble).

This action was submitted to OMB for review, as required by Executive Order 12866, and any comments or changes made in response to OMB suggestions or recomendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In an effort to identify and characterize the proposed rule's effects on small business, EPA has prepared an Initial Regulatory Flexibility Analysis (IRFA). This assessment has been included as part of the Regulatory Impact Analysis (RIA), and is summarized below.

In assessing small business impacts, EPA first developed an establishment profile for each major sector. This profile indicated that approximately 80 to 90 percent of all establishments in SICs 15, 17, 651, and 653 fell within the 1 to 9 employee size class. Thus, a substantial number of small firms are estimated to be potentially affected by the proposed rule.

To measure the cost impacts of the proposed rule on these small establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a multi-trade renovation contractor, regulatory costs were found to represent from 0.05 to 0.14 percent of labor and overhead costs. In the case of a specialty trade contractor, impacts were somewhat higher, ranging from 0.35 to 0.84 percent. An establishment engaged in rental property management was projected to sustain impacts of 0.99 to 1.95 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such

establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1669.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by telephoning (202) 260–2740.

This collection of information has an estimated recordkeeping burden averaging 11.5 minutes per response (at 5.8 minutes/respondent), and to require 7.7 minutes per recordkeeper, annually. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

Therefore, it is proposed that Chapter I of 40 CFR be amended by adding a new part 745 to read as follows:

PART 745—LEAD EXPOSURE REDUCTION

Subpart A—General Provisions

Sec.

745.1 Scope, purpose, and authority.
745.3 Definitions.
745.7 Confidential business information.

Subparts B–D [Reserved]

Subpart E—Residential Property Renovation

745.80 Purpose, scope, and applicability.
745.85 Lead pamphlet.
745.87 Notification.
745.90 Recordkeeping requirements.
745.97 Penalties for noncompliance.
745.99 Effective date.

Authority: 15 U.S.C. 2686.

Subpart A—General Provisions

§ 745.1 Scope, purpose, and authority.

(a) This part contains regulations developed under Title IV (15 U.S.C. 2681–2692) and section 6 (15 U.S.C. 2605) of the Toxic Substances Control Act.

§ 745.3 Definitions.

For purposes of this part, the following definitions apply:

Act means the Toxic Substances Control Act (TSCA), 15 U.S.C. *et seq.*

Administrator means the Administrator of the Environmental Protection Agency.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family.

EPA means the Environmental Protection Agency.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects in pregnant women or young children.

Multi-family housing means a housing property consisting of more than four dwelling units.

Owner means any individual, partnership, corporation, or trusteeship that has legal right of possession of residential property, or any person legally authorized to represent that individual, partnership, corporation, or trusteeship.

Person means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any state or political subdivision thereof, any municipality, any interstate body, any Indian tribe, and any department, agency, or instrumentality of the Federal government

Renovation means the modifying of any existing structure, or portion thereof, where exposure to the hazards of lead-based paint may result, unless the activity is performed as part of a lead abatement program by a certified contractor, or unless otherwise regulated by EPA in Subpart G of this part.

Renovator means any person who performs for compensation a renovation of target housing or public buildings.

Residential dwelling means (1) a single-family dwelling, including attached structures such as porches and stoops, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

TSCA means the Toxic Substances Control Act (15 U.S.C. *et seq.*).

§ 745.7 Confidential business information.

Any person required to submit a document or report to the EPA under this part may assert a claim of confidentiality for the information submitted. Any claim of confidentiality must accompany the information when it is submitted to EPA. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

Subpart B—D [Reserved]

Subpart E—Residential Property Renovation

§ 745.80 Scope, purpose, and applicability.

This subpart applies to renovation activities on target housing. Such housing may contain lead-based paint and lead-based paint dust that can pose a health hazard to occupants, especially young children and pregnant women. Persons or firms that perform renovation services for compensation on target housing must provide information on hazards of exposure to lead-based paint associated with renovation activities.

§ 745.85 Lead pamphlet.

(a) *Availability of pamphlet to the general public and regulated community.* The most current version of EPA pamphlet No. XXX, entitled *Lead-*

Based Paint: Protect Your Family, is available to the public and the regulated community for a fee from the Government Printing Office (GPO). Interested parties should write to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402–9328. In addition, persons may reproduce this pamphlet, for use or distribution, providing that the text and graphics are reproduced in full.

(b) *Pamphlet elements.* The information contained and presented in this pamphlet is mandated in section 406(a) of TSCA (15 U.S.C. 2686), and may not be changed or omitted during any reproduction of the information for the purpose of compliance with this subpart.

§ 745.87 Notification.

(a) Before beginning renovation activities on specific target housing units, renovators shall:

(1) Provide each owner and each head of household occupying the units to be renovated with a copy of the EPA pamphlet, entitled *Lead-Based Paint: Protect Your Family.*

(2) Obtain a signed, dated acknowledgement from the owners and each head of household occupying the housing unit affirming that they have received the pamphlet and are aware of the potential health hazards from renovating housing containing lead-based paint.

(i) The acknowledgement shall include the following language:

I have received the pamphlet entitled *Lead-Based Paint: Protect Your Family* and am aware of the potential health risks associated with renovating housing containing lead-based paint hazards.

(ii) Below the statement, the acknowledgement shall require the signature of each owner and head of household occupying the unit, along with their dates of signature.

(iii) The type size shall be no smaller than 12–point type.

(iv) The acknowledgement may be included as a separate sheet or as a part of any written contract or service agreement. It must be completed before the commencement of the target renovations.

(v) If the parties use a written contract or agreement which is written in a language other than English, the acknowledgement text shall be written in the same language as the text of the contract or agreement.

(b) Before beginning renovation activities in common areas of multi-family target housing, the renovator shall:

(1) Provide the owner(s) of the target housing requesting the renovation with a copy of the EPA pamphlet, entitled *Lead-Based Paint: Protect Your Family.*

(2) Obtain a signed, dated acknowledgement from the owner(s) of the target housing requesting the renovation affirming that they have received the pamphlet and are aware of the potential health hazards from renovating housing containing lead-based paint.

(i) The acknowledgement shall include the following language:

I have received the pamphlet entitled *Lead-Based Paint: Protect Your Family* and am aware of the potential health risks associated with renovating housing containing lead-based paint hazards.

(ii) Below the statement, the acknowledgement shall require the signature of each owner requesting the renovation, along with their dates of signature.

(iii) The type size shall be no smaller than 12–point type.

(iv) The acknowledgement may be included as a separate sheet or as a part of any written contract or service agreement.

(v) If the parties use a written contract or agreement which is written in a language other than English, the acknowledgement text shall be written in the same language as the text of the contract or agreement.

(3) Notify each owner and each head of household occupying the target housing, in writing, of the intended renovation and make the EPA pamphlet *Lead-Based Paint: Protect Your Family* available upon request. At minimum, such notification shall be accomplished by distributing written notice to each owner and each head of household occupying the target housing. The notice shall describe: The general nature and location(s) of the planned renovation activities, the expected starting and ending dates of the planned renovation activities, and a statement of how the owners and occupants can obtain the lead hazard information pamphlet, at no charge, from the renovator. These activities shall be conducted by either:

(i) The renovator.

(ii) The owner on behalf of the renovator.

(iii) If the notification activities are performed by the owner of the building on behalf of the renovator, the renovator shall retain a signed and dated statement by the owner of the dwelling describing the steps performed to notify all occupants of the intended renovation activities and to provide the lead hazard information pamphlet, at no charge, upon request. Regardless of who performs the notification activities required under this subpart, the renovator shall be responsible for assuring compliance with this subpart and shall be liable for any failures to comply with the notification requirements in this section.

(4) If the general nature, location(s), or expected starting and ending dates of the planned renovation activities change after the initial notification has been conducted, the renovator shall provide further notification to the owners and heads of households providing revised information on the ongoing or planned activities.

§ 745.90 Recordkeeping requirements.

Renovators shall retain all records necessary to demonstrate compliance with this section for a minimum of 3 years following completion of the renovation services on target housing. These records shall include:

(a) The address/location of the renovated target housing.

(b) A list of all heads of households occupying the renovated unit(s) at the commencement of renovations.

(c) Copies of signed and dated acknowledgements, as required by § 745.87(a)(2), from each owner and each head of household occupying a renovated unit.

(d) Copies of signed and dated acknowledgements, as required by § 745.87(b)(2), from each owner requesting renovations to common areas in multi-family dwellings.

(e) Copies of all signed and dated statements of notification, as well as copies of all notification materials sent to all owners and heads of household, as required in § 745.87(b)(3) for renovations to common areas in multi-family dwellings.

§ 745.97 Penalties for noncompliance.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689), subjecting the violator to penalties under TSCA section 16 (15 U.S.C. 2615).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this subpart, is a violation of TSCA section 15 (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by TSCA section 11 (15 U.S.C. 2610) is a violation of TSCA section 15 (15 U.S.C 2614).

(d) Violators may be subject to the civil and criminal penalties in TSCA sections 16 and 409 for each violation.

§ 745.99 Effective date.

The Federal requirements in this subpart shall take effect on April 28, 1996. In those States or Tribal lands, which have not obtained authorization, under § 745.XXX, to administer and enforce this program, the requirements in this subpart shall apply to any renovation of target housing if the renovation was commenced on or after April 28, 1996. In States and Tribes that have obtained authorization to implement their State/Tribal program according to the requirements in subpart X, individual State/Tribal requirements may take effect before April 28, 1996.

[FR Doc. 94–5299 Filed 3–8–94; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62133; FRL–4642–7]

Lead Hazard Information Pamphlet; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: This notice announces the availability of EPA's draft Lead Hazard Information Pamphlet for review and comment. EPA developed this pamphlet in response to Congressional concerns about the public's knowledge of home lead-based paint hazards. The Pamphlet is being developed pursuant to section 406(a) of the Toxic Substances Control Act (TSCA), and will be distributed in conjunction with regulatory provisions under section 406(b) of TSCA, and sections 1012 and 1018 of the Residential Lead-Based Paint Hazard Reduction Act.

DATES: Written comments in response to this draft pamphlet must be received on or before May 9, 1994.

ADDRESSES: Please submit three copies of all written comments on this draft pamphlet to: TSCA Document Receipts (7407), Rm. NE–G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments on this draft pamphlet should be identified by the docket number OPPTS–62133.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft pamphlet, contact: TSCA Document Receipts (7407), Rm. NE–G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Visitors can pick up a copy in person by visiting the TSCA Nonconfidential Information Center (NCIC) in Rm. G99, or by calling (202) 260–7099, between the hours of 12 noon and 4 p.m. For technical information contact: Charles Franklin, Office of Pollution Prevention and Toxics, Chemical Management Division, Program Development Branch (7404), 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1781, Fax: 202–260–0770.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Congressional mandate in section 406(a) of TSCA, EPA has developed a lead hazard information pamphlet. Congress specifically required that the pamphlet: (1) Contain information regarding the health risks associated with exposure to lead; (2) provide information on the presence of lead-based paint hazards in Federally-assisted, Federally-owned, and target housing; (3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards; (4) describe the risks of renovation in a dwelling with lead-based paint hazards; (5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards; (6) advise persons how to obtain a list of contractors certified pursuant to TSCA section 402 in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used; (7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing; (8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and (9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

II. Role of Pamphlet

This pamphlet will be disseminated as a result of several Congressional directives that will be implemented in separate rulemaking initiatives. Section 1012 of the Residential Lead-Based Paint Hazard Reduction Act requires that the Department of Housing and Urban Development (HUD) provide the pamphlet to purchasers and tenants of housing receiving Federal assistance. Section 1018 of that Act requires that EPA and HUD promulgate regulations requiring sellers or lessors of target housing to provide purchasers and lessees with the lead hazard information pamphlet. Section 406(b) of TSCA requires that EPA promulgate regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner(s) and occupant(s) of such housing prior to commencing the renovation. In addition, this pamphlet may be used by other Federal programs to support their educational and outreach goals and obligations.

Because the pamphlet was developed to support new Federal regulations, the pamphlet occasionally makes references to Federal programs that are not yet fully in place (for example, Federal requirements for sellers and lessors of target housing). To avoid confusion, EPA recommends that reviewers consider the pamphlet within the context of the many other regulatory provisions and Federal and State infrastructures that will be in place by the time the final pamphlet is published in late 1994.

III. Request for Comments

The EPA Office of Pollution Prevention and Toxics is seeking public comment on all aspects of the pamphlet's design. In particular, EPA requests comment on the tone of the pamphlet, and the extent to which the current wording and design tend to support (or undermine) its effectiveness as an educational tool. One issue that EPA has considered is the need to balance technical accuracy with clarity and freedom from overly technical jargon. The extent to which the current draft is clear and understandable is of primary concern to the agency, given the broad distribution the pamphlet will have.

EPA requests comment on the extent to which the pamphlet addresses the statutory content requirements in section 406(a) of TSCA. For example, section 406(a) of TSCA requires, among other things, that the pamphlet contain a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing. The current draft pamphlet includes phone numbers for the National Lead Information Center, the National Lead Information Center Hotline, and a phone number for an agency in each State that has lead information. Because addresses and phone numbers frequently change, and to prevent the pamphlet from becoming too unwieldy (there are complete books on State and local sources of information on lead and lead-based paints), EPA has decided not to include addresses of State agencies in the pamphlet, nor to provide addresses and phone numbers of local agencies. The pamphlet does, however, state that an updated list of the addresses and phone numbers of State agencies can be obtained, free of charge, by calling the National Lead Information Center Hotline. EPA requests comment on this approach to the issue of balancing

thoroughness with succinctness, and whether there may be an alternative manageable method for providing information on State and local sources of information.

In designing the layout of the pamphlet, EPA has also been aware of the need to develop a dynamic and engaging document while ensuring that the pamphlet can be easily and inexpensively reprinted. This approach has lead the Agency to focus on less ornate illustrations that can be easily reprinted. As the illustrations will provide a necessary anchor for many of the pamphlet's key points, EPA requests comment on whether the draft illustrations may be altered in any way to increase their effectiveness.

In addition to soliciting public input through this notice, EPA will conduct a series of focus tests on the draft pamphlet to evaluate the effectiveness of the current reading level, content, and graphic presentation. EPA will include a summary of the focus groups results when it announces the availability of the final pamphlet in the **Federal Register**.

EPA also recognizes that this lead hazard information may be important in some communities that may have a limited ability to utilize information provided in English. For that reason, EPA is developing a Spanish language version of the pamphlet as well. The availability of the Spanish-language pamphlet will be announced in the **Federal Register** when available.

Dated: February 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–5300 Filed 3–8–94; 8:45 am]

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federal register

Wednesday
March 9, 1994

Part III

Environmental Protection Agency

40 CFR Part 745

Lead Fishing Sinkers; Response to Citizens' Petition and Proposed Ban; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62134; FRL–4643–3]

RIN 2070–AC21

Lead Fishing Sinkers; Response to Citizens' Petition and Proposed Ban

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: On October 20, 1992, the Environmental Defense Fund (EDF), Federation of Fly Fishers, Trumpeter Swan Society, and North American Loon Fund petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), and the Administrative Procedure Act (APA), to initiate rulemaking proceedings under section 6 of TSCA to require that the sale of lead fishing sinkers be accompanied by an appropriate label or notice warning that such products are toxic to wildlife. EPA granted the petition; however, the Agency believes that a labeling provision would not adequately address the risk of injury to waterfowl and other birds (waterbirds), from ingestion of lead fishing sinkers. In addition, EPA also believes that zinc fishing sinkers adversely affect waterbirds, and can cause mortality. Therefore, EPA is proposing this rule under section 6(a) of TSCA to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass. The Agency also requests that persons with information relevant to the issues outlined in this document submit that information to EPA.

DATES: Written comments in response to this proposed rule must be received by May 9, 1994. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC. The exact date, time, and location of the hearing, if held, will be announced in the **Federal Register**. For further information regarding the hearing, see Unit XV. of this preamble.

ADDRESSES: Comments should be submitted in triplicate to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket No. 62134. For information regarding the submission of comments containing information claimed as confidential business information (CBI), see Unit XIV. of this preamble.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

If EPA determines that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture of chemical substances, or that any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment, section 6(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(a), authorizes EPA to apply one or more of the following requirements to such substance or mixture to the extent necessary to protect against the risk: (1) Prohibit or limit the amount of a chemical substance or mixture manufactured, processed, or distributed in commerce; (2) prohibit or limit the amount of chemical substance or mixture manufactured, processed, or distributed in commerce for particular uses or at particular concentration levels; (3) require labeling or warning rules; (4) require manufacturers and processors to make and retain records of the process used to manufacture or process a chemical substance or mixture, and to conduct tests to monitor compliance with regulatory requirements; (5) prohibit or otherwise regulate any manner or method of commercial use; (6) prohibit or otherwise regulate any manner or method of disposal of such substance or mixture or articles containing such substance or mixture; (7) require that manufacturers notify the public of unreasonable risk associated with a chemical substance or mixture, and to replace or repurchase the product. Section 6 of TSCA requires EPA to apply the least burdensome requirements to protect adequately against the risk. Section 6(a)(2)(A) of TSCA, prohibiting the manufacturing, processing, or distribution in commerce of a chemical substance or mixture for a particular use or at a particular concentration level, provides EPA the authority to issue this proposed rule. Section 8(a)(1) of TSCA gives EPA authority to require persons who manufacture or process chemical substances and mixtures to maintain records for manufacturing purposes, including records necessary for effective enforcement of TSCA requirements.

Section 12(a) of TSCA exempts from regulation under the Act any chemical substance, mixture, or article containing a chemical substance or mixture that is manufactured, processed, or distributed in commerce solely for export and bears or is enclosed in a container bearing a stamp or label stating that is intended for export. However, this exemption does not apply to any of the situations enumerated in TSCA section 12(b), nor to any recordkeeping requirements promulgated pursuant to TSCA section 8.

Section 12(b) of TSCA requires that any person who exports or intends to export a chemical substance or mixture for which a rule has been proposed or promulgated under section 6 must notify EPA of such exportation or intent to export.

II. Background

A. TSCA Section 21

Any person may petition EPA under section 21(a) of TSCA to initiate proceedings for the issuance, amendment, or repeal of a rule or order under section 4, 5, 6, or 8 of TSCA. As required by section 21(b), the petition must set forth the facts which the petitioner claims establish that it is necessary for the Agency to issue, amend, or repeal a rule or order under those sections of TSCA. Section 21(b) also directs EPA to decide either to grant or deny the petition within 90 days after a petition is filed. If EPA denies a petition, the Agency must publish the reasons for the denial in the **Federal Register**. If the Agency grants the petition, EPA must promptly commence an appropriate proceeding in accordance with section 4, 5, 6, or 8 of TSCA.

B. Petition Claims and Request

EPA received a petition under TSCA section 21 and the APA on October 20, 1992, from the EDF, Federation of Fly Fishers, Trumpeter Swan Society, and North American Loon Fund requesting EPA to initiate rulemaking proceedings under section 6 of TSCA to require that the sale of lead fishing sinkers be accompanied by an appropriate label or notice warning that such products are toxic to wildlife (Ref. 5). The petition claims that trumpeter swans and common loons are dying from ingestion of lead fishing sinkers. The petition did not specify the particular type, shape, or size of lead fishing sinkers that are the source of the problem, therefore requiring a label or warning notice. The petitioners also submitted a letter to the Agency on December 10, 1992, which reported that a Mississippi Sandhill

Crane was discovered dead on the Mississippi Sandhill Crane National Wildlife Refuge in 1992, and a flat, well-worn object was recovered from its gizzard (Ref. 6). The letter also stated that a necropsy of the bird revealed a lead concentration of 69 parts per million (ppm) (wet weight) in the liver, and in response to an inquiry to the Fish and Wildlife Service (FWS) about the nature of that object, EDF was advised that it was a lead fishing sinker (Ref. 6).

C. Summary of Studies Cited in Petition

The petition cited a number of studies which reported mortality in trumpeter swans, mute swans, and common loons due to ingestion of lead fishing sinkers. The petitioners also cited a recent bulletin from the FWS reporting that an immature Mississippi sandhill crane died from lead poisoning (Ref. 19).

1. *Common loons (Gavia immer).* A 2.5 year study of mortalities of common loons in New England found that lead toxicity from ingested fishing sinkers was the most common cause of death in adult breeding birds (Ref. 13). The study reported that 64 percent of adult common loons (*Gavia immer*) received for analysis from New Hampshire, and 44 percent of adults received from Maine, had ingested fishing sinkers. Thirty-one adults were examined, and of these, 16 (52 percent) were shown to have died from lead poisoning. The authors of the study concluded that due to adverse effects on breeding adults, lead poisoning may be an important factor in limiting loon populations in some areas.

Levels of lead found in the blood of loons that had ingested sinkers averaged 1.4 ppm. The study indicated that scientists consider 0.35 to 0.60 ppm lead in the blood to be indicative of lead poisoning in many species. Levels of lead in the livers of 4 loons that had lead sinkers in their gizzards ranged from 5.03 to 18.0 ppm, while levels in 10 loons that did not have fishing sinkers in their gizzards ranged from <0.05 to 0.11 ppm. The study also states that 5 or 6 ppm in the liver is considered a toxic level in waterbirds. Toxic effects of lead to loons were found to be similar to those seen in other waterbirds.

Lead poisoning was diagnosed as the cause of death in 7.3 percent of common loons necropsied (total of 7 adult loons) in a Minnesota study (Ref. 4). Five of the seven lead poisoned birds contained lead sinkers. Lead concentrations in the liver of the loons ranged from 7.12 to 35 ppm, wet weight. Although the incidence of lead sinkers was low in all necropsied birds, it is relatively high in relation to those birds found to have died from lead poisoning. In addition, only those birds whose body condition during necropsy indicated potential lead poisoning were actually analyzed for lead. Therefore, the incidence of lead poisoning in the study could be an underestimate of the actual number of loons exposed to lead sinkers and suffering from lead poisoning in Minnesota.

The petitioners also cited a case report involving three common loons found dead in New Hampshire, Wisconsin, and Maine that were submitted to a wildlife health laboratory for necropsy (Ref. 12). Two adult loons died of lead poisoning (lead liver levels were 20.6 ppm and 46.1 ppm), and a lead fishing sinker was found in each bird. One of these loons had ingested an oval shaped lead fishing sinker which measured 5 mm by 4 mm (or roughly 1/5 inch) in size. The third loon had a lead liver level of 38.52 ppm and three fragments of a fishing line were found in the loon's stomach.

Results from necropsies conducted on 222 common loon carcasses from 18 States submitted to the National Wildlife Health Research Center from 1975 through 1991 were also cited in the petition received by EPA (Ref. 10). Lead poisoning was responsible for 14 (6 percent) common loon deaths. Eleven of these birds had fishing sinkers in their gizzards (Ref. 17). Post mortem examinations, or necropsies performed on the loons that died from lead poisoning indicated that although the lead sinkers differed in shape and length, the largest reported diameter was 7 mm, or approximately 1/4 inch (Ref. 17). These data also revealed that two common loons ingested what appeared to be lead jigs (weighted hooks used for fishing).

While not listed as a threatened or endangered species under the Federal Endangered Species Act (ESA), 16 U.S.C. 1531, common loons are listed as an endangered or threatened species in some New England States (Ref. 5).

2. *Trumpeter swans (Cygnus buccinator).* Mortality due to lead poisoning was investigated for 72 trumpeter swans found dead in 7 western States (Ref. 2). Ingestion of lead pellets or fishing sinkers accounted for approximately 20 percent of the known deaths in Idaho, Montana, and Wyoming, and nearly 50 percent in western Washington. The maximum lead concentration in livers of swans found dead was 37 ppm (wet weight). Concentrations of 3 to 4 ppm expressed as wet weight in livers was considered by various researchers to be toxic to birds. Four swans were diagnosed to have signs of lead poisoning due to ingestion of fishing weights. The four birds ingested a total of eight lead fishing sinkers. The study postulated that trumpeter swans are particularly susceptible to lead poisoning because they feed by digging up large amounts of bottom sediments of streams and lakes, and ingesting large amounts of plant material in this manner.

3. *Mute swans (Cygnus olor).* Two studies were cited that examine mortality in mute swans, a species introduced into the Unites States that is similar to trumpeter swans. In the first study, lead fishing weights were found (an average of 11 per bird, one bird contained 43) in the gizzards of 16 out of 18 (88 percent) mute swans found dead or dying along the Trent River in England (Ref. 16). The mean concentration of lead in the kidney of these swans was 1,734 ppm dry weight. The area along the river where they fed was heavily contaminated with lead fishing split shot.

Mute swans were also examined along the Thames River in another study (Ref. 1). Out of 94 dead swans examined, 57 percent, or 53 were shown to have died from ingesting fishing weights. The average number of lead sinkers found in the gizzards of these swans was seven. The median lead level in the liver of these swans was 105 ppm dry weight and 908 ppm dry weight in the kidney.

4. *Mississippi sandhill crane (Grus canadensis pulla).* The petitioners also submitted a FWS technical bulletin which reported that a Mississippi sandhill crane, a Federally endangered species, was found dead on the Mississippi Sandhill Crane National Wildlife Refuge in 1992 due to lead poisoning (Ref. 19). The lead concentration in the crane's liver was 69.41 ppm wet weight (Ref. 18). The object found in the gizzard resembled lead, was triangular in shape although flattened, and approximately 8 by 10 mm, or approximately 1/2 inch in size (Ref. 18). Although a definitive identification of the object was not made, based on the size and shape of the object, the bird may have ingested a lead fishing sinker.

D. Summary of EPA Response to Petition and EDF Lawsuit

EPA granted the petition on January 14, 1993 (Ref. 22). After reviewing the petition, the accompanying studies, and other information gathered by EPA, the Agency preliminarily determined that certain lead fishing sinkers present an unreasonable risk of injury to waterbirds, and that rulemaking under section 6(a) of TSCA to ban the manufacture, processing, and distribution in commerce of certain lead

sinkers would be necessary to protect against that risk. EPA informed EDF by letter on March 11, 1993, that it was planning to issue a proposed rule to address these concerns (Ref. 23).

Despite EPA's expressed intent to issue a proposed rule to address the risks posed by certain lead fishing sinkers, including regulatory options more stringent than the labeling requested in the petition, EDF sued EPA on March 15, 1993, in the U.S. District Court for the District of Columbia, alleging EPA's failure to promptly publish a notice of proposed rulemaking under section 6 of TSCA (Ref. 8).

EPA subsequently informed EDF that, as an outgrowth of developing the proposed rule, EPA's preliminary analysis indicated that not only were lead fishing sinkers toxic to waterbirds, but that sinkers made of some other materials likely to be used as substitutes for lead in sinkers might also present unreasonable risks to waterbirds (Ref. 24). EPA also indicated that to analyze these other risks adequately, the schedule for proposal would be delayed until January 1994.

Based on EPA's commitment to utilize its best efforts to issue a proposed rule by January 14, 1994, to ban lead in certain fishing sinkers, EPA and EDF filed a joint motion for continuance with the U.S. District Court, requesting suspension of all legal proceedings until late January 1994 (Ref. 9). The court granted this motion and ordered the parties to submit a joint status report to the court by January 21, 1994 (Ref. 20).

In accordance with EPA's regulations for issuing a regulation under section 6 of TSCA, 40 CFR part 750, EPA is now proposing this rule under section 6(a) of TSCA to address unreasonable risk of injury to waterbirds (such as the trumpeter swan, common loon, and sandhill crane). This rule as proposed would prohibit the manufacture (including import), processing, and distribution in commerce of certain size lead- and zinc-containing fishing sinkers for use in the United States. The manufacture, processing, and distribution in commerce of these lead- and zinc-containing fishing sinkers solely for export would not be prohibited.

In granting the petition, EPA agreed to examine the appropriateness and feasibility of a TSCA section 6(a)(3) labeling requirement requested by the petitioners. However, EPA believes that a labeling provision would not adequately reduce the unreasonable risk of injury from lead- and zinc-containing fishing sinkers to waterbirds. EPA believes that a label would not result in a sufficient decline in consumer purchases of lead- or zinc-containing fishing sinkers such that waterbirds would be adequately protected. EPA also believes that since fishing sinkers typically become deposited in the environment accidentally, (i.e., even when carefully handling or using fishing sinkers, they may be accidentally lost or discarded into the environment), labels would have little affect on how sinkers are used in practice and would not significantly affect the environmental risks of using sinkers.

EPA also considered a number of other regulatory options, however, the Agency does not believe those options would adequately reduce the unreasonable risk of injury to waterbirds. A further discussion of all options considered, including EPA's determination why labeling would be minimally effective in this case, can be found in Unit VI. of this preamble.

If EPA finds that a final TSCA section 6 rule is warranted after evaluation of the public comments received, the Agency will use its best effort to promulgate such a regulation within 3 years of this proposed rule.

E. Summary of EPA's Analysis and Proposed Rule

EPA based this proposed regulatory action on a number of factors such as the scientific evidence regarding the toxicity of lead and zinc, exposure to fishing sinkers, the economic consequences of the rule as proposed, and availability of substitutes. These factors are discussed further in Units III., IV., and V. of this preamble.

Extremely low amounts of lead and zinc adversely affect waterbirds. Lead causes damage to the liver, kidney and central nervous system, and adversely affects reproduction and growth in waterbirds. Zinc is also toxic to waterbirds and can damage the central nervous system.

Studies have shown that exposure to both lead and zinc can cause death in waterbirds. Ingestion of a small sinker can result in the death of a waterbird. Various species have died from ingestion of lead fishing sinkers such as sandhill cranes, trumpeter, mute, and tundra swans, and common loons found in different areas of the United States.

Waterbirds may ingest fishing sinkers for a number of reasons. Small sinkers (1 inch and under) may appear most like pieces of grit necessary to break down food, or as food items such as seeds which waterbirds ingest. Waterbirds such as swans may ingest sinkers as they sift through sediments, and loons may ingest sinkers when eating fish with attached fishing tackle, or pick up sinkers from the bottom of waterbodies. Lead fishing sinkers up to and including 1 inch have been found in the gizzards, or digestive tracts of waterbirds. Studies have reported cases of sinkers ingestion in birds found in different parts of the United States.

EPA does not believe that the use of lead- and zinc-containing sinkers is essential. Several available or commercially viable substitutes for lead and zinc sinkers exist which are less toxic to waterbirds (e.g., bismuth, tin, antimony, steel, and tungsten). The economic impact (purchase price of sinkers) of the proposed regulation on consumers is estimated to be less than $4.00 for the average angler per year. This is minimal in comparison to other fishing expenditures such as rods, reels, licenses, etc.

The benefit of the proposed rule is measured in terms of number of sinkers removed from the market or reduced for exposure to waterbirds. Each sinker which does not enter the environment reduces the number of sinkers available for ingestion and potential waterbird mortality or death. The rule as proposed would prevent an estimated 450 million lead- and zinc-containing fishing sinkers from being produced each year, and potentially from entering the environment.

Not only would the proposed rule serve to reduce risks posed to waterbirds, but it would also assist in reducing human health risk to home manufacturers of lead fishing sinkers. While EPA has not analyzed the risks to human health due to the manufacture of lead fishing sinkers at home, the health effects of lead are well documented. Lead can cause learning disabilities in children, miscarriages, and may contribute to hypertension or high blood pressure. Persons who make lead sinkers at home may receive harmful exposures during the melting and pouring of lead through the inhalation of dust or vapors.

III. Regulatory Assessment

A. Lead

Lead is a soft, bluish metallic element mined from rock and found naturally all over the world. Its malleability, low melting point, ease of processing, abundance, low cost, density, and durability give lead good functional value. Accordingly, it has been used to manufacture, or as an ingredient in many different products including paint, gasoline, batteries, solder, and radiation shielding.

Lead affects nearly every system of the human body. While it is harmful to individuals of all ages, lead exposure is

especially detrimental to children, fetuses, and women of childbearing age. Lead enters the bloodstream and may cause lead poisoning, a disease which can cause learning disabilities, interfere with growth, cause permanent hearing and visual impairment, and cause other damage to the brain and nervous system in children. In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can affect fetal development and can cause miscarriages. In adult males, lead exposure may contribute to hypertension and infertility. Both adults and children can receive harmful exposures to lead by inhaling the fine dust or vapors produced when sinkers are made at home.

As indicated in Unit II. of this preamble, lead exposure may produce harmful effects and even death in wildlife as well. Lead adversely affects the function and structure of the kidney, central nervous system, bones, and production and development of blood cells in waterbirds. Exposure to lead can cause lead poisoning in waterbirds, producing convulsions, coma, and death. Waterbirds may be directly exposed to lead through ingestion of lead fishing sinkers.

B. Use, Production, and Distribution of Lead Sinkers

Lead is also used to manufacture fishing sinkers. Sinkers are used to assist in casting, and to carry the fishing line with attached lures and hooks to a certain depth in the water. There are no universal sizes or shapes of lead fishing sinkers due to differences in the type of fish being sought, the equipment being used, and the environmental conditions. However, all sinkers are attached in some manner to the fishing line, and provide weight so that the hook, bait, or lure is below the surface of the water.

The sinkers which may be lost or discarded in aquatic (freshwater) or terrestrial habitats vary in shape and range in weight from 1/100 of an ounce, to 8 ounces, and in size from under 1/16 inch up to 3 inches. They may be round split shot, or triangular, egg, cone, tear-drop, or elongated oval shapes. The Agency's examination focused on the types of sinkers used for freshwater fishing, which include: (1) Split shot, (2) worm weights, (3) egg sinkers, (4) bass casting, (5) pyramid sinkers, (6) rubber core, (7) pinch grip, and (8) slip shot.

EPA's evaluation also focused on sinkers under 2 inches in length or width regardless of weight. This size was chosen because the Agency believes this size sinker would be the largest readily ingested by waterbirds, and commonly available in the environment. It is estimated that approximately 2,500 metric tons of lead, zinc, and brass sinkers (over 98 percent of the volume represented by lead), an estimated 480 million sinkers, are manufactured each year in the United States (Support Document 2).

Split shot sinkers, a round sinker with a slice through a small portion of it, are estimated to account for almost half of the total lead sinker market in terms of numbers of sinkers. Fishing line is placed into this sliced area and then the sinker is "pinched" onto the line. The majority of lead sinkers produced are equal to or less than 1 inch in any dimension.

Fewer than 10 major manufacturing companies account for most of the domestic production of lead fishing sinkers. Production by individuals at home (home manufacturers) is estimated to be substantial. Home manufacturers buy lead ingots, which are available at retail stores or through catalogues, melt the lead, and then pour it into molds. Home manufacturers either use these sinkers for their personal use, or they sell these lead sinkers within the local area to other persons, or retailers, such as fishing tackle stores (Support Document 2). Home manufacture for sale is referred to as the "cottage industry" in this proposed rule. The majority of home manufacturers produce non-split shot fishing sinkers. It is estimated that between .8 and 1.6 million anglers may produce their own lead sinkers.

Lead fishing sinkers are imported into the United States in small volumes. The amount of lead fishing sinkers exported each year is also minimal.

Lead fishing sinkers are distributed from manufacturing companies to large retail establishments directly, or are furnished to a distributor who then supplies sinkers to smaller retailers. Distributors range from individuals to national distribution operations. A significant amount of lead fishing sinkers is also supplied directly to mail-order companies for purchase by individuals through a catalogue. It is estimated that there are currently 31 million freshwater anglers nationwide.

C. EPA's Concerns

The studies cited by the petitioners are supported by other studies in showing that lead fishing sinkers have been ingested by a number of different species of waterbirds in various parts of the country, and have caused mortality of those birds. This is not a localized occurrence, nor has only one type of lead sinker been ingested. However, no matter the specific type of sinker, lead is toxic and produces adverse effects in avian species.

EPA recognizes that United States waterbird populations migrate to other countries and can potentially ingest fishing sinkers that are exported from the United States. Although EPA is concerned about adverse effects exported sinkers may have on migratory waterbirds, EPA does not at this time have information indicating that use of exported fishing sinkers poses an unreasonable risk to waterbird populations in the United States. Therefore, EPA is not taking action at this time to prohibit the export of lead- or zinc-containing fishing sinkers.

EPA is required under TSCA section 6 to examine substitutes when exploring regulatory actions concerning chemical substances or mixtures. In the course of its analysis, the Agency discovered that some substitute materials for lead fishing sinkers could also pose an unreasonable risk of injury to waterbirds. There is evidence that zinc, a material presently used in fishing sinkers, can cause waterbird mortality based on a study involving mallards (Support Document 1). Brass contains a notable amount of lead and zinc (as much as 8 and 20 percent by weight respectively), as well as copper, aluminum, and antimony. Due to the low concentrations at which lead and zinc produce toxic effects in waterbirds, EPA believes that brass fishing sinkers could also present an unreasonable risk of injury to waterbirds. EPA is concerned that unless the Agency takes action to address these other fishing sinkers (e.g., zinc and brass), the rule would not reduce risk sufficiently. Therefore, the Agency is proposing restrictions on all sinkers containing lead and zinc of a size that are ingestible by waterbirds, as a necessary measure to prevent future exposures and mortality to those species.

EPA is also concerned about potential human exposures resulting from the home manufacture of lead fishing sinkers. While the Agency has not characterized or determined the extent of human exposure, EPA is aware that individuals and their family members may be exposed to potentially harmful airborne lead particles or vapors while pouring lead into lead fishing sinker molds. As discussed previously in this unit, lead can cause learning disabilities, impaired hearing, and behavioral changes in children, and hypertension and miscarriages in adults EPA is concerned about exposures to lead, particularly lead poisoning in young children, and in conjunction with other Federal Agencies, has established a National Lead Information Center. For

more information, persons may call 1–800–LEADFYI (532–3394).

This proposed rule, if implemented, may also reduce potential human exposures. As proposed, EPA's rule would prohibit the manufacture of lead fishing sinkers by persons at home (home manufacturers and the cottage industry). These parties are included in the provisions of the rule because of the potential for human exposure, and because EPA believes that a lead sinker, whether manufactured at home or by a large manufacturer, presents unreasonable risks to waterbirds when discarded in the environment. The rule as proposed, would also prohibit the production of fishing sinkers by individuals who purchase lead shot (ammunition), and cut a groove in the shot creating a split shot fishing sinker. This activity would be considered processing for the purposes of the rule.

D. Hazard to Waterbirds

For more detailed discussion of the studies reviewed by EPA and utilized in the discussion presented in Units III.D. and III.E. of this preamble, see Support Document 1 ("Ecological Hazard and Exposure Assessment of Lead Fishing Weights to Birds"). Although zinc-containing and brass fishing sinkers are subject to the provisions of this proposed rule, they are presented here as substitutes for lead sinkers due to the manner in which EPA conducted its analysis. EPA's investigation examined the toxicity of substitutes and compared their toxicity to lead. Those substitutes found to be toxic (i.e., zinc and brass) are also subject to this proposed regulatory action.

1. *Summary.* EPA's evaluation primarily focused on routes of exposure involving direct ingestion of fishing sinkers by waterbirds, but also considered uptake (not ingestion) and toxicity of metals contained in fishing sinkers to birds and aquatic organisms in laboratory studies. EPA also examined the toxicity of lead and other sinker materials to mammalian species (rats and mice) to determine if there were additional risks to other organisms in the environment.

Based on the conclusions of EPA's analysis which examined existing studies and laboratory data, zinc, and brass (with and without lead) could potentially result in greater toxicity to aquatic organisms (fish, invertebrates and algae) than lead. Copper is also toxic to aquatic organisms, however, copper metal may be less bioavailable in the environment because it can easily bind with materials such as sediment or organic particulate matter which would serve to mitigate copper's toxicity to aquatic organisms. The toxicity of lead and zinc to aquatic organisms in freshwater may also be mitigated to some degree, although to a lesser extent than copper. Available studies indicate that other substances used in fishing sinkers (i.e., bismuth, tin, tungsten, steel, and antimony) are less toxic to aquatic organisms than lead.

In comparing toxicities to avian species (mainly mallard ducks), zinc, brass, tin, copper, bismuth, tungsten, steel, and antimony, would be less toxic than lead. However, zinc is toxic at very low levels, and has been shown to produce zinc intoxication, and mortality of waterbirds (mallards).

With regard to toxicity to mammals (rats and mice), bismuth, tungsten, steel, and tin are less toxic than lead, while zinc, antimony, copper, and brass, are more toxic to mammals than lead.

EPA believes that polypropylene, terpene resin putty, and iron (also potential sinker substitutes) are less toxic than lead to aquatic, avian, and mammalian species.

2. *Toxicity of lead.* Lead causes adverse effects to birds through a variety of aquatic and terrestrial pathways. Lead is neither beneficial nor essential to animals, and studies commonly show its metabolic effects on birds to be adverse. The metal may cause several sublethal effects such as adversely modifying the function and structure of kidney, bone, the central nervous system, and the production and development of blood cells. It produces adverse behavioral, biochemical, histopathological, neuropsychological, fetotoxic, teratogenic, and reproductive effects. Ingested lead can impair antibody production and lower numbers of white blood cells and spleen plaque-forming cells in mallards. Severe damage to the central nervous system results in stupor, convulsions, coma, and death. Other signs of lead poisoning include loss of appetite (and resulting weight loss), lethargy, weakness, emaciation, drooped wings, green liquid feces, impaired locomotion and an inability to fly, and impaired balance and depth perception. Fat deposits in the body are eventually exhausted, and there is a marked atrophy of the bird's pectoral muscles. There is a definite progression of symptoms after sinkers are ingested, ending in most cases in death.

After ingestion, lead sinkers are reduced in size and shape by dissolution in the acidic environment of the digestive system such as the stomach, as well as the physical grinding in the gizzard. Soluble toxic salts are formed that are absorbed into the circulatory system causing toxicosis, neurological, and behavioral changes, and eventual death. Once lead passes through the gut it binds to red blood cells. It is stored in bones and soft tissues, and is excreted in the bile to the small intestine and feces. Dietary deficiencies in calcium, iron, zinc, copper, vitamin E, thiamin, phosphorus, magnesium, fat, protein, minerals, and ascorbic acid or diets low in these components, may increase absorption of lead, and thus, its toxic effects.

The level of lead in the blood of waterbirds considered toxic by most researchers is 0.5 ppm, and toxic symptoms may begin to appear at 0.2 ppm lead. The level of lead in the liver that is considered to be lethal to waterbirds is 5.0 ppm or more (3 to 4 micrograms per gram (ug/G) expressed as wet weight, or 10 to 14 ug/G expressed as dry weight).

For some sensitive species of birds, survival was reportedly reduced at lead doses of 75 to 150 ppm body weight; reproduction was affected at dietary levels of 50 ppm. Sublethal signs of lead poisoning were present at doses of 7.5 ppm body weight. Mortality in waterbirds is usually caused at dose concentrations of 20 to 40 ppm of lead in experimental studies, and lethal levels range from doses of 5 to 80 ppm of lead. In 1 study, 16 mallard ducks (11 males and 5 females) received 2 number 4 lead shot. This dose resulted in mean lead levels in the liver of 32.16 ppm (wet weight) in the males, and 13.85 ppm (wet weight) in the females, and blood lead levels of 3.47 ppm in the males, and 4.15 ppm in the females. Thus, ingesting only two lead shot can result in blood and liver levels considerably higher than those reported to be lethal.

EPA examined lead shot in its analysis because there is a substantial body of information concerning this form of lead (fate, transport, and distribution in the environment), and its toxicity may be similar in some cases to those for lead fishing sinkers. Younger birds and waterfowl are more susceptible to lead from shot or sinkers than older animals. A single shot or two swallowed with food or taken up as grit in the gizzard of birds may introduce enough lead into the bloodstream to be fatal. Based on this information, EPA scientists believe that a single fishing sinker which is usually larger and typically contains much more lead than a single shot, could be fatal to waterbirds. Death of waterbirds follows exposure to lethal amounts of lead by an average of 2 to 3 weeks. During this time, affected birds become less mobile, are limited in their ability to forage for food and seek cover, tend to avoid other

birds, and, as a result, become increasingly susceptible to predators, adverse climate changes, and other causes of mortality.

It is very difficult to derive a dose-response relationship for lead fishing sinkers. No studies were found in which increasing doses of lead were given to laboratory bird species that would enable a concentration-response curve to be derived. EPA believes that it is difficult to determine such a dose-response level due to a number of factors, such as species, age, size, sex of the bird, diet habits, and time of year. However, based on available studies, and the similarity between lead fishing sinkers and lead shot, EPA believes that ingestion of the smallest lead fishing sinker (1/100th of an ounce) is sufficient to cause adverse, and even lethal effects in waterbirds.

3. *Toxicity of substitutes.* To determine the effect of lead fishing sinker substitutes on the environment, EPA evaluated their toxicity to terrestrial (rats, mice, and ducks) and aquatic organisms (fish, oysters, crustaceans, clams, worms, insects, and algae) using available studies. However, EPA believes avian species are most likely to be directly exposed to fishing sinkers (by ingestion) and therefore become adversely affected.

The possible substitute metals examined in available studies, as individual metals or in combination with other metals, which were compared to lead were steel, zinc, tungsten, tin (inorganic form), antimony, copper, bismuth, brass without lead (zinc/copper, assumed to be a 50/50 alloy), and brass with lead (zinc/copper/lead in a 12 percent/80 percent/8 percent alloy). No avian toxicity information was discovered for tungsten, information on the toxicity of bismuth to avian and aquatic species was not found, and no mammalian or aquatic toxicity information was found for steel. No aquatic, avian, or mammalian toxicity information was found for other substitutes such as polypropylene, and terpene resin putty, and no toxicity information for aquatic or avian species on iron was found.

The hazards of these substitutes, based on available data, to aquatic invertebrates, fish, and algae, and to birds and mammals were compared with lead, to determine if they were any more or less toxic than lead. The Agency did not evaluate the direct ingestion of sinkers by fish or other aquatic organisms, which is assumed to be low in frequency. Measured endpoints in the aquatic toxicity analysis were lethality or death (acute exposure), reduction in cell numbers (algal tests), and changes in reproduction/growth (chronic exposure). Measured endpoints in the terrestrial tests were lethality (LD_{50}), changes in reproduction, the lowest published toxic dose, and the lowest published lethal dose. These laboratory effects were extrapolated to what could occur in the environment were these substitutes to be used in place of lead.

a. *Substitutes subject to regulatory action.*--i. *Zinc.* Zinc is more toxic to aquatic organisms (fish and crustaceans) than lead, may be bioconcentrated by invertebrates (insects and oysters) and algae, and may be more bioavailable to aquatic organisms. EPA believes that environmental conditions could mitigate the toxicity of zinc to a certain extent in freshwaters to aquatic organisms because it is more soluble than lead.

Zinc is toxic to mammals (rats and mice) and avian species. In one study, 15 mallard ducks were dosed with 8 number 6 zinc shot. Three of the dosed ducks died within 30 days, with an average time to death of 20 days. Weight loss, also a symptom of lead poisoning, was associated with zinc ingestion. Two of the 3 mallards that died, and 10 of the 12 surviving mallards developed evidence of zinc intoxication before the end of 30 days. These signs began with stumbling while walking, and progressed to an inability to run, a complete loss of muscular control of the legs, loss of the ability to move wings normally, and spasmodic movement of wings. Birds showing signs of zinc intoxication would, as with lead intoxication, be more susceptible to predation.

ii. *Brass.* It is problematic to determine the aquatic and terrestrial toxicities of brass with and without lead, because of the difficulty of apportioning the toxic contribution of each metal (zinc, copper, and lead) to the overall "total toxicity" of each alloy. Each metal may not contribute equally to the total toxicity of the alloy and the total toxicity may not be an average of the individual metal toxicities. Total toxicity of the alloy can be less than the sum of the parts, or more than additive (i.e., synergistic). Mixtures of zinc and copper are generally more-than-additive in aquatic toxicity to a number of different freshwater and marine fish and invertebrates. There is some evidence that zinc and lead mixtures may also be more-than-additive to some marine invertebrates. In addition, the alloys may vary in the percentage of a particular metal present. Also, the individual metals may leach into aquatic environments and at different rates.

The aquatic toxicity and fate of a brass dust consisting of copper, zinc, and lead (as an impurity) was studied. Daphnid crustaceans that were tested died, and the growth of algae was adversely affected after exposure to brass dust in a laboratory study. The brass mixes with and without lead was more toxic to aquatic organisms than lead alone assuming that each metal contributed to the total toxicity of the alloy, based on the percentage of each metal in the alloy. Brass with and without lead was calculated to be more toxic to mammals (rats and mice) than lead alone.

Even though the toxicity of brass to waterbirds has not been tested, based on the toxicity of lead and zinc, brass with and without lead would also be very toxic to waterbirds.

b. *Substitutes not subject to regulatory action.*--i. *Steel.* No adverse toxicological effects (mortality) from steel have been indicated as a result of a research program conducted by the FWS to replace lead shot with steel shot, which examined relative toxicity to ducks of five proposed substitute shot metals. Fifteen mallards were dosed with eight number 6 teflon-coated steel shot. No mortalities or significant body weight losses were reported over the 30–day study period. In contrast, all 15 mallards dosed with 8 number 6 lead shot died within 15 days, and an average 22 percent of their body weight was lost. No information was found regarding the toxicity of steel to aquatic and mammalian organisms. However, EPA believes that steel would have low potential toxicity to those species.

ii. *Tin.* Tin, in the inorganic form, is generally much less toxic to aquatic organisms (crustaceans and fish) than lead because of its low solubility, poor absorption, low uptake rate, and rapid excretion. Based only on limited information, it appears that tin is also much less toxic to waterbirds (mallards) and mammals than lead. No mortality was reported, over 30 days, in mallards exposed to 8 number 6 tin shot. Body weight losses in treated birds were not significantly different from control birds.

iii. *Antimony.* Laboratory studies indicate that antimony is less toxic to aquatic organisms such as fish, crustaceans, worms, and algae than lead. Even though antimony is not considered to be persistent, it bioaccumulates in invertebrates, but not in fish. Laboratory data indicate that antimony is more toxic to mammals (rats and mice) than lead. No information was found which indicates that antimony is toxic to avian species.

iv. *Copper.* Laboratory studies indicate that copper is more toxic to

aquatic organisms, such as fish, crustaceans, and algae than lead. However, the Agency believes that copper may act differently in the environment than in laboratory studies due to the physical and chemical nature of the aquatic ecosystem. EPA believes that environmental conditions in freshwaters where substitute fishing sinkers would likely be used, would mitigate the toxicity of copper metal (as cupric ions) to aquatic organisms. Copper chemistry, availability, and mobility in surface waters is complex, but the cupric ion has been found to be highly reactive to many inorganic and organic constituents of natural waters, and the proportion of copper present as the free cupric ion is generally low. For example, moderate to strong complexes and precipitates of carbonates, phosphates, amino acids, and humates are formed. Cupric ions are readily absorbed onto surfaces of suspended solids. These inorganic and organic copper and precipitates are generally less toxic than free cupric ions and tend to reduce the total toxicity of copper.

Toxicity of copper to avian species such as mallards is less than lead. In 1 study where 24 mallards were dosed with 8 number 6 copper shot, 1 death occurred after 41 days, but the authors concluded that this death could not be attributed to the copper pellet. Metallic copper was also viewed as non-toxic to mammals in this study. However, studies indicate that many copper salts are highly toxic to mammals, and copper is more toxic to mammals than lead.

v. *Bismuth*. No aquatic toxicity or avian toxicity studies were found regarding bismuth. EPA has no information to indicate that bismuth is toxic to avian species. However, information on the toxicity of bismuth to mammals (rats and mice) is available. The lethal dose of bismuth (chloride oxide salt) to 50 percent of rats tested is much higher than that for lead.

vi. *Tungsten*. Tungsten was found to have low toxicity to aquatic organisms (crustaceans and algae). EPA found no information which indicates that tungsten is toxic to avian species. The toxicity of tungsten to aquatic organisms (daphnids and algae), and mammals (rats) is less than lead based on laboratory studies.

vii. *Iron*. No aquatic, or avian toxicity information or studies could be found for iron. EPA found no information which indicates that tungsten is toxic to aquatic organisms or avian species. The toxicity of iron chloride and iron sulfate to mammals (rat) was examined. Both forms of iron exhibited low toxicity to rats based on lethal (LD_{50}) and lowest toxic dose data.

viii. *Terpene resin putty*. No aquatic, avian, or mammalian toxicity information or studies could be found for terpene. EPA found no information which indicates that terpene resin putty is toxic to avian species. However, terpene resin putty contains approximately 92 percent tungsten. Based on the low toxicity of tungsten to aquatic and mammalian, EPA believes that terpene resin putty may also present a low potential toxicity to these species.

ix. *Polypropylene*. No aquatic, avian or mammalian toxicity information or studies could be found for polypropylene. Polypropylene is a polymer and has a high molecular weight. EPA believes that this property would mitigate the transport of polypropylene through biological membranes, tissues, and cells of the gizzard or gut of avian species. Therefore, the polypropylene would not be absorbed and bioaccumulated by organisms such as waterbirds, but rather would be excreted after passage through the digestive system. EPA believes that polypropylene would present a low potential toxicity to avian, aquatic, and mammalian species.

E. Exposure

1. *Summary*. Fishing sinkers are used throughout the United States, easily lost or discarded into the environment and, therefore, are available for exposure to waterbirds. Sinkers may be found in areas fished, such as along shorelines, embankments, rock barriers, and piers. Sinkers may be lost in aquatic habitats if the hook or line gets tangled in weeds or other obstructions, and when the line breaks, sinkers may still be attached or fall off the line. Sinkers may also be lost or discarded in terrestrial habitats if dropped by anglers. Any sinker discarded in these areas could easily be ingested by waterbirds feeding on seeds or other vegetative matter.

For example, a recent study involving a lake dredging project that focused on lead shot in upstate New York, reported that for a period of 5 months in 1990, the average number of fishing weights extracted from the lake's sediment during dredging was 4.2 per day. The lake is approximately 60 acres in size and 125 cubic meters of sediment were dredged each day.

An area along the river Trent in England, where one of the studies took place that examined lead fishing sinker ingestion by mute swans, was heavily fished and contaminated with lead sinkers. Over a 100 meter stretch near the river, 1,100 lead split shot sinkers were collected by 2 persons in 1 hour.

Another study which examined deposition of lead split shot by anglers in South Wales and in England reported that a range of 5 to 300 sinkers per square meter were found in the water along the shoreline, and along the bank of several small ponds and lakes. The authors calculated that each person fishing dropped 4 to 7 sinkers per visit to the waterbody. While this area in Great Britain may experience heavy fishing pressure, it further demonstrates that sinkers enter the environment, and can be available for exposure to waterbirds.

Sinkers may be accidentally dropped along the shoreline, or can be caught on items in the water, such as waterside or submerged branches and vegetation. Waterbirds may intentionally pick them up, mistaking them for seeds, or to use them as grit (materials birds use to aid in digestion such as small pebbles), or may inadvertently ingest them along with food such as discarded bait fish with a line and sinker attached. It is necessary for birds to pick up and use grit to grind up food items because birds lack teeth.

Fishing sinkers discarded in shallow areas of aquatic habitats are readily available for ingestion by waterbirds for perhaps several years. Lead sinkers persist in the environment and may not completely degrade for a period of at least 100 to 300 years. Zinc and brass sinkers would also remain in the environment for many years.

Natural deposition and sedimentation processes operate to eventually cover the discarded sinkers with detritus and sediments. However, activities such as boating or dredging may disturb sediments and uncover discarded sinkers. Also, receding water levels due to drought, tidal effects, natural subsidence, or intentional drawdowns would make sinkers readily available.

The size of the waterbird, especially the size of the gizzard or esophagus may determine the size of the fishing sinker that can potentially be swallowed.

EPA believes that larger birds such as sandhill cranes could swallow sinkers which are 2 inches in diameter, however, smaller sinkers (1 inch and under) would be more readily ingested by most species. The Agency believes that sinkers 1 inch or less more closely resemble food sources or pieces of grit.

Limited data are available regarding the size of fishing sinkers ingested by waterbirds. While sinkers approximately 1/4 inch (7 mm) in diameter have been found in the gizzard of common loons, EPA believes that these sinkers were probably larger when

initially ingested. This is because sinkers are eroded in the gizzard by the mechanical grinding of the sinker with other materials such as grit, and chemically by acidic substances present in the gizzard or digestive tract. As the sinker is broken down and the metal materials are rubbed from the sinker surface, lead, zinc, or other metals are released into the bloodstream, tissues, and organs of the bird. Even if a fishing sinker is excreted from a bird after it has been ground down to a small size, the lead already absorbed into the tissue of the bird could still cause adverse effects and death.

A scientist who has studied lead poisoning in common loons has found lead sinkers up to, and including 1 inch in length in the gizzard of common loons which died from lead poisoning. These particular sinkers ingested appear to be worm weights, egg sinkers, and bass casting sinkers. Lead jigs were also found in these common loons.

The frequency of ingestion of sinkers may differ between species, geographic region, and time of year. Data are not currently available to determine to what extent ingestion of lead or other fishing sinkers is incidental, accidental, or selected.

The number of lead- or zinc-containing sinkers that waterbirds are likely to ingest cannot be quantified. There are differences among species of waterbirds, variations in feeding, mating, and migration behavior, as well as in other factors such as age and sex of the bird that can affect ingestion. In addition, accurate estimates of this sort would depend on a number of conditions such as the extent of fishing in a certain area, number of sinkers and waterbirds present in the area, and many factors relating to bird behavior.

Due to all these factors, a model is not available to predict the probability of ingestion of fishing sinkers by waterbirds or the extent of the exposure to birds over a specific time period (number of waterbirds at risk or number of fishing sinkers available for ingestion). In addition, an accurate number of waterbirds that could receive a lethal dose of lead or zinc from fishing sinkers, or the probability of consuming a lethal dose, cannot be estimated.

Areas subject to fishing each year will continue to pose a threat of sinker ingestion to waterbirds occurring or returning to migrate in that area. However, whether accidental or intentional, ingestion of sinkers does occur and is assumed to be proportional to availability. Therefore, as the number of lead- and zinc-containing fishing sinkers entering the environment increases, so does the probability of ingestion by waterbirds.

2. *Feeding habits.* Numerous species of waterbirds may intentionally or inadvertently ingest fishing sinkers during feeding. While it is not certain why waterbirds ingest small sinkers, perhaps it is due to a similarity in size and shape to grain, seeds or roots of some plants, or invertebrates, or they appear like pebbles or grit which aid in digestion. Waterbirds may also ingest sinkers when preying on fish still hooked to a broken line with a sinker attached.

Studies have documented ingestion of lead fishing sinkers by common loons, trumpeter swans, and mute swans. However, based on their feeding habits, and where they forage for food (locations where people fish), many other species could easily ingest lead- or zinc-containing sinkers, and could also be affected.

Loons can dive to a fairly substantial depth (up to approximately 30 feet) to capture fish, and may inadvertently ingest sinkers when eating fish with tackle still attached. Loons may also intentionally pick up sinkers for use as grit.

Cranes and herons wade in the shallow areas of inland and coastal aquatic habitats searching for prey. Both species dig into the sediment with their bills to extract food. They consume fish, crustaceans, and other benthic invertebrates, amphibians, insects, and vegetation (including grains), and may incidently ingest lead fishing sinkers.

Bay diving ducks (e.g., canvasbacks) and grebes, feed on aquatic insects, fish, crustaceans, other invertebrates, and aquatic plants found on the bottoms of aquatic habitats.

Geese, ducks, and swans eat aquatic vegetation, plant shoots or roots, seeds, bulbs, insects, small mammals, roots, berries, and nuts. Often they feed along shorelines and may be readily exposed to discarded or lost fishing sinkers. Swans frequently pull vegetation off the bottom sediments. These species can easily ingest fishing sinkers during feeding as they forage or sift through sediment on lake, pond, or river bottoms.

Raptors and scavengers such as hawks, osprey, and vultures consume fish, small mammals, birds, and crustaceans. Monofilament line and attached sinker weights hooked to bait such as worms or fish could also be easily ingested by other fish or fish-eating predators.

3. *Affected species.* EPA believes that over 75 individual species are potentially at risk from exposure to lead- and zinc-containing fishing sinkers based on their feeding habits and sources of food. These species fall into a number of groups such as surface feeding ducks, bay diving ducks, loons and grebes, sea ducks, cranes and their allies, geese and tree ducks, swans, herons and their allies, raptors and scavengers.

During the course of EPA's analysis, additional reports were found which document the ingestion of lead fishing sinkers and lead poisoning in sandhill cranes (not the endangered Mississippi sandhill crane), common loons, mute swans, and tundra swans.

Two wild sandhill cranes (*Grus canadensis*) found dying were submitted to the National Wildlife Health Research Laboratory for diagnosis (Ref. 26). One female sandhill crane, that died from lead poisoning shortly after capture, was found in Nebraska and contained a portion of a lead fishing sinker in its gizzard. The lead level (wet weight) in the crane's liver and kidney were 23 ppm and 29.8 ppm, respectively. Another female sandhill crane which was weakened and unable to fly was found in the Aransas National Wildlife Refuge in Texas. A portion of a lead fishing sinker was found in the gizzard, and lead poisoning was determined to be the cause of the moribund condition of the bird. The lead level (dry weight) in the kidney was 113.4 ppm and 258.8 ppm in the liver.

Tufts University Wildlife Clinic examined (necropsied) 21 adult common loons found dead or moribund in New England States from 1991 - 1993 (Ref. 30). Fourteen common loons had ingested either a lead fishing sinker, lead worm weight, or lead jig. Nine of these 14 loons died from lead poisoning; 5 were suspected of dying from lead poisoning (they showed necropsy and histopathologic lesions consistent with lead poisoning). Toxicological analysis of the 9 birds confirmed with lead poisoning had lead liver levels ranging from 6.05 ppm to 13 ppm. The lead sinkers, lead jigs, and lead worm weight that the loons had ingested were also examined (weighted and measured). These lead objects ranged in length from 0.27 to 1 inch; from 0.21 to 0.49 inches in width; and in weight from 1.5 grams to 16.5 grams.

Necropsy data from the Rose Lake Wildlife Research Center in East Lansing, Michigan report that from 1988 to 1993: (1) Out of 55 common loons examined, 3 died from lead poisoning due to lead fishing sinkers, (2) 5 out of 60 mute swans examined, ingested lead fishing sinkers and died from lead poisoning, and (3), 1 tundra swan (*Cygnus columbianus*) died from lead

poisoning due to the ingestion of a lead fishing sinker (Ref. 15). Lead concentrations in the liver and kidney of the common loons ingesting fishing sinkers ranged from 6 to 13 ppm and 28 to 46 ppm respectively. The data also indicated that 12 common loons ingested what appeared to be lead jigs, which are weighted hooks. The lead levels in the liver of these loons ranged from 11.7 to 98.2 ppm in the liver and 18.1 to 124 ppm in the kidney.

Data from the New York State Wildlife Resources Center in Delmar, New York reported that seven common loons, and one mute swan necropsied, died from lead poisoning due to ingestion of lead fishing sinkers (Ref. 29). The common loon mortalities were as follows: (1) one common loon located along Lake Ontario in 1983, and later died, had a lead level in the liver of 9.3 ppm; a worn lead fishing sinker weighing approximately 2 grams was found in the stomach, (2) one debilitated common loon that died shortly after it was found in 1986 at Long Lake, had ingested a worn elongated split shot fishing sinker; the lead concentration in the liver was 41.2 ppm wet weight, (3) two common loons that died in 1989, each with a worn lead fishing sinker in their gizzards, had lead liver levels of 26.4 ppm, and 30 ppm, (4) one common loon with a lead liver level of 9.8 ppm also died in 1989, and had ingested a lead fishing sinker, (5) a "large" split shot lead fishing sinker was found in a common loon that died in 1982 (2 assays were conducted indicating that lead liver levels were 21 and 23 ppm), and (6) one loon found dead on Kueka Lake had ingested an egg-shaped sinker approximately 8 mm in diameter; the lead liver level was 15.5 ppm. The New York State Wildlife Resources Center also reported that a female mute swan that had ingested a teardrop-shaped lead fishing sinker died from lead poisoning in 1986.

A male whistling swan (also referred to as the tundra swan, *Cygnus columbianus*) was found sick and extremely emaciated along the banks of a creek in Maryland (Ref. 11). It was brought to the Patuxent Wildlife Center for autopsy where it was found that the bird was lead poisoned. The swan had ingested a lead sinker contained in the gizzard. The level of lead found (on a wet weight basis) in the blood, liver, and kidney was 830 ppm, 40 ppm, and 2,440 ppm respectively. The study authors surmised that the very high levels of lead reflected a high level of lead absorbed from the ingested sinker.

Any endangered or threatened waterbirds, such as the Mississippi Sandhill Crane (See Unit II.C.4. of this preamble) that feed in areas with discarded or lost fishing sinkers may potentially ingest lethal quantities of lead or zinc. Each individual is important to the continued survival of an endangered or threatened species, and therefore, impacts on even single individuals are of special concern. Other listed endangered species, such as the whooping crane (*Grus americana*), wood stork (*Mycteria american*), Aleutian canada goose (*Branta canadensis leucopareia*), peregrine falcon (*Falco peregrinus peregrinus*), and possibly the bald eagle (*Haliaeetus leucocephalus*), may directly or indirectly ingest fishing sinkers.

4. *Species ranges.* Ranges of these potentially exposed waterbirds, as well as avian predators and scavengers include areas throughout the United States with suitable aquatic habitats for feeding and breeding activities. In some cases, these ranges correspond to areas subject to moderate to heavy use by fishermen (e.g., northwest, midwest, southeast, upper north central, and northeast U.S.). The range of a species often is complex and large and it can consist of a summer or breeding range, a winter range, and geographic areas where the species occurs throughout the year. Often portions of these three areas geographically overlap. The breeding ranges of the species with reported mortalities (common loon, trumpeter swan, mute swan, tundra swan, and sandhill crane) due to ingestion of lead fishing sinkers, the ranges of other potentially affected species discussed above, and the areas fished essentially cover the entire United States.

Bay diving ducks and mergansers are generally found throughout the United States during the year. Loons and grebes occur across the upper midwest, northeast, west coast, and Alaska. Surface feeding ducks, depending on the species, occur throughout the United States. Cranes, herons, and their allies, generally occur throughout the United States and along coastal areas. Sea ducks are commonly found along the United States coast. Geese and tree ducks are distributed along the west coast, northeast and Gulf coast. Swans are found in many areas of the United States including the northeast, upper midwest, west coast, Rocky Mountains, and Alaska. The distribution of raptors and scavengers is widespread throughout the United States.

5. *Population effects.* EPA recognizes that population effects cannot be measured accurately in this case, because of the many species that may be adversely impacted, and other complex variables involved. It is difficult to separate out the precise degree of the hazard posed by fishing sinkers to waterbird populations as opposed to that from natural or other man-made sources of population mortality and variability, or that caused by normal environmental change (e.g., drought, increased predation). Many waterbird populations have been decreasing progressively over the past several years and decades because of increased hunting and a decline in suitable nesting habitats (e.g., the net loss of 2.6 million acres of wetlands in the United States from the mid-1970's to the mid-1980's).

It is difficult to see the full effect on populations, as there have not been large reported die-offs due to ingestion of fishing sinkers. While the available studies may appear to indicate that a small number of common loons, trumpeter swans, mute swans, tundra swans, and sandhill cranes have died due to ingestion of lead fishing sinkers, EPA believes that the potential magnitude of the risk to waterbirds is greater than the number of known deaths indicates. Species with similar feeding habits in similar ecosystems such as those previously discussed (Unit III.E.2 of this preamble), are likely to also be at risk, although no deaths due to ingestion of fishing sinkers have been reported.

The potential risks to waterbird populations may not be fully reflected in the available data due to a number of factors. Birds that are seriously ill from ingesting lead- or zinc-containing sinkers may seek the cover of vegetation and are difficult to locate when they die. Common loons and trumpeter swans do not flock together and consequently, when individual birds seek cover they are often overlooked. Because they are susceptible to predation, most of the ill or dead birds may quickly disappear as they become meals for predators such as mink, weasels, raccoons, fox, coyotes, eagles, hawks, and owls. This complicates the ability to determine the magnitude of adverse effects to waterbirds due to sinker ingestion. Therefore, EPA believes that the true number of waterbird deaths is considerably larger than those that have been observed and reported. Even if a known number of carcasses are deliberately "planted" in known locations, it is difficult to locate all of them at a later time.

For example, in a study conducted in northwestern Missouri, 62 percent of 90 planted carcasses disappeared after only 4 days. In Texas coastal marshes, 89 percent of 47 carcasses had disappeared in 8 days. In a refuge in Missouri, 25 percent of "planted" carcasses were not located when the areas were searched.

If the number of dead and lead- or zinc-affected waterbirds do not exceed the ability of predators to consume them, few carcasses will be present. Carcasses would become more evident when birds die in greater numbers, or if the number of predators decreased.

EPA also recognizes that naturally occurring populations of waterbirds do not exist in isolation. The health of one population is often dependent upon other populations within a natural community. As such, lead- and zinc-containing fishing sinkers may cause direct adverse effects on one population, but may also produce indirect effects, such as perturbations on food webs in ecosystems. For example, these perturbations could include disruptions in the predatory/prey and competition relationships between individuals in interacting populations within a community.

However, EPA did examine how fishing sinkers may affect individuals within a population. The number of individuals within the trumpeter swan, common loon, and Mississippi sandhill crane populations are as follows. Trumpeter swan populations are estimated to be approximately 13,000 in Alaska, 1,700 in the Rocky Mountain area, and 300 in the interior portion of the United States. Common loon populations are estimated to be 34,000 in Alaska and 47,000 in the rest of the United States. The population of the Mississippi sandhill crane, found on and near the Mississippi Sandhill Crane National Wildlife Refuge in Jackson County, Mississippi, is estimated to be 142 individuals.

Although the total population of trumpeter swans or common loons may appear large and geographically dispersed, it can consist of relatively small local breeding populations. The loss of a few members of these local populations may be of great consequence. For example, the common loon population in 4 New England States (Maine, New Hampshire, Vermont, and Connecticut) is estimated to be approximately 4,374 individuals; however, Vermont has only about 16 nesting pairs or 32 individuals. As mentioned previously (Unit II.C.1. of this preamble), common loons are listed as an endangered or threatened species in some New England States (Ref. 5).

If only a few of these loons die from poisoning due to ingestion of a lead- or zinc-containing fishing sinker, there will be fewer birds to reproduce, and less future offspring. This is of particular concern regarding endangered species where both the total and local populations are low, and the loss of an individual is very significant. Therefore, deaths of individual birds may in turn impact the total population of avian species. However, direct effects may only be seen concerning individuals, or local breeding populations. Regardless of the difficulty in fully determining the impacts on waterbird populations, lead- and zinc-containing fishing sinkers remain as one source of unnecessary adverse pressure on already stressed populations. This is especially true if local breeding populations, made up of individuals, have to cope with other adversities such as loss of habitat. In addition, fishing sinker ingestion may result in toxic effects, thereby significantly reducing or eliminating the opportunity for reproductive effects to occur.

Although the effects of lead- and zinc-containing fishing sinkers on waterbird populations are impacts of concern, EPA does not believe it is necessary to demonstrate population effects before taking regulatory action (Ref. 3). Since most endangered species have very low population numbers, concern would be high if even one individual was adversely affected or died as a result of lead or zinc ingestion. By the time such effects were conclusively shown, it might be too late to mitigate any adverse effects to these species. In fact, the Mississippi sandhill crane, a Federally endangered species, is in danger of extinction due to a number of factors such as loss of habitat, human predation, and presence of other toxins in the environment.

EPA has previously implemented regulatory programs that protect birds without estimating population effects. The Agency took action to phase out most uses of granular carbofuran, an agricultural insecticide and nematicide (Ref. 27), and to cancel certain registrations of the pesticide diazinon, based solely on concerns about acute risks posed to birds (Ref. 28).

F. Risk Characterization

EPA believes that lead- and zinc-containing fishing sinkers pose an unreasonable risk to waterbirds for the following reasons.

Fishing sinkers are used and can be found in ponds, lakes, and streams, and along the shores and banks of these aquatic habitats throughout the United States. They are available for ingestion by waterbirds. The actual number of sinkers located in the environment cannot be quantified; however, approximately 477 million lead, zinc, and brass sinkers are sold each year in the United States. As more sinkers are discarded or lost in the environment each year, more will be potentially available to waterbirds, and additional waterbird deaths may occur. Based on the toxicity of lead and zinc, one fishing sinker can be sufficient to cause mortality in waterbirds.

As previously discussed, the actual number of waterbirds that will likely ingest fishing sinkers, and the definite number of fishing sinkers ingested by each waterbird, cannot be estimated. However, the true number of deaths may be higher than the number of documented cases due to: (1) The lack of a national incident reporting system (in addition, the studies and research conducted specifically to assess the ingestion of fishing sinkers are small in number), (2) the difficulty of locating carcasses in the field, and (3) limited resources and staff to conduct necropsies.

Ingestion of lead fishing sinkers by waterbirds has been documented. There is clear evidence that ingestion of lead fishing sinkers has resulted in toxic and often fatal effects to avian species such as common loons, trumpeter, mute, and tundra swans, and sandhill cranes.

The size of lead fishing sinkers which have been ingested by waterbirds has been documented. Sinkers up to and including one inch in size have been found in common loons.

Research has also demonstrated that zinc is toxic, and zinc pellets have produced mortality when ingested by waterbirds such as mallards. Therefore, ingestion of zinc fishing sinkers may also pose risks to waterbirds.

Other avian species that have similar feeding habits and breed or migrate in areas containing lead- or zinc-containing fishing sinkers are at risk.

IV. Provisions of the Proposed Rule and Rationale

The rule would impose a ban on all manufacture, import, and processing of fishing sinkers containing any lead or zinc and which are 1 inch or less in any dimension for use in the United States 1 year after promulgation of the final rule. The distribution in commerce of such fishing sinkers would be prohibited 2 years after promulgation of the final rule. The rule would not prohibit the manufacture and processing of lead and zinc-containing fishing sinkers 1 inch or less in any dimension solely for export. Manufacturers and processors of those sinkers for export would be required to maintain records regarding the production, inventory, and shipment of those sinkers. This would allow EPA to track the distribution of regulated sinkers, and effectively enforce the rule.

EPA is proposing to prohibit the manufacture, processing, and distribution in commerce of any lead- or

zinc-containing fishing sinker because EPA believes they pose an unreasonable risk of injury to avian species such as waterbirds. Extremely small amounts of lead and zinc (at the ppm level) adversely affect waterbirds, and ingestion of even one fishing sinker can result in their death. If fishing sinkers were allowed to contain a small amount of lead or zinc, although a trace amount may not produce toxic effects, the cumulative impacts due to ingestion of more than one sinker could result in mortality. In addition, lead- and zinc-containing fishing sinkers are very persistent in the environment and can be accessible for ingestion by waterbirds for a number of years. Therefore, EPA is proposing to regulate the production and sale of fishing sinkers containing any amount of lead or zinc.

EPA's economic analysis indicates that there are several available or commercially viable substitutes for lead- or zinc-containing fishing sinkers. This analysis, discussed further in Unit V. of this preamble, indicates that the average increase in annual costs to each individual person who fishes from this proposal would be substantially less than $4.00 per year. EPA believes the scientific evidence demonstrating the severe adverse effects to waterbirds from the ingestion of lead- and zinc-containing fishing sinkers, the economic, social, and environmental value of these birds, and the low costs and availability of substitutes for these sinkers, outweigh any costs that would result from imposition of the proposed regulation. Therefore, EPA believes the continued manufacturing, processing, and distribution in commerce of small size lead- and zinc-containing fishing sinkers presents an unreasonable risk of injury to the environment.

EPA does not believe that the use of lead- and zinc-containing fishing sinkers is essential. Substitutes which the Agency determined were less toxic to waterbirds are available, albeit at a somewhat higher cost. These substitutes include tin, copper, antimony, bismuth, steel, tungsten, and terpene resin putty. EPA believes these substitutes for lead- and zinc-containing fishing sinkers would perform as well as lead or zinc.

This ban, as proposed, would greatly eliminate future entry of these fishing sinkers into the environment, and therefore limit the number of lead- and zinc-containing fishing sinkers available for exposure. EPA believes this would ensure that any unreasonable risk posed to waterbirds would be adequately reduced.

EPA is proposing to regulate all sinkers 1 inch or less in any dimension because those size sinkers resemble pieces of grit or small food items such as seeds which waterbirds may ingest. The majority of sinkers most likely to be used for recreational fishing are also 1 inch and less in size.

The Agency evaluated banning different types of sinkers 1 inch or less in size (split shot and non-split shot). While a ban on split shot type sinkers is the most economical option in terms of cost per sinker, it would only account for 68 percent of the sinkers 1 inch or less on the market. Therefore, an additional 32 percent of sinkers 1 inch or less, or approximately 152 million sinkers, would still be manufactured per year and potentially available for exposure to waterbirds. EPA believes that it is important to capture this significant market segment because regardless of type, sinkers 1 inch or less pose a risk to waterbirds. In addition, the majority of home manufacturers produce non-split shot sinkers. Therefore, the prohibition on all sinkers 1 inch or less in any dimension would assist in reducing human health risks as well.

It is estimated that the proposed ban would prevent over 450 million lead- and zinc-containing fishing sinkers 1 inch or less from being produced each year, and potentially from entering the environment.

The provisions of this proposed rule concerning the ban on manufacturing and processing would become effective 1 year after promulgation of the final rule. EPA chose a 1-year delay, rather than an immediate ban which the Agency believed to be too burdensome on industry, to enable manufacturers of lead- and zinc-containing fishing sinkers time to retool their equipment to produce other types of sinkers.

The proposal, if implemented, would also prohibit the distribution in commerce of lead- or zinc-containing fishing sinkers, and that have any dimension less than or equal to 1 inch, by any person effective 2 years after promulgation of the final rule. The sale of these types and sizes of fishing sinkers in the United States by any person, including retail stores or catalogues, would not be allowed. The Agency believes restrictions on the distribution in commerce are necessary to eliminate the continued availability and usage of lead- and zinc-containing fishing sinkers less then or equal to 1 inch in size.

The prohibition on the distribution in commerce of lead and zinc-containing sinkers would become effective 2 years after promulgation of the final rule, in order to allow an adequate interval for distributors to sell their remaining inventory of those sinkers. Although EPA evaluated options which would further delay the regulatory requirements (ban the manufacture, processing, and distribution after 3 or 5 years), the Agency does not believe that these options would be justified in light of the continued and increasing risk to waterbirds. If EPA further delayed the ban, a potentially large number of lead- and zinc-containing fishing sinkers could enter the environment.

EPA evaluated a number of options before choosing to prohibit the manufacture, processing, and distribution in commerce of lead- and zinc-containing fishing sinkers 1 inch or less in any dimension. While the other options, discussed further in Unit VI. of this preamble, would restrict a segment of the fishing sinkers available for exposure to waterbirds, the Agency does not believe that these other options would adequately reduce the availability of sinkers for exposure or adequately reduce the unreasonable risk to waterbirds. To adequately reduce this risk, EPA believes a ban on the manufacture, processing, and distribution of lead- and zinc-containing sinkers 1 inch or less in any dimension is necessary. EPA also evaluated the option of a comprehensive ban on all fishing sinkers. While a comprehensive ban on all lead- and zinc-containing sinkers would accomplish the greatest degree of risk reduction, EPA did not select that option because the burden placed on society associated with that option would be too severe. Therefore EPA chose a limited ban targeting those sinkers which EPA believes pose the greatest harm to waterbirds.

The rule, as proposed would not prevent individuals from engaging in fishing or from using sinkers, but rather would prohibit the manufacture, processing and distribution of fishing sinkers of a certain type and size to prevent unreasonable risk of injury to waterbirds.

This rule would not prohibit the use of fishing sinkers containing lead and zinc by any person. TSCA section 6 (a)(5) authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a substance or mixture. Because the fishing sinkers at issue are those used in recreational fishing, EPA's proposal would not extend to the recreational use of these fishing sinkers.

The total cost of the proposed regulation for consumers is $71.6 million over 10 years. The cost to persons who fish is minimal (average 2 cents per fishing day).

V. Economic Impacts

All references and background information reviewed in this Unit of the preamble are found in the "Regulatory Impact Analysis of Options for Regulating Lead and Other Toxic Fishing Sinkers," referred to in this proposal as Support Document 2. EPA concentrated its analysis on lead fishing sinkers as they account for the majority of sinkers presently on the market. There is a small volume of brass sinkers currently produced domestically, and a very small volume of zinc sinkers which are imported. EPA estimates that approximately 477 million split shot and non-split shot lead, zinc, and brass sinkers are sold each year and used for freshwater fishing.

A. Availability, Application, and Cost of Substitutes

1. *Summary.* EPA has investigated a number of possible substitute materials for lead fishing sinkers. The substitutes considered suitable for lead fishing sinkers, are also appropriate for zinc and brass fishing sinkers. Substitutes were evaluated on the basis of availability, application, and cost, in addition to toxicity relative to lead and zinc (as detailed in Unit III.D. of this preamble). Availability refers to the current market for sinkers made of the various types of materials, while application refers to the sinker types that could be manufactured from a particular material. EPA is aware that there may be other substitutes which are being developed, but are not yet on the market, and others which may only be available locally such as glass and ceramic. The Agency has not analyzed these substitutes in detail, mainly because there is a lack of information regarding them.

As evaluated by the Agency, the costs of substitutes include raw materials, energy, operations and maintenance, capital, and conversion costs. These costs, along with toxicity considerations, were used to estimate the market share of various substitutes which would result following implementation of the proposed regulatory option.

The identified substitutes for split shot sinkers are different from those identified for non-split shot sinkers. Substitutes for lead split shot need to be malleable and have a soft edge so that fishing lines are not damaged when substitute weights are crimped or squeezed onto the line. The same considerations are not important for larger weights (i.e., non-split shot) that are tied onto the line. Hence, the list of feasible substitutes is different for the split shot segment of the market than it is for non-split shot sinkers.

Substitutes for lead fishing sinkers, which are identified as being currently commercially available and are subject to this proposed rule are zinc, and brass. Other potential substitute materials which are not subject to this proposal are: (1) Tin, (2) tin/antimony, (3) bismuth, (4) terpene resin putty, (5) copper, (6) stainless steel, and (7) polypropylene tungsten composite.

Finally, the suitability of lead jigs as a substitute was examined. While a jig basically accomplishes the same objective as a fishing sinker, the Agency does not believe they are viable substitutes for lead or zinc sinkers. Generally, jigs are used as artificial lures which require the angler to manipulate it such that it appears life-like. Sinkers are generally used with live bait and do not require such handling. Accordingly, it is estimated that lead jigs would substitute for less than 1 percent of lead fishing sinkers currently in use. Several of the substitutes are described below.

2. *Substitutes subject to regulatory action.*--i. *Zinc.* Zinc fishing sinkers under 1 inch are not currently manufactured in the United States. Non-split shot sinkers such as worm weights are presently imported for use. EPA does not believe that zinc sinkers are produced at home. Zinc is more expensive than lead, and could replace lead for a few product forms such as worm weights.

Disadvantages of zinc relative to lead are that it is more expensive, is more difficult to manufacture, can damage the manufacturing equipment, and has a harder edge, and therefore may damage the fishing line. Also, zinc has a lower density, and is not as soft and easy to work with as lead.

ii. *Brass.* Brass sinkers are currently available in the United States for purchase, and are slightly more expensive than comparable lead sinkers. Primarily non-split shot brass sinkers such as those used for bass casting are produced in the United States. EPA does not believe that brass sinkers are produced at home. Brass sinkers can be plated with silver, zinc, or with zinc plus black chromate.

One disadvantage of brass is that it cannot be crimped onto the line as easily as lead shot because of the hardness of brass. It is therefore considered too hard for use as split shot, and mechanical crimping methods such as rubber appendages must be used. Also, brass may contain 7 to 8 percent lead, and 5 to 20 percent zinc. Furthermore, brass is less dense than lead and has a higher melting point than lead and other substitutes, making processing more difficult.

3. *Substitutes not subject to regulatory action.*--i. *Tin.* Tin, although less dense than lead, is suitable for use as split shot due in part to its softness. Tin split shot is currently available in the same weights as lead split shot. It appears that tin sinkers are easier to affix to the line than are lead sinkers. The tin shot is opened with the thumbnail, but has no ears for release, as does removable lead shot. Raw material costs for tin are approximately 10 times the cost of lead. Because of this higher cost, tin is not considered practical for use in sinkers other than split shot.

The main disadvantage of tin sinkers is that they are less dense than lead sinkers, resulting in roughly a 50 percent increase in material to achieve the same effect as for typical split shot. Also, although tin is soft, it requires greater precision methods to manufacture so that it will not damage the fishing line. Tin sinkers could be produced by home manufacturers; however, the relatively high cost of tin would likely discourage this activity, and home-manufactured tin split shot could cause line damage due to the relatively hard edge.

ii. *Bismuth.* Sinkers that are 99.99 percent bismuth are manufactured and distributed to retail stores. Five types of bismuth sinkers have been identified including bell sinkers, bass casting (swivel) sinkers, walking sinkers, egg sinkers, and worm weights.

Bismuth sinkers generally costs approximately twice as much as comparable lead sinkers. Bismuth sinkers could be manufactured at home, using a lead sinker mold. However, if home-manufacturers were to use bismuth, the resulting sinkers would be considerably more expensive than lead sinkers and hence, probably would not be purchased by retailers.

The advantages of using bismuth rather than lead, zinc, or brass include its slightly lower melting point, which means that it requires slightly less energy to manufacture than lead. The melting point of bismuth is also lower than the melting points of the possible substitutes copper and steel. Furthermore, the density of bismuth is high relative to other substitute materials like tin and copper.

Bismuth can be used to replace all lead, zinc, and brass sinker types except split shot. Bismuth cannot effectively replace lead for split shot because of its brittleness, which results in breakage when it is crimped onto the line. The small density difference compared to lead is overcome by making the sinker slightly larger.

iii. *Terpene resin putties.* A putty of terpene resins containing 92 percent tungsten by weight is currently manufactured. It has approximately 80 percent of the density of lead. The product is sold wholesale to retail outlets and distributors.

Terpene resin putty is approximately three to four times as expensive as lead split shot. Although the putty is more expensive than lead shot, in the fly fishing market, the only market into which it currently is marketed, this higher cost of the putty is insignificant compared to the high costs of other fly fishing equipment (e.g., a person fly fishing may purchase 100 flies at $1.20 each for one fishing trip). The product is not, however, an economically viable choice for most types of fishing that require weights larger than split shot.

Terpene resin putty currently is marketed only for fly fishing, although it can substitute for all sizes of split shot and most sinker sizes. The putty is not suitable for use as a heavy weight since it cannot be tied onto the line. However, like removable split shot, the putty can be reused many times. The major disadvantage of putty relative to lead is its higher cost.

iv. *Steel and copper.* Steel and copper theoretically could also be used as substitutes for lead, zinc, or brass fishing weights. However, for various reasons these substitute materials are not considered as practical alternatives at this time. Steel rusts unless expensive non-corrosive alloys are used. Steel generally costs more and is less dense than lead. Furthermore, steel products usually have very high melting points and are hard, making these materials impractical for manufacture with traditional technologies. Steel could not be injection molded; it could be stamped, but only with very heavy equipment. Typically, forging and foundry operations are required for processing steel into shapes. Copper has a density of approximately 79 percent of lead and a melting point greater than lead, zinc and brass. These factors may make copper unsuitable for use as a substitute for lead in fishing sinkers.

v. *Polypropylene, iron, and tungsten mixtures.* One company is currently developing an iron and tungsten impregnated polypropylene mixture that can be molded into fishing sinkers of the same size, shape, and dimensions as lead fishing sinkers. These weights have the same "look" as lead fishing weights, although they have roughly 50 percent of the specific gravity of lead. Raw material costs are estimated at $1.50 to $1.75 per pound or approximately five times greater than lead.

B. Cost of Proposed Rule

The Agency developed estimates of the cost of the proposed regulatory option. The analysis, presented in Support Document 2, details the costs, methodology, and results for the proposed rule and for several additional regulatory alternatives.

In general, the approach of the cost analysis is to utilize a stepped demand function to depict demand for fishing sinkers and to estimate changes in consumer surplus resulting from various regulatory options. This type of function is appropriate where many substitutes are available and performance differences among the substitutes are not significant. The estimation of these functions incorporates basic information on the substitutes for lead- and zinc-containing sinkers and estimated market shares of the substitutes.

Stepped demand functions depict consumers as ceasing to demand certain quantities of a product when the cost of the product exceeds the cost of a comparable substitute. Therefore, there will be no reduction in the quantity demanded in the event of a price rise, unless the price rises sufficiently to be above the price of the next substitute. The cost of each substitute provides the height of each step, and the market share of substitutes provide the width. Demand is assumed to be relatively constant over the 10–year period--1993 to 2002.

While market shares are determined by a combination of toxicity and cost concerns to sensitivity analyses are performed, in the first market share is based predominately on cost concerns and, in the second, market share is based predominately on toxicity concerns. The base case market shares under the proposed regulatory option for non-split shot are estimated to be: Polypropylene-55 percent, bismuth-5 percent, tin-35 percent, steel-2 percent, and tin/antimony alloy-3 percent. The estimated base case market shares for split shot are: Tin-90 percent, tin/antimony alloy-2 percent, and terpene resin putty-8 percent. The supply of lead sinkers is assumed to be perfectly elastic in the long run, therefore, no producer surplus exists in these markets. Thus, most of the cost of the regulation will be borne in the long run entirely by consumers of these goods.

The present value social cost of the proposed regulatory option is estimated to be $75.9 million discounted at 7 percent. The total costs over the 10–year period apportioned to consumers is estimated to be $71.6 million discounted at 7 percent. This implies a cost of about $9.6 million per year for the 31 million freshwater anglers that participate in freshwater fishing annually or only 2 cents per fishing day (average fishing days per individual per year are equal to 14). This does not mean to suggest however, that the increase in the purchase price of sinkers is 2 cents. EPA has estimated that the cost impact of the final rule per average angler would be approximately 31 cents per year. However, this figure does not include the markups associated with retail process. The purchase price paid for sinkers by the average angler could be $1.50 to $3.50 per year, or 10 to 25 cents per day of fishing. In any case, the increased price in fishing sinkers is relatively minimal in comparison to the total cost incurred by anglers for other expenditures such as fishing rods, reels, and other tackle, licenses, fishing trips, and boats.

C. Benefits of Proposal

Conducting a benefits analysis is complicated by a number of factors. First, the large number of bird species potentially at risk, the paucity of available data on local bird populations, deaths from all causes, and on deaths from lead- or zinc-containing sinker ingestion make it difficult to estimate current exposures and effects. Second, it is difficult to estimate the probability that a lost lead- or zinc-containing sinker will be picked up by an individual bird. Last, the accumulation of lead in the environment based on historical fishing, together with uncertainties about its continued availability to migratory waterbirds, creates problems for estimating the potential effectiveness of alternative regulatory options in reducing exposure and observed effects. Because of these difficulties, the approach taken in the benefits analysis is to illustrate the potential routes of exposure and describe the circumstances that suggest that significant numbers of waterbirds are potentially at risk.

The benefits are presented in terms of number of sinkers removed from the market. As indicated in Unit III.D. of this preamble, one lead- or zinc-containing sinker can generally lead to mortality. Following this assumption, this analysis provides estimates of the number of these "toxic" sinkers removed from the marketplace as a result of a regulatory option. This information provides an indication of the potential for a regulatory option to reduce exposure and risk to birds. While this approach cannot definitively describe absolute risk reduction, it is an effective means of comparing regulatory options.

For the regulatory options that EPA considered, the estimated number of "toxic" sinkers entering the environment which would be avoided over a 10–year period ranged from near zero to near 4.8 billion. The number of sinkers in the environment avoided over 10 years resulting from the regulatory option proposed in this rule, a ban on the manufacture, processing, and distribution in commerce, is approximately 4.2 billion fishing sinkers or 470 million sinkers per year. This estimate assumes that the regulation is effective in reducing the home manufacture of lead fishing sinkers. Therefore, this estimate represents a decrease in the number of lead sinkers alone of 89 percent. The remainder of lead, zinc, and brass sinkers left on the market will consist of sinkers greater than 1 inch in size.

EPA also reviewed relevant economic valuation literature for the variety and range of values associated with the loss of birds. The range of values which is developed in the analysis is used to produce an estimate analogous to a break-even estimate of the number of birds required to generate positive net benefits from the regulatory option. This range is based solely on the relative costs of each of the options and does not address the effectiveness or cost-effectiveness of any given option in terms of risk reduction.

Birds have value to society for a variety of reasons. Values include those from: bird watching; as part of and essential to the health of the ecosystem, its structure or function; biodiversity value; aesthetic environment for hikers, campers, anglers, and nature walkers in national and state parks and other natural environments; potential future genetic or medical value; and game for hunting.

For example, approximately 58 million persons engaged in non-consumptive, non-residential recreation involving various forms of wildlife including birds. Recreational benefits or expenditure associated with birds including birdwatching, photography, and feeding is estimated to be $18.1 billion, or approximately $310 per spender. Other non-consumptive recreational benefits have examined endangered species such as the whooping crane. A valuation study found that persons were willing to pay $21 to $149 per year for a refuge that would help protect the crane which they could visit.

Because environmental benefits are usually not traded as market goods and services, estimating values for these benefits is difficult. However, economists have developed approaches with which to estimate these values.

Previously conducted valuation studies on birds are used in this analysis to produce an estimate of the number of non-endangered birds for which the regulatory costs would equal the value of birds for purposes of comparing regulatory options. This is similar in concept to a break-even point. Valuation studies which have been used focus primarily on use value and, thus, do not account for values which society places on endangered species, such as the Mississippi Sandhill Crane, which may be positively affected by the regulation. In addition, the estimates do not account for the value of risk reduction to human health which will occur as a result of the regulatory requirements. Thus, any ranges calculated can help to indicate the potential number of birds that would have to be saved to provide net benefits solely on the basis of benefits to non-threatened or non-endangered birds. The range offers useful guidance in comparing regulatory options, but does not measure absolute benefits or risk reduction.

To calculate the range, the costs of the selected regulatory option were divided by the estimated range of values for non-threatened or non-endangered birds. The results of EPA's analysis indicate that a likely breakeven range is equal to 367,000 to 3.4 million non-threatened or non-endangered birds. While not trivial, the upper bound of this estimate, 3.4 million birds, represents only 5 percent of the estimated fall population of game birds, which embody only a portion of the potentially affected species. Additionally, if as few as one percent of the sinkers removed from the market each year caused waterbird deaths, approximately 4.7 million birds could potentially be saved as a result of the regulation, well in excess of the high end of the estimated breakeven range.

While reductions in risk to human health and endangered species have not been quantified, they cannot be ignored. Because the proposed regulation encompasses home manufacture, human health benefits are expected because exposure to lead fumes and dust during the home manufacturing process are expected to be eliminated. Finally, several endangered species are potentially at risk from smaller lead- and zinc-containing sinkers. The values for these birds have not been accounted for, yet evidence suggests that society does place a high value on endangered species. For instance, in 1991, an estimated $1.37 million was spent on preservation efforts for the Mississippi Sandhill Crane alone. While not necessarily a measure of the social value of individuals of this species, it does suggest that these values are real.

D. Cost-effectiveness

The Agency also compared the costs of various regulatory options relative to the benefits achieved by each option. For this analysis, cost-effectiveness was evaluated as cost per 1,000 "toxic" or lead- and zinc-containing sinkers removed from the market. This type of analysis can be useful in two ways: (1) For regulatory options yielding similar quantified benefits, it can assist EPA in identifying the most cost-effective options, and (2) for regulatory options yielding dissimilar or quantified and non-quantifiable benefits (as in this analysis), it can assist EPA in identifying the incremental increase in cost per unit increase in quantifiable benefits. This analysis shows that a ban solely of split shot would have the lowest cost per 1,000 sinkers avoided. EPA is not proposing a ban on split shot alone because such a ban, on an annual basis, would address only 68 percent of lead sinkers 1 inch or less in size. EPA believes this option would be an inadequate response to the risks posed to waterbirds. The proposed option, however, increases benefits to include 100 percent of fishing sinkers 1 inch or less on an annual basis, at a still reasonable cost. In addition, the proposed option offers benefits to human health which would not accrue under a ban solely on split shot. EPA is not proposing a ban on fishing sinkers over 1 inch in any dimension, or an immediate ban of sinkers, in part, because this analysis showed that the incremental costs were high relative to the benefits achieved.

VI. Other Options Considered

A. Summary

In granting the petition, EPA agreed to examine labeling as one course of action. However, EPA also considered a number of other regulatory options such as: (1) A comprehensive ban on all sizes and types of lead- and zinc-containing fishing sinkers; (2) a geographic ban on lead- and zinc-containing fishing sinkers; (3) a prohibition on the manufacture, processing, and distribution in commerce of lead- and zinc-containing fishing sinkers under 2 inches in size; (4) a prohibition on the manufacture, processing, and distribution in commerce of lead and zinc-containing split shot fishing sinkers; (5) a prohibition or limitation on the amount of lead and zinc allowable in a fishing sinker; and (6) the use of an economic incentive or fee on the sale of lead- and zinc-containing

fishing sinkers. These options are not mutually exclusive, and could be proposed in conjunction with one another. Although EPA did examine a combination of some options (e.g., labeling and ban), the Agency evaluated each individual option's ability to reduce the number of sinkers available for exposure to waterbirds. After consideration of the options and the available information, EPA believes that the proposal to prohibit the manufacture, processing, and distribution in commerce of smaller fishing sinkers that contain lead and zinc is the least burdensome means to adequately address the unreasonable risk of injury posed by fishing sinkers to waterbirds.

B. Labeling

The petitioners' section 21 petition requested that the Agency require a label on lead fishing sinker packaging. However, the petition also stated that depending upon the "efficacy of the action requested of EPA today, it may at some point in the future be necessary for EPA to restrict further the manufacture, distribution, and sale of lead fishing sinkers under TSCA" (Ref. 5).

A proposal to label could include the following: (1) Placing a label or warning notice on lead- and zinc-containing fishing sinker packaging stating that the product is toxic to waterbirds; (2) for sinkers sold in bulk, requiring retailers to post a sign with similar language; and (3) requiring catalogues selling fishing sinkers to contain language regarding the toxicity of the sinkers. This label could be placed on fishing sinkers manufactured and sold for use in the United States, and well as those for export. The goal of such a label would be to modify consumer behavior and cause anglers to purchase less toxic sinkers.

Labels generally provide consumers with information indicating how to use a product safely. However, in this case, labeling would have little effect on the quantity of toxic sinkers lost in the environment, regardless of how careful anglers are. One ingested lead- or zinc-containing sinker can be enough to cause death to a waterbird.

Additionally, labels provide consumers with information regarding the risks associated with the product. The Agency has reviewed studies regarding factors affecting labeling effectiveness and concludes that consumers generally respond more readily to labels which state or suggest that an immediate and significant personal risk is associated with that product (Ref 31). In situations where the product would not pose such a risk (as is the case with anglers purchasing and using fishing sinkers), studies indicate that a label is often less effective in changing consumer response (Ref 31). Therefore, it is questionable whether a label would be effective in causing consumers to purchase other types of fishing sinkers.

EPA examined various rates of consumer response to a labeling provision in order to assess the impacts of such an option. The response rates evaluated include, 0, 5, and 10 percent, where a 0 percent response rate indicates that there would be no change in consumer purchasing behavior. EPA estimates that at a 5 percent response rate, approximately 22 million lead- and zinc-containing sinkers annually would not be purchased, and approximately 45 million sinkers annually would not be purchased at a response rate of 10 percent. In comparison, the proposed option, a ban on the manufacture, processing, and distribution in commerce of lead- and zinc-containing fishing sinkers, would result in removing over 450 million sinkers from the market on an annual basis, preventing them from entering the environment and becoming available for ingestion by waterbirds.

The Agency believes that labeling would not significantly affect the number of toxic sinkers lost in the environment and would only minimally affect consumer purchasing behavior. Therefore, the Agency believes that labeling would not adequately reduce any unreasonable risks of injury to waterbirds.

C. Comprehensive Ban, No Size Limit

This option would prohibit the manufacture, processing, and distribution in commerce of all types and sizes of lead- and zinc-containing fishing sinkers. This would guarantee the future elimination of all sizes and types of these sinkers in the environment. EPA believes this option would be unduly burdensome and would unnecessarily place restrictions on the types of sinkers that are not readily ingested by waterbirds, and, therefore do not pose a significant risk to those species. The Agency believes that there are less costly options which would effectively reduce the number of sinkers available for exposure to waterbirds. Therefore, EPA rejected this option.

D. Geographic Ban

EPA also considered a geographic ban to restrict the sale of lead- and zinc-containing fishing sinkers in certain areas such as those with freshwater habitats (e.g., near lakes, ponds, or rivers), or in habitats of affected species (see Unit III.E.3. of this preamble). The Agency rejected this option because these areas would essentially include the entire United States, and would be very difficult to enforce. In addition, waterbirds are migratory and could easily ingest sinkers in areas where the sale of these fishing sinkers was not prohibited. Anglers are also mobile, and could buy the sinkers in one location, and use them in another area where their sale is prohibited, thus defeating the purpose of the prohibition. For these reasons, EPA rejected this option.

E. Ban on Sinkers 2 Inches or Less in Size

EPA considered prohibiting the manufacture, processing, and distribution in commerce of lead- and zinc-containing fishing sinkers which were 2 inches and less in any dimension. EPA believes 2 inches is a diameter to which larger species, such as sandhill cranes, can expand their esophagus to swallow food or other items. However, after further consideration, although larger birds are physically capable of swallowing sinkers greater than 1 inch, EPA believes that most waterbirds would not likely ingest sinkers of that size. Moreover, the majority of sinkers over 1 inch in any dimension are used for fishing in the ocean, and would not be readily available for exposure to waterbirds. This option is less cost effective than the proposed option in terms of removing lead- and zinc-containing fishing sinkers from the market. This generally occurs because the number of total sinkers between 1 and 2 inches is small compared with the cost of regulating them. For these reasons, EPA rejected regulating sinkers over 1 inch and less than 2 inches in any dimension.

F. Ban on Split Shot Sinkers Only

EPA examined placing restrictions on the type of lead- and zinc-containing fishing sinkers which could be produced or sold. Specifically, EPA considered limiting split shot type sinkers because they constitute a significant market segment of the types of lead- and zinc-containing sinkers currently produced. However, while prohibiting the manufacture, processing, and distribution in commerce of these type sinkers would capture a large portion of sinkers available for exposure, EPA believes that regardless of shape, sinkers 1 inch or less in any dimension pose the same risk to waterbirds. As discussed earlier in this preamble, both split shot and non-split

shot sinkers have been found in waterbirds that have died from lead poisoning. A ban solely on split shot would not adequately reduce the number of sinkers deposited in the environment.

In addition, EPA believes that the majority of the home manufacturers produce non-split shot fishing sinkers. An option to only restrict split shot sinkers would not reduce any human health risks associated with the home manufacture of non-split shot. For these reasons, EPA rejected this option.

G. Regulation of Lead and Zinc Content in Sinkers

EPA also examined regulating lead and zinc content by weight, or by percentage of lead and zinc present in each sinker. A specific weight or percentage limit would not effectively address the low level of lead or zinc which when ingested by waterbirds could result in a lethal dose (parts per million range). It may not be feasible to measure accurately such a small amount of lead or zinc, making it troublesome for industry to comply with the option, and difficult for the government to enforce adequately. EPA has therefore rejected this option.

H. Economic Incentive

The Agency considered placing a fee on the sale of lead- and zinc-containing fishing sinkers. While this option would encourage manufacturers, the cottage industry, or consumers to switch to substitutes, it is difficult to predict the risk reduction that would result from a given fee. In addition, home manufacturers would not be subject to a fee unless they sold the sinkers. As such, the quantity of sinkers manufactured at home would not be expected to decrease as a direct result of the fee (in fact it may increase as consumers attempt to avoid the fee on purchased sinkers) possibly undermining the intended change expected from the fee. For these reasons, EPA rejected this option.

VII. Other Federal Statutes

A. Endangered Species Act

The Endangered Species Act (16 U.S.C. 1531 to 1544) was enacted to protect and preserve plants and animals that have been designated by the Secretary of the Interior as endangered or threatened. The Mississippi sandhill crane is listed as an endangered species under 50 CFR 17.11. EPA has an obligation to conserve the Mississippi sandhill crane, and to consult with the Secretary of the Interior (through the FWS) to insure the action specified in this proposal is not likely to jeopardize the continued existence of the crane, or other endangered species, or result in the destruction or adverse modification of their habitats.

While this proposal is intended to protect and preserve all waterbirds, the Agency is especially concerned about the continued existence of the endangered Mississippi sandhill crane, and potential risk posed to other endangered and threatened species by lead- and zinc-containing fishing sinkers. Other endangered species such as the whooping crane, Aleutian canada goose, peregrine falcon, and possibly the bald eagle could also benefit from this rule as proposed. A prohibition on the manufacture and sale of lead- and zinc-containing fishing sinkers would prevent future exposures and risks to these cranes and other endangered or threatened species. Although there has only been one reported death of a Mississippi sandhill crane due to lead poisoning, possibly from a lead fishing sinker, the Agency is concerned about each individual of an endangered species, and its importance to the continued survival of the species.

EPA has conferred with the FWS during the development of this proposed rule, to receive their input regarding the scientific aspects of this proposal, and to ensure that there is coordination between both agencies.

B. Migratory Bird Treaty Act

In considering this action under TSCA, EPA is also mindful of other statutes intended to protect birds such as the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703). Under the MBTA, it is unlawful to "take" migratory birds whether by killing, possessing, or trading except as permitted by regulations. Section 703 of the MBTA prohibits "by any means or in any manner, to. . .take, capture, kill, attempt to take, capture, or kill. . . migratory birds." The MBTA applies to ingestion of lead by birds as seen by action taken by the FWS to ban the use of lead shot to hunt certain waterfowl species. Numerous migratory waterfowl have died from lead poisoning due to ingestion of spent lead ammunition. Species such as sandhill cranes, and trumpeter, mute, and tundra swans are migratory birds which would be protected under the MBTA.

EPA believes that the MBTA is complimentary to the TSCA in potentially reducing risks to waterbirds. While this rule as proposed would regulate the manufacture, processing, and distribution in commerce of fishing sinkers in the United States, the Department of Interior has the authority to regulate the manner or method of fishing on lands under their control.

C. Other EPA Activities

EPA has been active in protecting migratory birds, and signed a Memorandum of Agreement along with the FWS, U.S. Forest Service, Bureau of Land Management, National Park Service, Department of the Navy, and the Agency for International Development on May 14, 1991, establishing the Neotropical Migratory Bird Conservation Program ("Partners in Flight"). This program, now comprised of many other Federal and State agencies, non-governmental organizations, and academia addresses noted population declines of migratory bird species which nest and breed in North America and winter in Mexico, Central and South America, and the Caribbean. In concert with other "Partners in Flight," EPA plays a major role in maintaining the environmental quality of migratory bird habitats.

VIII. Coordination with Other Federal Agencies

Concurrent with petitioning EPA under section 21 of TSCA, on October 20, 1992, the EDF, North American Loon Fund, Trumpeter Swan Society, and Federation of Fly Fishers also petitioned the Department of Interior (DOI) to utilize its authorities under the Migratory Bird Treaty Act, 16 U.S.C. sections 703–712, the National Wildlife Refuge System Administrator Act, 16 U.S.C. sections 668dd and 668ee, and the National Park Service Act, 16 U.S.C. sections 1–3, to prohibit, by regulation, the use of lead weights for fishing on any National Wildlife Refuge or National Park where the trumpeter swan or common loon breeds or stops over during migration. On June 4, 1993, DOI published a **Federal Register** notice requesting comment on the petition (58 FR 31740). Comments were due by September 2, 1993. It is EPA's understanding that DOI is still developing its response to the petition.

Under section 9 of TSCA, EPA is directed to consider whether the risk to be addressed by regulatory action under TSCA may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by EPA. EPA recognizes that in the area of protection of wildlife, and specifically of waterbirds and other avian species, there are some areas of overlap between the statutory authorities administered by EPA and DOI. However, some activities, the regulation of which could protect wildlife (e.g., regulation of the manufacture, processing, and distribution in commerce of chemical

substances), are clearly within the purview of EPA.

At this point, EPA has preliminarily determined that the potential unreasonable risks to waterbirds would not be sufficiently prevented or reduced through future regulatory initiatives by DOI so as to make regulatory action under TSCA unnecessary. As discussed above, EPA has worked closely in the past with a number of federal agencies, including DOI, to protect migratory birds. EPA has also conferred with the FWS of the DOI to ensure that there is coordination between the two agencies. EPA will continue to confer with and coordinate its activities with DOI in the course of this rulemaking to ensure a unified approach that adequately protects human health and the environment, and avoids unnecessary or duplicative Federal regulation.

IX. Unreasonable Risk

A. Standard

To promulgate a rule under TSCA section 6(a), EPA must find that there is a "reasonable basis to conclude" that activities involving a chemical substance or mixture present or will present "an unreasonable risk of injury to health or the environment." The finding of unreasonable risk is a judgement under which the decision-maker determines that the risk of health or environmental injury from the chemical substance or mixture outweighs the burden to society of potential regulations.

It is important to note that section 6 of TSCA does not require a factual certainty, but only a "reasonable basis to conclude" that a risk is unreasonable. The legislative history of TSCA makes it quite clear that EPA may take regulatory action to prevent harm even though there are uncertainties as to the threshold levels of risk. Congress recognized that in addition to basing its decision on known facts, EPA must, of necessity, often base its action on scientific theories, consideration of projections from available data, modelling using reasonable assumptions, and extrapolations from limited data. (H.R. Rep. No. 1341, 94th Cong., 2d Sess. 32 (1976))

Although TSCA uses unreasonable risk as its basic standard for deciding on appropriate action regarding the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, TSCA does not define the term "unreasonable risk." The only guidance in the statute is provided in section 6(c), which established the requirements that to make an unreasonable risk determination under section 6(a), EPA must consider the following: (1) The effects of the chemical on health and the magnitude of its exposure to humans; (2) the effects of the chemical on the environment and the magnitude of its exposure to the environment; (3) the benefits of the chemical for various uses and the availability of substitutes for such uses; and (4) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

Section 6(c) offers no further guidance to decisionmakers. In particular, it does not discuss how each of these factors are to be weighed in relationship to each other. Consequently, guidance on implementation of the unreasonable risk standard in regulatory decisionmaking requires consideration of the legislative history. The House Report on TSCA (H.R. Rep. No. 1341, 94th Cong., 2d Sess. 13-15 (1976)) provides the most useful pertinent explanation. The House Report describes the finding of unreasonable risk as involving a balancing of the probability that harm will occur, and the magnitude and severity of that harm, against the adverse effects (social and economic) on society of the proposed Agency action to reduce the harm. In other words, unreasonable risk involves a weighing of the risks to be reduced by Agency action and the consequences of the action.

B. Finding

Utilizing this analysis, EPA has evaluated the following elements to make its preliminary "unreasonable risk" finding: (1) Evidence of the toxicity of lead and zinc, (2) effects of lead fishing sinkers on waterbirds, (3) species exposed and adversely affected by lead-containing and potentially affected by zinc-containing fishing sinkers, (4) potential magnitude of exposure to lead- and zinc-containing fishing sinkers, (5) substitutes for lead- and zinc-containing fishing sinkers, and (6) economic impacts of imposing the proposed rule. Each individual element is discussed in detail in Units III. and V. of this preamble.

EPA has weighed the risks of injury to waterbirds from continued use of smaller lead- and zinc-containing fishing sinkers against the costs of eliminating the manufacture, processing, and distribution in commerce of such sinkers. The Agency believes that the benefits of eliminating the effects to waterbirds of ingesting these fishing sinkers outweigh the costs to society of the rule as proposed based on the following:

1. The toxicity associated with lead exposure is well documented. A review of extensive research on the toxicity of lead to waterbirds leads to the conclusion that ingestion of lead fishing sinkers poses a significant hazard to waterbirds. Specifically, common loons, trumpeter swans, mute swans, sandhill cranes, and tundra swans have been demonstrated to ingest lethal amounts of lead, either intentionally, accidently, or incidentally, while feeding in aquatic habitats containing discarded lead sinkers. Research has shown that one small lead fishing sinker is enough to cause mortality in these and other waterbirds. In addition, based on the toxicity of lead and zinc, other lead-containing or zinc-containing fishing sinkers such as brass would also pose a risk to waterbirds.

2. Lead and zinc are persistent in the environment. As more lead- and zinc-containing sinkers are produced and sold, more may enter ecosystems where they can become available to waterbirds.

3. The rule as proposed would create benefits by preventing potential waterbird deaths. It is estimated that the proposed ban would prevent over 450 million lead- and zinc-containing fishing sinkers that have any dimension 1 inch or less from being produced each year, and potentially from entering the environment.

4. Waterbirds have many benefits to society for reasons such as bird watching, photography, biodiversity, part of and essential to the health of the ecosystem, potential future genetic or medical value, contributing to the aesthetic environment for hikers, campers and anglers, and game for hunting. It is clear that significant public and private expenditures are made to protect and enjoy these birds.

5. Although the magnitude of the effect lead fishing sinkers have on waterbird populations is uncertain, it is reasonable to conclude that as more lead fishing sinkers are discarded or lost in the environment and are available for ingestion, further deaths will occur. In the case of endangered species particularly, each individual is valuable and vital to the continuation of the species.

6. Scientific evidence has demonstrated that zinc is also very toxic to waterbirds (exposure to mallards has resulted in their death), aquatic organisms, and mammals. Based on EPA's comparative toxicity analysis, ingestion of zinc-containing fishing sinkers could also cause death in waterbirds.

7. Substitutes for lead- and zinc-containing fishing sinkers are available which perform as well as lead and zinc, albeit at a higher cost. These sinkers can be manufactured using existing technologies.

8. EPA's analysis indicates that the costs of this proposed rulemaking will not result in serious economic consequences for small businesses or the national economy, and would result in minimal economic consequences for anglers. The annual cost of the rule as proposed to the average angler is less than $4.00.

9. A vast number of lead fishing sinkers are made by persons at home. Exposure to lead may cause severe adverse health effects such as brain damage in children, miscarriages, and hypertension. The rule as proposed may assist in preventing exposures which may result from the lead vapors or fumes created when making sinkers, and potential risks to human health.

After examination of these factors, EPA has preliminarily concluded that the continued manufacture, processing, and distribution in commerce of fishing sinkers that contain any lead or zinc, and that have any dimension 1 inch or less, presents or will present an unreasonable risk of injury to waterbirds.

X. Issues for Comment

While EPA solicits comment on all aspects of this proposal, the Agency specifically requests comments on the following issues: (1) The size of fishing sinkers prohibited from being manufactured, processed, and distributed in commerce; (2) whether the prohibitions will create difficulties for manufacturers of other types of fishing sinkers containing small amounts or impurities of lead and zinc; (3) the level at which lead or zinc impurities are present in other type of metals used for fishing sinkers; (4) additional avian or aquatic toxicity information for antimony, brass, tin, copper, bismuth, tungsten, terpene resin, polypropylene, and iron; (5) whether other types of sinkers should be included under the proposed ban; (6) whether the manufacture and sale of lead jigs should be prohibited or limited, and if so, how could the Agency distinguish jigs from other types of lures; (7) whether lead jigs are a likely or suitable substitute for lead fishing sinkers; (8) whether other suitable less toxic substitutes are available; (9) the effective date, or timing of the manufacture, processing, and distribution ban on lead- and zinc-containing fishing sinkers; (10) any further information which indicates that either lead- and zinc-containing fishing sinkers, jigs, lures, or other uses of lead in fishing equipment may be toxic to waterbirds, or other wildlife; (11) studies or any other information regarding the valuation or benefits of waterbirds, other birds, or endangered species (particular avian), or methods to estimate those benefits; (12) comments on the estimates of the cost associated with the proposed rule; (13) whether the proposal would inadvertently lead to greater human exposure due to increased illegal home production of lead fishing sinkers; (14) potential impacts of the proposed rule on small manufactuers and the cottage industry; (15) EPA's definition of fishing sinker; (16) information, studies, or comments on whether consumers' response to labels that do not warn of immediate and significant personal risk is likely to be small or uncertain compared to the response to labels that warn of personal risk; (17) whether warning labels on lead- or zinc-containing fishing sinkers are likely to reduce purchases of such sinkers by 0 to 10 percent; and (18) whether it is desirable or feasible to pursue any of the rejected options versus the one EPA has proposed.

XI. Exports

Section 12(b) of TSCA requires that any person who exports or intends to export a chemical substance or mixture for which a rule has been proposed or promulgated under section 6 of TSCA must notify EPA of such exportation or intent to export. In this proposed rule, EPA is addressing lead- and zinc-containing fishing sinkers. Since such sinkers may consist of lead and zinc in combination with any other material, EPA has concluded that it is proposing to regulate "mixtures" in the rule for purposes of applying section 12(b) export notification requirements. Thus, as a result of this proposed rule, any person who exports or who intends to export any lead- or zinc-containing fishing sinker described in this proposed rule, to a foreign country, would be required under section 12(b) of TSCA to notify EPA of such exportation or intent to export. The export notification requirements are described in 40 CFR part 707.

EPA anticipates that the burden of the export notification requirements will be minimal. Exporters are required only to provide notification the first time they export or intend to export to each country in a calendar year. The notification requirements are set forth in 40 CFR part 707 and consist of the company's name and address, chemical name, TSCA section that triggered the notification (in this case section 6), countries that are the receivers, and the export date or intended export date. As described in Unit V. of this preamble, there is very little export of sinkers.

XII. Recordkeeping

As discussed in Unit XI. of this preamble, TSCA section 12(a) authorizes EPA to impose recordkeeping requirements under TSCA section 8 on a chemical substance, mixture, or article containing a chemical substance or mixture even when it is manufactured, processed, or distributed in commerce and properly marked or labeled as being intended solely for export. Section 12(b) of TSCA permits EPA to require export notification for any substance or mixture regulated or proposed to be regulated under TSCA section 6.

EPA has the authority under section 8(a) of TSCA to require persons to engage in recordkeeping and reporting activities. Section 8(a)(1) of TSCA gives EPA authority to require persons who manufacture or process chemical substances and mixtures to maintain records for manufacturing purposes, including records necessary for effective enforcement of TSCA requirements. Small manufacturers and processors are generally exempt from recordkeeping under section 8(a). However, section 8(a)(3)(A)(ii)(I) provides that, when, as here, the chemical substance or mixture involved is subject of a rule proposed or promulgated under TSCA section 6, small manufacturers and processors also can be required to report and keep records.

Pursuant to these authorities and to ensure compliance with this proposed rule and TSCA section 12(b) export notification requirements, as applicable, and to assist in enforcement efforts, each person who manufactures or processes fishing sinkers that would be subject to the rule, after the effective date of the final rule, would be required to maintain manufacturing and shipment/distribution records for a period of 3 years from the date of manufacture or shipment, such as: (1) The product or brand name; (2) quantity and date of sinkers manufactured, processed, or shipped; (3) name, address, and telephone number of the person who shipped, and who received the sinker shipment; and (4) inventory records of sinkers manufactured or produced.

EPA believes that the recordkeeping requirements will be necessary for effective enforcement of the rule. This would enable EPA to ensure compliance with the rule and conduct inspections effectively. Examination of records would enable EPA to track distribution patterns and would aid in identifying

sites where a potential violation of the final rule may exist.

XIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Use for commercial purposes a chemical substance which such person knew or had reason to know was distributed in commerce in violation of a rule under section 6; (2) fail or refuse to establish and maintain records, submit reports or notices, or permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation of the rule would constitute a separate violation. Knowing or willful violations of the rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation or imprisonment for up to 1 year, or both. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violators of the rule and seizing any chemical substance or mixture manufactured or imported in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false or misleading information or cause it to be reported.

XIV. Business Confidentiality

A person may assert a claim of business confidentiality for any public comments submitted to EPA in connection with the proposed rule. Any person who submits a public comment that contains information claimed as confidential, must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in public comments at the time it is submitted to EPA, the Agency will put the comments in the public docket without further notice to that person.

XV. Hearing Procedures

If persons request time for oral comment, EPA will hold informal hearings in Washington, DC. Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT by [insert date 60 days after date of publication in the Federal Register]. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not file main comments in the rulemaking will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

XVI. Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA has established a record for this rulemaking [docket number OPPTS–62134]. This record includes information considered by the Agency in developing the proposed rule, and will include comments on the proposed rule. A public version of the record which does not include information claimed as confidential business information is available to the public in the Nonconfidential Information Center (NCIC). The NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460, and is open from noon to 4 p.m., Monday through Friday except legal holidays.

XVII. Support Documents

1. Smrchek, Jerry, U.S. EPA Environmental Effects Branch, Office of Pollution Prevention and Toxics. Ecological Hazard and Exposure Assessment of Lead Fishing Weights to Birds, With A Discussion of Possible Substitutes, and Their Effects on Birds and Aquatic Organisms. February 3, 1994.

2. ICF Incorporated. Economic Analysis of Options for Regulating Lead and Other Toxic Fishing Sinkers. Prepared for the Office of Pollution Prevention and Toxics, Economics, Exposure, and Technology Division, Regulatory Impacts Branch. February 6, 1994.

XVIII. References

1. Birkhead, M. 1982. Causes of Mortality in the Mute Swan *Cygnus olor* On the River Thames. Journal of Zoology. London. 198:15-25.

2. Blus, L.J., R.K. Stroud, B. Reiswig, and T. McEneaney. 1989. Lead Poisoning and Other Mortality Factors in Trumpeter Swans. Environmental Toxicology and Chemistry. 8:263-271.

3. Ciba-Geigy Corporation v. United States Environmental Protection Agency. 874 F.2d 277 (5th Cir. 1989).

4. Ensor, K.L., D.D. Helwig, and L.C. Wemmer. 1992. Mercury and Lead in Minnesota Common Loons (Gavia immer). Water Quality Division, Minnesota Pollution Control Agency, St. Paul, Minnesota.

5. Environmental Defense Fund, Federation of Fly Fishers, The Trumpeter Swan Society, and the North American Loon Fund October 20, 1992. Petition to EPA Administrator William K. Reilly pursuant to the Toxic Substances Control Act, and the Administrative Procedure Act.

6. Environmental Defense Fund, Mr. Bruce Manheim. December 10, 1992. Letter to EPA Administrator William K. Reilly.

7. Environmental Defense Fund, Mr. Bruce Manheim and Mr. Michael Bean. January 26, 1993. Letter to EPA Administrator Carol Browner.

8. Environmental Defense Fund, Inc. v. Carol Browner and the Environmental Protection Agency. Amended Complaint for Declaratory and Injunctive Relief filed in United States District Court for the District of Columbia. Civil Action Number 93-0532. May 18, 1993.

9. Environmental Defense Fund, Inc. v. Carol Browner and the Environmental Protection Agency. Joint Motion for Continuance filed in United States District Court for the District of Columbia. Civil Action Number 93-0532. June 22, 1993.

10. Franson, J.C., 1992. Causes of Mortality in Common Loons. Abstract of Presentation at the "Symposium on the Loon and Its Ecosystem: Status, Management, and Environmental Concerns," College of the Atlantic, Maine.

11. Locke, L.N. and L.T. Young. 1973. An Unusual Case of Lead Poisoning in a Whistling Swan. Maryland Birdlife. 29(3):106-107.

12. Locke, L.N., S.M. Kerr, and D. Zoromski. 1981. Lead Poisoning in Common Loons (*Gavia immer*). Avian Diseases. 26(2):392-396.

13. Pokras, M.A., and R., Chafel. 1992. Lead Toxicosis From Ingested Fishing Sinkers in Adult Common Loons (*Gavia immer*) in New England. Journal of Zoo and Wildlife Medicine. 23(1):92-97.

14. Pokras, M.A., Tufts University School of Veterinary Medicine. Personal communication to N. Laurson, EPA, Office of Pollution Prevention and Toxics. Photocopy of Lead Fishing Sinkers Found in Common Loons Which Died of Lead Poisoning. September 2, 1993.

15. Rose Lake Wildlife Research Center. Wildlife Disease Laboratory. Mortality Summary Tables and Necropsy Records for Common Loon and Mute Swan Mortalities in Michigan 1988-1993.

16. Simpson, V. R., A.E. Hunt, and M.C. French. 1979. Chronic Lead Poisoning in a Herd of Mute Swans. Environmental Pollution. 18:187-202.

17. U.S. Department of the Interior, Fish and Wildlife Service, National Wildlife Health Research Center. Summary of Necropsy Records for Common Loons and Trumpeter Swans. April 13, 1993.

18. U.S. Department of the Interior, Fish and Wildlife Service, National Wildlife Health Research Center. Diagnostic Services Case Report Number 10625. April 20, 1992.

19. U.S. Department of the Interior, Fish and Wildlife Service. Endangered Species Technical Bulletin, Vol. 27 Nos. 3–8 1992. p. 16.

20. United States District Court for the District of Columbia. Order Granting Joint Motion for Continuance filed in United States District Court for the District of Columbia. Environmental Defense Fund, Inc. v. Carol Browner and the Environmental Protection Agency. Civil Action Number 93-0532. July 2, 1993.

21. U.S. Environmental Protection Agency. Office of Prevention, Pesticides and Toxic Substances. Letter to Mr. Bruce Manheim and Mr. Michael Bean, Environmental Defense Fund from Deputy Office Director, Office of Pollution Prevention and Toxics. Receipt of Section 21 Petition Regarding Lead Fishing Sinkers. November 23, 1992.

22. U.S. Environmental Protection Agency. Office of Prevention, Pesticides and Toxic Substances. Letter to Mr. Bruce Manheim and Mr. Michael Bean, Environmental Defense Fund from Assistant Administrator for Prevention, Pesticides and Toxic Substances. Response to Section 21 Petition Regarding Lead Fishing Sinkers. January 14, 1993.

23. U.S. Environmental Protection Agency. Office of Prevention, Pesticides and Toxic Substances. Letter to Mr. Bruce Manheim and Mr. Michael Bean, Environmental Defense Fund from Assistant Administrator for Prevention, Pesticides and Toxic Substances. Response to January 26, 1993 Letter Regarding Lead Fishing Sinkers. March 11, 1993.

24. U.S. Environmental Protection Agency. Office of Prevention, Pesticides and Toxic Substances. Letter to Mr. Bruce Manheim and Mr. Michael Bean, Environmental Defense Fund from Assistant Administrator for Prevention, Pesticides and Toxic Substances. Update on Progress in Developing Proposed Rule. May 21, 1993.

25. U.S. Environmental Protection Agency. Office of Prevention, Pesticides and Toxic Substances. Letter to Mr. Bruce Manheim and Mr. Michael Bean, Environmental Defense Fund from Assistant Administrator for Prevention, Pesticides and Toxic Substances. Clarification of May 21, 1993 Letter. June 22, 1993.

26. Windingstad, R.M., S.M. Kerr, L.N. Locke, and J.J. Hurt. 1984. Lead Poisoning of Sandhill Cranes (*Grus canadensis*). Prairie Naturalist. 16(1):21–24.

27. U.S. Environmental Protection Agency. Office of Pesticide Programs. Preliminary Determination to Cancel Registrations of Carbofuran Products, Availability of Technical Support Document and Draft Notice of Intent to Cancel. 54 FR 3744. January 25, 1989.

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29. New York State Department of Environmental Conservation. Wildlife Resources Center. Autopsy Reports. Case Numbers: 31–19, 82–70–8, 86–35–19, 86–26–24, 89–8–16, 89–66–29, 90–09–32, and 90–25–23.

30. Pokras, M.A., and H. Stern. Tufts University School of Veterinary Medicine. Personal communication to N. Laurson, EPA, Office of Pollution Prevention and Toxics. Common Loons found in New England between 1991 and 1993. February 1, 1994.

31. U.S. Consumer Product Safety Commission. Carol Pollack-Nelson. March 1991. Estimated Effectiveness of Warning Labels.

XIX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

This proposed rule was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), EPA is required to make a statement concerning the economic impact of this proposed rule on small businesses. This proposed rule, if promulgated, will have a significant economic impact on a number of small entities. A substantial number of small business entities will be affected by the proposed action such as the cottage industry.

The analysis indicates that the manufacturers of lead, zinc, and brass sinkers all fall under the Small Business Administration's definition of a small business. However, the analysis identified three distinct subgroups of these manufacturers, "large" manufacturers with significant capital, "small" manufactures which are often one or two person operations, and home

manufacturers. The impacts on these segments were examined separately.

Large manufacturers are able to respond to the regulatory requirements and switch to alternative processes and/or materials and remain viable. While home manufacturers are unable to easily switch to alternatives, they would not be adversely impacted because retail sale of sinkers is not considered to be a primary source of income for these individuals. While small manufacturers may be adversely impacted, regulatory alternatives which may reduce the burden to these manufacturers could create unfair market advantages for them and their actions could continue to pose an unreasonable risk to the environment. An exemption for certain non-split shot sinkers would serve to reduce the burden on only some of the disproportionately impacted small businesses but not others. To conclude, it is difficult to devise a regulatory alternative which reduces the burden to this segment of the industry without compromising the intent of the regulation.

The selected regulatory option would impose recordkeeping requirements on industry; however, the overall impact of these requirements is expected to be minimal. The estimated maximum cost to industry is $16,450 annually, or approximately .2 percent of the annual cost of the regulation overall.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, et seq.), the information collection requirements in this proposed rule have been submitted to the OMB for approval. An Information Collection Request (ICR) has been prepared by EPA (identified as ICR Number 1671.01), and a copy may be obtained from Sandy Farmer (2136), Information Policy Branch, EPA, 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information has an estimated annual recordkeeping burden of 54 hours per respondent. This estimate includes time for gathering and maintaining information needed.

EPA believes that the proposed rule provisions regarding maintenance of information poses a minimal burden. Manufacturers and processors of lead- and zinc-containing fishing sinkers for export would be required to keep records which establish the sale and/or transfer of fishing sinkers that would be banned for domestic consumption under this proposal. The type of information required should already be maintained as normal business records, and readily available. Therefore the information collection provision of this proposed rule would not impose a significant burden on the regulated entities.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), EPA, 401 M St., SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 745 be amended to read as follows:

1. The authority citation for part 745 would be revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2681–2692.

2. Subparts F–Q are reserved and subpart R is added consisting of § 745.475 to read as follows:

Subparts F–Q—[Reserved]

Subpart R—Requirements for Specific Products Containing Lead

§ 745.475 Lead- and zinc-containing products.

(a) *Scope, purpose, and applicability.* (1) Scope. This subpart contains restrictions on the manufacture (including import), processing, and distribution in commerce of certain types of lead- and zinc-containing fishing sinkers. This subpart imposes requirements on persons who manufacture, process, or distribute fishing sinkers in commerce for use in the United States that contain any lead or zinc in combination with any other chemical substance, and are less than or equal to 1 inch in any dimension.

(2) Purpose. The purpose of this subpart is to protect waterbirds from unreasonable risk from ingestion of lead- and zinc-containing fishing sinkers.

(3) Applicability. This subpart applies to any person engaged in the manufacture, processing, or distribution in commerce of lead- and zinc-containing fishing sinkers, as defined in this subpart. Any person who manufactures or processes any such lead- or zinc-containing fishing sinker for export or intends to export any such fishing sinker to a foreign country will be subject to the export notification requirements of section 12(b) of TSCA. The notification requirements are set forth in 40 CFR part 707.

(b) *Definitions.* In addition to the terms defined in section 3 of TSCA, the following definition also applies for the purposes of this subpart:

(1) *Fishing sinker* means a weight which can be attached to a fishing line, not permanently affixed to a hook. This includes, but is not limited to split shot, worm weights, egg sinkers, bass casting, pyramid sinkers, rubber core sinkers, pinch grip sinkers, and slip shot sinkers.

(2) [Reserved]

(c) *Manufacturing and processing limitations.* Effective [insert date 1 year after promulgation of the final rule], all persons are prohibited from manufacturing or processing any fishing sinker for use in the United States which contains any lead or zinc, and is less than or equal to 1 inch in any dimension.

(d) *Distribution in commerce limitations.* Effective [insert date 2 years after promulgation of the final rule], all persons are prohibited from distributing in commerce any fishing sinker for use in the United States which contains any lead or zinc, and is less than or equal to 1 inch in any dimension.

(e) *Recordkeeping.* (1) Each person who manufactures or processes lead- and zinc-containing fishing sinkers less than or equal to 1 inch in any dimension for export shall maintain the following records: (i) Product name and/or brand name of such fishing sinkers manufactured or processed; (ii) location of where such fishing sinkers were manufactured or processed; (iii) quantity and date of such fishing sinkers manufactured or processed; (iv) product name and/or brand name of such fishing sinkers distributed (shipped); (v) quantities of such fishing sinkers shipped or delivered for shipment; (vi) date such fishing sinkers shipped or delivered for shipment; (vii) name, address, and telephone number of consignee; (viii) name, address, and telephone number of originating shipment carrier; and (ix) inventory records of the product and/or brand names, and quantity of such fishing sinkers manufactured or processed (these records may be disposed of when a more current inventory record is prepared by the manufacturer or processor). This information must be retained for a period of 3 years from the date of manufacture, processing or distribution in commerce. Shipping and receiving documents such as invoices,

freight bills, and receiving tickets which provide the required information will be considered satisfactory for purposes of this section.

(2) [Reserved]

(f) *Enforcement.* (1) Failure or refusal to comply with any provision of this section is a violation of section 15 of TSCA (15 U.S.C. 2614).

(2) Failure or refusal to permit entry or inspection as required by section 11 of TSCA (15 U.S.C. 2610) is a violation of section 15 of TSCA (15 U.S.C. 2614).

(3) Violators are subject to the civil and criminal penalties specified in section 16 of TSCA (15 U.S.C. 2615), or specific enforcement and seizure as specified in section 17 of TSCA (15 U.S.C. 2616).

(g) *Inspections.* EPA will conduct inspections under section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this section.

[FR Doc. 94–5298 Filed 3–8–94; 8:45 am]

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Wednesday
March 9, 1994

Part IV

Department of Health and Human Services

National Institutes of Health

NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

RIN 0905–ZA18

NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is establishing guidelines on the inclusion of women and minorities and their subpopulations in research involving human subjects, including clinical trials, supported by the NIH, as required in the NIH Revitalization Act of 1993.

EFFECTIVE DATE: March 9, 1994.

ADDRESSES: Although these guidelines are effective on the date of publication, written comments can be sent to either the Office of Research on Women's Health, National Institutes of Health, Building 1, room 203, Bethesda, MD 20892, or to the Office of Research on Minority Health, National Institutes of Health, Building 1, room 255, Bethesda, MD 20892. During the first year of implementation, NIH will receive the comments and experience with the guidelines in order to determine whether modifications to the guidelines are warranted.

FOR FURTHER INFORMATION CONTACT: Programmatic inquiries should be directed to senior extramural staff of the relevant NIH Institute or Center named at the end of this notice.

SUPPLEMENTARY INFORMATION: NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research.

I. Introduction

This document sets forth guidelines on the inclusion of women and members of minority groups and their subpopulations in clinical research, including clinical trials, supported by the National Institutes of Health (NIH). For the purposes of this document, clinical research is defined as NIH-supported biomedical and behavioral research involving human subjects. These guidelines, implemented in accordance with section 492B of the Public Health Service Act, added by the NIH Revitalization Act of 1993, Public Law. (Pub.L.) 103–43, supersede and strengthen the previous policies, NIH/ADAMHA Policy Concerning the Inclusion of Women in Study Populations, and ADAMHA/NIH Policy Concerning the Inclusion of Minorities in Study Populations, published in the NIH GUIDE FOR GRANTS AND CONTRACTS, 1990.

The 1993 guidelines continue the 1990 guidelines with three major additions. The new policy requires that, in addition to the continuing inclusion of women and members of minority groups in all NIH-supported biomedical and behavioral research involving human subjects, the NIH must:

- Ensure that women and members of minorities and their subpopulations are included in all human subject research.
- For Phase III clinical trials, ensure that women and minorities and their subpopulations must be included such that valid analyses of differences in intervention effect can be accomplished;
- Not allow cost as an acceptable reason for excluding these groups; and,
- Initiate programs and support for outreach efforts to recruit these groups into clinical studies.

Since a primary aim of research is to provide scientific evidence leading to a change in health policy or a standard of care, it is imperative to determine whether the intervention or therapy being studied affects women or men or members of minority groups and their subpopulations differently. To this end, the guidelines published here are intended to ensure that all future NIH-supported biomedical and behavioral research involving human subjects will be carried out in a manner sufficient to elicit information about individuals of both genders and the diverse racial and ethnic groups and, in the case of clinical trials, to examine differential effects on such groups. Increased attention, therefore, must be given to gender, race, and ethnicity in earlier stages of research to allow for informed decisions at the Phase III clinical trial stage.

These guidelines reaffirm NIH's commitment to the fundamental principles of inclusion of women and racial and ethnic minority groups and their subpopulations in research. This policy should result in a variety of new research opportunities to address significant gaps in knowledge about health problems that affect women and racial/ethnic minorities and their subpopulations.

The NIH recognizes that issues will arise with the implementation of these guidelines and thus welcomes comments. During the first year of implementation, NIH will review the comments, and consider modifications, within the scope of the statute, to the guidelines.

II. Background

The NIH Revitalization Act of 1993, PL 103–43, signed by President Clinton on June 10, 1993, directs the NIH to establish guidelines for inclusion of women and minorities in clinical research. This guidance shall include guidelines regarding—

(A) the circumstances under which the inclusion of women and minorities as subjects in projects of clinical research is inappropriate * * *;

(B) the manner in which clinical trials are required to be designed and carried out * * *; and

(C) the operation of outreach programs * * * 492B(d)(1)

The statute states that

In conducting or supporting clinical research for the purposes of this title, the Director of NIH shall * * * ensure that—

A. women are included as subjects in each project of such research; and

B. members of minority groups are included in such research. 492B(a)(1)

The statute further defines "clinical research" to include "clinical trials" and states that

In the case of any clinical trial in which women or members of minority groups will be included as subjects, the Director of NIH shall ensure that the trial is designed and carried out in a manner sufficient to provide for valid analysis of whether the variables being studied in the trial after women or members of minority groups, as the case may be, differently than other subjects in the trial. 492B(C)

Specifically addressing the issue of minority groups, the statute states that

The term "minority group" includes subpopulations of minority groups. The Director of NIH shall, through the guidelines established * * * defines the terms "minority group" and "subpopulation" for the purposes of the preceding sentence. 492B(g)(2)

The statute speaks specifically to outreach and states that

The Director of NIH, in consultation with the Director of the Office of Research of Women's Health and the Director of the Office of Research on Minority Health, shall conduct or support outreach programs for the recruitment of women and members of minority groups as subjects in the projects of clinical research. 492B(a)(2)

The statute includes a specific provision pertaining to the cost of clinical research and, in particular clinical trials.

(A)(i) In the case of a clinical trial, the guidelines shall provide that the costs of such inclusion in the trial is (sic) not a permissible consideration in determining whether such inclusion is inappropriate. 492B(d)(2)

(ii) In the case of other projects of clinical research, the guidelines shall provide that the

costs of such inclusion in the project is (sic) not a permissible consideration in determining whether such inclusion is inappropriate unless the data regarding women or members of minority groups, respectively, that would be obtained in such project (in the event that such inclusion were required) have been or are being obtained through other means that provide data of comparable quality. 492B(d)(2)

Exclusions to the requirement for inclusion of women and minorities are stated in the statute, as follows:

The requirements established regarding women and members of minority groups shall not apply to the project of clinical research if the conclusion, as subjects in the project, of women and members of minority groups, respectivaly—

(1) Is inappropriate with respect to the health of the subjects;

(2) Is inappropriate with respect to the purpose of the research; or

(3) Is inappropriate under such other circumstances as the Director of NIH may designate. 492B(b)

(B) In the case of a clinical trial, the guidelines may provide that such inclusion in the trial is not required if there is substantial scientific data demonstrating that there is no significant difference between—

(i) The effects that the variables to be studied in the trial have on a woman or members of minority groups, respectively; and

(ii) The effects that variables have on the individuals who would serve as subjects in the trial in the event that such inclusion were not required. 492B(d)(2)

III. Policy

A. Research Involving Human Subjects

It is the policy of NIH that women and members of minority groups and their subpopulations must be included in all NIH-supported biomedical and behavioral research projects involving human subjects, unless a clear and compelling rationale and justification establishes to the satisfaction of the relevant Institute/Center Director that inclusion is inappropriate with respect to the health of the subjects or the purpose of the research. Exclusion under other circumstances may be made by the Director, NIH, upon the recommendation of a Institute/Center Director based on a compelling rationale and justification. Cost is not an acceptable reason for exclusion except when the study would duplicate date from other sources. Women of childbearing potential should not be routinely included from participation in clinical research involving human subjects is defined as clinical research. This policy applies to research subjects of all ages.

The inclusion of women and members of minority groups and their subpopulations must be addressed in developing a research design appropriate to the scientific objectives of the study. The research plan should describe the composition of the proposed study population in terms of gender and racial/ethnic group, and provide a rationale for selection of such subjects. Such a plan should contain a description of the proposed outreach programs for recruiting women and minorities as participants.

B. Clinical Trials

Under the statute, when a Phase III clinical trial (see Definitions, Section V–A) is proposed, evidence must be reviewed to show whether or not clinically important gender or race/ethnicity differences in the intervention effect are to be expected. This evidence may include, but is not limited to, data derived from prior animal studies, clinical observations, metabolic studies, genetic studies, pharmacology studies, and observational, natural history, epidemiology and other relevant studies.

As such, investigators must consider the following when planning a Phase III clinical trial for NIH support.

- If the data from prior studies strongly indicate the existence of significant differences of clinical or public health importance in intervention effect amount subgroups (gender and/or racial/ethnic subgroups), the primary question(s) to be addressed by the proposed Phase III trial and the design of that trial must specifically accommodate this. For example, if men and women are thought to respond differently to an intervention, then the Phase III trial must be designed to answer two separate primary questions, one for men and the other for women, with adequate sample size for each.
- If the data from prior studies strongly support no significant differences of clinical or public health importance in intervention effect between subgroups, then gender or race/ethnicity will not be required as subject selection criteria. However, the inclusion of gender or racial/ethnic subgroups is still strongly encouraged.
- If the data from prior studies neither support strongly nor negate strongly the existence of significant differences of clinical or public health importance in intervention effect between subgroups, then the Phase III trial will be required to include sufficient and appropriate entry of gender and racial/ethnic subgroups, so that valid analysis of the intervention effect in subgroups can be performed. However, the trial will not be required to provide high statistical power for each subgroup.

Cost is not an acceptable reason for exclusion of women and minorities from clinical trials.

C. Funding

NIH funding components will not award any grant, cooperative agreement or contract or support any intramural project to be conducted or funded in Fiscal Year 1995 and thereafter which does not comply with this policy. For research awards that are covered by this policy, awardees will report annually on enrollment of women and men, and on the race and ethnicity of research participants.

IV. Implementation

A. Date of Implementation

This policy applies to all applications/proposals and intramural projects to be submitted on and after June 1, 1994 (the date of full implementation) seeking Fiscal Year 1995 support. Projects funded prior to June 10, 1993, must still comply with the 1990 policy and report annually on enrollment of subjects using gender and racial/ethnic categories as required in the Application for Continuation of a Public Health Service Grant (PHS Form 2590), in contracts and in intramural projects.

B. Transition Policy

NIH-supported biomedical and behavioral research projects involving human subjects, with the exception of Phase III clinical trial projects as discussed below, that are awarded between June 10, 1993, the date of enactment, and September 30, 1994, the end of Fiscal Year 1994, shall be subject to the requirements of the 1990 policy and the annual reporting requirements on enrollment using gender and racial/ethnic categories.

For all Phase III clinical trial projects proposed between June 10, 1993 and June 1, 1994, and those awarded between June 10, 1993 and September 30, 1994, Institute/Center staff will examine the applications/proposals, pending awards, awards and intramural projects to determine if the study was developed in a manner consistent with the new guidelines. If it is deemed inconsistent, NIH staff will contact investigators to discuss approaches to accommodate the new policy. Administrative actions may be needed to accommodate or revise the pending trials. Institutes/Centers may need to consider initiating a complementary activity to address any gender or minority representation concerns.

The NIH Director will determine whether the Phase III clinical trial being

considered during this transition is in compliance with this policy, whether acceptable modifications have been made, or whether the Institute/Center will initiate a complementary activity that addresses the gender or minority representation concerns. Pending awards will not be funded without this determination.

Solicitations issued by the NIH planned for release after the date of publication of the guidelines in the **Federal Register** will include the new requirements.

C. Roles and Responsibilities

While this policy applies to all applicants for NIH-supported biomedical and behavioral research involving human subjects, certain individuals and groups have special roles and responsibilities with regard to the adoption and implementation of these guidelines.

The NIH staff will provide educational opportunities for the extramural and interamural community concerning this policy; monitor its implementation during the development, review, award and conduct of research; and manage the NIH research portfolio to address the policy.

1. Principal Investigators

Principal investigators should assess the theoretical and/or scientific linkages between gender, race/ethnicity, and their topic of study. Following this assessment, the principal investigator and the applicant institution will address the policy in each application and proposal, providing the required information on inclusion of women and minorities and their subpopulations in research projects, and any required justifications for exceptions to the policy. Depending on the purpose of the study, NIH recognizes that a single study may not include all minority groups.

2. Institutional Review Boards (IRBs)

As the IRBs implement the guidelines, described herein, for the inclusion of women and minorities and their subpopulations, they must also implement the regulations for the protection of human subjects as described in title 45 CFR part 46, "Protection of Human Subjects." They should take into account the Food and Drug Administration's "Guidelines for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs," Vol. 58 **Federal Register** 39406.

3. Peer Review Groups

In conducting peer review for scientific and technical merit, appropriately constituted initial review groups (including study sections), technical evaluation groups, and intramural review panels will be instructed, as follows:

- To evaluate the proposed plan for the inclusion of minorities and both genders for appropriate representation or to evaluate the proposed justification when representation is limited or absent,
- To evaluate the proposed exclusion of minorities and women on the basis that a requirement for inclusion is inappropriate with respect to the health of the subjects,
- To evaluate the proposed exclusion of minorities and women on the basis that a requirement for inclusion is inappropriate with respect to the purpose of the research,
- To determine whether the design of clinical trials is adequate to measure differences when warranted,
- To evaluate the plans for recruitment/outreach for study, participants, and
- To include these criteria as part of the scientific assessment and assigned score.

4. NIH Advisory Councils

In addition to its current responsibilities for review of projects where the peer review groups have raised questions about the appropriate inclusion of women and minorities, the Advisory Council/Board of each Institute/Center shall prepare biennial reports, for inclusion in the overall NIH Director's biennial report, describing the manner in which the Institute/Center has complied with the provisions of the statute.

5. Institute/Center Directors

Institute/Center Directors and their staff shall determine whether: (a) The research involving human subjects, (b) the Phase III clinical trials, and (c) the exclusions meet the requirements of the statute and these guidelines.

6. NIH Director

The NIH Director may approve, on a case-by-case basis, the exclusion of projects, as recommended by the Institute/Center Director, that may be inappropriate to include within the requirements of these guidelines on the basis of circumstances other than the health of the subjects, the purpose of the research, or costs.

7. Recruitment Outreach by Extramural and Intramural Investigators

Investigators and their staff(s) are urged to develop appropriate and culturally sensitive outreach programs and activities commensurate with the goals of the study. The objective should be to actively recruit the most diverse study population consistent with the purposes of the research project. Indeed, the purpose should be to establish a relationship between the investigator(s) and staff(s) and populations and community(ies) of interest such that mutual benefit is derived for participants in the study. Investigator(s) and staff(s) should take precautionary measures to ensure that ethical concerns are clearly noted, such that there is minimal possibility of coercion or undue influence in the incentives or rewards offered in recruiting into or retaining participants in studies. It is also the responsibility of the IRBs to address these ethical concerns.

Furthermore, while the statute focuses on recruitment outreach, NIH staff underscore the need to appropriately retain participants in clinical studies, and thus, the outreach programs and activities should address both recruitment and retention.

To assist investigators and potential study participants, NIH staff have prepared a notebook, "NIH Outreach Notebook On the Inclusion of Women and Minorities in Biomedical and Behavioral Research." The notebook addresses both recruitment and retention of women and minorities in clinical studies, provides relevant references and case studies, and discusses ethical issues. It is not intended as a definitive text on this subject, but should assist investigators in their consideration of an appropriate plan for recruiting and retaining participants in clinical studies. The notebook is expected to be available early in 1994.

8. Educational Outreach by NIH to Inform the Professional Community

NIH staff will present the new guidelines to investigators, IRB members, peer review groups, and Advisory Councils in a variety of public educational forums.

9. Applicability to Foreign Research Involving Human Subjects

For foreign awards, the NIH policy on inclusion of women in research conducted outside the U.S. is the same as that for research conducted in the U.S.

However, with regard to the population of the foreign country, the

definition of the minority groups may be different than in the U.S. If there is scientific rationale for examining subpopulation group differences within the foreign population, investigators should consider designing their studies to accommodate these differences.

V. Definitions

Throughout the section of the statute pertaining to the inclusion of women and minorities, terms are used which require definition for the purpose of implementing these guidelines. These terms, drawn directly from the statute, are defined below.

A. Clinical Trial

For the purpose of these guidelines, a "clinical trial" is a broadly based prospective Phase III clinical investigation, usually involving several hundred or more human subjects, for the purpose of evaluating an experimental intervention in comparison with a standard or control intervention or comparing two or more existing treatments. Often the aim of such investigation is to provide evidence leading to a scientific basis for consideration of a change in health policy or standard of care. The definition includes pharmacologic, non-pharmacologic, and behavioral interventions given for disease prevention, prophylaxis, diagnosis, or therapy. Community trials and other population-based intervention trials are also included.

B. Research Involving Human Subjects

All NIH-supported biomedical and behavioral research involving human subjects is defined as clinical research under this policy. Under this policy, the definition of human subjects in title 45 CFR part 46, the Department of Health and Human Services regulations for the protection of human subjects applies: "Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains: (1) Data through intervention or interaction with the individual, or (2) identifiable private information." These regulations specifically address the protection of human subjects from research risks. It should be noted that there are research areas (Exemptions 1–6) that are exempt from these regulations. However, under these guidelines, NIH-supported biomedical and behavioral research projects involving human subjects which are exempt from the human subjects regulations should still address the inclusion of women and minorities in their study design. Therefore, all biomedical and behavioral research projects involving human subjects will be evaluated for compliance with this policy.

C. Valid Analysis

The term "valid analysis" means an unbiased assessment. Such an assessment will, on average, yield the correct estimate of the difference in outcomes between two groups of subjects. Valid analysis can and should be conducted for both small and large studies. A valid analysis does not need to have a high statistical power for detecting a stated effect. The principal requirements for ensuring a valid analysis of the question of interest are:

- Allocation of study participants of both genders and from different racial/ethnic groups to the intervention and control groups by an unbiased process such as randomization,
- Unbiased evaluation of the outcome(s) of study participants, and
- Use of unbiased statistical analyses and proper methods of inference to estimate and compare the intervention effects among the gender and racial/ethnic groups.

D. Significant Difference

For purposes of this policy, a "significant difference" is a difference that is of clinical or public health importance, based on substantial scientific data. This definition differs from the commonly used "statistically significant difference," which refers to the event that, for a given set of data, the statistical test for a difference between the effects in two groups achieves statistical significance. Statistical significance depends upon the amount of information in the data set. With a very large amount of information, one could find a statistically significant, but clinically small difference that is of very little clinical importance. Conversely, with less information one could find a large difference of potential importance that is not statistically significant.

E. Racial and Ethnic Categories

1. Minority Groups

A minority group is a readily identifiable subset of the U.S. population which is distinguished by either racial, ethnic, and/or cultural heritage.

The Office of Management and Budget (OMB) Directive No. 15 defines the minimum standard of basic racial and ethnic categories, which are used below. NIH has chosen to continue the use of these definitions because they allow comparisons to many national data bases, especially national health data bases. Therefore, the racial and ethnic categories described below should be used as basic guidance, cognizant of the distinction based on cultural heritage.

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

Black, not of Hispanic Origin: A person having origins in any of the black racial groups of Africa.

Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

2. Majority Group

White, not of Hispanic Origin: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

NIH recognizes the diversity of the U.S. population and that changing demographics are reflected in the changing racial and ethnic composition of the population. The terms "minority groups" and "minority subpopulations" are meant to be inclusive, rather than exclusive, of differing racial and ethnic categories.

3. Subpopulations

Each minority group contains subpopulations which are delimited by geographic origins, national origins and/or cultural differences. It is recognized that there are different ways of defining and reporting racial and ethnic subpopulation data. The subpopulation to which an individual is assigned depends on self-reporting of specific racial and ethnic origin. Attention to subpopulations also applies to individuals of mixed racial and/or ethnic parentage. Researchers should be cognizant of the possibility that these racial/ethnic combinations may have biomedical and/or cultural implications related to the scientific question under study.

F. Outreach Strategies

These are outreach efforts by investigators and their staff(s) to appropriately recruit and retain populations of interest into research studies. Such efforts should represent a thoughtful and culturally sensitive plan of outreach and generally include involvement of other individuals and organizations relevant to the

populations and communities of interest, e.g., family, religious organizations, community leaders and informal gatekeepers, and public and private institutions and organizations. The objective is to establish appropriate lines of communication and cooperation to build mutual trust and cooperation such that both the study and the participants benefit from such collaboration.

G. Research Portfolio

Each Institute and Center at the NIH has its own research portfolio, i.e., its "holdings" in research grants, cooperative agreements, contracts and intramural studies. The Institute or Center evaluates the research awards in its portfolio to identify those areas where there are knowledge gaps or which need special attention to advance the science involved. NIH may consider funding projects to achieve a research portfolio reflecting diverse study populations. With the implementation of this new policy, there will be a need to ensure that sufficient resources are provided within a program to allow for data to be developed for a smooth transition from basic research to Phase III clinical trials that meet the policy requirements.

VI. Discussion—Issues in Scientific Plans and Study Designs

A. Issues in Research Involving Human Subjects

The biomedical and behavioral research process can be viewed as a stepwise process progressing from discovery of new knowledge through research in the laboratory, research involving animals, research involving human subjects, validation of interventions through clinical trials, and broad application to improve the health of the public.

All NIH-supported biomedical and behavioral research involving human subjects is defined broadly in this guidance as clinical research. This is broader than the definition provided in the 1990 NIH Guidance and in many program announcements, requests for applications, and requests for proposals since 1990.

The definition was broadened because of the need to obtain data about minorities and both genders early in the research process when hypotheses are being formulated, baseline data are being collected, and various measurement instruments and intervention strategies are being developed. Broad inclusion at these early stages of research provides valuable information for designing broadly based clinical trials, which are a subset of studies under the broad category of research studies.

The policy on inclusion of minorities and both genders applies to all NIH-supported biomedical and behavioral research involving human subjects so that the maximum information may be obtained to understand the implications of the research findings on the gender or minority group.

Investigators should consider the types of information concerning gender and minority groups which will be required when designing future Phase III clinical trials, and try to obtain it in their earlier stages of research involving human subjects. NIH recognizes that the understanding of health problems and conditions of different U.S. populations may require attention to socioeconomic differences involving occupation, education, and income gradients.

B. Issues in Clinical Trials

The statute requires appropriate representation of subjects of different gender and race/ethnicity in clinical trials so as to provide the opportunity for detecting major qualitative differences (if they exist) among gender and racial/ethnic subgroups and to identify more subtle differences that might, if warranted, be explored in further specifically targeted studies. Other interpretations may not serve as well the health needs of women, minorities, and all other constituencies.

Preparatory to any Phase III clinical trial, certain data are typically obtained. Such data are necessary for the design of an appropriate Phase III trial and include observational clinical study data, basic laboratory (i.e. *in vitro* and animal) data, and clinical, physiologic, pharmacokinetic, or biochemical data from Phase I and Phase II studies. Genetic studies, behavioral studies, and observational, natural history, and epidemiological studies may also contribute data.

It is essential that data be reviewed from prior studies on a diverse population, that is, in subjects of both genders and from different racial/ethnic groups. These data must be examined to determine if there are significant differences of clinical or public health importance observed between the subgroups.

While data from prior studies relating to possible differences among intervention effects in different subgroups must be reviewed, evidence of this nature is likely to be less convincing than that deriving from the subgroup analyses that can be performed in usual-sized Phase III trials. This is because the evidence from preliminary studies is likely to be of a more indirect nature (e.g. based on surrogate endpoints), deriving from uncontrolled studies (e.g. non-randomized Phase II trials), and based on smaller numbers of subjects than in Phase III secondary analyses. For this reason, it is likely that data from preliminary studies will, in the majority of cases, neither clearly reveal significant differences of clinical or public health importance between subgroups of patients, nor strongly negate them.

In these cases, Phase III trials should still have appropriate gender and racial/ethnic representation, but they would not need to have the large sample sizes necessary to provide a high statistical power for detecting differences in intervention effects among subgroups. Nevertheless, analyses of subgroup effects must be conducted and comparisons between the subgroups must be made. Depending on the results of these analyses, the results of other relevant research, and the results of meta-analyses of clinical trials, one might initiate subsequent trials to examine more fully these subgroup differences.

C. Issues Concerning Appropriate Gender Representation

The "population at risk" may refer to only one gender where the disease, disorders, or conditions are gender specific. In all other cases, there should be approximately equal numbers of both sexes in studies of populations or subpopulations at risk, unless different proportions are appropriate because of the known prevalance, incidence, morbidity, mortality rates, or expected intervention effect.

D. Issues Concerning Appropriate Representation of Minority Groups and Subpopulations in All Research Involving Human Subjects Including Phase III Clinical Trials

While the inclusion of minority subpopulations in research is a complex and challenging issue, it nonetheless provides the opportunity for researchers to collect data on subpopulations where knowledge gaps exist. Researchers must consider the inclusion of subpopulations in all stages of research design. In meeting this objective, they should be aware of concurrent research that addresses specific subpopulations, and consider potential collaborations which may result in complementary subpopulation data.

At the present time, there are gaps in baseline and other types of data necessary for research involving certain minority groups and/or subpopulations

of minority groups. In these areas, it would be appropriate for researchers to obtain such data, including baseline data, by studying a single minority group.

It would also be appropriate for researchers to test survey instruments, recruitment procedures, and other methodologies used in the majority or other population(s) with the objective of assessing their feasibility, applicability, and cultural competence/relevance to a particular minority group or subpopulation. This testing may provide data on the validity of the methodologies across groups. Likewise, if an intervention has been tried in the majority population and not in certain minority groups, it would be appropriate to assess the intervention effect on a single minority group and compare the effect to that obtained in the majority population. These types of studies will advance scientific research and assist in closing knowledge gaps.

A complex issue arises over how broad or narrow the division into different subgroups should be, given the purpose of the research. Division into many racial/ethnic subgroups is tempting in view of the cultural and biological differences that exist among these groups and the possibility that some of these differences may in fact impact in some way upon the scientific question. Alternatively, from a practical perspective, a limit has to be placed on the number of such subgroups that can realistically be studied in detail for each intervention that is researched. The investigator should clearly address the rationale for inclusion or exclusion of subgroups in terms of the purpose of the research. Emphasis should be placed upon inclusion of subpopulations in which the disease manifests itself or the intervention operates in an appreciable different way. Investigators should report the subpopulations included in the study.

An important issue is the appropriate representation of minority groups in research, especially in geographical locations which may have limited numbers of racial/ethnic population groups available for study. The investigator must address this issue in terms of the purpose of the research, and other factors, such as the size of the study, relevant characteristics of the disease, disorder or condition, and the feasibility of making a collaboration or consortium or other arrangements to include minority groups. A justification is required if there is limited representation. Peer reviewers and NIH staff will consider the justification in their evaluations of the project.

NIH interprets the statute in a manner that leads to feasible and real improvements in the representatives of different racial/ethnic groups in research and places emphasis on research in those subpopulations that are disproportionately affected by certain diseases or disorders.

VII. NIH Contacts for More Information

The following senior extramural staff from the NIH Institutes and Centers may be contacted for further information about the policy and relevant Institute/Center programs:

Dr. Marvin Kalt, National Cancer Institute, 6130 Executive Boulevard, Executive Plaza North, room 600A, Bethesda, Maryland 20892, Tel: (301) 496–5147.

Dr. Richard Mowery, National Eye Institute, 6120 Executive Boulevard, Executive Plaza South, room 350, Rockville, Maryland 20892, Tel: (301) 496–5301.

Dr. Lawrence Friedman, National Heart, Lung and Blood Institute, 7550 Wisconsin Avenue, Federal Building, room 212, Bethesda, Maryland 20892, Tel: (301) 496–2533.

Dr. Miriam Kelty, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, room 2C218, Bethesda, Maryland 20892, Tel: (301) 496–9322.

Dr. Cherry Lowman, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Boulevard, Rockville, Maryland 20892, Tel: (301) 443–0796.

Dr. George Counts, National Institute of Allergy and Infectious Diseases, 6003 Executive Boulevard, Solar Building, room 207P, Bethesda, Maryland 20892, Tel: (301) 496–8214.

Dr. Michael Lockshin, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 9000 Rockville Pike, Building 31, room 4C32, Bethesda, Maryland 20892, Tel: (301) 496–0802.

Ms. Hildegard Topper, Bethesda, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, room 2A–03, Bethesda, Maryland 20892, Tel: (301) 496–0104.

Dr. Earleen Elkins, National Institute of Deafness and Other Communication Disorders, 6120 Executive Boulevard, Executive Plaza South, room 400, Rockville, Maryland 20892, Tel: (301) 496–8683.

Dr. Norman S. Braveman, National Institute on Dental Research, 5333 Westbard Avenue, Westwood Building, room 509, Bethesda, Maryland 20892, Tel: (301) 594–7648.

Dr. Walter Stolz, National Institute of Diabetes and Digestive and Kidney Diseases, 5333 Westbard Avenue, Westwood Building, room 657, Bethesda, Maryland 20892, Tel: (301) 594–7527.

Ms. Eleanor Friedenberg, National Institute on Drug Abuse, 5600 Fishers Lane, Parklawn Building, room 10–42, Rockville, Maryland 20857, Tel: (301) 434–2755.

Dr. Gwen Collman, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709, Tel: (919) 541–4980.

Dr. Lee Van Lenten, National Institute of General Medical Sciences, 5333 Westbard Avenue, Westwood Building, room 905, Bethesda, Maryland 20892, Tel: (301) 594–7744.

Dr. Dolores Parron, National Institute of Mental Health, 5600 Fishers Lane, Parklawn Building, room 17C–14, Rockville, Maryland 20857, Tel: (301) 443–2847.

Dr. Constance Atwell, National Institute of Neurological Disorders and Stroke, 7550 Wisconsin Ave., Federal Building, room 1016, Bethesda, Maryland 20892, Tel: (301) 496–9248.

Dr. Mark Guyer, National Center for Human Genome Research, 9000 Rockville Pike, Building 38A, room 605, Bethesda, Maryland 20892, Tel: (301) 496–0844.

Dr. Teresa Radebaugh, National Center for Nursing Research, 5333 Westbard Avenue, Westwood Building, room 754, Bethesda, Maryland 20892, Tel: (301) 594–7590.

Dr. Harriet Gordon, National Center for Research Resources, 5333 Westbard Avenue, Westwood Building, room 10A03, Bethesda, Maryland 20892, Tel: (301) 594–7945.

Dr. David Wolff, Fogarty International Center, 9000 Rockville Pike, Building 31, room B2C39, Bethesda, Maryland 20892, Tel: (301) 496–1653.

Dated: March 3, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–5435 Filed 3–8–94; 8:45 am]

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federal register

Wednesday
March 9, 1994

Part V

Department of Labor

Employment and Training Administration

Department of Education

Job Training Partnership Act: School-to-Work Opportunities; Local Partnership Implementation Grants; Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Job Training Partnership Act: School-to-Work Opportunities; Local Partnership Implementation Grants; Application Procedures

AGENCY: Employment and Training Administration, Labor. Office of Vocational and Adult Education, Education.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. This notice announces the competition for Local Partnership Grants financed under title IV of the Job Training Partnership Act, to enable local partnerships to begin implementation of School-to-Work Opportunities initiatives that will eventually be a part of a statewide School-to-Work Opportunities system. These initiatives will offer young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers, and to increase their opportunities for further education.

DATES: Applications for grant awards will be accepted commencing March 9, 1994. The closing date for receipt of applications is May 9, 1994, at 2 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 94–007, 200 Constitution Avenue NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Cesario, Division of Acquisition and Assistance, telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Section A. Purpose

The U.S. Departments of Labor and Education are conducting separate competitions for grants to *States* that are prepared to implement statewide School-to-Work Opportunities systems and to local partnerships that are prepared to implement local School-to-Work Opportunities initiatives. This notice announces the competition for Local Partnership Grants. Grants under this competition will be financed under title IV of the Job Training Partnership Act to enable local partnerships to begin implementation of School-to-Work Opportunities initiatives that will eventually be a part of a statewide School-to-Work Opportunities system.

Multiple awards will be made to local partnerships to implement local School-to-Work Opportunities initiatives as defined in this notice. Approximately $10 million to $12 million are available for awards under this notice. The amount of an award under this competition will be determined on a case-by-case basis and will depend upon the scope and quality of the application, the size of the jurisdictions covered by the local partnership, and the number of projected program participants. The estimated number of awards under this competition is expected to be between 15 and 25. The Departments are not bound by the estimates in this notice.

The Departments intend to conduct subsequent competitions for Local Partnership Grants, on an annual basis, under the proposed "School-to-Work Opportunities Act" currently pending in Congress.

Section B. Application Process

1. Eligible Applicants

A local entity that meets the definition of "partnership" in Section B (7) of this notice is eligible to apply for a Local Partnership Grant. An eligible partnership must include employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or non-managerial employee representatives. Other entities appropriate to effective implementation of the proposed School-to-Work Opportunities initiative may also be included in the partnership. The partnership must demonstrate that a sound planning and development base for a School-to-Work Opportunities initiative has been built and that implementation is ready to begin.

2. Submission of Application

Applicants must submit an original and four (4) copies of the application. The application shall consist of two (2) separate parts:

Part I shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and SF 424A, "Budget" (Appendix A). All copies of the 424 Form must have original signatures of the designated fiscal agent. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on Budget Form 424A. Assurances and Certifications (Appendix B) shall also be included in this part.

Part II shall contain the application narrative that demonstrates the applicant's plan and capabilities in accordance with the Statement of Work in Section C. No cost data or reference to price shall be included in this part of the application. In order to assist applicants in the preparation of their applications and to facilitate the expeditious evaluation by the panel, applicants should describe their proposed plan in light of each of the Selection Criteria in Section E of this notice.

The Departments strongly request that applicants limit the application narrative to no more than 40 double-spaced pages, on one side only.

3. Late Applications

Any application received after the exact time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—

(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or

(b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays.

The term "post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

4. Hand-Delivered Applications

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 2 p.m., Eastern Time, on the closing date. Telegraphed and/or faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and MUST BE RECEIVED by the above specified date and time.

5. Period of Performance

The period of performance shall be twelve (12) months from the date of award by the Department of Labor.

6. Option To Extend

These Local Partnership Grants may be extended at the discretion of the Government, based upon the availability of funds. Additional funds may be added if the State in which the local partnership is located has not begun the second year of a School-to-Work Opportunities State Implementation Grant.

The amount of Federal funds, if any, that are added to a grant awarded under this notice will decrease in any subsequent year.

7. Definitions

As used in this notice—

"All aspects of the industry" includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety issues, and environmental issues related to that industry;

"All students" means students from the broad range of backgrounds and circumstances, including disadvantaged students, students of diverse racial, ethnic, and cultural backgrounds, students with disabilities, students with limited-English proficiency, students who have dropped out of school, and academically talented students; "Career major" means a coherent sequence of courses or field of study that prepares a student for a first job and that—

(a) Integrates occupational and academic learning, integrates work-based and school-based learning, and establishes linkages between secondary and post-secondary education;

(b) Prepares the student for employment in broad occupational clusters or industry sectors;

(c) Typically includes at least two years of secondary school and one or two years of postsecondary education;

(d) Results in the award of a high school diploma or its equivalent, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate; and

(e) May lead to further training, such as entry into a registered apprenticeship program, or admission into a degree-granting college or university.

"Employer" includes both public and private employers;

"Partnership" means a local entity that is responsible for local School-to-Work Opportunities programs and that consists of employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or non-managerial employee representatives, and may include other entities, such as non-profit or community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education entities, local government agencies, parent organizations and teacher organizations, Private Industry Councils established under the Job Training Partnership Act, national trade associations working at the local levels, proprietary institutions of higher education (as defined in section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) that continue to meet the eligibility and certification requirements under section 498 of the Higher Education Act of 1965, vocational student organizations, and Federally recognized Indian tribes and Alaska Native villages;

"Postsecondary education institution" means a public or private nonprofit institution that is authorized within a State to provide a program of education beyond secondary education, and includes a community college, a technical college, a postsecondary vocational institution, or a tribally controlled community college;

"Registered apprenticeship agency" means either the Bureau of Apprenticeship and Training in the U.S. Department of Labor or a State apprenticeship agency recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes;

"Registered apprenticeship program" means a program registered by a registered apprenticeship agency;

"Skill certificate" means a portable, industry-recognized credential issued by a School-to-Work Opportunities program under a statewide School-to-Work Opportunities plan submitted by a State and approved by the Secretaries of Education and Labor, that certifies that a student has mastered skills that are benchmarked to high-quality standards, such as the skill standards envisioned in the proposed Goals 2000: Educate America Act. Until such plan is approved and until such skill standards are developed under the Act, the term "skill certificate" means a credential certifying that a student has mastered skills that are benchmarked to high-quality standards, issued under a process described in a Local Partnership's approved grant;

"State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"Workplace mentor" means an employee at the workplace, or another individual approved by the employer, who possesses the skills and knowledge to be mastered by a student, and who instructs the student, critiques the student's performance, challenges the student to perform well, and works in consultation with classroom teachers and the employer.

Section C. Statement of Work

Part I. Background

The United States is the only industrialized nation that lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about the labor market necessary to make an effective transition from school to career-oriented work. Three-fourths of America's high school students enter the workforce without four-year college degrees. Many of them do not possess the basic academic and occupational skills necessary for the changing workplace or to pursue further education.

In order to create a national framework for high-quality, statewide school-to-work transition systems that enable young Americans to identify and navigate paths to productive and progressively more rewarding roles in the workplace, the Secretaries of Education and Labor have developed the School-to-Work Opportunities initiative. Under this initiative, which is based on the Administration's proposed "School-to-Work Opportunities Act" currently pending in Congress, the Departments of Education and Labor are using current legislative authority in fiscal year 1994 to begin the development and implementation of statewide School-to-Work Opportunities systems in every State. In addition, the Departments are conducting the competition announced in this notice to award grants to local partnerships to operate local School-to-Work Opportunities programs that meet the requirements established in the notice.

The overall purpose of the initiative is to support the development and initial stages of implementation of statewide School-to-Work Opportunities systems within which local partnerships will apply for funds to develop local programs. However, through this

competition, a local partnership may apply directly to the Federal Government. These grants may be renewed on an annual basis until the State in which the partnership is located is in its second year of a School-to-Work Opportunities State Implementation Grant. Each State that receives one of these State Implementation Grants will be required to have a plan for expanding the State's system over time to cover all geographic areas in the State, including those with high concentrations of poor and disadvantaged youth, and will be making direct subgrants to local partnerships.

It is expected that the States will benefit from the experiences of the local partnerships and may incorporate successful elements of local initiatives into their statewide systems. Local and State programs may be developed by enhancing existing programs such as tech-prep education, career academies, youth apprenticeship, cooperative education, school-to-apprenticeship, and business-education compacts. However, the purpose of funding under the School-to-Work Opportunities initiative is not simply to augment existing programs, but rather to build statewide systems that provide opportunities for students to achieve the benefits and outcomes of the School-to-Work Opportunities initiative.

Grant Program Schedule

The School-to-Work Opportunities initiative is proceeding on two funding tracks—(1) during fiscal year 1994, the initiative is being funded under current legislative authority in the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act; and (2) for fiscal year 1995 and beyond, it will be funded under the proposed "School-to-Work Opportunities Act," when that legislation is enacted. The funds will be made available through a grants program administered cooperatively by the Department of Education and the Department of Labor that consists of—

(a) State Development Grants, awarded to each State for developing a statewide School-to-Work Opportunities plan;

(b) State Implementation Grants, awarded competitively to States that can demonstrate substantial ability to begin full-scale operation and implement the Statewide plan;

(c) Local Partnership Grants, as announced in this notice, awarded competitively to localities that are prepared to implement School-to-Work Opportunities initiatives;

(d) High Poverty Grants, awarded competitively to local partnerships to support the development and implementation of School-to-Work Opportunities programs in urban and rural areas of high poverty; and

(e) Grants for Territories and Native American programs, to support School-to-Work Opportunities programs in the territories and for Indian youth, respectively.

The competition for Local Partnership Grants will run concurrently with the State Implementation Grant competition, for which the application announcement was published in the **Federal Register** on February 3, 1994. Thus, both States and local partnerships prepared to implement School-to-Work Opportunities programs will be eligible for direct Federal funding, through separate competitions, in the current program year. The intent of this funding strategy is to allow "leading edge" communities to begin implementation of local School-to-Work Opportunities initiatives, even if their States are still in the program development phase. This parallel funding will allow States in the development phase to learn from innovative local partnerships and will build incentives for States and localities to work together to maximize funding within the State.

To permit a smooth transition from Federal to State funding, a local partnership applying for a grant under this competition should consult with the State at the earliest possible time. These consultations will permit local initiatives to be designed so that they are, or will be, consistent with State plans for a comprehensive statewide School-to-Work Opportunities system. This is particularly important because, beginning in the second year that a State receives as Implementation Grant, the only source of funding for a local partnership initiative will be through the State.

Since no State has yet received a School-to-Work Opportunities Implementation Grant, local partnerships in all States are eligible to apply for Local Partnership Grants this first year. This could result in a State and one or more of its local partnerships each receiving a competitive implementation grant award in 1994.

Part II. Program Description

a. Objectives

The School-to-Work Opportunities initiative provides for a substantial degree of State and local flexibility and experimentation, but all State systems and individual local programs will share several common features and basic program components. (Although there may be certain differences between requirements under the legislation as eventually enacted and grant requirements under this notice, these differences are not expected to be fundamental.) A local School-to-Work Opportunities initiative under this competition must include the following common features and basic program components:

1. The basis of the School-to-Work Opportunities system is—

(a) The integration of work-based learning and school-based learning, that provides students, to the extent practicable, with broad instruction in all aspects of the industries students are preparing to enter;

(b) The integration of occupational and academic learning; and

(c) The linking of secondary and postsecondary education.

2. School-to-Work Opportunities programs will result in students attaining—

(a) A high school diploma, or its equivalent;

(b) A certificate or diploma recognizing successful completion of one or two years of postsecondary education, if appropriate; and

(c) A skill certificate.

3. School-to-Work Opportunities programs must incorporate three basic program components;

(a) Work-Based Learning, that includes—

- A planned program of job training and work experiences, including pre-employment and employment skills to be mastered at progressively higher levels, that are relevant to a student's career major and lead to the award of a skill certificate;
- Paid work experience;
- Workplace mentoring; and
- Instruction in general workplace competencies.

(b) School-Based Learning, that includes—

- Career awareness and career exploration and counseling (beginning at the earliest possible age) in order to help students who may be interested to identify, and select or reconsider, their interests, goals, and career majors including those options that may not be traditional for their gender, race, or ethnicity;
- Initial selection by interested students of a career major not later than the beginning of the 11th grade;
- A program of study designed to meet the same challenging academic standards developed by the State for all students including, where applicable, standards established under the Goals 2000: Educate America Act, and to meet the requirements necessary for a student to earn a skill certificate; and

• Regularly scheduled evaluations to identify academic strengths and weaknesses, academic progress, workplace knowledge and goals of students and the need for additional learning opportunities to master core academic and vocational skills.

(c) Connecting Activities, that include—

• Matching students with employers' work-based learning opportunities;

• Serving as a liaison among the employer, school, teacher, parent, and student and, if appropriate, other community partners;

• Providing technical assistance and services to employers, including small and medium-sized businesses, and others in designing work-based learning components and counseling and case management services, and in training teachers, workplace mentors, and counselors;

• Providing assistance to students who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program;

• Providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning;

• Collecting and analyzing information regarding post-program outcomes of students who participate in the School-to-Work Opportunities program which may include information on gender, race, ethnicity, socio-economic background, limited-English proficiency, and disability; and

• Linking youth development activities under the School-to-Work Opportunities program with employer and industry strategies for upgrading the skills of their workers.

b. Scope

As noted above in Section B. 1., "Eligible Applicants," a local partnership must demonstrate that a sound planning and development base for School-to-Work Opportunities programs has been built and that implementation is ready to begin. The Departments encourage only applications for high quality, comprehensive School-to-Work Opportunities programs that—

1. Will deliver the common features and basic program components defined above in Part II. a., "Objectives;"

2. Have the potential to serve significant numbers of students during the grant period, in accordance with the size and type (i.e., urban, suburban, or rural) of the targeted geographic area;

3. Include plans to ensure opportunities for all students to participate.

4. Show strong evidence of employer involvement.

5. Demonstrate strong potential for achieving the local partnership's planned goals and outcomes.

c. Examples of allowable activities

Funds awarded to a local partnership that receives a grant under this competition may be used only for activities undertaken to implement the local partnership's plan that will provide opportunities for students to participate successfully in a School-to-Work Opportunities program. Among the activities that may be conducted with funds awarded under a Local Partnership Grant are—

1. Recruiting and providing assistance to employers, including small and medium-sized businesses, to provide the work-based learning components in the School-to-Work Opportunities program,

2. Establishing consortia of employers to support the School-to-Work Opportunities program and provide access to jobs related to the students' career majors;

3. Supporting or establishing intermediaries to perform the connecting activities described above in Part II. a., "Objectives" and to provide assistance to students in obtaining jobs and further education and training;

4. Designing or adapting school curricula that can be used to integrate academic and vocational learning, school-based and work-based learning, and secondary and postsecondary education;

5. Providing training to work-based and school-based staff on new curricula, student assessments, student guidance, and feedback to the school regarding student performance;

6. Providing career exploration and awareness services, beginning at the earliest possible age, including counseling and mentoring services, college awareness, and other services to prepare students for the transition from school to work;

7. Establishing in schools participating in a School-to-Work Opportunities program a graduation assistance program to assist at-risk, disabled, and low-achieving students in graduating from high school, enrolling in postsecondary education or training, and finding, maintaining, or advancing in jobs;

8. Conducting or obtaining an in-depth analysis of the local labor market and the generic and specific skill needs of employers to identify high-demand, high-wage careers to target;

9. Integrating work-based and school-based learning into existing job training programs for youth who have dropped out of school;

10. Establishing or expanding school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors;

11. Assisting participating employers, including small and medium-sized businesses, to identify and train workplace mentors and to develop work-based learning components;

12. Designing local strategies to provide adequate planning time and staff development activities for teachers, school counselors, and related services personnel;

13. Enhancing linkages between after-school, weekend, and summer jobs, and opportunities for career exploration and school-based learning; and

14. Conducting outreach to all students in a manner that most appropriately meets their needs and the needs of their communities.

Part III. Application Contents

An eligible applicant must submit an application that includes the following:

a. The State's comments on the application. The local partnership must submit its application to the State for review and comment before submitting the application to the Department. Many States have designated a State School-to-Work Opportunities contact. Applicants should call the office of their Governor for the name of the School-to-Work Opportunities contact. The Departments expect that all State School-to-Work Opportunities team members (i.e., the Governor; the State educational agency; the State agency officials responsible for job training and employment, economic development, and postsecondary education; and other appropriate officials on the State team) will be provided an opportunity to review and comment on the local partnership's application. Of particular importance to the Departments are the State's comments on the consistency of the partnership's planned activities with the State's plans for a comprehensive statewide School-to-Work Opportunities system.

The State's comments must be included in the local partnership's application; however, the local partnership may submit the application without State comment if proof of receipt by the State office is provided that the State was given the opportunity to comment, but did not do so within ten (10) days of receiving the request. A State's written comments received by the Department after this time will still be given consideration, if received within ten (10) days of the closing date

for receipt of applications in order to be considered, although the local partnership will no longer be responsible for the submission of the State's comments.

b. A description of the composition of the local partnership. The application must identify the members of the local partnership, which must include employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or non-managerial employee representatives, and may include others appropriate to effective implementation of the proposed School-to-Work Opportunities initiative; the respective roles of each member; and how the partnership is organized to successfully implement the planned local School-to-Work Opportunities initiative.

c. A description of the geographic area to be covered, which shall, to the extent feasible, reflect local labor market areas. The application must describe the relationship of the geographic area to be covered under the proposed Local Partnership Grant to the local labor market. It should include information on specific employer needs; industry and occupational growth projections; and high-demand, high-wage careers to be targeted. A partnership is encouraged to be comprehensive in scope and in geographic area and should describe any collaboration among school districts, employers, labor organizations, and other entities that are, or will be, a part of the local School-to-Work initiative in the same labor market area.

d. A plan for implementing a local School-to-Work Opportunities program. This plan must:

1. Show how the local School-to-Work Opportunities initiative will include the basic features and program components outlined above in Part II. a., "Objectives;"

2. Describe the manner in which the local partnership has obtained and will continue to obtain the active and continued involvement in local School-to-Work Opportunities programs of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, human service agencies, language minority communities, Private Industry Councils established under the Job Training Partnership Act, vocational student organizations, State or regional cooperative education associations, and local vocational educational agencies;

3. Describe the manner in which the local partnership will coordinate with or integrate its School-to-Work Opportunities program(s) with programs financed from State and private sources and from funds available from related Federal programs such as the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301 *et seq.*), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*), the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), Part F of Title IV of the Social Security Act (42 U.S.C. 681 *et seq.*) (authorizing the Job Opportunity Basic Skills Training Program), the Goals 2000: Educate America Act, the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), the National Apprenticeship Act (29 U.S.C. 50 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*); and the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*);

4. Describe the local partnership's strategy for providing training for teachers, employers, mentors, counselors, and other parties involved in the local partnership's initiative;

5. Describe the resources, including private sector resources, the local partnership intends to employ in maintaining local School-to-Work Opportunities programs when Federal School-to-Work Opportunities funds, including Federal funds awarded for State Development Grants and State Implementation Grants, are no longer available;

6. Describe how the local partnership will ensure effective and meaningful opportunities for all students, as defined in this notice, to participate in School-to-Work Opportunities programs;

7. Describe the goals of the local partnership and the methods the local partnership will use, such as awareness and outreach, to ensure opportunities for young women to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs, including non-traditional employment;

8. Describe how the local partnership will ensure opportunities for low-achieving students, students with disabilities, and former students who have dropped out of school to participate in School-to-Work Opportunities programs in a manner that leads to employment in high-performance, high-paying jobs; and

9. Describe the local partnership's process for assessing the skills and knowledge required in career majors, and awarding skill certificates that is consistent with the work of the proposed National Skill Standards Board and the criteria established under the Goals 2000: Educate America Act. (See Appendix C for a summary of Goals 2000: Educate America Act)

e. A description of the local partnership's plans for integrating existing school-to-work-related activities with local School-to-Work Opportunities initiatives planned for implementation under this announcement. Existing programs and projects related to school-to-work transition in the geographic area should be briefly described. The local partnership should describe its long-range plans to integrate these programs and projects with local School-to-Work Opportunities initiatives so that all students will be provided an opportunity to participate successfully in School-to-Work Opportunities systems.

f. A description of the short- and long-term goals and performance outcomes that the partnership has established and how the partnership will measure its progress in meeting these goals.

In addition to describing its own goals and outcomes, each local partnership awarded a grant under this notice must commit to assisting the Federal Government in the conduct of a national evaluation that will track and assess the progress and effectiveness of statewide School-to-Work Opportunities systems and the progress and outcomes of local programs.

g. A description of the current and planned coordination between the local partnership's initiative and the State's plans for a comprehensive statewide School-to-Work Opportunities system.

In order to ensure consistency with the State's developing School-to-Work Opportunities system, the local partnership should describe any current or planned coordination activities with expected statewide-building efforts in such areas as: the development of skill standards and processes for awarding skill certificates; the establishment of a State evaluation system; the identification of emerging occupations appropriate for career majors; the development of new curricula; strategies for recruiting employers; and plans for providing professional staff development. Should the State not have a plan for developing skill standards and awarding skill certificates, the application should describe the local partnership's investigation and adaptation of existing industry-

recognized standards or existing processes for awarding industry-recognized certificates to incorporate the criteria established in the proposed Goals 2000: Educate America Act.

h. A timeline outlining the specific tasks, with expected completion dates, that will be undertaken to implement the proposed plan, enroll significant numbers of students, and achieve the stated outcomes.

Section D. Safeguards

The Departments apply the following safeguards to School-to-Work Opportunities programs funded under this competition:

1. No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

2. No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, except that no program under this competition that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

3. No student shall be employed or job opening filled—

a. When any other individual is on temporary layoff from the participating employer, with the clear possibility of recall, from the same or any substantially equivalent job; or

b. When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a student.

4. Students shall be provided with adequate and safe equipment and a safe and healthful workplace in conformity with all health, safety, and labor standards of Federal, State, and local law.

5. Nothing in this notice shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

6. Funds awarded under this competition shall not be expended for wages of students.

The grantee shall implement and maintain such other safeguards as the Departments may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or, otherwise, to further the purposes of this program.

An applicant must provide an assurance, in the application, that the foregoing safeguards will be implemented and maintained throughout all program activities.

Section E. Selection Criteria

Under the fiscal year 1994 School-to-Work Opportunities Local Partnership Grant competition, a careful evaluation of applications will be made by a panel of (a) peer reviewers and/or (b) specialists within the Departments of Labor and Education. Each panelist will evaluate the applications against the criteria listed below, with emphasis on the scope and quality of the proposed plan and with careful consideration to the effectiveness, rather than the presence, of each program component. The panel results are advisory in nature and not binding on the Government. Final funding decisions will be made based on the results of the panel review process and such other factors as: geographic balance, diversity of programmatic approaches, replicability, sustainability, and innovation.

The Government will use the following selection criteria in evaluating applications:

1. Scope and Quality of Local School-to-Work Opportunities Initiative (25 points) Is there an effective strategy for implementing a School-to-Work Opportunities initiative that integrates occupational and academic learning, integrates work-based learning and school-based learning, establishes linkages between secondary and postsecondary education, and results in the award of a high school diploma or its equivalent, a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and a skill certificate? Does the application demonstrate an effective strategy for targeting high-demand, high-wage jobs? How effectively are the common features and basic program components described in Part II.a. of the Statement of Work included in the local School-to-Work Opportunities initiative? Have promising existing programs been considered for adaptation? Have new directions and approaches been planned to ensure that these programs include the common features and basic program components? Is there an effective long-range plan for integrating existing promising school-to-work programs with the proposed School-to-Work Opportunities initiative?

2. *Scope and Effectiveness of Local Partnerships* (25 points) Does the application demonstrate the strong commitment and support of employers, public secondary and postsecondary educational institutions or agencies, and labor organizations or non-managerial employee representatives and provide for their sustained and specific involvement? Given the scope of the proposed School-to-Work Opportunities initiative, does the partnership include other members appropriate to effective implementation? Are the roles and responsibilities of the members of the partnership appropriate and likely to produce the desired changes in the way students are prepared for the future? Does the partnership's plan include an effective and convincing strategy for obtaining the active and continued involvement of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions or agencies, business associations, employees, labor organizations or associations thereof, teachers, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, and local vocational educational agencies in the implementation of the local program(s)?

3. *Student Participation* (20 points) Does the plan propose realistic strategies to ensure that "all students," including young women, minorities, low-achieving students, students with disabilities, students with limited-English proficiency, academically talented students, and former students who have dropped out of school, have opportunities to participate in School-to-Work Opportunities programs? Does the strategy recognize barriers to their participation and propose effective ways of overcoming them so that these students are prepared for high-skill, high-wage jobs, including—for young women and minorities—nontraditional employment? Does the plan provide for the direct delivery of services to significant numbers of students?

4. *Comprehensiveness* (10 points) To what extent does the geographical area to be served by the partnership reflect the needs of the local labor market area? Is the strategy for implementing the School-to-Work Opportunities initiative likely to produce systemic change that will have substantial impact on the preparation of youth for a first job in a high-skill, high-wage career and in increasing their opportunities for further education? Is there existing or planned collaboration among other school districts, employers, labor organizations, and community groups that will lead to an increasingly comprehensive local School-to-Work Opportunities system?

5. *Collaboration with State* (10 points) To the extent practicable, has the partnership effectively consulted with the State in which it is located and established realistic methods for ensuring consistency of its program(s)

with the statewide School-to-Work Opportunities system being developed by the State? Has the local partnership developed a sound strategy for adapting its plans, as necessary, to coincide with the State plan for a School-to-Work Opportunities system?

6. *Management plan* (10 points) Does the entity submitting the application on the part of the partnership have the capacity to manage the implementation of the local School-to-Work Opportunities initiative? Does the management plan anticipate barriers to implementation and include a system for addressing them as they arise? Does the applicant limit administrative costs in order to maximize the amounts spent on delivery of services to students enrolled in its School-to-Work Opportunities programs? Does the plan include methods for sustaining and expanding the partnership, as the program expands in scope and size? Is there an effective strategy for identifying and utilizing other resources, including private sector resources to maintain and expand School-to-Work Opportunities programs? Does the management plan reflect continuous improvement methodologies by building in specific, outcome-based, evaluative checkpoints and the mechanisms necessary to carry out improvements, redesigns, or mid-course corrections along the way? Are key personnel under the plan qualified to perform the required activities, including maintaining the essential partnership?

Section F. Reporting Requirements/ Deliverables

The local partnership will be required to provide the following:

1. Quarterly and Final Reports

- Quarterly financial reports as required by the grant award documents;
- Quarterly narrative reports on progress made and problems encountered in implementing the proposed plan and that indicate, where relevant, the corrective action(s) proposed to address implementation problems; and
- A final report at year-end on the activities and accomplishments of the local partnership's School-to-Work Opportunities initiative.

2. Deliverables

- At a minimum, preparing an assessment of accomplishments and results at program year-end suitable for dissemination to other local partnerships still in the development phase; and
- Acting as a host to outside visitors who are interested in developing and implementing School-to-Work Opportunities initiatives of their own and to State visitors interested in the replication and adaption of successful program elements.

Signed at Washington DC this 3rd day of March 1994.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

BILLING CODE 4510-30-M

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 7 . 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided

   — "New" means a new assistance award.

   — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

   — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1. 17.249	$	$	$	$
2.	$	$	$	$

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

APPENDIX B

ASSURANCES AND CERTIFICATIONS

The Department of Labor will not award a grant or agreement where the awardee has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing the face sheet of this grant or agreement, the awardee is providing the certifications set forth below:

Assurances - Non-Construction Programs

Debarment and Suspension Certification

Certification Regarding Lobbying

Drug Free Workplace Certification

Certification of Non-Delinquency

Non-discrimination and Equal Employment Requirements Under JTPA

1. ASSURANCES - NON-CONSTRUCTION PROGRAMS:

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

(1) Has the legal authority to apply for Federal Assistance, and the institutional managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

(2) Will give the awarding agency, the Comptroller General of the united States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

(4) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

(5) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C.4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

A & C CONTINUE:(2)

(6) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88.352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, , Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statue(s) which may apply to the application.

(7) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91.646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(8) Will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

(9) Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a 7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction subagreements.

(10) Will comply, if applicable, with Flood Insurance Purchase Requirements of Section 102(A) of the Flood Disaster Protection Act of 1973 (P.L. 93.234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

A & C CONTINUE:(3)

(11) Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91.190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93.523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93.205).

(12) Will comply with the Wide and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wide and scenic rivers system.

(13) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a.1 et seq.).

(14) Will comply with P.L. 93.348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

(15) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L.) 89.544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(16) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et sew.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

(17) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

(18) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

2. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS:

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

A & C CONTINUE:(4)

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and;

(d) Have not within a three-year period preceding this application / proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

By accepting this grant/agreement, the signee hereby certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

A & C CONTINUE:(5)
INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

A & C CONTINUE:(6)

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: Page_____ Page _____

Approved by OMB 0348-0046

Authorized for Local Reporduction Standard Form - LLL-A

A & C CONTINUE: (7)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(see reverse for public burden disclosure)

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post-award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier _____, If known: Congressional District, If known:	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime. Congressional District, If known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, If applicable: _____
8. Federal Action Number, If known:	9. Award Amount, If known: $
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, If necessary)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, If necessary)
11. Amount of Payment (check all that apply): _____ actual _____ planned $_____ 12. Form of Payment (check all that apply): _____ a. cash _____ b. in-kind; specify: nature _____ value _____	13. Type of Payment (check all that apply) ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other, specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s) or Member(s) contacted, for Payment Indicated In Item 11:

(attach Continuation Sheet(s) SF-LLL-A, If necessary)

15. Continuation Sheet(s) SF-LLL-A attached: _____ YES _____ NO

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature _____ Print Name: _____ Title: _____ Telephone Number: _____ Date: _____

Authorized for Local Reproduction Standard Form - LLL-A

A & C CONTINUE:(8)

3. *The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.*

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. **DRUG FREE WORKPLACE:**

Awardee certifies that it will provide a drug free workplace by implementing the provisions at 29 CFR 98.630. In accordance with these provisions please provide in the space below, a list of places where performance of work done in connection with this specific grant/agreement will take place. This information must be included with this signed document.

_____

_____

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_____

5. **CERTIFICATION OF NON-DELINQUENCY:**

(PLEASE CHECK THE APPROPRIATE STATEMENT):

_____ *Not Delinquent on any Federal Debt*

_____ *Delinquent on any Federal Debt*

A & C CONTINUE:(9)

Nondiscrimination and Equal Opportunity Requirements of JTPA
29 CFR PART 34
ASSURANCES

(1) As a condition to the award of financial assistance under JTPA from the Department of Labor, the grant applicant assures, with respect to operation of the JTPA-funded program or activity and all agreements or arrangements to carry out the JTPA-funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA), including the Nontraditional Employment for Women Act of 1991 (where applicable); Title IV of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended, and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.

(2) The grant applicant certifies that it has developed and will maintain a "Method of Administration" pursuant to 29 CFR 34.33. This system must be in place by August 14, 1993.

(3) The grant applicant is attaching information pursuant to 29 CFR 34.24(a)(3)(ii) where applicable, including the name of any Federal agency other than the Department of Labor's Directorate of Civil Rights that conducted a civil rights compliance review or complaint investigation during the two preceding years in which the grant applicant was found to be in noncompliance; and shall identify the parties to, the forum of and case numbers pertaining to, any administrative enforcement actions or lawsuits filed against it during the two years prior to its application which allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or participation in JTPA.

NOTE:

___ No findings of noncompliance in the last two years.

___ See attached information.

BILLING CODE 4510–30–C

Appendix C—Goals 2000: Educate America Act

Supporting Systemic Education Reform Nationwide

Overview

• Goals 2000 provides resources to States and communities to develop and implement systemic education reforms aimed at helping all students reach challenging academic and occupational standards.

Legislative Update

• A unique bipartisan consensus among Governors, Members of Congress, business leaders, and educators has emerged in support of the systemic education reform reflected in the "Goals 2000: Educate America Act."

• On October 13, the House of Representatives voted 307–118 in support of Goals 2000.

• On February 8, the Senate voted 71-25 in support of Goals 2000.

• It is anticipated the President will sign the bill by late March.

Components of The "Goals 2000: Educate America Act"

Title I: National Education Goals

• Codifies in law the original six National Education Goals and adds two new goals related to parental participation and professional development.

Title II: National Education Reform Leadership, Standards, and Assessments

• Establishes in law the National Education Goals Panel and adds new responsibilities to build public support for reform and approve criteria for certifying voluntary national content and student performance standards and voluntary opportunity-to-learn standards.

• Creates a National Education Standards and Improvement Council (NESIC) to examine and certify national and State content standards, opportunity-to-learn standards, and assessment systems submitted on a voluntary basis. The establishment of NESIC was recommended by a bipartisan task force, the National Council on Education Standards and Testing, chaired by Governors Roy Romer and Carroll Campbell.

• Provides grants to support the development of voluntary model opportunity-to-learn standards as well as assessment systems aligned to State content standards.

Title III: State and Local Education Systemic Improvement

Title III is a State grant program to support, accelerate, and sustain State and local improvement efforts aimed at helping all students reach challenging academic standards.

State Planning Panel

• The Governor and the Chief State School Officer will appoint a broad-based panel comprised of policymakers, teachers, principals, administrators, representatives of business and labor, and members of the public.

• The Governor and the Chief State School Officer will each appoint half the members of the State panel.

• States that already have a broad-based panel in place can request that the Secretary of Education recognize the existing panel.

Comprehensive Improvement Plan

• The State Planning Panel has responsibility for developing a comprehensive reform plan.

• States with reform plans already in place that meet the Act's requirements will not have to develop new plans for Goals 2000. The Secretary can approve plans, or portions of plans, already adopted by the State.

• In order to receive funds after the first year, a State has to have an approved plan or have made substantial progress in developing it.

• A peer review process will be used to review the State plans and offer guidance to the State Planning Panel. The Department of Education will also offer other technical assistance and support.

In general, the plans are to address:

• Strategies for the development of content standards, student performance standards, student assessment, and plans of teacher training.

• Strategies for providing all students an opportunity to learn to challenging academic standards.

• Management and governance strategies that promote accountability for results, flexibility, site-based management, and other principles of high-performance management.

• Strategies to involve parents and the community in helping all students meet the challenging State standards and for promoting grass roots, bottom-up involvement in reform.

• Strategies for bringing education reform to scale and ensuring that all local educational agencies and schools in the State are involved in developing and implementing needed improvements.

Funds will also be available to States to support the development of a technology plan, which will be coordinated with the overall reform plan. This plan is to describe how States will use technology to support systemic reform and the achievement of high standards.

Title IV: National Skill Standards Board

• This title creates a National Skill Standards Board to serve as a catalyst in stimulating the development and adoption of a voluntary national system of occupational skill standards and certification that will serve as a cornerstone of the national strategy to enhance workforce skills. The Board would be responsible for identifying broad clusters of major occupations in the U.S. and facilitating the establishment of voluntary partnerships to develop skill standards for each cluster. The Board would endorse those skill standards submitted by the partnerships that meet certain statutorily prescribed criteria.

Timetable and Funding

• Congress has appropriated $105 million for Goals 2000 for fiscal year 1994. First-year funds will be available to the States on July 1, 1994. The President has asked for $700 million in his 1995 budget proposal for the Department of Education's portions of the Act and $12 million for the Department of Labor's portion of the Act, which is the National Skill Standards Board.

• For first-year funding, States will be asked to submit an application that will describe the process by which the State will develop a school improvement plan and how the SEA will use the funds received.

• In year 1, it remains unclear how much of the funds will stay at the State level and what will be distributed, through a competitive process, to local educational agencies. The House-Senate conference will resolve this.

• In succeeding years, either 85 percent or 90 percent of each State's funds are to be used to make subgrants for the implementation of the State and local improvement plans and to support educator preservice and professional development.

• LEAs that receive funding must use 75 percent to fund individual school improvement initiatives. After year one, LEA's must pass through 85 percent of the funds to schools.

Waivers

• SEAs can apply to the Secretary of Education for waivers of certain programmatic requirements that impede the implementation of the State or local implementation plans.

• The Act will not allow the Secretary to waive civil rights regulations or requirements in such areas as parental involvement.

The Relationship of Goals 2000 to Other Federal Education Programs

• State participation in all aspects of Goals 2000 is voluntary, and is not a precondition for participation in other Federal programs.

• Goals 2000 is the first step toward making the Federal Government a supportive partner in State and local systemic reforms aimed at helping all children reach high standards.

• Other new and existing education and training programs will fit within the Goals 2000 framework of challenging academic and occupational standards, systemic reform, and flexibility at the State and local levels. The aim is to promote greater coherence among Federal programs and between Federal programs and State and local education reforms.

• For example, the pending School-to-Work Opportunities Act will support State and local efforts to build a school-to-work transition system that will help youth acquire the knowledge, skills, abilities and labor market information they need to make a smooth transition from school to career-oriented work and to further education and training. Students in these programs will be expected to meet the same academic standards States establish under Goals 2000 and will earn portable, industry-recognized skill certificates that are benchmarked to high quality standards such as the skill standards that will be established under Goals 2000.

• Similarly, the Administration's proposed reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) allows States that have developed standards and assessments under Goals 2000 to use them for ESEA, thereby providing a single set of standards and assessments for States to use for their reform needs and to meet Federal requirements.

• In the future, the Administration's proposals for the reauthorization of education programs will also fit within the same framework of challenging standards and systemic reform.

[FR Doc. 94–5426 Filed 3–8–94; 8:45 am]
BILLING CODE 4510–30–M

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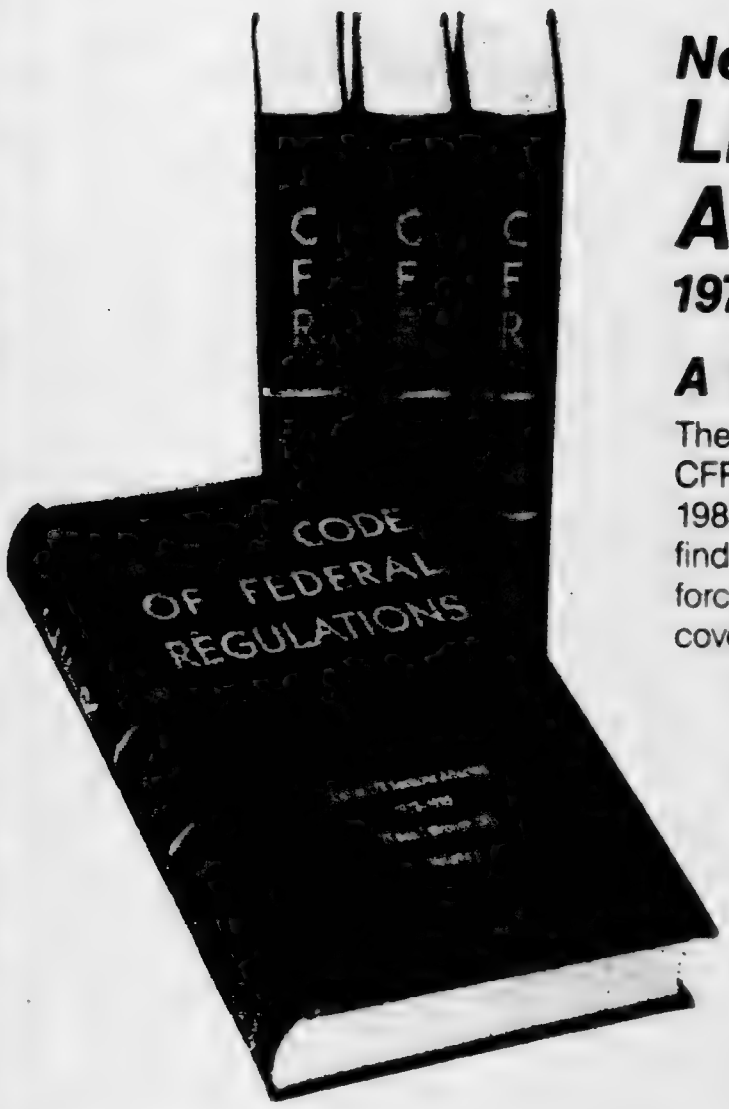

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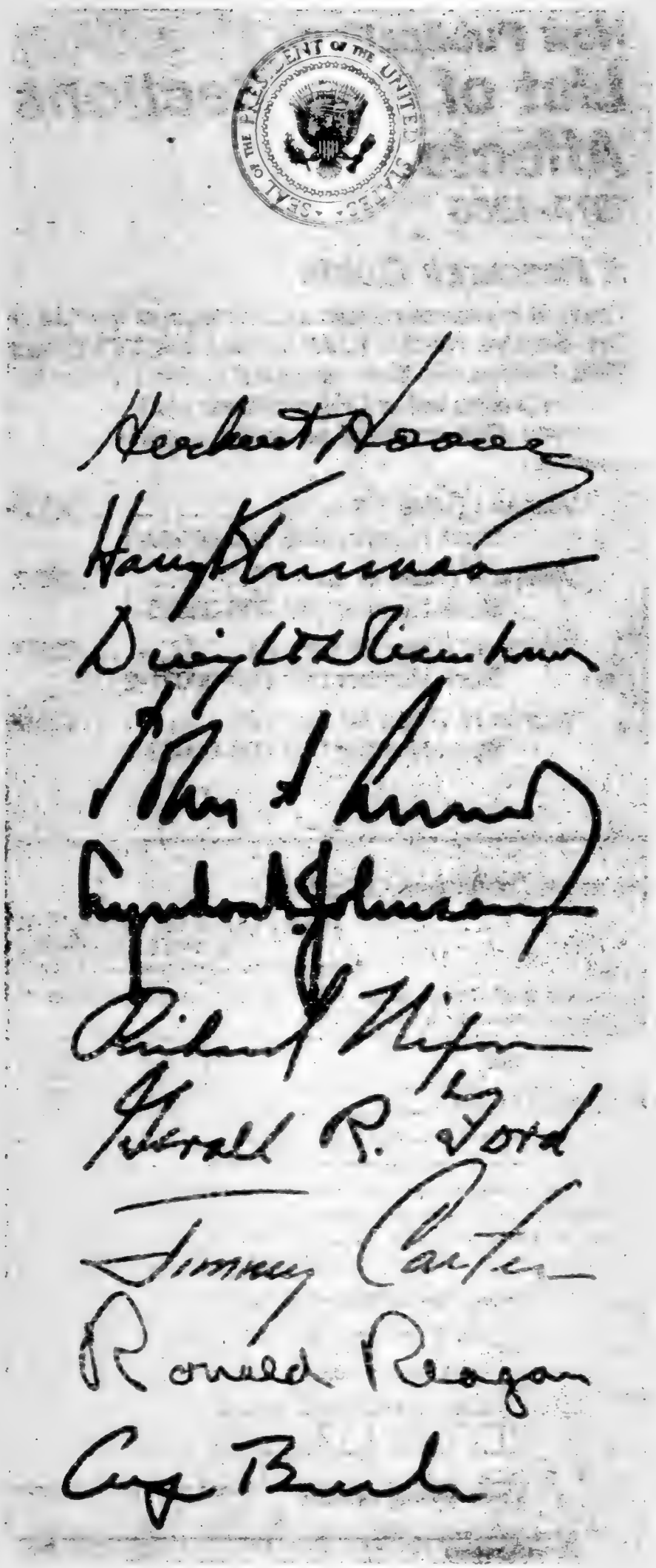

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Presidential Documents

Title 3—

The President

Proclamation 6656 of March 8, 1994

Irish-American Heritage Month, 1994

By the President of the United States of America

A Proclamation

The patchwork quilt of United States history is intricately woven with the many great deeds and memorable contributions of Irish Americans. Since the founding of our country, immigrants from the Emerald Isle have shared in weaving the fabric of a new nation. And it is in no small part their efforts that have made America a land of both unparalleled diversity and infinite promise.

Fleeing the Great Potato Famine of the 19th century, hundreds of thousands of Irish immigrants joined their cousins in the new world. They arrived to face the considerable challenges of an unfamiliar territory with untamed resources and a brewing conflict over the nature of freedom and self-governance. Yet these brave pioneers—our grandparents and great-grandparents—were filled with hope and a vision of a better life. From John F. Kennedy to Tip O'Neill, George M. Cohan to Flannery O'Connor, Irish Americans have graced our political and cultural life with a spirit born of the courage and idealism inspired by their ancestors.

Today, well over 200 years since the American colonies declared their independence, Irish Americans and people everywhere are again filled with hope. After centuries of conflict, we are deeply encouraged by the prospects for peace in Northern Ireland. We look forward to a day in the near future when the Irish strength of character and faith in justice bring lasting peace to this troubled land—a day when their love for harmony overtakes the differences between religious traditions.

As we celebrate the vital bonds between our two great nations, I reaffirm my call for an end to all violence in Northern Ireland. In the great tradition of our common heritage, the people of the United States renew our pledge to the people of Ireland, rededicating ourselves to fostering understanding, cooperation, and peace.

In tribute to all Irish Americans, the Congress, by Senate Joint Resolution 119, has designated March 1994 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1994 as Irish-American Heritage Month. I urge all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5748
Filed 3–8–94; 1:38 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Thursday, March 10, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–13]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding portions of Los Angeles, Orange, and San Bernardino Counties, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective March 4, 1994. Consideration will be given only to comments received on or before May 9, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–13. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10 and February 14, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; and 59 FR, Docket No. 91–155–12).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Brea, Glendora, Long Beach, San Antonio, San Dimas, Santa Monica, Torrance, and Yorba Linda areas of Los Angeles, Orange, and San Bernardino Counties, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding areas in Los Angeles, Orange, and San Bernardino Counties, CA, to the list of quarantined areas. These additions to the previously quarantined areas in these counties will create one single area of 1576 square miles in Los Angeles, Orange, and San Bernardino Counties. The revised quarantine area is as follows:

Los Angeles, Orange, and San Bernardino Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City limit; then north and west along the Pasadena City limit to its intersection with the La Canada Flintridge City limit; then west and south along the La Canada Flintridge City limit to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with

Interstate Highway 5; then northwest along Interstate Highway 5 to its intersection with Sunland Boulevard; then northeast along Sunland Boulevard to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with Bledsoe Street; then northeast along Bledsoe Street to its intersection with Olive View Drive; then west along Olive View Drive to its intersection with Cobalt Street; then north along Cobalt Street to its intersection with the Los Angeles City limit; then west and south along the Los Angeles city limit to its intersection with Limekiln Canyon Road; then south along Limekiln Canyon Road to its intersection with Sesnon Boulevard; then west along Sesnon Boulevard to its intersection with Winnetka Avenue; then south along Winnetka Avenue to its intersection with State Highway 118; then west along State Highway 118 to its intersection with State Highway 27 (Topanga Canyon Boulevard); then south along State Highway 27 to its intersection with Parthenia Street; then east along Parthenia Street to its intersection with Tampa Avenue; then south along Tampa Avenue to its intersection with U.S. Highway 101; then east along U.S. Highway 101 to its intersection with Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to its intersection with Chautauqua Boulevard; then southwest on Chautauqua Boulevard to its intersection with State Highway 1; then Southeast along State Highway 1 to its intersection with Ocean Avenue; then Southeast along Ocean Avenue to its intersection with Barnard Way; then southeast along Barnard Way to its intersection with Neilson Way; then southeast along Neilson Way to its intersection with Pacific Avenue; then southeast along Pacific Avenue to its intersection with Via Marina; then southeast from this intersection along an imaginary line to the intersection of 62nd Avenue and Pacific Avenue; then southeast along Pacific Avenue to its intersection with Vista del Mar; then southeast along Vista del Mar to its intersection with North Highland Avenue; then southeast along North Highland Avenue to its intersection with Manhattan Beach Boulevard; then southwest along Manhattan Beach Boulevard to its intersection with the Manhattan Beach Pier; then southwest along Manhattan Beach Pier to its intersection with the Pacific Ocean coastline; then south and east along the Pacific Ocean coastline to its intersection with the San Pedro Breakwater; then east along the San Pedro Breakwater to the Los Angeles Harbor Light Station; then east from the Los Angeles Harbor Light Station along an imaginary line to the Los Angeles Harbor Entrance East Light; then northeast from the Los Angeles Harbor Entrance East Light along the Middle Breakwater to the Long Beach Harbor Light Station; then north from the Long Beach Harbor Light Station along an imaginary line to the intersection of Harbor Scenic Way and Harbor Scenic Drive; then northwest along Harbor Scenic Drive to its intersection with Queen's Way; then north along Queen's Way to its intersection with Ocean Boulevard; then east and southeast along Ocean Boulevard to its intersection with 72nd Place; then southeast from this intersection along an imaginary line to the intersection of 1st Street and Ocean Avenue; then southeast along Ocean Avenue to its intersection with Seal Beach Boulevard; then northeast along Seal Beach Boulevard to its intersection with State Highway 1; then southeast along State Highway 1 to its intersection with Main Street; then north along Main Street to its intersection with Adams Avenue; then east along Adams Avenue to its intersection with Fairview Road; then north along Fairview Road to its intersection with Interstate Highway 405; then east and southeast along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northeast along Serrano Avenue to its intersection with Weir Canyon Road; then north from this intersection along an imaginary line to the northern intersection of the Yorba Linda City limit and the San Bernardino County line; then northeast from this intersection along an imaginary line to the intersection of State Highway 71 and State Highway 83 (Euclid Avenue); then north along State Highway 83 to its intersection with Eucalyptus Avenue; then east along Eucalyptus Avenue to its intersection with Walker Avenue; then north along Walker Avenue to its intersection with Riverside Drive; then east along Riverside Drive to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Mission Boulevard; then northwest along Mission Boulevard to its intersection with Grove Avenue; then north along Grove Avenue to its intersection with Holt Boulevard; then east along Holt Boulevard to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Carnelian Street; then north along Carnelian Street to its intersection with Hillside Road; then west along Hillside Road to its intersection with Sapphire Street; then north along Sapphire Street to its intersection with Almond Street; then north from this intersection along an imaginary line to its intersection with the Rancho Cucamonga City limit; then west along the Rancho Cucamonga City limit to its intersection with the San Bernardino National Forest Boundary; then west along the San Bernardino National Forest Boundary to its intersection with the Angeles National Forest Boundary; then west along the Angeles National Forest Boundary to its intersection with Mt. Baldy Road; then south from this intersection along an imaginary line to the intersection of 19th Street and Benson Avenue; then south along Benson Avenue to its intersection with State Highway 30; then west along State Highway 30 to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with the Glendora City limit; then north from the Glendora City limit to its intersection with the Angeles National Forest Boundary; then west along the Angeles National Forest Boundary to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Brea, Glendora, Long Beach, San Antonio, San Dimas, Santa Monica, Torrance, and Yorba Linda areas of Los Angeles, Orange, and San Bernardino Counties, CA. There are approximately 726 small entities that could be affected, including 561 fruit sellers, 67 nurseries, 20 growers, 64 vendors, 3 swapmeets, 8 wholesale distributors, 2 packers, and 1 farmers market.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

In the new quarantined areas in Los Angeles, Orange, and San Bernardino Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c) is amended by removing the entries for Los Angeles County, Los Angeles and Orange Counties, and Los Angeles and San Bernardino Counties; and by adding, in alphabetical order, one entry for Los Angeles, Orange, and San Bernardino Counties to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles, Orange, and San Bernardino Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City limit; then north and west along the Pasadena City limit to its intersection with the La Canada Flintridge City limit; then west and south along the La Canada Flintridge City limit to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Interstate Highway 5; then northwest along Interstate Highway 5 to its intersection with Sunland Boulevard; then northeast along Sunland Boulevard to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with Bledsoe Street; then northeast along Bledsoe Street to its intersection with Olive View Drive; then west along Olive View Drive to its intersection with Cobalt Street; then north along Cobalt Street to its intersection with the Los Angeles City limit; then west and south along the Los Angeles city limit to its intersection with Limekiln Canyon Road; then south along Limekiln Canyon Road to its intersection with Sesnon Boulevard; then west along Sesnon Boulevard to its intersection with Winnetka Avenue;

then south along Winnetka Avenue to its intersection with State Highway 118; then west along State Highway 118 to its intersection with State Highway 27 (Topanga Canyon Boulevard); then south along State Highway 27 to its intersection with Parthenia Street; then east along Parthenia Street to its intersection with Tampa Avenue; then south along Tampa Avenue to its intersection with U.S. Highway 101; then east along U.S. Highway 101 to its intersection with Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to its intersection with Chautauqua Boulevard; then southwest on Chautauqua Boulevard to its intersection with State Highway 1; then Southeast along State Highway 1 to its intersection with Ocean Avenue; then Southeast along Ocean Avenue to its intersection with Barnard Way; then southeast along Barnard Way to its intersection with Neilson Way; then southeast along Neilson Way to its intersection with Pacific Avenue; then southeast along Pacific Avenue to its intersection with Via Marina; then southeast from this intersection along an imaginary line to the intersection of 62nd Avenue and Pacific Avenue; then southeast along Pacific Avenue to its intersection with Vista del Mar; then southeast along Vista del Mar to its intersection with North Highland Avenue; then southeast along North Highland Avenue to its intersection with Manhattan Beach Boulevard; then southwest along Manhattan Beach Boulevard to its intersection with the Manhattan Beach Pier; then southwest along Manhattan Beach Pier to its intersection with the Pacific Ocean coastline; then south and east along the Pacific Ocean coastline to its intersection with the San Pedro Breakwater; then east along the San Pedro Breakwater to the Los Angeles Harbor Light Station; then east from the Los Angeles Harbor Light Station along an imaginary line to the Los Angeles Harbor Entrance East Light; then northeast from the Los Angeles Harbor Entrance East Light along the Middle Breakwater to the Long Beach Harbor Light Station; then north from the Long Beach Harbor Light Station along an imaginary line to the intersection of Harbor Scenic Way and Harbor Scenic Drive; then northwest along Harbor Scenic Drive to its intersection with Queen's Way; then north along Queen's Way to its intersection with Ocean Boulevard; then east and southeast along Ocean Boulevard to its intersection with 72nd Place; then southeast from this intersection along an imaginary line to the intersection of 1st Street and Ocean Avenue; then southeast along Ocean Avenue to its intersection with Seal Beach Boulevard; then northeast along Seal Beach Boulevard to its intersection with State Highway 1; then southeast along State Highway 1 to its intersection with Main Street; then north along Main Street to its intersection with Adams Avenue; then east along Adams Avenue to its intersection with Fairview Road; then north along Fairview Road to its intersection with Interstate Highway 405; then east and southeast along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northeast along Serrano Avenue to its intersection with Weir Canyon Road; then north from this intersection along an imaginary line to the northern intersection of the Yorba Linda City limit and the San Bernardino County line; then northeast from this intersection along an imaginary line to the intersection of State Highway 71 and State Highway 83 (Euclid Avenue); then north along State Highway 83 to its intersection with Eucalyptus Avenue; then east along Eucalyptus Avenue to its intersection with Walker Avenue; then north along Walker Avenue to its intersection with Riverside Drive; then east along Riverside Drive to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Mission Boulevard; then northwest along Mission Boulevard to its intersection with Grove Avenue; then north along Grove Avenue to its intersection with Holt Boulevard; then east along Holt Boulevard to its intersection with Vineyard Avenue; then north along Vineyard Avenue to its intersection with Carnelian Street; then north along Carnelian Street to its intersection with Hillside Road; then west along Hillside Road to its intersection with Sapphire Street; then north along Sapphire Street to its intersection with Almond Street; then north from this intersection along an imaginary line to its intersection with the Rancho Cucamonga City limit; then west along the Rancho Cucamonga City limit to its intersection with the San Bernardino National Forest Boundary; then west along the San Bernardino National Forest Boundary to its intersection with the Angeles National Forest Boundary; then west along the Angeles National Forest Boundary to its intersection with Mt. Baldy Road; then south from this intersection along an imaginary line to the intersection of 19th Street and Benson Avenue; then south along Benson Avenue to its intersection with State Highway 30; then west along State Highway 30 to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with the Glendora City limit; then north from the Glendora City limit to its intersection with the Angeles National Forest Boundary; then west along the Angeles National Forest Boundary to the point of beginning.

* * * * *

Done in Washington, DC, this 4th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–5577 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1106

[DA–94–08]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends, for the months of February 1, 1994 through August 31, 1996, a portion of the supply plant shipping requirement and the producer delivery requirement of the Southwest Plains Federal milk marketing order (Order 106). The suspension was requested by Kraft General Foods (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

EFFECTIVE DATE: February 1, 1994, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 7, 1994; published February 14, 1994 (59 FR 6915).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 14, 1994 (59 FR 6915) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment was received in support of the suspension.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the months of February through August of 1994 through 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

3. In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This suspension order temporarily removes the requirement that producers "touch-base" at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants before going to unregulated manufacturing plants.

Additionally, the suspension allows a supply plant that has been associated with the Southwest Plains order during the months of September through January of each year to qualify as a pool plant—without shipping any milk to a pool distributing plant—during the following months of February through August. Without the suspension, a supply plant would be required to ship 20 percent of its producer receipts to pool distributing plants to qualify as a pool plant during each of the months of February through August.

According to Kraft's letter requesting the suspension, supplemental milk supplies from supply plants will not be needed to meet the fluid needs of distributing plants because there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants to meet the fluid needs of the market. Consequently, it states, there is no need to require supply plants to uneconomically ship milk to distributing plants, nor is there any reason to require producers located some distance from pool distributing plants to deliver their milk to those plants simply for qualifying purposes when it can more economically be diverted directly to manufacturing plants in the production area.

One comment letter was received in support of the suspension request; none were received in opposition to it. A letter submitted by Mid-America Dairymen, Inc. (Mid-Am), stated that Mid-Am and Associated Milk Producers, Inc., two cooperative associations with a substantial number of producers on the market, were in support of the action.

A similar suspension of the supply plant shipping requirements and touch-base requirements has been effective for the past two years during the months of February through August. In both years, there were, in fact, adequate supplies of milk within direct-ship distance of pool distributing plants to meet the fluids needs of the market during these months. Producer milk deliveries in recent months indicate that a similar pattern will hold true for 1994.

For the reasons discussed above, it is appropriate to suspend the touch-base requirement and the specified supply plant shipping requirements for the months of February through August of 1994 through 1996. This suspension period, while unusually long, will preclude the necessity of similar suspensions in each of the next two years. In the event that the market experiences a reduction of direct-ship milk supplies and a need for supplemental milk from supply plants in 1995 or 1996, the suspended provisions can be easily reinstated by terminating this suspension order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, title 7, part 1106, is amended as follows effective February 1, 1994, through August 31, 1996:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1106.6 [Suspended in part]

2. In § 1106.6, the words "during the month" are suspended.

§ 1106.7 [Suspended in part]

3. In § 1106.7(b)(1), the words beginning with "of February through August" and continuing to the end of the paragraph are suspended.

§ 1106.13 [Suspended in part]

4. In § 1106.13, paragraph (d)(1) in its entirety is suspended.

Dated: March 1, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–5489 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–02–AD; Amendment 39–8822; AD 94–04–04]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the applicability statement of the above-captioned airworthiness directive (AD), that was published in the **Federal Register** on February 11, 1994 (59 FR 6542). A typographical error in the applicability statement of the AD resulted in a reference to a service document that does not exist.

DATES: Effective February 28, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the **Federal Register** as of February 28, 1994 (59 FR 6542).

FOR FURTHER INFORMATION CONTACT: Sheila Mariano, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2675; fax (206) 227–1182.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 94–04–04, amendment 39–8822, applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce engines, was published in the **Federal Register** on February 11, 1994 (59 FR 6542). As published, that AD contained a typographical error in the applicability statement: the applicability statement indicated that the airplanes affected by the AD were listed in Boeing Alert Service Bulletin 747–54A0030, Revision 1, dated December 20, 1993; however, the correct service bulletin number is "757–54A0030." The service bulletin number referenced in the applicability statement of the published AD does not exist.

This document corrects the reference to the service bulletin number cited in the applicability statement of AD 94–04–04, to read as follows:

"Applicability: Model 757 series airplanes equipped with Rolls Royce engines; as listed in Boeing Alert Service Bulletin 757–54A0030, Revision 1, dated December 20, 1993; certificated in any category."

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington on March 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5404 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 27613; Amdt. No. 1587]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC on February 25, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 28, 1994*

Orlando, FL, Central Florida Regional, NDB RWY 9L, Orig.
Orlando, FL, Central Florida Regional, ILS RWY 9L, Orig.
Orlando, FL, Central Florida Regional, VOR/DME RNAV RWY 9L, Orig.
Sanford, FL, Central Florida Regional, NDB RWY 9, Amdt. 11A, Cancelled
Sanford, FL, Central Florida Regional, ILS RWY 9, Amdt. 1A, Cancelled
Sanford, FL, Central Florida Regional, RNAV RWY 9, Amdt. 9A, Cancelled
Baxley, GA, Baxley Muni, VOR/DME–A, Amdt. 3, Cancelled
Patterson, LA, Harry P Williams Memorial, VOR/DME–A, Amdt. 9
Patterson, LA, Harry P Williams Memorial, LOC/DME RWY 23, Amdt. 3
Patterson, LA, Harry P Williams, NDB RWY 5, Amdt. 9
Kinston, NC, Kinston Regional Jetport AT Stallings Field, LOC BC RWY 23, Orig.
North Bend, OR, North Bend Muni, VOR–A, Amdt. 4
North Bend, OR, North Bend Muni, VOR/DME–B, Amdt. 3
North Bend, OR, North Bend Muni, VOR/DME RWY 4, Amdt. 9
North Bend, OR, North Bend Muni, NDB RWY 4, Amdt. 4
North Bend, OR, North Bend Muni, ILS RWY 4, Amdt. 5
Manning, SC, Santee Cooper Regional, VOR/DME–A, Amdt. 4
Manning, SC, Santee Cooper Regional, NDB RWY 2, Amdt. 2
St. George, SC, St. George Muni, VOR/DME–A, Amdt. 1
Walterboro, SC, Walterboro Muni, NDB RWY 23 Amdt. 11
North Kingstown, RI, Quonset State, VOR RWY 34, Orig.

* * * *Effective March 31, 1994*

Kingston, NY, Kingston-Ulster, VOR–A, Orig.
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 7
Medford, OR, Medford-Jackson County, VOR/DME–C, Amdt. 2
Medford, OR, Medford-Jackson County, LOC/DME BC–B, Amdt. 6
Franklin, PA, Venango Regional, ILS RWY 20, Amdt. 4

* * * *Effective February 18, 1994*

Wenatchee, WA, Pangborn Memorial, VOR–A Amdt. 6

[FR Doc. 94–5561 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27614; Amdt. No. 1588]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under the instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington; DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant eocnomic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 25, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
02/01/94	AK	Galena	Galena	4/0578	ILS/DME RWY 25 ORIG... THIS CORRECTS NOTAM IN TL 94-05
02/10/94	MN	Eveleth	Eveleth-Virginia Muni	4/0721	VOR/DME RNAV RWY 27 AMDT 1B
02/17/94	NJ	Trenton	Mercer County	4/0829	TKOF MIN AND DEP PROC AMDT 4...

[FR Doc. 94-5563 Filed 3-9-94; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Using Prior Convictions for Salient Factor Scoring

AGENCY: Parole Commission, Justice.

ACTION: Interim rule, with request for public comment.

SUMMARY: The Parole Commission is clarifying its paroling policy guidelines with regard to using a prior conviction for determining a prisoner's salient factor score, when a prisoner claims the conviction was obtained in violation of his right to counsel, and the records of the conviction are not available. The Commission's present instruction for calculating Item A of the score (prior convictions/adjudications) states that if a prisoner applies to have the appropriate court vacate a prior conviction, and shows that his attempt failed because the records of the conviction were no longer available, the conviction should not be counted. The clarification continues this policy only for felony convictions that occurred prior to 1964 and convictions for all lesser offenses before 1973. For convictions that occurred after these dates, the Commission concludes that the presumption of regularity applies to the prior conviction and that the conviction should be counted in scoring Item A, even though the records of the conviction cannot be retrieved.

DATES: *Effective Date:* March 10, 1994. *Comments:* Public comments must be received by May 9, 1994 in order to be considered prior to adoption of a final rule.

ADDRESSES: Send comments to Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of the General Counsel, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: In its paroling policy guidelines at 28 CFR 2.20, the Parole Commission provides comprehensive instructions for determining a prisoner's salient factor score, which is an actuarial device that assists the Commission in judging the risk of parole violation if the prisoner is paroled. The instruction at Item A (prior convictions/adjudications) provides that a prior conviction is presumed to be valid. However, another instruction in the same paragraph states that if a prisoner seeks to vacate a prior conviction with the appropriate court, and provides evidence to the Commission that the records of the prior proceeding are no longer available, the prior conviction should not be counted. This latter instruction constitutes an exception to the general statement that prior convictions are presumed valid.

The policy on not counting prior convictions when records are unavailable was included in the Commission's internal procedures manual in 1983 and was incorporated in the regulations of the Commission, with all the instructions in the salient factor scoring manual, three years later. 51 FR 7065 (Feb. 28, 1986). It was based on the assumption that federal prisoners incarcerated in 1983 might have incurred prior convictions flawed by a constitutional error so fundamental that the convictions should not be relied upon as reliable evidence of prior criminal behavior, *i.e.*, the violation of the defendant's right to counsel at trial. In 1963, the Supreme Court held that an indigent defendant has the right to appointed counsel in a felony prosecution. *Gideon* v. *Wainwright*, 372 U.S. 335 (1963). It was not until the Court decided the case of *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972), that state courts were advised that this right extended to any prosecution in which the defendant was ultimately sentenced to a jail term. Thus, misdemeanor and petty offense convictions which may have been obtained in violation of the constitutional rule laid down in *Argersinger* would likely have appeared among the prior convictions of many federal prisoners incarcerated in 1983. (The appearance of a prior felony conviction obtained in violation of *Gideon* was possible but less likely.) After these landmark decisions, courts presumably conformed their practices to the new rule, so that the probability that a federal prisoner would have an invalid prior conviction in his criminal record would diminish with time.

The Commission's present instruction at Item A gives the prisoner the benefit of the doubt as to the validity of the prior conviction when the records have been destroyed or are otherwise unavailable. This policy is still logical if it is limited to prior convictions that were incurred before *Gideon* and *Argersinger*. But it should not be extended to convictions obtained after state courts were obliged to follow the decisions. As the Supreme Court recently noted in *Parke* v. *Raley*, _____ U.S. _____, 113 S.Ct. 517, 523-24 (1992), a presumption of regularity attaches to a prior conviction when a defendant attempts to collaterally attack the prior proceeding in another forum. This presumption is especially reasonable when the procedural right allegedly violated in the prior proceeding was firmly established at the time of the prior conviction. *Id.* at 524. In *Parke*, the Court employed this presumption in finding that a state did not violate due process in a sentencing proceeding by requiring a defendant to bear the burden of producing evidence which demonstrates the invalidity of his prior convictions, when records of the prior convictions were unavailable. The Commission believes this presumption of regularity should also apply in parole proceedings in calculating the salient factor score, if the records of the conviction are not available.

Without a revision to the present instruction, the Commission would be restricting itself from counting convictions that are presumptively valid, simply because a court clerk had purged the records of a prior conviction according to a records retirement or destruction schedule. In such a case, the Commission would be ignoring, without good cause, reliable evidence of the risk the prisoner may pose to the public if paroled. In order to prevent this unintended result, the Commission is limiting its policy on not counting prior convictions when records are unavailable to felony convictions that were incurred prior to 1964, and misdemeanor or petty offense convictions incurred prior to 1973. The Commission is retaining its instruction on allowing the use of such convictions

to reach a parole prognosis based on the exercise of clinical judgment, even if the convictions are not counted in scoring Item A.

Finally, the revision clarifies that the policy at issue only allows for challenges to the validity of prior convictions based on the alleged infringement of the right to counsel at trial. The policy does not permit prisoners to collaterally attack prior convictions on constitutional issues that are less easily resolved than the defendant's right to counsel, and less essential to guaranteeing the reliability of the finding of the defendant's guilt.

Implementation

This rule will be applied at all hearings and record reviews (including reviews of appeals to the National Appeals Board), conducted after the effective date.

Executive Order 12291 and Regulatory Flexibility Statement

The Parole Commission has determined that this interim rule is not a major rule within the meaning of Executive Order 12291. This rule, if adopted as a final rule, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, the Parole Commission adopts the following amendment to 28 CFR part 2.

The Amendment

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.20 is amended by revising the second and sixth sentences of the Salient Factor Scoring Manual, Item A, paragraph A.7, to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

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Salient Factor Scoring Manual

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Item A. Prior Convictions/Adjudications (Adult or Juvenile)

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A.7 Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error

* * * * *

It is the Commission's presumption that a conviction/adjudication is valid, except under the limited circumstances described in the first note below.

* * * * *

Similarly, if the offender has petitioned the appropriate court to overturn a felony conviction that occurred prior to 1964, or a misdemeanor/petty offense conviction that occurred prior to 1973, on the ground that his right to counsel was denied, and the offender provides evidence (*e.g.*, a letter from the court clerk) that the required records are unavailable, do not count the conviction.

* * * * *

Dated: February 10, 1994.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94-5611 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Parole Hearings Conducted by Hearing Examiners

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for public comment.

SUMMARY: The U.S. Parole Commission is amending its regulations that define the role of the hearing examiner in conducting parole hearings and in formulating a panel recommendation to the Regional Commissioner. At present, the Commission's rules require that parole hearings be conducted by panels of two examiners, with single examiner hearings being the exception. The amended rule makes single examiner hearings the norm, with the Regional Commissioner having the option to order two-examiner panels for hearings when appropriate. Under the new rule, review and voting by the Regional Administrator will provide the Regional Commissioner with a panel recommendation. The amended rule also permits a hearing examiner (or panel) to withhold the recommended decision that is ordinarily given to the prisoner at the conclusion of a parole hearing, if a critical issues requires further consideration. The purpose served by these changes is to adjust the Commission's procedures to the down-sizing requirements of the Commission's impending abolition, without lessening the quality of justice in parole hearings and decisions.

DATES: Effective Date: The interim rule takes effect April 11, 1994.

COMMENTS: Comments must be submitted by May 9, 1994, in order to be received by the Commission prior to consideration of a final rule.

ADDRESSES: Send comments to Richard K. Preston, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of General Counsel, U.S. Parole Commission, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Under the Sentencing Reform Act of 1984, the U.S. Parole Commission will be abolished effective November 1, 1997. It has a diminishing caseload that consists primarily of offenders who committed their crimes prior to November 1, 1987. In order to achieve an orderly reduction of its staffing levels, it is imperative for the Parole Commission to conduct parole hearings, wherever feasible, with single hearing examiners.

This procedure is authorized by law. In 1986, Congress amended 18 U.S.C. 4208(g) to permit a hearing to be conducted by "a representative of the Commission" as opposed to the former requirement for hearings to be conducted by a panel of two examiners. The legislative history of this statutory amendment makes it clear that Congress intended to remove any bar to single examiner hearings so as to permit the Commission to continue functioning with reduced staff resources.

In order to ensure a thoroughly considered parole decision in every case, review by the Regional Administrator will provide a concurring vote, with a referral to other hearing examiners for a concurring vote in the event of a disagreement between the examiner who conducted the hearing and the Regional Administrator. Regional Commissioners will have the option of ordering panel hearings whenever a hearing examiner is deemed to be insufficiently experienced to conduct a docket of hearings without assistance, and whenever there are particularly complex cases to be heard. To further the purpose of adequate consideration in every case, examiners (and panels of examiners) will no longer be required to give the inmate a final recommendation at the conclusion of each hearing. A final recommendation will continue to be provided in most cases, but in exceptional cases examiners may reserve judgment if there

are issues that require further deliberation. In such cases, the amended rule requires that the prisoner be informed of a tentative recommendation, and of the issue (or issues) that need to be resolved.

Finally, the Commission has cautiously experimented with single examiner hearings for many years, and has traditionally used single examiners to conduct local revocation hearings (as permitted by 18 U.S.C. 4203). The Commission is confident that the quality of its hearings will not be diminished by making single examiner hearings the norm. Regional Commissioners will determine, at their discretion, when panel hearings should be used. The decision to order panel hearings will reflect administrative and staffing concerns only, and will not reflect any prejudgment about prisoners whose hearings will or will not be conducted by a panel of hearing examiners.

Implementation

This interim rule will be followed for all parole hearings (including statutory interim hearings, rescission hearings, special reconsideration hearings, etc.) on dockets conducted after the effective date announced above. It will not apply to transfer treaty prisoners under 18 U.S.C. 4106A.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. It is a rule of internal procedure only, which has been published for comment solely in order to reassure federal prisoners and their representatives of continued fair treatment. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rule

Accordingly, the U.S. Parole Commission amends 28 CFR Part 2 as follows:

(1) The authority citation for 28 CFR part 2 continues to read as follows:

PART 2—[AMENDED]

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR Part 2, § 2.13 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 2.13 Initial hearing; procedure.

(a) An initial hearing shall be conducted by a single hearing examiner unless the Regional Commissioner orders that the hearing be conducted by a panel of two examiners. The examiner shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the examiner may deem relevant.

(b) A prisoner may be represented a hearing by a person of his or her choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner, and to provide such additional information as the examiner shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the examiner shall discuss the recommendation and the reasons therefor.

* * * * *

(3) 28 CFR part 2, § 2.23 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and to make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Any hearing may be conducted by a single examiner or by a panel of examiners. A Regional Administrator may function as a hearing examiner for the purpose of obtaining a panel recommendation whenever the Regional Commissioner has not ordered that a hearing be conducted by a panel of two examiners.

(b) The concurrence of two hearing examiners, or of a hearing examiner and the Regional Administrator, shall be required to obtain a panel recommendation to the Regional Commissioner. A panel recommendation is required in each case decided by a Regional Commissioner after the holding of a hearing.

(c) An examiner panel recommendation consists of two concurring examiner votes. In the event of divergent votes, the case shall be referred to another hearing examiner (or to the Regional Administrator in the case of a hearing conducted by a panel of examiners) for another vote. If concurring votes do not result from such a referral, the case shall be referred to any available hearing examiner until a panel recommendation is obtained.

* * * * *

Edward R. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94-5610 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects the Pension Benefit Guaranty Corporation's final rules on distress and standard terminations of single-employer plans that were published in the **Federal Register** on Monday, December 14, 1992 (57 FR 59205). This action is needed to correct certain editorial errors.

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On May 27, 1992, the Pension Benefit Guaranty Corporation published a final rule setting forth information to be included in a notice of intent to terminate ("NOIT") by plan administrators of single-employer plans undergoing standard terminations (29 CFR part 2617, subpart E, 57 FR 22167). Part of the information relates to notification to participants and beneficiaries of the insurer or insurers from whom the plan administrator may purchase irrevocable commitments. The PBGC stated in the preamble to its final termination regulations that it was incorporating the provisions of that final rule into both the standard and the distress termination regulations (57 FR 59206, 59212, 59213, 59217, December 14,

1992). In doing so, the PBGC inadvertently omitted certain provisions permitting use of a list of insurers. This final rule corrects those omissions.

List of Subjects in 20 CFR Parts 2616 and 2617

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

Accordingly, 29 CFR parts 2616 and 2617 are corrected as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

2. Paragraph (d)(4) of § 2616.27 is corrected to read as follows:

§ 2616.27 Notices of benefit distribution.

* * * * *

(d) *Form and content of notices.*

* * *

(4) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of distribution is issued, a statement that the affected party to whom the notice is directed will be notified at a later date (but no later than 45 days before the date of distribution, as defined in § 2616.2) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, irrevocable commitments may be purchased.

* * * * *

3. Paragraph (e)(1)(ii) of § 2616.27 is corrected by inserting "(or from among whom)" after "whom" and before "he or she".

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2617 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

5. Paragraph (d)(9) of § 2617.22 is corrected to read as follows:

§ 2617.22 Notice of intent to terminate.

* * * * *

(d) *Contents of notice.* * * *

(9) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of intent to terminate is issued, a statement that—

(A) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan,

(B) The insurer or insurers have not yet been identified, and

(C) Affected parties will be notified at a later date (but no later than 45 days before the date of distribution, as defined in § 2617.2) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments;

* * * * *

6. Paragraph (e)(1)(ii) of § 2617.22 is corrected by inserting "(or from among whom)" after "whom" and before "he or she".

Issued in Washington, DC this 28th day of February 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–5429 Filed 3–9–94; 8:45 am]

BILLING CODE 7708–01–M

POSTAL SERVICE

39 CFR Part 20

Amendment of International Mail Manual Subchapter 790

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting amendments of International Mail Manual Subchapter 790 to clarify when a mailing in a foreign country is by or on behalf of a United States resident for purposes of collecting United States domestic postage and to authorize the collection of United States domestic postage on certain mail posted in a foreign country by or on behalf of persons who do not reside in that country.

EFFECTIVE DATE: 12:01 a.m., March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268–5180.

SUPPLEMENTARY INFORMATION: On April 28, 1993, the Postal Service published in the **Federal Register** (58 FR 25959) a proposed rule that would amend Subchapter 790 of the International Mail Manual to clarify when mail is posted in a foreign country is by or on behalf of a United States resident (ABA remail) for purposes of collecting United States domestic postage. The proposed rule would also authorize the Postal Service to collect United States domestic postage on certain mailings posted in countries with which the Postal Service has not negotiated cost-based terminal dues arrangements by or on behalf of persons who reside in countries with which the Postal Service has negotiated cost-based terminal dues arrangements (ABC remail). The Post Service proposed a broad definition of United States resident that would allow it to collect United States domestic postage on mailings posted in another country not only by firms or entities organized in the United States, but also by firms or entities organized under the laws of other countries when there was a substantial connection between such firms or entities and individuals or firms in the United States. The Postal Service also proposed to define when a mailing was by or on behalf of a United States resident as those mailings in which a United States resident seeks or expects to receive an economic advantage. The Postal Service also proposed a definition of resident of a country with which the Postal Service has cost-based terminal dues arrangements and a definition of when a mailing was by or on behalf of such a resident. Comments were due on or before June 1, 1993, and ten comments were received by that date. Of those comments, six opposed and four supported the proposed rule. In view of the comments, the Postal Service has decided to adopt the proposed rule with amendments to take into account some of the criticisms of the proposal.

Legal Authority

One commenter, an association of companies that compete with the Postal Service, asserts that this rulemaking violates the separation of powers and due process principles of the Constitution because the rule would regulate companies that compete with the Postal Service. The Postal Service disagrees. The commenter cited no cases or other authority to support its assertion, and the Postal Service is not aware of any authority which would support such an assertion. Moreover, the rule does not regulate competitors of

the Postal Service who do not use the Postal Service's services, but only specifies when mailers must pay U.S. domestic postage to secure delivery of their mail. Mailers can continue to use remailers and can deposit their mail in any country they choose. They will be required, however, to pay the full cost of the services they obtain from the Postal Service.

Two commenters, a competitor of the Postal Service and the association of competitors, assert that the proposed rule violates the Postal Reorganization Act because it would extend the application of the Private Express Statutes beyond the United States and to mailable matter other than letters. These commenters also assert that the proposed rule would either impose the Postal Service's bilateral cost-based terminal dues arrangements on third countries or boycott mail from non-cost-based terminal dues countries unless the mailer agreed to pay United States domestic postage. They further assert that the Postal Service is not authorized to adopt an interpretation of the Universal Postal Convention without the approval of the President. The Postal Service disagrees.

The proposed rule would not extend the territorial reach of the Private Express Statutes. The Private Express Statutes, 18 U.S.C. 1694–99, 39 U.S.C. 601–06, generally prohibit the private carriage of letters on post routes without paying postage. There are exceptions to this prohibition, and the Postal Service has suspended the prohibition in some cases, e.g., for extremely urgent letters and for outbound international remail. 39 CFR 320.6, 320.8.

The proposed rule would not require that anything be sent by mail, or that United States postage be paid on non-letter mail sent by a private carrier. It simply prescribes when United States postage must be paid to the Postal Service when the mailer chooses to use the Postal Service to deliver items in the United States. Mailers are free, subject to the internal legislation of the countries where they are, to use any carrier they want for both letter and non-letter mailable matter. The Private Express Statutes would come into play only when a mailer chooses to send letters to the United States via a private carrier. When those letters arrive in the United States, unless they come within an exception or suspension of the Statutes, they must be entered into the mails or have United States postage affixed. That is entirely different from the requirement in this rule that U.S. domestic postage be paid on matter entering the United States through the international mail system and which is tendered to the Postal Service for delivery by choice.

The proposed rule would not impose bilateral terminal dues arrangements on third countries nor would it constitute a boycott of mail from countries with which the Postal Service does not have cost-based terminal dues arrangements. The rule does not alter the terms under which the Postal Service exchanges mail with any other country. Countries that are part of the UPU terminal dues system will continue to pay UPU terminal dues. Mail from those countries will continue to be accepted and processed, except for mail posted by or on behalf of mailers who reside in the United States or one of the countries with which the Postal Service has cost-based terminal dues arrangements. That mail will be held for postage or returned as authorized by Article 25 of the Universal Postal Convention (Washington 1989).

The Postal Service is not required to obtain the approval of the President to adopt this rule. Section 407 of title 39, United States Code, provides in pertinent part, "The decisions of the Postal Service construing or interpreting the provisions of any treaty or convention which has been or may be negotiated and concluded shall, if approved by the President, be conclusive on all officers of the Government of the United States." This provision does not limit the authority to adopt regulations, 39 U.S.C. 401(2), but establishes the conditions under which any interpretation of a postal convention will be binding on all officers of the Government. Indeed, the absence of Presidential approval does not make the Postal Service's interpretation invalid, it merely leaves open the possibility that there might be a disagreement with some other interested agency. Presidential approval simply provides a mechanism for resolving disagreements in favor of the Postal Service.

One commenter asserted that the proposed rule would impermissibly extend the territorial jurisdiction of the Postal Service and could cause conflicts between it and the internal legislation of other countries in which mailers are present. The Postal Service disagrees. The basis of the proposed rule is Article 25 of the Universal Postal Convention. That article authorizes postal administrations to collect domestic postage on certain international mail and the decline to deliver certain international mail. Thus, the proposed rule is not based on domestic law alone, but is based on an international agreement to which virtually all countries adhere. That is far different from the case of purporting to apply domestic legislation to conduct outside the United States. That the Postal Service has decided to apply Article 25 selectively to avoid interference with mailers' decisions which do not adversely affect it does not change the application of Article 25 into an extraterritorial extension of United States jurisdiction.

One commenter asserts that the proposed rule exceeds the authority given by Article 25 because the proposed rule would allow the Postal Service to collect domestic postage on remail posted in a country other than the country where the mailer resides, and Article 25 provides only that postal administrations "shall not be bound to accept, forward, or deliver" such mail and "may send back such items to origin or return them to the senders without repaying the prepaid charge." This comment is accurate insofar as there is no express authorization to collect domestic postage on ABC remail as there is for ABA remail. However, the Postal Service does not believe that the absence of an express authorization precludes it from providing mailers an alternative that can be much less onerous than returning the mail to origin. The purpose of Article 25 and IMM 790 is not to punish remail per se, or for that matter, disrupt commercial activities via the mails. As viewed by the Postal Service, Article 25 is intended to ensure that postal administrations receive appropriate compensation for the services they render. Returning mail to origin can take time, and the mail being returned may be time sensitive. The mailer may also have invested more in a mailing than the postage that has been or will have to be paid. In these cases, the option of securing delivery by paying United States domestic postage can be much more desirable than incurring the expense of waiting for the mail to come back, preparing the mail for posting in a third country, and paying new postage to a third postal administration. Moreover, since United States domestic postage rates are among the lowest in the world, there is some likelihood that the mail would simply come back to the United States prepared as United States mail. This being the case, there appears to be no good reason to require mailers to incur the additional expense of re-preparing the mail, shipping it to the United States or some other country, and then paying new postage.

One commenter asserts that the proposed rule would be a repudiation of the Universal Postal Convention's basic terminal dues arrangements. The Postal Service disagrees. The Convention

contains both terminal dues provisions and Article 25 which authorizes administrations not to accept or deliver ABA or ABC remail. As both those provisions are in the Convention, they must be understood as being consistent with one another. In this respect, the existence of Article 25 is a recognition that terminal dues arrangements that are appropriate, and even essential, for the efficient exchange of mails between many countries can be unfairly exploited for individual gain. Enforcement of Article 25 is not a repudiation of the terminal dues system, it is a recognition of a vulnerability that permits administrations to protect themselves and their customers from unfair exploitation.

One commenter asserts that the Postal Service is not exempt from the Administrative Procedures Act (APA) and that the Supreme Court has rejected the Postal Service's claim to be exempt from the APA. The Postal Service disagrees. Section 410 of title 39, United States Code, provides expressly that "Except as provided by subsection (b) of this section, and except as otherwise provided in this title * * * no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service." 39 U.S.C. 410(a). This language plainly exempts the Postal Service from the APA, which is in chapters 5 and 7 of title 5. In subsection (b) of section 410, only sections 552 (public information), 552a (records about individuals), 552b (open meetings) of title 5 are made applicable. Elsewhere in title 39, only section 3001 makes the APA applicable to the Postal Service and then only for mailability proceedings. Thus, nothing in the statute makes the APA applicable to this rulemaking. As for the Supreme Court, in the case mentioned by the commenter, Air Courier Conference of America v. American Postal Workers Union, the Court did not rule on the merits of whether the Postal Service was subject to the APA, but refused to consider an argument based on exemption from the APA because that argument had not been presented to the court below. Not considering an argument is far different from considering an argument and rejecting it.

Definition of United States Resident and of Other Country Resident

Several commenters assert that the proposed rule, insofar as it attempts to elaborate criteria for determining whether a firm or business is resident in the United States in terms of the percentage of ownership of that firm or business by persons who reside in the United States or by other firms or organizations incorporated or organized in the United States, is unreasonable and that it is too broad and could result in legitimate international mailings having to pay twice or having to pay a different compensation rate than the one they are entitled to under the Universal Postal (UPU) Convention. They further assert that it is ambiguous, that it would require a knowledge of corporate information which would be too burdensome for a foreign private carrier or postal administration to ascertain, that it would have adverse consequences operationally and for customers, that efforts to apply the rule will lead to arbitrary actions and disputes, and that it would erect a trade barrier. Similar objections are raised regarding the application of such percentage of ownership criteria to determine the resident status of a sender in another country. In response to these views, the Postal Service is eliminating the percentage of ownership criteria from its proposed rulemaking.

Trade Policy

Two commenters have asserted that the proposed rule is contrary to U.S. trade interests and anti-competitive and that the European Commission has recently started proceedings against enforcement of Article 25. One of the commenters has asserted that Article 25 itself is an anti-competitive, market-allocation scheme. The Postal Service does not agree with these assertions. These commenters have also asserted that President Reagan had instructed the Postal Service not to apply UPU Convention Article 25(4) in an anti-competitive manner. The Postal Service does not consider the proposed rule to be inconsistent with the position President Reagan communicated to the Postal Service or to be anti-competitive. First, the Postal Service sees no inconsistency between U.S. trade interests and its own efforts to assure that it is fairly and adequately compensated for the costs of handling mail from other countries. It would not agree with the implication that remail companies, which target a specific, high-density type of mailing for their services, are entitled to subsidized, below-cost delivery of their mailings by postal administrations or that efforts to assure adequate compensation for the cost of delivery of such mailings are anti-competitive. To the extent that remail companies depend upon such below-cost delivery for the services they offer, they are engaged in an abuse of the international mail system and of U.S. mailers whose payments in effect subsidize such services. Article 25 permits postal administrations to take action which, rather than being anti-competitive, serves to protect themselves against such abuse. To the extent that private carriers provide end-to-end delivery services, Article 25 simply does not apply to their activities. Furthermore, the contention that the European Commission is proceeding against enforcement of Article 25 is ambiguous. The manner in which actions were taken by some European administrations in the past has been challenged by the European Commission. However, there are postal administrations in Europe, such as the German postal administration, which are now aggressively applying Article 25 and these actions are not being challenged by the European Commission.

Improvements in the Terminal Dues System

Three commenters assert that the Postal Service should deal with the problem of uneconomic remail by correcting the flaws of the UPU terminal dues system instead of taking administrative action. The Postal Service agrees that the best way of dealing with uneconomic remail would be to correct the flaws of the terminal dues system, but it has concerns about whether the 186 member countries of the Universal Postal Union, many of which have a vested interest in the current structure, can agree on a system that will adequately solve the problem.

The Postal Service is, nevertheless, working to establish a fully cost-based terminal dues system, that is, a system to cover the specific costs of each delivering postal administration which agrees to participate in the new system, thus providing fair and equal reimbursement for delivery services regardless of where mail is entered in the new system by participating administrations. Fewer than thirty industrialized countries, however, have an interest in developing such a system. Although these countries have made progress in achieving consensus on the requirements for and operation of such a system, the problem of "unequal access" is likely to be exacerbated. The majority of countries which will continue to apply a simplified, lower-rate UPU system in all their mail exchanges will have more favorable access to the industrialized countries participating in the cost-based system than the industrialized countries will have with each other.

To permit a new country-specific cost-based system to operate equitably and without the unfair arbitrage experienced between the current cost-related system and the UPU terminal dues system would require a majority of the member countries of the Universal Postal Union to agree either to a global country-specific cost-based terminal dues system or to an interface or "bridge" arrangement between the simpler UPU terminal dues system and the country-specific cost-based system. In considering the difficulties of persuading the UPU of the market-influenced reasons for cost-based terminal dues, it should be noted that a majority of UPU member countries, many of which are developing countries, would lose significant terminal dues revenues under a country-specific cost-based system which would require payment of higher prices for delivery services to the industrialized countries and lower prices for the same services to approximately 160 other countries.

Despite the obstacles, the Postal Service is working toward the adoption at UPU Congress of proposals which, if approved, will significantly reduce the flaws in the current terminal dues system. Although the Postal Service is optimistic about the adoption of some of these proposals, it has only one of approximately 186 votes at UPU Congress and cannot guarantee the outcome.

Furthermore, the Postal Service is obligated to comply with the terms of the Acts of the Universal Postal Union currently in effect. Outside of the framework of these Acts, the Postal Service can negotiate other terminal dues arrangements only with the agreement of another country or group of countries; it cannot impose a particular cost-based terminal dues arrangement on other countries nor can it unilaterally impose a particular level of terminal dues on inbound international mail.

The UPU meets in Congress every five years, and the next opportunity to achieve the agreement necessary to implement an equitable and fully cost-based terminal dues system among the industrialized countries will arise at the Seoul Congress in late 1994. The Acts of the Universal Postal Union adopted at that Congress will take effect in 1996.

In the meantime, therefore, the application of the proposed rule is the only means of providing protection against the abuse of the current terminal dues system.

Administration of Proposed Rule

One commenter asserted that enforcement of the rule is bound to be arbitrary and capricious, that it cannot be strictly enforced without incurring excessive costs, and that, if selectively enforced, it would be enforced only against competitors of the Postal Service. The Postal Service disagrees with this assertion. The elimination of the criteria for determining resident status which relates to percentage of ownership will simplify enforcement activity. Although excessive costs might be incurred if one-hundred percent effectiveness were required, enforcement can still be undertaken in a sufficiently vigorous and cost-effective manner to maintain a credible deterrent to abuse of the system. Furthermore, the effort to distinguish so-called competitors from non-competitors engaged in efforts to evade fair payment of delivery costs would, even if it were possible, certainly lead to excessive administrative costs and be self-defeating. As the purpose of the rule is solely to assure fair and adequate reimbursement of delivery costs, there is no incentive to make such an effort.

One commenter asserts that there has been no independent verification that UPU terminal dues do not adequately compensate the Postal Service for its expense in delivering foreign-origin mail and that participation in a study of international costs and revenues by the Postal Rate Commission should be a prerequisite to implementing the proposed rule. The Postal Service disagrees. The Postal Service alone is responsible international mail services, and there is no legal requirement that its determinations be subject to verification by any other agency. The Postal Rate Commission, in particular, has no jurisdiction over international rates or services, so any study conducted by the Commission would have no legal significance. The Postal Service has concluded that the proposed rule, as amended, would benefit users of United States mail. No persuasive reason has been put forward why implementation of that rule should be deferred while an agency with no responsibility for international services conducts a cost study that would have no legal significance. Accordingly, the Postal Service will not defer implementation of the proposed rule.

One commenter asserts that the Postal Service has offered no data on the losses against which the proposed rule would provide protection and no support of the need for such a rulemaking. The assertion that the Postal Service has not attempted to precisely quantify all losses is correct as far as it goes. However, based upon mailings already found to be in violation of Subchapter 790 and upon the continuing nature of these activities, the Postal Service considers that it has an adequate basis for its estimate that it has already suffered significant losses and for its judgment that it will continue to incur such losses unless more effective remedial action is taken. Therefore, by giving the sender the option of either paying domestic postage to secure delivery or accepting their return to origin, such losses can be avoided or significantly reduced.

One commenter asserted that, under the proposed rule, the Postal Service could decide at its own discretion whether mail was of legitimate international origin or whether it should have been entered as domestic mail and that it could make such decisions without prior consultation with regulators, other postal administrations, or other administrative bodies. The Postal Service agrees that it will exercise its own discretion in implementing the proposed rule, but disagrees with any implication that this will be done in an arbitrary manner and without opportunity for consultation. The Postal Service considers the exercise of this responsibility to be fully consistent with its statutory authority and responsibility to assure that it is appropriately and adequately compensated for the costs of the services it provides. The purpose of the proposed rule is to provide senders and foreign postal administrations with information about Postal Service enforcement activities which will help assure that mailings comply with Postal Service regulations and are not subject to such decisions. It is the responsibility of the sender to be informed about these regulations and to comply with them. The elimination of the percentage of ownership criteria should simplify compliance with these Postal Service regulations. If the sender or a foreign postal administration remains uncertain about whether a mailing complies with Postal Service regulations, then it is the responsibility of the sender or the foreign postal administration to consult with the Postal Service in advance of the mailing. In any event, when the Postal Service determines that it is appropriate to apply the proposed rule, it will attempt to consult with the sender and to give the sender an opportunity to pay the required domestic postage or to explain why the mailing should be delivered without such payment. The sending administration will then also have an opportunity to comment on the

enforcement of the rule by the Postal Service.

One commenter asserts that the proposed rule is inconsistent with the policy of allowing outbound remail from the United States, that it would deny to foreign firms the opportunities for remail to the United States that the Postal Service allows to firms in the United States, that it does not take into account remailing opportunities to the United States "between countries not listed in Exhibit 792.1," that, if adopted by other countries, the rule would eliminate the possibility of sending "prepaid mailshots" from the country of choice of the sender, and that the proposed ruling would disturb the climate for establishing cost-based terminal dues. The Postal Service disagrees with these assertions, at least to the extent that they refer to mailings for which the country of destination will be adequately compensated for its delivery costs. It is true that the suspension of the Private Express Statutes for outbound international mail will permit private delivery services, including remail companies, to carry mail to other countries without Postal Service constraint. In such circumstances, however, the Postal Service itself incurs no costs and suffers no cost disadvantage. The purpose of the proposed rule is to provide protection only in those circumstances where the Postal Service does incur costs and would suffer a cost disadvantage. Furthermore, the fact that Postal Service has suspended its own Private Express Statutes with respect to outbound international mail does not mean that private delivery services or remail companies are not subject to the corresponding statutes of other countries or to the actions which other postal administrations may take to enforce Article 25 or to assure adequate compensation for the delivery of mail from senders in the United States sent indirectly by way of third countries providing access to the international mail system at below-cost postage rates. With respect to remail opportunities to the United States "between countries not listed in Exhibit 792.1," as long as the sender is a resident of such a country, the Postal Service suffers no cost disadvantage for such mailings. With respect to the threat to "prepaid mailshots" from the country of choice of the sender, there is no threat to "prepaid mailshots" as long as there has been no evasion of the payment to the delivering country of appropriate postage rates or terminal dues. With respect to the assertion that the proposed rule would disturb the climate for establishing cost-based terminal dues, the Postal Service is of the view that such a rule vigorously enforced will strengthen the incentive to adopt a cost-based terminal dues system in order to reduce the need for such enforcement activity.

One commenter suggested what he considered to be clarifying changes to sections 792.31 and 792.32 of the proposed rule, which explain that a mailing is "by or on behalf of a person or firm who resides in the United States" or "by or on behalf of a person or firm who resides in a country listed in Exhibit 792.1" where "such a person or firm seeks or expects to derive economic benefit or advantage from that mailing" in relation to activities or to "operations physically conducted" in the United States or in one of the countries listed in Exhibit 792.1. The commenter suggested the addition of "with respect to the cost of postage" after "if such a person seeks or expects to derive economic benefit or advantage from that mailing" to clarify that the economic benefit is with respect to the cost of the postage for the mailing and not because of the content of the mailing. The Postal Service has not adopted this suggestion because the "economic benefit or advantage" noted in § 792.31 and 792.32 refers to the gains which are the result of the addressees response to the mailings expected by the person or firm engaged in the mailing and not gain which result from avoiding the cost of postage.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 7 of the International Mail Manual is amended by revising section 790 to read as follows:

CHAPTER 7—TREATMENT OF INBOUND MAIL

* * * * *

790 Items Mailed Abroad by or on Behalf of Senders in the U.S. and Certain Other Countries.

791 Postage Payment Required.

Payment of United States postage is required to secure delivery of mail described in 792 under the following circumstances:

a. The mailing is by or on behalf of a person or firm that resides in the United States and the foreign rate of postage applied to such items is lower than the comparable United States domestic rate of postage, or 1000 or more such items are mailed in a 30 day period regardless of whether the foreign postage is lower than the comparable United States postage; or

b. The mailing is by or on behalf of a person or firm that resides in a country listed in Exhibit 792.1, is posted in a country not listed in Exhibit 792.1, and 1000 or more items are mailed in a 30 day period.

792 Mailings Affected.

792.1 Special Conditions. The special conditions apply to items of mail which are posted in foreign countries:

a. By or on behalf of persons or firms who reside in the United States; or

b. By or on behalf of persons or firms who reside in one of the countries listed in Exhibit 792.1.

792.2 Residency

792.21 Criteria for U.S. Residency. A firm is a resident of the United States if it meets the following criteria:

a. It has a place of business in the United States; or

b. It is incorporated or otherwise in the United States, its territories, or possessions.

792.22 Criteria for Countries Listed in Exhibit 792.1 A firm is a resident of a country listed in Exhibit 792.1 if it meets the following criteria:

a. It has its principal place of business in that country; or

b. It is incorporated or otherwise in that country, its territories or possessions.

792.3 By or on Behalf

792.31 United States Resident. A mailing is by or on behalf of a person or firm who resides in the United States if such a person or firm seeks or expects to derive economic benefit or advantage from that mailing.

792.32 Resident of a County Listed in Exhibit 972.1. A mailing is by or on behalf of a person or firm who resides in a country listed in Exhibit 792.1 if such a person or firm seeks or expects to derive economic benefit or advantage from that mailing related to operations physically conducted in any of those countries. These operations include, but are not limited to, selling goods manufactured in those countries and selling services provided in those countries.

792.4 Place of Business. A place of business in the United States is any location in the United States, its territories, or possessions where a firm's employees or agents regulatory have personal contact with other individuals for the purpose of conducting the firm's business. For the purposes of this section, a firm whose employees or agents have personal contact with others for the purpose of conducting the firm's business in different places in the United States for short periods of time, e.g., at hotels in different cities for one or two days at a time, has a place of business in the United States if the aggregate amount of time spent in the United States is 180 days or more during a one year period.

792.5 Agents. The use of a non-exclusive agent in the United States for the sole purposes of accepting orders and remissions for transmission to a firm in another country or of distributing merchandise manufactured in another country and shipped to the United States in bulk does not by itself constitute establishment of a place in the United States.

793 Advance Payment Required.

793.1 Sample of Envelope. Senders affected by 791 must submit a sample of the proposed mailing (envelope and contents) with (1) a statement as to the number of items to be mailed, (2) when and where the mailing will take place, and (3) a check, made payable to the U.S. Postal Service, to cover the amount of the applicable U.S. postage, to the:

Manager, Business Mail Acceptance, Customer Service and Sales, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–6808.

793.2 Headquarters Notification. Notification of postage acceptance and approval of the mailing will be given by Headquarters to the sender and to the appropriate U.S. receiving exchange office. This will permit the items in the mailing to go forward to the addresses without delay when the items reach the United States.

794 Treatment if Advance Payment Not Made.

794.1 Return or Disposal of Items. Items may be returned to origin or disposed of in accordance with postal regulations if U.S. postage is not paid.

794.2 Mailings Received Without Advance Payment. A mailing subject to 791 received without advance payment of U.S. domestic postage will be held at the receiving exchange office. The exchange office will report all such mailings to the:

Manager, Business Mail Acceptance, Customer Service and Sales, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–6808.

Reports must contain (1) title and/or nature of the items, (2) identity of sender, (3) number of items detained, (4) weight of a single item, (5) foreign postage paid per item, and (6) office of mailing. The exchange office will be advised to release the mail when the applicable postage has been paid.

795 Report of Mailings.

Any mail appearing to be subject to the conditions of this subchapter must be reported to Business Mail Acceptance, at USPS Headquarters, by the U.S. receiving exchange office.

Exhibit 792.1

Canada
Denmark
Finland
France
Germany
Great Britain and Northern Ireland
Iceland
Ireland
Italy
Luxembourg
Netherlands
Norway
Spain
Sweden

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–5428 Filed 3–9–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[IA–6–1–6244; FRL–4848–1]

Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action, pursuant to section 107(d) of the Clean Air Act ("the Act") to redesignate part of Muscatine County, Iowa, from attainment to nonattainment for sulfur dioxide (SO_2).

The result of this action is that the state of Iowa must submit an SO_2 implementation plan for the Muscatine nonattainment area to EPA, within 18 months after the effective date of this notice, that meets the requirements of part D, Title I of the Act. (See section 191(a) of the Act.)

EFFECTIVE DATE: This rule will become effective April 11, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: EPA is authorized to initiate the redesignation of additional areas (or portions thereof) as nonattainment for SO_2, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality related considerations the Administrator deems appropriate. As explained in the notice proposing the redesignation (58 FR 44639), section 107(d)(3) outlines a procedure to be followed for redesignations. EPA believes that the redesignation, promulgated with this notice, is appropriate and necessary to ensuring timely attainment and maintenance of the SO_2 ambient air quality standard in the Muscatine area. Violations of the SO_2 standard occurred in both 1991 and 1992. EPA believes that the area redesignated as nonattainment by this notice satisfies the applicable criteria.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. A nonattainment area is defined as any area that does not meet, or that significantly contributes to, ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the relevant pollutant. (See section 107(d)(1)(A)(i).) EPA believes that reasonably reliable techniques, including monitoring and/or modeling information, may be used both in determining the designation appropriate for an area and in establishing SO_2 nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act. Thus, in determining the appropriate boundaries for the nonattainment area, EPA has considered using the appropriate monitoring data and modeling information not only in the area where the violations of the SO_2 National Ambient Air Quality Standards (NAAQS) are occurring, but in nearby areas which may significantly contribute to such violations.

On August 24, 1993, EPA published a notice in the **Federal Register** (54 FR 44639) proposing that an area in Muscatine County, Iowa, be redesignated to nonattainment for SO_2. A minor correction to the description of the proposed nonattainment area was

published on September 23, 1993 (54 FR 49467), and a notice reopening the comment period until November 26, 1993, was published on November 5, 1993 (54 FR 58999). Additional information regarding the proposed action and this final action is contained in the docket maintained at the EPA Regional Office located at the address above.

Response to Comments

Comments were received from three affected sources located within the proposed nonattainment area and from the Governor of Iowa. The comments are addressed extensively in the Technical Support Document (TSD) contained in the docket for this notice.

All commenters took issue with EPA's proposed action. The comments centered around the validity of the monitoring data, the description of the nonattainment area, and the need for the action given intentions by the sources to reduce their SO_2 emissions.

Two major source commenters questioned the validity of the monitoring data at the Musser Park monitor, where the violations were recorded, on the days of exceedances in 1991. A review of the monitoring station information for those days revealed that the air conditioner failed in the monitoring station on or before June 25, 1991. This resulted in higher than normal ambient temperatures in the monitoring station on June 25 and part of June 26, 1991, when the air conditioner was replaced. High temperatures may have affected the performance of the monitor on June 26, 1991. Therefore, EPA has decided to discount the exceedance which occurred on that date. Additional data review, however, confirmed that the exceedances which occurred on June 27 and July 20, 1991, were valid, and thus there was one measured violation of the SO_2 NAAQS in 1991.

Two commenters stated the EPA's notice to the Governor, required pursuant to section 107(d)(3) which was based on the 1991 violations and sent to the Governor on November 29, 1991, is invalid because no violations occurred in 1991. However, as stated above, at least one violation did occur in 1991. Therefore, the basis for this comment is incorrect. In addition, as explained in detail in the TSD, valid measured data from 1992 show at least one violation in that year. Even if the 1991 data had been shown to be invalid, EPA is not required to restart the process with another letter to the Governor in order to designate the area nonattainment.

One commenter questioned the siting of the Musser Park monitor. As explained in detail in the TSD, EPA review confirmed that the siting of the monitor is consistent with the EPA siting criteria specified in 40 CFR part 58, appendix E.

One commenter questioned using modeling to establish the boundaries of the nonattainment area, stating that modeling subsequently performed by the commenter did not validate the monitoring data on the days of exceedances at the Musser Park monitor, and, thus, use of the model by EPA to establish the nonattainment area is unjustified.

EPA is basing its nonattainment designation on ambient monitoring data, its description of the nonattainment area on monitoring data, and, to a lesser extent, modeling data. The contention by the commenter that modeling data are not consistent with monitoring data at the Musser Park location does not negate EPA's use of modeling data to help define the boundaries of the nonattainment area. EPA policy permits wide discretion in determining the boundaries of nonattainment areas, including the use of political boundaries. In this case, EPA used modeling data to narrow the nonattainment area to an area that encompassed both monitored and modeled nonattainment areas and major SO_2 sources.

The three major source SO_2 commenters, as well as the Governor of Iowa, stated that redesignation to nonattainment was unnecessary since the major SO_2 sources were working with the state to reduce emissions. EPA is aware of the ongoing efforts in this regard, but notes it has been over two years since the first monitored violation of the NAAQS and over one year since the second violation, yet there have been no federally enforceable emission limitations established to reduce SO_2 emissions in the Muscatine area. Furthermore, administrative orders recently issued by the state to the three major SO_2 sources in the Muscatine area have been appealed.

EPA has a responsibility to not only ensure that air quality problems are addressed thoroughly and expeditiously, but to require contingency measures and maintenance plans to ensure continued attainment of the NAAQS. The nonattainment designation promulgated today will lead to development of these necessary requirements to protect air quality in the Muscatine area.

The final comment was that a nonattainment designation would result in economic hardship on the sources and the community. This is a factor that may be considered by the state in developing and implementing a control strategy, but is not a factor to be considered by EPA in its nonattainment designation decision. EPA does not believe that it is appropriate to consider such factors in light of the criteria for redesignations pursuant to section 107(d)(3) of the Act, which relates to air quality considerations.

In summary, EPA believes that a nonattainment designation, for the area described in the corrected **Federal Register** notice of September 23, 1993, pursuant to section 107 of the Act, is appropriate and necessary to ensure timely attainment and maintenance of the air quality standards in the Muscatine area.

Areas designated nonattainment are subject to the provisions of sections 107, 176(c), and part D of the Act. From the effective date of this notice, the state will have 18 months to submit a revised State Implementation Plan (SIP) which contains measures that provide for attainment of the area within five years.

Within 12 months of this nonattainment designation, the state must submit a revision to the SIP which addresses the requirements of the general conformity rule (58 FR 63214). The general conformity requirements established by 40 CFR parts 51 and 91 apply to the nonattainment area until the state's general conformity SIP revision is approved by EPA.

EPA Action

EPA is designating part of Muscatine County, Iowa, as nonattainment for SO_2 in accordance with the section 107(d)(3) redesignation process described above. The nonattainment area is described as follows: T 77 N, R 2 W, Sections 26, 27, 34, 35; and T 76 N, R 2 W, Sections 2, 3, 10, 11, 14, 15, 22, 27, 28, 33, 34, Muscatine County, Iowa. 40 CFR 81.316 is being revised accordingly.

Redesignation of an area to nonattainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the state must adopt new regulations, based on an area's nonattainment status, EPA will review the effect of those actions on small entities at the time the state submits those regulations. Thus, EPA certifies that this redesignation will not affect a substantial number of small entities.

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A

revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived table 2 and table 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for table 2 and table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting, or allowing or establishing, a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 1, 1994.

Dennis Grams,

Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.316 is amended by revising the "Iowa—SO_2" table to read as follows:

§ 81.316 Iowa.

* * * * *

IOWA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Muscatine County:				
Area within T 77 N, R 2 W, sections 26, 27, 34, 35; and T 76 N, R 2 W, sections 2, 3, 10, 11, 14, 15, 22, 27, 28, 33, 34	x			
Remainder of county				x
Remainder of state				x

* * * * *

[FR Doc. 94–5626 Filed 3–9–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7031

[AZ–930–4210–06; AZA–26088, AZA–26089, AZA–26099]

Withdrawal of National Forest System Lands for a Recreation Complex, an Administrative Site, and a Research Ranch; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,117.77 acres of National Forest System lands from mining for 20 years to protect significant capital improvements and recreational and research values associated with the Parker Canyon Lake Recreation Complex, the Carr Barn Administrative Site and the Research Ranch. The lands have been and will remain open to mineral leasing and surface uses authorized by the Forest Service.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investments and the recreational and research values of the Parker Canyon Lake Recreation Complex, the Carr Barn Administrative Site, and the Research Ranch:

Gila and Salt River Meridian

Coronado National Forest

Research Ranch

T. 21 S., R. 18 E.,
Sec. 26, W½, and W½E½;
Sec. 33, E½NE¼, and NE¼SE¼;
Sec. 34;
Sec. 35, lot 6, W½, W½NE¼, NW¼SE¼NE¼, W½SW¼SE¼NE¼, NW¼NW¼SE¼, and N½SW¼SW¼SE¼.
T. 22 S., R. 18 E.,
Sec. 2, lots 2, 3, and 4, N½SW¼, NW¼SE¼, SW¼NE¼, and S½NW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, N½N½SE¼, and N½NE¼SW¼;
Sec. 4, lot 5, and SE¼NE¼NE¼.

The areas described aggregate 2,442.04 acres in Santa Cruz County.

Parker Canyon Lake Recreation Complex

T. 23 S., R. 19 E.,
Sec. 18, lots 1, 2, and lots 4 to 7, inclusive and lot 9, SW¼NE¼, E½NW¼, W½NE¼SE¼, W½E½NE¼SE¼, and that portion lying within Homestead Entry Survey 291;
Sec. 19, lots 1, 2, and 3, NE¼NE¼, and that portion lying within Homestead Entry Survey 291.

The area described contains 665.73 acres in Cochise County.

Carr Barn Administrative Site

T. 23 S., R. 21 E.,
Sec. 7, SE¼NE¼NW¼.

The area described contains 10 acres in Cochise County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–5467 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7032

[AK–932–4210–06; F–90576]

Withdrawal of Public Land for Protection of the Paleoindian Site Known as Mesa Site; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,560 acres of public land from settlement, sale, location, or entry under the general land laws, and from location and entry under the United States mining laws, but not from mineral leasing, for a period of 20 years for the Bureau of Land Management to protect the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Paleoindian site:

Umiat Meridian

T. 12 S., R. 17 W., (Unsurveyed)
Secs. 11 to 14, inclusive.

The area described contains approximately 2,560 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–5466 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 7033

[AK–932–4210–06; F–030474]

Partial Revocation of Powersite Classification No. 443, as Modified, for Selection of Land by the State of Alaska; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Powersite Classification, insofar as it effects approximately 25,634 acres of land withdrawn for power purposes at Teklanika River. The land is no longer needed for the purpose for which it was withdrawn. This action also opens approximately 19,734 acres of land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of any withdrawal of record. The remaining approximate 5,900 acres of land will continue to be withdrawn as part of the Denali National Park and Preserve pursuant to the Alaska National Interest Lands Conservation Act.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–17–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1)(1988), it is ordered as follows:

1. Powersite Classification No. 443, as modified, which withdrew land for power purposes in the Teklanika River area, is hereby revoked insofar as it affects the following described land:

Fairbanks Meridian

Beginning at a point on the Teklanika River latitude 63°58′08″ N., longitude 149°31′48″ W. All lands upstream from this point below the 2,000 foot contour located in:

a. Those portions of Tps. 12 and 13 S., Rs. 9 and 10 W., (surveyed), which lie outside of the Denali National Park and Preserve. The area described contains approximately 19,734 acres.

b. Those portions of Tps. 11 S., Rs. 9, 10, and 11 W.; and Tp. 13 S., R. 10 W., (partially surveyed), which lie within the Denali National Park and Preserve.

The area described contains approximately 5,900 acres.

The total area described contains approximately 25,634 acres.

2. Subject to valid existing rights, the land described in section 1(a) above is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b)(1988).

3. The State of Alaska applications for selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1988), for the land described in 1(a) above, become effective without further action by the State upon publication of the public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of any withdrawal of record.

4. The land described in paragraph 1(b) above will remain withdrawn as part of the Denali National Park and Preserve, pursuant to Section 206 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 410(hh–5)(1988).

Dated: March 2, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–5586 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF ENERGY

48 CFR Part 903

RIN 1991–AB10

Acquisition Regulation: Procurement Integrity

AGENCY: Department of Energy (DOE).

ACTION: Final rule; technical amendments.

SUMMARY: DOE is amending the Department of Energy Acquisition Regulation (DEAR) to implement the requirements of the Federal Acquisition Regulation (FAR) to identify the individuals responsible for concurring in the contracting officer's decision regarding the impact of a violation, or possible violation, of the procurement integrity requirements occurring during the conduct of a procurement. This rule falls under the exceptions stated in the Administrative Procedure Act to the proposed rulemaking and public procedure requirements. These changes are all technical and administrative in nature, and none of them raises substantive issues.

EFFECTIVE DATE: This rule will be effective on May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Office of Policy (HR–521.1), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Background.
A. Discussion
B. Section-by-Section Analysis
II. Procedural Requirements.
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Background

A. Discussion

DOE is amending the DEAR to implement the requirements of FAR 3.104–11(a) concerning the identification of the individuals within DOE responsible for concurring in the contracting officer's decision regarding the impact of a violation, or possible violation, of the procurement integrity requirements occurring during the conduct of a procurement. The specific amendments to the DEAR are described below.

B. Section-by-Section Analysis

The procedures contained in FAR 3.104–11(a)(1) require a contracting officer who has information concerning any violation, or possible violation, of the procurement integrity statute and regulations and who concludes that the violation or possible violation has no impact on the award of the contract or modification to submit this conclusion to an individual within the agency for concurrence. Under FAR 3.104–11(a)(2), that individual is also responsible for notifying the Head of the Contracting Activity, or his or her designee, if that individual does not concur in the contracting officer's conclusion with respect to the impact of the violation or possible violation. The FAR directs that such an individual be designated in accordance with agency procedures.

Under this rulemaking, Subpart 903.1, entitled "Safeguards," will be amended to add a new section 903.104–11(a) to implement FAR 3.104–11(a) by identifying the responsible individual. Within DOE, except for Headquarters activities, the individual designated to perform the responsibilities set forth in FAR 3.104–11(a)(1) and (2) is the legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award of the contract or modification. For Headquarters activities, the individual designated to perform the responsibilities set forth in FAR 3.104–11(a)(1) and (2) concerning questions of disclosure of proprietary or source selection information and certification matters is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions concerning FAR 3.104–11(a)(1) and (2) for Headquarters activities is the Assistant General Counsel for General Law (Designated Agency Ethics Official).

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or in the distribution of power and responsibilities among various levels of government.

If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and

implementing a policy action. This rule will not affect states. It deals with relations between Federal agencies.

F. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 903

Government procurement.

Issued in Washington, DC on March 2, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below:

PART 903–IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for Part 903 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subpart 903.1, Safeguards, is amended by adding a new section 903.104–11 to read as follows:

903.104–11 Processing violations or possible violations under procurement integrity.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of (FAR) 48 CFR 3.104–11(a) (1) and (2) relative to contracting officer conclusions on the impact of a violation or possible violation of the procurement integrity requirements shall be the legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award or selecting the source. The legal counsel is the Chief Counsel for the Operations Offices or the Energy Technology Centers; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in (FAR) 48 CFR 3.104–11(a) (1) and (2) regarding questions of disclosure of proprietary or source selection information and certification matters is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding (FAR) 48 CFR 3.104–11(a) (1) and (2) for Headquarters activities is the Assistant General Counsel for General Law (Designated Agency Ethics Official).

[FR Doc. 94–5437 Filed 3–9–94; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1815, 1852, and 1870

Acquisition Streamlining Techniques

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA FAR Supplement to incorporate a number of techniques that will streamline the acquisition planning and competitive source selection processes.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1993, an interim rule to amend the NASA FAR Supplement to streamline the acquisition planning and competitive source selection processes was published in the **Federal Register** for comment (58 FR 61629–61634). Public comments on the interim rule suggested NASA consider revising its policy to address several issues.

The first of these issues concerns the statement in section 1807.103(b)(4) that approval of a procurement plan does not constitute approval of any special conditions or special clauses that may be required unless the plan so specifies and the individual having approval authority is a signatory of the plan. The comment suggests that this approach is of questionable value and recommends that the interim rule be changed to indicate that procurement plans should only be approved by the level that has authority to grant approval to all aspects of the plan.

The policy in the interim rule allows a single document—the procurement plan—to accommodate the approval of special requirements that would normally be processed separately, thereby preventing duplicative effort. NASA believes that this technique is an effective streamlining tool. On the other hand, the public comment recommendation would be counter productive in that it would raise approval of the procurement plan to the highest levels when it is unnecessary to do so. For example, economic price adjustment (EPA) clauses require the approval of NASA Headquarters. If the public comment recommendation were adopted, the entire procurement plan would need to be approved at the Headquarters level rather than just the EPA clause. Under the NASA procedure, the procurement plan would be approved at the lowest appropriate level at the field installation, and only the EPA clause need be submitted for Headquarters approval. NASA does not believe the recommended change is appropriate.

The second issue raised in the public comments concerns the proposal page limitations imposed by the interim rule. The comment noted that section 1815.406(d) does not address whether proposal attachments are included in the page limitations and suggested that the interim rule be changed to exclude attachments such as key personnel resumes and management plans. If these exceptions were not made, the comment argues that NASA would be forced to generate questions during the discussions phase to obtain the information that could not be accommodated by the page limitations.

We do not believe that the public comment recommendation will contribute to streamlining acquisitions. The intent of the page limitation initiative is to streamline the acquisition process by focusing the attention of both the Government and prospective offerors on the key discriminators upon which selection will be based. Once so focused, solicitation requirements can be concisely articulated and proposals can be constructed in a like manner. Furthermore, with less material to evaluate, fewer resources need be committed to the evaluation process. These benefits can be achieved without degradation of the integrity, fairness, or thoroughness of the procurement process.

Section 1815.406(d) lists the specific elements of a proposal that are excluded from the proposal page limitations (title pages, tables of content, and cost/price information). Attachments to the proposal are not included in this list because they are intentionally subject to the page limitations. If they were not, and large sections of a proposal were

excluded from the page limitations, the benefits of this initiative would be largely dissipated.

In addition, the public comment assertion that the Government would generate questions during the discussion phase to obtain information that could not be included in the proposal because the page limitations is speculative at best. Consequently, NASA does not believe a change is appropriate in this instance.

The third issue raised in the public comments addresses the statement in section 1807.170–4(a) that approved Acquisition Strategy Meeting (ASM) minutes satisfy the requirement of a formal procurement plan. The comment expressed concern that the interim rule does not ensure that an ASM will address all the issues required of a procurement plan and recommended that the interim rule be changed to ensure this happens.

This recommended revision is unnecessary since adequate coverage is already in the interim rule. Section 1807.170–4(e) requires that "ASMs, whether held at Headquarters or field installations, shall address the mandatory procurement plan topics specified in 1807.170".

The fourth issue identified in the public comments concerns the accuracy of the statement in section 1815.613–71(b)(4)(i) that cost is "neither scored nor ranked". The public comment suggests that cost is always ranked.

Under NASA's long-standing source selection procedures, four evaluation factors are used. Mission suitability is scored both numerically and assessed an adjectival ranking. Past Performance and Other Considerations are both ranked adjectivally but neither is given a numerical score. Cost, the fourth factor, is neither scored numerically nor ranked adjectivally.

The NASA system is rooted in the best value concept in which selection decisions are made after performing informed trade-offs between most probable cost and the evaluation of the non-cost evaluation factors. Under this system, "ranking" cost is not meaningful. Both numerical evaluations and adjectival ratings are inappropriate, and the relative standing of offerors' evaluated costs in itself has no utility. Accordingly, NASA does not believe a change to indicate that cost is "ranked" is appropriate. However, we are making an editorial change in the final rule to clarify that cost is "neither scored numerically nor ranked adjectivally."

The fifth issue addressed in the public comment is the NASA alternative scoring method described in section 1815.613–71(b)(ii). The comment objects to this policy on the grounds that it deprives the Source Selection Official (SSO) from learning the extent of an offeror's improvement from its initial proposal to its BAFO and that it increases the potential for technical leveling and technical transfusion.

NASA believes that both of the concerns are unfounded. The alternative scoring method requires the identification of strengths and weaknesses of initial proposals, and the Source Evaluation Board (SEB) always presents to the SSO the strengths and weaknesses of both an offeror's initial proposal and its BAFO. Clear traceability between the two is provided and the SSO had full visibility into any improvement (or degradation) of an offeror's proposal during the course of the evaluation. Also, the nature and conduct of written or oral discussions is the same under the alternative scoring method as under the standard method. Either way, under the NASA system of limited discussions, technical leveling and technical transfusion are virtually eliminated. No changes to the interim rule are necessary in this area.

The last issue raised in the public comments questions the statement in section 1815.613–71(b)(4)(iv) that the competitive range may be further narrowed as a result of written or oral discussions.

NASA's policy is that the competitive range consists of all proposals with a reasonable chance of award. Where there is doubt about whether a proposal should be included in the competitive range, it is resolved by including it. If a proposal is included in the competitive range under the latter circumstances, and the written or oral discussions resolve the doubtful issues by clarifying that the proposal should not have been included in the competitive range, the proposal may be eliminated at that point. This procedure is already described in section 1815.613–71(b)(4)(iv), and no change to the interim rule is necessary.

NASA is adopting as a final rule the text set out in the interim rule with minor changes to parts 1815, 1852, and 1870 that have no significant effect on the substance of the interim rule. These changes either correct errata and inconsistencies or provide further clarification of the published interim rule. No changes are made to part 1807.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1815, 1852, 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1807, 1815, 1852, and 1870 are amended as follows:

1. The authority citation for 48 CFR parts, 1815, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.406 [Amended]

2. Section 1815.406 is amended by revising the fourth sentence of paragraph (c) to read as follows:

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

* * * * *

(c) * * * In determining page counts, a page is defined as one side of a sheet, 8½" × 11", with at least one inch margins on all sides, using not smaller than 12 characters per inch or equivalent type. * * *

* * * * *

1815.613–71 [Amended]

3. Section 1815.613–71 is amended by revising the fourth sentence of paragraph (b)(4)(i) to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

* * * * *

(b) * * *

(4) * * *

(i) * * * This evaluation will be fully documented, including scoring or ranking proposals in accordance with the numerical and adjectival standards identified in the RFP and this handbook, except cost which is neither scored numerically nor ranked adjectivally. * * *

* * * * *

4. Section 1815.613–71 is amended by revising the parenthetical reference "(e.g., two or three)" in the third sentence of paragraph (b)(4)(ii) to read "(e.g., five or fewer)".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.215–81 [Amended]

5. In section 1852.215–81, the reference "(October 1993)" after the

clause title is revised to read "(January 1994)", and the first sentence of paragraph (b) is revised to read as follows:

1852.215–81 Proposal Page Limitations.

* * * * *

(b) A page is defined as one side of a sheet, 8½" x 11", with at least one inch margins on all sides, using not smaller than 12 characters per inch (or equivalent) type. * * *

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.303 Appendix I—[Amended]

6. In section 1870.303, Appendix I, chapter 4, paragraph 404 is amended by revising the third sentence of paragraph 2.m. to read as follows:

Appendix I to 1870.303, NASA Source Evaluation Board Procedures (Handbook)

* * * * *

CHAPTER 4—SEB OPERATING PROCEDURES FOR SOLICITATION AND EVALUATION

* * * * *

404 Request for Proposals (RFPs)—Review and Approval

* * * * *

2. * * *

m. * * * Firm page limitations shall also be established for BAFOs, if requested. * * *

* * * * *

7. In section 1870.303, appendix I, chapter 4, paragraph 407.6.d is amended by revising the parenthetical reference "(e.g., two or three)" in the second sentence to read "(e.g., five or fewer)" and by removing the language "and complete" in the last sentence.

[FR Doc. 94–5143 Filed 3–9–94; 8:45 am]

BILLING CODE 7510–01–M

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48 CFR Part 1807

Procurement Plan Contents Regarding Strategies to Encourage Cost Realism

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has revised the NASA FAR Supplement to address how cost realism will be included in procurement plans. Procurement plans should included how the offeror will be advised of the importance of cost realism, how cost realism will factor into the evaluation and selection decision, how cost realism will be monitored, and how incentives will be offered through contract provisions.

DATES: *Effective Date:* This interim rule is effective March 31, 1994. *Comments:* Comments are due no later than May 9, 1994.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office or Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, telephone: (202) 358–0440.

SUPPLEMENTARY INFORMATION:

Background

Submission by competing proposers of unrealistically low estimated costs in proposals is a common occurrence in acquisitions where cost is a factor in the selection decision. Proposers may hope to gain selection over others by submitting cost proposals which are unrealistically low. This results in probable cost adjustments being made, during the source selection process, to the offeror's proposal based on assumptions by the Government which may or may not be totally accurate. The probable cost estimate is included in the report to the Source Selection Official for consideration in making a selection decision. Subsequently, selected proposals are negotiated upward based upon the cost adjustments, or else cost overruns are experienced on the ensuing contracts. The additional guidance on procurement plan preparation is provided to encourage NASA acquisition planners to address efforts to promote the submission of realistic cost proposals.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, wither in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This interim rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR 1807

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1807 is amended as follows:

1. The authority citation for 48 CFR part 1807 continues to read as follows:

Authority: 42 U.S.C. 2373 (c)(1).

PART 1807—ACQUISITION PLANNING

1807.170–1 [Amended]

2. In section 1807.170–1, paragraph (d)(4) is added to read as follows:

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(d) * * *

(4) *Cost realism.* To promote the submission of realistic cost proposals, discuss the following factors—

(i) How the offeror will be advised of the importance of cost realism (e.g., address cost realism in solicitation provisions);

(ii) How cost realism will factor into the evaluation and selection decision (e.g., include cost realism in evaluation factors and evaluation plan (reduce mission suitability scores));

(iii) How cost realism will be monitored and how incentives will be offered through contract provisions (e.g., recognize cost realism in award fee provisions).

[FR Doc. 94–5145 Filed 3–9–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 84]

RIN 2127–AF15

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; Response to petitions for reconsideration.

SUMMARY: On September 2, 1993, NHTSA published a final rule specifying that manufacturers must install air bags to satisfy automatic crash protection requirements. The final rule also required that labels bearing specified information be placed in vehicles equipped with air bags and that additional, more detailed information about air bags be provided in the owner's manual.

In response to two petitions for reconsideration, NHTSA is amending the labeling requirements to allow a consumer information label regarding utility vehicles to continue to be placed on the sun visor. In addition, in response to three requests for interpretation, NHTSA is amending the labeling to clarify that the air bag maintenance label can be combined with the air bag warning and to allow the use of either the word "Caution" or the word "Warning" at the beginning of the air bag warning label. Finally, this notice explains that translations of the labels are permitted as long as the required English language versions are provided.

DATES: *Effective Date:* The amendments made in this rule are effective March 1, 1994. *Compliance dates:* Mandatory air bag requirements: See the Compliance Dates section at the beginning of the "Supplementary Information" section of the final rule (58 FR 46551; September 2, 1993). Vehicle label requirements: September 1, 1994. Owner's manual requirements: March 1, 1994.

Petitions for reconsideration: Any petitions for reconsideration must be received by NHTSA no later than April 11, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: On September 2, 1993, NHTSA published a final rule specifying that manufacturers must install air bags to satisfy automatic crash protection requirements. The final rule also required that labels bearing specified information be placed in vehicles equipped with air bags and that additional, more detailed information about air bags be provided in the owner's manual.

General Motors Corporation (GM) and Ford Motor Company (Ford) submitted petitions for reconsideration of the September 2 final rule. Volkswagen of America, Inc. (VW), Nissan Research and Development, Inc. (Nissan), and American Suzuki Motor Corporation (Suzuki) wrote to the agency requesting clarification of certain aspects of the September 2 final rule. All of the issues raised by the petitions and the letters concern the labeling requirements of the September 2 final rule. A discussion of each issue and the agency's response follows.

Utility Vehicle Label

The September 2 final rule required various types of labels concerning air bags to be placed on the sun visor. Section S4.5.1(b)(2) of Standard No. 208, as amended by the September 2 final rule, states: Except for an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

Both GM and Ford petitioned the agency to amend S4.5.1(b)(2) of Standard No. 208 to permit the utility vehicle label on the sun visor. Since September 1, 1984, utility vehicles with a wheel-base of 110 inches or less have been required to be labeled with information to inform drivers that the handling and maneuvering characteristics of those vehicles require special driving practices (49 CFR part 575.105). Included in the language required by § 575.105(c)(1) is the statement "WEAR YOUR SEATBELTS AT ALL TIMES." The label is required to be affixed to one of several locations in the vehicle interior, including the driver's side sun visor.

Ford also stated that it voluntarily affixes the utility vehicle label on some vehicles with wheel-bases larger than 110 inches, and requested that S4.5.1(b)(2) permit the utility vehicle label in those instances also. This issue was also raised by Suzuki and Nissan.

The prohibition against other air bag or seat belt information on the sun visor in the final rule was intended to prevent "information overload" regarding air bags and seat belts. Additional information could blunt the impact of the required information. The main emphasis of the utility vehicle label is the possibility of rollover. Further, the required statement concerning belt use is incidental to that message. Finally, in view of the similarity of the statements about seat belt use in the utility vehicle label and air bag labels, the former label poses no threat of information overload about belt use. Therefore, NHTSA is amending the final rule to allow the installation of a utility label that contains the language required by 49 CFR 575.105(c)(1).

Dual Language Label

The September 2 final rule specified requirements for three air bag labels: A maintenance label, a warning label, and an alert label. Section S4.5.1(a) requires the air bag maintenance label to be in English. The specific wording which must be on the air bag warning label and the air bag alert label is specified in S4.5.1(b)(1) and S4.5.1(c) respectively. Section S4.5.1(b)(2) prohibited any "other information" on the same side of the sun visor as the air bag warning label and prohibited any "other information about air bags or the need to wear seat belts" on the sun visor.

VW requested an interpretation of the labeling requirements to allow dual language labels. VW stated that Canada requires these labels, if provided, to be in both English and French. VW stated that manufacturers would be able to produce vehicles at lower cost if one label could be used for vehicles sold in both countries. Nissan also asked whether French translations were allowed on the labels.

As explained above, section S4.5.1(a) requires the air bag maintenance label to be "in English." The air bag warning label and air bag alert label are not expressly required to be in English. However, S4.5.1(b)(1) and S4.5.1(c) do expressly require that those labels read as specified in the standard. For each label, those provisions specify, in English, the exact wording of a required message.

The agency addressed a related matter in a May 24, 1993 letter to Mr. Steve Flint of Century Products Co. In that letter, the agency determined that Spanish and French versions of the registration form required by Standard No. 213 were permitted, "as long as the English form complies with S5.8 and does not bear any information or writing beyond that required to be on the form * * * if the information * * * is presented in a manner that is not likely to confuse consumers in this country about the meaning of the English form or the importance of owner registration."

NHTSA interprets the labeling requirements of the September 2 final rule as requiring manufacturers to supply the information in English. Once this requirement is met, manufacturers may supply the same information in other languages, so long as it does not confuse consumers. As long as the non-English language label is a translation of the required information, NHTSA does

not interpret it to be "other information." However, manufacturers are not permitted to include additional information in the non-English label.

NHTSA intends to monitor the provision of foreign language translations of the English language label on the sun visor. NHTSA would initiate corrective rulemaking in the future if it appeared that the presence of non-English labels was in any way creating confusion or other problems. For example, the agency notes that the September 2 final rule did not include a minimum type size requirement for the labels required by S4.5.1 (b) or (c). Since sun visors have limited space, NHTSA is concerned that the addition of multiple language versions of the required information could result in use of a type size that would make the label difficult to read.

Maintenance Label Location

Section S4.5.1(a) of Standard No. 208, as amended by the September 2 final rule, allows the air bag maintenance label to "be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor." However, S4.5.1(b)(2), as amended by the September 2 final rule, states "No other information shall appear on the same side of the sun visor to which the label is affixed."

Both VW and Nissan stated that the language of these two sections appeared contradictory, and requested clarification that it was permitted to combine the air bag maintenance and warning labels.

NHTSA agrees that the two sections are contradictory. NHTSA intended to allow the combination of the air bag maintenance and warning labels, and is amending S4.5.1(b)(2) to clarify that no information other than that in the maintenance label is allowed on the same side of the sun visor as the air bag warning label.

Signal Word "Caution"

Section S4.5.1(b)(1) requires the following information on the sun visor for every seating position with an air bag:

Caution to Avoid Serious Injury

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

Suzuki requested an interpretation of this section to allow the use of the word "WARNING" rather than the word "CAUTION." Suzuki stated that the American National Standards Institute Standard Z535.4–1991, Product Safety Signs and Labels, specifies that the signal words "Warning," "Caution," and "Danger" be used to signify different degrees of risk of personal injury. Suzuki stated that this standard would require use of the word "Warning" for the type of label required by S4.5.1(b)(1), and that allowing this word in place of "Caution" would be consistent with "a national effort toward uniformity in safety labeling of products."

NHTSA added the phrase "CAUTION, TO AVOID SERIOUS INJURY" in the final rule to "attract occupants' attention to the label and provide a brief statement of the risks of improper use and consequences." NHTSA concludes that substitution of the word "WARNING" would also achieve these goals, and is therefore permitting its use.

Miscellaneous Corrections

NHTSA is also correcting two errors made in the regulatory language in the final rule. The fifth sentence of S4.5.1(e) read: The owner's manual shall also explain that no objects should be placed over or near the label identifying the air bag on the steering wheel and instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

NHTSA is deleting the words "the label identifying" since this label is no longer required.

The first sentence of S12.6(a) read: NHTSA will process any application for temporary exemption that contains the information specified in S21.4 and S12.5.

NHTSA is correcting the reference to S21.4 to read S12.4.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. A final regulatory evaluation was prepared for the September 2 final rule since it was significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has determined that there will be no additional economic impacts from this final rule because the changes simply either clarify the previous final rule, or allow manufactures additional flexibility.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA has determined that there will be no significant economic impacts from this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), NHTSA notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicles safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.5.1(b)(1), S4.5.1(b)(2), S4.5.1(e) and S12.6(a) to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.5 *Other general requirements.*

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) *Label on sun visor above front outboard seating positions equipped with inflatable restraint.* (1) For vehicles manufactured on or after September 1, 1994, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(3), and except that the word "WARNING" may be used instead of "CAUTION," this label shall read:

Caution to Avoid Serious Injury

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

(2) The color of the lettering on the label shall contrast with the background of the label. Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, no other information shall appear on the same side of the sun visor to which the label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, or in a utility vehicle label that contains the language required by 49 CFR 575.105(c)(1), no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

* * * * *

(e) *Information to appear in owner's manual.* The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and a lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the air bag on the steering wheel or on the instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

S12.6 *Processing an application for a temporary exemption.* (a) NHTSA will process any application for temporary exemption that contains the information specified in S12.4 and S12.5. If an application fails to provide the information specified in S12.4 and S12.5, NHTSA will not process the application, but will advise the manufacturer of the information that must be provided if the agency is to process the application.

* * * * *

Issued on March 4, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5485 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018 AB45

Migratory Bird Permits; Determination That Kansas, New Hampshire, and Rhode Island Meet Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds Kansas, New Hampshire, and Rhode Island to the list of States whose falconry laws have been determined by the Director to meet or exceed minimum standards. As a result, Kansas, New Hampshire and Rhode Island are participants in the cooperative Federal-State permit application program and falconry may be practiced by those States. Also, the asterisk preceding Missouri in 50 CFR 21.29(k) is removed as there is no longer a cooperative Federal-State permit application program in Missouri.

DATES: This rule is effective on March 10, 1994.

ADDRESSES: Comments and material concerning this rule should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday though Friday.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker, Special Agent in Charge, Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

Regulations in 50 CFR Part 21 provide for review and approval of State falconry laws by the Service. A list of States whose falconry laws have been approved by the Service is found in 50 CFR 21.29(k). Falconry is permitted in the those States. As provided by 50 CFR 21.29(c), the Director has reviewed certified copies of the falconry regulations adopted by the States of New Hampshire (New Hampshire Fish and Game Laws Chapter 209–A, effective January 1, 1988). Rhode Island (Chapter 20–17, General Laws of Rhode Island incorporating 50 CFR 21.27 through 21.30, effective December 15, 1992), and Kansas (K.A.R. 23–21–1 through 23–21–14, effective May 1, 1988). These regulations meet or exceed the minimum restrictions, conditions and requirements contained in 50 21.29(d) through (i) prescribed for permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. The Kansas, New Hampshire and Rhode Island regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j). Based on the review, the Director has determined that the

falconry regulations of the States of Kansas, New Hampshire and Rhode Island meet or exceed the Federal standards.

On March 11, 1992, the Missouri Department of Conservation notified the Service that the cooperative Federal-State permit application program was no longer in effect. Effective March 10, 1994, the practice of falconry in Kansas, New Hampshire, and Rhode Island will be governed by provisions found in 50 CFR 21.28 and 21.29 and the asterisk following Missouri in 50 CFR 21.29(k) will be removed thereby removing Missouri from the cooperative Federal-State permit application program.

The notice requirements of 5 U.S.C. § 553(b) are not applicable because public comments were solicited by the Service in a proposed rule for falconry permit regulations published in the **Federal Register** on December 20, 1987, (52 CFR 48948) and on September 14, 1989, (54 FR 38142) the final rule was published in the **Federal Register**. Also, the Kansas, New Hampshire, and Rhode Island regulatory programs allowed for reasonable public input. On November 17, 1987, the Kansas Department of Wildlife and Parks Commission held public hearings that were attended by falconers and concerned wildlife conservation organizations. Similar provisions for public hearing or comments were provided in New Hampshire on December 24, 1987, and November 20, 1992, and in Rhode Island on August 27, 1992. The Proposed Rule, Migratory Bird Permits; Determination That Kansas Meets Federal Falconry Standards, was published in the **Federal Register** on November 14, 1990, (55 FR 47498). Public comments were solicited at that time and none were received. As the rules relating too New Hampshire and Rhode Island are similar to those enacted by Kansas; and because of similar public hearings held in the respective states, as well as no comments having been received regarding the Kansas falconry rules, the falconry regulations adopted by New Hampshire and Rhode Island are also being added to this final rule.

This rule relieves a restriction prohibiting Kansas, New Hampshire and Rhode Island from the practice of falconry; therefore, it is effective upon publication in accordance with 5 U.S.C. 553(d)(1).

Need for Rulemaking

The need for changes to Title 50 CFR Part 21, has arisen from the expressed needs of those States (Kansas, New Hampshire, and Rhode Island) that have instituted falconry programs for the benefit of citizens interested in the sport of falconry and have constructed regulations that meet or exceed Federal requirements protecting migratory birds. Missouri has determined that its needs are best met by no longer participating in a cooperative Federal-State permit application program. However, Missouri remains a State in which falconry is practiced. The changes to 50 CFR 21.29 regulations are necessary to accommodate the needs of the States affected and those who wish to practice falconry in these States.

Required Determinations

This rule was not subject to the Office of Management and Budget review under Executive Order 12866. The Department of Interior has determined that this final rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). It has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this rule will be to allow falconers in the States of Kansas, New Hampshire, and Rhode Island to apply for falconry permits. It is estimated that approximately 25 people or less would apply for falconry permits in each of these States. The removal of Missouri from the cooperative Federal-State permit application program does not affect the ability of individuals to either apply for or receive falconry permits in Missouri. Missouri Falconry regulations meet or exceed Federal falconry standards. Permits for falconry in Missouri will be issued separately by Federal and State authorities. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* These final changes in the regulations in 50 CFR part 21 are regulatory and enforcement actions that are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 of the Department Manual.

Author

The primary author of this final rule is Marcia Cronan, Senior Special Agent, Division of Law Enforcement, U.S. Fish and Wildlife, Service, Washington, DC 20240.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation and Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, part 21, subchapter B, chapter I of title 50, Code of Federal Regulations, is amended as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for Part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

§ 21.29 [Amended]

2. Amend § 21.29(k) by adding to the list of States in alphabetical order the names "Kansas" preceded by an asterisk, "New Hampshire" preceded by an asterisk, "Rhode Island" preceded by an asterisk and removing the asterisk preceding "Missouri."

Dated: February 28, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5579 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 85

RIN: 1018–AB95

Clean Vessel Act Pumpout Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule provides the requirements for participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act of 1992. This rule provides for the uniform administration of this new grant program.

DATES: This rules becomes effective April 11, 1994.

Proposals will be accepted for FY 1995 funds ($7.05 million) between the effective date and April 29, 1994. For FY 1996 and FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1995 for FY 1996).

ADDRESSES: Copies may be obtained by mailing a request to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW, MS 140 ARLSQ, Washington, DC 20240, or obtained from the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, room 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

Sweage discharged by recreational boaters is a substantial contributor to localized degradation of water quality in the United States. The discharge of untreated sewage by boaters is prohibited under Federal law in all areas within the navigable waters of the United States. Many boaters have Type III marine sanitation devices (holding tanks), or portable toilets for sewage. However, there is currently an inadequate number of pumpout stations and dump stations for boaters to dispose of their sewage. The purpose of the Act, therefore, is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout and dump stations to improve water quality.

Section 5604 of the Clean Vessel Act (Pub. L. 102–587, Subtitle F) authorizes the Director of the U.S. Fish and Wildlife Service (Director) to make grants to coastal States for conducting surveys of the status of existing facilities and need for additional facilities, and developing plans for the provision of facilities; and to all States for constructing/renovating pumpout and dump stations and for implementing associated education programs. Funds will be available on a competitive basis to ensure that grants address the highest national priorities. Amounts made available to the Service in a fiscal year are available for obligating to the States for two years. Funds obligated to the States by the Service are normally spent within the year that these funds are obligated, but are available until expended on that grant.

Summary of Comments and Recommendations

In the July 8, 1993, Interim Rule for the Clean Vessel Act Pumpout grant Program, all interested parties were requested to submit comments that might contribute to the development of a final rule for a 45 day period ending August 23, 1993. Appropriate State and Federal agencies, local governments, boaters and boating organizations, marina owners/operators, marine equipment manufacturers and retailers, conservation organizations, and other interested parties were contacted and requested to comment.

A total of 2 written comment letters on the guidelines were received by the Service from 2 marine equipment manufacturers. Both comment letters made suggestions to clarify and recommendations to modify some of the language and guidance. In addition, 1 letter opposed the direction of the Clean Vessel Act to install pumpout and dump stations, recommending on-board treatment instead.

In addition to the comments received, ten changes were made. The first change is in the Summary, Other Dates, and in § 85.21(b): The next application period will end April 29, 1994, with $7.05 million available. The second change is in the Background, second paragraph, last sentence: language was added to clarify that the funds available to the Service each year are available for obligation to the States for two years. If not obligated in that two-year period, the funds are turned over to the U.S. Coast Guard for boat safety. Once obligated to the States, however, the funds are normally spent in the year obligated, but are available until expended.

The third change is in the information collection requirements section, last two sentences: The collection of survey information has been approved by OMB, and the Service may now fund the State surveys. The fourth change is in § 85.20(b)(2), first sentence, and 85.20 (c)(3): Floating restrooms have been added as eligible for federal aid funding. This addition makes these guidelines in agreement with the technical guidelines, in which the Oregon State Marine Board commented that these restrooms should be eligible because they meet the intent of the Act to reduce vessel sewage pollution, are used solely by boaters, and provide the only means to reasonably accommodate human waste from boaters using smaller recreational watercraft 12–18 ft that do not carry portable toilets or do not have holding tanks.

The fifth change is in § 85.22(d), Grant proposals, after innovative approaches: public/private partnerships, education, sensitive waters, and public access were added. The sixth change is in § 85.30 Grant selection criteria, at end of section: Points have been added to each of the criteria for both coastal and inland States. The seventh change is in Section 85.31 Grant selection, first sentence: Regional Offices have been deleted from the ranking panel and NOAA, EPA and USCG have been added, along with the Service's Washington office Division of Federal Aid personnel.

The eighth change is in § 85.31 Grant selection., second sentence: The date for the Director to make the selection has been changed to August 1, annually. The ninth change is in § 85.44, last sentence: the phrase, "for the useful life", was deleted, and the phrase, "as long as the facility is needed and it serves its intended purpose", was added. This better reflects how long proceeds should be used for operation and maintenance. An additional sentence was also added, "Maximum fee shall be evaluated for inflation, etc., each year." This sentence was added because conditions may change through time which may require changes in the maximum fee that should be charged. The tenth change is in § 85.48, after (b): This guidance was added because some States have a question on how they should receive payment for funds expended under this grant program.

A total of 6 issues were identified by the commenters. The Service considered all suggestions and recommendations. This final guideline revises the proposed guidelines based on the issues raised by the commenters and makes other changes to clarify the requirements in the interim guidelines. Those comments adopted are included in the final guidelines in the appropriate sections. The following is a discussion of the issues raised by the commenters, the Service's responses to those issues, and a summary of changes made to the proposed guidelines.

Issue 1. Raritan Engineering Co., Inc.: Regarding the Clean Vessel Act: Low density of pumpout stations is not the problem. Pumpout stations have not been installed or used because they are messy, problematic and distasteful. The primary problems with marine sanitation today are: (1) Less than desirable compliance of existing legislation; (2) difficulty enforcing existing legislation; (3) the absence of systems appropriate for all types of boats, boaters, and boating; (4) unfair allowances for treated waste water discharge from municipal waste water plants while treated waste water from boating sources is restricted; and (5) the specter of additional no discharge zone approvals. The Clean Vessel Act attempts to solve the first problem. It will not be successful, however, because the cause has been misidentified. Additionally, it does not address problems 2 and 3, and will heighten problems 4 and 5. The Clean Vessel Act contains no provision to provide funds to improve or enhance on-board treatment of boat generated sewage, which is the future of marine sanitation. The Act should be amended to provide 50% of the Wallop-Breaux funds made available to be spent on the documentation of on-board treatment systems successes, and to fund research and development programs for improved on-board treatment systems to make them more feasible for the vast numbers of small recreational boats.

Response: The Clean Vessel Act addresses Type III marine sanitation devices, or holding tanks, only. Types I

and II, as discussed by the commenter, are not addressed in the current legislation. Suggestions made by the commenter would need additional legislation, as the Service is not authorized to make such changes.

Issue 2. Raritan Engineering Co., Inc.: Background, first sentence: The word "may be" does not correspond to the wording in the Act, which states that "Sewage discharged * * * is a substantial contributor * * *"

Response: The words "may be" have been deleted, and the word "is" has been substituted.

Issue 3. Raritan Engineering Co., Inc.: Subpart C, Part 85.30 Grant selection criteria, subpart (d): after pumpout and dump stations add "and treatment".

Response: As mentioned above in response to issue 1, treatment is not within the scope of the Act.

Issue 4. Raritan Engineering Co., Inc.: Subpart C, Part 85.30 Grant selection criteria: after (g), add "(h) Proposals for innovative ways to develop on-board treatment systems (Type I and/or II) that would be more appropriate for smaller boats (boats under 30')."

Response: As mentioned above in response to issue 1, treatment is not within the scope of the Act.

Issue 5. Raritan Engineering Co., Inc.: Subpart C, Part 85.30 Grant selection criteria: after proposed (h) add "(i) Proposals to survey coastal boaters to establish the needs of smaller boaters such that on-board treatment systems may be developed to meet the needs more precisely."

Response: As mentioned above in response to issue 1, treatment is not within the scope of the Act.

Issue 6. Sealand Technology, Inc.: Section 85.44 Fee charges, first sentence: The maximum fee of $5.00 may deter pumpout station installation for two reasons: waste disposal costs may warrant a higher fee, and a provision should be made for very large holding tanks (50 gallons plus).

Response: The Service agrees that there may be situations in which a higher fee may be needed, and a statement that higher fees should be justified has been added.

Environmental Effects

The effects on the physical, biological and sociological environment are too broad, speculative, and conjectural to be analyzed meaningfully. Therefore, the action is categorically excluded from any National Environmental Policy Act documentation pursuant to 516 DM 2.3 A(2). However, construction/renovation of pumpout and dump stations will require separate environmental consideration.

All actions that may be funded by this national grant program will comply with requirements of the National Environmental Policy Act (Appendix 1 of 516 Department Manual 6) prior to the funding. Compliance with the National Environmental Policy Act and other environmental laws related to the Endangered Species Act, Coastal Barriers Resources Act as amended by the Coastal Barrier Improvement Act, Coastal Zone Management Act, Executive Orders on Floodplains (E.O. 11988) and Wetlands (E.O. 11990), historic/cultural resources, prime and unique farmlands, and the Clean Water Act shall be completed before grant agreements are approved by the Fish and Wildlife Service.

Information Collection Requirements

The information collection requirements contained in this rule, except for surveys, are only those necessary to fulfill applicable requirements of 43 CFR Part 12, and have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The collection of survey information contained in this rule was approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.*, October 18, 1993, OMB No. 1018–0086, expiration date September 30, 1996. Burden is expected to be 176,665 responses and 30,033 reporting hours.

Statement of Effects

This rule was not subject to Office of Management and Budget review under E.O. 12866. The grant program does not involve "taking" as described in Executive Order 12630. The rule allows eligible States to make decisions regarding the development and submission of proposed grants for surveys, plans, construction/renovation and education. Therefore, it is consistent with Executive Order 12612 on Federalism. The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The effects of these rules occur to agencies in the States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia and the Northern Mariana Islands. These are not small entities under the Regulatory Flexibility Act. Some small entities, mainly marina operators, may be the recipients of grants.

Intergovernmental Review of Federal Programs

This Clean Vessel Act Grant Program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 43 CFR part 9 "Intergovernmental Review of Department of the Interior Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

States and Territories that participate in the Executive Order process have established Single Points of Contact (SPOCs). Applicants should alert their SPOCs to the prospective applications and receive any necessary instructions to provide material as required by the SPOC. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the narrative. Applicants from States that choose to exempt the grants need take no action regarding E.O. 12372.

Author

The primary author of these rules is Robert D. Pacific, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 85

Grant program, Grant procedures, Program policy, Project selection criteria, Natural resources, Coastal waters, Pumpout station, Dump station, Recreational vessel, Coastal zone management, Information collection, Recordkeeping and reporting requirements.

Regulation Promulgation

For the reasons set out in the preamble, Subchapter F of Chapter I, Title 50 of the Code of Federal Regulations is amended by revising Part 85.

PART 85—CLEAN VESSEL ACT GRANT PROGRAM

Subpart A—General

Sec.

85.10 Purpose and scope.
85.11 Definitions.
85.12 Information collection, recordkeeping, and reporting requirements.

Subpart B—Application for Grants

85.20 Eligible activities.
85.21 Application procedures.
85.22 Grant proposals.

Subpart C—Grant Selection

85.30 Grant selection criteria
85.31 Grant selection.

Subpart D—Conditions on Use/Acceptance of Funds

85.40 Cost sharing.
85.41 Allowable costs.
85.42 Real and personal property.
85.43 Signs and symbols.
85.44 Fee charges for use of facilities.
85.45 Public access to facilities and maintenance.
85.46 Survey and plan standards.
85.47 Program crediting.
85.48 Compliance with Federal laws, regulations, and policies.

Authority: Public Law 102–587, Subtitle F.

Subpart A—General

§ 85.10 Purpose and scope.

The purpose of this Part is to establish requirements for state participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act (Public Law 102–587, Subtitle F).

§ 85.11 Definitions.

Terms used in this Part shall have the following meaning:

(a) *Clean Vessel Act or Act.* The Clean Vessel Act (Pub. L. 102–587, subtitle F).

(b) *Coastal State.* A State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. The term excludes Alaska and American Samoa because these States have a ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in § 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), of less than one.

(c) *Costal waters.* In the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes. In other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bays, lagoons, bayous, ponds, and estuaries.

(d) *Coastal zone.* Coastal zone has the same meaning that the term has in section 304(1) of the Coastal Zone Management Act of 1992 (16 U.S.C. 1453(1)). The coastal zone consists of coastal waters (including the lands therein and thereunder) and the adjacent shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands and protect coastal waters.

(e) *Construction.* Activities which produce new capital improvements and increase the value of usefulness of existing property.

(f) *Dump station.* A facility specifically designed to receive sewage from portable toilets carried on vessels. Dump stations do not include lavatories or restrooms.

(g) *Education/information.* The education/information program, as identified in the technical guidelines as published in the **Federal Register**, designed to make recreational boaters aware of the environmental pollution problem resulting from sewage discharges from vessels and inform them of the location of pumpout and dump stations.

(h) *Eligible applicant.* An agency of a State designated by the Governor.

(i) *Facility.* A pumpout station or dump station.

(j) *Grant.* An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee.

(k) *Inland State.* A State which is not a coastal State. The District of Columbia, American Samoa and Alaska are included as inland States (Rationale for Samoa and Alaska being inland States can be found in § 85.11(b) above).

(l) *Maintenance.* Those activities necessary for upkeep of a facility. These are activities that allow the facility to function and include routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is non-routine cyclical maintenance to keep facilities fully functional.

(m) *Operation.* Those activities necessary for the functioning of a facility to produce desired results. These are activities that make the facility work.

(n) *Plans.* Those plans identified in the technical guidelines as published in the **Federal Register**, for construction or renovation of pumpout and dump stations necessary to ensure that there are adequate and reasonably available stations to meet the needs of recreational vessels using the coastal waters of the State.

(o) *Pumpout station.* A facility that pumps or receives sewage from a type III marine sanitation device (holding tank) installed on board vessels.

(p) *Recreational vessel.* Watercraft manufactured for operation, or operated, primarily for pleasure. This term includes any watercraft leased, rented, or chartered to another for the latter's pleasure.

(q) *Renovation.* Major rehabilitation of a facility to restore it to its original intended purpose.

(r) *Surveys.* Those surveys identified in the technical guidelines as published in the **Federal Register**. Surveys are designed to determine the number and location of all operational pumpout and dump stations at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone. Surveys also are designed to determine the number of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas of coastal waters where those vessels congregate.

(s) *Type III marine sanitation device (holding tank).* Any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge sewage.

§ 85.12 Information collection, record keeping, and reporting requirements.

(a) The information collection requirements for this grant program, except for surveys, are those necessary to comply with 43 CFR 12 which include a narrative statement as identified in 85.22 Grant Proposals. The collection of survey information contained in this rule was approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.*, October 18, 1993, OMB No. 1018–0086, expiration date September 30, 1996.

(b) Record keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81).

(c) Reporting requirements include retention and access requirements as required by 43 CFR 12.82.

Subpart B—Application for Grants

§ 85.20 Eligible activities.

(a) Eligible grant activities—coastal States:

(1) Eligible activities include identification in the coastal zone of all operational pumpout and dump stations, and surveys of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas where those vessels congregate. Also eligible are costs of developing a list,

including chart coordinates, of all operational pumpout and dump stations in the coastal zone of the State, for submission to the Fish and Wildlife Service.

(2) Plans for construction and renovation of pumpout and dump stations in the coastal zone of the State necessary to ensure that these stations are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State. Completed Stated-funded plans may be submitted after the technical guidelines appear in the **Federal Register**.

(b) Eligible grant activities—all States:

(1) Eligible grant activities include education/information program to educate/inform recreational boaters about the environmental pollution problems resulting from sewage discharges from vessels and to inform them of the location of pumpout and dump stations.

(2) Eligible grant activities include the construction, renovation, operation and maintenance of pumpout and dump stations, including floating restrooms in the water, not connected to land or structures connected to the land, used solely by boaters. Eligible grant activities also include any activity necessary to hold and transport sewage to sewage treatment plants, such as holding tanks, piping, haulage costs, and any activity necessary to get sewage treatment plants to accept sewage, such as installing bleed-in facilities.

(c) Ineligible activities:

(1) Activities that do not provide public benefits.

(2) Enforcement activities.

(3) Construction/renovation of upland restroom facilities.

(4) Construction, renovation, operation and maintenance of on-site sewage treatment plants, such as package treatment plants and septic systems, and of municipal sewage treatment plants for primary and secondary treatment.

§ 85.21 Application procedures.

(a) Eligible applicants will submit their proposals to the appropriate Regional Office of the U.S. Fish and Wildlife Service.

Region 1 States Include—American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington

Division of Federal Aid, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6128

Region 2 States Include—Arizona, New Mexico, Oklahoma, and Texas

Division of Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, New Mexico 87103, (505) 766–2095

Region 3 States Include—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin

Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, (612) 725–3596

Region 4 States Include—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands

Division of Federal Aid, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 324, Atlanta, Georgia 30345, (404) 679–4159

Region 5 States Include—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia

Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8501

Region 6 States Include—Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, and Wyoming

Division of Federal Aid, U.S. Fish and Wildlife Service, 134 Federal Building, P.O. Box 25486, Denver, Colorado 80225
134 Union Boulevard, third floor, Lakewood, Colorado 80225, (303) 236–7392

Region 7 State Includes—Alaska

Division of Federal Aid, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3435

(b) Proposals will be accepted for FY 1995 funds ($7.05 million) between the effective date and April 29, 1994. For FY 1996 and FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1995 for FY 1996).

§ 85.22 Grant proposals.

Grant proposals will consist of a narrative which identifies and describes the following:

(a) The need within the purposes of the Act (Coastal States with approved plans should indicate how the activities contained in the proposal implements the plan);

(b) Discrete objective(s) to be accomplished during a specified time period that address the need(s);

(c) Expected results or benefits from accomplishing the objectives, including the numbers of recreational vessels and people served;

(d) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, cooperators, grant location, innovative approaches, public/private partnerships, education, sensitive waters, public access, and estimated costs;

(e) Amount and source of matching funds; and,

(f) Fees for use of facility.

Subpart C—Grant Selection

§ 85.30 Grant selection criteria.

The Director shall give priority consideration to grant proposals that meet the criteria listed in Subsections a–h and in the accompanying chart:

(a) In coastal States that have no survey or plan, proposals to complete such survey and plan;

(b) Proposals for constructing and renovating pumpout and dump stations without an approved plan;

(c) In coastal States, proposals for constructing and renovating pumpout and dump stations in accordance with a coastal State's plan approved under section 5603(c) of the Clean Vessel Act, and for inland States, proposals for constructing and renovating pumpout and dump stations in accordance with an inland State's plan;

(d) Proposals that provide for public/private partnership efforts to develop and operate pumpout and dump stations;

(e) Proposals for innovative ways to increase the availability and use of pumpout and dump stations, e.g., where private parties put in more than the minimum amount;

(f) Proposals that include an education/information component;

(g) Proposals that benefit the waters most likely to be affected by the discharge of sewage from vessels, including the waters as defined in the technical guidelines as published in the **Federal Register**; and,

(h) Proposals in areas with high vessel/pumpout or dump station ratios.

Criteria	Points	
	Coastal state	Inland state
a. Do a survey/plan	50	
b. Construct w/no plan	10	5
c. Construct with plan	20	10
d. Partnership	10	5
e. Innovative approach	5	2
f. Education	5	2
g. Sensitive area	5	2
h. Low pumpout ratio	5	2
Total		

§ 85.31 Grant selection.

The Fish and Wildlife Service, Division of Federal Aid, will convene a ranking panel of Federal employees, to include representatives from the Service's Washington Office of the Division of Federal Aid, the National

Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the U.S. Coast Guard, to review, rank, and make funding recommendations to the Director of the Fish and Wildlife Service. The Director will make the selection of eligible grants by August 1, annually. Upon selection of a proposal the appropriate Regional Office will advise the successful applicant of additional documentation requirements.

Subpart D—Conditions on Use/ Acceptance of Funds

§ 85.40 Cost sharing.

(a) The Federal share shall not exceed 75% of total costs approved in the grant agreement.

(b) The provisions of 43 CFR 12.64 apply to cost sharing or matching requirements. Third party in-kind contributions must be necessary and reasonable to accomplish grant objectives and represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual.

§ 85.41 Allowable costs.

(a) Allowable grant costs are limited to those costs that are necessary and reasonable for accomplishment of approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.60(b). Purchase of informational signs, program signs, and symbols designating pumpout and dump stations, are allowable costs.

(b) Grants or facilities designed to include purposes other than those eligible under the Act shall have the costs prorated equitably among the various purposes. Grant funds shall only be used for the part of the activity related to the Clean Vessel Act.

(c) Costs incurred prior to the effective date of the grant agreement are not allowable with the exception that preliminary costs are allowed only with the approval of the appropriate Regional Director. Preliminary costs may include such items as feasibility surveys, engineering design, biological reconnaissance, appraisals, or preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act.

§ 85.42 Real and personal property.

(a) Applicable regulations regarding acquisition, property records, maintenance, and disposal of real property and equipment are found in 43 CFR 12.71 and 12.72. If questions arise regarding applicability, the appropriate Regional Office should be contacted.

(b) A State shall ensure that design and installation of the facilities are in accordance with the technical standards identified in the technical guidelines as published in the **Federal Register**.

(c) The State must ensure that facilities are operated and maintained, and that structures or related assets are used for the stated grant purpose.

§ 85.43 Signs and symbols.

A national symbol, to be developed, should be installed to be clearly visible to direct boaters entering the facility to pumpout and dump stations. Appropriate information signs should be installed at pumpout and dump stations. Such information could indicate fees, restrictions, hours of operation, operating instructions, and a contact name and telephone number if the facility is inoperable.

§ 85.44 Fee charges for use of facilities.

A maximum of a $5.00 fee may be charged, with no justification, for use of pumpout facilities constructed, operated or maintained with grant funds. If higher fees are charged, they must be justified before the proposal can be approved. Such proceeds shall be retained, accounted for, and used by the operator to defray operation and maintenance costs as long as the facility is needed and it serves its intended purpose. The maximum fee shall be evaluated for inflation, etc., each year.

§ 85.45 Public access to facilities and maintenance.

All recreational vessels must have access to pumpout and dump stations funded under this grant program. Facilities shall be operated, maintained, and continue to be reasonably accessible to all recreational vessels for the full period of their useful life.

§ 85.46 Survey and plan standards.

(a) *Survey standards.* (1) Surveys should be conducted according to the technical guidelines as published in the **Federal Register**.

(2) Surveys may be conducted Statewide, if necessary, to obtain information on boats using the coastal zone.

(b) *Plan standards.* Plans should be developed according to the technical guidelines as published in the **Federal Register**.

§ 85.47 Program crediting.

Signs should acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. Following is suggested language: "This facility was built (or improved) using Federal Aid matching funds authorized by the Clean Vessel Act."

§ 85.48 Compliance with federal laws, regulations, and policies.

(a) In accepting Federal funds, State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies. This is done by submitting an assurances statement that describes the compliance requirements for Federal grants.

(b) Compliance with environmental and other laws, as defined in Service Manual 523 FW Chapter 1, may require additional documentation. Consult with Regional Offices for specific applicability.

(c) For method of payment, refer to 43 CFR part 12, 31 CFR part 205, and any other regulations referenced in these parts.

Dated: February 11, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5529 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 030794A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 8, 1994, through 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and

Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod for the inshore component in the Western Regulatory area of the GOA was established by the final 1994 groundfish specifications (59 FR 7647, February 16, 1994), as 14,967 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod TAC for the inshore component in the Western Regulatory Area of the GOA soon will be reached. The Regional Director established a directed fishing allowance of 14,467 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area, effective from 12 noon, A.l.t., March 8, 1994, through 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–5537 Filed 3–7–94; 12:25 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 47
Thursday, March 10, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 1994–3]

National Voter Registration Act of 1993

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission is seeking comments on proposed regulations governing the national mail registration form and recordkeeping and reporting requirements under the National Voter Registration Act of 1993 ("NVRA" or "the Act"). Please note that the draft rules which follow do not represent a final decision by the Commission on the issues presented by this rulemaking.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under section 9 of the National Voter Registration Act of 1993, Public Law 103–31, 197 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.*, the Federal Election Commission is required to develop a national mail voter registration form ("form") for elections to federal office, and to submit to Congress no later than June 30 of each odd-numbered year (beginning June 30, 1995), a report that assesses the impact of the Act and recommends improvements in federal and state procedures, forms, and other matters affected by the Act. 42 U.S.C. 1973gg–7(a). The Commission has no interpretive authority beyond these areas, and no enforcement powers.

The Commission notes, however, that this rulemaking does not apply to states where, on and after March 11, 1993, there was no voter registration requirement for any voter in the state with respect to an election for Federal office; or all voters in the State may register to vote at the polling place at the time of voting in the general election for Federal office. 42 U.S.C. 1973gg–2(b).

On September 30, 1993, the Commission published an Advance Notice of Proposed Rulemaking ("ANPRM") to gain general guidance from the regulated community and other interested parties on how best to carry out these responsibilities. 58 FR 51132. The Commission received 65 comments from 63 commenters in response to the ANPRM. In addition, the Commission's National Clearinghouse on Election Administration conducted a survey of state election officials to obtain information on state laws and procedures that impact on Commission responsibilities under the NVRA. Both the comments on the ANPRM and results of the survey have been considered in drafting these proposed rules and are thus part of the rulemaking record.

The Commission is publishing this Notice of Proposed Rulemaking ("NPRM") to seek comments from the regulated community and other interested parties on the specific items of information that it proposes to include on the mail registration form, and on the specific items of information that it proposes be required from the states to carry out the Act's reporting requirements.

The National Mail Voter Registration Form

The Commission is charged with developing a national mail voter registration form that "may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant) as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 42 U.S.C. 1973gg–7(b)(1). (The Act also requires certain specific information and attestation items to be included on the form. However, except with regard to format, these items are not discussed below because they are required by the Act.) The Commission is seeking comments on both the proposed items of information to be required or requested on the national mail registration form and the form's proposed format.

The form may require only information that is "necessary" to assess the eligibility of the applicant and to administer voter registration and other parts of the election process. Since information not deemed "necessary" cannot be required on the form, there may be conflicts between what is permissible under the NVRA and current state requirements. Several comments to the ANPRM questioned whether states may take the national form and add additional or optional items on a version of the form prepared by a state under 42 U.S.C. 1973gg-4(a)(2). However, the Commission does not have the authority to provide legal interpretations regarding issues raised by the Act. Determinations of whether to add items on the form must be made by each state in consultation with its State Attorney General. Moreover, because of the Commission's concern that the national form not be unduly lengthy, complex, or intrusive, preliminary decisions have been made that information considered "necessary" by certain states not be included on the national form. Comments are therefore sought from states and other interested parties on those items that the Commission proposes not to include on the national form that may nevertheless be considered as "necessary."

The Layout

In addition, the Commission invites comment on the layout of the form as prescribed in proposed section 8.3. The Commission places a top priority on ensuring that the form and accompanying instructions be as "user friendly" and clear as possible while accommodating requirements under the NVRA. The Commission notes that the Act requires the development of a single national form, accepted by all covered jurisdictions, that complies with the NVRA, and that: contains all elements necessary for jurisdictions to determine voter qualification and to administer voter registration and other parts of the election process (42 U.S.C. 1973gg–7(b)(1)); specifies each eligibility requirement (including citizenship) (42 U.S.C. 1973gg–7(b)(2)(A)); and contains an attestation that the applicant meets

each such requirement (42 U.S.C. 1973gg–7(b)(2)(B)).

The states' comments on the ANPRM reflected a broad range of voter eligibility requirements among the states. Other comments urged the Commission to develop a form that accommodates administrative and legal requirements, such as electronic imaging, additional information space, and bilingual requirements. In the ANPRM, the Commission sought comment on the best or most practical approach to incorporate all these aspects and still develop a single national form.

One option presented in the ANPRM was the use of a booklet format. The booklet would contain one or more tear out forms, instructions on how to complete the form, and a list of each covered state's eligibility requirements. Under this approach, the information contained in the booklet would be critical to the form, and the form could not be used without the accompanying booklet. See, proposed sections 8.2(a) and 8.3. All of the information relating to a particular state would be arranged so that the applicant will only have to turn to one place in the booklet. If the applicant had any questions concerning the form or his or her state eligibility requirements, the applicant would be able to read the information under his or her state in the booklet. Upon completing the form, the applicant would forward the form to the appropriate voter registration official, as listed in the booklet.

The Commission received several comments on the booklet approach. Comments in favor stated that the booklet approach is the most practical and feasible in light of the requirement to develop a universal form, the need to include the different state eligibility requirements, the desire to provide for additional space, and the desire that the form be "user friendly." One comment in favor raised the question of extra forms being provided without the booklet attached and suggested that the Commission require the applicant to sign that he or she has read the information contained in the booklet. Indeed, if this approach is adopted, the applicant would be required to affirm that he or she has read the contents of the form and booklet. See, proposed section 8.4(b)(3). Another comment acknowledged that the booklet approach should be used as a last resort, but suggested an alternative approach—a multi-page fold out with a tear-off registration form—and argued that the alternative approach would have less verbiage and would be less intimidating. Another comment suggested that states should be able to provide the form with their own state instructions instead of the entire national booklet. Finally, another comment urged that the form be modeled after the mail registration form used in the District of Columbia as it is considered to be the best example in terms of simplicity and clarity.

On the other hand, comments that opposed the booklet reflected concern that the form be as easy to fill out as possible, and argued that the booklet approach was costly, complicated, intimidating, time consuming, and would have a chilling effect. One commenter suggested instead that a 10″×8″ back-sided application form be implemented with one 5″×8″ portion as the actual and the other 5″×8″ portion as instructions. Other commenters suggested that the Commission limit or compromise state requirements to reflect only those requirements universally required in the covered states. One of these commenters further argued that the Commission could limit the variations on the form to, for example, those relating to felony conviction or mental capacity, or in the alternative, develop a form with printed state-specific variations. However, such an option would result in numerous state-specific printed versions instead of a single national form as contemplated by the Act.

While the Commission welcomes additional comments on these and other alternative approaches, it appears that the format that most closely meets the requirements of the NVRA is the booklet proposal. Therefore, the Commission has used that format in the proposed rules.

I. Proposed Items To Be Included on the Form

For the reasons given, the Commission is proposing in section 8.4 that the following information items be considered necessary to assess the eligibility of the applicant or to administer voter registration or other parts of the election process, and thus be included on the national mail voter registration form.

A. Whether the Application Is a New Registration, Address Change, Name Change, or a Party Change

In order to accommodate the NVRA requirement that the national form be usable as a change of address form as well as an original registration application in accordance with 42 U.S.C. 1973gg–4(a), proposed section 8.4(a)(1) would request this information as the first item on the application. Because changes of name and, in some states, changes of party affiliation are equally necessary to administering voter registration or primary elections, the Commission proposes to include these options as well. This proposed information block would contain instructions explaining that if the application is to be used as a new or change of address form, then the applicant should complete item A on the detachable portion of the form. If the application is to be used as a change of either name or party affiliation, then the applicant should complete item B on the detachable portion of the form. This approach is proposed, in part, to help facilitate the necessary keeping of up to date voter registration records.

B. Full Name of Applicant

Every state currently requires the full name of the voter registration applicant. There are, however, variations on how the full name is elicited. In light of the confusion that could result from cultural differences in the placement of the last name, and in accordance with the alphabetical order of most voter registration files, the Commission proposes in section 8.4(a)(2)(i) to require the last name first, the first name, and then the middle name. In addition, the Commission proposes to include an area for designating any suffix to the name (such as Jr., Sr., II, III, or IV).

C. Address Where You Live

Every state requires the address of each applicant, whether this be a traditional or non-traditional residence, for the necessary purpose of identifying the applicant's voting precinct and polling place. Proposed section 8.4(a)(2)(ii) would obtain this information by requiring: The applicant's street number; street name (with an instruction not to use post office box or rural route numbers); apartment or unit number; city, town, or village name; state name; and zip code. Further, in order to accommodate the concerns of several respondents to the ANPRM regarding rural addresses, proposed section 8.5(b)(3) would provide an area in the detachable portion of the application for applicants to sketch a map identifying the physical location of their residence in cases where street names, numbers, or rural route box numbers alone are insufficient.

D. Address Where You Get Your Mail (if Different From the Address Where You Live)

Because it is necessary for registrars to be able to communicate with registrants by mail, the Commission proposes in section 8.4(a)(2)(iii) to require the applicant's mailing address if it is

different from the physical address. Such information at once accommodates post office boxes, rural routes, and mailing addresses for non-traditional residences. The required items would include the applicant's: post office box, rural route number, or other mailing addresses; city, town, or village; state name; and zip code.

E. Date of Birth

The date of the applicant's birth is considered to be necessary or desirable by virtually all of the states in determining the applicant's eligibility, occasionally in differentiating between registrants of the same name, and in verifying the identity of voters at the polls. Proposed section 8.4(a)(2)(iv) would require the applicant's date of birth on the form in the standard month-day-year sequence.

F. Telephone Number (Optional)

Although not absolutely necessary, the applicant's telephone number is thought to be necessary or desirable by most of the respondents to the state survey, primarily as a means of facilitating registration applications by enabling registrars to clarify or complete required items of information by telephone. The Commission therefore proposes in section 8.4(a)(2)(v) to request the applicant's telephone number as an optional item, so as to avoid undue intrusion into the applicant's privacy and to avoid any apparent discrimination against applicants without telephones.

G. Political Party Preference

Under proposed section 8.4(a)(2)(vi), a statement of political party preference would be required only of those applicants applying in the states that require it as a necessary precondition to voting in primary elections ("closed primary states"). Applicants completing the form will be directed to consult the accompanying instructions in the booklet for their state of residence in order to determine whether their state requires this information, and, if so, how to determine whether their preferred political party is recognized in their state. For those states requiring such information, the Commission proposes to offer "unaffiliated" as an alternative to designating a political party instead of the more ambiguous and potentially confusing term "independent."

H. Voter Identification Number

The issue of requesting or requiring an identification number from voter registration applicants is a complex one. Thirteen states currently may and do require the applicant to provide their full social security number in accordance with the Privacy Act of 1974 (5 U.S.C. 552a note) while an additional 21 states consider the social security number either "necessary" or desirable. Still other states request either the social security number or some alternative to it, such as the state's driver's license or identification number.

The Commission recognizes the necessity of voter identification numbers in distinguishing between voters with the same name and date of birth. The Commission is aware, however, of the limits imposed by federal law on requiring an applicant's full social security number. 5 U.S.C. 552a note. See also 42 U.S.C. 405(c)(2)(C)(vii)(I). Even in states where this is legally permissible, the Commission is mindful of the privacy concerns articulated by the United States Court of Appeals for the Fourth Circuit in *Greidinger* v. *Davis*, 988 F.2d 1344 (4th Cir. 1993), which held that a state's practice of requiring social security numbers on voter registration applications and subsequent public disclosure of such social security numbers substantially burdened the applicant's fundamental right to vote. Therefore, states that require or accept social security numbers must keep that information confidential.

In the ANPRM, the Commission sought comment on the alternative of requiring only the last four digits of the applicant's social security number as a means of meeting privacy concerns while still allowing the use of these numbers for identification purposes. Although the Commission suggests such a practice as a possibility in states that cannot legally require full social security numbers, the Commission is concerned that requiring this alternative would arbitrarily impose on the states an identification system that may conflict with current state practices and may ultimately conflict with future individual identification systems currently under discussion or development in the public and private sectors.

In order to ensure the greatest flexibility for the states, the Commission proposes in section 8.4(a)(3) to request only whatever identification number may be required or requested from the applicant's state of residence by directing the applicant to the booklet instructions for that state, where the request or requirement would be identified.

I. Signature of Applicant Under Oath

Virtually every state requires the signature of the applicant under penalty of perjury. In addition, the Act requires the signature of the applicant under penalty of perjury. 42 U.S.C. 1973gg–7(b)(2)(C). This requirement is reflected in proposed section 8.4(b)(4).

The Act further requires a statement that "specifies each eligibility requirement (including citizenship)" and "contains an attestation that the applicant meets each such requirement." 42 U.S.C. 1973gg–7(b)(2)(A) and (B). Both because states vary significantly in their specific voter eligibility requirements, and to simplify the application form, proposed section 8.4 (b)(1) would specifically identify U.S. Citizenship on the application itself (since citizenship is a universal requirement) and then incorporate by reference the other specific voter eligibility requirements of each individual state, directing the applicant to the instructions under the applicant's state for the list of those requirements.

Under this approach, the form cannot be used without the booklet because the booklet would contain necessary information for the applicant to fill out the form. The applicant would sign a statement that he or she has read the accompanying booklet, and to the best of his or her knowledge, meets the requirements as stated in the form and in the accompanying booklet. See, proposed section 8.4(b)(3). Because a few states require a special pledge of allegiance to their state Constitution or other special oath as an eligibility requirement, the Commission likewise proposes in proposed paragraph 8.4(b)(1) to incorporate by reference any such state pledge in the oath on the national application.

J. Date of Signature

A majority of the states commented that the date of the applicant's signature is either necessary or desirable. The Commission recognizes the potential necessity of such an item whether for legal or administrative purposes, especially in light of the Act's provisions regarding the date of submitting an application versus the date of its receipt by the registrar. For example, the Act requires that completed registration applications must be forwarded to the appropriate state election official within 10 days after acceptance, except applications accepted within 5 days before the last day for registration to vote in an election must be forwarded no later than 5 days after the date of acceptance. 42 U.S.C. 1973gg–3(e) and 1973gg–5(d). Therefore, proposed section 8.4(b)(4) would require the date of signature in the standard month-day-year format.

K. If You Are Unable To Sign Your Name, the Name, Address, and Telephone Number of the Person Who Assisted You in Completing This Form

Several commenters on the ANPRM expressed concern about cases in which applicants are unable, by reason of disability or illiteracy, to sign their names. These commenters questioned whether requiring the name of the person who assisted such an applicant in completing the form would violate the Act's prohibition against "any requirement for notarization or other formal authentication." 42 U.S.C. 1973gg–7(b)(3).

In cases where the applicant is unable to sign the application, it may be legally or administratively necessary to require the name, address, and telephone number of the person assisting the applicant. Such a requirement does not appear to constitute the kind of "formal authentication" prohibited by the Act. The Commission therefore proposes in section 8.4(b)(5) to require the name, address, and telephone number of any person assisting an applicant who is unable to sign the application. However, the Commission seeks comments on whether requiring the disclosure of an assistant would constitute the kind of "formal authentication" prohibited under the Act.

II. Items on Which the Commission Has Not Made a Preliminary Proposal

The Commission is still considering whether to include race/ethnicity and gender as data elements. The Commission received several comments on both of these data elements, and recognizes that compelling arguments exist for the inclusion or exclusion of these data elements. In order to be included on the form, the data elements must meet the "necessary threshold" of the NVRA to assess voter eligibility and to administer voter registration. Therefore, further comments are encouraged from all of the states and other interested parties as to whether race/ethnicity and gender meet the "necessary threshold" under the Act The Commission will consider all comments in issuing the final rules.

A. Race/Ethnicity

Whether race/ethnicity should be regarded as a "necessary" element to be included on the national mail registration form is still a matter under consideration. Comments on the ANPRM reflected different viewpoints and an overall concern about the impact of its inclusion or exclusion. The Commission therefore welcomes comments regarding the inclusion or exclusion of this data element.

Seven states currently require race on their voter application forms, and 2 states request race as an optional item. The remaining jurisdictions do not require or request it.

Several of the key concerns of the Voting Rights Act relate to voter registration activity in that racial voter registration data facilitates the enforcement of that Act's provisions. Therefore, race/ethnicity information collected on the national form would be helpful in administrative determinations and litigation under that law. 42 U.S.C. 1973 *et seq.* Section 2 of the Voting Rights Act prohibits discriminatory voting practices and procedures nationwide, including the use of discriminatory redistricting plans and election systems that dilute minority voting strength. Section 5 of that Act prohibits the specially covered jurisdictions, all or some portions of 16 states, from implementing new election laws or procedures without preclearance from the U.S. Attorney General or the U.S. District Court for the District of Columbia. While that Act does not require specially covered jurisdictions to include race on their voter registration forms, it may be that information on registrants broken down by race is used both "as a sword and a shield" in certain instances to help the states administer and enforce the Voting Rights Act. It should be noted, however, that one covered jurisdiction employs Census Bureau figures for this purpose. In addition, one of the express findings in the NVRA was that, "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and can disproportionately harm voter participation by various groups, including racial minorities." 42 U.S.C. 1973gg(a)(3). Moreover, the NVRA specifically cautions that its implementation is to be consistent with the Voting Rights Act of 1965 and that the NVRA does not authorize or require conduct that is prohibited by that Act. 42 U.S.C. 1973gg–9(d).

Arguments advanced by commenters in favor of requiring race/ethnicity included: it is necessary to monitor the effectiveness of registration efforts under the Act; it is necessary to comply with the intent of the NVRA to eliminate the barriers to equal voter registration; it is essential for full enforcement of the NVRA anti-discrimination provisions concerning confirmation mailings; it would provide a statistical basis for administering or enforcing the Voting Rights Act; it is necessary under the U.S. Constitution to determine whether a jurisdiction unconstitutionally discriminates on the basis of race; and, it would serve as a guide to determine minority representation of pollworkers. Furthermore, if race/ethnicity data is not included on the form, incomplete and inconclusive data on race/ethnicity would result for those jurisdictions that currently collect such data.

On the other hand, arguments presented against requiring race/ethnicity included: it is not necessary to comply with the intent of the NVRA; it is not essential for voter registration purposes; it may be viewed by potential applicants as personally offensive, an invasion on privacy, or as intimidating; and, it could lead to an application being rejected because the applicant failed to indicate his or her race.

Some of the comments suggested alternatives to an all or nothing inclusion or exclusion proposal. For example, one commenter suggested that race/ethnicity data be included on the form as an optional item only (similar to applicants optionally providing telephone numbers). Another suggestion was that racial data be included on the form only for states that currently require it by state law. A third suggestion was that racial data be included on the form only for those states that are specially covered by the Voting Rights Act (similar to the party preference requirement only for closed primary states). Finally, another suggestion was to exclude the data element from the national form, but to require or request applicants to indicate race/ethnicity on the confirmation notices required under the Act.

In light of the Voting Rights Act, the conflicting state requirements, the suggested alternatives, and the arguments presented on both sides, the Commission seeks further comments from states and other interested parties on whether race/ethnicity meets the "necessary threshold" required by the Act to assess eligibility or to administer voter registration, and whether to include race/ethnicity as a data element on the form in the final rules.

B. Gender

Whether to request or require gender as an information item is another matter still under consideration. Forty-four respondents to the state survey declared gender to be unnecessary information while two more found it to be merely desirable. Its primary utility appears to be in generating statistics. Furthermore, gender is not an eligibility requirement in any state and it is seldom necessary for distinguishing between voters (since

date of birth and/or identification numbers can accomplish this as readily). The Commission welcomes further comment on whether to include or exclude this data element on the form in the final rules.

III. Proposed Items To Be Excluded From the Form

For the reasons given, the Commission is proposing that the following items be excluded from the national mail voter registration form because they do not appear to meet the "necessary threshold" of the NVRA to assess the eligibility of the applicant or to administer voter registration or other parts of the election process. The Commission will consider all the comments it receives in issuing the final rules, and welcomes further comments on the following data elements.

A. Information Regarding Naturalization

Respondents to the state survey were evenly divided on the necessity or desirability of requiring naturalization information, while 5 commenters on the ANPRM advocated including it. The issue of U.S. citizenship appears to be best addressed within the oath required by the Act, and signed by the applicant under penalty of perjury as previously proposed. The basis of citizenship, whether it be by birth or by naturalization, is irrelevant to the citizen's eligibility. Therefore, the Commission proposes not to request or require such information on the national form.

B. Place of Birth

Eleven commenters on the ANPRM advocated requiring place of birth as an information item on the national voter registration application (with 1 opposed and 2 dissenting in favor of a state voter identification number). At the same time, 33 respondents to the state survey found place of birth to be necessary or desirable (with 15 finding it unnecessary). The Commission nevertheless proposes not to request or require place of birth.

The chief argument advanced for including place of birth is that it might serve as a means of distinguishing between applicants of the same name and date of birth. However, requiring this information has the potential for inviting unequal scrutiny of applications from citizens born outside the U.S. Given the potentially chilling effect of including this item, the Commission proposes to exclude it from the form. Moreover, the administrative purpose of distinguishing between applicants can be as effectively accomplished by employing a voter identification number such as: the full social security number in states that can require it; the last four digits of the social security number in states that cannot require the full number; the state driver's license or identification number; or another voter identification number decided on by the state. Indeed, the fact that 17 states currently function without requiring place of birth draws into question its necessity.

C. Occupation

Only 5 survey respondents declared occupation to be a necessary or desirable information item while 43 survey respondents and 1 commenter on the ANPRM declared it to be unnecessary. The only use advanced for this datum would be for the purposes of voter identification at the polls. Because there is no mutually exclusive list of occupations, individuals may have more than one occupation at a time, occupations may be readily changed, and this information is not essential for voter identification, the Commission therefore proposes not to include it on the national voter registration form.

D. Specific Information Regarding Criminal Conviction or Mental Incapacity

The Act specifically requires that the national voter registration form contain a statement that "specifies each eligibility requirement (including citizenship)" and "contains an attestation that the applicant meets each such requirement." 42 U.S.C. 1973GG–7(b)(2) (A) and (B). Yet voter eligibility requirements vary considerably among the states especially with regard to both criminal conviction and mental incapacity.

Some states, for example, disenfranchise all persons convicted of any felony. Other states disenfranchise only persons convicted of certain types of crimes (e.g. election crimes). Some states disenfranchise felons for the entire period of their sentence while others disenfranchise only incarcerated felons, or felons incarcerated or on parole but not those on probation.

State voter eligibility requirements regarding mental incapacity also vary, with some providing very specific definitions and categories and others not.

In order to accommodate the different sets of eligibility requirements without burdening the application form with them, the Commission proposes, as noted previously, to list the specific voter eligibility requirements for each state in a booklet containing a set of instructions to accompany the application. The form would direct an applicant to the state voter eligibility list in the booklet. The oath, attesting that the applicant meets the eligibility requirements of the state including those regarding criminal conviction or mental incapacity, would be signed by the applicant, and thus incorporate by reference all eligibility requirements for each of the applicable states. Therefore, because the oath appears to be sufficient to determine voter eligibility, the Commission proposes that a separate item requiring specific criminal conviction or mental incapacity information would be unnecessary.

E. Height, Weight, Hair and Eye Color, or Other Physical Characteristics

The majority of respondents to the state survey find no value in requiring height, weight, hair and eye color, or other physical characteristics on the voter registration form. Only a handful, along with 1 commenter on the ANPRM found it necessary or desirable.

It appears that the only purpose for requiring or requesting information regarding personal characteristics is for voter identification at the polls, and there is little evidence that it has ever in fact been used for that purpose. Moreover, the Commission notes that, as with occupation, many personal characteristics are variable, most notably weight and hair color but also, to some extent, height and eye color. Because such information appears to be of negligible value in voter identification, and therefore not "necessary", the Commission proposes not to require or request it on the national voter registration form.

F. Marital Status

No state considers marital status to be a necessary item of information. The Commission therefore proposes not to require or request marital status on the national voter registration form.

G. Other Names

This section deals with other names such as maiden name, spouse's name, father's name, mother's maiden name, and prior legal name. Only 7 states currently require any other name on their voter registration form, presumably for the purposes of voter identification or for capturing changes of name.

The Commission notes that many applicants might find such items to be offensive or intrusive on their privacy. Moreover, because the proposed national form would serve as a notice of change of name, that important purpose is achieved in the individual cases where it is relevant. See, proposed section 8.4(a)(1). As discussed previously, other less intrusive means

are proposed for distinguishing between applicants. The Commission therefore proposes not to require or request any other names on the national voter registration form.

H. Miscellaneous Items

Several comments on the ANPRM addressed whether to include miscellaneous items such as language preference, the need for assistance by persons with disabilities, and the willingness to serve as a pollworker.

Three commenters on the ANPRM advocated including such miscellaneous information items on the voter registration form in order to provide useful information and to facilitate administering other aspects of the election process. Four commenters opposed the inclusion of such information because it would unnecessarily complicate the form and is not essential.

The Commission is aware of the concerns of language minority groups, as well as the language minority requirements of the Voting Rights Act specified in 42 U.S.C. 1973aa–1a and 1973b(f)(4). Indeed, the Commission is hoping to develop separate versions of the national voter registration form by translating the form into each of the written languages covered by the Voting Rights Act, to the extent technically possible in a side by side format with the English version.

The Commission is also aware of the needs of persons with disabilities and the requirements of both the Voting Accessibility for the Elderly and Handicapped Act of 1984 and the Americans with Disabilities Act, 42 U.S.C. 1973ee, 42 U.S.C. 12101 *et seq.* For example, the Commission proposes below to develop the national voter registration form in the largest practicable type size in order to accommodate applicants with vision impairments.

Further, the Commission realizes that local election officials face a challenge due to the dwindling pool of potential pool workers.

However, alternative means exist for eliciting these miscellaneous items of information without burdening the voter registration form with them. States and localities might, for example, want to consider using a detachable return postcard seeking this information on the acknowledgment notice required by the Act in response to voter applications.

Because such information is not, then, necessary in the act of applying to register, the Commission proposes not to require or request any such miscellaneous information on the national voter registration form.

IV. Format

A. Layout

With regard to format, the Commission considered in the ANPRM whether the layout of the form should be a single sheet or a booklet. The booklet would include a tear out application portion and accompanying instructions. The Commission is proposing this latter approach, in proposed sections 8.3 and 8.5, because it appears to be the best way to accommodate the information requirements under the NVRA, different state requirements, and other goals for the form. Under this approach, the Commission considers the "form" to include both the application portion and the accompanying instructions. The Commission welcomes comments on this approach.

B. Size, Weight, and Color of the Form

The Commission proposes in section 8.5(a) to capture all of the required data elements on a single 5″×8″ application card of sufficient stock and weight to satisfy postal regulations and standard filing requirements. The application card would be attached by a perforated fold to another 5″×8″ card containing requests for such ancillary information, where applicable, as previous address, previous name, previous political party affiliation, and a locational map space. Under proposed section 8.5(b)(1), applicants would be able to seal the completed application by removing a strip covering a pre-glued area along the bottom of the form, folding the form at the center perforation, and attaching the pre-glued area to the top of the form. Registrars would be able to remove the sealing strip portion (which itself would be perforated) and either remove the ancillary portion or else fold it back and file it along with the application.

The Commission is proposing in section 8.5(b)(2) that the "outside" of the application contain address lines. The address of each state registration official would be provided in the accompanying instructions. Applicants would be directed to affix first class postage, and appropriate postal indicia would be preprinted accordingly.

In order to accommodate optical scanning capabilities, proposed section 8.5(c) would require ink and paper colors of sufficient contrast for that purpose, to minimize the volume of preprinted material on the application without sacrificing clarity to the applicant, and to designate a signature field rather than a signature line for the applicant's signature or mark.

A number of commenters on the ANPRM expressed concern about their need to add additional information to the application such as precinct and legislative districts. Accordingly, the Commission proposes in section 8.5(b)(4) to provide space where practicable, and on both sides of the application, blank boxes labeled "For Official Use Only."

C. Type Size

In order to accommodate applicants with vision impairments, proposed section 8.5(e) would require that the form employ the largest practicable *sans serif* type size.

D. Bilingual Requirements

Jurisdictions covered by the NVRA must provide forms which meet the requirements of the Voting Rights Act of 1965 to eliminate language barriers. 42 U.S.C. 1973aa–1(a). In order to accommodate the concerns of several commenters on the ANPRM regarding the needs of language minority groups and the language minority requirements of the Voting Rights Act, the Commission hopes to develop separate versions of the form in each of the written languages covered by that Act, to the extent technically possible in a side by side format with the English version.

E. Additional Concerns

Pursuant to the Act's requirement that the form specify "each eligibility requirement" of each state (42 U.S.C. 1973gg–7(b)(2)(A)), proposed section 8.6(a) would require the chief election official of each state responsible for coordinating activities under the NVRA to certify to the Commission each voter eligibility requirement of the state, including the standard deadline for submitting applications (with State Constitutional or statutory citations), within 30 days after the promulgation of the Final Rule. Under proposed section 8.6(b), the election official must also provide the Commission with notice of any change thereafter to such eligibility requirements or dates within 30 days of the change. The Commission also proposes in section 8.6(c) to require, from officials in states requiring or requesting the applicant's full social security number, the state's privacy statement required under the Privacy Act of 1974. 5 U.S.C. 552a note.

In addition, the Commission is considering ways to keep printing and production costs at a minimum while maintaining printing quality control. To help achieve these goals, the Commission proposes to have a modest number of each version of the form

printed at the Government Printing Office. This would make the form a government document, available for sale through the Government Printing Office, and would offer the States and other interested groups an opportunity to "ride" the print order for as many copies as they feel necessary and to reorder as needed. The Commission feels that such an approach would substantially reduce costs and provide an avenue for obtaining large quantities of the booklet.

Recordkeeping and Reporting Requirements

Under 42 U.S.C. 1973gg–7(a)(3), the Commission is required to submit to the Congress not later than June 30 of each odd-numbered year a report assessing the impact of the NVRA on the administration of elections for federal office during the preceding 2 year period. The report must also include recommendations for improvements in federal and state forms, procedures, and other matters affected by the Act. The Commission is granted regulatory authority to prescribe, in consultation with the chief election officials of the states, such regulations as are necessary to implement this reporting requirement. 42 U.S.C. 1973gg–7(a)(1).

The Commission welcomes comment on how best to implement this responsibility while maintaining confidentiality and privacy rights of individuals and not unduly burdening the states and other reporting entities. In order to produce a document that is both useful and comprehensive, the Commission anticipates that it will need several different types of data. For some of this data (such as total voting age population by state and demographic figures on reported voter registration), the Commission will use figures produced by the Bureau of Census. For the data elements identified below, however, the Commission will require the chief election official of each state responsible for coordinating activities under the NVRA to report to the Commission.

The proposed rules in new section 8.7(a) would require each state's chief election official responsible for coordinating activities under the NVRA to report to the FEC, on a form provided by the Commission, the information identified below no later than March 31 of each odd-numbered year (the year following each regularly scheduled general election for federal office, hereafter referred to as "federal general election") beginning March 31, 1995.

I. Contents of the Report

For the reasons given, the Commission invites comments on whether the following information items should be considered necessary to assessing the impact of the NVRA on the administration of elections for federal office.

A. The Total Number of Voters Registered Statewide (Both as "Active" and as "Inactive") in the Federal General Election Two Years Prior to the Most Recent Federal General Election

The Commission believes that in order to assess the impact of the NVRA between each two federal general elections, it is essential to obtain as a baseline the total number of registrants statewide (both "active" and "inactive" if the state makes such a distinction) in the federal general election prior to the one just preceding the reporting date. For example, for the 1999 report, the number would be the number of voters registered in the November 1996 election.

The Commission therefore proposes in section 8.7(b)(1) to require this information on each state report. It further proposes to convey the number of active registrants to the Congress not only in numbers, but also, based on Census figures, as a percentage of voting age population in each state.

According to the NVRA legislative history, states may designate registrants, under certain circumstances, as "inactive". Throughout the following discussion, the term "active" refers to all registered voters except those who have received and not responded to the confirmation mailing sent in accordance with 42 U.S.C. 1973gg–6(d) and not offered to vote. See, proposed section 8.2(c). The term "inactive" refers to registrants who have neither responded to the confirmation mailing nor offered to vote. See, proposed section 8.2(d). For purposes of reporting under these rules, if a state does distinguish between "active" and "inactive" registrants, then the state shall also report the number of each.

B. The Total Number of Voters Registered Statewide (Both as "Active" and as "Inactive") in the Most Recent Federal General Election

In order to determine the overall increase or decrease in voter registration between federal general elections, proposed section 8.7(b)(2) would require from each state the total number of voters registered in the most recent federal general election and the number of "active" and "inactive" registrants if the state makes such a distinction.

C. The Total Number of New Valid Registrations Statewide Between the Past Two Federal General Elections

Because changes in total voter registration figures between federal general elections result from additions to the list as well as deletions from the list, the Commission proposes in section 8.7(b)(3) to require of each state the total number of new valid registrations between the date of the most recent federal election and the one prior to the most recent (ruling out any duplicate or rejected applications).

D. If the State Distinguished Between "Inactive" and "Active" Voters, the Total Number of Registrants Statewide That Were Designated "Inactive" Between the Past Two Federal General Elections and Were Still Designated "Inactive" After the Past Federal General Election

In order to maintain consistency in the numbers of registrants reported, proposed section 8.7(b)(4) would require from those states who adopt the practice of distinguishing between "active" and "inactive", the number of registrants designated as "inactive" between the most recent federal general election and the one prior to that and who remained "inactive" after the most recent federal general election (thus ruling out registrants that were designated "inactive" but were restored to "active" status by reason of returning a confirmation notice or voting).

Confirmation notices must be mailed to ensure the maintenance of accurate and current voter registration rolls for election to Federal office according to 42 U.S.C. 1973gg–6(b). Therefore, the proposed information should be readily obtained by state election officials, since the Act specifically requires registration officials to maintain records for at least 2 years regarding confirmation notices mailed out as well as the responses to such notices (42 U.S.C. 1973gg–6(i)(2)), and because the number of registrants designated as "inactive" is merely the number of persons who have neither responded to the confirmation notices nor subsequently voted.

E. The Total Number of Registrations Statewide That Were, for Whatever Reason, Deleted From the Registration List Between the Past Two Federal General Elections

Because changes in total voter registration figures between federal general elections result from deletions from the list as well as from additions to it, the Commission proposes in section 8.7(b)(5) to require of each state the total number of registrations (both

"active" and "inactive" if the state makes such a distinction) that were, for whatever reason, deleted from the registration list between the past two federal general elections.

F. The Total Number of Registration Applications Statewide That, Between the Past Two Federal General Elections, Were Received or Generated by Collectively: (1) All Motor Vehicle Offices; (2) Mail; (3) All Public Assistance Agencies That Are Mandated as Registration Sites Under the NVRA; (4) All State Funded Agencies Primarily Serving Persons With Disabilities; (5) All Armed Forces Recruitment Offices; (6) All Other Agencies Designated by the State; and (7) All Other Means (Including In-Person, Deputy Registrars, Organized Voter Registration Drives Delivering Forms Directly to Registrars, etc.)

A principal objective of the NVRA is to expand the number and range of locations where eligible citizens may obtain and complete a voter registration application. Accordingly, the Commission believes that any assessment of the impact of the NVRA should include an indication of the level of voter registration activity at the various categories of locations (as distinct from individual agencies or offices). Under proposed section 8.7(b)(6), information regarding the number of registration applications received from or generated by the various categories of locations identified above would be required to be reported. It is important to note that the Commission seeks the total number of applications (regardless of whether they are valid, rejected, duplicative, or address changes) since these numbers will reflect the overall level of registration activity at various types of sites. Issues of how to categorize certain applications (such as those that are obtained by the applicant from a public assistance agency or from an organized registration drive but are mailed in by the applicant) are not as important as assuring that the method of categorization is consistent throughout the State and over time.

G. The Total Number of Redundant or "Duplicate" Registration Applications Statewide That, Between the Past Two Federal General Elections, Were Received From or Generated by Collectively: (1) All Motor Vehicle Offices; (2) Mail; (3) All Public Assistance Agencies That Are Mandated as Registration Sites Under the NVRA; (4) All State Funded Agencies Primarily Serving Persons With Disabilities; (5) All Armed Forces Recruitment Offices; (6) All Other Agencies Designated by the State; and (7) All Other Means (Including In-Person, Deputy Registrars, Organized Voter Registration Drives Delivering Forms Directly to Registrars, etc.)

The Commission believes that it is important to gauge the level of unfruitful voter registration activity at both the categories of registration sites and by voter registrars. In order to do so, the Commission proposes in section 8.7(b)(7) requiring the number of redundant or duplicate registration applications received from each category of registration site identified above. A "duplicate registration application" is an offer to register by a person already registered to vote within the same jurisdiction. *See*, proposed section 8.2(e). Collecting such information might lead to better registration site selection or may indicate the need for improved voter information regarding the absence of the need to reapply if one is already registered and has not changed address.

H. The Statewide Number of Confirmation Notices Mailed Out Between the Past Two Federal General Elections and the Statewide Number of Responses Received to These Notices During That Same Period

The Act requires that registrars mail out confirmation notices to certain types of registrants. 42 U.S.C. 1973gg–6(d)(2). The Act further requires that States maintain records of all such mailings along with information concerning whether each recipient has responded to the notice. 42 U.S.C. 1973gg–6(i)(2). The Commission notes that such information is important in assessing the impact of the NVRA and that, in States which do not distinguish between "active" and "inactive" registrants, such numbers are essential to adjusting overall registration figures. The Commission, therefore, proposes in section 8.7(b)(8) to require that such information be reported.

I. The Postal Costs Incurred Statewide Between the Past Two Federal General Elections for All Mailings Required Under the NVRA

The Act requires at least five types of mailings to be paid for by the registrar's office: A notice to each applicant of the disposition of the registration application (42 U.S.C. 1973gg–6(a)(2)); a forwardable mailing to registrants who, according to Postal Service information, have changed address within the registrar's jurisdiction (42 U.S.C. 1973gg–6(c)(1)(B)(i)); a postage prepaid, pre-addressed return form by which registrants who may have moved within the same jurisdiction may verify or correct their address information (42 U.S.C. 1973gg–6(c)(1)(B)(i)); a forwardable confirmation mailing to registrants who may have moved outside the registrar's jurisdiction (42 U.S.C. 1973gg–6(d)(2)); and a prepaid, pre-addressed return card whereby registrants who may have moved outside the jurisdiction may state their current address (42 U.S.C. 1973gg–6(d)(2)). In addition to these required mailings, and depending on the specific procedures adopted by each state, the Act may also entail the costs of employing the Postal Service's National Change of Address ("NCOA") program or (in lieu of using the NCOA) a direct, return-if-undeliverable, address-correction-requested mailing to some or all of the voter registration list.

The Commission believes that, in order to gauge the impact of the NVRA on the administration of federal elections, it is important to require reporting of the postal costs incurred statewide for each of these items. Proposed section 8.7(b)(9) would require such reporting.

J. In the State's First Report, a Brief Narrative Description of the State's Implementation of the NVRA; and in Subsequent State Reports, any Significant Changes to the Program

Because the Act provides the states a number of options in complying with the NVRA, the Commission believes that an overall description on how each state has initially gone about implementing the Act is essential to assessing its impact. In order to ease this burden, and in order to enhance comparability across states, the Commission proposes in section 8.7(b)(10) to provide, on the FEC reporting form, a series of questions with categorical responses requiring the state to indicate the options or procedures the state has selected in implementing the NVRA. By the same token, and in the same manner, the

Commission proposes to inquire in all subsequent reports about any significant changes in each state's program.

K. Problems Encountered

The Commission notes that no report on the impact of the NVRA would be complete without identifying the types of problems encountered in its implementation and operation. Accordingly, under proposed section 8.7(b)(11), an area on the reporting form would be provided for states to identify any problems they have encountered along with the measures they have taken to address any such problems.

II. Items Not To Be Reported

Although a few commenters on the ANPRM suggested them, the Commission, for the reasons given, proposes not to request reporting of the following items:

A. Any Numbers or Other Information Regarding Registration Applications From Specific Offices or Agencies Designated as Registration Sites Under the NVRA

Although, as noted previously, the Commission proposes to require the numbers of applications from categories of registration sites designated under the NVRA, the Commission believes that the required reporting of information regarding specific offices or agencies would place an undue burden on local registration offices and could undermine the confidentiality requirements of the Act (which prohibits public disclosure of information regarding the specific public assistance agency or motor vehicle office through which any individual registered) with respect to applications from specific motor vehicle offices (42 U.S.C. 1973gg–3(c)(2)(D)(iii)) and from specific public assistance agencies (42 U.S.C. 1973gg–6(i)(1)). At the same time, however, states may for their own purposes wish to code their registration applications in such a manner as to be able, under certain circumstances, to identify originating offices or agencies. Although such information might be valuable to states in assessing the accuracy and efficiency of their individual intake sites, the Commission proposes not to require the reporting of such information.

B. The Number of Declinations Filed at Agencies or Motor Vehicle Offices

The Act requires that applicants at public assistance agencies be provided a form on which they may decline in writing to register to vote and permits, though does not require, such a procedure in motor vehicle offices. 42 U.S.C. 1973gg–5(a)(6)(B). There are any number of reasons why a person may decline to register to vote, not the least of them being that the person is already registered. Moreover, the same person may decline to register several times during the same two year period at different agencies or even at the same agency. Retaining records on the number of declinations will therefore not be likely to yield any statistically useful information. The Commission also wishes to avoid discouraging agencies from participating in voter registration activities by imposing on them burdensome reporting responsibilities.

At the same time, however, states must retain declination documents for 22 months. 42 U.S.C. 1974 *et seq.* Although states may want to ensure that such declinations are retained in such a manner as to be able to identify originating offices or agencies, the Commission proposes not to request the number of declinations.

C. The Number of Persons Voting Under the "Fail-Safe" Provisions of the NVRA

The Act permits some registrants, under very specific circumstances, to vote on election day by affirming their residence. In doing so, it grants states considerable latitude in how to administer such a process. Some procedures may generate statistics more readily than others. Moreover, such cases may be difficult to distinguish from other cases whereby, under state law, voters may already be permitted to cast a provisional ballot. The Commission therefore proposes that the burden on state and local registration offices of counting the number of persons voting under the "fail-safe" provisions of the Act outweighs whatever value such information might have in assessing the impact of the NVRA.

D. The Number of Persons Newly Registered Between the Past Two Federal General Elections Who Voted in the Past Federal General Election

The overall purpose of the NVRA is to increase the opportunity of citizens to register to vote. The information the Commission is proposing to be reported is designed to gauge the effect of the Act in increasing voter registration. Whether or not registered persons subsequently vote, however, is a separate matter driven by a multitude of variables outside the Act. Moreover, levels of voter participation can be ascertained by other means. Both because state and local election offices do not routinely gather information on the subsequent voting of specific groups of registrants and the burden such a data collection effort would impose, the Commission proposes not to require such information to be reported.

E. The Implementation or Operating Costs, Other Than the Postal Costs, of the NVRA

Based on some comments to the ANPRM, the Commission recognizes that a number of people will want to know the implementation and operating costs of the NVRA. For a number of very practical reasons, however, the Commission proposes not to seek such data other than postal costs as previously proposed.

The first of these reasons is that the states approach the NVRA from different starting points. Some already have motor voter, mail, or agency voter registration programs in progress while others operate none of these. It seems reasonable to imagine that the costs of newly implementing any of these programs will entail an up-front expenditure which could not be compared to any new costs incurred by states that already administer some or all of the programs.

The second reason is that states vary considerably in their degrees of computerization in election offices as well as in motor vehicle and public assistance agencies. Computerization at both the state and local levels will result in apparent reduced operating costs in states that already employ such technology.

The third reason is that, in recognition of the differences among state election laws and procedures, the Act provides the states a wide variety of options in implementing many of its provisions. Since different implementation strategies are likely to incur different kinds of costs, comparisons and even total cost figures would be misleading.

Finally, it is the experience of this Commission in conducting previous research on election costs, that few local election offices are able to isolate their election related costs from the costs of other non-election-related office activities. Fewer still are able to isolate registration-related costs from other election costs, and very few indeed would be able to isolate NVRA-related costs from other registration costs. Moreover, cost accounting systems vary widely not only from state to state but also from locality to locality within states.

Because ascertaining the implementation and operating costs of the NVRA would require imposing on election offices nationwide a uniform and burdensome accounting system, the

Commission proposes to limit cost data to the more uniform, comparable, and readily obtained item of postal costs. However, this proposal would not preclude states from voluntarily reporting other costs, e.g. in the Problems Encountered section of the report.

List of Subjects—11 CFR Part 8

National Voter Registration Act.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these rules.

For the reasons set out in the preamble, it is proposed to add a new part 8 to Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 8—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg–1 ET SEQ.)

Subpart A—General Provisions

Sec.

8.1 Purpose and scope (42 U.S.C. 1973gg–7(a)(1)).
8.2 Definitions.

Subpart B—Mail Voter Registration Form

Sec.

8.3 General information.
8.4 Contents (42 U.S.C. 1973gg–7(a) and (b)).
8.5 Format (42 U.S.C. 1973gg–7(a)).
8.6 Chief State Election Official (42 U.S.C. 1973gg–7(a) and 1973gg–8)

Subpart C—Recordkeeping and Reporting

Sec.

8.7 Contents of Reports from the States (42 U.S.C. 1973gg–7)

Authority: 42 U.S.C. 1973gg–1 *et seq.*

Subpart A—General Provisions

§ 8.1 Purpose and scope (42 U.S.C. 1973gg–7(a)(1)).

These regulations implement the responsibilities delegated to the Commission under section 9 of the National Voter Registration Act of 1993, Public Law 103–31, 97 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* ("NVRA"). They describe the format and contents of the national mail voter registration form and the information that will be required from the states for inclusion in the Commission's biennial report to Congress.

§ 8.2 Definitions.

As used in this part:

(a) *Form* means the national mail voter registration application form which includes the registration application and accompanying booklet.

(b) *Chief State Election Official* means the designated chief state officer or employee responsible for the coordination of state responsibilities under the NVRA.

(c) *Active voters* means all registered voters except those who have received and not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg–6(d) and not offered to vote.

(d) *Inactive voters* means registrants who have received and not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg–6(d) and not offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote within the same jurisdiction.

Subpart B—Mail Voter Registration Form

§ 8.3 General information.

The mail voter registration form shall consist of two components: a tear-gas application, which shall contain appropriate spaces for the applicant to provide all of the information required under 11 CFR 8.4(a); and an accompanying booklet, which shall contain instructions for completing the application arranged by state, the state election officials' addresses and telephone numbers, and information regarding each state's voter registration requirements as described in 11 CFR 8.4(b)(1).

§ 8.4 Contents (42 U.S.C. 1973gg–7(a) and (b)).

(a) *Information about the applicant.* The mail voter registration form shall provide appropriate spaces for the following information from each applicant:

(1) Whether the application is a new registration application, change of address, change of name, or change of party affiliation.

(i) If the application is a new application or change of address, the form shall instruct the applicant to complete item A on the detachable portion of the application indicating the address from which the applicant was previously registered.

(ii) If the application is for a change of name or a change of party, the form shall instruct the applicant to complete item B on the detachable portion of the application indicating the applicant's former name or party affiliation.

(2) The applicant's:

(i) Last, first, and middle name and any suffix;

(ii) Address where the applicant lives including: street number; street name; apartment or unit number; city, town, or village name; state; and zip code, with instructions not to use a post office box or rural route number;

(iii) Mailing address if different from the address where the applicant lives, such as a post office box, rural route number, or other street address; city, town, or village name; state; and zip code;

(iv) Month, day, and year of birth;

(v) Telephone number as an optional item for the applicant to provide; and

(vi) Political party preference, for applicants whose states require a statement of political party preference as a necessary precondition for voting in primary elections ("closed primary state").

(A) The application shall include instructions telling applicants to consult the accompanying booklet to determine if the applicant's state is a closed primary state and to obtain the telephone number of the state election official for information on the qualified parties of the applicant's state.

(B) The application shall also include a warning that if the applicant is registering in a closed primary state, failure to indicate a political party preference will prevent the applicant from voting in partisan races in primary elections.

(C) The booklet shall list whether a state is a closed primary state and include the telephone number of the state election official. The booklet shall also list "unaffiliated" as a political party preference option.

(3) A voter identification number as required or requested by the applicant's state of residence.

(i) The application shall include instructions for the applicant to consult the accompanying booklet to determine what type of voter identification number the state requires or requests.

(ii) The booklet shall include what type of voter identification number, if any, is required or requested by each state.

(iii) For each state using the applicant's full social security number as its voter identification number, the state's Privacy Act notice provided in accordance with 11 CFR 8.6(c), shall be reprinted in the booklet.

(b) *Required information.* (42 U.S.C. 1973gg–7(b)(2) and (4)). The form shall also include a statement that:

(1) Specifies each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as an eligibility requirement

and include a statement, through incorporation by reference, of each state's eligibility requirements (including any special pledges) and shall instruct the applicant to consult the booklet to determine what his or her state requirements are;

(2) Informs applicants of the penalties provided by law for submitting false voter registration applications;

(3) Contains an attestation that the applicant has read both the form and the accompanying booklet and, to the best of his or her knowledge and belief, meets each of his or her state's eligibility requirements;

(4) Requires the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;

(5) If the applicant is unable to sign the application without assistance, the name, address, and telephone number of the person who assisted the applicant in completing the form;

(6) If an applicant declines to register to vote, a statement of the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(7) If an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

§ 8.5 Format (42 U.S.C. 1973gg–7(a)).

(a) *Size.* The form shall consist of a 5" by 8" application card of sufficient stock and weight to satisfy postal regulations and standard filing requirements. The application card shall be attached by a perforated fold to another 5" by 8" card containing space for items A and B, in accordance with 11 CFR 8.4(a)(1).

(b) *Layout.* (1) The form shall be sealable.

(2) The "outside" of the form shall contain an appropriate number of address lines.

(3) The detachable portion of the application shall contain space to permit applicants from rural districts to draw a locational map showing their place of residence and to indicate, where applicable, a former address, former name, or former party preference.

(4) Both sides of the application card shall contain space designated "For Official Use Only."

(c) *Color.* The form shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(d) *Signature field.* The form shall contain a signature field in lieu of a signature line.

(e) *Type size.* (1) All print on the form shall be of the largest practicable *sans serif* type size.

(2) The requirements on the form specified in 11 CFR 8.4(b) (1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 8.4(b)(3).

§ 8.6 Chief State Election Official (42 U.S.C. 1973gg–7(a) and 1973gg–8).

(a) Each chief state election official shall certify to the Commission within 30 days after the promulgation of these rules:

(1) Each voter registration eligibility requirement of the state and its corresponding State Constitution or Statutory citation; and

(2) The State's deadline for submitting voter registration applications.

(b) Each chief state election official shall notify the Federal Election Commission, in writing, within 30 days of any change to the State's voter registration eligibility requirements.

(c) If the state, in accordance with 11 CFR 8.4(a)(3), requires or requests the applicant's full social security number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974. (5 U.S.C. 552a note).

Subpart C—Recordkeeping and Reporting

§ 8.7 Contents of reports from the states. (42 U.S.C. 1973gg–7).

(a) The chief state election official is responsible for filing the information required under this section with the Commission by March 31 of each odd-numbered year beginning March 31, 1995. Reports must be mailed to: National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The data to be reported in accordance with this section shall consist of applications or responses received up to and including the date of the federal general election.

(b) The report required under this section shall include:

(1) The total number of voters registered statewide, including "active" and "inactive" voters if that information is maintained by the state, in the federal general election two years prior to the most recent federal general election;

(2) The total number of voters registered statewide, including "active" and "inactive" voters if that distinction is made by the state, in the most recent federal election;

(3) The total number of new valid registrations statewide between the past two federal general elections, less any duplicate or rejected applications;

(4) If the state distinguishes between "inactive" and "active" voters, the total number of registrants statewide that were designated "inactive" between the past two federal general elections and were still designated "inactive after the past federal general election;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both "active" and "inactive" voters if that distinction is made by the state, between the past two federal general elections;

(6) The total number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address changes) that were received from or generated by each of the following categories of locations:

(i) All motor vehicle offices;

(ii) Mail;

(iii) All public assistance agencies that are mandated as registration sites under the Act;

(iv) All state funded agencies primarily serving persons with disabilities;

(v) All Armed Forces recruitment offices;

(vi) All other agencies designated by the state;

(vii) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of redundant or duplicate registration applications statewide that, between the past two federal general elections were received from or generated by each of the categories described in paragraphs (b)(6)(i) through (vii) of this section;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) The postal costs incurred statewide between the past two federal general elections for each of the following categories;

(i) Notices to applicants of the disposition of registration applications;

(ii) Forwardable mailings to applicants who, according to Postal Service information, have changed address within the registrar's jurisdiction;

(iii) Postage prepaid pre-addressed return forms by which registrants who may have moved within the same jurisdiction may verify or correct their address information;

(iv) Forwardable mailings to registrants who may have moved outside the registrar's jurisdiction;

(v) Prepaid, pre-addressed return cards whereby registrants who may have moved outside the jurisdiction may state their current address;

(vi) The costs of employing the Postal Service's National Change of Address program or the cost of direct, return-if-undeliverable, address-correction-requested mailings to some or all of the voter registration list;

(10) For the first state report due, a brief narrative or general description of the State's implementation of the NVRA and, in all subsequent reports, any significant changes to the state's voter registration program. The report form will contain a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA; and

(11) Problems encountered and the measures taken, if any, to address these problems.

Dated: March 4, 1994.

Trevor Potter,

Chairman.

[FR Doc. 94–5461 Filed 3–9–94; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASO–19]

Proposed Revision of Class D Airspace at Louisville, Bowman Field, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Louisville, KY Class D airspace. It would eliminate the overlapping of Louisville, Bowman Field, Class D airspace with Louisville, Standiford Field Class C airspace by redefining the lateral and vertical limits of Bowman Field Class D airspace. The existing Class D airspace area for Bowman Field extends into the overlying Standiford Class C airspace area. This revision would reduce the ceiling of the Class D airspace from 3000 feet MSL to an altitude of up to but not including 2,200 feet MSL. The amendment would also eliminate the small portion of the Bowman Field Class D airspace area that underlies the Standiford Class C airspace 1,700 foot MSL shelf. The changes are needed to avoid confusion for pilots that might inadvertently enter the Class C airspace area due to the existing charting. The intended effect of this action is to provide segregation of aircraft operating within Bowman Field Class D airspace, from aircraft operating within Standiford Class C airspace.

DATES: Comments must be received on or before: May 2, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–19, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530–B, 1701 Columbia Drive, College Park, Georgia 30337; telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Ralph C. Bixby, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530–B, 1701 Columbia Drive, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D airspace at Bowman Field Airport, KY. The existing Class D airspace area for Bowman Field extends into the overlying Standiford Class C airspace area. This amendment would reduce the ceiling of the Class D airspace from 3,000 feet MSL to an altitude of up to but not including 2,200 feet MSL. The amendment would also eliminate the small portion of the Bowman Class D airspace area that underlies the Standiford Class C airspace 1,700 foot MSL shelf. The changes are needed to avoid confusion for pilots that might inadvertently enter the Class C airspace area due to the existing charting.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class D airspace listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation Air.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 Designation of Class D Airspace

* * * * *

ASO KY D Louisville Bowman Field, KY [Revised]
Louisville, Bowman field, KY
(lat. 38°13′41″ N., long. 85°39′50″ W.)
Standiford Field Airport (lat. 38°10′29″ N., long. 85°44′11″ W.)

That airspace extending upward from the surface to but not including 2,200 feet MSL within a 3.9 mile radius of Bowman Field, excluding the portion within Louisville Standiford Field, KY, Class C Airspace Area, and excluding that portion south of the 081° bearing from Standiford field Airport.

* * * * *

Issued in College Park, Georgia, on February 15, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–5560 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–18]

Proposed Alteration of VOR Federal Airway V–116; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Federal Airway V–116 located in Michigan. This action would realign Federal Airway V–116 from the Keeler, MI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Jackson, MI, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility via the Kalamazoo, MI, (VOR/DME) facility. This action would improve navigation.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–18, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket many also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Federal Airway V–116. Because of signal interference, the minimum en route altitude (MEA) along a segment of the airway is 10,000 feet mean sea level (MSL). Realigning V–116 over the Kalamazoo, MI, VOR/DME would make it possible to lower the MEA to 3,000 feet MSL and enhance navigation. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–116 [Revised]

From INT Kansas City, MO, 076° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials. INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Kalamazoo, MI; INT Kalamazoo 089°T(090°M) and Jackson, MI, 265°T(270°M) radials; Jackson; INT Jackson 089° and Salem, MI, 252° radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on February 25, 1994.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 94–5565 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–6]

Proposed Modification of Class D Airspace; Glenview, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D airspace at Glenview, IL. A review of the Glenview, IL, Class D airspace found an oversight regarding ground elevation. As a result of this finding the Class D airspace legal description for Glenview Naval Air Station (NAS), Glenview, IL, requires modification. The modification would change the words in the description from: "upward from the surface to and including 3,000 feet MSL" to: "upward from the surface to and including 3,200 feet MSL". No other changes are being proposed in this notice of proposed rulemaking.

DATES: Comments must be received on or before April 22, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Glenview, IL. A review of the Glenview, IL, Class D airspace found an oversight regarding ground elevation. As a result of this finding the Class D airspace legal description for Glenview Naval Air Station (NAS), Glenview, IL, requires modification. The modification would change the words in the description from: "upward from the surface to and including 3,000 feet MSL" to: "upward from the surface to and including 3,200 feet MSL". No other changes are being proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AGL IL D Glenview, IL [Revised]

NAS Glenview, IL
(lat. 42°05′00″ N., long. 87°49′06″ W.)
Northbrook VORTAC
(lat. 42°13′26″ N., long. 87°57′06″ W.)
Chicago-O'Hare International Airport, IL
(lat. 41°58′46″ N., long. 87°54′14″ W.)
Glenview TACAN
(lat. 42°05′08″ N., long. 87°49′21″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL a 4.1-mile radius of NAS Glenview and within 1.8 miles each side of the Northbrook VORTAC 162° and 145° radials extending from the Chicago-O'Hare International Airport and the NAS Glenview 4.1-mile radius to 1.8 miles south along the 162° radial of the Northbrook VORTAC and 3.8 miles southeast along the 145° radial of the Northbrook VORTAC, and within 1.7 miles each side of the NAS Glenview TACAN 100° radial extending from the 4.1-mile radius to 5.7 miles east of the TACAN, and within 1.3 miles each side of the NAS Glenview TACAN 002° radial at 4.1 miles and within 2.0 miles west and 1.4 miles east of the NAS Glenview TACAN 002° radial extending from the 4.1-mile radius to 6.1 miles north of the TACAN, excluding that airspace within the Chicago, IL, Class B airspace area.

* * * * *

Issued in Des Plaines, Illinois on February 25, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–5566 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 12, 102, 134, and 177

RIN 1515–AB19

Rules of Origin Applicable to Imported Merchandise; Extension of Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments on proposed amendments to the Customs Regulations setting forth uniform rules governing the determination of the country of origin of imported merchandise. Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended to July 5, 1994.

DATES: Comments must be received on or before July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, a document was published in the **Federal Register** (59 FR 141) containing proposed amendments to the Customs Regulations setting forth uniform rules governing the determination of the country of origin of imported merchandise. The document solicited public comments that were to be received on or before April 4, 1994.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulations and prepare responsive comment. In view of the extensiveness and importance of the proposed regulations, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended to July 5, 1994.

Dated: March 3, 1994.

Stuart P. Seidel,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 94–5528 Filed 3–9–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

Mississippi Regulatory Program Amendment; Revision of Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of corrections to a previously proposed amendment to the Mississippi regulatory program (hereinafter referred to as the Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated December 9, 1993 (Administrative Record No. MS–319), Mississippi submitted a proposed amendment which covered a wide variety of topics. This submittal constituted a complete rewrite of the Mississippi regulations in order to make them consistent with current Federal regulations and amended parts 100 through 265 of the Rules and Regulations for the Surface Mining of Coal in Mississippi.

Review by OSM indicated deficiencies in the proposed amendment of December 9, 1992, and OSM so advised the State of Mississippi. On February 17, 1994 (Administrative Record No. MS–322), Mississippi submitted a corrected amendment in order to remove these deficiencies by amending parts 101, 173, 174, 175, 178, 185, 200, 216, 217, 223, and 245 of the Rules and Regulations for the Surface Mining of Coal in Mississippi. The amendment is intended to revise the Mississippi program to be consistent with the Federal regulations. OSM is reopening the comment period to allow the public

sufficient time to consider and comment on the corrected amendment.

This document sets forth the times and locations that the Mississippi program and proposed corrections to the amendment to that program are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on April 11, 1994.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Mississippi program, the proposed corrected amendment and all written comments received in response to this notice will be available for public review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, suite 215, Homewood, AL 35209, Telephone: (205) 290–7282.

Mississippi Department of Environmental Quality, The Office of Geology, Mining and Reclamation, 2380 Highway 80 West, Jackson, MS 39209, Telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program.
II. Discussion of Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior unconditionally approved the Mississippi program. Information pertinent to the general background on the Mississippi program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 924.10 and 924.16.

II. Discussion of Amendment

Since the time of approval of the Mississippi program in 1980, there have been changes to the program based on the fact that no mining was occurring in the State. However, in October 1988, due to some renewed interest in mining activity, Mississippi commenced to rewrite its regulations to conform with current Federal regulations. Since that time, Mississippi has made several information submittals of the rewritten regulation package to OSM. The December 9, 1992, formal submittal constituted a complete rewrite of the Mississippi regulations with changes to literally every section of the regulations. Due to the extensive nature of the rewrite, no attempt was made to identify changes made to each individual regulation. The sections proposed to be amended are parts 100 through 265 of the Rules and Regulations for the Surface Mining of Coal in Mississippi. The changes contained in the December 9, 1992, submittal were found to be deficient in a number of places. Consequently, the corrections to the amendment contained in the submittal of February 17, 1994, are too numerous and dispersed to attempt to identify individually, but pertain to parts 101, 173, 174, 175, 178, 185, 200, 216, 217, 223, and 245 of the Rules and Regulations for the Surface Mining of Coal in Mississippi.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the corrected amendment proposed by Mississippi satisfy the applicable program approval criteria of 30 CFR 732.15. If the corrected amendment is deemed adequate, it will become part of the Mississippi program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior had conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730,731, and 732 have been met.

National Environment Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior had determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 4, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–5629 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 65 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to update rule references and to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the authority of successor agencies within the Ohio Department of Natural Resources and the availability of the Ohio's permit, inspection, and enforcement records to the public. This document sets forth the times and locations that the Ohio program and proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 11, 1994. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on April 4, 1994. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 25, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, suite 201, Columbus, OH 43232. Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, OH 43224. Telephone: (614) 265–6675.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Columbus Field Office.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Director, Columbus Field Office, Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. General information on the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 65 by letter dated February 23, 1994 (Administrative Record No. OH–1990). In this amendment, Ohio proposes to revise two rules in the Ohio Administrative Code (OAC) to correct outdated rule references and to adopt language similar to corresponding Federal regulations concerning the availability of documents for public review:

1. Corrected Rule Reference

OAC section 1501:13–1–05 establishes that, in the event of a consolidation or reorganization of offices within the Ohio Department of Natural Resources (ODNR), the OAC rules which now apply to the Division of Reclamation shall apply to and be the rules of any other Division or office which succeeds the Division of Reclamation as the administering agency for Ohio Revised Code Chapter 1513. Ohio is revising this rule to expand the specific references to the Division of Reclamation's rules to cover additional rules adopted by Ohio since OAC section 1501:13–1–05 was first promulgated.

2. Availability of Records

Ohio is revising OAC section 1501:13–1–10 paragraph (B) to provide additional ways that members of the public may review Ohio's permit, inspection, and enforcement documents. Local district offices of the ODNR, Division of Reclamation, shall maintain copies of all documents pertaining to the mining operations within the jurisdiction of the individual offices. If Ohio does not maintain a district office in the specific county of the mining operation, Ohio shall either:

(a) Make copies of all locally pertinent documents available for public inspection at that county's office of the county recorder or at that county's office of the Soil Conservation Service of the U.S. Department of Agriculture; or

(b) Post, at that county's office of the county recorder or at that county's office of the Soil Conservation Service, a description of the documents available for inspection and the procedure by which members of the public may request copies of these documents. At its own expense, Ohio will promptly provide copies of documents by mail upon request of any resident of the area of the mining operation.

As part of Program Amendment Number 65, Ohio provided a draft example of the public notice on availability of documents which Ohio would post at one of the two locations specified by OAC section 1501:13–1–10(B).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the

person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on March 25, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 4, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–5627 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ17–1–6090; FRL–4847–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Air Pollution Control Division

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) adopted by the Maricopa County Air Pollution Control Division (MCAPCD) on April 6, 1992 and November 16, 1992. The Arizona Department of Environmental Quality (DEQ) submitted these revisions to EPA on June 29, 1992 and February 4, 1993. The revisions concern MCAPCD's Rule 350, Storage of Organic Liquids at Bulk Plants and Terminals; Rule 351, Loading of Organic Liquids; Rule 352, Gasoline Delivery Vessels, and a new rule, Rule 337, Graphic Arts. These rules control volatile organic compound (VOC) emissions from printing materials, and from the storage, loading, and transport of organic liquids including gasoline. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Air Pollution Control Division, 2406 South 24th Street, suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: William Davis, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County. 43 FR 8964, 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa Country to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that MCAPCD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that MCAPCD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Calls used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as moderate[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of Arizona submitted several revised RACT rules for incorporation into its SIP on June 29, 1992 and February 4, 1993, including the rules being acted on in this document. This document addresses EPA's proposed action for MCAPCD's Rule 350, Storage of Organic Liquids at Bulk Plants and Terminals; Rule 351, Loading of Organic Liquids; Rule 352, Gasoline Delivery Vessels; and Rule 337, Graphic Arts. The submitted Rules 350, 351, and 337 were found to be complete on September 8, 1992, while Rule 352 was found to be complete on March 10, 1993, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3]. The rules are being proposed for approval into the SIP. Arizona's complete submittal of Rules 350, 351, and 337 satisfies the deficiency for which a finding of nonsubmittal, dated October 22, 1991, was made and stopped the sanctions clock. However, the Federal Implementation Plan (FIP) clock will not stop until EPA approves the rules.

Rules 350 and 351 control VOC emissions from the storage and loading of organic liquids including gasoline. Rule 352 controls VOC emissions from gasoline delivery tanks, while Rule 337 controls VOC emissions from graphic art materials, such as inks. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the division's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Calls and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Rule 350 are: (1) CTG EPA–450/2–77–035, Control of Volatile Organic Emissions from Bulk Gasoline Plants; (2) CTG EPA–450/2–78–047, Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks, and (3) CTG EPA–450/2/77–036, Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks. The CTGs applicable to Rule 351 are: (1) CTG EPA–450/2–77–035, Control of Volatile Organic Emissions from Bulk Gasoline Plants; and (2) CTG EPA–450/2–77–026, Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals. The CTG document applicable to Rule 352 is CTG EPA 450/2–78–022, Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks. Finally, the documents which apply to Rule 337 are: (1) CTG EPA–450/2–78–033, Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VIII: Graphic Arts–Rotogravure and Flexography; and (2) the document entitled "Recordkeeping Guidance Document for Surface Coating Operations and the Graphic Arts Industry" (EPA 340/1–88–003). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MCAPCD's Rule 350, Storage of Organic Liquids at Bulk Plants and

[1] Among other things, the pre-amended guidance consists of those portions of the proposed post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Terminals, includes the following significant changes from the current SIP:

1. Applicability of the rule is specific to storage of organic liquids.
2. A definitions section has been added.
3. Standards for floating roofs and requirements for seals and fabric of the roofs have been added.
4. Recordkeeping and inspection provisions have been added.
5. A compliance schedule with full compliance by 18 months has been added.
6. Provisions for records on stored liquids including their vapor pressures have been added.
7. Test methods for determining compliance have been added.

MCAPCD's Rule 351, Loading of Organic Liquids, includes the following significant changes from the current SIP:

1. A definitions section has been added.
2. Standards have been added limiting emissions to 0.29 pounds of VOC per 1,000 gallons of liquid transferred.
3. Operating, repair, and testing requirements have been added.
4. Exemption of tanks with liquids which were not for sale has been deleted. Recordkeeping provisions for other exempt tanks have been added.
5. Annual leak detection tests and monthly visual leak monitoring are now required, and the leak test method has been clarified.
6. A compliance schedule requiring full compliance within 18 months has been added.
7. Test methods for determining compliance with the emission limits and vapor pressure limits have been added.

MCAPCD's Rule 352, Gasoline Delivery Vessels, includes the following significant changes from the current SIP:

1. A definitions section has been added.
2. Standards for vapor tightness of the delivery vessels and test methods to use in the determination have been added.
3. Provisions for registering and identifying tanks which pass the vapor tightness test have been added.
4. Provisions for recordkeeping have also been added.

MCAPCD's Rule 337, Graphic Arts, is a new rule and contains the following significant standards: (1) VOC content of graphic art materials is limited to 2.5 lbs/gal; (2) overall control efficiency of 65% for noncompliant materials is required; and (3) graphic materials sold are required to be labeled with the VOC content. There are also provisions for monitoring and for recordkeeping and reporting.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCAPCD's Rules 350, Storage of Organic Liquids at Bulk Plants and Terminals; 351, Loading of Organic Liquids; 352, Gasoline Delivery Vessels; and 337, Graphic Arts, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry forbids EPA to base its actions concerning SIPs on such grounds. into the economic reasonableness of state action. The CAA Union *Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 28, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–5615 Filed 3–9–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–011–P]

RIN 0938–AE63

Medicare Program; Post-Contract Protections and Other Coordinated Care Issues

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HCFA regulations to provide that—

- A health maintenance organization (HMO) or a competitive medical plan (CMP) that has a Medicare risk or cost contract with HCFA and that ceases to furnish services, for any reason, must provide, for enrollees who return to the fee-for-service payment system, protection against loss of coverage because of a preexisting condition exclusion clause in the enrollee's replacement Medicare supplement insurance policy.
- If the Medicare risk contract of an HMO or CMP is terminated, not renewed, or renewed with a reduced service area, all other Medicare risk-contracting organizations operating in any part of the service area must provide a 30-day special open

enrollment period for the benefit of the affected enrollees.

- All contracting HMOs and CMPs, and all health care prepayment plans (HCPPs), must furnish to Medicare beneficiaries at the time of application a signed copy of the enrollment application form.
- An HCPP must also meet all the other requirements that contracting HMOs and CMPs must meet in handling applications.
- These amendments would provide post-contract protections for Medicare enrollees of HMOs and CMPs that cease to provide services under a Medicare contract and would also strengthen the application procedures for HMOs, CMPs, and HCPPs. The first two amendments implement, respectively, section 4011 of the Omnibus Budget Reconciliation Act of 1987 and section 6206 of the Omnibus Budget Reconciliation Act of 1989.
- In addition, this proposed rule would provide that all HMOs and CMPs with risk contracts must submit their Adjusted Community Rate (ACR) proposals to HCFA not later than 60 days (rather than 45) days before the beginning of a contract period. The earlier submission date for the ACR proposals is necessary to provide more time for HCFA to review and evaluate the material.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m on May 9, 1994.

ADDRESSES: Mail comments (original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–011–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code OCC–011–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m., (202) 690–7890.

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (202) 619–2158.

SUPPLEMENTARY INFORMATION:

I. Background

A. Health Maintenance Organizations and Competitive Medical Plans

Health maintenance organizations (HMOs) and competitive medical plans (CMPs) are entities that provide specified health care services, in a defined geographic area, to persons who are enrolled in the entities, in exchange for a predetermined, fixed, periodic premium payment. When these entities meet the requirements of section 1876(b) of the Social Security Act (the Act), they become eligible to contract with HCFA to provide and be paid for services furnished to Medicare enrollees. These entities may contract either on a "risk" basis or a "cost" basis.

When HMOs or CMPs contract with HCFA on a risk basis, HCFA makes advance monthly payments for each enrolled Medicare beneficiary, and there is no adjustment at the end of the contract year. The per capita rate of payment for each class of enrollees under a risk contract is equal to 95 percent of the Adjusted Average Per Capita Cost (AAPCC). The AAPCC is the actuarial estimate made by HCFA, before an organization's contract period, of what the average per capita cost to the Medicare program would be for each class of Medicare enrollees if they received covered services other than through the organization or another organization in the same geographic area. A class of Medicare enrollees is a grouping of an organization's Medicare enrollees that HCFA constructs on the basis of actuarial factors such as age, sex, Medicaid status, institutional status, and other relevant factors that have a significant effect on the use and costs of health care services.

HMOs or CMPs that contract to be paid on a cost basis also receive monthly advance payments. However, these payments are based on a general overall budget submitted by the HMO or CMP and are subject to an annual reconciliation so that payments cover the reasonable costs of the specific services that they actually provide to Medicare enrollees.

An HMO or CMP that contracts to be paid on a risk basis must provide to enrollees all Medicare Part A and Part B services (except hospice services) that are available to beneficiaries who reside in the geographic area served by the HMO or CMP. A Medicare beneficiary who enrolls in a risk HMO or CMP must obtain all services directly from or under arrangements made by the HMO or CMP. The HMO or CMP is financially responsible for emergency services and urgently needed services obtained from other sources while the beneficiary is traveling or temporarily outside the service area of that HMO or CMP.

An HMO or CMP that contracts with HCFA on a cost basis must offer the same Medicare services as a risk HMO or CMP. However, the cost plan enrollee may obtain any Medicare covered services outside the HMO or CMP and have those services paid for by Medicare intermediaries or carriers, subject to Medicare deductibles and coinsurance.

Initial contracts between HCFA and an HMO or CMP must be for at least 1 year, but not more than 23 months, and any contract renewal must be for a period of 1 year. A contract is renewed automatically unless HCFA or the HMO or CMP decides not to renew. If the HMO or CMP decides not to renew its contract, it must give written notice to HCFA at least 90 days before the end of the current contract period and notify each Medicare enrollee by mail at least 60 days before the end of the contract period. It must also provide 30 days notice to the general public by publishing an announcement in a local newspaper. If HCFA decides not to renew, it must provide like notice to the Medicare enrollees, the HMO or CMP, and the general public.

A contract can be terminated before its expiration by mutual consent or unilaterally by either party if certain conditions are present, generally if the other party fails to perform its obligations. The terminating party is responsible for making the necessary notifications.

Each Medicare beneficiary who wishes to enroll in an HMO or CMP is required to complete an enrollment application form. 42 CFR 417.430 controls the format and content of the enrollment application form and prescribes procedures for handling applications. However, it does not require the HMO or CMP to furnish the beneficiary with a copy of the executed application at the time of enrollment.

B. Health Care Prepayment Plans

A health care prepayment plan (HCPP) is a prepaid group medical plan that elects to receive Medicare payment

from HCFA for Part B services on a reasonable cost basis under section 1833(a)(1)(A) of the Act. The regulations concerning Medicare payment to HCPPs are located at 42 CFR part 417. Under § 417.800(b)(1), an organization wishing to participate in Medicare as an HCPP is required to enter into a written agreement with HCFA to furnish physicians' services, through employee physicians or contracting physicians, and to furnish other covered Part B services through Medicare qualified providers and suppliers. HCFA pays an HCPP directly for physician's services furnished to its Medicare enrollees through plan employees or contracting physicians, and for other Part B services furnished under arrangements with Medicare certified suppliers. Payment for Part B services furnished to an HCPP enrollee by a provider of services such as a hospital, as well as payment for any Part A services, is made directly to the provider.

Section 417.801 sets forth the requirements for written agreements between HCFA and an HCPP, but it contains no specific procedures concerning application by Medicare beneficiaries for enrollment in an HCPP.

II. Supplemental Exclusion Coverage Upon Termination of Contract

A. Current Policy

Under the Medicare fee-for-service payment system, beneficiaries are liable for deductible and coinsurance amounts associated with certain Medicare covered services. Beneficiaries may insure for some or all of these out-of-pocket expenses by purchasing a Medicare supplement policy, generally referred to as a Medigap policy, from a private insurance company. Medigap policies supplement Medicare coverage by reimbursing the beneficiary for some or all coinsurance expenses and may also reimburse for deductible expenses as well, depending on the terms of the policy. The Medigap policy may also pay for certain additional services or costs that are not covered by Medicare.

Medigap policies sometimes contain a preexisting condition exclusion clause, that is, a provision that the policy will not cover its share of expenses related to a preexisting condition, until a specified waiting period has elapsed. The waiting period for coverage of a preexisting condition may not exceed 6 months. The Medigap policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

In the HMO or CMP setting, HCFA makes a monthly payment directly to the HMO or CMP to cover all mandated Medicare benefits, less deductible and coinsurance amounts. The HMO or CMP is permitted to charge the beneficiary a premium or other amounts such as copayments in place of the regular Medicare deductible and coinsurance amounts. When Medicare beneficiaries enroll in an HMO or CMP, they are advised to cancel their Medigap insurance policy because the HMO or CMP supplemental coverage is similar to the coverage afforded by Medigap policies. In addition, if the enrollee did not cancel the Medigap policy, the HMO or CMP could be considered in violation of section 1882(d)(3)(A) of the Act, which makes it unlawful for a person to sell or issue a health insurance policy to any individual entitled to benefits under Part A or under Part B of Medicare with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled.

If the HMO's or CMP's Medicare risk contract is terminated, not renewed, or renewed with a reduced service area, the affected Medicare enrollees would be transferred into the fee-for-service payment system unless they enroll in another HMO or CMP that is having an open enrollment. Beneficiaries who return to the fee-for-service system and apply for a Medigap policy could be subject to a waiting period of up to 6 months before preexisting conditions are covered. During the exclusion period, beneficiaries would have no coverage for payment of the coinsurance expenses, and possibly deductible expenses if the policy covered them, which are incurred as a result of preexisting conditions. The beneficiaries' only other alternative would be to purchase a policy with no waiting periods, if it were available, at a higher premium rate.

Prior to the enactment of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, there was no statutory requirement that HMOs or CMPs terminating their contract with HCFA provide or arrange for terminated enrollees to obtain Medicare supplemental coverage without exclusion periods related to preexisting conditions. However, HCFA routinely requested that HMOs or CMPs arrange for such coverage, and all the HMOs or CMPs that terminated their contracts complied on a voluntary basis.

B. Legislation and Provisions of the Proposed Regulations

In order to protect Medicare enrollees from loss of supplemental coverage for illness resulting from conditions existing prior to the termination of their HMO or CMP coverage, section 4011 of OBRA '87 added section 1876(c)(3)(F) of the Act. Section 1876(c)(3)(F) states that each eligible organization that provides Medicare services under a contract must provide assurances to the Secretary that, in the event it ceases to provide such services, it will provide or arrange for supplemental coverage of Medicare benefits related to a preexisting condition with respect to any exclusion period, to all individuals enrolled with the entity who receive Medicare benefits for the lesser of 6 months or the duration of such period.

We propose to follow the standards for preexisting condition exclusion clauses developed by the National Association of Insurance Commissioners (NAIC), and contained in the "Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act" (the NAIC model). All States regulate Medicare supplement insurance (Medigap) policy packages according to the NAIC model (57 FR 37487, August 21, 1992) standards which stipulate that preexisting condition exclusion clauses may be applied for a maximum of 6 months. This standard is consistent with the statutory requirement that the HMO or CMP provide supplemental exclusion coverage for a 6-month period, since the terminated enrollee may be precluded from obtaining such coverage when purchasing a Medigap policy on his or her own.

The NAIC model currently describes ten standard Medigap policies, all of which include the following core benefits: Part A coinsurance, Part B coinsurance, 100 percent of Medicare Part A eligible hospitalization expenses for 365 hospital days in addition to Medicare standard and lifetime reserve days, and the cost of the first 3 pints of blood each year. The ten policies range in price and benefits from A, which includes just the core benefits, to plan J, which contains the most comprehensive package of benefits. At this time, only three of the NAIC standard policies—Plans C, F, and J—contain the benefits that are determined to meet our definition of supplemental exclusion coverage, a definition which is derived from the beneficiary cost-sharing requirements for Part A and Part B as required under title XVIII. We define supplemental exclusion coverage to include the following benefits: The NAIC model core benefits as described above, Part A deductible, Part B deductible, and skilled nursing facility coinsurance.

In order to implement section 1876(c)(3)(F) of the Act, we propose

(§ 417.440(f)) to require that Medicare cost or risk-contracting HMOs or CMPs that cease to provide services are responsible for arranging supplemental coverage for a period of 6 months. This requirement would not apply when an HMO or CMP ceases to supply services to enrolled beneficiaries as a result of the beneficiaries' disenrollment under §§ 417.460 (a) or (b). As described below and under proposed § 417.440(f)(4), we propose to require the HMO or CMP to comply with one of the following supplemental coverage options:

(1) Make available to eligible beneficiaries one or more Medigap policies without a preexisting condition waiting period; or at the State-approved rate for the same policy with a preexisting condition waiting period; or

(2) Allow an eligible beneficiary to purchase a policy of his or her choice and

—Reimburse the beneficiary for all expenses related to a preexisting condition; or

—Arrange for provision of services related to a preexisting condition without beneficiary cost-sharing.

To exercise option one, we have determined that the most equitable standard for compliance with section 1876(c)(3)(F) is to require HMOs and CMPs with a Medicare contract that is terminated, not renewed, or renewed with a reduced service area, to offer former enrollees the least expensive NAIC model plan with benefits that meet the definition of supplemental exclusion coverage (plan C in most cases). Section 1876(c)(3)(F) of the Act requires coverage for "all individuals enrolled with the entity." Based on this language, we believe that Medicare enrollees who are under age 65 (that is, those eligible for Medicare because of disability or end stage renal disease) are intended to be covered by this regulation to the extent that a Medigap policy is available to them in the insurance marketplace. If a Medigap policy is not available, the proposed regulation would not apply, just as it would not apply to a Medicare enrollee over age 65 who chooses not to purchase a Medigap policy.

We do not believe that the statute requires supplemental exclusion coverage to include all benefits that might have been provided by the HMO or CMP in excess of those benefits mandated and covered by Medicare. Examples of benefits that need not be included as supplemental exclusion coverage under this proposed rule would be "additional benefits" or benefits not covered by Medicare but provided by the HMO or CMP for an additional payment by the enrollee, such as copayments for eyeglasses or hearing aids.

"Additional benefits" are benefits that are provided by a risk HMO or CMP to its Medicare enrollees in accordance with § 417.592 which stipulates that, if an eligible organization's Adjusted Community Rate (ACR) for services to enrolled beneficiaries is less than the average per capita rate of payment it receives from Medicare, the entire difference must be accounted for. This must be accomplished either through HCFA's reducing the payments to the HMO or CMP, or by the HMO's or CMP's provision of additional benefits not covered by Medicare to all beneficiaries enrolled under the risk contract, at no additional charge. These "additional benefits" are calculated separately for those enrolled in both Part A and Part B, and for those enrolled in Part B only.

Supplemental exclusion coverage would not apply to those beneficiaries who choose to enroll in another Medicare-contracting HMO or CMP because these organizations are not permitted to exclude preexisting conditions.

Since section 1876(c)(3)(F) of the Act states that an HMO or CMP may either "provide or arrange for" supplemental coverage, we propose to permit an eligible organization to make available to terminated enrollees the following options to comply with this statute: (1) It may arrange with a Medigap insurer to make available for purchase by each eligible beneficiary the least expensive State-approved Medigap policy that includes the benefits defined as supplemental exclusion coverage. The policy must waive any preexisting condition exclusion clause, and must be made available to the beneficiary at a premium rate approved by the State insurance commissioner for the same policy with a preexisting condition exclusion. This does not impose a requirement on the Medigap insurer to discount a premium. However, an HMO or CMP that chooses this option must guarantee that the Medigap policy offered to the former enrollees covers any preexisting condition related services at the same premium as a comparable package of benefits with a preexisting condition exclusion clause. This provision is consistent with what we believe to be Congressional intent to provide certain former enrollees of Medicare risk HMOs and CMPs with access to Medigap policies that do not discriminate on the basis of benefit or price.

(2) It may allow the former enrollee to purchase his or her own Medigap policy and—

- Reimburse the beneficiary for all of the Medicare deductible or coinsurance expenses for services that would have been covered by the Medigap policy but are not payable because of the existence of a preexisting condition exclusion clause; or
- Arrange for a physician or provider to furnish the actual services required as a result of the preexisting condition, with the HMO or CMP reimbursing the deductible and coinsurance amounts to the cooperating physician or provider on behalf of the former enrollee.

Section 1876(c)(3)(F) of the Act does not specifically refer to reductions in service area. However, that section requires supplemental exclusion coverage "in the event the organization ceases to provide * * * items and services" under a Medicare contract. HCFA interprets this phrase to apply to beneficiaries who are disenrolled due to a contract termination or a reduction in the service area. The phrase does not apply to reduction in benefits as provided in § 417.440 or to disenrollments under §§ 417.460 (a) or (b).

We considered permitting the HMO or CMP to satisfy this requirement by making available any State-approved Medigap policy, regardless of the benefit level. This option would give the HMO or CMP more flexibility in making arrangements for supplemental exclusion coverage and it would still provide the beneficiary with access to the Medigap market. However, since the NAIC model describes policies with several different levels of coverage, some conforming policies would not provide enrollees with coverage comparable to what they had with the HMO or CMP. We have decided to require the HMO or CMP to offer the least expensive policy that will comply with the supplemental exclusion coverage required under section 1876(c)(3)(F) of the Act. Additional policies may also be offered at a higher premium rate, as long as the policy includes the defined supplemental exclusion coverage benefits, at the State-approved premium rate for the same policy with a preexisting condition exclusion clause.

In summary, we propose to amend § 417.440(e) to require a risk or cost HMO or CMP whose contract with HCFA is terminated, not renewed, or renewed with a reduced service area, to offer affected Medicare enrollees who do not enroll in another Medicare contracting HMO or CMP, protection against out-of-pocket expenses because

of a Medigap preexisting condition exclusion clause, in accordance with the requirements in proposed § 417.440(f). Under proposed § 417.440(f), we would require that the HMO or CMP provide at least one of the following options to former enrollees for the lesser of 6 months after termination of enrollment or the duration of a Medigap insurance policy exclusion period:

- Make available for purchase by each former enrollee one or more State-approved Medicare supplement policies that waive the preexisting condition exclusion clause, at the premium rate approved by the State insurance commissioner for the same policy with such a clause. At least one of the policies must cover all of the expenses specified as supplemental exclusion coverage benefits at the lowest premium available in the area.
- Allow the former enrollee to obtain his or her own Medigap policy. If the policy imposes a preexisting condition exclusion clause, the HMO or CMP would be required to

—Reimburse the former enrollee for any benefits defined as supplemental exclusion coverage for services that would have been covered by the Medigap policy but for a preexisting condition exclusion clause; or

—Arrange for a physician or provider to furnish the actual services related to the preexisting condition, with the HMO or CMP reimbursing the deductible and insurance amounts to the cooperating physician or provider on behalf of the former enrollee.

We propose to add a new § 417.541 to clarify that an HMO or CMP with a cost contract may not claim reimbursement for costs related to furnishing of the supplemental exclusion coverage required by the proposed § 417.440(f).

We also propose to revise §§ 417.492 and 417.494 to require that an HMO or CMP whose contract with HCFA is terminated, not renewed, or modified with a reduced service area comply with § 417.440(e) regarding the provision of supplemental exclusion coverage for their affected Medicare enrollees and § 417.488 regarding the delivery of the appropriate notices to affected enrollees by risk HMOs or CMPs. In addition, we propose to revise § 417.440(e) in order to clarify that inpatient hospital services would no longer be the only covered services that must be provided beyond the date of disenrollment. This rule would require that, under certain circumstances, supplemental exclusion coverage must be provided after the date of disenrollment. In addition, all covered hospital and medical expenses incurred before the date of termination must be paid by the HMO or CMP.

III. Immediate Open Enrollment for Risk HMOs or CMPs

A. Current Policy

Before passage of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, there was no specific statutory requirement that a risk HMO or CMP that continued to operate in an area in which the contract of another risk HMO or CMP had been terminated, not renewed, or renewed with a reduced service area, enroll those Medicare beneficiaries who lost their prepaid health care coverage under the terminated contract. However, HCFA did require at § 417.488 that the notice sent to enrollees advising them of their pending disenrollment, include a listing of other risk HMOs or CMPs operating in the service area. Also, there was no requirement that an HMO or CMP that continued to contract with HCFA hold an open enrollment at any time other than the annual 30-day period mandated by section 1876(c)(A)(i) of the Act. Thus, Medicare beneficiaries who had been enrolled in the discontinued HMO or CMP had no alternative but to return to the fee-for-service payment system if no other HMO or CMP in the area was permitting new enrollment at the time of their termination.

B. Legislation

Section 6206(b)(1)(B) of OBRA '89 amended section 1876(c)(3)(A)(ii) of the Act to require that if a risk contract is not renewed, is otherwise terminated, or is renewed with a reduced service area, a special open enrollment period for the terminated enrollees must be held by all other risk HMOs or CMPs operating in the same service area. This special open enrollment period must be for 30 days and must begin 30 days after the date on which HCFA mails notice to the affected risk HMOs or CMPs informing them of their responsibility under section 1876(c)(3)(A)(ii) of the Act. This period is only required to be open to those individuals enrolled under the terminated contract as of the date of termination.

If the special open enrollment period coincides with the annual open enrollment period, the applications of all Medicare beneficiaries will be accepted in the order of application. We have considered giving precedence to the enrollees affected by the termination over new Medicare beneficiary applicants in cases where the enrollment periods do coincide. However, section 1876(c)(3)(A)(i) of the Act prohibits the HMO or CMP from restricting eligible beneficiaries' enrollment during open enrollment periods and we do not believe that section 1876(c)(3)(A)(ii) allows us to waive this requirement. The special open enrollment period must be conducted in accordance with all of the requirements of § 417.426, applicable to annual open enrollments. Enrollment becomes effective 30 days after the end of the special open enrollment period, or if HCFA determines that such a date is not feasible, such other date as HCFA specifies.

C. Provisions of This Proposed Rule

Based on the provisions of section 1876(c)(3)(A)(ii) of the Act, as amended by section 6206 of OBRA '89, we are proposing to add a new § 417.426(d) to provide that:

- HMOs or CMPs with risk contracts that serve a part of the same service area as an HMO or CMP whose risk contract is terminated, not renewed, or renewed with a reduced service area, for any reason, must provide a special open enrollment period for individuals enrolled under the terminated or revised contract.
- The special open enrollment period would be 30 days in duration and would begin 30 days after the date on which HCFA mails notice to the affected HMOs or CMPs informing them of their responsibility to hold a special open enrollment period.
- Coverage would become effective 30 days after the end of the special open enrollment period unless HCFA specifies a different effective date.
- This special open enrollment period may be in addition to, or coincide with, any annual open enrollment which the HMO or CMP is required to hold under § 417.426.
- The special open enrollment period must comply with the requirements of § 417.426.

We are also proposing to amend § 417.488 to require that, upon termination, nonrenewal, or reduction in the service area of a risk contract with HCFA, the HMO or CMP must provide to all of its former Medicare enrollees a list of the other risk HMOs and CMPs that are still operating in the service area, and a description of the special open enrollment period.

IV. Documentation of Enrollment for Medicare Enrollees of HMOs, CMPs, and HCPPs

A. Current Policy

Section 1876(c)(3)(C) of the Act provides that the Secretary may prescribe the procedures and conditions under which an HMO or CMP may inform eligible Medicare beneficiaries about the organization, or may enroll those beneficiaries. Under

§ 417.422(a)(4), each Medicare beneficiary requesting enrollment is required to complete an enrollment application form. Under § 417.430(a)(1), this form must contain the beneficiary's signature, an authorization for disclosure and exchange of information between HCFA and the HMO or CMP and must comply with HCFA instructions regarding format and content. For risk HMOs and CMPs, the application form must include a notice explaining that the applicant may only obtain services from within the health care delivery system of the organization, except for emergency care or urgent care out of the service area. This notice must contain a statement detailing the enrollee's liability for non-covered services and for out-of-plan services when not authorized by a physician or official of the risk HMO or CMP.

Current regulations at § 417.430 prescribe the application processing requirements, including a requirement at § 417.430(b)(3) that the HMO or CMP promptly notify an applicant of acceptance or denial of an application. However, there is no requirement that an HMO or CMP furnish to the applicant a copy of the enrollment application form, signed by the beneficiary and a representative of the HMO or CMP, at the time that the application is taken. Because there is generally a 30-day lag time between the date on which the beneficiary files an application and the date that the HMO or CMP sends the notification of enrollment (which contains the rules that enrollees must follow), many Medicare enrollees are not fully informed of the requirements of the plan, especially the limitations on out of plan services. Moreover, our experience in the administration of the prepaid health care programs has demonstrated that a certain number of Medicare beneficiaries do not fully understand the restrictions that apply to enrollment in an HMO or CMP. As a result, they may continue to obtain services after the effective date of their enrollment from sources outside the HMO or CMP and then find that they are liable for payment for these services. Therefore, we believe that reinforcement of the rules and obligations inherent in an HMO or CMP enrollment is appropriate.

It has been our policy to recommend that an HMO or CMP give a signed copy of the enrollment application to Medicare beneficiaries who apply for enrollment. However, this has been merely a recommendation and voluntary compliance has been sporadic. Because some Medicare beneficiaries may have difficulty fully understanding the HMO's or the CMP's rules and procedures, we believe that the enrollment application form should be presented to the enrollee on a mandatory basis, immediately after the actual signing. We believe that this additional step would strengthen our current enrollment procedures and significantly lower the number of disenrollments resulting from misunderstandings by enrollees. In addition, the presentation of the signed application form would also provide the prospective enrollee with in-hand documentation of intent to enroll in the HMO or CMP.

There are no current regulations governing application procedures for enrollment in an HCPP. Thus, a Medicare beneficiary's application for membership might not be accepted in the order of application, or the beneficiary may never be notified in writing of the acceptance or denial of the application. In order to prevent potential problems, we are proposing to require HCPPs to utilize the same enrollment application procedures that HMOs and CMPs utilize.

Since HCPPs are similar in organization to HMOs and the payment basis specified in the Act for HCPPs and cost-based HMOs is similar, we believe it would be appropriate to apply to HCPPs the same application procedures required for enrollment in cost-based HMOs. This proposed change would increase the uniformity of the application format and procedures for HCPPs and ensure that HCPPs have an effective system for receiving and processing applications from Medicare beneficiaries.

B. Provisions of This Proposed Rule

We propose to amend § 417.430 by adding a provision that would require each HMO or CMP to provide Medicare enrollees with a copy of the application form signed by the applicant and a representative of the HMO or CMP at the time the form is taken. In cases where the applicant submits the application by mail, the plan must furnish a copy to the applicant within 5 working days of receipt. In addition, we propose to amend § 417.801 to require that HCPPs comply with the requirements of § 417.430, that is, meet the same enrollment application procedures as contracting HMOs and CMPs. These procedures—

- Specify that a contracting HMO or CMP must comply with HCFA instructions concerning content of application forms;
- Require that a contracting HMO or CMP have an effective system for receiving, controlling and processing applications from Medicare beneficiaries; and
- Prescribe the details of an effective system for handling applications.

V. Adjusted Community Rate Proposal

A. Current Policy

Section 1876(a)(1)(A) of the Act requires that HCFA provide risk HMOs or CMPs with the per capita rates of payment for each class of Medicare enrollees no later than September 7 before the calendar year in which the rates take effect. Regulations at §§ 417.590 through 417.598 specify how eligible organizations use the HCFA payment rates in determining their new premium rates and benefits for the coming year. Section 417.592(d)(1) requires that an HMO or CMP provide HCFA with this rate and benefit information not later than 45 days before the beginning of its contract period. The package of materials that an organization submits is called the Adjusted Community Rate Proposal. HMOs or CMPs generally wait until November 15 (the current deadline) to submit their adjusted community rates (ACRs) after receiving the per capita rates from HCFA. This effectively leaves 45 days for HCFA to review and approve, or disapprove, the ACRs from all risk HMOs or CMPs that contract with the agency. In November and December of 1986, 1987, 1988, and 1989, HCFA accountants reviewed 139, 133, 135, and 107 ACRs, respectively, within the 45-day period.

The review process involves the actuarial examination of proposed payment rates, which is a complex, time consuming operation. Over time, HCFA has found the 45-day period to be insufficient for allowing agency personnel to perform a thorough and adequate review of ACRs and to carry out necessary followup activities. For example, most ACRs contain errors. HCFA staff must detect these errors and contact the HMO or CMP to resolve the errors. Often HCFA requests that the HMO or CMP submit additional materials for review. In addition, program growth (in total number of Medicare beneficiaries served), and maturation of the coordinated care industry has led to the development of more sophisticated ACRs, resulting in the need to devote additional time to the review of plan materials.

Following the review and approval by HCFA of an organization's ACR, the HMO or CMP must inform current enrollees of the new benefit package and rate changes for the coming contract year. This enrollee notification must occur 30 days before the effective date

of the change. If the ACR has not been approved 30 days before the effective date, HCFA may allow the HMO or CMP to advertise the new benefit package. However, the advertisement must indicate that the announced rates are subject to approval by HCFA.

B. Provision of This Proposed Rule

We propose to revise § 417.592(d)(1) to require that each risk HMO or CMP submit its proposed ACR at least 60 days prior to the beginning of a contract period. This change would provide HCFA with an additional 15 days to review and approve or disapprove the proposed ACRs.

A change in the deadline for submission of proposed ACRs from 45 to 60 days before the beginning of a contract period would allow HCFA additional time to evaluate the ACRs, particularly in cases in which HCFA requests that the HMO or CMP provide supplemental documentation. The additional time also would permit a more thorough review of the proposals, reducing the potential for review errors. Making the deadline for submission of ACR proposals earlier would also help to ensure that enrollees have adequate notification of any contract changes in a timely manner.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and we will respond to the comments in the preamble of the final rule that is issued.

VII. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We consider all HMOs, CMPs, and HCPPs to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

There are currently 98 HMOs and CMPs that contract with HCFA to provide services on a risk basis to Medicare beneficiaries. Only 3 percent of all Medicare beneficiaries are enrolled under these risk contracting plans. During the last fiscal year, eight risk-contracting HMOs and/or CMPs ceased providing services to beneficiaries on a risk basis. According to these data, the number of impacted small entities is very low.

We have determined and the Secretary certifies that this proposed rule will not have a significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

VIII. Information Collection Requirements

Section 417.430 of this proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

We have submitted this rule to the OMB for review. The information collection requirements concern personal information supplied by Medicare beneficiaries who are applying for membership in HCPPs. Public reporting burden for this collection of information is estimated to be ½ hour per application. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organizations (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 972–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701 and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

2. Section 417.426 is amended by adding a new paragraph (d) to read as follows:

§ 417.426 Open enrollment requirements.

* * * * *

(d) *Special open enrollment.* (1) If an HMO's or a CMP's risk contract is terminated, not renewed, or renewed with a reduced service area, all other HMOs or CMPs with risk contracts operating in the same service area must hold a special open enrollment period for the benefit of those Medicare enrollees whose enrollment in the HMO or CMP ends when the contract is terminated or modified.

(2) The special open enrollment period must be 30 days in duration and begin 30 days after the date on which HCFA mails notice to the affected HMOs or CMPs, informing them of their responsibility under this section.

(3) Enrollment is effective 30 days after the end of the special enrollment period or, if HCFA determines that date is not feasible, some other date that HCFA specifies.

(4) The special open enrollment period is in addition to, unless it coincides with, the annual open enrollment period required under paragraph (a) of this section.

(5) The special open enrollment period must be held in accordance with all of the requirements applicable to annual open enrollments under paragraphs (a) through (c) of this section.

3. In § 417.430, the introductory text of paragraph (b), and paragraph (b)(3) are revised to read as follows:

§ 417.430 Application procedures.

* * * * *

(b) *Handling of applications.* An HMO or CMP must have an effective system for receiving, controlling, and processing applications from Medicare beneficiaries. The system must meet the following conditions and requirements:

* * * * *

(3) The HMO or CMP—

(i) Provides the applicant with a copy of the enrollment application form signed by the applicant and a representative of the HMO or CMP either when the application is taken, or, if the application is submitted by mail, within 5 working days of receipt; and

(ii) Gives the beneficiary prompt written notice of acceptance or denial of the application.

* * * * *

4. In § 417.440, the section heading and paragraph (e) are revised, and a new paragraph (f) is added to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(e) *Financial responsibilities of an HMO or CMP after the effective date of disenrollment of a Medicare enrollee*—(1) *Inpatient hospital care.* If a Medicare beneficiary's effective date of disenrollment occurs during an inpatient stay in a hospital paid under part 412 of this chapter and the HMO or CMP is financially responsible for the hospitalization, either because it arranged for the stay or, as provided under paragraph (a)(2) of this section, the financial responsibility for inpatient services continues through the date the beneficiary is discharged from the inpatient stay

(2) *Payment of outstanding bills.* The HMO or CMP must pay for services furnished before the effective date of the contract termination or modification if the HMO or CMP would have been financially responsible for those services under the Medicare contract.

(3) *Protection against preexisting condition exclusions in Medicare supplement policies.* For beneficiaries who are disenrolled because the Medicare contract is terminated or renewed with a reduced service area, the HMO or CMP must comply with the requirements of paragraph (f) of this section.

(f) *Supplemental exclusion coverage*—(1) *Definition.* For the purposes of this section, supplemental exclusion coverage means payment for certain expenses incurred by a beneficiary for health care services related to a condition that exists at the time the beneficiary is disenrolled from a Medicare-contracting HMO or CMP according to paragraphs (f)(2) and (f)(3) of this section. Expenses included in supplemental exclusion coverage are Part A and Part B deductibles and coinsurance, SNF coinsurance, 100 percent of Medicare eligible Part A hospitalization expenses for 365 lifetime days after all Medicare hospital days (including lifetime reserve days) have been exhausted, and the annual cost of three pints of blood.

(2) *Basic rule.* An HMO or CMP that ceases to provide health care services under a Medicare contract, or reduces its service area, must provide or arrange for supplemental exclusion coverage for any Medicare enrollee who—

(i) Is disenrolled as a result of the cessation of services;

(ii) Does not enroll in another Medicare-contracting HMO or CMP; and

(iii) Would become liable for Medicare deductibles and coinsurance because he or she is unable to purchase a Medicare supplement policy without a waiting period for preexisting conditions.

(3) *Duration of coverage.* Supplemental exclusion coverage must extend for 6 months after the termination or modification of the contract, or for the duration of any preexisting condition exclusion period imposed by the Medicare supplement policy, whichever is less.

(4) *Methods of providing supplemental exclusion coverage.* To fulfill the supplemental exclusion coverage required under paragraph (f)(2) of this section, an HMO or CMP must select at least one of the following options: (i) Make available for purchase by each of its terminated Medicare enrollees, one or more State-approved Medicare supplement insurance policies that waive the preexisting condition exclusion clause, at the premium rate approved by the State Insurance Commissioner for the same policy with a preexisting condition exclusion clause. At least one of these policies must cover all of the expenses specified in § 417.440(f)(1) of this section, at the lowest premium available in the area.

(ii) Allow each former Medicare enrollee to purchase the Medicare supplement policy of his or her choice and, if that policy includes a preexisting condition exclusion clause, provide protection through either of the following:

(A) Reimburse the former enrollee for all Medicare deductible and coinsurance expenses that are required to be paid under supplemental exclusion coverage as specified in paragraph (f)(1) of this section that are not payable by the Medicare supplement policy because of a preexisting condition exclusion clause.

(B) Arrange for a physician or provider to furnish the services required as a result of the preexisting condition. The HMO or CMP must reimburse all deductible and coinsurance expenses identified as supplemental exclusion coverage and incurred for services provided in accordance with § 417.440(e)(3) to the cooperating physician or provider on behalf of the former enrollee.

5. In § 417.488, the introductory text is revised; and new paragraphs (c) and (d) are added to read as follows:

§ 417.488 Written notice of termination.

A risk contract must provide that if, for any reason, the contract is terminated, not renewed, or renewed with a reduced service area, the HMO or CMP agrees to provide to its affected Medicare enrollees, and to be responsible for the cost of, the following notices:

* * * * *

(c) A list of all HMOs or CMPs with risk contracts that operate in the same service area and that must hold a special open enrollment for the affected Medicare enrollees, as required by § 417.426(d).

(d) A description of the special open enrollment process.

6. In § 417.492, a new paragraph (c) is added to read as follows:

§ 417.492 Nonrenewal of contract.

* * * * *

(c) *Supplemental exclusion coverage after nonrenewal by either HCFA or the HMO or CMP.* If either HCFA or an HMO or CMP decides, for any reason, not to renew the contract, the HMO or CMP must provide supplemental exclusion coverage, as required under § 417.440(f) for each Medicare enrollee whose coverage with the HMO or CMP will terminate. In addition, each HMO or CMP with a risk contract must provide the written notices required under § 417.488.

7. In § 417.494, a new paragraph (d) is added to read as follows:

§ 417.494 Modification or termination of contract.

* * * * *

(d) *Supplemental exclusion coverage after modification or termination by either HCFA or the HMO or CMP.* If either HCFA or an HMO or CMP, for any reason, terminates the contract or modifies it in such a manner that the service area is reduced, the HMO or CMP must provide supplemental exclusion coverage as required under § 417.440(f) for each Medicare enrollee whose coverage with the HMO or CMP will terminate. In addition, each HMO or CMP with a risk contract must provide the written notices required under § 417.488.

8. A new § 417.541 is added to read as follows:

§ 417.541 Supplemental exclusion coverage costs.

Costs incurred by an organization for furnishing the supplemental exclusion coverage as required by § 417.440(f) are not allowable.

9. In § 417.592, paragraph (d)(1) is revised to read as follows:

§ 417.592 Determination of required additional benefits.

* * * * *

(d) *Notification to HCFA.* (1) The HMO or CMP must notify HCFA, not later than 60 days before the beginning of the contract period, of its ACR and its weighted average of its per capita rates of payment (as computed under § 417.590) for the contract period.

* * * * *

10. In § 417.801, the introductory text of paragraph (b) is republished; paragraph (b)(6) is redesignated as paragraph (b)(7); and a new paragraph (b)(6) is added to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

* * * * *

(b) *Terms.* The agreement must provide that the HCPP agrees to—

* * * * *

(6) Comply with the application procedures set forth in § 417.430.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 9, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–5327 Filed 3–9–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[Docket No. RSFC–7, Notice 1]

Freight Car Safety Standards; Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA is proposing in this document to amend the Freight Car Safety Standards by making all maintenance-of-way vehicles subject to the Standards with the exception of stenciled cars not used in revenue service and restricted to a speed of less than 20 miles per hour. This proposal would add to the present regulation an additional condition which must be met before a freight car in maintenance-of-way service can be operated without complying with the Freight Car Safety Standards: the equipment must be operated at a speed of less than 20 mph.

DATES: Written comments must be received no later than April 11, 1994. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate the date on which the comments were received and will return the postcard to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building located at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator, Office of Safety, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–4094), or Kyle M. Mulhall, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: FRA proposes to revise its Freight Car Safety Standards to make all maintenance-of-way vehicles subject to these Standards with the exception of any stenciled maintenance-of-way car operated at a speed less than 20 miles per hour and not used in revenue service.

The Freight Car Safety Standards, at 49 CFR 215.3(c)(3), excluded maintenance-of-way equipment from the requirements of Part 215, "if that equipment is not used in revenue service and is stenciled in accordance with section 215.305."

When it revised these rules in 1979, FRA proposed that equipment used exclusively in work train service be excluded from the requirement of the proposed rules (44 FR 1419). The theory of this proposal was that if a car were limited to work train service, with its slow speed and low mileage operations, safety considerations would not necessitate bringing the car up to the same maintenance levels needed for safe high speed mainline revenue service cars. All other equipment would be included.

Commenters urged that FRA not adopt the proposal. They indicated that having to confine such equipment to work train service would impose such stringent operational restrictions as to effectively force railroads to replace between 200 and 3,000 cars at a cost of about $30,000 each. It was asserted that these costs were not required from a safety standpoint, since there were no accidents attributable to such equipment.

FRA accepted the commenters' arguments on the theory that since cars in work train service are not freely interchanged and each railroad knows the condition of its own cars, an appropriate level of operational constraint, tailored to a particular car's condition, can be effectively imposed by individual railroads. FRA concluded that, if such cars were excluded from revenue service and were identified by reporting marks stenciled on the equipment, compliance with the regulation was not necessary from a safety standpoint. Accordingly, in adopting the revised regulation in 1979, FRA made the Freight Car Safety Standards inapplicable to any freight car that is "maintenance-of-way" equipment provided that it is not used in revenue service and is marked to indicate its status. FRA did not specifically prohibit use of non-complying maintenance-of-way equipment in revenue trains, only that it be excluded from revenue service.

By proceeding in this manner there was no need to define what constitutes maintenance-of-way equipment. In the absence of such a regulatory definition, the railroad industry has identified as "maintenance-of-way" cars an extensive group of company service cars when that equipment does not directly produce revenue for the railroad. Typical examples of this broad variety of freight cars include flat cars assigned to move railroad wheels, hopper cars in ballast service, covered hoppers in locomotive sand service, tank cars in locomotive fuel service, and box cars designated as mobile warehouses and containing a wide variety of supplies needed by the railroad in its daily operations. The designation of such cars as "maintenance-of-way" equipment is a departure from a historical industry practice that reserved this designation only for cars assigned to the railroad's engineering departments. These cars were used only in limited service to repair or maintain the track, bridge, and signal installations owned by the railroad and were largely of unique designs tailored to perform a specific function.

Although the Freight Car Safety Standards have not generally applied to "maintenance-of-way equipment," FRA's Safety Appliance and Power

Brake rules do apply to this equipment. Thus, the condition of such cars has been monitored as part of FRA's overall compliance program. In addition, during a special inspection effort in February 1983, FRA inspected 2,849 cars stenciled as "maintenance-of-way" cars. Two hundred twenty three (7.8%) had safety appliance violations and 518 (18.2%) had power brake violations. In addition, of 677 cars inspected for potential compliance with the freight car safety standards, 224 (33%) were found with defects that would have been violations of these standards. Effective remedial action was taken by the individual railroads in each instance, but the need for continued review was underscored by a significant accident that occurred on July 18, 1983 at Crystal City, Missouri.

Investigation of that accident indicated that the derailed train was operating at a normal speed for a revenue freight train despite the presence of 17 hopper cars in "maintenance-of-way" service, all of which were in a deteriorated condition. A cracked and displaced centerplate was present under one of these cars and is believed to have been a major contributing cause to the accident.

During another extensive effort in 1984, FRA inspected 3,933 maintenance-of-way cars, finding fewer non-complying conditions: Approximately 279 safety appliance violations (7%), 439 power brake violations (11.2%), and 823 defects that would have been freight car safety violations (20.9%) if these cars were required to comply with the freight car standards. In 1986, a third inspection survey of 25% of the nation's fleet of these cars revealed 700 safety appliance (7%) and 878 power brake (8.8%) violations, and 1,730 defects that would have been freight car safety violations (17.2%).

Several salient facts emerge from FRA's monitoring effort. Although each successive inspection has found that the percentage of cars with safety problems has decreased, the percentage of cars found with safety problems remains significantly higher for this group of cars than for the national fleet. In all instances, the railroads have taken remedial action once the non-complying conditions have been identified. However, after repairing a defective car on a repair track, railroads often elect to place the car back in service without correcting conditions that are substandard according to the freight car standards. For example, a car shopped for repair of a brake defect may be sent back into service without attention being given to broken and missing truck springs, despite the obvious and serious nature of that condition. Railroads differ as to whether to impose operational constraints on this type of equipment or limit speed or train makeup. For instance, FRA has observed ballast cars with both broken centerplates and broken or missing truck springs placed in a relatively high-speed revenue train and coupled to a car containing hazardous materials. Nothing in current FRA regulations prevents this from happening. Similarly, ample evidence emerged that these cars are being interchanged among railroads fairly extensively.

To identify the role that these cars may play in causing accidents, FRA has reviewed its accident data to find accidents caused by freight cars that were in "maintenance-of-way" service and to isolate those that can be attributed to conditions that would constitute noncompliance with the Freight Car Safety Standards. FRA has isolated 26 accidents involving maintenance-of-way cars between January 1, 1980 and July 1, 1987 in which defective components, which would otherwise have been regulated by these standards, were the probable cause of the accident.

These accidents resulted in property damage exceeding $1 million. Because of data limitations regarding identification of maintenance-of-way cars, the study could not include any maintenance-of-way cars entering the fleet since 1984. That limitation, together with the fact that our field inspection forces report increasing observation of such cars used in revenue trains, leads to the conclusion that the risk is substantial today and likely to grow in the future.

One further reason for concern relates to a recent change in industry requirements regarding cars with friction bearings. The Association of American Railroads (AAR) has changed its field manual of interchange rules, effective January 1, 1994, to require that "all cars must be equipped with journal roller bearings and may not be equipped with friction (plain) bearings." AAR Interchange Rule 88, Item 17(b). Although this change does not specifically address MOW equipment, the majority of these cars are equipped with friction bearings. The AAR prohibition of interchanging cars equipped with friction bearings will greatly reduce the the number of locations on the railroads where personnel are capable of performing frequent inspections of the bearing components and application of lubrication. Reduced inspection could lead to increases in journal burn offs, hot boxes, and derailments.

In summary, several factors call into question FRA's prior decision not to bring company-service-type equipment under the Freight Car Safety Standards: The increasing size of the "maintenance-of-way" car fleet; carrier decisions to minimize the level of repair work being performed on these cars rather than to voluntarily improve their general condition; fewer operational constraints for this fleet; and an accident history attributable to these cars. But the strongest argument for this proposal is simple common sense. FRA has required every car moving in a revenue service train to meet certain safety standards because it recognizes that equipment failure on a single car can derail an entire train. This is as true of maintenance-of-way vehicles as it is with any other type of car. Exempting maintenance-of-way vehicles from the freight car safety standards and allowing them to move at high speeds in trains which often carry hazardous materials does not appear logical in safety terms. This exemption appears to have contributed to at least 26 accidents, and mere chance appears to be responsible for the fact that none of these accidents produced catastrophic consequences. Because we do not believe that public safety can continue to be predicated on luck, FRA is proposing to remove this anomaly from the freight car safety standards.

The Proposed Rule

FRA proposes to revise § 215.3(c)(3) to exclude from the application of the Freight Car Safety Standards freight cars assigned to maintenance-of-way service only if that equipment is: (1) Not used in revenue service; (2) operated at a speed of less than 20 miles per hour; and (3) stenciled in accordance with Section 215.305. All three of these conditions would have to be met before the car is excluded from the application of the rules.

This proposal would add to the present regulation an additional condition which must be met before a freight car in maintenance-of-way service can be operated without complying with the Freight Car Safety Standards: the equipment must be operated at a speed of less than 20 mph. Under this approach, if a railroad wants to continue its current practice of operating a maintenance-of-way car at track speeds in revenue trains, the railroad will either have to bring the car into compliance with the Freight Car Safety Standards or substitute a car that is in compliance. However, a railroad could operate a non-complying

stenciled maintenance-of-way car in a revenue train as long as that train travelled less than 20 miles per hour.

This proposal would not prohibit stenciled, non-complying maintenance-of-way cars from being used in revenue trains as long as those trains operate at speeds less than 20 miles per hour. We specifically request comments on this aspect of the proposal. Should the permissible conditions for operating non-complying maintenance-of-way equipment be further limited by prohibiting use in *all* revenue trains as well as in revenue service? In view of the possibility that a car being used in restricted service might derail, fouling an adjacent track and leading to a raking collision, should all maintenance-of-way cars be required to comply with the provisions of the Freight Car Safety Standards?

The proposed language does not change the regulation's effect on self-propelled maintenance-of-way equipment except insofar as that equipment would also have to comply with the Freight Car Safety Standards if operated at a speed of 20 miles per hour or more.

FRA data indicates that freight cars specially modified for maintenance service constitute only a small segment of the group of cars that would be affected by this proposal. The vast majority of affected cars are unmodified cars that could just as easily be used in revenue service. Indeed, FRA investigations disclosed at least one railroad that was routinely employing in revenue service equipment stenciled for maintenance service. Given the potential for such alternative service, these cars should either be brought into compliance or replaced. Even if a railroad elects to replace all of its current equipment in this category, there does not appear to be any lack of equipment available for this purpose at minimal cost since the industry has a large number of freight cars in storage.

FRA estimates that approximately 40,000 freight cars stenciled to indicate their potential use as maintenance-of-way cars would, to the degree railroads choose to use them in revenue trains at speeds of 20 miles per hour or higher, be brought into compliance with the Freight Car Safety Standards if this proposed amendment is adopted. To place that number in context, the national freight car fleet now includes more than 1.5 million cars. FRA estimates that less than three percent of the entire fleet would be affected by this proposal.

Regulatory Impact

This proposed rule has been evaluated in accordance with existing regulatory policies. The proposed rule does not constitute a major rule under Executive Order 12291, but is a significant rule under DOT regulatory policies and procedures due to industry and public interest.

The proposed rule will have a direct economic impact only on railroads. If a railroad plans its maintenance activities in a manner that necessitates operating its MOW equipment at the same speed as normal revenue service trains, this proposal will have an adverse economic impact in that a railroad will either have to upgrade the condition of their equipment or replace that equipment with stored cars that comply with the standards. FRA estimates the cost of repairing the railroad industry's maintenance-of-way fleet to be $1,576,000 the first year and $1,733,600 the second year of compliance, with $315,200 in increased annual maintenance costs thereafter.

Operating MOW cars at low speeds in dedicated MOW trains will considerably reduce the threat of derailments. When MOW equipment is operated at high speed in trains that may well contain large quantities of hazardous materials, any derailment could have grave consequences. Preventing just one accident from causing substantial loss of life or property would result in benefits well above those identifiable in a review of past accidents. A full regulatory evaluation has been placed in the public docket and is available for inspection.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

The proposed rule will not have any significant impact on small entities because the limited speed provision will allow small railroads to continue to operate their equipment at current speeds since virtually all small railroads have very low operating speeds. The proposed rule does not contain any new or altered provisions that will affect the information collection requirements contained in the existing regulation.

Federalism Implications

The proposed rulemaking action would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 215

Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend part 215, title 49, Code of Federal Regulations, as set forth below:

PART 215—[AMENDED]

1. The authority citation for part 215 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. In section 215.3, paragraph (c)(3) is revised to read as follows:

§ 215.3 Application

* * * * *

(c) * * *

(3) Maintenance-of-way equipment (including self-propelled maintenance-of-way equipment) if it is not used in revenue service, is operated at a speed of less than 20 miles per hour, and is stenciled in accordance with § 215.305 of this part.

Issued in Washington, DC on March 3, 1994.

Donald M. Itzkoff,

Acting Administrator.

[FR Doc. 94–5371 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–06–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, and 1130

[Ex Parte No. MC–219]

Implementation of Section 4 of the Negotiated Rates Act of 1993

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing regulations to implement section 4 of the Negotiated Rates Act of 1993. The proposed regulations would establish a mechanism for obtaining ICC review and approval for motor carriers (other than household goods carriers) and shippers to resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions

or billing errors arising from inadvertent failure to properly and timely file and maintain agreed-upon rates, rules, or classifications in compliance with 49 U.S.C. 10761 and 10762.

DATES: Comments are due on April 11, 1994.

ADDRESSES: Send comments (an original and 10 copies) referring to [Ex Parte No. MC–219] to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Larry Herzig or James Manning (202) 927–5180. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Section 4 of the Negotiated Rates Act of 1993 (Pub. L. 103–180), to be codified at 49 U.S.C. 11712, provides that:

> Subject to Commission review and approval, motor common carriers subject to the jurisdiction of the Commission * * * [other than household goods carriers] and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with [49 U.S.C.] 10761 and 10762 * * * 49 U.S.C. 11712(a).

Under this language, the Commission may approve a departure from the filed rate when the shippers and carriers agree, and the departure is needed to settle claims resulting from incorrect tariff provisions or billing errors arising from the carrier's inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications.[1]

A shipper might consent to waive carrier payment of overcharges if, for example, the charges collected at the time of shipment were the charges the shipper had agreed to pay, and later the parties determined that a lower rate was in fact the applicable filed rate.[2] Similarly, a carrier might consent to waive undercharges where the applicable filed rate is higher than the rate the parties had intended. For example, the carrier might have inadvertently failed to file the rate it had negotiated and intended to apply. In other cases, the filed tariff provision may have been incorrect; for example, the commodity description might not be sufficiently inclusive or the shipment origin might be described as within a commercial zone when it is actually several miles outside the zone.[3]

To implement the provisions of Section 11712(a), we are proposing rules that are similar to our Special Docket rules at 49 CFR 1130.2(e), which allow rail and water carriers to waive collection of undercharges or pay reparations for similar reasons.[4] These proposed motor "Tariff Reconciliation" rules provide a process that will in most cases require the carrier to file only a letter of intent and an appropriate filing fee. (If a protest is filed or the Commission initiates an investigation on its own motion, the carrier could reply.) Following the protest period and Commission review, the Commission will issue an order either approving or disapproving the agreement.

The letter of intent must describe the action intended (*i.e.*, departure from the filed rate). While we are not proposing any particular format for these letters, they must contain, at a minimum, the following information:

1. The name(s) and address(es) of the payer(s) of the freight charges;
2. The name(s) of the carrier(s) involved in the traffic;
3. The amount(s) involved;
4. The tariff authority(ies) for the charged and sought rates;
5. The date(s) when the shipment(s) involved were delivered or tendered for delivery;
6. The point(s) of origin and destination of the shipment(s) and the route(s) of movement;
7. The commodity(ies) transported;
8. A statement certifying that the carrier(s) participating in the shipment(s) or the payer(s) of the freight charges (if waiver of overcharge is involved) concur(s) with the intent to depart from the filed rate;
9. A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate; and
10. The reason(s) why the Commission should approve the proposed resolution.

Letters of intent would be made available for public inspection in the Special Docket Board Public File, Room 4313, at our offices in Washington, DC. Letters of objection may be filed within 30 days of the filing of the petition. Following filing of the letter of intent, the proposed rules would provide separate procedures for the processing of uncontested and contested cases. With respect to uncontested petitions (letters of intent) on which the Commission does not initiate a formal investigation the Commission proposes two alternative procedures and requests comments from interested parties as to which procedure the Commission should adopt.

One procedure would adapt the Special Docket procedures. Under these procedures, objections could be lodged against a petition for a period of 30 days following its filing. If none were received and if by the 45th day following the filing date of the petition the Commission did not institute an investigation on its own motion, the petition would be considered to have been approved by the Commission. This would be consistent with the Special Docket Procedures where, unless objections are filed within 45 days after a petition is filed, the petition is thereafter considered to be "an order of the Commission authorizing the action contemplated in the petition." See 49 CFR 1130.2(e)(4). Under an alternative procedure for processing uncontested petitions, where the Commission decides not to investigate, the Commission would issue an order, through its Special Docket Board either approving or disapproving the petition.

Both procedures would meet section 11712's requirement for Commission "review and approval" of the consensual resolution of overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications by providing for careful Commission monitoring to assure that the new process is not misused or abused. Both procedures would do this by providing sufficient time for Commission consideration of each petition and the opportunity for a formal Commission investigation. The procedures differ in whether a final order will be issued granting approval of

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[1] Carriers are otherwise required by law to collect only the filed rate. Where the carrier has collected a rate higher than the applicable filed rate, and the filed rate is the rate the parties intended, the carrier may continue, as it would prior to the NRA, to repay the excess amount without recourse to the Commission. Carriers do not require court or Commission approval when merely conforming to that requirement.

[2] "Overcharge" has traditionally meant the amount by which the collected rate exceeds the legally applicable filed rate. See 49 U.S.C. 11706(b) and 11705(b)(1).

[3] In some cases where there are incorrect tariff provisions or an inadvertent carrier failure to properly and timely file and maintain the agreed upon rates, rules, or classifications, the shipper may have already paid charges that were based on a higher rate than the one the parties had intended. In this situation, the proposed rules would permit carriers to pay back the excess amounts.

[4] Unlike the rail rules, the proposed rules for motor carriers do not provide for the tolling of a statute of limitations. The reason is that for proceedings involving motor carriers, the statute of limitations can be tolled only by the filing of a court (not a Commission) action. 49 U.S.C. 11706(a), 11706(b), and 11706(c)(2). Since the section 11706 limitations periods apply only to civil actions, not to matters brought to the Commission under section 11712, the Commission proposes to accept letters of intent for motor shipments without regard to the dates of the shipments. This will allow carriers to adjust their charges even after the time for civil actions has passed, so as to avoid exposure to penalties for departure from the filed rate. See 18 U.S.C. 3282 (setting a five year period for enforcement actions against carriers) and 49 U.S.C. 11902 (six years for actions against shippers who have received rebates).

a petition not investigated by the Commission in an uncontested case. Under these circumstances, the first procedure would assure parties of a resolution of their case within 45 days. The second procedure would assure receipt of a written order confirming approval of a petition. This would also be accomplished in a short time, but the rules would not establish a standard deadline. In proposing these rules, the Commission notes that departures from the filed rate are not to be usual or expected activities. For any petition approved, under either of the procedures described above, or the other procedures proposed for contested and investigated cases, the claims to overcharges or undercharges would then be deemed to be waived (and, where refunds are involved, the carrier could then return to the shipper the excess amounts already collected).

If a letter is contested, or if the Commission decides on its own motion to investigate a particular case, carriers would not be allowed to take any action until the case is reviewed by the Special Docket Board and an appropriate order either granting or denying the application is issued. Carriers may file replies if objections are filed, or if an investigation is initiated on the Commission's own motion.

We are proposing a filing fee of $70.00. This is the same as the current filing fee of $70.00 under the rail/water Special Docket letter of intent procedures, and seems appropriate because each procedure requires similar processing.

Unlike the rail/water Special Docket procedures, the proposed rules would not require carriers to notify the Commission that the proposed transaction has been consummated. We see no need for notification, as carriers can be assumed to consummate the transactions for which they seek agency approval.

Public comment is invited on the scope of application of the proposed rules, the appropriateness of the letter of intent requirements, the alternative procedures for uncontested petitions not investigated by the Commission, the level of the fee, and on all other aspects of the proposed rules. To obtain a copy of the decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. The economic impact would be minimal because the proposed rules merely provide a simple, voluntary method to resolve certain billing problems that are likely to arise in only a small proportion of the shipments transported by the motor carrier industry. Thus the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1130

Administrative practice and procedure.

Decided: March 4, 1994.

By the Commission: Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Commissioner Philbin dissented.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, parts 1002, 1011 and 1130 are proposed to be amended as set forth below.

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, a new No. 81 is added to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceedings	Fees
(81) Tariff reconciliation petitions from motor common carriers	$70

* * * * *

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

4. Section 1011.6(e) is proposed to be revised to read as follows:

§ 1011.6 Employee boards.

* * * * *

(e) *Special Docket Board.* Disposition of special docket and tariff reconciliation proceedings under 49 CFR 1130.2 (e), (f), and (g).

* * * * *

PART 1130—INFORMAL COMPLAINTS

5. The authority citation for part 1130 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 10321, 10707 and 11712.

6. In § 1130.2, paragraph (f) is proposed to be revised by adding the words "or tariff reconciliation petition" after the word "petition" in the parenthetical phrase in the first sentence and by adding the words "or tariff reconciliation" after the words "Special Docket" in the second sentence, and by adding a new paragraph (g) to read as follows:

§ 1130.2 When damages sought.

* * * * *

(g) *Tariff reconciliation proceedings for motor common carriers.*

(1) *Petitions to waive collection or permit payment.*

Pursuant to 49 U.S.C. 11712, subject to Commission review and approval, motor common carriers (other than household goods carriers) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with 49 U.S.C. 10761 and 10762. Under section 11712, the Commission may approve a departure from the filed rate when the shipper and carrier agree, and the departure is needed to settle claims resulting from incorrect tariff provisions or billing errors arising from the carrier's inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications. Petitions for appropriate authority should be filed by the carrier in the Commission's tariff reconciliation docket by submitting a letter of intent to depart from the filed

rate. Copies of the petitions must be served on all parties named in the petitions. The petitions will be deemed the equivalent of an informal complaint and answer admitting the matters stated in the petition. Petitions shall be sent to the Special Docket Board, Interstate Commerce Commission, Washington, DC 20423. The petitions shall contain, at a minimum, the following information:

(i) The name(s) and address(es) of the payer(s) of the freight charges;

(ii) The name(s) of the carrier(s) involved in the traffic;

(iii) The amount(s) involved;

(iv) The tariff authority(ies) for the charged and sought rate;

(v) The date(s) when the shipment(s) involved were delivered or tendered for delivery;

(vi) The point(s) of origin and destination of the shipment(s) and the route(s) of movement;

(vii) The commodity(ies) transported;

(viii) A statement certifying that the carrier(s) participating in the shipment(s) or the payer(s) of the freight charges (if waiver of overcharges is involved) concur(s) with the intent to depart from the filed rate;

(ix) A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate; and

(x) The reason(s) why the Commission should approve the proposed resolution.

(2) *Public notice and protest.* Tariff reconciliation petitions (letters of intent) shall be served on all parties named in the petition and will be made available by the Commission for public inspection in the Special Docket Board Public File Room, Room 4313, Interstate Commerce Commission, Washington, DC 20423. Any interested person may protest the granting of a petition by filing a letter of objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of objection shall identify the tariff reconciliation proceeding, shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition.

(As to uncontested petitions, not investigated by the Commission two alternative rules are offered for comment. Comments from interested parties are requested on which procedure the Commission should adopt.) (First possible rule)

(3) *Uncontested petitions.* If a petition is not contested, and if the Commission does not initiate an investigation of the petition on its own motion, approval is deemed granted without further action by the Commission, effective 45 days after Commission receipt of the petition. (Second possible rule)

(3) *Uncontested petitions.* If a petition is not contested, the Commission may initiate an investigation of the petition on its own motion, or it may simply issue an order either approving or disapproving the petition.

(4) *Contested petitions.* If a petition is contested or the Commission initiates an investigation of the petition on its own motion, 15 days will be allowed for reply. The 15 day period will commence on the date of service of the objections or, if the Commission initiates an investigation on its own motion, on the date of service of the decision initiating the investigation. After the period for reply has expired, the Commission will issue a decision approving or disapproving the agreement, or requesting further submissions from the parties.

[FR Doc. 94–5625 Filed 3–9–94; 8:45 am]
BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 59, No. 47
Thursday, March 10, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 4, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

- Agricultural Marketing Service
  Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon-Marketing Order No. 924
  On occasion; Biennially
  Farms; Businesses or other for-profit; 91 responses; 23 hours
  Mark Kreaggor (202) 720–1755
- Agricultural Marketing Service
  Raisins Produced from Grapes Grown in California, Marketing Order No. 989
  FV–197 and FV–198
  Recordkeeping; On occasion; Weekly; Monthly; Annually
  Farms; Businesses or other for-profit; Small businesses or organizations; 15,279 responses; 2,584 hours
  Valerie L. Emmer
- Foreign Agricultural Service
  Certificate of Quota Eligibility
  FAS–961
  On occasion
  Businesses or other for-profit; 600 responses; 100 hours
  Fred R. Kessel (202) 720–5676
- Forest Service
  36 CFR Part 223—Disposal of National Forest Timber—Reports on Export or Substitution of Unprocessed Timber
  FS–2400–43 through 46
  On occasion
  Small businesses or organizations 8,200 responses; 4,100 hours
  Ron Lewis (202) 205–0855
- Forest Service
  36 CFR 223—Disposal of National Forest Timber—Timber Export and Substitution Restrictions
  One time only
  Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 33 responses; 69 hours
  Ron Lewis (202) 205–0855

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 94–5488 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–01–M

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Proposals for Fiscal Year 1994

PURPOSE: Notice is hereby given that under the authority contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), the Cooperative State Research Service (CSRS) through its Office of Higher Education Programs (HEP), will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

ELIGIBILITY: Please note that the authorizing legislation for the National Needs Graduate Fellowship Program allows the award of grants to colleges and universities only; awards cannot be made to research foundations established by the college or university.

AVAILABLE FUNDS: The amount available for this purpose in Fiscal Year 1994 is approximately $3,395,000.

TARGETED AREAS: Food and agricultural sciences areas appropriate for fellowship applications are those in which shortages of expertise have been determined and targeted by CSRS–HEP for national needs doctoral fellowship support. Please note that due to the funding level of this program over the last seven fiscal years, CSRS supports the six national needs areas funded in past years on a rotating basis of three needs areas per fiscal year. The targeted national needs areas to be supported in FY 1994 are: Biotechnology—Animal; Human Nutrition and/or Food Science; and Marketing or Management—Food, Forest Products, or Agribusiness. Approximately one-third of the available funds will be allocated to each of the three national needs areas. CSRS plans to support the remaining three national needs areas (Biotechnology—Plant; Engineering—Food, Forest, Biological, and Agricultural; and Water Science) in FY 1995. Although this procedure limits the participation of an applicant interested in a specific targeted national needs area to alternating years, it increases the likelihood that the applicant will obtain funding under the program each time a grant application is submitted.

PROPOSAL LIMITATIONS: For the Fiscal Year 1994 program, a proposal may request funding in only one: (1) National needs area. A proposal may request a minimum of two (2) fellowships and a maximum of four (4) fellowships in the national needs area for which funding is requested. No limitation is placed on the number of proposals an institution may submit. However, the same college or equivalent administrative unit within an institution may submit a maximum of three (3) proposals: One (1) in each of the three national needs areas supported. (No more than one proposal may be submitted in any one national needs area by the same college or equivalent administrative unit.) Additionally, total funds awarded to an institution under the program in Fiscal Year 1994 shall not exceed $324,000.

FINANCIAL AND OTHER LIMITATIONS: Each institution funded will receive $54,000 for each doctoral fellowship awarded. However, it is anticipated that total program funds available will not be evenly divisible by $54,000. Therefore, one fellowship will be supported on a partial basis with a lesser amount of funds. Except in the case of the partially funded fellowship, fellowship monies must be used to: (1) Support the same doctoral fellow for three (3) years at $17,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the three-year duration of the fellowship. Please note that beginning in FY 1991 the yearly doctoral stipend was increased from $15,000 to $17,000 in an attempt to keep the USDA support at a level that is competitive with fellowships offered outside the food and agricultural sciences community.

While proposals must document institution willingness to recruit and train at least two (2) but not more than four (4) fellows in a national needs area, CSRS may fund fewer fellows than requested in a proposal.

This program is highly competitive, and it is anticipated that available funding will support approximately 63 doctoral fellows through seven grants in each of the three targeted areas.

APPLICATION INFORMATION: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply to the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. Applicants should be aware that proposals must be typed on one side of the page only, using a font no smaller than ten characters per inch, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. Additionally, applicants are cautioned to comply with the 20-page limitation for the narrative section of the proposal and the inclusion of summary faculty vitae through the use of Form CSRS–708.

Copies of the Application Kit may be requested from: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; Ag Box 2245; Washington, DC 20250–2245; telephone number (202) 401–5048.

WHEN AND WHERE TO SUBMIT PROPOSALS: Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalog must be submitted. Proposals submitted through the mail should be sent to the address listed above and must be postmarked by April 29, 1994. Hand-delivered proposals must be submitted by April 29, 1994, to an express mail or a courier service or brought to Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303; Aerospace Center, 901 D Street, SW., Washington, DC 20024. Proposals transmitted via a facsimile (FAX) machine will not be accepted.

APPLICABLE REGULATIONS: This program is subject to the provisions found at 7 CFR part 3402 (52 FR 4712, February 13, 1987, as amended by 55 FR 2214, January 22, 1990). In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended; the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-FreeWorkplace (Grants), 7 CFR part 3017; the New Restrictions on Lobbying, 7 CFR part 3018; and Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051, apply to this program.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0024.

Done at Washington, DC, this 4th day of March 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–5575 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–22–M

Food and Nutrition Service

Commodity Supplemental Food Program: Elderly Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSPP). These poverty income guidelines are to be used in conjunction with the CSFF Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amended section 5(f) and (g) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Public law 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Public law 99–198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 58 FR 8287. These regulations defined

"elderly persons" as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services" (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1994 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** for February 10, 1994 at 59 FR 6277. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1994–June 30, 1995.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar.

The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the Territories including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1994–JUNE 30, 1995

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:	
1	9,568
2	12,792
3	16,016
4	19,240
5	22,464
6	25,688
7	28,912
8	32,136
For each additional family member add:	3,224
Alaska:	
1	11,960
2	15,990
3	20,020
4	24,050
5	28,080
6	32,110
7	36,140
8	40,170
For each additional family member add	4,030
Hawaii:	
1	11,011
2	14,716
3	18,421
4	22,126
5	25,831
6	29,536
7	33,241
8	36,946
For each additional family member add	3,705

Dated: March 4, 1994.

William E. Ludwig,

Administrator.

INCOME ELIGIBILITY GUIDELINES

[Effective From July 1, 1994 to June 30, 1995]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	7,360	614	142	13,616	1,135	262	9,568	798	184
2	9,840	820	190	18,204	1,517	351	12,792	1,066	246
3	12,320	1,027	237	22,792	1,900	439	16,016	1,335	308
4	14,800	1,234	285	27,380	2,282	527	19,240	1,604	370
5	17,280	1,440	333	31,968	2,664	615	22,464	1,872	432
6	19,760	1,647	380	36,556	3,047	703	25,688	2,141	494
7	22,240	1,854	428	41,144	3,429	792	28,912	2,410	556

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective From July 1, 1994 to June 30, 1995]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
8	24,720	2,060	476	45,732	3,811	880	32,136	2,678	618
For each add'l family member add	+2,480	+207	+48	+4,588	+383	+89	+3,224	+269	+62
Alaska									
1	9,200	767	177	17,020	1,419	328	11,960	997	230
2	12,300	1,025	237	22,755	1,897	438	15,990	1,333	308
3	15,400	1,284	297	28,490	2,375	548	20,020	1,669	385
4	18,500	1,542	356	34,225	2,853	659	24,050	2,005	463
5	21,600	1,800	416	39,960	3,330	769	28,080	2,340	540
6	24,700	2,059	475	45,695	3,808	879	32,110	2,676	618
7	27,800	2,317	535	51,430	4,286	990	36,140	3,012	695
8	30,900	2,575	595	57,165	4,764	1,100	40,170	3,348	773
For each add'l family member add	+3,100	+259	+60	+5,735	+478	+111	+4,040	+336	+78
Hawaii									
1	8,470	706	163	15,670	1,306	302	11,011	918	212
2	11,320	944	218	20,942	1,746	403	14,716	1,227	283
3	14,170	1,181	273	26,215	2,185	505	18,421	1,536	355
4	17,020	1,419	328	31,487	2,624	606	22,126	1,844	426
5	19,870	1,656	383	36,760	3,064	707	25,831	2,153	497
6	22,720	1,894	437	42,032	3,503	809	29,536	2,462	568
7	25,570	2,131	492	47,305	3,943	910	33,241	2,771	640
8	28,420	2,369	547	52,577	4,382	1,012	36,946	3,079	711
For each add'l family member add	+2,850	+238	+55	+5,273	+440	+102	+3,705	+309	+72

[FR Doc. 94–5570 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–30–P–M

Special Supplemental Food Program for Women, Infants and Children (WIC): Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(A)) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal Poverty Income Guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1994 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 10, 1994 at 59 FR 6277. The guidelines published by DHHS are referred to as the poverty income guidelines.

Section 246.7(c)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the

State cannot establish WIC guidelines which exceed the guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals, or which are less than 100 percent of the Federal poverty income guidelines. Consistent with the method used to compute eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1994 through June 30, 1995. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1994–JUNE 30, 1995

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	7,360	13,616
2	9,840	18,204
3	12,320	22,792
4	14,800	27,380
5	17,280	31,968
6	19,760	36,556
7	22,240	41,144
8	24,720	45,732
For each additional family member add	2,480	4,588
Alaska:		
1	9,200	17,020
2	12,300	22,755
3	15,400	28,490
4	18,500	34,225
5	21,600	39,960
6	24,700	45,695
7	27,800	51,430
8	30,900	57,165
For each additional family member add	3,100	5,735
Hawaii:		
1	8,470	15,670
2	11,320	20,942
3	14,170	26,215
4	17,020	31,487
5	19,870	36,760
6	22,720	42,032
7	25,570	47,305
8	28,420	52,577
For each additional family member add	2,850	5,273

Dated: March 4, 1994.

William E. Ludwig,

Administrator.

INCOME ELIGIBILITY GUIDELINES

[Effective From July 1, 1994 to June 30, 1995]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	7,360	614	142	13,616	1,135	262	9,568	798	184
2	9,840	820	190	18,204	1,517	351	12,792	1,066	246
3	12,320	1,027	237	22,792	1,900	439	16,016	1,335	308
4	14,800	1,234	285	27,380	2,282	527	19,240	1,604	370
5	17,280	1,440	333	31,968	2,664	615	22,464	1,872	432
6	19,760	1,647	380	36,556	3,047	703	25,688	2,141	494
7	22,240	1,854	428	41,144	3,429	792	28,912	2,410	556
8	24,720	2,060	476	45,732	3,811	880	32,136	2,678	618

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective From July 1, 1994 to June 30, 1995]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
For each add'l family member add	+2,480	+207	+48	+4,588	+383	+89	+3,224	+269	+62
Alaska									
1	9,200	767	177	17,020	1,419	328	11,960	997	230
2	12,300	1,025	237	22,755	1,897	438	15,990	1,333	308
3	15,400	1,284	297	28,490	2,375	548	20,020	1,669	385
4	18,500	1,542	356	34,225	2,853	659	24,050	2,005	463
5	21,600	1,800	416	39,960	3,330	769	28,080	2,340	540
6	24,700	2,059	475	45,695	3,808	879	32,110	2,676	618
7	27,800	2,317	535	51,430	4,286	990	36,140	3,012	695
8	30,900	2,575	595	57,165	4,764	1,100	40,170	3,348	773
For each add'l family member add	+3,100	+259	+60	+5,735	+478	+111	+4,030	+336	+78
Hawaii									
1	8,470	706	163	15,670	1,306	302	11,011	918	212
2	11,320	944	218	20,942	1,746	403	14,716	1,227	283
3	14,170	1,181	273	26,215	2,185	505	18,421	1,536	355
4	17,020	1,419	328	31,487	2,624	606	22,126	1,844	426
5	19,870	1,656	383	36,760	3,064	707	25,831	2,153	497
6	22,720	1,894	437	42,032	3,503	809	29,536	2,462	568
7	25,570	2,131	492	47,305	3,943	910	33,241	2,771	640
8	28,420	2,369	547	52,577	4,382	1,012	36,946	3,079	711
For each add'l family member add	+2,850	+238	+55	+5,273	+440	+102	+3,705	+309	+72

[FR Doc. 94–5571 Filed 3–9–94; 8:45 am]
BILLING CODE 3410–30–P–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon on Saturday, March 26, 1994, at the Marriott Hotel, 359 Calle Principal, Monterey, California 93940. The purpose of the meeting is to discuss and plan future Advisory Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–5605 Filed 3–9–94; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 686]

Grant of Authority for Subzone Status Intel Corporation, (Semiconductors and Computer Products) Chandler, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Phoenix, Arizona, grantee of Foreign-Trade Zone 75, for authority to establish a special-purpose subzone for the semiconductor/ integrated circuit and data processing products manufacturing facility of Intel Corporation located in Chandler (Maricopa County), Arizona, was filed by the Board on November 22, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 57–93, 58 FR 62635, 11/29/93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 75C) at the Intel Corporation facility in Chandler, Arizona, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of March 1994.

Joseph A. Spetrini

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 94–5617 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–05–P

International Trade Administration

[A–570–826]

Postponement of Preliminary Antidumping Duty Determination: Certain Paper Clips From the People's Republic of China (PRC)

AGENCIES: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0922.

Postponement

On November 2, 1993, the Department initiated an antidumping duty investigation of certain paper clips from the PRC. The notice of initiation stated that we would issue our preliminary determination on or before March 22, 1994 (58 FR 59239, November 8, 1993).

This investigation is rendered extraordinarily complicated by the novel issue of government ownership of exporters of subject merchandise. Furthermore, information available to the Department indicates that there are many producer/exporters of the subject merchandise. The process of identifying all exporters who sold subject merchandise to the United States during the period of investigation caused significant delays in issuing our questionnaire. In addition, we determine at this time that respondent parties in this investigation appear to be cooperating.

For these reasons, pursuant to sections 733(c)(1)(B)(i)(II) and (III) of Tariff Act of 1930, as amended (the Act), we determine that this investigation is extraordinarily complicated and that additional time is necessary to make the preliminary determination in accordance with 733(c)(1)(B)(ii) of the Act. Therefore, we are postponing our preliminary determination in this case. We will make our preliminary determination no later than May 11, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 2, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5455 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–809]

Postponement of Preliminary Antidumping Duty Determination: Phthalic Anhydride From Venezuela

AGENCIES: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Cameron Werker, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

Postponement

On February 14, 1994, the petitioners in the above-referenced investigation requested that the Department postpone its preliminary determination until April 11, 1994, in order to permit further analysis of the respondent's questionnaire responses. On February 22, 1994, the respondent in this investigation objected to the aforementioned extension based on its belief that the nature of the investigation is not such that an extension is necessary. In a February 23, 1994, letter, petitioners amended their request to ask that the preliminary determination in this investigation be postponed until May 20, 1994, stating that a postponement was necessary to permit them to determine whether the record contained evidence to support an allegation that home market sales were made at prices below the allegation that home market sales were made at prices below the cost of production under section 773(b) of the Trade and Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1677b(b)). In accordance with section 733(c)(1)(A) of the Act (19 U.S.C. 1673b(c)(1)(A)) and 19 CFR 353.15(c), we find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until May 20, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 3, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5616 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–828, A–823–805]

Postponement of Preliminary Antidumping Duty Determinations: Silicomanganese From the People's Republic of China (PRC) and Ukraine

AGENCIES: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Ready (PRC) or Edward Easton (Ukraine), Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or (202) 482–1777, respectively.

Postponement

On December 2, 1993, the Department initiated antidumping duty investigations of silicomanganese from the RPC and Ukraine. The notice of initiation stated that we would issue our preliminary determinations on or before April 21, 1994 (58 FR 64553, December 8, 1993).

We determine that these cases are extraordinarily complicated because of the novel issues presented in each. In the case of the PRC, information available to the Department indicates that there are many producer/exporters of the subject merchandise. To date, however, we have not been able to identify or contact large numbers of these companies. In the case of Ukraine, the dramatic changes occurring in the domestic economy have complicated the assessment necessary for selection of surrogate countries for the investigation. The inability at this time to select surrogate countries prevents our valuation of the factors of production in Ukraine. In addition, we determine that the parties in these investigations are cooperating and that additional time is necessary to make the preliminary determinations.

For these reasons, we determine that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i)(II) of Tariff Act of 1930, as amended (the Act), and that additional time is necessary to make these preliminary determinations in

accordance with section 733(c)(1)(B)(ii) of the Act. The statutory deadline for issuing these determinations will now be not later than June 10, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 2, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5454 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DS–M

I41[A–588–054]

Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Affirmation of the Results of Redetermination Pursuant to Court Remand

SUMMARY: On September 28, 1993, the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results and amendment to the final results of the administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan (56 FR 26054, June 6, 1991, and 56 FR 31113, July 9, 1991) (*NSK Ltd. and NSK Corporation* v. *United States*, (Slip. Op. 93–121, June 28, 1993) (*NSK*)). The results covered the period August 1, 1987 through July 31, 1988.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1993, the Court issued an order remanding to the Department the final results and amended final results of the 1987–88 administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision.

In *NSK*, the Court ordered the Department to recalculate NSK's U.S. inventory carrying costs using the home market short-term interest rate. Those remand instructions constitute a decision not in harmony with the Department's final results of review. This notice fulfills the publication requirements of *Timken*.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final results and amendment to those final results of the administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan to reflect the amended margin of 16.27 percent in the Department's redetermination on remand, which was affirmed by the Court.

Dated: March 3, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5453 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–9A004."

AMT—The Association For Manufacturing Technology's ("AMT") original Certificate was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); and July 20, 1992 (57 FR 33319, July 28, 1992). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: AMT—The Association For Manufacturing Technology, 7901 Westpark Drive, McLean, Virginia 22102–4269.

Contact: Jerome D. Sorkin, Legal Counsel, Telephone: (202) 662–6000.

Application No.: 87–9A004.

Date Deemed Submitted: March 1 1994.

Proposed Amendment: AMT—The Association For Manufacturing Technology seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): BHS-Torin, Inc., Farmington, Connecticut; Bertsche Engineering Corporation, Buffalo Grove, Illinois; Bohle Machine Tools, Inc., Farmington Hills, Michigan; Bramac Machine Tool Co., Tucson, Arizona;

Burr King Mfg. Co., Inc., South El Monte, California; Cellular Concepts Company, Detroit, Michigan (controlling entity: U.S. Equipment Co.); City Machine Tool & Die Company, Inc., Muncie, Indiana; D & H Machinery, Inc. Toledo, Ohio; Darex Corporation, Ashland, Oregon; DeVlieg-Bullard Services Group, Rockford, Illinois (controlling entity: DeVlieg-Bullard Inc.); Feldmann, Inc., Rockford, Illinois; Industrial Metal Products Corporation, Lansing, Michigan; Kalamazoo Saw Co., Kalamazoo, Michigan (controlling entity: KTS Industries, Inc.); Komatsu-Cybermation, Medford, Massachusetts (controlling entity: Komatsu Ltd.); Lasercut, Inc., North Bradford, Connecticut; M T R Ravensburg, Inc., Rochester, New York; Milltronics Manufacturing Company, Chanhassen, Minnesota; Modern Machine Tool Company, Jackson, Michigan; Munson Machinery Company, Inc., Utica, New York; Parlec, Inc., Fairport, New York; Rofin-Sinar, Inc., Plymouth, Michigan (controlling entity: Siemens Corporation); Sugino Corporation, Schaumburg, Illinois (controlling entity: Sugino Machine Ltd.); Utilase Systems, Inc., Detroit, Michigan; Weldun Flexible Assembly Systems, Bridgman, Michigan (controlling entity: Weldun International, Robert Bosch Corp.); Wes-Tech, Inc., Buffalo Grove, Illinois; Herman Williams Company, Inc., Birmingham, Alabama; and Peter Wolters of America, Plainville, Massachusetts (Peter Wolters AG);

2. Delete each of the following companies as a "Member" of the Certificate: Abrasive Engineering & Manufacturing; Alpha Machine, Inc.; American Machine & Science (Katy Inds.); Coherent General, Inc.; Equipment Systems Technology Company; GTE Valenite Corporation; The Hill Acme Company; C. O. Hoffacker Company; HZ Clearing Inc.; Jacobson Tool & Manufacturing Corp.; L & J Press Corporation; Maho Machine Tool Corporation; Manuflex Corporation; Mega Manufacturing Inc.; Pacific Press & Shear Inc.; Perfekt Precision Mfg. Co., Inc.; Tannewitz, Inc.; Truxton Machinery, Inc.; Unipunch Products, Inc.; and Vulcan Tool Company; and

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: American Pfauter Limited (American Pfauter Limited Partnership); Automation & Modular Components, Inc. (Automation & Modular Components); Barnes Drill Company (Barnes International, Inc.); Belden Tools, Inc. (Belden Inc.); Blue Valley Machine and Mfg. Co., Inc. (Blue Valley Machine and Mfg. Co.); Bracker Corporation (Bracker Corporation Pittsburgh); Bryant Grinder Corporation (Vermont-USA Machine Tool Group); Cleveland Punch & Shear (Bath Iron Works); The Cleveland Tapping Machine Company (TCE Corporation); Command Corporation (Command Corporation International); Compumachine Inc. (Compumachine Incorporated); Cooper-Weymouth, Peterson Div., Reed National Corp. (Cooper-Weymouth, Peterson); Crankshaft Machine Company (Crankshaft Machine Group); Dake Division, JSJ Corporation (Dake); Danly Machine Division/Connell Ltd. Partnership (Danly-Komatsu, L.P.); Digital Electronic Automation, Inc. (DEA); Eaton Leonard Technologies, Inc. (Eaton Leonard, Inc.); Electro Arc Manufacturing Co., Inc. (Electro Arc Manufacturing Co.); Esterline Corporation (Esterline Technologies); Fadal Engineering Company, Inc. (Fadal Engineering Co., Inc.); Fairfield Machine Co., Inc. (Fairfield Machine); Fayscott Company (Fayscott Co.); Fellows Corporation (Vermont-USA Machine Tool Group); Genesis Systems Group Inc. (Genesis Systems Group); George Fischer-Bohle Machine Tools Corp. (George Fischer, Ltd.); Gleason Corporation (The Gleason Corporation); Gold Crown Machinery, Inc. (Goldcrown Machinery); Greenfield Industries—Geometric Division (Greenfield Industries); Hansvedt Industries, Inc. (Hansvedt EDM Division); Harper Company (Harper Surface Finishing Systems, Inc.); HEM, Inc. (HE&M Saw); P. R. Hoffman Machine Products Co. (P. R. Hoffman Machine Products); Hoglund Corporation (Hoglund Technology Corporation); Imperial Stamp & Engraving Co., Inc. (Imperial Stamp & Engraving Company); Jarvis Corporation (Jarvis Products Corporation); Jones & Lamson-Vermont Corp. (Vermont-USA Machine Tool Group); Litton Industrial Automation—Machining & Assembly Sys. Div. (Litton Industrial Automation); Lynn Electronics Corp. (Lynn Electronics Corporation); J.M. Montgomery Mfg. Inc. (J.M. Montgomery Manufacturing Inc.); Multipress Incorporated (Multipress Division); National Acme Co. (The National Acme Company); National Broach & Machine Company (National Broach & Machine Co.); The Ohio Broach Machine Co. (The Ohio Broach & Machine Co.); Okuma Machinery, Inc. (Okuma Inc.); Peerless (Peerless Saw Division—Wisconsin Automated Machinery); PH Hydraulics & Automation, Inc. (PH Hydraulics and Automation, Inc.); PMC Industries, Inc. (PMC Industries); PS Group, Inc. (PS Group); Pope Machinery Inc. (Pope Corporation); Rank Pneumo Inc. (Rank Taylor Hobson Inc.); Republic Lagun CNC Corporation (Republic Lagun Machine Tool Co.); The S-P Manufacturing Corporation (S-P/Sheffer International, Inc.); Seneca Falls Machine Tool Co., Inc. (Seneca Falls Technology Group); Setco Industries, Inc. (Setco Sales Company); South Bend Lathe, Inc. (South Bend Lathe Corp.); and Teledyne Industries, Inc. (Teledyne).

Dated: March 3, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94-5463 Filed 3-9-94; 8:45 am]

BILLING CODE 3510-DR-P

Minority Business Development Agency

Business Development Center Applications: Santa Barbara, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from August 1, 1994 to July 31, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Santa Barbara, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of

management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is April 20, 1994. Applications must be postmarked on or before April 20, 1994.

The mailing address for submission is:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, April 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty of financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: March 1, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–5600 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 030494B]

Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing on scientific research permit applications (P557 and P557A).

SUMMARY: In response to several requests, NMFS will hold a public hearing on two applications for scientific research permits to incidentally harass marine mammals by a low frequency sound source, and monitor its affects.

DATES: A public hearing will be held at 9:30 a.m. on March 22, 1994. A written copy of each presentation is requested on the day of the hearing. It is advised to limit the use of slides or overheads during presentations, and copies of any slides or overheads used are requested to be made available to NMFS on the day of the hearing.

Additional written comments may be sent to the address below, or may be sent by facsimile to 301/713–0376, and must be received by close of business March 25, 1994.

ADDRESSES: The public hearing will be held at Conference Room 4527, 1315 East-West Highway, SSMC III, Silver Spring, Maryland. The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

FOR FURTHER INFORMATION CONTACT: Please contact the following individuals at least 48 hours in advance of the hearing if you plan to present comments so that a general agenda can be prepared, or at least 7 days in advance if you need additional information or special accommodations to attend the public hearing: Carol Fairfield or Jeannie Drevenak, 301/713–2289 or 301/713–0376 (facsimile). People who are deaf or hearing impaired may place a call through the Maryland Relay Service on 1–800–735–2258.

SUPPLEMENTARY INFORMATION: Two applications have been submitted by Scripps Institute of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225.

On November 16, 1993, notice was published in the **Federal Register** (58 FR 60426) that a request for a scientific research permit (P557) was submitted, to take by incidental harassment, the following species of marine mammals for purposes of scientific research in waters off the northern coast of Kauai, Hawaii: Humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), Cuvier's beaked whale (*Ziphius cavirostris*), Baird's beaked whale (*Berardius bairdii*), Blainville's beaked whale (*Mesoplodon densirostris*), spinner dolphin (*Stenella longirostris*), spotted dolphin (*Stenella attenuata*), false killer whale (*Pseudorca crassidens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), and monk seal (*Monachus schauinslandi*).

On February 17, 1994, notice was published in the **Federal Register** (59 FR 7983) that a modification to the above scientific research permit application (P557) was submitted to request incidental harassment of sea turtles, and additional species of marine mammals which have only occasionally been observed in Hawaiian waters.

On February 3, 1994, notice was published in the **Federal Register** (59 FR 5177) that a request for a scientific research permit (P557A) was submitted, to take by incidental harassment several species of marine mammals and sea turtles for purposes of scientific research in waters off the coast of Pt. Sur, California.

These permit applications were to incidentally harass marine mammals by low frequency (70 Hz) sound sources at depths of 850–900m. These sources are part of the Acoustic Thermometry of Ocean Climate (ATOC) program, and will be operated from March 1994 through December 1995 off Hawaii, and from April 1994 through March 1996 off California. The maximum duty cycle will be 8%, with a transmission bandwidth of 20 Hz at a level of 195 dB (re 1 uPa at 1m), and with a spectrum level for the peak frequency (70 Hz) at 182 dB. The effects of these transmissions on marine mammals will be monitored through a variety of methods.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Dated: March 7, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–5645 Filed 3–7–94; 4:18 pm]

BILLING CODE 3510–22–P

National Technical Information Service

NTIS Advisory Board Meeting

AGENCIES: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Thursday, March 24, 1994, from 9 a.m. to 4 p.m. and on Friday, March 25, 1994, from 9 a.m. to 3 p.m. The afternoon session on March 24, 1994 will be closed to the public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was chartered in 1989. The Board is composed of five members appointed by the Secretary of Commerce after soliciting recommendations from the major users and beneficiaries of NTIS' activities and selecting individuals experienced in providing or utilizing technical information. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda with include presentations on NTIS' implementation of the regulations under the American Technology Preeminence Act, NTIS plans to assist Depository Libraries, a review of the progress with FedWorld, and a discussion of the support services that NTIS provides to other agencies. The closed session discussion is scheduled to begin at 1 p.m. and end at 4 p.m. on March 24, 1994. The session will be closed because permature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plan, and thereby cause a significant adverse effect on the Government financial interests.

DATES: The meeting will convene on March 24, 1994 at 9 a.m. and adjourn at 4 p.m., and will convene again on March 25, 1994 at 9 a.m. and adjourn at 3 p.m.

ADDRESSES: The meeting will be held in room 1412, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

PUBLIC PARTICIPATION: Except for the closed session from 1 to 4 p.m. on March 24, 1994, the meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available to the public and to the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Barbara Higgins, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703–487–4612; Fax 703–487–4093.

Dated: February 25, 1994.

Donald R. Johnson,

Director.

[FR Doc. 94–5539 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 67397, published on December 21, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 7, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on March 14, 1994, you are directed to increase the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
338/638	708,550 dozen.
339/639	843,175 dozen.
342/642	513,305 dozen.
347/348/647/648	1,746,074 dozen of which not more than 1,249,698 dozen shall be in Categories 347/348 and not more than 831,038 dozen shall be in Categories 647/648.
443	139,031 numbers
633	107,026 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The guaranteed access levels for the aforementioned categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5618 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DR–F

Extension of an Import Restraint Limit for Certain Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Myanmar

March 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 647/648/847 for an additional twelve-month period, beginning on March 1, 1994 and extending through February 28, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 64645, published on November 29, 1993). Also see 58 FR 13744, published on March 15, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 7, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 14, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable fiber textile products in Categories 647/648/847, produced or manufactured in Myanmar and exported during the period beginning on March 1, 1994 and extending through February 28, 1995, in excess of 24,551 dozen.[1]

Imports charged to this category limit for the period March 1, 1993 through February 28, 1994 shall be charged against the level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5619 Filed 3–9–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: Wednesday, March 22, 1994. 0800 to approximately 1700.

Place: The Sheraton National Hotel, Columbia Pike & Washington Bouelvard, Arlington, VA.

Matters to be Considered: Research and Development proposals requesting SERDP funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Maxwell or Mr. John Rupnik, 2200 Clarendon, suite 900, Arlington, VA 22201, 703–525–9400.

Dated: March 7, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5578 Filed 3–9–94; 8:45 am]

BILLING CODE 5000–04–M

[1] The limit has not been adjusted to account for any imports exported after February 28, 1994.

Department of the Army

Second Annual Military Traffic Management Command Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command is hosting its Second Annual Symposium. The Symposium will be held at the Hyatt Regency Hotel (Airport) in Dallas/Fort Worth, Texas, April 24–28, 1994. The symposium program is designed for all transportation professionals as well as government transportation officers and military commanders. The intent of the symposium is to exchange ideas and information regarding current and future transportation issues that confront government and industry personnel.

DATES: Hotel/Symposium Registration may be obtained from Mr. Willie Hazel and should be submitted on or before March 29, 1994.

ADDRESSES: Comments and questions may be mailed to the Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTOP–QSM, Falls Church, Virginia 22041–5050, or delivered to the Nassif Building, room 630, Falls Church.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Hazel or Mr. Scott Johnson (703) 756–1590.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–5597 Filed 3–9–94; 8:45 am]

BILLING CODE 3710–08–M

Intent To Grant an Exclusive License for U.S. Patent Number 4,954,320, Reactive Bed Plasma Air Purification

AGENCY: U.S. Army Armament Research, Development and Engineering Center, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.6 the Department of the Army announces its intent to grant an Exclusive License to Battelle Pacific Northwest Laboratories for Patent Number 4,954,320, Reactive Bed Plasma Air Purification. The technology is applicable to controlling gaseous/chemical/biological pollution contamination. Patent availability was announced in the **Federal Register** on 25 January 1994, 59 FR 3638.

DATES: Written objections must be filed within 60 days from the date of publication of this Notice in the **Federal Register.**

ADDRESSES: U.S. Army Armament Research, Development and Engineering Center, Picatinny Arsenal, NJ 07806–500.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief Patent Counsel, (201) 724–6590, Datafax Number (201) 724–5552.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–5598 Filed 3–9–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER93–94–001, et al.]

Northeast Utilities Service Co., et al.; Electric Rate and Corporate Regulation Filings

March 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Co.

[Docket No. ER93–94–001]

Take notice that on February 16, 1994, Northeast Utilities Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Co.

[Docket No. ER93–154–000]

Take notice that on February 17, 1994, Pacific Gas and Electric Company (PG&E) supplemented its filing in this docket pursuant to FERC Staff's February 8, 1994, request for additional information and clarification for Agreement Nos. 14 and 27.

Copies of this filing have been served upon the parties on the service list including the California Public Utilities Commission.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Hampshire

[Docket No. ER93–417–001]

Take notice that on February 16, 1994, Public Service Company of New Hampshire tendered for filing an amendment in the above-referenced docket.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Co.

[Docket No. ER94–217–000]

Take notice that on Commonwealth Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Midwest Power Systems Inc.

[Docket No. ER94–351–000]

Take notice that on February 17, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 1 to the filing of a Transmission Wheeling Letter Agreement (Agreement) dated June 15, 1993, between Waverly Light & Power (Waverly) and MPSI. This Agreement provides a wheeling path over MPSI's 12.5 Kv distribution system for the delivery of capacity and energy derived from a wind generator owned and operated by Waverly to Waverly's municipal distribution system.

Amendment No. 1 contains additional support data and information.

MPSI states that copies of this filing were served on Waverly and the Iowa Utilities Board.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Co.

[Docket No. ER94–408–000]

Take notice that on February 17, 1994, Portland General Electric Company (PGE) tendered for filing a request for deferral of Commission action for sixty (60) days in the above Docket, to allow Commission staff to ask questions concerning the filed agreement, BPA Contract No. DE–MS79–93BP94034.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER94–423–000]

Take notice that on February 23, 1994, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Montana Power Co.

[Docket No. ER94–579–000]

Take notice that on February 18, 1994, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Co.

[Docket No. ER94–976–000]

Take notice that on February 17, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a Transmission Rate Schedule for service provided to three member cities of the Northern California Power Agency (NCPA)—Healdsburg, Lompoc and Santa Clara, California (Cities)—for the period May through September, 1982. Filing of the Transmission Service Agreement is required by a settlement agreement between NCPA and PG&E concerning NCPA's power purchase from the Western Area Power Administration at that time. Service under the Agreement is required to fully implement that purchase and use of the power by Cities.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Power Co.

[Docket No. ER94–986–000]

Take notice that on February 24, 1994, Consumers Power Company (Consumers) tendered for filing Operating Practice 9 relating to reactive power control and compensation pursuant to the Coordinated Operating Agreement dated November 6, 1981 between Consumers and the Michigan South Central Power Agency.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER94–987–000]

Take notice that PacifiCorp, on February 24, 1994, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Exhibit A (Revision No. 17, effective September 30, 1993) to the February 25, 1976, Transmission Agreement (PacifiCorp Rate Schedule FERC No. 123) between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Exhibit A specifies the projected maximum integrated demand in Kilowatts which Tri-State desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and an effective date of September 30, 1993, be assigned to Exhibit A, this date being consistent with the effective date shown on Exhibit A.

Copies of this filing were supplied to the Wyoming Public Service Commission.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Co.

[Docket No. ER94–988–000]

Take notice that on February 24, 1994, Arizona Public Service Company (APS) tendered for filing revised estimated load and contract/maximum demand Exhibits applicable under the following rate schedules:

APS-FPC/FERC No.	Customer	Exhibit name
52	Tohono O'odham Utility Authority ..	Exhibit 1.
82	Plains Electric G&T Cooperative, Inc.	Exhibit B.
128	Electrical District No. 7	Exhibit "II".

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Co.

[Docket No. ER94–989–000]

Take notice that on February 24, 1994, New England Power Company (NEP) submitted for filing eight proposed power sales contracts, and an amendment to an existing contract:

(1) System Power Sales Agreement dated November 10, 1993, with the Taunton Municipal Light Plant;
(2) System Power Sales Agreement dated November 10, 1993, with the Braintree Electric Light Department;
(3) System Power Sales Agreement dated November 10, 1993, with the Littleton Electric Light Department;
(4) Unit Power Contract dated January 13, 1994, with the Town of Holden Municipal Light Department;
(5) Unit Power Contract dated January 20, 1994, with the North Attleboro Electric Department;
(6) Unit Power Contract dated January 11, 1994, with the Hingham Municipal Light Plant;
(7) Unit Power Contract dated January 13, 1994, with the Groton Electric Light Department;
(8) Unit Power Contract dated January 14, 1994, with the Middleton Municipal Light Department; and
(9) First Amendment dated December 3, 1993, to System Power Sales Agreement dated August 10, 1993, with the Shrewsbury Electric Light Plant.

NEP states that the contracts are for system or unit power, ranging in amount from 0.5 to 10 megawatts, for a term of from 10 to 30 years. The contracts are part of a settlement of proceedings involving a coal-fired cogeneration unit proposed to be constructed by the Newbay Corporation. NEP further states that the revenue under the contracts will not exceed the cost of the service provided.

Comment date: March 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5501 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–P

Floodplain/Wetland Involvement for Bridge Replacement at Savannah River Site (F-Road Bridge 603–03G)

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: DOE proposes to repair Bridge 603–03G located on F-Road on the Savannah River Site (SRS) near Aiken, South Carolina. The bridge to be repaired is located in the floodplain of Upper Three Runs Creek that is currently, and should remain, a relatively unimpacted floodplain. Repair activities would involve restoring and preserving decayed or rotten timber piles using a pile jacketing system. This involves setting fiberglass, concrete, or steel in place around the pile and filling the jacket with epoxy grout or concrete. Cofferdams (watertight temporary structures for keeping water from an inclosed area) will be required at each pile, and rip rap (foundation of broken stones) will be placed on each embankment under the bridge. Most of the work will be accomplished from the present roadbed using cranes and scaffolding or other work platforms attached to the bridge deck. In accordance with title 10, Code of Federal Regulations (CFR), part 1022, DOE will prepare a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the proposed actions are due on or before March 25, 1994.

ADDRESSES: Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, Director, Environmental and Laboratory Programs Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725–3957. Fax comments to: (803) 725–7688.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U. S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–4600 or (800) 472–2756.

Further information, including a location map showing the repair site, can be obtained from the Savannah River Operations Office (see addresses above).

SUPPLEMENTARY INFORMATION: DOE proposes to repair F-Road Bridge 603–03G, that provides service to approximately 35 percent of daily SRS traffic. The present deteriorated condition of the bridge has resulted in load for the structure being restricted to a capacity of 15 tons gross weight that prevents tractor-trailers, fire fighting equipment, and other emergency vehicles from crossing the bridge and unless repaired, may be required to be closed to all traffic. Bridge supports to be repaired are in the floodplain of Upper Three Runs Creek that is currently, and should remain, a relatively unimpacted floodplain. The bridge will be repaired by restoring all deteriorated, decayed, or rotten timber piles having a section loss greater than

55 percent using a pile jacketing system. These activities will include: (1) A quantitative inspection on each timber pile that may include an underwater inspection and (2) pile restoration that will include setting a fiberglass, concrete, or steel jacket in place around the timber pile and filling the jacket with epoxy grout or concrete. Most of the work will be accomplished from the present roadbed using cranes to repair the bridge supports. Platforms may be lowered into the floodplain to support equipment and serve as a work base. These will be removed when the project is completed in approximately 2 months. A cofferdam may be installed around the piles to allow the water and mud to be pumped from around the pillars being repaired. This dam will be kept to the minimum size that is necessary to complete the task. At no time will mud pumped from the cofferdams be released into the stream. When repairs are complete, approximately 400 square feet of clean stone will be placed on the abutments at each end of the bridge inside the cofferdam to reduce sediment levels once the cofferdams are removed. The lower few feet of these slopes are in wetlands. Vegetation is sparse because of shade from the bridge. The impact will be limited to traffic near and under the bridge that will result in no long-term impact to the wetlands.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR 1022), DOE will prepare a floodplain/wetland assessment for this proposed DOE action. After DOE issues the assessment, a Floodplain Statement of Findings will be published in the **Federal Register**.

Issued in Washington, DC, on this 4th day of March 1994.

Donald F. Knuth,

Deputy Assistant Secretary for Facility Transition and Technical Support Defense Programs.

[FR Doc. 94–5604 Filed 3–9–94; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. RP94–170–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 2, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of April 1, 1994:

Third Revised Sheet No. 97.

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover gas supply realignment costs ("GSR Costs") billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive section 154.22 of the Commission's regulations to the extent that may be necessary to place this tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5517 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–246–000]

Allegheny Power Service Corp.; Filing

March 4, 1994.

Take notice that on January 13, 1994, Allegheny Power Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5512 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–166–000]

Arkla Energy Resources Co.; Filing

March 4, 1994.

Take notice that on March 1, 1994, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1994:

Third Revised Sheet No. 4
Third Revised Sheet No. 4.1

AER states that these revised tariff sheets are filed in compliance with the Stipulation and Agreement ("Stipulation") approved by Commission order in Docket No. RP91–49–000 on March 31, 1992. 58 FERC ¶ 61,359 (1992).

Pursuant to the Stipulation, the proposed tariff sheets reflect the final reconciliation of the CSC Rate Credit.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5558 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–236–000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

March 1, 1994.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP94-236-000]

Take notice that on February 18, 1994, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94-236-000 a request, as supplemented on February 28, 1994, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate additional measuring and regulating facilities at an existing delivery point to Washington Gas Light Company (WGL) under CNG's blanket certificate issued in Docket No. CP82-537-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, CNG proposes to construct and operate additional measuring and regulating facilities at its existing Dickerson M & R Station in Montgomery County, Maryland. CNG states that it would use the facilities to deliver natural gas to WGL for service to the Montgomery County Resource Recovery Facility. CNG further states that service to WGL would be provided under an existing firm transportation contract dated September 30, 1993, and CNG's Rate Schedule FTNN. The maximum daily volume under the contract is 60,224 Dt per day, it is stated. CNG estimates the average daily delivery to the Montgomery County facility would be 110 Mcf per day.

CNG estimates the cost of the facilities to be $550,000, which would be paid for by WGL. CNG asserts that CNG and WGL would equally share costs in excess of $550,000.

CNG states that it has sufficient system delivery capacity to deliver the existing contract quantities to WGL without disadvantaging its existing customers and that such deliveries will have a *de minimis* impact on its systemwide peak and annual deliveries.

Comment date: April 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Co.

[Docket No. CP94-238-000]

Take notice that on February 22, 1994, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, MA 02135, filed in Docket No. CP94-238-000 a request pursuant to §§ 157.205(b) and 157.212 of the Regulations under the Natural Gas Act for authorization to add a delivery point for New England Power Company (NEP), an existing customer, for service under Algonquin's existing Rate Schedule X-38 under the certificate issued in Docket No. CP87-317-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that the proposed delivery point would have a maximum daily delivery obligation of zero for NEP under Rate Schedule X-38, and would be located at an existing meter station in Milford, Massachusetts constructed for deliveries to Milford Power Limited Partnership. Algonquin avers that the addition of the proposed delivery point will not increase the Maximum Daily Transportation Quantity under Rate Schedule X-38 and that no additional facilities are required. Algonquin indicates that NEP requested that Algonquin establish the additional delivery point.

Comment date: April 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94-244-000]

Take notice that on February 22, 1994, Koch Gateway Pipeline Company (Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-244-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon delivery facilities under Gateway's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. [1]

Gateway proposes to abandon approximately 5,000 feet of 12-inch lateral pipeline and the associated meter station by sale of the pipeline to Liquid Carbonics, Inc. (Liquid Carbonics), and the transfer of the metering facilities to Gateway's inventory. Gateway states that the facilities have been used to provide transportation service to Arcadian Corporation's (Arcadian) ammonia plant located in Calcasieu Parish, Louisiana. Gateway explains that, due to a catastrophic failure caused by an explosion at the plant in July 1992 and since Arcadian does not plan to rebuild the facility, Gateway has arranged to sell the 12-inch pipeline to Liquid Carbonics. Gateway advises that Arcadian is the only Gateway customer served through the line. Gateway further explains that the pipeline would be used by Liquid Carbonics for the transmission of hydrogen gas and not for the transportation of natural gas in interstate commerce. Gateway states that (a) the facilities originally cost $868,563, (b) Liquid Carbonics would pay $275,000 for the lateral, (c) the salvage value of the metering facilities is $203,739 and (d) the removal cost is estimated to be $41,000.

Comment date: April 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

[1] Gateway was formerly United Gas Pipe Line Company. Gateway indicates that the name change was effective August 24, 1993.

4. Tennessee Gas Pipeline Co.

[Docket No. CP94-250-000]

Take notice that on February 24, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94-250-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for deliveries of natural gas to East Kentucky Power Cooperative, Inc. (East Kentucky), under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to install two 12" hot tap assembles at an estimated cost of $112,935, of which, 100% would be reimbursable by East Kentucky.

Comment date: April 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5502 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–3–32–000]

Colorado Interstate Gas Co.; Tariff Filing

March 4, 1994.

Take notice that on March 2, 1994, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 11, reflecting a decrease in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.52% to 0.49% effective April 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214 and 385.211). All such petitions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5519 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–157–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of April 1, 1994:

Fourth Revised Sheet No. 25
Fourth Revised Sheet No. 26
Fourth Revised Sheet No. 27
Fourth Revised Sheet No. 28
Third Revised Sheet No. 30A
Third Revised Sheet No. 30B
Third Revised Sheet No. 30C
Third Revised Sheet No. 30D

Columbia tendered the instant filing pursuant to Section 36, Transportation Costs Rate Adjustment (TCRA), of the General Terms and Conditions of its FERC Gas Tariff. The TCRA rates reflect and transportation costs applicable to the projected period April 1, 1994 through March 31, 1995. The TCRA Surcharge reflects the unrecovered, Account No. 858 amounts as of December 31, 1993.

Columbia states that copies of the filings were served upon Columbia's firm jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5505 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–158–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of April 1, 1994:

First Revised Sheet No. 94
Original Sheet No. 96
Original Sheet No. 97
Original Sheet No. 98

Columbia states that the instant limited section 4(e) filing represents Columbia's initial filing pursuant to section 39, Account No. 191 Reconciliation Mechanism, of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to recover the as adjusted balance in its Account No. 191.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5506 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–70–000]

Columbia Gulf Transmission Co.; Filing

March 4, 1994.

Take notice that on March 1, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following information.

Columbia Gulf states that the instant limited Section 4(e) filing represents Columbia Gulf's first annual filing pursuant to Section 33, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Based upon Columbia gulf's examination of the retainage percentages contained in its currently effective tariff, Columbia Gulf states that it has determined that no change in the retainage factor is warranted at this time. Columbia Gulf also states that it will monitor its operations and make future adjustments to the retainage factor if necessary. Columbia Gulf requested any necessary waivers of Section 33 that may be necessary to retain the current retainage factor.

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5522 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–21–000]

Columbia Gas Transmission Corp.; Filing

March 4, 1994.

Take notice that on March 1, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following information.

Columbia states that the instant limited section 4(e) filing represents Columbia's first annual filing pursuant to section 35, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Based upon Columbia's examination of the retainage percentages contained in its currently effective tariff, Columbia states that it has determined that no change in the retainage factor is warranted at this time. Columbia also states that it will monitor its operations and make future adjustments to the retainage factor if necessary. Columbia requested any necessary waivers of section 35 that may be necessary to retain the current retainage factor.

Columbia states that copies of the filing were served upon Columbia's firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5524 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–167–000 and TM94–4–33–000]

El Paso Natural Gas Co.; Tariff Filing

March 4, 1994.

Take notice that on March 1, 1994, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and in accordance with sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its First Revised Volume No. 1–A and Second Revised Volume No. 1 FERC Gas Tariff, respectively, tariff sheets which reflect (i) an updated Monthly Direct Charge and Throughout Surcharge to reflect additional principal dollars to be amortized based upon recently paid buyout and buydown costs associated with contracts that were in litigation or arbitration as of March 31, 1989, which have not been included in any of El Paso's previous filings to the Monthly Direct Charge and Throughput Surcharge for interest which includes the additional dollars to be amortized set forth therein.

El Paso states that it proposed to amortize the direct bill portion (25%) of the additional take-or-pay amount included in its instant filing over a twelve month direct bill amortization period extending through March 31, 1995. El Paso proposed that the throughput surcharge attributable to the recovery of the amount in the instant filing be amortized over a period commencing April 1, 1994 through March 31, 1996 which is consistent with El Paso's authorization at Docket No. RP92–115–000 to consolidate the amortization periods for the volumetric surcharge from each previous take-or-pay filing into a single amortization period terminating March 31, 1996. El Paso states that the Throughput Surcharge has decreased $0.0001 per dth, from $0.0372 per dth to $0.0371 per dth.

El Paso states that §§ 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff provide for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that no adjustment for differences between calculation of the actual and estimated interest rate was necessary for the period August 1, 1993 through January 31, 1994 since the rates were the same.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective April 1, 1994, which is not less than thirty (30) days following the date of the filing.

El Paso states that copies of the filing were served upon all customers of El Paso subject to Sections 22 and 21 of El Paso's Volume Nos. 1–A and 1 FERC Gas Tariff, respectively, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5513 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–34–000]

Florida Gas Transmission Co.; Compliance Filing

March 4, 1994.

Take notice that on March 1, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of April 1, 1994:

Second Revised Sheet No. 8A
Second Revised Sheet No. 8B

FGT states that Section 27 of its FERC Gas Tariff, Third Revised Volume No. 1 provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1. Section 27.C provides that the Current Fuel Reimbursement Charge Percentage

shall be based on the actual fuel usage and lost and unaccounted for gas and the volumes delivered during the six-month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment. The instant filing is submitted in conformance with the provisions of the tariff and in anticipation of the April 1 effective date.

FGT states that submitted with the instant filing is a work paper reflecting company use fuel, lost and unaccounted for volumes, and FGT deliveries for the period April 1 through September 30, 1993. The ratio of fuel usage and unaccounted for volumes to actual deliveries determined in accordance with section 27 of FGT's tariff and reflected on the attached work paper is calculated to be 3.14%.

Furthermore, Section 27 of FGT's tariff specifically provides that the deliveries to be used to compute the Fuel Reimbursement Charge will be the actual quantity of gas delivered by FGT for the account of Shippers under Rate Schedules FTS–1, SFTS, PTS–1, PRS or ITS–1, excluding backhaul and pooling volumes. Because Rate Schedules SFTS and PRS did not become effective until November 1, 1993, the effective date of FGT's tariff, and because FGT was still providing a bundled merchant service during the period from April 1 through September 30, 1993, FGT has reflected on the attached work paper the actual deliveries to both sales and transportation customers, adjusted to eliminate backhauls and downstream transportation contracts on FGT.

FGT is filing to make the attached tariff sheets reflecting the Current Fuel Reimbursement Charge Percentage of 3.14% effective April 1, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5520 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–162–000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, High Island Offshore System (HIOS) filed, pursuant to Section 4 of the Natural Gas Act, for a general increase in its transportation rates, proposing an effective date of April 1, 1994.

According to the filing, HIOS attributes the need for an increase in rates primarily to declining levels of firm service contracts and to changes in the mix of the firm and interruptible volumes that make up its system throughput. HIOS also states that its filed cost of service is substantially the same as its cost of service in its pending rate case in Docket Nos. RP93–59–000, et al., although increases in certain cost components are proposed.

HIOS requests the removal of the 100% load factor rate design condition for designing its rate, which was imposed in Docket Nos. CP75–104, et al.

HIOS also proposes to remove from its tariff the 90/10 interruptible revenue crediting provision that was imposed in Docket No. RS92–64–000.

HIOS states that copies of the filing have been served on all affected shippers.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211, 385.214. All protests and motions to intervene must be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5509 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–104–009 and RP92–131–010]

KN Energy, Inc.; Report of Refunds

March 4, 1994.

Take notice that on January 14, 1994, KN Energy, Inc. (KN) tendered for filing with the Federal Energy Regulatory Commission (Commission) its refund report in the above captioned dockets. KN states that the refunds were made in compliance with the Commission's order dated November 17, 1993.

KN states that the report shows that on December 15, 1993, KN refunded $139,312.50, including interest, to its sales transportation and gathering customers for the period June 1, 1993 through September 30, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5503 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP94–169–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 2, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 14 and Second Revised Sheet No. 25, to be effective April 1, 1994.

Natural states that the filing is submitted to commence recovering effective April 1, 1994, $131,352 net premium paid for coal gasification supplies which is part of its gas supply realignment program.

Natural requested whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective April 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them of GSR costs. Members of the NCG may

preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not finalized and approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5516 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–37–000]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of April 1, 1994:

Third Revised Volume No. 1
Second Revised Sheet No. 14
Original Volume No. 2
Eleventh Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to implement new fuel use requirements factors ("Factors"), consistent with Northwest's Tariff. Pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to Section 5 of Sheet No. 2.1 of Original Volume No. 2, the Factors shall be determined each year to become effective April 1.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5521 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–154–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, with a proposed effective date of April 1, 1994.

Northern states that the filing revises the currently effective Stranded Account No. 858 and Stranded Account No. 858–R.A. surcharges to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Sixth Revised Sheet Nos. 50 and 51, and Eighth Revised Sheet No. 53 to revise these surcharges effective April 1, 1994.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before March 11, 1994. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5504 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–168–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of April 1, 1994:

Third Revised Volume No. 1

Third Revised Sheet Nos. 5, 5–A and 8
Alternate Third Revised Sheet Nos. 5, 5–A and 8

Original Volume No. 2

Seventeenth Revised Sheet No. 2.2

Northwest states that the above listed tariff sheets are filed for the purpose of removing the Commodity SSP Surcharge from Northwest's Statement of Rates. The removal is necessary because the Commission approved recovery period, as outlined in Section 19 of Northwest's General Terms and Conditions, has elapsed.

Northwest also states that it has made the aforementioned changes to sheets that have been filed with but not yet accepted by the Commission. Second Revised Sheet Nos. 5, 5–A and 8 were submitted to implement the Joint Offer of Settlement which was filed January 28, 1994. In the event that the Commission has not made Second Revised Sheet Nos. 5, 5–A and 8 effective prior to effectiveness of the tariff sheets in the instant filing or has rejected or otherwise delayed the effectiveness of such sheets, Northwest has included Alternate Third Revised Sheet Nos. 5, 5–A and 8 which reflect the SSP Surcharge removal from the currently effective tariff rates.

Northwest further states that a copy of this filing has been served upon Northwest's jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5515 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–160–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as reflected in Appendix A to the filing, with a proposed effective date of April 1, 1994.

Panhandle states that such changes are made to establish a new storage rate schedule for flexible winter storage service, designated as Rate Schedule FS. Service under Rate Schedule FS will be consistent with Panhandle's blanket type certificate authorization under Part 284 of the Regulations and will comport with the mandates of Order No. 636 and the Commission authorized restructuring for the Panhandle system.

Panhandle states that copies of this filing have been served upon Panhandle's jurisdictional customers and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5507 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–165–000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

March 4, 1994.

Take notice that on March 1, 1994, Southern Natural Gas Company (Southern) filed pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717(c) (1988), to recover gas supply realignment (GSR) costs incurred as a consequence of Southern's implementation of restructured pipeline services under Order No. 636, et seq. Southern states that the tariff sheets identified below were filed in compliance with the Commission's order in Southern's restructuring proceeding in Docket No. RS92–10–000 and the procedures set forth in Section 31 of the General Terms and Conditions of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1:

Fifth Revised Sheet No. 15
Alternate Fifth Revised Sheet No. 15
Fifth Revised Sheet No. 17
Alternate Fifth Revised Sheet No. 17
Fifth Revised Sheet No. 18
Fourth Revised Sheet No. 29
Fourth Revised Sheet No. 30
Fourth Revised Sheet No. 31

Southern states that it sets forth in this filing the revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differentials under unrealigned gas supply contracts and transactional costs incurred in continuing realignment efforts during the period November 1, 1993 through January 31, 1994. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern requests that the tariff sheets be made effective April 1, 1994.

Southern states that it seeks to recover $17.5 Million in GSR costs plus pre-filing interest, which Southern has either paid or incurred as price differentials under its unrealigned contracts or as transactional costs in its continuing realignment efforts during the period November 1, 1993 through January 31, 1994. Southern states that these GSR costs have arisen as a direct result of the need to realign gas supply contracts following customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern further states that none of the GSR costs sought to be recovered in the instant filing constitute take-or-pay settlement costs under gas supply contracts existing at March 31, 1989 which would be subject to the provisions of Southern's 1988 take-or-pay settlement in Docket No. RP86–63–000.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5511 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–10–29–000]

Transcontinental Gas Pipe Line Corp.; Filing

March 4, 1994.

Take notice that on March 2, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets enumerated in Appendix A attached to the filing, with a proposed effective date of April 1, 1994.

TGPL states that the instant filing is submitted pursuant to Section 38 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file, to be effective each April 1, a redetermination of its fuel retention percentages applicable to transportation and storage rate schedules. The derivation of the revised fuel retention percentages included therein are based on TGPL's estimate of gas required for operations (GRO) for the forthcoming annual period April 1994 through March 1995 plus the balance accumulated in the Deferred GRO Account at January 31, 1994.

On this date TGPL states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5525 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–11–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 2, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets, which tariff sheets are enumerated in Appendix A to the filing. The proposed effective date of the attached tariff sheets is April 1, 1994.

TGPL states that the instant filing is submitted pursuant to section 41 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. TGPL states that in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5526 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–164–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets which reflect an increase in rates. Trunkline requests an effective date of April 1, 1994.

Trunkline states that this filing is being made in accordance with the provisions of section 4 of the Natural Gas Act and in compliance with Article V of the Stipulation and Agreement (Settlement) dated January 25, 1993, as approved by Commission letter order dated February 24, 1993 in Docket No. RP92–165–000.

Trunkline further states that the rate changes proposed are necessary in light of the current and projected cost of operations—$179.5 million—as well as changes in the projected demands on and use of the Trunkline system.

In addition, Trunkline states that also included in this filing are certain changes—largely in the nature of clarifications—to certain provisions of various transportation rate schedules and the tariff's General Terms and Conditions are proposed in this filing, as set forth in the revised tariff sheets submitted and as detailed in the Statement of the Nature, Reasons and Basis for the Changes.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheets and rates provided for herein effective.

Trunkline states that copies of the rate filing or summary version thereof are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5510 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–167–001]

Trunkline Gas Co.; Compliance Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets attached to the filing as Appendices A and B. Trunkline proposes that these revised tariff sheets become effective September 1, 1993 and November 1, 1993, respectively.

Trunkline states that the Commission's February 2, 1994, Order requires Trunkline to modify the tariff language contained in section 27(B), Stranded Costs, of its General Terms and Conditions to: (1) Clarify that both rate increases and decreases and credits will be included as part of the true-up mechanism; (2) provide for credits and refunds to interruptible shippers; and (3) extend the recovery period to the length of the longest contract. Trunkline states that the tariff sheets submitted herewith conform to those Commission requirements.

Trunkline further states that it has served a copy of the filing on its jurisdictional customers, affected state commissions and parties to the proceeding in the above-referenced docket number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5514 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 1994:

Third Revised Sheet No. 6
Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9
Third Revised Sheet No. 10

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and also complies with the Commission's Orders dated March 2, 1993 and August 4, 1993 in Docket Nos. RP89–160–000 and RP92–165–000, directing Trunkline to use an "additive zone" approach for transportation rates and fuel reimbursement percentages.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) The following decreases to the Current Fuel Reimbursement Percentages, pursuant to section 22.3, (0.78%) (Field Zone to Zone 2), (0.63%) (Field Zone to Zone 1), (0.20%) (Field zone only), (0.65%) (Zone 1 to Zone 2), (0.50%) (Zone 1 only) and (0.22%) (Zone 2 only); and (2) no change in the Annual Fuel Reimbursement Surcharge, pursuant to section 22.4.

Trunkline states that copies of this filing have been served on all jurisdictional transportation customers and affected states commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5523 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–161–000]

U–T Offshore System; Proposed Changes in FERC Gas Tariff

March 4, 1994.

Take notice that on March 1, 1994, U–T Offshore System (U–TOS) filed, pursuant to Section 4 of the Natural Gas Act, for a general increase in its transportation rates, proposing an effective date of April 1, 1994.

According to the filing, U–TOS attributes the need for an increase in rates primarily to declining levels of firm service contracts and to changes in the mix of the firm and interruptible volumes that make up its system throughput. U–TOS also states that its filed cost of service is substantially the same as its cost of service in its pending rate case in Docket Nos. RP93–61–000, et al.

U–TOS states that, based upon volumes transported during the base period, as adjusted, the proposed rates will result in an increase in annual revenues to U–TOS of approximately $1.0 million when compared to the annual revenues generated by presently approved SFV compliance rates, subject to refund, in Docket No. RS92–88.

U–TOS requests the removal of the 100% load factor rate design condition for designing its rate, which was imposed in Docket Nos. CP76–118, et al.

U–TOS also proposes to remove from its tariff the 90/10 interruptible revenue crediting provision that was imposed in Docket No. RS92–88–000.

U–TOS states that copies of the filing have been served on all affected shippers.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211, 385.214. All protests and motions to intervene should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5508 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–2–35–000]

West Texas Gas, Inc.; Filing

March 4, 1994.

Take notice that on March 1, 1994, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Tenth Revised Sheet No. 4, proposed to be effective April 1, 1994.

WTG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5518 Filed 3–9–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4847–6]

Public Water Supply Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved State Public Water Supply Supervision Primacy Program. Tennessee has adopted drinking water regulations for the Phase V (Volatile Organic Chemicals (VOC), Synthetic Organic Chemicals (SOC), and Inorganic Chemicals (IOC)) Rule. EPA has determined that this set of State program revisions is no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by April 11, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 11, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective April 11, 1994.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

State of Tennessee, Department of Environment and Conservation, Division of Water Supply, 6th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243–1549.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347–2913, (FAX) (404) 347–1798).

Authority: (Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations).

Dated: February 17, 1994.

Don Guinyard,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 94–5425 Filed 3–9–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4848–2]

Michigan: Final Partial Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of partial program adequacy for Michigan's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (USEPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the USEPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as final applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal MSWLF Criteria will apply to all permitted and unpermitted MSWLF facilities.

Michigan applied for a partial program determination of adequacy under section 4005 of RCRA. The USEPA reviewed Michigan's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to ensure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, the USEPA is today issuing a final determination for those portions of the State's program that are adequate. The State plans to revise the remainder of its permit program to ensure complete compliance with the revised Federal MSWLF Criteria, and gain full program approval.

EFFECTIVE DATE: The determination of adequacy for Michigan shall be effective on March 10, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria under part 258. Subtitle D also requires in section 4005 that the USEPA determine the adequacy of State MSWLF permit programs to ensure compliance with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

USEPA intends to propose in STIR to allow partial approvals if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258;

(2) Changes to a limited, narrow part(s) of the State/Tribal program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, USEPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program that have been approved. Federal rules covering any portion of a State/Tribe's program that have not received USEPA's approval apply directly to owners and operators.

As provided in the revised Federal Criteria, USEPA's national Subtitle D standards took effect on October 9, 1993. On October 1, 1993, the USEPA published a final ruling which modified the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). Thus, for certain small landfills that accept less than 100 tons of waste per day, the Federal landfill criteria will not be effective until April 9, 1994, instead of October 9, 1993. Consequently, any portions of the revised Federal MSWLF Criteria which are not included in a State/Tribal MSWLF program by October 9, 1993, would apply directly to owners and operators of large MSWLFs, and portions not included by April 9, 1994, would apply directly to owners and operators of certain small MSWLFs. The exact classifications of landfills and details on the effective date extensions are contained in the final rule. See 58 FR 51536 (October 1, 1993).

The USEPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. The USEPA interprets the requirements for States or Tribes to develop adequate programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to USEPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement, as required in section 7004(b) of RCRA. Finally, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The USEPA Regional offices will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The USEPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The USEPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF program. The USEPA is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. The USEPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

B. State of Michigan

On October 6, 1993, Michigan submitted an application to obtain a partial program adequacy determination for the State's MSWLF permit program. On December 22, 1993, the USEPA published a tentative determination of partial program adequacy for the Michigan program. Further background information on the tentative determination appears in 58 FR 67786 (December 22, 1993). In its application, Michigan demonstrated that the State's permit program adequately meets the general requirements, location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, and closure and post-closure care requirements in the revised Federal Criteria. The State's existing permit program will ensure full compliance with all of the revised Federal Criteria except the provisions in 40 CFR 258.53(b) which ban the field-filtering of groundwater samples, and financial assurance requirements found in 40 CFR 258.70.

Michigan demonstrated that the State's MSWLF permit program has the authority to issue permits incorporating the requirements of the revised Federal Criteria for all MSWLFs in the State. The USEPA determined that Michigan's permit program contains provisions for public participation, compliance monitoring, and enforcement.

Michigan's permitting process includes a procedure for ensuring that public comments made during review of MSWLF permit applications and corrective action remedy selection are considered. The procedures require the Michigan Department of Natural Resources (MDNR) to notify a municipality and its residents of the receipt of a permit application for a proposed MSWLF facility or plans to select a corrective action remedy. The public is notified through a local newspaper of the opportunity to request a public hearing on a proposed facility or remedy if there is significant interest. In addition, the MDNR ensures that all permit and license documents are available for public review and comment. Formal notification of a decision is made to a municipality with an explanation of the reasons for the decision within 10 days after the final decision is made.

Along with the tentative determination, the USEPA announced the availability of the application for public comment and a public hearing on the application. A 45-day public comment period was held until February 4, 1994. In this notice of tentative determination, the USEPA announced that a public hearing would be held if a sufficient number of people requested a hearing. The Agency received several public comment letters in response to the tentative determination. No requests for a public hearing were received, therefore, a hearing was not held.

C. Public Comment

The USEPA received several public comments concerning the tentative determination of partial program adequacy for Michigan's MSWLF permit program.

Four commenters requested that USEPA consider and include several recommendations in the determination of adequacy for Michigan's MSWLF permit program. These recommendations included the following operating criteria, design standards, and location restrictions:

1. Mandatory weight scales at all MSWLFs.

2. Mandatory primary and secondary liners (double composite) and leachate collection systems for all MSWLFs.

3. Mandatory set-back distances of 1–2 miles from a residential drinking water well or inland lake or stream, and

5 miles from a Great Lake, including Lake St. Clair, for all new MSWLFs.

4. Mandatory 50-foot isolation distance from the uppermost aquifer for all new MSWLFs.

The revised Federal Criteria contain minimum requirements for municipal solid waste landfills. The USEPA encourages States to consider local conditions and circumstances in adopting requirements that are equal to or more stringent than the revised Federal Criteria. As a result, certain portions of the Michigan MSWLF program are already more stringent than the Federal Criteria. However, the USEPA does not have the authority to require States to adopt additional requirements well beyond the minimum standards set forth in 40 CFR part 258. During the MSWLF permitting process in Michigan, opportunities are provided for public input into the siting and development of permit conditions for all MSWLF sites. The USEPA encourages concerned citizens to actively participate in the planning and development of solid waste management facilities early in the permitting process. As discussed in the previous section, the State's permitting process is designed to facilitate the consideration of site-specific comments and suggestions (1–4 above) during the early planning stages of MSWLF facilities.

One commenter suggested that the USEPA should grant full approval to the groundwater sampling and analysis portion of Michigan's application, because the State allows filtered groundwater samples for metals analyses. The revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Michigan requires field-filtering for groundwater samples that are to be analyzed for metals unless the Director of MDNR determines field-filtering is not appropriate. The USEPA intends to revisit this issue during a proposed rulemaking. If the USEPA determines the ban should be upheld, Michigan will be required to come into compliance with the provisions of 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

One commenter requested that the provisions for the emergency disposal of materials posing a threat or nuisance to the public or the environment be removed from the Michigan MSWLF permit program. Discussions with the State indicated that this provision has not been used to date and is intended only for extremely limited situations in which the Director of the MDNR is petitioned and must specifically grant approval for the activity. The USEPA is satisfied that the existence or use of this provision does not undermine the effectiveness of Michigan's program.

One commenter suggested that the reintroduction of leachate back into any MSWLF unit, as currently allowable under Michigan rules, be prohibited. The USEPA notes that the revised Federal Criteria allow for the reintroduction of leachate or gas condensate derived from a MSWLF unit in 40 CFR 258.28. The revised Federal Criteria require that MSWLF units in which leachate or gas condensate is recirculated must be designed with a composite liner and leachate collection system. In addition, Michigan rules require that the Director of the MDNR must specifically approve a plan for the recirculation of any liquids derived from the MSWLF unit in an operating license for the facility.

Several commenters requested that owners and operators of MSWLFs should be required to maintain a perpetual care fund for post-closure care and corrective action for as long as the waste poses a risk to the environment. Michigan did not apply for approval of financial assurance requirements in its application for partial program approval. This matter will be addressed when Michigan applies for full program approval. Interested parties concerned with financial assurance requirements for MSWLFs are encouraged to participate in the upcoming legislative or regulatory action currently under consideration by the MDNR on this issue.

As a State/Tribe's regulations and statutes are amended to comply with the Federal MSWLF Criteria, unapproved portions of a partially approved MSWLF permit program may be approved by the USEPA. The State/Tribe may submit an amended application for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. This adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If USEPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to public comments.

To ensure compliance with all of the revised Federal Criteria, Michigan needs to adopt the financial assurance requirements of 40 CFR 258.70. If the Agency upholds the ban on field-filtering, the State will be required to come into compliance with the provisions of 40 CFR 258.53(b).

Michigan plans to complete any revisions and amendments to its MSWLF permit program by October 1995. Michigan began the process of revising financial assurance requirements by issuing draft revisions for comment on August 11, 1993. Comments on the initial draft have been received and a second draft is currently being compiled. To allow the State to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, the USEPA is approving those portions of Michigan's program that are ready for action today.

The USEPA cautions Michigan that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR part 258 unless the State/Tribe can demonstrate to the Regional Administrator that it has sufficient cause for not meeting the deadline. If the Regional Administrator believes sufficient cause exists, the expiration date may be extended. The extension and new expiration date would be published in the **Federal Register**. Expiration of a partial approval would mean that the Federal Criteria would apply, and the flexibility provided for approved States/Tribes by the Federal Criteria would no longer be available in the State/Tribe. The USEPA urges Michigan to work diligently to make the necessary revisions to those portions of its permit program that are not being proposed for approval today.

D. Decision

After reviewing the public comments, I conclude that Michigan's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program:

1. General requirements, definitions, and consideration of other Federal laws (40 CFR 258.1, 258.2, and 258.3);

2. Location restrictions for airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas, and closure of existing units (40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16);

3. Operating criteria for excluding hazardous waste, daily cover material, disease vector control, explosive gases control, air criteria, access restrictions, run-on/run-off control systems, surface

water requirements, liquids restrictions, and recordkeeping requirements (40 CFR 258.20, 258.21, 258.22, 258.23, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.29);

4. Design criteria (40 CFR 258.40);

5. Groundwater monitoring applicability, systems, detection monitoring, assessment monitoring program, assessment of corrective measures, selection of remedy, and implementation requirements (40 CFR 258.50, 258.51, 258.54, 258.55, 258.56, 258.57, and 258.58); and

6. Closure and post-closure care requirements (40 CFR 258.60 and 258.61).

Section 4005(a) of RCRA provides that citizens may use the citizen suit provision of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the USEPA explained in the preamble to the revised Federal Criteria, the USEPA expects that any owner or operator complying with provisions in an approved State/Tribe program should be considered to be in compliance with the revised Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The USEPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the approved portions of the State's program are already in effect as a matter of State law. The USEPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by the USEPA as Federal law. Consequently, the USEPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This action, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: March 3, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–5612 Filed 3–9–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4847–2]

Massachusetts Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Waquoit Bay and its tributaries and salt ponds that border the Towns of Falmouth and Mashpee, within the State of Massachusetts to qualify as a "No Discharge Area".

The State of Massachusetts has certified that there are two pump-out facilities available to service vessels in Waquoit Bay.

One pump-out facility is located at the Edward's Boat Yard on the Childs River in Falmouth. The Edward's Boat Yard has 48 slips, 11 used for service and 37 for seasonal rental. In addition, there are 8 moorings. All mooring and slip users sign an anti-pollution contract with the Edward's Boat Yard. Public washrooms are available and the pump-out unit can also service porta-potties. The hours of operation are seven days a week from 8 a.m. to 4:30 p.m. during the summer season from Memorial Day through Columbus Day. The rest of the year the pump-out facility is operated Monday through Friday from 8 a.m. until 4:30 p.m. with Saturday service provided from mid April to Memorial Day and from Columbus Day to mid November between 8 a.m. until noon. A $5.00 fee is charged for use. Depth limits access at the Edward's Boat Yard to vessels which draw 3 feet or less at low tide.

A second pump-out facility will be established at the Little River Boat Yard on Seconsett Island in Mashpee. The Little River Boat Yard has approximately 25 slips, 64 racks for boats and no moorings. The Little River Boat Yard is expecting to provide "floating pump-out service" during the summer months to all boats in Waquoit Bay by mounting the equipment on a boat. The pump-out facility will be operated upon request during the regular business hours of the Little River which is seven days a week from 7 a.m. to 7 p.m. in the Summer Season (Memorial Day through Columbus Day). Business hours for the rest of the year are Monday through Friday from 8 a.m. until 4:30 p.m. A $5.00 fee per pump-out is expected to be charged for use. During the summer season, the floating pump-out system will make a scheduled round of Waquoit Bay to provide "floating pump-out service" to moored boats throughout the bay including transient boats located along the shores of Washburn Island. It is estimated that this floating pump-out run will take between 1 and 2 hours depending on the number of boats requiring the service. Mariners will be able to contact the operator by marine radio or visible signal to request a pump-out. The remainder of the time, the facility will be docked at the Little River Boat Yard where pump-out service will be provided for any boats wishing to use it. The floating pump-out facility will be able to service all areas of the bay.

All pump-out waste will be stored in a 2000 gallon licensed tight tank at the Edward's Boat Yard. A licensed hauler will remove the waste and dispose of it in the Falmouth Sewage Treatment Plant which is approved by the Massachusetts Department of Environmental Protection to receive boat waste.

Recreational boating is a predominant use during the summer months with mooring areas covering substantial portions of the bay and its tributaries and ponds. Marinas are found along the Childs and Little River and docks line the bay's tributaries and salt ponds. Currently, there are an estimated 2610 boats in Waquoit Bay and its tributaries and salt ponds with approximately 570 boats having some type of Marine Sanitation Device (MSD) based on their size classification. Waquoit Bay is 931 acres in size with a watershed of approximately 20 square miles.

Comments and views regarding this request for action may be filed on or before April 4, 1994. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Janet C. Labonte, U.S. Environmental Protection Agency—Region I, Marine and Estuarine Protection section (WQE), JFK Federal

Building, Boston, MA, 02203.
Telephone: 617/565–3550.

Dated: March 1, 1994.

Harley Laing,

Acing Regional Administrator.

A.—PUMP-OUT FACILITY TABLE

Marina/locations	Number pump-out units	Hours	Draft limitations	Fee
Edwards Boatyard, Inc., 1209 E. Falmouth Hwy. (Rt. 28), E. Falmouth, MA 02536, (508) 548–2216, Channel 09 VHF–FM.	1 Stationary	8 am–4:30 pm Daily	3' or less at low tide	$5.
Little River Boat Yard, Inc., Seconsett Island, Mashpee, MA 02649, (508) 548–3511, Channel 09 VHF–FM.	1 Mobile	7 am–7 pm Daily		5.

[FR Doc. 94–5424 Filed 3–9–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Gary Waxman, OMB Desk Officer (202-395-7340), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Final approval under OMB delegated authority the extension, without revision, of the following report(s):

1. *Report title:* HMDA/Loan Application Register
Agency form number: HMDA/LAR
OMB Docket number: 7100-0247
Frequency: Annual
Reporters: Depository institutions and other lenders covered by the Federal Reserve Board's Regulation C
Annual reporting hours: 114,840
Estimated average hours per response: 200 for state member banks; 160 for mortgage banking subsidiaries
Number of respondents: 507 state member banks; 84 mortgage banking subsidiaries
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 280-2810; 12 CFR part 203) and is not given confidential treatment.

The Federal Reserve Board's Regulation C implements HMDA; it requires depository institutions and other covered lenders to report information each year that shows a geographic breakdown of their residential mortgage applications, and loans made and purchased.

2. *Report title:* The Quarterly Gasoline Company Report
Agency form number: FR 2580
OMB Docket number: 7100-0009
Frequency: Quarterly
Reporters: Gasoline Companies
Annual reporting hours: 6
Estimated average hours per response: 0.15
Number of respondents: 10
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 263, 461, and 353 et seq.) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

This report is used to collect information on outstanding balances on retail credit card accounts at gasoline companies.

Final approval under OMB delegated authority the extension, with revision, of the following report(s):

1. *Report title:* The Monthly Commercial Bank Report on Consumer Credit
Agency form number: FR 2571
OMB Docket number: 7100-0080
Frequency: Monthly
Reporters: Commercial banks
Annual reporting hours: 2,880
Estimated average hours per response: 0.6
Number of respondents: 400
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 255(a) and 248(a)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

This report is used to collect information on consumer loans outstanding at the domestic offices of a sample of 400 commercial banks.

2. *Report title:* The Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans
Agency form number: FR 2835
OMB Docket number: 7100-0085
Frequency: Quarterly
Reporters: Commercial Banks
Annual reporting hours: 105
Estimated average hours per response: 0.15
Number of respondents: 175
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is not given confidential treatment.

This report collects the "most common" rate charged at a sample of 175 commercial banks on two types of consumer loans: auto loans and closed-end personal loans.

Final approval under OMB delegated authority the implementation of the following report:

1. *Report title:* The Quarterly Report of Credit Card Interest Rates
Agency form number: FR 2835a
OMB Docket number: 7100-0085
Frequency: Quarterly
Reporters: Commercial banks
Annual reporting hours: 300
Estimated average hours per response: .50
Number of respondents: 150
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

This new report would collect information on two measures of credit card interest rates from a sample of 150 depository institutions. The data would be viewed as representative of interest

rates at all banks by including all large issuers and an appropriate sampling of other issuers.

Board of Governors of the Federal Reserve System, March 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-5464 Filed 3-9-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 11]

Federal Travel Regulation; Subsistence Expense Payment Options for Attendance at a Conference

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin clarifies subsistence expense payment options available under the Federal Travel Regulation (FTR) (41 CFR chapters 301–304) to agencies planning, or authorizing attendance at, a conference. This information will assist agencies in minimizing overall conference costs in the prevailing seasonal per diem rate environment.

EFFECTIVE DATE: This bulletin is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Larry A. Tucker, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: Areas with seasonal variations in lodging rates may offer cost effective choices for conferences, especially during the off-season. Avoiding them because of their resort connotations without consideration of overall conference costs is not prudent policy. Moreover, contracts negotiated by Federal agencies before implementation of new off-season per diem rates on January 1, 1994 (FTR Amendment 34 (58 FR 67950, Dec. 22, 1993)), should not automatically be terminated. If the total conference cost still is less than the alternatives, payment of actual subsistence expenses at a rate up to 150 percent of the applicable maximum per diem rate for the area may be authorized for attendees. The attached GSA Bulletin FTR 11 clarifies fiscally responsible methods of planning conferences and handling subsistence expense payments.

Dated: March 3, 1994.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment

ATTACHMENT

[GSA Bulletin FTR 11]

March 3, 1994

To: Heads of Federal agencies

Subject: Subsistence expense payment options for attendance at a conference.

1. *Purpose.* This bulletin informs agencies of subsistence expense payment options available under the Federal Travel Regulation (FTR) (41 CFR chapters 301–304) to agencies planning, or authorizing attendance at, a conference. This information will assist agencies in minimizing overall conference costs in the prevailing seasonal per diem rate environment.

2. *Background.* The General Services Administration (GSA) recognizes that resort areas may offer attractive options for conference business when overall conference costs are considered, especially during the off-season. The FTR in Amendment 32 (58 FR 58234, Oct. 29, 1993) instructs agencies in § 301–16.4(a) to avail themselves of such cost savings opportunities. GSA issued FTR Amendment 32 to implement that portion of President Clinton's February 10, 1993, memorandum requiring Heads of agencies to exercise strict fiscal responsibility when selecting a conference site. The Office of Management and Budget (OMB) amplified the President's direction in OMB Bulletin No. 93–11, issued April 19, 1993, requiring agencies to select conference sites that minimize conference costs. Additionally, GSA issued FTR Amendment 34 (58 FR 67950, Dec. 22, 1993) implementing seasonal locality per diem rates effective January 1, 1994. Agencies are responsible for diligently planning and managing conferences to effectively control associated subsistence costs.

3. *Reimbursement of subsistence expenses for conference attendance.*

a. GSA's implementation of seasonal locality per diem rates in FTR Amendment 34 may have significantly affected conference commitments agencies entered into prior to the January 1, 1994, effective date of the new amendment. For conferences scheduled in an area where the per diem rate was lowered, it appears some agencies assume their only recourse is to cancel their plans and move the conference to a new site. While in some cases this may be the prudent choice, the same careful analysis of overall conference costs required by the FTR in the initial planning phase should be undertaken before any final decision is made about changing the conference site.

b. If a formal contract has been signed, its terms should dictate what happens in the event of a per diem rate change. In those cases where a fixed rate has been established, the costs of termination (if any) and the overall cost of shifting the conference to a new site should be considered before any final decision is made.

c. It may be that payment of an employee's actual subsistence expenses for conference attendance in a particular locality, in an amount up to 150 percent of the appropriate maximum per diem rate for the area, would result in lower overall costs to the Government than payment of per diem expenses for the employee to attend a conference scheduled in a locality with a higher per diem rate. If no other practical alternative is available, it would be prudent management for the agency to negotiate the best possible deal and, where appropriate, to authorize or approve payment of actual subsistence expenses in accordance with FTR §§ 301–8.3 and 301–16.4.

4. *Expiration date.* This bulletin expires on March 3, 1995.

5. *For further information contact.* Larry A. Tucker, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 94–5456 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–24F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Strengthening Community Supports for Youth Development

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Request for applications to implement a strategy for strengthening community supports for youth development.

SUMMARY: The Department wishes to participate in a demonstration and evaluation of a long-term community

development process in behalf of at-risk youth in 3–5 communities with the majority of funding being provided by charitable foundations. We estimate that the scope and level of effort will require up to five years to accomplish and will cost approximately $3–5 million for the first 24–30 months of work. Only one grant of $100,000 per year for five years will be awarded.

CLOSING DATES: The closing date for submitting an application is May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690–8794.

Part I. Background

The Department has been participating in a broadly-based interdepartmental working group and internally reviewing its program and policy options to find ways of addressing the problems of teen crime and violence, teen parenthood, and other barriers to a successful transition to adulthood. These discussions have been conducted in multidimensional context. Teen violence has been described a top public health problem. The number of homicides and serious injuries because of violence among teenager has reached pandemic levels in some communities. For example, adolescents are 2½ times more likely to be victims of violent crimes than those over age 20. Homicide is the second leading cause of death for all youth ages 15–24 and is the leading cause of death for African-American youth in this age group. Welfare reform discussions have also highlighted the importance of preventing teen pregnancies. Finally the need to ensure that young people enter adulthood with competitive and marketable job skills in an era of global economic competition has never been greater.

At the same time that these problems of youth are engaging the urgent attention of this Department, we are also concerned about avoiding the mistakes of past programs and initiatives. The lessons of the past point to the need to seek comprehensive, community-based family-centered solutions for today's problems. Many of the problems of poor children and poor families are inseparable from the conditions of their communities. Individual issues of drug abuse, delinquency, school failure, teen pregnancy, and so on, cannot be addressed unless the community poverty, violence, deterioration, and hopelessness that breeds these problems are also addressed. Any attempt to address these problems by working with youth in isolation from their families and communities will fail in the long term. While short term gains can be achieved and a few individuals can be "rescued" through high quality youth-focused intensive services, the core problems will not be addressed. These programs will never have enough resources to reach all the youth or even a majority of the youth who need help. We must begin devising policies and programs that respond not just to problems, not just individuals, not just families, but to whole communities as the client and subject of our concern. Large numbers of youth will not succeed until the environment within a local community supports positive youth development and a sufficiently strong social infrastructure exists to provide special help to those youth who need it.

The empowerment-zone and enterprise-community legislation enacted by Congress in August, 1993 encourages the development of more comprehensive, coordinated, and integrated approaches to serving low-income communities. While it is an opportunity to develop new and more local systems of human services—ones that are flexible, family focused, and community based, it is also an opportunity to realign the allocation of resources and accountability and develop new decision-making institutions which are in and of the communities they serve. Ideally, these broad-based community-level governing bodies would assume control and responsibility for dozens of separate special-purpose programs designed to address problems as if they were not interconnected. Accomplishing such fundamental structural changes will take years of effort and require repeated attempts. The scope of the task includes redefining the roles of the existing bureaucracies, renewal of the competencies of the helping professions, and the development of new measures and new tools for assuring accountability for positive outcomes.

The Department wishes to contribute to the process of building the capacities and infrastructure necessary for development of such community based programs, especially in the area of youth services. However it does not have funding for an independent effort at this time. Therefore it wishes to participate in an existing project as a first step in developing its own agenda for positive youth development.

Part II. Required Characteristics of a Qualifying Demonstration Project

A. Demonstrations in Multiple Sites

The applicant should be prepared to conduct a minimum of five demonstration projects in geographically separate communities. The process of collaboration with each local community will respect the flexibility and uniqueness that each community requires, while ensuring that the results of local development decisions reflect a coherent theory built on the best knowledge and evidence available. This approach consciously avoids assigning specific responsibilities to specific institutions. These would vary according to the capacities and strengths of each community. But the need for all key youth-serving institutions—the schools, voluntary organizations, community-based agencies, employers—to be actively involved and supportive of changes in current practices if necessary, is critical.

B. Foundation Support for Demonstrations

The applicant must demonstrate sufficient financial support from private philanthropic foundations to carry out at least the first two years of the project. Written evidence of the commitment of financial resources from the major participants must be included with the application.

C. Focus on "Core Concepts"

The design and implementation of a long-term youth development initiative should be focused around a small number of substantive core concepts. These "core concepts" are to be derived from theory and research on how adolescents learn, on what motivates them, and on what socialization practices most effectively promote their healthy development.

These core concepts should not attempt to meet all of a youth's needs, but rather represent hard choices about what supports and opportunities are critical to successful adolescence and transition to economic self-sufficiency, are likely to be absent in most resource poor neighborhoods, and are within the influence of social policy. They should represent a hypothesis about the threshold content of social infrastructure necessary to secure positive teenage development and a successful transition to adulthood, for a substantial number of youth who would otherwise not succeed.

D. Continuity From Early Adolescence Through Early Adulthood

Most of the current programs provide for only time-limited interventions, e.g., special classes, summer camps or specific problem-solving activities, e.g., homelessness, pregnancy counseling. To borrow an analogy from the field of medical practice, most programs are akin to attempts at inoculations for communicable disease or emergency room treatment. There have been very few programs that attempt to provide continuity of support and opportunity through the whole period of transition from early adolescence to early adulthood. Few yet have attempted to make support and mentoring of youth a conscious part of community social infrastructure. Applicants should discuss whether continuous youth supports are necessary for positive adult outcomes and whether these supports can be organized on a community level.

E. Support for Local Projects

Previous experience in multisitie demonstrations and replications also indicates the importance of providing to local initiatives certain kinds of support and assistance that local resources can rarely afford. Thus an applicant must demonstrate the ability to carry out or manage the following activities and roles to support local operations:

* The identification of and training in the use of "best practice" materials, curricula and training packages to provide content and boost local staff capacity in carrying out the five core concepts;
* The development and installation of an information system to assist in local decision-making, and provision of training in its installation and operation;
* Financial support for sites to implement core concept innovations that current public funding streams do not support;
* Support in securing local private resources necessary for staffing the local governance mechanism; and
* Assignment to each site of a staff member or consultant with substantial experience in multi-institution youth initiatives, to act as a sounding-board and broker on local issues, and provide a perspective independent of any specific local interest.

These functions are, in our experience, important to building local capacity for effective and institutionalized changes in practice.

F. Community Empowerment

In each community an organization which is representative of both public and private sectors and a variety of interests will be needed to direct the planning and implementation of the youth services project. The applicant should describe how it envisions the size and different levels within these organizations, the kinds of representation that will be needed, the level at which local community leaders will be involved in the project and the efforts that will be made to involve the youth themselves in meaningful roles.

G. Evaluation

Each applicant must provide for an independent evaluation of the process of implementation itself. It is this process evaluation which will provide lessons for other communities.

The implementation evaluation should be conducted by an independent evaluation team of researchers experienced in process evaluations, implementation studies, case studies, and other field approaches. The evaluation should focus on describing both the anticipated and the unanticipated processes of the implementation of the core concept strategy. The purpose of the documentation and analysis of unanticipated implementation issues is not to derive a judgment about the original plans, but rather to develop a better understanding of the factors affecting implementation and to derive lessons for wider-scale application.

Some questions to consider include:

What factors influence the success or failure of collaborative attempts to develop community based service delivery mechanisms?

These factors should include environmental conditions of historical experience and political climate, membership characteristics including the degree to which members represent their community and the influence of shared or different cultural norms and values, factors related to decision making process and structure, factors related to communication, factors related to goals and purpose, and factors related to available resources such as skilled leadership, funding, and skilled staff.

What are the appropriate intermediate measures of progress toward becoming a positive environment for youth development? How will we know that conditions are improving?

Does collaboration on the community level reduce or eliminate the barriers to service commonly found in categorical funding? Do more youth and a greater diversity of youth receive services? What opportunities are presented by coordination of funding streams at the community level? What problems encountered? Does this result in increased funding or volume of services for youth?

What are the core or essential services that must be in place in a comprehensive program? Do programs have to offer health, education, recreation, employment services? Should comprehensive programs attempt to address problems directly, e.g., pregnancy prevention and options counseling, substance abuse prevention and referrals.

Part III. Organization of Applications—Outline of Narrative Description

An application must contain the required Federal forms and a narrative description of proposed project. All pages of the narrative should be numbered consecutively. Each applicant must present their responses to the "Required Characteristics of a Qualifying Demonstration Project" delineated in part II within the structure presented below.

A. Abstract

Provide a one-page summary of the proposed project.

B. Goals, Objectives and Need for the Project

Include a brief overview which describes the need for the proposed project, justifies the approach to be taken, and identifies any theoretical or empirical basis for the approach proposed along with appropriate supporting citations of the pertinent professional literature. Present the goals of the implementation effort and related objectives in observable terms. These goals and objectives should be used in the development of the evaluation section.

C. Strategic Plan

Provide a description of how the proposed demonstration project will be implemented. It will be helpful if specific steps and milestones can be presented in the form of a series of Gantt or PERT charts.

D. Evaluation

Describe the level of effort and the resources that will be devoted to an independent evaluation of the project.

E. Organizational Capacity

Briefly describe the applicant's organizational capabilities and experience in conducting demonstration projects or programs involving local government, education, health, or human service agencies. Identify the key staff who are expected to carry out the demonstration project and provide a curriculum vitae for each person.

F. Budget

Submit a request for federal funds using Standard Form 424A and provide a proposed budget using the categories

listed on this form. Documentation must be included which substantiates the existence of a commitment by one or more private philanthropic foundations to provide at least $3 million for implementation of the demonstration project.

Part IV. Receipt and Processing of Applications

A. Deadline for Submitting of Applications

The closing date for submittal of applications under this announcement is May 9, 1994. Applications must be postmarked or hand delivered to the application receipt point no later than 5 p.m. on the closing date. Applications which do not meet the deadline are disqualified and will not be considered further. DHHS will send a letter to this effect to each late applicant.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before the due date, or (2) postmarked before midnight of the deadline date and received in time to be considered during the competitive review process.

Hand-delivered applications will be accepted Monday through Friday, excluding federal holidays during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as floods, hurricanes, or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

B. Initial Screening

Applications will be initially screened for compliance with the timeliness, completeness, and cost-sharing requirements. If judged in compliance, the application then will be reviewed by government personnel, augmented by outside experts where appropriate. Three (3) copies of each application are required. Applicants are encouraged to send an additional three (3) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. There is no limitation on the length of the narrative; however extraneous materials such as videotapes and brochures should not be included and will not be reviewed.

C. Review Process and Evaluation Criteria

Applications will be evaluated by a panel of reviewers according to the criteria set forth below. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. The relative weights are shown in parentheses.

1. Goals, Objectives, and Need for Assistance (10 points)

Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the grant announcement?

2. Project Design and Approach (30 points)

Is the plan reasonable? Are the activities listed for each objective sufficiently detailed to ensure successful, timely implementation? Do they demonstrate an adequate level of understanding by the applicant of the practical problems involved in executing such a complex project? Is there substantive evidence that the advisory board and local community will be substantively involved in the project?

3. Evaluation (10 points)

Does the applicant propose an independent evaluation of the implementation process? Does the applicant demonstrate an understanding of the practical difficulties of working with an independent evaluator and a resolve to successfully conduct the evaluation?

4. Organizational Capacity (20 points)

Does the organization(s) have sufficient experience to ensure success? Is the collaborative decision making process described in terms that assure accountability to the communities and families to be served? Are the number and type of staff positions sufficient to achieve project objectives?

5. Budget (30 points)

Is the proposed budget reasonable and sufficient to ensure implementation? Are the required local matching funds being provided and in this commitment reliable? Are funds allocated to carry out the evaluation?

Part V. Other Notices and Requirements

A. Legislative Authority

The authority for this grant is contained in section 1110 of the Social Security Act (42 U.S.C. 1310).

B. Applicable Regulations

1. "Grants Programs Administered by the Office of this Assistant Secretary for Planning and Evaluation" (45 CFR part 63).

2. "Administration of Grants" (45 CFR part 74).

C. Eligible Applicants

Any agency of state or local government, university or other agency whether organized as a for-profit or as a not-for-profit corporation. However for-profit organizations are advised that no grant funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct and indirect costs of the grantee.

D. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about June 1, 1994.

2. Projects will be twelve months in duration with funding for the second through the fifth year subject to a determination that continued support is in the interest of the government. The grantee may be required to provide an updated workplan toward the end of each budget period prior to receiving funding for the next year.

E. Statement of Funds Availability

1. Up to $100,000 is available for one grant to be awarded in Fiscal Year 1994.

2. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

F. Reports

The grantee must submit annual progress reports and a final report. The specific format and content for these reports will be provided by the project officer.

G. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants

Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690–8794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

H. Federal Domestic Assistance Catalog

This program is not listed in the Catalog of Federal Domestic Assistance.

I. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Dated: March 1, 1994.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94–5549 Filed 3–9–94; 8:45 am]

BILLING CODE 4110–60–M

Administration for Children and Families

Agency Information for Children and Families

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the continued use of an information collection titled: "Monthly Flash Report of Selected AFDC Program Data". This information collection was approved under OMB Number 0970–0071 for use through March 31, 1994.

ADDRESSES: Copies of this information collection request may be obtained from Edward E. Saunders, Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding this request for approval for information collection should be sent directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Monthly "Flash" Report of Selected AFDC Program Data.

OMB Number: 0970–0071.

Description: The authority for this information collection may be found at section 402(a)(6), Aid to Families with Dependent Children (AFDC) and section 1602 under Title XVI, Aged, Blind and Disabled (AABD) of the Social Security Act. Aid to Families with Dependent Children (AFDC) is the nation's largest financial assistance program serving needy families with dependent children. AFDC's mission is two-fold: first, to assist families with dependent children to meet an immediate financial need and second, to help parents in these families become economically self-sufficient.

Recent caseload and expenditures statistics for Fiscal Year 1992 show:

AFDC Caseload

Average No. of Monthly Families, 4,768,495.

Average No. of Monthly Recipients, 13,625,342.

Benefit Expenditures

Total, $21.9 billion.

Average Monthly Benefits (per Family), $383.45.

Average Monthly Benefits (per Recipient), $134.20.

Form ACF–3645 will be used by the States to provide preliminary monthly information on services provided to AFDC recipients including: numbers of AFDC families, adults, and children receiving cash assistance, the number of eligible families receiving emergency assistance payments, temporary housing, statistics on unemployment among AFDC parents, and caseload statistics, including the AFDC-Unemployed Parents and Basic segments under Title IV–A of the Social Security Act.

This information is electronically forwarded to the Office of Family Assistance where it is analyzed and circulated to key ACF headquarters and regional offices staff, DHHS administrative and budget offices, State welfare departments, OMB and Congressional committee staffs. This information is widely used for monitoring AFDC program trends and is an advance indicator of program activity and costs.

Annual Number of Respondents: 54.

Annual Frequency: 12.

Average Burden Per Response: 2.

Total Burden Hours: 1,296.

Dated: February 25, 1994.

Larry Guerrero,

Deputy Director, Office of Information System Management.

[FR Doc. 94–5590 Filed 3–9–94; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provision of the Federal Paperwork Reduction Act (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval for the continued use of an information collection for the Office of Family Assistance. This information collection titled: "Statistical Report of Recipients Under Public Assistance Program" (Form ACF–3637) was approved under OMB control number 0970–0008.

ADDRESSES: Copies of the information collection request may be obtained from Edward E. Saunders, Office of Information Systems Management, Administration for Children and Families, by calling (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Statistical Report on Recipients Under Public Assistance Programs (Form ACF–3637).

OMB No.: 0970–0008.

Description: This collection of information is authorized by section 402(a)(6) of the Social Security Act which requires that all State agencies administering or supervising the administration of Federally-aided public assistance programs under Title IV–A (AFDC) of the Social Security Act provides for a system of reporting on the administration of this program. Furthermore, the Code of Federal Regulations 45 Public Welfare, section 205.60 requires that "The State agencies administering or supervising the administration of the Aid to Families with Dependent Children (AFDC) and Job Opportunities and Basic Skills (JOBS) programs in the States, and the Adult Assistance programs in Guam, Puerto Rico and Virgin Islands will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the programs including records regarding applications, determination of eligibility, * * * individual records are

kept which contain pertinent facts about each applicant and recipient and include information as to the date of application and date and basis of its disposition; and basis for discontinuing assistance."

Form ACF–3637 is designed to compile basic monthly information and reports the information on a quarterly basis on the number of cases, recipients, children and adults for both the AFDC Basic (non-UP) program and the unemployed parent program. The ACF–3637 is also used to compile information on Emergency Assistance cases, General Assistance cases and recipients, the number of cases and individuals required to participate in the JOBS program, the number of children receiving Transitional Child Care, the number of AFDC recipients under JOBS sanctions, and the number of never-married minor families and their total maintenance assistance payments. Guam, Puerto Rico and the Virgin Islands report the number of recipients in each of their adult programs monthly.

Annual Number If Respondents: 54.
Annual Frequency: 4.
Average Burden Hours: 34.
Total Burden Hours: 7,344.

Dated: February 25, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–5591 Filed 3–9–94; 8:45 am]

BILLING CODE 4184–01–M

Administration on Aging

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

(1) *Title of Information Collection:* Program Performance Report, Title VI of the Older Americans Act (Grants to Native Americans for Supportive and Nutritional Services);

Type of Request: Extension;

Use: To monitor program operations, growth and results of Title VI funded activities, and to provide information for responses to inquiries;

Frequency: Semi-annually;

Respondents: Indian Tribes and Organizations Serving Native Hawaiians;

Estimated Number of Responses: 432;

Total Estimated Burden Hours: 648.

(2) *Title of Information Collection:* Grants for State and Community Programs on Aging;

Type of Request: Extension and Revision;

Use: To implement new provisions of the Older Americans Act which require States to submit their intrastate funding formulas to the Assistant Secretary for Aging for approval, rather than only for review and comment;

Frequency: Annually, or every two, three or four years, depending on duration of State plans;

Respondents: State Agencies on Aging;

Estimated Number of Responses: 11;

Total Estimated Burden Hours: 1618.

(3) *Title of Information Collection:* State Performance Report: Reporting Requirements for Titles III and VII of the Older Americans Act;

Type of Request: Extension and Revision;

Use: To revise an existing information collection form to conform to the newly-developed National Aging Program Information System (NAPIS) resulting from amendments to the Older Americans Act which directed the Administration on Aging to improve State reporting requirements;

Frequency: Annually;

Respondents: State Agencies on Aging;

Estimated Number of Responses: 57;

Total Estimated Burden Hours: 294,861.

(4) *Title of Information Collection:* Certification of Maintenance of Effort;

Type of Request: Extension;

Use: To verify the amount of State expenditures to assure that States are in compliance with maintenance of effort requirements under the Older Americans Act;

Frequency: Annually;

Respondents: State Agencies on Aging;

Estimated Number of Responses: 57;

Total Estimated Burden Hours: 28.5.

Additional Information or Comments: Call the Executive Secretariat of the Administration on Aging on (202) 260–0669 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 4, 1994.

William F. Benson,

Deputy Assistant Secretary for Aging.

[FR Doc. 94–5462 Filed 3–9–94; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

Fetal Alcohol Syndrome (FAS) Data Collaboration; Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the Research Society on Alcoholism and the National Institute on Alcohol Abuse and Alcoholism.

Name: Fetal Alcohol Syndrome (FAS) Data Collaboration Meeting.

Times and Dates: 8 a.m.–5:30 p.m., March 17, 1994. 8:30 a.m.–12:30 p.m., March 18, 1994.

Place: Atlanta Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: The primary purpose of this meeting is to promote collaborative discussions about current issues in FAS, share information, and identify future collaborative activities among institutions and agencies currently involved in FAS research and program development.

Matters to be Discussed: Topics to be discussed include the possibilities of data-sharing among researchers, issues in case ascertainment of FAS, FAS case definition and screening, and frameworks for primary prevention of FAS.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Louise Floyd, Ph.D., Chief, FAS Prevention Section, Developmental Disabilities Branch (F–15), NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia, 30341, telephone 404/488–7370.

Dated: March 4, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5500 Filed 3–9–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94N–0022]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins as a component of polypropylene homopolymer or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by April 11, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4411) has been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821. The petition proposes that the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of hydrogenated cyclodiene resins as a component of polypropylene homopolymer or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before April 11, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 1, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5450 Filed 3–9–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on March 11, 1994. The meeting will take place from 1 p.m. to 1:45 p.m. in Room 3C05, C–Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public from 1 p.m. to 1:20 p.m., is being held to discuss new developments in the field of smell, taste and touch since the National Strategic Research Plan for that area was developed. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 1:20 p.m. to adjournment for the discussion and recommendation of individuals to serve as consultants to the Research Priorities Subcommittee. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, Room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

Due to technical difficulties during the February 25, 1994, meeting, an additional meeting had to be scheduled within two weeks of the original meeting to complete Subcommittee business.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: March 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–5751 Filed 3–9–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Recombinant Pseudomonas Exotoxin Immunoconjugate Specifically Directed Against the Lewis Y Antigen

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 07/596,289 entitled "Antibodies Specific for Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors", to Boehringer Mannheim Pharmaceutical Corporation having a place of business in Rockville, MD. The patent rights in these inventions have been assigned to the United States of America. This notice supersedes and replaces the notice contemplating the grant of a coexclusive license to Boehringer Mannheim Pharmaceutical Corporation and NeoRX which was published at 58 FR 38581 on July 19, 1993.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not

be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to the use of the monoclonal antibodies of the subject invention with the recombinant Pseudomonas exotoxin for targeting the Lewis Y antigen.

The present invention related to the monoclonal antibodies (MAb) B1, B3, and B5. Of particular importance is the MAb B3 of this invention, which shows strong reactivity with the Lewis Y antigen on many human solid tumors and has limited reactivity with normal human tissues. MAb B3 reacts strongly with all adenocarcinomas of the colon and 75% of them react strongly and homogeneously. MAb B3 has also shown similar strong reactivity with other gastrointestinal malignancies such as esophageal (80%) and gastric carcinomas (75%); MAb B3 reacts strongly with approximately 70% of adenocarcinomas of the lung and also reacts with about 40% of squamous cell carcinomas of the lung and 25% of large cell carcinomas. MAb B3 reacts heterogeneously with 70% of breast carcinomas and homogeneously with about 65% of adenocarcinomas of the prostate and 100% of transitional cell carcinomas of the bladder. Several important characteristics of MAb B3 make it an ideal candidate for further development for use as an immunotoxin for treatment of cancers: (1) Its strong and uniform reactivity with many human solid carcinomas; (2) its limited reactivity with normal tissues; (3) the fact that similar reactivity is found in normal monkey and human tissues (which allow for performance of perclinical toxicology studies with predictive value for a clinical trial; and (4) when coupled to recombinant forms of Pseudomonas exotoxin lacking the cell binding domain, the resulting immunotoxin is capable of killing tumor cells expressing the Lewis Y antigen of their surface, indicating that the antibody/antigen complex is readily internalized.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: March 2, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5495 Filed 3–9–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive and Co-Exclusive Licenses: In-Vivo Imaging and Radiotherapy Targeting Antigens Recognized by the B1, B3 and B5 Antibodies

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of limited field of use exclusive and co-exclusive licenses in the United States to practice the invention embodied in U.S. Patent Application Number 07/596,289 entitled "Antibodies Specific for Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors", to NeoRx Corporation, having a place of business in Seattle, WA and ImmunoMedics, Inc., having a place of business in Morris Plains, New Jersey. The patent rights in this invention have been assigned to the United States of America.

The prospective licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

The prospective licenses may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

(1.) NeoRx Corporation would be granted a co-exclusive license limited to the use of the monoclonal antibodies of the subject invention with Tc-99m for in-vivo imaging of cancer and with Yttrium-90, Rhenium-186, Rhenium-188 and Iodine-125 for cancer radiotherapy. NeoRx would also be granted an exclusive license limited to the use of the monoclonal antibodies of the subject invention with Lutetium-177 and Lead-212 for cancer radiotherapy.

(2.) ImmunoMedics, Inc. would be granted a co-exclusive license limited to the use of the monoclonal antibodies of the subject invention with Tc-99m for in-vivo imaging of cancer and with Yttrium-90, Rhenium-186, Rhenium-188 and Iodine-125 for cancer radiotherapy. ImmunoMedics, Inc. would also be granted an exclusive license limited to the use of the monoclonal antibodies of the subject invention with Iodine-131 for cancer radiotherapy.

The present invention relates to the monoclonal antibodies(MAb) B1, B3, and B5. Of particular importance is the Mab B3 of this invention, which shows strong reactivity with the Lewis-Y antigen on many human solid tumors and has limited reactivity with normal human tissues. MAb B3 reacts strongly with all adenocarcinomas of the colon and 75% of them react strongly and homogeneously. MAb B3 has also shown similar strong reactivity with other gastrointestinal malignancies such as esophageal (80%) and gastric carcinomas (75%); MAb B3 reacts strongly with approximately 70% of adenocarcinomas of the lung and also reacts with about 40% of squamous cell carcinomas of the lung and 25% of large cell carcinomas. MAb B3 reacts heterogeneously with 70% of breast carcinomas and homogeneously with about 65% of adenocarcinomas of the prostate and 100% of transitional cell carcinomas of the bladder. Several important characteristics of MAb B3 make it an ideal candidate for further development for use as an immunotoxin for treatment of cancers: (1) Its strong and uniform reactivity with many human solid carcinomas; (2) its limited reactivity with normal tissues and (3) the fact that similar reactivity is found in normal monkey and human tissues (which allow for performance of preclinical toxicology studies with predictive value for a clinical trial).

ADDRESSES: Request for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Properly filed competing applications for a licensee filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: March 2, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5496 Filed 3–9–94; 8:45 am]

BILLING CODE 4140–01–M

Office of Community Services

State Median Income Estimates for Four-Person Families (1995 FY); Notice of the Fiscal Year (FY) 1995 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Fiscal Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of estimated state median income for FY 1995.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the District of Columbia for FY 1995 (October 1, 1994 to September 30, 1995). This listing of estimated state median incomes concerns maximum income levels for households to which the states may make payments under the Low Income Home Energy Assistance Fiscal (LIHEAP).

EFFECTIVE DATE: The estimates are effective as of October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–5304.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 1995 (the period of October 1, 1994, through September 30, 1995).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that states can use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of Fiscal Year 1995 by the National Institutes of Health Revitalization Act of 1993, Pub. L. 103–43, which was enacted on June 10, 1993.

Title VII of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501), which added a new section 2602(c) to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97–35, as amended), provided that LIHEAP funds would be available for obligation on the basis of a new "Program Year" of July 1 through June 30, rather than on the Federal "Fiscal Year" basis of October 1 to September 30. That change has not yet been implemented by appropriations actions, however. The FY 1994 HHS appropriations law (Pub. L. 103–112) has provided advance FY 1995 appropriations for LIHEAP to cover the nine-month period of October 1, 1994 to June 30, 1995. However, the President's Budget Request for FY 1995 proposes amending the funding level and making it available for the full 12 month fiscal year of October 1, 1994 to September 30, 1995.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1995 were developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recent available income data. In developing the median income estimates for FY 1995, the Bureau of the Census used the following three sources of data: (1) The March 1993 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1992 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

For further information on the estimating method and data sources, contact Edward Welniak, Chief of the Income Statistics Branch, Housing and Household Economic Statistics Division, at the Bureau of the Census (301–763–8576).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1995 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 2, 1994.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE

[FY 1995 [1]]

States	Estimated state median income, 4-person families [2]	60% of estimated state median income, 4-person families
Alabama	$39,659	$23,795
Alaska	49,632	29,779
Arizona	39,900	23,940
Arkansas	36,682	22,009
California	46,774	28,064
Colorado	45,021	27,013
Connecticut	55,061	33,037
Delaware	50,999	30,599
District of Columbia	45,782	27,469
Florida	40,925	24,555
Georgia	42,696	25,618
Hawaii	50,821	30,493
Idaho	38,844	23,306
Illinois	47,474	28,484
Indiana	43,674	26,204
Iowa	41,827	25,096
Kansas	42,285	25,371
Kentucky	38,512	23,107
Louisiana	38,061	22,837
Maine	40,924	24,554
Maryland	51,864	31,118
Massachusetts	51,172	30,703
Michigan	45,704	27,422
Minnesota	46,518	27,911
Mississippi	35,731	21,439
Missouri	41,926	25,156
Montana	37,174	22,304
Nebraska	42,207	25,324
Nevada	43,472	26,083
New Hampshire	48,385	29,031
New Jersey	55,634	33,380
New Mexico	36,299	21,779
New York	48,039	28,823
North Carolina	41,766	25,060
North Dakota	40,179	24,107
Ohio	43,636	26,182
Oklahoma	37,704	22,622
Oregon	41,558	24,935
Pennsylvania	45,015	27,009
Rhode Island	46,797	28,078
South Carolina	40,753	24,452
South Dakota	38,703	23,222
Tennessee	40,549	24,329
Texas	40,695	24,417
Utah	41,505	24,903
Vermont	43,167	25,900
Virginia	45,492	27,295
Washington	46,327	27,796
West Virginia	37,437	22,462
Wisconsin	44,444	26,666

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE—Continued

[FY 1995 [1]]

States	Estimated state median income, 4-person families [2]	60% of estimated state median income, 4-person families
Wyoming	43,126	25,876

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons,and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1993 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1992 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

Note—FY 1995 covers the period of October 1, 1994 through September 30, 1995. The estimated median income for 4-person families living in the United States is $44,615 for FY 1995.

[FR Doc. 94–5538 Filed 3–9–94; 8:45 am]

BILLING CODE 4134–01–P

Public Health Service

National Toxicology Program; Board of Scientific Counselors, Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on April 6, 1994.

The meeting will open to the public from 8:30 a.m. to adjournment with attendance limited only by space available. The preliminary agenda topics with approximate times are as follows:

8:30 a.m.–9 a.m.—Report of the Director, NTP.

9 a.m.–9:25 a.m.—Meeting Reports/ Upcoming Meetings:

Update on Activities of the Technical Reports Review Subcommittee

Planned Workshop on Dose Selection

Report on NTP Executive Committee

9:25 a.m.–10:05 a.m.—Mechanism Based Toxicology and Risk Assessment.

10:05 a.m.–10:25 a.m.—Report from Advisory Group on Cell Proliferation/ Apoptosis.

10:45 a.m.–12 noon—Biennial Report on Carcinogens—Discussion of Possible Role of the Board in Review Process.

1:15 p.m.–1:35 p.m.—Report on Results/ Accomplishments and New Contract Awards in Past Year.

1:35 p.m.–1:50 p.m.—Toxicology Review Team Activities.

1:50 p.m.–2:50 p.m.—Concept Reviews.

3:10 p.m.–3:20 p.m.—Environmental Toxicology and Alternative Methods—NIEHS Role.

3:20 p.m.–4 p.m.—New Initiatives in Alternative/Environmental Sentinel Test Methodology at Fort Detrick.

4 p.m.–4:45 p.m.—Reports of Research Programs on Alternative Methods at NIEHS.

4.45 p.m.–5 p.m.—Discussion.

Adjournment

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, will have available a roster of Board members prior to the meeting and summary minutes subsequent to the meeting.

Dated: March 3, 1994.

Richard A. Greisemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–5494 Filed 3–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program (NTP) Board of Scientific Counselors' Meetings; Announcement of NTP Draft Technical Reports Projected for Public Review From June 1994 Through Fall 1995

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee during their next four meetings from June 1994 through the fall of 1995. We plan to continue updating the listing with announcements in the **Federal Register** once or twice a year. The next meeting dates are June 21–22, 1994 and November 29–30, 1994. Specific dates for 1995 meetings will be established at a later time.

The attached table 1 lists draft Technical Reports for long-term studies on chemicals within known or approximate dates of reviews and includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

Technical Reports of short-time toxicity studies are currently reviewed by mail; however, when necessary may be reviewed in open meetings. The attached Table 2 lists the draft Technical Reports of short-term toxicity studies tentatively projected for review by mail during 1994 and also includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

Those interested in having more information about any of the studies listed in this announcement, should contact Central Data Management as early as possible by telephone or by mail to: MD–A0–01, NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709 (919–541–3419). The program would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone 919/541–3971, will furnish final agendas and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Attachments.

Dated: March 3, 1994.

Richard Griesemer,

Deputy Director, National Toxicology Program.

TABLE 1.—LONG-TERM STUDIES TENTATIVELY SCHEDULED FOR PUBLIC PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM JUNE 21, 1994, THROUGH FALL 1995

Chemical name/Cas No.	Use	Route	Species	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review June 21–22, 1994					
Acetonitrile, 75–05–8	Solv	Inhal	Rm	R:0, 100, 200, or 400 PPM M: 0, 50, 100, or 200 PPM; 50/group.	447
1-Amino-2,4-dibromoanthraquinone, 81–49–2	Dye	Feed	Rm	R: 0, .2, .5, 1.0, 2.0, M: 0, 1.0, 2.0 %/50/per group	383
Benzethonium chloride, 121–54–0	Germ	Sp	Rm	R&M: 0, 0.15, 0.5, 1.5 MG/KG/50/group	438
Tert-butyl alcohol, 75–65–0	Phar	Water	Rm	R: 0, 0.125, 0.25, 0.5% (M). 0, 0.25, 0.5, 1.0% (F). M: 0, 0.5, 1.0, 2.0% (M&F)/50 per group.	436
Init/prom comparative mouse study (DMBA/TPA/BPO/MNNG) init/prom.	Phar	SP	Mm	DMBA/Acetone (50, 25, 2.5UG), DMBA 2.5, TPA 5UG, BPO 20MG, DMBA/TPA (2.5, 25, 50UG/5UG), DMBA/BPO (2.5, 25UG/20MG) and MNNG/Acetone (1000, 500, 100UG), MNNG 100UG, TPA, 5UG, BPO 20MG, MNNG/BPO (100, 500, 1000UG/20MG), MNNG/TPA (100, 1000UG/5UG).	
Init/prom comparative mouse study (DMBA/TPA/BPO/MNNG) Imit/prom.	Phar	Sp	Mm	DMBA/Acetone (25, 2.5, 25UG), DMBA 2.5, TPA 5 UG, BPO 20MG, DMBA/TPA (.25, 2.5, 25/5UG), DMBA/BPO (2.5, 25UG/20MG) and MNNG/Acetone (1000, 500, 100UG), MNNG 100UG, TPA 5UG, BPO 20MG, MNNG/BPO (100, 500, 1000UG/20MG), MNNG/TPA (1000, 1000UG/5UG).	441
Init/prom comparative mouse study (DMBA/TPA/BPO/MNNG) init/prom.	Phar	Sp	Mm	DMBA/Acetone (25, 2.5, 25UG), DMBA 2.5, TPA 5UG, BPO 20MG, DMBA/TPA (.25, 2.5, 25/5UG), DMBA/BPO (2.5, 25UG/20MG) and MNNG/Acetone (1000, 500, 100UG), MNNG 100UG, TPA 5UG, BPO 20MG, MNNG/BPO (100, 500, 1000UG/20MG), MNNG/TPA (1000, 1000UG/5UG)..	441
Init/prom comparative mouse study (DMBA/TPA/BPO/MNNG) init/prom.	Phar	Sp	Mm	DMBA/Acetone (25, 2.5, .25UG): DMBA 2.5:TPA 1UG:BPO 20MG: DMBA/TPA (.25, 2.5, 25/1UG): DMBA/BPO (2.5, 25UG/20MG) and MNNG/Acetone (1000, 500, 100UG): MNNG 100UG:TPA 5UG:BPO 20MG: MNNG/BPO (100, 500, 1000 UG/20MG).	441
1-trans-delta-9-tetrahydro-cannabinol, 1972–08–3	Phar	Gav	Rm	R: 0, 12.5, 25, or 50; M: 0, 125, 250, or 500 MG/KG; 50/group.	
Chemicals Tentatively Scheduled for Peer Review November 29–30, 1994					
2,2-Bis(Bromomethyl)-1,3-Propanediol, 3296–90–0	Flam	Feed	Rm	R: 0, 2500, 5000, or 10000 PPM; 70/group M: 0, 312, 625, or 1250 PPM; 60/group.	
Isobutyl nitrite, 542–56–3	Intr	Inhal	Rm	R&M: 0, 37, 75, or 150 PPM.	
Nickel (II) oxide, 1313–99–1	Intr	Inhal	Rm	R: 0, .62, 1.25, or 2.5 M: 0, 1.25, 2.5, or 5.0 MG/M3; 50/group.	
Nickel sulfate hexahydrate, 10101–97–0	Intr	Inhal	Rm	R: 0, 0.125, 0.25, or 0.5 M: 0, .25, .5, or 1.0 MG/M3; 50/group.	
Nickel subsulfide, 12035–72–2	Envh	Inhal	Rm	R: 0, 0.075, or 0.15 M: 0, 0.6, or 1.2 MG/M3; 50/group.	
Triethanolamine, 102–71–6	Dtrg	Sp	Rmm	MR: 0, 32, 63, or 125; FR: 0, 63, 125, or 250; MM: 0, 200, 630, or 2000; FM: 0, 100, 300, or 1000 MG/KG; 60/group.	
Chemicals Tentatively Scheduled for Peer Review Summer 1995					
Butyl benzyl phthalate, 85–68–7	Plas	Feed	Rr	MR: 0, .3%, .6%, or 1.2%; 60/group FR: 0, .6%, 1.2%, or 2.4%; 60/group.	
T-butylhydroquinone, 1948–33–0	Food	Feed	Rmr	R&M: 0, 0.125, 0.25, or 0.5% in feed; 70 rats, 60 mice.	
Codeine, 76–57–3	Phar	Feed	Rm	R: 0, 400, 800, or 1600 M: 0, 750, 1500, or 3000 PPM; 60/group.	
1,2-dihydro-2,2,4-trimethylquinoline (monomer), 147–47–7.	Rubr	Sp	Rmm	Rats: 0, 60, or 100 MG/KG, Mice: 0, 6, or 10 MG/KG (core).	
1,2-dihydro-2,2,4-trimethylquinoline (monomer), 148–47–7.	Rubr	Sp	Rm	Rats: 0, 36, 60, or 100 MG/KG, Mice: 0, 3.6, 6.0, or 10.0 MG/KG.	
Salicylazosulfapyridine, 599–79–1	Phar	Gav	Rm	R: 84, 168, or 337.5 MG/KG; 70/group M: 675, 1350, or 2700 MG/KG; 60/group.	

TABLE 1.—LONG-TERM STUDIES TENTATIVELY SCHEDULED FOR PUBLIC PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM JUNE 21, 1994, THROUGH FALL 1995—Continued

Chemical name/Cas No.	Use	Route	Species	Exposure levels	NTP TR No.
Scopolamine hydrobromide trihydrate, 6533–68–2	Phar	Gav	Rmm	R&M: 0, 1, 5, or 25 MG/KG; 70/group diet restriction, Mice: 0 or .25 MG/KG; 70/group.	
Chemicals Tentatively Scheduled for Peer Review Fall 1995					
D & C yellow No. 11, 8003–22–3	Dye	Feed	R	Rats: 0, 0.05, 0.17, or 0.5%; 60/group.	
ethylbenzene, 100–41–4	Rubr	Inhal	Rm	R&M: 0, 75, 250, or 750 PPM (50/sex/species/group).	
Molybdenum trioxide, 1313–27–5	Metl	Inhal	Rm	R&M: 10, 30, or 100 MG/M3; 50/sex/species/group.	
Nitromethane, 75–52–5	Fuel	Inhal	Rm	R: 0, 94, 188, or 375 PPM; 50/group M: 0, 188, 375, or 750 PPM; 50/group.	
Tetrafluoroethylene, 116–14–3, PPM: 50/group	Food	Inhal	Rm	Mice & FR: 0, 312, 625, or 1250 MR: 0, 156, 312, or 625.	

Abbreviations Used in the Report

Use: Primary Use Category:
Comt Contaminates and/or Impurities
Cosm Cosmetics, Perfumes, Fragrances, Hair Preparations, Skin Lotions
Dtrg Detergents and Cleansers
Dye As or in Dyes, Inks, and Pigments
Elec In Electrical and/or Dielectric Systems or Products
Envh Environmental (Air/Water) Pollutants
Flam Flame Retardants
Food Food, Beverages, or Additives
Fuel As or in Fuel or Oil Products
Germ Germicides, Disinfectants, Antiseptics
Herb Herbicide(s)
Ind Industrial Uses
Intr Chemical Intermediate or Catalyst
Labc Unspecified Chemical Uses not Fitting in Solv, Intr, or Reag categories
Metl Metals or in Metal Products
Papr As or in Paper or Paper Products
Pest Pesticides, General or Unclassified
Phar Pharmaceuticals or Intermediates
Plas As or in Plastics
Pnt Paint Ingredient
Rubr Rubber Chemical
Solv Vehicles and Solvents
Texl In Manufacture of Textiles
Route Route of Administration:
Feed Dosed-Feed
Gav Gavage
Inhal Inhalation
IP/IJ Intraperitoneal Injection
Ivag Intravaginal
Micro Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical
Water Dosed-Water
Spec Species:
R=Rats
M=Mice

TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULE FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING 1994

Chemical name/CAS No.	Use	Route	Species	Exposure levels	NTP TR No.
Short-Term Toxicity Studies Scheduled for Peer Review January 1994					
Beta-bromo-beta-nitrostyrene, 7166–19–0	Pest	Gav	Rm	R&M 0, 0.037, 0.075, 0.3, 0.15, 0–.6 G/KG; 10/group.	40
Short-Term Toxicity Studies Scheduled for Peer Review February 1994					
1,3-diphenylguanidine 102–06–7	Rubr	Feed	Rm	R&M: 250, 500, 750, 1500, 3000 PPM/10 Per Group.	42
1–nitropyrene 5522–43–0	Labc	Inhal	R	R: 0, 0.5, 2.0, 8.0, 20.0, OR 50.0 MG/M3 12/S/group (CORE); 5/S/group for lung burden.	34
Short-Term Toxicity Studies Scheduled for Peer Review April 1994					
Dibutyl phthalate 84–74–2	Plas	Feed	Rm	In utero with F344 Rats; see 30 C62022B	30
Dibutyl phthalate 84–74–2	Plas	Feed	Rm	R: 0, 2500, 5000, 10000, 20000, OR 40000 Ppm R: 0, 1250, 2500, 5000, 10000, 20000 PPM (10/S/S).	30
Methapyrilene hydrochloride 135–23–9	Phar	Feed	R	Male rats: 0, 50, 100, 250, 1000 PPM; 40/group	46
Short-Term Toxicity Studies Scheduled for Peer Review May 1994					
Cyclohexanone oxime 100–64–1	Plas	Water	M	0, 625, 1250, 2500, 5000, OR 50 10000 PPM; 10/group.	50
Lead ores leadores	Metl	Feed	R	Ores: Males rats, 30/Group; lead sulfide used as standard: male and female 30/Group; 10 add'l males treated 180 days (PB sulfide) 0, 10, 30, & 100 PPM; particle size <38 microns; 30, 60, 90-day sacrifice.	48
Lead sulfide 1314–87–0	Pnt	Feed	R	Rats: male and female 0, 10, 30, 100 PPM, 10/Group 30, 60, 90, 180 day sac.	48

TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULE FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING 1994—Continued

Chemical name/CAS No.	Use	Route	Species	Exposure levels	NTP TR No.
Methylene blue trihydrate, 7220–79–3	Dye	Gav	Rm	R&M: 0, 0.125, 0.25, 0.5, 1.0, 2.0 GM/KG Body wt. R: 20/Group/Sex; M: 10/group/sex.	51
Methyl ethyl ketoxime, 96–29–7	Pnt	Water	Rm	R&M: 0, 625, 1250, 2500, 5000, OR 10000 PPM; 10/group.	
Short-Term Toxicity Studies Scheduled for Peer Review June 1994					
Class Study of Halogenated Ethanes:					
1,2-pitchloro-1,1-difluoroethane 1649–08–7	Ind	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,2-difluror-1,1,2,2-tetra-chloroethane 76–12–0	Solv	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
Hexachloroethane 67–72–1	Solv	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
Pentabromoethane 75–95–6	Ind	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
Pentachloroethane 76–01–7	Solv	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group; female rats 0, 1,24 MMOL/KG/DAY;.	45
1,1,1,2-tetrabromoethane 630–16–0	Ind	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,1,2,2-tetrabromoethane 79–27–6	Flam	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,1,1,2-tetrachloroethane 630–20–6	Intr	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,1,2,2-tetrachloroethane 79–34–5	Solv	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,1,1-trichloroethane 71–55–6	Solv	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
1,1,1-trichloro–2,2,2-trifluoroethane 354–58–5	Ind	Gav	R	Male rats 0, 0.62, 1.24 MMOL/KG/DAY; 5/group	45
Short-Term Toxicity Studies Scheduled for Peer Review 1994					
Cadium oxide 1306–19–0	Elec	Inhal	Rm	R,M: 0, 0.025, 0.05, 0.1, 0.25 OR 1.0 MG/M3 (10/S/S).	39
Cadium oxide 1306–19–0	Elec	Inhal	Rm	Rats & Mice: 0, 0.025, 0.05, 0.1, 0.25 OR 1.0 MG/MG (10/S/S).	39
Short-Term Toxicity Studies Scheduled for Peer Review August 1994					
Methacrylonitrile 126–98–7	Plas	Gav	Rm	R: 0,7.5,15.0,30.0,0,60.0,120.0 MG/KG/DAY; M: 0,0.75,1.5,3.0,6.0,12.0 MG/KG/DAY; RATS: 20/Grp; Mice: 10/group.	47
Short-Term Toxicity Studies Scheduled for Peer Review September 1994					
Benzophenone 119–61–9	Phar	Feed	Rm	R&M: 0,0.125,0.25,0.5,1.0,2.0%; R: 20/sex/grp; M: 10/SEX/group.	
M-chloroaniline 108–42–9	Intr	Gav	Rm	R&M 0, 10, 20, 40, 80, 160 MG/KG, 20/GRP (RATS); 10/group mice.	43
O-chloroaniline 95–51–2	Dye	Gav	Rm	R&M 0, 10, 20, 40, 80 & 160 MG/KG, 20/Group (rats); 10/group mice.	43
O-nitrotoluene 88–72–2	Rubr	Feed	R	Male R: 0, 0 altered microflora 20/Grp; 5000 PPM 60/grp; 5000 ppm altered microflora 40/group..	44
3,3',4,4'-tetrachloro-azobenzene 14047–09–7	Herb	Gav	Rm	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG body weight (M&F; 10/group).	
3,3',4,4'-tetrachloro-azobenzene 21232–47–3	Comt	Gav	Rm	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG body weight (M&F; 10/group).	
O-toluidine hydrochloride 636–21–5	Dye	Feed	R	O and 0 altered microflora; 20/group; 5000 PPM; 60 group.	44
Short-Term Toxicity Studies Scheduled for Peer Review October 1994					
Oxymetholone 434–07–1	Phar	Gav	Rm	R: 0, 80, 160, 315, 625, OR 1250 MG/KG; 20/sex/group M: 0, 160, 320, 630, 1250, OR 2500 MG/KG; 10/sex/group.	49
1,1,1-trichloroethane 71–55–6	Solv	Micro	Rm	R&M: 0, 0.5, 1.0, 2.0, 4.0, and 8.0 % (10/S/S).	

Abbreviations Used in this Report

Use: Primary Use Category:
Comt Contaminates and/or Impurities
Cosm Cosmetics, Perfumes, Fragrances, Hair Preparations, Skin Lotions
Dtrg Detergents and Cleansers
Dye As or in Dyes, Inks, and Pigments
Elec in Electrical and/or Dielectric Systems or Products
Envb Environmental (Air/Water) Pollutants
Flam Flame Retardants
Food Food, Beverages, or Additives
Fuel As or in Fuel or Oil Products
Germ Germicides, Disinfectants, Antiseptics
Herb Herbicide(s)
Ind Industrial Uses
Intr Chemical Intermediate or Catalyst
Labc Unspecified Chemical Uses not Fitting in SOLV, INTR, or REAG categories
Metl Metals or in Metal Products
Papr As or in Paper or Paper Products
Pest Pesticides, General or Unclassified
Phar Pharmaceuticals or Intermediates
Plas As or in Plastics
Pnt Paint Ingredient
Rubr Rubber Chemical
Solv Vehicles and Solvents
Texl In Manufacture of Textiles
Route Route of Administration:
Feed Dosed-Feed

Gav Gavage
Inhal Inhalation
IP/IJ Intraperitoneal Injection
Ivag Intravaginal
Micro Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical
Water Dosed-Water
Spec Species:
R = Rate
M = Mice

[FR Doc. 94–5493 Filed 3–9–94; 8:45 am]
BILLING CODE 4140–01–M

National Institutes of Health

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Services, DHHS.
ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in limited fields of use to practice the inventions embodied in U.S. Patent 4,371,673 (formerly U.S. Patent Application 06/170,570) and its foreign counterparts, entitled "Water Soluble Forms of Retinoids" to Samuelsson & Wadstein Medicina AB having a place of business at Lund, Sweden. The patent rights in these inventions have been assigned to the United States of America

The prospective exclusive license will be for the fields of skin care products for topical application and wound healing for topical application. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

This invention relates to cyclodextrin complexes of retinoid-polymers and complexes of retinoids with ether type derivatives of cyclodextrins. The U.S. patent issued on February 1, 1983 and contains both composition of matter and method of making claims to these complexes.

ADDRESSES: Requests for a copy of the above identified patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: February 16, 1994.

Donald P. Christoferson,
Acting Director, Office of Technology Transfer.

[FR Doc. 94–5491 Filed 3–9–94; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3649; FR–3403–N–02]

Elder Cottage Housing Opportunity Demonstration Announcement of Funding Awards for FY 1993

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.
ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department under the Elder Cottage Housing Opportunity (ECHO) Demonstration Program for FY 1993. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4542. TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The ECHO housing demonstration program is authorized by section 806(b) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA), as amended by section 602(d) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

The ECHO housing demonstration program is a demonstration program which allows a nonprofit section 202 owner to place a small, free-standing, barrier free, energy efficient, and removable dwelling unit (ECHO unit) adjacent to the existing single family home of a friend or relative of an eligible elderly person.

The purpose of the ECHO housing demonstration program is to determine the feasibility of incorporating ECHO units into the section 202 capital advance program. Specifically, the Secretary is directed to examine the durability of ECHO units, and determine whether the ECHO units are durable enough for continued use over the life of a capital advance (40 years).

A Notice of Funding Availability (NOFA) announcing HUD's FY 1993 funding of $4,533,562 in Capital Advances for construction of ECHO units was published on August 27, 1993 (58 FR 45384). A total of $5,352,800 in Capital Advances for construction of 100 ECHO units was awarded to seven non-profit organizations. (A total of $11,800,800 was awarded to the recipients; however, this figure includes the project rental assistance contract amount, in addition to the Capital Advance amount.) The difference between the amount awarded Capital Advances and the amount announced as available in the August 27, 1993 NOFA results from the fact that the NOFA amount was based on development costs per unit on a national basis. The projects selected were largely in areas where the per unit development cost is above the national average. In addition, subsequent to the publication of the NOFA, the Department published new higher cost factors which were higher in most areas, thereby increasing the total amount awarded for capital advances. Section 806(b) of NAHA requires that HUD fund 100 ECHO units from FY 1993 and 1994 Section 202 appropriations. (HUD opted to fund all 100 ECHO units from FY 1993 section 202 appropriations.) Because section 806(b) requires that HUD fund 100 ECHO units, without regard to the actual cost of those 100 ECHO units, the Department had to use additional funds from the section 202 appropriations to fund the 100 ECHO units.

The recipients were chosen in a national competition under selection criteria announced in the August 27, 1993 NOFA. In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the projects awarded funds under the

FY 1993 NOFA, and the amount of awards are attached to this Notice.

Dated: March 4, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

AWARDEES FOR THE ELDER COTTAGE HOUSING OPPORTUNITY DEMONSTRATION PROGRAM FY 1993

	Units	Capital advance	PRAC annual contract amount
Region: New York, New Jersey (Formerly Region II):			
Phillipsburg—031–EE022/NJ39–S932–001 NW New Jersey CAP 350 Marshall Street Phillipsburg, NJ 08865	20	$1,499,700	$93,200
Subtotal	20	1,499,700	93,200
Region: Southeast (Formerly Region IV):			
Knoxville—087–EE013/TN37–S932–001 Leadership Associates 408 N Cedar Bluff Road Knoxville, TN 37923	20	943,700	53,500
Louisville—083–EE030/KY36–S932–001 Christian Church Homes KY 12700 Shelbyville Road Louisville, KY 40243	10	513,900	29,100
Jacksonville—066–EE025/FL29–S932–001 CODEC, Inc. 300 SW–12th Avenue Miami, FL 33130	10	542,900	28,400
Subtotal	40	2,000,500	111,000
Region: Great Plains (Formerly Region VII):			
Kansas City—102–EE011/KS16–S932–001 Contemporary Housing Alt. 534 S. Kansas Avenue Topeka, KS 66603	20	898,500	56,300
Des Moines 074–EE013/IA05–S932–001 S. Central Iowa Dev. Corp 107 NW 2nd Street Leon, IA 50144	10	484,800	28,400
St. Louis 085–EE020/MO36–S932–001 DELMO Housing Corp P.O. Box 354 Lilbourn, MO 63802	10	469,300	33,500
Subtotal	40	1,852,600	118,200
Total	100	5,352,800	322,400
Total Capital Advance Plus 20-Year Prac			11,800,800

[FR Doc. 94–5533 Filed 3–9–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–4333–04]

Nevada; Temporary Closure of Certain Public Lands in the Winnemucca District for Management of the Spring 1994 Running of the "RENO 300" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain Public Lands in Washoe, Lyon and Churchill Counties, Nevada on and adjacent to the Spring 1994 "Reno 300" race course on April 30, 1994. Access will be limited to race officials entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Winnemucca District, Washoe, Lyon and Pershing Counties will be temporarily closed to public access from 0600 hours, April 24, 1994 to 2400 hours April 30, 1994, to protect persons, property and public land resources on and adjacent to the Spring 1994 "Reno 300" OHV race course. The Sonoma-Gerlach Area Manager is the authorized officer for the Spring 1994 "Nevada 300" OHV race, permit number N2–1–94. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washed identified as the Spring 1994 "Reno 300" OHV race course.

The following public lands administered by the BLM restricted or closed are described as the following: T. 22 N., R. 24 E., Sec. 2, 12, 18, and 30; T. 23 N., R. 24 E., Sec. 2, 12, 14, and 26; T. 24 N., R. 24 E., Sec. 10, 12, 16, 17, 20, 26, 28, 34, and 36; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 20, 22, 28, and 32; T. 22 N., R. 25 E. Sec. 30; T. 23 N., R. 25 E., Sec. 2, 6, and 10; T. 24 N., R. 25 E., Sec. 6, 8, 18, 20, and 30; T. 25 N., R. 25 E., Sec. 30, 31, and 32; T. 21 N., R. 26 E., Sec. 6 and 8; T. 22 N., R. 26 E., Sec. 2, 14, 22, 28, and 32; T. 23 N., R. 26 E., Sec 6, 16, 22, 26, and 36.

The following public lands administered by the BLM will be designated as a secondary pit area: T. 23 N., R. 24 E., Sec. 14.

The lands involved are located in the Mount Diablo Meridian and are located north and northeast of Fernley, Nevada. They are within Washoe, Pershing and Lyons Counties, A map showing the exact route of the course is available from the following BLM office: the Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada, 89445, (702) 623–1500.

Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided for in 43 CFR 8360.7.

FOR FURTHER INFORMATION CONTACT: Lynn Clemons, 705 East Fourth Street, Winnemucca, Nevada 89445, (702) 623–1500.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 94–5581 Filed 3–9–94; 8:45 am]

BILLING CODE 4333–HC–M

[NM–940–4120–04; OKNM 92222]

Invitation To Participate; Exploration for Coal in Oklahoma; Correction

In notice document 94–59, No. 4, beginning on page 775 in the issue of Thursday, January 6, 1994, make the following corrections:

1. On page 775, in the second column, under T. 8 N., R. 25 E., correct sec. 6 to read as follows: "sec. 6, lots 6 and 7, NE¼SW¼, N½SE¼SW¼, N½SE¼, and N½SW¼SE¼."

2. On the same page, same column, change acreage to read "aggregating 997.46 acres, more or less."

Dated: March 2, 1994.

Frank Splendoria,

Deputy State Director.

[FR Doc. 94–5584 Filed 3–9–94: 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4120–04; OKNM 92221]

Invitation To Participate; Exploration for Coal in Oklahoma; Correction

In notice document 94–59, No. 4, beginning on page 775 in the issue of Thursday, January 6, 1994, make the following corrections:

1. On page 775, in the first column, under T. 6 N., R. 20 E., correct sec. 35 to read as follows: "sec. 35, S½S½SW¼ and S½SE¼."

2. On the same page, same column, under T. 6 N., R. 21 E., correct sec. 31 to read as follows: "sec. 31, lots 2, 3, and 4, S½S½NE¼, S½SE¼NW¼, E½SW¼, and SE¼;"

3. On the same page, same column, under T. 6 N., R. 21 E., following sec. 33, S½S½N½ and S½; insert "sec. 35, N½S½ and N½S½S½;", and following sec. 35, insert "sec. 36, N½S½ and N½S½S½."

4. On the same page, same column, under T. 6 N., R. 22 E., correct sec. 31 to read as follows: "Sec. 31, lots 3 and 4, NE¼SW¼, N½SE¼SW¼, N½SE¼, and N½S½SE¼."

5. On the same page, same column, under T. 6 N., R. 23 E., correct sec. 31 to read as follows: "sec. 31, lot 3, NE¼SW¼ and N½SE¼."

6. On the same page, same column, change acreage to read "aggregating 4,230,37 acres, more or less."

Dated: March 2, 1994.

Frank Splendoria,

Deputy State Director.

[FR Doc. 94–5585 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–FB–M

[MT–930–04–4320–01]

Notice To Withdraw Decision Records on the Statewide Environmental Assessment for Predator Management in the Lewistown District Office, MT, et al.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State Director for Montana announces that on March 3, 1994, the District Managers in all three Montana districts withdrew their Decisions, issued November 17, 1993, on Predator Management.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–255–2929.

SUPPLEMENTARY INFORMATION: Based on the need to review and revise the Environmental Assessment for Predator Management in Montana, the Lewistown, Miles City, and Butte District Managers have withdrawn their Decision Records. Following review and revision of the environmental assessment, separate decisions on predator management will be reissued for each Montana district.

Dated: March 4, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–5499 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–DN–P

[ID–942–04–406A–02]

Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., March 2, 1994.

The supplemental plat prepared to show amended lottings in sections 5 and 6, Township 12 South, Range 17 East, Boise Meridian, Idaho, was accepted February 28, 1994.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: March 2, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–5588 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–GG–M

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 60 W., accepted March 2, 1994
T. 51 N., R. 95 W., accepted March 2, 1994
T. 38 N., R. 112 W., accepted March 2, 1994
T. 19 N., R. 93 W., accepted March 2, 1994
T. 52 N., R. 105 W., accepted March 2, 1994
T. 49 N., R. 106 W., accepted March 2, 1994
T. 48 N., R. 106 W., accepted March 2, 1994
T. 49 N., R. 105 W., accepted March 2, 1994
T. 50 N., R. 105 W., accepted March 2, 1994

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, metes and bounds surveys, retracements and surveys.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: March 2, 1994.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 94–5583 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–22–M

[NV–930–4210–05; N–57229]

Realty Action: Lease of Public Land in Clark County, NV

AGENCY: Bureau of Land Management.

ACTION: Initiation of a 45 day public comment period on the proposed lease of public land for airport purposes.

SUMMARY: Pursuant to the authority in the Act of May 24, 1928, as amended (49 U.S.C. appendix, 211–213), a 45 day public comment period is initiated on the following land proposed to be lease for airport purposes to Clark County:

Mount Diablo Meridian, Nevada

T. 25 S., R. 59 E.,
Sec. 14: SW¼NE¼.
Sec. 23: NE¼NE¼, SW¼NE¼, E½NW¼.
Containing 200.00 acres, more or less.

SUPPLEMENTARY INFORMATION: The public land is located in Jean, Nevada. The land is adjacent to lands currently owned by Clark County and will allow for the required approach safety zone. The land is not needed for Federal purposes. Lease of the land is consistent with current BLM land use planning and would be in the public interest.

This notice segregates the above described land from operations of the public land laws, including the general mining laws. The segregative effect will end upon issuance of the lease or one year from the date of this publication, whichever occurs first.

DATES: For a period of 45 days from March 10, 1994, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Stateline Resource Area Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the decision to approve this realty action will become a final determination of the Department of the Interior 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Cheryl Ruffridge, Stateline Resource Area Realty Specialist, Bureau of Land Management, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647–5000.

Dated: March 3, 1994.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 94–5582 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–HC–M

[CACA 33906, CACA 33907, CACA 33908, CACA 33909, CACA 33910]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 439.87 acres of National Forest System lands in Nevada, Sierra and Yuba counties, to protect various recreation areas and a roadside zone. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a public meeting should be received on or before June 8, 1994.

ADDRESSES: Comments and requests for a public meeting should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On January 24, 1994, the United States Department of Agriculture, Forest Service filed 5 applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights: All located in Tahoe National Forest.

Mount Diablo Meridian

CACA 33096

Union Flat Campground

T. 20 N., R. 11 E.,
Sec. 28, SE¼SW¼;
Sec. 33, N½NE¼NW¼.

CACA 33907

Wild Plum Campground

T. 20 N., R. 12 E.,
Sec. 26, S½SE¼SW¼;
Sec. 27, N½SW¼SE¼, SE¼SW¼SE¼, and SE¼SE¼.

CACA 33908

Ramshorn Campground

T. 19 N., R. 9 E.,
Sec. 1, N½SE¼ and N½N½S½SE¼.

CACA 33909

Oregon Creek Picnic Area and Roadside Zone for California State Highway 49

T. 18 N., R. 8 E.,
Sec. 28, SW¼SW¼SE¼NE¼, W½NE¼SE¼, S½SE¼NE¼SE¼, E½NW¼SE¼, N½NE¼SE¼SE¼, and N½N½NW¼SE¼SE¼.

CACA 33910

South Yuba No. 1—Keleher Picnic Site; South Yuba No. 3—Golden Quartz Picnic Site

T. 17 N., R. 11 E.,
Sec. 9, Lots 14, 15.
Sec. 6, SE¼SE¼SW¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;

The areas described aggregate 439.87 acres in Nevada, Sierra and Yuba counties, California.

Until June 8, 1994, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director before June 8, 1994. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

Dated: February 24, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–5609 Filed 3–9–94; 8:45 am]

BILLING CODE 3410–11–P

[ID–943–406A–02; IDI–30525]

Notice of Proposed Withdrawal and Opportunity for Public Meeting: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 40 acres of National Forest System lands for protection of a dam, powerhouse and access road. This notice closes the lands

for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments or requests for a meeting should be received on or before June 8, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, (208) 384–3166.

SUPPLEMENTARY INFORMATION: On February 17, 1994, the United States Department of Agriculture, Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

Boise National Forest

T. 5 N., R. 11 E.,
Sec. 5, lot 8.

The area described contains 40 acres in Elmore County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are presently authorized leases, licenses, permits, rights-of-way, etc.

Dated: March 1, 1994.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 94–5580 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records six notices describing records maintained by the Bureau of Reclamation. The systems of records notices being abolished are entitled "Accounts Receivable—Interior, Reclamation-2," which was previously published in the **Federal Register** on December 21, 1988 (53 FR 51324), "Collection Contracts—Interior, Reclamation-6," which was previously published in the **Federal Register** on November 16, 1984 (49 FR 45492), "Publication Sales—Interior, Reclamation-27," which was previously published in the **Federal Register** on April 11, 1977 (42 FR 19103), "Travel Approval Authorizations and Reports—Interior, Reclamation-35," which was previously published in the **Federal Register** on April 11, 1977 (42 FR 19106), "Travel Vouchers—Interior, Reclamation-36," which was previously published in the **Federal Register** on September 27, 1984 (49 FR 38196), and "Vendor Payment Records—Interior, Reclamation-44," which was previously published in the **Federal Register** on April 11, 1977 (42 FR 19108). These systems of records are no longer being maintained in the Department of the Interior.

Prior to October 14, 1992, the Bureau of Reclamation maintained a separate record of individuals who owed money to the Bureau for the purpose of accounting for payments received (Reclamation-2); a record of individuals who rent, lease or buy from the Bureau under a collection contract or agreement for the purpose of collecting funds due (Reclamation-6); a record of individuals purchasing Bureau publications for the purpose of accounting for funds received from the sale of publications (Reclamation-27); a record of travel authorizations for the purpose of authorizing employees to travel on official business (Reclamation-35); a record of travel vouchers for the purpose of paying the travel and transportation expenses of employees who travel on official business (Reclamation-36); and a record of individuals furnishing services or supplies for the purpose of documenting the disbursement of funds to these individuals (Reclamation-44).

With the establishment of the Departmentwide system of records "Federal Financial System—Interior, DOI-90" (57 FR 47118), these systems became obsolete. On December 14, 1992, the records maintained in these systems were incorporated into the Federal Financial System.

These changes shall be effective on publication in the **Federal Register** (March 10, 1994). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: March 3, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 94–5589 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

RIN 1018–AC06

Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final guidelines.

SUMMARY: These final technical Guidelines are being published in response to section 5605, Guidance and Notification, of the Clean Vessel Act of 1992, which requires the issuance of draft technical guidelines for public comment within 3 months after the date of the enactment of this Act, and the issuance of final technical guidelines within 6 months after the date of enactment. The technical guidelines should be used by States to conduct surveys and develop plans for pumpout stations and dump stations, to develop education/information programs, and to construct pumpout stations and dump stations.

DATES: These final technical guidelines are effective April 11, 1994.

ADDRESSES: Copies of the final guidelines may be obtained by mailing a request to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW. (Mailstop 140 ARLSQ), Washington, DC 20240, or by picking it up at the Division of Federal Aid, Fish

and Wildlife Service, room 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

Findings

The Congress found that there is currently an inadequate number of pumpout stations for Type III marine sanitation devices (MSD) (holding tanks) where recreational vessels normally operate; and, sewage discharged by recreational vessels, because of an inadequate number of pumpout stations, is a substantial contributor to localized degradation of water quality in the United States.

Purpose of the Act

The purpose of the Clean Vessel Act (Act) Pub. L. 102–587, subtitle F)" is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout stations and dump stations."

Purpose of the Technical Guidelines

The purpose of these guidelines is to provide States with technical information on adequacy of and appropriate types and location of pumpout stations and dump stations, disposal of sewage from these facilities, and waters most likely to be affected by the discharge of sewage from vessels. They also provide information to the States in completing the surveys, developing plans, and developing an education/information program. The guidelines will let States know what options are available and provide them with basic information upon which to base their choices. Environmental Protection Agency (EPA) regional offices, regulatory agencies, equipment suppliers and marina operators are another valuable source of information. The guidelines, however, are not to be used as a design manual or a substitute for the preparation of a design for a specific facility.

Consultation

As required in section 5605 of the Act, the Secretary of the Interior (Interior) has consulted with the Administrator of the EPA, the Under Secretary of Commerce for Oceans and Atmosphere (NOAA), and the Commandant of the Coast Guard (USCG), in the development of these guidelines. In addition, Interior has consulted with coastal States, local municipalities, boat users, manufacturers of pumpout equipment, marina operators, conservation groups, and others in obtaining information necessary to develop these guidelines. Three scoping meetings were held in January 1993, with various constituents. A scoping document was sent to nearly 100 people, and 45 comment letters were received. Draft guidelines were published in the **Federal Register** June 17, 1993, Vol. 58, No. 115, pages 33447–33457, and comment letters were received. EPA, NOAA, and USCG assisted in the review of these comments and finalization of these guidelines.

Relationship to the Grant Process

The technical guidelines are interim guidelines that will be later codified. They should be used by coastal States in conducting surveys, developing plans and education/information programs, and constructing pumpout/dump stations. However, grant guidelines will be needed for States to properly apply for funds under this grant program. The grant guidelines will provide criteria for the Fish and Wildlife Service (Service) to use in prioritizing grant proposals for funding. Such information as priorities, national pumpout symbols, other signs, fee restrictions, and monitoring success of projects, will be placed in the grant guidelines. Grant guidelines are being developed separately, and were published in the **Federal Register** July 8, 1993, Vol. 58, No. 129, pages 36619–36623. Funds are made available through a competitive process to coastal States to complete the surveys and develop plans, and, for all States, to apply for construction grants and education funds.

Statement of Effects

These guidelines have been reviewed under EO 12866. The guidelines do not involve "taking" as described in Executive Order 12630. The guidelines allow eligible States to make decisions regarding the development and submission of proposed grants for surveys, plans, construction/renovation and education. Therefore, they are consistent with Executive Order 12612 on Federalism. The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The effects of these guidelines occur to agencies in the States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia and the Northern Mariana Islands. Some small entities, mainly marina operators, may be the recipient of grants.

Summary of Comments and Recommendations

In the June 17, 1993, Notice of Public Review of Technical Guidelines, all interested parties were requested to submit comments that might contribute to the development of a final rule for a 45 day period ending August 2, 1993. Appropriate State and Federal agencies, local governments, boaters and boating organizations, marina owners/operators, marine equipment manufacturers and retailers, conservation organizations, and other interested parties were contacted and requested to comment.

A total of 8 written comment letters on the proposed guidelines were received by the Service, 4 from State agencies, 1 from a boating organization, 1 from a marina organization, 1 from a conservation organization, and 1 from a marine equipment manufacturer. All comment letters made suggestions to clarify and recommendations to modify some of the language and guidance. One verbal comment suggesting clarification was recorded from a State official. In addition to the comments received, four changes were made. The first change is in the Backgrounds. Definitions were relocated to the Technical Guidelines portion, just ahead of section 1. The second change is in the Technical Guidelines portion, section 2., first paragraph, and the Technical Guidelines portion, section 4., first paragraph, third sentence. Surveys and Plans should be submitted to the appropriate Regional Office. Addresses are provided. The third change, Technical Guidelines, section 2., is an addition to the second paragraph, first sentence, to indicate that all marinas should be surveyed. The fourth change is an addition of two paragraphs in the Information Packet, section 6., Off-Site Treatment, between the first and second paragraphs. These two paragraphs were inadvertently left out of the draft guidelines.

A total of 44 issues were identified by the commenters. The Service considered all suggestions and recommendations. This final guideline revises the proposed guidelines based on the issues raised by the commenters and makes other changes to clarify the requirements in the proposed guidelines. Those comments adopted are included in the final guidelines in the appropriate Sections. The following is a discussion of the issues raised by the commenters, the Service's responses to those issues, and a summary of changes made to the proposed guidelines.

Issue 1. Raritan Engineering Co., Inc.: Background, Findings, Raritan

Engineering said the word "may be" does not correspond to the wording in the Act, which states that "sewage discharged * * * is a substantial contributor * * *."

Response: The words "may be" have been deleted, and the word "is" has been substituted.

Issue 2. International Marina Institute (IMI): Other issues, Technical Guidelines, first paragraph, first sentence: The IMI states that the program should be handled by State administrators who know, and are known by, the marina industry. Inappropriate State program managers may not work as aggressively or successfully to facilitate pumpout installations. According to the IMI, some of the official State contacts have little or nothing to do with marinas or boat sewage controls. These contracts must move beyond traditional turf and foster inter- and intra-agency cooperation, planning and management.

Response: The Service agrees that the State should select the most appropriate State administrators to ensure the highest interest in the program, and encourages them to do so. The Service has been working closely with each State administrator identified. However, the actual selection process, according to statute, is up to the Governor of each State.

Issue 3. International Marina Institute (IMI): Technical Guidelines, first paragraph, second sentence: The IMI states that, unless the prohibition by a number of State laws to grant funds to private marinas is overcome, the intent of Congress will not be achieved. Guidelines need to be strengthened requiring grants be available to private facilities as well. The IMI said that States must identify restrictions on giving grants to private marinas in their application and what will be done to overcome this problem. States must explain in their plan how they will seek private applications and what proportion of the slip/mooring capacity is in public vs. private marinas. The IMI states that the Service should caution that inability of any State to give grants to private marinas will significantly lower that State's priority for funds. Funds should go to public and private marinas in approximate ratio to the public/private ratio in each State. Should the private marinas choose to not apply for grants during the first four years, then the IMI states that the funds should be released for use by the public sector in the fifth year of the program. Similarly, in the Information Packet, section 8. Other Information That is Considered: The IMI states that this Section should include language that such States with legal roadblocks to this public/private partnership must be required, as a condition of receiving any program funds, to change their law, and/or seek legal ways to bypass the serious impediment. IMI is very worried about this issue, and asks the Service to take affirmative action to keep private business a full partner in this program.

Response: The Service agrees that it is very important for States to overcome any prohibition of States to fund private marinas, and has added language in the Technical Guidelines portion, first paragraph, fourth sentence, and in the Technical Guidelines portion, section 4. Plans, (4)(e). States are already required to identify any restrictions to funding private marinas in the technical guidelines portion, section 4. Plans, (4)(e). The priority system identified in the final grant guidelines gives higher priority to those projects with public/private partnerships. Regarding the comment that funds should go to public and private marinas in approximate ratio to the public/private ratio and the comment that funds be released to the public sector in the fifth year if private marinas do not apply, priority will be given by the Service to those facilities that solve resource problems identified in the State's Plan rather than public/private ratios, which may not match resource problems. Regarding the suggestion that States with legal roadblocks to funding private marinas should be required to change their laws before funds will be granted to them, the Service has no legal authority to require States to change their laws.

Issue 4. Center for Marine Conservation and States Organization of Boating Access, Technical Guidelines, first paragraph, second and third sentences, "Both public and private marinas are eligible to participate in this program and should conform to these technical guidelines. Other marinas would not have to conform.": Both groups asked what other types of marinas there are other than public and private?

Response: This statement has been corrected to read that public and private marinas that participate must conform to these guidelines. Marinas that do not participate do not have to conform.

Issue 5. Center for Marine Conservation (Center): Technical Guidelines, Definitions (4) Waste reception facility: In the Center's work with vessel-generated garbage and the Marine Plastic Pollution Research and Control Act, "reception facility" refers to garbage cans, dumpsters, and recycling containers at ports and marinas. "Adequate reception facilities" are required under MPPRCA, and are referred to quite often. The Center wants to make sure that the phrase "waste reception facilities" referred to in the Clean Vessel Act guidelines is not going to confuse boaters or marina operators who are also exposed to provisions of the garbage laws dealing with garbage reception facilities. The Center suggests using another term, such as "portable toilet dump station" or "sewage reception facility".

Response: The Service agrees and has changed the term to agree with the term used in the grant guidelines: Dump stations.

Issue 6. Oregon State Marine Board (Marine Board): Technical Guidelines, Definitions (4) Dump Station: The Marine Board states that floating restrooms should be eligible for federal aid. They suggest that they are an eligible "dump station" which meets the intent of the Act to reduce vessel sewage pollution. Although landside restrooms should be ineligible, floating restrooms are not upland facilities and are used solely by boaters as dump stations. The Marine Board states that floating restrooms provide the only means to reasonably accommodate human waste from boaters using smaller recreational watercraft 12–18 ft. that do not carry portable toilets or do not have holding tanks.

Response: The Service agrees, and has added language in the guidelines to incorporate this suggestion, provided the facility is in the water, not connected to the shore.

Issue 7. International Marina Institute (IMI): Technical Guidelines, Definitions, (9) Coastal zone: the IMI suggests Printing out the full definition for coastal zone as given in the CZM Act of 1972 under Definitions.

Response: The Service agrees, and has printed it in full in the final guidelines.

Issue 8. International Marina Institute (IMI): Technical Guidelines, section 2. Surveys, Facility Survey, second paragraph, first sentence: The IMI states that survey of marinas for pumpout stations/dump stations should indicate whether the facility is public or private.

Response: The Service agrees and has added this survey question to the text.

Issue 9. Michigan Department of Natural Resources (Michigan DNR): Technical Guidelines, section 2. Surveys, second paragraph, first sentence, discussion of survey by specific coordinates: The Michigan DNR states that the Clean Vessel Act does not require the States to identify marinas by North American Datum Standard, nautical charts, etc. According to the law, section 5603 entitled "Charts (1) In General—the Under Secretary of Commerce for Oceans and Atmosphere

shall indicate, on charts published by the National Oceanic and Atmospheric Administration (NOAA) for the use of operators of recreational vessels, the locations of pumpout stations and dump stations." The Michigan DNR asks that this portion of the technical guidelines be taken out and be replaced by the specifications of the Act.

Response: The Service agrees and has rephrased this portion to agree with the Act. The Service suggests that obtaining specific coordinates for marinas may be helpful to determine location of marinas for development of plans.

Issue 10. International Marina Institute (IMI): Technical Guidelines, section 2. Boat Survey, third paragraph: The IMI states that most States do not have the ability to quickly determine which boats have toilets and what type MSD they are. The IMI states that the Service should request that the USCG require States to ask all boat owners if they have a MSD and what type, and include the data in their annual boating statistics reports. According to the IMI, States should list MSD use as part of their annual reports to the USCG and the USCG needs to correlate its own Federal documentation program (assume all documented vessels have toilets).

Response: The Service recognizes that this information may not be readily available, and has advised States in section 2. of the technical guidelines and Information Packet portion of these guidelines that reasonable estimates are acceptable. The Packet also advises States of alternative means of obtaining this information. The USCG would require legislative authority to require States to ask all boat owners if they have a MSD and include the data in their annual boating statistics report, since the purpose of the report is now boat safety. Regarding the comment that the USCG correlate its own Federal documentation, this would not result in obtaining a sufficient number of boats for the States to adequately complete their survey.

Issue 11. Oregon State Marine Board (Marine Board): Technical Guidelines, section 3., first paragraph, first sentence: The Marine Board requests the Service to add "/or". The sentence should read: "As a general guide, at least one pumpout station and '/or' dump station should be provided for every 300 to 600 boats (not considering length or toilets)." In Oregon, according to the Marine Board, the number of boats under 26 ft. is over 90% of the registered boats in the State. Therefore, the requirement of one pumpout as the sole means for vessel waste reception and not including dump stations or other means of waste disposal for every 300 to 600 boats, regardless of boat length, would be impracticable to meet in Oregon, according to the Marine Board.

Response: This formula is guidance only, not a requirement. States should use their judgment as to when this formula should be modified, or even used.

Issue 12. International Marina Institute (IMI): Technical Guidelines, section 3. Adequate Pumpouts, first paragraph, first sentence: According to the IMI, this section must be directly linked to the number and location of boat toilets. Otherwise, States may count all boats whether or not capable of holding a MSD toilet. Boat count guide for the number of pumpout stations now includes all canoes, dinghies, rowboats, etc., and all other boats without toilets, which distorts boat toilet use patterns and location of pumpout needs. The IMI states that the word "not" in the following sentence should be deleted: "As a general guide, . . . 300 to 600 boats (not considering length or toilets)." The IMI requests adding the following: "The number and location of pumpouts be based on counts of boats with toilets and/or boats 22 feet in length and larger capable of having installed MSDs."

Response: The Service agrees that canoes, dinghies, etc., should not be included in the assessment of need, and has added language to that effect. The amended method now suggested in the guidelines is a general guide only, and can be further amended by adding the language suggested by the commenter, or by any of the factors listed in that Section.

Issue 13. Oregon State Marine Board (Marine Board): Technical Guidelines, Section 3., first paragraph, second sentence: The Marine Board states that there needs to be a better breakdown of the requirement for vessel dump stations and pumpouts for marinas accommodating over 50 boats. The Marine Board suggests the following language: "Marina with 50 slips or more that are capable of mooring 26 ft. + boats install at least one pumpout station. Marinas with 50 slips or more that are capable of mooring 16–26 ft. boats install at least one pumpout or portable toilet dump station."

Response: This Section has been rewritten to incorporate the suggested language. Because the guideline is not a requirement, but guidance, which States should use or modify as needed, additional language has been added which clarifies this point. States should assess each particular situation to determine the pumpout stations and dump stations needed.

Issue 14. Oregon State Marine Board (Marine Board): Technical Guidelines, Section 3., second paragraph: The Marine Board requests adding the following to better clarify where to install waste reception facilities: "Waste reception facilities should be sited in conjunction with marinas, parking lot harbor or where vessels congregate or are used, such as transient harbors or launching ramps."

Response: The statement has been amended to better clarify where dump stations should be installed.

Issue 15. International Marina Institute (IMI): Technical Guidelines, section 4. (3) Expected Results or Benefits: To the end of that sentence the IMI requests adding "* * * and how results will be monitored and benefits will be measured."

Response: Although States have the option to monitor and measure benefits, and are encouraged to do so when necessary, requiring this step of the States goes beyond the intent of the Act and conveys an unnecessary burden to the States. There may be so many other factors, such as municipal sources of pollution, that it may be extremely difficult and expensive to measure the specific benefit of installing pumpouts. Pumpouts should be viewed as a Best Management Practice which, when installed, will help clean up the water by preventing one source of pollution.

Issue 16. International Marina Institute (IMI): Technical Guidelines, section 4. (4) (c), Approach/Strategy: The IMI suggests mentioning here or in section 8. that grants should not go for endless repairs of existing pumpouts which have proven to be located in inappropriate sites, under failed government control, or which has a history of unreasonably low use and performance. The IMI states that the State strategy must address the question of whether or not an existing pumpout station is worth upgrading, and how demonstrated problem pumpout services will be upgraded or eliminated.

Response: The Service agrees and has added language in section 4. (4) (c).

Issue 17. International Marina Institute (IMI): Technical Guidelines, section 4. (4) (d): To the list following "How States will ensure that * * *" the IMI requests adding "(iii) facilitate speedy permits for pumpout station construction or improvement." The IMI states that Federal and State agencies must facilitate, speed, and make less expensive the process of granting permits for pumpout stations. The IMI requests that the guidelines ask States to tell the Service how the permit process

will be expedited, and to document the average time it takes for a pumpout permit. The IMI believes the Service should give high priority to those States who speed the process.

Response: The Service encourages States to expedite the permit processes required by State and local governments, so that facilities will be installed as soon as possible. However, requiring the requested information is beyond the scope of the Act and the authority of the Service.

Issue 18. International Marina Institute (IMI): Technical Guidelines, section 4. (4) Approach: The IMI requests adding "(i) Describe methods to be used to measure program costs and benefits to the boating public; and (j) How the State will evaluate and monitor the program effectiveness and make changes to approaches as weaknesses and/or unanticipated opportunities become apparent." The IMI believes that program evaluation needs to be given greater emphasis, to assure quality products.

Response: Section "(i) Describe methods to measure costs and benefits * * *" is beyond the scope of the Act. Section (j) is included in the grant guidelines, § 85.42(c), which requires States to ensure that facilities are operated and maintained and used for the stated grant purpose. A paragraph at the end of section 3. of the Technical Guidelines has been added to give program evaluation greater emphasis.

Issue 19. Center for marine Conservation (Center): Technical Guidelines, section 5. Education/ Information: The Center considers education as a critical component in the ability of the Clean Vessel Act to keep boater's sewage out of the water. They are concerned that all education efforts will be done State by State, and that there is no plan for national development of model education programs or materials which can then be used by the States. With the Center's marine debris work, they have seen the effective use of a national information office, and have seen that it minimizes duplication at the State level, and enhances coordination and communication between educators. The Center believes something similar for the Clean Vessel Act would enhance the ability of the Act and reduce costly duplication.

Response: The Service is planning a workshop with Federal, State and local agencies, the marine industry, boaters, conservation organizations, and interested parties, early in 1994, to identify gaps in the education program, and responsibilities for filling those gaps. The Service encourages any organization interested to attend. Notice of the date, time, and place will be published in the **Federal Register**. In addition, the EPA is developing two reports on the subject, both still in draft: (1) Framework for a Public Outreach Strategy on Sewage Discharges from Boats and Marinas; and, (2) INTERIM REPORT: Summary of Federal Programs and Tools; Summary of State and Local Programs and Tools; Identification of Missing and Needed Information for Guidance Development on Boat and Marina Pollution Control; List of Contacts.

Issue 20. Oregon State Marine Board (Marine Board): Technical Guidelines, section 6. (1) (a) and (b), discharge of wastewater to treatment facilities and transport by licensed septage haulers: The Marine Board has found that time and again with Oregon there has been non-acceptance of vessel wastes by many small municipal wastewater treatment facilities. Therefore, the Marine Board recommends that USFWS or others conduct a detailed study on the effects of vessel waste treated by municipal wastewater systems and provide States technical guidance on this matter.

Response: When developing the State Plan, States are asked to identify any problems with municipal treatment plant operators accepting marine sewage. When the extent of the problem is ascertained, the Service will then consider solutions to the problem. At this time, a number of studies have been done to show that vessel sewage should not be a problem to waste treatment plants. Education may be the best toól for overcoming this perceived problem

Issue 21. International Marine Institute (IMI): Technical Guidelines, section 7., third paragraph, after first sentence: The IMI requests adding a sentence: "When pumpouts are installed on or near boat fueling areas, explosion proof motors and switches must be used."

Response: The Service agrees and has added language to that effect.

Issue 22. International Marina Institute (IMI): Information Packet, section 1. (5) Nursery Areas: The IMI states that this section is misleading, unsupported, and subject to regulatory abuse, and should be deleted. New York State Department of Environmental Conservation (DEC): The DEC requests expanding "Nursery areas of indigenous aquatic life" in section 1., item (5) to make reference to State and Federally designated significant habitats such as are designated in Coastal Zone programs.

Response: The Service agrees that the definition is too broad and has deleted it, substituting the definition suggested by New York State DEC in the Information Packet and section 1. (5) of the technical guidelines.

Issue 23. International Marina Institute (IMI): Information Packet, section 1., Discussion of the effects of vessel sewage on these waters, first paragraph, third sentence: The IMI requests changing the word from "several" to "many" in the sentence "While vessel sewage discharges represent only one of 'several' sources * * *"

Response: The Service agrees and has made the change.

Issue 24. International Marina Institute (IMI): Information Packet, Section 1., Discussion of the effects of vessel sewage * * * second paragraph, second sentence: The IMI requests adding the word "uncooked" to text: "Humans are put at risk by eating 'uncooked' contaminated shellfish. * * *" According to the IMI, cooking kills the pathogens.

Response: Although the discussion is primarily about pathogens, cooking does not destroy all forms of contaminants. Therefore, the conservative approach is taken.

Issue 25. International Marina Institute (IMI): Information Packet, Section 1., Discussion of the effects of vessel sewage * * * second paragraph, last sentence: The IMI requests deleting "and swimming beaches" from text. According to the IMI, the statement is not true for most beaches.

Response: The Service agrees that the statement is not true for most beaches, and has modified the statement accordingly.

Issue 26. International Marina Institute (IMI): Information Packet, Section 1., Discussion of the effects of vessel sewage * * * third paragraph, last 2 sentences: The IMI requests deleting the last two sentences: "Sewage discharged from holding tanks will thus increase the biological oxygen demand (BOD) in the vicinity of boats. When this occurs in poorly flushed waterbodies, the dissolved oxygen concentration of the water may decrease (Milliken and Lee, 1990." According to the IMI, this is misleading and faulty logic. If kept, the IMI requests fully qualifying this statement as to the number of holding tanks which must be dumped to make it significant.

Response: The sentences are general, informational statements. The statements have been qualified to ensure that they are not misleading.

Issue 27. North Carolina Department of Environment, Health & Natural Resources (DEHNR): Information Packet, section 1., last paragraph, first, fourth

and fifth sentences, and Information Packet, Section 6., second paragraph, last sentence: It is the DEHNR's understanding that zinc sulphate was voluntarily taken off the market 10 years ago when its degrading effects on waste treatment were discovered. According to the DEHNR, plant operators and regulators should not be given the implication that heavy metals or other severe, lingering toxics can be expected. The holding tank chemicals in use today are generally biodegradable and if even marginally diluted, have little effect on treatment systems. The DEHNR requests that the Information Packet be written to describe why the waste can be treated in existing systems rather than helping to panic regulatory agencies that are not familiar with the research, or the rate and volumes of present demands.

Response: Zinc sulphate has been deleted from the discussion, and the discussion modified in both places to indicate the lack of real problems noted from use of these chemicals.

Issue 28. International Marina Institute (IMI): The IMI requests that the Service credit IMI for its contributions in the guidelines. Information Packet, section 3., first and second paragraphs: The IMI requests the following be appended to these paragraphs: "(Ross & Amaral, 1992)", to give credit for this text to the IMI survey of New England pumpout stations mentioned previously. Information Packet, section 7., third paragraph, "Equipment failure * * *": The IMI requests the following be appended to this paragraph: "(Ross & Amaral, 1992)". Also, Information Packet, section 8., first paragraph, Public/private partnerships: IMI totally agrees with the importance of private involvement, and requests that the record show that the 80% is based on the 1986–87 National Boating Facilities Survey IMI/URI conducted for NMMA.

Response: Credits have been added for each of the sources.

Issue 29. International Marina Institute (IMI): Information Packet, section 3., fourth paragraph, next to last sentence: The IMI requests deleting the sentence "Some States require installation of pumpouts for all new marinas.", because it may encourage regulators to mandate pumpouts everywhere without consideration of other factors, or add " * * * regardless of any measured need or lack of potential use." at the end of that sentence.

Response: The Service agrees, and has deleted the sentence.

Issue 30. International Marina Institute (IMI): Information Packet, section 3. (2): The IMI requests changing the "45%" peak occupancy rate to "40%" in the sentence "It is assumed every boat which is occupied * * * the occupancy rate during peak periods is 45%." Also, Information Packet, section 3. (3) Calculation for Estimating Need for Dump Stations, and, Calculation for Estimating Need for Pumpout Stations: The IMI recommends changing the peak occupancy rate from "45%" to "40%", to match the sentence above in section 3. (2). According to the IMI, the 45% comes from the 1989 IMI national auto parking and boat use study of 142 public and private marinas in 24 States. The highest use day (July 4th weekend) was 46% of all boats in use, but quickly dropped to 33% on non-holiday weekends. (Reference: Ross, N. Auto Parking in Marinas. International Marina Institute, Wickford, RI. 1989. 13 pp. According to the IMI, holding tanks are often pumped during the week. National engineering standards for parking lot size for theaters, restaurants, and shopping malls call for using the 5th highest use day. The IMI states that it would be more reasonable to use the 33% to be high weekend use rate. The IMI suggests using the difference between the 46% and 33% or 40%, which is the most reasonable national number in the formula calculations.

Response: The Service agrees and has made the changes in the sentence and in both calculation formulas, giving credit to the source.

Issue 31. International Marina Institute (IMI): Information Packet, section 3. (3): Hours of operation: The IMI requests adding "peak boating season" to "* * * assumes facilities will be in operation for twelve hours per day during 'peak boating season' weekends and * * *".

Response: The statement has been added to the sentence.

Issue 32. Massachusetts Department of Fish, Wildlife and Environmental Law Enforcement (DFWELE): Information Packet, section 3., Calculation for Estimating Need for Pumpout Stations: The DFWELE suggests adding open brackets and open parentheses before "No. of Boats 26'–40'", close parentheses after "No. With Holding Tanks (50%)", and close brackets after "No. of Boats 40'+", to clarify the calculation.

Response: The Service agrees and has added the brackets and parentheses.

Issue 33. North Carolina Department of Environment, Health & Natural Resources: Information Packet, section 6.: The DEHNR is concerned with the discussion of waste treatment alternatives. According to the DEHNR, relatively few marinas are in a stage of construction where major waste treatment system modifications are readily feasible. It is likely, according to the DEHNR, that a marina waste disposal system is already in place. The best use of the grants, according to the DEHNR, will be to install as many dockside pumpout units as possible. The DEHNR states that, under certain circumstances, funding new or replacement waste treatment systems may be appropriate. But in most cases, research indicates that existing systems should be able to handle anticipated loads.

Response: The Service agrees with this assessment, and encourages States to install as many pumpout stations and dump stations as are needed as the highest priority. The discussion of waste treatment alternatives is informational, and not meant to imply a priority for new or upgraded waste treatment systems.

Issue 34. International Marina Institute (IMI): Information Packet, section 6., Vessel Sewage Characterization, second paragraph, first sentence, Effects of holdings tank additives: The IMI asks the following: What are the harmful additives? What chemicals should be regulated? Where is the list of products which can be used? Is there a government sanctioned list? Who is doing testing on products for holding tanks? If no government list exists, can the Service encourage the States to regulate them? If the list exists, publish it.

Response: This paragraph is an information paragraph which characterizes chemical holding tank additives. No statement is made that they are harmful or that they should be regulated. The Service has no list of products which can be used, and there is no government sanctioned list.

Issue 35. North Carolina Department of Environment, Health & Natural Resources (DEHNR): Information Packet, section 6. On-Site Treatment: According to the DEHNR, North Carolina law does not allow holding tanks as an acceptable sewage treatment and disposal system.

Response: A statement has been added to this section cautioning that marinas should consult State law before installing any of these measures.

Issue 36. Center for Marine Conservation (Center): Information Packet, section 7., first paragraph, sixth sentence: "Stationary or portable dockside pumps cost in the range of $2,000 to $10,000, and typical complete installations may be as high as $20,000." The Center believes these numbers sound high, and requests that the Service clarify what is covered here, and separate out costs for live aboard permanent installations.

Response: This information was obtained from the marine industry. Average costs, including sewage connection and other accessories, for the first application period, were close to $20,000 per unit. Some costs were in the range of $60,000.

Issue 37. International Marina Institute (IMI): Information Packet, section 7. (1) The IMI states that stationary units can also be discharged into septic systems if the State allows. According to the IMI, their advantages also include "speed of use".

Response: Although it may be true that the unit contents may be discharged into septic systems, this type of connection is not encouraged. Speed of use has been added as an advantage.

Issue 38: International Marina Institute (IMI): Information Packet, section 7. (2) Portable units on wheels, fourth sentence: While moving about the marina requires more time, the IMI believes that also is an advantage for pumping out boats during slow weekdays, especially after a busy weekend.

Response: This advantage has been added.

Issue 39: International Marina Institute (IMI): Information Packet, section 7. (3) Portable units on a vessel, last sentence. Range of operation is not a problem, according to the IMI, since one vessel can service an entire harbor of several marinas, etc.

Response: The Service agrees. This statement has been deleted.

Issue 40: International Marina Institute (IMI): Information Packet, section 7. (4) Remote operated multi-station systems, last sentence: According to the IMI, the last sentence talks about he problems of winter freezing. Freezing affects every pumpout in northern climates, but is less of a problem for multi-station systems because they generally depend on a vacuum tank system which keeps the lines free of all standing water. The IMI recommends dropping the issue, or making a general statement such as: "All pumpout systems in northern States subject to freezing may need winterization.".

Response: The Service agrees. The statement has been deleted.

Issue 41: International Marina Institute (IMI): Information Packet, section 7., next to last paragraph, fourth sentence, under Other Factors to Consider for Pumpout Stations, "* * * and disinfect suction connection.": The IMI states that this sounds like a good idea, but how do you do it? Would not the disinfectant used, e.g., chlorine, pose a more significant threat to aquatic life than sewage bacteria inside the hose connector? Recommend dropping the words.

Response: The Service agrees. The statement has been deleted, and a suggestion added to use a dedicated system for flushing and rinsing hoses.

Issue 42: International Marina Institute (IMI): Information Packet, section 7., last paragraph, third sentence under Other Factors to Consider for Pumpout Stations: The IMI states that the statements "EPA has found * * *" the need for "maintenance contracts * * *" and "dedicated funds * * *", are misquoted from the final Nonpoint Pollution Marinas Chapter 5, boat sewage section pp 5–42 to 5–46. The IMI states that the statements are based on a preliminary practices draft which was discarded in the final text. If maintenance contracts were necessary anywhere, according to the IMI, they would be needed at the public marinas do not need such government required contracts or dedicated funds since they will fix the problem themselves or hire someone. The IMI recommends deleting the entire last sentence beginning "EPA has found * * *", or specify that this "only applies to public marinas which are unable to do their own maintenance.".

Response: The reference to EPA has been dropped. The paragraph has been kept as a suggestion.

Issue 43: International Marina Institute (IMI): Information Packet, section 8., fifth paragraph, Rental Contracts: The IMI recommends adding "waters" to the text of "(1) prohibit boat sewage discharge into the marina 'waters' to keep the water clean." to otherwise allow discharge into a pumpout or sanitary waste system.

Response: The word has been added.

Issue 44: International Marina Institute (IMI): Information Packet, section 8., fifth paragraph, Rental Contracts: The IMI is not sure marinas can legally force boat owners to covert to holding tanks (2) without new legislation since Federal law allows use of all three types of MSDs. The IMI does not feel the Service can issue (2) in the Guideline at this time without a change in Federal law.

Response: The Service agrees. The statement has been deleted.

Technical Guidelines

The Fish and Wildlife Service will administer the Clean Vessel Act grant program through State agencies only. Both public and private marinas are eligible to participate in this program and should conform to these technical guidelines if they do participate. Marinas that do not participate in this program would not have to conform to these guidelines. The Service believes that public/private partnerships are a very important part of the success of this program, and will give higher priority to those projects that provide such partnership. Inability of a State to give grants to private marinas will result in a lowering of that State's priority for funds. Those States that have legal/administrative roadblocks are strongly encouraged to overcome them through changes in their law or procedures.

These technical guidelines should be followed when doing surveys, developing a plan and education program, and constructing pumpout stations and dump stations. Technical guidelines are presented here by section. At the end of these guidelines, an information packet is presented, which contains a general discussion of each section and provides greater detail.

Definitions

For the purposes of these technical guidelines the term: (1) *Type III marine sanitation device (holding tank)* means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes; (2) *pumpout station* means a facility that pumps or receives human body wastes out of Type III marine sanitation devices installed on board vessels; (3) *recreational vessel* means a vessel (a) manufactured for operation, or operated, primarily for pleasure; or (b) leased, rented, or chartered to another for the latter's pleasure; (4) *dump station* means an upland or floating waste reception facility specifically designed to receive wastes from portable toilets carried on vessels, or floating restrooms in the water, not connected to land or structures connected to the land, used solely by boaters, and does not include upland restroom facilities; (5) *marina* means a facility with ten or more wet slips and/or dry land storage; (6) *Parking lot harbor* means a harbor which is home port to many boats kept on swing moorings or in marina docks. Most of the time, most of the boats are unoccupied and unused; (7) *Transient harbor* means "destination" harbor where boaters go during day trips or berth overnight; (8) *Portable toilet* means toilets that are not installed toilets. They are designed to be removed from a vessel and their contents emptied into shoreside receptacles; (9) *Coastal zone* has the same meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453 (1). Section 1453 defines "coastal zone" as follows: "The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands

(including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extend necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

Guidelines for States to use in identifying waters most likely to be affected by the discharge of sewage from vessels are those waters frequented by large numbers of boaters and include: (1) Sheltered waters that are generally poorly flushed systems; (2) Waters identified to be of National Significance; (3) Waters of significant recreational value; (4) Waters supporting designated shellfish harvest areas; (5) State and federally designated Nursery areas of indigenous aquatic life; (6) Waters designated by the EPA as "No Discharge Areas" under section 312(f)(3) and (4) (A) & (B) of the Clean water Act, and (7) Waters that do not meet State designated usage.

Section 2. Surveys of Pumpout Stations and Dump Stations

Only coastal States are required to do a survey. Coastal States should submit surveys to the Federal Air official at the appropriate Fish and Wildlife Service Regional Office, as follows:

(1) Region 1 coastal States include California, Commonwealth of the Northern Mariana Islands, Guam. Hawaii, Oregon, and Washington: Deputy Assistant Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6128.

(2) Region 2 coastal State includes Texas: Deputy Assistant Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103, (505) 766–2095.

(3) Region 3 coastal States include Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Deputy Assistant Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, (612) 725–3596.

(4) Region 4 coastal States include Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, and the Virgin Islands: Deputy Assistant Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 324, Atlanta, Georgia 30345, 404/679–4159.

(5) Region 5 coastal States include Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia: Deputy Assistant Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8501.

Pumpout station/dump station survey: All marinas, moorages, docks, etc., should be surveyed. The survey should include whether the marina has pumpout stations, dump stations, or both; how many pumpout and dump stations; which ones are operational; and, the specific coordinates of each operational pumpout and dump station. For pumpout and dump stations not located in the above marinas, moorages, etc., such as at ramps, the specific coordinates should be obtained for these facilities also. Specific coordinates, i.e., latitude and longitude, should be reported in North American Datum 1983 (NAD 83) standard. Other alternatives include (a) State Plane Coordinate Values, and (b) A portion of a NOAA nautical chart identified by chart number, edition, and edition date that marks clearly the pumpout station/ dump station. Specific coordinates for all pumpout and dump stations should be submitted to the appropriate Regional Office of the Fish and Wildlife Service for inclusion on NOAA charts. Suggested survey questions include the following for each facility: (1) Name and address of marina, moorage, dock, etc.; (2) whether the marina is public or private; (3) telephone number; (4) location of marina, etc., by county, water body and specific coordinates; (5) whether the marina has pumpout stations, dump stations, or both; (6) how many pumpout and dump stations; and, (7) whether the pumpout and dump stations are operational.

Boat survey: The survey should include the following: (1) Total number of boats by water body and county; (2) How many boats have Type III MSD holding tanks; (3) How many boats have portable toilets.

A complete survey of all boaters is not necessary. States should obtain only as much information as is necessary to determine, within reasonable confidence limits, numbers of boats, how many boats have Type III MSD holding tanks or portable toilets, and where boaters are most likely to congregate by water body and county. Sample surveys are acceptable. Recent surveys are acceptable if they answer all the questions needed.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Dump Stations in Boating Areas

As a general guide, at least one pumpout station and dump station should be provided for every 300 to 600 boats over 16 feet length overall. This is not a requirement, but guidance only, and should be modified depending on the situation. For instance, if most boats in an area are under 26 feet, many more dump stations would be required than pumpout stations. Another question is the minimum number of boats that should have pumpout stations and dump stations. Again, there is no one answer. it is suggested that marinas with 50 slips or more that are capable of mooring 26 feet + boats have access to at least one pumpout station, and marinas with 50 slips or more that are capable of mooring 16–26 feet boats have access to at least one dump station. This does not mean that every marina with 50 + slips should have a pumpout station or dump station. Where marinas are adjacent (within two miles of each other), pumpout stations can be shared. Other factors should be considered, such as whether the marina is a parking lot or transient harbor, or the amount of fuel dock use. In determining the installation of any pumpout station or dump station, such factors as boat size, boating use patterns, coastal water characteristics, sensitive areas, flushing capacity, etc., should play a large role in establishing needs for facilities. Due to the variability in each State, States must have the flexibility to provide criteria that addresses their specific needs. See the discussion in the Information Packet, section 3, for alternative approaches to determining need.

Dump stations should be sited in conjunction with pumpout stations, but should also be located where there are no pumpout stations but where boats with portable toilets congregate or are used, such as launching ramps.

Program evaluation should be given great emphasis to assure quality products. States should evaluate and monitor the program effectiveness to determine that facilities are operated and maintained, and used for their intended purpose. Changes to approaches should be made as weaknesses and/or opportunities become apparent.

Section 4. Plans for Construction Pumpout Stations and Dump Stations

Only coastal States are required to develop a plan. Coastal States should work with the recreational marina industry and others in developing the plan. Coastal States should submit the plan to the appropriate Fish and Wildlife Service Regional Office, same address as in section 2 above. Following is an outline which should be used by States when developing the plan:

(1) *Need.* This section should establish the justification for the proposed work based on (a) the results of the surveys of existing pumpout stations and dump stations and the number of recreational vessels; (b) that part of the guidance relating to determining the adequacy and reasonable availability of pumpout stations and dump stations and, (c) that part of the guidance describing the waters most likely to be affected by the discharge of sewage from vessels.

(2) *Goals and objectives.* The purpose of the plan should be to ensure the availability of adequate and reasonably available pumpout stations and dump stations to the boating public throughout the coastal zone of a State.

(3) *Expected results or benefits.* This section should describe in general how water will be improved by making pumpout and dump stations available.

(4) *Approach.* In this section, describe the following: (a) How the plan addresses all coastal zone waters of the State, and gives priority to waters most likely affected; (b) How the plan complements plans of adjacent States for shared waters; (c) The strategy for locating and constructing, renovating and maintaining pumpout and dump stations. Address the question of whether or not an existing pumpout or dump station is worth upgrading, and how demonstrated problem facilities will be upgraded or eliminated. Include the general location and priority of projects; (d) How States will ensure that (i) waste will be disposed of properly, and (ii) that municipal waste treatment plants will accept waste; (e) What proportion of the slip/mooring capacity is in public vs. private marinas, how States will seek public/private partnerships for siting, constructing and operating pumpout stations and dump stations, any issues/problems, such as legislative/regulatory barriers, and what will be done to overcome these barriers; (f) Innovative techniques to increase the availability and use of pumpout stations/dump stations; (g) Approaches to educate and inform the public and the boating industry on the sue of, and need for, disposal of vessel waste; and, (h) Total estimated cost of the Statewide plan.

Section 5. Education/Information

Guidelines for States to consider when developing an education/information plan include:

(1) *Audience:* Consider six audiences when developing your education/information program regarding vessel sewage disposal, handling, and treatment, as follows: (a) Boat owners and operators; (b) Marina owners and operators; (c) Sewage treatment plan owners and operators; (d) Federal (where applicable), State and local governmental authorities and organizations; (e) Boating supply and retailers; (f) The general public.

(2) *Communication media:* There are a variety of media that States may use for disseminating this information. Common methods to consider are: brochures, workshops/symposiums, educational videos, TV/radio, signs, boat shows, etc. Innovative methods are encouraged.

(3) *Distribution:* States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Section 6. Appropriate Methods for Disposal of Vessel Sewage From Pumpout Stations and Dump Stations

Disposal methods will vary among States depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics, including soil types and groundwater flows towards drinking water sources and these coastal waters. Depending on these factors, States may consider the following methods: (1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a person licensed to haul septage waste to a municipal septage receiving/treatment facility; (2) On-site treatment at marinas: (a) Discharge to a package treatment plant; (b) discharge to a septic system.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Dump Stations That May Be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

Pumpout stations and dump stations should provide an efficient means of removing sewage from boats and a means of disposing of that sewage in a safe and sanitary manner. These facilities should include all the equipment, structures, and disposal facilities necessary to ultimately discharge or dispose of boat sewage in an efficient, safe and sanitary manner without causing an actual or potential public health hazard. Pumpout stations should include equipment for rinsing boat holding tanks. Pumpout stations and dump stations should be adequate to meet the peak use demand for such services. Facilities should be operated and maintained to provide adequate service, and to be maintained to function as intended.

Pumpout stations and dump stations should be reliable, corrosion resistant, easy to use, neat and tidy to clean and use, conveniently located, with low maintenance. Pumps should be specifically designed for handling sewage. Land-based restrooms are not an acceptable option for emptying portable toilets.

All pumps should be safe, functional and efficient. Motors and switches should be ignition protected. Pumps should be able to pump against the maximum head developed by elevation change and line losses. In addition, the suction connection to the boat should be a tight fit and adjustable by adapters to service boat discharge connections. Pumps should be able to transport flows out of the holding tank. Pumps exceeding 45 gallons per minute may cause tanks to collapse.

Factors in determining pumpout station holding tank capacity include boat size and use patterns. Sizing should be done on a case-by-case basis using documented demand, if possible. Holding tanks should be designed and installed to meet local regulations.

For all vessels manufactured after December 31, 1994, a standard deck fitting for removal of sewage should be

constructed to the "International standard ISO 4567 Shipbuilding—Yachets—Waste water fittings" for holding tanks, which is a female 38.1 mm (1½") pipe size with 11 threads per 25.4 mm (inch). These threads could utilize a quick-disconnect or cam lock fitting. For existing vessels, an adapter, such as a tapered cone, should be used for non-standard deck fittings. All pumpout connectors should fit the standard deck fitting.

For all vessels manufactured after December 31, 1994, because of possible confusion between waste, fuel and water deck fittings, the deck fittings should be identified with the words "WASTE", "GAS", "DIESEL", and "WATER", and color code the fittings with black caps for waste, red caps for gas and diesel, and blue caps for water.

The ultimate location for the station should be based on the unique conditions of the marina, boatyard, mooring field or other anchorage. Stationary pumpout stations should be located for the convenience of, and to encourage boaters to use the facility. Mobile pumpout stations should have reasonable access to boaters.

Section 8. Other Information (No Technical Guidelines)

Information Packet

This information packet is not technical guidelines. It has been recommended to provide additional information to States, and to marinas and others who participate in this program. The information packet presents general information on surveys, plans, education/information, pumpout facilities and other information helpful in promoting establishment of facilities. It provides a more detailed discussion of the technical guidelines, with examples and explanations. This information packet is also by Section, which corresponds to the sections in the technical guidelines.

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

The following coastal waters, including the Territorial Seas, estuaries, bays, and sounds, and then U.S. lakes and rivers as defined below, are considered waters most likely to be affected by the discharge of sewage from vessels. These definitions are not ranked in priority order.

(1) Sheltered waters that are generally poorly flushed systems.

(2) *Waters of National significance:* Waters identified by the Environmental Protection Agency under the National Estuary Program, waters identified by the NOAA under the Estuarine Reserve program, and Marine Sanctuaries program where appropriate.

(3) *Waters of significant recreational value:* A water body with unusual value as a resource for outdoor recreation activities, e.g., fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The significance may be in the intensity of present usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(4) *Shellfish harvest waters:* Waters designated as shellfish producing and harvesting areas.

(5) *Nursery areas of indigenous aquatic life:* State and federally designated significant habitats such as are designated in Coastal Zone programs.

(6) Waters designated by the EPA as "No Discharge Areas" under Section 312(f)(3) and (4)(A) & (B) of the Clean Water Act.

(7) Waters that do not meet State designated usage.

Discussion of the Effects of Vessel Sewage on These Waters

Waters previously designated by the EPA under the Clean Water Act as "No Discharge Areas" are eligible for renovation, maintenance and further construction funds under this program. The discharge of sewage from boats may degrade water quality by (1) introducing microbial pathogens into the environment and (2) locally increasing biological oxygen demand (U.S. EPA, 1985). While vessel sewage discharges represent only one of many sources of point and non-point pollution, the number of boats using coastal waters has increased substantially during the past decade. The contribution of boat sewage to total pathogen loadings and local BOD has grown proportionately.

A potentially serious problem resulting from vessel sewage discharges is the introduction of disease-carrying microorganisms from fecal matter into the coastal aquatic environment. Humans are put at risk by eating contaminated shellfish and by swimming in contaminated waters. The major disease-carrying agents are bacteria and viruses, and the most common serious ailment is acute gastroenteritis. Other waterborne diseases include hepatitis, typhoid, and cholera (Milliken and Lee, 1990). The indicators used to detect sewage pollution are not the pathogens themselves, but, rather, coliform bacteria. These bacteria are always present in the human intestinal tract and are thus considered reliable indicators of the presence of human waste (U.S. EPA, 1985). Studies conducted in Puget Sound, Long Island Sound, Narragansett Bay, and Chesapeake Bay have demonstrated that boats can be a significant source of fecal coliform bacteria in coastal waters, particularly in areas with high boat densities and low hydrologic flushing (Milliken and Lee, 1990; JRB Associates, 1980). If coliform levels exceed allowable thresholds, shellfish beds and swimming beaches may be closed to minimize the threat of public health problems. In addition, shellfish beds and some swimming beaches in the immediate vicinity of marinas are often closed because of the potential of contamination from vessel sewage discharges.

These organic-rich wastes also have the potential to depress oxygen levels as they decay in the marine environment. Biological oxygen demand is a measure of the dissolved oxygen required to decompose the organic matter in the water by aerobic processes. When the loading of organic matter increases, the BOD increases, and there is a consequent reduction in the dissolved oxygen available for respiration by aquatic organisms (U.S. EPA, 1985). Although the volume of wastewater discharged from boats is relatively small, the organics in the wastewater are concentrated, and therefore the BOD (1700–3500 mg/l) is much higher than that of raw municipal sewage (110–400 mg/l) or treated municipal sewage (5–100 mg/l) (JRB Associates, 1981). Sewage discharged from holding tanks will thus increase the BOD in the vicinity of boats. When this occurs in poorly flushed waterbodies, the dissolved oxygen concentrations of the water may decrease (Milliken and Lee, 1990). The amount of the decrease in dissolved oxygen concentrations, and therefore the significance to the water, depends on the amount of sewage discharged into the system.

Chemical additives such as chlorine and formaldehyde are used to disinfect or control odors of on-board sewage. There is little indication that these chemicals have any harmful effects on the environment. The holding tank chemicals in use today are generally biodegradable and, if even marginally diluted, have little effect on treatment systems. No heavy metals or other severe, lingering toxics can be expected. However, some discussion of possible problems should be mentioned here. Of the two major disinfectant chemicals used—chlorine and formaldehyde—only chlorine has been shown to be toxic in the aquatic environment. While formaldehyde is considered a toxic

substance, it is completely miscible in water and is readily degradable. While a direct link between MSD holding tank disinfectants and effects on the environment has not been documented, the presence of these chemicals in sufficient concentrations may be of concern (JRB Associates, 1981). Use of these chemicals as directed by the manufacturer should not result in problems. However, since the amounts of chemicals added are controlled by the boat owner or operator, excess use may occur.

Section 2. Surveys of Pumpout Stations and Dump Stations

The Clean Vessel Act of 1992 calls for surveys by coastal States within three months of notification to the States of the final technical guidelines to determine: (1) The number and location of all operational pumpout stations and dump stations at public and private marinas, mooring areas, docks, and other boating facilities within the coastal zone of a State; and (2) the number of recreational vessels in the coastal waters of the State with Type III marine sanitation devices (holding tanks) or portable toilets and the areas where those vessels congregate.

Survey information may be obtainable from the boat registration process or files; contacts with trade associations or boating organizations; from national surveys if available; or from mail or telephone surveys of boaters or marina/mooring field facility operators. Some States have surveyed boaters at marinas on high concentration days. The U.S. Coast Guard, telephone 202/267–1497, can provide the following information regarding Documented Vessels (5 net tons and larger): The vessel's port of documentation, vessel length, beam, net tonnage, and whether or not the vessel is equipped with mechanical propulsion.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Dump Stations in Boating Areas

Factors affecting pumpout use: Potential demand for pumpouts and/or dump stations is a function of several variables. First is the number of boats of a size that use sewage holding tanks or portable toilets and where they are stored. Second, accessibility of pumpouts and dump stations affects their use. Distance from routes of travel or from the home port as well as the likely waiting time once at the facility can affect the willingness of boaters to use pumpouts and dump stations. A third factor to consider is boat use. High use at moorages is related to transient versus "parking lot" customers, year-round versus seasonal users, and the frequency of overnight use of boats. High boat use is seasonal, correlated with good weather, weekends and holidays. Fourth is the fee charged, with higher use related to lower fees (Ross & Amaral, 1992).

High use of pumpouts and dump stations has also been related to aggressive management practices, active enforcement of "No Discharge Areas", perception of need by the public (related to the environmental sensitivity of the area and educational efforts), and good maintenance (Ross & Amaral, 1992).

Determining adequate and reasonably available station/facility needs: Boat numbers, boat size, boating use patterns, numbers and distribution of existing facilities, and where boats are kept during boating season (i.e., in a marina, yacht club; private dock, mooring, home on a trailer, etc.), determine the need for pumpout stations and dump stations. Moorages that receive high transient use, have mooring fields for large boats, are visited by large numbers of boats for refueling, and/or have a large number of people sleeping overnight or living on their boats should have high priority. Yacht clubs, boatyards and large capacity private docks should also be considered for priority installation of pumpouts and dump stations. Other situations that might be considered for the installation of facilities include marinas that provide fuel or service vessels equipped with MSD holding tanks. In addition to distributing stations/facilities in the above types of boating moorages, additional stations/facilities may be warranted where boat use impacts poorly flushed bays, coves, or sloughs and environmentally sensitive sites. After new facilities have been installed, subsequent patterns of use will indicate where and if additional pumpouts are needed. Periodic surveys should be conducted to ensure adequate numbers of pumpout stations and dump stations exist for boaters in the future.

Requirements for pumpout and dump stations vary by State and harbor. Some examples are as follows: Delaware requires a pumpout for marinas harboring 100 or more boats with marinas of 25–100 sharing a pumpout and those with less than 25 not required to install facilities. For New England, EPA Region I guidelines suggest a pumpout for 300–600 boats with toilets. A minimum of one pumpout per 300 boats with toilets is recommended in transient harbors with a high percentage of large vessels, while one pumpout per 600 boats with toilets should be provided in "parking lot" harbors where most boats are less than 25 feet long. In California's Richardson Bay, the pumpout guidelines is one station for every 300 boats. Launching ramps, marinas, etc., that cater to small craft (under 26 feet) or are too shallow for larger vessels may not need pumpouts, but may still require dump stations to receive portable toilet waste.

EPA's assessment (EPA, 1981) estimated that 20% of the boats between 16 and 26 feet, 50% of the boats between 26 and 40 feet, and all of the vessels over 40 feet had installed toilets with some type of MSD. So, if exact data are not available, an estimate could be calculated. The following is a method for estimating Statewide need for pumpout stations and dump stations (McKiernan, pers. comm.). It is not intended as a guide for determining requirements for a specific marina or harbor. The following assumptions underlie this method and can be adjusted where statistically valid information is available relating to a State's unique boating population characteristics.

(1) Given the availability of boat length information gathered during boat registration, assumptions can be made regarding the type of on-board sanitation equipment.

Boat length	Number with toilets (percent)	Type of system
16'–26	20	Portable toilets.
26'–40	50	Holding tanks.
40'+	100	Holding tanks.

(2) It is assumed every boat which is occupied will require service once a weekend and that the occupancy rate during peak periods is 40% (Ross, N. Auto Parking in Marinas, IMI, Wickford, RI, 1989).

(3) This method also assumes facilities will be in operation for twelve hours per day during peak boating season weekends and that the average time to service a boat's system will be 15 minutes for holding tanks and 5 minutes for portable toilets. Therefore:

Calculation for Estimating Need for Dump Stations

No. of Boats 16' - 26'	×	No. With Portable Toilets (20%)	×	Peak Occupancy Rate (40%)	=	BOATS REQUIRING DUMP STATIONS

Boats Served Per Hour	×	No. of Hours Of Operation Per Weekend	=	BOATS SERVED PER FACILITY
(12)		(24)		(288)

= Dump Stations Required

Calculation for Estimating Need for Pumpout Stations

No. of [(Boats 26' - 40'	×	No. With Holding) Tanks (50%)	+	No. of Boats] 40' +	×	Peak Occupancy Rate (40%)	=	Boats Requiring Pumpout Facilities

Boats Served Per Hour	×	Number of Hours Of Operation Per Weekend	=	Boats Served per Pumpout
(4)		(24)		(96)

= Pumpout Stations Required

Section 4. Plans for Constructing Pumpout Stations and Dump Stations

The Clean Vessel Act calls for coastal States, within six months after notification of the final technical guidelines, to develop a plan for any construction or renovation of pumpout stations and dump stations. For efficiency of review and approval by the Fish and Wildlife Service, coastal States should complete the plan in the standardized format identified in the technical guidelines.

Section 5. Education/Information

A clearly defined education/information program that will support the timely implementation of a State plan should be presented by the State as a part of that plan. This guidance provides States with some ideas and information useful in developing an education/information program effective at informing the public, the boating community; the boating industry, local government officials, public interest groups, and other audiences the State identifies. Ultimately, the State education/information program should provide information and understanding that will encourage the use of and installation of pumpout and dump stations.

Education of the boating, marina owner, and vessel sewage handling and treatment communities is important to the potential success of this program. An effective education/information program will help to realize both short term and long term goals of the Act. The goals of education are as broad as the audiences they should be targeted to reach, yet, these goals can be achieved with increased dialogue between and information to these groups.

Six audiences should be considered when developing an education/information program regarding vessel sewage disposal, handling, and treatment, as follows: (1) Boat owners and operators; (2) Marina owners and operators; (3) Sewage treatment plant owners and operators; (4) Federal (where applicable), State and local governmental authorities and organizations; (5) Boating supply and retailers; (6) The general public.

There are a variety of media that States may have available for disseminating this information. Common methods to consider are: brochures, workshops/symposiums, educational videos, TV/radio, signs, boat shows, etc. Innovative methods are encouraged.

Issues to consider when developing education/information material targeted to a specific audience:

Issues on which education/information programs for boat owners and operators, as well as, boating supply and retailers, might focus would include: (1) Environmental impacts of boater sewage and the benefits of pumping out at a pumpout station and using a dump station; (2) How a pumpout station operates; (3) Pumpout hose connections/adapters; (4) Pumpout locations and fees; (5) "Green" boat toilet chemicals, i.e., short term biodegradable or less environmentally-damaging treatment chemicals. Encourage manufacturers through demand to market only environmentally responsible products; (6) Proper operation and maintenance of boat toilets; (7) The value of responding to boater surveys and requests for information.

Marina owners and operators are important participants in the implementation of this program. This group is making a commitment for the long term by agreeing to install, maintain, and operate pumpout and dump stations. Issues States should consider (where applicable) when developing education/information programs for marina owner and operators include: (1) Benefits to marinas under this program; (2) The application process for receiving funds to construct, renovate, maintain, and operate pumpout and dump stations; (3) What are adequate and reasonably available pumpout facilities; (4) Reasonable fees; (5) Environmental benefits of providing pumpout stations and dump stations; (6) How to obtain a permit for a municipal hookup and options for disposal of pumpout waste; (7) Where to locate pumpout and dump stations; (8) Methods of encouraging boater compliance with pumpout requirements; (9) Types of pumpouts and dump stations currently on the market; (10) Encourage manufacturers to provide demonstrations for and training of marina personnel responsible for operating these devices; (11) Highlighting Those marinas that have done an excellent job in installing and maintaining facilities.

Wastewater collected from pumpout facilities must be discharged from the

marina to an appropriate treatment facility. Waste treatment plant owners and operators should be made aware of the options available to them for receiving and treating waste from boat holding tanks and portable toilets. Issues for States to consider when developing education/information programs for wastewater treatment facility owners and operators include: (1) Effects of this waste stream on waste treatment plant's normal operations and how to mitigate any negative effects; (2) Volume of waste from boats in proportion to normal "household" loading standard; (3) Experience of waste system operators in areas designated "No Discharge".

States may find it necessary to develop education/information programs that address issues related to Federal, State and local government agencies. Issues to consider for education/information programs for this audience include: (1) Awareness of environmental requirements and enforcement options for vessel sewage disposal and treatment (particularly for incoming harbor masters); (2) Encouraging the development of technical guidelines for design, installation, and use of pumpout facilities; (3) Encouraging the appropriate Federal agencies to support a national standard on pumpout and boat fittings; (4) Environmental benefits of reducing the amount of waste water discharged from boats in localized areas, e.g., shellfish beds; (5) Encouraging vessel manufacturers to include procedures for proper operation of vessel holding tanks and shoreside pumpout facilities in new owners' manuals; (6) The value of enforcement in implementing this program; (7) Value of educating the public; (8) Informing Federal and local governments on how to access Federal informational sources, and encouraging them to do so; (9) Working with local governments to mandate, after a reasonable period of time, the installation of pumpout facilities at marinas, as a condition of marina licensure or operation.

Education of the general public has an important role to play. Issues to consider for education/information of this audience include: (1) The environmental impacts of boater waste; (2) Importance of the coastal resource; (3) Efforts by the boating community to reduce waste discharges.

States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Representatives of the various groups could meet together at the State/local level to determine what information and education materials and strategies are needed to accomplish the objective. Private conservation and education groups could provide suggestions and materials once the needs are defined.

Section 6. Appropriate Methods for Disposal of Vessel Sewage From Pumpout Stations and Dump Stations

Introduction: The safe and sanitary disposal of vessel sewage waste must be provided for when constructing and operating pumpout stations and dump stations. Boaters will not want to spend time and money pumping out unless they can be assured that their efforts will help improve water quality.

Vessel Sewage Characterization

Vessel sewage is more concentrated than domestic sewage for almost all the standard parameters used to measure the quality of wastewater, including suspended solids, BOD, and total nitrogen. For example, the typical concentration of BOD in vessels is between 1700–3500 mg/l, while typical sanitary wastewater ranges from 110–400 mg/l for raw sewage and 5–100 mg/l for treated sewage. Raw municipal sewage has a lower concentration because people on land use more water for sanitary purposes than do people on boats. In addition, the proportion of gray water (defined as water from baths, showers and kitchens) is greater in municipal sewage, and municipal collection systems are subject to inflow and infiltration of storm water.

Another characteristic of vessel holding tank waste is the presence of chemical additives used to disinfect and deodorize the waste. These same additives are used to treat sanitary wastes in recreational vehicles (RVs), trains, and aircraft. Ideally, the odor-control chemicals should be biodegradable when diluted. These chemical additives commonly contain an active disinfectant along with dyes and perfumes. Some of the more common disinfectants include formaldehyde, paraformaldehyde, and quaternary ammonium chloride; formaldehyde is the most popular because of its effectiveness.

There is some concern from operators of small municipal and package sewage treatment plants and some marina operators with septic systems that vessel sewage holding tank waste may adversely affect performance of their sewage treatment systems by destroying the bacterial population, thereby reducing plant efficiency. A second concern, particularly of operators of municipal treatment plants operating at or near capacity, is that the additional volume of waste will cause the plant to exceed its capacity to treat wastewater effectively.

Research into the effects of chemical additives on sewage treatment processes indicates that these problems have been greatly overstated, and that, in general, most municipal sewage treatment plants can handle vessel holding tank waste without difficulty. In addition to relatively low volumes generated by sewage pumpout stations, the weekly and seasonal usage of marina facilities protects treatment systems from failing or exceeding capacity. Marinas receive their largest pumpout volumes on weekends and, in many parts of the country, only during the summer season. Therefore, treatment plants generally are able to assimilate such intermittent waste loading and no serious operational problem occurs.

Despite the negligible effects of holding tank additives on sewage treatment processes, general concern about toxic contaminants in the environment has led to the development of non-toxic, environmentally benign holding tank deodorants and disinfectants such as quarternary ammonium compounds, enzymes and adamantane. Holding tank chemicals in use today are generally biodegradable and if even marginally diluted, have little effect on treatment systems. No heavy metals or other severe, lingering toxics can be expected. States should encourage the use of these biodegradable products through education and, if necessary, regulation.

Disposal Methods

Disposal methods will vary depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics, including soil types and groundwater flows. Depending on these factors, States may consider the following methods: (1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a licensed septage hauler to a municipal septage receiving/treatment facility.

(2) On-site treatment at marinas: (a) Discharge to a package treatment plant with subsequent discharge back into coastal waters (a National Pollutant Discharge Elimination System permit would be required); (b) discharge to a septic system, where no other alternative is available.

The following is a description of the relative merits of each of these methods. It should be noted that each State has its own regulations and policies regarding what it considers "appropriate" disposal methods. What one State considers appropriate or even desirable, another may prohibit.

Off-Site Treatment

There are hundreds of existing municipal wastewater treatment facilities serving coastal areas throughout the country. Most provide at least secondary treatment utilizing an activated sludge process, but they vary greatly in size and details of treatment structures, sludge handling capability, and success in meeting current permit terms and conditions. In addition, many also incorporate septage receiving and treatment facilities into the overall treatment system.

Public Wastewater Collection Systems: The best option for the safe and sanitary disposal of vessel sewage is through a direct connection to an approved wastewater treatment facility. Most municipal treatment plants should have no problem accepting vessel holding tank waste. The relatively small volume of holding tank waste, bled into the sanitary waste stream, is effectively diluted by municipal sewage. The relatively large volume of wastewater routinely handled by these plants also mitigates against plant upset, and the treatment process can also break down or volatilize certain of the trace organic chemicals. Sewage treatment plants with a long history of accepting holding tank waste have reported no problems with this practice. However, States should exercise caution in designating sewage treatment plants that are over-capacity, have operational problems, or violate permit conditions on a regular basis.

Shoreside Holding Tanks/Septage Treatment Facilities: Many boating facilities are located where connection to a wastewater collection system is difficult or infeasible. In these cases, connection of the pumpout or dump station to a shoreside holding tank is the next best option. Holding (or tight) tanks provide a means for sanitary storage of vessel sewage until it can be transported by a licensed septage hauler to an approved septic waste receiving/treatment facility. The holding tank may be above or below ground, depending on State or local requirements, but should be located on solid land and secured to minimize potential storm damage or vandalism.

Septage receiving/treatment facilities are designed specifically to pretreat these wastes before introducing them to the wastewater treatment system. Because vessel holding tank and portable toilet waste is similar in nature to domestic septage, although more concentrated with variable amounts of organic chemicals, a properly operating municipal treatment plant with septage receiving/treatment facilities should not be adversely affected by the introduction of holding tank waste.

Modifications to Wastewater/Septage Treatment Facilities: Some wastewater treatment plants and septage receiving/treatment facilities may require modification to accommodate vessel sewage. These modifications may include increased capacity, construction of adequate septage receiving/treatment facilities, holding and bleed-in facilities, pretreatment facilities, and additional analytical capability. To determine which plants have the capability to effectively process holding tank waste, and whether additional facilities (or modifications to existing ones) are required, States may need to conduct a survey of the existing capabilities and limitations of their existing sewage treatment plants. A matrix to determine these capabilities might include the following elements, for which many States have available data as file information: (1) List all sewage treatment plants; (2) Eliminate plants that are over capacity, have operational problems, or violate permit conditions regularly; (3) Evaluate the balance for existing capacity and treatment methodology; (4) Estimate the available capacity; (5) Develop a short list of candidates for vessel sewage treatment; (6) Develop list of potential needs for modifications to those plants, including: (a) Receiving stations; (b) holding/bleed-in tanks, and associated piping; (c) pretreatment needs; (d) associated sludge handling needs; and, (e) additional staff and analytical capabilities.

On-Site Treatment

On-site treatment at a marina may be a viable alternative when the marina is not located near sewer lines, when transport of waste is prohibitively expensive, when the local sewage treatment plant is unable to accept additional discharges, and when groundwater and coastal waters can be protected. Prior to installing these systems, State law should be reviewed for legality. On-site treatment eliminates the need to transport waste. However, the proliferation of small, potentially troublesome treatment systems often creates more water quality problems than the collection of vessel sewage is intended to solve, including coastal and groundwater contamination.

Package Treatment Plants

Package treatment plants offer an alternative for the treatment of both vessel sewage and waste generated by marina restrooms and other shoreside sanitary facilities. Package treatment plants are usually small, prefabricated sewage treatment plants that provide secondary treatment, generally utilizing the extended air mode of operation. In this process, treatment is accomplished by introducing air into the wastewater to encourage the growth of aerobic bacteria which digest the sewage, providing a high degree of treatment.

Discharging vessel sewage to a package treatment plant should only be considered by boating facilities with large treatment systems that can handle the increased shock loading and chemical additives present in this type of waste. The typical problems with such systems are exacerbated by the nature of holding tank waste. Like septic systems, package plants are designed to deal with sewage with a low solids content, and the treatment process itself is highly dependent on an environment that is not toxic to the treatment bacteria. Holding tank waste is concentrated, which may raise treatment and sludge handling issues. Normal difficulties with treatment variability would be worsened by the slug flow nature of the discharges to a package treatment plant, though they can be eliminated by "bleeding" the influent into the plant. In addition, the waste may contain metals and hydrocarbons which can destroy the treatment process in a small plant.

Based on these concerns, States may not want to encourage the development of a multiplicity of small sewage treatment plants, due to the variability of effluent quality as well as substantial difficulty in ensuring proper operation and maintenance of the mechanical components of such systems.

Septic Systems

Septic systems are the conventional on-site sewage treatment systems throughout the United States. They consist of a septic tank where primary treatment (physical operations) predominate. These operations are floatation, settling, and the digestion of the sludge that accumulates in the bottom of the tank. Effluent from the

tank is directed to a subsurface leaching system which provides additional treatment by establishment of a biological crust; its resultant permeability is a direct function of the BOD and suspended solids in the effluent stream. Once effluent leaves the crust zone it enters a soil environment where, if the septic system has been properly sited, a number of treatment processes will result in a high quality final effluent. The size and location of the leaching system (or drainfield) is extremely important because of the quality of the final treatment is highly dependent on the type and quantity of the soil through which the effluent will pass.

In general, septic systems are not a favorable option for the disposal of vessel sewage, because they are not designed to treat the high solids content, high strength, and possibly toxic content of these wastes. They are not very effective at removing trace organic chemicals, and are ineffective at removing nutrients. The chemical additives used to disinfect and deodorize holding tank waste may kill the bacteria that aerobically digest the sewage, allowing solids to pass through the septic tank and causing the drainfield to clog and overflow. Nutrients leaching from the drainfield may stimulate algal growth in receiving waters, which can reduce the amount of sunlight necessary for submerged aquatic vegetation to grow and use up oxygen needed for fish and other aquatic life. In marine waters nitrogen is the nutrient most likely to cause these adverse effects, while phosphorous is the problem in fresh water.

Vessel sewage should be discharged to a septic system only if no other options exist and the system is specifically designed and sited to receive such waste. This design includes: Using large tanks to manage and "bleed" in increased flows from pumpout stations; combining flows from ordinary bathroom facilities on-shore and the pumpout stations to dilute pumpout wastes; providing two septic tanks in series to help segregate solids in the first tank and increase retention time in the system; a large single drainfield or use of alternating drainfields, and proper siting to assure the leach field does not drain into the coastal waters or contaminate groundwater. In addition to following specific design criteria, septic systems should be inspected regularly and properly maintained.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Dump Stations That may be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

There are four basic types of pumpout stations on the market. Each one has its advantages and disadvantages. Since every marina is unique, there is no one solution that will work in all cases. Therefore, each case should be examined individually, and the pumpout that will work best in any particular situation should be selected. Costs for equipment and installation can vary greatly, depending on need for sewage lift stations to accommodate widely fluctuating tides, need for special onshore holding tanks to hold concentrated waste, cost of connection to a sewer system, and other factors. Stationary or portable dockside pumps cost in the range of $2,000 to $10,000, and typical complete installations may be as high as $20,000. Following is a list of pumpout station types with a discussion of advantages and disadvantages.

(1) *Stationary pumpout unit:* Stationary units include a connector hose and pump, and are connected directly to a local or municipal sewage treatment facility or a holding tank. The unit is usually located at the end of a pier or floating dock, often near the fueling facilities. Vessels access the pumpout station by approaching and securing to the dock or pier. Advantages are convenience, efficiency and speed of use. Principal disadvantage is that the unit restricts pumpout service to a single area of the marina, which may cause congestion.

(2) *Portable pumpout unit on wheels:* This unit may be a wheeled device, consisting of a holding tank, hose and mechanical or hand pump, that is pushed along a dock to the vessel's location to pump out vessel sewage. The advantage is the unit is brought to the boat rather than the boat to the station. When full of sewage, however, the unit can be heavy and cumbersome. Since it must be moved from boat to boat, the time required to complete the pumpout operation can be somewhat greater than that of fixed units. Being able to move the unit can also be an advantage for pumping out boats during slow weekdays, especially after a busy weekend. The unit is also limited by its storage capacity.

(3) *Portable pumpout unit on vessel:* This unit is a boat with pumpout station on board, consisting of a pump and holding tank, that may be radio-dispatched or respond to a signal flag, to pump vessel holding tanks. The advantage is the convenience of having the pumpout station come directly to the boat.

(4) *Remote operated multi-station system:* This system has a pump which transports wastes via a main sewer to central collection and treatment. This unit can provide pumpout capabilities at any number of locations throughout the marina. This system, which provides wastewater collection anytime, combines the convenience and efficiency of fixed units with the versatility offered by portables. This system must be specifically designed to individual project requirements.

There are five basic types of pumps used in pumpout systems. Following is a description of each.

(1) *Centrifugal pump (rotary or impeller types):* This pump works when sewage in its impeller is spun to the outside of the impeller by centrifugal force, which creates a low pressure area at the impeller as it pumps. Most centrifugal pumps require priming. This pump is usually employed in lift station situations.

(2) *Reciprocating pump (diaphragm and piston types):* This pump, mechanical or hand operated, creates suction by mechanically lifting a diaphragm up and pushing it down in a pump body. The diaphragm works in conjunction with two or four check valves. As the diaphragm lifts, the low pressure area under it causes sewage to be sucked into the body through the inlet check valve; when it is pushed down the pressure under the diaphragm closes the inlet check valve and forces sewage out the outlet check valve. This pump is self-priming.

(3) *Vacuum pump:* This pump does not directly contact sewage, but draws air out of a tank which creates the necessary low pressure area or vacuum to cause the sewage to flow in. When the accumulator tank is full, pressurized air enters the accumulator tank and the pressure pushes the sewage out to a sewer or holding tank. This pump allows pumping over longer distances.

(4) *Flexible vein impeller pump:* This pump has suction lift. It is easy to repair and needs no priming. A switch device is needed to prevent the pump from running dry and damaging the impeller.

(5) *Progressive cavity pump:* This pump consists of stainless steel rotor or screw surrounded by a tight fitting rubber sleeve. As the rotor turns the sewage is progressively moved to the discharge line. This pump is self-priming.

Equipment failure can occur with any of the above equipment. Most common

causes are mechanical failure, followed by clogging of hose and/or pump, loss of hose prime, and hose failure (Ross & Amaral, 1992).

In addition to pumpout stations, there are facilities to receive sewage waste from portable toilets. A dump station consists of a receiving receptacle for sewage from portable toilets, and includes associated equipment and storage tank or sewer line connection. This facility is not a land-based or floating restroom, but can be made a part of such. Floating dump stations should be considered at mooring fields and other strategic locations. The device typically includes a receiving basin, which should be a minimum of 12 inches in diameter, and with a lid that completely covers the receiving unit (to control odors and insect access), with provisions for rinsing the portable toilet following emptying of the contents. If the unit is designed to drain, the drain should be a minimum of 3 inches in diameter and equipped with an insect-tight cover. Dump stations should be equipped with a washdown system to allow cleaning of the portable toilet. The washdown system should be clearly marked as unfit for drinking water. Wand attachments may be connected to a pumpout station to empty portable toilets, rather than building a separate facility.

Following is a description of other equipment that is part of the pumpout station.

Pumpout station holding tanks: Holding tanks should be sized appropriately for the volume of sewage generated and the frequency of removal of material from the holding tank. State and local requirements may govern the size of holding tanks. Generally, a 1,500-gallon holding tank can serve up to 100 boats with holding tanks. In terms of the number of boats serviced with a normal removal schedule, the following minimum sizes are suggested:

Total number of boats serviced with holding tanks	Recommended holding tank volume (gallons)
1–20	300
21–40	600
41–60	900
61–80	1200
81–100	1500
100+	2000

Pipes/hoses: Discharge piping should be rigid or noncollapsing flexible, with locking connections. Corrugated or ribbed hoses are not recommended. The line should be watertight and appropriately fastened or secured to the dock or pier. Local building codes should be checked for specific piping requirements, but the following materials are generally accepted for pumpout station service: Polyvinyl chloride (pvc), and polyethylene. Expansion joints should be included where appropriate. Force main systems may require "thrust blocks" and other security fastenings.

Fittings: A deck fitting (sewage removal fitting) is a flanged fitting permanently mounted on the vessel and connecting to the onboard holding tank. A connector is a nozzle or coupling permanently attached to the suction hose of a pumpout station. An adapter is a fitting designed to facilitate adapting a pumpout connector to a vessel deck fitting.

When the requirement for vessels with an installed toilet to have a certified marine sanitation device went into effect under 33 CFR 159 on January 30, 1975, there was a requirement for sewage removal fittings or adapters to be 1.5 inch for boats less than 65 feet in length. The expected types of acceptable fittings included threaded, flanged, or quick disconnect fittings. However, 33 CFR 159 was amended on January 3, 1977 to allow holding tanks to be certified by definition if they store sewage and flushwater only at ambient air pressure and temperature. As a result, boats have been put on the market with many sizes of sewage removal connector fittings, requiring the use of adapters in order to assure a clean, tight connection when a pumpout occurs.

There are several adapters on the market today. A black rubber nozzle is used by most boaters. Another adapter, the fuel hose fitting or cam-activated connector, consists of a male portion which fits into the connector, and a female portion which locks onto the male portion.

A suction nozzle or fitting such as a friction nozzle (right angle preferred) or cam-activated quick connector positive locking attachment should be provided on the end of the suction hose. Adapters should be provided to fit the 1.5 inch discharge connector. A valve should be provided on the suction hose at the nozzle. A valve should be provided on the pump end of the suction line if the line is to be installed in a manner such that sewage would discharge from the line when the pump is removed for service. Positive locking connections on the end of the discharge line should be provided to prevent it from coming loose during discharge. The discharge line should be protected from freezing, and prevented from leaking into the water. Suction hoses should be equipped with a clear tubing or a sight glass on the suction end of the hose to allow the pumpout station operator to determine when the pumping is complete.

Other factors that should be considered when installing pumpout stations/dump stations include the following.

Convenient location enhances use. Stationary pumpout stations should generally be located as close to a boat off-loading point as possible and/or where boats need to maneuver the least. The end of a dock is a good location because it is accessible. Many facilities are located at the fuel dock, so boaters only have to go to one location for both of these activities. Water level changes should be considered when installing pumpout stations.

Operation and maintenance: Proper operation and maintenance of pumpout stations and dump stations are critical to provide adequate and reasonable service. An individual should be assigned responsibility for operation and maintenance of pumpout and dump stations. Consider appropriate protective clothing, such as gloves, and hand washing, to protect the operator. Washing facilities should be readily available.

Convenience for boaters and operators is a major factor. Hours of operation for pumpout stations should be keyed to general operating hours for vessels in the area. Specific maintenance and winter storage requirements depend on the system and the location. However, the following minimum maintenance is suggested to maintain sanitary conditions: Use dedicated system for flushing and rinsing hoses; flush hoses; pump clean water through the system, and empty into disposal area, never onto the ground or into the water.

An event or hour meter could be installed on the pump to monitor its use. Monitoring of pumpouts should be an integral part of a marina management program to ensure that the facilities are operating effectively. The following practices can be applied successfully to maintain pumpout facilities: arrange maintenance contracts with contractors competent in the repair and servicing of pumpout facilities; develop regular inspection schedules; maintain a dedicated fund for the repair and maintenance of facilities.

Section 8. Other Information That is Considered Necessary to Promote the Establishment of Pumpout Facilities to Reduce Sewage Discharges From Vessels and to Protect United States Waters

Public/private partnerships: Since approximately 80 per cent (based on the

1986–87 National Boating Facilities Survey, IMI/URI conducted for NMMA) of the marinas in the United States are privately owned. States are encouraged to develop partnerships, within State laws and regulations, with private marinas to construct pumpout stations at these facilities.

"No Discharge Areas": Sections 312(f)(3) and (4)(A) and (B) of the Clean Water Act of 1987 enable States to apply to the EPA for designation of certain water bodies as "No Discharge Areas". In doing so, States must meet specific criteria outlined in 40 CFR 140.4 including demonstrating to the EPA Administrator that adequate and reasonably available facilities exist for the safe and sanitary removal of boat sewage. States should not consider "adequate and reasonably available" under the Clean Vessel Act to satisfy all requirements for determining "No Discharge Areas" under the Clean Water Act. A separate review and determination would have to be made by the EPA for Clean Water Act designation of a "No Discharge Area".

Holding tank bypass: Discharge of raw sewage from a vessel in U.S. Territorial Seas (within the three mile limit) is illegal. Holding tanks are frequently bypassed with the use of valves, commonly called Y-valves. A valve may be installed on any marine sanitation device holding tank to provide for the direct discharge of raw sewage when the vessel is beyond the baseline of the Territorial Seas, which is more than three miles from shore. The valve must be secured in the closed position while operating in Territorial Seas. Use of a padlock, non-releasable wire-tie, or removal of the valve handle would be considered adequate securing of the device. The method chosen must be one that presents a physical barrier to the use of the valve or the toilet. All Y-valves should be standardized, so that the handle points in the direction that the sewage flows and/or indicates the open and closed position. The Y-valve should be place after the holding tank rather than between the toilet and holding tank.

Upland and floating restrooms: Clean, well-maintained restrooms are very desirable for boaters. Many boaters would rather use these when available than use holding tanks. Restrooms should be constructed at marinas and other strategic locations.

Rental Contracts: Marinas could add language in rental contracts to prohibit discharge of sewage into the marina waters.

Disinfectants, perfumes: Industry should produce only products which will not harm waste treatment plants or septic tanks. A symbol should be placed on the label of these products indicating they may be discharged into treatment plants or septic tanks if correctly used in a properly designed treatment system.

Additional information: For additional information on pumpout stations, refer to: (1) "A Guidebook For Marina Owners and Operators On the Installation and Operation of Sewage Pumpout Stations", Maryland Department of Natural Resources Boating Administration, Coastal Technology, Inc., February 1990; (2) "Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings", State Department of Health, Richmond, VA, 1990; (3) "Guidance for States and Municipalities Seeking "No Discharge Area" Designation for New England Coastal Waters", Rev. 4/92, U.S. Environmental Protection Agency, Region 1, Boston, MA; (4) "State of the Art Assessment of Boat Sewage Pumpout Program in Washington State", 12/91, Howard Edde, Inc., Bellevue, WA, for Washington State Parks and Recreation Commission, Olympia, WA. For further information on pumpout stations and dump stations, consult "Marina Pump Out Facilities", Joseph Wettemann, 1/89, and "Types of Pump Out Facilities", Natchex, 7/92.

Dated: February 11, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5530 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–783902

Applicant: Dallas Zoo, Dallas, TX

The applicant requests a permit to export two captive-born female Round Island boas (*Casarea dussumieri*) to the Jersey Wildlife Preservation Trust, United Kingdom, for breeding to enhance the survival of the species.

PRT–787726

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one female captive-born great Indian rhinoceros (*Rhinoceros unicornis*) from the Metropolitan Toronto Zoo, Canada, for breeding to enhance the survival of the species.

PRT–787646

Applicant: Northland Animal Exchange, Abbotsford, British Columbia, Canada

The applicant requests a permit to import two captive-born tigers (*Panthera tigris*) from Wild Kingdom Zoo, Manitoba, Canada, to Steve Martin's Working Wildlife, Frazer Park, California, for breeding to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority

[FR Doc. 94–5460 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Abandonment of the USGS 15-Minute Topographic Quadrangle Map Series; [1:62,500-Scale]

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle map series is the official replacement for the USGS 15-minute series. The 7.5-minute (1:24,000-scale) series, which provides grater detail than the 15-minute series, has been completed for all States (except Alaska, which is covered by maps at 1:63,360-scale) The USGS has not revised or reprinted the maps for many years and can longer support both the 7.5-minute and the 15-minute map series. Consequently, the 15-minute series has been officially abandoned and will no longer be available for sale after June 1, 1994.

DATES: March 1–31, 1994—USGS map dealers may exchange USGS 15-minute topographic maps that they have in stock either for credit at the discounted

rate of $1.25 per map or for 7.5-minute maps, one for one. No dealer exchange or credit will be accepted after March 31, 1994.

April 1–May 31, 1994—State agencies, the general public and map dealers may purchase remaining USGS 15-minute topographic maps in stock for $0.50 per map, in minimum quantities of 100 maps per title.

June 1, 1994—The USGS 15-minute topographic maps are officially abandoned. This means that 15-minute maps will no longer be available from the USGS. However, copies of color separates will still be available for sale and descriptive information will be maintained for reference.

ADDRESSES: U.S. Geological Survey, 508 National Center, 12201 Sunrise Valley drive, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Gary W. North, Assistant Division Chief, Office of Information Services, National Mapping Division, U.S. Geological Survey, 508 National Center, 12201 Sunrise Valley Drive, Reston, Virginia; telephone (703) 648–5780; facsimile (703) 648–5939.

SUPPLEMENTARY INFORMATION: Until each of the printed catalogs can be updated, Earth Science Information Centers and the Branch of Distribution in Denver, Colorado, will insert 15-minute map abandonment notices in the catalogs.

Dated: February 28, 1994.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 94–5587 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–360 and 361 (Preliminary) and 731–TA–688 Through 695 (Preliminary)]

Certain Carbon Steel Butt-Weld Pipe Fittings From France, et al.

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–360 and 361 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–688 through 695 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, India, Israel, Malaysia, the Republic of Korea, Thailand,[1] the United Kingdom, and Venezuela of certain carbon steel butt-weld pipe fittings,[2] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of India and Israel and alleged to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 14, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 28, 1994, by the U.S. Fittings Group, Washington, DC.

Participation in the Investigations and Public Service List

Persons (other than petitioner) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in these investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than March 17, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 24, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document

[1] Only subject products produced by Awaji Sangyo (Thailand) Co., Ltd.

[2] For purposes of these investigations, certain carbon steel butt-weld pipe fittings are defined as carbon steel butt-weld pipe fittings having an inside diameter of less than 360 millimeters (14.17 inches), imported in either finished or unfinished condition.

filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 7, 1994

Donna R. Koehnke,

Secretary

[FR Doc. 94–5628 Filed 3–9–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for comments.

SUMMARY: Pursuant to section 206 of the Andean Trade Preference Act (ATPA, 19 U.S.C. 3204) and section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the United States International Trade Commission instituted investigation No. 332–352, Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Stamps (202–205–3227), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals can obtain further information by contacting the Commission's TDD terminal at 202–205–1810.

BACKGROUND

Section 206 of ATPA requires that the Commission submit annual reports to the Congress regarding:

(1) The actual economic effect of ATPA on the U.S. economy generally as well as on specific industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect of ATPA on the U.S. economy generally and on industries affected by the Act; and

(3) The estimated effect of ATPA on drug-related crop eradication and crop substitution efforts of beneficiary countries.

Section 332(b) of the Tariff Act of 1930 provides the Commission with general authority to conduct factfinding investigations with respect to trade and tariff matters. The Commission's first annual report on ATPA, covering calendar years 1992 and 1993, is to be submitted by September 30, 1994.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary of the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than May 2, 1994. Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436.

By order of the Commission.

Issued: March 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–5630 Filed 3–9–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–355]

Certain Vehicle Security Systems and Components Thereof; Decision Not To Review an Initial Determination Granting Joint Motion To Terminate Investigation With Respect to Respondent, Audiovox Corp., on the Basis of a License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 13) issued on January 31, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Code-Alarm, Inc. ("Code-Alarm") and respondent Audiovox Corp. ("Audiovox") to terminate the investigation with respect to Audiovox on the basis of a license agreement.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain vehicle security systems and components thereof, on August 25, 1993. Complainant Code-Alarm alleges infringement of claims 1–16 of U.S. Letters Patent 5,049,867 (the '867 patent).

On January 3, 1994, Code-Alarm and Audiovox filed a joint motion to terminate the investigation with respect to Audiovox on the basis of a license agreement. On January 31, 1994, the ALJ issued an ID granting the joint motion and terminating the investigation as to Audiovox. No petitions for review or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–5631 Filed 3–9–94; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at William M. Mercer, Inc. 30th Floor, Conference Room 30–C, 1166 Avenue of the Americas, New York, New York on April 8, 1994, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 3, 1994.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 94–5572 Filed 3–9–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) NIC Short-Term Technical Assistance/Training Consultant Fee Survey.

(2) None. National Institute of Corrections.

(3) Once every three years.

(4) Individuals or households. The purpose of this project is to provide the Institute with information on the competitiveness of its established daily flat-fee fate for consultants contracted with under the Institute's Short-Term Technical Assistance/Training Programs.

(5) 70 annual responses at .25 hours per response.

(6) 17.5 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: March 7, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–5557 Filed 3–9–94; 8:45 am]

BILLING CODE 4410–36–M

Lodging a Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 6973(d), notice is hereby given that on March 4, 1994, a proposed consent decree in *United States* versus *Dale Valentine, et al.*, Civil Action No. 93CV1005J, was lodged with the United States District Court for the District of Wyoming.

The complaint filed by the United States on February 19, 1993, seeks injunctive relief and civil penalties under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The complaint alleges that an abandoned oil reprocessing facility near Glenrock, Wyoming, commonly known as Powder River Crude Processors or Big Muddy Oil Processors (the "Site"), may present an imminent and substantial endangerment to human health or the environment. The complaint seeks injunctive relief for a clean up of the Site and civil penalties for violations of administrative orders issued by EPA.

Under this consent decree, five of the ten defendants named in the action, Texaco Marketing and Refining Inc., Phillips Petroleum Company, True Oil Company, Eighty-Eight Oil Company, and Conoco Pipe Line Company ("Settling Defendants"), will conduct a clean up of the Site, which contains unlined sludge pits, leaking tanks, oily seeps and spills, and contaminated soils. It is estimate that this cleanup will cost between $4.4 and $8.9 million. In addition, the Settling Defendants will pay a civil penalty of $300,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* versus *Dale Valentine, et al.*, DOJ Ref. #90–7–1–692.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Wyoming, 3rd Floor, Federal Building, 111 South Wolcott, Casper, Wyoming 82601; the United States Environmental Protection Agency, Region 8, 999 18th Street—Suite 500, Denver, Colo. 80202–2466; and at the Consent Decree Library, 1120 "G" Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $15.75

(25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-5483 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Development of Standard Cryogenic Tank Design Specification Utilizing New Technology

Notice is hereby given that, on January 21, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Air Products and Chemicals, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture are Air Products and Chemicals, Inc., Allentown, PA; Praxair, Inc., Danbury, CT; Minnesota Valley Engineering, Inc., Bloomington, MN; and Harsco Corporation, Wormleysburg, PA. The objective of the venture is to develop a new standard cryogenic tank design specification utilizing new technology.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94-5596 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on January 25, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and J. C. Penney Company ("JCPenney") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and JCPenney, Plano, TX. Bellcore and JCPenney entered into an agreement effective as of December 17, 1993, to engage in cooperative research related to technologies for accessing multimedia databases through an information infrastructure and for enabling electronic purchases through the information infrastructure to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototypes for the demonstration of such technologies.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94-5594 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on January 18, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* ("the Act"), Gas Utilization Research Forum ("GURF") filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Texaco, Inc., Houston, TX, has become a new member of GURF.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On December 19, 1990, GURF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991, 56 FR 1655.

The last notification was filed with the Department on August 27, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1993, 57 FR 52508.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94-5593 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MCI Telecommunications Corporation

Notice is hereby given that, on January 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), MCI Telecommunications Corporation ("MCI") has filed written notifications on behalf of MCI and Ericsson GE Mobile Communications, Inc. ("Ericsson") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are MCI, Washington, D.C.; and Ericsson, Research Triangle Park, NC. This venture was created to investigate deployment strategies for personal communications services (PCS) in the United States initially utilizing the Global System for Mobile Communications (GSM) platform structure and open architecture, to develop widely-available specifications for PCS network equipment and to identify changes necessary to adapt existing GSM platform to the U.S. marketplace.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94-5592 Filed 3-9-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MCI Telecommunications Corporation

Notice is hereby given that, on January 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), MCI Telecommunications Corporation ("MCI") has filed written notifications on behalf of MCI and Nokia Inc. ("Nokia") simultaneously with the

Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are MCI, Washington, D.C.; and Nokia, Irving, TX. This venture was created to investigate deployment strategies for personal communications services (PCS) in the United States initially utilizing the Global System for Mobile Communications (GSM) platform structure and open architecture, to develop widely-available specifications for PCS network equipment and to identify changes necessary to adapt existing GSM platform to the U.S. marketplace.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–5595 Filed 3–9–94; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee

The National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee will meet on April 19–20, 1994, from 9 a.m. until 5 p.m., at the Dulles Airport Marriott, 333 West Service Road, Chantilly, Virginia, telephone 703–471–9500, to discuss the design and implementation of the National Stolen Auto Part Information System (NSAPIS) mandated by Public Law 102–519.

The Committee will address issues concerning the theft status verification process, NSAPIS response time requirements and record retention periods, anticipated database sizing and estimated transaction volume, and data quality and record validation.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the National Stolen Auto Part Information System or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Officer. Anyone wishing to address this session of the meeting should notify the Designated Federal Officer, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquiries may be addressed to the Chairman/Designated Federal Officer, Mr. Virgil L. Young, Jr., Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC, 20535, telephone (202) 324–5084.

Dated: March 4, 1994.

Virgil L. Young, Jr.,

Chief, Programs Development Section, Designated Federal Officer

[FR Doc. 94–5599 Filed 3–9–94; 8:45 am]

BILLING CODE 4410–02–M

Office of Justice Programs

Office for Victims of Crime

Victims of Crime Act Victim Assistance Grant Program

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Final program guidelines.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Final Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.* (hereafter referred to as VOCA).

EFFECTIVE DATE: These Final Program Guidelines are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Hightower, Director, State Compensation and Assistance Division, at the above address; telephone number (202) 307–5947.

SUPPLEMENTARY INFORMATION: VOCA authorizes Federal financial assistance to States for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of Federal crimes. These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in Section 1404 of VOCA, Public Law 98–473, as amended, codified at 42 U.S.C. 10603, and contain information on the following: Summary of the Comments to the Proposed Program Guidelines; Background; Allocation of VOCA Victim Assistance Funds; VOCA Victim Assistance Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained during the first seven years of the grant program and are in accordance with VOCA. These Final Program Guidelines supersede any Guidelines issued previously by OVC.

The Office of Justice Programs, Office for Victims of Crime, has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, this rule was not reviewed by the Office of Management and Budget.

In addition, these Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is *not* required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information requirements contained in the *Program Requirements* section was submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Approval to use the specified reports to gather information on the use and impact of VOCA victim assistance grant funds has been given by OMB numbers 7390/2A and 7390/4.

Summary of the Comments to the Proposed Program Guidelines

On August 26, 1993, the Office for Victims of Crime (OVC) published proposed Victims of Crime Act (VOCA) victim assistance Program Guidelines in the **Federal Register**, Vol. 58, No. 164, pages 45126 through 45135. These proposed Guidelines were published for the purpose of soliciting comments on the revised rules of the VOCA victim assistance grant program from all interested individuals and organizations. OVC received 48 individual letters from interested individuals and organizations and had conversations with almost all State VOCA administrators. In total, over 200 different issues, questions, recommendations, and comments were received, which often reflected diverse views from a variety of perspectives.

OVC appreciates the time and effort each respondent invested in reading and responding to the proposed Guidelines. Although it is not possible to reply to each respondent on an individual basis, all comments were carefully considered in developing these Final Program

Guidelines. As a result, OVC rewrote, deleted, and incorporated additional information to further clarify various sections of the Guidelines. Explanation of our resolutions and final determinations is provided in the following paragraphs.

A. Background

Many representatives from sexual assault and domestic violence programs expressed concern that the Proposed Guidelines would encourage States to make mandatory the reporting of the crime as a condition of receiving services. There is no provision in VOCA mandating that crime victims report crimes to law enforcement agencies as a condition of receiving VOCA-supported assistance and services. Neither the Proposed nor these Final Program Guidelines deviates from the original purpose of VOCA—to support all victims of crime both outside of, and within, the criminal justice system. (See **Federal Register**, Vol. 52, No. 62, April 1, 1987, page 10422.)

Further, some respondents expressed concern that the proposed Guidelines symbolized a significant shift from a victim service focus to one which encouraged assistance and support with the criminal justice system. The sole purpose of the VOCA victim assistance grant program is to assist States in providing direct services to crime victims, through local public and nonprofit organizations. Direct services include crisis intervention, emergency shelter, information and referral, and group counseling, as well as those services that assist the crime victim with, and encourage willingness to participate in, the criminal justice system, such as temporary restraining orders, emergency child abuse petitions, assistance with property return, court accompaniment, assisting with victim impact statements, and case notification. OVC believes that VOCA victim assistance funds have supported a variety of services in the past and should continue to do so in the future.

B. Allocation of VOCA Victim Assistance Grant Funds

1. Allocation of Funds to States. Several respondents questioned the method for allocating grant funds. The allocation of funds to all State grantees is determined by VOCA. OVC does not have the authority under the Act, as some respondents suggested, to fund less populated States at a higher rate, to authorize a separate grant program for Native Americans, or to extend the length of the grant period to the year of award plus two years.

2. Allocation of Funds within the States. Some respondents raised the issue of seed money versus stabilizing victim services through ongoing programs, an issue which has been raised on numerous occasions. There is no provision in VOCA or the Program Guidelines to require or prohibit State grantees from using VOCA as seed money. Each State VOCA administrator is responsible for developing a funding strategy that meets the unique needs of crime victims within the State. Historically, the vast majority of subrecipients are organizations that have previously received VOCA funds. During FFY 1992, of the approximately 2,400 VOCA subrecipients, only 118 were "new" subrecipients.

Fortunately, there has been growth in victim services organizations throughout the Nation, resulting in crime victims having greater access to a wider variety of services. This growth has placed additional burdens upon State administrators to develop funding strategies that address how to most effectively distribute limited VOCA funds to reach the greatest numbers of crime victims. As a result, States are beginning to competitively award VOCA funds versus funding the same organizations every year.

In keeping with the intent of VOCA, these Final Program Guidelines will continue to give sole discretion to State administrators for (1) determining which organizations will receive funds, (2) the amount of funds to be awarded, (3) the length of time an organization will receive funding, and (4) the types of services to be provided to meet the divergent needs of their crime victims.

C. VOCA Victim Assistance Application Process—Application for Training Funds

Beginning with the FFY 1994 grant period, States may opt to retain a portion of their VOCA grant to provide State-wide or regional State training activities that improve the skills of direct service providers. OVC received a number of comments regarding this new option.

Some respondents believe that the option will be burdensome to the State VOCA administrators. First, OVC reminds States that this is an option, not a mandate. Secondly, the reporting requirements contained in this option are minimal—Subgrant Award Report information must be submitted and information regarding the training must be reported on the Performance Report. These reporting criteria apply to VOCA funds used for this option as well as all other uses of VOCA funds.

Other respondents believe that this option affords State administrators too much power. State administrators have always determined how, and for what purpose, VOCA funds will be used. With this training option, States may conduct the training themselves or work in coordination with another victim services organization or coalition. Previously, States who offered State-wide training included the cost of such training in each VOCA subrecipient's budget, thus enabling the subrecipient to attend the training. This option eliminates this extra administrative step. Additionally, this option permits States to meet the same training needs of many direct service providers in a very cost-effective way.

Many respondents requested that the match be consistent with other uses of VOCA. After careful consideration, the Final Program Guidelines will differ from the Proposed Guidelines in that the match requirement for this training option will be 20 percent.

D. Program Requirements

1. Priority Crime Victims. The letters from domestic violence and sexual assault coalitions and programs urged OVC to mandate that States be required to allocate more than 10 percent of each year's grant to priority crime victims (victims of child abuse, sexual assault, and domestic violence). Since the inception of VOCA in FFY 1986 through 1992, States have assessed the need for services and have allocated, from each year's VOCA grant, an average of 21 percent for victims of child abuse, 22 percent for victims of sexual assault, and 34 percent for victims of domestic violence. These Final Guidelines will continue to give flexibility to State VOCA administrators in allocating limited funds for victim services.

2. Underserved Crime Victims. VOCA was amended in October 1988 to require States to make VOCA victim assistance funds available to previously underserved crime victims, other than victims of child abuse, sexual assault, and domestic violence. As a result, since 1989, States have been required to allocate a minimum of 10 percent to previously underserved crime victims such as victims of assault, homicide, elder abuse, and DUI/DWI crashes.

This requirement can be met by allocating funds for one type of crime or by combining allocations for two or more types of crime victims.

States must identify underserved crime victims by type of crime in order for OVC to monitor each State's ability to fulfill this requirement. Identifying crime victims by a particular characteristic prevents the State and

OVC from determining if the underserved requirement has been met. For example, Hispanic crime victims may be underserved within a State; however, unless the State identifies the type of crime, it is impossible to determine whether the funds allocated should be used to meet a priority or the underserved requirement.

3. Underserved Requirement—Native American Crime Victims. At the time the underserved requirement was levied, States were permitted one exception to designating by type of crime—States could meet the requirement by allocating funds for services to Native Americans on reservations. This exception was adopted to encourage State administrators to make VOCA funds available for services to Native American crime victims on reservations, where few services were available.

Because of this exception, State administrators have requested OVC to interpret the underserved requirement by geographical considerations (such as rural crime victims) race, religion, sex, or other identifying characteristics such as non-English speaking crime victims, which was not the intent of the underserved requirement.

Therefore, beginning with the FFY 1994 VOCA victim assistance grant, States are required to identify underserved crime victims by type of crime only. Thus, States serving Native Americans, Hispanic, geographically isolated, etc. must identify the type of crime to which these crime victims are subjected.

Some respondents raised concerns that eliminating the Native American option for meeting the underserved requirement would encourage States to withdraw funding to Native American victim services organizations on reservations, if such services cannot help meet the underserved requirement. OVC strongly encourages State administrators to include the needs of all crime victims within their State in their funding strategy, including those crime victims residing in isolated geographical areas (such as on reservations), and to award VOCA funds appropriately.

Some State administrators expressed concern that identifying by type of crime, instead of Native Americans, would prevent them from meeting the 10 percent requirement. In an attempt to address this issue, the Final Program Guidelines permit States to allocate less than 10 percent to underserved crime victims, if they can document that a smaller percentage of funds is warranted for underserved crime victims, as described in the Final Program Guidelines.

Since 1989, OVC has undertaken an extensive effort to foster the growth of services to Native Americans on reservations and has dedicated substantial financial resources for services to crime victims through the VOCA Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program. The purpose of this discretionary program is to seed organizations offering services to crime victims on reservations with the expectation that these organizations could apply for and receive State VOCA victim assistance grant funds. OVC considers this effort successful in that, during FFY 1992, States funded 39 Native American organizations on reservations. Through this discretionary grant program, OVC will continue efforts to support services to Native American crime victims on reservations.

4. Underserved Requirement—Vulnerable Adults. Since 1989, States have been permitted to identify elder abuse as a type of crime. The Proposed Program Guidelines broadened the crime of elder abuse to include all vulnerable adults, regardless of age. However, comments from respondents indicated that the Proposed Guidelines were not clear. Therefore, these Final Program Guidelines have been revised to identify abuse of vulnerable adults as a type of crime, which may be used by States to meet the underserved requirement.

For the purpose of the VOCA victim assistance grant program, abuse of vulnerable adults occurs when an adult, who does not have the mental and/or physical capacity to manage his/her daily needs, is subjected to either physical or emotional abuse by a guardian or caretaker. This description parallels that of child abuse. This description differs significantly from other types of crime to which individuals, who are able to maintain an independent lifestyle, are subjected such as assault, robbery, fraud, etc.

5. 10 Percent Requirements for Priority and Underserved Crime Victims. Beginning with the FFY 1994 grant period, States will be given the latitude to assess the needs of crime victims within their State and allocate less than 10 percent to a specific category of priority or underserved crime victims, so long as they can demonstrate that (1) a specific category of crime victims is receiving sufficient amounts of financial assistance from the State or other funding sources, (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program, and (3) crime rates for that category of crime victims have diminished, warranting a lesser amount of VOCA funds to be allocated. If states cannot satisfy these conditions, they then must meet the 10% requirement for priority and underserved crime victims. This flexibility is offered to States who may be experiencing an influx of funds designated for a specific categories of crime victim during a grant period or who may be fortunate in that some types of crimes are very low in their State.

6. Verification of Actual Expenditures for Priority and Underserved Crime Victims. The Proposed Program Guidelines required States to verify for OJP representatives that a minimum of 10 percent of each year's grant is expended for services to each priority and underserved category of crime victims. This requirement was included in the Proposed Guidelines based upon a General Accounting Office recommendation that all recipients of VOCA victim assistance grant funds verify actual expenditures. OVC received vigorous opposition to this requirement from almost all State VOCA administrators, because of the unreasonable burden upon all recipients of VOCA funds.

Therefore, this requirement has been removed from the Final Program Guidelines.

7. Subrecipient Eligibility Requirement—Use of Volunteers. VOCA requires that "eligible crime victim assistance programs" use volunteers in providing direct services to crime victims, unless, and to the extent, that the chief executive determines that a compelling reason exists to waive the requirement. In response to requests to delete this requirement, please note that OVC does not have the statutory authority to change this legislative requirement (42 U.S.C. 1404(b)(1)(c)). OVC encourages State administrators to carefully consider waivers of this requirement.

Some respondents believe that the use of volunteers prevents victim services from being looked upon as a profession. OVC believes that volunteers in many organizations are the foundation of the victim services program. Perhaps the issue of professionalism relates more to proper training and support of both paid and volunteer staff, as opposed to whether or not the individual is paid by the agency. For example, many subrecipient organizations have a cadre of professionally trained volunteers.

Other respondents requested OVC to specify the number of hours and the value of a volunteer's time in relationship to total personnel within a subrecipient organization. State VOCA

administrators have total discretion in personnel management decisions; OVC is not authorized to regulate this matter.

8. Subrecipient Eligibility Requirement—Coordination Activities versus Coordination of Services on Behalf of Individual Crime Victims. Many respondents questioned sections of the Proposed Guidelines concerning coordination of activities. Coordinating public and private efforts on behalf of all crime victims within a community differs significantly from ensuring that an individual crime victim receives coordinated services within the community. The former is an eligibility criteria for any organization to receive VOCA funds, and as such, cannot be supported with VOCA funds. The latter is an allowable VOCA-supported activity.

VOCA identifies an "eligible crime victim assistance program" as an organization that "* * *promotes within the community served coordinated public and private efforts to aid crime victims". See section 1404.(b)(1)(D). It is expected that organizations conduct a number of coordination activities on behalf of crime victims as part of their routine activities to be eligible to receive VOCA funds, such as (1) being known to the general public and to community organizations serving crime victims; (2) having established working relationships with other service organizations, such as interagency agreements for appropriate referral of crime victims for other services; (3) serving on task forces, commissions, multidisciplinary teams, and/or other working groups on behalf of crime victims, in general; (4) being known as an advocate for crime victims within the community; (5) having developed policies, procedures, and protocols on offering victim services; (6) having developed methods to assess the needs of crime victims within their community; (7) having developed methods of assisting and supporting crime victims; and (8) having developed their own strategies for serving crime victims and training individuals to provide direct services. Organizations that do not perform these activities would have difficulty meeting the statutory requirements of an eligible crime victim assistance program.

VOCA funds are designated exclusively to provide direct services to crime victims. Therefore, they cannot, and should not, be used to help an organization meet eligibility criteria as defined by VOCA.

9. Subrecipient Eligibility Requirements—Contracted Services. Many respondents expressed concern about the use of VOCA funds to support contracted services. The intent of VOCA has always been to support services to crime victims through the staff of a subrecipient organization. It was not intended that VOCA subrecipients serve as contractors of services.

In previous years, the Program Guidelines prohibited VOCA funds from supporting professional services. The rationale behind this prohibition was that VOCA could not support administrative, indirect, and other organizational costs that were included in a loaded hourly rate, when these costs were strictly prohibited by VOCA. However, VOCA subrecipients have always been, and will continue to be, permitted to augment their staff by awarding a contract (for the equivalent of an individual's salary and fringe) to an individual or organization whose hourly or yearly rate contains no administrative and/or other VOCA-unallowable costs.

Although it was not the intent that VOCA subrecipients serve as contractors of services, OVC recognizes that, at times, it may be necessary for VOCA subrecipients to contract for specialized services. For example, if there is an infrequent need for a victim service, it may not be cost-effective for the VOCA subrecipient to employ an individual with the skills to perform the needed service, either on a part- or full-time basis. At other times, there may be emergency situations requiring victim services that are beyond the scope of the VOCA subrecipient organization. In situations such as these, VOCA subrecipients may contract for VOCA-allowable services, at the discretion of the State grantee and within the parameters of the OJP contracting rules and regulations and the OJP "Financial and Administrative Guide for Grants" (M7100.1D), effective edition. VOCA funds can only support limited use of contract services. Subrecipients are prohibited from using a majority or their entire award for contracted services that have administrative, overhead, and other indirect costs included in the hourly or daily rate. However, all contract documentation is subject to review by OVC and the Office of the Comptroller at both the State and the subrecipient level.

States who permit VOCA funds to be used for contracted services are encouraged to closely scrutinize each request to use VOCA funds to purchase services and consider the following: (1) How the need for, and frequency of, the contracted services was determined; (2) the total amount of contracted services requested within the grant period; (3) how reasonable is the hourly fee; (4) does the hourly fee contain any administrative costs; (5) what other options for service provision were available; (6) do the subrecipient's contracting procedures strictly adhere to OJP contract guidelines; and (7) the proportion of the contracted services in relation to other VOCA supported activities; etc.

When contracted services are a necessity, they are expected to comprise a very small percentage of a subrecipient's VOCA award. Thus, subrecipients cannot use their entire VOCA award or a majority of their award to purchase services. To do so raises questions such as: (1) How did the VOCA subrecipient meet the VOCA eligibility criteria of providing crime victim services, if they are contracting for a majority or all of the services; (2) if the organization providing contracted services is not eligible to receive funding, is the contract mechanism an attempt to circumvent the eligibility criteria established by VOCA; (3) if the organization providing contracted services is an eligible crime victim service provider, why doesn't that organization receive VOCA funds directly; (4) if services are continually purchased, what incentive exists for the organization to hire quality staff to provide the service within the organization; and (5) with VOCA funds being so limited and the needs of crime victims so great, how can a loaded rate that includes administrative and other indirect costs be justified?

10. Eligible Subrecipient Organizations—Program Income. A number of respondents questioned OVC's prohibiting VOCA-funded projects from generating program income. OVC has discovered during site visits that a growing number of organizations are generating program income from VOCA-funded projects and that few States and subrecipients understand the financial and monitoring burden they assume when program income is generated. OVC has four major concerns regarding Federal funds generating income for subrecipient organizations.

First, the rates being charged to crime victims are loaded hourly rates that include administrative and many types of indirect costs prohibited with VOCA grant funds. Program income that is received by the subrecipient is used to off-set unallowable VOCA costs. Further, VOCA funds were never intended to be a revenue-generating source for the subrecipient.

Second, few States and subrecipients have the capability to track program income appropriately and in accordance with Federal financial accounting

requirements. All program income generated from a VOCA-funded project is restricted to the same uses as the VOCA grant, which presents many problems for the subrecipient and the State, particularly when VOCA funds only support a portion of the counselor's time.

Third, any and all program income, no matter how large or small, must be tracked and accounted for, both at the subrecipient and State grantee level. Few subrecipients have procedures for reporting the income to the State so the State can monitor the appropriate uses of the VOCA-generated income.

Fourth, the purpose of the VOCA victim assistance grant program is to provide services to all crime victims without concern for their financial resources or availability of insurance or other third-party payors. Crime victims suffer tremendous emotional, physical, and financial losses; and it was not the intent of VOCA to exacerbate the injustice by asking the crime victim to pay—again.

OVC is mindful that some subrecipients use program income, in part, to offer additional services to crime victims, thus expanding available services beyond the VOCA-funded position. Therefore, these Final Program Guidelines will permit States and subrecipients to generate income from VOCA-funded staff time under the following conditions: (1) Only with prior approval of financial and monitoring procedures by the Office of the Comptroller; and (2) with the stipulation that no crime victim is ever denied services for lack of insurance or personal resources to cover the cost of the service.

E. Services, Activities, and Costs

1. Allowable Direct Services, Activities, and Costs—Liability Insurance. Several respondents questioned the use of VOCA funds to pay for liability insurance for direct-service providers who are subject to civil action. These Program Guidelines permit State administrators the option of including this type of insurance as an allowable cost, when it is part of an organization's benefit package for employees. OVC believes that to force direct-service providers to pay their own liability insurance, when many direct service providers receive low salaries, could have serious consequences on the quality of services provided to crime victims. NOTE: This section does not include the indirect organizational costs of building liability insurance, etc., which are not VOCA allowable costs.

2. Other Related Allowable Services, Activities, and Costs—Supervision. Several respondents requested that OVC reconsider its ruling on supervision of direct service providers as an allowable direct service. VOCA funds are not intended to defray the costs of management and administrative salaries within an organization. This is reflected in the "no administrative costs provision" of VOCA. The primary purpose of VOCA is to offer a supplement to those organizations that are able and willing to absorb the costs of supervising additional VOCA-funded staff. However, OVC realizes that the quality and quantity of direct services can be enhanced by funding a volunteer coordinator's salary or the salary of an individual who supervises interns. Therefore, these Final Program Guidelines will continue to give State grantees the latitude of determining under which circumstances VOCA funds should support supervisory activities.

Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits from fines and penalties levied on criminals convicted of Federal crimes. This Fund provides the source of funding for carrying out all of the activities authorized by VOCA.

OVC serves as the Federal focal point for all crime victim issues, which includes ensuring that the criminal justice system addresses the legitimate rights and interests of crime victims.

OVC's program activities support this role. These Program Guidelines address the specific program and financial requirements of the VOCA crime victim assistance grant program.

OVC makes annual VOCA crime victim assistance grants from the Fund to States. The primary purposes of these grants are to support the provision of direct services to innocent victims of violent crime throughout the Nation, to assist victims of crime as soon as possible in order to reduce the severity of the psychological and emotional consequences of the victimization, to demonstrate on-going support for the victim in coping with the impact of the victimization.

VOCA gives latitude to States to determine how VOCA victim assistance grant funds will best be used within each State. However, each State grantee must abide by the minimal statutory requirements outlined in VOCA and these Program Guidelines.

Allocation of VOCA Victim Assistance Funds

A. Distribution of the Crime Victims Fund

OVC administers the deposits made into the Fund for activities, as authorized in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund during the previous Federal Fiscal Year.

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with Federal Fiscal Year (FFY) 1993 deposits. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund by Congress. Thus, under current legislation, the Fund will receive deposits indefinitely.

Deposits into the Fund are distributed as follows:

1. The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the Federal judicial branch for administrative costs to carry out the functions of the judicial branch under Sections 3611 of Title 18, U.S. Code. [See Section 1402 (d)(1).]

2. Of the next $100,000,000 deposited in the Fund in a particular fiscal year [Section 1402 (d)(2)],

a. 49.5 percent shall be available for victim compensation grants;

b. 45 percent shall be available for victim assistance grants;

c. 1 percent shall be available for training and technical assistance services to eligible crime victim assistance programs and for the financial support of services to victims of Federal crime by eligible crime victim assistance programs; and

d. 4.5 percent shall be available for child abuse prevention and treatment grants.

3. The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for child abuse prevention and treatment grants [Section 1402 (d)(3)].

4. The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for victim assistance grants [Section 1402 (d)(4)].

5. Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed for the above purposes shall be available as follows [Section 1402 (d)(4)]:

a. 47.5 percent shall be available for victim compensation grants;

b. 47.5 percent shall be available for victim assistance grants; and

c. 5 percent shall be available for training and technical assistance

services to eligible crime victim assistance programs and for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

B. Availability of Funds

All States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as "States") are eligible to apply for, and receive, VOCA victim assistance grants. [See Section 1404(d)(1) of VOCA, codified at 42 U.S.C. 10603(d)(1).]

Funds are available for expenditure during the FFY of award and in the next FFY (the grant period). The FFY begins on October 1 and ends on September 30 of the following year. States may incur expenses retroactively to the beginning of each year's grant, October 1, even though the VOCA grant may not be awarded until later in the grant period. Under VOCA, funds that are not obligated by the end of the grant period must be returned to the General Fund of the U.S. Treasury. Therefore, States are encouraged to closely monitor the expenditure of VOCA funds at the subrecipient level and to reallocate unexpended funds prior to the end of the grant period, when possible.

C. Allocation of Funds to States

From the Fund deposits available for victim assistance grants, each State receives a base amount of $200,000, except Palau. The remaining Fund deposits are distributed to each State, based upon the State's population in relation to all other States, as determined by current census data.

D. Allocation of Funds Within the States

The Governor of each State designates the State agency that will administer the VOCA victim assistance grant program. That designated State agency establishes policies and procedures regarding the implementation and administration of the VOCA victim assistance grant program. These policies and procedures must meet the minimum requirements of VOCA and the Program Guidelines but can be more restrictive.

VOCA victim assistance funds granted to the States are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds, and in what amounts, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

States are encouraged to develop a VOCA program funding strategy, which should consider the following: the range of victim services throughout the State and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; and the extent to which other sources of funding are available for services.

States are encouraged to expand into new service areas as needs change. Many States use VOCA funds to stabilize victim services by continuously funding selected organizations. Some States end funding to organizations after several years in order to fund new organizations. Other States limit the number of years an organization may receive VOCA funds. These practices are within the State's discretion and are supported by OVC, when they serve the best interests of crime victims within the State.

States may award VOCA funds to organizations that are physically located in an adjacent State. States should use this adjacent-State approach when it is the only efficient and cost effective mechanism available for providing services to victims who reside in the awarding State. When adjacent-State awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent-State organization. OVC recommends that States enter into an interstate agreement with the adjacent State to address monitoring of the VOCA subrecipient, auditing Federal funds, managing noncompliance issues, reporting requirements, etc.

Note: States are requested to notify OVC of each VOCA award made to an organization in another State.

States may use a "conduit" organization to assist in selecting qualified subrecipients or to reduce the State's administrative burden in implementing the grant program. However, neither the "conduit" organization nor the State grantee may use any portion of the VOCA victim assistance grant for the administrative, coordination, and/or oversight activities. Further, the use of a "conduit" organization does not relieve the State from ultimate programmatic and financial responsibilities.

VOCA Victim Assistance Application Process

A. State Grant Application Process

Each year, OVC issues to each designated State agency a Program Instruction and Application Kit. The Kit contains the necessary forms and detailed information required to make application for VOCA grant funds, including the Application for Federal Assistance, Standard Form 424. The amount for which each State may apply is included in the Application Kit. At the time of application, States are not required to provide specific information on the subrecipients that will receive VOCA victim assistance funds.

In addition to the Application for Federal Assistance, States shall specify their arrangements for complying with the provisions of Circular A–128 (Audits of State or Local Government) and shall submit Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance; and/or any other certifications required by OJP and OVC.

B. Application for Training Funds

The quality of victim services is directly related to appropriately trained direct service providers; therefore, skills training for direct service providers has always been an allowable cost. During previous grant periods, States awarded VOCA funds to individual subrecipient organizations to support various skills development and training activities for individual service providers. Beginning with the FFY 1994 VOCA victim assistance grant program, State grantees have the option of retaining a portion of their VOCA victim assistance grant for conducting State-wide and/or regional State training(s) of victim services staff.

This option is extended for the following reasons: appropriate training opportunities are not always available within the State boundaries; direct service providers often do not have resources to access training in other States; access to quality training by all victim services personnel could help expand quality services to crime victims throughout the State; and State-wide training is often more cost-effective than awarding VOCA funds to subrecipients to be trained in other States.

To exercise this training option, a State must submit one or more training proposals to OVC for approval, either at the time of application for the annual VOCA victim assistance grant or at least three months prior to the training events. The training activity must occur within the grant period, and all training costs must be obligated prior to the end of the grant period.

Note: VOCA grant funds cannot be used to supplant the cost of existing State administrative staff or related State training efforts, i.e., Statewide conferences, coalition conferences, etc.

The maximum amount permitted for this purpose is $5,000 or 1 percent of the State's grant, whichever is greater. The VOCA funds will be matched at 20 percent, cash or in-kind, with the source of the match described.

Note: States who choose to sponsor Statewide or regional training(s) are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

Although specific criteria for applying for training funds will be given in each year's Application Kit, the following general guidance is provided, as follows:

1. The training proposal must identify the service provider needs and address a plan for meeting these needs through the training activity.

2. The training proposal must describe how the VOCA funds will be used to improve the skills of paid and volunteer direct service staff.

3. The training offered must consist of skills development activities for staff. Proposals submitted for seminars and conferences that only focus on sharing ideas, providing general information, and networking will not be approved. (An example of skills development is training focused on how to respond to a victim in crisis. This type differs significantly from being apprised of legislative updates of recent research findings regarding victims of crime.)

4. The training proposal will describe the goals of the training event, outline the curriculum, and identify costs associated with the purchase of trainers, space, conference coordination, curriculum development, materials, etc.

5. If registration fees will be charged to non-VOCA supported staff and volunteers, the proposal must identify how the program income will be used to defray the cost of the project.

Note: Program income generated from staff time is different from billing for services.

Program Requirements

A. State Eligibility Requirements

VOCA and the Program Guidelines establish minimal eligibility requirements. When applying for the VOCA victim assistance grant, States are required to give assurances that the following conditions or requirements will be met:

1. States shall certify that only eligible organizations will receive VOCA funds and that VOCA crime victim assistance funds will be used only for direct services to victims of crime. See Section 1404(b), codified at 42 U.S.C. 10603(b). Eligible organizations are those organizations that not only offer direct services to crime victims but also serve as a voice on behalf of crime victims in their community.

2. States shall certify that VOCA crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(C) of VOCA, codified at 10603(a)(2)(C). VOCA victim assistance grant funds are intended to enhance or expand services, not substitute for other sources of funding.

Note: This supplantation clause applies to State and local public agencies only

3. States shall certify that a minimum of 10 percent of each FFY's grant (30 percent total) will be allocated to each of the following categories of crime victims: sexual assault, domestic violence, and child abuse.

Note: This is a State requirement and does not mean that each VOCA subrecipient must meet this requirement.

These categories of crime victims are identified as "priority" victims by VOCA, because the problems experienced by these victims are often exacerbated by societal attitudes or vulnerabilities. Although "priority" victims are given special consideration in allocating VOCA funds, this designation does not imply that the needs and suffering of "priority" victims are greater than other crime victims.

Each State must meet this requirement, unless it can demonstrate to OVC that (1) a "priority" crime victim is currently receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; *and* (3) crime rates for a "priority" crime victim has diminished.

4. States shall certify that an additional 10 percent of each VOCA grant will be allocated to victims of violent crime who were "previously underserved" with VOCA funds, other than the "priority" victims. Underserved victims include, but are not limited to, survivors of homicide victims, victims of assault, survivors of DUI/DWI crashes, etc. To meet the "previously underserved" requirement, States must identify underserved crime victims by type of crime.

Note: Each State has latitude for determining the method for identifying "previously underserved" crime victims, which may include public hearings, needs assessments, task forces, meetings with Statewide victim services agencies, etc.

Each State must meet this requirement, unless it can justify to OVC that (1) services to victims of violent crime, other than the "priority" victims, are receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; *and* (3) crime rates for victims of violent crime, other than "priority" victims, has diminished.

States may fund services to Native Americans, elderly, Hispanic, or any other crime victims with specific demographic profiles and use those services to meet the "previously underserved" requirement. However, States must identify the type of violent crime to which the victims are subjected, such as assault, homicide, DUI/DWI, kidnapping, robbery, elder abuse, abuse of vulnerable adults, etc.

Note: For the purpose of the VOCA victim assistance grant program, abuse of vulnerable adults occurs when an adult, who does not have the mental and/or physical capacity to manage their daily needs, is subjected to either physical or emotional abuse by a guardian or caretaker.

5. States shall certify that appropriate accounting, auditing, and monitoring procedures will be employed at the State and subrecipient levels and that records are maintained to assure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, as per the M7100.1D, effective edition.

6. States shall certify compliance with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of Title 28 Code of Federal Requirements (CFR) applicable to grants.

7. States shall certify its compliance, and its subrecipients' compliance, with the applicable provisions of VOCA and the Final Program Guidelines.

8. States shall submit required programmatic and financial reports on the use of the VOCA victim assistance funds by the deadlines prescribed by OVC. (See Program Requirements and Financial Requirements for reporting requirements and timelines.)

9. States shall ensure that no person shall, on the grounds of race, color, religion, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with VOCA victim assistance grant funds.

10. In the event a Federal or State court or administrative agency makes a finding of discrimination on the grounds of race, religion, national

origin, sex, or disability against a recipient of VOCA victim assistance funds, the State shall certify that a copy of that finding will be forwarded to the Office of Civil Rights (OCR) for OJP.

11. States shall immediately notify OVC in the event of a finding of fraud, waste, and/or abuse of VOCA funds and continue to apprise OVC of the status of on-going investigations.

12. States are encouraged to coordinate their activities with the State victim compensation agency. Coordination could include activities such as meetings; training activities for direct service providers on the general parameters of the State compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); providing information on VOCA victim assistance services within the State; developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations; etc.

13. States are encouraged to coordinate their activities with the Victim/Witness Coordinator staff within U.S. Attorney Offices to ensure that the Coordinators are aware of available resources for victims of Federal crime. Such coordination could include providing Coordinators with a list of VOCA-funded organizations, co-sponsoring training activities, inviting Coordinators to serve on review panels that select the organizations to receive VOCA funds, etc.

B. Subrecipient Organization Eligibility Requirements

VOCA establishes minimal eligibility criteria that must be met by all organizations that receive VOCA funds. These funds are to be awarded to subrecipients for the purpose of providing direct services to victims through their staff. Each subrecipient organization shall:

1. Be a public or nonprofit organization that provides direct services to crime victims.

2. Have a record of providing effective direct services to crime victims for a minimum of one year, have the support and approval of its services by the community, have a history of providing direct services in a cost-effective manner, and have financial support from non-Federal sources. An organization meeting these criteria is considered an "existing" organization for match purposes.

States may choose to fund organizations which have been providing direct victim services for less than one year. However, these organizations must have financial support from non-Federal sources and meet the match requirement for "new" victim services organizations.

3. Be able to meet program match requirements. Match must be committed for each VOCA-funded project, must be derived from the other resources within the organization, and cannot be derived from other Federal funds and/or sources, except as provided in Chapter 2, paragraph 14, of the M7100.1D. All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Thus, only services and activities that are VOCA-allowable qualify as match. Because of this requirement, VOCA subrecipients must maintain records which clearly show the source, the amount, and the period during which the match was expended. Organizations are not encouraged to commit excessive amounts of match to the VOCA-funded project.

Match requirements are as follows:

a. For an "existing" victim services organization, the match is 20 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match).

b. For a "new" victim services organization the match is 35 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match).

c. The match for VOCA subrecipients that are Native American tribes/organizations located on reservations, whether new or existing, is 5 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match.) A Native American tribe/organization is described as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. A reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

d. Subrecipients located in the U.S. Virgin Islands, and all other territories and possessions of the United States excluding Puerto Rico, whether considered new or existing, are not required to match the VOCA funds. See 48 U.S. Code, 1469a(d).

4. Use volunteers unless the State determines there is a compelling reason to waive this requirement. A "compelling reason" may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

5. Promote, within the community served, a coordinated approach for serving crime victims, thus avoiding duplication of effort. Coordination may include, but is not limited to, serving on State, Federal, local, or Native American task forces, commissions and/or working groups; developing written interagency agreements; etc.—all of which contribute to better and more comprehensive services to crime victims.

Note: The examples of coordination efforts, as mentioned above, qualify an organization to receive VOCA victim assistance funds, but are not activities that can be supported with VOCA funds.

6. Assist crime victims with crime victim compensation benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

7. Comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of M7100.1D, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes financial documentation for disbursements; daily time and attendance records specifying time devoted to VOCA allowable victim services; client files; the portion of the project supplied by other sources of revenue; job descriptions; contracts for services; and other records which facilitate an effective audit.

8. Maintain statutorily required civil rights statistics on victims served by race or national origin, sex, age, and disability, within the timetable established by the State grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the recipient is complying with applicable civil rights laws.

Note: This requirement is waived when providing a service, such as telephone counseling, where soliciting the information is inappropriate or offensive to the crime victim.

9. Submit statistical and programmatic information on the use of and impact of VOCA funds, as requested and within the timetable established by the State grantee.

10. Provide services to victims of Federal crimes on the same basis as victims of State crimes. Federal crimes are prosecuted by U.S. Attorney Offices.

11. Provide a variety of services and assistance to crime victims, beyond

assistance with compensation and information/referral services.

12. Abide by any additional eligibility or service criteria as established by the State grantee.

13. Provide services, at no charge, through the VOCA-funded project. Any deviation from this provision requires prior approval by the State and OVC.

14. Maintain confidentiality of client-counselor information. VOCA subrecipients cannot use or reveal any client information without the consent of the client.

C. Eligible Subrecipient Organizations

Nonprofit and public organizations that provide direct services to crime victims are eligible to receive VOCA funds. These include, but are not limited to, rape crisis centers, domestic violence shelters, child abuse treatment facilities, centers for missing children, prosecutor offices, courts, probation and parole authorities, hospitals, public housing authorities, and religious-affiliated organizations.

Although nonprofit and public organizations may be eligible to receive VOCA funding, there are limitations on the use of VOCA victim assistance grant funds by these organizations. For example, VOCA funds cannot be used for an activity mandated by State legislation for which State or local funds are not available. However, VOCA funds can extend or enhance the legislatively mandated activities.

Note: In situations where a service is mandated by law but funds have not been appropriated, State grantees are cautioned to closely review using VOCA funds to support such activities. States may use VOCA funds to support an unfunded legislative mandate for a limited time, if the State believes that such support is essential to meeting the needs of crime victims.

In addition to victim services organizations, whose sole mission is to serve crime victims, many other public and nonprofit organizations that offer services to crime victims may be eligible to receive VOCA victim assistance grant funds. These organizations include, but are not limited to, the following:

1. Criminal justice agencies such as law enforcement organizations, prosecutor offices, courts, probation and parole authorities. However, these organizations may only use VOCA funds for services that exceed the boundaries of their mandate. For example, a police department cannot use VOCA victim assistance funds to hire law enforcement personnel for activities that a sworn law enforcement officer would be expected to provide in the normal course of his/her duties, such as crime scene intervention, questioning of victims and witnesses, investigation of the crime, and follow-on activities.

2. State and local public agencies charged with, for example, providing child and adult protective services or mental health services. Because rules and laws governing each jurisdiction differ, OVC encourages each State to closely review requests for VOCA funding by social services and public mental health organizations to ensure supplantation does not occur.

3. Religious-affiliated organizations. Religious organizations that receive VOCA funds must ensure that (1) services are offered to all crime victims without regard to religious views; (2) the receipt of services is not contingent upon participation in a religious activity or event; and (3) receipt of the funds does not create an "excessive entanglement" of church and State.

4. Other public and nonprofit organizations whose primary mission or purpose is not providing services to crime victims but who have a component of the organization that provides services to crime victims. Such organizations may include state grantees, mental health centers, hospitals, legal services agencies, coalitions, etc. These organizations must meet the same eligibility criteria as all other subrecipients.

5. State crime victim compensation agencies. Compensation programs that provide direct services such as group treatment, therapy and counseling, court accompaniment, shelter, etc. may receive VOCA funds. These services extend far beyond information/referral counseling regarding compensation benefits, and assistance with filing for compensation benefits.

Note: Because State compensation programs do not generally provide the type of direct services envisioned by the VOCA victim assistance grant program and the Program Guidelines, State grantees are encouraged to discuss with OVC any proposed award of VOCA victim assistance funds to a compensation program prior to making a final funding decision.

6. Hospitals and emergency medical facilities. Such organizations must offer counseling, support groups, and other types of victim services. Additionally, States may award VOCA funds to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the State, local prosecutor's office, or State-wide sexual assault coalition; *and* (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

D. Ineligible Recipients of VOCA Funds

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive State VOCA victim assistance funding. These organizations include, but are not limited to, the following:

1. Federal agencies, including U.S. Attorneys Offices, are not eligible to receive VOCA funds. Receipt of VOCA funds would constitute an augmentation of the Federal budget with money intended for State agencies. However, private nonprofit organizations that operate on Federal land may be eligible subrecipients of VOCA victim assistance grant funds.

2. In-patient treatment facilities that are designed to provide treatment to individuals with drug, alcohol, and/or mental health-related conditions are not eligible to receive VOCA victim assistance grant funds. In-patient facilities are not open and accessible to the general public and, therefore, do not meet the criteria for a victim services organization as intended by VOCA and these Program Guidelines.

E. Services, Activities, and Costs

Throughout the legislative history of VOCA, Congress has provided guidance on the types of direct services intended by this Act. These include those services which respond to the immediate needs of crime victims, so that the severity of the psychological trauma is reduced; assist the victim in participating in the criminal justice process; and help restore the victim's sense of dignity, self esteem, and coping mechanisms. Likewise, costs that are necessary and essential to providing these direct services may be supported with VOCA victim assistance grant funds.

1. Allowable Direct Services, Activities, and Costs. The following is a non-exhaustive listing of services, activities, and costs that are considered to be eligible for support with VOCA victim assistance grant funds within a subrecipient's organization:

a. Those services which immediately respond to the emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling; emergency food, clothing, transportation, and shelter; emergency legal assistance such as filing restraining orders; and other emergency services that are intended to restore the victims' sense of dignity, self esteem, and coping mechanisms.

b. Those services and activities that assist the primary and secondary

victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization such as counseling, group treatment, and therapy.

c. Services that are directed to the needs of the victim within the criminal justice system but not, primarily, to the needs of the criminal justice system. These services may include criminal justice advocacy, accompaniment to law enforcement offices, transportation to court, child care while in court, trial notification and case disposition information, restitution advocacy, assistance with victim impact statements, and parole notification.

d. Services which offer an immediate measure of safety to crime victims such as preventing the reburglarization by boarding-up windows, replacing or repairing locks, etc.

e. Forensic examinations for sexual assault victims only to the extent that other funding sources (such as State compensation or private insurance or public benefits) are unavailable or insufficient.

Note: State grantees should establish controls for using VOCA victim assistance funds to pay for forensic examinations in sexual assault cases. The controls should require VOCA subrecipients to investigate to what extent other resources are available to pay for the examinations; what other direct services will be offered in conjunction with the examination; and if the examination meets the evidentiary standards established by the State, local prosecutor's office, or State-wide coalition. VOCA funds cannot be used to pay for those forensic examinations that do not conform to one of these standards.

f. Costs that are necessary and essential to providing direct services such as pro-rated costs of rent, telephone service, transportation costs for victims to receive services or participate in the criminal justice system, and local travel expenses for direct service providers.

g. Services which assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim vis-a-vis other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; helping to apply for public assistance; managing the overall service and informational needs on behalf of the crime victim until such time that the victim can assume these responsibilities; etc.

h. Costs that are directly related to providing direct services through staff. Such costs may consist of the following: Advertising costs associated with recruiting VOCA-funded personnel; training costs for paid and volunteer staff; salaries and fringe benefits, to include malpractice insurance for professional direct service providers who are subject to civil actions.

i. Meetings and panels where crime victims are able to confront perpetrators, if they are requested by the victim and if they offer therapeutic value to crime victims. At times, such meetings and panels can provide victims with an opportunity to tell and retell one's story, put feelings and experiences into words, and enable victims to move forward with their lives.

States that plan to fund this type of service should closely review the criteria for, and the standards governing, the service to be provided. At a minimum, the following should be considered: (1) The benefit or therapeutic value to the victim, (2) the type of crimes and subsequent victims that will benefit from the service, (3) the number of victims wishing to participate, (4) the provision of appropriate support and accompaniment for the victim, (5) appropriate "debriefing" opportunities for the victim after the meeting or panel, (6) the credentials of the facilitators, (7) the other needs of individual crime victims, and (8) the opportunity for a crime victim to withdraw from the process at any time without negative feelings or penalty. States are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity.

Note: Victim-Offender mediation services in which the mediation serves to replace criminal justice proceedings cannot be supported with VOCA victim assistance funds.

2. Other Related Allowable Services, Activities, and Costs. The services, activities, and costs discussed under this section are not generally considered direct crime victim services. For example, staff training is often a necessary and essential activity to ensure that quality direct services are provided; however, it is not a direct services. Other costs described in this section may, also, be tied to direct services, although in a more remote way. Before these costs can be supported with VOCA funds, the State and subrecipient must agree that direct services to crime victims cannot be offered without support for these expenses, that the subrecipient has no other source of support for them, and that only limited amounts of VOCA funds will be used for these purposes. The following list provides examples of such items:

a. Skills training for staff. VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers (paid and volunteer) so that they are better able to offer quality services to crime victims. An example of skills development is training focused on how to respond to a victim in crisis. This type of training differs significantly from being apprised of legislative updates or recent research findings regarding victims of crime.

VOCA funds can be used for training direct service providers within the subrecipient's organization, who are not supported with VOCA funds; however, priority should be given to the individuals supported with VOCA funds.

VOCA funds can purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Although VOCA cannot support training individuals in other organizations, other staff from other organizations can be invited to attend training activities that are held for the subrecipient's staff, if no additional costs will be incurred by the VOCA-funded project.

VOCA funds can support costs associated with attendance at training activities held on a State-wide basis or within a similar geographic area, such as travel, meals, lodging, and registration fees. This limitation encourages State grantees and subrecipients to first look for available training within their immediate geographical area, as travel costs will be minimal. However, when needed training opportunities are unavailable within the immediate geographical area, State grantees may authorize the use of VOCA funds to support needed training outside of this geographical limitation.

VOCA funds cannot be used to support attendance at local, regional, or national-level conferences that do not focus on skills development for direct service providers but focus, instead, upon national issues, networking, legislative updates, presentation of research papers, etc. nor can VOCA funds support management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

b. Equipment and furniture that the State determines is necessary and essential to providing or enhancing direct services to crime victims, as demonstrated by the VOCA subrecipient.

Note: VOCA funds cannot support the entire cost of equipment that is not used exclusively for victim-related activities but can support a prorated share. Additionally, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service.

Examples of allowable costs may include beepers; typewriters and word processors; video-tape cameras and players for interviewing children; two-way mirrors; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas.

At times, computers may increase a subrecipient's ability to reach and serve crime victims. In such cases, VOCA subrecipients must describe to the State how the computer equipment will enhance services to crime victims; how it will be integrated into and/or enhance the subrecipient's current system; the cost of installation; the cost of training staff to use the computer equipment; the on-going operational costs, such as maintenance agreements, supplies; how these additional costs will be supported; etc.

States who authorize equipment to be purchased with VOCA funds must establish policies and procedures on the acquisition as well as the disbursement of the equipment, when the subrecipient no longer receives a VOCA grant. (See M7100.1D). Additionally, at a minimum, property records must be maintained, which contain the following: A description of the property and a serial number or other identifying number; who holds title; the acquisition date, the cost and the percentage of VOCA funds supporting purchase; the location, use, and condition of the property; and any ultimate disposition data, including the date of disposal and sale price.

c. Contracts for professional services. VOCA funds can only support limited use of contract services. Subrecipients are prohibited from using a majority or their entire award for contracted services that have administrative, overhead, and other indirect costs included in the hourly or daily rate.

VOCA grant funds are to be used within the subrecipient's organization. It was not intended that the VOCA subrecipients serve as contractors of services. However, at times, it may be necessary for VOCA subrecipients to contract for specialized services such as when there is an infrequent need for a specialized victim service. In such situations, subrecipient organizations may find that it is not cost-effective to employ an individual with the skills to perform the needed service, either on a part- or full-time basis. Additionally, there may be emergency situations requiring victim services that are beyond the scope of the VOCA subrecipient organization. Examples include the following: An attorney's fee for securing an emergency temporary retraining order; a physician's fee for conducting an forensic examination on a sexual assault victim only to the extent that other funding sources are unavailable or insufficient; emergency psychological or psychiatric services; etc.

Note: VOCA funds cannot be used to pay for legal costs or legal representation for divorces, child custody or visitation rights litigation, etc., for victims of spousal or child abuse.

d. Operating costs directly related to serving crime victims are allowable, such office supplies; equipment use fees, when supported by usage logs; printing, photocopying, and postage; brochures which describe available services; books and other victim-related materials; etc. VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; pro-rated share of audit costs; etc.

e. Supervision of direct service providers only to the extent that the State grantee believes that such supervision is necessary and essential to providing direct services to crime victims. For example, a State grantee may believe that using VOCA funds to support a volunteer coordinator position that is responsible for recruiting, screening, training, supervising, and maintaining volunteers is necessary and essential as well as being a cost-effective way of serving more crime victims.

f. Repair and/or replacement of an essential item of a victim service that contributes to maintaining a healthy and/or safe environment, such as a furnace in a shelter. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) that the building is owned by the subrecipient organization and not rented/leased, (2) all other sources of funding have been exhausted, (3) there is no available option for providing the service in another location, (4) that the cost of the repair or replacement is reasonable considering the value of the building, and (5) the cost of the repair or replacement is pro-rated among all sources of income. States are encouraged to discuss individual requests for substantial repairs of essential service components with OVC.

g. Activities and costs related to describing the services available to crime victims within the community such as presentations, brochures, newspaper articles, etc.

3. Unallowable Services, Activities, and Costs. The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds:

a. Crime prevention activities and other activities intended to educate the community on the prevention of crime and to raise the public's consciousness regarding crime.

b. Lobbying and administrative advocacy for victim legislation or administrative reform, whether conducted directly or indirectly.

c. Perpetrator rehabilitation and counseling. Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

d. Needs assessments, surveys, evaluations, studies, and research efforts conducted by individuals, organizations, task forces, special commissions, etc. which study and/or research a particular crime victim issue.

e. Activities that are directed at prosecuting an offender and/or improving the criminal justice system's effectiveness and efficiency such as witness notification and management activities; expert testimony at a trial; victim/witness expenses such as travel to testify in court and subsequent lodging and meal expenses; victim protection costs; etc., which are considered part of the criminal justice agency's responsibility.

f. Fundraising activities.

g. Indirect organizational costs such as liability insurance on buildings and vehicles; capital improvements; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; construction costs; etc.

h. Use of assistance funds for reimbursing crime victims for expenses incurred as a result of a crime or to supplement crime victim compensation awards to victims of crime for such costs as funeral expenses, lost wages, medical bills, etc.

i. Vehicles, purchased or leased. State grantees who believe that crime victims will not be able to receive services without VOCA support for a vehicle are urged to discuss the situation with OVC. Unless OVC gives prior approval to use VOCA to support a vehicle, such an expense is unallowable.

j. Nursing home care, home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical and/or dental treatment. VOCA victim assistance grant funds cannot support medical costs regardless of whether they are a result of a victimization or not. EXCEPTION: See Program Requirements, *E. Allowable Direct Services, Activities, and Costs*, 1.e., regarding forensic examinations for sexual assault victims.

k. Relocation expenses such as moving expenses, security deposits on housing, ongoing rent, mortgage payments; However, VOCA funds may be used to support staff time in locating resources to assist victims with these expenses.

l. Professional dues and memberships in the name of a specific individual. However, VOCA funds may purchase organizational memberships, or a membership, for example, in the name of the "Executive Director," if such membership will offer needed, timely, and relevant information on victim services and issues that assist direct service providers to provide quality services.

m. Salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless, and to the extent that, these expenses are incurred while providing direct services to crime victims.

n. Development of protocols, interagency agreements, and other working agreements that benefit crime victims, in general, throughout the community. These activities are considered examples of the types of activities that organizations undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA subrecipient. As such, VOCA funds cannot be used to support these activities.

o. The costs of sending individual crime victims to conferences. The purpose of the VOCA victim assistance grant program is to maximize the impact of the limited VOCA funds by expanding the number of direct service providers available to offer services. VOCA funds are insufficient to support individual crime victims' needs and cannot be used for this purpose.

p. Attendance at national-level conferences and symposia that have as a primary focus discussions and presentations on national issues, networking, sharing ideas, presenting research findings, etc., even when held in a subrecipient's community. Conferences that focus on skills development components that enable service providers to offer quality services to crime victims may be allowable. (See previous guidance located at Program Requirements, *E. Services, Activities, and Costs*, 2.a.)

q. Development of training manuals and/or extensive training materials. Viable crime victim organizations that receive VOCA funds should, prior to receiving a VOCA grant, offer training and materials for their staff.

F. Program Reporting Requirements

States will be required to adhere to all reporting requirements and times for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds, a hold being placed on processing the next year's grant award, or can result in the suspension or termination of a grant.

1. Subgrant Award Reports. States are required to submit to OVC, within 30 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds. Subgrant Award Report information is to be submitted to OVC via the automated subgrant dial-in system, whenever possible. When not possible, State grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

If the Subgrant Award Report information changes by the end of the grant period, States must inform OVC of the changes, either by revising the information via the automated subgrant subdial system, by completing and submitting to OVC a revised Subgrant Award Report form, or by making notations on the State-wide database report and submitting it to OVC. The total of all Subgrant Award Reports submitted by the State must agree with the Final Financial Status Report (269A) that is submitted at the end of the grant period.

A Subgrant Award Report is required for each organization that receives VOCA funds and uses the funds for employee salaries, fringe, supplies, rent, etc. This requirement applies regardless of whether the mechanism by which the State awards VOCA funds to a subrecipient is called a grant, contract, or subgrant and regardless of the type of organization (public or nonprofit) that receives the funds.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide limited, emergency services, on an hourly rate, through VOCA subrecipient organizations. All services and activities purchased on an hourly rate with VOCA funds are to be included in the subrecipient's Subgrant Award Report.

2. Performance Report. Each State is required to submit specific end-of-grant data on the OVC-provided Performance Report, form No. OJP 7390/4, no later than 90 days after each VOCA victim assistance grant ends.

G. Additional Program Requirements

1. Civil Rights—Prohibition of Discrimination for Recipients of Federal Funds. No person in any State shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving Federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq. and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.

2. Confidentiality of Research Information. Except as otherwise provided by Federal law, no recipient of monies under VOCA shall use or reveal any research or statistical information furnished under this program by any person, and identifiable to any specific private person, for any purpose other than the purpose for which such information was obtained, in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. [See Section 1407(d) of VOCA, codified at 42 U.S.C. 10604.]

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. Whatever the scope of

application given this provision, it is clear that there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981). Furthermore, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a Federal or State agency seeking to determine whether Federal and State funds are being utilized in accordance with funding agreements.

Financial Requirements

State grantees and subrecipients of VOCA victim assistance funds shall adhere to the financial and administrative provisions set forth in the OJP "Financial and Administrative Guide for Grants", M7100.1D (effective edition). The following describes the audit requirements for State grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advanced funding.

A. Audit Responsibilities for State Grantees

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), grantees that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. State governments receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. State and local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

B. Audit Responsibilities for Subrecipients

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), local governments that receive $100,000 or more in Federal financial assistance in any fiscal year shall have a single audit for that year. Local governments receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. Local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

Institutions of higher education and other nonprofit organizations that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133. Organizations and institutions that receive at least $25,000, but less than $100,000, in a fiscal year shall have an audit made in accordance with OMB Circular A–133 or an audit of the Federal program. Institutions and organizations receiving less than $25,000 in any fiscal year are exempt from audit requirements.

C. Financial Status Report for State Grantees

A Financial Status Reports (269A) are required from all State grantees. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred. Financial Status Reports shall be submitted to the Office of the Comptroller, by the State, within 45 days after the end of each subsequent calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 90 days after the end of the VOCA grant period, no later than December 31.

D. Termination of Advance Funding to State Grantees

If the State grantee receiving cash advances by Letter of Credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, OJP may terminate advance funding and require the State to finance its operations with its own working capital. Payments to the State will then be made by the direct Treasury check method, which reimburses the State for actual cash disbursements.

Monitoring

A. Office of the Comptroller

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, States and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant and all subawards.

B. Office for Victims of Crime

Beginning with the FFY 1991 grant period, OVC implemented an on-site monitoring plan in which each State grantee is visited a minimum of once every three years. While on site, OVC personnel will expect to review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the State grantee and all VOCA subrecipients; (3) the State's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other State and subrecipient records and files.

Additionally, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a State has failed to comply substantially with VOCA, the M7100.1D, the Final Program Guidelines, or another implementing regulation or requirements, OVC may suspend or terminate funding to the State and/or take other appropriate action. At such time, State grantees may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the State, may not request a hearing at the Federal level. However, VOCA subrecipients who believe that the State has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

Carolyn A. Hightower,

Acting Director, Office for Victims of Crime, Office of Justice Programs

[FR Doc. 94–5468 Filed 3–9–94; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Announcement of public hearings.

SUMMARY: This document is an announcement of public hearings to be held by the Department of Labor for the purpose of gathering factual information regarding child labor practices throughout the world. The hearing will be held on Tuesday, April 12, 1994, at the Department of Labor, room N–3437, beginning at 10 am. The hearing will be open to the public. The Department of Labor is now accepting requests from all sectors to provide oral testimony at the hearing. Each person or organizational representative selected will be provided ten minutes for oral testimony. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony.

Specifically, the international child labor study of the Bureau of International Labor Affairs is seeking written and oral testimony concerning children working in manufacturing and mining industries which export to the United States. The Department of Labor is currently undertaking a Congressionally-mandated review to identify any foreign industry and their host country that utilize child labor in the export of manufactured products from industry or mining to the United States (pursuant to the 1994 Department of Labor Appropriations Bill—Pub. L. 103–112). Information provided at the hearing will be considered by the Department of Labor in preparing its report to Congress. Testimony should be confined to the specific topic of the study. The Department's report is due to be presented to Congress by July 15, 1994. Individuals or organizations interested in testifying at the international child labor hearing, please call the Child Labor Study office at (202) 208–6152 to be put on the roster.

DATES: The hearing is scheduled for Tuesday, April 12, 1994. If necessary to accommodate the requests received, a second day of hearings will be held on Wednesday, April 13. Presenters will be required to submit five (5) written copies of their oral testimony to the Child Labor Study office by 10 am, April 11. The record will be kept open for additional written testimony until April 18, 1994.

ADDRESSES: Written testimony should be addressed to the International Child Labor Study, Bureau of International Labor Affairs, rm. S–1308, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Sonia A. Rosen, International Child Labor Study, Bureau of International Labor Affairs, room S–1308, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 208–6152; fax (202) 219–4923.

SUPPLEMENTARY INFORMATION: The Senate Appropriations Committee report states: [T]he Committee notes that in many developing countries children represent a substantial portion of the work force and can be found in such industries as glass, metal works, textiles, mining, and fireworks manufacturing. According to UNICEF and the International Labor Organization hundreds of millions of children worldwide under the age of 15 are employed.

The Committee understands that child labor laws in many countries around the globe are often not enforced or are circumvented by foreign manufacturers. The Committee also understands that many products made by child labor are being imported into the United States. The Committee believes that (1) since the passage of the Fair Labor Standards Act of 1938, Congress' intent has been to keep the streams of labor undefiled by the products of child labor; (2) American consumers do not want to provide a market for goods produced by the sweat and toil of children; and that (3) adult workers in the United States should not have their jobs imperiled by imports produced by child labor in developing countries. The Committee also believes, however, that more information is needed about the extent of the problem and what foreign industries are exporting products made whole or in part by child labor to the United States

The Committee, therefore, * * * directs the Secretary of Labor to undertake a review to identify any foreign industry and their host country that utilize child labor in the export of manufactured products from industry or mining to the United States. In making this review, the Secretary is directed to utilize all available information, including information made available by the International Labor Organization and human rights organizations. The Secretary is directed to report his findings to the Committee no later than July 15, 1994.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC this 2d day of March, 1994.

Jack Otero,

Deputy Under Secretary for International Affairs.

[FR Doc. 94–5624 Filed 3–9–94; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 21, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 21, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Black & Becker Co. (U.S.), Inc. (Workers).	Columbus, OH	02/22/94	02/10/94	29,520	Reconditioned Houseware Appliances.
IBM (Workers)	Houston, TX	02/22/94	02/05/94	29,521	Computers, Software, Etc.
Bull HN Information Systems (Workers)	Billerica, MA	02/22/94	02/04/94	29,522	Computers.
Scanti Lingerie Co., Inc. (Co.)	Battleboro, NC	02/22/94	02/04/94	29,523	Ladies' and Children's Panties
Vygen Corp. (Co.)	Ashtabula, OH	02/22/94	02/07/94	29,524	PVC Resins.
Seattle Shake & Shingle (Co.)	Forks, WA	02/22/94	02/07/94	29,525	Shakes and Shingles.
Hollywood Shake, Inc. (Co.)	Forks, WA	02/22/94	02/08/94	29,526	Shakes and Shingles.
D&R Cedar Products, Inc. (Co.)	Forks, WA	02/22/94	02/08/94	29,527	Cedar Shakes and Shingles.
Breyers Company (Workers)	Charlotte, NC	02/14/94	01/14/94	29,528	Ice Cream.
Zinc Corp. of America (Workers)	Palmerton, PA	02/22/94	02/03/94	29,529	Zinc Oxide.
Northwest Alloys, Inc. (Workers)	Addy, WA	02/22/94	02/07/94	29,530	Magnesium.
Aeronca, Inc. (Co.)	Middletown, OH	02/22/94	02/08/94	29,531	Static Airframe Structures.
Northern Telecom, Inc. (Co.)	Stone Mountain, GA	02/22/94	02/07/94	29,532	Circuit Boards & Cabinets.
Oxford of Kingstree (Co.)	Kingstree, GA	02/18/94	01/18/94	29,533	Ladies' Sportswear.
Cowden Manufacturing Co. (Co.)	Lancaster, KY	02/22/94	01/26/94	29,534	Denim Pants.
Texaco, Inc. (Workers)	Houma, LA	02/22/94	02/01/94	29,535	Oil.
Dee Fashions (Workers)	Centralia, PA	02/22/94	02/11/94	29,536	Ladies' Dresses.
Hembree Well Service, Inc. (Workers)	Ness City, KS	02/22/94	02/04/94	29,537	Oil.
Brown Shoe Co. (ACTWU)	Piedmont, MO	02/22/94	01/31/94	29,538	Sole Shoes for Brown Shoe Plants.
Moog Automotive (UAW)	St. Louis, MO	02/22/94	02/04/94	29,539	Automobile Parts.
Brown Group Retail, Inc. (Workers)	St. Louis, MO	02/22/94	02/04/94	29,540	Men, Women & Children Footwear.

[FR Doc. 94–5620 Filed 3–9–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,261]

CPC International, Inc.; Best Foods, Inc.; Warminster, PA; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–29,261 which was published in the **Federal Register** on December 14, 1993 (58 FR 65405) in FR Document 93–30435. A printing error concerning city and state location appears in the 5th line of the second column in the appendix table on page 65405. The name should read "Warminster, Pennsylvania" instead of "Englewood Cliff, New Jersey". Also, column one should read CPC International, Inc. Best Foods (Wkrs).

Signed in Washington, DC, this 25th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5621 Filed 3–9–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,981]

Cypress Sierrita Corp.; Green Valley, AZ; Notice of Negative Determination On Reconsideration

On December 6, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Cypress Sierrita Corporation in Green Valley, Arizona. The notice was published in the **Federal Register** on December 21, 1993 (58 FR 67422).

The Department's earlier denial was for workers producing copper concentrate and copper cathode. These products were sold to Cyprus Copper Marketing Corporation which does not import copper.

Investigation findings show that the molybdenum oxide workers at Cyprus Sierrita in Green Valley, Arizona were certified earlier under TA–W–28,718.

New findings on reconsideration, however, show that the molybdenum workers are not separately identifiable from the other workers from the mining of the ore through the beneficiating process at the mill. The workers become separately identifiable by product only at a later stage—the roasting process.

Accordingly, all workers engaged in employment from the mining of the raw ore through the floatation process in the mill are already covered under TA–W–28,718.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers producing copper cathodes and copper concentrates. However, all other workers in the mining, blasting and floatation activities including hauling and other support activities were already covered for certification under TA–W–28,718.

Singed at Washington, DC, this 25th day of February 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–5622 Filed 3–9–94; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,342; Elliott Turbomachinery Co., Jeannette, PA

TA–W–29,159; Robert Bosch Fluid Power Corp., Zanesville, OH

TA–W–29,206; Vought Aircraft Co., Dallas, TX

TA–W–29,344; Alliant Techsystems, Inc., Hopkins, MN

TA–W–29,212; Elastimold, Spring Lake, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,451; Houston Data Center, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,289; Texas Instrument, Abilene, TX

The investigation revealed that the subject firm transferred production of missile guidance system components domestically. All of the production at the subject plant is integrated into production at other facilities of Texas Instruments.

TA–W–29,218; McDonnell Douglas Helicopter Systems, Culver City, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,024; Tollycraft Yachts Corp., Kelso, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,156; Lykes Brothers Steamship Co., Inc., New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,261; C.P.C. International, Inc., Best Foods Plant, Warminster, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,411; Allied Signal Technical Services, Corp., Livermore, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–29,067; Olympic Plating Industries, Inc., Canton, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–29,452; Delta–X Corp., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,407; Digicon Geophysical Corp., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,296; Marathon Oil Co., Indiana Refining Div., Indianapolis, IN

U.S. imports of refined petroleum products declined absolutely and relative to domestic shipments in the twelve month period October 1992–September 1993 as compared to the same period a year earlier.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,245; Dupont Printing and Publishing, Parlin, NJ

A certification was issued covering all workers separated on or after November 10, 1992.

TA–W–29,356; Cooper Industries USD Connection, Laurence Harbor, NJ

A certification was issued covering all workers separated on or after December 9, 1992.

TA–W–29,133; Victoreen, Inc., Cleveland, OH

A certification was issued covering all workers separated on or after October 7, 1992.

TA–W–29,428; Carter South Co., Blackshear, GA

A certification was issued covering all workers separated on or after January 12, 1993.

TA–W–29,181; SNS Plastics, Waldoboro, ME

A certification was issued covering all workers separated on or after October 20, 1992.

TA–W–29,401; Swingter Co., Ocean Springs, MS

A certification was issued covering all workers separated on or after January 4, 1993.

TA–W–29,227; The Bates Manufacturing Co., Hackettstown, NJ

A certification was issued covering all workers separated on or after October 29, 1992.

TA–W–29,392, TA–W–29,393; Primrose Bedspread Corp., Passaic, NJ Clifton Comforter Corp., Passaic, NJ

A certification was issued covering all workers separated on or after December 22, 1992.

TA–W–29,415; Smith Energy Services, Odessa, TX

A certification was issued covering all workers separated on or after January 15, 1993.

TA–W–29,354; General Motors Corp., Delco Chassis Div., Livonia, MI

A certification was issued covering all workers engaged in the production of bumpers separated on or after July 1, 1993. Also, all workers at the suspension component line are denied.

TA–W–29,423; J.K. Operating Corp., Kulpmont, PA

A certification was issued covering all workers separated on or after January 12, 1993.

TA–W–29,372; Hubbell-Bell, Inc., Fogelsville, PA

A certification was issued covering all workers engaged in employment related to the production of weatherproof electrical products separated on or after December 21, 1992. The foregoing determination does not apply to workers engaged in the production of electrical modular tubing (conduits) of fittings.

TA–W–29,438; Canal Industries, Inc., Stigler, OK

A certification was issued covering all workers separated on or after January 11, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally

or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00009; Uniroyal Goodrich Tire Co., Woodburn, IN

The investigation revealed that criteria (2) and criteria (4) were not met. Sales and production increased at the subject plant in 1993 compared to 1992. There was no shift in production of tires from the workers' firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00005; A.C.A Lumber Inc., Beaver, WA

The investigation revealed that criteria (3) and criteria (4) were not met There was no shift in production of alder lumber from the workers' firm to Canada or Mexico during the relevant period. Also, increased imports from Canada or Mexico did not contribute importantly to the worker separations & the sales & production declines at A.C.A. Lumber, Inc.

NAFTA–TAA–00007; Worzalla Publishing Co., Inc., Worzalla East, Inc., Eastontown, NJ

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production of alder lumber from the workers' firm to Canada or Mexico during the relevant period. Also, increased imports from Canada or Mexico did not contribute importantly to the worker separations & the sales & production declines at Worzalla-East, Inc.

Affirmative Determination NAFTA–TAA

NAFTA–TAA–00004; Seattle Shake and Shingle, Forks, WA

A certification was issued covering all workers separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 2, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–5623 Filed 3–9–94; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is accepting applications for its eleventh consecutive Law School Civil Clinical Program (LSCCP) grant competition. The purpose of this grant competition is to expand relationships between legal services programs and law schools in meeting the challenges of equal access to justice. Proposed activities for the 1994–95 LSCCP must demonstrate a high degree of collaboration between law schools and legal services programs to meet the legal needs of low-income persons. For academic year 1994–95, Congress has appropriated $1.402 million for law school clinics.

All grants will be awarded pursuant to the authority conferred on LSC by Section 1006(a)(1)(B) and 1006(a)(3) ((42 U.S.C. 2996e(a)(1)) of the Legal Services Corporation Act of 1974, as amended (LSC Act). Grants funds for the 1994–95 LSCCP will be distributed on a one-time, non-recurring basis. Grant awards will be made in amounts of up to $100,000, however, LSC may consider larger grants under exceptional circumstances. Grant terms will be for a period of one year and grant activities must commence by September 30, 1994.

DATES: Grant proposals must be received by the Office of Program Services by 5:00 p.m. (EST) on April 18, 1994.

ADDRESSES: Law School Civil Clinical Program, Office of Program Services (Attn: Janice P. White), Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Manager, or Janice P. White, Assistant to Manager, Program Support and Technical Assistance Division, Office of Program Services, (202) 336–8908.

SUPPLEMENTARY INFORMATION: Since 1984, the Corporation has conducted a law school clinical grant competition. LSC believes that new and innovative collaborative approaches must be developed to meet the challenges of equal access to justice in the 1990's. Thus, LSC has enhanced the scope of the 1994–95 law school clinical program.

The broad goals of the 1994–95 LSCCP are to:

1. Increase collaboration between law schools and legal services programs;

2. Encourage law schools to become more involved in addressing the legal problems of the poor; and

3. Develop among law students an awareness of legal issues affecting low-income people and appropriate advocacy skills to address those issues.

The 1994–95 LSCCP will be administered under three (3) new categories. They are: (1) Teaching Sabbaticals; (2) Legal Services Summer Fellowships; and (3) Innovative Clinical Programs.

Under the Teaching Sabbatical category, the Corporation encourages legal services program attorneys to serve as full-time clinic instructors for law students in a law school clinical program for at least one quarter or one semester, but for no longer than one academic year.

Under the Legal Services Summer Fellowships category, the Corporation is interested in the establishment of a fellowship program in which law students would be placed in a legal services program for a summer with appropriate training and supervision, while also receiving academic credit or fulfilling law school pro bono requirements.

LSC recognizes that many ideas could improve the law school's relationship with the legal services community, but may not fit into the above categories Thus, under the Innovative Clinical Programs category, the Corporation encourages new and innovative approaches to legal services delivery that are not currently being provided by law school clinics or legal services programs. These innovative projects must show a close collaboration between the law school clinic and the legal services program. Such programs could be on either a local, state or national level.

Eligibility: (1) All law schools and consortia of law schools that are currently accredited by the American Bar Association or accredited for purposes of bar admission by the state bar associations of the states in which the law schools are located are eligible to apply; (2) any LSC-funded legal

services program is eligible to apply; (3) any 501(c)(3) organization with the capability to oversee a summer fellowship program is eligible to apply; (4) no 1994–95 LSCCP grant funds, in any category, may be used to fund conferences or research projects. This limitation does not restrict use of grant funds for meetings or trainings necessary to support a project, nor does it restrict funds being used for research related to representation or advocacy on behalf of eligible clients; and (5) the application should demonstrate that existing law school or legal services program support for law school clinical efforts will be continued, and that any LSC funds granted will be used solely for new or expanded operations.

Awards Process: Grant proposals will be carefully evaluated by an advisory panel of peer reviewers from the law school community, the legal services community, and LSC staff. Awards will be based on the merit of the proposal and the extent to which it meets the goals of the LSCCP. An applicant may submit a grant proposal for one category only.

The following selection criteria will be used to conduct the review:

1. Collaboration With Legal Services Programs

The applicant should detail the proposed working relationship between the law school clinic and the legal services program that will be involved in the project.

2. Project Goals and Objectives

The applicant should set forth the project's goals and objectives which will be reviewed in terms of the quality of the proposed project, evidence of the client need to be served, and the long term benefits to the organization and the legal services community.

3. Applicant's Capability to Accomplish Objectives

The applicant should detail its structure and staffing, past history with similar activities, and other work on behalf of the low-income eligible client community.

4. Community Involvement and Support

The applicant should state how the proposed activity will complement existing legal services delivery provided in its area.

5. Project Feasibility

The applicant should address the reasonableness of the proposed costs in terms of the benefits to be derived and the relationship to the project's overall goals.

Dated: March 4, 1994.

Charles T. Moses, III,

Deputy Director, Office of Program Services.

[FR Doc. 94–5481 Filed 3–9–94; 8:45 am]

BILLING CODE 7050–01–D

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Thermal Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Special Emphasis Panel in Chemical and Thermal Systems (#1190).

Date & Time: March 18, March 21–22, March 25, and April 25–26, 1994; 8:30–5 each day.

Place: Rms. 530 and 580.

Agenda: Review and evaluate nominations for the NSF Young Investigator and Research Initiation Awards Program as part of the selection process for awards.

Date & Time: March 21, 1994; 8:30–5 p.m.

Place: Rm. 530, NSF.

Agenda: Review and evaluate nominations for the Electric Power Institute (EPRI).

Program as part of the selection process for awards.

Date & Time: May 2–3, 1994; 8:30–5 p.m.

Place: Rm. 530, NSF.

Agenda: Review and evaluate nominations for the NSF Research Equipment Grants Program as part of the selection process for awards.

Contact: Division of Chemical and Transport Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1371

Type of Meetings: Closed.

Purpose of Meetings: to provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The nomincations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5553 Filed 3–9–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design & Manufacturing Systems (1194).

Date and Time: March 30, 1994, 8:30 a.m. to 5 p.m..

Place: 4201 Wilson Boulevard, Rooms 530 & 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. K. (Cheena) Srinivasan, Program Director, Manufacturing Processes and Equipment, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5551 Filed 3–9–94; 8:45 am]

BILLING CODE 7555–01–M

Avisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the national Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources; Committee of Visitors.

Date and Time: March 29, 1994, 8:30 a.m.–5:30 p.m.

Place: Room #830, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Closed.

Contact Person: Karolyn Eisenstein, Program Director, UFE, Division of Undergraduate Education, room 835, National Science Foundation, 4201 Wilson Blvd., Arlington, VA Telephone: (703) 306–1670

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposal, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Undergraduate Faculty Enhancement (UFE) Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal

information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5554 Filed 3–9–94; 8:45 am]

BILLING CODE 7555–01–M

Division of Environmental Biology; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Committee for Ecological Studies.

Date & Time: March 30, 1994, 3 pm–5 pm; March & April 1, 1994, 8:30 am–5 pm each day.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Richard Dame, Program Director, Ecological Studies Cluster, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: Wednesday, March 30, 1994, 3 pm–5 pm. To discuss Ecological Studies Cluster mission and goals.

Closed session: Thursday & Friday, March 31 & April 1, 1994, 8:30 am–5 pm. To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Committee for Ecological Studies.

Date & Time: March 30, 31 & April 1, 1994, 8:30 am–5 pm each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Scott L. Collins, Program Director, Ecological Studies Cluster, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: Open session: Wednesday, March 30, 1994, 3 pm–5 pm. Discuss Ecological Studies Cluster mission and goals.

Closed session: Wednesday, March 30, 1994, 8:30 am–3 pm; Thursday, March 31, and Friday April 1, 1994, 8:30–5 pm. To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Committee for Systematic and Population Biology.

Date & Time: March 26–29, 1994, 8 am–5 pm each day.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. James E. Rodman, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person above.

Agenda: Open session: Thursday, March 28, 1994, 1 pm–2 pm. To discuss Systematic and Population Biology Cluster mission and goals.

Closed Session: Tuesday & Wednesday, March 26 & 27, 1994, 8 am–5 pm; Thursday, March 28, 1994, from 8 am–1 pm and Friday, March 29, 1994, 8 am–5 pm. To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Committee For Systematic and Population Biology.

Date & Time: April 19–22, 1994, 8 am–5:30 pm each day.

Place: Rooms 380 & 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Therese Markow, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: Friday, April 22, 1994, 11 am–12. To discuss Systematic and Population Biology Cluster mission and goals.

Closed Session: Tuesday, Wednesday and Thursday, April 19, 20 & 21, 1994, 8 am–5 pm, Friday April 22, 1994, 8 am–11 am and 1 pm–5 pm. To review and evaluate Population Biology proposals as part of the selection process for awards.

Type of Meetings: Part Open.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5552 Filed 3–9–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 62—Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information is only required to be submitted when a low-level waste generator requests emergency access to an operating low-level radioactive waste disposal facility.

5. Who will be required or asked to report: Low-level radioactive waste generators, or States, seeking emergency access to an operating low-level radioactive waste disposal facility.

6. An estimate of the number of responses: One every three years.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 680 hours per response. With one response every three years, the estimated annual burden is 227 hours.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 62 sets out the information to be provided to the NRC by any low-level radioactive waste generator, or State, seeking emergency access to an operating low-level radioactive waste disposal facility pursuant to section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. The information is needed to permit NRC to make the required statutory determinations of necessity because of the existence of a serious and immediate threat to public health and safety and a lack of mitigating alternatives.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs (3150–0143), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of March, 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–5547 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 AND 50–499]

Houston Lighting & Power Co.; South Texas Project, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59(a)(1) and (c)(1) in response to a request filed by the Houston Lighting & Power Company, et al. (the licensee), for the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee to exceed the allowable time limit of twenty-four continuous months for each operator to successfully complete a requalification program as stated in 10 CFR 55.59(a)(1) and (c)(1). The proposed action is in accordance with the licensee's request for exemption dated December 17, 1993, and supplemented by letter dated January 14, 1994.

The Need for the Proposed Action

The exemption is requested on a one-time only basis to support the current requalification cycle that started on April 13, 1992. In January 1994, South Texas Project, Units 1 and 2 (STP) began a six-operating crew, six-week requalification training plan. This change will cause the current requalification cycle to continue until April 22, 1994, which exceeds the twenty-four month limit stated in 10 CFR 55.59.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption. The proposed exemption would allow STP to complete the current requalification cycle on April 22, 1994, an extension of ten days. This is a result of STP changing from five to six crews, as an enhancement to the operational staff. The increase was made to help maintain individual workloads at a reasonable level, to reduce the need for routine overtime, and to allow for continued, uninterrupted training. There will be no changes to the facility or the environment as a result of the exemption. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts that would result from the proposed action, any alternative will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2, dated August 1986.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 17, 1993, as supplemented by letter dated January 14, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 3rd day of March 1994.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation

[FR Doc. 94–5543 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The ACNW Working Group on the NRC staff Performance Assessment Capabilities in the Low-Level Waste Program will hold a meeting on March 22, 1994, Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 22, 1994—8:30 a.m. until the conclusion of business.

The purpose of the meeting will be to review the NRC's low-level waste (LLW) performance assessment (PA) program, with emphasis on the status of the draft Branch Technical Position for PA for LLW Disposal Facilities and the NRC staff's performance assessment capability. Issues to be examined include on-going and planned activities, milestones and schedules, results of on-going test case analyses, and the evolution of the NRC staff's capabilities in performance assessment for LLW disposal facilities.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will then hear presentations by and hold discussions with representatives of the NRC staff and their consultants, national laboratories, State officials, and other interested parties, as appropriate

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant

ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492–9851) between 8:15 a.m. and 6 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 4, 1994.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 94–5546 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 62nd meeting on Wednesday and Thursday, March 23 and 24, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Wednesday, March 23, 1994—8:30 a.m. until 6 p.m.

Thursday, March 24, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Low-Level Waste (LLW) Performance Assessment Program*—Review the LLW Performance Assessment Program (Working Group meeting scheduled for March 22, 1994). A Draft Branch Technical Position on Performance Assessment for LLW Disposal Facilities will be the focus of the review. Representatives of the NRC staff will participate.

B. *Meeting with the Director of NRC's Office of Nuclear Material Safety and Safeguards (NMSS)*—Discuss items of mutual interest with the Director of NMSS.

C. *Natural Analogs*—Review the NRC staff technical program on natural analogs. Participation by the NRC staff and representatives of the Center for Nuclear Waste Regulatory Analyses is expected.

D. *NRC Staff Technical Position (STP) on Fault Avoidance*—Review the STP on Fault Avoidance. Public comments on the draft STP will be reviewed. The ACNW expects to issue comments on the final STP.

E. *Summary of Nuclear Waste Technical Review Board (NWTRB) Meeting on Seismic and Volcanic Hazards*—Hear a brief report from an ACNW member who attended this NWTRB meeting on Seismic and Volcanic Hazard Estimation at Yucca Mountain.

F. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

H. *New Members*—Discuss matters related to the Department of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

I. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The ACRS Office is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the ACRS Office as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meetings as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the Office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: March 4, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–5548 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

In the Biweekly notice beginning on page 7694 in the issue of Wednesday, February 16, 1994, make the following correction:

On page 7694, *"Date of amendment requests:* December 14, 1993 (Reference LAR 93–07)" should read *"Date of amendment requests:* December 8, 1993 (Reference Lar 93–07)"

For the Nuclear Regulatory Commission.

Sheri R Peterson,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5542 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

Entergy Operations, Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would revise the technical specifications (TS) for the main steam-positive leakage control system (MS–PLCS) and the penetration valve leakage control system (PVLCS) to be consistent with the requirements contained in NUREG–1434, "Standard Technical Specifications, General Electric Plants (BWR/6)."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change request would allow 30 days of continued operation with one penetration valve leakage control system (PVLCS) subsystem inoperable. The PVLCS is required to mitigate the

consequences of a design basis accident (DBA). The proposed change would increase the allowed outage time with one OPERABLE PVLCS.

Based on the RBS Level 1 and Level 2 Individual Plant Examination (IPE), the loss of one train of PVLCS, concurrent with a DBA and subsequent radionuclide release, is an extremely low probability event (e.g., less than 1E–7 per year). This probability is less than NRC Safety Goal of 1E–6 per year for large releases following a core damage event. Because of the extremely low probability of the event, the increase in allowed outage time from seven days to 30 days does not represent a significant increase in the probability or consequences of the DBA which PVLCS is intended to mitigate.

The PVLCS is not an initiator of any previously analyzed accident. The configuration of one system inoperable is presently addressed by the specification and will not change an allowed operation. Because the operation is no different than previously allowed, the consequences of an event previously evaluated has not been increased. The probability of an event requiring the system has been evaluated and determined to be very low.

In addition, the proposed changes address two subsystems inoperable. This change would allow seven days of continued operation with both main steam positive leakage control (MS–PLCS) and PVLCS subsystems inoperable. The MS–PLCS and PVLCS are not initiators of any previously analyzed accident. Therefore, these changes do not significantly increase the frequency of such accidents. This proposed change would allow temporary operation with no OPERABLE PVLCS or MS–PLCS. Minor increases in containment leakage, such as the leakage through the MSIVs, have been found to have no significant impact on the risk to the public.

Consequently, this change does not significantly increase the consequences of any previously analyzed accident.

The increase to the probability of core damage as a result of the loss of long term ADS air supply backup has been evaluated and determined to be less than the NRC safety goal of 1E–6 and the NUMARC goal of 1E–7 for evaluation. Therefore there is not a significant increase in the probability of an accident previously evaluated.

2. The proposed change would not create the possibility of a new of different kind of accident from any accident previously evaluated.

The proposed change to increase the allowed outage time from seven days to 30 days for one subsystem inoperable does not result in the possibility of a new or different kind of accident from any accident previously evaluated. This change does not result in any changes to the equipment design or capabilities. Since the PVLCS mitigates the consequences of an accident and failure of this system cannot create an accident. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously analyzed accident.

The change to allow two systems out of service has been proposed for PVLCS and MS–PLCS of 7 days and is consistent with the allowable out-of-service time specified in LCO 3.6.1.8 and 3.6.1.9 of NUREG–1434, "Standard Technical Specification General Electric Plants, BWR/6" for these systems. This allowance is based on the low safety significance as discussed in NUREG–1273, "Technical Findings and Regulatory Analysis for Generic Safety Issue II.E.4.3, "Containment Integrity Check," and NUREG/CR–3539, "Impact of Containment Building Leakage on LWR Accident Risk."

Although the proposed change allows further operation of the plant with equipment not capable of performing its safety function, they do not result in any changes to the equipment design or capabilities. Loss of the containment function does not impact the reactor coolant pressure boundary or its support systems; therefore, does not create the possibility of a new or different kind of accident from any previously analyzed accident.

Since the change to the long term air supply for ADS has been evaluated and the increase in core damage is below the NRC safety goal of 1E–6 and the NUMARC goal of 1E–7 for evaluation, this proposal should not be considered as a new event.

3. The proposed change would not involve a reduction in the margin of safety.

The proposed change to increase the allowed outage time from seven days to 30 days for one subsystem inoperable does not involve a significant reduction in the margin of safety. The PVLCS is not an initiator of any previously analyzed accident. As stated above, the proposed change increases the allowed outage time for a system that is used to mitigate the consequences of an accident. The system continues to perform its intended safety function and the change in allowed outage time has a very small impact on plant risk. The configuration of one system inoperable is presently addressed by the specification and therefore will not change the previous margin of safety of an allowed operation. Because the operation is no different than previously allowed, the results of an event previously evaluated have not been increased. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The proposed change would also allow seven days of continued operation with both MS–PLCS and PVLCS inoperable. Minor increases in containment leakage such as the leakage through the MSIVs, as identified in NUREG–1273 and NUREG/CR–3539, have been found to have no significant impact on the risk to the public. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The change to the long term ADS air supply has been determined not to add significant risk to the general public; therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the

publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 11, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 22, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 3rd day of March 1994.

For the Nuclear Regulatory Commission

Robert G. Schaaf,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects, III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5541 Filed 3–9–94; 8.45 am]

BILLING CODE 7590–01–M

Tennessee Valley Authority; Denial of Amendment to Facility Operating License and Opportunity for Hearing

[Docket Nos. 50–327 AND 50–328]

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Tennessee Valley Authority (licensee), for amendments to Facility Operating License Nos. DPR–77 and DPR–79 issued to the licensee for operation of the Sequoyah Nuclear Plant Units 1 and 2, located in Soddy Daisy, Tennessee. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 2, 1994 (59 FR 4948).

The purpose of the licensee's amendment request was to revise the Technical Specifications to delete License Condition 2.H from the Operating License. This license condition requires that violations of certain specified license conditions be reported to the NRC Regional Office.

The NRC staff has concluded that the licensee's request cannot be granted because inadequate technical justification has been provided. The licensee was notified of the Commission's denial of the proposed change by a letter dated March 3, 1994.

By April 11, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to the Office of the General Council, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1993, and (2) the Commission's letter to the licensee dated March 3, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 3rd day of March, 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5545 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (WPPSS), for operation of the WPPSS Nuclear Project No. 2 (WNP–2) located in Benton County, Washington.

The proposed amendment would modify the plant operating license to reflect replacement of the existing analog main steam line radiation monitors, Integrated Nuclear Measurement and Control (INMAC), with a digital replacement, Nuclear Measurement Analysis and Control (NUMAC). The licensee identified the proposed change as an unreviewed safety question in accordance with 10 CFR 50.59, and requested the required license amendment to support the modification.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 11, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700) The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory commission, Washington, DC 20555, and to M.H. Philips, Jr., Esquire, Winston & Strawn, Washington, DC 20555, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a0(1) (i)–(v) and 2.174(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after its completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 30, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 3rd day of March 1994.

For the Nuclear Regulatory Commission

Theordor R. Quay,

Director, Project Directorate, Division of Reactor Projects–III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5544 Filed 3–9–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Commercial Activities Performance Circular A–76

AGENCY: Office of Management and Budget.

ACTION: Issuance of Transmittal Memorandum No. 13, amending OMB Circular No. A–76, "Performance of Commercial Activities."

SUMMARY: This notice contains Transmittal No. 13, to OMB Circular No. A–76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs for Fiscal Years 1994 through 1999. The Federal pay raise assumptions and the non-pay category rates are contained in the President's Budget for Fiscal Year 1995. The factors contained in OMB Circular No. A–76, Transmittal Memorandum No. 12 are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR)

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, Federal Services Branch, General Management Division, Office of Management and Budget, (202) 395–6104.

Franklin S. Reeder,

Assistant Director for General Management

March 2, 1994.

Circular No. A–76 (Revised) Transmittal Memorandum No. 13

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non pay costs, as provided in the President's Budget for Fiscal Year 1995.

The following factors should be applied per paragraph C pages IV–6 and IV–7 of the OMB Circular A–76 Supplemental Cost Comparison Handbook (August 1983).

Federal pay raise assumptions Effective date	Inflation factors military civilian
January 1994	0.0
January 1995	1.6
January 1996	2.2
January 1997	2.5
January 1998	2.5
January 1999	2.5
Non-pay categories (supplies and equipment, etc.)	
FY 1993	2.7
FY 1994	2.6
FY 1995	2.9
FY 1996	3.0
FY 1997	3.1
FY 1998	3.1
FY 1999	3.1

Geographic pay differentials received in 1994 and prior years shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1995 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These revisions are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Sincerely,

Franklin S. Reeder,

Assistant Director for General Management.

[FR Doc. 94–5482 Filed 3–9–94; 8.45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1994, shall be at the rate of 30 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1994, 33.5 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.5 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 25, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–5601 Filed 3–9–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

March 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

AMLI Residential Properties Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12084)
American Paging, Inc.
Common Stock, $1.00 Par Value (File No. 7–12085)
Beazer Homes USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12086)
Clear Channel Communications, Inc.
Common Stock, $.10 Par Value (File No. 7–12087)
Corimon
American Depositary Shares, No Par Value (File No. 7–12088)
Empressa La Moderna
American Depositary Receipt (each rep. 4 Class 1 Series A Common Shares) No Par Value (File No. 7–12089)
Grupo Mexicano De Desarrollo
Series L American Depositary Shares, No Par Value (File No. 7–12090)
Global Privatization Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12091)
India Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12092)
Morgan Stanley India Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12093)
Instituto Mobiliare Italiano
American Depositary Shares (rep. 3 shrs. of Common Stock) Par Value Lira 5,000 (File No. 7–12094)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12095)
Nations Government Income Term Trust 2004, Inc.
Common Stock, $.001 Par Value (File No. 7–12096)
Pacific Gulf Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12097)
Summit Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12098)
Worldwide Dollarvest Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12099)
Western National Corporation
Common Stock, $.001 Par Value (File No. 7–12100)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit or before March 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5473 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33701; File No. SR–CBOE–93–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Telephones Located on the Floor of the Exchange

March 2, 1994.

On June 7, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to incorporate into the rules of the Exchange the conditions imposed by the Exchange governing the use of member-owned and Exchange-owned telephones located at equity option trading posts on the floor of the Exchange. Notice of the proposal appeared in the **Federal Register** on July 21, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

CBOE Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor without prior approval by the Exchange, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor.

In October 1992, the Exchange determined to permit the installation of both Exchange-owned and member-owned telephones at equity option posts on the trading floor,[4] and it promulgated Information Circular IC92–118 ("Circular") to inform the membership of this new policy and the fees, charges, and conditions associated with the use of such telephones. At the time the Circular was issued, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 32633 (July 14, 1993), 58 FR 33471 (July 21, 1993).

[4] The Exchange has not allowed telephones to be installed at index option trading posts for use by market markers. Telephone conversation between Pat Cerny, Market Surveillance, CBOE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, SEC, on February 24, 1994.

Exchange determined that the conditions applicable to the use of floor telephones would not be treated as rules of the Exchange, and accordingly, no surveillance obligations were imposed on the Exchange nor were members subject to formal disciplinary proceedings for violations of the polices contained in the Circular.

The Exchange now proposes to incorporate into its rules those conditions set forth in the Circular as applying to the use of telephones at equity options trading posts. Specifically, these conditions are as follows:

1. There will be no restrictions on where a member may call.

2. Floor telephones may not be used to receive orders, although they may be used to provide quotations.

3. Members may give their clerks their personal identification ("PIN") access codes. Although both members and clerks may use the post telephones, members will have priority. Liability for all calls made using a member's PIN access code will be that of the member.

4. Stock clerks will not be permitted to establish a base of operations utilizing post telephones.

5. Members and their clerks using the telephones consent to the Exchange requiring that any telephone or line be subject to tape recording.

6. The telephones will be used for voice service only. Data (PC's, fax, etc.) will remain subject to Exchange consent under a separate program.

7. Cellular or portable telephone may not be used on the trading floor.

8. Telephone headsets may not be used on the equity options floor.

The Exchange shall republish the Circular as a Regulatory Circular in order to inform members that these conditions are rules and that violations may lead to disciplinary proceedings. The Exchange believes it is now appropriate to treat these conditions as Exchange rules in order to be able to utilize both informal and formal disciplinary proceedings and sanctions to promote compliance.[5]

The Exchange intends to police compliance with these conditions by means of customary floor surveillance procedures, including reliance on surveillance by floor officials and Exchange employees. Additionally, the Exchange represents that it has in place a surveillance sharing agreement with the Chicago Mercantile Exchange ("CME") whereby transaction information is continually made available to the CBOE by the CME regarding futures transaction activity by CBOE members that is above certain defined parameters.[6] The CBOE also receives New York Stock Exchange ("NYSE") program trading information and analyzes this information against options activity to conduct surveillance for options strategies implemented ahead of and in anticipation of programmed equity trades.[7] Finally, the Exchange represents that it has systems in place to detect and deter frontrunning.[8] These systems generate a report of options trades occurring within a certain time period prior to the purchase or sale of blocks of 10,000 or more shares of the securities underlying the options.[9] The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets. Specifically, the Commission agrees with the Exchange's position as stated in the Circular that the proposed rule change may facilitate efficient access to underlying markets by providing market makers with more immediate access to those markets. Providing procedures whereby market makers in the equity options crowds can readily communicate with the off-floor offices of member firms as well as other locations off of the Exchange's trading floor, will allow them to obtain and transmit information more efficiently which may result in benefits to investors by improving execution of orders.

Further, incorporating the procedures contained in the Circular into the Rules of the Exchange will enable the Exchange to monitor better the use of the floor telephones and to discipline members for violations of those rules. As noted above, because the proposed telephone policy does not restrict where a member may call, the telephones may be used to place orders in underlying stocks and in futures markets.[11] With respect to equity-related transactions, while the telephones may give options market makers more immediate access to the market in the underlying securities, the Commission believes that the CBOE's surveillance systems currently in place are adequate to detect and deter any such attempts at manipulation including frontrunning. Although the surveillance procedures will not directly detect that a potential frontrunning may have been attempted through use of the floor telephones, the Exchange's existing surveillance procedures will ensure that the CBOE is aware of any options transactions that raise frontrunning concerns. Accordingly, although the placement of telephones on the equity options trading floor may make it easier for a market maker to place hedging orders in the underlying security, the use of the floor telephones will not diminish the ability of the Exchange to detect and deter manipulation. Similarly, the CBOE will continue to analyze options trading against NYSE program trading data for potential frontrunning.[12] With respect to futures-related transactions, the Commission believes that the Exchange would be able to adequately conduct surveillance for improper activities as a result of the transaction information provided to the Exchange by the CME pursuant to the Exchange's surveillance sharing agreement with CME.[13] Although the surveillance information obtained by the Exchange will not indicate that the floor telephones were used to enter into a potentially improper futures transactions, the Exchange's ability to conduct surveillance for potential manipulation will not be hindered because of the existence of floor telephones at the equity options posts on the floor of the Exchange. Additionally, the Commission also notes that surveillance information is shared through the Intermarket Surveillance Group ("ISG").[14] Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock

[5] The Exchange has represented that it has received no complaints, nor has it detected any violations of the procedures contained in the Circular since telephones have been installed at the equity options trading posts. Telephone conversation between Pat Cerny, Market Surveillance, CBOE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, SEC, on February 23, 1994 ("February 23 Conversation").

[6] *Id*

[7] *Id*.

[8] Frontrunning is the practice of effecting an options transaction based upon non-public information regarding an impending block transaction in the underlying stock, in order to obtain a profit when the options market adjusts to the price at which the block trades.

[9] February 23 Conversation, *supra* note 5.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] The proposed rule change also allows members to use the floor telephones for the purpose of providing quotations on equity options. In using the telephones for this purpose, members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 30.11.

[12] *See supra* note 7 and accompanying text.

[13] *See supra* note 6 and accompanying text.

[14] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options market. *See* Intermarket Surveillance Group Agreement, July 14, 1983.

and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the CME and the Chicago Board of Trade joined the ISG as affiliate members in 1990.

The Exchange's proposal also prohibits the use of portable and cellular telephones on the equity options trading floor. Prohibiting the use of portable telephones aids in ensuring that market makers will be physically present at the equity options trading posts where the options classes to which they have been appointed are traded. The Commission believes that ensuring the physical presence of market makers at the trading posts helps to promote the maintenance of fair and orderly markets. As a result, the Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory concerns.

Finally, the Exchange has represented that since the Circular was issued and telephones at equity options trading posts have been installed, the Exchange has not received any complaints concerning their use, nor detected any violations of the procedures set forth in the Circular.[15]

In summary, because the Commission believes that installing telephones at the equity options posts on the floor of the Exchange may result in benefits to investors by allowing market makers to more efficiently hedge their options positions through improved immediate access to underlying markets while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper equity-related or futures-related trading activity, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–CBOE–93–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5478 Filed 3–9–94; 8:45 am]

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[15] February 23 Conversation, *supra* note 5.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200 30–3(a)(12) (1993)

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Pledge of Government Securities as Collateral

[Release No. 34–33709; File No. SR–DTC–94–02]

March 3, 1994.

On January 26, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] that would allow participants to pledge government securities to DTC as collateral to cover outstanding short positions. On February 15, 1994, the Commission published notice of the proposed rule change in the **Federal Register**.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change provides for a procedure to allow participants to pledge government securities to DTC as collateral to cover outstanding Next-Day Funds Settlement ("NDFS") short positions.[3] Only short positions aged thirty calendar days or more will be eligible for collateralization.[4]

DTC imposes a cash penalty of 130% of the market value of the aged short position ("short position penalty").[5] The rule change provides an alternate means for participants to satisfy their obligation to provide DTC with a short position penalty. Participants also may continue to make cash deposits.

Under the proposal, participants may pledge government securities residing in their DTC "free" accounts.[6] Initially only DTC-eligible U.S. Treasury issues (Treasury bills, bonds, and notes) which are fully guaranteed by the U.S. Government will be accepted as collateral. There are no plans to expand the program beyond government securities at the present time, however, DTC may include other securities as collateral in the future.[7]

Each day, DTC will inform each participant of its short positions aged thirty days or older as of the close of business on the previous day. The participant can then enter a request over DTC's Participant Terminal System ("PTS") to pledge government securities. The pledge system will verify that the securities being pledged are eligible for collateralization before the pledge is allowed to update into DTC's system.

DTC will establish a special account on its books that will be used to receive book-entry pledges. The government securities will remain in DTC's account at the Federal Reserve Bank of New York.[8] DTC will accept partial pledges that do not cover the entire amount of the short position penalty.

The value of a participant's securities short positions and pledged securities[9] will be marked to the market on a daily basis, and short charges will be adjusted accordingly. Participants may pledge additional securities to cover an increase in their aggregate short charges or request a release of pledged securities which are no longer needed to cover their aggregate short charges. If the value of the pledged position is greater than the short position penalty, the excess will not be returned to the participant unless the participant requests it.[10]

A participant may substitute pledged securities or request a complete release of collateral. In the former instance, after inputting the new pledge and the release request, the participant would contact the Reconciliation Department prior to 12:30 p.m. to request a release approval. The substitution will be made upon approval of the release request. In the event the participant requests a

[1] 15 U.S.C. 78s(b)(1) (1988)

[2] Securities Exchange Act Release No. 33602 (February 8, 1994), 59 FR 7273.

[3] The proposed rule change contemplates pledges of the type described in DTC Rule 4, Section 1 relating to DTC's Participant's Fund. DTC rule 4, Section 1. Letter from Karen G. Lind, Associate Counsel, DTC, to Sonia G. Burnett, Attorney-Advisor, Commission (February 23, 1994).

[4] The procedure is available for positions that are aged thirty days or more because many short positions that are due to administerial errors are cleared up in the first thirty days. The new procedure is designed to be utilized in the case of short positions that are difficult to cover because the securities are thinly traded. Letter from Karen G. Lind to Sonia Burnett, *supra*

[5] The cash DTC receives is invested and earns interest. The interest earned is returned to participants at periodic intervals during the year as part of the general refund. The general refund allocates back to participants excess operating revenues and interest earned calculated by activity levels.

[6] Each participant's DTC "free" account contains securities that are available for transfer or pledge. other securities, such as those that are segregated for customers or pledged to pledgee banks do not reside in the "free" account. Letter from Karen G. Lind to Sonia G. Burnett, note 3 *supra*.

[7] Letter from Karen G. Lind to Sonia G. Burnett, note 3 *supra*. In order to expand the types of eligible collateral to include securities other than Treasury bonds, notes, and bills, DTC will file a proposed rule change with the Commission under Section 19(b)(2) of the Act and Rule 19b–4 thereunder.

[8] Letter from Karen G. Lind to Sonia G. Burnett, note 3 *supra*

[9] The pledged securities will be valued at full market value. DTC will not impose a haircut on the pledged securities but will require a short position penalty of 130% of the market value of the short position.

[10] Letter from Karen G. Lind to Sonia G. Burnett, note 3 *supra*

release of collateral without requesting to pledge substitute collateral, the pledged securities would be returned to the "free" account at the end of the processing day and the short charges would be reinstated the following day.

If pledged securities are redeemed, DTC will hold the redemption proceeds in a suspense account until the pledged securities are released and moved to the participant's "free" account. At that time, the redemption proceeds would be credited to the participant's settlement account. If pledged government securities are called for redemption, the participant must release the pledge and move the securities to a "free" account. Interest earned on pledged securities will be automatically credited to the participant's account.

II. Discussion

The Commission believes DTC's proposal is consistent with the Act and particularly with sections 17A(b)(3)(A) and (F) of the Act.[12] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The proposed rule change will give DTC participants greater flexibility in collateralizing their short positions. By allowing participants to pledge government securities to DTC to replace cash deposits, the proposed rule change will improve participants' cash management abilities and liquidity.

At the same time, the proposal will continue to provide DTC with high quality collateral for short positions, mitigating the risk involved in uncovered short positions.[13] DTC will accept only Treasury notes, bonds, and bills which are backed by the full faith and credit of the U.S. Government. DTC therefore will not be subject to the credit risk of the obligor. Because the market for Treasury bills is extremely large and relatively liquid, DTC believes its liquidation risk will be minimal. Furthermore, DTC will employ its usual internal controls to segregate pledged positions within the pledge account and to minimize the risk of double pledging. By permitting DTC to minimize its credit and liquidation risk, the proposal promotes the safeguarding of securities and funds in DTC's custody or under its control.

[12] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[13] Credit risk is the risk that the counterparty to a transaction will not fulfill its obligation. Market risk is the risk associated with adverse changes in the market price of a security. Liquidation risk is the risk that the full value of collateral will not be realized upon liquidation of such collateral.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change (File No. SR–DTC–94–02) is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–94–02) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5479 Filed 3–9–94; 8:45 am]

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[Release No. 34–33708; File No. SR–MSE–93–05]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Agency Crosses Between the Disseminated Exchange Market

March 3, 1994.

I. Introduction

On March 2, 1993, the Midwest Stock Exchange, Inc. ("MSE," "Exchange" or "Chicago Stock Exchange")[1] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and rule 19b–4 thereunder,[3] a proposed rule change relating to the execution of agency cross transactions at a price between the disseminated Exchange market. On December 10, 1993, the MSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to summarize and respond to a comment letter it received in opposition to this proposal.[4] On February 16, 1994, the MSE submitted Amendment No. 2 to the proposed rule change to specify that the proposal only applies to block trades and to clarify the Exchange's position regarding specialist participation in cross transactions.[5]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33500 (January 21, 1994), 59 FR 4128 (January 28, 1994). One comment letter was received on the proposal.[6] This order approves the proposed rule change, including both amendments.

II. Description of the Proposal

Article XX, Rule 23 of the Exchange's rules outlines the current method for the execution of cross transactions on the MSE.[7] Under that rule (in conjunction with the MSE's priority rule), a member or member organization effecting a cross transaction first must assure that all existing bids or offers, at or better than the cross price, are filled at their limits.[8] Thereafter, the member or member organization must publicly announce both sides of the cross; the member's offer must be higher than its bid by at least the minimum variation permitted for that security.[9] Rule 23 then allows the member or member organization to execute the cross transaction at its bid or offer. Under this method, however, another member can "break up" the cross, by trading with either the bid or offer side of the transaction when it is presented to the crowd. According to the Exchange, the ability of the specialist, in particular, to participate in a cross transaction decreases the

[14] 17 CFR 200.30–3(a)(12) (1990).

[1] As of July 8, 1993, the MSE changed its name to the Chicago Stock Exchange, Inc. ("CHX"). See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR–MSE–93–13) (immediate effectiveness of proposed rule change to amend the MSE's Certificate of Incorporation and Constitution to effect a name change); and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR–MSE–93–16) (immediate effectiveness of proposed rule change to make conforming changes to the MSE Rules.)

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1991).

[4] See letter from David T. Rusoff, Foley & Lardner, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated December 9, 1993 ("Amendment No. 1").

[5] See letter from David T. Rusoff, Foley & Lardner to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated February 15, 1994 ("Amendment No. 2").

[6] See letter from Robert Hill, Vice President, The Chicago Corporation, to the Executive Committee, MSE, dated October 20, 1992 ("Hill comment letter"). The Hill comment letter was forwarded to the Commission as part of Amendment No. 1, *supra*, note 4.

[7] In a cross transaction, a member or member organization that holds an order to buy and an order to sell an equivalent amount of the same security wishes to execute the orders against each other. Because it already holds both sides of the trade, the member does not want the orders to interact with other market interest.

[8] As a general matter, the bid/offer entered at the best price (*i.e.*, the highest bid or the lowest offer) is entitled to priority over bids/offers at inferior prices; similarly, the first bid/offer clearly established at a given price is entitled to priority over other bids/offers at the same price. See Article XX, rules 15–18 of the MSE Rules.

[9] Article XX, Rule 22 of the MSE Rules sets forth the minimum variation permitted for securities traded on the Exchange.

likelihood of the order sending firm receiving an immediate execution.

The Exchange proposes to add a new Interpretation and Policy .01 to Rule 23. Specifically, the proposed interpretation will require that the MSE specialist refrain from interfering with a floor-brokered agency cross,[10] of 10,000 shares or more,[11] at a cross price between the disseminated Exchange market.[12] Even if the above requirement precludes specialist participation, once a cross is executed, the specialist nevertheless will be obligated, as under current rules, to satisfy all book orders with priority at the cross price. In contrast, the MSE proposal will allow the specialist to participate in a block agency cross if he or she has a disseminated bid or offer *at* the cross price, regardless of the size thereof.[13] Finally, the MSE has clarified that a specialist who is willing to provide one side of the cross with a better price will have the opportunity to do so.[14]

The MSE states that the purpose of the proposed rule change is to increase the possibility of immediate execution of agency crosses on the Exchange when the cross price is between the disseminated MSE market. The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[10] For purposes of this proposal, the Exchange has defined the term "agency cross" as a cross where neither the order to buy nor the order to sell is for the account of any member or member organization (*i.e.*, including, but not limited to, the member or member organization executing the cross). Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on January 5, 1994.

[11] The proposed interpretation will not apply to crosses of less than 10,000 shares. According to the Exchange, the current rules, see *supra* notes 7–9 and accompanying text, will continue to govern the execution of, and specialist participation in, crosses that fall below the MSE's 10,000 share size threshold for block trades. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on February 18, 1994.

[12] However, the specialist will be allowed to participate if the member presenting the cross previously solicited his or her assistance in consummating any part of the transaction.

[13] In particular, the Exchange has indicated that a specialist who is displaying a bid or offer at the cross price will be allowed to participate at that price, even in a size greater than his or her quotation. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on December 20, 1993.

[14] See Amendment No. 2, *supra*, note 5.

III. Comments Received and MSE Response

One comment letter on the proposed rule change, from a MSE specialist, was received by the Exchange and forwarded to the Commission.[15] In his letter, the commentator recommends that the MSE proposal be disapproved and raises several arguments, as discussed below, in support of his position.

First, the commentator states that the MSE's rules have always provided for the protection of customer orders, no matter how small, and claims that this proposal represents a significant philosophical change from that stance. The commentator fears that this will undermine the Exchange's leverage in arguing for increased protection and participation of public orders.

The letter also suggests that a new policy is not necessary at this time. In the commentator's opinion, most instances where crosses are broken up occur for legitimate reasons, and, while there may be problems with certain specialists, overall brokers believe that the current rules are adequate. Moreover, the commentator contends that the Exchange does not have much to gain, except for "window dressing trades," from the proposed rule change. To this end, the commentator states that the Exchange will receive little in the way of additional transaction fees or CTA revenue.

In addition, the commentator argues that the proposed interpretation makes no allowance for human slowness and asks what will happen in busy markets. The commentator notes that a public order which has come in to the MSE specialist, but has not yet been reflected in his or her quote, cannot participate in a cross; the letter implies that this result is contrary to the type of business an exchange (as opposed to a crossing network) wants to encourage. In addition, the commentator suggests that the new policy will be susceptible to abuse because the MSE cannot determine, on an immediate basis, whether a particular transaction is really an agency cross. His letter predicts that monitoring "after the fact" will have a negative impact on the Exchange's ability to attract business.

Finally, the commentator expresses concern that this proposal will reduce the natural tension between specialist and broker that allows for efficiency in the marketplace. The commentator argues that the Exchange should be encouraging more orders and less crosses. From his perspective, liquidity is based on the flow of orders into the price discovery network, and, accordingly, it is not in the Exchange's interest to facilitate what he describes as passively priced orders that trade without interaction.

[15] See Hill comment letter, *supra*, note 6.

The MSE responded to the issues raised by the specialist's comment letter.[16] In its response, the MSE asserts that the proposed rule change will not interfere with the execution of public orders on the specialist's book. According to the Exchange, customer orders will continue to be protected under its proposal, because the specialist will be required to fill limit orders at the cross price, even if they are not displayed due to the specialist's oversight. In the Exchange's view, this requirement also should encourage specialists to be more efficient in representing customer orders and to quote their true market.

Second, the MSE disputes the commentator's assessment of the costs and benefits of the proposed rule change. The MSE believes that its new policy will encourage more institutional trades to be routed to the Exchange floor; whether this will result in more revenue is described as a "secondary consideration." In conclusion, the MSE states that its proposal will create a more attractive marketplace for institutional orders, without sacrificing traditional agency auction market principles.

In addition, the MSE does not agree with the commentator that the potential for abuse (*i.e.*, by not having an agency order on both sides of the trade) is a valid argument against adopting the proposed interpretation in the first place. The Exchange states that many of its present rules cannot be monitored for compliance on an immediate basis, and pledges to take appropriate action if it finds that members are abusing this rule.

Finally, according to the MSE, the proposed rule change will not reduce the possibility of order interaction on the floor. The Exchange notes that a specialist who is not displaying his or her market at the cross price (and who has not previously been solicited for help) will be the only one who cannot participate in a cross transaction. This proposal will not affect the requirement that both sides of the cross be announced publicly and/or the ability of other interest in the crowd to participate. In fact, the MSE contends that, as a result of this policy, more orders could be routed to the Exchange floor and could take part in the auction process.

[16] See Amendment No. 1, *supra*, note 4.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11(a).[17] In particular, the Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest; and with the section 6(b)(8) requirement that the rules of an exchange not impose any unnecessary burden on competition. The Commission also believes that the proposed rule change does not operate in a manner inconsistent with the traditional auction market principle of customer priority, as embodied in section 11(a) of the Act.

After careful review of the comments received as well as the applicable statutory provisions, the Commission has concluded that the proposed rule change should further competition among the exchanges, as well as between exchanges and other markets, and should increase the opportunities for the efficient execution of cross transactions. In the past, the Commission has recognized the competition that exists between the various markets for order flow, and especially for block business. Several exchanges recently have received Commission approval to amend their rules, on the grounds that exchange rules may hinder members' ability to execute a cross transaction without interference and thus may place an exchange at a competitive disadvantage.[18]

In response to today's competitive market environment, the MSE has proposed to add a new requirement that a specialist's proprietary bid or offer must yield to a block agency cross at a cross price between the prevailing Exchange quotation. The MSE's new policy, however, will allow a specialist who has a disseminated bid or offer at the cross price to participate at that price. On balance, the Commission believes that the proposal will clarify the roles of various market participants and assure that, under routine circumstances, crosses are executed in a fair and orderly manner, without disadvantaging public customer orders. For instance, the Commission has determined that, for a regional exchange like the MSE, a size threshold of 10,000 shares is not unreasonable. Similarly, specialists will be protected from yielding priority if they have exposed themselves to market risk at the cross price. Accordingly, the Commission finds that the proposed rule change should improve the MSE's ability to compete for block business and potentially could enhance the depth and liquidity of the Exchange market.[19]

In terms of auction market principles, the Commission believes that the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the MSE and the proprietary trading operations of Exchange members and member organizations, including specialists. The Commission notes that the MSE's new policy only applies to crosses between the disseminated Exchange market. Accordingly, a member effecting a cross transaction *at* the prevailing bid or offer will, consistent with current rules, be required to obtain priority over all existing limit orders at that price.[20] In the event that an order on the specialist's book has not been displayed in the quote but has time priority, the MSE proposal guarantees that, after an order is effected at its price (pursuant to rule 23 or otherwise), that limit order will be filled, even if the specialist is precluded from interfering with the cross on its behalf. Thus the Commission has concluded that the MSE proposal adheres to the auction market principles of time and price priority and that this method for the execution of crosses [and, in particular, the priority granted to block agency crosses) will not disadvantage existing orders.[21] In fact, limit orders on the MSE which coincide with the cross price could benefit from being assured of receiving an execution at that price.

Furthermore, the Commission finds that the MSE proposal does not restrict the opportunity for customer orders to receive price improvement. To this end, rule 23 will allow the specialist to participate in a cross transaction to provide one side with a better price, notwithstanding any other provisions of this rule.[22] In addition, under the proposed rule change, it is still possible for interest in the trading crowd, including an order for the principal account of a member, to break up the cross and improve the price.

The Commission also believes that the MSE proposal would not grant priority, parity or precedence to the order of a member in a manner inconsistent with section 11(a)(1)(G) of the Act or SEC rule 11a1–1(T)(a)(3) thereunder.[23] For purposes of this proposed rule change, the MSE has defined the term "agency cross" as a cross where neither the order to buy nor the order to sell is for the account of a member or member organization. Because the definition of "agency cross" excludes (and, thus, does not grant priority to) an order for the account of the broker effecting the cross transaction or an associated person thereof,[24] the Commission is satisfied that the proposed rule change complies with section 11(a).

The Commission does not agree with the commentator that this proposed rule change represents a significant philosophical change from the MSE's traditional stance of customer protection. As discussed above, the Exchange will continue to afford time and price protection to orders on the specialist's book.[25] In the Commission's opinion, this proposal contains adequate safeguards to ensure that public customers are not disadvantaged.

In addition, the Commission finds that the Exchange has advanced a satisfactory rationale for its new policy. The MSE believes that the specialist's

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[17] 15 U.S.C. 78f(b) (1988).

[18] See, *e.g.*, Securities Exchange Act Release Nos. 27205 (August 31, 1989), 54 FR 37180 (September 7, 1989) (File No. SR–Phlx–89–17) (approving Philadelphia Stock Exchange ("Phlx") proposal to prohibit members from interfering, with either side of an agency cross or the customer side of a facilitation cross, by buying or selling for their own account at the cross price; except that a specialist can participate to the extent of a publicly disseminated bid or offer at that price, or to better the price); 31343 (October 21, 1992), 57 FR 48645 (October 27, 1992) (File No. SR–NYSE–90–39) (approving New York Stock Exchange ("NYSE") "clean cross" proposal to allow members to execute agency crosses of 25,000 shares or more, at a price at or within the prevailing quotation, without interference, irrespective of any pre-existing bids or offers at the cross price; however, the cross can be broken up *at* a better price); and 33391 (December 28, 1993, 59 FR 336 (January 4, 1994) (File No. SR–PSE–91–11) (approving Pacific Stock Exchange ("PSE") proposal to prohibit specialists from participating for their own account on either side of an agency cross, or the customer side of a facilitation cross, at a price within the disseminated PSE market; except that a specialist can participate to better the price).

[19] The Commission appreciates all the exchanges' competitive concerns with respect to the facilitation of cross transactions and, at the same time, continues to emphasize the importance of adherence with traditional auction market principles.

[20] See *supra*, note 8.

[21] In this regard, the MSE proposal contrasts favorably with other rule changes approved by the Commission, such as the NYSE's clean cross proposal, see *supra* note 18.

[22] See Amendment No. 2, *supra*, note 5.

[23] 17 CFR 240.11a1–1(T)(a)(3).

[24] Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on March 3, 1994.

[25] See *supra*, notes 20–21 and accompanying text.

ability to participate in a cross transaction decreases the likelihood of the order sending firm receiving an immediate execution. Conversely, the MSE argues that minimizing such interference will make the Exchange a more attractive marketplace for institutional orders (regardless of the effect on Exchange revenues). In the absence of a finding that this proposal is inconsistent with the Act, which the Commission cannot make at this time, the Commission is willing, in these circumstances, to defer to the MSE's judgment about the need for and the potential gains from the proposed rule change.

The Commission also believes that the means the exchange has chosen to accomplish its goals are not unreasonable, despite the potential for abuse identified by the commentator. In reaching that conclusion, the Commission placed great weight on the MSE's assurances that its current surveillance methods (especially, the existence of an audit trail) are capable of determining, in a relatively prompt fashion, whether a particular transaction was really an agency cross.[26] The Exchange, moreover, has pledged to take appropriate action to remedy any instances of noncompliance. Based on the above, the Commission is satisfied that existing surveillance procedures will detect, as well as deter, abuse of the rule. Where appropriate, the Commission expects the Exchange to take prompt action to discipline members that fail to comply with the agency cross requirement.

Finally, the Commission does not believe that the MSE proposal will significantly reduce order interaction on the floor of the Exchange. As discussed above, only a MSE specialist who does not have a displayed bid or offer at the cross price must refrain from participating in a cross transaction at that price.

The specialist, however, will be allowed to participate at a better price; and other interest in the trading crowd will not be subject to a comparable yielding requirement.[27] In the context of other rule changes that have been approved by the Commission,[28] the limited scope of the yielding requirement and the protection afforded book orders at the cross price, the Commission does not expect that the MSE proposal will substantially impair the price discovery network and/or market liquidity.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 2 merely delineates the scope of the original filing and clarifies the intent of certain language used therein. Finally, the interpretation the MSE proposes to adopt is substantially similar to the rules of several other exchanges that were published in the **Federal Register** for the full comment period and were approved by the Commission.[29]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the Chicago Stock Exchange, All submissions should refer to File No. SR–MSE–93–05 and should be submitted by March 30, 1994.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–MSE–93–05), including Amendments No. 1 and No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5476 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[26] Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on February 24, 1994.

[27] See *supra*, note 22 and accompanying text.

[28] See *supra*, note 18.

[29] No comments were received in connection with the rule changes submitted by the Phlx and PSE, which, as discussed above, see *supra* note 18, are substantially similar to the interpretation proposed herein.

[30] 15 U.S.C. 78s(b)(2) (1988).

[31] 17 CFR 200.30–3(a) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

March 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Western National Corporation
Common Stock, $.001 Par Value (File No. 7–12083)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5475 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33700; File No. SR–PSE–93–07]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to a Proposed Rule change by the Pacific Stock Exchange, Inc. Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the Wilshire Small Cap Index

March 2, 1994.

On April 21, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1)

of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Wilshire Small Cap Index ("Wilshire Index") that will expire on the last business day of each calendar quarter ("Quarterly Index Expirations" or "QIXs").[3] Currently, Wilshire Index options traded on the Exchange expire on the Saturday immediately following the third Friday of the expiration month. The PSE intends to trade Wilshire Index QIXs in addition to the existing Wilshire Index options expiring at the middle of the month. Notice of the proposed rule change appeared in the **Federal Register** on June 23, 1993.[4] No comments were received on the proposed rule change. On December 28, 1993, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On February 8, 1994, the Exchange filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposal.

The Exchange proposes to add subparagraph (d) to Rule 7.8 to provide for the listing of up to eight near-term quarterly expirations for trading on Wilshire Index options. The PSE would be permitted at any one time to have up to eight QIX Wilshire Index options open for trading with expiration dates on the last business day of a calendar quarter.[7] Accordingly, Wilshire Index QIXs will have expirations approximately two weeks apart from existing Wilshire Index option expirations in the quarterly month expiration.

The proposed QIX options will trade simultaneously with, not independent of, currently listed and traded Wilshire Index options. The proposed QIX options will be subject to the same rules that presently govern the trading of existing Wilshire Index options contracts, including sales practice rules, margin requirements, and floor trading procedures.[8] Contract terms for the QIX options will be similar, for the most part, to the corresponding Wilshire Index options that presently trade on the Exchange. For example, Wilshire Index QIXs will have European-style[9] exercise. The daily exercise settlement value of the index will be based, however, on the value of closing prices of component stocks, rather than opening prices.[10]

With regard to position and exercise limits,[11] the PSE is proposing to amend Rule 7.6 to provide that Wilshire Index QIXs will be subject to the 37,500 contract limit currently specified for Wilshire Index options, but without the 22,500 contract limit or "telescoping requirement" for the series with the nearest expiration date applicable for regular Wilshire Index options.[12] For the purpose of this test, regular Wilshire Index options would be aggregated with the Wilshire Index QIXs, however, in the case of regular Wilshire Index options, the 22,500 contract telescoping requirement continues to apply.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[13] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use Wilshire Index QIX options that settle based on the value of component stocks on the last business day of the calendar quarter, the PSE proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the PSE, the performance of portfolio managers and institutional investors is judged on a quarterly basis.[14] Therefore, in the past, these investors have been forced to pursue "quarterly hedges" in the over-the-counter ("OTC") market employing forwards, options, and/or swaps. Accordingly, the Commission believes the PSE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.[15]

In addition, the Commission believes that the PSE proposal will help promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in Wilshire Index options to quarterly calendar expirations. The attributes of the Exchange's Wilshire Index options market versus an OTC market include, but are not limited to, a centralized

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] The Wilshire Small Cap Index is a broad-based, capitalization-weighted index of domestic equity securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex"), and as national market securities traded through the facilities of the National Association of Securities Dealer's Automated Quotation system. The Index is composed of 250 domestic equity securities, and is designed to reflect the characteristics and market performance of small stocks generally.

[4] See Securities Exchange Act Release No. 32485 (June 17, 1993), 58 FR 26013 (June 23, 1993).

[5] In Amendment No. 1, the PSE proposes to add subparagraph (u) to Rule 7.1 to include a definition of QIX options. See Letter from Michael Pierson, Senior Attorney, Market Regulation PSE, to Richard Zack, Branch Chief, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated December 28, 1993.

[6] In Amendment No. 2, the PSE proposes (1) to adopt Rule 7.8(d) specifying the terms of QIX options; and (2) to change a reference in proposed Rule 7.6(d)(2) from "Exchange" to "Board." In Amendment No. 2, the Exchange also agrees that: (1) the use of any multiplier with respect to QIX options other than 100 will require Commission approval pursuant to Section 19(b) of the Act; (2) any proposal to list and trade QIX options with more than twelve months to expiration will require Commission approval pursuant to Section 19(b) of the Act; and (3) QIX options will be subject to the same rules that presently govern the trading of existing Wilshire Small Cap Index options contracts, including sales practice rules, margin requirements, and floor trading procedures. *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 7, 1994 ("February 7 Letter").

[7] Presently, options traded at the PSE expire on the Saturday following the third Friday of the expiration month. The PSE trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to six expiration months with none farther out than twelve months. The PSE is not now proposing to list or trade Wilshire Index QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under Section 19(b) of the Act. *Id*

[8] *Id.*

[9] A European-style option is one that may be exercised only during a specified period prior to the expiration of the option.

[10] Regular options on the Wilshire Index are settled based on the opening prices of the component securities. *See* Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368 (November 9, 1992) ("Exchange Act Release No. 31397").

[11] Position limits are the maximum number of option contracts permitted on the same side of the market with respect to a single underlying interest that may be held or written by a single investor or group of investors acting in concert. Exercise limits are the maximum number of option contracts on the same underlying interest that a single investor or group of investors acting in concert may exercise during any five consecutive business days.

[12] *See* Securities Exchange Act Release No. 32564 (June 29, 1993), 58 FR 36492 (July 7, 1993).

[13] 15 U.S.C. 78f(b)(5) (1982)

[14] In addition, many investment strategies employed by these portfolio managers converge at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.[16]

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, and sales practice rules and position and exercise limits will apply to QIX options.[17] In particular, Wilshire Index QIXs will be subject to a 37,500 contract limit under Rule 7.6 without a telescoping provision, and will be aggregated with regular Wilshire Index contracts.[18] Accordingly, all Wilshire Index options contract positions are limited in total to a 37,500 position limit.

The Commission notes that Wilshire Index QIXs will be treated like regular Wilshire Index options except for expiration settlement which will be based on the closing values of the component securities.[19] Although the Commission continues to believe that basing the settlement of index products on opening, as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[20] these concerns are reduced in the case of Wilshire Index QIXs, since expiration of these stock index options will not correspond with the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, Wilshire Index QIXs will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that Wilshire Index QIXs could have on the market. Accordingly, the Commission believes that Wilshire Index QIX options will not compromise the protection of investors or have an adverse market effect. Of course, the Commission expects the PSE to monitor the actual effect of Wilshire Index QIXs once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the PSE, the Commission believes that the PSE and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options.[21]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that Amendment Nos. 1 and 2 more closely conform the Exchange's proposal to proposals previously approved by the Commission with respect to the listing and trading QIX options.[22] Specifically, Amendment Nos. 1 and 2 provide definitions and additional listing and trading standards that are specifically tailored to Wilshire Index QIXs. The Commission believes that these additional standards strengthen the integrity of the security and may promote stability in the marketplace. Additionally, the Commission has not received any comments on this proposal. Therefore, the Commission believes it is consistent with sections 6(b)(5)[23] and 19(b)(2)[24] of the Act to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All written submissions should refer to File No. SR–PSE–93–07 and should be submitted by March 31, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–PSE–93–07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

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[16] See Securities Exchange Act Release No. 31898 (February 22, 1993), 58 FR 11878 (March 1, 1993).

[17] See February 7 Letter, *supra* note 6.

[18] Regular Index options will continue to be subject to limits of 37,500 contracts with a telescoping limit of 22,500 contracts in the near term series. In the aggregate, all Wilshire Index contracts are limited to the position limits of 37,500 contracts established for this particular contract, however, in the near-term series, no more than 22,500 of these contracts may be regular Index options.

[19] See Exchange Act Release No. 31397, *supra* note 10.

[20] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[21] *See* Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 25, 1994, incorporating a memorandum from Joseph Corrigan, Executive Director, OPRA, to Kim Koppien, PSE, dated February 24, 1994.

[22] See, e.g., Securities Exchange Act Release No. 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (order approving the listing and trading of QIX options by the Chicago Board Options Exchange, Inc. on the Russell 200 Index).

[23] 15 U.S.C. 78f(b)(5) (1988).

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 15 U.S.C. 78s(b)(2) (1982).

[26] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

March 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Western Gas Resources, Inc.
Cum Conv. Pfd. Stock, $.10 Par Value (File No. 7–12072)
Western National Corporation
Common Stock, $.001 Par Value (File No. 7–12073)
Morgan Stanley India Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12074)
Walden Residential Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12075)
Evergreen Healthcare, Inc.
Common Stock, $0.01 Par Value (File No. 7–12076)
India Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12077)
Travelers, Inc.
Warrants (File No. 7–12078)
KeyCorp
Dep. Shares each Rep. 1/5 of a share of 10 pc Cum. Pfd. Stock Class A (File No. 7–12079)
HMG Digital Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–12080)
Travelers, Inc.

5.5% Conv. Pfd. Series B (File No. 7–12081)
Jardine Fleming India Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12082)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5474 Filed 3–9–94; 8:45 am]

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[Release No. 34–33703; File No. SR–GSCC–94–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Amendment No. 1 to Proposed Rule Change Relating to the Comparison and Netting of Members' Treasury Auction Purchases

March 2, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On February 18, 1994, GSCC filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Commission (February 15, 1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's rules to allow GSCC to accept and report data on proprietary purchases of Treasury securities made at auction by members of GSCC's Netting System; to net the purchases with when-issued trades of such members in the same securities; and to deliver purchased securities through GSCC's clearing mechanism.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) In 1990, GSCC submitted to the United States Department of the Treasury ("Treasury") a preliminary proposal, with regard to Treasury security purchases made at auction by members of GSCC's Netting System ("netting members"), to: (1) Accept and report data on such purchases through GSCC's Comparison System; (2) net the purchases with when-issued trades of such members in the same securities, through the Netting System; and (3) assume responsibility for the delivery of the purchased securities, with GSCC receiving the securities via its agent bank directly from the appropriate Federal Reserve Banks for re-delivery through GSCC's clearing mechanism. Over the past several years, this proposal (known as the "auction takedown" proposal) has been refined as the result of discussion with and comment by GSCC Board members, Treasury and Federal Reserve Bank of New York ("FRBNY") staff, representatives of Public Securities Association committees, GSCC's members, and others.

Treasury, Federal Reserve Banks, and GSCC staff are working toward implementation of the proposal. While certain operational details regarding its implementation remain to be worked out, GSCC has targeted the Spring of 1994 as the time period for commencement of this service.

With the approval of GSCC's Board, this rule filing is being made in order for GSCC to receive the necessary authorization to implement the auction takedown proposal in conjunction with the Treasury, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), and the Federal Reserve Banks. This rule filing also would authorize GSCC more generally to establish a mechanism for taking in data on members' activity in eligible securities from sources such as exchanges and other clearing corporations and treating such data, under its rules, as compared trades to the same extent as if the data had been compared through the matching by GSCC of data submitted by two members.

GSCC believes that implementation of the auction takedown proposal would bolster the scope and effectiveness of GSCC's Netting System and the credit protections afforded by that system, would reduce the overall level of settlement exposure in the Government securities marketplace, and would provide other significant benefits, for the following reasons:

- The netting process performed by GSCC is incomplete so long as it does not encompass auction purchases, because there is no netting of such purchases with when-issued trades in the same securities in the secondary market. With the netting of auction purchases with secondary trades, the level of potential netting would be increased and, in the aggregate, there would be fewer required securities movements to be made.
- The settlement process for Treasury securities is made more efficient, because the re-delivery of original purchases to the next, and perhaps ultimate, buyer occurs in many cases virtually instantaneously after delivery by the Federal Reserve Banks (*i.e.*, where the auction purchase has been resold to another member).
- The proposal would reduce the counterparty credit risk to the Treasury resulting from the auction process.
- The level of daylight overdraft exposure may be lessened as the result of re-deliveries taking place earlier in the day.
- Currently, the information that GSCC maintains on the net settlement positions of members is incomplete and therefore, potentially misleading for risk management purposes, because those positions do not take into account auction purchases. For example, a member that appears to GSCC to be in a net short position in a particular CUSIP may in fact be in a net long position because of the size of its auction purchases. If this proposed procedure is implemented, more complete information on the overall distribution process required to settle auction purchases,

and the true net settlement positions of members during a when-issued period, would be available to GSCC, which would enable it to be better manage the risks and exposures presented to it by members' activity.

The general elements of GSCC's auction takedown proposal and its plan to establish a facility for the receipt of trade data on a locked-in basis are reviewed below.

1. The Auction Takedown Proposal

a. *Receipt of data by GSCC.* In the afternoon or evening of the day of a Treasury auction, the Federal Reserve Banks would transmit to GSCC information, on a per-CUSIP basis, regarding which netting members received auction awards of eligible securities and the amount and value of those awards at each yield by submitter The Federal Reserve Banks would receive in advance the necessary authorization from netting members to allow the dissemination of such auction award information to GSCC.

b. *Eligible securities.* GSCC would accept and report data on Treasury auction purchases of netting members, and net such purchases, only if information on such purchases is provided to GSCC by a Federal Reserve Bank. If a Treasury auction bid is submitted by a netting member for its own account, information on an auction award arising from such bid would be provided to GSCC and the purchase would be included in GSCC's net. If a Treasury auction bid is submitted by a netting member with a customer's or client's name either on the tender form or on an attachment to the tender form that has been submitted to a Federal Reserve Bank (even is such customer or client is itself a netting member), information on an auction award arising from such bid would not be provided to GSCC, and the purchase would not be eligible for GSCC's net. Only auction purchases of CUSIPs with an issue date that is one or more business days after auction date would be eligible for netting and settlement through GSCC; thus securities that are auctioned and issued on the same date would not be eligible for GSCC's net.

c. *Reporting of auction purchase information.* There would be no requirement that auction award data reported to GSCC by a Federal Reserve Bank be matched with data submitted by the purchasing member. Each eligible auction award would be treated as a "locked-in trade" and would be reported by GSCC to the purchasing member as a part of the daily comparison output. Upon the availability of GSCC's comparison output, the locked-in trade would be binding on the member pursuant to GSCC's rules, just as a trade that has been compared by GSCC through the matching of data received from two members. The comparison output provided to members would indicate, as appropriate, that a locked-in trade has been reported using data supplied to GSCC by a Federal Reserve Bank.

Procedures would be established that would provide the Federal Reserve Banks with a unilateral capability to cancel incorrect data and to provide new, correct data, as necessary. All such corrections would be promptly reported by GSCC to its members. GSCC also would provide each member with the capability to generate a cancellation and correction request to the Federal Reserve Banks should it believe that an error has been made; however, a member-requested adjustment would be made by GSCC's system only if it is acted upon by a Federal Reserve Bank, which would provide the corrected data to GSCC.

d. *Netting.* Reported auction awards, which would be treated GSCC's rules as compared trades, would go directly into the net. Pursuant to GSCC's procedures for netting such trades, these trades would be netted with members' compared secondary market trades in the same CUSIP to establish net settlement positions. Net settlement positions arising in whole or part from auction purchases would be established by GSCC and be binding on members based on the auction award data provided by the Federal Reserve Banks.

GSCC would make available netting output reflecting such positions to the members. At that time, subject to a limited exception discussed below, GSCC would become obligated to accept delivery of each member's auction purchases and pay for such purchases, through its agent banks, as though GSCC had made the auction purchases. To allow GSCC to assume the risks associated with undertaking these obligations, GSCC would require from its members Clearing Fund margin and forward mark allocation payment amounts calculated based on their net settlement positions taking into account auction purchases.

e. *Change in the forward mark allocation payment formula.* In connection with implementation of the auction takedown proposal, GSCC's formula for calculating the forward mark allocation ("FMA") payment obligations of most of its members will be changed. Except for category 1 inter-dealer broker netting members, who do not have an FMA payment obligation, all netting members will have their FMA payment obligation calculated based on the entire debit mark. The current method reduces the debit mark by a fraction based on the five largest debit mark amounts. Currently, only category 2 dealers have their FMA payment obligation calculated based on the entire debit mark.

This is being done in order to enhance GSCC's risk management process. Absent this change, there might not be sufficient time in the morning of issue date for GSCC to collect—via the transaction adjustment payment (TAP) component of its funds-only settlement process—the mark-to-market payments necessary to protect itself and its members from market exposure on net settlement positions. Pre-collection of mark-to-market exposure amounts via FMA payments is the best means of assuring that GSCC would have sufficient protection, especially given the potentially large auction positions that would be encompassed within GSCC's net.

Based on its years of experience with the netting and guaranteeing of forward net settlement positions and the collection of FMA payments, GSCC believes that this change would not pose an undue burden on members. Currently, members typically pay at least 75 percent of each debit mark on a forward net settlement position (and closer to 100 percent of the debit mark for off-the-run issues).

As regards its members, GSCC would continue to assume responsibility for ensuring the settlement of the entire amount of each of the deliver and receive obligations, and related payment obligations, generated by the net. However, as is discussed below, as between it and the Treasury, under certain, limited circumstances, GSCC would not bear the risk of loss that arises from the potential failure of a member to pay for auction purchases.

f. *Delivery of auction purchases on issue date.* Securities deliveries would be made by the Federal Reserve Banks to the clearing bank designated by GSCC for such purpose (currently, The Bank of New York for Treasury Notes and Chemical Bank for all other products). A netting member that makes a netting eligible auction purchase would be required to provide the Federal Reserve Bank from which it makes such auction purchase with appropriate instructions providing that such auction purchase be delivered to the agent bank designated by GSCC to act on its behalf with regard to such auction purchase. GSCC would continue to "pre-load" its agent banks during the early morning with netted deliver and receive instructions such that the re-deliveries by those banks of

auction purchases would occur automatically and virtually instantaneously after their receipt from the Federal Reserve Banks.

Deliveries would be made from a Federal Reserve Bank to GSCC against payment by GSCC at the auction award price. GSCC's initial redelivery to a member of a net long position that includes an auction purchase would be made against payment by such member at the greater of: (a) the settlement (market) value for the position nor (b) the average auction price for such auction purchase.

g. *Revision to the funds-only settlement process.* In order to take into account the delivery by GSCC of securities at a value different than the system value, a new concept—the settlement value—is being introduced and incorporated into GSCC's securities and funds-only settlement processes. This could be either the average auction price or the market value of securities, as designated by GSCC. The proposal also would authorize GSCC to require a member to settle net obligations at a price different from either the market value or average auction price if the member is subject to higher than normal surveillance status, and if, in the opinion of senior GSCC management, the potential for such member to fail to meet its settlement obligation to GSCC is higher than normal.[3]

Thus, following approval of the proposed rule change, members would be obligated to make and receive deliveries of securities to and from GSCC at the "settlement value" of the deliver or receive obligation. In the vast majority of situations, the settlement value of a receive or deliver obligation will be the same as the system value for such obligation. In those cases where an adjustment has been made by GSCC to the system value, such adjustment will be deemed to be the "delivery differential adjustment amount" and will be collected or paid as a new and separate component of the member's funds-only obligation. GSCC may establish varying delivery differential adjustment amounts for different deliver obligations and/or receive obligations of one or more members involving the same securities.

h. *Change in the handling of fails.* At the time of the implementation of netting, in 1989, due solely to internal operational concerns on the part of certain of the initial netting participants, it was determined that GSCC would maintain deliver and receive obligations on fail net settlement positions on an independent basis until settled. In the course of designing the auction takedown process, GSCC has reconsidered its handling of fails and has determined it appropriate now to allow the netting of fail deliver obligations and fail receive obligations with any other receive obligations and deliver obligations.

GSCC believes that the operational concerns that once prevented the netting of fail obligations are now gone. Moreover, allowing deliver and receive obligations on fail net settlement positions to be netted with any other receive or deliver obligations will enhance GSCC's netting process and further minimize the number of necessary movements of securities. Indeed, on occasion over the past several years, in response to a severe fail situation created by large short positions, GSCC has netted fail and non-fail positions in a specific CUSIP.

i. *Mandatory nature of the proposal.* Each member would be obligated to have all of its eligible Treasury auction purchases automatically delivered to GSCC's bank and encompassed within GSCC's net. There might, however, be certain circumstances, such as a member experiencing systems problems or just starting up in netting, where, because of operational considerations, GSCC would not allow a member's auction purchases to go into the net.

j. *Priority of auction purchase deliveries.* GSCC would provide a mechanism for ensuring timely delivery of needed auction purchases to a member that believes that, by virtue of its secondary market trading, it will have on issue date a net short or flat position, or a long position that is smaller than the amount of auction purchases that it requires, in a particular CUSIP. To accomplish this, each such member would be able to request (an "auction delivery request"), on a CUSIP-by-CUSIP basis, that GSCC deliver to it needed auction purchases (the "requested auction purchase amount") immediately after GSCC has received the securities from the Federal Reserve Banks on issue date.[4] Although an auction delivery request would be made prior to a member's having knowledge of its net settlement position on issue date, a member would be able to take advantage of this facility regardless of the nature (*i.e.*, long, short, or flat) of its ultimate net settlement position. GSCC would monitor this process to ensure that members are requesting priority delivery only of securities for which immediate delivery is needed.

For a member that submits an auction delivery request, GSCC would effectively split such member's existing net settlement position (the "prior net settlement position") into two net settlement positions—a new long position (the "requested position"), equal to the level of the requested auction purchase amount that is filled and a new offsetting short position (the "offsetting position"). Both the requested position and the offsetting position would be guaranteed by GSCC.

Each auction delivery request would have to be made to GSCC no later than on the second business day immediately prior to issue date (i.e., if the issue date is a Wednesday, the request must be made by GSCC's data input cutoff time in the evening of the prior Monday). An exception to this requirement would be allowed for purchases at auctions that are held on the business day immediately prior to issue date; in such a case, the request must be made by no later than on the auction date. As noted above, purchases made at auctions that are held on the same day as the day of issue are not eligible for GSCC's net.

The requested position would not be netted against the offsetting position or against any other existing net short position in the same CUSIP, nor would it be offset by the offsetting position or by any other existing net short position for purposes of calculation of the member's required Clearing Fund deposit. For purposes of calculation of a member's required Clearing Fund deposit, a priority delivery request would, prior to issue date, be treated as if it were a net long position if it is greater than the member's actual net long position. This would ensure that GSCC has sufficient margin protection prior to issue date.

Once all priority delivery requests are satisfied, GSCC would ensure that every netting member with a net long position comprised in whole or part of auction purchases receives from GSCC auction purchases in an amount equal to the lesser of such member's net long position or the amount of its auction purchases. Thereafter, a portion of the auction distribution likely would remain to be delivered out by CSCC. This would be done by delivering auction purchases, on an equal basis in $50 million increments, to each member with a net long position that remains unfilled. These deliveries also would take place immediately after GSCC's receipt of the auction distribution.

Once the auction distribution is exhausted, the allocation of securities received from members in a short

[3] See Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Commission (February 15, 1994).

[4] A member cannot receive priority delivery of an amount of securities greater than the amount of auction purchases made by the member.

position in satisfaction of still remaining long positions then would take place pursuant to GSCC's normal allocation process, which first looks to fill the "receive" needs of the members with the largest long positions.

In sum, GSCC's allocation process would automatically satisfy—from the Federal Reserve Banks' auction deliveries to GSCC on the morning of issue date—a member's long position up to the amount of the member's auction purchases. Thus, unless a member's secondary market trading in a particular CUSIP results in its having a net settlement position that is short, flat, or less long than the amount of its auction purchases, GSCC's "normal" allocation procedure alone would ensure that timely delivery would be made to the member of the entire amount of auction purchases that it might need to take possession of in the morning of issue date.

k. *Links with Federal Reserve Banks.* GSCC plans to implement the auction takedown proposal inclusive of the Treasury auction purchases of all netting members, including those that take delivery of auction purchases from Federal Reserve Banks other than the FRBNY. In this regard, GSCC will establish the necessary links for the transmission of data to GSCC on the auction purchases of members currently receiving securities from other Federal Reserve Banks.

l. *Risk considerations for GSCC arising from the potential failure of an auction purchaser.* Because, as discussed above, GSCC guarantees its net settlement positions upon their establishment, it has considered the possibility that a member that has bid successfully on an auction issue may fail, on or prior to issue date, and, as a result, may not settle its net settlement positions that arise, in whole or part, from such auction purchases. In such an unlikely scenario, GSCC, in liquidating the member's positions, might incur a loss over and above the amount of collateral it holds from that dealer.[5]

Under this proposal, GSCC would continue to guarantee fully the secondary market when-issued trades of its members, as it does today, as well as each member's receipt of its auction purchases. However, GSCC does not believe that it is appropriate to extend its full settlement guarantee to the Treasury for auction purchases. GSCC would not be in a position to appropriately allocate the loss to its other members, because the party that effectively "traded" with the defaulting member was the Treasury.[6]

Pursuant to its arrangement with the Treasury, GSCC would have the right not to take delivery from a Federal Reserve Bank on issue date of part or all of the auction purchases of a member under the following limited and defined circumstances: (1) A netting member has made auction purchases in a CUSIP, and remains in a long net settlement position in that CUSIP; (2) GSCC has reasonable cause to believe, bases on information it has received, that the member cannot or will not timely take delivery of and fully pay for auction purchase amounts due it from GSCC; (3) GSCC has determined from its analysis and prevailing market conditions that there is reasonable cause to believe that, if it were to liquidate the member's position, it would incur a loss that would not be covered by the margin deposited by the member with GSCC and/or by profits from the liquidation of other positions of the member; and (4) GSCC notifies that appropriate Federal Reserve Bank, in a mutually acceptable manner, of its exercise of this right by no later than 8:30 a.m. New York time on the relevant issue date. GSCC can only exercise this right to the extent that it is to have delivered to it from a Federal Reserve Bank securities that it cannot net against a short position. Payment for any securities refused by GSCC would remain the responsibility of the member to whom such securities were awarded, pursuant to the terms established by the Treasury.

m. *Loss allocation.* The need for an allocation of residual loss arising from the liquidation of a failed member's auction purchases is a remote possibility, given that GSCC would have the right until 8:30 a.m. on the morning of issue date to refuse delivery of any residual net long position up to the amount of the member's auction purchases. Should an allocation of residual loss incurred as the result of the liquidation of a failed member's auction purchases be necessary, it would be handled in the same manner as any other allocation of loss. As a failed member's actual counterparty, the Treasury, cannot be assessed, following GSCC's current procedure is the most equitable means of allocating the loss, because it effectively spreads the loss among all of the netting members that the failed member did business with on or prior to the day of default.

2. Facility for the Reporting and Netting of Locked-In Trade Data

In addition to implementing the auction takedown proposal, the proposed rule change would establish a facility permitting GSCC to treat trade data received from certain other designated sources (e.g., exchanges or clearing corporations) as locked-in trades. The auction award data would be the first type of data to be accepted by GSCC on a locked-in basis.

a. *Reporting of locked-in trade data.* GSCC would accept trade data from a locked-in trade source without matching it with data provided by a member. GSCC would report these locked-in trades to members as part of its daily comparison output. For purposes of GSCC's rules, locked-in trades would be considered as compared trades and would be as valid, binding, and enforceable as comparisons issued based on a match of corresponding data submitted to GSCC by two members.

Each member that makes an eligible locked-in trade would be obligated to provide GSCC with authorization for GSCC to receive from the locked-in trade source data on the locked-in trade GSCC would not accept data from a locked-in trade source with regard to a member unless GSCC previously has received this authorization.

A locked-in trade source that has submitted trade data to GSCC may have such data deleted or corrected by providing appropriate instruction to GSCC. Moreover, if the locked-in trade source is not a party to a locked-in trade, the data on the locked-in trade may be deleted or corrected upon receipt by GSCC of matching instructions from each member that is a party to such locked-in trade.

Data on locked-in trades would be reported by GSCC to members with an indication that such data has been received from a locked-in trade source In its sole discretion, subject to the terms and conditions that it has agreed to with the locked-in trade source, GSCC may decline to accept from a locked-in trade source data on the locked-in trades of a particular member or members.

b. *Netting.* In order to be in a position to ensure the integrity of its netting process, GSCC may, in its sole discretion, subject to the terms and conditions that it has agreed to with the locked-in trade source, exclude any locked-in trade from the Netting System.

[5] As a risk control measure, each Netting Member must promptly inform GSCC of the termination of any autocharge agreement that it has provided to a Federal Reserve Bank.

[6] GSCC's loss allocation procedure essentially provides that, if GSCC incurs a loss due to the default of a member and, after applying to the loss all of the Clearing Fund or other collateral of such defaulting member held by GSCC, a deficit remains, the remaining loss is allocated to the members that had trading activity with the defaulting member for settlement on or prior to the day of default, in proportion to the dollar value of such trading activity of each such member.

Each netting member that makes a locked-in trade that is eligible for netting and settlement by GSCC must provide GSCC with authorization for GSCC to receive from the locked-in trade source data on the locked-in trade. Each netting member that makes a locked-in trade that is eligible for netting and settlement by GSCC must provide the locked-in trade source with sufficient authorization for the source to transmit to GSCC such data as GSCC deems necessary on the locked-in trade.

3. Other Revisions

GSCC Rule 11, Section 2 provides that a trade is eligible for netting and settlement through the GSCC Netting System if the number of business days between the scheduled settlement date and the comparison date is fewer than fifteen. GSCC proposes to revise this language to allow GSCC to establish the maximum number of business days between comparison and settlement by a separately published schedule. When GSCC made forward-settling trades eligible for the Netting System in 1990, it was uncertain as to the length of time that it would be required to guarantee settlement of those trades. Given that the price volatility normally increases over time, and that GSCC was not taking a full debit mark on forward-settling positions, GSCC was concerned about unlimited risk exposure, and therefore placed a fifteen business day limit on forward-settling trades. GSCC no longer believes this limit is necessary or appropriate. GSCC has adjusted its Clearing Fund formula to incorporate all forward-settling activity, and is now switching to taking a full debit mark on all forward-setting position. Therefore, the increased price volatility associated with a position that remains open for a lengthy period of time is a less significant factor.

GSCC also proposes to collect clearance difference amounts on an intra-day basis. In the auction takedown context, a money difference may arise as a result of the pairing-off with fail obligations because in certain circumstances GSCC will establish a settlement value for net long positions that is different from the system value of those positions (*i.e.*, if the average auction price is higher than the system price, the settlement value will be set at the average auction price). If a net long position that has a settlement value equal to the average auction price of the underlying securities is paired off with a fail net short position in the same CUSIP (as can happen if the security being issued is a reissue), there will be a money difference reflecting an amount owed to GSCC by the member. This money difference should be settled on the same day if it is a significant amount. However, at the time the pair-off is done, it is too late to collect the difference via the morning funds-only settlement process. Thus, GSCC needs the ability, in order to minimize its exposure, in its discretion to require the affected member to pay such money difference amount to it on the same day.

The proposed rule change also adds language expressly making clear that GSCC generally, in order to ensure the efficiency and integrity of its comparison and netting processes, has the discretion to establish minimum amounts, maximum amounts, and other parameters for the acceptance of data submitted to it.

(b) The proposed rule change will broaden the scope of Government securities activity that will receive the benefits of GSCC's comparison, netting, and risk management processes and reduce overall risk in the settlement system for Government securities. Thus, GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have previously been solicited and received. Members will be notified of the rule filing, and comments again will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 450 Fifth Street, Washington, DC 20549 Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–GSCC–94–1 and should be submitted by March 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–5481 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20111; 812–8648]

Composite Bond & Stock Fund, Inc., et al.; Notice of Application

March 3, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Composite Bond & Stock Fund, Inc., Composite Growth Fund, Inc., Composite Northwest 50 Fund Inc., Composite U.S. Government Securities, Inc., Composite Income Fund, Inc., Composite Tax-Exempt Bond Fund, Inc., Composite Cash Management Company (the "Existing Funds"), Composite Research & Management Co. (the "Adviser"), and Murphey Favre, Inc. (the "Distributor") on their own behalf and on behalf of any other registered open-end management investment companies which the

Adviser may in the future serve as the investment adviser or which the Distributor may in the future serve as the distributor that are in the "same group of investment companies," as defined in rule 11a–3 under the Act (together with the Existing Funds, the "Funds").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), 22(d) of the Act and from rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds: (i) To issue and sell two classes of securities representing interests in the same investment portfolio and (ii) to assess and, under certain circumstances, waive or defer a CDSC on certain redemptions of their shares.

FILING DATE: The application was filed on October 25, 1993 and amended on January 6, 1994. In a letter dated March 2, 1994, applicants' counsel has stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on March 28, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretarty, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 601 West Riverside Avenue, Spokane, WA 99201–0694.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Existing Fund is an open-end management investment company registered under the Act. Composite Cash Management Company is the only Existing Fund which currently has multiple series.

2. The Adviser, a wholly-owned, indirect subsidiary of Washington Mutual Savings Bank, is registered with the Commission as an investment adviser and provides investment advisory and management services to each of the Existing Funds. Each Existing Fund has entered into a management agreement with the Adviser.

3. The Distributor is a wholly-owned, indirect subsidiary of Washington Mutual Savings Bank. Each Existing Fund has entered into a distribution contract pursuant to which the Distributor acts as the distributor for the Funds. Each Existing Fund currently reimburses the Distributor for expenses incurred in connection with the distribution of its shares pursuant to a plan adopted by the Existing Fund in accordance with rule 12b–1 under the Act (a "12b–1 Plan"). Murphey Favre Securities Services, Inc., a wholly-owned indirect subsidiary of Washington Mutual Savings Bank, provides transfer agent and related services to each Existing Fund.

4. Each Existing Fund currently has only one class of shares. Shares of each Existing Fund except Composite Cash Management Company are currently sold at net asset value plus a sales load calculated as a percentage of the offering price. Composite Cash Management Company is a money market fund and its shares currently are sold at net asset value with no front-end sales load.

5. The Directors of each Existing Fund, including all the members of the Board of Directors who are not interested persons of that Fund as defined in section 2(a)(19) of the Act ("Disinterested Directors"), have approved the establishment of a multiple class distribution system (the "Multiple Class Distribution System"). The Multiple Class Distribution System will enable a Fund to offer investors the option of purchasing shares in one of two alternative manners: (i) Subject to a conventional front-end sales load and a separate 12b–1 Plan for that class ("Class A shares") or (ii) subject to no front-end sales load, but subject to a separate 12b–1 Plan for that class with expected higher 12b–1 Plan fees and a CDSC ("Class B shares").

6. The Multiple Class Distribution System will be implemented by having the Funds create and issue two classes of shares, with the currently authorized shares of each Existing Fund being redesignated as Class A shares. The actual creation and issuance of multiple classes of shares will be made on a Fund-by-Fund basis. Each class of a Fund will represent interests in the same portfolio of investments of such Fund. Each class of a Fund will be identical except that: (i) Each class will be subject to a different 12b–1 Plan and may pay different 12b–1 Plan fees pursuant thereto; (ii) each class will bear different Class Expenses (as defined below); (iii) each class will vote separately as a class with respect to the 12b–1 Plan for that class except as provided in condition 15 below; (iv) each class will have different exchange privileges; (v) only Class B will have a conversion feature; and (vi) each class will bear a different name or designation.

7. Investors purchasing Class A shares of the Funds other than Composite Cash Management Company will do so at net asset value plus a front-end sales load. The front-end sales load charges, volume discounts and waivers for Class A shares of each Existing Fund are initially expected to remain the same as currently in existence for that Existing Fund. Class A shares of each Fund will also pay 12b–1 Plan fees pursuant to the 12b–1 Plan for that class (the "Class A Distribution Plan").

8. Investors purchasing Class B shares will do so at net asset value without the imposition of a front-end sales load. Class B shares will pay an asset-based distribution charge pursuant to a 12b–1 Plan for that class at an annual rate not to exceed 0.75% per annum of the average daily net asset value of the Class B shares (the "Class B Distribution Plan") and a service fee of 0.25% per annum.[1] In addition, a redemption of Class B shares made within a specified period of their purchase generally will be subject to a CDSC imposed by the Distributor. The CDSC will decrease over the applicable CDSC period, so that redemptions of shares held after that period will not be subject to a CDSC. The Class B alternative is designated to permit the investor to purchase Class B shares without the assessment of a front-end sales load and at the same time permit the Distributor to pay financial intermediaries (typically broker-dealers) selling shares of each Fund a commission on the sale of Class B shares.

9. Under the Multiple Class Distribution System, a Fund's Board of Directors, acting in its sole discretion, could determine that any of certain

[1] The term "service fee" has the meaning given that term in Article III, Section 26(d)(9) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD") (NASD Manual, CCH 2176). Applicants will comply with the provisions of Section 26(d).

expenses attributable to the shares of a particular class ("Class Expenses") would be borne by the class to which they are attributable. In addition to 12b–1 Plan fees, Class Expenses borne by a class of shares will be limited solely to: (a) Transfer agency fees attributable to a particular class; (b) printing and postage expenses related to preparing and distributing to a particular class materials such as shareholder reports, prospectuses and proxy statements; (c) state and federal registration fees incurred by a specific class of shares; and (d) legal expenses relating to a particular class of shares.

10. Under the Multiple Class Distribution System, expenses that were attributable to a particular series of a Fund, but not to a particular class thereof, would be borne by each class on the basis of the aggregate net assets of such class.

11. Because of the varying 12b–1 Plan fees and Class Expenses that could be borne by each class of shares, the net income of (and dividends payable with respect to) each class could be different from the net income of (and dividend payable with respect to) the other class of shares of a Fund. Dividends, however, paid to each class of shares in a Fund would be declared and paid on the same days and at the same times and, except as noted with respect to the varying 12b–1 Plan fees and Class Expenses, would be determined and paid in the same manner.

12. Under the Multiple Class Distribution System, Class A shares of a Fund will be exchangeable for (i) Class A shares of the other Funds or (ii) shares of any Fund which offers only one class of shares (provided such Fund does not impose a CDSC), on the basis of relative net asset value per share, plus any applicable front-end sales charge. Class B shares of a Fund will be exchangeable for: (i) Class B shares of the other Funds or (ii) shares of any Fund which offers only one class (and which imposes a CDSC), on the basis of relative net asset value per share, without the payment of any CDSC that might otherwise be due on redemption of the Class B shares being exchanged. The exchange privileges applicable to each of the classes of shares will comply with rule 11a–3 under the Act.

13. The CDSC will not be imposed on redemptions of: (a) Shares which were purchased more than six years (the "CDSC Period") prior to their redemption, or (b) Class B Shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability and rate of a CDSC, it will be assumed that a redemption is made first of any shares that were not subject to a CDSC and then of other shares in the order purchased.

14. Applicants reserve the right to change from time to time the CDSC and CDSC Period for any Fund. The CDSC Period, however, will not exceed six years. In all cases, however, any change in the terms of a CDSC would be reflected in the affected Fund's prospectus. In addition, such changes would not affect shares that had already been issued unless the change resulted in terms more favorable to the holders of such shares.

15. Under the proposed CDSC arrangement, the CDSC will be accompanied by a conversion feature. Under this conversion feature, after the expiration of a specified conversion period, Class B shares automatically convert at their net asset value into Class A shares. For purposes of the conversion of Class B shares to Class A shares, all Class B shares in a shareholder's Fund account that were purchased through reinvestment of dividends and other distributions paid in respect of Class B shares (and that have not converted) would be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account convert, an equal *pro rata* portion of shares then in the sub-account also would convert and would no longer be considered held in the sub-account. The portion would be determined by the ratio that the shareholder's Class B shares being converted bears to the shareholder's total Class B shares subject to the conversion feature.

16. Under the proposed CDSC arrangement, any conversion of Class B shares would be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue Service to the effect that the conversion of shares did not constitute a taxable event under federal income tax law. Conversion of Class B shares to Class A shares might be suspended if such a opinion or ruling were no longer available.

17. The Funds may waive the CDSC on redemptions of Class B shares: (i) Following the death or disability of a shareholder, (ii) in connection with certain distributions from an IRA or other retirement plan,[2] (iii) pursuant to the Funds' systematic withdrawal plan but limited to 12% annually of the initial value of the account at the date upon which the plan was established, and (iv) effected pursuant to the right of the Fund to liquidate a shareholder's account.

18. The Funds may defer the CDSC on a redemption of Class B shares of a Fund which is followed by a reinvestment of Class B shares of such Fund or another Fund within 120 days after the redemption. The deferral will be effected by reimbursement of the CDSC previously paid, with the reimbursement being made by credit to the shareholder's account and being paid by the Distributor. The Class B shares acquired upon such reinvestment will remain subject to the CDSC applicable to the redeemed shares. In computing the holding period of the Class B shares acquired upon such reinvestment for purposes of the CDSC arrangement and the conversion feature, the holding period of the redeemed shares will be "tacked" to the holding period of the acquired shares.

19. All front-end sales loads, asset-based sales charges, and CDSCs of each Fund will comply with Article III, section 26(d) of the Rules of Fair Practice of the NASD.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of Class A and Class B shares representing interests in the Funds might be deemed: (i) To result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act and (ii) to violate the equal voting provisions of section 18(i) of the Act. The creation of multiple classes of shares may result in shares of a class having "priority over [another] class as to * * * payment of dividends" and having unequal voting rights, because under the proposed arrangement: (1) The holders of different classes would pay different fees

[2] The charge may be waived for any total or partial redemption in connection with a lump-sum or other distribution from an Individual Retirement Account ("IRA"), a custodial account maintained pursuant to Internal Revenue Code of 1986, as amended ("IRC") section 403(b)(7), or a qualified pension or profit sharing plan ("Retirement Plans") following retirement or, in the case of an IRA or Keogh Plan or custodial account pursuant to IRC section 403(b)(7), after attaining age 59½. The charge also may be waived on any redemption which results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the IRC, the return of excess deferral amounts pursuant to IRC section 401(k)(8) or 402(g)(2), or from the death or disability of the employee. In sum, the CDSC may be waived on redemptions of Class B shares which constitute Retirement Plan distributions which are permitted to be made without penalty pursuant to the IRC, other than tax free rollovers or transfers of assets.

pursuant to different 12b–1 Plans and different Class Expenses and (2) each class would vote separately with respect to its 12b–1 Plan.

2. Moreover, owners of each class of shares may be relieved under the Multiple Class Distribution System of a portion of the fixed costs normally associated with investing in mutual funds since the costs would, potentially, be spread over a greater number of shares than they would be otherwise. Similarly, if sales increase because of the addition of Class B shares, the owners of each class of shares could expect to enjoy, under the proposed arrangement, lower effective investment management fee rates than they would enjoy if the arrangement were not implemented. Therefore, in order to achieve these potential benefits and obviate the risks associated with the creation of a separate series for each new class of shares, the Funds propose to establish the Multiple Class Distribution System.

3. Applicants believe that the proposed allocation of expenses and voting rights relating to the 12b–1 Plans in the manner described above is equitable and would not discriminate against either group of shareholders. Moreover, the possibility that the interests of the two classes of shares will ever conflict would be remote. The rights and privileges of each class are substantially identical and the interests of each class of shareholders are adequately protected by the requirements of rule 12b–1, including the requirement that the 12b–1 Plan be approved and continued on an annual basis by the Directors of each Fund, including the Disinterested Directors.

4. The abuses that section 18 of the Act is intended to redress are set forth in section 1(b) of the Act which declares "that the national public interest and the interest of investors are adversely affected * * * (7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or (8) when investment companies operate without adequate assets or reserves." The Multiple Class Distribution System described in the application does not involve borrowings and does not affect the Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Funds, since all shares will participate pro rata in all of each Fund's income and expenses (with the exception of the differing 12b–1 Plan fees and expenses).

5. Each class of shares will be redeemable at all times. No class of shares will have any preference or priority over the other class in each Fund. No class will have distribution or liquidation preferences with respect to particular assets, nor any right to require that lapsed dividends be paid before dividends are declared on the other class, nor any protection by a reserve or other account. The similarities and, with respect to the 12b–1 Plans and associated voting rights and the exchange privileges, dissimilarities, of the Class A and Class B shares, will be fully disclosed in each Fund's prospectus. Investors will not be given misleading impressions as to the safety or risk of any class of shares and the nature of the Class A and Class B shares will not be rendered speculative.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of a Fund will relate solely to: (a) The different payments pursuant to the different 12b–1 Plans of each class; (b) the different Class Expenses, which will be limited to: (i) Transfer agency fees attributable to a particular class; (ii) printing and postage expenses related to preparing and distributing to a particular class materials such as shareholder reports, prospectuses, and proxy statements; (iii) state and federal registration fees incurred by a particular class; and (iv) legal expenses relating to a particular class; (c) the separate class voting rights of each class with respect to the 12b–1 Plans except as provided in condition 15 below, (d) the different exchange privileges of each class; (e) only Class B will have a conversion feature; and (f) the different name or designation of each class of shares of the Funds. Any additional expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The Directors of each Fund, including a majority of the Disinterested Directors of the Fund, shall have approved the Multiple Class Distribution System. The minutes of the meetings of the Directors of each Fund regarding the deliberations of the Directors with respect to the approvals necessary to implement the Multiple Class Distribution System will reflect in detail the reasons for the Directors' determination that the proposed Multiple Class Distribution System is in the best interests of Fund and its shareholders.

3. The initial determination of the Class Expenses that will be applied to a class of shares and any subsequent changes thereto will be reviewed and approved by votes of the Directors of each Fund, including a majority of the Disinterested Directors of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amount so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors of each Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors, including a majority of the Disinterested Directors of the Fund shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The Directors of each Fund will receive quarterly and annually Statements concerning distribution and shareholders servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to support the 12b–1 fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Disinterested Directors in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that 12b–1 Plan fee payments and Class Expenses relating to each respective class of

shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distribution of the various classes and the proper allocation of income and expenses among such classes have been reviewed by an expert (the "Expert") who has rendered a report to Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to Section 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following the request by the Funds (which each Fund agrees to provide), will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrator or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. The applicants agree to take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of each Fund will contain a statement to the effect that a salespersons and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards to assist registered representatives in determining when Class A and Class B shares may be sold to particular investors. The applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of each Fund with respect to the Multiple Class Distribution System will be set forth in guidelines that will be furnished to the Directors.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses of performance data applicable to Class A or Class B, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will separately present Class A and Class B shares.

13. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to their 12b–1 Plans in reliance on the exemptive order.

14. Class B shares will convert into Class A shares on the basis of the relative net asset values to the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Class A. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 4 any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Adviser and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

16. The relief requested from the provisions of sections 2(a)(32), 2(a)(35), 22(d), and 22(c) of the Act and rule 22c–1 thereunder shall be subject to applicants' compliance with the provisions of proposed Rule 6c–10 under the Act (Investment Company Release No. 16619 (November 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5477 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20112; 811–4902]

SLH Ohio Municipals Fund; Application

March 4, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SLH Ohio Municipals Fund

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on December 27, 1993, and amended on February 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 29, 1994, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts on October 21, 1986. Applicant is registered under the Act as an open-end nondiversified management investment company. On November 17, 1986, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act, and a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on February 9, 1987, and the initial public offering of applicant's shares commenced immediately thereafter.

2. On January 17, 1990, applicant's Board of Trustees (the "Board") unanimously approved an agreement and plan of reorganization providing for the transfer of applicant's assets to SLH Managed Municipals Fund Inc. (the "Fund"),[1] a diversified management investment company organized as a Maryland corporation, in exchange for shares of the Fund and the assumption by the Fund of the stated liabilities of applicant. At the same time, the Board authorized all actions necessary to effect the reorganization of applicant. The Board approved the proposed reorganization because it believed that it would enhance the ability of the portfolio managers of the combined funds to effect portfolio transactions on more favorable terms, and give the portfolio managers greater investment flexibility, with the attendant ability to spread investment risks over a larger number of portfolio securities. The Board also anticipated that the proposed reorganization would permit the combined funds to obtain economies of scale by reading both fixed and variable costs of fund operations over a larger asset base.

3. Applicant and the Fund are affiliated persons of each other because they have a common investment adviser and common directors/trustees. Accordingly, the Board and the directors of the Fund made determinations pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in the best interests of applicant and the Fund, and that the interests of applicant's existing shareholders and those of the Fund would not be diluted as a result of the transaction.[2]

4. On or about February 28, 1990, definitive proxy materials were mailed to shareholders, and were filed with the SEC. At a special meeting held on March 27, 1990, applicant's shareholders approved the Plan.

5. As of April 2, 1990, applicant had 320,612 shares outstanding with an aggregate net asset value of $3,387,436 and a net asset value per share of $10.57. Immediately prior to the transfer of assets, applicant paid a capital grain distribution of $.3687 per share to its shareholders. On April 2, 1990, applicant transferred all of its assets to the Fund in exchange for the assumption by the Fund of applicant's stated liabilities and shares of the Fund with an aggregate net asset value equal to the net asset value of the transferred assets. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders, with each shareholder receiving shares of the Fund with an aggregate net asset value equal to the aggregate net asset value of their investment in applicant.

6. The expenses applicable to the reorganization, consisting of accounting, printing, administrative, and certain legal expenses, amounted to $8,000. These expenses were borne by applicant's investment adviser. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was it a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file a letter of withdrawal with the Office of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–5573 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20113; 811–4912]

SLH Michigan Municipals Fund; Application

March 4, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

[1] As of August 1, 1993, SLH Managed Municipals Fund Inc. changed its name of Smith Barney Shearson Managed Municipals Fund Inc.

[2] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

APPLICANT: SLH Michigan Municipals Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on December 27, 1993, and amended on February 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 29, 1994, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts on October 21, 1986. Applicant is registered under the Act as an open-end non-diversified management investment company. On November 24, 1986, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act, and a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on February 9, 1987, and the initial public offering of applicant's shares commenced immediately thereafter.

2. On January 17, 1990, applicant's Board of Trustee (the "Board") unanimously approved an agreement and plan of reorganization providing for the transfer of applicant's assets to SLH Managed Municipals Fund Inc. (the "Fund"),[1] a diversified management investment company organized as a Maryland corporation, in exchange for shares of the Fund and the assumption by the Fund of the stated liabilities of applicant. At the same time, the Board authorized all actions necessary to effect the reorganization of applicant. The Board approved the proposed reorganization because it believed that it would enhance the ability of the portfolio managers of the combined funds to effect portfolio transactions on more favorable terms, and give the portfolio managers greater investment flexibility, with the attendant ability to spread investment risks over a larger number of portfolio securities. The Board also anticipated that the proposed reorganization would permit the combined funds to obtain economies of scale by spreading both fixed and variable costs of fund operations over a larger asset base.

3. Applicant and the Fund are affiliated persons of each other because they have a common investment adviser and common directors/trustees. Accordingly, the Board and the directors of the Fund made determinations pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in the best interests of applicant and the Fund, and that the interests of applicant's existing shareholders and those of the Fund would not be diluted as a result of the transaction.[2]

4. On or about February 28, 1990, definitive proxy materials were mailed to shareholders, and were filed with the SEC. At a special meeting held on March 27, 1990, applicant's shareholders approved the Plan.

5. As of April 2, 1990, applicant had 231,495 shares outstanding with an aggregate net asset value of $2,546,881 and a net asset value per share of $11.00. Immediately prior to the transfer of assets, applicant paid a capital gain distribution of $.05978 per share to its shareholders. On April 2, 1990, applicant transferred all of its assets to the Fund in exchange for the assumption by the Fund of applicant's stated liabilities and shares of the Fund with an aggregate net asset value equal to the net asset value of the transferred assets. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders, with each shareholder receiving shares of the Fund with an aggregate net asset value equal to the aggregate net asset value of their investment in applicant.

6. The expenses applicable to the reorganization, consisting of accounting, printing, administrative, and certain legal expenses, amounted to $8,000. These expenses were borne by applicant's investment adviser. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was it a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file a letter of withdrawal with the Office of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–5574 Filed 3–9–94; 8:45 am]

BILLING CODE 8010–01–M

[1] As of August 1, 1993, SLH Managed Municipals Fund Inc. changed its name to Smith Barney Shearson Managed Municipals Fund Inc.

[2] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF STATE

[Public Notice 1961]

Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas; Open Meeting

The Advisory Committee of the United States Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on March 24, 1994, at the Guest Quarters Hotel at Baltimore/Washington International Airport, Linthicum, Maryland. The meeting will be open to the interested public and will begin at 1 p.m. and adjourn at 5 p.m. The Committee will consider reports from its Species Working Groups, discuss the Working Group reports, and consider recommendations to the Advisory Committee.

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, D.C. 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335 or by FAX on (202) 736–7350.

Dated: February 25, 1994.

David A. Colson,

Deputy Assistant Secretary for Oceans.

[FR Doc. 94–5603 Filed 3–9–94; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Cincinnati/Northern Kentucky International Airport; Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of the Federal Aviation Regulation (FAR) part 150 Noise Compatibility Program (NCP) at Cincinnati/Northern Kentucky International Airport.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Federal Aviation Administration, Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301. Telephone 901–544–3495.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare an EIS for implementation of the part 150 Noise Compatibility Program at Cincinnati/Northern Kentucky International Airport. If it is determined during the course of the study that the environmental impacts are not significant, FAA will terminate the EIS process, complete the study as an Environmental Assessment and issue a Finding of No Significant Impact (FONSI).

The Kenton County Airport Board submitted its Noise Compatibility Program to the FAA. The NCP was subsequently approved by the FAA on October 25, 1993, with some of the recommended measures being subject to applicable environmental requirements before their implementation. The Kenton County Airport Board has requested the FAA implement the operational measures. The NCP includes changes in aircraft departure tracks, preferential runway usage, a proposed 1,500 foot extension to Runway 18R–36L, and land use measures. Another recommended measure, to extend Runway 9–27 from 7,800 feet to 10,000 feet, was evaluated independently in an Environmental Assessment (EA) and a Finding of No Significant Impact was issued in November 1993. Runway 9–27 is the identified preferred nighttime departure runway.

The Kenton County Airport Board has conducted numerous workshops and a public hearing during the development of the NCP. Workshops and a public hearing were also held on the EA for the extension to Runway 9–27. In addition, the meetings of the Aviation Noise Abatement Committee are shown on local cable television. Federal Aviation Administration representatives attended the workshops and public hearings and received numerous letters and petitions on the NCP. Because of the widespread publicity and these previous opportunities for public comment, no general public scoping meetings will be held. FAA intends to consult and coordinate with Federal, State and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed project. The meeting for public agencies will be held at Cincinnati/Northern Kentucky International Airport Board Room, located on the second level of Terminal One at the Airport, at 1 p.m., Tuesday, April 5, 1994. FAA will also solicit input from the part 150 Study Planning Advisory Committee and the Aviation Noise Abatement Committee at a meeting to be held in the Navigation Room of the River Queen Restaurant, second level, Terminal One, at 6:30 p.m., Tuesday, April 5, 1994. In addition, the public may submit written comments on the scope of the environmental study to the address identified in "**FOR FURTHER INFORMATION CONTACT.**" Comments should be submitted by April 9, 1994.

Issued on March 3, 1994.

Billy J. Langley,

Manager, Memphis Airports District Office.

[FR Doc. 94–5562 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Modesto City-County Harry Sham Field Airport, Modesto, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Howard Cook, Airport Manager of the Modesto City-County Airport at the following address: 617 Airport Way, Modesto, California 95354. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Modesto under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Modesto City-County Harry Sham Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 18, 1994, the FAA determined that the application to impose and use a PFC submitted by the city of Modesto was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 23, 1994.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: October 1, 1994.

Proposed charge expiration date September 30, 2000.

Total estimated PFC revenue: $300,370.00.

Brief description of the proposed projects:

Impose and Use Projects: Airfield Sign Upgrade, Pavement Rehabilitation, Passenger Lift Vehicle, Airport Way Resurface and Extension, General Aviation Apron Slurry, Passenger

Terminal Parking Lot, General Aviation & Terminal Security Lights, and Rewire Runway & Taxiways lights.

Impose Only Projects: Airport Perimeter Security Upgrade, Widen Air Carrier & Transient Apron, Construct Runway 10L/28R Holding Bays, Taxiway B & Miscellaneous General Aviation Area Pavement Rehabilitation and Air Carrier Apron Expansion, Runway 10R/28L Pavement Overlay, and Relocate Runway 10R/28L Edge Lights.

For projects involving discretionary funds, the amount of funds may be reduced depending on the funding level.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Tax Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Modesto, CA.

Issued in Hawthorne, California, on February 24, 1994.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–5564 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Adair County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Adair County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neuman, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to upgrade U.S. Route 63 to a dual-lane facility starting approximately 1.5 miles south of Missouri Route T and continuing to a point approximately 1 mile south of Missouri Route KK in Adair County, Missouri. An MHTD reconnaissance report determined that the upgrade of U.S. Route 63 would accomplish several goals: (1) Provide a dual-lane bypass around the city of Kirksville, (2) improve safety and capacity for through-traffic on U.S. Route 63, and (3) promote economic development and planned growth in Kirksville and Adair County.

1. The proposed highway project begins approximately 1.5 miles south of Missouri Route T in Adair County and runs generally southeast for 11.2 miles where it rejoins existing U.S. Route 63 approximately 1 mile south of Missouri Route KK. The proposed facility would provide a four-lane, limited-access roadway with at-grade intersections or interchanges at major arterial crossroads.

2. Alternatives under consideration include "build" alternatives and a "no build" alternative, as well as mass transit and transportation system management options.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies as the study progresses. Further public hearings will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on February 2, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–5602 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–59; Notice 02]

Tradewinds Conversions, Inc., Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by Tradewinds Conversions, Inc. ("Tradewinds") of Elkhart, Indiana, an alterer of motor vehicles, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*). Tradewinds had petitioned for an exemption on the basis that a noncompliance in its conversions is inconsequential as it relates to motor vehicle safety. The noncompliance is related to the performance of its mid-position pedestal seats, Part# FDN–200.

Notice of receipt of the petition was published in the **Federal Register** on October 4, 1993, and an opportunity afforded for comment (58 FR 51667).

For the type of seats concerned in the petition, current FMVSS Nos. 207 and 210 test procedures specify simultaneous loading of seat assemblies and seat belts with the seat loads applied at the center of gravity of the seat assembly. Paragraphs S4.2(a), S4.2(b), S4.2(c), and S4.2(d) of Standard No. 207 require that each occupant seat, other than a side-facing seat or a passenger seat on a bus, shall withstand the following forces:

S4.2(a)/S4.2(b). In any position to which it can be adjusted—apply forces 20 times the weight of the seat in a forward longitudinal direction; and rearward longitudinal direction through the center of gravity of the seat.

S4.2(c). For a seat belt assembly attached to the seat—the force specified in S4.2(a) and S4.2(b), in each case applied simultaneously with the forces imposed on the seat by the seat belt assembly when it is loaded in accordance with S4.2 of Standard No. 210; and

S4.2(d). In its rearmost position—a force that produces a 3,300 in-pound moment about the seating reference for each designated seating position * * *.

Also, paragraph S4.2, "Strength," of FMVSS No. 210 requires that each occupant seat, other than side-facing seats, the anchorages, attachment hardware, and attachment bolts * * * shall withstand a 5,000-pound force when tested in accordance with S5.1, "Seats with Type 1 or Type 2 seat belt anchorages."

Tradewinds determined that there was a noncompliance of its conversion when Part # FDN–200, quick release pedestals, using the current NHTSA FMVSS Nos. 207 and 210 test procedures. The noncompliance occurred when the test results showed that the latching pin in the quick release pedestal "would not consistently reach" the maximum test loading requirements of the Standards. Approximately 200 van conversions are involved.

Tradewinds supported its petition for exemption by stating that when Part # FDN–200 pedestals were tested under test procedures that have been proposed by NHTSA, with split loading of pedestal and seat assembly, all requirements were met. The new test

procedure that Tradewinds is referring to is a rulemaking proposal to amend Standard No. 207 specifically for pedestal seating systems (Notice of Proposed Rulemaking (NPRM), (55 FR 33141, August 14, 1990); Supplemental Notice of Proposed Rulemaking (SNPRM), (58 FR 12921, March 8, 1993). Basically, the proposal would allow manufacturers the choice of using either the current procedure or the new procedure for testing most pedestal seats. The current procedure requires a single load be applied through the center of gravity of the entire assembly. The proposed procedure would permit the load to be split and applied simultaneously through the pedestal and through the seat.

The manufacturer of Part # FDN–200, Boss Manufacturing and Distributing, Inc. (Boss), furnished NHTSA with data on tests conducted by General Testing Laboratories on a 1993 Dodge "B" van using the procedure proposed in the SNPRM. Boss stated that the mid-position, quick release pedestal seat could withstand the proposed FMVSS No. 207 and the current FMVSS No. 210 testing. Boss also stated the pedestal seat would not consistently reach the current maximum requirements. Based on the test results submitted to NHTSA, Tradewinds concluded that the quick release pedestal seat can meet the test loading requirements of FMVSS Nos. 207 and 210 if the proposed new test procedure with spilt loading is permitted.

No comments were received on the petition.

Petitioner's sole inconsequently argument is that the vehicle would conform were it tested in a manner proposed by NHTSA. However, the proposed test procedure is addressed to seat adjustors and not pedestal anchorages. The test results would be the same for pedestal anchorages regardless of whether the proposed or current test method is used. This means that Tradewinds conversions would continue to manifest test failures even if the new test procedures were adopted.

In addition, Tradewinds did not quantify the test failures that led to its petition. NHTSA requested that Tradewinds provide test data on the extent of its noncompliance. However, the only data provided in response to this request were related to the proposed test procedure. No data were provided regarding margins of failure under the existing test procedure. This, NHTSA has no information as to whether the margin of failure was large or small.

Accordingly, petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50)

Issued on: March 7, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5567 Filed 3–9–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0917.

Regulation ID Number: LR–170–84 TEMP.

Type of Review: Extension.

Title: Effective Dates of the Economic Performance Requirement.

Description: The regulations provide the time and manner of making certain elections relating to the effective date of the economic performance requirement. The information is needed and will be used to assure compliance with the effective date provisions. All accrual basis taxpayers that make an election are affected by the reporting and recordkeeping requirements of the regulations.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours.

Frequency of Response: Other (one report required).

Estimated Total Reporting/ Recordkeeping Burden: 1,584 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–5469 Filed 3–9–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

March 3, 1994

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Human Factors Lab and Focus Group Testing of Answer-Sheet Style Form 1040 Packages (Simple and Regular Forms 1040)

Description: Results of Laboratory (2,005 participants) and Focus Group (486 participants) testing will be used by IRS to finalize the design of machine-readable answer-sheet forms for the Tax Systems Modernization program. This request is for a single series of tests to be conducted between April 1994 and September 1995.

Respondents: Individuals or households

Estimated Number of Respondents: 20,050

Estimated Burden Hours Per Respondent:

Human Factor Test—1 hour
Exit Questionnaire—15 minutes
Focus Group Discussion—1 hour, 30 minutes
Travel (Round Trip)—1 hour
Implementation of Screening Instrument—5 minutes

Frequency of Response: Other (one-time test series)

Estimated Total Reporting Burden: 7,725 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–5470 Filed 3–9–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

March 3, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0073.

Form Number: ATF F 5150.19.

Type of Review: Extension.

Title: Formula and/or Process for Articles Made with Specially Denatured Spirits.

Description: ATF F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. ATF uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of 26 U.S.C. 5273.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,711.

Estimated Burden Hours Per Respondent: 54 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,440 hours.

OMB Number: 1512–0075.

Form Number: ATF F 5150.18.

Type of Review: Extension.

Title: User's Report of Denatured Spirits.

Description: The information on ATF F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a summary of activities at permit premises. ATF examines and verifies certain entries on these reports to identify unusual activities, errors and omissions.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2,711.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 813 hours.

OMB Number: 1512–0207.

Form Number: ATF REC 5110/04–ATF F 5110.43.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 101.

Estimated Burden Hours Per Respondent/Recordkeeping: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 1,212 hour.

OMB Number: 1512–0250.

Form Number: ATF REC 5110/5.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Transaction and Supporting Data.

Description: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by ATF to verify those accounts and consequent tax liabilities.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 274.

Estimated Burden Hours Per Recordkeeper: 20 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 5,480 hours.

OMB Number: 1512–0462.

Form Number: ATF REC 5110/09.

Type of Review: Extension.

Title: Registration and Records of Vinegar Vaporizing Plants.

Description: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used.

Respondent: Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 5.

Estimated Burden Hours Per Respondent/Recordkeeping: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 5 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–5471 Filed 3–9–94; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

March 3, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0466.

Form Number: ATF REC 5110/12.

Type of Review: Extension.

Title: Equipment and Structures.

Description: Marks, signs and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 281.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0466.

Form Number: ATF REC 5170/7.

Type of Review: Extension.
Title: Alternate Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors.
Description: ATF allows exporters of liquors to apply for and receive approval of variances from the requirements of regulations under 27 CFR part 252. ATF uses the application to evaluate need, jeopardy to the revenue and compliance with the law.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 200 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–5472 Filed 3–9–94; 8:45 am]
BILLING CODE 4810–31–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Termination of Sanctions With Respect to the Federal Republic of Germany Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.
ACTION: Termination of sanctions imposed on the Federal Republic of Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988.

SUMMARY: The U.S. Trade Representative has determined to terminate sanctions imposed on the Federal Republic of Germany on May 28, 1993 (58 FR 31136) on the basis of assurances from Germany that it would not apply the discriminatory provisions of the Utilities Directive of the European Union to procurement of U.S. goods by its telecommunications utilities. The termination of sanctions is effective upon publication of this notice. A copy of the USTR's determination is attached.
FOR FURTHER INFORMATION CONTACT: Mark Linscott, Office of GATT Affairs (202–395–3063), or Laura B. Sherman, Office of the General Counsel (202–395–3150), Office of the United States Trade Representative, 600 Seventeenth Street NW., Washington, DC 20506.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

Determination Under Title VII of the Omnibus Trade and Competitiveness Act

On May 28, 1993, the United States imposed sanctions on nine member states of the European Union under Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended) for maintaining, in government procurement of telecommunications goods, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses (58 FR 31136).

I have received official assurances from the Federal Republic of Germany that: (1) Telecommunications entities owned in whole or in part or controlled by the German Government apply national treatment towards U.S. goods and suppliers; (2) Germany will not apply Article 29 of the Utilities Directive against U.S. goods and suppliers; and (3) Germany is not applying the counter-sanctions imposed by the European Union against U.S. goods and suppliers.

Pursuant to the authority vested in me by the President of the United States by Presidential Determination No. 93–16, I have determined that the Federal Republic of Germany has eliminated the discrimination identified under Title VII and have therefore terminated sanctions effective upon the publication of this determination in the **Federal Register**.

Michael Kantor,
United States Trade Representative.
[FR Doc. 94–5497 Filed 3–9–94; 8:45 am]
BILLING CODE 3190–01–M

Guidelines for U.S. Implementation of the Agreement Between the U.S. and Russian Federation Government Regarding International Trade in Commercial Space Launch Services

AGENCY: Office of the United States Trade Representative.
ACTION: Notice of guidelines for U.S. implementation of the agreement between the Government of the United States of America and the Government of the Russian Federation regarding international trade in commercial space launch services.

DATES: The Agreement entered into force on September 2, 1993. These guidelines on monitoring and enforcement are effective upon publication.
FOR FURTHER INFORMATION CONTACT: Scott Monier, (202) 395–3320, Director for European Industry and Technology, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. (Copies of the Agreement referenced herein can be obtained from the official designated above.)

SUMMARY: On September 2, 1993, the United States and the Russian Federation entered into the Agreement Between the Government of the United States of America and the Government of the Russian Federation Regarding International Trade in Commercial Space Launch Services (Agreement). The Agreement allows the Russian Federation (Russia) to enter the international commercial space launch market during the country's transition to an economy based on market principles in a manner intended to prevent disruption of normal competition. In order to assist in the successful operation of the Agreement, the U.S. Government has established certain guidelines it intends to follow in implementing the Agreement. This notice sets out those guidelines.

SUPPLEMENTARY INFORMATION

Background

At the June 1992 Summit between former President Bush and Russian President Yeltsin, the United States announced that it was granting a one-time exception to its policy of prohibiting the export of U.S.-made satellites or satellites incorporating U.S. technology (essentially all Western satellites) to Russia for launch on Russian space launch vehicles. This one-time exception allowed the International Maritime Satellite Organization (INMARSAT) to select a Russian launcher to launch an INMARSAT 3 satellite. At the same time, the United States stated that, while no further exceptions would be granted, it was willing to undertake negotiations on Russian entry into the international commercial space launch services market. The negotiations culminated in an agreement which would provide Russia, during its transitional phase from a non-market to market economy, access to the international commercial launch services market yet ensure against severe market distortion or disruption to the market. The Agreement was signed by Vice President Gore and Russian Prime Minister Chernomyrdin and entered into force on September 2, 1993.

The Agreement

Definition of Terms

The Agreement defines certain terms, as follows:

Contract means (i) to agree or commit to the provision of commercial space launch services such that a launch is

effectively removed from competition in the international market, or (ii) any such agreement or commitment.

International customer means any person; or any kind of corporation, company, association, venture, partnership, or other entity, whether or not organized for pecuniary gain, or privately or governmentally owned or controlled; or any governmental body, excluding the Government of the United States of America and the Government of the Russian Federation; or any intergovernmental organization or quasi-governmental consortium, including but not limited to INTELSAT, INMARSAT and their respective legal successors, that is the ultimate owner or operator of a spacecraft or satellite or that will deliver the spacecraft or satellite to orbit for use by such ultimate owner or operator.

Principal payload means a telecommunications satellite or, in the absence of a telecommunications satellite, any other spacecraft or combination of spacecraft.

Russian space launch service provider means any entity, agent or instrumentality acting on its behalf, permitted by the Government of the Russian Federation to provide commercial space launch services or the space launch vehicles for such services.

Agreement Terms

The Agreement establishes basic rules for avoiding distortion which results from government involvement in the commercial space launch market by prohibiting such practices as certain subsidies, marketing inducements, and corrupt business practices. The terms of the Agreement also include the following specific provisions:

Quantity Provisions

The Agreement permits Russian space launch services providers to contract with international customers for the launch of up to eight (8) principal payloads, in addition to the INMARSAT–3 satellite, to geosynchronous earth orbit (GEO) or geosynchronous transfer orbit (GTO), for the duration of the agreement (through December 31, 2000). Not more than two (2) such launches may be conducted in any twelve-month period.

Up to four (4) of these launches may be of two principal payloads, and each of these may be counted against the quantity limitation as single launches if the parties mutually agree that the international space launch market so warrants.

The Agreement also allows Russian space launch service providers to contract for up to three (3) launches to low earth orbit (LEO) for the Iridium system. Proposals by Russian space launch service providers for commercial suborbital launches LEO and launches to orbits other than GEO and GTO will be considered on a case by case basis, where there are competing comparable commercial space launch services.

Pricing Provisions

The Agreement provides that prices, terms, and conditions offered by Russian space launch service providers shall be comparable to those offered for comparable space launch services by commercial launch service providers from market economy countries. For GEO and GTO launches, the Agreement establishes a specific pricing mechanism. Bids or offers for launches to GEO or GTO more than 7.5% below the lowest market economy bid trigger special consultations in which Russia must demonstrate that its offer conforms to the principles of the Agreement. Bids or offers for Russian launch services to orbits other than GEO/GTO are not subject to a specific pricing mechanism; however, prices, terms, and conditions must be comparable to those offered by providers from market economy countries. Accordingly, the comparable pricing provision of the Agreement applies to all launches by Russian space launch service providers, including those to LEO.

The pricing provisions of the Agreement apply to bids or offers made as part of a sole-source procurement as well as to completed contracts.

Consultations

The Agreement requires the United States and Russia to hold annual consultations to "* * * review and examine implementation of the Agreement and market developments in commercial space launch services." The Agreement also allows the United States or Russia to request special consultations "on an urgent basis" prior to the conclusion of a contract, if possible, if either Party has reason to believe that a contract or pending contract is inconsistent with the terms of the Agreement.

Applicability Guidelines

Russian Launch Vehicles

All types or classes of launch vehicles that may be used by a Russian space launch service provider to provide commercial space launch services are subject to the Agreement.

Russian Space Launch Service Providers

Transactions involving launch service providers, regardless of nationality, permitted by the Russian Federation to provide commercial space launch services on Russian launch vehicles are subject to the terms of the Agreement.

Leasing on-Orbit

Leasing a satellite on orbit or satellite transponders does not remove a transaction from the terms of the Agreement. As a general rule, the Agreement applies to a contract calling for the leasing of a satellite on-orbit as to one requiring the launch of a satellite purchased by the customer. The definition of "international customer" as defined in the Agreement makes no distinction based upon the financing arrangement selected for the satellite. There will be no special consideration given to leased satellites launched solely for use by an international customer.

Nationality of Satellite Manufacturer

The terms of the Agreement apply to all satellites, regardless of the manufacturer's nationality. The Agreement is intended to be neutral in its effects on the satellite market.

Contracts Signed Prior to the Agreement

Contracts signed prior to the Agreement for the launch of a satellite subject to United States export controls will be considered under the terms of the Agreement.

Contracts signed prior to the Agreement for the launch of a Russian-built satellite for purchase or lease by an international customer are excluded from the terms of the Agreement.

Options Agreements/Reservations

An option agreement or reservation for Russian commercial space launch services, entered into on or before September 2, 1993, is subject to the terms and provisions of the Agreement.

Monitoring and Enforcement

A. *Designation of Responsibility*

The Trade Policy Staff Committee Subcommittee on Russian Space Launch Services (Subcommittee), will be responsible for overall implementation of the Agreement.

B. *Subcommittee Organization*

For purposes of carrying out its responsibilities with respect to overall implementation of the Agreement, the Subcommittee will be chaired by the Office of the United States Trade Representative (USTR) and will be composed of the Departments of Transportation, State, Commerce, Justice, Defense and Treasury, the Office of Management and Budget (OMB), the National Aeronautics and Space Administration (NASA), the Office of

Science and Technology Policy (OSTP), the Joint Chiefs of Staff, and such other departments and agencies as may be invited by the Chair to participate. A Working Group on Information (WGI) will be established to assemble such information as is necessary to enable the Subcommittee to carry out its responsibilities. The WGI will be chaired by the Department of Transportation (DOT) and will include the Departments of Commerce, State, Defense, and such other departments or agencies as designated by the Chair of the Subcommittee.

C. *Monitoring and Data Collection*

The Subcommittee will monitor Russian compliance with the Agreement. To this end, the Subcommittee will review market and other information relevant to participation in the commercial launch services market by Russian space launch service providers and compliance by those providers with the terms of the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the WGI. In monitoring Russian compliance with the Agreement, particular attention will be given to information on the number of contracts with international customers and the distribution of contracts by Russian space launch service providers within any twelve-month period; prices, terms and conditions offered or provided by Russian space launch service providers; unfair business practices; grants and subsidies to commercial space launch services suppliers; inducements to international customers; insurance or reflight guarantees; and government-supported financing for commercial space launch vehicles or services except in accord with the Organization for Economic Cooperation and Development's (OECD) "Arrangement on Guidelines for Officially-Supported Export Credits."

The Subcommittee will review and determine which information is to be provided to Russia to comply with U.S. obligations under the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the WGI in a timely fashion so that it could then be made available to Russia in accordance with the terms of the Agreement.

Particular attention will be given to U.S. obligations under the Agreement with respect to the provision of publicly releasable information to Russia on prices, terms, and conditions offered in the international market for commercial launch services, including insurance arrangements relating to such services.

The WGI will periodically produce information and preliminary assessments of conditions in the commercial launch services market, including prices, terms and conditions, commitments, and market forecasts for the Subcommittee as needed to implement effectively the Agreement and at least 30 days prior to annual consultations.

The WGI will also provide to the Subcommittee such additional information and preliminary assessments on compliance by Russian space launch service providers with the provisions of the Agreement as needed, and at least 30 days prior to annual consultations, or as needed prior to any additional or special consultations.

D. *Consultations*

The Subcommittee will hold annual consultations with the Russian Federation as outlined in the Agreement. The Subcommittee will exchange information with Russian authorities in advance of such consultations.

The Subcommittee will meet in advance of the annual consultations. The Subcommittee will provide all information, including prices, terms and conditions offered for commercial space launch services, necessary to monitor the Agreement and carry out regular and special consultation. Such information shall be provided to U.S. and/or Russian government authorities promptly, and in any case, no later than 30 days after a request, except that such information need not be provided prior to bids for commercial space launch services.

Following consultations, the Subcommittee will also report on the results of the consultations and recommend any follow-up actions to the TPSC or other appropriate government agencies.

The Subcommittee will consider whether consultations with other international parties could be beneficial, by aiding in the monitoring of the Agreement. If the Subcommittee determines that consultations could be beneficial, it will recommend to the TPSC and to the USTR that such consultations be initiated.

The Subcommittee and the WGI may, in carrying out the functions and procedures set forth herein, consult with U.S. commercial launch services providers, launch vehicle and satellite manufacturers, and, as appropriate, interested Congressional committees, the user community, and other interested parties, including the relevant private sector advisory committees. Such contacts will be made in conjunction with the information collection and assessments referred to herein and U.S. preparation for, and follow-up on the results of, meetings with Russia held under the Agreement. The Subcommittee will also, as appropriate, inform such interested parties of significant requests or notifications made by Russia under the Agreement, or significant developments under the Agreement.

E. Information Sharing

In the course of consulting with interested parties, in particular prior to annual consultations under the Agreement, the U.S. Government may provide such information provided by Russia as is allowed and appropriate under the Agreement, subject to business confidentiality.

F. Collection of Information

DOT, as Chair of the WGI, will have primary responsibility for soliciting and receiving relevant information, and will maintain data to be collected and reviewed by the WGI for purposes of this Agreement.

Members of the U.S. industry, and other interested members of the public, are invited to submit written comments on issues related to the Agreement and its operation. Comments must be provided in twenty copies to the DOT Office of Commercial Space Transportation, Attention: Working Group on Information for Russian Space Launch Services, 400 7th Street, SW., room 5408, Washington, DC 20590–0001.

Submissions from the public will be placed in a file open to public inspection at the above address pursuant to 15 CFR § 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of the cover page or letter and each succeeding page, and must be accompanied by a nonconfidential summary of the confidential information.

G. Enforcement

If the Subcommittee is of the view that the provisions of the Agreement have been violated as a result of information obtained in any annual or special consultation and review required under Article VII of the Agreement or on the basis of information presented to it by the WGI, the Subcommittee will notify the TPSC and recommend consultations with

Russia. If consultations proceed and satisfactory resolution is not achieved with Russia, or if consultations are deemed to be inappropriate in the circumstances, based on recommendations of the Subcommittee, the Section 301 Committee may be requested to review the case.

The USTR will, from time to time, advise the Secretary of State and the Secretary of Commerce of the status of the implementation of the agreement in order that this information may be available to the Secretaries with respect to the State Department export license responsibilities under the Arms Export Control Act and the implementing regulations, the International Traffic in Arms Regulations, 22 CFR parts 120–130 and the Commerce Department export license responsibilities under the Export Administration Act.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–5498 Filed 3–9–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 47
Thursday, March 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 8681 February 23, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m. (Eastern Time) Tuesday, March 8, 1994.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: March 8, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–5695 Filed 3–8–94; 11:24 am]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–5052.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 10, 1994, 10 a.m., Meeting Open to the Public.

The following items were added to the agenda:

Advisory Opinion 1994–1: Robert Schramm on behalf of the Western Pistachio Association (continued from meeting of March 3, 1994).

Legislative Recommendations—1994 (continued from meeting of March 3, 1994).

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy

Administrative Assistant.

[FR Doc. 94–5664 Filed 3–8–94; 11:09 am]

BILLING CODE 6715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–08]

TIME AND DATE: March 14, 1994 at 10 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436

STATUS: Open to the public

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–683 (Preliminary) (Fresh Garlic From China)—briefing and vote.
5. Outstanding action jackets—
   1. GC–94–009, Request for termination, or in the alternative steps to reinitiate Inv. Nos. 731–TA–678–682 (Preliminary) (Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain).
   2. OP–94–001, Outline for Inv. No. 332–344, Economic Effects of Antidumping Duty and Countervailing Duty Orders and Suspension Agreements.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: March 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–5663 Filed 3–8–94; 11:08 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced open meeting (**Federal Register**, Vol. 59, March 4, 1994, page 10460) scheduled for Wednesday, March 9, 1994, will include the following additional item:

3. Policy Statement on Fair Lending.

The Board voted unanimously to add this item to the open agenda. Earlier announcement of this change was not possible.

The previously announced items are:

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Request for Comment: Section 701.21, NCUA's Rules and Regulations: Prohibited Fees.

The Meeting is scheduled for 1 p.m., in the Board room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5735 Filed 3–8–94; 2:00 pm]

BILLING CODE 7535–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: Tuesday March 22, 1994, 1 p.m. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: The first part of the meeting, from 1 p.m. to 1:30 p.m. will be Open to the public. The Closed portion will commence at 1:30 p.m. (approximately).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of 9/21/93 Minutes (Open Portion).
3. Recommendation for meeting schedule through end of June 1994.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Projects in Russia.
2. Finance Project in Russia.
3. Finance Project in Russia.
4. Finance Project in Russia.
5. Finance and Insurance Joint Project in Russia.
6. Insurance Project in Russia.
7. Insurance Project in Philippines.
8. Insurance Project in Indonesia.
9. Finance and Insurance Joint Project in India.
10. Finance and Insurance Project in Africa.
11. Finance Project in Hungary.
12. Insurance Project in Hungary.
13. Insurance Project in Poland.
14. Pending Major projects.
15. Board Procedures.
16. Approval of the 9/21/93 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202)–336–8403.

Dated: March 7, 1994.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 94–5696 Filed 3–8–94; 11:23 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 14, 1994.

A closed meeting will be held on Tuesday, March 15, 1994, at 2:30 p.m. An open meeting will be held on Wednesday, March 16, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 15, 1994, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

The subject matter of the open meeting scheduled for Wednesday, March 16, 1994, at 10 a.m., will be:

Consideration of whether to propose for public comment two new rules and rule amendments under the Investment Advisers Act of 1940. The first rule would expressly prohibit investment advisers from making unsuitable recommendations to clients. The second rule would prohibit registered investment advisers from exercising investment discretion with respect to client accounts unless they have a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly. Related amendments to recordkeeping rule under the Advisers Act also would be proposed. For further information, please contact Robert E. Plaze or W. Thomas Conner at (202) 272–2107.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Carrie Dwyer (202) 272–2000.

Dated: March 8, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5806 Filed 3–8–94; 3:56 pm]

BILLING CODE 8010–01–M

Federal Register

Thursday
March 10, 1994

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1, et al.
Federal Acquisition Regulations; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–20]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary of interim and final rules and corrections.

SUMMARY: This document introduces the documents, set forth below, which comprise Federal Acquisition Circular (FAC) 90–20. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90–20 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Section 6050M of the Tax Reform Act of 1986	91–52	91–007	Klein.
II	Made in Amenca Labels and Unfair Trade Practices	93–301		DeStefano.
		93–306		DeStefano.
III	Preference for Commercial Products	91–48	89–315	O'Neill.
IV	Increase in Cost or Pricing Data Threshold	91–53	90–303	Olson.
V	Reimbursement, Interest Charges, and Penalties for Overpayment; Clarification	91–99/89–37	91–090	Olson.
VI	Clarify Increased Cost of Pricing Data Threshold	91–96	91–309	Olson.
VII	Nonmanufacturer Rule	91–50	90–335	O'Neill.
VIII	Small Business Competitiveness Demonstration Program	91–97	91–065	Scott.
IX	Removal of Steel Conduit from the FAR Buy American Act Exemption List	92–619		Klein.
X	Buy American Act—Construction Materials	91–75	91–305	O'Such.
XI	Examination of Records	92–47		O'Such.
XII	Independent Research and Development and Bid and Proposal Costs	93–302		Olson.
XIII	Prompt Payment Overseas	92–46		Olson.
XIV	Federal Courts Administration Act	92–301/91–62		O'Neill
			90–323	
XV	Defense Traffic Management Regulation	92–53		Klein.
XVI	Records of Plant Equipment	91–73	91–019	Klein.
XVII	Reports of Government Property	91–58	90–454	Klein.
XVIII	Returnable Cylinders	91–10	90–457	Klein.
XIX	Small Business Innovation Research Rights in Data	93–305		O'Neill
XX	Corrections and Technical Amendments			
Notices	Annual notice of Rates of Inflation			Olson
	Availability of the 1993 Consolidated Reprint of the FAR.			

DATES: For effective dates, see separate documents which appear elsewhere in this separate part. Please cite FAC 90–20 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. For specific information contact the analyst whose name appears in relation to each FAR case or subject area (see table under **SUMMARY**). Please cite FAC 90–20 and applicable FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–20 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Section 6050M of the Tax Reform Act of 1986 (FAR Case 91–52)

The interim rule published at 57 FR 44259 on September 24, 1992 (FAC 90–13, Item I), is converted to a final rule with one change. FAR Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204–3, Taxpayer Identification, have been revised to ensure the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications. The approved change is to the last sentence of 52.204–3(b). A 31 percent figure has replaced the previous 20 percent figure as a result of an amendment to 26 U.S.C. 3406(a)(1).

Item II—Made in America Labels (FAR Case 93–301) and Unfair Trade Practices (FAR Case 93–306)

These interim rules add language to FAR 9.403, 9.406, and 9.407 concerning suspension or debarment of contractors who engage in unfair trade practices and/or intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States.

Item III—Preference for Commercial Products (FAR Case 91–48)

The interim rule published as Item V of FAC 90–9 is converted to a final rule. The interim rule amended section 10.001 and revised sections 10.002(d) and 10.006(a) to provide an order of preference for the various types of product descriptions used in contracting. The final rule differs from the interim rule in that (1) the Department of Defense (DOD) requirement for mandatory use of product descriptions listed in the DOD Index of Specifications and Standards, which was inadvertently omitted from the interim rule, is reinstated at 10.006(a); (2) a new exception to the requirement for mandatory use of indexed product descriptions is added at 10.006(a)(6); and (3) editorial changes are made for clarification.

Item IV—Increase in Cost or Pricing Data Threshold (FAR Case 91–53)

The interim rule published at 56 FR 67413, December 30, 1991 (FAC–90–10, Item I), is confirmed as final without change. This rule amended the FAR to reflect an increase in the statutory threshold for submission of cost or pricing data from $100,000 to $500,000 for DOD, NASA, and the Coast Guard.

Item V—Reimbursement, Interest Charges, and Penalties for Overpayment; Clarification (FAR Case 91–99/89–37)

This item clarifies Item 11 of FAC–90–3 (55 FR 52782, December 21, 1990) regarding the application, to contract modifications, of the statutory and regulatory guidance on reimbursement, interest charges, and penalties for overpayment (FAR case 89–37). The word "contracts" in Item 11 includes control modifications.

For DOD, NASA, and the Coast Guard, the statutory and regulatory guidance applies to: (1) Contracts awarded on or after November 8, 1985; and (2) modifications issued on or after November 8, 1985, regardless of the date of contract award. For all other agencies, the regulatory guidance applies to contracts awarded and modifications issued after January 22, 1991.

If a contract is modified and that modification requires the submission of certified cost or pricing data, the contract must be updated to incorporate the January 1991 version of the clause at FAR 52.214–37, 52.215–22, or 52.215–23 for that modification. This updating is to ensure that the contract includes the requirement for interest on defective pricing reductions for modifications.

Item VI—Clarify Increased Cost or Pricing Data Threshold (FAR Case 91–96)

The interim rule published as Item X in FAC 90–16 is converted to a final rule without change. The interim rule revised FAR 15.804–2 to clarify application of the $500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements Section 804 of the FY 92 Defense Authorization Act, which amended 10 U.S.C. 2306a(a)(1) to specify that the $500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract is modified to incorporate the $500,000 threshold. It also specifies that the $500,000 threshold applies to changes or modifications made after December 5, 1991, when the prime contract is modified to incorporate the $500,000 threshold.

Item VII—Nonmanufacturer Rule (FAR Case 91–50)

This converts the interim rule on the Nonmanufacturer Rule, published in the **Federal Register** at 57 FR 60571 on December 21, 1992, as Item XI of FAC 90–16, to a final rule with minor revisions. The interim rule implemented section 210 of Public Law 101–574. It revised FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule," to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 91–97)

FAR 19.1001(b) and 19.1006(b)(1) are amended to extend the Small Business Competitiveness Demonstration Program through September 30, 1996. FAR 19.1006(b)(1) is also amended to clarify procedures when an emerging small business (ESB) reserve amount is greater than $25,000. Section 19.1006(c)(1) is amended to delete the dollar threshold for the ESB reserve amount and substitute "established by the Office of Federal Procurement Policy." Subparagraph (c)(1) (i) and (ii) have been added to clarify how to proceed when there is not a reasonable expectation of offers from two or more responsible ESB's or when it is necessary to cancel an ESB set-aside.

Item IX—Removal of Steel Conduit From the FAR Buy American Act Exemption List (FAR Case 92–619)

Paragraph (d)(1) of 25.108, Excepted Articles, Materials, and Supplies, is being amended to remove steel conduit (5" and 6") from the FAR Buy American Act exemption list. Market research has uncovered two domestic sources for these products.

Item X—Buy American Act—Construction Materials (FAR Case 91–75)

The interim rule published at 57 FR 20372, May 12, 1992, (FAC 90–11, Item II) is confirmed as final without change. The interim rule amended FAR 25.201 and 52.225–5 to modify the definition of "construction material" to require evaluation of an emergency life safety system as a single construction material under the Buy American Act, regardless of when and how the individual parts or components are delivered to the construction site. This rule implements section 631 of Public Law 102–141, Treasury, Postal Service and General Government Appropriations Act.

Item XI—Examination of Records (FAR Case 92–47) (Statutory)

FAR 25.901(c) is revised to make the requirement for notification of Congress, when the clause at 52.215–1, Examination of Records by Comptroller General, is omitted from a contract with a foreign contractor, inapplicable to the Department of Defense.

Item XII—Independent Research and Development and Bid and Proposal Costs (FAR Case 93–302)

FAR 31.205–18(c)(2)(iii)(A) is amended to insert a date certain with regard to waiving the limitation on the maximum allowable amount of independent research and development and bid and proposal costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190).

Item XIII—Prompt Payment Overseas (FAR Case 92–46)

This interim rule revises FAR 32.901 and amends the clauses at FAR 52.232–25, 52.232–26, and 52.232–27 to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of "foreign vendor" from the clauses.

Item XIV—Federal Courts Administration Act (FAR Cases 92–301 and 91–62)

This interim rule amends FAR 33.201, 33.202, 33.204, 33.207, 33.208, 33.210, 33.211, 33.214, 42.302, and the clause at 52.233–1 concerning the certification of claims under the Contract Disputes Act (CDA). The rule implements section 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572) which requires that the person certifying a CDA claim be duly authorized to bind the contractor; specifies the conditions under which a contracting officer does not have to issue a final decision; provides that certifications are not jurisdictional; further revises the existing alternative dispute resolution (ADR) coverage; and

provides for payment of interest from the date of initial receipt of the claim or enactment of Public Law 102–572, whichever is later. (Pub. L. 102–572 was enacted on October 29, 1992.)

Item XV—Defense Traffic Management Regulation (FAR Case 92–53)

FAR Subpart 42.14, Traffic and Transportation Management, is amended to update the title of the Defense Traffic Management Regulation and to add references to Military Departments and Defense Logistics Agency regulations concerning traffic and transportation management. Cross references at FAR 47.103(b)(2), 47.200(e), and 47.305–6(f)(1)(ii) were also revised to update the title of the Defense Traffic Management Regulation. Cross references at 47.103(b)(2), 47.200(e), and 47.305–6(f)(1)(ii) were also revised to update the title of the Defense Traffic Management Regulation.

Item XVI—Records of Plant Equipment (FAR Case 91–73)

The FAR is being revised at 45.501, 45.505–1, 45.505–4, and 45.505–5 to add language on the use of summary records and expand the use of summary records to special tooling and special test equipment costing less than $5,000.

Item XVII—Reports of Government Property (FAR Case 91–58)

FAR 45.505–14, Reports of Government Property, is revised to require contractors to report annually all classifications of Government property in their possession. The FAR revision expands the list of property classifications to be reported to include special tooling, special test equipment, material and agency peculiar property. It deletes the dollar amounts for plant equipment.

Item XVIII—Returnable Cylinders (FAR Case 91–10)

A clause, Returnable Cylinders, is added to the FAR at 52.247–66, and prescriptive language is added at 47.305–17. The clause describes the Government's responsibilities relating to the return and accountability of contractor-furnished returnable cylinders.

Item XIX—Small Business Innovation Research Rights in Data (FAR Case 93–305)

Paragraph (d) of the clause at FAR 52.227–20, Rights in Data—SBIR Program, is revised to increase the small business concern's data rights retention period from 2 to 4 years. This revision implements Section 15(f) of the revised SBIR Program Policy Directive, published by the SBA in the **Federal Register** on January 26, 1993 (58 FR 6144).

Item XX—Corrections and Technical Amendments

Corrections and technical amendments have been made to FAR parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53 for clarification, to correct references and terms. For the convenience of the user, Standard Forms 254, 255, and Optional Form 333 are reprinted. Among the changes are the following:

Standard Forms 254 and 255

Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, which were revised and illustrated as Item XXIII in FAC 90–16 (57 FR 60570, December 21, 1992), are being republished in this FAC 90–20 to reflect the removal of the Office of Management and Budget's (OMB) date of expiration for clearance approvals and to reflect other minor typographic changes.

Optional Form 333

Optional Form 333, Procurement Integrity Certification for Procurement Officials, is authorized for local reproduction indefinitely and the revised version is published here for the convenience of the user.

Annual Notice of Rates of Inflation

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish, as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of independent research and development and bid and proposal (IR&D/B&P) costs for major contractors under FAR 31.205–18(c)(2)(i)(C)(*2*). These rates were issued by the Acting Comptroller of the Department of Defense in March 1993. FAR 31.205–18(c)(2)(i)(C)(*2*) states the rates of inflation will be published in the **Federal Register** on an annual basis.

Federal Acquisition Circular 90–13, FAR case 91–37, Item VII, published in the **Federal Register** at 57 FR 44264, September 24, 1992, provided rates of inflation which were to be used to determine the allowability of IR&D/B&P costs for major contractors during the 3-year transition period FY 1993 through 1995. FAR 31.205–18(c)(2)(i)(C)(*2*) states the rates of inflation will be published in the **Federal Register** on an annual basis. The following rates of inflation are effective immediately, supersede those published in the **Federal Register** at 57 FR 44264, September 24, 1992, and shall remain in effect until superseded by the next publication:

Fiscal year	Annual percentage rate
1993	2.4
1994	2.3
1995	2.3
1996	2.2

Availability of the 1993 Consolidated Reprint of the FAR

The 1993 Consolidated Reprint of the FAR will be available after March 30, 1994. Circulars amending the 1990 edition of the FAR have been consolidated up through December 31, 1993; therefore, reprint users should immediately begin filing with FAC 90–19, which was issued January 5, 1994, and will be distributed to subscribers in March.

For additional information, contact the FAR Secretariat at 202 501–4755. For subscription and distribution information, contact the Superintendent of Documents at 202 512–2305.

Dated: February 22, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90–20 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–20 is effective May 9, 1994, except for Items I, II, III, IV, VI, VII, X, XIII, XIV, XIX, and XX which are effective May 9, 1994.

Dated: November 30, 1993.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: November 9, 1993.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: October 29, 1993.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement, NASA.

[FR Doc. 94–4381 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 4 and 52

[FAC 90–20; FAR Case 91–52; Item I]

RIN 9000–AF09

Federal Acquisition Regulation; Section 6050M of the Tax Reform Act of 1986

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: This adopts as final, with one change, the interim rule published at 57 FR 44259, September 24, 1992, as Item I of FAC 90–13. That rule amended the coverage "Information Reporting to the Internal Revenue Service (IRS)," of the Federal Acquisition Regulation (FAR), to ensure the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications occurring on or after April 1, 1990, when the initial contract was entered into before January 1, 1989. In addition, the coverage has been rearranged for clarification and the provision entitled "Taxpayer Identification" has been revised to update a reference. When the IRS issued its final regulations implementing section 6050M of the Tax Reform Act of 1986 (Public Law 99–514), the reporting requirements included the requirement to report certain modifications to contracts that were awarded before January 1, 1989. The Office of Federal Procurement Policy (OFPP) requested that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council consider revising the FAR accordingly. The rule is being adopted as a final rule with one change. The approved change is to the provision entitled "Taxpayer Identification" and consists of replacing the previous 20 percent figure with a 31 percent figure as a result of an amendment to 26 U.S.C. 3406(a)(1).

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–52.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6050M of title 26, United States Code, requires heads of Federal executive agencies to report certain contract information to the IRS. The information returns filed under section 6050M are used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

On December 6, 1989, the IRS published regulations that implemented section 6050M of the Tax Reform Act of 1986 (Pub. L. 99–514). The regulations apply to Federal executive agencies' contracts entered into on or after January 1, 1989, except that, with respect to a basic or initial contract entered into before January 1, 1989, the regulations do not apply to an increase contract action treated as a new contract if the increase occurred before April 1, 1990, or if the increase is not in excess of $50,000. The information required to be reported for contract actions over $25,000 includes name, address, and TIN of the Contractor, name and TIN of the common parent (if any); date of the contract action; amount obligated on the contract; and duration of the contract.

The OFPP requested that the FAR be revised to ensure that agency reporting requirements include the requirement to report certain modifications to contracts that were awarded before January 1, 1989. Interim rule coverage was published on September 24, 1992, with a request for comment. One response (a "no comment") was received. However, one change was made to paragraph (b) of 52.204–3, Taxpayer Identification, as a result of an amendment to 26 U.S.C. 3406(a)(1).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all taxpayers are required to have a TIN, and this rule merely requests that contractors provide that number for certain contract modifications.

This rule was published as an interim rule with a request for comments (see 57 FR 44259, September 24, 1992), and no comments were received regarding the Regulatory Flexibility Act statement.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule increases the existing burden. Accordingly, a request for approval of a revised information collection requirement concerning OMB Control Number 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number) was submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*, and was published in the **Federal Register** on October 16, 1992. OMB approved the collection through December 31, 1995.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final With One Change

Accordingly, the interim rule amending 48 CFR parts 4 and 52, which was published at 57 FR 44259 on September 24, 1992, is adopted as a final rule with the following change:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.204–3 [Amended]

Section 52.204–3 is amended in the last sentence of paragraph (b) by removing the figure "20" and inserting "31" in its place.

[FR Doc. 94–4382 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 9

[FAC 90–20; FAR Cases 93–301 and 93–306; Item II]

RIN 9000–AF40

Federal Acquisition Regulation; Made in America Labels/Unfair Trade Practices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to interim rules amending the Federal Acquisition Regulation (FAR) to implement sections 201 and 202 of the Defense Production Act. Section 201 directs that the FAR be amended to address the responsibility of contractors

who engage in unfair trade practices as defined in section 201. Section 202 directs that the FAR be amended to address the responsibility of persons that intentionally affix a label bearing a fraudulent "Made in America" inscription to a product sold in or shipped to the United States.

DATES: *Effective Date:* March 10, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Attn.: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–20, FAR cases 93–301 and 93–306, as appropriate, in all correspondence related to these cases.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to these FAR cases. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR cases 93–301 and 93–306, as appropriate.

SUPPLEMENTARY INFORMATION:

A. Background

Section 201 of the Defense Production Act (Pub. L. 102–558), provides that any contractor who has engaged in unfair trade practices may be found to lack such business integrity to affect the contractor's responsibility to perform a Government contract or subcontract. Section 201 defines "unfair trade practices" as the commission by a contractor of any of the following acts: (1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as determined by the International Trade Commission, (2) a violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement, and (3) a knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished. Section 201 mandates that this statement of public contract law policy be implemented by amending Subpart 9.4 of title 48, Code of Federal Regulations, not later than 270 days after the date of enactment of the Defense Production Act (October 28, 1992).

Section 202 of the Defense Production Act (Pub. L. 102–558) provides that any person determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when such product was not made in the United States, may be found to lack business integrity or business honesty to such a degree as to affect their responsibility to perform a Federal contract or subcontract. Section 202 mandates that this statement of policy be implemented by amending FAR Subpart 9.4 (Debarment, Suspension, and Ineligibility) not later than 270 days (July 28, 1993) after the date of enactment of the Defense Production Act (October 28, 1992).

B. Regulatory Flexibility Act

These interim rules are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes do not impose any new requirements on contractors and the amendments to FAR Subpart 9.4 are mandatory. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR cases 93–301, Made in America Labels, and/or 93–306, Unfair Trade Practices, as appropriate), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. This action is necessary because the required date for issuance of regulations under Public Law 102–558 was July 28, 1993.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.403 is amended by adding, in alphabetical order, the definition "Unfair trade practices" to read as follows:

9.403 Definitions.

* * * * *

Unfair trade practices, as used in this subpart, means the commission of any of the following acts by a contractor:

(1) A violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

2. Section 9.406–2 is amended at the end of paragraph (a)(3) by removing the word "or"; by redesignating paragraph (a)(4) as (a)(5) and adding new paragraphs (a)(4), (b)(3), and (b)(4) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(a) * * *

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102–558)); or

(b) * * *

(3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when

the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102–558)).

(4) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102–558)).

* * * * *

3. Section 9.407–2 is amended by redesignating paragraph (a)(5) as (a)(7) and adding new paragraphs (a)(5) and (a)(6) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102–558));

(6) Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102–558)); or

* * * * *

[FR Doc. 94–4383 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 10

[FAC 90–20; FAR Case 91–48; Item III]

RIN 9000–AE95

Federal Acquisition Regulation; Preference for Commercial Products

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clearly reflect the preference for use of voluntary standards, commercial item descriptions, and functional or performance specifications over design-type specifications. This rule amends and finalizes the interim rule published in **Federal Register** on December 27, 1991 (56 FR 67130).

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–48.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2325 of title 10, United States Code, requires, to the maximum extent practicable, that DOD requirements shall be stated in terms of (1) functions to be performed, (2) performance required, or (3) essential physical characteristics, and that such requirements shall be fulfilled through the acquisition of nondevelopmental items. Section 824(c) of the Fiscal Year 1990 Defense Authorization Act (Pub. L. 101–189) requires the Secretary of Defense to consider whether revisions to the regulations governing specifications, standards, and other purchase descriptions are necessary to implement the requirements of section 2325 of title 10, United States Code. An interim rule was published in the **Federal Register** on December 27, 1991 (56 FR 67130) to implement these statutory requirements. This final rule differs from the interim rule in that (1) the DOD requirement for mandatory use of product descriptions listed in the DOD Index of Specifications and Standards, which was inadvertently omitted from the interim rule, is reinstated at section 10.006(a); (2) a new exception to the requirement for mandatory use of indexed product descriptions is added at section 10.006(a)(6); and (3) editorial changes are made for clarification.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis was prepared supporting the interim rule, because it was anticipated that the proposed changes might have a significant economic impact on a substantial number of small entities. However, none of the public comments received indicated any concerns in this area. The additional changes included in the final rule do not constitute significant FAR revisions within the meaning of FAR 1.501 and Public Law 98–577. A Final Regulatory Flexibility Analysis has been prepared and is available from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91–48), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On December 27, 1991, an interim rule was published in the **Federal Register** (56 FR 67130). Seven comments were received from five organizations. All comments were considered, and changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR part 10, which was published at 56 FR 67130 on December 27, 1991, is adopted as a final rule with the following changes:

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1. The authority citation for 48 CFR part 10 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 10.001 is amended by revising the definitions "Commercial item description" and "Product description" to read as follows:

10.001 Definitions.

* * * * *

Commercial item description (CID) means an indexed, simplified product description managed by the General Services Administration (GSA) that describes, by functional, performance, or essential physical requirements, the available, acceptable commercial products that will satisfy the Government's needs.

* * * * *

Product description is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, CID's, or purchase descriptions.

* * * * *

3 Section 10.002 is amended by revising paragraph (d) to read as follows:

10.002 Policy.

* * * * *

(d) To the maximum practicable extent, unless inconsistent with applicable law or incapable of meeting the Government's needs, agencies shall

use the following types of product descriptions, which are listed in descending order of preference:

(1) Voluntary standards;

(2) CID's in the acquisition of commercial or commercial-type products;

(3) Government product descriptions stated predominantly in terms of functions to be performed or performance required;

(4) Government product descriptions stated predominantly in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements.

* * * * *

4. Section 10.006 is amended by revising the section heading and paragraph (a) to read as follows:

10.006 Mandatory product descriptions.

(a) Unless otherwise authorized by law or approved under 10.007(a), product descriptions listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies, and product descriptions listed in the DODISS are mandatory for use by the DOD, if acquiring supplies or services covered by such product descriptions, except if the acquisition is—

(1) Required under an unusual and compelling urgency, and using the indexed product description would delay obtaining the requirement;

(2) Conducted in accordance with the procedures in part 13;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale;

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available; or

(6) For a product or service for which an adequate and appropriate voluntary standard is known to exist but has not yet been adopted and listed in the indexes referenced in this section.

* * * * *

[FR Doc. 94–4384 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 14, 15, and 52

[FAC 90–20; FAR Case 91–53; Item IV]

RIN 9000–AE79

Federal Acquisition Regulation; Increase in Cost or Pricing Data Threshold

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the **Federal Register** at 56 FR 67412, December 30, 1991 (FAC 90–10, Item I), to a final rule with no change. This rule amended the Federal Acquisition Regulation (FAR) by increasing the threshold for submission of cost or pricing data from $100,000 to $500,000 for DOD, NASA, and the Coast Guard.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–53.

SUPPLEMENTARY INFORMATION:

A. Background

These revisions are based on section 803 of Public Law 101–150, which amended subsection 2306a(a)(1) of title 10, United States Code, by increasing the threshold for submission of cost or pricing data from $100,000 to $500,000 for DOD, NASA, and the Coast Guard.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act 44 U.S.C. 3501, *et seq.*, applies because the final rule contains information collection requirements. Approval for the revised burden was granted under OMB Control Number 9000–0013.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 14, 15, and 52, which was published at 56 FR 67412 on December 30, 1991 (FAC 90–10, Item I), is adopted as a final rule without change.

The authority citation for 48 CFR parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 94–4385 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 15

[FAC 90–20; FAR Cases 91–99 and 89–37; Item V]

Federal Acquisition Regulation; Reimbursement, Interest Charges, and Penalties for Overpayment; Clarification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Clarification of final rule.

SUMMARY: This item clarifies FAR case 89–37, Item 11 of FAC 90–3 published at 55 FR 52782, December 21, 1990, regarding the application to contract modifications of the statutory and regulatory guidance on reimbursement, interest charges, and penalties for overpayment. The word "contracts" in Item 11 includes contract modifications.

For DOD, NASA, and Coast Guard, the statutory and regulatory guidance applies to: (1) Contracts awarded on or after November 8, 1985; and (2) Modifications issued on or after November 8, 1985, regardless of the date of contract award. For all other agencies, the regulatory guidance applies to contracts awarded and modifications issued after January 22, 1991.

If a contract is modified and that modification requires the submission of certified cost or pricing data, the contract must be updated to incorporate the January 1991 version of the clause at FAR 52.214–27, 52.215–22, or 52.215–23 for that modification. This updating is to ensure that the contract includes the requirement for interest on defective pricing reductions for modifications.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For

general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–20, FAR cases 91–99 and 89–37.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 94–4386 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 15

[FAC 90–20; FAR Case 91–96; Item VI]

RIN 9000–AF24

Federal Acquisition Regulation; Clarify Increased Cost or Pricing Data Threshold

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising the Federal Acquisition Regulation (FAR) to clarify application of the $500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard.

DATES: Effective Date: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–96.

SUPPLEMENTARY INFORMATION:

A. Background

Section 804 of the FY 92 Defense Authorization Act, amended 10 U.S.C. 2306a(a)(1) to specify that the $500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract is modified to incorporate the $500,000 threshold. It also specifies that the $500,000 threshold applies to changes or modifications made after December 5, 1991, when the prime contract is modified to incorporate the $500,000 threshold.

An interim rule was published in the **Federal Register** at 57 FR 60570, December 21, 1992. This final rule makes no changes to the interim rule as a result of analysis of public comments.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive basis and the requirements for certified cost or pricing data do not apply. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies. This rule clarifies a rule previously promulgated under FAR Case 91–53, Increase in Cost or Pricing Data Threshold. A request for approval of a revision to reduce the burden of a currently approved information collection requirement concerning Increase in Cost or Pricing Data Threshold was submitted to the Office of Management and Budget (OMB) and approved under OMB control number 9000–0013.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 15 which was published at 57 FR 60570 on December 21, 1992, is hereby adopted as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 94–4387 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 19

[FAC 90–20; FAR Case 91–50; Item VII]

RIN 9000–AF08

Federal Acquisition Regulation; Nonmanufacturer Rule

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the **Federal Register** at 57 FR 60571, December 21, 1992, as Item XI of Federal Acquisition Circular (FAC) 90–16, to a final rule with minor changes. The reference to the Small Business Act in the interim rule has been corrected, and a notification of the Small Business Administration's (SBA's) Procurement Automated Service System was added to the final rule. The address for the SBA was also updated.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–50.

SUPPLEMENTARY INFORMATION:

A. Background

Section 210 of Public Law 101–574 authorizes the SBA to waive the nonmanufacturer rule as it applies to a specific product, as well as to classes of products. Heretofore, SBA waivers were not issued on a contract-by-contract basis but, rather, waivers were issued for classes of products.

An interim rule was published in the **Federal Register** at 57 FR 60571, December 21, 1992, as Item XI of FAC 90–16. This final rule makes minor revisions to the interim rule as a result of analysis of public comments.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this rule. The revisions may have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it may mean more small business set-asides will be possible. An Initial Regulatory Flexibility Analysis (IRFA) was, therefore, prepared and submitted to the Chief Counsel for Advocacy of the SBA. A final analysis has also been performed. A copy of the Final Regulatory Flexibility Analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final With Minor Revisions

Accordingly, the interim rule amending 48 CFR part 19 which was published at 57 FR 60571 on December 21, 1992, is hereby adopted as a final rule with minor revisions.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.102 is amended in the first sentence of paragraph (f)(5)(i) by removing "637" and inserting "8", and adding a sentence at the end of the paragraph; by redesignating paragraphs (f)(5)(iii) and (f)(5)(iv) as (f)(6) and (f)(7), respectively; and revising the new paragraph (f)(7) to read as follows:

19.102 Size Standards.

* * * * *

(f) * * *

(5) * * *

(i) * * * A listing is also available in the SBA's Procurement Automated Source System (PASS).

* * * * *

(7) Requests for waivers shall be sent to the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW., Washington, DC 20416.

* * * * *

[FR Doc. 94–4388 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 19

[FAC 90–20; FAR Case 91–97; Item VIII]

RIN 9000–AF30

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify how to proceed when there is not a reasonable expectation of offers from two or more responsible emerging small businesses (ESB), or when it is necessary to cancel an ESB set-aside and the emerging small business reserve amount established by the Office of Federal Procurement Policy (OFPP) is greater than $25,000. The FAR has also been amended to extend the Small Business Competitiveness Demonstration Program through September 30, 1996.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–97.

SUPPLEMENTARY INFORMATION:

A. Background

The Small Business Competitiveness Demonstration Program, FAR 19.10, is based on the OFPP Policy Directive and Test Plan, dated August 31, 1989. As part of this program, acquisitions in designated industry groups, with an estimated value equal to or less than a specified reserve amount, are set aside for emerging small businesses. OFPP may set a higher reserve amount in the event that emerging small business concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the designated industry groups. OFPP published a notice in the **Federal Register** at 56 FR 46656, September 13, 1991, which increased the reserve amount for the architectural and engineering services industry from $25,000 to $50,000. The increase of an emerging small business reserve amount above $25,000 makes this final rule necessary to clarify the internal Government procedures for proceeding with an acquisition when there is not a reasonable expectation of offers from two or more responsible ESB's or when it is necessary to cancel an ESB set-aside. Section 201 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 extended the Small Business Competitiveness Demonstration Program through September 20, 1996.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule clarifies internal Government procedures for proceeding with an acquisition when (1) the emerging small business (ESB) reserve amount is increased by OFPP above $25,000, (2) there is not a reasonable expectation of offers from two or more responsible ESB's, or (3) it is necessary to cancel an ESB set-aside.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 FR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.1001 is amended in paragraph (b) by revising the second sentence to read as follows:

19.1001 General.

* * * * *

(b) * * * The program will be conducted over the period from January 1, 1989, through September 30, 1996.

* * *

2. Section 19.1006 is amended in paragraph (b)(1) by removing the date "December 31, 1992", and inserting "September 30, 1996" in its place; removing the words "subparagraph (b)(2)" and inserting "subparagraphs (b)(2) and (c)(1)" in its place; and by revising paragraphs (c)(1) and (c)(2) to read as follows:

19.1006 Procedures.

* * * * *

(c) *Emerging small business set-aside.* (1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal

Procurement Policy shall be set aside for ESB's; *provided* that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—

(i) For acquisitions $25,000 or less, proceed in accordance with 13.105 or subpart 19.5; or

(ii) For acquisitions over $25,000, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with (c)(1) (i) or (ii) of this section.

* * * * *

[FR Doc. 94–4389 Filed 3–9–94; 8:45 am]
BILLING CODE 6820–34–M

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48 CFR Part 25

[FAC 90–20; FAR Case 92–619; Item IX]

RIN 9000–AF38

Federal Acquisition Regulation; Removal of Steel Conduit From the FAR Buy American Act Exemption List

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by removing steel conduit (5" and 6") from the FAR Buy American Act exemption list. Market research has uncovered two domestic sources for these products.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 92–619.

SUPPLEMENTARY INFORMATION:

A. Background

Item VII of FAC 90–9, published in the **Federal Register** at 56 FR 67132 December 27, 1991, amended FAR 25.108(d)(1) by adding steel conduit (5" and 6") to the FAR Buy American Act exemption list because of a lack of domestic sources for these products. Additional research has uncovered two domestic sources, so the products are being removed from the list.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–20, FAR case 92–619), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.108 [Amended]

2. Section 25.108 is amended in paragraph (d)(1) by removing the item "Steel conduit (5" and 6")" from the list.

[FR Doc. 94–4390 Filed 3–9–94; 8:45 am]
BILLING CODE 6820–34–M

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48 CFR Parts 25 and 52

[FAC 90–20; FAR Case 91–75; Item X]

RIN 9000–AF00

Federal Acquisition Regulation; Buy American Act—Construction Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule, published in the **Federal Register** at 57 FR 20372, May 12, 1992, as Item II in Federal Acquisition Circular (FAC) 90–11, to a final rule with no revisions. The interim rule amended the Federal Acquisition Regulation (FAR) by modifying the definition of "construction material" to require evaluation of an emergency life safety system as a single construction material under the Buy American Act, regardless of when and how the individual parts or components are delivered to the construction site.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–75.

SUPPLEMENTARY INFORMATION:

A. Background

Section 631 of Public Law 102–141, Treasury, Postal Service and General Government Appropriations Act, requires evaluation of an emergency life safety system as a single construction material under the Buy American Act, regardless of when and how the individual parts or components are delivered to the construction site. The amendments to FAR 25.201 and 52.225–5 implement section 631.

An interim rule was published in the **Federal Register** at 57 FR 20372, May 12, 1992 (FAC 90–11, Item II). This final rule makes no revision to the interim rule after analysis of public comments.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because they increase the potential use of foreign components in construction projects and, therefore, may have an adverse impact on small U.S. businesses who manufacture components of emergency life safety systems. Therefore, an Initial Regulatory Flexibility Analysis was prepared and forwarded to the Chief Counsel for Advocacy for the Small Business Administration. A final analysis has been performed. A copy of the final analysis may be obtained from

the FAR Secretariat (VRS) at General Services Administration, 18th & F Streets NW., room 4037, Washington, DC 20405.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 57 FR 20372, May 12, 1992 (FAC 90–11, Item II), is adopted as a final rule without change.

The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 94–4391 Filed 3–9–94; 8:45 am]
BILLING CODE 6820–34–M

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48 CFR Part 25

[FAC 90–20; FAR Case 92–47; Item XI]

Federal Acquisition Regulation; Examination of Records

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to state that the requirement to notify Congress when the Examination of Records clause is omitted from a contract with a foreign contractor, does not apply to the Department of Defense.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 92–47.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1301(9) of the Fiscal Year 1991 DOD Authorization Act amends section 2312 of title 10, United States Code, repealing the requirement for the Department of Defense to notify Congress when the authority to omit the Examination of Records clause is exercised.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–20, FAR case 92–47), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 4 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.901 is amended by revising paragraph (c) to read as follows:

25.901 Omission of examination of records clause.

* * * * *

(c) *Conditions for omission.* (1) The contracting officer may omit the clause at 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(i) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest; or

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) When a determination under subparagraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215–1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination; except that this requirement is not applicable to the Department of Defense

* * * * *

[FR Doc. 94–4392 Filed 3–9–94; 8:45 am]
BILLING CODE 6820–34–M

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48 CFR Part 31

[FAC 90–20; FAR Case 93–302; Item XII]

RIN 9000–AF42

Federal Acquisition Regulation; Independent Research and Development and Bid and Proposal Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by inserting a date certain with regard to waiving the limitation on the maximum allowable amount of independent research and development and bid and proposal costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR Case 93–302.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements section 1052 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484) which amended 10 U.S.C. 2372(e)(1) concerning waiver of the limitation on total maximum allowable amount of independent research and development and bid and proposal (IR&D/B&P) costs. Section 2372(e)(1) of title 10 was originally added by section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), which was enacted December 5, 1991. Section 1052 then amended 10 U.S.C. 2372(e)(1) by removing the phrase that begins with "on the day before" and ends at the semicolon, and inserted, in lieu thereof, the phrase "on December 4, 1991."

The rule inserts a date certain with regard to the FAR provision for waiving the limitation on the maximum allowable amount of IR&D/B&P costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of Public Law 102–190 on December 5, 1991. The phrase "prior to the enactment of Public Law 102–190" is removed from FAR 31.205–18(c)(2)(iii) (A) and replaced with the phrase "on December 4, 1991."

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for comments is not required. Therefore, the Regulatory Flexibility act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–20, FAR case 93–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–18 [Amended]

2. Section 31.205–18(c)(2)(iii)(A) is amended by removing the words "prior to enactment of Public Law 102–190" and inserting in its place "on December 4, 1991".

[FR Doc. 94–4393 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 32 and 52

[FAC 90–20; FAR case 92–46; Item XIII]

RIN 9000–AF41

Federal Acquisition Regulation; Prompt Payment Overseas

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to reflect a decision by the Armed Services Board of Contract Appeals that the Prompt Payment Act applies to overseas contracts.

DATES: *Effective Date*: March 10, 1994. *Comment Date:*, Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–20, FAR case 92–46 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90–20, FAR case 92–46.

SUPPLEMENTARY INFORMATION:

A. Background

On January 13, 1992, the Armed Services Board of Contract Appeals (ASBCA), in Held & Francke Baukittengesellschaft (ASBCA Nos. 42463 and 42464), held that FAR 32.901 improperly excluded applicability of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) to contracts awarded to foreign contractors for work performed outside the United States. As a result of the ASBCA decision, the Councils have agreed on an interim rule which, in effect, makes the Government liable for payment of interest and interest penalties under the Act for contracts with foreign contractors for work performed or supplies delivered overseas.

Section 32.901 and the clauses at 52.232–25, 52.232–26, and 52.232–27 are amended to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of "foreign vendor" from the clauses.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies, but the interim rule will not significantly impact a substantial number of small entities within the meaning of the Act. The rule only applies to contracts with foreign contractors for work performed overseas by extending the Government's liability to pay interest and penalties under the Prompt Payment Act to such entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610; however, such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–20, FAR case 91–46), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the amendments to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is

necessary because it is essential that uniform guidance on application of the board decision be issued in the FAR.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 32 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including small purchases as defined in subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (*e.g.*, tariffs).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.232–25 [Amended]

3. Section 52.232–25 is amended in the clause heading by removing "(SEP 1992)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text of paragraph (a)(5) of the clause.

52.232–26 [Amended]

4. Section 52.232–26 is amended in the clause heading by removing "(APR 1989)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text in paragraph (a)(4) of the clause.

52.232–27 [Amended]

5. Section 52.232–27 is amended in the clause heading by removing "(APR 1989)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text in paragraph (a)(3) of the clause.

[FR Doc. 94–4394 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 33, 42, and 52

[FAC 90–20; FAR Case 92–301/91–62; Item XIV]

RIN 9000–AF35/9000–AE96

Federal Acquisition Regulation; Federal Courts Administration Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule revising the claim certification procedures and the Alternative Means of Dispute Resolution (ADR) procedures in the FAR. The rule also implements subsection 907(a) of the Federal Courts Administration Act of 1992 and further revises existing ADR coverage. Accordingly, the interim rule published as FAR case 91–62, Item III, in the **Federal Register** at 56 FR 67412, December 30, 1991, concerning Alternative Dispute Resolution, is hereby closed and superseded by this rule.

DATES: *Effective date:* March 10, 1994, except (FAR) 48 CFR 33.201, 33.207(c), (e), and (f), 33.208, and 33.211(e) which are effective as of October 29, 1992. *Applicability dates:* The revisions to FAR 33.201 (definition of "defective certification"), 33.207(e) and (f), and 33.211(e) are applicable with respect to all claims filed before, on, or after October 29, 1992. However, these revisions do not apply to claims that were the subject of an appeal to an agency board of contract appeals or a suit filed in the United States Claims Court prior to October 29, 1992, unless the claim is dismissed without prejudice and is subsequently refiled. Section 33.207(c) is applicable to those certifications executed more than 60 days after publication of this rule in the **Federal Register**. For certifications executed prior to that date, the reference to 33.207(c) in the revised 33.210 definition of "defective certification" shall be deemed to be a reference to prior 33.207(a). *Comment date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–20, FAR case 92–301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 92–301.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572) requires that the person certifying a claim under the Contract Disputes Act (CDA) (41 U.S.C. 601–613) be duly authorized to bind the contractor; specifies the conditions under which a contracting officer does not have to issue a final decision; provides that certifications are not jurisdictional; and provides for payment of interest from the date of initial receipt of the claim or enactment of Public Law 102–572, whichever is later. Public Law 102–572 was enacted on October 29, 1992. This rule revises FAR 33.201, 33.207, 33.208, 33.211, and the clause at 52.233–1, and further revises ADR coverage at 33.202, 33.204, 33.210, 33.214, and 42.302.

B. Regulatory Flexibility Act

The interim revisions may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because they simplify existing policies and procedures for the certification of claims submitted by contractors and are intended to reduce the need for costly litigation which has arisen under the existing regulations. Moreover, the regulatory impact on small entities flows directly from subsection 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572) which serves as the basis for this interim rule. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 92–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,

contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because subsection 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572), which amended the certification requirements for contractor claims filed pursuant to the Contract Disputes Act (CDA), is intended to resolve many of the problems that have arisen under existing CDA procedures. Subsection 907(a) also contains specific effective dates for implementation. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 33, 42, and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 33, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 33, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

2. Section 33.201 is amended by revising the definition title "Alternative dispute resolution" to read "Alternative means of dispute resolution (ADR)", and inserting the word "assisted" before "settlement" in the second sentence; adding, in alphabetical order, the definition "Defective certification"; and revising the definition "Issue in controversy" to read as follows:

33.201 Definitions.

* * * * *

Defective certification, as used in this subpart, means a certificate which alters or otherwise deviates from the language in 33.207(c) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

Issue in controversy means a material disagreement between the Government and the contractor which (1) may result in a claim or (2) is all or part of an existing claim.

* * * * *

3. Section 33.202 is amended by revising the first sentence of the paragraph to read as follows:

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. * * *

4. Section 33.204 is revised to read as follows:

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see 5 U.S.C. 572(b)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), Public Law 100–522, agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

5. Sections 33.207 and 33.208 are revised to read as follows:

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in 33.207(c) when submitting any claim—

(1) Exceeding $50,000; or

(2) Regardless of the amount claimed when using—

(i) Arbitration conducted pursuant to 5 U.S.C. 575–580; or

(ii) Any other ADR technique that the agency elects to handle in accordance with the ADRA.

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.804–2(a)(1)(ii) regarding cost or pricing data).

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

33.208 Interest on claims.

(a) The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by 33.207(a)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (See 32.614 for the right of the Government to collect interest on its claims against a contractor).

(c) With regard to claims having defective certifications, as defined in 33.201, interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

6. Section 33.210 is amended by revising the introductory text to read as follows:

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and 33.214, contracting officers are authorized to use ADR procedures to resolve claims. The

authority to decide or resolve claims does not extend to—

* * * * *

7. Section 33.211 is amended by revising paragraph (a)(4)(v); redesignating paragraphs (e), (f), and (g) as (f), (g), and (h); and adding a new paragraph (e) to read as follows:

33.211 Contracting officer's decision.

(a) * * *

(4) * * *

(v) Paragraph substantially as follows: "This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

* * * * *

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding $50,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

* * * * *

8. Section 33.214 is amended by revising the section heading, the first sentence of the introductory text of paragraph (a), paragraphs (a)(5) and (b), and by adding paragraph (d) to read as follows:

33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. * * *

(5) Certification by the contractor in accordance with 33.207 when using ADR procedures to resolve all or part of a claim under the authority of the ADRA.

(b) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

* * * * *

(d) The confidentiality of ADR proceedings shall be protected consistent with 5 U.S.C. 574.

PART 42—CONTRACT ADMINISTRATION

9. Section 42.302 is amended by revising paragraph (a)(10) to read as follows:

42.302 Contract administration functions.

(a) * * *

(10) Attempt to resolve issues in controversy, using ADR procedures when appropriate (see subpart 33.2); prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.233–1 is amended by revising the date of the clause to read "(MAR 1994)" and revising paragraphs (d) through (h) to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (Mar 1994)

* * * * *

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim—

(A) Exceeding $50,000; or

(B) Regardless of the amount claimed, when using—

(1) Arbitration conducted pursuant to 5 U.S.C. 575–580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575–580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

* * * * *

[FR Doc. 94–4395 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 42 and 47

[FAC 90–20; FAR Case 92–53; Item XV]

RIN 9000–AF32

Federal Acquisition Regulation; Defense Traffic Management Regulation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the coverage "Traffic and Transportation Management" of the Federal Acquisition Regulation (FAR) to update the title of the Defense Traffic Management Regulation and to add references to the Military Departments' and Defense Logistics Agency's regulations concerning traffic and transportation management. Cross references were also revised to update the title of the Defense Traffic Management Regulation.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 92–53.

SUPPLEMENTARY INFORMATION:

A. Background

The title of the Military Traffic Management Regulation was revised several years ago but has not been updated, where referenced, in the FAR.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–20, FAR case 92–53), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 47

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 42 and 47 are amended as set forth below:

PART 42–CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR parts 42 and 47 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.1401 is amended by revising paragraph (b)(11) to read as follows:

42.1401 General.

* * * * *

(b) * * *

(11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed $100, as authorized in 41 CFR 101–41.304–2 and, for the Department of Defense (DOD), in Chapter 32, Defense Traffic Management Regulation (DTMR) (AR 55–355, NAVSUPINST 4600.70, AFM 75–2, MCO P–4600.14A, DLAR 4500.3);

* * * * *

42.1402 [Amended]

3. Section 42.1402 is amended in the second sentence of paragraph (a)(2) by removing the words "Military Traffic Management Regulation (MTMR)" and inserting in their place "Defense Traffic Management Regulation (DTMR)".

4. Section 42.1403 is amended by revising paragraph (c)(2) to read as follows:

42.1403 Shipping documents covering f.o.b. origin shipments.

* * * * *

(c) * * *

(2) For DOD shipments, corresponding guidance is in Chapter 32 of the DTMR.

42.1405 [Amended]

5. Section 42.1405 is amended in the last sentence of paragraph (a) by removing "P4610.19" and inserting "P4610.19D" in its place.

PART 47—TRANSPORTATION

6. Section 47.103 is amended by revising paragraph (b)(2) to read as follows:

47.103 Transportation Documentation and Audit Regulation (TDA).

* * * * *

(b) * * *

(2) For DOD shipments, corresponding guidance is in Chapter 32 of the Defense Traffic Management Regulation (DTMR).

* * * * *

47.200 and 47.305 [Amended]

7. In section 47.200(e) remove the words "Military Traffic Management Regulation" and in 47.305–6(f)(1)(ii), remove the words "Military Traffic Management Regulation (MTMR)" and insert "Defense Traffic Management Regulation" in each place.

[FR Doc. 94–4396 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 45

[FAC 90–20; FAR Case 91–73; Item XVI]

RIN 9000–AF02

Federal Acquisition Regulation; Records of Plant Equipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) under Management of Government Property in the Possession of Contractors, to add language on the use of summary records and expand the use of summary records to special tooling and special test equipment costing less than $5,000.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–73.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and the DARC have approved a final rule changing FAR Subpart 45.5, originating from a proposal from industry, to expand the use of summary records for recording and controlling plant equipment to special tooling and special test equipment. A proposed rule was published in the **Federal Register** at 57 FR 40891, September 8, 1992. Under this rule, summary records are permitted to account for multiple quantities of a line item of plant

equipment, special tooling and special test equipment costing less than $5,000, except when the contracting officer determines that individual records are necessary for effective control, calibration, or maintenance. Industry has advised that control and recordkeeping burden is a problem on certain items of individual equipment below $5,000, because of the need to alter property records each time an item in this category is moved within the contractor's facilities. This rule will permit listing only a general location in the summary record for multiple quantities of plant equipment, special tooling, and special test equipment costing less than $5,000 per unit, provided the contractor can locate the property within a reasonable period of time.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule expands the use of summary records to special tooling and special test equipment, thus reducing administrative burden on contractors. We received no comments on the Regulatory Flexibility Act statement in the proposed rule during the public comment period.

C. Paperwork Reduction Act

This rule reduces existing recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* It reduces the information collection hours by extending use of the summary records to special tooling and special test equipment. Therefore, the Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. This reduction in burden has been reflected in a revised clearance for Control Number 9000–0075 submitted under 44 U.S.C. 3501 *et seq.* on October 18, 1993, for approval. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.501 is amended by adding "Summary record" in alphabetical order to read as follows:

§ 45.501 Definitions.

* * * * *

Summary record, as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than $5,000 per unit.

* * * * *

3. Section 45.505–1 is amended by designating the introductory paragraph as paragraph (a); redesignating paragraphs (a) through (g) as (1) through (7); amending the new paragraph (a) by removing the reference "45.505–5a(a)" and inserting "paragraph (b) of this section"; and adding paragraph (b) to read as follows:

§ 45.505–1 Basic information.

* * * * *

(b) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than $5,000 per unit, except where the contract administration office determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (a)(1) through (a)(7) of this section, but may reference a general location, provided the contractor can locate the property within a reasonable period of time.

4. Section 45.505–4 is amended by revising paragraph (a) to read as follows:

§ 45.505–4 Records of special tooling and special test equipment.

* * * * *

(a) Unless summary records are used as authorized under 45.505–1(b), the contractor's property control system shall provide the basic information listed in 45.505–1(a) regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.

* * * * *

5. Section 45.505–5 is amended by revising paragraph (a) to read as follows:

§ 45.505–5 Records of plant equipment.

(a) Unless summary records are used as authorized under 45.505–1(b), the contractor shall maintain individual item records for each item of plant equipment.

* * * * *

[FR Doc. 94–4397 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 45

[FAC 90–20; FAR Case 91–58; Item XVII]

RIN 9000–AE88

Federal Acquisition Regulation; Reports of Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the coverage under Reports of Government Property, to require contractors to report annually all classifications of Government property in their possession. The amendment expands the list of property classifications to be reported to include special tooling, special test equipment, material, and agency peculiar property. The amendment is considered necessary to ensure that the classes of property reported are the same as those defined and to improve the Federal Government's visibility of Government property in the hands of contractors.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–58.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 45.505–14, Reports of Government Property, was published in the **Federal Register** as a proposed rule, with a request for comments (see 57 FR 2818, January 23, 1992). The five responses that were received consisted of one no comment and four comments. Comments

included recommendations to: (1) Revise the beginning of the first sentence of 45.505–14(a); (2) Revise 45.505–14(a)(6) to exempt material issued from stock; (3) establish a standard reporting date for reports of Government property; (4) revise 45.506(b) to delete the reference to $5,000; and (5) revise subparagraphs (a)(4) and (a)(6) of 45.505–14, to include the phrase "not required for nonprofit organizations." After the comments were evaluated, the Councils agreed to publish the rule as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule, while an expanded version of that now in the FAR, is currently in effect in regulations used by the agencies (DOD and NASA) who are accountable for the majority of Government property in the possession of contractors. The rule, therefore, will have a negligible increased effect on small businesses in custody of Government property.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Office of Management and Budget (OMB) Control Number 9000–0075, Government-furnished property requirements, was submitted to OMB under 44 U.S.C. 3501, *et seq.* On March 2, 1992, OMB cleared this information collection through March 31, 1995. A revised OMB clearance for all of part 45, including this burden, was submitted to OMB on October 18, 1993, for approval. No public comments concerning this request were received.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.505–14 is amended by revising paragraph (a) to read as follows:

45.505–14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

(1) Land and rights therein.

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.

(3) Plant equipment.

(4) Special tooling.

(5) Special test equipment.

(6) Material.

(7) Agency peculiar property.

* * * * *

[FR Doc. 94–4398 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 47 and 52

[FAC 90–20; FAR Case 91–10; Item XVIII]

RIN 9000–AE56

Federal Acquisition Regulation; Returnable Cylinders

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule that amends the Federal Acquisition Regulation (FAR) by adding a clause entitled Returnable Cylinders, with its prescriptive language. The clause prescribes the Government's responsibilities relating to the return and accountability of contractor-furnished returnable cylinders.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 91–10.

SUPPLEMENTARY INFORMATION:

A. Background

This change was recommended as a result of the Defense Management Review Regulatory Reform initiative. The Councils determined that language in FAR supplements would be useful for all Federal contracting activities. The proposed rule was published in the **Federal Register** at 56 FR 14298, April 8, 1991. Five substantive comments were received. After evaluating the comments, the coverage has been amended (1) to apply only to cylinders; (2) by adding a definition of the term "cylinder" in the clause; (3) by revising paragraphs (a) and (b) of the clause to eliminate inconsistencies; and (4) to refer to a "loan period" in place of the debit/credit concept previously referenced.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it prescribes Government responsibilities related to the return and accountability of returnable cylinders without imposing an additional burden on contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore 48 CFR parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.305–17 is added to read as follows:

47.305–17 Returnable cylinders.

The contracting officer shall insert the clause at 52.247–66, Returnable Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247–66 is added to read as follows:

52.247–66 Returnable Cylinders.

As prescribed in 47.305–17, insert the following clause:

Returnable Cylinders (May 1994)

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multitank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor's property but shall be loaned without charge to the Government for a period of ____ days [Contracting Officer shall insert number of days] (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination). The Government shall pay the Contractor a rental of $_____ [Contracting Officer shall insert dollar amount for rental, after evaluation of offers] per cylinder, per day, computed separately for cylinders by type, size, and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows: _____ [Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.] These cylinders shall become Government property.

(d) If any lost cylinder is located within _____ [Contracting Officer shall insert number of days] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

[FR Doc. 94–4399 Filed 3–9–94; 8:45 am]
BILLING CODE 6820–34–M

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48 CFR Part 52

[FAC 90–20; FAR Case 93–305; Item XIX]

Federal Acquisition Regulation; Small Business Innovation Research Rights in Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule that amends the Federal Acquisition Regulation (FAR) under the clause Rights in Data—Small Business Innovation Research Program, to increase the small business concern's data rights retention period from 2 to 4 years. This amendment implements Section 15(f) of the revised Small Business Innovation Research (SBIR) Program Policy Directive, published by the Small Business Administration (SBA) in the **Federal Register** at 58 FR 6144, January 26, 1993.

DATES: *Effective Date:* March 10, 1994. *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–20, FAR case 93–305 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–20, FAR case 93–305.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements subsection 15(f) of the revised SBIR Program Policy Directive, published by the SBA in the **Federal Register** at 58 FR 6144, January 26, 1993. Subsection 15(f) implements subsection 103(f)(4) of Public Law 102–564, Small Business Research and Development Enhancement Act of 1992, which increases the small business concern's data rights retention period from 2 to 4 years.

B. Regulatory Flexibility Act

The changes may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it is expected that this interim rule will benefit small businesses as it increases the small business concern's data rights retention period under the SBIR program from 2 to 4 years. As Initial Regulatory Flexibility Analysis (IRFA) has, therefore, not been prepared. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 93–305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement subsection 15(f) of the revised SBIR Program Policy Directive, published by the SBA in the **Federal Register** at 58 FR 6144, January 26, 1993, and subsection 103(f)(4) of Public Law 102–564, Small Business Research and Development Enhancement Act of 1992. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 52.227–20 [Amended]

2. Section 52.227–20 is amended by revising the date of the clause to read "(MAR 1994)"; in paragraph (d) of the clause, the "SBIR Rights Notice" is amended in the title by revising the date to read "(MAR 1994)"; by amending in the second sentence of the Notice "2 years" to read "4 years"; and by amending in the third sentence of the Notice "2-year period" to read "4-year period".

[FR Doc. 94–4400 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53

[Federal Acquisition Circular 90–20; Item XX]

Federal Acquisition Regulation; Corrections and Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; Technical corrections.

SUMMARY: Technical corrections are being made to FAR parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53 to correct errors, omissions, inconsistencies, references, and terms.

DATES: *Effective Date:* March 10, 1994.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–20, Corrections and Technical Amendments.

List of Subjects in 48 CFR Parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52 and 53

Government procurement.

Dated: Feb. 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53 are amended as set forth in the technical corrections appearing below:

1. The authority citation for 48 CFR parts 1, 3, 5, 15, 16, 19, 31, 42, 48, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.404 [Nomenclature change]

2. Section 1.404(c) is amended by revising "Assistant Administrator for Procurement" to read "Associate Administrator for Procurement".

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104–9 [Corrected]

3. Section 3.104–9(c)(2) is amended in item 1 of the certificate entitled "Contracting Officer Certificate of Procurement Integrity" by adding "I" after "certificate,".

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Nomenclature change]

4. Section 5.207(b) is amended in the last sentence of Item 4 of "Format Item and Explanation/Description of Entry" by removing the words "National Bureau of Standards" and inserting "National Institute of Standards and Technology (NIST)" in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.804–6

[Corrected]

5. Section 15.804–6 is corrected in the second sentence of paragraph 1 of Table 15–2 by revising "7A" to read "8A".

PART 16—TYPES OF CONTRACTS

6. Section 16.204 is amended by revising the third sentence and adding a fourth sentence to read as follows:

16.204 Fixed-price incentive contracts.

* * * See 16.403 for more complete descriptions, application, and limitations for these contracts. Prescribed clauses are found at 16.405.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. Section 19.102 is amended in the table consisting of industry size standards in Major Group 73, by revising SIC codes 7371 through 7379 to read as follows:

19.102 Size standards.

* * * * *

MAJOR GROUP 73—BUSINESS SERVICES

*	* * * *	
7371	Computer Programming Services.	$14.5
7372	Prepackaged Software	14.5
7373	Computer Integrated Systems Design.	14.5
7374	Computer Processing and Data Preparation and Processing Services.	14.5
7375	Information Retrieval Services.	14.5
7376	Computer Facilities Management Services.	14.5
7377	Computer Rental and Leasing.	14.5
7378	Computer Maintenance and Repair.	14.5
7379	Computer Related Services, N.E.C.	14.5
*	* * * *	

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–38 [Corrected]

8. Section 31.205–38 is corrected in paragraph (c)(2)(iii) by revising "December 22" to read "December 15".

PART 42—CONTRACT ADMINISTRATION

42.701 [Corrected]

9. Section 42.701 is corrected in the definition "business unit" by revising the parenthetical to read "(see 31.001)".

PART 48—VALUE ENGINEERING

48.104–1 [Corrected]

10. Section 48.104–1 is corrected in paragraph (a)(2)(i) by removing the word "new" and inserting "net" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.210–1 is amended by revising the heading and paragraph (a) of the provision to read as follows:

52.210–1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

* * * * *

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Federal Supply Service Bureau Specifications Section (3FBP–W), 470 East L'Enfant Plaza, SW., suite 8100, Washington, DC 20407 (Tel. 202–755–0325 or 755–0326), or from any of the General Services

Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX. Additional copies may be purchased from the GSA Specifications Section in Washington, DC.

* * * * *

52.201–2 [Amended]

12. Section 52.210–2 is amended in the last paragraph of the provision by removing the entries "Telex Number", "Western Union Number", and "Telephone Number" and inserting "Facsimile No. 215–697–2978" in their place.

52.228–8 [Corrected]

13. Section 52.228–8 is corrected in the introductory text by adding an "s" to "solicitation", and at the end of paragraph (a)(2) of the clause by revising the parenthetical to read "(28 U.S.C. 2671–2680)".

14. Section 52.232–25 is corrected in the introductory text by reinstating paragraph (b), [inadvertently removed at 54 FR 1337, March 31, 1989], to read as follows:

52.232–25 Prompt payment.

* * * * *

(b) As prescribed in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

* * * * *

52.246–21 [Corrected]

15. Section 52.246–21 is corrected in paragraph (a) of the clause by revising "paragraph (j)" to read "paragraph (i)".

PART 53—FORMS

53.213 [Corrected]

16. Section 53.213 is corrected in the section heading by adding an "s" to the end of the word "purchase" the first time it is used.

53.214 [Amended]

17. Section 53.214 is amended at the end of paragraphs (a) and (c) by adding a sentence to read as follows: "Pending issuance of a new edition of the form, the reference in block 1 should be amended to read 15 CFR 700."

18. Section 53.222 is amended at the end of paragraph (e) by adding a sentence to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH–347).

* * * * *

(e) * * * Pending issuance of a new edition of the form, the "prescribed by" reference at the bottom right of the form is revised to read "53.222(e)".

* * * * *

Subpart 53.3—Illustration of Forms

19. In section 53.301–254, Standard Form 254 is revised; in section 53.301–255, Standard Form 255 is revised; and in section 53.302–333 Optional Form 333 is revised to read as follows:

BILLING CODE 6820–34–M

STANDARD FORM (SF) 254	Architect–Engineer and Related Services Questionnaire	Form Approved OMB No. 9000–0004

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0004), Washington, D.C. 20503.

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect–Engineer and Related Services Questionnaire," is provided for that purpose. Interested A–E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A–E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect–Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e., Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant," as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.
   1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)
2. Provide date the firm was established under the name shown in question 1.
3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.
4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.).

   Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman–owned (See 48 CFR 19.101 and 52.219–9).
5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest–tier owner.

   5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.
6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.
7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A–E and related services.

   7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)
8. Show total number of employees, by discipline, in submitting office. (*If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.

STANDARD FORM (SF) **254**

Architect–Engineer and Related Services Questionnaire

9. Using chart (below) insert appropriate index number to indicate range of profesional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX		INDEX	
1.	Less than $100,000	5.	$1 million to $2 million
2.	$100,000 to $250,000	6	$2 million to $5 million
3.	$250,000 to $500,000	7.	$5 million to $10 million
4.	$500,000 to $1 million	8.	$10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encournged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (new firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employee of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

001 Acoustics, Noise Abatement
002 Aerial Photogrammetry
003 Agricultural Development; Grain Storage; Farm Mechanization
004 Air Pollution Control
005 Airports; Navaids; Airport Lighting; Aircraft Fueling
006 Airports; Terminals & Hangars; Freight Handling
007 Arctic Facilities
008 Auditoriums & Theatres
009 Automation; Controls; Instrumentation
010 Barracks; Dormitories
011 Bridges
012 Cemeteries *(Planning & Relocation)*
013 Chemical Processing & Storage
014 Churches; Chapels
015 Codes; Standards; Ordinances
016 Cold Storage; Refrigeration; Fast Freeze
017 Commercial Building *(low rise)*; Shopping Centers
018 Communications Systems; TV; Microwave
019 Computer Facilities; Computer Service
020 Conservation and Resource Management
021 Construction Management
022 Corrosion Control, Cathodic Protection; Electrolysis
023 Cost Estimating
024 Dams *(Concrete; Arch)*
025 Dams *(Earth; Rock)*; Dikes; Levees
026 Desalinization *(Process & Facilities)*
027 Dining Halls; Clubs, Restaurants
028 Ecological & Archeological Investigations
029 Educational Facilities; Classrooms
030 Electronics
031 Elevators; Escalators; People-Movers
032 Energy Conservation; New Energy Sources
033 Environmental Impact Studies, Assessments or Statements
034 Fallout Shelters, Blast-Resistant Design
035 Field Houses; Gyms; Stadiums
036 Fire Protection
037 Fisheries, Fish Ladders
038 Forestry & Forest Products
039 Garages; Vehicle Maintenance Facilities; Parking Decks
040 Gas Systems *(Propane; Natural, Etc.)*
041 Graphic Design
042 Harbors; Jetties; Piers, Ship Terminal Facilities
043 Heating; Ventilating; Air Conditioning
044 Health Systems Planning
045 Highrise; Air-Rights-Type Buildings
046 Highways; Streets; Airfield Paving Parking Lots
047 Historical Preservation
048 Hospital & Medical Facilities
049 Hotels; Motels
050 Housing *(Residential, Multi-Family; Apartments; Condominiums)*
051 Hydraulics & Pneumatics
052 Industrial Buildings; Manufacturing Plants
053 Industrial Processes; Quality Control
054 Industrial Waste Treatment
055 Interior Design; Space Planning
056 Irrigation; Drainage
057 Judicial and Courtroom Facilities
058 Laboratories; Medical Research Facilities
059 Landscape Architecture
060 Libraries; Museums; Galleries
061 Lighting *(Interiors; Display; Theatre, Etc.)*
062 Lighting *(Exteriors; Streets; Memorials; Athletic Fields, Etc.)*
063 Materials Handling Systems; Conveyors; Sorters
064 Metallurgy
065 Microclimatology; Tropical Engineering
066 Military Design Standards
067 Mining & Mineralogy
068 Missile Facilities *(Silos; Fuels; Transport)*
069 Modular Systems Design; Pre-Fabricated Structures or Components
070 Naval Architecture; Off-Shore Platforms
071 Nuclear Facilities; Nuclear Shielding
072 Office Buildings; Industrial Parks
073 Oceanographic Engineering
074 Ordnance; Munitions; Special Weapons
075 Petroleum Exploration; Refining
076 Petroleum and Fuel *(Storage and Distribution)*
077 Pipelines *(Cross-Country - Liquid & Gas)*
078 Planning *(Community, Regional, Areawide and State)*
079 Planning *(Site, Installation, and Project)*
080 Plumbing & Piping Design
081 Pneumatic Structures, Air-Support Buildings
082 Postal Facilities
083 Power Generation, Transmission, Distribution
084 Prisons & Correctional Facilities
085 Product, Machine & Equipment Design
086 Radar; Sonar; Radio & Radar Telescopes
087 Railroad; Rapid Transit
088 Recreation Facilities *(Parks, Marinas, Etc.)*
089 Rehabilitation *(Buildings; Structures; Facilities)*
090 Resource Recovery; Recycling
091 Radio Frequency Systems & Shieldings
092 Rivers; Canals; Waterways; Flood Control
093 Safety Engineering; Accident Studies; OSHA Studies
094 Security Systems; Intruder & Smoke Detection
095 Seismic Designs & Studies
096 Sewage Collection, Treatment and Disposal
097 Soils & Geologic Studies; Foundations
098 Solar Energy Utilization
099 Solid Wastes; Incineration; Land Fill
100 Special Environments; Clean Rooms, Etc.
101 Structural Design; Special Structures
102 Surveying; Platting; Mapping; Flood Plain Studies
103 Swimming Pools
104 Storm Water Handling & Facilities
105 Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
106 Testing & Inspection Services
107 Traffic & Transportation Engineering
108 Towers *(Self-Supporting & Guyed Systems)*
109 Tunnels & Subways
110 Urban Renewals; Community Development
111 Utilities *(Gas & Steam)*
112 Value Analysis; Life-Cycle Costing
113 Warehouses & Depots
114 Water Resources; Hydrology; Ground Water
115 Water Supply; Treatment and Distribution
116 Wind Tunnels; Research/Testing Facilities Design
117 Zoning; Land Use Studies
201 _____
202 _____
203 _____
204 _____
205 _____

STANDARD FORM (SF) **254** Architect-Engineer and Related Services Questionnaire	1. Firm Name/Business Address: 1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office	2. Year Present Firm Established	3. Date Prepared:
		4. Specify type of ownership and check below, if applicable. A. Small Business B. Small Disadvantaged Business C. Woman-owned Business	

5. Name of Parent Company, if any:	5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title/Telephone

1)

2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office — 7a. Total Personnel _____

8. Personnel by Discipline: (List each person only once, by primary function.)

____ Administrative	____ Electrical Engineers	____ Oceanographers	____ _____
____ Architects	____ Estimators	____ Planners: Urban/Regional	____ _____
____ Chemical Engineers	____ Geologists	____ Sanitary Engineers	____ _____
____ Civil Engineers	____ Hydrologists	____ Soils Engineers	____ _____
____ Construction Inspectors	____ Interior Designers	____ Specification Writers	____ _____
____ Draftsmen	____ Landscape Architects	____ Structural Engineers	____ _____
____ Ecologists	____ Mechanical Engineers	____ Surveyors	____ _____
____ Economists	____ Mining Engineers	____ Transportation Engineers	____ _____

9. Summary of Professional Services Fees Received: (Insert index number)

	Last 5 Years (most recent year first)				
	19____	19____	19____	19____	19____
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees
INDEX
1. Less than $100,000
2. $100,000 to $250,000
3. $250,000 to $500,000
4. $500,000 to $1 million
5. $1 million to $2 million
6. $2 million to $5 million
7. $5 million to $10 million
8. $10 million or greater

STANDARD FORM 254 PAGE 4 (REV. 11-92)

10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)			21)		
2)			12)			22)		
3)			13)			23)		
4)			14)			24)		
5)			15)			25)		
6)			16)			26)		
7)			17)			27)		
8)			18)			28)		
9)			19)			29)		
10)			20)			30)		

11. Project Examples, Last 5 Years

Profile Code	"P," "C," "JV," or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

STANDARD FORM 254 PAGE 5 (REV. 11-92)

STANDARD FORM 264 PAGE 6 (REV. 11-92)

8	9	10	11	12	13	14	15	16	17	18	19

		20			
		21			
		22			
		23			
		24			
		25			
		26			
		27			
		28			
		29			
		30			

12. The foregoing is a statement of facts

Signature: _____ Typed Name and Title: _____

Date:

*U.S. GPO: 1993-351-266

STANDARD FORM (SF) **255**

Architect–Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 9000–0005

Public reporting burden for this collection of information is estimated to average 1 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D C 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0005), Washington, D C 20503

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants," as used in this questionnaire, refer to individuals who will have major project responsibility or will provide **unusual or unique** capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.

2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of consultant personnel by discipline proposed for subject project on line (A). Insert the number of in-house personnel by discipline proposed for subject project on line (B). While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines -- sociologists, biologists, etc. -- and number of people in each, in blank spaces

5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, sociological, environmental, etc.).

5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

STANDARD FORM (SF) 255

Architect–Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration
Washington, D.C. 20405

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), and name and phone number of individual to contact for reference (preferably the project manager), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A–E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non-Federal Governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A–E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect–engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

STANDARD FORM (SF) 255 Architect-Engineer and Related Services Questionnaire for Specific Project	1. Project Name/Location for which Firm is Filing:	2a. *Commerce Business Daily* Announcement Date, if any:	2b. Agency Identification Number, if any:

3. Firm (or Joint-Venture) Name & Address	3a. Name, Title & Telephone Number of Principal to Contact
	3b. Address of office to perform work, if different from Item 3

4. Personnel by Discipline: (List each person only once, by primary function.) Enter proposed consultant personnel to be utilized on this project on line (A) and in-house personnel on line (B).

(A)	(B)	Administrative	(A)	(B)	Electrical Engineers	(A)	(B)	Oceanographers	(A)	(B)					
(A)	(B)	Architects	(A)	(B)	Estimators	(A)	(B)	Planners Urban/Regional	(A)	(B)					
(A)	(B)	Chemical Engineers	(A)	(B)	Geologists	(A)	(B)	Sanitary Engineers	(A)	(B)					
(A)	(B)	Civil Engineers	(A)	(B)	Hydrologists	(A)	(B)	Soils Engineers	(A)	(B)					
(A)	(B)	Construction Inspectors	(A)	(B)	Interior Designers	(A)	(B)	Specification Writers	(A)	(B)					
(A)	(B)	Draftsmen	(A)	(B)	Landscape Architects	(A)	(B)	Structural Engineers	(A)	(B)					
(A)	(B)	Ecologists	(A)	(B)	Mechanical Engineers	(A)	(B)	Surveyors	(A)	(B)					
(A)	(B)	Economists	(A)	(B)	Mining Engineers	(A)	(B)	Transportation Engineers	(A)	(B)	Total Personnel				

5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint-Venture previously worked together? ☐ Yes ☐ No

STANDARD FORM 255 PAGE 3 (REV 11-92)

8. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).		
Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

STANDARD FORM 255 PAGE 4 (REV. 11-92

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment.	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 PAGE 5 (REV. 11-92

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 PAGE 6 (REV 11-92)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 PAGE 7 (REV. 11-92)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 PAGE 8 (REV 11-92)

8. Work by firms or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address and Project Manager's Name & Phone Number	d. Completion Date (actual or estimated)	e. Estimated Cost (in Thousands)	
				Entire Project	Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

STANDARD FORM 255 PAGE 8 (REV. 11-92)

9. All work by firms or joint-venture members currently being performed directly for Federal agencies.					
a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent Complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Is Responsible

STANDARD FORM 255 PAGE 10 (REV 11-82)

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Signature: _____ Typed Name and Title: _____ Date:

STANDARD FORM 255 PAGE 11 (REV 11-92)

U.S. GPO: 1993-351-344

PROCUREMENT INTEGRITY CERTIFICATION FOR PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I, _____, hereby certify that
(Insert typed or printed name)

I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL	DATE
DEPARTMENT OR AGENCY	OFFICE TELEPHONE NUMBER

This form is authorized for use and local reproduction

Optional Form 333 (10/92)
Prescribed by GSA - FAR 48 CFR 53.203(b)

NAME OF PROCUREMENT OFFICIAL _____ SOCIAL SECURITY NUMBER _____

PRIVACY ACT NOTICE TO EMPLOYEES AND OFFICIALS

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:

AUTHORITY FOR COLLECTION OF INFORMATION: 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Optional Form 333, Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

PRINCIPAL PURPOSE FOR COLLECTION OF THIS INFORMATION:

To obtain and maintain a completed certification from any person designated as a "Procurement official" as defined by 41 U.S.C. 423 and applicable procurement regulations.

ROUTINE USES WHICH MAY BE MADE OF THE COLLECTED INFORMATION:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the *Federal Register* periodically by OPM.

OPTIONAL FORM (REV. 10/92) 333 BACK

[FR Doc. 94-4401 Filed 3-9-94; 8:45 am]
BILLING CODE 6820-34-C

federal register

Thursday
March 10, 1994

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

List of Approved OMB Clearance Requests With Extended Expiration Dates; Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

List of Approved OMB Clearance Requests With Extended Expiration Dates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of approved information collection requests and current expiration dates.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has obtained Office of Management and Budget (OMB) clearance of information collection requirements contained in the FAR. In lieu of reissuing Standard and Optional Forms to reflect extended OMB approval dates, and to reduce costs of reprinting forms, we are publishing this document to give notice of all information collection requests and their current expiration dates. FAR users should make appropriate pen-and-ink changes on any listed forms containing expiration dates that differ from the dates published in this notice.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, FAR Secretariat, General Services Administration, (202) 501–4755.

OBTAINING COPIES: Interested parties may obtain copies of this document or OMB application packages from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite the OMB control number and associated FAR case number in all requests for OMB clearance packages.

TABLE OF STANDARD FORMS AND OMB EXPIRATION DATES

Standard form	Edition	OMB control number	Expiration date
1. SF–24	Rev. 1/90	9000–0045	9/30/95
2. SF–25	Rev. 1/90	9000–0045	9/30/95
3. SF–25A	Rev. 1/90	9000–0045	9/30/95
4. SF–25B	Rev. 10/83	9000–0045	9/30/95
5. SF–28	Rev. 1/90	9000–0001	10/31/95
6. SF–34	Rev. 1/90	9000–0045	9/30/95
7. SF–35	Rev. 1/90	9000–0045	9/30/95
8. SF–119	Rev. 1/90	9000–0003	9/30/95
9. SF–129	Rev. 6/90	9000–0002	10/31/94
10. SF–254	Rev. 11/92	9000–0004	3/31/96
11. SF–255	Rev. 11/92	9000–0005	3/31/96
12. SF–273	Rev. 8/90	9000–0045	9/30/95
13. SF–274	Rev. 8/90	9000–0045	9/30/95
14. SF–275	Rev. 8/90	9000–0045	9/30/95
15. SF–294	Rev. 1/90	9000–0006	9/30/95
16. SF–295	Rev. 1/90	9000–0007	9/30/95
17. SF–1403	Rev. 9/88	9000–0011	10/31/94
18. SF–1404	Rev. 9/88	9000–0011	10/31/94
19. SF–1405	Rev. 9/88	9000–0011	10/31/94
20. SF–1406	Rev. 9/88	9000–0011	10/31/94
21. SF–1407	Rev. 9/88	9000–0011	10/31/94
22. SF–1408	Rev. 9/88	9000–0011	10/31/94
23. SF–1411	Rev. 7/87	9000–0013	3/31/96
24. SF–1412	Rev. 4/93	9000–0013	3/31/96
25. SF–1412A	Rev. 4/93	9000–0013	3/31/96
26. SF–1413	Rev. 6/89	9000–0014	3/31/95
27. SF–1416	Rev. 1/90	9000–0045	9/30/95
28. SF–1417	Rev. 8/90	9000–0037	1/31/96
29. SF–1423	Rev. 12/88	9000–0015	4/30/95
30. SF–1424	Rev. 7/89	9000–0015	4/30/95
31. SF–1426	Rev. 7/89	9000–0015	4/30/95
32. SF–1427	Rev. 7/89	9000–0015	4/30/95
33. SF–1428	Rev. 7/89	9000–0015	4/30/95
34. SF–1429	Rev. 7/89	9000–0015	4/30/95
35. SF–1430	Rev. 7/89	9000–0015	4/30/95
36. SF–1431	Rev. 7/89	9000–0015	4/30/95
37. SF–1432	Rev. 7/89	9000–0015	4/30/95
38. SF–1433	Rev. 7/89	9000–0015	4/30/95
39. SF–1434	Rev. 7/89	9000–0015	4/30/95
40. SF–1435	Rev. 7/89	9000–0012	5/31/95
41. SF–1436	Rev. 7/89	9000–0012	5/31/95
42. SF–1437	Rev. 7/89	9000–0012	5/31/95
43. SF–1438	Rev. 7/89	9000–0012	5/31/95
44. SF–1439	Rev. 7/89	9000–0012	5/31/95
45. SF–1440	Rev. 7/89	9000–0012	5/31/95
46. SF–1443	Rev. 10/82	9000–0010	8/31/96
47. SF–1444	Rev. 10/87	9000–0089	2/28/96
48. SF–1445	Rev. 10/87	9000–0089	2/28/96
49. SF–1446	Rev. 10/87	9000–0089	2/28/96

Dated: February 22, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 94–4380 Filed 3–9–94; 8:45 am]

BILLING CODE 6820–34–M

Federal Register

Thursday
March 10, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved addendum to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pari-Mutuel Racing Addendum to the Gaming Compact Between the Three Affiliated Tribes and the State of North Dakota, which was executed on April 14, 1993.

DATES: This action is effective March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 1, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–5465 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
March 10, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

White Mountain Apache Indian Reservation, AZ; Environmental Impact Statement; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

White Mountain Apache Indian Reservation, AZ; Environmental Impact Statement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bureau of Indian Affairs (BIA) is issuing this notice to advise the public that it intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the construction of a proposed water development project on the White Mountain Apache Indian Reservation in Navajo County located in east central Arizona. The BIA originally published a Notice of Intent in the November 30, 1987, **Federal Register** and held public scoping meetings on December 15, 1987, in Whiteriver, Arizona and December 16, 1987, in Phoenix, Arizona. The National Environmental Policy Act (NEPA) compliance process has been held in abeyance since that time to allow for additional planning and information gathering. It is now determined that it is appropriate to resume that process.

This notice is being furnished as required by the NEPA regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of the issues to be addressed in the EIS. Comments and participation in this scooping process are solicited.

DATES: Written comments should be received by March 30, 1994. Scoping meetings to identify issues and alternatives to be evaluated in the EIS will be held on March 30, 1994, at the White Mountain Apache Tribal Headquarters, Hwy 73, Whiteriver, Arizona at 7 p.m. The second scoping meeting is scheduled for March 31, 1994, at the Holiday Inn Crown Plaza, Adams and Central Avenue (downtown), Phoenix, Arizona at 7 p.m. Oral and written comments along with participation by the public in the scoping process is encouraged and should be directed to the addresses provided below.

ADDRESSES: Comments should be addressed to Mr. Walter Mills, Phoenix Area Director, Bureau of Indian Affairs, P.O. Box 10, Phoenix, Arizona 85001 and/or Mr. Ben Nuvamsa, Superintendent, Bureau of Indian Affairs, Fort Apache Agency, P.O. Box 560, Whiteriver, Arizona 85941.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Environmental Protection Officer, Bureau of Indian Affairs, Phoenix Area Office, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6750 or Mr. Dennis Jones, Land Operations Officer, BIA Fort Apache Agency, P.O. Box 560, Whiteriver, Arizona 85941, Telephone (602) 338–5378.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs in cooperation with the White Mountain Apache Tribe will prepare an Environmental Impact Statement on a proposed water development project located on the Fort Apache Indian Reservation in Arizona. The proposed action involves the construction and operation of the proposed Miner Flat Dam Project and associated facilities on the White River in the Salt River Drainage system. Alternative structures and locations will be analyzed. The need for the proposed project is to expand an irrigation system for agriculture development, recreational benefits and hydropower production for residential, community, and industrial purposes on the reservation.

Significant issues to be addressed during the scoping process include: Biotic (threatened and endangered species); archeological, cultural and historical sites; socioeconomic conditions; visual and land use; resource use patterns; air and water quality. Potential environmental impacts that may result from the proposal are: Cultural, biological and water resources.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et. seq.) and the Department of the Interior Manual (516 DM 1–6).

Dated: March 3, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–5484 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
March 10, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Drug Elimination; Technical Assistance Program; Notice of Funding Availability for Fiscal Year 1994

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3710; FR–3636–N–01]

Public Housing Drug Elimination; Technical Assistance Program; Notice of Funding Availability for FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Public Housing Drug Elimination Technical Assistance Program Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994.

SUMMARY: This NOFA announces the FY 1994 availability of $1,255,175 to fund qualified applicants selected under the FY 1993 NOFA and to invite additional applicants. The purpose of this program is to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), and incorporated resident councils (RCs) that are combating abuse of controlled substances in public and Indian housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, selection criteria, eligible and ineligible activities, application processing, consultant eligibility, and consultant application processing.

DATES: This NOFA is effective upon publication. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the Application Kit. There is no application submission deadline for short-term technical assistance funds available under this NOFA. Technical assistance applications will be reviewed on a continuing basis, until funds available under this NOFA are expended.

ADDRESSES: (a) An application kit may be obtained from the local HUD Field Office with jurisdiction or by calling HUD's Drug Information and Strategy Clearinghouse on 1–800–578–3472. The application kit contains information on all exhibits and requirements of this NOFA.

(b) An applicant must submit the application to the address specified in the application kit.

(c) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Native American Programs (ONAP) with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Public Housing Division, or Administrator, Office of Native American Programs.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Drug Free Neighborhoods Division (DFND), Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0133.

I. Purpose and Substantive Description

(a) Authority

Funds for both training and this technical assistance (TA) program have been appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act).

The TA program is intended to provide immediate, short-term (90 days for completion) training, recommendations and assistance to assess needs, train staff and residents, identify and design appropriate anti-drug strategies, and generally prepare and educate public housing and resident organization staff and residents to address problems related to the abuse of controlled substances in public housing communities. Housing authorities and eligible resident organizations with or without a drug elimination grant in their communities are encouraged to use this resource. Technical assistance is not intended for program implementation or the financial support of existing programs.

(b) Allocation Amounts

A total of $1,000,000 in FY 1994 funds is being made available under this NOFA. In addition, $255,175 in FY 1993 recoveries is available under this NOFA, for a combined total of $1,255,175. Of this amount, approximately $340,000 will be use for applicants who received sufficient points for funding under the FY 1993 NOFA after FY 1993 funds were exhausted. The remaining amount, approximately $660,000, is available for new applications for short-term technical assistance of up to $10,000 per request.

(c) Eligibility

The following is a listing of eligible applicants, eligible consultants, eligible activities, ineligible activities, and general program requirements under this NOFA.

(1) Eligible Applicants

(i) Public housing agencies (PHAs), Indian housing authorities (IHAs), incorporated resident councils (RCs), resident organizations (ROs) in the case of IHAs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this NOFA.

(ii) An eligible RC or RO must be an incorporated nonprofit organization or association that meets each of the following requirements:

(A) It must be representative of the residents it purports to represent.

(B) It may represent residents in more than one development or in all of the developments of a PHA or IHA, but it must fairly represent residents from each development that it represents.

(C) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(D) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represent.

(iii) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with an IHA. An RMC must have each of the following characteristics:

(A) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(B) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation.

(C) It must have an elected Board of Directors.

(D) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(E) Its voting members must be residents of the development or developments it manages.

(F) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(G) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this NOFA for a resident organization.)

(iv) Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other TA requests from the same applicant.

(v) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public Housing Drug Elimination Program.

(vi) In circumstances determined by HUD to be drug-related and to require immediate attention, eligible parties may receive technical assistance initiated and approved by HUD. These circumstances may include, for example, pervasive violence, disputes among tenants, and disputes between tenants and management. HUD will use the procedures of this NOFA to select a consultant in these cases.

(2) Eligible Consultants

Consultants who want to provide short-term technical assistance services under this NOFA must be listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND). To be included in that database, consultants must complete, in accordance with the requirements of section I.(c)(2)(ii), below, of this NOFA, a consultant application packet available from the Drug Information and Strategy Clearinghouse at 1–800–578–3472 and submit the packet to the address specified in the application kit. (This is a toll-free number.)

(i) Consultant eligibility. HUD is seeking individuals or entities who have experience working with public or Indian housing, or other low-income populations to provide short-term technical assistance under this NOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(A) PHA/IHA-related experience: Agency organization and management; facility operations; program development; experience working with residents and community organizations.

(B) Drug-related experience: Prevention/intervention programs; enforcement strategies; alternative programs.

(C) HUD especially encourages PHAs, IHAs, PHA/IHA employees, RMCs, incorporated resident councils and resident organizations, and public and Indian housing residents, with experience in the above areas, to submit a consultant application for eligibility under this NOFA. Eligible consultants will be entered into the Consultant Database for possible recommendation to Technical Assistance applicants.

(ii) Applying to be a consultant. Individuals or entities interested in being listed in the TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(A) The Consultant Resource Inventory Questionnaire, including three references;

(B) A resume;

(C) A narrative statement regarding the consultant's experience in the specific skills identified on the Resource Inventory Questionnaire, and outlining the consultant's overall approach;

(D) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this NOFA. This evidence can include an accountant's statement, W–2 Wage Statements, or invoices, and should be supplemented with a statement or other evidence of days worked in the course of the particular project (for an invoice) or for a tax year in the case of a W–2 Statement.

(iii) Consultant payment. HUD will determine a specific fee to pay a consultant under this NOFA, subject to a maximum cap of the daily equivalent of the maximum rate paid for ES–IV of the Executive Schedule for Federal White-Collar Workers, based upon the evidence submitted in section I.(c)(2)(D), above, of this NOFA.

(iv) Conflicts of interest. In addition to the conflict of interest requirements in 24 CFR part 85:

(A) No person who is an employee, agent, officer, or appointed official of the applicant may be funded as a consultant to the applicant by this Drug Elimination Technical Assistance program.

(B) Consultants who wish to provide Drug Elimination Technical Assistance services through this program may not have any involvement in the preparation or submission of the TA proposal which requests their services. Any involvement of the consultant will be considered a conflict of interest, which makes the consultant ineligible for providing consulting services to the applicant, and could disqualify the consultant from future consideration.

(3) Eligible Activities

To assist the eligible applicants identified in section I.(c)(1), above, of this NOFA, in responding immediately to drug-related problems in public and Indian housing developments, the U.S. Department of Housing and Urban Development (HUD) has supplemented the Public Housing Drug Elimination Program (PHDEP) and Youth Sports Program (YSP) with funds for short-term technical assistance (TA). Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The TA program is intended to provide short-term, immediate assistance to PHAs, IHAs, RMCs, RCs and ROs developing and/or implementing their drug elimination strategies. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below, or to fund the use of consultants who will assist the applicant in undertaking a task such as program planning and development for future drug elimination strategies, or conducting a needs assessment or survey. To assist housing authorities and resident councils, the TA program funds efforts in:

(i) Assessing drug problems in public or Indian housing development(s) and surrounding community(ies);

(ii) Designing and identifying appropriate anti-drug-related practices and programs in the following areas:

(A) Law enforcement strategies, including resident security patrols;

(B) Management techniques;

(C) Youth initiatives;
(D) Family management/parenting;
(E) Resident intervention and assistance programs;
(F) Community organization and leadership development; and
(G) Other areas that meet the drug elimination purposes of this NOFA, as determined by HUD.

(iii) Training for housing authority staff and residents in anti-drug practices, programs and management;

(iv) Improving overall agency management, operations and programming so that the applicant can more effectively respond to drug problems in the targeted public housing development(s).

(4) Ineligible Activities

(i) Funding is not permitted for any type of monetary compensation for residents unless they are listed in the TA Consultant Database and are working as consultants.

(ii) Funding is not permitted for any activity that is funded under any other HUD program.

(iii) Funding is not permitted for salary or fees to staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(iv) Funding is not permitted for underwriting conferences.

(v) Funding is not permitted for conference speakers unless the speaker will also be providing additional TA as outlined in the eligible activities in sections (c)(3)(i–ii) of this NOFA.

(vi) Funding is not permitted for program implementation, proposal writing, the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

(5) General Program Requirements

(i) Applications for short-term technical assistance may be funded up to $10,000 per request, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs.

(ii) Applicants that have not previously received technical assistance under this program may submit only one application initially. After the applicant's initial technical assistance report has been received and reviewed by HUD or the contractor administering the program, as appropriate, the applicant may submit multiple applications.

(d) Selection Criteria/Ranking Factors

An application must include the minimum required elements listed at section III.(a) of this NOFA, and cannot request assistance for ineligible activities as listed in I.(c)(4)(iv), and will be scored according to the criteria outlined below:

(1) The extent to which the applicant needs short-term technical assistance. This will be measured by the applicant's discussion of the problems that triggered the request for assistance under this NOFA. (Maximum points: 10)

(2) The extent to which the applicant clearly describes the kind of technical assistance and skills needed to address the problems, and how well the technical assistance requested will address the problems. (Maximum points: 10)

(3) The likelihood that the requested technical assistance will assist the applicant's current drug elimination strategy, as described in the application; or, if the applicant does not currently have a strategy, the extent to which the technical assistance will help them develop a drug elimination strategy. (Maximum points: 10)

(e) Application Review, Awards, and Payment

(1) Application Review

Applications will be reviewed as they are received, and will be time- and date-stamped to determine their order of receipt. An application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding. All applications that qualify on the basis of the minimum required elements will be scored on the basis of the selection criteria in section I.(d) of this NOFA. Applications that receive a total of 15 or more points, with no less than 3 points in any of the three selection criteria in section I.(d) of this NOFA will be eligible for funding. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the program administrator until all funds are expended. The basis for each funding decision under this section will be documented.

(2) Application Awards

(i) If the application includes the descriptive letter (or forms) requesting eligible activities, the certification statement (or form), and at least 15 points as described in section I.(e)(1) of this NOFA, it is eligible for funding. If sufficient funds are available to fund the technical assistance request, staff will confer with the applicant to confirm the work requirements. The TA Consultant Database will be searched to choose at least three consultants who (1) have a principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent, or (2) appear to have the requisite knowledge and skills to assist the applicant in addressing its needs. The applicant's preference for a consultant will be taken into account. An HA employee may not serve as a consultant to his or her employer. An HA employee who serves as a consultant must be on annual leave to receive the consultant fee. A list of the suggested consultants will be forwarded to the applicant. From this list, the applicant will recommend the consultant to provide the requested TA. Instructions for consultants to be included in the TA Consultant Database are outlined above in section I.(b)(2) of this NOFA.

(ii) The applicant must contact each TA consultant from the list provided. After making contact with each consultant, the applicant must send a written justification to HUD with a list of the consultants in order of preference, indicating any that are unacceptable, and state the reasons for its preference. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the TA if the request is not in conflict with other requests for the consultant's services.

(iii) Staff designated by HUD will work with the consultant and applicant to develop a statement of work that includes a timeline and estimated budget. The statement of work should also include a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; a description of the current drug elimination strategy, and a discussion of how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a drug elimination strategy. When the statement of work is approved, the consultant will be authorized to start work. The consultant must receive written authorization from HUD or its authorized agent before he or she can begin to provide technical assistance under this NOFA. The applicant and the relevant Field Office or Office of Native American Programs will also be notified. Because this program is for short-term technical assistance, consultants shall only be reimbursed for

a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work.

(3) Payment for TA Consultants

The consultant must submit a report of its activities, findings and recommendations, a fee invoice, and its expenses and receipts to the address specified in the application kit. A copy of the report must also be submitted to the applicant. Required elements of these reports are outlined in the Guidelines for Consultants book, available from the Clearinghouse. After the report and expenses have been approved, and a verbal or written evaluation is received from the applicant, payment will be issued to the consultant. Evaluation forms are then sent to the applicant, to be completed and returned.

II. Application Process

(a) Application Kit. An application kit may be obtained from the local HUD FO or ONAP, or by calling HUD's Drug Information and Strategy Clearinghouse on 1–800–578–3472. The application kit contains information on all exhibits and requirements of this NOFA.

(b) Application Submission. This NOFA is effective upon publication. Short-term (90 days for completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance grants available under this NOFA. Technical assistance applications will be reviewed on a continuing first-come, first-serve basis, until funds under this NOFA are no longer available.

(1) An applicant must submit the application and the necessary assurances to the address specified in the Application Kit.

(2) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Native American Programs with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing, or Administrator, Office of Native American Programs, as appropriate.

III. Checklist of Application Submission Requirements

Each application for a grant under this program must include the following:

(a) An application will not be considered for funding unless it includes, at a minimum, the following elements:

(1) An application letter, of no more than two pages, which responds to each of the selection criteria in section I.(d) of this NOFA, or the completed application forms available in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, and;

(2) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority and the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the NOFA.

(b) HUD Form 2880

(c) If the applicant has a particular consultant to recommend to provide the technical assistance, the response should identify the consultant and the basis for the recommendation. A consultant recommended by an applicant is not guaranteed to be approved to provide the requested technical assistance. If the consultant recommended by an applicant is not listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND), the consultant must apply as outlined in section I.(c)(2), above, of this NOFA. These consultant applications to be included in the TA Consultant Database will be given expedited review by the Department. However, a consultant must be listed to be eligible for funding under this NOFA.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, or by telephone, of any curable technical deficiencies, such as a missing signature in the application. A log of telephone notifications will be maintained. The applicant must correct the deficiency in accordance with the information specified in HUD's notification. The application will not be given further consideration until the deficiency is corrected.

(b) Curable technical deficiencies relate to items that are not necessary to make a determination of an applicant's eligibility. The items necessary for this determination are listed at section III.(a) of this NOFA, although missing signatures on the application letter, certification or forms are curable.

V. Other Matters

(a) Nondiscrimination and Equal Opportunity

The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(5) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of Debarred, Suspended or Ineligible Contractors

Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or

funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Drug-Free Workplace Act of 1988

The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR Part 24, subpart F.

(d) Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(e) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their public housing anti-drug-related efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would, indirectly affect the quality of life for public housing residents.

(f) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their anti-drug efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-drug efforts under this technical assistance program and, therefore, should have positive effects on the target population. As such, the program helps housing authorities to combat serious drug problems in their communities.

(g) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(h) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (approved October 6, 1992, Pub. L. 102–389); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, (approved October 28, 1993, Pub. L. 103–124).

Dated: March 2, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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Thursday
March 10, 1994

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Fiscal Year 1994 for Indian Applicants Under the HOME Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3720; FR–3617–N–01]

Funding Availability (NOFA) for Fiscal Year 1994 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1994 for Indian Applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program.

SUMMARY: This NOFA announces the availability of $12.75 million in funding for Fiscal Year (FY) 1994 for the HOME Program for Indian tribes; provides the selection criteria; provides information on how to apply; and explains how selections will be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA.

DATES: Applications must be received by the Office of Native American Programs (ONAP) having jurisdiction over the applicant on or before 4:30 p.m. (ONAP local time) on July 15, 1994. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate ONAP. Refer to Appendix 1 of this NOFA for a complete list of ONAPs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget for the HOME interim rule and approved under OMB control number 2501–0013.

Changes From Last Year's NOFA

This year there are new forms for the Indian HOME Program. The forms are referenced in the NOFA and will be included in the Application Kit. Other changes from last year include a requirement that the project be ready to go (to be further developed in the Application Kit in the scoring of the evaluation criteria), and clarification of what is a correctable deficiency. Submissions may be for only one project per applicant. No project will receive funding in an amount greater than $1.5 million.

NOFA Outline

I. Purpose and Substantive Description.
(a) Authority.
(b) Allocation Amounts.
(c) Eligibility.
(d) Eligibility Requirements.
(e) Selection Criteria and Ranking Factors.
II. Application Process.
(a) Application Packages.
(b) Submittal of Complete Application.
(c) Application Due Date.
III. Checklist of Application Submission Requirements.
IV. Other Matters.
(a) Environment.
(b) Energy.
(c) Federalism Impact.
(d) Family Impact.
(e) Section 102 of the HUD Reform Act.
(f) Section 103 of the HUD Reform Act.
(g) Section 112 of the HUD Reform Act.
(h) Monitoring.

List of Appendices

Appendix 1. List of local Offices of Native American Programs.

I. Purpose and Substantive Description

(a) Authority

The HOME Investment Partnerships Act (the HOME Act) (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600–92.652) apply specifically to the Indian HOME program.

The HOME Act was amended October 28, 1992 by title II of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550). Amendments to the HOME rule were published on June 23, 1993 (58 FR 34130). Reference in this NOFA to sections and subparts of the HOME rule refer to the rule as amended.

(b) Allocation Amounts

(1) *Fiscal Year 1994 Funding.* In accordance with section 217(a)(2) of the HOME Act, each Fiscal Year (FY) HUD shall provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. Following the procedures in the rule, the funds shall be awarded competitively. HUD will hold a nationwide competition. For the fiscal year ending September 30, 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994, (approved October 28, 1993, Pub. L. 103–124), appropriated a total of $1.275 billion for the HOME program. Thus, the amount of funding available for the HOME Indian program for the fiscal year ending September 30, 1994 is $12.75 million.

(2) For FY 1994, HUD may award at least one grant to each of the areas covered by the Offices of Native American Programs listed in Appendix 1, for the purposes of geographic diversity.

(3) A tribe may only apply for grant assistance for one project.

(4) *Project Grant Amount.* The maximum grant amount per project is $1.5 million. Projects may be funded at less than applied for levels. In determining appropriate grant amounts to be awarded, the ONAP may take into account the level of demand, the scale of the activity proposed relative to need, the number of persons to be served, the amount of funds required to achieve project objectives, and the administrative capacity of the applicant to complete the activities in a timely manner.

(5) If the Department does not award the entire $12.75 million in this funding round because there is not a sufficient number of eligible applications, the amount not awarded shall be awarded at another time.

(c) Eligibility

(1) *Eligible Applicants.* For the purposes of the HOME program, eligible applicants are defined as any Indian Tribe, band, group, or Nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education

Assistance Act are determined by the Bureau of Indian Affairs.

(2) *Eligible Projects.*

(i) *Size and Location of a Project.* A "project" may be located on one or more sites. The applicant must identify the scale and location of a project and show that the project is within the operating area of the applicant. A project may be as small as one site or as large as the operating area of the tribe. (NOTE: For purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the term "project" means one or more activities paid for in whole or in part with HUD financial assistance. Two or more activities that are integrally related, each essential to the other, are considered one project.)

(ii) *Categories of Eligible Projects.* In accordance with 24 CFR 92.604, there are four categories of projects that may be funded under the HOME Indian program: (A) Housing rehabilitation (moderate and substantial), (B) acquisition of housing, (C) new housing construction, and (D) tenant-based rental assistance. Project types (A), (B), and (C) may also include site improvements and relocation. A project may be for rental or homeownership.

(A) A rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation.

(B) An acquisition project consists of the acquisition of standard units not requiring rehabilitation.

(C) A new construction project consists of new construction of housing and may include acquisition and demolition.

(D) A tenant-based rental assistance project consists of tenant-based rental assistance, not tied to specific housing units.

(3) *Eligible Activities.* Eligible activities, in accordance with 24 CFR 92.611, are as follows:

(i) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

(ii) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(iii) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

(iv) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part.

(v) Site improvements must be in keeping with improvements of surrounding, standard projects. Site improvements include roads, streets, sidewalks, curbs, gutters, and connections to utilities, such as storm and sanitary sewers, water supply, gas, and electricity. The "site" of the improvements may include property adjacent or near the immediate site of the housing if this property and the housing are owned by the same entity (e.g., the housing is owned—at least until sold to first-time homebuyers—by the tribe and the housing and the improvements are located on a reservation). If the site improvements will benefit housing (existing or future) in addition to housing assisted with FY 1994 HOME Indian Program grant funds, only a pro-rated share of the site improvements may be charged to the HOME grant.

(d) Eligibility Requirements

The applicant must ensure that its application meets each of the eligibility requirements. The eligibility requirements, to be included in the application package, are:

(1) A description of the proposed project (for this requirement, use Form HUD–4122–I, Indian HOME Program Grants; Project Summary; the component that addresses the summary description of the proposed project). An application must provide a brief narrative summary description of the proposed project that tells HUD what the applicant wants to do with program funds. The applicant must include this brief narrative summary description. While there are no points for this project description requirement, it is a necessary eligibility requirement. For an application to be considered for ranking, rating and funding, it must include a brief description of the project or projects proposed for funding.

(2) A schedule for the implementation of the proposed project (for this requirement, use Form HUD–4125–I, Indian HOME Program Grants; Implementation Schedule; the component that addresses the implementation schedule for the proposed project). An application must provide information that tells HUD about the applicant's schedule for the project and the use of program funds. The applicant must include this information. While there are no points for this project schedule requirement, it is a necessary eligibility requirement. For an application to be considered for ranking, rating and funding, it must include information about the project schedule.

(3) In addition to providing a brief summary project description and project schedule, an application must tell HUD how the project meets the selection criteria. This NOFA presents the selection criteria in section I.(e), below. The selection criteria are taken from the regulation for the HOME program at 24 CFR 92.604. The applicant must tell HUD how its project meets each of the criteria listed in this NOFA. While there are no points for this requirement, it is also an eligibility requirement.

(4) Although Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds, information is required which demonstrates how the project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe (for this requirement use Form HUD–4121–I, Indian HOME Program Grants; Comprehensive Approach; the component that addresses the comprehensive approach for expanding the supply of affordable housing).

(e) Selection Criteria and Ranking Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 92.604, as more fully explained in sections I.(e) (1), (2), and (3) of this NOFA, below. See Figure 1. For an application to be considered for rating, ranking, and funding, all eligibility requirements must be addressed. After rating, the project must receive at least 50 points to be considered for funding. The complete rating and ranking process is described in detail at section I.(e)(4).

HUD suggests that each applicant score its own project, even though there is no requirement to do so. This will help to show how a project might be

scored by the reviewers. It will also help to show if the application meets the eligibility requirement and the minimum point score requirement (50 points), and where the strengths and weaknesses in a project are located. Then, the applicant can strengthen the weaker parts of a project and use the stronger parts as a model. Copies of the scoring sheets that will be used by HUD to evaluate a project are available from the ONAP.

The HOME program is for low-income and very low-income persons. In the application, applicants should provide information on the median income for the community in which the proposed project is located. If this information is not available, the applicant should obtain it from the ONAP.

FIGURE 1.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and design	30
Planning and implementation	40
Leveraging	30

(1) Need and Design—30 points maximum.

The first of the three criteria provided in 24 CFR 92.604 is: The degree to which the proposed project addresses the housing needs of the tribe as identified in the application and through other information available to HUD in the application, and the degree to which the proposed project is feasible while maximizing benefits to very low and low-income families. This first criterion is divided into two parts that will be examined and evaluated separately:

(i) Need—15 points maximum. The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the documentation for the project and through other information available to HUD. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc.

(ii) Project feasibility—15 points maximum. Project feasibility as measured here is the degree to which the number and size of the proposed housing units matches the need for low income housing identified in the previous evaluation factor. Examples: There is a match between the size of the proposed units and the size of units needed by the low income families to be housed. There is a match between the number of proposed units and the number of families to be housed. Documentation for a project must demonstrate that:

(A) The proposed project is feasible for its community in terms of the degree to which it maximizes benefits to very low and low-income persons;

(B) The proposed project shall provide a sufficient number of units of the appropriate size for the need that was identified;

(C) The units are suitable for occupancy (or shall be made suitable);

(D) The units are in compliance with building code requirements or shall be brought into compliance (modular and manufactured homes are eligible forms of housing); and

(E) The project plan shall indicate a schedule for the implementation of the expanded housing opportunities.

(2) Planning and Implementation—40 points maximum.

The second of the three criteria provided in 24 CFR 92.604 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to carry out the project successfully. Applicants must be concrete and specific in describing the financial, administrative, and legal actions involved in the project, and must describe their own administrative capability, existing or planned, to carry out the project. The applicant must demonstrate, using complete cost and revenue estimates for the project, that the proposed project is feasible and meets the regulatory affordability requirements. This criterion is divided into three parts that will be examined and evaluated separately:

(i) Financial—15 points maximum.

(ii) Legal and Administrative Actions—10 points maximum.

(iii) Administrative Staffing—15 points maximum.

(3) Leveraging—30 points maximum.

The third of the three criteria provided in 24 CFR 92.604 is: Leveraging of HOME funds. Leveraging is the degree to which other sources of assistance, including, but not limited to: Loans, advances, equity investments, interest subsidies, State funds, private contributions, and in-kind contributions are used in conjunction with HOME funds to carry out the proposed project. Funds from all such sources to be used for the applicant's project shall be documented by a written commitment and may be contingent on approval of the HOME award. These resources shall be counted only if they are currently available or shall be available within 3 months of grant notification. The degree to which other sources of assistance are used shall be evaluated, and points shall be awarded based upon the number of dollars available from other sources of assistance divided by the number of HOME dollars requested in the application.

(i) Points shall be awarded as presented in Table 1. For example, when one hundred (or more) dollars are made available from other sources of assistance for each one hundred dollars of HOME funds requested in the application, the maximum number of points (30) is awarded. When sixty dollars are made available from other sources of assistance for each one hundred dollars of requested HOME funds, ten points are earned.

TABLE 1.—SCORING GUIDE

Leveraging			
	Ratio	Points	Score
1.	100% or more	30	
2.	80% but less than 100%.	20	
3.	60% but less than 80%.	10	
4.	40% but less than 60%.	5	
5.	Less than 40%	0	

(ii) Ratio as a percentage is computed by dividing the number of dollars made available from other sources of assistance by the number of dollars of HOME funds requested in the application, and multiplying by 100.

(iii) Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal in-kind contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs, administrative costs), etc., which are to be used in conjunction with HOME funds to carry out the proposed project.

(iv) In-kind contributions must be documented. Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it shall be counted if the donation was contingent upon the receipt of the award. All funds, services, and land to be contributed must be documented. Land value shall be counted as a contribution only to the extent of its appraised value. All appraisals shall be in conformance with established and generally recognized appraisal practices and procedures in common use by professional appraisers. Donated services shall be accepted,

provided: First, the costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and second, comparable costs and time estimates are submitted that justify the costs attributable to the donated services or labor. Donated labor shall be valued at a level necessary for the work provided and shall be assessed at the skill level of the individual(s) providing the labor.

(v) The amounts recognized as leverage can include any other Federal grant or assistance program. Loans secured through mortgage loan insurance programs (e.g., section 248 mortgage loan insurance) can be recognized as leverage.

(4) Application Review.

(i) Receipt, eligibility, correctable deficiencies, and non-correctable deficiencies.

(A) Receipt. Upon receipt of the application, the ONAP will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received.

(B) Eligibility. Each application will be screened at the ONAP for eligibility. For the project to be considered further, the applicant must be eligible. If the applicant proposes to involve its IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

(C) Correctable deficiencies. The opportunity to correct a technical, non-substantive deficiency is only given for those deficiencies which would not affect the evaluation of the application. Therefore, only minor administrative deficiencies are correctable. These are a failure to submit a certification with the application or failure to submit a signed certification with the application. An applicant is not permitted to improve its application by filing statements that address substantive requirements after the due date for submissions has passed. If the application has correctable deficiencies, the ONAP shall notify the applicant in writing that the applicant has additional time to submit the missing item or correct the mistake. The ONAP must receive the correction before the end of the selection period.

(D) Non-correctable deficiencies. If the application does not include all the items identified as non-correctable eligibility requirements, the ONAP shall not request any corrections for correctable deficiencies. The ONAP shall set it aside and not transmit it to the national panel. When HUD announces its decisions concerning the funding competition, the ONAP shall notify the applicant whose application did not meet the eligibility requirements.

(ii) Eligibility requirements. Completeness will be determined by the ONAP as to whether the application includes all the non-correctable items, properly prepared and executed, identified in the Checklist of Application Submission Requirements. Following receipt and eligibility determination, but prior to advice to the applicant concerning correctable deficiencies, the application will be reviewed by the ONAP to determine whether the application includes all the items identified as eligibility requirements under the Eligibility Requirements heading. No rating or point scoring will be done. Therefore, ONAP review does not include determining whether the application meets the minimum point score requirement. After these ONAP reviews, each complete application and each application which is complete except for correctable deficiencies will be sent with the ONAP checklist by the ONAP to the national panel for rating and ranking against the evaluation factors.

(iii) Rating and ranking. There will be a single national rating and ranking of projects for a national competition.

The reviewer should use as a guide Figure 2.—Rating Form for Indian HOME Grant Applications, below, to roll-up the scores for each of the selection criteria.

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Figure 2.--Rating Form for Indian HOME Grant Applications.

APPLICANT:

REVIEWER:

DATE:

ELIGIBILITY REQUIREMENTS	Yes	No
1. Submission of Form HUD-4122-I, Indian HOME Program Grants. Project Summary. Component that addresses the summary description of the proposed project.		
2. Submission of Form HUD-4123-I, Indian HOME Program Grants. Cost Summary.		
3. Submission of How Project Meets Selection Criteria.		
4. Submission of Form HUD-4121-I, Indian HOME Program Grants. Comprehensive Approach. Component That Addresses The Comprehensive Approach For Expanding The Supply Of Affordable Housing. How project contributes to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.		
MEETS ALL ELIGIBILITY REQUIREMENTS.....		

POINT SCORES FOR EACH FACTOR	MAX. PTS.	PROJECT SCORE
1. Need and Design	total 30	
a. Housing need	subtotal (15)	
b. Project feasibility	subtotal (15)	
2. Planning and Implementation	total 40	
a. Financial	subtotal (15)	
b. Legal and Administrative Actions	subtotal (10)	
c. Administrative Staffing	subtotal (15)	
3. Leveraging	total 30	
PROJECT TOTAL SCORE	max. 100	

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(A) Merged ranking. After the projects from all applicants have been rated, their scores will be assembled in a single, merged list of scores for all rated projects. There will be a single national list.

(B) Computation. Scores for ranking will be carried out to two decimal places (e.g., 12.34).

(C) Selection. The ranking process will produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The eligibility requirement for further consideration will be 50 out of 100 points. Project applications scoring lower than 50 points will be set aside as non-responsive and ineligible. After rating and ranking but before selection for award, HUD Field ONAPs will perform an environmental review of applications in accordance with 24 CFR part 50, and applications may be re-ranked or disqualified on the basis of the environmental review. Applicants must cooperate in the environmental review process, including supplying HUD with information necessary for HUD to perform the environmental review. Sufficient applications will be rated and ranked to substitute for applications changed in rank or disqualified on the basis of the environmental review. Of the qualifying applications, in general, the project with the highest ranking after environmental review will be funded first, the next highest will be funded second, and so on, continuing through all the projects that have met the eligibility requirements or until the funds are exhausted. However, for the purposes of geographic diversity, HUD may award at least one grant to each of the areas covered by the Offices of Native American Programs listed in Appendix 1.

(D) Tie Breaker. When rating results in a tie among projects, projects will be approved in the following order:

(*1*) Those that can be fully funded over those that cannot be fully funded;

(*2*) Projects that benefit the most very low and low-income persons; and

(*3*) Projects that benefit the highest percentage of the total population of the tribe.

II. Application Process

(a) Application Packages

Although this NOFA provides the public with notice of, and salient information about, the FY 1994 HOME program for Indian applicants, it is the application kit that provides applicants with comprehensive information on how to participate in the program. Applicants should obtain a copy of the application kit, which includes copies of required forms, from any ONAP listed in Appendix 1.

(b) Submittal of Complete Application

Completed applications must be submitted to the ONAP having jurisdiction for the applicant at the address listed at Appendix 1. The application shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) Application Due Date

An applicant may submit an application for a project at any time after the publication date of this NOFA, to the ONAP having jurisdiction over the applicant on or before 4:30 P.M. ONAP local time, July 15, 1994. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies of applications will not be accepted.

III. Checklist of Application Submission Requirements

Each application must contain the following:

(a) _____ Standard Form–424, Application for Federal Assistance. Complete side one only. The Catalog of Federal Domestic Assistance identifies this program as program number 14.239.

(b) _____ Form HUD–4121–I, Indian HOME Program Grants. Comprehensive Approach; component that addresses the Comprehensive Approach For Expanding The Supply Of Affordable Housing. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

(c) _____ Form HUD–4122–I, Indian HOME Program Grants. Project Summary; component that addresses the summary description of the proposed project.

(d) _____ Components that address the selection criteria. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(e)(1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

(e) _____ Form HUD–4123–I, Indian HOME Program Grants. Cost Summary.

(f) _____ Form HUD–4125–I, Indian HOME Program Grants. Implementation Schedule.

(g) _____ Project location map.

(h) _____ Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(i) _____ Form HUD–4126, which contains the following certifications:

(1) A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

(2) A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

(3) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(4) Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

IV. Other Matters

(a) Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) Energy

Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. 24 CFR 92.621: "Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of

American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39." See also 24 CFR sec. 905.250(b) and 24 CFR sec. 85.36(b)(7).

(c) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA shall not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing.

(d) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for indirect, although positive, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the impact on the family is indirect and beneficial. Accordingly, no further review is considered necessary.

(e) Section 102 of the HUD Reform Act

Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics shall provide information of a general nature to HUD employees, as well.

(g) Section 112 of the HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Forms necessary for compliance with the rule may be obtained from the local HUD office.

(h) Monitoring

(i) HUD Monitoring. HUD monitoring will be in accordance with the provisions at 24 CFR 92.650, Performance Reviews.

(ii) Grantee Reports. Grantees must submit performance reports in accordance with 24 CFR 92.649.

(iii) Certifications. HUD monitoring will continue until the grant funds are expended and the project is complete. After that, HUD will rely upon an annual statement from the grantee—throughout the required period—which affirms that the project continues to meet affordability requirements.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: February 18, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix 1. List of local Offices of Native American Programs

Region V—Chicago, Office of Native American Programs, HUD, 77 West Jackson Boulevard, 24th Floor, Chicago, Illinois 60604–3507, 312–231–1282 or 1–800–735–3239, TDD Numbers: 1–800–927–9275, 312–886–3741

Region VI—Oklahoma, Office of Native American Programs, HUD, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, 405–231–4101, TDD Numbers: 405–231–4181, 405–231–4891

Region VIII—Denver, Office of Native American Programs, HUD, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, 303–844–2963, TDD Number: 303–844–6158

Region IX—Phoenix, Office of Native American Programs, HUD, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, 602–379–4156, TDD Number: 602–379–4461

San Francisco, Office of Native American Programs, HUD, 450 Golden Gate Avenue,

8th Floor, Box 36003, San Francisco, CA 94102–3448, 415–556–9200, TDD Number: 415–556–8357

Albuquerque, Office of Native American Programs, HUD, P.O. Box 1128, 421 Gold Street, Room 304, Albuquerque, NM 87103, 505–766–1372, TDD Number: None

Region X—Seattle, Office of Native American Programs, HUD, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5270, TDD Number: None

Region X—Anchorage, Office of Native American Programs, HUD, University Plaza Building, 949 E. 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, 907–271–4633, TDD Number: 907–271–4328

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federal register

Thursday
March 10, 1994

Part VIII

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Status of the Superfund Substance-Specific Applied Research Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–79]

Status of the Superfund Substance-Specific Applied Research Program

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides the status of ATSDR's effort to implement the Agency's Substance-Specific Applied Research Program (SSARP). This research program, authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)], was initiated on October 17, 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the **Federal Register** (56 FR 52178). The list was subsequently revised based on public comments, and published in final form on November 16, 1992 (57 FR 54150).

The 38 substances, each of which is found on ATSDR's "List of Priority Hazardous Substances" (56 FR 52166, October 17, 1991), are aldrin/dieldrin, arsenic, benzene, beryllium, cadmium, carbon tetrachloride, chloroethane, chloroform, chromium, cyanide, p,p'-DDT,DDE,DDD, di(2-ethylhexyl)phthalate, lead, mercury, methylene chloride, nickel, polychlorinated biphenyl compounds (PCBs), polycyclic aromatic hydrocarbons (PAHs) (includes 15 substances), selenium, tetrachloroethylene, toluene, trichloroethylene, vinyl chloride, and zinc.

This notice also serves as a continuous call for voluntary research initiatives. ATSDR encourages private sector organizations to volunteer to conduct research to fill specific priority data needs. A Tri-Agency Superfund Applied Research Committee (TASARC) comprised of scientists from ATSDR, the National Toxicology Program (NTP), and the Environmental Protection Agency (EPA) will review all proposed voluntary research efforts.

DATES: ATSDR considers the voluntary research effort to be important to the continuing development of the SSARP. Therefore, the Agency encourages private sector organizations to volunteer at any time to conduct research to fill identified data needs, until ATSDR announces that research has been initiated for a specific data need.

ADDRESSES: Private sector organizations interested in volunteering to conduct this type of research may write to Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6306.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)], requires that ATSDR (1) jointly with the Environmental Protection Agency (EPA), develop and prioritize a list of hazardous substances found at National Priorities List (NPL) sites, (2) prepare toxicological profiles for these substances, and (3) assure the initiation of a research program to fill identified data needs associated with the substances. Before starting such a program, ATSDR will consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the type of research that should be done.

On October 17, 1991, ATSDR announced the identification of the priority data needs for 38 priority hazardous substances (56 FR 52178), requested public comments, and invited private sector organizations to volunteer to conduct research to fill specific priority data needs. On November 16, 1992, the Agency published a revised list of 117 priority data needs for these priority hazardous substances (57 FR 54150).

The major goals of the ATSDR SSARP are: (1) To fill the substance-specific information needs of the public and scientific community, and (2) to supply information necessary to conduct comprehensive public health assessments of populations living near hazardous waste sites. This program also will provide data that can be generalized to other substances or areas of science, including risk assessment of chemicals, thus creating a scientific base for filling a broader range of data needs.

CERCLA, in section 104(i)(5)(D), states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under the Toxic Substances Control Act (TSCA) and by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or by cost recovery from responsible parties under CERCLA. To effect this statutory intent, ATSDR developed a plan whereby parts of the SSARP will be conducted via regulatory mechanisms (TSCA/FIFRA), private sector voluntarism, and the direct use of CERCLA funds.

A Tri-Agency Superfund Applied Research Committee (TASARC) comprised of scientists from ATSDR, NTP, and the EPA has been set up to: (1) Advise on the assignment of priorities on mechanisms for filling data needs; (2) coordinate knowledge of research activities to avoid duplication of research in other programs and under other authorities; (3) advise on issues of science related to substance-specific data needs; and (4) maintain a scheduled forum that provides an overall review of the ATSDR SSARP. The TASARC has met four times since the initiation of the SSARP. This notice provides the status of ATSDR's efforts to implement the SSARP, focussing on ongoing activities relevant to test rule development under TSCA/FIFRA, private sector voluntarism, and direct use of CERCLA funds. Additional data needs are being addressed through an interagency agreement with NTP, by ATSDR's Great Lakes human health effects research program, and other Agency programs. To date, 59 priority data needs associated with 35 ATSDR priority hazardous substances (including 15 PAHs) are being addressed via these mechanisms (Table 1).

A. TSCA/FIFRA

In developing and implementing the SSARP, ATSDR, NTP, and EPA have established procedures to identify priority data needs of mutual interest to Federal programs. These data needs will be filled through a program of toxicological testing under TSCA. This portion of the research will be conducted according to established TSCA procedures and guidelines. This testing will fulfill more than one Federal program's need. During FY 1993, a subset of the 117 priority data needs for 38 substances (about 60) was referred to the EPA under its authorities following

review and endorsement by the TASARC oversight committee. Currently, 26 priority data needs associated with 11 ATSDR substances have been recommended by EPA to be added to its Master Testing List, the first step in test rule development under TSCA, section 4 (Table 2). Please note that although ATSDR has identified priority data needs for oral exposure to tetrachloroethylene, cyanide, and beryllium, in response to other Federal government agency needs, ATSDR will consider proposals to conduct inhalation studies in conjunction with pharmacokinetic studies for these substances in lieu of bioassays using oral exposures. It is anticipated that inhalation data derived from these studies can be used, in conjunction with pharmacokinetic modeling, to address ATSDR's oral toxicity data needs.

Some of ATSDR's priority hazardous substances will not be added to EPA's Master Testing list because they do not fall within the bounds of TSCA, Section 4 authority. For example, TSCA does not require testing chemicals that are out of production, such as PCBs. Furthermore, TSCA is not considered the appropriate mechanism for testing PAHs, because the PAHs are by-products of multiple industrial processes and, therefore, it is difficult to identify specific manufacturers. In addition, TSCA guidelines are not available for some of the ATSDR priority data needs such as the development of analytical methods for cadmium and beryllium, mechanistic studies on the neurotoxic effects of lead, and the mitigation of toxicity of vinyl chloride. Moreover, some of the ATSDR priority hazardous substances are considered more appropriate for FIFRA than TSCA, e.g., arsenic, DDT, and aldrin/dieldrin. The Office of Pollution, Prevention and Toxics (OPPT), EPA, forwarded the data needs for these substances to the Office of Pesticide Programs for evaluation.

B. Private Sector Voluntarism

As part of the SSARP, ATSDR initially announced a set of proposed procedures for conducting voluntary research on February 7, 1992 (56 FR 4758). It was revised based on public comments and published on November 16, 1992 (57 FR 54160). This voluntary research program fills priority data needs along with other mechanisms such as test rule development through EPA and CERCLA-funded research. Private sector organizations were encouraged to volunteer to conduct research to fill these specific priority data needs.

Currently, ATSDR is pursuing voluntary research interests with two private sector organizations: the General Electric Company (GE) and the Halogenated Solvents Industry Alliance (HSIA). To date, through the voluntary research efforts of GE and HSIA, four priority data needs for two substances are under discussion, potentially leading to the signing of two memorandums of understanding (Table 3).

During FY 1993, ATSDR staff members met with officials from GE to discuss the Agency's research agenda for PCBs. The Agency has identified mutual interests in environmental fate testing and human health endpoints assessments and has initiated discussion on these studies with GE.

ATSDR met with HSIA representatives to discuss the use of physiologically-based pharmacokinetic (PBPK) models to fill priority data needs for six volatile organic compounds. The Agency selected methylene chloride to start using PBPK modeling to address ATSDR's toxicity priority data needs because of the extensive database on this substance. The toxicity priority data needs for the remaining 5 volatile organic compounds (carbon tetrachloride, chloroethane, chloroform, tetrachloroethylene, and trichloroethylene) may be addressed via similar voluntary efforts in the future.

C. CERCLA-Funded Research (Minority Health Professions Foundation Research Program)

During FY 1992, ATSDR announced a $4 million cooperative agreement program with the Minority Health Professions Foundation (MHPF) to support substance-specific investigations. This cooperative venture is supported by the direct use of CERCLA funds. During FY 1993, about $4 million was allocated to continue this research program; no new projects were initiated. Currently, 9 priority data needs for 21 priority hazardous substances (including 15 PAHs) in the SSARP are being addressed by the MHPF institutions through this program. Also, the MHPF research program will address 13 other substance-specific data needs identified in the ATSDR toxicological profiles concerning exposures and related health effects. The institutions receiving awards and their respective research projects are listed in Table 4.

The MHPF, a not-for-profit 501(c)(3) organization, is comprised of 11 minority health professions schools. Its primary mission is to research the persistent health problems that disproportionately plague poor and minority citizens. The purposes of the ATSDR-MHPF cooperative agreement are: (1) To initiate research to fill ATSDR-identified data needs for priority hazardous substances, and (2) to enhance existing disciplinary capacities to conduct research in environmental health at MHPF member institutions.

The areas of research at MHPF institutions include those related to broad areas of toxicology and environmental health science. Some of the MHPF member institutions are conducting health studies of minority groups exposed to ATSDR's priority hazardous substances.

D. National Toxicology Program

ATSDR maintains an interagency agreement (IAG) with NTP to conduct toxicological testing of substances identified at NPL sites. The studies determine levels of exposure that present a significant risk to humans of acute, subacute, and chronic health effects. Often these studies include an assessment of the substance's ability to cause cancer, reproductive toxicity, and birth defects. The results of these studies are used by regulatory agencies such as the Food and Drug Administration and the EPA, various environmental and industrial groups, and ATSDR to improve the ability to conduct public health assessments at NPL sites. Under this agreement, one toxicity priority data need identified in the SSARP (carbon tetrachloride, immunotoxicology battery of tests via oral exposure) is currently being addressed. This NTP study was begun in September 1993 and should be completed in February 1994.

E. Great Lakes Human Health Effects Research Program

Some of the priority data needs identified in the SSARP have been independently identified as research needs through the ATSDR Great Lakes human health effects research program, a separate research program. To date, 12 priority data needs for 19 priority hazardous substances (including 15 PAHs) identified in the SSARP are being addressed through this program. The institutions receiving awards and their respective studies are listed in Table 5.

The Great Lakes Critical Programs Act of 1990 mandates EPA, in consultation with ATSDR, to prepare a report by September 30, 1994, that assesses the adverse effects of pollutants in the Great Lakes system on the health of individuals in the Great Lakes states. A variety of persistent toxic substances are prevalent in the Great Lakes, including PCBs, DDT and its metabolites, dieldrin, toxaphene, mirex, mercury,

benzo[a]pyrene, hexachlorobenzene, furans, dioxins, and lead. Certain populations—Native Americans, sport anglers, fetuses and nursing infants of mothers who consume contaminated Great Lakes fish—have a potentially higher risk of long-term adverse effects resulting from exposure to these contaminants.

The ATSDR-supported research projects focus on these high-risk populations to try to further define the human health consequences of exposure to these persistently toxic substances. The research activities include, but are not limited to: (1) Characterizing exposure and determining the profiles and levels of Great Lakes contaminants in biological tissues and fluids in high-risk populations; (2) identifying sensitive and specific human reproductive/developmental end points and correlating them to exposure to Great Lakes contaminants; (3) determining the short- and long-term risk(s) of adverse health effects in progeny whose parents were exposed to Great Lakes contaminants; (4) investigating the feasibility of establishing registries and surveillance cohorts in the Great Lakes region; and (5) establishing a chemical mixtures database with emphasis on tissue and blood levels in order to identify new cohorts, conduct surveillance and health effects studies, and establish registries and surveillance cohorts.

During FY 1992, ATSDR announced a $2 million grant program to conduct research on the impact on human health of contaminated fish consumption in the Great Lakes region. On September 30, 1992, ATSDR announced nine awards under this program.

In FY 1993, about $3 million was allocated to support the continuation of the research projects conducted at the nine institutions originally funded during FY 1992. In addition, ATSDR awarded one new grant to the Michigan Department of Public Health to design, establish, and operate a professionally creditable interlaboratory quality assurance/quality control program for the ATSDR Great Lakes human health effects research program.

F. Other ATSDR Programs

In its role as a public health agency addressing environmental health, ATSDR may, where appropriate, collect human data to validate substance-specific exposure and toxicity findings; information on levels of contaminants in humans has been identified as a priority data need for 37 of the 38 priority substances (Table 1). ATSDR will obtain this information through exposure and health effects studies, and through establishing and using substance-specific subregistries of people within the Agency's National Exposure Registry who have potentially been exposed to these substances.

The list of 38 priority hazardous substances in the SSARP was forwarded to ATSDR's Exposure and Disease Registry Branch (EDRB), Division of Health Studies, for consideration as potential candidates for subregistries of exposed persons, based on criteria described in EDRB's 1988 document, "Policies and Procedures for Establishing a National Registry of Persons Exposed to Hazardous Substances." To date, ATSDR has selected benzene, chromium, and trichloroethylene as primary contaminants to establish subregistries in the National Exposure Registry. However, aldrin/dieldrin, carbon tetrachloride, chloroethane, chloroform, cyanide, p,p'-DDT, DDE, DDD, di (2-ethylhexyl) phthalate, mercury, methylene chloride, PAHs, selenium, tetrachloroethylene, and vinyl chloride remain as a part of the candidate pool. They will be considered for selection as primary contaminants during each selection process (Table 1). Finally, arsenic, beryllium, cadmium, lead, nickel, PCBs, toluene, and zinc are not considered to be in the pool of candidate substances for an exposure registry at this time. This decision will be re-evaluated as more information on the chemicals and exposure sites become available.

With regard to epidemiologic studies, ATSDR believes that for many of the 38 priority hazardous substances, an extensive amount of animal data, and some human data, have already been collected; therefore, ATSDR considers it appropriate, where feasible, to conduct epidemiologic studies on such substances. In response to public comments, the Agency's SSARP will address substance-specific rather than site-specific epidemiologic studies.

The substance-specific studies are designed to determine substance-specific cause and effect. In this case, ATSDR is not necessarily directed toward populations exposed via the environment at hazardous substance release sites, as in a site-specific study. Instead, any appropriate population of suitable exposure via the environment, consumer products, or occupation can be used to design a rigorous analytic epidemiologic investigation. Epidemiologic studies on several of ATSDR's 38 priority hazardous substances (such as DDT, PCBs, and PAHs) are being conducted by the ATSDR Great Lakes human health effects research program (Table 5).

Two epidemiologic studies on lead (identified as a data need by ATSDR), are also being conducted by the Morehouse School of Medicine and the King/Drew Medical Center of the Charles R. Drew University of Medicine and Science via the ATSDR—MHPF cooperative agreement. ATSDR expects that other substance-specific epidemiologic studies, identified as data needs or priority data needs in the SSARP, may potentially be conducted by other Divisions within ATSDR.

ATSDR acknowledges that the conduct of epidemiologic studies to determine possible linkages between exposure to hazardous substances and human health effects may be accomplished other than by Agency programs, or under other ATSDR-sponsored auspices. Toward that end, the Agency encourages the private sector and other government programs to use ATSDR's priority data needs to plan research activities to identify appropriate populations and conduct studies addressing the specific human health issues.

Finally, the collection, evaluation, and interpretation of data from contaminated media around hazardous waste sites have been identified as priority data needs for all 38 priority hazardous substances by ATSDR. However, the Agency realizes that a lot of information has already been collected through individual state programs and the EPA's CERCLA activities; therefore, ATSDR will evaluate the extant information from these programs in order to help fill data needs on substance-specific exposures.

The results of the research conducted via the SSARP will be used for public health assessments and to reassess ATSDR's substance-specific priority data needs. The Agency expects to re-evaluate the priority data needs for priority hazardous substances every three years.

Dated: March 3, 1994.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS

Substance	ID	Priority Data Need	Addressed
Lead	1A	Mechanistic studies on the neurotoxic effects of lead	✔
	1B	Analytical methods for tissue levels	
	1C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	✔
Arsenic	2A	Comparative toxicokinetic studies to determine if an appropriate animal species can be identified.	
	2B	Half-lives in surface water, groundwater	
	2C	Bioavailability from soil	
	2D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Mercury	3A	Multigeneration reproductive toxicity study via oral exposure	✔
	3B	Dose-response data in animals for chronic-duration oral exposure	✔
	3C	Immunotoxicology battery of tests via oral exposure	✔
	3D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	✔
	3E	Potential candidate for subregistry of exposed persons	✔*
Vinyl Chloride	4A	Dose-response data in animals for acute-duration inhalation exposure	
	4B	Multigeneration reproductive toxicity study via inhalation	✔
	4C	Dose-response data in animals for chronic-duration inhalation exposure	
	4D	Mitigation of vinyl chloride-induced toxicity	
	4E	2-species developmental toxicity study via inhalation	✔
	4F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	4G	Potential candidate for subregistry of exposed persons	✔*
Benzene	5A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology.	✔
	5B	2-species developmental toxicity study via oral exposure	✔
	5C	Neurotoxicology battery of tests via oral exposure	✔
	5D	Epidemiological studies on the health effects of benzene (Special emphasis endpoints include: immunotoxicity).	
	5E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Cadmium	6A	Analytical methods for biological tissues and fluids and environmental media	
	6B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
PCBs	7A	Dose-response data in animals for acute- and intermediate-duration oral exposures	✔
	7B	Biodegradation of PCBs in water; bioavailability of PCBs in air, water and soil	✔
	7C	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	
	7D	Epidemiological studies on the health effects of PCBs (Special emphasis endpoints include: immunotoxicity, gastrointestinal toxicity, liver, kidney, thyroid toxicity, reproductive/developmental toxicity).	✔
	7E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	✔
Chloroform	8A	Dose-response data in animals for intermediate-duration oral exposure	
	8B	Epidemiological studies on the health effects of chloroform (Special emphasis endpoints include: cancer, neurotoxicity, reproductive and developmental toxicity, hepatotoxicity, and renal toxicity).	
	8C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	8D	Potential candidate for subregistry of exposed persons	✔*
PAHs	9A	Dose-response data in animals for intermediate duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	✔
	9B	2-species developmental toxicity study via inhalation or oral exposure	
	9C	Mechanistic studies on PAHs, on how mixtures of PAHs can influence the ultimate activation of PAHs, and on how PAHs affect rapidly proliferating tissues.	
	9D	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	✔
	9E	Epidemiological studies on the health effects of PAHs (Special emphasis endpoints include: cancer, dermal, hemolymphatic, and hepatic).	✔
	9F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	✔
	9G	Potential candidate for subregistry of exposed persons	✔*
Trichloroethylene	10A	Dose-response data in animals for acute-duration oral exposure	✔
	10B	Neurotoxicology battery of tests via the oral route	✔
	10C	Immunotoxicology battery of tests via the oral route	✔
	10D	Epidemiological studies on the health effects of trichloroethylene (Special emphasis endpoints include: cancer, hepatotoxicity, renal toxicity, developmental toxicity, and neurotoxicity).	

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS—Continued

Substance	ID	Priority Data Need	Addressed
	10E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
DDT	11A	Dose-response data in animals for chronic-duration oral exposure	
	11B	Comparative toxicokinetic study (across routes/species)	
	11C	Bioavailability and bioaccumulation from soil	
	11D	Epidemiological studies on the health effects of DDT, DDD and DDE (Special emphasis endpoints include: immunotoxicity, reproductive and developmental toxicity).	✔
	11E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	✔
	11F	Potential candidate for subregistry of exposed persons	✔*
Chromium	12A	Dose-response data in animals for acute-duration exposure to chromium (VI) and (III) via oral exposure and for intermediate-duration exposure to chromium (VI) via oral exposure.	✔
	12B	Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI)	✔
	12C	Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI)	✔
	12D	2-species developmental toxicity study via oral exposure to chromium (III) and (VI)	
	12E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Tetrachloroethylene	13A	Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology.	✔
	13B	Multigeneration reproductive toxicity study via oral exposure	✔
	13C	Dose-response data in animals for chronic-duration oral exposure, including neuropathology and demeanor, and immunopathology.	
	13D	2-species developmental toxicity study via oral exposure	✔
	13E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	13F	Potential candidate for subregistry of exposed persons	✔*
Aldrin/Dieldrin	14A	Dose-response data in animals for intermediate-duration oral exposure	
	14B	Bioavailability from soil	
	14C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	14D	Potential candidate for subregistry of exposed persons	✔*
Cyanide	15A	Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subchronic study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological endpoints.	✔
	15B	2-species developmental toxicity study via oral exposure	✔
	15C	Evaluation of the environmental fate of cyanide in soil	✔
	15D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	15E	Potential candidate for subregistry of exposed persons	✔*
Carbon Tetrachloride	16A	Dose-response data in animals for chronic oral exposure. The study should include extended reproductive organ and nervous tissue (and demeanor) histopathology.	
	16B	Immunotoxicology battery of tests via oral exposure	✔
	16C	Half-life in soil	
	16D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	16E	Potential candidate for subregistry of exposed persons	✔*
Beryllium	17A	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	✔
	17B	2-species developmental toxicity study via inhalation exposure	✔
	17C	Environmental fate in air; factors affecting bioavailability in air	✔
	17D	Analytical methods to determine environmental speciation	
	17E	Immunotoxicology battery of tests following oral exposure	✔
	17F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Toluene	18A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immune system.	✔
	18B	Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure).	✔
	18C	Neurotoxicology battery of tests via oral exposure	✔
	18D	Mechanism of toluene-induced neurotoxicity	
	18E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Nickel	19A	Epidemiological studies on the health effects of nickel (Special emphasis endpoints include: reproductive toxicity).	
	19B	2-species developmental toxicity study via the oral route	
	19C	Dose-response data in animals for acute- and intermediate-duration oral exposures	
	19D	Neurotoxicology battery of tests via oral exposure	
	19E	Bioavailability of nickel from soil	
	19F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS—Continued

Substance	ID	Priority Data Need	Addressed
Methylene Chloride	20A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include extended reproductive organ histopathology, neuropathology and demeanor, and immunopathology.	✔
	20B	2-species developmental toxicity study via the oral route	✔
	20C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	20D	Potential candidate for subregistry of exposed persons	✔*
Zinc	21A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurological systems.	✔
	21B	Multigeneration reproductive toxicity study via oral exposure	
	21C	Carcinogenicity testing (2-year bioassay) via oral exposure	
	21D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
DEHP	22A	Epidemiological studies on the health effects of DEHP (Special emphasis endpoints include: cancer).	
	22B	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurologic systems.	
	22C	Multigeneration reproductive toxicity study via oral exposure	
	22D	Comparative toxicokinetic studies (Studies designed to examine how primates metabolize and distribute DEHP as compared to rodents via oral exposure).	✔
	22E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	22F	Potential candidate for subregistry of exposed persons	✔*
Selenium	23A	Dose-response data in animals for acute-duration oral exposure	
	23B	Immunotoxicology battery of tests via oral exposure	
	23C	Epidemiological studies on the health effects of selenium (Special emphasis endpoints include: cancer, reproductive and developmental toxicity, hepatotoxicity and adverse skin effects).	
	23D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	23E	Potential candidate for subregistry of exposed persons	✔*
Chloroethane	24A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system (and behavior, demeanor) tissues, and extended reproductive organ histopathology.	✔
	24B	Dose-response data in animals for chronic inhalation exposures. The study should include an evaluation of nervous system (and behavior) tissues.	
	24C	Potential candidate for subregistry of exposed persons	✔*

* These substances are included in the pool of candidate substances for subregistry development. These substances will be considered for selection as primary contaminants by the Division of Health Studies, ATSDR, during each selection process.

TABLE 2.—PRIORITY DATA NEEDS BEING ADDRESSED BY EPA RULE MAKING

Substance	ID	Priority Data Need	TSCA/FIFRA
Mercury	3B	Dose-response data in animals for chronic-duration oral exposure	TSCA.
	3C	Immunotoxicology battery of tests via oral exposure	TSCA.
Vinyl Chloride	4B	Multigeneration reproductive toxicity study via inhalation	TSCA.
	4E	2-species developmental toxicity study via inhalation	TSCA.
Benzene	5A	Dose-response data in animals for intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology.	TSCA.
	5C	Neurotoxicology battery of tests via oral exposure	TSCA.
Trichloroethylene	10A	Dose-response data in animals for acute-duration oral exposure	TSCA.
	10C	Immunotoxicology battery of tests via the oral route	TSCA.
Chromium	12A	Dose-response data in animals for acute-duration exposure to chromium(VI) and (III) via oral exposure.	TSCA.
	12B	Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI)	TSCA.
	12C	Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI)	TSCA.
Tetrachloroethylene	13A	Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology.	TSCA (inhalation study).
	13B	Multigeneration reproductive toxicity study via oral exposure	TSCA (inhalation study).
	13D	2–Species developmental toxicity study via oral exposure	TSCA (inhalation study).

TABLE 2.—PRIORITY DATA NEEDS BEING ADDRESSED BY EPA RULE MAKING—Continued

Substance	ID	Priority Data Need	TSCA/FIFRA
Cyanide	15A	Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subacute study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological endpoints.	TSCA.
	15B	2–Species developmental toxicity study via oral exposure	TSCA (inhalation study).
	15C	Evaluation of the environmental fate of cyanide in soil	TSCA.
Beryllium	17A	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	TSCA.
	17B	2-species developmental toxicity study via inhalation exposure	TSCA.
	17C	Environmental fate in air; factors affecting bioavailability in air	TSCA.
	17E	Immunotoxicology battery of tests following oral exposure :	TSCA (inhalation study).
Toluene	18A	Dose-response data in animals for intermediateduration oral exposures. The study should include an extended histopathological evaluation of the immune system.	TSCA.
	18B	Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure).	TSCA.
Methylene Chloride	20A	Dose-response data in animals for intermediate-duration oral exposure. The study should include extended immunopathology and neuropathology.	TSCA.
	20B	2-species developmental toxicity study via the oral route	TSCA.
Chloroethane	24A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system (and behavior, demeanor) tissues, and extended reproductive organ histopathology.	TSCA. (EPA will only address the immune system requirement of this Priority Data Need)

TABLE 3.—PRIORITY DATA NEEDS POTENTIALLY BEING ADDRESSED BY VOLUNTARY RESEARCH

Substance	ID	Priority data need	Firm
PCBs	7B	Biodegradation of PCBs in water	General Electric Company.
	7E	Epidemiological studies on the health effects of PCBs (Special emphasis endpoints include: immunotoxicity, gastrointestinal, toxicity, liver, kidney, thyroid, toxicity, reproductive/developmental, toxicity).	General Electric Company.
Methylene chloride	20A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include extended reproductive organ histopathology, neuropathology and demeanor, and immunopathology.	Halogenated Solvents Industry Alliance.
	20B	2-species developmental toxicity study via the oral route	Halogenated Solvents Industry Alliance.

TABLE 4.—PRIORITY DATA NEEDS BEING ADDRESSED BY MHPF INSTITUTIONS

Substance	ID	Priority data need	Institution
Lead	1A	Mechanistic studies on the neurotoxic effects of lead	Florida A & M University. Texas Southern University.
	1C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	The King/Drew Medical Center of the Charles R. Drew University of Medicine and Science. Morehouse School of Medicine.
Mercury	3A	Multigeneration reproductive toxicity study via oral exposure.	Tuskegee University.
Benzene	5B	2-species developmental toxicity study via oral exposure.	Xavier University.
PAHs	9A	Dose-response data in animals for intermediate duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	Meharry Medical College.
	9D	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	Meharry Medical College.
Trichloroethylene	10B	Neurotoxicology battery of tests via oral exposure	Texas Southern University.

TABLE 4.—PRIORITY DATA NEEDS BEING ADDRESSED BY MHPF INSTITUTIONS—Continued

Substance	ID	Priority data need	Institution
Toluene	18C	Neurotoxicology battery of tests via oral exposure	Texas Southern University.
Zinc	21A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathological evaluation of the immunologic and neurological systems.	Xavier University. Tuskegee University.

TABLE 5.—PRIORITY DATA NEEDS BEING ADDRESSED BY THE ATSDR GREAT LAKES HUMAN HEALTH EFFECTS RESEARCH PROGRAM

Substance	ID	Priority data need	Institution
Lead	1C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	State University of New York at Buffalo. State University of New York at Oswego. Michigan State University. University of Wisconsin—Superior. New York State Health Department. University of Illinois at Chicago. University of Illinois at Urbana-Champaign. Wisconsin Department of Health and Social Services.
Mercury	3A	Multigeneration reproductive toxicity study via oral exposure.	State University of New York at Oswego. University of Illinois at Chicago.
	3D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	State University of New York at Buffalo. State University of New York at Oswego. Michigan State University. University of Wisconsin—Superior. New York State Health Department. University of Illinois at Chicago. University of Illinois at Urbana-Champaign. Wisconsin Department of Health and Social Services.
	3E	Potential candidate for subregistry of exposed persons.	Wisconsin Department of Health and Social Services.
PCBs	7A	Dose-response data in animals for acute- and intermediate-duration oral exposures.	University of Wisconsin—Superior.
	7E	Epidemiological studies on the health effects of PCBs (special emphasis endpoints include: immunotoxicity, gastrointestinal toxicity, liver, kidney, thyroid toxicity, reproductive/developmental toxicity).	State University of New York at Buffalo. State University of New York at Oswego. University of Wisconsin—Superior. University of Illinois at Chicago. University of Illinois at Urbana-Champaign.
	7F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	State University of New York at Buffalo. State University of New York at Oswego. Michigan State University. University of Wisconsin—Superior. New York State Health Department. University of Illinois at Chicago. University of Illinois at Urbana-Champaign. Wisconsin Department of Health and Social Services.
PAHs	9E	Epidemiological studies on the health effects of PAHs (special emphasis endpoints include: cancer, dermal, hemolymphatic, and hepatic).	Wisconsin Department of Health and Social Services.
	9F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	Wisconsin Department of Health and Social Services.
DDT	11D	Epidemiological studies on the health effects of DDT, DDD and DDE (special emphasis endpoints include: immunotoxicity, reproductive and developmental toxicity).	State University of New York at Buffalo. State University of New York at Oswego. Michigan State University. University of Illinois at Chicago. Wisconsin Department of Health and Social Services.
	11E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	State University of New York at Buffalo. State University of New York at Oswego. Michigan State University. University of Illinois at Chicago. Wisconsin Department of Health and Social Services.
	11F	Potential candidate for subregistry of exposed persons.	Wisconsin Department of Health and Social Services.

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federal register

Thursday
March 10, 1994

Part IX

Department of Education

34 CFR Part 200 et al.
Chapter 1 Programs in Local Educational Agencies and Migrant Education; Proposed Rules

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 201

RIN 1810–AA70

Chapter 1 Program in Local Educational Agencies and Chapter 1—Migrant Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes to issue regulations amending the regulations governing Part A and Part D, Subpart 1 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. Part A of chapter 1 provides financial assistance through State educational agencies (SEAs) to local educational agencies (LEAs) to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and children in local institutions for neglected or delinquent children. Part D of chapter 1 authorizes a Migrant Education Program (MEP) that provides financial assistance to SEAs to establish and improve programs to meet the special educational needs of migratory children of migratory agricultural workers or fishermen.

These amendments are needed to afford flexibility to States that have developed assessment systems that support their systemic education reform efforts but that are inconsistent with the national evaluation standards in Subpart H of 34 CFR Part 200 and Subpart E of 34 CFR Part 201. The proposed regulations would enable States to request an exception to those national evaluation standards to use their own assessment systems to evaluate the effectiveness of their Chapter 1 and MEP programs.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: All comments concerning the proposed Part 200 regulations should be addressed to Mary Jean LeTendre, U.S. Department of Education, 400 Maryland Avenue SW., Portals Building, Room 4400, Washington, DC 20202–6132.

All comments concerning the proposed Part 201 regulations should be addressed to Francis Corrigan, U.S. Department of Education, 400 Maryland Avenue SW., Portals Building, Room 4104, Washington, DC 20202–6135.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: For Part 200, Wendy Jo New, U.S. Department of Education, 400 Maryland Avenue SW., Portals Building, room 4400, Washington, DC 20202–6132. Telephone: (202) 260–0982. For Part 201, James English, U.S. Department of Education, 400 Maryland Avenue SW., Portals Building, room 4104, Washington, DC 20202–6135. Telephone: (202) 260–1394. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under section 1435 of chapter 1, the Secretary is required, in consultation with SEAs and LEAs, to develop national standards for evaluation of chapter 1 programs. After enactment of this requirement in 1988, the Secretary held five regional meetings to receive input on the content of these standards and submitted draft standards for consideration in the negotiated rulemaking process required under section 1431 of the statute. After considering additional public comments on proposed regulations, the Secretary issued the final national standards that are contained in Subpart H (§§ 200.80–200.89) of Part 200 of the Chapter 1 regulations.

Under these national standards, LEAs assess, every 12 months, the achievement of each chapter 1 participant in grades 2 through 12 in reading, mathematics, and language arts, as appropriate, compared to an estimate of what his or her achievement would have been in the absence of chapter 1 services. The LEA is required to use a nationally normed test or a test equated to a nationally normed test and report to the SEA the results of student achievement using the common reporting scale established by the Secretary—i.e., normal curve equivalents. The SEA, in turn, is required to aggregate LEA student achievement data to provide a statewide average of student achievement gains resulting from participation in Chapter 1 programs. The Secretary aggregates data from each State in order to submit to Congress biennially a national report on the effectiveness of chapter 1.

Because section 1435 also applies to the MEP, regulations for that program in subpart E of part 201 contain a similar requirement to measure and report student achievement in accordance with national standards using, if possible, appropriate forms and levels of national- or State-normed achievement tests.

Since these regulations took effect, a number of States have developed new assessment systems linked to their statewide reform efforts, to improve the quality of education. Consistent with research and practice that have identified the limitations of traditional assessments, these new systems are tied to complex skills and challenging subject matter and use multiple measures of achievement. They do not routinely use nationally normed tests and typically only assess children in certain grades. As a result, the new assessments are not consistent with the national evaluation standards in parts 200 and 201. Therefore, SEAs and LEAs in these States must operate multiple, overlapping assessment systems.

Several States have requested that the Secretary either waive the current national evaluation standards or modify the regulations to take into account new State assessment activities. The Secretary does not currently have the authority to waive the national standards. Nevertheless, the Secretary does not want chapter 1 or MEP assessment requirements to be a barrier to systemic State reforms that upgrade the quality of elementary and secondary education. The Secretary recognizes that new State assessment systems now being implemented are likely to provide more meaningful data than the current Chapter 1 testing requirements on the success of chapter 1 and MEP programs because those assessments are tied to high State standards for what children should know and be able to do and are integral to systemic State reforms to improve education quality.

To address these concerns, the Secretary proposes to add exceptions to the requirements in Subpart H of Part 200 and in Subpart E of Part 201. These exceptions would enable States that are implementing new assessment systems that support education reform to use those assessments to measure the effectiveness of Chapter 1 and MEP programs in place of the current Chapter 1 testing requirements. The proposed regulations would also permit States to request exceptions for particular LEAs that, absent State systems, have new local assessment systems in place to support their education reform efforts.

In granting an exception, the Secretary would not be waiving any statutory requirements. SEAs and LEAs would continue to evaluate the effectiveness of their Chapter 1 programs under section 1019, perform the annual review required under section 1021(a), measure sustained program gains under sections 1019(a)(3)

and 1021(a)(2), identify schools and students in need of program improvement under section 1021(b) and (f), and meet schoolwide project accountability requirements under section 1015(e), using the State assessment and any other sources of information deemed appropriate. Similarly, under the MEP, SEAs must ensure that they and their operating agencies adhere to the requirements of sections 1011(b), 1019(b) and 1202(a)(6) to use desired outcomes for evaluating performance, to collect and report demographic and performance data, and to examine sustained gains for formerly migratory children.

An exception would give SEAs and LEAs greater flexibility to carry out these provisions. For example, LEAs would no longer be required to use nationally normed tests to measure "aggregate performance" for program improvement purposes. Similarly, evaluation data would not need to be able to be aggregated beyond the LEA level.

The Secretary would review each request for an exception to ensure that it would not impair an SEA's or LEAs' ability to account for results under chapter 1 or the MEP.

The Secretary wishes to emphasize that no State is required to make any changes in its chapter 1 or MEP testing programs as a result of these proposed regulations. Rather, the proposed exceptions are intended to reduce testing burden, provide flexibility for assessment and school reforms that will help the State improve the quality of education, and enable States to align Chapter 1 and MEP assessments with their own assessment systems.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential benefits associated with the proposed regulations are clear. Rather than continuing to operate multiple assessment systems for Federal and State purposes, States could use their State systems to evaluate their chapter 1 and MEP programs. Moreover, the potential costs associated with the proposed regulations are negligible. Because the proposed regulations would permit States to use their own assessment systems, States would incur few, if any, additional costs. To the contrary, the proposed regulations would result in reduced costs for States that would no longer need to operate multiple assessment systems.

Any burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980. The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions. The proposed regulations would actually increase States' flexibility in assessing their chapter 1 and MEP programs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the chapter 1 and MEP programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under the Chapter 1 and MEP programs. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 200.90 and 201.57 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

These proposed regulations would affect SEAs and LEAs that have developed assessment systems that support their educational reform efforts but that are inconsistent with the national evaluation standards in subpart H of part 200 or subpart E of part 201. The Department needs the information to grant exceptions to the national evaluation standards.

A one-time public reporting and recordkeeping burden for this collection of information is estimated to average two hours per response for a maximum of 52 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in rooms 4400 and 4100, respectively, Portals Building, 1250 Maryland Avenue, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

34 CFR Part 201

Children, Coordination, Education, Eligibility, Evaluation, Grant programs—education, Identification and recruitment, Local educational agencies, Migrant student record transfer system, Migratory children, Migratory workers, Needs assessment, Priorities, Reporting and recordkeeping requirements, Special educational needs, State educational agencies, Subgrants.

Dated: February 22, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.012, Chapter 1 Programs—State Administration)

The Secretary proposes to amend parts 200 and 201 of Title 34 of the Code of Federal Regulations as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

1. The authority citation for Part 200 is revised to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2881–2901, unless otherwise noted.

2. A heading entitled "Exception" and a new § 200.90 are added to subpart H to read as follows:

Exception

§ 200.90 May an SEA request an exception to the requirements in this subpart?

(a) An SEA may request, in writing, an exception to the requirements in this subpart if the SEA desires to use a State assessment system developed to support its education reform efforts for the purpose of evaluating the effectiveness of its Chapter 1 programs.

(b) The Secretary may grant an SEA's request if the State assessment system provides information, that can be aggregated for each LEA as a whole, about the yearly performance of each Chapter 1 school. This information must be from at least one grade level and must be based on student achievement in basic and more advanced skills and challenging subject matter.

(c) An SEA may request an exception that covers all or some of its LEAs.

(Authority: 20 U.S.C. 2729(a), 2835)

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

3. The authority citation for Part 201 continues to read as follows:

Authority: 20 U.S.C. 2781–2782, unless otherwise noted.

4. A new § 201.57 is added to subpart E to read as follows:

§ 201.57 Exception to evaluation requirements.

(a) An SEA may request, in writing, an exception to the requirements in §§ 201.51(a)(1)(ii), 201.52(b)(1), 201.53, and 201.55 if the SEA desires to use a State assessment system, developed to support its education reform efforts, for the purpose of evaluating the effectiveness of its Chapter 1 Migrant Education Program.

(b) The Secretary may grant an SEA's request if the State assessment system provides a statewide estimate of the yearly performance of migrant children in the State. This information must be from at least one grade level and must be based on student achievement in basic and more advanced skills and challenging subject matter.

(c) An SEA may request an exception that covers all or some of its operating agencies.

(Authority: 20 U.S.C. 2722, 2729, 2782, 2835)

[FR Doc. 94–5532 Filed 3–9–94; 8:45 am]

BILLING CODE 4000–01–P

Thursday
March 10, 1994

Part X

Department of Education

Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance; Notice

DEPARTMENT OF EDUCATION

Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance

ACTION: Notice of investigative guidance.

SUMMARY: The Assistant Secretary for Civil Rights announces investigative guidance, under title VI of the Civil Rights Act of 1964, that has been provided to the Office for Civil Rights (OCR) Regional Directors on the procedures and analysis that OCR staff will follow when investigating issues of racial incidents and harassment against students at educational institutions. The investigative guidance incorporates and applies existing legal standards and clarifies OCR's investigative approach in cases involving racial incidents and harassment.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036 Switzer Building, Washington, DC 20202–1174. Telephone: (202) 205–8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9683 or 1–800–421–3481.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 (title VI), 42 U.S.C. 2000d *et seq.*, prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. The Department of Education (Department) has promulgated regulations in 34 CFR part 100 to effectuate the provisions of title VI with regard to programs and activities receiving funding from the Department. The regulations in 34 CFR 100.7(c) provide that OCR will investigate whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with title VI and the Department's implementing regulations. The Department has interpreted title VI as prohibiting racial harassment.

The existence of racial incidents and harassment on the basis of race, color, or national origin against students is disturbing and of major concern to the Department. Racial harassment denies students the right to an education free of discrimination. To enable OCR to investigate those incidents more effectively and efficiently, a memorandum of investigative guidance has been distributed to OCR staff. The substance of this memorandum and the accompanying legal compendium are being published today with this notice to apprise recipients and students of the legal standards, rights, and responsibilities under title VI with regard to this issue.

The guidance outlines the procedures and analysis that OCR will follow when investigating possible violations of title VI based upon racial incidents and harassment. The guidance relies upon current legal standards.

Dated: March 7, 1994.

Norma V. Cantu,

Assistant Secretary for Civil Rights.

Investigative Guidance on Racial Incidents and Harassment Against Students

This notice discusses the investigative approach and analysis that the Office for Civil Rights (OCR) staff will follow when investigating issues of discrimination against students based on alleged racial incidents—including incidents involving allegations of harassment on the basis of race—that occur at educational institutions.[1] This guidance is supplemented by a corresponding compendium of legal resources for detailed legal citations and examples.

Under title VI of the Civil Rights Act of 1964 (title VI) and its implementing regulations, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color or national origin under any program or activity that receives Federal funds. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of title VI. These forms of race discrimination are discussed further below.[2]

[1] This investigative guidance is directed at conduct that constitutes race discrimination under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. (title VI), and its implementing regulations at 34 CFR Part 100, and not at the content of speech. In cases in which verbal statements or other forms of expression are involved, consideration will be given to any implications of the First Amendment to the United States Constitution. In such cases, regional staff will consult with headquarters.

[2] For the sake of simplicity and clarity, the term "race" shall be used throughout this guidance to refer to all forms of discrimination prohibited by title VI—i.e., race, color, and national origin.

Jurisdiction

In all cases, OCR must first decide whether it has jurisdiction over claims involving racial incidents or harassment. Under the Civil Rights Restoration Act of 1987,[3] OCR generally has institution-wide jurisdiction over a recipient of Federal funds.

If an institution receives Federal funds, title VI requirements apply to all of the academic, athletic, and extracurricular programs of the institution, whether conducted in facilities of the recipient or elsewhere. Title VI covers all of the uses of property that the recipient owns and all of the activities that the recipient sponsors. Title VI covers all of these operations, whether the individuals involved in a given activity are students, faculty, employees, or other participants or outsiders.

Standard Different Treatment by Agents or Employees

As with other types of discrimination claims, OCR will first apply a standard different treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. Under this analysis, a recipient violates title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient.[4] In applying this standard different treatment analysis, OCR staff will address the following questions—

(1) Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient?

(2) Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?[5]

[3] See 42 U.S.C. 2000d–4 (1988) (amending title VI).

[4] Note that such incidents can constitute violations of title VI even if they do not constitute "harassment," so long as they do constitute direct different treatment by agents or employees, as defined in this section, that interferes with or limits the ability of a student to participate in or benefit from the recipient's programs or activities.

[5] As used throughout this investigative guidance, the determination as to whether an agent or employee of a recipient is acting within the scope

(3) Was the different treatment based on race, color, or national origin?

(4) Did the context or circumstances of the incident provide a legitimate, nondiscriminatory, nonpretextual basis for the different treatment?

Where, based on the evidence obtained in the investigation, questions 1–3 are answered "yes" and question 4 is answered "no," OCR will conclude that there was discrimination in violation of title VI under this standard different treatment analysis. If questions 1, 2 or 3 are answered "no," or if questions 1 through 4 are answered "yes," OCR will find no violation under this theory. If warranted by the nature and scope of the allegations or evidence, OCR will proceed to determine whether the agent's or employee's actions established or contributed to a racially hostile environment as described below. OCR also will conduct a "hostile environment" analysis where actions by individuals other than agents or employees are involved.

Hostile Environment Analysis

A violation of title VI may also be found if a recipient has created or is responsible for a racially hostile environment—i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice (as discussed below).

Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, with particular attention paid to the factors discussed below.

Severe, Pervasive or Persistent Standard

To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under title VI varies inversely with their pervasiveness or persistence.

First of all, when OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

This is especially true for younger, less mature children, who are generally more impressionable than older students or adults. Thus, an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful to a younger student. For example, verbal harassment of a young child by fellow students that is tolerated or condoned in any way by adult authority figures is likely to have a far greater impact than similar behavior would have on an adult. Particularly for young children in their formative years of development, therefore, the severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind.

As with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim—especially the victim's race and age—when evaluating the severity of racial incidents at an educational institution. If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The perspective of a person of the same race as the victim is necessary because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as applied to a child must incorporate the age, intelligence and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The effect of a racial incident in the private and personal environment of an individual's dormitory room may differ from the effect of the same incident in a student center or dormitory lounge.

The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. For example, racially based conduct by a teacher, even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance worker or another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the victim's or complainant's race, so long as it is racially motivated

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of his or her official duties or employment must be made on a case-by-case basis, taking into account such factors as the relationship between the parties and the time, location and context of the alleged harassment.

(e.g., it might be based on the race of a friend or associate of the victim). Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

If OCR finds that a hostile environment existed under these standards, then it will proceed to determine whether the recipient received notice of the harassment, and whether the recipient took reasonable steps to respond to the harassment.

Notice

Though the recipient may not be responsible directly for all harassing conduct, the recipient does have a responsibility to provide a nondiscriminatory educational environment. If discriminatory conduct causes a racially hostile environment to develop that affects the enjoyment of the educational program for the student(s) being harassed, and if the recipient has actual or constructive notice of the hostile environment, the recipient is required to take appropriate responsive action. This is the case regardless of the identity of the person(s) committing the harassment—a teacher, a student, the grounds crew, a cafeteria worker, neighborhood teenagers, a visiting baseball team, a guest speaker, parents, or others. This is also true regardless of how the recipient received notice. So long as an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient.

A recipient can receive notice in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, an affirmative action officer, or staff in the office of student affairs. An agent or responsible employee of the institution may have witnessed the harassment. The recipient may have received notice in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The recipient also may have received notice from flyers about the incident(s) posted around the school.

In cases where the recipient did not have actual notice, the recipient may have had constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint.

In some cases, the pervasiveness, persistence, or severity of the racial harassment may be enough to infer that the recipient had notice of the hostile environment (e.g., a racially motivated assault on a group of students). A finding that a recipient had constructive notice of a hostile environment meets the notice requirement of the analysis.

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. If the recipient does not have a policy that prohibits the conduct of racial harassment, or does not have an accessible procedure by which victims of harassment can make their complaints known to appropriate officials, agency capacity—and thus constructive notice—is established.

The existence of both a policy and grievance procedure applicable to racial harassment (depending upon their scope, accessibility and clarity, and upon the acts of harassment) is relevant in the determination of agency capacity. A policy or grievance procedure applicable to harassment must be clear in the types of conduct prohibited in order for students to know and understand their rights and responsibilities. As discussed above, in the education context, the person from whose perspective the apparent authority of an agent or employee of a recipient must be evaluated is a reasonable student of the same age, intelligence and experience as the alleged victim of the harassment.

Finally, in order to find that the recipient had a duty to respond to notice of a racially hostile environment, OCR must examine the facts and circumstances to establish that the recipient knew or should have known that the conduct was of a racial nature or had sufficient information to conclude that it may have been racially based. OCR will consider whether the incident involved explicitly racial conduct or whether the circumstances indicate that, through symbols or other persuasive factors, the recipient should have recognized that the conduct was in fact, or was reasonably likely to have been, racial (e.g., the hanging of nooses, random violence against minorities, etc.).

Recipient's Response

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it.[6] Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or nonemployees.

In evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies.[7] OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

Examples of possible elements of appropriate responsive action include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

Conclusion

OCR will investigate allegations of racial incidents where the incidents fall within its jurisdiction. Based on the facts and circumstances of each case, OCR will use either or both the standard different treatment analysis and the hostile environment analysis to determine whether title VI has been violated.

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[6] Of course, a recipient can and should investigate and respond to individual racial incidents if and as they arise—regardless of whether any particular incident is severe enough by itself to establish a racially hostile environment under Title VI. By doing so in a timely and thorough manner, the recipient might prevent the development of a racially hostile environment.

[7] Of course, OCR cannot endorse or prescribe speech or conduct codes or other campus policies to the extent that they violate the First Amendment to the United States Constitution.

If OCR determines that an agent or employee, acting within the scope of his or her employment, treated someone differently on the basis of race, color, or national origin without a legitimate, nondiscriminatory reason for the treatment (i.e., direct different treatment), then OCR will conclude that Title VI was violated. If OCR determines that a racially hostile environment exists at a recipient, the recipient had notice of it, and the recipient failed to take adequate action in response to the hostile environment, OCR will also find a violation. If OCR determines that a hostile environment was not established, or that a hostile environment was established but that the recipient either (1) did not have notice of it; or (2) had notice of it and took adequate action in response, OCR will find no violation.

Appendix—Racial Incidents and Harassment Against Students—Compendium of Legal Resources

This compendium provides an outline summarizing key legal resources (including statutes, regulations, cases, and letters of findings) to serve as a reference for the Office for Civil Rights (OCR) staff in investigating possible discrimination against students based on racial incidents—including incidents involving allegations of harassment on the basis of race—that occur at educational institutions. It is intended to be used in conjunction with the investigative guidance on racial incidents and harassment, and follows the same general outline as that guidance.[1]

The investigation and analysis of cases under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (title VI) relies, to a large extent, on case law developed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in employment.[2] See *Dillon County District No. 1 and South Carolina State Department of Education*, No. 84–VI–16 (Civil Rights Reviewing Auth. 1987); *United States* v. *LULAC*, 793 F.2d 636, 648–49 (5th Cir. 1986); *Georgia State Conference of Branches of NAACP* v. *Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); and *NAACP* v. *Medical Center, Inc.*, 657 F.2d 1322 (3d Cir. 1981). See also, generally, EEOC Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, No. N–915.002 (July 14, 1992).[3]

I. Jurisdiction

OCR must first decide whether it has jurisdiction over a claim involving racial incidents or harassment. OCR has jurisdiction if the complaint alleges that the racially based conduct occurred in the context of an operation of an elementary, secondary, or postsecondary school or institution, or other entity that is a recipient of Federal funds.

A. Title VI Prohibits Race Discrimination in Federally Funded Programs and Activities

Title VI prohibits race discrimination in programs and activities that receive Federal financial assistance. See also 34 CFR part 100 (regulations effectuating provisions of title VI).

B. OCR Has Institution-Wide Jurisdiction

Under the Civil Rights Restoration Act of 1987,[4] OCR generally has institution-wide jurisdiction over a recipient of Federal funds.[5]

C. Allegation Must Relate to an "Operation" of Recipient

Discrimination must be alleged in an "operation" of a recipient. See 42 U.S.C. 2000d–4a.

D. Specific Discriminatory Actions Prohibited

The regulations implementing Title VI include provisions prohibiting discrimination based on race in terms of:

(1) Services: Provision of services or other benefits. 34 CFR 100.3(b)(1)(iii).

(2) Privileges: Restriction of an individual's enjoyment of an advantage or privilege enjoyed by others. 34 CFR 100.3(b)(1)(iv).

(3) Participation: Opportunities to participate. 34 CFR 100.3(b)(1)(vi).

The regulations also include a general, catchall provision prohibiting race discrimination. See 34 CFR 100.3(b)(5).

II. Standard Different Treatment by Agents or Employees

As with other claims of race discrimination under Title VI, OCR should first apply a standard different (disparate) treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. In doing so, OCR must determine whether a student was treated differently than other students on the basis of race without a legitimate, nondiscriminatory, nonpretextual reason.

The basic elements of a different treatment case were set out by the U.S. Supreme Court in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973) (focusing on indirect evidence of such treatment), a Title VII employment case. See also *United States Postal Service Board of Governors* v. *Aikens*, 460 U.S. 711 (1983); *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981).

A. Prima Facie Case

(1) Identify the racial group to which the complainant belongs for purposes of differential treatment analysis.

(2) Determine whether the complainant was treated differently than similarly situated members of other racial groups with regard to a service, benefit, privilege, etc., from the recipient. See, e.g., *University of Pittsburgh*, OCR Case No. 03–89–2035 (campus police treated black students more severely than white students); *Roosevelt Warm Springs Institute for Rehabilitation*, OCR Case No. 04–89–3003 (similar).

B. Rebuttal of Prima Facie Case by Showing Legitimate, Nondiscriminatory Reason for Treatment

After a prima facie case of race discrimination has been established against the recipient, OCR must then determine whether the recipient had a legitimate, nondiscriminatory reason for its action(s) which would rebut the prima facie case against it.

C. Recipient's Rebuttal Overcome With Showing of Pretext

If the prima facie case of discrimination is rebutted, OCR must

[1] The investigation guidance is directed at conduct that constitutes race discrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., (Title VI), and not at the content of speech. In cases in which verbal statements or other forms of expression are involved, consideration will be given to any implication of the First Amendment to the United States Constitution. In such cases, regional staff will consult with headquarters.

The term "race" shall be used throughout this compendium to refer to all forms of discrimination prohibited by Title VI—i.e., race, color, and national origin.

[2] Note that in addition to racial incidents/harassment cases, many sexual harassment cases are cited throughout this compendium—because the legal standards and theories applicable to these two different types of discrimination are similar. See *Drinkwater* v. *Union Carbide Corp.*, 904 F.2d 853, 859–60 (3d Cir. 1990) (both racial and sexual harassment are actionable based on right to nondiscriminatory environment).

[3] Of course, OCR will consider the differences between the contexts of employment and education.

[4] See 42 U.S.C. 2000d–4 (1988) (the section which amends Title VI).

[5] Note, however, that the Waggoner Amendment, 20 U.S.C. 1144(b), prohibits Federal agencies from directing or controlling the membership activities or internal operations of privately funded fraternities and sororities whose facilities are not owned by the recipient. This provision does not bar OCR from regulating recipients with respect to other activities of these groups.

next determine whether the recipient's asserted reason for its action(s) is a mere pretext for discrimination. Ultimately, however, the weight of the evidence must convince OCR that actual discrimination occurred. See *St. Mary's Honor Center* v. *Hicks*, 113 S.Ct. 2742 (1993) (under title VII disparate treatment analysis, ultimate burden of persuasion regarding intentional discrimination remains at all times with plaintiff).

III. Hostile Environment Analysis

A violation of Title VI may be found if racial harassment is severe, pervasive, or persistent so as to constitute a hostile or abusive educational environment. See *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986) (sets similar standard for sexual harassment under title VII) (relying on *Rogers* v. *EEOC*, 454 F.2d 234, 238 (5th Cir. 1971) (race discrimination can consist of an "environment heavily charged with ethnic or racial discrimination"), cert. denied, 406 U.S. 957 (1972)); *Harris* v. *Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (reiterating *Meritor* standard). Accord, *Hicks* v. *Gates Rubber Co.*, 833 F.2d 1406, 1412 (10th Cir. 1987); *Snell* v. *Suffolk County*, 782 F.2d 1094, 1102 (2d Cir. 1986); *Gray* v. *Greyhound Lines, East*, 545 F.2d 169, 176 (D.C. Cir. 1976) (noting with approval that EEOC has consistently held that title VII gives employee right to "'a working environment free of racial intimidation'"). See also, e.g., *Defiance College*, OCR Case No. 05–90–2024 (violation where college was aware of "repeated" and "patently offensive" verbal and physical racial harassment committed by students).

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. See *Harris* v. *Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (under title VII, factors to consider may include frequency and severity of discriminatory conduct, whether it is physically threatening or humiliating or merely offensive, and whether it interferes with work performance; psychological harm is not required but may be taken into account like any other relevant factor); *Johnson* v. *Bunny Bread*, 646 F.2d 1250, 1257 (8th Cir. 1981) (court examined nature, frequency, and content of racial harassment, as well as identities of perpetrators and victims). See also *Snell*, 782 F.2d at 1103 (citing *Henson* v. *City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982)) (same standard for sexual harassment).

A. Harassment Must Be Severe, Pervasive or Persistent

1. Pervasive or Persistent

Where the harassment is not sufficiently severe, it must consist of more than casual or isolated racial incidents to create a racially hostile environment. Compare *Trenton Junior College*, OCR Case No. 07–87–6006 (title VI violated where college failed to provide adequate security for black basketball players who were subjected to a break-in, cross-burning, and placement of raccoon skins at their campus residences) with *University of California, Santa Cruz*, OCR Case No. 09–91–6002 (no finding of racial harassment where OCR found only isolated individual incidents over three-year period). See also, e.g., *Snell*, 782 F.2d at 1103 ("To establish a hostile atmosphere, * * * plaintiffs must prove more than a few isolated incidents of racial enmity * * *. Casual comments, or accidental or sporadic conversation, will not trigger equitable relief"); *Gates Rubber Co.*, 833 F.2d 1406; *Powell* v. *Missouri State Highway and Transportation Department*, 822 F.2d 798 (8th Cir. 1986); *Moylan* v. *Maries County*, 792 F.2d 746 (8th Cir. 1986); *Henson*, 682 F.2d at 904 (quoting *Rogers*, 454 F.2d at 238).

OCR and Federal courts have found a hostile environment where there was a pattern or practice of harassment, or where the harassment was sustained and nontrivial. See, e.g., *Wapato School District No. 207*, OCR Case No. 10–82–1039 (Title VI violated where teacher repeatedly treated minority students in racially derogatory manner). Compare *Walker* v. *Ford Motor Co.*, 684 F.2d 1355 (11th Cir. 1982) (hostile environment where use of derogatory terms was "repeated, continuous, and prolonged") with *Gilbert* v. *City of Little Rock*, 722 F.2d 1390 (8th Cir. 1983) (hostile environment not created by isolated and allegedly unrelated racial slurs), cert. denied, 466 U.S. 972 (1984).

2. Severe

The severity of individual incidents must also be considered. See, e.g., *Vance* v. *Southern Bell Telephone and Telegraph Co.*, 863 F.2d 1503, 1510–11 (11th Cir. 1989) (determination whether conduct is "severe and pervasive" does not turn solely on number of incidents; fact-finder must examine gravity as well as frequency) (decided under 42 U.S.C. 1981); *Carrero* v. *New York City Housing Authority*, 890 F.2d 569, 578 (2d Cir. 1989) ("It is not how long the * * * obnoxious course of conduct lasts. The offensiveness of the individual actions * * * is also a factor to be considered.").

Generally, the severity of the incidents needed to establish a racially hostile environment varies inversely with their pervasiveness or persistence. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N–915.050 (Mar. 19, 1990) ("the more severe the harassment, the less need to show a repetitive series of incidents").

a. Special mission and duties of educational institutions. The unique setting and mission of an educational institution must be taken into account when OCR evaluates the severity of racial harassment under title VI. School officials have a duty to provide a nondiscriminatory environment conducive to learning. See generally 34 CFR part 100 (regulations prohibiting any form of race discrimination which interferes with educational programs or activities under title VI).

b. Characteristics and circumstances of victim—especially race and age. OCR must take into account the characteristics and circumstances of the victim on a case-by-case basis—particularly the victim's race and age—when evaluating the severity of racial incidents at an educational institution. See *Harris* v. *International Paper Co.*, 765 F. Supp. 1509, 1515–16 (D. Me. 1991) (the appropriate standard to apply in a "hostile environment racial harassment case is that of a 'reasonable black person'"). See also, e.g., *Ellison* v. *Brady*, 924 F.2d 872 (9th Cir. 1991) (discussing differences in perspectives of men and women toward sexual harassment, and need to examine harassment from perspective of reasonable victim with characteristic upon which harassment was based).

The reasonable person standard as applied to children is "that of a reasonable person of like age, intelligence, and experience under like circumstances." Restatement (2d), Torts, Section 283A (1965) (Comment b: "The special standard to be applied in the case of children arises out of the public interest in their welfare and protection * * *"). See also, e.g., *Honeycutt* v. *City of Wichita*, 247 Kan. 250, 796 P.2d 549 (Kan. 1990) (adopting Restatement standard); *Standard* v. *Shine*, 278 S.C. 337, 295 S.E.2d 786 (S.C. 1982) (same); *Camerlinck* v. *Thomas*, 209 Neb. 843, 312 N.W.2d 260 (Neb. 1981) (same).

c. Nature of Incident. The nature of the incident(s) should also be considered. See, e.g., *Vance* v. *Southern Bell Telephone and Telegraph Co.*, 863 F.2d at 1506–10 (hostile environment created where noose was hung twice at employee's workstation); *Watts* v. *New York City Police Department*, 724 F.

Supp. 99, 105 (S.D.N.Y. 1989) (same, based on two sexual assaults).

A single incident that is sufficiently severe may establish a racially hostile environment. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N–915.050 (Mar. 19, 1990) and cases cited therein; *Barrett* v. *Omaha National Bank*, 584 F. Supp. 22 (D. Neb. 1983), aff'd, 726 F.2d 424 (8th Cir. 1984) (sexually hostile environment established by sexual assault).

d. Size of recipient and location of incidents. The size of the recipient and the location of the incidents also may be important.

e. Identity of individuals involved. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. See, e.g., *Wapato School District No. 207*, OCR Case No. 10–82–1039 (racial harassment of students by teacher was particularly opprobrious).

f. Other incidents at the recipient. OCR will also consider other racial incidents at the institution. See, e.g., *Midwest City-Del City Public Schools*, OCR Case No. 06–92–1012 (finding of racially hostile environment based in part on several racial incidents at school which occurred shortly before incidents in complaint).

g. Harassment need not be directed specifically at complainant or tangibly harm complainant or victim. The regulations implementing Title VI provide that a complaint may be filed by "[a]ny person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part." 34 CFR 100.7(b). Thus, in hostile environment cases, the harassment need not be targeted specifically at the individual complainant. See *Waltman* v. *International Paper Co.*, 875 F.2d 468, 477 (5th Cir. 1989) (all sexual graffiti in office, not just that directed at plaintiff, was relevant to plaintiff's claim); *Hall* v. *Gus Construction Co.*, 842 F.2d 1010, 1015 (8th Cir. 1988) (evidence of sexual harassment directed at others is relevant to show hostile environment); *Gates Rubber Co.*, 833 F.2d at 1415 ("one of the critical inquiries in a hostile environment claim must be the *environment*" as a whole) (emphasis in original); *Walker* v. *Ford Motor Co.*, 684 F.2d 1355, 1358–59 (11th Cir. 1982) hostile environment established where racial harassment made plaintiff "feel unwanted and uncomfortable in his surroundings," even though it was not directed at him).

The harassment need not be based on the ground of the complainant's or victim's race, so long as it is racially motivated. See, e.g., *Center Grove Community School*, OCR Case No. 15–91–1168 (title VI violated where white girl was forced to withdraw from all-white school, as result of harassment by classmates which included note criticizing her association with black student at another school).

To establish a hostile environment, harassment need not result in a tangible injury or detriment to the complainant or the victim of the harassment. *Vinson*, 477 U.S. at 64. See also, e.g., *Harris* v. *Forklift Systems, Inc.*, 114 S.Ct. at 371 (under title VII several factors are considered including whether behaviors interfere with work performance; psychological harm is not required but may be taken into account like any other relevant factor); *Gilbert*, 722 F.2d at 1394 (environment "which significantly and adversely affects the psychological well-being of an employee because of his or her race" is enough to constitute title VII violation); *Bundy* v. *Jackson*, 641 F.2d 934, 943–45 (D.C. Cir. 1981) (protection against race and sex discrimination extends to "psychological and emotional work environment").

B. Notice

A recipient has a duty to provide a nondiscriminatory educational environment, but it must somehow receive notice of racial harassment in order to be found responsible for it. See *Vinson*, 477 U.S. at 72; see also *Steele* v. *Offshore Shipbuilding, Inc.*, 867 F.2d 1311 (11th Cir. 1989); *Lipsett* v. *University of Puerto Rico*, 864 F.2d 881 (1st Cir. 1988).

1. Actual Notice

A recipient may be found liable for racial harassment if it has actual knowledge of the racially offensive behavior or actions. See, e.g., *Hunter* v. *Allis-Chalmers Corp.*, 797 F.2d 1417 (7th Cir. 1986) (liability exists if management-level employees were aware of barrage of offensive conduct); *Katz* v. *Dole*, 709 F.2d 251 (4th Cir. 1983) (actual knowledge where victim complains of harassment to appropriate authorities); *Henson* v. *City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982).

2. Constructive Notice

A recipient may be found liable where it reasonably should have known of the harassment—e.g., because the harassment was so pervasive that its awareness may be inferred. See *Paroline* v. *Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989) (liability may be imputed where employer knew or should have known about prior conduct of harasser toward other women), vacated in part on other grounds, 900 F.2d 27 (4th Cir. 1990); *Yates* v. *Avco Corp.*, 819 F.2d 630 (6th Cir. 1987) (constructive notice where employee harassed women on a daily basis); *Waltman*, 875 F.2d 468 (possibility of constructive notice where sexual graffiti existed in numerous locations); *Vance* v. *Southern Bell Telephone and Telegraph Co.*, 863 F.2d at 1510–11; *Swentek* v. *USAir, Inc.*, 830 F.2d 552 (4th Cir. 1987).

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. See, e.g., *Kauffman* v *Allied Signal, Inc., Autolite Division*, 970 F.2d 178 (6th Cir.) ("scope of employment" standard for holding employers liable for supervisory harassment is based on traditional agency principles, such as when and where harassment took place, and whether it was foreseeable), cert. denied, 113 S.Ct. 831 (1992). See also EEOC Policy Guidance on Current Issues of Sexual Harassment, N–915.050 (Mar. 19, 1990) (apparent authority exists where third parties reasonably believe that actions of supervisor represent exercise of authority possessed by virtue of employer's conduct).[6]

In evaluating whether constructive notice should be imputed to a recipient, the availability, coverage and public dissemination of antidiscrimination policies and grievance procedures for students will be considered in determining whether the recipient has made a sufficient effort to become aware of racial incidents if and when they occur. See *Meritor Savings Bank*, 477 U.S. at 72–73 (existence of uninvoked grievance procedures and policies against discrimination is relevant to issue of employer liability for sexual harassment, but not dispositive).

C. Recipient's Response

1. Duty to Take Reasonable Steps to End Harassment

Once a recipient has notice of a racially hostile environment, it has a duty to take reasonable steps to eliminate it. If it fails to respond adequately to the hostile environment, then the recipient may be found to have

[6] As discussed supra, in the education context, the person from whose perspective the apparent authority of an agent or employee of a recipient must be evaluated is a reasonable student of the same age, intelligence and experience as the alleged victim of the harassment.

violated title VI. See, e.g., *California State University, Chico,* OCR Case No. 09–89–2106 (inadequate response to racial harassment where university had no written grievance procedure and failed to interview most of the individuals involved); *Township High School District No. 214,* OCR Case No. 05–82–1097 (OCR found violation where school district failed to take adequate steps to correct repeated racial harassment by students, of which employees were aware). See also, e.g., *Snell* v. *Suffolk County,* 782 F.2d 1094 (2d Cir. 1986) (responsibility depends on gravity of harm, nature of work environment, and resources available); *Hall* v. *Gus Construction Co., Inc.,* 842 F.2d 1010 (8th Cir. 1988) (employer will be liable for failing to discover what is going on and to take remedial steps when actions are so numerous, egregious, and concentrated as to add up to campaign of harassment); *Paroline,* 879 F.2d 100 (4th Cir. 1989); *Henson* v. *City of Dundee,* 682 F.2d 897, 904 (11th Cir. 1982).

2. Response or Remedy Should Redress Actual Problems

The appropriate response or remedy for a hostile environment should be tailored to redress the specific problems experienced at the institution. See, e.g., *Trenton Junior College,* OCR Case No. 07–87–6006 (region developed remedial plan with college that included staff training on racial harassment, payment of compensation to harassed students and individuals who assisted the students in arranging for their safety, implementation of special efforts—including financial aid—to recruit black students, and development of plan for handling future harassment complaints).

3. Response Must Reasonably Attempt to Prevent Recurrence

The responsive action taken by a recipient must be reasonably calculated to prevent recurrence and ensure that individuals are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees. See, e.g., *Brooms* v. *Regal Tube Co.,* 881 F.2d 412 (7th Cir. 1989) (response must be reasonably calculated to prevent further harassment under particular facts and circumstances of case at time allegations are made; courts should not focus solely on whether remedial activity ultimately succeeded, but should determine whether total response was reasonable); *Waltman* v. *International Paper Co.,* 875 F.2d 468, 476 (5th Cir. 1989) (response must be reasonably calculated to halt harassment); *Bundy* v. *Jackson,* 641 F.2d 934 (D.C. Cir. 1981) (employer liable where supervisor had full notice of harassment and did nothing to stop or investigate practice; employer must take all necessary steps to investigate and correct harassment—including warnings, appropriate discipline, and other means of preventing harassment).

[FR Doc. 94–5531 Filed 3–9–94; 8:45 am]
BILLING CODE 4000–01–P

federal register

Thursday
March 10, 1994

Part XI

Department of Agriculture

Cooperative State Research Service

Committee of Nine; Meeting; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: May 10–11, 1994, May 12, 1994.
Time: 8 a.m. to 5 p.m., 8 a.m.–Noon.
Place: Room 1066 South Building, 14th and Independence Avenue SW., USDA, CSRS, Washington, DC 20250.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

Contact Person for Agenda and More Information: Dr. Walter R. Woods, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, room 346, Aerospace Building, Ag Box 2230, Washington, DC 20250–2230, Telephone: 202–401–6040.

Done at Washington, DC, this 2nd day of March 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–5576 Filed 3–9–94; 8:45 am]
BILLING CODE 3410–22–M

federal register

Thursday
March 10, 1994

Part XII

Delaware River Basin Commission

18 CFR Part 401

Amendments to Administrative Manual—Rules of Practice and Procedure; Nonpoint Sources of Pollution; Special Protection Waters; Final Rule and Notice

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendments to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its February 23, 1994 business meeting, the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure relating to the control of nonpoint sources of pollution in the drainage area to classified Special Protection Waters.

By the same action, the Commission amended its Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations. Supplementary background information and a summary of the amendments to the Comprehensive Plan, Water Code and Water Quality Regulations are published elsewhere in this issue of the **Federal Register**. Those amendments address new nonpoint sources on a project-by-project basis through the Commission's project review process under section 3.8 of the Delaware River Basin Compact as well as any other activities the Commission believes may generate increased nonpoint source pollution loads which could have a substantial impact on Special Protection Waters. In addition, the amendments address new and existing nonpoint sources on a priority watershed basis. For priority watersheds, watershed nonpoint source management plans will be developed and implemented. Finally, the amendments encourage the development of watershed management plans prepared voluntarily and independently from these regulations. Processes to identify priority watersheds and develop watershed nonpoint source management plans are included in the amendments, as are implementation policies and exceptions.

The amendments to the Rules of Practice and Procedure add a new category to those now required to be submitted to the Commission for review and approval under section 3.8 of the Compact: Any project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

EFFECTIVE DATE: June 1, 1994.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on June 16, 1993 and June 22, 1993 as noticed in the April 9, 1993 and June 16, 1993 issues of the **Federal Register** (Vol. 58, No. 67 and Vol. 58, No. 114). Based upon testimony received and considerable deliberation, the Commission has amended its Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR Part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(b)(18) is added to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(b) * * *

(18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

* * * * *

Delaware River Basin Compact, 75 Stat. 688.

Dated: February 25, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–5608 Filed 3–9–94; 8:45 am]

BILLING CODE 6360–01–P

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its February 23, 1994 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan, Water Code and Water Quality Regulations relating to the control of nonpoint sources of pollution in the drainage area to classified Special Protection Waters. The amendments address new nonpoint sources on a project-by-project basis through the Commission's project review process under section 3.8 of the Delaware River Basin Compact as well as any other activities the Commission believes may generate increased nonpoint source pollution loads which could have a substantial impact on Special Protection Waters. In addition, the amendments address new and existing nonpoint sources on a priority watershed basis. For priority watersheds, watershed nonpoint source management plans will be developed and implemented. Finally, the amendments encourage the development of watershed management plans prepared voluntarily and independently from these regulations. Processes to identify priority watersheds and develop watershed nonpoint source management plans are included in the amendments, as are implementation policies and exceptions.

By the same action, the Commission amended its Administrative Manual—Rules of Practice and Procedure by the addition of a new category to those now required to be submitted to the Commission for review and approval under section 3.8 of the Compact: Any project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters. That amendment is published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**.

EFFECTIVE DATE: June 1, 1994.

ADDRESSES: Copies of the Commission's Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations, and the full text of the amendments are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on June 16, 1993 and June 22, 1993 as noticed in the April 9, 1993 and June 16, 1993 issues of the **Federal Register** (Vol. 58, No. 67 and Vol. 58, No. 114). Based upon testimony received and considerable deliberation, the Commission has amended its Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations.

Delaware River Basin Compact, 75 Stat. 688

Dated: February 25, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–5607 Filed 3–9–94; 8:45 am]

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federal register

Thursday
March 10, 1994

Part XIII

The President

Executive Order 12902—Energy Efficiency and Water Conservation at Federal Facilities

Federal Register
Vol. 59, No. 47
Thursday, March 10, 1994

Presidential Documents

Title 3—

The President

Executive Order 12902 of March 8, 1994

Energy Efficiency and Water Conservation at Federal Facilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act (Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.*) as amended by the Energy Policy Act of 1992 (Public Law 102–486, 106 Stat. 2776) and section 301 of title 3, United States Code, I hereby order as follows:

PART 1—DEFINITIONS

For the purposes of this order:

Section 101. The "Act" means the Federal energy management provisions of the Energy Policy and Conservation Act, as amended by the Energy Policy Act of 1992.

Sec. 102. The term "comprehensive facility audit" means a survey of a building or facility that provides sufficiently detailed information to allow an agency to enter into energy or water savings performance contracts or to invite inspection and bids by private upgrade specialists for direct agency-funded energy or water efficiency investments. It shall include information such as the following:

(a) the type, size, energy use, and performance of the major energy using systems and their interaction with the building envelope, the climate and weather influences, usage patterns, and related environmental concerns;

(b) appropriate energy and water conservation maintenance and operating procedures;

(c) recommendations for the acquisition and installation of energy conservation measures, including solar and other renewable energy and water conservation measures; and

(d) a strategy to implement the recommendations.

Sec. 103. The term "cost-effective" means providing a payback period of less than 10 years, as determined by using the methods and procedures developed pursuant to 42 U.S.C. 8254 and 10 CFR 436.

Sec. 104. The term "demand side management" refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

Sec. 105. The term "energy savings performance contracts" means contracts that provide for the performance of services for the audit, design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations.

Sec. 106. The term "agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 107. The term "Federal building" means any individual building, structure, or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government and which consumes energy

or water. In any provision of this order, the term "Federal building" shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

Sec. 108. The term "Federal facility" means any building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. In any provision of this order, the term "Federal facility" shall also include any building leased in whole or in part for use by the Federal Government where the term of the lease exceeds 5 years and the lease does not prohibit implementation of the provision in question.

Sec. 109. The term "franchising" means that an agency would provide the services of its employees to other agencies on a reimbursable basis.

Sec. 110. The term "gainsharing" refers to incentive systems that allocate some portion of savings resulting from gains in productivity to the workers who produce those gains.

Sec. 111. The term "industrial facilities" means any fixed equipment, building, or complex for the production of goods that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the hot water energy load requirements of the building.

Sec. 112. The term "life cycle cost" refers to life cycle cost calculated pursuant to the methodology established by 10 CFR 436.11.

Sec. 113. The term "prioritization survey" means a rapid assessment that will be used by an agency to identify those facilities with the highest priority projects based on the degree of cost effectiveness and to schedule comprehensive facility audits prior to project implementation. The prioritization survey shall include information such as the following:

(a) the type, size, energy and water use levels of the major energy and water using systems in place at the facility; and

(b) the need, if any, for acquisition and installation of cost-effective energy and water conservation measures, including solar and other renewable energy resource measures.

Sec. 114. The term "shared energy savings contract" refers to a contract under which the contractor incurs the cost of implementing energy savings measures (including, but not limited to, performing the audit, designing the project, acquiring and installing equipment, training personnel, and operating and maintaining equipment) and in exchange for providing these services, the contractor gains a share of any energy cost savings directly resulting from implementation of such measures during the term of the contract.

Sec. 115. The term "solar and other renewable energy sources" includes, but is not limited to, agriculture and urban waste, geothermal energy, solar energy, and wind energy.

Sec. 116. The term "utility" means any person, State, or agency that is engaged in the business of producing or selling electricity or engaged in the local distribution of natural gas or water to any ultimate consumer.

PART 2—INTERAGENCY COORDINATION

Sec. 201. *Interagency Coordination.* The Department of Energy ("DOE") shall take the lead in implementing this order through the Federal Energy Management Program ("FEMP"). The Interagency Energy Policy Committee ("656 Committee") and the Interagency Energy Management Task Force ("Task Force") shall serve as forums to coordinate issues involved in implementing

energy efficiency, water conservation, and solar and other renewable energy in the Federal sector.

PART 3—AGENCY GOALS AND REPORTING REQUIREMENTS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL FACILITIES

Sec. 301. *Energy Consumption Reduction Goals.* (a) Each agency shall develop and implement a program with the intent of reducing energy consumption by 30 percent by the year 2005, based on energy consumption per-gross-square-foot of its buildings in use, to the extent that these measures are cost-effective. The 30 percent reductions shall be measured relative to the agency's 1985 energy use. Each agency's implementation program shall be designed to speed the introduction of cost-effective, energy-efficient technologies into Federal facilities, and to meet the goals and requirements of the Act and this order.

(b) Each agency shall develop and implement a program for its industrial facilities in the aggregate with the intent of increasing energy efficiency by at least 20 percent by the year 2005 as compared to the 1990 benchmark, to the extent these measures are cost-effective, and shall implement all cost-effective water conservation projects. DOE, in coordination with the 656 Committee, shall establish definitions and appropriate indicators of energy and water efficiency, and energy and water consumption and costs, in Federal industrial facilities for the purpose of establishing a base year of 1990.

Sec. 302. *Energy and Water Surveys and Audits of Federal Facilities.* (a) *Prioritization Survey.* Each agency responsible for managing Federal facilities shall conduct a prioritization survey, within 18 months of the date of this order, on each of the facilities the agency manages. The surveys shall be used to establish priorities for conducting comprehensive facility audits.

(b) *Comprehensive Facility Audits.* Each agency shall develop and begin implementing a 10-year plan to conduct or obtain comprehensive facility audits, based on prioritization surveys performed under section 302(a) of this order.

(1) Implementation of the plan shall ensure that comprehensive facility audits of approximately 10 percent of the agency's facilities are completed each year. Agencies responsible for managing less than 100 Federal facilities shall plan and execute approximately 10 comprehensive facility audits per year until all facilities have been audited.

(2) Comprehensive audits of facilities performed within the last 3 years may be considered current for the purposes of implementation.

(3) "No-cost" audits, such as those outlined in section 501(c) of this order, shall be utilized to the extent practicable.

(c) *Exempt Facilities.* Because the mission within facilities exempt from the energy and water reduction requirements under the Act may not allow energy efficiency and water conservation in certain operations, actions shall be taken to reduce all other energy and water waste using the procedures described in the Act and this order. Each agency shall develop and implement a plan to improve energy and water efficiency in such exempt facilities. The prioritization surveys are intended to allow agencies to refine their designation of facilities as "exempt" or "industrial," so that only individual buildings in which industrial or energy-intensive operations are conducted remain designated as "exempt" or "industrial." Within 21 months of the date of this order, each agency shall report to FEMP and to the Office of Management and Budget ("OMB") the redesignations that the agency is making as a result of the prioritization surveys. Agencies may seek exemptions for their facilities pursuant to the Energy Policy and Conservation Act, as amended.

(d) *Leased Facilities.* Agencies shall conduct surveys and audits of leased facilities to the extent practicable and to the extent that the recommendations

of such surveys and audits could be implemented under the terms of the lease.

Sec. 303. *Implementation of Energy Efficiency and Water Conservation Projects.* (a) *Implementation of New Audit Recommendations.* Within 1 year of the date of this order, agencies shall identify, based on preliminary recommendations from the prioritization surveys required under section 302 of this order, high priority facilities to audit and shall complete the first 10 percent of the required comprehensive facility audits. Within 180 days of the completion of the comprehensive facility audit of each facility, agencies shall begin implementing cost-effective recommendations for installation of energy efficiency, water conservation, and renewable energy technologies for that facility.

(b) *Implementation of Existing Audits.* Within 180 days of the date of this order, agencies shall begin to implement cost-effective recommendations from comprehensive audits of facilities performed within the past 3 years, for installation of energy efficiency, water conservation, and renewable energy technologies.

Sec. 304. *Solar and Other Renewable Energy.* The goal of the Federal Government is to significantly increase the use of solar and other renewable energy sources. DOE shall develop a program for achieving this goal cost-effectively and, within 210 days of the date of this order, submit the program to the 656 Committee for review. DOE shall lead the effort to assist agencies in meeting this goal.

Sec. 305. *Minimization of Petroleum-Based Fuel Use in Federal Buildings and Facilities.* All agencies shall develop and implement programs to reduce the use of petroleum in their buildings and facilities by switching to a less-polluting and nonpetroleum-based energy source, such as natural gas or solar and other renewable energy sources. Where alternative fuels are not practical or cost-effective, agencies shall strive to improve the efficiency with which they use the petroleum. Each agency shall survey its buildings and facilities that utilize petroleum-based fuel systems to determine where the potential for a dual-fuel capability exists and shall provide dual-fuel capability where cost-effective and practicable.

Sec. 306. *New Space.* (a) *New Federal Facility Construction.* Each agency involved in the construction of a new facility that is to be either owned by or leased to the Federal Government shall:

(1) design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies;

(2) ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR 435, local building standards, or a Btu-per-gross-square-foot ceiling as determined by the Task Force within 120 days of the date of this order, whichever will result in a lower life cycle cost over the life of the facility;

(3) establish and implement, within 270 days of the date of this order, a facility commissioning program that will ensure that the construction of such facilities meets the requirements outlined in this section before the facility is accepted into the Federal facility inventory; and

(4) utilize passive solar design and adopt active solar technologies where they are cost-effective.

(b) *New Leases For Existing Facilities.* To the extent practicable and permitted by law, agencies entering into leases, including the renegotiation or extension of existing leases, shall identify the energy and water consumption of those facilities and seek to incorporate provisions into each lease that minimize the cost of energy and water under a life cycle analysis, while maintaining or improving occupant health and safety. These requirements may include renovation of proposed space prior to or within the

first year of each lease. Responsible agencies shall seek to negotiate the cost of the lease, taking into account the reduced energy and water costs during the term of the lease.

(c) *Government-Owned Contractor-Operated Facilities.* All Government-owned contractor-operated facilities shall comply with the goals and requirements of this order. Energy and water management goals shall be incorporated into their management contracts.

Sec. 307. *Showcase Facilities.* (a) *New Building Showcases.* When an agency constructs at least five buildings in a year, it shall designate at least one building, at the earliest stage of development, to be a showcase highlighting advanced technologies and practices for energy efficiency, water conservation, or use of solar and other renewable energy.

(b) *Demonstrations in Existing Facilities.* Each agency shall designate one of its major buildings to become a showcase to highlight energy or water efficiency and also shall attempt to incorporate cogeneration, solar and other renewable energy technologies, and indoor air quality improvements. Selection of such buildings shall be based on considerations such as the level of nonfederal visitors, historic significance, and the likelihood that visitors will learn from displays and implement similar projects. Within 180 days of the date of this order, each agency shall develop and implement plans and work in cooperation with DOE and, where appropriate, in consultation with the General Services Administration ("GSA"), the Environmental Protection Agency ("EPA"), and other appropriate agencies, to determine the most effective and cost-effective strategies to implement these demonstrations.

Sec. 308. *Annual Reporting Requirements.* (a) As required under the Act, the head of each agency shall report annually to the Secretary of Energy and OMB, in a format specified by the Secretary and OMB after consulting with the 656 Committee. The report shall describe the agency's progress in achieving the goals of this order.

(b) The Secretary of Energy shall report to the President and the Congress annually on the implementation of this order. The report should provide information on energy and water use and cost data and shall provide the greatest level of detail practicable for buildings and facilities by energy source.

Sec. 309. *Report on Full Fuel Cycle Analysis.* DOE shall prepare a report on the issues involved in instituting life cycle analysis for Federal energy and product purchases that address the full fuel cycle costs, including issues concerning energy exploration, development, processing, transportation, storage, distribution, consumption, and disposal, and related impacts on the environment. The report shall examine methods for conducting life cycle analysis and implementing such analysis in the Federal sector and shall make appropriate recommendations. The report shall be forwarded to the President for review.

Sec. 310. *Agency Accountability.* One year after the date of this order, and every 2 years thereafter, the President's Management Council shall report to the President about efforts and actions by agencies to meet the requirements of this order. In addition, each agency head shall designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of this order and shall appoint such official to the 656 Committee. The 656 Committee shall also work to ensure the implementation of this order. The agency senior official and the 656 Committee shall coordinate implementation with the Federal Environmental Executive and Agency Environmental Executives established under Executive Order No. 12873.

PART 4—USE OF INNOVATIVE FINANCING AND CONTRACTUAL MECHANISMS

Sec. 401. *Financing Mechanisms.* In addition to available appropriations, agencies shall utilize innovative financing and contractual mechanisms, including, but not limited to, utility demand side management programs, shared energy savings contracts, and energy savings performance contracts, to meet the goals and requirements of the Act and this order.

Sec. 402. *Workshop for Agencies.* Within a reasonable time of the date of this order, the Director of OMB, or his or her designee, and the Task Force shall host a workshop for agencies regarding financing and contracting for energy efficiency, water efficiency, and renewable technology projects. Based on the results of that meeting, the Administrator, Office of Procurement Policy ("OFPP"), shall assist the Administrator of General Services and the Secretary of Energy in eliminating unnecessary regulatory and procedural barriers that slow the utilization of such audit, financing, and contractual mechanisms or complicate their use. All actions that are cost-effective shall be implemented through the process required in section 403 of this order.

Sec. 403. *Elimination of Barriers.* Agency heads shall work with their procurement officials to identify and eliminate internal regulations, procedures, or other barriers to implementation of the Act and this order. DOE shall develop a model set of recommendations that will be forwarded to the Administrator of OFPP in order to assist agencies in eliminating the identified barriers.

PART 5—TECHNICAL ASSISTANCE, INCENTIVES, AND AWARENESS

Sec. 501. *Technical Assistance.* (a) To assist Federal energy managers in implementing energy efficiency and water conservation projects, DOE shall, within 180 days of the date of this order, develop and make available through the Task Force:

(1) guidance explaining the relationship between water use and energy consumption and the energy savings achieved through water conservation measures;

(2) a model solicitation and implementation guide for innovative funding mechanisms referenced in section 401 of this order;

(3) a national list of companies providing water services in addition to the list of qualified energy service companies as required by the Act;

(4) the capabilities and technologies available through the national energy laboratories; and

(5) an annually-updated guidance manual for Federal energy managers that includes, at a minimum, new sample contracts or contract provisions, position descriptions, case studies, recent guidance, and success stories.

(b) The Secretary of Energy, in coordination with the Administrator of General Services, shall make available through the Task Force, within 180 days of the date of this order:

(1) the national list of qualified water and energy efficiency contractors for inclusion on a Federal schedule; and

(2) a model provision on energy efficiency and water conservation, for inclusion in new leasing contracts.

(c) Within 180 days of the date of this order, the Administrator of General Services shall:

(1) contact each utility that has an area-wide contract with GSA to determine which of those utilities will perform "no-cost" audits for energy efficiency and water conservation and potential solar and other renewable energy sources that comply with Federal life cycle costing procedures set forth in Subpart A, 10 CFR 436;

(2) for each energy and water utility serving the Federal Government, determine which of those utilities offers demand-side management services and incentives and obtain a list and description of those services and incentives; and

(3) prepare a list of those utilities and make that list available to all Federal property management agencies through the Task Force.

(d) Within 18 months of the date of this order, the Administrator of General Services, in consultation with the Secretary of Energy, shall develop procurement techniques, methods, and contracts to speed the purchase and installation of energy, water, and renewable energy technologies in Federal

facilities. Such techniques, methods, and contracts shall be designed to utilize both direct funding by the user agency, including energy savings performance contracting, and utility rebates. To the extent permitted by law, the Administrator of OFPP shall assist the Administrator of General Services and the Secretary of Energy by eliminating unnecessary regulatory and procedural barriers that would slow the implementation of such methods, techniques, or contracts or complicate their use.

(e) Agencies are encouraged to seek technical assistance from DOE to develop and implement solar and other renewable energy projects.

(f) DOE shall conduct appropriate training for Federal agencies to assist them in identifying and funding cost-effective projects. This training shall include providing software and other technical tools to audit facilities and identify opportunities. To the extent that resources are available, DOE shall work with utilities and the private sector to encourage their participation in Federal sector programs.

(g) DOE, in coordination with EPA, GSA, and the Department of Defense ("DOD"), shall develop technical assistance services for agencies to help identify energy efficiency, water conservation, indoor air quality, solar and other renewable energy projects, new building design, fuel switching, and life cycle cost analysis. These services shall include, at a minimum, a help line, computer bulletin board, information and education materials, and project tracking methods. Agencies shall identify technical assistance needed to meet the goals and requirements of the Act and this order and seek such assistance from DOE.

(h) The Secretary of Energy and the Administrator of General Services shall explore ways to stimulate energy efficiency, water conservation, and use of solar and other renewable energy sources and shall study options such as new building performance guidelines, life cycle value engineering, and designer/builder incentives such as award fees. The studies shall be completed within 270 days of the date of this order. The OFPP will issue guidance to agencies on life cycle value engineering within 6 months of the completion of the studies.

(i) The Secretary of Energy and the Administrator of General Services shall develop and distribute through the Task Force a model building commissioning program within 270 days of the date of this order.

(j) The lists, guidelines, and services in this section of the order shall be updated periodically.

Sec. 502. *Retention of Savings and Rebates.* (a) Within a reasonable time after the date of this order, the Director of OMB, along with the Secretary of Energy, the Secretary of Defense, and the Administrator of General Services, to the extent practicable and permitted by law, shall develop guidelines and implement procedures to allow agencies, in fiscal year 1995 and beyond, to retain utility rebates and incentives received by the agency and savings from energy efficiency and water conservation efforts as provided in section 152 of the Energy Policy Act of 1992 and 10 U.S.C. 2865 and 2866.

Sec. 503. *Performance Evaluations.* To recognize the responsibilities of facility managers, designers, energy managers, their superiors, and, to the extent practicable and appropriate, others critical to the implementation of this order, heads of agencies shall include successful implementation of energy efficiency, water conservation, and solar and other renewable energy projects in their position descriptions and performance evaluations.

Sec. 504. *Incentive Awards.* Agencies are encouraged to review employee incentive programs to ensure that such programs appropriately reward exceptional performance in implementing the Act and this order. Such awards may include monetary incentives such as Quality Step Increases, leave time awards and productivity gainsharing, and nonmonetary and honor awards such as increased authority, additional resources, and a series of options from which employees or teams of employees can choose.

Sec. 505. *Project Teams/Franchising.* (a) Agencies are encouraged to establish Energy Efficiency and Environmental Project Teams ("Project Teams") to implement energy efficiency, water conservation, and solar and other renewable energy projects within their respective agencies. DOE shall develop a program to train and support the Project Teams, which should have particular expertise in innovative financing, including shared energy savings and energy savings performance contracting. The purpose of the program is to enable project teams to implement projects quickly and effectively in their own agencies.

(b) Agencies are encouraged to franchise the services of their Project Teams. The ability to access the services of other agencies' teams will foster excellence in project implementation through competition among service providers, while providing an alternative method to meet or exceed the requirements of the Act and this order for agencies that are unable to devote sufficient personnel to implement projects.

Sec. 506. *FEMP Account Managers.* FEMP shall develop a customer service program and assign account managers to agencies or regions so that each project may have a designated account manager. When requested by an agency, the account manager shall start at the audit phase and follow a project through commissioning, evaluation, and reporting. The account manager shall provide technical assistance and shall have responsibility to see that all actions possible are taken to ensure success of the project.

Sec. 507. *Procurement of Energy Efficient Products by Federal Agencies.* (a) *"Best Practice" Technologies.* Agencies shall purchase energy-efficient products in accordance with the guidelines issued by OMB, in consultation with the Defense Logistics Agency ("DLA"), DOE, and GSA, under section 161 of the Energy Policy Act of 1992. The guidelines shall include listings of energy-efficient products and practices used in the Federal Government. At a minimum, OMB shall update the listings annually. DLA, DOE, and GSA shall update the portions of the listings for which they have responsibility as new products become available and conditions change.

(1) Each agency shall purchase products listed as energy-efficient in the guidelines whenever practicable, and whenever they meet the agency's specific performance requirements and are cost-effective. Each agency shall institute mechanisms to set targets and measure progress.

(2) To further encourage a market for highly-energy-efficient products, each agency shall increase, to the extent practicable and cost-effective, purchases of products that are in the upper 25 percent of energy efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards. This requirement shall apply wherever such information is available, either through Federal or industry-approved testing and rating procedures.

(3) GSA and DLA, in consultation with DOE, other agencies, States, and industry and other nongovernment organizations, shall provide all agencies with information on specific products that meet the energy-efficiency criteria of this section. Product information should be made available in both printed and electronic formats.

(b) *Federal Market Opportunities.* DOE, after consultation with industry, utilities, and other interested parties, shall identify advanced energy-efficient and water-conserving technologies that are technically and commercially feasible but not yet available on the open market. These technologies may include, but are not limited to, the advanced appliance technologies referenced in section 127 of the Energy Policy Act of 1992. DOE, in cooperation with OMB, GSA, DOD, the National Institute of Standards and Technology ("NIST"), and EPA, shall issue a "Federal Procurement Challenge" inviting each Federal agency to commit a specified fraction of their purchases within a given time period to advanced, high-efficiency models of products, provided that these anticipated future products can meet the agency's energy performance, functionality, and cost requirements.

(c) *Accelerated Retirement of Inefficient Equipment.* DOE, in consultation with GSA and other agencies, shall establish guidelines for the cost-effective early retirement of older, inefficient appliances and other energy and water-using equipment in Federal facilities. Such guidelines may take into account significant improvements in energy efficiency and water conservation, opportunities to down-size or otherwise optimize the replacement equipment as a result of associated improvements in building envelope, system, or industrial process efficiency and reductions in pollutant emissions, use of chlorofluorocarbons, and other environmental improvements.

(d) *Review of Barriers.* Each agency shall review and revise Federal or military specifications, product descriptions, and standards to eliminate barriers to, and encourage Federal procurement of, products that are energy-efficient or water conserving.

PART 6—WAIVERS

Sec. 601. *Waivers.* Each agency may determine whether certain requirements in this order are inconsistent with the mission of the agency and seek a waiver of the provision from the Secretary of Energy. Any waivers authorized by the Secretary of Energy shall be included in the annual report on Federal energy management required under the Act.

PART 7—REVOCATION, LIMITATION, AND IMPLEMENTATION

Sec. 701. Executive Order No. 12759, of April 17, 1991, is hereby revoked, except that sections 3, 9, and 10 of that order shall remain effective and shall not be revoked.

Sec. 702. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 703. This order shall be effective immediately.

William J Clinton

THE WHITE HOUSE,
March 8, 1994.

[FR Doc 94–5834
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Billing code 3195–01–P

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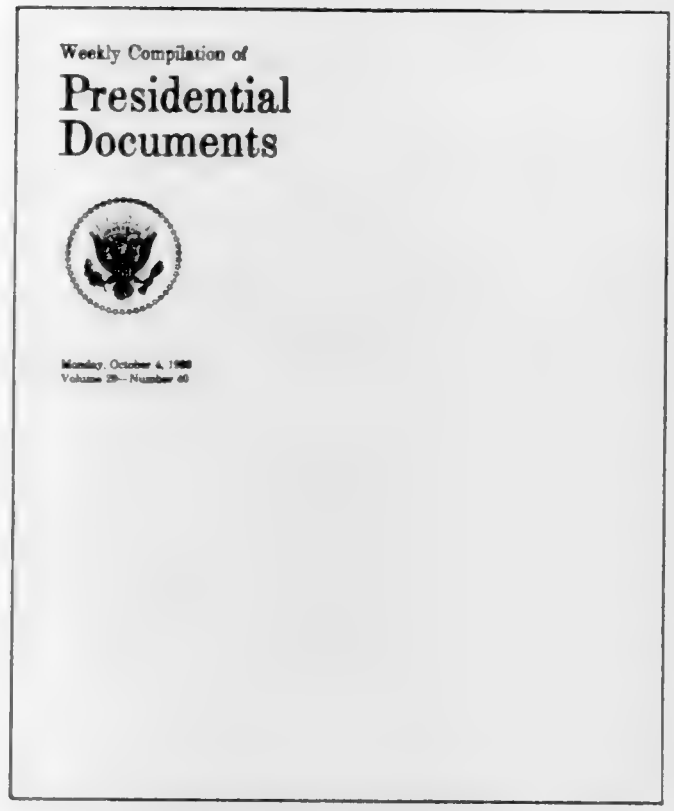

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Friday, March 11, 1994

Presidential Documents

Title 3—

The President

Executive Order 12903 of March 9, 1994

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, 12706, 12753, 12791, and 12840, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1995. Executive Order No. 12840 shall be superseded on the effective date of this Executive order.

William J. Clinton

THE WHITE HOUSE,
March 9, 1994.

[FR Doc. 94-5915
Filed 3-9-94; 3:57 pm]
Billing code 3195-01-P

Editorial note: For the President's message to the Congress on this Executive Order, see issue 10 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN No. 0584–AB13

Special Supplemental Food Program for Women, Infants, and Children (WIC): Coordination Rule: Mandates of the Child Nutrition and WIC Reauthorization Act of 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Food Program for Women, Infants, and Children (WIC) to comply with the mandates of sections 123 and 213 of the Child Nutrition and WIC Reauthorization Act of 1989 enacted on November 10, 1989. This final rule contains both funding and nonfunding provisions. The major nonfunding provisions in this final rule include: Extending adjunct or automatic income eligibility to certain family members; enhancing outreach efforts and program access; defining breastfeeding and establishing breastfeeding promotion activities; referring and providing participants with information about other health and welfare programs; permitting State agencies the option to establish alternative means of issuing food instruments, such as mailing them to participants; and, reducing the frequency with which State agencies must review their local agencies. This final rule also incorporates other legislative mandates, such as, Governmentwide debarment and suspension (nonprocurement) requirements, a drug-free workplace, and new restrictions on lobbying.

DATES: This rule is effective on March 11, 1994, except that the nondiscretionary funding provisions set forth in § 246.14 and § 246.16 were, by law, effective October 1, 1989. State agencies shall implement all other provisions no later than October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 542, Alexandria, VA 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has determined that this final rule will not have a significant impact on a substantial number of small entities. State and local agencies will be most affected because of the additional program administration and education requirements. However, some program administration requirements have also been reduced by this rule. The net effect on State and local agencies is expected to be minimal. Participants and applicants will also be affected by simplified application and benefits issuance procedures.

Paperwork Reduction Act

The reporting and recordkeeping requirements established in the proposed rulemaking of July 9, 1990 in §§ 246.4, 246.6, 246.7, 246.11 and the reductions in the reporting and recordkeeping requirements set forth in §§ 246.11 and 246.19 were reviewed and approved by the Office of Management and Budget under Control Number 0584–0043 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3505). No changes in the reporting/recordkeeping burden for the sections cited above have been incorporated into the final rule.

All existing reporting and recordkeeping requirements in §§ 246.14 and 246.16 for funding activities have been incorporated into this final rule, and no changes in burden hours for those activities are reflected in this final rule. The requirements for these sections have been approved by OMB for use through November 30, 1995 under OMB control number 0584–0043. This final rule, however, does impose on WIC State and local agencies one additional reporting and recordkeeping requirement of documenting both direct and in-kind expenditures for breastfeeding promotion and support.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department submitted to the Office of Management and Budget (OMB) for its review the information reporting and recordkeeping requirement of documenting both direct and in-kind expenditures for breastfeeding promotion and support. This reporting and recordkeeping requirement has been approved by OMB for use through August 31, 1995 under OMB control number 0584–0427.

Organizations and individuals desiring to submit comments regarding any aspect of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Director, Supplemental Food Programs Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for the Food and Nutrition Service.

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 (June 24, 1983)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the

"EFFECTIVE DATE" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Good Cause Determinations

This final rule incorporates several new statutory requirements from Public Law 101–147 which were not contained in a prior proposed rule. These are nondiscretionary funding provisions which revise the methodology for determining the amount of funds available for NSA, require that a portion of these funds be used for breastfeeding promotion and support, permit conversion of food funds to NSA funds under certain specified circumstances, provide optional spend forward authority to State agencies, and establish timelines for allocation and reallocation of funds. In light of the nondiscretionary nature of these requirements, and since the legislatively mandated effective date of these requirements was October 1, 1989, the Administrator of the Food and Nutrition Service has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest, and that good cause exists for publishing revisions to § 246.16 without prior notice and comment.

Two additional changes which were not proposed are contained in this final rule. First, this final rule incorporates in § 246.2 reference to the existing requirements of the non-discretionary department-wide rule governing lobbying which applies to WIC. This new reference merely incorporates existing, non-discretionary provisions of 7 CFR part 3018, "New Restrictions on Lobbying," into WIC Program regulations. Second, current § 246.7(c)(2)(v) contains a non-inclusive list of references of non-discretionary provisions of Federal law which prohibit certain benefits paid under other Federal programs from being considered as income for the WIC Program. This final rule renumbers that section as § 246.7(d)(2)(iv)(c), and amends it to update it with additional references to other non-discretionary income exclusions. With respect to these revisions, the Administrator of the Food and Nutrition Service has found, pursuant to 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest, and that good cause exists for publishing these revisions without prior notice and comment.

Background

Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, amended a wide range of WIC Program functions in such areas as income eligibility determinations; program outreach, referral and access; coordination; breastfeeding promotion; and food delivery systems. Therefore, on July 9, 1990, the Department published a proposed rule (55 FR 28033) addressing primarily the discretionary and nondiscretionary mandates of Public Law 101–147 that were unrelated to funds utilization and allocation. These provisions have been commonly referred to as the "nonfunding" provisions of Public Law 101–147. Also included in the proposed rule were references to requirements in Department-wide rules which apply to WIC: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016, and Governmentwide Debarment and Suspension (Non-Procurement) Requirements and Government Requirements for a Drug-Free Workplace, 7 CFR part 3017. Several nonfunding provisions were issued in separate rulemakings, as noted below.

The proposed rule provided for a 30-day comment period, which ended on August 8, 1990. Forty-seven comment letters were received on the proposed rule from a variety of sources, including State and local agencies and health professionals, advocacy groups and other public interest groups, and the general public.

The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal. In addition, subsequent meetings with various State and local agency staff on this rule provided a forum for staff to more fully discuss the concerns and recommendations made in their comment letters. Such discussions and individual comments on the proposed rule, which provided a detailed and thorough analysis of issues, were invaluable to the Department in developing this final rule. A summary of these meetings is contained in the Department's rulemaking record.

Although the proposed rule contained both discretionary and nondiscretionary nonfunding provisions of Public Law 101–147, State agencies were encouraged to focus on and direct their comments to the discretionary provisions of the law. In addition, the Department has worked with WIC State agencies to voluntarily implement the provisions designated as nondiscretionary, including those provisions proposed verbatim from the law. These legislative provisions required no further interpretation on the part of the Department as to how State and local agencies would implement them. While all provisions addressed in the proposal will be discussed further, those which are discretionary will be addressed in greater detail.

The proposed rulemaking published by the Department did not include any of the funding provisions mandated by Public Law 101–147 because the Department intended to publish these requirements in a separate rulemaking. However, because the law requires several nondiscretionary revisions to the WIC Program funds allocation procedures which preclude the Department from exercising discretion in their implementation, the Department has included these funding provisions in this final rule.

As indicated previously, these funding provisions include: (1) Revising the methodology for determining the amount of funds available for NSA, (2) requiring that at least $8 million of the NSA funds must be spent on breastfeeding promotion and support, (3) permitting, under certain circumstances, the conversion of food funds to funds to support NSA and an option for States to spend forward up to 3 percent of their food grants into the succeeding fiscal year, and (4) establishing timelines for the allocation and reallocation of funds. These provisions cannot be modified in response to public comment because the legislative language is explicit regarding implementation of these provisions. Because these provisions result in significant changes to § 246.16 of the WIC Program regulations, the Department is revising and republishing § 246.16(a) through (k), redesignated in this final rule as paragraphs (a) through (i), in its entirety. In addition and as required by law, these provisions were effective on October 1, 1989 and were reflected in grants to State agencies since Fiscal Year 1990.

This final rule also incorporates into § 246.7 of the WIC Program regulations references to various cash payments which are required by statute to be excluded from consideration as income for Federal assistance programs. Further, due to the addition of these references and other changes necessary to incorporate adjunct income eligibility requirements, newly designated paragraph (d) in § 246.7 has been revised and republished in its entirety in this final rule.

Department-wide rules implementing new Governmentwide lobbying restrictions, 7 CFR part 3018, are also included in this final rule. In addition, OMB Circular A–90, "Cooperating with State and Local Governments to Coordinate and Improve Information Systems" has been replaced by OMB Circular A–130. Therefore, all references to Circular A–90 have been revised to reference OMB Circular A–130.

Several nonfunding provisions of Public Law 101–147 were implemented in previous rulemakings. Therefore, they were not included in the proposed rule of July 9, 1990 and are not addressed in this final rule. First, the provision that State agencies be given the option to certify and provide program benefits to incarcerated persons (sections 123(a)(4)(A)(iv) and 123(a)(4)(E)) were published in an interim rule on December 14, 1989 (54 FR 51289) and in a final rule on August 5, 1992 (57 FR 34500). On February 1, 1990 (55 FR 3385), a final rule was published which implemented two nondiscretionary benefit-related provisions of section 123(a)(2) of Public Law 101–147—automatic WIC income eligibility for fully eligible current recipients of Food Stamps, AFDC, and/or Medicaid benefits, and the State agency option to exclude military off-base housing allowance payments from an applicant's countable income for purposes of determining WIC income eligibility. Finally, the requirements of sections 123(a)(3)(D) and 123(a)(4)(A)(i)(II) of the law regarding the provision of information on, and coordination with, substance abuse counseling and treatment services were included in a separate proposed rule issued on March 30, 1990 (55 FR 11946). This rule was issued in its final form on February 26, 1993 at 58 FR 11497.

Following is a discussion of each provision, as proposed, comments received on the proposed rule, an explanation of the provisions set forth in this final rule, and a discussion of several nondiscretionary provisions, including four basic areas of funding provisions in Public Law 101–147, which have been incorporated into this final rule.

1. References to 7 CFR Part 3016

Until the publication of the final rule entitled "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" on March 11, 1988 (53 FR 8044), the requirements for grants and cooperative agreements were set forth in 7 CFR part 3015. This rule was promulgated to establish consistency and uniformity among some 23 Federal agencies in the administration of grants to, and cooperative agreements with, State and local governments and federally-recognized Indian tribal governments. The final rule was published as 7 CFR part 3016, replacing part 3015 for most grants and subgrants to these government entities, including WIC grants, effective October 1, 1988. Therefore, as proposed, this final rule would change all references to 7 CFR part 3015 contained in part 246 to "7 CFR part 3016."

2. Breastfeeding Provisions (§§ 246.2, 246.3(e)(4), 246.11(c)(2), 246.11(c)(3), 246.11(c) (5)–(6) and (8), and 246.14(c)(10))

Public Law 101–147 established a number of mandates relative to breastfeeding. The significant number of provisions in Public Law 101–147 concerning breastfeeding promotion and support activities, and the level of detail with which most of these provisions are addressed, clearly demonstrate strong Congressional support for breastfeeding promotion and support efforts in the WIC Program. This strong support, in turn, reflects nutritional science and medical opinion that breastfeeding offers significant nutritional and health benefits to infants.

The Department shares this belief and has always actively encouraged the promotion and support of breastfeeding as the optimal method of infant feeding. Program regulations already contain a number of provisions in support of breastfeeding. Furthermore, the Department has taken non-regulatory actions in this area, including the development of publications to help local agency staff teach participants about breastfeeding; participation in cooperative efforts with other Federal agencies and organizations to promote breastfeeding, such as the USDA Breastfeeding Promotion Consortium which meets semi-annually; and the award of grants for projects on breastfeeding, such as the funding of a WIC Breastfeeding Promotion Study and Demonstration to identify, evaluate, and demonstrate approaches to promote breastfeeding effectively in WIC and, more recently, the award of grants to test the effectiveness of breastfeeding incentives in eight locations. The provisions regarding breastfeeding contained in Public Law 101–147 will serve to strengthen the emphasis in current regulations by focusing more attention on the promotion and support of breastfeeding activities at both the State and local levels. State and local agencies are encouraged to expand their efforts to increase the incidence and duration of breastfeeding among WIC participants.

This final rule amends the regulations to include nondiscretionary provisions (many of which have already been implemented by State agencies) which: (1) Require that the State agency include in its annual plan of operation and administration a plan to promote breastfeeding and to coordinate WIC operations with local programs for breastfeeding promotion, (2) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts, (3) require that the State agency provide training to persons providing breastfeeding promotion and support, (4) authorize the purchase of breastfeeding aids by State and local agencies as an allowable administrative expense, (5) require that the State agency provide breastfeeding promotion materials in languages other than English, and (6) establish a requirement that of the funds set aside for nutrition services and administration, at least $8 million must be spent in the area of breastfeeding promotion and support. This $8 million set-aside is discussed in further detail in section 11 of this preamble. This final rule also revises the regulations to implement the discretionary breastfeeding provisions, which are: (1) Definition of "breastfeeding," (2) breastfeeding promotion and support standards, and (3) annual evaluation of breastfeeding promotion and support efforts.

a. *Definition of "Breastfeeding" (§ 246.2).* Section 123(a)(6) of Pub. L. 101–147 adds a new section 17(h)(4)(A) to the Child Nutrition Act (CNA) of 1966 to require the Secretary, in consultation with the Secretary of Health and Human Services, to develop a definition of "breastfeeding" for the purpose of the WIC Program. Accordingly, the Department asked the Committee on Breastfeeding Promotion of the National Association of WIC Directors (NAWD), representatives from USDA and the Maternal and Child Health Bureau in the Department of Health and Human Services (DHHS),

and other experts on breastfeeding, to provide input on developing a national definition of breastfeeding. The NAWD Committee recommended that "breastfeeding" be defined as "the provision of mother's milk to her infant on the average of at least once a day." The DHHS concurred with this recommended definition for WIC Program purposes.

Except as may otherwise be specified, this definition would be consistently applicable to all aspects of the WIC Program, including the evaluation of promotional efforts and the determination of categorical eligibility as a breastfeeding woman. The definition also recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits which would otherwise not be provided to an infant, as well as significant psychological benefits, including assisting the transition to motherhood, and assisting the formation of strong bonds between the mother and her infant.

It is the Department's belief that a result of successful breastfeeding promotion should be a serious commitment to breastfeeding on the part of mothers so that breastfeeding will be the rule rather than the exception. The Department also acknowledges that any amount of breastfeeding should be encouraged. Partial breastfeeding supplemented by formula feeding is preferable to no breastfeeding at all. Therefore, the Department proposed the following definition of "breastfeeding" be added to § 246.2: "the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once per day."

The majority of commenters addressing the definition of "breastfeeding" supported the provision as proposed. Therefore, in view of the comments received and the Department's previous consultation with the National Association of WIC Directors, and the Secretary of the Department of Health and Human Services, including the Centers for Disease Control (CDC), the definition of "breastfeeding" in this final rule remains unchanged from the proposed rule.

b. *Designation of breastfeeding coordinator (§ 246.3(e)(4)).* Section 123(a)(6) of Pub. L. 101–147 amends section 17(h)(4)(C) of the CNA of 1966 to require each State agency "to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration." Therefore, the Department proposed in its July 9, 1990 rulemaking to add the breastfeeding promotion coordinator position to the list of State staffing requirements set forth in § 246.3(e)(4).

One commenter addressed this issue and recommended that the Department specify the staffing standards per caseload as well as the duties and responsibilities of a breastfeeding coordinator. It was the intent of the Department to allow the State agency the flexibility under this provision to delineate the duties and responsibilities of the breastfeeding coordinator in its State. However, the Department strongly urges State agencies to make breastfeeding promotion and education duties the first priority for this position. Other duties, may be assigned to this position, but should be related to nutrition services if at all possible. In this way a breastfeeding coordinator will have the flexibility to perform duties specific to the needs of the particular State. Accordingly, the Department is adopting the provision as proposed.

c. *Training for breastfeeding promotion (§ 246.11(c)(2)).* Section 123(a)(6) of Public Law 101–147 adds a new section 17(h)(4)(D) to the CNA of 1966 requiring the State agency "to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling (WIC) participants * * * concerning breastfeeding." Therefore, the proposed rule added a new sentence at the end of § 246.11(c)(2) of the current WIC Program regulations to require State agencies to provide training on the promotion and management of breastfeeding to local agency staff.

The majority of commenters approved this provision as proposed. One commenter approved the provision but indicated that additional funds would be needed to provide such training to local agency staff.

Congress has already augmented the existing requirement that States expend at least one-sixth of their nutrition services and administration (NSA) grants on nutrition education by mandating in Public Law 101–147 a targeted expenditure nationally of at least $8 million for the promotion and support of breastfeeding among WIC participants. The Department has issued a policy memorandum which clarifies that salary and benefit expenses of staff and non-WIC staff to deliver/attend training on breastfeeding promotion and support have been and continue to be allowable breastfeeding promotion and support expenditures. Accordingly, the proposed modification of § 246.11(c)(2) is adopted without changes.

d. *Provision of non-english breastfeeding materials (§ 246.11(c)(3)).* Section 17(f)(14)(A) of the CNA of 1966 has long required State agencies to provide nutrition education materials to local agencies in languages other than English in areas where a substantial number of low-income households speak other languages. Section 123(a)(4)(D) of Public Law 101–147 amends section 17(f)(14)(A) of the CNA of 1966 specifically to add breastfeeding promotion materials and instruction to this requirement.

The Department proposed to revise § 246.11(c)(3) of the regulations to require that the State agency "identify or develop resources and educational materials, including breastfeeding promotion and instruction materials, for use in local agencies, taking reasonable steps to include materials in languages other than English, in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population, and where possible, the reading level of the participants."

One commenter responded affirmatively to the provision. This commenter, however, recommended these materials be developed at the Federal level. The Department may develop some materials to assist State agencies in meeting this requirement. However, such action on the part of the Department does not alleviate the obligation imposed by this legislation on State agencies to produce or provide such materials for their WIC participants.

State agencies should note that the joint statement of explanation accompanying H.R. 24 (Congressional Record, October 10, 1989, H6863) clarifies that Congress does not expect State agencies to develop and produce all such materials on their own in cases where private entities have donated a sufficient supply of materials which include correct, complete, and up-to-date information. Furthermore, the Department believes that any printed information, either about breastfeeding, nutrition education, or the application/certification process itself, should reflect, where possible, the reading level of WIC participants, regardless of the language used. Accordingly, the final rule retains the requirement as proposed.

e. *Breastfeeding promotion and support standards and evaluation (§ 246.11(c)(5)–(6) and (8)).* Section 123(a)(3)(C) of Public Law 101–147 adds a new section 17(e)(2) to the CNA of 1966 mandating that the Department "prescribe standards to ensure that

adequate * * * breastfeeding promotion and support are provided."

The Department requested the assistance of National Association of WIC Directors' (NAWD) Committee on Breastfeeding Promotion in developing and prescribing the breastfeeding promotion standards required by Public Law 101–147. The standards/requirements recommended by this Committee were based on a position paper previously developed by NAWD on Breastfeeding Promotion, and reflect the concern of NAWD that requirements such as these be general in nature. In its July 9, 1990 proposed rule, the Department proposed to add the following requirements in new §§ 246.11(c)(8)(i)–(iv): (1) The State agency shall develop a policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding; (2) Each local agency shall designate a staff person to coordinate breastfeeding promotion and support activities; (3) The State and local agency shall incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients, and; (4) The State agency shall develop a plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

New section 17(e)(2) of the CNA of 1966 also mandates that States annually evaluate breastfeeding promotion and support activities, including the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they received. Section 246.11(c)(5) of the WIC regulations currently requires that WIC State agencies perform and document annual evaluations of nutrition education activities, which have always encompassed breastfeeding promotion. Because existing program regulations already contained annual nutrition education evaluation requirements, the Department proposed some minor modifications to existing §§ 246.11 (c)(5) and (c)(8) to emphasize that breastfeeding education and promotion are to be included in these evaluations.

A few commenters who addressed these proposed changes opposed the annual review requirement for breastfeeding promotion and support and recommended the frequency of this review activity be revised to be consistent with the biennial review of local agencies as required in Public Law 101–147.

Because language in Public Law 101–147 requires that evaluations of breastfeeding promotion and support activities be performed annually by State agencies, this provision must be retained as proposed. However, as indicated above, this annual evaluation, for most States, will not be a new requirement, because most if not all have included it as a part of the currently required nutrition education evaluation. For those that have not, it is likely to be a simple extension of the evaluation currently being performed annually of nutrition education activities, and likely entails utilizing the same assessment tool currently used to evaluate nutrition education activities, such as a survey. Furthermore, during management evaluation reviews which must be conducted at least biennially, as set forth in § 246.19(b)(3) of this final rule, State agencies are required to monitor compliance with all aspects of program operation including whether local agencies are complying with the nutrition education and breastfeeding promotion and support activities required by § 246.11(c)(8).

Therefore, in this final rule, § 246.11 (c)(5), (c)(6), and (c)(8) are adopted as proposed. In addition to the assessment of participants' views concerning the effectiveness of nutrition education and breastfeeding promotion and support they received, the Department would encourage all State agencies to include in their evaluation an assessment of the outcomes of nutrition education and breastfeeding promotion and support, including the incidence and duration of breastfeeding.

f. *Breastfeeding aids as an allowable administrative expense (§ 246.14(c)(10)).* Section 123(a)(6) of Public Law 101–147 adds a new section 17(h)(4)(B) to the CNA of 1966 mandating that the Department "authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration." To implement this legislative mandate, a new § 246.14(c)(10), which includes "breastfeeding aids" as allowable administrative costs, was proposed to be added by the Department in its proposed rulemaking. Accordingly, the proposed rule would allow, but would not require, State agencies to purchase, and authorize their local agencies to purchase, breastfeeding aids with WIC NSA funds.

Although commenters generally supported the provision as proposed, several suggested that more detail be added on the breastfeeding aids which may be considered allowable costs. FNS believes the detailed discussion in the preamble to the proposed rule adequately addressed this subject. It has also issued additional guidance through its regional offices in a January 17, 1991 policy memorandum entitled, "Allowable Costs for the Promotion and Support of Breastfeeding and the Reporting of Allowable Nutrition Services Expenditures."

However, in this final rule a new paragraph (c)(10) has been modified to state that allowable NSA costs include "the cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding." This is consistent with the preamble of the proposed rule and policy issued by the Department, that breastfeeding aids include, but are not limited to, devices such as breast pumps, breastshells, and nursing supplementers, which directly support the initiation and continuation of breastfeeding.

Breast pumps, including manual, battery-operated, or electric models, are used to express breast milk for storage and later use or to relieve over-fullness. Breastshells (i.e., breastshields and breast cups) are used for correcting inverted nipples. A pregnant woman with this problem is usually encouraged to start wearing such a device as early in pregnancy as possible. If the problem continues after the infant is born, it may be necessary to wear the aid between breastfeedings. Nursing supplementers are small tubes which are taped against the mother's body through which infant formula or other nourishment is expressed as the infant breastfeeds. This permits the mother to supplement breastfeeding when the supply of breastmilk is insufficient to meet the infant's nutritional needs without resorting to bottlefeeding. Avoiding the use of a bottle for supplementary feeding eliminates possible confusion for the infant who is learning how to breastfeed.

Other devices or aids, such as nursing pads or nursing bras, which also directly support the initiation and continuation of breastfeeding, may also be purchased with NSA funds. However, State and local agencies should weigh the benefits of providing this more marginal equipment, which provides less direct support for the initiation and continuation of breastfeeding, against the importance of management functions and participant benefits (e.g., nutritional counseling) that could otherwise be provided or enhanced with the NSA funds. The Department recommends that States establish very specific policy for local agencies regarding what, if any, types of breastfeeding aids may be purchased so that the most efficient use is made of NSA funding resources. While all of the devices or aids mentioned in this section are Federally allowable

expenses, the Department recommends that States restrict the use of administrative funds to aids or devices without which breastfeeding for particular participants would be overly difficult, e.g., breastshells, nursing supplementers, and breastpumps. However, items and aids for breastfeeding that go beyond the scope of the WIC Program would not be allowable costs.

3. Adjunct or Automatic WIC Income Eligibility (§§ 246.2 and 246.7(d)(2)(vi))

Section 123(a)(2) of Public Law 101–147 amended section 17(d)(2)(A) of the CNA of 1966 to provide adjunct (i.e., automatic) WIC income eligibility to the following individuals applying for program benefits: (1) Recipients of Food Stamps, Aid to Families with Dependent Children (AFDC), or Medicaid Program benefits, and (2) a member of a family which contains an AFDC recipient or a pregnant woman or infant receiving Medicaid.

The intent of Congress in passing this provision was to reduce the administrative burden on local agency WIC staff in the income determination process, expedite an applicant's entry into the program thereby removing potential barriers to program participation, and result in increased referrals from WIC to other health and social service programs (H.R. Rep. No. 101–194, p. 11–12).

Final regulations were published on February 1, 1990 at 55 FR 3385 to implement the nondiscretionary, benefit-related provision of extending adjunct income eligibility to "fully" eligible recipients of Food Stamps, AFDC, or Medicaid Program benefits. However, that final rule left several issues outstanding including presumptive eligibility, definition of "family" for adjunct purposes, and the length of the certification periods. These and other issues were addressed in the proposed rule.

Before discussing the proposed and final provisions in this area and the comments received on the proposed rule, several facts regarding adjunct income eligibility are important to restate. First, this provision provides only automatic income eligibility. Persons who are determined income eligible for WIC must still meet the other prong of WIC eligibility and be determined at nutritional risk before they can participate in the WIC Program and receive benefits.

Secondly, in accordance with the language of Public Law 101–147, which specifically cites programs conducted under Federal law, these provisions apply only to recipients of the Federal AFDC, Medicaid, and Food Stamp Programs. A few States are administering programs financed solely by State funds that operate like and parallel the Federal AFDC or Medicaid programs. In addition, some States have chosen to extend Medicaid program benefits with State funds to pregnant women and infants who have incomes above 185 percent of poverty. Persons participating in such state-administered programs cannot be determined or classified as adjunctively income eligible for the WIC Program on that basis. As discussed in further detail below, however, some of these individuals may, at the State agency's discretion, be determined automatically income eligible for WIC based on participation in certain State-administered programs if the State program has income limits at or below the WIC Program income guidelines, as set forth in newly redesignated § 246.7(d)(2)(vi)(B) of this final rule (previously set forth in § 246.7(c)(2)(vii)). This provision has been in the WIC regulations since 1981.

Third, while the legislation states that "recipients" of AFDC, Medicaid, or Food Stamp benefits or a member of a family which contains a recipient of certain programs are adjunctively income eligible for WIC, "recipients" in this context and as intended in this rule are individuals who have been certified or determined eligible to receive benefits from one or more of these programs. It would not be feasible to base adjunct income eligibility status for WIC on whether an individual actually receives AFDC, Medicaid, or Food Stamp benefits at the time of WIC application. For example, an individual may be certified as eligible to receive Medicaid benefits but at the time he/she applies for WIC benefits is not in need of or has not sought Medicaid services. Section 246.7(d)(2)(vi)(A) has been modified by this final rule to clarify this point.

Fourth, individuals are required to document that they are certified as eligible to receive AFDC, Medicaid, or Food Stamp Program benefits. This requirement was first established in the final rule published in the **Federal Register** on February 1, 1990 at 55 FR 3385. Such documentation would include, for example, a participant's program identification card, or notice of program eligibility. State agencies may also, if they have the capability, assist applicants in obtaining such documentation through use of available means such as an online access data system. Some of the State's program identification cards may not provide the data necessary to confirm that the individual is currently certified as eligible to receive program benefits. State agencies should ensure that the documentation required sufficiently confirms that a WIC applicant is currently certified as eligible to participate in any one of these programs.

Note that for both Medicaid and AFDC, a recipient is an individual. This is not the case in the Food Stamp Program. Food Stamp benefits are for household units. Thus, a Food Stamp "recipient" may be one individual or a group of individuals who are determined eligible for benefits. Accordingly, some Food Stamp recipients may not have documentation to confirm that they are certified as eligible to receive food stamp benefits. They may only have documentation which identifies that the head of the household and other unnamed family members are certified as eligible to receive benefits. In such cases, State agencies should require the WIC applicant to document that the person named as the head of the household for Food Stamp purposes is certified as eligible to receive Food Stamp benefits, and that the WIC applicant resides with the individual named as the Food Stamp head of household, or provide other similar documentation which proves that the applicant is certified as eligible to receive Food Stamp benefits.

a. *Definition of "Family" for members of families that contain an AFDC recipient or a pregnant woman or infant receiving assistance under the Medicaid program (§§ 246.2 and 246.7(d)(2)(vi)).* As mentioned previously, the legislation extends adjunct income eligibility for WIC to an individual who is a member of a family which contains an AFDC recipient or a member of family in which a pregnant woman or infant receives Medicaid. The purpose of this provision is to ensure that family members of AFDC and certain Medicaid participants, who might not themselves be AFDC or Medicaid participants, would be determined adjunctively income eligible for WIC. Consider, for example, a family unit which includes a pregnant woman and a 2-year old child. The pregnant woman participates in the Medicaid Program; however, the child does not qualify. By including family members as adjunctively income eligible for WIC, Public Law 101–147 extends automatic WIC income eligibility to the child, as well as to its mother. This provision also serves to facilitate closer coordination between WIC and other health and welfare programs that serve the same population and thereby streamlines administrative procedures.

Prior to issuing a proposed rule on this provision, USDA considered the development of a new definition of "family" that was consistent across WIC, Medicaid and AFDC. After discussion with Federal Medicaid and AFDC Program counterparts, however, there was some concern that use of any one of the Federal programs' definitions of family for purposes of this provision might exclude, in some rare situations, an individual as adjunctively income eligible for WIC who in effect may have been considered or counted as a family member in one of these programs. AFDC and Medicaid approach the concept of "family" in a significantly different manner from each other and from WIC. The AFDC and Medicaid "families"—referred to in these programs as "budget units" or "filing units"—may be composed exclusively of persons directly receiving the program benefit or may include recipients and non-recipients. Additional persons who contribute to the economic unit may be excluded from consideration in these programs because they are not related to the applicant by blood, marriage, or some other form of legal relationship. In contrast, § 246.2 of the WIC regulations defines "family" as "a group of related or nonrelated individuals who are living together as one *economic unit* * * *" FNS Instruction 803–3, Rev. 1, dated April 1, 1988, reiterates this regulatory definition. It considers persons as members of a single family, or economic unit, when their "production of income and consumption of goods and services are related."

In addition, use of the equivalents of "family" in AFDC and Medicaid for purposes of determining adjunct income eligibility in WIC would require either (1) that the WIC applicant provide information on the persons who were considered to be family members for AFDC or Medicaid; (2) WIC authorities to be charged with the responsibility for obtaining such information from these other programs; or (3) WIC staff master the complex eligibility determination procedures of these programs so that, working with the WIC applicant, they could, independent of the other programs, reestablish the composition of the applicant's AFDC or Medicaid "family" for WIC purposes. These alternatives would impose significant unnecessary burdens on the applicant and/or the program involved. Such procedures would increase the administrative complexity of the programs and adversely impact on the delivery of benefits to participants, and would, therefore, be in direct opposition to Congressional intent.

In order to establish a proposed adjunct income eligibility procedure which effectively results in an expedited income determination process for such applicants and limits administrative burden on local agencies, as intended by Congress, the Department proposed to expand the definition of "family" in § 246.2 of the regulations solely for use in establishing WIC adjunct income eligibility.

The Department proposed in its rulemaking to use a definition of "family" that would not require the Food Stamp, AFDC or Medicaid Program to report information to WIC authorities. Nor would it require the WIC applicant to secure additional information from these programs. As proposed, the definition of "family" in § 246.2 was revised to provide that, for purposes of determining WIC adjunct or automatic income eligibility only, "family" would be defined as persons living together, except that residents of an institution could not be considered members of a single family. WIC Program authorities could easily apply this definition with minimal burden on applicants. The Department believed that this proposed definition would not exclude any person who would have been encompassed by the AFDC and Medicaid concepts of "family."

The majority of commenters addressing this issue opposed the provision. They objected to different definitions being applied to three types of applicants—adjunct income eligibles, applicants not adjunctively income eligible, and homeless persons—and indicated that such variation would create a "double standard" for eligibility and confusion for WIC clinic staff. In addition, they indicated that individuals may make manipulations in their household compositions or family members, i.e., request AFDC or Medicaid recipients to move in with them, in order to gain WIC adjunct income eligibility status. Other commenters approved the provision with modifications. For example, one commenter expressed concern with the fact that the definition, as proposed, did not address how a foster child should be counted, and recommended the definition incorporate current policy which counts a foster child as a family of one. Several commenters concurred with the definition as proposed as long as the Department's ultimate goal was to move towards a single definition.

In view of the concerns raised by commenters and the intent of Congress that the Department establish an expedited process yet limit the administrative burden on WIC local agencies, the Department has decided in this final rule to use the WIC Program's current definition of "family" for adjunct income eligibility purposes. Therefore, no change is necessary in this final rule to the regulatory text.

The Department agrees with commenters that (1) the definition as proposed is broad and would bring into the WIC Program a number of persons who may not otherwise be income eligible for program benefits, and (2) the use of a common definition of "family" for adjunct and nonadjunct applicants in order to determine WIC income eligibility is preferable in order to ensure limited administrative burden on WIC local agencies. As reflected by commenters, merely living with an individual who has been determined eligible to receive AFDC or a pregnant woman or infant eligible for Medicaid benefits should not necessarily be the sole factor in determining what family members will also be deemed adjunctively income eligibility for WIC. The Department would like to note that the proposed definition of "family" for adjunct purposes was an attempt to account for any slight effect that might result from variation between the WIC Program's definition of "family" and the budgetary or filing unit used by the AFDC and Medicaid Programs. However, after further review, the Department believes that using the current WIC definition of "family" for adjunct income eligibility purposes would encompass all, or virtually all persons that were considered in the budgetary or filing unit for AFDC or Medicaid, and which are categorically eligible for WIC.

For purposes of determining under § 246.7(d)(2)(vii) which family members must also be deemed adjunctively income eligible for WIC, and as set forth in the current WIC Program regulations, § 246.2, "'Family' means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family." Therefore, those family members, categorically eligible for WIC, who would be adjunctively income eligible are (as is currently the case in WIC) those individuals, related or nonrelated, who usually (although not necessarily) live together and share income and resources with an individual who has been certified eligible to receive AFDC or a pregnant woman or infant who has been certified as eligible to receive Medicaid benefits. Further, in response to commenter concerns, the Department would like to emphasize and clarify how this definition applies to foster children. As

set forth in FNS Instruction 803–3, Rev. 1, a foster child who is the legal responsibility of a welfare or other agency is considered a family of one. Therefore, a foster child who remains the legal responsibility of the State and is certified as eligible to receive AFDC or Medicaid (if the foster child is an infant), can never confer adjunct income eligibility to family members. Only the foster child would be adjunctively income eligible for WIC.

The Department also proposed to revise § 246.7(d)(2)(vii) of the regulations to implement the legislative mandate that a person who documents that he/she is a member of a family which includes an AFDC recipient or a pregnant woman or an infant who receives Medicaid shall be determined adjunctively income eligible for WIC. No commenters addressed this issue. In this final rule, this paragraph has been renumbered as (d)(2)(vi)(A)(*2*) and has also been modified slightly to eliminate potential confusion by replacing the word "receives" with the phrase "is certified eligible to receive." This change is explained fully in Section 3 of this preamble, above, and is intended to include persons who are currently certified as eligible for Medicaid or AFDC although they are not currently participating in those programs.

The remainder of this provision remains as proposed. It retains the requirement that an applicant seeking adjunct eligibility must document, at a minimum, that the family member is certified as eligible to receive such benefits and that the family member resides with the applicant. Examples of documentation to confirm that a family member is certified as eligible to participate in AFDC or Medicaid is also addressed previously in this preamble. Documentation that the WIC applicant resides with the individual certified as eligible to receive such benefits need not be extensive. Such documentation would include, for example, a letter or envelope addressed to the family member who participates in, for example, AFDC, which matches the WIC applicant's address, or a program identification card or notice of eligibility which includes the family member's name and address and matches the WIC applicant's address.

As set forth in newly designated § 246.7(d)(2)(vi)(B) of this final rule, State agencies continue to have the option to accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State administered programs that routinely require documentation of income, *provided* that those programs have income eligibility guidelines at or below the State agency's WIC Program income guidelines. This section had been redesignated as § 246.7(d)(2)(x) in the proposed rule. It has again been renumbered in this final rule.

As set forth in Public Law 101–147, section 123(a)(2) of the law revises section 17(d)(2) of the CNA of 1966 to specify that persons who are at nutritional risk shall be eligible for the WIC Program if the individual meets WIC's maximum income limit (which in the law is prescribed as the limit prescribed for the National School Lunch Program Act for free and reduced price meals), or receives food stamps, AFDC, or Medicaid benefits, or is a member of a family that receives AFDC or in which a pregnant woman or an infant receives Medicaid. Therefore, as set forth in the law, persons determined adjunctively income eligible for WIC are not further required to meet WIC's maximum income limit set at 185 percent of poverty. Accordingly, the Department proposed in § 246.7(d)(2)(x) that persons who are adjunctively income eligible shall not be subject to these income limits. No comments were received on this proposed provision. Therefore, in this final rule, the Department has retained the provision as proposed, however, it has been redesignated as § 246.7(d)(2)(vi)(C). State agencies should be aware that there are cases where an adjunctively income eligible individual's family income can actually exceed the income limit of 185 percent of poverty. For example, in the Medicaid Program, some States employ what is known as the "Katie Beckett" or "TEFRA" option to serve disabled children who in the past would have been institutionalized but now live at home. These children are deemed income eligible for Medicaid without regard to the income of the parents. However, as set forth in the law, participation in Medicaid (or one or more of the other programs described above) is the sole factor in determining an applicant as adjunctively income eligible for WIC benefits, assuming the applicant has elected to apply for WIC benefits on this basis. The fact that a few such individuals may actually have family incomes which exceed WIC guidelines is not determinative in these instances.

b. *Adjunct income eligibility for presumptively eligible recipients of assistance under AFDC or Medicaid (§ 246.7(d)(2)(vi)).* Adjunct income eligibility for fully eligible recipients of Food Stamps and assistance under AFDC and Medicaid was established in a final rule published on February 1, 1990 at 55 FR 3385. That rulemaking did not grant adjunct income eligibility to "presumptively," or provisionally, eligible recipients of AFDC or Medicaid who apply for WIC. No similar presumptive eligibility provision exists in the Food Stamp Program.

Presumptive eligibility essentially entails granting full AFDC benefits to all or, at the option of the State, certain eligible recipient categories, and limited Medicaid benefits to pregnant women based on their categorical eligibility, before they have completed the application process and have been determined fully eligible. Such recipients are subsequently removed from the program if they are determined to be ineligible once the application process has been completed. In both the AFDC and Medicaid Programs, States have the option to provide presumptive eligibility determinations. Currently, approximately 30 States have opted to provide such determinations under the Medicaid Program and approximately 13 States under the AFDC Program. In the February 1, 1990 final rulemaking, the Department did not permit these presumptively eligible recipients of the AFDC and Medicaid Programs to be considered adjunctively income eligible for WIC because the Department needed first to gather more information about the meaning and implications of presumptive eligibility in these programs.

Although, as indicated above, presumptively eligible AFDC and Medicaid recipients may ultimately prove to be ineligible for these programs, in actual practice, as confirmed with our Federal Medicaid and AFDC counterparts, such persons characteristically prove to be fully eligible upon completion of the eligibility determination process. This is not, therefore, a frequent cause of persons ceasing to be certified as eligible to receive benefits under these programs after relatively brief periods of participation, and it is by no means the only cause of early termination. Individuals may cease to be certified as eligible to participate in AFDC, Medicaid, or the Food Stamp Program at any time because these programs, for the most part, reassess eligibility more frequently than the WIC Program. Furthermore, persons may cease to be certified as eligible to receive benefits under these programs for reasons entirely unrelated to changes in their income, e.g., an AFDC recipient who neglects to submit the required monthly reporting form may be terminated from the program. Even when persons cease to be certified as eligible to receive benefits under these programs because of increases in their income, the

possibility remains that they may still meet WIC income eligibility guidelines.

Therefore, the Department intended, as explained in the preamble of its proposed rulemaking, that any WIC applicant determined presumptively eligible for AFDC or Medicaid would also be considered adjunctively income eligible for WIC. However, the proposed regulatory language in § 246.7(d)(2)(vii)(A) inadvertently did not specifically mention presumptive eligibility.

The majority of commenters approved the Department's proposal to extend WIC adjunct income eligibility to persons participating in AFDC or Medicaid based on presumptive eligibility determinations. However, several commenters recommended that the actual regulatory text be revised specifically to grant WIC adjunct income eligibility status to applicants determined presumptively eligible for AFDC or Medicaid.

Therefore, based on the comments received, this final rule, in newly designated § 246.7(d)(2)(vi)(A)(*1*), states that applicants who are certified as eligible to receive Food Stamps, AFDC or Medicaid, or applicants who are presumptively eligible for AFDC or Medicaid, and document such eligibility, shall be determined adjunctively income eligible for WIC.

c. *Cessation of food stamp, AFDC or medicaid benefits and its impact on WIC certification periods and mid-certification disqualification of adjunct income eligible participants (§ 246.7(h)(1)).* An additional issue which was addressed in the Department's proposed rule is how to treat WIC participants who gain adjunct income eligibility only to be subsequently determined ineligible for Food Stamps, AFDC or Medicaid, and the impact, if any, such a determination should have on these individuals' WIC certification periods. Currently, WIC local agencies are required to make a WIC income eligibility determination at the time of initial application and subsequent applications. The standard certification period is 6 months, though pregnant women may be certified for the term of their pregnancies and up to 6 weeks postpartum, and State agencies may opt to certify infants who are under six months of age for a period extending to their first birthday. However, in § 246.7(g) of the current WIC regulations and under current WIC policy, if a reassessment of program eligibility is performed mid-certification and the individual is determined ineligible, the local agency must disqualify the individual in the middle of a certification period. Examples of situations which might trigger a reassessment include a change in income reported by a participant, rehiring of temporarily laidoff workers and validated citizen complaints of eligibility violations. If the State agency has reason to believe that a participant may no longer be income-eligible, prudent management would dictate the need to conduct a reassessment. However, WIC participants are not required to report income changes during certification periods nor are local agencies required to inquire about such changes. State agencies have been informed that they may wish to establish formal policies for when it is appropriate to conduct a mid-certification reassessment.

As discussed earlier in section 3.b. of this preamble, there are a variety of reasons why persons may cease to be certified as eligible to participate in one or more benefit programs that confer adjunct income eligibility for WIC, many of which do not signal a change in financial status. To require in these regulations that adjunctively income eligible WIC participants must report cessation of benefits in any one of these programs during their WIC certification periods would be inconsistent with current policy regarding the reporting of income changes for other WIC participants.

Therefore, the Department proposed in its rulemaking to allow State agencies to confer adjunct income eligibility for the entire WIC certification period to persons who, at the time of application for WIC, were either recipients of Food Stamps, Medicaid, or AFDC, or were members of families which contain an AFDC recipient or a pregnant woman or an infant who receives Medicaid. In the proposed rule, a statement was added to newly designated § 246.7(h)(1) to the effect that the State agency need not, during a certification period, reassess the income eligibility of a person who has been enrolled in WIC based on adjunct income eligibility.

While the majority of commenters approved the proposal that adjunctively income eligible participants be given a full certification period, some commenters opposed the proposed change in the regulations. Although the intent of the proposal was to confer equal treatment for adjunct and nonadjunct income eligible participants by ensuring such participants are provided a full certification period, several commenters noted that the proposed regulatory language change to the mid-certification disqualification requirements resulted in and reflected inequitable treatment. In effect, nonadjunct participants could be disqualified mid-certification while participants adjunctively income eligible for WIC were guaranteed continued participation regardless of income changes during the certification period. Such commenters recommended the regulatory language be revised to reflect consistent mid-certification reassessment policy regardless of the method used to initially determine an individual's income eligibility for WIC.

Therefore, in response to these concerns, the Department has clarified these issues in this final rule. First, no change is reflected in this final rule concerning WIC certification periods. All participants, including those determined adjunctively income eligible or income eligible under the State option set forth in newly designated § 246.7(d)(2)(vi)(B) would be subject to the certification periods set forth in newly designated § 246.7(g)(1), except in those cases where State policy permits shorter certification periods in certain circumstances, as permitted in newly designated § 246.7(g)(1)(v).

Secondly, newly designated § 246.7(h)(1) has been revised with regard to mid-certification disqualification action. State agencies shall continue to ensure that local agencies disqualify an individual during a certification period if, on the basis of a reassessment of WIC eligibility, the individual is determined ineligible. In addition, newly designated paragraph (h)(1) has been revised to clarify the procedures to be followed in the case of participants who at the time of certification were determined adjunctively income eligible (or income eligible under the State option) for WIC. As set forth in this paragraph, an individual determined adjunctively income eligible or eligible under the State option, shall not be disqualified mid-certification solely on the basis of a determination that they (or where applicable for adjunct eligibility purpose, a member of their family) are no longer certified as eligible to participate in AFDC, Medicaid, Food Stamps, or another qualified State-administered program (as permitted in § 246.7(d)(2)(vi)(B)). As discussed above, such participants or a family member or members may no longer be certified as eligible to participate in any one of these programs for reasons entirely unrelated to their income status. In addition, while the WIC participant may have been determined adjunctively income eligible for WIC due to certified eligibility for Medicaid but may have been recently terminated from the Medicaid Program, such an individual could be certified as eligible to participate in AFDC and/or Food

Stamps. Therefore, such an individual would continue to be classified as an adjunct income eligible WIC participant and would not be disqualified mid-certification.

Therefore, as set forth in paragraph (h)(1) of this final rule, State agencies are required to ensure that local agencies disqualify such an individual during a certification period if, on the basis of a reassessment of Program eligibility he/she is no longer deemed adjunctively income eligible (or income eligible under the State option), and after utilizing standard income screening procedures employed for other WIC applicants, such an individual does not meet income criteria. Any mid-certification reassessment of an adjunct income eligible participant must first involve a determination of whether the individual (1) is certified as eligible to participate in at least one of the programs which triggers adjunct income eligibility or (2) is a member of a family which contains an individual certified as eligible to receive AFDC or a pregnant woman or an infant is certified as eligible to receive Medicaid or (3) is participating in a qualified State-administered program, if the State agency has chosen to implement this option. If none of the conditions exist, the reassessment process would proceed with the usual income screening procedures used for individuals not adjunctively income eligible for the Program. If, utilizing these procedures, the individual is no longer income eligible, he/she must be disqualified or terminated from the program mid-certification. Such procedures ensure equal treatment of any WIC participant if his/her eligibility is reassessed mid-certification. The distinction in this final rule is that the process used to reassess an adjunctively income eligible participant must be approached differently in order to ensure an equitable determination of continued eligibility. Just as there is not a requirement for reporting income changes during the certification period, adjunctively income eligible participants are not required to report changes in their status which may effect the basis for their eligibility during the certification period.

4. State Plan Requirements (§ 246.4(a))

a. *Enhanced outreach.* In recognition of the importance of enrolling women in WIC as early in their pregnancy as possible, section 123(a)(4)(A)(ii) of Public Law 101–147 amends section 17(f)(1)(C)(vii) of the CNA of 1966 to require that the State agency's outreach plan include "emphasis on reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants." This legislation adds an emphasis on outreach and also specifically refers to migrants as a target population. Therefore, the Department proposed to revise § 246.4(a)(7) of the regulations to require a description in the State plan of how the State intends to emphasize contacting and enrolling eligible women in the early months of pregnancy and migrants through its outreach efforts. One commenter responded to this proposal by recommending additional resources be provided State agencies to reach potentially eligible migrants.

This final rule retains the provision as proposed. In response to the commenter's recommendation, the Department notes that through the overall increases in the amount of NSA funding provided to State agencies as a result of increases in program funds appropriated by Congress and the increased percentage of the appropriation which is allocated as NSA funds as a result of Public Law 101–147, State agencies will receive more NSA funds to carry out the activities required by this provision to reach and enroll migrants.

b. *Plans to promote breastfeeding.* Section 123(a)(4)(A)(i) of Public Law 101–147 amends section 17(f)(1)(C)(iii) of the CNA of 1966 to require that State plans include a plan to coordinate WIC operations with "local programs for breastfeeding promotion." Because coordination between WIC and other programs is already covered in § 246.4(a)(8) of program regulations, the Department proposed to modify this paragraph to include breastfeeding promotion.

Further, section 123(a)(4)(A)(iv) of Public Law 101–147 amends section 17(f)(1)(C)(xi) of the CNA of 1966 to require that the State agency describe in its State plan the manner in which it intends to provide nutrition education "and promote breastfeeding."

Nutrition education goals and action plans are currently addressed in § 246.4(a)(9). Therefore, the Department proposed in its rulemaking to revise § 246.4(a)(9) of the WIC regulations to include, as part of the State's description of its nutrition education goals and action plans, a description of the methods that would be used to promote breastfeeding.

No comments were received on these proposed provisions. Therefore, this final rule retains the provision as proposed.

WIC Program regulations (§ 246.11(e)(1)) have long required State and local agencies to encourage all pregnant participants to breastfeed unless contraindicated for health reasons. The breastfeeding promotion and support provisions of Public Law 101–147 therefore serve to reinforce and intensify efforts by WIC Program staff to encourage breastfeeding.

c. *WIC benefits for foster children.* Section 123(a)(4)(A)(ii) of Public Law 101–147 added a new paragraph (viii) to section 17(f)(1)(C) of the CNA of 1966, requiring State agencies to describe in their State plans how they will provide program benefits "to infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally."

Accordingly, the Department proposed to add a new § 246.4(a)(20) to the WIC regulations to incorporate this legislative mandate.

The majority of commenters addressing this issue approved the provision, as proposed, but suggested modifications. One commenter recommended that the Department develop a method of allowing WIC staff access to such a child's medical records in order to determine nutritional risk. Another commenter recommended that the Department require Federally-funded State child social service programs to coordinate with WIC. While the Department is currently involved in coordination efforts with numerous Federal health and social service programs, we would encourage State agencies to initiate discussions with their State counterparts administering such programs in order to bring about the suggested actions and coordination efforts within the State. With regard to both recommendations, we would encourage State agencies to enter into written agreements with health and welfare programs serving foster children, as provided in § 246.26(d) of the WIC regulations pertaining to confidentiality. Such written agreements provide an effective mechanism to encourage coordination of services and the sharing of information for eligibility and outreach purposes.

Because these comments do not necessitate changes in the provision as proposed, the Department is adopting it without changes.

In explaining the provision, Senator Leahy noted (Congressional Record, August 3, 1989, S10021–2) that Congress intended that implementation of this provision would entail State or local WIC agencies contacting foster care and protective service agencies and providing them with written information about the WIC Program. It would then be up to the foster care and

protective service agencies to make this information available to their clients.

In regard to a clarification requested by a commenter, this outreach effort and provision of WIC materials would include agencies serving foster children in group settings. Because such group settings would be considered only temporary arrangements, they would fall under the very broad definition of homeless facilities used in the WIC Program. As such, this clarification of policy was recently issued by the Department as guidance to States in implementing the final homeless regulations published in the **Federal Register** on August 5, 1992 (57 FR 34500).

d. *Improved access for employed persons and rural-area residents.* Most local WIC clinics are located where WIC participants are concentrated within their service delivery areas, and are organized to take and process WIC applications during "normal" business hours. This may pose problems for WIC applicants and participants who are employed and cannot always take time off from their jobs long enough to complete the application/certification process or participate in nutrition education activities, and for applicants and participants who reside in rural areas which may be a considerable distance away from the nearest WIC local agency or clinic. Similar problems are encountered by these two groups of participants when they need to make subsequent trips to the local WIC office to pick up their food instruments.

Section 123(a)(4)(A)(iv) of Public Law 101–147 focuses attention on this issue by adding a new section 17(f)(1)(C)(x) to the CNA of 1966 requiring State agencies to describe in their State plans how they will "improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers." Therefore, a new § 246.4(a)(21) was proposed by the Department with the intent to reiterate this legislative mandate.

Of those commenters addressing this issue, the majority either opposed the provision or approved the provision but expressed some concerns. Some commenters expressed concern with staffing the clinic for late hours, and in one commenter's opinion such action would place too much demand on local agencies to change clinic hours which could result in clinic closings. Several commenters noted that additional funds would be needed to hire additional staff and provide clinic security for extended or after-hours operation.

It should be noted that this State plan requirement addressing improved program access for employed applicants and residents of rural areas is flexible. As proposed, the Department inadvertently used language in the regulatory text which implied that a State's plan to improve program access for employed individuals or individuals who reside in rural areas must include appointment scheduling, adjustment of clinic hours and/or locations and alternate means of delivery of benefits. This inadvertent error may have generated the concerns raised by commenters. As noted above, the legislative language did not specify that all of these procedures must be implemented, but rather cited several examples of procedures which might be implemented. In other words, a State agency may choose to implement procedures to adjust clinic hours and/or locations, but may prefer not to implement alternative procedures for delivery of benefits, such as mailing vouchers. The intent of this legislative provision is to ensure State agencies take some action to recognize and accommodate the special needs of employed persons and those living in rural areas. Therefore, the proposed § 246.4(a)(21) has been modified to clarify that at least one of the procedures/practices contained in this paragraph must be implemented, but that each State agency has the option of choosing which one. State agencies are encouraged, but not required, to implement more than one of these procedures/practices. In addition, this provision has been revised to incorporate the legislative requirement, as discussed below in Section 6.d. of the preamble, that each State agency must adopt policies to require local agencies to schedule appointments for adult individuals applying or reapplying for the WIC Program for themselves or on behalf of others who are employed, if the local agencies do not currently do so.

While several commenters raised valid security and staffing concerns with adjusting clinic hours, there are alternatives available that achieve the goal of improved Program access without significant resource or security implications. For example, if extended evening hours are not feasible in all local agencies, the agencies might consider closing clinic offices early one day during the week and providing Saturday morning clinic hours. Local agencies might also provide "early-bird" morning services. In this way, both the security and staffing issues may have a minimal impact on the feasibility of implementing this procedure. Another option is to establish smaller satellite facilities that are open a half day to one day a week for purposes of certification and food instrument issuance that rotate throughout the local agency's "catchment area" in which hard to reach participants live.

e. *Conforming state plan amendments and related provisions.* The proposed rule contained amendments to conform WIC Program regulations to ensure compliance with certain existing, Department-wide or government-wide requirements of general applicability. The first of these are the conforming amendments to State Plan requirements contained in §§ 246.24(a) (22) and (23). They concern the Department's requirements, set-forth in 7 CFR part 3017, on debarment and suspension and maintenance of a drug-free workplace. In addition, § 246.6(b), which contains the requirements for agreements entered by the State agency with local agencies, was amended in the proposed rule to reflect the debarment and suspension provisions in 7 CFR part 3017. This final rule further amends it to incorporate by reference any applicable restrictions on the use of Federal funds for lobbying which are contained at 7 CFR part 3018. The substance of these provisions is more fully discussed in section 20 of this preamble.

In addition, as discussed in section 10 of this preamble, Public Law 101–147, as set forth in the Department's proposed rulemaking and these final regulations (§ 246.12(r)(8)), authorizes State agencies to issue food instruments to participants through means other than direct participant pick-up. As set forth in this final rule in § 246.4(a)(21), a State agency which chooses to issue food instruments through alternative means must include a description of this system in its State Plan and describe measures to ensure the integrity of program services, such as nutrition education and health care/social services linkages, and fiscal accountability. In addition, as required by § 246.12(r)(8) of this final rule, if a State agency opts to mail WIC food instruments, it must provide justification, in the description of the alternative issuance system in its State Plan, for mailing WIC food instruments to areas where food stamps are not mailed.

5. Outreach/Certification in Hospitals (§ 246.6(f))

A number of local agencies operate the WIC Program within a hospital, or have cooperative arrangements with an area hospital to certify WIC applicants. Such arrangements enable eligible newborn infants to begin receiving WIC benefits from the earliest possible date, and facilitate enrollment of at-risk mothers who may not have been eligible during pregnancy immediately after the birth of their child. Section 123(a)(4)(B) of Public Law 101–147 builds upon existing local agency/hospital WIC relationships by adding a new section 17(f)(8)(D) to the CNA of 1966 to require each local agency which either operates a WIC Program within a hospital or has a cooperative arrangement with one or more hospitals to "advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of Program benefits." The legislation also requires that local agencies, "to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in the program."

The Department proposed to add a new paragraph (f) to § 246.6 to state that a local agency which has such an arrangement with a hospital would be required to enter into a written agreement with the hospital incorporating the provisions of the legislative mandate. This agreement would, in turn, be appended to the State agency's agreement with the local agency. No requirement exists for local WIC agencies which do not operate the program in a hospital or through a cooperative agreement with a hospital to establish such an arrangement.

An overwhelming majority of commenters opposed the provision as proposed. The main concern expressed by commenters was the Department's proposal that local agencies enter into written agreements with hospitals. Several commenters indicated that such an agreement could potentially jeopardize existing arrangements and cooperative efforts local agencies have established with many hospitals and would be unnecessarily prescriptive.

Based on commenters' concerns, the Department has deleted in this final rule the requirement that local agencies enter into written agreements with hospitals. The remainder of § 246.6(f) is adopted as proposed. As set forth in this paragraph, the State agency is required to ensure that each local agency operating the program within a hospital and/or that has a cooperative arrangement with a hospital advises potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or that accompany a child under the age of 5 who receives well-child services, of the availability of program services. In addition, to the extent feasible, individuals who may be eligible to be certified for WIC within the hospital should be provided such an opportunity.

6. Program Referral and Access (§ 246.7(b))

In response to mandates of Public Law 101–147 which place increased emphasis on improving access to the WIC Program and referrals to other health-related or public assistance programs, the Department proposed to add a new paragraph (b) to § 246.7. The specific proposed requirements regarding improved program access and referral, including comments received and changes made in this final rule, are discussed in detail below.

a. *Providing written information on other programs to WIC applicants/participants.* Section 123(a)(3)(D) of Public Law 101–147 adds a new section 17(e)(3)(A) to the CNA of 1966 which requires State agencies to "ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program." The Department proposed to implement this requirement by adding a new subparagraph (1) in newly designated § 246.7(b).

While the majority of commenters approved the provision as proposed, many of these commenters recommended various changes to the regulatory text or questioned the intent of the provision as discussed in the preamble to the proposed rule. First, several commenters recommended that such information be provided to one adult member in any family as opposed to "each adult participant in and each applicant for the program." Commenters noted that as proposed, the requirement could result in multiple copies of the same materials being provided to different household members, including children, in the same family. One commenter recommended the provision of materials be extended to adult caretakers. Secondly, several commenters recommended such information be provided to applicants and participants "on at least one occasion" as required by law and not once each certification period as noted in the proposed preamble.

Based on commenters' concerns, § 246.7(b)(1) has been modified to require State agencies to ensure that written information concerning the Food Stamp, Aid to Families with Dependent Children and the Child Support Enforcement Programs is provided on at least one occasion to "adult participants and adult individuals applying for the WIC Program for themselves or on behalf of others." Because Congress did not intend this provision to result in an inordinate administrative burden, the Department believes that providing one adult member or caretaker of a household with the required information is sufficient and meets the intent of Congress.

In addition, while the proposed rule did not specifically define the phrase "on at least one occasion," the Department suggested in the preamble that the requirement should mean at each certification or recertification. However, based on commenters' concerns that this suggestion went beyond the intent of Congress, the Department wishes to make clear that State agencies have the flexibility to define what "on at least one occasion" means. It may be defined as only at the initial application or at each application or reapplication. Since these comments arose only in connection with the proposed preamble, this portion of § 246.7(b)(1) is being adopted as proposed.

State agencies may find that a routine distribution at every application is actually administratively easier or less burdensome than distribution only at initial application. Also, household circumstances can change dramatically in a 6-month period. For example, some applicants and participants who received the information at the initial WIC application visit may not have contacted one of these programs because they felt their circumstances at that point in time did not necessitate seeking other types of assistance. However, 6 months later at a subsequent WIC application visit, the family's circumstances may warrant contacting other assistance programs. Therefore, the availability of such program information at the reapplication visit would assist the family in seeking additional services. Further, a program's requirements can change from year to year, in which case WIC applicants and participants should be apprised or updated regarding these changes. While

the State agency must require local agencies to provide this information on one occasion, it should consider such factors when determining if more frequent distribution is appropriate.

In addition, a statement of explanation agreed on by the House and Senate to accompany H.R. 24 makes it clear that this requirement can be satisfied by providing a fact sheet which contains basic information about these programs and the addresses and phone numbers of local offices where low-income families can apply (Congressional Record, October 10, 1989, H6863). Further, WIC agencies are not required to document in each WIC participant's or applicant's file that the fact sheet was provided, as this would unnecessarily increase paperwork burdens for local WIC agency staff.

Finally, it is not the intent of this provision to require WIC agencies to develop and create fact sheets on other assistance programs. WIC State and/or local agencies are encouraged to consult with their State and/or local counterparts administering the Food Stamp, AFDC and Child Support Enforcement Programs to ascertain the existence and availability of program fact sheets for dissemination in WIC clinics. State and/or local agencies may simply need to duplicate copies of a fact sheet or materials developed by another assistance program.

The Department wishes to reiterate that this final rule attempts to minimize the administrative and paperwork burden associated with providing information to Program applicants concerning the Food Stamp, AFDC, Medicaid, and Child Support Enforcement Programs. However, the Department believes very strongly that WIC's role in providing referrals to other health and social service programs is critical to WIC's mission to promote and protect the health and well-being of at-risk women, infants, and children. Therefore, the Department fully expects State and local agencies to aggressively promote and pursue appropriate referrals on behalf of their clients and, as appropriate, institute measures to determine whether clients have in fact made contact with other service providers.

b. *Referrals to Medicaid.* Section 123(a)(3)(D) of Public Law 101–147 adds a new section 17(e)(3)(B) to the CNA of 1966 requiring State agencies to "provide each local WIC agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act (in this section referred to as the 'medicaid program')." In addition, a new section 17(e)(3)(C) is added to the CNA by the same section of Public Law 101–147 to require that local agencies, in turn, "provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the Medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for the program." In the proposed rule, the Medicaid referral provisions were addressed by adding a new subparagraph (2) to newly designated § 246.7(b).

The majority of commenters approved the provision as proposed. Therefore, the proposed rule is adopted with two minor clarifications the Department feels are needed. First, this final rule clarifies in the regulatory text that information about the Medicaid Program must be provided to "adult individuals applying and reapplying for the WIC Program for themselves or on behalf of others." This clarification is intended to ensure that duplicative materials are not provided to multiple family members applying for the program, which the Department believes was not intended by Congress. This is also consistent with the revision made in this final rule to newly designated § 246.7(b)(1) regarding the provision of written information on the Food Stamp, AFDC and Child Support Enforcement Programs. State and local agencies should note, however, that Congress specified in the law that information on the Medicaid Program must be provided to individuals at the time of application and reapplication. In addition, the joint statement of explanation accompanying H.R. 24 further supports this requirement by directing State agencies to provide local agencies with "the information necessary to conduct such referrals, including * * * the appropriate agency where the participant or applicant could apply for Medicaid" (Congressional Record, October 10, 1989, H6863). Thus, this final rule retains reference to providing this information to those both applying and reapplying to the WIC Program.

Second, the proposed regulatory language has been revised to clarify that referrals to the Medicaid Program include the referral of infants and children to the appropriate agency in the area authorized to determine eligibility for early and periodic screening, diagnostic, and treatment (EPSDT) services. EPSDT services are authorized under title XIX of the Social Security Act and are a component of and provided under the Medicaid Program. In addition, the proposed requirement has been revised to clarify that it includes the referral of pregnant women to the appropriate entity in the area authorized to determine presumptive eligibility for the Medicaid Program, if the State has chosen to make such determinations. As mentioned previously, based on current data, approximately 30 States have opted to provide presumptive eligibility determinations under the Medicaid Program.

Several clarifications are necessary regarding this requirement since it was misunderstood by some commenters. First, the requirement to refer individuals to the Medicaid Program applies only to individuals seeking WIC benefits who do not currently participate in the Medicaid Program. Therefore, the effects of implementing this provision could be minimal if a large majority of WIC applicants and participants already participate in the Medicaid Program. Second, while Medicaid eligibility is based on various factors, including citizenship and alien status, it is not the intent of this provision that WIC local agency staff become experts in Medicaid eligibility and screen WIC applicants based on various Medicaid eligibility factors, including for example, whether such individuals are U.S. citizens. Such extensive screening procedures would be outside the intent and scope of this requirement and are not the responsibility of WIC local agencies in implementing this provision.

As reflected in this requirement, the determination by local clinic staff of whether to refer an individual to Medicaid would entail a comparison of the family income, as determined for WIC income eligibility purposes, to the State Medicaid Program's maximum income limits according to family size, supplied by the WIC State agency to its local agencies. One factor which local clinic staff need to consider, however, in performing this comparison is that Medicaid by law counts a pregnant woman as if the child were born and living with her, whereas by law the WIC Program does not count the child. For example, a pregnant woman applies for WIC benefits and her family size, which includes herself and her spouse, is a two-person household for WIC income eligibility purposes. In performing the comparison of this family's potential Medicaid eligibility, this household's income should be compared to a family

size of three persons on the State's Medicaid income eligibility scale.

Further, as indicated by Congress, it is not the intent that such referrals to Medicaid by local WIC agencies be documented in each individual's WIC file. Moreover, as indicated above in Section 6.a. of this preamble, the requirement to provide Medicaid information can be met by use of a simple fact sheet, and it is not the intent of this provision to require WIC agencies to develop and create a fact sheet on the Medicaid Program. WIC State and/or local agencies are encouraged to consult with their State and/or local Medicaid counterparts to determine the existence and availability of program fact sheets for dissemination in WIC clinics. State and/or local agencies may simply need to duplicate copies of a fact sheet or materials developed by the State's Medicaid Program. Although Congress envisioned minimal administrative burden on State and local agencies in providing applicants/participants with information about other assistance programs, the Department believes, as stated above, that the referral of WIC applicants and participants to other health and welfare programs is a vital WIC function and critical to the WIC Program's mission to promote and protect the health and well-being of at-risk women, infants, and children.

c. *Referrals to other food assistance programs when WIC is fully enrolled.* Section 123(a)(4)(F) of Public Law 101–147 adds a new paragraph 17(f)(19) to the CNA of 1966 which requires each local agency to "provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area." The Department proposed to incorporate this legislative mandate in the WIC regulations by adding a new subparagraph (3) to newly designated § 246.7(b) of the regulations.

No comments were received on this specific requirement, and the Department is retaining this provision with one minor change to clarify that the information need only be provided to adults who apply or reapply for themselves or on behalf of others. This eliminates duplicative and unnecessary distribution of this information to infants or children. If individuals cannot be served because the program is operating at capacity in the local area, local agencies shall provide to individuals applying or reapplying for the program for themselves, or on behalf of others, information about other potential sources of food assistance in the local area. Such potential sources of food assistance would include, but are not limited to, food banks, food pantries, and soup kitchens which provide emergency or immediate food assistance, as well as more structured food assistance programs such as the Food Stamp Program, the Commodity Supplemental Food Program where available, the Emergency Food Assistance Program, and/or the Food Distribution Program on Indian Reservations (FDPIR), as appropriate. Information and referrals provided under this section need not be documented in participant files.

d. *Scheduled appointments for employed participants and applicants.* Most local agencies utilize an appointment system for the WIC application/certification process. However, in some local agencies, particularly the smaller ones, persons wishing to apply for WIC are seen on a first-come, first-served basis. This type of intake system creates a particular hardship for the employed applicant or participant who must take time off from work in order to be certified for WIC, and may be required to wait a long time for service at the clinic if a number of clients are in line ahead of her. In order to facilitate participation of working families in WIC, section 123(a)(4)(F) of Public Law 101–147 adds a new Section 17(f)(20)(B) to the CNA of 1966 requiring local agencies that do not routinely schedule certification appointments to "schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification." Therefore, the Department proposed to incorporate the requirement that local agencies schedule appointments for employed WIC applicants/participants through the addition of a new § 246.7(b)(4). The majority of commenters supported the provision as proposed. This final rule retains the requirement as proposed, but clarifies, consistent with the preceding referral provisions, that this requirement applies to adult applicants seeking to apply or reapply for themselves or on behalf of others.

7. Contacting Pregnant Women Who Miss Certification Appointments (§ 246.7(b)(5))

Section 123(a)(4)(F) of Public Law 101–147 adds a new section 17(f)(20)(A) to the CNA of 1966 requiring the State agency to adopt a policy that would "require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency."

The statement of explanation agreed upon by the House and Senate which accompanied H.R. 24 provides specific guidance regarding how this mandate should be implemented. First, Congress did not envision that compliance would entail "elaborate efforts" by the local agency; rather, "a brief phone call or the mailing of a post card would suffice" (Congressional Record, October 10, 1989, H6863). Second, although the legislation does not require that an effort be made to contact the pregnant woman who has missed an appointment if the local agency lacks her address and phone number, Congress expressed the view that "local agencies should get her phone number (and/or the address) when a pregnant woman makes an appointment. This should become a routine part of making appointments for pregnant women, * * * (if it) * * * is not already" (Congressional Record, October 10, 1989, H6863). The Department believes that this is, in fact, standard practice at most local agencies.

In commenting on this provision at the time S. 1484 was introduced, Senator Leahy indicated that it "applies at the initial certification interview only. It does not apply to missed appointments for picking up WIC vouchers or to missed appointments at recertification" (Congressional Record, August 3, 1989, S10018).

Pursuant to the direction of Congress that follow-up contacts be made, but that the process not be labor-intensive (Congressional Record, October 10, 1989, H6863), the Department proposed to add a new paragraph (b)(5) in § 246.7 which required each local agency to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. In addition, the Department proposed that each local agency, at the time of initial contact, would be required to request an address and telephone number where the pregnant woman could be reached. Without this requirement, it would be difficult for local agencies to conduct the Congressionally mandated follow-up with pregnant women who miss their first certification appointment, and the Congressional intent of promoting early program intervention for these women would be thwarted. In addition, the Department proposed several minimum procedures to comply with the

legislative requirement. First, if the applicant failed to attend her first certification appointment, the local agency would be required to attempt to contact her by telephone or mail. If she is contacted by phone, she must be offered one additional certification appointment. Second, if the applicant could not be reached by telephone and initial contact is by mail, the local agency would be required to send the applicant one card or letter requesting that the applicant contact the local agency for a second appointment.

The majority of commenters supported these proposed requirements and indicated that it is essential that the program facilitate the certification of this high-risk population. Several commenters focused their concerns on the proposed minimum procedural requirements. One of these commenters indicated that follow-up calls are ineffective due to nonworking numbers, recordings, and frequent moves by some individuals, and further noted that there is no consensus such calls increase the show rate. Some commenting State agencies recommended the Department provide State and local agencies with the flexibility to determine procedurally how to implement the provision. They indicated that other types of follow-up procedures could produce more effective show rates. For example, a local agency could schedule an appointment and provide an alternate appointment in a followup postcard. Applicants would be instructed to call if the scheduled appointment was unacceptable. These commenters emphasized that local agencies should have the option to use a reminder (before the appointment) and/or follow-up system. They indicated the postcard and reminder system and calling the day before the appointment are effective procedures.

While the Department must require compliance with the legislative mandate to contact pregnant women who miss their initial certification appointment, the Department does have flexibility to modify in this final rule the minimum procedural requirements to accomplish this mandate. Therefore, based on commenters' concerns, proposed paragraph (b)(5) has been modified in this final rule to only require that each local agency must attempt to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. As noted above, Congress intends this requirement to apply at the initial certification interview only and does not apply to missed appointments for WIC voucher pick up or to missed appointments at subsequent applications. In order to facilitate such an attempt to contact these women if an initial certification appointment is missed, this final rule retains the requirement, from the proposed rule, that local agencies must request an address and telephone number of each pregnant woman at the time of the initial contact.

As requested by commenters, the specific procedures for implementing this requirement have been deleted from this final rule. It is the responsibility of State and/or local agencies to determine appropriate procedures and they should be addressed in each State's procedure manual. In developing such procedures, State and/or local agencies should consider those addressed in the proposed rule, commenters' recommendations as noted above and any first-hand experiences in attempting to contact applicants in order to minimize no-show rates. As suggested by commenters, the Department also encourages, but does not require, local agencies to send out a reminder notice prior to the certification appointment, especially where there is a long lag time between the initial contact and the date of the appointment. Such a precaution could reduce the number of missed initial appointments requiring follow-up action.

8. Prior Notification to Participants for Termination Due to Funding Shortages (§ 246.7(h)(2))

Section 246.7(g)(2) in current regulations (redesignated § 246.7(h)(2) in the proposed rulemaking) permits a State agency to discontinue program benefits to certified participants in the event that it experiences funding shortages which would warrant taking such action. Because such a step would constitute an adverse action against a participant, section 123(a)(4)(C)(ii) of Pub. L. 101–147 adds a new section 17(f)(9)(B) to the CNA of 1966 requiring State agencies in this situation to first issue a notice to affected participants identifying "the categories of participants whose benefits are being suspended or terminated due to the shortage." The Department proposed to add this requirement in a new paragraph (j)(9) in § 246.7.

Current regulations require State agencies to provide 15 days advance notification of disqualification. To maintain consistency with the statutory language, the Department proposed that the first sentence of redesignated § 246.7(j)(6) (formerly § 246.7(i)(6)) be revised to indicate that 15 days advance notice must be given in cases of suspension, as well as disqualification.

No comments were received on these proposed provisions. Therefore, the Department is retaining these requirements as proposed. As discussed in the proposed rule preamble, State agencies would be able to define the "categories" of participants to be terminated or suspended in a variety of ways, given the alternative methods available to them to achieve the necessary reduction in costs through mid-certification disqualifications. Further, as discussed in Section 6.c. of this preamble, § 246.7(h)(3) of the final rule requires local agencies to provide referrals to other food assistance programs when their caseloads are full. State agencies may wish to advise their local agencies to provide similar referrals to WIC participants who are disqualified or suspended due to a funding shortage.

9. Documentation of Nutrition Education in a Master File (§ 246.11(e)(4))

Nutrition education has always been an integral component of the WIC Program. Any nutrition education provided to WIC participants has always been required by regulations to be documented in each WIC participant's casefile. However, many nutrition education activities, especially those directed toward children or involving considerable dialogue (such as food preparation demonstrations), lend themselves to group activities. In such cases, individual casefile documentation becomes an administrative hardship for the local agency staff. Therefore, section 213(a)(1) of Public Law 101–147 adds a new Section 17(e)(5) to the CNA of 1966 which alleviates this paperwork requirement by allowing local agencies to "use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes." The law applies the master file documentation option to nutritional education contacts, after the first such contact during a certification period, which are provided, per Departmental mandate, to persons in groups. However, because of the wide variety of both the nutrition education services that can be provided to WIC participants and the techniques and strategies appropriate for providing these various services, the Department does not dictate terms and conditions under which subsequent nutrition education contacts could be provided in a group setting.

The Department proposed to revise § 246.11(e)(4) to comply with this legislative requirement by permitting local agencies to document nutrition education contacts, except for initial contacts, in a participant master file when such contacts are provided in a group setting. Further, proposed § 246.11(e)(4) provided that should a participant miss (no-show or refusal) a nutrition education appointment, the local agency is required, for purposes of monitoring and further education efforts, to document this fact in the participant's file, or, at the local agency's discretion, in a master file, in the case of a second or subsequent missed contact where the nutrition education was offered in a group setting.

The majority of comments approved this provision as proposed. They indicated that this provision would help to reduce and eliminate the current paperwork burden, thus allowing more time on actual nutrition education. Therefore, this final rule retains the provision, as proposed.

With regard to this requirement, State agencies may not prohibit a local agency from exercising the option to document nutrition education in a master file, as permitted in these final regulations. First, as designated by Congress in Public Law 101–147, this is a paperwork reduction burden provision. Secondly, the legislative language specifically refers to "Each local agency * * *" when addressing the option to use a master file. For State agencies to prohibit local agencies from exercising this option would be in direct violation of the Congressional intent of this provision.

One commenter recommended the Department suggest mechanisms for effective monitoring of the provision when implemented by local agencies. The Department will address this issue in guidance materials which will be issued to assist State agencies with this task.

10. Alternatives to Participant Pick-Up for Issuance of WIC Food Instruments (§§ 246.7(f)(2)(iv), 246.7(h)(1)(ii) and 246.12(r)(8))

Section 213(a)(2)(A)(ii) of Public Law 101–147 adds a new section 17(f)(7)(B) to the CNA of 1966 allowing States to provide for the delivery of WIC food instruments "to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain the food instruments." This section of the law also requires State agencies to describe any plans for issuance of vouchers by mail in its State Plan. Further, the law states that the Department may disapprove a State plan with respect to issuance of WIC vouchers by mail "in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program * * *".

By including the alternative issuance provision in Public Law 101–147, Congress intended to broaden the authority of State agencies to deliver food benefits to participants. Problems of convenience, transportation, and accessibility to the local agency can be addressed by use of alternative means of issuance of WIC food instruments. In addition, alternative means of issuance of WIC food instruments can significantly alleviate clinic congestion and keep participants as well as applicants from having to wait for long periods of time at local agencies. Local agency staffs would also be freed by use of other issuance alternatives to spend more time on certification and nutrition education activities, including high-risk contacts.

As indicated above, however, Congress did impose certain restrictions on the issuance of food instruments through alternative means. First, the method may not, in the judgment of the Department, pose a significant threat to the integrity of the program. The concept of program integrity encompasses both the quality and coordination of the full range of program services—supplemental foods, nutrition education, and health care referrals—and fiscal accountability. Congress specifically stressed the former aspect of program integrity by stipulating that food instruments may not be mailed to participants who are scheduled for a certification interview or for a nutrition education contact. Applicants must be seen when they enter the program in order to provide referrals and to ensure integration into the health care system with which WIC is coordinated.

Under current WIC regulations (§ 246.12(r)(8)(i)–(ii)) and in accordance with guidelines established by the State agency, local agencies have had the authority to mail food instruments on a case-by-case basis to individual participants in specific circumstances which make direct pick-up infeasible, e.g., illness or imminent childbirth. State agencies have also had the authority to permit the mailing of food instruments on a local agency-wide basis in response to specific temporary conditions, e.g., inclement weather or damage to a bridge that is a critical transportation link. In such circumstances, certification appointments and nutrition education have been rescheduled and food instruments mailed.

The new legislation expands the authority of States to mail food instruments. Therefore, in order to comply with the legislative mandate, the Department proposed to revise § 246.12(r)(8) to expand State agency authority to implement alternative issuance systems through means other than direct pick-up, such as mailing food instruments, provided that direct pick-up must be required of participants when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. The Department further proposed that the State agency may provide the issuance of food instruments through means, such as mailing, to specified categories of participants in specified areas. However, as proposed and per the mandate of Public Law 101–147, State agencies would be required by the new § 246.4(a)(21) (discussed in Section 4.d. of this preamble) to describe in their State plans any alternative food instrument distribution policies and systems. Further, for conformity, the reference to § 246.12(r)(8)(i) and (ii) in § 246.7(f)(2)(iv) was proposed to be changed to § 246.12(r)(8).

Use of an alternative means of issuance, such as mailing food instruments, in no way reduces the State and local agency's responsibility to ensure accountability for issuance and receipt of food instruments, as required by § 246.12(l) of current regulations. Therefore, this was an issue which was addressed by the Department in the preamble to its proposed rulemaking. The Department indicated that State agencies which opted to distribute food instruments by mail would be expected to ensure that the food instruments do, in fact, reach the intended persons. In order to monitor non-participation, the State agency instead would need to trace food instruments not redeemed back to participant files. Therefore, the Department proposed to revise § 246.7(h)(1)(ii) to specify that non-redemption of food instruments for a number of consecutive months would be a basis for disqualification.

Mailing by certified mail, return receipt requested, was a method identified in the preamble to the proposed rule that should be considered by State agencies to ensure accountability for issuance and receipt of food instruments by participants. Commenters were asked, in response to

the proposed rule, to suggest other means of ensuring accountability in alternate issuance systems which could be shared as guidance to State and local agencies in the preamble to the final rule.

The majority of commenters overwhelmingly opposed the proposed provision in § 246.7(h)(1)(ii) whereby participants could be disqualified for failure to redeem food instruments for a number of consecutive months if such instruments were provided by the State agency by means other than direct pick-up. Commenters viewed this requirement as creating an undue administrative burden on State and local agencies to track unredeemed food instruments in such cases. In addition, commenters indicated that such a requirement was not feasible given the timeframe which exists before data are available to State agencies on non-redemption. Commenters also indicated that the provision, as proposed, created a different requirement for WIC food instruments mailed versus those instruments picked up at the clinic. Several commenters noted that if a State agency can ensure delivery, there is no need to require the tracking of redemption data for such participants.

With regard to the proposed revision to § 246.12(r)(8), which provides State agencies with the option to implement alternative means of delivery of WIC food instruments other than by means of direct pick-up, the majority of commenters approved the provision but offered comments regarding their experiences with mailing of food instruments or recommendations on the method which should be used to mail the food instruments to participants. Those supporting the provision indicated that implementation of this option would reduce transportation and accessibility barriers to WIC services.

Of those approving the provision but suggesting modifications, one commenter recommended that State agencies be given discretion in procedural implementation, and another commenter recommended the Department delete the reference to mailing food instruments to "specified categories of participants in specified areas" because this created limitations on a State agency's implementation of the provision. One commenter viewed the proposed preamble discussion as contradictory and recommended the Department clarify the relationship between this new provision and policy which has been in existence regarding the circumstances in which food instruments may be mailed.

The majority of commenters responded to the request in the preamble to the proposed rule for suggestions of methods State agencies may want to consider in the mailing of food instruments to ensure accountability and receipt of the food instruments by participants. Several commenters recommended that food instruments should not be sent certified mail due to the expense.

They recommended that food instruments mailed should be sent first class, but that the following phrase should be added on the envelope: "Do Not Forward, Return to Sender" or "Do Not Forward, Address Correction Requested." One commenter recommended that for security purposes the name of the clinic should be deleted from the return address. The Department will provide State agencies with additional guidance in this area, using experience gained and effective techniques utilized by WIC State agencies which currently mail WIC food instruments in limited circumstances and the experience and knowledge gained by States in mailing food stamps in the Food Stamp Program.

Based primarily on comments received on § 246.12(r)(8) of the proposed rulemaking, the Department has made the following changes in this final rule. First, based on comments received on the Department's proposed revision to § 246.7(h)(1)(ii) regarding mid-certification disqualification for failure of participants to redeem mailed food instruments for a specified number of consecutive months, the Department has modified this requirement in this final rule. The intent of the proposed revision was to establish a mid-certification disqualification policy for participants mailed food instruments which would be comparable to disqualification due to failure on the part of participants to pick up their WIC food instruments. Therefore, in this final rule, § 246.7(h)(1)(ii) has been revised to state that a participant may be disqualified mid-certification for failure to obtain food instruments or supplemental foods for a number of consecutive months, as specified by the State agency, evidenced by indicators such as failure to pick up supplemental foods or food instruments, nonreceipt of food instruments as evidence by return of mailed instruments, or failure to have an electronic benefit transfer (EBT) card revalidated to authorize the purchase of supplemental foods. As set forth in this final rule, this requirement ensures similar treatment of all participants, regardless of the method in which they may receive or obtain authorization to purchase supplemental foods, including the mailing of food instruments or use of an EBT system as alternative issuance systems.

Second, for clarification purposes, paragraph (r)(8) has been revised to include reference to an EBT system as an example of an alternative WIC food instrument issuance system. An EBT system has been pilot-tested by one WIC State agency, who is currently in the process of developing an expanded demonstration project. Other State agencies have also shown an interest in this type of issuance system.

Third, as requested by commenters, a reference in the proposed rule to what appeared to be limitations on the mailing of food instruments to only "specified categories of participants in specified areas" has been deleted in this final rule. Therefore, this paragraph allows State agencies the option to provide for the issuance of food instruments through an alternative means, such as EBT or mailing to any participant, except when participants are scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period, unless FNS determines that such action would jeopardize the integrity of program services or program accountability.

Fourth, § 246.12(r)(8) has been revised to specify that if a State agency opts to mail WIC food instruments, it must provide justification, as part of the description of its alternative issuance system in its State plan, as required in § 246.4(a)(21) of this final rule, for mailing WIC food instruments to areas where food stamps are not mailed. In assessing the impact on program integrity and accountability, WIC State agencies and FNS will review Food Stamp Program experience in mailing food stamps. Some States do not mail food stamps either statewide or to certain areas due to the probability of or experienced high mail issuance losses. As of Fiscal Year 1992, approximately 11 States have chosen not to implement a mail issuance system for food stamps. Some States, however, that have implemented mail issuance systems may only mail food stamps to certain areas of the State. A decision by a State not to mail food stamps could be based on, for example, the probability of or experienced high mail issuance losses, the use of an EBT system in some areas, or other reasons which may be unrelated to mail issuance losses.

WIC State agencies and FNS must review such decisions on the part of States in determining if it is appropriate to mail WIC food instruments to such areas. Close coordination on this issue with State Food Stamp Program staff

will be necessary. For example, WIC State agencies will need to determine whether a State has chosen not to mail food stamps or to mail only to certain areas, the reason(s) why such decision(s) were made, and if food stamps are being mailed, the dollar value of current mail issuance losses in the State's Food Stamp Program. In approving a WIC State agency's plan to mail to areas where food stamps are not mailed, FNS will not approve a plan in which all WIC participants would be mailed food instruments in an area where food stamps are not mailed due to the probability of or experienced high mail issuance losses. However, FNS may approve, for example, a State agency's plan to mail WIC food instruments in an area where food stamps are not mailed due to reasons unrelated to mail issuance losses.

Fifth, in this final rule, paragraph (r)(8) further provides that State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participant no longer resides or receives mail at the address to which the food instruments were mailed. Inclusion of this requirement is intended to reflect a balance between responding to commenters' concerns that the Department permit greater flexibility in the procedural implementation of this requirement and the Department's concern, that such procedures ensure program accountability for the issuance and receipt of mailed food instruments. While some commenters viewed the tracking of unredeemed mailed food instruments as an administrative burden, good program management dictates a reconciliation of food instruments, as required in § 246.12(n)(1), which includes reconciling food instruments issued to food instruments redeemed, unredeemed, lost, stolen and voided.

Currently, while alternative means of issuance present certain advantages of convenience for participants and local agencies, these same advantages can be achieved through modifications of the participant pick-up system. Section 246.12(r)(7) of current regulations permits State agencies to give the participant up to a 3-month supply of food instruments at one time. Thus through this multiple-issuance strategy, States can reduce to two the number of times the participant must visit the WIC local agency during the standard 6-month certification period. The new statutory provision regarding alternative means of issuance would not change the number of personal appearances required per certification period.

In any event, the Department would not recommend that State agencies reduce the participant's frequency of visits to the local agency merely for reasons of local agency convenience, independent of consideration for the quality of service to participants.

In addition, a commenter requested clarification on the relationship of this new legislative provision to what has been permitted by the Department in the past in terms of mailing food instruments. In the past, mailing of food instruments was permitted only to meet specific needs on a case-by-case basis. The new provision would permit a State agency to continue their current policy of mailing food instruments on a case-by-case basis or expand its use of mailing food instruments. For example, a State agency could continue to permit a nutrition education or a certification appointment to be rescheduled if extenuating circumstances exist, e.g., illness, inclement weather, and authorize the mailing of that month's food instruments. A participant who may have been scheduled for a certification visit could be mailed food instruments due to inclement weather as long as the mailed food instruments represent no more than a one-month extension to the participant's certification period, as permitted by the current § 246.7(f)(3) which is newly designated as § 246.7(g)(3) in this final rule. The certification appointment (or nutrition education session) *must* be scheduled during the next issuance cycle and the participant must be required to pick up WIC food instruments at the time of her rescheduled visit.

State agencies which decide to mail food instruments may want to consider which groups of participants (based either categories or on location) are most in need of this service and least in need of regular direct contact with WIC staff. For example, mailing might be appropriate for lower risk participants in a sparsely populated rural area where they must travel great distances to reach their WIC clinic, and for working families. Mailing might be less appropriate for pregnant women, for whom regular interface with clinic staff—and the health care system which may be on WIC clinic premises—can contribute significantly to positive pregnancy outcomes. In the final analysis, State agencies must weigh the benefits of participant convenience and reduced administrative burden against the benefit of frequent contact with participants and the goal of balanced, coordinated delivery of services, which is facilitated through such contact. Furthermore, the State agency will need to assess which local agency service area(s) are more appropriate locations for mailing of food instruments. It is not likely to be appropriate, given numerous factors which must be considered, including program integrity and accountability, for a State agency to establish a policy of mailing food instruments to all participants statewide.

The Department will carefully scrutinize plans for alternative issuance of food instruments through the State plan review process and monitor the effects of implementation during management evaluations in order to ensure that alternative issuance systems do not jeopardize the quality of program services or fiscal accountability.

As discussed in Section 4.d. of this preamble, State agencies opting to implement an alternative WIC food instrument issuance system must describe this system in its State plan, as required by Public Law 101–147 and addressed in §§ 246.4(a)(21) and 246.12(r)(8) of this final rule.

11. Nutrition Services and Breastfeeding Promotion (§§ 246.14(c)(1) and 246.16(b)(2))

This final rule revises Program regulations to incorporate certain non-discretionary funding requirements of Public Law 101–147, which are described below. Although not previously proposed, this final rule incorporates these non-discretionary changes in §§ 246.14(c)(1) and 246.16(b)(2).

Prior to the enactment of Public Law 101–147, section 17(h)(1) of the CNA of 1966 required that not less than one-sixth of the funds expended by each State agency for NSA costs be used for nutrition education activities, but there was no requirement that any portion of this amount be used specifically for promotion and support of breastfeeding among WIC mothers. Section 123(a)(6) of Public Law 101–147 recognizes the importance of breastfeeding by creating a new section 17(h)(3)(A)(i)(II) of the CNA of 1966.

This new section earmarks $8 million in State agency NSA grants for the promotion and support of breastfeeding among WIC mothers. The mandated utilization of this $8 million, and its relationship to the existing one-sixth NSA requirement are described below.

The earmarked $8 million is the amount of NSA funds that, at a minimum, must be expended to support and promote breastfeeding. These funds are intended to be used to promote increases in the number of breastfeeding

mothers and the length of time that these mothers breastfeed. As noted above in this preamble in section 2.f., breastfeeding aids are allowable administrative expenses, as set forth in § 246.14(c)(10) of this final rule. In addition, this final rule revises § 246.14(c)(1) to specify that in addition to the cost of nutrition education, the cost of breastfeeding promotion and support activities which meet the requirements of § 246.11 are allowable nutrition services and administration costs.

In addition, this final rule revises § 246.14(c)(1) to specify that each State agency's target share of the $8 million expenditure requirement will be determined by the State agency's average monthly number of pregnant and breastfeeding WIC participants as a percentage of the average monthly number of pregnant and breastfeeding participants in the WIC Program in all State agencies. These targets will be announced at the same time that final grants for the fiscal year are announced. As discussed further in section 16 of this preamble, in this final rule, § 246.16(b)(2) has been revised to indicate that the grant levels will be issued in a timely manner.

As set forth in § 246.14(c)(1) of this final rule, the $8 million expenditure target for breastfeeding promotion and support provided by section 123(a)(6) of Public Law 101–147 is an augmentation of the amount of funds State agencies must spend on nutrition education and related activities as specified in newly-amended section 17(h)(3)(A)(i) of the CNA of 1966. The total spending requirement for nutrition education, including breastfeeding promotion and support, is one-sixth of the amount of NSA funds allocated to the State agency for nutrition education in general, plus the State agency's proportionate share of the $8 million targeted specifically for breastfeeding promotion support. Of this aggregate amount, the targeted amount is the minimum which must be spent on breastfeeding promotion and support. However, total spending on breastfeeding promotion and support may exceed this minimum, since funds from the one-sixth allocation may be used for additional breastfeeding promotion and support, or for other nutrition education purposes.

The following is a simplified example of how NSA funds, the one-sixth spending requirement for nutrition education and related services and targeted amounts for breastfeeding promotion and support are calculated for a particular State:

Total NSA Expenditures	$600
Proportionate Share of $8 Million (targeted for breastfeeding promotion and support only)	10
1/6 Nutrition Education Requirement (may include additional breastfeeding promotion and support)	100
Aggregate sum of 1/6 and Proportionate Share (total expenditure requirement for nutrition education and breastfeeding promotion and support)	110
Total remaining funds for other NSA	490

As allowed by section 123(a)(6) of Public Law 101–147 and as set forth in § 246.14(c)(1) of this final rule, State agencies are permitted, subject to approval by the Department, to spend less than their identified breastfeeding support and promotion target amount if: (a) The State agency so requests, and (b) the request is accompanied by documentation that other resources will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the target share amount were expended. State agencies may also request permission to spend less than the amount earmarked for nutrition education if they can, similarly, document that other resources are being used to meet the requirement. These other resources include in-kind services provided by volunteer private organizations and professionals, or other State and local personnel. Section 246.14(c)(1) has also been modified to clarify that State agencies should submit documentation of other resources to be used in lieu of NSA funds to the appropriate WIC regional office for advance approval. If a State agency does not have such documentation approved, and its nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, the Department will issue a claim for the difference.

12. Funding Authorizations—§§ 246.16(a)(1) and 246.16(a)(6)

Section 123(a)(5) of Public Law 101–147 amends section 17(g)(1) of the CNA of 1966 to change the funding authorization for the WIC Program to include a specific provision that allows appropriations 1 year in advance of the beginning of the fiscal year in which the funds become available for disbursement to the States. If appropriations are enacted for a year in advance, this would enable State agencies to know total grant funds for the current fiscal year and the next fiscal year. This provision previously existed for the WIC Program and appeared in section 3 of the National School Lunch Act. It has now been specifically referenced in the WIC authorizing legislation. Therefore, this final rule revises § 246.16(a) to add a new paragraph (a)(1) to incorporate this provision.

Section 123(a)(5)(D) of Public Law 101–147 amends section 17(g)(5) (as redesignated by section 123(a)(5)(B)) of the CNA of 1966 to expand funding for studies and demonstration projects. It permits the Secretary to use one-half of 1 percent (not to exceed $5 million) for evaluation and demonstration purposes, which is an increase from the previous statutory limit of $3 million. Section 246.16(b)(1) of the current regulations has been redesignated as § 246.16(a)(6) in this final rule and revised to address the Secretary's authority to increase the amount of funds used for studies and demonstration projects.

13. Nutrition Services and Administration (NSA) Funding—§ 246.16(c)(2)

Administrative costs associated with the WIC Program were formerly referred to as administrative and program services costs. Public Law 101–147 has changed the name of these costs to "nutrition services and administration (NSA) costs". Therefore, the definition of "Administrative and program services costs" in § 246.2 has been removed and replaced with a definition of "Nutrition services and administration costs." In addition, all other references within part 246 to "administrative and program services" costs or funds have been revised accordingly.

During the past few years, WIC Program participation has increased substantially in States that have implemented measures to lower WIC food costs. This increase in participation, as well as additional Program requirements in areas such as drug abuse education and referral, prevention and detection of vendor abuse, improved management information systems at the State and local level, improved program access for rural areas and the working poor, improved nutrition services and more effective Program coordination, had been increasingly difficult to accomplish within existing limits on funds set for NSA. Previously, section 17(h)(1) of the CNA of 1966 mandated that 20 percent of the funds appropriated for the WIC Program (less funds used for evaluation and demonstrations) be made available for State agency and local agency costs for NSA. There has been extensive discussion and research to determine

whether the 20 percent funding limitation for NSA was an appropriate level to permit State and local programs to operate the WIC Program. As mandated in section 8(c) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237), the Department submitted to Congress in March 1989, a report entitled Study of Funding for Nutrition Services and Program Administration in the WIC Program. The report concluded that the WIC Program faced a serious erosion of per participant administrative resources due to significant participation increases. Among the solutions proposed was the establishment of a base-level NSA grant per participant with an appropriate inflation index. Public Law 101–147 amends section 17(h)(1) of the CNA of 1966 to eliminate the 20 percent limitation for NSA funding and, in lieu thereof, adopts a national guaranteed average administrative grant per person to be used in determining the amount of total funds available for NSA. As described below in a simplified example, NSA funds will now be apportioned on a per-participant basis.

The amount available for NSA will be determined by the Department based on the ratio of the national guaranteed average administrative grant per person to the total projected cost per person. This ratio is derived as follows. Once the national guaranteed average administrative grant per person is calculated, the projected per participant food cost is determined based on State agency reported food expenditure and participation data. The national guaranteed average administrative grant per person is then added to the projected food cost per participant to estimate the total projected cost per person. The ratio of the NSA cost per participant to the total cost per participant can then be derived. This ratio determines the amount available for NSA. In the following simplified example, 25 percent of the appropriation would go to NSA since the guaranteed average administrative grant per person represents 25 percent of the total projected cost per person.

Projected Food Cost/Person	$30–75%
Guaranteed Admin./Person	$10–25%
Total Projected Cost/Person	$40–100%

Section 123(a)(6) of Public Law 101–147 also amends section 17(h)(1)(B)(ii) of the CNA of 1966 to change the method for determining the inflation adjustment for NSA funding. Previously, the same inflation adjustments were applied to both food benefit funds and NSA funds. Many State agencies argued that inflationary increases in food costs did not track with inflationary increases in salary and wage costs. In the Study of Funding for Nutrition Services and Program Administration in the WIC Program, it was shown that from Fiscal Year 1981 through Fiscal Year 1987 the average administrative expenditure per person had risen by an average of 2.3 percent per year. This rate of increase has been much lower than the 7 percent rate of inflation for salaries during the same time period. Salaries constitute one of the largest NSA costs. Approximately 70 percent of all NSA expenditures are for salaries and related benefits. As State agencies can only expend the Federal WIC funds granted to them, their expenditures could not keep pace with inflation. In recognition of these NSA expenditure trends, Congress determined that separate inflation indices were needed for food and NSA funding, which are incorporated into revised § 246.16(c)(2).

a. *National NSA Funding.* Section 123(a)(6) of Public Law 101–147 amends section 17(h)(1) of the CNA of 1966 to guarantee funds sufficient to provide a national average per participant grant for NSA. As stipulated in such amendments, § 246.16(c)(2) of this final rule specifies that the national average per participant grant shall be equal to the national average per participant grant for Fiscal Year 1987, adjusted to reflect annual inflation increases. The Fiscal Year 1987 figure is $8.24. Section 17(h)(1)(B)(ii) provides that the adjustment for inflation for a current fiscal year will be made by revising the national average per participant grant for NSA for Fiscal Year 1987 to reflect the percentage change from the base year level in the index for State and local government purchases. This index is calculated using the implicit price deflator, and is published by the Bureau of Economic Analysis of the Department of Commerce. It measures the price increase of State and local government purchases including compensation for employees and purchases of structures, durable goods (such as equipment), nondurable goods (such as food, paper goods, and clothing), and services.

The base year for the index, as established in section 17(h)(l)(B)(ii)(I), is the 12-month period ending June 30, 1986. It has a value of 100. The inflation adjustment shall reflect the percentage change between this base year value and the most recent estimate that is available as of the start of a current fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. The difference between the most recent estimate and the base index of 100 is multiplied by $8.24 to establish a current year's national average per participant grant. In any fiscal year, any remaining funds after funds for NSA have been identified will be made available for food benefits. These requirements are also incorporated into revised § 246.16(c)(2).

b. *Allocations to state agencies.* Section 123(a)(6) of Public Law 101–147 amends section 17(h)(2)(A) of the CNA of 1966 to require that the formula for allocating NSA funding must be designed to take into account the varying needs of each State, participation levels in each State, a minimum grant amount, and other factors which promote proper, efficient and effective program administration. Section 123(a)(6) of Public Law 101–147 also amends section 17(h)(2)(A) of the CNA of 1966 to require that the funding formula must provide each State agency with an estimate of participation and a per participant grant for NSA. The NSA funding formula outlined in § 246.16(c)(2) of the WIC Program regulations as revised by this final rule reflects these requirements. The Department is currently evaluating the funding formula contained in § 246.16 to ensure that the formula promotes proper, efficient and effective program administration, and may undertake a future rulemaking if modifications are necessary.

Public Law 101–147 also amends section 17(h)(2)(B)(i) to specify that the total NSA grant level is the operational level for NSA costs that a State agency is authorized to spend for any given fiscal year. Section 246.16(c)(2)(iv) has been added to this final rule to reflect this, as described below.

14. Nutrition Services and Administration Performance Standard—§§ 246.16(c)(2)(ii) and 246.16(e)

A new provision mandated by section 123(a)(6) of Public Law 101–147, which amends section 17(h)(2)(B)(ii) of the CNA of 1966, provides that the Secretary may reduce a State agency's NSA operational level if its per participant expenditure for NSA is more than 15 percent higher than its per participant NSA grant, without good cause. This will only occur in those State agencies that fail to reach the Federally-projected participation level. Guidelines for determining the Federally-projected participation level are set forth in § 246.16(c)(3)(ii)(B) of the current regulations and redesignated as § 246.16(c)(2)(ii)(B) by this final rule.

In order to carry out revised section 17(h)(2)(B)(ii), § 246.16(e)(2)(ii) is revised to provide that if a State

agency's per participant expenditure exceeds its per participant grant by more than 15 percent, the Secretary shall reduce the State agency's NSA operational level in the subsequent fiscal year. In accordance with section 17(h)(2)(B)(ii) however, a State agency may avoid a reduction to its NSA operational level in the subsequent fiscal year by showing good cause. Section 246.16(c)(2)(ii) is revised by this final rule to permit a State agency to submit in writing a "good cause" justification for exceeding the 15 percent limit. Circumstances that may meet the "good cause" criterion include, but are not limited to, dramatic and unforeseen increases in food costs which result in an inability to reach Federally-projected participation levels.

Section 246.16(e)(2)(ii) further requires justification for exceeding the 15 percent limit to be submitted to the Department at the time the State agency submits its closeout report for the applicable fiscal year.

It should be noted that section 123(a)(6) of Public Law 101–147 amends section 17(h)(2)(B) of the CNA of 1966 to require that each State agency's operational level for NSA be maintained, except when the State agency's administrative expenditure per person exceeds its administrative grant per person by more than 15 percent without good cause. This precludes NSA grant reductions in concert with food grant reductions pursuant to a State agency's failure to meet the 95 percent standard for food expenditures contained in § 246.16(e)(2) of the current regulations. Therefore, this final rule amends § 246.16(e)(2)(i) to no longer require that a corresponding level of NSA funds be deducted for failure to meet the 95 percent performance standard for food expenditures.

15. Local Agency Funding—§ 246.16(d)

Section 123(a)(6) of Public Law 101–147 amends section 17(h)(6) of the CNA of 1966 to require that State agencies develop local agency NSA funding allocation standards taking into consideration factors such as local agency staffing needs, population density, participation and the availability of administrative support from other sources. Section 246.16(d)(2) of the current WIC Program regulations already includes these funding allocation standards for local agencies. Although no changes to this section have been made in this final rule, this section is republished for the convenience of the reader.

However, section 123(a)(6) of Public Law 101–147 also amends subsection 17(h) of the CNA of 1966 by adding paragraph (7) which provides that State agencies are permitted to advance NSA funds to local agencies following approval of "(A) a new local agency; (B) a new cost containment measure; or (C) a significant change in an existing cost containment measure." Therefore, § 246.16(d)(3) of this final rule has been revised to incorporate this legislative provision.

16. Cost Containment Cash Flow Provisions (§§ 246.16(a)(3), 246.16(a)(4), 246.16(b)(2), 246.16(b)(3), 246.16(b)(4), and 246.16(b)(5))

In the past, some State agencies that have implemented infant formula rebate systems have experienced cash flow problems. In some rebate systems, a State agency receives payments from manufacturers based on the number of units of the product purchased with WIC funds. Cash flow problems have resulted because of the delay between the time the State agency pays retail vendors for food instruments and the time the State agency receives rebate payments from manufacturers.

To help alleviate these cash flow problems, new funding mechanisms have been set forth in Public Law 101–147 for those State agencies that have implemented an approved cost-containment measure. Section 17(i) of the CNA of 1966 has been amended by section 123(a)(7)(C) by adding a new paragraph (7) which authorizes State agencies with approved cost-containment measures (defined in § 246.2 as competitive bidding, rebates, home delivery and direct distribution) to temporarily borrow current fiscal year first quarter cash to defray fourth quarter expenses from the prior fiscal year. Therefore, in this final rule § 246.16(b)(4) is redesignated as (b)(5) and this legislative provision has been added in a new § 246.16(b)(4). As further required by section 17(i)(7), section 246.16(b)(4) requires that these borrowed funds must be restored when the State agency receives the rebate funds or other reimbursement resulting from its cost containment measure. This provision is not an extension of the back-spending authority which is a permanent transfer of funds that allows the State agency to use current year food funds to pay prior year food expenditures which is contained in section 17(i)(3)(A)(i) of the CNA of 1966 and § 246.16(b)(3)(i) of the current regulations. In addition, § 246.16(b)(2) has been revised to specify that the Department will issue final grant levels to State agencies in a timely manner.

In a further effort to reduce cash flow difficulties within a given fiscal year due to approved cost containment measures, section 123(a)(5)(C) of Public Law 101–147 amends section 17(g) of the CNA of 1966 to require the initial allocation of appropriated funds to include not less than ⅓ of the appropriated funds and the second and third quarter allocations to include not less than ¼ of appropriated funds. This helps ensure that adequate cash is available in the early part of the fiscal year to make payments to vendors while waiting for rebate payments. Therefore, in this final rule a new § 246.16(a)(3) has been added to incorporate this legislative provision.

Further, section 123(a)(5)(C) of Public Law 101–147 amends section 17(g)(3)(C) of the CNA of 1966 to require that in the case of an appropriation of not more than 4 months, such as a continuing resolution, all appropriated amounts shall be allocated, except amounts reserved by the Secretary to carry out the provisions in section 17(g)(5) of the CNA of 1966 (as reflected in § 246.16(a)(6) of this final rule). This exception provides that one-half of 1 percent, not to exceed $5 million per fiscal year, shall be available to the Secretary for program evaluation, technical assistance to State agencies administration of pilot projects, and other specified purposes. This requirement to fully allocate all other amounts not reserved to the Secretary for these purposes is incorporated in a new § 246.16(a)(4) in this final rule.

It should be noted that while these provisions are helpful, they do not solve all cash flow problems. State agencies with significant rebate savings should institute management controls to avoid cash flow problems and potentially disruptive funding shortfalls, particularly at the end of the Federal fiscal year.

17. Allocation Timelines (§§ 246.16(a)(2), 246.16(a)(4), and 246.16(a)(5))

Public Law 101–147 sets forth explicit deadlines for the allocation of WIC Program funds. It is imperative that timely allocations are made to State agencies, especially reallocation of unspent funds, to ensure efficient and effective use of all program resources. Section 123(a)(5)(C) of Public Law 101–147 amends section 17(g)(2)(A)(i) of the CNA of 1966 to provide that the initial allocation of funds to State agencies must be made within 15 days of enactment of appropriating legislation. Therefore, a new § 246.16(a)(2) has been added in this final rule to incorporate this provision. Subsequent allocations must be made by the beginning of each quarter.

Newly added section 17(g)(2)(B) of the law further requires that unused funds from a prior fiscal year that are identified by the end of the first quarter of the current fiscal year (December 31) must be recovered and reallocated not later than the beginning of the second quarter of the fiscal year. That provision further states that unused funds from a prior fiscal year identified after the end of the first quarter must be reallocated on a timely basis. These provisions are set forth in a new § 246.16(a)(5) in this final rule.

18. Conversion of Food Funds to Nutrition Services and Administration Funds (§§ 246.16(b)(3), 246.16(f), and 246.16(h))

Under section 8 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237), which amended section 17(h)(5) of the CNA of 1966, State agencies that implemented one of the four designated cost containment measures, specifically defined as competitive bidding, rebates, home delivery and direct distribution, were authorized to convert food funds to cover allowable nutrition services and administration expenditures related to increased participation attributable to the resulting cost savings. The purpose of conversion was to cover additional NSA expenses not funded by the Department's NSA funding formula. The conversion authority pursuant to Public Law 100–237 was exceedingly complicated and was focused on accommodating sudden decreases in food costs resulting from newly instituted cost containment measures.

Public Law 101–147 has simplified the conversion process. Section 123(a)(6) of Public Law 101–147 further amends section 17(h)(5)(A) of the CNA of 1966 to provide that State agencies which, through acceptable measures, increase participation beyond Federally-projected participation levels can convert food funds to NSA funds necessary to maintain that year's per participant grant for NSA to the extent that such funds are needed to cover allowable NSA expenses. The Department points out that unlike the prior conversion provision, new section 17(h)(5)(A) is based on participation increases accomplished through "acceptable measures," not just the four designated cost containment measures. Therefore, § 246.16(f) of this final rule amends § 246.16(f) to provide that in addition to the cost containment measures which were specified in Public Law 100–237 (i.e. competitive bidding, rebates, direct distribution, and home delivery), "acceptable measures" could include, but are not necessarily limited to, curtailment of vendor abuse and increased breastfeeding promotion. It is not possible to more fully specify in advance all acceptable measures utilized to increase participation as many unforeseen situations could occur. State agencies may not convert food funds if participation increases are achieved through measures that are not in the nutritional interests of participants or are not otherwise allowable under program regulations. An example of an unacceptable measure which increases participation is a reduction/modification in the food package not related to the nutritional needs of participants.

The number of participants reported by the State agency will be monitored by the Department and any significant increases in participation must be satisfactorily explained by the State agency to insure that increases were achieved through acceptable measures in compliance with WIC Program regulations. The State agency does not have to request prior approval to convert funds from food to NSA funds but State agencies are strongly advised to seek guidance from the Department if in doubt concerning conversion authority. Additionally, State agencies are encouraged to plan expenditures and anticipate the number of participants early so as not to convert food funds needed to support anticipated caseload. Any State agency which has NSA expenditures that exceed the limits of its conversion authority shall have such excess expenditures disallowed. Section 246.16(h) of this final rule describes this disallowance.

As the new procedure is a straightforward mathematical process, State agencies do not need prior Departmental approval to convert. At the end of the fiscal year, the Department will reconcile the total reported NSA expenditures to the total authorized spending level (authorized NSA grant plus allowable conversions). Allowable conversions will be determined based on the difference between the Federally-projected participation for the year and the actual number of participants served. The participation difference multiplied by the per participant grant for NSA represents the allowable conversions.

As specified by section 123(a)(6) of Public Law 101–147, which amends section 17(h)(5)(A)(ii) of the CNA of 1966, the maximum rate by which food funds may be converted to NSA funds is the current year's administrative per participant grant. This final rule revises § 246.16(f) to specify that the conversion will be determined after the initial allocation (excluding partial year appropriations) by dividing the current year administrative grant (inclusive of regional discretionary funds) by the current year Federally-projected participation level.

Section 123(a)(7) of Public Law 101–147 also amends the CNA of 1966 regarding spend forward of unspent funds. Previously, the term "carry forward" was used to describe this procedure. In order to be consistent with the CNA of 1966, we use the term "spend forward" in this rule. Substantive modifications to the spend forward provisions are explained below.

It is recognized that the process of program expansion is a gradual one which must be preceded by adequate planning and staffing adjustments, and must take place in a controlled manner consistent with sound program management. Consequently, State agencies may not be able to utilize all of the savings resulting from their food cost containment measures as fast as such savings accrue. Recognizing these factors, section 3(b) of Public Law 100–356 amended section 17(i)(3) of the CNA of 1966 to permit a State agency implementing one of the four cost containment measures identified in section 17(h)(5)(A) to spend forward into the first fiscal year following the implementation of a cost containment measure up to 5 percent of its food grant. This provision was intended to allow State agencies the time to add additional participants when a substantial amount of savings is involved. Therefore, any cost containment measure in which savings exceeded 5 percent of the State agency's food grant authorized the State agency to spend forward up to 5 percent of its food grant. In the second fiscal year following the implementation of its cost containment system, the State agency was required to request permission from the Department in order to spend forward food funds, up to a maximum of 5 percent of its food grant. The actual amount of funds spent forward-up to this 5 percent limit was negotiable and ultimately depended on Departmental discretion. In accordance with section 123(a)(7)(B) of Public Law 101–147, amending section 17(i)(3)(D) of the CNA of 1966, the 5 percent cap on the amount of food funds that may be spent forward into the second fiscal year following implementation of an approved cost containment system has been reduced to a maximum of 3 percent beginning with Fiscal Year 1989 grants. However, State agencies no longer have to request the permission of the Department to spend forward these funds. This change allows State

agencies to know in advance the amount of food funds that can be spent forward which will, in turn, facilitate better planning of expenditures for the following year. The spend forward provision and the 3 percent cap requirement are set forth in revised § 246.16(b)(3) of this final rule.

Section 3(a) of Public Law 100–356 added subparagraph (D) to section 17(h)(5) of the CNA of 1966 to protect a State's administrative grant per participant from declining more than 2 percent per year due to increases in participation achieved through cost containment measures. Section 123(a)(6) of Public Law 101–147 eliminates the 2 percent conversion protection. Since the basis for determining the total amount of NSA funds is now directly related to expected participation levels, it is no longer necessary to protect a State agency from a sharp decrease in NSA funds related to unexpected participation increases. Therefore, reference in § 246.16(h) of the current WIC regulations to the 2 percent conversion protection has been deleted in this final rule.

19. Local Agency Review Requirement (§ 246.19(b)(3))

Section 213(a)(2)(B) of Public Law 101–147 adds a new section 17(f)(21) to the CNA of 1966 mandating that "each State agency shall conduct monitoring reviews of each local agency at least biennially." Prior to this final rule, § 246.19(b)(3) of the regulations has required State agencies to review all of its local agencies annually. As explained in the July 9, 1990 proposed rule, the Department believes it is appropriate to amend § 246.19(b)(3) to reduce the frequency required of local agency reviews. As proposed, the State agency would be required to review each local agency under its jurisdiction not less frequently than every other year. The State agency would continue to be required to review the greater of 20 percent of the clinics in each local agency or one clinic for each local agency it reviews. In addition, the State agency would continue to have the authority to conduct more frequent reviews.

The majority of commenters supported the proposed change and were pleased with the flexibility afforded by this provision. One State agency indicated it would continue yearly reviews of those local agencies which may show marginal performance, but perform biennial reviews on the majority of agencies. Two State agencies recommended a revision to the regulatory text which permits State agencies to conduct additional on-site reviews. They recommended that more frequent reviews should be based on a State agency's determination that such reviews were necessary in the interest of the efficiency and effectiveness of the program instead of "as it finds necessary." Therefore, based on these comments and the legislative mandate that State agencies conduct such reviews at least biennially, the Department has retained, in § 246.19(b)(3) of this final rule, the provision as proposed, except that the last sentence regarding authority to conduct more frequent reviews has been revised as recommended by commenters. As reflected in the legislative mandate and as set forth in the regulatory text, State agencies have the authority to conduct on-site monitoring reviews of local agencies more frequently than biennially. As set forth in this final rule, the State agency may conduct additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

20. Reference to Departmental Rule on Debarment and Suspension, Drug-Free Workplace, and Lobbying Restrictions (Sections 246.2, 246.3(b) and (c)(2), 246.4(a), 246.6(b), 246.24(a))

a. *Nonprocurement debarment and suspension.* Executive Order (E.O.) 12549, signed by the President on February 18, 1986, stipulated the establishment of debarment and suspension procedures to protect the integrity of nonprocurement programs funded by the Federal Government and procurement contracts that equal or exceed $25,000 at the grantee and subgrantee levels. This action was taken to parallel the debarment and suspension system already in place for Federal procurement activities. In response to E.O. 12549, a final rule creating 7 CFR part 3017 was published in the **Federal Register** on January 30, 1989 (54 FR 4722).

The Department proposed in its rulemaking to add to the definition section a reference to "7 CFR part 3017" which indicates that it is the Department's common rule regarding Governmentwide Debarment and Suspension (Nonprocurement). As proposed, § 246.24(a), "Procurement and property management," was also amended to require compliance with the mandates of 7 CFR part 3017.

The majority of commenters approved these provisions as proposed. Because these provisions merely reference compliance with a pre-existing regulatory mandate, the Department is retaining the provisions as proposed in this final rule, except several clarifications. As proposed, a new § 246.4(a)(22) has been added to require the State to include in its State Plan an assurance that, as clarified in this final rule, each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the nonprocurement debarment/suspension requirements of 7 CFR part 3017. In addition, this final rule revises § 246.6(b)(1), as proposed, to require as part of the local agency agreement with the State agency, assurance that the local agency complies with the debarment/suspension requirement of 7 CFR part 3017. In order to comply with these requirements, it is incumbent on State and local agencies when contracting with, for example, banks, consultants, and infant formula manufacturing companies that they seek certifications from such entities attesting to the fact that they have not been debarred or suspended. These requirements are to be incorporated into any new contracts entered into with such entities or any renewal of current awards. Such provisions would not be required to be incorporated into any current contract or agreements because, in some cases, such revisions could potentially render the conditions set forth in the contracts null and void. Finally, the proposed revision to § 246.24(a) has been changed in this final rule to clarify that State and local agencies in procuring supplies, equipment, and other services shall ensure that their subgrantees comply with the debarment and suspension requirements in 7 CFR part 3017.

b. *Drug-free workplace requirements.* A final rule expanding 7 CFR part 3017 was published in the **Federal Register** on May 25, 1990 (55 FR 21679), addressing the Governmentwide Drug-Free Workplace Requirements of the Drug-Free Workplace Act of 1988, Public Law 100–690, enacted on November 18, 1988. The governmentwide drug-free workplace mandates in 7 CFR part 3017 require Federal grantees to certify that they will provide and maintain drug-free workplaces as a condition of receiving Federal grant assistance. These requirements apply only to direct Federal grant agreements, i.e., to the State WIC agencies. The Department's regulation, 7 CFR part 3017, implements the requirements of Public Law 100–690, which became effective March 18, 1989. It states that a Federal agency may not enter into a new grant agreement or renew an existing agreement unless a drug-free workplace certification is obtained from the grantee. The proposed

rule preamble stated that Federal/State WIC agreement forms were being revised to include such an assurance, and that State agencies should sign the certification as an addendum to their current Federal/State WIC agreement. Since publication of the proposed rule, Federal/State WIC agreement forms have been revised to include such an assurance. The forms contain two check-off boxes. By checking off one box the grantee verifies that a certification form is on file with the Department. If no certification form has been submitted or if any changes have occurred since the previous certification form was submitted, then a second box must be checked and a certification form attached to the Federal/State agreement. By signing the certification, the State agency agrees to provide and maintain a drug-free workplace. The Department, in its proposed rulemaking, incorporated this legislative mandate in the WIC regulations by adding a new § 246.4(a)(23), which requires WIC State agencies to provide in their State plans an assurance of compliance with the requirements of 7 CFR part 3017 regarding a drug-free workplace, including a description of how they will provide and maintain such a workplace. No comments were received on this specific provision. Because the assurance is now included in the Federal/State agreement, this final rule revises § 246.4(a)(23) to delete the assurance portion of the requirement from the State plan, but has maintained the requirement for a description of the State agency's plans to provide and maintain such a workplace. The assurance requirement is moved by this final rule to § 246.3(c)(2), which provides the requirements for the Federal/State agreement.

c. *Lobbying restrictions.* Section 319 of the 1990 Appropriations Act (31 U.S.C. 1352) of the Department of Interior and Related Agencies (Pub. L. 101–121), enacted October 23, 1989, contains provisions which prohibit the use of federal funds for lobbying for specific federal awards and requires recipients of any federal grants, contracts, loans, and cooperative agreements to disclose expenditures made with their own funds for such purposes. Section 319 of that act also required the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, these restrictions. OMB's interim final governmentwide guidance published in the **Federal Register** on December 20, 1989, became effective December 23, 1989. The Department's final rule 7 CFR part 3018, implementing new restrictions on lobbying, was published in the **Federal Register** on February 26, 1990 at 55 FR 6736. The OMB subsequently issued guidance on the common rule in a June 12, 1990 memorandum to federal agencies which was published as a Notice in the **Federal Register** on June 15, 1990 at 55 FR 24540. Public Law 101–121 and 7 CFR part 3018 apply to WIC State and local agencies and any entities the State or local agency contracts with, including infant formula manufacturing companies, as long as each covered action exceeds $100,000. According to 7 CFR part 3018, Indian tribes or tribal organizations (§ 3018.105(l)) and any individual Federal actions $100,000 or under (§ 3018.110) are excluded from the lobbying restriction requirements. For grants, the $100,000 limit applies to each fiscal year award, or the period of the grant if other than the federal fiscal year. For contracts, the $100,000 limit applies to each contract.

Section 3018.105(b) defines as "covered actions," grants, loans, cooperative agreements, or Federal contracts. Of these covered Federal actions, only grants or contracts are likely to arise in the WIC Program context.

Although the Department's proposed rule did not address the legislative lobbying restrictions, reference to this nondiscretionary requirement has been added in this final rule. A definition has been added in this final rule for "7 CFR part 3018," the Department's Common Rule regarding Governmentwide Lobbying Restrictions, and other appropriate references have been added which require compliance with 7 CFR part 3018.

21. Revision of References to OMB Circular A–90

OMB Circular A–90, which primarily addressed the Federal responsibilities for oversight of grantee information systems, was superseded by OMB Circular A–130 in 1986. Accordingly, the Department had proposed to delete a reference to OMB Circular A–90 in § 246.24(a). However, OMB Circular A–130 continues to reference requirements on state information systems. Therefore, references to the new circular must be included in the WIC regulations and all references to OMB Circular A–90 in Part 246 have been revised to reference OMB Circular A–130 by this final rule.

22. Corrections to Program Information (Section 246.27) and Updating of Information in § 246.7(d)(2)(iv)(C)

As proposed, this final rule makes technical revisions to § 246.27 of the WIC Program regulations to reflect address changes or corrections for the Northeast, Mid-Atlantic, Southeast, and Midwest Regional Offices of the Food and Nutrition Service.

In addition, this final rule updates the non-inclusive list of payments or benefits provided under other federal programs or acts which are specifically excluded as income for WIC purposes and moves the list to § 246.7(d)(2)(iv)(C). It was formerly found in § 246.7(c)(2)(v).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is amended to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In part 246, all references to "7 CFR part 3015" are revised to read "7 CFR part 3016".

3. In part 246, all references to "OMB Circular A–90" are revised to read "OMB Circular A–130".

4. In part 246, all references to "administrative and program services" are revised to read "nutrition services and administration".

5. In § 246.2:

a. Definitions of "Breastfeeding", "7 CFR part 3017", "7 CFR part 3018", and "Nutrition Services and Administration (NSA) Costs" are added in alphabetical order; and,

b. The definition of "Administrative and Program Services Costs" is removed.

The additions read as follows:

§ 246.2 Definitions.

* * * * *

Breastfeeding means the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once a day.

* * * * *

Nutrition Services and Administration (NSA) Costs means those direct and indirect costs, exclusive of food costs, as defined in § 246.14(c), which State and local agencies determine to be necessary to support Program operations. Costs include, but are not limited to, the costs of Program administration, start-up,

monitoring, auditing, the development of and accountability for food delivery systems, nutrition education and breastfeeding promotion and support, outreach, certification, and developing and printing food instruments.

* * * * *

7 CFR part 3017 means the Department's Common Rule regarding Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace. Part 3017 implements the requirements established by Executive Order 12549 (February 18, 1986) and sections 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

7 CFR part 3018 means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101–121).

* * * * *

6. In § 246.3:

a. The first sentence of paragraph (b) is revised.

b. The text of paragraph (c) is redesignated as paragraph (c)(1) and is revised;

c. A new paragraph (c)(2) is added;

d. Paragraph (e)(4) is redesignated as paragraph (e)(5); and,

e. A new paragraph (e)(4) is added.

The revisions and additions read as follows:

§ 246.3 Administration.

* * * * *

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b); governing administration of grants (7 CFR part 3016); governing nonprocurement debarment/suspension and drug-free workplace (7 CFR part 3017); and governing restrictions on lobbying (7 CFR part 3018); FNS guidelines; and, instructions issued under the FNS Directives Management System. * * *

(c) *Agreement and State Plan.* (1) Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(2) The written agreement shall include a certification/assurance regarding drug-free workplace as required by 7 CFR part 3017, and, if applicable, a certification regarding lobbying and a disclosure of lobbying activities as required by 7 CFR part 3018.

* * * * *

(e) * * *

(4) A designated breastfeeding promotion coordinator, to coordinate breastfeeding promotion efforts identified in the State plan in accordance with the requirement of § 246.4(a)(9) of this part. The person to whom the State agency assigns this responsibility may perform other duties as well.

* * * * *

7. In § 246.4:

a. In paragraph (a)(2) and (a)(13), reference to "administrative funds" is revised to read "nutrition services and administration funds";

b. The first sentence of paragraph (a)(7) is revised;

c. Paragraphs (a)(8) and (a)(9) are revised;

d. In paragraph (a)(10), reference to "§ 246.7(c)(2)(vi)" is revised to read "§ 246.7(d)(2)(vii)";

e. In paragraph (a)(11)(i), reference to "§ 246.7(d)(4)" is revised to read "§ 246.7(e)(4)";

f. In paragraph (a)(19), an incorrect reference to "§ 246.7(m)(1)(i)" is revised to read "§ 246.7(n)(1)(i)"; and,

g. New paragraphs (a)(20)–(a)(23) are added.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation, the location of local agencies operating the Program, and the institutional conditions of § 246.7(n)(1)(i) of this part, with emphasis on reaching and enrolling eligible women in the early months of pregnancy and migrants. * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 *et seq.*), the Early and Periodic Screening, Diagnosis, and Treatment Program (Title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601–615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701–709), the Medicaid Program (42 U.S.C. 1396 *et seq.*), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, child abuse counseling, and local programs for breastfeeding promotion.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, promote breastfeeding, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(20) A plan to provide program benefits to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally.

(21) A plan to improve access to the program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. This shall include at least one of the following procedures: appointment scheduling, adjustment of clinic hours and/or locations, or the mailing of food instruments, provided, however, that all State agencies shall include appointment scheduling for employed adult individuals applying or reapplying for themselves or on behalf of others if such appointments are not currently provided. The State agency shall also describe any plans for issuance of food instruments to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to § 246.12(r)(8). Such description shall also include measures to ensure the integrity of program services and fiscal accountability.

(22) Assurance that each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the requirements of 7 CFR part 3017 regarding nonprocurement debarment/suspension.

(23) A description of the State agency's plans to provide and maintain a drug-free workplace.

* * * * *

8. In § 246.6:

a. Paragraph (b)(1) is revised;
b. A new paragraph (f) is added.
The revision and addition read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to this part, 7 CFR part 3016, the debarment and suspension requirements of 7 CFR part 3017, if applicable, the lobbying restrictions of 7 CFR part 3018, and FNS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

* * * * *

(f) *Outreach/Certification In Hospitals.* The State agency shall ensure that each local agency operating the program within a hospital and/or that has a cooperative arrangement with a hospital:

(1) Advises potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or that accompany a child under the age of 5 who receives well-child services, of the availability of program services; and

(2) To the extent feasible, provides an opportunity for individuals who may be eligible to be certified within the hospital for participation in the WIC Program.

9. In § 246.7:

a. Paragraphs (b)–(n) are redesignated as paragraphs (c)–(o) and all references to these paragraphs within § 246.7 are redesignated accordingly.

b. A new paragraph (b) is added;

c. Newly redesignated paragraph (d) is revised;

d. In newly redesignated paragraph (f)(2)(iv), an incorrect reference to "§ 246.12(s)(8) (i) and (ii)" is revised to read § 246.12(r)(8)";

e. The introductory text of newly redesignated paragraph (h)(1) is revised;

f. Newly redesignated paragraph (h)(1)(ii) is revised;

g. The first sentence of newly redesignated paragraph (j)(6) is revised; and

h. A new paragraph (j)(9) is added.

The additions and revisions read as follows:

§ 246.7 Certification of participants.

* * * * *

(b) *Program referral and access.* State and local agencies shall provide WIC Program applicants and participants or their designated proxies with information on other health-related and public assistance programs, and when appropriate, shall refer applicants and participants to such programs.

(1) The State agency shall ensure that written information concerning the Food Stamp Program, the program for Aid to Families with Dependent Children under Title IV–A of the Social Security Act (AFDC), and the Child Support Enforcement Program under Title IV–D of the Social Security Act, is provided on at least one occasion to adult participants and adult individuals applying for the WIC Program for themselves or on behalf of others.

(2) The State agency shall provide each local WIC agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under Title XIX of the Social Security Act (in this section, referred to as the "Medicaid Program"). The local agency shall, in turn, provide to adult individuals applying or reapplying for the WIC Program for themselves or on behalf of others, written information about the Medicaid Program. If such individuals are not currently participating in Medicaid but appear to have family income below the applicable maximum income limits for the program, the local agency shall also refer these individuals to Medicaid, including the referral of infants and children to the appropriate entity in the area authorized to determine eligibility for early and periodic screening, diagnostic, and treatment (EPSDT) services, and, the referral of pregnant women to the appropriate entity in the area authorized to determine presumptive eligibility for the Medicaid Program, if such determinations are being offered by the State.

(3) Local agencies shall provide information about other potential sources of food assistance in the local area to adult individuals applying or reapplying in person for the WIC Program for themselves or on behalf of others, when such applicants cannot be served because the Program is operating at capacity in the local area.

(4) Each local agency that does not routinely schedule appointments shall schedule appointments for employed adult individuals seeking to apply or reapply for participation in the WIC Program for themselves or on behalf of others so as to minimize the time such individuals are absent from the workplace due to such application.

(5) Each local agency shall attempt to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. At the time of initial contact, the local agency shall request an address and telephone number where the pregnant woman can be reached.

* * * * *

(d) *Income criteria and income eligibility determinations.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

(1) *Income eligibility guidelines.* The State agency may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming Program income guidelines to health care guidelines, the State agency shall not establish Program guidelines which exceed the guidelines for reduced-price school meals or are less than 100 percent of the revised poverty income guidelines issued annually by the Department of Health and Human Services. Program applicants who meet the requirements established by paragraph (d)(2)(vi)(A) of this section shall not be subject to the income limits established by State agencies under this paragraph.

(i) *Local agency income eligibility guidelines.* Different guidelines may be prescribed for different local agencies within the State provided that the guidelines are the ones used by the local agencies for determining eligibility for free or reduced-price health care.

(ii) *Annual adjustments in the income guidelines.* On or before June 1 each year, FNS will announce adjustments in the income guidelines for reduced-price meals under section 9 of the National School Lunch Act, based on annual adjustments in the revised poverty income guidelines issued by the Department of Health and Human Services.

(iii) *Implementation of the income guidelines.* On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement (revised) guidelines effective July 1 of each year for which such guidelines are issued by the State.

(2) *Income eligibility determinations.* The State agency shall ensure that local agencies determine income through the use of a clear and simple application form provided or approved by the State agency.

(i) *Timeframes for determining income.* In determining the income eligibility of an applicant, the State agency may instruct local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator more accurately reflects the family's status. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State or local agency's income guidelines for Program eligibility.

(ii) *Definition of "Income".* If the State agency uses the National School Lunch reduced-priced meal income guidelines, as specified in paragraph (d)(1) of this section, it shall use the following definition of income: Income for the purposes of this part means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following—

(A) Monetary compensation for services, including wages, salary, commissions, or fees;

(B) Net income from farm and non-farm self-employment;

(C) Social Security benefits;

(D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(E) Public assistance or welfare payments;

(F) Unemployment compensation;

(G) Government civilian employee or military retirement or pensions or veterans' payments;

(H) Private pensions or annuities;

(I) Alimony or child support payments;

(J) Regular contributions from persons not living in the household;

(K) Net royalties; and

(L) Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(iii) *Use of a State or local health care definition of "Income".* If the State agency uses State or local free or reduced-price health care income guidelines, as it is authorized to do in paragraph (d)(1) of this section, it may use the State or local definition or definitions of income used for the health care eligibility determinations. The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (d)(2)(iv) of this section as income for Program purposes, and that families with gross income, as defined in paragraph (d)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (d)(1) of this section are not rendered eligible for Program benefits, except that persons who meet the requirements of paragraph (d)(2)(vi) of this section shall not be subject to limitations established under this paragraph.

(iv) *Income exclusions.* (A) In determining income eligibility, the State agency may exclude from consideration as income any basic allowance for quarters received by military services personnel residing off military installations. State agencies which choose to exercise this option shall implement it uniformly with respect to all Program applicants from military families.

(B) The value of inkind housing and other inkind benefits, shall be excluded from consideration as income in determining an applicant's eligibility for the program.

(C) Payments or benefits provided under certain Federal programs or acts are excluded from consideration as income by legislative prohibition. The payments or benefits which must be excluded from consideration as income include, but are not limited to:

(*1*) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, sec. 216, 42 U.S.C. 4636);

(*2*) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(*3*) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95–510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(*4*) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, sec. 6, 25 U.S.C. 459e);

(*5*) Payments received under the Job Training Partnership Act (Pub. L. 97–300, sec. 142(b), 29 U.S.C. 1552(b));

(*6*) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, sec. 6);

(*7*) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100–241, sec. 15, 43 U.S.C. sec. 1626(c));

(*8*) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94–105, sec. 9(d), 42 U.S.C. sec. 1760(e)), the Child Nutrition Act of 1966 (Pub. L. 89–642, sec. 11(b), 42 U.S.C. sec. 1780(b)), and the Food Stamp Act of 1977 (Pub. L. 95–113, sec. 1301, 7 U.S.C. sec. 2017(b));

(*9*) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, sec. 2, 25 U.S.C. 609c–1);

(*10*) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(*11*) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99–125, sec. 504(c), 42 U.S.C. sec. 8624(f));

(*12*) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472 (1) and (2) of that Act (Pub. L. 99–498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472 (1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution. The specified costs set forth in section 472 (1) and (2) of the Act are those costs which are related to the costs of attendance at the educational institution and do not include room and board and dependent care expenses;

(*13*) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub.

L. 100–707, sec. 105(i), 42 U.S.C. sec. 5155(d));

(*14*) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. sec. 2466d);

(*15*) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(*16*) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. sec. 1989b–4(f)(2));

(*17*) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. sec. 602 (g)(1)(E));

(*18*) Value of any "at-risk" block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(*19*) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858q);

(*20*) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. sec. 1411 (b));

(*21*) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of $2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. sec. 2307);

(*22*) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. sec. 1437f nt);

(*23*) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. sec. 2307);

(*24*) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(*25*) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25 U.S.C. sec. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. sec. 117b(b));

(*26*) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. sec. 640d-21);

(*27*) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(*28*) Payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(*29*) Payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(*30*) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(*31*) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2)); and

(*32*) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b)).

(v) *Verification of information.* A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits.

(vi) *Adjunct or automatic income eligibility.* (A) The State agency shall accept as income-eligible for the Program any applicant who documents that he/she is:

(*1*) Certified as fully eligible to receive food stamps under the Food Stamp Act of 1977, or certified as fully eligible, or presumptively eligible pending completion of the eligibility determination process, to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act or Medical Assistance (i.e., Medicaid) under Title XIX of the Social Security Act; or

(*2*) A member of a family that is certified eligible to receive assistance under AFDC, or a member of a family in which a pregnant woman or an infant is certified eligible to receive assistance under Medicaid.

(*B*) The State agency may accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

(C) Persons who are adjunctively income eligible, as set forth in paragraphs (d)(2)(vi)(A) of this section, shall not be subject to the income limits established under paragraph (d)(1) of this section.

(vii) *Income eligibility of Indian applicants.* If an Indian State agency (or a non-Indian State agency which acts on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FNS that the majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility guidelines, FNS may authorize the State agency to approve the use of an income certification system under which the local Indian agency shall inform each Indian applicant household of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant, or the applicant's parent or caretaker, signs a statement that the applicant's family income does not exceed the maximum. The local agency may verify the income eligibility of any Indian applicant.

(viii) *Income eligibility of instream migrant farmworkers and their family members.* Instream migrant farmworkers and their family members with expired Verification of Certification cards shall be declared to satisfy the State agency's income standard; Provided, however, that the income of that instream migrant farmworker family is determined at least once every 12 months. Any determination that members of an instream migrant farmworker family have met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria in any State for any subsequent certification while the migrant is instream during the 12-month period following the determination.

* * * * *

(h) * * *

(1) The State agency shall ensure that local agencies disqualify an individual during a certification period if, on the basis of a reassessment of Program eligibility status, the individual is determined ineligible; provided, however, that an individual determined adjunctively income eligible under paragraph (d)(2)(vi)(A) (*1*) or (*2*) of this section or income eligible under paragraph (d)(2)(vi)(B) of this section is not disqualified solely on the basis of a determination they no longer participate in AFDC, Medicaid, Food Stamps, or another qualified State-administered program or are no longer a member of a family which contains an AFDC recipient or a pregnant woman or an infant receiving Medicaid. The State agency shall ensure that local agencies disqualify such an individual during a certification period, if on the basis of a reassessment of Program eligibility, the individual is no longer deemed income

eligible under paragraph (d)(2)(vi) (A) or (B) of this section and does not meet the income eligibility requirements of paragraph (d)(1) of this section. The State agency may authorize local agencies to disqualify an individual during the certification period for the following reasons:

* * * * *

(ii) Failure to obtain food instruments or supplemental foods for a number of consecutive months, as specified by the State agency, evidenced by indicators such as failure to pick up supplemental foods or food instruments, nonreceipt of food instruments as evidenced by return of mailed instruments, or failure to have an electronic benefit transfer card revalidated to authorize the purchase of supplemental foods.

* * * * *

(j) * * *

(6) A person who is about to be suspended or disqualified from program participation at any time during the certification period shall be advised in writing not less than 15 days before the suspension or disqualification. * * *

* * * * *

(9) If a State agency must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the Program, it shall issue a notice to such participant in advance, as stipulated in paragraph (j)(6) of this section. Such notice shall also include the categories of participants whose benefits are being suspended or terminated due to such shortage.

* * * * *

§ 246.9 [Amended]

10. In § 246.9(g), reference to "§ 246.7(i)(6)" is revised to read "§ 246.7(j)(6)".

11. In § 246.11:

a. A new sentence is added at the end of paragraph (c)(2);

b. Paragraphs (c)(3), (c)(5), and (c)(6) are revised;

c. A new paragraph (c)(8) is added; and

d. Paragraph (e)(4) is revised.

The additions and revisions read as follows:

§ 246.11 Nutrition education.

* * * * *

(c) * * *

(2) * * * The State agency shall also provide training on the promotion and management of breastfeeding to staff at local agencies who will provide information and assistance on this subject to participants.

(3) Identify or develop resources and educational materials for use in local agencies, including breastfeeding promotion and instruction materials, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population and, where possible, the reading level of participants.

* * * * *

(5) Annually perform and document evaluations of nutrition education and breastfeeding promotion and support activities.

The evaluations shall include an assessment of participants' views concerning the effectiveness of the nutrition education and breastfeeding promotion and support they received.

(6) Monitor local agency activities to ensure compliance with provisions set forth in paragraphs (c)(8), (d), and (e) of this section.

* * * * *

(8) Establish standards for breastfeeding promotion and support which include, at a minimum, the following:

(i) A policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding;

(ii) A requirement that each local agency designate a staff person to coordinate breastfeeding promotion and support activities;

(iii) A requirement that each local agency incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients; and

(iv) A plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

* * * * *

(e) * * *

(4) The local agency shall document in each participant's certification file that nutrition education has been given to the participant in accordance with State agency standards, except that the second or any subsequent nutrition education contact during a certification period that is provided to a participant in a group setting may be documented in a masterfile. Should a participant miss a nutrition education appointment, the local agency shall, for purposes of monitoring and further education efforts, document this fact in the participant's file, or, at the local agency's discretion, in the case of a second or subsequent missed contact where the nutrition education was offered in a group setting, document this fact in a master file.

* * * * *

12. In § 246.12:

a. In paragraph (o), reference to "paragraph (s)(8)" is revised to read "paragraph (r)(8)";

b. In paragraph (r)(2) (ii) and (iii), all references to "paragraph (s)(2)(i)" are revised to read "paragraph (r)(2)(i)"; and,

c. Paragraph (r)(8) is revised.

The revision reads as follows:

§ 246.12 Food delivery systems.

* * * * *

(r) * * *

(8) Participants or their authorized proxies shall personally pick up food instruments when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance of food instruments through an alternative means, such as electronic benefit transfer (EBT) or mailing, unless FNS determines that such action would jeopardize the integrity of program services or program accountability. If a State agency opts to mail WIC food instruments, it must provide justification, as part of the description of its alternative issuance system in its State plan, as required in § 246.4(a)(21), for mailing WIC food instruments to areas where food stamps are not mailed.

State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participant no longer resides or receives mail at the address to which the food instruments were mailed.

* * * * *

13. In § 246.14:

a. The heading and introductory text of paragraph (c) and paragraph (c)(1) are revised;

b. A new paragraph (c)(10) is added.

The revision and addition read as follows:

§ 246.14 Program costs.

* * * * *

(c) *Specified allowable nutrition services and administration costs.* Allowable nutrition services and administration (NSA) costs include the following:

(1) The cost of nutrition education and breastfeeding promotion and support which meets the requirements of § 246.11. During each fiscal year, each State agency shall expend for nutrition education activities and breastfeeding

promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA, and an amount equal to a proportionate share of $8 million targeted specifically for breastfeeding promotion and support activities. Each State agency's share of the $8 million shall be determined on the basis of the average monthly number of pregnant and breastfeeding women served by a WIC State agency as a percentage of the average monthly number of pregnant and breastfeeding women served by all WIC State agencies. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount spent by a State agency on breastfeeding promotion and support activities shall be at least an amount that is equal to its proportionate share of the $8 million as specified in this paragraph. If the State agency's total reported nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, the Department will issue a claim for the difference. The State agency may also request prior written permission from the Department to spend less than the required portions of its NSA grant for either nutrition education or for breastfeeding promotion and support activities. The Department may grant such permission if the State agency has documented that other resources, including in-kind resources, will be used to conduct these activities at a level commensurate with the requirements of this paragraph. Such requests should be submitted to the appropriate FNS regional office for approval. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, the cost of screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services, and the cost of other health-related screening shall not be applied to the expenditure requirement for nutrition education and breastfeeding promotion and support activities. The Department shall advise State agencies regarding methods for minimizing documentation of the nutrition education and breastfeeding promotion and support expenditure requirement. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education and the target share of funds required to be spent on breastfeeding promotion and support include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education and breastfeeding promotion and support consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education and breastfeeding promotion and support materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids, and the cost of mailing nutrition education or breastfeeding promotion and support materials to participants;

(iii) The cost of training nutrition or breastfeeding promotion and support educators, including costs related to conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education or breastfeeding promotion and support activities, including evaluations conducted by contractors;

(v) Salary and other costs incurred in developing the nutrition education and breastfeeding promotion and support portion of the State Plan and local agency nutrition education and breastfeeding promotion and support plans; and

(vi) The cost of monitoring nutrition education and breastfeeding promotion and support activities.

* * * * *

(10) The cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding.

* * * * *

14. In § 246.16:

a. Paragraphs (a) through (i) are revised and paragraphs (j) through (k) are removed;

b. Paragraphs (l) through (q) are redesignated as paragraphs (j) through (o); and,

c. In newly redesignated paragraphs (k)(2) (ii) and (iii), all references to "administrative" are revised to read "nutrition services and administration".

The revisions read as follows:

§ 246.16 Distribution of funds.

(a) *General.* This paragraph describes the timeframes for distribution of appropriated funds by the Department to participating State agencies and the authority for the Secretary to use appropriated funds for evaluation studies and demonstration projects.

(1) Authorized appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds shall become available for disbursement to the State agencies. The funds shall remain available for the purposes for which appropriated until expended.

(2) In the case of appropriations legislation providing funds through the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds provided under such legislation not later than the expiration of the 15-day period beginning on the date of the enactment and subsequent allocation of funds shall be issued not later than the beginning of each of the second, third and fourth quarters of the fiscal year.

(3) Allocations of funds pursuant to paragraph (a)(2) of this section shall be made as follows: The initial allocation of funds to State agencies shall include not less than ⅓ of the appropriated amounts for the fiscal year. The allocation of funds to be made not later than the beginning of the second and third quarters shall each include not less than ¼ of the appropriated amounts for the fiscal year.

(4) In the case of legislation providing funds for a period that ends prior to the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds not later than the expiration of the 10-day period beginning on the date of enactment. In the case of legislation providing appropriations for a period of not more than 4 months, all funds must be allocated to State agencies except those reserved by the Secretary to carry out paragraph (a)(6) of this section.

(5) In any fiscal year unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year. Unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(6) Up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems preparing the biennial Participation Report to Congress described in § 246.25(b)(3) of this part, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(b) *Distribution and application of grant funds to State agencies.*

Notwithstanding any other provision of law, funds made available to the State agencies for the Program in any fiscal year will be managed and distributed as follows:

(1) The State agency shall ensure that all Program funds are used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its State Plan.

(2) Notwithstanding any other provision of law, all funds not made available to the Secretary in accordance with paragraph (a)(6) of this section shall be distributed to State agencies on the basis of funding formulas which allocate funds to all State agencies for food costs and NSA costs incurred during the fiscal year for which the funds had been made available to the Department. Final State agency grant levels as determined by the funding formula and State agency breastfeeding promotion and support expenditure targets will be issued in a timely manner.

(3) A State agency may transfer funds allocated to it for one fiscal year to another fiscal year under the following conditions:

(i) Not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year;

(ii) Not more than 1 percent of the total funds allocated to a State agency for food costs and for NSA costs in any fiscal year may be spent forward and expended by the State agency for such costs incurred in the subsequent fiscal year, except that State agencies which converted food funds to NSA funds under paragraph (f) of this section during a fiscal year shall not spend NSA funds forward into the following fiscal year.

(iii) The total amount of funds transferred from any fiscal year under paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall not exceed 1 percent of the funds allocated to a State agency for the fiscal year.

(iv) A State agency which has implemented an acceptable cost containment measure(s) resulting in increased annual food cost savings of more than 5 percent of its food grant, may spend forward into the fiscal year following the fiscal year of implementation a maximum of 5 percent of the funds allocated to the State agency for food costs for the fiscal year of implementation of such system, less any food funds backspent into the prior fiscal year under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward into the succeeding fiscal year under paragraph (b)(3)(ii) of this section.

(v) Any State agency entering the second fiscal year following the fiscal year of implementation of, or a significant change to, any cost containment measure may, at its discretion, spend forward up to 3 percent of the funds allocated to such State agency for food costs for such fiscal year, less any food funds backspent under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward from the fiscal year under paragraph (b)(3)(ii) of this section.

(vi) The State agency shall specify in writing to the Department the amount of funds it intends to backspend under paragraph (b)(3)(i) of this section and to spend forward under paragraphs (b)(3)(ii), (iv) and (v) of this section not later than March 1 of the fiscal year following the fiscal year from which funds are to be transferred.

(vii) Food funds transferred by the State agency from one fiscal year to another shall be used by the State agency only for food costs in the subsequent fiscal year and, in accordance with § 246.14(a)(2) of this part, shall not be used to cover NSA costs. Any funds spent forward by the State agency for expenditure in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year. The Department shall presume that any funds spent forward are the first funds expended by such State agency for costs incurred in the subsequent fiscal year.

(4) Any State agency using an approved cost containment measure as defined in § 246.2 of this part (rebates, competitive bidding, home delivery and direct distribution), may temporarily borrow amounts made available to the State agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. Any State agency that uses this authority shall restore or reimburse such borrowed amounts when the State agency receives payment as a result of its cost containment measures for such expenses.

(5) Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by the Department. State agencies shall use funds to cover those allowable and documented Program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

(c) *Allocation formula.* State agencies shall receive grant allocations according to the formulas described in this paragraph. To accomplish the distribution of funds under the allocation formulas, State agencies shall furnish the Department with any necessary financial and Program data.

(1) *Use of participation data in the formula.* Wherever the formulas set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b) of this part; *Provided, however,* that prior to using such participation data in any such formula the Department shall adjust such data as necessary to impute the number of persons in each participant category that are in each nutritional risk priority group; *Provided, further,* that the Department shall use data reflecting participation supported by the aggregate of Federal and State funds for any State agency whose State has budgeted funds from State sources for the Program, if such State agency requests the Department to do so in accordance with a deadline prescribed by the Department.

(2) *Allocation for nutrition services and administration.* The funds available for allocation to State agencies for NSA for each fiscal year shall be an amount sufficient to guarantee a national average per participant grant, as adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be $8.24, the amount of the national average per participant grant for NSA allocated for Fiscal Year 1987, annually adjusted for inflation. This inflation adjustment will be made by revising the $8.24 to reflect the percentage change in the value of the index for State and local government purchases, calculated using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce. The percentage change shall be calculated based upon the change between (x) the base year, and (y) the most recent estimate that is available as of the start of the current fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. The base year is the value of such index for the 12-month period ending June 1986. Funds for NSA costs will be allocated according to the following procedure:

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(2)(iii) of this section, each State agency shall, at a minimum, receive an amount equal

to the final amount of funds received for NSA in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(2)(iii) of this section, any funds remaining available for allocation for NSA after the stability allocation required by paragraph (c)(2)(i) of this section has been completed shall be allocated as residual funds.

(A) The Department shall allocate residual funds to each State agency according to a method that determines the higher of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(2)(i) of this section plus an amount commensurate with the projected increase in participation from the preceding year as determined by the Department or the amount of funds generated by the formula set forth in paragraph (c)(2)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if all available NSA funds were allocated on the basis of the average monthly participation levels, as projected by the Department. Each State agency's projected participation level shall be adjusted to account for the higher (per participant) costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by the Department, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by the Department.

(iii) *Discretionary funds.* Each State agency's final NSA grant shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. The Department shall distribute these funds according to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

(iv) *Operational level.* The sum of each State agency's stability, residual and discretionary funds shall constitute the State agency's operational level. This operational level shall remain unchanged for such year even if the number of Federally-supported participants in the program at such State agency is lower than the Federally-projected participation level. However, if the provisions of paragraph (e)(2)(ii) of this section are applicable, a State agency will have its operational level for NSA reduced in the immediately succeeding fiscal year.

(3) *Allocation for food costs.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated for the preceding fiscal year after making any allocations under paragraph (a)(6) of this section and allocations for NSA as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies for food costs will be determined according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive for food costs a base amount of stability funds equal to the sum of all funds allocated to such State agency for all food costs during the preceding fiscal year minus fifty (50) percent of any food funds voluntarily returned by such State agency prior to July 16 of the preceding fiscal year. This base amount shall be adjusted by the cumulative effect of the following operations.

(A) *Inflation adjustment.* The base amount shall be increased by an inflation factor. The inflation factor shall be obtained by dividing the State agency's imputed participation in Priorities I, II and III by its total participation and multiplying the resulting quotient by the anticipated rate of inflation as determined by FNS. *Provided, however,* that the sum of the stability funds and residual funds allocated to any Indian State agency for food costs shall not be less than such State agency's base amount increased by the anticipated rate of inflation.

(B) *Migrant set-aside.* Each State agency's base amount, as adjusted for inflation, shall be further adjusted in order to make funds available for services to eligible members of migrant populations. The national aggregate amount of funds made available for this purpose shall not be less than nine-tenths of one percent of the sums appropriated for the applicable fiscal year. To the extent that this amount exceeds the amount required to maintain each State agency's existing level of service to migrants, as determined by the Department, funds shall be deducted on a proportional basis from every State agency's base amount as adjusted for inflation. The funds made available thereby shall be added to the amounts awarded to those State agencies that had served migrant populations in the immediately preceding fiscal year. The basis for determining each such State agency's share of these funds shall be its proportionate share of the anticipated cost, as determined by the Department, of supplemental foods to be provided to eligible migrants in the applicable fiscal year.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(3)(i) of this section has been completed shall be allocated as follows.

(A) Fifty (50) percent of such food funds shall be allocated on the basis of the State agency's imputed participation in Priority I. Of the funds available for allocation on this basis, the percent allocated to each State agency shall be the percent such State agency's imputed Priority I participation is of the national aggregate imputed Priority I participation.

(B) Fifty (50) percent of such food funds shall be allocated on the basis of the extent to which the total amount of funds each State agency receives through the allocations required by paragraphs (c)(3)(i) and (c)(3)(ii)(A) of this section falls short of the amount such State agency would receive for food costs if all funds available for food were allocated solely on the basis of each State agency's proportionate share of the national aggregate population of persons potentially eligible to participate in the Program. Each State agency's population of potentially eligible persons shall be determined through poverty and health indicators selected by FNS. If the CSFP also operates in the State, the number of persons in such State participating in the CSFP but otherwise eligible to participate in the Program, as determined by FNS, shall be deducted from such State agency's population of potentially eligible persons. For purposes of this allocation, the respective amounts of food funds that would be allocated to Alaska, the Virgin Islands, Hawaii, Guam, and any Indian State agencies located within the borders of these States, on the basis of their respective shares of the potentially eligible population, shall be adjusted on the basis of appropriate Thrifty Food Plan amounts used in the Food Stamp Program. The adjusting factor for each such State agency shall be the quotient obtained by dividing the Thrifty Food Plan amount used in the applicable State by the Thrifty Food Plan amount used in the 48 contiguous States and the District of Columbia; *Provided, however,* that the "Urban Alaska" Thrifty Food Plan amount shall be used to determine the adjusting factor for the Alaska State

Agency; and the adjusting factor for any Indian State agency located within the State of Alaska shall be determined from whichever "Rural Alaska" Thrifty Food Plan amount is used in the locality served by such Indian State agency.

(4) *Adjustment for new State agencies.* Whenever a State agency that had not previously administered the program enters into an agreement with the Department to do so during a fiscal year, the Department shall make any adjustments to the requirements of this section that are deemed necessary to establish an appropriate initial funding level for such State agency.

(d) *Distribution of funds to local agencies.* The State agency shall provide to local agencies all funds made available by the Department, except those funds necessary for allowable State agency NSA costs and food costs paid directly by the State agency. The State agency shall distribute the funds based on claims submitted at least monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs, and the State agency shall offset the advances made against incoming claims each month to ensure that funding levels reflect the actual expenditures reported by the local agency. Upon receipt of Program funds from the Department, the State agency shall take the following actions:

(1) Distribute funds to cover expected food cost expenditures and/or distribute caseload targets to each local agency which are used to project food cost expenditures.

(2) Allocate funds to cover expected local agency NSA costs in a manner which takes into consideration each local agency's needs. For the allocation of NSA funds, the State agency shall develop an NSA funding procedure, in cooperation with representative local agencies, which takes into account the varying needs of the local agencies. The State agency shall consider the views of local agencies, but the final decision as to the funding procedure remains with the State agency. The State agency shall take into account factors it deems appropriate to further proper, efficient and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(3) The State agency may provide in advance to any local agency any amount of funds for NSA deemed necessary for the successful commencement or significant expansion of program operations during a reasonable period following approval of a new local agency, a new cost containment measure, or a significant change in an existing cost containment measure.

(e) *Recovery and reallocation of funds.* (1) Funds may be recovered from a State agency at any time the Department determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program. Recovery of funds may be either voluntary or involuntary in nature. Such funds shall be reallocated by the Department through application of appropriate formulas set forth in paragraph (c) of this section.

(2) *Performance standards.* The following standards shall govern expenditure performance.

(i) *95 Percent standard.* The amount allocated to any State agency for food benefits in any fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year were less than 95 percent of the amount allocated to such State agency for such benefits. Such reduction shall equal the difference between the State agency's preceding year food expenditures and 95 percent of the amount allocated to the State agency for such benefits. If a State agency has incurred a food funds recovery, the 95 percent standard will be calculated based on the amount of its grant prior to the recovery. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred in the second preceding fiscal year in accordance with paragraph (b)(3)(i) of this section, food funds spent forward from the preceding fiscal year in accordance with paragraph (b)(3)(ii) of this section, or allowable adjustments related to rebate savings or funds conversions discussed in paragraph (f) of this section. The Department shall recover the amount of food funds by which the amount allocated to any State agency is reduced pursuant to this paragraph. Temporary waivers of this 95 percent performance standard may be granted at the discretion of the Department.

(ii) *Reduction of NSA operational level.* If a State agency's per participant expenditure for NSA is more than 15 percent higher than its per participant grant for NSA without good cause, the Secretary shall reduce such State agency's operational level for costs of NSA in the next fiscal year. Circumstances that may meet the good cause criterion include, but are not limited to, dramatic and unforeseen increase in food costs, which result in the inability to reach Federally-projected participation levels. To avoid a reduction, the State agency must submit to and receive approval from the Department, justification for exceeding the 15 percent limit on excess NSA expenditures under the "good cause" allowance. The justification must be submitted at the time it submits its closeout report for the applicable fiscal year.

(iii) *Spend forward funds.* If any State agency notifies the Department of its intent to spend forward a specific amount of funds for expenditure in the subsequent fiscal year, in accordance with paragraph (b)(3)(ii) of this section, such funds shall not be subject to recovery by the Department.

(f) *Conversion of food funds.* In any fiscal year that a State agency achieves, through use of acceptable measures (including, but not limited to, use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotional activities), increased Federal participation that exceeds its current year Federally-projected participation level as determined by the allocation in the second quarter, such State agency may convert food funds to NSA funds. The conversion rate (per participant administrative grant) will be determined after the initial allocation (excluding partial year appropriations) by dividing the current year's administrative grant, inclusive of regional discretionary funds, by the current year's Federally-projected participation level. This conversion is allowable to the extent that the funds are necessary to cover allowable NSA expenditures in such fiscal year and the State agency does not exceed the per participant grant for NSA established by the funding procedure in paragraph (c)(2) in this section. If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable under program regulations (such as reducing the quantities of foods provided for reasons not related to nutritional need), the State agency may not convert amounts allocated for food benefits to defray costs of NSA and the expenditure of such funds for NSA purposes will be disallowed in accordance with paragraph (h) of this section.

(g) *Expenditure of converted food funds.* The State agency may convert food funds to NSA funds under paragraph (f) of this section only to the extent necessary to cover allowable NSA

costs which exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *Limits on converted food funds.* At the end of the fiscal year, the Department will determine the amount of food funds which the State agency was entitled to convert to NSA funds under paragraph (f) of this section. In the event that the State agency has converted more than the permitted amount of funds, the Department will disallow the amount of excess conversion.

(i) *Converted funds in relation to grants.* For purposes of establishing a State agency's stability food grant and stability NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraph (f) of this section and § 246.14(e) of this part during the preceding fiscal year shall be treated as though no conversion had taken place.

* * * * *

15. In § 246.19, paragraph (b)(3) is revised to read as follows:

§ 246.19 Management evaluation and reviews.

* * * * *

(b) * * *

(3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

* * * * *

16. In § 246.24, paragraph (a) is revised to read as follows:

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall ensure that subgrantees comply with the requirements of 7 CFR part 3016, the nonprocurement debarment/suspension requirements of 7 CFR part 3017, and if applicable, the lobbying restrictions as required in 7 CFR part 3018 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

* * * * *

§ 246.25 [Amended]

17. In § 246.25(b)(2), reference to "§ 246.7(d)(4)" is revised to read "§ 246.7(e)(4)".

18. In § 246.27, paragraphs (a)–(d) and (f) are revised to read as follows:

§ 246.27 Program information.

* * * * *

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

* * * * *

Dated: March 2, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–5569 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Part 248

RIN 0584–AB43

WIC Farmers' Market Nutrition Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements the mandates of the WIC Farmers' Market Nutrition Act of 1992, enacted on July 2, 1992, which establishes the WIC Farmers' Market Nutrition Program (FMNP or Program). The purposes of the FMNP are to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and, to increase sales at such markets.

In accordance with the WIC Farmers' Market Nutrition Act of 1992, this rulemaking establishes the requirements for the operation and management of the FMNP. In addition to the requirements of the Act, these rules were developed based on the results of the Farmers' Market Coupon Demonstration Project.

EFFECTIVE DATES: March 11, 1994, except for §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), and 248.18(b) which contain information collection requirements which are not effective until approved by OMB. When approval is received, the agency will publish a notice in the **Federal Register** announcing the effective date.

To be assured of consideration, comments on this rule must be received on or before July 11, 1994.

ADDRESSES: Comments may be mailed to Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia, 22302, (703) 305–2730. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman or Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. It has been designated "not significant" and did not require clearance by the Office of Management and Budget.

Executive Order 12372

This program is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Farmers' Market Nutrition Program, the administrative procedures are as follows: (1) Local agencies, farmers, and farmers' markets—State agency hearing procedures issued pursuant to 7 CFR 248.16; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 248.16; and (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 248.17—administrative appeal in accordance with 7 CFR 248.19; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Regulatory Flexibility Act

The Department has also reviewed this rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this interim rule does not have a significant economic impact on a substantial number of small entities. Participating farmers and farmers' markets will be affected by the FMNP requirements and increased sales generated by FMNP participants. In addition, participating State and local agencies will be affected by FMNP administration requirements.

Paperwork Reduction Act

The reporting requirements established by this rulemaking in § 248.23 have been reviewed by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The reporting and recordkeeping requirements established by this rulemaking in §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), 248.18(b), and 248.23(b) are pending review by the Office of Management and Budget.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section of regulations	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting:				
248.4	11	1	50	550
248.10(a) (2) & (3)	500	1	2	1,000
248.10(b)	250	1	2	500
248.10(e)	50	1	10	500
248.14(h)	11	1	1	11
248.17(b)(2)(ii)	2	1	20	40
248.18(b)	11	1	15	165
248.23(b)	11	2	6.5	143
Total	511			6,802
Recordkeeping:				
248.9	11	1	1	11
248.10(e)	50	1	1	50
248.10(f)	11	1	5	55
248.11	11	1	12	132
Total	61	1		289.75
Total Reporting & Recordkeeping Burden				7,091.75

This interim rule implements legislative mandates of Public Law 102–314, which was enacted on July 2, 1992, and became effective retroactive to October 1, 1991. Because the FMNP is already operating in several States, further delay of these rules for notice and comment would serve no useful purpose. Accordingly, the Administrator of the Food and Nutrition Service has certified that it is unnecessary and contrary to the public interest to have prior opportunity for comment. For the same reasons, the Administrator has found that it would be impracticable and contrary to the public interest to delay the effective date of this interim rule. Accordingly, it is effective upon publication. The Department believes, however, that the rule may be improved by public comment. Therefore, comments are being solicited on this rule until July 11, 1994. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Demonstration Projects

Section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted on September 19, 1988, amended the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1771 *et. seq.*, to add a new subsection 17(m) which authorized up to 10 Farmers' Market Coupon Demonstration Projects (demonstration projects) for a 3-year period. The purpose of the demonstration projects was twofold: (1) To provide fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets to persons at nutritional risk, and (2) to expand the awareness and use of farmers' markets.

Under the authority of Public Law 100–435, participants in the Special Supplemental Food Program for Women, Infants, and Children (WIC) in selected areas of Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington were provided coupons that could be redeemed for fresh fruits and vegetables

at authorized farmers' markets, in addition to their regular WIC benefits. The 10 States were selected through a competitive grant application process which was based on criteria set forth in the law as well as additional criteria developed by the Department to ensure accountability and to maximize benefits for farmers and recipients.

Basic features of the initial demonstration projects included: (1) Only persons currently participating in the WIC Program (excluding infants 4 months of age or younger) were eligible for Federal benefits under the demonstration projects.

(2) States could impose other eligibility requirements or priorities for receiving coupons as they saw appropriate (e.g., most States limited distribution to specific geographic areas, and some gave priority to pregnant or breastfeeding women).

(3) The annual value of the Federal share of the benefit could not be less than $10 or more than $20. If the coupon face value exceeded the purchase price, farmers were not allowed to give change.

(4) Most recipients received some form of nutrition education explaining how to buy and prepare fresh fruits and vegetables.

(5) The State grantees were required to provide matching funds for the demonstration project in an amount equal to not less than 30 percent of the total cost of the demonstration project in the State. The match could be satisfied by contributions to similar projects operating in the State.

(6) State grantees were allowed to use up to 12 percent of project funds for administration.

(7) Each year the availability of demonstration project grant money was subject to the Federal appropriations process. For Fiscal Year 1989, up to $2 million for demonstration project grants was appropriated. The Fiscal Year 1990 appropriation was also up to $2 million. The Fiscal Year 1991 appropriation was increased to $2.75 million, providing some expansion over the Fiscal Year 1990 appropriation.

(8) Although authorization for the demonstration projects expired at the end of Fiscal Year 1991, as part of the Rural Development, Agriculture, and Related Agency Appropriations Act for Fiscal Year 1992 (Pub. L. 102–142), Congress appropriated up to $3 million to carry on the projects. As a result, on January 6, 1992, the Food and Nutrition Service (FNS) announced grant levels totaling $3 million to State grantees to carry out the demonstration projects another year, through Fiscal Year 1992.

Evaluation

Public Law 100–435 also amended section 17(m)(9)(A) of the CNA to mandate an evaluation of the demonstration projects, which was conducted in two phases. Phase One examined the general management and accountability of the demonstration projects during their first season in 1989. It was found that they were generally well-run, particularly in the areas of accountability, benefit delivery, and overall project management. Phase Two of the evaluation process assessed the impact of the demonstration projects and their effectiveness in accomplishing the legislative goals. Surveys were also completed to obtain information on the food consumption and purchasing patterns of demonstration project coupon recipients, and on sales and food purchases at participating farmers' markets as compared to control groups. Findings from Phase Two suggested that the demonstration projects may have had a modest positive effect on farmers' incomes, and on the consumption of fruits and vegetables by the surveyed women who received demonstration project coupons. In addition it was found that participating farmers and WIC recipients strongly supported the demonstration projects. The results of both phases of the evaluation were submitted in a report to Congress in April 1991.

WIC Farmers' Market Nutrition Program

History

Based largely on the success of the demonstration projects, Public Law 102–314 amended section 17(m) of the CNA (42 U.S.C. 1786(m)) to authorize the FMNP as an independent program. Amended section 17(m)(1) instructs the Secretary to award grants to States that submit State Plans for the establishment or maintenance of programs designed to provide recipients of assistance through the WIC Program, or those who are on a waiting list to receive WIC benefits, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets. In order to be eligible for grants, the State Plan must first be approved by the Secretary. Pursuant to section 17(m)(2) of the CNA, the Chief Executive Officer of the State or Indian Tribal Organization (i.e., the Governor or Principal Chief) shall designate the appropriate State agency or agencies to administer the FMNP in conjunction with the appropriate nonprofit organizations, and shall ensure coordination among the appropriate agencies and organizations.

Difference Between Demonstration Project and Program

The newly created FMNP is very similar to the demonstration projects which operated for 4 years. For example, the annual Federal value of the coupons issued to FMNP recipients is still restricted to not less than $10 and not more than $20 per recipient per year, and each State agency administering the FMNP must provide matching funds in an amount equal to not less than 30 percent of the total cost of the program's operation and administration. However, five significant differences are also included in the authorizing legislation: (1) Persons who are on a waiting list for WIC Program participation, as well as current WIC participants, may receive FMNP coupons;

(2) The State agency cap for administrative funds to operate the FMNP has been increased to 15 percent of the total amount of program funds, and the Department may permit up to an additional 2 percent, upon a showing by the State agency of financial need.

(3) During the first year for which a State receives assistance, a State shall be permitted to use not more than 2 percent of the total program funds for administration of the FMNP in addition to the 15 percent already established;

(4) A State agency may use not more than 5 percent of its current year funds during a subsequent fiscal year or to cover expenses incurred during the prior fiscal year; and

(5) There is no longer a 10-state limit on the number of State agencies that can administer the Program.

States With Demonstration Projects

Section 17(m)(6)(A) of the CNA effectively authorizes the State agencies that have operated demonstration projects to continue under the new FMNP, by stipulating that each State which received Federal funding in a fiscal year ending before October 1, 1991 (i.e., before Fiscal Year 1992) shall receive benefits under the new FMNP, provided that the State agency complies with the requirements established by Public Law 102–314, as determined by the Secretary. The funding distribution formula for new State agencies, State agencies currently participating in the demonstration projects, and requirements for reallocation will be described in detail in the Distribution of Funds section of this Preamble. Because the FMNP will operate as an adjunct to WIC and will utilize standard operating procedures of WIC, this preamble will only discuss in detail individual provisions of this interim rulemaking that are unique to the FMNP.

1. Definitions (§ 248.2)

"Administrative costs." In the FMNP, "administrative costs" are all allowable costs as defined in § 248.12(b). This includes costs for developing, printing and distributing coupons; costs associated with managing and monitoring markets; training and authorizing farmers; preparing materials for recipients such as coupon guidelines and market guides; and providing nutrition education. It does not include the value of the coupons themselves.

"Compliance buy." Participating State agencies have the option to conduct compliance buys, which are defined as covert, on-site investigations in which a FMNP representative poses as a FMNP recipient and transacts one or more FMNP food coupons. Because the busy, informal atmosphere of a farmers' market makes it difficult to detect program violations, compliance buys can provide an objective measure of whether farmers are following FMNP rules such as not providing change, and selling only authorized foods to FMNP recipients.

"Coupon." In order to distinguish them from the negotiable financial instruments called "food instruments", used in the WIC Program, the FMNP will use the term "coupon" to identify the negotiable financial instrument by which FMNP benefits are transferred. Both coupons and checks were used by States as demonstration project instruments. Some States used negotiable checks that could be deposited at a bank. While the term "coupon" will be used exclusively in this rulemaking, it should be noted that other terms may be used in some States participating in the FMNP.

"Demonstration project." In 1988, Congress authorized grant funding for 3-year demonstration projects in 10 States under which food coupons would be issued, in addition to normal food package benefits, to WIC recipients for purchases of fresh, nutritious, unprepared foods at farmers' markets (Public Law 100–435). The 10 States awarded grants to operate projects were Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington. For Fiscal Year 1992, Public Law 102–142 allowed for an appropriation of up to $3 million dollars to carry on the projects another year through 1992. This interim rule distinguishes the previously administered "demonstration projects" from the permanent WIC Farmers' Market Nutrition Program by using the term FMNP or Program when referring to the permanent program.

"Eligible foods." Under the FMNP, eligible foods are defined as fresh, nutritious, unprepared, domestically grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes.

Section 2 of the WIC Farmers' Market Act of 1992 states that one of the purposes of the Act is to provide women, infants and children at nutritional risk with "fresh nutritious unprepared foods (such as fruits and vegetables)." The Department notes that a broad variety of foods are available at farmers' markets that are not fresh and unprepared, including jams and jellies, baked goods, maple syrup, cider and fruit juices, and cheese. Accordingly, such foods are not eligible foods for the FMNP.

Among the remaining food choices which meet the fresh, nutritious and unprepared criteria, the Department has decided to limit eligible foods to fresh fruits, vegetables and herbs. This is consistent with the emphasis on fruits and vegetables contained in section 2 of the Act, as noted above, and in section 3 (section 17(m)(8)(D) of the CNA) which requires State agencies to report to the Department information on the "change in consumption of fresh fruits and vegetables" resulting from participation in FMNP. As a result, although some foods in addition to fruits, vegetables and herbs may be considered "fresh, nutritious, and unprepared," they are excluded as eligible foods. These include honey, as well as protein foods, such as eggs, raw seeds and nuts, meats, fish and seafood. In addition to the fact that it is not a fruit or vegetable, the exclusion of honey is also consistent with the recommendation by the American Academy of Pediatrics that infants under 12 months of age not consume honey due to the risk of infant botulism. American Academy of Pediatrics, Pediatric Nutrition Handbook, 1993 Edition, (p.17). The Department believes that this exclusion is necessary given the FMNP's relationship to the WIC Program, and the likelihood that some FMNP participants will be infants. The exclusion of the protein foods is consistent with their generally high cost relative to the limited annual benefit of the FMNP, and the fact that FMNP in most cases will supplement WIC packages which already contain significant amounts of protein foods.

Consistent with the WIC Program, and other food assistance programs administered by the Department, the FMNP values its partnership with American agriculture and therefore promotes the use of FMNP coupons to purchase domestically grown produce at participating farmers' markets. Because the Department intends that the FMNP benefit local or State farmers, most States participating in the demonstration projects prohibited the use of coupons to purchase foods grown outside of the State. Two States in the demonstration project defined locally grown to include counties outside but adjacent to the State boundary. States may want to consider the advantages of establishing "locally grown" guidelines for the purpose of improving marketing opportunities for local farmers.

"Farmer." Although authorizing legislation refers to "producer", the term "farmer" will be used in this rulemaking for clarification, to identify an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. This is consistent with the Department's belief that the FMNP should benefit smaller, local farmers.

"Farmers' market." Pursuant to section 2 of Public Law 102–314, one of the purposes of the WIC Farmers' Market Nutrition Act of 1992 is to, "expand the awareness and use of farmers' markets and increase sales at such markets". The Department therefore proposes that "farmers' market" for the FMNP be defined as "an association of local farmers who assemble for the purpose of selling their produce directly to consumers." In most cases, the Department makes a distinction between an established farmers' market (one that has community roots, such as a permanent location, and good support from non-FMNP sales), and a farmstand. A farmstand is a location at which an individual farmer sells his or her produce directly to consumers. A farmstand set up near a WIC clinic would not be eligible to participate. Since WIC participants cannot rely on the continued existence of such farmstands, they do little to promote the sustained patronage of farmers' markets. In contrast, most eligible farmers' markets have a sufficient number of sellers to provide some measure of stability, and a wider selection of products so as to create a competitive environment, which discourages higher prices. In addition, their stable existence increases the likelihood of continued patronage by recipients or former recipients, and is more conducive to compliance monitoring. It should be noted that farmstands may be authorized in those cases where

recipient access to farmers' markets is an issue and where FNS has granted prior approval. For example, in an urban area where recipient access to farmers' markets is limited, a farmstand providing locally grown produce and overseen by a nonprofit agency could be approved for authorization with the prior consent of FNS.

"Household." Household under the FMNP has the same definition as that of "family" defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes. As permitted by section 17(m)(11)(c) of the CNA, a recipient may be either a person or a household, at the State agency's option. This distinction is discussed in detail in section 5 of this preamble

"Local agency." Under the FMNP, a local agency includes any nonprofit entity or local government location where recipients are issued FMNP coupons or are provided with nutrition education or information on other operational aspects of the Program. This may include the WIC local agency or any other location authorized by the administering State agency to provide the services indicated above to recipients.

"Matching requirement." All participating FMNP States are required to provide non-Federal matching funds equal to not less than 30 percent of the total FMNP cost. The calculation for total FMNP cost and minimum State match is as follows:

- Divide the total Federal funds by 0.7. This establishes the total FMNP cost including both Federal funds and minimum State match from non-Federal sources.
- Multiply the total FMNP cost by 0.3. This establishes the required State match based on the Federal funding request.

The match may be satisfied through State, local or private contributions for the FMNP or State, local or private contributions for similar farmers' market programs which operate at the same time as the FMNP. Similar programs include other farmers' market programs which serve women, infants, and children (who need not be WIC participants or on the waiting list for WIC), as well as other categories of recipients such as, but not limited to, elderly persons.

"Nutrition education." Nutrition education means individual or group education sessions, and the provision of information and educational materials, designed to improve health status, achieve positive change in dietary habits, and to emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"Recipient." Recipient means a person chosen by the State agency to receive FMNP benefits. Public Law 102–314 modified the definition of eligible persons which was used in the demonstration projects to include persons on the waiting list to receive benefits under the WIC Program, as well as persons actually participating in WIC. Accordingly, this interim rule expands the definition of those eligible to participate (§ 248.6(a)) to include the following, individually or in combination: Women, infants over four months of age, or children who receive assistance under the WIC Program, or are on the waiting list to receive benefits under the WIC Program. As permitted by section 17(m)(11)(c) of the CNA, a recipient may be either a person or a household, at the State agency's option. This distinction is discussed in detail in section 5 of this preamble.

As set forth in § 248.6 of this interim rule, State agencies may impose other eligibility requirements or priorities for receiving FMNP coupons as may be necessary. For instance, most States limit distribution to specific geographic areas, and some give priority to pregnant or breastfeeding women. States may preclude WIC "waiting list" persons on the basis of their potentially lower priority status. State agencies must identify in their State Plan the groups/categories of WIC or WIC waiting list participants to whom FMNP coupons will be issued or restricted. Based on the Department's Evaluation Report of the demonstration projects conducted in 1989, most States distributed coupons to all categories of eligible WIC participants. Approximately two-thirds of the coupons were distributed to infants and children participating in WIC, with the remaining one-third distributed to women. Three States focused their distribution efforts more heavily on women participating in WIC because they were considered to be at highest risk nutritionally.

"Similar programs." Similar programs means other farmers' market projects or programs which serve women, infants and children, as well as other categories of recipients, such as, but not limited to, elderly persons. Based on language in section 3 of Public Law 102–314, amending sections 17(m)(6)(F) (i) and (ii) of the CNA, in selecting States to participate in the FMNP, the Secretary shall give favorable consideration to States that have prior experience operating similar programs.

"State agency." Section 3 of Public Law 102–314 amends section 17(m)(2)(A) of the CNA to state that the Chief Executive Officer of the State shall designate the appropriate State agency or agencies to administer the FMNP in conjunction with the appropriate nonprofit organizations. State agency means the agriculture department, the health department or comparable agency; an appropriate Indian agency as specified in § 248.2.

"State Plan." "State Plan" means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of the Program within its jurisdiction in accordance with § 248.4 of this regulation. Prior to the receipt of Federal funds to operate the FMNP, a State agency (including those that participated in the demonstration projects), must submit for approval a State Plan of Operation each November 15, for operation in the next fiscal year. New FMNP State agencies will be selected competitively based on State Plans submitted to and approved by the Food and Nutrition Service and the specific ranking criteria set forth in section 17(m)(6)(F) of the CNA and § 248.5 of the regulations.

2. Administration (§ 248.3)

FNS is responsible for the administration of the FMNP within the Department, and will provide assistance to State agencies and evaluate all levels of Program operations to ensure that the goals of the Program are effectively and efficiently achieved. The Supplemental Food Programs Division and the FNS Regional offices are responsible for administration within FNS. Each State agency is responsible for the effective and efficient administration of the FMNP within that State, and shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. State FMNP contacts are to communicate with the designated FMNP contacts in the appropriate FNS Regional office regarding FMNP operations.

The grant funds will be provided to the administering State agency or agencies designated by the Chief Executive Officer of the State or Indian Tribal Organization. A State agency may be the agriculture department, the health department or comparable agency; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing

relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

The Chief Executive Officer of the State shall ensure coordination between the agency designated to administer the FMNP, and the WIC State agency if different, by requiring that a written agreement is entered into by the two agencies. Because eligibility for the FMNP is limited to WIC participants or persons on the waiting list for WIC services, thorough coordination between agencies is necessary for the successful operation of the Program. In order to further ensure successful operation, State agencies shall ensure that there are sufficient staff available to administer an efficient and effective Program and shall provide an outline of administrative staff and job descriptions for staff whose salaries will be provided from FMNP funds. An increase in administrative funding (compared with the demonstration projects) to 15 percent (see § 248.14(g) of this rulemaking) will aid the staffing and general administrative process as well.

3. State Plan Provisions (§ 248.4)

In establishing the FMNP as a permanent program, Congress established basic standards and requirements for its operation. Pursuant to section 17(m)(6)(D)(i) of the CNA, each State agency that desires to receive an FMNP grant, including State agencies previously participating in the demonstration projects, must submit a State Plan for approval by the Department. Section 248.4 requires submission of State Plans by November 15 of each year.

The State plan process replaces the grant application process that was used for the demonstration projects. Sections 17(m)(6)(D) (ii) and (iii) of the CNA require that each State Plan submitted to the Secretary contain the following:

- The estimated cost of the FMNP;
- The estimated number of individuals to be served by the FMNP;
- A description of the State's plan for complying with the requirements of section 17(m)(5) of the CNA; and
- The criteria developed by the State with respect to authorization of farmers to participate in the FMNP. Such criteria shall require any authorized farmer to sell fresh, nutritious, unprepared fruits, vegetables or herbs to recipients, in exchange for coupons.

A complete listing of State Plan requirements is contained in § 248.4.

4. Selection of State Agencies (§ 248.5)

Pursuant to section 3 of Public Law 102–314, each State agency that received assistance under the demonstration projects in a fiscal year prior to October 1, 1991, and which complies with matching requirements for funding and other program requirements as determined by the Department, shall receive assistance under the FMNP. New State agencies wishing to participate in the FMNP will have their State plans approved and ranked based on objective criteria consistent with the requirements established in section 17(m)(6)(F) of the CNA as set forth in § 248.5.

5. Recipient Eligibility (§ 248.6)

Individuals who are eligible to receive Federal benefits under the FMNP are WIC participants, excluding infants four months of age or younger, or individuals on the waiting list to receive WIC benefits. Infants under four months of age are excluded from eligibility in the FMNP based on the recommendation of the American Academy of Pediatrics that such infants are not able to consume solids due to the level of development of their gastrointestinal tract. State agencies have the option to prioritize WIC participants who will receive FMNP benefits. For example, a State agency may choose to provide benefits to all eligible pregnant and breastfeeding women. Section 248.2 defines recipient as a person chosen by the State agency to receive benefits under the FMNP. This definition permits State agencies to allocate the quantity of benefits on a household basis, meaning that the household could receive fewer benefits as a unit than it otherwise would if benefits were allocated to individual household members. For example, in a household where four members of that household are categorically eligible, the State may choose to allocate benefits on the basis of fewer than four eligibles. A State agency making the decision to issue benefits on a household basis would be choosing to spread fewef benefits among more recipients. State agencies that chose this option in the demonstration projects have argued that by bringing in more recipients, they addressed expanding the awareness and use of farmers' markets for a greater number of households, consistent with one of the mandated purposes of the FMNP set forth in section (2) of Public Law 102–314. A State agency allocating benefits on a household basis shall not issue more benefits to a household than it otherwise would if benefits were allocated to individual recipients within the household. For those State agencies issuing FMNP benefits on a household basis, each family as defined in § 246.2 of the WIC Program regulations shall constitute a separate household. For example, if two pregnant women (and their children) are living together and WIC has identified them all as one family (a single economic unit with one participant identification), then they should all be classified as one household in the FMNP, if the State agency is allocating benefits on a household basis. Likewise, if WIC has identified the two pregnant women (and their children) as two families (two economic units with two participant identifications), then they should be classified as two households in the FMNP. State agencies making the decision to issue benefits by household must do so on a Statewide basis. That is, the same State agency may not simultaneously issue benefits on both an individual and household basis. Recognizing that the food benefit has been issued to certain high-risk individuals to address nutritional needs, it is not intended that food benefits from the FMNP be shared with non-FMNP recipients residing in the FMNP recipient household.

If a State agency elects to issue benefits on a household basis, data concerning number and type of recipients must still be provided as required by section 17(m)(8)(A) of the CNA.

6. Nondiscrimination (§ 248.7)

Because racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964) are collected at the time women, infants, and children are certified for participation in the WIC Program, the Department has determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP. Therefore, no additional data collection is required.

7. Recipient Benefits (§ 248.8)

While this interim rule defines eligible foods as fresh, nutritious, unprepared fruits, vegetables and herbs, States must specifically identify in their State plans, which of these foods may be purchased (§ 248.4(a)(10)(vi)). The value of the Federal benefits received by any recipient under the FMNP may not be less than $10 per year or more than $20 per year. Most States participating in the demonstration projects found that the most practical distribution of coupons for the FMNP is in booklets made up of $1 and $2 denominations. If the FMNP coupon face value exceeds the purchase

price of produce, farmers are prohibited from giving cash change to recipients. Instead, this difference may be made up by providing recipients with extra eligible foods in the approximate value of the difference.

In the interest of enhancing local revenues, the Department recognizes a State agency's option in allowing only locally grown produce, as defined by the State agency, to be purchased by FMNP coupon recipients. Since States are required to match 30 percent of the total cost of the FMNP with State or non-Federal contributions, some States may consider this an attractive option for ensuring that FMNP benefits remain in the State. State agencies also have the option to define what they consider to be "locally grown". For instance, some State agencies for various reasons, such as availability of an adequate volume and variety of produce, may consider produce grown in adjacent States as locally grown. At the same time, other State agencies may define locally grown to be produce grown within the State boundaries.

8. Nutrition Education (§ 248.9)

Because most FMNP recipients are also WIC participants, in most cases relevant nutrition education will be delivered to FMNP recipients by WIC nutritionists at WIC clinics. The Department views the FMNP as an excellent opportunity to reinforce messages delivered to WIC participants on the benefits of consuming fresh fruits and vegetables. When the consumption of fruits and vegetables is included as part of the regular nutrition education lesson provided by the WIC clinic to WIC participants who are also FMNP recipients, this may be deemed to have fulfilled the nutrition education requirement for the FMNP. The WIC clinic may not seek reimbursement from the administering FMNP State agency for this service since it is an ongoing and vital component of the WIC Program. In these situations, the administering FMNP State agency shall include the provision of nutrition education by the WIC clinic as part of the cooperative agreement with WIC agencies required by § 248.3(e) and § 248.9 of these regulations.

If in specific situations FMNP recipients do not receive relevant nutrition education at WIC clinics, the administering State agency is responsible for arranging alternative methods for the provision of relevant nutrition education, which is an allowable cost under the FMNP. At the option of the FMNP State agency, the nutrition education provided by WIC to recipients may be supplemented by additional FMNP nutrition education. The additional FMNP enhancement may be considered an allowable administrative cost of the FMNP State agency. Provision of such nutrition education enhancements and reinforcements would be legitimate justification for the additional 2 percent administrative funds that are available upon approval by the Department. In addition, the administering FMNP State agency is responsible for providing information to recipients on the use of FMNP coupons and the purpose of the program as required by § 248.4(a)(9)(iii). The costs of providing this information must be provided by the FMNP and not the WIC agencies which may be performing this service for the FMNP.

Section 17(m)(8)(D) of the CNA requires the Secretary to collect from each State that receives a grant under the FMNP, information relating to, when practicable, the impact of the FMNP on the nutritional status of recipients by determining the change in consumption of fresh fruits and vegetables by FMNP coupon recipients. Because of this requirement, State agencies shall develop minimally burdensome procedures such as surveys to assess the impact on the nutritional status of FMNP recipients by obtaining information on the change in their consumption of fresh fruits and vegetables. This nutritional information shall be submitted as an addendum to the State Plan as set forth in § 248.4(a)(15), at such a date specified by the Secretary. Coordination with the WIC Program will reduce costs and minimize duplication of effort on this data collection element.

Section 17(m)(8)(E) of the CNA requires that States receiving a grant under the FMNP submit information on the effects of the FMNP on the use of farmers' markets and the marketing of agricultural products at such markets and when practicable, the effects of the FMNP on recipients' awareness regarding farmers' markets. Pursuant to § 248.4(a) (16) and (17) of these interim regulations, State agencies shall submit in their State Plans the methods they will use to assess this information and shall submit the actual information as an addendum to the State Plan at such a date specified by the Secretary.

9. Coupon and Market Management (§ 248.10)

The State agency is responsible for the fiscal management of, and accountability for farmers/farmers' markets. Farmers' markets are authorized by the State agency which may administer the FMNP directly or through a sub-agency such as a farmers' market association. Each State agency may authorize individual farmers, farmers' markets or both. When the State agency authorizes farmers' markets, the farmers' markets may authorize the farmers within the market to accept FMNP coupons. The demonstration projects revealed that market managers often play an important role in the day-to-day management of the FMNP, such as in the receipt of coupon batches from farmers and the reimbursement to farmers. According to the demonstration project's evaluation report, the strongest markets appeared to be those where the market manager had an active role in farmer training, compliance monitoring, reimbursing farmers, and redeeming coupons. Farmers at these markets were more likely to have a sound understanding of the demonstration project, and to comply strictly with guidelines. In contrast, where the market manager's role in the demonstration projects was limited, there was usually greater misunderstanding among participating farmers about demonstration project operations. Demonstration project participation was typically lower at markets with only nominal market manager involvement.

Monitoring techniques varied widely from State to State for the demonstration projects. All States met the grant requirement to visit every authorized market at least once during operations, and peer monitoring was common and effective in most market settings. Peer monitoring is a system in which farmers watch what their neighbors are doing, and make complaints to the market manager about suspected infractions in an effort to prevent competitors from getting an unfair advantage. State agencies have broad discretion in developing systems for FMNP coupon and market management. They should keep in mind, however, that it is the State agency that is ultimately responsible for the fiscal management of, and accountability for farmers and farmers' markets. The State agency is responsible for establishing the number of, and criteria for, the authorization of farmers and/or farmers' markets as provided by section 17(m)(6)(D)(iii) of the CNA and § 248.10(a) of these regulations. Because the Department believes that the FMNP is intended to help small, local farmers, State agencies may limit the foods eligible for purchase under the FMNP to those locally grown, as defined by the State. To further support this objective, individuals who exclusively sell produce grown by someone else (such as wholesale

distributors), are not eligible to participate in the FMNP. This requirement does not apply to individuals which an authorized farmer may have employed to sell his produce at the farmers' market or to individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers.

When FMNP coupon reimbursement is delegated to farmers' market managers or farmers' market associations or non-profit organizations, State agencies may establish appropriate bonding procedures for farmers' market managers, associations or non-profit organizations. The State agency may determine the best procedure to put in place for bonding. Costs of such bonding are not reimbursable administrative expenses. Additional criteria and requirements for authorizing farmers and farmers markets are identified in § 248.10 of this interim rule.

Section 248.10(b) of this interim rule outlines the contents of the farmers' market agreement. These agreements may be between the State agency and an authorized farmer or an authorized farmers' market, and shall be no more than 3 years in duration. Among its provisions, the agreement shall require that a farmer or farmers' market shall not issue cash change for purchases that are in an amount less than the value of the FMNP coupon(s). Since it is recommended that FMNP coupons be in $1 or $2 denominations, the difference between the purchase price and the value of the coupon should be less than $2. The Department, therefore, encourages farmers to adjust for any difference by adding more produce to the purchase.

Pursuant to § 248.10(d), State agencies shall conduct annual training for farmers and farmers' market managers. State agencies have discretion in determining the method used for training purposes. Training shall include, at a minimum, dissemination of information concerning eligible foods, and proper FMNP coupon redemption procedures, including deadlines for submission of coupons for payment. Other points which must be covered in training include the following:

- Equitable treatment of FMNP recipients, including the availability of produce to FMNP recipients that is of the same quality and cost as that sold to other customers;
- Civil rights compliance guidelines;
- Guidelines for storing FMNP coupons safely; and
- Guidelines for cancelling FMNP coupons, such as punching holes or rubber stamping.

Although these regulations permit State agency discretion in determining the method of annual training, the State agency is required to conduct a documented on-site visit prior to, or at the time of authorization, which shall include at a minimum, information concerning eligible foods and proper coupon redemption procedures. For example, in a State with a 3-year agreement, a State agency may conduct an in-person training prior to or at the time of authorization, and if reauthorization is granted three years later, conduct another in-person training at least once during the next 3-year grant agreement period. Other less comprehensive forms of training such as information handouts may be more appropriate for State agencies in the second or third years of operation for a grant agreement.

State agencies are required to conduct on-site monitoring visits to at least 10 percent of authorized farmers, starting with the highest risk farmers and working down, and 10 percent of farmers' markets, starting with the highest risk farmers' markets and working down. Mandatory high risk indicators are a proportionately high volume of FMNP coupons redeemed within a farmers' market (as compared to other farmers within the market or within the State) and recipient complaints. Participating State agencies have the option to conduct compliance buys and the Department encourages such activity when practicable. A State agency may be required to conduct compliance buys as a follow-up measure when a farmer/farmers' market in a State is found to be out of compliance during an FNS management evaluation.

Compliance activity can provide an objective measure of whether farmer training is adequate and whether farmers are following FMNP rules such as not providing change, selling only authorized foods to FMNP recipients, and ensuring participation only by authorized farmers. In addition to this, compliance buys can induce compliance and provide a justification for sanctions and removal of non-complying farmers.

As set forth in § 248.10(h), the State agency shall identify the disposition of all FMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. This identification shall be determined on a one-to-one reconciliation basis. Validly redeemed coupons are those that are issued to an authorized recipient and redeemed by an authorized farmers' market/farmer before the expiration date. Coupons that are redeemed but cannot be traced to an authorized recipient or authorized farmer will be subject to claims action in accordance with § 248.20 of this interim rule. A State agency has the option to replace lost, stolen, or damaged coupons, and must describe its system for doing so in the State Plan. A State agency shall use uniform FMNP coupons within its jurisdiction, which must include at a minimum, the following information as required by § 248.10(h)(3):

- The last date by which the recipient can use the coupon. This date shall be no later than November 30 of each year.
- A date by which the farmer/farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Currently SF–269 financial statements are due to FNS by January 30.
- A unique and sequential serial number.
- A denomination (dollar amount).
- For each redeeming farmers' market, a farmer identifier on each coupon and market identifier on the cover of the batched coupons. For each redeeming farmer, a farmer identifier on each coupon.

Inclusion of individual farmer identifiers on all FMNP coupons is a requirement in the FMNP, in order to trace coupon redemption to an authorized farmer, as required by section 17(m)(5)(E)(i) of the CNA. States have the option to directly authorize either farmers' markets, individual farmers or both. However, if the State directly authorizes farmers' markets, and not farmers, an individual farmer identifier must be included on the coupon and a farmers' market identifier included on the batched set of coupons submitted by the farmers' market manager for reimbursement. Those State agencies which have agreements directly with farmers and not markets must include individual farmer identifiers on each redeemed coupon. This is a change from the demonstration projects which required that only a market identifier be included on the coupon. A farmer identifier will provide protection for the farmers' market, since it is the individual farmer who may be identified and penalized for abuse rather than the entire market, if appropriate.

Each FMNP recipient shall receive instructions on the proper use of coupons, including, but not limited to:

- A list of names and addresses of authorized farmers' markets and/or authorized farmers at which FMNP coupons may be redeemed.
- A description of eligible foods, and the prohibition against cash change.
- Notification that they have the right to complain about improper farmer/farmers' market practices with regard to FMNP responsibilities, and the process for doing so.

10. Financial Management System. (§ 248.11)

The demonstration projects served as an effective model for the FMNP in the area of financial management systems. Based on the evaluation report conducted for the demonstration projects and submitted to Congress in April 1991, good controls were in place to account for advanced funds, and effective systems were in place to recoup leftover funds. Two States used negotiable checks in lieu of coupons, and six States advanced funds to payment intermediaries to pay authorized farmers or markets for coupons they had accepted. Payment intermediaries included market managers, private banks, and various contracted organizations and associations.

Pursuant to § 248.11(d) of this interim rule, participating State agencies must implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost provisions set forth in § 248.11 of this rule, 7 CFR part 3016, and FNS guidelines and Instructions.

11. FMNP Costs (§ 248.12)

FMNP costs consist of food and administrative costs. Administrative costs are those costs associated with providing benefits and services to recipients. Allowable administrative costs include costs associated with the provision of nutrition education which meets the requirements of § 248.9 of this rule. In addition, other allowable administrative costs include, but are not limited to, the costs of administering the coupon and market management system, including printing, issuing and reconciling coupons; and, authorizing, training and monitoring markets, as well as FMNP outreach, recordkeeping and reporting costs.

12. Distribution of Funds (§ 248.14)

As a prerequisite to the receipt of funds, State agencies must agree to contribute from non-Federal sources at least 30 percent of the total cost of the FMNP, which may also be satisfied from State contributions that are made for similar programs which operate during the same period as the FMNP. Similar programs include other farmers' market projects or programs which serve women, infants, and children, as well as other categories of recipients such as, but not limited to, elderly persons.

Section 17(m)(6)(A) of the CNA, subject to certain limitations and requirements, provides for authorization of State agencies that received assistance under the demonstration projects. It stipulates that each State which received Federal funding in a fiscal year ending before October 1, 1991 (i.e. before Fiscal Year 1992) shall receive benefits under the new FMNP, provided that the State complies with the requirements established by the Act, as determined by the Secretary. Section (17)(m)(6)(B) mandates that, if sufficient funds are appropriated by Congress, no State shall receive less Federal funds than it did in the most recent fiscal year in which it received assistance, as long as the State continues to provide the requisite matching funds.

If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to maintain prior year funding levels for each State authorized under section 17(m)(6)(A) of the CNA, each State's grant shall be ratably reduced, except that, if sufficient funds are available, each State shall receive at least $50,000 or the amount that the State received for the prior fiscal year if that amount is less than $50,000.

Once funds have been set aside to satisfy this requirement, section 17(m)(6)(G) requires that any remaining funds shall be allocated as follows: (1) An amount equal to 45 to 55 percent shall be made available to States participating in the FMNP that wish to serve additional FMNP recipients, and whose State plan to do so is approved by the Department. If this amount is greater than that necessary to satisfy approved expansion requests from participating State agencies, the unallocated amount shall be made available to State agencies that have not participated in the FMNP in the prior fiscal year, and whose State Plans have been approved by the Department.

(2) An amount equal to 45 to 55 percent shall be made available to States that have not participated in the FMNP in the prior fiscal year, and whose State Plans have been approved by the Department. If this amount is greater than that necessary to satisfy the approved State Plans for new State agencies, the unallocated amount shall be applied toward satisfying any unmet need of States that desire to serve additional recipients, and whose State Plans have been approved by the Department.

State agencies must return to FNS any unexpended funds made available for a fiscal year, by February 1 of the following fiscal year, except that each State agency may retain not more than 5 percent of the funds made available to the State agency for the fiscal year to reimburse expenses incurred during the preceding fiscal year or to reimburse expenses expected to be incurred during the succeeding fiscal year. The spend forward or carry back provisions are contained in § 248.14(h) of this interim rule. Any funds that remain available after satisfying paragraphs (1) and (2) above, shall be reallocated in accordance with the appropriate method determined by the Secretary.

Subject to requirements of section 17(m)(6) described above, the Secretary is instructed in section 17(m)(4) to establish a formula for determining amounts to be awarded to each State with an approved plan according to the number of recipients proposed to participate as specified in the State Plan. In determining the amount to be awarded to new States, the Secretary is further instructed to rank the State Plans according to the following criteria set forth in section 17(m)(6)(F) of the CNA. The Secretary shall:

(1) Favorably consider a State's prior experiences with this or similar programs;

(2) Favorably consider a State's operation of a similar program with State or local funds that can present data concerning the value of that program;

(3) Require that if a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year with State or local funds, the State shall not reduce the amount of such State or local funds previously made available to the similar program below the level at which the similar program was funded in the year prior to obtaining FMNP funding.

(4) Give precedence to State Plans that would serve areas in the State having—

(a) The highest concentration of eligible persons;

(b) The greatest access to farmers' markets;

(c) A broad geographical area;

(d) The greatest number of recipients in the broadest geographical area within the State; and

(e) Any other characteristics, as determined appropriate by the

Secretary, that maximize the availability of benefits to eligible persons; and

(5) Take into consideration the amount of funds available and the minimum amount needed by each applicant State to successfully operate the FMNP.

In providing funds to serve additional recipients in a State that received assistance under the FMNP in the previous fiscal year, section 17(m)(6)(C) of the Act requires the Secretary to consider:

(1) The availability of any such assistance not spent by the State during the FMNP year for which the assistance was received;

(2) Documentation that justifies the need for an increase in participation; and

(3) Demonstrated ability to satisfactorily operate the existing FMNP.

The Secretary will review State agency requests for expansion funds on a case-by-case basis in the evaluation process as set forth in § 248.14(e). The Secretary shall consider if State agencies requesting expansion funds have demonstrated their ability to spend at least 80 percent of their prior year food grant (exclusive of the 5 percent carry forward). In those instances where State agencies are requesting funds for expansion but have excessive unspent funds, as determined by the Secretary, during the FMNP year for which the assistance was received, the State agency may still be eligible for expansion funds if the Secretary determines there was good cause for the excessive unspent funds, such as severe weather conditions and other factors such as unanticipated decreases in participant caseload in the WIC Program.

Administrative funds are limited by section 17(m)(5)(F) of the Act and cannot exceed 15 percent, (or 17 percent for a State's first year of operation or in approved cases thereafter), of the total FMNP funds. This is consistent with House report No. 102–540(I), page 192, accompanying Public Law 102–314, which states that the 15-percent administrative cost allowance is designed to more realistically reflect the costs of administering the FMNP than the 12 percent permitted under the demonstration projects. Section 17(m)(5)(F) of the CNA also allows for an additional 2-percent allowance for a State's first year of operation (i.e. in Fiscal Year 1993, States which did not operate a demonstration project prior to October 1, 1992), to cover start-up costs such as determining which local WIC sites will be utilized; recruiting farmers to participate in the program; preparing contracts for farmers and local WIC providers; developing a data processing system for redemption and reconciliation of food coupons; designing program training and informational materials; and planning program implementation and coordination of responsibilities between State agriculture and health departments.

Section 17(m)(5)(F)(ii) of the Act states that after the first fiscal year of operation, upon a showing by the State of financial need, the Secretary may permit the State to use up to an additional 2 percent of the total FMNP funds for administration. In determining financial need, the Secretary shall take into consideration the State agency's unique circumstances and proposed enhancements to its operations. Examples of FMNP enhancements are upgraded nutritional education and instructional materials, automation of coupon issuance, and micro-encoding checks. As set forth in § 248.14(g)(3), State agencies wishing to request the additional 2 percent administration allowance must submit written justification to FNS for approval as part of the annual State Plan. Such requests must be resubmitted each year, since approval of the additional 2 percent allowance one year does not mean that the additional amount will be granted in subsequent years.

It is up to the State agency to determine what mix of funds (Federal, State, or both) will be used for the administrative portion, as long as the administrative funds do not exceed 15 (or 17, where approved) percent of the total of Federal and State funds allocated. This means that a State agency can choose to utilize some of the Federal funds allocated for administrative costs or it can use all of the Federal funds for food costs. The following example illustrates two options available to State agencies to provide flexibility regarding administrative funds within the 30 percent matching requirement:

	Total	Food	Administration
Federal Dollars Allocated	$70	$59.50	$10.50
Minimum State Match	30	25.50	4.50
Total FMNP Cost	100	85.00	15.00
Option:			
Federal Dollars	70	70.00	0 00
Minimum State Match	30	15.00	15.00
Total FMNP Cost	100	85.00	15.00

In summary, a State agency may not use more than 15 (or 17) percent of the total (Federal and State) amount of funds for administrative costs. If a State agency provides funds in excess of the 30 percent matching requirement, the limit on the use of funds for administration shall not apply to the funds contributed above the matching requirement.

List of Subjects in 7 CFR Part 248

Food assistance programs, Food donations, Grant programs, Social programs, Infants and children, maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 248 is added to read as follows:

PART 248—WIC Farmers' Market Nutrition Program (FMNP)

Subpart A—General

Sec.

248.1 General purpose and scope.
248.2 Definitions.
248.3 Administration.

Subpart B—State Agency Eligibility

248.4 State Plan.
248.5 Selection of new State agencies.

Subpart C—Recipient Eligibility

248.6 Recipient eligibility.
248.7 Nondiscrimination.

Subpart D—Recipient Benefits

248.8 Level of benefits and eligible foods.
248.9 Nutrition education.

Subpart E—State Agency Provisions

248.10 Coupon and market management.
248.11 Financial management system.
248.12 FMNP costs.
248.13 FMNP income.
248.14 Distribution of funds.
248.15 Closeout procedures.
248.16 Administrative appeal of State agency decisions.

Subpart F—Monitoring and Review of State Agencies

248.17 Management evaluations and reviews.
248.18 Audits.
248.19 Investigations.

Subpart G—Miscellaneous Provisions

248.20 Claims and penalties.
248.21 Procurement and property management.
248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.
248.23 Records and reports.
248.24 Other provisions.
248.25 FMNP information.
248.26 OMB control numbers.

Authority: 42 U.S.C. 1786

Subpart A—General

§ 248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are: (a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Food Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

§ 248.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs, exclusive of food costs, as defined in § 248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

Compliance buy means a covert, on-site investigation in which a FMNP representative poses as a FMNP participant and transacts one or more FMNP food coupons.

Coupon means a coupon, voucher, or other negotiable financial instrument by which benefits under the FMNP are transferred to recipients.

Days means calendar days.

Demonstration project means the Farmers' Market Coupon Demonstration Project authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1786(m)), as amended by section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted September 19, 1988. Public Law 102–314 authorized the Secretary to competitively award, subject to the availability of funds, a 3-year grant (which was subsequently extended for an additional year by Public Law 102–142) to up to 10 States that submitted applications that were approved for the establishment of demonstration projects designed to provide WIC participants with coupons that could be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Those States are: Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington.

Department means the U.S. Department of Agriculture.

Eligible foods means fresh, nutritious, unprepared, domestically grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs meat, cheese and seafood are examples of foods not eligible for purposes of the FMNP.

Farmer means an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. For purposes of this part, the term "farmer" shall mean "producer" as that term is used in section 17(m)(6)(D) of the CNA (42 U.S.C. 1786(m)(6)(D)). A participating State agency has the option to authorize individual farmers or farmers' markets.

Farmers' market means an association of local farmers who assemble for the purpose of selling their produce directly to consumers. In cases where recipient access to farmers' markets is an issue, with prior FNS approval this definition may be expanded at the State agency's option to include farmstands at which authorized farmers sell their produce.

Farmstand means a location at which a single, individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market. With prior FNS approval, a State agency may authorize a farmstand or a nonprofit organization operating a farmstand to participate in the FMNP, where necessary to ensure adequate recipient access to farmers' markets.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FMNP funds means Federal grant funds provided for the FMNP, plus the required non-Federal match.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible supplemental foods.

Household has the same definition as that of "family" defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes.

Local agency means any nonprofit entity or local government agency which issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

Matching requirement means non-Federal cash outlays in an amount equal to, but not less than, 30 percent of the total FMNP costs for the fiscal year. The match may be satisfied through non-Federal cash expenditures for the FMNP or for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of recipients, such as, but not limited to, elderly persons.

Nonprofit agency means a private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 *et. seq.*).

Nutrition education means individual or group education sessions and the

provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

OIG means the Department's Office of the Inspector General.

Program or FMNP means the WIC Farmers' Market Nutrition Program authorized by section 17(m) of the CNA (42 U.S.C. 1786(m)), as amended by Public Law 102–314, the WIC Farmers' Market Nutrition Act of 1992, enacted on July 2, 1992.

Recipient means a person chosen by the State agency to receive FMNP benefits. Such person must be a woman, infant over 4 months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program.

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Similar programs means other farmers' market projects or programs which serve women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

State agency means the agriculture department; the health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), a division of the Department of Health and Human Services.

State Plan means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the FMNP within its jurisdiction in accordance with § 248.4.

Total FMNP costs means the sum of all allowable costs incurred for FMNP purposes, whether funded from the Federal or the State matching share of total FMNP funds.

Total FMNP funds means the sum of the Federal funds provided to the State agency and non-Federal contributions provided by the State agency for FMNP purposes.

WIC means the Special Supplemental Food Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et. seq.*).

§ 248.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the FMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for FMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of FMNP operations to ensure that the goals of the FMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and lobbying (7 CFR part 3018); and, Office of Management and Budget Circular A–130, FNS guidelines, and Instructions issued under the FNS Directives Management System. The State agency shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. Pursuant to section 17(m)(2) of the CNA, State agencies may operate the FMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the FMNP shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State agency ineligibility.* A State agency shall be ineligible to participate in the FMNP if State or local sales tax is collected on Program food purchases in the area in which it administers the Program, except that, if sales tax is collected on Program food purchases by sovereign Indian entities which are not State agencies, the State agency shall remain eligible so long as any farmers' markets collecting such tax are disqualified.

(e) *Coordination with WIC agency.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and the WIC State agency, if different, by ensuring that the two agencies enter into a written agreement. Such coordination between agencies is necessary for the successful operation of the FMNP, because WIC participants or persons on the waiting list for WIC services are the only persons eligible to receive Federal benefits under the FMNP. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency. This agreement shall be submitted each year along with the State Plan.

(f) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to efficiently and effectively administer the FMNP. This shall include, but not be limited to, sufficient staff to provide nutrition education in coordination with the WIC Program, coupon and market management, fiscal reporting, monitoring, and training. The State agency shall provide an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds in their State Plans.

Subpart B—State Agency Eligibility

§ 248.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must address the following areas in sufficient detail to demonstrate the State agency's ability to meet the requirements of the FMNP: (1) A copy of the agreement between the designated administering State agency and the WIC State agency, if different, for services such as nutrition education, and documentation of coordinated efforts as required in § 248.3(e), as well as copies of agreements with agencies other than the WIC State agency.

(2) Estimated number of recipients for the fiscal year, and proposed months of operation.

(3) Estimated cost of the FMNP, including a minimum amount necessary to operate the FMNP.

(4) Description of how the Program will achieve its dual purposes of providing a nutritional benefit to WIC (or waiting list) participants and expanding the awareness and use of farmers' markets.

(5) Outline of administrative staff and job descriptions.

(6) Detailed description of the recordkeeping system including, but not limited to, the system for maintaining records pertaining to financial operations, coupon issuance and redemption, and FMNP participation.

(7) Detailed description of the financial management system, including, but not limited to documentation of how the State will meet the matching requirement and procedures for obligating funds.

(8) Detailed description of the service area including: (i) The number and addresses of participating markets and area WIC clinics including a map outlining the service area and proximity of markets to clinics; and

(ii) Estimated number of WIC participants and persons on the WIC waiting list that will receive FMNP coupons.

(9) Description of the coupon issuance system including: (i) How the State agency will target areas with highest concentrations of eligible persons and greatest access to farmers' markets within the broadest possible geographic area;

(ii) Annual benefit amount per recipient;

(iii) Method for instructing recipients on the proper use of FMNP coupons and the purpose of the FMNP; and

(iv) Method for ensuring that FMNP coupons are only issued to eligible recipients.

(10) Detailed description of the coupon and farmers' market management system including: (i) criteria for authorizing farmers' markets;

(ii) Procedures for training farmers and market managers, at authorization, and annually thereafter;

(iii) Procedures for monitoring farmers' markets;

(iv) Description of system for identifying high risk farmers and farmers' markets and procedures for sanctioning farmers and farmers' markets;

(v) Facsimile of the FMNP coupon;

(vi) Identification of the fresh, nutritious, unprepared fruits, vegetables, and herbs which are eligible for purchase under the Program;

(vii) Description of FMNP coupon replacement policy;

(viii) Procedures for handling recipient and farmer/farmers' market complaints.

(11) Detailed description of the FMNP coupon redemption process including:

(i) Procedures for ensuring the secure transportation and storage of FMNP coupons;

(ii) System for identifying and reconciling FMNP coupons;

(iii) Timeframes for FMNP coupon redemption by recipients; submission for payment by markets, and payment by the State agency;

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers/farmers' markets and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets.

(14) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets. In those States which authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(15) When practicable, information on the impact on the nutritional status of recipients by determining the change in their consumption of fresh fruits and vegetables. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(16) The method the State agency will use to assess the effects of the FMNP on the use of farmers' markets, the marketing of agricultural products, and when practicable the effects of the FMNP on recipients' awareness regarding farmers' markets.

(17) Information on the effects of the FMNP on the use of farmers' markets and marketing of agricultural products at such markets and when practicable, the effects of the FMNP on recipients' awareness regarding farmers' markets. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(18) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 248.7(a), including the processing of discrimination complaints.

(19) State agencies which have not previously participated in the FMNP, shall provide the following additional information: (i) A statement assuring that if the State agency receives Federal funds, as specified under § 248.14 to operate the FMNP, and applies those funds to similar programs operated in the previous fiscal year with State or local funds, the amount of State and local funds that were available to similar programs in the fiscal year preceding the first year of operation shall not be reduced. The State agency shall include data in the State Plan showing that it did not reduce the amount of State and local funds available to the similar program in the preceding fiscal year.

(ii) A capability statement which includes a summary description of any prior-experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(20) For States making expansion requests, documentation which meets the following requirements: (i) Justifies the need for an increase in participation;

(ii) Demonstrates the State agency's ability to satisfactorily operate the existing FMNP;

(iii) Identifies the management capabilities of the State to expand.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FNS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the FMNP is operated in accordance with the State Plan.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

§ 248.5 Selection of new State agencies.

In selecting new State agencies, the Department shall rank State Plans submitted in accordance with § 248.4, using the following criteria in making this ranking: (a) Prior experience of the State with the demonstration project or similar farmers' market programs;

(b) Prior operation, by the State of a similar program with State or local funds and ability to present data concerning the beneficial attributes of such program;

(c) Emphasis on service to areas in the State that have: (1) The highest concentration of eligible persons;

(2) The greatest access to farmers' markets;

(3) Broad geographic areas;

(4) The greatest number of recipients in the broadest geographical area within the State; and

(5) Any other characteristics the Department determines that maximize the availability of benefits to eligible persons.

(d) Consideration of the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP.

(e) Approval of a State Plan does not equate to an obligation on the part of the Secretary to fund the FMNP within that State.

Subpart C—Recipient Eligibility

§ 248.6 Recipient eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the FMNP are those, excluding infants 4 months of age or younger, who are currently receiving benefits under WIC or who are on the waiting list to receive benefits from WIC.

(b) *Limitations on certification.* If necessary to limit the number of recipients, State agencies may impose additional eligibility requirements, such as limiting participant certification to certain geographic areas, or to high priority WIC participants such as pregnant and breastfeeding women. States may also preclude groups of low priority persons, such as persons on the waiting list for WIC. Each State agency must specifically identify these limitations on certification in its State Plan.

(c) *Recipient or household benefit allocation.* On a Statewide basis, State agencies shall elect to allocate and issue benefits either to recipients or households. A State agency allocating benefits on a household basis shall not issue more benefits to a household than it otherwise would if benefits were allocated to individual recipients within the household. For those State agencies issuing FMNP benefits on a household basis, each family as defined in § 248.2 of this chapter shall constitute a separate household. Foods provided, regardless of method of issuance, are intended for the sole benefit of FMNP recipients and are not intended to be shared with other non-participating household members. If a State agency issues benefits on a household basis, data concerning number and type of recipients must still be provided as required by § 248.23(b). Recipients shall receive FMNP benefits free of charge.

§ 248.7 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and applicable FNS Instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FMNP. Because racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964) are collected at the time women, infants, and children are certified for participation in the WIC Program, the Department has determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP. Therefore, no additional data collection is required. Compliance with title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to: (1) Notification to the public of the nondiscrimination policy and complaint rights of recipients and potentially eligible persons, which may be satisfied through the Department's required nondiscrimination statement on brochures and publications;

(2) Review and monitoring activity to ensure FMNP compliance with the nondiscrimination laws and regulations;

(3) Establishment of grievance procedures for handling recipient complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Equal Opportunity, USDA. A State agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

Subpart D—Recipient Benefits

§ 248.8 Level of benefits and eligible foods.

(a) *General.* State agencies shall identify in the State Plan the fresh, nutritious, unprepared fruits, vegetables and herbs which are eligible for purchase under the FMNP. Honey, maple syrup, cider, nuts and seeds, eggs, cheese, meat and seafood are not eligible foods for purposes of the FMNP. State agencies may limit the eligible foods to those that are locally grown, as defined by the State.

(b) *The value of the Federal benefits received.* The value of the Federal share of the FMNP benefits received by each recipient, or by each family within a household in those States which elect to issue benefits on a household basis under § 248.6(c) may not be less than $10 per year or more than $20 per year.

§ 248.9 Nutrition education.

(a) *Goals.* Nutrition education shall emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fresh fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into FMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. Such other agencies may include the WIC Program which routinely offers nutrition education to participants and which may wish to use the opportunity of the FMNP to reinforce nutrition messages. State agencies wishing to coordinate nutrition education with WIC shall enter into a written cooperative agreement with WIC agencies to offer nutrition education relevant to the use and nutritional value of foods available to FMNP recipients. In cases where relevant WIC nutrition education sessions are used to meet this requirement, reimbursement to the WIC local agency shall not be permitted. In cases where FMNP recipients are not receiving relevant nutrition education from the WIC Program, the State agency shall arrange alternative methods for the provision of such nutrition education which is an allowable cost under the FMNP.

Subpart E—State Agency Provisions

§ 248.10 Coupon and market management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers/farmers' markets. The State agency is responsible for the fiscal management of, and accountability for farmers/farmers' markets. Each State agency may decide whether to authorize farmers individually, farmers' markets, or both farmers and farmers' markets. All contracts or agreements entered into by the State agency for the management or operation of farmers/farmers' markets shall conform with the requirements of 7 CFR part 3016, Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments.

(1) Only farmers' markets authorized by the State agency may redeem FMNP coupons. Only farmers authorized by the State agency or that have a valid agreement with an authorized farmers' market, may redeem coupons.

(2) The State agency shall establish criteria for the authorization of individual farmers and/or farmers' markets. Any authorized farmer/farmers' market must agree to sell recipients only those foods identified as eligible by the State agency, in exchange for FMNP coupons. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers.

(3) The State agency shall ensure that an appropriate number of farmers/farmers' markets are authorized for adequate recipient convenience and access in the area(s) proposed to be served and for effective management of the farmers/farmers' markets by the State agency. The State agency may establish criteria to limit the number of authorized farmers/farmers' markets.

(4) The State agency shall conduct a documented on-site visit prior to, or at the time of, authorization of a farmers' market or individual farmer. The on-site visit shall include at a minimum, provision of information concerning eligible foods and proper FMNP coupon redemption procedures.

(5) Authorized farmers shall display a sign stating that they are authorized to redeem FMNP coupons.

(6) Authorized farmers/farmers' markets shall comply with the requirements of Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 248.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer/farmers' market.

(b) *Farmers' market agreements.* The State agency shall ensure that all participating farmers' markets enter into written agreements with the State agency. State agencies which authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement shall be signed by a representative who has legal authority to obligate the farmers/farmers' market. Agreements shall include a description of sanctions for noncompliance with FMNP requirements and shall contain at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer/farmers' market shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that FMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at the current price or less than the current price charged to other customers;

(iv) Accept FMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer, each transacted FMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted FMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on FMNP procedures and provide training to farmers and any employees with FMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with FMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer FMNP recipients the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in § 248.7; and

(xii) Notify the State agency if any farmer or farmers' market ceases operation prior to the end of the authorization period.

(2) The farmers' market/farmer shall not: (i) Collect sales tax on FMNP coupon purchases;

(ii) Seek restitution from FMNP recipients for coupons not paid by the State agency;

(iii) Issue cash change for purchases that are in an amount less than the value of the FMNP coupon(s).

(3) Neither the State agency nor the farmer/farmers' market has an obligation to renew the agreement. Either the State agency or the farmer/farmers' market may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer/farmers' market for improperly redeemed FMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(5) The State agency may disqualify a farmer/farmers' market for FMNP abuse. The farmer/farmers' market has the right to appeal a denial of an application to participate, a disqualification, or a FMNP sanction by the State agency. Expiration of a contract or agreement with a farmer/farmers' market, and claims actions under § 248.20, are not appealable.

(6) A farmer or farmers' market which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(7) Agreements may not exceed 3 years.

(c) *Farmer agreements for State agencies which do not authorize farmers.* Those State agencies which authorize farmers' markets but not individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in FMNP. The State agency shall set forth the required terms for the agreement and provide a sample agreement which may be used.

(d) *Annual training for farmers/farmers' market managers.* State agencies shall conduct annual training for farmers/farmers' market managers participating in the FMNP. State agencies have discretion in determining the method used for training purposes. At a minimum, training shall include instruction emphasizing:

(1) Eligible food choices;

(2) Proper FMNP coupon redemption procedures, including deadlines for submission of coupons for payment;

(3) Equitable treatment of FMNP recipients, including the availability of produce to FMNP recipients that is of the same quality and cost as that sold to other customers;

(4) Civil rights compliance and guidelines;

(5) Guidelines for storing FMNP coupons safely; and

(6) Guidelines for cancelling FMNP coupons, such as punching holes or rubber stamping.

(e) *Monitoring and review of farmers/farmers' markets and local agencies.* The State agency shall be responsible for the monitoring of farmers/farmers' markets, and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers/farmers' markets and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers/farmers' markets as appropriate.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2) Each State agency shall rank participating farmers and farmers' markets by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers and 10 percent of farmers' markets beginning with those farmers and markets identified as being the highest-risk. Mandatory high-risk indicators are a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State, and recipient complaints. States are encouraged to formally establish other high risk indicators for identifying potential problems. If additional high risk indicators are established, they shall be set forth in the farmers/farmers' market agreement and in the State Plan.

(3) The following shall be documented for all on-site farmers and farmers' markets monitoring visits, at a minimum: Names of both farmer/farmers' market and reviewer; date of review; nature of problem(s) detected or the observation that the farmer/farmers' market appears to be in compliance with FMNP requirements; record of interviews with recipients, market managers and/or farmers; and signature of the reviewer. Reviewers are not required to notify the farmer/farmers' market of the monitoring visit during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation. After the farmer/farmers' market has been informed of any deficiencies detected by the monitoring visit, and instances where the farmer/farmers' market will be permitted to continue participation, the farmer/farmers' market shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency shall review all local agencies within its jurisdiction. Reviews of FMNP practices at the WIC local agency may be included in the overall WIC local agency review conducted by the WIC State agency.

(f) *Control of FMNP coupons.* (1) The State agency shall control and provide accountability for the receipt and issuance of FMNP coupons.

(2) The State agency shall ensure that there is secure transportation and storage of unissued FMNP coupons.

(3) The State agency shall design and implement a system of review of FMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing recipient signature, a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency shall implement procedures to reduce the number of errors in transactions, where possible.

(g) *Payment to farmers/farmers' markets.* The State agency shall ensure that farmers/ farmers' markets are promptly paid for food costs.

(h) *Reconciliation of FMNP coupons.* The State agency shall identify the disposition of all FMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed FMNP coupons are those that are issued to a valid recipient and redeemed by an authorized farmers/farmers' market within valid dates. FMNP coupons that were redeemed but cannot be traced to a valid recipient or authorized farmer/farmers' market shall be subject to claims action in accordance with § 248.20.

(1) If the State agency elects to replace lost, stolen or damaged FMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency shall use uniform FMNP coupons within its jurisdiction.

(3) FMNP coupons must include, at a minimum, the following information:

(i) The last date by which the recipient may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Currently, financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons which are batched by the market manager for reimbursement.

(i) *Instructions to recipients.* Each recipient shall receive instructions on the proper use and redemption of the FMNP coupons, including, but not limited to: (1) A list of names and addresses of authorized farmers/farmers' markets at which FMNP coupons may be redeemed.

(2) A description of eligible foods and the prohibition against cash change.

(3) An explanation of their right to complain about improper farmer/farmers' market practices with regard to FMNP responsibilities and the process for doing so.

(j) *Recipients and farmer/farmers' market complaints.* The State agency shall have procedures which document the handling of complaints by recipients and farmers/farmers' markets. Complaints of civil rights discrimination shall be handled in accordance with § 248.7(b).

(k) *Recipients and farmer/farmers' market sanctions.* The State agency shall establish policies which determine the type and level of sanctions to be applied against recipients and farmers/farmers' markets, based upon the severity and nature of the FMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers/farmers' markets may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper FMNP coupon redemption procedures and the penalties outlined in § 248.20, in case of deliberate fraud. In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer/farmers' market sanctions. A farmer/farmers' market committing fraud or other unlawful activities is liable to prosecution under applicable Federal, State or local laws. State agency policies shall ensure that a farmer that is disqualified from the FMNP at one market shall not participate in the FMNP at any other farmers' market in

the State's jurisdiction during the disqualification period.

§ 248.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the FMNP. This shall include an accounting for all property and other assets and all FMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all FMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with FMNP funds are authorized and properly chargeable to the FMNP.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for FMNP activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FNS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated FMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency shall reconcile FMNP coupons in accordance with § 248.10(f).

(h) *Transfer of cash.* The State agency shall establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR part 205.

§ 248.12 FMNP costs.

(a) *General.*—(1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is reasonable and necessary for FMNP purposes and otherwise satisfies allowability criteria set forth in 7 CFR 3016.22 and this part. FMNP purposes include the administration and operation of the FMNP. Program costs supported by State matching contributions must meet the same criteria for allowability as costs supported by Federal funds. Allowable FMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of food benefits provided to FMNP recipients. Administrative costs are the costs associated with providing FMNP benefits and services to recipients and generally administering the FMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. Except as provided in § 248.14(g) of this part, a State agency's administrative costs under the FMNP may not exceed 15 percent of its total FMNP costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the FMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one without effort disproportionate to the results achieved. In accordance with the provisions of 7 CFR part 3015, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with 7 CFR 3016.22 before charging to the FMNP any capital expenditures and other cost items designated by 7 CFR 3016.22 as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for FMNP purposes, or that do not otherwise satisfy the cost principles of 7 CFR 3016.22, are unallowable. Notwithstanding any other provision of part 3016 or this part, the cost of constructing or operating a farmers' market is unallowable. Unallowable costs may never be claimed for Federal reimbursement or counted toward the State matching requirement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following: (1) The costs associated with the provision of nutrition education which meets the requirements of § 248.9 of this part.

(2) The costs of FMNP coupon issuance, or recipient education covering proper coupon redemption procedures.

(3) The cost of outreach services.

(4) The costs associated with the food delivery process, such as printing FMNP coupons, processing redeemed coupons, and training market managers on the food delivery system.

(5) The cost of monitoring and reviewing Program operations.

(6) The cost of FMNP training.

(7) The cost of required reporting and recordkeeping.

§ 248.13 FMNP income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency shall retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties or assessments paid by local agencies or farmers/farmers' markets are also deemed to be FMNP income. The State agency shall ensure that the sources and applications of Program income are fully documented.

§ 248.14 Distribution of funds.

(a) *Conditions for receipt of Federal funds.*—(1) *Matching of funds—(i) Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute from non-Federal sources at least 30 percent of its total FMNP cost. The State agency may contribute more than this minimum amount. Non-federal contributions for similar programs as defined in § 248.2 may satisfy the State matching requirement. If a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year solely with State or local funds, the State shall not reduce in any fiscal year the amount of State or local funds made available to the similar program below the level at which the similar program was funded in the year prior to obtaining FMNP funding.

(ii) *Sources of matching contributions.* A State agency may count any form of cash contribution authorized by 7 CFR 3016.24(a)(1) toward the State matching requirement.

(iii) *Failure to match.* A State agency's failure to meet the State matching requirement will result in the establishment of a claim for the amount of Federal grant funds not matched. The matching requirement will be considered satisfied if State or other non-Federal matching contributions reported on the final closeout report

required by § 248.15(a) of this part amount to at least 30 percent of the total FMNP costs.

(2) *State Plan and agreement.* A State agency shall have its State Plan approved and shall execute an agreement with the Department in accordance with § 248.3(c) of this part.

(b) *Distribution of FMNP funds to previously participating State agencies.* Provided that sufficient FMNP funds are available, each State agency that participated in the FMNP in the previous year or in the case of Fiscal Year 1993 operations, in a demonstration project, shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant shall be ratably reduced, except that, if sufficient funds are available, each State agency shall receive at least $50,000 or the amount that the State agency received for the prior fiscal year if that amount is less than $50,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any FMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner: (1) An amount not less than 45 percent and not more than 55 percent of the remaining funds shall be made available to State agencies already participating in the FMNP that wish to serve additional recipients. If this amount is greater than that necessary to satisfy all State plans approved for additional recipients, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) An amount not less than 45 percent and not more than 55 percent of the remaining funds shall be made available to State agencies that have not participated in the FMNP in the prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. The Department reserves the right not to fund every State agency with an approved State Plan.

(3) In any fiscal year, any FMNP funds that remain unallocated after satisfying the requirements of paragraphs (d) (1) and (2) of this section, shall be reallocated in accordance with paragraph (j) of this section.

(e) *Expansion for current State agencies.* In providing funds to serve additional recipients in State agencies that participated in the FMNP in the previous fiscal year, the Department shall consider on a case-by-case basis, the following: (1) Whether a State agency utilized at least 80 percent of its prior year food grant (exclusive of the 5 percent carry forward). States that did not spend at least 80 percent of their prior year food grant (exclusive of the 5 percent carry forward), may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which was beyond the management control of the State, such as severe weather conditions, or unanticipated decreases in participant caseload in the WIC Program.

(2) Documentation that justifies the need for an increase in participation. This documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(3) Demonstrated ability to satisfactorily operate the existing FMNP. Supporting documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(4) Documentation that identifies the management capabilities of the State to expand. This documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(f) *Funding of new State agencies.* Funds will be awarded to new State agencies in accordance with § 248.5.

(g) *Administrative funding.* A State agency may convert administrative funds into food funds, but may not convert food funds into administrative funds. The State agency may determine what mix of funds (Federal, State, or both) will be used for the administrative portion. A State agency shall have available for administrative costs an amount not greater than 15 percent of total FMNP funds, except that: (1) a State agency shall be authorized to use up to an additional 2 percent of total FMNP funds for administrative costs incurred during the first year in which it receives a grant under this part. The additional 2 percent is intended to cover start up costs to new States such as, but not limited to: (i) Determining which local WIC sites will be utilized;

(ii) Recruiting and authorizing farmers/farmers' markets to participate in the FMNP;

(iii) Preparing contracts for farmers/farmers' markets and local WIC providers;

(iv) Developing a data processing system for redemption and reconciliation of FMNP coupons;

(v) Designing program training and informational materials;

(vi) Conducting FMNP training; and

(vii) Coordinating FMNP implementation responsibilities between designated administering agencies.

(2) After the first year in which a State agency receives a grant under this part, and upon showing by the State agency of financial need, the Secretary may permit the State agency to use up to an additional 2 percent of the total of FMNP funds toward FMNP administration. In determining financial need, the Secretary shall take into consideration any circumstances unique to the State agency, and any proposed enhancements to its operations.

(3) State agencies wishing to request the additional 2 percent administration allowance in paragraph (g)(2) of this section must submit written justification to FNS for approval as part of the annual State Plan. Approvals, if granted, are only valid for one year.

(4) A State agency's failure to effectively and efficiently manage the FMNP within the 15 percent administrative allowance shall not be an appropriate justification for authorizing the additional 2 percent increase in administrative funding.

(5) The 15 percent administrative cost limitation, and the provisions of paragraphs (g)(1) and (2) of this section shall not apply to any funds that a State agency may contribute in excess of its minimum matching requirement. A State agency may use any non-Federal contributions over the 30 percent matching requirement for food and/or administrative costs.

(h) *Transfer of funds.* A State agency may use not more than 5 percent of the Federal FMNP funds made available for the fiscal year to reimburse expenses incurred by the FMNP during a preceding fiscal year, or to reimburse expenses expected to be incurred by the FMNP during the succeeding fiscal year. The State agency shall provide such justification for its request to carry forward or spend back funds under this paragraph as FNS may require.

(i) *Recovery of unused funds.* State agencies shall return to FNS any unexpended funds made available for a fiscal year, by February 1 of the following fiscal year, except as provided in paragraph (h) of this section.

(j) *Reallocation of funds.* Any funds recovered under paragraphs (d)(3) and (i) of this section will be reallocated in accordance with the appropriate method determined by FNS.

§ 248.15 Closeout procedures.

(a) *General.* State agencies shall submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR part 3016.

(1) FNS may disqualify a State agency's participation under the FMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may disqualify the State agency or restrict its participation in the FMNP when both parties agree that continuation under the FMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency shall not incur new obligations after the effective date of the disqualification, and shall cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers/farmers' markets.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, FMNP records as specified in § 248.24(b) and (c). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any FMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 248.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 248.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby recipients, local agencies and farmers/farmers' markets adversely affected by certain actions of the State agency may appeal those actions. A recipient may appeal disqualification/suspension of FMNP benefits. A local agency may appeal an action of the State agency disqualifying it from participating in the FMNP. A farmer/farmers' market may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the FMNP. Expiration of a contract or agreement shall not be subject to appeal.

(b) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer/farmers' market, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) In a case where a recipient appeals the termination of benefits, that recipient shall continue to receive FMNP benefits until the hearing official reaches a decision or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision.

(c) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer/farmers' market with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (b) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, or in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(d) *Continuing responsibilities.* Appealing an adverse action does not relieve a farmer/farmers' market or local agency permitted to continue in the FMNP while its appeal is pending, from responsibility for continued compliance with the terms of the written agreement or contract with the State agency.

(e) *Judicial review.* If a State level decision is rendered against the recipient, local agency or farmer/farmers' market and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(f) *Additional appeals procedures for State agencies which authorize farmers' markets and not individual farmers.* A State agency which authorizes farmers' markets and not individual farmers shall establish procedures to be used when a farmer seeks to appeal an action of a farmers' market denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered by the State agency and the farmers' market and the farmers' market and the farmer.

Subpart F—Monitoring and Review of State Agencies

§ 248.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of FMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to State agencies in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State FMNP performance.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits to ensure that the FMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include a review of each local agency, and on-site reviews of selected farmers/farmers' markets. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations.

(1) If FNS determines that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its FMNP or has failed to comply with the requirements contained in this section or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's administrative grant.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 248.20. Before carrying out any sanction against a State agency, the following procedures will be followed: (i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action, and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers/farmers' markets.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of FMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the FMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements: (1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but are not limited to: (i) Annual monitoring reviews of participating farmers/farmers' markets, including on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, starting with the highest risk farmers and farmers' markets and working down. More frequent reviews may be performed as the State agency deems necessary.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon management systems.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on FMNP activities, and take positive action to correct deficiencies in FMNP operations.

§ 248.18 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether FMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies shall conduct independent audits in accordance with 7 CFR part 3015, 3016.26 or part 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 248.19 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with

this part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 248.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any FMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from FMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons so misused or diverted.

(2) If FNS determines that any part of the FMNP funds received by a State agency; or coupons, were lost as a result of theft, embezzlement, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the FMNP coupons so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled FMNP coupons. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the FMNP coupons issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the FMNP, the State agency shall provide the funds necessary to maintain FMNP operations at the grant level authorized by FNS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 248.21 Procurement and property management.

(a) *Requirements.* State agencies shall comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with FMNP funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the FMNP in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the FMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with FMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with FMNP funds.

§ 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency shall ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

§ 248.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall maintain full and complete records concerning FMNP operations. Such records shall comply with 7 CFR part 3016 and the following requirements: (1) Records shall include, but not be limited to, information pertaining to financial operations, FMNP coupon issuance and redemption, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records shall be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the FMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with FMNP funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such

examinations shall not divulge names of individuals.

(b) *Financial and recipient reports.* State agencies shall submit financial and FMNP performance data on a yearly basis as specified by FNS and required by section 17(m)(8) of the CNA. Such information shall include, but shall not be limited to:

(1) Number and type of recipients (Federal and non-Federal).

(2) Value of coupons issued.

(3) Value of coupons redeemed.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and FMNP performance reports shall be traceable to source documentation.

(d) *Certification of reports.* Financial and FMNP reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, FMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

§ 248.24 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the FMNP shall not be considered as income or resources of recipients or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs. Section 17(m)(7)(B) of the CNA provides that any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(b) *Statistical information.* FNS reserves the right to use information obtained under the FMNP in a summary, statistical or other form which does not identify particular individuals.

(c) *Confidentiality.* The State agency shall restrict the use or disclosure of information obtained from FMNP applicants and recipients to persons directly connected with the administration or enforcement of the WIC Program or the FMNP, including persons investigating or prosecuting violations in the WIC Program or FMNP under Federal, State or local authority.

§ 248.25 FMNP information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1068.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey, 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604–3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

§ 248.26 OMB control number.

The collecting of information requirements of § 248.23(b) have been approved by the Office of Management and Budget and assigned OMB control number 0584–0477. The collecting of information requirements in §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), and 248.18(b) are pending approval by the Office of Management and Budget.

Dated: March 2, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–5568 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 944, 980 and 999

[Docket Nos. FV93–944–3IFR, FV93–980–1IFR and FV93–999–1IFR]

Exemptions From Import Regulations for Specified Commodities; Reopening of Comment Period on Interim Final Rules

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: This rule reopens the periods for filing written comments on two interim final rules. The rules established exemptions from import requirements for various fruit, vegetable and specialty crop commodities. The rules added exemptions from grade, size, quality and maturity requirements for the commodities imported for use in certain specified outlets such as processing, livestock feed and donation to charity. The rules also implemented safeguard provisions to assure that such imports are utilized in a specified exempt outlet. The interim final rules were published in the **Federal Register** on December 30, 1993. A correction to the interim final rule on fruit exemptions was published on January 31, 1994.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning the interim final rules. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. Comments should reference the docket numbers, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–6862.

SUPPLEMENTARY INFORMATION: The interim final rules were implemented in accordance with Annex 703.2(23) of the North American Free Trade Agreement. The provision states that when a domestic agricultural commodity has to meet quality requirements, and processed forms of the commodity are exempt from those requirements, the same treatment is to be provided to imports of the commodity destined for processing as provided for the domestic commodity destined for processing.

The interim final rules also were issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act). Section 8e provides that whenever certain specified commodities are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. The domestic marketing agreements and orders are authorized by the Act.

The interim final rules were issued on December 23, 1993, and published in the December 30, 1993, issue of the **Federal Register** (58 FR 69182 for fruit crops and 58 FR 69186 for vegetable and specialty crops). One interim final rule amended the following fruit crop import requirements: § 944.28 for avocados, § 944.106 for grapefruit, § 944.209 for limes, § 944.312 for oranges, § 944.401 for olives, § 944.503 for table grapes, § 944.550 for kiwifruit, and § 944.605 for Tokay grapes, and added § 944.350 safeguard procedures for exempt imports of these fruit commodities. The second interim final rule amended the following vegetable crop import requirements: § 980.1 for Irish potatoes, § 980.117 for onions, § 980.212 for tomatoes, and added § 980.501 safeguard procedures for exempt imports of those vegetable crops. The second rule also amended the following specialty crop import requirements: § 999.1 for dates, § 999.100 for walnuts, and added § 999.500 safeguard procedures for exempt imports of those specialty crops. A correction to the fruit crop exemption rule was published on January 31, 1994 (59 FR 4245).

The import requirements for these commodities were amended to provide exemptions from grade, size, quality, and maturity requirements that are the same as, or similar to, the exemptions provided to handlers of the domestic commodities under the respective marketing orders.

Because of the impact the rules have on affected persons and entities, the Department has determined that it is in the public interest to reopen the comment periods for the two interim final rules. Accordingly, the comment periods are reopened to April 11, 1994.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

7 CFR Part 980

Import regulations, Onions, Potatoes, Tomatoes.

7 CFR Part 999

Import regulations, Dates, Filberts, Prunes, Raisins, Walnuts.

Authority: 7 U.S.C. 601–674.

Dated: March 7, 1994.

Martha B. Ransom,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 94–5643 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1942

RIN 0575–AB54

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published November 18, 1991, (56 FR 58177) as a final rule without change. This action makes final its Community Facility loan and grant regulations utilized by the Rural Development Administration to assist the residents of rural communities in obtaining adequate quantities of drinking water that meet the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.). Grants can be made under this program to any city or town with a population not in excess of 5,000 inhabitants according to the most recent decennial census of the United States. Also, the median household income of the rural area cannot exceed the statewide nonmetropolitan median household income according to the most recent decennial census of the United States. The intended effect of this action revises FmHA regulations to include the emergency community assistance grants authorized by the Act. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

This program is listed in the Catalog of Federal Domestic Assistance under number 10.440, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided

in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Background

This action implements section 2326 of Public Law 101–624 which requires that grants be provided to assist residents of rural areas and small communities in securing adequate quantities of safe drinking water. Grants made under this program will only be made to remedy an acute shortage of quality water or a significant decline in the quantity or quality of water that is available. Grant applicants must be a public or private nonprofit entity and, in the case of a grant made because of a decline in water supplies, the applicant must demonstrate that the decline occurred within two years of the date the application was filed for a grant.

FmHA published an interim final rule in the **Federal Register** on November 18, 1991, (56 FR 58177) and asked for written comments on or before January 17, 1992. One comment was received from the public review process. The respondent suggested that smaller communities of less than 500 in population be given the most points in § 1942.507(d)(1)(ii)(A). The respondent stated that smaller communities have the most problems with water quality and supply and are least able to finance major repairs. The Agency did not adopt this suggestion. § 1942.507(d)(1)(ii)(A) awards the most points to projects that serve an area with a rural population not in excess of 1,500. The points are awarded based on the population of the area to be served and the Agency believes that they are fair to all type entities that qualify for these grants. The respondent also suggested that a specific date should establish for review of applications for funding by the National Office. The Agency did not adopt this suggestion. § 1942.507(c) states that starting November 1 the National Office will start funding requests and will continue as long as funds are available. Emergency situations can occur at any time and the Agency needs the flexibility to fund projects at any time when funds are available. By not having a set date to review funding requests the Agency can also better match funding requests with the amount of funds available.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, FmHA adopts its interim final rule published November 18, 1991, (56 FR 58177) as a final rule without change.

Dated: March 1, 1994.

Bob J. Nash,

Under Secretary Small Community and Rural Development.

[FR Doc. 94–5642 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–223–AD; Amendment 39–8849; AD 93–25–10]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–25–10 that was sent previously to all known U.S. owners and operators of certain Jetstream Model 4101 airplanes by individual letters. This AD requires inspections to detect damage of the bearings in the aileron quadrants, replacement of damaged bearings with new bearings, and adjustment to the secondary stops. This amendment is prompted by a report that an in-flight failure of a bearing in a quadrant in the pilot's aileron control system caused abnormal backlash of the pilot's aileron control. The actions specified by this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective March 28, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–25–10, issued on December 16, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before May 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On December 16, 1993, the FAA issued priority letter AD 93–25–10, which is applicable to certain Jetstream Model 4101 airplanes. That action was prompted by a report indicating that an in-flight failure of a bearing in a quadrant in the pilot's aileron control system had caused abnormal backlash of the pilot's aileron control. In this incident, the co-pilot assumed control and landed the airplane. A subsequent fleet inspection revealed damage to two other bearings. This condition, if not corrected, could result in reduced controllability of the airplane.

Jetstream Aircraft Limited has issued Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993, that describes procedures for performing repetitive detailed visual inspections to detect damage of the bearings in the aileron quadrants, replacing damaged bearings with new bearings, and adjusting the secondary stops. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 93–25–10 to require repetitive detailed visual inspections to detect damage of the bearings in the aileron quadrants, replacement of damaged bearings with new bearings, and adjustment to the secondary stops. The actions are required to be accomplished in accordance with the alert service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 16, 1993, to all known U.S. owners and operators of certain Jetstream Model 4101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–223–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–10 Jetstream Aircraft Limited: Amendment 39–8849. Docket 93–NM–223–AD.

Applicability: Model 4101 airplanes, having constructor numbers 41004 and subsequent, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, perform a detailed visual inspection to detect damage of the bearings in the aileron quadrant in the pilot's and co-pilot's aileron control, in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993.

(1) If no damaged bearing is found, repeat the inspection, thereafter, at intervals not to exceed 7 days.

(2) If any damaged bearing is found, prior to further flight, replace the damaged bearing with a new bearing in accordance with the service bulletin, and repeat the inspection, thereafter, at intervals not to exceed 7 days.

(b) Within 7 days after the effective date of this AD, adjust the aileron secondary stop in the pilot's and co-pilot's aileron control system in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993.

(c) Within 7 days after the effective date of this AD, revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Where abnormal aileron control backlash is experienced by one pilot, the other pilot should assume control of the aircraft without using the disconnect facility. The disconnect facility should only be used in accordance with published procedures in cases of control restrictions or jamming."

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, replacement, and adjustment shall be done in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 28, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–25–10, issued on December 16, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5405 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–161–AD; Amendment 39–8848; AD 94–06–01]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that requires inspection of the ceiling pressure relief panels in the cargo compartments to determine if slotted attach points are present and, if not, modification of the panels. This amendment is prompted by a report that certain panels were manufactured without the appropriate slotted attach points. The actions specified by this AD are intended to ensure that the action of the cargo compartment pressure relief panels will enable the airplane to withstand a rapid decompression caused by a hole below the compartment floor.

DATES: Effective April 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes was published in the **Federal Register** on November 23, 1993 (58 FR 61853). That action proposed to require inspection of the ceiling pressure relief panels to determine if slotted attach points are present, and modification of the panel(s), if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,016 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 556 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $30,580, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

If modification of a panel is necessary, accomplishing the modification will entail approximately 5.4 work hours, at an average labor rate of $55 per work hour. No additional parts will be required. Based on these figures, the total cost of impact of any necessary modification is estimated to be $297 per panel.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–06–1 McDonnell Douglas: Amendment 39–8848. Docket 93–NM–161–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the action of the cargo compartment ceiling relief panels will enable

the airplane to withstand a rapid decompression caused by a hole below the compartment floor, accomplish the following:

(a) Within 18 months after the effective date of this AD, inspect the ceiling relief panels in the forward, mid, and aft cargo compartments to determine if slotted attach points are present, in accordance with McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993.

(1) If slotted attach points are present, no further action is required by this AD.

(2) If slotted attach points are not present on any panel, prior to further flight, modify that panel in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 11, 1994.

Issued in Renton, Washington, on March 3, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5406 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASO–7]

Establishment of Class E Airspace; Louisburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Louisburg, North Carolina. A Standard Instrument Approach Procedure (SIAP) to the Franklin County Airport has been developed and controlled airspace from 700 feet to 1200 feet above ground level (AGL) is needed to contain IFR operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5590.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Louisburg, North Carolina. A SIAP based on the Raleigh-Durham Very High Frequency Omnidirectional Range (VOR) was developed for the Franklin County Airport at Louisburg. The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rule (IFR) operations in controlled airspace (58 FR 67727).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Four businessmen (Fayard Enterprises, Inc.) from the North Raleigh Airport (old Franklin County Airport) objected to the proposal on the basis that the new controlled airspace would have a major safety and economic impact on the North Raleigh Airport. The primary purpose for establishing an additional 500 feet of controlled airspace between 700 feet and 1200 feet at Franklin County Airport is to enhance safety. This action will increase the required inflight visibility from one statute mile to three statute miles for operations within the new Class E airspace. Any adverse economic impact should have been addressed when the new Franklin County Airport was proposed and circularized to the public for comment. No objections were received in response to the airport establishment.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations established Class E airspace at Louisburg, North Carolina to provide controlled airspace to 700 feet AGL for aircraft executing the VOR SIAP into the Franklin County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, in effect as of September 16, 1993, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 above the surface of the earth.

* * * * *

ASO NC E5 Louisburg, NC [New]
Franklin County Airport, NC
(lat. 36°01'26" N, Long. 78°19'47" W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Franklin County Airport.

* * * * *

Issued in East Point, Georgia, on February 7, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–5783 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–19]

Update of Class D and Class E Airspace in the New England Region

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action updates certain Class D and Class E airspace in the New England Region. This action is prompted by a review of all Class D and Class E airspace in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). This action is necessary in order to keep the Class D and Class E airspace in the New England region operationally current.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; Telephone: (617) 238–7532; Facsimile: (617) 238–7560.

SUPPLEMENTARY INFORMATION:

History

On July 26, 1993, the FAA published a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to update certain control zones and transition areas in the New England Region. (58 FR 39693) This action was prompted by a review of control zones and transition areas in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). That review revealed the need to expand the radius of some areas to account for rising terrain in the vicinity of the airport serving those areas, add and delete departure and arrival extensions to conform areas to new updates in instrument flight rules (IFR) approach and departure procedures, decrease the radius of some areas due to published visual departure procedures, make minor editorial changes, and delete one transition area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "control zone" and "transition area." The airspace in the vicinity of an airport with an operating control tower is now designated as Class D airspace. General controlled airspace is now designated as Class E airspace, and includes the airspace extending upward from the surface in the vicinity of an airport with no operating control tower, identified as E2; airspace extending upward from the surface designated as extensions to Class C surface areas, identified as E3; airspace extending upward from the surface designated as extensions to Class D surface area, identified as E4; and airspace in the vicinity of an airport extending upward from 700 feet or more above ground level, identified as E5. In addition to those changes in terminology, this amendment makes the following minor corrections and changes from the proposal. These corrections are based on a review of the Notice and further updates to the affected airspace descriptions based on amendments to instrument approach procedures. None of these minor corrections increase the scope of the rule.

Airport/class	Correction/change
Danbury, CT/D	Add location of the Carmel VORTAC, and add a Class D extension to contain aircraft executing the VOR–A instrument approach.
Groton, CT/D	For charting purposes, change the radius from 4.5 to 5 miles, and add the word "excluding" prior to description of Fisher's Island airspace.
Hartford, CT/D	Add a phrase completing description of airspace within vicinity of Rentschler Airport.
Bedford, MA/D	Change state designation from ME to MA, correct top of airspace from 2,500 feet MSL to 2,600 MSL.
Beverly, MA/D	Change state designation from ME to MA.
North Kingstown, RI/D	Change name of airport from Kingston to Kingstown.
Danbury, CT/E5	Change 9-mile radius to 10-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and add an extension based on the Danbury Airport 255° bearing.
Oxford, CT/E5	Eliminate reference to the Waterbury NDB, and change description of extension.
Fryeburg, ME/E5	Change bearing references.
Boston, MA/E5	Change state designation from ME to MA.
Provincetown, MA/E5	Change name of NDB referenced from Racepoint to Provincetown, and add latitude and longitude coordinates.
Laconia, NH/E5	For charting purposes, change radius from 2.8 miles to 3.5 miles.
Whitefield, NH/E5	For charting purposes, change radius from 2.8 miles to 3.5 miles, change from "east" to "west" the directional reference for the extension.
Block Island, RI/E5	For charting purposes, change radius from 6.3 miles to 9.0 miles.
Bennington, VT/E5	For charting purposes, change radius from 2 miles to 2.5 miles.
Burlington, VT/E5	Increase radius from 10.8 miles to 23 miles, and eliminate extension descriptions and references to the Burlington VORTAC and HERRO NDB.
Morrisville, VT/E5	For charting purposes, change radius from 3.5 miles to 4.0 miles.
Springfield, VT/E5	For charting purposes, change radius from 3.0 miles to 3.5 miles.

The coordinates for this airspace action are based on North American Datum (NAD) 83. Class D airspace designations for airspace in the vicinity of airports with operating control towers are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR

71.1 (58 FR 36298; July 6, 1993). Class E airspace designations for areas of controlled airspace designated as an extension to Class C airspace are published in Paragraph 6003 of FAA Order 7400.9A; Class E airspace designations for areas of controlled airspace designated as an extension to Class D airspace are published in Paragraph 6004 of FAA Order 7400.9A; and Class E airspace designations for controlled airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations updates Class D airspace to provide controlled airspace in the vicinity of airports with an operating control tower, updates Class E airspace to provide controlled airspace from the surface in the vicinity of airports having instrument approach procedures but no operating control tower, updates Class E airspace to provide controlled airspace upward from 700 feet above the surface as extensions to Class C and Class D airspace, and updates Class E airspace upward from 700 feet above the surface to provide controlled airspace in the vicinity of certain airports in the New England Region. These actions are necessary to keep Class D and Class E airspace in the vicinity of certain airports in the New England region operationally current in order to provide controlled airspace for aircraft executing instrument departures from and approaches to those airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

SUBPART D—CLASS D AIRSPACE

Paragraph 5000 General

* * * * *

ANE CT D Bridgeport, CT [Revised]

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(lat. 41°09'48" N, long. 73°07'34" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 360° bearing clockwise to the Sikorsky Airport 260° bearing, and within a 6.5-mile radius from the Sikorsky Airport 260° bearing clockwise to the Sikorsky Airport 360° bearing. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Danbury, CT [Revised]

Danbury Municipal Airport, CT
(lat. 41°22'17" N, long. 83°28'56" W)
Carmel VORTAC
(lat. 41°22'48" N, long. 73°34'53" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 6.5-mile radius of Danbury Municipal Airport and within 1.2 miles on each side of the Carmel VORTAC 039° radial, extending from the 6.5-mile radius to the Carmel VORTAC. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Groton, CT [Revised]

Groton-New London Airport, CT
(lat. 41°19'48" N, long. 72°02'42" W)
Fisher's Island, Elizabeth Field, NY
(lat. 41°15'07" N, long. 72°01'54" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Groton-New London Airport; excluding that airspace within a 1-mile radius of the Fisher's Island, Elizabeth Field. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Hartford, CT [Revised]

Hartford-Brainard Airport, Hartford, CT
(lat. 41°44'10" N, long. 72°39'00" W)
Rentschler Airport, East Hartford, CT
(lat. 41°45'15" N, long. 72°37'28" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Hartford-Brainard Airport, and within a 6.9-mile radius of the Rentschler Airport from the Rentschler Airport 055° bearing clockwise to the Rentschler Airport 170° bearing, and within a 4.9-mile radius of the Rentschler Airport from the Rentschler Airport 170° bearing clockwise to the Rentschler Airport 055° bearing; excluding that airspace within the Windsor Locks, CT Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D New Haven, CT [Revised]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15'49" N, long. 72°53'12" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Tweed-New Haven Airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE ME D Brunswick, ME [Revised]

Brunswick NAS, ME
(lat. 43°53'32" N, long. 69°56'19" W)
Brunswick Navy TACAN
(lat. 43°54'09" N, long. 69°56'43" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 4.3-mile radius to 7 miles southeast of the Brunswick Navy TACAN, and within 1.8 miles on each side of the Brunswick Navy TACAN 015° radial extending from the 4.3-mile radius to 8.6 miles northeast of the Brunswick Navy TACAN.

ANE MA D Bedford, MA [Revised]

Bedford, Laurence G. Hanscom Field, MA
(lat. 42°28'12" N, long. 71°17'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of Laurence G. Hanscom Field, excluding that airspace within the Boston, MA Class B Airspace. This Class D airspace is effective during the

specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA D Beverly, MA [Revised]

Beverly Municipal Airport, MA
(lat. 42°35'03" N, long. 70°55'01" W)
Topsfield NDB
(lat. 42°37'10" N, long. 70°57'25" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Beverly Municipal Airport; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the Lawrence, MA Class D Airspace during the specific dates and times it is effective. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA Lawrence, MA [Revised]

Lawrence Municipal Airport, MA
(lat. 42°43'02" N, long. 71°07'24" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5-mile radius of the Lawrence Municipal Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE MA D Norwood, MA [Revised]

Norwood Memorial Airport, MA
(lat. 42°11'27" N, long. 71°10'23" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 6-mile radius of the Norwood Memorial Airport, excluding that airspace of the Boston, MA Class B Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA D Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(lat. 42°09'28' N, long. 72°42'56" W)

That airspace extending from the surface to and including 2,800 feet MSL within a 4.3-mile radius of Barnes Municipal Airport from the Barnes Municipal Airport 341° bearing clockwise to the Barnes Municipal Airport 288° bearing, and within 7.5 mile radius from the Barnes Municipal Airport 288° bearing clockwise to the Barnes Municipal Airport 341° bearing, and within 1.6 miles on each side of the Barnes Municipal Airport 009° bearing extending from the 4.3-mile radius to 4.9 miles north of the Barnes Municipal Airport, and within 2.5 miles on each side of the Barnes Municipal Airport 175° bearing extending from the 4.3-mile radius to 5.8 miles south of the Barnes Municipal Airport; excluding that airspace within the Springfield/Chicopee, MA Class D Airspace during the dates and times it is effective, and the airspace within the Windsor Locks, CT Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be published in the Airport/Facility Directory.

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37'35" N, long. 72°18'15" W)
BURGR OM
(lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(lat. 43°42'08" N, long. 72°10'39" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport.

ANE NH D Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)
Lawrence VOR/DME
(lat. 42°44'25" N, long. 71°05'41" W)
Sports Center Airport, Pepperell
(lat. 42°41'45" N, long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 6-mile radius of Boire Field, and that airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 231° radial extending from the 6-mile radius to 1.3 miles southwest of the Manchester VORTAC, and within 3.7 miles on each side of the Lawrence VOR/DME 277° radial extending from the 6-mile radius to 6.9 miles east of Boire Field; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester, NH Class C Airspace, and that airspace within the Manchester, NH Class E Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE NH D Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(lat. 43°04'40" N, long. 70°49'24" W)
Eliot, Littlebrook Air Park, ME
(lat. 43°08'35" N, long. 70°46'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of the Pease International Tradeport, excluding that airspace within a 1.5-mile radius of the Littlebrook Air Park.

ANE RI D North Kingstown, RI [Revised]

North Kingstown, Quonse State Airport, RI
(lat. 41°35'48" N, long. 71°24'43" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Quonset State Airport; excluding that airspace within the Providence, RI Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE ME D Augusta, ME [Revised]

Augusta State Airport, ME
(lat. 44°19'14" N, long. 69°47'50" W)
Dunns LOM
(lat. 44°24'39" N, long. 69°51'39" W)
Augusta VORTAC
(lat. 44°19'12" N, long. 69°47'48" W)

That airspace extending upward from the surface within a 4.1-mile radius of Augusta State Airport, and within 3.5 miles on each side of the Augusta State Airport 333° bearing extending from the 4.1-mile radius to 10 miles northwest of the Dunns LOM, and within 2.5 miles on each side of the Augusta State Airport 156° bearing extending from the 4.1-mile radius to 7 miles southeast of the Augusta VORTAC.

ANE ME D Houlton, ME [Revised]

Houlton International Airport, ME
(lat. 46°07'25" N, long. 67°47'32" W)

That airspace extending upward from the surface within a 6.5-mile radius of Houlton International Airport excluding the airspace outside of the United States.

* * * * *

ANE ME D Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(lat. 46°41'20" N, long. 68°02'41" W)
EXCAL LOM
(lat. 46°36'37" N, long. 68°01'08" W)
Rogers Airport
(lat. 46°37'30" N, long. 67°56'10" W)

That airspace extending upward from the surface within a 6.8-mile radius of Northern Maine Regional Airport at Presque Isle, and within 2.5 miles on each side of the Northern Maine Regional Airport at Presque Isle 165° bearing extending from the 6.8-mile radius to 8.2 miles southeast of the EXCAL LOM; excluding that airspace within a 1-mile radius of the Rogers Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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SUBPART E—CLASS E AIRSPACE

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Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

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ANE NH E2 Concord, NH [Revised]

Concord Municipal Airport, NH
(lat. 43°12'12" N, long. 71°30'07" W)
Concord VORTAC
(lat. 43°13'11" N, long 71°34'32" W)

That airspace extending upward from the surface within a 7.7-mile radius of Concord Municipal Airport, and within 2.4 miles on each side of the Concord VORTAC 300° radial extending from the 7.7-mile radius to 7 miles northwest of the Concord VORTAC.

ANE VT E2 Montpelier, VT [Revised]

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12'12" N, long. 72°33'44" W)
Mount Mansfield, VT NDB
(lat. 44°23'12" N, long. 72°41'37" W)

That airspace extending upward from the surface within a 4.1-mile radius of Edward F Knapp State Airport, and within 2.8 miles on each side of the Edward F. Knapp State Airport 159° bearing extending from the 4.1-mile radius to 13.7 miles southeast of the airport, and within 1.8-miles on each side of the Edward F. Knapp State Airport 212° bearing extending from the 4.1-mile radius to 7.0 miles southwest of the Edward F. Knapp State Airport, and within 1 mile on each side of Mount Mansfield NDB 152° bearing extending from the 4.1-mile radius to 6.6 miles southeast of the Mount Mansfield NDB.

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Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area.

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ANE CT E3 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International, CT
(lat. 41°56'20" N, long. 72°40'59" W)
Bradley VORTAC
(lat. 41°56'27" N, long. 72°41'19" W)

That airspace extending upward from the surface to and including 4,200 feet MSL within 2.2 miles on each side of the Bradley VORTAC 314° radial extending from a 5-mile radius of Bradley International Airport to 6.4 miles northwest of the Bradley VORTAC, and within 2.2 miles on each side of the Bradley VORTAC 218° radial extending from the 5-mile radius to 5.0 miles southwest of the Bradley VORTAC.

ANE ME E3 Bangor, ME [Revised]

Bangor International Airport, ME
(lat. 44°48'27" N, long. 68°49'41" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 68°52'26" W)

That airspace extending upward from the surface to and including 4,200 feet MSL within 1.5 miles on each side of the Bangor VORTAC 135° radial extending from a 5-mile radius of Bangor International Airport to 9.4 miles southeast of the Bangor VORTAC, and within 3.1 miles on each side of the Bangor VORTAC 318° radial extending from the 5-mile radius to 7.2 miles northwest of the Bangor VORTAC.

ANE NH E3 Manchester, NH [Revised]

Manchester Airport, NH
(lat. 42°56'00" N, long. 71°26'16" W)
Manchester VORTAC
(lat. 42°52'07" N, long. 71°22'10" W)

That airspace extending upward from the surface to and including 4,300 feet MSL within 1.1 miles on each side of the Manchester VORTAC 325° radial extending from a 5-mile radius of the Manchester Airport to 5.6 miles northwest of the Manchester Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE RI E3 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N, long. 71°25'40" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from the surface to and including 4,100 feet MSL within 3.3 miles on each side of the Providence VORTAC 132° radial extending from a 5-mile radius of Providence, Theodore Francis Green State Airport, to 8.4 miles southeast of the Providence VORTAC, and within 3.8 miles on each side of the Theodore Francis Green State Airport 211° bearing extending from the 5-mile radius to 15 miles southwest of the Theodore Francis Green State Airport.

ANE VT E3 Burlington, VT [Revised]

Burlington International Airport, VT
(lat. 44°28'17" N, long. 73°09'10" W)
Burlington VORTAC
(lat. 44°23'50" N, long. 73°10'57" W)

That airspace extending upward from the surface to and including 4,400 feet MSL within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from a 5-mile radius of the Burlington International Airport to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport.

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Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

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ANE MA E4 Beverly, MA [Revised]

Beverly Municipal Airport, MA
(lat. 42°35'03" N, long. 70°55'01" W)
Topsfield NDB
(lat. 42°37'10" N, long. 70°57'25" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within 3.2 miles on each side of the Topsfield NDB 317° bearing, extending from a 4.5-mile radius of Beverly Municipal Airport to 7 miles northwest of the Topsfield NDB; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the Lawrence, MA Class D Airspace during the specific dates and times it is effective. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

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ANE NH E4 Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37'35" N, long. 72°18'15" W)
BURGR OM
(lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(lat. 43°42'08" N, long. 72°10'39" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within 3.3 miles on each side of the BURGR OM 352° bearing extending from a 6.7-mile radius of Lebanon Municipal Airport to 8 miles north of the BURGR OM, and within 2.4 miles on each side of the Hanover NDB 051° bearing extending from the 6.7-mile radius to 7 miles northeast of Hanover NDB.

ANE NH E4 Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)
Lawrence VOR/DME
(lat. 42°44'25" N, long. 71°05'41" W)
Sports Center Airport, Pepperell
(lat. 42°41'45" N, long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within 2.6 miles on each side of the CHERN NDB 303° bearing extending from a 6-mile radius of Boire Field to 7 miles northwest of the CHERN NDB; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester, NH Class C Airspace, and that airspace within the Manchester, NH Class D Airspace. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be coninuously published in the Airport/Facility Directory.

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Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

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ANE CT E5 Bridgeport, CT [Revised]

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(lat. 41°09'48" N, long. 73°07'34" W)
Stratford, Sikorsky Heliport, CT
(lat. 41°14'57" N, long. 73°05'48" W)
Bridgeport VOR
(lat. 41°09'39" N, long. 73°07'28" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 245° bearing clockwise to the Sikorsky Airport 070° bearing, and within a 6.5-mile radius from the Sikorsky Airport 070° bearing clockwise to the Sikorsky Airport 245° bearing, and within 4 miles on each side of the Bridgeport VOR 041° radial extending from the 10-mile radius to 14.8 miles northeast of Bridgeport VOR, and within a 8.5-mile radius of the Sikorsky Heliport; excluding that airspace within the Bridgeport, CT, Stratford, CT, and New Haven, CT, Class D Airspace during the specific dates and times they are effective.

ANE CT E5 Chester, CT [Revised]

Chester Airport, CT
(lat. 41°23'02" N, long. 72°30'21" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Chester Airport, and within 4 miles west and 5.4 miles of the Chester Airport 339° bearing extending from the 9.3-mile radius to 17.3 miles northwest of Chester Airport; excluding that airspace within the

Hartford, CT Class D Airspace during the specific dates and times it is effective.

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ANE CT E5 Danbury, CT [Revised]

Danbury Municipal Airport, CT
(lat. 41°22'17" N, long. 73°28'56" W)
Carmel VORTAC
(lat. 41°16'48" N, long. 73°34'53" W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Danbury Municipal Airport from the Danbury Airport 320° bearing clockwise to the Danbury Airport 010° bearing, and within a 10-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and within 3 miles on each side of the Carmel VORTAC 218° radial extending from the 10-mile radius to 10 miles southwest of the Carmel VORTAC, and within 4 miles north and 5.5 miles south of the Danbury Airport 255° bearing extending from the 10-mile radius to 16 miles west of the Danbury Airport; excluding that airspace within the White Plains, NY, Class D Airspace, and that airspace within the White Plains, NY, and Poughkeepsie, NY, Class E Airspace, and that airspace within the Danbury, CT Class D Airspace during the specific dates and times it is effective.

ANE CT E5 Danielson, CT [Revised]

Danielson Airport, CT
(lat. 41°49'11" N, long. 71°54'03" W)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Danielson Airport.

ANE CT E5 Groton, CT [Revised]

Groton-New London Airport, CT
(lat. 41°19'48" N, long. 72°02'42" W)
Groton VOR
(lat. 41°19'49" N, long. 72°03'07" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Groton-New London Airport, and within 1.3 miles on each side of the Groton VOR 048° radial extending from the 7.5-mile radius to 15.6 miles northeast of the Groton VOR; excluding that airspace within the Groton, CT Class D Airspace during the specific dates and times it is effective, and that airspace within the Westerly, RI Class E Airspace.

ANE CT E5 Hartford, CT [Revised]

Hartford-Brainard Airport, CT
(lat. 41°44'10" N, long. 72°39'00" W)
East Hartford, Rentschler Airport, CT
(lat. 41°45'15" N, long. 72°37'28" W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport, and within an 11.9-mile radius of the Rentschler Airport; excluding that airspace within the Windsor Locks, CT Class C Airspace, and that airspace within the Windsor Locks, CT, and Chester, CT, Class E Airspace, and that airspace within the Hartford, CT Class D Airspace during the specific dates and times it is effective.

ANE CT E5 Madison, CT [Revised]

Madison, Griswold Airport, CT
(lat. 41°16'16" N, long. 72°32'59" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Griswold Airport from the Griswold Airport 260° bearing clockwise to the Griswold Airport 090° bearing, and within a 6.2-mile radius from the Griswold Airport 090° bearing clockwise to the 260° bearing; excluding that airspace within the Chester, CT Class E Airspace.

ANE CT E5 Meriden, CT [Revised]

Meriden Markham Municipal Airport, CT
(lat. 41°30'31" N, long. 72°49'46" W)
Madison VOR/DME
(lat. 41°18'50" N, long. 72°41'32" W)

That airspace extending upward from 700 feet above the surface within a 10.8-mile radius of Meriden Markham Municipal Airport, and within 4 miles on each side of the Madison VOR/DME 332° radial extending from the 10.8-mile radius to 0.6 mile northwest of the Madison VOR/DME; excluding that airspace within the New Haven, CT Class D Airspace during the specific dates and times it is effective, and that airspace within the Bridgeport, CT, Madison, CT, Chester, CT, and Hartford, CT, Class E Airspace.

ANE CT E5 New Haven, CT [Revised]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15'49" N, long. 72°53'12" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Tweed-New Haven Airport; excluding that airspace within the Bridgeport, CT, Meriden, CT, Chester, CT, and Madison, CT, Class E Airspace, and that airspace within the New Haven, CT, Bridgeport, CT, Sikorsky, CT, Class D Airspace during the specific dates and times they are effective.

ANE CT E5 Oxford, CT [Revised]

Waterbury-Oxford Airport, CT
(lat. 41°28'46" N, long. 73°08'07" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Waterbury-Oxford Airport, and within 5 miles on each side of the Waterbury-Oxford Airport 351° bearing extending from the 8-mile radius to 19 miles north of the Waterbury-Oxford Airport; excluding that airspace within the Meriden, CT, New Haven, CT, and Bridgeport, CT, Class E Airspace.

ANE CT E5 Willimantic, CT [Revised]

Willimantic, Windham, Airport, CT
(lat. 42°44'38" N, long. 72°10'49" W)
Norwich VORTAC
(lat. 41°33'23" N, long. 71°59'58" W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Windham Airport, and within 3.7 miles on each side of the Norwich VORTAC 323° radial extending from the 10.5-mile radius to 12.9 miles southeast of the Windham Airport, and within 3.9 miles south and 5.2 miles north of the Windham Airport 074° bearing extending from the 10.5-mile radius to 15.7 miles east of Windham Airport; excluding that airspace within the Danielson, CT, and Hartford, CT, Class E Airspace.

ANE CT E5 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International Airport
(lat. 41°56'20" N, long. 72°40'59" W)
Bradley VORTAC
(lat. 41°56'27" N, long. 72°41'19" W)

That airspace extending upward from 700 feet above the surface within a 10.9 mile radius of Bradley International Airport, and within 3.1 miles on each side of the Bradley Airport 044° bearing extending from the 10.9-mile radius to 11.7 miles northeast of the Bradley Airport; excluding that airspace within the Hartford, CT, Westfield, MA, and Springfield/Chicopee, MA, Class D Airspace, during the specific dates and times they are effective, and that airspace within the Windsor Locks, CT Class C Airspace

ANE MA E5 Boston, MA [Revised]

Boston, General Edward Lawrence Logan International Airport
(lat. 42°21'51" N, long. 71°00'18" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 42°30'00" N, long. 70°47'58" W and running to lat. 42°43'00" N, long. 70°39'28" W, then to lat. 42°55'00" N, long. 70°57'58" W, then to lat 42°56'00" N, long. 71°15'28" W, then to lat. 42°42'00" N, long. 71°17'58" W, then to lat. 42°32'00" N, long. 71°40'58" W, then to lat. 42°21'00" N, long. 71°41'58" W, then to lat. 42°20'00" N, long. 71°24'28" W, then to lat. 42°05'00" N, long. 71°22'30" W, then to lat. 42°04'00" N, long. 71°11'58" W, then to lat. 41°56'00" N, long. 71°06'58" W, then to lat. 41°59'00" N, long. 70°56'28" W, then to lat. 42°12'00" N, long. 70°36'28" W, then to the point of beginning; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the South Weymouth, MA, Norwood, MA, Bedford, MA, Beverly, MA, Lawrence, MA, Class D Airspace, during the specific dates and times they are effective.

ANE MA E5 Fall River, MA [Revised]

Fall River Municipal, MA
(lat. 41°45'18" N, long. 71°06'36" W)
Fall River NDB (FLR)
(lat. 41°45'20" N, long. 71°06'44" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Fall River Municipal Airport; excluding that airspace within the New Bedford, MA Class D Airspace during the dates and times it is effective, and that airspace within the New Bedford, MA, Providence, RI, and North Kingstown, RI, Class E Airspace.

ANE MA E5 Falmouth, MA [Revised]

Falmouth, Otis ANGB, MA
(lat. 41°39'30" N, long. 70°31'17" W)
Barnstable Municipal Airport-Boardman/Polando Field
(lat. 41°40'09" N, long. 70°16'49" W)
Chatham Municipal Airport
(lat. 41°41'18" N, long. 69°59'22" W)
Martha's Vineyard Municipal Airport
(lat. 41°23'35" N, long. 70°36'52" W)
Martha's Vineyard VOR/DME
(lat. 41°23'46" N, long. 70°36'46" W)
BOGEY LOM
(lat. 41°42'58" N, long. 70°12'11" W)

That airspace extending upward from 700 feet above the surface within a 12.2-mile radius of Otis ANGB, and within a 6.7-mile

radius of Barnstable Municipal Airport, and within 3 miles on each side of the BOGEY LOM 050° bearing extending from the 6.7-mile radius to 10 miles northeast of the BOGEY LOM, and within a 6.3-mile radius of the Chatham Municipal Airport, and within a 6.5-mile radius of Martha's Vineyard Municipal Airport, and within 5.1 miles on each side of the 052° radial of the Martha's Vineyard VOR/DME extending from the 6.5-mile radius to 14 miles northeast of Martha's Vineyard VOR/DME; excluding that airspace within the Hyannis, MA, and Martha's Vineyard, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Falmouth, MA Class D Airspace.

ANE MA E5 Fitchburg, MA [Removed]

ANE MA E5 Fort Devens, MA [Revised]

Fort Devens, Moore AAF, MA
(lat. 42°34'12" N, long. 71°36'10" W)
Dickinson NDB
(lat. 42°38'46" N, long. 71°43'37" W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Fort Devens, Moore AAF, and within 3 miles on each side of 310° bearing from the Dickinson NDB extending from the 7.6-mile radius to 10 miles northwest of the Dickinson NDB; excluding that airspace within the Keene, NH, Nashua, NH, Manchester, NH, and Boston, MA, Class E Airspace.

ANE MA E5 Great Barrington, MA [Revised]

Great Barrington Airport, MA
(lat. 42°11'03" N, long. 73°24'11" W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Great Barrington Airport, excluding that airspace within the Hudson, NY Class E Airspace.

ANE MA E5 Hopedale, MA [Revised]

Hopedale Industrial Park Airport, MA
(lat. 42°06'23" N, long. 71°30'36" W)
Putnam VOR/DME
(lat. 41°57'20" N, long. 71°50'39" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Hopedale Industrial Park Airport, and within 4 miles on each side of the Putnam VOR/DME 059° radial extending from the 7.3-mile radius to the Putnam VOR/DME; excluding that airspace within the Boston, MA, Danielson, CT, Pawtucket, RI, Providence, RI, and North Kingstown, RI, Class E Airspace.

ANE MA E5 Mansfield, MA [Revised]

Mansfield Municipal Airport, MA
(lat. 42°00'00" N, long. 71°11'48" W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Mansfield Municipal Airport; excluding that airspace within Norwood, MA Class D Airspace during the specific dates and times it is effective, and that airspace within the Boston, MA, Hopedale, MA, Fall River, MA, North Kingstown, RI, Providence, RI, and Pawtucket, RI, Class E Airspace.

ANE MA E5 Marshfield, MA [Revised]

Marshfield Airport, MA
(lat. 42°05'53" N, long. 70°40'20" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshfield Airport, excluding that airspace within the Boston, MA Class E Airspace.

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ANE MA E5 Northampton, MA [Revised]

Northampton Airport, MA
(lat. 42°19'41" N, long. 72°36'41" W)

That airspace extending upward from 700 feet above the surface within a 13.3-mile radius of Northampton Airport; excluding that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Springfield/Chicopee, MA, Keene, NH, and Windsor Locks, CT, Class E Airspace.

ANE MA E5 Palmer, MA [Revised]

Palmer, Metropolitan Airport, MA
(lat. 42°13'24" N, long. 72°18'41" W)
Palmer NDB
(lat. 42°13'26" N, long. 72°18'45" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Metropolitan Airport, and within 3.9 miles on each side of the Palmer NDB 201° bearing extending from the 6.3-mile radius to 13.3 miles southwest of the Palmer NDB; excluding that airspace within the Springfield/Chicopee, MA Class D Airspace during the specific dates and times it is effective, and that airspace within the Springfield/Chicopee, MA, Northampton, MA, and Windsor Locks, CT, Class E Airspace.

ANE MA E5 Pittsfield, MA [Revised]

Pittsfield Municipal Airport, MA
(lat. 42°25'36" N, long. 73°17'34" W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Pittsfield Municipal Airport, and within 4 miles on each side of the Pittsfield Municipal Airport 065° bearing extending from the 4-mile radius to 16.2 miles northeast of the Pittsfield Municipal Airport; excluding that airspace within the Great Barrington, MA Class E Airspace.

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ANE MA E5 Provincetown, MA [Revised]

Provincetown Municipal Airport, MA
(lat. 42°04'19" N, long. 70°13'17" W)
Provincetown NDB
(lat. 42°04'08" N, long. 70°13'25" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Provincetown Municipal Airport, and within 8 miles north and 4 miles south of the Provincetown NDB 051° bearing extending from the Provincetown NDB to 16 miles northeast of the Provincetown NDB, and within 8 miles north and 4 miles south of the Provincetown NDB 257° bearing extending from the Provincetown NDB to 16 miles southwest of the Provincetown NDB; excluding that airspace within the Marshfield, MA, and Boston, MA, Class E Airspace.

ANE MA E5 Southbridge, MA [Revised]

Southbridge Municipal Airport, MA
(lat. 42°06'03" N, long. 72°02'18" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Southbridge Municipal Airport, excluding that airspace within the Worcester, MA Class E Airspace.

ANE MA E5 Springfield/Chicopee, MA [Revised]

Springfield/Chicopee, Westover AFB, MA
(lat. 42°11'52" N, long. 72°31'48" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Westover AFB; excluding that airspace within the Westfield, MA Class E Airspace, and that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective.

ANE MA E5 Taunton, MA [Revised]

Taunton Municipal Airport, MA
(lat. 41°52'28" N, long. 71°01'01" W)
Taunton NDB
(lat. 41°52'35" N, long. 71°01'01" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Taunton Municipal Airport; excluding that airspace within the Boston, MA, Fall River, MA, New Bedford, MA, and Mansfield, MA, Class E Airspace.

ANE MA E5 Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(lat. 42°09'28" N, long. 72°42'56" W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Barnes Municipal Airport; excluding that airspace within the Windsor Locks, CT Class C Airspace, and that airspace within the Northampton, MA, Palmer, MA, and Windsor Locks, CT, Class E Airspace, and that airspace within the Springfield, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective.

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ANE ME E5 Auburn, ME [Revised]

Auburn/Lewiston Municipal Airport, ME
(lat. 44°02'54" N, long. 70°17'00" W)
Lewis LOM
(lat. 43°57'50" N, long. 70°20'08" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Auburn/Lewiston Municipal Airport, and within 3.9 miles on each side of the LEWIE LOM 203° bearing extending from the 7.5-mile radius to 8.2 miles southwest of the LEWIE LOM.

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ANE ME E5 Bangor, ME [Revised]

Bangor International Airport, ME
(lat. 44°48'27" N, long. 68°49'41" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 68°52'26" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Bangor International Airport, and that airspace within 6.5 miles south and 4 miles north of the Bangor International Airport 136° bearing extending from the 10-mile radius to 16.7 miles southeast of the Bangor International Airport, and that airspace within 3.7 miles on each side of the Bangor

VORTAC 318° radial extending from the 10-mile radius to 8.8 miles northwest of the Bangor VORTAC; excluding that airspace within the Bangor, ME Class D Airspace.

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ANE ME E5 Belfast, ME [Revised]

Belfast Municipal Airport, ME
(lat. 44°24'35" N, long. 69°00'44" W)
Belfast NDB
(lat. 44°24'40" N, long. 69°00'39" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Belfast Municipal Airport from the Belfast Airport 050° bearing clockwise to the Belfast Airport 180° bearing, and that airspace within 9.4-mile radius from the Belfast Airport 180° bearing clockwise to the Belfast Airport 050° bearing, and that airspace within 3 miles on each side of the Belfast NDB 306° bearing extending from the 9.4-mile radius to 15.4 miles northwest of the Belfast NDB.

ANE ME E5 Biddeford, ME [Revised]

Biddeford Municipal Airport, ME
(lat. 43°27'51" N, long. 70°28'21" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Biddeford Municipal Airport, excluding that airspace within the Kennebunkport, ME Class E Airspace.

ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME
(lat. 43°53'32" N, long. 69°56'19" W)
Brunswick Navy TACAN
(lat. 43°54'09" N, long. 69°56'43" W)
Wiscasset Airport, ME
(lat. 43°57'40" N, long. 69°42'48" W)
Wiscasset NDB
(lat. 43°58'57" N, long. 69°38'25" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 7.8-mile radius to 10.4 miles south of the Brunswick Navy TACAN, and within a 8.4-mile radius of Wiscasset Airport, and within 4 miles south and 6 miles north of the Navy Brunswick TACAN 070° radial extending from the 8.4-mile radius to 25.5 miles east of the Navy Brunswick TACAN.

ANE ME E5 Frenchville, ME [Revised]

Frenchville, Northern Aroostook Regional Airport, ME
(lat. 47°17'08" N, long. 68°18'46" W)
Frenchville NDB
(lat. 47°16'05" N, long. 68°15'24" W)

That airspace extending upward from 700 feet above the surface within a 8.9-mile radius of Northern Aroostook Regional Airport, and that airspace within 4.0 miles on each side of the Frenchville NDB 113° bearing extending from the 8.9-mile radius to 9.8 miles southeast of Frenchville NDB; excluding that airspace outside of the United States.

ANE ME E5 Fryeburg, ME [Revised]

Fryeburg, Eastern Slopes Regional Airport, ME
(lat. 43°59'26" N, long. 70°56'49" W)
Sebago NDB
(lat. 43°54'16" N, long. 70°46'56" W)

That airspace extending upward from 700 feet above the surface within a 2.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 197° bearing clockwise to the Eastern Slopes Airport 295° bearing, and that airspace within a 10.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 295° bearing clockwise to the Eastern Slopes Regional Airport 197° bearing, and that airspace within 2 miles on each side of the Sebago NDB 306° bearing extending from 2.3-mile radius to the Sebago NDB.

ANE ME E5 Greenville, ME [Revised]

Greenville Municipal Airport, ME
(lat. 45°27'45" N, long. 69°33'02" W)
Squaw NDB
(lat. 45°31'18" N, long. 69°40'28" W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Greenville Municipal Airport from the Greenville Airport 345° bearing clockwise to the Greenville Airport 315° bearing, and within a 11.5-mile radius of Greenville Municipal Airport from the Greenville Airport 315° bearing clockwise to the Greenville Airport 345° bearing, and within 3 miles on each side of the Squaw NDB 305° bearing extending from the 9.4-mile radius to 9.7 miles northwest of the Squaw NDB.

ANE ME E5 Houlton, ME [Revised]

Houlton International Airport, ME
(lat. 46°07'25" N, long. 67°47'32" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Houlton International Airport excluding that airspace outside of the United States.

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ANE ME E5 Lincoln, ME [Revised]

Lincoln Regional Airport, ME
(lat. 45°21'44" N, long. 68°32'05" W)
Lincoln NDB
(lat. 45°21'23" W, long. 68°32'13" W)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Lincoln Regional Airport, and within 4 miles west and 8 miles east of the Lincoln NDB 342° bearing extending from 10.3-mile radius to 16 miles northwest of the Lincoln NDB.

ANE ME E5 Machias, ME [Revised]

Machias Valley Airport, ME
(lat. 44°42'11" N, long. 67°28'41" W)
Machias NDB
(lat. 44°42'16" N, long. 67°28'42" W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Machias Valley Airport.

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ANE ME E5 Millinocket, ME [Revised]

Millinocket Municipal Airport, ME
(lat. 45°38'52" N, long. 68°41'08" W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Millinocket Municipal Airport, excluding that airspace within the Lincoln, ME Class E Airspace.

ANE ME E5 Norridgewock, ME [Revised]

Norridgewock, Central Maine Airport of Norridgewock, ME
(lat. 44°42'56" N, long. 69°51'59" W)
Augusta VORTAC
(lat. 44°19'12" N, long. 69°47'47" W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Central Maine Airport from the Central Maine Airport 190° bearing clockwise to the Central Maine Airport 340° bearing, and within a 10-mile radius of the Central Maine Airport from the Central Maine Airport 340° bearing clockwise to the Central Maine Airport 190° bearing, and within 4 miles west and 5 miles east of the Augusta VORTAC 353° radial extending from the 10-mile radius to the Augusta VORTAC; excluding that airspace within the Augusta, ME Class E Airspace.

ANE ME E5 Old Town, ME [Revised]

Old Town, Dewitt Field, Old Town Municipal Airport, ME
(lat. 44°57'10" N, long. 68°40'25" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 68°52'26" W)
Old Town NDB
(lat. 45°00'24" N, long. 68°38'00" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dewitt Field, Old Town Municipal Airport, and within 2.8 miles on each side of the Old Town NDB 029° bearing extending from the 7-mile radius to 9 miles northeast of the Old Town NDB, and within 4 miles on each side of the Bangor VORTAC 050° radial extending from the 7-mile radius to 25 miles northeast of the Bangor VORTAC; excluding that airspace within the Bangor, ME Class C Airspace, and that airspace within the Bangor, ME Class E Airspace.

ANE ME E5 Pittsfield, ME [Revised]

Pittsfield Municipal Airport, ME
(lat. 44°46'06" N, long. 69°22'28" W)
Burnham NDB
(lat. 44°41'50" N, long. 69°21'28" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Pittsfield Municipal Airport, and within 2.9 miles on each side of the Burnham NDB 170° bearing extending from the 7.5-mile radius to 9.2 miles south of the NDB; excluding that airspace within the Belfast, ME Class A Airspace.

ANE ME TA Portland, ME [Revised]

Portland International Jetport, ME
(lat. 43°38'46" N, long. 70°18'31" W)
ORHAM LOM
(lat. 43°39'09" N, long. 70°26'28" W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of the Portland International Jetport, and within 3 miles on each side of the ORHAM LOM 275° bearing extending from the 8.7-mile radius to 10 miles west of the ORHAM LOM; including that airspace within the Portland, ME Class C Airspace, and that airspace within the Biddeford, ME Class E Airspace.

ANE ME E5 Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(lat. 46°41'20" N, long. 68°02'41" W)
Presque Isle VORTAC
(lat. 46°46'27" N, long. 68°05'40" W)
EXCAL LOM

(lat. 46°36'37" N, long. 68°01'08" W)
Caribou Municipal Airport, ME
(lat. 46°52'17" N, long. 68°01'04" W)
Loring Air Force Base
(lat. 46°57'01" N, long. 67°53'08" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles on each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within a 8.5-mile radius of Caribou Municipal Airport, and within an 8.5-mile radius of Loring Air Force Base; excluding that airspace outside of the United States, and that airspace within the Limestone, ME, Class D Airspace.

ANE ME E5 Princeton, ME [Revised]

Princeton Municipal Airport, ME
(lat. 45°12'02" N, long. 67°33'52" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Princeton Municipal Airport, excluding that airspace outside the United States.

ANE ME E5 Rangeley, ME

Rangeley Municipal Airport, ME
(lat. 44°59'30" N, long. 70°39'49" W)
Rangeley NDB
(lat. 44°56'04" N, long. 70°45'04" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Rangeley Municipal Airport, and within 4 miles southeast and 8 miles northwest of the Ranageley NDB 227° bearing extending from Ranageley NDB to 16 miles southwest of NDB; excluding that airspace within the Berlin, NH, Class E Airspace.

ANE ME E5 Rockland, ME [Revised]

Rockland, Knox County Regional Airport, ME
(lat. 44°03'37" N, long. 69°05'59" W)
Sprucehead NDB
(lat. 43°59'52" N, long. 69°07'03" W)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of Knox County Regional Airport, and within 4 miles east and 5.5 miles west of the Sprucehead NDB 194° bearing extending from the 8.4-mile radius to 10 miles south of Sprucehead NDB

ANE ME E5 Sanford, ME [Revised]

Sanford Municipal, ME
(lat. 43°23'38" N, long. 70°42'29" W)
Kennebunk VORTAC
(lat. 43°25'33" N, long. 70°36'49" W)
SANFD LOM
(lat. 43°20'04" N, long. 70°50'04" W)

That airspace extending upward from 700 feet above the surface within 10.7 miles of Sanford Municipal Airport from the Sanford Airport 253° bearing clockwise to the Sanford Airport 073° bearing, and within 6.7 miles of the Sanford Municipal Airport from the Sanford Airport 073° bearing clockwise to the Sanford Airport 253° bearing, and within 4 miles north and 5 miles south of the SANFD LOM 238° bearing extending from the 6.7-mile radius to 10 miles southwest of the SANFD LOM, and within 4 miles north and 5 miles south of the Kennebunk VORTAC 064° radial extending from 6.7-mile radius to 9 miles northeast of the Kennebunk VORTAC; excluding that airspace within the Portsmouth, ME, Kennebunkport, ME, and Biddeford, ME, Class E Airspace.

ANE ME E5 Waterville, ME [Revised]

Waterville Robert LaFleur Airport, ME
(lat. 44°32'00" N, long. 69°40'32" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Waterville Robert LaFleur Airport; excluding that airspace within the Norridgewock, ME, and Augusta, Class E Airspace.

ANE NH E5 Berlin, NH [Revised]

Berlin Municipal Airport, NH
(lat. 44°34'30" N, long. 71°10'32" W)
Berlin VOR/DME
(lat. 44°38'00" N, long. 71°11'10" W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Berlin Municipal Airport, and within 4 miles west and 8 miles east of the Berlin VOR/DME 355° radial extending from the 8.2-mile radius to 16 miles north of the Berlin VOR/DME.

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ANE NH E5 Concord, NH [Revised]

Concord Municipal Airport, NH
(lat. 43°12'12" N, long. 71°30'07" W)
EPSOM NDB
(lat. 43°07'07" N, long. 71°27'09" W)
Concord VORTAC
(lat. 43°13'11" N, long. 71°34'31" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Concord Municipal Airport, and within 4 miles on each side of the EPSOM NDB 156° bearing extending from the 12-mile radius to 9.6 miles south of the EPSOM NDB, and within 8 miles south and 15 miles north of the Concord VORTAC 300° radial extending from the 12-mile radius to 20 miles northwest of the Concord VORTAC; excluding that airspace within the Manchester, NH Class C Airspace.

ANE NH E5 Keene, NH [Revised]

Keene, Dillant Hopkins Airport, NH
(lat. 42°53'53" N, long. 72°16'14" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°01'00" N, long. 72°13'00" W and running to lat. 42°53'00" N, long. 71°55'00" W, then to lat. 42°38'00" N, long. 71°41'00" W, then to lat. 42°26'00" N, long. 71°42'00" W, then to lat. 42°26'00" N, long. 71°53'00" W, then to lat. 42°24'00" N, long. 72°00'00" W, then to lat. 42°28'00" N, long. 72°15'00" W, then to lat. 42°28'00" N, long. 72°40'00" W, then to lat. 42°39'00" N, long. 72°48'00" W, then to lat. 42°46'00" N, long. 72°43'00" W, then to lat. 42°52'00" N, long. 72°28'00" W, then to lat. 43°05'00" N, long. 72°34'30" W, then to lat. 43°10'00" N, long. 72°19'00" W, then to the point of beginning.

ANE NH E5 Laconia, NH [Revised]

Laconia Municipal Airport, NH
(lat. 43°34'22" N, long. 71°25'08" W)
Belknap NDB
(lat. 43°32'12" N, long. 71°32'13" W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of the Laconia Municipal Airport, and within 2.8 miles on each side of the Belknap NDB 249° bearing extending from the 3.5-mile radius to 8.8 miles southwest of the Belknap NDB, and within 2.8 miles on each side of the Laconia Municipal Airport 041° bearing extending from the 3.5-mile radius to 6.5 miles northeast of the Laconia Municipal Airport.

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ANE NH E5 Manchester, NH [Revised]

Manchester Airport, NH
(lat. 42°56'00" N, long. 71°26'16" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Airport; excluding that airspace within the Manchester, NH Class C Airspace, and that airspace within the Nashua, NH, and Lawrence, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Boston, MA, and Keene, NH, Concord, NH, Portsmouth, NH, Nashua, NH, Newburyport, MA, Class E Airspace.

ANE NH E5 Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Boire Field, and within that area bounded by a line beginning at lat. 42°53'54" N, long. 71°30'47" W and running to lat. 42°53'22" N, long. 71°31'52" W, then to lat. 43°02'25" N, long 71°13'28" W, then to lat. 42°55'15" N, long. 71°06'58" W, then to lat. 42°38'30" N, long. 71°21'48" W, then to lat. 42°40'48" N, long. 71°27'50" W, then to lat. 42°40'30", long. 71°27'03", and within 4 miles on each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the CHERN NDB; excluding that airspace within the Nashua, NH Class D Airspace during the specific dates and times it is effective, and that airspace within the Portsmouth, NH, Fort Devens, MA, and Boston, MA, Class E Airspace, and that airspace within the Manchester, NH Class C Airspace

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ANE NH E5 Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(lat. 43°04'40" N, long. 70°49'24" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°25'00" N, long. 71°13'00" W and running to lat. 43°27'00" N, long. 70°56'00" W, then to lat. 43°25'00" N, long. 70°48'00" W, then to lat. 43°14'00" N, long. 70°36'00" W, then to lat. 43°00'00" N, long. 70°36'00" W, then to lat. 42°54'00", long. 70°52'00" W, then to lat. 42°49'00" N, long. 71°09'00" W, then to lat. 42°53'00" N, long. 71°12'00" W, then to lat. 43°03'00" N, long. 71°05'00" W, then to the point of beginning; excluding that airspace within the Portsmouth, NH Class D Airspace,

and that airspace within the Newburyport, MA, and Boston MA, Class E Airspace.

ANE NH E5 Whitefield, NH [Revised]

Whitefield, Mt. Washington Regional Airport, NH
(lat. 44°22'03" N, long. 71°32'40" W)
Mahn NDB
(lat. 44°21'44" N, long. 71°41'10" W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Mt. Washington Regional Airport, and within 2.9 miles on each side of the MAHN NDB 267° bearing extending from 3.5-mile radius to 9.5 miles west of the NAHN NDB; excluding that airspace within the Lyndonville, VT Class E Airspace.

ANE RI E5 Block Island, RI [Revised]

Block Island State Airport, RI
(lat. 41°10'05"N, long. 71°34'40"W)
Sandy Point VOR/DME
(lat. 41°10'03" N, long. 71°34'34" W)
Block Island NDB
(lat. 41°09'59" N, long. 71°34'47" W)

That airspace extending upward from 700 feet above the surface within a 9.0-mile radius of Block Island State Airport, and within 4 miles north to 8 miles south of the Block Island NDB 271° bearing extending from the 9.0-mile radius to 16 miles west of the Block Island NDB, and within 4 miles south to 8 miles north of the Sandy Point VOR/DME 080° radial extending from the 9.0-mile radius to 16 miles east of the Sandy Point VOR/DME.

ANE RI E5 Newport, RI [Revised]

Newport State, RI
(lat. 41°31'56" N, long. 71°16'53" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the North Kingstown, RI, and New Bedford, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Providence, RI Class D Airspace, and that airspace within the New Bedford, MA, and Fall River, MA, Class E Airspace.

ANE RI E5 North Kingstown, RI [Revised]

North Kingstown, Quonset State Airport, RI
(lat. 41°35'48" N, long. 71°24'43" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Quonset State Airport, and within 6.5 miles east to 4.5 miles west of the Quonset State Airport 145° bearing extending from the 9.3-mile radius to 16.3 miles southeast of the Quonset State Airport, and within 5 miles east to 8 miles west of the Providence VORTAC 355° radial extending from the 9.3-mile radius to 14.5 miles north of the Providence VORTAC; excluding that airspace within the North Kingstown, RI, Class D Airspace during the dates and times it is effective, and that airspace within the Providence, RI Class C Airspace, and that airspace within the Newport, RI, and New Bedford, MA, Class E Airspace.

ANE RI E5 Pawtucket, RI [Revised]

Pawtucket, North Central State, RI
(lat. 41°55'14" N, long. 71°29'29" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)
Putnam VOR/DME
(lat. 41°57'20" N, long. 71°50'39" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of North Central State Airport, and within 2 miles on each side of the North Central State Airport 032° bearing extending from the 6.6-mile radius to 13.4 miles northeast of the North Central State Airport, and within 4.5 miles east and 6.5 miles west of the North Central State Airport 212° bearing extending from the 6.6-mile radius to 16 miles southwest of the North Central Airport, and within 3.6 miles on each side of the Putnam VOR/DME 097° radial extending from the 6.6-mile radius to 6.8 miles east of the Putnam VOR/DME, and within 3.8 miles on each side of the Providence VORTAC 347° radial extending from the 6.6-mile radius to 0.8 miles north of the Providence VORTAC; excluding that airspace within the Providence, RI Class C Airspace, and that airspace within the North Kingstown, RI, Danielson, CT, and Boston, MA Class E Airspace.

ANE RI E5 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N, long. 71°25'40" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 8.8-mile radius to 16.7 miles southwest of the Providence VORTAC, within 4 miles on each side of the VORTAC 330° radial extending from the 8.8-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 8.8-mile radius to 9.6 miles southeast of the Providence VORTAC; excluding that airspace within the North Kingstown, RI Class D Airspace during the dates and times it is effective, and that airspace within the Providence, RI Class C Airspace, and that airspace within the North Kingstown, RI, Pawtucket, RI, Newport, RI, and Fall River, MA, Class E Airspace.

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ANE RI E5 Westerly, RI [Revised]

Westerly State Airport, RI
(lat. 41°20'56" N, long. 71°48'12" W)
Westerly NDB
(lat. 41°20'40" N, long. 71°48'52" W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Westerly State Airport, and within 2.9 miles on each side of the Westerly NDB 222° bearing extending from the 8.5-mile radius to 9.4 miles southwest of Westerly NDB; excluding that airspace within the Block Island, RI Class E Airspace, and that airspace within the Groton, CT Class D Airspace during the specific dates and times it is effective.

ANE RI E5 Bennington, VT [Revised]

Bennington, William H. Morse State Airport, VT
(lat. 41°53'29" N, long. 73°14'47" W)
Cambridge VOR
(lat. 42°59'40" N, long. 73°20'38" W)

That airspace extending upward from 700 feet above the surface within a 2.5-mile radius of William H. Morse State Airport, and within 1.3 miles on each side of the Cambridge VOR 145° radius extending from the 2.5-mile radius to 1.4 miles southeast of Cambridge VOR.

ANE VT E5 Burlington, VT [Revised]

Burlington International Airport, VT
(lat. 44°28'17" N, long. 73°09'10" W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Burlington, VT Class C Airspace, and that airspace within the Plattsburgh, NY Class E Airspace, and that airspace within the Plattsburgh, NY Class D Airspace.

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ANE VT E5 Lyndonville, VT [Revised]

Lyndonville, Caledonia County Airport, VT
(lat. 44°34'09" N, long. 72°01'04" W)

That airspace extending upward from 700 feet above the surface within a 12.3-mile radius of Caledonia County Airport.

ANE VT E5 Montpelier, VT [Revised]

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12'12" N, long. 72°33'44" W)
Montpelier VOR/DME
(lat. 44°05'08" N, long. 72°26'57" W)
Williams NDB
(lat. 44°07'14" N, long. 72°31'06" W)
Mt. Mansfield NDB
(lat. 44°23'12" N, long. 72°41'36" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Edward F. Knapp State Airport, and within 3 miles on each side of the Montpelier VOR/DME 144° radial extending from the 8-mile radius to 10 miles southeast of the Montpelier VOR/DME, and within 2.8 miles on each side of the Williams NDB 159° bearing extending from the 8-mile radius to 9.3 miles southeast of the Williams NDB, and within 3 miles on each side of the Mt. Mansfield NDB 332° bearing extending from the 8-mile radius to 9.8 miles northwest of the Mt. Mansfield NDB.

ANE VT E5 Morrisville, VT [Revised]

Morrisville-Stowe State Airport, VT
(lat. 44°32'04" N, long. 72°36'50" W)
Morrisville-Stowe NDB
(lat. 44°34'43" N, long. 72°35'14" W)

That airspace extending upward from 700 feet above the surface within a 4.0-mile radius of Morrisville-Stow Airport, and

within 2.9 miles on each side of the Morrisville-Stow NDB 034° bearing extending from 4.0-mile radius to 9.2 miles northeast of the Morrisville-Stow NDB.

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ANE VT E5 Springfield, VT [Revised]

Springfield, Hartness State Airport, VT
(lat. 43°20'37" N, long. 72°31'02" W)
Springfield NDB
(lat. 43°16'12" N, long. 72°35'11" W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Hartness State Airport, and within 2.8 miles on each side of the Springfield NDB 217° bearing from 3.5-mile radius to 9 miles southwest of the Springfield NDB.

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Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

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BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for FY 1994 reflects the costs to the Commission of providing those services during fiscal years 1991, 1992 and 1993. Accordingly, the fee for applications for contract market designation for a futures contract will be increased to $12,000 from $11,000, the fee for contract market designation for an option contract will remain at $3,000, the fee for contract markets which simultaneously submit designation applications for a futures and an option on that futures contract will be raised to a combined fee of $13,000 for both from $12,000 for both, the fee for leverage commodity registration will be maintained at $4,500 and the schedule of fees for registered futures association and exchange rule enforcement and financial reviews is published. These adjustments reflect the Commission's actual costs of providing these services during FY 1991, FY 1992 and FY 1993.

EFFECTIVE DATES: Contract Market Designation and Leverage Commodity Registration March 11, 1994. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202-254-6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the FY 1994 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

Background Information

I. Computation of Fees

In accordance with Section 237 of the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A-76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1991—94%; FY 1992—99%; FY 1993—93%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1991, FY 1992 and FY 1993 are averaged. This results in a calculation of the average annual cost for each project over the three-year period.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three year moving average of the actual costs expended and the number of contracts reviewed in that period of time. The fee charged was reviewed again in FY 1985 and every year thereafter to determine the fee for the current year. In FY 1985 the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the proposed fee covered both futures and option applications. In FY 1992 the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of the option contract application was even lower.

In FY 1993 the Commission lowered the fees for designation applications to $11,000 for a futures contract and $3,000 for an option contract from the FY 1992 levels of $15,000 and $7,000 respectively. In addition, the combined fee for designation applications submitted simultaneously for a futures contract and option on that futures contract was lowered to $12,000 from $17,000. These lower fees were based on a decline in costs through FY 1992 as well as an anticipated further decline in

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

costs due to revisions of Guideline No. 1.

A review of actual costs of processing applications for contract market designation for a futures contract for FY 1991, FY 1992 and FY 1993 indicates that, while actual costs have continued to decline, the average cost over the three year period was $12,199. A review of actual costs of processing applications for contract market designation for an option contract for FY 1991, FY 1992 and FY 1993 reveals that the average costs over the three year period was $3,086. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be raised to $12,000. The fee for applications for contract market designation as an option contract will be maintained at $3,000 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be raised to $13,000.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1993. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

The average annual costs for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1991–1993 average annual costs for review services
Chicago Board of Trade	$217,644.28
Chicago Mercantile Exchange	229,993.05
Commodity Exchange, Inc.	69,032.61
Coffee, Sugar and Cocoa Exchange	87,703.08
New York Mercantile Exchange	74,624.26
New York Cotton Exchange	142,015.07
Kansas City Board of Trade	36,226.23
New York Futures Exchange	129,357.71
Minneapolis Grain Exchange	41,014.37
Philadelphia Board of Trade	3,542.42
Amex Commodity Corporation	1,507.53
Total	1,032,660.60

The average annual cost for the National Futures Association is $298,050.22.

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR part 1, appendix B), the Commission also takes volume into account in the calculation of these fees. The Commission looks at trading volume for the three fiscal years to determine the actual volume for each exchange and its percentage of total trading volume across all exchanges during that same period. Volume figures are as follows:

Exchange	Three-years average volume	Percentage of total volume across exchanges
Chicago Board of Trade	457,111,353	43.1740
Chicago Mercantile Exchange	378,706,178	34.9627
Commodity Exchange, Inc.	46,220,246	4.1671
Coffee, Sugar and Cocoa Exchange	29,746,285	2.7462
New York Mercantile Exchange	138,175,629	12.7566
New York Cotton Exchange	11,676,287	1.0780
Kansas City Board of Trade	4,495,318	.4150
New York Futures Exchange	4,265,358	.3938
Minneapolis Grain Exchange	2,136,936	.1973
Philadelphia Board of Trade	101,725	.0094
Amex Commodity Corporation	.....	.....
Total	1,083,172,202	100.0000

The formula for calculating the fee is as follows

0.5a+0.5vt

where:

a=actual cost
v=% of total volume
t=total cost for all exchanges

If the calculated fee using this formula is higher than actual costs, the exchange would pay only actual costs. If the calculated fee using the formula is less than actual costs then the exchange would pay the calculated fee. No exchange would pay more than actual costs. Also, if an exchange has no volume over the three year period it would pay a flat 50% of actual costs. The National Futures Association will continue to be charged 100% of its actual costs.

For example:

The Minneapolis Grain Exchange had an actual cost of $41,014.37 (a), and its three-year volume was 0.1973% of the total three year volume. As a result, the exchange's fee for FY 1994 is:

(.5)($41,014.37) +
(.5)(.001973)($1,032,660.60) = or
20,507.19+1,018.72=21,525.91

Based upon this formula the fees for all of the exchanges and the NFA for FY 1994 are as follows:

Exchange/NFA	Fee
Chicago Board of Trade	$217,644
Chicago Mercantile Exchange	229,993
Commodity Exchange, Inc	56,549
Coffee, Sugar and Cocoa Exchange	58,031
New York Mercantile Exchange	74,624
New York Cotton Exchange	76,574
Kansas City Board of Trade	20,255
New York Futures Exchange	66,712
Minneapolis Grain Exchange	21,526
Philadelphia Board of Trade	1,820
Amex Commodity Corporation	754
National Futures Association	298,050
Total	1,122,532

As in the calculation of fees in previous years, the FY 1994 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"); 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Acting Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

* * * * *

Issued in Washington, DC, on March 7, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5651 Filed 3–10–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR PARTS 154, 157, 284, 385 and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Notice of Availability of Revised Edit-Checking and Print Software and Errata Notice for FERC Form No. 2

March 7, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of revised PC executable edit-checking and print software modules, User's Manual and errata notice for FERC Form No. 2.

SUMMARY: On December 23, 1993, the Commission issued revised record formats and edit-checks for the FERC Form No. 2. Most of the changes to the record formats and edit checks were necessary to accommodate certain new accounting requirements and new and revised pages for the Form No. 2 that were established in Order No. 552, issued March 31, 1993. This version of the Form No. 2 software provides for the new accounting and reporting requirements of Order No. 552; includes "cosmetic" enhancements to improve the readability of the printed output pages; and expands the validation of the electronically filed Form No. 2 data through additional edit-checking equations.

The Form No. 2 edit-checking and print software modules are distributed as one package. Details on how to obtain the software are explained in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this Notice.

An errata notice to correct several errors in the Form No. 2 list of new and revised record formats and edit check equations released on December 23, 1993, is provided in Appendix A.

DATES: The Form No. 2 edit-checking and print software modules and User's Manual are available on March 7, 1994.

ADDRESSES: Requests for the Form No. 2 edit-checking and print software modules and User's Manual should be directed to: Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208–1371.

FOR FURTHER INFORMATION CONTACT: For general information on the Form No. 2 software and documentation, contact: Robert Trimble at (202) 208–0906.

For information related to the execution of the software, contact: James M. Krug at (202) 208–0677.

SUPPLEMENTARY INFORMATION: Copies of the Form No. 2 (1) edit-checking and print software modules, (2) User's Manual and (3) record formats are available through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). The Form No. 2 software, User's Manual and record formats can be purchased on diskette in the following ways:

(1) by written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, ATTN: Mr. William McDermott, Chief, Public Reference & Files Branch.

Please enclose a check, payable to LaDorn System Corporation for $7.00 per diskette ordered and $3.40 to cover postage and handling. Allow 10–14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for $7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street, NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1–800–676–FERC. Orders placed by phone will be assessed charges as follows:

(a) A $25.00 processing fee,

(b) $7.00 per diskette ordered, and

(c) Cost of shipping and handling. (The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208–1371 or LaDorn (1–800–676–FERC) for information and the cost of purchasing the paper version of any documents.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and software. Any questions concerning the application of the information contained in these documents should be directed to the individual listed in the **FOR FURTHER INFORMATION CONTACT:** Section of this notice.

This notice, including all of the appendices, is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A—Corrections to the Form No. 2 New and Revised Record Formats and Edit Check Equations Issued on December 23, 1993 (Appendices B and D)

Appendix B—Summary of Revisions to the FERC Form No. 2 Record Formats and General Instructions

Revise:

1. Record F6/17: Item 862—the Comments Column should read "(Sum of Items 844, 845, 851, 852, 854 and 861)—Item 853—Item 855—Item 860."

APPENDIX D—List of New and Revised Form No. 2 Edit Checks

Add:

2. Edit Check #168a: Item 561 (Stock Code = 3) = Sum of Item 561 (Stock Code = 1).

3. Edit Check #527a: Item 549 = Item 545 + 546 − 548 (for Deferred Debit Codes 1, 2 and 3).

Revise:

4. Edit Check #98g: Item 398 (Transaction Type = 2) = Item 398 (Transaction Type = 1) + Item 398 (Transaction Type = 3) + Item 398 (Transaction Type = 5) + Item 398 (Transaction Type = 6).

5. Edit Check #98g: Item 399 (Transaction Type = 2) = Item 399 (Transaction Type = 1) − Item 399 (Transaction Type = 4) + Item 399 (Transaction Type = 5) + Item 399 (Transaction Type = 6).

6. Edit Check #116: Item 475 = Item 472 + Item 473 + Item 474.

7. Edit Check #498: Item 1359 = Item 1331 (Information Reported Code = 2) + Item 1332 (Information Reported Code = 2).

8. Edit Check #538: Item 1266 = Item 1258 + 1261 + 1262 − 1265 (for Well Type Codes 1, 2 and 3).

Delete:

9. Edit Checks #530a through #530f.

[FR Doc. 94–5655 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 102, and 134

[T.D. 94–4]

RIN 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Extension of Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments on interim Customs Regulations for determining the country of origin of certain goods for purposes of Annex 311 of the North American Free-Trade Agreement, as implemented under the North American Free-Trade Agreement Implementation Act (Act). Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended to July 5, 1994.

DATE: Comments must be received on or before July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, a document was published in the **Federal Register** (T.D. 94–4, 59 FR 110) containing the interim regulations that represent fulfillment of the obligations of the United States under paragraph 1 of Annex 311 of the North American Free-Trade Agreement (NAFTA), as implemented under the North American Free-Trade Agreement Implementation Act (Act) (Pub. L. 103–182, 107 Stat. 437 (December 8, 1993)). The document solicited public comments that were to be received on or before April 4, 1994.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the interim regulations and prepare responsive comment. In view of the extensiveness and importance of the interim regulations, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended to July 5, 1994.

Dated: March 3, 1994.

Stuart P. Seidel,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 94–5527 Filed 3–10–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 301

[TD 8527]

RIN 1545–AS53

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 301 implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service. The regulations specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

EFFECTIVE DATE: These regulations are effective March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, was signed into law on December 8, 1993. Section 522 of the Act adds section 6103(l)(14) to the Internal Revenue Code (Code) and directs the Treasury Department to adopt temporary regulations to implement the new section.

Explanation of Provisions

The temporary regulations specify the procedure by which return information may be disclosed to officers and employees of the United States Customs Service, as authorized by section 6103(l)(14) of the Code, and describe the conditions and restrictions on the use and redisclosure of that information.

The temporary regulations limit the return information to be disclosed to that necessary to the purpose authorized by the statute, i.e., ascertaining the correctness of entries in Customs audits and in other actions to recover any loss of revenue or collect amounts determined to be due and owing as a result of these audits. The temporary regulations permit redisclosure to the Department of Justice for civil enforcement actions related to these collection efforts. Consistent with the statute's legislative history, the temporary regulations prohibit disclosure of information either (i) relating to Advance Pricing Agreements (as described in Rev. Proc. 91–22, 1991–1 C.B. 526), or (ii) covered by tax treaties and executive agreements with respect to which the United States is a party. The temporary regulations also specifically prohibit any use or redisclosure of the information by Customs in a manner inconsistent with section 6103 and the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6103(l)(14)–1T also issued under 26 U.S.C. 6103(l)(14).

Par. 2. Section 301.6103(l)(14)–1T is added to read as follows:

§ 301.6103(l)(14)–1T Disclosure of return information to United States Customs Service (temporary).

(a) *General rule.* Pursuant to the provisions of section 6103(l)(14) of the Internal Revenue Code, officers and employees of the Internal Revenue Service may disclose to officers and employees of the United States Customs Service return information (as defined by section 6103(b)) with respect to taxes imposed by chapters 1 and 6 of the Internal Revenue Code solely for purposes of, and only to the extent necessary in—

(1) Ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 or;

(2) Other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

(b) *Procedures.* Disclosure of return information by officers or employees of the Internal Revenue Service as provided by paragraph (a) of this section will be made only following receipt by the Internal Revenue Service of a written request for the disclosure by the Commissioner of the U.S. Customs Service identifying—

(1) The particular items of return information to be disclosed;

(2) The particular taxpayer to whom the return information relates;

(3) The taxable period or date to which the return information relates;

(4) The particular purpose for which each item of return information is needed, including an explanation as to how the requested information is necessary to accomplish that purpose. In addition, the request must designate by title the officers and employees of the Customs Service to whom the disclosure is authorized and certify that the Customs Service has initiated or intends to initiate, under section 509 of the Tariff Act of 1930, an audit of each taxpayer for whom return information is requested or that the taxpayer has a transactional or ownership relationship with the subject of such an audit.

(c) *Return information subject to disclosure.* Any return information requested must be necessary to a Customs determination of the correctness of any entry in audits conducted under section 509 of the Tariff Act of 1930. Taxpayers as to whom return information is requested must either be the subject of a Customs audit (or intended audit) or have a transactional or ownership relationship with the subject of a Customs audit. Requested information must relate to the declared value, classification or rate of duty applicable to entered merchandise. Requested information may also include any adjustment by the IRS to the items of return information described by this paragraph.

(d) *Return information not subject to disclosure.* The following return information may not be requested or disclosed pursuant to section 6103(l)(14) of the Internal Revenue Code: any Advance Pricing Agreement or information submitted to or generated by the IRS as part of the negotiation process for an Advance Pricing Agreement, or any information to the extent its disclosure would be inconsistent with a tax treaty or executive agreement with respect to which the United States is a party.

(e) *Impairment of tax administration.* Return information with respect to a taxpayer may not be disclosed pursuant to this section if the IRS determines that the disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation or proceeding.

(f) *Use by Customs Service.* Return information disclosed under this section may be used by the U.S. Customs Service to the extent necessary to ascertain or to document the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 and in any related administrative proceedings to recover any loss of revenue, or to collect duties, taxes or fees, determined to be due and owing pursuant to these audits. Uses may include, to the extent necessary, disclosure to the importer (or the legal representative of such importer) subject to the audit with respect to which the information was requested.

(g) *Disclosure to, and use by, the Department of Justice.* Return information disclosed to officers and employees of the U.S. Customs Service as provided by this section may be disclosed by these officers and employees to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their necessary use in, advocating or defending the correctness of Customs determinations with respect to any entry, in any civil judicial proceeding, or any preparations therefor (or for their necessary use in an investigation which may result in such a proceeding), to recover any loss of revenue, or to collect duties, taxes or fees, determined to be due and owing as a consequence of an audit provided for in section 509 of the Tariff Act of 1930.

(h) *Disclosure by officers and employees of the Department of Justice.* Return information disclosed to officers and employees of the Department of Justice (including United States Attorneys) as provided by this section may be disclosed by these officers and employees to other persons as is necessary to properly accomplish the purposes or activities described in paragraph (g). Disclosure of return information to a person, other than the importer (or the legal representative of the importer) subject to the audit with respect to which the information was originally requested, to properly accomplish any purpose or activity described in paragraph (g) may be made, however, only if the purpose or activity cannot otherwise properly be accomplished without making the disclosure. Disclosures may include, but are not limited to, disclosures where necessary—

(1) To properly obtain the services of persons having special knowledge or technical skills;

(2) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer (or the legal representative of the taxpayer) to whom the return information relates or any witness who may be called to give evidence in the proceeding; or

(3) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

(i) *Use in criminal judicial proceedings.* Return information disclosed pursuant to this section may not be used in any criminal judicial proceeding, or any preparations therefor (or in a criminal investigation which may result in such a proceeding), involving the enforcement of a criminal statute, without compliance with the requirements of section 6103(i) (1) or (2) as appropriate. However, the return information may in any event be used for purposes of complying with the requirements of section 6103(i).

(j) *Restrictions.* Return information disclosed to officers and employees of the U.S. Customs Service or to the Department of Justice as provided by this section may not be used or disclosed for any purpose other than to ascertain, or advocate or defend the correctness of, Customs determinations with respect to, any entry in the audits for which the information was requested or in certain actions resulting from the audits as described above. Return information disclosed to officers and employees of the U.S. Customs Service or to the Department of Justice as provided by this section may not be disclosed to any person, including any contractor of the U.S. Customs Service, except as provided by this section, or as

otherwise provided by section 6103 of the Internal Revenue Code.

Dated: March 7, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–5746 Filed 3–8–94; 2:07 pm]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: Effective immediately, the Postal Service is amending the rules governing disclosure of name and address information, 39 CFR 265.6(f), to limit public access to change of address information filed by individuals and families. This amendment applies only to individual "walk-in" or "write-in" requests for change of address information and does not affect the forwarding of mail, nor does it affect any other postal services for the correction of addresses and mailing lists. Accordingly, persons who submit permanent change of address orders need to be aware that their new addresses may still become known through address correction. The Postal Service is considering further action to prevent disclosure of the change of address of a person who has obtained a protective court order.

DATES: The interim regulations take effect on March 11, 1994. Comments must be received on or before May 10, 1994.

ADDRESSES: Written comments should be directed to Robert G. Krause, Manager, Address Management, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260–6802. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5801, U.S. Postal Service Headquarters.

FOR FURTHER INFORMATION CONTACT: Michael Selnick, Address Management, (202) 268–3519.

SUPPLEMENTARY INFORMATION: Because of 39 U.S.C. 410(c)(1), the name or address of any postal patron is not subject to mandatory disclosure by the Postal Service under the Freedom of Information Act. Nevertheless, current postal regulations reflect a longstanding practice of furnishing a customer's new permanent mailing address upon request to anyone who is already in possession of the customer's name and former address. The Postal Service is able to do this when the customer has filed a Change-of-Address Order, PS Form 3575, or written equivalent, with the post office that serves the old address. The purpose in making the information available has been to provide a convenient means of obtaining the new mailing address of a person with whom one wishes to keep in touch through the mails.

In recent years, the Postal Service has become aware of a growing concern among some members of the public regarding the privacy of address information. Some people have objected to the practice of making an individual's change of address readily available to anyone who asks for it. For many, this concern seems based primarily in a desire to keep information of one's physical whereabouts from falling into the hands of individuals who may pose a threat to one's personal security. This kind of concern is compelling. Moreover, no postal interest is served by furnishing the information to persons who are seeking it for reasons unrelated to the use of the mails. The Postal Service's objective is, as it has always been, to assist persons who wish to correspond with each other through the mails. Given the availability of a variety of address correction services that serve that need, it no longer seems necessary to the Postal Service's legitimate objectives to make the information available to all who might request it either in person or in writing from the post office serving the former address. Having considered the potentially detrimental effects on the privacy interests of its customers, the Postal Service has concluded that it is appropriate to discontinue the practice.

Under this interim rule, private individuals for the most part will no longer be able to obtain the new address of an individual or family simply by requesting it in person or in writing from the post office that serves the former address. The Postal Service, however, will continue to furnish upon request and payment of the prescribed fee the new addresses submitted by those who do not identify themselves on the change of address order as either an individual or a family. Thus, access to the new address of an organization, such as a business or an institution, will not be restricted by the rule. Further, the rule change is not intended to have an effect on any other presently existing address or mailing list correction service.

With one exception, the regulations at § 265.6(d)(6) will remain unchanged insofar as they authorize disclosure of certain address information (1) to a federal, state or local government agency for official purposes, (2) to an authorized person for the purpose of service of legal process, (3) when necessary to comply with a court order, or (4) to a criminal law enforcement agency when an oral request is made through the Inspection Service. The Postal Service considers that making address information available for these purposes is supported by sound public policy. These provisions, which have heretofore operated primarily to permit the disclosure of non-business boxholder and temporary change of address information in the specified circumstances, will, under the revised regulations, also provide authority for the disclosure of the newly restricted permanent change of address information of individuals and families. For example, pursuant to paragraph (d)(6)(ii), which will be renumbered as paragraph (d)(4)(ii), both permanent and temporary change of address information pertaining to an individual or family will be furnished to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of the written information specified in that paragraph. The only substantive change being made to the text of former paragraph (d)(6) occurs in subparagraph (iii), which is being amended in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, to make clear that change of address and boxholder information that is not otherwise subject to disclosure under these regulations may not be disclosed pursuant to a subpoena, which typically is signed by an attorney or a Clerk of Court, but may be disclosed only pursuant to an order of a court bearing the signature of a judge.

Minor conforming changes are also being made in §§ 265.6(d) and 265.9(g) at this time.

Due to the element of personal security of members of the public associated with this rule change, the Postal Service has determined to place the change immediately into effect on an interim basis. Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments concerning the interim rule. These comments will

be considered before a final rule is adopted.

List of Subjects in 39 CFR Part 265

Disclosure of Information, Postal Service.

For the reasons set out in this notice, the Postal Service adopts the following interim amendments to part 265 of 39, Code of Federal Regulations.

PART 265—RELEASE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App 3

§ 265.6 [Amended]

2. Paragraph (d)(1) of section 265.6 is revised and the introductory text of paragraph (d) is republished to read as follows:

* * * * *

(d) *Disclosure of Names and Addresses of Customers.* Upon request, the addresses of specifically identified postal customers will be made available only as follows:

(1) *Change of address.* The new address of any specific customer who has filed a permanent or temporary Change of Address Order (Form 3575, hand-written order or electronically communicated order) will be furnished to any person upon payment of the fee prescribed in paragraphs (e)(3) and (g)(5) of § 265.9, except that the new address of a specific customer who has indicated on the order that the address change is for an individual or an entire family will be furnished only in those circumstances stated at paragraph (d)(4) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order.) Other information on Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section. The fee is waived for providing information under the circumstances listed at paragraph (d)(4) of this section. See paragraph (g)(5) of § 265.9.

* * * * *

3. Paragraph (d)(2) of § 256.6 is removed; paragraph (d)(3) of that section is redesignated as paragraph (d)(2), and the reference to § 256.8 appearing in the first sentence thereof is changed to read "§ 265.9."

4. Paragraph (d)(4) of § 256.6 is removed; paragraph (d)(5) of that section is redesignated as paragraph (d)(3); and the references to paragraphs (d)(6)(i) through (d)(6)(iv) and to paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) appearing in redesignated § 265.6(d)(3) (ii) and (iii) respectively, are changed to read "(d)(4)(i) through (d)(4)(iv)" and "(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)," respectively.

5. Paragraphs (d)(6) through (d)(10) are redesignated as paragraphs (d)(4) through (d)(8) respectively.

6. Redesignated (d)(4)(iii) of § 265.6 is revised to read as follows:

* * * * *

(4) * * *

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

7. In redesignated paragraph (d)(4)(iv) of § 256.6, the reference to paragraph (d)(6)(i) appearing in the last sentence is changed to read "paragraph (d)(4)(i)".

§ 265.9 [Amended]

8. Paragraph (g)(5) of § 265.9 is amended by changing the reference to paragraph (d)(6)(ii) appearing in paragraph (g)(5)(ii) to read "(d)(4)(ii)" and by changing the reference to paragraph (d)(6)(iv) appearing in paragraph (g)(5)(iv) to read "(d)(4)(iv)."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–5749 Filed 3–10–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT12–1–6135; FRL–4807–7]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Butte. The State has committed to complete several actions for this SIP, including issues regarding its New Source Review and Prevention of Significant Deterioration regulations, test methods, emergency episode plan, operating permit program, and contingency measures. EPA will take separate action, as appropriate, on these rules when the State fulfills its related commitments.

EPA is also correcting a previous error in describing the boundary for the Butte nonattainment area.

EFFECTIVE DATE: This rule will become effective on April 11, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and Mr. Jerry Kurtzweg, ANR–443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Butte, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991); 40 CFR 81.327 (Silver Bow County-Butte). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM_{10} National Ambient Air Quality Standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended ("the Act"), 42 U.S.C. 7401, *et seq.*

interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (*i.e.*, those areas designated nonattainment for PM_{10} under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

On September 28, 1993, EPA announced its proposed approval of the Butte, Montana moderate nonattainment area PM_{10} SIP as meeting those moderate PM_{10} SIP requirements due on November 15, 1991 (58 FR 50530–50536). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Butte moderate nonattainment area PM_{10} SIP taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 58 FR 50535), and comments from the State of Montana were received during the comment period, which ended on October 28, 1993. For further discussion of these public comments, please see below and the Addendum to the TSD for EPA's proposed rulemaking action on this SIP. This final action on the Butte moderate nonattainment area PM_{10} SIP is unchanged from the September 28, 1993 proposed approval action, except one typographical error noted by EPA. In the table describing sources, controls, emission reductions, and effective dates, the effective date for the Montana Resources, Inc. permit modification should have been listed as March 20, 1992 instead of March 10, 1992, as indicated.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the September 28, 1993 proposed rule for a more in depth discussion of the action now being finalized.

II. Response to Comments

EPA did not receive any adverse public comments regarding its September 28, 1993 proposed approval of the Butte moderate nonattainment area PM_{10} SIP (58 FR 50530–50536). However, the State of Montana submitted the following comments for clarification. In a letter dated October 27, 1993 from Jeff Chaffee, Montana Department of Health and Environmental Sciences, to Amy Platt, EPA, the State indicated that since submitting the original moderate nonattainment area PM_{10} SIP for Butte, it discovered a minor error in the emissions inventory report and the control strategy calculations. The State inadvertently included the municipality of Walkerville in the nonattainment area boundary. Therefore, the emissions inventory was slightly higher due to Walkerville emissions. When applying the emission reduction credits derived from control strategies outlined in the SIP, a slightly larger reduction was demonstrated since the credits were being applied to higher emission levels than appropriate.

The Walkerville area has very minimal emissions that do not contribute to the Butte nonattainment problem. The Walkerville residential wood burning emissions constituted only 2.0% of the total residential wood burning emissions reported from all grids. Walkerville's paved road dust emissions made up only 0.4% of the total paved road dust emissions reported from all grids. Therefore, correcting the control strategy calculations for these sources did not significantly change the control credits nor result in an inability to demonstrate attainment and maintenance of the PM_{10} NAAQS in Butte. With the adjustments, the 24-hour attainment value (*i.e.*, ambient PM_{10} air quality levels achieved by 1995 [2]) increased 0.1 $\mu g/m^3$ to 144.4 $\mu g/m^3$ and the annual attainment value is unchanged at 42.1 $\mu g/m^3$. (Before these adjustments, the 24-hour attainment value was 144.3 $\mu g/m^3$.) The adjusted 24-hour maintenance value (*i.e.*, ambient PM_{10} air quality levels maintained through January 1, 1998) increased 1.3 $\mu g/m^3$ to 145.5 $\mu g/m^3$ and the annual maintenance value increased 0.1 $\mu g/m^3$ to 41.7 $\mu g/m^3$. (Before these adjustments, the 24-hour and annual attainment values were 144.2 $\mu g/m^3$ and 41.6 $\mu g/m^3$, respectively.)

The State believes that since the reported emissions from Walkerville were determined to be insignificant and the control values and demonstrations are not significantly altered, the SIP is still adequate. These corrected calculations are based on more accurate emissions inventory numbers, and the adjusted values still adequately demonstrate attainment and maintenance of the PM_{10} NAAQS. Since these corrected values do not represent major changes to those considered in EPA's proposed action, EPA is proceeding with its approval of this SIP. There is no need to adopt additional control measures based on these adjusted calculations.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted the Butte PM_{10} SIP in a letter dated July 9, 1992. Technical corrections were submitted by the State with a letter dated May 17, 1993. The submittals were intended to satisfy those moderate PM_{10} SIP requirements due for Butte on November 15, 1991. As described in EPA's proposed action on this SIP (58 FR 50530–50536, September 28, 1993), the Butte moderate nonattainment area

[2] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment of the PM_{10} NAAQS by January 1, 1995 EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates.

PM_{10} plan includes, among other things, a comprehensive and accurate emissions inventory, control measures that satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by January 1, 1995 (see footnote #2), provisions for meeting the November 15, 1994 quantitative milestone and reasonable further progress, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Butte.[3] Please refer to EPA's notice of proposed rulemaking (58 FR 50530) and the TSD for that action for a more detailed discussion of these elements of the Butte plan.

In this notice of final rulemaking action, EPA is announcing its approval of those elements of the Butte moderate nonattainment area PM_{10} SIP that were due on November 15, 1991, and submitted by the Governor on July 9, 1992, with technical corrections submitted in a letter dated May 17, 1993. In addition, EPA is correcting the nonattainment area boundary description for Butte in order to address an error in the previous description. The nonattainment area boundary issue is discussed in detail in the September 28, 1993 proposed approval and associated TSD.

EPA finds that the State of Montana's PM_{10} SIP for the Butte moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Butte and, therefore, were targeted for control in the SIP. The State has demonstrated that by applying control measures to area sources (re-entrained road dust, residential wood combustion, prescribed burning, and motor vehicle exhaust), as well as reducing allowable emissions through air quality permit modifications for Montana Resources, Inc. and Rhone-Poulenc, Butte will be in attainment by January 1, 1995 (see footnote #2) and it does not appear that applying further control measures to these sources would expedite attainment.

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

EPA views the following measures as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Butte: (1) Butte/Silver Bow Resolution No. 1307, which sets sanding and chip sealing standards and street sweeping and flushing requirements; (2) Butte/Silver Bow Ordinance No. 330, which regulates residential wood burning and idling diesel vehicles and locomotives; (3) industry permit modifications made at Rhone-Poulenc to reduce allowable plant-wide emissions; and (4) the federal tailpipe standards, which provide an ongoing benefit due to fleet turnover. Also, additional control measures were implemented through industry permit modifications made at Montana Resources, Inc. to (a) limit winter PM_{10} emissions from haul trucks and support vehicles; (b) limit winter PM_{10} diesel exhaust emissions; and (c) limit winter PM_{10} emissions from the ore dump, molybdenum dryer and lime handling process. The RACM (including RACT) provisions in the SIP and the additional control measures implemented at Montana Resources, Inc. are described further in the technical support document associated with EPA's September 28, 1993 notice of proposed rulemaking on this SIP.

Further, although no credit was claimed in the SIP, EPA notes that the State has adopted, as part of the Butte SIP, the Montana Smoke Management Plan, which sets standards for the regulation of prescribed burning. EPA approved this plan in a separate rulemaking action.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Butte moderate PM_{10} nonattainment area SIP (58 FR 50530). EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Butte will result in the attainment of the PM_{10} NAAQS by January 1, 1995 (see footnote #2). By this notice EPA is approving the Butte PM_{10} plan's control measures as satisfying the RACM, including RACT, requirement.

As noted, EPA did not propose to approve some aspects of the Butte SIP, as explained in the notice of proposed rulemaking (58 FR 50530–50536) and associated TSD. To address EPA-identified deficiencies in the Butte and statewide SIP, the State committed to complete additional tasks to correct these deficiencies. A more detailed explanation of the State's commitments can be found in EPA's September 28, 1993 proposed approval of the Butte moderate nonattainment area PM_{10} SIP (58 FR 50530–50536) and the TSD for that action).

The State has fulfilled one commitment regarding revising the demonstrations of attainment and maintenance to properly handle background concentrations, and another commitment regarding clarification that the statewide emergency episode plan applies in Butte. These commitments were fulfilled by the State with the submittal of the May 17, 1993 technical corrections. The remaining commitments do not impact the attainment or maintenance demonstrations, credited control strategies in the Butte PM_{10} SIP, or other federal Clean Air Act SIP requirements for the Butte moderate PM_{10} nonattainment area due to EPA on November 15, 1991. Therefore, EPA will take separate action, as appropriate, when the remaining commitments are fulfilled by the State.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Final Action

This document announces EPA's final action on the rulemaking proposed at 58 FR 50530. As noted elsewhere in this action, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act

do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order (EO) 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 12, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(29) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(29) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Butte, Montana with a letter dated July 9, 1992, with technical corrections dated May 17, 1993. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Butte on November 15, 1991.

(i) Incorporation by reference.

(A) Stipulation signed October 8, 1991 between the Montana Department of Health and Environmental Sciences and the Butte-Silver Bow Council of Commissioners, which delineates responsibilities and authorities between the two entities.

(B) Board order issued on November 15, 1991 by the Montana Board of Health and Environmental Sciences approving the Butte-Silver Bow Air Pollution Control Program.

(C) Stipulation between the Montana Department of Health and Environmental Sciences (signed September 27, 1991), the Montana Department of Transportation (signed October 4, 1991), and the Butte-Silver Bow Council of Commissioners (signed October 7, 1991) to ensure that Butte-Silver Bow and the Montana Department of Transportation comply with Butte-Silver Bow Council Resolution No. 1307.

(D) Butte/Silver Bow Resolution No. 1307, effective March 6, 1991, which addresses sanding and chip sealing standards and street sweeping and flushing requirements.

(E) Butte/Silver Bow Ordinance No. 330, effective August 3, 1988, which addresses residential wood burning and idling diesel vehicle and locomotive requirements.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit #1636A, with a final modification date of October 26, 1991, for Rhone-Poulenc's elemental phosphorus plant.

(B) Montana Department of Health and Environmental Sciences Air Quality Permit #1749–04, with a final modification date of March 20, 1992, for Montana Resources, Inc.'s open pit copper and molybdenum mine, crushing and milling operation and concentrator.

(C) Montana Smoke Management Plan, effective April 28, 1988, which addresses prescribed burning requirements.

(D) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In 81.327 the PM–10 table is amended by revising the entry for "Silver Bow County, Butte" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10 Nonattainment Areas

Designated Area	• • •	• • •	• • •	• • •
•	•	•	•	•
Silver Bow County				
Butte.....				
The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: beginning at the Northwest corner of Section 2, T.3N., R.8W.; thence Easterly to Northeast corner Section 5, T.3N., R.7W.; thence Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning.				

[FR Doc. 94–5614 Filed 3–10–94; 8:45 am]
BILLING CODE 8560–50–P

40 CFR Part 61

[FRL–4848–3]

Delegation of Authority; Wyoming; National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule; Delegation of authority.

SUMMARY: EPA is providing notice that it granted delegation of authority to the State of Wyoming on December 6, 1993 to implement and enforce National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos in 40 CFR part 61, subpart M, which were adopted by the State. This is a result of a November 4, 1993 request for delegation from the State.
EFFECTIVE DATE: This action became effective on December 6, 1993.
ADDRESSES: Copies of the State's submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following office:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Brenda South, Environmental Protection Agency, Region VIII Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 294–7685.

SUPPLEMENTARY INFORMATION: Section 112(d) of the Clean Air Act (CAA) permits EPA to delegate to the States the authority to implement and enforce standards set forth in 40 CFR part 61, (NESHAPs). On November 4, 1993, the State of Wyoming submitted revisions to its Asbestos NESHAP regulations. The submittal included the addition of the following Asbestos NESHAP categories: Manufacturing, fabricating, insulating materials, waste disposal for manufacturing, inactive waste disposal sites for manufacturing and fabricating operations, operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. Pursuant to such submittal, on December 6, 1993, delegation was given with the following letter:

Honorable Mike Sullivan,
Governor, State of Wyoming, Office of the Governor, Cheyenne, Wyoming 82002

Dear Governor Sullivan: On November 4, 1993, you submitted several revisions and additions to the Wyoming Air Quality Standards and Regulations (WAQSR). This letter addresses only those WAQSR that pertain to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos, i. e., section 29, Emission Standards of Asbestos for Demolition, Renovation, Manufacturing, Spraying and Fabricating Air Pollution Control Rules and Regulations.

Subsequent to states adopting NESHAP regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of one NESHAP.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NESHAPs by the State of Wyoming. Therefore, pursuant to section 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR part 61, EPA hereby delegates its authority for the implementation and enforcement of the NESHAPs to the State of Wyoming as follows.

(A) Responsibility for all covered sources located, or to be located, in the State of Wyoming subject to the emission standards for hazardous air pollutants promulgated in 40 CFR part 61 subpart M. The category of hazardous air pollutant sources covered by this delegation is as follows: Asbestos manufacturing, demolition and renovation, spraying, fabricating, insulating materials, waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations, inactive waste disposal sites for manufacturing and fabricating operations, air-cleaning, reporting, active waste disposal sites, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. This delegation does not include the following category of sources: asbestos mills, roadways, waste disposal for asbestos mills, and inactive waste disposal for asbestos mills. EPA will retain the authority to implement and enforce those

categories of sources not delegated to the State.

(B) Not all authorities of NESHAPs can be delegated to states under Section 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision-making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR part 61 subpart M that EPA cannot delegate to the State:

(i) Section 61.149(c)(2) pertains to an alternative emission control and waste treatment method for waste disposal for asbestos mills;

(ii) Section 61.150(a)(4) pertains to an alternative emission control and waste treatment method for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations;

(iii) Section 61.151(c) pertains to an alternative control method for inactive waste disposal sites for asbestos mills and manufacturing and fabrication operations;

(iv) Section 61.152(b)(3) pertains to the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of Section 61.152 for air cleaning;

(v) Section 61.154(d) pertains to an alternative emission control method for active waste disposal sites; and

(vi) Section 61.155(a) pertains to the construction of a facility which converts asbestos-containing waste material into nonasbestos (asbestos-free) material.

(C) As 40 CFR part 61 subpart M is updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

This delegation is based upon, and is a continuation of, the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR part 61 subpart M), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977.

In addition, whereas the original delegation letter pertained only to NSPS, those conditions in the original delegation letter now apply to the Asbestos NESHAP, as appropriate. (A copy of the August 2, 1977 letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.)

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,

Jack W. McGraw,

Acting Regional Administrator

List of Subjects 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: March 1, 1994.

William P. Yellowtail,

Regional Administrator.

40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. Secs. 101, 112, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart A—General Provisions

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

[(NESHAPs) for Region VIII]

Subpart	State					
	CO	MT [1]	ND [1]	SD [1]	UT [1]	WY
A. General Provisions	(*)	(*)	(*)	(*)	(*)	.....
C. Beryllium	(*)	(*)	(*)	.....	(*)	.....
D. Beryllium Rocket Motor Firing	(*)	(*)	(*)	.....	(*)	.....
E. Mercury	(*)	(*)	(*)	.....	(*)	.....
F. Vinyl Chloride	(*)	(*)	(*)	.....	(*)	.....
J. Equipment Leaks (Fugitive Emission Sources) of Benzene	(*)	(*)	(*)	.....	(*)	.....
L. Benzene Emission From Coke By-Product Recovery Plants	.....	(*)	(*)	.....	(*)	.....
M. Asbestos	(*)	(*)	(*)	(*)	(*)	(*) [2]
N. Inorganic Arsenic Emissions From Glass Manufacturing Plants	.....	(*)	(*)	.....	(*)	.....
O. Inorganic Arsenic Emissions From Primary Copper Smelters	.....	(*)	(*)	.....	(*)	.....
P. Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	.....	(*)	(*)	.....	(*)	.....
V. Equipment Leaks (Fugitive Emission Sources)	.....	(*)	(*)	.....	(*)	.....
Y. Benzene Emissions From Benzene Storage Vessels	.....	(*)	(*)	.....	(*)	.....
BB. Benzene Emissions From Benzene Transfer Operations	.....	(*)	(*)	.....	(*)	.....
FF. Benzene Waste Operations	.....	(*)	.....	.....	(*)	.....

(*) Indicates approval of state regulation.

[1] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP).

[2] Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

[FR Doc. 94–5613 Filed 3–10–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 185

[OPP–300237B; FRL–4767–3]

RIN No. 2070–AB78

Dichlorvos; Stay of Effective Date for Order Revoking Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Stay of effective date.

SUMMARY: EPA is staying the effective date of an order which was published in the **Federal Register** of November 10, 1993 (58 FR 59663) regarding the revocation of the food additive regulation for dichlorvos. EPA received a petition to stay the March 10, 1994 effective date for the revocation of the food additive regulation (40 CFR 185.1900). EPA is staying the effective date in order to review the petition and determine whether to grant a stay, and if so, for what period.

DATES: Any affected person may submit comments on the petition to stay on or before March 28, 1994. This stay is effective March 10, 1994.

ADDRESSES: Comments, identified by the document control number, [OPP–300237B], may be submitted to: OPP Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, Rm. WF31L1, 2800 Jefferson Davis Hwy., Arlington, VA, (703)–308–8028.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1993 (58 FR 59663), EPA issued an order revoking the food additive regulation for dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, based on the determination that this food additive regulation is inconsistent with the Delaney Clause which is found in section 409 of the Federal Food, Drug and Cosmetic Act. In that order, EPA set an expiration date of March 10, 1994 for the food additive regulation affected by that order.

Any person adversey affected was given a 30–day opportunity to (1) file written objections to the order, (2) file a written request for an evidentiary hearing on the objection, and (3) file a petition for a stay of the effective date. EPA stated that if any petition for a stay were received, the Agency would stay the March 10, 1994 effective date of the order as to the particular food additive regulation for which the stay was sought for such time as is required to review and make a determination on the stay petition(s).

AMVAC Chemical Corporation (AMVAC) submitted a petition for a stay of the effective date of the revocation announced in the November 10, 1993 **Federal Register**. Therefore, by this document EPA is staying the effective date of that order until such time as EPA issues its response to AMVAC's stay petition.

Any comments regarding AMVAC's petition for a stay of the March 10, 1994 effective date for the food additve regulation for DDVP, identified by the document control number, OPP–300237B, may be forwrded within 15 days of publication of this **Federal Register** document to the OPP docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

By this document EPA is staying the effective date of the revocation announced in the November 10, 1993 **Federal Register** (58 FR 59663).

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Pesticides and pests, Recording and recordkeeping.

Dated: March 8, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore 40 CFR Chapter I, part 185 is amended as follows:

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

185.1900 [Stayed]

2. The revision of § 185.1900, published at 58 FR 59663, November 10, 1993 is stayed until further notice.

[FR Doc. 94–5821 Filed 3–9–94; 10:33 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–112; RM–8210]

Radio Broadcasting Services; Buckeye, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 295C2 for Channel 295A at Buckeye, Arizona, and modifies the license for Station KMJK(FM) to specify operation on the higher powered channel, as requested by Mobley Broadcasting, Inc. See 58 FR 26088, April 30, 1993. Coordinates for Channel 295C2 at Buckeye, Arizona, are 33–21–03 and 112–52–41. Buckeye is located within 320 kilometers (199 miles) of the Mexican border, and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–112, adopted, February 25, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 295A and adding Channel 295C2 at Buckeye.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5669 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–9; RM–8152]

Radio Broadcasting Services; Silver City, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Avila Beach, Ltd., substitutes Channel 225C2 for Channel 233A at Silver City, New Mexico, and modifies the license of Station KSCQ to specify operation on the higher class channel. See 58 FR 7874, February 10, 1993. Channel 225C2 can be allotted to Silver City in compliance with the Commission's minimum distance separation requirements at Station KSCQ's licensed transmitter site, at coordinates North Latitude 32–50–40 and West Longitude 108–14–18. Mexican concurrence in the allotment has been received since Silver City is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–9, adopted February 28, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), Table of FM Allotments under New Mexico, is amended by removing Channel 233A and adding Channel 225C2 at Silver City.

Federal Communications Commission.

Victoria M. McCauley,

Acting chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5668 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–218]

Filing of Tariff Adoption Publications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; Correction.

SUMMARY: The Commission adopted a regulation (59 FR 10304, March 4, 1994) which established a 60-day deadline for the filing of adoption publications. The regulation is intended to remove any possible ambiguity with regard to the existing regulation, which requires that such publications be filed "promptly". The regulation is corrected as set forth below.

EFFECTIVE DATE: The regulation published on March 4, 1994, and this correction are effective April 3, 1994.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Accordingly, the Commission makes the following correction: In the **Federal Register** issue of March 4, 1994, at page 10304, in the third column, the docket number of the final rule "Ex Parte No. 218" is corrected to read "Ex Parte No. MC–218."

Dated: March 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5699 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 601

Docket No. [940259–4059; I.D. 100793B]

RIN 0648–AG16

Regional Fishery Management Councils; Guidelines for Council Operations/Administration

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues this interim final rule to revise regulations concerning the practices, procedures, and operations of the Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action would foster fuller disclosure and make information easier to access in required financial disclosures of Councils' nominees, voting members, and Executive Directors. It is intended to disclose possible financial conflicts of interest.

DATES: This interim final rule is effective April 11, 1994. Comments must be received on or before May 10, 1994.

ADDRESSES: Send comments on this interim final rule and requests for copies of NOAA Form 88–195 to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NOAA, NMFS, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

Send comments on collection-of-information requirements to: The Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Richard W. Surdi, Office of Fisheries Conservation and Management, room 14600, telephone (301) 713–2337, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

Background

NMFS received a petition for rulemaking from Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries and Swan Fisheries asking the Secretary of Commerce (Secretary) to adopt regulations related to: (1) Financial disclosure requirements of

Council members, (2) emergency rulemakings, (3) requirements to balance the membership of the North Pacific Fishery Management Council between different fishing interests, and (4) general procedures for Secretarial review of fishery management plans (FMPs) and regulatory amendments. NMFS published a notice of receipt of the petition for rulemaking and a request for comments on April 15, 1991 (56 FR 15072).

Comments and Responses

Three comments were received on the petition for rulemaking. These were from Williams, Kastner and Gibbs (representing the petitioners), American Factory Trawler Association, and Royal Seafoods, Inc. All three commenters supported the petition and, in some cases, expanded on the rationale for adoption of the proposed provisions.

One commenter had an additional comment concerning unconstrained conflicts of interest among Council members. This commenter indicated that there is a fine line between the need for industry expertise and conflicts of interest. The current system, which allows Council members to vote on issues where they have a direct financial interest, crosses over the line of acceptability. Citing E.O. 12674, commenters suggested that NMFS develop a comprehensive set of rules governing Council member conduct on issues in which they have a direct financial interest.

Because E.O. 12674 is specific in that it can apply only to Federal employees, it cannot be used as a basis for regulations governing Council members, who are not Federal employees. Furthermore, Congress provided for industry members to participate in and vote on issues in which they have a financial interest. Paragraph (A) of section 302(b) of the Magnuson Act (16 U.S.C. 1852(b)(2)) provides for the appointment of members based on their occupational experience, and paragraph (B) requires a fair and balanced apportionment of the active participants in the commercial and recreational fisheries under a Council's jurisdiction when making appointments to that Council. Furthermore, guidance for the conduct of Council members specifically, and members of any deliberative body, in general, already exists.

Discussion

NMFS has considered the petition, public comments, and other related issues, and decided to proceed with several of the rulemaking suggestions proposed in the petition. The following paragraphs list the suggestions contained in the petition for rulemaking, provide an explanation as to why NMFS has decided to accept or reject the suggested rulemaking, and describe the changes to be made.

1. Adopt a regulation that provides for meaningful disclosure of the financial interests of Council members.

The petitioners requested six additional areas of information be added to the financial form for Council members, including fisheries participated in, product types produced, gear type used, revenue generated, identity of primary buyers, and financial interest of stockholders in a privately held corporation in which the Council member is a stockholder. NMFS has determined that NOAA Form 88–195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," should be amended to include information concerning the fisheries participated in, the product type produced, and the gear type utilized. This information will better identify the nature of a Council member's financial interest. Additional revisions not noted in the petition are made to delete Part I of the form, which presently is completed by the Agency but is no longer useful, and to add a statement to the General Provisions section concerning penalties for false or incomplete information.

The petitioners also requested that the form be updated every 6 months, on January 15 and June 15. Section 601.37 of title 50 CFR is amended to require that Council members update the form annually, beginning February 1, 1995, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. NMFS finds that requiring updates only as interests are acquired or substantially changed does not provide for disclosure of modest, but important, changes in financial interests and divestitures of interests. Requiring an annual update will bring into focus a member's need to update the current status of his/her interests, particularly in terms of fishery participation, gear utilized, or product types produced.

NMFS also believes it appropriate to make financial disclosure forms more readily available to the public. Section 601.37 accordingly is amended to require financial disclosure forms be available at all Council meetings, and that their availability be so noted on the agenda for each meeting. This provision is in addition to the requirement of having the forms kept on file and available to the public at the Council offices.

2. Adopt a rule that prohibits biological reasons from being used to support an emergency rule unless a Council's Scientific and Statistical Committee (SSC) concurs that a biological justification exists.

NMFS rejected this provision because the Secretary does not have the authority to condition a recommendation for emergency action by the Council on the approval of an advisory body, such as the SSC. NMFS notes, however, that a Council may establish such a condition as part of an FMP.

3. Adopt a rule that requires the Secretary to balance the governor-nominated voting membership of the North Pacific Fishery Management Council (NPFMC) between the at-sea processing fleet and the onshore processing fleet.

NMFS rejected this provision because its enactment would be redundant to an existing provision of the Magnuson Act. Section 302(b) of the Magnuson Act (see also interpretive policy published May 24, 1991, at 56 FR 23856) provides that the Secretary "* * * shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." Congress established a limited number of seats on the Regional Fishery Management Councils to which the Secretary appoints voting members. Only seven such seats are established on the NPFMC. Considering the broad range of industry sectors, gear types, and other interests that might wish representation on the NPFMC and other Councils, it would be impossible to have every interest represented. NMFS further finds that there are numerous alternatives for having ideas and concerns considered by the Councils and their panels, including participation in committee and panel meetings, testifying at Council meetings, and providing the Council with written testimony, suggestions, comments, or data.

4. Adopt a rule that sets forth clearly the procedures for Secretarial review of regulations and amendments that have been recommended to the Secretary for implementation by a Council.

The petitioners requested rulemaking that would: (1) Set forth the review process followed by the Secretary when reviewing a regulation or amendment, and (2) require all final rules promulgated by the Secretary to set forth the procedure followed in reviewing the regulation or amendment. These proposals are rejected. Detailed

information concerning the schedule and timing of the review process for an FMP or amendment is available in the "Operational Guidelines—Fishery Management Plan Process." In addition, a detailed schedule of events and dates is available for final Secretarial review of a specific plan or amendment. Both documents are available to the public upon request from NMFS (see **ADDRESSES**). A summary of key target dates relative to the date of receipt from the Council follows. The dates noted are target dates only and are subject to change, except those dates specified in the Magnuson Act (so noted by an asterisk).

Date and Event

Day 0*—Receipt date of FMP or amendment from Council.
Day 1*—Begin Secretarial review and 60-day public comment on the FMP or amendment.
Day 9—Assistant Administrator for Fisheries (AA), NOAA , clears proposed rule for continued review and publication in the **Federal Register**.
Day 15*—Secretary makes such changes as may be necessary and publishes rule with any changes, together with an explanation of changes which are substantive.
Day 60*—Public comment period ends on FMP or FMP amendment and proposed rule.
Day 73—Regional Director transmits final rule package to NMFS headquarters.
Day 95*—FMP or FMP Amendment is formally approved, disapproved, or partially disapproved, and Council is notified of decision.
Day 110*—Final regulations published in the **Federal Register**.
Day 140—End of Administrative Procedure Act 30-day delayed effectiveness period. Final regulations become effective.

The suggestion that all final rules disclose who reviewed the rule or amendment, what was reviewed, and the identity of the person who determined that the rule complied with the national standards is also rejected. It is impractical and of no benefit to identify all those who reviewed the rule or amendment, and to identify what was reviewed. Except for the actual decisionmakers, all reviews are considered advisory.

Classification

The AA has determined that this action is necessary for the efficient administration and responsible operation of Councils and is consistent with the Magnuson Act and other applicable law.

This interim final rule contains a modification to a collection-of-information requirement previously approved by the Office of Management and Budget (OMB) under OMB No. 0648–0192. Several new requirements are added to NOAA Form 88–195, part II, under the section titled "Financial Interests." Each voting member and Executive Director of a Council and new nominees for Secretarial appointment to a Council are required to provide information concerning: (1) Fisheries participated in under Council jurisdiction, (2) the product types produced, and (3) gear types utilized. Council members are required to update the form by February 1 of each year, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. Part I, which is routinely completed by NMFS, is removed from the form. A request for clearance of this change has received OMB approval. Public reporting burden for this collection of information is expected to increase by 5 minutes per respondent to an average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments concerning the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to OMB (see **ADDRESSES**).

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the AA finds that prior notice and comment is contrary to the public interest, because this rule institutes procedural changes that provide increased information to the public regarding possible financial conflicts of interest of individuals involved in establishing fishery conservation and management measures. In addition, public comment was solicited on the petition for rulemaking, and the additional data requirements contained in the financial disclosure form were sent to the regional fishery management Councils for review. This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 6, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 601 is amended as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In section 601.37, paragraph (a) is revised to read as follows:

§ 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by each Council nominee, voting member appointed to the Council by the Secretary, and Executive Director, of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the authority of the individual's Council, and of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, "Statement of Financial Interests for Use by Voting Members, Nominees, and Executive Directors of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary, or designee, may prescribe. The report must be filed by each nominee for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary, and Executive Directors, must file an update of the report with the Executive Director of the appropriate Council, with a copy sent to the NMFS Regional Director for the geographic area concerned, on or before February 1 of each calendar year. Individuals must also update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The Financial Interest Forms will be kept on file, and made available for public inspection at reasonable hours at the Council offices. In addition, the forms will be available for inspection at each Council meeting and their availability will be so noted on the Council meeting agenda.

* * * * *

[FR Doc. 94–5644 Filed 3–10–94; 8:45 am]
BILLING CODE 3510–22–P

50 CFR Part 669

[Docket No. 940372–4072; ID 123093H]

Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to correct and clarify the specification of the minimum mesh sizes allowed in fish traps used in the exclusive economic zone around Puerto Rico and the U.S. Virgin Islands. The intent of this action is to correct and clarify the regulations and carry out the intent of the Caribbean Fishery Management Council (Council).

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and the U.S. Virgin Islands is managed under the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 669 under the authority of the Magnuson Fishery Conservation and Management Act.

Under the FMP's framework procedure for making regulatory changes, the Council may initiate and NMFS may change, among other things, the minimum allowable mesh sizes in fish traps. In accordance with that framework procedure, the mesh sizes were substantively changed by a final rule published September 26, 1991 (56 FR 48755). Since that final rule, the regulations specify a minimum mesh size of 2 inches (5.1 cm) for fish traps constructed of material other than bare wire, such as coated wire or plastic, measured in the smallest dimension of the opening, rather than measured between centers of strands (currently codified at 50 CFR 669.23(b)(1)). When the Council recommended changes in the minimum allowable mesh sizes in fish traps, it intended that the minimum allowable mesh sizes for all fish traps be measured between centers of strands, regardless of construction material. Wire manufacturers produce trap mesh in accordance with this measurement procedure. Fishermen have been using coated-wire fish traps constructed with mesh of this standard size. The difference in the mesh openings between industry standard bare wire and coated wire is approximately 0.23 inch (5.84 mm), which is considered insignificant for purposes of fishery conservation. Accordingly, this final rule, technical amendment, corrects the regulations so that all fish trap mesh is measured between centers of strands. In addition, this final rule, technical amendment clarifies the regulations by specifying that measurements are to be made between the centers of opposite strands.

Classification

This technical amendment is issued as a final rule under 50 CFR part 669.

This rule is minor and technical and does not change regulatory impacts that were previously reviewed and analyzed.

Because this rule (1) makes a non-substantive correction and a clarification to the regulations; (2) will not necessitate a change in operating practices in the fishery; and (3) relieves a restriction, the Assistant Administrator for Fisheries, NOAA, under section 553(b) (B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 8, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 669.23, paragraph (b)(1) is revised to read as follows:

§ 669.23 Gear restrictions.

* * * * *

(b) * * *

(1) *Mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm), in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension measured between centers of opposite strands.

* * * * *

[FR Doc. 94–5762 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANE–83]

Proposed Revocation of Class E Airspace; Bozrah, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class E airspace at Bozrah, CT. This action is prompted by the cancellation of the Special Instrument Approach Procedures for Runway 2 and Runway 20 at Gager Field.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93–ANE–83." The postcard will be date stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class E airspace at Bozrah, CT. This action is prompted by the cancellation of the Special Instrument Approach Procedures for Runway 2 and Runway 20 at Gager Field. Class E airspace areas extending from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace at Gager Field would be removed subsequently from the Order.

The FAA has determined that this Proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANE CT E5 Bozrah, CT [Removed]

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5778 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–1]

Proposed Establishment of Class E Airspace; Palm Beach Gardens, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Plam Beach Gardens, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 8R at the proposed North County General Aviation Airport which, is under construction, has recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

DATES: Comments must be received on or before: April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 94–ASO–1, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of the comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace at Palm Beach Gardens, Florida. A Runway 8R SIAP to serve the North County General Aviation Airport based on the Pahokee VORTAC has been developed. Controlled airspace extending upward from 700 feet above the surface, is needed to contain IFR operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It. therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and

effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Palm Beach Gardens, FL [New]

North County General Aviation Airport, FL (lat. 26°50'45" N, long. 80°13'20" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the North County General Aviation Airport, excluding that airspace within the West Palm Beach, FL., and Jupiter, FL., Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on February 11, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-5781 Filed 3-10-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANE-75]

Proposed Establishment of Class E Airspace; Eastport, ME

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Eastport, ME. A review of proposed standard instrument approach procedures (SIAP's) for Eastport Municipal Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the proposed SIAP's.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7532; fax (617) 238-7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE-7, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7050; fax (617) 238-7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE-530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT:

Charles M. Taylor, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7532; fax (617) 238-7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93-ANE-75." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108-5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Eastport, ME. Standard instrument approach procedures (SIAP's) are proposed for the Eastport Municipal Airport and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations using those SIAP's at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the proposed SIAP's at Eastport Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ANE ME E5 Eastport, ME [New]

Eastport Municipal Airport, ME
(lat. 45°54'35" N, long. 67°00'44" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Eastport Municipal Airport, excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5777 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–76]

Proposed Establishment of Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Claremont, NH. A review of a proposed nondirectional beacon (NDB) standard instrument approach procedure (SIAP) for Claremont Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations executing that NDB SIAP at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the proposed NDB SIAP at Claremont, NH.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93–ANE–76." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Claremont, NH. A nondirectional beacon (NDB) standard instrument approach procedure (SIAP) is proposed for the Claremont Airport and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations executing that NDB SIAP at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the proposed NDB instrument approach at Claremont Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ANE NH E5 Claremont, NH [New]

Claremont NDB
(lat. 43°22'10" N, long. 72°22'16" W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Claremont NDB; excluding that airspace within the Springfield, VT and Lebanon, NH class E5 areas.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5780 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–77]

Proposed Establishment of Class E Airspace; Lyndonville, VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lyndonville, VT. A modification of the nondirectional beacon (NDB) standard instrument approach procedure (SIAP) for Runway 2 at the Caledonia County Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the NDB SIAP at Caledonia County Airport.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to airspace Docket No. 93–ANE–77." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Lyndonville, VT. The NDB instrument approach procedure for Runway 2 at the Caledonia County Airport has been modified and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations executing the modified NDB SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB SIAP at Caledonia County Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE VT E5 Lyndonville, VT [New]

Lyndonville, Caledonia County Airport, VT, ME
(lat. 44°34'09"N, long. 72°01'04"W)
Lyndonville NDB
(lat. 44°30'15"N, long. 72°01'45"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Caledonia County Airport, and within 2.5 miles on each side of the Lyndonville NDB 188° bearing extending from the 6.3-mile radius to 7 miles south of the Lyndonville NDB.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5776 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

March 7, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of filing and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received a report from Working Groups 1 & 2 containing revised capacity release data sets and an implementation guide for downloading these data sets using Electronic Data Interchange according to standards promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. The Commission is affording interested persons an opportunity to file comments on this filing.

DATES: Comments due by March 15, 1994.

ADDRESSES: Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426; (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), and electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5686 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[DL–21–94]

RIN 1545–AS52

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the IRS to disclose certain return information to the U.S. Customs Service. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests for a public hearing must be received by May 10, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (DL–21–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of

this issue of the **Federal Register** add § 301.6103(l)(14)–1T to 26 CFR part 301. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules to implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these temporary regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service. However, other personnel from the IRS, U.S. Customs Service and Treasury Department participated in their development.

List of Subjects in Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(l)(14)–1 also issued under 26 U.S.C. 6103(l)(14). * * *

Par. 2. Section 301.6103(l)(14)–1 is added to read as follows:

§ 301.6103(l)(14)–1 Disclosure of return information to United States Customs Service.

[The text of this proposed section is the same as the text of § 301.6103(l)(14)–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–5747 Filed 3–8–94; 2:07 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H–071A]

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the record for the proposed revision (NPRM) of the regulation of methylene chloride (MC) (56 FR 57036, November 7, 1991) to incorporate (1) information regarding engineering controls for MC exposure in the furniture stripping industry; (2) a National Cancer Institute study of occupational exposure to chlorinated aliphatic hydrocarbons and the risk of astrocytic brain cancer; and (3) information regarding the use of MC as a solvent in adhesive formulations in flexible foam manufacturing. The NPRM and hearing notice (57 FR 24438, June 9, 1992) raised concerns and solicited information regarding the ability of furniture stripping operations to comply with the proposed PELs through the use of engineering controls; human cancer risk from exposure to MC; and any applications of MC not addressed by OSHA's Preliminary Regulatory Impact Assessment. The Agency generated a considerable amount of information regarding these and other MC-related issues at public hearings (September 16–24, 1992 and October 14–16, 1992) and in post-hearing comment periods that ended on March 15, 1993. OSHA subsequently received the materials covered by this notice.

OSHA has determined that the above-mentioned information is relevant to full consideration of issues raised by the MC rulemaking. Therefore, OSHA is reopening the record to incorporate the pertinent materials and to allow the public an opportunity to comment.

DATES: Written comments on the materials incorporated through the notice of reopening must be postmarked by April 25, 1994.

ADDRESSES: Comments are to be submitted in quadruplicate to the Docket Office, Docket No. H–071A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–7894. Written comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 219–5046, provided that the original and three copies are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1991, OSHA issued a notice of proposed rulemaking (NPRM) (56 FR 57036) to address the significant risks of MC-induced health effects. The proposed rule required employers to reduce occupational exposure to MC and to institute ancillary measures, such as employee training and medical surveillance, for further protection of MC-exposed workers.

OSHA convened public hearings in Washington, DC on September 16–24, 1992 and in San Francisco, CA on October 14–16, 1992. The post-hearing period for the submission of additional briefs, arguments and summations ended on March 15, 1993.

The Agency has subsequently obtained information which OSHA

believes should be considered in the drafting of the final rule. Accordingly, the Agency is reopening the rulemaking record so the public has an opportunity to comment on that information. The materials being added to the record are discussed below.

A. Feasibility Analysis for the Furniture Stripping Sector

OSHA conducted a Preliminary Regulatory Impact Analysis and preliminarily determined that it would be feasible for the furniture stripping sector to comply with the proposed standard of 25 ppm as an 8-hour time-weighted average (TWA) permissible exposure limit (PEL) with a 125 ppm short-term exposure limit (as measured over 15 minutes) (STEL) and ancillary provisions (e.g., exposure monitoring, medical surveillance and training). Several commenters and hearing participants questioned the feasibility determination (Exs. 29, 30, 73 and 86). In response to issues raised during the hearings and comment periods, OSHA contracted with Mr. Richard Green to reexamine the technical and economic feasibility of the proposed rule for the furniture stripping industry. In order to give interested parties an opportunity to comment on this analysis, it is being introduced into the rulemaking record at this time.

Mr. Green determined that the proposed standard would be technically and economically feasible for furniture refinishers. The cost of engineering controls and additional heating (of make-up air) needed to comply with the proposed rule were estimated to be approximately $300 per establishment per year. Total compliance costs would be higher than this figure and include costs for ancillary provisions, such as exposure monitoring, medical surveillance and training.

Mr. Green determined the amount of ventilation that would be needed based upon the rate of evaporation of methylene chloride, principles of dilution ventilation, and estimates of costs for heating make-up air. Mr. Green's analysis utilized data in the MC docket and general reference materials such as the ACGIH Industrial Ventilation Manual for ventilation recommendations, and the 1993 Statistical Abstract of the United States to obtain monthly average, high and low temperatures.

Based on theoretical and empirical models, Mr. Green determined that the average-sized firm will need to install an approximately 5,000 cubic feet per minute (cfm) fan in both the stripping and rinse areas to ensure that the proposed PEL could be met in both areas. This would ensure good air mixing in both areas and provide adequate ventilation capacity. Mr. Green also recommended that the fans should be located near each process to provide a local spot ventilation effect.

OSHA solicits comments on Mr. Green's analysis and the appropriateness of using this analysis as a basis for the Agency's final determination of feasibility in the furniture stripping sector.

B. National Cancer Institute Study on Methylene Chloride Exposure and the Risk of Developing Astrocytic Brain Cancer

After the post-hearing comment period closed, OSHA received a copy of a study on the risk of developing brain cancer after exposure to chlorinated solvents conducted by researchers at the National Cancer Institute. This study was accepted for publication as two journal articles to be published in the American Journal of Industrial Medicine as "Occupational exposure to chlorinated aliphatic hydrocarbons and risk of astrocytic brain cancer" by Ellen F. Heineman et al. and "Occupational exposure to chlorinated aliphatic hydrocarbons: job exposure matrix" by M.R. Gomez et al.

The abstract for the Heineman et al. paper reads as follows,

Chlorinated aliphatic hydrocarbons (CAHs) were evaluated as potential risk factors for astrocytic brain tumors. Job-exposure matrices for six individual CAHs and for the general class of organic solvents were applied to data from a case-control study of brain cancer among white men. The matrices indicated whether the CAHs were likely to have been used in each industry and occupation by decade (1920–1980), and provided estimates of probability and intensity of exposure for "exposed" industries and occupations. Cumulative exposure indices were calculated for each subject.

Associations of astrocytic brain cancer were observed with likely exposure to carbon tetrachloride, methylene chloride, tetrachloroethylene, and trichloroethylene, but were strongest for methylene chloride. Exposure to chloroform or methy chloroform showed little indication of an association with brain cancer. Risk of astrocytic brain tumors increased with probability and average intensity of exposure, and with duration of employment in jobs considered exposed to methylene chloride, but not with a cumulative exposure score. These trends could not be explained by exposures to the other solvents.

The Gomez et al. paper explains in detail the job-exposure matrix used to determine whether exposure to a particular solvent was likely for the subjects of the study. OSHA solicits comments on this study and its implications for the MC risk assessment.

C. Information Regarding the Use of Methylene Chloride as a Solvent in Adhesive Formulations in Flexible Foam Manufacturing

During the rulemaking proceedings, OSHA solicited information on the feasibility of compliance with the proposed standard. After the post-hearing comment period had closed, the Center for Emissions Control sent OSHA materials with a cover letter from Mr. Stephen P. Risotto, detailing an ongoing analysis of adhesive use in foam manufacturing facilities and a request for OSHA to "consider the inability of foam adhesive operations to meet the proposed occupational limits before issuing a final rule." The CEC submission also included a document entitled "Foam Adhesive—Ventilation Project Description," which outlined the protocol for investigating potential engineering controls and feasibility for this sector, and a preliminary report entitled "Foam Adhesive Fabrication Ventilation Study," conducted by Rust Engineering Company, which outlined recommendations to improve the ventilation systems for the spray booths, including costs of modifications.

OSHA preliminarily determined that it was technologically and economically feasible for establishments that use adhesives to comply with the proposed standard or substitute away from MC. In this **Federal Register** notice, OSHA is soliciting comments on the submitted protocol and report and requesting information on the technological and economic feasibility of compliance with the proposed standard for adhesive use in this situation.

II. Public Participation

Comments

Written comments regarding the materials incorporated into the methylene chloride rulemaking record through this notice must be postmarked by April 25, 1994. Four copies of these comments must be submitted to the Docket Office, Docket No. H–071A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), and 29 CFR part 1911.

Signed at Washington, DC, this 8th day of March 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–5752 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–67–1–6296; FRL–4848–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to disapproving a requested revision to the Ohio State Implementation Plan (SIP) for particulate matter (PM) and nitrogen oxides (NO_x) for sources within specified source categories that require continuous emission monitoring (CEM), and reporting. USEPA's action is based upon a revision request submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: Comments on this proposed action must be received by April 11, 1994.

ADDRESSES: Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 5, 1987, the State of Ohio submitted to the USEPA a revision to the Ohio State Implementation Plan (SIP) for particulate matter and nitrogen oxides for sources within specified source categories that require continuous emission monitoring (CEM) and reporting. The revision request consists of CEM requirements contained in operating permits for 116 associated sources, at 37 facilities.

The requirements at issue are necessary to meet the general guidelines established in section 110(a)(2)(F)(i), (ii), and (iii) of the Clean Air Act and the specific provisions described in 40 CFR part 51, appendix P. Section 110(a)(2)(F) provides that the SIP must require the installation of equipment to monitor emissions from stationary sources, periodic reporting of such emissions and correlation of such reports with any emission limitations established in the SIP for these source categories. In appendix P, USEPA described specific minimum requirements for CEM that each SIP must include in order to be approved under the provisions of 40 CFR 51.214. CEM plans are required by 40 CFR 51.214 to provide, as a minimum, legally enforceable procedures for requiring the stationary sources to install and operate CEM equipment.

The source categories and the respective monitoring requirements identified in 40 CFR part 51, appendix P are listed below:

1. Fossil fuel-fired steam generators. This category shall be monitored for opacity, nitrogen oxide emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.

2. Fluid bed catalytic cracking unit catalyst regenerators. This category shall be monitored for opacity.

3. Sulfuric acid plants. This category shall be monitored for sulfur dioxide emissions.

4. Nitric acid plants with greater than 300 tons per day production capacity shall be monitored for nitrogen oxide emissions.

This revision request applies to the source categories of fossil fuel-fired steam generators (except for sulfur dioxide (SO_2) emissions), fluid bed catalytic cracking unit catalyst generators, and nitric acid plants. This revision request does not apply to the monitoring of SO_2 emissions at fossil fuel-fired steam generators and sulfuric acid plants. These two emission sources are covered in a separate **Federal Register** rulemaking (54 FR 1693), dated January 17, 1989. The State indicated that there are no nitric acid plants in Ohio with a production capacity greater than 300 tons per day.

Following is a list of the 37 facilities in Ohio that are subject to the CEM requirements in the SIP revision request:

- Cincinnati Gas and Electric (CG&E) Company–W.C. Beckjord Station
- CG&E Miami Fort Station
- Cleveland Electric Illuminating (CEI) Company (Centerior Energy) Ashtabula Plant "A"
- CEI Ashtabula Plant "C"
- CEI Avon Lake Plant
- CEI Eastlake Plant
- CEI Lakeshore Plant
- Columbus and Southern Ohio Electric (C&SOE) Company–Conesville Station
- C&SOE Poston Station
- C&SOE Pickaway Station
- Dayton Power and Light (DP&L) Company–Longworth Station
- DP&L J.M. Stuart Station
- DP&L Hutchings Station
- Mead Paper-Chillicothe Facility
- Ohio Edison (OE) Company Niles Station
- OE R.E. Burger Station
- OE Toronto Station
- OE W.H. Sammis Station
- OE Edgewater Station
- OE Gorge Station
- Ohio Power (OP) Company–Gavin Plant
- OP Cardinal Operating Company
- OP Buckeye Power, Inc.
- OP Muskingum River Plant
- Ohio Valley Electric (OVE) Company–Kyger Creek Station
- Orrville Municipal Power Plant
- Toledo Edison (TE) Company (Centerior Energy)–Acme Station
- TE Bay Shore Station
- Piqua Municipal Power Plant
- Elkem Metals Company
- Goodyear Tire and Rubber Company–Akron Plant II
- Procter and Gamble Company
- The Standard Oil Company–Lima Refinery
- The Standard Oil Company–Oregon
- Sun Refining and Marketing Company–Toledo Refinery
- Champion International, Hamilton Mill Champion Papers
- Hamilton Municipal Electric Plant

The opacity CEM requirements apply to 34 of the above facilities with fossil fuel-fired steam generators, and 3 of the above facilities with petroleum refinery fluid bed catalytic cracking unit catalyst regenerators.

The State of Ohio furnished USEPA with the following supplemental information regarding these facilities subsequent to submittal of the SIP revision request. The Columbus and Southern Ohio Electric Company has changed its name to the Columbus Southern Power Company (CSPC). CSPC's Poston Station was permanently shut down on October 27, 1987. The Standard Oil Company of Ohio is now owned and operated by the British Petroleum Oil Company. On September 1, 1988, the American Municipal Power-

Ohio, Inc. (AMP-Ohio) took over the ownership and operation of the Elkem Metals Company boilerhouse.

Proposed Action

USEPA is proposing to disapprove the requested revision to the Ohio SIP for particulate matter for the sources listed above that require CEM, recording, and reporting. CEM plans are required by 40 CFR 51.214 to contain legally enforceable procedures for requiring stationary sources listed in 40 CFR part 51, appendix P, to install and operate CEM equipment. Ohio's CEM requirements for monitoring and reporting are contained in operating permits that have expired and are, therefore, no longer enforceable.

If the Ohio Environmental Protection Agency submits up-to-date permits, containing approvable CEM requirements for the facilities covered by this requested revision before the the public comment period ends, the USEPA would then approve the revision request in the final **Federal Register** rulemaking action, through the effective dates of the unexpired permits.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by April 11, 1994 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the Sta te submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 2, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–5720 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–60–F

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40 CFR Part 180, 185, and 186

[PP 4F3103 and FAP 3H5654/P579; FRL–4763–5]

RIN 2070–AC18

Pesticide Tolerances for Methoprene

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for residues of the insecticide methoprene in or on various agricultural commodities. Zoecon Corp., A Sandoz Co., requested this proposed regulation to establish the maximum permissible levels of methoprene in or on the commodities. This document also proposes to delete certain obsolete food additive tolerances for methoprene.

DATES: Comments, identified by the document control number, [PP 4F3103 and FAP 3H5654/P579] must be received on or before April 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Document and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm.211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5412.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128C at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703)-305-7690.

SUPPLEMENTARY INFORMATION: The Agency is proposing to delete an expired, temporary food additive tolerance of 10 parts per million (ppm) for residues of the insecticide methoprene (isopropyl (E,E)-11-methoxy-3,7,11- trimethyl-2,4-dodecadienoate) in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes resulting from applications of methoprene in accordance with the provisions of an experimental use permit that expired September 21, 1986. The tolerance was established under section 409 of the Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, and appears in chapter I of title 40 of the Code of Federal Regulations (40 CFR 185.4150(b)). This temporary tolerance was established with issuance of an experimental use permit (EUP) and expired on September 21, 1986. The tolerance is obsolete, and EPA is proposing to remove it.

EPA issued a notice in the **Federal Register** of August 1, 1984 (49 FR 149), which announced that Zoecon Corp., 975 California Ave., Palo Alto, CA, 94304, had submitted pesticide petition (PP) 4F3103 to EPA proposing to

establish tolerances under section 408 of the Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for the insecticide methoprene in or on the following commodities: barley at 10.0 ppm, buckwheat at 10.0 ppm, corn (all types) at 10.0 ppm, eggs at 2.0 ppm, fat of cattle, goats, hogs, horses and sheep at 3.0 ppm, meat and meat by-products of cattle, goats, hogs, horses, and sheep at 2.0 ppm, milk at 2.0 ppm, millet at 10.0 ppm, milo (sorghum) at 10.0 ppm, oats at 10.0 ppm, poultry at 2.0 ppm, rice at 10.0 ppm, rye at 10.0 ppm, sunflower at 10.0 ppm, and wheat at 10.0 ppm.

Subsequently, the Agency requested that Zoecon amend the petition by proposing tolerances as follows: cereal grains Group XV (except popcorn and sweet corn) at 5.0 ppm; eggs at 0.1 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 1.0 ppm; meat and meat by-products of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; and milk at 0.1 ppm. Sandoz Crop Protection Corp. acquired Zoecon Corp. and amended the petition as follows: a tolerance of 5 ppm for cereal grains Group XV (except popcorn and sweet corn); the tolerance for eggs reduced to 0.1 ppm; the tolerance for fat of cattle, goats, hogs, horses, and sheep reduced to 1.0 ppm; a tolerance for poultry fat of 1.0 ppm added; the tolerance for meat and meat by-products of cattle, goats, hogs, horses, and sheep reduced to 0.1 ppm; a tolerance for meat and meat by-products of poultry at 0.1 ppm added; and the tolerance for milk reduced to 0.1 ppm.

EPA issued a notice in the **Federal Register** of July 20, 1988 (53 FR 27391), announcing that Sandoz Crop Protection Corp. had submitted these tolerance requests to amend PP 4F3103. In addition, the Agency requested that Zoecon submit a food additive petition for the proposed tolerances of 25 ppm in or on rice hulls and 10.0 ppm for cereal grain milled fractions (except flour and ricehulls). Zoecon submitted a food additive petition requesting tolerances of 10.0 ppm for cereal grain milled fractions (except flour and rice hulls) and 25 ppm in or on rice hulls. The Agency designated this petition as food additive petition (FAP) 3H5654.

Because tolerances for meat and meat by-products of cattle, goats, hogs, horses, and sheep are currently established at 0.1 ppm, new tolerances for these commodities are not necessary. There were no comments received in response to the notices of filing.

The data submitted in support of the petitions and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include the following:

1. An 18-month mouse feeding/carcinogenicity study using doses of 0, 250, 1,000, and 2,500 ppm (equivalent to doses of 0, 37.5, 150, and 375 milligrams/kilogram (mg/kg) of body weight (bwt)/day). The systemic no-observed-effect level (NOEL) is 250 ppm (37.5 mg/kg/day) based on liver pigmentation, and the systemic lowest-effect-level (LEL) is 1,000 ppm (150 mg/kg/day). There was no evidence of carcinogenicity at any dose levels tested.

2. A 2-year rat feeding/carcinogenicity study using dietary concentration of 0, 250, 100, and 5,000 ppm (equivalent to doses of 0, 12.5, 50, and 125 mg/kg bwt/day). The systemic NOEL is 1000 ppm (50 mg/kg/day) based on liver pathology observed. There was no evidence of carcinogenicity at any dose levels tested.

3. A three-generation mouse reproduction study with a NOEL of 2,500 ppm (125 mg/kg/day) for both reproductive and systemic effects.

4. A rabbit developmental toxicity study was negative for developmental effects at all dose levels up to 2,000 mg/kg/day, the highest dose tested. The NOEL for maternal toxicity and developmental toxicity was 200 mg/kg/day, and the LEL for both maternal toxicity and developmental toxicity was 2,000 mg/kg/day.

5. A mouse developmental toxicity study was negative for developmental effects at all dose levels up to 600 mg/kg/day, the highest dose tested. The NOEL for developmental toxicity was 600 mg/kg/day.

Methoprene was not carcinogenic in either the mouse or rat chronic/carcinogenic feeding studies. In the mouse study, the only effect noted was a dark brown granular pigment in the cytoplasm of liver parenchymal cells. This effect was pronounced at the 2,500 ppm level, still obvious at the 1,000 ppm level, but was absent at the 250 ppm level. The effect thus seemed dose related and linked to the administration of the chemical. The tumor incidence in mice was not increased in this study.

The main toxicological effect seen in the rat chronic/carcinogenic feeding study was liver pathology which consisted of slight portal lymphocytic infiltration, slight to very slight bile duct proliferation, and vacuolized hepatocytes. These findings were not consistent and dose related. No increased occurrence of tumors was observed in rats fed methoprene.

EPA concludes that methoprene did not induce cancer in rats or mice and that no significant carcinogenic risk is posed by these tolerances.

The reference dose (RfD), based on the 18-month mouse chronic feeding/carcinogenicity study (NOEL of 37.5 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.4 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for the general population from previously established tolerances and tolerances established here is 0.016198 mg/kg bwt/day and utilizes 4% of the RfD. The subgroup most highly exposed, nonnursing infants less than one year old, has a TMRC from published and proposed uses of 0.045043 mg/kg bwt/day, or 11.3% of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods for the enforcement of methoprene residues in milk, meat, and animal fat have been published in the Pesticide Analytical Manual, Vol. II.

The modifications raise tolerance levels for milk, eggs, and fat of cattle, goats, hogs, horses, poultry, and sheep and for meat byproducts of poultry. The modifications lower the tolerance level for poultry meat. The tolerance level of 0.1 ppm for meat and meat byproducts of cattle, goats, hogs, horses, and sheep remains unchanged.

The pesticide is considered useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health, and use of the pesticide in accordance with the terms of the proposed food additive regulation would be safe. Therefore, the tolerances and food/feed additive regulations are established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that the portion of this rulemaking proposal for tolerances for raw agricultural commodities be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [PP 4F3103 and FAP 3H5654/P579]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address give above, from 8 a.m. to 4

p.m., Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Because EPA proposes to reduce the tolerance for residues of methoprene on poultry meat from 0.5 ppm to 0.1 ppm, an economic impact assessment of the proposed reduction on business is needed to comply with the requirements of the Regulatory Flexibility Act and Executive Order 12866. The economic analysis concluded that there would be no impact expected on businesses or other entities of any size by reducing the poultry meat tolerance from 0.5 ppm to 0.1 ppm and that this proposed rule is not a significant rule according to Executive Order 12866.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedures, Agriculture commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.359, to read as follows:

§ 180.359 Methoprene; tolerances for residues.

Tolerance are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley	5.0
Buckwheat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Peanut hulls	40.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.4150, by revising paragraph (b), to read as follows:

§ 185.4150 Methoprene.

* * * * *

(b) A tolerance of 10 parts per million is established for residues of isopropyl ((E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.4150, by adding new paragraph (d), to read as follows:

§ 186.4150 Methoprene.

* * * * *

(d) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy -3,7,11-trimethyl-2,4-dodecadienoate) in or on the following feed additive commodities:

Feed	Parts per million
Cereal grain milled fractions (except flour and rice hulls)	10
Rice hulls	25

[FR Doc. 94-5723 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 8F3622, FAP 0H5597/P551; FRL-4164-5]

RIN 2070-AC18

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to reestablish the time-limited tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodities (RACs) field corn, grain at 1.0 part per million (ppm); field corn, fodder at 10.0 ppm; and field corn, forage at 3.0 ppm; and on or in the processed agricultural commodities (PACs) field corn, milling fractions at 1.5 ppm. These time-limited tolerances were requested by DowElanco. The time-limited tolerances are proposed to expire on December 31, 1996.

DATES: Written comments and/or objections, identified by the document control number, [PP 8F3622 and FAP 0H5597/P551], must be received on or before April 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The

public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1990 (55 FR 22231), EPA established time-limited tolerances under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodities (RACs) field corn, grain at 0.2 ppm; field corn, fodder at 5.0 ppm; field corn, forage at 1.0 ppm; and on the processed agricultural commodity (PAC) field corn, milling fractions at 0.6 ppm. These tolerances were requested by Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, and established the maximum permissible level for residues of the herbicide in or on these RACs and the PACs. These tolerances expired on June 15, 1991. Meanwhile, the Dow Chemical Company's pesticide business has been merged with Elanco Products Co., a division of Eli Lilly & Co., to form DowElanco. The subject EPA pesticide petitions have been transferred to DowElanco.

The tolerances for the corn commodities were issued as time-limited tolerances because EPA did not have adequate data from a rat metabolism study which was due in January 1991, and the following studies with the technical product that were due July 31, 1991, 1 year from the date of publishing these tolerances:

1. A 21-day dermal study in rabbits.

2. A mutagenicity study testing other nontoxic effects.

These toxicological data were submitted and found to be acceptable for changing the time-limited tolerances to permanent tolerances. Prior to the expiration of these time-limited tolerances the Agency determined that the residue chemistry data used to support these tolerances were suspect data. The residue chemistry data had been generated by Craven Laboratories. The Agency had received information alleging that Craven Laboratories may have falsified residue and environmental fate studies. DowElanco reanalyzed split samples and reported on March 27, 1991, that they had found in a bridging study that residues of clopyralid in field corn grain were higher than the established time-limited tolerance of 0.2 ppm and that the residues in or on corn fodder and green forage were below existing time-limited tolerances of 5.0 and 1.0 ppm, respectively. There were no bridging data for the processed commodity, corn milling fractions. The reported residues found in the corn grain ranged from 0.008 to 0.14 ppm, and the data represented four locations of use on corn.

DowElanco proposed changing the tolerances for residues of clopyralid in field corn grain from 0.2 to 0.5 ppm, and in corn green forage/silage from 1.0 to 1.5 ppm. They determined that the increased tolerance for field corn grain would reflect an increase in the utilized ADI, from 5.07 percent to 5.18 percent or a net increase of 0.11 percent of the ADI.

On March 13, 1992, DowElanco submitted a request for an amended tolerance petition with residue chemistry data, and proposed that based on the submitted data tolerances for field corn, grain at 1.0 ppm; field corn, green forage/silage at 3.0 ppm; and field corn, fodder at 10.0 ppm were appropriate. They also proposed food and feed additive tolerances for field corn milling fractions at 1.2 ppm. EPA issued a notice in the **Federal Register** of May 27, 1992 (57 FR 22232), which announced these proposed tolerances. There were no comments received in response to the notice of filing.

The Agency determined that the data submitted to support the food and feed additive tolerances for field corn milling fractions were inadequate. On March 15, 1993, DowElanco requested reestablishing time-limited tolerances for residues of clopyralid from its use in field corn. They proposed that the Agency use data from a similar compound, 6-chloropicolinic acid, to support their request. Based on the substitute data the Agency has determined that time-limited tolerances for residues of clopyralid at 1.0 ppm in or on corn, field, grain; 3.0 ppm in or on corn, field, forage; 10.0 ppm in or on corn, field, fodder; and 1.5 ppm in or on field corn milling fractions would be acceptable until data from repeated studies on the field corn milling fractions are submitted. DowElanco has assured the Agency that these studies will be submitted no later than mid-year, 1994.

The toxicology data listed below were considered in support of these tolerances.

1. Data listed in the final rule (55 FR 31182) that established the time-limited tolerances for the use of clopyralid in field corn.

2. A 21-day dermal study in New Zealand white rabbits with a no-observed-effect level (NOEL) of > 1,000 mg/kg, no systemic toxicity, and slight dermal irritation.

3. A mutagenicity study, rat hepatocyte unscheduled synthesis assay, showed negative response at dose levels tested, between 5×10^5 and 1.56×10^2 mole/L.

4. Desposition and metabolism of clopyralid were tested in male and female rats at a dose of 5 mg/kg (oral). The majority of a radioactive dose was excreted in 24 hours of all dose groups. Fecal elimination was minor. Detectable levels of residual radio activity were observed in the carcass and stomach at 72 hours post-dose. HPLC and TLC analysis of pooled urine and fecal extracts showed no apparent metabolism of clopyralid. The study was found acceptable for use in the regulation of this pesticide.

EPA believes it is inappropriate to establish permanent tolerances for the use of clopyralid in field corn at this time. Nevertheless, EPA believes that the existing data support the time-limited tolerances to December 31, 1996. The proposed time-limited tolerances for the RACs are appropriate and are being proposed in this rule.

There are no pending regulatory actions against the registration of this pesticide. The pesticide is useful for the purpose for which these tolerances are sought. The metabolism of clopyralid in animals is adequately understood. Adequate analytical methodology, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Based upon the information cited above, the Agency has determined that the establishment of a time-limited

tolerance by amending 40 CFR part 180 will protect the public health and that establishment of a time-limited food additive and a time-limited feed additive regulation by amending 40 CFR parts 185 and 186 will be safe. It is proposed, therefore, that the tolerance and food and feed additive regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Documents relied upon by EPA in issuing this proposal are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above. Comments must bear a notation indicating the document control number, [PP 8F3622 and FAP 0H5597/P551]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 2, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.431, by revising paragraph (b), to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Field corn, fodder	10.0	December 31, 1996
Field corn, forage	3.0	December 31, 1996
Field corn, grain	1.0	December 31, 1996

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1100 by revising paragraph (b), to read as follows:

§ 185.1100 Clopyralid.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following foods:

Foods	Parts per million	Expiration date
Field corn, milling fractions ...	1.5	December 31, 1996

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1100 by revising paragraph (b), to read as follows:

§ 186.1100 Clopyralid.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following feeds:

Feeds	Parts per million	Expiration date
Field corn, milling fractions ...	1.5	December 31, 1996

[FR Doc. 94-5724 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-17, RM-8437]

Radio Brodcasting Services; Jefferson City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Richard L. Billings, proposing the allotment of Channel 281A to Jefferson City, Missouri, as that community's third FM broadcast service. The coordinates for Jefferson City are 38-34-00 and 92-11-00. There is a site restriction 1.5 kilometers southwest of the community.

DATES: Comments must be filed on or before April 28, 1994, and reply comments on or before May 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frederick A. Polner, Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of Proposed Rule Making, MM Docket No. 94-17, adopted February 24, 1994, and released March 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room

239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5667 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–175; RM–8264]

Radio Broadcasting Services; Pateros, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Pateros Community Broadcasters, dismisses the petition for rule making to allot Channel 300A at Pateros, Washington, as the community's first local aural transmission service. See 58 FR 36376, July 7, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–175, adopted February 25, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5670 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Crown Jewel Mine, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On March 2, 1992, the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued a notice of intent (NOI) to prepare an environmental impact statement (EIS) for a proposal to develop a mine for precious mineral extraction on Buckhorn Mountain in the **Federal Register** (57 FR 7362). On April 15, 1993, the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued a revision to the notice of intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (58 FR 19646). The purpose of this revised notice of intent is to inform the interested publics, of the following:

1. A revised release date for the draft- and final EIS;
2. Forest Plan consistency wording;
3. The availability of a revised Reclamation Plan;
4. A revised list of where documents related to the Crown Jewel Mine proposal are available for public review.

The draft Environmental Impact Statement (EIS) is now expected to be completed and available for public review in October 1994. The final EIS is expected to be available in April 1995.

The original NOI stated that, "* * * This project will be in consistent with the Forest Plan * * *". This wording was changed in the April 15, 1993 revision of the notice of intent to read, "* * * This project will be consistent with the Forest Plan * * *". This statement is being revised to read, "* * * All action alternatives will require several amendments to the Forest Plan. These amendments will create a new management area, MA 27; add a site specific amendment for Forest-wide Standards and Guidelines that can not be met by the project; and add a possible amendment to set aside several blocks of land, 150 total acres estimated, in perpetuity for wetlands mitigation * * *"

The initial plan of operations for the crown Jewel Mine was filed in January, 1992. As additional engineering and planning work was done, and in response to agency and public comments and suggestions, the proponent revised the initial plan on several occasions and on March 9, 1993 submitted a single integrated plan of operations. Based on additional engineering and planning work and in response to additional agency and public comments and suggestions, the proponent revised chapter 6 of the Integrated Plan of Operations and published a stand alone Reclamation Plan in August 1993 which was further modified on November 29, 1993.

Copies of the Reclamation Plan, Scoping Comment Summary document, the Integrated Plan of Operations, and other documents related to the Crown Jewel Mine proposal and EIS are available for public review at the following locations:

Forest Service District Ranger's office, Tonasket, Washington
Forest Service Supervisor's office, Okanogan, Washington
Washington Department of Ecology office, Olympia, Washington
Washington Department of Ecology office, Yakima, Washington
Bureau of Land Management office, Wenatchee, Washington
Public libraries in Oroville, Tonasket, Omak, and Seattle (Main Branch), Washington
Chesaw General Store, Chesaw, Washington
Environment Canada office, North Vancouver, B.C., Canada
B.C. Ministry of Environment, Lands & Parks office, Victoria, B.C., Canada
Village office, Midway, B.C., Canada
City Hall, Grand Forks, B.C., Canada has been dropped from previously published lists.

Dated: March 1, 1994.

Sam Gehr,

Forest Supervisor.

[FR Doc. 94–5705 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–11–M

Establishment of 3 New Research Natural Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given that the Chief of the Forest Service has issued Decision Notices/Designation Orders to establish 3 new Research Natural Areas within the National Forest System. Establishment of these areas is subject to administrative appeal pursuant to the rules at 36 CFR part 217.

DATES: The establishment of the areas is effective April 25, 1994. Also, pursuant to 36 CFR 217.8(b), the period for appealing this decision begins March 12, 1994. Any notice of appeal must be received in writing by April 25, 1994.

ADDRESSES: Copies of the establishment records and of the Decision Notices/ Designations Orders for the 3 areas are available upon written request to Chief (4060), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Copies are available for inspection in the office of the Director of Forest Management Research, First Floor, Northwest Wing, Auditor's Building, 201 Fourteenth Street SW., Washington, DC. To facilitate entry into the building, visitors are encouraged to call in advance (202–205–1552).

Anyone who wishes to appeal must submit a notice of appeal to The Honorable Mike Espy, Secretary of Agriculture, Fourteenth and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jacob L. Whitmore, Forest Management Research Staff, (202) 205–1149.

SUPPLEMENTARY INFORMATION: Research Natural Areas are part of a national network of ecological areas on National Forest System lands designated and permanently recorded for research, education, and/or maintenance of biological diversity. These areas are managed for nonmanipulative research, observation, and study, and they may assist in implementing provisions of special statutes, such as recovery of species under the Endangered Species Act and the monitoring provisions of the National Forest Management Act. The establishment of the 3 new areas will bring the total number of Research Natural Areas on National Forest System lands to 292.

Based on Environmental Assessments of the effects of establishment of these areas, it has been determined that these actions would have no significant impact on the quality of the human environment and that the preparation of Environmental Impact Statements is not necessary.

The new areas to be established are as follows:

Name of RNA	State	County	National forest	Acres
Cape	VT	Addison and Rutland	Green Mountain	290
Buckhorn Mountain	AZ	Gila	Tonto	2810
Haufer Wash	AZ	Gila	Tonto	680

The Decision Notices/Designation Orders amend the relevant forest plans. Notice of the establishment of a new Research Natural Area and notice of forest plan amendment are accomplished simultaneously by publication of this notice in the **Federal Register**.

The effective date of establishment is delayed to permit giving public notice of the decision and to permit the opportunity for appeal as provided in 36 CFR part 217. Pursuant to 36 CFR 217.7(a), review of the Chief's decision by the Secretary is wholly discretionary.

Dated: March 4, 1994.

Mark A. Reimers,

Acting Chief.

[FR Doc. 94–5761 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Friday, March 25, 1994, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and nine ex officio members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 8:30 a.m. and adjourn at 5 p.m. on Friday, March 25, 1994.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, room 2066, Federal Building 3, Washington, DC 20233. Telephone: (301) 763–7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes discussion on cooperative ventures, classification of race and ethnicity, 1995 Census Test plans, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763–7298.

Dated: March 4, 1994.

Paul A. London,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 94–5757 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–EA–M

Bureau of Export Administration

Christopher A. Carrigan, Tower House, Hortin, Wimborne, Dorset, BH21 7EP United Kingdom, Respondent: Order

Whereas, on June 16, 1986, then-Assistant Secretary for Trade Administration Paul Freedenberg entered an Order denying Datalec, Ltd. (Datalec) and Bryan V. Williamson (Williamson) all export privileges for a period of 20 years based on a finding that they had violated the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Public Law 103–10, March 27, 1993)) (the Act), and the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations) (51 FR 22324 (June 19, 1986));

Whereas, in the June 16, 1986 Order, then-Assistant Secretary Freedenberg also found that Christopher A. Carrigan (Carrigan), among others, was related to Datalec and Williamson in the conduct of trade or related services and, therefore, named Carrigan as a "related person" subject to the provisions of the Order entered against Datalec and Williamson;

Whereas, Carrigan has submitted documentation to the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), asserting that he is no longer related to either Datalec or Williamson;

Whereas, the Department has reviewed Carrigan's submission and, based on that submission, asked the Under Secretary for Export Administration to modify the June 16, 1986 Order by deleting Carrigan as a related person, a motion joined in by Carrigan; and

Whereas, I find, based on his submission, that Carrigan is no longer related to either Datalec or Williamson in the conduct of trade or related services;

Accordingly, it is hereby ordered that the June 16, 1986 Order against Datalec and Williamson is modified by deleting Christopher A. Carrigan as a related person under that Order. By this Order,

Carrigan is no longer subject to the provisions of the June 16, 1986 Order. All other aspects of the June 16, 1986 Order remain in full force and effect.

This Order, which is effective immediately, shall be published in the **Federal Register.**

Entered this 5th day of March, 1994.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 94-5758 Filed 3-10-94; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Myanmar

March 8, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for wool trousers, breeches and shorts in Category 448, produced or manufactured in Myanmar and exported during the twelve-month period which began on March 1, 1994 and extends through February 28, 1995 at a level of 2,316 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448 or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 448—Women's/Girls' Wool Trousers/Slacks/Shorts

February 1994

Import Situation and Conclusion

U.S. imports of women's and girls' wool trousers, slacks, and shorts, Category 448, from Myanmar reached 2,316 dozen in 1993. There were no Category 448 imports from Myanmar in 1991 or 1992.

The sharp and substantial increase of Category 448 imports from Myanmar is causing disruption in the U.S. market for women's and girls' wool trousers, slacks, and shorts.

U.S. Production, Import Penetration and Market Share

U.S. production of women's and girls' wool trousers, slacks and shorts declined from 282 thousand dozen in 1989 to 169 thousand dozen in 1992, a decrease of 40 percent. In contrast, U.S. imports of Category 448 increased from 326 thousand dozen in 1989 to 395 thousand dozen in 1992, a 21 percent increase. Category 448 imports increased to 461 thousand dozen in 1993, 17 percent above the 1992 level.

The ratio of imports to domestic production increased from 116 percent in 1989 to 234 percent in 1992. The domestic manufacturers' share of the women's and girls' wool trousers, slacks and shorts market declined from 46 percent in 1989 to 30 percent in 1992, a decrease of 16 percentage points.

Duty-Paid Value and U.S. Producers' Price

All of Category 448 imports from Myanmar during 1993 entered the U.S. under HTSUSA 6104.61.0010—Women's and girls' knitted trousers and breeches of wool. These trousers entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's wool trousers.

Committee for the Implementation of Textile Agreements

March 8, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Myanmar and exported during the period beginning on March 1, 1994 and extending through February 28, 1995, in excess of 2,316 dozen [1].

Textile products in Category 448 which have been exported to the United States prior to March 1, 1994 shall not be subject to the limit established in this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-5756 Filed 3-10-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

[1] The limit has not been adjusted to account for any imports exported after February 28, 1994

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 3, 14 and 28, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 74, 2360 and 4043) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Hub, Full Length

5510–00–NSH–0040, (Requirements for the Federal Highway Administration, Vancouver, Washington)

Stake, Wood, Survey

5510–00–NSH–0039, (Requirements for the Federal Highway Administration, Vancouver, Washington)

Cup, Specimen

6530–01–163–3704

Pitcher, Water

7350–01–138–0022

Coveralls, Safety

8415–00–939–7879
8415–00–939–7880
8415–00–939–7881
8415–00–939–7882
8415–00–926–5113

Services

Janitorial/Custodial

U.S. Courthouse, 500 State Avenue, Kansas City, Kansas

Operation of the Postal Service Center, Eglin Air Force Base, Florida

Sharpening of Drill Bits, Fleet and Industrial Supply Center, Jacksonville, Florida

Switchboard Operation, Veterans Administration Medical Center, 1030 Jefferson Avenue, Memphis, Tennessee.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5742 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Box, Shipping

8115–00–134–3655
8115–00–134–3656
8115–01–006–7257
8115–01–010–8956
8115–00–516–0251

NPA: Tarrant County Association for the Blind, Fort Worth, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5743 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statements underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Lancet, Finger Bleeding

6515–01–135–8497
NPA: Mental Health Systems, Inc., San Diego, California

Cover, Water Canteen

8465–00–860–0256
NPA: Human Technologies Corporation, Utica, New York

Service

Janitorial/Custodial, Veterans Outreach Center, Vista, California.
NPA: Mental Health Systems, Inc., San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5744 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 56569) of proposed additions to the Procurement List.

Comments were received from one of the current contractors for the stencil sets at the time of the **Federal Register** notice proposing addition of the stencils to the Procurement List, as well as from two Members of Congress who urged that the contractor's comments be seriously considered. Because considerable time has elapsed since that notice, the Committee wrote to the contractor on January 11, 1994 to afford it an opportunity to update its comments on the proposed action. The contractor's responses to this letter are addressed in the following paragraphs, along with its initial response to the notice proposing the addition of the stencil sets to the Procurement List.

The contractor indicated that the stencil sets, while not making up a very large part of the dollar value of its sales, did represent a significant numerical part of its sales. The company said it has been a longtime supplier of stencil sets to the Government, and its Government sales enable it to remain competitive with other suppliers, even though it has to offer prices to the Government which are substantially below its commercial prices in order to keep the Government business. The company stated that it is the last American manufacturer of brass interlocking stencils, and is having to compete against an importer of foreign stencils.

The contractor indicated that loss of the ability to sell these stencil sets to the Government would result in the loss of seven well paid jobs for individuals who would be unable to find comparable employment. It would also deprive a nonprofit agency employing people with severe disabilities of the opportunity to provide employment for those people in packaging the stencils.

The company noted that it would have to absorb a loss in unusable inventory if it could no longer produce the stencil sets for the Government. It also noted that substantial start-up costs are involved in producing the stencils. The contractor questioned whether the nonprofit agency proposed by the Committee to produce the stencils could acquire the necessary equipment and learn to use it successfully in the time available before it would have to fill Government orders, and the wisdom of setting aside 100% of the Government requirement for the stencils under these circumstances.

The contractor questioned whether the Committee has given proper notice of its current action, because it has not republished its November 1992 notice of proposed rulemaking. The contractor contends that the Committee made a final decision in 1993 on its 1992 proposal. If this is true, the current Committee action would be a new rulemaking which should have been announced as a new proposal in the **Federal Register**.

The Committee's key measure of impact on a contractor has traditionally been the percentage of the dollar value of the contractor's total annual sales which it will lose as a result of an addition to the Procurement List. Viewed in this light, addition of the stencil sets to the Procurement List would not have a severe adverse impact on the contractor. However, as indicated in the following paragraphs, the Committee believes that, while consideration of all of the points made by the contractor would not result in a

finding of severe adverse impact, the circumstances, particularly the contractor's efforts to subcontract with nonprofit agencies employing persons with severe disabilities, warrant some ameliorative action.

Accordingly, the Committee has decided to add all seven stencil sets to the Procurement List, but to grant a one-year purchase exception which will permit the Government to purchase its annual requirement for three of the stencil sets from the commercial market one last time. If the commenting contractor is successful in competing for the contract, it will be able to use at least some of the inventory which it claims would otherwise be useless. Moreover, the nonprofit agency which the Committee is authorizing to produce the stencil sets has expressed an interest in exploring with the current contractor the purchase of its surplus inventory.

The Committee has considered the contractor's record as a long-time supplier of these stencil sets to the Government. However, as the contractor admitted, it has not won the contract to supply all the stencils every year, and the price of winning it has been to cut its prices severely. The contractor even implied that this competitive process drove the other American stencil manufacturer out of business. Also, no contractor is guaranteed a contract in the competitive bidding process. Under these circumstances, the Committee does not believe that the contractor's record as a supplier of the stencil sets adds enough to the other impact factors it mentioned to constitute severe adverse impact on the contractor.

Addition of the stencil sets to the Procurement List will create a larger number of jobs for people with severe disabilities than it will lose for contractor employees. The unemployment rate for people with severe disabilities is considerably higher than it is for people without disabilities, even in labor surplus areas. Consequently, the Committee believes that the possible loss of jobs for the contractor's employees, who can more easily find other jobs than people with severe disabilities, is outweighed by the creation of jobs by the Committee's action.

The nonprofit agency which was packaging the stencil sets for the contractor has informed the Committee that this task had not yet created much work for its employees with severe disabilities, and that it did not object to the Committee's action. The contractor has offered to enter into a similar arrangement with another agency employing people with disabilities. However, the Committee notes that such an arrangement would be totally at the discretion of the contractor and would require the contractor to reduce work available to its current employees, an outcome the contractor has indicated is not desirable. More importantly, unlike the Committee's program, this arrangement—even if it were not discretionary—does not guarantee that the work will continue to be done by people with severe disabilities because the contractor has no guarantee that it will continue to receive contracts for any or all of the stencil sets.

The Committee did not make a decision on adding the stencil sets to the Procurement List in 1993. As the contractor predicted, questions about the nonprofit agency's capability delayed the project. However, these problems have been solved, and the nonprofit agency now meets the Committee's capability requirements. It should be noted that the contractor did not renew its questions about the nonprofit agency's capability in its 1994 comments.

Because the Committee did not make a decision on the proposal to add the stencil sets to the Procurement List in 1993, it was not necessary to publish a new notice of proposed rulemaking before this regulatory action could be completed. The Committee even exceeded due process requirements by affording the contractor an opportunity to update its comments. Accordingly, the Committee rejects the contractor's challenge to the adequacy of due process in this rulemaking.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Stencil Set, Marking

7520–00–205–1760
7520–00–269–9012
7520–00–272–9680
7520–00–272–9683
7520–00–272–9684
7520–00–298–7043
7520–00–298–7044

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director

[FR Doc. 94–5745 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Non-Competitive Financial Assistance Award

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Non-Competitive Financial Assistance (Cooperative Agreement) Award with Babcock & Wilcox.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it intends to make a non-competitive Financial Assistance (Cooperative Agreement) award to Babcock & Wilcox for a research project entitled, "Advanced Emissions Control Development Program."

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: John R. Columbia, Contract Specialist, (412) 892–6219.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.

DE–FC22–94PC94251.

Title of Research Effort

"Advanced Emissions Control Development Program."

Awardee

Babcock & Wilcox.

Term of Assistance Effort

Five (5) years.

Cost of Assistance Effort

A Total Estimated Value of $11,000,000.000, with DOE estimated funding of $5,000,000.000

Objective

The objective of the proposed program is to provide financial assistance to Babcock & Wilcox for the continuation of research for improvements in conventional flue gas cleanup technologies and will contribute to the development of advanced emissions control technologies using the Clean Environment Development Facility (CEDF) located at its Research Center in Alliance, Ohio. Specific areas of research include: optimizing the capture of air toxics in conventional systems, investigating the impacts of coal properties on air toxic emissions, developing advanced air toxics measurement concepts, developing advanced control concepts, and developing an air toxics emissions data base. The program will include these phases. Phase I activities will consist of test equipment modification, installation, and shakedown for the test equipment to be added to the CEDF, along with benchmarking, verification testing, and data analysis. Phase II research and development will focus on the optimization of convention systems, and Phase III will be directed at advanced control and measurement concepts, along with coal comparisons.

Although the project would be carried out by the participant using its own funds or those donated by third parties, DOE support of the research will enhance the public benefits to be derived through technology transfer, and the DOE knows of no other entity which is conducting or is planning to conduct such activity. In addition, Babcock & Wilcox has exclusive domestic capability to perform the research based upon the unique equipment at the CEDF, the technical expertise of their project engineers, and the versatility of the CEDF to accept additional testing equipment required for specific projects.

Dated: March 4, 1994.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 94–5732 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–M

Indian Energy Resource Development Program

AGENCY: U.S. Department of Energy.

ACTION: Solicitation for Applications; Indian Energy Resource Development.

SUMMARY: The Office of Technical and Financial Assistance, Assistant Secretariat for Energy Efficiency and Renewable Energy, through the Chicago Operations Office, invites applications for grants for two distinctly different Indian energy resource activities authorized by sections 2603 and 2606 of title XXVI, Public Law 102–486, The Energy Policy Act of 1992.

Title XXVI supports both fossil and renewable energy resource development on Indian reservations. The provisions of the title are broad and designed to stimulate the creation and vertical integration of energy-related reservation enterprises; develop and improve tribal technical capabilities; train and educate Native Americans in energy fields; improve environmental protection; and overall, to promote tribal self-sufficiency when reservation energy matters are dealt with.

Even though the scope of title XXVI is very broad, the solicitation announced in this Notice only invites applications under two provisions of the Statute: (1) Section 2603, Subsection (a)(2), Demonstration Programs for Vertical Integration Projects; and (2) Section 2606, Tribal Government Energy Assistance Program in Support of Renewable Energy Projects on Indian Reservations.

DATES: The solicitation for applications will be available on and after March 11, 1994. Applications must be received at the location designated below by 3 p.m., May 9, 1994.

ADDRESSES: The solicitation, required forms, and application instructions are available from: Indian Energy Resource Development Program, U.S. Department of Energy, Denver Support Office, 2801 Youngfield—suite 380, Golden, CO 80401–2266, (303) 231–5750, ext. 132.

SUPPLEMENTARY INFORMATION: An applicant for assistance under section 2603, subsection (a)(2), Demonstration Programs for Vertical Integration, must be an Indian tribe. An applicant for assistance under section 2606, Tribal Government Energy Assistance Program in Support of Renewable Energy Projects on Indian Reservations, must be either an Indian tribe or private sector person working in cooperation with an Indian tribal government.

An Indian tribe is defined as any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established under, the Alaska Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Private sector person" is defined as any individual or entity engaged in free enterprise for the purpose of making a profit from the sale of goods, property, merchandise, commodities, products, materials, or services.

"Public sector" entities, i.e., state, county, and local governments, state colleges and universities, etc. may not be applicants for assistance, but can participate as contributing partners when tribes or private sector entities are the prime applicants.

Applicants may submit applications for 2603(a)(2)-type projects and 2606-type projects, but may not combine them on a single application. Funding percentages and eligibility requirements differ for each section thereby precluding consideration of applications which combine or mix project types.

The Fiscal Year 1994 appropriation is $5,000,000. Awards made under section 2603(a)(2) are anticipated to range from $1 million to $2.5 million. Grants made under section 2606 are anticipated to be less than $250,000 each. In all, the DOE expects to make from 25 to 30 grant awards.

An applicant is advised to concentrate only on its strongest, most promising, and best developed energy resource project. The DOE discourages multiple applications from the same entity, for the same section of title XXVI, e.g., two or more applications for assistance under 2603(a)(2) from Tribe "X".

Applicants must show evidence of tribal involvement in the proposed energy project. Most commonly this will be by including in the application a tribal resolution, or similarly official tribal document, which reflects the tribe's support for and understanding of the project for which funding is applied.

It is currently anticipated that the review of applications will begin on or about May 16, 1994. Selections will commence approximately mid-June. Awards will be issued during the period of late June through September 1994.

Issued this day in Chicago, IL March 7, 1994.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 94–5738 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: March 24, 1994–9 am to 5 pm. March 25, 1994–9 am to 12:15 pm.

Place: Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20007, (202)687–3200.

Contact: Bill Raup, U.S. Department of Energy, Office of Technical and Financial Assistance, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–2214, FAX: 202–586–5145.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding energy efficiency goals and objectives and programmatic and administrative policies related to those programs, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Purpose of the Meeting: To review and discuss the responses of the Department regarding the Board consensus statement on FY95 budget and strategic planning priorities; to discuss ways the Board can most effectively assist the Office of Energy Efficiency and Renewable Energy in the Climate Change Action Plan; to discuss Board recommendations to the DOE FY 96 budget; to discuss National Laboratories' feedback to a letter from the Board this year; and, to discuss various internal Board issues, including its revised 1994 work plan and budget and membership issues.

Tentative Agenda:

- Discussion of DOE responses to Board FY95 budget consensus statement.
- Discussion of Board membership issues.
- Discussion of Board's best role in the Climate Change Action Plan.
- Discussion of Board's recommendations to the Secretary and the Congress on the FY 96 budget.
- Other internal Board business, including discussion of Board budget and revised 1994 work plan.

Public Participation: The meeting is open to the public. The chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Bill Raup at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 8, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–5731 Filed 3–8–94; 4:12 pm]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–15: Atmospheric Radiation Measurement (ARM) Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests applications for grants to support:

(Category 1): Renewal or supplementing of activities previously funded by DOE Program Notice 91–9 dated March 8, 1991 (with grants awarded in the fall of 1991).

(Category 2): The modeling and analysis of data relating to the parameterization of clouds and radiation in General Circulation Models (GCMs) and related models. These activities should be closely tied to the use of data from the current and planned facilities of the Cloud and Radiation Testbed centered near Lamont, Oklahoma and further deployments in the Tropical Western Pacific and on the North Slope of Alaska.

(Category 3): The development of new analytic methods and derived data products by combining ARM data and other data such as satellite data; these new methods or products must support the experimental efforts of ARM Science Team members.

(Category 4): The development of advanced instrumentation for high accuracy/precision radiometric observations and for profiling of all three phases of water in the atmosphere and lower stratosphere.

(Category 5): The use of ARM data to support activities in other programs with goals related to those of ARM through unfunded participation in the ARM Science Team.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 26, 1994, to permit timely consideration for award in Fiscal Year 1995

ADDRESSES: Formal applications referencing Program Notice 94–15 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, ATTN: Program Notice 94–15. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Mr. Peter W. Lunn, Environmental Sciences Division, Office of Health and Environmental Research, ER–74 (GTN), Washington, DC 20585, telephone (301) 903–4819.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Environmental Sciences Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCMs). This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM Program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This testbed is referred to as the Cloud and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. Sites are planned for the Tropical Western Pacific Ocean and the North Slope of Alaska which are expected to begin operation during the next four years. Each site is

intended to be in operation for approximately 10 years.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Environmental Sciences Division (ESD), successful applicants will participate as ARM Science Team members along with selected scientists from other ESD programs that relate to the ARM Program. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two (2) trips of 3 days each to Chicago, IL.

Successful applicants for renewing or supplementing grants placed under Program Notice 91–9, Category 1, will demonstrate (a) continued relevance of their work to the goals of the ARM Program; (b) the quality and relevance of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM program, particularly the design and development of CART facilities, as a result of previous funding. Applications should include a special section entitled "Accomplishments Under Previous Support" which addresses items (b) and (c) directly above.

Successful applicants for grants in support of Category 2 will participate in the modeling and scientific portion of the ARM Program. These applicants must demonstrate the role of their research in the improvement of General Circulation Models and/or related models and delineate the path that their results will take to make those improvements. It is anticipated that successful applicants will be involved in one or more of three activities: (a) The development of models and parameterization of radiative transfer or cloud processes or the testing of these models in GCMs or process-level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing.

Successful applicants for participation in Category 3, the development of new analytic methods and derived data products, must demonstrate how the proposed efforts support the ARM Science Team members involved in the other categories of research. Participation in category 3 is not a stand alone activity. Successful applicants must either be current participants in the ARM Program or be a successful applicant through this solicitation for participation in one of the other four categories.

Successful applicants for participation in the ARM advanced instrument development program, Category 4, will either: (a) Develop instruments to meet the long-term need of the ARM Program for deployment of improved radiometric sensors, both broad-band and spectrally-resolved. Of particular interest are instruments capable of high-precision radiometric calibration. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength and the relevance of the resulting measurements to testing models of atmospheric radiative processes; or (b) Develop instruments to meet the long-term need of the ARM Program for the deployment of improved systems for the measurement of the spatial distribution of all three phases of water, with particular emphasis on vertical profiles. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of altitude and the relevance of the resulting measurements to testing models of atmospheric radiative processes.

Successful applicants for participation in the adjunct ARM Science Team, Category 5, will apply ARM data to research programs of interest to DOE and related to ARM goals, but which are funded by other sources. While ARM data is available through the ARM Data Archive at Oak Ridge National Laboratory, ARM Science Team participation provides investigators the opportunity to receive tailored data products from the ARM Experiment Center at Pacific Northwest Laboratory and the opportunity to participate in the design of ARM facilities and experiments. While there will not be funds to support the research of applicants under this portion of this notice, some funds may be available to support the travel of successful applicants to participate in ARM Science Team activities as indicated below. The current number of participants in this aspect of the program is four. The number of participants which will be selected under this portion of this notice may be limited to no more than 6 teams. Preference will be given to participants whose goals are related to the general goals of ARM outlined above; Global Energy and Water Experiment (GEWEX) and its associated programs; the study of aerosols and their effect on the radiative transfer, including visibility studies; and the transfer of UV-B radiation through the atmosphere.

The efforts proposed in support of all five categories should have as a focus the conduct of research using the CART facilities either in operation or being developed for ARM. Successful applicants will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

It is anticipated that approximately $2,000,000 will be available for awards for the combined activity under Categories 1, 2, 3, and 4 above in FY 1995, contingent upon availability of appropriate funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds among the four categories above will depend on the number and quality of the applications received. It is anticipated that a substantial fraction of the funds will support renewals of existing research under Category 1 above. Typical ESD awards are $200,000 per year, but range from $50,000 to $600,000. Collaborative applications are encouraged. Awards are anticipated to begin on or about November 1, 1994.

The technical portion of the application should not exceed twenty-five (25) doubled-spaced pages. For applicants under Category 1 above, the "Accomplishments Under Previous Support" section should not exceed ten (10) additional double-spaced pages. An abstract of less than 200 words must be included with the application. Lengthy appendices are discouraged.

Technical information on the ARM Program is available from the ARM Program Office at Pacific Northwest Laboratory, P.O. Box 999, Richland, WA 99352 (telephone (509) 375–6964) or from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (telephone (615) 576–8401).

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures, may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application and Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Office of Energy Research, ER–74, Washington, DC 20585. Telephone

requests may be made by calling (301) 903–4208.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94–5737 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–14; Electron Beam Irradiation of Medical Waste

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), announces its interest in receiving applications in support of research to study the feasibility of electron beam irradiation for treatment of infectious medical waste. The research should be conducted at a medical research center with proven experience with this technology. In recent years, the practice of handling medical infectious waste by shipping to special disposal sites, incinerating, or by other physical and chemical treatments has resulted in public concern over environmental, public health, and cost-related issues. Irradiation of medical infectious waste by electrons may provide an environmentally safe (publicly acceptable), and cost effective method for disposing of this waste. Applications should address research plans for: (a) The pre-irradiation processing of waste, (b) monitoring and validating treatment efficacy, and (c) investigating the advantages and disadvantages of on-site versus regionally based electron beam irradiation facilities. They should also address how the research could demonstrate technical feasibility of the technique. Applicants may include technical expertise from industry and/or National Laboratories.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., May 31, 1994, to be accepted for a June merit review and to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–14 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, (GTN), Washington, DC 20585. Attn: Program notice 94–14. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, DC 20585, telephone: (301) 903–3209.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs for the electron irradiation technology for medical waste treatment. Preapplications referencing program notice 94–14 should be received by April 1, 1994, and sent to Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, Washington, DC 20585, (301) 903–3209. Telephone and fax numbers are required to be a part of the preapplication. A response to the preapplication discussing potential relevance of a formal application will be communicated by April 15, 1994. It is anticipated that approximately $1 million will be available for grant awards during Fiscal Year 1994 contingent upon availability of funds. We expect to award two to three grants in this area of research ranging from $300,000 per year up to $500,000 per year for 1 year. Information about development and submission of applications, eligibility, limitations, evaluations and selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301)903–5349.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94–5734 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–16; Terrestrial Carbon Research of the Global Change Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE) hereby announces its interest in receiving applications to support research and analysis of "terrestrial carbon processes" (TCP) that affect changes of atmospheric carbon dioxide (CO_2) concentration. This program is a refocusing of existing DOE research on the global carbon cycle, and the response of vegetation to CO_2. The refocused research supports the Department's Global Change Research Program (including studies of climate change), the U.S. Global Change Research Program (USGCRP), and the Administration's goals to understand and mitigate the rise in greenhouse gases.

This notice requests grant applications for research that will (i) advance the scientific understanding of terrestrial processes regulating carbon balance of those ecosystems having a major influence on atmospheric CO_2 concentration; (ii) evaluate changes of carbon quantities of ecosystems in relation to the rising concentration of atmospheric CO_2, and, reciprocally, how ecosystem response affects atmospheric CO_2 concentration; and (iii) identify/quantify biological processes and paradigms that control carbon metabolism and operate across a range of ecosystems. Emphasis will be placed on an improved understanding of metabolic processes of vascular plants that mediate the removal of CO_2 from the atmosphere and the biological and ecological factors controlling retention of carbon in terrestrial ecosystems. The goal of TCP research is to identify and quantify natural mechanisms of the terrestrial ecosystems that may be affecting secular trends and year to year variations of atmospheric CO_2, and to develop the scientific understanding needed to model/predict/quantify the

role of terrestrial ecosystems for regulating the global carbon balance. As a secondary priority, associated research will identify sites and rates of carbon sequestration by land systems, particularly those that lend themselves to the management of enhanced carbon fixation and retention. While this notice focuses on terrestrial aspects of the global carbon cycle, DOE also maintains an Oceans Research Program which addresses ocean-related carbon questions. Research on the effects of global change (including ecological responses to CO_2) on ecosystem structure and function not directly tied to carbon processes will be considered by the companion DOE Program on Ecosystem Research (PER).

DATES: Formal applications submitted in response to this notice must be received by 4:30 PM, EDT, May 16, 1994, to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–16 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, ATTN: Program notice 94–16. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Roger C. Dahlman, Office of Health and Environmental Research, Environmental Sciences Division, ER–74 (GTN), U.S. Department of Energy, Washington, DC 20585, (301)903–4902/4951, or by Internet address, roger.dahlman@mailgw.er.doe.gov

SUPPLEMENTARY INFORMATION: The solicited TCP research seeks to enhance the scientific understanding of natural processes of the terrestrial carbon cycle, including documenting the fate of excess CO_2 emissions in terrestrial environments. In this context, the research is an important adjunct to policies and actions being considered for slowing the rise of greenhouse gases in the atmosphere. For example, improved understanding of carbon processes will help to build scientific foundations for evaluating the effectiveness of the Administration's Climate Change Action Plan for slowing the rate of atmospheric CO_2 increase. This research will help provide the scientific basis for quantifying the role of the terrestrial biosphere in regulating changes in atmospheric CO_2, which defines an important radiative forcing for assessment of climate change—a core research activity of the USGCRP and DOE's Global Change research.

While it is well-known that energy-related emissions contribute greenhouse gases to the atmosphere, it is also recognized that natural earth system processes exert a major control on ultimate atmospheric concentration of the gases. This is especially true for CO_2, and is illustrated by the observation of the past few years that the rate of increase of atmospheric CO_2 increase has drastically slowed. This observed phenomenon raises questions about whether unexplained natural processes have a major influence on this constituent of the atmosphere.

Priority will be placed on field experiments of physiological/ecological controls of whole ecosystem carbon processes, and on studies of metabolism/retention of carbon in major terrestrial ecosystems. While processes to be investigated may range from fundamental studies of plant carbon metabolism (e.g., photosynthesis, respiration, etc) to ecosystem controls on carbon balance, the research products must logically contribute to the analysis of overall carbon balance of ecosystems, and to "global" evaluations of natural controls of the global carbon cycle. Collaborative studies are encouraged, particularly those that contribute to multidisciplinary research organized around existing field facilities designed to manipulate CO_2 concentrations and other global change variables (e.g., temperature, moisture) that affect carbon budgets of ecosystems.

Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives. The preapplication is required to provide information that can be used to arrange for adequate reviews and also to provide applicants with an indication of DOE's interest in a potential application. Preapplication and the formal grant application should identify theoretical underpinnings for the proposed research on processes, identify field empirical approaches for generating data bases, and suggest the logical connection of research products to global-scale analysis of atmospheric CO_2 change.

Preapplications and formal applications will be reviewed relative to the DOE interests described by this notice, and in reference to scope and research priorities of the U.S. Global Climate Change Research Program (USGCRP), specifically, the priority task on CO_2 and Trace-Gas research described in the USGCRP draft report entitled, "Special Issue on Enhanced Terrestrial Ecology Research on Global Change". Preapplications should include no more than two to three double-spaced pages (10 pt): Including proposed research; names and telephone numbers for all principal investigators (PIs), co-principal investigators (CO–PIs), and collaborators; and telefax number, Internet address (if available) and mail address for the PI. Preapplications referencing Program Notice 94–16 should be received by March 31, 1994, and sent to Dr. Roger C. Dahlman, Office of Health and Environmental Research, ER–74, Washington, DC 20585, or to the Internet address noted above. A response to the preapplications will be communicated to the PI by April 22, 1994.

Each formal application should not exceed 25 double-spaced 10 pt pages (20 pages technical material, and 5 pages for curriculum vitae and all other data) with one-inch margins, and should include an abstract of not more than two paragraphs. Lengthy applications are not encouraged, and may be returned with a request to reduce length; however, applications received after the deadline may not be eligible for award in FY 1995.

It is anticipated that approximately $2.5 million will be available for grant awards in FY 1995, and approximately another $2.0 million in FY 1996, contingent upon availability of appropriated funds. Previous awards for this type of research have ranged from $100,000 up to $400,000 per year, with most not exceeding $250,000. While most awards are expected to range from $100,000 to $250,000 per year, a few larger awards may be granted for core experiments requiring designs or facilities for manipulating CO_2 and other environmental variables. Funding of multiple year grant awards is expected, and is also contingent upon availability of appropriated funds. Other investigators with meritorious applications may be encouraged to conduct research at core facilities; therefore, to the extent it is possible, applicants should identify which, if any, existing facilities or locations they would cooperate with if they received an award.

Emphasis will be placed on experimental and analytical studies in the first cycle (FY 1995) of awards, and interests in modeling terrestrial carbon processes, and the terrestrial carbon cycle will be considered in the second

cycle (FY 1996). In the first cycle, however, applicants are encouraged to point out how their research products on terrestrial carbon processes might contribute to on-going or planned carbon modeling activities.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures, may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER–74, Washington, DC 20585. Telephone requests may be made by calling (301)903–4902. Supplemental documentation including (1) Examples of existing DOE research on carbon cycle and the response of vegetation to CO_2, the two programs that will be refocused as research on "terrestrial carbon processes," and (2) Draft USGCRP report on the "Special Issue on Enhanced Terrestrial Ecology Research on Global Change" is also available upon request by calling (301) 903–4902.

The Catalog of Federal Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94–5736 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. EA–80]

Application for Authorization to Export Electricity; Citizens Utilities

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Utilities (Citizens) has requested an electricity export authorization in order to transmit electric energy between two points in northern Vermont. To facilitate the transmission, electricity must pass through the system of Hydro-Quebec, a Canadian corporation. No net electricity will be exported to Hydro-Quebec.

DATES: Comments, protests or requests to intervene must be submitted on or before April 11, 1994.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

Citizens holds two Presidential permits issued pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to construct, connect, operate, and maintain electric transmission facilities at the international border between Vermont and Canada. In 1979 Citizens was issued Presidential Permit PP–66 for the construction of one, 120-kilovolt (kV) overhead transmission line at a point on the international border between the United States and Canada near Derby Line, Vermont. Citizens also holds Presidential Permit PP–80, issued in 1983, for construction of a 25-kV line near Canaan, Vermont, and a 25-kV line in Norton, Vermont.

On February 9, 1994, Citizens notified DOE that it had entered into an agreement with Baldwin Hydroelectric Corporation (Baldwin) to purchase the electrical output of the Baldwin Hydroelectric Project being constructed on the Connecticut River in northern New Hampshire. Citizens would then provide that electricity to its customers in northern Vermont. In its application, Citizens asserts that it has limited transmission capability between the area of the Baldwin project and the majority of its customers in north-central and north-west Vermont. In order to efficiently facilitate the transfer of electricity, Citizens proposes to export electric energy to Hydro-Quebec in Canada across the facilities near Canaan, Vermont (PP–80). Hydro-Quebec will redeliver the same amount of electricity to Citizens in the U.S. at the Derby Line facility (PP–66) in Vermont. This transaction would not result in a net export of electricity to the system of Hydro-Quebec.

Procedural Matters:

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Craig Marks, Citizens Utilities, High Ridge Park, Stamford, CT 06905.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by section 202(e) of FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, March 7, 1994

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 94–5733 Filed 3–10–94; 8.45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EC94–11–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

March 7, 1994.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. EC94–11–000]

Take notice that on March 2, 1994, PacifiCorp tendered for filing in accordance 18 CFR 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to convey to the Portland General Electric Company (PGE) certain transmission facilities located in Multnomah County, Oregon.

PacifiCorp requests that, pursuant to Section 33.10 of the Commission's Regulations, the Commission accept this application for filing to be effective forty-five (45) days after the date of filing.

Copies of this filing were supplied to PGE and the Public Utility Commission of Oregon.

Comment date: March 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Oxbow Geothermal Corporation

[Docket No. EL94–36–000]

Take notice that on February 24, 1994, Oxbow Geothermal Corporation (Oxbow) tendered for filing a request for disclaimer of jurisdiction.

Oxbow requests the Commission to disclaim jurisdiction over Oxbow as the owner or operator of an undivided leasehold interest in Oxbow's QF interconnection facilities proposed to be leased to and made a part of another qualifying facility.

Comment date: March 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. American Municipal Power-Ohio, Inc. v. Toledo Edison Company

[Docket No. EL94–37–000]

Take notice that on February 25, 1994, American Municipal Power-Ohio, Inc. (AMP-Ohio) tendered for filing a complaint against Toledo Edison Company (TECO) requesting the initiation of an investigation to determine whether TECO's present rates for transmission service under FERC Rate Schedule No. 34, Supplement No. 3, Schedule C, as well as the transmission rate and distribution charge sought in its filing in Docket No. ER94–567 are excessive, and, if so, to decrease those rates to a just, reasonable and non-discriminatory level. AMP-Ohio also requests the Commission to set a refund effective date for TECO's then effective transmission rate 60 days after the filing of the complaint and for TECO's proposed distribution charge at the end of any suspension period ordered in Docket No. ER94–567 or 60 days after the filing of this complaint, as appropriate.

Comment date: April 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. City of Orangeburg, South Carolina v. South Carolina Electric & Gas Co.

[Docket No. EL94–39–000]

Take notice that on February 28, 1994, the City of Orangeburg, South Carolina (orangeburg) tendered for filing a complaint and motion for refunds against South Carolina Electric & Gas Company (SCE&G) alleging that SCE&G has failed to comply with the refund requirement set forth in the Settlement Agreement among SCE&G, Central Electric Power Cooperative, Inc., orangeburg, Town of McCormick, and Town of Winnsboro in FERC Docket No. ER83–487–000, which was approved by the Commission. 27 FERC ¶ 61,244 (1984).

Orangeburg alleges that, under the terms of the ER83–487–000 Settlement Agreement, SCE&G was required to implement refunds to its wholesale WR customers parallel to those ordered by the South Carolina Public Service Commission in its January 19, 1993 Order No. 93–49 in Docket No. 88–681–E for SCE&G's retail large general service customers. Orangeburg alleges that no filing to implement refunds has been filed with this Commission. Orangeburg requests that (1) the Commission find that SCE&G has violated its refund obligation under the ER83–487–000 Settlement Agreement and that (2) the Commission order refunds of amounts owed with interest.

Comment date: April 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric Power Company

[Docket No. ER94–790–000]

Take notice that on February 24, 1994, Virginia Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Power Systems Inc.

[Docket No. ER94–985–000]

Take notice that on February 24, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a Notice of Cancellation of Electric Interchange Agreement (1989 Agreement), dated January 9, 1989, and amended on June 11, 1992. This Interchange Agreement was accepted and designated by the Commission as Rate Schedule No. 26. This Interchange Agreement is being replaced with a new Electric Interchange and Interconnection Agreement dated January 24, 1994.

This cancellation is effective upon acceptance by the Commission of the new Electric Interchange and Interconnection Agreement.

MPSI states that copies of this filing were served on Indianola and the Iowa Utilities Board.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER94–991–000]

Take notice that on February 25, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 214. WRI states the purpose of the change is to provide generation deferral service to the City of Clay Center. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Clay Center and the Kansas Corporation Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER94–992–000]

Take notice that on February 25, 1994, Atlantic City Electric Company (ACE) tendered for filing under § 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, an Agreement between ACE and PECO Energy Company (PECO) dated February 18, 1994.

ACE states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PECO. ACE requests that the Commission waive its standard notice period and allow this Agreement to become effective on February 28, 1994.

ACE states that a copy of this filing has been sent to PECO and will be furnished to the New Jersey Board of Regulatory Commissioners and the Pennsylvania Public Utility Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company, Boston Edison Company

[Docket No. ER94–993–000]

Take notice that on February 25, 1994, New England Power Company (NEP), and Boston Edison Company (BECo) filed an amendment to their Unit Power Exchange Contract (the Contract). The

amendment reflects changes in the maintenance schedules for certain units subject to the Contract. The applicants request that the proposed amendment be made effective March 1, 1994.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER94–994–000]

Take notice that on February 25, 1994, New England Power Company (NEP), tendered for filing an amendment to its Rate Schedule FERC No. 352, the Interconnection and Support Agreement between NEP and the Milford Power Limited Partnership.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Baltimore Gas and Electric Company

[Docket No. ER94–997–000]

Take notice that on February 28, 1994, the Baltimore Gas and Electric Company filed on behalf of the parties to the Extra High Voltage Transmission System Agreement (EHV Agreement) a Spare 500 kV Circuit Breaker Agreement which is filed as a supplement to the EHV Agreement. The parties to the EHV Agreement and the Supplement to the EHV Agreement are:

Public Service Electric and Gas Company
PECO Energy Company
Atlantic City Electric Company
Delmarva Power and Light Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Potomac Electric Power Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
UGI Utilities, Inc.

BG&E states that this filing has been sent to the Regulatory Commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia for their information.

The purpose of the Spare 500 kV circuit Breaker Agreement, which is a supplement to the EHV Agreement, is to permit the signatories to the EHV Agreement to collectively own and have use of a spare 500 kV circuit breaker in accordance with a utilization procedure which is acceptable to each of the signatories.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Ocean State Power Company

[Docket No. ER94–998–000]

Take notice that on February 28, 1994, Ocean State Power Company (Ocean State) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

I. Supplements Based on "Fundamental Analysis"

Supplements No. 16 to Rate Schedule FERC No. 1
Supplements No. 13 to Rate Schedule FERC No. 2
Supplements No. 12 to Rate Schedule FERC No. 3
Supplements No. 13 to Rate Schedule FERC No. 4

II. Supplements Based on Ocean State II's Preferred Methodology

Supplements No. 17 to Rate Schedule FERC No. 1
Supplements No. 14 to Rate Schedule FERC No. 2
Supplements No. 13 to Rate Schedule FERC No. 3
Supplements No. 14 to Rate Schedule FERC No. 4

The Supplements to the rate schedules based on "fundamental analysis" request approval of Ocean State's proposed rate of return on equity for the period beginning on April 29, 1994, the requested effective date of the Supplements based on fundamental analysis, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1995. The Supplements to the rate schedules based on Ocean State's preferred methodology request approval of Ocean State's proposed rate of return on equity for the period beginning on February 28, 1994, the requested effective date of the Supplements based on Ocean State's preferred methodology, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1995 ("Preferred Rate Period").

Ocean State is filing the Supplements based on fundamental analysis pursuant to Section 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively (Agreements), the Commission's Order in Ocean State Power II, 59 FERC ¶61,360 (1992) ("Ocean State II Order"), and the Commission's Order in Ocean State Power and Ocean State Power II, 63 FERC ¶61,072 (1993) ("April Order"). Ocean State is filing the Supplements based on its preferred methodology pursuant to Section 7.5 of the Agreements, the Ocean State II order, and Ocean State's petition for rehearing of the April Order, Ocean State Power and Ocean State Power II, Petition for Rehearing of Ocean State Power and Ocean State Power II, Docket Nos. ER93–397–000 and ER93–398–000 (May 17, 1993). Ocean State intends to ask the Commission to make effective the Supplements based on its preferred methodology for the Preferred Rate Period if the Commission grants Ocean State's petition for rehearing of the April Order.

The Supplements based on fundamental analysis constitute a rate decrease. The Supplements based on Ocean State's preferred methodology constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Electric Power Company

[Docket No. ER94–1000–000]

Take notice that on February 28, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing the final return on common equity (Final ROE) to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1993 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc. and TEX-LA Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO provides service to these customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Company

[Docket No. ER94–1001–000]

Take notice that on February 28, 1994, Montaup Electric Company tendered for filing an annual report titled

Conservation and Load Management Informational Report Proposed Surcharge—February 28, 1994—supporting a negative surcharge for the period March 1, 1994 through February 28, 1995. This annual report filing is required under a conservation and load management (C&LM) clause applied to service to Montaup's affiliated M-rate customers as amended by Montaup in a filing approved by the Commission on May 4, 1993 in Docket No. ER93–79–000. The informational report shows that a negative surcharge (credit) will be required to true up collections for the twelve months ended December 31, 1993 with actual C&LM costs during that period.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5682 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–30–000, et al.]

SEI Holdings V, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 3, 1994.

Take notice that the following filings have been made with the Commission:

1. SEI Holdings V, Inc.

[Docket No. EG94–30–000]

On February 25, 1994, SEI Holdings V, Inc. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and operating a part of an "eligible facility" as defined in section 32(a)(2) of PUHCA. The eligible facility will consist of a six unit 2100 MW power plant facility owned by Comision Federal de Electricidad in Lazaros Cardenas, Mexico. The part of the eligible facility that will be owned and operated by the Applicant is a coal handling facility that will be integrated into the operation of the power plant facility.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. LG&E Power Marketing Inc.

[Docket No. EG94–31–000]

On February 23, 1994, LG&E Power Marketing Inc., 12500 Fair Lakes Circle, suite 260, Fairfax, Virginia 22033 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a corporation engaged directly or indirectly through one or more affiliates and exclusively in the business of owning a twenty-five percent (25%) interest of the Rensselaer eligible facility located in Rensselaer, New York, and selling electric energy at wholesale.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Desarrollo Petacalco, S. De R. L. De C.V.

[Docket No. EG94–29–000]

On February 25, 1994, Desarrollo Petacalco, S. De R. L. De C.V. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant is a Mexican corporation. Fifty-one percent of the voting securities of Applicant are owned by SEI Holdings V, Inc., a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and operating a part of an "eligible facility" as defined in section 32(a)(2) of PUHCA. The eligible facility will consist of a six unit 2100 MW power plant facility owned by Comision Federal de Electricidad in Lazaros Cardenas, Mexico. The part of the eligible facility that will be owned and operated by the Applicant is a coal handling facility that will be integrated into the operation of the power plant facility.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Company

[Docket No. ER94–919–000]

Take notice that on February 14, 1994, Gulf States Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER94–620–000]

Take notice that on February 24, 1994, Pennsylvania Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

Westchester Resco Company, L.P.

[Docket Nos. ES94–14–000 and ES94–14–001]

Take notice that on March 1, 1994, the Chief Accountant, pursuant to delegated authority, issued a Letter Order to Westchester Resco Company, L.P. (WRC) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by WRC.

The March 1, 1994, Letter Order, in ordering paragraphs (C)(1), (C)(2) and (C)(3), reads as follows:

(C)(1) Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by WRC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

(C)(2) Absent a request for hearing within the period set forth above, WRC is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(C)(3) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of WRC's issuances of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene

or protest, as set forth above, is April 1, 1994.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5683 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–938–003, et al.]

Southwestern Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Company Public Service Company of Oklahoma

[Docket No. ER93–938–003]

Take notice that on January 31, 1994, Southwestern Electric Power Company and Public Service Company of Oklahoma (the "Companies") submitted for filing a revised Firm Transmission Service Tariff and a revised Coordination Transmission Service Tariff in compliance with the Commission's January 19, 1994 order in the above referenced proceeding.

Copies of this filing have been served upon parties to the proceeding and the Arkansas Public Service Commission, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Company, and the New Mexico Public Utility Commission.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER94–969–000]

Take notice that on February 14, 1994, Western Resources, Inc. tendered for filing a Notice of Cancellation of RS–247 with Kansas Power Cooperative, Inc.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5679 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

Project No.'s 2528–ME, 2527–ME, 2194–ME, 2531–ME, 2529–ME, 2530–ME, and 11365–ME

Central Maine Power, et al.; Intention To Prepare an Environmental Impact Statement for the Saco River Basin, Conduct Project Site Visits, and Hold Public Scoping Meetings

March 7, 1994.

The Federal Energy Regulatory Commission (Commission) is reviewing applications for new licenses for the continued operation of two hydropower projects and an exemption for an existing unlicensed project on the Saco River, Maine. The Commission's Staff (Staff) also anticipates applications for amendments to license will be filed within the next year on four additional mainstem Saco River projects as a consequence of the "Draft Saco River Fish Passage Agreement" (Agreement) which will affect all seven projects on the Saco River.

The Staff has determined that issuance of new licenses for the Bonny Eagle and Skelton Projects, the issuance of an exemption for the unlicensed Swans Falls Project, and the issuance of amendments to the Hiram, West Buxton, Bar Mills, and Cataract Projects as a result of the Agreement would constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 and the Commission's regulations. Therefore, the Staff intends to prepare an environmental impact statement (EIS) before any licensing decision by the Commission. The preparation of the EIS will continue to be supported by a vigorous and ongoing scoping process to ensure the identification and analysis of all pertinent issues.

The purpose of the scoping process is to identify significant issues related to the proposed actions and the continued operation of hydropower projects in the basin and to determine what issues should be covered in the EIS. The document enclosed, entitled "Scoping Document I" is being circulated to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations, and other interested parties to effectively participate in and contribute to the scoping process. This scoping document provides a brief description of the proposed actions, the potential alternatives, the geographic and temporal scope of a cumulative effects analysis, and a preliminary schedule for preparing the EIS.

The staff's EIS will consider both site specific and cumulative environmental effects to the proposed actions and reasonable alternatives, and will include an economic, financial and engineering analysis. A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

Project Site Visit

The applicants and Commission staff will conduct project site visits of the Swans Falls, Hiram, Bonny Eagle, West Buxton, Bar Mills, Skelton, and Cataract Projects. The site visits will be held starting at 1 p.m. March 22, 1994, and at 9 a.m. on March 23, 1994. All interested individuals, organizations, agencies are invited to attend. All participants are responsible for their own transportation to the starting point. For more details, interested parties should contact Ms. Wendy Bley at (207) 626–9600, extension 2999 prior to the site visit date.

Scoping Meetings

The Commission staff will conduct one evening scoping meeting and one morning scoping meeting. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The evening meeting will be held on March 23, 1994, from 7 p.m. to 10 p.m. (or later) at the Saco Elks Club, on Route #1, Saco, Maine.

The morning agency meeting will be held on March 24, 1994, from 10 a.m. to 1 p.m. at Alfred Restaurant, 281 Civic Center Drive, Augusta, Maine.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on the Saco River projects under consideration. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until April 15, 1994. All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show one or more of the following captions on the first page: Swans Falls Project, FERC No. 11365; Hiram Project, FERC No. 2530; Bonny Eagle Project, FERC No. 2529; West Buxton Project, FERC No. 2531; Bar Mills Project, FERC No. 2194; Skelton Project, FERC No. 2527; and Cataract Project, FERC No. 2528.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated into the record of the proceeding.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Ron W. Kokel, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC 20426 (Telephone 202 219–2840), J. Rich McGuire (Telephone 202 219–3084), or Bob Bell (Telephone 202 219–2806).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5685 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–026, et al.]

Frontier Gas Storage Company, et al.; Natural Gas Certificate Filings

March 7, 1994

Take notice that the following filings have been made with the Commission:

1. Frontier Gas Storage Company

[Docket No. CP85–221–026]

Take notice that on March 1, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc. (Prairielands). The Service Agreement, dated February 28, 1994, contemplates the possible sale to commence March 15, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Frontier Gas Storage Company

[Docket No. CP85–221–027]

Take notice that on March 1, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Interenergy Resources Corporation (Interenergy). The Service Agreement, dated February 28, 1994, contemplates the possible sale to commence March 15, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Frontier Gas Storage Company

[Docket No. CP85–221–028]

Take notice that on March 2, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW.,

Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier's gas storage inventory on an "as metered" basis to Rainbow Gas Company (Rainbow). The Service Agreement, dated March 1, 1994, contemplates the possible sale to commence March 16, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5681 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–257–000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

March 3, 1994.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company, Texas Eastern Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP94–257–000]

Take notice that on February 28, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001–0683, filed in Docket No. CP94–257–000 a joint application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of exchange services among Trunkline, Texas Eastern and Columbia Gulf, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the exchange agreements, Texas Eastern transports up to 50,000 Mcf per day of gas received from Columbia Gulf in Angelina County, Texas, and redelivers equivalent volumes to Trunkline at interconnects between Texas Eastern and Trunkline in either Allen or Beauregard Parish, Louisiana. Trunkline receives the gas from Texas Eastern and redelivers equivalent quantities, up to 50,000 Mcf per day, to Columbia Gulf at the interconnection between Trunkline and Columbia Gulf near Centerville, Louisiana.

By letter dated August 16, 1993, Trunkline, Texas Eastern, and Columbia Gulf mutually agreed to terminate both exchange agreements. The July 30, 1979, agreement is embodied in Texas Eastern's Rate Schedule X–98 and Columbia Gulf's Rate Schedule X–69 of their respective FERC Gas Tariffs, Original Volume No. 2. The August 17, 1979, agreement is embodied in Trunkline's Rate Schedule E–26 of its FERC Gas Tariff, Original Volumes No. 2, and Columbia Gulf's Rate Schedule X–69.

No facilities are proposed to be abandoned as a result of this request.

Comment date: March 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP94–259–000]

Take notice that on March 1, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–259–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Pontchartrain Natural Gas System (Pontchartrain), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it was authorized to exchange natural gas with Pontchartrain by order issued May 3, 1968, in Docket No. CP68–203. ANR provides the service pursuant to its Rate Schedule X–9, it is stated. ANR further states that the exchange agreement provides for termination by either party on six months written notice. ANR asserts that by letter dated September 23, 1993, it provided written notice to Pontchartrain that it would terminate the service effective March 31, 1994. ANR further states that, beginning April 1, 1994, the exchange service will be superseded with a transportation service pursuant to ANR's Rate Schedule FTS–1.

ANR does not propose to abandon any facilities.

Comment date: March 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94–242–000]

Take notice that on February 22, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a request in Docket No. CP94–242–000, pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization under its blanket certificate issued in Docket No. CP82–433–000 to abandon by sale a meter station, all as more fully described in the prior notice request which is on file with the Commission and available for public inspection.

Northwest proposes to abandon by sale to Puget Sound Power & Light Company (Puget Power) its existing Puget Power Meter Station located in Pierce County, Washington. Northwest states that the meter station consists of two 10-inch taps, one 12-inch turbine meter, two monitor regulator runs and appurtenant facilities with a design capacity of 37,780 MMBtu's per day to deliver natural gas from Northwest's 26-inch mainline and 30-inch mainline loop directly to Puget Power's electrical generation plant. Northwest further states that Puget Power would pay $639,999 for the meter station.

Northwest states that it would continue to operate and maintain the meter station for Puget Power as part of Northwest's open-access transmission system.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP94–255–000]

Take notice that on February 28, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed a prior notice request with the Commission in Docket No. CP94–255–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon and remove approximately 664 feet of 3½ inch lateral in Polk County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

FGT proposes to abandon and remove approximately 664 feet of 3½ inch lateral between the Cargill Fertilizer, Inc. (Cargill) meter station and the old Ridgewood Dry Mill plant in Polk County. FGT states that Cargill has abandoned its dry rock operations and no longer needs the lateral. FGT also states that abandonment and removal of the lateral would not result in any abandonment of services to Cargill or any of FGT's existing customers.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP94–249–000]

Take notice that on February 24, 1994, Tennessee Gas Pipeline (Tennessee), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP94–249–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Chevron USA, Inc. (Chevron), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that by an order issued March 12, 1980, in Docket No. CP80–178, Tennessee was authorized to conduct an exchange of natural gas pursuant to an agreement with Chevron. According to Tennessee the referenced agreement provided for Tennessee to deliver certain specified quantities of gas to Chevron at Ship Shoal 154, Offshore Louisiana. Tennessee indicates that in return, Chevron agreed to accept delivery at South Timbalier 31, Offshore Louisiana of gas produced by Mesa Petroleum Company, *et al.*, for the account of Tennessee, and to redeliver equivalent volumes to Tennessee at South Timbalier 36B, Offshore Louisiana.

Tennessee states that due to restructuring of its services pursuant to Order 636, this exchange service has been rendered obsolete. Further, Tennessee states that there has been no activity under this agreement and that the parties have mutually agreed to terminate this exchange service pursuant to mutual written agreement.

Comment date: March 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5684 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–254–000, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

March 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP94–254–000]

Take notice that on February 25, 1994, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188, filed an abbreviated application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and 18 CFR 157.214 for a certificate of public convenience and necessity and abandonment authorization relating to the proposed refunctionalization of certain facilities from production and gathering to transmission and from transmission to production and gathering, respectively, all as more fully set forth in the application which is on

file with the Commission and open to public inspection.

Transwestern explains that, on November 23, 1993, it filed a Stipulation and Agreement (Stipulation) resolving all issues in its pending rate case in Docket No. RP93–34–000. In Article V of the Stipulation, the parties thereto agreed that Transwestern would file an application to refunctionalize certain plant from transmission to production and gathering and certain plant from production and gathering to transmission, within sixty days of the Presiding Judge's certification of the Stipulation to the Commission. On December 27, 1993, the Presiding Judge certified the Stipulation to the Commission. Further, pursuant to the Stipulation, Transwestern is requesting that its application be set for formal hearing.

Transwestern filed its application in compliance with the Stipulation and requests that the Commission: (a) Approve the refunctionalization as requested, (b) grant certificate authorization to operate the facilities to be refunctionalized from production and gathering to transmission as described in Exhibit T–1 to the application, (c) grant abandonment authorization of the certificates applicable to the facilities to be refunctionalized from transmission to production and gathering as described in Exhibit T–2 to the application, (d) find that the facilities to be refunctionalized from transmission to production and gathering as well as all of Transwestern's existing production and gathering facilities are non-jurisdictional facilities under section 1(b) of the Natural Gas Act, and (e) grant such other and further relief as may be proper and appropriate in the premises.

Transwestern submits that the refunctionalization proposed in its application is in the public convenience and necessity because it comports with the Commission's modified primary function test and, therefore, meets the Commission's policy objectives of unbundling transmission and production and gathering.

Comment date: March 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company; Williams Natural Gas Company

[Docket No. CP94–258–000]

Take notice that on February 28, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101 (collectively referred to as Applicants), jointly filed in Docket No. CP94–258–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale, transportation and exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG and WNG propose to abandon two transportation and exchange services provided under CIG's Rate Schedules X–14 and X–47 and WNG's Rate Schedules X–12 and X–20 of their respective Gas Tariff. CIG and WNG have agreed to terminate the designated agreements, as gas has not been purchased since 1983 and both Applicants have open access certificates to provide transportation service and to operate under Order No. 636.

Comment date: March 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources Company

[Docket No. CP94–263–000]

Take notice that on March 2, 1994, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–263–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Louisiana and Texas, under AER's blanket certificate issued in Docket No. CP82–483–000 et al. pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to upgrade two existing domestic delivery taps for deliveries to Arkansas Louisiana Gas Company's (ALG) new Rural Extension Nos. 1329 and 1330 in Claiborne Parish, Louisiana and Titus County, Texas. It is said that the volume of gas to be delivered through these taps is approximately 42,705 Mcf annually and 366 Mcf on a peak day. It is further said that the facilities would be constructed at an estimated cost of $41,700 and that ALG would reimburse AER for all construction costs.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company and Colorado Interstate Gas Co.

[Docket No. CP94–256–000]

Take notice that on February 28, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 and Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a joint application in Docket No. CP94–256–000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern and CIG propose to abandon the exchange of natural gas pursuant to an October 8, 1956, Gas Exchange Agreement included in Northern's FERC Gas Tariff as Rate Schedule X–67 and in CIG's FERC Gas Tariff as Rate Schedule X–21. Northern and CIG state that these rate schedules provide for the exchange of natural gas supplies which are nearer the gathering facilities of the other party in the Hugoton Field in Oklahoma. Northern and CIG state that since both parties have open access transportation certificates and have restructured their services under Order No. 636, there is no longer a need for the exchange service as certificated by the Commission.

Northern and CIG do not propose to abandon any facilities as a result of the authorization requested.

Comment date: March 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if

the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5680 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–1–27–000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1994.

Take notice that on March 1, 1994 North Penn Gas Company (North Penn) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Fifteenth Revised Sheet No. 3A, with a proposed effective date of April 1, 1994.

North Penn states that this filing is North Penn's Annual take-or-pay (TOP) surcharge rate adjustment filing proposed to become effective April 1, 1994. North Penn's computed third annual TOP surcharge is a refund rate of $0.0322 per Mcf, which represents a decrease of $0.0197 per Mcf.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1994, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5653 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–171–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1994.

Take notice that on March 3, 1994, Carnegie Natural Gas Company (Carnegie), tendered for filing as part of its FERC Gas Tariff, Third Revised Volumes No. 1, the following revised tariff sheet:

Original Sheet No. 9B

Carnegie states that it is filing the above tariff sheet as a limited application under Section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former bundled firm sales customers CAP costs direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Texas Eastern's filing in Docket No. RP94–16–000. Carnegie states that it is making this filing pursuant to 31.3(b) of the General Terms and Conditions of its FERC Gas Tariff. Carnegie requests waiver of the Commission's regulations to permit the tariff sheet to become effective March 15, 1994.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5652 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IS94–22–000]

Chevron Pipe Line Co.; Informal Settlement Conference

March 7, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on March 16, 1994, at 9 a.m., as requested by the Presiding Administrative Law Judge in his order of March 3, 1994. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Kathleen M. Dias at (202) 208–0524.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5654 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140418; FRL–4753–3]

Access to Confidential Business Information by Westat, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Westat, Inc. (Westat) of Rockville, Maryland for access to

information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D3–0011, contractor Westat of 1650 Research Blvd., Rockville, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in providing statistical and survey design support for EPA's development of toxic chemical exposure evaluations.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0011, Westat will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Westat personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Westat access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at Westat's Rockville, MD site only.

Westat will be authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. EPA has approved Westat's security certification statement and performed the required inspection of its facility to ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, Westat will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

Westat personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 23, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–5726 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4709–2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed February 28, 1994 Through March 4, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940068, Draft EIS, AFS, UT, Pacer Timber Harvest and Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: April 25, 1994, Contact: Kevin R. Schulkoski (801) 826–5400.

EIS No. 940069, Final Supplement, AFS, ID, Cuddy Mountain Roadless Area, Grade/Dukes Timber Sale and Road Construction, New Information concerning Additional Modifications to the Blend Alternative, Implementation, Payette National Forest, Washington and Adams Counties, ID, Due: April 11, 1994, Contact: John Baglien (208) 549–2420.

EIS No. 940070, Final EIS, BLM, WA, Adoption—Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval, Ferry County, WA, Contact: Ann Aldrich (509) 353–2570. The US Department of the Interior, Bureau of Land Management (DOI/BLM) has adopted the US Department of Agriculture's, Forest Service (USDA/FS) FEIS #920362, filed 9–4–92. DOI/BLM was a cooperating agency on the USDA/FS FEIS and recirculation of the document is not necessary.

EIS No. 940071, Draft Supplement, BLM, WA, Kettle River Key Project Expansion, Lamefoot Mine Site Mining and Milling Operations, Plan of Operations Approval, Ferry County, WA, Due: May 6, 1994, Contact: Ann Aldrich (509) 353–2570.

EIS No. 940072, Final EIS, BOP, PA, Philadelphia, PA. Metropolitan Detention Center (MDC), Construction and Operation, City of Philadelphia, PA, Due: April 11, 1994, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 940073, Draft EIS, APH, REG, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States, Due: April 25, 1994, Contact: Richard Orr (301) 436–8939.

EIS No. 940074, Draft EIS, BLM, OR, Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR, Due: May 31, 1994, Contact: Cathy Humphrey (509) 522–4053.

Amended Notices

EIS No. 940065, Draft EIS, COE, FL, Central and Southern Florida (Canal 111 (C–111) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL, Due: April 18, 1994, Contact: Stephen Sutterfield (904) 232–1104. Published FR—3–4–94—Due Date Correction.

Dated: March 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–5729 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–60–U

[ER–FRL–4709–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 21, 1994 through February 25, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–CGD–D50005–VA

Rating EO2, Parallel Crossing of the Chesapeake Bay, Construction and Operation, US 13 between the Delmarva Peninsula and southeastern Virginia, Funding, COE section 10 and 404 Permits and CGD Bridge Permit, Virginia Beach, Northampton County, VA.

Summary: EPA expressed environmental objections to the project

as proposed, especially to the stated purpose and need, and the direct and indirect impacts from such actions. EPA also objected to the impacts to habitat from the dredging and the noise generated by this project.

ERP No. D-FHW-J40131-ND

Rating EC1, ND-57 Improvements, US 281 to ND-20, Funding, Right-of-Way, NPDES and COE Section 404 Permits, City of Bismarck, ND.

Summary: EPA expressed environmental concerns about the lack of sufficient identification of project area wetland resources, and the relationship of proposed mitigation activities to the resources being impacted. EPA requested that these issues be addressed in the final EIS.

ERP No. DS-AFS-J65193-MT

Rating LO, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

Summary: EPA had no objections to the proposed action as all points of concerns raised in response to the final EIS have been resolved.

Final EISs

ERP No. F-AFS-J61091-00

Continental Divide National Scenic Trail Comprehensive Plan, Designation, Construction and Reconstruction, Implementation, Medicine Bow National Forest, Hayden Ranger District, WY to Rio Grande National Forest, Conejos Peak Ranger District, CO.

Summary: EPA believed that the Forest Service had adequately addressed EPA concerns.

ERP No. F-AFS-J65200-MT

Little Snowies Vegetative Management and Public Access, Fire and Timber Management Practices, Lewis and Clark National Forest, Musselshell Ranger District, City of Harlowton, Fergus and Golden Valley Counties, MT.

Summary: EPA expressed environmental concerns about cumulative effects to water quality, stream and riparian conditions from the proposed project and domestic grazing.

ERP No. F-AFS-J65201-CO

Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO.

Summary: EPA expressed environmental objections to the preferred alternative since the final EIS identified practicable, less damaging alternatives such as the combined alternatives. EPA wishes to work with the Forest Service and Streamboat Springs to ensure that a less damaging alternative is arrived at that will also ensure future water supply needs.

ERP No. F-AFS-J65204-MT

Tolan Creek Timber Sale, Timber Harvest and Road Construction, Tolan Creek, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summaryu: EPA expressed environmental concerns about air quality impacts to the anacondapintler wilderness area from precribed burning.

ERP No. F-AFS-L65156-ID

Big Eightmile, North Fork of Timber and Alder Creek Timber Sale, Reforestation and Road Construction, Implementation, Lemhi Range Roadless Area, Salmon National Forest, Lemhi County, ID.

Summary: EPA continued to have environmental concerns with the preferred alternative (Alternative J) since the air quality analysis did not provide the basis for the no effect conclusion.

ERP No. F-BLM-J65187-UT

Diamond Mountain Resource Area, Resource Management Plan, Implementation, Daggett, Duchesne and Uintah Counties, UT.

Summary: EPA felt that the Bureau of Land Management had adequately addressed EPA concerns.

ERP No. F-FHW-J40117-CO

CO-82 Transportation Improvements, East of Basalt to the Buttermilk Ski Area West of Aspen, Funding and COE Section 404 Permit, Pitkin County, CO.

Summary: EPA expressed environmental concerns regarding wetland and air quality mitigation.

ERP No. F-FHW-J40127-UT

West Valley Highway Transportation Improvement, 9000 South to 12600 South, Funding and Right-of-Way Acquisition, Salt Lake County, UT.

Summary: EPA encouraged the use of less impactive de-icing alternatives, including a reduction in road salt application.

ERP No. F-NOA-L90023-WA

Olympic Coast National Marine Sanctuary, Management Plan, Site Designation, NPDES Permit and COE Permit, Olympic Peninsula, WA.

Summary: EPA had no objections to the activities suggested in this document.

ERP No. F-NRC-J22004-UT

Uranium and Thorium Byproduct Material Disposal Project, Construction and Operation, Licenses, Salt Lake City, Tooele County, UT.

Summary: EPA continued to have a lack of objections for the project as proposed in the final EIS.

Dated: March 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-5730 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4848-9]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The Office of Science and Technology and the Water Environment Federation, co-sponsors, will hold the "17th Annual Conference on Analysis of Pollutants in the Environment" to discuss all aspects of environmental measurement. The conference is open to the public.

DATES: The conference will be held on May 3-5, 1994, from 8:30 am to 4:45 pm. On May 3, 1994, the first session will begin at 1 pm and last until 5 pm.

ADDRESSES: The meeting will be held at the Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia.

FOR FURTHER INFORMATION CONTACT: Conference arrangements are being coordinated by the Water Environment Federation. For information on registration, hotel rates, transportation, social events and reservations call the Water Environment Federation Conference Service Line at 1-800 666 0206 to receive a brochure. If you have technical questions regarding the conference program please contact William Telliard, Office of Science and Technology (Mail Code 4303), telephone (202) 260-7120, fax (202) 260-7185.

SUPPLEMENTARY INFORMATION: The conference is designed to bring together commercial environmental laboratories, regulated industries, State and Federal regulatory agencies, and consulting and contracting firms to exchange state-of-the-art technical information on aquatic pollutant measurement. Special Sessions will be held on EPA's studies of alternative solvents to Freon 113 in the measurement of "oil and grease", and the development of methods for the determination of trace metals in ambient waters.

The session on Freon substitution will cover the results of EPA's Phase II Study of the determination of "oil and grease" and "total petroleum hydrocarbons" (TPHs). Freon replacement studies by the American Petroleum Institute and the laundry industry will be presented. The session will include updates on solid-phase extraction techniques using cartridges and disks, and the determinations of "oil and grease" and TPH by infra-red adsorption. The session will be capped by discussion of the criteria that EPA will use in the selection of alternate solvent(s) for Freon 113 and technique(s) in the oil and grease test.

The session on trace metals determinations will cover EPA guidance for sampling and analytical methods with associated QC to support the determination of metals at EPA ambient water quality levels. The session will include discussions of clean and ultra-clean techniques. A case study of an environmental monitoring program establishing site-specific water quality criteria for trace metals in the San Francisco Bay will be presented. The session will also cover techniques for determination of arsenic, selenium, and mercury at EPA and State ambient water quality criteria levels.

Topics for the 17th annual conference will include: effects of interferences in methods for cyanide, performance characteristic of isotope dilution HRGC/LRMS method for volatiles, characterization of non-purgeable organic halogen in river water adjacent to Kraft mill discharge and micellular electrokinetic capillary chromatograpy. The conference will include discussion on the setting of discharge limitations and problems with EPA's method detection limit (MDL). EPA's approach to performance-based methods and performance evaluation of methods will be discussed. Additional subjects include EPA's approval process for a nationwide alternate test procedure for pesticides, high-speed system for biochemical oxygen demand, and false positives for gasoline and diesel range organics from blowby in internal combustion engines.

Dated: March 7, 1994.

Tudor Davies,

Director, Office of Science and Technology.

[FR Doc. 94–5718 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4849–1]

Public Meetings on the Draft Waste Minimization and Combustion Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meetings.

SUMMARY: On May 18, 1993, with the release of the Draft Hazardous Waste Minimization and Combustion Strategy, the Administrator announced that EPA was taking a leadership role in reducing the amount of hazardous waste produced in this country, and maximizing protection to the public when the combustion process is utilized.

In November 1993, EPA held a National Roundtable in Washington, DC. That meeting, which drew more than 200 participants, engaged a broad spectrum of stakeholders in a discussion of the concerns and issues surrounding waste minimization and combustion.

EPA will continue the dialogue with stakeholders through a series of one-day Regional Roundtables on the Draft Hazardous Waste Minimization and Combustion Strategy. The Roundtables are scheduled for April 16, 1994, in San Francisco, California; April 23 in Houston, Texas; April 30 in Chicago, Illinois; and May 7 in Atlanta, Georgia.

The purpose of the Roundtable discussions is to give a broad range of interested parties and stakeholders, particularly those citizens, companies, and local officials who are directly involved (e.g., local citizen groups, environmental organizations, regulated companies, industry trade associations, and state, local and regional regulatory officials) an opportunity to share their concerns and information regarding waste minimization and combustion.

EPA Regions, who are acting as hosts for the Regional Roundtables, will invite representative organizations and individuals to participate in the Roundtables. Information regarding locations of the Roundtables, when available, as well as other information relating to attendance can be obtained by calling the following Regional Roundtable contacts: San Francisco contact is Vicky Semones in EPA Region 9 at (800) 231–3075; Houston, Texas contact is Laurie King in EPA Region 6 at (214) 655–6792; Chicago, Illinois contact is Bill Omohundro in EPA Region 5 at (312) 353–8254; Atlanta, Georgia contact is Hagan Thompson at (404) 347–3004.

DATES: San Francisco, April 16, 1994. Houston, Texas, April 23, 1994. Chicago, Illinois, April 30, 1994. Atlanta, Georgia, May 7, 1994. The public is welcome to observe discussions among the invited participants, and to participate at designated open public comment periods during these proceedings. No prior registration is required for attendees. However, EPA would appreciate observers who plan to attend the sessions notifying EPA of their intention to attend by calling the above contacts.

Written summaries of the proceedings of each Roundtable will be prepared and made publicly available following the Roundtables.

Dated: March 7, 1994.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 94–5719 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4848–5]

Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: Federal advisory committee meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the March meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid. The Committee will also discuss the scope, timing and direction of its future work with the Agency.

DATES: The Committee meeting will be held on March 29, 1994 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001; (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS–779, Environmental Protection Agency, Washington, DC, 20460; phone (202) 260–6700. Persons needing further information on the committee's

procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853–9846.

Dated: March 7, 1994.

Deborah Dalton,

Designated Federal Official, Office of Regulatory Management & Evaluation Office of Policy, Planning and Evaluation.

[FR Doc. 94–5717 Filed 3–10–94; 8.45 am]

BILLING CODE 6560–50–P

[OPP–50776; FRL–4764–6]

Receipt of an Application for an Experimental Use Permit Amendment/ Extension for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 7, 1993, EPA received an application from Ciba Geigy, Seed Division to extend their Experimental Use Permit (EUP) for a transgenic plant pesticide. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11 (a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by April 11, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50776 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)305–7690.

SUPPLEMENTARY INFORMATION: On December 7, 1993, EPA received an application to extend an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709–2257. The EUP application is assigned EPA File Symbol 66736–EUP–1. Notices of receipt, extension of comment period, and issuance were published in the **Federal Registers** of March 31, 1993 (58 FR 16827), May 7, 1993 (58 FR 27284), and December 27, 1993 (58 FR 68409). The EUP currently in effect allows for plantings of up to 33 acres of transgenic *Bacillus thuringiensis* (Bt) corn through March 31, 1994, and for the completion of activities associated with these plantings (e.g., data collection, harvesting, and processing of grain). The Bt corn plants produce an insect control protein encoded by a synthetic cryIA(b) gene derived from *Bacillus thuringiensis* subsp. *kurstaki*. Ciba Seeds has applied to amend and extend the EUP to allow for plantings of up to 195 acres of transgenic Bt corn between April 1, 1994 and March 31, 1995, and for the completion through October 1, 1995 of activities associated with these plantings. Plantings are proposed to occur in California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin and Puerto Rico.

The current EUP authorizes plantings of transgenic corn derived from transformation Event 176 and Event 171. Over 99 percent of the proposed acreage under the EUP extension will involve plants derived from Event 176. Limited plantings of up to 1.5 acres of material derived from Event 171 may occur as part of the breeding trials. All other activities proposed in the EUP extension will involve only plants derived from Event 176.

Activities planned for plantings through March 1995 include: Breeding, gene efficacy evaluations, hybrid growout trials, insect population dynamics studies, insect predation parasitism studies, insect susceptibility studies, performance evaluations--hybrid comparison strip tests, performance evaluations--replicated yield trials, resistance management experiments, and seed increases/hybrid production.

All field trials will be conducted in a crop destruct manner. Some plant material and seed will be retained for research purposes or future plantings, and some will be fed to experimental animals. Some seed may also be retained until such time that approval for commercial distribution has been obtained. All other material will be destroyed. If a temporary tolerance or tolerance exemption is granted during the EUP program, some grain and/or silage may be used as conventional animal feed (e.g., for poultry, hogs, and cattle) or in other commercial operations. Upon review of the Ciba Seeds application, any comments received in response to this notice and any other relevant information, EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Dated: March 4, 1994.

Stephanie Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5728 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180922; FRL 4763–4]

Receipt of Application for Emergency Exemption to Use Maneb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulation (hereafter referred to as the "Applicant") for use of the pesticide maneb (CAS 1242738–2) to control walnut bacterial blight on walnuts. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180922," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway,

Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703–308–8347).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the maneb, available as Manex (EPA Reg. No. 1812–251) from Griffin Corporation, to control walnut bacterial blight, caused by *Xanthomonas campestris pv. juglandis*, on a maximum of 29,000 acres in California. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, walnut blight was found a few years ago, but only in isolated locations in individual orchards. Walnut blight is attributed to the development of a tolerance to copper based bactericides, the only registered product for control of this disease. In 1992 walnut blight became a serious problem and continued to worsen in 1993. Since climate conditions previous to 1992 were not favorable for disease development the tolerant bacteria did not become widespread. However, in 1993 the climatic conditions changed producing favorable conditions for the bacteria to spread throughout infested orchards. Approximately 29,000 acres in Butte, Colusa, Glenn, Shasta, Sutter, Tehama, Yolo and Yuba counties are critically affected. Without the use of maneb, growers will face similar loss potential as those recorded prior to the use of registered copper sprays.

Under the proposed exemption a 1.8125 lbs of product per acre will be used on 29,000 acres. Manex and Kocide 101 will be applied as a tank mix only. Applications may be made by air or ground. This tank mixture is a skin sensitizer and may cause sensitization following repeated contact in susceptible individuals.

Applications will begin at early pre-bloom prior to or when catkins are partially expanded. Make additional applications during bloom and early nutlet stage or as needed if frequent rainfall occurs. Do not exceed 14 applications per season, and do not apply after June 15. A worker safety reentry interval of 24 hours and a preharvest interval of 75 days must be observed. Livestock can not graze in treated orchards or be feed the crop or crop products.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been subject of the Special Review. [40 CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes maneb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from, pesticide products containing the active ingredient maneb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10–5 from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington State Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5722 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–60–F

[OPP–64018; FRL 4759–5]

Oxydemeton-Methyl; Receipt of Request to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt to Cancel Registrations.

SUMMARY: This notice issued pursuant to section 6(f)(1) of the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of requests from Miles, Inc. and all remaining registrants to voluntarily cancel their registrations for products containing oxydemeton-methyl (ODM). Further, this notice will provide guidance for existing stocks.

DATES: Unless the request is withdrawn, the Agency is likely to publish a cancellation order in the **Federal Register** on or about June 9, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8038.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of requests for cancellation of the registrations for the products containing oxydemeton-methyl.

I. Background

Oxydemeton-Methyl (ODM) is the common name for an insecticide and

acaricide of the organophosphate class; its trade name is Metasystox-R®. The chemical name for ODM is *S*-[2-(ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate. Miles Incorporated (Agriculture Division) is the sole producer of a 50 percent oxydemeton-methyl product, for formulating purposes only.

ODM is a broad spectrum insecticide/acaricide which is registered for use to control many insects, including mites. Its mode of action is systemic and contact. It is used predominantly on terrestrial food crops (vegetable, tree fruit, and nut crops), but is also registered for use on terrestrial nonfood crops (ornamentals and forest trees).

II. Intent to Cancel

On September 30, 1993, Miles, Inc., submitted a letter to EPA requesting voluntary cancellation of all its products containing oxydemeton-methyl. As the basis for requesting voluntary cancellation, the company concluded that the expenditures necessary to generate required data under the reregistration process did not justify continued registration of its products. In addition, the Agency has since received notice from all other oxydemeton-methyl registrants requesting voluntary cancellation of their registrations. The registrations subject to this action are listed below:

EPA Reg. No.	Company Name	Product Name
3125–99	Miles Incorporated	METASYSTOX-R 50% Concentrate
3125–111		METASYSTOX-R Spray Concentrate
CA-820103		METASYSTOX-R Spray Concentrate
CA-820104		METASYSTOX-R Spray Concentrate
CA-910029		METASYSTOX-R Spray Concentrate
ID-770006		METASYSTOX-R Spray Concentrate
ID-780001		METASYSTOX-R Spray Concentrate
MI-890004		METASYSTOX-R Spray Concentrate
NM-79002503		METASYSTOX-R Spray Concentrate
NV-770014		METASYSTOX-R Spray Concentrate
OH-890004		METASYSTOX-R Spray Concentrate
OR-770019		METASYSTOX-R Spray Concentrate
OR-790067		METASYSTOX-R Spray Concentrate
OR-800071		METASYSTOX-R Spray Concentrate
OR-800079		METASYSTOX-R Spray Concentrate
OR-890004		METASYSTOX-R Spray Concentrate
OR-920009		METASYSTOX-R Spray Concentrate
TX-800024		METASYSTOX-R Spray Concentrate
WA-770014		METASYSTOX-R Spray Concentrate
WA-770058		METASYSTOX-R Spray Concentrate
WA-800069		METASYSTOX-R Spray Concentrate
WA-800077		METASYSTOX-R Spray Concentrate
WA-850003		METASYSTOX-R Spray Concentrate
WA-890033		METASYSTOX-R Spray Concentrate
7946–10	J.J. Mauget Co.	INJECT-A-CIDE
64014–2	Tree Technology System, Inc.	HARPOON
CA-89003500	Robert E. Jones	METASYSTOX-R Spray Concentrate
CA-89003800	Nature's Harvest	METASYSTOX-R Spray Concentrate

It should be noted that EPA classified ODM as a Restricted Use pesticide in September 1987, and initiated a Special Review on October 5, 1987 (52 FR 37248), which is ongoing, based on potential adverse reproduction effects resulting from exposure for persons mixing, loading and applying this pesticide. That notice was based on a determination that products containing ODM met or exceeded the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2). In addition, studies required to support the registration of ODM were due about the time of the cancellation request from Miles, Inc.

Section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

If any current registrant of ODM notifies the Agency during the 90-day comment period of an agreement to transfer one or more of its registrations, EPA will not issue the cancellation order provided that, within 30 days of notifying the Agency, a request for transfer of registration has been submitted to the Agency in accordance with 40 CFR 152.135. Nevertheless, the new registrant would be responsible for all outstanding data requirements. As noted above, at the time voluntary cancellation was requested, Miles, Inc. had studies which were approaching the required due date and EPA could have

initiated a suspension action upon lapse of the due date. The due dates for these studies have since expired and if an ODM registration is transferred during the 90-day period, the new registrant would be at risk of suspension until all outstanding data requirements are met.

Comments on this voluntary cancellation request may be submitted to the contact person listed under FOR FURTHER INFORMATION CONTACT by June 9, 1994. In addition, interested persons desiring retention of a registration should contact the registrant directly during this 90-day period at the following address: Ms. Karen Cain, Miles, Inc., 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 242–2000, (816) 242–2838.

Unless the request for voluntary cancellation is withdrawn by a registrant, or a registration is transferred as described above within 90 days of publication of this notice, an order is likely to be published in the Federal Register, cancelling all previously listed registrations for oxydemeton-methyl.

Unless the burden of supporting oxydemeton-methyl through reregistration is assumed by a registrant holding a registration for ODM, oxydemeton-methyl will no longer be a registered active ingredient. Once an active ingredient is cancelled, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration generally would not be approved until all applicable data requirements are satisfied.

III. Procedures for Withdrawal of Request

If a registrant chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Brigid Lowery, Reregistration Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, postmarked on or before June 9, 1994. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Existing Stocks Determination

Miles, Inc. also requested in its September 30, 1993 voluntary cancellation letter a 1–year existing stocks provision, whereby products containing ODM may be sold by the registrant for a period of 1–year from the date listed on the voluntary cancellation letter to the Agency.

The Agency's established policy for determinations concerning existing stocks was published in the Federal Register of Wednesday, June 26, 1991 (56 FR 29362). Consistent with that policy, the Agency is proposing to allow all registrants to continue to sell and distribute existing stocks for 1–year from September 30, 1993. Hence, the 1–year existing stocks provision will expire on September 30, 1994. EPA will continue to permit after this date the shipping, sale and use of existing stocks of product containing ODM already in the channels of distribution by persons other than the registrant or supplemental registrants, (i.e., stocks already in the hands of dealers or users). EPA believes it is appropriate to allow sale and use until stocks already in channels of distribution are exhausted rather than impose a time limit on use of existing stocks, so that persons who have legally purchased stocks of ODM will be able to sell or use those stocks without violating the cancellation order (although the Agency may place restrictions if such stocks are not exhausted in a reasonable time).

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 2, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–5727 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–60–F

[OPP–180924; FRL–4761–1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the two States as listed below. A quarantine exemption was granted to the United States Department of Agriculture and a public health exemption was granted to the California Environmental Protection Agency, Department of Pesticide Regulation and the Pennsylvania and Texas Departments of Agriculture. There were also three crisis exemptions initiated by California. These exemptions were issued during the months of November and December 1993, except for one in August 1993, and are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the California Environmental Protection Agency and the Wyoming Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Environmental Protection Agency for the use of prometryn on parsley to control various weeds; December 21, 1993, to December 20, 1994. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of propargite on avocados to control oligonychus perseae, a new mite species; November 3, 1993, to October 31, 1994. California had initiated a crisis exemption for this use. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of fenpropathrin on tomatoes to control the silverleaf and greenhouse whitefly; December 2, 1993, to December 1, 1994. California had initiated a crisis exemption for this use. (Margarita Collantes)

4. California Department of Agriculture for the use of methyl bromide on watermelons to control nematodes, fungi, and weeds; November 26, 1993, to April 30, 1994. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of imidacloprid and fenpropathrin on tomatoes to control the sweet potato whitefly; December 21, 1993, to December 20, 1994. A notice published in the Federal Register of November 17, 1993 (58 FR 60636), and no comments were received. The exemptions were issued for the use of both imidacloprid and fenpropathrin based on the rationale that each is useful at a different stage of development of the tomato plants. Imidacloprid, a systemic, will be applied as a soil application once, at or near transplanting, to be

taken up by the small plants and protect them during this vulnerable stage. Fenpropathrin may then be used to maintain control, later in the season, as a foliar spray. EPA has determined that this situation is urgent, nonroutine, and that use of the registered pesticides was not expected to prevent significant economic losses. (Andrea Beard)

Crisis exemptions were initiated by the:

1. California Department of Pesticide Regulation on December 16, 1993, for the use of fenamiphos on broccoli and cauliflower to control nematodes. The California Department of Pesticide Regulation inactivated this crisis exemption on December 17, 1992. (Libby Pemberton)

2. California Environmental Protection Agency, Department of Pesticide Regulation, on August 30, 1993, for the use of fenpropathrin on tomatoes to control silverleaf and greenhouse whiteflies. The need for this program is expected to last until December 1, 1994. (Margarita Collantes)

3. California Environmental Protection Agency on November 3, 1993, for the use of imazethapyr on alfalfa to control creeping wartcress. The need for this program is expected to last until February 28, 1994. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. California Environmental Protection Agency for the use of imidacloprid on cotton to control the sweet potato whitefly. The Agency denied the exemption because an emergency condition does not exist. (Andrea Beard)

2. Wyoming Department of Agriculture for the use hymexazol on sugarbeet seed to control aphanomyces cochlioides. (Lawrence Fried)

EPA has granted public health exemptions to the California Environmental Protection Agency, Department of Pesticide Regulation; November 24, 1993, to November 23, 1994, the Pennsylvania Department of Agriculture; December 29, 1993, to December 28, 1994, and the Texas Department of Agriculture; November 24, 1993, to November 23, 1994, for the use of formaldehyde in poultry houses, hatcheries, and on immobile equipment to control *Salmonella* bacteria. (Susan Stanton)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of carbaryl on flightless birds to control parasites at United States ports of entry; December 21, 1993, to December 20, 1996. (Libby Pemberton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: February 28, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–5725 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4847–5]

Yellow Water Road Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Yellow Water Road Site, Baldwin, Florida with 102 *de minimis* parties. The settlement includes 3 parties not originally identified as *de minimis*. Based on information obtained by EPA during its approval of the settlement, EPA has included these parties in the settlement. The inclusion of these parties decreases the payments required by the other *de minimis* settlers. EPA will consider public comments on the proposed *de minimis* settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed *de minimis* settlement and the list of parties participating are available from:

Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: February 22, 1994.

Myron D. Lair,

Acting Director, Waste Management Division.

[FR Doc. 94–5716 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 94–44]

FCC Asks for Comments Regarding the Establishment of an Advisory Committee

March 7, 1994.

The Commission is considering the establishment of a Federal Advisory Committee to assist the Common Carrier Bureau (Bureau) in the development and implementation of an electronic filing system. This Committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The proposed advisory committee would be convened to provide recommendations to the Bureau to be used in the formulation of rules and procedures that will facilitate the electronic filing of Bureau applications, formal complaints, various reports, petitions and tariff filings and related pleadings and reports that are filed in conjunction therewith. Committee recommendations would also be considered in ongoing discussions regarding Commission-wide electronic filing initiatives. Specifically, the committee will assist the Bureau in (1) designing the technical software necessary to receive, store and retrieve reports, applications and related filings; (2) studying the feasibility of establishing an on-line public access system to the database necessary to accomplish this goal, using, where possible, readily available, off-the-shelf software; (3) analyzing and identifying the costs of implementing and maintaining such a system, and the feasibility of recovering such costs through user fees or other means, in conjunction with the President's goal of providing efficient and easy to use public access to government information, and (4) designing and developing a final request for proposal that the Commission could use in implementing an electronic filing system.

The Commission requests public comment, by April 1, 1994, whether it should establish a federal advisory committee, and the proposed scope of that committee's deliberations. Comments should be sent to the Office of the Secretary, CC Docket 94–18, Federal Communications Commission, Washington, DC 20554.

Action by the Commission, March 2, 1994, by Public notice (FCC 94–44). Chairman Hundt, Commissioners Quello and Barrett.

For further information pertaining to the establishment of this advisory

committee, contact Jim Talens at (202) 632–3214, Rosalee Chiara at (202) 634–1781 or Kristi Kendall at (202) 634–7058.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–5666 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–05]

Notice of Filing of Complaint and Assignment

Maritrend, Inc. v. the Galveston Wharves, the Board of Trustees of the Galveston Wharves, John G. Unbehagen, W.H. ("BB") Nelson, Harry Brown, Louis Pauls, Jr., Rudy Teichman and Doug J. Marchand.

Notice is given that a complaint filed by Maritrend, Inc. ("Complainant") against The Galveston Wharves, The Board of Trustees of the Galveston Wharves, John G. Unbehagen, W.H. ("BB") Nelson, Harry Brown, Louis Pauls, Jr., Rudy Teichman and Doug J. Marchand ("Respondents") was served March 8, 1994. Complainant alleges that Respondents have violated section 16 First of the Shipping Act of 1916, 46 U.S.C. app. 815, and section 10 of the Shipping Act of 1984, 46 U.S.C. app. 1709, by denying, and conspiring to deny, Complainant a Stevedore license because of Complainant's non-union status. Complainant also seeks a ruling regarding Commission jurisdiction.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 8, 1995, and the final decision of the Commission shall be issued by July 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–5759 Filed 3–10–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Aaron Acquisition Corporation, Louisville, Kentucky; to merge with Liberty National Bancorp, Inc., Lexington, Kentucky, and thereby indirectly acquire Liberty National Bank and Trust Company of Kentucky, Louisville, Kentucky; Liberty National Bank of Ownesboro, Ownesboro, Kentucky; Liberty National Bank of Madisonville, Madisonville, Kentucky; Liberty National Bank of Hardin County, Elizabethtown, Kentucky; Hardin County Bank & Trust, Inc., Radcliff, Kentucky; Farmers Deposit Bank of Bradenburg, Bradenburg, Kentucky; and Liberty National Bank and Trust Company of Indiana, Charlestown, Indiana.

In connection with this application, Applicant also proposes to acquire Liberty Financial Services, Inc., Louisville, Kentucky, and thereby engage in consumer finance activities and the sale of credit-related insurance pursuant to §§ 225.25(b)(1) and (b)(8) of the Board's Regulation Y, and Liberty Investment Services, Louisville, Kentucky, and thereby engage in offering full-service brokerage services to the public and underwriting and offering full-service brokerage services to the public and underwriting and dealing in bank-eligible securities and municipal revenue bonds as riskless principal with respect to government, agency and municipal securities activities pursuant to §§ 225.25(b)(15) and (b)(16) and 76 Federal Reserve Bulletin 461 (1990).

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5694 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Creditanstalt-Bankverin, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Creditanstalt-Bankverein, Vienna, Austria; to engage *de novo* through its subsidiary Creditanstalt Corporate Finance, Inc., Westport, Connecticut, in acquiring or servicing loans or other extensions of credit, for the Company's own account or for the account of others, such as would be made by a commercial finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary Capstar Partners, Inc., in the activities of leasing tangible personal property, or acting as agent, broker or adviser in leasing such property, in which the lessor relies on an estimated residual value of the property in excess of the 25 percent limitation described in § 225.25(b)(5)(i)(D)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Western Bancorp, Inc., New Castle, Pennsylvania; to engage *de novo* through its subsidiary Residential Mortgage Company, New Castle, Pennsylvania, in conducting business consisting of making residential mortgage loans for its affiliates and others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama, to engage *de novo* in leasing tangible personal property, or acting as agent, broker, or adviser in such property, utilizing residual values up to 100 percent of acquisition cost, pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan, to engage *de novo* in investing in low income housing projects by making equity investments as a limited partner, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5690 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

First Financial Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Financial Bancorp, Hamilton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of First Clyde Banc Corp., Clyde, Ohio, and thereby indirectly acquire Clyde Savings Bank, Clyde Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Community Corporation, Rogersville, Tennessee, to become a bank holding company by acquiring 100 percent of First Community Bank of East Tennessee, Rogersville, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois, to merge with Lake Shore Bancorp, Inc., Chicago, Illinois; and thereby indirectly acquire Lake Shore National Bank, Chicago, Illinois, and Bank of Hinsdale, Hinsdale, Illinois. In addition, First Chicago has applied to acquire up to 16.6 percent of the shares of Lake Shore Bancorp, Inc.

2. First Chicago Corporation, Chicago, Illinois, to merge with Hampton Park Corporation, Romeoville, Illinois, and thereby indirectly acquire Oxford Bank, Romeoville, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Jacksonville Bancorp, M.H.C., Jacksonville, Illinois; to become a bank holding company by acquiring at least 51 percent of Jacksonville Savings Bank, Jacksonville, Illinois, a proposed stock savings bank being formed to acquire substantially all of the assets and assume all of the liabilities of Jacksonville Savings Bank, Jacksonville, Illinois, an existing mutual savings bank.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mesaba Bancshares, Inc., Grand Rapids, Minnesota, to become a bank holding company by acquiring 80 percent of Mountain Iron First State

Bank, Mountain Iron, Minnesota; 100 percent of American National Agency, Inc., Nashwauk, Minnesota, and thereby indirectly acquire American Bank of Nashwauk, Nashwauk, Minnesota; and 100 percent of Calumet Investment Company, Grand Rapids, Minnesota, and thereby indirectly acquire Itasca State Bank of Grand Rapids, Grand Rapids, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. ColoEast Bankshares, Inc., Lamar, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Holly Bankshares, Inc. Holly, Colorado and thereby indirectly acquire First Bank & Trust, Holly, Colorado; and Granada Bankshares, Inc., Granada, Colorado, and thereby indirectly acquire The American State Bank, Granada, Colorado.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. NBT Northwest Bancorp, Tukwila, Washington, to become a bank holding company by acquiring 100 percent of National Bank of Tukwila, Tukwila, Washington.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5692 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Stephen Alan Songer, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 1994.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stephen Alan Songer, Veedersburg, Indiana, to acquire an additional 22.57 percent, for a total of 31.50 percent of the voting shares of Veedersburg Bank Corp., Veedersburg, Indiana, and thereby indirectly acquire Veedersburg State Bank, Veedersburg, Indiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Albert Delano and Vernon Lyle Johnson, Walhalla, North Dakota, to each acquire 50 percent of the voting shares of Citizens State Bancorporation, Petersburg, North Dakota, and thereby indirectly acquire Citizens State Bank, Petersburg, North Dakota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Fai Heng Chan, White Rock, British Columbia, to acquire an additional 44.8 percent for a total of 50.75 percent of the voting shares of American Pacific Bank, Aumsville, Oregon.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5689 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

The Toronto-Dominion Bank; Application to Engage in Certain Nonbanking Activities

The Toronto-Dominion Bank, Toronto, Canada (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* through its indirect wholly owned subsidiary, Toronto-Dominion Securities (USA) Inc., New York, New York (Company), in the following nonbanking activities:

1. Underwriting and dealing in, to a limited extent, all types of debt and equity securities, including sovereign debt securities, corporate debt securities, debt securities convertible into equity securities, debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations, preferred stock, common stock, American Depositary Receipts, and other direct and indirect ownership interests in corporations and other entities;

2. Purchasing and selling all types of securities as a "riskless principal" on the order of customers; and

3. Making, acquiring, and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for Company's account or for the account of others, pursuant to section 225.25(b)(1) of Regulation Y.

Applicant seeks approval for Company to conduct the proposed activities throughout the United States.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in National Courier Association v. Board of Governors of the Federal Reserve System, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are:

(1) Whether banks generally have in fact provided the proposed services;

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that the proposed lending activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(1).

Applicant also maintains that the Board previously has determined by order that the other proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See Canadian Imperial Bank of Commerce,*

et al., 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989); *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993); and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (underwriting and dealing activities). *See also Dauphin Deposit Corporation*, 77 Federal Reserve Bulletin 672 (1991); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (riskless principal activities).

Applicant maintains that Company will conduct the proposed activities in conformity with the conditions and limitations established by the Board in prior cases.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and provide greater convenience to Company's customers. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 9, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5693 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Waterhouse Investor Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Waterhouse Investor Services, Inc., New York, New York, to become a bank holding company by acquiring 100 percent of the voting shares of Waterhouse National Bank, White Plains, New York, a *de novo* bank.

In connection with this application, Applicant has also applied to acquire Waterhouse Investor Services, Inc., and Washington Discount Brokerage Corp., both of New York, and thereby engage in providing securities brokerage services restricted to buying and selling securities solely as agent for the account of customers pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5691 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020794 AND 021894

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Interprovincial Pipe Line System Inc., British Gas plc, British Gas Finance (Canada) Limited	94-0654	02/07/94
Tribune Company, Thomas C. Wright and Arlene A. Wright, Thomas C. Wright, Inc	94-0701	02/07/94
J.R. Simplot Company, Alpine Lace Brands, Inc., Mountain Farms, Inc	94-0722	02/07/94
GBC Technologies, Inc., Thomas and Audrey Pine, Vista Technology, Inc	94-0738	02/07/94
TCW Special Placements Fund III, Automatic Bar C L.P., Automatic Bar Holding, Inc	94-0739	02/07/94
Humana Inc., Group Health Association, Inc., Group Health Association, Inc	94-0759	02/07/94
MicroAge, Inc., Troy Barnes, Kelly Micro Systems, Inc	94-0763	02/07/94
OshKosh B'Gosh, Inc., Arnold H. Simon, Rio Sportswer, Inc	94-0766	02/07/94
OshKosh B'Gosh, Inc., Stephen Huang, Rio Sportswear, Inc	94-0767	02/07/94
Technology Resources Industries Bernad, WorldCorp, Inc., World Airways, Inc	94-0769	02/07/94
Grand Casinos, Inc., Bob Stupak, Stratosphere Corporation	94-0596	02/08/94
The May Department Stores Company, Albert Steiger, Inc., Albert Steiger, Inc	94-0656	02/08/94
Hellman & Friedman Capital Partners II, L.P., Falcon Cable TV, Inc., Falcon Cable TV, Inc	94-0675	02/08/94
Hellman & Friedman Capital Partners, Falcon Cable TV, Inc., Falcon Cable TV, Inc	94-0677	02/08/94
Boston Ventures Limited Partnership II, Falcon Cable TV, Inc., Falcon Cable TV, Inc	94-0678	02/08/94
American Telephone and Telegraph Company, Goldome Financial Corporation, Goldome Industrial Credit Corporation	94-0730	02/08/94
Staples, Inc., David H. Goldner, National Office Supply Company, Inc	94-0745	02/08/94
Staples, Inc., Evan and Judith Stern, National Office Supply Company, Inc	94-0746	02/08/94
Torchmark Corporation, Robert T. Shaw, I.C.H. Corporation	94-0749	02/08/94
Anglian Water Plc, AlliedSignal Inc., Fluid Systems Corporation	94-0663	02/09/94
N.V. Verenigd Bezit VNU, BPI Communications L.P., BPI Communications L.P	94-0719	02/09/94
M. Francois Pinault, Continental Graphics Holdings, Inc., Continental Graphic Holdings, Inc	94-0751	02/09/94
Vanguard Cellular Systems, Inc., Geotex Industries, Inc., Geotex Industries, Inc	94-0670	02/10/94
Arthur M. Goldberg, Fleming Companies, Inc., Fleming Foods East, Inc	94-0754	02/10/94
Ted Arison (an Isreali person), CHGC, Inc., CHGC, Inc	94-0756	02/10/94
Crown Cork & Seal Company, Inc., Tri Valley Growers, Tri Valley Growers	94-0758	02/10/94
Great American Communications Company, Robert F. Fuller, Fuller-Jeffrey Broadcasting Corp. of Greater Sacramento	94-0740	02/14/94
Sage Technologies, Inc., The DBL Liquidating Trust, Forsythe, Inc	94-0771	02/14/94
Public Service Enterprise Group Incorporated, USX Corporation, Marathon Oil Company	94-0772	02/14/94
Walter Hewlett, GTE Corporation, Contel of Vermont, Inc	94-0780	02/14/94
Souris River Telecommunications Cooperative, Rochester Telephone Corporation, Minot Telephone Company	94-0783	02/14/94
PETsMART, Inc., Roger & Cathy Perry, The Weisheimer Companies, Inc	94-0786	02/14/94
TCW Special Placements Fund III, Houston Foods Co., Houston Foods Co	94-0788	02/14/94
Champion Enterprises, Inc., Dutch Housing Inc., Dutch Housing Inc	94-0790	02/14/94
International Insurance Investors, L.P., Trygg-Hansa SPP Holding AB, Home Holdings Inc	94-0792	02/14/94
Chemical Banking Corporation, Chiquita Brands International, Inc., John Morrell & Company	94-0798	02/14/94
Ebara Sangyo Kabushiki Kaisha, IHC Toshi Jigyo Kumiai, Saison Britannia B.V.	94-0812	02/14/94
Peter Kiewit Sons', Inc., Ashland Oil, Inc., APAC-Arizona, Inc	94-1194	02/16/94
American Medical Response, Inc., 911 Emergency Services, Inc., 911 Emergency Services, Inc	94-0736	02/16/94
Wheaton Franciscan Services, Inc., LaSalle Clinic of Wisconsin, S.C., LaSalle Clinic of Wisconsin, S.C	94-0755	02/16/94
Imperial Chemical Industries PLC, Total S.A., LaSeigneurie U.S. Holdings Inc.	94-0813	02/16/94
Cordis Corporation, Wilton W. Webster, Jr. and Helen E. Webster, Webster Laboratories, Inc	94-0814	02/16/94
Wilton W. Webster, Jr. and Helen E. Webster, Cordis Corporation, Cordis Corporation	94-0815	02/16/94
Dial Page, Inc., Henry Posner, Jr., American Mobilphone, Inc	94-0720	02/17/94
ConAgra, Inc., William E. Bucek, Double "B" Foods, Inc	94-0784	02/17/94
The Vigoro Corporation, Charles E. Rivers, Mid-Ohio Chemical Company, Inc	94-0802	02/17/94
The Vigoro Corporation, Ronald D. Rivers, Mid-Ohio Chemical Company, Inc	94-0803	02/17/94
Applied Extrusion Technologies, Inc., Hercules Incorporated, Hercules Incorporated	94-0804	02/17/94
Trivest Institutional Fund, Ltd., Deann Bell Smith, The Hartwell Company	94-0808	02/17/94
Siemens Aktiengesellschaft (a German company), Siemens Aktiengesellschaft, Siemens Nixdorf Printing Systems, L.P	94-0809	02/17/94
Grupo Empresarial "G" S.A. de C.V., Motor Coach Industries International, Inc., Motor Coach Industries International, Inc	94-0781	02/18/94
Russell A. Gerdin, Courtney Munson, Munson Transportation, Inc	94-0782	02/18/94
CGW Southeast Partners I, L.P., Eckerd Corporation, Eckerd Corporation	94-0824	02/18/94
Nick G. Karabots, AMREP Corporation, AMREP Corporation	94-0825	02/18/94
Sage Technologies, Inc., Robert Crocker, CBM Incorporated	94-0828	02/18/94
Apollo Real Estate Investment Fund L.P., CF Income Partners, L.P., CF Income Partners, L.P	94-0830	02/18/94
Staples, Inc., Henry P. Epstein, Spectrum Office Products, Inc	94-0833	02/18/94
Staples, Inc., Roger B. Friedlander, Spectrum Office Products, Inc	94-0834	02/18/94
James A. Pattison, Timothy A. Braswell, Dixie News Company	94-0840	02/18/94
TCW Special Placements Fund III, HFC Holding Company, HFC Holding Company	94-0848	02/18/94

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, or Renee A. Horton, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–5715 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9228]

Promodes, S.A., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued May 17, 1990 (55 FR 23138) by deleting Paragraphs II.A.3 and II.A.6, thereby ending the respondents' obligation to divest two Red Food Supermarkets in Tennessee. The Commission determined that the respondents demonstrated that this action would be in the public interest.

DATES: Consent Order issued May 17, 1990. Modifying Order issued January 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Promodes, S.A., et al. The prohibited trade practices and/or corrective actions as set forth at 55 FR 23138, are removed, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended: 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–5713 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3478]

The Valspar Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Minnesota-based corporation to divest, within 12 months of the date of the order, certain assets it acquired from Cargill, to Newco, an independent corporation that Valspar forms as a successor corporation to McWhorter, and to obtain Commission approval of the divestiture arrangement prior to consummation. In addition, the consent order requires McWhorter and Newco, for 10 years, to obtain the Commission's approval before acquiring any stock or other interest in any entity that manufactures coating resins in the United States.

DATES: Complaint and Order issued January 25, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Robert Tovsky, FTC/S–3302, Washington, DC 20580. (202) 326–2634.

SUPPLEMENTARY INFORMATION: On Tuesday, Nov. 9, 1993, there was published in the **Federal Register**, 58 FR 59479, a proposed consent agreement with analysis In the Matter of The Valspar Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat, 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–5714 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Modifying Order and Commissioners Azcuenaga's and Owen's statements are available from the Commission's Public Reference Branch, H–130, 6th & PA. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Physician Survey Regarding 1992 New Visit Codes (Medicare)—New—This request for information from physicians is needed to determine the effectiveness of implementation of the 1992 new visit codes and the effect of the codes on physicians. Only by collecting information from physicians can the Office of the Inspector General thoroughly and accurately assess the implementation process and attendant effect.

Respondents: Businesses or other for-profit organizations, small businesses; *Total Number of Respondents*: 345; *Frequency of Response*: one time; *Average Burden per Response*: 45 minutes; *Estimated Annual Burden*: 259 hours.

2. HHS Acquisition Regulations—HHSAR Subpart 315 Solicitation and Receipt of Proposals and Quotations—0990–0139—Extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposal. *Respondents*: State or local governments, businesses or other for-profit organizations, non-profit institutions, small businesses; *Total Number of Respondents*: 12,914; *Frequency of Response*: one time; *Average Burden per Response*: 2 hours; *Estimated Annual Burden*: 25,828 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–1053. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 22, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 94–5550 Filed 3–10–94; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 90F–0399]

E.I. duPont de Nemours; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2212) proposing that the food additive regulations be amended to provide for the safe use of ethylene-vinyl acetate copolymer as a binding agent in crustacean feeds.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52100), FDA announced that a food additive petition (FAP 2212) had been filed by E.I. duPont de Nemours & Co., Wilmington, DE 19898. The petition proposed to amend the food additive regulations to provide for the safe use of ethylene-vinyl acetate copolymer as a binding agent in crustacean feeds. E.I. duPont de Nemours & Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 571.7).

Dated: March 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–5636 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0050]

Lilly Research Laboratories, et al.; Withdrawal of Approval of 57 Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 57 abbreviated antibiotic drug applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 11, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
60–002	Penicillin V Potassium Pulvules	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
60–060	Ampicillin Trihydrate Capsules, 250 and 500 milligrams (mg)	SmithKline Beecham Pharmaceuticals, One Franklin Plaza, P.O Box 7929, Philadelphia, PA 19101.
60–129	Sterile Ampicillin Sodium, USP (Bulk)	Valso Ltd., 11 Binga Lane, White Plains, NY 10605.
60–132	Sterile Chloramphenicol Sodium Succinate, USP	Angus Chemical Co., 1500 East Lake Cook Rd., Buffalo Grove, IL 60089.
60–197	Bacitracin, USP (Nonsterile Bulk)	A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399 Ft. Lee, NJ 07024.
60–209	Ampicillin for Oral Suspension, USP	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
60–210	Griseofulvin Tablets, USP	Do.
60–250	Erythromycin Ethylsuccinate Injection, USP	Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500.
60–254	Dicloxacillin Sodium Capsules	SmithKline Beecham.
60–264	Tyrothricin, USP (Bulk)	Penick Corp., 158 Mt. Olivet Ave., Newark, NJ 07114.
60–278	Tetracycline Oral Suspension, USP	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.
60–320	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment, USP.	Do.
60–336	Bacitracin Zinc and Polymyxin B Sulfate Ointment, USP	Marion Merrell Dow, Inc., Marion Park Dr., P.O. Box 9627, Kansas City, MO 64134–0627.
60–342	Tetracycline Hydrochloride	Angus Chemical Co.
60–343	Tetracycline Hydrochloride	Do.
60–344	Tetracycline Hydrochloride	Do.
60–364	Penicillin G Potassium Ointment	Bristol-Myers Squibb, Pharmaceutical Research Institute, P.O. Box 4000, Princeton, NJ 08543–4000.
60–411	Streptomycin Sulfate Injection, USP	Wyeth-Ayerst Laboratories Inc.
60–414	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment	Procter & Gamble Pharmaceuticals, P.O. Box 191, Norwich, NY 13815–0191.
60–415	Bacitracin Ointment, USP	Do.
60–427	Neomycin and Polymyxin B Sulfates and Gramicidin Ophthalmic Solution, USP.	Marion Merrell Dow, Inc.
60–459	Bacitracin, Neomycin Sulfate, Polymyxin B Sulfate, and Diperodon Hydrochloride Ointment.	Byk-Gulden, Inc., 60 Baylis Rd., P.O. Box 2006, Melville, NY 11747.
60–471	Tetracycline Hydrochloride Capsules, USP, 250 mg	ICN Pharmaceuticals, Inc., ICN Plaza, 3300 Hyland Ave., Costa Mesa, CA 92626.
60–479	Neomycin Sulfate Ointment, USP	The Upjohn Co.
60–480	Neomycin Sulfate-Fluorometholone	Do.

AADA No.	Drug	Applicant
60–481	Tetracyline Oral Suspension, USP	Do.
60–515	Kanamycin Sulfate Injection	Apothecon, A Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500.
60–516	Kanamycin Sulfate Capsules, 500 mg	Do.
60–556	Neomycin Sulfate, USP (Nonsterile Bulk)	Penick Corp.
60–558	Erythromycin Estolate Oral Suspension, USP, 100 mg base/mL	Lilly Research Laboratories.
60–812	Chloramphenicol Hemisuccinate (Bulk)	Marion Merrell Dow, Inc.
60–828	Tetracycline Hydrochloride, USP (Bulk)	Valso Ltd.
60–829	Tetracycline, USP (Bulk)	Do.
61–137	Penicillin V (Bulk)	Lilly Research Laboratories.
61–525	Erythromycin Delayed-Release Tablets, 250 mg	Richmar International, Inc., 1706 Birch Rd., McLean, VA 22101.
61–586	Neomycin Sulfate Tablets, 500 mg	Eon Labs Manufacturing, Inc., 227–15 Conduit Ave., Laurelton, NY 11413.
61–967	Chloramphenicol Palmitate (Bulk)	Merrell Dow Pharmaceuticals, Inc., 2110 East Galbraith Rd., Cincinnati, OH 45215.
62–177	Erythromycin Ethylsuccinate Oral Suspension, 200 mg/5 milliliters (mL) and 400 mg/5 mL.	Lilly Research Laboratories.
62–261	Cephalexin Monohydrate (Bulk)	Do.
62–264	Gentamicin Sulfate Injection, USP	Wyeth-Ayerst Laboratories.
62–381	Neomycin and Polymyxin B Sulfates, Bacitracin Zinc, and Hydrocortisone Topical Ointment.	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
62–386	Neomycin and Polymyxin B Sulfates and Bacitracin Zinc Ophthalmic Ointment, USP.	Do.
62–389	Neomycin and Polymyxin B Sulfates, Bacitracin Zinc, and Hydrocortisone Ophthalmic Ointment, USP.	Do.
62–411	Neomycin and Polymyxin B Sulfates and Dexamethasone Ophthalmic Ointment, USP.	Do.
62–428	Neomycin and Polymyxin B Sulfates and Dexamethasone Ophthalmic Suspension, USP.	Do.
62–443	Gentamicin Sulfate Ophthalmic Ointment, USP, 3 mg base/gram (g).	Do.
62–481	Erythromycin Ophthalmic Ointment, USP, 5 mg/g	Do.
62–485 ...	Erythromycin Topical Solution, USP, 1.5%	Do.
62–547	Cephalothin Sodium and 5% Dextrose Injection, USP	Abbott Laboratories, Inc., Hospital Products Division Abbott Park, IL 60064.
62–548	Cephalothin Sodium and 0.9% Sodium Chloride Injection, USP	Do.
62–603	Nystatin and Triamcinolone Acetonide Ointment, USP	Pharmaderm, A Division of Altana Inc., 60 Bayliss Rd., Melville, NY 11747.
62–617 ...	Neomycin and Polymyxin B Sulfates and Hydrocortisone Otic Suspension.	Pharmafair, Inc.
62–623	Neomycin and Polymyxin B Sulfates and Hydrocortisone Ophthalmic Suspension, USP.	Do.
62–848	Cefadroxil, USP (Bulk)	Valso Ltd.
62–894	Sterile Cefazolin Sodium, USP 250 mg, 500 mg, 1 g, 5 g, and 10 g per vial.	Ben Venue Laboratories, Inc., 270 Northfield Rd., P.O. Box 46568, Bedford, OH 44146–0568.
62–908	Clindamycin Phosphate Injection, USP, 150 mg/mL	The DuPont Merck Pharmaceutical Co., 1000 Stewart Ave., Garden City, NY 11530.
70–292	Carbachol Intraocular Solution, USP, 0.01%	Pharmafair, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 11, 1994.

Dated: February 23, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–5634 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 92E–0472]

Determination of Regulatory Review Period for Purposes of Patent Extension; Sporanox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Sporanox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product,

medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Sporanox®. Sporanox® (itraconazole) is indicated for the treatment of the following fungal infections in immunocompromised and nonimmunocompromised patients: (1) blastomycosis, pulmonary and extrapulmonary, and (2) histoplasmosis, including chronic cavitary pulmonary disease and disseminated, nonmeningeal histoplasmosis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Sporanox® (U.S. Patent No. 4,267,179) from Janssen Pharmaceutica N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patents's eligibility for patent term restoration. FDA, in a letter dated December 8, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Sporanox® represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sporanox® is 2,990 days. Of this time, 2,155 days occurred during the testing phase of the regulatory review period, while 835 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: July 7, 1984. The applicant claims June 7, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 7, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: May 31, 1990. The applicant claims May 30, 1990, as the date the new drug application (NDA) for Sporanox® (NDA 20–083) was initially submitted. However, FDA records indicate that NDA 20–083 was initially submitted on May 31, 1990.

3. *The date the application was approved*: September 11, 1992. FDA has verified the applicant's claim that NDA 20–083 was approved on September 11, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,510 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 10, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–5635 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the meeting of the Cardiovascular and Renal Drugs Advisory Committee, which is scheduled for March 24 and 25, 1994. This meeting was announced in the **Federal Register** of February 25, 1994 (59 FR 9219 at 9220). The amendment is being made to change both the starting times of the meetings for March 24 and 25, 1994, and revise the agenda for the open committee discussion of the meeting of March 25, 1994. Both amendments will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT:

Joan C. Standaert, Center for Drug Evaluation and Research, Food and Drug Administration, 234 Summit St., Toledo OH 43604, 419–259–6211 or

Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 25, 1994 (59 FR 9219 at 9220), FDA announced that a meeting of the Cardiovascular and Renal Drugs Advisory Committee would be held on March 24 and 25, 1994. On page 9220, column 1, the "Date, time, and place," "Type of meeting and contact person," and the "Open committee discussion" portions of this meeting are amended to read as follows:

Date, time, and place. March 24 and 25, 1994, 9 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, March 24, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, March 25, 1994, 9 a.m. to 5 p.m.

Open committee discussion. On March 24, 1994, the committee will discuss new drug application (NDA) 20–390 (vesnarinone), Arkin®, Otsuka America Pharmaceutical, for congestive

heart failure, and NDA 19–151/S–002 (propafenone), Rythmol®, Knoll Pharmaceuticals, for prophylaxis of paroxysmal supraventricular tachycardia and paroxysmal atrial fibrillation and flutter. On March 25, 1994, the committee will continue its discussion on NDA 19–151/S–002.

Dated: March 7, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5673 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0049]

Clinical Trial Design Issues of Liposomal Antifungal Agents; Public Workshop

AGENCY: Food and Drug Administration and National Institute of Allergy and Infectious Diseases, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in conjunction with the National Institute of Allergy and Infectious Diseases (NIAID) is announcing a public workshop on clinical trial design issues of liposomal antifungal agents. The workshop will enable experts in the field of fungal diseases to exchange ideas regarding clinical trials of liposomal antifungal agents. While the workshop is not intended to result in consensus among the participants or formulation of agency policy, discussions regarding these agents may provide assistance to pharmaceutical sponsors in designing appropriate study protocols and expediting drug development.

DATES: The public workshop will be held on Wednesday, April 20, 1994, from 1 p.m. to 5 p.m. Submit written notices of participation and comments by March 25, 1994. Registration must be received by March 25, 1994. Written comments will be accepted until June 3, 1994.

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference rm. G, 5600 Fishers Lane, Rockville, MD 20857. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A transcript and summary of the workshop will be available from the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Cathy E. Hobbs, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–9550.

Those persons interested in attending this meeting should FAX their registration to 301–443–9292, including name, firm name, address, and telephone number. There is no registration fee for this workshop, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION: Liposomal drugs are drugs that use a new drug-delivery system that incorporates the drug by either encapsulating it with liposomes or by forming a complex with lipid molecules. Drug delivery by this technique has potential advantages over the parent drug alone in specific tissue targeting and in improved toxicity profiles. Liposomal drugs are considered pharmacokinetically and pharmacodynamically different from the parent drug.

The public workshop will focus on designing clinical trials for liposomal drugs. Issues for discussion include whether and how to conduct active-controlled trials of the liposomal drug, taking into consideration the specific drug and fungal infection, and whether the use of historical controls might be justified in some cases and, if so, how historical control data might be collected for specific fungal infections.

The workshop will begin with presentations by FDA and an industry representative, followed by a panel discussion. FDA and NIAID staff members will cochair the panel. The final part of the workshop will be devoted to questions for panel members.

A transcript and summary of the workshop will be available from the Freedom of Information Office (HFI–35) Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857, approximately 10 business days after the workshop at a cost of 10 cents per page.

Interested persons may submit comments on the workshop to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the workshop will remain open until June 3, 1994. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by June 3, 1994.

Dated: March 7, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5671 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92E–0506]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and

an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler. The PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler is indicated for the repair of acute metaphyseal fracture defects and is to be used in conjunction with rigid internal fixation as dictated by the clinical use requirements in skeletally mature individuals when there is no autogenous bone donor site available. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler (U.S. Patent No. 3,929,971) from Research Corp. Technologies, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 31, 1992, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler is 3,774 days. Of this time, 2,049 days occurred during the testing phase of the regulatory review period, while 1,725 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation on humans involving this device was begun*: July 2, 1982. FDA has verified the applicant's claim that the investigational device exemption required under section 520(g) of the Federal Food, Drug, and Cosmetic Act became effective on July 2, 1982.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: February 9, 1988. The applicant claims February 8, 1986, as the date the premarket approval application (PMA) for the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler (PMA P860005) was filed. However, FDA records indicate that PMA P860005 was initially submitted on February 9, 1988.

3. *The date the application was approved*: October 29, 1992. FDA has verified the applicant's claim that PMA P860005 was approved on October 29, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 10, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–5672 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP for RFP on Retrovirus Epidemiology Donor Study (REDS)—Blood Centers and RFP on Retrovirus Epidemiology Donor Study (REDS)—Coordinating Center (Telephone Conference Call).

Dates of Meeting: March 14, 1994.

Time of Meeting: 12:30 p.m..

Place of Meeting: 5333 Westbard Avenue, room 648, Bethesda, Maryland.

Agenda: To review and evaluate contract proposals.

Contact Person: Dr. Lynn M. Amende, 533 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood diseases and Resources Research, National Institutes of Health.)

Dated: March 07, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–5750 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Meeting of the Advisory Panel on Alzheimer's Disease

Pursuant to Public Law 92–463, notice is hereby given of the Advisory Panel on Alzheimer's Disease meeting to

be held at the National Institutes of Health, Building 31, Conference Room 8, Bethesda, Maryland, from 9 a.m. to 5 p.m. on April 4 and again on April 5 from 9 a.m. to 1 p.m.

The meeting will be open to the public for discussion of draft material for the Panel's annual report and other business before the Panel. Attendance by the public will be limited to space available.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institute of Health).

Dated: March 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–5764 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for a License: Assay Using Recombinant Histidyl-tRNA Synthetase

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license (in accordance with 35 U.S.C. 207) a novel assay to detect auto-antibodies to histydyl tRNA synthetase, known as JO1. This diagnostic assay is able to detect the presence of various autoimmune diseases including myositis, polymyositis and dermatomyositis with more sensitivity than any diagnostic assay that is presently available. The antigen is highly stable on the ELISA plate at refrigerator temperatures for long periods of time.

NIH is the assignee of the patent rights for this technology covered by U.S. Patent Application 08/052,404 and developed by Dr. Nina Raben and Dr. Paul Plotz of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

ADDRESSES: Licensing information and a copy of the U.S. patent application may be obtained by contacting Carol Lavrich, Technology Licensing Specialist, National Institutes of Health, Office of Technology Transfer, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed confidentiality agreement will be required to receive copies of the patent application.

Dated: February 25, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5765 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 4, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. NCHS Application for Technical Assistance—Training Form—0920–0217 (Extension, no change)—Applicants for mortality coder training and for vital registration methods training complete an application form for use by the instructor in selecting training applicants. An annual survey of medical coder training is conducted among vital registration areas. This training is in support of coverage and quality of national vital statistics data. *Respondents:* Individuals or households, State or local governments; *Number of Respondents:* 192; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .27 hour; *Estimated Annual Burden:* 52 hours.

2. Rural Health Medical Education Demonstration Project—Progress Reports—0915–0145 (Revision)—Teaching hospitals conduct demonstration projects in collaboration with rural hospitals in which resident physicians obtain field clinical experience in rural hospitals. The required annual progress reports summarize outcomes, problems, plans for continuing the activity, and recommendations. *Respondents:* Businesses or other for-profit, Non-profit institutions; *Number of Respondents:* 10; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 20 hours.

3. AIDS Prevention and Surveillance Project Reports—0920–0208 (Reinstatement)—Information and data gathered by recipients of AIDS cooperative agreements will be reported to the Centers for Disease Control in narrative or summary statistical reports. Project activities include, AIDS surveillance, assessment of AIDS-related knowledge, attitudes and behavior, AIDS public information and education, counseling and HIV testing and special activities to reach minorities at risk. *Respondents:* State or local governments; *Number of Respondents:* 65; *Number of Responses per Respondent:* 4; *Average Burden per Response:* .458 hour; *Estimated Annual Burden:* 119 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 8, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–5674 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Announcement of Advisory Council Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration National Advisory Council of the Substance Abuse and Mental Health Services Administration in April 1994.

This is the initial meeting of the SAMHSA National Advisory Council. The meeting will be open for discussion of SAMHSA policy issues and include current administrative, legislative and program development. Attendance by the public will be limited to space available.

A summary of the meeting and/or a roster of council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, room 12C–15, Rockville, Maryland 20857.

Substantive program information may be obtained from the contact whose

name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Meeting Dates: April 14–15, 1994.

Place: Parklawn Building, Conference Room "D", 5600 Fishers Lane, Rockville, Maryland 20857.

Open: April 14, 9 a.m. to 5 p.m. April 15, 9 a.m. to 3:30 p.m.

Contact: Toian Vaughn, room 12C–15, Parklawn Building, Telephone (301) 443–4640.

Dated: March 7, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–5633 Filed 3–10–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–74]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with sections 2905 and 2906 of the National Defense Authorization act for Fiscal Year 1994, Public Law 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: March 11, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/11/94

Suitable/Available Properties

Buildings (by State)

California

Family Housing Units
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410001.
Status: Pryor Amendment.
Base Closure Number of Units: 933.
Comment: 933 units, 900 to 2300 sq. ft., 2 to 4 bedrooms, duplex and single family housing, scheduled to be vacated 9/30/95.

Dormitories
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410002.
Status: Pryor Amendment.
Base Closure Number of Units: 31.

Comment: 3610 to 33712 sq. ft., scheduled to be vacated 9/30/95.

Dining Hall
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410003.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 15874 sq. ft., scheduled to be vacated 9/30/95.

Communication
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410004.
Status: Pryor Amendment.
Base Closure Number of Units: 7.
Comment: 7 communication facilities, 224 sq. ft. to 6236 sq. ft., scheduled to be vacated 9/30/95.

Training
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410005.
Status: Pryor Amendment.
Base Closure Number of Units: 9.
Comment: 9 training facilities, 424 to 100976 sq. ft., scheduled to be vacated 9/30/95

Personnel Support
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410006.
Status: Pryor Amendment.
Base Closure Number of Units: 18.
Comment: 18 support buildings, 400 to 22760 sq. ft., including fire station, education centers, post office, chapel, correction and operation facilities, scheduled to be vacated 9/30/95.

Administrative
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410007.
Status: Pryor Amendment.
Base Closure Number of Units: 41.
Comment: 41 buildings, 192 to 82581 sq. ft., including maintenance, office, traffic and headquarters facilities, scheduled to be vacated 9/30/95.

Recreational and Welfare
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410008.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 38 facilities, 923 to 82360 sq. ft., including commissary, child care and recreation centers, library, theater, stores, and gymnasiums, scheduled to be vacated 9/30/95.

Medical
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410009.
Status: Pryor Amendment.
Base Closure Number of Units: 3.
Comment: 3 buildings, 255 to 124289 sq. ft., including a hospital, scheduled to be vacated 9/30/95.

Museums
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410010.
Status: Pryor Amendment.
Base Closure Number of Units: 6.
Comment: 6 buildings, 160 to 24696 sq. ft., scheduled to be vacated 9/30/95.

Operations
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410011.
Status: Pryor Amendment.
Base Closure Number of Units: 11.
Comment: 11 buildings, 884 to 21872 sq. ft., including operations and readiness facilities, scheduled to be vacated 9/30/95.

Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410012.
Status: Pryor Amendment.
Base Closure Number of Units: 22.
Comment: 22 buildings, 38 to 72991 sq. ft., including storage sheds and warehouses, scheduled to be vacated 9/30/95.

Maintenance
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410013.
Status: Pryor Amendment.
Base Closure Number of Units: 49.
Comment: 49 buildings, 72 to 191576 sq. ft., maintenance shops, scheduled to be vacated 9/30/95.

Cold Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410014.
Status: Pryor Amendment.
Base Closure Number of Units: 2.
Comment: 2 buildings used for cold storage, 2753 sq. ft. and 3145 sq. ft., scheduled to be vacated 9/30/95.

Petroleum, Disp. & Oper. Bldgs
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410015.
Status: Pryor Amendment.
Base Closure Number of Units: 13.
Comment: 13 petroleum, dispensing and operations facilities, 100 to 9080 sq. ft., scheduled to be vacated 9/30/95.

Explosive Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410016.
Status: Pryor Amendment.
Base Closure Number of Units: 32.
Comment: 32 facilities, majority are 1608 sq. ft. igloo storage, scheduled to be vacated 9/30/95.

Illinois

Single Family Housing
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410004.
Status: Pryor Amendment.
Base Closure Number of Units: 29.
Comment: 29 Bldgs., 930 to 7594 sq. ft., brick frame, 1–3 bathrooms, 2–5 bedrooms, need repairs, subject to historic preservation guidelines.

Duplex Residence Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410005.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 19 Bldgs., (38 units) 850 to 2087 sq. ft., brick frame, need repairs, 1–2 bathrooms, 2–6 bedrooms, subject to historic preservation guidelines.

Flat Residence Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410006.
Status: Pryor Amendment.
Base Closure Number of Units: 3.
Comment: 3 Bldgs., 977 to 2807 sq. ft., brick frame, need repairs, 1–2 bathrooms, 1–5. bedrooms, subject to historic preservation guidelines.

Row Housing Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410007.
Status: Pryor Amendment.
Base Closure Number of Units: 86.
Comment: 21 Bldgs. (86 units), 828 to 1329 sq. ft., brick frame, need repairs, 1–2 bathrooms, 2–4 bedrooms, subject to historic preservation guidelines.

Apartment Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410008.
Status: Pryor Amendment.
Base Closure Number of Units: 40.
Comment: 3 Bldgs., (40 units), 1–3 story, brick frame, need repairs, subject to historic preservation guidelines.

Motel Type Housing
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410009.
Status: Pryor Amendment.
Base Closure Number of Units: 2.
Comment: 2 Bldgs., 35,146 sq. ft., brick frame, need repairs, subject to historic preservation guidelines.

Administrative Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410010.
Status: Pryor Amendment.
Base Closure Number of Units: 32.
Comment: 32 Bldgs., 577 to 66,544 sq. ft., brick frame, need repairs, subject to historic preservation guidelines, incs. admin general purpose, ADP bldgs., civ. personnel bldgs.

Warehouses
Fort Sheridan
Chicago Co: Lake IL 60037–.

Landholding Agency: COE–BC.
Property Number: 329410011.
Status: Pryor Amendment.
Base Closure Number of Units: 20.
Comment: 20 Bldgs., 263 to 22,815 sq. ft., brick frame, need repairs, subject to historic preservation guidelines.

Miscellaneous Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410012.
Status: Pryor Amendment.
Number of Units: 42.
Base Closure Comment: 42 Bldgs., 16 to 11489 sq. ft., brick frame, need repairs, subject to historic preservation guidelines, incs. general storehouses, commissaries, vehicle storage, magazines.

Community Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410013.
Status: Pryor Amendment.
Number of Units: 22.
Base Closure Comment: 22 Bldgs., 250 to 24617 sq. ft., need repairs, brick frame, subject to historic preservation guidelines, incs. library, museum, child support center, clinic, fire station, post ofc.

Maine

Limestone Capehart Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Location: Trafton Drive and Lane Terrace
Landholding Agency: Air Force–BC.
Property Number: 199410022
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Caribou Capehart Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Location: Route 1.
Landholding Agency: Air Force–BC.
Property Number: 199410023.
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Bldgs. 701 and 702
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410024.
Status: Pryor Amendment.
Number of Units: 2.
Base Closure Comment: 2 shops used for storage and maintenance, 1200 to 2500 sq. ft., wood frame, scheduled to be vacated 9/30/94.

Caribou Capehart Family Hsg
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410025.
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Presque Isle Wherry Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410026.
Status: Pryor Amendment.
Number of Units: 112.
Base Closure Comment: 112 duplex units with attached garages, 726 to 805 sq. ft., 2 bedrooms, wood frame, scheduled to be vacated 9/30/94.

Duplex Presque Isle Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410027.
Status: Pryor Amendment.
Number of Units: 52.
Base Closure Comment: 52 duplex units with attached garages, 865 sq. ft., 3 bedrooms, wood frame, scheduled to be vacated 9/30/94.

Presque Isle Wherry Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410028.
Status: Pryor Amendment.
Number of Units: 27.
Base Closure Comment: 27 residences with attached garages, 988 sq. ft., 1-story wood frame, 3 bedrooms, scheduled to be vacated 9/30/94.

Bldg. 101, Presque Isle Dorm
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410029.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 11229 sq. ft., brick frame, most recent use—multipurpose recreation building, scheduled to be vacated 9/30/94.

Ohio

Bldg. 364
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC
Property Number: 199410017.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 1200 sq. ft., 1-story, most recent use—environmental health lab, scheduled to be vacated 9/30/94.

Bldg. 370
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC
Property Number: 199410018.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 5408 sq. ft., 1-story cinder block, most recent use—correction facility, presence of asbestos and lead paint, scheduled to be vacated 9/30/94.

Bldgs. 416, 417, 419, 420
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force-BC.
Property Number: 199410019.
Status: Pryor Amendment.
Base Closure Number of Units: 4.
Comment: approx. 9000 sq. ft. each, 1-story, most recent use—storage, poor condition, presence of asbestos, scheduled to be vacated 9/30/94.

Bldg. 440
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force-BC.
Property Number: 199410020.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 5200 sq. ft., 1-story masonry, most recent use—office, scheduled to be vacated 9/30/94.

South Carolina

Family Housing
(711, 714 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410001.
Status: Pryor Amendment.
Base Closure Number of Units: 78.
Comment: 78 buildings including garages, 242 to 7872 sq. ft., 1 to 2 story, which includes officers and public quarters, scheduled to be vacated 4/96.

Barracks/Quarters
(721–724 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410002.
Status: Pryor Amendment.
Base Closure Number of Units: 26.
Comment: 26 buildings with a galley and canteen, 240 to 90260 sq. ft. 1 to 3 story, scheduled to be vacated 4/96.

Personnel/Support
(730, 740 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100
Landholding Agency: Navy Base Close.
Property Number: 789410003.
Status: Pryor Amendment.
Base Closure Number of Units: 110.
Comment: 110 buildings, 1 to 2 story which includes a chapel, post office, stores, commissary, child care center, recreation facilities, storage etc., scheduled to be vacated 4/96.

Administrative
(600 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100
Landholding Agency: Navy Base Close
Property Number: 789410004.
Status: Pryor Amendment.
Base Closure Number of Units: 60.
Comment: 60 buildings, 153 to 229293 sq ft., 1 to 6 story, which includes office and admin. facilities, scheduled to be vacated 4/96.

Medical
(500 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100
Landholding Agency: Navy Base Close.
Property Number: 789410005.
Status: Pryor Amendment.
Base Closure Number of Units: 6.

Comment: 6 buildings, 441 to 19951 sq. ft., 1 to 2 story, which includes dispensary and dental clinics, scheduled to be vacated 4/96.

Storage
(431, 441 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410006.
Status: Pryor Amendment.
Base Closure Number of Units: 66.
Comment: 66 buildings, 384 to 100980 sq. ft., 1-story, which includes warehouse and storage facilities, scheduled to be vacated 4/96.

Maintenance-Storage
Charleston Naval Base
(219, 229 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410008.
Status: Pryor Amendment.
Base Closure Number of Units: 26.
Comment: 26 buildings, 200 to 29036 sq. ft., 1 to 2 story, which includes admin, storage facilities, scheduled to be vacated 4/96.

Maintenance
Charleston Naval Base
(212–214 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410009.
Status: Pryor Amendment.
Base Closure Number of Units: 80.
Comment: 80 buildings, 300 to 151824 sq. ft., 1 to 3 story, which includes weapons, ship, automotive facilities, scheduled to be vacated 4/96.

Maintenance
Charleston Naval Base
(216–218 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410010.
Status: Pryor Amendment.
Base Closure Number of Units: 15.
Comment: 15 buildings, 320 to 221754 sq. ft., 1 to 4 story, which includes munitions, electronic, weight handling facilities, scheduled to be vacated 4/96.

Admin/Training/Classroom
Charleston Naval Base
(170 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410011.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 38 buildings, 104 to 168360 sq. ft., 1 to 3 story, admin/training/classroom/storage facilities, scheduled to be vacated 4/96.

Operational/Warehouse
Charleston Naval Base
(143 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410012.
Status: Pryor Amendment.
Base Closure Number of Units: 10.
Comment: 10 buildings, 130 to 24735 sq. ft., 1-story, which includes admin., laboratory and warehouse facilities, scheduled to be vacated 4/96.

Communications/Navigation
Charleston Naval Base
(130 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410013.
Status: Pryor Amendment.
Base Closure Number of Units: 5.
Comment: 5 buildings, 13117 to 13740 sq. ft., 1 to 2 story, which includes communication and navigation facilities, scheduled to be vacated 4/96.

Waterfront Administrative
Charleston Naval Base
(150 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410014.
Status: Pryor Amendment.
Base Closure Number of Units: 7.
Comment: 7 buildings, 576 to 15000 sq. ft., 1 to 2 story, which includes boat house and waterfront admin/storage facilities, scheduled to be vacated 4/96.

Fuel Dispensing
Charleston Naval Base
(125 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410015.
Status: Pryor Amendment.
Base Closure Number of Units: 4.
Comment: 4 buildings includes pumphouses, scheduled to be vacated 4/96.

Utah

Bldg. 800
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410001.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 211 sq. ft., 1 story, limited utilities, secured area w/alternate access, most recent use—sentry station.

Bldg. 801
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410002.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 2294 sq. ft., 1 story, secured area w/alternate access, most recent use—administration.

Bldg. 632
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410003.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 370,975 sq. ft., 1 story, underutilized facility, secured area w/alternate access, most recent use—consolidated maintenance facility.

Unsuitable Properties

Buildings (by State)

Ohio

Bldg. 413
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC.
Property Number: 199410021.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Reason: Within 2000 ft. of flammable or explosive material Other.
Comment: Contamination.

[FR Doc. 94–5534 Filed 3–10–94; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3733; FR–3680–N–01]

Summerset Homes, Inc. and David Leers; Presentation of Views

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of presentation of views in the matter of Summerset Homes, Inc. and David Leers.

SUMMARY: An Informal Presentation of Views pursuant to 24 CFR 3282.152(f) will take place because the Secretary is contemplating injunctive action under section 612(a) of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5410(a), on the issue of whether Summerset Homes, Inc. and David Leers have manufactured park models and units made to mate with the park models and with manufactured homes that are manufactured and sold in violation of the Act, regulations, and standards.

DATES: An informal presentation of views pursuant to 24 CFR 3282.152(f) will commence at 3 p.m. on Tuesday, March 23, 1994, and, if additional time is needed, will continue on the next day commencing at 10 a.m., in room 10257, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: G. Robert Fuller, Special Assistant to the Deputy Assistant Secretary for Single Family Housing, room 9184, 451 7th Street, SW., Washington, DC 20410. Telephone: (202) 708–4549.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations, 24 CFR part 3282, and standards, 24 CFR part 3280. The Office of Manufactured Housing and Regulatory Functions has been conducting an investigation of Summerset Homes, Inc. and David Leers due to information received indicating

that Summerset Homes, Inc. and David Leers may have built manufactured homes in violation of the Act, regulations and standards. The Department has received information and evidence indicating that Summerset Homes, Inc. and David Leers may have built park model and modular unit combinations which are actually manufactured homes but are not built in accordance with the Act and standards. In addition, the evidence indicates that Summerset Homes, Inc. and David Leers may have built manufactured homes mated with modular units which are integral to the manufactured homes but are not built in accordance with the Act and standards.

The Secretary is now considering whether there have been violations of the Act, regulations, and standards such that this case should be referred for injunctive action and other relief. Prior to deciding to make this referral, the Secretary is providing Summerset Homes, Inc. and David Leers with the opportunity to present their views pursuant to section 612(a) of the Act and to present any evidence which they believe is relevant to the inquiry.

The parties to this Presentation of Views are the Secretary, Summerset Homes, Inc. and David Leers. The Informal Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(f). Mr. G. Robert Fuller is hereby designated the presiding officer for the proceeding. All inquiries concerning this proceeding should be directed to Mr. Fuller. The Presentation of Views will commence at 3 p.m. on March 23, 1994, and, if additional time is needed, will continue on the next day commencing at 10 a.m., in room 10257, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

In determining that the requirements of 24 CFR 3282.152 shall apply in this matter, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4).

As provided for by 24 CFR 3282.153, interested persons may participate in writing in the Informal Presentation of Views, and the presiding officer shall, to the extent practicable, consider any such written materials. Interested persons may participate in the oral portion of the Informal Presentation of Views unless the presiding officer determines that participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Dated: March 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–5755 Filed 3–10–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement for Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice is to advise the public that the Draft Environmental Impact Statement (DESIS) for Bayou Sauvage National Wildlife Refuge, Orleans Parish, Louisiana, is available for public review. Comments and suggestions are requested.

The proposed action is: Alternative 2, Comprehensive Diverse Habitat Enhancement. Comprehensive Diverse Habitat Enhancement would involve a concerted real estate acquisition program to acquire fee title to lands presently administered as part of the refuge but leased from the city of New Orleans and the Conservation Fund, as well as all additional lands available from willing sellers within the proposed Bayou Sauvage National Wildlife Refuge Expansion Area. With Alternative 2, the refuge could be expanded to 30,000 acres in fee title ownership. The comprehensive management program would focus on maintaining, enhancing, and restoring, to the greatest extent practicable, the diverse natural communities which historically characterized the area.

A major characteristic of this alternative would be hyudrologic management. This manipulation of water levels, period and extent of flooding, salinity, and circulation would be achieved using existing and proposed water management structures. In addition to the two approved Coastal Restoration Programs being implemented, there would be: (1) Shore zone stabilization, protection, and enhancement measures in tidal wetlands along Lake Pontachartrain and Lake Borgne, (2) bank zone stabilization and protection in tidal wetlands along the Gulf Intracoastal Waterway (GIWW), (3) control of nuisance animals and exotic plants, and (4) maintenance and enhancement of forested ridge habitat for wildlife. Consumptive public use, including recreational and sport fin and shellfishing from banks and by boat, limited rabbit hunting, and potential waterfowl hunting south of the GIWW (upon achievement of the goals of the North American Waterfowl Management Plan) would be authorized.

There would be nonconsumptive programs for fish and wildlife observation, environmental education, and archaeological interpretation.

A major, state-of-the-art Facilities Program would be planned for Alternative 2 which would serve all anticipated users of the refuge (general public, special interest groups, scientists, and refuge personnel):

(1) Visitor/Interpretive Center (5.8 acres)—near the southeast quadrant of the I–10/Turtle Bayou Interchange
(2) Environmental Education Center (3.4 acres)—south side of the U.S. Highway 11 and U.S. Highway 90 intersection
(3) Administrative/Maintenance Complex (8.3 acres)—near the southeast quadrant of the I–10/Michoud Boulevard Interchange
(4) Trail Head/Interpretive Facilities (approximately 2.1 acres each):
(a) Northwest exit of I–10/Michoud Boulevard Interchange
(b) Northwest exit of I–10/Turtle Bayou Interchange
(c) Southeast exit of I–10/Turtle Bayou Interchange
(d) Lake Pontchartrain Levee north of I–10/Little River Interchange
(e) I–10/Turtle Bayou Interchange near Visitor Center
(f) U.S. Highway 11 at Cane Bayou
(g) U.S. Highway 11 at Irish Bayou Levee
(h) Northwest side of U.S. Highway 11 and U.S. Highway 90 intersection
(i) Northeast side of U.S. Highway 11 and U.S. Highway 90 intersection
(j) South side of U.S. Highway 11 and U.S Highway 90 intersection
(k) U.S. Highway 90 near Fort McComb
(l) U.S. Highway 90 at the Maxent Levee
(m) Intersection of the Maxent Levee and the CSX (Louisville-Nashville) Railroad

DATES: Written comments are requested by May 10, 1994.

A public meeting will be held at the Sarah T. Reed High School, 5316 Michoud Boulevard, New Orleans, Louisiana 70126 at 7 p.m. on March 23, 1994, to present the preferred alternative and receive public input.

ADDRESSES: Comments should be addressed to: Cashio, Cochran, Torre/Design Consortium Ltd., 5005 Magazine Street, New Orleans, LA 70115.

FOR FURTHER INFORMATION CONTACT: Dan Tabberer, Wildlife Biologist, U.S. Fish and Wildlife Service, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458, 504/646–7579.

Dated: March 7, 1994.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 94–5703 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–66–M

Bureau of Land Management

[AK–967–4230–05; AA–8096–03]

Alaska; Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for approximately 21,130 acres. The lands involved are in the vicinity of the Nellie Juan River, Alaska.

Seward Meridian Alaska

T. 1 N., R. 2 E.,
T. 2 N., R. 2 E.,
T. 2 N., R. 3 E.,
T. 3 N., R. 3 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 11, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett

Chief, Branch of KCS Adjudication.

[FR Doc. 94–5753 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–JA–P

[CO–920–94–4110–03; COC34918]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC34918, Cheyenne County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: March 4, 1994.

Joan E. Gilbert,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–5639 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–58080]

Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Las Vegas Center for Children proposes to use the land for a treatment center for emotionly disturbed children.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 18: Lots 26 and 27.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement 30.00 feet in width along with north, and south boundaries of Lot 26 in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the north, and south boundaries of Lot 27 in favor of Clark County for roads, public utilities and flood control purposes.

3. Those rights for energy project purposes which have been granted to the Federal Energy Regulatory Commission by Permit No. N–56078 under the Act of March 3, 1879 (43 U.S.C. 31).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: February 15, 1994.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 94–5641 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, April 7, 1994, at Building 201, Fort Mason, San Francisco, California. The Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

The main agenda item at this meeting will be a vote on the Presidio Committee Report on the Presidio General Management Plan Amendment (GMPA) and Environmental Impact Statement (EIS). Discussion on this report by the Advisory Commission has been completed following five public hearings on the Presidio General Management Plan Amendment (GMPA) and Environmental Impact Statement (EIS) throughout the Bay Area in fall of 1993. The public comment period ended on December 21, 1993. No public comments on the Presidio Plan will be taken at this meeting.

Also on the agenda will be a report from the GGNRA education committee and an update report on the wetlands restoration projects at Bolinas Lagoon and Big Lagoon in Marin County. The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after April 22, 1994. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: March 4, 1994.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–5661 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, April 13, 1994; 6:30 p.m. until 9:30 p.m.

ADDRESSES: Metropolitan council Chambers, Mears Park Centre, 230 East Fifth Street, Saint Paul, Minnesota.

The agenda for the meeting consists of commission review and discussion of a revised draft comprehensive management plan for the Mississippi National River and Recreation Area. It is anticipated the commission will vote whether or not to recommend the comprehensive management plan be transmitted to the Governor of Minnesota and the Secretary of the Interior for review and approval.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, suite 418, St. Paul, Minnesota 55101, 612–290–4160.

Dated: March 3, 1994.

F.A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 94–5662 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.

Bureau/Office: Office of Compliance & Consumer Assistance.

Title of Form: Application for Certificate of Registration for Certain Foreign Carriers.

OMB Form Number: 3120–0124.

Agency Form Number: OP–2.

Frequency: Initiated by Foreign Carriers requesting a Certificate of Registration.

No. of Respondents: 420.

Total Burden Hours: 840.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5698 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–P

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

a. 1. Parent Corporation and address of principal office: The Birmingham News Company, 2200 North 4th Avenue, Birmingham, Alabama 35203.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation: Mercury Express, Inc.; Alabama.

b. 1. Parent Corporation and address of principal office: Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420.

2. Directly or indirectly wholly owned subsidiaries which will participate in the operation, state and country of incorporation:

B.I. Transportation, Inc., incorporated in the State of Delaware
Burlington Fabrics, Inc., incorporated in the State of Delaware
Burlington Canada, Inc., incorporated in Canada
Textile Morelos, S.A. de C.V., incorporated in Mexico
Nobills-Lees, S.A. de C.V., incorporated in Mexico
Burlington Knitted Apparel Services Co., incorporated in the State of Delaware

c. 1. Parent Corporation and address of principal office: Outboard Marine Corporation, a Delaware Corporation with its principal place of business at 100 Sea Horse Drive, Waukegan, Illinois 60085.

2. Wholly-owned subsidiaries which will participate in the operations, and the State(s) of incorporation:

Syracuse Transportation, Inc.—Indiana
OMC Aluminum Boat Group Inc.—Delaware

OMC Fishing Boat Group Inc.—Delaware
Recreational Boat Group LP.—Delaware

d. 1. The parent corporation is Steelcase, Inc. and the address of the principal office is: 1120 36th Street SE., Grand Rapids, Michigan 49508.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

Anderson Desk, Inc., California corporation
Atelier International, Ltd., New York corporation
A.I. Collection, Ltd., New York corporation
Attwood Corporation, Michigan corporation
Brayton International, Inc., North Carolina corporation
Brayton Leasing Corporation, North Carolina corporation
Continuum, Inc., North Carolina corporation
Columbus Circle Realty Corp., New York corporation
Design Tex Fabrics, Inc., New York corporation
Western States Design Tex, Inc., California corporation
Hedberg Data Systems, Inc., Connecticut corporation
Legacy Dealer Capital Fund, Inc., Delaware corporation
Metropolitan Corporation, Delaware corporation
Metropolitan Fabricating Corporation, California corporation
Metropolitan Furniture Corporation, California corporation
Revest Inc., Texas corporation
SC Transport, Inc., Michigan corporation
Steelcase Canada Ltd., Toronto corporation
Steelcase Hong Kong Ltd., Inc., Michigan corporation
Steelcase Financial Services Inc., Michigan corporation
Steelcase Financial Services Ltd., Canadian corporation
Steelcase International Inc., Michigan corporation
Stow Davis Architectural Woodwork Incorporated, Colorado corporation
Stow Davis Furniture Incorporated, Indiana corporation
Turnstone Inc., Michigan corporation
Vecta Division (a/k/a Vecta Contract), Steelcase, Inc., Texas corporation
WDI Realty Co., Michigan corporation

e. 1. Parent corporation and address of principal office: Thompson Industries, Inc., South Highway 7, Route 1, Box 142, Russellville, AR 72801.

2. Wholly owned subsidiary which will participate in the operation and state of incorporation:

Thompson Transportation, Inc., an Arkansas corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5697 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated December 3, 1993, and published in the **Federal Register** on December 16, 1993, (58 FR 65734), Anys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

[FR Doc. 94–5707 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances Notice of Registration

By Notice dated December 21, 1993, and published in the **Federal Register** on December 28, 1993, (58 FR 68664), the Binding Site, Inc., 5889 Oberlin Drive, suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Ethylmorphine (9190)	II
Methadone-intermediate (9254)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5708 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances Notice of Registration

By Notice dated November 24, 1993, and published in the **Federal Register** on December 6, 1993, (58 FR 64338), OMB Pharmaceutical Partners, HC–02 Box 19250, Gurabo, Puerto Rico 00778–9250, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5709 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1994, Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 3, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5711 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 1994, Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II basic class of controlled substance Meperidine (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

Dated: March 3, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5710 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 26, 1994, Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 3, 1994.

Gene R. Haislap,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5712 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances of Registration

By Notice dated November 24, 1993, and published in the **Federal Register** on December 6, 1993, (58 FR 64338), Upjohn Company, 7171 Portage Road, M.L. 7011–126–5, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-

Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5706 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Cancellation of Open Meeting

This notice is to cancel the public meeting of the Glass Ceiling Commission which had been scheduled for Tuesday, March 22, 1994. Notice of this meeting was published in the **Federal Register** on March 4, 1994 (59 FR 10426).

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 8th day of March, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5766 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor form its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I:

Maine
ME940027 (Mar. 11, 1994)

Volume II:

Pennsylvania
PA940064 (Mar. 11, 1994)
PA940065 (Mar. 11, 1994)

Volume V:

New Mexico
NM940006 (Mar. 11, 1994)
Oklahoma
OK940024 (Mar. 11, 1994)
Texas
TX940103 (Mar. 11, 1994)
TX940104 (Mar. 11, 1994)
TX940105 (Mar. 11, 1994)

Volume VI:

Arizona
AZ940017 (Mar. 11, 1994)
Utah
UT940022 (Mar. 11, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

Pennsylvania
PA940027 (Feb. 11, 1994)

Volume III:

None

Volume IV:

Illinois
IL940019 (Feb. 11, 1994)
Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)

MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940047 (Feb. 11, 1994)
Wisconsin
WI940019 (Feb. 11, 1994)

Volume V:

Oklahoma
OK940016 (Feb. 11, 1994)
OK940018 (Feb. 11, 1994)

Volume VI:

Arizona
AZ940001 (Feb. 11, 1994)
AZ940002 (Feb. 11, 1994)
AZ940004 (Feb. 11, 1994)
AZ940005 (Feb. 11, 1994)
AZ940007 (Feb. 11, 1994)
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AZ940015 (Feb. 11, 1994)
AZ940016 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 4th day of March 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–5427 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 25, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Army (N1–AU–90–23). Wage survey data used to set wages for wage rate civilian employees.

2. Department of Health and Human Services, Indian Health Service. (N1–513–92–1). Comprehensive schedule covering records relating to Staff Services.

3. Department of Health and Human Services, Indian Health Service. (N1–513–92–2). Comprehensive records schedule relating to Management Services.

4. Department of Justice, Office of Alien Property (N1–131–93–1). Valueless seized securities.

5. Department of State, Foreign Buildings Operations (N1–59–94–9). Routine and facilitative records relating to real estate matters.

6. Department of the Treasury, Office of Thrift Supervision (N1–483–92–8). Records documenting and tracking consumer complaints.

7. ACTION, Office of Management and Budget (N1–362–94–1). Travel, transportation and telephone records.

8. Defense Finance and Accounting Service (N1–507–93–2). Routine administrative records.

9. National Aeronautics and Space Administration (N1–255–94–2). Records relating to industry relations and procurement, and to financial management, audits and investigations (Chapters 5 and 9 of the NASA Records Retention Handbook).

10. National Archives and Records Administration (N2–70–94–1). Raw data notebooks from Bureau of Mines drilling site experiment stations, 1926–1958.

11. National Achives and Records Administration (N2–182–94–1). Internal disposal of fragmentary, routine, and facilitative records of the War Trade Board.

12. On-Site Inspection Agency (N1–330–93–4, N1–330–93–5). Routine administrative records (treaty monitoring files are proposed as permanent).

13. Tennessee Valley Authority, Corporate Relations & Development (N1–142–93–9). Original x-rays that have deteriorated beyond usefulness prior to their scheduled date of destruction.

Dated: March 3, 1994.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 94–5650 Filed 3–10–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(12) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on March 29, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:45 a.m. for Opening Remarks and Introductions; and from 4:30 p.m. to 5:30 p.m. for a Policy Discussion.

The remaining portion of this meeting from 9:45 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne J. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–5657 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory panel (Arts on Television Section) to the National Council on the Arts will be held on April 5–6, 1994. The panel will meet from 9:15 a.m. to 6:30 p.m. on April 5, 1994 and from 9 a.m. to 5 p.m. on April 6, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC 20506.

A portion of this meeting will be open to the public from 9:15 a.m. to 9:30 a.m. on April 5, 1994 for Introductory Remarks and from 4:30 p.m. to 5 p.m. on April 6, 1994 for a Policy Discussion.

The remaining portions of this meeting from 9:30 a.m. to 6:30 p.m. on April 5, 1994 and from 9 a.m. to 4:30 p.m. on April 6, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5658 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Artists' Communities Section) to the National Council on the Arts will be held on March 25, 1994, from 8:30 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5:30 p.m. for Policy and Guidelines discussion and a Field Report on Artists' Communities.

The remaining portion of this meeting from 8:30 a.m. to 3:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington,

DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5656 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following four meetings:

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date and Time: March 24, 1994; 8:30 a.m. to 5 p.m.

Place: NSF, room 530, 4201 Wilson Blvd, Arlington, VA.

Agenda: Review and evaluate nominations for the NSF Young Investigator and Research Initiation Awards Program.

Contact Person Drs. George Peterson & Milton Linevsky, Program Directors, (703)306-1371.

Date and Time: March 29, 1994; 8:30 a.m. to 5 p.m.

Place: NSF, room 530, 4201 Wilson Blvd, Arlington, VA.

Agenda: Review and evaluate nominations for the NSF Research Initiation Award (RIA) and Research Equipment Grants (REG) Program.

Contact Person: Dr. George P. Peterson, Program Directors, (703)306-1371.

Purpose of Meeting: To provide advice and recommendation to the Division of Chemical and Thermal Systems concerning proposals submitted to the Division for financial support.

Type of Meeting: Closed.

Reason for Closing: The nominations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations and proposals. These matters are exempt under 5 USC 552 b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5763 Filed 3–10–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; LaSalle Count Station, Unit 1 Withdrawal of Amendment to Facility Operating License

[Docket No. 50–373]

The U.S. Nuclear Regulatory Commission (the Commission) has received a letter from Commonwealth Edison Company, (licensee) to withdraw its application for an exigent amendment to Facility Operating License No. NPF–11, issued to the licensee for operation of the LaSalle County Station, Unit No. 1, located in LaSalle County, Illinois. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on December 22, 1993 (58 FR 67873).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) on a one-time only basis. The revision would have been in effect for a limited time period, which was to end when Unit 1 next entered cold shutdown, but no later than the start of the forthcoming refueling outage which was scheduled for March 1994.

Subsequently, the licensee informed the staff that it had complied with the requirements of the LaSalle, Unit 1, TSs. Accordingly, the requested amendment was no longer needed; the licensee withdrew its request for the subject exigent amendment in its letter dated January 24, 1994, therefore, the amendment request is hereby considered withdrawn.

For further details with respect to this action, refer to the application for amendment dated December 10, 1993, and the staff's letter dated December 13, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 4th day of March 1994.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5665 Filed 3–10–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New EDGAR Survey—File No. 270–388.

Notice is hereby given that pursuant with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct a survey of interested parties regarding the Electronic Data Gathering Analysis and Retrieval (EDGAR) system. The results of the survey will be used in the evaluation of EDGAR's readiness for and acceptability in support of possible mandatory EDGAR filing for all registrants. Survey responses are estimated to require 0.25 burden hours.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hour for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 5647 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33720; File No. SR–Amex–93–36]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Options on the Amex Natural Gas Index

March 7, 1994.

I. Introduction

On November 12, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Amex Natural Gas Index ("Natural Gas Index" or "Index"). Notice of the proposed rule change appeared in the **Federal Register** on December 16, 1993.[3] This order approves the Exchange's proposal. No comment letters were received on the proposed rule change. The Exchange subsequently submitted Amendments Nos. 1 and 2 to the proposed rule change.[4]

II. Description of Proposal

A. General

The Amex proposes to trade options on the Natural Gas Index, a new stock index developed by the Amex based on natural gas industry stocks or American Depositary Receipts ("ADRs")[5] thereon which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or are national market system securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ–NMS"). In addition, the Amex proposes to amend Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines for securities underlying options set forth in Rule 915.[6] The Amex also proposes to list either long-term options on the Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Natural Gas Index ("Natural Gas LEAPS" or "Index LEAPS").[7] Natural Gas LEAPS will trade independent of and in addition to regular Natural Gas Index options traded on the Exchange, however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index is comprised of fifteen securities of highly-capitalized companies in the natural gas industry. Included in this group are companies in the U.S. which are involved in natural gas exploration and production, natural gas transmission, or natural gas distribution.[8] The Exchange will use an "equal dollar-weighted" method to calculate the Index.[9] The Index was initialized at a level of 300 at the close of trading on October 15, 1993.

As of the close of trading on February 8, 1994, the Index was valued at 276.69. The market capitalizations of the individual stocks in the Index on that date ranged from a high of $8.13 billion (Enron Corp.) to a low of $470 million (Cabot Oil and Gas Corp. (Class A)), with the man and median being $2.35 billion and $1.37 billion, respectively. The market capitalization of all the stocks in the Index was $35.32 billion. The total number of shares outstanding for the stocks in the Index ranged from a high 238.97 million shares (Enron Corp.) to a low of 20.56 million shares (Cabot Oil and Gas Corp. (Class A)). In addition, the average daily trading volume of the stocks in the Index, for the six-month period from August 8, 1993 through February 8, 1994, ranged from a high of 522,510 shares per day (Enron Corp.) to a low of 36,520 shares per day (Cabot Oil and Gas Corp. (Class A)), with the mean and median being 226,080 and 159,000 shares, respectively. Lastly, no one stock comprised more than 7.31% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 34.92% of the Index's value. The percentage weighting of the lowest weighted stock was 6.08% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 31.73% of the Index's value.

C. Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index

Exchange Rule 901C specifies criteria for the inclusion of stocks in an index on which options will be traded on the Exchange. Specifically, rule 901C states that an index must have a minimum of five stocks, and any index with less than 25 component stocks may not include stocks traded on the Amex.[10] If, however, the Exchange determines to increase or decrease the number of Index component stocks by 33⅓% or more from its current level of 15 components, the Amex will submit a rule filing with the Commission pursuant to section 19(b) of the Act.[11] The Exchange also notes that

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33312 (December 9, 1993), 58 FR 65740 (December 16, 1993).

[4] In Amendment No. 1, the Exchange proposes to provide that the number of components in the Index will not increase or decrease by more than 33⅓% from the current number of components (i.e., 15) and in no event will there be less than 9 components in the Index. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated January 14, 1994 ("Amendment No. 1"). In order to increase or decrease the number of components in the Index beyond this range, the Exchange would be required to submit a rule filing to the Commission pursuant to section 19(b) of the Act. On February 22, 1994, the Exchange filed Amendment No. 2 to clarify that the position and exercise limits for the Index options would be 10,500 contracts on the same side of the market. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 18, 1994 ("Amendment No. 2").

[5] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. See discussion of standards for ADR components, *infra* note 31.

[6] The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Amex Rule 915.

[7] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[8] The current component securities of the Index are Apache Corp.; Anadarko Petroleum Corp.; Burlington Resources; Consolidated Natural Gas; Cabot Oil and Gas Corporation (Class A); Enron Corp.; Ensearch Corp.; Louisiana Land and Exploration; Mitchell Energy and Development; Noble Affiliates, Inc.; Oryx Energy; Parker and Parsley Petroleum; Pogo Producing Co.; Seagull Energy Corp.; and Sonat Inc.

[9] See infra Section II.D entitled "Calculation of the Index" for a description of this calculation method.

[10] Accordingly, the Natural Gas Index as currently constituted does not include Amex-traded stocks. The Amex, however, has submitted a proposal, that, among other things, revises Amex Rule 901C to remove the limitation on the number of Amex stocks that can be included in an index which underlies a stock index option traded on the Exchange. Specifically, the proposal would allow, among other things, Amex-listed stocks to be included in Amex-traded index options that are comprised of less than 25 stocks. See Securities Exchange Act Release No. 30356 (February 12, 1992), 57 FR 5497 (February 14, 1992).

[11] See Amendment No. 1, *supra* note 4.

component stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. Furthermore, the Amex will be required to ensure that each of the components of the Index is subject to last sale reporting requirements in the U.S.

In addition, the Exchange will require, as reflected in amended Commentary .01 to Exchange Rule 901C, that at least 90% of the Index's numerical value, after each quarterly rebalancing of the Index, will be accounted for by stocks that meet the Exchange's options listing standards.

In choosing among natural gas industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Rule 901C) or traded through NASDAQ–NMS. In addition, the Exchange intends to select stocks that (1) have a minimum market value (in U.S. dollars) of at least $75 million, and (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than one million shares except that component stocks accounting for not more than 10% of the Index value at each quarterly rebalancing may have an average monthly trading volume of not less than 500,000 shares.

The Index currently has fifteen component stocks, all of which are eligible for standardized options trading and thirteen of the fifteen are currently the subject of standardized options trading. However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized options trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized options trading set forth in Exchange Rule 915 will be required to account for at least 90% of the Index's numerical value, and this requirement will be reflected in commentary to Exchange Rule 901C.

D. Calculation of the Index

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities are represented in approximately "equal" dollar amounts in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the natural gas industry there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the natural gas industry, Enron Corp. currently represents over 23% of the aggregate market value of the Index. In addition, while currently there is not much disparity in the prices of the stocks included in the Index, using a price-weighted method to calculate the Index's value is not the Exchange's preferred method since the prices of such stocks can fluctuate significantly as a result of a corporate action (*e.g.*, a stock split or distribution), rather than as a result of stock performance, causing the relative weightings of the stocks within the Index to fluctuate significantly.

In calculating the initial "equal dollar-weighting" of component stocks, the Amex, using closing prices on October 15, 1993, calculated the number of shares that would represent an investment of $10,000 in each of the stocks contained in the Index (to the nearest whole share). The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the assigned number of shares of each of the stocks in the Index portfolio divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 300.00 at the close of trading on October 15, 1993. Each quarter thereafter, following the close of trading on the third Friday of January, April, July and October, the Index portfolio is adjusted by changing the number of shares of each component stock so that each company is again represented in $10,000 "equal" dollar amounts. If necessary, a divisor adjustment is made to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange represents that it has had experience making regular quarterly adjustments to certain of its indexes (e.g., the Amex Institutional Index) and has not encountered investor confusion regarding the adjustments because they are done on a regular basis and timely, proper, and adequate notice is given in the form of an information circular distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index, a description of the equal dollar-weighting methodology. The Exchange states that this procedure has been used for the Exchange's Biotechnology Index, another equal dollar-weighted index.[12]

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly reviews except in the event of certain types of corporate actions, such as the payment of a dividend, other than an ordinary cash dividend, stock distributions, stock splits, reverse stock splits, rights offerings, or a distribution, reorganization, recapitalization, or some such similar event with respect to an Index component stock. The number of shares will also be adjusted in the event of a merger, consolidation, dissolution or liquidation of an issuer of a component stock. When the Index is adjusted between quarterly reviews, the number of shares of the relevant security in the portfolio will be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the new component stock to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B and to the Options Price Reporting Authority ("OPRA").

The Index value for purposes of settling outstanding Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of securities traded through the NASDAQ–NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (i.e., Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a

[12] See Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992).

component stock for purposes of determining the settlement value of the Index, the Amex will wait until the end of the trading day on expiration Friday.[13]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[14] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The options on the Index will expire on the Saturday following the third Friday of the expiration month. Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals in the January cycle. The Exchange also intends to list Natural Gas LEAPS, having up to thirty-six months to expiration. Strike price interval, bid/ask differential and price continuity rules will not apply to the trading of Natural Gas LEAPS until their time to expiration is less than twelve months.[15]

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

F. Listing of Long-Term Options on the Full Value or Reduced Value Natural Gas Index

The proposal provides that the Exchange may list long-term index options that expire from 12 to 36 months from listing on the full-value Natural Gas Index or a reduced-value Index that will be computed at one-tenth the value of the full-value Index. The current and closing Index value for reduced-value Natural Gas LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 276.46 would be 27.65 for the Index LEAPS and 276.43 would become 27.64. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

In addition, the proposal provides that full-value or reduced-value Natural Gas LEAPS will be issued at no less than six month intervals and that new strike prices will either be near or bracketing the current Index value.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures[18] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For aggregation purposes, ten reduced-value contracts will equal one full-value contract.

H. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19]

III. Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[20] Specifically, the Commission finds that the trading of Natural Gas Index options, including full-value and reduced-value Natural Gas LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the natural gas industry.[21]

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[13] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the Amex will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[14] A European-style option can be exercised only during a specified period before the option expires.

[15] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR-Amex-87-22).

[16] Pursuant to Amex Rule 462(d)(2)(D)(iv), the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[17] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted. See Amendment No. 2, *supra* note 4.

[18] Pursuant to Amex Rule 918C, the trading of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[19] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Natural Gas Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks comprising the natural gas industry in the U.S. stock markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the natural gas industry sector of the U.S. stock markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. The Commission also believes that the trading of the Index options and Index LEAPS will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that the reduced-value Index LEAPS, that will be traded on an index computed at one-tenth the value of the Natural Gas Index, will

The trading of options on the Natural Gas Index and on a reduced-value Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Natural Gas Index is a narrow-based index. The Natural Gas Index is comprised of only fifteen stocks, all of which are within one industry—the natural gas industry.[22] Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume of 4.75 million and 3.34 shares, respectively.[24] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $8.13 billion (Enron Corp.) to a low of $470 million (Cabot Oil and Gas Corporation (Class A)) as of February 8, 1994, with the mean and median being $2.35 billion and $1.37 billion, respectively. Third, although the Index is only comprised of fifteen stocks, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 7.31% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 34.92% of the Index's value.[25] Fourth, all of the component stocks in the Index currently are eligible for options trading,[26] and all but two components have standardized options trading on them. Fifth, the Amex, prior to increasing or decreasing the number of component stocks by more than 33⅓%, will be required to seek Commission approval pursuant to section 19(b)(2) of the Act before effecting such change.[27] This will help protect against material changes in the composition and design of the Index that might adversely affect the Amex's obligations to protect investors and to maintain fair and orderly markets in Natural Gas Index options. Sixth, the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Natural Gas Index in any significant way through trading in component stocks (or options on those stocks) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

In addition, the Commission does not believe that the fact that the Index is equal dollar-weighted instead of market-weighted or price-weighted results in the Index being readily susceptible to manipulation. Because the use of an equal dollar-weighting method could give securities with relatively small floats or prices a greater weight in the Index than if the Index were capitalization weighted or price weighted, the Commission is concerned that this calculation method could make the Index more readily susceptible to manipulation. The Amex, however, has developed several composition and maintenance criteria for the Index that the Commission believes will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, after each quarterly rebalancing, the Amex proposal requires that 90% of the weighting of the Index be accounted for by stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be manipulated by abusive trading in the smaller stocks contained in the Index. Second, the proposal provides that to be eligible for inclusion in the Index, component stocks must have an average monthly trading volume over the previous six-month period of not less than one million shares, except that component stocks accounting for not more than 10% of the value of the Index at rebalancing, may have an average monthly trading volume of less than one million shares but not less than 500,000 shares. This trading volume requirement is considerably higher than the requirement contained in the options listing standards for individual equity options. Third, the Commission believes that the quarterly rebalancing of the Index will further serve to reduce the susceptibility of the Index to manipulation. Through the quarterly rebalancing, any "overweight" stock[28] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted. Fourth, because the Index is narrow-based, the applicable position and exercise limits and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, the Amex represents that it will make every effort to add new stocks to the Index that are representative of the natural gas sector and, as discussed above,[29] will take into account a stock's capitalization, liquidity, and volatility.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Natural Gas Index options (including full-value and reduced-value Natural Gas LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be

serve the needs of natural gas industry investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[22] The reduced-value Natural Gas Index, which is comprised of the same component securities as the Natural Gas Index and calculated by dividing the Natural Gas Index value by ten, is identical to the Natural Gas Index.

[23] See *supra* Section II.G entitled "Position and Exercise Limits, Margin Requirements, and Trading Halts."

[24] In addition, for the six-month period between August 8, 1993 and February 8, 1994, all of companies within the Index had an average daily trading volume greater than 226,000 shares.

[25] For an index with a significantly greater number of stocks than fifteen issues, the Commission might come to a different conclusion if only a few stocks accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[26] See *supra* note 6.

[27] See Amendment No. 1, *supra* note 4.

[28] A stock would be "overweight" if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

[29] See *supra* Section II.C entitled "Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index."

subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Natural Gas Index options and full-value or reduced value Index LEAPS.

The Commission also has some concern that the quarterly rebalancing of the Index could result in investor confusion because the number of stocks of each component issuer in the Index could fluctuate each quarter. Such fluctuation, among other things, could make it difficult for investors to maintain any corresponding cash positions in the stocks underlying the Index. The Commission, however, does not believe that the quarterly rebalancing will result in dramatic changes in the weightings of the component securities. Moreover, the Commission believes the benefits to be derived from using a quarterly rebalancing will more than offset the potential confusion for investors. Specifically, the Commission believes the quarterly rebalancing will ensure that no stock or group of stocks will have a disproportionate impact on the Index.

Finally, the Amex has developed procedures to ensure that investors are adequately notified of any changes due to the quarterly rebalancing of the Index. In particular, the Amex represents that it will send informational circulars to its members notifying them of any changes to the Index as a result of the quarterly rebalancing prior to the implementation of those changes. In addition, the Amex has stated that it will include a description of the equal dollar-weighting methodology in all its promotional and marketing materials for the Index. The Commission believes these procedures should help to avoid any investor confusion, while providing important information about the special characteristics of the Index.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[30] In this regard, the NYSE, which currently is the primary market for all of the Index's component stocks, is a member of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[31]

D. Market Impact

The Commission believes that the listing and trading of Natural Gas Index options, including full-value and reduced-value Index LEAPS on the Amex will not adversely impact the underlying securities markets.[32] First, as described above, due to the "equal dollar-weighting" method, no one stock or group of stocks dominates the Index. Second, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly-capitalized stocks. Third, the 10,500 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Natural Gas Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[33]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides that the Amex must submit a rule filing pursuant to section 19(b) of the Act if the number of components in the Index increases or decreases by more than 33⅓%. This amendment conforms the proposal to other proposals recently approved by the Commission for the listing and trading of options on narrow-based indexes.[34] Amendment No. 2 merely states that the position and exercise limits for the proposed Index options will be set at 10,500 contracts pursuant to Amex Rule 904C consistent with the Commission's recent approval order increasing the position and exercise limits for narrow-based index options.[35] Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW.,

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[30] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[31] See *supra* note 19. Although the Index currently does not contain ADRs, the proposal provides that the Index could contain ADRs representing natural gas industry stocks. If the Amex were to change the composition of the Index so that greater than 20% of the Index by weight was represented by ADRs whose underlying securities were not subject to a comprehensive surveillance sharing arrangement with the Amex, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable to continue to trade options on the Index. The Amex should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement see, *e.g.*, Securities Exchange Act Release Nos. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992); and 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994).

[32] The Commission notes that prior to listing Index options or full-value or reduced-value Index LEAPS, the Exchange will be required to provide written representations that both the Exchange and OPRA have the necessary systems capacity to support those new series of Index options.

[33] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[34] See, *e.g.*, Securities Exchange Act Release No. 33442 (January 6, 1994), 59 FR 1973 (January 13, 1994) order approving the listing and trading of options on the CBOE Gaming Index).

[35] See, *e.g.*, Securities Exchange Act Release No. 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993).

Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–Amex–93–36), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.[37]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5675 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33713; File No. SR–NASD–93–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Eliminating Regulatory Reporting Requirements for Certain Equity Securities Under Section 2 of Schedule H to the NASD Bylaws

March 4, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on November 17, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously is approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act, and Rule 19b–4 thereunder, the NASD has filed a proposed rule change to eliminate a regulatory reporting requirement that now exists for certain equity securities under Section 2 of Schedule H to the NASD Bylaws.

Following is the full text of the proposal. (Additions are italicized.)

Schedule H

* * *

Sec. 2. Price and Volume Reporting

* * *

(c) The reporting requirements contained in paragraphs (a) and (b) of this Section shall not apply to any non-NASDAQ security for which members are required to report individual transactions pursuant to Part XII of Schedule D to the NASD Bylaws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD hereby proposes an amendment to Section 2 of Schedule H to the NASD Bylaws to eliminate the obligation of member firms to report aggregate volume of purchases and sales, price range, and certain contra party information for principal transactions in equity securities classified as non-NASDAQ securities. Currently, this regulatory reporting mechanism extends to over-the-counter ("OTC") principal transactions in equity securities that are not listed on The NASDAQ Stock Market or on a national securities exchange. It also extends to a small group of equities that are listed on regional exchanges, but do not qualify as "eligible securities" for purposes of certain national market system plans governing the collection and dissemination of quotation and transaction information, respectively.

The foregoing categories of securities are subsumed by the definition of OTC Equity Security ("OTC equity") in Section 1(b), Part XII of Schedule D to the NASD Bylaws.[1] Part XII, which took effect on December 20, 1993, establishes requirements and procedures for reporting individual transactions in OTC equities on a real-time basis (i.e., within 90 seconds of execution). The reporting requirements and procedures in Part XII closely approximate those that now apply to NASD members when they effect transactions in NASDAQ-listed securities.

When Part XII was implemented on December 20, 1993, the NASD began capturing far more information for regulatory purposes than was previously captured via Schedule H reporting. Specifically, the NASD began collecting trade-by-trade information on a real-time basis and processing that data to form a sequenced audit trail of members' trading activity in individual OTC equities. Such information has greater utility to the NASD's market surveillance program than the aggregate volume and price range data reported for principal transactions under Section 2 of Schedule H.[2] In essence, the regulatory purposes underlying the capture of Schedule H information are satisfied more effectively by the NASD's collection and processing of individual trade reports entered in accord with Part XII of Schedule D. The NASD posits that no regulatory purpose would be served by continuing Schedule H reporting for OTC equities subject to Schedule D reporting after December 20, 1993.[3]

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(2) and (b)(6) of the Act. Section 11a(A)(1) contains the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance the ability of investors to monitor the quality of executions received, and foster

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[36] 15 U.S.C. 78s(b)(2) (1988).

[37] See supra note 32.

[38] 17 CFR 200.30–3(a)(12) (1993).

[1] Part XII was the subject of File No. SR–NASD–92–48, which was approved by the Commission in Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[2] In addition, the reporting requirements of Part XII would require member firms to report dual agency trades within 90 seconds of execution. Such trades are not reportable under Section 2 of Schedule H because its scope is limited to principal transactions.

[3] Recently, the NASD represented to the Commission that members are complying with the new real-time transaction reporting requirements, and that other than some minor training needed for some members' staff, the NASD has found no regulatory or surveillance problems with respect to member compliance with the new provisions. Telephone conversation between Michael Kulczak, NASD and Betsy Prout, Commission, on February 9, 1994.

competition among market participants. Section 15A(b)(2) requires the NASD, as a registered national securities association, to have the capacity to enforce members' compliance with all applicable provisions of the Act as well as the NASD's own rules. Finally, Section 15A(b)(6) requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and facilitate transactions in securities.

The NASD submits that elimination of Schedule H reporting requirements for securities classified as OTC equities—concurrently with the implementation of real-time trade reporting for those same securities—will produce operational efficiencies for member firms by permitting the use of existing reporting techniques and procedures applicable to NASDAQ-listed securities. From the NASD's perspective, it will eliminate what has become redundant mechanism for the capture of regulatory data to surveil trading in OTC equities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after the publication in the **Federal Register**. The NASD grounds its request on the following factors: (1) The December 20, 1993 effective date of real-time trade reporting requirements for OTC equities, which requirements were approved by the Commission earlier this year; (2) the more comprehensive and real-time nature of the transaction data reported under new Part XII of Schedule D versus the aggregate and historical character of data currently reported under Section 2 of Schedule H; (3) the NASD's ability to process trade-by-trade data received under Part XII to form an electronic audit trail file for surveillance of trading in OTC equities; and (4) in light of the preceding factors, the lack of any regulatory purpose to be served by continuing Schedule H price and volume reporting from December 20, 1993, onward.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular, with the requirements of section 15A(b)(2). Section 15A(b)(2) requires, among other things, the NASD to have the capacity to enforce compliance by its members and persons associated with its members with the provisions of the Act and with the NASD's rules.

As the Commission stated in the recent order approving the NASD's real-time trade reporting provisions for OTC equities, the Commission believes that by providing the NASD with real-time reports of transactions in those securities and enabling the construction of audit trails, the new reporting provisions will improve significantly the NASD's ability to regulate the market in those securities.[4] The Commission also believes that real-time trade reporting in the relevant securities supersedes the aggregate reporting requirements for principal transactions found in Schedule H to the NASD By-Laws. The Commission agrees with the NASD that the regulatory purpose underlying the capture of Schedule H information is satisfied more effectively by the NASD's collection and processing of individual trade reports entered in accord with Part XII of Schedule D, and that no regulatory purpose is served by continuing Schedule H reporting. Thus, the Commission believes that the recently approved real-time reporting requirements, as compared to the Schedule H reporting requirements, should improve the NASD's capacity to enforce compliance by its members and persons associated with its members with the provisions of the Act and with the NASD's rules. Elimination of the redundant, less informative Schedule H reporting requirements, therefore, is appropriate and consistent with section 15A(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of filing thereof. Accelerated approval of the NASD's proposal is appropriate to avoid member confusion as to whether real-time transaction reporting and Schedule H reporting are both required, when dual reporting would serve no regulatory purpose and would create an unnecessary and unintended expense to NASD members.

[4] See *supra* note 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with section 15A(b)(2) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5646 Filed 3–10–94; 8:45 am]

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[Release No. 34–33721; File No. SR–PSE–94–05]

Self Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Listing of Municipal Securities.

March 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b–4 thereunder,[2] notice is hereby

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

given that on February 15, 1994, the Pacific Stock Exchange Incorporated ("PSE") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Subsequently, the PSE amended its rule filing to comport the numbering of the proposed rules with the Rules of the Exchange that are currently in effect.[3] The PSE is requesting accelerated approval of the proposed rule change as certain municipal securities the Exchange may wish to list are likely to be issued prior to the thirtieth day following publication of notice of the proposed rule change in the **Federal Register**. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal for an interim period through July 5, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend rules 3.2 and 3.5 to provide listing and delisting guidelines applicable to municipal securities. New rule 5.13(i) would provide that all aspects of the trade reconciliation process, including comparison, settlement, and clearing, will be governed by the applicable requirements of the Municipal Securities Rulemaking Board ("MSRB"). The proposed rule change would also create an exemption from the PSE's off-board trading rules for municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

[3] See letter from Michael Pierson, Senior Attorney, Market Regulation, Pacific Stock Exchange, Inc. to Scott C. Kursman, Attorney, Division of Market Regulation, Commission (March 2, 1994).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rule 3.2 to provide that municipal securities, as defined in section 3(a)(29) of the Act, are eligible for listing on the Exchange.

To be eligible for listing, a municipal security must be rated as investment grade by at least one nationally recognized rating service, and satisfy the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, i.e., the size of the issue must be at least $20 million principal amount/aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

The Exchange is proposing that any municipal securities that it lists be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities listed on the Exchange. As with corporate bonds, trade reports and quotation information will be disseminated over Network B. However, to ensure uniformity of practice within the securities industry, proposed rule 5.13(i) provides that all aspects of the trade reconciliation process, including comparison, settlement, and clearing, will be governed by the applicable requirements of the MSRB.[4]

The proposed rule change will also amend PSE Rule 5.46 to specify that any purchase or sale of a municipal security shall be exempt from the provisions of the Exchange's off-board trading rules.

Further, the proposed rule change is not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.[5]

[4] MSRB rule G–3 provides specific qualification requirements for municipal securities principals and representatives. In light of the PSE's qualification requirements for specialists, the Exchange believes it is appropriate solely for purposes of this temporary 120-day approval period for the PSE to rely on this requirement for its specialists in lieu of the rule G–3 standards. It is important, however, that any specialist selected by the PSE for a listed municipal security be familiar with the characteristics of municipal securities.

[5] The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Exchange notes that it will also be responsible for enforcing MSRB rules for the listed municipal securities. The PSE's enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

Finally the Exchange is proposing to amend its delisting guidelines (rule 3.5) to provide that a municipal security would be subject to delisting in the event it were no longer rated as investment grade by a nationally recognized rating service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change on an accelerated basis for an interim period through July 5, 1994. During this period, PSE would be able to list qualifying municipal securities. Also, during this period, PSE will file a proposed rule change requesting permanent approval of the listing of municipal securities that would be subject to full notice and comment.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act, in general and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

Only municipal bond issuers that qualify under PSE's proposed non-listed corporate issuer distribution criteria will be considered for listing on the Exchange. These criteria, along with any other information relevant to determine whether the issue is appropriate for exchange trading, should ensure that only municipal bond issues that can support a liquid trading market will be listed on the Exchange. Moreover, the regulatory scheme in place for municipal securities now would continue to apply to PSE-listed municipal securities, with the additional coverage of the PSE surveillance program to the trading of the listed municipal securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publishing notice of the filing thereof. Temporary accelerated approval of the PSE's proposal is appropriate because certain municipal securities the exchange may wish to list are likely to be issued prior to the thirtieth day following publication of notice of the proposed rule change and it is necessary to inform prospective issuers that their securities are eligible for listing and that the Exchange has in place guidelines and procedures applicable to such securities. Moreover, municipal securities are not a new product and indeed are comparable in all material respects to other municipal securities that are currently traded in other established and regulated markets. Finally, PSE-listed municipal securities will be traded like other PSE-listed bonds and will be subject to applicable MSRB rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–PSE–94–05) be, and hereby is, approved for an interim period of 120 days through July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5678 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33723; File No. SR–Phlx–93–21]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Rotations

March 7, 1994.

On June 8, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change dealing with options rotation procedures. Notice of the proposal appeared in the **Federal Register** on September 22, 1993.[3] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal.

The Phlx is proposing, with some substantive amendments, to move the text of Phlx Rule 101, Commentary .01 (a) through (d) to a new Commentary .03 to Phlx Rule 1047, which deals with trading rotations.[5] Proposed Commentary .03 to Rule 1047 would permit stock option trading after 4:10 P.M. E.S.T. in the context of a trading rotation approved by the Exchange's Options Committee due to either unusual circumstances, or the opening or reopening of a stock underlying a particular equity option. The Exchange believes that this change will more logically group rotation procedures in one rule for ease of reference.

The specific substantive changes being made to the text from Commentary .01 to Rule 101 are as follows. First, the reference in Rule 101, Commentary .01(a), to the reopening of trading in the underlying "after 3:30 p.m." is being deleted. The proposed language instead provides that a trading rotation may occur promptly after the opening or reopening of trading in the underlying security. The Exchange believes 3:30 p.m. E.S.T. is an arbitrary deadline which could be ineffective in certain situations.[6] Secondly, the Exchange's Options Committee, as opposed to two floor officials as currently provided in Rule 101, must approve such any post-closing rotation. The Exchange believes this is consistent with the remainder of Phlx Rule 1047 for which, when approval for an action is required, it is the appropriate standing committee which must grant such approval. Because Commentary .03 would apply only to equity options, the Exchange believes that it is appropriate to require approval from the Options Committee for post-closing trading of stock options.[7]

In addition to these amendments, because Rule 1047 applies to the foreign currency options floor as well as to the equity options floor, the Phlx is proposing to amend 1047(c) to state that the "appropriate floor standing committee," as opposed to solely the Options Committee, has authority to delay an options opening, halt trading, or reopen after a halt. Rule 1047(c), as amended, would include the ability to

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[1] 15 U.S.C. 78s(b)(1) (1988)

[2] 17 CFR 240 19b–4 (1992).

[3] See Securities Exchange Act Release No. 32881 (September 14, 1993), 58 FR 49346 (September 22, 1993) ("Exchange Act Release No. 32881").

[4] In Amendment No. 1 to the proposed rule change, which was filed with the Commission on March 2, 1994, the Exchange proposes to amend proposed Commentary .03(b) to restore certain language from the original version of the paragraph as it appears in Rule 101. Specifically, .03(b) would provide that notice of a rotation to be conducted due to unusual market conditions must be disseminated to the trading floor no later than 4:10 p.m. Eastern Standard Time (E.S.T.). In addition, such rotation would not begin until ten minutes after the required notice is given. Finally, the Exchange proposes to amend Commentary .01(a) to Rule 1047 to specify that opening rotations in foreign currency options shall occur promptly following the opening of trading, as opposed to "at the times fixed by the Exchange," as originally proposed. See Letter from Gerald O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 28, 1994 ("Amendment No. 1")

[5] The Exchange is also proposing to amend Commentary .01 to Rule 101 to clarify that the rule deals solely with stock option trading occurring after 4:10 p.m. E.S.T. and that any such trading must be conducted pursuant to Rule 1047.

[6] See Amendment No. 1, *supra* note 4.

[7] *Id.*

open an options class for trading where the underlying stock did not open or where current quotations are unavailable for any foreign currency, and to conduct a closing rotation on the trading day prior to expiration where the underlying stock did not open during that day or was halted as of its normal close of trading. Such trading and closing rotations, however, could only be conducted if such action is deemed necessary in the interests of maintaining a fair and orderly market and to protect investors.

The Phlx is also proposing to amend Commentary .02 to Rule 1047 to provide that the determination to open options trading where the underlying security did not open for trading or where foreign currency quotations are unavailable will be made by the appropriate floor standing committee, as opposed to solely the chairman of that committee.

Furthermore, the Phlx proposes to amend Commentary .01(d), which governs closing rotations at expiration. The proposed language states that where an underlying stock does not trade or where trading was halted as of the normal close of trading in the primary market for that stock (i.e., 4 p.m. E.S.T.) on the day prior to expiration, with the approval of the Options Committee, a closing rotation in the expiring equity options may be conducted immediately after the time at which the options normally cease free trading. The Exchange believes that by establishing a more objective standard, the proposed deadline would provide notice to floor traders and customers alike. Under the proposal, however, the standing committee may still determine not to open the option at all.

Finally, the Phlx also proposes to further amend Rule 1047 by: (1) Specifying in 1047(a) that closing rotations are only required for expiring equity options contracts; (2) specifying in Commentary .01(a) that the deadline for opening foreign currency options will be promptly after the current time those options open for trading; [8] and (3) adding a heading ("Modified Rotations") to Commentary .01(b).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [9] in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, the Commission believes that the proposed rule change should serve to minimize investor confusion by grouping all of the Exchange's rotation procedures in one rule for ease of reference. In addition, the Commission believes that the proposed changes to Rule 1047 apply more objective standards to Phlx's rotation procedures which will provide consistency in the application of those procedures.

The proposed change to Rule 1047(c) to permit the appropriate floor committee to open for trading an equity option or foreign currency option where trading in the underlying equity security or foreign currency has not opened or has been halted raises concerns regarding the integrity of the price of the options. Certainly, where there is a regulatory halt in the trading of the underlying or trading in the underlying is suspended pursuant to section 12(k) of the Act the Phlx would not be permitted to trade the related options.[10] Moreover, the appropriate floor committee can only commence trading an option based upon a finding that it is necessary in order to maintain a fair and orderly market and to protect investors. In making this determination, the Commission would expect the floor committee to ensure the integrity of the pricing of the options and would expect this authority to only be used in the most exceptional of circumstances.

Finally, with respect to post-closing trading of stock options, the Commission believes that Options Committee approval is a higher level of review than the current standard in Rule 101 which merely requires approval from two floor officials for such trading. This higher level of review should ensure that post-closing trading occurs only where appropriate under the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, with respect to the time for conducting opening rotations in foreign currency options, Amendment No. 1 merely conforms the proposed rule language to the intent expressed by the Exchange in its original proposal. The Exchange, in its original proposal, represented that a purpose of the proposed rule change was to establish that the deadline for opening foreign currency options would be promptly following the current time those options open for trading.[11] The Commission believes that the amendment to change "at the times fixed by the Exchange" to "promptly following the opening of trading" more accurately reflects this intent. Amendment No. 1 also reincorporates language from the text of Rule 101 which the Exchange originally proposed to delete. The effect of this portion of Amendment No. 1 is merely to move an existing procedure from one rule to another. Based on the foregoing, the Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–93–21) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–5677 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] Telephone conversation between Gerald O'Connell, Vice President, Market Surveillance, Phlx, and Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, on March 7, 1994. Additionally, the Phlx would not be permitted to trade options when trading in equity securities has been halted as a result of decreases in the Dow Jones Industrial Average ("DJIA") of 250 or 400 points below the closing value of the DJIA from the previous trading day.

[11] See Exchange Act Release No. 32881, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–20114; File No. 812–8862]

American Skandia Life Assurance Corporation, et al.

March 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"), American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) (the "Variable Account"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction from the assets of the Variable Account of the mortality and expense risk charge assessed under certain variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on March 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 29, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Corporate Drive, Shelton, Connecticut, 06484–9932.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel at (202) 272–2060, Office of Insurance Products (Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock are directly owned by American Skandia Investment Holding Corporation, which in turn is ultimately wholly-owned by Skandia Insurance Company, Ltd, a Swedish corporation.

2. The Variable Account is registered under the 1940 Act as a unit investment trust. The Contracts are individual and group flexible premium tax-deferred variable annuity contracts.

3. SLESCO will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchenge Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Variable Account will invest in shares of one or more investment portfolios of American Skandia Trust, the Life and Annuity Trust of such other fund or funds as may be made available by Skandia Life and the Variable Account (the "Funds"). Purchasers of Contracts may allocate purchase payments or account value to one or more sub-accounts of the variable account, each of which will invest is a corresponding portfolio of the Funds.

5. During the accumulation period, Skandia Life will deduct from the Variable Account, on a daily basis, an administration charge at the rate of 0.15% per annum. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of account value of the sub-accounts of $30 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion as each sub-account holding bears to the account value of such Contract. The administration and maintenance fees cannot be increased by Skandia Life. The administration and maintenance charges are assessed at amounts that Skandia Life represents are necessary to recover the actual costs of maintaining and administering the Contracts and the Variable Account.

6. A. mortality and expense risk charge will be deducted daily from the net asset value of the Variable Account at the rate of 1.25% per annum of the net assets in the Variable Account. Of that amount, approximately 0.90% is allocable to Skandia Life's assumption of mortality risks, and 0.35% is allocable to Skandia Life's assumption of the expense risks. Skandia Life assumes this mortality risk by virtue of annuity rates incorporated in the Contracts that cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in value resulting in losses to Skandia Life in paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed, may be insufficient to cover the actual costs of maintaining the Contracts and the Variable Account.

7. A contingent deferred sales charge ("CDSC") may be assessed on full or partial surrenders. The Contract offers free withdrawal privileges. This privilege permits a Contract owner to partially surrender without any CDSC being imposed up to the greater of the Contract's growth plus unliquidated old purchase payments, or 10% of purchase payments per annuity year, cumulatively. "Growth" equals the then-current cash value less all unliquidated purchase payments. "Unliquidated" means not previously surrendered. "Old Purchase Payments" are those allocated to account value more than seven years prior to the partial withdrawal. Any amounts so withdrawn shall be deemed to come first from Growth, then from Unliquidated Old Purchase Payments. For purposes of the CDSC, amounts withdrawn under the free withdrawal privilege are not considered a liquidation of purchase payments. On full or partial surrenders, the CDSC on any Unliquidated new purchase payments surrendered in excess of the free withdrawal privilege is given by the following schedule:

Year	CDSC (percent)
1	7
2	7
3	6
4	5
5	4
6	3
7	2
8+	0

For purposes of calculating the CDSC, partial surrenders, excluding amounts taken under the free withdrawal privilege, will be considered to come first from any amount available as a free withdrawal, then from new purchase payments. If there are multiple new purchase payments, the one received earliest is liquidated first, than the one received next, and so forth. In no event, however, will the total CDSC for a particular Contract exceed 9% of the purchase payments for a Contract or otherwise violate the requirements of Rule 6c–8 under the 1940 Act.

8. Skandia Life deducts an amount equal to any premium taxes due in relation to a Contract. Should Skandia Life determine that the tax is payable in relation to purchase payments received, the charge will be assessed prior to the allocation of amounts to the sub-accounts. Should Skandia Life determine that the tax is payable in relation to the Variable Account value applied to purchase annuity payments at the time of annuitization, then the charge is assessed at that time. No charge is currently being made for corporate federal income taxes that may be attributable to the sub-accounts.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing

bookkeeping and other administrative services.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Variable Account under the Contracts.

3. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by Skandia Life and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life represents that is will maintain a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and the results of, its comparative survey.

4. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Skandia Life represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by Skandia Life at its administrative offices, and will be available to the Commission upon request.

5. Skandia Life represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5649 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20115; No. 812–8716]

Northwestern National Life Insurance Company, et al.

March 7, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Nothwestern National Life Insurance Company ("Northwestern"), Northstar/NWNL Variable Account ("Variable Account"), and NWNL Northstar Distributors, Inc. ("Northstar Distributors") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of mortality and expense risk charges in connection with the offer and sale of certain flexible premium individual deferred variable annuity contracts.

FILING DATES: The application was filed on December 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Northwestern National Life Insurance Company, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Wendell M. Faria, Deputy Chief, (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Northwestern, a wholly-owned subsidiary of The NWNL Companies, Inc., a holding company, sells life insurance and annuities, employee benefits, and retirement contracts in the District of Columbia and all states except New York. As of December 31, 1992, on a consolidated basis, Northwestern had $108 billion of life insurance in force and its assets exceeded $9 billion.

2. The Variable Account is a separate account established by Northwestern to fund variable annuity contracts, including the Northstar/NWNL Annuity ("Northstar Annuity"). A notification of registration on Form N–8A to register the Variable Account as a unit investment trust under the 1940 Act, and a registration statement on Form N–4 under the Securities Act of 1933 to register the Variable Account and the flexible premium individual deferred retirement annuity contracts ("Northstar/NWNL Annuity"), have been filed with the Commission. The Variable Account has a subaccount ("Subaccount") for each investment option offered under the Contracts. Each Subaccount will invest solely in a corresponding investment portfolio ("Portfolio") of the Northstar/NWNL Trust ("Northstar Fund"). Other funds and portfolios may be made available in the future.

Variable Account assets are owned by Northwestern but are held separately from its other assets. The portion of Variable Account assets equal to the reserves and other contract liabilities of the Variable Account are not chargeable with liabilities incurred in any other business Northwestern may conduct. Income, if any, and gains and losses, realized or unrealized, on the Variable Account are credited to or charged against the amount allocated to the Variable Account, without regard to other income, gains or losses of Northwestern.

3. Northstar/NWNL Trust has filed with the Commission a registration

statement on Form N-1A. The Northstar Fund will be a diversified, open-end, management investment company with a series of Portfolios, as defined in Rule 18f-2 under the 1940 Act. The assets of each Portfolio are separate from the assets of other Portfolios. Each Portfolio has separate investment objectives and policies and, thus, operates as a separate investment fund. Consequently, the investment performance of one Portfolio has no effect on the investment performance of any other Portfolio. Shares of the various Portfolios of the Northstar Fund will be sold to the Variable Account at net asset value.

4. Northstar Distributors will serve as the distributor and principal underwriter of the Contracts. Northstar Distributors is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Northstar Annuity will be offered in connection with non-tax qualified plans ("Nonqualified Contracts") or retirement plans that qualify for favorable federal income tax treatment ("Qualified Contracts"). The Northstar Annuity requires certain minimum initial payments. Contractowners may allocate premium payments, and later transfer accumulated Contract Value, among and between the different Subaccounts or to the Fixed Account prior to the Annuity Commencement Date. A Guaranteed Death Benefit will be payable.

6. Various fees and expenses are deducted from each Contract. An annual contract charge of $35 per Contract Year will be deducted *pro rata* from the Fixed Account and each Subaccount in which a Contract is invested prior to the Annuity Commencement Date, after which it will be deducted in equal installments from each annuity payment. This charge is guaranteed not to increase and will compensate Northwestern for administrative services provided under the Contracts. A daily administration charge, equal to an annual rate of .15%, is deducted from the assets of the Variable Account to reimburse Northwestern for administrative services it provides with respect to the Variable Account. Currently, there are no transfer charges or processing fees for partial surrenders. Northwestern, however, reserves the right to impose a charge of up to $25 per transfer, and a charge not to exceed the lesser of 1% of the partial surrender amount or $25. These administrative charges will be deducted in reliance on Rule 26a-1 under the 1940 Act. Each charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Northwestern does not anticipate any profit from any of these charges.

7. A contingent deferred sales charge ("CDSC") may be assessed for partial withdrawals, surrenders, or if the Annuity Commencement Date is less than two years from the date a Contract is issued. The CDSC applies to each purchase payment for a period of up to six years after receipt of that payment, after which the payment may be withdrawn without a CDSC. Contract Value in excess of accululated purchase payments also may be withdrawn without a CDSC. The CDSC schedule is as follows:

Years since payment received	CDSC as percentage of each purchase payment
0	7
1	7
2	5
3	5
4	4
5	3
6	2
7	0

After the first Contract Year, up to 10 of total purchase payments to which the CDSC would otherwise apply may be withdrawn once each year without incurring the CDSC. The CDSC will apply to subsequent withdrawals. After the annual free surrender each year, purchase payments are considered to be withdrawn on a first-in first-out basis, and before earnings thereon. A CDSC is not imposed in event of annuitization after the first two Contract years or upon payment of the Death Benefit.

Northwestern does not currently anticipate that the CDSC will generate sufficient funds to pay the cost of distributing the Contracts. If the CDSC is insufficient to pay the cost of distributing the Contracts, the deficiency will be met from Fixed Account assets, which may include amounts derived from the mortality and expense risks charge discussed below.

8. An annual charge of 1.25% of the Variable Account's assets will be deducted for mortality and expense risks assumed by Northwestern, of which approximately .85% is for mortality risks and .40% for expense risks. The 1.25% rate is guaranteed not to increase. If the charge is insufficient to cover the assumed risks, the loss will be assumed by Northwestern. Conversely, the charge may be a source of profit for Northwestern which will be added to its surplus. Northwestern currently anticipates a profit from this charge. Any profits which may result from this charge may be used by Northwestern for, among other things, the payment of distribution, sales and other expenses.

The mortality risk assumed by Northwestern under the Contracts arises from its contractual obligation to make periodic annuity payments in accordance with annuity tables and other contract provisions regardless of how long all Annuitants or any one Annuitant may live. Thus, it is assured that neither an Annuitant's longevity nor an improvement in life expectancy, generally, will adversely affect monthly annuity payments.

Northwestern also incurs a mortality risk in connection with the Guaranteed Death Benefit. Prior to age 85, and during the first seven Contract Years, the Death Benefit is the greatest of (a) all purchase payments less any withdrawals, or (b) the Contract Value. Prior to age 85 and after the seventh Contract Year, the Guaranteed Death Benefit is the greatest of (a) all purchase payments less any withdrawals, (b) the Contract Value, or (c) the Contract Value on the most recent Contract Anniversary, plus any purchase payments since that anniversary and minus any withdrawals since that anniversary. There is no extra charge for this guarantee.

The expense risk assumed by Northwestern is that its actual administrative expenses will exceed the amounts recovered through the administration charges.

9. Northwestern will pay premium taxes, if any, when due and reserves the right to deduct the amount of the tax either from purchase payments or at a later date. No other charges currently are made against the Variable Account for federal, state or local taxes, but these charges for taxes, or the economic burden resulting from such taxes, may be imposed in the future.

10. The Fund will pay its investment adviser a fee for managing its investments and business affairs. Each portfolio of the Fund is responsible for all its operating expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act."

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit

a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties is normally performed by the bank itself.

3. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Variable Account of the 1.25% charge for the assumption of mortality and expense risks. Applicants represent that the charge is consistent with the protection of investors because it is a reasonable and proper insurance charge to compensate Northwestern for assuming the mortality and expense risks. Northwestern represents that the 1.25% per annum mortality and expense risks charge is within the range of industry practice for comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Northwestern will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. The charge for mortality and expense risks may be a source of profit which would increase Northwestern's general assets available to pay distribution expenses not reimbursed by a sales charge. There is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by Northwestern at its administrative offices and made available to the Commission upon request.

5. The Variable Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exceptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5676 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25996]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 4, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, a serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8233)

The Southern Company ("Southern"), a registered holding company, and Southern Company Communications, Inc. ("Communications"), both at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13 of the Act and Rules 45, 50, 50(a) (5), 81, 87, 90, 91, 93 and 94 thereunder.

Southern proposes to form Communications and to acquire directly all of its authorized capital stock of 1,000 shares, with a par value of $1 per share. Communications will provide the following services ("Communications Services"): it will design, construct, finance, maintain and operate the Southern system's future communications systems, including a mobile radio network that, when complete, will provide contiguous or "seamless" mobile radio service; it will manage all equipment procurement and inventory maintenance activities, represent the Southern system in any necessary licensing activities before the Federal Communications Commission ("FCC") and become the FCC licensee of the 800 MHz mobile radio system and acquire and hold any other rights or interests in property (e.g., leases of transmitter towers) necessary for the construction, networking, and efficient operations of this network; and it will provide operations, maintenance, management and technical services for frequency licensees in connection with frequencies which third parties own that are used in connection with the 800 MHz system of Communications.

The new system will modernize, update and replace the existing mobile radio systems currently being utilized by the operating companies through a wireless system that performs the functions of two-way voice, dispatch and data transfer on a seamless, integrated basis. The new system will consist of towers, transmitters, telecommunications network facilities, associated vehicular and portable mobile user equipment, and control stations spaced to provide coverage throughout Georgia, Alabama, northern Florida, on or north of Florida Highway 40 (to cover the general service areas of Gulf Power Company, transmission corridors to interconnected utilities including Southern's largest wholesale customers and a corridor to Tallahassee), southern Mississippi (to cover the general service area of Mississippi Power Company) and a corridor to the state capital in Jackson, Mississippi ("Expanded Southern Territory").

Southern has initiated the license application process at the FCC to obtain the necessary frequencies and has contracted to obtain the necessary equipment and technology for the new system. The frequency applications have included Industrial Land Transportation ("ILT"), General Category and Specialized Mobile Radio ("SMR") 800 MHz frequencies.

Southern represents that there are not sufficient ILT and General Category frequencies available to meet Southern's needs in congested markets, such as Atlanta. Southern, however, will be able to use its ILT and General Category licenses to supplement the SMR frequencies it obtains through intercategory sharing procedures. Southern states that, taking technology and ecomonics into account, the minimum number of frequencies required in urban areas in 42 frequencies and that it will have between 42 and 50 frequency pairs across its system. Southern will seek additional frequency channel pairs in order to optimize use of the new system, but it states that it can meet its system needs with the currently obtainable frequencies.

To permit system-wide coverage and interconnection with the public switch telephone network, the 800 MHz fixed transmitter stations will be networked together, employing microwave and landline telecommunications facilities. The telephone interconnects will permit direct communications between customers and filed personnel and quick access to information by filed personnel.

The system would be primarily offered to associate public utility companies and to the industrial, commercial and other retail and wholesale customers of the associate companies, including interconnected utilities, as well as federal, state and local public safety, law enforcement, and emergency management governmental agencies, as well as other agencies of the governments of the states of Georgia, Alabama, Mississippi and Florida ("Base Service").[1] The Base Service would also include service to other affiliates and subsidiaries of Southern, to the extent they are located within the Expanded Southern Territory. Any excess capacity beyond the Base Service would be marketed to others.[2] It is expected that users will be charged a monthly service fee in addition to a change based on the actual use of the system through assessed charges for times of use. The monthly service fee and the time of use charges will be based upon competitive fair market value pricing.

Communications proposes that the operating companies be charged the cost of providing Communication Services to them in accordance with Rules 81, and 91. Southern states that the rates involved are completely and normally subject to public regulation by the FCC and may also be subject to state regulation; thus, it states, the provision of mobile radio services will be charged to associate companies in the Southern system on the basis of market prices in accordance with Rule 81—the transactions will be on terms which are comparable to those offered to non-associate customers having due regard to any differences of quality or quantity. Southern estimates that this will result in an annual reduction in costs to the operating companies of $6 million per year as compared to fully allocated costs. The operating expenses such as general and administrative expenses and overheads will be spread evenly over all users, regardless of class. Southern states that the operating companies and their ratepayers will be the beneficiaries of economies of scale because their proportionate share of overheads and general and administrative expenses and non-variable expenses will be reduced as a result of the participation of other customers. All other transactions between Communications and associate companies which are not subject to FCC and/or state rate regulation will be "at cost" in compliance with Rules 90 and 91.

Southern's investment in the infrastructure for a system, confined solely to its service territory, would be approximately $132 million. Southern represents that, in order to build out a system which includes necessary coverage for the Base Service, an incremental investment of approximately $25 million in additional funds would be necessary. In addition, Southern anticipates requiring $22 million for frequency acquisition and working capital, making the overall initial investment for the new system estimated at $179 million.

Southern contemplates that Communications' business will be financed with investments by Southern and loans obtained from external sources, including vendor financing, if available. Initially, Southern proposes to invest up to $179 million from time to time through December 31, 1998, for purchases of Communications' stock, loans and capital contributions to Communications, or guarantees of obligations of Communications, or any combination thereof. To the extent capital contributions involve loans from Southern, such loans will be made from time to time prior to September 30, 1998 with maturities no later than September 30, 2003. They will bear an interest rate equal to Southern's comparable cost of capital or, if no such comparability exists, a rate not to exceed the greater of the prime rate in effect on the date of the loan at a bank designated by Southern plus three percentage points or 12 percent per annum. To the extent loans are made by third parties within the overall $179 million capitalization of Communications (other than credit extended by equipment vendors),[3] such loans will be evidenced by notes issued by Communications and will have a term of from 5 to 20 years, with an interest rate not to exceed the greater of the prime rate of interest plus three percentage points per annum, or 12 percent per annum. Such loans may be guaranteed by Southern.

Southern proposes that existing communications facilities of the Southern system may in the future be transferred or leased to Communications from other affiliated companies. Southern states that wholly owned facilities of the operating companies, such as towers or tower sites or landline connections, could be used to provide network interconnections of the new system through lease. Existing fiber optic capacity held by other Southern subsidiaries may be transferred to Communications on an "at cost" basis or leased to it, so as to link the transmitter stations, switches, computers, etc. In addition, radio frequency licenses in the 800 MHz band owned by Southern or the operating companies will be transferred to Communications, for which the operating companies will be reimbursed for their costs incurred in obtaining such licenses. Communications will bear all costs of transfer.

Initially, a small management staff of approximately five to ten persons will be transferred to Communications. It is contemplated that Southern Company Services, Inc. will provide financial, accounting, data processing, and internal auditing services to Communications in accordance with the methods and accounts previously approved by the Commission. In addition, personnel from the operating companies and Southern Development

[1] Southern states that it is anticipated that a portion of such classes of users and other holders of radio frequency licenses may place their own radio frequencies within the new system and have Communications manage the frequencies so that they can be integrated on a compatible basis and operated in the overall service, but they would be reserved for emergency communications with the ability to "spill over" to other frequencies when necessary.

[2] Southern asserts that the term excess capacity, in the context used for the mobile radio system, means the capacity which does not interfere with or preclude the communications necessary for operation of the Base Service.

[3] Southern states that, when the new mobile radio system is installed, the equipment vendor will purchase the existing equipment from each of the operating companies for the market value thereof and give each one credit which they may use for purchases from the vendor.

and Investment Group, Inc. will provide necessary services to Communications on a full cost reimbursement basis utilizing a work order procedure.

IP Holding Company (70–8305)

IP Holding Company ("Holding Company"), 500 South 27th Street, Decatur, Illinois, 62525, a Illinois corporation has filed an application under Sections 3(a)(1), 9(a)(2) and 10 of the Act, requesting the Commission to authorize its acquisition of all of the outstanding common stock of Illinois Power Company ("Illinois Power"), an Illinois electric and gas public-utility holding company exempt from registration under Section 3(a)(2) of the Act pursuant to Rule 2 ("Acquisition"). In addition, Holding Company requests that upon completion of the Acquisition, the Commission grant it an exemption under Section 3(a)(1) from all provisions of the Act, except Section 9(a)(2) thereof.

As a result of the Acquisition, Holding Company would indirectly acquire 20% of the outstanding common stock of Electric Energy, Inc. ("EEI"), an Illinois corporation. EEI owns and operates a steam electric generating station near Joppa, Illinois and related transmission facilities. EEI's electric energy is sold to the U.S. Department of Energy for use in its uranium processing plant near Paducah, Kentucky, but Illinois Power has a right to purchase a specified percentage of the annual output of the Joppa facility.

Illinois Power, an Illinois corporation, is engaged in the generation, transmission, distribution, and sale of electric energy and the distribution, transportation, and sale of natural gas in the State of Illinois. Illinois Power and EEI are "electric utilities" as defined in Section 2(a)(3) of the Act and "public utilities" as defined in Section 2(a)(5) of the Act. Illinois Power is also a "gas utility" as defined in Section 2(a)(4) of the Act.

Holding Company was incorporated under Illinois law on November 12, 1993, for the purpose of carrying out the proposed corporate restructuring in which Holding Company will become a holding company over Illinois Power. Currently, Holding Company owns all of the outstanding common stock of IP Merging Corporation ("Merging Corp."), an Illinois corporation that has also been incorporated to effect the restructuring. Neither Holding Company nor Merging Corp. owns any utility assets.

The Acquisition will be accomplished through a merger ("Merger") of Illinois Power and Merging Corp. in which Illinois Power will be the surviving corporation. Illinois Power and Merging Corp. entered into an Agreement and Plan of Merger dated November 15, 1993 ("Merger Agreement"), and Holding Company, Illinois Power and Merging Corp. entered into a Supplemental Agreement dated November 15, 1993. The Merger will be done on a "pooling of interests" basis under generally accepted accounting principles. As result of the Merger, the common stock of Merging Corp. owned by Holding Company will be converted into common stock of Illinois Power. The outstanding common stock of Illinois Power will be converted, on a share-for-share basis, into common stock of Holding Company, and Illinois Power will become a subsidiary company of Holding Company.

The Merger Agreement also provides that the present holders of Illinois Power common stock will cease to have any rights as Illinois Power shareholders after the restructuring, except holders of shares who have perfected their dissenters' rights in accordance with Illinois law will have the right to be paid fair value of such shares. After the Articles of Merger are filed with the Secretary of State of Illinois, certificates representing shares of Illinois Power common stock will represent, and be exchangeable for certificates representing shares of Holding Company common stock. The outstanding preferred stock and debt of Illinois Power will not be exchanged or changed in connection with the restructuring, and Holding Company will thus have no outstanding securities other than common stock immediately following the restructuring. Holders of Illinois Power preferred stock and debt securities will continue as security holders of Illinois Power, except for those holders of Illinois Power preferred stock who properly exercise statutory appraisal rights.

Illinois Power's present subsidiary companies, except for IP Group, Inc. ("IP Group") would remain its direct subsidiary companies. IP Group would become a direct subsidiary company of Holding Company.

Illinois Power currently owns 100% of the capital stock of IP Group, Inc., which was formed to invest in and develop independent power projects, to provide services for such projects, and to engage in other non-utility businesses ("Non-utility Businesses"). The proposed restructuring is intended to permit Holding Company, through IP Group, to participate in Non-utility Businesses in a timely manner without the need for prior regulatory approvals to increase financial flexibility, to enhance managerial accountability for separate business activities, and to protect Illinois Power and its ratepayers from the risks and costs of non-utility projects.

Holding Company is not currently a "holding company" under the Act because it does not own, control, or hold with power to vote ten percent or more of the voting securities of a public-utility company. Holding Company asserts that, following the consummation of the Merger, it will be a public-utility holding company entitled to an exemption under Section 3(a)(1) of the Act because it and each of its public-utility subsidiary companies from which it will derive a material part of its income will be predominantly intrastate in character and will carry on their businesses substantially within the State on Illinois.

Public Service Co. of Oklahoma (70–8341)

Public Service Company of Oklahoma ("PSCO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric public utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application pursuant to Sections 9(a) and 10 of the Act.

PSCO requests authorization to invest up to $2.5 million, through capital stock purchases, in Excel Energy Technologies, Limited ("Excel"), a Delaware corporation, pursuant to an October 14, 1993 Debenture, Common Stock and Preferred Stock Purchase Agreement ("Purchase Agreement"), which was signed by Excel, PSCO, and ML Oklahoma Venture Partners, L.P. ("Partnership"), an unaffiliated Oklahoma limited partnership.

Excel is engaged in research, development, and installation of proprietary energy management microprocessors ("Technology"). On April 9, 1993, PSCO and Excel entered into a Consulting and Research and Development Agreement ("Consulting Agreement") to enhance jointly the application of the Technology. PSCO believes that the Technology might provide its commercial and residential customers with significant demand side management ("DSM") opportunities.

Pursuant to the Consulting Agreement, PSCO will provide Excel with, for example, commercial and industrial electric power usage patterns and Excel will provide PSCO with product research and development expertise, sales experience, a database of information on installed energy management systems, and otherwise will consult on DSM issues. PSCO believes Excel and the Technology can help it advance its DSM program with

respect to, in particular, middle-market commercial customers.

Excel, the Partnership, and PSCO expect to purchase, install, and maintain at least five Excel energy management systems, which will provide data to gauge their results and evaluate customer perceptions. PSCO will acquire no energy management system outside of its service territory. Excel, the Partnership, and PSCO also intend to market the Technology to other utilities and other interested parties. It is anticipated that, in the future, more than 50% of the sales of the Technology will be outside the service territory of PSCO. In consideration for its services and energy management systems under the Consulting Agreement, PSCO will pay Excel up to $1.35 million and provide Excel with market research data.

Under the Purchase Agreement, PSCO has agreed to acquire from Excel (i) 3,882 shares of Series A Preferred Stock @ $30.67 per share, which shares represent 19.23% of all Series A Preferred Stock, (ii) 61,336 shares of Series B Preferred Stock @ $30.67 per share, which shares represent 100% of all Series B Preferred Stock, (iii) 4,334 shares of Common Stock for $625, which shares represent 3% of all Common Stock. Series A Preferred Stock is voting stock, and the 3,882 shares of Series A Preferred Stock will represent 2.36% of the voting stock, and Series B Preferred Stock is non-voting stock. In addition, under the Purchase Agreement, PSCO has paid Excel $200,000 to finance the further development of the Technology. PSCO also requests authorization to invest an additional $500,000 in Excel, through capital stock purchases, to finance further technological development.

Both series of preferred stock are convertible into common stock upon the terms and conditions set forth in the Certificate of Designations relative to the preferred stock. Series B Preferred Stock, however, is convertible into non-voting common stock. The application states that upon conversion of the non-voting stock into voting stock, PSCO will own 4.99% of the voting securities of Excel. Thus it is stated that Excel will neither be a subsidiary company under section 2(a)(8)(A) of the Act nor an affiliate company under section 2(a)(11)(A) of the Act.

The application states that PSCO will divest its equity interest in Excel once PSCO has achieved its objectives under its DSM program and, in any event, prior to December 31, 2004, unless PSCO receives Commission approval to retain the equity interest for an additional period of time.

PSCO concluded with Excel on September 14, 1993 a Registration Agreement, which provides for Excel to register the common stock under the Securities Act of 1933. Finally, PSCO and other shareholders of Excel concluded on October 14, 1993 a Shareholder Agreement that allows PSCO to elect a single member of the six-member Excel board of directors. PSCO states that other rights provided to PSCO under the Shareholder Agreement will allow PSCO to monitor the development of the Technology to ensure its Compatibility with the needs of PSCO and its retail customers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5648 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 4, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49433.
Date filed: March 1, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 29, 1994.
Description: Application of Air L.A., Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: 49434.
Date filed : March 3, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 1994.
Description: Application of Air Niagara Express, Inc., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a Foreign Air Carrier permit to enable it, in addition to conducting transborder charter flights, to offer scheduled foreign air transportation of persons, property and mail between Toronto, Ontario, on the other hand, and Columbus and Dayton, Ohio and Indianapolis, Indiana as co-terminals, on the other hand, and between Toronto, Ontario, on the one hand, and Harrisburg and Allentown, Pennsylvania as co-terminals, on the other hand.

Docket Number: 49438.
Date filed: March 4, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 1, 1994.
Description: Application of Aeroflot Russian International Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment and Reissuance of its Foreign Air Carrier Permit issued by Order 86–5–75, dated May 20, 1986. Aeroflot is requesting this action to enable it to operate additional service as provided for in the Air Transport Agreement between the Government of the United States of America and the Government of the Union of the Russian Federation signed in Moscow on January 14, 1994.

Docket Number: 45723.
Date filed: March 4, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 1, 1994.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Section 402 Foreign Air Carrier Permit issued to it in Order 89–8–29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination route: The terminal point Mexico City, Mexico on the one hand, and the terminal point Chicago, IL, on the other hand.

Docket Number: 44511.
Date filed: March 4, 1994.
Due Date for Answers, Conforming Applications, Motions to Modify Scope: April 1,1994.
Description: Application of Saudi Arabian Airlines Corporation, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests amendment of its current permit so as to add all rights and authorities to

which Saudia is entitled under the terms of the United States-Saudi Arabian Air Transport Agreement.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–5688 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended March 4, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49431.

Date filed: March 1, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 674 r-1 Fare Increase from Iran; effective date: March 15, 1994. COMP Telex Mail Vote 675 r-2 Amend Rounding Unit for South African Rand Currency; effective date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–5687 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Adirondack Regional Airport, Harrietstown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Adirondack Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airport District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John E. Finegan, Airport Manager for the Town of Harrietstown, New York, at the following address: Adirondack Airports District Board, c/o Town of Harrietstown, 30 Main Street, Saranac Lake, New York 10601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Harrietstown, New York under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581, Tel. (718) 553–1882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Adirondack Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town Harrietstown was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, on later than May 19, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: July 1, 1994.

Proposed Charge Expiration Date: December 15, 2003.

Total Estimated PFC Revenue: $144,552.

Brief Description of Proposed Projects:

—Purchase Snow Removal Equipment.
—Runway 5–23 Crack Repair and Drainage Improvements.
—Replace Airport 36 Inch Rotating Beacon.
—Airline Terminal Building Expansion.
—Airfield Signage.
—Runway 9–27 Crack Repair and Drainage Improvements.
—Rehabilitate and Expand ARFF and Snow Removal Vehicle Storage Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Adirondack Regional Airport.

Issued in Jamaica, New York state on February 28, 1994.

Peter A. Nelson,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 94–5782 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[Docket No. RSSI–94–1, Notice No. 1]

Special Safety Inquiry; Railroad Radio Communications

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of special safety inquiry.

SUMMARY: As provided for in the Rail Safety Enforcement and Review Act, the Federal Railroad Administration (FRA) is examining use of radio communications in railroad operations. Based on the results of this inquiry, FRA will submit a report to Congress expressing its views on the subject. In order to permit interested parties to help inform FRA and share their views on radio communications, FRA is issuing this notice soliciting both written and oral comments on the subject.

DATES: (1) A public hearing will begin at 10 a.m. on March 29, 1994, and continue throughout the day until concluded.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least two working days before the hearing date (close of business March 25, 1994). Parties not meeting that deadline may be denied the opportunity to present oral testimony; however, their written statements will be included in the record of this proceeding.

(3) Persons not desiring to testify, but wishing to submit written comments for inclusion in the safety inquiry docket should submit them by April 11, 1994.

ADDRESSES: (1) Hearing location—Room 3442, Nassif building, 400 Seventh Street, SW., Washington, DC 20590. (2) Docket Clerk, Office of Chief Counsel (RCC–30), Federal Railroad Administration, Washington, DC 20590 at 202–366–0000.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Office of Safety Enforcement, RRS–10, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 at 202–366–9252.

SUPPLEMENTARY INFORMATION: In the railroad industry, safety communication takes various forms. It includes written materials such as operating rule books and timetables, verbal exchanges such as telegraph and telephone messages, and visual displays such as signal flags and wayside signal systems. High quality communications are essential to both efficient and safe railroad operations.

In recent years, reliance on radios to transmit railroad communications has become wide spread in the railroad industry. Radios are currently being used to digitally transmit safety information such as information regarding brake pipe pressure communicated through end of train (EOT) telemetry systems (an issue under consideration in a separate FRA proceeding). Likewise, reliance on radios to orally transmit safety information has replaced older methods such as telegraph and telephone delivery of messages. Use of radio communication has become an indispensable part of railroad operations, and the need for high quality radio communications continues to increase.

This safety inquiry is being conducted against the background of an earlier examination of the subject in 1987. However, circumstances have changed during the intervening period. Subsequent to FRA's earlier safety inquiry, improvements and changes to railroad radio communications systems have narrowed the gap in the need for corrective measures. Channel spectrum diversity integrated into railroad radio equipment now provides the user breadth of choice in interline operations. No longer are trains equipped with radios that are limited to use on one railroad. New technology has been developed making radio equipment failure relatively rare as compared to the commonplace failures of the past.

Nevertheless, some problems persist. Concerned about the need for high quality of railroad communications transmitted by radio, Congress directed in the Rail Safety Enforcement and Review Act of 1992 (RSERA) that FRA conduct a safety inquiry concerning this issue. Section 11 of RSERA provides that FRA examine the following issues and report on the need for regulatory action and the specific plans for taking such action if action is appropriate:

(1) The advantages and disadvantages of requiring that every locomotive (and every caboose, where applicable) be equipped with a railroad voice communications system capable of permitting a person in the locomotive (or caboose) to engage in clear two-way communications with persons on following and leading trains and with train dispatchers located at railroad stations;

(2) A requirement that replacement radios be made available at intermediate terminals;

(3) The effectiveness of radios in ensuring timely emergency response;

(4) The effect of interference and other disruptions of radio communications on safe railroad operations;

(5) How advanced communications technologies such as digital radio can be implemented to best enhance the safety of railroad operations;

(6) The status of Advanced Train Control Systems (ATCS) that are being developed, and the implications of such systems for effective railroad communications; and

(7) The need for minimum Federal standards to ensure that such systems provide for positive train separation and are compatible nationwide.

FRA's focus at the public hearing will be directed towards the first five of these issues, which relate to voice radio communications and the use of digital data communication as a substitute. Public comment is requested on—

- The safety-related purposes for which voice radio is currently employed by the railroads (e.g., communication of movement authorities, communication of various types of emergency information);
- The extent to which existing technology and procedures serve these purposes (including channel allocation, congestion of primary frequencies, clarity of transmissions, compliance with FRA's Radio Standards and Procedures, etc.); and
- The alternatives available to railroads and FRA to improve safety-related voice communications or substitute other means of communication (including enhancements or substitutions of technology, improved maintenance, availability of backup transceivers, and better use of available frequencies).

Although existing types of voice radio communications are the focus of the public hearing announced in this notice, this safety inquiry also comprehends the issues of Advanced Train Control Systems and other next-generation train control technologies that may facilitate positive train separation and speed control to prevent collisions and overspeed derailments on America's railroads. FRA recognizes that wireless telecommunications science is providing new opportunities for railroads to transmit business data, including train movement authorizations, customer work order information, and locomotive health monitoring information. The North American rail industry is continuing to develop the ATCS project incorporating these functions, including train control.

In keeping with the direction of the RSERA, FRA has engaged in extensive consultations with rail labor, the railroads, the supply industry and other interested parties regarding train control issues. For instance, FRA has held two roundtable discussions on the status of the ATCS project and is planning a third. These roundtables have also explored possibilities for incremental or building-block approaches to enhanced train control. The transcripts of the roundtable discussions will be placed in the docket of this inquiry.

Because other avenues for addressing the train control subsets of the radio communications issue are available, FRA does not plan to entertain discussion of the train control issues at the public hearing, except to the extent parties that have not participated in other forums may wish to address these issues at the conclusion of the hearing. However, the public is invited to submit written comments on the role of train control in railroad safety in response to this notice.

Authority: Sections 202, 208, 84 Stat. 971, 974 (45 U.S.C. 431, 437); Section 1.49(m) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(m)); 49 CFR 211.61

Issued in Washington, DC, on March 7, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–5767 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 23, 1994, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be heid at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the fifth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on March 23, 1994. The meeting was announced on February 18, 1994 (59 FR 8292). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Pedestrian special NASS data collection project, Child safety research, Vehicle aggressivity and fleet compatibility, Crash test dummy component development, and Upgrade seat and occupant restraint systems.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by March 1, 1994, in response to the announcement published February 18, 1994.

As announced on February 18, 1994, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on March 16, 1994, to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, FAX number: 202/366–5930. This meeting is followed on the next day by the regular quarterly NHTSA Technical Industry Meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: March 7, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–5739 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–77; Notice 2]

Bugatti Automobili, S.p.A.; Grant of Petition for Temporary Exemption From Standard No. 208

Bugatti Automobili, S.p.A., of Modena, Italy, petitioned for a temporary exemption until November 1, 1995, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on December 10, 1993, and an opportunity afforded for comment (58 FR 65008). This notice grants Bugatti's petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), section 123(a)(1)(A) of the National Traffic and Motor Vehicle Safety Act (the Act), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *."

The following is a summary of Bugatti's petition. Bugatti was formed as an Italian corporation in 1987 for the purpose of manufacturing automobiles. It is 80.66% owned by Bugatti International Holding, S.A., a Luxembourg corporation, which between 1987 and 1994 will have invested in excess of $115,000,000 in facilities, personnel, research and development. Four years after its founding in 1991, Bugatti presented a prototype vehicle to the public. The factory was completed in 1992. Production of its first model, the EB 110, began in April 1993. As of the date of Bugatti's petition, "fewer than 50 cars have been produced." As the company only began realizing income with the commencement of sales in 1993, its cumulative net losses from 1987 through the latest fiscal year preceding the filing of its petition exceed $30,000,000.

In its early years, the company's focus was to establish itself and to commence sales in markets other than the United States. The company's permanent management team was not in place until 1991, and its permanent engineering team was finalized only in 1993. Initially, it "seriously considered not even coming to the US at all" because of "product liability exposure and insurance, homologation costs, and the often volatile nature of the high performance/exotic car market in the United States." In the spring of 1993, however, it made the decision to enter the U.S. market and intends to do so in mid-1994. Because of the requirement in the Intermodal Surface Transportation Act of 1991 mandating the phase-in of airbags beginning in September 1996, the company decided not to develop an automatic belt system but, instead, to provide an air bag system from the beginning as a means of complying with Standard No. 208.

Lacking the in-house engineering staff capable of developing an air bag system, and concurrently with its decision to enter the U.S. market, Bugatti began a search to locate an "engineering design and development firm to manage Bugatti's air bag project." Fourteen companies were approached. In September 1993, the proposal by Lotus Engineering was accepted. The cost set forth in the proposal is "in excess of $1.2 million (not including the cost of the vehicles to be crashed)." The company anticipates that it will be able to commence production of air bag equipped vehicles in April 1995, well before the end of the 2-year exemption it has requested.

Late in August 1993, Bugatti International Holding, signed a contract to purchase Group Lotus plc, including Lotus Engineering. Lotus is also a manufacturer of motor vehicles, whose production in 1992 was 688 units. According to the petitioner, Lotus "lost over $35 million in 1992 on revenues of approximately $92 million." The purchase of Lotus would be financed by capital investments into Bugatti International Holding earmarked for that specific purpose.

In the absence of an exemption, the company projects continuing net losses through 1994.

Arguments Why An Exemption Would Be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the Act. In support of its petition, Bugatti informed NHTSA that it "will make every effort possible to design its air bag system so that it can retrofit with air bags all vehicles sold under the exemption." It also argued that it does not expect to sell more than 100 cars under the exemption. Each car, equipped with a three-point belt system, would be labeled with a seat belt use reminder. Further, all vehicles will meet all other Federal motor vehicle safety standards including amended Standard No. 214 *Side Impact Protection* in advance of the requirement to do so.

No comments were received on the petition.

The primary finding that must be made by the agency with regard to Bugatti in order to grant its petition is that "compliance would cause substantial economic hardship" (15 U.S.C. 1410(a)(1)(A)). The phrase "substantial economic hardship" is undefined, and there is scant legislative history to provide an interpretation of these words. The purpose that was cited on the House floor while the legislation was pending was the need to protect the ability of a small U.S. manufacturer to "continue production of its automobiles while it tooled to adapt the new safety equipment, which it purchases from big automobile manufacturers, to its own automobiles." (Remarks of Rep. Springer, Congressional Record, October 13, 1973, 38047 and 38048). Thus, to require immediate compliance of the manufacturer in question would have resulted in a cessation of production until compliance was achieved. The obvious result of cessation of production is an eventual cessation of sales and generation of revenue. In other words, the hardship example cited by Rep. Springer is directly related to the effect of a denial upon a small manufacturer's present income.

In implementing the statutory provision, NHTSA requires a petitioner to file corporate balance sheets and financial statements for the past three fiscal years (49 CFR 555.6(a)(1)(iv)), and a projected balance sheet and financial statement for the year following any denial of a petition (49 CFR 555.6(a)(1)(v)). A petitioner is also offered an opportunity to discuss "any other hardships (e.g., loss of market) that the petitioner desires the agency to consider." (49 CFR 555.6(a)(1)(vi)).

The touchstone that NHTSA has used in determining the existence of substantial economic hardship is an applicant's financial health as indicated by its income statements. NHTSA has tended to consider a continuing and cumulative net loss position as evidence per se of hardship. See, e.g., Ferrari, Docket No. EX89–5 (55 FR at 3786); Maserati, Docket No. EX88–2 (53 FR at 34630). The theory behind NHTSA's rationale is that, if a company with a continuing net loss is required to divert its limited resources to resolve a compliance problem on an immediate basis, it may be unable to use those resources to solve other problems that may affect its viability. The agency has considered this especially important in its treatment of corporate petitioners during their infancy.

NHTSA has considered all these foregoing factors in the finding that it has reached with respect to Bugatti. The petitioner's income statements indicate the company's cumulative net losses to date of $30,000,000. Under ordinary circumstances, that fact ought to enable the Administrator to conclude that the company has made a persuasive hardship argument. Yet there are other factors here which must be weighed in reaching a decision that is consistent with the hardship legislation as NHTSA interprets it. The most important of these factors is the effect of a denial upon the company. A denial will not force the company to terminate production until compliance with Standard No. 208 is achieved, because the United States is only one of a number of markets that the company is pursuing. A denial will not result in the withdrawal of funds by investors as completion of a total of $115,000,000 investment is scheduled for the current year. A denial will not result in loss of market in the United States or create hardship for its dealers here because the company has not yet imported vehicles for sale through a franchised dealer network. The primary recognizable effect of a denial is that the company will be unable to introduce itself to the American market until if fields a fully complying car. According to the petition, it anticipates that compliance will be achieved during April 1995, approximately 9 months after it would have begun importation of an exempted vehicle. Given the nature of the EB110, it appears that sales which would otherwise have occurred during this period will only be deferred rather than lost.

In search of a rationale for an affirmative finding of hardship, NHTSA returns to the criterion implicit in Rep. Springer's example, the effect of a denial upon present income. The effect of a denial, according to Bugatti, is that it will experience a net loss of $2,000,000 rather than the $10,000,000 profit projected with the exemption in place. Thus, a denial would have a potential $12,000,000 impact upon the company, contributing to an increase, rather than a decrease, in the cumulative net loss figure of $30,000,000. Even though the profits might eventually be realized with the sale of conforming cars were the petition denied, the delayed profits will have the effect of deferring down the line the additional profits that would be realized, and will not affect the net losses attributable to a denial. This has an impact upon the company's cash flow situation. NHTSA has been given to understand that the petitioner has been able to sell only approximately 30 vehicles as of mid-January 1994 because of the economic situation in Europe, and that this is below the sales that had been projected for the EB 110. Thus, it is the effect that a denial would have upon current income that NHTSA believes would create substantial economic hardship. This situation is to be contrasted with the agency's denial of a similar petition by Ferrari where the effect of the agency action was to reduce anticipated profits from $20,000,000 to $10,000,000, and no loss of cumulative loss position existed (55 FR 3785).

With respect to the company's good faith efforts to meet Standard No. 208, the company has argued that it did not commit itself to entering the American market until early 1993. While it might be assumed that a motor vehicle would not be designed today without the American market in mind, the United States is not invariably attractive to small manufacturers. The EB 110 appears to be one of a number of expensive, high performance vehicles that have been developed with no original intention of sale in the United States. Examples of such vehicles include Britain's Jaguar XJ220, McLaren, and Lister. Accepting the petitioner's statement that the decision to offer the vehicle for sale in the United States was not made until 1993, the agency is led by the solicitations and decisions reached in the period preceding the filing of the petition, and Bugatti's anticipated ability to comply by April 1995 to conclude that the petitioner has made a good faith effort to meet the automatic restraint requirements of Standard No. 208.

The agency must also find that an exemption is in the public interest and consistent with the objectives of the Safety Act. In providing the authority to establish safety standards, Congress expressed its intent that the public continue to be afforded a wide choice of motor vehicles. The agency is cognizant that granting the petition would not appear to have a discernible impact upon safety. Bugatti now anticipates that, at the most, about 50 vehicles would not be provided with automatic restraints. Further, it is actively pursuing the possibility that these could be retrofitted to comply with driver airbags.

For the reasons expressed above, it is hereby found that to require Bugatti to comply with Standard No. 208 would create substantial economic hardship, and that the petitioner has made a good faith effort to comply with the standard. It is further found that an exemption for Bugatti would be in the public interest and consistent with the objectives of the Act. Accordingly, Bugatti Automobili

S.p.A. is hereby granted NHTSA Exemption No. 94–1 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, expiring November 1, 1995.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.40.

Issued on: March 8, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5774 Filed 3–10–94; 8:45 am]

BILLING CODE 4917–59–M

[Docket No. 93–89; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 500SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes Benz 500SL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes Benz 500SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes Benz 500SL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer No. R–90–004) petitioned NHTSA to determine whether 1992 Mercedes Benz 500SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 69443) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #60 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes Benz 500SL (Model ID 129.066) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes Benz 500SL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–5770 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–17; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 500SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 500SEC passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 500SEC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 11, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the

model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania, ("Champagne") (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 500SEC (Model ID 126.044) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 500SEC that was manufactured for importation into, and sale in the United States, and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared the non-U.S. certified 1990 model 500SEC to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 model 500SEC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 model 500SEC is identical to its certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 Windshield Retention, 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the 1990 model 500SEC is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Display:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing-actuated microswitch in the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of knee bolsters to augment the vehicle's airbag-based automatic restraint system. The petitioner claims that the remaining components of the vehicle's automatic restraint system, consisting of a driver's side air bag, sensor, and control unit, have part numbers identical to those found on the U.S. certified 1990 model 500SEC.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1990 model 500SEC must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–5771 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–91; Notice 2]

Determination That Nonconforming 1988 Saab 9000 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1988 Saab 9000 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Saab 9000 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation

into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Saab 9000), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c) (3) (A) (i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A) (i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that a motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer No. R–90–006) petitioned NHTSA to determine whether 1988 Saab 9000 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 69445) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #59 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Saab 9000 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Saab 9000 originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c) (3) (A) (i) (I) and (C) (ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–5772 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–1; Notice 2]

Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, determined that some of its tires fail to comply with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," and 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Uniroyal also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 13, 1994 (59 FR 1989) and an opportunity afforded for comment.

Paragraph S4.3.3(b) of Standard No. 109 and paragraph S6.5(d) of Standard No. 119 specify that each tire be labeled with an identification number. The last digit of this identification number should represent the year of manufacture.

In the 46th week of 1993, Uniroyal manufactured approximately 6,500 tires in several brands and sizes with an incorrect year of manufacture contained in the tire identification number. The last digit in the identification number on these tires was incorrectly marked "4," signifying 1994. The last number should have been "3," signifying 1993.

Uniroyal supported its petition for inconsequential noncompliance with the statement that it did not "believe that this error will impact motor vehicle safety since only the year of manufacture is incorrect." All tires are sold only in the replacement market.

No comments were received on the petition.

The primary safety purpose of the manufacturing date code is to enable identification of tires for the purposes of notification and remedy in the event they are determined to be noncompliant or incorporate a safety-related defect. If it is necessary to recall the tires before the 46th week of 1994, there will be no difficulty in identifying them, as there will be no tires that were truly manufactured in the 46th week of 1994 by that point in time. If it is necessary to recall them during or after the 46th week of 1994, the recall population will comprise both the mismarked and properly marked tires, the disadvantage being to the manufacturer rather than to motor vehicle safety.

For the reason expressed above, the petitioner has met its burden of persuasion that the noncompliance described herein is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5773 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 1993 Closed Meetings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1992, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW., room 224, Washington, DC 20024, Telephone (202) 401–4128, (Not a toll free telephone number).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–5632 Filed 3–10–94; 8:45 am]

BILLING CODE 4830–01–U

[Delegation Order No. 219 (Rev. 3)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Allows for the delegation of authority to approve jeopardy and termination assessments. The Chief, EP/EO Division is added to the list of previously delegated officials.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Donald Ketchum, E:FC:C1, room 2232, 1111 Constitution Avenue, NW., Washington, DC 20224 (202) 622–7497 (not a toll free number).

Delegation of Authority To Make Jeopardy and Termination Assessments

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue under 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7701–9 and Treasury Order 150–10, authority is hereby delegated to the Assistant Commissioner (International) and the District Director to make jeopardy and termination assessments in accordance with Internal Revenue Code Sections 6861, 6862, 6851, respectively, and the regulations promulgated thereunder.

2. In the event the Assistant Commissioner (International) or the District Director has to exclude himself/herself from personal involvement for reasons prescribed in IRM 4500, IRM 7(10)(12)(19) or IRM 7(10)(12)(20), then jeopardy and/or termination assessments will be personally approved by the Deputy Assistant Commissioner (International) or the Assistant District Director, if that position exists, or if that position does not exist, by the official delegated in the order prescribed below:

a. Chief, Examination Division.
b. Chief, Collection Division.
c. Chief, Criminal Investigation Division.
d. Chief, Employee Plans and Exempt Organizations.

3. If all International or District officials identified above must exclude themselves from personal involvement, the personal approval of the Chief Operations Officer or Regional Commissioner is required. In any event, the person approving the jeopardy and/or termination assessment must not fall within any of the exclusionary situations that prevent the Assistant Commissioner (International) or a District Director from being personally involved.

4. This authority may not be redelegated.

5. Delegation Order No. 219 (Rev. 2), effective February 22, 1991, is superseded.

Dated: March 18, 1994.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–5769 Filed 3–10–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Census of Foreign Students in the U.S.

AGENCY: United States Information Agency.

ACTION: Notice—Request for concept papers.

SUMMARY: The United States Information Agency (USIA) invites U.S. educational, cultural, and other not-for-profit organizations to submit concept papers outlining the design of a statistical survey (census) of foreign nationals affiliated with institutions of higher learning in the United States. The census should identify in the most economical way possible the number of foreign students and scholars studying, conducting research, or teaching at all accredited universities and colleges in the United States starting in the 1994–95 academic year; it must also survey the number of American students studying abroad. Papers should also describe the methodology which will be used to collect the data and how the material will be analyzed and presented to the public. Following Agency review of concept papers, certain organizations may be invited to submit full proposals, leading to the award of a FY 1995 cooperative agreement.

DATES: Deadline for proposals: All copies must be received at USIA by 5 p.m. Washington, DC time, on April 15, 1994. Faxed documents will not be accepted, nor will documents postmarked April 15 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Data from the 1994–5 academic year census must be compiled and published by December 1995.

Duration: The award will begin on October 1, 1994 and end on September 30, 1995. No funds may be expended until the agreement is signed.

ADDRESSES: One original and 5 copies of the concept paper, which should be 7–10 double-spaced pages and include a summary budget, are to be mailed to: U.S. Information Agency, Ref.: Foreign Student Census, Grants Management Office, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Catherine Sevcenko at the U.S. Information Agency, Advising, Teaching, and Specialized Programs Division, Advising and Student Services Branch (E/ASA), room 349, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619–5434, for further clarification. There are no official forms which must be submitted with the concept papers but all submissions must contain the information requested below.

SUPPLEMENTARY INFORMATION:

Overview

As the Federal agency tasked with promoting international educational exchange, USIA considers it essential to

have an accurate picture of foreign study and scholarship in the United States, such as that provided by the statistical survey. This survey should provide a detailed and comprehensive picture of the number and characteristics of foreign nationals (excluding permanent residents and refugees) affiliated with American institutions of higher learning and the numbers of U.S. students studying abroad. Topics of interest include the numbers of students and scholars, their gender, countries of origin, and fields of study. Information about students interim of academic level (undergraduate, graduate, post-doctorate), primary source of financial support, financial contribution they make while in the United States, and location of study should be included. A compilation of visa status (F, J, M, H) should be included. Papers should indicate whether potential applicants will provide information on a yearly basis; less frequent collection and compilation of data must be justified. A survey of students in intensive English language programs would be of interest but is not required.

The Agency will consider funding a publication, database, newsletter, or any other medium presented as a viable vehicle for making census data about the U.S. and foreign student population widely available in a timely manner and in a clear and concise format. Continued support, assuming availability of funding, will be contingent upon accurate data collection, quality of presentation of that data, and prompt publication of the census. The Agency reserves the right to reproduce, publish or otherwise use any work developed under this grant for Government purposes.

Concept papers should include a description of the methodology to be used to canvass colleges and universities for information about their foreign student and scholar populations as well as study abroad statistics. Provision should be made for securing the highest possible response rate. The Agency is interested in a clear presentation of the data collected as well as a rigorous analysis of the data which will draw conclusions about the trends in international study in the U.S. and make recommendations for policy for both government and academia based on the data collected. Organizations submitting concept papers judged most feasible and cost-effective will be invited to submit full proposals in accordance with Agency guidelines.

A final cooperative agreement will be awarded October 1, 1994 subject to the availability of FY 1995 funding.

Pursuant to the Bureau's authorizing legislation, funded activities must maintain a non-political character.

Guidelines

Eligibility

U.S. non-profit educational, cultural, and other non-for-profit organizations that have a minimum of four years experience in some aspect of international education are eligible to apply. The project director or key program staff responsible for the administration of the census must be demonstrated expertise in one or more of the following: statistics, data collection, international exchange, publication design, computer technology.

Proposed Budget

The amount of funding for this project will be determined upon evaluation of all concept papers submitted. Papers should include a short budget, however, and highlight how the census would be produced as cost-effectively as possible. Papers which offer substantial cost-sharing or alternate sources of funding will be given special consideration. Discussion of potential target markets and possible sales revenue should also be included. Budgets should include provision to the Agency of a minimum of 600 copies of any publication, database or other medium of presentation. Organizations should be familiar with grant regulations described in OBM circulars A110, A122 and A133. Cost-sharing of the grantee organization may be in the form of allowable direct or indirect costs.

Application Requirements

Concept papers must be submitted by the deadline and must conform to the following requirements:

1. A Concept Paper Cover Sheet: with name(s) of institution(s), project director(s), appropriate addresses, telephone and fax numbers.

2. Narrative of 7–10 double-spaced pages, including a description of the proposed institution(s) which will run the project; a detailed description of the type of information to be collected and the methodology to be used, a description of the manner in which the data will be presented and analyzed, and a description of the qualifications of those who will play key roles in the project.

3. Brief resumes (no more than 2 pages) of the proposed project director and others if identified who will be involved in the project.

4. Brief (one page) budget.

Review Process

USIA will acknowledge receipt of all concept papers and forward them to panels of USIA officers for advisory review. Institutions submitting concept papers which meet the review criteria will be invited to submit full proposals in accordance with Agency guidelines. USIA reserves the right to issue another general announcement for proposals or concept papers if none submitted in accordance with this announcement pass Agency review. All funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs.

Review Criteria

All concept papers will be competitively reviewed according to the following criteria:

1. Overall Quality

The content, definition, and organization of all aspects of the project; appropriateness of project plan and content to program objectives; extensive academic and professional involvement of the staff assigned to the project in the U.S. educational community; evidence of understanding of the dynamics of trends in international education.

2. Institutional Capacity

Adequacy of proposed resources, including professional staff and available educational network(s), to administer the census successfully, based on achieving a high response rate from those institutions surveyed, in the most economical way possible. Development of an appropriate method and format for presentation and analysis of the data.

3. Institution's Track Record/Ability

Clear evidence of applicant institution's track record of successful projects and experience with international education. Demonstrated expertise of the Project Director to assume the administration of this undertaking.

4. Cost-Effectiveness

The overhead and administrative components of the program, as well as salaries, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should also be included.

5. Cost-sharing

Proposals should maximize cost-sharing through host institutions and other private sector support as well as institutional direct funding

contributions and may include marketing the data.

Notice

The terms and conditions published in this Request for Concept Papers are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the Government.

Notification

All applicants will be notified of the results of the initial review process by May 15, 1994.

Dated: March 7, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–5660 Filed 3–10–94; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on March 15, 1994 in the San Carlos Institute located at 516 Duval Street, Key West, Florida. The intended agenda is listed below.

Agenda

Thursday, March 15, 1994

Part One—Closed to the Public

9 a.m.

1. Technical Transmission Matters
2. TV Marti Policy Update
3. Restructuring of OCB
4. Coast Guard Briefing

Part Two—Open to the Public

11:30 a.m.

1. Approval of Minutes
2. Update on Radio Marti
3. Update on TV Marti
4. OCB Office of Program Evaluation/Focus Group Results
5. Public Testimony

Items one, two, three and four which will be discussed from 9 a.m. to 11:30 a.m., will be closed to the public. Discussion of items one, two, three and four will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed Agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Dated: March 7, 1994.

Joseph Duffey,

Director, United States Information Agency.

Determination To Close Portions of the Advisory Board Meeting of March 15, 1994

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 9 am to 11:30 am portion of the meeting should be closed to the public.

The Advisory Board has requested that items one, two, three and four of the March 15, 1994 meeting be closed to the public. Items one, two, three and four will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Items one and two on the agenda consist of a discussion of technical matters, which include TV Marti transmissions. Item three on the agenda consists of Radio and TV Marti restructuring to include budgetary matters. Item four will provide sensitive information on the many related activities between the Coast Guard's operations with regards to Cuba.

Dated: March 7, 1994.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 94–5659 Filed 3–10–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Scientific Committee; Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92-463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Friday, April 29, 1994, at 1 p.m.—5 p.m.

The location on the meeting will be 9000 Rockville Pike; National Institutes of Health; Building 31; Room 8, C Wing; Bethesda, MD.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public.

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue, NW.; Washington, DC 20420.

Dated: February 28, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94-5637 Filed 3-10-94; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAS) National Advisory Committee (NAC) will meet March 23–25, 1994, at the Holiday Inn Mart Plaza Hotel, 330 North Orleans, Chicago, Illinois. This meeting is scheduled from 8 a.m.—5 p.m. on March 23 and 24 and from 8 a.m. to Noon on March 25.

The VAVS NAC consists of 60 organizations which provide volunteers who assist veterans, primarily in VA health care facilities. The VAVS NAC advises the Under Secretary for Health on how to coordinate and promote volunteer activities within VA health care facilities and voluntarism matters. The Executive Committee consists of 20 representatives from the NAC member organizations and acts as the NAC governing body between the NAC Annual Meetings. Business topics for the Executive Committee meeting include: VAVS program progress since the 1993 Annual NAC Meeting; 1994 NAC Annual Meeting planning; 1995 Annual Meeting site review and Subcommittee reports.

The Executive Committee meeting is open to the public and individuals interested in attending are encouraged to contact Mr. Jim Mayer, Staff Assistant, Voluntary Service (161A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, (202) 566–1687.

Dated: February 28, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–5638 Filed 3–10–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the continuation of the following meeting of the Board:

TIME AND DATE: 10 a.m. March 15, 1994.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the public meeting conducted on March 7 to deliberate upon the following:

1. The Board's continuing review of the readiness of Los Alamos National Laboratory's (LANL) Plutonium Facility (TA-55) for production of encapsulated plutonium (Pu238) oxide pellets for Radioisotope Thermoelectric Generators that provide electrical power for spacecraft used on deep space missions.

2. DOE's evaluation of the Los Alamos National laboratory's efforts to comply with DOE nuclear-safety orders.

3. Presentations by the Board's Technical Staff relating to the safety basis, including status of the emergency diesel generator, and the adequacy of protection of public and worker health and safety relative to LANL's plutonium Facility.

The Board is holding this meeting with less than one week's notice. As provided in the Board's Sunshine Act rule, 10 CFR 1704.6(b), a majority of the Board's members has voted that the Board's business requires the meeting to be held with less than seven days' notice.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: March 9, 1994.

John T. Conway,

Chairman.

[FR Doc. 94-5875 Filed 3-9-94; 2:18 pm]

BILLING CODE 6820-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:19 p.m. on Tuesday March 8, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations regarding the cross-guaranty provisions of the Federal Deposit Insurance Act.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Various Failed Institutions, State of Connecticut, Case No. 507-07408-93-BOD

Memorandum re: Bank of New England, National Association, Boston, Massachusetts, and Maine Savings Bank, Portland, Maine, Case No. 000-00032-94-COM

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: March 9, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94-5908 Filed 3-9-94; 3:41 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 16, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5841 Filed 3-9-94; 11:34 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., March 21, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 22, 1994, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of KPMG Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administration Staff."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: March 8, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–5816 Filed 3–9–94; 8:45 am]

BILLING CODE 6760–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10 a.m., Thursday, March 17, 1994.

PLACE: Board Room, 7th Floor, room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

4. NCUA Strategic Information Systems Plan. Closed pursuant to exemptions (2) and (9)(B).

5. Personnel Policies. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5855 Filed 3–9–94; 11:55 am]

BILLING CODE 7535–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., March 10, 1994.

PLACE: Conference Room, 1333 H Street, NW., suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Procedural steps in Docket No. R94–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–5840 Filed 3–9–94; 11:33 am]

BILLING CODE 7710–FW–P

Corrections

Federal Register

Vol. 59, No. 48

Friday, March 11, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-142-1]

Black Stem Rust; Addtion of Rust-Resistant Varieties

Correction

In rule document 94-4324 beginning on page 9065 in the issue of Friday, February 25, 1994, make the following correction:

On page 9065, in the first column, under **DATES**, in the fifth line, "March 25, 1994" should read "March 28, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 94-5036 beginning on page 10368, in the issue of Friday, March 4, 1994, make the following corrections:

On page 10368, in the table entitled "Antidumping Duty Proceedings", after the entry "United Kingdom: Lead and Bismuth Steel (A-412-810)" insert the heading "Suspension Agreements:".

On page 10369, the heading at the top of the table "Antidumping Duty Proceedings" should read "Countervailing Duty Proceedings".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-940-5101-10-F303; N-57461]

Pipeline Right-of-Way Application; Nevada

Correction

In notice document 94-3139 beginning on page 6287 in the issue of Thursday, February 10, 1994, make the following corrections:

On page 6288, in the first column, in the land description::

a. In T. 16 N., R 20E., in Sec. 30, the second line should read "lot 2 NW¼, N½SE¼."

b. In T. 31 N., R 33E., Sec. 32 should read "NE¼NW¼, W½W½."

c. In the 21st line, "T. 37 N., R. 39E." should read "T. 37 N., R. 38E."

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

35 CFR Part 10

RIN 3207-AA33

Implementation of the Privacy Act of 1974

Correction

In rule document 94-4215 beginning on page 9088 in the issue of Friday, February 25, 1994, make the following correction:

On page 9088, in the second column, under **EFFECTIVE DATE:**, "March 24, 1994" should read "February 25, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD13-93-028]

Drawbridge Operation Regulations; Lake Washington, WA

Correction

In rule document 94-4763 beginning on page 10076 in the issue of Thursday, March 3, 1994, make the following correction:

§ 117.1049 [Corrected]

On page 10077, in the first column, amendatory item 2 correctly reads as set forth below.

"2. Section 117.1049 is temporarily amended by suspending paragraph (d) and revising paragraphs (a) and (c) to read as follows".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.203 A, B and C]

Star School Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Correction

Notice document 93-4057 beginning on page 8766 in the issue of Wednesday, February 23, 1994, contained numerous printing errors on page 8777, consequently the entire page is reprinted as follows:

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

CFDA No. 84.203A Star Schools—Distance Education Projects

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will meet one or more of the absolute priorities, and the competitive priority, if appropriate, in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Distance Education Projects

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include—

A. The design, development, construction, and acquisition of State or multistate educational

telecommunications networks and technology resource centers;

B. Microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;

C. Reception facilities;

D. Satellite time;

E. Production facilities;

F. Other telecommunications equipment capable of serving a wide geographic area;

G. The provision of training services to instructors who will be using the facilities and equipment for which assistance is sought; and in using such facilities and equipment, and in integrating programs into the class curriculum; and

H. The development of educational programming for students, or for educational personnel, or both, to be used on the telecommunications network;

2. Describe the types of programming that will be acquired or developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level.

3. Demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in the subjects to be offered.

4. Describe the manner in which traditionally underserved students (such as students who are disadvantaged, limited-English proficient, disabled or illiterate) will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this proposed project, and the extent to which existing telecommunications equipment will be used where available.

5. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

6. Describe the activities or services for which assistance is sought including activities and services such as—

A. Providing facilities, equipment, training, services, and technical assistance;

B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

C. Linking networks together, for example, around an issue of national importance such as elections;

D. Sharing curriculum materials among networks;

E. Providing teacher and student support services;

F. Incorporating community resources such as libraries and museums into instructional programs;

G. Providing teacher training to early childhood development and Head Start teachers and staff;

H. Providing teacher training to vocational education teachers and staff, and

I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Distance Education Projects

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, and when it will be delivered.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½" × 11" paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203B Star Schools—Special Statewide Network

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will use a Statewide fiber optics network with two-way full motion video and audio communications to meet any or all of the priorities in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Special Statewide Network

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include:

A. The design, development, construction, and acquisition of Statewide educational telecommunications networks and technology resource centers;

B. Reception facilities;

C. Production facilities;

D. Other telecommunications equipment capable of serving a wide geographic area;

E. The provision of training services to instructors who will be using the facilities and equipment and how to integrate distance learning into the classroom curriculum; and

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Friday
March 11, 1994

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing Operations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4845–8]

RIN 2060–AC98

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing standards that would limit emissions of hazardous air pollutants (HAP) from existing and new magnetic tape manufacturing operations that are part of major sources. The proposed standards implement sections 112(d) and 112(h) of the Clean Air Act as amended in 1990 (the Act), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intent of the proposed standards is to protect the public by requiring new and existing major sources to control emissions to the level corresponding to the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any non-air quality and other air quality-related health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before April 25, 1994.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for the magnetic tape manufacturing industry. If anyone contacts the EPA requesting to speak at a public hearing by April 5, 1994, a public hearing will be held on April 13, 1994 beginning at 10 a.m. Persons interested in attending the hearing should notify Ms. Julia Latta at (919) 541–5578 to verify that a hearing will occur.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center, Attention, Docket No. A–91–31, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If anyone contacts the EPA requesting a public hearing, the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons wishing to present oral testimony must contact the EPA by April 5, 1994 by contacting Ms. Julia Latta, Standards Development Branch (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the docket or from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to, "Hazardous Air Pollutants from Magnetic Tape Manufacturing—Background Information for Proposed Standards," EPA–453/R–93–059.

Docket. Docket No. A–91–31, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. Telephone (202) 260–7548. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning regulatory decisions and the proposed standards, contact Ms. Gail Lacy at (919) 541–5261, Standards Development Branch, Emissions Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Proposed Standards.
  A. Applicability of the Standards.
  B. Actual Standards and Format of the Standards.
  C. Monitoring Requirements.
  D. Test Methods for Compliance.
  E. Reporting and Recordkeeping Requirements.
II. List of Source Categories.
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  B. Docket.
  C. Executive Order 12866.
  D. Paperwork Reduction Act.
  E. Regulatory Flexibility Act.
  F. Miscellaneous.
  G. Statutory Authority.

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–91–31 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541–5384.

I. Summary of Proposed Standards

This section provides an overview of:
(1) The applicability of the standards;
(2) The format of the standards;
(3) The actual standards;
(4) The monitoring requirements;
(5) The test methods for compliance; and
(6) The reporting and recordkeeping requirements. Detailed discussions concerning the statutory basis and the selection rationale for the proposed standards are provided in sections IV and VI, respectively, of this preamble.

A. Applicability of the Standards

The proposed standards apply to new and existing major sources emitting HAP from magnetic tape manufacturing operations, according to certain criteria. First, a source is subject to all of the provisions of the standards if it is major, that is, if it has the potential to emit

greater than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP. Second, a major source actually utilizing less than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP is subject only to an annual recordkeeping and reporting requirement (§ 63.703(g)) of the proposed rule. Finally, research or laboratory facilities are not subject to the provisions of the standards unless they are collocated with production lines.

Several solvent and particulate HAP are used in the magnetic tape manufacturing industry. Solvent HAP used include methyl ethyl ketone (MEK), toluene, methyl isobutyl ketone (MIBK), toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde. The HAP solvents that are used to the greatest extent are MEK, toluene, and MIBK. The other HAP are used in small quantities at only a few facilities in the source category. Chromium and cobalt, which are particulate HAP, are also used. These are the HAP expected to be emitted by this industry; however, the proposed standards apply to emissions of all 189 HAP listed in section 112(b).

This standard covers HAP emission sources that result from magnetic tape manufacturing operations. Products manufactured as a result of these operations include video and audio tape, and computer diskettes. Production of nonmagnetic products may require use of some of the same equipment as is needed for magnetic products. For example, leader tape is the tape at the beginning of an audio or video cassette that does not contain magnetic media. Leader tape is manufactured on the same type of equipment that is used to manufacture magnetic tape, and is directly related to manufacturing operations. Therefore, the production of leader tape is considered as part of magnetic tape manufacturing operations.

Likewise, other products may be manufactured using the same solvents and equipment that are used to coat the tape with magnetic material. If HAP are used during their production, and the same equipment that is used for manufacturing magnetic tape products is used in their manufacture, the provisions of this standard apply when these products are being manufactured.

Sources in a magnetic tape manufacturing operation that are affected by the standards include but are not limited to:

(1) The solvent storage tanks;
(2) The mix preparation equipment;
(3) The coating operation;
(4) The waste handling devices;
(5) The particulate transfer operations;
(6) The wash sinks for cleaning removable parts;
(7) Cleaning involving the flushing of fixed lines;
(8) Wastewater treatment systems; and
(9) Condenser vents in the solvent recovery area except the vent on a condenser that is used as the primary control device.

A description of the emission points within magnetic tape manufacturing operations can be found in section VI.B.

B. Actual Standards and Format of the Standards

The proposed standards are expressed in terms of percent control of HAP, as outlet concentrations of HAP, and as equipment standards for the various emission points that comprise the magnetic tape operation. A summary of the requirements of the proposed standards is provided in table 1.

TABLE 1.—SUMMARY OF THE REQUIREMENTS OF THE PROPOSED STANDARDS

Emission point	Standards
Solvent storage tanks.	95-percent overall HAP control efficiency.[a, b]
Mix preparation equipment.	95-percent overall HAP control efficiency.[a, b]
Coating operation equipment.	95-percent overall HAP control efficiency.[a, b]
Waste handling devices.	95-percent overall HAP control efficiency.[a, b]
Condenser vents in solvent recovery.	95-percent overall HAP control efficiency.[a, b]
Wastewater treatment systems.	Remove 99 percent of the HAP in the wastewater or achieve a total HAP outlet concentration of 50 ppmw.
Wash sinks for cleaning removable parts.	88-percent overall HAP control efficiency.
Particulate transfer devices.	Equipment standard—use enclosed transfer device.
Cleaning involving the flushing of fixed lines.	Equipment standard—use closed system for flushing fixed lines or vent open containers to a control device.

[a] The overall control efficiency is the product of the capture efficiency and the control efficiency.

[b] For sources using incinerators as control devices an alternate emission limit of 20 ppmv HAP is allowed.

As indicated in Table 1, the proposed standards require an overall HAP control efficiency (the product of capture efficiency and control efficiency) of 95 percent for solvent storage tanks, mix preparation equipment, coating operations, waste handling devices, and condenser vents in solvent recovery. If an incinerator is used to control these emission points, an alternate emission limit of 20 ppmv is allowed.

For wastewater treatment systems, either 99 percent of the HAP present in the wastewater discharge must be removed, or an outlet HAP concentration of less than 50 parts per million by weight (ppmw) must be achieved.

For the wash sinks, emissions must be controlled by 88 percent. This can be achieved by maintaining a 75-percent freeboard ratio. Alternatively, an owner or operator can control HAP emissions from wash sinks by venting them to a 95-percent efficient control device.

Equipment standards are required to control emissions from particulate transfer operations and the cleaning of fixed lines by flushing.

For the transfer of particulates from the holding tanks to the mixing area, the proposed standards require that an enclosed transfer device as defined in § 63.702 must be used to transfer particulates containing HAP.

For the flushing of fixed lines with solutions containing HAP, the proposed standards require that the lines be flushed using a closed system as described in § 63.702. As an alternative to using a closed system, an owner or operator may flush the line into an open container. However, that container must be in an enclosure (such as the type surrounding the coater) that is vented to a control device such that the overall control is 95 percent.

The proposed standards would require the owner or operator of an existing magnetic tape operation to comply with these standards within 1 year after they are published in the **Federal Register**. Section 63.7(a)(2) of the proposed General Provisions, if promulgated, would then allow a source 120 days after the compliance date to demonstrate compliance through an initial performance test.[1] The Administrator feels that this timeframe is sufficient for existing sources to comply with the regulation. A longer compliance timeframe is not necessary because many of the sources in the

[1] The EPA proposed regulations for subpart A of 40 CFR Part 63 were published in the **Federal Register** on August 11, 1993 at 58 FR 42760. Sources covered by subpart EE will need to comply with whatever deadlines for performing the initial performance test are contained in subpart A, and all other applicable provisions of subpart A, as finally promulgated.

source category have already instituted the control techniques required to meet the proposed standards. A shorter timeframe was not selected because the proposed timeframe is necessary for those sources that will be required to install new capture and/or control devices to purchase and install the equipment.

Owners or operators of facilities initially determined to be area sources that become major sources are subject to the rule under the same compliance timeframe as established for existing major sources. That is, area sources that become major sources will have to comply within one year of becoming a major source.

Owners or operators of new sources that commence construction after the standards are proposed but before the standards are promulgated will have to comply immediately upon startup, unless the promulgated regulation is more stringent than the proposed regulation. In accordance with Section 112(i)(2) of the Act, if the promulgated standards are more stringent than the proposed standards, the compliance date for sources that commence construction after proposal but before promulgation will be 3 years after the promulgation date, provided the owner or operator complies with the standards as proposed until the compliance date.[2] The owner or operator would then be required to conduct a performance test within 120 days after the compliance date.

All other new sources will have to comply with the proposed standards immediately upon startup.

C. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a magnetic tape operation is in continuous compliance. Depending on the control system, this can be accomplished by: (1) Continuously measuring inlet and outlet concentration and showing that the control efficiency corresponds to that required by the standard; or

(2) Continuously measuring site-specific operating parameters, the values of which are established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. This type of enhanced monitoring would be required for those emission points for which the standards are expressed as a percent control. For equipment standards, no monitoring would be required. However, the owner or operator is expected to install and operate the equipment properly (for particulate transfer and flushing fixed lines). For owners or operators complying with the proposed standards for wash sinks by maintaining a freeboard ratio, compliance would be demonstrated through recordkeeping (see section VI.K). A summary of the monitoring requirements of the proposed standards is provided in table 2.

TABLE 2.—PROPOSED ENHANCED MONITORING REQUIREMENTS

Control device	Parameter(s) to monitor	Deviation
1. Carbon adsorber:		
If used only to control affected coating operation and solvent is recovered..	Perform a material balance (3-day rolling average) comparing solvent applied at the coater to solvent recovered.	Material balance indicates control efficiency is less than stipulated by NESHAP.
Multiple beds on adsorber exhaust through a common stack.	Continuous measure of outlet total VOC concentration if compliance is based on outlet concentration; or	Monitored outlet concentration is greater than the value established during the performance test for three consecutive adsorption cycles.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	Efficiency is less than that stipulated by the NESHAP for three consecutive adsorption cycles.
Adsorber has individual exhaust stacks for each of multiple beds.	Continuous measure of outlet total VOC concentration if compliance is based on outlet concentration; or	3-day rolling average for an adsorption vessel indicates an outlet concentration that is greater than the value established during the performance test.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	3-day rolling average for an adsorption vessel indicates efficiency is less than that stipulated by the NESHAP.
2. Condenser:		
If used only to control affected coating operation and solvent is recovered..	Perform a material balance (3-day rolling average) comparing solvent applied at the coater to solvent recovered.	Material balance indicates control efficiency is less than stipulated by NESHAP.
If used to control coating operation and other emission points.	Continuous measure of the temperature of condenser exhaust stream; or	For any 3-hour period, the average exhaust temperature is greater than the average exhaust temperature established during the performance test.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.
3. Thermal incinerator	Continuous measure of the combustion temperature; or	For any 3-hour period, the average combusition temperature is less than the average combustion temperature established during the performance test.
	Continuous measure of outlet VOC concentration if compliance is based on outlet concentration; or	For any 3-hour period, the average outlet VOC concentration is greater than that required by the standard.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.

[2] Section 63.7(a)(2)(ix) of the proposed General Provisions implements this requirement.

TABLE 2.—PROPOSED ENHANCED MONITORING REQUIREMENTS—Continued

Control device	Parameter(s) to monitor	Deviation
4. Catalytic incinerator	Continuous measure of the gas temperature both upstream and downstream of catalyst bed; or	For any 3-hour period, the average gas temperature before and after the catalyst bed, or the average gas temperature difference across the catalyst bed, is less than the average temperature established during the performance test.
	Continuous measure of outlet VOC concentration if compliance is based on outlet concentration.	For any 3-hour period, the average outlet VOC concentration is greater than that required by the standard.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.
5. Capture system	Continuous measure of an indicator parameter (e.g. differential pressure).	For any 3-hour period, parameter readings are outside the value established during the performance test.
6. All air pollution control devices	Flow diversion: if bypass lines that could divert flow from the control device to the atmosphere exist, flow must be monitored continuously or the line must be secured with a car-seal or lock-and-key type configuration that is inspected monthly.	Presence of flow detected in the line, rupture of the car-seal, or removal of the lock-and-key must be reported in the quarterly reporting required by §63.10. Occurrence does not establish noncompliance.
7. Steam strippers	Continuous measure of the steam and wastewater feed rates.	For any 3-hour period, the average steam to fee ratio is less than the average value established in the compliance determination.

The operating parameter value monitoring system shall complete a minimum of one measurement cycle (sampling, analyzing, recording) for each successive 15-minute period in accordance with § 63.8(c)(4).[3]

D. Test Methods for Compliance

The product of the capture efficiency of the system and the efficiency of the control device yields the overall efficiency of the control system. Sources can demonstrate that the overall HAP control efficiency required by the proposed rule is being met by: (1) Measuring the capture and control efficiency; or

(2) Performing a liquid-liquid material balance, if a solvent recovery device is used to control the coating operation only.

The proposed rule allows several ways to calculate the capture efficiency. The first way to calculate the capture efficiency is to perform a capture efficiency test in accordance with the provisions of § 63.705(c) (2) or (3). Another way to demonstrate 100-percent capture is to meet the total enclosure criteria of § 63.705(c)(4). The capture efficiency associated with using piping or ductwork to direct emissions from an affected emission source to a control device is 100 percent if the requirements of § 63.705(d)(1)(i) are met.

To calculate the efficiency of the control device or to measure the outlet concentration, the proposed standards allow the use of either the EPA Method 25A or the EPA Method 18, both of which are found in 40 CFR part 60, appendix A. The EPA Method 25A, which measures control device efficiency for organic compounds, is the minimum test method proposed to demonstrate initial compliance with the proposed standards. The EPA Method 18, which can distinguish control efficiencies for different species of HAP, is also allowed as an alternative testing method.

In certain instances, a liquid-liquid material balance conducted in accordance with § 63.705(c)(1) is proposed to demonstrate ongoing compliance with the proposed standards. For a solvent recovery device that controls only the coating operation, a liquid material balance is performed by continuously measuring solvent applied at the coater. The overall HAP control efficiency is then calculated over a 3-day rolling averaging period. A rolling average is the overall average of the individual averages calculated during a given time period.

The proposed rule requires that the HAP in the wastewater discharge from a wastewater treatment system be treated by: (1) Using a steam stripper designed to be 99-percent efficient;

(2) Using a steam stripper such that the total HAP concentration of the water discharged from the steam stripper is less than 50 ppmw; or

(3) Using an alternate treatment device, approved by the Administrator, which removes 99 percent of the HAP or reduces HAP to a concentration of less than 50 ppmw. Any alternate treatment device should not allow HAP emissions to be merely transferred from the water phase to the air phase in any uncontrolled manner. To demonstrate compliance with the proposed rule, an owner or operator must provide either engineering design calculations that show that the stripper is designed to achieve a 99-percent removal efficiency, or sample the wastewater discharged from the stripper using the EPA Method 305 to show that a total HAP outlet concentration of 50 ppmw is being achieved. The EPA Method 305 was proposed to be added to appendix A of part 63 on December 31, 1992 (57 FR 62785). The engineering design calculations would have to include, at a minimum, the feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature. Owners or operators complying with the standards through use of an alternate treatment device must identify an appropriate compliance test and ongoing compliance monitoring plan, subject to the approval of the Administrator.

If an owner or operator complies with the proposed standards for wash sinks by venting the emissions to a control device, an overall HAP control efficiency of 88 percent must be determined from the product of the control device efficiency and the capture efficiency. Determination of the overall HAP control efficiency is not required in situations where: (1) The sources are existing sources that have been venting HAP emissions from the

[3] The EPA proposed regulations for subpart A of 40 CFR Part 63 on August 11, 1993 at 58 FR 42760. Sources covered by subpart EE will need to comply with the provisions of subpart A as finally promulgated.

wash sink to the control device since before March 11, 1994;

(2) The system venting HAP emissions from the wash sink to the control device is in place before March 11, 1994; and

(3) The owner or operator continues venting the wash sink emissions to the device.

If the owner or operator is an existing source but discontinues the venting of the sink to the control device, a 75-percent freeboard ratio must then be maintained.

E. Reporting and Recordkeeping Requirements

The owner or operator of any magnetic tape operation subject to these proposed standards would be required to fulfill the reporting and recordkeeping requirements outlined in § 63.10, except as exempted by § 63.701(a)(2) of the proposed rule.[4] These proposed requirements include those associated with startup, shutdown, or malfunctions; operation and maintenance records; compliance monitoring system records; performance test reporting; quarterly reports of excess emissions; and continuous monitoring system performance reports. The quarterly reports must contain the monitored value for the periods constituting exceedances, and a description and timing of steps taken to address the cause of the exceedances. Owners or operators of facilities described in § 63.701(a)(2) are not subject to these requirements of part 63, subpart A. However, such affected sources are subject to the requirements of § 63.703(g), and must record the amount of HAP utilized annually and report that quantity to the Administrator.

In addition to the above-proposed requirements, it is proposed that whenever solvent is added to the wash sink, the owner or operator of a magnetic tape manufacturing operation that uses wash sinks containing HAP to clean removable parts shall calculate and record the freeboard ratio of each sink, if maintenance of a freeboard ratio is the chosen compliance method. Times during which a freeboard ratio of 75 percent or greater is not maintained is a violation of the standards and should be noted in the aforementioned quarterly reporting.

II. List of Source Categories

Section 112 of the amended Act requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Included on that list were major sources emitting HAP from magnetic tape manufacturing operations. Thus, the source categories to be regulated by the proposed standards are existing and new major sources emitting HAP from magnetic tape manufacturing operations.

There are a total of 25 facilities that make up the magnetic tape source category. For the purposes of estimating environmental, energy, cost, and economic impacts, an evaluation was conducted to determine which sources would be subject to the proposed rule. Of the 25 facilities, 14 were determined to meet the major source definition. One of these major sources is expected to fall below the solvent usage cutoff identified in § 63.701(a)(2) and will therefore only be subject to recordkeeping and reporting requirements. The remaining 11 sources are not expected to be major and, thus, are not expected to be regulated by these standards.

Since 1988, 17 magnetic tape manufacturing facilities have ceased operation. However, six new coating lines were constructed; two are located at two new plants and the remaining four were added to four existing facilities. No new plants are expected to be built over the next 5 years, although the trend of adding new lines to existing facilities is expected to continue at the same rate. Therefore, six new lines are expected to be built over the next 5 years, an approximate rate of one per year.

III. Background

Magnetic tape manufacturing operations have previously been regulated by the EPA. The new source performance standards (NSPS) for the magnetic tape manufacturing industry were promulgated on October 3, 1988 (53 FR 38892). The NSPS are national standards that limit volatile organic compound (VOC) emissions from the coating operation and the mix preparation steps at new magnetic tape manufacturing facilities.

The NSPS include control requirements for new coating operations using greater than or equal to 38 cubic meters (m^3) (10,000 gallons [gal]) of solvent per year and for modified or reconstructed coating operations using 370 m^3 (98,000 gal) of solvent per year. Coating operations that are below these solvent usages are subject only to reporting and recordkeeping requirements.

The NSPS require new coating operations to recover or destroy 93 percent of the VOC content of the solvent applied at the coater. This same requirement applies to any modified or reconstructed coating operation that was achieving less than 90-percent control when it was modified or reconstructed. However, an existing coating operation that demonstrates an overall VOC control efficiency greater than or equal to 90 percent before modification or reconstruction is not required to add additional controls but has to maintain an overall control level equal to or greater than the previously demonstrated control (up to an overall VOC control efficiency of 93 percent).

The NSPS also require new mix preparation equipment to be covered and vented to the 95-percent efficient control device if it is constructed concurrently with any control device other than a condenser. For other cases, at a minimum, mix preparation equipment has to be equipped with a cover meeting particular specifications.

Under the NSPS, sources can also comply with the rule by using coatings that contain a maximum of 0.2 kilograms of VOC per liter of coating solids as calculated on a weighted average basis for each nominal 1-month period. Since the promulgation of the NSPS, no source subject to the rule has complied by meeting this provision of the standards.

As of the date of proposal of the NSPS (January 22, 1986), any new, modified, or reconstructed lines in any State are subject to the NSPS. As of March 1993, six coating lines are known to be subject to the NSPS.

In addition to the NSPS, several State regulations that apply to the magnetic tape manufacturing industry have been developed. Twenty-eight States limit VOC emissions by requiring that the coatings used contain less than 347 grams per liter (g/L) (2.9 pounds per gallon [lb/gal]) of coating applied, excluding water. This applies to 12 operating facilities and was recommended by a 1977 Federal control techniques guideline (CTG) for existing stationary sources ("Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coatings of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks," Document No. EPA–450/2–77–008). Based on the average VOC content of the coatings used by the magnetic tape industry, this is approximately equal to 83-percent control. Two States limit VOC emissions by requiring that the coatings used contain less than 359 g/

[4] Ibid.

L (3.0 lb/gal) of VOC. One facility is located in one of those States and is therefore subject to this requirement. Five facilities in California are subject to rules that limit the VOC content of their coatings to either 120 g/L (1.0 lb/gal) or 264 g/L (2.2 lb/gal) of VOC, depending upon local district regulations. All of the above coating limits can also be met through the use of add-on controls, which is the method all known magnetic tape facilities have chosen for compliance. Finally, four facilities are located in ozone attainment areas regulated by the national ambient air quality standards and are not subject to additional control requirements at this time.

There has also been some regulation of VOC emissions from cleaning activities in the magnetic tape industry. In California, the Bay Area Air Quality Management District requires that owners or operators maintain a minimum freeboard ratio in their wash sinks or vent wash sink emissions to a control device. Four facilities are located in the California Bay Area. Illinois requires facilities with VOC emissions greater than 110 Mg/yr (100 tons/yr) that are located in nonattainment areas to cover vessels during cleaning. However, there are no known magnetic tape manufacturing sources with VOC emissions above this level located in Illinois.

In developing today's proposed standards under the Act, the Agency used the information gathered through its previous regulatory activities, described above, to the greatest extent possible. The status of the proposed standards and the basis for selecting the regulatory alternatives were presented to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) in November 1992 at a meeting attended by industry, State and local regulatory agency representatives, and representatives from environmental groups.

IV. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology" (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)).

V. Summary of Environmental, Energy, Economic and Cost Impacts

A. Environmental Impacts

This section will discuss the incremental increase or decrease in air pollution, water pollution and solid waste generation that would result from implementing the proposed standards. Nationwide impacts are provided for existing sources and new sources. The impacts on new sources are based on a projected six new lines in the industry that would be located at existing plants; no new plants are expected to be built. The sizes of the new lines are expected to reflect the sizes of existing lines; four are estimated to be large, one to be medium, and one to be small. Impacts on new sources are presented on a per-line basis in chapter 7 of the BID (see **ADDRESSES**). The estimated impacts on existing and new sources are also summarized in sections VI.C and VI.D in comparing the two regulatory alternatives considered for the proposed standards.

1. Air Pollution Impacts

The HAP emissions from most of the emission points can be controlled by the use of add-on control equipment such as carbon adsorbers, condensers and incinerators. At other emission points, equipment standards and work practice standards are proposed to limit HAP emissions. Emissions of VOC that are both HAP and non-HAP may be controlled in the process of meeting the requirements for HAP removal. The quantity of those non-HAP VOC's that will be removed, however, has not been quantified. The estimated primary and secondary air pollution impacts that would result from implementing each alternative are summarized below for new and existing sources.

a. *Primary air pollution impacts.* The immediate air pollution impacts caused by the proposed standards would be a reduction in the emission of solvent HAP by the source category. At baseline conditions (i.e., the conditions that exist in the absence of NESHAP), total solvent HAP emissions from existing sources are estimated to be 4,060 Mg/yr (4,470 tons/yr). If the proposed standards were enacted, these emissions would drop to approximately 1,980 Mg/yr (2,170 tons/yr). This is a total estimated HAP emission reduction of 2,080 Mg/yr (2,300 tons/yr). The HAP emission reduction could also potentially result in a decline in ambient VOC levels, and therefore a reduction in ozone and photochemical smog formation. For new sources built over the next 5 years, the proposed standards are estimated to reduce solvent HAP emissions from a baseline level of 368 Mg/yr (405 tons/yr) to a level of 227 Mg/yr (250 tons/yr), an incremental reduction of 141 Mg/yr (155 tons/yr).

The proposed standards are also estimated to reduce HAP particulates from existing sources by 0.27 Mg/yr (0.3 ton/yr), from an estimated baseline level of 0.39 Mg/yr (0.43 ton/yr) to a level of approximately 0.12 Mg/yr (0.13 ton/yr). At new sources, particulate emissions are expected to be reduced by approximately 2 Mg/yr (2.2 ton/yr), from a baseline level of 2.1 Mg/yr (2.3

ton/yr) to a level of 0.12 Mg/yr (0.14 ton/yr). The baseline emissions of particulate HAP are greater for new sources than for existing sources because of assumptions made for new sources. All new sources were assumed to use particulate HAP, whereas particulate HAP are not used at all existing sources. Also, some existing sources control emissions of particulate HAP. Since the NSPS do not require control of particulate HAP, it was assumed that new source emissions of particulate HAP would be uncontrolled.

b. *Secondary air pollution impacts.* Secondary emissions of air pollutants result from generation of the energy needed to operate the control devices required by the proposed standards. For those facilities that currently operate a control device, the energy requirements of the proposed standards are incremental, i.e., in addition to the current energy expended at a facility. The combustion of natural gas in incinerators will result in particulate matter (PM), nitrogen oxides (NOx), and carbon monoxide (CO) emissions. The combustion of fuel oil in the boiler used to produce steam for the fixed-bed carbon adsorption system will result in PM, NOx, and sulfur oxide (SOx) emissions.

As a result of implementing the proposed standards at existing sources, PM emissions are estimated to increase by 1.3 Mg/yr (1.4 tons/yr), NOx emissions are estimated to increase by 4 Mg/yr (4.4 tons/yr), SOx emissions are estimated to increase by 17 Mg/yr (19 tons/yr), and CO emissions are estimated to increase by less than 0.01 Mg/yr (0.01 ton/yr). The magnitude of the secondary pollutants generated by the operation of the control devices is expected to be much smaller than the magnitude of the HAP emissions being reduced. Under the proposed standards, 23 Mg/yr (25 tons/yr) of secondary pollutants are anticipated but 2,080 Mg/yr (2,300 tons/yr) of HAP emissions would be expected to be reduced. At new sources, 0.4 Mg/yr (0.5 ton/yr) of PM emissions, 5.4 Mg/yr (6 ton/yr) of SOx emissions, and 1.3 Mg/yr (1.4 ton/yr) of NOx emissions are estimated to be generated. Secondary pollutants projected for new sources are based on all new sources using carbon adsorption as a control technology. As with existing sources, secondary impacts are expected to be small compared to primary air pollution impacts.

2. Water Pollution Impacts

The only wastewater stream generated from magnetic tape manufacturing operations results when the carbon bed in the carbon adsorption system becomes saturated with HAP and is desorbed with steam. Once the steam (containing solvent) is condensed and the solvent removed from it, the resulting water is discharged to a POTW. (See discussion of wastewater treatment systems in section VI.B.) Because the proposed standards require that additional HAP air emissions be controlled over baseline conditions, more HAP may be processed through the wastewater treatment system. Because steam will be used, a greater quantity of water is expected to be discharged. It has been estimated that at existing sources an additional 5,600,000 L (1,460,000 gal) would be discharged under the proposed standards. This wastewater is from the three major sources that are known to perform wastewater treatment (as defined in the proposed rule) onsite. Assuming a HAP content of 50 ppmw in the wastewater, the waterborne HAP discharged from this source would be 0.28 Mg/yr (0.31 ton/yr). At new sources, the wastewater discharge that would result is estimated to be 1,024,000 L/yr (271,000 gal/yr). The associated HAP discharged in this wastewater is estimated to be 0.05 Mg/yr (0.06 ton/yr).

3. Solid Waste Impacts

The only solid waste impacts from the add-on control systems come from carbon adsorption units. Solid waste impacts resulting from the proposed standards are only those impacts that are in addition to the solid waste currently generated at a magnetic tape manufacturing operation (i.e., incremental over baseline). It is assumed that the control of the additional emission points at an affected source that has an existing carbon adsorption system would not decrease the life of the carbon bed. Thus, there are no incremental solid waste impacts from these sources. Solid waste will result from existing sources that require new carbon adsorption systems in order to comply with the proposed standards. It is estimated that one existing source will add a carbon adsorption system to meet the requirements of the proposed standards. The annual solid waste impacts of the proposed standards that are expected to result from the operation of the new carbon adsorption system are estimated to be less than 0.1 Mg/yr (0.1 ton/yr). Likewise, for new sources, solid waste impacts will only result from the addition of small lines that are installed at a currently uncontrolled plant. These impacts are estimated to be less than 0.01 Mg/yr (0.01 ton/yr). All of these impacts were determined under the assumption that carbon beds have an average life of 5 years.

B. Energy Impacts

The energy impacts from the proposed standards are a result of: (1) The additional natural gas required by those facilities currently using incineration,

(2) The fuel necessary to produce the additional steam required by existing carbon adsorption systems, and

(3) The additional electricity requirements associated with control device operation as well as the operation of the ventilation fan required for controlling particulate HAP emissions.

Under the proposed standards for existing sources, natural gas consumption is estimated to increase by 70 GJ/yr (65×10^6 Btu/yr), steam consumption is estimated to increase by 20,160 GJ/yr ($19,125 \times 10^6$ Btu/yr), and electricity consumption is estimated to increase by 600 GJ/yr (570×10^6 Btu/yr). The total increase in energy requirements for existing sources would be 20,830 GJ/yr ($19,760 \times 10^6$ Btu/yr). For new sources it is assumed that carbon adsorption systems would be used because this is the type of control device used predominantly in the industry. The increase in steam consumption would be approximately 6,430 GJ/yr ($6,100 \times 10^6$ Btu/yr) and the increase in electricity consumption would be approximately 33 GJ/yr (31×10^6 Btu/yr).

C. Economic Impacts

The economic impact analysis estimates that only one affected source may experience adverse economic impacts. This result should not adversely affect the magnetic tape manufacturing industry, the economy, competition, or any other economic concerns.

An analysis was conducted to assess the economic impacts of the proposed regulation. Price, output, and employment impacts were calculated on a facility-specific basis as well as on an industry-wide basis. A worst-case scenario was used to calculate the facility-specific impacts.

The analysis calculated price impacts on magnetic tape products such as blank recording, audio, and computer media. The facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of approximately 0 percent would be required of some facilities while a maximum price increase of approximately 5 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to

be required to increase their prices by approximately 1 percent or greater.

The analysis recognized, however, that some facilities may be able to absorb a portion of their increased costs. Therefore, an additional analysis was conducted for the 4 facilities expected to experience price increases of approximately 1 percent or greater. An examination of the regulation's effect on the facilities' net income and capital availability revealed that one facility would be significantly impacted. This facility has been identified as a small business.

The economic analysis also examined the proposed regulation's impact on industry output and employment. The magnetic tape industry is expected to experience a 0.1-percent reduction in output. Assuming a one-to-one relationship between output and employment, the industry can also be expected to experience a similar reduction in employment.

D. Cost Impacts

For existing major sources, the proposed standards are estimated to result in a total industry-wide capital investment of $2,263,600. This cost includes the capital cost of control devices required to achieve compliance with the proposed standards. The annual cost associated with the proposed standards is $400,120/yr. This cost includes the capital cost of control (annualized, assuming a 7-percent interest rate and a 10-year equipment life), annual compliance costs including initial performance tests and ongoing monitoring, and annual reporting and recordkeeping costs. The annual control cost is approximately $174,240/yr, the annual compliance cost is approximately $115,640/yr, and the annual reporting and recordkeeping costs are approximately $110,240/yr. The associated cost effectiveness of the proposed standards is estimated as $190/Mg ($170/ton). For new sources, the costs vary depending on whether a carbon adsorber or an incinerator is the control device used. With either system, the total capital investment of the proposed standards is approximately $500,000. The total annual costs, which include all of the items cited above, are estimated to be $349,360/yr, with an associated cost effectiveness of $2,470/Mg ($2,250/ton) if a carbon adsorption system is used. To compare the costs of various control devices, the cost analysis was also repeated assuming incineration was used at new sources. If an incinerator is used, the annual costs are estimated as $270,367 with an associated cost effectiveness of $1,910/Mg/yr ($1,740/ton/yr).

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standards.

A. Selection of Pollutant and Source Category for Control

In this section, the pollutants and source category selected for control by the proposed standards are identified. The potential for subcategorization and the solvent usage cutoff established for this source category are also discussed. Finally, a discussion of area source regulation is presented.

1. Identification of Pollutants and Source Category

Magnetic tape manufacturing operations are sources of both VOC and particulate emissions. The specific pollutants regulated by the proposed standards are those VOC's and particulates that are listed as HAP in section 112(b) of the amended Act.

The solvent HAP typically used in the magnetic tape manufacturing industry are methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), toluene, xylene, and ethyl benzene. These HAP are used predominantly in the coating operations. The HAP used for cleaning are most typically MEK and toluene. All of these HAP are also VOC's. Other non-HAP solvents that are used in magnetic tape operations are tetrahydrofuran, cyclohexanone, and acetone. Acetone is used only for those magnetic tape manufacturing operations involving a paper substrate. Particulates, which are magnetic particles containing iron, chrome, and/or cobalt, are also used in this industry. The particulate HAP used are those containing cobalt and chromium.

As discussed earlier, the list of source categories for which NESHAP will be developed was published in the **Federal Register** on July 16, 1992 (57 FR 31576), and includes major sources performing magnetic tape manufacturing operations. Thus, emissions of HAP from new and existing major magnetic tape manufacturing operations are being regulated by the proposed rulemaking.

Products that are manufactured as a result of magnetic tape manufacturing operations include magnetic products such as audio and video tape and computer diskettes, and non-magnetic products such as leader tape. Leader tape is the tape at the beginning of an audio or video cassette that does not contain magnetic media; it is manufactured using the same methods as magnetic tape. Therefore, leader tape production is included in the definition of magnetic tape manufacturing operations.

There may also be some facilities in this source category that produce multiple products, some that involve magnetic media and some that do not. In cases where the nonmagnetic tape products are produced using the same pieces of equipment as the magnetic tape products, and the manufacture of nonmagnetic products uses HAP such as HAP solvent, the Agency is proposing that the pieces of equipment being used for both magnetic and non-magnetic products be controlled, regardless of which product is being manufactured. The process (and hence emissions of HAP) is essentially the same except that no magnetic particles are added to the coating mix. The control systems would be in place and would be applicable for both products. This regulation, therefore, applies to all products produced at magnetic tape production facilities (provided HAP are used in the production), regardless of whether magnetic particles are added to the coating mix, as long as the same or some of the same equipment is used. Equipment that coexists with magnetic tape equipment but is never used in magnetic tape manufacturing does not need to be controlled even if HAP are emitted.

At sources where research or laboratory facilities are collocated with production lines, the research or laboratory facilities are subject to the proposed standards. The close proximity of these lines allows control of the research or laboratory facilities by production line control devices. The mix of solvents used in research or laboratory facilities may differ from those used on production lines, and affect operation of the control device. Therefore, the costs to control the variety of solvents that would be used in research or laboratory facilities were considered in calculating control costs.

The proposed definition of research or laboratory facility is from section 112(c)(7) of the CAA. One of the criteria in the definition is that the facility is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner. The EPA is soliciting comments on what the sale of products in a *de minimis* manner would be for the magnetic tape manufacturing industry, including if research facilities sell any products.

The process for manufacturing magnetic and leader tape consists of mixing the coating ingredients (magnetic particles for magnetic tape, resins and solvents for both types of tape), conditioning the base film, applying the coating to the base film

(either a plastic or paper substrate), orienting the magnetic particles (magnetic tape), removing the solvents by evaporation in a drying oven, and finishing the tape by calendering, rewinding, slitting, testing, and packaging. Most of the HAP emissions from magnetic tape manufacturing operations result from the coating operation, and to a lesser degree from the ancillary activities such as solvent storage, mix preparation, transferring solvent through piping, equipment cleaning, treatment of solvent-laden waste material, and wastewater treatment.

This source category was evaluated to determine if subcategorization was appropriate. The Agency's analysis indicates that no subcategorization is necessary. There are no distinct process differences within the source category and no distinction between sizes of facilities in terms of what controls are technically feasible. Both small and large existing sources have implemented the control technologies that form the basis for MACT.

2. Criteria for Applicability Determination

Only major sources are being regulated by the proposed standards. A source is considered major if it has the potential to emit, considering controls, greater than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP. (Area sources were evaluated to determine if they should be regulated; see discussion that follows.) One way to make the determination of whether a source is an area source or a major source is to conduct a facility-wide material balance of solvent and particulate HAP used at the plant. Any HAP that is not recovered or controlled contributes to the potential HAP emissions from a facility. It is important to note that the major source determination is based on the total, potential HAP emitted annually inside the fenceline of a facility, not just from magnetic tape manufacturing operations. Potential emissions are estimated assuming operations occur 24 hours per day, 365 days per year.

For this source category, a solvent usage cutoff has also been proposed. Major sources that use less than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP are only subject to an annual reporting requirement (§ 63.703(g) of the proposed regulation), and are not subject to the control provisions of these standards or to some provisions of part 63, subpart A. A solvent usage cutoff was proposed to mitigate the impacts on some facilities in the industry as a result of the definition of potential to emit. The "potential to emit" is defined in part 70 and the proposed General Provisions to part 63 (58 FR 42760) as, "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design," and "any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

For the magnetic tape industry, it is conceivable that a plant would be physically and operationally designed to operate 24 hours per day, 365 days per year, because coating operations are continuous. This is particularly true for those facilities whose primary products are magnetic media and whose operations have been reported to operate on a more or less continuous basis. Some facilities, however, may produce magnetic tape as only one segment of their total manufacturing process. For example, one plant is known to produce magnetic tape on a limited basis and operate the magnetic tape coating lines for only a few days every year, so its actual emissions are much less than 10 tons/yr of any one HAP or 25 tons/yr of multiple HAP. It is unlikely that this plant would begin producing magnetic tape on a continuous basis. Based on potential to emit, however, this facility could be considered a major source and therefore be subject to all requirements of the proposed standard.

The cutoff value was selected so that it would not allow any major source that actually emits more than 10 tons/yr of any one HAP or 25 tons/yr of multiple HAP to be exempt from the control requirements. The solvent usage cutoff is equal to the major source emissions criteria because in the absence of control, almost all of the solvent used by a facility would be emitted. Therefore, even if a facility had no controls in place, if the solvent usage were below the cutoff, it would not be emitting greater than 9.1 Mg/yr of one HAP or 22.5 Mg/yr (25 tons/yr) of multiple HAP.

As discussed above, a cutoff established at this level would ensure that all major sources are subject to the proposed control requirements. However, once an owner or operator is subject to all control provisions of the standards by virtue of being a major source and exceeding the solvent usage cutoff, the usage cutoff is no longer a basis for determining applicability to the control requirements. That is, a subsequent reduction in HAP solvent usage alone would not be sufficient to allow a source to avoid compliance with the proposed controls. The reason for this is that the source would already have the controls in place and operational. Therefore, the source should continue to operate them according to the rule.

Based on information currently available to the EPA, only one existing facility is a major source that would be exempt from the proposed control requirements because its solvent usage is estimated to remain below the proposed solvent usage cutoff. This source would still be subject to the annual solvent usage reporting and recordkeeping requirement required by 63.703(g).

3. Area Source Evaluation

The Act provides the Administrator with authority to regulate area sources. An area source is defined as one that is not a major source. In order to list a category of area sources for regulation, the Administrator must find that the sources in a category, individually or in aggregate, pose a threat of adverse effects to human health or the environment, warranting regulation under section 112.

For the purpose of estimating the number of major sources, the Agency examined each source's potential to emit, considering controls. Many of the magnetic tape manufacturing operations already have emissions controls in place that reduce their emissions to below the criteria for major sources. For estimating the number of major sources, the Agency assumed that the emission limitations would be federally enforceable, and therefore highly controlled sources would not be "major" for the purposes of the magnetic tape manufacturing NESHAP. Of the 25 known facilities in this source category, 11 are considered to be area sources based on the Agency's estimate of their potential HAP emissions. The data available on the area sources were evaluated to determine whether regulation of area sources should be proposed.

Two of the area sources are research or laboratory facilities as defined by section 112(c)(7) and as such are not subject to the standards. (Research or laboratory facilities collocated with production facilities are subject to the standards.) Area source 3 uses particulate HAP only; emissions are estimated to be less than 1 pound per year. Area source 4 uses a combination of HAP and non-HAP solvent; because

the quantity of HAP solvents used is less than the quantity of non-HAP solvents, total HAP emissions are low, approximately 5 Mg/yr. Area source 5 also uses a combination of HAP and non-HAP solvents in their magnetic tape operations. At one time Area source 5 was considered a major source, but this source has recently implemented strict controls on cleaning solvent emissions. Based on the Agency's estimate of the reduction in solvent emissions, this source is now considered an area source. Area source 6 also uses HAP and non-HAP solvents, and most of the solvents used are HAP. However, this particular source is highly controlled and is therefore only emitting approximately 5 Mg/yr of HAP. Area sources 7 through 11 do not use any HAP in magnetic tape operations. Therefore, unless they switch their operations to begin using HAP, they are not subject to the standards. None of these sources are collocated at major sources. If any of these area sources becomes a major source, they would have to notify the Agency and will have 1 year from the date on which they became major sources to install control devices to conform to the proposed standard.

As noted above, section 112(c) states that categories of area sources emitting HAP may be listed and regulated if the Administrator finds the sources, individually or in the aggregate, present a threat of adverse effects to human health or the environment (see 57 FR 31576: July 16, 1992, for further discussion of this statutory language). To determine a threat of adverse effects, the Agency examines available data on facilities, emissions, and health and environmental effects of the emitted HAP. In this case, the Agency has adequate health data for determining whether there is a likely threat of adverse effects to humans for area sources emitting toluene and MEK. The Agency conducted a screening analysis of sources emitting these chemicals, either alone or in combination. Based on this analysis, the Agency does not believe there is a threat of adverse effects from the area sources of magnetic tape facilities that emit these two chemicals. For the remaining emitted HAP, data required to determine the potential for adverse effects are inadequate. As such, the Agency is unable to determine whether there is a threat of adverse effects from area sources emitting any other combination of HAP. The Agency may repeat the analyses of these sources in the future, to evaluate the potential for human health and environmental effects, if appropriate data become available. Until such analyses are conducted, the Agency will not regulate area sources in this rule.

B. Selection of Emission Points

The Agency examined all known HAP emission points associated with the manufacturing of magnetic tape for potential control. They are described below.

a. *Solvent storage tanks.* Small tanks are generally used to store the solvent HAP, which may be virgin material, spent solvent from cleaning or from off-specification mixes, or solvent from any stage of the solvent recovery process. The tanks operate at or slightly above atmospheric pressure. A facility typically has from 1 to 12 storage tanks, with a total capacity ranging from 757 to 75,700 liters (L) (200 to 20,000 gallons [gal]). Storage tanks, as discussed in the proposed rulemaking, do not refer to tanks that are part of the process (e.g., mix preparation equipment). The HAP emissions from storage tanks to the air occur through working losses during tank loading or breathing losses due to diurnal temperature changes.

b. *Mix preparation equipment and particulate transfer operations.* The mix preparation usually takes place in a room or rooms separate from the coating line. The components of the mix are first blended and then transferred to a series of mills to disperse the aggregates of magnetic particles without reducing particle size. The mix is circulated and filtered in holding tanks to prevent binders from curing, metal particles from settling out, and to remove any oversize contaminants. The coating mix is pumped to and from the different pieces of mix preparation equipment through closed lines. The mix preparation equipment to be controlled by the proposed standards includes all of the equipment used in preparing the coating mix including mixers, holding tanks, and polishing tanks. Mills, which are pressurized equipment used for thoroughly dispersing the aggregates of magnetic particles without reducing particle size, are not included as mix preparation equipment. This is because these pieces of equipment are under pressure and, as such, no emissions are expected, nor could they be vented to a control device.

Particulate HAP can either be transferred through closed systems or can be manually poured through hatches in the covers of the mix preparation equipment. A small amount of particulate HAP is emitted while transferring particulate from the bag or storage bin to the mix tank.

c. *Coating operation.* In the coater, the substrate to be used for the magnetic or leader tape passes over a support roll while the coating mix is applied. The thickness and amount of coating applied vary with the product. During the coating application step, some solvent HAP will volatilize. The amount that is emitted depends on site-specific variables such as the coating mix composition and the type of coater. Immediately following the coater, magnetic tape is guided through an orientation field consisting of an electromagnet or permanent magnet, which aligns the individual magnetic particles in the direction of the intended recording. (Leader tape does not go through the orientation process because magnetic particles are not used.) The magnetic or leader tape is passed through a drying oven, where the remaining solvents in the coating mix evaporate. It is expected that any solvents on the coated tape that are going to evaporate will do so by this point in the process. Therefore, there is no solvent evaporation in subsequent steps. After drying, the finished product may be: (1) Calendered to compact the dry coating and to smooth the surface; (2) Slit to the desired width; and (3) Packaged and labelled, either in parts produced in-house or in pre-purchased plastic casings.

d. *Cleaning activities.* Cleaning is a task performed differently at each plant. Some plants may clean equipment between each batch of coating, while others may clean only between product changes. Sometimes virgin solvent is used once and immediately treated as a waste. At other plants, cleaning solvent may be used several times before it is considered "spent."

Four basic categories of cleaning activities have been identified for this industry: (1) Flushing fixed lines; (2) Cleaning tanks; (3) Cleaning fixed exterior surfaces; and (4) Cleaning miscellaneous removable parts.

The flushing of fixed lines involves flushing solvent through fixed lines not associated with the cleaning of a tank (e.g., the line from the mix preparation equipment to the coater). A fixed line is one that is stationary during normal operation but can be removed from its original location for cleaning. Emissions can occur if the solvent used for cleaning or collected after cleaning has occurred is exposed to the air.

Tank cleaning may be either an open-top or closed-top process. Open-top tank cleaning is the practice of cleaning a tank that either has no cover or whose cover has been removed. Solvent may be added and drained via buckets or pipes. The interior of the tank may be

manually cleaned with brushes while the solvent is in it. Closed-top tank cleaning is the practice of cleaning a tank while using a cover that seals the top of the tank. Solvent is added to and drained from the tank via pipes. An automated brush inside the tank may scrub the sides while the solvent is in the closed tank. Emissions occur when the solvent used in the cleaning process is exposed to the air, and in a closed system, equipment leak emissions also occur. Based on test data from industry, emissions from both types of cleaning processes are approximately equal.

Cleaning fixed exterior surfaces involves cleaning the surface area of a fixed piece of equipment with rags or brushes. The solvent that is on the rag or brush evaporates to the air. The surfaces to be cleaned are typically on the coater. The ventilation system of the enclosure around the coater draws these emissions to the outside air.

Cleaning removable parts involves cleaning parts that have been moved from their normal position to a wash tank or sink containing solvent. The solvent is volatile and thus evaporates into the air above the sink. The sink is usually ventilated; thus emissions are discharged to the atmosphere.

Rags used for miscellaneous cleaning activities will contain some residual solvent and will therefore result in air emissions.

e. *Waste handling devices.* The two waste handling devices most commonly used in the magnetic tape manufacturing industry are pot stills and filter dryers. Both are devices in which solvents are recovered from waste materials. In the pot still, liquid wastes are pumped through closed piping into the pot still and heated to evaporate the solvent portion of the waste. The filter dryer is used to treat solid wastes such as filters, rags, and brushes, which are manually placed in the dryer and heated to evaporate the solvent portion. With both the pot still and the filter dryer, the evaporated solvent is condensed, and the recovered liquid sent to a storage tank. Air emissions may occur through the condenser vent.

f. *Wastewater treatment.* At a magnetic tape manufacturing facility, the only significant source of wastewater that contains HAP results from steam desorption of the carbon adsorption system beds used to recover HAP air emissions. After the steam desorbs the carbon adsorber bed, the solvent/water mixture is condensed and separated by gravity into distinct solvent and water phases.

The solvent phase is distilled to separate it into its individual components. Potential air emissions could result from residual solvents in the water phase if it is not further treated prior to discharge to the publicly owned treatment works (POTW). At magnetic tape manufacturing facilities, the water phase is treated through steam stripping to remove residual solvent. The solvent compounds recovered through steam stripping are then purified into the individual solvent components.

g. *Condenser vents in the solvent recovery area.* The solvent recovery area is that area in a plant that contains the equipment used to: (1) Remove HAP solvent from the air stream; (2) recover the solvent; and (3) purify the solvent for reuse in the process. At a magnetic tape manufacturing facility, this equipment would include the control device (a carbon adsorption system or condenser), the wastewater treatment system (in the case of carbon adsorbers), and distillation units. Emissions of HAP to the air occur in the solvent recovery area from atmospheric condenser vents, including condenser vents on the steam stripper distillation columns and condenser vents to condense steam from carbon adsorber regeneration. The vent on a condenser that is used as a primary air emission control device is not considered part of this emission point.

h. *Equipment leaks.* In magnetic tape manufacturing operations, solvent is pumped through piping and process equipment as it travels to or from storage tanks and from the mix preparation equipment to the coater. Facilities that perform onsite solvent recovery and wastewater treatment will also have process piping and equipment within these areas. The volatile HAP will be emitted through leaks from equipment such as pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges or any other connecter in VOC service.

i. *Packaging and labeling.* This process occurs after the product has been coated, rewound, and slit into the desired width (or punched into diskettes). Whatever the final form of the product, printed materials such as labels, boxes, and inserts are usually part of the final package. Most facilities purchase these items preprinted. Two, however, are known to print product identification codes on boxes. This operation involves HAP solvents (contained in the ink) that volatilize as the ink dries.

C. Selection of Basis and Level of the Proposed Standard for Existing Sources

1. Selection of the Maximum Achievable Control Technology Floor

Section 112 requires the Agency to set standards for new and existing sources of HAP emissions that represent the maximum degree of reduction achievable, taking into consideration the cost of achieving such emission reductions, as well as any non-air quality health and environmental impacts and energy requirements. As discussed in section IV.B., this level of control cannot be less stringent than the MACT floor. For existing sources in source categories with less than 30 sources, such as this one, the MACT floor is the average emission limitation achieved by the best performing 5 sources in the source category.

The EPA is considering more than one interpretation of the statutory language concerning the MACT floor for existing sources. In the case of this standard, the EPA does not believe that the legal interpretation would make a difference for most of these emissions points. However, for particulate transfer operations (discussed later in this section and also in section VI.G of this preamble), there is a possibility that one of the five best performing sources in fact is achieving a lower level of control and, in this case, the interpretation of the MACT floor could make a difference. The EPA is soliciting comment on the different legal interpretations of the statutory language in a separate **Federal Register** notice, which is a reopening of the comment period for the national emission standards for hazardous organic air pollutants from the synthetic organic chemical manufacturing industry. Persons wishing to comment on the legal interpretations should refer to that rulemaking and submit comments to docket number A–90–19. However, comments on the MACT floor analysis that are specific to magnetic tape manufacturing operations should be addressed to docket number A–91–31, as noted in the beginning of this notice.

For this source category, information was gathered on all 25 of the known sources in the source category through surveys, site visits, and telephone calls. The MACT floor analysis included major sources and sources that are not considered major for the purposes of the nationwide impacts analysis. These area sources are the same as the major sources in every way except that they are highly controlled and thus are below the major source emission criteria. If these area sources were uncontrolled.

they would be considered major sources of HAP emissions.

The MACT floor for this source category was determined on an emission point-by-emission-point basis, which corresponds with the proposed narrow definition of affected source (see section VI.J of this preamble). Another way to establish the MACT floor, not used by the EPA in this proposal, would be to identify a mass emission limit or mass emission reduction percentage across the whole facility. The EPA does not expect that there would be a large difference in the resulting MACT floor for this industry if the latter approach were used. The MACT floor for each of the emission points is identified below.

a. *Solvent storage tanks.* The highest level of control that was found for storage tanks in this source category involved a closed vent system, i.e., a system including piping, ductwork, etc., that is not open to the atmosphere and that transports vapor to a control device. The overall HAP control efficiency of this practice is 95 percent and is the average level of control achieved by the five best performing magnetic tape manufacturing operations in the source category. Thus, the MACT floor for the storage tanks emission point is an overall HAP control efficiency of 95 percent.

b. *Mix preparation equipment.* The highest level of control for emissions from mix preparation equipment that was found in this source category was to cover the equipment and vent the emissions to a control device. Of the five best performing sources in this source category, one achieves a control level of 98 percent. The others achieve a control level of 95 percent. The average control level achieved by the best performing five sources in this source category, therefore, is approximately 96 percent. This control level does not correspond to any particular control technique. Therefore, the MACT floor is based instead on the median control level achieved by the five best performing sources. This level is 95 percent; thus, the MACT floor is an overall HAP control efficiency of 95 percent.

Particulate emissions may also result from coating mix preparation. The MACT floor control level for this emission point is discussed in subsection e, below.

c. *Coating operation.* The coating application and drying emission points, collectively referred to as the coating operation, include emissions that result from applying the coating mix at the coater and drying the coated tape in the oven. The coating operation also includes all equipment between the coater and the dryer.

The highest level of control that is used in this source category to limit HAP emissions from coating operations is to vent emissions through an enclosure to a control device. Existing sources in this source category vent emissions through a total enclosure, thereby capturing 100 percent of the emissions. The emissions are directed to a control device. Of the five best performing sources in this source category, one vents the emissions from the total enclosure to an incinerator, achieving an overall HAP control efficiency of 98 percent. The remaining four best performing sources vent the emissions from their total enclosure to a control device that is 95-percent efficient, achieving an overall HAP control efficiency of 95 percent. Thus, the average control level achieved by the five best performing sources in the source category is approximately 96 percent. Because this does not correspond to any particular control technique, the median control level of the five best performing sources (i.e., a 95-percent overall HAP control efficiency) is the basis for the MACT floor. Thus, the MACT floor for coating operations is an overall HAP control efficiency of 95 percent.

d. *Waste handling devices.* Both types of waste handling devices (pot stills and filter dryers) used in this industry are equipped with condensers to recover the solvent. The highest level of control for the condenser vent that was found in this source category is venting emissions from it to a control device. The overall HAP control efficiency of this practice is 95 percent and is the average level of control achieved by the five best performing waste handling devices. Therefore, the MACT floor level of control is capture and control of 95 percent of HAP emissions.

e. *Particulate transfer operations.* To control particulate emissions during mix preparation (when solid materials are transferred into the mix preparation equipment), owners or operators in this source category use an enclosed transfer device for transferring particulates into the mix preparation equipment. An enclosed transfer device is a system in which particulate HAP are conveyed from the storage bin to the mix preparation equipment using equipment that completely contains the transferred material, so that particulate HAP do not enter the atmosphere as dust. The types of enclosed transfer devices currently used in magnetic tape manufacturing facilities include vacuum injection systems and bag slitter devices. The vacuum injection system draws particulate from a storage container into an enclosed hopper. The hopper uses gravity to feed a conveyer, which is also enclosed and which carries the material to the mix preparation equipment. With a bag slitting device, the bag of particulate raw material is placed into a hopper, the hopper is closed, and an internal mechanism slits the bag to release the particulate into an enclosed conveyer that feeds the mix preparation equipment. Alternatively, the hopper may be located above the mix preparation equipment and feed it directly.

Of the five best performing sources in this source category controlling particulate emissions, four use enclosed transfer devices. The average control level achieved by the five best performing sources in the source category is the arithmetic average of the control efficiency of the four enclosed transfer devices and the one without an enclosed transfer device. Although the control efficiency associated with an enclosed transfer device has not been quantified, the average control level of the five best performing sources would not be equivalent to any particular control technique. Therefore, the basis for the MACT floor is the median level of control achieved by the best performing five sources. The median level of control corresponds to the use of an enclosed transfer device. Thus, the MACT floor is the use of an enclosed transfer device for transferring HAP-containing particulates.

f. *Wash sinks for cleaning removable parts.* Two methods of control were found in the industry to control HAP emissions from wash sinks. Both methods were considered to be equivalent by controlling HAP emissions by approximately 88 percent. These methods were also the highest level of control achieved in the source category. One control technology involved venting the wash sink emissions through a hood (capture device) to a control device that is 95-percent efficient. The overall control efficiency is less than 95 percent because the capture efficiency is less than 100 percent. The second control technique involves maintaining a 75-percent freeboard ratio. A freeboard ratio is defined as the vertical distance from the liquid surface to the top of the wash sink divided by the smaller of the length or width of the sink evaporative area. Maintaining a freeboard ratio limits solvent HAP emissions because the solvent level in the sink is lower and solvent vapors remain in the sink; they do not rise to the air above the sink. When a freeboard ratio is maintained, the wash sink should not be ventilated

as this will draw the solvent vapors from the sink to the air above it. An overall HAP control efficiency of approximately 88 percent is the average level of control achieved by the five best performing sources in the source category, achieved either by venting emissions from wash sinks to the control device or by maintaining a freeboard ratio. Thus, the MACT floor is an overall HAP control efficiency of 88 percent.

g. *Cleaning involving the flushing of fixed lines.* Five sources in this source category flush the line between the coating operation and the mix preparation equipment with solvent to remove any hardened debris that may have collected. Three of the facilities use a closed system, which has been determined to have negligible emissions. In a closed system for flushing fixed lines, the empty line to be cleaned is disconnected from its original location and connected to two other containers. One is a closed container with cleaning solvent and the other is a closed container that is empty. Solvent is flushed from the container with cleaning solvent, through the line, and into the empty container. The only solvent emissions are from vents located on the containers. The two other major sources that perform this cleaning operation flush the solvent through the line into an open container. However, the container is in the total enclosure surrounding the coater, which is vented to a control device capable of removing 95 percent of the VOC emissions. Emissions from these control systems have not been quantified. However, emissions are thought to be very low, regardless of which system is used. The average level of control achieved by these five best performing sources is equal, achieved either through a closed system or by venting emissions from an enclosure (such as the one surrounding the coater) to the control device. Thus, either of these control methods is the MACT floor.

h. *Wastewater treatment systems.* Facilities that use steam to desorb the carbon beds of the carbon adsorption systems used for air pollution control generate significant quantities of wastewater (5 to 10 million gallons per year). All three of the facilities using steam to desorb the carbon adsorber beds use a steam stripper to remove HAP compounds from the wastewater discharge. The wastewater is typically preheated to its saturation temperature prior to being fed into the stripping column. Upon contact with the steam, the volatile components are transferred to the steam, and the steam/solvent mixture is removed from the top of the column and cooled in a condenser. The resulting water/solvent mixture is collected in a decanter; the solvent is sent to distillation for purification, and the water is returned back to the column. Clean water exits the bottom of the column. In this industry, a total HAP outlet concentration of less than 50 ppmw in the outlet of the stripper can be expected. Inlet concentrations to the column are typically in the 2- to 5-percent range. Given these inlet and outlet concentrations and the fact that the quantity of water entering and exiting the column is equal, the removal efficiency is greater than 99 percent. The extent to which a compound is removed via steam stripping is a direct function of its volatility. The HAP that are present in the wastewater from magnetic tape facilities (MEK, MIBK, toluene) are very volatile and thus highly strippable. In a properly-operated steam stripper, 99 percent of these HAP compounds can be removed, with a typical HAP concentration in the outlet from the steam stripper of less than 50 ppmw. This is the highest level of control achievable and is in practice at all three plants in the source category that perform this operation (no other sources have this emission point). Therefore, the MACT floor for this emission point is the use of a control device such as a steam stripper that reduces the HAP content of the wastewater from the separator by 99 percent prior to discharge to the POTW, or that results in a total HAP concentration of less than 50 ppmw in the wastewater discharge.

i. *Condenser vents in the solvent recovery area.* The condenser vents in the solvent recovery area emit HAP to the atmosphere. One way to control these emissions is to duct the emissions to the main control device. The overall HAP control efficiency of this practice is 95 percent and is the average control level achieved by the five best performing sources in the source category. Thus, the MACT floor for this emission point is an overall HAP control efficiency of 95 percent.

j. *Equipment leaks.* In any magnetic tape manufacturing operation there is equipment such as valves, flanges, pumps, and pressure relief valves that are a source of HAP emissions. (See discussion of equipment leak emissions in Section VI.B.) None of the major sources in this source category control emissions from equipment leaks. Therefore, the MACT floor is represented by a no-control level.

k. *Exterior surface cleaning, tank cleaning, and packaging and labeling.* The Agency also evaluated other emission points that were considered to contribute to HAP emissions from a facility. These other emission points are packaging and labeling operations, tank cleaning, and the cleaning of fixed exterior surfaces. Packaging and labeling involves the printing of product identification codes on boxes. Tank cleaning involves cleaning the inside of the coating mix tanks with solvents, and sometimes involves scrubbing the tank. Spent solvent is discharged to a waste holding container. Cleaning fixed exterior surfaces usually involves wetting a rag with solvent and wiping the item to be cleaned. All of the solvent used evaporates.

These emission points were evaluated by the Agency to determine their emission potential and possible control strategies. Industry-wide HAP emissions from packaging and labeling were estimated as 3.4 Mg/yr (3.7 tons/yr), those from tank cleaning were estimated as 140 Mg/yr (154 tons/yr), and those from exterior surface cleaning were estimated as 95 Mg/yr (104 tons/yr). No sources in the source category that perform these operations are controlling their emissions. Thus, the MACT floor is represented by a no-control level.

l. *Use of non-HAP solvents.* Some solvents used by the area sources in this source category are currently not listed as HAP under section 112(b), and as such are not regulated under this standard. These solvents include tetrahydrofuran, cyclohexanone, and acetone. Acetone is used for those magnetic tape manufacturing operations that involve coating a magnetic strip on a paper substrate, and is not suitable for coating that involves a plastic substrate. Currently, the Agency is developing a methodology to assess whether non-listed chemicals should be considered for addition to the list of hazardous air pollutants. Tetrahydrofuran, cyclohexanone, and acetone may become candidates for this process. Therefore, the Agency is not requiring that sources switch operations so that these non-HAP solvents are used. However, as the compounds are not currently listed in section 112(b), sources using and emitting these compounds and not emitting HAP compounds at a major source level are not subject to the proposed standards.

The proposed standards also do not preclude the use of water-based coatings. No existing sources are known to use water-based coatings. Therefore, they were not considered in setting the MACT floor. There does not appear to be a strong interest in their use in the magnetic tape manufacturing industry. Industry representatives have indicated that changing solvent formulation would likely involve changing most of

the other coating components and the coating equipment. This would require extensive research and development, which could take years. Furthermore, given the fact that little work has been done in formulating water-based coatings for use in magnetic tape manufacturing operations, it is unlikely that water-based coatings would be sufficient to comply with either the proposed standard or the NSPS for this industry. (See related discussion on the selection of the format of the standards in section VI.F.)

2. Regulatory Alternatives Considered

When determining the MACT floor for the affected source, the Agency evaluates more stringent regulatory alternatives that may be feasible. For this source category, two regulatory alternatives have been evaluated. These are summarized in table 3. The first alternative is the MACT floor, as discussed above. The additional requirements of regulatory alternative II (RA II) include the implementation of a leak detection and repair program to control equipment leaks and a work practice requirement for cleaning activities.

TABLE 3.—REGULATORY ALTERNATIVES

	HAP emission points										
								Cleaning activities			
Reg alt.	Storage tanks	Mix preparation equipment	Coating operation	Waste handling	Wastewater	Condenser vents	Piping leaks	Housekeeping	Removable parts	Flushing of fixed lines	Particulates
I	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	99 percent HAP removal or 50 ppmw HAP outlet concentration.	95 percent HAP removed.	No control.	None	75% freeboard ratio.	Closed system or vent to control.	Enclosed transfer of particulates
II	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	99 percent HAP removal or 50 ppmw HAP outlet concentration.	95 percent HAP removed.	LDAR program.	Use closed containers for collecting and dispensing cleaning solvent.	75% freeboard ratio.	Closed system or vent to control.	Enclosed transfer of particulates

The LDAR program evaluated for this source category actually involves both equipment modification and routine inspection and monitoring. The equipment found in this source category that would be subject to such a program includes valves, pumps, connectors, pressure relief devices, open-ended lines, and sampling connection systems. The program evaluated for these standards is analogous to the one required by the negotiated regulations proposed in subpart H of the hazardous organic NESHAP (see 57 FR 62628). Under this program, leaks from open-ended lines, sample connections, and pressure relief valves are eliminated through certain equipment modifications. Emission reductions for pumps, connectors, and valves are achieved through the LDAR program that involves monthly, annual, and quarterly inspections, respectively. During the inspections, a portable hydrocarbon detection device is used to determine whether the fitting is leaking. A leak is defined differently for each piece of equipment, ranging from 500 to 10,000 ppmv hydrocarbon. The program allows for reduced monitoring frequency if certain criteria are met. If a leak occurs, the fitting must be repaired or replaced. Although the LDAR program is not being used in the magnetic tape industry, the Agency considered it technically feasible for controlling equipment leak emissions from magnetic tape operations. The LDAR program is used in chemical manufacturing facilities, and the same types of fittings that are present in those facilities are present in magnetic tape operations.

The other control technique that is included in RA II is an equipment standard to control emissions from general cleaning activities. This work practice would require that closed containers be used for dispensing and collecting cleaning solvent. This would prevent solvent emissions from open containers of cleaning solvent that are associated with cleaning operations. Some facilities in the magnetic tape source category have reported using closed containers for dispensing cleaning solvent. Information on the specific characteristics of the containers was not reported, but one type of container that is available is a spring-loaded can that delivers solvent to a mesh surface at the top of the can only when a rag is pressed to the mesh. Although some solvent emission reduction would be expected from using these containers, the control level achieved by the median of the five best performing sources is zero. Thus, this control technique cannot be included as a MACT floor level control technique. It is, however, considered with RA II as a control technique that is more stringent than the floor.

As discussed in the selection of the MACT floor for existing sources, there are sources in the industry that capture coating operation emissions in a total enclosure and vent the emissions to an incinerator. If the total enclosure meets the Agency's criteria and the incinerator is properly operated, an overall efficiency of 98 percent may be achieved. (One source that was subject to the NSPS for this industry and operates an incinerator is estimated to achieve a 98-percent control level.) The Agency considered whether to include a 98-percent control requirement based on incineration as a regulatory alternative more stringent than the MACT floor. Such an alternative may eliminate the carbon adsorption systems and condensers currently being used to control and recover the solvent for reuse in the coating operation, because these systems may not be able to routinely achieve a 98-percent control efficiency. Solvent recovery is an in-process recycling operation which, although not pollution prevention, is very desirable (see discussion of pollution prevention in section VI.E.). The reuse of the solvent by the industry results in a lower overall consumption of solvent. In turn, the negative impacts from the production of solvent are reduced. Therefore, there are both environmental and cost benefits of solvent recovery. For these reasons, the Agency decided not to include thermal incinerators as a separate regulatory alternative for the magnetic tape manufacturing industry. The Agency is interested in receiving comments on this proposed approach.

There are other emission points at magnetic tape manufacturing facilities that were evaluated for possible control

strategies beyond the floor. These points include packaging and labeling, cleaning of tanks, and cleaning of fixed exterior surfaces. The packaging and labeling emission point was evaluated to determine if non-HAP solvents could be used. Solvent substitution was considered the only technically feasible control technique to reduce HAP emissions from packaging and labeling. However, after conversations with vendors who supply the inks to industry, it was concluded that no non-HAP solvents were available. Given the low HAP emissions from this emission point (3.4 Mg/yr total from two sources) and the absence of any control options, it has not been included for control in RA II.

Several control strategies were evaluated for controlling emissions from the cleaning of tanks and fixed exterior surfaces. The first strategy evaluated involved installing a total enclosure around the emission source and directing emissions from the enclosure to the existing add-on control device. This strategy was determined not to be technically feasible because the high volume, low concentration streams cannot be controlled by adding them to the other solvent-laden air that is being controlled by the existing control device. A second strategy that was evaluated involved using separate control devices particularly suited for high volume, low concentration streams for controlling these emission points. The Agency's analysis indicated that the cost effectiveness of such an option would be very high, exceeding $14,500/Mg HAP ($13,100/ton HAP) for tank cleaning. The cost effectiveness for controlling emissions from fixed exterior surface cleaning has not been quantified. However, it would be even higher than tank cleaning because the capital cost of control is comparable to that for tank cleaning and the emission reduction is even lower. (The estimate of nationwide HAP emissions from tank cleaning is 140 Mg/yr; for exterior surfaces it is 95 Mg/yr.) Finally, the use of other cleaning agents was evaluated as a potential control strategy. Non-HAP solvents were also determined not to be technically feasible in all cases because the cleaning solvent used for these emission points must be compatible with the solvents in the coating mix. Also, as was discussed in section VI.C.1., the substitution of the non-HAP solvents common to this industry is not being encouraged because of the lack of data on their toxicity. The use of soap and water was examined but was not able to clean adequately in most cases. There is research under way that examines the use of high pressure water to clean vessels in other industries, like the pharmaceutical industry. There is also ongoing research to examine new construction materials for vessels to make them easier to clean. Although these may lead to improvements in the future, this research was too preliminary to include in a regulatory alternative for the magnetic tape industry. Thus, after evaluating potential control strategies for tank cleaning and cleaning of fixed exterior surfaces, the Agency did not include in RA II any alternative beyond the general cleaning work practice described in the beginning of this section.

The Agency is currently developing a document describing alternative control techniques (ACT) for controlling VOC emissions from solvent used for cleaning operations. Some of these control techniques may be appropriate for controlling HAP emissions. One of the techniques evaluated in the ACT requires that a source develop a solvent accounting system that tracks the usage and disposal of cleaning solvent throughout a manufacturing facility. A program to test alternative cleaning solvents may also be implemented. The results of the ACT are not yet finalized and therefore have not been fully evaluated in terms of their applicability to this source category. State and local regulatory agencies that are interested in using this system to control emissions from cleaning should notify the Agency to keep apprised of the status of the ACT study.

3. Impacts of the Regulatory Alternatives

For each of the regulatory alternatives, environmental, energy, cost, and economic impacts were estimated. The impacts associated with RA I were presented in Section V. These impacts and the impacts associated with RA II are summarized in table 4. The source of the environmental, energy, cost, and economic impacts were also discussed in section V. Therefore, the same discussion is not repeated here, but impacts are briefly summarized.

TABLE 4.—ENVIRONMENTAL, ENERGY AND COST IMPACTS OF THE TWO REGULATORY ALTERNATIVES ON EXISTING MAJOR SOURCES

Reg. Alt.[a]	Reduction in solvent HAP emissions in air from baseline, Mg/yr (ton/yr)	Reduction in particulate HAP emissions in air from baseline, Mg/yr (ton/yr)	Secondary air pollution emissions, Mg/yr (ton/yr)				Incremental solvent HAP emissions in wastewater over baseline, Mg/yr (ton/yr)	Incremental solid waste generated over baseline, Mg/yr (ton/yr)
			PM	NO_x	CO	SO_x		
I	2,080 (2,300)	0.27 (0.3)	1.3 (1.4)	4.1 (4.4)	<0.01 (0.01)	17 (19)	0.28 (0.31)	<0.1 (0.1)
II	2,470 (2,720)	0.27 (0.3)	1.3 (1.4)	4.1 (4.4)	<0.01 (0.01)	17 (19)	0.28 (0.31)	<0.1 (0.1)
Difference between RA I and RA II	380 (420)	0	0	0	0	0	0	0

Reg. Alt.[a]	Incremental energy impacts over baseline, GJ/yr (10^6 Btu/yr)				Incremental cost impacts over baseline, $				
	Natural gas	Steam	Electricity	Total	Total capital investment	Annual control costs	Annual compliance costs	Annual reporting and recordkeeping costs	Total annual costs
I	70 (65)	20,160 (19,125)	600 (570)	20,830 (19,760)	2,263,640	174,240	115,640	110,240	400,120
II	70 (65)	20,160 (19,125)	600 (570)	20,830 (19,760)	2,268,440	2,528,910	115,640	110,240	2,754,790
Difference between RA I and RA II	0	0	0	0	4,800	2,354,670	0	0	2,354,670

[a] For a description of the regulatory alternatives, refer to Table 3.

a. *Environmental impacts.* In regard to primary air pollution impacts, RA II would reduce solvent HAP emissions from existing major sources by approximately 2,470 Mg/yr (2,720 tons/yr), which is an additional decrease of 380 Mg/yr (420 tons/yr) over RA I. The particulate HAP emission reduction for RA II is the same as it is for RA I because RA I requires the use of the most stringent particulate HAP control techniques available.

There are no additional secondary pollutant emissions for RA II because the additional requirements have little or no energy impacts. The LDAR program requires monitoring of pipe fitting emissions using an electronic device. The use of closed containers is a work practice that will only require the purchase of suitable containers. Likewise, there are no additional wastewater discharges associated with RA II as compared to RA I because there are none associated either with the LDAR program or with the use of closed containers for dispensing and collecting cleaning solvent. No incremental solid waste impacts are associated with RA II.

b. *Energy impacts.* The energy impacts associated with RA I and RA II are also presented in table 4. There are no additional energy requirements associated with RA II as compared to RA I. The electricity requirements of the electronic monitoring device required for an LDAR program are considered negligible.

c. *Cost impacts.* The costs associated with RA I and RA II are presented in table 4. The total annual cost of RA II is estimated to be $2,754,790/yr, which includes the total annual control cost, the total annual compliance cost, and the annual reporting and recordkeeping cost. These two latter costs are the same as for RA I because the compliance, reporting, and recordkeeping associated with an LDAR program is incorporated into the LDAR annual cost. The industry-wide cost effectiveness of RA II is approximately $1,120/Mg ($1,010/ton HAP). The incremental cost effectiveness of RA II compared to RA I is $6,100/Mg ($5,540/ton).

d. *Economic impacts.* An analysis was conducted to assess the economic impacts associated with RA I and RA II. Price, output, and employment impacts were evaluated on a facility-specific basis as well as on an industry-wide basis. A worst-case scenario was used to calculate the facility-specific impacts.

For RA I, the facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of 0 percent would be required of some facilities while a maximum price increase of approximately 5 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to be required to increase their prices by approximately 1 percent or greater.

However, the analysis recognized that some facilities may be able to absorb a portion of their increased costs. Therefore, an additional analysis was conducted for the 4 facilities expected to experience price increases of approximately 1 percent or greater. An examination of the regulation's effect on the facilities' net earnings and capital availability indicated that one facility would be significantly impacted. This facility has been identified as a small business.

The impact that RA I would have on industry output and employment is expected to be small. The magnetic tape industry is expected to experience a reduction in output of approximately 0.1 percent. Assuming a one-to-one relationship between output and employment, the industry can also be expected to experience a similar reduction in employment.

For RA II, the facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of approximately 0 percent would be required of some facilities while a maximum price increase of approximately 6 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to be required to increase their prices by approximately 1 percent or greater. An additional analysis of RA II's impact on these facilities' earnings, net income, and capital availability indicated that these 4 facilities would be significantly impacted.

The economic analysis also examined the effect of RA II on industry output and employment. The industry is expected to experience a 0.7-percent reduction in output as a result of implementing RA II. Since a one-to-one relationship between output and employment is assumed, the industry is also expected to experience a similar reduction in employment.

The results of the economic impact analysis indicate that implementation of the proposed NESHAP should not adversely affect the magnetic tape manufacturing industry, the economy, competition, or any other economic concerns.

4. Selection of MACT

The Administrator is proposing that MACT for existing magnetic tape operations be set at RA I, the MACT floor. In deciding whether to require RA II, which is more stringent than the floor, the additional environmental, energy, cost, and economic impacts must be evaluated. These impacts are presented in section VI.C.3.

There are no additional secondary pollutant, wastewater, solid waste, or energy impacts associated with RA II that would prevent the Administrator from choosing this alternative over RA I. The implementation of RA II would result in an additional HAP emission reduction of approximately 385 Mg/yr (420 tons/yr). The additional annual cost associated with this emission reduction is estimated as $2,754,796/yr. Thus, the incremental cost effectiveness between RA I and RA II is $6,100/Mg ($5,540/ton). The Administrator is proposing that the costs associated with implementing RA II at magnetic tape operations are unreasonable compared to the incremental emission reductions that result. The primary source of emissions at a magnetic tape manufacturing operation is associated with the coating operation, and this emission point will be highly controlled by RA I. In fact, at baseline conditions, industry-wide equipment leak emissions represent 10 percent of total HAP emissions, compared to 45 percent associated with the coating operation, 19 percent associated with mix preparation, and 17 percent associated with cleaning activities. The Administrator, therefore, is proposing RA I as the basis of the standards for existing sources.

D. Selection of Basis and Level of the Proposed Standard for New Sources

1. Selection of the MACT Floor and Regulatory Alternatives

The MACT floor for new sources is based on the emission control that is achieved in practice by the best controlled similar source. The MACT floor for new sources is therefore the same as the MACT floor for existing sources for each of the emission points because, as explained in the previous section, these control technologies were the highest level of control found in the magnetic tape industry. Likewise, the same regulatory alternatives that were evaluated for existing sources were evaluated for new sources.

One existing source in the industry is known to capture coating operation emissions in a total enclosure and vent the emissions to an incinerator. However, for the same reasons cited in section VI.C.2. in the discussion of the regulatory alternatives considered for existing sources, the Agency is not

proposing incineration over solvent recovery techniques as the basis for the MACT floor for new sources.

2. Impacts of the Regulatory Alternatives

Model magnetic tape operations (model lines) were created to estimate the impacts of the regulatory alternatives on new sources. The term model line is being used to describe a new or modified plant with one coating line, or an existing plant that adds a new coating line. As discussed in section II, the latter case is the one that is likely to occur in this industry; new plants are not expected. Further, existing plants are expected to expand capacity by adding only one coating line at a time. A coating line by necessity has other operations such as mixing, solvent storage, and cleaning associated with it. Therefore, the "model lines" defined for this analysis include not only the coating operation, but the ancillary operations such as mix preparation equipment, storage tanks, waste handling devices (at larger facilities), particulate transfer operations, and cleaning activities. A summary of the emission points associated with model lines is provided in Table 5. The logic is that if a coater and drying oven (i.e., a line) were installed at a new plant or added to an existing facility, all of the ancillary equipment would be required. For example, at an existing plant, additional storage capacity or mix preparation equipment may be required. This is a conservative assumption, but one that estimates worst-case emission impacts.

Five model lines representing three sizes—small, medium, and large—have been selected to characterize new or modified sources in the industry. A small model line uses less than 23.5 Mg/yr (26 tons/yr) of HAP to make applied coatings. (Applied coatings are those magnetic coatings that are eventually applied to the base substrate at the coater.) A medium model line uses an average of 64 Mg/yr (71 tons/yr) of HAP to make applied coatings. A large model line uses an average of 641 Mg/yr (705 tons/yr) of HAP to make applied coatings.

The five model lines are further described as: (1) A small model line (ML–1);

(2) A medium model line built without concurrent construction of a solvent HAP control device (ML–2A);

(3) A medium model line built concurrently with a solvent HAP control device (ML–2B);

(4) A large model line built without concurrent construction of a solvent HAP control device (ML–3A); and

TABLE 5.—SUMMARY OF EMISSION POINTS FOR MODEL LINES

Emission point	Model line		
	Small	Medium[a]	Large[a]
Storage tanks	•	•	•
Mix preparation equipment.	•	•	•
Equipment leak emissions from piping from mix room to coating operation.	•	•	•
Coating operation	•	•	•
Equipment leak emissions from solvent recovery operations.	•	•	•
Waste handling	•	•	•
Packaging/labeling	•	•	•
Cleaning activities	•	•	•
Particulates	•	•	•
Wastewater treatment.	•	•	•
Condenser vents in solvent recovery.	•	•	•

[a] Includes lines that are built with *and* without concurrent construction of a control device.

NOTE: "•" indicates emission point is included in model line.

(5) A large model line built concurrently with a solvent HAP control device (ML–3B).

Model lines are intended to describe new sources that would be found in the source category at baseline conditions, i.e., in the absence of NESHAP. Because newly constructed lines are subject to the NSPS for the industry, the baseline conditions of the model lines incorporate control devices or methods required by the NSPS. This means that the small line would be uncontrolled, but medium and large lines may already be controlling their mix preparation equipment, and would at least be controlling the coating operation (see discussion of NSPS requirements in section III). The model line emission points that are not controlled at baseline but that would be controlled under RA I or RA II include storage tanks, mix preparation equipment (ML–1, ML–2A, and ML–3A), waste handling devices, and equipment leaks.

In order to estimate the impact of the NESHAP on new sources, the number of new sources needs to be projected. As was discussed in section II, no new plants are expected to be built in this source category. However, six new lines are expected to be added at existing facilities over the next 5 years. Such situations are represented by ML–1, ML–2A, and ML–3A (building a new line but not concurrently constructing a control device). Because ML–2B and ML–3B are more typical of new plants, these model lines are not used in the impact calculations. The sizes of the new lines can also only be projected. For the purposes of this analysis, the six new lines are projected to have the same size mix as the existing sources in the source category. Based on the solvent usage designations identified above, 66 percent of the existing plants have lines that are large, 26 percent have lines that are medium, and 8 percent have lines that are small. To estimate impacts for new sources, this is roughly equal to four large model lines, 1 medium model line, and 1 small model line. The impacts discussed below incorporate this assumption. For a discussion of impacts on a model line basis, refer to chapter 7 of the BID (see **ADDRESSES**).

a. *Environmental impacts.* As with existing sources, the environmental impacts of the regulatory alternatives on new sources include primary and secondary air pollution impacts, wastewater impacts, and solid waste impacts. All of these impacts are summarized in table 6.

TABLE 6.—IMPACTS FOR NEW SOURCES

Reg. alt.	HAP emission reduction from baseline Mg/yr (tons/yr)[a]	Secondary pollutant emissions, Mg/yr (ton/yr)			Wastewater		Energy requirements, GJ/yr (10^6 Btu/yr)	
		PM	SO_x	NO_x	Discharge 10^3 L/yr (10^3 gal/yr)	HAP emissions, Mg/yr (ton/yr)[b]	Electricity	Steam
I	141 (155)	0.4 (0.5)	5.4 (6)	1.3 (1.4)	1,024 (271)	0.06(0.05)	33 (31)	6,430 (6,100)
II	194 (213)	0.4 (0.5)	5.4 (6)	1.3 (1.4)	1,024 (271)	0.06 (0.05)	33 (31)	6,430 (6,100)

[a] The reduction in particulate HAP emissions is the same for each alternative: 94 percent.
[b] These emissions are to the wastewater; they are not air emissions.

The HAP emission reduction achieved with RA I is estimated to be at least 141 Mg/yr (155 tons/yr). As indicated in Table 6, RA II does not provide any additional particulate HAP emission reduction beyond RA I because the control requirements are the same. The additional solvent HAP emission reduction associated with RA II (53 Mg/yr [58 tons/yr]) are from implementing the LDAR program.

Secondary pollutants (PM, NO_x, and SO_x) will be emitted from model lines as a result of the combustion of fuel oil in the boiler used to produce steam. (It is assumed that all of the model lines use carbon adsorption systems as control devices because this is the predominant control device used by the major sources in the industry.) For ML–1, the fuel oil consumption is a result of a new control device required to meet RA I and RA II. For the other model lines, the fuel oil consumption is incremental over baseline, resulting from controlling additional emission points. As with the existing sources, the magnitude of the estimated quantity of secondary emissions (7.1 Mg/yr [7.9 tons/yr]) is much less than the estimated HAP emission reduction.

For the same reasons explained for existing sources, there will also be incremental wastewater discharges over baseline conditions from the model lines under RA I and RA II. Small lines are assumed to dispose of wastewater offsite because it is unlikely that a small operation would perform on-site wastewater treatment. Thus, there is no discharge. The waterborne HAP emission levels presented in Table 6 assume a 50-ppmw discharge limit for HAP compounds. As indicated in this table, the quantity of HAP discharged to the wastewater is small.

The final environmental impacts associated with the model lines are solid waste impacts. All model lines except for the small model line are currently assumed to use fixed-bed carbon adsorption systems to meet the requirements of the NSPS (baseline conditions for new lines). As with existing sources, it is assumed that the control of additional emission points would not decrease the carbon life. Thus, there are no solid waste impacts from medium and large lines. Overall impacts are a result of any new small model lines.

b. *Energy impacts.* The estimated additional steam requirement of new lines that would result from implementing the regulatory alternatives are presented in table 6. This table also includes the additional electricity requirements for new lines. As explained for existing sources, RA I and RA II have the same energy impacts because the higher level control options associated with RA II have no energy requirements.

c. *Cost impacts.* There are some difficulties inherent in estimating the cost of regulatory alternatives for new sources because the "new" sources are expected to be new coating operations and ancillary equipment installed at existing plants. There are, therefore, many factors that would influence the cost to meet the proposed standards. Factors that vary from plant-to-plant include the size of the plant, the existing level of control, the type of control device used, the percentage of total solvent used that is HAP, the extent of magnetic tape operations (as compared to other manufacturing operations) at a plant, the percentage of HAP in the coating mix, and process differences such as the type and amount of equipment in the plant (important in assessing the appropriateness of LDAR). Some of these factors have been accounted for in developing the model lines, but to account for all differences among the plants in this source category would be impossible.

Despite the difficulties in estimating the cost of regulatory alternatives on new sources, such an analysis is necessary to determine the extent of control that is appropriate for these sources. Therefore, a range of the incremental cost-effectiveness values that would result if RA II were applied instead of RA I has been estimated by incorporating as many factors as was reasonably possible into the model plant analysis. The range of cost-effectiveness values was calculated to determine the range of cost impacts that may actually be encountered in the industry. In addition to estimating the cost impacts on the model lines previously described, costs were estimated assuming that the models used incinerators instead of carbon adsorption systems. This permutation accounts for the fact that some sources in the industry (both small and large) have elected to use incineration over solvent recovery technologies. The models are still limited in that they assume that 100 percent of the solvent used are HAP, and that a facility is performing only magnetic tape manufacturing operations.

If it is assumed that a carbon adsorption system is used to comply with RA I, the total annual cost is estimated to be $349,360/yr. This cost includes control costs, compliance costs, and reporting and recordkeeping costs. The associated cost effectiveness is $2,470/Mg ($2,250/ton). For RA II, this cost increases to $483,080/yr, with a cost effectiveness of $2,500/Mg ($2,270/ton). The incremental cost of applying RA II over RA I is approximately $2,550/Mg ($2,320/ton). If an incinerator is used to comply with RA I, the total annual cost is estimated to be $270,367 including control, compliance, and reporting and recordkeeping costs. The associated cost effectiveness is $1,910/Mg ($1,740/ton). Under RA II, the annual cost increases to $362,847, with an average cost effectiveness of $2,370/Mg ($2,150/ton). When incineration is the control technique used by model lines, the incremental cost of applying RA II over RA I is approximately $7,590/Mg ($6,900/ton).

3. Selection of MACT

As with existing sources, in evaluating MACT for new sources the Administrator looks at the emission reductions, costs, economic impacts, and other environmental and energy impacts. As discussed in the previous section, cost impacts were calculated considering that either a carbon adsorption system or an incinerator could be used. However, as was discussed in section VI.D.2, the environmental and energy impacts are based on the use of a carbon adsorption system because this type of system is the most commonly used in the industry. Based on the environmental impact estimates calculated for existing sources, other environmental impacts (i.e., secondary pollutants, wastewater and solid waste) are not substantial compared to the HAP emission reduction that is achieved with either regulatory alternative, regardless of the control technology used. Therefore, as was the case for existing sources, the basis of the decision to regulate new sources with RA I or RA II is based on the cost impacts and emission reductions.

The cost analysis indicates that, depending on the type of control device used and the size of the plant, the incremental nationwide cost effectiveness of applying RA II instead of RA I is approximately $2,550/Mg if carbon adsorbers are used and $7,590/Mg if incinerators are used. On a per-line basis, however, the incremental cost effectiveness ranges from $2,400/Mg to almost $60,000/Mg.

The incremental cost effectiveness of applying RA II over RA I will vary depending on the type of plant at which the new line is located. An analysis of the estimated incremental cost effectiveness of RA II over RA I for existing sources also indicates a wide range in values. For some existing facilities, the incremental cost

effectiveness is low, less than $100/Mg. For others, however, it is very high, exceeding $100,000/Mg. As was stated in Section VI.C.3, the industry-wide incremental cost effectiveness is $6,100/Mg. The reasons for the variation in the incremental cost effectiveness for existing sources are not so obvious that distinct subcategories would be possible. For example, the incremental cost effectiveness is not consistently high or low based on the size of the facility or the type of control device used at a plant. The quantity of HAP that is used at a plant relative to the total solvent used affects the incremental cost effectiveness, as does the extent of magnetic tape manufacturing operations at a facility (i.e., other products may be manufactured). There are no clear distinctions, however, to indicate when RA II is cost-effective and when it is not; it is highly source-specific.

Based on the costs and emission reductions associated with RA I and RA II, and the potentially high incremental cost effectiveness of applying RA II over RA I, the Administrator is proposing that MACT for new sources should be RA I, which is also the proposed MACT for existing sources. As with existing sources, the Agency does not feel that the additional cost of RA II is justified given the small incremental emission reduction that results.

E. Pollution Prevention Considerations

The Pollution Prevention Act of 1990 establishes the following environmental management hierarchy as national policy:

(1) Pollution should be prevented or reduced at the source wherever feasible;

(2) Pollution that cannot be prevented should be recycled in an environmentally safe manner wherever feasible;

(3) Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner wherever feasible; and

(4) Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The Pollution Prevention Act considers "source reduction" as a fundamental aspect of pollution prevention. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Practices such as recycling, energy recovery, treatment, and disposal are not considered pollution prevention measures under the Pollution Prevention Act. However, as noted above, recycling conducted in an environmentally safe manner is still desirable.

The proposed rule contains one source reduction element and encourages environmentally beneficial recycling. Some source reduction is achieved by requiring that existing and new sources maintain a 75-percent freeboard ratio in wash sinks used for cleaning removable parts. This control technique limits emissions by requiring that a lower level of solvent be kept in the sink. For example, a facility previously may have filled the wash sink to capacity; now, the sink would only be filled about one-quarter of that amount, but the same level of cleanliness would still be achieved. Solvent emissions have thus been reduced by reducing solvent usage. It is estimated that solvent emissions are reduced by 88 percent compared to traditional methods of cleaning parts in wash sinks. The extent to which usage is reduced will vary from plant to plant; some sources may wash parts more frequently even though the amount of solvent used during each cleaning is reduced. The trend indicated by existing sources maintaining a freeboard ratio, however, is that overall solvent usage will be reduced.

Although not considered source reduction, solvent recycling is a common practice in this industry and is further encouraged by the proposed rule. Many facilities in this source category use solvent recovery devices such as carbon adsorption systems or condensers to control air emissions. The solvent controlled by these devices is subsequently collected and distilled so that it can be reused in either the coating or cleaning process. This is a very beneficial process both to industry and the environment. Industry benefits because any solvent that is recycled is profitable; it is solvent that they would otherwise have to purchase. Also, less solvent enters the waste stream because less solvent is used. An environmental benefit is that less consumption of solvent by this industry means less production of solvent and the negative environmental impacts that go along with solvent manufacturing processes.

It has also been determined that there are negligible cross-media impacts from the solvent recovery devices in this industry. Any wastewater that results is treated in a steam stripper prior to discharge to a POTW. The solvent recovered from stripping is collected, distilled, and reused. The other secondary impacts from control operations have been calculated and are very small compared to the HAP emission reduction that is achieved with the devices. Finally, with regard to carbon adsorption systems, the carbon is regenerated onsite until its useful life is over, approximately 5 years. The amount of carbon disposed by a large facility (worst case) is small compared to other solid waste generators and is estimated as 8,000 pounds every 5 years. Facilities have reported that the spent carbon is a nonhazardous solid waste that can be sent offsite for reactivation when its useful life is over.

F. Selection of Format

The emission points to be covered by the proposed standards include:

(1) The solvent storage tanks;

(2) The mix preparation equipment;

(3) The coating operation(s);

(4) The waste handling devices;

(5) The particulate transfer operations;

(6) The wash sinks for cleaning removable parts;

(7) Cleaning involving the flushing of fixed lines;

(8) The wastewater treatment systems; and

(9) The condenser vents in the solvent recovery area except the vent on a condenser that is the primary air pollution control device.

The proposed standards require an overall HAP control efficiency of 95 percent for control of emissions from each of the following sources: Solvent storage tanks, mix preparation equipment, coating operation(s), waste handling devices, and condenser vents in solvent recovery. Sources using incineration can alternatively meet an emission limit of 20 ppmv HAP outlet concentration. For wastewater, 99 percent of the HAP present must be removed, or the total HAP outlet concentration must not exceed 50 ppmw. Emissions from wash sinks must be controlled by 88 percent. Equipment standards would be required to control emissions from particulate transfer operations and the cleaning of fixed lines by flushing. The rationale for selecting the percent efficiency format is provided below. The rationale for selection of the emission limit for wastewater treatment and wash sinks, the alternative emission limit for incinerators, and for the equipment standards are presented in section VI.G.

There were several formats that were considered for the proposed standards, including a concentration limit (ppm), a mass emission rate per volume of coating or coating solids (lb/gal or lb VOC/lb solids), a process emission rate (lb emitted/unit produced), or a percent control efficiency. The primary reason for choosing percent reduction as the format of the standards is the fact that this format assures a consistent

requirement for all plants and allows plants flexibility in the method selected for emission reduction. The NSPS also use a percent reduction format. To maintain consistency between the NSPS and NESHAP, it is reasonable to choose the same format for the NESHAP.

A concentration format is not recommended in all cases because it does not always result in equivalent control among all facilities. For example, a facility with a high inlet loading to the control device would be controlling more total emissions than a facility with a lower inlet loading. The format of mass per unit of production (e.g., kg/m² of tape coated) is not recommended because it would result in different levels of control at different plants due to variations in coating thickness and coating solvent content. The format of mass of emissions per volume of coating or per mass of coating solids is also not recommended because of the variety of coating formulations used. The above formats are also not recommended because recent HAP emission data are not available for this source category. As such, there is no technical basis for establishing a value for the pounds of HAP emitted per hour, per coating solids, or per unit produced. Also, given the fact that this industry uses solvents that are both HAP and non-HAP and each operation differs in the percent of solvent used that is HAP, it would be very difficult to establish one HAP emission rate or HAP concentration for the entire industry. Therefore, a percent reduction format is proposed.

One undesirable aspect of the percent reduction format is that it does not credit improvements in the coating formulation or in process operations that could potentially be pollution prevention measures. For example, reduction in the HAP content of the coating through the use of water-based coatings or a reduction in the amount of HAP applied per unit of tape manufactured would not be credited toward compliance. This might discourage development of water-based coatings or optimization of processes from a pollution prevention standpoint. One possible solution to the problems inherent with a percent reduction format is to specify a coating limit (e.g., pounds of HAP per gallon) that is an acceptable alternative to the percent reduction proposed. The NSPS for this industry have a similar provision; to date, no source subject to the NSPS has complied with the rule by using a low-VOC coating. The Agency requests comments on the feasibility of allowing a coating limit as an equivalence to compliance with the proposed percent reduction in HAP emissions, as well as data that would suggest the specific coating limit that would be equivalent with the proposed MACT requirements.

G. Selection of Emission Limits, Work Practice, and Equipment Standards

The emission limit that has been selected for controlling HAP emissions from solvent storage tanks, mix preparation equipment, coating operation, and waste handling devices is a HAP control efficiency of 95 percent at each emission point. In expressing the standards for some emission points as a 95-percent control efficiency, the Agency is relying on past tests and proven performance that indicate the control efficiency that is achievable with certain control devices. For example, through tests in other industries it has been proven that well-operated and well-maintained carbon adsorption systems and incinerators can obtain at least 95-percent removal efficiencies.

The proposed standards allow facilities using incinerators the alternative of achieving either the 95-percent control efficiency or an emission limit of 20 ppmv total HAP. The 20 ppmv HAP limit is based on the Agency's study of available incinerator technology, cost, and energy use. The dual requirement of 95 percent or 20 ppmv limit accounts for a fall-off of incinerator efficiency at lower inlet concentrations. The Agency believes that a 20-ppmv HAP limit could be reached by most incinerators with moderate adjustments.

One technical issue associated with the selection of an overall HAP control efficiency of 95 percent that was brought up by a member of the industry is the difficulty of achieving this efficiency at low inlet concentrations. The concern was raised with respect to a carbon adsorber. Typically, one common control device is used to control emissions from the various sources at a magnetic tape operation. If the coating operation emission point is not concurrently being directed to the control device with the emissions from other emission points such as the mixers and storage tanks, the inlet concentration to the control device may be very low. For example, the inlet concentration when the coating operation is operating may be 3,000 ppmv and an outlet concentration of 100 ppmv could be achieved (a 96.7 percent emission reduction). If only mix preparation equipment, solvent storage tanks, or waste handling device emissions are being vented, the inlet concentration may only be 200 ppmv. Even if an outlet concentration of 30 ppmv is achieved, the control efficiency is only 85 percent. The EPA has recognized this problem for incinerators and, consequently, has included the alternative 20 ppmv HAP emission level.

However, the proposed standards do not include special provisions for low inlet concentrations for control devices other than incinerators. The Agency would like comments and data on this issue. If, based on comments received at proposal, the Agency determines that the 95-percent control efficiency standards cannot be met at low concentrations, the Agency is considering the following possible solutions for the promulgated standards:

(1) Allow a longer averaging time for demonstration of compliance (e.g., the proposed monitoring requirements identify a 3-day rolling average for carbon adsorbers; this averaging period could be increased to allow for some fluctuation in the percent efficiency when the coating operation is down);

(2) Specify an alternate control efficiency for periods when the coating operation is down; or

(3) Specify an outlet concentration for those periods when the coating operation is down.

The Agency would also like to receive comments and any data that may indicate an appropriate averaging time, outlet concentration, or percent removal efficiency.

Another emission point that requires a percent removal efficiency is the wastewater treatment system; owners or operators must remove 99 percent of the HAP in wastewater discharged from the water phase of a carbon adsorption system using steam desorption. The percent removal efficiency is primarily based on the analysis being carried out for the hazardous organic NESHAP (HON) for the chemical manufacturing industry. The proposed HON rule (see 57 FR 62628) indicated that the HAP compounds used in the magnetic tape industry (MEK, toluene, MIBK) are readily stripped and a 99-percent removal efficiency is proposed for those compounds. There are no specific data for magnetic tape operations, but industry representatives have stated that wastewater treatment operations are likely to be 99-percent efficient. The Agency solicits comments on this efficiency. Data would be necessary to support any suggested efficiency requirements other than 99 percent.

The proposed standards would also allow sources to comply with the wastewater treatment provisions of the proposed regulation by treating the wastewater discharge from the separator in a steam stripper such that the effluent

from the steam stripper has a total HAP concentration of less than 50 ppmw. The emission limit of 50 ppmw HAP is based on data from two facilities that operate steam strippers that are estimated to remove at least 99 percent of the HAP compounds present. The total HAP concentration in the effluent from their steam strippers was reported as 20 and 40 ppmw. These concentrations are representative of the HAP concentration in the wastewater before it is combined with any other on-site wastewaters (such as sanitary waste). In other rules requiring the treatment of wastewater via steam stripping, the Agency has selected 50 ppmw as an appropriate emission limit for compounds of similar stripability. The data support this limit as being achievable for this source category. The available data are too limited and too inconclusive, however, to support a lower limit. Therefore, a HAP concentration of 50 ppmw in the water discharge is being proposed for this standard. The Agency requests comments on this proposed limit, as well as any data that would support an alternate limit.

The proposed standards require that HAP emissions from wash sinks be controlled by 88 percent. This level of control can be achieved by maintaining a 75-percent freeboard ratio. This is the freeboard ratio maintained by facilities in the source category currently subject to regulatory requirements on wash sinks. An alternative method of controlling wash sink emissions is to vent them to the common control device; this method is also thought to be 88-percent efficient. The emission limit identified for both control technologies is based on industry tests that compared the quantity of HAP emissions occurring from wash sinks both before and after controls are imposed.

The other emission points that will require control under the proposed standards include the particulate transfer operations and cleaning that involves the flushing of fixed lines. For these emission points, the proposed standards are expressed as equipment standards. Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard. For this source category, equipment standards have been selected for the reasons described below.

The requirement for particulate transfer operations would be an equipment standard, requiring the installation of an enclosed transfer device to be used when transferring chromium- or cobalt-containing particulates. The definition of an enclosed transfer device is provided in § 63.702. An emission limit or percent control efficiency is not feasible because HAP emissions from particulate transfer cannot reasonably be emitted through a conveyance system designed and constructed to capture these pollutants. Therefore, it is recommended that this emission point be regulated by an equipment standard. There is at least one source in the industry that does not have an enclosed transfer device but uses fabric filters to remove particulate from the solvent-laden air being sent to the control device. The Agency currently has no data to suggest the feasibility of, or control efficiency associated with, such filters. The Agency is concerned that particulate emissions would not be sufficiently captured and delivered to the control device. The one facility using fabric filters for control operates within a total enclosure designed to capture gaseous emissions. The Agency is also concerned that particulate emissions could occur during the removal of the particulate from the filters. Therefore, the Agency is not proposing an alternative standard based on such a system. The Agency is interested in data that show whether the total enclosure controls particulate emissions as well as gaseous emissions. However, the Agency specifically requests comments on the proposed standard for not identifying as an alternate particulate control level an overall control efficiency that could be achieved by capturing particulates and venting them to a control device such as a fabric filter. Data that indicate the overall control efficiency (capture and control) of such systems would be required to support any suggested efficiency.

For control of emissions from flushing fixed lines, the standards would be equipment-based, requiring that the lines be flushed using a closed system (see description in section VI.B). Alternatively, if open tanks are used for supply and collection, the area in which they are located would need to be vented to a control device such that the overall efficiency is 95 percent. Every facility in the industry that flushes fixed lines performs the operations in one of these two ways. An emission limitation is not appropriate because the HAP from this operation are not emitted through a conveyance system designed and constructed to capture these pollutants.

H. Selection of Monitoring Requirements

In accordance with paragraph (3) to section 114 of the amended Act, enhanced monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For most of the sources subject to the proposed standards, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. The Agency has proposed the parameters to be monitored for the types of capture and control devices now used in the industry. The value of this parameter that corresponds to compliance with the standard is set by the owner or operator during the initial compliance test. If future monitoring indicates that capture or control equipment is operating outside of the range of values established during the initial performance test, the owner or operator is out of compliance with the standards, except as specified for malfunctions in § 63.6(e)(3) of the General Provisions.[5]

1. Work Practice and Equipment Standards

For equipment standards, no monitoring would be required. However, the owner or operator is expected to install and operate the equipment properly (for particulate transfer and flushing fixed lines). For owners or operators complying with the proposed standards for wash sinks by maintaining a freeboard ratio (a work practice) compliance would be demonstrated through recordkeeping (see section VI.K).

2. Emission Limits

The proposed standards require an overall HAP control efficiency of 95 percent for the storage tanks, mix preparation equipment, coating operation, waste handling devices, and condenser vents in solvent recovery. Facilities in the industry will most likely demonstrate compliance with the standards through one of two methods:

(1) By demonstrating the efficiency of the capture equipment and removal or destruction efficiency of the control equipment; or

(2) By performing a material balance calculation. An overall HAP control efficiency of 88 percent is required for controlling emissions from wash sinks.

[5] Ibid.

This can be attained by maintaining a 75-percent freeboard ratio or venting the emissions to a control device. A 99-percent HAP removal efficiency, or a total HAP outlet concentration of 50 ppmw, is required for the wastewater emission point. Sources will likely comply with the standards by operating a steam stripper.

For the magnetic tape source category, initial compliance will be demonstrated following the procedures outlined in § 63.705 of the proposed rule. Ongoing compliance is demonstrated through either direct measurement to show compliance with the emission limit (i.e., overall control efficiency of 95 percent or, for incinerators only, a 20-ppmv emission limit) or through monitoring an operating parameter. The Agency has identified the parameters that are considered appropriate for certain types of capture and control equipment. There are no additional monitoring requirements for facilities demonstrating compliance through a material balance because the material balance calculation itself demonstrates compliance.

a. *Demonstrating compliance for an add-on control device.* Except as described in paragraph b, below, the Agency is proposing that owners or operators using an add-on air pollution control device demonstrate ongoing compliance through the use of continuous emission monitors (CEM's) that measure the total VOC concentration. The emission monitors shall be located either at the inlet and outlet to the control device (so that a percent VOC removal efficiency can be calculated), or at the outlet to the control device. If the monitor is located only at the outlet, the outlet VOC concentration value that corresponds to compliance with the standards must be established during the initial performance test. (Alternatively, owners or operators of incinerators may accept 20 ppmv as the outlet VOC concentration to monitor.) In both cases, the CEM's would measure total VOC concentration. For this source category, measurement of VOC is an appropriate surrogate for HAP measurement, as discussed in section VI.I, Selection of Compliance Test Methods.

The Agency is proposing CEM's as the method for complying with the emission limit because these are the most accurate devices that can be used to ensure compliance with the standard. As discussed in paragraph 2, below, continuous parameter monitoring is allowed in lieu of CEM's for owners or operators of incinerators and condensers. Parameter monitoring is not allowed for owners or operators of carbon adsorption systems because there are no process parameters that are directly related to efficient operation. While carbon bed and steam temperatures may be indicators of acceptable performance, they have not been shown to be directly correlated to control device efficiency. Also, CEM's were required by the NSPS for facilities using carbon adsorption systems to comply with the standards, and the Agency would like to make the two rules consistent wherever possible. The proposed NESHAP also require CEM's when carbon adsorption systems are used because they are technically feasible and, based on their current use in the industry, are considered reasonable in terms of cost. Therefore, a less stringent monitoring requirement was not evaluated.

b. *Demonstrating compliance through operating parameter measurement.* Owners or operators using incinerators and condensers to comply with the proposed standards are required to conduct an initial performance test to demonstrate compliance with the standards, in accordance with § 63.705 of the proposed rule. Owners or operators of incinerators and condensers may use CEM's to demonstrate continuous compliance. However, parameter monitoring is also allowed if these devices are used. The Agency has selected temperature as the operating parameter that would then be monitored to determine ongoing compliance with the standard. Owners or operators of incinerators would have to monitor the combustion temperature (or the temperature before and after the catalyst bed if a catalytic incinerator is used), and owners or operators of condensers would have to monitor the temperature of the vapor exhaust stream. The value of the site-specific operating parameter is established by the owner or operator during the initial performance test. The site-specific operating parameter value is the arithmetic average of the maximum or minimum temperatures (as appropriate), measured during each of the three test runs required by § 60.705(b)(2), which demonstrates compliance with the standards (i.e., a 95-percent control efficiency or, for incinerators only, an outlet HAP concentration of 20 ppmv).

The use of CEM's on incinerators or condensers are not proposed to be required for the following reasons:

(1) CEM's are not currently in use by facilities in this industry that operate these devices;

(2) For each of these control systems a measurable control device parameter, temperature, is considered to provide a suitable indication of performance for determining compliance; and

(3) Temperature monitors are considerably less costly than CEM's.

The proposed standards, therefore, would be based on parameter monitoring to demonstrate compliance with the standards for incinerators and condensers. The Agency is soliciting comments on the selection of temperature as a parameter to monitor for compliance and any available data on the correlation of the control device parameter to the control efficiency. The proposed rule would not preclude owners or operators who are using incinerators or condensers to comply with the rule from choosing to use CEM's to demonstrate compliance instead of monitoring temperature.

For owners or operators complying with the wastewater provisions of the proposed rule by using a steam stripper, the operating parameter that will be monitored to demonstrate ongoing compliance is the steam-to-feed ratio. The Agency has selected this monitoring parameter because the steam-to-feed ratio is directly related to proper column operation. Monitoring the HAP concentration of the inlet and outlet of the stream stripper has not been identified because it is much more costly than monitoring the steam-to-feed ratio, and the steam-to-feed ratio is adequate to determine compliance. The owner or operator shall select as the operating parameter value the minimum steam-to-feed ratio that demonstrates compliance with the standards. Steam-to-feed ratios reported by two manufacturing plants range from 1:3 to 1:11 on a weight basis.

Different types of capture equipment may be used to comply with the standards; in some cases, monitoring is required to ensure that it is operating properly. The capture device used by most existing facilities is a total enclosure that meets the criteria identified in § 63.705(c)(4)(i). Proper operation of the enclosure is crucial to compliance with the standards and depends on the velocity at which air is induced into the enclosure by the fan that drafts emissions to the control device. To assure that the enclosure is properly operated (e.g., all doors or other openings that were closed during the performance test remain closed normally), the operating conditions of the enclosure must by monitored. A description of the advantages and potential problems with some possible monitoring scenarios follows.

During the performance test, the inlet velocity may be determined by calculation. It would not be acceptable to assume that after the performance test

the configuration of the enclosure remains unchanged. For example, doors that were closed during the performance test will subsequently be used by operating personnel to enter and exit the enclosure, so the monitoring procedure should be able to assure that such openings are brief and that the total square feet of openings is less than or equal to performance test conditions.

Ideally, the monitoring technique would reflect any change from conditions during the performance test that would deviate from compliance with the total enclosure criteria. One method for assuring that doors (or walls) that were closed (or in place) during the performance test remain in place during operation of the process is the use of manometers or sensors that measure the pressure difference, or the use of a differential recording manometer or other differential pressure device. Ongoing operation should, at a minimum, replicate the conditions under which the facility passed the initial compliance test.

For the purpose of the cost analysis, it was assumed that differential pressure monitoring would ensure continuous compliance. In such a situation, the manometer (or other differential pressure device) should accurately reflect the pressure loss from outside of the enclosure to some position within. The manometers selected to monitor the pressure difference must have an error less than the magnitude of the expected pressure difference. If the minimum air velocity identified in the total enclosure criteria of § 63.704(c)(4)(1) is maintained, the differential pressure could be as low as 0.004 inches of water. Care must also be used in installing the measurement devices to assure that the very small pressure loss across the enclosure wall is not overwhelmed by the influence to the hood or other air pickup device within the enclosure. For example, to locate one leg of a manometer in the ductwork to the fan would cause the manometer to measure the pressure drop associated with the hood, the magnitude of which could be one or more inches of water. This would mask any small changes across the enclosure wall. Thus, the location of monitors is important because their operation can be affected by their proximity to exhaust fans.

To provide flexibility in monitoring capture equipment, the Agency is proposing that owners or operators of capture equipment that require continuous monitoring (i.e., enclosures) submit to the Administrator a plan that outlines:

(1) The parameter to be monitored;

(2) Why this parameter is appropriate to demonstrate that 100-percent capture is being maintained; and

(3) How the operating parameter will be monitored (i.e., locations of monitors).

The capture equipment monitoring plan shall be submitted to the Administrator with the compliance status report required by § 63.9(h) of the proposed General Provisions to part 63.[6] The acceptable operating parameter value will be set by the owner or operator during the initial performance test as required by either § 63.705(c)(2), (3), or (4), in accordance with the plan submitted to the Administrator.

In the case of hard piping used to direct the emissions from the emission point to the control device, compliance with the proposed standards would be achieved by:

(1) Demonstrating that all emissions from each piece of equipment are delivered to the control device, thus ensuring 100-percent capture; and

(2) Measuring the control efficiency of the control device in accordance with test methods outlined in Section VI.I.

Ongoing compliance monitoring would then consist of that required for the control device to which the equipment vents. Monitoring of the capture efficiency is not required because piping connects the emission source to the control device.

Owners or operators of any capture or control device that contains bypass lines that could divert flow away from the control device and to the atmosphere must monitor these lines. The proposed regulation requires either the installation and operation of a flow indicator, or securing the bypass line with a car-seal or a lock-and-key type configuration.

Owners or operators that use capture or control techniques not identified in the proposed regulation must identify operating parameters to monitor and the frequency of monitoring, subject to the Administrator's approval.

c. *General monitoring requirements.* In accordance with § 63.8(c)(4) of the proposed General Provisions, all continuous monitoring systems measuring either emissions or an operating parameter shall complete a minimum of one measurement cycle (sampling, analyzing, and data recording) for each successive 15-minute period.[7] The EPA requests comment on the appropriateness of this monitoring frequency for this source category.

[6] Ibid.

[7] Ibid.

The determination of compliance varies for each type of control or capture system. Owners or operators complying with the standards by using condensers, incinerators, and total enclosures may be determined to be out of compliance with the standards if, for any 3-hour period, the average operating parameter value exceeds or is less than the value established during the initial performance test, as applicable. A 3-hour averaging time is chosen to determine compliance because it parallels the 3 test runs conducted for the initial performance test.

Owners or operators complying with the standards by using carbon adsorbers with a common exhaust stack may be determined to be out of compliance with the standards if, for any three consecutive adsorption cycles, the control efficiency or outlet concentration is less than that specified by the standards. Owners or operators complying with the standards by using carbon adsorbers with individual exhaust stacks for each of the multiple beds may be determined to be out of compliance with the standards if, for any 3-day period, a rolling average of the control efficiency values or outlet concentration values is less than that specified by the standards.

The Agency believes that a different compliance timeframe is appropriate for carbon adsorbers than for condensers, incinerators, or total enclosures. Section 63.705(b) of the proposed rule requires that the performance test coincide with one or more adsorption cycles. The averaging times for compliance that are specified in the proposed rule ensure that the performance test runs and monitoring averaging periods will parallel the complete adsorption cycles of the individual adsorber vessels or the system's complete sequential rotation through the adsorption cycles of all the vessels. Use of a testing or monitoring period that does not correspond to at least one actual adsorber vessel cycle or system rotation could bias the results slightly in either direction. Efficiencies would be biased high if the test run or monitoring period did not include the elevated emissions typical at the beginning and end of a vessel's adsorption cycle; efficiencies would be biased low if the period included a disproportionate number of these emission peaks.

In determining compliance with the standards, periods of startup and shutdown shall be included because these periods are part of normal operations for this source category.

I. Selection of Compliance Test Methods

Compliance test methods are required to verify that an owner or operator complies with the proposed rule. Initial compliance tests are also required so that owners or operators can establish values for the site-specific operating parameters that will be monitored to ensure ongoing compliance in accordance with § 63.704 of the proposed standards. The proposed rule allows several methods for owners or operators to demonstrate compliance with the proposed emission limits. This flexibility is needed because of the various types of control devices currently used in the industry.

1. Compliance With a 95-Percent HAP Control Efficiency

For certain emission points, the proposed rule requires an overall HAP control efficiency of 95 percent. The overall control efficiency is calculated in one of two ways:

(1) As the product of the capture efficiency and the control efficiency; or

(2) As demonstrated by a liquid-liquid material balance conducted in accordance with the provisions of § 63.705(c)(1).

a. *Calculation of capture efficiency.* When emissions are ducted from the emission point, through piping, and to the control device, 100 percent capture is presumed if the requirements of § 63.705(d)(1)(i) are met. The proposed rule allows two ways to calculate the capture efficiency if an enclosure is used. The first way is to perform a capture efficiency test in accordance with the provisions of § 63.705(c) (2) or (3). Another way to demonstrate 100-percent capture is to meet the total enclosure criteria of § 63.705(c)(4). Both methods are proposed to provide flexibility to sources, especially those that currently operate enclosures that may not meet the total enclosure criteria. If an owner or operator believes that an existing enclosure, in conjunction with a control device, can achieve an overall HAP control efficiency of 95 percent, the owner or operator can perform a capture efficiency test in lieu of retrofitting these older enclosures to be total enclosures.

b. *Calculation of control efficiency.* The proposed standards allow either the EPA Method 25A or the EPA Method 18 of Appendix A to part 60 for determining the control efficiency of the air pollution control device. The EPA Method 25A is used to measure the total VOC concentration such that the VOC removal efficiency can be calculated. The EPA Method 18 is used to measure the concentration of individual species of HAP; a HAP removal efficiency could then be calculated.

Although the standards are expressed as HAP removal efficiency, the measure of VOC removal (the EPA Method 25A) is being allowed as a surrogate for several reasons. One reason for proposing that VOC removal efficiency be used as a surrogate to determine compliance with the standards is that the cost of compliance will be less. If VOC removal efficiency is allowed as a surrogate for HAP removal efficiency, sources could use the EPA Method 25A to determine initial compliance. Otherwise, the EPA Method 18 must be used. The EPA Method 25A is approximately 20 percent less costly than the EPA Method 18. Industry-wide performance test costs would increase by approximately 50 percent and overall annual costs would increase by approximately 35 percent if the EPA Method 18 were required. This is because, in accordance with § 63.705(a)(1) of the proposed rule, seven facilities that have continuous VOC monitors on their control device would be exempt from an initial performance test if the EPA Method 25A is required. (The continuous monitors would be able to demonstrate that a 95-percent VOC removal is being continuously achieved.) All of these facilities, however, would be required to do testing if the EPA Method 18 is required because none have data on the removal efficiency of specific HAP compounds.

The Agency does not believe that there will be any sacrifice of environmental benefits by allowing owners or operators to use the EPA Method 25A to demonstrate compliance. The control efficiency data that are available for this source category indicate that control devices used in this industry remove or destroy 95 percent of the VOC entering the device. Most of the VOC used in the industry are HAP. It would therefore follow that if 95 percent of the VOC are being removed, 95 percent of the HAP are being removed.

If a carbon adsorption system is being used as the air pollution control device, it could be argued that non-HAP VOC's could be preferentially sorbed over HAP. However, the data that are available on specific compound removal efficiencies show that, although there may be differences in the removal rates of various compounds in a carbon adsorption system, these differences are very small for the compounds used in this industry. For example, there are data from two performance tests that indicated the control efficiency for individual species controlled with carbon adsorbers in this industry. An analysis of the data confirms that different species will be adsorbed at different efficiencies. However, both HAP and non-HAP solvents were removed at average efficiencies exceeding 95 percent. Also, in both systems, the difference in removal efficiencies for various compounds was not great.

c. *Liquid-liquid material balance.* Owners or operators that use a solvent recovery device to control emissions from the coating operation may demonstrate compliance with the emission limit by performing a liquid-liquid material balance in accordance with § 63.705(c)(1). This compliance method was allowed under the NSPS for this source category, and is employed by at least one source that is subject to the NSPS. Under the NSPS, owners or operators are required to compute the overall control efficiency by continuously measuring the amount of VOC applied at the coater and comparing this amount to the amount of VOC recovered at solvent recovery. The overall emission reduction is calculated on a 30-day rolling average basis. Under these standards, a 3-day rolling average basis has been selected to provide a more representative picture of compliance with these standards, consistent with the requirements of § 63.704(c)(3) for carbon adsorbers Also, regulators typically assess ozone attainment status by evaluating compliance over a shorter timeframe; the shorter averaging time would facilitate their evaluation. The Agency specifically requests comments on the feasibility of a 3-day averaging period for the material balance calculation, as well as data to support this or another appropriate averaging period.

2. Compliance With a 20-ppmv HAP Emission Limit for Incinerators

The proposed rule provides an alternative to the 95-percent overall HAP control efficiency for sources using incinerators as control devices. Initial compliance would be determined using the same methods as for the control efficiency (i.e., either the EPA Method 25A or EPA Method 18), although only the outlet concentration would be measured.

3. Compliance With an 88–Percent HAP Control Efficiency

The proposed rule requires that HAP emissions from wash sinks used for cleaning removable parts be controlled by 88 percent. Compliance with this standard can be achieved by maintaining a 75-percent freeboard ratio

or by venting emissions from the wash sink to a control device. Compliance with the freeboard ratio is demonstrated by recordkeeping and reporting (see section VI.K.). If a source chooses to comply with the provisions of this standard by venting to a control device, compliance provisions depend on whether or not the source is in place prior to proposal of this rule. If it is, no testing is required. New sources, however, will have to demonstrate that an overall control efficiency is being achieved by performing capture efficiency and control device efficiency tests in accordance with § 63.705(c) (2), (3), or (4) of the proposed rule. Testing is reasonable for new sources because the owner or operator could install the wash sink such that there would be sufficient space for a total enclosure, or the space required to perform a capture efficiency test. Existing sources may not have this space available.

4. Compliance With a 99–Percent HAP Removal Rate

The proposed rule requires that the HAP in wastewater discharged from the separator in a wastewater treatment system be treated by:

(1) Using a steam stripper designed to be 99-percent efficient;

(2) Using a steam stripper such that the total HAP concentration of the water discharged from the steam stripper is less than 50 ppmw; or

(3) Using an alternate treatment device, approved by the Administrator, that removes 99 percent of the HAP or results in a total HAP concentration of 50 ppmw in the outlet.

In the proposed rule, compliance provisions are provided for the first two situations listed. To demonstrate initial compliance with the proposed rule, an owner or operator must either provide engineering design calculations that show that the stripper is designed to achieve a 99-percent removal efficiency, or sample the wastewater discharged from the stripper using the EPA Method 305. The EPA Method 305 is a test method that is proposed to be included in appendix A of part 63. The EPA Method 305 was proposed with the Hazardous Organic NESHAP on December 31, 1992 at 57 FR 62785. The engineering design calculations would have to include, at a minimum, feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature. The Agency has identified these parameters as the critical ones for proper design of a steam stripper. If an alternate treatment device is used, the owner or operator must identify the operating parameters to be measured to demonstrate initial and ongoing compliance, subject to the Administrator's approval.

5. Performance Tests for Continuous Emission Monitors

Continuous emission monitors (CEM's) that are used to demonstrate compliance with emission limits on a continuous basis must meet certain performance specification requirements. On October 22, 1993 at 58 FR 54648, the Agency proposed performance specifications for VOC CEM's for inclusion in the appendices to part 64 (the proposed enhanced monitoring provisions). These performance specifications (PS 101 and 102), along with the requirements in appendix F of 40 CFR part 60, identify the minimum quality assurance requirements necessary for the control and assessment of the quality of the CEM's data submitted to the Agency. The performance specifications include, among other requirements, that the owner or operator conduct a performance test and a relative accuracy test to ensure proper operation of the CEM's and high quality data. Quarterly audits are required to demonstrate that CEM's continue to be well-maintained and operated. In performing quarterly audits, owners or operators must challenge the monitors using compounds that are representative of the gaseous emission stream being controlled. Owners or operators subject to the proposed standards for magnetic tape manufacturing operations that use CEM's for continuous compliance monitoring would be subject to the requirements of PS 101 and 102 of the proposed appendices to part 64 and appendix F of part 60.

J. Selection of Definition of Affected Source

The affected source subject to the standards may be a stationary source, a group of stationary sources, or a portion of a stationary source. The Act defines stationary source as any building, structure, facility, or installation which emits or may emit HAP. Most industrial plants consist of numerous pieces or groups of equipment that emit HAP and that may be viewed as "sources." The EPA, therefore, uses the term "affected source" to designate the equipment within the plant that is chosen as the "source" covered by a given standard. In general, the affected source can be defined narrowly or broadly, from an individual emission point up to and including an entire plant.

If emissions averaging were to be included as part of the regulation, then the definition of affected source would have to be broader than each emission point. The reason is that the averaging would be implemented across the affected source. For this source category, emissions averaging was considered. However, the EPA believes the opportunities are relatively limited at magnetic tape manufacturing operations, since most facilities already have control devices and the majority of the emission points would be ducted to them. Therefore, it has not been proposed in this regulation. However, the EPA solicits comments and information on emissions averaging for this source category. For more information on emissions averaging, refer to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (57 FR 62608).

The definition of affected source influences the implementation of section 112 standards in several ways (see 58 FR 42760). The designation of affected source has implications related to modification and reconstruction provisions. The source definition can determine whether a new source standard (e.g., new source MACT) applies to a reconstructed source (see 40 CFR 63.2). For example, a narrow definition of affected source (e.g., individual pieces of equipment) will trigger the new source MACT requirements more readily than a broad definition of affected source (e.g., the entire plant). For the magnetic tape manufacturing source category, however, the modification and reconstruction provisions are not the primary considerations in defining the affected source because new source MACT and existing source MACT are the same.

The affected source definition also plays a role in the implementation of the approval of State programs and delegation of Federal authorities (58 FR 62262). Under 40 CFR 63.93, a State may seek approval of State authorities which differ in form from a Federal rule developed under section 112 of the CAA. Once approved, the State rule substitutes for the Federal section 112 rule. A State would need to submit a formal request under 40 CFR part 63, subpart E to accomplish this. One of the criteria for approval is that the State rule must be at least as stringent as the section 112 rule for each affected source covered by the otherwise applicable Federal section 112 rule. A broader definition of affected source would allow additional flexibility for a different form of the standard to be

approved on a case-by-case basis. For example, if the EPA chose a broad affected source definition encompassing more than one type of emission point, a State would be able to seek approval for one emission point to be controlled less stringently, and another more stringently than the otherwise applicable Federal section 112 rule, as long as the resulting overall stringency for the affected source was determined to be at least as stringent as the Federal requirement. If the affected source were each emission point, the State program would have to be at least as stringent for each emission point and, therefore, would be less flexible.

In addition, the affected source is the entity to which the reporting and recordkeeping requirements of this proposed rule and of 40 CFR part 63, subpart A apply. In particular, the notification requirements of the proposed § 63.9 apply to each affected source.[8] For each new affected source, an owner or operator is required to notify the permitting authority of its construction. A narrow definition of affected source would ensure that the permitting authority is kept up-to-date with new emission points at the plant. A concern with a broad definition of affected source such as the entire plant was that the permitting authorities may not remain apprised of changes to the emission points within a plant.

For the magnetic tape manufacturing source category, the EPA is proposing a narrow definition of affected source based on the notification considerations. In addition, because of the high level of existing control, and the small growth in the industry, the EPA thinks that there may not be a significant interest in using the additional flexibility that could be afforded under section 112(l) or emissions averaging with a broader definition of affected source. Therefore, the affected source is proposed to be each piece of equipment requiring control in a magnetic tape manufacturing operation. The EPA solicits comments on this proposed definition.

K. Selection of Reporting and Recordkeeping Requirements

Except as specified in § 63.701(a)(2) of the proposed rule, the owner or operator of any magnetic tape manufacturing operation subject to these standards would be required to fulfill the reporting and recordkeeping requirements outlined in § 63.10 of the proposed General Provisions.[9] These requirements include those associated with startup, shutdown, or malfunctions; operation and maintenance records; compliance monitoring system records; performance test reporting; quarterly reports of no excess emissions; and exceedances of the monitored values required under this subpart. These quarterly reports must contain the monitored value for the periods constituting exceedances, and a description and timing of steps taken to address the cause of the exceedances. Owners or operators that are not subject to the control provisions of the standards in accordance with § 63.701(a)(2) are only subject to certain provisions of 40 CFR part 63 subpart A, as described in section VI.A.2. However, they are subject to § 63.703(g) and shall record the amount of solvent utilized annually and report this quantity to the Administrator. The first report shall cover the 12-month period following the effective date of the standards, with subsequent reports covering each subsequent 12-month period. All reports must be submitted within 30 days following the end of a 12-month period.

There are several other monitoring results that should be included in the quarterly reports. Quarterly reports should contain, as appropriate, information obtained from visual inspections of car seals on bypass lines and the dates of the inspections, solvent usage data for sources that are only subject to § 63.703(g), and the results from material balance calculations that show exceedances of the standards.

In addition to the above requirements, owners or operators complying with the proposed standard for wash sinks by maintaining a freeboard ratio would have to calculate and record the freeboard ratio any time that solvent is added to the wash sink. Times during which a freeboard ratio of 75 percent or greater is not maintained is a violation of the standard and should be noted in the quarterly report. The Administrator feels that calculation of the freeboard ratio whenever solvent is added to the sink is sufficient to ensure that the freeboard ratio is being maintained. More frequent determinations are not necessary because the freeboard ratio will not increase unless more solvent is added to the wash sink. Less frequent calculation of freeboard ratio is also not appropriate because wash sinks are frequently used in this source category.

L. Applicability of the General Provisions

The proposed General Provisions to part 63 of the Act apply to owners or operators subject to the proposed standards. However, the owners or operators of facilities that are subject to § 63.703(g) (solvent usage cutoff) are exempt from certain requirements of the General Provisions. For example, much of § 63.6 does not apply because it is related to compliance with emission standards and sources subject to § 63.703(g) of the proposed rule are not subject to emission standards.[10] Also, § 63.6(e) directs affected sources to prepare and submit a startup, shutdown, and malfunction plan; sources subject to § 63.703(g) of the proposed rule do not have to prepare this plan.[11] No parts of § 63.7 and § 63.8 apply to sources subject to § 63.703(g) because no testing or monitoring is required by this proposed provision.[12] Most of the notification, reporting, and recordkeeping requirements of the proposed General Provisions also do not apply (except for initial notification requirement in § 63.9(b)) because they pertain to emission standards, performance testing, or monitoring. The specific sections of the proposed General Provisions that do not apply to sources subject to § 63.703(g) are identified in § 63.701(a)(2) of the proposed rule.

Other exceptions made by the proposed standards to the requirements of the General Provisions affect § 63.7 and § 63.8.[13] Section 63.7(e)(3), under performance testing requirements, requires affected sources to conduct three test runs as part of the performance test.[14] However, owners or operators of existing facilities demonstrating compliance with a material balance calculation are not subject to this provision because the initial compliance demonstration is not a typical test consisting of various runs. The material balance calculation averaged over a 3-day period provides the initial compliance information. Owners or operators of those existing facilities using VOC CEM's for determination of inlet and outlet concentrations and for demonstration of ongoing compliance are not subject to § 63.7 for their control device because they are not required to conduct an initial performance test for the control device. Under these circumstances the control device performance is known via the continuous measurement of VOC concentrations.

Many sections of § 63.8, Monitoring requirements, do not apply to facilities demonstrating compliance via a material balance calculation. For example, such sources are not subject to

[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.

any requirements related to continuous monitoring systems, or performance evaluations for such systems. The specific sections of § 63.8 that do not apply are outlined in § 63.704 of the proposed rule.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for magnetic tape manufacturing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–91–31.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to identify and locate documents readily so that they can participate intelligently and effectively in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review material [section 307(d) (7)(a) of the Clean Air Act]).

C. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of the Executive Order 12866, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The Agency has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by the EPA (ICR No. 1678.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 650 hours per facility annually including time for reviewing instructions, searching existing data sources, conducting performance tests, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities.

The results of the economic impact analysis (EIA) indicate that the first and fourth criteria are satisfied for one of the three small businesses in the regulated portion of the magnetic tape industry.

The EIA calculated facility and product-specific price increases based on the assumption that each facility would need to recoup fully its control costs through a price increase. The results indicated that one facility (a small business) would require a price increase of approximately 5 percent. In addition, an evaluation of post-regulation facility earnings indicated that the same facility would experience a decline of approximately 36 percent in earnings if it is required to comply with the proposed regulation.

The combination of satisfying the significant price increase criterion as well as satisfying the significant impact on post-regulation earnings criterion indicate that one small entity is expected to experience a significant economic impact due to implementation of the proposed regulation.

The small business administration's size standards was used to identify three facilities out of the fourteen regulated facilities as being small businesses. Due to the significant impacts expected to be experienced by one of the small facilities, a regulatory flexibility analysis was conducted to assess the feasibility of providing additional flexibility to small businesses complying with the proposed regulation.

For small businesses in general, one mechanism that was identified as potentially helpful was the low solvent usage cutoff described earlier in this

document. However, any small business whose solvent usage exceeds the cutoff level will have operations similar to those located at large businesses, and therefore will have the same potential to emit HAP as the large businesses. All three small businesses identified as being subject to the proposed regulation have solvent usage levels above the cutoff level. Due to the above reasoning, there are no technical reasons for examining different requirements for small businesses as opposed to large businesses.

For the small business with significant economic impacts, monitoring is the least costly activity that would achieve the requirements of the Clean Air Act. The recommended recordkeeping and reporting requirements of the rule are also the minimum proposed for the General Provisions for the NESHAP program. The facility could minimize its recordkeeping and reporting burden by continuing to stay in compliance with the regulation. More detailed reporting is necessary for deviations from compliance.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

G. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 1994

Carol Browner,

Administrator.

[FR Doc. 94-5313 Filed 3-10-94, 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Airspace Reclassification; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27633; Amendment No. 91–239]

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reinstates the requirement for pilots to establish and maintain two-way radio communications with an operating control tower in Class E and Class G airspace areas. This action also adds a paragraph to § 91.130 of the Federal Aviation Regulations (FAR), for simplification and clarification, that allows an aircraft operator to deviate from any provision of § 91.130 under the provisions of an air traffic control (ATC) authorization. This action is necessary to reinstate and clarify certain operating rules that existed prior to the Airspace Reclassification final rule, which became effective September 16, 1993.

EFFECTIVE DATE: This amendment is effective on March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638). This rule, effective September 16, 1993, in pertinent part, reclassified control zones for airports with operating airport traffic control towers (ATCT) and airport traffic areas as Class D airspace areas. Further, the rule required two-way radio communication with air traffic control in these Class D airspace areas.

Discussion

The Airspace Reclassification final rule requires two-way communication with ATCT located in Class B, C, and D airspace only. The rule deleted the requirement for pilots to establish two-way radio communications with the ATCT's (including temporary ATCT established for special aviation and emergency activities) located in areas other than Class B, C, or D airspace, i.e., Class E and G airspace. This was not the intent of the FAA.

An ATCT is established when the traffic volume and complexity warrants the need for increased services and safety. At the time the Airspace Reclassification final rule was promulgated, it was assumed that those pilots operating at airports within Class E and Class G airspace would establish radio contact with the ATCT. Additionally, the ATCT's located outside Class B, C, or D airspace were considered to have minimal levels of traffic which would not create a safety problem even though two-way communication was not mandatory. However, since the final rule was published, the FAA has received reports of incidents where pilots have not established communications with these ATCT's. Unless all pilots are in communication with the ATCT, controllers are unaware of the intentions of each aircraft, and may be unable to provide ATC services and safety advisories. Therefore, only by requiring pilots to communicate with an operating ATCT can safety be enhanced for pilots operating on or in the vicinity of an airport. This action reinstates the communication requirement for aircraft operating at airports where there is an operating ATCT, as existed in § 91.129 to September 16, 1993.

The Terminal Airspace Reclassification project required numerous amendments to the FAR's. Specifically, § 91.130, "Operations in Class C Airspace" of the FAR was one of the affected rules. Previous to the Airspace Reclassification final rule, § 91.130 included a paragraph which allowed for deviations from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airport radar service area. This paragraph now appears only in § 91.129; § 91.130 includes a statement which requires the reader to refer back to § 91.129 in order to obtain a complete understanding of the rule. This action makes the "deviation" information more accessible to the reader and will replicate the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

The Rule

This action enhances the safety of certain aircraft operations in Class E and Class G airspace and continues the intent of the regulation which existed prior to September 16, 1993. Specifically, this rule adds § 91.126(d) and § 91.127(c) requiring all aircraft to establish two-way radio communications with an ATCT when operating an aircraft to, from, through, or on an airport having an operational control tower. In addition, this action amends § 91.130, making the "deviation" information more accessible to the reader, and replicating the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

Conclusion

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980.

In the interest of flight safety, the public needs to be made immediately aware of the requirement for pilots to establish and maintain two-way radio communications with operating ATCT's that are located in Class E or G airspace areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in these airspace areas.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125 articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.126 is amended by revising the introductory text in paragraph (b) and adding paragraph (d) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

* * * * *

(b) *Direction of turns.* When approaching to land at an airport without an operating control tower in Class G airspace—

* * * * *

(d) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

3. Section 91.127 is amended by adding paragraph (c) to read as follows:

§ 91.127 Operating on or in the vicinity of an airport in Class E airspace.

* * * * *

(c) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

4. Section 91.130 is amended by adding paragraph (e) to read as follows:

§ 91.130 Operations in Class C airspace.

* * * * *

(e) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

Issued in Washington, DC, on March 7, 1994.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 94–5775 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

Friday
March 11, 1994

Part IV

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program, Energy Biomass/Biofuels for Fiscal Year 1994; Solicitation of Applications; *Notice*

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Energy Biomass/Biofuels for Fiscal Year 1994; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants, Energy Biomass/Biofuels Program for fiscal year 1994.

Authority and Funding

The authority for this program is contained in Section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Pursuant to section 719 of Public Law No. 103–111, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in fiscal 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to section 727(b) of Public Law No. 103–111, in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018; (f) Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051; and (g) the CSRS regulations implementing the National Environmental Policy Act of 1969 (NEPA), 7 CFR part 3407.

Program Description

CSRS Contact: Dr. Wayne K. Murphey; Telephone: (202) 401–4089.

Approximately $443,000 will be available for this program in fiscal year 1994. Research into various areas constraining the development and acceptance of fuels derived from biological sources (biofuels) is solicited. The topics of interest are:

a. Benefit/costs associated with the production of biomass, its conversion into biofuels;

b. Environmental impacts of using biofuels including carbon sequestration, emissions upon conversion and use, systems sustainability, and life cycle (growing, processing, and use) analysis;

c. Economic analysis of costs of alternative fuels including infrastructure changes, equipment purchases and/or modifications, vehicle conversion and/or new alternative fuel vehicle costs, and other costs associated with establishing biofueled vehicle fleets; and development of biofuels including production, materials compatibility and assessment, and mitigation of engine deposits and emissions;

d. Development of co-products directly resulting from the production of biofuels.

In future years, the guidelines for this program will be adjusted as additional researchable issues arise or program progress dictates.

Format for Research Grant Proposals

Members of review committees and the staff expect each project description to be complete. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extend that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

Length of Proposal. Grant proposals must be limited to 15 pages (single-spaced exclusive of required forms, bibliography, vitae of the principal investigator(s), senior associate(s) and other professional personnel, and the NEPA statement with its supporting documentation. Information should be typed on one side of the page only. Reduction by photocopying or other means for the purposes of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

Application for Funding. Attach a completed and signed "Application for Funding," Form CSRS-661, to the front of the proposal. The "Special Research Grants Program" should be indicated in Block 7, and "Energy Biomass/Biofuels" should be indicated in Block 8. One copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS-661 and the other required forms and certifications are contained in the Application Kit.)

Budget Form CSRS-55. A copy of the Form CSRS-55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS-55:

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS-55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds

awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontract and should be reflected in the subrecipient budget.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), the environmental data for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions (7 CFR 3407.6)

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions listed above and the reasons therefore. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified in the Table of Contents as "NEPA Considerations" and the narrative statement with supporting documentation shall be placed after the cover sheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

How to Obtain Application Materials

Copies of his solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@csrs.esusda.gov. which states that you want a copy of the application materials for Fiscal Year 1994 Special Research Grants Program, Energy Biomass/Biofuels. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What to Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the administrative provisions which govern the Special Research Grants Program, 7 CFR part 3400.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When To Submit Applications

To be considered for funding during Fiscal Year 1994, proposals must be submitted by April 25, 1994.

Proposals submitted through the regular mail must be postmarked by April 25, 1994, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or a courier service, or brought to the following address by April 25, 1994: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is: (202) 401–5048.

Supplementary Information: The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local Officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 8th day of March, 1994.

William D. Carlson,

Associate Administrator, Office of Grants and Program Systems.

[FR Doc. 94–5741 Filed 3–10–94; 8:45 am]

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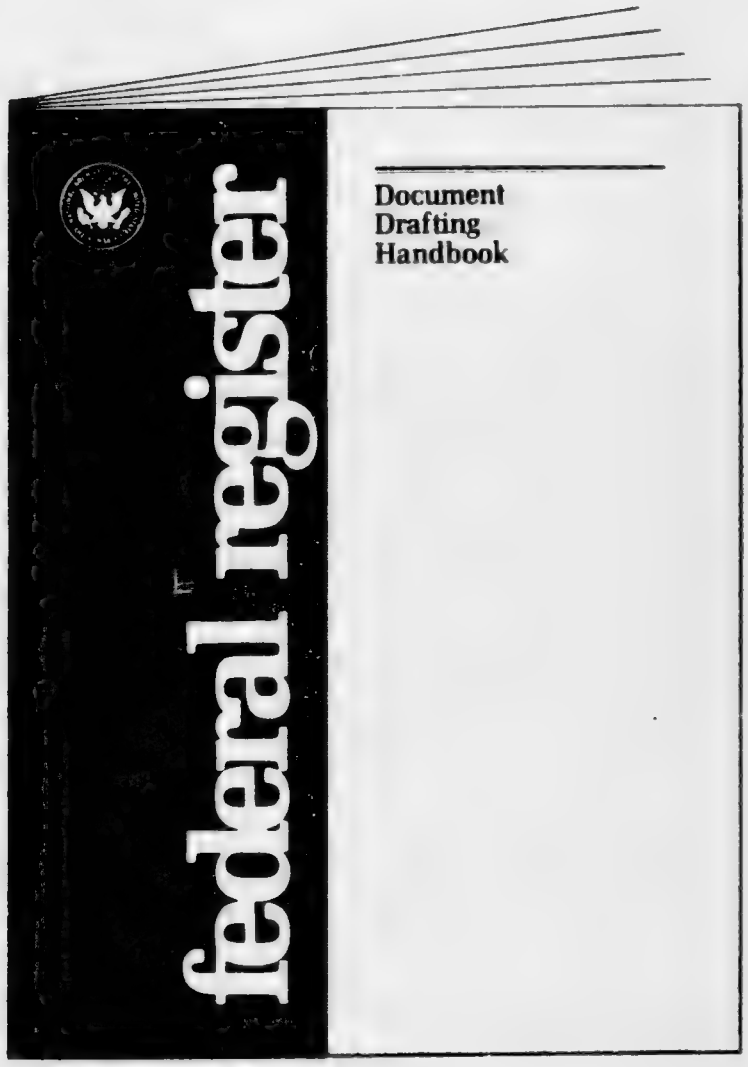

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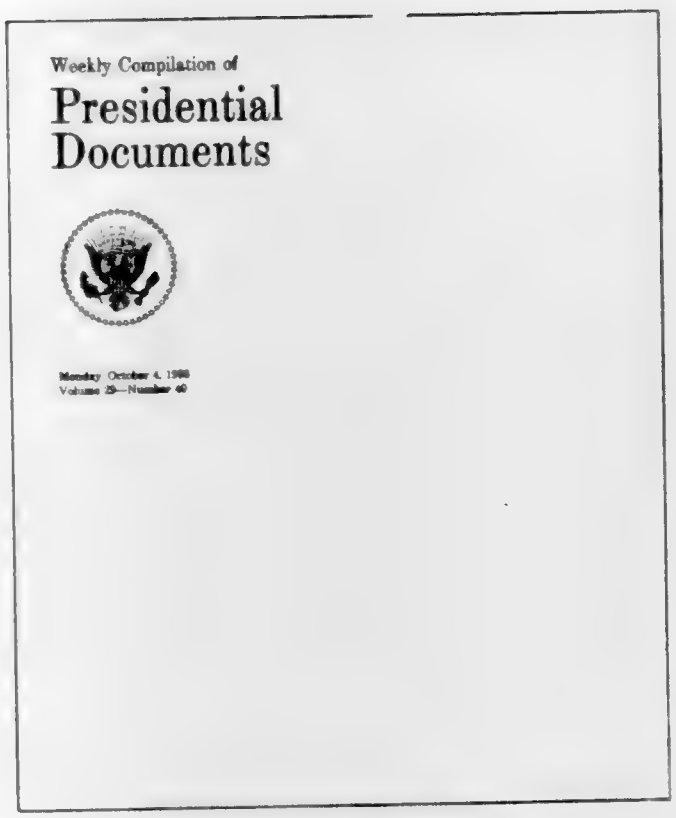

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3–14–94
Vol. 59 No. 49

federal register

Monday
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Monday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 532, 550, and 575

RIN 3206–AF84

Special Pay Entitlements for Law Enforcement Officers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM), in conformance with amendments to the Federal Employees Pay Comparability Act of 1990 (FEPCA) made by the Technical and Miscellaneous Civil Service Amendments Act of 1992, is issuing final regulations to amend the definition of "law enforcement officer" for certain pay purposes and expand coverage of the special maximum limitation on relocation bonuses for law enforcement officers to five additional categories of law enforcement employees.

EFFECTIVE DATE: These final regulations are effective on April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On January 8, 1993, OPM published interim regulations to implement certain provisions of the Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992). These provisions include (1) an expanded definition of "law enforcement officer" in section 5541 of title 5, United States Code (with conforming amendments in 5 U.S.C. 4521, 5542, and 5547, and section 402 of FEPCA); (2) an amendment to section 404 of FEPCA to provide OPM with the authority to determine the extent to which a special pay adjustment for law enforcement officers may be paid to an employee receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law; and (3) an amendment to section 405 of FEPCA to extend application of the special maximum limitation on relocation bonuses for law enforcement officers to the categories of law enforcement employees listed in section 405 of FEPCA—i.e., Park Police officers, Secret Service Uniformed Division officers, special agents in the Diplomatic Security Service, and probation and pretrial services officers.

The 60-day public comment period ended on March 9, 1993. Comments were received from one Federal agency, one employee organization, and one individual. These comments are summarized below.

Expanded Definition of "Law Enforcement Officer"

An agency commented that the provisions in the technical amendments to FEPCA providing special pay adjustments for supervisory and administrative law enforcement employees who are not eligible for special law enforcement retirement coverage are confusing and that the criteria should be applied consistently across the board. These provisions are in law, and OPM does not have the authority to change them. The law provides four definitions of "law enforcement officer" for purposes of special pay adjustments that differ according to an employee's retirement coverage and whether his or her position is or is not supervisory or administrative.

An employee who meets the definition of "law enforcement officer" in section 5541(3) of title 5, United States Code, must also be subject to the provisions of chapter 51 of title 5, United States Code (Classification), in order to be entitled to a special pay adjustment provided by section 404 of FEPCA. To meet the definition, an employee must be a "law enforcement officer" who—

(1) Is subject to the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), is in a primary (nonsupervisory) or secondary (supervisory or administrative) law enforcement position, and is actually covered by the corresponding special law enforcement retirement provisions of CSRS or FERS;

(2) Is subject to (CSRS), is in a secondary (supervisory or administrative) position that has been approved for law enforcement retirement purposes, but is not eligible for law enforcement retirement coverage;

(3) Is subject to FERS and, as in (2), is in an approved secondary position, but is not eligible for law enforcement retirement coverage; or

(4) Is not subject to either CSRS or FERS and is in a position that OPM determines would satisfy one of the other three conditions cited above.

In addition, an employee who has had law enforcement retirement coverage granted retroactively for service while subject to 5 U.S.C. chapter 51 is entitled to the special pay adjustment retroactively.

An agency commented that there is a lack of congruence between the definitions of "law enforcement officer" under CSRS and FERS and that the classification standards should provide specific guidance for linking law enforcement duties to the definition of "law enforcement officer" for retirement purposes. Questions that arise concerning law enforcement duties for the purpose of determining an employee's entitlement to these special pay adjustments must be handled within the context of the technical amendments to FEPCA and law enforcement retirement law and regulations. Such issues are not within the scope of a classification standard. Adding a discussion of these issues to classification standards would add unnecessarily to the complexity of the standards without adding materially to the quality of information already provided.

An employee organization commented that the definitions of "law enforcement officer" in these regulations should provide guidance on specific positions, job series, or duties. Such guidance is beyond the scope of these regulations. The criteria for approval of a position as a primary or secondary law enforcement position are in 5 CFR part 831, subpart I, for employees subject to CSRS, and in 5 CFR part 842, subpart H, for employees subject to FERS. Most employees who are covered by law enforcement retirement provisions are criminal investigators, Border Patrol Agents, Deputy U.S. Marshals, correctional officers, or support personnel in correctional institutions who have frequent and direct contact with inmates. Most Federal police officers are

not covered by law enforcement retirement provisions.

Basic Pay for Computation of Special Pay Adjustments

An agency commented that some of its attorneys and accountants are on nationwide special rates under 5 U.S.C. 5305 that are not specifically related to law enforcement duties. Some of these attorneys and accountants have been granted retroactive coverage under the law enforcement retirement provisions. The agency believes special pay adjustments for LEO's should not be based on nationwide special rates unless the special rates are directly related to law enforcement duties.

The interim regulations for special pay entitlements for law enforcement officers published on January 8, 1993, provided for computation of special pay adjustments on the basis of a nationwide or worldwide special salary rate under 5 U.S.C. 5305. Such a rate was included in the definition of "scheduled annual rate of pay" in § 531.301 of title 5, Code of Federal Regulations.

In developing regulations for the implementation of locality-based comparability payments under 5 U.S.C. 5304, OPM determined that a special law enforcement adjusted rate of pay should not be based on a nationwide or worldwide special salary rate under 5 U.S.C. 5305. The final regulations for locality-based comparability payments published on December 30, 1993, [58 FR 69169] removed special rates of pay under 5 U.S.C. 5305 from the definition of "scheduled annual rate of pay" in § 531.301. It should be noted that special pay adjustments continue to be based on the special rates for law enforcement officers provided by section 403 of FEPCA. For law enforcement officers who were receiving special pay adjustments on top of special rates under 5 U.S.C. 5305, the regulations established a continued rate of pay equal to the rate received before this change became effective so that there would be no loss in pay.

Miscellaneous

The Office of Management and Budget changed the title of the Boston CMSA to the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA, effective on June 30, 1993. (Although the title of the Boston CMSA changed, the geographic coverage did not change). Also, section 628 of the Treasury, Postal Service, and General Government Appropriations Act, 1994 (Pub. L. 103–123, October 28, 1993), amended section 404 of FEPCA by striking "Washington, DC–MD–VA Metropolitan Statistical Area" and inserting in its place "Washington-Baltimore, DC–MD–VA–WV Consolidated Metropolitan Statistical Area." This amendment became effective on October 28, 1993. Accordingly, OPM is revising the titles of the Boston and Washington metropolitan statistical areas in paragraph (a) of the definition of "special pay adjustment area" (§ 531.301) and in the chart in § 531.302(a).

An individual called OPM staff by telephone and pointed out that an incorrect citation for the definition of "law enforcement officer" was used in 5 CFR 575.302. OPM is revising § 575.302 to substitute the correct reference.

OPM is taking this opportunity to make technical corrections to two additional regulatory sections to conform with changes in law. The Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992) revised the divisor for computing overtime pay for certain prevailing rate employees (i.e., those employees whose pay is fixed on either a monthly or annual basis) from 2,080 to 2,087. The amendment became effective on the first day of the first pay period beginning on or after October 2, 1992. OPM is revising 5 CFR 550.113 accordingly.

In addition, OPM is correcting erroneous citations in 5 CFR 531.205(a)(3) and (4) by removing the reference to "5 U.S.C. 5305" and inserting "5 U.S.C. 5303." Prior to enactment of FEPCA, annual adjustments to pay schedules were covered under section 5305 of title 5, United States Code. As a result of the FEPCA amendments, annual adjustments are now covered under section 5303. The references in § 531.205(a) must be changed accordingly.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

5 CFR Part 532

Administrative practices and procedures, Freedom of Information, Government employees, Reporting and recordkeeping requirements, Wages.

5 CFR Part 550

Administrative practices and procedures, Claims, Government employees, Wages.

5 CFR Part 575

Government employees, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, the interim rule amending 5 CFR parts 531, 532, 550, and 575, published at 58 FR 3199 on January 8, 1993, as amended by the final rule published at 58 FR 69169 on December 30, 1993, is adopted as final with the following additional changes:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316.

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C 5304, 5305, and 5553; and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102–378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553.

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993.

§ 531.205 [Amended]

2. In § 531.205, paragraphs (a)(3) and (4) are amended by removing the reference "5 U.S.C. 5305" and inserting in its place "5 U.S.C. 5303".

3. In § 531.301, under the definition of "special pay adjustment area," paragraphs (a) and (h) are revised to read as follows:

§ 531.301 Definitions.

* * * * *

Special pay adjustment area * * *

(a) Boston-Worcester-Lawrence, MA–NH–ME–CTCMSA;

* * * * *

(h) Washington-Baltimore, DC-MD-VA-WV CMSA.

4. In § 531.302, paragraph (a) is revised to read as follows:

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the

scheduled annual rate or pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Worcester-Lawrence, MA-NH-ME-CT CMSA	1.16
Chicago-Gary-Kenosha, IL-IN-WI CMSA	1.04
Los Angeles-Riverside-Orange County, CA CMSA	1.16
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA	1.16
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA	1.04
San Francisco-Oakland-San Jose, CA CMSA	1.16
San Diego, CA MSA	1.08
Washington-Baltimore, DC-MD-VA-WV CMSA	1.04

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p. 316.

2. In § 550.113, paragraphs (d) (1) and (2) are revised to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(d) * * *

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,087 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,087, and multiply the quotient by one and one-half.

* * * * *

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

3. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316.

4. In § 575.302, paragraph (a)(4) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter;

* * * * *

[FR Doc. 94–5785 Filed 3–11–94; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AF61

Prevailing Rate Systems; Champaign, Illinois, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to abolish the Champaign, IL, Federal Wage System nonappropriated fund (NAF) wage area for pay-setting purposes. With the closing of Chanute Air Force Base in August 1993, the only NAF employees remaining in the Champaign wage area are those located in Vermilion County, IL. This regulation assigns Vermilion County to the Marion, IN, NAF wage area.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 10, 1993, OPM published an interim rule abolishing the Champaign, IL, Federal Wage System NAF wage area and assigning Vermilion County, IL, to the Marion, IN, wage area (58 FR 59639). OPM received no comments during the 30-day comment period. However, the interim regulation gave a March 4, 1994, effective date coinciding with the anticipated effective date of the Marion wage schedule (reflecting the 90-day delay required by law since 1984). Since the publication of the interim rule, Public Law 103–123, which phases out the 90-day delay, was enacted. The new law provides that wage adjustments will be effective on the later of the normal wage adjustment date for the wage area or the first day of the first pay period beginning on or after January 1, 1994. The normal wage adjustment dates for both the Champaign and Marion wage areas were in December 1933. Hence under the new law, wage adjustments for both of these wage areas would be effective on the first day of the first pay period beginning on or after January 1, 1994. Because of the interim rule abolishing the Champaign NAF wage area, there is no new wage schedule for Champaign. In order that Vermilion County employees may receive a pay adjustment in January 1994, as required by Public Law 103–123, the effective date of the wage area redefinition must be changed from March 4, 1994, to January 1, 1994.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective retroactively to January 1, 1994, so that Vermilion County employees may receive the pay adjustment required by Public Law 103–123.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and record keeping requirements, Wages.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

Accordingly the interim rule amending 5 CFR part 532 published on November 10, 1993, (58 FR 59639), is adopted as final with the following change:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B is amended by revising the for "Vermilion" to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * * *

Indiana

Marion

Survey area

Indiana:
Marion

Area of application: Survey area plus:
Vermilion [1]

[1] Effective date January 1, 1994.

* * * * *

[FR Doc. 94–5784 Filed 3–11–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1703

RIN 0572–AA87

Rural Economic Development Loan and Grant Program; Grants

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulation on the Rural Economic Development Loan and Grant Program. This amended regulation establishes procedures for approving and administering grants, clarifying the eligible uses of grant funds, supplemental funds requirements, and administrative requirements for grant funds. The amendments contained in this final rule will facilitate the process whereby REA borrowers can apply to REA for community development grant funding.

EFFECTIVE DATE: This regulation is effective April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

The Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on current and historical funding levels for this program and a projected average size loan and/or grant in the range of $300,000 to $400,000, it is estimated that 50 to 60 loans and/or grants will be made nationwide each year. It is projected that the Rural Economic Development Loan and Grant Program will have a limited impact upon small businesses because of the program's unique delivery system; i.e., loans and grants will be made through REA financed electric and telephone cooperatives or companies. These entities do not operate as credit institutions, thus they do not seek funds for the expressed purpose of loan portfolio expansion. Rather, REA financed entities request REA funding through this program to enhance economic development in rural areas by funding a limited number of selected development projects. Since credit is channeled to areas which are generally underdeveloped and financially depressed, job creation and economic development resulting from newly emerging businesses and community facilities funded by REA does not pose undue competition or other adverse effects upon existing businesses. Therefore, this final rule will have no effect upon businesses or entities other than those to be funded through this program.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Intergovernmental Review

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials, with the exception of applications for Project Feasibility Studies. A notice informing the public of the intergovernmental review coverage was published in the **Federal Register** on March 20, 1989, at 54 FR 11426.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.854, Rural Economic Development Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 9609511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0090. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

On February 15, 1989, REA published the final rule, 7 CFR 1709, subpart B, in the **Federal Register** (54 FR 6867), implementing the Rural Economic Development Loan and Grant Program to provide funds to REA Borrowers under the Rural Electrification Act of 1936, as amended (7 USC 901 *et seq.*) (Act). This program provides zero-interest loans to REA Borrowers for the promotion of rural economic development and job creation projects. On September 27, 1990, REA changed the designation of this rule from 7 CFR part 1709 to part 1703 (55 FR 39394). On September 25, 1992, REA published a final rule in 7 CFR 1703 subpart B (57 FR 44317) to revise the loan program. The revision provided additional information to potential applicants on the selection factors and rating criteria, allowed monthly submittal of applications and established a maximum amount of project funding as a fixed percentage of allocated funds. Subsequently, a proposed rule was published on October 12, 1993 (58 FR 52688), to establish procedures for approving and administering grants and make minor changes to enhance the overall program delivery for the zero-interest loan and grant program. This final rule contains the provisions set forth in the proposed rule published October 12, 1993.

This rule contains provisions for grant funds to be used for the following purposes:

1. The establishment and/or operation of a revolving loan fund by REA Borrowers; and,

2. Pass-through grants in conjunction with loans for: (a) Project feasibility studies and technical assistance for community development, business start-ups, business planning, and market

research, (b) business incubators established by non-profit organizations, (c) community development assistance by non-profit organizations, (d) projects operated on a profit or non-profit basis that enhance the overall quality of medical care of rural residents, and (e) projects by profit or non-profit organizations which encourage the use of advanced telecommunications for educational and medical services.

Several conditions for grant making have been established under this program in order to maximize the benefits of the grant program, conserve the limited funds available, and provide for the efficient administration of grant making by REA:

1. With the exception of the establishment and/or operation of a revolving loan program, grants will be made only in conjunction with rural development loans. For grants to REA Borrowers to establish revolving loan funds, REA Borrowers will be required to commit their funds in an amount no less than 20 percent of the REA grant. For all other projects eligible for loan and grant funding, that portion of project cost eligible for REA funding may be funded up to 20 percent with grant funds.

2. As with zero-interest loans, all REA projects funded with grants will require a minimum of 20 percent supplemental funding for project costs. Supplemental funds may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower, or other sources.

3. For grants made in conjunction with zero-interest loans, grant funding will be provided only in sufficient amount necessary for a feasible project. A project which generates sufficient revenue to show feasibility without grant funds is not eligible for a grant.

4. In determining the eligible amount of a grant, REA will base the appropriate amount of grant funding on a typical year of operation, when the project has generally reached its target income earning potential.

5. Grant funding will be channeled, to the extent practicable, to non-profit entities which have a broad impact on rural economies. However, grant funding will be available for project feasibility studies and technical assistance irrespective of entity status. Also, grant funding will be provided irrespective of entity status for enhancement of medical care and advanced telecommunications for educational and medical services.

In addition to grant making provisions, several changes have been made to the loan provisions of the Rural Economic Development Loan and Grant Program. These changes, addressed in detail in the proposed rule published on October 12, 1993, are as follows:

(1) Paragraph (d) of § 1703.21 has been revised to require Borrowers to deposit zero-interest loan funds into their construction accounts.

(2) Paragraph (b) of § 1703.28 has been revised to eliminate the $400,000 limitation on the size of zero-interest loans and grants and set the maximum amount not to exceed 3 percent of the projected amount of zero-interest loan and grant funds available each year. However, the REA Administrator will retain the authority to limit funding below the 3 percent level, and a decision in this regard will be published in the **Federal Register** for each fiscal year. For fiscal year 1994, the REA Administrator has determined the maximum amount of a loan and grant to be $400,000.

(3) To provide REA Borrowers additional flexibility to fund worthwhile community development projects, paragraph (e) of § 1703.46 has been eliminated to remove the prohibition against funding recreational facilities unless they convincingly demonstrate that they would be an integral part of a tourism industry in their area.

(4) Paragraph (b) of § 1703.61 has been amended to clarify that the grant portion of the zero-interest loan and grant will be disbursed to the borrower only upon completion of the project. This will ensure that grant funds are handled so as to minimize the time between disbursement and authorized use to comply with USDA's Federal Assistance Uniform Regulation, 7 CFR parts 3015 and 3016.

(5) Paragraph (b) of § 1703.66 has been revised to require the recipients of pass-through loans and grants to furnish a record of receipts showing total project costs to verify that no greater than 80 percent of project costs have been funded with REA zero-interest loan and grant funds.

(6) Paragraph (e) of § 1703.66 has been revised to allow REA field accountants to provide a rural economic development review of zero-interest loans and grant funds. This revision will, in many cases, save REA Borrowers thousands of dollars by eliminating costs of formal audits which were previously required in accordance with the provisions of 7 CFR part 1773, "REA Policy on Audits of Electric and Telephone Borrowers."

(7) Paragraph (g) of § 1703.66 has been revised to clarify that for pass-through zero-interest loans and grants, REA Borrowers must require project owners to provide sufficient financial, accounting and budget information, and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status. Likewise, paragraph (g) has been revised to require REA Borrowers receiving grants for establishment of revolving loan funds to furnish information to allow audits in accordance with USDA departmental grant regulations. Copies of these grant regulations are available to REA Borrowers by request.

Comments

REA received 24 comments regarding the proposed rule which were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Visions Five Group.
(2) Southeast Alabama Regional Planning and Development Commission.
(3) Coastal Area District Development Authority.
(4) LaCreek Electric Association, Inc.
(5) Nebraska Rural Electric Association.
(6) National Rural Electric Cooperative Association.
(7) National Telephone Cooperative Association.
(8) Edison Electric Institute.
(9) East River Electric Power Cooperative.
(10) Carolina Electric Cooperatives.
(11) Sequachee Valley Electric Cooperative.
(12) Mid-Cumberland Area Development Corporation.
(13) Mid-East Commission.
(14) McIntosh Trail Regional Development Center.
(15) North Dakota Association of Rural Electric Cooperatives/North Dakota Association of Telephone Cooperatives.
(16) Greater Egypt Regional Planning.
(17) Southwest Tennessee Development District.
(18) Southwest Arkansas Planning and Development District.
(19) Eastern Panhandle Regional Planning and Development Council.
(20) Northeast South Dakota Energy Conservation Corporation.
(21) National Association of Development Organizations.
(22) North Dakota Commissioner of Agriculture.
(23) Region Nine Development Commission.
(24) Purchase Area Development District.

The comments from various organizations including REA Borrowers, electric and telephone utility trade organizations, economic development organizations and state governments reflected broad support for the proposed rule.

Most of the organizations made specific recommendations on the

proposed rule. REA has considered all comments in finalizing this regulation.

A number of the comments were from entities that administer existing Revolving Loan Funds (RLFs) or organizations representing entities that administer revolving loan programs. These organizations feel that grants should not be directed to REA Borrowers exclusively, but also to existing organizations not financed by REA that operate RLFs, since REA Borrowers do not serve all of rural America. They also are concerned that they would be unable to compete with the REA Borrowers' revolving funds zero-interest rate loans.

First, grants, as well as zero-interest loans administered exclusively through REA Borrowers are in accordance with directives established in the Omnibus Reconciliation Act of 1987, (Pub. L. 100–102, 101 Stat. 1330–20). This law was created in a context where electric and telephone Borrowers who had made prepayments on loans into cushion of credit accounts could utilize a Rural Development Subaccount to collectively draw from the interest earnings from the Borrowers' cumulative credit resources to reinvest into local economic development projects. The provisions of the proposed rule making grant funds available exclusively to REA Borrowers, as a result of their prepayments, are governed by legislation.

REA acknowledges, however, that many rural development organizations are well qualified to administer grant funds, and they provide a valuable resource for local or regional rural economic development efforts. REA will strongly encourage Borrowers operating revolving loan funds to collaborate with existing organizations involved in rural development activities, and those organizations are urged to work with REA Borrowers in facilitating rural development projects. This collaboration and assistance could include performing local or regional studies to identify area economic development needs, assisting community leaders and other project owners in planning and implementing projects, loan packaging, technical assistance to REA Borrowers in reviewing loan applications and administering the revolving loan fund, and coordinating efforts between other entities, including public and private lending institutions, that provide assistance and/or funding to rural development projects. REA also encourages state Rural Development Councils to become active participants in planning rural development projects and coordinating activities between local governments, economic development districts, REA Borrowers and other entities operating RLFs. However, although collaboration between REA Borrowers and other enitities is strongly encouraged, legislation requires that REA Borrowers retain the ultimate decision-making authority and responsibility for REA rural development loan and grant funds.

Regarding possible competition between REA Borrowers and other lenders, it should be emphasized that REA does not intend for REA Borrowers to compete with or replace existing services of RLFs, or other public or private lenders, but merely to augment or supplement those sources of funds. To clarify this policy, and ensure effective implementation, § 1703.22(b) has been revised to require Borrowers, within their RLF rural development plan, to document coordination of lending activities with local organizations operating RLFs and other area lenders. The rule requires such documentation to indicate that Borrowers will not compete with, but will supplement other legal sources of financing. Rural development plan documentation which complies with REA policy will be stipulated in RLF agreements between Borrowers and REA.

Some commenters expressed concern that the administrative burden for operating RLFs would be too great and REA Borrowers may choose not to participate. REA has minimized administrative requirements; thus the burden should be no greater for the RLFs than for zero-interest loans. Although the REA Borrowers will decide whether or not to establish RLFs, REA believes the potential of significant benefits to rural residents through the RLF provisions will encourage participation.

There were a number of recommendations concerning purposes eligible for funding, including comments that REA should make grant funds available for businesses in a for-profit status. REA believes there is adequate flexibility with the rule as written regarding eligible projects. The quality of the proposal and the degree of benefit to the rural community or the potential for economic development are determining factors in application approval. It should be noted that rural for-profit and non-profit projects alike may be able to obtain grant funds in conjunction with zero-interest loans for feasibility studies and technical assistance. In addition, for-profit as well as non-profit entities that enhance the overall quality of medical care or provide advanced telecommunications services or computer networks for medical and educational services may be considered for grants because they may facilitate projects which will improve the rural communities overall and provide needed services to rural America. However, generally, REA desires to fund non-profit entities, since grants to for-profit entities for direct business start-up costs could result in the possibility or perception that grants would provide certain for-profit entities an unfair competitive advantage over those entities not receiving REA funding.

It was also suggested that housing be included as eligible for funding under the regulation. REA recognizes the value of adequate housing in developing rural areas. However, REA believes other federal programs are available to provide housing, and grant funds will be better utilized to provide broader community-wide facilities and infrastructure improvements. REA Borrowers may, in accordance with a rural development plan for a revolving loan fund, provide housing assistance from those funds classified as non-Federal.

Further, it was suggested that grant funds be used for venture capital purposes. The focus of the rural economic development loan and grant program is to allow REA Borrowers to assist projects that will promote rural development. REA intends to be flexible in meeting this objective; thus, applications will be evaluated on a case by case basis.

There were several objections to linking grants to zero-interest loans. Some comments urged direct grants for feasibility studies and technical assistance be provided to non-profit entities and that grants be made outright, without loans, to economically distressed local governments. REA feels that grants for feasibility studies or technical assistance will most likely be effectively used in conjunction with loans. Grants in conjunction with loans strengthen the loan program and maximize the benefits derived from the limited amount of grant funding available. No change is being made to allow direct grants to economically distressed local governments; however, provisions of the program as written will enable REA Borrowers to facilitate economic development in distressed rural areas by funding worthwhile community development and job creation projects.

Two commenters suggested that the 10 percent limitation for using grant funds for administrative costs of the RLFs be revised to provide more flexibility in determining these costs. No change is being made to the program

at this time. REA feels that limiting the funds used for administrative costs will be an incentive to encourage REA Borrowers to stress prudent management of the funds and maximize the benefits for rural development. REA encourages interested rural development organizations to work with REA Borrowers to minimize overhead costs.

Some commenters felt REA's grant funding limitation of 80 percent of the cost of establishing the revolving fund, which will require 20 percent supplemental funding to the revolving loan fund by the Borrower, is overly restrictive. These organizations stated that this Borrower supplemental funding requirement, and the supplemental funding requirement for individual projects, was too burdensome. Additionally, commentors objected to requiring projects be funded by REA Borrowers "up-front." This requirement was set forth in the proposed rule's preamble paragraph entitled "The establishment and/or Operation of a Revolving Loan Fund by REA Borrowers", § 1703.22(a)(3) relating to supplemental funding requirements, and § 1703.22(h)(2), "Requisition requirements", which requires Borrowers be reimbursed 80 percent of funds expended for approved projects. REA believes the supplemental funding requirement should remain applicable for Borrowers establishing revolving loan funds, as well as supplemental funding for individual projects presently required for zero-interest pass-through loans. REA has found that the supplemental funding requirement specified in § 1703.23 of the regulation, as applied to individual projects, has been beneficial for the zero-interest loan program by maximizing the use of outside funds. Likewise, REA believes the Borrower supplemental funding requirement for the revolving loan fund will be equally beneficial for the grant selection process by evidencing a degree of Borrower support and commitment to the revolving loan fund, and it will provide REA adequate assurance of effective project review and oversight resulting in projects having a high probability of success.

However, REA recognizes that reimbursing Borrowers only 80 percent of funds expended "up front" for community development projects, in order to achieve Borrowers' 20 percent required contribution to RLFs, may place an undue financial burden upon some Borrowers and discourage program participation. In addition, REA recognizes that requiring Borrowers to initially exhaust their financial resources, as well as the REA grant funds, will result in no available funds for Borrowers' revolving funds during the first year or two of operation until payments from the funded community development projects are received. Therefore, REA has modified the proposed rule in § 1703.22(h)(2), "Requisition requirements", to remove the 80 percent reimbursement provision and allow for full reimbursement of Borrowers' expended funds for approved projects funded. However, consistent with the supplemental funding requirements for individual projects, as well as revolving loan funds set forth in the proposed rule, Borrowers' supplemental funding requirements to the revolving loan fund will be maintained. Accordingly, paragraph (a)(5) in § 1703.22 of the final rule has been added to require REA Borrowers establishing RLFs to submit a commitment, in the form of a board resolution, to provide supplemental funding, referred to as "additional funding" in an amount no less than 20 percent of the REA grant approved. The Borrower will be required to provide documentation that the additional funding has been deposited in the appropriate account in § 1703.22(h)(1) of this final rule prior to grant disbursement. This paragraph also reiterates the requirement in § 1703.22(g)(2) in the proposed rule requiring additional funding be retained within the revolving loan fund. Additional funding for revolving loan funds may be retained initially as non-Federal funds for any rural economic development project(s), subject to the normal requirements outlined in § 1703.22(g). For example, for a $400,000 revolving loan fund grant from REA, the Borrower may requisition 100 percent of REA's portion of eligible project costs. However, the REA Borrower will commit at least $80,000 (20 percent of $400,000) of additional funds to be used for rural economic development projects in accordance with an approved rural development plan for non-Federal funds. Since the Borrower's funds provided as additional funds may be considered non-Federal monies and not subject to "Federal monies" restrictions for the Rural Economic Loan and Grant Program as outlined in the regulation, the REA Borrower can retain a worthwhile degree of flexibility to fund projects during the first year of the revolving loan fund. It should be noted, however, that as with pass-through zero-interest loans and grants, projects funded with Federal grant funds under the revolving loan provision will be subject to the supplemental funding requirements as outlined in § 1703.23 of the Rural Economic Loan and Grant Program regulation. As pointed out in the comments, REA recognizes that many projects may have limited sources of supplemental funding available. In this regard, therefore, REA has provided a provision in § 1703.22(a)(5), whereby Borrowers, with prior approval from REA, may use all or a portion of their additional funding to assist project owners receiving funding through the revolving loan provisions to meet their supplemental funding requirements required by § 1703.23. In this case, such additional funding will be considered as Federal funds and subject to the requirements and restrictions of the regulation.

Finally, several technical changes have been made to the proposed regulation for clarification as follows: (1) Section 1703.21(d) has been revised to clarify that excess interest returned to REA will not be used to reduce principal indebtedness. (2) For revolving loan funds, § 1703.22(a)(4) has been revised to clarify that reasonable servicing fees may be charged regardless of whether Federal or non-Federal funds are involved. (3) Section 1703.20(a)(8) has been revised to clarify that the overall restriction for using zero-interest loan and grant funds for payment of Borrower salaries is subject to the operating expense allowance for revolving loan funds. (4) Section 1703.22(h)(1) has been revised to add to the accounting requirements, additional ledger accounts to record interest income. (5) Section 1703.22(g)(2) has been clarified to require Borrowers to retain interest earned from non-Federal funds within the revolving fund to be used in accordance with their approved Rural Development Plan and Scope of Work Plan. (6) Section 1703.22(g)(3) has been revised to require REA Borrowers that terminate the revolving loan program without obtaining approval by the REA Administrator to return the amount of the original grant to REA. (7) Section 1703.22(h)(2) has been revised to delete the requirement for account ledgers to be submitted as a prerequisite for requisitioning grant funds for revolving loan funds. (8) Section 1703.66(g) has been revised to require REA Borrowers to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 et seq. and 950aaa et seq.

Subpart B—Rural Economic Development Loan and Grant Program

2. In § 1703.12 of this subpart B, the following definitions are added in alphabetical order to read as follows:

§ 1703.12 Definitions.

* * * * *

Revolving loan program—a program established and operated by the Borrower, using grant funds, the Borrower's contribution and loan repayments to make loans to businesses or others for rural economic development and job creation purposes.

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for REA Borrowers financed under sections 201 and 408 of the Act.

* * * * *

Rural economic development—job creation or preservation or community facilities improvement projects in rural areas.

* * * * *

Scope of work—a detailed plan, which has been approved by the Administrator, covering the work to be performed by the loan and/or grant recipient using the loan and/or grant funds.

* * * * *

Technical assistance—analysis of facilities or processes, managerial, financial and operational consultation by independent qualified entities to assist project owners to identify and evaluate problems or potential problems and provide training to enable project owners to successfully implement, manage, operate and maintain viable projects.

* * * * *

3. Paragraph (c) of § 1703.17 is added to read as follows:

§ 1703.17 Uses of zero-interest loans and grants.

* * * * *

(c) Zero-interest loans and grants may be used for Projects that enhance rural economic development by providing advanced telecommunications services and computer networks for medical and educational services, as follows: (1) For telecommunications end use and/or transmission facilities; and (2) Other portions of the project, such as modifications to buildings necessary to accommodate telecommunications equipment for medical care and other services, public or private education, and employment training.

4. Sections 1703.18 and 1703.19 are added to read as follows:

§ 1703.18 Types of projects eligible for grant funding.

Grants may be made for the following purposes:

(a) The establishment and operation of a revolving loan program by Borrowers in accordance with § 1703.22;

(b) Project feasibility studies to assist for-profit and non-profit entities in conjunction with a loan for an authorized project. Feasibility studies will include management assistance, consultation, and research for planning individual projects that the Borrower has determined will benefit the rural community. Feasibility studies which may be financed under this section must be performed by qualified entities subject to § 1703.19(i), General requirements for grant funding. Feasibility studies must address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. These include the market, technical, economic, financial, and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA;

(c) The acquisition of technical assistance in conjunction with projects funded with zero-interest loans to enable for-profit and non-profit entities to obtain analysis of facilities and processes, managerial, financial and operational consultation. Grant funds may also be used in conjunction with zero-interest loans to enable non-profit business incubators to provide technical assistance. Technical assistance will enable project owners to identify and evaluate problems or potential problems and provide training in order that they may ultimately implement, manage, operate and maintain viable projects which are financed with zero-interest loan funds. Technical assistance financed under this section must be performed by qualified entities which are independent of the project owner subject to § 1703.19(i), General requirements for grant funding;

(d) Business incubators established by non-profit organizations to assist in developing emerging enterprises. Business incubators funded in conjunction with zero-interest loans will include those facilities in which single or multiple businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or other overhead facilities. Grant funding may also be provided to allow business incubators to provide feasibility studies and technical assistance in accordance with paragraphs (b) and (c) of this section;

(e) Community development assistance to non-profit entities and public bodies for employment creation projects, or other projects which provide needed community facilities and services;

(f) Facilities and equipment to public, for-profit and non-profit entities to provide education and training to rural residents to facilitate economic development. Equipment and facilities may be funded to enable rural businesses to provide educational and job enhancement skills to employees;

(g) Facilities and equipment to public, for-profit and non-profit entities to provide medical care to rural residents. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(h) Projects which utilize advanced telecommunications and/or computer networks to facilitate medical or educational services or job training in accordance with paragraphs (f) and (g) of this section.

§ 1703.19 General requirements for grant funding.

(a) Grants made under § 1703.18(a), establishment and operation of a revolving loan program by Borrowers, will be limited to Borrowers and can be made without zero-interest loans. Grants made under § 1703.18 (b) through (h) will be made only in conjunction with zero-interest loans, and on a pass-through basis.

(b) Pass-through grant funding for projects under § 1703.18 (b), (c), (f), (g) and (h) will be available for non-profit and for-profit entities. Pass-through grant funding for projects under § 1703.18 (d) and (e) will be available only for non-profit entities.

(c) All projects funded with zero-interest loans and grants will require supplemental funding in accordance with § 1703.23. For grants made under § 1703.18(a), the portion eligible for REA funding may be fully funded with grant funds. For all other grants funded under 1703.18, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

(d) Grant funding will be provided only to the extent necessary for a feasible project. A feasible project is a project which expects to generate sufficient income to pay operating expenses and debts and compensate for depreciation of equipment and facilities for the project which is to be funded by REA. Depreciation must be based on allowable depreciation schedules as set forth by the United States Internal Revenue Service. Borrowers whose analyses of projects show feasibility without grant funds should not apply for grant funding. Borrowers requesting pass-through grant funds will base grant funding requests on borrower projected income and expense projections for the project, and documentation regarding depreciation of the equipment and facilities for the project. The Administrator will determine whether the Borrower's projections of income, expenses and depreciation are reasonable.

(e) For projects that project insufficient operating revenue the first two years to show feasibility, borrowers should first consider the deferral provisions set forth in § 1703.29(b) before determining the appropriate level of requested grant funding. Zero-interest loan and grant funding will be approved in accordance with paragraph (d) of this section based on the option which results in the lowest required grant percentage.

(f) The owner of the pass-through project that receives grant funds will be encouraged to commit that the project will be a demonstration project.

(g) Borrowers or project owners must demonstrate the availability and commitment of other sources of funding needed to complete a project in addition to REA loan and/or grant funds, prior to the first advance of REA funds.

(h) Feasibility studies and/or technical assistance funded with grants under § 1703.18 (b) and (c) must be performed by entities which are independent of the Borrower and qualified to provide such services. The project owner, if deemed qualified in accordance with this paragraph, may furnish a feasibility study under § 1703.18(b). Entities furnishing technical assistance under § 1703.18(c), must be independent of the project owner. To be deemed qualified, entities providing feasibility studies and/or technical assistance must:

(1) Provide sufficient documentation evidencing their proven ability, background and experience to furnish such services; and

(2) Provide sufficient documentation evidencing their legal authority and capacity to furnish such services.

5. Section 1703.20 is revised to read as follows:

§ 1703.20 Ineligible uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must not be used:

(1) To fund or assist projects of which any director, officer, general manager or significant stockholder of the Borrower, or close relative thereof, is an owner, stockholder, partner or director, or which would, in the judgment of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The Borrower must disclose to the Administrator information regarding any conflict of interest, potential conflict of interest or any appearance of a conflict of interest. The Administrator will determine whether there is a conflict of interest or whether any potential conflict of interest or appearance of a conflict of interest may adversely affect REA's interests. A Borrower organized as, or consisting of a cooperative, widely held mutual corporation, tribal government, municipal power corporation, public power district, or a similar widely held organization would ordinarily be able to have an ownership interest in or manage a project operated on either a for-profit or non-profit basis. A Borrower organized as a closely held, for-profit corporation with more than 5 percent of its stock held by one legal person, its subsidiary or an affiliate, would ordinarily be able to own or manage a project operated on a non-profit basis only;

(2) For any costs incurred on the project: (i) Prior to receipt of the Borrower's completed application by REA during an application period unless the Administrator has specifically approved such usage in writing; or

(ii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.32;

(3) By the Borrower to purchase or lease any real property, materials, equipment, or services from its subsidiary, an affiliate, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(4) By the recipient of a pass-through-loan or pass-through-grant to purchase or lease any real property, materials, equipment, or services from the Borrower, its subsidiary, an affiliate of the Borrower, or significant stockholders, officers, managers or directors of the Borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(5) To pay off or refinance existing indebtedness incurred prior to receipt of the Borrower's completed application by REA or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For the Borrower's electric or telephone operations or for any operations affiliated with the Borrower unless the Administrator has specifically informed the Borrower in writing that the operations are part of the approved purposes;

(8) To pay the salaries of any employee or owner of the Borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator. This restriction is subject to the operating expense allowance for revolving loan funds set forth in § 1703.22 (a)(6);

(9) To fund feasibility studies and technical assistance as set forth in § 1703.18 independently of projects which are funded under the zero-interest loan and grant program;

(10) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(11) For anything other than an approved purpose.

(b) [Reserved]

6. Section 1703.21 is amended by adding a sentence at the end of paragraph (b) and revising paragraph (d) to read as follows:

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

* * * * *

(b) * * * Grant funds will be disbursed to the Borrower in accordance with § 1703.61(b).

* * * * *

(d) The Borrower may not requisition zero-interest loan funds unless those funds are deposited into the Borrower's REA construction fund trustee account. The Borrower will be required to set up a separate Federally insured account called the Rural Economic Development Account, if loan funds are not expected to be disbursed within two months after receipt from REA. All interest earned on temporarily deposited zero-interest loan funds in excess of $500 per 12-month period must be used for approved purposes or returned to REA. Interest earned in excess of $500 per 12 month period and returned to REA will not be used to reduce the Borrower's principal indebtedness. Grant funds will be disbursed by REA in accordance with 7 CFR parts 3015 and 3016, and § 1703.61 (b).

* * * * *

7. Section 1703.22 is added to read as follows:

§ 1703.22 Revolving loan program.

Grant funds under this section will be provided only to REA Borrowers on a non pass-through basis. REA Borrowers will, in turn, provide loans to foster rural economic development in accordance with this subpart and the specific requirements of this section.

(a) *General.* Grant funds disbursed to REA Borrowers to establish revolving loan programs under this section are subject to the following requirements:

(1) The uses, restrictions and limitations for zero-interest loans set forth in §§ 1703.17, 1703.20 and 1703.21 respectively;

(2) Loans made by REA Borrowers initially lending grant funds disbursed by REA are limited to types of projects specified in § 1703.18 (d), (e), (f), (g) and (h). Loans may also be made for feasibility studies and technical assistance in accordance with § 1703.18 (b) and (c), respectively, but only for those types of projects specified in this paragraph (a)(2). Loans made from repayments of the initial loans made by REA Borrowers may be used for any rural economic development purpose in accordance with a prior agreement between the Borrower and REA;

(3) All other requirements relevant to zero-interest pass-through loans and grants outlined in this subpart, except the minimum size of a zero-interest loan as specified in § 1703.28(f);

(4) The initial loans made from the revolving loan fund using the grant funds must carry an interest rate of zero percent; however, loans made from repayments of the initial loan may carry an interest rate in accordance with prior agreement with REA. In either case, the Borrower may charge reasonable loan servicing fees;

(5) The Borrower will provide a board resolution certifying a commitment to provide and maintain additional funding to the revolving loan fund in an amount no less than 20 percent of the REA grant approved. The Borrower will provide documentation that the additional funding has been deposited in the appropriate account in § 1703.22(h)(1) prior to grant disbursement. This requirement does not pertain to supplemental funding requirements for individual projects as set forth in § 1703.23. Additional funding required in this paragraph pertains only to borrowers establishing revolving loan funds, with the following provisions: (i) Use of additional funding is subject to requirements set forth in paragraph (b) of this section and with REA concurrence;

(ii) Individual projects funded under this section are subject to supplemental funds requirements set forth in § 1703.23;

(iii) At the Borrower's option with REA concurrence, all or a portion of the additional funding may be used to assist project owners receiving funding from Federal grant funds under this section to meet their supplemental funding requirements set forth in § 1703.23 of this subpart. Such additional funding will be deemed as Federal funds and accounted for in accordance with paragraph (h)(1)(i)(A) of this section for electric borrowers or paragraph (h)(1)(ii)(A) of this section for telephone borrowers, as appropriate;

(iv) At the Borrower's option, all or a portion of the additional funding may be retained as non-Federal funds, for any rural economic development project(s), subject to paragraph (g) of this section and REA concurrence. Additional funding committed as non-Federal will be accounted for in accordance with paragraph (h)(1)(i)(E) of this section for electric borrowers or paragraph (h)(1)(ii)(E) of this section for telephone borrowers, as appropriate;

(6) Grant funds will only be provided to an REA Borrower for a revolving loan program when a proposed budget submitted to REA demonstrates and the Borrower agrees in writing that no more than 10 percent of grant funds received are used to cover operating expenses of the revolving loan program. Operating expenses include the costs of administering the revolving loan fund and the provision of technical assistance to project owners. All proceeds in excess of those needed to cover authorized expenses, as described above, must revert to the revolving fund and be available for re-lending for eligible projects. Budgets which reflect expenses incurred in operating the fund must be submitted to REA annually;

(7) The Borrower may charge reasonable loan servicing charges. For purposes of this section, loan servicing charges must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on each project owner's zero-interest loan which is made from the REA grant proceeds;

(8) The Borrower will submit documentation indicating that potential projects which are eligible for funding have sufficiently progressed in the planning stage to allow grant funding approved for a revolving loan program to be requisitioned by the Borrower, disbursed by REA, and loaned to recipients within 3 years of the date of grant approval by REA. Grant funds that have not been requisitioned within 3 years will be cancelled, unless the Administrator has approved an extension in writing. Grant funds will be disbursed by REA in accordance with paragraphs (d) and (g) of this section,

(9) If the revolving loan program is terminated, further disbursement of grant funds will be cancelled. Repayments of loans made using grant funds which have been disbursed will be used in accordance with the Borrower's rural development plan;

(10) Payment of creditors which provide interim or construction financing to a viable project for eligible purposes as set forth in § 1703.17 of this subpart may be authorized. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not authorized.

(b) *The Borrower's rural development plan.* REA requires that the revolving loan program be administered in accordance with a rural development plan, developed by the Borrower and approved by REA. The plan must be of sufficient detail to provide REA with a complete understanding of what the Borrower intends to accomplish by administering a revolving loan program. The rural development plan will provide the mechanics of how the revolving loan funds will be disbursed to the project owner. The rural development plan must outline the Borrower's plans for administering the revolving loan program, during the initial period when REA grant funds are

lent by the Borrower and after the revolving fund becomes non-Federal in accordance with paragraph (g) of this section. The plan must outline the following: (1) Specific objectives for the revolving loan program, revolving loan operating procedures, lending parameters, maximum and minimum loan amount, and types of projects to be funded;

(2) Documentation of Borrower's coordination of lending activities with other local entities that provide financing for rural economic development projects. Such documentation will indicate that the Borrower will not compete with, but supplement other sources of legal financing;

(3) Eligibility criteria if other than outlined in this subpart;

(4) The application process and method of disposition of the funds to the project owner; and

(5) A procedure for monitoring the project owner's accomplishments and reporting requirements by the project owner's management.

(c) *The Borrower's scope of work.* Borrowers applying for grant funding under this section must submit a scope of work to REA. Applications for grants under this section will be evaluated for funding based on the Borrower's rural development plan in paragraph (b) of this section and the scope of work. The scope of work must contain the following items: (1) Documented need for grant funds. The Borrower must identify a sufficient number of rural development projects of the type specified in § 1703.18 (d), (e), (f), (g), and (h) which are currently being planned requiring zero-interest loans equal to the amount of grant assistance requested from REA. These projects may be supported with a community facilities plan, or other development plan, prepared by local community leaders in cooperation with the Borrower. For each project, the Borrower will submit information required under § 1703.34;

(2) Documented authority and ability of the Borrower to administer a revolving rural development loan program in accordance with the provisions of this subpart. The Borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience;

(3) Documented ability of the Borrower to commit financial resources under the control of the Borrower to assist in the establishment of a rural development revolving loan program. This should include a statement of the sources of funding for the administration of the Borrower's operations, as well as financial and technical assistance for projects;

(4) Documentation that the Borrower has secured commitments of significant financial support from public agencies and/or private organizations for supplemental funding to support a rural development loan program;

(5) A list of proposed fees and other charges the Borrower will assess the projects it funds; and

(6) The Borrower's rural development policy for non-Federal funds in accordance with paragraphs (b) and (g) of this section.

(d) *Grant processing and approval.* Applications for grants to establish revolving loan funds will be reviewed in accordance with §§ 1703.45 and 1703.46, and with the Borrower's rural development plan and scope of work outlined in paragraphs (b) and (c) of this section. Grants will be processed in accordance with §§ 1703.58 and 1703.59.

(e) *Disbursement of grant funds.* Borrowers are not authorized to commence projects to be funded under this section until those projects have been submitted for authorization in accordance with paragraph (c)(1) of this section, or the projects have been submitted for authorization subsequent to grant approval in accordance with paragraph (e)(2) of this section. REA grant funds will be disbursed in accordance with the provisions of 7 CFR part 3015, Uniform Federal Assistance Regulations, on a reimbursement basis, the applicable requirements of this subpart, the administrative provisions outlined in paragraph (g) of this section, and the following requirements:

(1) Only projects authorized by REA in accordance with paragraphs (c)(1) and (e)(2) of this section, for which adequate documentation, including receipts for expenditures and certification of approved purposes, are submitted will be considered for reimbursement;

(2) A project which was not submitted prior to grant approval in accordance with paragraph (c)(1) of this section, may be authorized for funding subsequent to grant approval. A project which is authorized for funding under this paragraph will be considered for disbursement at the first allowable time period after project authorization in accordance with paragraphs (e)(3) and (e)(4) of this section. Project authorization after grant approval is subject to the following requirements: (i) The project meets the specific objectives for the Borrower's revolving loan program as outlined in paragraph (b)(1) of this section;

(ii) The Borrower presents evidence that the project requested for authorization can be funded prior to projects which were authorized prior to grant approval in accordance with paragraph (b)(1) of this section; and

(iii) REA approves the project for funding in accordance with § 1703.34;

(3) Grant funds requisitioned for individual projects in increments of less than $100,000, or less than 25 percent of the amount approved for the revolving loan fund, whichever is less, may be reimbursed semi-annually. Submission periods for requisitioning grant funds on a semi-annual disbursement basis will be 14 days commencing from the 6-month anniversary date of grant approval;

(4) Grant funds requisitioned for individual projects in increments of $100,000 or greater, or at least 25 percent of the amount approved for the revolving loan fund, whichever is less, may be submitted for reimbursement at any time.

(f) *Reporting requirements.* (1) The Borrower must maintain financial management systems and retain financial records in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(2) Borrower records must include an accurate accounting and source documentation to support each transaction involving the revolving loan fund. Records are subject to a rural economic loan review as set forth in § 1703.66(g).

(3) SF–269, "Financial Status Report," and a revolving loan program activity report will be required of all Borrowers on an annual basis. Reports will be submitted no later than 90 days after December 31 of each year. The program activity report will contain an aggregate list of projects funded, the amount funded for each project, the project repayment schedule, a brief description of each project, the project objectives, whether or not the project has been completed, and the projected number of jobs created or saved by each project. Reports under this paragraph will be required until all grant funds have been disbursed and projects completed.

(4) A performance report will be required for each project funded on an annual basis. Performance reports will be due no later than 90 days after December 31 of each year. Performance reports will be submitted until one year after project completion. Project performance reports will contain the following: (i) A comparison of actual accomplishments during the reporting period to the objectives established for the project and, if not attained, reasons

why established objectives were not met;

(ii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(iii) Projected accomplishments for the next reporting period, if applicable; and

(iv) Status of compliance with any special conditions for project funding, if applicable.

(5) Borrowers must report and remit interest earned on advances of grant funds deposited in interest accounts to REA on a quarterly basis in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations.

(g) *Non-Federal funds.* Once all REA-derived grant funds have been utilized by the Borrower to fund rural development projects according to the provisions of this section and the applicable provisions of this subpart, loans made by the Borrower thereafter from repayments to the revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on the Borrower or project owners. However, the Borrower will, as a condition for receiving a grant under this section, agree to the following conditions: (1) To maintain a revolving loan account to promote rural economic development in accordance with the Borrower's rural development plan for non-Federal funds submitted in accordance with paragraph (b) of this section;

(2) To maintain the additional funding supplied by the Borrower in accordance with paragraph (a)(5) of this section and interest earnings within the revolving loan fund;

(3) Approval may be granted by the Administrator to terminate the revolving loan program, or modify the requirements set forth in paragraphs (g)(1) and (g)(2) of this section, upon written request and justification by the Borrower. Should the Borrower terminate the revolving loan program without obtaining approval by the REA Administrator, the Borrower will return the amount of the original grant to REA.

(h) *Administrative provisions.* The requirements of this paragraph set forth the procedures for accounting, requisitioning and disbursement of Federal funds, those funds initially disbursed for projects which may be funded in accordance with an approved rural development plan and scope of work submitted by the Borrower. Disbursement of grant funds will be approved on a reimbursement basis after the grant agreement is executed by REA and the Borrower, the applicable provisions of this subpart are met, subject to disbursement restrictions in paragraph (e) of this section, and the requirements in paragraphs (h) (1) through (3) of this section.

(1) *Accounting requirements.* Accounting will be performed in accordance with 7 CFR part 1767, Accounting Requirements for REA Electric Borrowers, or 7 CFR part 1770, Accounting Requirements for REA Telephone Borrowers, as appropriate. The Borrower will maintain accounts for the revolving funds as follows:

(i) *REA electric Borrowers.* (A) A general ledger Account 131.13, "Cash-General—Economic Development Grant Funds." The Borrower will debit this account in an amount equal to the amount of the grant received from REA, any additional funds deemed Federal from the Borrower as required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit this account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 124.1, "Other Investments—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(C) A general ledger Account 123.3, "Investment in Associated Companies—Federal Economic Development Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section. This account will be credited with repayments of loans made with Federal economic development grant funds.

(D) Account 421, "Miscellaneous Non-operating Income." The Borrower will credit this account in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 131.14, "Cash-General—Economic Development Non-Federal Revolving Funds." The Borrower will debit this account with any additional funds deemed non-Federal from the borrower as required by paragraph (a)(5)(iv) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(i)(F), and (h)(1)(i)(G) of this section. The Borrower will credit this account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(i)(F) and (h)(1)(i)(G) of this section.

(F) A general ledger Account 124.2, "Other Investments—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to non-associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(G) A general ledger Account 123.4, "Investment in Associated Companies—Non-Federal Economic Development Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 171 "Interest and Dividends Receivable." The Borrower will debit this account with the amount of interest earned on the revolving loan fund. The Borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 419, "Interest and Dividend Income." The Borrower will credit this account with the amount of interest earned on the revolving loan fund.

(ii) *REA telephone Borrowers.* (A) A general ledger Account 1130.4, "Cash—General Fund—Economic Development Grant Funds (Class A Companies)", or Account 1120.14, "Cash-General Fund—Economic Development Grant Funds (Class B Companies)." The

Borrower will debit the appropriate account in an amount equal to the amount of the grant received from REA, any additional funds deemed Federal from the Borrower required by paragraph (a)(5)(iii) of this section, and all other funds advanced for the project, regardless of the source, if controlled by the Borrower. The Borrower will credit the appropriate account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 1402.4, "Other Investments in Nonaffiliated Companies—Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(C) A general ledger Account 1401.1, "Other Investments in Affiliated Companies—Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section. This account will be credited with repayments of loans made from Federal economic development grant funds.

(D) Account 7360, "Other Non-operating Income (Class A Companies)", or Account 7300, Non-operating Income and Expense (Class B Companies), as appropriate. The Borrower will credit these accounts, as appropriate, in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 1130.5, "Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class A Companies)", or Account 1120.15, "Cash—General Fund—Economic Development Non-Federal Revolving Funds (Class B Companies)", as appropriate. The Borrower will debit the appropriate account with any additional funds deemed non-Federal from the Borrower as required by paragraph (a)(5) of this section, cash received from the repayment of loans made from accounts in paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), (h)(1)(ii)(F), and (h)(1)(ii)(G) of this section. The Borrower will credit the appropriate account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(ii)(F) and (h)(1)(ii)(G) of this section.

(F) A general ledger Account 1402.5, "Other Investments in Nonaffiliated Companies-Non-Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(G) A general ledger Account 1401.2, "Other Investments in Affiliated Companies—Non-Federal Economic Development Grant Loans." The Borrower will debit this account in the amount of non-Federal funds the Borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section. This account will be credited with repayments of loans made from non-Federal economic development funds.

(H) A general ledger Account 1210, "Interest and Dividends Receivable." The Borrower will debit this account with the amount of interest earned on the revolving fund loan. The borrower will credit this account and debit the appropriate cash account when the cash is received.

(I) A general ledger Account 7320, "Interest Income (Class A Companies)", or Account 7300.2, "Interest Income (Class B Companies)", as appropriate. The Borrower will credit this account with the amount of interest earned on the revolving fund loans.

(2) *Requisition requirements.* Grant funds may be requisitioned by REA Borrowers in accordance with disbursement requirements in paragraph (e) of this section. Borrowers will be fully reimbursed for funds expended for approved projects funded. For each completed project, the Borrower will submit the following for reimbursement:

(i) Standard Form 270, "Request for Advance of Reimbursement";

(ii) Copies of cancelled checks and other verifiable source records supporting the transactions; and

(iii) Certification and evidence that the project costs to be reimbursed are for a project which has been authorized by REA and are authorized costs for that project.

(3) *REA review.* Requisition requests will be evaluated for compliance with loan purposes previously submitted by the Borrower for project authorization in accordance with paragraphs (c)(1) or (e)(2) of this section, compliance with the Borrower's rural development plan, accounting documentation submitted in paragraph (h)(1) of this section, and the cancelled checks and source records submitted.

8. Paragraph (b) of § 1703.28 is revised to read as follows:

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

* * * * *

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000.

* * * * *

9. Section 1703.30 is amended by revising the parenthetical containing the OMB control number at the end of the section to read as follows:

§ 1703.30 Approval of agreements.

* * * * *

(Approved by the Office of Management and Budget under control number 0572–090090)

10. Section 1703.34 is amended by revising paragraphs (b)(5) (ii) and (iii), and adding paragraphs (b)(5) (iv) and (v) to read as follows:

§ 1703.34 Applications.

* * * * *

(b) * * *

(5) * * *

(ii) A section entitled "Project Description" as set forth in § 1703.36;

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in § 1703.37;

(iv) Monitoring plan. For a pass-through loan and/or grant, a copy of the Borrower's plan to monitor the loan and/or grant and ensure that the requirements of this subpart are met; and

(v) Scope of work. For an application for a loan and/or grant, a proposed scope of work for the project.

* * * * *

11. Section 1703.46 is amended by revising the first sentence of paragraph (a); by removing paragraph (e), and redesignating paragraphs (f), (g), (h), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), (i), (j), and (k), respectively; and by adding a sentence at the end of newly

designated paragraph (g)(6)(iv) to read as follows:

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in § 1703.17 and § 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. * * *

* * * * *

(g) * * *

(6) * * *

(iv) * * * For a pass-through loan and grant, the quality of the Borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

* * * * *

12. Section 1703.61 is amended by adding two sentences at the end of paragraph (a) and three sentences at the end of paragraph (b) to read as follows:

§ 1703.61 Disbursement of zero-interest loan and grant funds.

(a) * * * The Borrower or project owner's share in the cost of the project must be utilized in advance of REA zero-interest loan funds, or upon REA approval, on a pro-rata distribution basis with loan funds during the disbursement period. The Borrower or project owner will not be permitted to provide its contribution at the end of the loan disbursement period.

(b) * * * Prior to the disbursement of grant funds under this subpart, the Borrower will provide evidence of fidelity bond coverage as required by 7 CFR 3015.17. The grant portion of a pass-through zero-interest loan and grant will be disbursed to the Borrower on a reimbursement basis after all other project funds have been utilized and evidence is provided that the project has been completed. Grants to Borrowers for establishment of revolving loan funds will be disbursed in accordance with § 1703.22 of this subpart.

* * * * *

13. Section 1703.66 is amended by revising paragraphs (b), (d), (e) and (g), and by adding paragraphs (h), (i), and (j), to read as follows:

§ 1703.66 Review and other requirements.

* * * * *

(b) The Borrower must require the recipient of a pass-through loan and grant to provide an itemized list to the Borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The Borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the REA zero-interest loan and grant. In addition, the Borrower will also require the recipient to furnish a record of itemized receipts showing total project costs in such detail that will permit auditors to establish the REA funding percentage. REA's legal agreements will include the terms and conditions that the Borrower must require in its agreement with the recipient of a pass-through loan and grant covering the use and intended schedule of expenditures of the loan funds.

* * * * *

(d) The legal documents executed between the Borrower and the Administrator in connection with a zero-interest loan and/or grant must contain certain provisions giving the Administrator discretionary rights and remedies in the event a Borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy the Administrator chooses to assert, if the Borrower uses any zero-interest loan and/or grant funds other than for approved purposes, the Borrower will be required to return to REA the amount used for unapproved purposes. An unauthorized zero-interest loan amount which is returned will be considered a prepayment on the REA note.

(e) Borrowers receiving zero-interest loans and/or grants will be subject to a rural economic development review of zero-interest loan and grant funds.

* * * * *

(g) Grants provided under this program will be administered in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Copies of these USDA Uniform Assistance regulations can be obtained by contacting REA in Washington, DC. A Borrower that receives a grant for the establishment of a revolving loan fund, or project owner that receives a pass-through loan and grant, will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audit requirements. For pass-through loans and grants, REA Borrowers will be required to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA rural economic development loan reviews for projects in a for-profit status.

(h) For pass-through loans and grants awarded under this subpart, the Borrower must diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Borrower must submit an original and one copy of each report to REA on an annual basis. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why any established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(i) For pass-through loans and grants, a final project performance report will be required with the last SF 269, "Financial Status Report," available from REA in Washington, DC. The final report also must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(j) Monitoring requirements for Borrowers receiving grants for revolving loan funds are specified in § 1703.22.

14. Sections 1703.67 and 1703.68 are added to read as follows:

§ 1703.67 Changes in project objective or scope.

For loans and grants awarded under this subpart, the Borrower must obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.68 Loan and grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any loan and/or grant in whole, or in part, at any time before the date of completion of

loan and/or grant disbursement, whenever the Borrower has failed to comply with the conditions of the loan and/or grant. The Administrator will promptly notify the Borrower in writing of the determination and the reasons for the termination, together with the effective date. The termination date will be no less than 30 days following receipt of the termination notice. The Borrower will have such time to cure the default, or to state why it feels the loan and/or grant should not be terminated. The Administrator will stay the termination upon the curing of the default, and may delay termination if, sufficient cause has been given by the Borrower.

(b) *Termination for convenience.* The Administrator or the Borrower may terminate a loan and/or grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The Borrower will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the Borrower for the Federal share of unfulfilled contractual obligations which were incurred in good faith by the Borrower prior to grant termination.

Subpart C—[Amended]

§§ 1703.80–1703.99 [Reserved]

15. Sections 1703.80 through 1703.99, which are presently reserved in subpart B, are transferred to subpart C.

Dated: March 7, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–5740 Filed 3–11–94, 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–132–AD; Amendment 39–8854; AD 94–06–06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires certain maximum brake wear limits to be incorporated into the FAA-approved maintenance inspection program. This amendment also requires that the Airplane Flight Manual be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO). This amendment is prompted by an accident in which a transport category airplane executed an RTO and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: April 13, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on November 1, 1993 (58 FR 58307). That action proposed to require that certain maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program; and that the Airplane Flight Manual (AFM) be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter, the Air Transport Association (ATA) of America, questions the need for the proposed AD. This commenter is aware of the FAA's efforts to review and determine allowable aircraft brake wear limits, since those efforts prompted the issuance of a series of AD's, applicable to U.S.-manufactured airplanes, to mandate maximum brake wear limits. While those U.S.-manufactured airplanes were certified to new brake criteria, the commenter points out that airplanes such as the Fokker Model F28 Mark 0100, which were certified under the Joint Airworthiness Regulations (JAR) criteria, are certified to worn brake standards. In light of this, the commenter questions why the FAA indicated that the proposed AD was prompted by the 1988 accident involving worn brakes on a McDonnell Douglas Model DC–10 airplane. This commenter states that U.S. operators of Fokker Model F28 Mark 0100 series airplanes, at the time of airplane delivery, implemented within their maintenance programs the same worn brake criteria as proposed in the notice; additionally, these operators' FAA-approved AFM's already reflect this criteria. Therefore, this commenter argues that there is no basis for adopting the proposed rule unless it can be shown that U.S. operators cannot safely administer to certified brake wear criteria within their approved maintenance programs.

The FAA does not concur with this commenter's suggestion that this AD action is not appropriate. The accident involving the Model DC–10 was the primary reason prompting this AD and the previously-issued AD's to mandate specific maximum brake wear limits on transport category airplane. During the process of promulgating those AD's, the FAA became aware that not all operators were following the manufacturer's recommended brake wear limits. For example, in one case, three different operators of the same model of airplane were found to be observing three different maximum brake wear limits. Further, the FAA is aware that, until recently, not all manufacturers had provided brake wear limits that met the FAA criteria, e.g., landing distance predicated upon single engine-out, maximum takeoff weight, and fully worn brakes. The purpose of this AD is in no way an attempt to question the ability of U.S. operators to safely administer to brake wear limits criteria; its purpose is to establish what those brake wear limits are.

Several commenters request that the proposed rule be revised to eliminate the requirement to replace the landing gear sliding member after an RTO event One of these commenters suggests that, instead of requiring replacement, the proposed rule could require inspections of the sliding member, using procedures that are currently included in the Fokker F28 Mark 0100 Aircraft Maintenance Manual (AMM) 05–51–01

This commenter states that similar inspection procedures exist for most other commercial aircraft, and those procedures have proven to be a safe and effective method of evaluating landing gears for the effects of high brake heat. This commenter also suggests that additional procedures could include inspection of the axles for evidence of discolored or peeling paint with cadmium plating that is blistered, wrinkled, or mottled (signs of cadmium melting and resolidifying). Cadmium melts at 610 °F, which is very close to the tempering temperature of ultra-high strength steels; therefore, if the cadmium is not melted, it is unlikely that any heat damage has been done to the steel sliding member axle. This commenter notes that this criteria has been used for other aircraft, and this commenter plans to contact Fokker to request that this type of inspection criteria be added to the Fokker F28 Mark 0100 AMM. Further, another commenter states that, on other aircraft models in its fleet, it regularly performs a visual inspection of the pistons following an RTO to determine the amount of heat that the piston has been subjected to; the degree of discoloration of the paint on the axle and the amount of damage to the hydraulic hoses are evidence of the amount of heat. This commenter also plans to contact Fokker to request the inclusion of this inspection in the AMM.

The FAA does not concur with the suggestion to revise the proposed rule, at least at this time. The FAA has queried Fokker directly about the inspection procedures suggested by these commenters; however, Fokker was not aware of any effective nondestructive inspection technique that can be used to establish whether cadmium embrittlement has taken place on the axle after an RTO. Fokker did indicate that it is currently working with the manufacturer of the brakes to devise a way to limit the exposure of the sliding member to heat from the brakes, which in turn would limit the need to replace the sliding member. Once an inspection or other procedure is developed that would preclude the necessity of replacing the sliding member, the FAA would consider further rulemaking on this issue. In the meantime, under the provisions of paragraph (d) of the final rule, the FAA would consider requests for the use of alternative methods of complying with this rule, provided sufficient data are presented to justify such requests.

One commenter requests that the proposed entry in the maintenance program (as specified in paragraph (b) of the proposal) and the proposed entry in the AFM (as specified in paragraph (c) of the proposal) be revised: This commenter states that calculations have shown that only when "flap 0" is selected, there is a possibility to reach an energy level that can cause the axle to overheat. Therefore, those entries should include a statement that, during the RTO scenario, the flaps would have to be at 0 degrees. The commenter suggests that the wording of both entries be changed to read as follows:

"*If flap 0 is selected,* and if a takeoff is rejected at a speed greater than 90 percent of * * *"

The FAA concurs and has revised paragraphs (b) and (c) of the final rule accordingly.

This same commenter suggests that the AFM entry proposed in paragraph (c) be reworded to include language that is more familiar to pilots, who will be the primary users of this information in the Limitations Section. Specifically, the commenter suggests that pilots would be more familiar with the term "V_1" (takeoff decision speed) than with "V_{MBE}" (maximum brake energy limit speed). The commenter states that use of V_1 as a reference is more appropriate than V_{MBE} in this context, as well, since it is more conservative with respect to the axle overheat problem. Along this same line, the commenter suggests that the AFM wording be revised to indicate that "the rejected takeoff conditions should be reported to maintenance personnel prior to the next takeoff" and that "further dispatch may be affected." The FAA concurs with all of these suggestions and has revised paragraph (c) of the final rule accordingly.

Note: If a pilot were to report a rejected takeoff event to maintenance personnel and refer the V_1 speed involved, maintenance personnel can recalculate the V_1 figure to a V_{MBE} figure by means of a graph incorporated into the AMM.

This commenter also suggests that proposed paragraph (b) be revised to specify the part numbers of the main landing gears (MLG) equipped with the sliding members that need to be replaced. Adding a reference to the MLG part numbers would avoid any relationship between the currently-installed Dowty MLG's and other brands of MLG's that are expected to be certified and installed in the near future. The FAA concurs with this suggestion and has revised paragraph (b) of the final rule accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 83 airplanes of U.S. registry and 2 U.S. operators will be affected by this AD.

Although the rule requires the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs relative to that requirement are involved; such actions are currently a part of the normal maintenance program. However, it is estimated that it will require 20 work hours, at an average labor rate of $55 per work hour, for each operator to incorporate the brake wear limitations into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of that requirement on U.S. operators is estimated to be $2,200, or $1,100 per operator.

Additionally, the FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of that requirement on U.S. operators is estimated to be $4,565, or $55 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–06–06 Fokker: Amendment 39–8854. Docket 93–NM–132–AD.

Applicability: Model F28 Mark 0100 series airplanes, equipped with brake part numbers (P/N) identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a rejected takeoff, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Incorporate the maximum brake wear limits specified in the following tables into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

TABLE 1.—BRAKE MANUFACTURER: AIRCRAFT BRAKING SYSTEMS CORP. (ABS)

Brake P/N	Maximum settings—Non refurbished brakes	
	Maximum wear pin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132–2	1.85" (47 mm)	4.00" (101.6 mm)
5008132–3	1.85" (47 mm)	4.00" (101.6 mm)
5008132–4	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132–5	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132–6	2.10" (53.3 mm)	4.25" (107.9 mm)
5008132–7	2.10" (53.3 mm)	4.25" (107.9 mm)

Note 1: Measuring instructions for non refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP–652 (Fokker Manual No. 32–43–77) or in ABS Service Bulletin Fo100–32–35. ABS Service Bulletin Fo100–32–35 does not contain measurement information relative to brake P/Ns 5008132–2 and –3.

TABLE 2

Brake P/N	Maximum settings—Refurbished brakes	
	Maximum wearpin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132–2	1.85" (47 mm)	4.00" (101.6 mm)
5008132–3	1.85" (47 mm)	4.00" (101.6 mm)
5008132–4	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132–5	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132–6	2.20" (55.9 mm)	4.35" (110.5 mm)
5008132–7	2.20" (55.9 mm)	4.35" (110.5 mm)

Note 2: Refurbished brakes will have "R11–3" etched on the brake housing adjacent to the shuttle valve.

Note 3: Measuring instructions for refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP–652 (Fokker Manual No. 32–43–77) or in ABS Service Bulletin Fo100–32–38.

(2) Any brake using a heat stack kit with an "R" after the P/N must use the wear pin length specified on the Airworthiness Tag that accompanies each heat stack kit, and must not use the "Alternate Wear Measurement" noted in Table 1 of this AD under "Non-Refurbished Brakes" to determine the brake's maximum wear limit. Any of these brakes that are worn more than the maximum wear limit must be replaced, prior to further flight, with a brake that is within the limits specified in Table 2 of this AD.

(b) Within 180 days after the effective date of this AD, incorporate the following information into the FAA-approved maintenance program:

"If flap 0 is selected; and if a takeoff is rejected at a speed greater than 90 percent of the scheduled Maximum Brake Energy limit speed (V_{MBE}) for the applicable weight, altitude, temperature, wind conditions, runway slope and brake configuration (if applicable); and if any brake is worn to 90 percent or more of its brake wear limit: The main landing gear sliding member (identified with one of the following main landing gear part numbers: 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016) should be replaced with a serviceable sliding member in accordance with Fokker Aircraft Maintenance Manual, section 32–11–08.

Note: Only the sliding member with a brake that is more than 90 percent worn has to be replaced."

(c) Within 180 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM, by adding the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"If flap 0 is selected, and if a takeoff is rejected at a speed greater than 90 percent of the scheduled takeoff decision speed (V_1) for the applicable weight, altitude, temperature, wind conditions, runway slope, and brake configuration (if applicable), as specified in the FAA-approved AFM, report the rejected takeoff conditions to maintenance prior to next takeoff. Dispatch may be affected."

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on April 13, 1994.

Issued in Renton, Washington, on March 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5700 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–ANE–09; Amendment 39–8853; AD 94–06–05]

Airworthiness Directives; Hamilton Standard 14RF Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hamilton Standard 14RF series propellers. This action adopts new torquing procedures for the propeller hub retaining nuts, requires initial and repetitive torque checks of propeller hub retaining nuts using those new procedures. In addition, this AD requires repetitive visual inspections for external propeller oil, investigation, and removal from service of propellers hubs found cracked or with undetermined leakage. This amendment is prompted by reports of cracks in propeller hubs that initiate in hub dowel pin holes at the connection of the hub to the engine flange. The actions specified in this AD are intended to prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub.

DATES: Effective March 29, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1994.

Comments for inclusion in the Rules Docket must be received on or before May 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of cracks found in some Hamilton Standard Model 14RF–9, 14RF–19, and 14RF–21 propeller hubs. Through testing and field investigation the FAA has determined that insufficient torque of the propeller hub retaining nuts has resulted in damage by fretting within the dowel holes and subsequent cracks initiating in the hub dowel pin holes at the connection of the hub to the engine flange. The FAA has also determined that the present torquing procedures for propeller hub retaining nuts on this model propeller are insufficient to control fretting during the conditions experienced in service. Therefore, through engineering analysis, the FAA has determined that new, more stringent torquing procedures must be applied to this propeller model to mitigate this fretting condition. Cracks that may be caused by this condition can be detected by oil leakage not explained by other conditions such as leaks in the blade seal, the pressure relief valve, or actuator assembly. Since undetermined oil leakage is a good indication of cracks in the propeller hub, the FAA has also determined that propellers hubs with unexplained oil leakage must be removed from service and inspected for cracks prior to return to service. This fretting condition, if not corrected, could result in propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub.

The FAA has reviewed and approved the technical contents of Temporary Revision (TR) No. 61–6, dated March 15, 1993, and TR No. 61–7, dated July 27, 1993, to Hamilton Standard Maintenance Manual (MM) P5186, applicable to Model 14RF–9 propellers; TR No. 61–6, dated April 8, 1993, and TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5199, applicable to Model 14RF–19 propellers; and TR No. 61–4, dated March 15, 1993, and TR No. 61–5, dated July 27, 1993, to Hamilton Standard MM P5189, applicable to Model 14RF–21 propellers. These TR's describe the new torquing procedures for torque checks of propeller hub retaining nuts, and procedures for inspecting propeller hubs for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other Hamilton Standard 14RF series propellers of the same type design, this AD is being issued to prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub. This AD requires an initial torque check of the propeller hub retaining nuts within 30 days after the effective date of this AD, the implementation of a new, more stringent hub retaining nut tightening procedure, and repetitive torque checks of the hub retaining nuts. If the torque checks of the hub retaining nuts do not meet the acceptance critieria of the applicable TR's during the initial or subsequent repetitive checks, then the propeller hub must be removed from service and inspected for cracks prior to return to service. Propeller hubs with crack indications must be removed from service and replaced with a serviceable propeller hub prior to further flight. The FAA's analysis indicates that 30 days will be sufficient to schedule the torque checks without adversely affecting flight safety.

Subsequent to an acceptable initial torque check and the implementation of the new hub retaining nut tightening procedure, this AD requires a one-time entry in the propeller maintenance records that the new tightening procedure was incorporated. In addition, all future propeller installations should follow the new installation and hub retaining nut tightening procedure.

The AD will thereafter require repetitive torque checks at intervals not to exceed 500 hours time in service since the last inspection. In addition, this AD requires repetitive visual inspections for external propeller oil, investigation, and removal from service

of propellers hubs found cracked or with undetermined leakage. These inspections must be performed at intervals not to exceed 70 hours time in service (TIS) since the last inspection, or at line checks, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the leakage may be due to a propeller hub crack and the propeller must be removed from service and replaced with a serviceable propeller prior to further flight. The actions would be required to be accomplished in accordance with the applicable TR's to the MM's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–09." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–06–05 Hamilton Standard: Amendment 39–8853. Docket 94–ANE–09.

Applicability: Hamilton Standard Model 14RF–9, 14RF–19, and 14RF–21 propellers, installed on but not limited to Embraer EMB–120 series, Construcciones Aeronauticas, SA (CASA) CN–235 series, and SAAB–SCANIA SF340 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub cracking and loss of engine oil, and possible loss of a propeller blade or hub, accomplish the following:

(a) Within 30 days after the effective date of this airworthiness directive (AD), perform an initial torque check of the propeller hub retaining nuts, as follows:

(1) For Hamilton Standard Model 14RF–9 propellers, in accordance with Temporary Revision (TR) No. 61–6, dated March 15, 1993, to Hamilton Standard Maintenance Manual (MM) P5186.

(2) For Hamilton Standard Model 14RF–19 propellers, in accordance with TR No. 61–6, dated April 8, 1993, to Hamilton Standard MM P5199.

(3) For Hamilton Standard Model 14RF–21 propellers, in accordance with TR No. 61–4, dated March 15, 1993, to Hamilton Standard MM P5189.

(b) If propeller hub retaining nuts are found not to meet the acceptance criteria in accordance with the applicable TR to the Hamilton Standard MM's during the initial torque check in accordance with paragraph (a), and during the repetitive torque checks performed in accordance with paragraph (e) of this AD, remove the propeller hub from service and inspect for cracks in accordance with the applicable TR's listed in paragraph (a) of this AD. Remove propeller hubs with crack indications and replace with serviceable propeller hubs prior to further flight.

(c) If the initial propeller hub retaining nut torque check is acceptable in accordance with the applicable TR listed in paragraph (a) of this AD, support the propeller with an appropriate lifting fixture and loosen all the propeller hub retaining nuts. Tighten the propeller hub retaining nuts as follows:

(1) For Hamilton Standard Model 14RF–9 propellers, in accordance with TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5186.

(2) For Hamilton Standard Model 14RF–19 propellers, in accordance with TR No. 61–7, dated July 27, 1993, to Hamilton Standard MM P5199.

(3) For Hamilton Standard Model 14RF–21 propellers, in accordance with TR No. 61–5, dated July 27, 1993, to Hamilton Standard MM P5189.

(d) Make a one-time entry into propeller maintenance records to record:

(1) That the initial torque check was performed;

(2) The propeller hub retaining nuts were loosened and tightened in accordance with paragraph (c) of this AD; and

(3) The torque values.

(e) Thereafter, perform repetitive torque checks at intervals not to exceed 500 hours time in service since the last inspection, in accordance with the applicable TR to the Hamilton Standard MM's listed in paragraph (a) of this AD.

(f) Install all propellers after the effective date of this AD using the propeller hub retaining nut tightening procedure defined in the applicable TR to the Hamilton Standard MM's listed in paragraph (c) of this AD. Record the torque values in accordance with paragraph (d) of this AD.

(g) Visually inspect and investigate all external propeller oil leakage at the next line

check, or within 70 hours TIS after the effective date of this AD, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the propeller must be removed from service and replaced with a serviceable propeller prior to further flight.

(h) Thereafter, visually inspect and investigate all external propeller oil leakage at intervals not to exceed 70 hours TIS since the last inspection, or at the next line check, whichever occurs first. If the leakage is found to be caused by other than a leak in the blade seal, the pressure relief valve, or actuator assembly, the propeller must be removed from service and replaced with a serviceable propeller prior to further flight.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(k) The torque checks, retightening, and installation procedures shall be done in accordance with the following service documents:

Document No.	Pages	Date
TR No. 61–6 to Hamilton Standard MM P5186. Total pages: 8.	1–8	Mar. 15, 1993.
TR No. 61–7 to Hamilton Standard MM P5186. Total pages: 9.	1–9	July 27, 1993.
TR No. 61–6 to Hamilton Standard MM P5199. Total pages: 6.	1–6	Apr. 8, 1993.
TR No. 61–7 to Hamilton Standard MM P5199. Total pages: 7.	1–7	July 27, 1993.
TR No. 61–4 to Hamilton Standard MM P5189. Total pages: 8.	1–8	Mar. 15, 1993.
TR No. 61–5 to Hamilton Standard MM P5189. Total pages: 7.	1–7	July 27, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on March 29, 1994.

Issued in Burlington, Massachusetts, on March 7, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–5704 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 90C–0221]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color poly(ε-caprolactone) absorbable sutures for general surgery. This action responds to a petition filed by Concept, Inc.

DATES: Effective April 14, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections by April 13, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 6, 1990 (55 FR 31897), FDA announced that a color additive petition (CAP 0C0224) had been filed by Concept, Inc., 11311 Concept Blvd., Largo, FL 34643. The petition proposed that the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) be amended to provide for the safe use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures for general surgery. Since the publication of the filing notice, Concept, Inc., has changed its name to Linvatec Corp. The petition was filed under section 706 (currently section 721) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376) (currently 21 U.S.C. 379e).

II. Regulatory History

The regulatory history of D&C Violet No. 2 is summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). In the May 1990, final rule FDA permanently listed D&C Violet No. 2 for use in coloring polymethylmethacrylate intraocular lens haptics (§ 74.3602) in response to a color additive petition (CAP 9C0216). In that final rule, FDA also transferred the listings for the use of the color additive in sutures from § 74.1602 (21 CFR 74.1602) under Subpart B—Drugs to § 74.3602 under Subpart D—Medical Devices. Since the publication of the May 7, 1990, final rule, § 74.3602 has been amended to provide for the safe use of D&C Violet No. 2 as a color additive in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). D&C Violet No. 2 is added to the poly(ε-caprolactone) absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical

reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine and other manufacturing aids, are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives. Numerous minor impurities are present in all chemical products, even in highly purified reagent-grade chemicals.

V. Determination of Safety

Under section 721(b)(4) of the act (21 U.S.C. 379e(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establish that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define "safe" as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The anticancer or Delaney clause of the Color Additive Amendments (section 721(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

VI. Safety of the Petitioned Use of the Additive

FDA estimates that the upper limit of lifetime exposure to D&C Violet No. 2 from its use in coloring poly(ε-caprolactone) absorbable sutures is 3.7 milligrams (mg) per person (0.15 micrograms (μg) per person per day). The agency calculated this upper limit of lifetime exposure based on several factors. First, the color additive will be used at a level of 0.1 percent by weight of the poly(ε-caprolactone) absorbable sutures. Second, the agency made four assumptions: (1) Five meters is the maximum total length of suture likely to be used in a single surgical operation, and 10 meters of suture would be used in multiple operations over a person's lifetime; (2) a lifespan of 70 years follows initial suture implantation; (3) a size 2 suture is used for general surgery; and (4) 100 percent of the color additive migrates from the suture into the body. Because these are conservative assumptions, the lifetime exposure to D&C Violet No. 2 from its use in coloring poly(ε-caprolactone) absorbable sutures is likely to be far less than 3.7 mg per person (0.15 μg per person per day).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing in this case. Although the agency does not normally require such testing, chronic studies supporting current listings for the use of D&C Violet No. 2 are available in the agency's files, and FDA's safety evaluation of the proposed use of the color additive in absorbable sutures included a consideration of these studies. Two-year carcinogenicity studies of dyed sutures implanted in rats and a lifetime skin-painting study in mice showed no indication of carcinogenicity. Additionally, teratology studies of sutures implanted in rats and rabbits exhibited no evidence of teratogenic effects.

In its evaluation of the safety of the proposed use of the subject additive, FDA has also considered other safety data submitted previously to support current listings for the use of D&C Violet No. 2. These toxicity studies of D&C Violet No. 2 included acute oral toxicity studies in rats and dogs, acute toxicity studies of dyed sutures and suture components in rats and mice, an evaluation of the tissue response to dyed sutures implanted intramuscularly in rats, a biological evaluation of dyed sutures implanted in rabbit's eyes, a study of the tissue reaction to the color additive injected into rabbit muscle, in vitro cytotoxicity studies, a pyrogenicity study of sutures, 7-month toxicity studies of implanted sutures in rats and dogs, a 119-day evaluation of dyed sutures implanted intramuscularly in rats, and six mutagenicity studies, including one *Salmonella*/reverse mutation test (Ames test) using extracts of dyed sutures, one study of chromosomal aberrations using dyed suture in Chinese hamster ovary cells, one study of in vitro transformation using dyed suture in Balb/c-3T3 cells, two mouse lymphoma forward mutation assays using dyed suture, and one mouse lymphoma toxicity assay of dyed suture.

In addition, FDA evaluated the toxicity studies that the petitioner provided to support the proposed use of D&C Violet No. 2 in poly(ε-caprolactone) absorbable sutures for general surgery. These studies included a hemolysis test by direct contact, a direct contact cytotoxicity test on mouse fibroblast cells using extracts of dyed sutures, a systemic toxicity test in mice using extracts of dyed sutures, a guinea pig sensitization maximization test using extracts of dyed sutures, a test of intracutaneous toxicity in rabbits using extracts of dyed sutures, implantation tests (7, 32, and 89 days, and 6 and 9 months) in rabbits, a *Salmonella*/ mammalian mutagenicity test using extracts of dyed sutures, 52- and 32-week implantation tests in rats, and 60- and 62-day evaluations of absorbable suture following abdominal wound closure in rabbits.

There were no significant adverse effects from D&C Violet No. 2 in any of the studies evaluated by the agency. Therefore, the agency has concluded that these studies in conjunction with previously submitted studies establish the safety of the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data. The agency has also used risk assessment procedures to estimate the upper-bound limit of risk presented by *p*-toluidine, a carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. p-Toluidine

Using risk assessment procedures, FDA estimates that the maximum total lifetime exposure to *p*-toluidine that will result from the use of poly(ε-caprolactone) absorbable sutures colored with D&C Violet No. 2 that complies with the applicable specifications is 0.3 nanograms (ng) per person per day. The agency used data reported by the National Cancer Institute, which demonstrated that *p*-toluidine was carcinogenic for male and female Charles River CD-1 (HaM/ICR derived) mice, causing an increased incidence of hepatomas (liver tumors) (Ref. 1), to estimate the upper-bound

limit of lifetime human risk from exposure to this chemical stemming from the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures (Ref. 3).

Based on a potential exposure of 0.3 ng per person per day, the upper-bound limit of individual lifetime risk from the potential exposure to *p*-toluidine from the proposed use of D&C Violet No. 2 as a color additive in poly(ε-caprolactone) absorbable sutures is $2x10^{-11}$, or 2 in 100 billion (Ref. 3). Because of the numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to *p*-toluidine is expected to be substantially less than the worst-case estimated daily exposure. Therefore, the actual risk would be less than $2x10^{-11}$. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to *p*-toluidine that might result from the proposed use of D&C Violet No. 2 for coloring poly(ε-caprolactone) absorbable sutures.

B. Specifications

D&C Violet No. 2 is currently produced as a certifiable color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602, the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in poly(ε-caprolactone) absorbable sutures.

VII. Conclusions

Based upon the available toxicity data and the other relevant considerations discussed above, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Violet No. 2 for coloring poly(ε-caprolactone) absorbable sutures when it is used at a level not to exceed 0.1 percent by weight of the suture material. The agency also concludes on the basis of available data that the color additive will perform its intended coloring effect in poly(ε-caprolactone) absorbable sutures and, thus, is suitable for this use. The agency, therefore, is amending § 74.3602 of the color additive regulations to provide for use of the color additive at a maximum level of 0.1 percent by weight in poly(ε-caprolactone) absorbable sutures.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," F. Homburger and J. K. Marquis, editors, S. Karger, New York, pp. 24–33, 1985.

3. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for *p*-Toluidine in D&C Violet No. 2 Used as a Color Additive for Poly(*epsilon*-Caprolactone) Absorbable Sutures CAP 0C0224 (Concept, Inc.)," July 30, 1991.

XI. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 13, 1994 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.3602 is amended by adding new paragraph (b)(2)(iv) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(iv) At a level not to exceed 0.1 percent by weight of the suture material for coloring poly(ε-caprolactone) absorbable sutures for use in general surgery.

* * * * *

Dated: March 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5788 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4847–1]

Outer Continental Shelf Air Regulations; Delegation of Authority; Santa Barbara County, San Luis Obispo County, and Ventura County; Air Pollution Control Districts; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco has delegated authority to implement and enforce the requirements of the Outer Continental Shelf (OCS) program within 25 miles of the state's seaward boundary to the Santa Barbara County Air Pollution Control District (SBCAPCD), San Luis Obispo County Air Pollution Control District (SLOCAPCD), and Ventura County Air Pollution Control District (VCAPCD), California. EPA reviewed each District's rules and regulations and has found them to be adequate for delegation.

DATES: The effective date of the delegation authority for each agency is:

Santa Barbara County APCD—November 5, 1993

San Luis Obispo County APCD—January 18, 1994

Ventura County APCD—January 27, 1994

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region 9 office during normal business hours and at the following locations:

Santa Barbara County Air Pollution Control District 26 Castilian Drive B–23, Goleta, CA 93117.

San Luis Obispo County Air Pollution Control District 2156 Sierra Way, Suite B, San Luis Obispo, CA 93401.

Ventura County Air Pollution Control District 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking section (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1197.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated the authority to implement and enforce the requirements of the OCS rule (40 CFR part 55) to the Santa Barbara County, San Luis Obispo County, and Ventura County Air Pollution Control Districts. The final OCS rule was promulgated by EPA on September 4, 1992 pursuant to section 328 of the Clean Air Act (the Act). (57 FR 40792).

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources and each District's regulations have been reviewed by EPA and have been determined to be adequate. The following criteria for delegation are set forth at 40 CFR 55.11:[1] (1) The state has adopted the appropriate portions of 40 CFR part 55 into law; (2) The state has adequate authority under state law to implement and enforce the requirements of part 55; (3) The state has adequate resources to implement and enforce the requirements of part 55; and (4) The state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures.

The following delegation agreements represent the terms and conditions of the delegations to the SBCAPCD, SLOCAPCD, and VCAPCD:

I

U.S. EPA—Santa Barbara County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the Santa Barbara County Air Pollution Control District ("SBCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to SBCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SBCAPCD's request for delegation and has found that SBCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11.

This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

[1] The term "state" as used in the delegation criteria refers to the local air pollution permitting agencies—SBCAPCD, SLOCAPCD, and VCAPCD.

Section	Title
55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which Santa Barbara County has been designated the corresponding onshore area (COA), the State has submitted SBCAPCD's regulations to EPA and requested that EPA delegate authority to SBCAPCD to implement and enforce the OCS air regulations. SBCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SBCAPCD adopted Rule 903, Outer Continental Shelf Air Regulations, on November 10, 1992. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District.

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SBCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SBCAPCD has submitted information documenting

that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures—SBCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by SBCAPCD for review to meet this requirement:

Rule 101 Compliance By Existing Installations (Adopted 6/81)
Rule 208 Action on Applications—Time Limits (Adopted 10/18/71)
Rule 209 Appeals (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/5/91)
Rule 501 Hearing Boards—General (Adopted 10/23/78)
Rule 502 Hearing Boards—Filing (Adopted 10/23/78)
Rule 503 Hearing Boards—Contents of Filing (Adopted 10/23/78)
Rule 505 Breakdown Conditions (Adopted 10/23/78)
Rule 507 Appeal From Denial (Adopted 10/23/78)
Rule 508 Failure to Comply with Rules (Adopted 10/23/78)
Rule 601 Emergencies—General (Adopted 6/15/81)
Rule 602 Episodes/Disasters (Adopted 6/15/81)
Rule 604 Source Inspection (Adopted 6/15/81)
Rule 605 Enforcement (Adopted 6/15/81)
Rule 901 New Source Performance Standards (Adopted 4/21/92)
Rule 1001 National Emission Standards for Hazardous Air Pollutants (Adopted 5/14/91)
Rule 1101 Public Notification—General (Adopted 9/15/80)
Rule 1102 Daily Reporting of Air Quality (Adopted 9/15/80)
Rule 1103 Annual Reporting (Adopted 9/15/80)
Rule 1104 Health Effects (Adopted 9/15/80)
Rule 1105 Public Awareness and Involvement (Adopted 9/15/80)

Santa Barbara also submitted the following two (2) administrative rules:

Rule 504 Petitions for Variances: Contents (Adopted 10/23/78)
Rule 506 Emergency Variances (Adopted 10/23/78)

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SBCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to SBCAPCD.

(2) SBCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) SBCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SBCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act or the delegated sections of the Outer Continental Shelf Air Regulations or 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by EPA determinations or guidance sent or communicated to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 903 is consistent with the time frames and requirements of the federal regulations.

Exemptions

Pursuant to § 55.7:

(1) SBCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of any permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SBCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption under § 55.6(a)(2) will be granted or denied.

(3) If SBCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SBCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SBCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) SBCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SBCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SBCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SBCAPCD to conduct unannounced inspections.

General Conditions

(1) SBCAPCD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SBCAPCD. This responsibility includes the District's implementation and enforcement of all the rules and regulations in part 55 specifically stated and interpreted by the District as being applicable to OCS sources, such as SBCAPCD's Rule 331 prohibiting routine venting of pollutants.

(3) Nothing in this agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS air regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(4) In the event that the District does not enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District shall immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(5) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from California's seaward boundaries.

(6) This delegation may be amended at any time by the formal written agreement of both the SBCAPCD and the U.S. EPA including amendments to add,

change, or remove conditions or terms of this agreement.

(7) If SBCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 6 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 8 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(8) This delegation, after consultation with the SBCAPCD, may be revoked in whole or in part, if the U.S. EPA determines that the SBCAPCD no longer meet the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SBCAPCD.

(9) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(10) A notice of this delegated authority will be published in the **Federal Register**.

Dated: October 29, 1993.

James M. Ryerson,

Santa Barbara County Air Pollution Control District.

Dated: October 29, 1993.

William W. Master,

Santa Barbara County Air Pollution Control District.

Dated: November 5, 1993.

Felicia Marcus,

U.S. Environmental Protection Agency.

Dated: November 8, 1993.

David Howekamp,

U.S. Environmental Protection Agency.

II

U. S. EPA—San Luis Obispo County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the San Luis Obispo County Air Pollution Control District ("SLOCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to SLOCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SLOCAPCD's request for delegation and has found that SLOCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11. This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. In addition, SLOCAPCD does not have SIP-approved Prevention of Significant Deterioration ("PSD") regulations, nor has it received delegation of authority from EPA for implementation and enforcement of the federal PSD program. Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the San Luis Obispo County has been designated the corresponding onshore area (COA), the State has submitted SLOCAPCD's regulations to EPA and requested that EPA delegate to SLOCAPCD authority to implement and enforce the OCS air regulations. SLOCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SLOCAPCD adopted Rule 215, Outer Continental Shelf Air Regulations, on November 17, 1992. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District. (NOTE: Section 55.5, corresponding onshore area designations, was adopted by SLOCAPCD but EPA will not delegate authority for this section, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SLOCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SLOCAPCD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures—SLOCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by SLOCAPCD for review to meet this requirement:

Rule 110 Enforcement (Adopted 8/2/76)
Rule 111 Arrests and Notices to Appear (Adopted 8/2/76)
Rule 112 Public Availability of Information (Adopted 12/6/76)
Rule 202 Permits (Adopted 11/5/91) (except A.4 and A.8)
Rule 204 New Source Review Requirements B.3. (Adopted 8/10/93)
Rule 205 Action on Applications (Adopted 11/5/91)
Rule 206 Conditional Approval (Adopted 11/5/91)
Rule 210 Periodic Inspection (Adopted 11/5/91)
Rule 211 Emission Banking (Adopted 8/10/93)
Rule 212 Community Bank (Adopted 8/10/93)
Rule 213 Calculations (Sec. F.) (Adopted 8/10/93)
Rule 214 Notification (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 9/15/92)

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the

preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SLOCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to SLOCAPCD.

(2) SLOCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) SLOCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SLOCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS regulations or any other provision of 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 215 is consistent with the time frames and requirements of the federal regulations (40 CFR part 55).

Exemptions

Pursuant to § 55.7:

(1) SLOCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U. S. Coast Guard, a copy of the permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SLOCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If SLOCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SLOCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SLOCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) SLOCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SLOCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SLOCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SLOCAPCD to conduct unannounced inspections.

General Conditions

(1) SLOCAPCD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SLOCAPCD. Nothing in this agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from the state's seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the SLOCAPCD and the U.S. EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If SLOCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) This delegation, after consultation with the SLOCAPCD, may be revoked in whole or in part if the U.S. EPA determines that the SLOCAPCD no longer meets the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SLOCAPCD.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register**.

Dated: January 12, 1994

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

Dated: January 18, 1994.

John Wise,

Acting Regional Administrator, Region 9.

County of San Luis Obispo.

Harry L. Ovitt,

Chairman of the Board of Supervisors.

Attest:

F.M. Cooney,

Clerk of the Board of Supervisors.

Approved as to Form and Legal Effect:

James B. Lindhold, Jr.

County Counsel

R. Biering

Deputy County Counsel.

Dated: November 18, 1993.

III

U.S. EPA—Ventura County APCD Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the Ventura County Air Pollution Control District ("VCAPCD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to VCAPCD to implement and enforce the requirements of the Outer Continental Shelf Air Regulations ("OCS") (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed VCAPCD's request for delegation and has found that VCAPCD's regulations meet the requirements for delegation set forth at 40 CFR 55.11.

This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope
55.2	Definitions
55.3	Applicability
55.4	Requirements to submit a notice of intent
55.6	Permit requirements
55.7	Exemptions
55.8	Monitoring, reporting, inspections, and compliance
55.9	Enforcement
55.10	Fees
55.13	Federal requirements that apply to OCS sources
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce §§ 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. In addition, VCAPCD does not have SIP-approved PSD regulations, nor has it received delegation of authority from EPA for implementation and enforcement of the federal PSD program. Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the Ventura County APCD has been designated the corresponding onshore area (COA), the State has submitted VCAPCD's regulations to EPA and requested that EPA delegate authority to VCAPCD to implement and enforce the OCS air regulations. VCAPCD's regulations have been reviewed by EPA and determined to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—VCAPCD adopted Rule 72.1, Outer Continental Shelf Air Regulations, on December 22, 1992. This rule incorporates the provisions of 40 CFR Part 55 that EPA is delegating to the District. (NOTE: Section 55.5, corresponding onshore area designations, was adopted by VCAPCD but EPA will not delegate authority for this section, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to the State Attorney General's January 12, 1993 letter which was forwarded to EPA, VCAPCD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—VCAPCD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures—VCAPCD's administrative procedures have been reviewed by EPA and found to be adequate. The following rules were submitted by VCAPCD for review to meet this requirement:

Rule 8 Access to Facilities (Adopted 5/23/72, renumbered 11/21/78)
Rule 9 Arrest Authority (Adopted 11/21/78)
Rule 17 Disclosure of Air Toxics (Adopted 4/17/90)
Rule 25* Action on Applications (Adopted 1/10/84)
Rule 26.7 New Source Review (Adopted 12/22/92)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 31 Public Disclosure of Data (Adopted 11/22/77)
Regulation VIII Emergency Action (Adopted 11/22/77)

* District Rule 25 contains procedures for processing permit applications. When an exemption request is submitted, section 55.6(a)(2) will supersede Rule 25.

EPA maintains that the District may use any administrative Procedures it has under State law to implement and enforce the requirements of part 55, such as a variance. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) VCAPCD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to VCAPCD.

(2) VCAPCD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and the Minerals Management Service.

(3) VCAPCD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) VCAPCD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District will request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS air regulations or any other provision of 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 72.1 is consistent with the time frames and requirements of the federal regulations.

Exemptions

Pursuant to § 55.7:

(1) VCAPCD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) VCAPCD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If VCAPCD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the VCAPCD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). VCAPCD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) VCAPCD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR 55.6(a)(2), which supersedes District Rule 25.

Monitoring, Reporting, Inspections, and Compliance

VCAPCD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or VCAPCD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or VCAPCD to conduct unannounced inspections.

General Conditions

(1) VCAPCD agrees to implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District will rest with the VCAPCD. Nothing in this agreement shall prohibit EPA from regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from states' seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the VCAPCD and the U.S. EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If VCAPCD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) If the U.S. EPA determines that: (a) The requirements of the OCS air regulations are not being adequately implemented or enforced by VCAPCD; or (b) VCAPCD no longer has adequate regulations as required by 40 CFR 55.11(b) in accordance with the terms and conditions of this delegation, the requirements of 40 CFR part 55, or the Clean Air Act, this delegation, after consultation with the VCAPCD, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the VCAPCD.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register**.

Dated: January 18, 1994.

Vicky Howard,

Ventura County Air Pollution Control District.

Dated: January 27, 1994.

John Wise,

Acting Regional Administrator, Region 9.

EPA Action

The EPA hereby notifies the public that it has delegated the authority to implement and enforce the requirements of the OCS air regulations (40 CFR part 55) promulgated by EPA on September 4, 1992 to the above-referenced local agencies.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 6 of Executive Order 12866.

This notice is issued under the authority of section 328 of the Clean Air Act, 42 U.S.C. 7627.

Dated: February 26, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–5869 Filed 3–11–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7030

[AZ–930–4210–06; AZA 26001, AZA 26002, AZA 26003]

Withdrawal of National Forest System Lands for Campgrounds and an Administrative Site; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 60 acres of National Forest System lands from mining for 20 years to protect significant capital improvements associated with the Reef Townsite Campground, the Ramsey Vista Campground, and the Carr Canyon House Administrative Site. The lands have been and will remain open to mineral leasing and surface uses authorized by the Forest Service.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–5509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investments of the Reef Townsite and Ramsey Vista Campgrounds and the Carr Canyon House Administrative Site:

Gila and Salt River Meridian

Coronado National Forest

T. 23 S., R. 20 E.,
Sec 11, N½SE¼SW¼.
Sec 14, W½NW¼SW¼;
Sec 15, E½NW¼SW¼.

The areas described aggregate 60 acres in Cochise County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 25, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–5795 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–32–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7592]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood Insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Iowa:			
Norway, city of Benton County	190632	January 21, 1994	9–26–75
Greene County, unincorporated areas	190869	January 27, 1994	6–14–77
Kentucky: Allen County, unincorporated areas	210267	February 10, 1994	6–24–77
Nebraska: Stanton County, unincorporated areas	310478	February 14, 1994	
Arkansas: Bull Shoals, city of Marion County	050394	February 18, 1994	4–25–75
New Eligible—Regular Program			
California: American Canyon, city of Napa County [1]	060755	January 11, 1994	

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Minnesota: Wyoming, township of Chisago County[2]	270752	January 28, 1994	
Nebraska: Merrick County unincorporated areas	310457	January 31, 1994	12–2–92
Illinois: Hillview, village of Greene County	170253	January 31, 1994	9–30–83
Arizona: Fountain Hills, town of Maricopa County	040135	February 10, 1994	12–3–93
Florida:			
Oak Hill, city of Volusia County	120624	February 21, 1994	7–15–92
Alachua, city of Alachua County[3]	120664	.....do	
Nebraska: Axtell, village of Kearney County	310344	February 24, 1994	[4]NSFHAs
Iowa: Preston, city of Jackson County	190431	February 28, 1994	3–3–92
Reinstatements—Regular Program			
Kentucky: Augusta, city of Bracken County	210022	February 26, 1975, Emerg.; January 19, 1978, Reg.; December 3, 1993, Susp.; January 31, 1994 Rein.	12–3–93
Pennsylvania: Rockwood, borough of Somerset County	422045	February 17, 1977, Emerg.; June 18, 1990, Reg.; June 18, 1990, Susp.; February 1, 1994, Rein.	6–18–90
New York: Marshall, town of Oneida County	360534	July 17, 1975, Emerg.; September 30, 1982, Reg.; September 30, 1982, Susp.; February 7, 1994 Rein.	9–30–82
Alabama: Sheffield, city of Colbert County	010048	January 10, 1974, Emerg.; December 15, 1977, Reg.; January 28, 1985, With.; February 10, 1994, Rein.	3–18–83
New York: Constableville, village of Lewis County	360360	April 22, 1981, Emerg.; July 16, 1982, Reg.; November 4, 1992; Susp., February 10, 1994 Rein.	7–16–82
Pennsylvania:			
Concord, township of Delaware County	420410	February 25, 1972, Emerg.; January 5, 1978, Reg.; December 3, 1993, Susp.; February 11, 1994, Reg.	9–30–93
Huntington, township of Adams County	421143	March 26, 1974, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; February 11, 1994 Rein.	7–15–88
Somerset, township of Somerset County	422055	July 19, 1976, Emerg.; May 17, 1990, Reg.; May 17, 1990, Susp.; February 11, 1994 Rein.	7–2–92
Eddystone, borough of Delaware County	420413	September 15, 1972, Emerg.; February 2, 1977, Reg.; December 3, 1993, Susp.; February 14, 1994, Rein.	9–30–93
Gambel, township of Lycoming County	420974	August 1, 1973, Emerg.; September 30, 1980, Reg.; June 16, 1993, Susp.; February 14, 1994, Rein.	9–30–80
Parkside, borough of Delaware County	420426	December 10, 1971, Emerg.; July 5, 1977, Reg.; December 3, 1993, Susp.; February 14, 1994, Rein.	9–30–93
Vermont: Coventry, town of Orleans County	500246	July 23, 1975, Emerg.; September 27, 1985, Reg.; November 1, 1985, Susp.; February 18, 1994, Rein.	9–27–85
Regular Program Conversions			
Region V:			
Indiana: Anderson, city of Madison County	180150	February 16, 1994, Suspension Withdrawn.	2–16–94
Minnesota: Pine Island, city of Goodhue County	270145	.....do	2–16–94
Region VIII:			
South Dakota: Fort Pierre, city of Stanley County	465419	.....do	2–16–94
Region X:			
Washington: Bothell, city of King County	530075	.....do	3–2–94

[1] The City of American Canyon has adopted Napa County's Flood Insurance Rate Map (FIRM) dated September 28, 1990, for floodplain management and insurance purposes.

[2] The Township of Wyoming has adopted Chisago County's FIRM dated August 2, 1993, for floodplain management and insurance purposes.

[3] The City of Alachua has adopted Alachua County's FIRM dated November 4, 1988, for floodplain management and flood insurance purposes.

[4] No Special Flood Hazard Areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement. (Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94-5865 Filed 3-11-94; 8:45 am]

BILLING CODE 6718-21-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Aircraft Fuel Cells

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to prohibit the use of Fiscal Year 1994 Department of Defense appropriated funds for acquisition of aircraft fuel cells unless such cells are manufactured in the United States.

DATES: *Effective Date:* March 7, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before May 13, 1994 to be considered in the formulation of a final rule. Please cite DFARS Case 93-D307 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8090 of the Fiscal Year 1994 Defense Appropriation Act (Pub. L. 103-139) prohibits use of Fiscal Year 1994 appropriated funds for acquisition of aircraft fuel cells unless such cells are manufactured in the United States.

The Director, Defense Procurement, issued Departmental Letter 94-003, March 7, 1994, to implement the restriction on acquisition of aircraft fuel cells in the Defense Federal Acquisition Regulation Supplement.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies but is not expected to have a significant impact on a substantial number of small entities because the revisions are limited to acquisition of aircraft fuel cells, and limit such acquisitions to U.S. manufacturers.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because section 8090 became effective upon enactment of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), on November 11, 1993. However, pursuant to Public Law 98-577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

1. The authority for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 225—FOREIGN ACQUISITION

2. A new section 225.7021 is added to read as follows:

225.7021 Restriction on aircraft fuel cells.

225.7021-1 Restriction.

In accordance with section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), do not purchase aircraft fuel cells unless they are manufactured in the United States.

225.7021-2 Waiver.

The restriction may be waived by the Secretary of the department responsible for the acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7021-3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225-7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 funds; and

(b) Require delivery of aircraft fuel cells.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7038 is added to read as follows:

252.225-7038 Restriction on acquisition of aircraft fuel cells.

As prescribed in 225.7021-3, use the following clause:

Restriction on Acquisition of Aircraft Fuel Cells (Fed 1994)

The Contractor agrees that all aircraft fuel cells furnished under this contract have been manufactured in the United States.

(End of clause)

[FR Doc. 94-5817 Filed 3-11-94; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket Number 940251-4051 I.D. 110193C]

RIN 0648-AF51

Antarctic Marine Living Marine Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the harvesting of Antarctic marine living resources and/or other associated activities by persons subject to jurisdiction of the United States by adding regulations for the protection of land-based ecosystem monitoring sites designated within Convention for the Conservation of Antarctic Living Marine Resources (CCAMLR) waters. The regulations implement conservation and management measures promulgated by the Commission for the Conservation of Antarctic Marine Living Resources (Commission) and accepted in whole by the Government of the United States to

regulate activities within Convention waters. The Commission, at its ninth meeting in 1990, established a procedure for protecting sites within the CCAMLR Ecosystem Monitoring Program (CEMP). Long-term investigations of selected sites within CEMP will be conducted to monitor changes in the ecosystem. The Commission determined that these sites are in need of the status of "Specially Protected Sites" similar to the program established under the Antarctic Treaty. The intent of these regulations is to implement the agreed to procedures for CEMP.

EFFECTIVE DATE: March 14, 1994.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Thomas J. McIntyre, National Marine Fisheries Service, 1315 East-West Highway, room 13225, Silver Spring, MD 20910–3233, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Paperwork Reduction Act Project 0648–0194.

FOR FURTHER INFORMATION CONTACT: Thomas J. McIntyre (NMFS Protected Resources Management Division), 301–713–2319.

SUPPLEMENTARY INFORMATION:

Background

At its ninth annual meeting in Hobart, Tasmania, Australia, in 1990, the Commission, of which the United States is a member, adopted detailed procedures for according protection to sites within the CEMP. This protection, extended pursuant to site-specific management plans, is intended to prevent adverse impacts to these sites resulting from certain forms of human activities. Once approved, management plans will be reviewed every 5 years to determine whether they require revision and whether continued protection is necessary. Section 307 of the Antarctic Living Marine Resources Convention Act of 1984 (the Act) states that the Secretary of Commerce, after consultation with the heads of appropriate agencies, shall promulgate such regulations as are necessary to implement the provisions of the Act and the Conservation Measures adopted by the Commission. This notice adds regulatory text for previously reserved § 380.28 of 50 CFR part 380 to implement CEMP procedures and the Commission's approved CEMP management plans. One part of the section requires individuals seeking permits in order to enter a CEMP site to apply either to NMFS or the National Science Foundation (NSF) as follows:

A. If the CEMP protected site is not also a site specially protected under the Antarctic Treaty, or the Protocol on Environmental Protection to the Antarctic Treaty, the individual must apply to NMFS for a CEMP entry permit.

B. If the CEMP protected site is also a site specially protected under the Antarctic Treaty or the Protocol on Environmental Protection to the Antarctic Treaty, and, thus, a site requiring a permit under the Antarctic Conservation Act (ACA) (and any superseding legislation), the individual must apply to NSF for a single CEMP/ACA permit.

Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Act and to give effect to the conservation and management measures adopted by the Commission and agreed to by the United States.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget (OMB Approval Number 0648–0194).

The annual reporting burden for this collection of information is estimated to average 1 hour per application, and one half hour for preparation of a final report on the permitted activities. All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Thomas J. McIntyre, National Marine Fisheries Service, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**). This rule is exempt from review under E. O. 12866.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting end recordkeeping requirements.

Dated: March 6, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.2 is amended by adding a definition for *CEMP Entry Permit*, in alphabetical order, to read as follows:

§ 380.2 Definitions.

* * * * *

CEMP entry permit (CEMP permit) means a permit issued under 50 CFR 380.28 by the Assistant Administrator to a person subject to the jurisdiction of the United States authorizing the person to enter specially protected sites designated under the authority of the Convention Ecosystem Monitoring Program (CEMP) established by the Commission in accordance with the terms and conditions of the CEMP Management Plan for the specific site and the terms and conditions contained in the permit.

* * * * *

3. Section 380.28 is amended by adding text to read as follows:

§ 380.28 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the National Science Foundation (NSF) for a permit under applicable provisions of the Antarctic Conservation Act of 1978 (ACA)(16 U.S.C. 2401 *et seq.*) or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must

comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this part, and any permit issued under this part.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230);

(2) The Convention for the Conservation of Antarctic Seals; and

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes governing the activities of persons in Antarctica. These CEMP permits specifically do not authorize takings or harvesting native birds, mammals and plants under:

(1) The ACA (administered by the NSF), 45 CFR part 670, which regulates all activities under the Antarctic Treaty south of 60 °S. lat. in Antarctica, and any superseding statute;

(2) The Act, 50 CFR part 380;

(3) The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), 50 CFR part 216;

(4) The Endangered Species Act (16 U.S.C. 1531 *et seq.*), 50 CFR part 222; and

(5) The Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), 50 CFR part 10.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act;

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere; and

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site's Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application:

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site's Management Plan; and

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site's Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Duration.* Permits issued under this section are valid for a period of 1 year. Applicants requesting a permit to reenter a Protected Site must include the report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) *Modification.* (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore; and

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements. If a requested modification is not in compliance within the terms of the Protected Site's Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(2) *Additional conditions and restrictions.* The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act or this part.

(2) Failure to report a change in the information submitted in an CEMP permit application within 10 days of the change is a violation of this part and voids the application or permit, as applicable. 15 CFR part 904 governs permit sanctions under this part.

(l) *Exceptions.* No entry into a Protected Site described in this section shall be unlawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft or to prevent environmental damage.

(m) *Protected sites.* (1) Sites protected by the Antarctic Treaty and regulated by the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following site has been identified as a CEMP Protected Site subject to the regulatory authority of the Act:

(i) *Seal Islands, South Shetland Islands*—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59′14″ S. lat., 055°23′04″ W. long.

(ii) [Reserved]

[FR Doc. 94–5847 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–204–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections to detect cracking in the upper row of fasteners in the lower lobe of the fuselage skin lap joints, and repair, if necessary. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. The actions specified by the proposed AD are intended to prevent separation of the fuselage skin and rapid loss of pressure in the airplane. This proposal also relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 747 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox , Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–204–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after cracks in rivet holes in the upper fuselage linked together, causing structural failure and uncontrolled decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 747 series airplanes completed its work on Item 2 in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 747 fleet. This program is contained in Boeing Document Number D6–36022, "Aging Airplane Corrosion Prevention and Control Program—

Model 747," dated July 1989. The FAA issued AD 90–25–05, Amendment 39–6790 (55 FR 49268, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item 1, above. The Working Group's proposal is contained in Boeing Document Number D6–35999, "Aging Airplane Service Bulletin Structural Modification Program—Model 747." The FAA issued AD 90–06–06, Amendment 39–6490 (55 FR 8374, March 7, 1990), which requires the installation of the structural modifications identified in the Boeing Document, and AD 92–27–04, Amendment 39–8437 (58 FR 8693, February 17, 1993), which requires structural inspections of older airplanes.

Additional structural inspections are required by AD 86–09–07 R1, Amendment 39–5580 (52 FR 7564, March 12, 1987), which references Boeing Alert Service Bulletin 747–53A2267, dated March 28, 1986, and Revision 1, dated September 25, 1986.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item 1. The Working Group has identified certain service difficulties that warrant mandatory inspections following mandatory modification of these airplanes. The Working Group considers that these service difficulties can be controlled safely by repetitively inspecting following modification of these airplanes, and that, because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on older airplanes, and the Working Group has a very high degree of confidence in the ability of an inspection program to detect the damage before it impairs safety.

The Working Group has reviewed Boeing Service Bulletin 747–53A2267, and has recommended it to the FAA for mandatory inspection following modification to ensure the successful long-term operation of Model 747 series airplanes. The procedures contained in this service bulletin address reports of corrosion and cracking in the body skin of the lap joints under the wing-to-body fairing on Model 747 series airplanes that had accumulated between 21,500 flight hours and 33,000 flight hours. Operators have also reported finding corrosion and cracks at the lower body lap joints forward and aft of the wing-to-body fairing on airplanes that had accumulated more than 9,000 flight hours. Additionally, operators have reported finding fatigue cracking in the body frames adjacent to the lap joints on airplanes that had accumulated more than 10,000 flight cycles. Continued operation of these airplanes with corroded lap joints and cracked or broken adjacent frames could cause the skin to separate, which could lead to rapid loss of pressure in the airplane.

The FAA has concurred with the Working Group's recommendations and has determined that AD action is warranted to mandate the inspections to assure the continued airworthiness of the Model 747 fleet.

The FAA has reviewed and approved Revision 3 of Boeing Service Bulletin 747–53A2267, dated March 26, 1992, that describes procedures for external high frequency eddy current (HFEC) inspections to detect cracking in the upper row of fasteners in the lower lobe of the fuselage skin lap joints. Certain inspections to detect cracking of the lower lobe lap joints described in this service bulletin are required by AD 86–09–07 R1, which references the original issue of this service bulletin, dated March 8, 1986, and Revision 1, dated September 25, 1986. The "full" modification (including the "permanent" repair) and the "optional" modification of the lower lobe lap joints described in this service bulletin are required by AD 90–06–06, which also references both the original issue of this service bulletin and Revision 1. The inspections to detect corrosion described in this service bulletin are required by AD 90–25–05, Amendment 39–6790 (55 FR 49268, November 27, 1990).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive external high frequency eddy current inspections to detect cracking in the upper row of fasteners in modified lap joints, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously.

The requirements of this proposed AD are not intended to duplicate, rescind, or supersede the requirements of AD 86–09–07 R1, AD 90–06–06, or AD 90–25–05. The FAA's intent is to require the external HFEC inspections, described above, of older airplanes following the mandatory modifications required by AD 90–06–06, in addition to those inspections required by AD 86–09–07 R1 and AD 90–25–05.

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 124 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $804,760, or $6,820 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed inspections would require a large number of work hours to accomplish. However, the compliance times specified in paragraph (a) of this proposed AD should allow ample time for the inspections to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–204–AD.

Applicability: Model 747 series airplanes having line positions 1 through 200 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of fuselage skin and rapid loss of pressure in the airplane, accomplish the following: (a) Perform an external high frequency eddy current inspection to detect cracks in the upper row of fasteners in the modified lap joints in accordance with Boeing Service Bulletin 747–53A2267, Revision 3, dated March 26, 1992, at the time specified in paragraph (a)(1) or (a)(2) or (a)(3) of this AD, as applicable.

(1) For airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Revision 2 of Boeing Service Bulletin 747–53A2267, dated March 29, 1990, or Revision 3, dated March 26, 1992: Prior to the accumulation of 10,000 flight cycles after accomplishment of the full modification.

(2) For airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 8, 1986, or Revision 1, dated September 25, 1986: Prior to the accumulation of 7,000 flight cycles after accomplishment of the full modification.

(3) For airplanes on which the optional modification has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 28, 1986; or Revision 1, dated September 25, 1986; or Revision 2, dated March 29, 1990; or Revision 3, dated March 26, 1992: Prior to the accumulation of 7,000 flight cycles after accomplishment of the optional modification.

(b) If no cracking is detected, repeat these inspections thereafter at intervals not to exceed 3,000 flight cycles.

(c) If any cracking is detected, prior to further flight, repair in accordance with the Section 53–30–03 of the 747 Structural Repair Manual, and repeat these inspections thereafter at intervals not to exceed 3,000 flight cycles.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5853 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–222–AD]

Airworthiness Directives; Canadair Model CL–600–2B16 (CL–601–3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–2B16 series airplanes. This proposal would require inspection to detect chafing of the wiring harness of the air driven generator (ADG), modification of the wiring harness, and repair of any chafed harness. This proposal is prompted by a report that the wiring harness on certain airplanes were produced in a configuration that is subject to chafing and electrical shorting. The actions specified by the proposed AD are intended to prevent loss of ADG power to the essential bus when the ADG is deployed during an emergency situation.

DATES: Comments must be received by May, 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 1991, the FAA issued AD 91–19–01, Amendment 39–8026 (56

FR 45893, September 9, 1991), applicable to certain Canadair Model CL–600–1A11, CL–600–2A12, and CL–600–2B16 series airplanes. That AD requires inspection to detect chafing and modification of the wiring harness of the air driven generator (ADG), and repair of any chafed harness. That action was prompted by reports of chafing of the ADG electrical output harness against the backshell of the connector on the turbine generator assembly. Although the chafing occurred while the ADG was in the stowed position, when the ADG was deployed, the chafed wires shorted to the airplane structure and prevented the ADG from powering the essential bus. This essential bus provides electrical power to the hydraulic flight control system and to the essential flight control equipment. In these instances, the shorting also damaged the ADG output harness and its support structure.

This condition, if not corrected, could result in loss of emergency power to the essential bus when the ADG is deployed.

Since issuance of AD 91–19–01, Transport Canada Aviation, which is the airworthiness authority for Canada, notified the FAA that the same unsafe condition addressed in AD 91–19–01 may exist on certain additional Model CL–600–2B16 series airplanes. Transport Canada Aviation advises that, during production of Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131, inclusive, the wiring harnesses of the ADG's were not modified to preclude chafing against the backshell of the connector on the turbine generator assembly. (AD 91–19–01 is applicable only to airplanes having serial numbers 5001 through 5098, inclusive.) Therefore, these airplanes are also subject to losing ADG power to the essential bus when the ADG is deployed during an emergency situation.

Canadair has issued Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993, that describes procedures for a one-time inspection to detect chafing and modification of the ADG wiring harness, and repair of any chafed harness. This modification entails replacing two existing harness support brackets with redesigned brackets that would preclude chafing of the harness. The effectivity of this service bulletin includes Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131 only. Transport Canada Aviation classified this alert service bulletin as mandatory and issued Canadian Airworthiness Directive CF–91–21R1, dated May 6, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection to detect chafing and modification of the wiring harness of the ADG, and repair of any chafed harness. The actions would be required to be accomplished in accordance with the alert service bulletin described previously. This proposed AD would apply only to airplanes having serial numbers 5099 through 5131, inclusive.

Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 91–19–01 to expand its applicability to include the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This AD does not supersede AD 91–19–01; airplanes listed in the applicability of AD 91–19–01 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to airplanes having serial numbers 5099 through 5131, inclusive.)

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $1,375, or $55 per airplane.

The FAA estimates that it would take approximately 9 work hours per airplane to accomplish the proposed modification and the average labor rate is $55 per work hour. Required parts would cost approximately $199 per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $17,350 or $694 per airplane.

Based on the figures, above, the total (inspection plus modification) cost impact of the proposed AD on U.S. operators is estimated to be $18,725 or $749 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Canadair: Docket 93–NM–222–AD.

Applicability: Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131, inclusive; certificated in any category.

Note 1: Airplanes having serial numbers 5001 through 5098, inclusive, are subject to the requirements of AD 91–19–01, Amendment 39–8026.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of emergency power to the essential bus when the air driven generator (ADG) is deployed, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect to detect chafing of the wiring harness of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. If chafing is found, prior to further flight, repair in accordance with the service bulletin.

(b) Within 60 days after the effective date of this AD, modify the harness installation of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 8, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

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14 CFR Part 39

[Docket No. 93–NM–229–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes (Excluding Mark 050 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This proposal would require accomplishment of certain structural modifications. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–229–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The FAA, in concert with the Regional Airline Association (RAA); the General Aviation Manufacturers Association (GAMA); several U.S. and non-U.S. operators of the affected airplanes; the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands; and Fokker; has agreed to undertake the task of identifying and implementing procedures to ensure continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected service bulletins, applicable to Fokker Model F27 series

airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

This group's proposal is contained in Fokker Report Number SE–278, "F27 Aging Aircraft Project-Final Document," Issue 3, dated February 1, 1993. This Report references modifications from eight service bulletins and recommends that they be incorporated in the applicable Fokker Model F27 series airplanes. The modifications consist of three modifications to the fuselage, two modifications to the wing, and three modifications to the empennage of the airplane. They include structural reinforcement of frames, ribs, and stringers; replacement of formers and ribs; and installation of inspection doors and covers, access holes, and drain holes.

The procedures described in these service bulletins are intended to positively address conditions identified in Model F27 series airplanes that, if not corrected, could result in structural failure.

The RLD classified this Report as mandatory and issued Netherlands Airworthiness Directive (BLA) 91–058/5 (A), dated July 16, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since fatigue cracking and corrosion are likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of Fokker Model F27 series airplanes prior to their economic design goal in accordance with the Fokker Report described previously.

The economic design goal of an airplane is typically considered to be the period of service after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. The economic design goal for Fokker Model F27 series airplanes is 90,000 landings for structural problems associated with fatigue damage.

The proposed compliance time for implementation of the mandatory structural modification program is prior to reaching the applicable economic design goal. This time interval was determined based upon the ability of the manufacturer to provide the parts necessary for the modification, and the time necessary to incorporate the modifications.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' on-going basic maintenance programs; continuing inspections required by numerous previously issued AD's; the Structural Integrity Program (SIP) program, previously mandated by AD 92–19–07, Amendment 39–8365 (57 FR 42693, September 16, 1992); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance.

The FAA estimates that 58 Fokker Model F27 series airplanes (excluding Mark 050 series airplanes) of U.S. registry would be affected by this proposed AD within the initial threshold. Since not all affected airplanes would be required to accomplish every modification referenced in each of the service bulletins, the cost impact of the proposed modifications is estimated in the following table. This cost includes the price of modification kits, and the estimated labor rate is $55 per work hour It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition.

Service Bulletin No.	No. of affected airplanes	No. of work hours	Cost of parts per airplane	Cost per airplane	Total cost for affected airplanes
55–33 (B–77)	5	40	$314	$2,514.00	$12,570.00
55–12 (B–67)	5	20	121	1,221.00	6,105.00
55–12 (Part II)	5	30	168	1,818.00	9,090.00
55–61 Revision 2	13	45	2,235	4,710.00	61,230.00
57–68 Revision 1	58	556	1,279	31,859.00	1,847,822.00
53–19 (B–45) Issue 3	5	22	0	1,210.00	6,050.00
53–58 (B–149)	5	16	0	880.00	4,400.00
53–76 (B–211)	13	0.25	0	13.75	178.75
57–7 Issue 1	5	32	400	2,160.00	10,800 00

Based on these figures, above, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,958,245.75.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the proposed modifications would require a large number of work hours to accomplish. However, the threshold specified in each of the service bulletins referenced by the Fokker Report should allow ample time for the accomplishment of the modifications coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–229–AD.

Applicability: Model F27 series airplanes (excluding Mark 050 series airplanes), as listed in Fokker Report Number SE–278, "F27 Aging Aircraft Project—Final Document," Issue 3, dated February 1, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Prior to reaching the incorporation thresholds listed in Part II of Fokker Report Number SE–278, "F27 Aging Aircraft Project—Final Document," Issue 3, dated February 1, 1993, accomplish the structural modifications listed in Part II of the Fokker Report.

Note 1: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for that inspection requirement.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5852 Filed 3–11–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–76–AD]

Airworthiness Directives; Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, 700, and 800 Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F–27 series airplanes. This proposal would require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by

the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AATF was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

The working group assigned to review the Fokker Model F–27 series airplanes has completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Model F–27 fleet. The program is contained in Fokker Document SE–291, "F–27 Corrosion Control Program," with revisions through October 1, 1993. (Hereafter, this publication is referred to as "the Document.") The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified this Document as mandatory and issued Netherlands Airworthiness Directive (BLA) 91–113, Issue 2, dated June 26, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

Section 2.1 of the Document defines three levels of corrosion: Level 1 corrosion is that which does not exceed certain limits; Level 2 corrosion is that which exceeds those limits; and Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Sections 2.2 and 2.3 of the Document provide general guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly-acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 2.4 of the Document sets forth the general implementation schedule for the corrosion inspection/control program. As described in that section, each "aircraft zone" is assigned an "Initial Inspection Time" and a "Repeat Inspection Time." The program is applicable to each aircraft zone on all Model F–27 series airplanes whose age has reached or exceeded the Initial Inspection Time for that zone. For airplanes that have not reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection task has to be performed before the airplane has reached the Initial Inspection Time for the specific aircraft zone, or before the Repeat Inspection Time of the task is exceeded (a maximum of 6 years), whichever occurs later. For airplanes that have already reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection has to be performed before the Repeat Inspection Time of the task is exceeded or within 6 years, whichever occurs first.

Section 2.4 of the Document also identifies the specific aircraft zones that are subject to the program, and describes the "basic task" to be accomplished in each defined aircraft zone as part of the baseline program, along with the initial inspection time and repeat inspection time for each area, and other information necessary to carry out the program for each area. The Document defines a "basic task" as including not only the pertinent visual inspections of all primary and secondary structures, but any necessary repairs, application of sealants or corrosion inhibitors, and other follow-on procedures, as well. A basic task may also include detailed visual and non-destructive inspections (NDI); where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected.

Section 2.5 establishes the procedures for reporting the results of the inspections conducted under the corrosion prevention and control program.

Section 2.6 provides for periodic review and update of the data contained in the Document.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific basic tasks described in the Document (the "task-by-task method"), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a) of the proposal sets forth the proposed compliance times for the initial basic task of each affected aircraft zone. These compliance times are measured from a date one year after the effective date of the final rule. (The proposed compliance times are consistent with those of other similar AD's that the FAA has issued on this subject.) Generally, operators would be required to complete the initial basic task before reaching the "Initial Inspection Time" plus one "Repeat Inspection Time" interval for the aircraft zone, as detailed in the Document. The basic task would be required to be repeated at a time interval not to exceed the "Repeat Inspection Time" interval for that area, as detailed in the Document.

Paragraph (a) includes paragraph (a)(1)(iii), which states that, for each area that exceeds the initial inspection time for that area, operators must accomplish the initial basic task at a minimum rate of one such area every two years, beginning one year after the effective date of the final rule. The FAA

recognizes that this may cause a hardship on some small operators; in those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. (A note to this effect is included in the proposal.)

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each basic task, as it is defined in the Document. As discussed previously, a "basic task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow- on procedures, as well. Paragraph (a) contains a note to reference the portion of the Document that defines a basic task, and to emphasize the importance of these corrective actions.

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Paragraph (b) also would require that, subsequent to the accomplishment of the initial basic task, any extensions of Repeat Inspection Time intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) section 91.417 or section 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each basic task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each basic task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under section 121 709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD Each time a basic task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention.

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (The FAA has developed guidance material that will contain information to be considered by FAA Principal Maintenance Inspectors (PMI) when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the proposal provides for increasing a "Repeat Inspection Time" interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the basic task in the affected area on the remainder of the Model F–27 series airplanes in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the basic tasks in the affected area on the remainder of the operator's Model F–27 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the basic tasks performed on the remainder of the operator's Model F–27 series fleet.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model F–27 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the operator must accomplish the basic tasks in the affected areas on the remaining airplanes in its Model F–27 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that if corrosion is found and it is not considered representative of the operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted to Fokker within certain time periods after such corrosion is detected. A note has been included in this paragraph indicating that reporting to the FAA of any Level 2 or Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703.

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD. It would take an average of approximately 7 work hours per basic task to accomplish the 75 basic tasks called out in the Document; this represents a total average of 525 work hours. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the 6-year average inspection cycle is estimated to be $1,588,125, or $28,875 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1 The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–76–AD.

Applicability: Model F–27 Mark 100, 200, 300, 400, 500, 600, 700, and 800 series airplanes (does not include Model F–27 MK 050 series airplanes), certificated in any category

Compliance: Required as indicated, unless accomplished previously

Note 1: This AD references Fokker Document SE–291, "F–27 Corrosion Control Program," including all revisions through October 1, 1993, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM–113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note 3: The FAA recommends that priority for implementing the corrosion prevention and control program, specified in this AD, be given to older aircraft and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in section 2.4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 4: A "basic task," as defined in section 2.4 of the Documen., includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

Note 5: Airplane "areas" are those items listed in columnar form in the "ACTION" statement of each task, as listed in the Document.

Note 6: Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD

Note 7: Where non-destructive inspection (NDI) methods are employed, in accordance with section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in section 2.4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT, or no later than one Repeat Inspection Time (RIT) interval measured from a date one year after the effective date of this AD, whichever occurs later.

(ii) For airplane areas that have exceeded the IIT for a particular basic task as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iii) Notwithstanding paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of this AD.

Note 8: This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

Note 9: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10% but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F–27 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F–27 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: 10: Notwithstanding the provisions of section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not

typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA (ref. **Note 2** of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F–27 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to Fokker of such findings, in accordance with section 2.5 of the Document.

Note 11: Reporting to the FAA of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) Reports of inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Issued in Renton, Washington, on March 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5850 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–6–93]

RIN 1545–AR54

Limitation on Annual Compensation for Qualified Plans; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the compensation limit for tax-qualified retirement plans under section 401(a)(17) of the Internal Revenue Code of 1986.

DATES: The public hearing originally scheduled for Thursday, March 17, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 401(a)(17) of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Thursday, December 30, 1993 (58 FR 69302), announced that the public hearing on the proposed regulations would be held on Thursday, March 17, 1994, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, March 17, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5856 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposal amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes in the State's revegetation success document.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. April 13, 1994. If requested, a public hearing on the proposed amendment will be held on April 8, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on March 29, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed

amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918 (307) 261–5776.

Mr. Edward J. Englerth, Director, Reclamation Division; North Dakota Public Service Commission Capitol Building; Bismarck, North Dakota 58505–0165 (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the North Dakota Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated February 17, 1994, (Administrative Record No. ND–U–01) North Dakota submitted a proposed amendment to its permanent program pursuant to SMCRA. The North Dakota proposed amendment XX consists of changes to the State revegetation success document "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" including changes to address required program amendments at 30 CFR 934.16 (b through i, w and x).

The following areas are proposed for change:

(1) Section I–A regarding concurrence of other Federal and State agencies and additional reference cites.

(2) Section II–B regarding various modifications to the Subsections on County Soil Survey Estimates, Cropland Productivity Indexes, Average County Spring Wheat Yields, SCS Yield Estimates, and Updating SCS Data.

(3) Section II–C, Subsection on Requirements for Successful Revegetation regarding statistical confidence and management practices; Subsection on Revegetation Success Standards for Third Stage Bond Release regarding prime farmland standards; Subsection on Revegetation Success Standards for Fourth-Stage Release regarding changes for the crops most commonly grown and methods of calculating success standards.

(4) Section II–D, Subsection on Premining Assessment regarding inventory requirements and range site descriptions; Subsection on Postmining Assessment regarding cover data requirements and mapping; Subsection on Fourth Stage Bond Release regarding the use of aerial photography, cover data requirements, and mapping.

(5) Section II–E, Subsection on Requirements for Successful Revegetation regarding changes to species composition, diversity, seasonality and permanence; Subsection on Premining Assessment regarding inventory requirements; Subsection on Postmining Assessment regarding data requirements, mapping, species composition, and production standards.

(6) Section II–F, Subsection on Requirements for Successful Revegetation regarding consultation with State agencies, erosion control, stocking rates, and survival measurements.

(7) Section II–G, Subsection on Definition of shelterbelt; Subsection on Requirements for Successful Revegetation regarding ground cover requirements, species composition data, replacement requirements, and time in place requirements.

(8) Section II–H, Changes to the Introduction and Definitions for fish and wildlife habitat; Subsection on Grasslands regarding statistical requirements for ground cover measurements, composition requirements, and data requirements; Subsection on Wetlands regarding requirements for successful vegetation.

(9) Section III–B, changes to the use of soil mapping units in calculating standards.

(10) Section III–C, changes to sampling designs.

(11) Section III–D, changes to the methods for measuring productivity, cover, and diversity.

(12) Section III–E, changes to the methods of statistical analysis.

(13) Appendix A, changes to management practices.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. March 29, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**.

A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12866

This proposed rule is exempted from review by the office of Management and Budget under Executive Order 12866 (Reduction of Regulatory Burden).

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 4, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–5890 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 94

[CC Docket No. 92–166; FCC No. 94–11]

Licensing Policies and Procedures, Domestic Common Carrier Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 19, 1994, the Commission adopted a Notice of Proposed Rulemaking seeking comments on its proposed rules to govern the licensing and regulation of mobile satellite systems operating in the 1610–1626.5/2483.5–2500 MHz frequency bands (1.6/2.4 GHz MSS). The proposed qualification requirements and technical rules are intended to facilitate the provision of new domestic and international satellite services.

DATES: *Comment date:* May 5, 1994; *Reply comment date:* June 6, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Common Carrier Bureau, (202) 634–1682; Kathleen Campbell, Common Carrier Bureau, (202) 634–1952.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted January 19, 1994, and released February 18, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. A complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Frequency Bands, CC Docket No. 92–166.

OMB Number: None.

Action: Proposed new and revised collection.

Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion, annually.

Reporting requirements	No. of responses	Hours per response	Total
Proposed Sections 25.143(b), 25.213, 25.203 (j), (k)	6	900	5400
Proposed Section 25.143(e)(1)	5	15	65
Proposed Section 25.143(e)(2)	5	3	15
Proposed Section 25.143 (c), (d)	5	2	10
Proposed Sections 25.115, 25.130, 25.213	10	320	3200

Reporting requirements	No. of responses	Hours per response	Total
Proposed Section 25.133(b)	10	2	20
Total	41		8710

Note: These requirements will not all be triggered in the same year.

Needs and Uses: The Notice of Proposed Rulemaking solicits public comment on the Commission's proposals for rules and policies to govern the licensing and provision of service by voice and data mobile satelli' e service (MSS) systems in the 1610–1626.5/2483.5–2500 MHz band (1.6/2.4 GHz MSS).

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

This Notice of Proposed Rulemaking represents the next step in the process of licensing the world's first commercial low-earth orbit satellites offering both voice and data mobile satellite services (MSS). These satellites are to operate in the 1610–1626.5/2483.5–2500 MHz frequency bands (1.6/2.4 GHz bands). The proposed systems are to provide a wide range of services, including cellular-like mobile services to users anywhere, telephone service to remote areas that are not linked to a communications network, position location services, search and rescue communications, disaster management communications, environmental monitoring, paging services, facsimile transmission services, cargo tracking, educational communications, and industrial monitoring. In addition to offering these services to users in the United States, the proposed low-earth orbit systems have the capability to extend these offerings throughout the world. This can potentially expand markets for U.S.-developed goods and services and to make a major contribution to U.S. global competitiveness. It also offers the potential for significant economic and social advances in developing countries by providing an "instant" telecommunications infrastructure at minimum cost.

Six applications to construct satellite systems in these frequency bands were filed by the cut-off date. Five proposed low-Earth orbit (LEO) systems. These were filed by Ellipsat Corporation, Motorola Satellite Communications Inc., Constellation Communications, Loral/Qualcomm Corporation, and TRW, Inc. The other application was filed by American Mobile Satellite Corporation. AMSC proposed to add the additional MSS frequencies to its geostationary satellite orbit (GSO) MSS system that was authorized in 1989. An international allocation for MSS in these frequency bands was made in February 1992; a domestic allocation was adopted in December 1993.

A negotiated rulemaking was undertaken from January through April 1993 to assist the Commission in establishing technical and operational rules to govern this new service (hereinafter 1.6/2.4 GHz MSS) and in developing an arrangement by which all six pending system proposals could be accommodated. Neither the Commission nor the applicants were able to fashion a spectrum sharing compromise that was acceptable to all. The Committee did, however, reach consensus regarding other major technical issues. After the Negotiated Rulemaking was concluded, the LEO applicants, in two new "partial settlement" groups, submitted two new sharing proposals they assert would permit all LEO applications to be granted. Both proposals are premised on excluding GSO systems from consideration for licensing in these frequency bands.

Licensing Procedure

If the applicants can develop or agree to an engineering solution or sharing scheme by which all proposed systems can be accommodated, the Commission generally adopts this approach if it is otherwise in the public interest. In situations where all applicants' proposed systems cannot be accommodated, the Commission must devise a method consistent with the public interest for choosing among them. In such cases, the Commission has, as an initial matter, imposed rigorous financial and technical requirements as a means of ensuring that those granted licenses are capable of expeditiously implementing state-of-the-art systems that will serve the public interest. If it is not possible to accommodate all qualified applicants, a further processing mechanism must be selected.

Qualification Requirements

As a means of encouraging new technology and of realizing the unique benefits that a global system can provide, the Commission proposes a LEO design requirement (proposed rule § 25.143(b)(2)(i)). It solicits comment on this proposal from both applicants and potential users, requesting that commenters address the potential for 1.6/2.4 GHz MSS systems to generate social, economic, and technical benefits, both domestically and globally, and the extent to which these benefits are realizable with LEO and GSO satellites. The Commission further proposes that systems be capable of serving all areas of the world, except for the polar regions, for at least 75% of each day. Specifically, the Commission proposes that satellite systems be designed so that at least one satellite is visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day at latitudes less than 80° (proposed rule § 25.143(b)(2)(11)). To provide efficient and ubiquitous service to users throughout the United States, the Commission also proposes to require systems to be capable of providing continuous voice services to all areas of the United States (proposed rule § 25.143(b)(2)(iii)). That is, satellite systems must be designed so that at least one satellite is visible above the horizon at elevation angles of at least 5° at any given time in all areas of the United States.

Further, the Commission proposes strict financial qualification requirements identical to those in the domestic fixed-satellite service, where applications to implement space stations regularly exceed the number that can be accommodated (proposed § 25.143(b)(3)). Specifically, the Commission proposes that MSS applicants be required to provide evidence of current assets or irrevocably committed debt or equity financing sufficient to meet the estimated costs of constructing and launching all planned satellites and operating the system for one year. These requirements stem from the Commission's repeated experience that licensees without sufficient resources spend a significant amount of time attempting to raise the capital needed to finance a satellite system (here, $97 million to $2 billion), that these attempts often end unsuccessfully,

and that qualified fully-financed applicants may be blocked from entry during this several-year period.

All applicants will be given the opportunity to amend their applications to bring them into compliance with any final rules.

Processing Alternatives

While a sharing solution could not be developed during the Negotiated Rulemaking, the Commission believes that the recent LEO sharing proposals may form the basis for allowing it to proceed expeditiously with licensing. Both of the LEO applicants' proposals appear to allow up to five LEO systems to be accommodated in the 16.5 MHz of spectrum allocated to MSS in each transmission direction. This may be sufficient to allow all qualified applicants to be licensed.

The Commission proposes to assign licensees implementing code-division multiple access (CDMA) systems to 11.35 MHz of shared bandwidth at 1610–1621.35 MHz. It further proposes to assign a frequency division multiple access (FDMA)/time division access (TDMA) system to 5.15 MHz of dedicated bandwidth at 1621.35–1626.5 MHz. When a system is launched and read to begin operating, it will be permitted to operate over the entire assigned bandwidth for that technology. Any in-orbit CDMA system will be required to operate compatibly with any newly launched CDMA system. If only one CDMA system is implemented, the plan proposes to adjust the assignments for the system to 8.25 MHz at 1610–1618.25 MHz, leaving the freed spectrum available for possible reassignment to the FDMA licensee or for new entry. The Commission believes that 8.25 MHz should be ample to support a first-generation system and should provide some flexibility in coordinating the system internationally.

The plan includes the 1.6 GHz band only. While CDMA systems will use the 2.4 GHz band for downlink transmissions, an FDMA/TDMA system will use the 1.6 GHz band for both uplink and downlink transmissions. This may free some spectrum in the 2.4 GHz band and provide some flexibility in assigning specific downlink spectrum segments to CDMA licensees. For example, the Commission may decide to avoid licensing in those portions of the 2.4 GHz band that are especially susceptible to inter-service interference. Thus, while the Commission proposes to license CDMA operators to share the same amount of 2.4 GHz downlink spectrum as 1.6 GHz uplink spectrum, it does not propose specific frequencies for downlink operations at this time.

The commission requests comment on all aspects of its sharing proposal.

Other Alternatives if Mutual Exclusivity is Not Resolved

If the Commission's spectrum sharing plan, or some variation of it, does not permit the applications of all qualified applicants to be granted, the Commission must devise a procedure for choosing among those applicants. Possibilities include a comparable hearing, an auction, or a lottery. These alternatives are briefly discussed and, to expedite licensing if mutual exclusivity is not resolved, the Commission proposes structures for both an auction and a lottery.

The Commission's experience with comparative hearings has shown they usually are prolonged. Here, they would not only delay the provision of needed service to the United States public, but the delay could disadvantage the United States in coordinating a licensed system internationally. For these reasons, it may not be advisable to hold a comparative hearing.

The 1993 Budget Act gives the Commission the authority to employ competitive bidding procedures to select licensees from among two or more mutually exclusive applicants provided that certain criteria are met. The Commission believes it mutual exclusivity among the applicants cannot be resolved, an auction may be considered. Specifically, MSS licensees will be providing a commercial subscription-based service that will enable subscribers to transmit or receive MSS transmissions in the frequencies on which the MSS space stations will be licensed to operate. A competitive bidding system should permit a new service to be more rapidly introduced than would a comparative hearing. It should also allow the public to recover the value of the public spectrum resource being made available for commercial use. Further, it should encourage efficient use of the electromagnetic spectrum by encouraging applicants to bid on only the minimum amount of spectrum needed. The Commission recognizes that the statute also directs it to promote economic opportunity by disseminating licenses to a wide variety of licensees, including small and minority businesses. It requests comment on the manner in which this statutory obligation can be taken into account. The Commission also recognizes that an auction may have unintended consequences internationally by encouraging other countries to impose licensing costs on MSS systems. The Commission will carefully consider these concerns.

The Commission envisions that if an auction is employed, it will be conducted pursuant to the general framework adopted in its Competitive Bidding Implementation Proceeding (PP Docket No. 93–253). The Commission also proposes service-specific criteria. To maximize multiple entry and to encourage applicants to bid only for the minimum amount of spectrum they require, the Commission proposes to auction the 16.5 MHz of bandwidth in each transmission direction in eight paired 2.0625 MHz uplink and downlink segments. Based on the applicants' proposals, it appears that some MSS systems could be implemented with as little as 2 to 4 MHz of spectrum in each transmission direction. To afford licensees some flexibility, however, the Commission proposes to allow applicants to big successfully on up to four segments, for a total of 8.25 MHz of bandwidth in each transmission direction. Given the CDMA applicants' proposals to share spectrum, the Commission also questions whether it should permit successful bidders to agree to pool their spectrum and implement co-frequency systems.

Section 309(i) of the Budget Act also authorizes the use of a lottery to select from among one or more mutually exclusive applicants if the applications are accepted for filing before July 26, 1993. The Commission tentatively concludes that if mutual exclusivity cannot be resolved, the statutory requirements for a system of random selection are met. The Commission proposes to implement a lottery in a manner similar to its proposed auction framework. Specifically, eight 2.0625 MHz paired segments would be offered, and each selectee would be limited to four segments. The Commission questions whether it may be advisable to permit applicants to agree among themselves that they will implement co-frequency systems if one of them is chosen as the tentative selectee, allowing the Commission to grant licenses to all qualified applicants in the pool.

The Commission requests comment on all aspects of these alternative processing mechanisms.

Interservice Sharing

The radioastronomy service (RAS), the aeronautical radionavigation service (ARS), the instructional television fixed-service (ITFS), a variety of terrestrial services, and industrial, scientific and medical (ISM) equipment all operate in portions of the bands allocated to MSS

or in adjacent bands. The Committee studied the potential for interference between MSS and these services.

The Committee, which included an RAS representative, reached a consensus regarding MSS–RAS sharing. These recommendations, which form the basis for the Commission's proposed rules (§ 25.213(a)), establish fixed radius protection zones around the sixteen radio astronomy sites in the United States and set technical requirements for MSS downlink transmissions.

GLONASS, the Russian Global Navigation Satellite System, is operating in the 1610–1616 MHz band pursuant to International Radio Regulation RR 732. MSS stations may not cause harmful interference to or claim protection from stations operating under RR 732. During the Negotiated Rulemaking, the FAA indicated that it sought to use GLONASS in conjunction with the U.S. Global Positioning System (GPS) to provide aircraft ground approach and terminal communications. The Committee determined that MSS can coexist with GLONASS now, but if GLONASS were used as proposed by the FAA, the GLONASS/MSS interference problems at 1610–1616 MHz would be unresolvable. The Committee proposed that GLONASS be moved below the 1610 MHz band or, in the alternative, that U.S. reliance on GLONASS be lessened or eliminated. Both inter-agency and international negotiations have been initiated on this issue. We are encouraged that even if GLONASS is used for aircraft approach communications, it will be moved to frequencies below 1610 MHz. The Committee's proposed rules regarding e.i.r.p. limits pursuant to RR 731F and limitations on the use of MSS terminals on aircraft fall within accepted international standards and are set forth for comment (proposed § 25.213(c)).

The Committee also suggested a variety of solutions to the likely interference problems between MSS and other services, ranging from relocating existing licensees (e.g., "grandfathered" terrestrial stations operating in the 2483.5–2500 MHz band) to imposing stricter suppression requirements on transmissions in adjacent frequency bands (e.g., ITFS stations operating above 2500 MHz). However, these interests were not represented on the Committee, nor were the interests of ISM operators in the 2483.5–2500 MHz band. In these cases, the Commission does not believe that it can propose sharing rules without developing the record more fully. It therefore requests comment on the interference environment and possible solutions from affected operators.

Feeder Links

Since the fixed-satellite frequencies to be used for LEO MSS feeder links may also be used by GSO satellites, the Committee studied the sharing potential between LEO and GSO satellites. It concluded that sharing was feasible. The Committee also studied the obligations of the United States under RR 2613, which essentially requires a LEO operator to cease operations when unacceptable interference is cause to a GSO system. To afford LEO operators some protection, the Committee suggested that the U.S. seek international agreement that RR 2613 will not be invoked to require a LEO operator to terminate transmissions unless: (1) The affected administrations reach agreement as to a level of "accepted interference," (2) the LEO system is operating in excess of these levels, and (3) the excess interference is caused by the LEO satellite's failure to maintain sufficient angular separation between the satellites.

The Commission accepted the Committee's analysis that sharing between LEO feeder links and GSO systems is feasible with coordination. Further, the Commission agrees with the Committee's interpretation of RR 2613 and has already begun to explore, in international forums, issues relating to international coordination of and protection for LEO system feeder links.

Several applicants request feeder links in the 5/6 GHz frequency bands (C-band); other request the 20/30 GHz bands (Ka-band). The FAA opposes feeder links at 5 GHz, arguing that feeder link operations would be incompatible with its intended use of the band for new navigation aids. In a related Further Notice of Proposed Rulemaking regarding the Local Multipoint Distribution Service (CC Docket No. 92–297; FCC No. 94–12) 59 FR 7964, February 17. 1994 adopted the same day as this Notice, the Commission proposes to conduct a negotiated rulemaking to assist it in assigning the 27.5–30.0 GHz frequency band. It expects, in the context of that proceeding, to be able to identify sufficient spectrum to satisfy 1.6/2/4 GHz MSS operators. The Commission will, however, continue to pursue feeder links at 5 GHz and will allow applicants to incorporate these bands or other bands if they become available.

Intersatellite Links

Motorola's proposed system system includes intersatellite links in the 23.18–23.38 GHz band. The Committee concluded that Motorola's use of this band would be compatible with other operations in the band. The Committee's recommended rules regarding intersatellite service frequencies, coordination with government agencies, and sharing criteria are contained in proposed rule § 25.279.

Service Rules

Regulatory Classification

The 1993 Budget Act requires that the provision of space segment capacity directly to commercial mobile radio service (CMRS) providers be treated as common carriage. However, the Act gives the Commission the discretion to determine whether the provision of space segment capacity to CMRS providers should be treated as common carriage. (Most of the pending applicants propose to offer service through resellers.) The Commission tentatively concludes that 1.6/2.4 GHz MSS offering will, in most cases, fall within the definition of CMRS. The Commission requests comment on whether 1.6/2.4 GHz MSS space station licensees making satellite capacity available to CMRS providers should be required to operate as common carriers. Specifically, the Commission requests comment regarding whether there may be any public interest reasons to impose a legal compulsion upon 1.6/2.4 GHz MSS operators to serve the public indifferently, and whether a decision to exempt operators from common carriage requirements will allow them to engage in unreasonable or anticompetitive practices. The Commission recognizes that requiring common carriage may limit the amount of foreign participation in these inherently global systems, potentially impeding international coordination of these satellites. The Commission requests comment on the extent to which applicants are seeking foreign investment and the extent to which a common carriage requirement may impact their plans. The Commission also requests comment regarding the likelihood that 1.6/2.4 GHz MSS space station capacity will inherently be offered as an indifferent holding out to the public.

System License and License Term

The Commission also proposes licensing and service rules (proposed rules §§ 25.143(a), (c) and (d), 25.120(e), and 25.143(e) and (g)). These include blanket licensing for the space segment, a ten year operating license that begins to run when the first LEO satellite is launched, authority to replace older satellites as they are retired, a filing window for next-generation system proposals, system implementation

milestones, and an annual reporting requirement.

Mobile Earth Station Licensing

The Commission proposes to license gateway and tracking, telemetry and control (TT&C) stations as fixed-satellite earth stations under part 25 of the Commission's Rules. It also proposes a blanket licensing approach for mobile user transceivers under which a service vendor would hold the authorization for a specified number of technically identical units. The Commission's proposals for earth station licensing are contained in §§ 25.115(d) (applications for earth station authorizations); 25.130(b) (filing requirements for transmitting earth stations); 25.133(b) (period of construction; commencement of construction); 25.136 (operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service); and 25.213 (technical requirements for the 1.6/2.4 GHz mobile-satellite service). The Commission requests comment on these proposals.

To help maintain an interference-free environment, the Commission proposes to require an end user to obtain the authorization of the space station operator, either directly or through an authorized service vendor, before the user may transmit to that system. The Commission believes that this approach will facilitate roaming by international user while still protecting the domestic electromagnetic environment.

The regulatory treatment of earth station licensees will depend upon whether they will be providing CMRS, although the Commission expects that they will. Earth station licensees that provide CMRS must be regulated as common carriers.

International Coordination

All space segment licensees will be required to provide the Commission with all information required for international coordination. The Commission will follow the coordination procedures prescribed by the International Telecommunication Union and will work with the global community to promote mobile satellite services through the development of sharing techniques and the exploration of other technical issues. The Commission will also require United States licensees to meet all international obligations any national requirements imposed by other licensing administrations regarding operations within their borders. All decisions relating to implementing 1.6/2.4 GHz MSS within a country's territory will remain solely within that country's jurisdiction and control.

Procedural Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed in accordance with Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding could affect the marketing opportunities of potential new service providers or equipment manufacturers, who may be small entities, in the voice mobile-satellite services. As this is a new service, the number of such small businesses is unknown. Public comment is requested on the initial regulatory flexibility analysis set out in full, in the Commission's complete decision.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.1415 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 5, 1994, and reply comments on or before June 6, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clauses

Accordingly, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), we hereby give notice of our intent to adopt the regulations and licensing policies described above.

It is ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 25

Communications common carriers, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 94

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–5829 Filed 3–11–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 12]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Standard No. 114 currently requires automatic transmission vehicles with a "park" position on their transmission to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. In other words, under the first alternative, a vehicle must be designed so that the key cannot be removed when the transmission shift lever or other shifting mechanism is in any position other than "park." NHTSA is proposing to amend this provision to prevent key removal only when the shift lever or other shifting mechanism is fully placed in any designated shift position other than "park." This rulemaking action results from a petition submitted by Mazda. The agency believes that the proposed amendment would provide greater flexibility to manufacturers, and not have any measurable impact on safety.

DATES: Comments must be received on or before May 13, 1994. The proposed amendments would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin's telephone number is (202) 366–5307.

SUPPLEMENTARY INFORMATION: On May 30, 1990, NHTSA amended Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, to protect against injuries to children caused by vehicle rollaway in vehicles with automatic

transmissions, where children were able to shift the transmission of a parked vehicle. 55 FR 21868. The amendment required automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. The amendment became effective on September 1, 1992.

In adopting the amendment, the agency explained that a study focusing on child-injuring rollaway accidents in Orange County, California demonstrated that injuries caused by rolling vehicles posed a significant safety problem. That study uncovered nine cases of children releasing the brake or moving the transmission shift lever, or both, causing a parked vehicle to roll and injure the child operating the controls or children near the vehicle. Even though two of the cases could be discounted for the purposes of the rulemaking in question because the vehicle's engine was running and there was insufficient information to draw conclusions about some other situations, the study did establish that the type of accident at issue was occurring.

NHTSA explained that although the then-current Standard No. 114 did not prohibit systems which permit the transmission lever to be shifted when the vehicle is parked and the ignition is locked, some manufacturers had voluntarily used a transmission shift lever lock that precludes this possibility. The agency stated that these transmission shift lever lock designs typically have two critical elements. First, the transmission shift lever lock requires the transmission shift lever to be in "park" before a person can remove the key. Second, the device also prevents shifting the transmission lever from "park" to another position once the key is removed.

NHTSA estimated that installation of the required technology in the cars and light trucks not voluntarily equipped by the rule's effective date would prevent an estimated 50 to 100 child-injuring rollaway accidents annually. The agency stated that these injuries could be prevented at a relatively low cost.

On February 2, 1993, Mazda submitted a petition for rulemaking requesting that the agency amend the provision added by the May 1990 final rule. That company claimed that an amendment was needed to clarify the requirement to make the compliance test procedure "objective."

Mazda stated that, in a December 12, 1992 letter, NHTSA had notified it of an apparent noncompliance with Standard No. 114. By way of explanation, the agency had sent Mazda a copy of a November 20, 1992 interpretation letter to Ford. That interpretation letter was a response to a Ford letter written to NHTSA concerning a compliance issue for certain of its keylocking systems which had been designed by Mazda. In its petition, Mazda stated that it was aware of at least five other manufacturers which had been informed of apparent noncompliances with that same provision of Standard No. 114.

In its November 20, 1992 interpretation letter to Ford, NHTSA rejected a request by that company to interpret Standard No. 114 to prevent key removal only when the transmission shift lever is in one of the available gear positioning detents other than "park," i.e., reverse, neutral, drive, first, or second, and not when the lever is at points between those detents. The agency stated that following: We cannot agree with your suggested interpretation, as it is inconsistent with the express language of S4.2.1. That section states that, with certain exceptions not at issue, the key-locking system must prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key. Stated more simply, key removal must be prevented in all circumstances save those specified in S4.2.1. Neither the transmission nor the transmission shift lever is locked in "park" when the lever is between the gear selector positioning detents. Therefore, under section S4.2.1, key removal must be prevented in that situation, unless the transmission/transmission shift lower becomes locked in "park" as a direct result of removing the key.

In its petition, Mazda characterized the agency's interpretation as permitting "intentional mispositioning" of the transmission shift lever during compliance testing. That company argued that during the design and development of the vehicles which are the subject of the agency's December 1, 1992 letter, it never understood "intentional mispositioning" to be a reasonable and legitimate means for testing compliance with Standard No. 114. It also argued that even if it had such an understanding, it is not at all clear what kind of certification test procedure it would have used to assure that key removal could not occur in any possible situation.

Mazda also argued that it had reexamined the rulemaking record and found nothing to indicate that "intentional mispositioning" of the transmission shift lever was ever contemplated. In addition, Mazda alleged that even if this is now believed by NHTSA to be an appropriate aspect of the performance required by the standard, the absence of an objective test procedure for determining compliance with the standard results in a lack of objectivity and fails to satisfy the requirements of the National Traffic and Motor Vehicle Safety Act.

Mazda requested that Standard No. 114 be amended to incorporate a provision that it considers to set forth an objective performance requirement. The provision would specify testing with the transmission level in each detent position, and moving the lever from detent position to detent position using force levels specified by the manufacturer.

NHTSA rejects Mazda's claim that the existing provision in Standard No. 114 is non-objective. There is nothing subjective about a requirement that a key-locking system must prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key. As discussed in the agency's interpretation letter, key removal must be prevented in all circumstances save those specified in S4.2.1.

While the agency rejects Mazda's objectivity argument, NHTSA does believe it is appropriate to address in rulemaking whether Standard No. 114 should be amended along the lines suggested by that company, albeit for different reasons. In the preamble to the May 1990 final rule, the agency stated that it believed the injuries in question could be prevented at a relatively low cost to manufacturers since most vehicles would already comply with the amendments. This belief was based on the fact that the vast majority of vehicles with automatic transmissions already had transmission locking systems or had already been scheduled to have newly designed systems installed. The agency assumed that all of those locking systems were or would be designed in a manner that would comply with the requirements. However, it now appears that some of these transmission locking systems do not comply with the requirements.

Based on agency testing of post-September 1, 1992 vehicles, the agency estimates that approximately 650,000 model year 1993 passenger cars and 18,000 light trucks do not meet the present requirement. For the final rule, the agency estimated the consumer cost of redesigning the transmission key-locking system to be $6.75 to $14.00 per

vehicle. Those are maximum figures that include both the situation where a complying system must be installed and the situation in which an existing system need only be adjusted in order to comply. In that respect, those figures likely overstate costs for this rulemaking, especially those applicable to an existing system needing only a minor adjustment. Additionally, some manufacturers have likely modified model year 1993 systems to comply with the existing requirements. Therefore, the actual numbers of passenger cars and light trucks that do not now meet the requirements are probably less than the estimates suggested above.

Since NHTSA did not anticipate the need for manufacturers to redesign a large number of transmission locking systems, the agency believes that it should consider whether it is appropriate to require such redesign. This is particularly true to the extent that the apparently noncomplying locking systems at issue result in essentially the same child-injury prevention safety benefits as would occur if the systems were redesigned to comply with the current requirement.

As indicated above, Standard No. 114 currently requires automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. In other words, under the first alternative, a vehicle must be designed so that the key cannot be removed when the transmission shift lever or other shifting mechanism is in any position other than "park." NHTSA is proposing to amend Standard No. 114 to instead require a key-locking system that prevents removal of the key: (1) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission and transmission shift mechanism are locked in park or become locked in "park" as the direct result of removing the key, and (2) whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than park, unless the transmission and transmission shift mechanism become locked in "park" as the direct result of removing the key. The standard would no longer address key removal when the transmission shift lever is between shift positions.

(NHTSA notes that, for nearly all current designs, the key cannot be removed if the transmission shift lever is in a detent other than park. However, electronic designs can be produced which permit the key to be removed while the transmission is in a position such as drive and then automatically move the shifting mechanism and transmission to park. Both the existing language of Standard No. 114 and the proposed language permit such designs.)

The basic rationale for limiting the key-removal requirement to situations where the transmission shift lever is in detent positions is that drivers are unlikely to attempt to remove the key when the transmission shift lever is between shift positions. As a practical matter, drivers are likely to either leave the transmission in the gear they had last used or attempt to put the transmission in park, before attempting key removal. The only chance for mispositioning is therefore in the latter situation, and the agency believes the chance for such mispositioning is small. Therefore, as a practical matter, when the agency decided to prohibit key removal in situations where the transmission was not in park, it was essentially addressing situations where the shift lever was in detent positions other than park. A more complete discussion of this rationale, which addresses the transmission designs currently at issue, is provided below.

Since the key-removal requirement would be limited to situations where the shift mechanism is fully placed in any designated shift position, it would be necessary for the agency to specify a means for determining whether the mechanism is in such position. Under the proposal, a vehicle would be considered to be in "park" when the transmission gear selection indicator shows that "park" has been selected and the vehicle will not roll away on an incline when the parking brake is disengaged. A vehicle would be considered to be in a drive gear when the transmission gear selection indicator shows that a drive gear has been selected and the vehicle can be moved under its own power. A vehicle would be considered to be in "neutral" if the transmission gear selection indicator shows that "neutral" has been selected, the vehicle is stopped, and activation of the accelerator pedal does not cause the vehicle to move.

As part of assessing the safety implications of the proposed amendment, it is necessary to evaluate the types of locking systems that would likely be produced under it. NHTSA believes that the most likely types of systems are ones like the Mazda-designed locking system that was the subject of the agency's November 1992 interpretation letter and the other locking systems that led the agency to issue letters concerning apparent noncompliances.

Ford and Mazda first advised the agency of a possible compliance issue concerning the Mazda-designed locking system in September 1992, shortly after the requirement at issue became effective. Ford advised that if key removal were attempted while the transmission shift lever on a large proportion of 1993 Escorts and Tracers was placed at various points between the "reverse" and "park" detents, the key could be removed while the selector lever was held short of engaging the "park" detent, and without the transmission becoming locked in park. Ford and Mazda also demonstrated these vehicles to NHTSA personnel. These personnel found that the transmission shift lever could be moved to a position where it appeared to be in "park," but where in fact the lever was not fully in the "park" position. After releasing the shift lever in this position, the personnel could remove the key without the transmission's becoming locked in park.

As indicated above, in its November 1992 interpretation letter, NHTSA rejected Ford's suggestion that the agency interpret Standard No. 114 to prevent key removal only when the transmission shift lever is in one of the available gear positioning detents other than "park." The agency stated that its interpretation was consistent with the agency's intent in promulgating S4.2.1, explaining: As discussed in several rulemaking notices, NHTSA amended Standard No. 114 to prevent vehicle rollaway caused by unattended children shifting the transmission lever in automatic transmission vehicles. If a driver were able to remove the key while the transmission or transmission shift lever were not locked in park, and if the transmission or transmission shift lever did not become locked in "park" as a result of removing the key, a child might later shift the transmission shift lever, thereby causing a vehicle rollaway. For this reason, we continue to believe that this amendment to Standard No. 114 meets the need for motor vehicle safety.

Subsequent to issuing the November 1992 interpretation letter, the agency conducted a number of compliance tests for Standard No. 114. As a result of these tests, the agency sent letters to Mazda, Ford, Honda, GM, Suzuki, and Hyundai, advising that, for certain of their vehicles, there was an apparent noncompliance with Standard No. 114's provision requiring that key removal be prevented unless the transmission or transmission shift lever is locked in park or becomes locked in park as a

direct result of removing the key. (Copies of the correspondence between NHTSA and these manufacturers, and the compliance test reports for the vehicles at issue, have been placed in the docket for this NPRM.)

For all of the vehicles for which tests showed apparent noncompliances, it was possible to remove the ignition key from the key-locking system when the transmission shift lever was in a position between "park" and "reverse," without the transmission becoming locked in "park" as a result of removing the key. The circumstances under which the ignition key could be removed when the transmission shift lever was between "park" and "reverse" varied. For some vehicles, the lever could simply be placed in a position between park and reverse, the hand that controlled it removed, and the key then removed. For certain of these vehicles, this happened only over a very small range of lever movement when the lever was very close to the park position and appeared to be in park, when in fact it was not fully in the park position. For other vehicles, this condition existed for about half of the range of lever movement between park and reverse.

For another set of vehicles, key removal without the transmission becoming locked in park only happened if one hand was kept on the transmission lever while the key was removed with the other hand, since the transmission lever would "spring" into park if the hand holding it between the two positions was removed.

NHTSA also notes that, while it was not a compliance issue before September 1, 1993, in some cases the transmission shift lever could be moved from the "park" position after the key was removed if the thumb button on the transmission shift lever was kept depressed while the shift lever was moved to the "park" position and the key was removed. (For a discussion of this issue, see October 21, 1992 interpretation letter to Transportation Research Center, Inc., which has been placed in the docket for this NPRM.)

With respect to the problem of child-induced rollaway, the safety consequences of permitting these types of apparently noncomplying systems are dependent on the likelihood that drivers would, in fact, remove the key in a manner that the transmission would not be locked in park after such removal. If the existing requirement is complied with, removal of the ignition key gives absolute assurance that the transmission is (or will become) locked in "park" and that vehicle movement will not occur as a result of the shift lever being moved. If the proposed requirement is complied with, removal of the ignition key while the transmission shift lever is fully placed in any designated shift position would give the same assurance that the transmission is (or will become) locked in "park," but the requirement would no longer prohibit key removal in the circumstance when the lever is between detents. NHTSA is not aware of any specific reported crashes that would be relevant to permitting these systems.

For some of the vehicles tested by the agency, deliberate action by the driver appears to be necessary in order to remove the key without the transmission becoming locked in "park." Such action is necessary where the driver must either hold the shift lever between "park" and "reverse" with one hand while removing the key with the other hand, or keep the thumb button depressed on the shift lever while removing the key. NHTSA tentatively concludes that there is no basis to believe that drivers would deliberately make such efforts to defeat the transmission shift lock. Therefore, the agency believes that permitting such systems would have no safety consequences, and that the existing requirement is unnecessarily design-restrictive with respect to these systems.

For other of the vehicles tested by the agency, it is possible that a driver might inadvertently remove the key without the transmission becoming locked in "park." This could happen, for example, if the driver moved the lever so that it appeared to be in "park" but was in fact short of the full "park" position.

However, in order for such systems to result in any adverse safety consequences related to child-induced rollaway, it would be necessary both for the driver to inadvertently fail to place the lever fully in the "park" position *and* for a child to then play with the lever and/or the parking brake in a way that creates a rollaway. NHTSA believes that either event would occur only very rarely and has tentatively concluded that the possibility of both events occurring together is minuscule. Therefore, the agency does not believe that it is necessary to address this remote possibility in a safety standard.

NHTSA notes that its safety standards are intended to address unreasonable safety risks and not all conceivable risks no matter how remote. The agency believes that its proposal is consistent with other actions that it has taken in this area. For example, while NHTSA decided in the May 1990 final rule to require transmission shift locks for automatic transmission vehicles, it also decided, based on a review of accident data, not to require such locks for manual transmission vehicles. This did not mean that there was no conceivable risk of child-induced rollaways for manual transmission vehicles, but instead that the risk was sufficiently small that the agency did not believe it was necessary to address in a safety standard. Similarly, in June 1990, NHTSA denied a petition for rulemaking submitted by Mr. W. A. Barr requesting that the agency issue requirements to address inadvertent vehicle movement associated with shifting automatic transmissions into "park," in part because of lack of evidence that the extent of the alleged problem was great enough to warrant Federal intervention.

NHTSA is also proposing to amend the Purpose and Scope section of Standard No. 114 to clarify that the purpose of the requirements at issue is to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position. That section currently indicates that the purpose of the requirements is to reduce the incidence of crashes resulting from rollaway of parked vehicles.

NHTSA contemplates making the proposed amendments effective 30 days after publication of a final rule. The agency tentatively concludes that there is good cause for such an effective date, since the amendments would impose no new requirements but instead provide additional flexibility to manufacturers with no measurable impact on safety.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under either. As explained above, the proposed amendments would impose no new requirements but instead provide additional flexibility to manufacturers, with respect to transmission shift lock designs, with no measurable impact on safety. Also as stated above, the agency estimates the annual consumer cost savings of adopting the proposed amendment to be a maximum of $6.75 to $14.00 per affected vehicle. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this proposal, if adopted as

a final rule, would not have a significant economic impact on a substantial number of small entities. The vehicle manufacturers affected by the proposed requirements would not typically qualify as small businesses. Further, since no price changes should be associated with this proposal, small businesses, small organizations and small governmental entities would not be affected in their capacity as purchasers of new vehicles if this proposal were adopted in a final rule.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have a significant impact on the quality of human life.

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR 571.114, *Theft Protection*, to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.114 [Amended]

2. Section 571.114 would be amended by revising S1 and S4.2.1 to read as follows:

§ 571.114 Standard No. 114, Theft protection.

S1 *Purpose and Scope.* This standard specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of a motor vehicle. It also specifies requirements to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position.

* * * * *

S4.2.1(a) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a "park" position shall prevent removal of the key—

(1) Whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than park, unless the transmission and transmission shift mechanism become locked in "park" as the direct result of removing the key, and

(2) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission and transmission shift mechanism are locked in park or become locked in "park" as the direct result of removing the key.

(b) The following procedure is used for determining whether the shift lever or other shifting mechanism is fully placed in a designated position. The lever or other shifting mechanism is moved to a designated position and physical contact with the lever or other shifting mechanism is ended. The lever or other shifting mechanism is considered to be fully placed in the "park" position if the transmission gear selection indicator shows that "park" has been selected and the vehicle will not roll away on a 10 percent grade when the parking brake is disengaged. The lever or other shifting mechanism is considered to be fully placed in the "neutral" position if the "neutral" position is selected, the transmission gear selection indicator shows that "neutral" has been selected, and activation of the accelerator pedal does not cause the vehicle to move. The lever or other shifting mechanism is considered to be fully placed in a forward or reverse drive position if the transmission gear selection indicator shows that a drive position has been selected and the vehicle can be driven under its own power. For purposes of S4.2.1, rollaway is movement of a vehicle greater than 100 mm.

* * * * *

Issued on March 4, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5487 Filed 3–11–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To Delist Seven Texas Karst Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to remove seven species of invertebrates that occur in karst topography in Travis and Williamson counties, Texas, from the List of Endangered and Threatened Wildlife and Plants. The Service determines that the petition does not present substantial scientific or commercial information indicating that delisting the Coffin Cave mold beetle (*Batrisodes texanus*), the Tooth Cave spider (*Neoleptoneta myopica*), the Tooth Cave ground beetle (*Rhadine persephone*), the Tooth Cave pseudoscorpion (*Tartarocreagris texana*), the Kretschmarr Cave mold beetle (*Texamaurops reddelli*), the Bee Creek Cave harvestman (*Texella reddelli*), and the Bone Cave harvestman (*Texella reyesi*) may be warranted.

DATES: The finding announced in this notice was made on March 7, 1994. Comments and information related to this petition finding may be submitted until further notice.

ADDRESSES: Information, comments, or questions may be submitted to the State Administrator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist, at the above address (512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Judge John C. Doerfler, representing the Williamson County Commissioners Court, submitted a petition to the Service to delist six species of endangered karst invertebrates in Travis and Williamson counties, Texas. The petition was dated June 7, 1993; and received by the Service on that date. On June 16, 1993, the Service received a letter from attorney J.B. Ruhl on behalf of the petitioners, clarifying the intent of the petition to incorporate recent taxonomic revisions and the taxonomic reevaluation of five listed karst invertebrate species as seven species.

The final rule listing the Tooth Cave pseudoscorpion (*Microgreagris texana*), the Tooth Cave spider (*Leptoneta myopica*), the Bee Creek Cave harvestman (*Texella reddelli*), the Tooth Cave ground beetle (*Rhadine persephone*), and the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) as endangered species was published in the **Federal Register** on September 16, 1988 (53 FR 36029) (final rule). Subsequent taxonomic revisions have formalized genus reassignments for *M. texana* and *L. myopica* and established that *Texella reddelli* and *Texamaurops reddelli* each actually comprise two species. *Microcreagris texana* has been reassigned to *Tartarocreagris texana* (Muchmore 1992). *Leptoneta myopica* has been formally reassigned to *Neoleptoneta myopica* following Brignoli (1977) and Platnick (1986). *Texella reddelli* has been found to comprise two species, *Texella reddelli* (Bee Creek Cave harvestman) and *Texella reyesi* (Bone Cave harvestman) (Ubick and Briggs 1992). *Texamaurops reddelli* has been found to comprise two species, *Texamaurops reddelli* (Kretschmarr Cave mold beetle) and *Batrisodes texanus* (Coffin Cave mold beetle) (Chandler 1992). A **Federal Register** notice announcing the latter two revisions was published on August 18, 1993 (58 FR 43818).

Several caves in Travis County contain more than one of the endangered karst invertebrates. These include Tooth Cave, Amber Cave, Gallifer Cave, Kretschmarr Cave, and Kretschmarr Double Pit. These caves and others are protected under the stewardship of the Texas System of Natural Laboratories (TSNL). In addition, some other caves are in preserves regulated by the Cities of Austin and Georgetown. (For further discussion, see Factor D, "The inadequacy of existing regulatory mechanisms," below.) However, many of the caves containing endangered karst invertebrates currently have no protection other than that provided by the Act.

The petitioners point out that, since publication of the final rule, new locations have been discovered for several of the species, most notably the Tooth Cave ground beetle and the Bone Cave harvestman. The Tooth Cave ground beetle was known from two caves about 2.5 kilometers (km) (1.5 miles (mi)) apart in Travis County, Texas, at the time of listing. It is currently known from about 27 locations (24 confirmed, 3 tentative) along a 14-km (9-mi) distance in Travis and Williamson counties, Texas. Only 10 of these caves are provided any degree of local protection (James Reddell, Texas Memorial Museum, *in litt.*, 1993). Seven of these caves are located in the small TSNL preserves discussed above, one is in a small preserve owned by the City of Austin, and two are in small preserves acquired as mitigation for a development project.

The Bone Cave harvestman was not described at the time of the original listing, but was thought to be the same species as the Bee Creek Cave harvestman. The Bone Cave harvestman is currently known from about 69 locations (60 confirmed, 9 tentative) along a 40-km (25-mi) distance in Travis and Williamson counties, Texas. Of the 69 caves recorded as locations of the Bone Cave harvestman, only 9 are provided any local protection. Three are TSNL caves, two are in City of Austin preserves, two are in City of Georgetown preserves, and two were acquired as mitigation for a development project. In addition, this species exhibits considerable geographical variation and loss of a significant number of locations within a part of its range would result in a loss of genetic diversity within the species (Reddell, *in litt.*, 1993). Few caves are provided any protection other than that now provided by the Act and their distribution is disjunct and at the extremes of the species' range.

The number of caves in which the other five endangered karst invertebrates have been found or tentatively identified has increased slightly for three of the species, remained the same for another species

(although its range has decreased), and decreased for the fifth species.

The Tooth Cave pseudoscorpion, known at the time of listing from Tooth and Amber caves, within a 1.3-km (0.8-mi) radius in Travis County, remains confirmed only from the two original caves. The species has been tentatively identified from Stovepipe Cave and Kretschmarr Double Pit, lying within the original range. Stovepipe Cave is located on private property that the City of Austin has approved for development. The three remaining caves are located in the small TSNL preserves discussed above.

The Tooth Cave spider, known at the time of listing only from Tooth Cave, is now also confirmed at New Comanche Trail Cave and tentatively identified from Gallifer and Stovepipe caves, all lying along a 4.5-km (3-mi) distance in northwest Travis County, Texas. Tooth and Gallifer caves lie within small TSNL preserves, Stovepipe Cave is on private property approved for development, and New Comanche Trail Cave is not protected and may be adversely impacted by a planned realignment of New Comanche Trail Road.

The Coffin Cave mold beetle was not described at the time of listing, but was thought to belong to the same species as the Kretschmarr Cave mold beetle. The Coffin Cave mold beetle is currently confirmed from four caves and tentatively identified from one cave, all occurring along a 17-km (10-mi) distance in Williamson County, Texas. Off Campus and Sierra Vista caves are located in a small preserve surrounded by a subdivision; the adequacy of the preserve for long-term protection of the species at those sites is uncertain. On Campus Cave lies on a high school campus. The status of the type locality (Coffin Cave) is unknown; recent attempts to locate the species in Inner Space Cavern were unsuccessful (Reddell, *in litt.*, 1993).

The Kretschmarr Cave mold beetle was believed to occur in four caves in Travis and Williamson counties at the time of listing and is currently known from four caves in Travis County. A specimen from Coffin Cave was redescribed as the Coffin Cave mold beetle and a new location for the Kretschmarr Cave mold beetle was discovered at Stovepipe Cave. The range of the Kretschmarr Cave mold beetle has consequently decreased since the original listing from a 45-km (28-mi) distance in Travis and Williamson counties to a 2-km (1.2-mi) distance in Travis County. Stovepipe Cave lies within a proposed subdivision and the other three locations for the species, Tooth, Amber, and Kretschmarr caves, lie within small TSNL preserves.

The Bee Creek Cave harvestman was believed to occur in five caves in Travis and Williamson counties at the time of listing. It is currently confirmed at four caves and tentatively identified from two caves. The distribution of the Bee Creek Cave harvestman consists of two disjunct areas, one about 5 km (3 mi) long and the other about 8 km (5 mi) in length, with a distance of about 28 km (17 mi) between the northernmost and southernmost localities, all of which lie in Travis County. Little Bee Creek Cave, Jester Estates Cave, and Kretschmarr Double Pit (a TSNL cave) are located in small preserve areas. Bandit Cave is maintained as a small preserve, although attempts to relocate the Bee Creek Cave harvestman in the cave in 1966, 1988, and 1989 were unsuccessful (Reddell, *in litt.*, 1993). Cave Y is located in a proposed development area; the species' status in Bee Creek Cave is unknown since it has not been possible to obtain permission to inspect the cave since 1975 (Reddell, *in litt.*, 1993).

None of these invertebrates are known to occur in large numbers (William Elliott, Texas Memorial Museum, *in litt.*, 1993; Reddell, *in litt.* and pers. comm., 1993). The fact that several of the species are known to occur at several dozen locations should not be interpreted to mean that those species are abundant. (See Factor A, "The present or threatened destruction, modification, or curtailment of its habitat or range," below).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to or removing species from the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the seven karst invertebrates are re-evaluated in light of new information available to the Service and information presented in the petition and are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Service determined that the primary threat to these species comes from loss of habitat due to ongoing and proposed development activities (final rule). The proximity of the caves inhabited by these species to the City of Austin makes them vulnerable to continuing expansion of the Austin metropolitan area. Threats to specific caves occupied by these species were addressed in the final rule (53 FR 36029).

The known ranges of the Tooth Cave pseudoscorpion, the Tooth Cave spider, the Kretschmarr Cave mold beetle, the Coffin Cave mold beetle, and the Bee Creek Cave harvestman have not appreciably increased since the original listing. Although the range and number of known locations for the Tooth Cave ground beetle and the Bone Cave harvestman have increased since the original listing, the degree of threat of habitat destruction or modification remains significant, and may have increased, throughout the range of each species.

Searches for karst features and karst fauna surveys have become more frequent since the listing, as developers and landowners have sought to comply with the Act. Many of the new locations of these karst invertebrates have been discovered as a result of biological surveys conducted prior to development or sale of land; consequently, newly discovered locations are frequently threatened by habitat destruction and other threats associated with development. The recent revitalization of the real estate market in the Austin metropolitan area has maintained and intensified the threat of karst invertebrate habitat destruction and other associated threats.

The petitioners present a list of caves with endangered species that have been subject to some degree of disturbance. They cite these cases as demonstrating that activities such as dumping, vandalism, and sealing of cave entrances do not actually threaten the karst invertebrates. Reddell (in litt., 1993) counters that, in most of these cases, the disturbance to the cave environment is recent in origin, minor in scale, and/or generally restricted to the immediate entrance zone. The Service concurs with Reddell and believes that these examples do not present convincing evidence that dumping, vandalism, and sealing entrances are harmless to the karst invertebrates. In most cases, not enough time has elapsed since the disturbance to detect an effect on the karst invertebrates. The Service agrees with the petitioners that there is little quantitative data available on the direct effects of trash dumping, vandalism, sealing, and other disturbances on the karst invertebrates. However, there is substantial qualitative evidence indicating that the threats to the karst invertebrates discussed in the final rule and in this finding are real, significant, and ongoing. Reddell (*in litt.*, 1993) and

Elliott (*in litt.*, 1993) both cite examples in which trash dumping, vandalism, and over-visitation have resulted in decreased occurrence of karst invertebrates in affected areas.

The petitioners cite the work of Crawford (1981) and Veni (1992) as evidence that the caves where the karst invertebrates occur are not isolated "islands" of special habitat and that the invertebrates likely occur and move throughout the karst in the interstitial spaces. In this interpretation, the petitioners misunderstand the Service's use of the "island" analogy in the final rule. The final rule listing the karst invertebrates stated that the caves containing the karst invertebrates "occur in isolated 'islands' " of the Edwards limestone formation that were separated from one another when stream channels cut through overlying limestone to lower rock layers" (53 FR 36029). The Service applied the island analogy to the distinct, geologically isolated karst areas (referred to in the Draft Recovery Plan (U.S. Fish and Wildlife Service 1993) and hereinafter as "regions") within which the caves containing the karst invertebrates have formed, not to the individual cave systems. Veni's work (1992) delineates these karst regions and identifies areas "having a high probability of suitable habitat for endangered or other endemic invertebrate cave fauna." A letter from Veni in response to the petition clarifies that he did not intend that his work be interpreted to mean that there are thousands of acres of habitat suitable for the karst invertebrates (George Veni, Veni and Associates, *in litt.*, 1993).

While the Service believes that the karst invertebrates are likely to use interstitial spaces in the karst, particularly in areas with some surface nutrient input to the karst system, the Service does not believe that this suitable habitat exists uniformly within the larger karst regions (as delineated by Veni (1992) and described by the Service in the final rule as "islands"). Finally, Crawford (1981) focuses on aquatic karst species. In the aquatic karst ecosystems upon which Crawford based his ideas, continuously flowing water through caves and the interstitium may provide more continuous habitat for aquatic subterranean species and thus provide more opportunity for aquatic invertebrates to inhabit interstitial spaces. Given that the Travis and Williamson County karst invertebrates are exclusively terrestrial and that habitat for terrestrial species is more patchy and distributed according to the occurrence of food, cover, and moisture, Crawford's ideas may not apply to these invertebrates.

The petitioners cite the work of Curl (1966), Juberthei and Delay (1981), and Culver (1986) as evidence that most caves have no entrance, that caves are rare even in karst areas, and that caves may be less favorable environments for karst invertebrates than interstitial spaces. They cite these papers as evidence that habitat for terrestrial troglobites (obligate cave-dwelling species) is ubiquitous in karst areas and that the Texas karst invertebrates exist throughout the karst even where there are no caves or openings to the surface. Culver (1986) says that "the number of caves (defined as cavities large enough for human access) more or less corresponds to the number of habitable patches for terrestrial troglobites." Reddell (*in litt.*, 1993) and Peck (1976) believe that cave entrances provide an important avenue of nutrient input for cave fauna. Reddell (*in litt.*, 1993) also cites several examples in which sub-surface voids having no natural entrance were encountered during construction activities and found not to contain karst invertebrates. Similarly, clay-filled sinkholes with no openings to the surface rarely contain karst invertebrates, whereas caves and sinkholes that are sealed to human access by soil or rock fill or with openings to the surface that allow access by cave crickets or small mammals (and associated nutrients) more often contain karst fauna (Reddell, *in litt.*, 1993).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

No threat from overutilization of these species is known to exist at this time. Collection for scientific or educational purposes could become a threat if specific localities become widely known.

C. Disease or Predation

At the time of listing, predation by and competition with non-native species introduced in association with human habitation was considered a potential threat to the karst invertebrates. Human activities facilitate movement of non-native competitors and predators such as sowbugs, cockroaches, and fire ants into an area. Buildings, lawns, roadways, and landscaped areas provide habitat from which these species can disperse. The relative accessibility of the shallow caves in Travis and Williamson counties makes them especially vulnerable to invasion by non-native species.

Fire ants are a major threat to the karst invertebrates. The significance of this threat and the difficulty of controlling fire ants should not be underestimated. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorensen 1986, Porter and Savignano 1990). Reddell (*in litt.*, 1993) lists at least nine cave-inhabiting species that he has observed being preyed upon by fire ants. Elliott (1992) cites other examples and notes that fire ant activity has increased dramatically in Central Texas since 1989.

Although the threat posed by fire ants was not recognized at the time these species were listed, the magnitude of the threat the ants pose has subsequently become quite apparent. Even in the unlikely event that fire ants do not prey upon the listed species, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain.

Controlling fire ants once they have invaded the cave and vicinity is difficult. Chemical control methods have some effectiveness but the effect of these agents on non-target species is unclear. Consequently, using chemicals to control fire ants in and near caves is not advisable. Currently, the Service recommends only boiling water treatment for control of fire ant colonies near caves inhabited by listed invertebrates. This method is labor-intensive and only moderately effective. Presently, the burden of carrying out such practices is not a designated or mandated duty of any agency, individual, or organization. This type of control will likely be needed indefinitely or until a long-term method of fire ant control is developed.

D. The Inadequacy of Existing Regulatory Mechanisms

Invertebrates are not included on the Texas Parks and Wildlife Department's list of threatened and endangered species and are provided no protection by the State; nor do the Department regulations contain provisions for protecting habitat of any listed species.

As previously discussed, some of the caves containing endangered invertebrates are in TSNL and city preserves. A small preserve surrounds the entrance to each of these caves. However, these preserves encompass only a fraction of the surface drainage area that provides input of nutrients and moisture into the caves. The entire surface and subsurface drainage area is the minimum area believed necessary to provide adequate long-term protection for cave ecosystems. The preserves around these caves are not sufficient to counter nutrient depletion and prevent

pollution, should the surrounding areas be developed.

Some of the TSNL caves are under temporary deed to TSNL and may be sold at the owner's discretion (U.S. Fish and Wildlife Service 1993). In addition, City of Austin cave protection laws do not apply in most cases, since the great majority of these caves lie outside the city limits.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Service is unaware of other threats to these species beyond those discussed under factors A–D (above). As noted under Factor A, the Bone Cave harvestman exhibits considerable geographical variation. Loss of a number of locations within any one part of its range would result in a loss of genetic diversity for the species (Reddell, *in litt.*, 1993). The Tooth Cave pseudoscorpion, Tooth Cave spider, Coffin Cave and Kretschmarr Cave mold beetles, and Bee Creek Cave harvestman are each known from fewer than 10 locations (4, 4, 5, 4, and 6 locations respectively, including unconfirmed identifications). Therefore, the loss of even a single location would represent a significant loss of genetic diversity for any of those species. Lack of genetic diversity can accelerate the decline or extinction of rare species.

Conclusion

As discussed in the final rule, these species remain extremely vulnerable to losses. For the Tooth Cave pseudoscorpion, the Tooth Cave spider, the Kretschmarr Cave mold beetle, the Coffin Cave mold beetle, and the Bee Creek Cave harvestman, neither the range nor the number of confirmed localities within the range has expanded significantly since the original listing. The Tooth cave ground beetle and the Bone Cave harvestman occur in more locations and are more widespread than was originally believed, but the expansion of the overall range is not significant and the majority of caves in which these species occur are subject to one or more of the threats discussed above (Reddell, *in litt.*, 1993).

The Service recently released a Draft Recovery Plan for the karst invertebrates (U.S. Fish and Wildlife Service 1993). That document details recovery actions and criteria that, when met, may result in reclassification or delisting of the endangered karst invertebrates. Continued efforts to locate new inhabited caves, to implement habitat conservation measures, and to control the threat of fire ants could bring the karst invertebrates to the point where protection under the Act is no longer necessary.

The Service has carefully assessed the information presented in the petition, as well as the best and most current scientific and commercial information, in determining that the petition does not present substantial scientific and commercial information indicating that delisting of any of the seven karst invertebrates may be warranted. These species continue to require the protection provided by the Act because of their extremely small, vulnerable, and limited habitats located within an area that is experiencing continued pressures from economic and population growth.

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Vinson, S.B., and A.A. Sorensen. 1986. Imported Fire Ants: Life history and impact. Texas Dept. of Agriculture 1986. 28 pp.

Author

The primary author of this notice is Ruth Stanford (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: March 7, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–5854 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-011-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94-038-01	Calgene, Incorporated	02-07-94	Canola plants genetically engineered to express oil modification genes.	North Dakota.
94-039-01	Petoseed Company, Incorporated.	02-08-94	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California.
94-039-02, renewal of permit 93-063-05, issued on 05-26-93.	American Crystal Sugar Company.	02-08-94	Sugar beet plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	Minnesota, North Dakota.
94-039-03	Cornell University	02-08-94	Apple trees genetically engineered to express resistance to fire blight.	New York.
94-039-04, renewal of permit 90-088-01, issued on 07-11-90.	Upjohn Company	04-06-93	Cantaloupe and squash plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.

Done in Washington, DC, this 8th day of March 1994.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-5874 Filed 3-11-94; 8:45 am]

BILLING CODE 3410-34-P

Federal Grain Inspection Service

Pilot Programs Allowing More Than One Official Agency To Provide Official Services Within A Single Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice With Comment Period.

SUMMARY: Amendments in 1993 changed the United States Grain Standards Act, as amended (Act). One of these changes provides that the Federal Grain Inspection Service (FGIS) may conduct pilot programs allowing more than one official agency to provide official services within a single geographic area. FGIS is announcing its intent to conduct one or more such pilot programs. FGIS is requesting comments on the specific pilot programs described below, and FGIS also is requesting suggestions for other possible pilot programs in lieu of or in addition to those listed below.

DATES: Comments and suggestions must be postmarked, or sent by telecopier (FAX) or electronic mail by April 22, 1994.

ADDRESSES: Comments and suggestions must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments and suggestions to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments and suggestions received will be made available for public inspection during regular business hours at the above address located at 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION: Sections 7(f) and 7A of the Act were amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103–156) on November 24, 1993, to authorize FGIS' Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of the pilot programs is to evaluate the impact of allowing more than one official agency to provide official services within a single geographic area. FGIS is considering several possible pilot programs and may conduct one or more pilot programs. Official agencies selected by FGIS to participate in a pilot program would be allowed to provide official services in specified areas during the test period, and these agencies would provide FGIS with information on such official services. Following the pilot programs, FGIS would evaluate the impact of allowing more than one official agency to provide service within a single geographic area. FGIS is considering the following possible pilot programs and may select one or more of these or other suggested pilot programs for a test.

1. Barges on selected rivers or portions of rivers as defined by FGIS. Agencies would be allowed to provide official services for barges at these locations in addition to the agency already designated to serve these locations.

2. Exceptions. Agencies having exceptions to their assigned geographic areas would be allowed to provide official services at these specified locations in addition to the official agency already designated to serve these points.

3. Commercial inspection services. Agencies would be allowed to provide official commercial inspection services outside their assigned geographic areas.

4. Submitted samples. Agencies would be allowed to enter another agency's assigned area to pick up submitted samples.

5. Timeliness of service. If an official agency can not provide the requested services within 12 hours of the request, the applicant may request such services from another official agency.

Commenters are encouraged to submit reasons and pertinent data for support or objection to the pilot programs described above. FGIS is also requesting suggestions regarding other possible pilot programs in addition to or in lieu of those listed above. All comments and suggestions must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in determining which pilot programs to conduct. FGIS will publish notice of any pilot programs to be conducted.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 3, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–5805 Filed 3–11–94; 8:45 am]

BILLING CODE 3410–EN–F

Food and Nutrition Service

RIN 0584–AB61

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice

SUMMARY: By this notice, the Department of Agriculture is updating the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies implemented this action on October 1, 1993 based on advance notice of the new amounts. Based on regulations published at 47 FR 46485 (October 19, 1982) annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this proposed rule in conformance with Executive Order 12866, and has determined that it is not a "significant regulatory action." Based on information compiled by the Department, it has been determined that this action: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

William E. Ludwig, the Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits issued to participating households. However, this money will be distributed among the nation's food vendors as the food stamps are used by households, so the

effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to review by the Office of Management and Budget.

Background

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets most dietary standards. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

TFPs for Alaska and Hawaii are based upon an adjusted average for the six-month period that ends with June 1993. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1993 TFP costs. The adjusted average is equal to January–June 1993 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January–June average from 1976 through 1986 (a 1.53 percent increase over January–June costs in Alaska and a 1.82 percent increase in Hawaii).

For the period January through June 1993, the average cost of the TFP was $467.70 in Alaska and $596 in Hawaii. The proxies for actual June 1993 TFP costs were $474.86 in Alaska and $606.85 in Hawaii. The June 1993 cost of the TFP was $587.70 in Guam and $469.10 in the Virgin islands.

The TFP is also the basis for establishing food stamp allotments. Food stamp allotments are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(11)) provides for an adjustment on October 1, 1993, based upon 103 percent of the June 1993 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11.

The maximum food stamp benefit or allotment is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30% of the household's net income. To obtain the maximum food stamp allotment for each household size, the TFP costs for the four-person household were increased by 3 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar.

Pursuant to section 3(o)(3) of the Food Stamp Act (7 U.S.C. 2012(o)(3)), maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and D.C., so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. In addition, the urban Alaska allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the adjusted Anchorage TFP (see 50 FR 18456, dated May 1, 1984, and 51 FR 16281, dated May 2, 1986).

According to regulations published at 51 FR 16281, on May 2, 1986, the allotment for rural I areas is the higher of the allotment that was in effect in each rural I area on October 1, 1985 or 128.52 percent of the Anchorage TFP (as adjusted). The rural II allotment is 156.42 percent of the adjusted Anchorage TFP (Alaska TFP). For further information concerning the allotments for urban Alaska, rural I Alaska, and rural II Alaska, see 51 FR 16281, dated May 2, 1986.

The following table shows new allotments for urban Alaska, rural I Alaska, rural II Alaska, Hawaii, Guam, and the Virgin Islands.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1993, S ADJUSTED

Household size	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Hawaii	Guam [5]	Virgin Islands [5]
1	$147	$188	$229	$187	$166	$144
2	271	345	420	343	304	265
3	388	495	602	492	436	380
4	492	628	765	625	553	483
5	585	746	908	742	657	573
6	702	895	1,090	890	789	688
7	776	990	1,204	984	872	760
8	887	1,131	1,377	1,125	997	869
Each additional member	+111	+141	+172	+141	+125	+109

[1] Adjusted to reflect the cost of food in June 1993, adjustments for each household size, economies of scale, a 1.03 percent increase in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 128.52 percent of the Anchorage TFP, as adjusted.
[4] These levels are 156.42 percent higher than the Anchorage TFP, as adjusted.
[5] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in rural II Alaska.

Maximum allotments for the 48 States and D.C. were published in a separate notice in the **Federal Register**. These adjustments were made sooner than the adjustments for Alaska, Hawaii, Guam and the Virgin Islands because the data to accomplish the update for the 48 States and D.C. were available sooner than the data for the other areas covered by this notice.
(7 U.S.C. 2011–2032)

Dated: March 3, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–5811 Filed 3–11–94; 8:45 am]

BILLING CODE 3410–30–U

RIN 0584–AB62

Food Stamp Program: Maximum Allotments for the 48 States and DC, and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 1994: (1) The maximum allotment levels, which are the basis for determining the maximum amount of food stamps which participating households receive, (2) the gross and net income limits for food stamp eligibility which certain households may have, (3) the standard deduction and maximum amounts for the excess shelter expense deduction available to certain households, and (4) the homeless household shelter deduction. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2496. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies must implement this action on October 1, 1993 based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this notice in conformance with Executive Order 12866, and has determined that it is an "economically significant regulatory action." Based on information compiled by the Department, it has been determined that this action will increase Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

William E. Ludwig, the Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) (1) and (11), 5(c), and 5(e)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. secs. 2012(o) (1) and (11), 2014(c), and 2014(e) the "Food Stamp Act"). Section 3(o)(11) requires that the October 1, 1993 change in food stamp allotments be based upon 103 percent of the June 1993 cost of the Thrifty Food Plan (TFP) for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale and a requirement to round the final results down to the nearest dollar increments. Section 5(c) requires that the income eligibility standards for the program be adjusted on October 1, 1993 based on changes in the Federal income poverty guidelines. Section 5(e)(4) requires that the standard deductions and the maximum amounts for the excess shelter expense deductions be adjusted on October 1, 1993 to the nearest lower dollar increments to reflect certain changes for the 12 months ending June 30, 1993. Section 13912 of the Mickey Leland Childhood Hunger Relief Act, chapter 3 of P.L. 103–66, the Omnibus Reconciliation Act of 1993, amends section 5(e) by further raising the excess shelter expense deduction cap effective July 1, 1994.

Benefits

This action increases maximum food stamp allotments, income eligibility standards, and deductions based on the changing cost of living.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $652.6 million in Fiscal Year 1994.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income benefits (SSI), is determined by comparing their incomes to the appropriate income eligibility standards (limits). Households containing an elderly or disabled member need to have net incomes below the net income limits, while households which do not contain an elderly or disabled member must have net incomes below the net income limit and gross incomes below the gross income limit. Households in which all members are receiving PA or SSI are categorically eligible; their incomes do not have to be below the income limits.

In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities, may be considered separate households, even if they are living and eating with another household. 7 U.S.C. Sec. 2012(i). The Food Stamp Act limits separate household status to those persons who meet both of the following requirements:

(1) Their own income may not exceed the net income eligibility standards, and

(2) The income of those with whom they reside may not exceed 165 percent of the poverty line.

The net and gross income limits are derived from the Federal income poverty guidelines. The net income limit is 100 percent of the guidelines; the gross income limit is 130 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated annually. The effective date of October 1 is required by the Food Stamp Act.

The revised income eligibility standards are as follows:

Food Stamp Program; October 1, 1993—September 30, 1994

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 Percent of Poverty Level]

House-hold size	48 States [1]	Alaska	Hawaii
1	$581	$725	$670
2	786	982	905
3	991	1,239	1,140

NET MONTHLY INCOME ELIGIBILITY STANDARDS—Continued

[100 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
4	1,196	1,495	1,375
5	1,401	1,752	1,610
6	1,606	2,009	1,845
7	1,811	2,265	2,080
8	2,016	2,522	2,315
Each add. member	+205	+257	+235

[1] Includes District of Columbia, Guam, and the Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
1	$756	$943	$871
2	1,022	1,277	1,177
3	1,289	1,610	1,482
4	1,555	1,944	1,788
5	1,822	2,278	2,093
6	2,088	2,611	2,399
7	2,355	2,945	2,704
8	2,621	3,279	3,010
Each add. member	+267	+334	+306

[1] Includes District of Columbia, Guam, and the Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY DISABLED ARE A SEPARATE HOUSEHOLD

[165 Percent of Poverty Level]

Household size	48 States [1]	Alaska	Hawaii
1	$959	$1,197	$1,106
2	1,297	1,620	1,494
3	1,635	2,044	1,881
4	1,974	2,467	2,269
5	2,312	2,891	2,657
6	2,650	3,314	3,045
7	2,988	3,738	3,432
8	3,327	4,161	3,820
Each add. member	+339	+424	+388

[1] Includes District of Columbia, Guam, and the Virgin Islands.

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that households might use to provide nutritious meals and snacks for household members. The plan suggests amounts of food for men, women, and children of different ages, and it meets dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. Nationally, food stamp allotment levels are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act (7 U.S.C. Sec. 2012(o)(11)), provides for an adjustment on October 1, 1993, based upon 103 percent of the June 1993 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11. In June 1993, the cost of the TFP was $364.90 in the 48 States and D.C.

To obtain the maximum food stamp benefit for each household size, June 1993 TFP costs for the four-person household (of $364.90) were increased by 3 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households which have no net income. For households which have some income, the individual household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income.

. The following tables show the new allotments for the 48 States and DC.

ALLOTMENT AMOUNTS [1]—OCTOBER 1993 AS ADJUSTED

Household size	48 States & DC
1	$112
2	206
3	295
4	375
5	446
6	535
7	591
8	676
Each additional person	+85

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 3 percent increase in the TFP and rounding.

Minimum Benefit.

Pursuant to Section 8(a) of the Food Stamp Act, the $10 minimum monthly benefit provided to all one- and two-person households must be adjusted on each October 1 to reflect the percentage change in the TFP for the 12-month period ending the preceding June, with the result rounded to the nearest $5. In order to implement this provision of the law, the minimum benefit is adjusted each year as follows: (1) The percentage change in the TFP from June of the previous year to June of the current year (prior to rounding) is calculated; (2) this percentage change is multiplied by the previous "unrounded" minimum benefit to obtain a new unrounded benefit amount; and (3) the new unrounded minimum benefit is then rounded to the nearest $5 in accordance with the statutory provisions.

The unrounded cost of the TFP was $355.55 in June 1992 and $364.895 in June 1993. The change from June 1992 to June 1993 is 102.6284%, which when multiplied by $10.96, the unrounded minimum benefit in Fiscal Year 1993, results in a new unrounded minimum benefit of $11.25. Rounded to the nearest $5, the minimum benefit for Fiscal Year 1994 is $10.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income and thus to increase household benefits. When a household's net income decreases, its food stamp benefits increase.

The standard deduction is available to all households. The excess shelter expense deduction is available to households with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly or disabled members but no maximum for households with elderly or disabled members. The standard deduction and the maximum amount for the excess shelter expense deduction for households with no elderly or disabled members are being adjusted by this Notice.

This Notice is also adjusting the homeless household shelter expense. The homeless household shelter expense is a standard estimate of the shelter expenses of homeless households and is available to households in which all members are homeless and are not receiving free shelter throughout the month.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that, in computing household income, households shall be allowed a standard deduction. (7 U.S.C. Sec. 2014(e)). Section 5(e) also requires that the standard deduction be adjusted periodically. The deduction for the 48 States and DC was last adjusted effective October 1, 1992. Section 5(e)(4) requires that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price

Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLS) for items other than food (7 U.S.C. Sec. 2014(e)(4)). The adjustments are rounded to the nearest lower dollar pursuant to the requirements of Section 5(e). There are separate standard deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new deduction amounts that go into effect on October 1, 1993.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous standard deductions (eff. 10–1–92)	New unrounded numbers (10-1-93)	Standard deductions (eff. 10–1–93)
48 States and DC	$127	$131.19	$131
Alaska	216	223.77	223
Hawaii	179	185.21	185
Guam	254	262.35	262
Virgin Islands	112	115.75	115

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act also provides that, in computing household income, households shall be allowed a deduction for certain excess shelter expenses. 7 U.S.C. Sec. 2014(e). There is a maximum amount for the excess shelter expense deduction, unless the household has an elderly or disabled member, in which case there is no maximum. The maximum amount for the excess shelter expense deduction is adjusted each October 1 based on changes in the shelter, fuel and utilities components of housing costs in the CPI–U published by BLS. Moreover, Section 13912 of the Mickey Leland Childhood Hunger Relief Act amends 5(e) by raising the excess shelter expense deduction cap over a period of three years before removing it altogether The first increase is effective July 1, 1994 Shelter deductions for the 48 States and DC are at one level while shelter deductions for Alaska, Hawaii Guam, and the Virgin Islands are set separately

The following table shows the maximum shelter deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new maximum excess shelter deductions that went into effect October 1, 1993 as well as the new maximum excess shelter deduction that is required by statute to go into effect July 1, 1994

MAXIMUM SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBER

	Previous shelter deductions (10–1–92)	New unrounded numbers (10–1–93)	Shelter deductions (10–1–93)	Shelter deductions (07–1–94)
48 States and DC	$200	$207 04	$207	$23[illegible]
Alaska	349	359.80	359	402
Hawaii	286	295.41	295	330
Guam	243	251 23	25[illegible]	280
Virgin Islands	[illegible] 148	152.76	[illegible]52	[illegible]71

(7 U.S.C 2011–2032)

Adjustment of the Homeless Household Shelter Expense

Section 11(e)(3)(E) of the Food Stamp Act requires the Secretary to prescribe rules requiring state agencies to develop standard estimates of the shelter expenses that may reasonably be expected to be incurred by households in which all members are homeless but which are not receiving free shelter throughout the month. 7 U.S.C. Sec. 2020(e)(3)(E). In recognition of the difficulty State agencies may face in gathering the necessary information to compute standard shelter estimates for their States, the Secretary offered a standard estimate which may be used by all State agencies in lieu of their own estimates.

In the Deduction and Disaster Provisions from the Mickey Leland Memorial Domestic Hunger Relief Act final rule, published at 56 FR 63613 (December 4, 1991), the Department stated that it would annually adjust the homeless household shelter expense each October 1 using the same changes in the shelter, fuel and utilities component of the CPI used in indexing the shelter cap. This year's homeless household shelter expense is $137

Dated: February 16, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services

[FR Doc. 94–5810 Filed 3–11–94, 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Management of Selected Vegetation Stands in the Nebo Management Area: Spanish Fork Ranger District, Uinta National Forest, Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to document the analysis of the effects of alternatives for management of white fir timber stands infested with fir engraver beetles (Scolytus Ventralis) within the Nebo Management Area of the Spanish Fork Ranger District of the Uinta National Forest. The proposed action is to implement management activities that will support the desired

future condition for the Nebo Management Areas outlined in the Uinta National Forest Land and Resource Management Plan (Forest Plan) in accordance with the requirements of 36 CFR 219.17 and 219.27.

The project area is located south of Payson, Utah, and northeast of Nephi, Utah, on lands accessible from the Mt. Nebo Loop Scenic Byway. The largest concentration of infected timber stands are in the Sheepherder Hill area (Sections 15, 22–24, 28, 29, T10S, R2E, Salt Lake Meridian). The purpose of this proposed management action is to save the remaining healthy trees by removing the competition that may be posed by dead and dying conifer trees and planting seedlings to accelerate the recovery time for reestablishing a healthy forest.

Implementation of activities to restore a healthy forest condition may require entry into areas designated as roadless in the 1980 RARE II inventory.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis for this Forest Service proposal should be received in writing by May 10, 1994. A scoping meeting will be held at the Spanish Fork Ranger Station, May 4, 1994 from 3 to 7 p.m.

ADDRESSES: Send written comments to Tom Tidwell, District Ranger, Spanish Fork Ranger District, 44 West 400 North, Spanish Fork, Utah 84660.

FOR FURTHER INFORMATION CONTACT: Requests for further information or comments should be sent to Mark Sensibaugh, Resource Assistant, phone (801) 798–3571.

SUPPLEMENTARY INFORMATION: Because much of this project area is within view of a designated Scenic Byway and in the vicinity of the Mt. Nebo Wilderness Area, the nature and scope of the decision to be made is affected.

Aerial surveys indicate more than 15,000 acres of timber stands were infested in the Nebo Management Area by the summer of 1993. A biological evaluation of current stand conditions was conducted on 350 acres to assess the magnitude of the problem and potential management options. The biological evaluation indicated that management actions should be considered to reduce the volume of dead and dying trees in the more concentrated, infested timber stands in the area, specifically Sheepherder Hill. In the spring of 1993, an emergency timber sale, the Payson Canyon Salvage Sale, was approved for harvesting approximately 141 acres of highly visible dead and dying timber within the proposed project area, but not within an inventoried roadless area. The emergency sale is adjacent to the Sheepherder Hill area. Since the Payson Canyon Salvage Sale was initiated, many additional fir beetle infestations have been identified and concern about forest health has increased throughout the area.

Scoping of public issues were initiated as part of the Payson Canyon Salvage Sale, which is applicable to this project. The preliminary list of issues identified to be addressed by this project analysis include:

—Forest health
—Impacts on the roadless characteristics of the project area
—Cumulative impacts of alternatives to this action
—Visual impacts to the Scenic Byway
—Fuel build-up/fire and insect disease hazards
—Economic feasibility of implemented management actions
—Implications to wetlands, floodplains and riparian vegetation
—Possible impacts to threatened, endangered and/or sensitive species
—Land/slope stability
—Forest user safety
—Water quality
—Elk calving vs. the timing of management activities

A wide range of alternatives will be considered in managing the insect impacted timber stands. A preliminary list of alternatives includes:

—No change to current management
—Harvest the dead and dying trees
—Burning of infested areas
—Stand treatment based on its visibility from the Scenic Byway
—A combination of any or all of the above
—Other considerations identified in the analysis process

There are no known permits or licenses required to implement any of the proposed alternatives.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the Draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objectives that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

It is estimated that the Draft Environmental Impact Statement (DEIS) will be released for public review in August 1994. The Final EIS is scheduled to be released in November 1994. Implementation of the project could occur by late fall of 1994 or the Spring of 1995.

After the 45 day comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS. The Forest Service is required to respond to the comments received in the Final EIS. The responsible official is the District Ranger. The responsible official will consider the comments, responses and environmental consequences discussed in the EIS and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR part 215.

Dated: March 4, 1994

Tom L. Tidwell,

District Ranger.

[FR Doc. 94–5802 Filed 3–11–94; 8.45 am]

BILLING CODE 3410–11–M

Use of Bait in Hunting

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of interim policy; request for public comment.

SUMMARY: The Forest Service gives notice that it is issuing interim policy on the agency's role in regulating the placement of bait on National Forest System lands. The intended effect is to clarify the agency's role in relation to the role of the States and, thus, to provide a consistent approach to the regulation of baiting resident game. Public comment is invited and will be considered in the adoption of a final policy, notice of which will be published in the **Federal Register**.

DATES: Interim Directive No. 2640–94–1 was effective on March 3, 1994, and will expire no later than September 4, 1995, unless removed before that date.

Comments must be received by May 13, 1994.

ADDRESSES: Send written comments to Director, Wildlife and Fisheries (2640), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim policy in the Office of the Director, Wildlife and Fisheries, 4th floor Southwest Wing, Auditors Building, 205 14th Street SW., Washington, DC. Those wishing to inspect comments should call ahead at (202) 205–1207 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Darden, Wildlife and Fisheries Staff, (202) 205–1207.

SUPPLEMENTARY INFORMATION: State fish and wildlife agencies have the primary responsibility for protection and management of wildlife populations on National Forest System lands, including adoption of State fish and wildlife laws and regulations affecting the taking of resident game animals. The Forest Service enters into a Memorandum of Understanding (MOU) with each State which governs Forest Service/State cooperation on matters of Statewide fish and wildlife policy or procedure affecting the National Forest System. See FSM 2611.1. The States issue regulations regarding hunting licenses, methods, seasons, locations, and bag limits for resident game and have the primary responsibility for enforcement of fish and wildlife laws and regulations on National Forest System lands. Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife; *see* the National Forest System Organic Administration Act at 16 U.S.C. 480, the Multiple Use-Sustained Yield Act at 16 U.S.C. 528, the Sikes Act at 16 U.S.C. 670h, the Federal Land Policy and Management Act, at 43 U.S.C. 1732. The Forest Service therefore is generally reluctant to override State fish and wildlife regulation, except where federal interests, such as protection of forest land, resources, and users require federal intervention.

The practice of placing bait (food or scent to attract wildlife) is a hunting activity allowed by some State laws and regulations. The baiting of bears is particularly controversial. While the total number of States allowing bear baiting has declined, State fish and wildlife agencies permit the baiting of black bear as a hunting activity in Alaska, Idaho, Oregon, Maine, Michigan, Minnesota, New Hampshire, Utah, Washington, Wisconsin, and Wyoming. The Forest Service intends to work diligently through its ongoing cooperative efforts to encourage the States to evaluate their regulation of the practice of baiting bears. In the meantime, the agency is issuing interim policy regarding the use of bait on National Forest System lands.

In the past, some national forests have regulated the placement of bear baits by requiring hunters and commercial guides to obtain special use authorizations in order to prevent conflicts with other users or other problems associated with the location and removal of bait. Additionally, some Forest Service Regions have issued orders under 36 CFR Part 261 to control litter, as well as to close certain areas to bear baiting where the practice would create unacceptable adverse effects on other resources or forest users. In early 1992, the Forest Service's role in the regulation of bear baiting on the national forests in Wyoming became an issue. Special use authorizations for bear baiting had been issued on a number of national forests in that State. Typically, those special use authorizations included conditions with which the holder had to comply to minimize adverse effects created by placement of bear bait.

In March 1992, the Regional Foresters for the Rocky Mountain and Intermountain Regions issued a joint closure order prohibiting bear baiting in the national forests in Wyoming, unless the baiting activity was conducted in compliance with the requirements of the order pertaining to the placement and disposal of baits. Like the conditions that previously had been included in special use authorizations, the requirements of the order were intended too minimize adverse effects on forest resources and users.

The Fund for Animals and the Friends of the Bow brought suit to challenge the Forest Service's closure order and to challenge what Plaintiffs considered a shift in established policy, that is, no longer requiring special use authorizations for bear bait placement and using closure orders instead (*The Fund for Animals* v. *Robertson*, (D.D.C. Civ. No. 92–1694–TPJ)). These groups perceived this shift in method as a diminution in the level of Forest Service regulation and wildlife protection. The parties settled the case upon the Forest Service's decision to rescind the closure order and, in compliance with the National Environmental Policy Act, to analyze the effects of eliminating the practice of issuing special use authorizations for the placement of bear bait on National Forest System lands in Wyoming. The Regions then prepared an Environmental Assessment to disclose effects on the proposed action and alternatives to the proposal.

Upon completion of the Environmental Assessment and issuance of a Decision Notice by the Rocky Mountain and Intermountain Regional Foresters in April 1993, there were new challenges to the agency's position. Subsequently, the Deputy Chief for the National Forest System decided that national direction was needed to end the conflict and controversy. Accordingly, the Decision Notice was rescinded, and bear baiting in national forests in Wyoming was prohibited pending issuance of national direction. However, because the spring hunting season will begin before a final policy can be adopted, the agency has determined that in fairness to outfitters, guides, and individual hunters, an interim policy should be issued to ensure consistency and uniformity of policy and practice by the Forest Service. State agency regulations have been developed and published in Wyoming and other States governing the use of bait in spring hunts for 1994. These new Wyoming regulations were developed in close coordination with the Forest Service to be in concert with federal regulation and law on the national forests involved and to be protective of National Forest System resources. In addition, hunters, outfitters, and guides in Wyoming have moved forward with the normal practice of planning and booking hunting activity based on the expectation that the Forest Service would have a final policy in place for the spring hunting season. It is unfair to continue the bear baiting prohibition in Wyoming when such a prohibition is not in effect on other National Forest System lands in other States where the practice is permitted, because of the agency's delay in adopting a final policy. Therefore, the agency has issued an interim directive to Forest Service Manual Chapter 2640, which is set out at the end of this notice.

The Forest Service special use authorization regulations at 36 CFR

251.50 exempt noncommercial use and occupancy, including "hunting," from the special use authorization requirement. Since hunting methods subject to State regulation are included within the term "hunting," the interim directive makes explicit that where State regulations permit baiting, the Forest Service will not require a special use authorization for the practice of baiting connected with hunting on National Forest System lands. Outfitter and guide activities require a special use authorization. Outfitters and guides must comply with applicable State laws and regulations, and Forest Service closure orders as a condition of special use authorizations.

However, if the placement of bait should become a land or resource management issue and it is determined that the State regulations governing baiting would not protect resources in an area adequately or would otherwise be inconsistent with the applicable forest plan or conflict with federal laws such as the Endangered Species Act, then the authorized officer will issue an order to close the area to baiting. The authorized officer also may close an area to baiting considering the likely impact on a site-specific basis on water quality, public health and sanitation, or the potential threat to the viability of wildlife. Finally, the policy would explicitly prohibit the issuance of a special use authorization to individuals for the specific act of placing bait on National Forest System lands for hunting purposes.

The approach adopted in the interim policy maintains protection of national forest resources. First, under the terms of the Memorandums of Understanding with the State fish and wildlife or game agencies, the Forest Service continuously participates in the review and adoption of State game regulations as they affect National Forest System land or resources. Second, the interim policy provides the Regional Forester or Forest Supervisor with the flexibility and discretion to determine if baiting should be prohibited in a specific location. Finally, if a hunter, in placing bait to attract resident game creates litter through improper placement or untimely removal of bait in violation of State regulations or Forest Service closure orders, the agency has the authority under its regulations at 36 CFR 261.11 to cite the hunter for violating the prohibition on litter. If such bait results in violation of State regulations, the agency has authority to cite the hunter for violation of 36 CFR 261.8, and agency employees routinely do so where such violations occur. In short, the agency's approach (1) relies on existing relationships with each State, (2) prevents duplicative regulation by Federal and State agencies, and (3) provides site-specific environmental safeguards to address those situations where baiting would have an adverse site-specific effect on National Forest System land or resources.

Pursuant to the rules at 36 CFR part 316, the text of the baiting policy as it has been issued in Interim Directive No. 2640–94–1 to the Forest Service Manual is set out at the end of this notice. Public comment is invited and will be considered in adoption of a final policy.

Environmental Impact

Section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." This interim directive would provide administrative instructions to Forest Service field offices on the procedures and processes to follow in the case of baiting resident game. Accordingly, the agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR Part 1320 do not apply.

Regulatory Impact

This interim policy has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant rule.

Dated: March 7, 1994.

Jack Ward Thomas,

Chief.

FOREST SERVICE MANUAL

Washington, D.C.

Interim Directive: !!ID 2640–94–1
Effective Date:
Expiration Date:
Chapter: 2640—Stocking and Harvesting
Posting Notice:
Remove:

This directive clarifies roles, responsibilities, and procedures to regulate the placement of bait on National Forest System lands.

FSM 2643 emphasizes the cooperation between the Forest Service and State fish and wildlife agencies through memorandums of understanding.

FSM 2643.1 clarifies the States' role and emphasizes the need for consistency of State regulations with Federal laws and forest plans.

FSM 2643.12 adds factors to consider and methods to regulate baiting.

2643—Applicability of State Fish and Wildlife Laws and Regulations

The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations and may assist in the enforcement of State fish and wildlife laws on National Forest System lands. Pursuant to FSM 2610, Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations, especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.

2643.1—Hunting, Fishing, and Trapping Regulations

Hunting, fishing, and trapping of fish and wildlife and associated practices are permitted on National Forest System lands subjects to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with federal laws; or
2. State laws and regulations would permit activities that conflict with the land and resource management responsibilities of the Forest Service or that are inconsistent with forest plans.

2643.12—Trapping Furbearers

Use of Bait for Resident Game Hunting. The use of bait as a lure or attractant for the purpose of taking resident game on National Forest System lands is considered a hunting practice subject to State regulation.

Where State hunting regulations prohibit the use of bait, the practice is prohibited on National Forest System lands.

Where States permit the use of bait for attracting resident game, this activity is allowed on National Forest System lands, subject to State hunting laws and regulations, unless the authorized officer determines on a site-specific basis that there is a need to prohibit or

restrict the practice of baiting because one or more of the following circumstances exist:

1. The State laws and regulations on placement of bait are inadequate to protect forest land or other resources or users in a particular location and/or to prevent trespass or litter;

2. Baiting is inconsistent with the applicable forest plan; or

3. The State law and regulations conflict with Federal law, such as the Endangered Species Act.

In addition to the mandatory causes for prohibiting or restricting baiting, the authorized officer also may prohibit baiting, regardless of the adequacy of State regulations, based on consideration of the likely impact of baiting on such matters as water quality, public health and sanitation, the potential for litter, or the potential to threaten the viability of wildlife.

Where the authorized officer determines that baiting is a significant problem and should be restricted or prohibited:

1. The officer shall notify State fish and wildlife officials and provide them the opportunity to resolve the issue through further restrictions or the prohibition through State regulation rather than for the Forest Service to issue the restriction or prohibition.

2. If the State does not revise its regulations to adequately regulate or restrict baiting, the Forest Service authorized officer shall, time permitting, close the area or otherwise restrict baiting by issuing an order pursuant to 36 CFR part 261.

Where time does not permit closure of an area to baiting because the hunting season is underway and it would be impracticable to issue a closure order, the Regional Forester or Forest Supervisor shall take such mitigation and/or enforcement measures as are appropriate and practicable to ensure consistency with forest plan management direction and compliance with Federal laws, orders, and regulations, and protection of forest users and resources. For example, the agency may close a road or gate, or cite violations of other State or Forest Service regulations.

Closure is not the only way to address the practice of baiting. It is expected that land managers as part of their day-to-day management of National Forest System lands and resources will be cognizant of the effects of hunting activities and take such proactive measures, after consultation with the responsible fish and wildlife agency, such as hunter education, as may be necessary to ensure resource protection consistent with forest plan management direction.

This policy, in and of itself, does not compel an authorized officer to undertake a specific decision or to make a determination of whether baiting is allowed in those States where the practice is permitted.

Special use authorization shall not be issued for placing bait on National Forest System lands for hunting purposes (36 CFR 251.50(c)).

For the purposes of this section and to assure consistency in coordination of national forest wildlife matters with State agencies, the authorized officer is the Regional Forester or Forest Supervisor responsible for executing memorandums of understanding with the State wildlife agency.

[FR Doc. 94–5786 Field 3–11–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held March 30, 1994, 8:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of export controls affecting sensors & lasers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: March 8, 1994.

Betty A. Ferrell,

Director.

[FR Doc. 94–5876 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with February anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4737

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with section 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with February anniversary dates.

Initiation of Reviews

In accordance with sections 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than February 28, 1995.

	Period to be reviewed
Antidumping Duty Proceedings:	
Canada: Racing Plates, A–122–050, Equine Forgings Limited	02/01/93–01/31/94
France: Anhydrous Sodium Metasilicate, A–427–098, Rhone-Poulenc, S.A	01/01/93–12/31/93
Japan: Mechanical Transfer Presses, A–588–810, Aida Engineering, Ltd., Komatsu, Ltd., Ishikawajima-Harima Heavy Industries Co., Ltd., Hitachi Zosen Corporation	02/01/93–01/31/94
The Republic of Korea: Certain Small Business Telephone Systems and Subassemblies Thereof, A–580–803, Ssangbangwool Electronics Ltd	02/01/93–01/31/94
The People's Republic of China: Axes/Adzes; Bars/Wedges; Hammers/Sledges; and Picks/Mattocks, A–570–803, Fujian Machinery & Equipment, Import & Export Corporation, (FMEC), Shandong Machinery Import & Export Corporation (SMC)	02/01/93–01/31/94
United Kingdom: Sodium Thiosulfate, A–412–805, William Blythe & Co., Ltd.	02/01/93–01/31/94
Suspension Agreements:	
Venezuela: Gray Portland Cement and Clinker, A–307–803	02/01/93–01/31/94
Countervailing Duty Proceedings:	
Saudi Arabia: Carbon Steel Wire Rod, C–517–501	01/01/93–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with sections 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: March 7, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–5882 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–820]

Antidumping Duty Order: Ferrosilicon from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

Scope of the Order

The merchandise subject to this antidumping duty order is ferrosilicon (FeSi), a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium of any other element.

FeSi is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

FeSi is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of FeSi found in a given shipment. FeSi grades are defined by the percentages by weight of contained silicon and other minor elements. FeSi is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent FeSi.

Calcium silicon, ferrocalcium silicon, and magnesium FeSi are specifically excluded from the scope of this order. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium FeSi is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

FeSi is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

FeSi in the form of slag is included within the scope of this order if it meets, generally, the chemical content definition stated above and is capable of being used as FeSi. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Antidumping Duty Order

On January 24, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of FeSi from Brazil materially injure a U.S industry.

In accordance with section 735(c) of the Act, on February 15, 1994, the Department issued an amended final determination that FeSi from Brazil is being sold at less than fair value (59 FR 8598, February 23, 1994) to correct ministerial errors. On February 18, 1994, the ITC, after considering the

Department's amended final determination, reaffirmed its determination that the domestic industry producing FeSi is materially injured by reason of subject imports from Brazil, including imports from Minasligas.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value (FMV) of the merchandise exceeds the United States price (USP) for all entries of FeSi from Brazil. These antidumping duties will be assessed on all unliquidated entries of FeSi from Brazil entered, or withdrawn from warehouse, for consumption on or after August 16, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 43323). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin (percent)
Companhia Ferroligas Minas Gerais	3.46
Italmagnesio S.A. Industria e Comercio	88.86
Companhia Brasileira Carbureto de Calcio	15.53
All Others	35.95

In its final determination, the Department found that critical circumstances existed with respect to exports from Brazil by Italmagnesio S.A. Industria e Comercio (Italmagnesio). However, on January 24, 1994, the ITC notified the Department that retroactive assessment of antidumping duties was not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(b)(4) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(e)(2) with respect to Italmagnesio's FeSi entered, or withdrawn from warehouse for consumption prior to August 16, 1993.

This notice constitutes the antidumping duty order with respect to FeSi from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Note: Temporary Restraining Order Regarding Ferrosilicon Imports from Companhia Brasileira Carbureto de Calcio (CBCC)

On February 23, 1994, the Court of International Trade (CIT) entered a temporary restraining order prohibiting the Customs Service from collecting deposits of the estimated antidumping duty margin for CBCC at a rate higher than that published in the original final determination. Thus, notwithstanding the language of the antidumping duty order (above), the Department will not, until permitted to do so by the CIT, instruct Customs to collect cash deposits equal to the amount of the antidumping duty margin calculated in the Department's amended final determination for imports of ferrosilicon from CBCC. Until we are notified differently by the Court, we are instructing Customs to collect cash deposits on imports of ferrosilicon from CBCC equal to 2.23 percent, the amount of the antidumping duty margin calculated in the Department's final original determination.

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5877 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–029]

Preliminary Results of Antidumping Duty Administrative Review; Fishnetting of Man-Made Fiber From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping finding administrative review.

SUMMARY: In response to a request by Yamaji Fishing Net Co., Ltd. (the respondent), the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on fishnetting of man-made fiber from Japan. This review covers one company and the period June 1, 1992 through May 31, 1993. For these preliminary results, we applied the best information available (BIA). The review indicates the existence of dumping margins during the period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kim Moore or Lisa Raisner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0090/3518.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1972, the Department of Treasury published in the **Federal Register** (37 FR 11560) the antidumping finding on fishnetting of man-made fiber from Japan. On June 7, 1993, the Department published a notice of opportunity to request review for the period June 1, 1992 through May 31, 1993 (58 FR 31941). The respondent requested, in accordance with 19 CFR 353.22(a) that we conduct an administrative review. We published the notice of initiation on July 21, 1993 (58 FR 39007). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, not including salmon gill netting, from Japan. The merchandise is currently classified under item numbers 5608.11.00, 5608.19.10, and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers entries of the subject merchandise by Yamaji Fishing Net Co., Ltd., during the period June 1, 1992 through May 31, 1993.

Analysis

Although Yamaji attempted to respond to all Department requests for information, the data submitted was unverifiable. In particular, at verification in Japan we discovered that approximately 40 percent of total home market sales had not been reported. Furthermore, because Yamaji did not prepare adequate source documentation, the Department was unable to complete sales traces to its satisfaction. Finally, significant discrepancies and errors in

Yamaji's sales listings were identified, thereby making it impossible to verify several of Yamaji's claimed adjustments. For further information on the deficiencies in the respondent's questionnaire response, see the verification report filed on the record of this case.

Because we have no data upon which we can reliably base our analysis, the Department must use BIA for its preliminary results of review.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we rely upon BIA in cases where a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes proceedings. The Department generally uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents which substantially impede the proceedings ("first tier"), the Department uses the higher of (1) the highest rate for any company from the original investigation or prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate ("second tier"), the Department uses the higher of (1) the highest rate ever applicable to the firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al., 58 FR 39729, July 26, 1993).

As outlined above, the second-tier BIA rate should be applied, since Yamaji was essentially cooperative. Accordingly, we will continue to apply Yamaji's previous rate of 18.30 percent, which is both the highest rate ever applicable to the firm for the subject merchandise and the highest rate in the proceeding (see Fishnetting of Man-Made Fibers from Japan; Final Results of Administrative Review of Antidumping Finding, 56 FR 49457, September 30, 1991).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin exists for the period June 1, 1992 through May 31, 1993, as follows:

Manufacturer/exporter	Percent margin
Yamaji Fishing Net Co., Ltd	18.30

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of the notice of final results of this administrative review, for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be their company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, and, because the proceeding is governed by an antidumping finding, the cash deposit rate will be set equal to the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Moqul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purpose of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 1.94 percent, the "new shipper" rate established in the first final results of the administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5878 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–301–801 and A–331–801]

Initiation of Antidumping Duty Investigations: Fresh Cut Roses From Colombia and Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–0371.

Initiation of Investigations

The Petitions

On February 14, 1994, we received petitions filed in proper form by the Floral Trade Council. In accordance with 19 CFR 353.12, the petitioner alleges that imports of fresh cut roses from Colombia and Ecuador are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

The products covered by these investigations are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Colombia

Petitioner based United States price (USP) on offers for sale by Colombian importers and distributors of the subject merchandise to U.S. customers. Petitioner deducted from USP amounts for air freight, insurance, customs duties and handling charges. Petitioner also deducted an amount for commissions paid to the grower on sales of subject merchandise.

Petitioner calculated foreign market value (FMV) using two methodologies. First, petitioner based FMV on import statistics for fresh cut roses in various third countries. Second, petitioner based FMV on constructed value (CV).

For FMV based on import statistics, petitioner used third country import statistics obtained from Statistics Canada and Eurostat. Petitioner deducted amounts for air freight and insurance and, where appropriate, duty charges. Since the import statistics were in foreign currencies, petitioner made currency conversions using monthly exchange rates published in the Federal Reserve Bulletin.

Petitioner alleged home market sales below the cost of production (COP) with respect to the subject merchandise for all Colombian producers and exporters named in the petition. However, petitioner did not provide any company-specific sales data in its COP allegation. Because it is the Department's practice to require COP allegations to be company-specific, we have not initiated a COP investigation.

Regarding FMV based on CV, because the Department is not initiating a COP investigation, and because the information submitted concerning price-to-price comparisons was deemed to be adequate, we did not review the CV data contained in the petition, nor have we accepted it for purposes of initiation.

Comparison of FMV based on import statistics and net USP for sales of fresh cut roses from Colombia results in a range of alleged dumping margins from .4 percent to 256.7 percent.

Ecuador

Petitioner based USP on offers for sale by Ecuadorean importers and distributors of the subject merchandise to U.S. customers. Petitioner deducted from USP amounts for air freight, insurance, customs duties and handling charges. Petitioner also deducted an amount for commissions paid to the grower on sales of subject merchandise. Petitioner calculated FMV using the two methodologies discussed above for Colombia.

Petitioner alleged home market sales below COP with respect to the subject merchandise for all Ecuadorean producers and exporters named in the petition. However, because petitioner did not provide any company-specific sales data in its COP allegation, we have not initiated a COP investigation.

Regarding FMV based on CV, because the Department is not initiating a COP investigation, and because the information submitted concerning price-to-price comparisons was deemed to be adequate, we did not review the CV data contained in the petition, nor have we accepted it for purposes of initiation.

Comparison of FMV based on import statistics and net USP for sales of fresh cut roses from Ecuador results in a range of alleged dumping margins from .2 percent to 316.7 percent.

Initiation of Investigations

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioners supporting the allegations. We have examined the petitions on fresh cut roses from Colombia and Ecuador and have found that the petitions meet the requirements of 19 CFR 353.13(a). Therefore, we are initiating antidumping duty investigations to determine whether imports of fresh cut roses from Colombia and Ecuador are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our preliminary determinations by July 25, 1994.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determination by the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that imports of fresh cut roses from Colombia and Ecuador are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in any of these investigations will result in its termination; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5879 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–829]

Postponement of Preliminary Antidumping Duty Determination: Saccharin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, U.S. Department of Commerce, room BO99, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239 or 482–0189, respectively.

Postponement

We have determined this investigation to be extraordinarily complicated due to the large number of producers and resellers. We have also determined that respondent parties to the proceeding are cooperating in this investigation. Accordingly, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 353.15(b), we are postponing the date of the preliminary determination until no later than June 16, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 4, 1994.

Joseph A. Spetrini

Assistant Secretary for Import Administration

[FR Doc. 94–5880 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–807, A–428–818]

Initiation of Antidumping Duty Investigations: Steel Wire Rod From Belgium and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

Initiation of Investigations:

The Petitions

On February 14, 1994, we received petitions filed in proper form by the Connecticut Steel Corp., Georgetown Steel Corp., Keystone Steel & Wire Co., North Star Steel Texas, Inc., Co-Raritan River Steel Co., and Northwestern Steel & Wire Co. (petitioners). At the request of the Department of Commerce (the Department), petitioners filed a supplement to the petitions to correct methodological errors and support the data presented. In accordance with 19 CFR 353.12, petitioners allege that imports of steel wire rod (SWR) from Belgium and Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petitions are filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Acting Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products covered by these investigations are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing, by weight, 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, ball bearing steel rods, and deformed concrete reinforcing bars; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Belgium

Petitioners based United States Price (USP) on competitive pricing information obtained through their own business activity and supported with affidavits. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges (including U.S. customs duties), and adjusting for Belgian taxes.

FMV was based on home market price quotes for identical merchandise, exclusive of value-added tax (VAT). Petitioners calculated FMV by subtracting movement charges, and converted the prices to U.S. dollars using contemporaneous exchange rates found in the U.S. Customs Bulletin. Petitioners made a circumstance of sale adjustment for differences in credit expenses. Petitioners also calculated the amount of VAT in accordance with the Department's methodology as discussed in Stainless Steel Wire Rod from France (58 FR 68865, December 29, 1993) (Final Determination) and added the resulting amount to both USP and FMV.

Germany

Petitioners based USP on competitive pricing information obtained through their own business activity and supported with affidavits. This information included delivered prices of SWR to unrelated U.S. customers. Petitioners calculated USP by subtracting movement charges (including U.S. customs duties), and adjusting for German taxes.

FMV was based on home market price quotes for identical merchandise or, if non-identical, merchandise which would presumably have a lower cost of production (COP) than the U.S. merchandise, exclusive of value-added

tax (VAT). Petitioners calculated FMV by subtracting movement charges, and converted the prices to U.S. dollars using contemporaneous exchange rates found in the U.S. Customs Bulletin. Petitioners made a circumstance of sale adjustment for differences in credit expenses. Petitioners also calculated the amount of VAT in accordance with the Department's methodology as discussed in Stainless Steel Wire Rod from France (58 FR 68865, December 29, 1993)(Final Determination) and added the resulting amount to both USP and FMV.

Allegations of Sales Below Cost of Production

Petitioners allege that Forges de Thy-Marcinelle, a potential respondent in the Belgium investigation, is selling the subject merchandise in the home market at prices below its COP. This allegation is based on a comparison of company-specific home market prices with the COP. COP was based on the costs of a comparable U.S. producer adjusted for known differences in the country of production.

Based on the information presented, we have reasonable grounds to believe or suspect that the home market sales of Forges de Thy-Marcinelle are being made at less than COP. See Memorandum to Marie E. Parker from C.M. Miller dated March 4, 1994, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we will initiate a COP investigation with respect to this company if it is named as a respondent in the investigation.

Petitioners also allege that specific potential respondents in the German investigation are selling the subject merchandise in the home market at prices below their COP. These allegations are based on a comparison of company-specific home market prices with the COP. COP was based on the costs of a comparable U.S. producer adjusted for known differences in the country of production, and/or company-specific information, and on the company's financial statements, when applicable.

Based on the information presented, we have reasonable grounds to believe or suspect that the home market sales of the following German producers are being made at less than COP: Stahl-und Walzwerk Brandenburg GmbH, Saarstahl AG, and Thyssen Stahl AG. See Memorandum to Marie E. Parker from C.M. Miller dated March 4, 1994, which is on file in the Import Administration Central Records Unit. Accordingly, pursuant to Section 773(b) of the Act and 19 CFR 353.51, we will initiate COP investigations with respect to each of these companies if they are named as a respondent in the investigation.

Alleged Dumping Margins

The range of positive dumping margins of SWR from Belgium based on price-to-price and price-to-CV comparisons of USP to FMV alleged by petitioners, corrected for minor errors, is 5.69% to 52.34%.

The range of positive dumping margins of SWR from Germany based on price-to-price and price-to-CV comparisons of USP to FMV alleged by petitioners, corrected for minor errors, is 2.77% to 72.09%.

Initiation of Investigations

We have examined the petitions for SWR from Belgium and Germany, as amended, and have found that the petitions meet the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SWR from Belgium and Germany are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our preliminary determinations by July 25, 1994.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that imports of SWR from Belgium and Germany are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in any of these investigations will result in its termination; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: March 7, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-5881 Filed 3-11-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-428-819]

Initiation of Countervailing Duty Investigation: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (202) 482-2239 or Jennifer Yeske (202) 482-0189, Office of Countervailing Investigations, Import Administration, room 3099, U.S. Department of Commerce, Washington, DC 20230.

The Petition

On February 14, 1994, we received a petition from by Connecticut Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., Co-Steel Raritan Co., Keystone Consolidated Industries and Northwestern Steel & Wire Co. ("Petitioners") on behalf of the United States steel wire rod industry. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of steel wire rod in Germany receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Because Germany is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Germany are materially injuring, or threatening material injury to, a U.S. industry.

Standing

Petitioners have stated that they are interested parties, as defined in section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry producing steel wire rod. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorus plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing, by weight, 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, ball bearing steel rods, and deformed reinforcing bars; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarbonization and seams no more than 0.75 mm in depth.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213 41.3000, 7213.41.6000, 7213 49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227 90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation remains dispositive.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Investigation

The Department has examined the petition on steel wire rod from Germany and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters of steel wire rod receive countervailable subsidies. The following programs are included in our investigation.

1. "Rückzahlungsverpflichten" (RZVs)
2. Government Assumption of Debt
3. Debt Forgiveness by Private Banks
4. Worker Assistance under the European Coal and Steel Community's Article 56(2)(b).

We are not including the following program which was alleged to be benefiting producers of the subject merchandise in Germany.

The Government of Saarland's Capital Contribution to DHS of DM 145.1 Million

Petitioners alleged that a DM 145.1 million payment by the Government of Saarland (GOS) constitutes a countervailable equity infusion. Petitioners base this allegation on their claim that the shares which the GOS received in exchange for this payment had a value of only DM 82.5 million, DM 62.5 million less than what the GOS paid.

The question of whether this transaction constitutes a countervailable equity infusion was addressed in Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany (58 FR 6233, January 27, 1993). The Department determined that the funds were provided on terms consistent with commercial considerations because at the same time that the GOS invested, two private investors also invested in DHS on the same terms. Petitioners have provided no new information in this petition indicating that this determination was incorrect. Therefore, the Department does not intend to re-investigate whether the investment was consistent with commercial considerations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determinations By the ITC

The ITC will determine by March 31, 1994, whether there is a reasonable indication that a United States industry is being materially injured, or threatened with material injury, by reason of steel wire rod imports from Germany. If the ITC makes a negative determination, we will terminate this proceeding; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5883 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application no. 91–00002

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Automotive Service Industry Association (ASIA) effective March 1, 1994. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a) any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Automotive aftermarket products including replacement parts, accessories, tools and equipment.

2. Services

Engineering, design and related services related to Products and to contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Proprietary rights to all kinds of technology associated with Products or Services including but not limited to patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), industrial designs and computer software protection.

4. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology Rights)

Marketing, selling, brokering, shipping, handling, common marking and identification, consulting, international market research, advertising and sales promotion, trade show participation, insurance, product research and design, legal assistance services related to compliance with Customs requirements, transportation, trade documentation and freight forwarding, communication and processing of sales leads and export orders, warehousing, foreign exchange, financing, taking title to goods and liaison with foreign government agencies, trade associations and banking institutions.

Export Markets

The Export Markets include all parts of the world except: The United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and Canada.

Export Trade Activities and Methods of Operation

1. ASIA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and/or Services;

e. Solicit Member Suppliers to sell their Products and/or Services and/or offer Export Trade Facilitation Services through the certified activities of ASIA and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. Members may license associated Technology Rights in Export Markets to non-Members in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member customer without coordination with ASIA or any other Member.

3. ASIA and/or its Members may enter into agreements wherein ASIA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) ASIA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other non-Member Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ASIA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ASIA and/or any Member when acting as an Export Intermediary shall make its services available to any Member on non-discriminatory terms.

4. Except as set forth in paragraph 8, ASIA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to export prices, Product quantity, source, and delivery dates are on a transaction-by-transaction basis only;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by ASIA and its Members;

e. information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ASIA's or its Members' export operations, including without limitation sales and distribution networks established by ASIA or its Members in Export Markets, and prior export sales by Members (including prior export price information).

5. ASIA may provide the Members the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by ASIA itself, or by agreement with Members or other parties.

6. Except as set forth in paragraph 8, ASIA and/or its Members may meet to engage in the activities described in paragraphs 1 through 4 above.

7. ASIA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

8. Restricted Information Exchanges

In the case of engine bearings, any exchange or discussion of, as well as any meeting pursuant to paragraph 6 to exchange or discuss, the types of information set forth in paragraph 4 (not including subparagraphs (f) and (g) thereof) shall be subject to the following restrictions:

a. Participation in any price discussion is limited to those instances in which the prices are discussed and determined solely in the following manner: a Neutral Third Party, hereinafter defined, acting independently, will obtain price information concerning engine bearings from the Members which intend to participate in a joint bid and will incorporate that price information into the joint bid or other sales agreement. For purposes of this provision, "acting independently" means that the Neutral Third Party who obtains from and negotiates price information on behalf of the Members will not disclose the price information of one Member to any other Member intending to participate in a joint undertaking with regard to engine bearings.

b. The limitation set forth in (a) above shall also apply to instances where more than one Member intends to participate, but the participation of a Member is solely as an Export Intermediary for the Export Trade Activity or Method of Operation.

c. Neither ASIA nor any Member participating in the Export Trade Activity or Method of Operation shall disclose the engine bearing price information of one Member to any other Member that produces engine bearings.

d. As used in this paragraph, the term "Neutral Third Party" means an individual, partnership, corporation (profit or non-profit), or any representative thereof which is not engaged in the manufacture, distribution, or sale of engine bearings.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product, Service, Technology Rights and/or Export Trade Facilitation Services, whether a Member or non-Member.

Members (Within the Meaning of Section 325.2(l) of the Regulations)

The member companies of ASIA are listed in Attachment A to this Certificate, which is incorporated by reference.

Terms and Conditions of Certificate

(a) Except as expressly authorized in paragraph 4(f), in engaging in Export Trade Activities and Methods of Operation, neither ASIA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing, servicing and repair arrangements) shall be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only and shall include only those Members participating or having a genuine interest in participating in such transactions; provided that ASIA and/or its Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products or Services in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to ASIA, a copy of which ASIA shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) ASIA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate.

The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Protection Provided by Certificate

This Certificate protects ASIA, its Members and their directors, officers, and employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date (March 1, 1994) until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits ASIA and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to ASIA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of ASIA or its Members or (b) the legality of such business plans of ASIA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the U.S. Government is the buyer or where the U.S. Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

Attachment A

Berryman Products, Inc.
Federal Mogul Corporation.
A.E. Clevite, Inc.
JS Products, Inc.
KSG Industries, Inc.
Kwik-Way Manufacturing, Inc.
Sealed Power Division of Sealed Power Technologies Limited Partnership.

Standard Motor Products, Inc.
Triangle Auto Parts Co., Inc.
Truck-Lite Co., Inc.

Dated: March 3, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–5884 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 94–00002." A summary of the application follows.

Summary of the Application

Applicant: Frederick Pogorzelski doing business as Russian Business Center, P.O. Box 90400, Honolulu, Hawaii 96835–0400. Contact: Frederick Pogorzelski, Owner, Telephone: 808–941–4541.

Application No.: 94–00002.

Date Deemed Submitted: March 3, 1994.

Members (In Addition to Applicant): None.

Frederick Pogorzelski d/b/a Russian Business Center seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products:* All Products.
2. *Services:* All Services.
3. *Export Trade Facilitation Services (As They Relate to the Export of Products and Services):* Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, Frederick Pogorzelski d/b/a the Russian Business Center ("RBC") may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreements may prohibit Suppliers from exporting independently of RBC;

d. Enter into exclusive agreements with distributors in the Export Markets;

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among its Suppliers; and

g. Enter into contracts for shipping.

2. RBC and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by RBC with its distributors in the Export Markets.

3. RBC may require any Supplier wishing to terminate its export sales agreement to give RBC six months written notice. RBC may require a former Supplier not to sell through foreign distributors with whom RBC deals for a period of two years following termination.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

Dated: March 7, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–5885 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 030194D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of five applications for scientific research permits and enhancement permits.

Notice is hereby given that the University of Idaho, Department of Fish and Wildlife (P498A), the Idaho Department of Fish and Game (P503N and P503O), the U.S. Army Corps of Engineers (P504E), and the Northern Wasco County Public Utility District (P563) have applied in due form for permits to take listed species of Snake River salmon, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS

regulations governing listed fish and wildlife permits (50 CFR Parts 217–227).

The University of Idaho (P498A) is requesting a scientific research permit to capture listed Snake River salmon in order to study the potential effectiveness of drawdown as a tool to enhance downstream survival of salmonid smolts. The applicant requests this authorization for a duration of six years.

The U.S. Army Corps of Engineers (P504E) is requesting a scientific research permit to capture listed Snake River salmon in order to study passage through the Lower Granite dam, both for project operation and a possible biological drawdown test. The applicant requests this authorization for a duration of one year.

The Northern Wasco County Public Utilities District (P563) is requesting a scientific research permit to capture listed Snake River salmon in order to monitor the effectiveness of the fish screens and of the downstream bypass facility at their hydroelectric generation facility. The applicant requests this authorization for a duration of one year.

The Idaho Department of Fish and Game (IDFG) is requesting two scientific research and Enhancement permits. The first request (P503N) is for the enhancement of Snake River spring/summer chinook salmon from the headwaters of the Salmon River and Sawtooth Fish Hatchery. The second request (P503O) is for the enhancement of Snake River spring/summer chinook salmon from the East Fork Salmon River. IDFG requests these authorizations for a period of five years each.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: March 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–5846 Filed 3–11–94; 8:45 am]

BILLING CODE 3510-22-P

[Docket No. 940256–4055; I.D. 011494A]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota for 1994

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NOAA for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. NOAA is soliciting public comment on the proposed allocation of the IWC bowhead whale catch limit in 1994.

DATES: Comments must be submitted on or before April 13, 1994.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained on request, and the documents examined during business hours (9 a.m. to 5 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, (301) 713–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C 1531–1543) and the Whaling Convention Act 16 U.S.C. 916–916l). In addition, it provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, NOAA develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under Paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948).

In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1992–1994; (2) a summary of available bowhead scientific information, including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits which could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Under Secretary for Oceans and Atmosphere in making his finding on the range of harvest limits. NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit for 1994.

1. Catch Level

At the 43rd Annual Meeting of the IWC, Reykjavik, Iceland, May 27–31, 1991, the following catch limit was established for aboriginal/subsistence whaling:

"The taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: For each of the years 1992, 1993, and 1994 combined, the total number of whales struck shall not exceed 141, except that: (A) Any unused strikes up to ten percent of the total strikes allowed in the years 1989, 1990, and 1991 combined shall be carried forward from those years and added to the combined total of strikes for the years 1992, 1993, and 1994; and (B) in any one year no more than 54 whales shall be struck and no more than 41 shall be landed. (Schedule to the Convention, Paragraph 13(b)(1)(i).)

2. Scientific Information

At the 1991 IWC meeting, the Scientific Committee agreed that the Bering-Chukchi-Beaufort Sea population of bowhead whales is between 6,400 and 9,200 animals, with a most likely estimate of 7,500 whales. A minimum estimate of the replacement yield (RY) was calculated to be 92 whales per year, and the most likely replacement yield for the population size of 7,500 is 254 whales per year. The replacement yield defines the number of new whales annually joining the adult population, and it is assumed that, all other things being constant, up to this number could be taken from the population without causing it to decline.

3. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted its analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983, and the IWC adopted this method for quantifying need in 1986. DOI contracted for a new study on the quantification of subsistence and cultural need for bowhead whales in 1987, which was presented at the 1988 meeting. The new study presented the cultural and subsistence need of nine Alaska Eskimo whaling villages to take 41 landed bowhead whales. This quantification of need used the same method of calculation accepted by the IWC in 1986. This method derives the mean annual number of bowhead whales landed per capita during a specified historical period and multiplies this mean by the current Eskimo population of nine Alaska Eskimo whaling villages. The result of this calculation is the total number of bowhead whales these Eskimo whaling villages need to land each year in order to meet their cultural and subsistence need.

When the IWC adopted this method of quantifying need, members of the IWC Aboriginal Subsistence Subcommittee noted that the quantification was based on a large but incomplete series of data on historical bowhead landings. It was also noted that the quantification used an inconsistent data base period. The DOI study was initiated to correct these deficiencies. To complete the series of data on historical bowhead whale landings to the extent possible, the study undertook a comprehensive review of available published and unpublished sources of bowhead landings. Remaining gaps are unlikely to be significantly reduced with further searches for historic data on bowhead landings. The data resulting from this study also permitted the use of a consistent historical base period for the calculation of need. In the prior analysis, the base periods varied from 1940 to 1970 and 1950 to 1970. The base period now begins in 1910, the year following the cessation of commercial whaling in the Arctic, and ends in 1969, prior to the period of unusually high bowhead harvests in the unique economic circumstances of the 1970s. Therefore, applying the additional landed bowhead data and the longer period to the accepted method of quantifying need, results in a current cultural and subsistence need of 41 landed whales.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)): "For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level." Given the above-stated estimates of replacement yields of 92 (lower bound) to 254 whales for the point estimate recruited into the population annually, an aboriginal/subsistence catch can be permitted in 1994.

The catch limit for bowhead whales for the years 1992–1994, established by the IWC, is 141 strikes plus 13 strikes carried over from the previous block quota with no more than 54 whales struck and no more than 41 landed in any one year. Of the 154 total strikes for 1992–1994, 50 bowhead whales were struck and 38 were landed in 1992, and 52 were struck and 41 landed in 1993. Therefore, the number under consideration for allocation to the Alaska Eskimo Whaling Commission for the 1994 catch limit is 52 strikes or 41 landed whales.

5. Documents Reviewed

A list of the documents reviewed for this action may be obtained on request (see **ADDRESSES**). The documents are available for public inspection during the 30-day public comment period at the same address.

(Authority: 16 U.S.C. 916, 1361–1407, 1531–43)

Dated: January 14, 1994.

D. James Baker,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 94–5891 Filed 3–11–94; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee

March 31, 1994.

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on March 31, 1994, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Presentation/discussion by GAO staff of the GAO derivatives study;

2. Presentation/discussion by House Banking Committee staff of Cong. Leach's proposed legislation to strengthen OTC derivatives regulation;

3. Discussion/analysis of OTC derivative issues in Congress for the upcoming year by representatives of the House Energy & Commerce Committee and Senate Banking Committee;

4. Panel Discussion of Clearing Systems for Off-Exchange Instruments, including Multinet and the CBOT's Hybrid Instrument Transaction Service;

5. Briefing by CFTC Trading and Markets staff on CFTC's proposed risk assessment rules; and

6. Wrap-up; discussion of future agenda items.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 8, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5839 Filed 3–11–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Board on the Investigative Capabilities of the Department of Defense; Change in Status of Meeting

AGENCY: Advisory Board on the Investigative Capabilities of the Department of Defense, DOD.

ACTION: Notice of Advisory Board Meeting; change in status of meeting.

SUMMARY: On March 4, 1994, the Department of Defense published a notice announcing the meeting of the Advisory Board on the Investigative Capabilities of the Department of Defense (59 FR 10378). This notice is published to announce a change in the status of the meeting. All sessions on March 17, 1994 will be open. Portions of the meeting on March 18, 1994 will be closed. This determination is based upon the consideration that it is expected that the discussions will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the closed portion of the meeting. To permit all of this Advisory Board meeting to be open to the public would prevent discussion of such matters and would greatly diminish the Board's findings or recommendations to the Secretary of Defense.

DATES AND TIMES: March 17, 1994 from 8:30 a.m.–5:30 p.m. and March 18, 1994 from 9 a.m.–12:15 p.m.

ADDRESSES: 1700 N. Moore Street, Suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capabilities of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: March 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5794 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 28, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 2011 Crystal Drive Suite 307 Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5843 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, March 23–24, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5844 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meetings

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 22, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Part, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the

Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II § 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: March 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94–5845 Filed 3–11–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) in Conjunction With Proposed Maintenance Dredging of the Indiana Harbor and Canal, and the Construction of a Confined Disposal Facility (CDF) at East Chicago, in Lake County, IN

AGENCY: U.S. Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed project involves maintenance dredging of the Federal navigation channel in Indiana Harbor and Canal, and construction and operation of a confined disposal facility (CDF) for containment of contaminated sediments dredged from the harbor and canal. Approximately 4.7 million cubic yards of sediment could be dredged and confined during a 30-year maintenance period (1998 to 2027). Alternatives include (but are not limited to) dredging/disposal, no action, and innovative treatment technologies; alternative CDF locations include the ECI, J–Pit, and Inland Steel sites. Major features of the recommended plan include dredging the authorized Federal navigation channel and certain berthing areas/dockfaces adjacent to the channel, and construction of a CDF. The proposed CDF would be constructed at the site of the former Energy Cooperative, Inc. (ECI). The ECI site is located along the north bank of the Lake George Branch of the Indiana Harbor Canal, immediately west of Indianapolis Boulevard.

ADDRESSES: U.S. Army Corp of Engineers, Chicago District, 111 N. Canal St., Chicago, Illinois 60606–7206.

FOR FURTHER INFORMATION CONTACT: Mr. Keity Ryder, 312–353–7795.

SUPPLEMENTARY INFORMATION:

1. The project would provide both commercial navigation and environmental benefits. The U.S. Environmental Protection Agency is a cooperating agency.

2. Coordination regarding the assessment of impacts of the project is being undertaken with the concerned agencies, including the U.S. Environmental Protection Agency, the Indiana Department of Environmental Management, and local communities.

3. Issues to be addressed in the DEIS will include impacts of dredging, impacts of CDF construction and operation, feasibility of innovative treatment technologies, protection of Lake Michigan water quality and fisheries, protection of groundwater, impacts on local communities and industry, and future use of the facility.

4. The scoping process has been undertaken as part of a program on-going public participation and interagency coordination begun in the late 1970s. A public meeting to discuss a previous draft EIS on Indiana Harbor and Canal was held in East Chicago on 18 March 1986. Interagency scoping meetings were held on 19 May 1986, 22 April 1987, and 25 October and 12 December 1988.

5. A public meeting will be held during the 90-day public review and comment period for the DEIS.

6. The DEIS is expected to be available to the public in late March or early April 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–5800 Filed 3–11–94; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement for the Proposed East Fork Poplar Creek Flow Management Project at the Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: DOE proposes to install an energy dissipation chamber and a raw water line in the Y–12 Plant within the East Fork Poplar Creek (EFPC) floodplain which is located in Anderson County, in the city of Oak Ridge, Tennessee. In accordance with 10 Code of Federal Regulations (CFR), part 1022, DOE will prepare a Floodplain Assessment and perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments are due to the address below no later than March 29, 1994.

ADDRESSES: Comments should be addressed to: R. J. Spence, Manager, DOE Y–12 Site Office, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box 2001, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, INCLUDING A LOCATION MAP, CONTACT: Susan D. Morris, DP–813, U.S. Department of Energy, Y–12 Site Office, Post Office Box 2001, Oak Ridge, Tennessee 37831, 615–576–3545 (telephone), 615–576–8019 (fascimile).

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585,202–586–4600 or 800–472–2756

SUPPLEMENTARY INFORMATION: DOE proposes to install a concrete box with 2 weirs (obstructions placed in a stream, diverting water for measuring the rate of flow) and a raw water line to manage the flow of the EFPC. The action would take place at the headwaters of the creek, which are located within the boundaries of the Y–12 Plant. The open box would be approximately 12 by 14 feet and emplaced at the edge of the creek bank to allow for proper diffusion and mixing of the added water with creek headwaters. Additional water would be provided by extending the existing raw water line from the Clinch River. As part of the proposed action, a Best Management Practices Plan will be prepared to identify the necessary steps to minimize potential impacts to the creek.

The addition of Clinch River water to the creek is required by the Tennessee Department of Environment and Conservation in order to guarantee a minimum base flow as the limitations established in the Y–12 Plant National Pollutant Discharge Elimination System permit are based on management of the flow in the EFPC. Additional water will not be added when the flow in the creek

is above this established minimum flow, such as during storm events.

In accordance with DOE regulations, "Compliance with Floodplains/ Wetlands Environmental Review Requirements," 10 CFR part 1022, DOE will prepare a Floodplain Assessment for this proposed DOE action. After DOE issues the assessment, a Floodplain Statement of Findings will be published in the **Federal Register**.

Issued in Washington, DC, on this 7th day of March 1994.

Eugene G. Grewis,

Associate Deputy Assistant Secretary for Military Application, Defense Programs.

[FR Doc. 94–5897 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–PM

Morgantown Energy Technology Center Financial Assistance Award (Potential Sources Sought)

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Expressions of interest.

SUMMARY: The U.S. Department of Energy is seeking expressions of interest for the Office of Environmental Management Technology Leveraging Initiative. The Office of Environmental Management was established in November 1989 and was tasked with cleaning up the legacy of environmental pollution at DOE weapons complex facilities, preventing further environmental contamination, and instituting responsible environmental management. The magnitude and complexity of many aspects of this mission are such that it cannot be achieved using existing technology without incurring high costs. The technology leveraging initiative is to transfer into practice technologies developed by DOE in its national laboratories or in other agreements. It will also be beneficial to the nation if the new or improved technologies developed to clean up the DOE weapons complex facilities can be used by other government agencies and for other industrial cleanup applications. Considering that DOE and the world market needs for environmental cleanup are immense, there is a large potential market for technology transfer. Consequently, cost sharing will be a key consideration. It is anticipated that this activity will be partially DOE funded at initiation, and will mature to self sufficiency with little or no Government funding.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4241.

SUPPLEMENTARY INFORMATION: It is envisioned that the work scope will address methods for environmental technology integration and transfer, which means facilitating the licensing of DOE funded technologies, guiding the startup of new venture companies with DOE developed technologies, identifying markets and assessing the commercial potential of the DOE developed technologies, and promoting coordination between DOE and U S.-based industry to address environmental cleanup technology development issues of mutual interest. The developed technologies are in the following focus areas: (1) Contaminant Plume.Containment and Remediation, (2) Mixed Waste Characterization, Treatment, and Disposal, (3) High-Level Waste Tank Remediation, (4) Landfill Stabilization, and (5) Facility Transitioning, Decommissioning, and Final Disposition.

Interested parties should provide: statements of experience and capabilities in both the technical and business aspects specifically associated with the focus areas and work scope; your perception of the discussed activity; a name and telephone number for a point of contact; and be limited to 5 pages. Statements should be submitted to the attention of D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880. Closing date for the submission of statements of interest is fifteen (15) days from the publication date of this notice.

This notice is for information and planning purposes, does not constitute a request for proposal and is not to be construed as a commitment by the Government to issue a solicitation or enter into an award.

Issued in Washington, DC, March 4, 1994.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–5898 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–M

Notice of Public Meeting to Discuss the Environmental Assessment for Proposed Interim Storage of Highly Enriched Uranium Above the Maximum Historic Level at the Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: DOE has scheduled a public meeting in Oak Ridge, Tennessee, on Thursday, March 24, 1994, to provide a public briefing, receive comments, and answer questions from the State of Tennessee and stakeholders on the predecisional draft Environmental Assessment (EA) for the Proposed Interim Storage of Highly Enriched Uranium (HEU) above the maximum historic levels at the Y–12 Plant, Oak Ridge, Tennessee. The Y–12 Plant, which is part of the DOE-owned Oak Ridge Reservation, located 20 miles west of Knoxville, Tennessee, has had a mission to store HEU since the World War II era. Since 1964, HEU used in the production of nuclear weapons was recycled from HEU stockpiled at the Y–12 Plant. Because the United States has now ceased production of nuclear weapons, DOE must hold its excess HEU in storage until a decision on long-term disposition is made by an interagency task force recently formed by President Clinton. The Department of Energy will also discuss its overall nuclear materials storage and disposition planning activities.

The purpose of this meeting is to provide the State of Tennessee and other stakeholders an opportunity to discuss the EA and the Department's long-term plans for disposition of special nuclear materials. All interested and affected individuals are invited to participate in the public meeting which will be held at the Pollard Auditorium, Oak Ridge Associated Universities, Oak Ridge, Tennessee, from 9 a.m. to 9 p.m. on Thursday, March 24, 1994. During the morning and afternoon sessions (9 a.m. to 5 p.m.) the Department proposes to discuss the EA and its nuclear materials disposition activities. During the evening session (6 p.m. to 9 p.m.) the morning and afternoon sessions will be summarized and the public will have further opportunity to ask questions and discuss the EA. Department of Energy officials from Oak Ridge, Tennessee, and Headquarters in Washington, DC, will be present at each of the sessions to answer questions.

FOR FURTHER INFORMATION CONTACT: Susan D. Morris, DP–183, U.S. Department of Energy, Y–12 Site Office, Post Office Box 2001, Oak Ridge, Tennessee 37831, 615–576–3545.

SUPPLEMENTARY INFORMATION: Under the Department of Energy National Environmental Policy Act Implementing Procedures (10 Code of Federal Regulations 1021.301), the Department is required to provide EAs to the host State for review prior to issuing its decision. A copy of this predecisional EA was provided to the State of Tennessee on March 2, 1994.

Notices were placed in local newspapers inviting the general public to review and provide comments to DOE on the EA. Copies of the EA were placed in the following DOE Reading Rooms:

U.S. Department of Energy, Public Reading Room, Federal Office Building, 200 Administration Road, Oak Ridge, Tennessee 37831.

The DOE Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on this 7th day of March 1994.

Charles J. Beers, Jr.,

Rear Admiral, U.S. Navy, Deputy Assistant Secretary for Military Application and Stockpile Support, Defense Programs.

[FR Doc. 94–5986 Filed 3–11–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2486–002 Wisconsin]

Wisconsin Electric Power Co.; Availability of Draft Environmental Assessment

March 8, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Pine Hydroelectric Project, located on the Pine River in Florence County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NW., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Tom Camp at (202) 219–2832.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5813 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–32–000, et al.]

EI Services Canada Limited, et al.; Electric Rate and Corporate Regulation Filings

March 8, 1994.

Take notice that the following filings have been made with the Commission:

1. EI Services Canada Limited

[Docket No. EG94–32–000]

On March 3, 1994 EI Services Canada Limited ("EI Canada") c/o Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

EI Canada states in its application that it is a Nova Scotia corporation formed to provide certain operation and maintenance services to an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada, which facility will be owned by Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership.

Comment date: March 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. AES Power, Inc.

[Docket No. ER94–890–000]

Take notice that on March 4, 1994, AES Power Inc. tendered an amendment to its earlier-filed application in this docket for approval to market capacity and energy at market-based rates.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES94–17–000]

Take notice that on February 28, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $1.2 million of its Common Stock (approximately 40,000 shares) for the acquisition of a heating, ventilating and air conditioning company. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: March 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5830 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–260–000, et al.]

Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

March 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP94–260–000]

Take notice that on March 2, 1994, Algonquin Gas Transmission Company ("Algonquin"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP94–260–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to (i) transport gas on a pipeline lateral for Canal Electric Company ("CEC") and Montaup Electric Company ("MEC") (CEC and MEC are collectively referred to herein as "Customer") pursuant to a proposed new Rate Schedule X–40, and (ii) to construct and operate facilities necessary to perform such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate facilities and transport on a firm basis up to 75,000 MMBtu per day of natural gas through such facilities under

a new Rate Schedule X–40 for Customer. Algonquin states that Customer intends to use the natural gas transported hereunder as fuel for Unit No. 2 of the electric generating station in Sandwich, Massachusetts. Specifically, Algonquin proposes to construct, own and operate a pipeline lateral, meter station, and appurtenant facilities (the "Canal Lateral"). Algonquin states that the Canal Lateral will extend from a point on Algonquin's existing G–8 system in Bourne, Massachusetts along the north side of the Cape Cod Canal to an agreed upon point of interconnection, at or near the Bourne/Sandwich town line, with facilities to be constructed by Customer for purposes of receiving the gas. Algonquin states that Customer is filing a contemporaneous petition for declaratory order requesting that the Commission declare its facilities to be nonjurisdictional.

Algonquin states that transportation service under proposed Rate Schedule X–40 will consist of receipt of gas at the head of the Canal Lateral and delivery to Customer's facilities at the terminus of the Canal Lateral. Algonquin states that transportation service upstream of the Canal Lateral will be provided through existing facilities under existing open access rate schedules, including firm transportation obtained through capacity release or interruptible transportation. Customer and Algonquin have executed a precedent agreement contemplating firm transportation service for a fourteen year term under proposed Rate Schedule X–40 and construction of the following facilities necessary to provide that service:

1. 4.0 miles of 18-inch pipeline extending from the interconnection of Algonquin's existing G–8 and G–11 System in Bourne, Massachusetts along the north side of the Cape Cod Canal to an agreed upon point of interconnection with facilities to be constructed by Customer at or near the Bourne/Sandwich, Massachusetts town line.

2. Line pressure measurement meter station adjacent to the existing Algonquin Sagamore Meter Station, consisting of measurement facilities with flow control capability, a remote terminal unit, and utilities for data transmission, valves and other associated equipment.

3. Expansion of the existing G–11 System tap valve site and construction of a new valve site at the upstream and downstream ends of the Canal Lateral respectively.

Algonquin states that the facilities would be constructed during the summer and fall of 1995 for an in-service date of November 1, 1995. The cost of the facilities is estimated to be approximately $7.5 million. The proposed monthly demand charge for service under Rate Schedule X–40 is $2.4986 per MMBtu.

Comment date: March 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources Company

[Docket No. CP94–262–000]

Take notice that on March 2, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–262–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities in Arkansas to Arkansas Louisiana Gas Company (ALG) under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to abandon 1,300 feet of 2-inch plastic pipe (AER's Line KM–9) and two 1-inch delivery taps in Union County, Arkansas. Line KM–9 was constructed in 1923 and certificated in AER's Grandfather Docket No. G–252, it is stated. AER says that Line KM–9 has been used to deliver gas to five ALG domestic customers in a rural area. AER states that there are no industrial or prospective industrial customers on this line. It is further stated that ALG would continue to secure the appropriate supply arrangements and provide deliveries to the rural customers. Therefore, AER says that no services to the customers would be abandoned.

Comment date: April 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Canal Electric Company and Montaup Electric Company

[Docket No. CP94–264–000]

Take notice that on March 1, 1994, Canal Electric Company, One Main Street Post Office Box 9150 Cambridge, Massachusetts 02142–9150, and Montaup Electric Company, One Liberty Square Post Office Box 2333 Boston, Massachusetts 02107, (Jointly referred to as Petitioners) filed in Docket No. CP94–264–000 a request for a declaratory order that Petitioners construction and operation of certain facilities are not subject to the Commission's jurisdiction under the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that they intend to construct and operate facilities designed to receive natural gas supplies from a new lateral pipeline to be constructed by Algonquin Gas Transmission Company (Algonquin) and to deliver those gas supplies to Generating Unit No. 2 at the Canal Electric Plant located in Sandwich, Massachusetts.

Specifically, Petitioners proposes to construct, own, and operate approximately 4,600 feet of 18-inch pipeline. Petitioners state that approximately 3,300 feet of this will be located on Canal Plant property and approximately 1,300 feet will extend from the Canal Plant property to the point of interconnection with new facilities to be constructed by Algonquin. In addition, Petitioners state that they will construct appurtenant pressure regulating and heating facilities. Petitioners state that their pipeline facilities would originate on the property of the existing Canal Plant, proceed in a northwesterly direction, cross under the Cape Cod Canal, and terminate at a point located north of the Cape Cod Canal, at or near the Bourne/Sandwich town line, where they would interconnect with the interstate natural gas transmission facilities proposed for construction by Algonquin in Docket No. CP94–260–000. Petitioners state that the facilities will be constructed for the purpose of receiving supplies of natural gas for use only as fuel for Canal Unit No. 2, and will not be used to transport or sell natural gas to any third party.

Petitioners request that the Commission rule: (1) That Petitioners will not become natural gas companies subject to the jurisdiction of the Commission by virtue of their ownership and operation of pipeline facilities; (2) that Petitioners proposed facilities will not be used in interstate commerce; and (3) the service to be provided by Petitioners facilities will not occur in interstate commerce.

Comment date: March 29, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources Company

[Docket No. CP94–267–000]

Take notice that on March 4, 1994, Arkla Energy Resources Company ("AER"), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–267–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement and rearrangement of existing mainline pipeline, abandonment of minor storage and gas supply facilities and certain mainline

enhancements to its pipeline system in Arkansas, Louisiana and Texas.

AER specifically proposes to do the following replacement activities: (a) Reclaim Line F in Louisiana, 87 miles of 20-inch Dresser-coupled pipe and replace it with 91 miles of 20-inch welded steel pipe and rate the MAOP to 1000 psig or greater; (b) re-route a portion of Line F in Claiborne Parish, Louisiana to connect to AER's Ruston Storage Field and abandon in place Line 1–F and Line FT–5; (c) reclassify approximately 8.2 miles of Line F in Caddo Parish, Louisiana and operate it as a low pressure gas supply line; and (d) abandon 55 inactive delivery taps and rearrange eleven existing delivery taps, all serving Arkansas Louisiana Gas Company. AER states that these replacement activities are estimated to cost $48.6 million.

AER also specifically proposes to do the following mainline enhancements: (a) Install a mainline compressor station, two 2,250 h.p. compressor units, on Line F near the Ruston Storage Field and rearrange the existing Ruston Storage Compressor unit to perform both mainline and storage operations; (b) install approximately 2.2 miles of 20-inch pipeline (Line ACT–4) at the discharge side of AER's Malvern Compressor Station on Line AC to Line S–3–S in Hot Spring County, Arkansas; and (c) uprate the MAOP on AER's Line S from 880 psig to 930 and abandon 2,208 feet of Line S in Harrison County, Texas. AER states that these mainline enhancements are estimated to cost $12.4 million.

Comment date: March 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5832 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–306–000]

Keystone Cogeneration Service Company

March 4, 1994.

Take notice that on February 23, 1994, Keystone Cogeneration Service Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5831 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–3–000]

Montana Power Company; Informal Settlement Conference

March 8, 1994.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Monday, March 21, 1994, at 11 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Mark Hegerle at (202) 208–0927.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5814 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–010]

Williams Natural Gas Company; Proposed Change in FERC Gas Tariff

March 8, 1994.

Take notice that on March 4, 1994, Williams Natural Gas Company (WNG) tendered for filing Third Revised Sheet Nos. 6 and 6A to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of these tariff sheets is March 1, 1994.

WNG states that it tenders the above tariff sheets for the purpose of placing an interim rate reduction of approximately $12 million into effect pending final resolution of the general rate proceeding in this docket.

WNG states that a copy of its filing was served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5815 Filed 3–11–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4849–2]

Ozone Design Value Study of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report on the Clean Air Act Ozone Design Value Study for public review and comment.

SUMMARY: Section 183(g) of Title I of the Clean Air Act Amendments of 1990 requires the Administrator to conduct a study of whether the methodology in use by the EPA, as of the date of enactment, for establishing a design value for ozone, provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The EPA is directed to obtain public review of the study report prior to submitting the report to Congress.

The focus of the Ozone Design Value Study is EPA's ozone design value methodology. A design value may be viewed intuitively as a concentration value used to quantify the degree to which the level of an air quality standard has been exceeded. With the wording of the ozone standard, the appropriate design value is the concentration with expected number of exceedances equal to 1. These ozone design values were used to classify areas as marginal, moderate, serious, severe, or extreme in accordance with the provisions of the 1990 Clean Air Act Amendments.

This notice announces the availability of a draft report of the Clean Air Act Ozone Design Value Study for public review and comment.

DATES: Comments must be received on or before April 14, 1994.

AVAILABILITY OF DRAFT REPORT: Single copies of the report are available from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "The Clean Air Act Ozone Design Value Study."

FOR FURTHER INFORMATION CONTACT: Mr. Warren P. Freas at (919) 541–5469, Data Analysis Section, Monitoring and Reports Branch (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: March 4, 1994.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–5872 Filed 3–11–94; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, March 29, 1994, from 9:30 a.m. to 12:10 p.m. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Role and Responsibilities; Financial and Budget Status Report; Update on Reinventing Eximbank; Discussion of Topics for Future Advisory Committee Meetings; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8893, not later than March 28, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to March 24, 1994, Loretta Carrier, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Loretta Carrier, Room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Tamzen C. Reitan,

Vice President, Management Services and Human Resources.

[FR Doc. 94–5979 Filed 3–11–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1013–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1013–DR), dated March 3, 1994, and related determinations.

EFFECTIVE DATE: March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe winter storms, freezing, and flooding on January 16–February 14, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for

Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster: Colbert, Cullman, Dekalb, Franklin, Lauderdale, Lawrence, Limestone, Marshall and Winston Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–5864 Filed 3–11–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Cambridgeport Mutual Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 7, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Cambridgeport Mutual Holding Company, Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire Cambridgeport Savings Bank, Cambridge, Massachusetts. Cambridgeport Savings Bank, upon the reorganization, will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Commercial Bancshares, Inc., Abbeville, Louisiana, and thereby indirectly acquire First Commercial Bank, Franklin, Louisiana.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5892 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota, the discount brokerage business of First National Bank of Detroit Lakes, Detroit Lakes, Minnesota, a subsidiary of Norwest Corporation, and thereby engage in full-service brokerage activities, government securities, and limited underwriting activities, pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5893 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Walter E. Ollech, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Walter E. Ollech, Neillsville, Wisconsin; to retain 11.01 percent of the voting shares of Withee Bank Shares, Inc., Withee, Wisconsin, and thereby indirectly acquire State Bank of Withee, Withee, Wisconsin.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. City Bankshares, Inc., ESOP; Bruce W. Day and Carl L. Short, Co-Trustees, Oklahoma City, Oklahoma, to acquire an additional 0.79 percent, for a total of 15.92 percent of the voting shares of City Bankshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire City Bank & Trust, Oklahoma City, Oklahoma.

2. Peter and Elizabeth Field, Newcastle, Wyoming, to acquire an additional 3.74 percent, for a total of 17.84 percent of the voting shares of Union Bank Corporation, Upton, Wyoming, and thereby indirectly acquire Union State Bank, Upton, Wyoming.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5894 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation, Hartford, Connecticut, and Boston, Massachusetts; Petition for Reconsideration of the Board's decision

Shawmut National Corporation, Hartford, Connecticut, and Boston, Massachusetts (Shawmut), has filed a Petition for Reconsideration of the Board's decision dated November 15, 1993, not to approve its application to acquire New Dartmouth Bank, Manchester, New Hampshire. The Board's Rules of Procedure provide that a request for reconsideration of a Board decision must present relevant facts that for good cause shown were not previously presented to the Board.

Shawmut represents in its request that relevant facts not previously considered by the Board are now available. In particular, Shawmut refers to its settlement with the Department of Justice and the Federal Trade Commission of charges of illegal discrimination by Shawmut Mortgage Company; its improved lending record as reflected by 1993 data filed under the Home Mortgage Disclosure Act (HMDA); the results of its efforts to ensure that HMDA data are accurate; managerial and organizational changes designed to strengthen compliance; and the results of steps initiated to improve its lending to minority and low- and moderate-income communities. In light of these facts, Shawmut maintains that the Board should grant the petition and approve the proposed acquisition. Notice of the filing of the petition is published in order to seek the views of interested persons on the issues presented by the petition. The Board expects to act on the petition no later than May 2, 1994.

Comments may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments must be received not later than March 31, 1994.

The Petition for Reconsideration may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5895 Filed 3-11-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0007]

Revision of the Food Chemicals Codex Policy on Arsenic Specifications; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the revised Food Chemicals Codex policy on arsenic specifications. This new policy was recently approved by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This revised policy is intended to be implemented in the fourth edition of the Food Chemicals Codex, scheduled for release in early 1996.

DATES: Written comments and information by May 27, 1994. The committee advises that comments not received by this date cannot be considered for the fourth edition but will be considered for a later edition or supplement.

ADDRESSES: Submit written comments and information to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580, or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, a compendium of specifications for substances used as food ingredients. In the **Federal Register** of July 15, 1993 (58 FR 38129), FDA announced an opportunity for public comment on the committee's revised policy on lead and heavy metals.

FDA now gives notice that the committee is soliciting comments and information on a revised policy on arsenic specifications and its proposed implementation. The revised policy is intended for implementation in the fourth edition of the Food Chemicals Codex, which is scheduled for release in early 1996. FDA emphasizes, however, that it will not consider adopting new Food Chemicals Codex monographs and monograph revisions until the public has had ample opportunity to comment on them. The opportunity for public comment on new and revised monographs will be announced in a notice published in the **Federal Register**.

The committee regards the safety of properly used food chemicals as one of its goals. This means that Food Chemicals Codex specifications will respond to advances in new manufacturing methods, analytical techniques, toxicology, and safety issues. At the same time, where possible, the committee will reduce unnecessary burdens on manufacturers and users of food ingredients. Currently, most monographs for Food Chemicals Codex substances include an arsenic limit that requires testing to ensure

compliance. The committee believes that arsenic is no longer a contemporary concern in many Food Chemicals Codex substances for the following reasons: (1) The use of arsenic-containing materials in agriculture and manufacturing has declined sharply and registrations for many arsenic-containing pesticides have been revoked; (2) the heavy metals limit for many Food Chemicals Codex substances has been significantly reduced. Because arsenic is one of the nine elements detected as a heavy metal, the test indirectly provides a safety net in those rare cases where arsenic is present; and (3) arsenic has not been associated with or detected in most Food Chemicals Codex substances with a long history of use. Therefore, the committee believes that the inclusion of arsenic limits in Food Chemicals Codex monographs should not be routine, but that inclusion of such limits should be considered on an "as needed" basis. The committee has adopted the following general policy:

The general policy for arsenic specifications in Food Chemicals Codex monographs is that an arsenic specification be included in the requirements only when there is specific reason to believe that arsenic constitutes a significant portion of the heavy metals limit.

To implement this policy in the fourth edition, the committee proposes deleting the arsenic specification from all current monographs, except for the following substances where the arsenic specification will be retained.

1. The top 25 high-volume usage ingredients, based on the 1987 NAS/NRC Food Additives Survey:
Calcium carbonate
Calcium oxide
Caramel color
Citric acid
Coconut oil
Corn oil
Corn syrup
Corn syrup solids (glucose syrup, dried)
Cottonseed oil
Cottonseed oil, partially hydrogenated
Dextrose
Diatomaceous earth
D-sorbitol
Food starch, modified
High fructose corn syrup
Lactose
Mono- and diglycerides
Sodium bicarbonate
Sodium chloride
Sodium hydroxide
Soybean oil
Soybean oil, hydrogenated
Sucrose
Sucrose, liquid
Whey

2. Ingredients that are obtained from natural sources, such as gums and mineral phosphates, including:
Acacia gum
Agar
Alginic acid
Ammonium alginate
Ammonium phosphate, dibasic
Ammonium phosphate, monobasic
Calcium alginate
Calcium phosphate, monobasic
Calcium phosphate, dibasic
Calcium phosphate, tribasic
Calcium pyrophosphate
Carrageenan
Gellan gum
Ground limestone
Guar gum
Gum ghatti
Kaolin
Karaya gum
Konjac flour
Locust (Carob) bean gum
Pectin
Perlite
Potassium alginate
Potassium phosphate, dibasic
Potassium phosphate, monobasic
Potassium phosphate, tribasic
Potassium polymetaphosphate
Potassium pyrophosphate
Potassium tripolyphosphate
Silicon dioxide
Sodium alginate
Sodium aluminum phosphate, acidic
Sodium aluminum phosphate, basic
Sodium metaphosphate, insoluble
Sodium phosphate, dibasic
Sodium phosphate, monobasic
Sodium phosphate, tribasic
Sodium polyphosphates, glassy
Sodium pyrophosphate
Sodium trimetaphosphate
Sodium tripolyphosphate
Talc
Titanium dioxide
Xanthan gum

3. Ingredients where information and/or data exist to support the inclusion of an arsenic specification.

The committee requests data and information from all interested parties suggesting other Food Chemicals Codex monographs that, for safety reasons, should retain the arsenic specification.

Two copies of written comments and information regarding this notice are to be submitted to NAS (address above). Comments may also be submitted electronically to the Food Chemicals Codex bulletin board, 202–334–1738, or transmitted by facsimile, 202–334–2316. Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment, submitted either electronically or in writing, to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under Docket No. 94N–0007 for public review.

Dated: March 3, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5824 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94G–0023]

Soya Oligo Japan, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Soya Oligo Japan, Inc., has filed a petition (GRASP 1G0369) proposing to affirm that soybean oligosaccharide syrup is generally recognized as safe (GRAS) when used as an ingredient in foods.

DATES: Written comments by May 30, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Soya Oligo Japan, Inc., c/o 1001 G St. NW., suite 500, Washington, DC 20001, has filed a petition (GRASP 1G0369) proposing that soybean oligosaccharide syrup be affirmed as GRAS when used as an ingredient in foods.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the

evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 30, 1994, review the petition and/or file comments with the Dockets Management Branch (address above). Two copies of any comment should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether soybean oligosaccharide syrup is, or is not, GRAS for the proposed use and whether it should be listed for use as an ingredient in foods. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5789 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[RIN–0905–ZA06, PN 2179]

Availability of Funds for Community and Migrant Health Center Activities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of discretionary funds of approximately $617.5 million in fiscal year (FY) 1994 for Community and Migrant Health Center (C/MHC) activities including grants for the operation of C/MHCs, the Comprehensive Perinatal Care Program (CPCP) and Special Infant Mortality Reduction Initiative (SIMRI), and capital improvements.

A subsequent notice will be issued in the **Federal Register** to announce the availability of approximately $17 million to support new start and expansion grants for C/MHCs, a minimal number of planning grants for future CHCs and grants for the development and/or expansion of networking activities of C/MHCs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–01) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

APPLICATION DEADLINES: Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline; or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.) Late applications not accepted for processing will be returned to the applicant. Deadlines are as follows:

SECTIONS 329 AND 330 FUNDS: Competing continuation applications for section 329 and/or Section 330 funds to provide essential services are due 120 days prior to the expiration of the current project period award unless otherwise specified. Non-competing continuation applications are due 120 days prior to the expiration of the current budget period.

CAPITAL: In order to be considered for funding, major capital applications must be received no later than April 13, 1994. Minor capital improvements will continue to be included in a project's section 329 or section 330 continuation application. Emergency supplemental requests (major or minor) may be submitted at any time during the year.

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs), whose names and addresses are provided in the appendix to this document, are responsible for distributing application kits and guidance (PHS form 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control numbers 0937—0189). Completed applications must be submitted to them. The kits and guidance will be sent to existing grantees, while new applicants should contact the appropriate RGMO. The RGMOs are available to provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information about the availability of sections 329, 330, 329(g)(1), 330(f)(1) and 333(d) funds, contact Richard C. Bohrer, (301) 594–4300. For additional information about funding under section 329, contact Antonio Duran, (301) 594–4303. Additional information about CPCP and SIMRI can be obtained from Joan Holloway, (301) 594–4420.

SUPPLEMENTARY INFORMATION:

A. General Primary Care Services Delivery

Grant Amounts

It is estimated that approximately $521 million in discretionary continuation grants for CHC activities (i.e., approximately $478 million for general primary care services delivery and $43 million for CPCP and SIMRI activities) and approximately $59 million in discretionary grants for continuation of MHC activities (i.e., approximately $57 million for general primary care services delivery and $2 million for CPCP and SIMRI activities) will be available under sections 330 and 329 of the Public Health Service (PHS) Act (42 U.S.C. 254c and 254b, respectively). Of the total $45 million available for CPCP and SIMRI activities, approximately $10 million will be for SIMRI.

In addition, approximately $16 million will be available for existing C/MHCs to support the increased cost of providing services to their current patients. Within the $16 million, approximately $10 million will be available for current service adjustments, including support for the recruitment and retention of health care providers in C/MHCs, service education linkages with academic institutions, school-based or school-linked programs, and activities to address high prevalence morbidity and mortality (e.g., HIV/AIDS). Current service adjustments, where applicable, enable C/MHCs to show the need for additional funds to maintain the existing range of services for the current number of patients when existing levels of service cannot be supported with the total Federal and non-Federal revenue. The remaining $6 million will be used for C/MHC improvement proposals to enhance the provision of required

services. Such improvement proposals should be presented in priority order. The improvement proposals for which funding may be made available include the following required services: dental, pharmacy, culturally sensitive/ translation services, and case management.

Number of Awards

A total of approximately 600 C/MHC grants will be made available, of which approximately 223 ($216 million) will be for competing continuation grants and approximately 377 ($364 million) will be for non-competing continuation grants. Approximately 300 of these grants will include CPCP and SIMRI activities. Grants will range from approximately $200,000 to approximately $2 million for general primary care services delivery (C/MHC). Grants will range from approximately $24,000 to approximately $450,000 for CPCP and SIMRI activities in C/MHCs. Awards will be made for a one year budget period. SIMRI grantees will continue to have budget periods beginning September 30 for FY 1994. Project periods will be for up to three years. Requests for current service adjustments and improvement proposals will be included in the continuation grant application.

Eligible Applicants

It is the intent of HRSA to continue to support health services in the service areas of currently funded C/MHCs, given the unmet need inherent in their designation as medically underserved. Within their project periods, only present grantees may apply for sections 329 and 330 awards to continue to provide health services in medically underserved areas. However, any nonprofit private and public entities may apply to serve the geographic areas where project periods are expiring. For a list of service areas with expiring project periods, see **Federal Register** notice published on May 3, 1993, 58 FR 26328 *et seq.*

Review Criteria

When determining whether Federal support will be made available for continuing awards, the Department will review C/MHCs for compliance with standard criteria stipulated in the program regulations (42 CFR part 51c for CHC and part 56 for MHC activities) and for how effectively they have used previously awarded sections 330 and 329 funds. This year's reviews will continue to emphasize need and community impact, health services, management and finance, and governance. Specifically, applications will be evaluated based on: (1) The demonstrated need for services based on geographic, demographic, and economic factors, resources in the area, and health status; (2) the capacity to provide primary health services as appropriate to meet the needs of the community, as evidenced by such attributes as an adequate medical provider staff (e.g., number, specialty mix, and qualifications), critical linkages to other relevant entities (e.g., State or local health departments, State Medicaid agencies, health professions training programs), and coordination with other levels of care; (3) appropriate leadership, management structures and financial systems to enable delivery of health services efficiently and effectively; (4) appropriateness of governing board composition, committee structure, and performance to enable the board to function fully and effectively in its fiduciary role; and (5) how the applicant integrates services supported by this grant with health services provided under other federally assisted programs.

B. Capital Improvements

Approximately $4.5 million will be available to support new major and minor capital improvements. Major capital requests are requests for Federal grant support in excess of $100,000 and will fall into one of two categories: (1) Proposals to correct major fire and life safety code violations; and (2) proposals to expand facilities to eliminate overcrowding associated with an increased demand for services. Major capital improvements include: facility acquisition, construction, alteration, renovation, expansion and modernization.

Minor capital improvements are requests for Federal grant support of less than $100,000. Minor capital proposals submitted in continuation applications for FY 1994 should address the same categories of projects as those to be considered for major capital projects, i.e., to correct fire and life safety code violations and to relieve overcrowding.

Emphasis will be given to capital proposals that correct existing fire and life safety code violations, particularly violations that disrupt the delivery of primary care services and may pose a danger to health center patients and staff. Fire and life safety code violations include those that are cited or clearly documented.

Review Criteria

Applications for major capital will be reviewed against the following criteria: (1) Documented community need for continued service delivery; (2) extent of the facility need; (3) appropriateness of site selection; (4) availability of other sources of proposed financing; and (5) soundness of the proposal. Awards will be issued by September 30, 1994, except for minor capital improvements which may be made sooner, depending on the nature of the building deficiency.

C. Comprehensive Perinatal Care Program and Special Infant Mortality Reduction Initiative

Eligible Applicants

All CPCP and SIMRI awards are expected to be made as continuation awards to current recipients of CPCP and SIMRI funding which are performing satisfactorily.

Review Criteria

The review criteria for CPCP continuations, including SIMRI, are: (1) The extent to which the current and proposed basic center operations are sound; (2) the extent to which infants born to the center's perinatal users are at high risk for mortality and/or morbidity; (3) the extent to which the previous CPCP funding has been used to enhance the basic perinatal services of the center, such as by provision of case management (risk assessment, coordination and referral, follow-up and tracking, crisis intervention and documentation), outreach to targeted special populations (e.g., homeless, HIV-infected, substance abusing, teenaged populations), patient education and counseling, and home visiting; (4) the capability of the center to improve perinatal health as demonstrated through various process and outcome measures of progress, such as increased perinatal caseload, increased first trimester enrollment, reduced late or absent entry into care, increased post partum return rate, reduced incidence of low birth weight, and increased newborn visits (an increase in perinatal caseload may also be a process indicator of progress in reaching out to women to get them into care early); (5) the extent to which the plan is reasonable in that it: (a) addresses the specific perinatal care needs of the community, focusing on women and infants at high risk of poor health status; (b) further develops an appropriate system of care which includes collaboration with other resources; (c) contains specific time-framed, measurable objectives, responsive to the CPCP and SIMRI expectations and the clinical measures; and (d) contains an associated budget which is appropriate for the proposal in that it is in accordance with Federal cost

principles and corresponds to the proposed activities.

Additional review criteria for SIMRI applicants include: (1) For those SIMRI grantees in Healthy Start target areas, the extent and effectiveness of collaborative efforts with the Healthy Start consortium; (2) the extent of collaborative efforts with other Federal, State and local programs to develop integrated systems of perinatal care that address the needs of the community; and (3) the extent to which the grantee's plan and progress demonstrate that SIMRI funds are being used to effectively address gaps in perinatal services throughout the community.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants (other than Federally recognized Indian Tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The Bureau of Primary Health Care does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

Public Health System Reporting Requirement

Section 329 and section 330 programs are subject to the Public Health System Reporting Requirement, PHS Circular 92.01. Reporting requirements have been approved by the OMB under control numbers 0937–0195. Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) A copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies.

(In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is listed as Number 93.246.)

Dated: January 18, 1994.

William A. Robinson,

Acting Administrator

Appendix—Regional Grants Management Officers

Region I

Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II

Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III

Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV

Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V

Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI

Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII

Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII

Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX

Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X

James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 94–5790 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

State of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services to reflect a technical change in chapter AF, Office of Inspector General (OIG). While the basic organizational structure of the OIG is unchanged, this notice reflects the transfer of personal protection services from the Office of the Secretary to the OIG, Office of Investigations.

EFFECTIVE DATE: This notice is effective on March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Chapter AF is amended as follows:

Under the heading Section AFJ.20, Office of Investigations—Functions, subheading B. Criminal Investigations, existing paragraph 3. is redesignated as paragraph 4. and a new paragraph 3. is added to read as follows—

"3. The staff provides for the personal protection of the Secretary.

"4. The field offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct and other investigative matters within the jurisdiction of the OIG. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and improvement reports."

Dated: March 2, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–5797 Filed 3–11–94; 8:45 am]

BILLING CODE 4150–04–M

Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1994 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1994 funds for refugee [1] social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice announces the proposed allocations to States of FY 1994 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director proposes to add to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects. In the final notice, allocation amounts could be adjusted after considering comments and evidence from States on population estimates. This notice proposes to eliminate the set-aside for mutual assistance associations (MAAs) as a separate component of the social service allocations.

EFFECTIVE DATE: Comments on the proposals contained in this notice must be received by April 13, 1994.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed For Allocation

The Office of Refugee Resettlement (ORR) has available $80,802,000 in FY 1994 refugee social service funds as part of the FY 1994 appropriation for the Department of Health and Human Services (Pub. L. No. 103–112).

Of the total of $80,802,000, the Director of ORR proposes to make available to States $68,681,700 (85%) under the allocation formula set out in this notice. These funds would be made available for the purpose of providing social services to refugees. In addition, the Director of ORR proposes to make available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for additional services to former political prisoners from Vietnam. The allocation amounts proposed in this notice could be adjusted slightly in the final notice after taking into consideration any population adjustments (see Section VI, below). ORR intends FY 1994 to be the last year in which a special set-aside will be allocated for additional services for former political prisoners from Vietnam.

A. Discretionary Social Service Funds for Vietnamese Political Prisoners

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR proposes to set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1993. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide additional services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are proposed to provide specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this target population only.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations with experience serving the target population. All contractors receiving these funds should have Vietnamese language capacity and Vietnamese cultural understanding.

States are required to provide to ORR program performance information on the Vietnamese political prisoner program that meets the reporting requirements contained in 45 CFR 92.40, under the terms and conditions of the social services grant awards to States. This information, to be contained in the narrative portion of State quarterly performance reports, must indicate: (1) Name of service contractors; (2) categories of activities provided; (3) numbers of persons and types (former prisoners, family members, etc.) served; and (4) outcomes, to the extent possible.

B. Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,681,700 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1,

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[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

1993 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,300 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. Grant announcements on discretionary initiatives will be issued separately.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the requirements of 45 CFR part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. In keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds, based on population and service needs, as determined by the State, for services to newly arriving refugees who have been in the U.S. less than one year.

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. If a State intends to provide services to refugees who have been in the U.S. more than 3 years, 45 CFR 400.147(c) requires the State to specify and justify as part of its Annual Services Plan those funds that it proposes to use to provide services to those refugees.

ORR expects States to ensure that refugee social services are provided to special populations such as Amerasians and former political prisoners from Vietnam, in addition to special funding that ORR may designate to address the special needs of these populations.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, ORR expects States to ensure that a coherent plan of services is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. Each service plan should address a family's needs for both employment-related services and other needed social services.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services. For an employed refugee, day care funded by refugee social service dollars must be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in section 400.146(b)) is 55% or more, funds awarded under this notice (with the exception of the political prisoner set-aside) are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management service" (INA, section 412(a)(1)(B)). If refugee social service funds are used for the provision of English language training, such training should be provided concurrently, rather than sequentially, with employment or with other employment-related services, to the maximum extent possible. ORR also encourages the continued provision of services after a refugee has entered a job to help the refugee retain employment or move to a better job.

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. Or

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

Refugee social services should be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. To the maximum extent possible, particularly during a refugee's initial years of resettlement, refugee social services should be provided through a refugee-specific system rather than through a system in which refugees are only one of many client groups being served. When planning State refugee services, States are strongly encouraged to take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless services to refugees.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HSS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR proposes to eliminate the set-aside for refugee mutual assistance associations as a separate component under the social service notice and proposes instead to fold these funds into the social service formula allocation to States. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, at a minimum, ORR expects States to continue to award refugee social service funds to MAAs at a level comparable to the MAA set-aside level in previous years. In addition, ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

State Administration

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: Direct and indirect administrative costs incurred for the overall management and operation of the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. See also State Transmittal No. 88–40.

II. [Reserved for Discussion of Comments in Final Notice]

III. Allocation Formula

Of the funds available for FY 1994 for social services, $68,681,700 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1993,

adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

Allocations for political prisoners are based on FY 1993 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 170 or more political prisoner arrivals. We have limited the population base to FY 1993 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 170 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be adequately served under the State's refugee social services program.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1994 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1993, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1994, ORR's formula allocations for the States for social services are based on the number of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1991, 1992, and 1993, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1990, and September 30, 1993, who are thought to be living in each State as of October 1, 1993. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and-out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 8 months as of June 1993 for the majorigy of States whose reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1993, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1993, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); and the proposed allocation amounts after allowing for the minimum amounts (col. 5). Table 1 also shows the number of former political prisoner arrivals in FY 1993 (col. 6); and the allocation amounts for services to this population (col. 7).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made, based on data submitted by States in accordance with Section VI of this notice, and all population estimates and allocation amounts may change somewhat as a result.

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan. The following amounts are proposed for allocation for refugee social services in FY 1994.

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1994; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1994 *

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	Former political prisoner arrivals from Vietnam in FY 1993 (6)	Former political prisoner proposed allocation (7)
Alabama	894	19	913	$163,830	$163,830	39	$0
Alaska	134	0	134	24,045	75,000	14	[illegible]
Arizona	4,052	40	4,092	734,276	734,276	183	16,029
Arkansas	296	[illegible]	296	53,115	94,143	64	[illegible]
California	96,259	499	96,758	17,362,427	17,362,427	10,279	900,324
Colorado	3,541	2	3,543	635,762	635,762	230	20,145
Connecticut	3,413	75	3,488	625,893	625,893	130	0
Delaware	112	12	124	22,251	75,000	6	0
District of Columbia	2,883	18	2,901	520,561	520,561	181	15,854
Florida	12,916	15,989	28,905	5,186,764	5,186,764	546	47,823
Georgia	8,833	51	8,884	1,591,161	1,594,161	1,294	113,340
Hawaii	906	0	906	162,574	162,574	119	[illegible]
Idaho	897	4	901	161,677	161,677	111	0
Illinois	13,540	102	13,642	2,447,945	2,447,945	358	31,357
Indiana	1,162	6	1,168	209,588	209,588	73	0
Iowa	3,173	2	3,175	569,728	569,728	250	21,897
Kansas	2,006	3	2,009	360,499	360,499	282	24,700

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1994; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1994[a]—Continued

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	Former political prisoner arrivals from Vietnam in FY 1993 (6)	Former political prisoner proposed allocation (7)
Kentucky	1,918	16	1,934	347,040	347,040	159	0
Louisiana	2,516	58	2,574	461,883	461,883	306	26,802
Maine	630	0	630	113,048	113,048	4	0
Maryland	7,456	174	7,630	1,369,141	1,369,141	342	29,955
Massachusetts	10,985	294	11,279	2,023,924	2,023,924	601	52,641
Michigan	7,242	38	7,280	1,306,336	1,306,336	241	21,109
Minnesota	7,471	0	7,471	1,340,609	1,340,609	421	36,875
Mississippi	178	0	178	31,941	75,000	19	0
Missouri	5,195	26	5,221	936,865	936,865	330	28,904
Montana	345	0	345	61,907	100,000	0	0
Nebraska	2,259	0	2,259	405,359	405,359	215	18,832
Nevada	841	168	1,009	181,057	181,057	38	0
New Hampshire	572	0	572	102,641	102,641	88	0
New Jersey	7,563	496	8,059	1,446,121	1,446,121	262	22,948
New Mexico	1,093	164	1,257	225,558	225,558	39	0
New York	65,309	760	66,069	11,855,538	11,855,538	527	46,159
North Carolina	3,551	22	3,573	641,145	641,145	177	15.503
North Dakota	1,049	0	1,049	188,234	188,234	48	0
Ohio	6,064	39	6,103	1,095,133	1,095,133	164	0
Oklahoma	1,633	1	1,634	293,208	293,208	288	25,226
Oregon	5,944	58	6,002	1,077,009	1,077,009	373	32,671
Pennsylvania	11,066	86	11,152	2,001,135	2,001,135	353	30,919
Rhode Island	1,066	11	1,077	193,259	193,259	3	0
South Carolina	454	2	456	81,825	100,000	79	0
South Dakota	830	0	830	148,937	148,937	0	0
Tennessee	3,324	32	3,356	602,207	602,207	196	17,167
Texas	16,762	178	16,940	3,039,744	3,039,744	2,272	199,001
Utah	1,772	0	1,772	317,971	317,971	135	0
Vermont	723	0	723	129,736	129,736	16	0
Virginia	6,222	22	6,244	1,120,434	1,120,434	805	70,509
Washington	19,220	1	19,221	3,449,050	3,449,050	1,522	133,310
West Virginia	85	0	85	15,253	75,000	0	0
Wisconsin	4,817	1	4,818	864,550	864,550	22	0
Wyoming	0	0	0	0	75,000	0	0
Total	361,172	19,469	380,641	68,302,894	68,681,700	24,204	2,000,000

[a] Based on arrivals through September 30, 1993.

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence. Requests will be evaluated according to a strict standard. The following evidence should be provided:

- Documentation and discussion should be confined to the population entering the United States during the fiscal years 1991, 1992, and 1993, and should clearly identify what refugee or entrant groups are being discussed.
- Documentation should include a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. Listings of refugees who are not identified by their alien numbers will not be considered. Data should be submitted in machine readable form, preferably in ASCII format on diskette.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Loren Bussert, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW. Washington DC 20447. Telephone: (202) 401–4732.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: March 4, 1994.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 94–5823 Filed 3–11–94; 8:45 am]

BILLING CODE 4184–01–M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

Correction: On March 1, 1994 (59FR9761), a notice was published announcing the meeting of an Ad Hoc Subcommittee on Childhood Vaccines. Under Open Committee Discussion we are adding an agenda item, the most recent report entitled "DPT Vaccine and

Chronic Nervous System Dysfunction: A New Analysis".

The rest of the notice remains as published.

Dated: March 7, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94–5792 Filed 3–11–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–94–4333–04; 4–00154 I–LM]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Carson City, Lyon and Douglas Counties on and adjacent to two Off Highway Vehicle race courses:

April 22–24, 1994—High Sierra Motorcycle Club.
Carson Valley Qualifier—Permit Number NV–03516–94–06.
May 6–8, 1994—Western States Racing Association.
Virginia City Grand Prix—Permit Number NV–03516–94–03.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the Carson Valley Qualifier National Reliability Enduro Motorcycle Race and the Virginia City Grand Prix Motorcycle Race.

EFFECTIVE DATES: April 22–24, 1994; May 6–8, 1994.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel. Specific information on each event follows:

1. High Sierra Motorcycle Club Carson Valley Qualifier, Permit Number NV–03516–94–06. This event is located on roads and trails in the Pine Nut Mountains near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1994 Carson Valley Qualifier except at designated pit and spectator areas. Brunswick, Sand and Eldorado Canyon Roads will be closed to through traffic; Sunrise Pass Road will have traffic regulated. This closure will be effective from 6 p.m. April 22 to 4 p.m. April 24, 1994. Spectators are welcome at the main Start/Finish area at Carson Valley Inn, Minden.

Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited.

2. Western States Racing Association Virginia City Grand Prix—Number NV–03516–94–03. Multiple-lap motorcycle race on roads and trails near Virginia City, Nevada in Storey County within T17N R21E sections 21–29, 32–36 and T16N R21E sections 2–5. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground at the 1994 Virginia City Grand Prix Motorcycle Race route except at designated pit and spectator areas. The main spectator/pit area is located in Virginia City at the Old Railroad Depot.

Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited.

This closure will be in effect from 6 p.m. on May 6 through 4 p.m. on May 8, 1994.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the event.

Authority: 43 CFR part 8340; 43 CFR part 8360 and 43 CFR part 8370.

Penalty: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.07.

Dated: March 2, 1994.

James W. Elliott,

District Manager.

[FR Doc. 94–5640 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–HC–M

[NM–070–04–4333–02]

Closure of Lands to Discharge of Firearms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of use restrictions.

SUMMARY: In order to decrease conflict between recreationists and better provide for the safety of the public, use restrictions are announced by the Farmington District.

Effective immediately, the discharge of any type of firearm for any purpose is prohibited in the Dunes Vehicle Recreation Area and Head Canyon ORV Competition Area.

SUPPLEMENTARY INFORMATION: Since the discharge of firearms presents both a safety hazard to and recreational conflict with other users of these Special Management Areas, the following areas are hereby closed to the discharge of firearms at any time for any purpose:

Dunes Vehicle Recreation Area

T.29 N., R. 13 W., NMPM,
Sec. 19, Lots 19–23;
Sec. 20, SW¼ west of New Mexico State Highway 371;
Sec. 29, All below elevation of 5800';
Sec. 30, All;
Sec. 31, All below elevation of 5800'.

Head Canyon ORV Competition Area

T. 29 N., R. 13 W., NMPM,
Sec. 33, NW¼NW¼, S½NW¼, SW¼.

Total area affected by these closures is approximately 1,150 acres. Authority for these closures is found in 43 CFR 8364. Any person who fails to comply with a closure issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Christopher Barns, BLM, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401; 505–599–6300.

Dated: March 5, 1994.

Mike Pool,

District Manager, Farmington District.

[FR Doc. 94–5798 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–FB–M

[ES–930–4410–01] ES–046823, Group 198, Florida]

Filing of Plat of the Dependent Resurvey and Survey of Lots 12, 13 and 14 in Section 31

The plat of the dependent resurvey of a portion of the north boundary of section 31, and the survey of Lots 12, 13 and 14 of section 31, and the survey of a portion of the rights-of-way of Highway U.S. No. 1 and County Road No. 707, Township 40 South, Range 43 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 22, 1994.

The survey was made upon request by the Eastern States, Bureau of Land Management, Division of Lands and Renewable Resources. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., April 22, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 2, 1994.

[FR Doc. 94–5804 Filed 3–11–94; 8:45 am]

BILLING CODE [illegible]

Geological Survey

Grants and Cooperative Agreements; Availability, etc.: National Spatial Data Infrastructure Competitive Cooperative Agreements Program (NSDICCAP) for Fiscal Year (FY) 1994

AGENCY: Geological Survey, Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1994.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure Competitive Cooperative Agreements Program (NSDICCAP) is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that will promote more cost-effective production, ready availability, and greater use of high quality geospatial data. The NSDICCAP is intended to encourage resource-sharing projects, between and among the public and private sector through the use of technology, networking, and enhanced interagency coordination efforts. Proposals must involve two or more organizations, and participants are expected to cost share in the project. Activities initiated under this program will promote development and maintenance of and access to data sets that are needed for national, regional, State, and local analyses. Authority for this program is contained in the Department of the Interior and Related Agencies Appropriations Act of 1994, Public Law 103–138.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or State-recognized Native American tribes or groups.

DATES: The program announcement and application forms are expected to be available on or about March 20, 1994. Applications must be received on or before May 10, 1994.

ADDRESSES: Copies of Program Announcement 8071 may be obtained by writing to Kathleen Craig, U.S. Geological Survey, Office of Procurement and Contracts, Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648–7357.

FOR FURTHER INFORMATION CONTACT:

Jennifer Snyder, FGDC, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone number (703) 648–5514; facsimile (703) 648–5755. Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Under this FY 1994 program announcement, proposals are to be directed towards two components of the NSDI. The first component deals with creation of a distributed clearinghouse for finding and accessing geospatial data. The second component involves development and promulgation of the use of standards in data collection, documentation, transfer, and search and query. The following list of efforts is considered within the scope of the two aforementioned activities, and are intended to serve as general parameters for consideration when developing proposals: Component I. Development and implementation of the National Geospatial Data Clearinghouse: Create (inventory, evaluate, catalog data, and establish Internet access) and manage a node on the National Geospatial Data Clearinghouse that provides users with a means for finding, accessing, and sharing data; increase use and awareness of geospatial data available over Internet through development of training programs, information guides and other explanatory materials in support of a National Geospatial Data Clearinghouse; and, establish, develop, or expand programs or projects that improve local, regional, or national access to geospatial data to the government, public and private sector. Component II. Develop and further the implementation of FGDC-endorsed standards: Conduct programs to increase user comprehension and adoption of the FGDC Metadata Standard and the Spatial Data Transfer Standard; test and evaluate existing and proposed geospatial data standards; and, stimulate the development of geospatial data standards for consideration by the FGDC.

Dated: March 3, 1994.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 94–5799 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Santa Rosa Island Development Concept Plan; Channel Islands National Park; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Development Concept Plan for Santa Rosa Island, Channel Islands National Park, Santa Barbara County, California.

The draft plan proposes the development of infrastructure and facilities to support maintenance and protection of resources and historic structures, research and further study of both natural and cultural resources, limited experimental restoration of natural systems, and the provision of limited visitor use opportunities. Maintenance and housing facilities would be provided in two locations. One alternative is evaluated, that of no action, which would maintain existing housing, provide minimal maintenance of facilities to provide for basic health and safety of visitors and employees, and provide essential resource protection with minimal research and planning for restoration of natural systems.

SUPPLEMENTARY INFORMATION: Written comments on the draft Development Concept Plan and DEIS will be accepted until May 31, 1994 and should be sent to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, Ca. 93001. A public meeting on the plan will be held April 27, 1994, from 7 p.m. to 9 p.m., at the park visitor center located at the above address. National Park Service officials will be available at this time to present the plan, receive oral and written comments, and answer questions.

Copies of the draft plan and DEIS are available at the park headquarters at the above address. Copies are also available for inspection at libraries located in the park's vicinity and at the Western Regional Office, National Park Service, 600 Harrison St., suite 600, San Francisco, Ca. 94107–1372.

Inquiries on the DEIS should be directed to the superintendent at the above address or at (805) 658–5700.

Dated: February 28, 1994.

Lew Albert,

Acting Regional Director, Western Region.

[FR Doc. 94–5899 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–70–P

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the tenth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: April 21, 1994.

TIME: 7 p.m.–9 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, review of final Land Protection Plan, briefings on Resource Management Plan, Eisenhower Barn reconstruction, Federal Highway project, Fiscal 94 park budget, Clean Cities Project, and an operational update on park activities.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

B.J. Griffin (Ms.),

Regional Director, Mid-Atlantic Region.

[FR Doc. 94–5873 Filed 3–11–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1515]

Cedar River Railroad Co.—Directed Service Order—Charles City Railway Lines Inc.

The Charles City Railway Lines, Inc. (CCRY), a 3.6 mile railroad in Charles City, Iowa, with connections to the Cedar River Railroad Company (CRR) and the Soo Line Railroad Company (SOO) was shut down by its management effective with the close of business February 24, 1994, due to a lack of operating funds, and has been out of operation since that time. CCRY, based on its letter to shippers dated February 4, 1994 announcing cessation of operations effective February 24, 1994, placed Embargo No. 1–94, dated 2/14/94, which was effective 2/24/94. There are two principal shippers located on the CCRY.

The Commission was first contacted about the impending shutdown of the CCRY on February 10, 1994, by shippers on the line, and on February 16, 1994, by the Iowa Department of Transportation (IDOT) indicating their concerns for the possible shutdown of the railroad and requesting that the Commission consider issuing a directed service order (DSO). IDOT's petition of February 16, 1994, requested the Commission to initiate voluntary directed service over the CCRY lines and indicated that the CRR was willing to operate the CCRY lines as a "Directed Rail Carrier" (DRC). However, it was not until February 28, 1994, that the CRR indicated its willingness to provide the uncompensated directed service operations sought by IDOT and the two affected shippers.

Section 11125(a) of the Interstate Commerce Act authorizes the Commission to act in situations where it finds that *a rail carrier cannot transport traffic offered to it because—(1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under 49 U.S.C. 10903* (emphasis added). The initial period for the directed service order may not exceed 60 days. However, the order may be extended for an additional period not to exceed 180 days.

Under a directed service order from the Commission, a directed carrier may voluntarily choose to provide directed service without any subsidy or compensation to which it may be entitled from the Commission, as CRR has done here. See St. Louis S.W. Ry. Co—Directed Service—Chicago, 363 I.C.C. 1 (1980), and Directed Service Order No. 1504, The New York, Susquehanna and Western Railway Corporation—Directed Service—The Delaware and Hudson Railway Company, (not printed) served June 22, 1988.[1]

Considering the limited nature of the proposed directed service operation, e.g., only two active shippers on the 3.6 mile CCRY line, CRR has asked that in order for CRR to waive all compensation from the Federal government otherwise applicable under 49 U.S.C. 11125(b)(5), that it be allowed to condition it's offer to provide uncompensated directed service by limiting its initial 60-day operation to only those portions of the CCRY lines that CRR determines can be safely operated; that CRR not be required to improve any CCRY lines that it believes are unsafe to operate; that it be allowed to perform needed switching service to shippers using crews from its through trains, and that it be allowed to utilize CCRY maintenance of way employees in conjunction with its own employees only to the extent practicable for its limited operations.

Considering CCRY's cessation of service without alternative and its apparent inability to continue due to its cash position, we find that CCRY's current situation meets the standards of 49 U.S.C. 11125(a)(1) and (3).

In view of the need for continued rail service over CCRY's lines and CRR's willingness to provide directed service without compensation from the Federal government, this decision grants the requests of interested parties for interim service authority to CRR.

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest in assuring the immediate resumption of essential rail transportation services. Accordingly, we exercise our authority under 49 U.S.C. 11125(a) to waive advance public notice in the present circumstances.

Section 11125 permits us to direct service for an initial period of not more than 60 days, with an option to extend the directed service period for an additional 180 days, if cause exists. We believe directed service authority to be necessary here at least for an initial 60 day period. Any interested person may file comments on this action during this period.

We Find

1. CCRY had discontinued service over all of its lines. CRR has requested the Commission to permit it to provide continued rail service over those lines which it considers to be operable.

2. To prevent transportation and economic disruptions due to CCRY's ceased operations, and to assure the immediate continued movement of commodities, some of which may be perishable, it is necessary for the Commission to authorize CRR to operate CCRY's lines at Charles City, Iowa under 49 U.S.C. 11125, conditioned

[1] Likewise, the Commission may authorize directed service without provision for compensation to the carrier over which service is directed. Kansas City Terminal Ry. Co.—Operate—Chicago R.I.&P., 360 I.C.C. 289 (1979).

upon a waiver of any compensation or subsidy from the Federal government.

3. Our action in this decision will not substantially impair the ability of CRR to serve its own patrons adequately, or meet its outstanding common carrier obligations, see 49 U.S.C. 11125(b)(2)(B), and will assure continued rail service to affected shippers.

This action will not significantly affect either the quality of the human environment or energy conservation.

It Is Ordered

1. Based upon its undertaking to do so without any form of compensation from the Federal government, CRR is authorized to enter upon and operate CCRY's lines at Charles City, Iowa pursuant to this voluntary directed service order under 49 U.S.C. 11125.

(a) Entry by CRR on the lines of CCRY may occur on the date and time authorized in this decision. Operations by CRR may continue no later than the sixtieth day from the effective date of this decision.

(b) CRR shall immediately notify the Commission, CCRY, and SOO, in writing, of the date on which it commences operations under this order.

2. Operations performed under authority of this order shall conform to the directions and conditions prescribed above.

3. All submissions filed in this proceeding should refer to DSO No. 1515 and be sent to the Commission's headquarters at 12th Street and Constitution Avenue, NW., Washington, DC 20423. An original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice to the general public of this decision shall be given by publication in the **Federal Register**. The decision will be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, CRR, CCRY, SOO, and the IDOT.

7. This decision and order shall become effective at 12:01 a.m., on March 7, 1994.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on May 5, 1994.

Decided: March 4, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioner Simmons and Philbin.

Sidney L. Strickland,

Secretary.

[FR Doc. 94–5871 Filed 3–11–94; 8:45 am]

BILLING CODE 7035–01–P–M

[Finance Docket No. 32457]

Port Railroads, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company

Port Railroads, Inc. (PRI), a noncarrier subsidiary of Kyle Railways, Inc. (Kyle) has filed a notice of exemption to lease and operate approximately 107.438 miles of railroad lines of the Southern Pacific Transportation Company in Fresno and Kern Counties, CA.

The lines involved in the lease transaction consist of: (1) The West Side Line: Between milepost 207.138 on the west leg of the wye and milepost 207.260 on the east leg of the wye, at Fresno, CA, and the end of the line at milepost 159.60 at Oxalis, CA; (2) the Riverdale Branch: Between milepost 182.003 at Ingle, CA, and the end of the line at milepost 208.73 at Burrell, CA; and (3) the Buttonwillow Branch: Between milepost 313.649 on the west leg of the wye and milepost 314.020 on the east leg of the wye, at Kern Junction in Bakersfield, CA, and the end of line at milepost 347.00 at Buttonwillow, CA. The parties expected to consummate the proposed transaction on or after March 6, 1994.

This proceeding is related to Finance Docket No. 32458, Kyle Railways, Inc.—Continuance in Control Exemption—Port Railroads, Inc., wherein Kyle has concurrently filed a petition for exemption to continue in control of PRI and seven other railroads upon PRI becoming a railroad.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Esq., suite 120, 1101 30th St., NW., Washington, DC 20007.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5870 Filed 3–11–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Commission on Family and Medical Leave; Meeting

AGENCY: Office of Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on Family and Medical Leave was established by an Act of Congress, the Family and Medical Act, Public Law 103–3.

TIME AND PLACE: The meeting will be held on Tuesday, March 22, 1994, from 10 a.m. to 12 Noon, in the BLS Postal Square Building (G–440), in Meeting Room #3 (Ground Level), 2 Massachusetts Avenue, NE., Washington, DC (First Street entrance directly across from Union Station).

PUBLIC PARTICIPATION: The meeting will be open to the public. It will be in session from 10 a.m. to 12 Noon. Seating will be available to the public on a first-come, first served basis. Handicapped individuals wishing to attend should contact the office of the Commission to obtain appropriate accommodations. Individuals wishing to submit written statements should send 16 copies to Irasema T. Garza, Executive Director, Commission on Family and Medical Leave, room S–3305, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, telephone (202) 219–6594.

Signed at Washington, DC this 9th Day of March, 1994.

Irasema T. Garza,

Executive Director, Commission on Family and Medical Leave.

[FR Doc. 94–5886 Filed 3–11–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–29,213]

Smead Manufacturing Co.; Hastings, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 1994, applicable to all workers of the subject firm engaged in employment related to the production of office filing supplies. The certification notice was published in the **Federal**

Register on March 4, 1994 (59 FR 10429).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that several workers were laid off a few months prior to the Department's impact date of August 1, 1993. The findings also show that the workers were laid off as a result of a company decision to import office filing supplies.

Accordingly, the Department is amending the certification with a new impact date of April 1, 1993.

The amended notice applicable to TA-W-29,213 is hereby issued as follows: All workers of Smead Manufacturing Company, Hastings, Minnesota engaged in employment related to the production of office filing supplies who became totally or partially separated from employment on or after April 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-5887 Filed 3-11-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Zurn Industries, Inc (Workers)	Erie, PA	02/28/94	02/18/94	29,541	Steam Generating Equipment.
Prince Gardner, Inc (ACTWU)	Marked Tree, AR	02/28/94	02/17/94	29,542	Women's Billfolds.
Oshkosh B'Gosh, Inc (Workers)	McKenzie, TN	02/28/94	01/31/94	29,543	Children's Pants.
Oshkosh B'Gosh, Inc (Workers)	Oshkosh, WI	02/28/94	02/15/94	29,544	Children's Pants.
Andrea Manufacturing (Workers)	Decatur, IL	02/28/94	02/17/94	29,545	Ladies Sportswear.
Apache International Inc (Workers)	Houston, TX	02/28/94	02/14/94	29,546	Crude Oil and Natural Gas.
Reynolds Aluminum Recycling Co (Workers).	Bristol, CT	02/28/94	02/04/94	29,547	Aluminum Shreds.
Clifton Precision (Workers)	Clifton Heights, PA	02/28/94	02/17/94	29,548	Motors, Resolver, Torque.
Atlantic Design Co (Workers)	Vestal, NY	02/28/94	02/09/94	29,549	Finishing of Circuit Boards.
Ford New Holland (UAW)	Bloomington, MN	02/28/94	02/17/94	29,550	Ford Tractor Parts.
Fisher-Price Inc (Co)	East Aurora, NY	02/28/94	02/08/94	29,551	Company Headquarters.
Gulf Interstate Engineering (Co)	Houston, TX	02/28/94	02/14/94	29,552	Engineering Services & Project Mgr.
Ornstein Fashions, Inc (ILGWU)	Garfield, NJ	02/28/94	02/14/94	29,553	Coats and Suits.
O&K, Inc (IBB)	Batavia, NY	02/28/94	02/04/94	29,554	Front End Loaders.
Polo Clothing Co, Inc (ACTWU)	Lawrence, MA	02/28/94	02/08/94	29,555	Men's Suits.
McDonnell Douglas Helicopter (Co)	Mesa, AZ	02/28/94	02/18/94	29,556	Helicopters.
Genesco, Inc (Co)	Danville, KY	02/28/94	02/16/94	29,557	Men's Footwear.
Genesco, Inc (Co)	Nashville, TN	02/28/94	02/16/94	29,558	Men's Footwear.
Gary Williams Energy Corp (Workers)	Roosevelt, UT	02/28/94	02/10/94	29,559	Propane, Butane, & Natural Gas.

[FR Doc. 94-5888 Filed 3-11-94; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 13-94

This UIPL advises SESAs of the provisions of Public Law (Pub. L.) 103-152 which affect the unemployment compensation (UC) program. Public Law 103-152 requires that States establish and utilize a system of profiling all new claimants for regular UC in order to identify those claimants most likely to exhaust regular UC and in need of reemployment services in order to

obtain new work. It also requires that an individual identified pursuant to the profiling system must participate in reemployment services as a condition of UC eligibility.

Unemployment Insurance Program Letter No. 14–94

This UIPL advises SESAs of the provisions of Public Law 103–182 relating to self-employment assistance as it affects the UC program. Public Law 103–182 amended Federal law to give States the option of permitting, for a five-year period, certain individuals to receive payments from a State's unemployment fund for the purpose of assisting such individuals in establishing businesses and becoming self-employed.

Dated: March 8, 1994.

Doug Ross,

Assistant Secretary of Labor.

Classification: UI.
Correspondence Symbol: TEURL.
Date: January 28, 1994.

Directive: Unemployment Insurance Program Letter No. 13–94

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: The Unemployment Compensation Amendments of 1993 (Pub. L. 103–152)—Provisions Affecting the Federal-State Unemployment Compensation Program

Rescissions: None.

Expiration Date: January 31, 1995.

1. *Purpose.* To advise State employment security agencies (SESAs) of the provisions of the Unemployment Compensation Amendments of 1993, Public Law (Pub. L.) 103–152, which affect the Federal-State Unemployment Compensation (UC) Program.

2. *References.* Section 4 of Public Law 103–152; Titles III and IX of the Social Security Act (SSA); Public Law 103–6; Public Law 102–318; UI Occasional Papers 89–3 and 91–1; and UIPL 45–93, dated September 23, 1993.

3. *Background.* On November 24, 1993, the President signed into law the Unemployment Compensation Amendments of 1993, Public Law 103–152. Public Law 103–152 extended the Emergency Unemployment Compensation (EUC) program, and amended the SSA to require States, as a condition of receiving administrative grants, to establish and utilize a system of profiling all new claimants for regular UC for purposes of identifying claimants who are likely to exhaust UC and will need job search assistance to make a successful transition to new employment. The SSA was further amended to require States to disqualify an individual identified pursuant this profiling system if the individual fails to participate in reemployment services. In addition, Public Law 103–152 made a technical change to Title IX of the SSA. States have already been advised of those provisions affecting the EUC program in GAL 12–92, Change 6. This issuance is limited to those amendments to the SSA affecting the Federal-State UC program. These amendments are as follows:

(a) a new requirement that States establish and utilize a system of profiling all new claimants for regular UC;

(b) a new requirement that State law require claimants identified as most likely to exhaust regular UC to participate in reemployment services as condition of UC eligibility; and

(c) a technical amendment to Title IX of the SSA pertaining to the Unemployment Trust Fund.

4. *Action Required.* SESAs are requested to take the action necessary to assure consistency with Federal requirements as amended by Public Law 103–152. The effective dates for implementation of these amendments are found in Attachment III.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachments.*

I. Unemployed Workers Profiling
II. Participation in Reemployment Services
III. Draft Language to Implement Section 4(b) of Public Law 103–152
IV. Technical Amendment Concerning the Unemployment Trust Fund

Attachment I to UIPL 13–94

Unemployed Worker Profiling

a. *Text of Amendment—Section 4(a) of Public Law 103–152*

Sec. 4. Worker Profiling.

(a) In General.—

(1) Establishment of Profiling System.—Section 303 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j)(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

"(A) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

"(B) Refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

"(C) Collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

"(D) Meets such other requirements as the Secretary of Labor determines are appropriate.

"(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State."

b. *Discussion.*

Profiling—Situation Prior to Enactment of Public Law 103–152. Profling is based on the premise that a set of characteristics—a "profile"—can be developed to identify, at an early stage of unemployment, which workers are likely to exhaust UC and will need assistance to find new jobs. Research on this point sponsored by the Department of Labor and conducted in the State of New Jersey found that profiled claimants who received reemployment services returned to work earlier than those who did not receive such services. (See UI Occasional Papers 89–3 and 91–1 which contain reports on the New Jersey project). In addition, studies on the long-term unemployed have found that individual characteristics such as schooling and job tenure relate to when the individuals return to work. Thus, providing early reemployment assistance to individuals most likely to remain out of work should result in an earlier return to work.

Section 4 of Public Law 103–6 addressed the establishment of a system of profiling all new claimants for regular UC (including new claimants under Federal unemployment benefit allowance programs) to determine which claimants may be most likely to exhaust regular UC and may need reemployment services to make a successful transition to new employment. Although States were not required to establish a system of profiling, the Secretary was directed to "encourag[e] [its] adoption and implementation by all States," as well as provide "technical assistance and advice to the States in the development of model profiling systems."

In response to this legislation, the Department took action to develop a model profiling system. UIPL 45–93 was issued and States were encouraged to provide comments on the profiling system and the procedures needed to implement it. The Department was in the process of developing this system and a strategy for its implementation when Public Law 103–152 was enacted.

Profiling—Effect of Public Law 103–152. The amendments made by Public Law 103–152 repealed section 4 of Public Law 103–6 and added subsection (j) to section 303, SSA, to require States, as a condition for receiving Title III grants, to implement and utilize a system of profiling all new claimants for regular UC. Under section 303(j)(1), SSA, the system must include components which:

1. Identify which claimants will be likely to exhaust regular UC and will need job search assistance services to make a successful transition to new employment.

2. Refer the claimants described in item 1 above to reemployment services, such as job search assistance services, available under any State or Federal law. The conference Committee Report defines "reemployment services" as:

* * * job search assistance and job placement services, such as counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services. [H. Rep. No. 333, 103rd Cong. 1st Sess., 5 (1993)]

3. Collect follow-up information relating to the services received by such claimants and their employment outcomes and use the information for future profiling.

4. Meet "such other requirements as the Secretary of Labor determines are appropriate."

The Department of Labor will provide further guidance concerning "reemployment services," job search assistance," "follow-up information," "employment outcomes" and any other requirements the Secretary of Labor determines to be necessary for the proper implementation of a profiling system.

c. *Technical Assistance and Report.* Section 4(c) of Public Law 103–152 requires that the "Secretary of Labor shall provide technical assistance and advice to assist the States in implementing the profiling system" and that "such assistance shall include the development and identification of model profiling systems." The Department of Labor plans to provide technical assistance to States. Information concerning this assistance and the model profiling systems will be provided in future issuances.

Section 4(d) of Public Law 103–152 requires that, not later than the date three years after the date of enactment of Public Law 103–152, the Secretary of Labor will report to the Congress on the operation and effectiveness of the profiling system and of the participation requirement described in Attachment II below. Since Public Law 103–152 was enacted on November 24, 1993, the report is due November 24, 1996.

d. *Effective Date.* Section 303(j)(2), SSA, requires that States must comply substantially with the requirements of 303(j)(1), SSA as a condition of receiving administrative grants under Section 303(a), SSA.

Under section 4(f)(1) of Public Law 103–152, new section 303(j), SSA, "shall take effect on the date one year after the date of the enactment of this Act," or November 24, 1994. In determining whether to take action against a State which has not appropriately amended its law and/or not established a profiling system by this effective date, the Department of Labor will take into consideration the feasibility of such State taking that action to meet the requirements of the statute, as interpreted by the Department in its operating instructions. These operating instructions will be provided in future issuances.

Attachment II to UIPL 13–94

Participation in Reemployment Services

a. *Text of the Amendment—Section 4(b) of Public Law 103–152.*

(b) Participation Requirement.—Section 303(a) of the Social Security Act is amended—

(1) By striking the period at the end of paragraph (9) and inserting "; and ", and

(2) By adding at the end thereof the following new paragraph:

"(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

"(A) Such claimant has completed such services; or

"(B) There is justifiable cause for such claimant's failure to participate in such services."

b. *Discussion.* Public Law 103–152 added section 303(a)(10) to the SSA to require States, as a condition of receiving Title III grants, to place an additional condition of eligibility on claimants who have been referred to reemployment services pursuant to the profiling system under subsection 303(j)(1)(B), SSA. A profiled claimant, in order to be eligible for regular UC for any given week, must participate in reemployment services or similar services unless the State agency determines that (1) the profiled claimant has already completed such services; or (2) there is a justifiable cause for the claimant's failure to participate in such services. The Department of Labor will provide further guidance to States concerning participation in "reemployment services" or "similar services" and "justifiable cause."

The Department believes States will need to amend their laws to provide for a disqualification based on a profiled claimant's failure to participate in reemployment services. If a State does not need to make such a law change, it will be necessary to notify the Department that such a disqualification can be accomplished without amendment.

c. *Effective Date.* Section 4(f) of Public Law 103–152, requires that new Section 303(a)(10), SSA, "shall take effect on the date one year after the date of the enactment of this Act," or November 24, 1994. In determining whether to take action against a State which has not met this requirement by this effective date, the Department of Labor will take into consideration the feasibility of such State timely amending its law and establishing a profiling system (which is a necessary requisite to this denial provision) which meets the requirements established by the Department in its operating instructions.

Attachment III to UIPL 13–94

Draft Language to Implement Section 4(b) of Public Law 103–152

States needing to amend their laws to incorporate the new eligibility criteria established by Public Law 103–152, may wish to use the following draft language.

(a) *Eligibility for benefits.*—An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

* * * * *

( ) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Commissioner.

Attachment IV to UIPL 13–94

Technical Amendment Concerning the Unemployment Trust Fund

(a) *Text of the Amendment—Section 5 of Public Law 103–152.*

Sec. 5. Technical Amendment to Unemployment Trust Fund.

Paragraph (1) of section 905(b) of the Social Security Act is amended to read as follows:

"(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount (determined by such Secretary) equal to 20 percent of the amount by which—

"(A) The transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

"(B) The payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred."

(b) *Discussion.* The legislation proposed which eventually became Public Law 103–318 contained a provision which would have amended section 901(b)(1), SSA, to create new subparagraphs (A) and (B). This provision was not enacted. However, corresponding amendments to section 905(b) were included in the enacted version of Public Law 103–319. As these amendments referred to non-existent sections, the amendments had no effect. Section 5 of Public Law 103–152 amended Section 905(b), SSA, to delete the erroneously enacted language pertaining to the non-existing section.

Classification: UI.
Correspondence Symbol: TEURL.
Date: February 16, 1994.
Directive: Unemployment Insurance Program Letter No. 14–94
To: All State Employment Security Agencies
From: Mary Ann Wyrsch, Director, Unemployment Insurance Service
Subject: North American Free Trade Agreement Implementation Act (Pub. L. 103–182)—Provisions Affecting the Federal-State Unemployment Compensation (UC) Program relating to Self-Employment Assistance
Rescisions: None.
Expiration Date: February 28, 1995.

1. *Purpose.* To advise State agencies of the provisions of the North American Free Trade Agreement Implementation Act which affect the Federal-State UC Program.

2. *References.* The Federal Unemployment Tax Act (FUTA); Title III of the Social Security Act (SSA); the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), as amended; section 9152 of Public Law 100–203; section 507 of the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182; Unemployment Insurance Program Letter (UIPL) 29–83, Change 1; General Administration Letter (GAL) 7–94; and UI Occasional Paper 92–2.

3. *Background.* On December 8, 1993, the President signed into law the NAFTA, Public Law 100–182, which affects the UC program in two ways. First, NAFTA created a transitional adjustment assistance program

designed to address worker dislocation caused by NAFTA. This aspect of NAFTA was addressed in GAL 7–94. Second, NAFTA amended Federal law to give States the option of permitting, for a five-year period, certain individuals to receive a payment from the State's unemployment fund for the purpose of assisting such individuals in establishing a business and becoming self-employed. It is this second aspect of NAFTA which is the subject of this UIPL.

4. *Discussion.*

a. *In General.* The "withdrawal standard" of Section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limits withdrawals (with specified exceptions not relevant here) from a State's unemployment fund to payments of "compensation" and prior to the enactment of NAFTA would have prohibited withdrawals for the purpose of paying self-employment allowances. The term "compensation" is defined in section 3306(h), FUTA, as "cash benefits payable to individuals with respect to their unemployment." Due to this requirement that the payment be with respect to "unemployment," the withdrawal standard has previously, with one temporary exception, prohibited States from using unemployment funds to assist individuals in establishing themselves in self-employment.

The previous temporary exception was created by section 9152 of Public Law 100–203, the Budget Reconciliation Act of 1987. Public Law 100–203 authorized three demonstration projects to test the feasibility of providing self-employment allowances, payable from a State's unemployment fund, to individuals. Only Massachusetts operated a demonstration project. The initial report on this project was issued in UI Occasional Paper 92–2, Self-Employment Programs for Unemployed Workers, and is available by writing Ingrid Evans, United States Department of Labor, Unemployment Insurance Service, 200 Constitution Ave. NW., room S–4231, Washington, DC 20210. A final report will be available in 1994.

NAFTA amended Federal law to allow payments to self-employed individuals under specified conditions during the five years following NAFTA's date of enactment. The report of the House Ways and Means Committee describes the intent behind the new Self-employment provision:

Providing States the authority to establish and operate self-employment programs would significantly benefit workers that may be dislocated because of the NAFTA. The traditional system of unemployment compensation is primarily designed to provide income support for workers who are temporarily laid off or expect to be unemployed for only a short time. However, as a result of the NAFTA, some workers may lose their jobs permanently and need additional tools besides the basic income maintenance provided by the unemployment insurance system in order to re-enter the work force. For some of those workers, access to a self-employment program would be the best path for them to re-enter the work force. This provision gives states the ability to add the tool of self-employment training and support to the options available to help speed the transition of dislocated workers back into the work force. [H. Rept. No. 361, Part 1, 103rd Cong., 1st Sess. 94 (1993).]

Specifically, section 507, NAFTA, amended the withdrawal standard (and the definition of "unemployment fund" in section 3306(f), FUTA) to provide that amounts may be withdrawn from the unemployment fund of a State "for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)) * * *" FUTA. This exception to the withdrawal standard applies solely to the self-employment assistance (SEA) allowances described in section 3306(t), FUTA, which was also added to FUTA by section 507(a), NAFTA. Under new section 3306(t)(1), SEA allowances are payable "in lieu of regular" UC for the purposes of assisting individuals in establishing a business and becoming self-employed.

b. *Eligibility for SEA Allowances.* SEA allowances are to be payable "in the same amount, at the same interval [e.g., payment with respect to a period will be made weekly if that is the State's usual practice for claims for regular UC or every other week if that is the usual practice], on the same terms, and subject to the same conditions as" regular UC. (Section 3306(t)(2), FUTA.) This "equal treatment" provision applies to all monetary and nonmonetary (including reporting and certification) eligibility requirements except where specifically prohibited by other provisions of Federal law pertaining to SEA allowances. It also applies to notice and appeal rights.

Since individuals engaged in self-employment activities will normally be disqualified if certain eligibility provisions for State UC are followed, section 3306(t)(2), FUTA, provides that these provisions of State law shall not be followed. Specifically, the following provisions shall not apply:

(1) State requirements relating to availability for work, active search for work, and refusal to accept work.

(2) State requirements relating to disqualifying income are not applicable to income earned from self-employment by individuals claiming SEA allowances.

In addition, individuals in the SEA program will be considered to be "unemployed" for purposes of both Federal and State UC laws provided the individuals meet provisions of State law subject to the above equal treatment provision and four additional eligibility provisions for SEA allowances discussed immediately below. (The effect of this requirement on Federal law is discussed below in item 4.f.)

Section 3306(t)(3), FUTA, contains the four additional eligibility provisions which individuals must meet to receive SEA allowances:

(1) They must be eligible to receive regular UC under the State law (or they would be eligible but for the requirements suspended by the SEA provisions at section 3306(t)(2), FUTA, as discussed above). This is basically a restatement of the "equal treatment" requirement of section 3306(t)(1), FUTA, and includes monetary as well as initial and continuing nonmonetary eligibility. For purposes of determining SEA eligibility, "regular compensation" includes UC for ex-servicemembers (UCX) and former Federal employees (UCFE). (See item 4.g below.)

Since the SEA allowance is "in lieu of" regular UC, the total amount of SEA allowances that individuals may receive is equal to their maximum benefit amount of regular UC less any regular UC previously received. Similarly, the weekly SEA allowance amount must equal the weekly benefit amount for regular UC. Also, SEA allowances and regular UC may not be paid for the same period.

The term "regular compensation" is defined in section 205(2), EUCA, as "compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation." Thus, individuals who have exhausted regular UC are ineligible for SEA allowances. Individuals may not receive SEA allowances in lieu of Federal-State extended benefits (EB), additional benefits (AB) entirely financed by the State, any wholly funded Federal extension of UC, or other types of compensation not meeting the definition of regular UC.

Individuals who are terminated from or voluntarily leave the SEA program may collect regular UC with respect to the benefit year (if otherwise eligible) until the total amount of regular UC paid and SEA paid equals the maximum benefit amount. Such individuals may be paid EB if otherwise eligible. This is because, under 20 CFR 615.5(a)(1), these individuals are "exhaustees" for EB purposes because they have received "all of the regular compensation that was payable under the applicable State law * * *." Similarly, individuals who exhaust the maximum benefit amount as SEA program participants may also receive EB if otherwise eligible. Whether any of the individuals discussed in this paragraph are eligible for other Federal extensions will depend on the law creating the extension. Whether individuals are eligible for AB will be determined by State law.

(2) The individuals must be identified pursuant to a State worker profiling system as likely to exhaust regular UC. For further discussion of SEA profiling requirements, refer to items 4.d and 4.j of this UIPL.

(3) The individuals are participating in self-employment assistance activities which are approved by the State agency. State agency is defined in Section 3306(e), FUTA, as the authority "designated under a State law to administer the unemployment fund in such State." The activities which must be offered the individuals are entrepreneurial training, business counseling, and technical assistance. (Information concerning these activities may be found in UI Occasional Paper 92–2, which describes services provided to claimants participating in the self-employment demonstration programs in Washington and Massachusetts.) If these activities are not available, an individual pursuing self-employment will not be eligible for SEA allowances; determination of eligibility for regular UC for such individuals will be made under State law provisions relating to self-employment. The activities

may be offered by either private or public entities.

An individual who fails to participate in a scheduled activity (e.g., failure to attend a scheduled training course) is not considered to be participating in SEA program activities. However, for purposes of receiving a SEA allowance, it is not always necessary for the individual to have actually participated in SEA program activities for the week claimed. What is, at a minimum, necessary is that the individual be participating in a program (approved by the State agency) which provides training programs on an ongoing basis and allows individuals to avail themselves of other SEA program services when they are needed. As long as individuals are under such a program, even though no activities are scheduled for a given week, they will be considered to be participating in SEA program activities and may be paid SEA allowances. It is possible that an individual may be eligible for both regular UC and the SEA allowance. This will occur when the individual is participating in training related to self-employment which is also approved training under State law. In this instance, the State is free to determine whether regular UC or the SEA allowance will be paid as long the eligibility requirements for the respective program are met. However, in no instance may both regular UC and the SEA allowances be paid with respect to the same period.

Since States do not disqualify individuals under their regular UC laws for failure to participate in SEA program activities, the SEA "equal treatment" provision does not address what disqualifications States may impose in these cases. It is recommended that States disqualify these individuals from receipt of SEA allowances only for the week the failure to participate occurs. Such individuals may be eligible for regular UC for that week if State law provisions relating to regular UC are met. Individuals who fail to meet the participation requirement may be dropped by the State from the SEA program.

(4) They are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed. The Department of Labor ("Department") is researching the relationship of this requirement to the Americans with Disabilities Act. When this research is completed, guidance on what constitutes a "full-time basis" will be provided.

As is the case with failing to participate in SEA activities, States do not currently disqualify individuals under their regular UC laws for failure to actively engage on a full-time basis relating to the establishment of a business and becoming self-employed. Therefore, the SEA "equal treatment" provision does not address what disqualifications States may impose in these cases. It is recommended that States disqualify these individuals from receipt of SEA allowances only for the week the failure to actively engage on a full-time basis occurs. Such individuals may be eligible for regular UC for that week if State law provisions relating to regular UC are met. Individuals who fail to meet the "full-time" requirement may be dropped by the State from the SEA program.

c. *5 Percent Rule.* Section 3306(t)(4), FUTA, places a limitation on the number of individuals in a State who may receive SEA allowances. Specifically, it provides that the aggregate number of individuals receiving the allowance must "not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time * * *." The Department will monitor this "5 percent test" on a monthly basis. Therefore, States must use at least a monthly measurement period as well. The calculation relates to individuals actually receiving (i.e., paid) SEA for the week as a percent of those receiving regular UC for the same week. Thus, for example, if 10,000 individuals receive regular UC (including UCFE and UCX) for a given week, then no more than 500 may receive SEA allowances (including UCFE and UCX claimants).

Note: The 5 percent figure is not arrived at by taking 5 percent of the sum of the number of individuals receiving SEA and the number of individuals receiving regular UC.

The 5 percent figure is an express limitation which the State may not exceed. Therefore, States must monitor SEA allowance payments closely to assure that the 5 percent limitation is not exceeded. The Department recommends that new individuals not be added to the SEA program if it appears the 5 percent threshold may be exceeded.

d. *No Cost to Unemployment Trust Fund (UTF).* Section 3306(t)(5), FUTA, places an additional requirement on the States as a condition of paying SEA allowances. It provides that the payment of SEA allowances must not result in any cost to the UTF "in excess of the cost that would be incurred by such State and charged to such [Unemployment Trust] Fund if the State had not participated in" the SEA program. Put simply, payment of SEA allowances may not result in any additional benefit charges to the UTF. This limitation applies only to the benefit costs associated with the payment of SEA/regular UC. It does not apply to the charging of SEA allowances to employers.

Since individuals successfully establishing themselves in self-employment will not collect EB, the UTF will accrue some savings to the Extended Unemployment Compensation Account and the State's account. However, since EB is not always payable in a State, the Department has determined that this "no cost" requirement will be met only if:

(1) The State implements a profiling system which assures that only claimants likely to exhaust regular UC will receive SEA allowances. An inadequate profiling system were those likely to not exhaust regular UC are allowed to receive SEA allowances will not meet the "no cost" requirement.

(2) The State creates "participation requirements" designed to assure SEA allowances are paid only to those who actually participate in the SEA program. Participation requirements for determining if an individual is actively engaged on a full-time basis in SEA activities must be at least as stringent as the able and available requirements for regular UC; otherwise the SEA program will not meet the "no cost" requirement.

More information on what is required of States in these areas is described in item 4.j below.

e. *State Reports.* Section 507(c), NAFTA, provides that any State operating a SEA program authorized by the Secretary of Labor must report annually to the Secretary the number of individuals who participate in the SEA program, the number of individuals who are able to develop and sustain businesses (e.g., business survival data), the cost of operating the SEA program, and compliance with program requirements. The report must also contain other relevant data needed by the Department, including data related to business income, number of employees and wages paid in the new businesses, and incidence and duration of unemployment after business start-up.

State reports will be submitted with respect to a calendar year and will be due the June 30 following the report year. This means the first report may be for only part of a year. For example, if a State's SEA program is effective April 1, 1994, then the first annual report will be due on June 30, 1995 and will cover a nine-month period.

Failure to submit the report as required will create an issue under section 303(a)(6), SSA, which requires that, as a condition of receipt of administrative grants for the UC program, State law provides for "the making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require * * *."

Under section 507(d), NAFTA, the Secretary of Labor is required to submit a report to Congress with respect to the SEA program not later than four years after the date of enactment of NAFTA. Since NAFTA was enacted on December 8, 1993, this report is due no later than December 8, 1997. This report will be based on the reports from the States operating SEA programs.

f. *Individuals Receiving SEA considered to be Unemployed.* As noted in item 4.a, section 3306(h) defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." Payments to self-employed individuals are not compensation since they are not payable with respect to unemployment. However, under section 3306(t)(2)(c), FUTA, individuals to whom the SEA allowances are payable "are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements" of section 3306(t). The effect of this provision is that, with respect to SEA, individuals are considered to be unemployed and payments made to them are considered to be "compensation." Thus, the term "compensation" is considered to include individuals eligible for SEA allowances. The term "regular compensation" does not, however, include SEA allowances. This is because under Section 3306(t)(1), FUTA, SEA is payable "in lieu of" regular UC.

g. *Equal Treatment Requirements Elsewhere in Federal Law.* In addition to the SEA "equal treatment" requirement in Section 3306(t)(2), FUTA, Federal law contains two other equal treatment requirements mandating payment of compensation "in the same amount, on the

same terms, and subject to the same conditions" as UC payable under State law. One requirement is found in section 3304(a)(6)(A), FUTA, and pertains to payment of UC based on services performed for State and local governments and certain nonprofit entities, commonly called "reimbursing" employers. The other requirement is found in 5 U.S.C. 8502(b) and pertains to payment of UCX and UCFE. As noted in item 1.f. above, the term "compensation" is considered to include SEA allowances. Therefore, individuals who perform services covered under these two additional "equal treatment" provisions must be given the option of receiving SEA allowances. The payment of SEA allowances does not require an amendment to the UCFE/UCX agreement.

The "equal treatment" requirement contained in section 3306(t)(2), FUTA, provides that SEA allowances will be "payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law * * *." Thus, SEA allowances must be paid to all eligible individuals to whom regular UC is payable under State law, including individuals who performed services to which section 3304(a)(6)(A), FUTA, and 5 U.S.C. chapter 85 apply.

These equal treatment requirements extend to all aspects related to the payment of SEA.

h. *Financing of SEA Allowances.* It will be necessary for States to review their laws to determine how the allowances will be financed. Financing depends on the type of employer for which the individual receiving the allowance previously performed services.

(1) *Experience Rated Employers.* Section 3303(a)(1), FUTA, requires, as a condition of employers in a State obtaining the additional credit against the Federal unemployment tax, that no reduced contribution rate be assigned an employer, except on the basis of "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk * * *." All but one of the existing experience rating systems consist of charging payments of compensation or benefit wages to an employer who had previously provided employment to the compensated individual.

As noted in item 1.f. under section 3306(t)(2)(c), FUTA, individuals to whom the SEA allowance is payable "are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation * * *." Under this provision, SEA allowances reflect "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk" for purposes of section 3303(a)(1), FUTA. Therefore, the measurement of an employer's experience through charges based on SEA allowances is appropriate.

In charging SEA allowances, States must use the same method of charging (e.g., charging base period employers proportionately) and noncharge in the same situations (e.g., noncharging claims where the individual has voluntarily quit) as apply to regular UC. To fail to do this would raise an issue under the "uniform method" requirement of section 3303(a)(1), FUTA. See UIPL 29–83, Change 1, dated September 24, 1991.

The Department will address the issue of whether SEA allowances may be noncharged when it develops a comprehensive noncharging policy.

(The one experience rating system not using payments of compensation or benefit wages is Alaska which uses a payroll decline system. The Department believes this system will not be affected by the payment of SEA allowances.)

(2) *Reimbursing Employers.* Section 3309(a)(2), FUTA, provides that costs "of compensation attributable under the State law" to service performed for State and local governments and nonprofit organizations to which that section pertains must be reimbursed by such entities. Since, as discussed in item 1.f, SEA allowances are considered to be compensation, this requirement also applies to SEA allowances.

(3) *Federal Military and Civilian Employers.* Under 5 U.S.C. 8509(b), moneys in the Federal Employees Compensation Account shall be "available only for the purpose of making payments to States pursuant to agreements" with the Secretary of Labor. Since payments of SEA are payments of compensation for purposes of Federal law, SEA allowances attributable to Federal military or civilian service may be charged to Federal employers.

i. *Payment of Administrative Costs.* Costs of administering SEA allowances (including those paid to UCFE and UCX claimants) are payable from grants received for the administration of State's UC law under Title III of the SSA. Costs of providing SEA program services such as entrepreneurial training, business counseling and technical assistance are not, however, payable from these Title III funds.

j. *Required Plan.* Section 3306(t)(6), FUTA, provides that a State SEA program must meet "such other requirements as the Secretary of Labor determines to be appropriate." Secretary's Order No. 4–75 (40 FR 18515) gives the Department the authority to make this determination. The Department has determined that, prior to implementing a SEA program, the Department must approve a State plan. This approval process will assure an orderly start-up of the SEA program in a State. To be approved the plan must contain:

(1) A description of the profiling system used to identify SEA program participants. The State has three options for choosing a profiling system:

(A) Using elements of the statistical model developed by the Department for purposes of providing technical assistance in implementing Section 303(j), SSA. (Section 303(j), SSA, requires States to establish and use a system of profiling all new claimants for regular UC.) The report on the profiling model, Profiling Dislocated Workers for Early Referral to Reemployment Services by Kelleen Worden (October 6, 1993), is available from the appropriate Regional Office. If this model is used, States must re-estimate the coefficients using State data.

(B) A statistical model developed by the State.

(C) Another profiling method developed by the State.

Regardless of which option is chosen, the State must demonstrate that its system has a high degree of accuracy for purposes of meeting the cost-neutrality requirement discussed in item 4.d. For this reason, the State must submit with its plan a baseline analysis of historical data indicating the extent to which the exhaustion rate of individuals identified by the proposed system exceeds the exhaustion rate of the population of all beneficiaries under the regular UC program. The determination of whether the system is sufficiently accurate will be made by the Department.

(2) Assurances that the annual report will be submitted as required and contain such information as required by this UIPL.

(3) A description of participation requirements including:

(A) The structured set of services provided to individuals in the SEA program. The description must address the working relationship of the State agency with any entity (such as a State economic development agency or an agency administering the Job Training Partnership Act) providing services under the SEA program.

(B) A description of what actions (such as certification procedures) the States will take to assure SEA participants are engaged "on a full-time basis" in self-employment activities.

(4) Legislative language implementing the SEA program consistent with the requirements of this UIPL. (Draft language is provided in Attachment II and a Commentary in Attachment III.)

(5) A description of the source (and amount of) funds for paying for SEA program activities such as entrepreneurial training, business counseling, and technical assistance, and assurances that Title III, SSA, funds will not be used for these activities.

(6) Assurances that the payment of SEA allowances will not create any additional benefit costs to the UTF.

Since no State may commence operation of a SEA program without approval of a plan by the Department, States may expedite implementation of the SEA program by submitting their plans prior to obtaining legislation. Although the Department may provide provisional approval of a plan prior to enactment, it will not approve any plan until certified copies of SEA legislation are provided by the State. Any modifications to an approved plan are to be submitted to the Department.

Proposed plans and modifications to approved plans are to be submitted to the appropriate Regional Office.

k. *Counting of SEA Claims for EB Trigger Purposes.* SEA claimants are to be included in the calculation of the insured unemployment rate (IUR) for purposes of determining whether EB is payable in a State.

l. *Reporting Requirements.* Any changes required in reporting to the Department will be addressed in future issuances.

m. *Effective Date and Termination Date of SEA Programs.* Under Section 507(e), NAFTA, the provisions of Federal law relating to SEA programs are effective on the date of enactment of NAFTA. In addition, these provisions provide only temporary exceptions to the withdrawal standard. The

authority to operate SEA programs expires five years after the date of enactment of NAFTA. Since NAFTA was enacted on December 8, 1993, the SEA program provisions were effective on that date and expire on December 8, 1998.

5. *Action Required.* The establishment of SEA programs is optional for States. However, States must enact enabling legislation and obtain this Department's approval of a plan prior to implementing a SEA program.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

7. *Attachments.*

I. Text of Section 507, NAFTA.

II. Draft Language to Implement a Self-Employment Assistance Program.

III. Commentary on the Draft Language to Implement a Self-Employment Assistance Program.

Attachment I to UIPL 94–

Text of Section 507, NAFTA

Sec 507. Treatment of Self-Employment Assistance Programs

(a) General Rule.—Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(t) Self-Employment Assistance Program.—For the purposes of this chapter, the term 'self-employment assistance program' means a program under which—

"(1) Individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

"(2) The allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

"(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

"(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

"(C) Such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements applicable under this subsection;

"(3) Individuals may receive the allowance described in paragraph (1) if such individuals—

"(A) Are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

"(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

"(C) are participating in self-employment assistance activities which—

"(i) include entrepreneurial training, business counseling, and technical assistance; and

"(ii) are approved by the State agency; and

"(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

"(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

"(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

"(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.".

(b) Conforming Amendments.—

(1) Section 3304(a)(4) of such Code is amended—

(A) In subparagraph (D), by striking "; and" and inserting a semicolon;

(B) In subparagraph (E), by striking the semicolon and inserting "; and"; and

(C) By adding at the end the following new subparagraph:

"(F) Amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));"

(2) Section 3306(f) of such Code is amended—

(A) In paragraph (3), by striking "; and" and inserting a semicolon;

(B) In paragraph (4), by striking the period and inserting "; and"; and

(C) By adding at the end the following new paragraph:

"(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).".

(3) Section 303(a)(5) of the Social Security Act (42 U.S.C. 503(a)(5)) is amended by striking "; and" and inserting ": Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and".

(c) State Reports.—Any State operating a self-employment program authorized by the Secretary of Labor under this section shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

(d) Report to Congress.—Not later than 4 years after the date of enactment of this Act, the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate.

(e) Effective Date; Sunset.—

(1) Effective Date.—The provisions of this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Sunset.—The authority provided by this section, and the amendments made by this section, shall terminate 5 years after the date of the enactment of this Act.

Attachment II to UIPL 94—

Draft Language to Implement a Self-Employment Assistance Program

States wishing to amend their UC law to add the optional SEA program provisions may use the following draft language. A Commentary is provided in Attachment III.

Section _____. Self-Employment Assistance Program

(a) *Definitions.* As used in this section—

(1) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, and technical assistance) approved by the commissioner in which an individual identified through a worker profiling system as likely to exhaust regular benefits participates for the purpose of establishing a business and becoming self-employed.

(2) "Self-employment assistance allowance" means an allowance, payable in lieu of regular benefits and from the unemployment fund established under section _____ [enter relevant section], to an individual participating in self-employment assistance activities who meets the requirements of this section.

(3) "Regular benefits" means benefits payable to an individual under this Act (including benefits payable to Federal civilian employees and to ex-servicemembers pursuant to 5 U.S.C. chapter 85) other than additional and extended benefits.

(4) "Full-time basis" shall have the meaning contained in regulations prescribed by the commissioner.

(b) *Amount of self-employment assistance allowance.* The weekly allowance payable under this section to an individual will be equal to the weekly benefit amount for regular benefits otherwise payable under section _____ of this Act. The sum of (1) the allowances paid under this section and (2) regular benefits paid under this Act with respect to any benefit year shall not exceed the maximum benefit amount as established by section _____ with respect to such benefit year.

(c) *Eligibility for self-employment assistance allowance.* The allowance described in subsection (a) shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this Act, except that—

(1) The requirements of sections _____ [enter relevant sections] relating to availability for work, active search for work, and refusal to accept work are not applicable to such individual;

(2) The requirements of section _____ [enter relevant section] relating to self-employment income are not applicable to income earned from self-employment by such individual;

(3) An individual who meets the requirements of this section shall be considered to be unemployed under section _____ [enter relevant section]; and

(4) An individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed shall be disqualified for the week such failure occurs.

(d) *Limitation on receipt of self-employment assistance allowances.* The aggregate number of individuals receiving the allowance under this section at any time shall not exceed 5 percent of the number of individuals receiving regular benefits. The commissioner shall, through regulations, prescribe such actions as are necessary to assure the requirements of this subsection are met.

(e) *Financing costs of self-employment assistance allowances.* Allowances paid under this section shall be charged to employers as provided under provisions of this Act relating to the charging of regular benefits.

(f) *Effective date and termination date.* The provisions of this section will apply to weeks beginning after the date of enactment or weeks beginning after any plan required by the United States Department of Labor is approved by such Department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when Federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

Attachment III to UIPL 94–

Commentary on the Draft Language to Implement a Self-Employment Assistance Program

This commentary should be used in conjunction with Section 4 of this UIPL.

States will need to make adjustments in the draft language to accommodate State law conventions. Blanks have been provided for inserting cites to relevant sections of the State law.

(a) *Definitions.*

(1) *Self-employment assistance activities.* These activities are defined consistent with section 3306(t)(3)(C) and (D), FUTA. States should note that the approval of the State agency is limited to the self-employment "activities" themselves. States may not base a denial of approval on factors unrelated to the self-employment assistance activities.

(2) *Self-employment assistance allowance.* This section defines the SEA allowance and establishes that such allowances are to be paid from the State's unemployment fund. States may also wish to consider whether to amend the section of State law which governs withdrawals from the unemployment fund.

(3) *Regular Benefits.* A definition of "regular benefits" (or "regular compensation") is necessary since SEA allowances are payable "in lieu of" regular compensation. State law may already contain a definition of regular benefits in which case the addition of this definition may not be necessary. Some State laws contain a definition of regular benefits in the sections pertaining to EB. In these cases, the State will need to determine whether the definition is limited to the EB section, and, therefore, whether a cross-reference is necessary.

(4) *Full-time basis.* Since the Department is not at this time providing a specific definition of "full-time basis," it is recommended that States reserve the right to prescribe the definition in regulations in order to assure consistency with Federal law.

(b) *Amount of self-employment assistance allowance.* This section governs the weekly and maximum amount of SEA allowance payable. It assures that SEA allowances are paid "in the same amount" as regular UC. It also clarifies the relationship between payments of regular UC and SEA allowances with respect to a benefit year.

(c) *Eligibility for self-employment assistance allowance.* This section contains the "equal treatment" requirement of Section 3306(t)(2), FUTA (except for the requirement that SEA allowances be paid "in the same amount" which is contained in subsection (b) above). It also contains the three exceptions to the "equal treatment" requirement which are found in subparagraphs (A) through (C) of section 3306(t)(2), FUTA.

By cross referencing the definition of "self-employment assistance activities," this provision should assure payment only to those participating in such activities. It also contains the requirement of section 3306(t)(3)(D) that the individual be actively engaged in a full-time basis in activities relating to the establishment of a business and becoming self-employed.

States are free to establish their own disqualifications for failure to meet these requirements. States should note that, like unavailability for work, failure to participate may be only a temporary condition which should not necessarily result in an indefinite denial. Conversely, quitting the SEA program may be grounds for a duration disqualification. The draft language provides for a disqualification only for the week the failure occurred.

States also have the option of dropping an individual from the SEA program for failure to meet SEA requirements. This may be appropriate if, for example, the individual misses training necessary to commence self-employment activities.

(d) *Limitation on receipt of self-employment assistance allowances.* This section implements section 3306(t)(4), FUTA, which limits the number of individuals receiving SEA allowances at any given time to 5 percent of the number of individuals receiving regular UC. Giving the commissioner authority to create regulations to meet this requirement provides flexibility to the agency to assure that necessary data will be collected as required by this Department and that the five percent limit will not be exceeded.

(e) *Financing costs of SEA allowances.* Since State UC law may provide only for the financing of regular UC and not SEA allowances, it may be necessary to describe the financing mechanism for the allowances. The draft language uses the same mechanism as is used for regular UC.

Draft language for the noncharging of SEA allowances is not provided at this time as the Department is not addressing the issue of whether such allowances may be noncharged at this time.

(f) *Effective Date and Termination Date.* Since SEA allowances may be paid only after enactment of State law and approval by this Department, it will be necessary to specify that the allowances will not become payable until both conditions are met. The draft language assures that SEA allowances will not become payable until the first week aster both conditions are met.

Since the authority under NAFTA for SEA programs terminates five years after the date of enactment of NAFTA, it is recommended that States "sunset" any SEA provisions. The draft language provided does not provide a definite expiration date since States may wish to continue operating a SEA program if the Federal authority is extended either on a temporary or permanent basis. States may, however, wish to include a specific expiration date. The draft language takes into account an expiration of Federal legislative authority which falls on a weekday by providing that the program will terminate as of the end of the week preceding the week containing the ending date of the Federal authority. If, however, the ending date of the Federal authority as a Saturday, then the State must end its SEA program on later than midnight on such Saturday.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior To January 1, 1979," section III.G.2, to the Power Authority of the State of New York the (licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

Section III.G.2 of 10 CFR part 50, Appendix R, specifies measures to be taken to ensure that one train of redundant equipment necessary to

achieve and maintain hot shutdown conditions remains free of fire damage.

During a programmatic review of IP3's Fire Protection Program and Appendix R compliance strategy, the licensee identified that safe shutdown instrument sensing lines inside containment do not meet the separation requirements of section III.G.2 of 10 CFR part 50, Appendix R. Specifically, in some areas the wide-range steam generator (SG) water level and pressurizer level sensing lines are not separated by a horizontal distance of 20 feet, nor are they separated by a radiant energy shield. In addition, fire detection and suppression in the area is limited. The licensee has, therefore, requested exemption from the requirements of 10 CFR part 50, Appendix R, section III.G.2, for the wide-range SG water level and pressurizer level sensing lines within the IP3 containment structure.

Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's regulations and to obviate the need for extensive modifications. Physical modification of the plant to achieve literal compliance with 10 CFR part 50, Appendix R, section III.G.2, would require many design changes, for example: rerouting portions of the sensing lines, installing additional barriers, and the installation of additional fire suppression and detection. Given the location of the sensing lines, the implementation of these changes would entail extensive scaffolding, as well as engineering and financial resources. In addition, since these modifications were not anticipated in the current outage scope, the detailed development and implementation of such design changes could significantly delay restart from the current outage, resulting in lost revenue.

Environmental Impacts of the Proposed Action

Section III.G.2 of 10 CFR part 50, Appendix R, requires that where redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area inside containment, fire protection must be provided by separation of cables and equipment by a horizontal distance of 20 feet, noncombustible radiant energy shields, or by installation of fire detectors and an automatic fire suppression system in the fire area. The licensee has determined that certain sections of the wide-range SG water level and pressurizer level sensing lines within containment do not meet these requirements. Therefore, the licensee has requested an exemption from the requirement of 10 CFR part 50, Appendix R, section III.G.2, for these sensing lines within the containment.

The likely result of a fire affecting the sensing lines would be erroneous signals. The erroneous signals would not initiate until the fluid inside the lines is heated by the fire and would terminate after the fire was extinguished. The lines themselves would not experience fire damage.

The capability to safely shutdown the unit would not be jeopardized in the event that a fire results in erroneous wide-range SG water level or pressurizer level indications. Specifically, a fire inside containment would not necessitate control room evacuation (i.e., alternate shutdown), so operations personnel would have access to numerous and diverse plant status indications. In addition, plant operating procedures advise personnel that a fire may cause anomalous equipment behavior. Erroneous wide-range SG water level or pressurizer level indications resulting from a fire would be of short duration due to low combustion loadings inside containment. The fixed combustible loading in containment is very small and the locations of the redundant sensing lines are remote from fixed combustibles. The largest fixed combustible load, reactor coolant pump oil, is contained in a collection system in accordance with 10 CFR part 50, Appendix R, section III.O, and automatic smoke detectors are installed above each reactor coolant pump. Personnel access to the containment is restricted during power operation. As such, the potential for transient combustible materials to accumulate in the containment is very low. The containment is inspected by operations personnel prior to plant startup.

Based on the considerations discussed above, the Commission concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for IP3. The proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect nonradiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. The alternative would also result in unwarranted expenditures of engineering and financial resources, and could significantly delay restart from the current outage.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 30, 1993. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 7th day of March 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5826 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time schedular exemption from the requirements of sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 to the Tennessee Valley Authority, licensee for the Sequoyah Nuclear Plant (SQN), Unit 2. The plant is located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated February 4, 1994.

Environmental Assessment

Identification of Proposed Action

The action would exempt the licensee from the provisions in sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 with respect to the requirement to perform Primary Containment Type B and Type C local leak rate tests at intervals no greater than 2 years. The exemption would affect Unit 2 only and allow the tests to be delayed until the Cycle 6 refueling outage. This outage is scheduled to start approximately 4 months after the 2-year period ends.

Between March and April 1992, all Type B and Type C local leak rate tests were preformed during the SQN Unit 2 Cycle 5 refueling outage. Between March 1, 1993, and October 19, 1993, Unit 2 was shut down due to a steam leak in the secondary system, and experienced several forced shutdowns since it was restarted. Due to the accumulated length of the shutdowns, TVA has decided to delay start of the Unit 2 Cycle 6 refueling outage until July 1994. As a result, the expiration of the 2-year time interval for the Type B and Type C tests occurs before the outage starts. Therefore, to perform the tests in accordance with the requirement would force the unit to shut down in April 1994. To prevent this, the proposed exemption would allow a one-time deferment of the Appendix J interval requirement from March 1994 until the shutdown in July 1994. The result would be an interval of approximately 4 months since the previous test for any component.

This environmental assessment is similar to an environmental assessment processed by the Commission and forwarded by letter dated November 9, 1993. It was published in the **Federal Register** on November 16, 1993 (58 FR 60470). This action addressed the 10 CFR part 50 appendix J exemption for the Unit 2 refueling outage when it was scheduled to begin in April 1994.

The Need for the Proposed Action

The proposed action is required to exempt the licensee from the requirement to conduct Type B and Type C containment local leak rate tests on SQN Unit 2 at a 2-year frequency so that the tests can be performed during the Cycle 6 refueling outage that is scheduled to start in July 1994.

Environmental Impacts of the Proposed Action

With respect to the requested action, exemption from the above requirement would allow the licensee to delay conducting Type B and Type C local leak rate tests at Unit 2 approximately 4 months beyond the scheduled expiration date of the 2-year period. This relatively small increase in the test interval does not significantly contribute to the total Type B and Type C leakage limits.

The intent of Sections III.D.2(a) and III.D.3 of appendix J is to ensure that containment leakage is maintained within the prescribed limits. Based on the following information, the exemption will not significantly affect the ability of the individual primary containment components that are subject to Type B or Type C tests to perform this safety function:

1. The valves and components for which the extension of the 2-year interval is being requested have a history of being leak tight and in good condition. The leak-tight condition of these components was last verified by Type B and C local leak rate tests conducted during the Cycle 5 refueling outage in 1992 and, at least for many, by the Type A containment leak rate test conducted on Unit 2 during the same refueling outage. Based on the present containment leakage that accounts for the less than 8.0 percent of the 0.6 percent La limit, the remaining margin is sufficient to ensure any incremental increase in leakage resulting from the extension would not cause unacceptable as-found test results.

2. Based on historical data, any incremental increase in leakage because of the extension will be small. Improved maintenance practices implemented during the Unit 2 Cycle 5 outage, including motor operated valve testing of containment isolation valves, periodic replacement of valve packing, and periodic lubrication of valve stems, provide increased assurance that these components will perform their safety function.

3. Many of the components for which the exemption is requested were included in the Type A test performed in April 1992. This test indicated a containment leak rate of 0.15 percent per day, which is below the 0.1875 percent per day limit.

With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other significant nonradiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the licensee's "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2" (FES), dated February 21, 1974. The Commission concluded that operation of the Sequoyah units will not result in any environmental impacts other than those evaluated in the FES and its letter to the licensee dated September 15, 1981, which granted the facility operating license DPR–79 for Unit 2.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated February 4, 1994, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 7th day of March 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5828 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–528, 50–529, and 50–530]

Arizona Public Service Co.; Consideration of Transfer of Control of Ownership of Licensee and Opportunity for Public Comment on Antitrust Issues

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the indirect transfer of control of El Paso Electric Company's (El Paso) interest in Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3, (Operating License Nos. NPF–41, NPF–51, and NPF–74) to a subsidiary of the Central and South West Corporation (CSW). By letter dated January 13, 1994, Arizona Public Service Company (APS), partial owner and operator and operating agent for PVNGS submitted its request for indirect transfer and deletion of sale-leaseback provisions, pursuant to 10 CFR 50.80. The request for license amendments to delete the provisions of certain previous sale-leaseback arrangements relating to Operating License Nos. NPF–51 and NPF–74 will be subject of a separate **Federal Register** notice.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a licensee, after notice to interested persons, upon the Commission's determination that the new owner is qualified to have control of the license and the transfer of control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

By this notice the Commission is seeking public comment on this proposed transfer of control of ownership. Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulation Commission, Washington, DC 20555 and should site the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–233, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland between 7:30 a.m. and 4:15 p.m. Copies of written comments may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Antitrust Issues

Pursuant to 10 CFR 2.101 of the Commission's regulations, the staff is publishing receipt of APS's request to transfer the above described control of ownership of PVNGS.

Any person who wishes to submit comments or information relating to antitrust issues believed to be raised by this transfer request should submit said comments or information within 30 days of the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulation Commission, Washington, DC 20555, Attention: Chief, Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensees' activities have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments concerning the competitive aspects of the proposed transfer, the staff notes that it is aware of and is closely following a proceeding at the Federal Energy Regulatory Commission (FERC) involving CSW's proposed acquisition of El Paso. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to the subject transfer, see the request for transfer of control dated January 13, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland the 7th day of March 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5827 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–09792–CivP, ASLBP No. 94–689–02–CivP]

Indiana University School of Medicine, Indianapolis, IN; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

INDIANA UNIVERSITY SCHOOL OF MEDICINE

Indianapolis, Indiana

Byproduct Material License No. 13–02752–08, EA 93–111

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Director, Office of Enforcement, dated January 18, 1994, entitled "Order Imposing Civil Monetary Penalty" (58 FR 4123–25, January 28, 1994).

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

James P. Gleason, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Thomas D. Murphy Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 4th day of March 1994.

Paul B. Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–5825 Filed 3–11–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33730; File No. SR–CBOE–94–01]

Self-Regulatory Organizations: Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trade Recording and Price Reporting

March 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, Interpretation and Policy .01 to CBOE rule 6.51, "Reporting Duties," requires both the buyer and the seller in a transaction to record on a card or ticket information concerning the transaction, including the buyer's or seller's assigned broker initial code and his clearing firm (if a market maker), the symbol of the underlying security, the type, expiration month and exercise price of the option contract, the transaction price, the number of contract units comprising the transaction, the time of the transaction, the name of the contra clearing firm member and the assigned broker initial code of the contra member. Under Interpretation and Policy .01, this information constitutes the "transaction record." The CBOE proposes to amend Interpretation and Policy .01 to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes in various media in addition to paper form.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposal is to enable CBOE members to submit options transaction data to the CBOE for trade recording and price reporting purposes in various media in addition to paper form. Under current CBOE rule 6.51, members are required to submit transaction data in paper form only, either on a trade ticket or on a transaction card. The CBOE states that in today's market and operations technology environment the limitation is unduly restrictive, and some Exchange members have requested the opportunity to submit transaction record data by means of electronic data transmission. Submission in that form would enable those members to report trades and prices to the CBOE through the same automated medium they use to report that information to their clearing firms. Accordingly, the CBOE seeks authority to approve particular media in addition to paper that CBOE members may use for trade recording and price reporting purposes.

In administering the proposed rule change, the CBOE will from time to time identity particular media and formats acceptable for use under Exchange Rule 6.51 based on members' needs and will inform members about acceptable media and formats through appropriate circulars. The CBOE expects to identify as acceptable only those media that involve secure and tested technology.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washignton, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5837 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33734/March 8, 1994; File No. 600–25]

The Registration as a Clearing Agency of the Participants Trust Co., Order Granting Approval of Registration Until March 31, 1995

On January 26, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] an amendment to its Form CA–1 [2] requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1995. Notice of PTC's amended application and request for extension of temporary registration appeared in the **Federal Register** on February 15, 1994.[3] No comments were received. This order approves PTC's amendment by extending PTC's registration as a clearing agency until March 31, 1995.

On March 28, 1989, the Commission granted PTC temporary registration as a clearing agency pursuant to sections 17A and 19(a) of the Act, and rule 17Ab2–1 thereunder for a period of twelve months.[4] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration until March 31, 1994.[5]

As discussed in detail in the initial order granting PTC's temporary registration,[6] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. The par value of GNMA securities on deposit grew from $706 billion on December 31, 1992 to $850 billion on December 31, 1993.[7] The par value of VA REMICs on deposit at PTC grew from $1.608 billion on December 31, 1992 to $4.634 billion on December 31, 1993.[8] The average transaction volume grew from 250,000 in 1992 to 309,000 in 1993.[9]

PTC continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[10] For example, PTC acquired rights to the SPEED source code, thereby facilitating the process of enhancing the SPEED system to suit PTC's needs. PTC also initiated a program to distribute to participants a portion of GNMA I principal and interest ("P&I") earlier in the day,[11] and in December 1993, introduced a new P&I processing system, PRISM, that further automates P&I data processing. PTC was able to reduce its fees to participants further, effective January 1, 1994,[12] and declared a dividend of $.525 per share to stockholders of record on December 31, 1993.[13]

Although PTC has made considerable progress toward complying with the undertakings set out above, PTC needs more time to implement fully the changes necessary for compliance. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1995, to permit PTC to gain experience and stability as a fully operative depository and to comply fully with the undertakings made in connection with PTC's registration.[14]

The Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). PTC has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. PTC has functioned as a clearing agency for the past four years in compliance with the Act.

It is therefore ordered, that PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1995, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[15]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5836 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33722; File No. SR–ICC–94–03]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Filing and Order Granting Temporary Approval on an Accelerated Basis to a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

March 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 23, 1994, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through December 31, 1994.

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[1] 15 U.S.C. 78s(a).

[2] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated January 25, 1994.

[3] Securities Exchange Act Release No. 33604 (February 8, 1994), 59 FR 7285.

[4] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[5] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; and 32040 (March 23, 1993), 58 FR 16902.

[6] *Supra* note 4.

[7] *Supra* note 2.

[8] *Id.*

[9] *Id.*

[10] In connection with PTC's original temporary registration, PTC committed to the Commission and the Federal Reserve Bank of New York to make a number of operational and procedural changes, which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse a transfer because its customer may not be able to fulfill its financial obligations to the participant.

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

Supra note 4.

[11] Securities Exchange Act Release No. 33132 (November 2, 1993), 58 FR 59501.

[12] Securities Exchange Act Release No. 33362 (December 21, 1993), 58 FR 69433.

[13] Securities Exchange Act Release No. 33487 (January 18, 1994), 59 FR 3900.

[14] *Supra* note 2.

[15] *Supra* note 4.

[16] 17 CFR 200.30–3(a)(50) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requests that the Commission extend its temporary approval of ICC's modifications to its rules setting forth the standards for letters of credit deposited with ICC as a form of margin.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change requests that the Commission extend its temporary approval of ICC's modifications to its rule 502(a)(3), which sets forth the standards for letters of credit deposited with ICC as margin. The modifications which are the subject of this proposed rule filing are the same modifications which were previously approved by the Commission.[3]

First, ICC intends to require that letters of credit state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, ICC proposes to amend its rules to eliminate the issuer's right to revoke the letter of credit. Third, unless otherwise permitted by ICC, ICC's proposal requires letters of credit to expire on a quarterly basis rather than annually. Fourth, ICC proposes to add language to its rules to make explicit ICC's authority to draw upon a letter of credit at any time, whether or not the clearing member that deposited the letter of credit has been suspended or is in default, if ICC determines that such a draw is advisable to protect ICC, other clearing members, or the general public.

Finally, ICC proposes to amend its rules to grant its chairman limited discretion to accept a letter of credit that varies from the standards set forth in its rules. This discretionary power will be limited by the following factors: (1) Before using this power, the chairman must consult with the staffs of ICC's regulatory agencies, which include the Commission and the Commodity Futures Trading Commission ("CFTC"); (2) this power can be used only in unusual circumstances and only on a temporary basis; (3) after exercising such power, the chairman must advise ICC's board of directors; and (4) ICC must promptly notify clearing members affected by the exercise of this power.[4] ICC believes the proposed rule change is consistent with the requirements of section 17A of Act.[5] Specifically, ICC believes the proposed rule change promotes the protection of investors by enhancing ICC's ability to safeguard the securities and funds in its possession or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

For the reasons set forth in the previous Commission order approving ICC's revised standards for letters of credit deposited as margin, the Commission believes that the proposal is consistent with ICC's obligations under section 17A(b)(3)(F) of the Act.[6] Among other things, the revised standards: (1) Should make the letters of credit ICC will accept as margin deposits more liquid than under the previous standards and, consequently, should permit ICC to more safely rely upon such letters of credit; (2) should result in more frequent assessments of the financial conditions of clearing members depositing letters of credit and thereby should facilitate the discovery of any adverse developments in a more timely manner: and (3) should make letters of credit a more reliable form of margin deposit than previously because issuers will no longer be able to revoke letters of credit at times when clearing members most need credit facilities (*e.g.*, when a clearing member is experiencing financial difficulties or during times of market volatility).[7] By approving the proposed rule change on a temporary basis through December 31, 1994, ICC, the Commission, and other interested parties will be able to assess further any effects these revised standards have on letter of credit issuance and on margin deposited at ICC.[8]

ICC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because the Commission believes it is desirable that the revised standards that were implemented under the previous temporary approval order remain in place pending permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent

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[2] Securities Exchange Act Release Nos. 32003 (March 16, 1993), 58 FR 15389 [File No. SR–ICC–92–01] (order approving revised letter of credit standards through December 31, 1994).

[3] For a detailed discussion of the revised standards, refer to Securities Exchange Act Release Nos. 32003, *supra* note 2.

[4] Factors (1) and (2) are set forth in ICC Rule 502(a)(3). Factors (3) and (4) are set forth in the letter from James C. Yong, Vice President and Assistant Secretary, ICC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (March 1, 1993), which amended File No. SR–ICC–92–01. ICC has represented that the March 1, 1993, letter with all its requirements for use by ICC's Chairman of his limited discretion to accept a letter of credit that varies from the standards is applicable to this proposed rule filing. Conversation between James C. Yong, Vice President and Assistant Secretary, ICC, to Jerry W. Carpenter, Branch Chief, Division, Commission (March 4, 1994).

[5] 15 U.S.C. 78q-1

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988). Among other things, section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible.

[7] For a detailed discussion of the Commission's basis for approving ICC's revised standards, refer to Securities Exchange Act Release Nos. 32003, *supra* note 2.

[8] The Commission and ICC currently are studying concentration limits on letters of credit deposited as margin. The Division believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. ICC has no concentration limits on the use of letters of credit issued by U.S. institutions.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to the file number SR–ICC–94–04 and should be submitted by April 4, 1994.

V. Conclusion

On the basis of the foregoing, the Commission finds that ICC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–ICC–94–03) be, and hereby is, approved through December 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5807 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33731; File No. SR–NASD–94–11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

March 8, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to add new section 45 to the Code of Arbitration Procedure to require that any member named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. Below is the text of the proposed rule change. Proposed new language is italicized.

Part III. Uniform Code of Arbitration

* * *

Member Surcharge

Sec. 45. (a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsection 43(c) of the Code.

(B) For the purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to add new section 45 to the Code of Arbitration Procedure to provide that any member named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. In addition, any firm whose associated persons are named in an arbitration proceeding will be assessed the surcharge.

Historically, the revenue-to-expense ratio of the NASD's arbitration service has resulted in a deficit, which has been subsidized by other revenues of the Association. Although the deficit has declined in 1992, the NASD has determined in a recent review of the arbitration process that the deficit will begin to rise in the immediate future as a result of significantly increased resourcing needs. The NASD anticipates such needs to be ongoing. The increased resourcing needs result from a number of factors, including case growth, more selective arbitrator recruitment, increased arbitrator training, increased arbitrator compensation, and the anticipated overhaul of the arbitration administrative systems. The NASD determined that the time frame within which to initiate cost recovery for impending resourcing needs should be the immediate future, and that cost recovery should be directed at those member firms using the NASD's arbitration service.

Proposed new subsection (a) would require each member who is named as a party to an arbitration proceeding, whether in a claim, counterclaim, crossclaim or third-party claim, to be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. This fee would be in addition to fees assessed pursuant to section 43 [1] and 44 [2] of the Code. The fee applies both to members who file as Claimants and to members who are served by the Arbitration Department as Respondents. Therefore, in claims brought by members, the $200 fee would be assessed in addition to the $500 claim filing fee described in the current fee schedule. For an associated person who is named as a party to an arbitration proceeding, the fee would be

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[9] 17 CFR 200.30–3(a)(12) (1993).

[1] *NASD Manual*, Code of Arbitration Procedure, Article III, Sec. 43 (CCH) ¶ 3743.

[2] *NASD Manual*, Code of Arbitration Procedure, Article III, Sec. 44 (CCH) ¶ 3746.

assessed against the member firm or firms which employed the associated person at the time of the events which gave rise to the claim. However, no member will be assessed more than a single charge in any arbitration proceeding. Finally, subsection (a) clarifies that the surcharge is not subject to reimbursement under subsection 43(c) of the Code.

The NASD estimates that it will collect the $200 surcharge on 75 percent of the approximately 5700 arbitration cases expected to be filed in 1994, which will result in over $800,000 of additional revenue for the Arbitration Department in 1994. Thus, the surcharge will effectively offset expenses to be incurred on arbitrator education through 1994. The NASD expects the arbitrator education program to reach over 3,000 new arbitrators and almost 500 chairpersons during the period that began in the fourth quarter of 1993 and will end at the end of 1994. This will add over $750,000 to the Arbitration Department expenses, which will include costs for staff and travel time, conference rooms, written materials, videotape production and mailing costs.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[3] of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule equitably assesses a surcharge on each member that is named or whose associated person is named and for which service is perfected in an arbitration proceeding and applies such revenue to additional costs resulting from increased arbitration resourcing needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–11 and should be submitted by April 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5808 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33582A; File No. SR–ODD–94–1]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Amendment to the Options Disclosure Document; Correction

March 8, 1994.

In FR Document No. 94–3250, beginning on page 6661, column 1, for Friday, February 11, 1994, a sentence was incorrectly stated. The first paragraph should be changed to clarify that the National Association of Securities Dealers, Inc., did not participate in the submission of the revised Options Disclosure Document ("ODD") and to indicate that the Options Clearing Corporation ("OCC") filed the revised ODD on behalf of, rather than in conjunction with, the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

The first paragraph is revised to read as follows:

On February 2, 1994, the Options Clearing Corporation ("OCC") on behalf of the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. ("PHLX") submitted amended copies of an options disclosure document ("ODD") to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 9b–1[1] of the Securities Exchange Act of 1934 ("Act").

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5835 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20121; File No. 812–8748]

Century Life of America, et al.; Application

March 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Century Life of America ("Century Life"), Century Variable Annuity Account (the "Account") and CUNA Brokerage Services, Inc. (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on December 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving

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[3] 15 U.S.C. 78o-3.

[1] 17 CFR 240.9b–1 (1993).

Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 4, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Century Life of America, 2000 Heritage Way, Waverly, Iowa 50677.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Century Life, a mutual life insurance company organized under the laws of Iowa, entered into a permanent affiliation with CUNA Mutual Life Insurance Society ("CUNA Mutual") on July 1, 1990. Applicants state that the terms of the "Agreement of Permanent Affiliation" provide for the following: Financial sharing between Century Life and CUNA Mutual of future individual life insurance business through reinsurance arrangements; joint development of business plans and systems for the distribution of individual insurance and other financial service products within the credit union movement; and, sharing of certain resources and facilities. All of the directors of Century Life are also directors of CUNA Mutual and many of the senior executive officers of Century Life hold similar positions with CUNA Mutual. Applicants state that the affiliation is not a merger or a consolidation and that both Century Life and CUNA Mutual remain separately owned by their respective contract owners who retain voting rights.

2. The Account, established by Century Life on December 14, 1993 as a separate investment account under Iowa law, serves as a funding medium for certain flexible premium individual deferred variable annuity contracts (the "Contracts"). Applicants state that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–73738), for the Account.

3. The Account currently has five subaccounts, each of which invests exclusively in the shares of a designated investment portfolio of the Ultra Series Fund (the "Fund"). The Fund, a Massachusetts business trust, is registered under the 1940 Act as an open-end diversified management investment company. The Fund currently has six investment portfolios, five of which offer their shares to the Account.

4. The Contracts may be purchased on a nontax qualified basis (the "Nonqualified Contracts") or they may be purchased in connection with retirement plans, including retirement programs described in sections 401(a) or 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or as individual retirement annuities that qualify for favorable federal income tax treatment under section 409 of the Code (together, the "Qualified Contracts").

5. CUNA Brokerage Services, Inc. ("CUNA Brokerage") acts as the principal underwriter, as defined in the 1940 Act, of the Contracts pursuant to the terms of an underwriting agreement between Century Life and CUNA Brokerage. The principal business address of CUNA Brokerage is the same as that of CUNA Mutual.

6. An owner of a Contract may allocate purchase payments to one or more subaccounts of the Account, and the purchase payments will be credited with the investment experience of the chosen subaccount or subaccounts. An owner of a Contract may also allocate purchase payments to the guaranteed interest option, part of the general account of Century Life, and such payments will be credited with interest as provided for in the Contracts.

7. The minimum initial purchase payment for Nonqualified Contracts is $5,000 and for Qualified Contracts, other than those sold in connection with tax sheltered annuity arrangements ("TSAs"), the amount is $2,000. Subsequent purchase payments must be at least $1,000 and may be made any time before the annuity date and during the annuitant's lifetime. Initial and subsequent purchase payments for TSAs must be at least $25, and such payments in each Contract year must total $300 and be paid pursuant to a schedule.

8. The Contract provides for a series of annuity payments beginning on the annuity date. The Contract owner may select from four annuity payment options, two of which are available only as a fixed annuity and two of which are available as either a variable or a fixed annuity.

9. If the owner of a Contract dies prior to the annuity date and the Contract is in force, Century Life will, upon receipt of due proof of death, pay a death benefit. If the annuitant is age 75 or younger, the death benefit is equal to the greatest of:

(a) Aggregate purchase payments made under the Contract less partial withdrawals as of the date that Century Life receives due proof of death; or

(b) Contract value as of the date that Century Life receives due proof of death; or

(c) The death benefit floor amount as of the date of death plus any net purchase payments and minus any partial withdrawals made since the most recent death benefit floor computation anniversary;

less premium taxes not previously deducted and any outstanding loan amount on the date the death benefit is paid. The death benefit floor amount is the Contract value on the most recent death benefit floor computation anniversary. Death benefit floor computation anniversaries occur on the seventh Contract anniversary and each seventh Contract anniversary thereafter prior to the annuitant's 76th birthday. After the annuitant's 76th birthday, the death benefit will equal the Contract value less any outstanding loan amount and any applicable premium taxes not previously deducted as of the date that Century Life receives due proof of the annuitant's death.

10. On each Contract anniversary prior to the annuity date, Century Life deducts from the variable Contract value an annual fee of $30. Applicants guarantee that this charge will not increase and state that the charge reimburses Century Life for administrative expenses relating to the Contract. The fee will be deducted from each subaccount based on the proportion that the value in each such subaccount bears to the total Contract value. After the annuity date, the annual Contract fee is deducted from variable annuity payments. Applicants represent that this charge will be deducted in reliance upon Rule 26a-1 under the 1940 Act and that the charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not anticipate a profit from this charge.

11. Century Life deducts a daily administrative charge equal to an annual effective rate of .15% of the assets of the Account. The application states that this charge will compensate

Century Life for certain expenses incurred in administering the Contracts. Applicants represent that this charge will be deducted in reliance upon Rule 26a-1 under the 1940 Act and that the charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not expect to make a profit from this charge.

12. Although no fee is currently charged for transfers, Century Life reserves the right to charge $10 for the 13th and each subsequent transfer during a Contract year. The transfer fee will be deducted from the subaccount or guarantee amount from which the transfer is made. Applicants represent that where the fee is imposed, Applicants will rely upon Rule 26a-1 under the 1940 Act for the deduction. Applicants state that the transfer fee will represent reimbursement only for administrative costs expected to be incurred over the life of the Contract. Applicants further represent that Century Life does not anticipate a profit from this charge.

13. Applicants note that various governmental entities levy a premium tax, currently ranging up to 3.5%, on annuity contracts, such as the Contracts, issued by insurance companies. The timing of the tax levies varies among taxing authorities. The application states that if applicable to a Contract, premium taxes will be deducted either: (a) From purchase payments as received; (b) from Contract value upon withdrawal or surrender; (c) from adjusted Contract value upon application to an annuity payment option; or (d) upon payment of a death benefit. Applicants note that Century Life reserves the right to deduct premium taxes at the time such taxes are incurred.

14. A contingent deferred sales charge (the "Sales Charge") of up to 7% is imposed on the partial withdrawal or surrender of purchase payments within seven years of such payments having been made. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to cover expenses relating to the sale of the Contracts, including payment of commissions to registered representatives and other promotional expenses. Applicants state that Century Life does not anticipate that the Sales Charge will generate sufficient revenues to pay the cost of distributing the Contracts. If the Sales Charge is insufficient to cover the cost of distribution, the deficiency will be met from the general account assets of Century Life and these assets may include amounts derived from the charge for mortality and expense risks.

15. Century Life will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Century Life for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Century Life guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks under the Contracts, Century Life will bear the loss. Conversely, if the charge exceeds costs, the excess will be profit to Century Life. Applicants state that Century Life currently anticipates a profit from this charge.

16. Applicants state that the mortality risk borne by Century Life arises from its contractual obligation to make annuity payments (as determined in accordance with the Contracts) regardless of how long all annuitants or any individual annuitant may live. Applicants state that this undertaking assures that neither annuitant's own longevity nor an improvement in general life expectancy will adversely affect the periodic annuity payments that a payee will receive under the Contract. Applicants state that Century Life also incurs a risk in connection with the death benefit guarantee and that there is no charge for this guarantee.

17. Applicants state that the expense risk assumed by Century Life is the risk that administration costs will exceed amounts received by Century Life through imposition of the administration charge, the transfer fee (where imposed) and the annual Contract fee.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for mortality and expense risks. Sections 26(a)(2)(C) and 27 (c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Century Life under the Contracts. Applicants state that the charge is a reasonable charge to compensate Century Life for the risks that: the annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts; the Contract value will be less than the death benefit; and administrative expenses will be greater than amounts derived from the asset-based administration charge, the transfer fee and the Contract fee.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Century Life is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon Century Life's analysis of publicly available information about similar industry practices, taking into consideration such factors as: current charge levels; charge level guarantees; and guaranteed annuity rates. Applicants represent that Century Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

4. Applicants represent that Century Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Century Life and will be made available to the Commission.

5. Century Life also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5838 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20118; 812–8484]

The One® Group℠, et al.; Notice of Application

March 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The One® Group℠ ("The One Group"), The Kent Funds, Allmerica Funds, and The Valiant Funds (collectively, the "Trusts"); Banc One Investment Advisors Corporation ("BOIAC"), Old Kent Bank and Trust Company ("Old Kent"), Allmerica Investment Management Company, Inc. ("AIMCO"), and Integrity Management & Research, Inc. ("IMR") (collectively, the Advisers"); and Allmerica Investments, Inc. ("Allmerica"), 440 Financial Distributors, Inc. ("440 Distributors"), and Integrity Investments, Inc. ("Integrity") (collectively, the "Distributors"). Applicants also seek relief on behalf of future investment companies for which the Advisers, or any person controlled by or under common control with the Advisers, may serve as investment adviser, or for which the Distributors, or any person controlled by or under common control with the Distributors, may serve as distributor.

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue and sell multiple classes of shares representing interests in the same portfolios of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, and waive the CDSC in certain instances.

FILING DATE: The application was filed on July 2, 1993, and amended on November 12, 1993, January 31, 1994, and February 23, 1994. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 1, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 440 Lincoln Street, Worcester, Massachusetts 01653.

FOR FURTHER INFORMATION CONTACT:

James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

APPLICANTS' REPRESENTATIONS: 1. Each of the Trusts is a registered open-end management investment company organized as a Massachusetts business trust. Each of the Trusts offers shares in separate series (the "series"). BOIAC, Old Kent, AIMCO, and IMR act as investment advisers for The One Group, The Kent Funds, Allmerica Funds, and The Valiant Fund, respectively. 440 Distributors acts as distributor for The One Group, and will act as distributor for The Kent Funds beginning April 1, 1994. Allmerica and Integrity act as distributors for Allmerica Funds and The Valiant Fund, respectively. 440 Financial Group of Worcester, Inc. ("440 Financial") serves as administrator and sub-transfer agent for The One Group, administrator and transfer agent for The Valiant Fund, and will serve as the administrator and transfer agent for The Kent Funds beginning April 1, 1994. AIMCO, Allmerica, 440 Distributors, and 440 Financial are all wholly-owned subsidiaries of State Mutual Life Assurance Company of America.

2. Series of The One Group currently offer shares in four classes pursuant to exemptive orders previously granted by the SEC.[1] Class A shares of The One Group's series, other than class A shares of money market series, are sold subject to a front-end sales charge. Class B shares, which are available only with respect to non-money market series, are sold subject to a CDSC. Retirement class shares are offered to certain investors without any front-end or deferred sales charge. Fiduciary class shares are offered to certain investors without a front-end or deferred sales charge. Class A, class B, and the retirement class shares are authorized to pay 440 Distributors distribution and shareholder services fees pursuant to a

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[1] See Liquid Asset Trust, *et al.*, Investment Company Act Release Nos. 17144 (Sept. 20, 1989) (notice) and 17169 (Oct. 18, 1989) (order), as amended, Investment Company Act Release Nos. 17878 (Nov. 27, 1990) (notice) and 17915 (Dec. 24, 1990) (order), as amended, Investment Company Act Release Nos. 19698 (Sept. 9, 1993) (notice) and 19756 (Oct. 1, 1993) (order). On November 17, 1993, The One Group received no-action relief so that, pending receipt of the order requested hereby, it can continue to offer its shares for up to one year in reliance on prior orders.

rule 12b–1 plan in annual amounts up to .35%, 1%, and .75% of average daily net assets, respectively.

3. Series of The Kent Funds currently offer two classes of shares pursuant to an exemptive order granted to The Kent Funds and its current distributor.[2] Investment class shares of The Kent Funds' series, other than investment class shares of money market series, are sold subject to a front-end sales charge. Institutional class shares of the Kent Funds' series are sold without a front-end or deferred sales charge. Each series of The Kent Funds is authorized to pay 440 Distributors a monthly shareholder services fee of up to .25% of the series' average daily net assets pursuant to a rule 12b–1 plan.

4. Shares of series of Allmerica Funds, other than money market series, are sold subject to a front-end sales charge. For purchases of $1,000,000 or more of shares of Allmerica Funds' non-money market series, no front-end sales charge is imposed but a 1% CDSC is imposed on certain redemptions. The CDSC is assessed in reliance upon an exemptive order granted by the SEC.[3] Under a rule 12b–1 plan, series of Allmerica Funds pay Allmerica a shareholder services fees in the amount of up to .25% of average daily net assets of the non-money market series, and up to .10% of the average daily net assets of the money market series.

5. The Valiant Fund offers its series at net asset value without any sales charge. The Valiant Fund has adopted a rule 12b–1 plan, but no payments have been authorized or will be made during the current fiscal year.

6. Applicants seek relief to implement a proposed multiple pricing system (the "Multiple Pricing System"). Under applicants' proposal, the non-money market series of the Trusts will provide investors the option of purchasing shares: (a) with a front-end sales load and in certain circumstances a distribution fee of up to .75% ("Class A shares"); (b) subject to a CDSC and distribution and shareholder services fees of up to 1% ("Class B shares"); (c) subject to a CDSC that will normally be lower than the CDSC imposed on Class B shares and a distribution and shareholder services fees of up to 1% ("Class C shares"); and (d) without a sales charge and either with or without distribution and shareholder services fees of up to .75% ("Class D shares"). Each of the money market series of the Trusts will provide investors the option of purchasing shares: (a) without a sales load and subject to a distribution fee of up to .35% ("Class E shares"); (b) without a sales load and subject to distribution and shareholder services fees of up to .75% ("Class F shares"); and (c) without sales charges or distribution fees ("Class G"). Each series' rule 12b–1 plan will be amended as necessary to accommodate the proposed fee arrangements of each class.

7. Existing shares of The One Group correspond to shares authorized under the Multiple Pricing System as follows: Class A shares of the non-money market series correspond to Class A shares, and class A shares of the money market series correspond to Class E shares; class B shares correspond to Class B shares; retirement class shares of the non-money market series correspond to Class D shares, and retirement class shares of the money market series correspond to Class F shares; fiduciary class shares of the non-money market series correspond to Class D shares, and fiduciary class shares of the money market series correspond to Class G shares. Existing shares of The Kent Fund correspond to shares authorized under the Multiple Pricing System as follows: investment class shares of the non-money market series correspond to Class A shares, and investment class shares of the money market series correspond to Class E shares; institutional class shares of the non-money market series correspond to Class D shares, and institutional class shares of the money market series correspond to Class F shares. Shares of Allmerica Funds' existing non-money market series will be redesignated Class A, and shares of the existing money market series will be redesignated Class E.

8. From time to time each Trust also may offer additional classes of shares. Certain of these additional classes ("Indirect Investor Classes") will be offered only to Qualified Institutional Investors (as defined herein). All classes of shares other than the Indirect Investor Classes, including Classes A, B, C, D, E, F, and G, will be referred to herein as "Direct Investor Classes." Qualified Institutional Investors eligible to purchase Indirect Investor Classes are limited to the following five categories: (a) benefit plans such as qualified retirement plans, other than individual retirement accounts and retirement plans of self-employed persons, with total assets in excess of $5 million or such other amounts as the Trusts may establish and with such other characteristics as the Trusts may establish; (b) defined contribution retirement plans maintained by the Advisers or their affiliates for the benefit of their employees; (c) banks and insurance companies purchasing shares for their own accounts; (d) registered investment companies not affiliated with 440 Financial or with any of the Advisers; and (e) endowment funds of non-profit organizations.

9. The benefit plans in category (a) will have a separate trustee for the plan who is vested with investment discretion as to plan assets. The plan beneficiaries will have limited ability to access their plan investments without incurring adverse tax consequences. Applicants will exclude self-directed plans from this category. The assets of the tax-exempt retirement plans in category (b) will be held in trust by a trustee, and the employees who participate in such plans will have limited pre-retirement access to their plan investments. The investors in categories (c), (d), and (e) will share with category (a) the essential features of substantial assets under management and investment decision-making by institutional management. Investors in the Direct Investor Classes will not be eligible to purchase shares of the Indirect Investor Classes.

10. Applicants propose to convert Class B shares, other than Class B shares acquired through the reinvestment of dividends and distributions, automatically to Class A shares a certain number of years after the end of the calendar month in which the shareholders' order to purchase was accepted. Shares purchased through the reinvestment of dividends and distributions will be considered held in a separate sub-account, and each time any Class B shares convert to Class A shares, a *pro rata* portion of the Class B shares purchased through the reinvestment of dividends or distributions also will convert. The purpose of the conversion feature is to relieve the holders of the Class B shares from continuing to pay a high ongoing distribution fee after the Class B shares have been outstanding long enough for the Distributor to have recouped its distribution expenses.

11. Shares of one class of a series generally may be exchanged for a corresponding class of another series belonging to the same "family of funds" (as defined in rule 11a–3). Each Trust is a separate family of funds. Exchanges will not be permitted between Direct

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[2] The Kent Funds, *et al.*, Investment Company Act Release Nos. 19033 (Oct. 15, 1992) (notice) and 19094 (Nov. 12, 1992) (order). On February 15, 1994, The Kent Funds received no-action relief so that it can continue to rely on that order for an interim period of up to one year, if any, between the assumption by 440 Distributors of the role as The Kent Funds' distributor and the granting of an order pursuant the application.

[3] Investment Company Act Release Nos. 19236 (Jan. 26, 1993) (notice) and 19291 (Feb. 23, 1993) (order).

Investor Classes of shares and Indirect Investor Classes of shares.

12. Applicants seek exemptive relief to permit them to impose a CDSC on redemptions of shares of Classes B and C. In no event would the aggregate amount of the Class B CDSC exceed 6% of the aggregate purchase payments made by an investor for Class B shares of a series. The CDSC for the Class C shares of a series will not exceed 1% of the aggregate purchase payments. The CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time.

13. The Trusts intend to waive the CDSC in the event of one or more of the following occurrences: (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code or 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder, as relevant; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keough Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½ or, in connection with redemptions which result from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code or from the death or disability of the employee; (c) in connection with redemptions of shares purchased by officers, directors or trustees, and employees of the series, the Advisers and their affiliated entities the Distributors and their affiliated entities, and by the members of the immediate families of such persons; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a series; (e) in connection with redemptions effected by advisory accounts managed by the Advisers and their affiliated entities; (f) in connection with redemptions by tax-exempt employee benefit plans as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the series would be improper; and (g) in connection with redemptions effected by a registered investment company in connection with the combination of the investment company with a series by merger, acquisition of assets, or by any other transaction. In addition, the Trusts intend to reduce the CDSC in connection with redemptions by large accountholders.

14. Each series may provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares from a series followed by a reinvestment in the series effected within 365 days, or a shorter period, of the redemption. The credit will be paid for by the series' distributor.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g); and 18(i) to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Trust might be deemed: (a) to result in a "senior security" within the meaning of section 18(g); (b) prohibited by section 18(f)(1); and (c) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Trusts to meet the competitive demands of today's financial services industry. Under the multiclass arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Trusts to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Trusts. The multi-class arrangement does not involve borrowing, nor will it affect the Trust's existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the Trusts to implement the proposed CDSCs is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangements will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Trusts with no deduction of an initial sales charge.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a series and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same series will relate solely to: (a) the method of financing certain expenses that may be imposed upon a particular class of shares and which are limited to (i) incremental transfer agent fees identified by the transfer agent as being attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class of shares, (iii) blue sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) trustees' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the SEC pursuant to an amended order, (collectively, "Class Expenses"); (b) the impact of different rule 12b–1 plan (if any) or shareholder services plan (if any) payments made by a particular class of shares; (c) voting rights on matters which pertain to rule 12b–1 plans or shareholder services plans; (d) the conversion feature applicable to classes of shares sold subject to a CDSC which are convertible into a class of shares not subject to a CDSC; and (e) the designation of each class of shares of a series.

2. If a series implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or

implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), existing shares of the class that will convert ("Purchase Class") will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6 below, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Advisers and the Distributors. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

4. The trustees of each of the Trusts, including a majority of the independent trustees, shall have approved the Multiple Pricing System, prior to the implementation of the Multiple Pricing System by a particular series. The minutes of the meetings of the trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Pricing System will reflect in detail the reasons for determining that the Multiple Pricing System is in the best interest of both the series and their respective shareholders.

5. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a series and any subsequent changes thereto will be reviewed and approved by a vote of the trustees, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a series to meet Class Expenses shall provide to the trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which such expenditures were made.

6. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each series for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisers and the Distributors will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Advisers and the Distributors at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale or servicing of a class of shares will be used to support any rule 12b–1 plan or shareholder services plan expenditures charged to such class. Expenditures not related to the sale or servicing of a specific class will not be presented to the trustees to support rule 12b–1 plan or shareholder services plan expenditures charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. If any class will be subject to a shareholder services plan, such shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

9. Dividends paid by a series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenditures associated with any rule 12b–1 plan or shareholder services plan and any Class Expense will be borne by the affected class.

10. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among such classes has been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants (and such report has been filed with the SEC as an exhibit to the application), stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and based upon such review, will render at least annually a report to the Trusts that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Experts with respect to such reports, following request by the Trusts (which the Trusts agree to make), will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, any Assistant Director, and any Regional Administrator or Associate and Assistant Administrator. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may

be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. The applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

12. The prospectuses of the series relating to each class of shares will contain a statement to the effect that financial institutions, groups, and any other person entitled to receive any compensation for selling series shares may receive different levels of compensation for selling one particular class of shares over another in a series.

13. The series' Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to these standards. Applicants' compliance standards will require the investors eligible to purchase an Indirect Investor Class of shares of a non-money series offering such shares to invest in the Indirect Investor Class of shares, rather than the Direct Investor Classes of shares of such non-money market series. Applicants' compliance standards will also require all investors eligible to purchase an Indirect Investor Class of shares of a money market series offering such shares, to invest in an Indirect Investor Class of shares of such money market series.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multiple Pricing System will be set forth in guidelines which will be furnished to the trustees.

15. Each Trust will disclose the respective expenses, performance data, distribution arrangements, service fees, initial sales loads, deferred sales loads, and exchange privilege applicable to each Director Investor Class of shares in every prospectus offering any Direct Investor Classes of shares. Each Trust will disclose the respective expenses, performance data, distribution arrangements, service fees, initial sales loads, deferred sales loads, and exchange privileges, if any, applicable to each Indirect Investor Class of shares in every prospectus offering Indirect Investor Classes of shares. The Indirect Investor Classes will be offered solely pursuant to separate prospectus(es). The prospectus(es) for the Indirect Investor Classes will disclose the existence of the Trust's Direct Investor Classes and will identify the entities eligible to purchase such shares, and the prospectuses for the Trust's Direct Investor Classes will disclose the existence of the Indirect Investor Classes and will identify the persons eligible to purchase shares of such classes. Each Trust will disclose the respective expenses and performance data applicable to all classes in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the trust as a whole generally, and not on a per class basis. Each Trust's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Trust. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any Direct Investor Class of shares, it will also disclose the expenses and/or performance data applicable to all Direct Investor Classes of shares. Advertising materials reflecting the expenses or performance data for the Indirect Investor Classes will be available only to Qualified Institutional Investors eligible to purchase such Indirect Investor Classes and to the extent any such advertisement or sales literature describes the expenses or performance data applicable to any one Indirect Investor Class of shares, it will also disclose the expenses or performance data applicable to all Indirect Investor Classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Trusts' asset values and public offering prices for Direct Investor Classes of shares will present each class of shares, except the Indirect Investor Classes, separately.

16. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trust may make pursuant to a rule 12b–1 distribution plans or shareholder services plans in reliance on the exemptive order.

17. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5809 Filed 3–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1962]

Delegation of Authority 211; Authorization of Testimony and Production of Documents

By virtue of the authority vested in me by 22 CFR 172.4(b) and section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to Principal Deputy Assistant Secretary for Consular Affairs the authority conferred on the Assistant Secretary for Consular Affairs pursuant to 22 CFR 172.4 and 172.5 concerning approval of testimony and production of documents by Department of State employees. This authority may be redelegated to another Deputy Assistant Secretary. Notwithstanding this delegation of authority, the Assistant Secretary for Consular Affairs may at any time exercise any authority conferred upon that officer by 22 CFR part 172.

Dated: January 31, 1994.

Mary A. Ryan,

Assistant Secretary of Consular Affairs.

[FR Doc. 94–5796 Filed 3–11–94; 8:45 am]

BILLING CODE 4710–06–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app., announcement is hereby published for the first meeting of the Affordable Housing Advisory Board. The meeting is open to the public. Less than 15 days notice is being given because Public Law 103–204 requires that the first meeting of the Affordable Housing Advisory Board take place no later than March 16, 1994.

DATES: The Affordable Housing Advisory Board meeting is scheduled

for Tuesday, March 15, 1994, from 9 to 12 p.m.

ADDRESSES: The meeting will be held at the Washington Vista Hotel, Monticello Room, 1400 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law 103–204, establishes the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Advisory Board consists of the Secretary of Housing and Urban Development (HUD), the Chairperson of the Board of Directors of the FDIC (or delegate), a nonvoting member, the Chairperson of the Oversight Board (or delegate), a nonvoting member, four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two members of the Affordable Housing Advisory Board appointed by such Board. The Affordable Housing Advisory Board was chartered March 10, 1994, and Public Law No. 103–204 requires that its first meeting take place not later than March 16, 1994.

Agenda

A detailed agenda will be available at the meeting. Discussions will include a review of RTC's and FDIC's Affordable Housing Disposition Programs and their unification plan, sale of non-performing loans to nonprofits and public agencies, and the affordable housing provisions of the Resolution Trust Completion Act.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: March 10, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–5933 Filed 3–10–94; 9:46 am]

BILLING CODE 2222–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 791 Ref: ATF O 1100.63F]

Delegation Order—Delegation or Authority to Accept or Reject Offers in Compromise

1. *Purpose.* This order delegates the authority to accept or reject certain offers in compromise of liabilities incurred under chapters 32, 51, 52, 53, and 78, Title 26 U.S.C., and liabilities incurred under the Federal Alcohol Administration (FAA) Act.

2. *Cancellation.* ATF O 1100.63E, Delegation to the Associate Director (Compliance Operations), Division Chiefs (Compliance), Regional Directors (Compliance) and Chief, Tax Processing Center to Accept or Reject Offers in Compromise, dated April 7, 1992, is canceled.

3. *General.* a. The authority to accept or reject offers in compromise of liabilities arising under chapters 32, 51, 52, and 53, and sections 7652 and 7653 (chapter 78), Title 26 U.S.C., and the provisions of the FAA Act is vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly Order No. 221), dated June 6, 1972; Treasury Department Order No. 120–03, dated November 5, 1990; and 27 CFR 70.482 and 70.483.

b. The term tax liability used throughout this document includes all principal, interest, additional amounts, addition to the tax, or assessable penalties.

4. *Discussion.* This order authorizes regional directors (compliance) and the Chief, Tax Processing Center, to take final action on selected offers in compromise previously requiring action by the division chiefs (compliance). This order also gives the Chief, Tax Processing Center authority to resolve certain cases involving permittees when these cases are in enforced collection status.

5. *Delegations.* Pursuant to the authority vested in the Director by Treasury Department Orders No. 120–01 and 120–03, and subject to the limitations contained in applicable regulations and procedures, there is hereby delegated the following authority relating to the offers in compromise of liabilities (other than forfeiture) arising under chapters 32, 51, 52, 53, and 78, Title 26 U.S.C., and under the FAA Act.

a. *Associate Director and Deputy Associate Director (Compliance Operations).* (1) The Associate Director and Deputy Associate Director (Compliance Operations) are authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52 and 53, Title 26 U.S.C.

(b) Violations of sections 7652 and 7653 (chapter 78), Title 26 U.S.C., insofar as those sections relate to commodities subject to tax under chapters 32, 51, 52, and 53.

(c) Violations of the FAA Act.

(d) Cases which combine liabilities arising from violations of chapter 51, Title 26 U.S.C. and the FAA Act.

(2) This delegation is limited to offers in compromise which do not exceed $1,000,000.

b. *Division Chiefs (Compliance).* (1) Each division chief (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52, and 53 and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C. as follows:

1 Cases in which the offer in compromise does not exceed $100,000 and the tax liability sought to be compromised does not exceed $250,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $500,000 and the offer in compromise does not exceed $100,000.

(b) Violations of the FAA Act where cases include an offer in compromise which does not exceed $100,000.

(c) Cases that combine liabilities arising under chapter 51, Title 26 U.S.C. and the FAA Act where the tax liability sought to be compromised does not exceed $250,000 and the offer in compromise does not exceed $100,000.

(2) The division chief (compliance) in whose area of responsibility the majority of violations pertains will be the deciding official to accept or reject offers which compromise the liabilities, including those cases which are designated as national investigations/cases by Bureau Headquarters.

c. *Regional Directors (Compliance).* (1) Each regional director (compliance) is authorized to accept or reject offers in compromise of tax liabilities and penalties arising from:

(a) Chapter 51, Title 26 U.S.C., as follows:

1 Illegal production of untaxpaid distilled spirits, wines, or beer.

2 Failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, or beer.

(b) Chapter 53, Title 26 U.S.C. (failure to pay firearms making, transfer, and occupational taxes).

(2) Each regional director (compliance) is authorized to accept or reject offers in compromise of criminal

liabilities of retail dealers in alcoholic beverages arising from violations of the Internal Revenue laws relating to alcoholic beverages, including the refilling or reuse of liquor bottles.

(3) Each regional director (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of chapters 32, 51, 52, and 53, and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C., not enumerated in paragraphs 5c(1) and (2), as follows:

1 Cases in which the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised does not exceed $20,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $50,000 and the offer in compromise does not exceed $10,000.

3 Cases that pertain to specially denatured alcohol (SDA) or taxfree (TF) alcohol where the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised is based upon either (a) use of SDA or TF alcohol for unauthorized purposes or (b) activities to which no liability would normally attach if the proponent completed required notification and/or approval procedures, but for which the proponent failed to complete such procedures. This delegation is limited to cases in which the misuse of SDA or TF alcohol or the activities in question are:

a Not willful, and

b Not for beverage purposes, and

c Not for a purpose that poses a health risk to the public, and

d Not for any purpose that poses a jeopardy to the revenue.

(b) Violations of the FAA Act where cases include an offer in compromise which does not exceed $10,000.

(c) Cases that combine liabilities arising under chapter 51, Title 26 U.S.C., and the FAA Act where the tax liability sought to be compromised does not exceed $20,000 and the offer in compromise does not exceed $10,000.

(4) Each regional director is authorized to accept or reject offers in compromise arising from cases outlined in paragraph 5b provided the following circumstances apply:

(a) The final action to be taken follows specific written case resolution guidance previously furnished by the division chief (compliance).

(b) The relevant circumstances of the case have not changed subsequent to the guidance of the division chief (compliance).

(5) *Offers Encompassing Violations in Multiple Regions.* (a) The regional director (compliance) in whose region the permittee or brewer responsible for the majority of violations is located will be the deciding official for offers involving violations or permittees in more than one region. However, cases that include a previously issued order to show cause will be resolved by the regional director who authorized issuance of the order.

(b) Tax cases regarding members of controlled groups as defined in 26 U.S.C. 1563(a) will generally be resolved by the regional director (compliance) in whose region the members are located. However, if multiple liabilities for the same tax period(s) have occurred as a result of preparation of late filed tax returns or late paid tax handled by a central location, the penalties will be resolved by the regional director (compliance) in whose region lies the central location.

(c) This authority does not include:

1 Cases which are designated as national investigations/cases by Bureau Headquarters, or

2 Cases where the total amount of such a liability exceeds the levels delegated to regional director (compliance).

d. *Chief, Tax Processing Center.* The Chief, Tax Processing Center is authorized to accept or reject offers in compromise of all tax liabilities arising from violations of chapters 32, 51, 52, and 53, and §§ 7652 and 7653 (chapter 78), Title 26 U.S.C., in the following situations:

(1) Floor stocks tax and special (occupational) tax cases in which the offer in compromise does not exceed $5,000 and the tax liability sought to be compromised does not exceed $10,000. This authority does not include offers in compromise from alcohol and tobacco permittees except for those permittee cases included in paragraph 5d(2). Decisions regarding special (occupational) taxes imposed by 26 U.S.C. chapter 53 will be coordinated with the Chief, National Firearms Act Branch.

(2) Enforced Collection cases in which the offer in compromise does not exceed $5,000 and the tax liability sought to be compromised does not exceed $10,000. Cases in excess of these amounts will be referred to Bureau Headquarters for evaluation.

(3) Floor stocks tax, special (occupational) tax, and enforced collection cases which meet the criteria outlined in paragraph 5b(1)(a), provided the following circumstances apply:

(a) The final action to be taken follows specific written case resolution guidance previously furnished by the division chief (compliance).

(b) The relevant circumstances of the case have not changed subsequent to the guidance of the division chief (compliance).

6. *Redelegation.* The authority delegated herein may not be redelegated.

7. *For Information Contact.* Gary Malaskovitz, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

8. *Effective Date.* March 14, 1994.

Approved: March 7, 1994.

John W. Magaw,

Director.

[FR Doc. 94–5803 Filed 3–11–94; 8:45 am]

BILLING CODE 4810–31–U

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Determination; Bisphenol-A, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include bisphenol-A and alpha-methylstyrene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that bisphenol-A and alpha-methylstyrene should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for bisphenol-A, under section 4671(b)(3), is $5.11 per ton. This is based upon a conversion factor for benzene of 0.68 and a conversion factor for propylene of 0.37.

The rate of tax prescribed for alpha-methylstyrene, under section 4671(b)(3), is $4.96 per ton. This is based upon a conversion factor for benzene of 0.66 and a conversion factor for propylene of 0.36.

The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Bisphenol-A

HTS number: 2907.23.00.00
CAS number: 80–05–7

Bisphenol-A is derived from the taxable chemicals benzene and propylene. Bisphenol-A is a solid produced predominantly by the acid catalyzed reaction of phenol with acetone.

The stoichiometric material consumption formula for bisphenol-A is:

$2\ C_6H_6$ (benzene) + $2\ C_3H_6$ (propylene) + $2\ O_1$ (oxygen) ——> $C_{15}H_{16}O_2$ (bisphenol-A) + C_3H_6O (acetone) + H_2O (water)

Bisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 78.9 percent by weight of the materials used in its production.

Alpha-methylstyrene

HTS number: 2902.90.00.00
CAS number: 98–83–9

Alpha-methylstyrene is derived from the taxable chemicals benzene and propylene. Alpha-methylstyrene is a liquid produced predominantly as a byproduct from the cumene oxidation process for the production of phenol-acetone. The stoichiometric material consumption formula for alpha-methylstyrene is:

C_6H_6 (benzene) + C_3H_6 (propylene) + 0.5 O2 (oxygen) ——> C_9H_{10} (alpha-methylstyrene) + H_2O (water)

Alpha-methylstyrene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 88.2 percent by weight of the materials used in its production.

Dale D. Goode

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 94–5861 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Notice of Determination; Decabromodiphenyl Oxide, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include decabromodiphenyl oxide and tetrabromobisphenol-A.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 9, 1991, the Secretary determined that decabromodiphenyl oxide and tetrabromobisphenol-A should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for decabromodiphenyl oxide, under section 4671(b)(3), is $7.41 per ton. This is based upon a conversion factor for bromine of 1.666.

The rate of tax prescribed for tetrabromobisphenol-A, under section 4671(b)(3), is $5.22 per ton. This is based upon a conversion factor for bromine of 1.175.

The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Decabromodiphenyl oxide

HTS number: 2909.30.07
CAS number: 1163–19–5

Decabromodiphenyl oxide is derived from the taxable chemical bromine. Decabromodiphenyl oxide is a solid produced predominantly by direct bromination of diphenyl oxide in the presence of a catalyst.

The stoichiometric material consumption formula for decabromodiphenyl oxide is:

$C_{12}OH_{10}$ (diphenyl oxide) + 10 Br_2 (bromine) ——> $C_{12}OBr_{10}$ (decabromodiphenyl oxide) + 10 HBr (hydrogen bromide).

Decabromodiphenyl oxide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 90.3 percent by weight of the materials used in its production.

Tetrabromobisphenol-A

HTS number: 2908.10.25
CAS number: 79–94–7

Tetrabromobisphenol-A is derived from the taxable chemical bromine. Tetrabromobisphenol-A is a solid produced predominantly by the reaction of bromine with bisphenol-A.

The stoichiometric material consumption formula for tetrabromobisphenol-A is:

$C_{15}H_{16}O_2$ (bisphenol-A) + 4 Br_2 (bromine) ——> $C_{15}H_{12}O_2Br_4$ (tetrabromobisphenol-A) + 4 HBr (hydrogen bromide).

Tetrabromobisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 73.7 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5859 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Di-n-hexyl Adipate, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that di-n-hexyl adipate, ortho-dichlorobenzene and para-dichlorobenzene be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by May 13, 1994. Any modification of the list of taxable substances based upon these petitions would be effective October 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on December 27, 1989. The petitioner is Monsanto Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Di-n-hexyl adipate

HTS number: 2917.39.20.00
CAS number: 110–33–8

This substance is derived from the taxable chemicals ethylene, methane, benzene, and nitric acid. Di-n-hexyl adipate is a liquid produced predominantly by reaction of n-hexyl alcohol with adipic acid in the presence of a catalyst. n-hexyl alcohol is produced from aluminum, natural gas (via hydrogen), and ethylene (via triethylaluminum). Oxidation of the intermediate mixed trialkylaluminum with air produces a mixed aluminum alkoxide, which is hydrolyzed to produce a mixture of alcohols, from which n-hexyl alcohol is recovered by distillation. Adipic acid is produced from benzene (via cyclohexane) and the methane in natural gas (via hydrogen). Oxidation of cyclohexane using air and nitric acid in a two-step process produces adipic acid.

The stoichiometric material consumption formula for this substance is:

6 C_2H_4 (ethylene) + 1.5 CH_4 (methane) + C_6H_6 (benzene) + 2.33 HNO_3 (nitric acid) + 2.83 H_2O (water) + 1.75 O_2 (oxygen) + 0.67 Al (aluminum) + 2.02 H_2 (hydrogen) ——> $C_{18}H_{34}O_4$ (di-n-hexyl adipate) + 3 H_2 (hydrogen) + 1.5 CO_2 (carbon dioxide) + 2.33 NO (nitric oxide) + 2 H_2O (water) + 0.67 AlH_3O_3 (aluminum hydroxide)

According to the petition, taxable chemicals constitute 76.6 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.67 per ton. This is based upon a conversion factor for ethylene of 0.58, a conversion factor for methane of 0.05, a conversion factor for benzene of 0.33, and a conversion factor for nitric acid of 0.29.

Ortho-dichlorobenzene

HTS number: 2903.61.20.00
CAS number: 95–50–1

This substance is derived from the taxable chemicals benzene and chlorine. Ortho-dichlorobenzene is a liquid produced predominantly by the reaction of chlorine with benzene.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + 2 Cl2 (chlorine) ——> $C_6H_4Cl_2$ (o-dichlorobenzene) + 2 HCl (hydrogen chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.55 per ton. This is based upon a conversion factor for benzene of 0.57 and a conversion factor for chlorine of 1.03.

Para-dichlorobenzene

HTS number: 2903.61.30.00
CAS number: 106–46–7

This substance is derived from the taxable chemicals benzene and chlorine. Para-dichlorobenzene is a solid produced predominantly by the reaction of chlorine with benzene.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + 2 Cl_2 (chlorine) ——> $C_6CH_4Cl_2$(p-dichlorobenzene) + 2 HCl (hydrogen chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.55 per ton. This is based upon a conversion factor for benzene of 0.57 and a conversion factor for chlorine of 1.03.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5863 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Epichlorohydrin, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that epichlorohydrin and allyl chloride be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by May 13, 1994. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on November 21, 1991 (epichlorohydrin) and December 6, 1991 (allyl chloride). The petitioner is Dow Chemical Company a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Epichlorohydrin

HTS number: 2910.30.00.00
CAS number: 106–89–8

This substance is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide. Epichlorohydrin

is a liquid produced predominantly by the chlorohydration of allyl chloride, which is obtained by chlorination of propylene, followed by the hydrochlorination of the formed dichlorohydrin.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 2 Cl_2 (chlorine) + NaOH (sodium hydroxide)——> C_3H_5ClO (epichlorohydrin)+2 HCl (hydrogen chloride) + NaCl (sodium chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $8.58 per ton. This is based upon a conversion factor for propylene of 0.61, a conversion factor for chlorine of 1.98, and a conversion factor for sodium hydroxide of 0.96.

Allyl chloride

HTS number: 2903.29.00.00
CAS number: 107–05–1

This substance is derived from the taxable chemicals propylene and chlorine. Allyl chloride is a liquid produced predominantly by noncatalytic flow-pressure, high temperature chlorination of propylene.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + Cl_2 (chlorine) ——> C_3H_5Cl (allyl chloride) + HCl (hydrogen chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.45 per ton. This is based upon a conversion factor for propylene of 0.66 and a conversion factor for chlorine of 1.20.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5862 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Glycerine, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under notice 89–61, 1989–1 C.B. 717, of petitions requesting that glycerine and phenol be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by May 13, 1994. Any modification of the list of taxable substances based upon this petition would be effective January 1, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition for glycerine was received on February 21, 1990, and the petition for phenol was received on March 6, 1990. The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Glycerine

HTS number: 1520.90.00.00
CAS number: 56–81–5

This substance is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide. Glycerine is a liquid produced predominantly by the reaction of epichlorohydrin with an aqueous caustic carbonate solution, followed by the removal of water, sodium chloride, and other impurities by mechanical means, chemical extraction, and distillation.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 2 Cl_2 (chlorine) + 2 NaOH (sodium hydroxide) + H_2O (water) ——> $C_3H_8O_3$ (glycerine) + 2 NaCl (sodium chloride) + 2 HCl (hydrogen chloride).

According to the petition, taxable chemicals constitute 93.5 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $9.52 per ton. This is based upon a conversion factor for propylene of 0.67, a conversion factor for chlorine of 2.16, and a conversion factor for sodium hydroxide of 1.54.

Phenol

HTS number: 2907.11.00.00
CAS number: 108–95–2

This substance is derived from the taxable chemicals benzene and propylene. Phenol is a solid produced predominantly based on cumene peroxidation.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + C_3H_6 (propylene) + O_2 (oxygen) ——> C_6H_6O (phenol) + C_3H_6O (acetone)

According to the petition, taxable chemicals constitute 78.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.33 per ton. This is based upon a conversion factor for benzene of 0.9 and a conversion factor for propylene of 0.4.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5857 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition; Para-nitrophenol, Etc.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under notice 89–61, 1989–1 C.B. 717, of petitions requesting that para-nitrophenol, ortho-nitrochlorobenzene, and para-nitrochlorobenzene be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by May 13, 1994. Any modification of the list of taxable substances based upon these petitions would be effective July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on September 29, 1989. The petitioner is Monsanto

Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Para-nitrophenol

HTS number: 2908.90.04.00
CAS number: 100–02–7

This substance is derived from the taxable chemicals chlorine, benzene, sodium hydroxide, nitric acid, and sulfuric acid. Para-nitrophenol is a solid produced predominantly by the reaction of para-nitrochlorobenzene with aqueous sodium hydroxide, followed by reaction with sulfuric acid to form para-nitrophenol from the resulting para-nitrophenoxide.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + 2 NaOH (sodium hydroxide) + HNO_3 (nitric acid) + 0.5 H_2SO_4 (sulfuric acid) ——> $C_6H_5NO_3$ (p-nitrophenol) + NaCl (sodium chloride) + 2 H_2O (water) + 0.5 Na_2SO_4 (sodium sulfate) + HCl (hydrogen chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.85 per ton. This is based upon a conversion factor for chlorine of 0.54, a conversion factor for benzene of 0.60, a conversion factor for sodium hydroxide of 0.75, a conversion factor for nitric acid of 0.47, and a conversion factor for sulfuric acid of 0.59.

Ortho-nitrochlorobenzene

HTS number: 2903.69.00.00
CAS number: 88–73–3

This substance is derived from the taxable chemicals chlorine, benzene, and nitric acid. Ortho-nitrochlorobenzene is a solid produced predominantly by the nitration of monochlorobenzene.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + HNO_3 (nitric acid) ——> $C_6H_4ClNO_2$ (o-nitrochlorobenzene) + H_2O (water) + HCl (hydrogen chloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.89 per ton. This is based upon a conversion factor for chlorine of 0.47, a conversion factor for benzene of 0.52, and a conversion factor for nitric acid of 0.41.

Para-nitrochlorobenzene

HTS number: 2903.69.00.00
CAS number: 100–00–5

This substance is derived from the taxable chemicals chlorine, benzene, and nitric acid. Para-nitrochlorobenzene is a solid produced predominantly by the nitration of monochlorobenzene.

The stoichiometric material consumption formula for this substance is:

Cl_2 (chlorine) + C_6H_6 (benzene) + HNO_3 (nitric acid) ——> $C_6H_4ClNO_2$ (p-nitrochlorobenzene) + H_2O (water) + HCl (hydrogenchloride)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.89 per ton. This is based upon a conversion factor for chlorine of 0.47, a conversion factor for benzene of 0.52, and a conversion factor for nitric acid of 0.41.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5858 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Notice of Determination; Perchloroethylene

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include perchloroethylene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that perchloroethylene should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for perchloroethylene under section 4671(b)(3), is $5.44 per ton. This is based upon a conversion factor for ethylene of 0.17 and a conversion factor for chlorine of 1.71.

The petitioner is Vulcan Chemicals, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

Perchloroethylene

HTS number: 2903.23.00.00
CAS number: 127–18–4

Perchloroethylene is derived from the taxable chemicals ethylene and chlorine. Perchloroethylene is a liquid produced predominantly by the high temperature chlorination of ethylene.

The stoichiometric material consumption formula for perchloroethylene is:

C_2H_4 (ethylene)+4 Cl_2 (chlorine) ——> C_2Cl_4 (perchloroethylene)+4 HCl (hydrogen chloride)

Perchloroethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–5860 Filed 3–11–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Addendum

On September 14, 1993, notice was published at page 48089 of the **Federal Register** (58 FR 48089) by the United States Information Agency pursuant to

Public Law 89–259 relating to the exhibit "The Age of the Baroque in Portugal." This exhibit will continue to be presented at the National Gallery of Art, Washington, DC until on or about April 3, 1994. In addition to this venue, the exhibit will also be on display at the San Diego Museum of Art, San Diego, California from on or about May 12, 1994, to on or about August 7, 1994. A copy of the list of objects covered by this notice may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Les Jin,

General Counsel.

[FR Doc. 94–5812 Filed 3–11–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 49

Monday, March 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2 p.m., Wednesday, March 23, 1994.

PLACE: SR–236, Russell Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
1. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 94–5967 Filed 3–10–94; 11:31 am]

BILLING CODE 4738–01–M

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2 p.m., March 22 1994.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Special Open Meeting of November 30, 1992.
2. Memorandum re: Update of CCC–Owned Inventory.
3. Memorandum re: CCC Financial Condition Report.
4. Docket ZCP–72b re: Program to Supply Cotton to Textile Schools for 1994 and Subsequent Years.
5. Docket JCZ–328 re: Emergency Livestock Feed Assistance Programs for 1994 and Subsequent Years.
6. Docket CZ–128a, Revision 1 re: Policy With Respect to Notifying Persons of Claims Against the Commodity Credit Corporation.
7. Docket CZ–189, Revision 3 re: Policy Covering Payment of Claims Against Commodity Credit Corporation Which Are Due But Are Beyond Legal Action Due to a Statute of Limitations.
8. Memorandum re: Informational Memorandum of CCC Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1993 Amendments and in Fiscal Year 1994 and Amendment.
9. Resolution for Docket CZ–266, Resolution No. 30, Amendment 1, re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1993.
10. Resolution for Docket CZ–266, Resolution No. 31 re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1994.
11. Docket CZ–332 re: Food for Progress Program.

CONTACT PERSON FOR MORE INFORMATION: Deborah A. Dawson, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 690–0490.

Dated: March 10, 1994.

Deborah A. Dawson,

Secretary, Commodity Credit Corporation.

[FR Doc. 94–6022 Filed 3–10–94; 3:57 pm]

BILLING CODE 3410–05–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), U.S.C. 552b:

DATE AND TIME: March 16, 1994, 10 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 996th Meeting—March 16, 1994, Regular Meeting (10 a.m.)

CAH–1.
Project No. 2440–005, Northern States Power Company
CAH–2.
Project No. 3083–060, Oklahoma Municipal Power Authority
CAH–3.
Project No. 7396–030, The Incorporated County Of Los Alamos, New Mexico
CAH–4.
Project No. 2536–012, Niagara of Wisconsin Paper Corporation
CAH–5.
Project No. 11409–001, North Side Canal Company
CAH–6.
Project No. 5192–003, Lind And Associates
CAH–7.
Project No. 8910–018, Ten Sleep Hydropower, Inc.
CAH–8.
Omitted
CAH–9.
Project No. 11038–000, The County of Arapahoe and Town of Parker, Colorado
CAH–10.
Project No. 5772–004, City of Augusta, Georgia

Consent Agenda—Electric

CAE–1.
Docket Nos. ER93–299–000, EL93–18–000, ER92–436–000 and EL92–29–000, Florida Power Corporation
CAE–2.
Docket Nos. ER90–283–003, ER90–283–005 and ER90–283–006, Cambridge Electric Light Company
CAE–3.
Docket Nos. ER92–809–000 and 002, Illinois Power Company
CAE–4.
Docket No. TX94–1–002, Minnesota Municipal Power Agency v. Northern States Power Company
CAE–5.
Omitted
CAE–6.
Docket No. ER92–517–002, Southern Company Services, Inc.
CAE–7.
Docket Nos. ER93–150–003 and EL93–10–003, Boston Edison Company
CAE–8.
Docket No. ER93–266–001, Boston Edison Company
CAE–9.
Docket No. EG94–22–000, Inversores de Electricidad, S.A.
CAE–10.
Docket No. EG94–23–000, SEI Inversora, S.A.
CAE–11.
Docket No. EG94–19–000, COE Argentina I Corp.
CAE–12.
Docket No. EG94–17–000, 2322133 Nova Scotia Limited
CAE–13.
Docket No. EG94–15–000, 2322117 Nova Scotia Limited
CAE–14.
Docket No. EG94–20–000, SEI Holdings VI, Inc.
CAE–15.
Docket No. EG94–21–000, SEI Bahamas Argentina I, Inc.
CAE–16.
Omitted
CAE–17.

Omitted
CAE–18.
Docket No. QF93–131–001, UNIGAS Corporation
CAE–19.
Docket No. RM93–10–002, New Reporting Requirement Implementing Section 213 (b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No, FERC–714
CAE–20.
Docket No. EL89–44–002, Cajun Electric Power Cooperative, Inc. v. Gulf System Utilities Company
CAE–21.
Docket No. ER90–144–010 Northeast Utilities Service Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–135–000, Texas Eastern Transmission Corporation
CAG–2.
Docket No. RP94–73–002, ANR Pipeline Company
CAG–3.
Omitted
CAG–4.
Docket No. RP94–136–000, Northern Pipeline Corporation
CAG–5.
Docket No. RP94–133–000, Southern Natural Gas Company
CAG–6.
Docket Nos. RP93–172–000 and RP93–172–001, Panhandle Eastern Pipe Line Company
CAG–7.
Docket No. RP94–103–001, Williston Basin Interstate Pipeline Company
CAG–8.
Docket No. RP88–67–070, Texas Eastern Transmission Corporation
CAG–9.
Docket No. RP93–165–001, OkTex Pipeline Company
CAG–10.
Docket No. RP94–43–000, ANR Pipeline Company
CAG–11.
Docket Nos. RP94–72–000 and FA92–59–000, Iroquois Gas Transmission System
CAG–12.
Docket No. RP94–93–001, K N Interstate Gas Transmission Company
CAG–13.
Docket No. RP94–139–000, Williston Basin Interstate Pipeline Company
CAG–14.
Docket No. RP93–189–000, Texas Gas Transmission Corporation
CAG–15.
Docket No. RP94–113–000, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company
CAG–16.
Docket No. PR94–1–000, Bay Gas Storage Company, Ltd.
CAG–17.
Docket No. RP94–87–001, Natural Gas Pipeline Company of America
CAG–18.
Docket Nos. RP91–161–021 and RP92–3–012, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–019 and RP92–2–012, Columbia Gulf Transmission Company
CAG–19.
Docket No. TM94–2–17–003, Texas Eastern Transmission Corporation
CAG–20.
Docket Nos. RP93–151–006 and RP94–39–003, Tennessee Gas Pipeline Company
CAG–21.
Docket No. RP85–170–011, Texas Eastern Transmission Corporation
CAG–22.
Docket No. RP85–181–007, Texas Gas Transmission Corporation
CAG–23.
Docket Nos. RP85–203–016 and RP88–203–013, Panhandle Eastern Pipeline Company
Docket No. RP85–202–013, Trunkline Gas Company
Docket Nos. RP93–127–001, RP93–127–004 and RP93–102–005, Columbia Gas Transmission Corporation
CAG–24.
Docket No. IS94–4–002, All American Pipeline Company
CAG–25.
Docket No. RM87–5–015, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
CAG–26.
Docket Nos. TM90–3–42–007, RP90–49–004, CP88–99–015, TM90–5–42–004, RP86–126–008 and RP90–43–003, Transwestern Pipeline Company
CAG–27.
Docket No. RP87–103–012, Panhandle Eastern Pipe Line Company
CAG–28.
Docket Nos. RP93–184–001 and RP93–185–001, Carnegie Natural Gas Company
CAG–29.
Docket Nos. RP94–35–002 and RP94–35–003, Colorado Interstate Gas Company
CAG–30.
Docket No. RP93–3–010, Arkla Energy Resources Company
CAG–31.
Docket No. RO93–1–000, Concord Petroleum Corporation and Paul C. Elliott
CAG–32.
Docket Nos. RS92–19–010, RP92–104–010 and RP92–131–011, K N Energy, Inc.
CAG–33.
Docket Nos. RS92–1–008 and RS92–1–009, ANR Pipeline Company
CAG–34.
Docket Nos. RS92–45–012 and 013, Natural Gas Pipeline Company of America
CAG–35.
Docket No. CP92–595–001, Great Lakes Gas Transmission, Limited Partnership
CAG–36.
Docket No. CP92–606–001, Great Lakes Gas Transmission, Limited Partnership
CAG–37.
Omitted
CAG–38.
Docket Nos. CP92–165–004 and CP92–165–005, Texas Eastern Transmission Corporation
CAG–39.
Docket No. CP93–69–003, Petal Gas Storage Company
CAG–40.
Docket No. CP93–507–000, Sonat Marketing Company
CAG–41.
Omitted
CAG–42.
Omitted
CAG–43.
Docket No. CP94–23–000, Ozark Gas Transmission System
CAG–44.
Docket Nos. CP89–362–004 and CP89–363–004, North Country Gas Pipeline Corporation
CAG–45.
Docket No. CP94–208–000, Questar Pipeline Company
CAG–46.
Docket No. CP93–425–001, CNG Transmission Corporation
CAG–47.
Omitted
CAG–48.
Docket No. CP94–36–000, Arkla Gathering Services Company
CAG–49.
Docket Nos. RP94–67–001 and 002, Southern Natural Gas Company

Hydro Agenda

H–1.
Project No. 2376–001, Appalachian Power Company. Order on application for new license.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–10–006, RS92–10–007, RS92–10–008, RP92–134–007, RP93–15–005 and CP71–237–005, Southern Natural Gas Company. Order on compliance and rehearing.
RS–2.
Docket Nos. RS92–75–009, RS92–75–010 and RS92–75–011, Paiute Pipeline Company. Order on compliance and rehearing.
RS–3.
Docket Nos. RS92–64–009 and RS92–64–010, High Island Offshore System.
Docket Nos. RS92–88–011 and 012, U-T Offshore System. Order on compliance and rehearing.
RS–4.
Docket Nos. RS92–12–008, RS92–12–009, RP89–183–054, RP91–152–027, RP93–171–001, TC89–8–010 and TM91–3–43–010, Williams Natural Gas Company. Order on compliance and rehearing.
RS–5.
Docket Nos. RS92–5–012, RS92–5–013, RS92–5–014, RS92–5–016, RP90–108–023, RP90–108–024, RP91–82–014, RS91–82–015, RP91–161–019, RP91–161–020, RS92–3–010 , RS92–3–011,

RP93–66–003, RP93–66–004, RP93–115–003 and RP93–115–004, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–011, RS92–6–012, RS92–6–013, RS92–6–014, RP90–107–020, RP90–107–021, RP91–60–016, RP91–60–017, RP92–2–010, RP92–2–011, CP93–736–002 and CP93–736–003. Columbia Gulf Transmission Company. Order on compliance and rehearing.

RS–6.
Docket Nos. RS92–86–016, RP92–108–012 and RP92–137–022, Transcontinental Gas Pipe Line Corporation. Order on compliance and rehearing.

RS–7.
Docket No. RS92–23–018, RS92–23–019, RP91–203–040 and RP92–132–037, Tennessee Gas Pipeline Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: March 9, 1994.
Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94–5966 Filed 3–10–94; 11:30 am]
BILLING CODE 6717–01–P

UNITED STATES ENRICHMENT CORPORATION
Board of Directors
TIME AND DATE: 10 a.m., Tuesday, March 22, 1994.
PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.
STATUS: Parts of this meeting will be open to the public: The balance of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED:

Portions Open to the Public
- Administering Oaths of Office
- Establishment of Board committees

Portions Closed to the Public
- Consideration of internal personnel issues of the Corporation
- Consideration of, and action on, decisions and actions taken by the Transition Manager
- Consideration of commercial and financial issues of the Corporation

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.
SUPPLEMENTAL INFORMATION: Anyone requiring special accommodations should advise the contact person above at least 48 hours prior to the meeting.
William H. Timbers, Jr.,
Transition Manager.
[FR Doc. 94–5987 Filed 3–10–94; 1:43 pm]
BILLING CODE 8720–01–M

Corrections

Federal Register
Vol. 59, No. 49
Monday, March 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 92-297]

Domestic Public Fixed Radio Services; Local Multipoint Distribution Service

Correction

In proposed rule document 94-3772 beginning on page 7961 in the issue of Thursday, February 17, 1994, make the following correction:

On page 7963, in the third column, in the next to last paragraph, in the seventh line, "March 18, 1994." should read "March 21, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-033A]

RIN 0905-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Oral Antiseptic Drug Products

Correction

In proposed rule document 94-2262 beginning on page 6084, in the issue of Wednesday, February 9, 1994, make the following corrections:

1. On page 6084, in the first column, in the **DATES:**, in the last line, "August 8, 1994" should read "June 8, 1994".

2. On page 6121, in the first column in the second full paragraph, in the 12th line, "August 8, 1994", should read "June 8, 1994".

3. On the same page, in the same column, in the last paragraph, beginning in the fourth line, "(insert date 14 months after date of publication in the **Federal Register**)." should read "April 10, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-406A-02]

Area Closures to ORV/Motorized Vehicles

Correction

In notice document 94-4418 beginning on page 9493, in the issue of Monday, February 28, 1994, make the following corrections:

1. On page 9493, in the second column, in the land description, in the first line, "T. 9 S., R. 20 E.," should read "T. 9 S., R. 29 E.,"and in the fourth line, "Section 2: SE¼, SE¼, SW¼, SE¼," should read "Section 2: SE¼ SE¼, SW¼ SE¼".

2. On the same page, in the same column, in the sixth line, "Section 20: SE¼, SE¼, SW¼, SE¼", should read "Section 20: SE¼SE¼, SW¼SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-4210-05-03; AZA 28016]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

Correction

In notice document 94-3126 appearing on page 6288 in the issue of Thursday, February 10, 1994, in the second column, in the land description, under the heading **Gila and Salt,**, Sec. 30 should read "E½NE¼."

BILLING CODE 1505-01-D

Monday
March 14, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AC37

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) herein proposes to amend the Migratory Bird Harvest Information Program (Program) regulations. The Service plans to add Texas and Maryland (beginning with the 1994–95 hunting season) to the list of participating States, and to implement some additional modifications to the Program. This regulatory action will require that licensed hunters in all participating States have evidence of current participation in the Program on their person while hunting migratory game birds. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sampling frame for a voluntary hunter survey to improve harvest estimates for all migratory game birds.

DATE: The comment period for the proposed rule will end on May 13, 1994.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Wildlife Research Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Robert L. Jessen, Migratory Bird Harvest Information Program Coordinator, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028, (301) 497–4986, FAX (301) 497–5981.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Harvest Information Program (Program) to include the States of Texas and Maryland beginning in the 1994–95 hunting season, and to make minor modifications to the Program. One such modification is proposed to limit the requirement for participation to only State-licensed migratory bird hunters. Another modification would require compliance with the Program in each State in which an individual hunts migratory game birds.

Background

A notice of intent to establish the Program was published in the **Federal Register** on June 24, 1991. The proposed rule was published in the **Federal Register** on June 10, 1992. State wildlife agencies expressed a number of concerns in response to the proposed rule. The majority of comments were positive and constructive in nature. However, many States were severely disappointed that the sole remaining option placed the major cost burden on the State wildlife agency. The identification of licensed migratory bird hunters and the collection of names, addresses and other information from them would be the State's responsibility and represents the major portion of the cost burden; while conduct of the harvest survey would be a Federal responsibility.

Many States would have preferred the opportunity of using a separate Federal permit card. A State/Federal technical working group is continuing to develop procedures that would improve harvest estimates without placing unnecessary burdens on State agencies, license vendors or the hunters. Alternative survey designs continue to be investigated. Specifically, alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters) are being investigated to determine if any resulting biases in the estimates would compromise the quality of the survey and if other procedures could be developed that would conform to accepted statistical standards.

The final rule was published in the **Federal Register** on March 19, 1993. The effect of that final rule was to establish the Program and implement the pilot phase in three States.

Implementation of Pilot Phase

State wildlife agencies and the Service began implementing and studying the Program in 1992 with a 2–year pilot phase in three volunteer States (California, Missouri, and South Dakota). These States are providing the names and addresses of migratory bird hunters and other necessary information, from which the Service is conducting a national Migratory Bird Harvest Survey.

The pilot phase of the Program is being preliminarily evaluated to determine the adequacy and timeliness of the sample and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. The approaches used in different States are being compared for costs, efficiency, convenience and survey performance.

The Service previously stated that after evaluation in 1994 of this pilot phase and consideration of any proposed changes, other States will be phased into the Program until all States will participate in 1998. The suggested schedule was published in the June 10, 1992, proposed rule. Consistent with that schedule, Texas will participate in the Program beginning in 1994. Maryland has requested to participate in the Program earlier than scheduled. Revision of the implementation schedule is being proposed in this rulemaking document.

Description of Program (1992–1994)

Currently, all migratory game bird hunters in participating States are required to have a Program validation indicating that they have provided their names and addresses to the State wildlife agency. Validations are printed on their annual State hunting license or supplementary permit. The State may charge hunters a small handling fee to compensate agents and to cover the State's administrative costs associated with conducting this Program. Individual migratory bird hunters are not required to obtain evidence of Program participation in more than one State per year.

The names, current addresses, and necessary information for an adequate sample of migratory bird hunters are needed in time for hunting-record forms to be distributed to selected hunters before they forget the details of their hunts. Because of this fundamental need, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service.

Proposed Modifications to the Program

In addition to implementation of the Program in Texas and Maryland, the Service is proposing several other modifications to the Program. One such modification would require persons who hunt migratory game birds in more than one State to identify themselves as migratory game bird hunters and provide their names, addresses, and dates of birth to each State in which they hunt migratory game birds. Currently, individual hunters are not required to participate in more than one State per year; however, hunters must still adhere to the licensing requirements of all individual States in which they hunt.

Another modification being proposed is to exempt hunters from a permit

requirement if they are also exempt from State-licensing requirements. This would include several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. These exemptions vary on a State-by-State basis.

Excluding those hunters who are not required to obtain an annual State hunting license from the Program also excludes their harvest from the estimates. The importance of their harvest depends on how many hunters are excluded and on the number of birds they bag. Excluding these hunters may result in serious bias. Therefore, the Service is currently evaluating the effects of excluding these hunters and would appreciate any information that may be available. Minimum survey standards are also being developed for exempt categories. One suggestion is to allow a class of hunters to be excluded from participating in the Program if 1) it is periodically demonstrated that only minimal bias in the estimates results from their exclusion or 2) a statistically sound alternate sampling procedure is implemented. States entering the program will individually address the effects of exempting unlicensed hunters through a cooperative agreement with the Service.

NEPA Consideration

The establishment of this Harvest Information Program and options have been considered in the "Environmental Assessment: Migratory Bird Harvest Information Program." Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Regulatory Flexibility Act and the Paperwork Reduction Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 USC 601 *et seq.* This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a small handling fee to compensate their hunting-license vendors and to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information is required from licensed hunters to obtain the benefit of hunting migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.015 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Executive Order 12612—Federalism

The regulations do not have significant federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: Some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses. Comparable information is not available from all States because States have different licensing laws regulating who must buy a hunting license and different survey procedures. Currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season. Budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing special surveys to meet mutual management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

Executive Order 12360—Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary authors of this rule are Robert L. Jessen and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is proposed to be amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: The Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

2. Section 20.20 is revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0015. The

information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in California, Maryland, Missouri, South Dakota, and Texas shall have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and shall have on his or her person evidence, provided by that State, of compliance with this requirement.

(c) *Tribal exemptions.* Nothing in paragraph (b) shall apply to hunters on Federal Indian Reservations or to tribal members hunting on ceded lands.

(d) *State exemptions.* Nothing in paragraph (b) shall apply to those hunters who are exempt from State-licensing requirements in the State in which they are hunting.

(e) *Implementation schedule.* The Service is implementing this Program over a 5-year period from 1994–1998 which will incorporate approximately a half million additional migratory bird hunters each year. States must participate on or before the following schedule:

1994 - California, Maryland, Missouri, South Dakota, and Texas.

1995 - Georgia, Louisiana, Minnesota, and Pennsylvania

1996 - Alabama, Illinois, Michigan, Mississippi, North Carolina, Oklahoma, and Tennessee.

1997 - Arizona, Arkansas, Colorado, Florida, Kentucky, South Carolina, Virginia, and Wisconsin.

1998 - Alaska, Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, Vermont, Washington, West Virginia, and Wyoming.

Dated: February 11, 1994.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5787 Filed 3–11–94; 8:45 am]

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Monday
March 14, 1994

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 203 and 205

Prescription Drugs, Policies, Requirements and Administrative Procedures; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 203 and 205

[Docket No. 92N-0297]

RIN 0905-AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule to set forth agency policies and requirements and to provide administrative procedures, information, and guidance for those sections of the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), that were not implemented by the final rule that set forth Federal guidelines for State licensing of wholesale drug distributors (55 FR 38012, September 14, 1990). FDA is also proposing to amend the definitions section of the State licensing guidelines to make the definition of "wholesale distribution" consistent with that in this proposed regulation.

DATES: Written comments by May 30, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

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I. Background

On April 22, 1988, the President signed PDMA into law (Pub. L. 100-293). According to the congressional findings that were made part of the text of PDMA as section 2, the legislation was intended to ensure that drug products purchased by consumers would be safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs were being sold to American consumers. (See sec. 2(8), PDMA.)

Congress found, among other things, that legislation was necessary because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over, or even routine knowledge of, the true sources of drugs. (See secs. 2(2) and 2(3), PDMA.)

Congress found that large amounts of drugs had been reimported into the United States as American goods returned, causing a health and safety risk to American consumers because the drugs may have become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against American manufacturers and had provided the cover for the importation of foreign counterfeit drugs. (See sec. 2(4), PDMA.)

The congressional findings stated that the then-existing system of providing drug samples to physicians through manufacturers' representatives had been abused for decades and had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals. (See sec. 2(6), PDMA.)

According to the congressional findings, the bulk resale of below-wholesale-priced prescription drugs by health care entities for ultimate sale at retail helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices. (See sec. 2(7), PDMA.)

PDMA amends sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, 381) to: (1) Ban the reimportation of prescription human drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample; (3) ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, or counterfeit any drug coupon; (4) establish limits on the distribution of drug samples to practitioners licensed to prescribe such drugs or to pharmacies of hospitals or other health care entities, including a requirement that such distributions occur only at the request of a licensed practitioner; (5) require licensed practitioners to request samples in writing; (6) mandate storage, handling, and recordkeeping requirements for drug samples; (7) prohibit, with certain exceptions, the sale, purchase, or trade, or the offer to sell, purchase, or trade, of prescription human drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; (8) require State licensing of wholesale distributors of prescription drugs under Federal guidelines that include minimum standards for storage, handling, and recordkeeping; (9) require unauthorized wholesale distributors to provide to each wholesale distributor a statement identifying each sale of the drug before the sale to such wholesale distributor; and (10) set forth civil and criminal penalties for violations of these provisions.

Most PDMA provisions became effective July 22, 1988. However, the drug sample distribution requirements (section 503(d) of the act (21 U.S.C. 353(d))) became effective on October 20, 1988, and the requirement for State licensure of wholesale distributors (section 503(e)(2) of the act) became effective on September 15, 1992 (2 years after the adoption of final rules by the agency setting standards for State licensing). In the **Federal Register** of September 13, 1988 (53 FR 35325), FDA published proposed State licensing guidelines to implement that part of PDMA. FDA received approximately 50 comments on the proposal. These comments were made part of a public docket (Docket No. 88N-0258), which is available for inspection at FDA's Dockets Management Branch (address above). After considering all the comments received on the proposed rule, FDA published revised State licensing guidelines as a final rule (21 CFR part 205) in the **Federal Register** of September 14, 1990 (55 FR 38012). That rule includes minimum requirements for storage and handling of prescription drugs and for establishment and maintenance of records of drug distribution.

The PDMA State licensing requirements were modified by the enactment of PDA (Pub. L. 102–353, 106 Stat. 941) on August 26, 1992. Among other things, PDA amended section 503(e) of the act to establish a temporary Federal wholesale distributor registration procedure for wholesale drug distributors in those States that do not have a licensing program that meets the Federal guidelines. On September 3, 1992, FDA issued a letter to industry and other interested persons providing information and guidance on the procedure to be followed by wholesale distributors required to register under the procedure established by PDA.

PDA also recast other parts of PDMA. Among other things, PDA: (1) Amended section 303(b)(1) of the act to establish a scienter requirement ("knowingly") for conviction of violations of certain prohibited acts under section 301(t) of the act relating to reimportation (section 801(d)(1) of the act), samples (section 503(c)(1) of the act), coupons (503(c)(2) of the act), and unlicensed wholesale distributors (section 503(e)(2)(A) of the act); (2) amended section 503(d) of the act to prohibit the distribution of drug samples by anyone other than the manufacturer or authorized distributors of record, except that Congress excluded from the term "distribute" the provision of a drug sample to a patient by a licensed practitioner, health care professional acting at the direction and under the supervision of such a practitioner, and a hospital or health care entity pharmacy acting at the direction of such a practitioner; (3) amended section 503(d)(2) and (d)(3) of the act to disallow any distribution of drug samples by unauthorized distributors; (4) amended section 503(e)(1) of the act to require that unauthorized distributors provide a statement of origin identifying all prior sales, purchases, or trades of such drugs and the names and addresses of the parties to the transactions to all recipients; and (5) made certain conforming and technical changes to the statute.

On August 1 and November 3, 1988, and January 26, 1990, FDA issued letters to the regulated industry and other interested persons providing information and guidance on those aspects of PDMA that were not implemented by the State licensing rule. The letters requested suggestions from the public regarding the drafting of regulations. Suggestions from the public have been made part of a public docket (Docket No. 88N–258L), which is also available for inspection at FDA's Dockets Management Branch (address above). The agency has received requests for the issuance of further guidance letters to provide specific information in certain areas or to answer particular questions. However, FDA believes that it is now appropriate to establish definitive requirements through notice and comment rulemaking.

In drafting this proposed rule, the agency considered the comments submitted to Docket Nos. 88N–0258 and 88N–258L, including suggestions received in response to FDA's three guidance letters, pertinent comments received in response to the proposed rule on State licensing of wholesale distributors, and other written submissions.

II. Description of the Proposed Rule

FDA is proposing to add a new part 203 to set forth agency policies and requirements and to provide administrative procedures, information, and guidance for those sections of PDMA that were not implemented by part 205. FDA is also proposing to amend § 205.3 to make the definition of "wholesale distribution" consistent with that in proposed part 203.

A summary of the provisions of proposed part 203 follows:

A. Scope

1. General

It was intended that PDMA would protect the public against the threat of subpotent, adulterated, counterfeit, and misbranded drugs posed by the existence of drug diversion schemes and a drug diversion submarket, and the absence of appropriate controls over and creation and maintenance of appropriate records regarding the distribution of prescription drugs

Accordingly, the scope of the proposed rule, as set forth in proposed § 203.1, includes establishment of procedures and requirements pertaining to the reimportation and wholesale distribution of prescription drugs; the sale, purchase, or trade (or the offer to sell, purchase, or trade) of prescription drugs by hospitals, health care entities, and charitable institutions; and the distribution of prescription drug samples.

2. Bulk Drugs

Some questions have been raised about the applicability of PDMA to bulk drugs. The statutory language of PDMA encompasses all drugs subject to section 503(b) of the act within its scope.

The legislative history ("Report of the Committee on Energy and Commerce," H. Rept. 100–76, April 30, 1987, and "Report of the Committee on Finance," S. Rept. 100–202, March 18, 1988) or the congressional hearing record do not suggest that bulk drug substances be treated any differently from other prescription drugs. Bulk drug substances are susceptible to the same problems of lack of accountability and diversion that this legislation was intended to remedy. It is clear that applying the provisions of the statute to bulk drug substances would help protect against the abuses that Congress intended to address and contribute to the protection of the public health. Accordingly, bulk drug substances are, as drugs within the meaning of section 503(b) of the act, expressly brought within the scope of PDMA and these implementing regulations.

3. Biological Products

Questions have also been raised about the applicability of PDMA to biological products, even though the statutory language of PDMA encompasses all drugs subject to section 503(b) of the act.

There is nothing in the legislative history or the congressional hearing record to suggest that biological products that are prescription drugs under section 503(b) of the act should be treated differently from other prescription drugs. Biological products, except for blood and blood components intended for transfusion, are susceptible to the same problems of lack of accountability and diversion that this legislation was intended to remedy. It is clear that applying the provisions of the statute to biological products, except for blood and blood components intended for transfusion, or biological products which are also medical devices, would help protect against the abuses that Congress intended to address and contribute to the protection of the public health. Accordingly, biological products that are prescription drugs under section 503(b) of the act, except for blood and blood components intended for transfusion, fall under the scope of PDMA and are expressly included in these implementing regulations.

4. Blood and Blood Components Intended for Transfusion

Since passage of PDMA, a number of persons have presented to FDA issues posed by the application of PDMA to the distribution and sale of blood and blood components intended for transfusion by blood establishments and hospitals. Two comments to the agency requested clarification of PDMA's scope and urged FDA to exempt blood establishments from all of PDMA's provisions. The comments contended

that licensing blood distributors as wholesalers would seriously disrupt the Nation's blood services. A third comment suggested that the agency could, by notice and comment rulemaking, exempt blood and blood components from PDMA by declaring that they are not prescription drugs for PDMA purposes.

PDMA, by its literal terms, applies to all drugs that are subject to section 503(b) of the act; that is, to all human prescription drugs, including biological products. There is no doubt that blood and blood components intended for transfusion are prescription drugs. (See 21 CFR 606.121(c)(8)(i) and 610.61(s). See also 47 FR 22518, May 25, 1982; 46 FR 40212, August 7, 1981.) However, if PDMA were considered applicable to the distribution of blood and blood components, the result would be to impede the existing blood distribution system, thereby interfering with our Nation's blood supply. Because application of PDMA to blood and blood components would produce this untenable result, FDA believes that Congress could not have intended to subject blood and blood components to PDMA's provisions.

Moreover, the legislative history lacks any discussion of PDMA's application to blood and blood components and also clearly shows that Congress intended that PDMA remedy problems associated with the distribution of those drugs that are popularly referred to as "medicines" or "pharmaceuticals." (See Pub L. 100–293, sec 2 (1988) ("Report of the Committee on Energy and Commerce," H Rept 100–76, April 30, 1987, and "Report of the Committee on Finance," S Rept. 100–202, March 18, 1988).) Blood and blood components are unique drug products that are distributed in an entirely different way from other prescription drugs. FDA believes that the fact that blood and blood components are not part of the system of distribution and marketing that Congress intended to regulate under the terms of PDMA further signals that Congress could not have intended to include blood and blood components within the scope of the licensing requirement.

Accordingly, FDA has taken a number of actions to clarify the scope of PDMA to prescription drugs other than blood and blood components intended for transfusion. In the final State licensing guideline rule (55 FR 38012 at 38024), FDA specifically excluded from the definition of "wholesale distribution" the sale, purchase, or trade of blood and blood components intended for transfusion (see § 205.3(f)(8)). At the same time, FDA published another proposed rule, "Applicability to Blood and Blood Components Intended for Transfusion; Guidelines for State Licensing of Wholesale Prescription Drug Distributors" (55 FR 38027, September 14, 1990), asking for comments on the exclusion of blood and blood components intended for transfusion from the PDMA State licensing guidelines.

After considering the comments received and reviewing PDMA's purpose and its legislative history, FDA has tentatively concluded that PDMA is not intended to apply to blood and blood components intended for transfusion. Accordingly, at § 203.1 the proposed rule would exclude blood and blood components intended for transfusion from the requirements of and the restrictions in PDMA and also adds specific language at § 203.22(g) excluding blood and blood components intended for transfusion from the PDMA sales restrictions.

5. Oxygen

Questions have also been raised about the applicability of PDMA to the drug oxygen, U.S.P (U.S. Pharmacopeia). FDA advises that oxygen, U.S.P., is a prescription drug subject to section 503(b) of the act, and, therefore, within the scope of PDMA and these proposed regulations.

B Reimportation

Section 801(d) of the act (21 U.S.C 381(d)) provides that a prescription drug that is manufactured in a State and exported may not be reimported into the United States unless it is imported by the manufacturer, except when authorized by the Secretary of Health and Human Services for emergency medical care The delegation of authority provisions at 21 CFR 5.10 redelegate the functions of the Secretary to the Commissioner of Food and Drugs.

Section 801(d) of the act responds to a finding that large amounts of drugs were being reimported into the United States as "American Goods Returned," and that these imports posed a health and safety risk to American consumers because they could become subpotent or adulterated during foreign handling and shipping. (See sec. 2(4), PDMA.)

The congressional findings also acknowledged that what was termed "the ready market for prescription drug reimports" was "the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs." (See sec. 2(5), PDMA.)

1. Restrictions on Reimportation

Proposed § 203.10 sets forth the restriction that no prescription drug manufactured in a State and exported from the United States may be reimported by anyone other than its manufacturer, except that FDA may grant permission to a person other than the manufacturer to reimport a prescription drug if it deems such reimportation is required for emergency medical care.

2. Defining "Manufacturer"

FDA defined the term "manufacturer" in the PDMA State licensing regulation to mean anyone engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug (§ 205.3(d)). This definition is somewhat more inclusive than the definition used earlier by the agency in the labeling provisions at § 201.1 (21 CFR 201.1). The definition in § 201.1(b) states that the manufacturer is the person who performs all of the following operations that are required to produce the product: (1) Mixing, (2) granulating, (3) milling, (4) molding, (5) lyophilizing, (6) tableting, (7) encapsulating, (8) coating, (9) sterilizing, and (10) filling sterile, aerosol, or gaseous drugs into dispensing containers; or at least some of the operations if the labeling indicates the presence of other manufacturers Under § 201.1, a packer or distributor is not the same as a manufacturer

FDA concluded that the more inclusive definition of "manufacturer" was consistent with the intent of the statute in imposing the requirement for State licensing of wholesale drug distributors; however, the agency has preliminarily concluded that a less inclusive definition of that term would be more consistent with the intent of the remaining sections of PDMA. For example, the statutory provision against reimportation by persons other than the manufacturer (except when permission is granted by FDA) is intended to establish accountability in reimportations so that adulterated and/or misbranded goods do not reenter commercial channels in the United States. The reimportation provision is based on the assumption that a manufacturer, in the less inclusive sense, is the person most knowledgeable about the product's characteristics; is the most capable of determining that the product meets the stability, quality, and purity standards it is represented to possess; and is the only person capable

of authenticating the basic integrity of the product.

The remaining sections of PDMA are consistent with the less inclusive definition of "manufacturer" in § 201.1, rather than the more inclusive definition in § 205.3(d). Accordingly, proposed § 203.3(p) proposes to adopt the definition of "manufacturer" in § 201.1 for this rule.

3. Applications for Reimportation to Provide Emergency Medical CareProposed § 203.11 provides an administrative procedure by which applications may be made by a person other than the manufacturer for the reimportation of prescription drugs for emergency medical care. The proposal would codify the current procedure whereby applications for reimportation are submitted to the Director of the FDA District Office in the district where reimportation is sought. The District Office would review and approve or disapprove each application.

4. An Appeal From an Adverse Decision by the District Office

Proposed § 203.12 would also codify the current procedure that permits an appeal from an adverse decision by the district office to be made to the Office of Compliance (HFD–300), Center for Drug Evaluation and Research, for prescription human drugs other than biological products. An appeal from an adverse decision involving human prescription biological products is to be made to the Office of Compliance (HFM–600), Center for Biologics Evaluation and Research.

C. Sales Restrictions

Section 503(c)(3) of the act prohibits, with certain exceptions, the sale, purchase, or trade (or any offer to sell, purchase, or trade) of any prescription drug that was purchased by a public or private hospital or other health care entity, or donated or supplied at a reduced price to a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

1. Defining "Charitable Organization"

Section 501(c)(3) of the Internal Revenue Code generally exempts from income taxes not-for-profit organizations that operate for religious, charitable, scientific, literary, educational, and public safety purposes. However, such exemptions are not automatic. Under 26 CFR 1.501, a charitable organization must apply for and be granted tax-exempt status. Tax-exempt status may be revoked and the organization may lose its exemption if it fails to meet the requirements of the statute and regulations.

It is FDA's view that an organization can be accurately described as one fitting the requirements of section 501(c)(3) of the Internal Revenue Code only if it has been granted tax-exempt status by the Department of the Treasury. Accordingly, FDA proposes to define the term "charitable organization" in proposed § 203.3(f) as a nonprofit hospital, health care entity, organization, institution, foundation, association, or corporation that has been granted an exemption under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

2. Restrictions and Exclusions

Proposed § 203.20 restates the statutory restrictions on prescription drug sales by hospitals, health care entities, and charitable institutions (section 503(c)(3) of the act). These restrictions reflect a congressional finding that the resale of prescription drugs by health care entities at below wholesale prices had helped to fuel the drug diversion market and that such sales constituted an unfair form of competition to legitimate wholesalers and retailers paying the prevailing market prices. (See sec. 2(7), PDMA.)

The statute does not distinguish sales made at the average wholesale price (AWP) and those made at below AWP or at more than the AWP. The sales restrictions apply to all sales, purchases, or trades by hospitals, health care entities, and charitable institutions. Sales of any human prescription drugs purchased by a hospital or other health care entity, or donated or supplied at reduced cost to a charitable institution, are prohibited unless excepted by section 503(c)(3)(B) of the act or exempted under proposed §§ 203.22, 203.23, or 203.24.

In its findings, Congress stated that it believed that these resales had helped to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs would be sold to American consumers. (See sec. 2(8), PDMA.)

a. *Hospital, health care entity, or charitable institution cannot be wholesaler.* FDA has learned that some hospitals and health care entities, including physicians, have obtained licenses as wholesale distributors in an effort to circumvent the statutory restrictions against the sale of prescription drugs by hospitals, health care entities, and charitable institutions. Those hospitals and health care entities that have secured wholesale drug distributor licenses claim that the statutory restrictions are made inapplicable to them by the first clause of the last sentence of section 503(c)(3) of the act, which reads: "For purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *."

Such a reading is inconsistent not only with general rules of statutory construction, but with the intent of Congress as reflected in the legislative history. The legislative history, which addresses Congress' concern about donations to charitable institutions and institutional discounts for hospitals and health care entities, notes that some of these institutions had been sources of unfair competition and drug diversion, and explains that the statutory prohibition against the sale of drugs donated to or acquired at reduced price by charitable institutions or purchased by hospitals or health care entities is directed at preventing unfair profits through resales of such drugs. Congress said:

> Section 503(c)(3) would prohibit resales of pharmaceuticals by hospitals and other health care entities or charitable organizations with certain exceptions. This provision is intended to cover resales by both for profit and nonprofit health care entities. These institutions typically receive discount prices, substantially below the average wholesale price (AWP) for pharmaceuticals, based on their status as a health care entity or charity. When hospitals or other health care entities obtain pharmaceuticals at favorable prices and then resell those drugs at a profit, they are unfairly competing with wholesalers and retailers who cannot obtain such a favorable price. Such resales defraud manufacturers, who are led to believe that the drugs are for the use of the health care entity. In any case, these resales reward the unscrupulous and penalize the otherwise honest and efficient wholesaler or retailer while fueling the diversion market.

(H. Rept. 100–76, pp. 12–13.)

FDA interprets the first clause of the last sentence of section 503(c)(3) of the act to mean that the general prohibition against drug sales by hospitals, health care entities, and charitable institutions was not intended to interfere with the operations of legitimate licensed prescription drug wholesalers and retail pharmacies. Section 503(c)(3) of the act does not open up a loophole for a hospital, health care entity, or charitable institution to avoid the statutory prohibition against drug sales simply by obtaining a wholesaler license.

Accordingly, proposed § 203.3(n) would state that a person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor. The agency is also proposing to amend the State licensing guidelines by adopting the same

definition for "health care entity" at § 205.3(h).

If a charitable institution or a for-profit or nonprofit hospital or health care entity has a corporate for-profit subsidiary that is a wholesale distributor or retail pharmacy, or if it is part of a group in which there is common control over the hospital or health care entity and a wholesale distributor or retail pharmacy, then the charitable institution, hospital, or health care entity would be prohibited under section 503(c)(3) of the act and proposed §§ 203.20 and 203.22 from transferring any prescription drug donated or supplied at reduced price to the charitable institution or purchased by the hospital or health care entity to the related wholesale distributor or retail pharmacy for further sale except for a sale under a valid prescription or for emergency medical reasons.

A charitable institution, hospital, or health care entity that has a wholesale distributor or retail pharmacy subsidiary, or one that is part of a group in which there is common control over the charitable institution, hospital, or health care entity and a wholesale distributor or retail pharmacy, should maintain books and records that provide sufficient audit trails to trace the purchase and sale of prescription drugs to ensure that no prescription drug donated or supplied at reduced price to the charitable institution or purchased by the hospital or health care entity is transferred to a related wholesale distributor or retail pharmacy for further sale except for a sale under a valid prescription or for emergency medical reasons.

b. *Statutory exclusions.* Proposed § 203.22 restates the statutory exclusions to the sales restrictions. They are: (1) The purchase or other acquisition of a drug for its own use by a hospital or other health care entity that is a member of a group purchasing organization from the group purchasing organization or from other hospitals or health care entities that are members of the organization; (2) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law; (3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; (4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; or (5) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a valid prescription.

c. *Common control.* One statutory exclusion to the general prohibition against resale of drugs by hospitals, health care entities, and charitable institutions permits the sale, purchase, or trade of prescription drugs among hospitals and health care entities that are under common control. There is no statutory definition of the term "common control," nor is the term mentioned in the legislative history.

The concept of common control can be found in other Federal regulatory schemes that were in use at the time PDMA was enacted into law. Both the Securities and Exchange Commission and the Environmental Protection Agency define "common control" to mean possession of the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting securities or rights, contract, or otherwise. (See 17 CFR 230.405 and 40 CFR 66.3(f).) FDA included this definition in the State licensing guidelines at § 205.3(f)(4). This proposal would adopt the same definition in proposed § 203.3(g).

d. *Sales for emergency medical reasons.* Section 503(c)(3) of the act permits the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution for emergency medical reasons. The statute states that "emergency medical reasons" includes transfers of a drug between health care entities or from a health care entity to a retail pharmacy undertaken to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules. The statute does not further elaborate on the term "emergency medical reasons."

FDA believes that it may be useful to specify some of the circumstances in which a sale for emergency medical reasons would be allowed. (See proposed § 203.3(k).)

FDA received a significant number of comments from providers of emergency care, including emergency medical services, ambulance corporations, fire companies, rescue squads, urgent care providers, emergency care physicians and technicians, and State emergency care agencies and commissions that advised the agency that hospital pharmacies have traditionally supplied drugs for emergency use by emergency medical services and licensed practitioners' offices operating in the general service area of the hospital. Several comments stated that wholesale distributors are reluctant to open small accounts to provide such drugs for emergency care, and that nearby hospital pharmacies are the logical providers. Moreover, the comments noted that many States encourage hospitals to supply drugs for emergency use to emergency medical services, and some States require emergency services to acquire their drugs exclusively from hospitals.

The proposal would allow sale of drugs by a hospital or health care entity to nearby emergency medical services such as ambulance services, rescue squads, and fire companies in the same State or service or marketing area for use in emergency treatment and to licensed practitioners for emergency office treatment. The proposal would also define emergency medical reasons to allow hospitals and health care entities to provide minimal emergency supplies to nursing homes.

In contrast, FDA believes that the exception for emergency medical reasons does not permit hospitals or health care entities regularly to sell to licensed practitioners prescription drugs that will be used for routine office procedures.

e. *Government hospitals and health care entities.* Proposed § 203.22(f) would also exclude the sale, purchase, or trade of prescription drugs by Federal, State, and local government hospitals and health care entities to other Federal, State, and local government hospitals or health care entities from the general prohibition against the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution.

Congress has established an extensive system of public hospitals and health care entities. These include hospitals, clinics, and dispensaries operated for the military by the Department of Defense; hospitals and clinics operated by the Veterans' Administration; and hospitals and clinics operated by the U.S. Public Health Service (including Indian Health Service hospitals and clinics).

In addition, State and local governments have established public health hospitals, clinics, and dispensaries, including drug treatment inpatient and outpatient facilities. These facilities operate under a variety of organizational structures. They may be owned and operated by governmental entities, or be organized as private corporations or associations under contract to State or local government agencies.

These health care entities may have interagency arrangements for the purchase and exchange of prescription drugs. Such facilities operate because of Federal, State, or local governmental

commitments to provide health care to particular classes of patients in response to specific client needs. Among these needs are the provision of services to people with low incomes, the distribution of vaccines, and the dispensing of antitoxins and blood derivatives in public health emergencies.

As noted, the adoption of the prohibition against sales by hospitals or health care entities was prompted in part because of the differential pricing structure that permits purchases by hospitals and health care entities at below wholesale prices and the resultant temptation to resell drugs so acquired at a profit. However, there is no financial incentive for a Federal, State, or local government hospital or health care entity to sell prescription drugs purchased at below wholesale prices because any profit from such a sale would go to the Federal or State treasury. Accordingly, FDA believes that there is little likelihood that permitting Federal, State, or local government hospitals and health care entities to sell prescription drugs to other Federal, State, or local government hospitals and health care entities would lead to the kinds of abuses that PDMA was designed to end.

Therefore, proposed § 203.22(f) would exclude such transactions from the general prohibition against resales by hospitals and health care entities and thus permit Federal, State, or local government hospitals and health care entities to sell drugs to other Federal, State, or local government hospitals and health care entities.

FDA has been asked whether a State or local government agency, which, under a contract or memorandum of agreement, sends or allows some of its patients to be treated at a private local clinic or other health care entity, may transfer prescription drug products to such a facility to be dispensed to patients. In other words, would such a transfer violate the prohibition against the sale, purchase, or trade of prescription drugs by a hospital, health care entity, or charitable institution?

FDA advises that if a State or local government agency functions as or operates a hospital, health care entity, or charitable institution, and a private health care entity is bound by a contractual agreement to the State or local government agency, then the State or local government hospital or health care entity may sell prescription drugs to the contract private health care entity provided that the prescription drugs sold are only used to serve government patients and programs. The State or local government hospital or health care agency supplying the drug and the contract health care entity would be obligated to implement appropriate controls to ensure that the drugs sold by the Government hospital or health care entity to the contract health care entity are dispensed to patients in the Government program and not diverted or sold to other patients or otherwise used for non-Government purposes.

If the State or local government agency does not function as or operate a hospital, health care entity, or charitable institution, and is acting as a prescription drug wholesaler, the prohibition against the sale of prescription drugs by a hospital, health care entity, or charitable institution would not be applicable.

3. Revocation of Acceptance, Reshipment, and Returns

FDA proposes to clarify the circumstances under which hospitals, health care entities, and charitable institutions may, without violating section 503(c)(3) of the act, return or ship back prescription drugs to the manufacturer or distributor from which they were purchased.

In particular, proposed §§ 203.23 and 203.24 would, respectively, describe the conditions by which hospitals, health care entities, and charitable institutions may: (1) Revoke acceptance of any prescription drug received because of an ordering or delivery mistake and ship them back to the manufacturer or distributor, and (2) return a drug to the manufacturer or distributor.

A number of persons who submitted comments to the PDMA docket questioned the effect of the new statutory language on commercial practice in the pharmaceutical industry. Several persons argued that the sales provisions in the Uniform Commercial Code treat a sale as completed once a nondefective product has been ordered, delivered, and paid for, unless specific contractual provisions make the sale conditional or revocable. Several persons urged that FDA view a return for cash or credit after a completed sale as a new and prohibited sales transaction.

However, many other comments to the agency in the months after passage of PDMA observed that under common commercial practice in the pharmaceutical industry, manufacturers and wholesale distributors permit returns and urged that this practice be allowed to continue. FDA is aware that hospital, health care entity, or charitable institution pharmacies, and distributors sometimes return products because of overstocks, changes in institutional formularies, the death of a patient for whose use a drug product was acquired, or other reasons. The comments received by the agency argued that to permit returns would both help to keep down the costs of medical care and reduce the risk that adulterated or misbranded drugs would find their way into the diversion market.

FDA has tentatively concluded that it should, under specified conditions, allow drug products to be shipped back or returned to the manufacturer or distributor, and this tentative conclusion is reflected in proposed §§ 203.23 and 203.24.

Under proposed § 203.23, a hospital, health care entity, or charitable institution could revoke a sale and purchase transaction because of a mistake in ordering or delivery and ship the prescription drug back, provided: (1) The hospital, health care entity, or charitable institution ships the drug back within 10 working days of receipt; (2) the reshipment is made under proper storage, handling, and shipping conditions; and (3) if reshipped to the wholesale distributor, the hospital, health care entity, or charitable institution provides written notice to the manufacturer of the revocation and reshipment.

The proposal would require that the manufacturer be notified of the reshipment so that any chargebacks to the manufacturer by the wholesale distributor or special price reduction credited by the manufacturer to the wholesale distributor would be factored into the credit or refund given the distributor. This is intended to prevent windfall profits from the return of a specially priced drug to the wholesale distributor.

Under proposed § 203.24, a hospital, health care entity, or charitable institution could return a product it had purchased from a manufacturer or wholesale distributor, provided that: (1) The hospital, health care entity, or charitable institution notifies the manufacturer that the prescription drug product has been returned to the wholesale distributor; and (2) the hospital, health care entity, or charitable institution fills out a credit memo. Proposed § 203.24 would require the hospital, health care entity, or charitable institution to send a copy of the credit memo to the manufacturer, for the same reasons that notification of the manufacturer is required in the event of a revocation and reshipment, i.e., so that any chargebacks or reduced prices will be factored into any credit or refund to prevent windfall profits from the transaction.

Proposed §§ 203.23 and 203.24 would both require detailed documentation to

provide the kind of accountability contemplated by the act to help ensure against diversion. To ensure that returned drugs remain safe and effective, both proposed sections would require that drugs returned to a manufacturer or wholesale distributor be kept under proper conditions for storage, handling, and shipping, and that written documentation reflecting the maintenance of proper conditions be provided to the manufacturer or wholesale distributor to which the drugs are returned.

Under the proposal, the value of any credit, refund, or merchandise exchanged for the returned product could not exceed the purchase price.

For purposes of clarification and to ensure that the State licensing regulation and this proposed rule, when adopted, are consistent, the agency is also proposing to amend the definitions in the State licensing guidelines at § 205.3(f) by adding two additional exceptions to "wholesale distribution" for the reshipment of drugs, when conducted in accordance with § 203.23, and drug returns, when conducted in accordance with § 203.24.

D. Samples

To provide accountability and oversight in the sample distribution process, PDMA established in section 503(d) of the act a strict system of controls over the distribution of prescription drug samples, which are defined in section 503(c)(1) of the act. Under the statutory scheme, no person could distribute any drug sample, except for a manufacturer or distributor who distributed drug samples in accordance with specific requirements and in response to a written request from a licensed practitioner.

Under sections 503(d)(1) and (d)(2) of the act, both manufacturers and distributors could engage in sample distribution if certain requirements were followed. However, section 4(2) of PDA further restricted the persons who can engage in distribution of drug samples by amending section 503(d)(1) and (d)(2) of the act to restrict sample distributions to manufacturers and authorized distributors of record. This amendment is demonstrative of the intent of Congress, as reflected elsewhere in PDMA and PDA, to restrict the activities of drug distributors who are not authorized distributors of record. Proposed §§ 203.30, 203.31, and 203.33 through 203.39 are consistent with this amendment.

Under the revised statutory scheme, no person may distribute any drug sample, except for a manufacturer or authorized distributor of record who distributes drug samples in accordance with specific requirements and in response to a written request from a licensed practitioner.

Section 503(d)(1) of the act states that, for purposes of this subsection, the term "distribute" does not include the providing of a drug sample to a patient by a practitioner licensed to prescribe such drug, by a health care professional acting at the direction and under the supervision of such a practitioner, or the pharmacy of a hospital or of another health care entity acting at the direction of such a practitioner who received the drug sample in accordance with the act and regulations. The definition of "distribute" in proposed § 203.3(h) reflects this statutory exclusion.

PDMA sets up two different sample distribution systems, depending on the mode of delivery: (1) By mail or common carrier, and (2) by means other than mail or common carrier, i.e., representative or detailer.

If a sample is delivered by mail or common carrier, the statute requires the recipient to execute a written receipt when the drug sample is delivered and return the receipt to the manufacturer or authorized distributor of record from which the drug sample was received. If the sample is delivered by a representative, a number of additional procedures are required by the statute that pertain to storage and handling, inventories, recordkeeping, reporting of thefts and significant losses, notification of convictions of representatives for drug sample violations, and accountability. The statute specifies minimum requirements for the contents of written request forms and details certain recordkeeping and reporting requirements.

1. Requirements for Drug Sample Distribution

The requirements for distribution of drug samples by manufacturers and authorized distributors of record by mail or common carrier are set forth in proposed § 203.30. The requirements for distribution of drug samples by representatives are set forth in proposed § 203.31. The proposed sections provide detailed requirements for written request forms, receipts, and recordkeeping.

Most of these requirements are statutory; however, FDA has tentatively concluded that clarification of some of the statutory requirements is desirable. FDA also has tentatively concluded that other requirements should be imposed to help ensure smooth operation of the system, effective enforcement, effective accountability and oversight of drug sample distribution, and provide adequate safeguards against drug sample diversion.

2. Contents of the Sample Request Forms

Proposed §§ 203.30 and 203.31 would require the written request form for drug samples to bear certain information: (1) The name, address, professional title, signature of the practitioner making the request; (2) the practitioner's State license number or the Drug Enforcement Administration (DEA) identification number; (3) the proprietary or established name and strength of the drug sample requested; (4) the quantity requested; (5) the name of the manufacturer of the drug sample and the authorized distributor of record, if the drug sample is requested from a distributor; and (6) the date of the request.

A number of comments suggested that it is sometimes difficult for a manufacturer or distributor to determine whether or not a particular person who wishes to receive drug samples is a licensed practitioner. FDA has added the requirement that the request form bear the practitioner's State license or DEA identification number to assist the manufacturer or distributor in determining whether or not a person is a licensed practitioner.

The statute requires a request form to bear the "identity" of the drug sample being requested. FDA has clarified the meaning of "identity" in the proposed rule by specifying that the request form bear the proprietary or established name and strength of the requested sample.

PDMA requires that the request form bear the name of the manufacturer of the drug. However, where the statute also permits an authorized distributor of record to distribute drug samples, the identity is incomplete without naming both the manufacturer and distributor. In that circumstance, FDA proposes to require that the name of the distributor as well as the manufacturer be made part of the sample request form.

The statute also permits delivery of a drug sample to the pharmacy of a hospital or other health care entity at the request of a licensed practitioner. However, the statute does not state how that request for delivery should be made. FDA has tentatively concluded that the name and address of the intended recipient should be part of the request form. This conclusion is reflected in the requirements in proposed §§ 203.30 and 203.31 that, if the request is being made by a licensed practitioner for delivery of a drug sample to a hospital or health care entity pharmacy, the name and address

of the intended recipient be included on the request form.

3. Drug Sample Receipts

Proposed §§ 203.30 and 203.31 would require the execution of a written receipt by the recipient upon delivery of a drug sample. The proposed sections also set out the contents of the receipt.

The statute requires the execution of a receipt upon delivery of a drug sample by mail or common carrier to establish an audit trail for drug sample orders and deliveries and to ensure that drug samples ordered are received. The statute does not require the execution of a written receipt for samples delivered by representatives in the apparent belief that a representative always delivers a drug sample to a licensed practitioner at the same time that the licensed practitioner signs the request form.

A number of comments suggested that samples frequently are not delivered at the time of the request, i.e., some time elapses between request and delivery, even when a representative personally delivers the drug sample. Sometimes the period of time is only a few minutes, but often it may be hours, days, or weeks. In some instances, a representative may receive a request for a drug sample at one sales call and deliver the requested sample at a later date. In these cases, because of lapses of memory, mistake, or because a diversion scheme may be underway, the samples delivered may not always match the request. Accordingly, the agency has tentatively concluded that the requirement for a written receipt should extend to all drug sample deliveries, and that requirement is included in proposed §§ 203.30 and 203.31.

A sample request and receipt need not be on separate forms if delivery is by a representative. A single form could be devised and used containing all of the required information, which could be fully completed and executed with a single signature, if the request and delivery are simultaneous, or executed in part with a signature for the request at the time of the request, and executed in part with a second signature acknowledging receipt at the time of the delivery

Proposed §§ 203.30(c) and 203 31(c) state that a receipt is to be on a form designated by the manufacturer or distributor. If the drug sample is received by the requesting practitioner, both proposed sections would require that the receipt contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery If the drug sample is received by the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, both proposed sections would require the receipt to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery FDA believes this information is necessary to ensure that the sample received is the same as the sample requested.

4. Additional Requirements For Delivery of Drug Samples by Representatives

PDMA provides that manufacturers and distributors that utilize representatives for the delivery of drug samples must abide by a number of additional requirements. These additional requirements are intended to guard against the kinds of abuses that Congress' findings stated had been an integral part of the drug sample delivery system and had led to large-scale drug sample diversion.

a. *Inventories of drug samples of manufacturers' and distributors' representatives.* The statute provides that each drug manufacturer or distributor that engages in drug sample distribution is required to conduct, at least annually, a complete and accurate inventory of all drug samples in the possession of representatives (21 U.S.C. 353(d)(3)(C)). The inventory is intended to guard against drug sample diversion by providing manufacturers and distributors information that will permit them to identify diverters and take appropriate action and provide data for FDA enforcement activities.

The statute does not specify what is meant by such an inventory, nor how it is to be conducted and reported. It is FDA's preliminary view that such an inventory must go beyond a mere physical count, and that meaningful information and data can only be provided if the inventory is conducted utilizing generally accepted inventory practices and a reconciliation report is prepared that relates the latest inventory to the most recent prior inventory and to drug samples acquired and distributed in the interim.

Accordingly, proposed § 203.31(d) would require the manufacturer or distributor to inventory all drug samples in the possession of a manufacturer's or distributor's representative, and keep a record of the inventory. The record would be required to identify all drug samples by established or proprietary name, dosage strength, and number of sample units of each drug sample in stock.

The proposal would require that the manufacturer or distributor reconcile the number of drug samples on hand with the number received during the reporting period. The reconciliation report would be required to include: (1) A report of the physical count of the most recently completed prior inventory; (2) a record of each drug sample shipment received since the most recently completed prior inventory, including the sender and date of the shipment, and the established or proprietary name, dosage strength, and number of sample units received; (3) a record of drug sample distributions since the most recently completed inventory showing the name and address of each recipient of each sample unit shipped, the date of the shipment, and the established or proprietary name, dosage strength, lot or control number, and number of sample units shipped; and (4) an explanation for any significant loss.

To ensure impartiality, the proposal would also require that the inventory and reconciliation reports be conducted and prepared by persons other than the representatives being inventoried or their supervisors or managers in their direct line of supervision or command.

To guard against drug sample diversion, the proposed section would require manufacturers and distributors to evaluate carefully any apparent discrepancy or significant loss in the inventory and reconciliation, and to investigate fully any significant loss that cannot be justified.

b. *Lists of manufacturers' and distributors' representatives.* PDMA requires that each manufacturer or authorized distributor of record who distributes drug samples maintain a list of the names and addresses of its representatives who distribute drug samples and of the sites where drug samples are stored. The proposal restates this statutory requirement (§ 203.31(e)).

c. *Notification if representative is convicted of violations.* The statute requires drug manufacturers or distributors of record to report to FDA any conviction of a representative for violations of section 503(c)(1) of the act or a State law because of the sale,

purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample. The proposal restates this statutory requirement (§ 203.31(f)).

5. Drug Sample Storage and Handling Requirements

FDA has already excluded the distribution of drug samples by representatives from the definition of "wholesale distribution" in § 205.3(f)(7), and the agency is proposing to adopt this exclusion in the definition of "wholesale distribution" in proposed § 203.3(y). In view of this, representatives are not required to be licensed as wholesale distributors by the States. PDMA requires manufacturers and authorized distributors of record to store all drug samples under conditions that will maintain their stability, integrity, and effectiveness, and ensure that the drug samples are not contaminated, deteriorated, or otherwise adulterated. Proposed § 203.32 reflects this requirement.

A representative, as an agent of the manufacturer or authorized distributor of record, is bound by the same standard, and is required to take adequate precautions to ensure the safety and efficacy of any drug samples the representative distributes. Generally, if a representative follows the labeling and compendial requirements for storage and handling of a particular prescription drug in handling samples of that drug, the safety and efficacy of the drug sample may be assured.

6. Drug Sample Forms

A number of persons posed questions regarding drug sample request and receipt forms. FDA does not contemplate developing its own forms for sample request and receipt, and instead intends to rely on manufacturers and distributors to develop appropriate forms. Accordingly, any written request or receipt form developed by a manufacturer or authorized distributor of record that complies with the requirements of proposed § 203.33 would be acceptable to FDA if it contains the information and any signature required in this section.

The agency wishes to encourage transmission and receipt of sample request and receipt forms by the most efficient and expeditious means. Accordingly, proposed § 203.33 would permit such forms to be delivered by mail, common carrier, or private courier or to be transmitted photographically or electronically (i.e., by telephoto, wirephoto, radiophoto, facsimile transmission (FAX), xerography, or electronic data transfer) or by any other system, provided that the method for transmission meets the security requirements set forth in proposed § 203.60(d).

7. Written Policies and Procedures and Other Requirements for Drug Sample Distribution

FDA received a number of questions and comments from drug manufacturers and distributors seeking assistance in developing appropriate administrative systems for distributing drug samples. There are a wide variety of administrative systems in use, and enforcement has been complicated by the multiplicity of sample distribution procedures. Although standardization is not necessary, the agency believes that clear internal administrative systems are essential to ensure that sample distribution is carried out efficiently and that the statutory requirements are met.

In addition, FDA expects that manufacturers and distributors will have administrative systems in place to review all losses and thefts so that patterns that may indicate the possibility of drug sample diversion will be detected. The agency believes that this is consistent with Congress' intent that manufacturers and distributors develop adequate audit and security systems to detect and investigate sample losses and thefts. (H. Rept. 100–76, p. 20; S. Rept. 100–202, p. 9.)

Accordingly, under proposed § 203.34, each manufacturer or authorized distributor of record that distributes drug samples would be expected to adopt an administrative system to monitor losses and thefts.

Also, proposed § 203.34 would require drug manufacturers and distributors to establish, maintain, and adhere to written policies and procedures describing its administrative systems for sample distribution. The proposed section contemplates that each manufacturer's or distributor's written policies and procedures would describe its administrative system for: (1) Distributing drug samples by mail or common carrier, including methodology for reconciliation of requests and receipts; (2) distributing drug samples by means other than mail or common carrier; (3) conducting its inventory of drug samples under proposed § 203.31(d), including an inventory schedule; (4) auditing and detecting falsified or incomplete drug sample records; (5) identifying any significant loss of drug samples and notifying FDA of the loss; (6) monitoring any loss or theft of drug samples; and (7) storing drug samples by representatives.

8. Standing Requests

Both the House Report and Senate Report state that it is the intent of Congress that separate written requests be made each time that samples are requested to be delivered and that standing requests do not fulfill the requirements of the statute, except that the Senate Report states that FDA may provide by regulation for the delivery by mail of a small number of samples for strictly limited periods of time. (H. Rept. 100–76, p. 14; S. Rept. 100–202, p. 6.)

Proposed § 203.35 would require that separate written requests be made for each sample or group of samples and does not allow for open-ended or standing requests to order drug samples.

The proposed section states, however, that the agency does not consider standing requests to include an arrangement by which a licensed practitioner requests in writing that a specified number of drug samples be delivered over a period of not more than 6 months, with the actual delivery dates for parts of the order to be set by subsequent communication.

9. Use of Fulfillment Houses, Shipping and Mailing Services, Other Contractors, and Comarketing Agreements

FDA understands that some manufacturers and distributors employ third parties to meet some of the requirements imposed on them under PDMA. Third parties may include contractors such as fulfillment houses (companies that receive and fill orders), mailing services, and other contractors. In addition, some manufacturers and distributors enter into comarketing agreements in which one manufacturer or its representatives undertake a contractual commitment to provide specified services relating to drug marketing for one or more other manufacturers or distributors. FDA does not regard the use of third parties or entry into comarketing agreements as absolving a manufacturer or distributor from its responsibility for complying with the statute and regulations pertaining to the distribution of its drug samples.

Accordingly, proposed § 203.36 would make clear that a manufacturer or authorized distributor of record that uses a fulfillment house, shipping or mailing service, or other third party to fulfill some of the requirements of PDMA, or engages in a comarketing agreement with another manufacturer, remains responsible for creating and maintaining all requests, receipts, forms, reports, and records required under PDMA, PDA, and proposed part 203.

The agency will give a manufacturer or distributor that contracts with a third

party to maintain some or all of its records up to 48 hours to produce requested forms, reports, records, or other required documents.

10. Investigation and Notification Requirements

In proposed § 203.37, FDA proposes to codify the requirements and procedures for undertaking investigations and making reports and notifications to the agency regarding sample distribution.

a. *Drug sample diversion.* To ensure against drug sample diversion, proposed § 203.37(a) would impose an investigation and reporting requirement on a manufacturer or distributor who has reason to believe that any person has falsified drug sample requests, receipts, or records. A full and complete investigation would have to be undertaken, and the manufacturer or distributor would be required to report to FDA that such an investigation is under way and that it has completed such an investigation. The proposal would require the report to include the reason for the investigation and the results of the investigation.

Because persons who falsify drug sample requests may be prosecuted under Title 18 of the United States Code, and because falsifications are often associated with drug diversion, FDA is proposing to require manufacturers and distributors to report such offenses to the agency.

Accordingly, the proposal would require that a manufacturer or distributor notify the agency of any falsification of drug sample requests, receipts, or records, no later than 5 working days of learning of the falsification. The proposal would permit an initial notification to be made by telephone or in writing, with a complete written report required not later than 30 days after the date of the initial telephone or written notification.

b. *Significant loss and known theft.* PDMA requires a manufacturer or distributor that distributes drug samples to notify FDA of any significant loss of drug samples and any known theft of drug samples (21 U.S.C. 353(d)(3)(D)). FDA believes that enforcement would be facilitated if the manufacturer or distributor promptly notifies the agency upon becoming aware of a significant loss or theft. Accordingly, proposed § 203.37(b) would require a manufacturer or distributor to notify FDA within 5 working days of becoming aware of such a loss or theft.

FDA is proposing in § 203.39 that charitable organizations be permitted to solicit and receive surplus drug samples from licensed practitioners. As part of this program, FDA proposes to require that a charitable institution that receives donated drug samples from a licensed practitioner also be required to notify FDA within 5 working days of becoming aware of a loss or theft.

The reporting of any significant loss of drug samples is critical to the success of diversion control. Although a sample can inadvertently become adulterated through mishandling, spoilage, or exposure to the elements, and although samples are reported as stolen or lost from time to time, some representatives reportedly have used false claims of damage, theft, or loss to divert drug samples into illicit commercial channels.

FDA intends this requirement to mean that the agency is to be advised of actual, physical losses, but not insignificant accounting mistakes. The agency does not seek to receive reports concerning minor mathematical errors that are caught and corrected in the normal course of business. These are not significant losses that would trigger the reporting requirement. FDA seeks comment on how to distinguish between significant losses and minor accounting or inventory errors.

The agency is mindful of the difficulty of establishing a threshold for significant loss and requests comment on this issue and examples of situations that may and may not be appropriate reportable losses. FDA currently believes that a small discrepancy in the total inventory of a multimillion dollar company may not be significant and thus may not trigger the reporting requirement, but the loss of a hundred tablets of a particular drug by one sales representative in one quarter might be significant. Similarly, a bookkeeping imbalance may not be a loss, as long as it represents small inventory discrepancies that are likely to be accounted for in the normal course of audits or other methods of inventory control.

FDA is not proposing to establish any "tolerance" level for sample losses below which no report is required. Each manufacturer or distributor is required to establish its own threshold for determining when inventory not accounted for is significant. This threshold should be derived from the firm's past experience in sample distribution and inventory and should be based on the level of accuracy of its internal audit and security system.

Some manufacturers or distributors might be able to set a historically validated statistical baseline for the minimal amounts of shrinkage that might be caused by routine accounting errors, mistakes, or losses, and a statistical baseline for the frequency of occurrences that might routinely happen with a particular representative or product. However, any loss of drug samples exceeding the number or frequencies of the established baselines must be reported. In addition, any loss possibly associated with falsification of drug sample inventory or distribution records, or connected with diversion activity, suspicious circumstances, or theft must be investigated and reported.

When FDA becomes aware of a significant loss or theft of drug samples, it may conduct its own investigation in cooperation with or independent of the manufacturer's or distributor's investigation.

FDA is proposing that an initial notification of a significant loss or known theft be made by telephone or in writing, with a complete written report required not later than 30 days after the date of the initial notification.

c. *Conviction of a representative.* PDMA requires a manufacturer or distributor to notify FDA of any conviction of its representatives for a violation of section 503(c)(1) of the act or any State law involving the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample (21 U.S.C. 353(d)(3)(E)).

FDA believes that enforcement would be facilitated if prompt notice of such a conviction is provided to the agency. Accordingly, proposed § 203.37(c)(1) would require a manufacturer or distributor to notify FDA within 5 working days of becoming aware of the conviction of one or more of its representatives for such a violation.

To facilitate such reports, proposed § 203.37(c) would permit an initial notification of such a conviction to be made by telephone or in writing, but would require a complete written report to be submitted no later than 30 days after the date of the initial notification.

d. *Selection of individual responsible for drug sample information.* PDMA requires a manufacturer or distributor who distributes drug samples to provide FDA with the name and telephone number of the individual responsible for responding to a request for information respecting drug samples (21 U.S.C. 353(d)(3)(F)).

FDA believes that enforcement would be facilitated if that information is transmitted to the agency shortly after a designation is made. Accordingly, proposed § 203.37(d) would require a manufacturer or distributor to notify FDA in writing within 30 days of the selection of such an individual and would also require the manufacturer or distributor to supply the individual's

business address to expedite easy communication.

e. *Whom to notify at FDA.* The proposed rule would set forth the addresses to which notifications and reports are required to be made. Under the proposal, reports and notifications are required to be made to the Division of Drug Quality Evaluation (HFD–330), Center for Drug Evaluation and Research, for human prescription drugs; or the Division of Inspections and Surveillance (HFM–650), Center for Biologics Evaluation and Research, for human biological prescription drug products.

11. Sample Lot or Control Numbers

A drug sample is a drug product as defined in 21 CFR 320.1(b). In 21 CFR 201.10(i)(1)(iii) and 201.18 of the general labeling regulations and 21 CFR 211.130(b) of the current good manufacturing practice (CGMP) regulations, the label of drug products is required to bear an identifying lot or control number capable of yielding the complete manufacturing history of the package. Persons subject to the CGMP regulations are required under 21 CFR 211.196 to maintain distribution records containing lot or control numbers.

Maintenance of records of lot numbers on drug samples will help provide the kind of accountability and oversight of prescription drug sample distribution that PDMA is intended to provide. A comment to the docket from the Department of Health and Human Services' Office of the Inspector General not only endorsed this view, but suggested that maintenance of drug sample distribution records, including lot numbers, would be important for enforcement purposes.

Accordingly, proposed § 203.38 would require the manufacturer or authorized distributor of record of drug samples to include in the drug sample labeling, the label of the sample unit, and distribution records identifying lot or control numbers that will permit the tracking of the distribution of each drug sample unit from the point of its manufacture to the representative or, if delivered by mail or common carrier, to the licensed practitioner. (In addition, as discussed earlier, proposed §§ 203.30 and 203.31 also require that drug sample request and receipt forms include lot or control numbers.)

12. Sample Labels

FDA has been advised that some manufacturers and distributors use ordinary stock packages as drug samples. The agency believes that this practice makes it difficult to distinguish samples from ordinary stock and contributes to drug diversion. FDA believes that it is essential that drug samples be clearly and easily recognizable.

Accordingly, proposed § 203.38(c) would require that each sample unit bear a label that clearly denotes its status as a drug sample. An appropriate designation would include (but not be limited to) the word "sample" and the terms "not for sale" and "professional courtesy package." The proposed section would also provide that drug products that are labeled or imprinted as samples are deemed to be drug samples within the meaning of the act.

An article that meets the statutory definition of a drug sample that fails to bear the label required in proposed § 203.38(c) would still be a sample despite the absence of the required label.

13. Disposition of Drug Samples by Licensed Practitioners

PDMA permits manufacturers and distributors to distribute drug samples to licensed practitioners and to hospital or health care entity pharmacies at the request of a licensed practitioner, provided certain documents and records are created and maintained.

PDMA restricts drug sample distribution to "licensed practitioners" and to hospital or health care entity pharmacies at the request of a "licensed practitioner." A number of comments asked FDA to define the term "licensed practitioner." For purposes of proposed part 203, FDA would, in proposed § 203.3(o), define the term "licensed practitioner" to mean any person licensed by State law to prescribe drugs.

Physicians and surgeons, including osteopathic physicians and surgeons, are licensed to prescribe drugs in every State, as are dentists and dental surgeons. In most States, podiatrists and optometrists are licensed to prescribe certain drugs. In some States, pharmacists, physicians' assistants, paramedics, emergency medical technicians, certified nurse practitioners, certified nurse midwives, or other medical professionals or paraprofessionals may be licensed to prescribe drugs, sometimes on their own authority and sometimes on the authority of supervising physicians.

Some States limit the authority to prescribe prescription drugs to specific protocols or formularies for certain professionals or paraprofessionals. For those professionals and paraprofessionals, FDA follows the requirements of those States and considers the authority to request and receive drug samples to be similarly limited.

Section 503(d)(1) of the act provides that no person may distribute any drug sample unless the requirements set forth in paragraphs (d)(2) and (d)(3) of that section are followed. Paragraphs (d)(2) and (d)(3) set forth detailed requirements for manufacturers and authorized distributors of record to follow when they distribute drug samples by mail or common carrier and by representatives.

In the section-by-section analysis that the Senate and House of Representatives ordered to be published in the Congressional Record when PDA was introduced and passed, Congress stated that it did not intend this prohibition to restrict the provision of a drug sample to a patient by a licensed practitioner or by another person at the direction of a licensed practitioner in certain circumstances. (Congressional Record, August 10, 1992, p. S 12061–2; August 12, 1992, p. H 8107–8.) Consequently, in PDA, Congress amended section 503(d)(1) of the act to clarify the prohibition by stating that providing or dispensing a drug sample in certain circumstances is not considered distribution within the meaning of the statute. The clarification specifically excludes from the term "distribute" the provision of a drug sample to a patient by: (1) A practitioner licensed to prescribe such drug, (2) a health care professional acting at the direction and under the supervision of such a practitioner, and (3) the pharmacy of a hospital or of another health care entity that received the drug sample in accordance with the act and regulations, and that is acting at the direction of the health care practitioner who requested the drug sample.

A licensed practitioner who provides a drug sample other than as set forth in section 503(d)(1) of the act is engaging in an act of distribution, and drug sample distributions may be undertaken only as permitted by PDMA.

FDA advises that PDMA and this proposed rule would permit a licensed practitioner to: (1) Dispense the drug sample as set forth in section 503(d)(1) of the act; (2) donate the drug sample to a charitable institution as provided for in proposed § 203.39; (3) return the drug sample to the manufacturer or distributor; or (4) destroy the drug sample.

FDA advises that any person, including a licensed practitioner, is prohibited from carrying out certain distributions of drug samples, including: (1) Selling, purchasing, or trading (or offering to sell, purchase, or trade) any drug sample; (2) requesting a manufacturer or distributor to deliver any drug sample to a retail pharmacy;

(3) delivering any drug sample to a retail pharmacy to be dispensed by the pharmacist to a patient of the licensed practitioner or other persons; (4) giving any drug sample to a retail pharmacy; or (5) donating any drug sample to any charitable institution, except as provided in proposed § 203.39.

PDA singles out dispensing of drug samples by health care professionals who act at the direction and under the supervision of licensed practitioners, and hospital or health care entity pharmacies that receive drug samples in accordance with the act and regulations and that act at the direction of the health care practitioners who request samples. Thus, Congress clearly intended to distinguish these persons from retail pharmacists. The pharmacist in a retail pharmacy is an autonomous professional who is licensed by the State and supervised by the State Board of Pharmacy and independently dispenses drugs to patients in response to a prescription written by a separate licensed practitioner.

A manufacturer or distributor is prohibited from delivering a drug sample to any retail pharmacy, and a retail pharmacy is barred from receiving any drug sample from any person.

FDA has been advised that some licensed practitioners have requested that drug samples be delivered to retail pharmacies in rural, isolated, or medically underserved areas for dispensing to the practitioner's patients. FDA views this practice as being inconsistent with the accountability and oversight requirements imposed on sample distribution by PDMA. The agency believes it makes enforcement of the sample distribution sections difficult, and is a potential source of drug diversion. Accordingly, FDA advises that a practitioner should not request delivery of a drug sample to a retail pharmacy and that a retail pharmacy should not accept a drug sample from a licensed practitioner or from a manufacturer or distributor to be dispensed by the pharmacist to a practitioner's patients or to other persons.

To cut off a potential source of drug diversion and promote enforcement of PDMA, FDA advises licensed practitioners that they should return adulterated or misbranded drug samples to the manufacturer or distributor, or destroy them. Examples of drug samples that may be adulterated or misbranded include, but are not limited to: (1) Samples that have gone beyond the labeled expiration date; (2) samples that are obviously discolored, soiled, spoiled, or otherwise deteriorated; (3) samples with mutilated or damaged packaging; and (4) samples with labeling that is torn, adjusted, or modified.

14. Donation of Drug Samples by Licensed Practitioners to Charitable Institutions

FDA is aware of the practice whereby some licensed practitioners give significant quantities of drug samples to charitable institutions, such as free clinics, charity nursing homes, and charitable health care entities. Donated drug samples are then dispensed by staff of the charitable institutions to patients or given to domestic or overseas missions or other charitable institutions.

Some charitable institutions actively solicit and collect donations of drug samples from licensed practitioners, and it is not uncommon for charitable institutions to rely on donated drug samples as a significant source of prescription drugs for patient care. In response to concerns about this practice, FDA established procedures for drug sample donations in Compliance Policy Guide (CPG) 7132.08, "Collection and Charitable Distribution of Drugs," issued on October 1, 1980.

FDA continues to be concerned about drug sample donations. The agency believes that ongoing donations of drug samples by licensed practitioners to charitable institutions could be considered as being inconsistent with the objectives of accountability and oversight of sample distribution that PDMA is designed to provide. The agency is concerned that this practice could make enforcement of the sample distribution sections difficult and provide an avenue for drug diversion.

One of the principal purposes of PDMA was to prevent drug diversion. The easiest way to ensure that prescription drug samples will not be diverted by charitable institutions would be to prohibit such institutions from possessing them. However, Congress did not choose to do so. Indeed, PDMA explicitly allows prescription drug samples to be delivered by a manufacturer or distributor to the pharmacy of a hospital or health care entity at the written request of a licensed practitioner. Such a hospital or health care entity may be operated for profit or as a charitable institution. PDMA is silent, however, as to whether or not there are other legitimate means by which a charitable institution can acquire prescription drug samples.

The operations of not-for-profit hospitals, health care entities, and charitable institutions were closely scrutinized by Congress before the passage of PDMA. Congress identified sales of drugs acquired at below-wholesale prices by hospitals, health care entities, and charitable institutions as a source of unfair competition for prescription drug wholesalers who are required to pay the average wholesale price, and suggested that such sales could be a source of drug diversion. (See sec. 2(7), PDMA.)

Congress also identified the sale of prescription drug samples as a source of diversion (see sec. 2(6), PDMA), but did not suggest that charitable institutions were peculiarly likely to engage in this abuse. Instead, Congress sought to balance the need for restrictions that would prevent unfair competition and put an end to diversion of prescription drug samples with the goals of providing prescription drugs to all who need them and permitting the distribution, with appropriate restrictions, of prescription drug samples to patients.

Congress did not alter this balance when in PDA, it revised the PDMA sample distribution restrictions.

FDA has preliminarily concluded that development of a system that would permit licensed practitioners to donate excess quantities of prescription drug samples to charitable institutions for dispensing to patients or for further distribution to domestic or overseas charitable institutions for dispensing to patients would be consistent with PDMA, PDA, and the goal of providing adequate medical care to patients in need.

A system that would permit such donations with adequate restrictions would ensure wider opportunities for the provision of medical care, including prescription drugs, to patients in need, and would, if appropriate controls were established similar to those governing sample distribution, be consistent with the language and intent of the statute. Controls would serve the objectives of accountability and oversight in the act and minimize the potential for drug diversion.

Such a system would also prevent the waste of significant quantities of valuable prescription drugs that have been distributed as drug samples to licensed practitioners who have not used or dispensed them.

FDA believes that such a system should contain audit and security protection, similar to those required in the statute for requesting drug samples from manufacturers or distributors and delivering them to licensed practitioners, to provide accountability and oversight, and to protect the public against drug diversion.

In designing such a system, the agency has kept in mind that the day-

to-day operations of licensed practitioners, including the provision of prescription drugs to patients, are regulated primarily by the States. In addition, there is nothing in the legislative history of PDMA or PDA that would suggest that Congress intended FDA to become more deeply involved in the regulation of the activities of licensed practitioners, except to the extent necessary to ensure that drug samples are not diverted and that they do not, as a result, become adulterated or misbranded.

Accordingly, the agency is proposing to establish a system of drug sample donation controls in proposed § 203.39. Proposed § 203.39 would set up a system that would permit a licensed practitioner to donate a drug sample to a charitable institution for dispensing to a patient of that institution or for distribution to another properly enrolled charitable institution for subsequent dispensing to patients, provided that the institution is properly enrolled and certain requirements are met.

Under proposed § 203.39, a charitable institution that wishes to solicit or receive drug samples would be required to: (1) Become properly enrolled by notifying the agency of its intention to solicit and receive drug sample donations and obtaining a central file number; and (2) maintain records of drug samples received as donations and subsequently dispensed or distributed to other charitable institutions.

A recipient charitable institution must provide written certification of compliance with all regulations to a licensed practitioner or charitable institution that provides a drug sample before receiving any drug sample donation.

Under the proposal, the charitable institution or organization (defined as one that has been granted tax exempt status by the Department of the Treasury under the requirements of section 501(c)(3) of the Internal Revenue Code of 1954) would be required to enroll with FDA. A charitable institution would be enrolled when it has notified the appropriate FDA district office that it intends to solicit and receive drug samples, has made application to the district office for a central file number, and has received the number. A charitable institution would also be required to be licensed by the State, if required by State law, and otherwise conform to State law.

Proposed § 203.39(b) would establish procedures that the charitable institution would be required to follow for receiving, holding, dispensing, and distributing donated drug samples. These requirements closely parallel the statutory and proposed regulatory requirements for request and delivery of drug samples by manufacturers and distributors to licensed practitioners.

Under proposed § 203.39(b)(1), a recipient charitable institution would be required to provide a written identification document to any employee or agent authorized to act on behalf of the institution in soliciting or receiving donations of prescription drug samples. The employee or agent identification document would be valid for a limited term, but could be renewed.

FDA is not proposing to delineate the form and content of the required identification document, but it should be sufficient to readily identify the agent or employee of the charity and to establish that he or she has the authority to solicit and receive drug sample donations.

Such an identification document would be acceptable to the agency, for example, if it: (1) Would be effective for a fixed term, e.g., 1 year, and would bear an expiration date; (2) would include the name, address, and central file number of the charitable institution; (3) would exhibit the name, signature, and photograph of the authorized employee or agent; and (4) would display an affirmative statement that the employee or agent identified on the document is authorized by the institution to solicit and receive donations of prescription drug samples on behalf of the institution.

Proposed § 203.39(b)(2) would require each recipient charitable institution to maintain a current listing of all agents or employees authorized to solicit and receive drug samples on behalf of the institution. The listing would also be required to include the name and telephone number of the authorized agent or employee in charge of prescription drug sample solicitation, receipt, and redistribution.

One problem associated with drug sample diversion has been the practice of "shucking" drug samples (separating drug sample dosage units from their sample packaging (usually blister packs, cards, or small boxes) and sample labeling) and repackaging them (often in plastic bags or "baggies," or in other nonstandard containers with other sample dosage units from the same or different drug sample lots or production runs). This repackaging process may be accompanied by physical tampering with the sample dosage units with sharp or abrasive instruments or with solvents to remove imprints denoting their status as samples. Because this practice adulterates and misbrands the samples, proposed § 203.39(b)(3) would require that a drug sample could be donated by a licensed practitioner or donating charitable institution and could be received by a charitable institution only in its original, unopened packaging with its labeling intact.

Proposed § 203.39(b)(4) would permit delivery of a donated drug sample to a recipient charitable institution by mail or common carrier, collection by an authorized agent or employee of the recipient charitable institution, or personal delivery by a licensed practitioner or an authorized agent or employee of the donating charitable institution. It would direct that the donor place the donated drug samples in a sealed carton for delivery to or collection by the recipient institution.

Under proposed § 203.39(b)(5), a donated drug sample could not be dispensed to a patient or be distributed to another charitable institution until a licensed practitioner or registered pharmacist at the recipient charitable institution has examined it to confirm that the drug sample delivered matches the donation record and that any adulterated or misbranded drug sample is eliminated. The recipient would be required to reject any drug sample that: (1) Is out of date; (2) has labeling that has become mutilated, obscured, or detached from the drug sample packaging; (3) shows evidence of having been stored or shipped under conditions that might adversely affect its stability, integrity, or effectiveness; (4) is for a drug product that has been recalled or is no longer marketed; or (5) is otherwise possibly contaminated, deteriorated, or adulterated.

Proposed § 203.39(b)(6) would require recipient charitable institutions to dispose of any drug sample found to be unsuitable by destroying it or by returning it to the manufacturer and to maintain complete records of the disposition of all drug samples destroyed or returned.

Proposed § 203.39(b)(7) would require that, if a donated drug sample is collected by an authorized agent or employee of the recipient charitable institution or is personally delivered by a licensed practitioner or an authorized agent of a donating charitable institution, the employee or agent of the recipient institution is to prepare at the time of collection or delivery a complete and accurate donation record for the samples. Both the donor and recipient would be required to sign the donation record when it is created, and the donor and recipient would each retain a copy.

If a donated drug sample is transferred by mail or common carrier, the licensed practitioner or donating

charitable institution would be required to prepare a donation record that would be signed by the licensed practitioner or authorized agent of the donating charitable institution (§ 203.39(b)(8) and (b)(9)). The donation record would be shipped with the drug sample. An authorized agent or employee of the recipient charitable institution would be required to countersign it, keep a copy, and return a copy to the licensed practitioner or donating charitable institution.

Proposed § 203.39(b)(9) would require the donation record to include: (1) The name, address, and telephone number of the licensed practitioner (or donating charitable institution), and the practitioner's professional title and State license number or DEA identification number; (2) the manufacturer, brand name, quantity, and lot or control number of the sample; (3) the date of the donation; (4) the signature of the licensed practitioner (or the signature of the authorized agent of the donating charitable institution); and (5) the signature of the authorized agent or employee of the recipient charitable institution.

The proposal would require charitable institutions to maintain complete and accurate records of donation, receipt, inspection, inventory, dispensing, redistribution, destruction, and returns sufficient for complete accountability and auditing of drug sample stocks (§ 203.39(b)(10)).

It would also require each recipient charitable institution to conduct an inventory of drug sample stocks, at least annually, utilizing independent inventory personnel, and to prepare a report reconciling the results of each inventory with the most immediate prior inventory. Inventory discrepancies and reconciliation problems would be required to be investigated by the charitable institution and reported to FDA (§ 203.39(b)(11)).

Proposed § 203.39(b)(12) would require that a recipient charitable institution provide written certification to the licensed practitioner or donating charitable institution that it is in conformity with all the requirements of proposed part 203 before receiving any drug sample donation. Such certification, which links the licensed practitioner with the charitable institution, could be made part of the donation record.

Proposed § 203.39(b)(13) would require a recipient charitable institution to store drug samples under conditions that will maintain the samples' stability, integrity, and effectiveness, and ensure that the drug samples will be free of contamination, deterioration, and adulteration.

Proposed § 203.39(c) would also specify that a charitable institution may donate drug samples to another recipient charitable institution for dispensing to patients, provided that the recipient charitable institution meets the appropriate requirements.

In addition to the procedure for drug sample donations delineated in proposed § 203.39, there are alternative means available for charities to receive donated prescription drug products from manufacturers and distributors. These include: (1) Direct donations of prescription drug stock by manufacturers or distributors, with records of distribution and receipt being maintained in accordance with State regulations; and (2) deliveries of drug samples to charity hospital and health care entity pharmacies by manufacturers and distributors or their representatives under the request of a licensed practitioner in accordance with the requirements set forth in proposed §§ 203.30 and 203.31.

15. Free Distributions That Are Not Samples

There are certain situations in which manufacturers and distributors may deliver prescription drugs at no charge without such free distributions being samples. Accordingly, such distributions are not subject to the recordkeeping requirements for samples. Nevertheless, FDA believes that States and manufacturers and distributors should establish recordkeeping requirements and systems, where appropriate, to prevent diversion.

a. *Distribution of drugs to indigent patients.* As noted above, a drug sample is defined at proposed § 203.3(i) as a unit of a prescription drug that: (1) Is not intended to be sold; and (2) is intended to promote the sale of the drug. Drugs that are given free of charge to patients in some circumstances may not necessarily be samples. For example, manufacturers of some expensive new drugs have decided that, under certain circumstances, they will arrange for licensed practitioners to prescribe and dispense these drugs at no charge or at reduced cost to indigent patients. In FDA's view, if the objective of this practice is to ensure that patients in need of prescription drugs will have access to them, whatever their financial circumstances, then it is not a promotional scheme, and such drugs are not samples under section 503(c)(1) of the act or proposed § 203.3(i).

b. *Starter packs.* Starter packs are also not drug samples. Starter packs are prescription drug products distributed without charge by manufacturers or distributors to pharmacists with the intent that the pharmacists place the prescription drugs in stock and sell them at retail. Starter packs may be distributed by manufacturers' or wholesale distributors' representatives (detailers), by mail or common carrier, or by direct delivery from a manufacturer or distributor. Starter packs of solid oral dosage forms can be offered in ordinary stock packages, in special packaging comprised of unit-of-use or course-of-treatment sizes, or in special packaging smaller than standard stock packages whose sizes have no relationship to treatment regimens.

Starter packs are intended to "prime the pump" by making a product available at no cost to the pharmacist so the pharmacist will fill prescriptions with the manufacturer's product. They permit the patient and pharmacist to become familiar with the manufacturer's product. Starter packs are a widely used selling tool and thus are intended to promote the sale of the drug. Representatives often will make a sales presentation before delivering them or at the same time they are delivered.

PDMA's definition of drug sample sets up a two-element test that determines whether a particular item of prescription drug is a drug sample. The two-element test requires that the drug: (1) Is not intended to be sold; and (2) is intended to promote the sale of the drug. Starter packs meet the second element of the drug sample test because they are intended to promote the sale of a particular drug. However, even though starter packs are delivered without charge to pharmacists, they do not conform to the first element of the statutory drug sample definition because the manufacturer or distributor intends that they be sold by the pharmacist. Accordingly, starter packs are not samples.

Because starter packs are not samples, they are not subject to the sample restrictions in PDMA. Instead, they are subject to regulation as prescription drugs under the act in like manner as stock shipments of prescription drugs. Because starter packs are not drug samples, the request, receipt, and recordkeeping requirements in PDMA for samples do not apply, and pharmacists are free to sell these products at retail.

Because starter packs provide opportunities for diversion similar to those presented by drug samples, manufacturers, and distributors should establish and maintain accounting, audit, and security systems for starter packs to guard against diversion.

c. *Pharmacy colleges.* For many years, manufacturers have given pharmacy schools and colleges pharmaceutical products for teaching purposes. These products are given to help the schools train pharmacy students in drug formulation, compounding, packaging, and labeling, and to familiarize students with dosage forms. These products are not intended to be distributed or dispensed, nor are they intended to promote the sale of the drug. Accordingly, the agency does not view prescription drugs donated to colleges of pharmacy for educational purposes as drug samples.

d. *Donations of drugs to charitable institutions.* There is nothing in PDMA or in the legislative history of PDMA that would suggest that PDMA is intended to discourage direct donations by manufacturers or distributors of stock packages of prescription drug products to charitable institutions. Because these donations provide patients with the prescription drugs they need without regard to cost and are not intended to promote the sale of the drug, the distributions are not sample distributions within the meaning of section 503(c)(1) of the act or proposed § 203.3(i).

16. "Bid" and "Commercial" Samples

Manufacturers of drug products sometimes take delivery of bulk drug ingredients or precursor specimens for testing and evaluation purposes. These specimens are scrutinized for compatibility with a manufacturer's production equipment and to determine if they are suitable for use in formulating the drug products the manufacturer wishes to produce. Sometimes, manufacturers take delivery of examples of unpackaged finished dosage forms to determine if they are suitable for use with the manufacturer's packaging materials and equipment. These specimens, referred to as "bid" or "commercial" samples, are generally delivered in limited quantities for evaluation purposes.

The act defines a drug sample as a unit of a drug subject to section 503(b) of the act (i.e., a prescription drug), which is not intended to be sold and is intended to promote the sale of the drug (21 U.S.C. 353(c)(1)). Proposed § 203.3(i) restates this definition. Because of the statutory language and the threat of diversion, persons who distribute "bid" or "commercial" samples should follow the requirements for sample distribution set forth in the act and this proposed rule.

17. Retail Pharmacists and Drug Samples

Proposed § 203.40 would provide that the presence in a retail pharmacy of any drug sample shall be considered evidence that the drug sample was obtained by the retail pharmacy in violation of section 503(c)(1) of the act.

E. Wholesale Distribution

1. Identifying Statements ("Pedigrees")

Section 503(e)(1) of the act imposed a new requirement on "unauthorized" or "secondary" wholesale prescription drug distributors (wholesale drug distributors who are not authorized distributors of record) to provide to a wholesale distributor purchaser, before the completion of a sale, a statement identifying each sale of the drug (often referred to as a "statement of origin" or "drug pedigree"). PDA expanded this requirement by specifying the information to be included in the drug pedigree and mandating that it be provided to retail pharmacy buyers as well as wholesale distributor purchasers.

The pedigree requirements for unauthorized distributors under PDMA, as later amended by PDA, have been a matter of continuing interest and discussion. These requirements affect only unauthorized wholesale distributors (i.e., those who do not have an ongoing business relationship with a manufacturer to distribute that manufacturer's drugs) and impose upon them more stringent requirements than are imposed on authorized distributors of record.

Before passage of PDA, section 503(e)(1) of the act required that each person engaged in the wholesale distribution of drugs subject to section 503(b) of the act (prescription drugs) who is not an authorized distributor of record of such drugs provide to each wholesale distributor of such drugs a statement identifying each sale of the drug, including the date of the sale, before the sale to such wholesale distributor. Soon after the enactment of PDMA, the terms "secondary" and "unauthorized" distributors became common to describe persons who are not authorized distributors of record, and the term "drug pedigree" became popular to describe the required statement of origin.

In order to make it possible to distinguish between authorized and unauthorized distributors, section 503(e)(1) of the act also required each manufacturer to maintain at its corporate offices a current list of its authorized distributors. This requirement was not altered by PDA, which otherwise amplified the pedigree requirement.

When Congress adopted section 503(e)(1) of the act, it was responding to information uncovered by the Oversight Subcommittee of the House Committee on Energy and Commerce. The Committee found that most counterfeit, stolen, expired, or fraudulently obtained drugs entering commercial channels had been handled by distributors who were not authorized to distribute the manufacturer's product, rather than by the manufacturer's authorized distributors. Accordingly, Congress imposed a more stringent reporting requirement on distributions by unauthorized distributors, requiring them to inform their wholesale customers of all previous sales of the drug product. (H. Rept. 100–76, p. 17.)

A number of comments to the agency after enactment of PDMA reflected concerns about application of the drug pedigree requirement. One comment asked FDA to consider whether the drug pedigree must include the name and address of the seller, or whether a general statement, such as "this shipment of drugs came from an unnamed authorized distributor on ———— ——, 199—," or a coded statement, such as "this shipment of drugs came from unauthorized distributor [code] on ———— ——, 199—," would comply with PDMA.

The agency stated its position on the form and content of the drug pedigree requirement in PDMA in a section of the August 1, 1988, information and guidance letter to regulated industry and other interested parties. The August 1, 1988, letter requested that any drug pedigree be in writing, that it bear the title "Statement Identifying Prior Sales of Prescription Drugs by Unauthorized Distributors Required by the Prescription Drug Marketing Act," and that it include all necessary identifying information regarding all sales in the chain of distribution of the product, starting with the manufacturer or authorized distributor of record. The agency believed that this was consistent with the legislative history of PDMA, which indicated that Congress intended that the drug pedigree be a written certification fully identifying the source and place from which the drugs were obtained. (H. Rept. 100–76, p. 17; S. Rept. 100–202, p. 7.)

In the August 1, 1988, letter, the agency requested that the identifying statement include the following information: (1) The business name and address of the source from which the drug was purchased; (2) the date of the sale; and (3) the identity, strength,

container size, number of containers, and lot number(s) of the drug. FDA also requested that the drug pedigree accompany all products purchased from an unauthorized distributor, even when they are resold.

Late in 1988, the American Association of Pharmaceutical Distributors (AAPD), an organization of wholesale prescription drug distributors who are not authorized distributors of record for some or all of the products they distribute, designed a form for drug pedigrees that substituted codes for names and addresses. AAPD's system, which is now reportedly being used by its members and certain nonmembers, is administered by an accountant employed by AAPD for that purpose. The agency does not know if other code systems exist that are being used in place of the required names and addresses on drug pedigrees.

In the months following passage of PDMA, some Senators and members of Congress wrote to support coded pedigrees or pedigrees that did not disclose full names and addresses. However, others expressed their support for full disclosure on drug pedigrees.

Even before passage of PDA, FDA considered that Congress had intended the PDMA drug pedigree requirement to require that each party in a chain of distribution be given sufficient information to make an informed determination as to the origin of drugs being purchased. In the agency's view, general statements of origin could not provide sufficient information for purchasers, and coded statements that made information unintelligible to purchasers without the intervention of a trade association or regulatory agency to decipher the code, would not provide purchasers with the information that Congress intended that they receive. In FDA's opinion, the only meaningful way to identify the "source and place" from which drugs were obtained was to require that the identifying statement bear the business name and address of each previous distributor and the date of each prior sale. Furthermore, the only meaningful way to identify fully the drugs being described was to provide detailed particulars about the drugs being sold. FDA has stated this position in a number of letters, speeches, and public comments since PDMA became law.

The PDA amendments to the PDMA significantly tightened the drug pedigree requirement and constitute Congress' latest word on the issue. PDA amended section 503(e)(1) of the act to require that unauthorized distributors provide, before a sale takes place, a drug pedigree to every wholesale distributor or retail pharmacy customer. The drug pedigree is required to identify all prior sales, purchases, or trades of such drugs and to specify by name and address all parties to the transactions. PDA also states that FDA may require additional information or a specific form for the drug pedigree.

As Congress stated in the section-by-section analysis that accompanied PDA when it was introduced and passed, the stricter language in the PDA revision "makes it clear" that any wholesale distribution of a prescription drug by an unauthorized distributor, including any sale to another unauthorized distributor, an authorized distributor of record, or a retail pharmacy, must be preceded by a full and complete identifying statement. "The identifying statement," the analysis added, "must in all cases include the dates of each transaction involving the drug and the names and addresses of all parties to the transaction, and must contain any such other information as the Secretary may require." (Congressional Record, page S 12061, August 10, 1992; page H 8107, August 12, 1992.)

Passage of PDA thus gave added emphasis to Congress' intent, as stated in the legislative history of PDMA, to restore accountability to the wholesale sector of the pharmaceutical market and to regulate the wholesale distribution of prescription drug products. (H. Rept. 100–76, pp. 16–17; S. Rept. 100–202, p. 7.)

Proposed § 203.50(a) would restate the statutory requirement that, before the completion of any wholesale distribution by an unauthorized wholesaler to another wholesale distributor or retail pharmacy, the seller is required to provide to the purchaser a statement identifying each prior sale, purchase, or trade of such drug. It would require that the drug pedigree include: (1) The proprietary and established name of the drug; (2) the dosage; (3) the container size; (4) the number of containers; (5) the drug's lot or control number(s); (6) the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and (7) the date of each previous transaction involving the drug.

2. Additional Manufacturing Processes

A manufacturer applies at least one manufacturing process to a bulk drug substance or precursor product to produce a finished dosage form or a precursor product that will be further manufactured into a finished dosage form. Each of these processes produces a changed product. Accordingly, proposed § 203.50(b) specifies that a manufacturer who subjects a drug to any additional manufacturing processes to produce a different drug is not required to provide to a purchaser a statement identifying the previous sales of the component drug or drugs.

3. Authorized Distributor Lists

Proposed § 203.50(c) would require each manufacturer to maintain at the corporate offices a current written list of all authorized distributors of record. The term "authorized distributor of record" is defined in proposed § 203.3(b) to mean a distributor with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products. Because an agreement by which a single shipment of drugs is distributed would not constitute an ongoing relationship (see proposed § 203.3(r)) that shipment would not establish an "authorized distributor of record" relationship.

The proposal would also require the manufacturer's list to specify whether each distributor listed is authorized to distribute the manufacturer's full product line, or only particular, specified products. The proposal would also require the manufacturer to update the list on a continuing basis.

In the PDMA legislative history, Congress stated that manufacturers' lists of authorized distributors of record should be freely available to the public. Accordingly, FDA is also proposing that each manufacturer make its list of authorized distributors of record available on request to the public for inspection and copying.

4. Unknown Origins or "Salvaged" Drugs

A number of comments inquired about persons that purchase lost or abandoned drugs from transportation companies for sale to licensed wholesale distributors. This procedure is sometimes referred to as drug salvage, although it differs from the process identified as salvaging in 21 CFR part 211. These inquiries suggested that identifying statements for "salvaged" drugs should list the transportation company from which the drugs were "salvaged" as the point of origin.

FDA believes that this kind of business operation cannot meet the requirements of the CGMP regulations, nor can it operate in a manner consistent with PDMA's requirements (e.g., that a wholesale distributor give a wholesale distributor purchaser a statement of origin for the product being sold).

FDA's view is that the requirement for a statement of origin is designed to permit prospective purchasers to

determine if the source of a drug is a legitimate source, such as an authorized distributor or secondary distributor licensed by the State as a wholesale distributor. The agency believes that an "origin unknown" statement or a statement that a particular shipment of prescription drugs originated as "salvage" or that they came from a lost shipment from unknown persons at an unknown time would not be consistent with the meaning of that provision. Thus, in FDA's view, use of an "origin unknown" or "salvage" statement would not meet the requirement for an identifying statement under section 503(e)(1) of the act.

5. State Licensing of Wholesale Distributors

PDMA established a requirement that any person engaged in the wholesale distribution in interstate commerce of prescription drugs in a State be licensed by the State in accordance with guidelines issued as a final rule by the agency (21 U.S.C. 353(e)(2)). The final rule that set forth guidelines for State licensing of wholesale prescription drug distributors was published in the Federal Register of September 14, 1990 (55 FR 38012), making the requirement that any person engaging in the wholesale distribution of prescription drugs in interstate commerce shall be licensed by the State in which it operates, become effective September 15, 1992.

However, Congress passed PDA, which modified the State licensing requirement, before the date on which the requirement would have gone into effect. PDA amended section 503(e) of the act to establish a temporary Federal registration procedure for wholesale prescription drug distributors in those States that do not have a licensing program that meets the Federal guidelines.

This temporary Federal wholesale distributor registration procedure expires on September 14, 1994. After that date, all persons engaged in the wholesale distribution of prescription drugs in interstate commerce are required to be licensed by the State.

FDA issued a letter to industry and other interested persons on September 3, 1992, that provides information and guidance on the procedure to be followed by wholesale distributors required to register under the temporary Federal wholesale distributor registration procedure established by PDA. (See the Federal Register of December 2, 1992 (57 FR 57068).)

6. Defining "Wholesale Distribution"

The term "wholesale distribution" is defined in section 503(e)(4)(B) of the act as distribution of prescription drugs to other than the consumer or patient, but not including intracompany sales or distributions of drugs described in section 503(c)(3)(B) of the act. The exclusions under section 503(c)(3)(B) of the act are for the purchase or other acquisition by a hospital or other health care entity member of a group purchasing organization of a drug for its own use from the organization or from other hospitals or health care entity members of the organization; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities under common control; the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; and the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription executed in accordance with section 503(b) of the act.

These exclusions are part of the proposed definition of "wholesale distribution" in proposed § 203.3(y).

For clarity, FDA proposes to codify additional exclusions in proposed § 203.3(y) that have already been discussed in this notice. They are the distribution of drug samples by manufacturers' and authorized distributors' representatives; the sale, purchase, or trade of blood and blood components intended for transfusion; drug reshipments, when conducted in accordance with proposed § 203.23; and drug returns, when conducted in accordance with proposed § 203.24.

In addition, as discussed below, FDA is proposing to codify an exclusion from the definition of wholesale distribution for the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

For consistency, FDA is also proposing to incorporate these additional exclusions in the definition of "wholesale distribution" at § 205.3(f).

7. Sales to Licensed Practitioners by Retail Pharmacies

In general, a retail pharmacy that engages in the business of selling prescription drugs to licensed practitioners is a wholesale distributor that, since September 15, 1992, has been required to be licensed by the State as a wholesaler or registered with FDA if the State does not have a conforming licensing program.

Licensed practitioners often purchase small quantities of drugs from retail pharmacies for office use. Many wholesale distributors are reluctant to open accounts with individual practitioners for small quantities of drugs, and some practitioners believe that there is no cost-effective, reasonable alternative for making occasional purchases of small quantities of drugs for office use.

The legislative history supports the view that Congress did not intend to interfere with this small-scale practice. According to the House Report, "It is the express intent of the Committee that the scope of section 6 include distribution by * * * all sellers of prescription drugs in wholesale quantities to persons or firms other than the consumer or patient." (H. Rept. 100–76, p. 17.)

FDA believes that permitting the sale of small quantities of prescription drugs by retail pharmacies to licensed practitioners for office use without the requirement of a State wholesale distributor's license satisfies a legitimate need and is consistent with the intent of the statute. Accordingly, the agency has included language in proposed § 203.3(y) that would exclude the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use from the definition of "wholesale distribution."

In this context, sales of prescription drugs by a retail pharmacy to licensed practitioners for office use will be considered to be minimal if the total annual dollar volume of prescription drugs sold to licensed practitioners does not exceed 5 percent of the dollar volume of that retail pharmacy's annual prescription drug sales.

If a retail pharmacy is engaged in wholesale sales of prescription drugs in any amount after September 15, 1992, the presumption will be that the retail pharmacy is, in fact, a wholesale distributor that must be licensed by the State in accordance with part 205, or registered with FDA if the State does not have a conforming licensing program, unless it can be shown that the total annual dollar volume of its sales to licensed practitioners does not exceed 5 percent of the dollar volume of that pharmacy's annual prescription drug sales and the pharmacy does not otherwise engage in wholesale distribution.

8. Sales to Wholesale Distributors by Retail Pharmacies

FDA received a number of questions asking whether PDMA prohibits a retail pharmacy from selling prescription drugs to a wholesale distributor. FDA advises that there is no provision in PDMA, the final PDMA State licensing guidelines, or this proposed rule that would prohibit a retail pharmacy from selling prescription drugs to a wholesale distributor. However, a retail pharmacy that engages in such sales would become a wholesale distributor that would be required to provide the wholesale distributor purchaser with an identifying statement for the drugs sold and would be required to have a valid State wholesale distributor license or be registered with FDA if the State does not have a conforming licensing program.

F. Request and Receipt Forms, Reports, and Records

Proposed § 203.60 sets forth standards for request and receipt forms, reports, and for the creation, retention, and maintenance of records and other documents under proposed part 203. These requirements, although procedural in nature, are essential for the efficient administration and enforcement of PDMA and proposed part 203

1 Recordkeeping Media

FDA is proposing that manufacturers and distributors have the option of creating or maintaining records on nonpaper media. FDA believes that recent technological advances compel the agency to reexamine how the requirements for written records (including forms bearing written signatures) can be satisfied by electronic media. FDA believes that greater efficiency, lower costs, and more effective enforcement can result from an effort to facilitate the development and use of photographic, electronic, and other nonpaper devices, and media for creation and maintenance of sample requests, receipts, records, and other forms.

Accordingly, proposed § 203.60(a) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposed rule to be created on paper or on electronic media.

Proposed § 203.60(b) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposal that are created on paper to be maintained on paper or by photographic or electronic recordation or imaging, provided that appropriate security and authentication requirements are followed.

Proposed § 203.60(c) would permit request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this proposal that are created by means of electronic data entry and recordkeeping equipment to be stored using computer technologies, provided that appropriate security and authentication requirements are followed.

Under this proposal, appropriate photographic records and electrographic records could include, but not be limited to, those maintained on microfilm, microcard, microfiche, and xerographic copies. Appropriate electronic records could include, but not be limited to, those maintained in analog or digital form or by means of image recording technology on computer disks, cards, tapes, memory chips, or optical media.

2. Security and Authentication Requirements for Request and Receipt Forms, Reports, Records, and Other Documents

The proposed rule would require that any request or receipt form, report, record, or other document, and any signature appearing thereon, is to be created, maintained, or transmitted in a form that provides reasonable assurance of being: (1) Resistant to tampering, revision, modification, or alteration; (2) preserved in accessible and retrievable fashion; and (3) visible or readily made visible to permit copying or other means of duplication for purposes of review, analysis, verification, authentication, and reproduction by the person who executed the form or created the record, by the manufacturer or distributor, and by authorized personnel of FDA or other regulatory and law enforcement agencies.

3. Retention of Request and Receipt Forms, Reports, Lists, Records, and Other Documents

The proposed rule also sets standards for the retention of request and receipt forms, reports, lists, records, and other documents. PDMA requires the retention of certain records for not less than 3 years. FDA believes that, with one exception, the 3-year minimum requirement should be extended to all records created and maintained under the statute and the proposed rule to ensure efficient enforcement and compliance operations. Accordingly, the proposal would state that any person required to create or maintain forms, reports, lists, or other records under the statute or regulations would have to retain them for at least 3 years after the date of their creation.

The agency believes that a more stringent standard is necessary for the retention of records relating to drug sample distribution because some drug samples are relatively stable and may remain unexpired even though 3 or more years may have elapsed since they were packaged and shipped. Accordingly, the proposal would require that forms, reports, or records relating to the distribution of drug samples be retained for at least 3 years after the date of the record's creation or the date of expiration of a drug sample for which the record is being kept, whichever is later.

4. Availability of Forms, Reports, Lists, and Records

Forms, reports, lists, or other records are of little value to FDA or other regulatory and law enforcement agencies, unless they are readily available for inspection and copying. Accordingly, the proposal would compel any person required to create or maintain forms, reports, lists, or other records under PDMA, PDA, or the proposed rule to make them available upon request, in a form that permits copying or other means of duplication, to FDA or other Federal, State, or local regulatory and law enforcement officials for review and reproduction.

5. Signatures on Forms, Reports, or Records

By affixing a signature to a document, the person who signs it is giving his or her personal verification of the validity of a document. For example, by affixing a signature to a drug sample request form, the person signing it attests to the fact that he or she is a licensed practitioner and that he or she has requested delivery of a specific amount and type of drug sample. Similarly, a signature on a receipt verifies the delivery of the drug samples to the licensed practitioner or to the pharmacy of a hospital or other health care entity.

FDA has preliminarily concluded that a valid signature need not be made by pen or indelible pencil on a piece of paper. Instead, the agency believes that in certain circumstances a valid signature can be created and recorded by electronic means.

Accordingly, under proposed § 203.61 a verifiable signature may be made by use of a writing or marking instrument such as a pen, indelible pencil, or electronic stylus on electronic pad. Because some imprinting or copying devices can be used to forge or falsely imprint a signature, and because false signatures and forgeries could be an

integral part of a drug diversion scheme, the proposal would prohibit imprinting or automatic reproduction of a signature by a device or machine such as a stamp, copier, or autopen.

Proposed § 203.61 would establish performance standards and special security requirements for signatures signed on electronic media. Proposed § 203.61(b) would require that if electronic media are used to execute and record signatures, it must be installed and operated with: (1) A system permitting visual review of the signature; (2) a system to detect or inhibit entry of a forged, traced, fraudulent, or counterfeit signature, i.e., authentication software; and (3) a mechanism that blocks alteration of documents or signatures after the signatures are made, i.e., a locking device.

Persons interested in commenting on electronic records and electronic signatures should be aware that an agency task force, the FDA Electronic Identification/Signature Working Group, is currently assessing issues relating to electronic signatures and recordkeeping. In the **Federal Register** of July 21, 1992 (57 FR 32185), FDA published an advance notice of proposed rulemaking (ANPRM) entitled "Electronic Identification/Signatures; Electronic Records; Request for Information and Comments." The notice stated that the agency is considering whether it should propose regulations that would, under certain circumstances, accept electronic signatures in place of handwritten signatures where signatures are currently required in Title 21 of the Code of Federal Regulations and is asking for comments on any related issues. Comments were to be identified with Docket No. 92N–0251. The working group has reviewed the comments in the docket and the agency is considering additional action. The agency's emerging position on electronic signatures and records will be coordinated with the final PDMA policies requirements and administrative procedures rule. Suggestions on electronic signatures and other signature substitutes and surrogates made to FDA in response to this proposed rule will also be made available to the working group force for its review.

G. Penalties and Rewards

1. Criminal Penalties

Most violations of the act are punishable as misdemeanors, except that a violation committed after a prior conviction, or a violation committed with the intent to defraud or mislead, is punishable as a felony. In addition, FDA advises that persons who knowingly make any false, fictitious, or fraudulent statements or representations, or knowingly make or use any false writing or document, in any matter within the jurisdiction of a Federal department or agency; who engage in mail fraud or wire fraud; or who otherwise obstruct agency regulatory activities may be subject to prosecution under Title 18 of the United States Code.

Most PDMA violations are felonies punishable by a prison term of not more than 10 years, a fine of not more than $250,000, or both. Felonies under PDMA include the knowing importation of a drug in violation of section 801(d)(1) of the act; the knowing sale, purchase, or trade of a drug or drug sample, or the knowing offer to sell, purchase, or trade a drug or drug sample in violation of section 503(c)(1) of the act; the knowing sale, purchase, or trade of a drug coupon; the knowing offer to sell, purchase, or trade a drug coupon, or the knowing counterfeiting of such a coupon in violation of section 503(c)(2) of the act; or the knowing distribution of drugs in violation of section 503(e)(2)(A) of the act. Misdemeanors include the distribution of a drug sample in violation of section 503(d) of the act and the failure to comply with the "pedigree" requirement of section 503(e)(1)(A) of the act.

2. Civil Penalties

PDMA also includes provisions for civil penalties for certain violations of the drug sample distribution requirements.

A manufacturer or distributor who distributes drug samples by means other than mail or common carrier, whose representative, in the course of his or her employment, violates the PDMA prohibition against the sale, purchase, or trade or offer to sell, purchase, or trade drug samples, or any State law prohibiting the sale, purchase, or trade or offer to sell, purchase, or trade drug samples, is, upon conviction of the representative, subject to civil penalties as follows: (1) A civil penalty of not more than $50,000 for each of the first two such violations resulting in a conviction of any representative of the manufacturer or distributor in any 10-year period; and (2) a civil penalty of not more than $1,000,000 for each violation resulting in a conviction of any representative after the second conviction in any 10-year period.

A manufacturer or distributor who fails to report to FDA any conviction of one of its representatives for violations of section 503(c)(1) of the act or any State law that prohibits the sale, purchase, or trade of a drug sample (or the offer to sell, purchase, or trade a drug sample) is subject to a civil penalty of not more than $100,000.

In the **Federal Register** of May 26, 1993 (58 FR 30680), FDA published a proposed rule on procedures for administrative hearings on civil money penalties, including penalties under PDMA. FDA published a correction to this proposal in the **Federal Register** of July 27, 1993 (58 FR 40103).

3. Rewards

Section 7 of PDMA (section 303(b)(5) of the act) provides that a person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample in violation of section 503(c)(1) of the act, is entitled to one-half of the criminal fine imposed and collected for such violation, but not more than $125,000. The proposed rule provides in § 203.70 that an application for such a reward be made to the Director, Office of Compliance, of the appropriate Center.

H. Technical Amendment to State Licensing Guideline

FDA is proposing a technical amendment to the storage and handling requirements of the State licensing guideline at § 205.50(c) to clarify the agency's intention that the paragraph require that prescription drugs be stored at appropriate temperatures in accordance with the requirements of the 22d edition of the U.S. Pharmacopoeia (U.S.P. XXII), the current edition of that compendium.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the principles set out in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order.

Most of the requirements in this proposed rule have already been implemented by the regulated industry in response to PDMA's enactment,

FDA's guidance, and industry trade associations' recommendations.

The regulatory costs of this proposal, which are due to increased paperwork requirements, were calculated by multiplying an estimate of the time necessary to complete the paperwork for each section by an hourly wage rate of $44.99. The agency estimates that nonprofit health care organizations (hospitals and charitable organizations) will require roughly 76,100 hours to complete the paperwork, at a cost of just over $3.4 million (76,000 hours X $44.99) annually. Pharmaceutical manufacturers and distributors will need about 476,000 hours to comply with the paperwork requirements, at a cost of around $21.4 million (476,000 hours X $44.99) annually. In total, therefore, the industry will utilize 552,000 hours (76,000 + 476,000) and spend approximately $24.8 million (3.4 million + 21.4 million) to complete the paperwork requirements. Further details for these estimates are included with the agency's paperwork reduction package, prepared pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Most of the requirements in this proposed rule have already been implemented by the regulated industry, including small entities, in response to PDMA's enactment, FDA's guidance, and industry trade association recommendations. Consequently, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act, no further analysis is required.

IV. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to examine carefully regulatory actions to determine if they would have a significant impact on federalism. Using the criteria and principles set forth in the Order, the agency has considered the impact of this proposed rule on the States, on their relationship with the Federal government, and on the distribution of power and responsibilities among the various levels of government.

FDA is publishing this proposed rule to set forth agency policies and requirements and provide administrative procedures, information, and guidance for those sections of PDMA that are not related to State licensing of wholesale drug distributors. Because enforcement of these sections of PDMA is a Federal responsibility, there should be little, if any, impact on the States from this rule, if it is finalized.

FDA certifies that it has examined this proposed rule. Because it has little, if any, effect on federalism issues, as stated above, and because any effects are not significant, this proposed rule does not require an assessment under Executive Order 12612.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Prescription Drug Marketing Act of 1987; Policies, Requirements, and Administrative Procedures.

Description: The information requirements contained in the proposed rule would collect information from establishments engaged in the reimportation and wholesale distribution of drugs subject to section 503(b) of the act; the sale, purchase, or trade (or offer to sell, purchase, or trade) of prescription drugs by hospitals, health care entities, and charitable institutions; and the distribution of prescription drug samples.

Description of Respondents: Businesses, hospitals, health care entities, charitable institutions, and other for-profit and not-for-profit organizations; small businesses or organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
203.11	12	1	30 min	6.00
203.23(b), (c)	44,469	2	15 min	22,234.00
203.24	44,469	3	20 min	44,469.00
203.30(a), (b), (c)	34,000	120	1 min	68,000.00
203.31(a), (b), (c)	34,000	480	1 min	272,000.00
203.31(d)	27,200	1	30 min	13,600.00
203.31(e)	4,700	1	1 min	78.33
203.31(f)	12	1	30 min	6.00
203.34	4,700	1	24 hrs	112,800.00
203.37(a)	48	1	30 min	24.00
203.37(b)	1,200	1	60 min	1,200.00
203.37(c)	2	1	30 min	6.00
203.37(d)	4,700	1	15 min	1,175.00
203.39(a)(2)(i)	6,800	1	15 min	1,700.00
203.39(b)(1), (2), (6), (7), (8), (9), (10), (12)	300	1	3 hrs	900.00
203.39(b)(11), (14)	6,800	1	60 min	6,800.00
203.50(a)	125	1	30 min	62.50
203.50(c)	4,700	1	90 min	7,050.00
Total burden hours				552,111.33

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding this burden estimate or any other aspect of

thiscollection of information, including suggestions for reducing the burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn.: Desk Officer for FDA.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(7) and (a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before May 30, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 203

Drugs, Labeling, Manufacturing, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 205

Intergovernmental relations, Prescription drugs, Reporting and recordkeeping requirements, Security measures, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

1. Part 203 is added to read as follows:

PART 203—PRESCRIPTION DRUG MARKETING

Subpart A—General Provisions

Sec.

203.1 Scope.
203.2 Purpose.
203.3 Definitions.

Subpart B—Reimportation

203.10 Restrictions on reimportation.
203.11 Applications for reimportation to provide emergency medical care.
203.12 An appeal from an adverse decision by the district office.

Subpart C—Sales Restrictions

203.20 Sales restrictions.
203.22 Exclusions.
203.23 Revocation of acceptance and reshipment.
203.24 Returns.

Subpart D—Samples

203.30 Sample distribution by mail or common carrier.
203.31 Sample distribution by means other than mail or commoncarrier (direct delivery by a representative or detailer).
203.32 Drug sample storage and handling requirements.
203.33 Drug sample forms.
203.34 Policies and procedures; administrative systems.
203.35 Standing requests.
203.36 Fulfillment houses, shipping and mailing services,comarketing agreements, and third party recordkeeping.
203.37 Investigation and notification requirements.
203.38 Sample lot or control numbers; labeling of sample units.
203.39 Donation of drug samples to charitable institutions.
203.40 Retail pharmacists and drug samples.

Subpart E—Wholesale Distribution

203.50 Requirements for wholesale distribution of prescriptiondrugs.

Subpart F—Request and Receipt Forms, Reports, and Records

203.60 Request and receipt forms, reports, and records.
203.61 Signatures.

Subpart G—Rewards

203.70 Application for a reward.

Authority: Secs. 301, 303, 501, 502, 503, 510, 701, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381).

Subpart A—General Provisions

§ 203.1 Scope.

This part sets forth procedures and requirements pertaining to the reimportation and wholesale distribution of prescription drugs, including both bulk drug substances and finished dosage forms, and to the sale, purchase, or trade (or the offer to sell, purchase, or trade) of prescription drugs, including bulk drug substances, by hospitals, health care entities, and charitable institutions, and to the distribution of prescription drug samples. Blood and blood components intended for transfusion are excluded from the restrictions in and the requirements of the Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992.

§ 203.2 Purpose.

The purpose of this part is to implement the Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992, except for those sections relating to State licensing of wholesale distributors (see part 205 of this chapter), to protect the public health, and to protect the public against drug diversion by establishing procedures, requirements, and minimum standards for the distribution of prescription drugs and prescription drug samples.

§ 203.3 Definitions.

(a) *The act* means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

(b) Authorized distributor of record means a distributor with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.

(c) *Blood* means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(d) *Blood component* means that part of a single-donor unit of blood separated by physical or mechanical means.

(e) *Bulk drug substance* means any drug or drug component furnished in other than finished dosage form that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans.

(f) *Charitable institution or charitable organization* means a nonprofit hospital, health care entity, organization, institution, foundation, association, or corporation that has been granted an exemption under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

(g) *Common control* means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.

(h) *Distribute* means to sell, offer to sell, deliver, or offer to deliver a drug to a recipient, except that the term "distribute" does not include the providing of a drug sample to a patient by:

(1) A practitioner licensed to prescribe such drug;

(2) A health care professional acting at the direction and under the supervision of such a practitioner; or

(3) The pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner

and that received such sample in accordance with the act and regulations.

(i) *Drug sample* means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(j) *Drug coupon* means a form that may be redeemed, at no cost or at reduced cost, for a drug that is prescribed in accordance with section 503(b) of the act.

(k) *Emergency medical reasons* include, but are not limited to, transfers of a prescription drug between health care entities or from a health care entity to a retail pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, i.e., ambulance companies and fire fighting organizations in the same State or same marketing or service area, or nearby licensed practitioners, of drugs for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary drugs cannot be obtained; and transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage; but do not include regular and systematic sales to licensed practitioners of prescription drugs that will be used for routine office procedures.

(l) *FDA* means the U.S. Food and Drug Administration.

(m) *Group purchasing organization* means any entity established, maintained, and operated for the purchase of prescription drugs for distribution exclusively to its members with such membership consisting solely of hospitals and health care entities bound by written contract with the entity.

(n) *Health care entity* means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. A person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor.

(o) *Licensed practitioner* means any person licensed by State law to prescribe drugs.

(p) *Manufacturer* means any person who is a manufacturer as defined by § 201.1 of this chapter.

(q) *Nonprofit affiliate* means any not-for-profit organization that is either associated with or a subsidiary of a charitable organization as defined in section 501(c)(3) of the Internal Revenue Code of 1954.

(r) *Ongoing relationship* means an association that exists when a manufacturer and a distributor enter into a written agreement under which the distributor is authorized to sell the manufacturer's products for a period of time or for a number of shipments, at least one sale is made under that agreement, and the name of the authorized distributor of record is entered on the manufacturer's list of authorized distributors of record.

(s) *PDA* means the Prescription Drug Amendments of 1992.

(t) *PDMA* means the Prescription Drug Marketing Act of 1987.

(u) *Person* includes any individual, partnership, corporation, or association.

(v) *Prescription drug* means any drug (including any biological product, except for blood and blood components intended for transfusion or biological products which are also medical devices) required by Federal law (including Federal regulation) to be dispensed only by a prescription, including finished dosage forms, bulk drug substances, and active ingredients subject to section 503(b) of the act.

(w) *Representative* means an employee or agent of a drug manufacturer or distributor who promotes the sale of prescription drugs to licensed practitioners and who may solicit or receive written requests for the delivery of drug samples. A detailer is a representative.

(x) *Sample unit* means a packet, card, blister pack, bottle, container, or other single package comprised of one or more dosage units of a prescription drug sample, intended by the manufacturer or distributor to be distributed by a licensed practitioner to a patient in an unbroken or unopened condition.

(y) *Wholesale distribution* means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(1) Intracompany sales;

(2) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;

(5) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;

(6) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription executed in accordance with section 503(b) of the act;

(7) The distribution of drug samples by manufacturers' and authorized distributors' representatives;

(8) The sale, purchase, or trade of blood or blood components intended for transfusion;

(9) The reshipment of drugs, when conducted in accordance with § 203.23;

(10) Drug returns, when conducted in accordance with § 203.24; or

(11) The sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

(z) *Wholesale distributor* means any person engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

Subpart B—Reimportation

§ 203.10 Restrictions on reimportation.

No prescription drug that was manufactured in a State and exported from the United States may be reimported by anyone other than its manufacturer, except that FDA may grant permission to a person other than the manufacturer to reimport a prescription drug if it deems such reimportation is required for emergency medical care.

§ 203.11 Applications for reimportation to provide emergencymedical care.

(a) Applications for reimportation for emergency medical care are required to be submitted to the director of the FDA District Office in the district where reimportation is sought (addresses found in § 5.115 of this chapter).

(b) Applications for reimportation to provide emergency medical care will be reviewed and approved or disapproved by each district office.

§ 203.12 An appeal from an adverse decision by the district office.

An appeal from an adverse decision by the district office involving

prescription human drugs other than biological products may be made to the Office of Compliance (HFD–300), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. An appeal from an adverse decision by the district office involving prescription human biological products may be made to the Office of Compliance (HFM–600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852.

Subpart C—Sales Restrictions

§ 203.20 Sales restrictions.

Except as provided in §§ 203.22, 203.23, and 203.24, no person may sell, purchase, or trade, or offer to sell, purchase, or trade, any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization.

§ 203.22 Exclusions.

Section 203.20 does not apply to:

(a) The purchase or other acquisition of a drug for its own use by a hospital or other health care entity that is a member of a group purchasing organization from the group purchasing organization or from other hospitals or health care entities that are members of the organization.

(b) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control.

(d) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons.

(e) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a valid prescription.

(f) The sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug by hospitals or health care entities owned or operated by Federal, State, or local governmental units to other hospitals or health care entities owned or operated by Federal, State, or local governmental units.

(g) The sale, purchase, or trade of, or the offer to sell, purchase, or trade, blood or blood components intended for transfusion.

§ 203.23 Revocation of acceptance and reshipment.

The revocation of a sale and purchase transaction by a hospital, health care entity, or charitable institution because of a mistake in ordering or delivery and the reshipment of the prescription drug to a manufacturer or wholesale distributor for a credit or refund are exempt from the prohibitions in § 203.20, provided that:

(a) The hospital, health care entity, or charitable institution ships the drug back to the manufacturer or distributor from which the drug was received within 10 working days of receipt;

(b) The reshipment is made under proper conditions for storage, handling, and shipping; and written documentation showing that proper conditions were maintained is provided to the manufacturer or distributor to whom the drug is reshipped;

(c) If reshipped to the wholesale distributor, the hospital, health care entity, or charitable institution provides written notice to the manufacturer of the revocation and reshipment that includes the following information:

(1) The name and address of the hospital, health care entity, or charitable institution;

(2) The name and address of the manufacturer and wholesale distributor;

(3) The product name and lot number;

(4) The quantity involved in the revocation and reshipment; and

(5) The date of the revocation and reshipment.

§ 203.24 Returns.

The return of a prescription drug purchased by a hospital or health care entity, or acquired at a reduced price by or donated to a charitable institution, to the manufacturer or the wholesale distributor that sold, donated, or supplied the prescription drug, is exempt from the prohibitions in § 203.20, provided that:

(a) The hospital, health care entity, charitable institution, or wholesale distributor notifies the manufacturer that the prescription drug product has been returned to the wholesale distributor;

(b) The hospital, health care entity, or charitable institution documents the return by filling out a credit memo specifying:

(1) The name and address of the hospital, health care entity, or charitable institution;

(2) The name and address of the manufacturer or wholesale distributor from which it was acquired;

(3) The product name and lot or control number;

(4) The quantity returned; and

(5) The date of the return.

(c) The hospital, health care entity, or charitable institution forwards a copy of each credit memo to the manufacturer and retains a copy of each credit memo for its records;

(d) The value of any credit, refund, or exchange for the returned product does not exceed the purchase price or, if a donation, the fair market price of the returned product; and

(e) Any drugs returned to a manufacturer or wholesale distributor are kept under proper conditions for storage, handling, and shipping, and written documentation showing that proper conditions were maintained is provided to the manufacturer or wholesale distributor to which the drugs are returned.

Subpart D—Samples

§ 203.30 Sample distribution by mail or common carrier.

(a) *Requirements for drug sample distribution by mail or common carrier.* A manufacturer or authorized distributor of record may distribute a drug sample to a practitioner licensed to prescribe the drug that is to be sampled, or, at the written request of a licensed practitioner, to the pharmacy of a hospital or other health care entity, by mail or common carrier, provided that:

(1) The licensed practitioner executes and submits a written request to the manufacturer or authorized distributor of record, as set forth in paragraph (b) of this section, before the delivery of the drug sample;

(2) The recipient executes a written receipt, as set forth in paragraph (c) of this section, when the drug sample is delivered; and

(3) The recipient returns the receipt to the manufacturer or distributor from which the drug sample was received.

(b) *Contents of the written request form for delivery of samples by mail or common carrier.* (1) A written request for a drug sample to be delivered by mail or common carrier to a licensed practitioner is required to contain the following:

(i) The name, address, professional title, signature of the practitioner making the request;

(ii) The practitioner's State license number or Drug Enforcement Administration identification number;

(iii) The proprietary or established name and strength of the drug sample requested;

(iv) The quantity requested;

(v) The name of the manufacturer, and the authorized distributor of record, if the drug sample is requested from an authorized distributor of record; and

(vi) The date of the request.

(2) A written request for a drug sample to be delivered by mail or common carrier to the pharmacy of a hospital or other health care entity is required to contain, in addition to all of the information in paragraph (b)(1) of this section, the name and address of the pharmacy of the hospital or other health care entity to which the drug sample is to be delivered.

(c) *Contents of the receipt to be completed upon delivery of a drug sample.* The receipt is to be on a form designated by the manufacturer or distributor, and is required to contain the following:

(1) If the drug sample is delivered to the licensed practitioner who requested it, the receipt is required to contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(2) If the drug sample is delivered to the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, the receipt is required to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

§ 203.31 Sample distribution by means other than mail or commoncarrier (direct delivery by a representative or detailer).

(a) *Requirements for drug sample distribution by means other than mail or common carrier.* A manufacturer or authorized distributor of record may distribute by means other than mail or common carrier, e.g., by a representative or detailer, a drug sample to a practitioner licensed to prescribe the drug to be sampled, or, at the written request of such a licensed practitioner, to the pharmacy of a hospital or other health care entity, provided that:

(1) The manufacturer or authorized distributor of record receives from the licensed practitioner a written request signed by the licensed practitioner before the delivery of the drug sample;

(2) A receipt is signed by the recipient, as set forth in paragraph (c) of this section, when the drug sample is delivered;

(3) The receipt is returned to the manufacturer or distributor; and

(4) The requirements of paragraphs (d) through (f) of this section are met.

(b) *Contents of the written request forms for delivery of samples by a representative.* (1) A written request for delivery of a drug sample by a representative to a licensed practitioner is required to contain the following:

(i) The name, address, professional title, signature of the practitioner making the request;

(ii) The practitioner's State license number or Drug Enforcement Administration identification number;

(iii) The proprietary or established name and strength of the drug sample requested;

(iv) The quantity requested;

(v) The name of the manufacturer and the authorized distributor of record, if the drug sample is requested from an authorized distributor of record; and

(vi) The date of the request.

(2) A written request for delivery of a drug sample by a representative to the pharmacy of a hospital or other health care entity is required to contain, in addition to all of the information in paragraph (b) of this section, the name and address of the pharmacy of the hospital or other health care entity to which the drug sample is to be delivered.

(c) *Contents of the receipt to be completed upon delivery of a drug sample.* The receipt is to be on a form designated by the manufacturer or distributor, and is required to contain the following:

(1) If the drug sample is received by the licensed practitioner who requested it, the receipt is required to contain the name, address, professional title, and signature of the practitioner or the practitioner's designee who acknowledges delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(2) If the drug sample is received by the pharmacy of a hospital or other health care entity at the request of a licensed practitioner, the receipt is required to contain the name and address of the requesting licensed practitioner, the name and address of the hospital or health care entity pharmacy designated to receive the drug sample; the name, address, professional title, and signature of the person acknowledging delivery of the drug sample; the proprietary or established name and strength of the drug sample, the quantity, and the lot or control number of the drug sample delivered; and the date of the delivery.

(d) *Inventories of drug samples of manufacturers' and distributors' representatives.* Each drug manufacturer or authorized distributor of record that distributes drug samples by means of representatives shall conduct, at least annually, a complete and accurate drug sample inventory, utilizing generally accepted inventory practices. All drug samples in the possession or control of each manufacturer's and distributor's representatives are required to be inventoried, and the results of the inventory are required to be recorded in an inventory record and reconciliation report.

(1) The inventory record is required to identify all drug samples by the proprietary or established name and dosage strength, and number of sample units of each drug sample in stock.

(2) The reconciliation report is required to include:

(i) A report of the physical count of the most recently completed prior inventory;

(ii) A record of each drug sample shipment received since the most recently completed prior inventory, including the sender and date of the shipment, and the proprietary or established name, dosage strength, and number of sample units received;

(iii) A record of drug sample distributions since the most recently completed inventory showing the name and address of each recipient of each sample unit shipped, the date of the shipment, and the proprietary or established name, dosage strength, lot or control number, and number of sample units shipped; and

(iv) An explanation for any significant loss.

(3) The inventory and reconciliation reports shall be conducted and prepared by persons other than the representatives being inventoried or supervisors or managers in their department, division, or branch, or in their direct line of supervision or command.

(4) A manufacturer or authorized distributor of record shall carefully evaluate any apparent discrepancy or significant loss in its inventory and reconciliation, and shall fully investigate any such discrepancy or significant loss that cannot be justified.

(e) *Lists of manufacturers' and distributors' representatives.* Each drug manufacturer or authorized distributor of record who distributes drug samples by means of representatives shall maintain a list of the names and addresses of its representatives who

distribute drug samples and of the sites where drug samples are stored.

(f) *Notification if representative is convicted of violations.* Drug manufacturers or authorized distributors of record shall report to FDA any conviction of their representatives for violations of section 503(c)(1) of the act or a State law because of the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample.

§ 203.32 Drug sample storage and handling requirements.

(a) *Storage and handling conditions.* Manufacturers, authorized distributors of record, and their representatives shall store and handle all drug samples under conditions that will maintain their stability, integrity, and effectiveness, and ensure that the drug samples are free of contamination, deterioration, and adulteration.

(b) *Compliance with compendial and labeling requirements.* A manufacturer, authorized distributor of record, and their representatives can generally comply with this section by following the compendial and labeling requirements for storage and handling of a particular prescription drug in handling samples of that drug.

§ 203.33 Drug sample forms.

A sample request or receipt form may be delivered by mail, common carrier, or private courier or may be transmitted photographically or electronically (i.e., by telephoto, wirephoto, radiophoto, facsimile transmission (FAX), xerography, or electronic data transfer) or by any other system, provided that the method for transmission meets the security requirements set forth in § 203.60(d).

§ 203.34 Policies and procedures; administrative systems.

Each manufacturer or authorized distributor of record that distributes drug samples shall establish, maintain, and adhere to written policies and procedures describing its administrative systems for the following:

(a) Distributing drug samples by mail or common carrier, including methodology for reconciliation of requests and receipts;

(b) Distributing drug samples by means other than mail or common carrier including the methodology for their independent sample distribution security and audit system;

(c) Conducting its inventory of drug samples under § 203.31(d), including an inventory schedule;

(d) Auditing and detecting falsified or incomplete drug sample records;

(e) Identifying any significant loss of drug samples and notifying FDA of the loss;

(f) Monitoring any loss or theft of drug samples; and

(g) Storing drug samples by representatives.

§ 203.35 Standing requests.

Manufacturers or authorized distributors of record shall not distribute drug samples on the basis of open-ended or standing requests, but shall require separate written requests for each drug sample or group of samples. An arrangement by which a licensed practitioner requests in writing that a specified number of drug samples be delivered over a period of not more than 6 months, with the actual delivery dates for parts of the order to be set by subsequent oral communication or electronic transmission, is not considered to be a standing request.

§ 203.36 Fulfillment houses, shipping and mailing services, comarketing agreements, and third party recordkeeping.

(a) *Responsibility for creating and maintaining forms, reports, and records.* Any manufacturer or authorized distributor of record that uses a fulfillment house, shipping or mailing service, or other third party, or engages in a comarketing agreement with another manufacturer or distributor to distribute drug samples or to meet any of the requirements of PDMA, PDA, or this part, remains responsible for creating and maintaining all requests, receipts, forms, reports, and records required under PDMA, PDA, and this part.

(b) *Responsibility for producing requested forms, reports, or records.* A manufacturer or authorized distributor of record that contracts with a third party to maintain some or all of its records shall produce requested forms, reports, records, or other required documents within 48 hours of a request by an authorized representative of FDA or another Federal, State, or local regulatory or law enforcement official.

§ 203.37 Investigation and notification requirements.

(a) Investigation of falsification of drug sample records. (1) A manufacturer or authorized distributor of record that has reason to believe that any person has falsified drug sample requests, receipts, or records shall conduct a full and complete investigation, and shall notify FDA, by telephone or in writing, within 5 working days of becoming aware of a falsification and within 5 working days of the completion of an investigation.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report, including the reason for and the results of the investigation, not later than 30 days after the date of the initial notification.

(b) *Significant loss or known theft of drug samples.* (1) A manufacturer or authorized distributor of record that distributes drug samples or a charitable institution that receives donated drug samples from a licensed practitioner shall notify FDA, by telephone or in writing, within 5 working days of becoming aware of any significant loss or known theft of drug samples and within 5 working days of the completion of an investigation into a report of a significant loss or known theft.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report not later than 30 days after the date of the initial notification.

(c) *Conviction of a representative.* (1) A manufacturer or authorized distributor of record that distributes drug samples shall notify FDA, by telephone or in writing, within 30 days of becoming aware of the conviction of one or more of its representatives for a violation of section 503(c)(1) of the act or any State law involving the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample.

(2) A manufacturer or authorized distributor of record shall provide FDA with a complete written report not later than 30 days after the date of the initial notification.

(d) *Selection of individual responsible for drug sample information.* A manufacturer or authorized distributor of record that distributes drug samples shall inform FDA in writing within 30 days of selecting the individual responsible for responding to a request for information about drug samples of that individual's name, business address, and telephone number.

(e) *Whom to notify at FDA.* Notifications and reports concerning prescription human drugs shall be made to the Division of Drug Quality Evaluation (HFD–330), Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Notifications and reports concerning prescription human biological products shall be made to the Division of Inspections and Surveillance (HFM–650), Office of Compliance, Center for Biologics Evaluation and Research, Food and Drug

Administration, 1401 Rockville Pike, Rockville, MD 20852.

§ 203.38 Sample lot or control numbers; labeling of sample units.

(a) *Lot or control number required on drug sample labeling and sample unit label.* The manufacturer or authorized distributor of record of a drug sample shall include in the labeling of the drug sample and the label of the sample unit an identifying lot or control number that will permit the tracking of the distribution of each drug sample unit.

(b) *Lot or control number required on all drug sample distribution records.* All drug sample distribution records required under this part shall contain the lot or control number.

(c) *Labels of sample units.* Each sample unit shall bear a label that clearly denotes its status as a drug sample, e.g., "sample," "not for sale," "professional courtesy package."

(1) A drug that is labeled as a drug sample is deemed to be a drug sample within the meaning of the act.

(2) A drug product dosage unit that bears an imprint identifying the dosage form as a drug sample is deemed to be a drug sample within the meaning of the act.

(3) Notwithstanding the above, any article that is a drug sample as defined in section 503(c)(1) of the act and § 203.3(i) that fails to bear the label required in this paragraph is a drug sample.

§ 203.39 Donation of drug samples to charitable institutions.

(a) A charitable institution may receive a drug sample donated by a licensed practitioner for dispensing to a patient of the charitable institution, provided that the charitable institution meets the conditions set forth in paragraph (b) of this section; and

(1) The charitable institution is licensed by the State, if required by State law, and is otherwise in compliance with State law; and

(2) The charitable institution has enrolled with FDA. A charitable institution is enrolled when it has notified the FDA district office in which it is located (addresses found in § 5.115 of this chapter) that it intends to solicit and receive drug samples, has made application to the district office for a central file number, and has received such a number.

(i) A person, partnership, or corporation that seeks to enroll with FDA as a charitable institution for the solicitation and receipt of donated drug samples is required to provide the following information to the district office:

(A) The name, address, and telephone number of the person, partnership, or corporation seeking to enroll; and

(B) The name, address, and telephone number of the agent, employee, or other individual responsible for solicitations and receipt of donated drug samples.

(ii) Once the required information has been provided, the district office will advise the applicant charitable institution that it has been enrolled and issue the applicant a central file number.

(b) Each recipient charitable institution shall comply with the following procedures for receiving, holding, dispensing, and distributing donated drug samples:

(1) A recipient charitable institution shall provide a written identification document to any employee or agent authorized to act on behalf of the institution in soliciting or receiving donations of prescription drug samples. The employee or agent identification document shall be valid for a limited term, but may be renewable.

(2) Each recipient charitable institution shall maintain a current listing of all agents or employees authorized to solicit and receive drug samples on behalf of the institution. The listing shall include the name and telephone number of the authorized agent or employee in charge of prescription drug sample solicitation, receipt, and redistribution.

(3) A drug sample donated by a licensed practitioner or donating charitable institution may be received by a charitable institution only in its original, unopened packaging with its labeling intact.

(4) Delivery of a donated drug sample to a recipient charitable institution may be completed by mail or common carrier, collected by an authorized agent or employee of the recipient charitable institution, or personal delivery by a licensed practitioner or an authorized agent or employee of the donating charitable institution. The licensed practitioner or donating charitable institution shall place donated drug samples in a sealed carton for delivery to or collection by the recipient institution.

(5) A donated drug sample may not be dispensed to a patient or be distributed to another charitable institution until it has been examined by a licensed practitioner or registered pharmacist at the recipient charitable institution to confirm that the donation record accurately describes the drug sample delivered and that no drug sample is adulterated or misbranded for any reason, including, but not limited to, the following:

(i) The drug sample is out of date;

(ii) The labeling has become mutilated, obscured, or detached from the drug sample packaging;

(iii) The drug sample shows evidence of having been stored or shipped under conditions that might adversely affect its stability, integrity, or effectiveness;

(iv) The drug sample is for a prescription drug product that has been recalled or is no longer marketed; or

(v) The drug sample is otherwise possibly contaminated, deteriorated, or adulterated.

(6) The recipient charitable institution shall dispose of any drug sample found to be unsuitable by destroying it or by returning it to the manufacturer. The charitable institution shall maintain complete records of the disposition of all destroyed or returned drug samples.

(7) If a donated drug sample is collected by an authorized agent or employee of the recipient charitable institution or is personally delivered by a licensed practitioner or an authorized agent of a donating charitable institution, the employee or agent of the recipient institution shall prepare at the time of collection or delivery a complete and accurate donation record containing the information set forth in paragraph (b)(9) of this section, a copy of which shall be retained by the recipient and by the donor.

(8) If the donated drug sample is transferred by mail or common carrier, the donor shall prepare a complete and accurate donation record for any drug sample so transferred.

(i) The donor shall include a copy of the donation record with the drug sample shipment.

(ii) An authorized agent or employee of the recipient charitable institution shall countersign the donation record, return one copy to the donor, and retain one copy for the recipient's records.

(9) The completed donation record is required to include the following information:

(i) The name, address, and telephone number of the licensed practitioner (or donating charitable institution); and the practitioner's professional title and State license number or Drug Enforcement Administration identification number;

(ii) The manufacturer, brand name, quantity, and lot or control number of the drug sample donated;

(iii) The date of the donation;

(iv) The signature of the licensed practitioner making the donation (or the signature of the authorized agent of the donating charitable institution); and

(v) The signature of the authorized agent or employee of the recipient charitable institution.

(10) Each recipient charitable institution shall maintain complete and

accurate records of donation, receipt, inspection, inventory, dispensing, redistribution, destruction, and returns sufficient for complete accountability and auditing of drug sample stocks.

(11) Each recipient charitable institution shall conduct an inventory of prescription drug sample stocks, at least annually, utilizing independent inventory personnel, and shall prepare a report reconciling the results of each inventory with the most immediate prior inventory. Drug sample inventory discrepancies and reconciliation problems shall be investigated by the charitable institution and reported to FDA.

(12) A recipient charitable institution shall provide written certification to the licensed practitioner or donating charitable institution that it is in conformity with all the requirements of this part before receiving any drug sample donation. Such certification may be made part of the donation record.

(13) A recipient charitable institution shall store drug samples under conditions that will maintain the sample's stability, integrity, and effectiveness, and will ensure that the drug samples will be free of contamination, deterioration, and adulteration.

(14) A charitable institution shall notify FDA within 5 working days of becoming aware of a significant loss or known theft of prescription drug samples.

(c) A charitable institution may donate drug samples to another recipient charitable institution for dispensing to patients, provided that the recipient charitable institution meets the requirements set forth in paragraphs (a) and (b) of this section.

§ 203.40 Retail pharmacists and drug samples.

The presence in a retail pharmacy of any drug sample shall be considered evidence that the drug sample was obtained by the retail pharmacy in violation of section 503(c)(1) of the act.

Subpart E—Wholesale Distribution

§ 203.50 Requirements for wholesale distribution of prescription drugs.

(a) *Identifying statement for sales by unauthorized distributors.* Before the completion of any wholesale distribution by a wholesale distributor of a prescription drug for which the seller is not an authorized distributor of record to another wholesale distributor or retail pharmacy, the seller shall provide to the purchaser a statement identifying each prior sale, purchase, or trade of such drug. This identifying statement shall include:

(1) The proprietary and established name of the drug;

(2) Dosage;

(3) Container size;

(4) Number of containers;

(5) The drug's lot or control number(s);

(6) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(7) The date of each previous transaction.

(b) *Identifying statement not required when additional manufacturing processes are completed.* A manufacturer that subjects a drug to any additional manufacturing processes to produce a different drug is not required to provide to a purchaser a statement identifying the previous sales of the component drug or drugs.

(c) *List of authorized distributors of record.* Each manufacturer shall maintain at the corporate offices a current written list of all authorized distributors of record.

(1) Each manufacturer's list of authorized distributors of record shall specify whether each distributor listed thereon is authorized to distribute the manufacturer's full product line, or only particular, specified products.

(2) Each manufacturer shall update its list of authorized distributors of record on a continuing basis.

(3) Each manufacturer shall make its list of authorized distributors of record available on request to the public for inspection or copying. A manufacturer may impose reasonable copying charges for such requests from members of the public.

Subpart F—Request and Receipt Forms, Reports, and Records

§ 203.60 Request and receipt forms, reports, and records.

(a) *Creation of request and receipt forms, reports, records, and other documents.* Request and receipt forms, reports, records, and other documents required by PDMA, PDA, and this part may be created on paper or on electronic media.

(b) *Maintenance of request and receipt forms, reports, records, and other documents created on paper.* Request and receipt forms, reports, records, and other documents created on paper may be maintained on paper or by photographic or electronic imaging, provided that the security and authentication requirements described in paragraph (d) of this section are followed.

(c) *Maintenance of request and receipt forms, reports, records, and other documents created by electronic means.* Request and receipt forms, reports, records, and other documents created by means of electronic data entry and recordkeeping equipment may be stored using computer technologies, provided that the security and authentication requirements described in paragraph (d) of this section are followed.

(d) *Security and authentication requirements for request and receipt forms, reports, records, and other documents.* A request or receipt form, report, record, or other document, and any signature appearing thereon, shall be created, maintained, or transmitted in a form that provides reasonable assurance of being:

(1) Resistant to tampering, revision, modification, fraud, unauthorized use, or alteration;

(2) Preserved in accessible and retrievable fashion; and

(3) Visible or readily made visible to permit copying or other means of duplication for purposes of review, analysis, verification, authentication, and reproduction by the person who executed the form or created the record, by the manufacturer or distributor, and by authorized personnel of FDA and other regulatory and law enforcement agencies.

(e) *Retention of request and receipt forms, reports, lists, records, and other documents.* (1) Any person required to create or maintain reports, lists, or other records under PDMA, PDA, or this part shall retain them for at least 3 years after the date of their creation.

(2) Any person required to create or maintain reports, or records relating to the distribution of drug samples shall retain them for at least 3 years after the date of their creation or 3 year after the date of expiration of a drug sample for which the record is being kept, whichever is later.

(3) Any person required to create or maintain reports, or records relating to the distribution of drug samples shall maintain a record of the distribution of drug samples that identifies the drugs distributed and the recipients of the distributions and all drug samples destroyed or returned to the manufacturer. These records shall be maintained for 3 years from the date on which they were created.

(f) *Availability of request and receipt forms, reports, lists, and records.* Any person required to create or maintain request and receipt forms, reports, lists, or other records under PDMA, PDA, or this part shall make them available upon request, in a form that permits copying or other means of duplication, to FDA or other Federal, State, or local regulatory and law enforcement officials for review and reproduction.

§ 203.61 Signatures.

(a) *Signatures on request and receipt forms, reports, and records.* A verifiable signature on a request and receipt form, report, record, or other document shall be made by means of a writing or marking instrument such as a pen, indelible pencil, or electronic stylus on electronic pad. Imprinting or automatic reproduction of a signature by a device or machine (such as a stamp, copier, or autopen) is prohibited.

(b) *Performance standards and special security requirements for signatures on electronic media.* If an electronic pad and stylus or other electronic medium is used to execute and record signatures, it shall be installed and operated with:

(1) A system permitting visual review of the signature;

(2) An authentication system to detect or inhibit entry of a forged, traced, fraudulent, or counterfeit signature; and

(3) A locking mechanism that blocks alteration of documents or signatures after the signatures are made.

(c) *Signature surrogates.* [Reserved]

Subpart G—Rewards

§ 203.70 Application for a reward.

(a) *Reward for providing information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample.* A person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample, in violation of section 503(c)(1) of the act, is entitled to one-half the criminal fine imposed and collected for such violation, but not more than $125,000.

(b) *Procedure for making application for a reward for providing information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample.* A person who provides information leading to the institution of a criminal proceeding against, and conviction of, a person for the sale, purchase, or trade of a drug sample, or the offer to sell, purchase, or trade a drug sample, in violation of section 503(c)(1) of the act, may apply for a reward by making written application to: (1) Director, Office of Compliance (HFD–300), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855; or (2) Director, Office of Compliance (HFM–600), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852, as appropriate.

PART 205—GUIDELINES FOR STATE LICENSING OF WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS

2. The authority citation for 21 CFR part 205 continues to read as follows:

Authority: Secs. 501, 502, 503, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 371, 374).

3. Section 205.3 is amended by adding new paragraphs (f)(9), (f)(10), (f)(11), and (h) to read as follows:

§ 205.3 Definitions.

* * * * *

(f) * * *

(9) The reshipment of drugs, when conducted in accordance with § 203.23 of this chapter;

(10) Drug returns, when conducted in accordance with § 203.24 of this chapter; or

(11) The sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use.

* * * * *

(h) Health care entity means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. A person cannot simultaneously be a "health care entity" and a retail pharmacy or wholesale distributor.

4. Section 205.50 is amended by revising the introductory text of paragraph (c) and paragraph (c)(1) to read as follow:

§ 205.50 Minimum requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

* * * * *

(c) *Storage.* All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with the requirements, if any, in the labeling of such drugs, or with the requirements in the U.S. Pharmacopeia XXII (U.S.P. XXII), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(1) If no storage requirements are established for a prescription drug, the drug shall be held at "controlled room temperature" as defined in U.S.P. XXII to help ensure that its identity, strength, quality, and purity are not adversely affected.

* * * * *

Dated: March 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Nutrition Labeling, Small Business Exemption; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0031]

RIN 0905–AD08

Food Labeling; Nutrition Labeling, Small Business Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to modify the basis on which low-volume food products of small businesses are exempted from the requirements for nutrition labeling. The proposed regulations will also establish a notification procedure for small businesses to claim exemption for their qualifying food products. This proposal is in response to the Nutrition Labeling and Education Act Amendments of 1993 (the 1993 amendments).

DATES: Written comments by May 13, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective upon its publication in the **Federal Register**.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (Pub L. 101–535) (the 1990 amendments) was enacted. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments is that they added section 403(q) to the act (21 U.S.C. 343(q)). This section provides that, with certain exceptions, a food—that is, both a food in conventional form and a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances—is misbranded unless its label or labeling bears certain nutrition information (nutrition labeling).

The 1990 amendments, however, also provide an exemption from mandatory nutrition labeling for small businesses. Section 403(q)(5)(D) of the act provides that:

> [I]f a person offers food for sale and has annual gross sales made or business done in sales to consumers which is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers which is not more than $50,000, the requirements of subparagraphs (1), (2), (3), and (4) [the provisions that establish the nutrition labeling requirement] shall not apply with respect to food sold by such person to consumers unless the label or labeling of food offered by such person provides nutrition information or makes a nutrition claim.

In the **Federal Register** of November 27, 1991 (56 FR 60366 at 60376), in a document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (hereinafter referred to as "the mandatory nutrition labeling proposal"), FDA proposed to reflect this provision of the 1990 amendments in § 101.9(j)(1) of its regulations (21 CFR 101.9(j)(1)).

Many comments to the mandatory nutrition labeling proposal stressed that the dollar exemption limits that FDA proposed to implement in the 1990 amendments were too low. The comments argued that the sum of the analytical, printing, and other costs of nutrition labeling are prohibitively expensive for low-volume products. FDA found that these comments were persuasive, and that some adjustment to this exemption was necessary. Additionally, FDA participated in a series of public forums that had been scheduled by the United States Department of Agriculture to discuss the small business issue. These forums were held in May 1992 in Kansas City, MO; Atlanta, GA; and San Francisco, CA. In the **Federal Register** of May 6, 1992 (57 FR 19410), FDA announced its participation in the public forums and requested comment on a number of issues concerning exemption of food products of small businesses.

The agency compiled the information that it received in response to the notice and at the public forums. This information helped form the basis for the agency's "Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990" (Ref. 1). FDA announced the public availability of this analysis in the **Federal Register** of July 6, 1993 (58 FR 36205).

In adopting the exemption for food labeled by small businesses in its final rule on nutrition labeling of January 6, 1993, entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079 at 2144) (hereinafter referred to as "the mandatory nutrition labeling final rule"), FDA stated that it was constrained by the requirements of section 403(q)(5)(D) of the act. Therefore, the agency adopted the exemption for small business, as it had proposed the exemption, as part of the mandatory nutrition labeling final rule in § 101.9(j)(1)(i). This exemption (as corrected on August 18, 1993 (58 FR 44063 at 44083)) states:

> Food [is exempt from § 101.9 *Nutrition labeling of food* when] offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

The agency stated, however, that it would make changes in § 101.9 with respect to products labeled by small businesses if Congress were to amend the statute.

The agency established the same exemption in § 101.36(f)(1) (21 CFR 101.36(f)(1)) for dietary supplements of vitamins and minerals in a final rule entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances" that it published in the **Federal Register** of January 4, 1994 (59 FR 354) (hereinafter referred to as "the dietary supplement final rule"). Under that final rule, § 101.9(j)(1) applies to dietary supplements of herbs and of other similar nutritional substances manufactured, packed, or distributed by small firms.

At about the same time that FDA published the mandatory nutrition labeling final rule, a number of small businesses and the trade associations that represent them made a concerted effort to bring their concerns about the exemption from nutrition labeling for food products of small businesses and about their problems in meeting the requirements of the new law to the attention of Congress. In response to these concerns, a bill was introduced and passed to provide relief to small businesses. In presenting this bill for consideration in Congress, Congressman Dingell noted that:

Over the last two years, it has become evident that, unfortunately, the NLEA exemption for small businesses was too limited. It became clear that many small food businesses simply could not comply with the law's requirements in the timeframe allowed. Some very small businesses may have great difficulty complying at all. Concerns about this matter have been raised to FDA's attention and ours. They are legitimate concerns and they should be addressed. The bill we are introducing today addresses companies with small numbers of employees and products sold in relatively small quantities.

* * * * *

These amendments will provide greatly needed help to small businesses for whom a more realistic deadline for NLEA compliance is essential. Small specialty food manufacturers and retail confectioners, many of whom rely on low-volume sales of seasonal products, will be able to spread the cost of product analysis and printing over a 2- or 3-year period. This literally will allow them to stay in business. According to the Retail Confectioners Association, for example, a 1-year delay in NLEA implementation saves hundreds of millions of dollars.

(139 Congressional Record E 2016 (August 5, 1993).) On August 13, 1993, the President signed the 1993 amendments into law (Pub. L. 103–80).

The 1993 amendments establish a new exemption for low-volume food products that will be available to manufacturers, packers, and distributors based on the number of people that they employ. In creating this new exemption, Congress was responding to the information presented to it that: (1) It can cost several thousand dollars to change the label of a food product to bring it into compliance with the requirements for nutrition labeling; (2) many small businesses simply cannot comply with the requirements within the time frames allowed; and (3) the cost of complying with the nutrition labeling requirements will be prohibitive for small businesses with a low volume of products at low profits (Refs. 2 through 4). By providing additional time before low-volume food products of small businesses must conform with the requirements for nutrition labeling, the 1993 amendments will permit small firms to use up stocks of labels, thereby reducing the costs of label inventory disposal, and to avoid having to compete for design and printing resources with larger firms. By providing that food produced by firms having fewer than 100 employees and selling fewer than 100,000 units of a food product will not have to be nutrition labeled (at least until 2002), the 1993 amendments save such firms the expense of nutrient analysis and preparation of new labels for those products.

Under the new provisions, persons that claim an exemption for a low-volume food product must file with FDA an annual notice claiming the exemption, with the first such notice due by May 7, 1994 (section 403 (q)(5)(E)(iii) of the act), that is, before the first 12-month period during which the nutrition labeling regulations will be in effect. Although the filing of the notice is necessary for an exemption, the agency notes that, under section 403 (q)(5)(E)(i)(I) and (q)(5)(E)(ii) of the act, a product would not be exempt if its labeling provides nutrition information or bears a nutrient content or health claim.

The requirement that the labeling of a product not include nutrition information creates an anomalous result. FDA is aware that a number of small businesses market low-volume food products whose labeling bears nutrition information in accord with the pre-1990 amendment nutrition labeling requirements of the agency's regulations. Because such products bear nutrition information, they would not be eligible for the exemption in section 403(q)(5)(E). Such a result makes little sense under the 1993 amendments, however; small firms with low-volume products, to which Congress was attempting to provide some relief, would be penalized for having provided nutrition information, exactly what Congress was trying to encourage, in the past. Such firms would be presented with the choice of either removing the nutrition information from the labeling of eligible products, which would impose costs that Congress was trying to protect these firms from having to expend, or marketing misbranded products.

FDA is considering providing relief in such cases under § 101.9(g)(9). Under this section of its regulations, FDA may permit alternative means of compliance or additional exemptions to deal with a situation when it is not technologically feasible, or some other circumstance that makes it impracticable, for firms to comply with the requirements for nutritional labeling in § 101.9(c). FDA is currently limiting the permission that it grants for alternative means of compliance or additional exemptions in response to requests under § 101.9(g)(9) to those cases that involve technological problems. However, based upon the comments that it receives in response to this proposal, FDA will consider whether the cost to a small business of changing the labeling of a low-volume food product in response to the 1993 amendments represents a circumstance that makes it impracticable for the firm to comply with the requirements of § 101.9(c) and for which FDA may permit alternative means of compliance or provide an exemption. FDA will consider modifying § 101.9(g)(9) in such a manner as it finds appropriate based on consideration of comments, to accommodate this situation.

To ensure that the regulations implementing the 1993 amendments are in place as close as possible to May 8, 1994, the date of applicability for the nutrition labeling regulations, FDA is proposing that any final rule that may issue in response to this proposal become effective upon its publication in the **Federal Register**. The agency believes that it is in the public interest to have a final rule in place as quickly as possible so that people will know exactly what they must do to claim the exemption and to minimize the possibility that eligible firms will fail to file their claims for exemption in a timely manner. Therefore, FDA tentatively concludes that there is good cause to dispense with the normal 30-day period between publication of a final rule and its effective date. Given the small amount of time before May 8, 1994, however, FDA recommends that persons that want to file notices with FDA to claim the small business exemption follow the procedures proposed below.

II. The Proposal

A. Application of Existing Small Business Exemption From Nutrition Labeling Requirements

In establishing the regulations that provide exemptions for foods labeled by small businesses, i.e., § 101.9(j)(1) for foods in conventional food form and dietary supplements of herbs and of other similar nutritional substances and § 101.36(f)(1) for dietary supplements of vitamins or minerals, FDA interpreted the 1990 amendments as applying to food offered for sale by manufacturers, packers, and distributors. However, the Statement of Explanation for H.R. 2900 (the bill that became the 1993 amendments) states that this interpretation was an inappropriate extension of the law: "[T]he statutory language provides that this exemption applies only to retailers ('person[s who] offer[] food * * * to consumers')." (139 Congressional Record H6358 (August 6, 1993).)

Recognizing that manufacturers, packers, and distributors may have reasonably relied on the small business exemption provided in § 101.9(j)(1), Congress, in section 2(a)(1) of the 1993 amendments, provided that the

exemption in section 403(q)(5)(D) of the act will continue to be available until May 7, 1995, in accordance with the regulation, that is, based on gross sales made or business done to the consumer by manufacturers, packers, and distributors that do not sell directly to the consumer. Section 2(a)(2) of the 1993 amendments further provides that after May 8, 1995, this exemption will only be available with respect to food offered for sale by a person who makes direct sales to consumers.

FDA is proposing to modify §§ 101.9(j)(1) and 101.36(f), consistent with the provisions of section 2(a) of the 1993 amendments, to establish May 7, 1995, as the date after which the exemption provided in section 403(q)(5)(D) of the act will not be available to food labeled by manufacturers, packers, and distributors but will only be available to food offered for sale by a person who makes direct sales to consumers. The agency is revising the numbering of §§ 101.9(j)(1) and 101.36(f) to accommodate the proposed modifications.

B. New Small Business Exemption From Nutrition Labeling

The 1993 amendments added new section 403(q)(5)(E) to the act. This section provides an exemption for low-volume food products of small businesses from the mandatory nutrition labeling requirements of section 403(q)(1) and (q)(2) of the act. FDA is proposing to amend § 101.9(j) by adding a new paragraph (j)(18) to reflect this exemption. Under proposed § 101.9(j)(18), qualification for the exemption for a low-volume food product is based on four factors: (1) The number of units of that food product sold in the United States; (2) the average number of full-time equivalent employees of the person claiming the exemption, e.g., the firm or corporation; (3) the absence of other nutrition information or nutrition claims in the labeling for that food product; and (4) the timely filing with FDA of a notice claiming the exemption. FDA is also proposing similar revisions to § 101.36(f) to provide this exemption from the requirements of section 403(q)(1) and (q)(2) of the act for low-volume food products that are dietary supplements of vitamins or minerals.

1. Definitions

For the purposes of this regulation, FDA is proposing in § 101.9(j)(18)(vi)(A), (j)(18)(vi)(B), and (j)(18)(vi)(C) (and also § 101.36 (f)(2)(vi)(A), (f)(2)(vi)(B), and (f)(2)(vi)(C)) to adopt, with minor changes, the definitions for "unit," "food product," and "person" respectively, as established by the 1993 amendments in section 403(q)(5)(E)(vi) of the act. Also, the agency is proposing a definition for the term "average number of full-time equivalent employees" in §§ 101.9(j)(18)(vi)(D) and 101.36(f)(2)(vi)(D).

a. *Unit.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(A) and 101.36(f)(2)(iv)(A) the term "unit" to mean "the packaging or, if there is no packaging, the form in which a food product is offered for sale to the consumer." This definition reflects section 403(q)(5)(E)(vi)(I) of the act. Consistent with this definition, any completely labeled package such as a can, bottle, box, or bag of a food product that is presented for sale to the consumer is a unit of that product. Thus, for example, for soft drinks, a 12-pack or a 24-pack of 12-ounce (oz) cans that are fully labeled would represent 12 or 24 units, respectively, of that soft drink because each can is in a form in which it can be offered for sale to the consumer. On the other hand, in the case of a package containing six 4-oz containers of pudding, the individual containers of which are not completely labeled (i.e., it complies with the provisions of § 101.9(j)(15)), the package of six would constitute one unit. The difference between these two examples is that in the second case, the packaging of the product, as it is presented to the consumer, is as an individual unit of six containers (a multiunit retail food package), whereas in the first instance, the 12-pack or 24-pack is a convenience used by the manufacturer to deliver 12 or 24 individual units of the product to the consumer.

The agency recognizes that there also may be occasions where a food product is sold in bulk or in individual pieces rather than in packaging; e.g., flour may be sold from bulk containers in a grocery store. Such products are not exempt from nutrition labeling but must have the nutrition information provided on the bulk container from which the food is dispensed (§§ 101.9(j)(16) and 101.36(g)). Under the proposed definition for "unit," a person will have to determine the number of units of product sold in the United States not in packaging on the basis of the typical sales practice for the food product. For example, if 2,000 pounds of flour are sold from bulk displays at grocery stores, and the typical practice for sales to consumers is to price the flour on a per pound basis, then the bulk sales would represent 2,000 units.

To be eligible for an exemption from the provisions of §§ 101.9 or 101.36, as discussed in more detail below, the total number of units of a product sold in all of its forms (i.e., various sizes) must be less than the applicable number of units for the exemption. For example, a firm may manufacture a beverage in 10-oz bottles, 12-oz cans, 16-oz bottles, 1-liter (L) bottles, and 2–L bottles. In determining whether the beverage would be eligible for an exemption, the firm would total the number of units of each of the various sizes of containers sold in the United States, and if the total number of units for all five types of packages is less than the applicable amount, e.g., less than 600,000 in the case of proposed § 101.9(j)(18)(i)(A), then the beverage would be eligible for exemption.

b. *Food product.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(B) and 101.36(f)(2)(vi)(B) the terms "food product" and "food product that is a dietary supplement of vitamins or minerals" to mean "food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods." This definition reflects section 403(q)(5)(E)(vi)(II) of the act. Whether two units of a food are units of the same food product or are units of different food products for the purposes of proposed §§ 101.9(j)(18) and 101.36(f)(2) depends on how they compare under the factors listed in this definition. If two units of a food are the same under each of these three factors, then they would represent two units of the same food product. However, if the two units of a food differ in one or more respects under these three factors, then they would represent one unit of two different food products.

Although the terms "single manufacturer" and "same brand name" are self-explanatory, the agency believes that it is useful to provide more detail on the terms "statement of identity" and "similar method of preparation" and to provide some examples of the relationship between units and food products. In discussing the definition for statement of identity, the Statement of Explanation for H.R. 2900 explains that by statement of identity, it intended that FDA use the definition of "statement of identity" in its regulations under § 101.3(b) (21 CFR 101.3(b)) (139 Congressional Record H6358 (August 6, 1993)). Section 101.3(b) provides that:

(b) Such statement of identity shall be in terms of:

(1) The name now or hereafter specified in or required by any applicable Federal law or regulation; or, in the absence thereof,

(2) The common or usual name of the food; or, in the absence thereof,

(3) An appropriately descriptive term, or when the nature of the food is obvious, a fanciful name commonly used by the public for such food.

Thus, under proposed §§ 101.9(j)(18) and 101.36(f)(2), in determining whether a food is the same food product as another food for determining the number of units sold, a firm should refer to § 101.3(b) to determine whether the two foods have the same statement of identity.

The agency interprets the term "similar preparation methods" to extend to all aspects in the manufacture of the food product, from the initial steps of determining the ingredients to be used, i.e., formulation, to interim treatment steps of the ingredients, such as blanching, to all of the various steps used in the processing of the finished food to be sold to the consumer. Because each of these steps may have an effect on the nutrient content of the finished food product, units of foods that differ with respect to particular steps in their manufacture should be considered by a firm to constitute units of different food products for the purpose of its determining the approximate number of units of food products sold in the United States.

The agency provides the following examples to describe the circumstances in which two units of a food would be two units of the same food product, or, alternatively, one unit each of two different food products: A firm would count two units of a food with the same statement of identity and similar methods of preparation as two units of the same product if they both bear the same brand name even though they were manufactured by two different firms. A private label manufacturer would have to count as units of the same food all production with the same statement of identity (presuming similar method of preparation) even if it is packing the food products under the brand names of five different firms. On the other hand, even if two units of food are made by the same firm (or have the same brand name) and have the same statement of identity, they would not count as units of the same food product if there were differences in their method of preparation, such that the nutrition profiles of the two products are different, (one ice cream product was made with nuts and the other was not) or different manufacturing processes were used (e.g., one was canned while the other was frozen).

c. *Person.* The agency is proposing to define in §§ 101.9(j)(18)(vi)(C) and 101.36(f)(2)(vi)(C) the term "person" to mean "all domestic and foreign affiliates of the corporation, in the case of a corporation." This aspect of the definition reflects section 403(q)(5)(E)(vi)(III) of the act. FDA is also proposing to include within the coverage of this term companies that are not corporations by including the following language in these regulations: "* * * and all affiliates of that firm or other entity, when referring to a firm or other entity that is not a corporation." Section 201(e) of the act (21 U.S.C. 321(e)) defines "person" as including an individual, partnership, corporation, and association.

In the 1993 amendments, Congress clarified the definition of "person" to remove any ambiguity as to the entities that a corporation should include in determining the average number of its full-time equivalent employees. Congress said the employees of each of its affiliates should be counted by a corporation. The agency is proposing to include the sentence noted above in its regulation to provide parallel coverage of persons that are not corporations.

d. *Full-time equivalent employee.* The agency is proposing in §§ 101.9(j)(18)(vi)(D) and 101.36(f)(2)(vi)(D) to define the term "full-time equivalent employee" to mean all individuals employed by the person claiming the exemption and to establish a formula for use by a person to calculate the average number of its full-time equivalent employees. The agency is proposing that the average number of full-time equivalent employees of a company be determined by dividing the total number of hours of salary or wages paid to individuals that render services to a company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours × 52 weeks). Under this formula, a person would base the average number of full-time equivalent employees on a typical work-year and on the total hours worked by individuals employed by the firm and, as noted above, by all of its affiliates. The average number of full-time equivalent employees would be calculated based on all employees of a firm, including production workers, office staff, salesmen, and distribution staff, including any contract personnel. Under the proposed formula, a foreign firm, as well as a domestic firm, will have to calculate the average number of its full-time equivalent employees based on the total numbers of individuals employed by that firm and its affiliates, regardless of whether their operations are related to sales of food products in the United States.

2. Small Business Food Labeling Exemption Notice

The 1993 amendments provide that the exemption contained in section 403(q)(5)(E) of the act shall only be available to a person that files a notice with FDA to claim the exemption for one or more of its low-volume food products before the beginning of the 12-month period during which the exemption is to be in effect. The agency is proposing requirements concerning the filing of this notice in §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv). In addition to the name and address of the firm claiming exemption for certain of its food products, under the proposed regulations, the notice must include the average number of full-time equivalent employees of the firm, and, for each food product for which an exemption is claimed, the approximate number of units sold by the firm over the 12-month period preceding the period for which the exemption is claimed. FDA intends to treat all information received in such notices in accordance with its public information regulations, 21 CFR part 20, particularly § 20.61 *Trade secrets and commercial or financial information which is privileged or confidential.*

Upon the filing of the notice establishing that a product meets the requirements for an exemption, the food product will be exempt from the requirements for nutrition labeling specified in § 101.9 or § 101.36 during the 12-month period for which the exemption is claimed. There is no requirement for agency action, review, or approval before the exemption is effective.

Recognizing that a person is subject to criminal liability for submitting false information to the Federal Government (18 U.S.C. 1001), FDA is proposing to require that a notice of claimed small business exemption contain a signed certification of the accuracy of the submission by a responsible individual for the company submitting the notice (proposed § 101.9(j)(18)(iv)(F) and § 101.36(f)(2)(iv)(F). Additional information to support the validity of the information provided in the notice may be required under section 403(q)(5)(E)(iii)(IV) of the act.

Section 403(q)(5)(E)(iii)(IV) of the act provides that a notice of a claimed small business exemption shall "contain such information" as FDA (by delegation from the Secretary) may require "to verify the information required" about the number of full-time equivalent employees and unit sales of food products if the agency "has questioned the validity of such information." Because the notice cannot include

information that FDA has not yet required—that is, that FDA has not yet identified as necessary to verify the information in the notice—a two-step process is necessary to implement this provision. The agency must first review the notice and decide whether any verifying information is necessary and then be given access to that information. The agency is considering defining in this rulemaking the procedure through which it will obtain the verifying information that the statute clearly states that it may require.

Information in the notice could be verified either by requiring the submission of supporting documentation or by inspecting that documentation at a firm's place of business. In some circumstances, inspection of records will be more practicable than submission, and vice versa. FDA is thus considering requiring that any company that claims the small business exemption provide the agency with access to its records that support the information contained in the exemption notice if the agency finds that such access is necessary to verify the information contained in the notice. In some situations, the agency may instead require the submission of supporting information to the agency. FDA tentatively finds that it has ample legal authority to impose these requirements.

Under section 701(a) of the act (21 U.S.C. 371(a)), FDA has the authority to adopt by regulation requirements that are necessary for the efficient enforcement of the act, including section 403(q)(5)(E)(iii)(IV) of the act. (See *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617 (1973); *United States* v. *Nova Scotia Food Products Corp.*, 568 F.2d 240, 246 (2d Cir 1977).) Courts have recognized FDA's authority to impose records inspection requirements where they effectuate the goals of the act. (See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 163–64 (1967); *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1978).) Implementing section 403(q)(5)(E)(iii)(IV) of the act through the sole method of requiring submission of verifying information to the agency could be unduly burdensome for both the agency and the companies claiming the small business exemption. For example, the agency could determine, under section 403(q)(5)(E)(iii)(IV) of the act, that information in a particular notice must be verified by examining a firm's payroll records and invoices. Copying all of these documents and submitting them to the agency could present difficulty for a small business claiming the exemption. This difficulty could be avoided if FDA examined the relevant documents at the firm's premises. Moreover, verifying the information contained in notice of claimed exemption by inspecting documents at the firm's place of business, and copying only those needed, would in many cases be a more efficient use of the agency's investigational resources. This approach is consistent with FDA's actions in other areas where it has required that records be made available to agency employees. (See, e.g., 21 CFR 108.25(g) (acidified foods); 108.35(h) (thermal processing of low-acid foods); 172.320 (amino acids).)

The agency points out that its contemplated approach is fully consistent with Congress' desire, as reflected in the legislative history of the 1993 amendments, that the small business exemption be obtained in a simple and straightforward manner without complicated reporting. (See 139 Congressional Record E 2016 (August 5, 1993) (statement of Rep. Dingell) ("The system is a simple one that does not require complicated reporting or a response from FDA."); see also 139 Cong. Rec. S 10817 (August 6, 1993) (statement of Sen. Kennedy) (The 1993 amendments "provide[] a straightforward system under which a company simply notifies the FDA that one or more of its products qualify for an exemption"); id. at S 10818 (statement of Sen. Hatch).) Under the approach that the agency is considering, a company would merely have to file a simple notice with the agency. It would then be up to the agency to determine whether any matter needs verification and to take steps to view the documentation required to verify the relevant information.

FDA requests comments on the approach described above. Based on its review of the comments, the agency may provide in the final rule that companies claiming the exemption will be required to permit inspection of supporting documentation or to submit any required information to the agency, as appropriate. Given the late date of this proposal, however, the agency would not make these requirements effective for notices of exemption for 1994–95. Many small firms, in contemplation of the fact that most small businesses must file a notice, have already filed notices without any indication from the agency as to how it intends to enforce the implementation requirements. Because FDA believes that people should have full notice of the requirements that will apply to them when they file a notice of exemption, and because requiring small firms to refile based on any final rule would significantly undercut the efficient enforcement purposes of a records access requirement, FDA would make these requirements applicable to notices seeking exemption beginning with the period from May 8, 1995, to May 7, 1996. Nevertheless, companies filing for an exemption would still be subject to the statutory requirement in section 403(q)(5)(E)(iii)(IV) of the act, and, although the procedural requirements for complying with this section would not be effective until 1995, companies should still be prepared to provide information to FDA to support their notices of exemption should FDA question the validity of any information contained in those notices.

Reflecting new section 403(q)(5)(E)(iii) of the act, the agency is providing in proposed §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) that a firm that is not an importer and that has an average of fewer than 10 full-time equivalent employees does not have to file notice for any product for which it has sales of less than 10,000 units in any year for it to be eligible for the small business exemption for that product. The agency would suggest, however, that such a company submit a notice to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, to establish a record that it is claiming a small business exemption for some or all of its products. (The Office of Food Labeling is the office within FDA that has responsibility for food labeling issues.) The agency intends to make available to FDA and State enforcement offices a list of the names and addresses of firms that have claimed the small business exemption and the names of the products for which they have claimed the exemption. The agency intends to include on this list the names of firms that have fewer than 10 employees and sales of fewer than 10,000 units of a particular product. Such firms are not required to file a notice but can choose to do so voluntarily. FDA believes that the appearance of a product's name on the list will eliminate any questions about its eligibility for an exemption. Thus, even though not required, the submission of a notice of a claimed small business exemption for a food product may be in the best interest of a firm. FDA also intends to include in the list the names of firms eligible for the small business exemption provided in §§ 101.109(j)(1)(i) and 101.36(f)(2)(i) if they file notice with the Office of Food Labeling.

All notices must be filed by May 7, 1994, for the 12-month period beginning

May 8, 1994, the date that the new mandatory nutrition labeling regulations become effective. The notice is to be filed with the Office of Food Labeling (address above).

FDA recognizes that time is growing short for the filing of notices to FDA, and that firms may be anxious to file the notice for claimed exemption. As an interim measure and to assure that all necessary information is submitted, FDA suggests that firms follow the procedures proposed in this document if they file a notice with FDA before the agency issues final regulations.

Because it has received numerous inquiries as to whether a form exists for the submission of the notice, FDA is providing in Appendix I of this document, a model form, along with instructions for completing it in Appendix II of this document. This model form may be used by firms to supply notice of their claimed exemptions. FDA advises, however, that it is not necessary to use this form. The agency also advises that the small business exemption for a food product will be in effect once a notice has been filed with FDA, even though it may be necessary for the Office of Food Labeling to work with the firm that is filing the notice to address deficiencies in the notice. Although no action by the agency is required, FDA will attempt to review all notices to ensure that they are complete and to notify companies of the receipt of the notice, and whether additional information needs to be submitted.

3. Eligibility for the Small Business Exemption

In proposed §§ 101.9 (j)(18)(i) and (j)(18)(ii) and in 101.36 (f)(2)(i) and (f)(2)(ii), FDA is incorporating into its regulations the statutory limits on the number of units sold that would qualify a food product as a low-volume food product eligible for exemption from the nutrition labeling requirements established by section 403(q)(1) and (q)(2) of the act. Proposed §§ 101.9 (j)(18)(i) and (j)(18)(ii) and 101.36 (f)(2)(i) and (f)(2)(ii) also reflect the statutory limits on a firm's average number of full-time equivalent employees that would qualify it as a small business whose products are eligible for an exemption.

The act provides for phased-in coverage of foods that were first introduced into interstate commerce before May 8, 1994. Under section 403(q)(5)(E)(ii)(I) of the act, a food product is eligible for exemption from the nutrition labeling requirements from May 8, 1994, to May 7, 1995, if fewer than 600,000 units of that product were sold in the United States between May 8, 1993, and May 7, 1994, and the person claiming the exemption for that product employed fewer than an average of 300 full-time equivalent employees during that time. The agency recognizes that there are some products that will have come onto the market before May 8, 1994, for which there will not be a full year of sales on which to determine whether they qualify for an exemption as a low-volume food. The agency is proposing that a food for which there is not 12 months of sales before May 8, 1994, will qualify as a low-volume food eligible for an exemption if the sales of the food during the period in which the exemption will apply, May 8, 1994, to May 7, 1995, are reasonably anticipated to be less than 600,000 units. This treatment of products sold before May 8, 1994, but without a full year of sales history before that date, is consistent with that of products not sold in the 12-month period before an exemption is claimed under section 403(q)(5)(E)(i)(IV) of the act.

The agency is proposing to provide for this exemption in § 101.9(j)(18)(i)(A). The agency notes that this proposed provision is not applicable to dietary supplements of herbs and other similar nutritional substances, and that FDA is not proposing to include a parallel provision in § 101.36(f) for dietary supplements of vitamins or minerals, because the mandatory labeling requirements do not become effective for dietary supplements until July 1, 1995.

Under section 403(q)(5)(E)(ii)(II) of the act, the exemption for a food first introduced into interstate commerce before May 8, 1994, narrows in the second year that section 403(q) of the act is applicable. Such a food will continue to be eligible for exemption from nutrition labeling between May 8, 1995, and May 7, 1996, only if there were fewer than 400,000 units of that product sold in the United States between May 8, 1994, and May 7, 1995, and if the firm that claims an exemption for the product employed an average of fewer than 300 full-time equivalent employees during that period. The agency is proposing to reflect this provision in §§ 101.9(j)(18)(i)(B) and 101.36(f)(2)(i)(A) of its regulations.

The exemption narrows even further in the third year. Under section 403(q)(5)(E)(ii)(III) of the act, a food introduced into interstate commerce before May 8, 1994, is eligible for exemption from the requirements for nutrition labeling between May 8, 1996, and May 7, 1997, if there were fewer than 200,000 units of that food product sold in the United States, and if the firm that claims an exemption for such product employed an average of less than 200 full-time equivalent employees, between May 8, 1995, and May 7, 1996. The agency is proposing to reflect this provision in §§ 101.9(j)(18)(i)(C) and 101.36(f)(2)(i)(B) of its regulations.

Under section 403(q)(5)(E)(i) of the act, all other food products are eligible for exemption from the requirements for nutrition labeling in section 403(q)(1) and (q)(2) of the act for any 12-month period if there were fewer than 100,000 units of that food product sold in the United States during the preceding 12 months by the firm claiming the exemption, and if that firm employed an average of less than 100 full-time equivalent employees during that preceding 12-month period. Under section 403(q)(5)(E)(i) of the act, newly marketed food is eligible for exemption if fewer than 100,000 units of that food product are reasonably anticipated to be sold, and if the firm claiming the exemption employs an average of less than 100 full-time equivalent employees, during the 12-month period for which the exemption is claimed. The agency is proposing to reflect these provisions in §§ 101.9(j)(18)(ii) and 101.36(f)(2)(ii) of its regulations.

If adopted, the proposed regulations will operate in the following way: A person with an average of 250 full-time equivalent employees between May 8, 1993, and May 8, 1994, may file a notice with FDA claiming an exemption from the requirements of § 101.9 for the period from May 8, 1994, to May 7, 1995, for each of its products whose sales were less than 600,000 units during the period from May 8, 1993, to May 7, 1994. The filing of the notice will serve to establish the exemption for the food product (assuming no nutrition information or health or nutrient content claims are provided in the labeling of the product). If a product were not offered for sale for the entire year preceding May 8, 1994, the firm could claim a small business exemption for that food product if the number of units of that product sold in the United States during the time period from May 8, 1994, to May 7, 1995, is reasonably anticipated to be fewer than 600,000 units.

If that firm continues to have less than 300 employees, e.g., 275 full-time equivalent employees, for the period of May 8, 1994, to May 7, 1995, it may file by May 7, 1995, a new notice to claim an exemption for the period from May 8, 1995, to May 7, 1996, for any product for which it sold less than 400,000 units in the United States during the period

of May 8, 1994, to May 7, 1995 and where labeling does not bear nutrition information or health or nutrient content claims. However, if the firm continues to have more than 200 full-time equivalent employees for the time period of May 8, 1995, to May 7, 1996, the firm will not be eligible to claim a small business exemption for its products after May 8, 1996. Under section 403(q)(5)(E)(iv) of the act, within 18 months after that date, it will have to bring the labels of its products into compliance with the provisions of §§ 101.9 and 101.36. On the other hand, a firm with less than 200 full-time equivalent employees during the period of May 8, 1995, to May 7, 1996, e.g., 175 employees, would be eligible to file a notice by May 7, 1996, to claim a small business exemption for the time period May 8, 1996, to May 7, 1997, for any product that was on the market before May 8, 1994, and of which it sold fewer than 200,000 units during the period of May 8, 1995, to May 7, 1996. Only those firms having less than 100 full-time equivalent employees would be able to file a notice to claim a small business exemption for a 12-month period after May 8, 1997, and then only for products having approximate annual sales of less than 100,000 units.

Under proposed §§ 101.9(j)(18)(ii) and 101.36(f)(2)(ii), a person that is planning to introduce a new food product into interstate commerce effective August 1, 1994, (i.e., after May 8, 1994) and that has, for example, an average of 50 full-time equivalent employees (during the period of August 1, 1993, to August 1, 1994) may file a notice with FDA by July 31, 1994, claiming an exemption for that product from the requirements of §§ 101.9 or 101.36 for the period from August 1, 1994, until July 31, 1995, if it reasonably anticipates selling fewer than 100,000 units of that product during the period from August 1, 1994, to July 31, 1995. As discussed above, the filing of the notice serves to establish the exemption for the food product. If the firm continues to have less than 100 employees, e.g., only 55 full-time equivalent employees, and continues to sell less than 100,000 units of the product in the United States, the firm will be able to annually claim an exemption.

The agency is proposing in §§ 101.9(j)(18)(iii) and 101.36(f)(2)(iii), consistent with the provisions of section 403(q)(5)(E)(iv) of the act, that a small business exemption for a product shall expire 18 months after the date on which the average number of full-time equivalent employees or number of units of food products sold in the United States exceed the numbers necessary for a food to be eligible for an exemption. For example, under the provisions of proposed §§ 101.9(j)(18)(iii) and 101.36(f)(2)(iii), an exemption for a low-volume food product for the time period between May 8, 1994, and May 7, 1995, expires 18 months after the date on which sales of that food product exceed 600,000 units, or the average number of full-time equivalent employees of the firm claiming the exemption exceeds 300. Alternatively, the exemption shall expire 18 months after the ending date of the 12-month period that the food product was exempt under §§ 101.9(j)(18) or 101.36(f)(2). This provision will provide to a small business approximately the same amount of time after the eligibility for exemption ends that firms that did not qualify for a small business exemption had to bring the labels of their products into compliance with section 403(q) of the act after the publication of final rules implementing that section of the act.

The agency is proposing in §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) to require that the certification statement include a commitment on the part of the person claiming an exemption that he or she will notify FDA if the number of units of a food product sold, or the average number of full-time equivalent employees employed, by the person exceeds the applicable numbers. Having made such a commitment, a failure to notify the agency that the food is no longer eligible would subject the person to action under Title 18 of the United States Code.

4. Modification of Exemption Eligibility Requirements

Section 403(q)(5)(E)(v) of the act provides that FDA may by regulation lower the requirements pertaining to the average number of full-time equivalent employees or the number of units of food products requirements for eligibility for exemption for any food product first introduced into interstate commerce after May 8, 2002. Under the act, before FDA can lower these requirements, it must determine that the cost of compliance with the lower requirements will not place an undue burden on persons that would be affected by the lower requirements. FDA is proposing to reflect this provision in §§ 101.9(j)(18)(v) and 101.36(f)(2)(v) of its regulations.

III. Economic Impact

FDA has examined the economic impact of the proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires agencies to analyze options for regulatory relief for small businesses. The agency finds that the only significant economic effect of this rule is the benefit that it creates by reducing labeling costs for newly exempted companies. This benefit is the result of statutory provisions and not FDA discretion. However, because this benefit is large and affects small businesses, we are providing the following voluntary economic impact analysis and regulatory flexibility analysis that meet the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

There are two types of costs in this regulation: (1) Costs to comply with the notification requirement, and (2) costs of lost nutrition benefits. FDA estimates that the volume of food products produced by manufacturers, packers, or distributors eligible for the exemption being proposed in §§ 101.9(j)(18) and 101.36(f)(2) constitutes less than 1 percent of the U.S. diet. Thus, any lost nutrition benefits are likely to be small. The 1993 amendments require that any small firm (except for very small firms with very low-volume food products) that has low-volume food products that are eligible for exemption from nutrition labeling notify FDA of the volume of sales of such products and the number of its full-time equivalent employees if the product is to be exempt.

Some firms will not have products that are eligible for the new small business exemption, and some will not take advantage of the exemption from nutrition labeling for one of the following reasons: (1) They make nutrient content claims, (2) they make health claims, (3) they decide to label to be competitive with other labeled products, or (4) retailers they sell to insist on nutrition labeling.

Assuming that 50 percent of all firms that could claim the small business exemption will decide not to do so for one of the reasons listed above and will, as a result, provide nutrition labeling for their products, it is estimated that approximately 4,500 firms will remain that have products that are eligible for exemption and not label their products with nutrition labeling in the first 2 years during which nutrition labeling is required by §§ 101.9 and 101.36. The agency further estimates that this figure

will reduce to 4,000 firms for the third year during which nutrition labeling is required and to 3,200 firms for subsequent years. Those firms that choose not to label will be responsible for annually gathering sales and employee data and notifying FDA of their claim for exemption.

First, firms will have to read and analyze the regulation. Second, they will have to determine the average number of full-time equivalent employees they employed in the previous year. Because most firms keep payroll records of expenses only, this will require some conversion. Third, firms will have to determine which of their products qualify for exemption. Again, records of dollar sales are normally kept and, as prices may have changed throughout the year, some analysis may be required for each product that the firm believes to be exempt. This activity may be reasonably expected to take an average of 8 hours per firm although FDA solicits comment on this figure. If costs to perform this activity (plus overhead) average approximately $46 per hour (the value used by FDA in calculating costs for reporting under the Paperwork Reduction Act of 1980), then the first year costs to firms that decide to file a notice of exception are expected to be approximately $1,656,000. This cost will drop to approximately $1,472,000 and $1,177,640 in subsequent years as the number of firms filing a notice decreases as discussed above. The proposed rule reflects the statute's removal of coverage for manufacturers, packers, and distributors under the exemption based on gross value of sales or business done after May 8, 1995. The agency believes that this will result in minimal cost to industry because almost all firms that might have been covered by that exemption will be covered by the new exemption provisions.

Federal costs for implementing the notification system in terms of setting up the system, handling mail, recording firms and products, and providing information concerning exempted firms will approximate $207,000. Thus, it is reasonable to expect that total costs of the notification provision will be less than $2 million for the first year and decrease substantially in subsequent years.

The benefits of this regulation are likely to be very large. First, many small manufacturers noted the impossibility of labeling their low-volume products in comments to the rule.

Assuming that the costs of labeling are about $3,000 per product and that there is an average of 20 products per firm, cost savings from not labeling the products that are exempt are estimated to be between $275 million and $360 million. In addition, this law and regulation prevent both the lost value to consumers of products that would no longer be available and the costs of losing many small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The proposed actions pertaining to food labeling meet the criteria in 21 CFR 25.24(a)(11) for exclusion from preparation of an environmental assessment and an environmental impact statement. The proposed regulations pertaining to the small business notification procedure meet the criteria for exclusion described in 21 CFR 25.24(a)(8).

V. Paperwork Reduction Act

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent description of the information requirements are shown below with an estimate of the annual collection and information burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of the request.

Title: Food Labeling; Nutrition Labeling, Small Business Exemption.

Description: The proposed rule provides the procedures for the submission of a notice of a claim by a company of an exemption from FDA's regulations for mandatory nutrition labeling. FDA action on the notice will be limited to review for completeness and acknowledgement that the notice had been received and was or was not adequate.

The 1993 amendments revise the basis for a small business exemption provided by section 403(q)(5) of the act. This new provision, section 403(q)(5)(E) of the act, provides an exemption for a food product based on the number of employees of the company and the number of units sold on an annual basis. Under the 1993 amendments, to qualify for an exemption, a person must file the notice mentioned in the preceding paragraph with FDA before the time period for the claimed exemption. Proposed §§ 101.9(j)(18)(iv) and 101.36(f)(2)(iv) reflect the information identified in section 403(q)(5)(E) of the act as necessary as part of the notice for a claimed small business exemption.

Description of Respondents: Persons and businesses, particularly small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden hours per response	Annual burden hours
101.9 and 101.36	4,500	1	8	36,000

The agency expects that the number of respondents and corresponding annual burden hours will decrease over succeeding years as the basis for additional exemptions changes. By May 1997, FDA estimates that approximately 3,200 companies may be filing notices to claim the exemption with a corresponding annual burden hours of approximately 25,600 hours.

The agency has submitted copies of the proposed rule to OMB for its review of these recordkeeping requirements. Interested persons are requested to send comments regarding this estimated burden, including suggestions for reducing this burden to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New

Executive Bldg., Washington, DC 20503, ATTN: Desk Officer for FDA.

VI. Effective Date

Because of the shortness of time until the date on which notices must be filed with the agency to claim the new exemptions, FDA is proposing to make these regulations effective on the date of publication of the final rules in the **Federal Register**. As stated above, FDA tentatively concludes that it has good cause for this action.

VII. Comments

Interested persons may, on or before May 13, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Because of the shortness of the time until firms must begin filing notice of claimed exemptions with the agency, FDA will not be able to extend the comment period beyond that date. Also, the agency is advising that it may not be able to consider any comments received at the Dockets Management Branch after the close of business on May 13, 1994.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Final Regulatory Flexibility Analysis of the Regulations Implementing the Nutrition Labeling and Education Act of 1990.
2. 139 Congressional Record-Extension of Remarks, E2015–2018, August 5, 1993.
3. 139 Congressional Record—House, H6358–6360, August 6, 1993.
4. 139 Congressional Record—Senate, S10817–10818, August 6, 1993.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9, effective May 8, 1994, is amended by revising paragraph (j)(1) and by adding a new paragraph (j)(18) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(j) * * *

(1) (i) Until May 7, 1995, food offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(ii) Food offered for sale by a person who makes direct sales to consumers who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iii) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship foods into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

* * * * *

(18) Food products that are low-volume (that is, they meet the requirements for units sold in paragraph (j)(18)(i) or (j)(18)(ii) of this section); that, except as provided in paragraph (j)(18)(iv) of this section, are the subject of a claim for an exemption that provides the information required under paragraph (j)(18)(iv) of this section, that is filed before the beginning of the time period for which the exemption is claimed, and that is filed by a person that qualifies to claim the exemption under the requirements for average full-time equivalent employees in paragraph (j)(18)(i) or (j)(18)(ii) of this section; and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim.

(i) For food products first introduced into interstate commerce before May 8, 1994, the product shall be exempt for the period:

(A) Between May 8, 1994, and May 7, 1995, if, for the period between May 8, 1993, and May 7, 1994, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 600,000 units of that product were sold in the United States or, if the product was not offered for sale for a full year before May 8, 1994, it is reasonably anticipated that fewer than 600,000 units of the product will be sold between May 8, 1994, and May 7, 1995;

(B) Between May 8, 1995, and May 7, 1996, if, for the period between May 8, 1994, and May 7, 1995, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of that product were sold in the United States; and

(C) Between May 8, 1996, and May 7, 1997, if, for the period between May 8, 1995, and May 7, 1996, the person claiming the exemption employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of that product were sold in the United States.

(ii) For all other food products, the product shall be eligible for an exemption for any 12-month period if, for the preceding 12 months, the person claiming the exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product were sold in the United States, or in the case of a food product that was not sold in the 12-month period preceding the period for which exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which exemption is claimed.

(iii) If a person claims an exemption under paragraphs (j)(18)(i) or (j)(18)(ii) of this section for a food product and then, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the appropriate number, or the number of units of the food product sold in the United States exceeds the appropriate number, or, if at the end of the period of such exemption, the food product no longer qualifies for an exemption under the provisions of paragraphs (j)(18)(i) or (j)(18)(ii), such person shall have 18 months from the date that the product no longer qualified

as a low-volume product of a small business to comply with this section.

(iv) A notice shall be filed with the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204 and contain the following information, except that if the person is not an importer and has fewer than 10 full-time equivalent employees, that person does not have to file a notice for any food product with annual sales of fewer than 10,000 total units:

(A) Name and address of firm requesting exemption;

(B) Names of the food products (including the various brand names) for which exemption is claimed;

(C) Name and address of the manufacturer of the food products for which an exemption is claimed, if different than the firm that is claiming the exemption;

(D) The number of full-time equivalent employees. Provide the average number of full-time equivalent individuals employed by the person and its affiliates for the 12 months preceding the period for which a small business exemption is claimed for a product. The number of full-time equivalent employees is to be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks);

(E) Approximate total number of units of the food product sold in the United States in the 12-month period preceding that for which a small business exemption is claimed: Provide the approximate total number of units sold, or expected to be sold, in a 12-month period for each product for which an exemption is claimed. For products that have been in production for 1 year or more before the period for which exemption is claimed, the 12-month period is the period immediately preceding the period for which an exemption is claimed. For other products, the 12-month period is the period for which an exemption is claimed; and

(F) The notice shall be signed by a responsible individual for the person who can certify the accuracy of the information presented in the notice. The individual shall certify that the information contained in the notice is a complete and accurate statement of the number of full-time equivalent employees of the firm and its affiliates and of the number of units of the product for which an exemption is claimed sold by the firm. The individual shall also state that should the average number of full-time equivalent employees or the number of units of the food products sold in the United States by the firm exceed the applicable numbers for the time period for which exemption is claimed; the firm will notify FDA of that fact and of the date on which the number of employees or number of products sold included the standard.

(v) FDA may by regulation lower the employee or units of food products requirements of paragraph (j)(18)(ii) of this section for any food product first introduced into interstate commerce after May 8, 2002, if the agency determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to it.

(vi) For the purposes of this paragraph, the following definitions apply:

(A) *Unit* means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers.

(B) *Food product* means food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods.

(C) *Person* means all domestic and foreign affiliates of the corporation, in the case of a corporation, and all affiliates of a firm or other entity, when referring to a firm or other entity that is not a corporation.

(D) *Full-time equivalent employee* means all individuals employed by the person claiming the exemption. This number shall be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the person by the number of hours of work in a year, 2,080 hours (i.e., 40 hours×52 weeks).

* * * * *

3. Section 101.36, effective July 1, 1995, is amended by revising paragraph (f) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins or minerals.

* * * * *

(f)(1) Until May 7, 1995, dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided,* That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(i) Dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a person who makes direct sales to consumers who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided,* That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(ii) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship food into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

(2) Dietary supplements of vitamins or minerals that are low-volume food products (that is, they meet the requirements for units sold in paragraph (f)(2)(i) or (f)(2)(ii) of this section); that, except as provided in paragraph (f)(2)(iv) of this section, are the subject of a claim for an exemption that provides the information required under paragraph (f)(2)(iv) of this section, that is filed before the beginning of the time period for which the exemption is claimed, and that is filed by a person that qualifies to claim the exemption under the requirements for average full-time equivalent employees in paragraph (f)(2)(i) or (f)(2)(ii) of this section; and whose labels, labeling, and advertising do not provide nutrition information or make a nutrient content or health claim.

(i) For food products that are dietary supplements of vitamins or minerals first introduced into interstate commerce before May 8, 1994, the supplement shall be exempt for the period:

(A) Between May 8, 1995, and May 7, 1996, if, for the period between May 8, 1994, and May 7, 1995, the person claiming the exemption employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of that product were sold in the United States; and

(B) Between May 8, 1996, and May 7, 1997, if, for the period between May 8,

1995, and May 7, 1996, the person claiming the exemption employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of that product were sold in the United States.

(ii) For all other food products that are dietary supplements of vitamins or minerals, the supplement shall be eligible for an exemption for any 12-month period if, for the preceding 12 months, the person claiming the exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product were sold in the United States, or in the case of a dietary supplement that was not sold in the 12-month period preceding the period for which exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which exemption is claimed.

(iii) If a person claims an exemption under paragraphs (f)(2)(i) or (f)(2)(ii) of this section for a dietary supplement food product and then, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the appropriate number, or the number of units of the dietary supplement sold in the United States exceeds the appropriate number, or, if at the end of the period of such exemption, the dietary supplement no longer qualifies for an exemption under the provisions of paragraphs (f)(2)(i) or (f)(2)(ii) of this section, such person shall have 18 months from the date that the supplement no longer qualified as a low-volume food product of a small business to comply with this section.

(iv) A notice shall be filed with the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204 and contain the following information, except that if the person is not an importer and has fewer than 10 full-time equivalent employees, that person does not have to file a notice for any dietary supplement of vitamins or minerals with annual sales of fewer than 10,000 total units:

(A) Name and address of firm requesting exemption;

(B) Names of the food products (including the various brand names) for which exemption is claimed;

(C) Name and address of the manufacturer of the food products for which an exemption is claimed, if different than the firm that is claiming the exemption;

(D) The number of full-time equivalent employees. Provide the average number of full-time equivalent individuals employed by the person and its affiliates for the 12 months preceding the period for which a small business exemption is claimed for a product. The number of full-time equivalent employees is to be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the company by the number of hours of work in a year, 2,080 hours (i.e., 40 hours x 52 weeks);

(E) Approximate total number of units of the food product that is a dietary supplement of vitamins or minerals sold in the United States in the 12-month period preceding that for which a small business exemption is claimed. Provide the approximate total number of units sold, or expected to be sold, in a 12-month period for each product for which an exemption is claimed. For products that have been in production for more than 1 year before the period for which exemption is claimed, the 12-month period should be the period preceding the period for which an exemption is claimed. For other products, the 12-month period should be the period for which an exemption is claimed; and

(F) The notice shall be signed by a responsible individual for the person who can certify the accuracy of the information presented in the notice. The individual shall certify that the information contained in the notice is a complete and accurate statement of the number of full-time equivalent employees of the firm and its affiliates and of the number of units of the product for which an exemption is claimed sold by the firm. The individual shall also state that should the average number of full-time equivalent employees or the number of units of the food product sold in the United States by the firm exceed the applicable numbers for the time period for which exemption is claimed, the firm will notify FDA of that fact and of the date on which the number of employees or number of products sold exceeded the standards.

(v) FDA may by regulation lower the employee or units of a food product that is a dietary supplement of vitamins or minerals requirements of paragraph (f)(2)(ii) of this section for any product first introduced into interstate commerce after May 8, 2002, if the agency determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to it.

(vi) For purposes of this paragraph, the following definitions apply:

(A) *Unit* means the packaging or, if there is no packaging, the form in which a dietary supplement of vitamins and minerals is offered for sale to consumers.

(B) *Food product that is a dietary supplement of vitamins or minerals* means a food (supplement) in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods.

(C) *Person* means all domestic and foreign affiliates of the corporation, in the case of a corporation, and all affiliates of a firm or other entity, when referring to a firm or other entity that is not a corporation.

(D) *Full-time equivalent employee means* all individuals employed by the person claiming the exemption. This number shall be determined by dividing the total number of hours of salary or wages paid to individuals that render services to the person by the number of hours of work in a year, 2,080 hours (i.e., 40 hours × 52 weeks).

* * * * *

Dated: March 9, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendixes will not appear in the annual Code of Federal Regulations.

Appendix I—Model Small Business Food Labeling Exemption Notice

(Please Type or Clearly Print)

1. Name of Firm _____
2. Firm Address _____
_____ State ____ ZIP _____
3. Name of Food Product for which Exemption is Claimed. (Use continuation sheets as necessary)
_____
_____
_____
_____
_____

4. Name and address of the manufacturers of the products listed in item 3 if different than the firm listed in item 1. (Use continuation sheets as necessary)
_____
_____
_____
_____
_____

5. Average number of Full-Time Equivalent Employees _____ (For time period of May 8, 1993, to May 7, 1994)
6. Approximate Total Number of Units sold in United States between May 8, 1993, and May 7, 1994. (Use continuation sheets as necessary)

No. of Units	Product

7. The undersigned certifies that the above information is a true and accurate representation of the operations of _____. (Name of firm)

The undersigned will notify the Office of Food Labeling of the date on which the average number of full-time equivalent employees or the number of units of food products sold in the United States exceeds the applicable number for the exemption which is being claimed herein.

(Signature)

(Title)

Appendix II—Model Small Business Food Labeling Exemption Notice

Instructions for Completion

(Send to: Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204)

1. Name of Firm: Enter recognized legal name of firm.

2. Firm Address: Enter mailing address for principal place of business.

3. Name of the food product for which exemption is claimed. Enter the name of each food product for which an exemption is claimed. Continuation sheets may be used if necessary.

4. Name and address of manufacturer: Provide the names and addresses of the manufacturers of the food products for which an exemption is being claimed if they are different than the firm that is submitting the claim for exemption.

5. Number of Full-Time Equivalent Employees: Enter the approximate average number of persons employed by the firm for the year preceding the year for which an exemption is claimed. The average number should include all persons employed by the firm and its affiliates. The average number of employees may be calculated by using the following formula: Total number of employee/hours paid divided by 2080 hours a year = Average number of full-time equivalent employees. Employee hours should include overtime paid to employees.

6. Approximate Total Number of Units Sold in United States between May 8, 1993, and May 7, 1994: Enter the total number of units sold in the United States between May 8, 1993, and May 7, 1994 for each product listed under item 3 for which a small business exemption is being claimed. Continuation sheets may be used if necessary. A food product is a food in any sized package which is manufactured by a single manufacturer, or which bears the same brand name; which bears the same statement of identity; and which has similar preparation methods. The approximate total number of units is the summation of all units of the various package sizes of the food product in the form in which the food product is sold to consumers.

7. Certification. The form is to be signed by a responsible individual for the firm that can certify the authenticity of the information presented on the form. The individual signing the form will commit to notify the Office of Food Labeling when the numbers of full-time equivalent employees or total numbers of units of product sold in the United States exceed the applicable numbers for an exemption.

[FR Doc. 94–5902 Filed 3–9–94; 4:18 pm]

BILLING CODE 4160–01–P

Monday
March 14, 1994

Part V

Postal Service

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcodes Rate Mailings; Final Rule

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) requirements governing the preparation of the residual portion of second- and third-class letter-size automation rate mailings. This rule also includes an optional procedure for preparing the residual portion of First-Class ZIP+4 and barcoded letter-size mail and changes to Line 2 of AADC tray labels for letter-size mail.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Alexandrovich, (202) 268–2260.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1993, the Postal Service published a proposed rule in the **Federal Register** (58 FR 49402–49415) to require that the residual portion of second- and third-class letter-size automation rate mailings be sorted to the automated area distribution center (AADC) level.

As explained in the proposed rule, this change was needed to correct the processing problem that resulted when the requirement for a states and mixed-states presort of second- and third-class residual mail was eliminated as part of a larger change in preparation requirements that took effect March 21, 1993. At the time, the Postal Service did not anticipate the magnitude of the resulting increase in residual mail that must be processed at origin. This increase in non-presorted residual mail has exceeded the Postal Service's processing capabilities at many facilities, leading to considerable problems.

The proposed rule also introduced an additional preparation option for the residual portion of First-Class letter-size automation rate mailings and changed the tray labeling requirement for Line 2 of AADC trays of letter-size mail.

This final rule is intended to address the specific processing problem discussed in the proposed rule. As part of the ongoing process of re-examining the mailing standards in the DMM, the Postal Service plans to take a more comprehensive look at the standards for automation rate mail later this year, with a view to simplifying those standards.

Evaluation of Comments Received

The Postal Service received eight comments on the proposed rule, including five from mailing-related businesses, two from companies or corporations, and one from an individual. These comments are discussed below.

Package Size

Four commenters raised concerns relative to the preparation and processing of small packages. The original proposal did not contain a minimum package size for presortation of the residual portion of the mailing. Instead, it stated that residual packages must be prepared if two or more pieces in a mailing destinate to an AADC area. The commenters claimed that the creation of such small packages was burdensome to mailers and inefficient for the Postal Service. One mailer also stated that banding small packages results in damage to the mailpieces that may render them unsuitable for automated processing.

The Postal Service shares the commenters' concerns about package size. After consideration of the comments received, a decision was reached to require packaging of residual pieces only if 10 or more pieces destinate to an AADC area. The 10-piece minimum (which was formerly the minimum for state packages) balances concerns about extremely small packages against the Postal Service's need to reduce piece handlings of residual mail at origin. Residual pieces not meeting the 10-piece package minimum are to be placed in a working tray in AADC sequence.

Processing Efficiency of Packages

Three comments were received concerning the relative efficiency of processing residual AADC packages instead of full, unpackaged residual trays. The commenters suggested that the costs associated with unbanding residual packages prior to processing on automated equipment may outweigh any benefits the Postal Service receives through presorting. These mailers stated that mail in full trays is more suitable for induction into high-speed automated equipment than is mail in bundles. The commenters argued that the Postal Service might actually realize increased processing costs for the residual portion of mailings as a result of the proposed preparation changes.

The Postal Service has determined that presortation of the residual portion of a mailing will improve overall operating efficiency for the Postal Service relative to nonpresorted residual trays. Mixed-AADC trays will contain AADC packages that must be distributed at origin. However, no piece processing will be performed on this mail at the origin facility. Piece processing of residual mail at origin will be limited to working trays containing pieces that do not meet the 10-piece minimum to an AADC area. Thus, presortation of residual mail will virtually eliminate piece processing of this mail at the origin facility. Although there is some cost to handle packages, the Postal Service has concluded that this cost is outweighed by the need to correct the processing problems currently presented by piece handling of residual mail, as described in the proposed rule. Moreover, a significant proportion of the packages will not be handled at origin; for example, all residual mail in AADC trays will be routed directly to destination. Also, the new requirements allow for the creation of full AADC trays of residual mail that is not packaged.

Additional Mailer Operating Costs

Five commenters stated that the proposed changes would increase their operating costs. Two of these mailers remarked that the Postal Service is essentially transferring costs from mail processing plants to mailer plants. Two of the commenters expressed concerns about the costs of training their workers on the new requirements. One mailer commented that the proposed changes were incompatible with his operation and would require substantial and costly changes to his production processes.

The residual preparation requirements in this rule are comparable to those in effect prior to March 21, 1993, for automated rate second- and third-class letters prepared in sacks, and those still in effect for nonautomated presort second- and third-class letters. Prior to the March 21, 1993, change, mailers were required to prepare packages of residual second- and third-class automated rate letters and place them in state and mixed-states sacks. State sacks were then routed to a destination SDC for processing while mixed-states sacks were, in most cases, processed at the origin SCF.

This rule will require similar presortation of the residual portion of second- and third-class automated rate letter mailings. Like state packages and sacks, residual AADC packages and trays involve presortation of the residual portion of a mailing in order to bypass outgoing processing operations at the origin facility. Only mail in working trays will be processed at the origin SCF, as was mixed-states mail under the previous preparation requirements.

Requiring this presortation of the residual portion of a second- or third-class mailing is justified by the fact that some degree of worksharing is assumed in the basic rate paid for second- and third-class residual letters, a rate that is substantially reduced from the single-piece rate.

One commenter expressed concern about being required to prepare a large number of less-than-full residual AADC trays, which would be a waste of time and space. This final rule, which permits AADC packages of 10 or more pieces to be placed in a mixed-AADC tray if a full AADC tray cannot be prepared, and allows groups of fewer than 10 pieces to an AADC to be placed in working trays, avoids the potential problem raised by this commenter.

Creation of Nonuniform Preparation Standards for Different Classes of Automated Mail

One commenter stated that the proposed changes represented a retreat from the Postal Service's declared goal of simplified and standardized mail preparation requirements. This mailer remarked that adopting the proposed changes would necessitate the retraining of his workforce and lead to verification problems for the Postal Service.

Although the changes in this rule will make the required preparation of the residual portion of second- and third-class automated rate letters different from that for First-Class Mail, the Postal Service believes these changes are appropriate given the processing problems that led to the proposed rule and the discount mailers receive for basic rate mail in second- and third-class mailings. Furthermore, the final regulations are modified to allow First-Class mailers the option of preparing residual mail according to the residual sortation options required for second- and third-class mail. This modification will allow mailers the opportunity to presort first-, second-, and third-class mailings in a uniform manner.

Lower Minimum for 3-Digit Packages

One commenter recommended that the Postal Service reduce or eliminate the 50-piece minimum for qualifying 3-digit mail as a way to reduce the residual volume. This mailer proposed that the Postal Service eliminate the 3-digit qualifying minimum for automated mail if it is prepared in trays on SCF pallets and reduce the minimum to 10 pieces for mail that is 100 percent delivery point barcoded. The result, according to this mailer, would be a significant reduction in the amount of residual mail requiring processing at the origin plant.

Relaxation of the 50-piece minimum for qualifying 3-digit mail under package-based preparation is not being considered at the present time. Under tray-based preparation options, second- and third-class mail in SCF trays is not required to meet a 50-piece minimum for a 3-digit area. However, this rule gives mailers an option to prepare the residual portion of package-based mailings by 3-digit area with no minimum package size.

Limit Residual Preparation to Full AADC Trays

One commenter suggested that the Postal Service test the feasibility of limiting the preparation of residual mail to full AADC trays. Residual mail that remained after full AADC trays were prepared would not require sortation. The commenter contended that this limited approach might solve the processing problems caused by residual mail volumes.

Limiting residual preparation to full AADC trays would not adequately address the problem of excessive volumes of working residual mail at origin. Most AADC areas contain five or fewer 3-digit ZIP Code areas, making it very unlikely that full trays of residual mail could be prepared for these AADCs given that 3-digit packages must be prepared at 50 pieces. In order to relieve the problems associated with processing residual mail at origin, a more substantial presortation of the residual portion of a mailing than that suggested by this commenter is necessary.

Allocate Barcode Sorters to Residual Mail Processing

One commenter suggested that each of the 10 processing and distribution areas set up a centralized facility for processing residual mail. Under this scenario, origin processing plants would divert the residual portion of automation rate mailings to this centralized site for processing.

Equipment deployment decisions are based on originating and destinating volumes for all classes of mail within a processing and distribution plant's service area. Allocating equipment based on originating residual volumes of second- and third-class letters would result in sub-optimal utilization of automated equipment. The Postal Service believes that presortation of residual volumes, as described in this rule, is a reasonable and effective way to deal with the processing problems caused by piece processing of residual mail.

Summary of Changes

The following is a summary of the changes, by preparation option in DMM Module M.

ZIP+4 Presort and Barcoded Tray-Based Mailings (DMM M812 and M814)

This rule will require presortation of the residual portion of second- and third-class mailings by AADC area. These changes are optional for First-Class mailings. Changes in residual preparation are as follows:

- Full AADC trays must be prepared if enough pieces exist to fill a tray. Packaging is not required in full AADC trays.
- AADC packages must be prepared if 10 or more residual pieces destinate to an AADC area.
- Less-than-full AADC trays are not permitted except for optional overflow trays.
- AADC packages of 10 or more pieces not placed in a full AADC tray must be banded, labeled, and placed in a mixed-AADC tray.
- AADC packages must bear a pink Label A or optional endorsement line (OEL).
- AADC packages must be banded, except when placed in full AADC trays. Separator cards are not allowed in overflow AADC trays or in mixed-AADC trays.
- Mail remaining after preparing AADC packages must be placed in working trays in AADC sequence.

ZIP+4 Presort and Barcoded Package-Based Mailings (DMM M813, M815, and M816)

This rule will require that the residual portion of second- and third-class package-based mailings be prepared under one of the two options described below. Both options require presortation of residual pieces by AADC area. First-Class mailings may be prepared under either of these options, which together will replace the current AADC tray option, or under the existing ZIP Code sequencing and listing option or the physical separation option.

SCF/AADC Preparation Option

Under this option, the residual and qualifying portions of the mailing may be combined in SCF and AADC trays. Residual pieces must be sorted into AADC packages if 10 or more pieces destinate to an AADC area. All pieces that do not meet the 10-piece minimum are placed in working trays. In addition, mailers have the option of preparing residual mail into 3-digit packages prior to preparing required AADC packages. Three-digit residual packages must be labeled (green Label 3 or OEL or

separator card label) and placed in SCF trays. AADC packages must be packaged and labeled (pink Label A or OEL) and placed in AADC trays and mixed-AADC trays, except that pieces in full AADC trays containing only residual mail need not be packaged and labeled. AADC trays must be prepared if enough pieces exist to fill a tray. Less-than-full AADC trays are permitted. Mixed-AADC trays must be prepared unless all residual mail is trayed to the AADC level. Mixed-AADC trays are limited to AADC packages of residual mail. Pieces remaining after preparing and traying AADC packages are working mail and must be placed in working trays in AADC sequence. In barcoded three-tier package-based mailings prepared under M816, residual mail is not permitted in the 5-digit tier.

Separate AADC Sortation

Under this option, the residual portion of the mailing is presented separately from the qualifying portion in AADC, mixed-AADC, and working trays. AADC packages must be prepared if 10 or more pieces destinate to an AADC area, except that pieces in full AADC trays need not be packaged. AADC trays must be prepared if enough pieces exist to fill a tray. Less-than-full AADC trays are permitted. Remaining AADC packages must be placed in mixed-AADC trays. AADC packages must be labeled with a pink Label A or OEL. All pieces that do not meet the 10-piece minimum per AADC are placed in separate working trays in AADC sequence.

Labeling Changes

The AADC tray label for two-tier package-based preparation under DMM M815 is revised to change the position of the term "LTRS" on the second line so that it is consistent with other tray labels. The AADC tray label for 3-tier package-based preparation under DMM M816 is revised to delete the term "3D" when SCF/AADC residual preparation is used. Since these trays will contain both 3-digit and AADC packages, the description "3D" is no longer appropriate.

In addition, the labeling format for mixed-AADC and working trays is as follows:

- ZIP+4 mixed-AADC trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by ZIP+4 PRESORT PKGS.
- ZIP+4 working trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by ZIP+4 WORKING or ZIP+4 WKG.
- Barcoded mixed-AADC trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by LTRS BARCODED PKGS.
- Barcoded working trays: On Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at a BMC/ASF. On Line 2 use class followed by LTRS BARCODED WKG.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,
Chief Counsel, Legislative.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 522(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

Module E: Eligibility

2. Make the following changes to Domestic Mail Manual (DMM) Module E.

* * * * *

E200 Second-Class Mail

* * * * *

E242 ZIP+4 Discounts

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

d. In AADC, mixed-AADC, and working trays, ZIP+4 coded or delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces can qualify for the A/G/J1 presort rates.

* * * * *

E244 Barcoded Discounts (Letter-Sized Pieces)

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

d. In AADC, mixed-AADC, and working trays, delivery point barcoded pieces can qualify for the A/G/J1 Barcoded rates; subject to the applicable standards in C830 or C840, ZIP+4 coded non-delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces qualify for the A/G/J1 presort rates.

* * * * *

E300 Third-Class Mail

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E342 ZIP+4 Discounts

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

In tray-based presort mailings under M812, ZIP+4 coded or delivery point barcoded pieces in full or overflow 5-digit, 3-digit, and SCF trays can qualify for the 3/5 ZIP+4 rate; other pieces can qualify for the 3/5 presort rate. One less-than-full SCF tray for the origin SCF is permitted. ZIP+4 coded or delivery point barcoded pieces in AADC, mixed-AADC, or working residual trays can qualify for the basic ZIP+4 rate; other pieces can qualify for the basic presort rate.

* * * * *

E344 Barcoded Discounts (Letter-Sized Pieces)

* * * * *

2.0 Qualifying Presort

2.1 Tray-Based

* * * * *

c. In AADC, mixed-AADC, and working trays, delivery point barcoded pieces can qualify for the basic Barcoded rate; subject to the applicable standards in C830 or C840, ZIP+4 coded non-delivery point barcoded pieces can qualify for the basic ZIP+4 rate; other pieces qualify for the basic presort rates.

* * * * *

E350 Destination Entry Discounts

* * * * *

5.0 BMC Discount

* * * * *

5.3 Separate Sacks

Separate ADC, AADC, mixed-AADC, working, or residual trays; or separate SDC, state, and mixed-states sacks must be prepared for pieces eligible for the DBMC rate if the mailer includes them in that portion of the mailing claimed at the DBMC rate, and the facility to which the sacks, trays, or pallets are labeled is within the DBMC service area, except that, machinable parcels claimed at the DBMC rate and deposited at the corresponding facility may be placed in the same sack or on the same pallet as other correctly presorted machinable parcels not eligible for or not claimed at the DBMC rate.

* * * * *

Module M: Mail Preparation and Sortation

3. Make the following changes to DMM Module M.

M000 General Preparation Standards

* * * * *

M013 Optional Endorsement Lines

1.0 Use

1.1 Address Block, Label

[Revise the illustration to include AADC packages as shown below:]

On FIRM PACKAGES use.....FIRM 12345
On CARRIER ROUTE use.....CAR–RT–SORT**B–001
On 5-DIGIT PACKAGES use....5-DIGIT 12345
On OPTIONAL CITY PACKAGES use.....MIXED CITY 12345
(Use lowest 5-digit ZIP Code assigned to that city.)
On 3-DIGIT PACKAGES use.....3-DIGIT 771
On SCF PACKAGES use.....SCF 750
(Use correct 3-digit SCF code as shown in L002, Column B.)
On OPTIONAL SDC PACKAGES use.....ALL FOR SDC
On STATE PACKAGES use.....ALL FOR STATE
On MIXED-STATES PACKAGES use.....MIXED STATES
On AADC PACKAGES use....ALL FOR AADC
On RESIDUAL PACKAGES use.....WORKING

* * * * *

2.0 Format

* * * * *

2.6 ZIP Code

Except for carrier route packages (all classes), state distribution center (SDC), state, and mixed-states packages (second- and third-class), and AADC and working residual packages (automation rate mail), the optional endorsement line must include the applicable ZIP Code information. Mixed-states bundles of fourth-class bound printed matter must have facing slips as specified in M407.

* * * * *

M020 Packages and Bundles

* * * * *

3.0 Additional Standards—Automation Rate Mailings

* * * * *

3.3 Prohibited

Packages must not be prepared in full trays in tray-based mailings of larger than postcard-size pieces except in AADC and mixed-AADC trays and as permitted by standard for oversize pieces.

* * * * *

3.6 Separator Cards

Separator cards:

a. Must be used for First-Class Mail to delineate groups of 100 pieces within trays of residual mail if the physical separation option is chosen.

* * * * *

3.7 Identification

[Revise the last sentence to read as follows:]

Residual pieces of First-Class Mail may be prepared using separator cards as permitted by standard.

* * * * *

M800 Automation-Compatible Mail

M810 Letter-Size Mail

M812 ZIP+4 Presort—Tray-Based Mailings

1.0 Basic Standards

* * * * *

1.3 Grouping

[Insert the following at the end of this section:]

c. For pieces for the same AADC area in working trays.

* * * * *

1.5 Packaging

Separator cards are permitted only under 4.4. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by size for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For mail in overflow AADC trays, in mixed-AADC trays, and in a less-than-full working tray. Appropriate package labels are required in these trays.

1.6 No Packaging

Packaging may not be used for larger than card-size pieces, except that:

* * * * *

[Delete current 1.6c and replace with the following:]

c. Mail in AADC trays may be packaged and mail in mixed-AADC trays must be packaged into AADC packages.

d. Mail in a less-than-full working tray under 4.2 or First-Class residual tray under 4.3 or 4.4 must be packaged.

* * * * *

4.0 Residual Mail

4.1 Definition, Standards

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail. Residual second- or third-class mail must be prepared under 4.2. Residual First-Class Mail must be prepared under 4.2, 4.3, or 4.4 except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 4.5.

4.2 AADC Sortation

Prepare residual pieces as follows:

a. All pieces must be sorted by AADC area using L804 (or, for automated site mailings, L803).

b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.

c. All AADC packages must be trayed in AADC or mixed-AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.

d. Pieces in less-than-full AADC overflow trays and in all mixed-AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.

e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area (listed by numeric AADC code from the labeling list in L804 or, for automated

site mailings, L803) the number of pieces eligible for each rate and the number of pieces with and without a ZIP+4 code.

g. Tray size:

(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.

(2) Mixed-AADC: required full trays; one less-than-full tray permitted.

(3) Working: required full trays; one less-than-full tray permitted.

h. Residual presort sequence and Line 1 labeling:

(1) AADC (required); use L804 (or, for automated site mailings, L803) on Line 1.

(2) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(3) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

i. On Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) For AADC trays: AADC ZIP+4 PRESORT.

(2) For mixed-AADC trays: ZIP+4 PRESORT PKGS.

(3) For working trays: ZIP+4 WORKING or ZIP+4 WKG.

4.3 Sequencing, Listing—First-Class Mail Only

[*Insert current M812.4.2 and renumber as M812.4.3. Revise the first sentence to read as follows:*]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[*Delete renumbered 4.3f; reletter 4.3g and h as 4.3f and g. Revise renumbered and relettered 4.3g to read:*]

g. For Line 2: FCM LTRS followed by either ZIP+4 WORKING or ZIP+4 WKG.

4.4 Separation by Rate—First-Class Mail Only

[*Insert current M812.4.3 and renumber as M812.4.4. Revise the first sentence to read as follows:*]

First-Class residual pieces may be separated by rate qualification:

[*Delete "First-Class" in renumbered 4.4a(1) and 4.4a(3). Delete renumbered 4 4a(4) and a(5). Revised renumbered 4.4d to read:*]

d. For Line 2: FCM followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

4.5 Presentation

When presented to the USPS, trays of residual mail prepared under 4.3 or 4.4 must be separate from trays of qualifying mail.

5.0 Documentation

* * * * *

5.4 Standards. [*In current 812.5.4, change the reference "4.2" to "4.2 or 4.3" and change the reference "4.3" to "4.4."*]

* * * * *

5.6 ZIP Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 4.3; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed-AADC, and working trays under 4.2. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays

5.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 4.3; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed-AADC, and working trays under 4.2.

* * * * *

M813 ZIP+4 Presort—Package-Based Mailings

1.0 Basic Standards

* * * * *

1.3 Packaging

[*Add the following sentence to the end of this section:*]

Packaging (no separator cards) is required in AADC trays (except for full AADC trays containing only residual packages), mixed-AADC trays, and less-than-full working or residual trays.

1.4 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays containing only residual AADC packages, full working trays under 5.2 and 5.3, and full First-Class residual trays under 5.4.

* * * * *

1.5 Separator Cards

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 5.0.

* * * * *

5.0 Residual Mail

5.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 4.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 5.2 and 5.3. Residual First-Class Mail must be prepared under 5.2 and 5.3, or 5.4, or 5.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. Residual mail from automated site mailings under 4.0 is subject to specific instructions where applicable. All residual mail must be presented under 5.6.

5.2 AADC Residual Preparation Options

Residual second- and third-class mail must be prepared under one of these options and in accordance with 5.3. First-Class Mail may be prepared under one of these options and 5.3 if not prepared under 5.4 or 5.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 (or L803 or automated site preparation) are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3.

b. Intermixed SCF/AADC Preparation Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area

in L804 (or L803 for automated site preparation) are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3. First-Class automated site mailings in which the residual portion contains pieces not listed in L801 must not use this option.

5.3 AADC Residual Preparation

Subject to 5.1 and 5.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 5.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays.

(2) AADC: required at 10 pieces for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 5.2b) that also contain qualifying mail. Packages of fewer pieces not permitted. Use L804 (or L803 for automated site preparation).

(3) Working: required grouping of pieces by AADC in working trays. Use L804 (or L803 for automated site preparation). Packaging required only in a less-than-full working tray as follows: Prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 5.2b): use green Label 3 or OEL.

(2) AADC (required, except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 5.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF. This tray is not available for residual of automated site mailings.

(2) Optional SCF (only for option 5.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF. (For automated site mailings, one less-than-full tray for the origin SCF is permitted only if the origin SCF is listed in L802; see 4.5b.)

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 5.2b); use L002, Column A (facilities identified with three bullets), on Line 1. This tray is not available for the residual mail of automated site mailings.

(2) Optional SCF (only for option 5.2b); use L802 on Line 1 for automated site mailings; for other mailings use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L803 on Line 1 for automated site mailings; for other mailings, use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) On 3-digit and SCF trays (option 5.2b only): ZIP+4 PRESORT.

(2) On AADC trays: AADC ZIP+4 PRESORT.

(3) On mixed-AADC trays: ZIP+4 PRESORT PKGS.

(4) On working trays: ZIP+4 WORKING or ZIP+4 WKG.

5.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 5.2 and renumber as 5.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 5.4f; reletter 5.4g and h as 5.4f and g. Revise renumbered and relettered 4.3g to read:]

g. For Line 2: FCM LTRS followed by ZIP+4 WORKING or ZIP+4 WKG.

5.5 Separation by Rate—First-Class Mail Only

[Insert text of current 5.3 and renumber as 5.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 5.5a(1) and 5.5a(3). Delete renumbered 5.5a(4) and 5.5a(5). Revise renumbered 5.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

5.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 5.2b, 3-digit, SCF and AADC trays containing both qualifying and residual pieces are grouped with trays of qualifying mail.

6.0 Documentation

* * * * *

6.3 Standards

Documentation must meet the basic standards in P012 and those below. Residual mail is included in the documentation if prepared under 5.2 and 5.3, or 5.4, or in the summary alone if prepared under 5.5. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

6.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail prepared under 5.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 6.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 5.2 and 5.3) reported in a continuous sequential list under 6.6 within each tier listing. Under either option, data must be presented as shown in 6.7 and 6.8.

6.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 5.4; and, for AADC packages and AADC

groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804 (AADC entries must be preceded by "AADC").

6.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 5.4; and, for AADC packages and AADC groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804. AADC entries must be preceded by the prefix "AADC." For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

M814 Barcoded—Tray-Based Mailings

1.0 Basic Standards

* * * * *

1.2 Grouping

[Add the following at the end of this section:]

c. For pieces for the same AADC area in working trays under 3.2.

* * * * *

1.4 Packaging

Separator cards are permitted only under 3.4. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by *size* for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For mail in overflow AADC trays, in mixed-AADC trays, and in a less-than-full working tray. Appropriate package labels are required.

1.5 No Packaging

Packaging may not be used for larger than card-size pieces, except that:

* * * * *

[Delete current 1.5c and replace with the following:]

c. Mail in AADC trays may be packaged and mail in mixed-AADC trays must be packaged into AADC packages.

d. Mail in a less-than-full working tray under 3.2 or First-Class residual tray under 3.3 or 3.4 must be packaged.

* * * * *

3.0 Residual Mail

3.1 Definition, Standards

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail. Residual second- or third-class mail must be prepared under 3.2. Residual First-Class Mail must be prepared under 3.2, 3.3 or 3.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 3.5.

3.2 AADC Sortation

Prepare residual pieces as follows:

a. All pieces must be sorted by AADC area using L804.

b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.

c. All AADC packages must be trayed in AADC or mixed-AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.

d. Pieces in less-than-full AADC overflow trays and in all mixed-AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.

e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area (listed by numeric AADC code from the labeling list in L804) the number of pieces eligible for each rate and the number of pieces with a delivery point barcode, the number of pieces without a delivery point barcode that qualify for ZIP+4 rates, and the number of other pieces.

g. Tray size:

(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.

(2) Mixed-AADC: required full trays; one less-than-full tray permitted.

(3) Working: required full trays; one less-than-full tray permitted.

h. Residual presort sequence and Line 1 labeling:

(1) AADC (required); use L804 on Line 1.

(2) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(3) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

i. On Line 2: class (FCM, 2C, NEWS, or 3C), followed by:

(1) For AADC trays: LTRS AADC BARCODED.

(2) For mixed-AADC trays: LTRS BARCODED PKGS.

(3) For working trays: LTRS BARCODED WKG.

3.3 Sequencing, Grouping—First-Class Mail Only

[Insert current M814.3.2 and renumber as M814.3.3. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 3.3f; reletter 3.3g and 3.3h as 3.3f and 3.3g, respectively. Revise renumbered and relettered 3.3g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

3.4 Separation by Rate—First-Class Mail Only

[Insert current M814.3.3 and renumber as M814.3.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification.

[Delete "First-Class" in renumbered 3.4a(1) and 3.4a(3). Delete renumbered 3.4a(4) and 3.4a(5). Revise renumbered 3.4d to read:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

3.5 Presentation

When presented to the USPS, trays of residual mail prepared under 3.3 or 3.4 must be separate from trays of qualifying mail.

4.0 Documentation

* * * * *

4.4 Standards

[In current 814.4.4, change the reference "3.2" to "3.2 or 3.3," and change the reference "3.3" to "3.4."]

4.5 Segmentation, Labeling

[In the last sentence, replace "3.2," with "4.6"; replace "3.3" with "4.7"; replace "5.8 and 5.9" with "4.8 and 4.9."]

4.6 ZIP Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 3.3; by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed-AADC, and working trays under 3.2. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

4.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (second-class only); by 3-digit ZIP Code for 3-digit, SCF, and First-Class residual trays under 3.3; by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed-AADC, and working trays under 3.2.

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M815 Barcoded—Two-Tier Package-Based Mailings

1.0 Basic Standards

* * * * *

1.2 Packaging

[Add the following sentence to the end of this section:]

Packaging (no separator cards) is required in AADC trays (except for full AADC trays containing only residual packages), mixed-AADC trays, and less-than-full working or residual trays.

1.3 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays containing only residual AADC packages, full working trays under 4.2 and 4.3, and full First-Class residual trays under 4.4.

* * * * *

1.5 Separator Cards

Separator cards must not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 5.0.

* * * * *

4.0 Residual Mail

4.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 and 3.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 4.2 and 4.3. Residual First-Class Mail must be prepared under 4.2 and 4.3, or 4.4, or 4.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 4.6.

4.2 AADC Residual Preparation Options ●

Residual second- and third-class mail must be prepared under one of these options and in accordance with 4.3. First-Class Mail may be prepared under one of these options and 4.3 if not prepared under 4.4 or 4.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

4.3 AADC Residual Preparation

Subject to 4.1 and 4.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 4.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays.

(2) AADC: required at 10 pieces per AADC (use L804) for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 4.2b) that also contain qualifying mail. Packages of fewer pieces not permitted.

(3) Working: required grouping of pieces by AADC (use L804) in working trays. Packaging required only in a less-than-full working tray as follows: prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 4.2b): use green Label 3 or OEL.

(2) AADC (required, except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 4.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF.

(2) Optional SCF (only for option 4.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF.

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 4.2b): use L002, Column A (facilities identified with three bullets), on Line 1.

(2) Optional SCF (only for option 4.2b): use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by LTRS and:

(1) On 3-digit trays (only single 3-digit SCFs under option 4.2b) and SCF trays (option 4.2b only): BARCODED.

(2) On AADC trays: AADC BARCODED.

(3) On mixed-AADC trays: BARCODED PKGS.

(4) On working trays: BARCODED WKG.

4.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 4.2 and renumber as 4.4. Revise the first sentence to read as follows:]

First-Class residual pieces may be sequenced by ZIP Code and presented with a listing:

[Delete renumbered 4.4f. Reletter 4.4g and h as 4.4f and g. Revise renumbered and relettered 4.4g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

4.5 Separation by Rate—First-Class Mail Only

[Insert text of current 4.3 and renumber as 4.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 4.5a(1) and 4.5a(3). Delete renumbered 4.5a(4) and 4.5a(5). Revise renumbered 4.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

4.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 4.2b, 3-digit, SCF, and AADC trays containing both qualifying and residual pieces are grouped with trays of qualifying mail.

5.0 Documentation

* * * * *

5.2 Standards

[In current M815.5.2, revise the second sentence to read as follows:]

Residual pieces are included in the documentation if prepared under 4.2 and 4.3, or under 4.4, and included in the summary alone if prepared under 4.5.

* * * * *

5.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail prepared under 4.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 5.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 4.2 and 4.3) reported in a continuous sequential list under 5.6 within each tier listing. Under either option, data must be presented as shown in 5.7 and 5.8.

5.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 4.4; and, for AADC packages and AADC groups (in working trays) under 4.2 and 4.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC").

5.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 4.4; and, for AADC packages and AADC groups (in working trays) under 4.2 and 4.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC"). For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

M816 Barcoded—Three-Tier Package-Based Mailings

1.0 Basic Standards

* * * * *

1.2 Packaging

[Replace the last sentence with the following:]

Packaging or separator cards are required for other pieces placed in city, 3-digit, or SCF trays except as provided under 1.3 for 3-digit tier preparation. Packaging (no separator cards) is required in AADC trays except for full AADC trays in the 3-digit presort tier containing only residual packages, mixed-AADC trays, and in less-than-full working or residual trays.

1.3 No Packaging

Packaging or separator cards are not required for larger than card-size pieces in full 5-digit trays in the 5-digit tier; nor in the 3-digit tier in full city, full 3-digit, full SCF, and full AADC trays containing only residual AADC packages; nor in full working trays under 6.2 and 6.3, and full First-Class residual trays under 6.4.

* * * * *

1.4 Separator Cards

Separator cards must not be used in a less-than-full tray for the origin SCF, in AADC trays, in mixed-AADC trays, in working trays, or in residual trays unless permitted by 6.0.

* * * * *

4.0 Package Preparation—3-Digit Tier

* * * * *

4.2 Presort and Labeling

Package presort sequence and labeling:

a. City (optional: for second-class only): package labels not required except that package labels required in AADC trays if residual is prepared under 6.2b (use yellow Label C or OEL).

b. 3-digit (required: optional for First-Class Mail not claimed at the 3-digit Barcoded rate): package labels not required except that package labels required in AADC trays if residual is prepared under 6.2b (use green Label 3 or OEL).

* * * * *

5.0 Tray Preparation—3-Digit Tier

* * * * *

5.4 Line 2

Line 2: class of mail and:

* * * * *

c. On AADC trays: LTR AADC 3D BARCODE, except for mailings in which residual mail is prepared under 6.2b use LTRS AADC BARCODED.

* * * * *

6.0 Residual Mail

6.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 5.0 are residual (nonqualifying) mail. Residual second- and third-class mail must be prepared under an option in 6.2 and 6.3. Residual First-Class Mail must be prepared under 6.2 and 6.3, or 6.4, or 6.5, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times. All residual mail must be presented under 6.6.

6.2 AADC Residual Preparation Options

Residual second- and third-class mail must be prepared under one of these options and in accordance with 6.3. First-Class Mail may be prepared under one of these options and 6.3 if not prepared under 6.4 or 6.5.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed-AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail in the 3-digit tier. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) in the 3-digit tier and in separate mixed-AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays within the 3-digit tier (remaining pieces sorted by AADC). A less-than-full tray for the origin SCF in the 3-digit tier containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

6.3 AADC Residual Preparation

Subject to 6.1 and 6.2, residual mail must be prepared as follows:

a. Package size:

(1) 3-digit (option 6.2b only): optional with no minimum for residual pieces in single- or multi-3-digit SCF trays in the 3-digit presort tier.

(2) AADC: required at 10 pieces per AADC (use L804) for residual pieces in mixed-AADC trays, in less-than-full AADC trays, and in AADC trays (under option 6.2b) that also contain qualifying mail. Packages of fewer pieces not permitted.

(3) Working: required grouping of pieces by AADC (use L804) in working trays. Packaging required only in a less-than-full working tray as follows: prepare as few packages as possible, each not more than 6 inches thick, without regard to AADC breaks.

b. Package presort and labeling:

(1) Optional 3-digit (only for option 6.2b): use green Label 3 or OEL.

(2) AADC (required except in full residual AADC trays): use pink Label A or OEL.

(3) Working (required in less-than-full working tray): use facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

c. Tray size:

(1) Optional 3-digit (only for single 3-digit SCFs in L002, Column A, identified with three bullets and prepared under option 6.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit origin SCF.

(2) Optional SCF (only for option 6.2b): required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the origin SCF.

(3) AADC: required if enough pieces to fill tray; less-than-full and overflow trays permitted.

(4) Mixed-AADC: required full trays; one less-than-full tray permitted.

(5) Working: required full trays; one less-than-full tray permitted.

d. Tray presort sequence and Line 1 labeling:

(1) Optional 3-digit (only for single 3-digit SCFs under option 6.2b); use L002, Column A (facilities identified with three bullets), on Line 1.

(2) Optional SCF (only for option 6.2b); use L002, Column B, on Line 1 for 3-digit areas listed in Column C.

(3) AADC (required); use L804 on Line 1.

(4) Mixed-AADC (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

(5) Working (required); on Line 1 use "MXD" followed by the applicable origin SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for second- and third-class mail entered by the mailer at an ASF or BMC.

e. Line 2: class (FCM, 2C, NEWS, or 3C), followed by LTRS and:

(1) On 3-digit trays (only single 3-digit SCFs under option 6.2b) and SCF trays (option 6.2b only): 3DG BARCODED.

(2) On AADC trays: AADC BARCODED.

(3) On mixed-AADC trays: BARCODED PKGS.

(4) On working trays: BARCODED WKG.

6.4 Sequencing, Grouping—First-Class Mail Only

[Insert text of current 6.2 renumber as 6.4. Revise the first sentence to read:]

First-Class residual pieces may be sequenced by ZIP Code and prepared with a listing:

[Delete renumbered 6.4f. Reletter 6.4 g and h as 6.4 f and g. Revise renumbered and relettered 6.4g to read:]

g. For Line 2: FCM LTRS BARCODED WKG.

6.5 Separation by Rate—First-Class Mail Only

[Insert text of current 6.3 and renumber as 6.5. Revise the first sentence to read as follows:]

First-Class residual pieces may be separated by rate qualification:

[Delete the phrase "First-Class" in renumbered 6.5a(1) and 6.5a(3). Delete renumbered 6.5a(4) and 6.5a(5). Revise renumbered 6.5d as follows:]

d. For Line 2: FCM followed by:

(1) On trays of delivery point barcoded mail: LTRS BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

6.6 Presentation

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail except that when prepared under 6.2b, 3-digit, SCF, and AADC trays in the 3-digit presort tier that contain both qualifying and residual pieces are grouped with trays of qualifying mail.

7.0 Documentation

* * * * *

7.3 Standards

Documentation must meet the basic standards in P012 and those below. Residual mail is included in the documentation if prepared under 6.2 and 6.3, or 6.4, or in the summary alone if prepared under 6.5. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

7.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). A residual segment is not required for First-Class Mail if separated under 6.5. Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 7.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 6.2 and 6.3) reported in a continuous sequential list under 7.6 within each tier listing. Under either option, data must be presented as shown in 7.7 and 7.8.

7.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 6.4; and, for AADC packages and AADC groups (in working trays) by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC").

7.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each qualification tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages; by lowest assigned 5-digit ZIP Code for city packages (second-class only); by 3-digit ZIP Code for 3-digit packages and First-Class residual mail prepared under 6.5; and, for AADC packages and AADC groups (in working trays) under 6.2 and 6.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC"). For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

* * * * *

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
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1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
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52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
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400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
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1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
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1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
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10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–022–00031–4)	15.00	[7] Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
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600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
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60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
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15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
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800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
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19 Parts:			
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400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
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21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
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300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
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23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
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200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
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700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
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26 Parts:			
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27 Parts:			
1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
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200–699	(869–019–00117–4)	20.00	July 1, 1993
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81–85	(869–019–00145–0)	21.00	July 1, 1993
86–99	(869–017–00143–1)	33.00	July 1, 1992
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300–399	(869–019–00151–4)	18.00	July 1, 1993
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
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*200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
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*15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
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49 Parts:			
1–99	(869–019–00193–0)	23.00	Oct. 1, 1993
100–177	(869–017–00191–1)	27.00	Oct. 1, 1992
178–199	(869–019–00195–6)	20.00	Oct. 1, 1993
200–399	(869–017–00193–7)	27.00	Oct. 1, 1992
400–999	(869–017–00194–5)	31.00	Oct. 1, 1992
1000–1199	(869–017–00195–3)	19.00	Oct. 1, 1992
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50 Parts:			
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CFR Index and Findings Aids	(869–019–00053–4)	36.00	Jan. 1, 1993

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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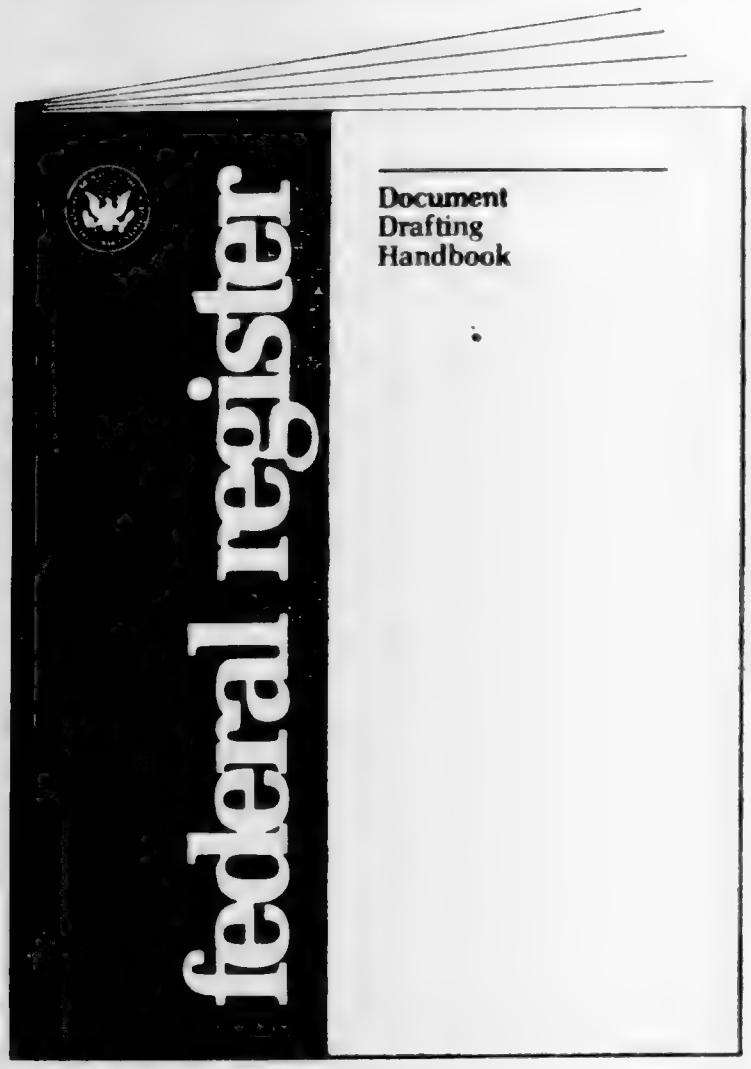

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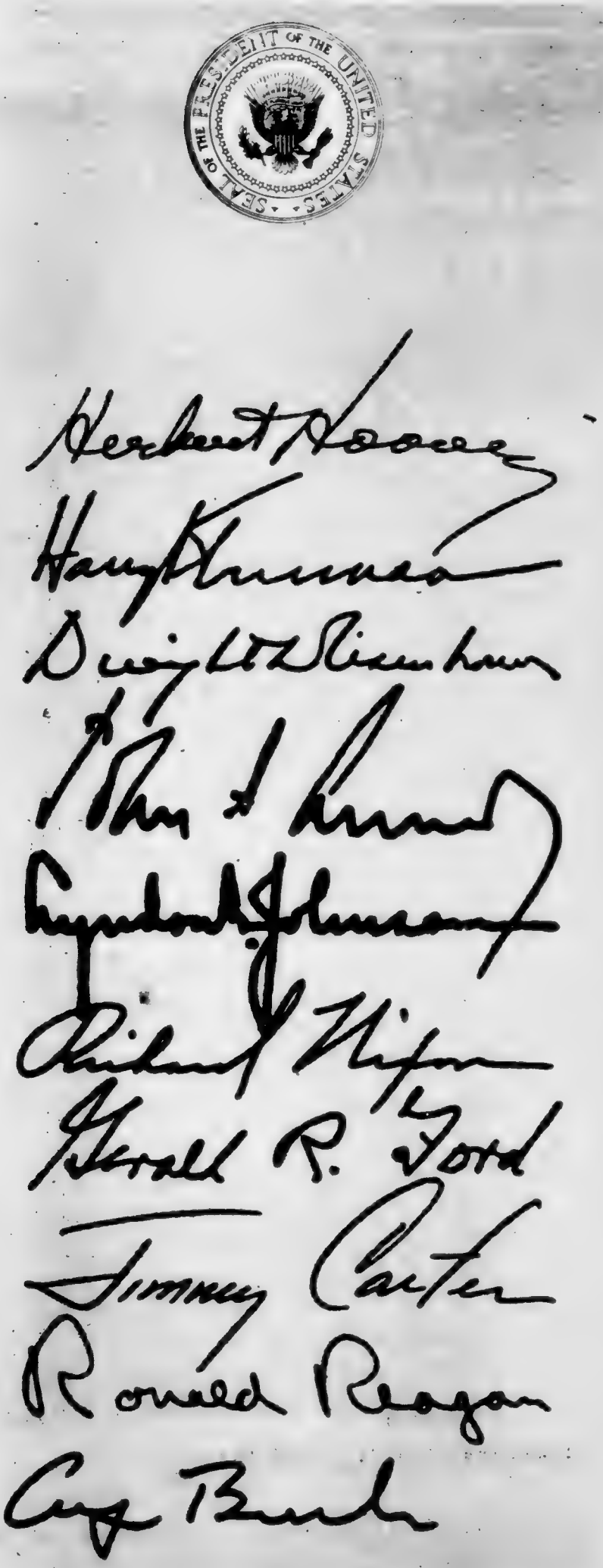

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federal register

Tuesday
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Tuesday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[FV–94–701]

Pecan Promotion and Research Plan; Termination Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This document terminates all but certain administrative provisions of the Pecan Promotion and Research Plan (Plan) effective on March 15, 1994. The remaining administrative provisions will be terminated at a later date.

A referendum was conducted with registration of voters from September 27 through October 1, 1993, and mail balloting during October 4–6, 1993. Termination of the Plan was favored by a majority of the growers, grower-shellers, and importers voting in the referendum.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Pecan Promotion and Research Plan: Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of a Referendum Agent to Conduct the Referendum, issued on July 28, 1993, and published on August 3, 1993 (58 FR 41203).

This action has been determined to be non-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this termination order.

This action is governed by section 1917(b) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013). The Act authorizes a national pecan promotion, research, and information program. In accordance with the Act, the Department developed and implemented the Pecan Promotion and Research Plan (7 CFR 1211.1–1211.78). The Plan became effective on May 1, 1992.

Section 1916(a) of the Act requires that the Secretary conduct a continuance referendum within 24 months of the effective date of the Plan for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the Plan. The order directing that a referendum be conducted was issued July 28, 1993, and published August 3, 1993 (58 FR 41203). A referendum was conducted with registration of voters from September 27 through October 1, 1993, and mail balloting during October 4–6, 1993. Termination of the Plan was favored by 62.3 percent of the growers, grower-shellers, and importers casting valid ballots in the referendum.

Therefore, pursuant to section 1917(b) of the Act and § 1211.73 of the Plan, it is hereby found and determined that termination of the Plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum and that the Plan should therefore be terminated.

The Act requires termination of the collection of assessments within six months after the determination that growers, grower-shellers, and importers favor termination of the Plan. This termination order terminates the assessment provisions of the Plan effective on March 15, 1994.

Termination of this Plan and any of its provisions including the requirements to report handlings and remit assessments, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of the Plan; or

(b) Release or extinguish any violation of this Plan; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

The Act provides that refunds of assessments shall be made to those growers, grower-shellers, and importers who applied for such refunds prior to the referendum and submitted satisfactory proof that they paid the assessment for which refund is requested. The Act, further, provides that if the escrow account, established in accordance with the Act, is not sufficient to meet the total demand for refunds, the Pecan Marketing Board shall prorate such refunds among all eligible growers, grower-shellers, and importers who demanded such refunds. Section 1211.55 of the Plan provides that the Board shall pay refund requests within 90 days of the date the results of the referendum are released by the Secretary.

The Act provides that the Secretary shall terminate activities under the Plan in an orderly manner as soon as practicable. To meet this requirement of the Act, it will be necessary to retain certain administrative provisions of the Plan. Accordingly, the following sections of the Plan will remain in effect until further notice: §§ 1211.1 through 1211.29, Definitions; § 1211.52, Failure to remit and report; § 1211.53, Determination of first handler; § 1211.55, Refunds; § 1211.60, Reports; § 1211.61, Books and records; § 1211.62, Confidential treatment of books, records, and reports; § 1211.70, Right of the Secretary; § 1211.71, Personal liability; § 1211.73, Suspension or termination; § 1211.74, Proceedings after termination; § 1211.75, Effect of termination or amendment; § 1211.76, Separability; and § 1211.78, OMB control numbers.

All other provisions including those dealing with establishment and membership of the Board, nomination procedures, powers, duties, policies, programs and projects, contracts, budgets, and assessments are terminated.

Order

It is therefore ordered, That the terms and provisions of Subpart A of the Plan requiring pecan growers, grower-

shellers, and importers to pay an assessment used to finance the national program for pecan promotion, research, and industry and consumer information, (7 CFR part 1211) except §§ 1211.1 through 1211.29, 1211.52, 1211.53, 1211.55, 1211.60, 1211.61, 1211.62, 1211.70, 1211.71, 1211.73, 1211.74, 1211.75, 1211.76, and 1211.78, which include definitions, reporting and remittance requirements necessary to enforce the collection of assessments which came due prior to this action, refunding, and the procedures necessary to carry out the orderly termination of activities under the Plan, are hereby terminated effective on March 15, 1994.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

PART 1211—PECAN PROMOTION AND RESEARCH PLAN

1. The authority citation for 7 CFR part 1211 is revised to read as follows:

Authority: 7 U.S.C. 6001 *et seq.*

Subpart A—Pecan Promotion and Research Plan

Subpart A to Part 1211—[Amended]

2. In part 1211, Subpart A, the undesignated centerheading preceeding § 1211.30, §§ 1211.30 through 1211.39, the undesignated centerheading preceeding § 1211.40, §§ 1211.40 through 1211.42, 1211.51, 1211.54, 1211.56, 1211.72, and 1211.77 are removed.

Dated: March 10, 1994

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–5986 Filed 3–14–94; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB46

Loan Policies and Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 614 on November 29, 1993 (58 FR 62513). The final regulation amends 12 CFR part 614 regarding the content of borrower rights notices for distressed loans. The regulation will no longer require that Farm Credit System institutions include a reference to foreclosure when notifying borrowers that their distressed loans may be suitable for restructuring. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 15, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR part 614, published on November 29, 1993 (58 FR 62513) is effective March 15, 1994.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority (12 U.S.C. 2252(a) (9) and (10)).

Dated: March 10, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–6009 Filed 3–14–94; 8:45 am]

BILLING CODE 6705–01–P

12 CFR Part 615

RIN 3052–AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments, Liquidity, Interest Rate Risk, and Eligible Investments; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 615 on November 30, 1993 (58 FR 63034). The final regulation amends 12 CFR part 615 allowing Farm Credit Banks, banks for cooperatives, and agricultural credit banks to hold specified eligible investments, in an amount not to exceed 30 percent of the total outstanding loans of such banks, to maintain a liquidity reserve, invest short-term surplus funds, and manage interest rate risk. These regulations also establish a liquidity reserve requirement for all Farm Credit System banks. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 15, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR part 615, published on November 30, 1993 (58 FR 63034) is effective March 15, 1994.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority: (12 U.S.C. 2252(a) (9) and (10)).

Dated: March 10, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–6010 Filed 3–14–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 94–20]

Addition of Tuvalu to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the Customs Service has found that Tuvalu does not impose discriminating duties of tonnage or imposts upon vessels belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country. Accordingly, vessels of Tuvalu are exempt from special tonnage taxes and light money in ports of the United States. This document amends the Customs Regulations by adding Tuvalu to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

DATES: *Effective Date:* This amendment to the Custom Regulations is effective March 15, 1994.

Applicability date: The reciprocal privileges for vessels registered in Tuvalu were applicable as of January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Whiting, Carriers Rulings Branch, 202–482–6940.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money," on all foreign vessels which enter United States ports (46 U.S.C. app. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. app. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Finding

On the basis of information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Tuvalu, the Customs Service has determined that the vessels of Tuvalu are exempt from the payment of the special tonnage tax and light money, effective January 1, 1993, and that the Customs Regulations should be amended accordingly.

Regulatory Flexibility Act and Executive Order 12866

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure requirements thereof are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866.

Drafting Information

The principal author of this document was Janet Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspections, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Accordingly, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read, in part, as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.22 also issued under 46 U.S.C. app. 121, 128, 141.

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Tuvalu" in appropriate alphabetical order.

Dated: March 7, 1994.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 94–5820 Filed 3–14–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AD50

Payments for Vocational Rehabilitation Services

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations on the vocational rehabilitation (VR) payment programs under titles II and XVI of the Social Security Act (the Act). These changes: (1) Expand access to the use of private and public non-State VR providers when a State VR agency declines to provide VR services to an individual whom we refer for services; (2) explain that, in appropriate cases, we will pay for only those VR services which have a causal relationship to an individual's performance of substantial gainful activity (SGA) for a continuous period of 9 months; and (3) prescribe the specific kinds of VR services for which we will pay. The changes are intended to make VR services more readily available to individuals under our VR payment programs and to improve the administration and cost effectiveness of these programs.

EFFECTIVE DATES: These rules are effective March 15, 1994, except that paragraphs (c)(2), (f)(1) and (f)(2) of §§ 404.2104 and 416.2204 shall become effective on October 1, 1994 with respect to Social Security beneficiaries or Supplemental Security Income (SSI) recipients whom the Social Security Administration (SSA) refers to a State VR agency on or after October 1, 1994, and §§ 404.2121 and 416.2221 shall become effective on October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: These final rules amend our regulations at §§ 404.2101 *et seq.* and §§ 416.2201 *et seq.*, which prescribe the rules for the title II and title XVI VR payment programs under sections 222(d) and 1615(d) of the Act. The final rules take into consideration the comments we received from interested individuals and public and private organizations and groups on the proposed rules we published on July 24, 1992 (57 FR 32926). These comments and the changes we have made in the proposed rules are discussed below.

In general, sections 222(d) and 1615(d) of the Act authorize the Secretary of Health and Human Services (the Secretary) to use the title II trust funds and the title XVI general fund to pay a State for the reasonable and necessary costs of VR services provided to a title II social security beneficiary who is disabled or blind or to a title XVI recipient who is disabled or blind, in three categories of cases. Specifically, these sections permit payment for VR services furnished to such beneficiaries or recipients in cases where: (1) The furnishing of such services results in the individual's performance of SGA for a continuous period of 9 months; (2) the individual is continuing to receive benefits, despite his or her medical recovery, under section 225(b) or 1631(a)(6) of the Act because of his or her participation in a VR program; or (3)

the individual, without good cause, refused to continue to accept VR services or failed to cooperate in such a manner as to preclude his or her successful rehabilitation. Payment may be made for the reasonable and necessary costs of VR services provided in these cases as determined in accordance with criteria established by the Commissioner of Social Security (the Commissioner).

Sections 222(d) and 1615(d) of the Act permit payment to a State for VR services if the services are provided by a State VR agency, i.e., an agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. However, in the case of a State which is unwilling to participate or does not have such a plan for VR services, section 222(d)(2) of the Act authorizes the Commissioner to enter into agreements or contracts with alternative VR service providers (alternate participants) for the purpose of providing VR services to disability beneficiaries under the title II VR payment program under the same conditions that would apply to a State VR agency. While section 1615(d) of the Act is silent with regard to alternate participants, section 1633(a) of the Act provides authority for using alternate participants under the title XVI VR payment program inasmuch as the latter section gives the Secretary the authority to make administrative and other arrangements under title XVI in the same manner as they are made under title II. Moreover, the legislative history of section 1615(d) indicates that Congress intended the title XVI VR payment program to parallel the title II program. Our title II and title XVI regulations, therefore, contain virtually identical provisions for the title II and title XVI VR payment programs.

When we first published final regulations to implement sections 222(d) and 1615(d) of the Act on February 10, 1983, at 48 FR 6286, we indicated that we would reexamine the provisions of the regulations and consider possible changes after we had gained experience administering the title II and title XVI VR payment programs. Certain recommendations contained in the March 1988 Report of the Disability Advisory Council also suggested a need to consider new approaches to these programs to increase the availability of VR services for disabled or blind beneficiaries and recipients and to ensure that such beneficiaries and recipients are provided with those services that are necessary to achieve and maintain employment.

The basic purpose of the title II and title XVI VR payment programs is twofold: (1) To make VR services more readily available to disabled or blind Social Security beneficiaries and SSI recipients; and (2) to achieve savings for the title II trust funds and the title XVI general fund. To promote these objectives more effectively, we are amending our existing regulations to provide for greater use of alternate participants under the VR payment programs and to improve the administration and cost effectiveness of the programs so as to ensure that savings will accrue to the trust funds and the general fund.

None of the changes to the VR regulations is a major departure from the current program. The changes are meant to address the most significant criticisms of the SSA VR program. By expanding the opportunity for private VR providers to participate in the program, we are responding to the recommendations of the 1988 Disability Advisory Council, and the dictates of Congress. By permitting payment to providers for only services which have a causal connection to the individual's completion of nine months of SGA, we are responding to criticisms by the General Accounting Office and the Inspector General of the Department of Health and Human Services. The Inspector General stated in his most recent and thorough report on SSA's VR program, in April 1990, "SSA should strengthen the linkage between the SSA vocational rehabilitation payment program and actions to * * * rehabilitate SSA clients."

Use of Alternate Participants

These final regulations revise §§ 404.2104 and 416.2204 to provide for the use of alternate participants in cases where a State VR agency declines to provide VR services to a disabled or blind Social Security beneficiary or SSI recipient whom we referred to the State VR agency. These regulations provide that in such cases, the State will be considered unwilling to participate through its VR agency with respect to such individual.

When we first published regulations for the VR payment programs, we provided in §§ 404.2104 and 416.2204 that the option of participating through their VR agencies would be offered first to the States and that a State had to notify us within 60 days after publication of the regulations whether it intended to participate through its VR agency(ies). All States chose to participate.

Existing §§ 404.2104 and 416.2204 also give a State the option of not participating, including terminating participation, or limiting the scope of its participation. If a State decides not to participate or to limit participation, the existing regulations provide that we may arrange for VR services through an alternate participant for disabled or blind beneficiaries or recipients in the State or, where the State has limited its participation, for those beneficiaries and recipients not included within the scope of the State's participation. While we are making certain technical changes to the rules concerning a State's option not to participate or to limit participation, the existing provisions relating to these options remain substantially the same under the revised regulations. However, while existing §§ 404.2104 and 416.2204 provide each State the option of declaring its intent to participate with respect to the title II or title XVI VR payment program as a whole, the revised §§ 404.2104 and 416.2204 afford each State the opportunity to participate through its VR agency(ies) with respect to disabled title II beneficiaries in that State, or disabled or blind title XVI recipients in that State, on a case-by-case basis, unless the State has notified us in advance of its decision not to participate or to limit participation.

Under the revised §§ 404.2104 and 416.2204, unless the State has exercised its option not to participate or to limit participation through its VR agency(ies), we will provide the State the opportunity to participate with respect to disabled or blind Social Security beneficiaries or SSI recipients in the State by referring such individuals first to the State VR agency(ies) for necessary VR services. The revised regulations require the State to declare, through the State VR agency, whether it is willing to participate with respect to a beneficiary or recipient whom we referred to that VR agency. Under the revised regulations, the State may participate with respect to such an individual only if the State VR agency decides to accept the individual as a client for VR services or to place the individual into an extended evaluation process and notifies us of such decision in writing within a prescribed time period.

In response to comments we received concerning the proposed rules, we are defining the phrases "accept the beneficiary as a client for VR services" and "accept the recipient as a client for VR services," which are used in §§ 404.2104 and 416.2204, respectively, to mean that the State VR agency determines that the individual is eligible for VR services and places the individual into an active caseload status for development of an individualized written rehabilitation program. We are

defining these phrases in §§ 404.2103 and 416.2203, respectively, since these sections provide the definitions of terms used in the VR payment regulations.

In addition, we recognize that there are occasions when a State VR agency places an individual whom we referred to that agency into an extended evaluation process prior to deciding whether the individual is eligible for State VR services. Therefore, the revised §§ 404.2104 and 416.2204 provide that the State VR agency must notify the appropriate SSA Regional Commissioner of its decision either to accept the individual as a client for VR services or to place the individual into an extended evaluation process no later than the close of the fourth month following the month in which we referred the individual to the State VR agency. As we explain later in this preamble, we have changed "third month" in the proposed rules to "fourth month" in the final rules in response to comments we received concerning the proposed regulations. If we do not receive a notice with respect to an individual within the prescribed time period, we will consider the State unwilling to participate with respect to the individual and may arrange for VR services for the individual through an alternate participant.

We are adding provisions to §§ 404.2103 and 416.2203 to define the phrases "place the beneficiary into an extended evaluation process" and "place the recipient into an extended evaluation process" to mean that the State VR agency determines that an extended evaluation of the individual's VR potential is necessary to determine whether the individual is eligible for VR services and places the individual into an extended evaluation status.

In those cases where the State VR agency notifies the appropriate SSA Regional Commissioner within the prescribed time period of a decision to place the Social Security beneficiary or SSI recipient into an extended evaluation process, the State VR agency also must notify the appropriate SSA Regional Commissioner, at the conclusion of the extended evaluation, of the State VR Agency's final decision whether or not to accept the individual for further VR services. If following the completion of the extended evaluation we receive a notice of a decision by the State VR agency to accept the individual as a client for VR services, the State may continue to participate with respect to such individual. If we receive a notice of a decision by the State VR agency not to accept the individual as a client for VR services, we may arrange for VR services for such individual through an alternate participant.

These provisions also apply with respect to the class(es) of disabled or blind beneficiaries or recipients whom we refer to a State VR agency in a case in which a State has decided to limit participation of its VR agency(ies) to such class(es) of beneficiaries or recipients.

Minimum Qualifications for Alternate Participants

Because the revisions of §§ 404.2104 and 416.2204 provide for greater use of alternate participants under the title II and title XVI VR payment programs, we are adding new §§ 404.2106 and 416.2206 to our regulations to specify certain minimum qualifications for alternate participants, that is, any for-profit or not-for-profit agency, organization, institution, or individual, other than a State VR agency. Existing §§ 404.2104(a) and 416.2204(a) provide that an alternate participant must have a plan for VR services that is similar to a State plan approved under title I of the Rehabilitation Act of 1973, as amended. The final regulations do not change this basic requirement. However, we clarify in §§ 404.2106 and 416.2206 of these final rules that the plans of alternate participants must provide, among other things, that the provision of VR services to disabled or blind beneficiaries or recipients will meet certain minimum standards. We also explain in §§ 404.2106 and 416.2206 that we will use as alternate participants only those VR service providers that are licensed, certified, accredited or registered, as appropriate, in the State in which they provide VR services, and are not precluded from Federal procurement or nonprocurement programs.

Payments to Alternate Participants

The existing regulations provide that we will pay alternate participants for VR services furnished to beneficiaries or recipients under the same terms and conditions that apply to State VR agencies. These final rules do not change this requirement.

Requirements for Payment

The final rules amend §§ 404.2108 and 416.2208 to specify the information that the State VR agency or alternate participant must provide in order to claim and receive payment under our VR payment programs. The final rules provide that each claim for payment must be submitted on a form prescribed by us and contain the following information: A description of each service provided; a statement of when the service was provided; and the cost of the service. In response to comments we received on the proposed rules, we deleted the requirement in the proposed rules that the claim also contain, as appropriate, an explanation of how the service contributed to the individual's performance of a continuous 9-month period of SGA, or an explanation of how the service was reasonably expected to motivate or assist the individual to perform such a continuous period of SGA. Instead, we are including provisions in §§ 404.2121 and 416.2221 of the final rules to require the State VR agency or alternate participant to provide this information as part of the validation review process.

The final rules also amend §§ 404.2108 and 416.2208 to provide that the State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disabled or blind beneficiaries or recipients with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under our VR payment programs.

VR Services Contributing to a Continuous Period of SGA

The final regulations amend §§ 404.2111 and 416.2211 which provide the criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months of SGA. We are amending §§ 404.2111(a)(1) and 416.2211(a)(1) to provide that any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous 9-month period of SGA in the situation where the individual does not recover medically and the continuous 9-month period of SGA begins 1 year or less after VR services end. We are deleting the words "might have" before the phrase "significantly motivated or assisted" in the existing regulations to strengthen the casual relationship between the VR services and the continuous period of SGA.

Refusal of VR Services

We are amending §§ 404.2113 and 416.2213 to include a timeframe within which State VR agencies and alternate participants are to report cases of VR refusal. These are cases in which an individual refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude his or her successful rehabilitation.

Services for Which Payment May Be Made

Under section 222(d)(5) of the Act, the Secretary may limit the type, scope, or amount of VR services that are subject to payment in accordance with regulations designed to achieve the purpose of section 222(d). In general, §§ 404.2114 and 416.2214 of the existing regulations permit payment for evaluation services and all services provided by a State VR agency under an Individualized Written Rehabilitation Program (IWRP) or by an alternate participant under a similar document.

Consistent with section 222(d)(5) of the Act, we are revising §§ 404.2114 and 416.2214 to describe the specific kinds of VR services for which payment may be made in all three categories of cases under the VR payment programs. Under the final rules, VR services for which payment may be made include only those services described in §§ 404.2114(b) and 416.2214(b). In addition, these services are subject to payment only if: (1) The services are necessary to determine an individual's eligibility for VR services or the nature and scope of the services to be provided; or (2) the services are provided under an IWRP, or under a similar document in the case of an alternate participant, and could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

In response to comments we received on the proposed rules, we are clarifying §§ 404.2114(a)(1) and 416.2214(a)(1) to indicate that VR services for which payment may be made include diagnostic or other evaluation services which are provided after an individual has been determined to be eligible for VR services and prior to the implementation of an IWRP (or similar document in the case of an alternate participant) and which are necessary to determine the nature and scope of the VR services to be provided to the individual.

Additionally, we are clarifying §§ 404.2114 (b)(3) and (b)(12) and 416.2214 (b)(3) and (b)(12) to indicate that the employment referred to in these sections may be at or above the SGA level. The individual's employment is not restricted to the minimum SGA threshold. Also, in these final rules, we have modified some of the descriptions of the VR services in §§ 404.2114(b) and 416.2214(b) to reflect changes which the Rehabilitation Act Amendments of 1992 made to the list of VR services covered under the Rehabilitation Act of 1973.

Cost Containment

We are amending §§ 404.2117 and 416.2217 to require, rather than to expect, State VR agencies and alternate participants to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR part 361. The final rules also provide that the cost incurred for VR services must comply with the cost-containment policies of the State VR agency or, in the case of an alternate participant, with similar written policies established under a negotiated plan in accordance with a written agreement or contract between us and the alternate participant. These cost-containment policies must provide guidelines to ensure the lowest reasonable cost for VR services while allowing flexibility to provide for an individual's needs. With reference to the cost-containment policies of the State VR agencies, the phrase "established under 34 CFR part 361" which appeared in proposed §§ 404.2117(c)(1) and 416.2217(c)(1) has been deleted in the final rules since the regulations in 34 CFR part 361 do not themselves explicitly mandate the establishment of specific "cost-containment" policies.

Under these final rules, a State VR agency or alternate participant is required to maintain and use these cost-containment policies to govern the costs incurred for all VR services for which payment will be requested under the VR payment programs. In response to comments, the requirement in the proposed rules that the State VR agency or alternate participant send to us on a yearly basis a written summary of the written cost-containment policies has been deleted. Instead, these final rules require that, before the end of the first calendar quarter of each year, the State VR agency must send to us a written certification that approved cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the State VR agency requests payment under our VR payment programs. The rules further specify who may sign such certification. In addition, the final rules require that State VR agencies must specify the basis upon which such certification is made, e.g., a recent audit by an authorized State, Federal or private auditor, or other independent compliance review, and the date of such audit or compliance review. In the case of an alternate participant, these certification requirements shall be incorporated into the negotiated agreement or contract. The final rules also provide that we may request a copy(ies) of the specific written cost-containment policies of a State VR agency or alternate participant if we determine that such additional information is necessary to ensure compliance with the requirements of our VR payment programs.

Validation Reviews

We are revising §§ 404.2121 and 416.2221. The existing rules provide for postpayment reviews of claims submitted by State VR agencies or alternate participants for payment under our regulations. Under the revised rules, we will institute a validation review of a sample of claims filed by each State VR agency or alternate participant. Some validation reviews will be conducted prior to payment and some will be conducted after payment is made.

For each claim selected for review, the State VR agency or alternate participant must submit records of the VR services and costs for which payment has been requested or made to show that the services and costs meet the requirements for payment. Also, we have modified the proposed rules by providing in these final rules that for claims for payment in cases described in §§ 404.2101(a) and 416.2201(a), a clear explanation or existing documentation that demonstrates how the service contributed to the individual's performance of a continuous 9-month period of SGA must be provided as part of the validation review documentation. Similarly, for claims for payment in cases described in § 404.2101 (b) or (c), or § 416.2201 (b) or (c), a clear explanation or existing documentation which demonstrates how the service was reasonably expected to motivate or assist the individual to return to, or continue in, SGA must be provided. We are making these changes in the final rules in response to comments we received on the proposed rules from commenters who expressed strong objections about the reporting burden related to the requirements of proposed §§ 404.2108(b)(4) and 416.2208(b)(4). These sections of the proposed rules would have required that each claim for payment that is filed with us include a clear explanation of how the service contributed to the individual's performance of a continuous 9-month period of SGA, or how the service was reasonably expected to motivate or assist the individual to perform SGA, as appropriate. Rather than require this information for each claim that is filed, we are including in §§ 404.2121 and 416.2221 of the final rules requirements that this information or appropriate supporting documentation be provided

as part of the validation review process. We are including these requirements as a substitute for the requirements in proposed §§ 404.2108(b)(4) and 416.2208(b)(4) which we are deleting in these final rules.

The purposes of these validation reviews are to ensure that the VR services and costs meet the requirements for payment under our regulations, to assess the validity of our documentation requirements, and to assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under our regulations.

In any validation review, we will determine the amount of payment and will notify the State VR agency or alternate participant of our determination. In any postpayment validation review, if we find that we have paid more or less than the correct amount, we will determine that there is an overpayment or underpayment and will notify the State VR agency or alternate participant that we will make the appropriate adjustment. In any case, if a State agency or alternate participant disagrees with our determination, it may appeal our determination. These regulations do not change the existing rules set out in §§ 404.2127 and 416.2227 for appealing determinations or resolving disputes under the VR payment programs.

Other Changes

We are also making certain changes to §§ 404.2102 and 416.2202, 404.2108 and 416.2208, and 404.2109 and 416.2209 to conform to the changes to the other sections of the regulations discussed above.

Comments Received Following Publication of the Notice of Proposed Rulemaking

We published proposed rules on payments for VR services as a notice of proposed rulemaking in the **Federal Register** on July 24, 1992 (57 FR 32926). We also mailed copies of the proposed rules to State VR agencies. We invited comments on the proposed rules and gave interested parties 60 days within which to submit comments. The comment period closed on September 22, 1992.

We received 45 letters with comments. These included comments from State VR agencies, private VR agencies, national organizations and other organizations active in the field of VR. Portions of some letters dealt with operational or administrative issues outside the scope of the proposed rules, or discussed provisions of the regulations that were not being altered by the proposed regulations. Because these matters are beyond the scope of the proposed rules, they are not addressed here.

For ease of comprehension and perspective, we have grouped the comments according to the issues raised. The comments and our responses are presented in the sequence of the regulations.

Use of Alternate Participants—§§ 404.2104 and 416.2204

Comment: Many commenters indicated that the proposed timeframe for a State VR agency to notify us of its decision to accept an SSA-referred beneficiary or recipient as a client for VR services was too short. The proposed rules required a State VR agency to notify us no later than the close of the third month following the month of referral. Some of these commenters further indicated that the timeframe for providing notification was too restrictive, particularly if the referred individual required an extended evaluation prior to the State VR agency deciding whether or not it could serve the individual's VR needs.

Response: In consideration of the commenters' concerns about the length of the proposed timeframe, we are extending the timeframe for the State VR agency to notify us about its decision to accept an SSA-referred beneficiary or recipient as a client for VR services. The revised timeframe allows the State VR agency to notify us by the close of the fourth month following the month of referral. This revised timeframe considers:

—An increase in the time for State VR agencies to notify SSA as suggested by many commenters;
—That a longer interval could cause the referred individual's rehabilitation potential to deteriorate before re-referral to an alternate participant occurs, thereby causing a potential rehabilitation opportunity to slip away;
—That possible backlogs in the State VR agencies can delay the time it takes for an SSA-referred beneficiary or recipient to be contacted about the State's available VR services; and
—The requirement of the Rehabilitation Act Amendments of 1992 that a State VR agency generally must make a determination of whether an individual is eligible for VR services within 60 days after the individual makes application for services.

We believe that the revised timeframe will permit adequate time, in most cases, for a State VR agency to arrive at a decision and to notify us of its acceptance of an SSA-referred beneficiary or recipient for State VR services.

We recognize that some disabled or blind beneficiaries or recipients whom we refer to the State VR agency may require a period of extended evaluation prior to the State VR agency deciding whether the individual is eligible for State VR services. Therefore, we are making changes in the final rules to provide that if the State VR agency decides that an extended evaluation is needed, then the State VR agency will notify us no later than the close of the fourth month following the month of referral, that the individual has been placed into an extended evaluation process. The final rules also require the State VR agency to notify us of the individual's "accepted" or "not accepted" status following the conclusion of the extended evaluation. This second notification, in extended evaluation situations, will permit us to make an informed decision concerning possible re-referral of the individual to an alternate participant in those cases where the State VR agency has decided not to provide VR services beyond the extended evaluation to an SSA-referred beneficiary or recipient.

Comment: Several commenters requested that we define the term "accepted." Another commenter inquired as to what will constitute a notification of acceptance.

Response: In these final rules, we are defining the phrases "accept the beneficiary as a client for VR services" and "accept the recipient as a client for VR services" in §§ 404.2103 and 416.2203, respectively, to mean that the State VR agency determines that the individual is eligible for VR services and places the individual into an active caseload status for development of an IWRP. In addition, the final rules provide that the State VR agencies also notify us of those SSA referred beneficiaries or recipients whom the State VR agencies place into an extended evaluation process prior to determining whether such individuals are eligible for VR services.

In regard to how State notifications to us will be structured, we will issue procedural instructions outlining the form and content of State notifications. To the extent allowable, flexibility in reporting formats will be taken into consideration, e.g., electronic notification.

Comment: Several commenters indicated that the requirement to have the State VR agencies notify us concerning which of the beneficiaries

and recipients whom we referred to the State VR agency are being accepted for State VR services will present an administrative burden to the States. Another commenter expressed concern that the reporting provision will have an adverse impact upon the resources of the State Disability Determination Services (DDS).

Response: The proposed rules recognized that an additional reporting burden is associated with this regulatory change. However, in order to expand rehabilitation opportunities for disabled or blind beneficiaries and recipients, it is necessary for us to know which of the individuals whom we referred to the State VR agency are accepted for VR services so that we may consider those not accepted for possible re-referral to an alternate participant.

In order to minimize the State's reporting burden, we are asking for notification of acceptances (instead of the more voluminous number of nonacceptances) of beneficiaries and recipients whom we referred to the State VR agency, i.e., individuals who are determined to be entitled to Social Security disability benefits or eligible for SSI disability or blindness benefits (not those individuals whose claims for benefits are denied). We believe that we have limited the referral reporting burden on the State VR agencies while still achieving a sufficient level of information to permit us to consider those disabled or blind beneficiaries who are eligible for a possible re-referral to an alternate provider for services.

We do not anticipate an adverse impact upon the resources of the State DDS as this regulation does not prescribe changing the referral process between the State's DDS and VR agency, nor does it entail changing the existing process the DDS uses to report to SSA on these referrals.

Comment: Some commenters asked whether we planned to limit payments to State VR agencies under our VR payment programs to those cases involving a beneficiary or recipient whom we referred to the State VR agency.

Response: It is not our intention to limit payments to State VR agencies under the VR payment programs to only those cases in which the beneficiary or recipient was referred to the State VR agency by SSA. Consistent with our past practices, we will continue to pay claims filed by State VR agencies for payment of the costs of VR services provided to a disabled or blind Social Security beneficiary or SSI recipient in accordance with the requirements of our regulations, regardless of the means by which the beneficiary or recipient came to the attention of the State VR agency.

Comment: One commenter stated that the use of alternate participants should be limited to those instances where a State VR agency is not cooperating with us. Another commenter thought that State VR agencies have the sole responsibility of providing services to those who are disabled. In addition, one commenter stated that the services available from an alternate participant should be referred to as "VR like" services or as "similar to" VR services to acknowledge that only State designated units are authorized to provide VR services under the program carried out under title I of the Rehabilitation Act of 1973, as amended.

Response: Under sections 222(a) and 1615(a) of the Act, disabled or blind Social Security beneficiaries and SSI recipients are to be referred for VR services to the State agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. Sections 222(d) and 1615(d) of the Act authorize payment to the State for the costs of VR services provided to such beneficiaries or recipients in certain categories of cases. However, with respect to Social Security beneficiaries, section 222(d)(2) of the Act provides that if a State is unwilling to participate or does not have an approved State plan for VR services, the Commissioner is authorized to provide such services by agreement or contract with alternative VR service providers under the same conditions that would apply to a State VR agency. Section 1633(a) provides authority for making similar arrangements for VR services with respect to SSI recipients. In order to make VR services more readily available to beneficiaries and recipients, these final rules provide that a State will be considered unwilling to participate with respect to an individual whom we referred to the State VR agency if that agency declines to provide VR services to that individual.

There is nothing in section 222(d)(2) of the Act to suggest a distinction between the kind of services that are available from a State VR agency and the services that would be provided by an alternate participant. Consequently, for the purpose of our regulations regarding the use of alternate participants, we do not believe that there is any need to create a distinction in the nomenclature used to identify the services available from the State VR agency and those provided by an alternate participant. Additionally, §§ 404.2103 and 416.2203 already define the terms "alternate participants" and "Vocational Rehabilitation services." In neither instance is a distinction made to differentiate the services available from a State VR agency and those that would be provided by an alternate participant. These final rules do not amend those definitions.

Comment: Some commenters expressed concern that the practice of making the first referral of the beneficiary or recipient to the State VR agency will permit such agencies to select those referrals with the best rehabilitation potential, thereby leaving the alternate participants to serve the most difficult cases having a lesser probability of rehabilitation success and provider payment. Another commenter indicated that we should provide a mixture of cases in the referrals made to VR service providers in order to balance the levels of disability severity contained in the caseloads referred to each provider.

Response: Sections 222(a) and 1615(a) of the Act require us to refer disabled or blind Social Security beneficiaries and SSI recipients for VR services to the State agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. Section 222(d)(2) of the Act provides that it is only in the event that the State is unwilling to participate or does not have an approved State plan that we may arrange for such services through an agreement or contract with an alternative VR service provider. Therefore, the law directs SSA to follow a prescribed order in determining where to refer individuals for VR services.

In addition, the Federal regulations governing the State plan for VR services (34 CFR 361.36) provide that the "* * * plan must assure that those individuals with the most severe handicaps are selected for service before other individuals with handicaps." Thus, the State VR agencies are required to select those individuals with the most severe impairments for VR services before selecting other individuals.

We also believe that a sufficiently large pool of disabled or blind beneficiaries and recipients exists so that both the State VR agencies and the alternate participants will have the opportunity to offer VR services to a diverse cross section of these beneficiaries and recipients.

Comment: One commenter asked whether a State VR agency could be reimbursed for services provided to a beneficiary or recipient whom SSA had referred previously to an alternate participant.

Response: A State VR agency which provides VR services to a beneficiary or

recipient who becomes its client after having been referred to an alternate participant may be paid for such services if the services and costs meet the requirements for payment under our regulations, including the requirements in §§ 404.2108–404.2117 for cases involving Social Security beneficiaries or §§ 416.2208–416.2217 for cases involving SSI recipients. Among other things, the services must have been provided during the period specified in §§ 404.2115 or 416.2215, as appropriate. Also, §§ 404.2117(d) and 416.2217(d) provide that the total payment for the costs of services provided to an individual in each case, including any prior payments made under our VR payment programs, must not be so high as to preclude a "net savings" to the title II trust funds or the title XVI general fund, as the case may be. In addition, §§ 404.2117(f) and 416.2217(f) provide that payment will not be made more than once for the same VR service or cost.

While a State VR agency or alternate participant which provided only evaluation services to a beneficiary or recipient may be paid for such services in certain, limited circumstances described in §§ 404.2111, 404.2113, 416.2211 and 416.2213, the regulations generally permit payment only to a State VR agency which provided services under an IWRP, or to an alternate participant which provided services under a similar document, as provided under §§ 404.2114(a)(2) and 416.2214(a)(2). Thus, with few exceptions, we would pay only a State VR agency or alternate participant which developed an IWRP, or similar document in the case of an alternate participant, with the individual and coordinated the services. At any given time, only one VR service provider would be providing services to the individual under an IWRP or similar document. We will not pay more than one provider for the costs of the same services provided during the period specified in §§ 404.2115 or 416.2215.

Comment: One commenter stated that regional staff of the Rehabilitation Services Administration (RSA) should approve the plan for VR services developed by an alternate participant to assure that the requirements for a State plan under title I of the Rehabilitation Act of 1973, as amended, have been included in the alternate participant's plan.

Response: While §§ 404.2104(a) and 416.2204(a) provide that an alternate participant must have a plan for VR services similar to an approved State plan, the details of the plan of an alternate participant will be developed under the terms of the negotiated agreement or contract between us and the alternate participant. The agreement or contract will include procedures for the review and approval of such plan. However, we do not believe that it is necessary to include such procedures in the regulations.

Comment: A commenter stated that our plan to expand the use of alternate participants suggested that there are problems with State VR agencies in providing VR services to individuals with disabilities.

Response: Our desire to increase the availability of sources of VR services for disabled or blind beneficiaries and recipients is not intended to question the quality of work performed by the State VR agencies, but rather to address a mutual goal shared with the States, i.e., that all those desiring VR services shall have the opportunity to receive them.

SSA's interest is in arranging for the maximum number of disabled or blind beneficiaries and recipients to have access to the availability of rehabilitation and employment opportunities which can assist them in achieving and sustaining employment at or above the SGA threshold. We believe a sufficiently large pool of disabled or blind beneficiaries and recipients exists so that both the State VR agencies and alternate participants have ample opportunity to serve such beneficiaries and recipients. For this reason, we believe that an increased number of disabled or blind beneficiaries and recipients could achieve and sustain rehabilitation and employment opportunities if an increased number of VR provider sources are available to serve the needs of such beneficiaries and recipients.

Basic Qualifications for Alternate Participants—§§ 404.2106 and 416.2206

Comment: Three commenters questioned the adequacy of the qualifications for alternate participants in §§ 404.2106 and 416.2206 and recommended that we include a specific provision in the regulations providing for ongoing monitoring of alternate participants. The commenters believed that the provisions requiring that alternate participants be licensed, certified, accredited, or registered would be inadequate without providing for ongoing monitoring of the services provided. They also believed that periodic accreditation or certification, e.g., every three years, would not be an adequate substitute for ongoing monitoring of such participants. One commenter asked for a definition of the term "qualified personnel" as used in proposed §§ 404.2106(b)(2) and 416.2206(b)(2), which provide that the plans of alternate participants must provide that only qualified personnel will be used to furnish VR services. One commenter asked how and on what basis alternate participants would provide services. Another commenter suggested that we require IWRPs from alternate participants to document the relationship of the services provided to the performance by an individual of a continuous 9-month period of SGA in appropriate cases.

Response: We did not adopt the recommendation to include a specific provision in the regulations to provide for ongoing monitoring of the services of alternate participants. Rather, the negotiated agreement or contract which we enter into with an alternate participant will include procedures for monitoring such services. In addition, we will monitor the services provided by alternate participants by conducting validation reviews under §§ 404.2121 and 416.2221 of the claims for payment that are filed by such participants.

We do not believe it is necessary to expand the requirements of §§ 404.2106 and 416.2206 since these sections are intended to state only the basic qualifications for alternate participants. Under §§ 404.2106 and 416.2206, we will select as alternate participants only those VR service providers that are licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which they operate. In addition, §§ 404.2104(a), 404.2106(a)(1)(ii), 416.2204(a), and 416.2206(a)(1)(ii) provide that to be an alternate participant, a VR service provider must have a plan for VR services that is similar to a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. Sections 404.2106(a)(1)(ii) and 416.2206(a)(1)(ii) also state that this plan shall govern the provision of VR services to individuals. While the plan of an alternate participant for providing VR services to individuals will include provisions similar to those of an approved State plan, the details of the plan will be developed under the negotiated agreement between us and the alternate participant. We state in §§ 404.2106(b) and 416.2206(b), however, that the plan of an alternate participant must provide that the provision of VR services to individuals will meet certain minimum standards, including the requirement that only qualified personnel and facilities will be used to furnish such services. Specific criteria relating to this and other requirements for providing services will be prescribed in the plan for VR services

in accordance with the terms of the negotiated agreement or contract.

The VR services furnished to an individual by an alternate participant will be provided under a document similar to the IWRP used by State VR agencies. With respect to validation reviews under §§ 404.2121 and 416.2221, the documentation requirements for claims for payment in cases in which the individual completes a continuous 9-month period of SGA are the same for both State VR agencies and alternate participants.

Comment: Four commenters stated that proposed §§ 404.2106 and 416.2206 concerning the basic qualifications for alternate participants would not ensure the protection of client rights to the same extent provided in the Rehabilitation Act of 1973, as amended, and required in State plans. They recommended that the plans of alternate participants include specific provisions to protect consumer rights, including procedural safeguards and the right to a review of decisions by the provider affecting the individual. One commenter indicated that clients of State VR agencies are protected because State plans are required to undergo public hearings and States are required to provide procedural safeguards and advise clients of their rights. Another commenter expressed the view that the rights of client participation provided by an alternate participant should be equal to the rights that are required to be provided by State VR agencies, including providing for participation by the client in the development of an IWRP and providing procedural safeguards and the right to appeal decisions affecting the individual.

Response: We agree with the comments regarding the need to protect client rights when we make arrangements for VR services for beneficiaries or recipients through alternate participants. The regulations provide that an alternate participant must have a plan for VR services that is similar to a State plan approved under title I of the Rehabilitation Act of 1973, as amended. We will include provisions in the negotiated agreement or contract with each alternate participant to ensure that the plan of the alternate participant includes provisions to protect client rights.

Comment: Two commenters questioned whether there were sufficient incentives for private or public non-State VR service providers to meet the requirements that an alternate participant have a plan similar to the State plan governing the provision of VR services to individuals and that such plan include certain minimum standards for the provision of services. They also questioned whether there are interested private or public non-State VR service providers that would be able to meet these requirements of the regulations.

Response: The regulations require that an alternate participant have a plan for providing services to individuals that is similar to a State plan approved under title I of the Rehabilitation Act of 1973, as amended. We will solicit expressions of interest in serving as alternate participants from qualified private or public non-State VR service providers, and will negotiate agreements or contracts with those VR service providers that are interested in providing services to disabled or blind beneficiaries or recipients under the conditions prescribed in the regulations.

Comment: One non-State VR provider indicated that most providers are subject to national accreditation for services rendered and asked what outside quality control indicators exist for State VR agencies.

Response: A State plan for providing VR services must comply with the requirements of the Rehabilitation Act of 1973, as amended, and RSA regulations. In addition, the 1992 amendments to the Rehabilitation Act of 1973 require RSA to develop and publish performance standards and indicators for State VR programs. These regulations are in the process of development at this writing.

Requirements for Payment—§§ 404.2108 and 416.2208

Comment: One commenter believed it was unnecessary to require in each claim for payment the information specified in §§ 404.2108(b) (1), (2) and (3) and 416.2208(b) (1), (2) and (3), i.e., a description of each service, when the service was provided, and the cost of the service. Two commenters objected to providing this information on a form prescribed by us.

Response: We believe that SSA should know what it pays for and, therefore, that it is not unreasonable to require that every claim for payment must include such basic information as a description of each service provided, when the service was provided, and the cost of the service. By specifying that the claim for payment containing this information be in a form prescribed by us, we did not intend to preclude a provider from requesting our approval to use reasonable facsimiles of our claim form, such as those generated by a provider's automated system.

Comment: Many commenters objected to the documentation requirements set forth in §§ 404.2108(b)(4) (i) and (ii) and 416.2208(b)(4) (i) and (ii), i.e., an explanation of how the service contributed to the individual's performance of a continuous 9-month period of SGA, or how the service was reasonably expected to motivate or assist the individual to perform such a continuous period of SGA, as appropriate. The commenters believed that providing this documentation for all claims would be burdensome and time-consuming, and would emphasize reporting rather than program improvements. These requirements were also viewed by a few commenters as a disincentive to serving beneficiaries or seeking payment from SSA. Several other commenters thought that these requirements questioned the integrity of rehabilitation counselors and could lead to second guessing of their decisions. Most of these commenters suggested that we delete paragraphs (b)(4) (i) and (ii) from these sections. A few suggested that if these requirements are retained in the final rules, we should require this documentation for some but not all claims for VR payment. For example, one commenter suggested that documentation be required for claims for payment in cases involving the completion of a continuous 9-month period of SGA only where the link between the services provided and the accomplishment of 9 continuous months of SGA was not routine or apparent. Some commenters did not request that we delete paragraphs (b)(4)(i) and (ii), but did recommend that we accept existing documentation in lieu of requiring providers to record information on a prescribed form.

Response: Under the Act and our existing regulations, payment may be made for services furnished to disabled or blind Social Security beneficiaries or SSI recipients in three categories of cases. In cases described in §§ 404.2101(a) and 416.2201(a), payment may be made only for services which contributed to the individual's performance of a continuous 9-month period of SGA. We continue to believe that there are sound reasons for requiring that documentation establishing this causal relationship be available for all claims for payment in these cases. We also believe that documentation showing how the VR services could reasonably be expected to motivate or assist the individual to perform SGA must be available for all claims for payment in cases described in §§ 404.2101 (b) and (c) and 416.2201 (b) and (c). However, we agree that these requirements could be accomplished in a less burdensome manner. Therefore, we will not require that such

documentation be included for each claim submitted for payment and have deleted §§ 404.2108(b)(4)(i) and (ii) and 416.2208(b)(4)(i) and (ii) in the final rules. Instead, such documentation must now be submitted only for those claims selected for validation review. This option was recommended by a number of commenters and is reflected in §§ 404.2121 and 416.2221 of these final rules. Additionally, in revising these sections to require this information in the validation review process, we have adopted the recommendation to accept existing documentation, such as pertinent parts of the IWRP, as sufficient for compliance with these requirements.

Comment: A few commenters, in commenting on proposed §§ 404.2108 and 416.2208, raised questions concerning how we will make VR payments to alternate providers. Specifically, questions were raised concerning whether private providers would be able to wait until 9 months of SGA had been achieved before receiving payment, and whether we will advance funds to private providers.

Response: Alternate providers are subject to the same payment provisions as the State VR agencies.

VR Services Contributing to a Continuous Period of SGA—§§ 404.2111 and 416.2211

Comment: We received comments relating to §§ 404.2111 and 416.2211 from nine commenters. Only two commenters acknowledged the changes we had proposed to make in these sections of the existing rules, and no commenter objected to the proposed changes. Instead, most commenters raised questions or sought clarification relating to provisions that were unchanged by the proposed rules. Although unrelated to the changes in the proposed rules, suggestions were made by two commenters that we should specifically state in the final rules that supported employment should be considered transitional work activity.

Response: Since no commenters objected to our proposed deletion of the words "might have" before the phrase "significantly motivated or assisted," or to the other changes we proposed to §§ 404.2111 and 416.2211, these sections are unchanged from the proposed rules.

We did not adopt the recommendation to amend §§ 404.2111 and 416.2211 to provide that supported employment will be considered transitional work activity under these sections. Supported employment will qualify as transitional work activity only if it meets the definition of transitional work activity already included in §§ 404.2111(a)(2)(i) and 416.2211(a)(2)(i), i.e., employment or self-employment which gradually evolved, with or without periodic interruption, into SGA. To unequivocally include supported employment in these sections might lead to the erroneous conclusion that supported employment should always be viewed as transitional employment, whether it does or does not meet this definition.

Refusal of VR Services—§§ 404.2113 and 416.2213

Comment: Six commenters questioned the requirement in proposed §§ 404.2113 and 416.2213 for reporting VR refusals within 60 days after the State VR agency or alternate participant makes a preliminary finding that an individual refuses to continue to accept VR services or fails to cooperate in a VR program. One commenter indicated that reporting refusals within a timeframe would create an additional administrative burden for State VR agencies. Three commenters recommended that this deadline for reporting refusals be deleted to allow the State VR agencies the latitude they currently have in reporting VR refusals to SSA. Another commenter indicated that many times individuals who initially refuse services will change their minds. The commenter believed that in such cases, reporting their refusal too early might undermine the rehabilitation process instead of helping. One commenter suggested that the 60-day reporting requirement be waived in cases where the State VR agency can provide good cause justification for not reporting a refusal within the timeframe.

Response: We did not adopt the recommendation to delete this provision. The purpose of the 60-day reporting requirement is to encourage disabled or blind beneficiaries and recipients to participate in VR services by providing for stricter enforcement of the VR refusal provisions of the law. We believe that providing procedures in the regulations to strengthen such enforcement will encourage participation of beneficiaries and recipients in VR programs. The requirement for reporting refusals within 60 days does not change the latitude State VR agencies currently have in determining whether a person can benefit from VR services and in working with a person to encourage him or her to participate or continue participation in a VR program; it only requires that they report within 60 days after making a finding of VR refusal. It also should not create an additional administrative burden on State or other VR service providers because it does not change how refusals are currently reported or the procedures for processing refusal cases.

We do not believe that the reporting of a refusal will undermine the rehabilitation process in cases of individuals who have initially refused VR services. Instead, it should provide an incentive for such a person to decide to participate in services rather than to delay such participation and risk losing benefits. We did not provide a waiver of this reporting requirement in cases where a provider can establish good cause justification for not reporting a refusal within the timeframe. Once a provider has completed its evaluation and determined that a refusal situation exists, it should not be necessary to delay the reporting of the refusal beyond 60 days.

Comment: One advocacy group wanted to know how a reported refusal situation affects payment to a provider. It wanted to know whether a provider would be paid in situations where a client drops out of a program after several months but is provided assistance that is designed to improve the client's quality of life.

Response: Under the Act and our existing regulations, State VR agencies and alternate participants may be paid for the costs of VR services furnished to disabled or blind beneficiaries or recipients in three categories of cases. One of the categories of cases is where the individual, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. Our existing regulations provide for payments to providers for the costs of VR services provided to beneficiaries/recipients in refusal situations only when the individual has at least applied for services and his or her benefits have been suspended because SSA has determined that the refusal to participate or continue in the VR program is without good cause.

Comment: Two commenters suggested that we should place more of an emphasis on encouraging beneficiaries to participate in VR services rather than on the reporting of refusals. One commenter recommended that the final regulations should require State VR agencies and alternate participants to make substantial efforts to encourage individuals to participate in VR services prior to their reporting a refusal. Another commenter indicated that stricter enforcement of the VR refusal provisions would not motivate more

people to continue in a VR program unless SSA becomes more involved earlier in the VR process and directly informs beneficiaries of the importance of working with VR agencies.

Response: Our current operating instructions on processing VR refusal cases include procedures which emphasize the importance of encouraging participation of beneficiaries and recipients in VR programs. These procedures require State VR agencies and alternate participants to report refusals only after they have made substantial efforts to encourage disabled or blind individuals to participate in VR services and to resolve problems preventing participation prior to reporting a refusal. We are currently working to improve the procedures we follow when referring beneficiaries and recipients for VR services and to provide more information to beneficiaries and recipients regarding rehabilitation and employment opportunities and the importance of working with VR service providers.

Comment: Two commenters suggested that SSA should place more emphasis on enforcing the VR refusal sanctions rather than on the reporting of VR refusal cases. One State VR agency stated that it reports few refusal cases because few beneficiaries or recipients have sanctions imposed against their benefits because of VR refusal. The agency recommended that the process of enforcing VR cooperation be improved to make the reporting provision viable.

Response: We do not believe that a change to the regulation is necessary to enhance our enforcement of the VR refusal sanctions. Our current operating instructions for processing refusal cases, which were issued in December 1991, emphasize enforcement of the refusal sanctions and provide specific instructions for suspending benefits in cases where we have determined that good cause does not exist for refusing to participate in VR services.

Comment: Several commenters expressed concern about whether a VR provider would be able to distinguish between the effects of a psychiatric impairment in refusing VR services and an actual refusal. The commenters recommended that SSA obtain a thorough psychiatric evaluation or new report from the treating psychiatrist prior to any actions based on the person's motivation to participate in VR services. Two commenters noted that people with psychiatric disabilities who refuse VR services or fail to cooperate may too easily be considered unwilling to cooperate, even though such unwillingness may be due to their illness rather than to a non-valid reason. They were concerned that our proposed regulations would permit such people to be removed from the rolls because of refusal to cooperate when the refusal is due to the person's illness. Another commenter recommended that the definition of VR refusal be more specific regarding mental retardation, mental illness, and other psychological disorders.

Response: We did not make any changes to §§ 404.2113 and 416.2213 in response to these comments. Sections 404.422 and 416.1715 of our existing regulations provide that deductions will not be imposed against an individual's Social Security benefits, and an individual's SSI benefits will not be suspended, on account of a refusal of VR services if we find that the individual has good cause for refusing such services. Section 416.1715(b) of our SSI regulations lists examples of good cause, including being physically or mentally unable to participate in the services that are offered. We use the same criteria for Social Security cases. Consequently, a person's psychiatric and/or medical condition must be evaluated and taken into account in determining whether good cause for refusing VR services exists and prior to any determination that deductions will be imposed against Social Security benefits or that SSI benefits will be suspended. In addition, we published final rules in the **Federal Register** on January 12, 1994 (59 FR 1629) to amend §§ 404.422 and 416.1715 to provide that we will take into account any physical, mental, educational, or linguistic limitations of an individual in determining whether the individual has good cause for refusing VR services.

Services for Which Payment May Be Made—§§ 404.2114 and 416.2214

Comment: In commenting on proposed §§ 404.2114 and 416.2214, many commenters expressed the belief that there is no need to list the specific services for which payment may be made since such services are already identified in the Rehabilitation Act of 1973, as amended, and in the RSA regulations. Commenters were concerned that SSA's listing of such services would create confusion with those already identified in the Rehabilitation Act of 1973, as amended, and in the implementing regulations promulgated by RSA, and could create a double standard between Social Security beneficiaries or SSI recipients and other vocational rehabilitation clients. A few commenters expressed concern that the list was intended to permit more VR payment denials.

Response: Our intent in listing specific services in these sections was to further clarify the services for which payment may be made under our programs and to provide a reference under SSA's regulations for use with potential alternate providers. With some modifications to take account of the Rehabilitation Act Amendments of 1992, discussed below, the services listed in these final rules are essentially the same as those currently described in the RSA regulations. There are minor differences in our final regulations, relating primarily to the issue of the individual's attainment of employment at or above the SGA level, which is the basic objective of our VR payment programs. Our final regulations, therefore, do not precisely mirror the descriptions of VR services contained in the RSA regulations or in the Rehabilitation Act Amendments of 1992.

It is not our intent, in making this change in our rules, to introduce conflicts between the handling of cases of Social Security beneficiaries or SSI recipients and the cases of other vocational rehabilitation clients, nor do we intend, by including this list in our rules, to permit more denials of payments to providers of such services. We believe that the list of services is as extensive as that provided in the RSA regulations or in the Rehabilitation Act Amendments of 1992. Moreover, it provides a general category of VR services in §§ 404.2114(b)(15) and 416.2214(b)(15), for "Other goods and services that can reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA." In these final regulations, we have modified some of the descriptions of the VR services in §§ 404.2114(b) and 416.2214(b) to reflect changes which the Rehabilitation Act Amendments of 1992 made to the list of VR services covered under the Rehabilitation Act of 1973. As the need arises, we will consider making further changes to §§ 404.2114(b) and 416.2214(b), as may be necessary and appropriate, to reflect other relevant changes that may be made in the law or in RSA regulations to ensure that the list of VR services in these sections of our regulations is up-to-date.

Comment: A few commenters expressed concern that the references to "SGA" and "the SGA level" contained in proposed §§ 404.2114 and 416.2214 could be read to permit the exclusion of payment of those expenses aimed at achieving employment at a level higher than the SGA threshold. One commenter specifically recommended

that the reference to SGA be revised to state, "at or above SGA level."

Response: It was not our intent to exclude payment for services aimed at employment above the SGA threshold. However, we recognize that the phrase "at the SGA level" in paragraphs (b)(3) and (b)(12) of proposed §§ 404.2114 and 416.2214 could be misleading. Therefore, we have revised these paragraphs in the final rules to state "at or above the SGA level," to prevent any misunderstandings in this regard.

Comment: One commenter requested further clarification as to what costs for diagnostic services would be paid, believing that the proposed rules appeared to limit these costs to determining eligibility for vocational rehabilitation services. This commenter believed that the proposed rules would exclude payment for certain diagnostic services provided later in the rehabilitation process, such as preparing the rehabilitation plan and determining appropriate rehabilitation goals. Another commenter thought that the proposed rules would preclude payment for the cost of vocational evaluation and disagreed with the rules for this reason. This commenter stated that vocational evaluation is often necessary to determine an individual's eligibility to receive services, and provides a template for developing the IWRP.

Response: It was not our intent to preclude payment for diagnostic or other evaluation services, including vocational evaluations, which are necessary to assist an individual and a VR counselor in preparing an IWRP or in determining an appropriate vocational goal. Such services are covered under §§ 404.2114(b)(1) and 416.2214(b)(1). We recognize, however, that §§ 404.2114(a) and 416.2214(a) of the proposed rules could be read to preclude payment for the costs of diagnostic or other evaluation services which are provided after an individual has been determined to be eligible for VR services and prior to the implementation of an IWRP (or similar document in the case of an alternate participant). Therefore, to address the concerns raised by the commenters and avoid any misunderstanding regarding our intent, we are adding the phrase "or the nature and scope of the services to be provided" to §§ 404.2114(a)(1) and 416.2214(a)(1) to clarify that payment may be made for diagnostic or other evaluation services which are provided between these two stages of the rehabilitation process and which are necessary to determine the nature and scope of the services to be provided to the individual.

Comment: Three commenters believed that there was no need to include provisions for seeking grant assistance for educational services under §§ 404.2114(b)(4) and 416.2214(b)(4) since similar provisions are already mandated by the Rehabilitation Act of 1973, as amended.

Response: While we acknowledge that such "similar benefit" provisions are already mandated under the Rehabilitation Act of 1973, as amended, and the RSA regulations, we are including the requirement for seeking grant assistance from other sources for the costs of training or training services in institutions of higher education in our final regulations to ensure compliance with this requirement by alternate participants. The requirements of the Federal/State rehabilitation program administered by RSA under title I of the Rehabilitation Act of 1973, as amended, apply to State VR agencies. With the expanded use of private or public non-State VR service providers as alternate participants under our VR payment programs, we believe it is necessary to include in our regulations certain requirements for payment of services and cost under our programs, even if such requirements when applied to State VR agencies are duplicative of the requirements under the Rehabilitation Act of 1973, as amended, and RSA regulations.

Comment: One State VR agency raised a question about the qualifications of the SSA personnel who will determine whether the services provided could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA as expressed in §§ 404.2114(a)(2) and 416.2214(a)(2). The commenter believed that since a counselor has specialized training and experience, and has extensive client information, SSA personnel who will determine this issue should have equal qualifications in order to make appropriate decisions and ensure that the review process does not unnecessarily delay the VR payment process.

Response: We appreciate the need for SSA to ensure that qualified personnel are involved in the review process. It is not our intent under these regulations to attempt to "second guess" the decisions made by the VR counselor so long as the VR services involved could reasonably have been expected to motivate or assist the individual in progressing toward the goal of performing SGA. We will ensure that the reviewers are trained and qualified to perform such a review.

Cost Containment—§§ 404.2117 and 416.2217

Comment: A few commenters stated that our "requirement" (rather than our expectation) that they seek similar benefits when providing services to beneficiaries or recipients is duplicative of an RSA requirement. They viewed this duplication as unnecessary or as imposing an additional reporting burden.

Response: It was our intent to establish consistency with the RSA regulations in 34 CFR part 361. We see no additional reporting requirement and regard this as a change for reasons of consistency only.

Comment: The requirement in proposed §§ 404.2117(c)(2) and 416.2217(c)(2) that State VR agencies and alternate participants submit to SSA on a yearly basis a summary of their cost-containment policies drew strong criticism from a number of State VR agencies. It was described as duplicative of RSA reporting requirements and administratively burdensome. One commenter believed that the requirement in these sections represented gross over-regulation; another believed that it would result in nonessential documentation.

Commenters who did not recommend deleting this requirement suggested that the timeframe for submitting cost-containment policies be changed from annually to every 3 years. This would make SSA's reporting requirements consistent with the timeframe States must use when submitting plans to RSA.

Response: In proposing the requirement in paragraph (c)(2) of §§ 404.2117 and 416.2217, it was our intent to have some written assurance that providers of rehabilitation services would have cost-containment policies in effect and to ensure that these policies were adhered to when providing or procuring goods and services for which payment would be requested from SSA. In consideration of the comments we received and our own reevaluation of the requirement set forth in the proposed rules, we have made substantial changes to paragraph (c)(2) in the final rules.

The final rules require that State VR agencies submit to SSA, by the end of the first quarter of each calendar year, a certification that approved cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the State VR agency requests payment under our regulations. Such certification must be signed by the State's chief financial official or the head of the VR

agency. Additionally, such certification must specify the basis upon which it is made, e.g., a recent audit by an authorized State, Federal or private auditor, or other independent compliance review, and the date of such audit or compliance review. In the case of an alternate participant, these certification requirements will be incorporated into the negotiated agreement or contract. We also provide in the final rules that we may request copies of a provider's specific written cost-containment policies if we determine that such additional information is necessary to ensure compliance with the requirements of our regulations, and that the provider shall submit copies of these policies when requested. We believe that these certification requirements set forth in the final rules will minimize any administrative burden that might have resulted from annual submissions of summaries of cost-containment policies to SSA, while still assuring that such policies are in effect and in use.

Comment: Several private providers commented that alternate participants would need additional guidance on what constitutes a cost-containment plan for SSA purposes.

Response: We agree that alternate participants will need such guidance but believe that it would be inappropriate to include such guidance in these regulations. Instead, we will provide specific guidance when we develop contractual agreements with potential alternate participants who express an interest in serving disabled or blind beneficiaries and recipients.

Validation Reviews—§§ 404.2121 and 416.2221

Comment: Thirteen State VR agencies, as well as the Council of State Administrators of Vocational Rehabilitation and RSA, commented on proposed §§ 404.2121 and 416.2221. Most commenters identified two major areas of concern about the proposal permitting prepayment or postpayment validation review of claims for payment for VR services. First, many commenters questioned the need for prepayment reviews since a process for postpayment review of State VR agency claims has been in place for a substantial period of time and, in their experience, has proven to be an effective and viable approach. These commenters expressed the view that prepayment reviews would unnecessarily delay payments and would constitute increased paperwork and administrative costs for the State VR agencies.

Second, many commenters were concerned that the proposed rules would give SSA extremely broad discretionary authority to conduct an unspecified number of reviews on a prepayment or postpayment basis, without providing any guidelines regarding the frequency of such reviews or permitting any negotiation or appeal procedures for the State VR agencies with respect to the initiation of such reviews. Some commenters suggested revising these proposed sections to specify the frequency and timing of the validation reviews and to allow an appeal by the State VR agency prior to our initiating an increase in validation reviews. Also, some commenters suggested that the expanded use of validation reviews be limited to situations where evidence already pointed to inaccurate or noncompliant claims.

Response: In proposing the revisions to §§ 404.2121 and 416.2221, it was not our intention to set review standards which would be arbitrarily burdensome or time-consuming, or which would needlessly delay the VR payment process. We envisioned the proposed validation reviews as a mechanism to ensure a cost-effective payment program which would be supported by sufficient documentation to provide for reasonable accountability and sound business practices.

To maintain appropriate accountability and oversight of this growing program, we intend to conduct some validation reviews on a prepayment basis and some on a postpayment basis for all VR providers, i.e., State VR agencies and alternate participants. We intentionally did not specify in the proposed rules particular guidelines for the implementation of these prepayment and postpayment reviews. We intended to allow some discretion under these sections in order to permit flexibility for implementing reviews for both State VR agencies and alternate participants; ensure compliance with the provisions for payment; and reinforce our goal of conducting quality, comprehensive validation reviews. We are aware that sample sizes will have to be determined based upon the availability of resources, workload levels, and the volume and accuracy of claims being presented by individual States and alternate participants. While it is not our intention to unnecessarily impede or delay the process for paying claims, we must have the discretion and flexibility to determine the volume of claims selected for prepayment and postpayment reviews. For these reasons, we have not made changes in response to the above comments.

Comment: One State VR agency interpreted the documentation requirements under the validation review process as meaning that SSA would only accept original documents as acceptable proof of costs and services provided. The agency stated that this requirement was unreasonable and would present unnecessary burdens to the State VR agencies to attempt to maintain and provide such original documentation, particularly since many rehabilitation cases require more time to complete than record retention guidelines call for. It recommended that our documentation and retention requirements comply with the *Federal Grants Management Handbook* criteria.

Response: We believe the commenter may have misinterpreted §§ 404.2121(a) and 416.2221(a) in regard to acceptable proofs of costs for services provided. We stated in these proposed sections that copies of records of the services and costs would be sufficient documentation, and that we reserved the right to examine any records relating to services and costs. We did not intend to require that only original documents would be acceptable as proofs of costs under these sections. Also, under §§ 404.2108(f) and 416.2208(f), a requirement for participation in SSA's VR payment program is that the State VR agency or alternate participant must maintain, and provide as we may require (i.e., for validation reviews), adequate documentation of all services or costs, regardless of other record retention requirements governing such VR agencies or alternate participants.

Comment: One State VR agency recommended that onsite reviews be considered for conducting the validation review process in order to expedite the process and resolve any payment problems, as well as to permit the reviewers to gain a better understanding of the rehabilitation program's impact on individual clients.

Response: We appreciate this recommendation and will consider onsite reviews as a possible option for some validation review activities to the extent that resources will permit.

Comment: One commenter recommended that §§ 404.2121 and 416.2221 include a time requirement under which SSA must provide the State VR agency a report of the validation review findings. The commenter recommended that a State VR agency be notified of the validation review determination within 45 days after the review was completed. The commenter believed that timely feedback to the State VR agencies would permit corrective actions to be initiated as quickly as possible.

Response: We are not including in these regulations a specific timeframe for notifying the State VR agency or alternate participant of validation review determinations. However, we believe that notifying the VR provider of our determination within 45 days of the completion of a validation review is reasonable, and we expect to provide such notification sooner than 45 days.

Other Comments

Comment: As we requested in the NPRM, most of the commenters provided their views on the feasibility of SSA establishing an experience-based fee schedule mechanism as a means for achieving a simplified payment process which would also ensure a fair representation of actual costs incurred by State VR agencies and alternate participants. Almost all of these commenters were opposed to this initiative. A number of reasons for this position were presented, including the view that such a fee schedule could act as an inhibiting factor to the State VR agencies' achievement of their goal of being able to provide individualized rehabilitation services which would be most likely to benefit a given client. Most commenters expressed the belief that an experience-based fee schedule would not be able to fairly represent the costs incurred by the various State agencies because these costs can vary considerably from State to State and region to region. Many commenters also argued that there is no need for SSA to establish a fee schedule because individual States are required to have fee schedules which are based on local conditions and provider/consumer negotiations. Many commenters believed that imposing a fee schedule would not improve the payment process and recommended instead that the current process be continued.

Response: Given the overwhelmingly negative response we received to this question, we will not establish an experience-based fee schedule at this time.

Comment: One commenter recommended that the references to individuals with certain disabilities or impairments be made consistent with the terms used in the Americans with Disabilities Act and the Rehabilitation Reauthorization Act.

Response: We have not adopted this recommendation. Because of the special meanings of terms used in the Social Security and SSI programs, we must ensure that the references we make to blind or disabled beneficiaries and recipients in these rules remain consistent with the applicable provisions of the Social Security Act and the other Social Security and SSI regulations we have issued pursuant to this Act.

Comment: Many commenters expressed general displeasure with the proposed regulatory changes in total, believing them to represent undue interference and bureaucratic overcontrol in the work of the State VR agencies. They stated that the proposed changes would constitute serious administrative burdens, and would act as a disincentive to State participation. Some of the State VR agencies believed these proposed changes were intentionally adversarial to them and represented an attempt on the part of SSA to unduly restrict VR payments.

Response: Our intention was not to restrict VR payments, institute interference or overcontrol, or to be adversarial in nature. In reply to these comments, we can only reiterate that we proposed and are now making regulatory changes to improve the administration and cost-effectiveness of the SSA VR payment program, to ensure that the services we pay for bear a reasonable relationship to our goal of returning individuals to substantial gainful work activity, and to make VR services more readily available to disabled or blind beneficiaries and recipients.

Our VR payment program has expanded over the last 10 years and is rapidly approaching a $100 million program. It is understandable that a program of such size would come under closer scrutiny and would require assurances of proper administration. A minimal element for ensuring proper administration is to know what SSA is paying for; hence, we proposed and are now issuing additional requirements for submitting a claim. In addition, for us to expand our referral mechanism to include alternate participants, we need to know the outcome of the referrals we send to the State VR agencies.

As a result of the comments which discussed additional administrative burdens under the proposed rules, we have made certain revisions, which are discussed in the individual sections above, to lessen the impact of these regulatory changes.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291. We expect that these regulations would be at least cost-neutral over time. While it is not yet possible to present realistic estimates, the expectation is that the program savings from the additional successful rehabilitations and resultant benefit terminations would exceed any additional administrative costs, including the cost of providing VR evaluations and services.

Nevertheless, it is clear that the potential exists for VR payment costs to increase, even if they are later offset by benefit savings. If the current workload of claims for successful rehabilitations were to increase, the annual cost in VR program payments would be an additional $5.8 million for each 1000 claims submitted. In its 1986 report, the Disability Advisory Council estimated that the trust funds save at least $4 for each $1 spent. Using that as a basis, savings to the trust funds could increase by $23.2 million for each additional 1000 claims.

Because these regulations do not meet any of the threshold criteria for a major rule, a regulatory impact analysis is not required.

Paperwork Reduction Act

These rules contain information collection requirements. The requirements in § 404.2108 (b) and (f) and in § 416.2208 (b) and (f), which deal with claims for reimbursement for vocational rehabilitation (VR) services, already have partial clearance by the Office of Management and Budget (OMB) under OMB No. 0960–0310 (form SSA–199; State Vocational Rehabilitation Agency Claim). However, these sections expand the requirements of the previous regulations to provide for the collection of additional information. Also, the changes to §§ 404.2104, 404.2117, 404.2121, 416.2204, 416.2217 and 416.2221 contain new reporting requirements.

As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we submitted a copy of the proposed rules to OMB for its review of these information collection requirements. Other organizations and individuals that wanted to submit comments on these information collection requirements were asked to direct them to the Social Security Administration, Attn: Reports Clearance Officer, 1–A–21 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTENTION: Desk Officer for HHS.

Public reporting burden for these collections of information is estimated as follows according to the section of the rule: §§ 404.2104 and 416.2204—80 minutes per response times 960 responses yearly = 1,280 hours; §§ 404.2108 and 416.2208—15 minutes

per response times 12,000 responses yearly = 3,525 hours. (**Note:** The burden shown here is in addition to that already approved by OMB); §§ 404.2113 and 416.2213—No additional burden; §§ 404.2117 and 416.2217—4 hours per response for the first year times 80 responses = 320 hours; thereafter, responses are estimated to take 1 hour, so the burden is estimated to be 80 hours in subsequent years; and §§ 404.2121 and 416.2221—70 minutes per response times 1,500 responses annually = 1,750 hours. (**Note:** The burden shown here is in addition to that already approved by OMB.)

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act of 1980, is not required.

These regulations apply to States and certain alternate providers of VR services which are willing to provide services to disabled or blind beneficiaries or recipients under our VR payment programs under the conditions specified in the regulations. While the changes to the regulations permit us to make greater use of alternate participants under these programs, the regulations do not impose any significant economic burdens on these alternate VR service providers which may be small entities. Under the Act, we may arrange for VR services for beneficiaries or recipients by agreement or contract with alternate VR service providers where the State is unwilling to participate or does not have an appropriate plan for VR services. The Act requires that the provision of VR services by alternate participants, and the payment to alternate participants for such services, shall be subject to the same conditions that would apply to the States. Our existing regulations provide that an alternate participant must have a plan for VR services that is similar to an appropriate State plan. These amended regulations do not change this requirement but clarify that the plans of alternate participants, like a State plan for VR services, must ensure, among other things, that the provision of VR services will meet certain minimum standards. These regulations also clarify that we will not enter into a written agreement or contract with a private or other non-State VR provider to serve as an alternate participant unless such provider meets certain basic qualifications. The regulations do not require private or other non-State VR providers to participate in the VR payment programs. Rather, the regulations increase the opportunity for these providers to participate in these programs if they wish to do so.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, and Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 8, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: November 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending part 404, subpart V, and part 416, subpart V, of chapter III of title 20, Code of Federal Regulations, as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart V—Payments for Vocational Rehabilitation Services

1. The authority citation for subpart V of part 404 continues to read as follows:

Authority: Secs. 205(a), 222, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 422, and 1302.

2. Section 404.2102 is amended by revising paragraph (b), by redesignating paragraphs (c) through (n) as paragraphs (d) through (o), by adding a new paragraph (c), and by revising redesignated paragraphs (e) and (l) to read as follows:

§ 404.2102 Purpose and scope.

* * * * *

(b) Section 404.2104 explains how State VR agencies or alternate participants may participate in the payment program under this subpart.

(c) Section 404.2106 describes the basic qualifications for alternate participants.

* * * * *

(e) Sections 404.2110 through 404.2111 describe when an individual has completed a continuous period of SGA and when VR services will be considered to have contributed to that period.

* * * * *

(l) Sections 404.2120 and 404.2121 describe the audits and the prepayment and postpayment validation reviews we will conduct.

* * * * *

3. Section 404.2103 is amended by adding a new definition of "Accept the beneficiary as a client for VR services" immediately before the definition of "Act" and adding a new definition of "Place the beneficiary into an extended evaluation process" immediately before the definition of "Secretary" to read as follows:

§ 404.2103 Definitions.

* * * * *

Accept the beneficiary as a client for VR services means that the State VR agency determines that the individual is eligible for VR services and places the individual into an active caseload status for development of an individualized written rehabilitation program.

* * * * *

Place the beneficiary into an extended evaluation process means that the State VR agency determines that an extended evaluation of the individual's VR potential is necessary to determine whether the individual is eligible for VR services and places the individual into an extended evaluation status.

* * * * *

4. Section 404.2104 is revised to read as follows:

§ 404.2104 Participation by State VR agencies or alternate participants.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended An alternate participant must have a similar plan and otherwise qualify under § 404.2106.

(b) *Participation by States.* (1) The opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a

certain class(es) of disability beneficiaries. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind disability beneficiaries in the State in accordance with paragraph (d) of this section. We would arrange for VR services for non-blind disability beneficiaries in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(2)(i) In order for the State to participate with respect to a disability beneficiary whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the month in which we referred the beneficiary to the State VR agency. If we do not receive such notice with respect to a beneficiary whom we referred to the State VR agency, we may arrange for VR services for that beneficiary through an alternate participant.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the beneficiary into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the beneficiary as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the beneficiary as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such beneficiary. If we receive a notice of a decision by the State VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation, we may arrange for VR services for that beneficiary through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State, we will give the State the opportunity to participate with respect to such class(es) of disability beneficiaries by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may choose not to participate through its VR agency(ies) with respect to any disability beneficiaries in the State, or it may choose to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2)(i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disability beneficiaries in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries, we may arrange for VR services through an alternate participant(s) for the class(es) of disability beneficiaries in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disability beneficiary in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the beneficiary to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disability beneficiaries in that State:

(1) A disability beneficiary whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2)(i) of this section of a decision by the VR agency either to accept the beneficiary as a client for VR services or to place the

beneficiary into an extended evaluation process;

(2) A disability beneficiary with respect to whom we receive a notice under paragraph (c)(2)(ii) of this section of a decision by the VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation;

(3) The class(es) of disability beneficiaries excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(4) All disability beneficiaries in the State if the State has decided not to participate through its VR agency(ies).

5. A new § 404.2106 is added to read as follows:

§ 404.2106 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 404.2104(f). An alternate participant may be a public or private agency, organization, institution or individual (that is, any entity whether for-profit or not-for-profit), other than a State VR agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 404.2104(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide, among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribe or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2) (i), (ii), or (iii) of this section will be used to provide VR services.

6. Section 404.2108 is amended by redesignating paragraphs (b) through (f) as (c) through (g), by adding a new paragraph (b), and by revising redesignated paragraphs (d) and (f) to read as follows:

§ 404.2108 Requirements for payment.

* * * * *

(b) The claim for payment must be in a form prescribed by us and contain the following information:

(1) A description of each service provided;

(2) When the service was provided; and

(3) The cost of the service;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, or, in the case of an alternate participant, under a negotiated plan, and must be services that are described in § 404.2114;

* * * * *

(f) The State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disability beneficiaries with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under this subpart; and

* * * * *

7. Section 404.2109 is amended by revising paragraph (c), by removing the word "and" at the end of paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding a new paragraph (g) to read as follows:

§ 404.2109 Responsibility for making payment decisions.

* * * * *

(c) Whether an individual, without good cause, refused to continue to accept VR services or failed to cooperate in a VR program for a month(s) after October 1984, and whether deductions should be imposed against the individual's disability benefits;

* * * * *

(g) Whether a VR service is a service described in § 404.2114; and

* * * * *

8. Section 404.2111 is amended by revising the introductory text by revising paragraphs (a)(1) and (a)(2), and by revising the introductory text of paragraph (b)(1) to read as follows:

§ 404.2111 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be paid for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services described in § 404.2114 that were initiated, coordinated or provided, including services before October 1, 1981.

(a) * * *

(1) *One year or less.* Any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(2) *More than one year.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved, with or without periodic interruption, into SGA), and that work activity began less than a year after VR services ended, any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the VR services (e.g., training).

(b) *Continuous period with medical recovery occurring before completion.* (1) If an individual medically recovers before a continuous period has been completed, VR services under paragraph (a) of this section will not be payable unless some VR services contributed to the medical recovery. VR services will

be considered to have contributed to the medical recovery if—

* * * * *

9. Section 404.2113 is revised to read as follows:

§ 404.2113 Payment for VR services in a case of VR refusal.

(a) For purposes of this section, *VR refusal* means an individual's refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

(b) No later than the 60th day after the State VR agency or alternate participant makes a preliminary finding that an individual refuses to continue to accept VR services or fails to cooperate in a VR program, the State VR agency or alternate participant shall report to the appropriate Regional Commissioner (SSA) in writing such individual's VR refusal so that we may make the determination described in § 404.2109(c).

(c) Payment can be made to a State VR agency or alternate participant for the costs of VR services provided to an individual who, after filing an application with the State VR agency or alternate participant for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual if deductions have been imposed against the individual's monthly disability benefits for a month or months after October 1984 because of VR refusal.

10. Section 404.2114 is revised to read as follows:

§ 404.2114 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of 1973, as amended, or by an alternate participant under a negotiated plan, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

(1) Necessary to determine an individual's eligibility for VR services or the nature and scope of the services to be provided; or

(2) Provided by a State VR agency under an IWRP, or by an alternate participant under a similar document, but only if the services could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

(b) *Specific services.* Payment may be made under this subpart only for the following VR services:

(1) An assessment for determining an individual's eligibility for VR services and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, and which includes determining—

(i) The nature and extent of the physical or mental impairment(s) and the resultant impact on the individual's employability;

(ii) The likelihood that an individual will benefit from vocational rehabilitation services in terms of employability; and

(iii) An employment goal consistent with the capacities of the individual and employment opportunities;

(2) Counseling and guidance, including personal adjustment counseling, and those referrals and other services necessary to help an individual secure needed services from other agencies;

(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and which constitutes an impediment to suitable employment at or above the SGA level;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency or alternate participant to secure grant assistance in whole or in part from other sources;

(5) Maintenance expenses that are extra living expenses over and above the individual's normal living expenses and that are incurred solely because of and while the individual is participating in the VR program and that are necessary in order for the individual to benefit from other necessary VR services;

(6) Travel and related expenses necessary to transport an individual for purpose of enabling the individual's participation in other necessary VR services;

(7) Services to family members of a disabled individual only if necessary to the successful vocational rehabilitation of that individual;

(8) Interpreter services and note-taking services for an individual who is deaf and tactile interpreting for an individual who is deaf and blind;

(9) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for an individual who is blind;

(10) Telecommunications, sensory, and other technological aids and devices;

(11) Work-related placement services to secure suitable employment;

(12) Post-employment services necessary to maintain, regain or advance into suitable employment at or above the SGA level;

(13) Occupational licenses, tools, equipment, initial stocks, and supplies;

(14) Rehabilitation technology services; and

(15) Other goods and services that can reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

11. Section 404.2117 is amended by revising the introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 404.2117 What costs will be paid.

In accordance with section 222(d) of the Social Security Act, the Secretary will pay the State VR agency or alternate participant for the VR services described in § 404.2114 which were provided during the period described in § 404.2115 and which meet the criteria in § 404.2111, § 404.2112, or § 404.2113, but subject to the following limitations:

* * * * *

(b) The cost must not have been paid or be payable from some other source. For this purpose, State VR agencies or alternate participants will be required to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education. Alternate participants will not be required to consider State VR services a similar benefit.

(c)(1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency or, in the case of an alternate participant, it complies with similar written policies established under a negotiated plan. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in § 404.2114. The State VR agency or alternate participant must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services.

for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

(i) The lowest reasonable cost for such services; and

(ii) Sufficient flexibility so as to allow for an individual's needs.

(2) The State VR agency shall submit to us before the end of the first calendar quarter of each year a written statement certifying that cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the State VR agency requests payment under this subpart. Such certification must be signed by the State's chief financial official or the head of the VR agency. Each certification must specify the basis upon which it is made, e.g., a recent audit by an authorized State, Federal or private auditor (or other independent compliance review) and the date of such audit (or compliance review). In the case of an alternate participant, these certification requirements shall be incorporated into the negotiated agreement or contract. We may request the State VR agency or alternate participant to submit to us a copy(ies) of its specific written cost-containment policies and procedures (e.g., any guidelines and fee schedules for a given year) if we determine that such additional information is necessary to ensure compliance with the requirements of this subpart. The State VR agency or alternate participant shall provide such information when requested by us.

* * * * *

12. Section 404.2121 is revised to read as follows:

§ 404.2121 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each State VR agency or alternate participant. We will conduct some of these reviews on a prepayment basis and some on a postpayment basis. We may review a specific claim, a sample of the claims, or all the claims filed by any State VR agency or alternate participant, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency or alternate participant must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the requirements for payment. For claims for cases described in § 404.2101(a), a clear explanation or existing documentation which demonstrates how the service contributed to the individual's performance of a continuous 9-month period of SGA must be provided. For claims for cases described in § 404.2101(b) or (c), a clear explanation or existing documentation which demonstrates how the service was reasonably expected to motivate or assist the individual to return to or continue in SGA must be provided. If we find in any prepayment validation review, that the scope or content of the information is inadequate, we will request additional information and will withhold payment until adequate information has been provided. The State VR agency or alternate participant shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) *Purpose.* The primary purpose of these reviews is—

(1) To ensure that the VR services and costs meet the requirements for payment under this subpart;

(2) To assess the validity of our documentation requirements; and

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency or alternate participant of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency or alternate participant that we will make the appropriate adjustment.

(d) *Appeals.* If the State VR agency or alternate participant disagrees with our determination under this section, it may appeal that determination in accordance with 404.2127. For purposes of this section, an appeal must be filed within 60 days after receiving the notice of our determination.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart V—Payments for Vocational Rehabilitation Services

1. The authority citation for subpart V of part 416 continues to read as follows:

Authority: Secs. 1102, 1615, and 1631(d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382d, and 1383(d)(1) and (e); sec. 2344 of Pub. L. 97–35, 95 Stat. 867.

2. Section 416.2202 is amended by revising paragraph (b), by redesignating paragraphs (c) through (n) as paragraphs (d) through (o), by adding a new paragraph (c), and by revising redesignated paragraphs (e) and (*l*) to read as follows:

§ 416.2202 Purpose and scope.

* * * * *

(b) Section 416.2204 explains how State VR agencies or alternate participants may participate in the payment program under this subpart.

(c) Section 416.2206 describes the basic qualifications for alternate participants.

* * * * *

(e) Sections 416.2210 through 416.2211 describe when an individual has completed a continuous period of SGA and when VR services will be considered to have contributed to that period.

* * * * *

(*l*) Sections 416.2220 and 416.2221 describe the audits and the prepayment and postpayment validation reviews we will conduct.

* * * * *

3. Section 416.2203 is amended by adding a new definition of "Accept the recipient as a client for VR services" immediately before the definition of "Act" and adding a new definition of "Place the recipient into an extended evaluation process" immediately before the definition of "Secretary" to read as follows:

§ 416.2203 Definitions.

* * * * *

Accept the recipient as a client for VR services means that the State VR agency determines that the individual is eligible for VR services and places the individual into an active caseload status for development of an individualized written rehabilitation program.

* * * * *

Place the recipient into an extended evaluation process means that the State VR agency determines that an extended evaluation of the individual's VR potential is necessary to determine

whether the individual is eligible for VR services and places the individual into an extended evaluation status.

* * * * *

4. Section 416.2204 is revised to read as follows:

§ 416.2204 Participation by State VR agencies or alternate participants.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended. An alternate participant must have a similar plan and otherwise qualify under § 416.2206.

(b) *Participation by States.* (1) The opportunity to participate through its VR agency(ies) with respect to disabled or blind recipients in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disabled or blind recipients. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind recipients in the State in accordance with paragraph (d) of this section. We would arrange for VR services for disabled recipients in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disabled or blind recipients in the State by referring such recipients first to the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any recipient so referred by accepting the recipient as a client for VR services or placing the recipient into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(2)(i) In order for the State to participate with respect to a disabled or blind recipient whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the recipient as a client for VR services or to place the recipient into an extended evaluation process. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the month in which we referred the recipient to the State VR agency. If we do not receive such notice with respect to a recipient whom we referred to the State VR agency, we may arrange for VR services for that recipient through an alternate participant.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the recipient into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the recipient as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the recipient as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such recipient. If we receive a notice of a decision by the State VR agency not to accept the recipient as a client for VR services following the completion of the extended evaluation, we may arrange for VR services for that recipient through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients in the State, we will give the State the opportunity to participate with respect to such class(es) of disabled or blind recipients by referring such recipients first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any recipient so referred by accepting the recipient as a client for VR services or placing the recipient into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may choose not to participate through its VR agency(ies) with respect to any disabled or blind recipients in the State, or it may choose to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General, verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2)(i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disabled or blind recipients in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients, we may arrange for VR services through an alternate participant(s) for the class(es) of disabled or blind recipients in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the

appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disabled or blind recipient in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the recipient to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disabled or blind recipients in that State:

(1) A disabled or blind recipient whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2)(i) of this section of a decision by the VR agency either to accept the recipient as a client for VR services or to place the recipient into an extended evaluation process;

(2) A disabled or blind recipient with respect to whom we receive a notice under paragraph (c)(2)(ii) of this section of a decision by the VR agency not to accept the recipient as a client for VR services following the completion of the extended evaluation;

(3) The class(es) of disabled or blind recipients excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(4) All disabled or blind recipients in the State if the State has decided not to participate through its VR agency(ies).

5. A new § 416.2206 is added to read as follows:

§ 416.2206 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 416.2204(f). An alternate participant may be a public or private agency, organization, institution or individual (that is, any entity whether for-profit or not-for-profit), other than a State VR agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 416.2204(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide, among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribe or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2)(i), (ii), or (iii) of this section will be used to provide VR services.

6. Section 416.2208 is amended by redesignating paragraphs (b) through (f) as (c) through (g), by adding a new paragraph (b), and by revising redesignated paragraphs (d) and (f) to read as follows:

§ 416.2208 Requirements for payment.

* * * * *

(b) The claim for payment must be in a form prescribed by us and contain the following information:

(1) A description of each service provided;

(2) When the service was provided; and

(3) The cost of the service;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, or, in the case of an alternate participant, under a negotiated plan, and must be services that are described in § 416.2214;

* * * * *

(f) The State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disabled or blind recipients with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under this subpart; and

* * * * *

7. Section 416.2209 is amended by revising paragraph (c), by removing the word "and" at the end of paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding a new paragraph (g) to read as follows:

§ 416.2209 Responsibility for making payment decisions.

* * * * *

(c) Whether an individual, without good cause, refused to continue to accept VR services or failed to cooperate in a VR program for a month(s) after October 1984, and whether an individual's disability or blindness payment should be suspended;

* * * * *

(g) Whether a VR service is a service described in § 416.2214; and

* * * * *

8. Section 416.2211 is amended by revising the introductory text, by revising paragraphs (a)(1) and (a)(2), and by revising the introductory text of paragraph (b)(1) to read as follows:

§ 416.2211 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be paid for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services described in § 416.2214 that were initiated, coordinated or provided, including services before October 1, 1981.

(a) * * *

(1) *One year or less.* Any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(2) *More than one year.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved, with or without periodic interruption, into SGA), and that work activity began less than a year after VR services ended, any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the VR services (e.g., training).

(b) *Continuous period with medical recovery occurring before completion.* (1) If an individual medically recovers before a continuous period has been completed, VR services under paragraph (a) of this section will not be payable unless some VR services contributed to the medical recovery. VR services will be considered to have contributed to the medical recovery if—

* * * * *

9. Section 416.2213 is revised to read as follows:

§ 416.2213 Payment for VR services in a case of VR refusal.

(a) For purposes of this section, *VR refusal* means an individual's refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

(b) No later than the 60th day after the State VR agency or alternate participant makes a preliminary finding that an individual refuses to continue to accept VR services or fails to cooperate in a VR program, the State VR agency or alternate participant shall report to the appropriate Regional Commissioner (SSA) in writing such individual's VR refusal so that we may make the determination described in § 416.2209(c).

(c) Payment can be made to a State VR agency or alternate participant for the costs of VR services provided to an individual who, after filing an application with the State VR agency or alternate participant for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual if the individual's monthly disability or blindness payment has been suspended or terminated for a month or months after October 1984 because of VR refusal.

10. Section 416.2214 is revised to read as follows:

§ 416.2214 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of-1973, as amended, or by an alternate participant under a negotiated plan, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

(1) Necessary to determine an individual's eligibility for VR services or the nature and scope of the services to be provided; or

(2) Provided by a State VR agency under an IWRP, or by an alternate participant under a similar document, but only if the services could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

(b) *Specific services.* Payment may be made under this subpart only for the following VR services:

(1) An assessment for determining an individual's eligibility for VR services and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, and which includes determining—

(i) The nature and extent of the physical or mental impairment(s) and the resultant impact on the individual's employability;

(ii) The likelihood that an individual will benefit from vocational rehabilitation services in terms of employability; and

(iii) An employment goal consistent with the capacities of the individual and employment opportunities;

(2) Counseling and guidance, including personal adjustment counseling, and those referrals and other services necessary to help an individual secure needed services from other agencies;

(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and which constitutes an impediment to suitable employment at or above the SGA level;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency or alternate participant to secure grant assistance in whole or in part from other sources;

(5) Maintenance expenses that are extra living expenses over and above the individual's normal living expenses and that are incurred solely because of and while the individual is participating in the VR program and that are necessary in order for the individual to benefit from other necessary VR services;

(6) Travel and related expenses necessary to transport an individual for purpose of enabling the individual's participation in other necessary VR services;

(7) Services to family members of a disabled or blind individual only if necessary to the successful vocational rehabilitation of that individual;

(8) Interpreter services and note-taking services for an individual who is deaf and tactile interpreting for an individual who is deaf and blind;

(9) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for an individual who is blind;

(10) Telecommunications, sensory, and other technological aids and devices;

(11) Work-related placement services to secure suitable employment;

(12) Post-employment services necessary to maintain, regain or advance into suitable employment at or above the SGA level;

(13) Occupational licenses, tools, equipment, initial stocks, and supplies;

(14) Rehabilitation technology services; and

(15) Other goods and services that can reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

11. Section 416.2217 is amended by revising the introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 416.2217 What costs will be paid.

In accordance with section 1615(d) of the Social Security Act, the Secretary will pay the State VR agency or alternate participant for the VR services described in § 416.2214 which were provided during the period described in § 416.2215 and which meet the criteria in § 416.2211, § 416.2212, or § 416.2213, but subject to the following limitations:

* * * * *

(b) The cost must not have been paid or be payable from some other source.

For this purpose, State VR agencies or alternate participants will be required to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education. Alternate participants will not be required to consider State VR services a similar benefit.

(c)(1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency or, in the case of an alternate participant, it complies with similar written policies established under a negotiated plan. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in § 416.2214. The State VR agency or alternate participant must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services, for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

(i) The lowest reasonable cost for such services; and

(ii) Sufficient flexibility so as to allow for an individual's needs.

(2) The State VR agency shall submit to us before the end of the first calendar quarter of each year a written statement certifying that cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the State VR agency requests payment under this subpart. Such certification must be signed by the State's chief financial official or the head of the VR agency. Each certification must specify the basis upon which it is made, e.g., a recent audit by an authorized State, Federal or private auditor (or other independent compliance review) and the date of such audit (or compliance review). In the case of an alternate participant, these certification requirements shall be incorporated into the negotiated agreement or contract. We may request the State VR agency or alternate participant to submit to us a copy(ies) of its specific written cost-containment policies and procedures (e.g., any guidelines and fee schedules for a given year), if we determine that such additional information is necessary to ensure compliance with the requirements of this subpart. The State VR agency or alternate participant shall provide such information when requested by us.

* * * * *

12. Section 416.2221 is revised to read as follows:

§ 416.2221 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each State VR agency or alternate participant. We will conduct some of these reviews on a prepayment basis and some on a postpayment basis. We may review a specific claim, a sample of the claims, or all the claims filed by any State VR agency or alternate participant, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency or alternate participant must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the requirements for payment. For claims for cases described in § 416.2201(a), a clear explanation or existing documentation which demonstrates how the service contributed to the individual's performance of a continuous 9-month period of SGA must be provided. For claims for cases described in § 416.2201(b) or (c), a clear explanation or existing documentation which demonstrates how the service was reasonably expected to motivate or assist the individual to return to or continue in SGA must be provided. If we find in any prepayment validation review that the scope or content of the information is inadequate, we will request additional information and will withhold payment until adequate information has been provided. The State VR agency or alternate participant shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) *Purpose.* The primary purpose of these reviews is—

(1) To ensure that the VR services and costs meet the requirements for payment under this subpart;

(2) To assess the validity of our documentation requirements; and

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency or alternate participant of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency or alternate participant that we will make the appropriate adjustment.

(d) *Appeals.* If the State VR agency or alternate participant disagrees with our determination under this section, it may appeal that determination in accordance with § 416.2227. For purposes of this section, an appeal must be filed within 60 days after receiving the notice of our determination.

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BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8528]

RIN 1545–AS12

Certain Elections for Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the procedures for making elections under the intangibles provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). The regulations affect electing taxpayers that acquired intangible property after July 25, 1991, or acquired intangibles under a written, binding contract that was in effect on August 10, 1993. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective March 15, 1994.

FOR FURTHER INFORMATION CONTACT: John Huffman, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1425. The estimated annual burden per respondent varies from 30 minutes to 75 minutes, depending on individual circumstances, with an estimated average of 1 hour.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 197 and 167(f). The amendments reflect changes made by section 13261 of OBRA '93.

Explanation of Provisions

Section 13261 of OBRA '93 contains provisions affecting the tax treatment of intangible property acquired after August 10, 1993 (the date of enactment of OBRA '93). The temporary regulations provide guidance on how to make the section 13261(g)(2) election to apply the intangibles provisions of OBRA '93 to property acquired after July 25, 1991, and on or before August 10, 1993 (retroactive election). Once made, the election applies to all property acquired during this period by the taxpayer or a taxpayer under common control with the electing taxpayer. Common control exists if the two taxpayers are treated as a single taxpayer under section 41(f)(1) (A) or (B) at any time after August 2, 1993, and on or before the election date as defined under these regulations.

If a corporation is a former member of a consolidated group and the common parent of that group makes the retroactive election, the intangibles provisions of OBRA '93 will apply to property that was acquired by the former member after July 25, 1991, while it was a member of the consolidated group.

The regulations provide special rules for partnerships for which a section 754 election was in effect. In these situations, a partner that obtains an increased basis in intangibles held through the partnership as a result of either section 734(b) or 743(b) will be treated as if the increased basis were attributable to the partner's acquisition of a new intangible asset on the date of the transaction that results in the basis increase.

The regulations also provide guidance on how a taxpayer may make the section 13261(g)(3) election to apply prior law to intangibles acquired after August 10, 1993, pursuant to a written binding contract in effect on August 10, 1993, and at all times thereafter before the acquisition (binding contract election). Only taxpayers that have not elected the retroactive election may make the binding contract election.

The elections provided for in these regulations generally must be made on the taxpayer's timely filed (including extensions) income tax return for the taxable year that includes August 10, 1993. Transition rules are provided, however for taxpayers that have filed tax returns for the taxable year that includes August 10, 1993, prior to April 14, 1994.

The taxpayer must make the desired election by following the election requirements under the regulations. An attempted election made other than at the time and in the manner prescribed by the regulations is not valid.

Taxpayers making the retroactive election must conform all affected prior years' returns to reflect the application of the intangibles provisions of OBRA '93.

The regulations also provide special rules for transfers of intangibles in certain tax-free transactions. Under these rules, a transferee is bound by a transferor's retroactive election with respect to any transferred intangibles. In cases where the transferor does not make the retroactive election, the transferee may make the election. In these cases, the transferor is not required to apply the intangibles provisions of OBRA '93 to the transferred intangibles (unless those provisions are otherwise applicable), and the transferee must take into account an adjustment with respect to the transferred intangibles on account of any interim period during which the intangibles provisions of OBRA '93 did not apply to the transferred intangibles. The adjustment, which is taken into account in the taxable year of the acquisition, is equal to the difference, as of the date of the transfer, between the sum of the depreciation, amortization, or other cost recovery deductions that would have been permitted for the transferred intangibles had the intangibles provisions of OBRA '93 applied to the property during the interim period, and the sum of the depreciation, amortization, or other cost recovery deductions claimed with respect to the intangibles during the interim period. The transferee must also make any corresponding basis adjustments to the transferred intangibles.

Principles and adjustments similar to those described in the preceding paragraph (in the case of a retroactive election by the transferee where no election is made by the transferor) are also applied in certain circumstances with respect to an electing former member of a non-electing consolidated group.

Finally, in order for the retroactive or binding contract elections to be valid, the regulations prescribe certain notice requirements and require that certain information be included in a written election statement filed with the election year return and any affected amended returns.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is John Huffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.197–1T also issued under 26 U.S.C. 197(g).

Par. 2. Section 1.167(a)–13T is added to read as follows:

§ 1.167(a)–13T Certain elections for intangible property (temporary).

For rules applying the elections under section 13261(g) (2) and (3) of the Omnibus Budget Reconciliation Act of 1993 to intangible property described in section 167(f), see § 1.197–1T.

Par. 3. Section 1.197–1T is added under the heading "Itemized Deductions for Individuals and Corporations" to read as follows:

§ 1.197–1T Certain elections for intangible property (temporary).

(a) *In general.* This section provides rules for making the two elections under section 13261 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Paragraph (c) of this section provides rules for making the section 13261(g)(2) election (the retroactive election) to apply the intangibles provisions of OBRA '93 to property acquired after July 25, 1991, and on or before August 10, 1993 (the date of enactment of OBRA '93). Paragraph (d) of this section provides rules for making the section 13261(g)(3) election (binding contract election) to apply prior law to property acquired pursuant to a written binding contract in effect on August 10, 1993, and at all times thereafter before the date of acquisition. The provisions of this section apply only to property for which an election is made under paragraph (c) or (d) of this section.

(b) *Definitions and special rules*—(1) *Intangibles provisions of OBRA '93.* The intangibles provisions of OBRA '93 are sections 167(f) and 197 of the Internal Revenue Code (Code) and all other pertinent provisions of section 13261 of OBRA '93 (e.g., the amendment of section 1253 in the case of a franchise, trademark, or trade name).

(2) *Transition period property.* The transition period property of a taxpayer is any property that was acquired by the taxpayer after July 25, 1991, and on or before August 10, 1993.

(3) *Eligible section 197 intangibles.* The eligible section 197 intangibles of a taxpayer are any section 197 intangibles that—

(i) Are transition period property; and

(ii) Qualify as amortizable section 197 intangibles (within the meaning of section 197(c)) if an election under section 13261(g)(2) of OBRA '93 applies.

(4) *Election date.* The election date is the date (determined after application of section 7502(a)) on which the taxpayer files the original or amended return to which the election statement described in paragraph (e) of this section is attached.

(5) *Election year.* The election year is the taxable year of the taxpayer that includes August 10, 1993.

(6) *Common control.* A taxpayer is under common control with the electing taxpayer if, at any time after August 2, 1993, and on or before the election date (as defined in paragraph (b)(4) of this section), the two taxpayers would be treated as a single taxpayer under section 41(f)(1) (A) or (B).

(7) *Applicable convention for sections 197 and 167(f) intangibles.* For purposes of computing the depreciation or amortization deduction allowable with respect to transition period property described in section 167(f) (1) or (3) or with respect to eligible section 197 intangibles—

(i) Property acquired at any time during the month is treated as acquired as of the first day of the month and is eligible for depreciation or amortization during the month; and

(ii) Property is not eligible for depreciation or amortization in the month of disposition.

(8) *Application to adjustment to basis of partnership property under section 734(b) or 743(b).* Any increase in the basis of partnership property under section 734(b) (relating to the optional adjustment to basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property) will be taken into account under this section by a partner as if the increased portion of the basis were attributable to the partner's acquisition of the underlying partnership property on the date the distribution or transfer occurs. For example, if a section 754 election is in effect and, as a result of its acquisition of a partnership interest, a taxpayer obtains an increased basis in an intangible held through the partnership, the increased portion of the basis in the intangible will be treated as an intangible asset newly acquired by that taxpayer on the date of the transaction.

(9) *Former member.* A former member of a consolidated group is a corporation that was a member of the consolidated group at any time after July 25, 1991, and on or before August 2, 1993, but that is not under common control with the common parent of the group for purposes of paragraph (c)(1)(ii) of this section.

(c) *Retroactive election*—(1) *Effect of election*—(i) *On taxpayer.* Except as provided in paragraph (c)(1)(v) of this section, if a taxpayer makes the retroactive election, the intangibles provisions of OBRA '93 will apply to all the taxpayer's transition period property. Thus, for example, section 197 will apply to all the taxpayer's eligible section 197 intangibles.

(ii) *On taxpayers under common control.* If a taxpayer makes the retroactive election, the election applies to each taxpayer that is under common control with the electing taxpayer. If the retroactive election applies to a taxpayer under common control, the intangibles provisions of OBRA '93 apply to that taxpayer's transition period property in the same manner as if that taxpayer had itself made the retroactive election. However, a retroactive election that applies to a non-electing taxpayer under common control is not treated as an election by that taxpayer for purposes of re-applying the rule of this paragraph (c)(1)(ii) to any other taxpayer.

(iii) *On former members of consolidated group.* A retroactive election by the common parent of a consolidated group applies to transition period property acquired by a former member while it was a member of the consolidated group and continues to apply to that property in each subsequent consolidated or separate return year of the former member.

(iv) *On transferred assets*—(A) *In general.* If property is transferred in a transaction described in paragraph (c)(1)(iv)(C) of this section and the intangibles provisions of OBRA '93 applied to such property in the hands of the transferor, the property remains subject to the intangibles provisions of OBRA '93 with respect to so much of its adjusted basis in the hands of the transferee as does not exceed its adjusted basis in the hands of the transferor. The transferee is not required to apply the intangibles provisions of OBRA '93 to any other transition period property that it owns, however, unless such provisions are otherwise applicable under the rules of this paragraph (c)(1).

(B) *Transferee election.* If property is transferred in a transaction described in paragraph (c)(1)(iv)(C)(*1*) of this section and the transferee makes the retroactive election, the transferor is not required to apply the intangibles provisions of OBRA '93 to any of its transition period property (including the property

transferred to the transferee in the transaction described in paragraph (c)(1)(iv)(C)(*1*) of this section), unless such provisions are otherwise applicable under the rules of this paragraph (c)(1).

(C) *Transactions covered.* This paragraph (c)(1)(iv) applies to—

(*1*) Any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033; and

(*2*) Any transaction between corporations that are members of the same consolidated group immediately after the transaction.

(D) *Exchanged basis property.* In the case of a transaction involving exchanged basis property (e.g., a transaction subject to section 1031 or 1033)—

(*1*) Paragraph (c)(1)(iv)(A) of this section shall not apply; and

(*2*) If the intangibles provisions of OBRA '93 applied to the property by reference to which the exchanged basis is determined (the predecessor property), the exchanged basis property becomes subject to the intangibles provisions of OBRA '93 with respect to so much of its basis as does not exceed the predecessor property's basis.

(E) *Acquisition date.* For purposes of paragraph (b)(2) of this section (definition of transition period property), property (other than exchanged basis property) acquired in a transaction described in paragraph (c)(1)(iv)(C)(*1*) of this section generally is treated as acquired when the transferor acquired (or was treated as acquiring) the property (or predecessor property). However, if the adjusted basis of the property in the hands of the transferee exceeds the adjusted basis of the property in the hands of the transferor, the property, with respect to that excess basis, is treated as acquired at the time of the transfer. The time at which exchanged basis property is considered acquired is determined by applying similar principles to the transferee's acquisition of predecessor property.

(v) *Special rule for property of former member of consolidated group*—(A) *Intangibles provisions inapplicable for certain periods.* If a former member of a consolidated group makes a retroactive election pursuant to paragraph (c)(1)(i) of this section or if an election applies to the former member under the common control rule of paragraph (c)(1)(ii) of this section, the intangibles provisions of OBRA '93 generally apply to all transition period property of the former member. The intangibles provisions of OBRA '93 do not apply, however, to the transition period property of a former member (including a former member that makes or is bound by a retroactive election) during the period beginning immediately after July 25, 1991, and ending immediately before the earlier of—

(*1*) The first day after July 25, 1991, that the former member was not a member of a consolidated group; or

(*2*) The first day after July 25, 1991, that the former member was a member of a consolidated group that is otherwise required to apply the intangibles provisions of OBRA '93 to its transition period property (e.g., because the common control election under paragraph (c)(1)(ii) of this section applies to the group).

(B) *Subsequent adjustments.* See paragraph (c)(5) of this section for adjustments when the intangibles provisions of OBRA '93 first apply to the transition period property of the former member after the property is acquired.

(2) *Making the election*—(i) *Partnerships, S corporations, estates, and trusts.* Except as provided in paragraph (c)(2)(ii) of this section, in the case of transition period property of a partnership, S corporation, estate, or trust, only the entity may make the retroactive election for purposes of paragraph (c)(1)(i) of this section.

(ii) *Partnerships for which a section 754 election is in effect.* In the case of increased basis that is treated as transition period property of a partner under paragraph (b)(8) of this section, only that partner may make the retroactive election for purposes of paragraph (c)(1)(i) of this section.

(iii) *Consolidated groups.* An election by the common parent of a consolidated group applies to members and former members as described in paragraphs (c)(1)(ii) and (iii) of this section. Further, for purposes of paragraph (c)(1)(ii) of this section, an election by the common parent is not treated as an election by any subsidiary member. A retroactive election cannot be made by a corporation that is a subsidiary member of a consolidated group on August 10, 1993, but an election can be made on behalf of the subsidiary member under paragraph (c)(1)(ii) of this section (e.g., by the common parent of the group). See paragraph (c)(1)(iii) of this section for rules concerning the effect of the common parent's election on transition period property of a former member.

(3) *Time and manner of election*—(i) *Time.* In general, the retroactive election must be made by the due date (including extensions of time) of the electing taxpayer's Federal income tax return for the election year. If, however, the taxpayer's original Federal income tax return for the election year is filed before April 14, 1994, the election may be made by amending that return no later than September 12, 1994.

(ii) *Manner.* The retroactive election is made by attaching the election statement described in paragraph (e) of this section to the taxpayer's original or amended income tax return for the election year. In addition, the taxpayer must—

(A) Amend any previously filed return when required to do so under paragraph (c)(4) of this section; and

(B) Satisfy the notification requirements of paragraph (c)(6) of this section.

(iii) *Effect of nonconforming elections.* An attempted election that does not satisfy the requirements of this paragraph (c)(3) (including an attempted election made on a return for a taxable year prior to the election year) is not valid.

(4) *Amended return requirements*—(i) *Requirements.* A taxpayer subject to this paragraph (c)(4) must amend all previously filed income tax returns as necessary to conform the taxpayer's treatment of transition period property to the treatment required under the intangibles provisions of OBRA '93. See paragraph (c)(5) of this section for certain adjustments that may be required on the amended returns required under this paragraph (c)(4) in the case of certain consolidated group member dispositions and tax-free transactions.

(ii) *Applicability.* This paragraph (c)(4) applies to a taxpayer if—

(A) The taxpayer makes the retroactive election; or

(B) Another person's retroactive election applies to the taxpayer or to any property acquired by the taxpayer.

(5) *Adjustment required with respect to certain consolidated group member dispositions and tax-free transactions*—(i) *Application.* This paragraph (c)(5) applies to transition period property if the intangibles provisions of OBRA '93 first apply to the property while it is held by the taxpayer but do not apply to the property for some period (the "interim period") after the property is acquired (or considered acquired) by the taxpayer. For example, this paragraph (c)(5) may apply to transition period property held by a former member of a consolidated group if a retroactive election is made by or on behalf of the former member but is not made by the consolidated group. See paragraph (c)(1)(v) of this section.

(ii) *Required adjustment to income.* If this paragraph (c)(5) applies, an adjustment must be taken into account in computing taxable income of the

taxpayer for the taxable year in which the intangibles provisions of OBRA '93 first apply to the property. The amount of the adjustment is equal to the difference for the transition period property between—

(A) The sum of the depreciation, amortization, or other cost recovery deductions that the taxpayer (and its predecessors) would have been permitted if the intangibles provisions of OBRA '93 applied to the property during the interim period; and

(B) The sum of the depreciation, amortization, or other cost recovery deductions that the taxpayer (and its predecessors) claimed during that interim period.

(iii) *Required adjustment to basis.* The taxpayer also must make a corresponding adjustment to the basis of its transition period property to reflect any adjustment to taxable income with respect to the property under this paragraph (c)(5).

(6) *Notification requirements*—(i) *Notification of commonly controlled taxpayers.* A taxpayer that makes the retroactive election must provide written notification of the retroactive election (on or before the election date) to each taxpayer that is under common control with the electing taxpayer.

(ii) *Notification of certain former members, former consolidated groups, and transferees.* This paragraph (c)(6)(ii) applies to a common parent of a consolidated group that makes or is notified of a retroactive election that applies to transition period property of a former member, a corporation that makes or is notified of a retroactive election that affects any consolidated group of which the corporation is a former member, or a taxpayer that makes or is notified of a retroactive election that applies to transition period property the taxpayer transfers in a transaction described in paragraph (c)(1)(iv)(C) of this section. Such common parent, former member, or transferor must provide written notification of the retroactive election to any affected former member, consolidated group, or transferee. The written notification must be provided on or before the election date in the case of an election by the common parent, former member, or transferor, and within 30 days of the election date in the case of an election by a person other than the common parent, former member, or transferor.

(7) *Revocation.* Once made, the retroactive election may be revoked only with the consent of the Commissioner.

(8) *Examples.* The following examples illustrate the application of this paragraph (c).

Example 1. (i) X is a partnership with 5 equal partners, A through E. X acquires in 1989, as its sole asset, intangible asset M. X has a section 754 election in effect for all relevant years. F, an unrelated individual, purchases A's entire interest in the X partnership in January 1993 for $700. At the time of F's purchase, X's inside basis for M is $2,000, and its fair market value is $3,500.

(ii) Under section 743(b), X makes an adjustment to increase F's basis in asset M by $300, the difference between the allocated purchase price and M's inside basis ($700 − $400 = $300). Under paragraphs (b)(8) and (c)(2)(ii) of this section, if F makes the retroactive election, the section 743(b) basis increase of $300 in M is an amortizable section 197 intangible even though asset M is not an amortizable section 197 intangible in the hands of X. F's increase in the basis of asset M is amortizable over 15 years beginning with the month of F's acquisition of the partnership interest. With respect to the remaining $400 of basis, F is treated as stepping into A's shoes and continues A's amortization (if any) in asset M. F's retroactive election applies to all other intangibles acquired by F or a taxpayer under common control with F.

Example 2. A, a calendar year taxpayer, is under common control with B, a June 30 fiscal year taxpayer. A files its original election year Federal income tax return on March 15, 1994, and does not make either the retroactive election or the binding contract election. B files its election year tax return on September 15, 1994, and makes the retroactive election. B is required by paragraph (c)(6)(i) of this section to notify A of its election. Even though A had already filed its election year return, A is bound by B's retroactive election under the common control rules. Additionally, if A had made a binding contract election, it would have been negated by B's retroactive election. Because of B's retroactive election, A must comply with the requirements of this paragraph (c), and file amended returns for the election year and any affected prior years as necessary to conform the treatment of transition period property to the treatment required under the intangibles provisions of OBRA '93.

Example 3. (i) P and Y, calendar year taxpayers, are the common parents of unrelated calendar year consolidated groups. On August 15, 1991, S, a subsidiary member of the P group, acquires a section 197 intangible with an unadjusted basis of $180. Under prior law, no amortization or depreciation was allowed with respect to the acquired intangible. On November 1, 1992, a member of the Y group acquires the S stock in a taxable transaction. On the P group's 1993 consolidated return, P makes the retroactive election. The P group also files amended returns for its affected prior years. Y does not make the retroactive election for the Y group.

(ii) Under paragraph (c)(1)(iii) of this section, a retroactive election by the common parent of a consolidated group applies to all transition period property acquired by a former member while it was a member of the group. The section 197 intangible acquired by S is transition period property that S, a former member of the P group, acquired while a member of the P group. Thus, P's election applies to the acquired asset. P must notify S of the election pursuant to paragraph (c)(6)(ii) of this section.

(iii) S amortizes the unadjusted basis of its eligible section 197 intangible ($180) over the 15-year amortization period using the applicable convention beginning as of the first day of the month of acquisition (August 1, 1991). Thus, the P group amends its 1991 consolidated tax return to take into account $5 of amortization ($180/15 years × 5/12 year = $5) for S.

(iv) For 1992, S is entitled to $12 of amortization ($180/15). Assume that under § 1.1502–76, $10 of S's amortization for 1992 is allocated to the P group's consolidated return and $2 is allocated to the Y group's return. The P group amends its 1992 consolidated tax return to reflect the $10 deduction for S. The Y group must amend its 1992 return to reflect the $2 deduction for S.

Example 4. (i) The facts are the same as in *Example 3*, except that the retroactive election is made for the Y group, not for the P group.

(ii) The Y group amends its 1992 consolidated return to claim a section 197 deduction of $2 ($180/15 years × 2/12 year = $2) for S.

(iii) Under paragraph (c)(1)(ii) of this section, the retroactive election by Y applies to all transition period property acquired by S. However, under paragraph (c)(1)(v)(A) of this section, the intangibles provisions of OBRA '93 do not apply to S's transition period property during the period when it held such property as a member of P group. Instead, these provisions become applicable to S's transition period property beginning on November 1, 1992, when S becomes a member of Y group.

(iv) Because the P group did not make the retroactive election, there is an interim period during which the intangibles provisions of OBRA '93 do not apply to the asset acquired by S. Thus, under paragraph (c)(5) of this section, the Y group must take into account in computing taxable income in 1992 an adjustment equal to the difference between the section 197 deduction that would have been permitted if the intangibles provisions of OBRA '93 applied to the property for the interim period (i.e., the period for which S was included in the P group's 1991 and 1992 consolidated returns) and any amortization or depreciation deductions claimed by S for the transferred intangible for that period. The retroactive election does not affect the P group, and the P group is not required to amend its returns.

Example 5. The facts are the same as in *Example 3*, except that both P and Y make the retroactive election. P must notify S of its election pursuant to paragraph (c)(6)(ii) of this section. Further, both the P and Y groups must file amended returns for affected prior years. Because there is no period of time during which the intangibles provisions of OBRA '93 do not apply to the asset acquired by S, the Y group is permitted no adjustment under paragraph (c)(5) of this section for the asset.

(d) *Binding contract election*—(1) *General rule*—(i) *Effect of election.* If a taxpayer acquires property pursuant to

a written binding contract in effect on August 10, 1993, and at all times thereafter before the acquisition (an eligible acquisition) and makes the binding contract election with respect to the contract, the law in effect prior to the enactment of OBRA '93 will apply to all property acquired pursuant to the contract. A separate binding contract election must be made with respect to each eligible acquisition to which the law in effect prior to the enactment of OBRA '93 is to apply.

(ii) *Taxpayers subject to retroactive election.* A taxpayer may not make the binding contract election if the taxpayer or a person under common control with the taxpayer makes the retroactive election under paragraph (c) of this section.

(iii) *Revocation.* A binding contract election, once made, may be revoked only with the consent of the Commissioner.

(2) *Time and manner of election*—(i) *Time.* In general, the binding contract election must be made by the due date (including extensions of time) of the electing taxpayer's Federal income tax return for the election year. If, however, the taxpayer's original Federal income tax return for the election year is filed before April 14, 1994, the election may be made by amending that return no later than September 12, 1994.

(ii) *Manner.* The binding contract election is made by attaching the election statement described in paragraph (e) of this section to the taxpayer's original or amended income tax return for the election year.

(iii) *Effect of nonconforming election.* An attempted election that does not satisfy the requirements of this paragraph (d)(2) is not valid.

(e) *Election statement*—(1) *Filing requirements.* For an election under paragraph (c) or (d) of this section to be valid, the electing taxpayer must:

(i) File (with its Federal income tax return for the election year and with any affected amended returns required under paragraph (c)(4) of this section) a written election statement, as an attachment to Form 4562 (Depreciation and Amortization), that satisfies the requirements of paragraph (e)(2) of this section; and

(ii) Forward a copy of the election statement to the Statistics Branch (QAM:S:6111), IRS Ogden Service Center, ATTN: Chief, Statistics Branch, P.O. Box 9941, Ogden, UT 84409.

(2) *Content of the election statement.* The written election statement must include the information in paragraphs (e)(2) (i) through (vi) and (ix) of this section in the case of a retroactive election, and the information in paragraphs (e)(2) (i) and (vii) through (ix) of this section in the case of a binding contract election. The required information should be arranged and identified in accordance with the following order and numbering system—

(i) The name, address and taxpayer identification number (TIN) of the electing taxpayer (and the common parent if a consolidated return is filed).

(ii) A statement that the taxpayer is making the retroactive election.

(iii) Identification of the transition period property affected by the retroactive election, the name and TIN of the person from which the property was acquired, the manner and date of acquisition, the basis at which the property was acquired, and the amount of depreciation, amortization, or other cost recovery under section 167 or any other provision of the Code claimed with respect to the property.

(iv) Identification of each taxpayer under common control (as defined in paragraph (b)(6) of this section) with the electing taxpayer by name, TIN, and Internal Revenue Service Center where the taxpayer's income tax return is filed.

(v) If any persons are required to be notified of the retroactive election under paragraph (c)(6) of this section, identification of such persons and certification that written notification of the election has been provided to such persons.

(vi) A statement that the transition period property being amortized under section 197 is not subject to the anti-churning rules of section 197(f)(9).

(vii) A statement that the taxpayer is making the binding contract election.

(viii) Identification of the property affected by the binding contract election, the name and TIN of the person from which the property was acquired, the manner and date of acquisition, the basis at which the property was acquired, and whether any of the property is subject to depreciation under section 167 or to amortization or other cost recovery under any other provision of the Code.

(ix) The signature of the taxpayer or an individual authorized to sign the taxpayer's Federal income tax return.

(f) *Effective date.* These regulations are effective March 15, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 5. Section 602.101(c) is amended by adding an entry numerical order to the table to read as follows:

"1.197–1T . . . . 1545–1425".

Dated: March 2, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–5984 Filed 3–10–94; 3:04 pm]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions of valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in April 1994, and to multiemployer plans with valuation dates in April 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, (202) 326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the April 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer

regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required). In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during April 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1994.

For annuity benefits, the interest rates will be 6.20% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.75% for the period during which benefits are in pay status and 4.0% during the period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that provide sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for March 1994) of .40 percent for the first 25 year following the valuation date are otherwise unchanged; the lump sum interest assumptions represent an increase (from those in effect for March 1994) of .25 percent of the period during which benefits are in pay status and are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during April 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 6 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of Table I is amended by revising both references to "2619.43" to read "2619.49", and the introductory text of both tables is republished for the convenience of the reader.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y,n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the

valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
6	4–1–94	5–1–94	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
April 1994	.0620	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 6 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
6	4–1–94	5–1–94	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o,n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as I_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i, are:					
	i_1	for t=	i_2	for t=	i_3	for t=
• • •	•	•	•	•	•	•
April 1994	.0620	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of March 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–5968 Filed 3–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to provisions of North Dakota's rules concerning permit application requirements, permit application approval, transportation facility plans, performance standards regarding impoundment stability, bald and golden eagles, and coal mine waste impoundments. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT:

Guy Padgett, telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission and Industrial Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated April 21, 1993 (Administrative Record No. ND–P–01), North Dakota submitted a proposed amendment ("Amendment XVII") to its permanent program pursuant to SMCRA. North Dakota proposed this amendment: (1) In response to program amendments required at 30 CFR Part 934.16 (m), (o), (p), (q), (r), (s), (t), & (v), codified in the January 9, 1992, **Federal Register** (57 FR 827); (2) to provide minor editorial revisions, and (3) to propose a State initiative to delete a requirement that the Commission approve subsoil respreading prior to the redistribution of topsoil by the operator.

OSM published a proposed rule in the May 19, 1993, **Federal Register** (58 FR 29153) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. ND–P–7). The public comment period ended June 18, 1993. No substantive comments were received. The public hearing, scheduled for June 14, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to the proposed provisions of the North Dakota Administrative Code (NDAC) 69–05.2–10–03(1) regarding permit denial for unpaid civil penalties for certain violations. OSM notified North Dakota of the concerns by letter dated October 6, 1993 (Administrative Record No. ND–P–10). North Dakota responded in a letter dated November 23, 1993, by submitting revisions to its proposed program amendment at NDAC 69–05.2–10–03(1)(a) (Administrative Record No. ND–P–11) that would require that the Commission not issue a permit if there are delinquent civil penalties under the North Dakota Century Code (NDCC) sections 38–14.1–32 and 38–12.1–08, SMCRA, or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation. OSM then reopened the public comment period in the December 8, 1993, **Federal Register** (58 FR 64528); Administrative Record No. ND–P–12). The public comment period closed on December 23, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed North Dakota program amendment as submitted on April 21, 1993, and revised on November 23, 1993.

1. Provisions Not Discussed

North Dakota proposes a few non-substantive editorial revisions to certain of its rules. Because these proposed revisions to its previously approved rules are non-substantive in nature, the Director finds that these proposed

revisions are not inconsistent with or less effective than the Federal regulations, and is approving the proposed non-substantive editorial revisions.

2. Permit Applications: List of Violation Notices

At NDAC 69–05.2–06–02(3), North Dakota proposes to revise the requirement that each permit application contain a "violation list" as required by NDCC 38–14.1–14(1)(g) (for a discussion of the referenced statutory provision, see 57 FR 807, 811 (January 9, 1992)). Under the proposed revision to NDAC 69–05.2–06–02(3), the phrase "violation list" will be replaced by the phrase "list of all violation notices."

In a previous rulemaking action concerning the North Dakota program (57 FR 807, 812, January 9, 1992), OSM had noted the term "violation notice" is broader than and encompasses the term "notice of violation" (NOV). For instance, the term "violation notice," as defined in the Federal and the North Dakota program, includes cessation orders, notices of noncompliance, and other citations, regardless of terminology, in addition to NOV's (see citation above). OSM thus found that the existing language at NDAC 69–05.2–06–02(3), by referencing the requirement of NDCC 38–14.1–14(1)(g) for a list of "notices of violation," was not as inclusive as the Federal regulation language at 30 CFR 778.14(c), which requires a "list of all violation notices." North Dakota now proposes to revise the existing phrase so that it is substantively the same as the corresponding phrase in the Federal requirement; i.e., the proposed revision would interpret the statutory provision to encompass the broader term "violation notice," just as the Federal regulation interprets SMCRA. The Director therefore finds that the proposed phrase "list of all violation notices" is no less effective than the Federal regulation requirement, and is approving the proposed revision. For a discussion of the remainder of this North Dakota provision, the reader is directed to the earlier OSM rulemaking action (57 FR 807, 811; January 9, 1992; Finding No. 6).

The Director notes that the approval of this proposed revision satisfies the required amendment at 30 CFR 934.16(m) that was placed on the North Dakota program in the earlier rulemaking action (57 FR 807, 812, January 9, 1992), and is herewith removing that requirement.

3. Permit Applications: Plans for Support Facilities

North Dakota proposes to revise NDAC 69–05.2–09–01(4) to require that plans for support facilities be sufficient to demonstrate compliance with either section 69–05.2–24–08 or section 69–05.2–24–09, as applicable. Section 69–05.2–24–08 contains the performance standards for transportation facilities other than roads, while section 69–05.2–24–09 contains the performance standards for support facilities and utility installations.

The corresponding Federal requirement at 30 CFR 780.38 requires that plans for support facilities be sufficient to demonstrate compliance with 30 CFR 816.181. This latter section contains the performance standards for support facilities, which, under the Federal provisions, includes all transportation facilities other than roads (see 53 FR 45190, 45197, November 8, 1988). Thus, North Dakota's proposal would require plans in permit applications to demonstrate compliance with the equivalent performance standards as those required by the Federal rule. The Director finds that the proposed revision to NDAC 69–05.2–09–01(4) is no less effective than the Federal regulation in meeting SMCRA's requirements and is approving the proposed change.

The Director notes that the approval of this provision satisfies the required amendment at 30 CFR 934.16(o) that was placed on the North Dakota program in a January 9, 1992, rulemaking action (57 FR 807, 814), and is herewith removing that requirement.

4. Permit Approval/Denial: Review of Violations

a. Proposed Subsection (1)—Applicable Laws

North Dakota proposes to revise NDAC 69–05.2–10–03 (1) so that it would provide as follows:

1. The Commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, [SMCRA], or any law or rule in any state enacted under Federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:

a. Delinquent civil penalties under [NDCC] sections 38–14.1–32 and 38–12.1–08, [SMCRA], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.

* * * * *

d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.

* * * * *

In this amendment, the State proposed changes to subsections (1) and (1)(a).

The Federal rules at 30 CFR 773.15(b)(1) require that the regulatory authority deny a permit if any surface coal mining and reclamation operation owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of "the Act or any other law, rule or regulation referred to in this paragraph," as indicated by any available information, including the list of violation notices submitted in the permit application. Among the specified violations are:

Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518 of the Act, bond forfeitures where violations upon which the forfeitures where based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation * * *.

The reference to "the Act" in section 510(c) of SMCRA and 30 CFR 773.15(b)(1) includes SMCRA, its implementing regulations, and all State and Federal programs approved under SMCRA (see 48 FR 44344, 44389 (September 28, 1983); 53 FR 38868, 38882–38883 (October 3, 1988); see also 45 FR 82214, 82223 (December 15, 1980) (conditional approval of North Dakota program); 57 FR 807, 816 (January 9, 1992)). Similarly, the reference in proposed NDAC 69–05.2–10–03, subsection (1), to violations of SMCRA is interpreted to mean violations of SMCRA, its implementing regulations, and any State or Federal program approved pursuant to SMCRA.

Regarding other environmental laws and rules, the State proposal at NDAC 69–05.2–10–03, subsection (1), prohibits permit issuance for current violations of "any law or rule in any state * * * pertaining to air or water environmental protection * * *" (emphasis added). The Federal regulation cited above prohibits permit issuance if any surface coal mining and reclamation operation owned or controlled by the applicant or by any person who owns or controls the

applicant has "unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection * * *." Thus the Federal provision, unlike the State proposal, encompasses Federal as well as State laws, rules, and regulations. However, OSM notes that existing NDAC 69–05.2–10–03(1)(d), which is not proposed for revision and which is quoted above, prohibits the Commission from issuing a permit if there are outstanding "* * * [u]nabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection * * *" (emphasis added). As a result, even though the proposed revision at NDAC 69–05.2–10–03(1) is less inclusive than the Federal regulation requirement at 30 CFR 773.15(b)(1), the North Dakota program as proposed would nevertheless contain the same requirements for prohibiting permit issuance for current violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection. Therefore the Director finds the proposed revision to NDAC 69–05.2–10–03(1) to be no less effective than the Federal regulation requirements, and is approving the proposed revision.

b. Proposed Subsection (1)(a)—Delinquent Civil Penalties

At NDAC 69–05.2–10–03, subsection (1)(a), North Dakota proposes revisions that would require that the Commission deny a permit if there are outstanding delinquent civil penalties under NDCC sections 38–14.1–32 and 38–12.1–08, SMCRA, or any law or rule in any State, enacted under Federal law or regulation, pertaining to air or water environmental protection, if incurred in connection with a surface coal mining and reclamation operation.

The Federal rule at 30 CFR 778.15(b)(1) requires that the regulatory authority deny a permit if, among other circumstances, "civil penalties issued pursuant to section 518 of the Act" are delinquent. The reference to "the Act" includes SMCRA, its implementing regulations, and all State and Federal programs approved under SMCRA (see 48 FR 44344, 44389 (September 28, 1983); see also 53 FR 38868, 38882–38883 (October 3, 1988)). Accordingly, the reference in the State proposal at NDAC 69–05.2–03, subsection (1)(a), to delinquent civil penalties under SMCRA is interpreted to encompass civil penalties under SMCRA, its implementing regulations, and all State and Federal programs approved under SMCRA.

The State proposal at NDAC 69–05.2–03, subsection (1)(a), would also require permit denial if civil penalties under "any law or rule in any State enacted under Federal law or regulation pertaining to air or water environmental protection . . ." are delinquent. In the preamble to the Federal rule at 30 CFR 773.15(b)(1), OSM stated:

> OSMRE intends to construe references to civil penalties in final § 773.15(b)(1) as referring only to those civil penalties that arise from violations of the Act, its implementing regulations and approved State or Federal programs * * *. Whether failure to pay civil penalties arising under other laws is covered depends upon whether such failure constitutes an unabated violation of other law pertaining to air or water environmental protection.
>
> 53 FR 38868, 38882–38883 (October 3, 1988)

North Dakota's proposal would thus require permit denial for at least the same delinquencies as would be required by the Federal regulation; and it could be interpreted to require permit denial for additional delinquencies beyond those required by the Federal regulation. In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations.

Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore the Director finds that North Dakota's proposed revision to NDAC 69–05.2–10–03(1)(a) is not inconsistent with the Federal program requirements and is approving the proposed revision.

The Director notes that the approval of the proposed provisions at NDAC 69–05.2–10–03 (1) and (1)(a) (discussed in Finding Nos. 4a and 4b above) satisfy the requirement amendment at 30 CFR 934.16(q) that was placed on the North Dakota program in a January 9, 1992, rulemaking action (57 FR 807, 817), and is herewith removing that requirement.

5. Permit Approval/Denial: Patterns of Violations

North Dakota proposes to revise NDAC 69–05.2–10–03, subsection (4), so that it would provide, in part, as follows:

> The Commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, [SMCRA], or any state or federal program approved under [SMCRA], of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules or programs.

The Federal regulation at 30 CFR 773.15(b)(3) requires that the regulatory authority deny a permit if it finds a demonstrated pattern of willful violations of "the Act." As discussed in Finding No. 4a above, the reference to "the Act" in section 510(c) of SMCRA and 30 CFR 773.15(b)(3) includes SMCRA, its implementing regulations, and all State and Federal programs approved under SMCRA.

Similarly, the reference in proposed NDAC 69–05.2–10–03(4) to violations of SMCRA is interpreted to mean violations of SMCRA, its implementing regulations, and any State or Federal program approved pursuant to SMCRA. When so interpreted, the proposed language actually addresses violations of State and Federal programs twice, since proposed NDAC 69–05.2–10–03(4) refers to violations of both "[SMCRA]" and "any State or Federal program approved under [SMCRA]". OSM finds that the additional language clarifies the implicit requirement.

In addition, North Dakota's proposal would include violations of North Dakota laws and rules outside its SMCRA-approved program. Therefore, the North Dakota proposal would encompass more violations than those encompassed by the Federal regulation at 30 CFR 773.15(b)(3). In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore the Director finds that North Dakota's proposed revisions at NDAC 69–05.2–10–03(4) are not inconsistent with the Federal program and is approving them.

The Director notes that the approval of the proposal satisfies the required amendment at 30 CFR 934.16(r) that was placed on the North Dakota program in a January 9, 1992, rulemaking action (57 FR 807, 817–818), and is herewith removing that requirement.

Note regarding applicable persons in violation: NDAC 69–05.2–10–3, subsection (4), as it was previously proposed by North Dakota (November 20, 1990; Administrative Record No. ND–L–01) and approved by OSM (57 FR 807, 817, January 9, 1992) applied the requirement for permit denial based upon a pattern of willful violations to "the applicant, anyone who owns or controls the applicant, or the operator specified in the application * * *." In this current proposal (April 21, 1993; Administrative Record No. ND–P–01), the clause referring to anyone who owns or controls the applicant has been omitted. On January 31, 1994, OSM contacted North Dakota by telephone to determine whether this language was intended to be deleted or whether its omission was an editorial error. North Dakota responded that the clause was not intended to be deleted but rather its omission from the submission was an editorial error, and that the clause will be restored when the revision is promulgated (Administrative Record No. ND–P–14). The Director's approval of proposed NDAC 69–05.2–10–03(4) is based on this understanding.

6. Permit Revisions, Approval/Denial: Violation Review

At NDAC 69–05.2–11–02(5)(d) [approval/denial of permit revisions], North Dakota proposes to revise a reference to "subsection 3 of section 69–05.2–10–03 [permit approval/denial, review of violations]" to "subsection 6 of section 69–05.2–10–03." This revision corrects the reference to reflect a recodification of that subsection that was approved by OSM in a previous rulemaking action (57 FR 807; January 9, 1992). The Director finds that the revision references the correct subsection and is approving the revision.

The Director notes that the approval of the proposal satisfies the required amendment at 30 CFR 934.16(s) that was placed on the North Dakota program in the January 9, 1992, rulemaking action (57 FR 807, 817–818), and is herewith removing that requirement.

7. Annual Maps: Acreage Listing

Under the North Dakota program at NDAC 69–05.2–13–02, a permittee is required to submit two copies of an annual map to the Commission for all permit areas by each February fifteenth. North Dakota proposes to revise subsection (4)(e) of the provision to require that the required annual map must clearly show, among other things, a tabular listing of acreage within the permit area where bond has been totally released. There are no Federal requirements regarding the submission of annual maps of permit areas. In accordance with section 505(b) and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no Federal counterpart provision exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director finds that the State proposal at NDAC 69–05.2–13–02(4)(e) is not inconsistent with the Federal requirements and is approving the proposal.

8. Protection of Bald and Golden Eagles

North Dakota proposes to revise NDAC 69–05.2–13–08(3) by adding a new sentence requiring that no surface mining activity may be conducted in a manner that would result in the unlawful taking of any bald or golden eagle or nests or eggs thereof. North Dakota further proposes to add a new subsection (4) to NDAC 69–05.2–13–08 to add a specific requirement that nothing in NDAC Article 69–05.2 authorizes the taking of endangered or threatened species, or a bald or golden eagle, its nest, or any of its eggs, in violation of the Endangered Species Act or the Bald Eagle Protection Act. The proposed new sentence in subsection (3) is substantively the same as the corresponding Federal requirement at 30 CFR 816.97(c)(first sentence); and the proposed new subsection (4) is substantively the same as the corresponding Federal requirement at 30 CFR 816.97(d). Therefore the Director finds that the proposed revisions at NDAC 69–05.2–13–08(3) and (4) are no less effective than the Federal regulations in meeting SMCRA's requirements and is approving the proposed revisions.

The Director notes that the approval of the proposal satisfies the required amendment at 30 CFR 934.16(t) that was placed on the North Dakota program in the January 9, 1992, rulemaking action (57 FR 807, 819), and is herewith removing that requirement.

9. Subsoil and Topsoil Redistribution

At NDAC 69–05.2–15–04(3), North Dakota proposes to delete the requirement that the Commission approve the respreading of subsoil prior to topsoil redistribution.

The Federal program does not impose any requirement for regulatory authority approval of subsoil respreading prior to topsoil redistribution. Additionally, North Dakota's proposal would not conflict with any other program requirement, and the operator would still be required to replace the full required subsoil and topsoil depths in order to meet the bond release requirements of NDCC 38–14.1–17(7)(b) and NDAC 69–05.2–12–12(6). Therefore, the Director finds that the proposal is not inconsistent with any Federal requirements and will assist in the administration of the North Dakota program, and is approving the proposal.

10. Sedimentation Ponds: Design Standards and Stability Requirements

North Dakota proposes to revise certain sediment pond performance standards at NDAC 69–05.2–16–09(13) and (16). Subsection (13) as proposed would require that the upstream slop of a settled embankment not be steeper than 3h:1v and that the downstream slope not be steeper than 2h:1v. One proposed revision to subsection (16) would require that embankment fill adjacent to structures, pipe conduits, and drainfill or antiseep collars be compacted to the density of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. A second revision to subsection (16) would allow the operator, in lieu of the specific design requirements of subsections (11) through (16), to demonstrate that the structure's design has a minimum static safety factor (SSF) of 1.3 for a normal pool with steady state seepage saturation conditions. OSM notes that there exist in the North Dakota program additional requirements for large or hazardous impoundments, specified in subsection (17).

The Federal requirements for sediment ponds at 30 CFR 816.49 do not contain specific design standards However, 30 CFR 816.49(a)(3)(ii) requires that small and nonhazardous ponds either have a minimum SSF of 1.3 for a normal pool with steady-state seepage saturation conditions, or meet the requirements of 30 CFR 780.25(c)(3). This latter section allows, in lieu of engineering tests to demonstrate

compliance with the minimum 1.3 SSF, engineering design standards to be established by regulatory authorities, through the State program approval process, that ensure stability comparable to a 1.3 minimum SSF.

OSM has reviewed North Dakota's existing and proposed design standards at NDAC 69–05.2–16–09 subsections (11) through (16). These include, among other things, minimum 5% height increase to allow for settlement, minimum top widths (based in part on embankment height), maximum side slopes (as described above), foundation clearing and scarification, requirements for fill materials, and compaction requirements. Based on this review, OSM is satisfied that these design standards would ensure embankment stability comparable to a 1.3 SSF. Further, the proposed provision in NDAC 69–05.2–16–09(16) that would allow the use of other design parameters if a minimum 1.3 SSF is demonstrated is substantively the same as the provision in the Federal requirement at 30 CFR 816.49(a)(3)(ii) that allows impoundments to have a minimum 1.3 SSF as an alternative to meeting specific design standards approved in accordance with 30 CFR 780.25(c)(3). Therefore the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–16–09(13) and (16) are no less effective than the Federal program requirements and is approving the proposed revisions.

The Director notes that the approval of the proposal satisfies that required amendment at 30 CFR 934.16(p) that was placed on the North Dakota program in the January 9, 1992, rulemaking action (57 FR 807, 815), and is herewith removing that requirement.

11. Coal Processing Waste Impoundments: Dewatering

North Dakota proposes to revise NDAC 69–05.2–20–03(3) to require that dams or embankments constructed of or impounding waste materials be designed so that at least ninety percent of the water stored during the design precipitation event can be removed within a ten-day period. North Dakota also proposes to add a new subsection (4) to NDAC 69–05.2–20–03 that would require that for such dams and embankments, at least ninety percent of the water stored during the design precipitation event be removed within the ten-day period following such an event. The proposal is substantively identical to the Federal requirements at 30 CFR 816.84 (e) and (f). Therefore the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–20–03 (3) and (4) are no less effective than the Federal program requirements and is approving the proposed revisions.

The Director notes that the approval of the proposal satisfies the required amendment at 30 CFR 934.16(v) that was placed in the North Dakota program in the January 9, 1992, rulemaking action (57 FR 807, 821), and is herewith removing that requirement.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b) of SMCRA and implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the North Dakota program. A summary of the comments, and the Director's responses to them, appear below.

a. The State Conservationist of the Soil Conservation Service (U.S. Department of Agriculture) and the Bureau of Mines (U.S. Department of the Interior) responded that they had no comments (Administrative Record Nos. ND–P–8b and ND–P–8a).

b. The Mine Safety and Health Administration (U.S. Department of Labor) (MSHA) responded that the proposed amendment would not affect MSHA's mandate and that it thus had no comments (Administrative Record No. ND–P–9).

c. The U.S. Army Corps of Engineers (Corps) responded with a technical comment on the proposed static safety factor for small and nonhazardous impoundments at NDAC 69–05.2–16–09(16) (Administrative Record No. ND–P–13). The Corps noted that there are many methods for stability analysis, and that each can produce a different safety factor for the same design and data. The Corps stated that where no particular method of analysis is specified, the minimum SSF for seepage conditions should not be less than 1.5.

The Federal regulations at 30 CFR 816/817.49(a)(3)(ii) specify only the minimum 1.3 SSF for small, non-hazardous impoundments; they do not specify methods of stability analysis. OSM's duty in reviewing State program amendments (SPA's) like the one under consideration here is limited to determining whether the SPA is "in accordance with" and "consistent with" SMCRA and its implementing regulations (see sections 503(a)(1) and (a)(7) of SMCRA; see also 30 CFR 730.5). OSM does not have the authority to require standards in excess of the Federal regulations that implement SMCRA, and therefore cannot require that North Dakota adopt the Corp's recommendation.

OSM also notes that under NDAC 69–05.2–09–09(1)(h), the plan for each impoundment must be certified as meeting the requirements of the North Dakota program using current, prudent engineering practices and any design requirements established by the Commission. Further, under NDCC 38–14.1–21(3)(a), the Commission may not approve a permit unless the application affirmatively demonstrates, and the Commission finds in writing, that the application is accurate and complete and that all requirements of the North Dakota program, including the 1.3 minimum SSF, have been complied with.

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17 (h)(11(ii), OSM solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) (Administrative Record No. ND–P–6).

No response was received from the EPA, Washington, DC office, and their concurrence is not required on the proposed amendment, since it did not address any requirements that would impact the Clean Water or Clean Air Acts.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. Neither SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves North Dakota's proposed program amendment as submitted on April 21, 1993, and subsequently revised on November 23, 1993.

The Director has determined that the previously-required program amendments, discussed in the Findings as follows: have been satisfied, and is

removing those requirements: Finding No. 2, 30 CFR 934.16(m) [lists of violation notices]; Finding No. 3, § 934.16(o) [support facility plans]; Finding Nos. 4a and 4b, § 934.16(q) [permit approval/denial, review of violations]; Finding No. 5, § 934.16(r) [permit approval/denial, patterns of violations]; Finding No. 6, § 934.16(s) [permit revisions, violation review]; Finding No. 8, § 934.16(t) [protection of eagles]; Finding No. 10, § 934.16(p) [sediment pond design standards and stability]; and Finding No. 11, § 934.16(v) [dewatering of coal processing waste impoundments].

The Federal regulations at 30 CFR part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State Regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 1994.

Raymond L. Lowrie,

Assistant Director Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended by adding paragraph (q) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(q) The following provisions of the North Dakota Administrative Code, as submitted on April 21, 1993 (Amendment XVII), and revised on November 23, 1993, are approved effective March 15, 1994: 69–05.2–06–02(3) (permit applications, violation information); 69–05.2–09–01(4) (permit applications, support facility plans); 69–05.2–10–03 (1), (1)(a), & (4) (permit approval/denial, violation review); 69–05.2–13–02(4)(e) (annual maps/information); 69–05.2–13–08 (3) through (6) (protection of eagles and recodification); 69–05.2–15–04(3) (resoiling); 69–05.2–16–09 (13), (14), & (16) (sediment ponds, performance & design standards); and 69–05.2–20–03 (3) & (4) (coal processing waste impoundments, dewatering).

§ 934.16 [Amended]

3. Section 934.16 is amended by removing and reserving paragraphs (m), (o) through (t), and (v).

[FR Doc. 94–5974 Filed 3–14–94; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 53

[FAC 90–20 Addendum]

Federal Acquisition Regulation; Optional Form 333

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; technical amendment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend a Federal Acquisition Regulation (FAR) on the use of Optional Form 333. Optional Form 333 was revised in FAC 90–16 and published at 57 FR 60570, December 21, 1992. In FAC 90–20, it was republished because it has been authorized for local reproduction indefinitely.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755 in reference to this technical amendment.

List of Subjects in 48 CFR Part 53

Government procurement.

Dated March 8, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Paragraph 53.203(b) is revised to read as follows:

53.203 Improper business practices and personal conflicts of interest.

* * * * *

(b) *OF 333 (Rev. 10/92), Procurement Integrity Certification for Procurement Officials.* OF 333 is prescribed for use, as specified in 3.104–12(a)(3). OF 333 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

[FR Doc. 94–5833 Filed 3–14–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543–4030; I.D. 112493C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues this interim final rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule requires Federally permitted summer flounder dealers to submit weekly reports even if no fish are received during a particular week, and owners of vessels having summer flounder moratorium permits to maintain accurate daily fishing logs and submit them each month regardless of species fished for or taken. Other minor language changes are made to the regulations regarding dealer and vessel reporting to clarify intent. The intended effect of this rule is to achieve consistency and effectiveness by standardizing the reporting requirements for all Federally managed fisheries in the Northeast Region.

DATES: Effective on April 13, 1994. Written comments must be received on or before April 13, 1994.

ADDRESSES: Written comments should be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Summer Flounder Negative Reporting". Copies of the Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Environmental Impact Statement for Amendment 2 may be obtained from David R. Keifer, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901–6790.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this rule should be sent to Richard B. Roe at the address listed above for the Northeast Regional Office, and the Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, (508–281–9101).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 2 to the FMP published December 4, 1992, required summer flounder dealer reporting effective on January 1, 1993. A final rule implementing a resubmitted portion of Amendment 2 required vessel fishing log reports to be submitted beginning January 1, 1994 (58 FR 35891, July 2, 1993).

Existing regulations at § 625.6(a) require dealers to report, on a weekly basis, information concerning purchases from vessels that land summer flounder. Under the current regulations, a dealer is required to submit a report only if summer flounder are purchased. As a result, it is impossible to determine whether a dealer report was not submitted because summer flounder were not purchased or because of a disregard for the regulations. Although negative reporting is not explicitly discussed in Amendment 2, the Council has requested that NMFS revise the reporting requirements at § 625.6(a) to require negative reporting. The Council's request reflects the intent of Amendment 2 that all summer flounder purchased by Federally permitted dealers be accurately reported. This is essential for maintaining the integrity of the annual quota.

Also at the Council's request, § 625.6(b) is revised to clarify that vessels with moratorium permits must maintain and submit accurate daily fishing log reports for all fishing trips regardless of species fished for or taken. This change makes clear to owners and operators that all species taken by the vessel must be recorded even if the vessel is not directing, or has unsuccessfully directed, its effort toward harvesting summer flounder.

Section 625.6(c), which specifies reporting requirements pertaining to vessels issued a summer flounder party or charter permit, is also revised to make clear that if a vessel also has been issued a moratorium permit, it must report all trips regardless of whether summer flounder are retained. Thus, all vessels issued a moratorium permit are subject to the same reporting requirements. Vessel which are issued a party or charter permit, but which are not issued a moratorium permit, must report a trip only if summer flounder are landed. This clarification is needed to prevent confusion in the industry since some vessels hold permits for both commercial and party/charter activities.

Standardized requirements are desirable for several reasons. The dealer and vessel reporting requirements of the FMP are only a part of the Northeast Region Mandatory Data Reporting System. Amendments to the Fishery Management Plans for Northeast Multispecies and Atlantic Sea Scallops contain reporting requirements that are expected to be implemented early in 1994. Both the New England and Mid-Atlantic Fishery Management Councils are likely to add mandatory reporting requirements to other FMPs.

Because it is common for fishermen and dealers holding Federal permits to participate in one or more of the fisheries that are, or will be, subject to the reporting requirements, uniform reporting requirements should minimize reporting burdens and confusion. NMFS believes that its uniform requirements are the least complicated, most convenient for the industry, and most effective way for the Council and NMFS to collect the information necessary to manage Northeast Region fisheries. Implementation of these regulations will further the goal of a uniform standardized system by providing consistency among the reporting requirements of the summer flounder, multispecies, and scallop fishery management plans.

A provision is added to § 625.8 (Prohibitions) to make it a violation for vessel owners, operators, and dealers not to comply with recordkeeping and reporting requirements.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has initially determined that this interim final rule is

necessary for the conservation and management of the summer flounder fishery and is consistent with the Magnuson Act and other applicable law.

This rule is subject to the requirements of the Paperwork Reduction Act. The requirement in § 625.6(a)(1) for dealers to provide negative reports has been approved by the Office of Management and Budget (OMB) under control number 0648–0229. A response is estimated to take 2 minutes. Section 625.6(a)(2) contains an annual reporting requirement that dealers complete the "Employment Data" section of the processed product report. A response is estimated to take 2 minutes.

The logbook requirement in § 625.6(b)(1) is a clarification of a requirement approved by OMB under control number 0648–0212. A response is estimated to take 5 minutes. Send comments regarding this burden estimate or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden, to Richard B. Roe, NMFS, and to OMB (see **ADDRESSES**).

The AA finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b). The AA finds that providing prior notice and opportunity for comment is unnecessary and not in the public interest. To the extent that this rule clarifies the intent of existing reporting requirements, opportunity for comment would serve no purpose. The other changes are necessary to prevent confusion in the fishing industry with reporting requirements in Amendment 4 to the FMP for Sea Scallops and Amendment 5 to the FMP for Northeast Multispecies that are expected to be implemented early in 1994 and to provide for the effective management of the summer flounder fishery. However, because this rule changes some of the reporting requirements previously applicable, the AA is not waiving the 30-day delay in effective date required by 5 U.S.C. 553(d) in order for all in the fishery to come into compliance. Opportunity for post issuance comment is being provided, and comments received will be considered in issuing a final rule.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: March 9, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.6 is amended by revising paragraphs (a)(1) through (a)(4), redesignating paragraph (a)(5) as (a)(6), adding a new paragraph (a)(5), revising paragraphs (b) and (c) to read as follows:

§ 625.6 Recordkeeping and reporting requirements.

(a) *Dealers.* (1) *Weekly report.* Dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director, a report on fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director, must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of other sections on that form is voluntary. Required data are the number of employees handling fishery products by month. Reports for a given calendar year must be submitted to: NMFS Statistics, 166 Water Street, Woods Hole, MA 02543, and must be postmarked by February 10 of the following year.

(3) *Inspection.* Upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no fish were purchased during a week, a report so stating must be submitted.

* * * * *

(b) *Vessel owners issued a moratorium permit.* (1) *Fishing log reports.* The owner of any vessel issued a moratorium permit under § 625.4 must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example by using a vessel tracking system or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(2) *When to fill in the log.* Such log reports must be filled in, expect for information required but not yet ascertainable, before offloading has begun. All information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Upon the request of an authorized officer, or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection, the fishing log reports currently in use, or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to

submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

(c) *Owners of party and charter boats.*

(1) *Fishing log reports.* The owner of any party or charter boat issued a moratorium permit under § 625.4 and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip, even if no summer flounder is retained, on forms supplied by or approved by the Regional Director. The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip which lands summer flounder. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, by using a vessel tracking system or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard (USGC) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers, quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count by species of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(2) *When to fill in the log.* Such log reports must be filled in before offloading has begun. All information required in paragraph (c)(1) of this section must be filled in for each fishing trip by the end of each fishing trip.

(3) *Inspection.* Upon the request of an authorized officer, or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no summer flounder is landed or no fishing trip is made during a month, a report so stating must be submitted.

3. Section 625.8, paragraph (c)(2) is revised to read as follows:

§ 625.8 Prohibitions.

* * * * *

(c) * * *

(2) If subject to the permitting requirements in § 625.4 or § 625.5, to offload, cause to be offloaded, sell or buy, whether on land or at sea, as an owner, operator, dealer, buyer or receiver, without accurately preparing and submitting in a timely fashion the documents required by § 625.6.

* * * * *

[FR Doc. 94–5925 Filed 3–14–94; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 50
Tuesday, March 15, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Request for comment.

SUMMARY: Under National Credit Union Administration (NCUA) Rules and Regulations, federally insured credit unions are prohibited from providing incentive pay plans to certain employees related to the credit union's lending activities. NCUA is soliciting public comment on whether this prohibition should be changed. NCUA also invites comment on other changes to its lending regulations that would facilitate increased lending and improved loan-to-share ratios in credit unions. Information from interested parties will assist NCUA in determining whether to issue proposed amendments to its lending regulations.

DATES: Comments must be postmarked by May 16, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, (703) 518–6561, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 701.21(c)(8) of the NCUA Rules and Regulations, 12 CFR 701.21(c)(8), prohibits federal credit unions from making any loan or extending any line of credit if, either directly or indirectly, and commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. For the purposes of the provision, "senior management employees" means the credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer, and "immediate family member" means a spouse or other family member living in the same household. The regulation does not restrict the payment of non-commission salary to employees. Through the insurance provisions at § 741.3(a) of the Regulations, 12 CFR 741.3(a), the § 701.21(c)(8) prohibition applies to federally insured state-chartered credit unions.

The purpose of § 701.21(c)(8) is to ensure that an individual who is in a position of authority in a credit union does not put self-interest ahead of the credit union's interest in making good loans and providing good service to its members. The provision prohibits compensation from third parties and from the credit union itself, in the form of commissions, incentive pay, or bonuses.

Under the regulation, a "loan officer" is an individual who has the authority to approve a loan. A loan officer may or may not be involved in taking and processing loan applications. "Underwriting the loan" means approving or disapproving it. It does not mean processing the loan. Thus, the prohibition against a federal credit union making a loan if a commission or fee is to be received by a loan officer in connection with underwriting the loan means that an individual may not receive incentive pay if he or she has any part in finally approving the loan. Individuals who are involved in processing loans, but who have no role in their approval or disapproval, may receive incentive pay.

The prohibition against making a loan if a commission or fee is to be received by a loan officer in connection with insuring the loan means, for example, that the individual who has the authority to approve a loan may not receive an incentives for selling credit life or disability insurance on it.

Amending the Regulation

It has come to NCUA's attention that credit union management is increasingly interested in implementing incentive pay programs that, among other things, provide incentives to loan officers for underwriting and insuring loans. In this period of soft loan demand and historically low loan-to-share ratios, concerns have been expressed that credit unions are losing market share to lenders that can reward employees for working extra hard to close a loan. Some interested parties have suggested that with sufficient controls, incentive pay programs can benefit credit unions. However, others fear that providing loan officers with an incentive to generate loans will lead to poor quality loans, threatening the safety and soundness of the credit union.

To assist in the resolution of this issue, NCUA seeks comment on the general question of whether the regulation should be amended to permit loan officers to receive incentive pay for underwriting and insuring loans. Comments from individuals who have had experience with incentive plans would be particularly helpful.

The NCUA Board notes that while the receipt of incentive pay by loan officers is the primary focus of the debate, the issue is not limited to loan officers. Under the regulation, a federal credit union may not make a loan if a commission or fee is to be received by a senior management employee in connection with underwriting or insuring the loan. Thus, for example, a credit union's vice president for lending may not receive compensation based on the volume of loans generated by the loan department. The NCUA Board seeks comment on whether the regulation should be amended to permit senior management employees to receive incentive pay based on loan activities. The Board notes that it is wary of making such a change, however, because of concern that if senior management is allowed to receive loan-related incentive pay, control over the activities of loan officers and other non-senior employees could be compromised.

The NCUA Board also notes that while a vice president for lending may not receive compensation tied to the performance of the loan department, the agency has taken the position that a chief executive officer's compensation may be tied to the overall performance of the credit union, part of which is based on its loan activities. The rationale for the distinction is that compensation tied to the overall performance of the credit union takes into account so many factors that it

cannot be said to be "in connection with" the underwriting, insuring, servicing, or collecting of a loan.

How the Regulation Should Be Amended

There are many ways the regulation could be amended. For example, the term "loan officers" could simply be deleted from the provision. This would preserve the prohibition for directors, committee members, and senior management employees, but allow credit unions to design any type of incentive program for loan officers. With such authority, a credit union could implement a plan in which loan officers receive a certain dollar amount for each loan closed, regardless of the ultimate performance of the loan. If the regulation were amended in this manner, it would be up to the business judgment of a credit union's management to design an incentive program that contains the necessary controls. Through the supervision process, NCUA could take exception to programs without such controls.

Amending the regulation in such a manner might reach beyond its intended effect, however, and present serious safety and soundness concerns. For example, it would remove the prohibition against a loan officer receiving compensation from third parties for activities relating to underwriting, insuring, servicing, or collecting a loan made by the credit union. Thus, for example, a loan officer could have an ownership interest in a collection company used by the credit union or receive a payment from a real estate agent for approving a loan on property sold by the agent.

A loan officer in a federal credit union would still be subject to Article XIX, Section 4, of the Federal Credit Union Bylaws, which provides that no director, committee member, officer, agent or employee of a credit union shall participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association in which he or she is interested. While the bylaw would prohibit a loan officer from approving a loan if he were to receive a momentary benefit from that decision, bylaws serve as a contract between the members and the credit union and their enforcement is generally left up to the members. NCUA action is predicated on a violation of law, regulation, Board order, or safety and soundness. Accordingly, the NCUA Board would be concerned about the implications of simply deleting "loan officers" from the regulation.

As an alternative to simply deleting the term "loan officer," the Board could insert language to clarify that loan production personnel may receive incentive pay (from the credit union) so long as they are not involved in the credit granting decision. This would preserve the integrity of the rule—those who make the loan decision do not get extra pay for saying yes—while eliminating a possible misunderstanding that may be preventing credit unions from implementing incentive plans that are permissible under the current rule.

As another alternative, the regulation could be amended by adding language permitting incentive pay plans and instructing credit unions on the kinds of controls that must be in place for a plan to be permissible. These controls could include: (1) Requiring the credit union to have written policies and procedures to ensure that personnel making final decisions to approve or disapprove loans are accountable for making safe and sound decisions for the credit union; (2) permitting loan officers to receive incentive pay only when underwriting standards are firm; (3) requiring two loan officers' signatures on any loan where incentives are involved; (4) excluding business loans and loans to officials or family members; (5) requiring that a sample of each loan officer's loans be reviewed as part of the credit union's internal audit; (6) requiring the loan officer's adherence to performance standards be documented; (7) requiring that incentives be tied to loan quality, rather that quantity; and (8) requiring that loan officer incentives be part of an overall employee incentive program. NCUA could continue to take exception to specific plans based on safety and soundness concerns.

The above controls have been suggested by NCUA staff and some members of the credit union community. It is by no means an exclusive list. From those commenters who believe the regulation should be amended, NCUA seeks suggestions on how it should be done and whether and what kinds of controls should be imposed. In addition to the incentive pay issue, NCUA welcomes comment on any other changes to its lending regulations that would facilitate increased lending and improved loan-to-share ratios without compromising safety and soundness.

By the National Credit Union Administration Board on March 9, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5949 Filed 3–14–94; 8:45 am]

BILLING CODE 7535–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for copiers/duplicating equipment.

SUMMARY: The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for copiers/duplicating equipment. The basis for waivers is that no small business manufacturers are supplying this class of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before March 30, 1994.

ADDRESSES: Comments should be addressed to: Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 205–6460.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, Tel: (202) 205–6465.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors available to

participate in the Federal market. To be considered available to participate in the Federal market on a class of products, the small business must have been awarded or have performed on a contract or contracts to supply a product within a specific class of products to the Federal government within the past 24 months from the date of request for waiver, either directly or through a dealer, or who have offered on a solicitation for that class of products within that time frame. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code established by the Federal Procurement Data System.

This notice proposes to waive the Nonmanufacturer Rule for copiers/duplicating equipment (SIC code 3579, PSC code 3610).

In an effort to identify small business sources for this class of products, SBA has searched its Procurement Automated Source System (PASS) and the Thomas Register and has contacted the General Services Administration. SBA will also publish a notice in the Commerce Business Daily. To date, these efforts have identified no small business sources. The public is invited to comment or provide source information to SBA on the proposed wavier of the nonmanufacturer rule for this class of products.

Dated: March 7, 1994.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 94–5999 Filed 3–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–18–AD]

Airworthiness Directives; Beech Model 400A and 400T (Military T–1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T (military T–1A) airplanes. This proposal would require an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts; and installation of new washers on the roller attach bolts. This proposal is prompted by reports of undersized tabs on some lock washers, and tabs or inner tangs missing from the washers installed on the flap roller bolts. Such discrepancies defeat the locking function of the tab washer, and could result in loss of the nut and flap roller. The actions specified by the proposed AD are intended to prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during investigation of flap roll problems on Beech Model 400T (military T–1A) airplanes, lock washer inner tabs were missing from the washers installed on the flap roller bolts. Subsequent investigation of production aircraft revealed that, in addition to missing tabs, undersized inner tabs were found on some lock washers. In addition, the FAA has received a report that the locking tab washers may be missing an inner tang, which is designed to engage the keyway in the bolt. Absence of this tang defeats the locking function of the tab washer, and could result in loss of the nut and flap roller. This condition, if not corrected, could result in loss of the main or aft flap surface and subsequent reduced controllability of the airplane.

Model 400A airplanes are similar in design to Model 400T (military T–1A) airplanes and, therefore, also are subject to the addressed unsafe condition.

The FAA has reviewed and approved Beech Service Bulletin No. 2522, dated January 1994, that describes procedures for an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts with new or serviceable parts; and installation of new washers, tab washers, and flat washers on the roller attach bolts. Installation of these new components will ensure the locking

function of the tab washer and the structural integrity of the flap roller.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts with new or serviceable parts; and installation of new washers, tab washers, and flat washers on the roller attach bolts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 122 Model Beech 400A and 400T (military T–1A) airplanes of the affected design in the worldwide fleet. The FAA estimates that 102 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55,080, or $540 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 94–NM–18–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–79 inclusive; and Model 400T (military T–1A) airplanes, serial numbers TT–1 through TT–42 inclusive, and TT–44; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Beech Service Bulletin No. 2522, dated January 1994.

(1) Perform an inspection of the flap roller retention components to detect discrepant or missing parts; and, prior to further flight, replace any discrepant or missing part with a new or serviceable part.

(2) Install new washers, new tab washers, and new flat washers on the roller attach bolts.

(b) As of the effective date of this AD, no person shall install a bolt, part number 45A97115–1 or 45A97115–51; or a tab washer, part number 168AS–06–2; on any airplane unless the requirements of paragraph (a)(1) of this AD have been accomplished on that bolt or tab washer.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5936 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–106–AD]

Airworthiness Directives; Boeing Model 747–100, –200, –300, and –400 Series Airplanes Equipped With BFGoodrich Evacuation Ramp/Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes, that would have required various modifications of certain evacuation ramp/slides. That proposal was prompted by reports of several evacuation ramp/slide malfunctions. This action revises the proposed rule by adding requirements for additional modifications of the ramp/slides. The actions specified by this proposed AD are intended to prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by April 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, AZ 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft

Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 8, 1993 (58 FR 47224). That NPRM would have required various modifications of certain evacuation ramp/slides. That NPRM was prompted by reports of several evacuation ramp/slide malfunctions. That condition, if not corrected, could result in delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

Two commenters to the proposal, Boeing and BFGoodrich, request that the proposed rule be revised to require modification of the packboard and girt. This modification is described in paragraph 2.C. of the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993; that service bulletin is cited in the NPRM. The commenters explain that accomplishment of the modifications proposed in the NPRM will lower the force required to activate the slide inflation bottle by a significant amount. Therefore, in order to prevent accidental inflations during handling, the commenters state that it is also necessary to modify the packboard and girt.

The FAA concurs. Paragraph 2.C. of the Accomplishment Instructions of BFGoodrich service bulletin references Boeing Service Bulletin 747–25–2885 as the appropriate source of service information for modification of the packboard and girt. The modification involves updating the later-style packboards to include a locking device for the firing lanyard, adding a firing lanyard with a provision for a packboard lock, and modifying the girt for use with the new firing lanyard. At the time the NPRM was issued, the FAA planned to issue a separate AD to address the Boeing service bulletin referenced in paragraph 2.C. of the Accomplishment Instructions of BFGoodrich service bulletin. Therefore, the actions described in that paragraph were excluded from the proposed requirements of the NPRM. However, since the issuance of the NPRM, the FAA has determined that the modification requirement specified in that paragraph should be included in this supplemental NPRM, rather than addressing that modification in a separate rulemaking action.

In addition, at the time the NPRM was issued, the FAA considered certain other modifications described in the BFGoodrich service bulletin to be product improvements. Those modifications are specified in paragraph 2.G. of the service bulletin, and included adding chafe patches to the forward end and installing velcro patches between the girt plies on the units, and adding safety pin locating decals to the regulator actuator assembly and a protective patch to a clevis/pin assembly. Since the issuance of the NPRM, the FAA has determined that these modifications are necessary in order to positively address the unsafe condition and to enhance the safety and reliability of the evacuation ramp/slides.

In light of these changes, the FAA has revised paragraph (a) of this proposed rule to require accomplishment of all paragraphs specified in the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993. In addition, "**Note 1**" has been added to this proposal to inform operators that modification of certain reservoir assemblies, as specified in paragraph 2.D.(1) of the service bulletin, is required currently by AD 91–25–02, Amendment 39–8103 (56 FR 63629, December 5, 1991).

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 1,100 BFGoodrich ramp/slides of the affected design installed on Boeing Model 747–100, –200, –300, and –400 series airplanes in the worldwide fleet. The FAA estimates that 300 of these subject ramp/slides are installed on Boeing Model 747–100, –200, –300, and –400 series airplanes of U.S. registry, and would be affected by this proposed AD. It would take approximately 22 work hours per ramp/slide to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be provided by the ramp/slide manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $363,000, or $1,210 per ramp/slide.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–106–AD.

Applicability: Model 747–100, –200, –300, and –400 series airplanes equipped with BFGoodrich evacuation ramp/slides; as listed in BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the door 3 offwing evacuation ramp/slide, part number 7A1418–( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993, as applicable.

Note 1: Modification of the reservoir assembly (part number 4A3416–1) to the part number 4A3416–3 configuration, as specified in paragraph 2.D.(1) of the service bulletin, is required currently by AD 91–25–02, Amendment 39–8103 (56 FR 63629, December 5, 1991).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5937 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–79]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires repetitive inspections of the combustion chamber outer case (CCOC). This action would reduce the rear flange inspection interval for CCOC's when only the aft face of the rear flange has been inspected and introduce an improved ultrasonic probe assembly. This proposal is prompted by reports of rupture of CCOC's that had only the aft face of the rear flange inspected in accordance with the current AD. The CCOC's ruptured due to cracks on the forward face of the rear flange that were not detected during this inspection and had propagated to critical lengths within the inspection interval required by the current AD. The actions specified by the proposed AD are intended to prevent CCOC flange cracks that could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

DATES: Comments must be received by May 16, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–79, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–79." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–79, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 3, 1989, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 87–11–07 R1, Amendment 39–6360 (54 FR 46045, November 1, 1989), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, to require repetitive eddy current, fluorescent penetrant, fluorescent magnetic penetrant, or visual inspections for cracks in the rear flange, and ultrasonic, fluorescent penetrant, or fluorescent magnetic penetrant inspections for cracks in the PS4 boss, and drain bosses of the combustion chamber outer case (CCOC). That action was prompted by reports of uncontained rupture of the CCOC. That condition, if not corrected, could result in CCOC flange cracks that if undetected could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

Since the issuance of that AD, the FAA has received reports of rupture of CCOC's that had only the aft face of the rear flange inspected in accordance with the current AD. The CCOC's ruptured due to cracks on the forward face of the rear flange that were not detected during this inspection and propagated to critical lengths within the inspection interval required by the current AD. The FAA has determined that a reduced inspection interval is required if only the aft face of the rear flange is inspected and the forward face is not inspected. The proposed AD maintains the rear flange inspection, but specifies this reduced interval if only the aft face of the rear flange is inspected.

The requirement in the current AD to inspect the CCOC at every shop visit, in addition to the specified cyclic intervals, is maintained in this proposed AD. This inspection requirement is necessary to meet safety of flight criteria based on the statistical forecasting models utilized to assess this problem. The proposed AD also requires reporting of CCOC inspection results to the FAA for the purpose of updating these statistical forecasting models.

The current AD requires more frequent inspection of the PS4 boss and drain bosses that have been weld repaired. This requirement is maintained in the proposed AD and was based on analytical studies and component tests that revealed a greater propensity for these weld repaired bosses to develop cracks.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 5676, Revision 8, dated November 5, 1993, that describes procedures for initial and repetitive inspections of the CCOC for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 87–11–07 R1 to reduce the inspection interval for CCOC's that have had only the aft face of the rear flange inspected and introduce an improved ultrasonic probe assembly.

The FAA estimates that 6,815 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,499,300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6360 (54 FR 46045, November 1, 1989) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 93–ANE–79. Supersedes AD 87–11–07 R1, Amendment 39–6360 and AD 87–11–07, Amendment 39–5619.

Applicability: Pratt & Whitney (PW) Models JT8D–1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines, installed on but not limited to Boeing 727 and 737 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent combustion chamber outer case (CCOC) flange cracks that could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage, accomplish the following:

(a) Ultrasonic, eddy current, fluorescent penetrant, fluorescent magnetic penetrant, or visually inspect the CCOC PS4 boss, drain boss, and rear flange for cracks at each engine shop visit after the effective date of this AD, in accordance with paragraph 2.B.(3) of PW Alert Service Bulletin (ASB) No. 5676, Revision 8, dated November 5, 1993.

(b) Ultrasonic, fluorescent penetrant, fluorescent magnetic penetrant, or visually inspect the CCOC PS4 boss and drain boss, which have not been weld repaired, for cracks at the initial and repetitive intervals specified in paragraph 1.E.(1) and Table 1 of PW ASB No. 5676, Revision 8, dated November 5, 1993, in accordance with the Accomplishment Instructions of paragraph 2 and Table 3 of PW ASB No. 5676, Revision 8, dated November 5, 1993.

(c) Eddy current, fluorescent penetrant, fluorescent magnetic penetrant, or visually inspect the CCOC rear flange for cracks at the initial and repetitive intervals specified in paragraph 1.E.(1) and Table 1 of PW ASB No 5676, Revision 8, dated November 5, 1993, in accordance with the Accomplishment Instructions of paragraph 2 and Table 3 of PW ASB No. 5676, Revision 8, dated November 5, 1993.

(d) Ultrasonic, fluorescent penetrant, fluorescent magnetic penetrant, or visually inspect the CCOC PS4 boss and drain boss, which have been weld repaired, for cracks at the interval specified in paragraph 1.E.(1) and Table 1 of PW ASB No. 5676, Revision 8, dated November 5, 1993, in accordance with the Accomplishment Instructions of paragraph 2 and Table 3 of PW ASB No. 5676, Revision 8, dated November 5, 1993

(e) CCOC's inspected in accordance with paragraphs (a), (b), (c), and (d) of this AD that are found cracked must be removed from service prior to further flight and replaced with a serviceable part.

(f) For the purpose of this AD, a shop visit is defined as an engine removal to perform engine maintenance that cannot be performed on-wing, that entails separation of pairs of mating engine lettered flanges or the removal of a compressor disk, hub, or spool, or removal of a turbine disk.

(g) Report the following information in writing, if a case is found cracked, within 30 days of the inspection, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803–05299; Telex Number 949301 FAANE BURL; fax (617) 238–7199:

(1) Engine Serial Number

(2) Inspection date

(3) Case Part Number and Serial Number

(4) Case total time in service and cycles in service (if estimate, so note)

(5) Case time in service and cycles in service since last inspection

(6) Method of inspection used

(7) Crack location and size

The reporting requirements of this proposed AD terminate one year from the effective date of the AD.

(h) Information collection requirements contained in this proposed regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 8, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–5941 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–78]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Turbomeca Arriel 1 series turboshaft engines, that currently requires a gearbox chip detector inspection prior to further flight, subsequent inspection at designated intervals, and if necessary, removal of the gearbox, and also requires modification of the gearbox if not accomplished previously. This action would require modification to the intermediate gear that would constitute terminating action to the repetitive chip detector inspections. On certain engines this proposal would require immediate modification of the intermediate gear prior to further flight. This proposal is prompted by the availability of design improvements to the intermediate gear. The actions specified by the proposed AD are intended to prevent damage to the aircraft resulting from engine debris following an uncontained engine failure.

DATES: Comments must be received by May 16, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–78, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca Engine Corporation, 2709 Forum Drive, Grand Prairie, TX 75051. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–78." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–78, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'aviation Civile (DGAC), which is the airworthiness authority of France, notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca Arriel 1B, 1D, 1D1, 1A with TU13, and 1A1 with TU13, turboshaft engines. The DGAC advises that they have received reports of seven inflight engine shutdowns and three uncontained failures of the power turbine disk. The DGAC also advises that these failures were caused by failure of the reduction gearbox intermediate gear.

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal

Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

On June 25, 1992, the FAA issued telegraphic airworthiness directive (TAD) T92–13–52 to require a gearbox chip detector inspection prior to further flight, subsequent inspection at intervals not to exceed 5 hours time in service since the last inspection, and if necessary, removal of the gearbox. The FAA determined after review of the results of the investigation and analysis performed by the manufacturer that these failures are due to high cycle fatigue that initiates from vibration induced by gear teeth wear. Failure of the intermediate gear can result in an overspeed condition and possible failure of the power turbine disk. That condition, if not corrected, can result in damage to the aircraft resulting from engine debris following an uncontained engine failure.

On October 26, 1992, the FAA issued AD 92–24–08, Amendment 39–8413 (57 FR 54293, November 18, 1992), to supersede AD T92–13–52. That action requires gearbox chip detector inspection at intervals not to exceed 8 hours time in service on TU39 modified gearboxes, and requires modification of the reduction gearbox to standard TU39, if not already modified to standard TU39.

Since the issuance of that AD, the manufacturer has developed a modification to the intermediate gear that will inhibit the gear teeth wear and consequent vibration-induced high cycle fatigue.

Turbomeca has issued Service Bulletin (SB) No. 292 72 0157, Update No. 2, dated July 30, 1993, that describes procedures for a gearbox chip detector inspection to find evidence of metal chips that may indicate impending gear failure, prohibits further operation of gearboxes that have not been modified to the TU39 standard, and defines suspect gearboxes that require rework of the gear train components to prevent failure. Turbomeca has also issued SB No. 292 72 0169, dated July 12, 1993, that describes procedures for modification (TU232) of the intermediate gear.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–24–08 to remove gearboxes that were overhauled prior to June 1, 1992, within 30 days after the effective date of this AD. Those gearboxes have intermediate gears that are prone to gear teeth wear due to mixing of used gear train components with new components. This proposed AD would also require immediate modification of certain engines to the TU39 which introduces a thicker web intermediate gear that is more resistant to HCF failure. Finally, this proposed AD would also continue to require repetitive inspections of the chip detector for evidence of metal chips until installation of modification TU232 to the intermediate gear at the next overhaul or repair of the reduction gearbox. Installation of modification TU232 would constitute terminating action to the inspection requirements of this AD.

The FAA estimates that 270 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Turbomeca has advised the FAA that required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,188,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8413 (57 FR 54293, November 18, 1992) and by adding a new airworthiness directive to read as follows:

Turbomeca: Docket No. 93–ANE–78. Supersedes AD 92–24–08, Amendment 39–8413.

Applicability: Turbomeca Arriel Model 1B, 1D, 1D1, 1A with TU13, and 1A1 with TU13, turboshaft engines installed on but not limited to Aerospatiale AS–350B helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following an uncontained engine failure, accomplish the following:

(a) For the following Turbomeca Arriel engine models: 1D not modified to TU232, 1D1 not modified to TU232,.1B modified to TU39 but not modified to TU232, 1A with TU13 modified to TU39 but not modified to TU232, and 1A1 with TU13 modified to TU39 but not modified to TU232, accomplish the following:

(1) Except for those engines that have been inspected in accordance with AD 92–24–08 within 8 hours time in service (TIS) prior to the effective date of this AD, prior to further flight remove and inspect the reduction gearbox chip detector for evidence of metal chips in accordance with Turbomeca Service Bulletin (SB) No. 292 72 0157, Update No. 2, dated July 30, 1993.

(2) Remove from service reduction gearbox modules that do not meet the return to service criteria described in Turbomeca SB No. 292 72 0157, Update No. 2, dated July 30, 1993, and replace with a serviceable part

(3) Thereafter, at intervals not to exceed 8 hours TIS since the last inspection, accomplish the following:

(i) Remove and inspect the reduction gearbox chip detector in accordance with paragraph (a)(1) of this AD.

(ii) Remove from service, if necessary, the reduction gearbox module in accordance with paragraph (a)(2) of this AD, and replace with a serviceable part.

(4) At the next overhaul or repair of the reduction gearbox module after the effective

date of this AD, incorporate modification TU232 in accordance with Turbomeca SB No. 292 72 0169, dated July 12, 1993. Incorporation of modification TU232 constitutes terminating action to the inspections, and replacement, if necessary, required in paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(b) For the following Turbomeca Arriel engine models: 1B not modified to TU39, 1A with TU13 not modified to TU39, and 1A1 with TU13 not modified to TU39, prior to further flight replace reduction gearbox module No. 5 with a reduction gearbox module No. 5 modified to standard TU39.

(c) For the following Turbomeca Arriel engine models: 1B, 1A with TU13, and 1A1 with TU13; with reduction gearbox modules identified by serial numbers specified in paragraph C.(c) of Turbomeca SB No. 292 72 0157, Update No. 2, dated July 30, 1993, that were overhauled prior to June 1, 1992, but not overhauled between that date and the effective date of this AD, and with less than 200 hours TIS since overhaul, remove from service and return for overhaul within 30 days after the effective date of this AD, in accordance with Turbomeca Service Bulletin (SB) No. 292 72 0157, Update No. 2, dated July 30, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Except for engines specified in paragraph (b) of this AD, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 8, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–5942 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–218–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Carbon Brakes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require inspections to detect cracking, corrosion, and wear of various components of the main landing gear (MLG) brake assembly, and correction of discrepancies. This proposal is prompted by reports indicating that components in the MLG assembly have been damaged due to the consequences of vibration. The actions specified by the proposed AD are intended to prevent failure of components of the MLG, which could severely affect the braking capability of the airplane while on the ground.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–218–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that Boeing Model 767 series airplanes equipped with carbon brakes have experienced certain vibratory conditions that have resulted in damage to or failure of components of the main landing gear (MLG) assembly. Such damage has included cracked and worn bushings on the brake load path, deformation of the brake rod lugs, and missing chrome or heat damage of the brake attach pins. Failure of these components due to the damage caused by the vibratory phenomenon could result in the loss of one or two brakes, depending upon the location of the failure. In fact, there have been reports of at least 14 incidents of single brake failure and 2 incidents of two-brake failure related to these problems. This condition, if not corrected, could severely affect the braking capability of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 767–32–0128, dated November 11, 1993, that describes procedures for conducting repetitive visual, fluorescent magnetic particle, and fluorescent penetrant inspections to detect cracks and corrosion of the pin that attaches the brake rod to the brake housing, and replacement of the pin, if necessary. It also contains procedures for conducting visual inspections to detect cracking and wear of the brake torque arm bushing, and to detect cracking of the brake rod bushings; and repair or replacement of parts, if necessary. Also included are procedures for conducting repetitive visual inspections to detect corrosion or damage of the bulkhead, keeper pin, and the bore and face of the brake

attachment pin; and replacement of parts, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections to detect corrosion and cracking of the pin that attaches the brake rod to the brake housing, the brake torque arm bushing, the brake rod bushings, the keeper pin, and the bore and face of the brake attach pin. Any discrepant parts would be required to be replaced or repaired, as applicable. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 289 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 71 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,050, or $550 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 9.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–218–AD.

Applicability: Model 767 series airplanes equipped with carbon brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of components of the main landing gear, which could severely affect the braking capability of the airplane while on the ground, accomplish the following:

(a) Within 1,500 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 1,500 hours time-in-service, conduct inspections to detect cracking and corrosion of the pin that attaches the brake rod to the brake housing; to detect cracking of the brake torque arm bushings; and to detect wear of the brake rod bushings; in accordance with Part 1 of Boeing Service Bulletin 767–32–0128, dated November 11, 1993. If any discrepancy is detected in any part, replace or repair the part in accordance with the compliance schedule specified in Figure 1 or Figure 2 of the service bulletin, as applicable.

(b) Within 6 months after the effective date of this AD, and thereafter at intervals not to exceed 6 months, conduct a visual inspection to detect corrosion and damage of the bulkhead, the keeper pin, and the bore and face of the brake attach pin, in accordance with Part 2 of Boeing Service Bulletin 767–32–0128, dated November 11, 1993. If any corrosion or damage is found on any part, prior to further flight, replace the part in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–5935 Filed 3–14–94, 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–15–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes. This proposal would require modification of the mounting structure of the elevator controls on the rear pressure bulkhead. This proposal is prompted by the results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

DATES: Comments must be received by April 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this changed light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Jetstream Model 4101 airplanes. The CAA advises that the results of a structural analysis revealed that the mounting structure on the elevator controls may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. This condition, if not corrected, could result in reduced controllability of the airplane due to structural deformation in the elevator control system.

Jetstream has issued Service Bulletin J41–53–012, dated November 30, 1993, that describes procedures for modification of the mounting structure of the elevator controls on the rear pressure bulkhead. This modification entails installing thicker support brackets and additional stiffening to the mounting structure of the upper and lower pulley installations of the elevator and rudder cables aft of the rear pressure bulkhead. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the mounting structure of the elevator control components on the rear pressure bulkhead. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,260, or $907.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 94–NM–15–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to structural deformation in the elevator control system, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the mounting structure of the elevator controls on the rear pressure bulkhead in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5934 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AD22

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Representative Payment Under Title II and Title XVI of the Social Security Act

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to amend our regulations on payment of Social Security and supplemental security income (SSI) benefits under title II and title XVI of the Social Security Act (the Act). The proposed regulations reflect the provisions of section 5105(a) (1) and (2), and (c) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). Section 5105 amended sections 205(j) and 1631(a)(2) of the Act and made numerous modifications and additions to the representative payee provisions of the Act intended to provide additional safeguards and protection for beneficiaries who need representative payees. These modifications and additions include procedures for investigating representative payee applicants, identifying unsuitable representative payee applicants, making direct payment to some beneficiaries while we try to find a payee, providing advance notice of determinations to make representative payment and selections of representative payees, providing all affected beneficiaries with the opportunity to appeal our determination to make representative payment or to select a particular representative payee, and making restitution in some instances to beneficiaries of benefits misused by representative payees.

DATES: To be sure your comments are considered, we must receive them no later than May 16, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

Subpart U of part 404 and Subpart F of part 416 of our regulations explain the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. These subparts also describe the responsibilities of a representative payee regarding the use of funds the payee receives on behalf of the beneficiary. Under the authority provided in sections 205(j) and 1631(a)(2) of the Act and these regulations, we will select a representative payee for a person receiving Social Security or supplemental security income benefits under title II or title XVI of the Act if we believe that representative payment rather than direct payment of benefits would be in the interest of that person.

In selecting a representative payee, we select the person, agency, or organization that we believe will best serve the interest of a beneficiary. Any person or organization chosen as a representative payee must use benefits and accept responsibilities as required under the Act and our regulations.

Section 5105 of OBRA 90 amended sections 205(j) and 1631(a)(2) of the Act to:

1. Mandate prompt revocation or termination of payment to a representative payee, and allow certification of payment to an alternative payee or directly to the beneficiary if we, or a court of competent jurisdiction, determine that the representative payee misused the beneficiary's benefits.

2. Authorize exemptions on a case-by-case basis to the prohibition on payment to a payee applicant who previously served as a representative payee and had certification of payment of benefits revoked or terminated by reason of misuse, if appointing the payee applicant would be in the best interest of an individual.

3. Require that any determination that payment of benefits be made to a particular representative payee be made on the basis of an investigation conducted in advance of the appointment of the payee, including a face-to-face interview with the payee applicant when practicable.

4. Prohibit, with certain exceptions, payment to a payee applicant who is a creditor of the beneficiary providing the beneficiary with goods or services for monetary consideration. Previously, we had no regulations on this subject.

5. Require a determination whether a payee applicant who would ordinarily be precluded from being selected as a representative payee because he or she is a creditor of an individual receiving benefits would be acceptable to serve as a representative payee.

6. Require a finding that direct payment of monthly benefits can be expected to cause substantial harm to the beneficiary before we suspend or defer benefits to the beneficiary until a suitable representative payee is selected.

In such cases delay of benefits will not exceed 1 month except if the individual is, as of the date of our determination, legally incompetent, under age 15, or an SSI beneficiary eligible for benefits based on disability and medically determined to be a drug addict or alcoholic. For beneficiaries residing in California, we will continue to follow the immediate direct payment requirement as explained in *Briggs* v. *Sullivan*, No. CV–S–89–0203 EJG (E.D. Cal. March 23, 1990). Under the *Briggs* court order, we may not refuse to pay directly or withhold the Social Security or SSI benefits of any California beneficiary, 18 years or older, who has been determined to need, but does not have a representative payee. The court order does not apply to individuals who are eligible for SSI disability payments and who have been medically determined to be drug addicts or alcoholics or to individuals who have been declared legally incompetent by a court. Members of the *Briggs* class will

be paid directly and will not be subject to deferral or suspension of benefits based on a substantial harm determination. Payment of any benefits which are delayed pending selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as we determine is in the best interest of the individual entitled to such benefits.

7. Require that we provide, in advance of certification of payment, written notice to the beneficiary of our determination to certify payment of benefits to a representative payee and the right to appeal that determination. If, however, the beneficiary is under the age of 15, an unemancipated minor under the age of 18, or legally incompetent, the notice will be provided solely to the beneficiary's legal guardian or legal representative.

Present regulations (§§ 404.2030 and 416.630) generally require that we notify the beneficiary, or the individual acting on his or her behalf, whenever we intend to make representative payment and appoint a payee. We must also ask an individual to contact us if he or she objects to either proposed action. Sections 404.902(o) and 416.1402(d) of the regulations currently indicate that a decision to make representative payment is an initial determination, which is appealable, unless the beneficiary is under age 18, legally incompetent or in the case of title XVI only, an SSI beneficiary eligible on the basis of disability and medically determined to be a drug addict or alcoholic.

8. Provide that when our negligent failure to investigate or monitor a representative payee results in misuse of benefits by the representative payee, we shall make payment to the beneficiary or the beneficiary's new representative payee in an amount equal to such misused benefits.

9. Provide that we shall make a good faith effort to obtain restitution from the representative payee who misused benefits.

Current regulations (§§ 404.2041 and 416.641) explain that our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary and that the representative payee may be liable if the payee misuses the beneficiary's benefits.

Proposed Regulations

We propose to make the following changes in our regulations to reflect the pertinent amendments to sections 205(j) and 1631(a)(2) of the Act made by sections 5105(a) (1) and (2), and (c) of OBRA 90.

- Amend §§ 404.902 and 416.1402 to include a determination on restitution as an initial determination subject to the administrative review process. This change reflects our conclusion that our determination regarding a person's right to restitution is a decision covered by the provisions of section 205(b)(1) or 1631(c)(1) of the Act, and accordingly, an initial determination subject to the administrative review process.
- Amend §§ 404.2001(b)(3) and 416.601(b)(3) to add a parenthetical statement at the end of each advising that §§ 404.2011 and 416.611, respectively, should be referenced if continued direct payment would cause substantial harm to the beneficiary. This proposed regulatory change results from the amendments to sections 205(j)(2)(D)(i) and 1631(a)(2)(B)(vii) of the Act made by section 5105(a)(2) of OBRA 90 which reflect the prohibition against deferring or suspending payment of benefits unless direct payment to the beneficiary would cause substantial harm to the beneficiary.
- Add new §§ 404.2011 and 416.611 to explain the following:

—We will pay monthly benefits directly to a beneficiary who we determine should have a representative payee until a suitable representative payee is selected unless we determine that direct payment of benefits to the beneficiary would result in substantial harm to the beneficiary.

—Findings of substantial harm will be made on a case-by-case basis. When the direct receipt of benefits can be expected to result in physical or mental injury to the beneficiary (such as instances when the beneficiary cannot deal with the stress associated with handling his or her own financial affairs), substantial harm will be found to exist. Substantial harm will also be found to exist when the beneficiary is legally incompetent, or under age 15, unless there is evidence to the contrary regarding substantial harm, or when the beneficiary is an SSI recipient eligible based on a disability and is medically determined to be a drug addict or alcoholic. We believe that Congress did not intend that these categories of beneficiaries should receive direct payment. Therefore, we believe it is reasonable to consider that direct payment would result in substantial harm to these categories of beneficiaries and to delay payment of benefits to these beneficiaries for more than 1 month until an appropriate payee is selected and appointed. However, with respect only to individuals adjudged legally incompetent and children under age 15, we will allow the individual to provide evidence that substantial harm does not exist, and if we find upon review of this evidence that direct payment would not result in substantial harm, then we will make direct payment to the individual. Every effort will be made to select and appoint a payee expeditiously.

—Findings of substantial harm will not be considered initial determinations subject to appeal rights. This is because a finding of substantial harm will not materially affect the beneficiary's payment since delay or suspension of direct payment may not exceed 1 month unless the beneficiary is: legally incompetent, under age 15, or an SSI recipient eligible based on a disability and is medically determined to be a drug addict or alcoholic. Beneficiaries who have had their benefits temporarily suspended can also avail themselves of additional administrative remedies in that they can challenge the determination to make representative payment (§§ 404.902(o) and 416.1402(d)) and/or challenge the appointment of a particular person to be their representative payee (§§ 404.902(p) and 416.1402(e)). A finding of substantial harm is closely associated with a determination to make representative payment or to change representative payee and can be raised in connection with the appeal of those determinations.

—If we find that direct payment to an individual would cause substantial harm, we may delay or suspend benefits up to 1 month. If the beneficiary is legally incompetent, under age 15, or is eligible for SSI benefits based on a disability and is medically determined to be a drug addict or alcoholic, we may delay payments for more than 1 month.

—Payment of any benefits which were deferred or suspended pending selection of a representative payee shall be made to the beneficiary or the representative payee as a single sum or over such period of time as we determine is in the best interest of the beneficiary.

- Add new §§ 404.2022 and 416.622 to explain that:

—A payee applicant who has been convicted of a violation under section 208 or section 1632 of the Act may never be appointed as a representative payee. This provision was in section 208 of the Act prior to enactment of section 5105(a)(2) of OBRA 90 but was never included in our regulations.

—A payee applicant who receives Social Security or SSI benefits through a representative payee may not serve as a representative payee. Such individuals have already been determined to be incapable of handling financial affairs.

—A payee applicant whose prior certification or appointment as representative payee was revoked or terminated by reason of misuse of title II or title XVI benefits may not be appointed as a representative payee. We may make an exception to this prohibition on a case-by-case basis if direct payment is not possible and payment to the payee applicant would serve the best interest of the beneficiary. An exception may be granted if no suitable alternative payee is available and the information indicates the applicant is now suitable to serve as payee. If the applicant is appointed, evaluation(s) of the applicant's performance as payee will be conducted as our field offices determine are necessary.

—Payment will not be certified to a payee applicant who is a creditor of the beneficiary.

i.e., someone who provides the beneficiary with goods or services for monetary consideration, unless the creditor is:

(1) A relative of the beneficiary living in the same household as the beneficiary;

(2) A legal guardian or legal representative of the beneficiary;

(3) A facility that is licensed or certified as a care facility under State or local law, or an administrator, owner, or employee of such a facility, if the beneficiary resides in the facility and the selection of the facility or such person is made only after we have attempted to locate an alternative representative payee who would better serve the interests of the beneficiary;

(4) An individual whom we determine, based on written findings and under procedures prescribed in our regulations to be acceptable to serve as a representative payee. The individual must establish that he or she poses no risk to the beneficiary, that the financial relationship of the applicant to the beneficiary poses no substantial conflict of interest, and a more suitable payee cannot be found; or

(5) A qualified organization authorized to collect a monthly fee from the beneficiary for expenses incurred by the organization in providing services performed as the individual's representative payee. (This regulatory provision and implementing regulations separately published on June 1, 1992 (57 FR 23054), apply only as long as the payment for services provisions set out in sections 205(j)(4) and 1631(a)(2)(D) of the Act, currently scheduled to lapse on July 1, 1994, are in effect.)

- Add new §§ 404.2024 and 416.624 to explain that before certifying payment to a representative payee applicant, we will conduct an investigation of a payee applicant to determine the applicant's suitability. A face-to-face interview will be included as part of the investigation unless it is impracticable to do so. A face-to-face interview will be considered impracticable if it would cause the payee applicant undue hardship such as when the applicant cannot reasonably make arrangements to visit the Social Security field office.

During the investigation we will:

—Require the payee applicant to submit documented proof of identity, unless such information has been submitted with an application for title II or title XVI benefits;

—Verify the payee applicant's Social Security account number or employer identification number;

—Determine whether the payee applicant has been convicted of a violation of section 208 or section 1632 of the Act; and

—Determine whether the payee applicant previously served as a representative payee and had his or her certification revoked or terminated by reason of misuse of title II or title XVI benefits.

- Amend existing §§ 404.2025 and 416.625 to change the title of the sections to "Information to be submitted by a representative payee after a representative payee has been selected," moving existing paragraph (a) of these sections with minor revisions to new §§ 404.2024 and 416.624 as new paragraph (c) and keeping existing paragraph (b) as an undesignated paragraph under §§ 404.2025 and 416.625.

- Amend existing §§ 404.2030 and 416.630 to explain that whenever we intend to make representative payment or to appoint a payee, we will provide written notice to the beneficiary (or the legal guardian or the legal representative of the beneficiary) in advance of the certification of payment. The advance notice will:

—Be clearly written in language that is easily understandable to the reader;

—Identify the person to be designated as representative payee;

—Explain the right of the beneficiary (or the legal guardian or legal representative of the beneficiary) to appeal our determination that a representative payee is necessary; and

—Explain the right to appeal the designation of a particular person to serve as the representative payee of the beneficiary and to review the evidence upon which such designation is based and submit additional evidence.

If the beneficiary or his or her legal guardian or legal representative appeals and the appeal is received before the effectuation of the payee appointment, the payee appointment will not be processed until the appeal has been resolved in accordance with Subpart J of part 404 or Subpart N of part 416. Current monthly benefits will be paid directly to the beneficiary, where appropriate, in accordance with proposed §§ 404.2011 and 416.611, until we have selected a payee. Also, we are proposing to amend §§ 404.902(o) and 416.1402(d) to include as an initial determination whether representative payment will be made. This will afford the right to request review to all beneficiaries for whom we propose representative payment including beneficiaries who are under age 18, who are legally incompetent, or who receive SSI disability benefits and are medically determined to be drug addicts or alcoholics.

- Amend existing §§ 404.2041 and 416.641 to explain that:

—The representative payee is liable for misuse of the beneficiary's benefits and is responsible for paying back misused benefits to us. Restitution will always be sought from a payee who misused benefits;

—We will be liable for repayment of misused benefits when our negligent failure to investigate or monitor a representative payee resulted in misuse;

—If we determine that repayment of misused benefits is appropriate, we will certify for payment to the beneficiary or the beneficiary's new representative payee an amount equal to such misused benefits;

—The term "negligent failure" as used in the proposed regulations means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but were negligent in that effort; and

—We will make every effort to obtain the return of misused funds from the terminated representative payee.

—Section 416.641 will also explain that for title XVI purposes, when we find that our negligent failure to investigate or monitor a representative payee results in misuse of SSI benefits which involve federally administered State supplementary payments, our repayment of misused funds will include any portion of misused SSI benefits which are State supplementary payments. We believe that Congress intended that beneficiaries should be made whole in cases where restitution is appropriate. Therefore, we have determined that State funds which are Federally administered and which are involved in restitution cases will be reissued as appropriate. The replacement State supplementary payment will constitute a State liability under existing Federal-State agreements.

- Amend §§ 404.2050 and 416.650 to reflect the changes made by section 5105(a)(1) of OBRA 90 requiring that we will promptly stop payment to a representative payee and make payment directly to the beneficiary or to a new payee if we, or a court of competent jurisdiction, determine that the representative payee has misused the beneficiary's benefits.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules will primarily affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations contain reporting requirements in §§ 404.2024 and 416.624. We would normally seek approval of these requirements (under the Paperwork Reduction Act) from the Office of Management and Budget (OMB). We are not doing so in this situation because we have already obtained clearance from OMB to collect

this information using form SSA–11 BK, OMB No. 0960–0014.

(Catalog of Federal Domestic Assistance Program Nos. 93.802–93.805 Social Security; and 93.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure; Aged, Blind, Death benefits; Disability Insurance benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative Practice and Procedure; Aged, Blind, Disability benefits; Medicaid, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Editorial Note: This document was received at the Office of the Federal Register on March 9, 1994.

Dated: May 25, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: August 26, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts U and J of part 404 and subparts F and N of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart J continues to read as follows:

Authority: Secs. 201(j), 205(a), (b) and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b) and (d)–(h), 421(d), and 1302.

2. Section 404.902 is amended by revising paragraph (o), by removing the "and" after paragraph (t), by removing the period after paragraph (u) and replacing it with "; and" and by adding new paragraph (v) after paragraph (u) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(v) Restitution of misused benefits.

3. The authority citation for Subpart U of part 404 continues to read as follows:

Authority: Secs. 205 (a), (j), and (k), and 1102 of the Social Security Act; 42 U.S.C. 405(a), (j), and (k), and 1302.

§ 404.2001 [Amended]

4. Section 404.2001 is amended by adding the following parenthetical statement after the last sentence of paragraph (b)(3):

§ 404.200 Introduction.

* * * * *

(b) * * *

(3) * * * (See § 404.2011 if direct payment of benefits would cause substantial harm to the beneficiary.)

5. New § 404.2011 is added to subpart U to read as follows:

§ 404.2011 When a beneficiary will be paid directly pending selection of a suitable representative payee.

(a) We will pay current monthly benefits directly to the beneficiary until we have selected a representative payee except as explained in paragraphs (b), (c), (d) and (e) of this section.

(b) We may delay (in the case of initial entitlement to benefits) or suspend (in the case of existing entitlement to benefits) payment to a beneficiary while we try to find a suitable representative payee if we determine that direct payment would cause substantial harm to the beneficiary.

(c) We will make findings of substantial harm on a case-by-case basis, taking into consideration all matters that may affect the ability of the beneficiary to handle his or her affairs in his or her interest. When the direct receipt of benefits can be expected to cause physical or mental injury to the beneficiary, we will consider substantial harm to exist. We will also consider direct payment to cause substantial harm when the beneficiary is legally incompetent or under age 15, unless there is evidence to the contrary which establishes that substantial harm to the beneficiary will not result if direct payment is made.

(d) If we find that direct payment will cause substantial harm to the beneficiary, we may delay payment for a period not to exceed 1 month. If the beneficiary is legally incompetent, or under age 15, payments will be withheld until we appoint a representative payee.

Example 1: Substantial Harm Does Not Exist. A claim is approved for a title II claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that the beneficiary needs assistance in managing benefits; however, a representative payee has not been found when we are ready to pay benefits. Although we believe that the beneficiary may not use the money wisely, there is no indication that the direct receipt of funds would cause physical or mental injury. Benefits must be paid directly to the beneficiary while we locate a suitable representative payee.

Example 2: Substantial Harm Exists. We are unable to find a representative payee for a title II beneficiary who suffers from alcoholism and has been determined to need assistance in managing funds. There is evidence that the beneficiary has had repeated and recent hospitalizations due to acute problems caused by excessive drinking. We may delay payment based on the substantial harm rule while we locate a suitable representative payee. If a representative payee is not found in 1 month, we must make direct payment while we continue to make every reasonable effort to locate a suitable payee.

(e) Payment of any benefits which were deferred or suspended pending appointment of a representative payee shall be made to the beneficiary or the representative payee as a single sum or over such period of time as we determine is in the best interest of the beneficiary.

6. New § 404.2022 is added to Subpart U to read as follows:

§ 404.2022 Persons who may not serve as representative payees.

(a) A payee applicant who has been convicted of a violation under section 208 or section 1632 of the Social Security Act may not serve as a representative payee.

(b) A payee applicant who receives Social Security or SSI benefits through a representative payee may not serve as a representative payee.

(c)(1) A payee applicant who previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II or title XVI benefits will not be selected to be a representative payee. However, we may grant an exception to this prohibition on a case-by-case basis if direct payment of benefits to the beneficiary is not feasible, and selection of the payee applicant as representative payee would be in the interest of the beneficiary. Such a payee applicant may be appointed as a representative payee if—

(i) No suitable alternative payee is available, and

(ii) The information we have indicates the applicant is now suitable to serve as a representative payee.

(2) If the payee applicant is appointed, we will evaluate the applicant's performance as payee at such intervals as the local field office determines are necessary.

(d) A payee applicant who is a creditor, i.e., someone who provides the beneficiary with goods or services for monetary consideration, will not be selected to be a representative payee unless the creditor is—

(1) A relative of the beneficiary living in the same household as the beneficiary;

(2) A legal guardian or legal representative of the beneficiary;

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State, or a person who is an administrator, owner, or employee of the facility, if the beneficiary resides in such facility, and we are unable to locate an alternative representative payee;

(4) An individual who establishes that he or she poses no risk to the beneficiary and that his or her financial relationship to the beneficiary poses no substantial conflict of interest. We will investigate each case to ensure that such individual poses no risk to the beneficiary and presents no substantial conflict of interest. Our determination will be based on written findings and will be made when a more suitable payee cannot be found under procedures set out in this subpart on the selection of representative payees; or

(5) A qualified organization authorized to collect a monthly fee from the beneficiary for expenses incurred by the organization in providing services performed as the individual's representative payee, under § 404.2040a.

Example 1

An individual applies to be representative payee for a beneficiary who has been determined to need assistance in managing benefits. The payee applicant has been renting a room to the beneficiary for several years and assists the beneficiary with his other financial obligations, as needed. He charges the beneficiary a reasonable amount of rent. The beneficiary has no other family or friends willing to help manage his benefits or to act as representative payee. The payee applicant has demonstrated that his interest in and concern for the beneficiary goes beyond his desire to collect the rent each month. In this instance, the applicant may be selected as a representative payee because a more suitable payee is not available, the applicant appears to pose no risk to the beneficiary, and there is minimal conflict of interest.

Example 2

In a situation similar to the one above, the beneficiary's landlord indicates that he is applying to be payee only to ensure receipt of his rent, and will give the balance of the benefit funds remaining after payment of the rent directly to the beneficiary. In this situation the applicant will not be considered suitable because of the apparent conflict of interest.

7. New § 404.2024 is added to Subpart U to read as follows:

§ 404.2024 Investigation of representative payee applicant.

(a) We will conduct an investigation of a payee applicant before selecting the applicant as a payee. We will include a face-to-face interview with the payee applicant as part of the investigation unless it is impracticable to do so. As part of the investigation we will—

(1) Require the payee applicant to submit documented proof of identity, unless such information has been previously submitted with an application for title II or title XVI benefits;

(2) Verify the payee applicant's Social Security account number or employer identification number;

(3) Determine whether the payee applicant has been convicted of a violation of section 208 or section 1632 of the Social Security Act;

(4) Determine whether the payee applicant has previously served as a representative payee and has had a previous appointment as payee revoked or terminated by reason of misuse of title II or title XVI benefits;

(5) Use our records to verify the payee applicant's employment and/or direct receipt of Social Security or SSI benefits;

(6) Corroborate the payee applicant's concern for the beneficiary with the beneficiary's custodian; and

(7) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(d)).

(b) A face-to-face interview will be considered impracticable if it would cause the payee applicant undue hardship (e.g., the payee applicant cares for children or disabled individuals in the home and no alternative caregiver is available, or is employed and cannot arrange for time off from work or would have to travel a great distance to the field office). In this situation, we will conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview.

(c) Before we select a representative payee, the payee applicant also must give us adequate information showing his or her relationship to the beneficiary and demonstrating his or her responsibility for the care of the beneficiary.

8. Section 404.2025 is revised to read as follows:

§ 404.2025 Information to be submitted by a representative payee after a representative payee has been selected.

Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship with the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a satisfactory reason for not complying with our request and we receive the information requested. We will consider paying the beneficiary directly in accordance with § 404.2011 in instances when we decide to stop paying the representative payee.

9. Section 404.2030 is revised to read as follows:

§ 404.2030 Advance notice of the determination to make representative payment.

(a) We will provide written notice to the beneficiary of our determination to make representative payment in advance of certification of payment of the beneficiary's benefits to a representative payee. We will also advise the beneficiary that we have determined that representative payment would be in the interest of the beneficiary, and we will provide the name of the representative payee we expect to select. If the beneficiary is under age 15, is an unemancipated minor under the age of 18, or is legally incompetent, the written notice will be provided to the legal guardian or legal representative of the beneficiary. The advance notice will—

(1) Be clearly written in language that is easily understandable by the reader;

(2) Identify the person to be designated as representative payee;

(3) Explain the right of the beneficiary (or the legal guardian or legal representative of the beneficiary) to appeal a determination, in accordance with subpart J of this part, that a representative payee is necessary for the beneficiary; and

(4) Explain the right of the beneficiary, legal guardian or legal representative to appeal, in accordance with subpart J of this part, the designation of a particular person to serve as the representative payee of the beneficiary and to review the evidence upon which such designation is based and submit additional evidence.

(b) If the beneficiary or his or her legal guardian or legal representative objects to representative payment or to the designated payee, and the objection is received before the effectuation of the payee appointment, we will resolve the objection in the same manner as we resolve other objections to initial determinations in accordance with subpart J of this part before the payee appointment is processed.

10. Section 404.2041 is revised to read as follows:

§ 404.2041 Restitution of misused benefit payments.

(a) We will repay benefits in cases when we determine that a representative payee misused benefits and the misuse resulted from our negligent failure to investigate or monitor a representative payee. When we make restitution, we will pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the misused benefits.

(b) The representative payee who misuses the beneficiary's benefits is responsible for paying back misused benefits to us. Restitution of misused benefits will always be sought from the payee who misused the benefits.

(c) The term "negligent failure" as used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but were negligent in our investigation or monitoring. Examples of SSA's negligent failure include, but are not limited, to the following. We did not—

(1) Follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) Investigate timely a reported allegation of misuse; or

(3) Take the steps necessary to prevent the issuance of payments to the payee after it was determined that the payee misused benefits.

(d) Our repayment of misused benefits under these provisions does not alter the payee's liability and responsibility as described in paragraph (b) of this section. Therefore, we will make every reasonable effort to obtain the return of misused benefits from the payee who misused the benefits.

11. Section 404.2050 is amended by revising the introductory paragraph, and paragraph (a) to read as follows:

§ 404.2050 When a new representative payee will be selected.

When we learn that the interest of a beneficiary is not served by continuing payment to the present payee or that the present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop payment to the payee and make payment directly to the beneficiary or to an alternative payee until we find a suitable payee. We will terminate payment of benefits to the payee and find a new payee if the present payee:

(a) Has been determined to have misused the beneficiary's benefits as found by us or a court of competent jurisdiction;

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart F continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383 (a)(2) and (d)(1).

§ 416.601 [Amended]

2. Section 416.601 is amended by adding the following parenthetical statement after the last sentence of paragraph (b)(3):

§ 416.601 Introduction.

* * * * *

(b) * * *

(3) * * * (See § 416.611 if direct payment of benefits would cause substantial harm to the beneficiary.)

3. New § 416.611 is added to subpart F to read as follows:

§ 416.611 When a beneficiary will be paid directly pending selection of a suitable representative payee.

(a) We will pay current monthly benefits directly to the beneficiary until we have selected a representative payee except as explained in paragraphs (b), (c), (d) and (e) of this section.

(b) We may delay (in the case of initial eligibility for benefits) or suspend (in case of existing eligibility for benefits) payment to a beneficiary while we try to find a suitable representative payee if we determine that direct payment would cause substantial harm to the beneficiary.

(c) We will make findings of substantial harm on a case-by-case basis, taking into consideration all matters that may affect the ability of the beneficiary to handle his or her affairs in his or her interest. When the direct receipt of benefits can be expected to cause physical or mental injury to the beneficiary, we will consider substantial harm to exist. We will also consider direct payment to cause substantial harm when the beneficiary is legally incompetent or under age 15, unless there is evidence to the contrary which establishes that substantial harm to the beneficiary will not result if direct payment is made. We will always consider direct payment to cause substantial harm when the beneficiary is eligible for SSI benefits based on a disability and is medically determined to be a drug addict or alcoholic.

(d) If we find that direct payment will cause substantial harm to the beneficiary, we may delay payment for a period not to exceed 1 month. If the beneficiary is legally incompetent, under age 15, or is an SSI beneficiary eligible for payment based on a disability and is medically determined to be a drug addict or alcoholic, payment will be withheld until we appoint a representative payee.

Example 1 Substantial Harm Does Not Exist. A claim is approved for a title XVI claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that the beneficiary needs assistance in managing benefits; however, a representative payee has not been found when we are ready to pay benefits. Although we believe that the beneficiary may not use the money wisely, there is no indication that the direct receipt of funds would cause physical or mental injury. Benefits must be paid directly to the beneficiary while we locate a suitable representative payee.

Example 2: Substantial Harm Exists. We are unable to find a representative payee for a title XVI beneficiary who has been determined to need assistance in managing funds but who is not legally incompetent. There is evidence that handling money in the past has resulted in uncontrollable stress, self-inflicted injury and hospitalization. We may delay payment based on the substantial harm rule while we locate a suitable representative payee. If a representative payee is not found in 1 month, we must make direct payment while we continue to make every reasonable effort to locate a suitable payee.

(e) Payment of any benefits which were deferred or suspended pending appointment of a representative payee shall be made to the beneficiary or the representative payee as a single sum or over such period of time as we determine is in the best interest of the beneficiary.

4. New § 416.622 is added to subpart F to read as follows:

§ 416.622 Persons who may not serve as representative payees.

(a) A payee applicant who has been convicted of a violation under section 208 or section 1632 of the Social Security Act may not serve as a representative payee.

(b) A payee applicant who receives Social Security or SSI benefits through a representative payee may not serve as a representative payee.

(c)(1) A payee applicant who previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II or title XVI benefits will not be selected to be a representative payee. However, we may grant an exception to this prohibition on a case-by-case basis if direct payment of benefits to the beneficiary is not feasible, and selection of the payee

applicant as representative payee would be in the interest of the beneficiary. Such a payee applicant may be appointed as a representative payee if—

(i) No suitable alternative payee is available, and

(ii) The information we have indicates the applicant is now suitable to serve as a representative payee.

(2) If the payee applicant is appointed, we will evaluate the applicant's performance at such intervals as the local field office determines are necessary.

(d) A payee applicant who is a creditor, i.e., someone who provides the beneficiary with goods or services for monetary consideration, will not be selected to be a representative payee unless the creditor is—

(1) A relative of the beneficiary living in the same household as the beneficiary;

(2) A legal guardian or legal representative of the beneficiary;

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State, or a person who is an administrator, owner, or employee of the facility, if the beneficiary resides in such facility, and we are unable to locate an alternative representative payee;

(4) An individual who establishes that he or she poses no risk to the beneficiary and that his or her financial relationship to the beneficiary poses no substantial conflict of interest. We will investigate each case to ensure that such individual poses no risk to the beneficiary and presents no substantial conflict of interest. Our determination will be based on written findings and will be made when a more suitable payee cannot be found under procedures set out in this subpart on selection of representative payees; or

(5) A qualified organization authorized to collect a monthly fee from the beneficiary for expenses incurred by the organization in providing services performed as the individual's representative payee, under § 416.640a.

Example 1

An individual applies to be representative payee for a beneficiary who has been determined to need assistance in managing benefits. The payee applicant has been renting a room to the beneficiary for several years and assists the beneficiary with his other financial obligations, as needed. He charges the beneficiary a reasonable amount of rent. The beneficiary has no other family or friends willing to help manage his benefits or to act as representative payee. The payee applicant has demonstrated that his interest in and concern for the beneficiary goes beyond his desire to collect the rent each month. In this instance, the applicant may be selected as a representative payee because a more suitable payee is not available, the applicant appears to pose no risk to the beneficiary, and there is minimal conflict of interest.

Example 2

In a situation similar to the one above, the beneficiary's landlord indicates that he is applying to be payee only to ensure receipt of his rent, and will give the balance of the benefit funds remaining after payment of the rent directly to the beneficiary. In this situation the applicant will not be considered suitable because of the apparent conflict of interest.

5. New § 416.624 is added to subpart F to read as follows:

§ 416.624 Investigation of representative payee applicant.

(a) We will conduct an investigation of a payee applicant before selecting the applicant as a payee. We will include a face-to-face interview with the payee applicant as part of the investigation unless it is impracticable to do so. As part of the investigation we will—

(1) Require the payee applicant to submit documented proof of identity, unless such information has been previously submitted with an application for title II or title XVI benefits;

(2) Verify the payee applicant's Social Security account number or employer identification number;

(3) Determine whether the payee applicant has been convicted of a violation of section 208 or section 1632 of the Social Security Act;

(4) Determine whether the payee applicant has previously served as a representative payee and has had a previous appointment as payee revoked or terminated by reason of misuse of title II or title XVI benefits;

(5) Use our records to verify the payee applicant's employment and/or direct receipt of social security or SSI benefits;

(6) Corroborate the payee applicant's concern for the beneficiary with the beneficiary's custodian; and

(7) Determine whether the payee applicant is a creditor of the beneficiary (see § 416.622(d)).

(b) A face-to-face interview will be considered impracticable if it would cause the payee applicant undue hardship (e.g., the payee applicant cares for children or disabled individuals in the home and no alternative caregiver is available, or is employed and cannot arrange for time off from work, or would have to travel a great distance to the field office). In this situation, we will conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview.

(c) Before we select a representative payee, the payee applicant must also give us adequate information showing his or her relationship to the beneficiary and demonstrating his or her responsibility for the care of the beneficiary.

6. Section 416.625 is amended to read as follows:

§ 416.625 Information to be submitted by a representative payee after a representative payee has been selected.

Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship with the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a satisfactory reason for not complying with our request, and we receive the information requested. We will consider paying the beneficiary directly in accordance with § 416.611 in instances when we decide to stop paying the representative payee.

7. Section 416.630 is revised to read as follows:

§ 416.630 Advance notice of the determination to make representative payment.

(a) We will provide written notice to the beneficiary of our determination to make representative payment in advance of payment of the beneficiary's benefits to a representative payee. We will also advise the beneficiary that we have determined that representative payment would be in the interest of the beneficiary, and we will provide the name of the representative payee we expect to select. If the beneficiary is under age 15, is an unemancipated minor under the age of 18, or is legally incompetent, the written notice will be provided to the legal guardian or legal representative of the beneficiary. The advance notice will—

(1) Be clearly written in language that is easily understandable by the reader;

(2) Identify the person to be designated as representative payee;

(3) Explain the right of the beneficiary (or the legal guardian or legal representative of the beneficiary) to appeal a determination, in accordance with subpart N of this part, that a representative payee is necessary for the beneficiary; and

(4) Explain the right of the beneficiary, legal guardian or legal representative to appeal, in accordance with subpart N of this part, the designation of a particular person to

serve as the representative payee of the beneficiary and to review the evidence upon which such designation is based and submit additional evidence.

(b) If the beneficiary or his or her legal guardian or legal representative objects to representative payment or to the designated payee, and the objection is received before the effectuation of the payee appointment, we will resolve the objection in the same manner as we resolve other objections to initial determinations in accordance with subpart N of this part before the payee appointment is processed.

8. Section 416.641 is revised to read as follows:

§ 416.641 Restitution of misused benefit payments.

(a) We will repay benefits in cases when we determine that a representative payee misused benefits and the misuse resulted from our negligent failure to investigate or monitor a representative payee. When we make restitution, we will pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the misused benefits, including any Federally administered State supplementary payments.

(b) The representative payee who misuses the beneficiary's benefits is responsible for paying back misused benefits to us. Restitution of misused benefits will always be sought from the payee who misused the benefits.

(c) The term "negligent failure" as used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but were negligent in our investigation or monitoring. Examples of SSA's negligent failure include, but are not limited to the following. We did not—

(1) Follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) Investigate timely a reported allegation of misuse; or

(3) Take the steps necessary to prevent the issuance of payments to the payee after it was determined that the payee misused benefits.

(d) Our repayment of misused benefits under these provisions does not alter the payee's liability and responsibility as described in paragraph (b) of this section. Therefore, we will make every effort to obtain the return of misused benefits from the payee who misused the benefits.

9. Section 416.650 is amended by revising the introductory paragraph, and paragraph (a) to read as follows:

§ 416.650 When a new representative payee will be selected.

When we learn that the interest of a beneficiary is not served by continuing payment to the present payee or that the present payee is no longer able or willing to carry out the payee responsibilities, we will promptly stop payment to the payee and make payment directly to the beneficiary or to an alternative payee until we find a suitable payee. We will terminate payment of benefits to the payee and find a new payee if the present payee:

(a) Has been determined to have misused the beneficiary's benefits as found by us or a court of competent jurisdiction;

* * * * *

10. The authority citation for Subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b. sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

11. Section 416.1402 is amended by revising paragraph (d), by removing the "and" after paragraph (l), by removing the period after paragraph (m) and replacing it with "; and", and by adding new paragraph (n) after paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(d) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(n) Restitution of misused benefits.

[FR Doc. 94–5848 Filed 3–14–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

[FHWA Docket No. 93–28]

RIN 2125–AC60

Certification of Size and Weight Enforcement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: On December 16, 1993, the FHWA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (58 FR 65830), in which the agency announced that it was considering proposing changes to the guidance provided to State highway agencies for preparing annual vehicle size and weight certifications and enforcement plans. The ANPRM requested public comment on the type of information and data that should be submitted by States to support an effective enforcement plan, and their annual vehicle size and weight enforcement certifications. The comment period is scheduled to close on March 16, 1994. In order to allow sufficient time for interested parties to comment on this complex issue, the FHWA is extending the comment period until May 18, 1994.

DATES: The comment period is extended to May 18, 1994.

ADDRESSES: Submit written, signed comments, to FHWA Docket No.93–28, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management (202–366–2212) or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: To preserve the Nation's investment in the Interstate Highway System, Congress established in 1956 vehicle weight limits for the Interstate System (23 U.S.C. 127) and beginning in 1974 required each State to certify annually that it is enforcing its size and weight laws (23 U.S.C. 141). The Federal-aid Highway Act of 1978, Public Law 95–599, 92 Stat. 2689, authorized the Department of Transportation to require that each State provide information in its certification sufficient to allow evaluation of the State's weight enforcement program. In 1980, the FHWA promulgated a regulation, 23 CFR 657, Certification of Size and Weight Enforcement, detailing the information needed from the States to evaluate the State's weight enforcement program. In addition, the States were 2 required annually to prepare vehicle size and weight enforcement plans. Each State's plan was to be the basis against which its enforcement program

as summarized in its certification was to be evaluated.

Currently, States provide in their annual certifications to the FHWA, due on January 1 of each year, such information as the number of trucks weighed by scale type, and the total number of citations issued by type of violation. Permits issued by type, the number of off-loads and load shifts, and changes to the State's vehicle size and weight laws and regulations related to permit fees and overweight fines are also reported.

A State's vehicle size and weight enforcement plan contains, among other information, an inventory of facilities and equipment, fiscal and personnel resources, enforcement practices and procedures, program goals, and an evaluation of current operations. A State's plan is to be provided to the FHWA for review by July 1 and is to be accepted and in effect by October 1 of each year.

The comment period for the ANPRM is scheduled to close on March 16, 1994. In order to allow sufficient time for interested parties to comment on this complex issue, the FHWA is extending the comment period until May 18, 1994.

List of Subjects in 23 CFR Part 657

Enforcement, Enforcement Plan, Highways and roads, Sanctions, and Vehicle size and weight certification.

Authority: 23 U.S.C. 127, 141, and 315; 49 CFR 1.48(b)

Issued on: March 8, 1994

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–5916 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–65–93]

RIN 1545–AS11

Certain Elections for Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the procedures for making elections regarding the amortization of certain intangible property. The temporary regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and affect electing taxpayers who acquired intangible property after July 25, 1991, or who acquired intangibles under a written binding contract in effect on August 10, 1993. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by May 16, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–55–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:T:R (PS–55–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John Huffman, (202) 622–3110 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.197–1T(e). This information is required by the IRS in order to verify that electing taxpayers have properly determined amortization and depreciation deductions allowable under sections 167(f) and 197. The likely reporting entities are businesses and other for-profit institutions.

Estimated total annual reporting burden: 10,000 hours.

The estimated annual burden per respondent varies from 30 minutes to 75 minutes, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: One time.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 167(f) and 197 by adding §§ 1.167(a)–13T and 1.197–1T. The temporary regulations contain rules relating to the depreciation and amortization of certain intangible property.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary and proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John Huffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.197–1 also issued under 26 U.S.C. 197(g). * * *

Par. 2. § 1.167(a)–13 is added to read as follows:

§ 1.167(a)–13 Certain elections for intangible property.

For rules applying the elections under sections 13261(g) (2) and (3) of the Omnibus Budget Reconciliation Act of 1993 to intangible property described in section 167(f), see § 1.197–1.

Par. 3. § 1.197–1 is added to read as follows:

§ 1.197–1 Certain elections for intangible property.

(The text of this proposed section is the same as the text of § 1.197–1T published elsewhere in this issue of the **Federal Register**).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–5985 Filed 3–10–94; 3:04 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 32–2–6238; FRL–4849–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOCs) from the transfer of gasoline into storage tanks or fuel tanks, and from crude oil and natural gas production and processing facilities. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP are South Coast Air Quality Management District (SCAQMD) Rule 461, Gasoline Transfer and Dispensing, and Ventura County Air Pollution Control District (VCAPCD) Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities. These rules were submitted by the California Air Resources Board (CARB) to EPA on December 31, 1990 and September 14, 1992, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin and the Ventura County Area. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme, and the Ventura County Area is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on December 31, 1990 and September 14, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 461, Gasoline Transfer and Dispensing, and VCAPCD Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles-South Coast Air Basin and the Ventura County Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

Facilities. Rule 461 was adopted by SCAQMD on July 7, 1989, and Rule 74.10 was adopted by the VCAPCD on June 16, 1992. These submitted rules were found to be complete on February 28, 1991 and November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [3] and are being proposed for approval into the SIP.

SCAQMD Rule 461 requires Stage I and Stage II vapor control to limit emissions of VOCs during the transfer of gasoline into storage tanks or fuel tanks. VCAPCD Rule 74.10 sets requirements for control of fugitive VOC emissions from crude oil and natural gas production and processing facilities. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SCAQMD Rule 461 is entitled, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA–450/2–78–051, while the CTG applicable to VCAPCD Rule 74.10 is entitled, "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA–450/3–83–007. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 461 includes the following significant changes from the current SIP:

1. Adds definitions, equipment and operating requirements, and sign-posting requirements.
2. Deletes many storage container exemptions.
3. Changes compliance schedule to require compliance at the start of operation.

VCAPCD Rule 74.10 is a new rule which was adopted to control fugitive VOC emissions from components at crude oil and natural gas production and processing plants. Its major provisions include:

1. Operating standards and component leak thresholds.
2. Inspection and repair requirements, and submission of an operator management plan.
3. Recordkeeping requirements, test methods, and definitions.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 461 and VCAPCD 74.10 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 4, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–5995 Filed 3–14–94; 8:45 am]

BILLING CODE 6560–50–F

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

40 CFR Part 63

[AD–FRL–4850–1]

Preparation, Adoption, and Submittal of State Implementation Plans: List of Qualified Coke Oven Panel Members

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: On October, 27, 1993, the EPA promulgated the coke oven National Emission Standards for Hazardous Air Pollutants, which limits the number of visible leaks from coke oven doors, topside ports, and offtake systems, and the amount of time of visible emissions from the charging operation. Also promulgated at that time was Method 303 (40 CFR, part 63, appendix A), which sets forth the procedures an observer shall follow to determine compliance with the coke oven standards. In order to implement the coke oven rule, coke oven inspectors must be certified by an EPA recognized panel in accordance with the procedures set forth in section 2 of Method 303. The Method 303 certification training for each trainee concludes with a determination by a three member panel as to the trainee's ability to conduct Method 303 satisfactorily. The Agency is developing a certification course for coke oven inspectors and, as part of this effort, the Agency has selected a group of experienced individuals to act as panel members. With today's action, the Agency sets forth the list of experienced coke oven inspectors who will serve as panel members during the certification of coke oven observers and informs the public that these people have demonstrated to the Agency that they satisfy the minimum experience requirements of 120 days of experience in reading coke oven emissions. Additional panel members may be added in the future in accordance with implementation needs. Any additions of certified and qualified inspectors to the panel will be made without promulgation, which was only necessary to establish this initial panel.

DATES: *Comments:* Comments must be received on or before May 16, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 15, 1994, a public hearing will be held on April 14, 1994, beginning at 10 a.m. Persons interested in attending the hearing should contact Ms. Shelby Journigan at (919) 541–5543 to verify that a hearing will be held. If a hearing is held, a verbatim transcript will be placed in the docket.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by April 5, 1994, contact Ms. Shelby Journigan at (919) 541–5543.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention, Docket No. _____, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5543.

FOR FURTHER INFORMATION CONTACT: For further information or documentation concerning the proposed rule, contact Mr. Roy Huntley, or Mr. Peter Westlin, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: In development of the coke oven emissions rule, EPA used formal regulatory negotiations, where parties negotiate and sign a formal agreement that becomes the basis for EPA's proposed rule.

The Coke Ovens Regulatory Negotiation Committee, which was formed to negotiate the coke oven NESHAP, was comprised of several interested parties: environmental groups such as the National Resources Defense Council and Group Against Smog and Pollution, industry associations such as American Iron and Steel Institute and American Coke and Coal Chemicals Institute, representatives from the Steel Workers' Union, and State and local agencies, as well as the EPA. The final coke oven rule reflects the agreements reached by this Committee.

During negotiations, the Committee agreed that the coke oven observers must be certified. As part of the certification process, each observer must demonstrate to the satisfaction of a three-member panel of experienced individuals, a high degree of proficiency in performing Method 303.

After the agreement was signed by the committee on October 28, 1992, EPA began selecting the panel members by searching for people with the required experience. The qualifications for the panel members are in section 2.1.3 of Method 303 of appendix A at 40 CFR, part 63, and reads as follows: "Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens." Representatives from industry and EPA reached a common understanding of the qualifications for panel members. A list developed by EPA of 23 prospective panel members was submitted to industry representatives for review. On March 30, 1993, a training course for the prospective panel was held in Chicago, Illinois. Of the 23 participants, 21 successfully completed the training course and, subsequently, were able to provide the Agency with sufficient documentation. These 21 people are now considered by the Agency as qualified panel members and able to act as such in the Method 303 certification course.

Concurrent with these events, EPA decided to propose and promulgate the list to give the public an opportunity to examine and comment on the panel members' qualifications.

I. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the "Executive Order."

OMB has exempted this regulatory action from E.O. 12866 review.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements for the Coke Oven Battery National Emission Standards under the provisions of the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0253. This proposed rule does not add any additional requirements to those already approved.

The public reporting and recording keeping burden for the Coke Oven Battery National Emission Standards collection of information is estimated to average 2,461 hours per respondent per year. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 205503, marked "Attention: Desk Officer for EPA."

C. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) which requires EPA to consider potential impacts of proposed regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This list will have no adverse economic impact on small entities. Since this proposal does not significantly change the status quo for such entities, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require an RFA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coke oven emissions, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 7, 1994.

Carol M. Browner,

Administrator.

TABLE 1.—PANEL MEMBERS

Name	Affiliation
Basim Dihu (Doors Only)	U.S. EPA, Central District Office, 77 West Jackson Blvd., Chicago, IL 60604–3590.
William Kiettner	U.S. EPA Wheeling Office, 303 Methodist Building/3ES12, 11th & Chapline Streets Wheeling, WV 26003.
Ron Mordosky	Pennsylvania Dept. of Environmental Resources, 4530 Bath Pike, Bethlehem, PA 18017.
Robert Simmons	Indiana Department of Environmental Management, Gainer Bank Building/Rm 418, 504 N. Broadway, Gary, IN 46402.
Mark Hughes	Allegheny County Health Dept., Bureau of Air Pollution Control, 301–30 Ninth St., Pittsburgh, PA 15201.
Barnie Clark	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Rich Casselberry	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Beryl Denne	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Frank Georgakis	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Robert Gori	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Linda McCracken	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Gordon Lawson	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Terry Redenbaugh	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Cindy Rogers	Independant consultant.
Elmer Spiker	Chester Environmental, P.O. Box 15777, Pittsburgh, PA 15244.
Ed Peterson	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
John Simpson	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Richard Somers	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Bob Trezak	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Scott Trezak	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Jim Fanning	Independant Consultant, P.O. Box 2752, Union City, PA 16438.

[FR Doc. 94–5994 Filed 3–14–94; 8.45 am]
BILLING CODE 6560–50–P

40 CFR Part 141

[FRL–4849–4]

National Primary Drinking Water Regulations; Monitoring Requirements for Public Drinking Water Supplies

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: On February 10, 1994, EPA published a proposed rule which would require certain public water systems to generate and provide the Agency with specific monitoring data and other information. (59 FR 6332). That proposed rule provided for a public comment period to March 14, 1994. This notice extends the public comment period to March 28, 1994.

DATES: The comment period is extended to March 28, 1994.

ADDRESSES: Send written comments to ESWTR/DBPR Monitoring Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, Telephone (800–426–4791) Monday through Friday, from 9 a.m. to 5:30 p.m Eastern Time. For technical inquiries, contact Stig Regli (202–260–7370) or Paul Berger (202–260–3039), Office of Ground Water and Drinking Water, Drinking Water Standards Division.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency proposed national primary drinking water regulations to require public water systems serving more than 10,000 persons to provide to the Agency: Information characterizing their water systems; monitoring data for *Giardia*, *Cryptosporidium* and other

contaminants; and engineering data pertaining to removal of disease-causing microorganisms. (59 FR 6332, February 10, 1994). The Agency received several informal requests to extend the public comment period for this proposal, and a formal request from the American Water Works Association. EPA has decided to extend the public comment period for an additional two weeks, to March 28, 1994, in order to provide these groups and any other interested parties additional time to prepare comments on the proposal. EPA does not expect to extend the public comment further.

Mark A. Luttner,

Acting Deputy Assistant Administrator, Office of Water.

[FR Doc. 94–5868 Filed 3–14–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 93–21; FCC 94–65]

Sports Programming Migration

AGENCY: Federal Communications Commission.

ACTION: Further notice of inquiry.

SUMMARY: This Further Notice of Inquiry ("Further Notice") continues an inquiry into sports programming migration and the impact of preclusive contracts on the availability of college sports programming to local television stations. The inquiry was mandated by the Cable Television Consumer Protection and Competition Act of 1992, sec. 26. The Further Notice is designed to update the record that was established in response to the Commission's initial Notice of Inquiry and, in particular, solicits comment on the large number of new contracts that professional and college leagues have recently signed with broadcast and cable networks.

DATES: Comments must be received on or before April 11, 1994; reply comments must be received on or before April 26, 1994.

ADDRESSES: Comments and reply comments may be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION: This proceeding, which the Commission initiated with a Notice of Inquiry (58 FR 8248, February 12, 1993), examines, on a sport-by-sport basis, trends in the movement of sports programming from broadcast television to subscription media, including, to the extent possible, projections of future patterns of sports programming distribution. It encompasses local, regional, and national sports programming, and investigates, pursuant to specific Congressional instruction, "the economic causes and economic and social consequences" of migration trends. Moreover, the Commission is assessing the impact of preclusive contracts between college athletic conferences and video programming vendors of the supply of local college sports programming to local television stations.

The Commission's inquiry is focused on professional baseball, basketball, football, and hockey, and on college football and basketball, but comment is invited on other sports as appropriate. Pursuant to Congressional instructions, the Commission submitted to Congress an Interim Report (58 FR 38088, July 15, 1993) on July 1, 1993 and will submit to Congress a final sports programming migration report on or before July 1, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6092 Filed 3–14–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–87; Notice 1]

RIN 2127–AF03

Federal Motor Vehicle Safety Standards; Metric Conversion

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise selected Federal Motor Vehicle Safety Standards (FMVSS) by converting English measurements specified in those standards to metric measurements. This proposed rulemaking is the first of several that NHTSA will undertake to implement the Federal policy that the metric system of measurement is the preferred system of weights and measures for United States trade and commerce. The proposed conversions are not intended to make any changes in the stringency of the affected FMVSS.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: All comments should refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cavey's telephone number is: (202) 366–5271.

SUPPLEMENTARY INFORMATION: Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418), makes it U.S. policy that the metric system of measurement is the preferred system of weights and measures for United States trade and commerce. Through Executive Order 12770, Federal agencies are directed to comply with the Act by adopting a conversion schedule for their programs by September 30, 1992. In a **Federal Register** document of April 21, 1992 (57 FR 14691), NHTSA published its plan to use the metric system in NHTSA programs, and included an implementation schedule to convert the Federal Motor Vehicle Safety Standards (FMVSSs).

In the document, NHTSA stated its intent to review all the FMVSSs that the agency expects will be in effect between June 1992 and 1997, and to the fullest extent feasible, convert English system measurements in those FMVSSs to the metric system. In undertaking the conversion of the measurements in the FMVSSs, the agency identified the following steps to be taken for each standard:

1. List the values to be converted.
2. Determine whether to convert the values to an equivalent metric unit, or to use an exact conversion.
3. For the equivalent metric unit conversions, determine any interrelationships with other values, and the effect of conversion on the interrelationships.
4. Determine any impact that the conversion may have on changes in safety.
5. Undertake rulemaking to revise the standard to reflect the converted values.

With respect to the nature of the conversions to be made, the agency stated that NHTSA generally favored the use of equivalent conversions because using values stated in integers would facilitate making measurements during

compliance testing. However, NHTSA indicated that it would not use equivalent conversions where there is a specific safety need or other reason to make an exact conversion. (To illustrate equivalent and exact conversions, an equivalent conversion of two inches would be 50 millimeters, while an exact conversion would be 50.8 millimeters.)

The agency anticipated that some standards will be easier to convert than others. Therefore, the agency established the following timetable: Simple conversions to be completed by June 1994, intermediate conversions by December 1996, and the most complex conversions by December 1997.

NHTSA received comments on the plan from Ford Motor Company, General Motors Corporation, Volkswagen of America, the Association of International Automobile Manufacturers, and Mr. John T. Benedict, an interested citizen. All the comments supported NHTSA's approach to making the conversions. Some commenters cautioned the agency to be careful when rounding off metric conversions, so that the agency does not inadvertently make the standards more stringent. NHTSA agrees that the conversions should not inadvertently result in making the standards more stringent. In this first round of simple conversions, NHTSA has made the conversions using SAE guideline J916 May 1991, and Federal Standard 376B "Preferred Metric Units for General Use by the Federal Government" and then rounding the result. NHTSA acknowledges Mr. Benedict's comment that this approach may not be suitable for the more difficult conversions to be made in subsequent rulemkings.

NHTSA generally agrees with Volkswagen's comments that measurements and performance requirements should be expressed in the same units in the FMVSS, the SAE recommended practices and standards, and the Canadian Motor Vehicle Safety Standards. The agency will follow this practice unless adopting levels consistent with other standards would substantively change the existing requirements in the FMVSSs. With regard to the simple conversions proposed in this notice, the agency's approach of making a conversion and rounding to the nearest whole metric unit results in numbers that are consistent with voluntary industry guidelines, such as ASTM and SAE standards.

This initial notice of proposed rulemaking identifies those standards for which the agency believes conversions would be simple and makes the appropriate conversions to the metric system. English measurements in the following Federal Motor Vehicle Safety Standards (49 CFR 571 *et seq.*) are proposed to be converted to the metric system: Standard No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect; Standard No. 103, Windshield defrosting and defogging systems; Standard No. 104, Windshield wiping and washing systems; Standard No. 107, Reflecting surfaces; Standard No. 110, Tire selection and rims; Standard No. 112, Headlamp concealment devices; Standard No. 114, Theft protection; Standard No. 115, Vehicle identification number basic requirements; Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars; Standard No. 124, Accelerator control systems; Standard No. 126, Truck-camper loading; Standard No. 205, Glazing materials; Standard No. 206, Door locks and door retention components; Standard No. 207, Seating systems; Standard No. 212, Windshield, mounting, and Standard No. 216, Roof crush resistance.

I. Exact Versus Equivalent Conversions

In the majority of cases, the proposed conversions are equivalent conversions. It is the agency's intent that, if made final, these equivalent conversions have no substantive effect on specifications or requirements in the affected standard. Public comment is sought on whether each equivalent conversion would substantively effect the regulatory text. If there would be a substantive effect, comment is requested on the appropriate exact conversion.

In certain cases, exact conversions are proposed. Most of the exact conversions specify the height of lettering, the minimum depth to which the lettering must be impressed, or the maximum height to which it must be embossed. In such situations, manufacturers typically have invested in molds and other materials that produce lettering of very precise sizes. NHTSA does not want the conversion of the required lettering to have the effect of requiring manufacturers to have to change molds and materials.

NHTSA also proposes to use exact conversions for certain other measurements, to avoid a possibility that the standard would become more stringent after the conversion. For each of these proposed conversions, the agency seeks comment on whether use of the equivalent, rather than the exact conversion, would make a substantive difference:

1. Gross Vehicle Weight Ratings (GVWRs)

When the standards proposed to be converted in this notice refer to GVWR, the agency proposes to convert those GVWRs to the exact conversion. GVWRs of 10,000 pounds are proposed to be converted to 4536 kilograms and GVWRs of 6,000 pounds are proposed to be converted to 2,722 kilograms. NHTSA is aware that some of the Canadian Motor Vehicle Safety Standards use the equivalent conversions of 4500 kilograms for the 10,000 pound GVWR and 2700 kilograms for the 6000 pound GVWR.

The GVWR conversion may affect the applicability of some of the FMVSS's to particular vehicles. In the case of standards that apply to vehicles with a GVWR of 10,000 pounds or less, rounding to 4500 kilograms would affect any vehicles between 4501 and 4536 kilograms GVWR. Such vehicles may be excluded from FMVSS's that had applied to them (e.g., Standards 118, Power-operated window, partition, and roof panel systems, and 212, Windshield mounting, which apply to vehicles with GVWR's of 10,000 pounds or less), or be subject to requirements that had previously not applied to them (e.g, Standard No. 222, School Bus Passenger Seating and Crash Protection which applies to vehicles with GVWR's of more than 10,000 pounds).

Since the number of vehicles in the 4501 to 4536 kilogram or 2700 to 2722 kilogram ranges is likely to be very small, NHTSA requests comments on whether the greater ease of using equivalent conversions would outweigh the benefits of exact conversion.

2. Standard No. 110, Tire Selection and Rims

Standard No. 110 specifies at S4.4.1(b) that tire rims shall, in the event of rapid loss of inflation pressure at a speed of 60 miles per hour, retain the deflated tire until the vehicle can be stopped. In this NPRM, the agency proposes that 60 miles per hour be converted to 97 kilometers per hour, the exact conversion. The Canadian Motor Vehicle Safety Standards currently specify the requirement be met at 100 kilometers per hour, which is the equivalent conversion. The agency seeks comment on whether there is a substantive difference whether the conversion of 60 miles per hour is made to 97 or to 100 kilometers per hour.

3. Standard No. 212, Windshield Mounting

Under the test conditions of S6.1(b) in Standard No. 212, certain tested

vehicles must be loaded to their unloaded vehicle weight plus 300 pounds. In this NPRM, the agency proposes to convert 300 pounds to 136 kilograms, the exact conversion. The Canadian standards have converted 300 pounds to the equivalent conversion of 140 kilograms. In the conversion of 300 pounds, the concern about stringency is particularly relevant because the manufacturers' certification testing for Standards Nos. 208, Occupant crash protection; 212, Windshield mounting; 219, Windshield zone intrusion; and 301, Fuel system integrity can be conducted in a single crash test. A slight increase in the load required for Standard No. 212 testing (resulting from a conversion to 140 kilograms) may necessitate the manufacturers conducting a separate crash test for Standard No. 212 certification. To avoid this situation, the agency proposes to convert 300 pounds to the exact conversion of 136 kilograms, rather than the equivalent conversion of 140 kilograms.

II. Labeling Information

The agency also seeks comment on proposed metric conversions of labels providing information to consumers. Certain FMVSSs specify labels or wording to be placed on vehicles to provide safety information to the consumer. At present, the FMVSSs generally specify that labels provide units measurement in the English measurement system. When converting the FMVSSs to the metric system, the agency is not certain that labels incorporating metric measurements would be informative for American consumers. Therefore, in cases where labels or other information must be provided for the consumer's benefit, it is proposed that the information provide both the English and metric systems of measurement. Specifically, in converting Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars, it is proposed that in the "TRUCK EXAMPLE," the GVWR and GAWRs of a vehicle be provided in kilograms and pounds, and the inflation pressure of the tires be provided in kilopascals and in pounds per square inch (psi). In Standards Nos. 120 and 110, Tire selection and rims, it is proposed that information about the maximum speed for spare tire be provided as "MAXIMUM 80 KM/H (50 M.P.H.)". In converting Standard No. 126, Truck-camper loading, it is proposed that the maximum camper weight be provided in terms of kilograms and pounds, the capacity of the camper be stated in terms of liters and gallons of water, the weight of bottled gas and ice in terms of kilograms and pounds, and refrigerator capacity (for determining vehicle weight) in terms of cubic meters and cubic feet.

If the proposed use of dual measurements is adopted as final, the agency anticipates, at some future date, phasing out the English units of measurement in the consumer information labels. Public comment is sought generally on this proposed use of dual measurements for consumer information labels, and on the period of time after which the English units of measurement should be phased out.

III. Force Measurements

Standards Nos. 207 and 216 establish strength requirements for occupant seats and for the passenger compartment roof, respectively. Standard No. 207 specifies that occupant seats shall be subjected to a force 20 times the weight of the seat. Standard No. 216 specifies that the vehicle roof shall be subjected to a force 1½ times the vehicle weight. These force measurements are straightforward enough when using units of English measurement, since both weight and force are expressed in pounds. However, the metric system expresses mass in kilograms and force in Newtons. Thus, in converting forces to the metric system, there will no longer be a simple one-to-one conversion when calculating the force that should be applied. Instead, persons conducting tests will need to measure the weight of the seat or vehicle mass in kilograms and multiply each figure by 9.8 to convert the figure to Newtons. In making the metric conversion of the force measurements in Standards Nos. 207 and 216, NHTSA proposes to specify the steps of the conversion in the regulatory language, to minimize the chance of the wrong metric system conversion being made. Specifically, for Standard No. 207, NHTSA proposes to amend the force measurement language to provide that the seat shall be subjected to a force in Newtons equal to 20 times the weight of the seat, measured in kilograms and multiplied by 9.8. For Standard No. 216, NHTSA proposes to amend the force measurement language to provide that the vehicle roof shall be subjected to a force in Newtons equal to 1½ times the vehicle weight, measured in kilograms and multiplied by 9.8. Comment is sought on this proposal to specify the calculation of the metric force measurement for Standards Nos. 207 and 216.

IV. Documents Incorporated by Reference

Certain standards proposed to be converted in this notice incorporate documents that express measurements in the English system. An example of an incorporated document is SAE Recommended Practice J902, "Passenger Car Windshield Defrosting Systems," August 1964, parts of which are incorporated into Standard No. 103, Windshield defrosting and defogging systems. If incorporated documents are to be consistent with rest of the standard, some conversion of the incorporated documents might be desirable. However, since many of the incorporated documents are documents that are published by groups other than NHTSA, converting these documents is an exacting and time consuming process. The agency has decided to consider converting incorporated documents on a case by case basis at a later date.

Regulatory Impacts

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under DOT's regulatory policies and procedures. In converting the Federal Motor Vehicle Safety Standards from the English to the metric measurement system, the agency proposes conversions that would not substantively change the performance requirements of the FMVSS's. If this rule is made final, manufacturers now providing consumer information (e.g., labeling) may incur minimal additional costs since they would have to change their information to add the metric units. However, the agency believes additional costs would be minuscule, since manufacturers currently label and provide consumer information in English units. The impacts of this action would be so minor that a full regulatory evaluation for this proposed rule has not been prepared.

2. Small Entity Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rationale for this certification is that no substantive change resulting from converting the FMVSS from the English system to the metric system will be

made to the performance requirements of any of the Federal Motor Vehicle Safety Standards. Manufacturers that qualify as small businesses that do not now label their products in metric units or provide consumer information in metric units would incur some costs to include metric labeling. However, the agency believes such costs should be minimal, given these manufacturers are currently labeling and providing the consumer information in English units.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This proposed rule would not have a retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(D)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of a complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Standards (49 CFR part 571 be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.102 would be amended by revising S1, and revising S3.1.2, to read as follows:

§ 571.102 Standard No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect.

S1. *Purpose and scope.* This standard specifies the requirements for the transmission shift lever sequence, a starter interlock, and for a braking effect of automatic transmissions, to reduce the likelihood of shifting errors, starter engagement with vehicle in drive position, and to provide supplemental braking at speeds below 40 kilometers per hour.

* * * * *

S3.1.2 *Transmission braking effect.* In vehicles having more than one forward transmission gear ratio, one forward drive position shall provide a greater degree of engine braking than the highest speed transmission ratio at vehicle speeds below 40 kilometers per hour.

* * * * *

3. Section 571.103 would be amended by revising S3; and, in S4.3, revising paragraphs (b)(ii), (e), (g), and (h), to read as follows:

§ 571.103 Standard No. 103, Windshield defrosting and defogging systems.

* * * * *

S3. *Definitions. Road load* means the power output required to move a given motor vehicle at curb weight plus 180 kilograms on level, clean, dry, smooth portland cement concrete pavement (or other surface with equivalent coefficient of surface friction) at a specified speed through still air at 20 degrees Celsius, and standard barometric pressure (101.3 kilopascals) and includes driveline friction, rolling friction, and air resistance.

* * * * *

S4.3 * * *

(b) * * *

(ii) The engine speed and load shall not exceed the speed and load at 40 kilometers per hour in the manufacturer's recommended gear with road load.

* * * * *

(e) One or two windows may be open a total of 25 millimeters:

(g) The wind velocity is at any level from 0 to 3 kilometers per hour.

(h) The test chamber temperature and the wind velocity shall be measured, after the engine has been started, at the forwardmost point of the vehicle or a point 914 millimeters from the base of the windshield, whichever is farther forward, at a level halfway between the top and bottom of the windshield on the vehicle centerline.

4. Section 571.104 would be amended by revising, in S3, the definition "*Glazing surface reference line*"; and revising S4.1.2, to read as follows:

§ 571.104 Standard No. 104, Windshield wiping and washing systems.

* * * * *

S3 * * *

Glazing surface reference line means the line resulting from the intersection of the glazing surface and a horizontal plane 625 millimeters above the seating reference point, as shown in Figure 1 of SAE Recommended Practice J903a, "Passenger Car Windshield Wiper Systems," May 1966.

* * * * *

S4.1.2 *Wiped area.* When tested wet in accordance with SAE Recommended Practice J903a, May 1966, each passenger car windshield wiping system shall wipe the percentage of Areas A, B, and C of the windshield (established in accordance with S4.1.2.1) that (1) is specified in column 2 of the applicable table following paragraph S4.1.2.1 and (2) is within the area bounded by a perimeter line on the glazing surface 25 millimeters from the edge of the daylight opening.

* * * * *

5. In § 571.104, S4.1.2.1 would be amended by revising the title of Table I; the title of Table II; the title of Table III; and the title of Table IV, to read as follows:

* * * * *

Table I—Passenger Cars of Less Than 1520 Millimeters in Overall Width

* * * * *

Table II—Passenger Cars of 1520 or More But Less Than 1630 Millimeters in Overall Width

* * * * *

Table III—Passenger Cars of 1630 or More But Less Than 1730 Millimeters in Overall Width

* * * * *

Table IV—Passenger Cars of 1730 or More Millimeters in Overall Width

* * * * *

6. Section 571.110 would be amended by revising, in S3, the definitions "*Normal occupant weight,*" "*Production options weight,*" and "*Vehicle capacity weight*" in S4.4.1, revising paragraph (b); in S6, revising the introductory paragraph, and paragraph (b); and revising S7.1, to read as follows:

§ 571.110 Standard No. 110, Tire Selection and rims.

* * * * *

S3 * * *

Normal occupant weight means 68 kilograms times the number of occupants specified in the second column of Table I.

* * * * *

Production options weight means the combined weight of those installed regular production options weighing over 2.3 kilograms in excess of those standard items which they replace, not previously considered in curb weight or accessory weight, including heavy duty brakes, ride levelers, roof rack, heavy duty battery, and special trim.

* * * * *

Vehicle capacity weight means the rated cargo and luggage load plus 68 kilograms times the vehicle's designated seating capacity.

* * * * *

S4.4.1 * * *

(b) In the event of rapid loss of inflation pressure with the vehicle traveling in a straight line at a speed of 97 kilometers per hour, retain the deflated tire until the vehicle can be stopped with a controlled braking application.

* * * * *

S6 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.*

Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 4 millimeters high, the information specified in paragraphs S6 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S6 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S6 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

* * * * *

(b) MAXIMUM 80 KM/H (50 M.P.H.)

* * * * *

S7.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the vehicle trunk or an equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S6 in block capitals and numerals not less than 6 millimeters high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 9 millimeters high.

* * * * *

7. Section 571.112 would be amended by revising S4.5 to read as follows:

§ 571.112 Standard No. 112, Headlamp concealment devices.

* * * * *

S4.5 Except for cases of malfunction covered by S4.2, each headlamp concealment device shall, within an ambient temperature range of −30 degrees Celsius to +50 degrees Celsius be capable of being fully opened in not more than 3 seconds after actuation of the mechanism described in S4.3.

8. Section 571.114 would be amended by revising 32 and revising S4.1, to read as follows:

§ 571.114 Standard No. 114, Theft protection.

* * * * *

S2 *Application.* This standard applies to passenger cars, and to trucks and multipurpose passenger vehicles having a GVWR of 4536 kilograms or less. However, it does not apply to walk-in van-type vehicles.

* * * * *

S4.1 Each truck and multipurpose passenger vehicle having a GVWR of 4536 kilograms or less manufactured on or after September 1, 1983 and each passenger car shall meet the requirements of S4.2, S4.3, S4.4, and S4.5. However, open-body type vehicles that are manufactured for operation without doors and that either have no doors or have doors that are designed to be easily attached to and removed from the vehicle by the vehicle owner are not required to comply with S4.5.

* * * * *

9. Section 571.115 would be amended by revising S4.6 to read as follows:

§ 571.115 Standard No. 115, Vehicle identification number—basic requirements.

* * * * *

S4.6 This VIN for passenger cars, multipurpose passenger vehicles, and trucks of 4536 kilograms or less GVWR shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. Each character in the VIN subject

to this paragraph shall have a minimum height of 4 mm.

* * * * *

10. Section 571.118 would be amended by revising S2. to read as follows:

§ 571.118 Standard No. 118, Power-operated window, partition, and roof panel systems.

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4536 kilograms or less. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

* * * * *

11. Section 571.120 would be amended by revising the first sentence in S5.1.2; revising in S5.2, the introductory paragraph; revising in S5.3, the introductory paragraph; revising S5.3.2; revising in S7, the introductory paragraph and paragraph (b); and revising S8.1, to read as follows:

§ 571.120 Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars.

* * * * *

S5.1.2 Except in the case of a vehicle which has a speed attainable in 3.2 kilometers of 80 kilometers per hour or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567.

* * *

* * * * *

S5.2 *Rim marking.* On and after August 1, 1977, each rim or, at the option of the manufacturer in the case of a singlepiece wheel, wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this paragraph, in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this paragraph shall appear on the weather side. In the case of rims of multipiece construction, the information listed in paragraphs (a) through (e) of this paragraph shall appear on the rim base and the information listed in paragraphs (b) and (d) of this paragraph shall also appear on each other part of the rim.

* * * * *

S5.3 *Label information.* Each vehicle manufactured on or after December 1, 1984, shall show the information specified in S5.3.1 and S5.3.2, and in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this section. This information shall appear either—

* * * * *

S5.3.2. *Rims.* The size designation and, if applicable, the type designation of Rims (not necessarily those on the vehicle) appropriate for those tires.

Truck Example

SUITABLE TIRE–RIM CHOICE

GVWR: 7,840 kilograms (17,280 pounds)
GAWR: Front—2,850 kilograms (6,280 pounds) with 7.50—20(D) tires, 20×6.00 rims at 520 kPa (75 psi) cold single
GAWR: Rear—4,990 kilograms (11,000 pounds) with 7.50—29–(D) tires, 20×6.00 rims, at 450 kPa (65 psi) cold dual
GAWR: 13,280 kilograms (29,279 pounds)
GAWR: Front—4,826 kilograms (10,640 pounds) with 10.00—20(F) tires, 20×7.50 rims, at 620 kPa (90 psi) cold single
GAWR: Rear—8,454 kilograms (18,639 pounds) with 10.00—20(F) tires, 20×7.50 rims, at 550 kPa (80 psi) cold dual

* * * * *

S7 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 4 millimeters high, the information specified in paragraphs S7 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S7 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire-assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S7 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

* * * * *

(b) MAXIMUM 80 KM/H (50 M.P.H.).

* * * * *

S8.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the space tire stowage area or equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S7 in block capitals and numerals not less than 6 millimeters high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 9 millimeters high.

* * * * *

12. Section 571.124 is amended by revising S5 and revising S5.3 to read as follows:

§ 571.124 Standard No. 124, Accelerator control systems.

* * * * *

S5. *Requirements.* The vehicle shall meet the following requirements when the engine is running under any load condition, and at any ambient temperature between −40 degrees Celsius and +52 degrees Celsius after 12 hours of conditioning at any temperature within that range.

* * * * *

S5.3 (a) Except as provided in paragraph (b), maximum time to return to idle position shall be 1 second for vehicles of 4536 kilograms or less GVWR, and 2 seconds for vehicles of more than 4536 kilograms GVWR. (b) Maximum time to return to idle position shall be 3 seconds for any vehicle that is exposed to ambient air at −18 degrees Celsius to −40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

13. Section 571.126 is amended by revising in S4, the paragraph titled *"Cargo weight rating"*; revising in S5.1.1, the introductory paragraph and paragraph (d); and revising in S5.1.2, paragraphs (b) and (e), to read as follows:

§ 571.126 Standard No. 126, Truck-camper loading.

* * * * *

S4. * * *

Cargo weight rating means the value specified by the manufacturer as the

cargo-carrying capacity, in pounds and kilograms, of a vehicle, exclusive of the weight of occupants in designated seating positions.

* * * * *

S5.1.1 *Labels.* Each slide-in camper shall have permanently affixed to it, in a manner that it cannot be removed without defacing or destroying it, in a plainly visible location on an exterior rear surface other than the roof, steps, or bumper extension, a label containing the following information in the English language lettered in block capitals and numerals not less than 2.4 millimeters high, or a color contrasting with the background, and in the order shown below and in the form illustrated in Figure 1

* * * * *

(d) The following statement completed as appropriate:

"Camper weight is ____ Kgs. (____ Lbs.) Maximum When it Contains Standard Equipment, ____ Liters (____ Gal.) of Water, ____ Kgs. (____ Lbs.) of Bottled Gas, and ____ Cubic Meters (____ Ft.) Refrigerator (or Icebox with ____ Kgs. (____ Lbs.) of Ice, as applicable). Consult Owner's Manual (or Data Sheet as applicable) for Weights of Additional or Optional Equipment."

"Liters and Gals. of water" refer to the volume of water necessary to fill the camper's fresh water tanks to capacity. "Kgs. and Lbs. of Bottled Gas" refer to the weight of the gas necessary to fill the camper's bottled gas tanks to capacity. The statement regarding a "Refrigerator" or Icebox" refers to the capacity of the refrigerator with which the vehicle is equipped or the weight of the ice with which the icebox may be filled. Any of these items may be omitted from the statement, if the corresponding accessories are not included with the camper, provided that the omission is noted in the camper owner's manual as required in paragraph S5.1.2(a).

* * * * *

S5.1.2 * * *

(b) A list of other additional or optional equipment that the camper is designed to carry, and the maximum weight of each if its weight is more than 9 kilograms when installed.

* * * * *

(e) A picture showing the location of the longitudinal center of gravity of the camper within an accuracy of 50 millimeters under the loaded condition specified in paragraph S5.1.1(d), in the manner illustrated in Figure 2. Until October 1, 1973, the phrase "Mount at Aft End of Truck Cargo Area" may be used in Figure 2 instead of "Point That Contacts Rear End of Truck Bed."

* * * * * *

14. Section 571.126 would be amended by revising Figure 1 at the end of the introductory paragraph in S5.1.1 to read as follows:

MFD. BY: (CAMPER MANUFACTURER'S NAME)

(MONTH AND YEAR OF MANUFACTURE)

THIS CAMPER CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE

CAMPER WEIGHT IS ___KG (___LBS.) MAXIMUM WHEN IT CONTAINS STANDARD EQUIPMENT, ___LTRS. (___GAL.) OF WATER, ___KG. (___LBS.) OF BOTTLED GAS, AND ___ CUBIC METERS (___ CUBIC FT.) REFRIGERATOR (OR ICEBOX WITH ___KG (___LBS.) OF ICE, AS APPLICABLE). CONSULT OWNER'S MANUAL (OR DATA SHEET AS APPLICABLE) FOR WEIGHTS OF ADDITIONAL OR OPTIONAL EQUIPMENT.

(VEHICLE IDENTIFICATION NUMBER)

Figure 1. Label for Campers

15. In § 571.126, Figure 2 at S5.1.1, after the introductory paragraph, would be revised to read as follows:

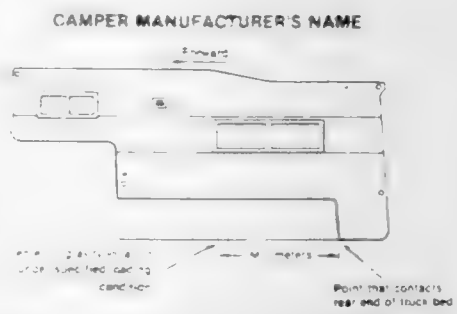

Figure 2.—Camper Center Of Gravity Information

16. Section 571.205 would be amended by revising in S5.1.1.2, paragraph (m); revising S5.1.1.5; revising in S5.1.2.2, paragraph (b); revising in S5.1.2.3, paragraph (b); revising in S5.1.2.9, paragraph (b); and revising in S5.1.2.10, paragraph (b), to read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S5.1.1.2 * * *

(m) For Item 5 safety glazing only: Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.1.5 The phrase "readily removable" windows as defined in ANS Z26, for the purposes of this standard, in buses having a GVWR of more than 4536 kilograms, shall include pushout windows and windows mounted in emergency exits that can be manually pushed out of their location in the vehicle without the use of tools, regardless of whether such windows remain hinged at one side to the vehicle.

S5.1.2.2 * * *

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.2.3 * * *

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.2.9 * * *

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40 degrees Celsius (plus or minus 5 degrees Celsius), for a period of 6 hours at the commencement of Test No. 28, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

* * * * *

S5.1.2.10 * * *

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 4.5 millimeters nor more than 6 millimeters high, the following words, GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS.

* * * * *

17. Section 571.206 would be amended by revising S4.1.1.1; revising S4.1.1.2; revising S4.1.2; revising S4.2.1.1; revising S4.2.1.2; revising S4.2.2; revising S4.3; and revising S5.3, to read as follows:

§ 571.206 Standard No. 206, Door locks and door retention components.

* * * * *

S4.1.1.1 *Longitudinal Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a longitudinal load of 11,120 Newtons is applied. When in the secondary latch position, the door latch and striker assembly shall not separate when a longitudinal load of 4,450 Newtons is applied.

S4.1.1.2 *Transverse Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a transverse load of 8,900 Newtons is applied. When in the secondary latched position, the door

latch and striker assembly shall not separate when a transverse load of 4,450 Newtons is applied.

* * * * *

S4.1.2. *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,120 Newtons is applied. Similarly, each door hinge system shall not separate when a transverse load of 8,900 Newtons is applied.

* * * * *

S4.2.1.1 *Longitudinal Load.* Each latch system, when in the latched position, shall not separate when a longitudinal load of 11,120 Newtons is applied.

S4.2.1.2 *Transverse Load.* Each latch system, when in the latched position, shall not separate when a transverse load of 8,900 Newtons is applied. When more than one latch system is used on a single door, the load requirement may be divided among the total number of latch systems.

S4.2.2 *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,120 Newtons is applied, and when a transverse load of 8,900 Newtons is applied.

S4.3 *Sliding Doors.* The track and slide combination or other supporting means for each sliding door shall not separate when a total transverse load of 17,800 Newtons is applied, with the door in the closed position.

* * * * *

S5.3 *Sliding Doors.* Compliance with S4.3 shall be demonstrated by applying an outward transverse load of 8,900 Newtons to the load bearing members at the opposite edges of the door (17,800 Newtons total). The demonstration may be performed either in the vehicle or with the door retention components in a bench test fixture.

18. Section 571.207 would be amended by revising in S4.2, the introductory paragraph, paragraph (a), paragraph (b), and paragraph (d); revising S4.3.2.1; and revising S5.1.2, to read as follows:

§ 571.207 Standard No. 207, Seating systems.

* * * * *

S.4.2 *General performance requirements.* When tested in accordance with S5., each occupant seat, other than a side-facing seat or a passenger seat on a bus, shall withstand the following forces, in Newtons.

(a) In any position to which it can be adjusted—20 times the weight of the seat in kilograms multiplied by 9.8 applied in a forward longitudinal direction;

(b) In any position to which it can be adjusted—20 times the weight of the seat applied in kilograms multiplied by 9.8 in a rearward longitudinal direction;

* * * * *

(d) In its rearmost position—a force that produces a 373 Newton meters moment about the seating reference point for each designated seating position that the seat provides, applied to the upper cross-member of the seat back or the upper seat back, in a rearward longitudinal direction for forward-facing seats and in a forward longitudinal direction for rearward-facing seats.

* * * * *

S4.3.2.1 *Static force.*

(a) Once engaged, the restraining device for a forward-facing seat shall not release or fail when a forward longitudinal force, in Newtons, equal to 20 times the weight of the hinged or folding portion of the seat in kilograms multiplied by 9.8 is applied through the center of gravity of that portion of the seat.

(b) Once engaged, the restraining device for a forward-facing seat shall not release or fail when a forward longitudinal force, in Newtons, equal to 8 times the weight of the hinged or folding portion of the seat in kilograms multiplied by 9.8 is applied through the center of gravity of that portion of the seat.

* * * * *

S5.1.2 If the seat back and the seat bench are attached to the vehicle by different attachments, attach to each component a fixture capable of transmitting a force to that component. Apply forces, in Newtons, equal to 20 times the weight of the seat in kilograms multiplied by 9.8 horizontally through the center of gravity of the seat back, as shown in Figure 2 and apply forces, in Newtons, equal to 20 times the weight of the seat in kilograms multiplied by 9.8 horizontally through the center of gravity of the seat bench, as shown in Figure 3.

* * * * *

19. Section 571.212 would be amended by revising S3; revising S5; revising in S6.1, paragraph (b); and revising S6.5, to read as follows:

§ 571.212 Standard No. 212, Windshield mounting.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks, and buses having a gross vehicle weight rating of 4536 kilograms or less. However, it does not apply to forward control vehicles, walk-in van-type vehicles, or to open-body type vehicles with fold-down or removable windshields.

* * * * *

S5. *Requirements.* When the vehicle travelling longitudinally forward at any speed up to and including 48 kilometers per hour impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S6, the windshield mounting of the vehicle shall retain not less than the minimum portion of the windshield periphery specified in S5.1 and S5.2.

S6.1 * * *

(b) Except as specified in S6.2, a multipurpose passenger vehicle, truck or bus is loaded to its unloaded vehicle weight, plus 136 kilograms or its rated cargo and luggage capacity, whichever is less, secured to the vehicle, plus a 50th-percentile test dummy as specified in part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of Standard No. 208. Each dummy is restrained only by means that are installed for protection at its seating position. The load is distributed so that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR. If the weight on any axle when the vehicle is loaded to its unloaded vehicle weight plus dummy weight exceeds the axle's proportional share of the test weight, the remaining weight is placed so that the weight on that axle remains the same. For the purposes of this section, unloaded vehicle weight does not include the weight of work-performing accessories. Vehicles are tested to a maximum unloaded vehicle weight of 2,495 kilograms.

* * * * *

S6.5 The windshield mounting material and all vehicle components in direct contact with the mounting material are at any temperature between −93 degrees Celsius and +43 degrees Celsius.

20. Section 571.216 would be amended by revising S3; revising S4; revising S5; revising in S6.2, paragraph (d); and revising S6.3 to read as follows:

§ 571.216 Standard No. 216, Roof crush resistance—passenger cars.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 2722 kilograms or less. However, it does not apply to—

(a) School buses;

(b) Vehicles that conform to the rollover test requirements (S5.3) of Standard No. 208 (§ 571.208) by means that require no action by vehicle occupants; or

(c) Convertibles, except for optional compliance with the standard as an alternative to the rollover test requirements in S5.3 of Standard No. 208.

S4. *Requirements*—(a) *Passenger cars.* A test device as described in S5 shall not move more than 125 millimeters, measured in accordance with S6.4, when it is used to apply a force in Newtons equal to 1½ times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8 or 22,240 Newtons, whichever is less, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994, a test device as described in S5 shall not move more than 125 millimeters, measured in accordance with S6.4, when it is used to apply a force in Newtons equal to 1½ times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6. Both the left and right front portions of the vehicles's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

S5. *Test device.* The test device is a rigid unyielding block with its lower surface formed as a flat rectangle 762 millimeters×1829 millimeters.

* * * * *

S6.2 * * *

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device and 254 millimeters from the forwardmost point of that centerline.

6.3 (a) *Passenger cars.* Apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in Newtons of 1½ times the unloaded vehicle weight of the tested vehicle, measured in kilograms and multiplied by 9.8 or 22,240 Newtons, whichever is less. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S6.2(a) through S6.2(d).

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994, apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in Newtons of 1½ times the unloaded vehicle weight of the tested vehicle, measured in kilograms and multiplied by 9.8. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S6.2(a) through S6.2(d).

* * * * *

21. Section 571.216, would be amended by revising Figure 1 at the end of the S6.4 to read as follows:

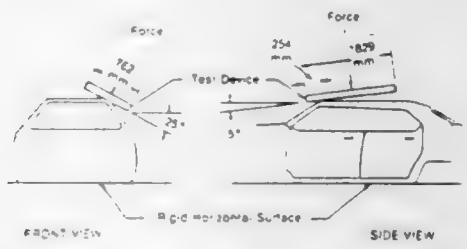

Figure 1.—Test Device Location And Application To The Roof

Issued on: March 4, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5486 Filed 3–14–94; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 59, No. 50
Tuesday, March 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Tri-State Generation and Transmission Association, Inc., Intent To Hold Public Workshops and Prepare an Environmental Assessment and/or an Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct public scoping workshops and prepare an Environmental Assessment.

SUMMARY: The Rural Electrification Administration (REA) intends to hold public scoping workshops and prepare an Environmental Assessment (EA) in connection with possible REA financing assistance relating to a project proposed by Tri-State Generation and Transmission Association, Inc., (Tri-State) of Denver, Colorado. The project consists of the construction and operation of a 230 kV transmission line from the Comanche Generation Station located in Pueblo County, Colorado, to the Walsenburg Substation in Huerfano County, Colorado.

DATES: REA will conduct two public scoping workshops as follows:

April 13, 1994, 4–8 p.m.—Sangre De Cristo Arts and Conference Center, Board Room, 210 N. Sante Fe Avenue, Pueblo, Colorado 81003

April 14, 1994, 4–8 p.m.—City Hall Complex, City Council Chambers, 525 S. Albert Street, Walsenburg, Colorado 81089.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, Rural Electrification Administration, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784, or Mr. Karl Myers, Tri-State Generation and Transmission Association, Inc., P.O. Box 33695, Denver, Colorado 80233, telephone (303) 452–6111.

SUPPLEMENTARY INFORMATION: Tri-State is proposing to construct approximately 50 miles of 230 kV transmission line from the Comanche Generation Station in Pueblo County, Colorado, to the Walsenburg Substation in Huerfano County, Colorado.

Alternatives to be considered by REA include no action, demand side management, local generation, system alternatives, transmission alternatives and alternative routes.

Comments regarding the proposed project may be submitted orally or in writing at the public scoping workshops or in writing within 30 days after the April 14, 1994, workshop to REA or Tri-State at the addresses provided in this notice.

Tri-State and its consultant have prepared an Alternative Evaluation and Macro-Corridor Study for the project. The Alternative Evaluation and Macro-Corridor Study is available for public review at REA or Tri-State at the addresses provided in this notice. The documents can also be reviewed at San Isabel Electric Association, Inc., 893 East Enterprise Drive, Pueblo, Colorado 81002–0892.

Based on the Alternative Evaluation and Macro-Corridor Study, input from interested local, state, and Federal agencies, and the public, Tri-State will prepare an Environmental Analysis to be submitted to REA for review. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an Environmental Assessment to determine if the preparation of an Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality Regulations and REA Environmental Policies and Procedures.

Dated: March 9, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–5980 Filed 3–14–94; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 9401154105]

Monitor National Marine Sanctuary; Special Use Permit

AGENCIES: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue a special use permit; request for applications for special use permit.

SUMMARY: This is a public notice of intent to issue, and a request for applications for a special use permit to conduct non-research diving at the Monitor National Marine Sanctuary (MNMS). Public comments are invited. Since 1975, NOAA has protected and preserved the wreck of the USS Monitor as a significant historical resource by restricting physical access except for research expeditions. NOAA recognizes that changes in dive technology and experience in the dive community have resulted in a growing public interest to dive at this site. Thus, NOAA intends to issue, on a trial basis, a special use permit to a qualified dive concessionaire, selected competitively, for non-intrusive dives at this site over a period of 2 weeks during the 1994 season. Because any touching of the monitor or its debris field will be prohibited, NOAA expects that no disruption or harm will occur at the site from dive activities. NOAA will review this trial activity, evaluate impacts to the Monitor, if any, and assess whether to issue subsequent special use permits.

DATES: Applications must be submitted no later than April 14, 1994. Public comments must be received by April 14, 1994. Applicants will be notified as to the disposition of their applications by May 16, 1994.

ADDRESSES: All applications for a special use permit and comments on

this notice must be sent to: John Broadwater, Manager, Monitor National Marine Sanctuary, NOAA/Bldg 1519, Fort Eustis, VA 23604. Fax: (804) 878–4619.

FOR FURTHER INFORMATION CONTACT: John Broadwater, Manager, Monitor National Sanctuary, (804) 878–2973, or Helen Golde, Sanctuaries and reserves Division, (301) 713–3145.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice and request for applications is issued under the authority of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, as amended.

II. Background

The USS Monitor was the first American ironclad and is therefore of cultural significance to the transition from wood to metal vessels, as well as for its historic battle against the CSS Virginia (Merrimack). The Monitor was lost during a storm off Cape Hatteras, NC, on December 31, 1862. The wreck of the Monitor was located in 1973, 16.1 miles (29.8 km) south-southeast of Cape Hatteras, resting in 230 feet (70.1 m) of water. The Monitor and the water column 1 nautical mile in diameter centered on the vessel were designated as the first National Marine Sanctuary in 1975, in order to protect and preserve the Monitor from commercial salvors and souvenir collectors. The Monitor has also been designated as a National Historic Landmark.

The regulations governing the NMNS are found at 15 CFR part 924. The MNMS is the most strictly regulated sanctuary regarding public access and is the only sanctuary where diving without a sanctuary permit is prohibited, primarily because it is also an archaeological research site. Alteration of the seabed risks harm of contextual information. Thus, non-research access has previously not been permitted because of the threat of harm or unauthorized removal of Monitor artifacts and the archaeological information contained by the vessel and the surrounding seabed. Private research expeditions on the Monitor have been permitted annually since 1989. Research permits have allowed access to the MNMS while including conditions to prevent harm to the Monitor and associated artifacts. NOAA recognizes that non-research access may be conducted in a similar fashion.

III. Special Use Permit

NOAA plans to issue special use permit pursuant to section 310 of the NMSA, 16 U.S.C. 1441, for public access to the Monitor. Activities conducted pursuant to the special use permit will be limited to non-intrusive, non-destructive access, observation and photography of the Monitor, and must be consistent to the highest practicable degree with the preservation and conservation of the MNMS. Touching or disturbing the Monitor or its associated debris field will be prohibited.

A qualified applicant will be selected on a competitive basis and allowed to bring qualified divers to the Monitor during a 2 week period during the 1994 summer dive season. This 2 week period will be at the convenience of the permittee, except for any conflicts with research activities permitted and scheduled before the issuance of the applicant's permit. The permittee will be authorized to conduct one trip by one vessel to the MNMS per day, during which daylight-only dive activities may be conducted. The permittee will be responsible for ensuring that all divers are appropriately qualified and for ensuring the safety of all divers.

The following conditions will be imposed by the permit:

1. The permittee shall use only vessels and vessel captains that meet all applicable U.S. Coast Guard (USCG) certification and license requirements and that are appropriately certified and licensed;

2. The permittee shall not anchor in the sanctuary. The permittee shall utilize the permanent mooring at the Monitor site for a diver descent/ascent line when conducting dive activities. The permittee may secure a surface float or small inflatable boat to the mooring line, but at no time may the trip vessel be secured to the permanent mooring, as the mooring capacity is not adequate;

3. The permittee shall ensure activities conducted in the MNMS pursuant to the special use permit are limited to non-intrusive, non-destructive access, observation and photography of the Monitor. The permittee shall ensure that all divers maintain neutral buoyancy, do not penetrate the wreck, and do not touch, otherwise contact, disturb, attempt to recover, or recover any portion of the Monitor, its associated debris field, or any artifact which may be found;

4. The permittee shall document all activities conducted pursuant to the special use permit through the use of videotape and/or still photography, and written records. The permittee shall submit a report on all activities and copies of all photographs and videotapes taken of the activities;

5. Upon request of the Sanctuary Manager, the permittee shall carry an individual designated by the Sanctuary Manager as an observer on board the permittee's vessel during trips to and from the MNMS and when the vessel is in the MNMS for the purpose of observing, monitoring, and documenting the activities conducted pursuant to the special use permit. The permittee shall allow the observer free and unobstructed access to all portions of the vessel at any time, and facilitate observation and documentation by the observer of all activities conducted pursuant to the special use permit. The permittee shall provide the observer all reasonable assistance to enable the observer to carry out his/her duties. (Other requirements of the permittee with respect to the observer such as advance notification of trip dates and departure times and responsibilities regarding boarding and debarking will appear in the actual permit conditions.)

6. The permittee shall purchase and maintain a comprehensive general liability insurance policy in an amount to be negotiated upon selection of an applicant, but not less than $100,000 plus the value of any vessel used under the special use permit. The policy shall insure against any claims that may arise from the activities conducted pursuant to the special use permit, including diver accidents and damage to the Monitor. A copy of such policy must be furnished to NOAA before conducting any activity authorized by the special use permit; and

7. Before conducting any activity under the special use permit, the permittee and all divers shall sign and furnish NOAA with a hold harmless and indemnification agreement, provided by NOAA, releasing and holding the United States harmless for any claim arising from the conduct of any activity under the special use permit and assuming the risk of harm from any such activity.

The NMSA authorizes NOAA to assess fees for the costs incurred, or expected to be incurred from monitoring the permitted dive activities, and the cost of the review and processing of the special use permit, and a fair market value of the use and a reasonable return to the United States. NOAA will assess a fee for the special use permit issued pursuant to this notice. The fee will include (1) the cost of reviewing and processing the application, i.e., personnel hours, copying and other overhead; (2) the cost of monitoring the activity, i.e., personnel hours, equipment costs and travel expenses; and (3) the fair market value of the use of the Sanctuary which NOAA will determine prior to issuing the special use permit. In determining the fair

market value, NOAA will consider the amounts proposed in applicant submissions and comments received in response to this notice.

A. Application Process

All applications should be submitted to Mr. John Broadwater, Manager at the address indicated in the ADDRESS section. Applications must be submitted no later than April 14, 1994. Applicants will be notified as to the disposition of their applications by May 16, 1994.

B. Application Format and Contents

All applications must be typed double spaced. All applications must describe in detail the methodologies that would be employed to conduct dive activities at the site, including, but not limited to, the number of trips, the number of divers per trip, the minimum qualifications each diver would have to meet, the dive plan, and the diver safety contingency plans in the event of an accident. In addition, each application must describe the experience of the applicant in organizing and running dive expeditions, including information on expeditions involving diving of this type, including the number of divers, the depth of the dives, the time of year, and environmental conditions. The application must include information showing that the applicant has the financial capability to organize and run the activity to be conducted under the special use permit and to obtain the required insurance. The application must include the applicant's plans for documenting all activities conducted pursuant to the special use permit. Finally, the application must contain a dollar amount representing the fair market value of the use of the MNMS or a reasonable return to the United States that the applicant is willing to pay to be permitted to conduct a dive concession at the site.

C. Application Review and Evaluation

All applications will be reviewed by the Sanctuaries and Reserves Division (SRD). This will include the Sanctuary Manager, the technical projects staff and the regional management staff. Outside peer reviewers may also to used.

In selecting the permittee, SRD shall consider: (1) The experience of the applicant for organizing and running dive expeditions involving diving of this type; (2) the applicant's financial capability; (3) the likelihood that the permittee will be able to fully comply with all permit conditions; (4) the fair market value or reasonable return offered by the applicant; and (5) such other factors as the SRD deems appropriate, based on review of submitted comments and information, consistent with the purposes of the NMSA.

SRD may solicit additional information from any applicant, or written clarification of an application, and may extend the solicitation period at its discretion. SRD may choose to reject all applications received at any time, re-request, or cancel this request at its discretion when in the best interest of preserving and conserving the MNMS. Any information made available to any applicant by SRD will be made available to all applicants, and will be available to the public upon request.

Once an applicant is selected, SRD shall draft and issue a special use permit incorporating as conditions the terms of this notice and the application. SRD may include additional conditions if necessary to protect the MNMS. The special use permit and application shall be subject to review by the State Historic Preservation Officer and Advisory Council on Historic Preservation pursuant to section 106 of the National Historic Preservation Act (NHPA).

NOAA considers diving to the depths of the Monitor (230 ft; 70.1 km) to be extremely hazardous. All dive activities conducted pursuant to the special use permit are at the permittee's and each diver's own risk. The permittee is solely responsible for setting the minimum technical requirements and experience for a diver to participate in dives at the site. Further, the permittee is solely responsible for the adequacy and implementation of all diver safety requirements and the contingency plan for diver emergencies.

IV. Request for Comments

NOAA requests comments and suggestions from applicants and other interested parties on methods to conduct safe dive activities at the Monitor site, conditions for the special use permit, methods to safeguard the wreck, and any other relevant information pertaining to the activities proposed to be permitted at the MNMS.

NOAA specifically requests comments on what the fair market value of the use of the MNMS or a reasonable return to the United States should be, or what factors should be considered in its determination of such fee.

V. Classification

This notice is not subject to review under E.O. 12866.

Prior notice and an opportunity for public comment, although voluntarily here given, are not required by the Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, preparation of a Regulatory Flexibility Analysis is not required.

This action is categorically excluded from the requirements to prepare an Environmental Assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Dated: March 1, 1994.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 94–5943 Filed 3–14–94; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next public meeting is scheduled for 17 March 1994 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

At the request of the U.S. Mint, the Commission will also hold an executive session at 9 a.m., prior to the public meeting, to review designs for the 1995/1996 Olympic Centennial Games Commemorative Coins.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, March 8, 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–5932 Filed 3–14–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and Applicable Form: Accident Report; Air Force Form 1315.

Type of Request: Existing collection in use without an OMB control number.

Number of Respondents: 20,000.

Responses Per Respondent: 1.

Annual Responses: 20,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: The Air Force Form 1315 is used to record investigative data relating to vehicle accidents which result in injury, property damage exceeding $10,000, or disabling vehicle damage on military installations. Portions of this form may be filled out by members of the public; i.e., retiree dependents, civilian contractors, businesses, and State and Government representatives.

Affected Public: Individuals or households; State and local governments; Federal agencies or employees; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5976 Filed 3–14–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Air Force Academy Candidate Activities Record; USAFA Form 147; OMB No. 0701–0063.

Type of Request: Revision.

Number of Respondents: 9,000.

Responses Per Respondent: 1.

Annual Responses: 9,000.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 6,750.

Needs and Uses: The Air Force Academy Form 147 is used to collect data on Air Force Academy candidates' athletic, non-athletic, and extracurricular activities. The information collected hereby is used in determining eligibility and in the selection process of appointees to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5977 Filed 3–14–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Open Meeting, U.S. Army Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College (CGSC), DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date: 20–22 April 1994.

Place: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–6900.

Time: 1700–2200—20 April 1994; 0730–2100—21 April 1994; 0730–1400—22 April 1994.

Proposed Agenda: 1700–2200, 20 April: Review of CGSC education program; 0730–2100, 21 April: Continuation of review; 0730–1030, 22 April: Continuation of review; 1030–1130, 22 April: Executive Session; 1300–1400, 22 April: Report to Commandment.

The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and facility.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary: Philip J. Brookes, USACGSC Advisory Committee, Bell Hall, room 123, Fort Leavenworth, Kansas 66027–6900: Phone (913) 684–2741.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–5913 Filed 3–14–94; 8:45 am]

BILLING CODE 3710–08–M

CONUS Automated Rate System (CARTS)—Proposed Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Proposed procedure change.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing use of Electronic Data Interchange (EDI) as the method for carriers to submit interstate household goods carrier rates for the CONUS Automated Rate System (CARTS). This system is the method by which interstate household goods rates are submitted for Department of Defense (DOD)-sponsored interstate household goods shipments. This proposed change is not a part of the interstate test developed as a result of the General Accounting Office (GAO/NSIAD–90–50 report and announced by MTMC previously in the **Federal Register** on 29 June 1992, 57 FR 28842).

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Comments should be mailed to Headquarters, Military Traffic Management Command, ATTN: MMTOP–T–NI, room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Nemier, MTOP–T–NI, (703) 756–1190.

SUPPLEMENTARY INFORMATION: MTMC's intention to institute and EDI program for acquisition of carrier rates is in

furtherance of the following policy and directives:

a. Department of the Secretary of Defense Policy Memorandum directing use of American National Standards Institute EDI standards, dated May 1988.

b. 41 Code of Federal Regulations, section 101–41–007, permitting use of EDI to document and pay transportation bills, April 1989.

c. Defense Management Review Decision 941 directing use of EDI standards, dated November 1993.

MTMC proposes the use of EDI to receive, return, file, and use rates submitted by household goods carriers.

The meetings listed below were held to discuss use of EDI for billing and rate filing purposes. The household goods carrier industry was invited to attend these meetings and was briefed on MTMC's desire to convert from a magnetic tape media for rate submissions to an EDI process.

a. DOD/Industry EDI Personal Property Working Group meetings on June 14, 1991, and January 29–31, at Bethesda, Maryland

b. DOD/Industry EDI Personal Property Working Group meeting on March 23–25, 1992, at Indianapolis, Indiana.

Under this proposed change to CARTS, carriers will be able to electronically file their rates on a daily basis during filing windows and will be electronically notified by the next business day of the results, i.e., total rates received and rates rejected with a rejection error code. For the initial filing (I/F) window, carriers will have a 3-week period in which they can add, delete, or change rates on a daily basis. Upon completion of the I/F window, MTMC will notify all interested parties via an electronic bulletin board of all rate levels filed by traffic channel, including which carrier established the rate. If two or more carriers establish this rate level, each carrier will be shown. MTMC will continue to verify all carriers filing rates in the I/F window have a letter of intent on file at each applicable installation. There will be approximately a 4-week period between the I/F and me-too (M/T) windows to allow carriers an opportunity to determine their M/T rates. During the M/T window, carriers will have a 2-week period in which they can either add or change M/T rates on a daily basis. There will be four 1-week long letter of intent/cancellation (L/C) windows during each 6-month rate cycle for newly approved carriers at a personal property shipping office to file rates and other carriers to cancel existing rates.

The purpose of this proposed change is to convert the rate filing process from a magnetic tape media to electronic submission. Initially, MTMC will accept electronic rate submissions in the existing proprietary format using electronic mail capabilities or in the public standard format of ANSI X.12 Transportation Services Tender Transaction Set 602 using EDI technology. However, MTMC plans to transition over the next 18 months of ANSI X.12 602 public standard format as the sole method for submission of interstate household goods rates.

It is anticipated that many automated data processing (ADP) firms currently filing magnetic tapes on behalf of carriers will continue to provide rate filing services under the electronic submission requirement. Carriers that elect to use the services of these ADP firms will only have to notify MTMC, in writing, of the firm representing them.

For interested parties who wish to file rates using EDI procedures, the first step will be to obtain the services of a Value Added Network (VAN) for either X.25 protocol for the EDI 602 format or X.400 protocol for the electronic mail proprietary format. The VAN will be the conduit for exchanging rate submissions with MTMC. The next step will be to complete a Trading Partner Agreement and submit it to MTMC. A trading Partner Agreement provides the terms and conditions governing the exchange of administrative information between carriers and MTMC, and legally binds both parties to those terms. The final step will be to complete three successful transmissions of rates without a communications or technical error.

All interstate household goods rates will be filed via electronic submission for the Domestic Summer 1995 (DS95) cycle, rates effective May 1, 1995. It is anticipated that the I/F window will be in early January 1995 for a 3-week period. Magnetic tapes will no longer be accepted.

DOD-approved interstate household goods carriers and current ADP rate tape filers will be provided instructions on filing electronic rate submissions after comments received, as a result of this **Federal Register** notice, have been reviewed. Instructions for filing rates electronically will also be provided on the AT&T Bulletin Board. the instructions for filing electronic interstate household goods rates will include procedures for filing a Trading partner Agreement, and procedures for testing transmission rates, along with MTMC points of contract for these procedures.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–5912 Filed 3–14–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award a Grant to National Coal Association

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award, based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B), to the National Coal Association, under Grant Number DE–FG01–94FE63243. Performance under the proposed grant will be utilized to prepare a report on the many areas of modern coal technology. The Department of Energy will provide an estimated $75,000 of the proposed $135,000 budget to perform the literary searches, data collection and the report preparation.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(B) that a noncompetitive award based on the application submitted by the National Coal Association is in the public interest. This grant will bring together, in a single report, the many areas of modern coal technologies and technological innovations including: exploration, mining, coal cleaning, preparation, reclamation, environmental protection, transportation and combustion. The anticipated period of performance for this grant is nine months from the effective date of award.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of Placement and Administration, Attn: Stanley T. Colt, HR–531.21, 1000 Independence Avenue SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Headquarters Operations Division "B" Office of Placement and Administration.

[FR Doc. 94–5989 Filed 3–14–94; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Financial Assistance Award; Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (B), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plan to award a Grant to the Texas A&M University-Kingsville of Texas, Department of Chemical and Natural Gas Engineering, Campus Box 193, Kingsville, TX 78363, in the amount of approximately $155,000, including cost-sharing of $30,000, and will be comprised of two (2), twelve (12) month budget periods.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–94MC31162.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for work being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such and activity. The Grant award is to provide financial assistance to the university to advance the technology and improve the economics of the commercial iron-based chelate processes such as LO-CAT and Sulferox processes utilizing biologically enhanced reoxidation of the redox solutions used in these processes. By providing financial support, the public benefits of the proposed natural gas processing technology are the potential of increased capacity, increased efficiency, and reduced equipment size in natural gas processing. If technology is successful, it is expected that the U.S. shall have more natural gas available by expanding the resource base from which natural gas can be economically recovered and by reducing the cost for processing, thereby, yielding a substitute for imported oil and in helping to stabilize our energy supply.

Issued in Washington, DC, March 7, 1994.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–5988 Filed 3–14–94; 8:45 am]

BILLING CODE 6454–01–M

Federal Energy Regulatory Commission

[Docket No. RP92–237–011]

Alabama-Tennessee Natural Gas Co.; Proposed Changes In FERC Gas Tariff

March 9, 1994.

Take notice that on March 2, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 4, in order to conform its tariff with the settlement approved by the Commission in its letter order issued on December 30, 1993 in this proceeding. Alabama-Tennessee proposes that the tariff sheet be made effective as of October 1, 1993.

Alabama-Tennessee has requested such waiver of the Commission's regulations as may be necessary to accept and approve its filing as proposed.

Alabama-Tennessee states that copies of its filing were served upon the Alabama-Tennessee's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5956 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–115–002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 9, 1994.

Take notice that on March 2, 1994, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 98
Second Revised Sheet No. 705

The proposed effective date of the tariff sheets is February 1, 1994.

Algonquin states that the purpose of this filing is to comply with the Letter Order issued in this docket on February 18, 1994, concerning the flowthrough of upstream Account No. 858 transition costs.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions and parties on the service list in Docket No. RP94–115–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211. All such protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5955 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–7–000]

Associated Louisiana Intrastate Pipe Line Company; Petition for Rate Approval

March 9, 1994

Take notice that on February 28, 1994, Associated Louisiana Intrastate Pipe Line Company (ALIP) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2109 per MMBtu, plus 0.5% of in-kind fuel reimbursement, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

ALIP states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. ALIP states that it purchased the 42-mile "Minden-Terryville" lateral from Gulf States Pipeline Company, an intrastate pipeline, effective March 1, 1994. This lateral comprises the facilities for which

transportation rates are at issue in this docket. ALIP proposes an effective date of March 1, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 24, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5962 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–161–018]

Columbia Gas Transmission Corp.; Report of Refund

March 9, 1994.

Take notice that on November 23, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) to Refund Report of $146,272,178.43 in refunds Columbia made to certain jurisdictional sales and transportation customers on October 25, 1993, for the period December 1, 1991 through September 30, 1993. Columbia states that the refunds are in accordance with Article I, Section E of the Joint Offer of Settlement (Settlement) that it and Columbia Gulf Transmission Company submitted to the Commission on November 9, 1992. On April 2, 1993, and September 29, 1993, the Commission issued orders in Docket No. RP91–161, *et al.*, approving the Settlement. Columbia states that the refunds including interest computed in accordance with § 154.67(c)(2) of the Commission's regulations.

Additionally, Columbia states a rate adjustment is included in this refund for interruptible transportation customers who used this service during May and June 1993 business months. Columbia states that the winter period instead of summer period TCRA component of the ITS rate was billed due to a typographical error on an accepted tariff sheet. Columbia states that the corrected ITS rate has been used in determining refunds for these two months, thus correcting this error.

Columbia states that a copy of the detail of each customer's refund calculation has been mailed to each respective customer and a copy of the Refund Report to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5953 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–160–015]

Columbia Gulf Transmission Co.; Report of Refund

March 9, 1994.

Take notice that on November 23, 1993, Columbia Gulf Transmission Company (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report of $16,990,440.84 in refunds Columbia made to certain jurisdictional transportation customers on October 25, 1993, for the period December 1, 1991 through September 30, 1993. Columbia states that the refunds are in accordance with Article I, Section E of the Joint Offer of Settlement (Settlement) that it and Columbia Gas Transmission Corporation submitted to the Commission on November 9, 1992. On April 2, 1993, and September 29, 1993, the Commission issued orders in Docket No. RP91–160 *et al.*, approving the Settlement. Columbia states that the refunds including interest computed in accordance with § 154.67(c)(2) of the Commission's regulations.

Columbia states that a copy of the detail of each customer's refund calculation has been mailed to each respective customer and a copy of the Refund Report to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5952 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–006]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

March 9, 1994.

Take notice that on March 1, 1994, Equitrans, Inc. (Equitrans) filed a motion to place its suspended rates in this proceeding into effect on March 1, 1994, and it tendered for filing revised tariff sheets to its FERC Gas Tariff listed in Appendices A and B to the filing.

Equitrans states that the tariff filing is being made in accordance with the Commission's Order issued September 30, 1993 in these proceedings, Section 4 of the Natural Gas Act, and § 154.67(a) of the Commission's Regulations. Equitrans states that the sheets listed in appendix A to the filing are those sheets which were included in Equitrans' September 2, 1993, filing in Docket No. RP93–187–000, and which Equitrans is moving to place into effect on March 1 without any modification. Equitrans states that the sheets listed in appendix B to the filing have been modified to comply with the directives of the Commission's September 30, 1993, Order in this proceeding.

Equitrans requests waiver of any applicable notice or other provisions of the Commission's Regulations to accept the tariff sheets as proposed.

Equitrans states that copies of this filing were served by the Company upon each of its jurisdictional customers, interested state commissions and to each of the parties set forth on the Official Services List in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE. Washington, DC 20426, in accordance with § 385.211 of the Commission Rules of Practice and Procedure. All such protests should be filed on or before March 16,1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5954 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–117–002]

KN Wattenberg Transmission Limited Liability Co.; Report of Refund

March 9, 1994.

Take notice that on March 2, 1994 K N Wattenberg Transmission Limited Liability Company (K N Wattenberg) tendered for filing with the Federal Energy Regulatory Commission (Commission) a report detailing K N Wattenberg's refund of ACA surcharges pursuant to the Commission's letter order dated January 21, 1994 in Docket No. TM94–1–117–000. The report states that refunds totalling $110,725.75, including interest, were disbursed by K N Wattenberg to its customers on February 18, 1994.

K N Wattenberg states that the refund report was served on its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5959 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–8–000]

Louisiana Intrastate Gas Company L.L.C.; Petition for Rate Approval

March 9, 1994.

Take notice that on March 1, 1994, Louisiana Intrastate Gas Company L.L.C. (LIG) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2465 per MMBtu, plus up to 3.0% for fuel and gas lost, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). LIG notes that this rate also includes costs and volumes associated with the Eloi Bay facilities, and that the system-wide rate will apply to service through such facilities.

LIG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. LIG proposes an effective date of March 1, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 24, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5963 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–7–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 9, 1994.

Take notice that on March 4, 1994, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 1 Revised Seventh Revised Sheet No. 53, with an effective date of March 1, 1994.

Northern states that it filed 1 Revised Seventh Revised Sheet No. 53 to establish the February 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5960 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–163–000]

Northwest Pipeline Co.; Petition for Limited Waiver of Tariff

March 9, 1994.

Take notice that on March 1, 1994, Northwest Pipeline Company (Northwest) petitions the Commission for a limited waiver of the Commission's first-come, first-served policy as reflected in section 1 of the Northwest's TI–1 Rate Schedule and in the Priority Date provisions in Section 12 of the General Terms and Conditions in Third Revised Volume No. 1 of Northwest FERC Gas Tariff.

Northwest states that it is seeking waiver of the Commission's first-come, first served policy in order to allow the receipt and delivery point priority of service dates previously held by Washington Energy Exploration, Inc. (Washington Exploration) under an Interruptible Transportation Agreement to be retained by Washington Exploration's Marketing affiliate and assignee, Washington Energy Marketing, Inc. (Washington Marketing).

Northwest states that providing the subject interruptible transportation

service for Washington Marketing, instead of Washington Exploration, simply places the transportation rights in the control of the marketer which has been supplying the gas to various distribution companies and end users under the Transportation Agreement. Northwest states that retaining the priority dates established for service on behalf of Washington Exploration will ensure that the subject gas, now transported on-behalf of Washington Exploration's marketing affiliate, will properly continue to have priority over later requests for transportation service on Northwest's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5957 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–8–000]

Red River Pipeline, L.P.; Petition for Rate Approval

March 9, 1994.

Take notice that on February 28, 1994, Red River Pipeline, L.P. (Red River) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.1925 per Mcf, plus fuel and gas lost, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Red River states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Texas. Red River proposes an effective date of February 28, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 24, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5961 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–172–000]

Williams Natural Gas Co.; Proposed Deferral of Fuel Reimbursement Filing

March 9, 1994.

Take notice that on March 4, 1994, Williams Natural Gas Company (WNG) filed a proposal to defer the annual fuel reimbursement percentage filing until March 1, 1995, and to base such filing on actual experience for the 15-month period October 1, 1993 through December 31, 1994. WNG proposes to continue to utilize the fuel and loss reimbursement percentages developed in its current rate case in Docket No. RP93–109–000 until April 1, 1995.

WNG states that it would be appropriate to defer its filing because WNG has had only three months of actual operating experience and data in a transportation-only environment and a full storage injection/withdrawal cycle will not be completed until October 31, 1994. WNG further states that because only three months of data are available, the annual fuel reimbursement calculation and comparison contemplated by its tariff cannot be accurately performed at this time.

WNG states that a copy of this filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5958 Filed 3–14–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $14,912.58 (plus accrued interest) obtained by the DOE under the terms of Remedial Orders issued to Pete Aljian Chevron and Shaw & 99 Chevron. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for Refund from the remedial order funds must be filed in duplicate and must be postmarked no later than June 13, 1994. All Applications should refer to either Case Number LEF–0089 or LEF–0090 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision relates to Remedial Orders issued to Pete Aljian Chevron (Aljian) and Shaw & 99 Chevron (Shaw), two motor gasoline retail outlets located in Castro Valley and Fresno, California, respectively. The Remedial Orders found that the firms had committed pricing violations in

their sales of motor gasoline during the periods of December 15, 1979 through May 28, 1980, and December 15, 1979 through July 7, 1980, respectively.

The Decision sets forth the procedures and standards that the Office of Hearings and Appeals (OHA) of the DOE has formulated to distribute funds remitted by Aljian and Shaw and being held in escrow. The OHA has decided to accept Applications for Refund from individuals that purchased motor gasoline from Aljian or Shaw during the respective audit periods. Each claimant will be required to submit a listing of its monthly purchases from Aljian and Shaw. The specific information required in an Application for Refund is set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: March 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 8, 1994.

Names of Firms: Pete Aljian Chevron
Shaw & 99 Chevron
Date of Filing: July 20, 1993
Case Numbers: LEF–0089, LEF–0090.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, subpart V, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Pete Aljian Chevron (Aljian) and Shaw & 99 Chevron (Shaw) remitted to the DOE pursuant to a May 3, 1982 Remedial Order Decision.

I. Background

During the periods relevant to this proceeding, Aljian and Shaw operated Chevron-branded retail service stations located in Castro Valley, and Fresno, California, respectively. In 1980, the ERA audited the pricing practices of the two retailers and, as a result of those audits, issued Proposed Remedial Orders (PROs) to the two firms. The PROs alleged that Aljian, during the period December 15, 1979 through May 28, 1980, and Shaw, during the period December 15, 1979 through July 7, 1980, sold motor gasoline at prices in excess of their maximum lawful selling prices, in violation of the Federal petroleum price regulations at 10 CFR 212.93(a)(2). After considering the firms' objections to the PROs, the DOE amended the remedial provisions of the PROs and issued a final consolidated Remedial Order Decision on May 3, 1982, to five retailers, including Aljian and Shaw. *Allen Union*, 9 DOE ¶ 83,028 (1982). On November 22, 1982, the Federal Energy Regulatory Commission issued a consolidated Order affirming the Aljian and Shaw Remedial Orders. *Gary Pfister's Mobil Service*, 21 FERC ¶ 61,109 (1982). Aljian and Shaw have remitted to the DOE $8,190.51 and $6,722.07, respectively, in compliance with the Remedial Orders. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE.[1]

On December 15, 1993, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order funds. 58 FR 67403 (December 15, 1993). We stated in the PD&O that the basic purpose of a special refund proceeding is to make refunds in order to remedy the effects of regulatory violations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any alleged overcharges made by one of the consent order firms during the relevant consent order period.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq.; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the Aljian and Shaw Remedial Order funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute these funds.

III. Refund Procedures

The PD&O provided a 30-day period for the submission of comments regarding our proposed refund procedures. Since more than 30 days have elapsed and we have not received any comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage, refund monies will be refunded to those customers who purchased motor gasoline from one of the firms during the relevant audit period and who demonstrate that they were injured by the overcharges of the applicable firm. Such purchasers must file claims and document their purchases in order to be eligible for a refund.

A. Calculation of Refunds

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the adjudicated overcharges were dispersed equally in all sales of motor gasoline made by each firm during its audit period. The OHA has referred to this presumption in the past as a volumetric refund amount.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that the overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the overcharges. See, *e.g.*, *Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In each of the cases being considered here, the information available in the ERA audit files is insufficient to base refunds on the amount each individual customer was overcharged.[2] We therefore shall use the volumetric method to allocate the Remedial Order fund in each case. An applicant's allocable share will be equal to the number of gallons purchased from Aljian or Shaw during the relevant audit period multiplied by the per gallon volumetric refund amount. In the present case, the per gallon refund amount for Aljian customers is $0.0340. We derived this figure by dividing the amount of the Remedial Order funds remitted by Aljian, $8,190.51, by the 240,777 gallons which the firm sold during the period December 15, 1979 through May 28, 1980. The per gallon refund amount for Shaw customers is $0.0202, which we derived by dividing the

[1] The funds were held in a non-interest bearing DOE suspense account until September 3, 1993, when they were transferred to separate escrow accounts.

[2] The ERA audit files do not identify any customers of Aljian or Shaw.

amount it remitted $6,722.07, by the 333,505 gallons that it sold during the period December 15, 1979 through July 7, 1980. Any firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.

The relevant information for the two proceedings is summarized below.

Firm	Amount	Audit period	Volumetric refund amount
Pete Aljian Chevron, Castro Valley, CA	$8,190.51	December 15, 1979–May 28, 1980	$0.0340
Shaw & 99 Chevron, Fresno, CA	6,722.07	December 15, 1979–July 7, 1980	0.0202

B. Presumption of Injury

Since both firms were small retailers, we presume that all, or virtually all, of their sales were to end-users. In accordance with prior Subpart V proceedings, we shall adopt the presumption that an end-user (ultimate consumer) of gasoline purchased from Aljian and Shaw whose business is unrelated to the petroleum industry was injured by the overcharges set forth in the Remedial Order Decision. See, *e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the periods covered by the Remedial Orders, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Therefore, end-users of gasoline purchased from Aljian and Shaw need only document their purchase volumes from Aljian and Shaw during the applicable period covered by the Remedial Orders to make a sufficient showing that they were injured by the overcharges.[3]

C. Minimum Refund Amount

We will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[4] See, *e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR § 205.286(b).

D. Refund Application Requirements

All Applications for Refund must be filed in duplicate and must be postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential. The following information should be included in all Applications for Refund:

1. Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number,[5] a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

2. The applicant's use of gasoline purchased from Pete Aljian Chevron or Shaw & 99 Chevron: e.g., consumer (end-user), retailer, or reseller;

3. A monthly purchase schedule covering the period December 15, 1979 through May 28, 1980, for Aljian and December 15, 1979 through July 7, 1980 for Shaw. The applicant should specify the source of this gallonage information;

4. A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Aljian or Shaw refund proceedings. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

5. If the applicant is or was in any way affiliated with Aljian or Shaw, it should explain this affiliation, including the time period in which it was affiliated;

6. A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, or sale of company assets);

7. A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action: If so, an explanation of the case and copies of relevant documents should also be provided.

8. The statement set forth below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All Applications should be either typed or printed and clearly labelled "Aljian Special Refund Proceeding, Case No. LEF–0089" or "Shaw Special Refund Proceeding, Case No. LEF–0090." Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

E. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any portion of the Aljian and Shaw Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

[3] If a reseller or retailer should file a refund application in this proceeding, we will utilize the standards and appropriate presumptions established in previous refined product refund proceedings. See, *e.g., Shell Oil Co.*, 18 DOE ¶ 85,492 at 88,799 (1989).

[4] In order to be eligible for the minimum refund, applicants in the Aljian and Shaw proceedings will have to have purchased during the relevant audit period 442 and 743 gallons, respectively.

[5] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiallty, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Pete Aljian Chevron and Shaw & 99 Chevron will be distributed in accordance with the foregoing Decision.

(2) All Applications must be postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: March 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5990 Filed 3–14–94; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $38,214.98, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to County Fuel Company, Inc., Case No. LEF–0061. The OHA has tentatively determined that the funds will be distributed in accordance with the provision of 10 CFR part 205, subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATE AND ADDRESS: Comments must be filed in duplicate on or before April 14, 1994 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. All comments should display a reference to Case Number LEF–0061.

FOR FURTHER INFORMATION CONTACT: Janet R. H. Fishman, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $38,214.98, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to County Fuel Company, Inc., on May 7, 1984. Under the Remedial Order, County Fuel Company, Inc., was found to have violated the federal petroleum price and allocation regulations involving the sale of motor gasoline during the relevant audit period.

The OHA has proposed to distribute the Remedial Order fund in a two stage refund proceeding. Purchasers of motor gasoline from County Fuel Company, Inc., will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of motor gasoline they purchased from County Fuel Company, Inc., during the relevant audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received, will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 8, 1994.

Name of Petitioner: County Fuel Company, Inc.

Date of Filing: March 6, 1990.

Case Number: LEF–0061.

On March 6, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving County Fuel Company, Inc. (County), pursuant to 10 CFR part 205, subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of County refund applications is authorized.

I. Background

County was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was located in Baltimore, Maryland. On May 24, 1982, the DOE issued a Proposed Remedial Order (PRO) to County alleging that the firm violated the Mandatory Petroleum Price Regulations by overcharging its retail customers in its sales of motor gasoline at the wholesale and retail levels between March 1, 1979, through March 18, 1980. The PRO ordered County to refund the full amount of the alleged violations, $197,305.49, plus interest, to the United States Treasury.

County filed a Statement of Objections to the PRO on August 23, 1982. On October 12, 1982, the ERA filed its Response to County's Statement of Objections. As requested by County, a hearing for the purpose of oral argument was held on December 22, 1983. In the final Remedial Order issued on May 7, 1984, County's Statement of Objections was denied, and the PRO was issued as a final Remedial Order with one modification. The Remedial Order directed that the overcharges, plus interest, be remitted to the DOE for deposit into an interest-bearing escrow account pending ultimate distribution through a special refund proceeding. *County Fuel Company, Inc.*, 12 DOE ¶ 83,007 (1984).

The Remedial Order was affirmed by the Federal Energy Regulatory Commission on August 23, 1985. *County Fuel Company, Inc.*, 32 FERC ¶ 61,301 (1985). The Temporary Emergency Court of Appeals (TECA) affirmed the decision on August 12, 1987. *County Fuel Company, Inc. v. Department of Energy*, 3 Fed. Energy Guidelines ¶ 26,588 (Temp. Emer. Ct. App. 1987).

However, County had filed for bankruptcy on July 6, 1981. Following the TECA decision, the DOE's claim as an unsecured creditor was allowed by the bankruptcy court in the amount of $254,766.49, including interest. *In re: County Fuel Company, Inc.*, No. 81–2–2208–L (D. Md. 1986). Under the Second Amended Plan of Reorganization, unsecured creditors were paid 15 percent of the allowed claim in cash or 100 percent of the claim in common stock. On August 25, 1988, County delivered a check in the amount of $38,214.98 to the DOE, representing 15 percent of the allowed claim. The ERA accepted this amount in lieu of payment in common stock. Interest in the amount of $13,770.57 has accrued as of January 31, 1994, making available a total of $51,985.55 (the County Remedial Order Fund) for distribution through Subpart V.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 9 DOE ¶ 82,597 (1981). We have considered the ERA's petition that we implement a Subpart V

proceeding with respect to the County remedial order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund.

II. Proposed Refund Procedures

We propose to implement a two-stage refund process by which purchasers of County refined products during the remedial order period may submit Applications for Refund in this initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; and (iii) refiners, resellers, and retailers (collectively "resellers").

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of County motor gasoline during the remedial order period. If the product was not purchased directly from County, the claimant must establish that the product originated with County. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by County's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[1] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070, at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from County. See *National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), aff'd sub nom. *Atlantic Richfield Co.* v. *Department of Energy*, 618 F. Supp. 1199 (D. Del. 1985).

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable subpart V regulations at 10 CFR § 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of County's sales of motor gasoline during the remedial order period. In accordance with this presumption, refunds will be made on a pro-rata or volumetric basis.[2] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the remedial order fund is equal to the number of gallons purchased from the remedial order firm during the applicable remedial order period times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0214. We derived this figure by dividing the remedial order fund, $51,985.55, by 2,431,180 gallons, the approximate number of gallons of covered refined products which County sold from March 1, 1979, through March 18, 1980. A firm that establishes its entitlement to a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[3]

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

2. End-Users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of County motor gasoline whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the remedial order. See, e.g., *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069, at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the remedial order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of County motor gasoline need only document their purchase volumes from County during the remedial order period to make a sufficient showing that they were injured by the alleged overcharges.

3. Regulated Firms and Cooperatives

We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. *See Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[4]

4. Refiners, Resellers, and Retailers

a. *Small claims presumption.* We propose to adopt a "small claims" presumption that a firm which resold County products and requests a relatively small refund was injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or

[1] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. See *Standard Oil (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. See, e.g., *Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

[2] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of County's alleged overcharges. See, e.g., *Standard Oil (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of County's alleged overcharges, and (3) it was injured by those overcharges. See *MCO Holdings, Inc., MGPC, Inc./Little America Refining Co.*, 19 DOE ¶ 85,560 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.*, 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refunds of this type, we will prorate the refund amount by the ratio of the County remedial order amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) (*Amtel/Whitco*).

[3] As in previous cases, we propose to establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590, at 89,150 (1988) (*Exxon*). Accordingly, an applicant must have purchased at least 678 gallons of motor gasoline from County in order for its claim to be considered.

[4] A cooperative's purchases of County products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of County products it purchased during the remedial order period. *See TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.[5]

b. *Mid-level claim presumption.* In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $20,000,[6] whichever is larger.[7] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. *See, e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381, at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore propose to adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of County motor gasoline during the remedial order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $20,000, or $5,000, whichever is greater.[8]

c. *Spot purchasers.* We propose to adopt a rebuttable presumption that a reseller that made only spot purchases from County did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See, e.g., Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from County.[9]

B. Allocation Claims

We may also receive claims based upon County's alleged failure to furnish motor gasoline that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*), *aff'd sub nom. Research Fuels, Inc. v. Department of Energy*, No. CA3–89–2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp. Emer. Ct. App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the remedial order firm and the likelihood that the remedial order firm failed to furnish motor gasoline that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that County may have had to the alleged allocation violation. See Marathon/RFI, 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than County. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the County remedial order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the County Remedial Order Fund is less than County's potential liability in the proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the remedial order fund. *Cf. Amtel/Whitco*, 19 DOE ¶ 85,319.

C. Distribution of Funds Remaining After First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the County remedial order escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by County Fuel Company, Inc., pursuant to the remedial order issued on May 7, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–5991 Filed 3–14–94; 8:45 am]

BILLING CODE 6450–01–P

[5] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 584,171 gallons of County motor gasoline during the remedial order period.

[6] In most prior proceedings, we have used a $40,000 mid-level claim presumption. However, due to the small size of the County Remedial Order Fund, this amount would be impractical.

[7] That is, claimants who purchased more than 584,171 gallons of County motor gasoline during the remedial order period (mid-level claimants) may elect to utilize this presumption.

[8] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from County. See *Exxon*, 17 DOE at 89,150 n.10.

[9] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4850–7]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that various committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All meetings are open to the public. Due to limited space, seating at all meetings will be on a first-come basis. For further information concerning each meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB staff. Many of the meetings listed below include discussion of

issues relevant to the SAB's Environmental Futures Project.

Clean Air Scientific Advisory Committee

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting to review the two draft documents: (1) The Supplement to the Second Addendum (1986) to Air Quality Criteria for Oxides (1982); Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics; and (2) Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. Both documents, which constitute supplements to existing documents, will be reviewed and evaluated with respect to their scientific and technical adequacy. Both documents have been revised in response to public comments and CASAC recommendations received (at an August 19, 1993 meeting) on earlier drafts of the two documents.

The meeting will be held at the Sheraton Inn University Center, 2800 Middleton Avenue, Durham, NC 27705. The hotel telephone number is (919) 383–8575. The meeting will be held on April 12, 1994, from 9:30 a.m. to 2 p.m. Seating is limited and will be on a first come basis.

Availability of Documents

The following documents are not available from the Science Advisory Board:

1. Single copies of the revised draft Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982); Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics will be available on March 7, 1994, from Dr. Dennis J. Kotchmar, U.S. EPA, Environmental Criteria Assessment Office (MD–52), Research Triangle Park, NC 27711, telephone (919) 541–4158. Members of the public who wish to provide comments directly to EPA on the Criteria Document Supplement may do so by sending their written comments to Dr. Kotchmar at the above address. Comments must be received by EPA no later than April 6, 1994.

2. Single copies of the revised draft document National Ambient Air Quality Standards for Sulfur Oxides; Updated Assessment of Scientific and Technical Information. Supplement to the 1986 OAQPS Staff Paper Addendum will be available on March 21, 1994 from Mr. John Haines, U.S. EPA, Office of Air Quality Planning and Standards, (MD–12), Research Triangle Park, NC 27711, telephone (919) 541–5533. Members of the public who wish to provide comments directly to EPA on the Staff Paper Supplement may do so by sending their written comments to Mr. Haines at the above address. Comments must be received by EPA no later than April 20, 1994.

Further Information and Providing Comments

For additional information concerning this meeting, please contact Mr. Randall C. Bond, Designated Federal Official, or Ms. Janice Cuevas, Management Analyst, at (202) 260–8414, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Interested individuals may also contact the SAB via The INTERNET at:BARNES.DON@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the agenda should contact Ms. Lori Gross at the phone number above.

Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. These written statements may be the same as those provided directly to EPA or may be tailored to the Committee. Please send these comments to Ms. Cuevas at the address given above. The Science Advisory Board expects that public statements presented at its meeting will not be repetitive of previously submitted oral or written statements.

Radiation Advisory Committee

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a teleconference meeting on Monday, March 28, 1994 from 11:00 a.m. to 1:00 p.m. eastern time. In this teleconference meeting, the RAC intends to conduct a closure review and to complete technical edits to its draft report on review of the Agency's draft scoping study on naturally-occurring radioactive materials (NORM), entitled "Diffuse NORM—Waste Characterization and Preliminary Risk Assessment." This document is available for examination from the Environmental Protection Agency's (EPA's) Air Docket at 401 M Street, SW, Washington, DC 20460 (202–260–7548). The Docket Number is R–82–01, and the Item Number is IIA–38. There may be a newer draft document with a different docket and item number. For technical information on the NORM draft document, please contact Mr. William E. Russo of the EPA's Office of Radiation and Indoor Air (ORIA) at (202) 233–9215. The teleconference meeting is open to the public and teleconference lines will be assigned on a first come basis. The latest public meeting to discuss this topic was held on February 23 and 24, 1994 (See **Federal Register**, Vol. 59, No. 20, pp. 4279–4281).

Any member of the public wishing further information, such as a proposed agenda, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW, Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118, or via The INTERNET at: BARNES.DON@EPAMAIL.EPA.GOV. There was a draft SAB report on review of the Agency's diffuse NORM document, dated February 8, 1994. It is expected that a newer draft report will be prepared for review by mid-March, and will be available to the public on a request basis. Members of the public who wish to make a brief oral presentation at the teleconference should contact Dr. Kooyoomjian no later than March 24, 1994 in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at the teleconference meeting will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of three minutes, with a total time limit of fifteen minutes. Written comments of any length (at least 35 copies) received by the SAB by March 22, 1994 may be mailed to the SAB's RAC prior to the meeting; comments received after that date will normally be provided to the RAC at the meeting. Written comments of any length (at least 35 copies) should be provided to the Committee no later than March 22, 1994.

Dated: March 4, 1994

A. Robert Flaak,

Acting Staff Director, Science Advisory Board

[FR Doc. 94–5992 Filed 3–11–94; 8:45 am]

BILLING CODE: 6560–60–P

[FRL–4850–8]

Science Advisory Board Environmental Health Committee Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) of the Science Advisory Board will meet on April 6, 1994 in the Fortune Room at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington

DC 20007. The hotel telephone number is (202) 338–4600.

The meeting, which is open to the public, will start at 8:45 AM and adjourn no later than 5 PM.

The Committee will be briefed on, and discuss, the following issues: (a) The recent National Academy of Sciences report on cancer guidelines; (b) pollution prevention and environmental health effects; (c) EPA's planned revisions to its reproductive toxicity guidelines; and (d) "environmental hormones," those pollutants believed to have physiological effects similar to human hormones. The Committee will also discuss topics for future meetings.

Members of the public desiring additional information about the conduct of the meeting, or an agenda, should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Health Committee, by telephone at (202) 260–2559, via Internet to RONDBERG.SAMUEL@EPAMAIL.EPA.GOV or by mail to the Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by March 30, 1994. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: March 1, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–5996 Filed 3–14–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–60050; FRL–4764–4]

Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Dawn Banks-Waller, Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8251.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an

extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Dawn Banks-Waller at (703) 308–8251

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent To Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A-LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Barton Chemical Corporation	00046720001	Na and Ca Hypochlorite	Chloro-San	1/28/94
L & F Products	00077700059	Na and Ca Hypochlorite	Bowl Power	1/28/94
Olin Corporation	00125801091	Na and Ca Hypochlorite	Sodium Hypochlorite-7	1/28/94
	00125801092	Na and Ca Hypochlorite	Sodium Hypochlorite-5	1/28/94
	00125801093	Na and Ca Hypochlorite	Sodium Hypochlorite-9	1/28/94
	00125801094	Na and Ca Hypochlorite	Sodium Hypochlorite 10	1/28/94
	00125801095	Na and Ca Hypochlorite	Sodium Hypochlorite-11	1/28/94
	00125801096	Na and Ca Hypochlorite	Sodium Hypochlorite 12.5	1/28/94
An-Fo Manufacturing Company	00131700086	Na and Ca Hypochlorite	Dairy-Du Chlorine Sanitizer	1/28/94
Momar Incorporated	00155320001	Na and Ca Hypochlorite	Aquatrol C-2712	1/28/94
Ecolab Inc.	00167700019	Na and Ca Hypochlorite	Mikro-Chlor	1/28/94
	00167700076	Na and Ca Hypochlorite	Soilax Liquid Pool Sanitizer	1/28/94
Truetech, Inc.	00169120005	Na and Ca Hypochlorite	Calcium Hypochlorite	1/28/94
Drew Industrial Division	00175700095	Na and Ca Hypochlorite	Olin 3001	1/28/94
Elf Atochem N.A. Inc.	00181600005	Na and Ca Hypochlorite	Turco Turclor	1/28/94
Erbrich Products Company-Food & Chemical Products	00252800040	Na and Ca Hypochlorite	Linco Bleach	1/28/94
	00252800041	Na and Ca Hypochlorite	SX-3 Liquid Bactericide	1/28/94
Betz Laboratories, Inc.	00387620001	Na and Ca Hypochlorite	Slimicide C-70	1/28/94
Dominion Chemical Company	00416620001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	00416620002	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
H.B. Fuller Company	00452400037	Na and Ca Hypochlorite	Monoklor Liquid	1/28/94
M-CO Inc.	00463500001	Na and Ca Hypochlorite	Master Bleach	1/28/94
	00463500003	Na and Ca Hypochlorite	Master Chlor 8%	1/28/94
	04635020001	Na and Ca Hypochlorite	Master Chlor 12.5%	1/28/94
Plantabbs Corp.	00533200010	Indole-3-Butyric Acid	Plantabbs Rooting Powder	10/8/93
Snee Chemical Company	00568000005	Na and Ca Hypochlorite	CHC-15	1/28/94
Diversey Corporation	00573620004	Na and Ca Hypochlorite	Liqu-a-Klor	1/28/94
Clorox Company	00581300047	Na and Ca Hypochlorite	Bowl Gard Automatic Bowl Cleaner	1/28/94
	00581300048	Na and Ca Hypochlorite	Bowl Gard II Automatic Toilet Bowl Cleaner	1/28/94
	00581300047	Na and Ca Hypochlorite	Bowl Gard Automatic Bowl Cleaner	1/28/94
	00581300048	Na and Ca Hypochlorite	Bowl Gard II Automatic Toilet Bowl Cleaner	1/28/94
Texo Corporation	00587020003	Na and Ca Hypochlorite	C - 13	1/28/94
	00587020004	Na and Ca Hypochlorite	Chemcide	1/28/94

TABLE A-LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Octagon Process Inc.	00683020005	Na and Ca Hypochlorite	Calcium Hypochlorite, Technical	1/28/94
Merit Chemical Inc.	00693120002	Na and Ca Hypochlorite	Chloricide 12	1/28/94
Alden Leeds Inc.	00712400055	Na and Ca Hypochlorite	Tru-Clor	1/28/94
Savol Bleach Company	00726700005	Na and Ca Hypochlorite	Savol Shock Treatment	1/28/94
Chaska Chemical Company	00735000001	Na and Ca Hypochlorite	Clor-12	1/28/94
	00735000002	Na and Ca Hypochlorite	Chaska-San Disinfectant-Bactericide-Alkaline	1/28/94
	00735000020	Na and Ca Hypochlorite	Chlor-12	1/28/94
Great Lakes Biochemical Company, Inc.	00736420005	Na and Ca Hypochlorite	Tabex Shock	1/28/94
K O K Cleanser Company	00815400001	Na and Ca Hypochlorite	K-O-K Bleach	1/28/94
	00815420001	Na and Ca Hypochlorite	Sodium Hypochlorite Concentrate Solution	1/28/94
American Machinery Corporation	00851720003	Na and Ca Hypochlorite	Pacrite Clean San	1/28/94
Sanolite	00861600012	Na and Ca Hypochlorite	Dual Chlor	1/28/94
	00874020004	Na and Ca Hypochlorite	Blue Ribbon Bleach	1/28/94
Patterson Labs Inc.	00874020004	Na and Ca Hypochlorite	Blue Ribbon Bleach	1/28/94
E-Z Clor Systems Inc.	00879120005	Na and Ca Hypochlorite	Cal-Chlor Shock	1/28/94
Kleen Brite Lab, Inc.	00887300001	Na and Ca Hypochlorite	Kleen	1/28/94
Morgan Gallacher Inc.	00915700019	Na and Ca Hypochlorite	Sun Sanitizer	1/28/94
Delta Chemical Corporation	00948820002	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	00959420001	Na and Ca Hypochlorite	CON-O Sodium Hypochlorite 12.5%	1/28/94
	00963200004	Na and Ca Hypochlorite	Sodium Hypochlorite 10% Solution	1/28/94
Intecontinental Chemical Corporation	00959420001	Na and Ca Hypochlorite	CON-O Sodium Hypochlorite 12.5%	1/28/94
	00963200004	Na and Ca Hypochlorite	Sodium Hypochlorite 10% Solution	1/28/94
Bowman Mell & Company	00963200004	Na and Ca Hypochlorite	Sodium Hypochlorite 10% Solution	1/28/94
Skasol Inc.	00974300007	Na and Ca Hypochlorite	Microbiocide No. H	1/28/94
Lerro's Products Inc.	01009800008	Na and Ca Hypochlorite	Ler - Chlor	1/28/94
	01009820004	Na and Ca Hypochlorite	Lerro Bleach	1/28/94
ICI Americas Inc.	01018200081	Na and Ca Hypochlorite	Shock Treatment	1/28/94
	01018200084	Na and Ca Hypochlorite	Calcium Hypochlorite Granular	1/28/94
	01018220008	Na and Ca Hypochlorite	Calcium Hypochlorite	1/28/94
Antech Chemical Company Inc.	01036900004	Na and Ca Hypochlorite	Shock King	1/28/94
World Industries International, Inc.	01059800001	Na and Ca Hypochlorite	Pool Doctor Dry Chlor	1/28/94
Alpha Chemical Services Inc.	01063400002	Na and Ca Hypochlorite	Alpha San 100	1/28/94

TABLE A-LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
	01063420003	Na and Ca Hypochlorite	Liquid Chlorinating Product	1/28/94
	01063420004	Na and Ca Hypochlorite	Alpha Chlor	1/28/94
Springfield Water Conditioning Company Inc.	01067100004	Na and Ca Hypochlorite	Hy-Test Sodium Hypochlorite	1/28/94
Esbro Chemical	01101100002	Na and Ca Hypochlorite	Esbro-Chlor	1/28/94
T-Chemical Products Division Thurmond Chemicals Inc.	01132120007	Na and Ca Hypochlorite	T-Chem Industrial Sodium Hypochlorite	1/28/94
Leslie's Poolmart	01141100010	Na and Ca Hypochlorite	Leslie's Chlorinating Liquid	1/28/94
Colonial Chemical Company	01173620001	Na and Ca Hypochlorite	Sparkle	1/28/94
	01200320001	Na and Ca Hypochlorite	Super Chlor	1/28/94
Bay State Pool Supplies Inc.	01200320001	Na and Ca Hypochlorite	Super Chlor	1/28/94
Advanced Laboratories	01246500003	Na and Ca Hypochlorite	Aqua Maid Shock Treatment	1/28/94
Phillips Industrial Product/Crosley Field Lan	01700400003	Na and Ca Hypochlorite	Pipco Dish-San	1/28/94
Ashland Chemical, Inc.	01853320001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution (12.5%)	1/28/94
	01853320002	Na and Ca Hypochlorite	Sodium Hypochlorite Solution (10%)	1/28/94
	01872300001	Na and Ca Hypochlorite	Chem-Clear	1/28/94
Midwest Pool Supply	01872300001	Na and Ca Hypochlorite	Chem-Clear	1/28/94
Puratex Company Inc.	02085100004	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
LCP Chemicals	02113920002	Na and Ca Hypochlorite	Sodium Hypochlorite 10%	1/28/94
	02113920003	Na and Ca Hypochlorite	Sodium Hypochlorite 9.2%	1/28/94
	02113920004	Na and Ca Hypochlorite	Sodium Hypochlorite 5.25%	1/28/94
	02113920007	Na and Ca Hypochlorite	Sodium Hypochlorite 12.5%	1/28/94
Hatchick Supply Company	02441100002	Na and Ca Hypochlorite	Hatchik Supply Company Sodium Hypochlorite Solution	1/28/94
	02702920001	Na and Ca Hypochlorite	Pool Pride Pool Clear	1/28/94
Acro Dishwashing Service	04097520004	Na and Ca Hypochlorite	Acro-Klo	1/28/94
Scott Pool, Inc.	04142620001	Na and Ca Hypochlorite	Scott Chlor	1/28/94
	04161900001	Na and Ca Hypochlorite	Liquid Chlorinating Product	1/28/94
E.J. Miller & Sons Pool Company	04161900001	Na and Ca Hypochlorite	Liquid Chlorinating Product	1/28/94
Park Corporation	04183120001	Na and Ca Hypochlorite	Hi-Chlor	1/28/94
Blue Ribbon Pools, Inc	04183720001	Na and Ca Hypochlorite	Blu-Clor Sodium Hypochlorite Solution	1/28/94
	04193400002	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	04199720003	Na and Ca Hypochlorite	Dietz Sanitizer for Swimming Pools	1/28/94
George S. Coyne Chemical Company, Inc.	04193400002	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	04199720003	Na and Ca Hypochlorite	Dietz Sanitizer for Swimming Pools	1/28/94

TABLE A-LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Dietz Pool, Inc.	04199720003	Na and Ca Hypochlorite	Dietz Sanitizer for Swimming Pools	1/28/94
York Chemical Corporation	04217700002	Na and Ca Hypochlorite	"Klear Out"	1/28/94
	04217700053	Na and Ca Hypochlorite	Olympic Pool Chlor 65	1/28/94
	04217700021	Na and Ca Hypochlorite	Olympic Chlor-O-Shock	1/28/94
	04217700025	Na and Ca Hypochlorite	Olympic Hypo-Chlor 125	1/28/94
Ed-Chem Corporation	04260800001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	04261320001	Na and Ca Hypochlorite	Indo-Clor	1/28/94
Independent Chemical Company	04261320001	Na and Ca Hypochlorite	Indo-Clor	1/28/94
Patterson Laboratories, Inc.	04270220002	Na and Ca Hypochlorite	Pool Hypochlorite "For Swimming Pool Water Treatment"	1/28/94
UR Industries Inc.	04289520005	Na and Ca Hypochlorite	Calcium Hypochlorite, 65% Dry Granular Chlori	1/28/94
Atlantic Aquatics	04320520001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
Agri-Chem, Inc.	04341020002	Na and Ca Hypochlorite	Agri-Chlor 10	1/28/94
Pro Chemicals, Inc.	04349700001	Na and Ca Hypochlorite	Pro Chlor 64	1/28/94
Sun Pools, Supplies & Services, Inc.	04413020002	Na and Ca Hypochlorite	Sun Pools Chlorinating Solution	1/28/94
Recreational Factory Warehouse	04428100001	Na and Ca Hypochlorite	Swimway Liquid Sanitizer	1/28/94
Value Products, Inc.	04491700001	Na and Ca Hypochlorite	Sani-Clean	1/28/94
Hydrologic Florida Inc.	04522520003	Na and Ca Hypochlorite	Sodium Hypo Chlorite Solution	1/28/94
Scientific Water Systems	04538700019	Na and Ca Hypochlorite	Clor Mor Cal Hypo-Granules	1/28/94
	04538700020	Na and Ca Hypochlorite	Clor Mor Calhypo Tablets	1/28/94
	04538700021	Na and Ca Hypochlorite	Clor Mor Calhypo Giant Tabs	1/28/94
Clenesco Products Corporation	04544720001	Na and Ca Hypochlorite	Cleneso Chlorinating Liquid	1/28/94
Safeway Industries, Inc.	04618300001	Na and Ca Hypochlorite	Sani-Way 6	1/28/94
	04618300002	Na and Ca Hypochlorite	Sani-Way 12	1/28/94
	04618300010	Na and Ca Hypochlorite	Bio-Chlor LB-525	1/28/94
Bionox Co., Inc.	04650600001	Na and Ca Hypochlorite	Bionox	1/28/94
Aqua Blue Pools of Central Florida, Inc.	04725020002	Na and Ca Hypochlorite	Aquatech Supurr Shock Chlorinating Solution	1/28/94
EES Corporation	04848220006	Na and Ca Hypochlorite	Genchlor - 65(TM)	1/28/94
Yarnell Pool Supply	04933720001	Na and Ca Hypochlorite	Yarnell's Bleach	1/28/94
CK Enterprises	04961400001	Na and Ca Hypochlorite	K-San	1/28/94
Proclean Systems Inc.	05041620001	Na and Ca Hypochlorite	Proclean Pro-San Sanitizer/Bleach	1/28/94
Autotrol Corporation	05051000001	Na and Ca Hypochlorite	Chlorinating Tablets	1/28/94

TABLE A-LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Blue Lustre Home Care Products Inc.	05069700006	Na and Ca Hypochlorite	120 Day Automatic Toilet Cleaner	1/28/94
	05069700007	Na and Ca Hypochlorite	Mil-Don't	1/28/94
G & S Enterprises	05135420001	Na and Ca Hypochlorite	Sun Guard 15	1/28/94
Chem West	05356900001	Na and Ca Hypochlorite	Chem Klor	1/28/94
Capo Industries, Ltd.	05499820005	Na and Ca Hypochlorite	Pool Shock	1/28/94
Krudico Inc.	05530400001	Na and Ca Hypochlorite	Calcium Hypochlorite 70% Dry Chlorinating Pel	1/28/94
Aqua Specialists Inc.	05571400001	Na and Ca Hypochlorite	Corrosive Sodium Hypochlorite Solution	1/28/94
Aqua Chemical Sales & Delivery	05600320001	Na and Ca Hypochlorite	Aqua Pure Sodium Hypochlorite Solution 12.5%	1/28/94
North Country Dairy Supply, Inc.	05715920003	Na and Ca Hypochlorite	San 2000	1/28/94
Haviland Consumer Products, Inc.	05778700004	Na and Ca Hypochlorite	Liquichlor Bleach	1/28/94
Nuchem Corporation	05915120002	Na and Ca Hypochlorite	Nuchem CF-167	1/28/94
	05919820001	Na and Ca Hypochlorite	Sodium Hypochlorite 12.5%	1/28/94
	05928920001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	05942620002	Na and Ca Hypochlorite	Sodium Hypochlorite	1/28/94
Viking Chemical Company	05919820001	Na and Ca Hypochlorite	Sodium Hypochlorite 12.5%	1/28/94
	05928920001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	05942620002	Na and Ca Hypochlorite	Sodium Hypochlorite	1/28/94
Lockwood Laboratories Inc.	05928920001	Na and Ca Hypochlorite	Sodium Hypochlorite Solution	1/28/94
	05942620002	Na and Ca Hypochlorite	Sodium Hypochlorite	1/28/94
J. James Smullen, Inc.	05942620002	Na and Ca Hypochlorite	Sodium Hypochlorite	1/28/94
7C'S Safety and Environmental Consultants	06142800001	Na and Ca Hypochlorite	Emergency Storage Pak Water Preserver Concentrate	1/28/94
Accu-Care Supply, Inc.	06203220001	Na and Ca Hypochlorite	Pool Clear	1/28/94
Excelex Corporation	06249500001	Na and Ca Hypochlorite	Excelex Bleach	1/28/94
	06249500003	Na and Ca Hypochlorite	Liqui-Chlor Sodium Hypochlorite Solution	1/28/94
Enichem America, Inc.	06255000001	Na and Ca Hypochlorite	Calcium Hypochlorite Idroklorel	1/28/94

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following requirement data or information:

TABLE B-LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Na and Ca Hypochlorite	Accu-Care Supply, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Acro Dishwashing Service	Confidential Statement of Formula (CSF) Form		11/18/92
	Advanced Laboratories	Confidential Statement of Formula (CSF) Form		11/18/92
	Agri-Chem, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Alden Leeds Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Alpha Chemical Services Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	An-Fo Manufacturing Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Antech Chemical Company Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	American Machinery Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Aqua Blue Pools of Central Florida, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Aqua Chemical Sales & Delivery	Confidential Statement of Formula (CSF) Form		11/18/92
	Aqua Specialists Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Ashland Chemical, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Atlantic Aquatics	Confidential Statement of Formula (CSF) Form		11/18/92
	Autotrol Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Barton Chemical Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Bay State Pool Supplies Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Betz Laboratories, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Bionox Company, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Blue Lustre Home Care Products Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Blue Ribbon Pools, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Bowman Mell & Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Capo Industries, Ltd.	Confidential Statement of Formula (CSF) Form		11/18/92
	Chaska Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Chem West	Confidential Statement of Formula (CSF) Form		11/18/92
	CK Enterprises	Confidential Statement of Formula (CSF) Form		11/18/92
	Clenesco Products Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Clorox Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Colonial Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Delta Chemical Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Dietz Pool, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Diversey Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Dominion Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Drew Industrial Division	Confidential Statement of Formula (CSF) Form		11/18/92
	Ecolab Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Ed-Chem Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	EES Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	E.J. Miller & Sons Pool Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Elf Atochem N.A. Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Enichem America, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Erbrich Products Company-Food & Chemical Products	Confidential Statement of Formula (CSF) Form		11/18/92
	Esbro Chemical	Confidential Statement of Formula (CSF) Form		11/18/92
	Excelex Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	E-Z Clor Systems Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	George S. Coyne Chemical Company, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Great Lakes Biochemical Company, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	G & S Enterprises	Confidential Statement of Formula (CSF) Form		11/18/92

TABLE B-LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
	Hatchick Supply Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Haviland Consumer Products, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	H.B. Fuller Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Hydrologic Florida Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	ICI Americas Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Independent Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Intecontinental Chemical Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	J. James Smullen, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Kleen Brite Lab, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	K O K Cleanser Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Krudico Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	LCP Chemicals	Confidential Statement of Formula (CSF) Form		11/18/92
	Lerro's Products Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Leslie's Poolmart	Confidential Statement of Formula (CSF) Form		11/18/92
	L & F Products	Confidential Statement of Formula (CSF) Form		11/18/92
	Lockwood Laboratories Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	M-CO Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Merit Chemical Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Midwest Pool Supply	Confidential Statement of Formula (CSF) Form		11/18/92
	Momar Incorporated	Confidential Statement of Formula (CSF) Form		11/18/92
	Morgan Gallacher Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	North Country Dairy Supply, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Nuchem Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Octagon Process Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Olin Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Park Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Patterson Laboratones, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Patterson Labs Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Phillips Industrial Product/Crosley Field Lane	Confidential Statement of Formula (CSF) Form		11/18/92
	Pro Chemicals, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Proclean Systems Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Puratex Company Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Recreational Factory Warehouse	Confidential Statement of Formula (CSF) Form		11/18/92
	Safeway Industries, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Sanolite	Confidential Statement of Formula (CSF) Form		11/18/92
	Savol Bleach Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Scientific Water Systems	Confidential Statement of Formula (CSF) Form		11/18/92
	Scott Pool, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Skasol Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Snee Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	Springfield Water Conditioning Company Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Sun Pools, Supplies & Services, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	T-Chem Products Div Thurmond Chemicals Inc.,	Confidential Statement of Formula (CSF) Form		11/18/92
	Texo Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	Truetech, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	UR Industries Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Value Products, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Viking Chemical Company	Confidential Statement of Formula (CSF) Form		11/18/92
	World Industries International, Inc.	Confidential Statement of Formula (CSF) Form		11/18/92
	Yarnell Pool Supply	Confidential Statement of Formula (CSF) Form		11/18/92

TABLE B-LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
	York Chemical Corporation	Confidential Statement of Formula (CSF) Form		11/18/92
	7C's Safety and Environmental Consultants	Confidential Statement of Formula (CSF) Form		11/18/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Na and Ca Hypochlorite

On February 28, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing Na and Ca Hypochlorite to develop and submit certain data/information. These data/information were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Na and Ca Hypochlorite Phase 5 Reregistration Data Requirements Notice dated February 28, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. The Notice further required that data/information be submitted by deadlines noted for the subject data/information requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data/information to satisfy these data/information requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data/information requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above

List of Subjects

Environmental protection.

Dated: March 8, 1994.

Connie S. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 94-5997 Filed 3-14-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011203-004.

Title: Wallenius/NOSAC Space Charter and Cooperative Working Agreement.

Parties: Wallenius Line AB, NOSAC ANS.

Synopsis: The proposed amendment clarifies that Wallenius may charter space on vessels owned or chartered by the NOSAC parties or agents in conjunction with wholly-owned subsidiaries of Wallenius. The parties have requested a shortened review period.

Agreement No.: 207-011315-002.

Title: American Carriers NOSAC Joint Service Agreement.

Parties: Wallenius Lines AB, NOSAC ANS.

Synopsis: The proposed amendment clarifies that the parties may contribute vessels to the Joint Service in their individual capacities or jointly, directly or through agents or affiliates. The parties have requested a shortened review period.

Agreement No.: 203-011448.

Title: U.S./Latin America Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon rates on a voluntary basis. They may also discuss and agree upon matters relating to the deployment and utilization of vessels in the trade between ports and points in the United States and ports and points in Colombia, Ecuador, Peru, Chile, (including points in Bolivia), Mexico, Panama, Guatemala, Honduras, Costa Rico, El Salvador, Nicaragua, Belize, and Jamaica. It also authorizes the parties to charter vessels to each other or other parties in the trade. The parties have requested a shortened review period.

Agreement No.: 224-200755-001.

Title: Jacksonville Port Authority/Stevens Shipping and Terminal Company.

Parties: Jacksonville Port Authority, Stevens Shipping and Terminal Company.

Synopsis: The proposed amendment authorizes an annual rate and throughput increase to the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 9, 1994

Joseph C. Polking,

Secretary.

[FR Doc. 94-5904 Filed 3-14-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Meridian Bancorp, Inc., Reading, PA; Application To Engage in Nonbanking Activities

Meridian Bancorp, Inc., Reading, Pennsylvania (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, McGlinn Capital Management, Inc., Wyomissing, Pennsylvania (Company), in the following securities-related activities: (1) Providing portfolio investment advice to the general public, including the exercise of investment discretion on behalf of institutional customers and a limited number of individuals related to Company's management; (2) serving as general partner of, maintaining a

financial interest in, and, in its capacity as general partner, providing portfolio investment advice, including the exercise of investment discretion, to a series of limited partnerships now existing or to be established in the future (Partnerships); (3) engaging in the private placement of limited partnership interests in the Partnerships to institutional customers and certain additional employee benefit plans; and (4) performing certain administrative and recordkeeping functions for the Partnerships in its capacity as general partner. The scope of the proposed activity is nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y (49 FR 806 (1984)).

Applicant believes that the provision of portfolio investment advice to any person, including the exercise of limited investment discretion for institutional customers, is authorized by regulation. See 12 CFR 225.25(b)(4)(iii). Applicant has stated that it will conduct its proposed investment advisory activities subject to the requirements and limitations of the Board's Regulation Y and the conditions and limitations of the Board's previous orders, with one exception. Applicant proposes to exercise limited investment discretion on behalf of a small number of relatives of Company's proposed chief executive officer, but only for so long as this individual serves in this position. This individual has provided this service to these individuals for several years. Applicant believes that these individuals are suitable persons for whom Company may exercise investment discretion in view of their small number, their unique family relationship to Company's proposed chief executive officer, and the longstanding practice of Company's proposed chief executive officer to exercise investment discretion on their behalves.

Applicant believes that Company, in its capacity as general partner, also may provide portfolio investment advice, including the exercise of investment discretion, to the Partnerships. Applicant notes that the Partnerships are excluded from the definition of an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (1940 Act), and believes, for this and other reasons, that the provisions of section 225.125 of Regulation Y (12 CFR 225.125), including the prohibition therein against an investment adviser purchasing for its own account any shares of an investment company for which it serves as an investment adviser, are not applicable to Company's investment in the Partnerships or its activities as general partner of the Partnerships.

Each of the Partnerships is engaged solely in the business of investing in debt and equity securities, including indirect interests in real property that would qualify as securities. Applicant represents that the securities owned by the Partnerships, together with all other securities directly or indirectly owned or controlled by Applicant, do not include more than 5 percent of the voting shares of any company (except for certain securities held by the Partnerships that Applicant will cause the Partnerships to divest within a period of time acceptable to the Board). Applicant also represents that it will not directly or indirectly exercise a controlling influence over the management or policies of any company, or otherwise engage in the conduct of the activities of any company, the securities of which are owned by any of the Partnerships. On this basis, Applicant believes that Company may acquire an interest in each of the Partnerships without the filing of an application for prior Board approval under the BHC Act.

Applicant has stated that the Partnerships will not, after the Partnerships are initially subscribed, admit new limited partners, or permit limited partners after their initial investment either to make additional contributions or to withdraw capital, more frequently than once per quarter. Applicant proposes to engage, as general partner, in the private placement of limited partnership interests in the Partnerships in this context. Applicant is seeking authority to engage in private placement activity only in this context, and is not seeking private placement authority in general. Applicant also will comply with all conditions and limitations contained in the Board's previous orders approving private placement activities generally and the requirements of the Securities and Exchange Commission's Regulation D (17 CFR 230.501 *et seq.*) (Regulation D) and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). See J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990); Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989); The Chase Manhattan Corporation, 74 Federal Reserve Bulletin 704 (1988); Manufacturers Hanover Corporation, 73 Federal Reserve Bulletin 930 (1987). Applicant believes that engaging in the issuance and private placement of limited partnership interests not more frequently than once per quarter is sufficiently infrequent that in doing so, while also observing Regulation D and the conditions and limitations described above, neither Company nor the Partnerships would be principally engaged in the issue, flotation, underwriting, public sale, or distribution of securities for purposes of section 20 of the Glass-Steagall Act.

The Board's previous orders do not authorize the private placement of securities with qualified employee benefit plans with assets less than $1,000,000. Applicant believes, however, that qualified employee benefit plans with assets of not less than $500,000 typically have the sophistication to evaluate an investment in the Partnerships. Applicant proposes on this basis that the private placement of limited partnership interests in the Partnerships with such smaller qualified employee benefit plans, and in conformity with all other conditions and limitations of the Board's previous orders and Regulation D, would be consistent with the Board's previous determinations that private placements are not the public sale or distribution of

securities for purposes of section 20 of the Glass-Steagall Act.

Applicant also proposes that Company will maintain such records and provide such services as are necessary and incidental to its exercising investment discretion on behalf of its institutional customers and other approved individual customers and acting as general partner of and exercising investment discretion on behalf of the Partnerships. In the case of Company's institutional customers and other approved individual customers, this would include records of customers' identities, securities holdings, securities transactions and settlements, account balances, and other records customarily retained by investment advisers or that investment advisers are required by law to retain. In the case of the Partnerships, this would include the foregoing and records relating to limited partners' identities and their ownership interests and account balances in the Partnerships, the payment of Partnership bills, the retention of legal, accounting, and financial professionals, and other activities incidental to acting as general partner of a limited partnership. Applicant believes that these activities are closely related to banking because they are incidental to investment advisory activities approved by the Board, and are permissible.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition in the delivery of high quality investment management services. Applicant also believes that approval of this application will allow Company to provide a wider range of services and serve a wider clientele. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 6, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, March 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5944 Filed 3–14–94; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Business Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet March 14 and April 1, 1994, from 8 a.m. to 4 p.m. at the General Services Administration Building at 18th and F Streets, room 5141A, Washington, DC 20405. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR part 101–6.

The purpose of these meetings is to provide a forum to discuss the development of asset management principles that will guide the management of GSA's real property portfolio. The agenda for this meeting will include discussions on and recommendations of asset management principles to guide GSA's ownership enterprise.

The meeting will be open to public.

For further information, contact Deborah Schilling (202) 501–9192 of the Public Buildings Service, Real Estate Reinvention Task Force, GSA, Washington, DC 20405.

Dated: March 1, 1994

David L. Bibb,

Deputy Commissioner, Public Buildings Service.

[FR Doc. 94–5910 Filed 3–14–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Safe Medical Devices Act of 1990; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 10, 1994 by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Commissioner of Food and Drugs, with authority to redelegate, all the authorities under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), as amended hereafter. This delegation excludes the authority to submit reports to the Congress.

This delegation is effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the Commissioner of Food and Drugs or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: February 23, 1994.

Philip R. Lee, M.D.,

Assistant Secretary for Health.

[FR Doc. 94–5914 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Food Advisory Committee

Date, time, and place. April 6, 1994, 1 p.m., April 7 and 8, 1994, 8 a.m.,

Renaissance Hotel-Dulles Airport, corner of Sully and McLearen Rds., Herndon, VA 22071.

Type of meeting and contact person. Open committee discussion, April 6, 1994, 1 p.m. to 5:30 p.m.; open committee discussion, April 7, 1994, 8 a.m. to 5 p.m.; open committee discussion, April 8, 1994, 8 a.m. to 9:15 a.m.; open public hearing, 9:15 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business March 31, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes per participant.

Open committee discussion. The committee will undertake a scientific discussion of the safety review of whole foods produced by new biotechnologies. A genetically modified tomato currently under review by the agency will serve as an example and focus of the discussion.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 9, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5945 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. March 31, 1994, 1 p.m., Food and Drug Administration, Bldg. 29, conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion on review of research, 1 p.m. to 1:45 p.m.; closed committee deliberations, 1:45 p.m. to 2:45 p.m.; open public hearing, 2:45 p.m. to 3:45 p.m., unless public participation does not last that long; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 24, 1994, and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Molecular Immunology of the Division of Cellular and Gene Therapies, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 9, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5946 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Low Income Levels for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used by the Public Health Service for grants and cooperative

agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program, section 740 (previously section 787), the Program of Financial Assistance for Disadvantaged Health Professions Students, section 740(a)(2)(F) (previously section 787(b)), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, section 827. Loans to Disadvantaged Students, section 724 (previously section 740(c)), Scholarships for Health Professions Students from Disadvantaged Backgrounds, section 737 (previously section 760), Disadvantaged Health Professions Faculty Loan Repayment and Fellowships Program, section 738 (previously section 761) were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101-527) and are also using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 740

This program awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Section 740(a)(2)(F)

This program awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education. The provision of these scholarships shall be subject to section 795 relating to residency training and practice in primary health care.

Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, Section 827

This program awards grants to public and nonprofit private schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 724

This program makes awards to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students from Disadvantaged Backgrounds, Section 737

This program awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment and Fellowship Program, Section 738

This program awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology. Section 738(a) allows loan repayment only for an individual who has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for repayment contract (ie., "new" faculty).

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1993.

Size of parents family [1]	Income level [2]
1	$9,700
2	12,600
3	15,000
4	19,200
5	22,600
6 or more	25,400

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1993.

Dated: March 9, 1994.

Ciro V. Sumaya, M.D., M.P.H.T.M.,

Administrator.

[FR Doc. 94-5947 Filed 5-14-94; 8:45 am]

BILLING CODE 4160-15-P-M

[RIN-0905-ZA15; PN 2176]

Rural Health Outreach Grant Program

AGENCY: Health Resources and Services Administration (PHS).

ACTION: Notice of Availability of Funds for Minority Community Health Coalition Development and Implementation of HIV/AIDS Centered Education/Prevention Demonstration Grant Project.

SUMMARY: The Office of Minority Health (OMH), Office of the Assistant Secretary for Health (OASH), and the Office of Rural Health Policy (ORHP), Health Resources and Services Administration (HRSA), announce the availability of funds for Fiscal Year 1994 to support rural Minority Community Health Coalition demonstration (MCHC) project grants for a period not to exceed three years. Given the nature of some of the activities conducted separately under the auspices of one Office or the other, the Offices are committed to jointly supporting activities whose underlying missions are similar. Therefore, the MCHC Project is designed to be a component of the existing Rural Health Outreach Grant Program.

The MCHC grant projects are designed to provide limited resources to plan and develop five rural minority community health coalitions. The purpose of these coalitions will be to develop strategies to implement an integrated HIV/AIDS-centered plan addressing HIV and related health problems associated with risk behaviors underlying HIV transmission. In addition, interventions

for other health-related areas (such as hypertension, obesity, cancer, diabetes) which have particular impact on minority populations are also strongly encouraged.

Awards will be made to five applicants from OMH funds authorized under section 1707 of the Public Health Service Act as amended by the Disadvantaged Minority Health Improvement Act of 1990, and transferred to the Office of Rural Health Policy. The Rural Health Outreach grants are authorized under section 301 of the Public Health Service Act. (See **Federal Register** published November 30, 1993, at 58 FR 63173.)

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Minority Community Health Coalition Development and Implementation of HIV/AIDS Centered Education/Prevention Demonstration Grant Project (MCHC Project) is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Funds Available

Approximately $510,000 is available for the development and implementation of the MCHC Project through a joint effort between ORHP, in HRSA, and OMH, in OASH. Awards will be made to five grantees, at $102,000 each, including indirect costs, for one year. Applicants may propose project periods for up to three years. However, applicants are advised that continued funding beyond Fiscal Year 1994 is subject to appropriation of funds and an acceptable level of performance.

Addresses/Contacts

Application kits may be obtained from Ms. Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, East-West Building, 4350 East-West Highway, 11th Floor, Rockville, Maryland 20857, (301) 594–4260. Application kits contain guidelines which outline program requirements indicated in the authorizing legislation. Applicants may contact Ms. McCarthy for assistance on business management issues. Completed applications must be submitted to Ms. McCarthy.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0189) have been approved by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information regarding this announcement should be directed to Ms. Arlene Granderson, Office of Rural Health Policy, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

Due Date: Applications for the program must be received by the close of business on April 30, 1994. Applications will be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

Eligible Applicants

All public and private entities, both nonprofit and for-profit, may participate as members of a minority community health coalition. The grant recipient must be a nonprofit or public entity which meets one of three geographic requirements and the other requirements noted below:

Geographic Requirements

(1) The applicant is located outside of a Metropolitan Statistical Area as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within a Metropolitan Statistical Area will be included with the application kit; or

(2) The applicant is located in a rural census tract of one of the counties listed in Appendix I of this notice. Although each of these counties is a Metropolitan Statistical Area, or part of one, large parts of the counties are rural. Organizations located in these rural areas are eligible for the program. Rural portions of these counties have been identified by census tract since this is the only way we have found to clearly differentiate them from urban areas in the large counties. Appendix I provides a list of these census tracts for each county. Appendix II includes the telephone numbers for regional offices of the Census Bureau. Applicants may call these offices to determine the census tract in which they are located; or

(3) The applicant is an organization that is constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under section 329 of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of their administrative headquarters; and

Other

(1) The applicant is located in a State; and

(2) The applicant is a community-based organization that has a board of directors or governing body that is composed of more than 50 percent minorities.

SUPPLEMENTARY INFORMATION: The OMH and the ORHP are committed to activities targeted toward: improving the health status of rural minority populations; and improving the knowledge base and cultural competence of health providers, governmental entities and community-based organizations regarding the specific health concerns of these racial/ethnic minority populations. These concerns range from availability of and access to appropriate health care and social service—to the provision of education and service in health promotion and disease prevention—to the issues of education, identification, and treatment of contemporary diseases, such as AIDS and HIV infection. The two offices have mutual concerns for enhancing:

(a) The dissemination of information regarding the health of rural minority populations;

(b) The exchange of dialogue between rural minority populations and appropriate groups;

(c) Policy makers' awareness and understanding of the unique problems of rural minority populations; and

(d) The development of local, culturally appropriate strategies for improving the delivery of health and social services to rural minority populations.

Background

In Fiscal Year 1988, HIV infection and AIDS were recognized as an important public health problem in minority populations. The term "HIV infection" more appropriately describes the entire scope of this public health problem than the term "AIDS." HIV infection, especially in minority communities, does not occur as an isolated problem. It is intimately linked to many other health problems such as: Tuberculosis, substance abuse and sexually

transmitted diseases like syphilis and Hepatitis B.

Because health promotion/risk reduction programs require influencing behavior which frequently is resistant to change, it is crucial that the methods used be sound and acceptable to the target population. Successful programs recognize that the health information/media approach alone is insufficient to motivate, effect, and sustain the desired change in either individual or group behavior. Moreover, even when additional educational interventions (e.g. counseling, workshops) are conducted, conventional health promotion activities are often ineffective in reaching minority populations; too often such programs disregard ethnic/cultural health beliefs and practices, or community norms which could contribute to or otherwise affect risk factors leading to illness.

The era of HIV or HIV/AIDS has seen the creation of a number of community-based organizations dedicated to the work of preventing HIV infection by providing the community with prevention information. These grassroots organizations have developed skills which can be transferred to other health prevention activities. This demonstration grant activity will allow small community-based organizations to come together to provide culturally relevant, integrated comprehensive health prevention information focusing on AIDS, but touching all areas which impact on HIV/AIDS. There is an urgent need for developing these organizations in rural areas of the country where HIV/AIDS and related illnesses are not adequately addressed in minority populations.

The MCHC project is based on the hypothesis that the community coalition approach to risk reduction can be effective in reaching minority target populations—even those most at risk or especially hard to reach. Among the merits of using coalitions is the likelihood that (1) the intervention will be culturally sensitive and credible to the target group, (2) the project will address the health problem(s) within the context of related socioeconomic issues, and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. Therefore, the OMH and the ORHP are continuing, through this announcement, to promote the development and implementation of health promotion/disease risk reduction projects which will utilize community coalitions in rural areas of the country.

Definitions

For purposes of the MCHC grant project, the following definitions are provided:

(1) Minority Community Coalition

The governing board of a minority community coalition consists of at least 60 percent representation from minority community-based organizations.

(2) Community Coalition

The coming together of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

- Requires resource participation. Each member organization brings certain resources (e.g., money, space, staff) to the coalition to enable the coalition to accomplish its mission.
- Requires that each member organization has a specific role within the coalition.
- Requires that each member organization establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship). These relationships must be formalized through the development of memoranda of understanding/agreement between each member organization and the coalition, and between members as necessary, in order to make the specified roles explicit.
- Requires a long-term commitment on the part of each member organization to participate, at a minimum, over the life of the funded project. We encourage coalitions to demonstrate a commitment to work together beyond the period for funding available under this announcement.
- Must document its activities to ensure a written history of and a continuity to its work.
- The coalition is not dependent solely upon the active participation of any particular member organization.

(3) Minority Community-Based Organization

A public or private, non-profit or for-profit organization which has a governing board composed of more than 50 percent racial/ethnic minority members, has a significant number of minorities in key program positions, and has an established record of service to a racial and ethnic minority community or communities. It may be a local affiliate of a national organization which has a national governing board composed of more than 50 percent racial/ethnic minority members, has a significant number of minorities in key program positions, and has an established record of service to racial and ethnic minority communities.

(4) Minority Institution

A public or private, non-profit or for-profit institution which focuses predominantly on addressing the needs of racial/ethnic minority populations. Such institutions may include minority churches, Historically Black Colleges and Universities (HBCUs), Indian Tribal Colleges, and educational institutions that have an Hispanic enrollment of 25 percent or more.

(5) Community

A defined geographical area in which persons live, work, and recreate, characterized by: (a) Formal and informal communication channels; (b) formal and informal leadership structures for the purpose of maintaining order and improving conditions; and (c) its capacity to serve as a focal point for addressing societal needs, including health needs. A community should be an appropriate catchment area in which to address a population's social and health needs.

(6) Target Population

The population for whom the proposed project is directed. It can be described as a specific racial/ethnic population in a defined area for whom the interventions are planned, based on an assessment of their health risks and needs.

(7) Risk Factors

The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyle and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include, for example, tobacco use, poor dietary habits, obesity, sedentary lifestyle, severe emotional stress, depression, conflict resolution behaviors, abuse of alcohol or drugs, intravenous drug use, late or no prenatal care, teen pregnancy, high risk sexual practices (e.g., unprotected intercourse with HIV infected persons), no or inadequate access to health care, and environmental and occupational hazards.

(8) Intervention

The process of carrying out an action(s) so as to alter or modify the condition or outcome. Risk reduction interventions, for purposes of this project, typically include a set of planned activities designed to change behavior so as to reduce the likelihood that a preventable health problem will occur or progress further.

(9) Minority Populations

As defined by the "Report of the Secretary's Task Force on Black and Minority Health," they include: Asians and Pacific Islanders; Blacks; Hispanics; and Native Americans/Alaska Natives (including Native Hawaiians).

(10) State

State means, in addition to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, and the Federated States of Micronesia.

Awards, in General

Funding decisions will be based on the recommendations or ratings of objective review panels. In addition, efforts will be made to achieve geographic and minority distribution as well as cover the various health problems identified.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—# 0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Preparation of the Application

Applicants should complete the application Form PHS–5161–1 for support for the Minority Community Health Coalition Development and Implementation of HIV/AIDS Centered Education/Prevention Demonstration Grant Project. Applicants should pay particular attention to the general and supplemental instructions provided in the application kit to ensure that their applications are responsive. In the program narrative section, applicants should pay particular attention to the issues described below under "Review Criteria." Applicants should not request Federal funds that exceed the stipulated limit of $102,000 for the MCHC Project (including indirect costs). The narrative of the application must not exceed 20 pages. Applicants *must* submit an original and two copies of their complete application to the Office of Grants Management as directed earlier.

Application Review Process

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to this notice, or nonconforming, will be returned. Applications judged to be complete, responsive, and conforming, will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by Federal and non-federal reviewers chosen for their technical expertise in the health and human services area, their experience with similar projects, and their understanding and special knowledge of the problems confronting the target populations addressed by the proposals.

Minority Community Health Coalition Development Project

Purpose: This project is designed to provide limited resources to plan and develop a minority community health coalition to address the specific health education services needed by a defined population in a specified community. These grants are intended to provide support for:

(1) Developing a formal coalition of community-based organizations that will address minority-targeted health education and prevention strategies which will help eliminate or reduce risk for acquiring or transmitting HIV and other related health problems that are acquired and/or transmitted or associated with similar risk behaviors. These include tuberculosis (TB), substance abuse and sexually transmitted diseases (STDs) and Hepatitis B and other health issues important to the target population (e.g., obesity and nutrition, asthma control, and management of diabetes); or

(2) Enabling an existing community coalition to modify and implement its organizational structure, purpose, policies, or practices to demonstrate an effective and efficient way of addressing the minority-targeted health education and prevention strategies which will help eliminate or reduce risk for acquiring or transmitting HIV and other related health problems that are acquired and/or transmitted or associated with similar risk behaviors. These include tuberculosis, substance abuse and sexually transmitted diseases and Hepatitis B and other health issues important to the target population (e.g., obesity and nutrition, asthma control, and management of diabetes).

Review Criteria

Applications will be reviewed and evaluated for the ability of the applicant to meet the following criteria. An indication of the quantitative weight appears in parentheses after each heading.

Project Objectives: (25 Points)

- Description of and justification for the choice of the target population and the targeted community's health education/prevention services needs and problems.
- Demonstration of ties with and credibility with the target population as evidenced by previous service to that population.
- Consistency of the coalition's developmental goals and objectives with those of the MCHC Project and the extent to which such goals and objectives are measurable.
- Description and justification of why the proposed coalition is the appropriate strategy to address the community's needs and circumstances.

Operation Plan: (30 Points)

- Description and justification of the process for effective development of a new coalition or modification of an existing coalition.
- Coherence, feasibility, and realistic approach of the time-based action plan that sets out project goals, objectives, and milestones.
- Feasibility and adequacy of plans to involve the target population in carrying out the project.

• Description of the health education and prevention strategies for integrated HIV/AIDS Centered Education/ Prevention Plan.

Project Management and Staffing: (15 Points)

• Description and justification of budget support requested, the coalition's organizational structure and board composition, and the management/staffing plan delineating the roles and responsibilities of each proposed coalition member.

• Appropriateness of relevant experience and qualifications of the applicant to function as the lead entity in developing the coalition and the experience and qualifications of the proposed project director and other key project personnel.

• Appropriateness of relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant.

Resources: (15 Points)

• Adequacy of the description of the proposed community coalition, documentation of endorsement by proposed coalition members and other organizations serving the target population, and degree of commitment of each proposed member to developing the coalition, including the amount or extent of support to be provided.

• Degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and proposed intervention(s).

• Applicant's potential to develop financial support for continuing the project.

• Applicant should demonstrate linkages with units of State, county, local health departments, Ryan White-funded consortia in its catchment area, and the private sector.

Evaluation: (15 Points)

• Adequacy of the applicant's evaluation plan for evaluating the project, including a description of the process and outcome indicators which will be used to determine whether the project's objectives are met.

Use of Grant Funds

Funds up to $100,000 per year, including indirect costs, may be requested to cover the cost of personnel to coordinate the coalition's activities; consultants; support services; materials; and justified domestic travel. The grantee must allocate sufficient travel funds to allow the Project Director to meet with Federal Project Officers, in Washington, D.C. twice annually. Funds must also be allocated to travel to meet with Federal Project Officers in Washington, within 60 days of the Notice of Grant Award. Funds must be budgeted for staff development training for coalition building. Funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project. Grant funds may not be used for sectarian instruction and other religious purposes.

Terms and Conditions of Support

A schedule of reporting requirements will be provided upon award.

Executive Order 12372 (Intergovernmental Review)

Executive Order 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each State. All SPOC recommendations should be submitted to Ms. Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, East-West Building, 11th Floor, 4350 East-West Highway, Rockville, MD 20857, (301) 594–4260. SPOCs will have 60 days to provide comments and must be received by seventy days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernment Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

The OMB Catalog of Federal Domestic Assistance Number for this Program is 93.912.

Dated: January 7, 1994.

William A. Robinson,

Acting Administrator.

Appendix I

* Census tract numbers are shown below each county name.

State/County/Tract Number

Alabama
Baldwin
0101
0102
0106
0110
0114
0115
0116
Mobile
0059
0062
0066
0072.02
Tuscaloosa
0107
Arizona
Maricopa
0101
0405.02
0507
0611
0822.02
5228
7233
Pima
0044.05
0048
0049
California
Butte
0024
0025
0026
0027
0028
0029
0030
0031
0032
0033
0034
0035
0036
El Dorado
0301.01
0301.02
0302
0303
0304.01
0304.02
0305.01
0305.02
0305.03
0306
0310
0311
0312
0313
0314
0315
Fresno
0040
0063
0064.01
0064.03
0065
0066
0067
0068
0071
0072
0073
0074
0077
0078

0079
0080
0081
0082
0083
0084.01
0084.02

Kern

0033.01
0033.02
0034
0035
0036
0037
0040
0041
0042
0043
0044
0045
0046
0047
0048
0049
0050
0051.01
0052
0053
0054
0055.01
0055.02
0056
0057
0058
0059
0060
0061
0063

Los Angeles

5990
5991
9001
9002
9004
9012.02
9100
9101
9108.02
9109
9110
9200.01
9201
9202
9203.03
9301

Monterey

0109
0112
0113
0114.01
0114.02
0115

Placer

0201.01
0201.02
0202
0203
0204
0216
0217
0219
0220

Riverside

0421
0427.02
0427.03
0429
0430
0431
0432
0444
0452.02
0453
0454
0455
0456.01
0456.02
0457.01
0457.02
0458
0459
0460
0461
0462

San Bernardino

0089.01
0089.02
0090.01
0090.02
0091.01
0091.02
0093
0094
0095
0096.01
0096.02
0096.03
0097.01
0097.03
0097.04
0098
0099
0100.01
0100.02
0102.01
0102.02
0103
0104.01
0104.02
0104.03
0105
0106
0107

San Diego

0189.01
0189.02
0190
0191.01
0208
0209.01
0209.02
0210
0212.01
0212.02
0213

San Joaquin

0040
0044
0045
0052.01
0052.02
0053.02
0053.03
0053.04
0054
0055

Santa Barbara

0018
0019.03

Santa Clara

5117.04
5118
5125.01
5127

Shasta

0126
0127
1504

Sonoma

1506.04
1537.01
1541
1542
1543

Stanislaus

0001
0002.01
0032
0033
0034
0035
0036.05
0037
0038
0039.01
0039.02

Tulare

0002
0003
0004
0005
0006
0007
0026
0028
0040
0043
0044

Ventura

0001
0002
0046
0075.01

Colorado

Adams

0084
0085.13
0087.01

El Paso

0038
0039.01
0046

Larimer

0014
0017.02
0019.02
0020.01
0022

Pueblo

0028.04
0032
0034

Weld

0019.02
0020
0024

0025.01
0025.02

Florida

Collier

0111
0112
0113
0114

Dade

0115

Marion

0002
0004
0005
0027

Osceola

0401.01
0401.02
0402.01
0402.02
0403.01
0403.02
0404
0405.01
0405.02
0405.03
0405.05
0406

Palm Beach

0079.01
0079.02
0080.01
0080.02
0081.01
0081.02
0082.01
0082.02
0082.03
0083.01
0083.02

Polk

0125
0126
0127
0142
0143
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0157
0158
0159
0160
0161

Kansas

Butler

0201
0203
0204
0205
0209

Louisiana

Rapides

0106
0135
0136

Terrebonne

0122
0123

Minnesota

St. Louis

0105
0112
0113
0114
0121
0122
0123
0124
0125
0126
0127
0128
0129
0130
0131
0132
0133
0134
0135
0137.01
0137.02
0138
0139
0141
0151
0152
0153
0154
0155

Stearns

0103
0105
0106
0107
0108
0109
0110
0111

Montana

Cascade

0105

Yellowstone

0015
0016
0019

Nevada

Clark

0057
0058
0059

Washoe

0031.04
0032
0033.01
0033.02
0033.03
0033.04
0034

New Mexico

Dona Ana

0014
0019

Santa Fe

0101
0102
0103.01

New York

Herkimer

0101
0105.02
0107
0108
0109
0110.01
0110.02
0111
0112
0113.01

North Dakota

Burleigh

0114
0115

Grand Forks

0114
0115
0116
0118

Morton

0205

Oklahoma

Osage

0103
0104
0105
0106
0107
0108

Oregon

Clackamas

0235
0236
0239
0240
0241
0243

Jackson

0024
0027

Lane

0001
0005
0007.01
0007.02
0008
0013
0014
0015
0016

Pennsylvania

Lycoming

0101
0102

South Dakota

Pennington

0116
0117

Texas

Bexar

1720

1821
1916

Brazoria

0606
0609
0610
0611
0612
0613
0614
0615
0616
0617
0618
0619
0620.01
0620.02
0621
0622
0623
0624
0625.01
0625.02
0625.03
0626.01
0626.02
0627
0628
0629
0630
0631
0632

Harris

0354
0544
0546

Hidalgo

0223
0224
0225
0226
0227
0228
0230
0231
0243

Washington

Benton

0116
0117
0118
0119
0120

Franklin

0208

King

0327
0328
0330
0331

Snohomish

0532
0536
0537
0538

Spokane

0101
0102
0103.01
0103.02
0133
0138
0143

Whatcom

0110

Yakima

0018
0019
0020
0021
0022
0023
0024
0025
0026

Wisconsin

Douglas

0303

Marathon

0017
0018
0020
0021
0022
0023

Wyoming

Laramie

0016
0017
0018

Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA 404–730–3957
  Alabama, Florida, Georgia
Boston, MA 617–565–7078
  Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC 704–344–6144
  Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL 708–409–4617
  Illinois, Indiana, Wisconsin
Dallas, TX 214–767–7105
  Louisiana, Mississippi, Texas
Denver, CO 303–969–7750
  Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI 313–354–4654
  Michigan, Ohio, West Virginia
Kansas City, KS 913–236–3711
  Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA 818–904–6339
  California
New York, NY 212–264–4730
  Brooklyn, Bronx, Manhattan, Queens, Staten Island, Nassau Co., Orange Co., Suffolk Co., Rockland Co., Westchester Co.
Philadelphia, PA 215–597–8313
  Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA 206–728–5314
  Idaho, Montana, Nevada, Oregon, Washington

[FR Doc. 94–5948 Filed 3–14–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–94–3732; FR–3679–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge. Three committees were established by the Task Force members; (1) Finance Committee; (2) Liability Committee; and (3) Implementation Committee. The members of these committees are members of the Task Force.

DATES: The committees will be meeting on April 4, 1994—Finance Committee (9 to 5:15), April 5, 1994—Implementation Committee (9 a.m. to 5:15 p.m.), and April 6—Liability Committee (9 a.m. to 5:15 p.m.), (EST), at the Capital Hilton Hotel, 16th & "K" Street NW., Washington, DC 20036, telephone number (202) 393–1000.

ADDRESSES: Members of the public are invited to provide written material to: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW, room B–133, Washington, DC 20410. The

Task Force encourages submission of materials.

FOR FURTHER INFORMATION CONTACT: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW, room B–133, Washington, DC 20410; telephone (202) 755–1805. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The last full Task Force meetings were held on February 9th & 10th, 1994 in Washington, DC. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: March 3, 1994.

Ronald J. Morony,

Deputy Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–5754 Filed 3–14–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A–060–04–4350–08]

Intent To Prepare Northern and Eastern Colorado Desert Coordinated Management Plan, To Amend the California Desert Plan, and To Analyze Impacts in an Environmental Impact Statement (EIS); Invitation To Participate in the Identification of Issues

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Amended notice of intent.

SUMMARY: Amended notice is hereby given that the Bureau of Land Management (BLM), in cooperation with the U.S. Fish and Wildlife Service (FWS), the California Department of Fish and Game (DFG), and Joshua Tree National Monument (JTNM), will develop a comprehensive land use plan and environmental impact statement (EIS) for federal public lands in California's Northern and Eastern Colorado Desert.

AREA: Portions of California counties of Imperial, Riverside, and San Bernardino.

The plan will identify measures to implement the recovery tasks called for by the FWS in its "Recovery Plan for the Desert Tortoise (Mojave Population)", and address the needs of other significant and special status plants and wildlife. The plan will amend BLM's California Desert Conservation Area Plan of 1980.

The plan and EIS for the Eastern Colorado Desert, the original target area, has been expanded for efficiency to include the Northern Colorado Desert and the cooperating agencies. The original Notice of Intent, published on January 4, 1993, is hereby amended.

DATES: BLM is seeking the involment of interested publics, organizations and other local, state and federal agencies in the identification of issues that should be addressed in the plan and EIS. Written comments should be received or post-marked by [30 days after publication] to allow for compilation into a report on issues assessment.

A new series of public workshops has been scheduled as follows:

March 29, 1994, 7–9 p.m.
Blythe City Council Chambers, 220 N. Spring St., Blythe, CA

March 30, 1994, 7–9 p.m.
Needles City Council Chambers, 1111 Bailey Ave., Needles, CA

March 31, 1994, 7–9 p.m.
Imperial Irrigation District Auditorium, 1285 Broadway, El Centro, CA

April 5, 1994, 7–9 p.m.
BLM Yuma District Office, 3150 Winsor Ave., Yuma, AZ

April 6, 1994, 7–9 p.m.
BLM Palm Springs Office, 63–500 Garnet Ave., Palm Springs, CA

April 7, 1994, 7–9 p.m.
Park Headquarters Conference Room, Joshua Tree National Monument, 54485 National Monument Dr., Twenty-Nine Palms, CA

With the reinitiation of this plan all comments received during the last year from previous public meetings and by letter will still be considered and need not be resubmitted.

ADDRESSES: Send written comments to Team Leader, Northern & Eastern Colorado Desert Coordinated Management Plan, Bureau of Land Management, 6221 Box Springs Blvd. Riverside, CA 92507.

FOR ADDITIONAL FURTHER INFORMATION CONTACT: Richard E. Crowe, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507, (909) 697–5216/5200.

SUPPLEMENTARY INFORMATION: The Desert Tortoise, *Gopherus agassisii*, was listed as a threatened species by the FWS on April 2, 1990, under the federal Endangered Species Act. It is also listed as threatened under the State's endangered species act. Populations have been in decline for a number of years due to human and disease factors. In April, 1993, the FWS issued a Draft Recovery Plan for the Desert Tortoise (Mojave Population). This document requires that federal land managing jurisdictions prepare and implement plans for the recovery and delisting of the Mojave populations of Desert Tortoise. Three of the target Desert Wildlife Management Areas—the Chuckwalla Bench, Joshua Tree (in part), and Chemehuevi—are in the Northern and Eastern Colorado Desert Recovery Units in California. One or another of them are common to BLM, JTNM and also the Chocolate Mountains Gunnery Range, administered by the U.S. Marine Corps Air Station, Yuma. A request is being made to the U.S. Marine Corps for that agency to become a cooperating member of the project.

The boundary for the planning area, which is about 5.5 million acres in size, is described as follows: I–40 Freeway to the north, the boundary of the California Desert Conservation Area to the east, the north edge of the Imperia Sand Dunes to the south, and the eastern boundary of the West Mojave Coordinated Management Plan to the west.

The two tortoise recovery units are very large in area, overlaying private and public lands managed by many jurisdictions. Recovery has many implications for use and management of the desert by the public and agencies. Therefore, this plan will be an ecosystem management plan. The goal is that it be comprehensive enough to satisfy the goal of the Recovery Plan, to meet the needs of agencies' resource management programs, and to preclude the need for further major land use plans and additional listings of species under the ESA.

At the heart of managing desert resources (both their uses and protection), including tortoise populations, is the management of access for vehicles. Therefore, the designation of vehicle routes as open, closed and limited will become an important element of this plan. Comments from the public and government agencies on specific routes of travel will be accepted throughout the period of development of the draft and final plan and EIS, scheduled to end in December, 1995.

Dated. March 9, 1994

Henri R. Bisson,

District Manager.

[FR Doc. 94–6072 Filed 3–14–94; 8:45 am]

BILLING CODE 4310–40–M

[NM–920–02–4120–02]

San Juan River Regional Coal Team (RCT) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT meeting.

SUMMARY: The San Juan RCT will meet to discuss current activities on Federal coal lands in New Mexico and southwest Colorado and to consider future development plans for Federal coal in the region. The public is invited to attend.

1. The primary purposes of the meeting are to:

1. Discuss renewal of the RCT charter and possible changes;

2. Discuss Indian voting RCT membership; and

3. Inform the RCT on the status of coal Preference Right Lease Applications (PRLA's).

DATES: The RCT will meet at 9 a.m. on Tuesday, April 12, 1994.

ADDRESSES: The meeting will be held in the Stagecoach Room of the Iron Horse Inn, 5800 North Main, Durango, Colorado.

FOR FURTHER INFORMATION CONTACT: Jim Olsen at the Bureau of Land Management, New Mexico State Office, Branch of Solid and Fluid Minerals (92113), P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7455.

SUPPLEMENTARY INFORMATION: At this meeting, the RCT will discuss renewal of the RCT Charter, which will expire on October 5, 1994, whether the requirement for annual meetings should be modified, and Indian voting membership on the RCT.

The BLM will report on the status of the outstanding coal PRLA's in New Mexico, in particular, actions leading to termination of those PRLA's. The RCT will consider information obtained from the public in making decisions at this meeting. Anyone who wishes to be scheduled to speak at the meeting or bring up additional topics for discussion should provide written copies of their remarks or suggestions to Jim Olsen, Bureau of Land Management, at the above address by Friday, April 1, 1994. Written materials will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Annual BLM Coal Market/Industry Interest Assessment
4. Current Activity and Production on Existing Leases
   a. New Mexico
   b. Colorado
5. Status of Coal Actions in New Mexico
6. Indian Voting Representation on the RCT
7. Indian Coal Issues
8. RCT History
9. RCT Chapter Renewal
10. Public Comment
11. Scheduling of Next Meeting
12. Adjourn

Dated: March 8, 1994.

Frank Splendoria,

Acting Chairman, San Juan River Regional Coal Team.

[FR Doc. 94–5938 Filed 3–14–94; 8:45 am]

BILLING CODE 4310–FB–M

[CA–010–01–4210–05; CA 28617; 4–00160–GP4–010–06]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Kern County, California have been examined and found suitable for classification for lease to the Kern County Sheriff's Search and Rescue under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

All that land located in section 7 encompassing a portion of Lots 7 and 10, and a portion of NW¼NW¼NE¼NW¼, Township 27 South, Range 33 East, M.D.M., Kern County, California, described as follows:

Beginning at the BLM BC marked for the West 1/16 corner of sections 6 and 7 of said Township 27 South, said BLM BC also being the Point of Beginning, thence the following nine courses:

1. North 89°41'00" East along the North line of said Section 7 39.33 feet;
2. South 03°05'49" East 193.16 feet;
3. South 73°47'28" West 215.26 feet;
4. South 70°08'42" West 48.36 feet;
5. South 53°39'35" West 60.09 feet;
6. South 49°07'04" West 92.21 feet;
7. North 01°02'08" West 32.75 feet to a BLM BC property corner;
8. Continuing North 01°02'08" West 330.63 feet to the North line of said section 7 and a BLM BC;
9. North 89°41'00" East 327.12 feet to the Point of Beginning.

Kern County, California

Containing Approximately 2.18 acres a portion of AP #348–060–03

The Kern County Sheriff's Search and Rescue organization proposes to use the lands for storage of equipment and vehicles used in search and rescue operations, to include building enclosures, and parking and maintenance areas. The site provides a central location for quick response to emergency situations.

The lands are not needed for Federal purposes at the present time. Lease is consistent with current BLM land use planning and would be in the public interest. The land is currently withdrawn for Power Project 382 and Power Site Reservation 655. The Federal Energy Regulatory Commission has no objection to the lease of public land subject to condition #1 below.

The lease, when issued, will be subject to the following terms, conditions, and reservations:

1. That the United States, its permittees, lessees, and licensees, shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any land, crops, facility installed or erected, income, or other property or investments resulting from the use of such lands, or portions thereof, for hydroelectric development at any time where such hydroelectric development is made by or under the authority of the United States. Furthermore, in the event the reserved lands are required for hydroelectric

development, any structures or improvements placed thereon found to interfere with such development shall be removed or relocated as necessary to eliminate such interference at no cost to the United States, its permittees, or licensees.

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. A right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30,1890 (26 Stat. 391; 43 U.S.C. 945).

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

5. All valid existing rights documented on the official public land records at the time of lease issuance.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Caliente Resource Area, 4301 Rosedale Highway, Bakersfield, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Proposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, until April 29, 1994, interested persons may submit comments regarding the proposed lease or classification of the lands to the Area Manger, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, CA 93308.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a vehicle and equipment storage facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a vehicle and equipment storage facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 8, 1994.

Stephen F. Larson,

Acting Caliente Resource Area Manager.

[FR Doc. 94–4179 Filed 3–14–94; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; N–58520; formerly N–53989]

Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, NV.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 and section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 33: NE¼NE¼, N½SE¼NE¼, E½NW¼NE¼.
containing 83.730 acres, more or less.

This parcel of land, situated in Henderson is being offered as a direct sale to the City of Henderson.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

2. Those rights for slope easement purposes which have been granted to the City of Henderson by Permit No. N–54101 under the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: March 3, 1994.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 94–5911 Filed 3–14–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR–120–04–6332–01; GP4–089; 1–00151]

Occupancy and Camping Stay Limit; Coos Bay District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of occupancy and camping stay limit for campgrounds and undeveloped public lands administered by the Coos Bay District, OR.

SUMMARY: This occupancy and camping stay limit applies to designated campgrounds and to undeveloped Bureau of Land Management administered public lands within the Coos Bay District, Oregon, that are not

closed to camping or regulated under different stay limitations as a result of a separate **Federal Register** Notice. Persons may camp or occupy any specific location on these public lands for a period of not more than 14-days within any period of 28 consecutive days. The 28-day period will begin when a person initially occupies a specific location on public land. The 14-day limit may be reached through a number of separate visits or through 14 days of continuous occupation during the 28-day period. After the 14-day stay limit is reached, occupants must move with all of their personal possessions and cannot camp on BLM-administered lands within a 10-mile radius of the previous location.

For purposes of this notice, camping is defined as the erection and use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, mooring a vessel, or parking a vehicle or trailer for the apparent purpose of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or leaving property at a location.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis Turowski, Outdoor Recreation Planner, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459, (503) 756–0100.

SUPPLEMENTARY INFORMATION: This occupancy and camping stay limit is being established to provide consistency and uniformity for the camping public on Bureau of Land Management-administered lands in the Coos Bay District, Oregon, and to assist the Bureau in: preventing persons from camping for excessively long periods, thereby denying recreation opportunities to others; preventing or reducing the incidence of unauthorized, long-term occupancy of public lands under the guise of camping; and minimizing unacceptable sanitary conditions and other resource impacts.

Authority for this stay limit is contained in CFR Title 43, Chapter II part 8360, subparts 8364.1 and 8365.1–2(a). Violations of the supplementary rules under authority of 43 CFR 8365.1–2 are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: February 15, 1994.

M. Lee Douthit,

Acting District Manager, Coos Bay.

[FR Doc. 94–4305 Filed 3–14–94; 8:45 am]

BILLING CODE 4310-33-P

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier; Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (9189). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–20469, filed February 25, 1994. FRANCIS A. TEDESCO AND MARK TEDESCO—CONTROL—COMMUTER BUS LINE, INC. AND ACADEMY BUS TOURS, INC. Applicant's representative: David H. Radcliff, 2216 Walnut St., Harrisburg, PA 17103. Francis A. Tedesco and Mark Tedesco, both noncarrier individuals, are in control of Commuter Bus Line, Inc. (Commuter) (MC–162133), of Hoboken, NJ, and Academy Bus Tours, Inc. (Academy) (MC–215354), of Philadelphia, PA, both motor carriers of passengers. Francis A. Tedesco is president and treasurer of both Commuter and Academy, and Mark Tedesco is secretary of both Academy and Commuter. These individuals owns all the stock of Commuter and will acquire all of the stock of Academy.

MC–F–20470, filed February 25, 1994. ACADEMY BUS TOURS, INC.—PURCHASE—COLONIAL COACH CORP. Applicants' representatives: David H. Radcliff, 2216 Walnut St., Harrisburg, PA 17103, and Edward Ciemnecki, 1 Liberty Pl., 32nd Floor, Philadelphia, PA 19103. Academy Bus Tours, Inc. (Academy) (MC–215354), seeks approval of its purchase of the interstate operating authority of Colonial Coach Corp. (Colonial) in Certificate No. MC–39491, issued October 10, 1978. This certificate authorizes the transportation of passengers, over regular and irregular routes.

As part of this transaction, Academy is acquiring all of Colonial's intrastate authority issued by Pennsylvania Public Utility Commission in docket A–94605. Transfer of the intrastate authority is effected pursuant to 49 U.S.C. 11341(a).

Approval for common control of Academy and Commuter Bus Line, Inc. (MC–162133) by noncarrier individuals Francis A. Tedesco and Mark Tedesco was concurrently filed and docketed as MC–F–20469.

Temporary authority under 49 U.S.C. 11349 was granted March 7, 1994.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5965 Filed 3–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–57 (Sub-No. 35X)]

Soo Line Railroad Co.—Abandonment Exemption—in Dakota County, MN

The Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon service on 4.1 miles of Mendota Heights Line between milepost 160.84 and milepost 164.92 at Mendota Heights, Dakota County, MN.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 14, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 25, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 4, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Larry D. Starns, Esq., 1000 Soo Line Bldg., 150 S. 5th St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Soo has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 18, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5964 Filed 3–14–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94018]

NASA Advisory Council; Reorganization of the NASA Advisory Council and Related Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of reorganization of the NASA Advisory Council and related committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92–463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that a reorganization of the committees of the NASA Advisory Council is in the public interest in connection with the performance of duties imposed upon NASA by law. As a result of this reorganization, (1) the NASA Advisory Council History Advisory Committee has been abolished; (2) the NASA–NIH (National Institutes of Health) Advisory Committee on Biomedical and Behavioral Research has been established as a standing committee of the NASA Advisory Council; and (3) the NASA Advisory Council Space Station Advisory Committee has been renamed and rechartered as the Advisory Committee on the International Space Station, also a standing committee of the NASA Advisory Council.

The following committees remain in place:

- NASA Advisory Council.
- Aeronautics Advisory Committee.
- Life and Microgravity Sciences and Applications Advisory Committee.
- Space Science Advisory Committee.
- Minority Business Resource Advisory Committee.
- Technology and Commercialization Advisory Committee.
- Earth System Science and Applications Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Mail Code I, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–0682).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: March 9, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–5903 Filed 3–14–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ENDOWMENT FOR THE ARTS

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #1 Section) to the National Council on the Arts will meet on March 15–16, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 8, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5982 Filed 3–14–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #2 Section) to the National Council on the Arts will meet on March 17–18, 1994, from 9 a.m. to 5:30 p.m. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of title 5, United States Code.

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independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 8, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5981 Filed 3–14–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #3 Section) to the National Council on the Arts will meet on March 24–25, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 8, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5983 Filed 3–14–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by April 14, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Evaluation—User-Friendly Project Evaluation Handbook.

Affected Public: Individuals.

Respondents/Reporting Burden: 5,000 respondents: 30 minutes per response.

Abstract: This survey will be used to evaluate how the "User-Friendly Handbook for Project Evaluation" was used; is it clearly understood; and recommend changes to the Handbook.

Dated: March 9, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–5924 Filed 3–14–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Co., et al.; Perry Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the provisions in the Technical Specifications (TS) to (1) change primary containment pressure and temperature limits, (2) reflect the expected peak pressure in requirements for containment integrated leak rate testing, and (3) change suppression pool and upper containment pool temperature and level limits.

The proposed action is in accordance with the licensee's application for amendment dated June 24, 1992, as supplemented by letter dated September 25, 1992, and application dated November 16, 1992.

The Need for the Proposed Action

The proposed amendment is needed in order to prevent unnecessary plant shutdowns due to high water temperatures in Lake Erie, and to provide additional operational flexibility with respect to suppression pool and upper containment pool water levels.

Environmental Impact of the Proposed Action

The NRC staff has completed its evaluation of the proposed revision to the TS and concludes that the containment temperature and pressure response following a postulated loss-of-coolant accident (LOCA) will remain acceptable after implementation of the proposed changes. The NRC staff also concludes that the containment will continue to meet the requirements for sufficient margin from temperature and pressure limits as described in 10 CFR part 50, appendix A, General Design Criterion 50, "Containment design basis." Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the NRC staff concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission's staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Perry Nuclear Power Plant, Units 1 and 2, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the State of Ohio.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for amendment dated June 24, 1992, as supplemented by letter dated September 25, 1992, and application for amendment dated November 16, 1992, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 8th day of March 1994.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Project—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5973 Filed 3–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, 50–530]

Arizona Public Service Co. (Palo Verde Nuclear Generating Station); Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated February 1, 1994, Thomas J. Saporito, Jr., (Petitioner) has requested that the NRC: (1) Institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke the licensee's operating licenses for Palo Verde Nuclear Generating Station (Palo Verde); (2) initiate "appropriate actions" to cause the licensee to recognize the Buckeye, Arizona Regional Office of the National Whistleblower Center as an agency to which licensee employees may raise safety concerns about operations at Palo Verde without fear of retaliation by the licensee; (3) initiate "appropriate actions" to cause the licensee to encourage employees at Palo Verde to contact the Buckeye, Arizona Regional Office of the National Whistleblower Center to identify safety concerns about operations at the facility as part of its procedural requirements to ensure a working environment which is free of hostility and promotes the raising of safety concerns by employees without fear of retaliation; and (4) initiate "appropriate actions" to cause the licensee to encourage employees at Palo Verde to contact the NRC to identify safety concerns about operations at the facility as part of its procedural requirements to ensure a working environment which is free of hostility and promotes the raising of safety concerns by employees without fear of retaliation.

As grounds for this request, Mr. Saporito asserts that: (1) The NRC has identified Palo Verde as the second highest source of whistleblower complaints in the nation, with 72 of the 621 harassment and intimidation allegations received by the NRC between October 1988 and April 1993 received fro Palo Verde employees; (2) the licensee's "spokesman" for Palo Verde, Mark Fallon, made public comments to the *West Valley View* newspaper which increase the "chilling effect" at the facility by discouraging employees from raising safety concerns to the Buckeye, Arizona Regional Office of the National Whistleblower Center; and (3) Mr. Fallon's comments to the *West Valley View* newspaper increased the existing "chilling effect" at Palo Verde by clearly discouraging employees from raising safety concerns to the NRC.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 8th day of March 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–5972 Filed 3–14–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 942–8800.

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Dissemination Services, Washington, DC 20549.

Extension

Filing Fees Account ID Form, File No. 270–352

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval of extension on the following currently approved form:

The *Filing Fees Account ID Form* is used by the SEC for notification and retrieval of Filing Fees Account information. There are approximately 20,000 potential respondents who will file the Filing Fees Account ID Form annually at an estimated .17 burden hours per response with a total annual burden of 3,400 hours.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Project Number 3235–0398), room 3208, New Executive Building, Washington, DC 20503.

Dated: March 2, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5951 Filed 3–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33740]

EDGAR Filer Conference and Roundtable Discussion

ACTION: Notice of EDGAR Filer Conference and Roundtable Discussions.

SUMMARY: This is to give notice that the Office of Information Technology will conduct an EDGAR Filer Conference and Roundtable Discussions on April 18 and 19, 1994 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m. The conference will be open to the public.

FOR FURTHER INFORMATION CONTACT:
George Pospolita, Office of Information Technology, (202) 942–8846, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

SUPPLEMENTARY INFORMATION: The Office of Information Technology, Securities and Exchange Commission, will present an EDGAR Filer Conference on April 18, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m.

At the conference, the SEC will present an update on the status of the EDGAR project, a discussion of the EDGAR Rules, and a demonstration of the new EDGARLink™ software, which will include support for handling Financial Data Schedules. There is no preregistration for the conference.

On April 19, the Office of Information Technology will present two roundtable discussions at the same location. The subject of the morning discussion, which will begin at 9 a.m., is the Future Prospects for the EDGAR System. The purpose of this discussion is to better understand the filer perspective on the technological evoluation of the EDGAR system.

The subject of the afternoon discussion, which will begin at 1:30 p.m., is EDGAR Information Dissemination Issues. The purpose of this discussion is to enhance the SEC's understanding of the needs of both information disseminators and consumers.

Both roundtable discussions will be organized as panel discussions with audience participation. Members of the public who want to participate on the panels; or, who have suggested topics for discussion; or, who have technical and/or position papers that they would like to place before the panels, should Contact George Pospolita, Office of Information Technology, (202) 942–8846. Any documents placed before the panels will be considered public and copies will be made available upon request.

Dated: March 9, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–5931 Filed 3–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33735; File No. SR–Amex–87–33]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Telephone Access to the Floor

March 8, 1994.

I. Introduction

On December 30, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to allow members to establish direct telephone communications between the floor of the Exchange and non-members located off of floor. The proposal will formalize the Amex's existing telephone policy. The proposed rule change also prohibits Amex members from using a portable telephone on the Exchange floor.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 25287 (January 22, 1988), 53 FR 2555 (January 28, 1988). No comments were received on the proposal. Notice of Amendment No. 1 was published in Securities Exchange Act Release No. 26604 (March 7, 1989) 54 FR 10599 (March 14, 1989). The Commission did not receive any comments to the amendment.

II. Description

The proposed rule change amends Amex rules 220, 221, and 222 concerning communication to the Floor and Floor wire privileges. Amex rule 220 will be amended to provide that no member may establish or maintain any telephonic or electronic communication between the Floor and any other location without the prior written approval of the Exchange. In addition, the proposed rule change adds three commentaries to rule 220 (.01, .02, and .03).

Commentary .01 permits, with the approval of the Exchange, a telephone line to be established by a member or member organization on the Floor to communicate with a non-member located off the Floor. Commentary .01 also prohibits the use of portable telephones or other portable communication devices on the Floor which would facilitate direct voice communication between members and non-members.

Commentary .02 permits a specialist unit, with the approval of the Exchange, to maintain a telephone line at its trading post location to the off-floor offices of the specialist unit; the unit's clearing firm; the floor of another securities, commodities, or options exchange; or the upstairs offices of a member organization. With respect to entering orders, the commentary prohibits the use of such telephones for transmitting to the Floor orders for the purchase or sale of securities, but permits the specialist to enter orders in options, futures, or underlying securities for execution in such other markets, or with a member firm's off-floor offices.[4] Finally, the commentary also permits the specialist to obtain market information through use of the post phone.

Commentary .03 places responsibility upon any member or member organization, which has been granted approval of any means of communication under rule 220, for assuring compliance with all Exchange rules and requirements in connection with any business conducted by means of such electronic or telephonic communication.

The proposed amendments to rule 221 will delete paragraphs (a)(1) and (a)(2) concerning wire connections between a regular members's floor booth and a member not represented on the floor of the Exchange.

The proposed amendment to rule 222 concerning revocation of floor wire privileges deletes the current text of the rule and substitutes language which provides that the Exchange, to the extent not inconsistent with the Act, may deny, limit or revoke approval of any electronic or telephonic communication between the Floor and any other location when it determines[5] that such Communication is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such communication has been or is being used to facilitate any violations of the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] This prohibition is the substance of Amendment No. 1, submitted on November 16, 1988.

[4] Amex rule 175(b) permits a specialist to purchase or sell options on its specialty stock only when such transaction is appropriate to permit the specialist to offset the risk of making a market in the underlying stock. Any such options transaction must be made in accordance with Amex's "Guidelines for Specialists' Stock Options Transactions".

[5] Such action by the Exchange must be in accordance with the procedures set forth in Amex rule 40 ("Denial of Membership") which provides due process procedures on actions by the Exchange which may prohibit or limit a person with respect to access to services offered by the Exchange.

Act, the rules thereunder, or the Exchange Constitution or rules.

III. Discussion

In its filing with the Commission, the Amex stated that the proposed rule change will codify current Exchange policies relating to communications to and from the Floor. These policies, states the Amex, have developed in keeping with the general premise that since transacting business on the floor of an exchange is an essential privilege of exchange membership, communications to and from the Floor should be restricted.

The Commission has reviewed closely the provisions of the proposed Amex rule change. The Commission notes that the substantive provisions of the proposed Amex rule change are very similar to the New York Stock Exchange ("NYSE") telephone access rules previously approved by the Commission.[6] In its June 23 order approving the proposed NYSE rule, the Commission carefully considered the provisions of the proposed rule and the comments and arguments raised in favor of and in opposition to the NYSE rule change. In particular, the Commission carefully considered the issues and arguments concerning the proposal to limit the installation of such telephone links to a member's booth on the floor and the proposed prohibition on the use by members of portable telephones. In the more recent NYSE order, the Commission carefully reviewed the possible effects from permitting specialists to communicate with, and enter orders directly to, a member on the floor of an option or futures exchange. For the same reasons as set forth in the NYSE orders with respect to the aforementioned issues, we now believe the Amex's proposal should be approved.

First, the Commission believes that permitting members to communicate from their floor booths to non-members located off-floor is reasonable and consistent with the Act, and, in particular, with sections 6(b)(5), 6(b)(8), and 11A(a)(1)(C)(ii) of the Act.[7] The Commission believes that this may permit smaller floor broker firms to compete more effectively for order flow and can result in benefits to investors by improving execution of orders.

Second, the Commission continues to believe that prohibiting members' use of portable telephones is reasonable and consistent with the Act. In its proposal the Amex states that portable telephones will enable a non-member to communicate directly with a member in the trading crowd. The Amex is concerned that this could lead to loss of investor confidence because generally larger, more active customers would be granted the privilege of communicating with the crowd. The Commission believes these concerns are valid because the ability of a customer to communicate directly with a broker in a trading crowd could provide time and place advantages to the customer which are unavailable to others. Moreover, the Commission does not believe that a prohibition against the use of portable telephones violates section 6(b)(8) of the Act by imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In summary, although it is a close question, the Commission believes there are valid regulatory reasons for prohibiting the use of portable telephones. Thus, in the Commission's view, the proposed Amex prohibition on the use of portable telephones on the Exchange floor constitutes a reasonable response by the Amex to its regulatory concerns, and therefore is consistent with sections 6(b)(5) and 6(b)(8) of the Act.

Third, the Commission continues to believe it is reasonable to permit specialist units to communicate from the Amex floor with their off-floor office or clearing firm. By allowing such necessary communication links, the Exchange is enabling the specialist units to function more effectively on the Amex floor. This is consistent with section 6(b)(5), in that it will facilitate transactions in securities. Similarly, the Commission believes that the Amex's proposed prohibition against the use of such communication links to transmit to the Amex floor orders for the purchase or sale of securities is reasonable and consistent with the requirements of the Act in view of the specialist unit's integral role in maintaining stability in the market. In particular, the Commission would be concerned that, without this restriction, large customers could be provided with time and place informational advantages that are not available to other public customers. The Commission also notes that such a restriction does not impose an unnecessary or inappropriate competitive burden on specialist units in conflict with the requirements of section 6(b)(8) of the Act.

Finally, the Commission believes that the portion of the proposal allowing a specialist unit to use a telephone linkage at the specialist post to enter orders in operations, futures, or underlying securities through a member on the floor of an options, futures, or other securities exchange is consistent with section 6(b)(5) of the Act. In this regard, the Commission believes that this will facilitate transactions in securities by providing specialists with the ability to hedge their positions more rapidly by enabling them to communicate directly with a member on the floor of the exchange where the order is being placed. Further, it is the Commission's belief that the execution of the hedging order will be more cumbersome and less timely if the specialist is limited to routing such an order through an off-floor office or clearing firm. Moreover, by expanding the available processes by which specialists can transfer the risk of their market making responsibilities, specialists will be better able to fulfill their responsibilities.

Nevertheless, the Commission has always been concerned that transactions from a specialist post ensure a course of fair dealing and not allow abuses such as frontrunning and tape racing due to the specialist's position. In this context, the Commission, in originally approving the use of options by specialists for hedging their speciality stocks, was sensitive to concerns over the potential for specialist frontrunning, tape racing, or other abuses arising from the specialist's informational advantage.[8] The Commission notes that the Amex rule permitting a specialist to enter into options transactions is limited to hedging (i.e., offsetting the risk of making a market in the underlying specialty stock) purposes in that it places restrictions on the size, timing, and purpose of such transactions.[9] In addition, the Commission emphasizes that the proposal being approved does not affect the restrictions currently in place for placing options orders. The proposal only provides a more efficient

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[6] See Securities Exchange Act Release Nos. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988); and 33686 (February 25, 1994).

[7] 15 U.S.C. 78f(b)(5), 78f(b)(8), and 78k–1(a)(1)(C)(ii) (1988). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * to remove impediments to and perfect the mechanism of a free and open market * * * and, in general to protect investors and the public interest * * *." Section 6(b)(8) requires that the rules of an exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Section 11A(a)(1)(C)(ii) states the Congressional finding that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * fair competition among brokers and dealers * * *."

[8] See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708.

[9] See Amex Rule 175 and note 4, *supra*.

means for specialists to relay their hedging orders to options exchanges.[10]

With respect to the entry of futures orders, the Amex is able to conduct surveillance of specialists' futures transactions through information sharing agreements with the futures exchanges.[11] In addition, the Amex has agreed to establish procedures to surveil certain futures activity.[12] The Commission also notes and the Amex has stated, as a practical matter, that the entry of futures orders by specialists, in addition to orders by options specialists in the underlying securities, is generally done for hedging purposes and the Commission believes that any such activity would have to be consistent with the specialist's obligation to maintain a fair and orderly market.

Based on the above, the Commission believes that any increased potential for frontrunning, tape racing, or other abuses by specialists that would be created by the proposed rule change is minimal, due to the restrictions placed on the specialists' options activity and the special surveillance procedures to monitor equity specialists' use of options, options specialists' activity in underlying securities, and the use of futures by both equity and options specialists.

In view of the above, the Commission concludes that the proposed Amex rule change is reasonable and consistent with the Act, particularly sections 6(b)(5), 6(b)(8) and 11A(1)(C)(ii).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–87–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

[10] We also note that the rules of the Chicago Board Options Exchange and those of the NYSE prohibit market makers and specialists, respectively, from accepting orders over the telephone at the trading post.

[11] We also that surveillance information is also shared through the Intermarket Surveillance Group ("ISG"). ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., CME & CBT) joined the ISG as affiliate members in 1990.

[12] Conversation between Tom Brown, Managing Director, Trading Analysis & Inquiries/Derivatives, Amex, Julio Mojica, Assistant Director, Market Operations and Surveillance, Division of Market Regulation, Commission, and Joe McDonald, Branch Chief, Options Inspections, Division of Market Regulation, Commission on March 2, 1994.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[FR Doc. 94–5921 Filed 3–14–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–33737; File No. SR–NASD–93–48]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule change to the By-Laws and Rules of Fair Practice Relating to Rule Approval Procedures

March 8, 1994.

I. Introduction

On September 17, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change amends the NASD By-Laws and Rules of Fair Practice to make uniform all rule approval and amendment procedures under the NASD's By-Laws and to convert certain appendices of Rules of Fair Practice into Rules of Fair Practice themselves.

Notice of the proposed rule change appeared in the **Federal Register** on September 28, 1993.[3] The Commission received four comment letters opposing the proposal.[4] This order approves the rule change.[5]

II. Description of the Rule Change

The NASD is proposing to amend the NASD By-Laws and Rules of Fair Practice to make all rule approval and amendment procedures under the NASD's By-Laws uniform[6] and, thus, eliminate the requirement that certain rules be submitted to the membership for their approval as part of the rulemaking process.[7] The rule change conforms the NASD's procedure to those of other securities industry self-regulatory organizations ("SRO"), which do not require member vote for rule changes.[8] The rule change is effective immediately and applies only to proposed rule changes approved by the Board or the Executive Committee[9] after the effective date of the rule change.[10] Thus, rule changes currently pending before the Commission or approved by the Board prior to the date of effectiveness of this order will not be affected by the rule change.

A. Amendments to the By-Laws

Article VII, Section 1(a) of the By-Laws sets forth certain authority of the Board. The rule change amends this section with respect to the Board's authority to amend the NASD rules; to amend its Certificate of Incorporation or By-Laws, the NASD will continue to be required to obtain membership approval. To reflect this distinction, Article VII, section 1(a)(1) of the By-Laws has been divided into two subsections. Amended section 1(a)(1) provides that amendments to the By-Laws require membership approval and new section 1(a)(2) specifies that the Board has the authority to adopt and amend Rules of Fair Practice. This new section also provides that the Board

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 32942 (Sept. 22, 1993), 58 FR 50609 (Sept. 28, 1993).

[4] Letter from Merle L. Hoch, Executive Director, Securities Traders Association of New York, to Jonathan G. Katz, Secretary, SEC (Oct. 15, 1993) ("STANY Comment Letter"); letter from Dennis Marion, President and Chief Executive Officer, Sherwood Securities, to Jonathan G. Katz, Secretary, SEC (Oct. 15, 1993) ("Sherwood Comment Letter"); letter from David E. Rosendahl, Chairman, Federal Regulation Committee, Securities Industry Association ("SIA"), and Mark T. Commander, Chairman, Self-Regulatory and Supervisory Practices Committee, SIA, to Jonathan Katz, Secretary, SEC (Nov. 4, 1993) ("SIA Comment Letter"); and letter from Kenneth S. Spirer, General Counsel, Private Client Group, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC (Oct. 25, 1993) ("Merrill Lynch Comment Letter").

[5] The rule change was approved for filing with the Commission at a meeting of the NASD Board of Governors ("Board") on November 13, 1992. The change was submitted to a vote of the NASD membership in NASD Notice to Members 93–15 (Mar. 1993), and was approved by the membership, as required by Article XII, Section 1, and Article XVII, Section 1 of the NASD By-Laws by a vote of 1,683 in favor, 478 opposed, and 11 not voting out of 2,172 ballots received.

[6] In addition, the rule change converts certain appendices of Rules of Fair Practice into Rules of Fair Practice themselves.

[7] Currently, the NASD By-Laws and Rules of Fair Practice require Board and membership approval to amend Rules of Fair Practice while amendment to other NASD rules only requires Board approval. Thus, the NASD By-Laws currently provide that the Board may adopt Rules of Fair Practice for submission to NASD members. *NASD Manual*, By-Laws, Art. XII, Sec. 1 (CCH) ¶ 1251. Certain Rules of Fair Practice adopted by the Board and approved by the membership, however, authorize the Board to establish rules, regulations and/or procedures concerning NASD members without recourse to the membership for approval. *NASD Manual*, Rule of Fair Practice, Art. III, Secs. 30(b) (Margin accounts), 31 (Securities "failed to receive" and "failed to deliver"), 32(b) (Fidelity bonds), 33(c) (Options), 34(c) (Direct participation programs) & 37 (Operating rules for ITS/CAES and CAES), (CCH) ¶¶ 2180, 2181, 2182, 2183, 2191 & 2197.

[8] See, e.g., Amex, Const., Art. II, Sec. 2; Chicago Stock Exchange, Const., Art. XI, Sec. 2; Midwest Clearing Corp., By-Laws, Art. VII, Sec. 1; NYSE, Const., Art. VIII, Sec. 1.

[9] Between Board meetings, the Executive Committee has authority to act on behalf of the Board during emergency or extraordinary market conditions. NASD Manual, By-Laws, Art. VII, Sec 3, (CCH) ¶ 1182A.

[10] Letter from Suzanne Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Jan. 27, 1994).

may, in its discretion, still choose to submit certain rule changes or additions to Rules of Fair Practice to the membership for consideration.

Redesigned section 1(a)(3) (formerly section 1(a)(9)) generally provides broad authority to the Board to exercise the action necessary or appropriate to implement the provisions of the Act. The rule change deletes from redesignated section 1(a)(3) language referencing the Government Securities Act of 1986 because the pertinent provisions of the Government Securities Act of 1986 are incorporated in the Act, as amended.[11]

Article XII, Section 1 of the By-Laws is also amended to delete the reference to the member vote procedure for adoption and amendment of Rules of Fair Practice, and to remove references to emergency rules. Because the NASD may now amend Rules of Fair Practice without membership vote, the procedures for member vote and references to emergency rules are no longer.

B. Amendments to Rules of Fair Practice

Currently, the text of Rules of Fair Practice, Article III, Sections 30 through 34 contain general Rules of Fair Practice and set forth the procedures for adopting the specific requirements underlying these general rules, which procedures include that the Board may adopt or amend these rules without recourse to the membership.[12] The specific requirements underlying these general rules appear in appendices to each of these rules, which include a reiteration of the general rule. As noted above, the rule change amends Article VII of the By-Laws to provide the Board authorization to and the procedure for amending all Rules of Fair Practice without recourse to the membership. Accordingly, the rule change deletes the text of Sections 30 through 34, which are now superfluous, and converts the substantive provisions found in the appendices to each of these rules into their respective sections. To conform the former appendices to the format of Rules of Fair Practice, the appropriate numbering, lettering and cross referencing, changes have been made.[13]

Finally, the rule change deletes Rules of Fair Practice, Section 37, which provided the Board authority to adopt and amend CAES Operating Rules and ITS/CAES Operating Rules without seeking membership approval. As amended, redesignated Sections 1(a) (3), (8) and (9) (formerly sections 1(a) (9), (6) and (7)) generally provide the Board authority to adopt rules and operate systems such as CAES and ITS/CAES without membership approval; thus, section 37 is unnecessary.

III. Comment Letters

The Commission received four comment letters opposing the rule change. Commentators noted, among other things, that it violated the traditionally democratic process of the NASD[14] and is unnecessary given the Board's authority to adopt rules in the event of an emergency.[15] One commenter opposed the NASD's rule change because it believed that member vote provides a mechanism for NASD members to give careful consideration to rule changes.[16] In addition, this commenter argued that the NASD should establish a uniform comment period for all rule changes.

In response, the NASD noted that its members have access to the NASD's rulemaking process through means other than membership vote.[17] In particular, the NASD noted, members participate in this process through their representatives on Standing and District committees and through the election of a Board member from their district. In addition, the NASD noted, the Board has reserved the option of submitting to its members for consideration proposed changes to Rules of Fair Practice. Moreover, the NASD reiterated its representation that it will continue to notify its members of proposed rule changes through regular publication of Notice to Members and periodic summaries of Board meetings and noted that it will still respond to member comments.

IV. Discussion

The Commission believes that the NASD's rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the rule change is consistent with the provisions of sections 15A(b)(4) and (6) of the Act.[18] These sections require, in part, that the NASD's rules assure fair representation in the selection of its directors and the administration of its affairs and be designed to foster cooperation and coordination of securities transactions, to remove impediments to a free and open market, and to protect investors and the public interest.

By eliminating the need for member vote prior to amending certain of the Rules of Fair Practice, the rule change simplifies the NASD's ability to amend its rules. With the change, the NASD's procedures for amending its rules will be consistent with those of other SROs in the securities industry, which do not require member vote for rule changes. According to the NASD, the change will not only reduce delays in making rule changes effective, but will also result in administrative cost savings. A member vote will, however, continue to be required for amendments to the NASD's By-Laws. Further, the Board has specifically provided that it may seek a member vote on any rule change if it considers such a vote appropriate.

The rule change does not alter the substance of the NASD's Rules of Fair Practice. Rather, it simplifies the NASD's ability to amend its rules by eliminating the requirement for member vote. Nonetheless, mechanisms for members to participate in the formulation of and comment on NASD proposed rule changes remain. As noted above, members will continue to be able to participate in this process through the election of a Board member from their district and through representation on more than twenty Standing and District committees.[19] Each Standing committee consists of at least one Board member and of members from across the country with expertise in the committee's business. In addition, section 19(b) of the Act provides NASD members the mechanism to comment in writing directly to the Commission on all NASD rule changes.[20]

To facilitate access to its committees, in addition to publishing the names and titles of all its officers, the NASD provides in the front of its manual a list

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[11] The rule change also amends redesignated sections 1(a) (5), (6) and (8) (formerly sections 1(a) (3), (4) and (6)) because the language in these sections specifying that no member vote is needed is now superfluous. In addition, redesignated sections 1(a) (9) and (10) (formerly sections 1(a) (7) and (8)) have been amended stylistically, with no substantive implications.

[12] NASD Manual, Rule of Fair Practice, Art. III, Secs. 30(b), 31, 32(b), 33(c), 34(c) & 37, (CCH) ¶¶ 2180, 2181, 2182, 2183, 2191 & 2197.

[13] The numbering convention for former Appendix A, however, is not changed at this time because, as explained in SR–NASD–92–35, the NASD's new margin rule is based on rules of the NYSE and, for purposes of comparison, the NASD considers using the same numbering scheme for the NASD's and NYSE's rules useful. See Securities Exchange Act Release No. 31916 (Feb. 24, 1993), 58 FR 12286 (Mar. 3, 1993) (order approving File No. SR–NASD–92–35).

[14] STANY and Sherwood Comment Letters.

[15] STANY and SIA Comment Letters.

[16] Merrill Lynch Comment Letter.

[17] Letter from T. Grant Callery, Vice President and General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Nov. 29, 1993).

[18] 15 U.S.C. 78o–3(b)(4) and (6).

[19] NASD Manual, By-Laws, Sec. 4(a), (CCH) ¶ 1183; By-Laws, Art. III., Secs. 1–12, (CCH) ¶¶ 1191–1202; By-Laws, Art. XI, Secs. 1–4, (CCH) ¶¶ 1241–44.

[20] 15 U.S.C. 78s(b)(1).

of its committees and the names of the committee members. Each committee has a mission statement which provides it authority to make recommendations to the Board concerning specific areas of concentration. When the jurisdiction for an issue overlaps, all the relevant committees are presented an opportunity to provide input before a final recommendation is presented to the Board.

The NASD's current process of electing Board members and selecting committee members provides fair representation of local, regional and national firms on the Board and on committees. To provide greater representation to each board member, in 1990, the NASD decreased the size of the Board.[21] Finally, the Commission notes that an overwhelming majority (77%) of the members voting on the NASD's proposal voted to approve the rule change.

Recognizing that some rule changes will engender more debate than others, the Board has reserved the option of submitting to its members for consideration proposed changes to Rules of Fair Practice. Furthermore, the NASD has reiterated its representation that it will continue to notify its members of proposed rule changes through regular publication of Notice to Members and periodic summaries of Board meetings.

Section 15A(b)(4) requires the NASD's rules assure fair representation of its members in the selection of its directors and administration of its affairs. This can be accomplished in several ways, not just by requiring member votes on specific rules. Accordingly, the Commission encourages the NASD not to underestimate the benefits derived from membership comment. In the Commission's experience, this provides members the opportunity to review proposals carefully, and often members provide useful comments which may lead to changes in the proposal.[22] Committee members, therefore, should be encouraged to obtain the views of all interested members and committee chairman should be reminded of the NASD's obligation to provide fair representation to a cross-section of members pursuant to section 15A(b)(4) of the Act.

[21] Securities Exchange Act Release No. 28406 (Sept. 4, 1990), 55 FR 37782 (Sept. 13, 1990).

[22] See, e.g., SR–NASD–93–3 (amendment to Section 34, Appendix F, Rules of Fair Practice to limit member participation in unfair roll-up transactions); SR–NASD–92–46 (amendment to Schedule E, Schedule to the By-Laws concerning conflicts of interest).

V. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it. The rule change will provide the NASD greater flexibility to amend its rules. This will enable the NASD to respond quickly to the needs of its members and to protect investors and the public interest in this era of rapidly changing market conditions.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the rule change SR–NASD–93–48 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5920 Filed 3–14–94; 8:45 am]

BILLING CODE 8010–01–M

[23] 17 CFR 200.30–3(a)(12).

[Release No. 34–33725; File No. SR–NASD–94–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Article III, Section 44 of the Rules of Fair Practice and Schedules A and E to the NASD By-Laws

March 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. By this Release, the Commission: (i) Solicits comments on the proposed rule change from interested persons, and (ii) approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

RULES OF FAIR PRACTICE

THE CORPORATE FINANCING RULE

Underwriting Terms and Arrangements

Sec. 44.

(b) Filing Requirements.

* * * * *

(6) Information Required to be Filed.

* * * * *

(G) a detailed explanation and any documents related to the modification of any item of underwriting compensation subsequent to the review and approval of such compensation by the NASD.

* * * * *

(10) Filing Fees.

* * * * *

(B) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by an additional amount of filing fee equal to .01% of the *per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered* [increase in the amended gross dollar amount of the offering], not to exceed $30,500 when aggregated with all fees previously paid.

* * * * *

SCEDULES TO THE BY-LAWS

SCHEDULE A

Sec. 6. Fees for Filing Documents Pursuant to the Corporate Financing Rule

* * * * *

(b) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by an additional amount of filing fee equal to .01% of the *per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered* [increase in the amended gross dollar amount of the offering], not to exceed $30,500 when aggregated with all fees previously paid.

* * * * *

SCHEDULE E

Distribution of Securities of Members and Affiliates

* * * * *

Sec. 3. Participation in Distribution of Securities of Member or Affiliate

* * * * *

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities subject to

this section [without limitation as to the amount of securities to be distributed by the member], one or more of the following three criteria shall be met. * * *

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Filing Requirements

The filing requirements of Subsection (b) to Article III, Section 44 of the Rules of Fair Practice ("Corporate Financing Rule")[1] require submitting to the Corporate Financing Department for review each pre-effective and post-effective amendment to the registration statement and any other amended document previously filed, marked to show changes. The final registration statement declared effective by the Securities and Exchange Commission or an equivalent final offering document must also be filed. The required filings allow the Corporate Financing Department to review what effect, if any, such changes have on the fairness and reasonableness of the underwriting compensation and arrangements. Additionally, the Corporate Financing Department's "no objections" letter restates the requirement to file amendments and the final prospectus and indicates that modification of the terms and arrangements of the offering may result in a change in the Department's fairness opinion.

The Corporate Financing Department is aware that certain items or underwriting compensation received by underwriters and related persons in connection with the distribution of a public offering, and approved by the Department, are sometimes modified subsequent to the effectiveness of the offering. Such modifications include, for example, payments to an underwriter for the buyout or waiver of a right of first refusal, adjustments to the exercise price (usually downward)[2] or to the term of the underwriter's warrants (usually lengthening), payments under financial consulting contracts, and other negotiated changes in connection with additional services sometimes provided by the underwriter to the issuer. The NASD is concerned that modifications to items of underwriting compensation, particularly if such modifications occur after the effectiveness of the offering, might not be disclosed in amendments or other documents and may not come to the attention of the Corporate Financing Department. Such modifications to compensation may be found to be unfair or unreasonable in light of the approved compensation and arrangements of the public offering and the applicable compensation guidelines for such offering. The proposed rule change would add new subsection (G) to subsection (b)(6) to section 44 to the Rules of Fair Practice to clarify the requirement that the Corporate Financing Department be notified in detail of any change in, or modification of, any item of underwriting compensation approved by the Department.

Filing Fees

Subsection (b)(10) to the Corporate Financing Rule and Section 6 of Schedule A to the NASD By-Laws ("Schedule A")[3] require a filing fee for the Corporate Financing Department's review of underwriting terms and arrangements. Offerings filed with the Department are charged a fee equal to $500 plus .01% of the gross dollar amount of the offering, not to exceed a fee of $30,500. The "gross dollar amount of the offering" is the public offering price of all securities offered to the public plus securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities. Subsection (b)(10)(B) to the Corporate Financing Rule and Subsection 6(b) to Schedule A contain identical language stating that when the number of securities being registered is modified by an amendment to the initially filed documents, an additional amount of filing fee may also be required. The Corporate Financing Department has always calculated such additional filing fees by multiplying the number of new or additional securities being registered by the proposed public offering price, consistent with Rule 457 under the Securities Act of 1933, which sets forth the method of calculating SEC filing fees.[4]

Questions have arisen regarding the calculation of any additional filing fee where the number of securities being offered is increased by an amendment. The language of the Corporate Financing Rule and Schedule A did not contemplate an amendment where the number of securities is increased and the proposed public offering price is decreased, resulting in no change in the gross dollar amount of the offering. Thus, the proper calculation of an additional filing fee could be unclear where, for example, a one million share offering at $10.00 per share is amended to a two million share offering at $5.00 per share. In such a situation, the existing rule language could be interpreted to call for no additional fee since the gross dollar amount of the offering is unchanged. The actual practice, however, is that an additional fee is assessed based on the additional one million shares multiplied by the new price of $5.00.

The NASD has determined that it is important to conform the language of the Corporate Financing Rule and Schedule A to SEC Rule 457 to clarify the calculation of fees for securities which have been added by amendment to the amount of securities being offered in the initial filing documents. The proposed rule change amends subsection (b)(10)(B) to section 44 to Article III of the Rules of Fair Practice and subsection (b) to section 6 of Schedule A to clarify that the calculation of the additional fee required as a result of additional securities being offered pursuant to an amendment to the initially filed documents shall be equal to .01% of the result of the number of new shares being offered multiplied by the offering price of the new shares.

Schedule E to the By-Laws

Subsection 3(c) to Schedule E to the NASD By-Laws states that if a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of securities of members or affiliates "without limitation as to the amount of

[1] NASD Manual, (CCH) ¶ 2200D.

[2] But see Securities Exchange Act Release No. 33119 (October 29, 1993), 58 FR 65084 (November 5, 1993).

[3] NASD Manual, (CCH) ¶ 1757.

[4] SEC Rule 457(a) states, in part, "If the number of shares or other units of securities, or the principal amount of debt securities to be offered is increased by an amendment filed prior to the effective date of the registration statement, an additional filing fee, computed on the basis of the offering price of the additional securities, shall be paid." 17 CFR 230.457.

securities to be distributed by the member," then one of three conditions must be met. The conditions are that: (1) A qualified independent underwriter must be engaged to establish the price and participate in the preparation of the registration statement and the prospectus; or (2) the offering is of a class of equity securities for which a bona fide independent market exists; or (3) the offering is of a class of securities which is rated as investment grade by Moody's, Standard & Poor's or some other acceptable rating service.

The phrase "without limitation as to the amount of securities to be distributed by the member" is a carryover from an early provision of Schedule E, eliminated in 1988,[5] that restricted a member's participation in the syndicate or selling group to an amount not exceeding 10% of the dollar amount of an offering underwritten on a firm commitment basis and managed by a qualified independent underwriter. At the time the restriction on participation was operable, two qualified independent underwriters were required by Schedule E. If the member's participation was limited to 10% or less, only one qualified independent underwriter was required. The removal of the restrictive provision renders the quoted phrase superfluous. The proposed rule change amends subsection (c) to section 3 of Schedule E to remove that part of the subsection which is superfluous and no longer operable.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,[6] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members, and is also consistent with the provisions of section 15A(b)(6) of the Act, which require that the rules of the Association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest, in that the proposed rule change clarifies the correct calculation of a filing fee on members, clarifies the requirement of members to provide detailed documentation related to the modification of underwriting compensation subsequent to the review and approval of such compensation by the NASD and, finally, clarifies that when members issue, or participate in the distribution of, *any* amount of their own securities or securities of an affiliate, they must satisfy one of three options under subsection 3(c) to Schedule E to the NASD By-Laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, sections 15A(b) (5) and (6) of the Act. The Commission believes that the rule change, which clarifies the requirement that members provide detailed documentation concerning modifications in underwriting compensation subsequent to the review and approval of such compensation by the NASD, promotes just and equitable principles of trade and protects investors and the public interest by ensuring compliance with the NASD's Corporate Financing Rule in terms of fair and reasonable underwriting terms and arrangements. In addition, the Commission believes that the rule change protects investors and the public interest by clarifying the correct calculation of filing fees for the NASD's review of underwriting arrangements, and by clarifying members' obligations under subsection 3(c) of Schedule E to the NASD By-Laws.

The Commission finds good cause for approving the rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**. As indicated above, the Commission recognizes that the rule change clarifies members' obligations under Schedules A and E to the NASD By-Laws, and under the NASD's Corporate Financing Rule. The Commission believes that accelerated approval will avoid unnecessary delay in effectiveness of the rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-NASD–94–12 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5930 Filed 3–14–94; 8:45 am]

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[5] Securities Exchange Act Release No. 25525 (March 29, 1988), 53 FR 11156 (April 5, 1988).

[6] 15 U.S.C. 78*o*–3.

[Release No. 34–33736; File No. SR-PHLX–93–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendments to Floor Procedure Advice F–5, Material Changes to Terms of a Matched Trade

March 8, 1994.

On July 23, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b 4 thereunder,[2] a proposed rule change to amend Floor Procedure Advice ("Advice") F–5, "Material Changes to Terms of a Matched Trade," to designate the Advice's current language as paragraph (a)[3] and to add

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Specifically, paragraph (a) requires that all correction sheet submissions which change material terms of a transaction (security, price, volume, series, class and customer to firm participation) be signed by all of the parties to the transaction and

Continued

paragraph (b), which will require any person signing a correction sheet to use due diligence to confirm the correction before signing the correction sheet, including checking the appropriate floor tickets or computerized report ("run") in any case where a sizeable error may result if appropriate corrective action is not taken. The proposed rule change was noticed for comment in Securities Exchange Act Release No. 32894 (September 14, 1993), 58 FR 49078.[4] No comments were received on the proposed rule change.

Currently, Advice F–5 provides that all correction sheet submissions which change material terms of a transaction (security, price, volume, series, class and customer to firm participation) must be signed by all parties to the transaction and by a representative of the specialist unit. If one of the parties to the transaction is not present at the time the matter is being resolved, the signature of one of the Exchange's Surveillance staff is required to acknowledge the contra side's absence. The Advice states that the signature of the Surveillance staff member does not relieve any party to the trade from liability in connection with the change.

The PHLX proposes to amend Advice F–5 to emphasize that correction sheets should not be signed absent the use of due diligence to confirm the correct terms of the trade. Specifically, the Exchange proposes to amend Advice F–5 to add paragraph (b), which would require that a person signing a correction sheet use due diligence to confirm the correction by checking the appropriate floor tickets or the Exchange-provided computer "run." Recognizing that certain corrections are so minor that a fine pursuant to proposed paragraph (b) would not be warranted, the Exchange proposes to limit the imposition of a fine under proposed paragraph (b) to situations where the person signing the correction sheet has reason to believe that a sizeable error[5] may result if the terms of the correction sheet are not confirmed.

The proposed rule change will apply to all options traded on the PHLX.[6] The Exchange plans to increase the fine imposed for violations of paragraph (a) from $50.00 to $100.00.[7] The PHLX states that the proposed increase is designed to impose a more realistic fine in view of the violation; the PHLX notes that the current $50.00 fine has been in place since 1986. In addition, the PHLX proposes to add the following fine schedule for violations of proposed paragraph (b): $250.00 for the first occurrence; $500.00 for the second occurrence; and a sanction discretionary with the Exchange's Business Conduct Committee ("BCC") for the third and subsequent occurances.

The PHLX proposes to include proposed paragraph (b), as well as paragraph (a), as amended, in the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan").[8] In addition, the PHLX proposes to place Advice F–5 on a three-year rolling cycle for the imposition of fines, so that repeat violations during the same three-year period would result in escalating fines.[9]

The PHLX believes that the proposed amendments to Advice F–5 should provide an incentive to improve the handling of corrections to executed transactions by increasing the fee for violations and adding a correction confirmation requirement, consistent with the purposes of section 6(b)(5) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[10] in that the proposal is designed to facilitate transactions in securities and to protect investors and the public interest. Specifically, the Commission believes that paragraph (b), which requires a person to use due diligence to confirm a correction by checking the appropriate floor ticket or computerized report, should benefit investors and help the PHLX to maintain a fair and orderly market by enhancing the accuracy of corrections to executed transactions. The Commission believes that the fine schedule applied to paragraph (b), which is graduated to account for repeat offenders and will be administered on a three-year rolling calendar basis under the PHLX's minor rule plan, should provide a prompt, effective and appropriate means to enforce compliance with the correction confirmation requirement. Likewise, the Commission believes that it is appropriate for the PHLX to increase the fine applicable to violations of paragraph (a) from $50.00 to $100.00 because of the importance of ensuring the accuracy of corrections to executed transactions.

In addition, the Commission believes that it is appropriate to include paragraph (b), as well as paragraph (a), in the PHLX's minor rule plan because a violation of the correction confirmation requirement for sizeable errors through failure to check the appropriate floor ticket or computerized

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by a representative of the specialist unit. In addition, paragraph (a) states that if one of the parties to the transaction is not present when the matter is being resolved, then a member of the Exchange's Surveillance staff must sign the correction sheet to acknowledge the contra side's absence.

[4] On February 2, 1994, the PHLX submitted a letter defining a "sizeable error." Specifically, the PHLX views a sizeable error in equity or index options, where the average trade size is approximately 10 contracts, as an error of $1,000 or more. For foreign currency options, where the average trade size is approximately 80 contracts, the PHLX views an error of $3,000 or more as a "sizeable error." See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 2, 1994 ("February 2 Letter"). In its February 2 Letter the PHLX also amended the title of Advice F–5 to "Material Changes to Terms of a Matched Trade" rather than "Material Changes to Terms of a Cleared Trade." Subsequently, the PHLX submitted a letter incorporating its definition of "sizeable error" into the text of Advice F–5. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated February 28, 1994 ("February 28 Letter"). In its February 28 Letter the PHLX also noted that the amounts specified as constituting a "sizeable error" are guidelines and that the circumstances surrounding a correction must be considered. In addition, in its February 28 Letter the PHLX deleted language indicating that the correction confirmation requirement would apply only where the person "has reason to believe" that a sizeable error will result without appropriate corrective action. Instead, as noted above, the correction confirmation requirement applies at any time when a sizeable errors may result in the absence of appropriate corrective action.

[5] See February 2, Letter and February 28 Letter, *supra* note 3, for the PHLX's definition of a "sizeable error."

[6] Telephone conversation between Edith Hallahan, Attorney, Market Surveillance, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on August 4, 1993.

[7] See note 3, *supra*, for a description of paragraph (a).

[8] The Exchange's minor rule plan is administratered pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures."

[9] In November 1993, the Commission approved a PHLX proposal to place nine Advices on a three-year rolling cycle for the imposition of fines. See Securities Exchange Act Release No. 33130 (November 2, 1993), 56 FR 59502 (order approving File No. SR-PHLX-93-29). Currently, most fines accrue under the Exchange's minor rule plan on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (i.e. the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. Under the three-year rolling cycle, a violation of Advice F–5 which occurs within three years of the first violation of the Advice will be treated as a second occurrence, and any violation of the Advice within three years of the previous violation of the Advice will be subject to the next highest fine. Thus, a third violation of Advice F–5 within less than three years after a fine for a second violation of Advice F–5 will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of Advice F–5.

[10] 15 U.S.C. 78f(b)(5) (1988).

report is easily verifiable and should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions. Moreover, under the PHLX's minor rule plan, a person fined under the Advice will be permitted to contest the fine pursuant to PHLX Rule 970(d) and be entitled to full due process. In addition, the Commission notes that the proposal provides the PHLX with flexibility in administratering the Advice, in that the requirement to use due diligence to confirm a correction applies only where the person has reason believe that a sizeable error may result in the absence of appropriate corrective action. At the same time, the PHLX's definition of a "sizeable error" [11] should help to ensure that fines are not imposed under the Advice in an arbitrary manner. The Advice also sets forth specifically what action is expected to be taken to confirm the correction.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR-PHLX –93–27) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5919 Filed 3–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33732; International Series Release No.; File No. SR–PHLX–93–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Cash/Spot Foreign Currency Option Contracts

March 8, 1994.

I. Introduction

On March 12, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list cash-settled, European-style[3] cash/spot foreign currency option contracts ("cash/spot FCOs") on the German mark ("DM").[4] The DM cash/spot FCOs will have the same contract size as the PHLX's current U.S. dollar/DM based options (62,500 German marks) and will trade in one-week and two-week expirations.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 32685 (July 28, 1993), 58 FR 41529. No comments were received on the proposal. This order approves the proposal.[5]

II. Description of the Proposal

Cash/spot FCOs are cash-settled, European-style options issued by the Options Clearing Corporation ("OCC")[6] that allow holders to receive U.S. dollars representing the difference between the current foreign exchange spot/price[7] and the exercise price of the cash/spot FCO. Specifically, upon exercise of an in-the-money cash/spot FCO structured as a call, the holder will receive from OCC U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the cash/spot FCO contract multiplied by the number of units of currency covered by the contract. For a cash/spot FCO structured as a put, the holder will receive U.S. dollars representing the excess of the exercise price over the closing settlement value of the cash/spot FCO contract multiplied by the number of units of foreign currency covered by the contract.

Unlike other PHLX-traded FCOs, cash/spot FCOs which are in-the-money by any amount on the expiration date will be exercised automatically by OCC.[8] Cash/spot FCOs which are out-of-the-money at expiration will expire worthless.

The closing settlement value, which will be disseminated through OPRA, will be determined by a designated agent(s) of the Exchange under proposed PHLX Rule 1057, "Cash/Spot Foreign Currency Option Closing Settlement Value." Pursuant to PHLX Rule 1057, at 10 a.m. (Eastern Standard Time ("EST") or Eastern Daylight Time (("EDT")) on every expiration date for cash/spot contracts, the market information vendor(s) acting as the Exchange's designated agent(s) will collect a bid and offer quotation for the current foreign exchange spot/price from the quotations submitted to the designated agent(s) by at least 15 interbank foreign

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[11] See February 2 Letter and February 28 Letter, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] A European-style option may be exercised only during a limited period time before the option expires.

[4] The PHLX amended its filing on June 1, 1993 ("Amendment No. 1") to indicate that trading in an expiring cash/spot contract ceases at 10:30 a.m. on its expiration Monday, rather than 9 a.m. On July 16, 1993, the PHLX amended its filing to provide that a market information vendor(s) would be the PHLX's designated agent(s) for purposes of determining the closing settlement price for the cash/spot contracts ("Amendment No. 2"). On September 27, 1993, the PHLX amended its proposal to provide a list of the Exchange holidays and designated bank holidays on which cash/spot contracts will not expire. If a cash/spot contract is scheduled to expire on an Exchange holiday or on a designated bank holiday, then the option will expire at 11:59 p.m. Eastern Time ("ET") on the previous business date ("Amendment No. 3"). On April 29, 1993, the PHLX submitted a letter stating that the PHLX's automated trading systems, as well as those of the Options Price Reporting Authority ("OPRA"), have sufficient capacity to adequately process quotations and trades in the DM cash/spot FCOs. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, and to Eugene Lopez, Assistant Director, Automation and International Markets, Division, Commission, dated April 28, 1993 ("April 28 Letter"). On July 7, 1993, the PHLX submitted a letter describing the procedures it will use to calculate the settlement value for cash/spot contracts. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated July 7, 1993. On January 4, 1994, the PHLX submitted a letter that: (1) Withdraws File No. SR–PHLX–93–12 (proposing margin for cash/spot contracts of 2.5%); (2) proposes a margin level of 4% for cash/spot contracts; and (3) states that the Exchange will aggregate cash/spot contracts with existing FCOs on the same underlying currency for position limit purposes. See Letter from Eric W. Noll, Assistant Vice President, New Product Development, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated January 4, 1994 ("January 4 Letter"). In addition, the PHLX proposes to collect margin for the cash/spot contracts on a two-day basis. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated January 21, 1994 ("January 21 Letter"). Finally, the PHLX submitted a letter indicating that cash/spot FCOs will be aggregated with other FCOs on the same underlying currency for the exercise limit as well as position limit purposes. See Letter from Murray L. Ross, Secretary, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated February 9, 1994 ("February 9 Letter").

[5] This order specifically approves DM cash/spot FCOs. In the future, the listing of additional cash/spot FCOs based on different foreign currencies will require separate 19b–4 filings with the Commission.

[6] OCC submitted a proposal to accommodate the trading of cash/spot FCOs. The Commission approved the OCC's proposal on January 19, 1994. See Securities Exchange Act Release No. 33491 (January 19, 1994), 59 FR 3898 (order approving File No. SR–OCC–93–10).

[7] The "spot price" with respect to an option contract on a foreign currency means the price, in terms of U.S. dollars, quoted by various commercial banks in the interbank foreign exchange market for the sale of a single unit of such foreign currency for immediate delivery, which generally means delivery within two business days following the date on which the terms of such sale are agreed upon. See Securities Exchange Act Release No. 33491 (January 19, 1994), 59 FR 3898 (order approving File No. SR–OCC–93–10).

[8] The PHLX notes that the cash/spot FCOs will be the first PHLX-traded FCO to utilize a feature which does not depend on any manual submission of exercise notices or the ability to opt out of exercise procedures.

exchange participants, which the designated agent(s) will select randomly from a list of 25 active interbank foreign exchange market participants.[9] After discarding the five highest offers and five lowest bids, the Exchange's designated agent(s) will arithmetically average the remaining ten bids and ten offers to arrive at a closing settlement value. This value will be calculated and sent to the PHLX every 30 seconds until 10:30 a.m.,[10] when the designated agent(s) will determine the final settlement value. At that time, the settlement value will be entered manually into the PHLX's systems, disseminated through OPRA and sent to the OCC for entry into the OCC clearing systems.[11]

As noted above, the Exchange proposes, initially, to list and trade weekly DM cash/spot FCOs which have the same contract size as the PHLX's current U.S. dollar/DM based options (62,500 German marks). The PHLX plans to designate a three-letter contract symbol, with the third letter presenting each expiration week of the month.[12] At the time a new expiration is listed, the PHLX plans to list three exercise strike prices for each cash/spot FCO around the current spot price. The PHLX may add new exercise prices during the life of the option, consistent with Exchange Rule 1012, "Series of Options Open for Trading."[13] The strike prices will be listed at half-cent intervals.[14]

Cash/spot FCOs will trade during the same hours as the FCOs trading currently on the PHLX,[15] and will be listed, initially, in one-week and two-week expirations, with new series listed each Monday at 1:30 a.m. EST. The expiring cash/spot contract will cease trading at 10:30 a.m. and expire at 11:59 p.m. on its expiration Monday, unless such Monday is an Exchange holiday or an Exchange designated bank holiday, when, under PHLX Rule 1000(b)(21), "Expiration Date," as amended, the cash/spot FCO will expire at 11:59 p.m. on the preceding business date (*i.e.*, Friday).[16]

Accordingly, on Exchange holidays and Exchange designated bank holidays, the expiring cash/spot FCO will cease trading at 10:30 a.m. on the preceding business day. In addition, when Monday is an exchange holiday, a new two-week contract will be listed on the following Tuesday at 1:30 a.m. EST as opposed to the normal Sunday morning listing.

The cash/spot FCOs will trade in accordance with the rules governing all PHLX FCOs, including sales practice rules and floor trading procedures. In addition, the PHLX proposes to amend PHLX Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," to provide that bid/ask differentials for cash/spot FCOs shall be determined by reference to the underlying foreign currency. For example, the DM cash/spot contract would be subject to the bid/ask differential for DM options. The PHLX also proposes to amend PHLX Rule 1033, "Bids and Offers—Premium," to provide that bids and offers for cash/spot FCOs shall be expressed in terms of dollars per unit of the underling foreign currency. For position limit and exercise limit purposes, cash/spot contracts will be aggregated with other existing contracts on the same underlying currency.[17]

The PHLX proposes to apply Exchange Rule 722, "Margin Accounts," to cash/spot FCOs, so that the current margin requirements for FCOs will apply to cash/spot FCOs. Specifically, for any put or call cash/spot option issued, guaranteed or carried "short" in a customer's account the required margin shall be 100% of the options premium plus 4% of the value of the underlying contract less any out-of-the-money amount, with an adjustment for out-of-the-money options to be not less than 100% of the option premium plus ¾ of the underlying contract value.[18] The PHLX plans to collect margin within two days following the date on which a customer enters into a cash/spot FCO position.[19]

The Exchange believes that cash/spot FCOs should respond to the continuing needs of market participants, particularly portfolio managers and other institutional currency market participants, by providing protection from short-term market movements while offering an alternative to hedging currency portfolios with short duration futures, forward contracts, or off-exchange customized derivative instruments. In this regard, the PHLX notes that FCOs provide a strategic investment tool for sophisticated retail options customers, multi-national corporations, and proprietary traders who manage and hedge foreign currency exposure. In addition, banks trade short-term FCOs to hedge the risks of trading in the foreign currency forward and cash markets.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[20]

Specifically, the Commission believes that the proposal is designed to provide investors with a new and innovative means to hedge foreign currency portfolios and cash flows from short-term market risk, thereby facilitating transactions in FCOs. The Commission believes that the one- and two-week expirations for the cash/spot FCOs will provide investors with greater flexibility to tailor foreign currency options positions to satisfy their investment objectives.[21] In this regard, the

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[9] The PHLX will select the list of interbank market participants by evaluating the number of times each contributor supplies DM spot quotes to the market information vendor(s) on Monday mornings between 10 a.m. and 10:30 a.m. The pool of quote contributors will be reviewed every six months based on these criteria and substitutions will be made, if necessary. If at any time an interbank market participant ceases to distribute DM spot quotes or is no longer in the business of making DM markets, that entity will be replaced before the end of the six-month period. See July 7 Letter.

[10] Telephone conversation between Murray Ross, Secretary, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on March 8, 1994.

[11] See July 7 Letter.

[12] The PHLX plans to reserve five symbols, with the first two letters, XD, representing the DM cash/spot contract and the third letter representing the week of the month that the contract expires. Thus, the symbol ZXDA would represent weekly cash/spot German market contracts expiring on the first Monday of the month, and XDB would represent an expiration on the second Monday of the month.

[13] Telephone conversation between Murray Ross, Secretary, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on March 8, 1994.

[14] The PHLX has represented that the Exchange's automated trading systems as well as those of OPRA have sufficient capacity to adequately process quotations and trades in the proposed cash/spot FCOs. See April 28 Letter, *supra* note 4.

[15] FCOs currently trade Monday through Friday from 1:30 a.m.–2:30 p.m. EST.

[16] See Amendment No. 3, *supra* note 4. The following holidays are currently observed by the Exchange: New Years Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. In addition, the PHLX has listed the following holidays as designated bank holidays in 1994: November 1 (French holiday), December 26 and 27 (Boxing Day, U.K.), January 17 (Martin Luther King Day), April 4 (Easter Monday, U.K.), May 2 (May Day, U.K.), May 23 (German holiday), August 1 (Swiss holiday), August 15 (French holiday), August 29 (U.K. bank holiday), October 3 (German holiday), and October 10 (U.S. bank holiday).

[17] See January 4 Letter and January 9 Letter, *supra* note 4.

[18] See January 4 Letter, *supra* note 4.

[19] See January 21 Letter, *supra* note 4.

[20] 15 U.S.C. 78f(b)(5) (1982).

[21] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for

Commission notes that the PHLX has stated that FCOs provide a strategic investment tool for sophisticated retail options customers, multi-national corporations, and proprietary traders who manage and hedge foreign currency exposure, as well as for banks, which trade short-term FCOs to hedge the risks of trading in the foreign currency forward and cash markets. The Exchange states, in addition, that international financial markets are focusing increasingly on shorter term FCO instruments and that there is an active over-the-counter ("OTC") market for short-term FCOs, both in the U.S. and abroad.[22]

The PHLX's cash/spot FCOs are a response by the Exchange to meet the demands of sophisticated foreign currency market participants who are concentrations increasingly on shorter term FCO products. The Commission believes that the cash/spot FCOs will also broaden the hedging opportunities of foreign currency market participants by providing them with an alternative to using futures contracts, forward contracts and/or off-exchange customized derivative instruments to satisfy their short-term foreign currency investment needs, thereby promoting competition among these markets.

The Commission believes that the PHLX's proposal will help to promote the maintenance of a fair and orderly market by extending the benefits of a listed currency market to an instrument designed to meet the investment needs of foreign currency market participants. The attributes of the Exchange's markets versus the OTC market for short-term FCOs include, but are not limited to, a regulated market center, an auction market, with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures and procedures for clearance and settlement, and the guarantee of the OCC.

The trading of cash/spot FCOs, however, raises several issues, including issues related to product design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the PHLX has adequately addressed these issues.

A. Pricing and Settlement Value

The Commission believes that the methodology described in PHLX Rule 1957 for calculating the settlement value of the cash/spot FCOs is designed to provide an accurate reflection of the foreign currency spot price. As noted above, pursuant to PHLX Rule 1057, at 10 a.m. (EST or EDT) on expiration day, the market information vendor(s) acting as the Exchange's designated agent(s) will collect bid and offer quotations for the current foreign exchange spot/price from the quotations submitted to the designated agent(s) by at least 15 interbank foreign exchange participants, which the designated agent(s) will select randomly from a list of 25 active interbank foreign exchange market participants. After discarding the five highest offers and five lowest bids, the Exchange's designated agent(s) will arithmetically average the remaining ten bids and ten offers to arrive at a closing settlement price, which will be calculated and sent to the PHLX every 30 seconds or every minute until 10:30 a.m., when the designated agent(s) will determine the final settlement price. The PHLX states that the spot market for foreign currencies is active and highly competitive,[23] so that the variations among the quotations of interbank market participants are relatively small. The Commission believes that the PHLX's procedures and the competitive nature of the spot market for foreign currencies should help to ensure that the settlement values for cash/spot contracts will accurately reflect the spot price for foreign currencies.

In addition, the Commission believes that the PHLX's procedures should guard against unreliable or manipulated quotes. In this regard, the Commission notes that the cash/spot settlement value will be determined on the basis of quotes obtained from 15 randomly selected active interbank foreign exchange market participants obtained from a universe of 25 interbank market participants. After discarding the five highest offers and five lowest bids, the Exchange's designated agent(s) will arithmetically average the remaining ten bids and ten offers to arrive at a final settlement price. The Commission believes that by having its designated agent(s) choose interbank market participants at random for the purposes of collecting quotes, and then averaging those randomly obtained figures to arrive at the final settlement value, the PHLX has designed procedures which minimize the Commission's concerns for manipulation and inaccuracy in calculating the cash/spot settlement value.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as cash/spot FCOs, can commence on a national securities exchange. The PHLX proposes to amend several rules to address these concerns. Specifically, the PHLX proposes to apply PHLX Rule 1024, "Conduct of Accounts Open for Trading," PHLX Rule 1025, "Supervision of Accounts," and PHLX Rules 1026, "Suitability," and 1027, "Discretionary Accounts," to cash/spot FCOs.[24] Under paragraph (b) of PHLX Rule 1024, as amended, members will be prohibited from accepting a customer order to purchase or write a cash/spot FCO unless such customer's account has been specially approved in writing by a designated Foreign Currency Options Principal of the member for transactions in cash/spot FCOs. Exchange Rule 1026 is designed to ensure that options, including cash/spot FCOs, will be sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Finally, under Exchange Rule 1027, members will be permitted to exercise discretionary power with respect to trading cash/spot FCOs in a customer's account only if the member has received prior written authorization from the customer and the account has been accepted in writing by a designated Foreign Currency Options Principal. In addition, under Exchange Rule 1027, the Foreign Currency Options Principal or a Registered Options Principal must approve and initial each discretionary cash/spot FCO order on the day the order is entered.

The Commission notes that the Options Disclosure Document ("ODD") has been amended to include cash/spot FCOs and that the Exchange plans to deliver a circular to its members

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manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] In conjunction with the PHLX's approval order for cash/spot FCOs, the Commission also approved for distribution a revised Options Disclosure document entitled Characteristics and Risks of Standardized, Options that describes the characteristics and risks of trading in cash/spot FCOs. This disclosure document must be provided to investors in cash/spot FCOs before their accounts are approved for transactions in cash/spot FCOs or their orders for cash/spot FCOs are accepted. See Securities Exchange Act Release No. 33582 (February 4, 1994), 59 FR 6661.

[23] The Commission has found previously that the DM spot market is very active and that the interbank foreign currency spot market, in general, is an extremely large, diverse market comprised of banks and other financial institutions worldwide. The foreign currency spot market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. There is also an active OTC market for FCOs. See Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399 (order approving File No. SR-Amex-92-36) ("Multiple Foreign Currency Warrants Approval Order").

[24] See Amendment No. 3, *supra* note 4.

describing the specific risks associated with cash/spot FCOs.

Because the PHLX has taken steps to ensure that the risks of trading cash/spot FCOs will be disclosed to public customers and to members, and because the cash/spot FCOs will be subject to the same regulatory regime as FCOs currently traded on the PHLX, the Commission believes that the PHLX has provided adequate safeguards to ensure the protection of investors in cash/spot FCOs.

C. Surveillance

The Commission notes, in addition, that the PHLX plans to integrate the cash/spot FCOs into existing PHLX market surveillance programs.[25] In light of the design of the cash/spot contracts and the developed market for foreign currencies, the Commission believes that the markets for the cash/spot FCOs will not be readily susceptible to manipulation.

D. Position and Exercise Limits and Margin Requirements

As noted above, cash/spot FCOs will be aggregated with other existing contracts on the same underlying currency for position and exercise limit purposes.[26] The Commission believes that aggregation of cash/spot FCOs with existing contracts on the same underlying currency for position and exercise limit purposes will reduce concerns regarding manipulations or disruptions of the markets for cash/spot FCOs, other currency options, and the underlying currencies, while at the same time not hampering the depth and liquidity of the market for cash/spot FCOs.

The Commission believes the proposed margin levels for cash/spot contracts, which are consistent with the margin levels for the PHLX's other FCOs, will result in adequate coverage of contract obligations and are designed to preclude the systemic risks arising from excessively low margin levels. As noted above, the margin requirement on any put or call cash/spot option issued, guaranteed or carried "short" in a customer's account shall be 100% of the option premium plus 4% of the value of the underlying contract less any out-of-the-money amount, with an adjustment for out-of-the-money options to be not less than 100% of the option premium plus ¾% of the underlying contract value. The PHLX plans to collect margin within two days following the date on which a customer enters into a cash/spot FCO position. The PHLX has indicated that the proposed margin would cover the historical volatility of the DM over a two-day period with a 99.40% level of confidence. Accordingly, the Commission believes that the PHLX's proposed margin level will result in adequate coverage for cash/spot contracts. Because the volatility of foreign currencies can change significantly, the Commission expects the PHLX to monitor the adequacy of margin levels for cash/spot FCOs to ensure that the required margin remains appropriate in view of the volatility of the underlying instrument.[27]

E. Other Proposed Rule Changes

The Commission believes that the other rules changes proposed by the PHLX to accommodate the trading of cash/spot FCOs are consistent with the Act. First, the Commission believes it is reasonable for the PHLX to list at least three exercise strike prices for each cash/spot FCO, and to list the strike prices at half-cent intervals, because such intervals will provide market participants with the flexibility to tailor their cash/spot FCO positions to achieve their investment objectives. At the same time, the Commission does not believe that the proposal will result in excessive proliferation of options series.[28] The Commission notes, in addition, that the PHLX has represented that the Exchange and OPRA have adequate capacity to process quotations and trades in cash/spot FCOs.[29]

Second, the Commission believes that it is reasonable for the Exchange to amend PHLX Rule 1014 to provide that the bid/ask differentials for cash/spot FCOs shall be determined by reference to the underlying currency. The Commission believes that these bid/ask differentials should facilitate tightly quoted markets without impairing specialists' and Registered Options Traders' ("ROTs") ability to provide market depth and liquidity. Accordingly, the Commission believes the quote spread parameters for cash/spot FCOs are consistent with the obligation of PHLX specialists and ROTs under the Act to provide fair and orderly markets.

Third, the Commission believes that it is reasonable for the PHLX to amend PHLX Rule 1000(b)(21), "Expiration Date," to clarify the procedures the PHLX will follow when a cash/spot FCO expires on an Exchange holiday or Exchange designated bank holiday.

F. Market Impact

The Commission believes that the listing and trading of DM cash/spot FCOs will not adversely affect the spot or derivative foreign currency markets. First, the Commission notes, as it has concluded in the past,[30] that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. There is also an active OTC market for FCOs. Given the probable expense of attempting to affect the FCO spot market underlying a cash/spot FCO (or any derivative market related thereto), the Commission believes that it would be difficult for a market participant to manipulate the underlying spot market, or any derivative market related thereto, to benefit a previously established cash/spot FCO position.

Further, as noted above, the PHLX will apply its existing FCO surveillance procedures to the cash/spot FCOs, which should enable the Exchange to conduct, deter, as well as detect, other trading abuses involving the cash/spot FCO market and the markets for the underlying FCOs.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3, which provides that contracts scheduled to expire on Exchange holidays and designated bank holidays will expire on the previous business day, is technical in nature and raise no new regulatory issues. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 3 to the PHLX's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written

[25] See Amendment No. 3, *supra* note 4.

[26] See February 9 Letter, *supra* note 4.

[27] In this regard, the Commission would view coverage of less than 97% as problematic.

[28] When listing additional strikes, the Commission expects the Exchange to consider whether the listing of such strikes will be consistent with the maintenance of a fair and orderly market.

[29] See April 28 Letter, *supra* note 4.

[30] See Multiple Foreign Currency Warrants Approval Order, *Supra* note 22.

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1994.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[31] that the proposed rule change (File No. SR–PHLX–93–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5929 Filed 3–14–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Dallas Express Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 94–3–15; order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Dallas Express Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with Barbara P. Dunnigan, Air Carrier Fitness Division, X–56, room 6401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 23, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: March 8, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–5923 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–62–P

[31] 15 U.S.C. 78s(b)(2) (1988).

[32] 18 CFR 200.30–3(a)(12) (1993).

National Highway Traffic Safety Administration

[Docket No. 93–86; Notice 2]

General Tire, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

General Tire, Inc., (General Tire) of Akron, Ohio, determined that some of its tires failed to comply with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles other Than Passenger Cars," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." General Tire has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 9, 1993, (58 FR 64793), and an opportunity afforded for comment.

Section S6.5 of FMVSS No. 119 specifies that each tire be labeled with the name of the manufacturer or brand name, and number assigned to the manufacturer in the manner specified in part 574. In addition, if the tire is manufactured for a brand name owner, a code must be included for this brand name owner.

During the week of August 8 to August 14, 1993, General Tire manufactured approximately 420 285/75R24.5 M101Z Toyo truck tires that bear incorrect serial numbers. These tires were produced with the GTY code for Yokohama (6B) and the brand name owner code for Yokohama (9LA). These tires should have been produced with the GTY plant code for Toyo (3C) and the brand name owner code for Toyo (9LB). The remaining nomenclature in the serial number is correct. The full serial number on the tires was labeled as 6B4K9LA323. Instead, the serial number should have been 3C4K9LB323.

General Tire supported its petition for inconsequential noncompliance with the following:

The tires can still be identified as to the GTY Tire Company and the appropriate plant of manufacture, size and date of manufacture. The tires are branded with the correct brand owner name "Toyo."

This is the type of labeling failure that may be said to have a consequential effect upon safety if it were of such a nature that it would affect the ability of its manufacturer to notify and remedy in the event that it was noncompliant or contained a safety-related defect. After review of their petition and a telephone call to the petitioner, NHTSA has concluded that the recall process should not suffer because of the noncompliance. Both the 6B and 3C plant codes allow the tires to be identified as being produced by the GTY Tire Company. General Tire has confirmed to NHTSA that both codes also allow the tires to be traced back to General Tire in Mt. Vernon, Illinois. These facts and the manufacturer's data base should be sufficient for the manufacturer to notify dealers and consumers in the event of a recall, and for the dealers and consumers to identify whether their tires are the subject of the campaign.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance with FMVSS No. 119 described herein is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 anmd 501.8.

Issued on: March 9, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5918 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–82; Notice 2]

Rover Group Ltd.; Grant of Petition for Determination of Inconsequential Noncompliance

Rover Group Ltd. (Rover) of Lanham, Maryland, determined that some of its spare wheels fail to comply with 49 CFR 571.120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 120), and filed an appropriate report pursuant to 49 CFR part 573 "Defect and Noncompliance Reports." Rover also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 4, 1993, and an opportunity afforded for comment (58 FR 59780). This notice grants the petition.

Paragraph S5.2 of FMVSS No. 120 requires that each rim shall be marked with the following:

(a) A designation which indicates the source of the rim's published nominal dimensions * * *.

(b) The rim size designation * * *.

(c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards.

(d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol.

(e) The month, day, and year, or the month and year, of manufacture, expressed in numerals.

Between March 8, 1993 and July 9, 1993, Rover produced 1,703 model year 1993 Range Rover County and County LWB vehicles with spare wheels that do not comply with Paragraph S5.2 of FMVSS No. 120. In addition, approximately 39 noncompliant replacement wheels were manufactured that may have entered the U.S. parts distribution system with the same noncompliance.

The rims on the subject wheels may be lacking the designation that indicates the source of the rim's published nominal dimensions (S5.2(a)), the "DOT" certification (S5.2(c)), and wholly numerical date code (S5.2(e)).

Rover cites the following reasons for requesting an exemption from the notification and remedy requirements:

A. The tire and rim of the affected spare wheels are properly matched, and are appropriate for the load-carrying characteristics of these vehicles. The lack of complete rim marking has no effect on the performance of the tire/rim combination.

B. The alloy wheels attached to the vehicles contain all of the FMVSS No. 120 required information. As these alloy wheels are the same size as the steel spare wheel, they should provide an adequate reference for any required information required by the owner/operator/mechanic.

C. The persons who change tires rely primarily on the information marked on the sidewalls of the tires being removed. Under this circumstance, the most likely source of information to be consulted on the wheel is the wheel size, which is included on the subject steel wheels.

D. The vehicle owner's manual references the proper wheel and tire size, and wheel/tire information appears on the certification label fitted to the edge of the driver's door. (Certain of these vehicles built before May 22, 1993 are also the subject of a July 2, 1993 Part 573 Report, and subsequent recall campaign.)

E. The subject spare wheels include a date code that can be decoded by Rover Group and the wheel manufacturer, Dunlop, which companies, in accordance with a 49 CFR 571.120 S5.2(d), may be contacted should there be any confusion about the source of the published nominal dimensions of the wheel or its certification status.

F. NHTSA has long maintained the policy that the omission of the certification (DOT) symbol is not the type of non-compliance requiring notification and remedy.

* * * * *

Rover believes that the safety goals of FMVSS 120 have been achieved by means of the wheel size (the information most often referenced by service personnel) being marked on the steel spare wheel and all required information being provided to the vehicle operator or service personnel (1) on the four alloy wheels installed on the vehicle axles, (2) the vehicle owner's manual and (3) the certification label fitted to the edge of the driver's door. Therefore, we submit that the failure to provide a wholly numerical date code, "DOT" certification mark and the source of the rim's published nominal dimensions on the subject spare wheels is inconsequential as it relates to motor vehicle safety.

No comments were received on the petition.

There are two rim marking failures here of the spare wheel that NHTSA regards as constituting a noncompliance with FMVSS NO. 120. The first is the failure to designate a source of the rim's published nominal dimensions. The petitioner argued that this failure is inconsequential because the required information is on the four wheels that are attached to the vehicle, in the operator's manual, and on the certification label fitted to the driver's door. NHTSA believes that the availability of this information in three other locations affords sufficient reference if the information is needed.

The second failure is to provide a wholly numerical date code. The petitioner points out that the date code that is provided can be decoded by the petitioner and the wheel manufacturer. The agency agrees that the information that is provided is sufficient to identify the wheel rims in question should the need arise.

Finally, the failure to mark the rims with the symbol "DOT" is not a failure to comply with FMVSS No. 120 of a nature that the company would be required to institute a notification and remedy campaign were it the only failure that had occurred. This is a simple failure to certify compliance of the rim with all applicable Federal motor vehicle safety standards. This does not raise a safety issue in the context of this petition because the petitioner has stated that the rim, in fact, meets all performance requirements of FMVSS No. 120.

For the foregoing reasons, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50.

Issued on: March 9, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5917 Filed 3–14–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 9, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0020.

Form Number: OTS Form H–(b)10.

Type of Review: Extension.

Title: Savings and Loan Holding Company Registration Statement H–(b)10.

Description: This form is used to determine a savings and loan holding company's adherence to the statutes, regulations and conditions of approval to acquire an insured institution and whether any of the Holding Company's (H.C.'s) activities would be injurious to the operation of any subsidiary savings association.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 99.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Other (once, after becoming a savings and loan holding company).

Estimated Total Reporting Burden: 792 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift

Supervision, 2nd Floor, 1700 G Street NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5969 Filed 3–14–94; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

March 9, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Forms 945, 945–V and 945–A.

Type of Review: New collection.

Title: Annual Return of Withheld Federal Income Tax; Annual Record of Federal Tax Liability.

Description: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement, and gambling winnings. Form 945–A is used to record nonpayroll tax liabilities.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 300,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 945	Form 945–A
Record-keeping.	4 hr., 47 min.	8 hr., 37 min.
Preparing and send-ing the form to the IRS.	5 min.	8 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,972,470 hours.

OMB Number: 1545–0183.

Form Number: IRS Form 4789.

Type of Review: Extension.

Title: Currency Transaction Report.

Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 788,871.

Estimated Burden Hours Per Respondent: Paper—24 minutes; Tape—2 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,185,624 hours.

OMB Number: 1545–1131.

Regulation ID Number: INTL–485–89 Final.

Type of Review: Extension.

Title: Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Sections 988(c)(1) (D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss of which are hedges of other transactions.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,333 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5970 Filed 3–14–94; 8:45 am]

BILLING CODE 4830–01–P

Fiscal Service

[Dept. Circ. 570, 1993—Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Western Atlantic Reinsurance Corp.; Correction

A notice was published in 58 FR 68988 dated December 29, 1993, whereby a Certificate of Authority as an acceptable surety on Federal bonds was issued to Western Atlantic Reinsurance Corporation, under section 9304—9308, title 31 CFR part 223, of the United States Code. The effective date of certification for Western Atlantic Reinsurance Corporation is hereby changed to November 5, 1993, from December 23, 1993.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6602.

Dated: March 4, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–5900 Filed 3–14–94; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 50

Tuesday, March 15, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 16, 1994.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to the Board's risk-based capital guidelines for state member banks and bank holding companies to recognize the risk-reducing benefits of netting arrangements.

Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6142 Filed 3–11–94; 2:50 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, March 21, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6143 Filed 3–11–94; 2:50 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–09]

TIME AND DATES: March 17, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: OPEN TO THE PUBLIC.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 701–TA–359 (Preliminary) (Certain Steel Wire Rod From Germany) and Inv. Nos. 731–TA–686–687 (Preliminary) (Certain Steel Wire Rod From Belgium and Germany)—briefing and vote.
5. Inv. No. 731–TA–646 and 648 (Final) (Certain Steel Wire Rod from Brazil and Japan)—briefing and vote.
6. Outstanding action jacket:
   1. INV–94–017, Scheduling of additional hearing in Inv. No. 22–54, Wheat, Flour and Semolina.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205–2000.

Issued: March 10, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6025 Filed 3–11–94; 8:45 am]

BILLING CODE 7020–02–U

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 14, 21, 28, and April 4, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 14

Monday, March 14

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula Alford, 703–235–4473)

Friday, March 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Supplemental Ethics Regulations (Tentative)
(Contact: John Szabo, 301–504–1610)

1:00 p.m.
Briefing on Investigative matters (Closed—Ex. 5 and 7)

Week of March 21—Tentative

There are no meetings scheduled for the Week of March 21.

Week of March 28—Tentative

Thursday, March 31

9:00 a.m.
Briefing by Nuclear Energy Institute (NEI) (Public Meeting)
(Contact: Richard Myers, 202–293–0770)

2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: 301–881–7040)

Friday, April 1

10:00 a.m.
Briefing on Low Level Radioactive Waste Performance Assessment Development Plan (Public Meeting)
(Contact: John Greeves, 301–504–3334)

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting)
a. Sequoyah Fuels Corp.—Petition for Review of LBP–93–25 (Tentative)
(Contact: Cecilia Carson, 301–504–1625)
b. Final Rule on Equal Access to Justice Act (10 CFR Part 12) (Tentative)
(Contact: Susan Fonner, 301–504–1634)

Week of April 4—Tentative

Thursday, April 7

10:00 a.m.
Briefing by Westinghouse on AP–600 Design Certification (Public Meeting)
(Contact: Brian McIntyre, 412–374–4334)

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a

time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: March 11, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–6141 Filed 3–11–94; 2:48 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on March 7, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for April 4, 1994, in Chicago, Illinois. The members will consider an additional funding request for the Chicago, Illinois, General Mail Facility.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(6) and (9)(B) of Title 5, United States Code, and section 7.3(f) and (i) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and further, is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determined that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(6) and (9)(B) of Title 5, United States Code; and section 7.3(f) and (i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–6099 Filed 3–11–94; 1:40 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register

Vol. 59, No. 50

Tuesday, March 15, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13-93-028]

Drawbridge Operation Regulations; Lake Washington, WA

Correction

In rule document 94-4763 beginning on page 10076 in the issue of Thursday, March 3, 1994, make the following correction:

§ 117.1049 [Corrected]

On page 10077, in the first column, amendatory item 2 correctly reads as set forth below.

2. Section 117.1049 is temporarily amended by suspending paragraph (d) and revising paragraphs (a) and (c) to read as follows.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 93-030]

RIN 2115-AE44

Shipboard Oil Pollution Emergency Plans

Correction

In proposed rule document 94-3522 beginning on page 8086 in the issue of Thursday, February 17, 1994, make the following corrections:

1. On page 8087, in the second column, in the tenth line from the bottom, "regulations" should read "regulation".

2. On the same page, in the third column, in the sixth full paragraph, in the fifth line from the bottom, "prime" should read "prima".

3. On page 8088, in the second column, in the last paragraph, in the first line, "Ships" should read "ships".

4. On page 8089, in the first column, in the third paragraph, in the second line, "cost" should read 'costs".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Part Petition Concerning Country of Origin Marking for Cast Iron Soil Pipe

Correction

In proposed rule document 94-5262 beginning on page 10764 in the issue of Tuesday, March 8, 1994, make the following correction:

On page 10765, in the first column, under **DATES**, beginning in the second line, "60 days from the date of publication in the **Federal Register**." should read "May 9, 1994."

BILLING CODE 1505-01-D

Federal Register

Tuesday
March 15, 1994

Part II

Office of Personnel Management

SES Positions That Were Reserved During 1993; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1993

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive and Management Policy, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1993 whether or not they were still career reserved on December 31, 1993. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993

Agency organization	Career reserved positions
Action:	
Office Inspector General	Inspector General.
Assoc Director For Mgmt & Budget	Associate Director for Management & Budget.
	Asst Dir for Financial Management.
Administrative Conference of the U.S.:	
Administrative Conference of the U.S	Executive Director.
	Research Director.
	General Counsel.
Advisory Council on Historic Preservation:	
Ofc of the Exec Director	Executive Director.
Department of Agriculture:	
Ofc of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Dep Asst Inspector General for Audit.
	Asst Inspector Gen for Pol Dev & Res Mgmt.
	Dep Asst Insp Gen for Invest Immediate Office.
Office of Asst Sec'y Administration	Deputy Chief Financial Officer.
Office of Operations	Director Office of Operations.
	Deputy Dir for Procurement & Real Property.
Office of Finance and Management	Director, Applications Systems Division.
	Dir, Info Resources Management Division.
	Director, Financial Services Division.
	Dir, Thrift Savings Plan Division.
Farmers Home Administration	Deputy Administrator for Management.
	Assistant Administrator, Finance Office.
	Asst Admr for Automated Information Services.
	Asst Admr, Community and Business Programs.
Federal Crop Insurance Corporation	Assistant Manager for Administration.
	Assistant Manager for Insurance Services.
	Asst Manager for Research & Development.
Rural Development Administration	Asst Admr Fin Prog.
Agricultural Marketing Service	Deputy Administrator, Management.
	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Tobacco Division.
	Agricultural Marketing Svc, Dir Poultry Div.
	Director, Compliance Staff.
	Dir, Commodity Scientific Support Division.
	Director
Animal & Plant Health Inspection Service	Deputy Administrator for Management & Budget.
	Assoc Dep Administrator for Mgt. & Budget.
	Dep Admr, Regulatory Enforcement/Animal Care.
Veterinary Services	Director, Northern Region.
	Dir, S E Region, Veterinary Services.
	Director, Western Region.
	Director, South Central Region.
	Dep Admr, Animal Damage Control.
	Dir, Natl Ctr for Veterinary Epidemiology.
Plant Protection & Quarantine Service	Dep Admr, International Services.
	Director Northeastern Region.
	Director, South Central Region.
	Director, Western Region.
	Director, Southeastern Region.
	Asst to the Asst Dep Admr, Natl Programs, PPQ.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Science and Technology	Director, Operational Support PPQ.
	Director, Science and Technology.
Federal Grain Inspection Service	Dir, Field Management Division.
Food Safety and Inspection Service	Asst Deputy Admin Technical Services.
	Dep Admir-Administrative Mgmt.
	Dir, Northeast Region, Phila., PA.
	Regl Director, Atlanta Georgia.
	Dir, North Central Region, Des Moines, Iowa.
	Director, Southwest Region, Dallas, Texas.
	Asst Dep Admr Comp & Staff Operations.
	Asst Dep Admin (Admin Mgt).
	Deputy Administrator, Science.
	Dep Admr, Interni Programs.
	Asst to the Dep Admr International Programs.
	Asst Deputy Administrator.
	Regional Director.
	Assistant Deputy Administrator.
	Associate Deputy Administrator.
	Associate Deputy Administrator.
	Associate Administrator.
	Deputy Administrator.
	Matrix Manager, Track II.
	Deputy Administrator.
	Director.
	Deputy Administrator.
	Assistant Deputy Administrator.
	Deputy Administrator.
Food & Nutrition Service	Deputy Admin for Financial Management.
	Deputy Admr for Management.
Agricultural Stabilization & Conservation Service	Accounting Officer.
	Director, Budget Division.
Foreign Agricultural Service	Dir, Grain & Feed Div.
	Deputy Asst Administrator for Management.
Agriculture Research Service	Dep Admr for Adm Mgmt.
	Assoc Dep Admin for Administrative Management.
	Asst Adm for Cooperative Interactions.
	Global Change Research Staff Assistant.
National Program Staff Office	Deputy Administrator National Program Staff.
	Assoc Dep Admr.
	Associate Dep Administrator, Animal Sciences.
Beltsville Area Office	Dir, Beltsville Human Nutrition Research Ctr.
	Director, Beltsville Area Office.
	Assoc Dir Beltsville Area.
	Assoc Dep Admr, Natural Resources/Systems.
	Associate Deputy Admin Genetic Resources.
	Associate Deputy Administrator.
	Supervisory Research Chemist.
	Dir, US National Arboretum.
	Dir, Beltsville Human Nutrition Research Ctr.
North Atlantic Area Office	Director, Eastern Regl Research Center.
	Research Programs Director.
	Director, North Atlantic Area.
	Assoc Dir, North Atlantic Area.
South Atlantic Area Office	Res Leader-Plant Physio & Photosynthesis Res.
	Associate Dir, South Atlantic Area.
	Director, Russell Research Center.
	Supervisory Research Geneticist.
	Supervisory Research Physiologist.
	Director, South Atlantic Area.
Midwest Area Office	Dir, Midwest Area.
	Dir, Northern Regional Research Center.
	Assoc Dir, Midwest Area.
	Supervisory Veterinary Medical Officer.
	Supervisory Research Chemist.
	Supervisory Research Geneticist (Plants).
Midsouth Area Office	Dir, Southern Regional Res Center, New Orlean.
	Director, Mid-South Area.
	Associate Director, Mid South Area.
Central Plains Area Office	Dir, Natl Animal Disease Center.
Southern Plains Area Office	Director, Southern Plains Area.
	Director, Conservation & Production Res Lab.
	Assoc Dir, Southern Plains Area.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Northern Plains Area Office	Dir, Subtropical Agricultural Res Laboratory.
	Director, Northern Plains Area.
	Associate Director, Northern Plains Area Ofc.
	Dir, R.L. Hruska US Meat Animal Res Center.
	Supervisory Soil Scientist.
Pacific West Area Office	Director, Western Regional Research Center.
	Res Leader Natural Products Chemistry Res.
	Dir, Western Human Nutrition Research Center.
	Director, Pacific West Area Office.
	Director, Plant Gene Expression Center.
	Associate Director, Pacific West Area Office.
	Dir, Western Cotton Research Laboratory.
	Supervisory Research Plant Pathologist.
	Supervisory Research Plant Pathologist.
	Supervisory Soil Scientist.
	Supervisory Soil Scientist.
Cooperative State Research Service	Assoc Administrator for Grants & Program Sys.
Extension Service	Deputy Admin Management.
Soil Conservation Service	Director, Engineering Division.
	Dir, Ecological Sciences and Technology Divisi.
	Deputy Chief for Management.
	Dir, Consv Planning and App.
	Director, Watershed Projects Division.
	Dir, Basin & Area Planning (Soil Conserv).
	Associate Deputy Chief for Management.
	Dir, Soils (Soil Scientist).
	Dir, Land Treatment Program.
	Dir, Information Res Management Division.
	Dir, South National Technical Center.
Forest Service	Associate Deputy Chief for Technology Sci Tec.
	Dep Chf for Administration.
	Dir, Forest Pest Mgmt Staff.
	Dir, Fiscal and Accounting Management.
	Associate Deputy Chief for Administrator.
Research	Director, Fire and Aviation Staff.
	Director, Timber Mgmt Research Staff.
	Dir Insect and Disease Research Staff.
	Dir Forest Environment Research Staff.
	Director, Forest Resource Economics Staff.
	Dir, Forest Fire & Atmos Sciences Res Staff.
Nat'l Forest System	Dir, Range Management Staff.
	Dir, Recreation, Mgmt Staff.
	Dir Timber Management Staff.
	Director, Engineering Staff.
	Director, Lands Staff.
	Dir Land Management Planning Staff.
	Dir, Wildlife & Fisheries Mgmt Staff.
	Dir, Minerals & Geology Staff.
	Director, Watershed & Air Management Staff.
	Dir Ecological Management.
	IPA Assignment.
State & Private Forestry	Dir Cooperative Forestry.
Field Units	NE Area Dir, State & Private Forestry, U DARB.
	Dir N Eastern Forest Experiment Station.
	Dir, North Central Forest Exp Station.
	Dir, Pacific NW Forest & Range Exp Station.
	Dir, Pacific SW For & Range Exper Sta.
	Director Rocky Mt Forest & Range Exper Stat.
	Dir S Eastern Forest Experiment Station.
	Director, Forest Products Laboratory.
	Dep Dir Forest Products Lab.
International Forest System	Deputy Regional Forester.
Economic Research Service	Associate Deputy Chief.
	Admr, Economic Research Service.
	Associate Administrator-Economic Rsch Svc.
	Director Agriculture & Trade Analysis Div.
	Director Commodity Economics Division.
	Director Resources & Technology Division.
	Director Agriculture & Rural Econ Division.
	Dep Admin for Info Res & Mgt Oper.
Economics Management Staff	Director, Economics Management Staff.
National Agricultural Statistics Service	Admr, National Agricultural Statistics Serv.
	Deputy Administrator for Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dir Estimates Div.
	Dir, State Statistical Division.
	Deputy Administrator for Programs.
	Dir, Systems & Information Division.
	Director, Survey Management Division.
World Agricultural Outlook Board	Chairperson.
	Dep Chairperson.
Office of Energy	Director, Office of Energy.
Board for International Broadcasting:	
Board of International Broadcasting	Dep Exec Director/Director of Program Review
	Inspector General.
Board Staff	Exec Director.
	General Counsel.
	Director of Financial & Congressional Affairs.
Department of Commerce:	
Office of Technology	Executive Director.
Office of the General Counsel	Asst General Counsel for Finance & Litigation.
	Director, Office of Intelligence Liaison.
Ofc of Asst Secy for Administration	Dir for Federal Asst & Management Support.
	Dir for Financial Management.
Director for Management and Information	Dir for Information Resources Management.
Director for Procurement & Administrative Services	Director for Procurement & Admin Services.
	Dep Dir for Procurement & Admin Services.
	Director, Office of Security.
	Deputy Director for Procurement.
Office of Human Resources Management	Director for Human Resources Management.
	Dep Dir of Human Resources Management.
Director for Planning Budget and Evaluation	Director, Office of Budget.
Ofc of the Under Secy for Economic Affairs	Dep Asst Secy for Statistical Affairs.
	Dir, Office of Business Analysis.
Bureau of Economic Analysis	Director.
	Dep Dir, Bur of Economic Analysis.
	Assoc Dir for Natl Economic Accounts.
	Assoc Dir for Regional Economics.
	Assoc Dir for International Economics.
	Chief Economist.
	Chf Statistician.
	Asst to the Director for Econometrics.
	Chf, Natl Income & Wealth Div.
	Chief, Business Outlook Div.
	Chief, International Investment Division.
Bureau of the Census	Dep Dir.
	Asst Director for ADP.
	Prog Mgr, Computer-Assisted Survey Info Coll.
	Chief, Technical Services Division.
	Chief, Personnel Division.
	Chief Admin & Publications Services Division.
	Senior Program Analyst.
	Asst Dir for Administration.
	Associate Director for Administration.
	Assoc Dir for Information Technology.
	Chief, Data User Services Division.
	Chief, Computer Services Division.
Demographic Programs	Associate Director for Demographic Fields.
	Chf, Population Div.
	Chief, Demographic Surveys Divisions.
	Chf, Housing & Household Econ Statistics Div.
	Chief, Statistical Methods Division.
	Chief, Intl Statistical Programs Center.
Decennial Census	Associate Director for the Decennial Census.
	Asst Dir for Publicity and Outreach.
	Chf, Geography Div.
	Chief, Decennial Management Division.
	Chief, Decennial Statistical Studies Div.
Statistical Design Methodology and Standards	Assoc Dir for Statistical Standards & Methods.
	Chief, Year 2000 Res & Dev Staff.
	Chief, Statistical Research Division.
Field Operations	Assoc Dir for Field Operations.
	Chief, Field Division.
	Chief, Data Preparation Division.
Economic Programs	Associate Director for Economic Programs.
	Assistant Director for Economic Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Chief, Agriculture Div.
	Chf, Business Div.
	Chf, Construction Statistics Div.
	Chief Economic Census & Surveys Division.
	Chf, Foreign Trade Div.
	Chf, Government Div.
	Chf, Industry Div.
	Chief, Economic Statistical methods Division.
	Chief, Economic Programming Division.
Institute for Telecommunications Sciences	Assoc Admr for Telecommunications Science.
	Deputy Dir for Systems & Networks.
Economic Development Administration	Dep Director for Program Operations.
Ofc of the Inspector General	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Asst Insp Gen for Compl & Audit Resolution.
	Deputy Assistant Inspector Gen for Auditing
	Asst Insp Gen for Plng, Eval & Inspections.
	Counsel to the Inspector General.
	Dep Asst Insp Gen for Insp & Res.
* Ofc of the Under Sec for Export Administration	Director of Administration.
Ofc of Asst Secy for Trade Development	Director Office of Consumer Goods.
Ofc of Dep Asst Secy for Compliance	Dir, Office of Agreements Compliance.
	Dir, Office of Antidumping Compliance.
Ofc of Dep Asst Secy for Investigations.	Dir, Office of Antidumping Investigations.
	Dir, Office of Countervailing Investigations.
National Oceanic and Atmospheric Administration	Dir for High Performance Computing Commun.
	Dir, NOAA Coastal Ocean Program Office.
Systems Program Office	Director, Systems Engineering Staff.
	ASOS Program Manager.
	Nexrad Program Manager.
	GOES Program Manager.
	CHF/AWI Interactive Processing System/1990's.
	Fleet Modernization Program Manager.
Office of Administration	Dir for Information Systems & Finance.
	Director for personnel & Civil Rights.
	Dir for Procurement, Grants & Adm Services.
National Marine Fisheries Service	Senior Scientist for Fisheries.
	Dir, Ofc of Research & Environmental Info.
Fisheries Resource Management	Director, Office of Enforcement.
Fisheries Centers	Science & Research Dir Northeast Region.
	Science & Research Dir.
	Science & Research Dir Southwest Region.
	Science & Research Dir.
	Science and Research Director.
Deputy Asst Admr for Satellites	Dir, Natl Oceanographic Data Center.
	Director, National Climatic Data Center.
	Dir, National Geophysical Data Center.
	Poes Program Manager.
	Dir Ofc of Sys Development.
Office of Oceanic and Atmospheric Research	Director, Forecast Systems Laboratory.
Office of Oceanic Research Programs	Dep Dir, Ofc of Oceanic Research Programs.
	Program Director for Weather Research.
	Dep Asst Admr for Extramural Research.
Environmental Research Laboratories	Dep Dir, Environmental Research Laboratories.
	Associate Director for Science & Data.
	Dir, Climate Monitoring & Diagnostics Lab.
Atlantic Oceanographic and Meteorological Labs	Dir, Atlantic Oceanographic & Meteorological.
	Depy Dir, Atlantic Oceanographic & Meteorological.
	Dir, Space Environment Laboratory.
Wave Propagation Lab	Director.
Aeronomy Lab	Director, Aeronomy Laboratory.
Geophysical Fluid Dynamics Laboratories	Director.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
Great Lakes Environmental Research Lab	Dir, Great Lakes Environmental Research Lab.
National Severe Storms Laboratory	Dir, Nat'l Severe Storms Lab.
Air Resources Laboratory	Director, Air Resources Laboratory.
Pacific Marine Environmental Lab	Dir, Pacific Marine Environmental Lab.
National Ocean Services	Chf, Marine Analysis & Interpretation Div.
	Dir, Office of Ocean & Earth Sciences.
	Senior Scientist for Ocean Services.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Ocean Resources Conservation and Assessment	Chief, Ocean Observation Division. Chief, Ocean & Lake Levels Division. Chf, Strategic Environmental Assessments Div. Chf, Hazardous Materials R&A Division. Chief, Coastal Monitoring Bioeffects Asses Div. Chf, Physical Oceanography Division.
Charting and Geodetic Services	Chief, Geosciences Laboratory. Chief, Aeronautical Charting Division.
National; Weather Service	Director, NOAA Data Buoy Office. Chief, Management and Budget Staff. Chief, International Affairs Division. Chf, Ofc of the Fed Coordinator for Meteorlogy. Deputy Assistant Administrator for Operations. Dir, NEXRAD Operational Support Facility. Transition Dir, Transition Prog Ofc.
Office of Meteorology	Dir, Office of Meteorology. Chief, Operations Division. Chf, Prog Requirements & Plng Division.
Office of Hydrology	Director, Office of Hydrology. Chief, Hydrologic Services Division. Chief, Hydrologic Research Laboratory.
Office of Systems Operations	Chief, Engineering Division. Chief, Systems Operations Center. Chief, Systems Integration Division. Dir, Office of Systems Operations.
Office of Systems Development	Director, Office of Systems Development. Chief, Integrated Systems Laboratory. Chief, Techniques Devel Laboratory. Chief, Advanced Devel & Demonstration Lab.
National Meteorological Ctr	Dep Dir, Office of Systems Development. Director, National Meteorological Center. Deputy Director. Director, Climate Analysis Center. Chief, Automation Division. Chief, Development Div. Chf, Meteorological Operations Division. Dir. Natl Severe Storms Forecast Center. Director Natl Hurricane Center.
Regional Offices & Centers	Dir Southern Region, Ft. Worth. Dir. Salt Lake City Region. Dir. Alaska Region, Anchorage. Dir Eastern Region NWS. Director Central Region.
National Institute of Standards and Technology	Director for Quality Programs. Dep Dir, Ofc of Quality Programs. Assoc Dir for Tech & Business Assessment. Scientific Advisor.
Office of Associate Director	Director for International & Academic Affairs. Deputy Director for International Affairs. Deputy Director for Academic Affairs.
Advanced Technology Program	Dep Director, Advanced Technology Program. Director, Advanced Technology Program.
Technology Services	Deputy Director, Technology Services. Dir, Ofc of Technol Evaluation & Assessment.
Office of Technology Commercialization	Dir, Office of Technology Commercialization.
Office of Measurement Services	Chf, Phy Meas S/P Ofc of Measurement Services. Director, Office of Measurement Services.
Office of Standards Services	Dir, Office of Standards Services.
Electronics and Electrical Engineering Laboratory	Dir, Electronics & Electrical Eng Laboratory. Deputy Director. Dir, Office of Microelectronics Programs.
Electricity Division	Chief, Electricity Division.
Electromagnetic Technology Division	Chf-Electromagnetic Technology Division.
Semiconductor Electronics Division	Chief Semiconductor Electronics Division. Senior Research Scientist.
Manufacturing Engineering Laboratory	Dir, Manufacturing Engineering Laboratory. Chief, Automated Production, Technology Div. Manager for Industrial Relations. Program Manager Automated Manufacturing Res. Dep Dir, Manufacturing Engineering Laboratory.
Precision Engineering Division	Chief, Precision Engineering Division.
Robot Systems Division	Chief, Robot Systems Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Factory Automation Systems Division	Chief, Factory Automation Systems Division.
Physics Laboratory	Director, Physics Laboratory.
	Physicist (Nuclear).
	Coordinator of Radiation Measurement Services.
	Coordinator of Program Development.
	Deputy Director, Physics Laboratory.
Ionizing Radiation Division	Chief, Ionizing Radiation Division.
Fundamental Constants Data Center	Mgr, Fundamental Constants Data Center.
Molecular Physics Division	Chief, Molecular Physics Div.
Quantum Metrology Division	Chief, Quantum Metrology Division.
Atomic Physics Division	Chief, Atomic Physics Division.
Time and Frequency Division	Chief, Time and Frequency Division.
Quantum Physics Division	Senior Scientist..
	Senior Scientist & Fellow of JILA.
	Senior Scientist & Fellow of JILA.
Electron and Optical Physics	Group Leader for FAR Ultraviolet Physics.
Chemical Science and Technology Laboratory	Dir, Chemical Sci & Technology Laboratory.
	Deputy Director for Programs.
Inorganic Analytical Research Division.	Chief Inorganic Analytical Research Division.
Organic Analytical Research Division	Chief Organic Analytical Research Division.
Surface and Microanalysis Science Division	Chf, Surface & Microanalysis Science Division.
	Group Leader, Surface Spec. & Thin Films.
Biotechnology Division	Chief, Biotechnology Division.
Thermophysics Division	Chief Thermophysics Division.
Materials Science and Engineering Laboratory	Dir, Materials Sci & Eng Laboratory.
	Senior Scientist.
	Scientific Assistant to the Director, IMSE.
	Dep Dir, Materials Sci & Eng Lab.
	Chief, Film & Fiber Technology.
Materials Reliability Division	Chief Materials Reliability Div.
Office of Intelligent Processing of Materials	Chf, Ofc of Intell Processing of Materials.
Organization Abolished	Chief Ceramics Division.
Polymers Division	Chief, Polymers Division.
Metallurgy Division	Chf, Metallurgy Division.
	Physicist (Solid State).
Reactor Radiation Division	Chief, Reactor Radiation Division.
	Group Leader Neutron Condensed Matter Science.
	Chief, Reactor Operations.
Computer Systems Laboratory	Chief Systems & Network Architecture Division.
	Chf, Advanced Systems Division.
	Chf, Info Syst Engineering Division.
	Chf, Systems and Software Technology Division.
	Associate Director for Computer Security.
	Associate Director for Program Implementation.
	Chief, Computer Security Division.
Building and Fire Research Laboratory	Chief, Structures Division.
	Dir, Building & Fire Research Laboratory.
	Dep Dir, Building & Fire Research Laboratory.
	Asst Dir, Building & Fire Research Laboratory.
Building Environment Division	Chief, Building Environment Division.
Building Materials Division	Chf, Building Materials Div.
Fire Science and Engineering Division	Chief, Fire Safety Engineering Division.
Fire Measurement and Research Division	Chief, Fire Science Division.
Computing and Applied Mathematics Laboratory	Dir, Computing & Applied Mathematics Lab.
	Dep Dir, Computing & Applied Mathematics Lab.
	Chief, Computer Services Division.
	Chief Scientific Computing Division.
	Asst Dir for Management Information Technology
	Associate Director for Computing.
Statistical Engineering Division	Chief, Statistical Engineering Division.
Patent and Trademark Administration	Asst Commissioner for Finance and Planning.
	Assistant Commissioner for External Affairs.
	Dep Asst Comr for Public Services & Adm.
	Dir Directorate for Interdiscipl Program.
Office of Assistant Commissioner for Patents	Administrator for Search & Information Res.
Chemical	Group Director 110.
	Group Director 120.
	Group Director—130.
	Group Director 150.
	Deputy Group Director—110.
	Group Director—180.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Electrical	Deputy Group Dir 150. Deputy Group Director 180. Group Director for 260. Group Director 210. Group Director for 220. Group Director—230. Group Director 240. Group Director 250. Deputy Group Director—250. Deputy Group Director—260. Deputy Group Director—230.
Mechanical	Group Director—310. Group Director—320. Group Director—330. Group Director—340. Group Director—350.
Office of Assistant Commissioner for Trademarks	Chairman, Trademark Trial & Appeal Board. Deputy Asst Commissioner for Trademarks. Director, Trademark Examining Operation.
Commodity Futures Trading Commission:	
Office of the General Counsel	Deputy General Counsel (Opinions & Review). Deputy General Counsel (Litigation). Deputy General Counsel (Reg & Adm).
Office of the Executive Director	Dep Exec Dir. Dir, Ofc in Information Resources Mgmt.
Division Economic Analysis	Dep Chf Economist. Chf, Analysis Section. Associate Director for Surveillance. Director of Economic Research.
Division of Enforcement	Deputy Director (Western Operations). Deputy Director (Eastern Operations).
Division of Trading and Markets	Deputy Director (Contract Markets). Chief Counsel.
Consumer Product Safety Commission:	
Ofc of Executive Dir	Asst Exec Dir For Compliance & Enforcement. Assoc Exec Dir for Adm. Associate Executive Dir for Field Opeartions.
Office of Hazard Identification & Reduction	Asst Exec Dir for Hazard I&R. Associate Exec Dir for Epidemiology. Associate Executive Director for Economics.
Ofc Secy of Defense:	
Office of the Secretary	Asst to the Secy of Defense (Intel Oversight).
Ofc of Asst Secy (Solic)	Dep Asst Secy of Defense (Forces & Resources).
Joint Activities	Director for Budget and Execution. Director for Requirements & Programs.
Director Operational Test and Evaluation	Director DESA.
Ofc of Inspector General	Dep Dir for Resources & Administration. Deputy Inspector General. Asst Inspector General for Investigations. Dep Asst Inspector Gen for Investigations. Dep Asst Inspector General for Investigations. Asst Inspector Genl for Analysis & Followup. Asst Insp Gen for Adm & Info Management. AIG for Departmental Inquiries. Dep Asst Inspector Gen for Adm & Info Mgmt. Dir, Audit Planning & Technical Support. Dep Asst Insp Gen for Audit, Pol & Oversight. Director, Acquisition Management. Director, Logistics and Support. Director, Contract Management. Dir, Readiness & Operational Support. Director, Financial Management. Asst Inspector Gen for Audit, Pol & Oversight. Deputy Asst Inspector General for Auditing. Asst IG for Inspections. Asst Inspector General for Auditing. Dir for Investigative Operations. Director for Criminal Policy & Oversight. Asst Insp Gen for Criminal Investigative P/O. Dep Asst Inspector Gen for Program Evaluation
Ofc of Asst Secy of Defense (Reserve Affairs)	Principal Director (Manpower and Personnel).
Ofc Dep Asst Secy (Civilian Personnel P/E Opportunity)	Director, Personnel Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Ofc of Dir of DOD Dependents Schools	Prin Dir (Civilian Pers Pol/Equal Opp). Dir Personnel Management. Director, Staffing & Career Management. Dir Pacific Region DODDS. Director, Germany Region. Dep Dir Dep of Defense Dependents School. Assoc Dir for Financial, Logistl, & Info Mgmt.
Office Assistant Sec Health Affairs	Dir, Defense Medical Systems Support Center.
Uniformed Serv. University of the Health Sciences	Scientific Director, AFRRI.
Office of Asst to Secy of Def for Public Affairs	Dir, Freedom of Information & Security Review. Dep Dir, Armed Forces Radio & Television Serv.
Washington Headquarters Services	Director of Personnel and Security. Dep Dir, Real Estate & Facilities. Dep Dir, Personnel and Security.
Office of the General Counsel	Deputy General Counsel (IG).
Ofc of Under Secy of Def for Acquisition	Dep Dir Missile & Space Systems. Deputy Dir Air Systems. Director for Defense Procurement. Sr Staff Specialist for S&A Systems. Dep Dir Maritime Systems. Sr Staff Spec for Tech & Analysis. Deputy Dir, Cost Pricing & Finance. Sr Staff Spec for Air Weapons Def Sup Sys. Sr Staff Spec for Ground Air Defense Systems. Sr Staff Spec Close Air Supp & Air Int Sys. Sr Staff Spe for Antisubmarine & Mine Sys. Sr Staff Spec for Ship Systems. Sr Staff Spec for Ball Missile Def Sys. Dep Dir Munitions. Sr Staff Spec for Air Mobility. Sr Staff Special for Air Superiority Systems. Dep Dir, Contract Pol & Administration. Deputy Dir Test Facilities & Resources. Dep Dir Land Systems. Dep Dir Deep Strike Systems. Executive Director, Defense Science Board. Deputy Dir Line Fire Test. Dir Computer Aided Logistics Support Office. ADUSD (ASIA/MID East/S. Hemisphere Affairs). Deputy Dir Program Assessment. Dep Dir, Def Syst Procurement Strategies. Dep Dir, Program & Budget Integration. Dep Dir Electronic Combat Systems. DOD Contractor Adv & Assistance Serv Director. Asst Dep Under Secy of Def (Plnng & Eval). Dir, Base Closure and Utilization. Dir, Def Acquisition Reg Sys & Council. Dep Dir, Foreign Contractor. Dir, Acquisition Log & Production Readiness. Sr Staff Spec for Submarine & Surveil Sys. Dep Dir Mayor Policy Initiatives. Staff Spec for Spec Tech Program. Dep Dir WSA/Special T&E Programs. Dep Dir Strategy Arms Control & Compliance. Dep Dir, Aeronautical Systems. Special Asst Concepts & Plans. Deputy Director Defensive Systems. Prin DASD (Atomic Energy). Dep Dir, Land & Maritime Programs. Dep Dir, Air & Space Programs. AUSD (Ballistic Missle Defense).
Ofc of DD (Research and Advanced Tech)	Director, Engineering Technology. Staff Specialist for Vehicle Propulsion. Staff Specialist for Materials & Structures. Staff Specialist for Weapons. Dir Environmental & Life Sciences. Staff Spec/Mobility, Logistics & Adv Concepts. Dir, Research & Laboratory Management. Spec Asst for Mctl & Long-range Plnng Matters. Staff Spec for Electronic W/C, Ctrl & Comms. Staff Specialist for Electronic S/D. Dir, Balanced Technology Initiative.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Ofc of DD (Tactical Warfare Progs)	Assistant Deputy Director (TWP).
Office of DD (Plans & Resources)	Deputy Director (Plans & Resources).
Director, Strategic & Theater Nuclear Forces	Dir Strategic & Theater Nuclear Forces C3
	Staff Asst S/C, Control & Communications.
Director, Theater & Tactical C3	Dir Theater & Tactical Commun Command & Contr.
	Dep Dir T&T Communications Command Control.
Deputy Assistant Secretary of Defense (Intelligence)	Senior Advisor for Measurement & Signature.
	Senior Advisor For Imaging Intelligence.
	Director, Intelligence Issues.
	Director, Intelligence Policy.
Senior Advisor for Human Intelligence Systems	Senior Advisor for Human Intelligence.
Senior Advisor, Signal Intelligence Systems	Senior Advisor Signal Intelligence.
Deputy Assistant Secretary of Defense (Defense-Wide C3)	Dir Comm Electronics Technology.
Director, Information Systems	Director, Telecommunications.
Director, C3 Mobilization Systems	Dir National Programs.
Organization Abolished	Asst Dep Dir (Information Technology).
DASD (Counterintelligence & Security Countermeasures)	Director, Counter Intelligence.
Ofc of Asst Secy (Principal Deputy for Intelligence)	Dir, Special Technology Support.
Advanced Research Projects Agency (ARPA)	Director, ASTO.
	Assistant Director, Smart Weapons.
	Deputy Director, ASTO.
	Deputy Director, Management.
	Deputy Director.
	Dir Electronic Systems Technology Office.
	Dir Land Systems Office.
	Director Special Projects.
	Dir Microelectronics Technology.
	Dep Dir Micro Electronics Technology.
	Dir Undersea Warfare Office.
	Chief, Advanced Technology.
	Executive Director Manufacturing.
	Asst Dir, Sensors & Processing.
Computing Systems Technology Office	Executive Director (Software).
	Dir Computing Systems Technology Office.
Defense Sciences Office	Dir Defense Sciences Office.
	Assistant Director for Material Sciences.
Defense Manufacturing Office	Executive Director.
Contracts Management Office	Dir, Contracts Management Office.
Nuclear Monitoring Office	Dir Nuclear Monitoring Research Ofc.
Office of the Joint Chiefs of Staff	Dep Dir for Technical Operations.
Ballistic Missile Defense Organization	Asst Dir for Sensors Demonstrations.
	Assistant Director for Sensor Technology.
	Asst Dir for Interceptors & Communications.
	Director, Information Systems.
	Deputy for Program Operations.
Defense Contract Audit Agency	Director, DCAA.
	Deputy Director, DCAA.
	Assistant Director, Operations.
	Asst Dir, Policy & Plans.
	Director, Field Detachment.
Regional Managers	Regional Director, Eastern.
	Regional Director, Northeastern.
	Regional Director, Central.
	Regional Director, Western.
	Regional Director, Mid-Atlantic.
	Dep Regional Director Eastern Region.
	Deputy Regional Director Northeastern Region.
	Deputy Regional Dir Central Region.
	Deputy Regional Director, Western.
	Dep Reg Dir Mid Atlantic Region.
Defense Logistics Agency	Special Asst for Integrity in Contracting.
	Dir, Defense Manpower Data Center.
	Chief Actuary.
Directorate for Contract Management	Executive Directive, Contract Management.
	Chf, Plans, Policies & Systems Division.
Directorate of Quality Assurance	Dep Exec Dir, Quality Assurance.
	Deputy Commander.
Ofc of Staff Dir-Small & Disadvantaged Business Until	Staff Dir, Small & Disadv Busin Utilization.
Office of Civilian Personnel	Staff Director, Civilian Personnel.
	Deputy Staff Director, Civilian Personnel.
Directorate of Supply Operations	Deputy Commander.
Directorate of Contracting	Executive Director, Contracting.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Directorate of Tech & Logistics Services	Chief, Contracts Division.
	Executive Director Procurement.
	Chf, Property Disposal Div.
	Dep Commander Defense Electronics Supply Ctr.
	Deputy Commander.
Defense Personnel Support Center	Deputy Commander DPSC.
Defense Training & Performance Data Center	Deputy Dir Defense Manpower Data Center.
Defense Contract Management	Deputy DCMC.
	Executive Director, Contract Management.
Defense Communications Agency	Dir Multi-Functional Central Design Activity.
	Dir Mult-Functional Information Processing.
Office of the Director	Director, DITSO.
	Deputy Director, DITSO.
	Deputy Manager National Commun Systems.
Ofc of Assoc Dir for Eng, Technol & Corporate Planning	Assoc Dir for Eng, Technology & Corp Plng.
	Chief Information Officer.
	Dep Dir for Operations.
	Dep Dir for Systems.
Organization Abolished	Spec Asst to the Dir, Spec Prog Organization.
National Communications System	Deputy Manager, Natl Communications Systems.
	Asst Mgr, NCS, Technology & Standards.
	Asst Mgr, NCS, Plans & Operations.
Center for Command, Control & Communications (C3) Sys	Dep Dir, Theater Systems.
	Dep Dir for Switched Network Engineering.
	S/A to the Dir, CPSI for Satellite Com Sys.
	Asst Dir for Prog Development & Coordination.
	Spec Asst to Dir, Ctr for C3 for Int Dig Arch.
	Dep Dir Strategic Systems Directorate.
	Assistant Director for Process & Integration.
	Dir Military Satellite Communications.
	Dir Center for Systems Intero & Integration.
	Dep Dir Joint (IEO).
	Dir Center for Technical Architecture.
	Tech Dir Joint Intero & Eng Comm (JIEO).
	Dir Center for Standards.
	Dir Center for Engineering.
	Assoc Dir Mission Support Information Systems.
	Assoc Dir Center for Standards.
Defense Communications System Organization	Dep Dir, Defense Comm System Organization.
	Dep Dir, DCS Telecommunications Networks.
	Assoc Deputy Director, DCS Data Systems.
Organization Abolished	Dir, Def Communications Engineering Center.
Defense Commercial Communications Office	Dir Defense Commercial Communications Office.
Center for Agency Services	Director, Center for Agency Services.
Joint Data Systems Support Center	Director, Joint Data Systems Support Center.
	Tech Dir, WWMCCS ADP Tech Support Directorate.
	Deputy Director, NMCS ADP Directorate.
	Assoc Dir for Technical & Management Support.
Joint Tactical Command, Control & Communications Agency	Assistant Director, JTC3A.
	Dep Dir, Architecture Directorate.
	Deputy Director for Testing.
Information Management Center	Director, Information Management Center.
	Director, Technical Integration Office.
Comptroller Directorate	Comptroller.
Defense Nuclear Agency	Chief of Staff.
Office of the Director	Deputy Director.
Acquisition Management Office	Dir, Acquisition Management.
Operations Directorate	Deputy Director, Operations Directorate.
	Chief, Structural Dynamics Division.
Radiation Sciences Directorate	Dir for Radiation Sciences.
	Chief, Atmospheric Effects Division.
	Chief, Electronic Effects Division.
	Chief, Electromagnetic Applications Division.
Shock Physics Directorate	Director for Shock Physics.
	Chief, Weapons Effects Division.
Test Directorate	Director for Test.
	Chf, Nevada Operations Ofc, Test Directorate.
Defense Mapping Agency	Chief Digital Production System Department.
D M A Headquarters	Dep Dir for Hum Res-Dir DMA Ofc Hum Res Mgt.
	Dep Dir For Acq Install & Logistics.
	Dep Dir for Progs, Production & Operations.
	Dep Dir for Research & Engineering.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
D M A Field Activities	Asst Dep Dir for Production. Asst Deputy Dir for Resources. Deputy Director. Asst Dep Dir for Advanced Sys Requirements. Deputy Director for Plans & Requirements. Dep Dir for Intl Prog Operations. Dep Dir for Information Resources Management. Chief, Analysis Division. Dep Dir for Prog, Prod & Operations DMA HTC. Dep Dor for Progs, Production and Operations. Chf, Digital Products Department AC. Chf, Digital Products Department HTC. Chief, Scientific Data Dept. Chief, Scientific Data Department. Dir DMA Sys Ctr Dep Dir for Res & Engineering. Dep Dir for Modernization Development. Dep/Techn Dir/DMA Syst Cntr ASD for Res & Eng. Dep Dir for P/O, DMA Syst Cntr/ADD for RDT&E. Chief, Mapping & Charting Department. Chief, Mapping & Charting Department. Chief, Reston Department. Dir DMA Hydrographic/Topographic Center. Career Reserved Positions. Dir DMA Reston Center. Dir DMA Aerospace Center. Dep Dir/Dep for Development Group.
Defense Finance & Accounting Service	Deputy Director, Cleveland Center.
Defense Investigative Service	Dir, Defense Investigative Service. Deputy Director (Investigations). Dep Dir (Industrial Security). Deputy Director (Resources). Dir, Personnel Investigations Center.
Department of Air Force:	
Ofc of Administrative Assistant to the Secretary	Administrative Assistant to the Secy. Dep Administrative Assistant.
OFC of Small & Disadv Bus Utilization	Dir, Ofc of Small & Disadv Bus Utilization.
Office of the Inspector General	Dep Asst Inspector Gen/Spec Investigations.
Office of ASAF for Financial Management & Comptroller	Principal Dep Asst Secry (Financial Mgmt).
ODAS Budget	Deputy for Budget. Director of Budget Investment. Director of Budget Management & Execution. Deputy Director of Budget Operations.
ODAS Cost & Economics	Dep Asst Secy (Cost & Economics).
Office of ASAF for Acquistion	Dir Science & Technology. Assoc Dir Strategic, Sof & Airlift Prog. Assoc Dir, Tactical Programs. Competition Advocate Gen Dir, CAAS.
ODAS Acquisition	Dep Asst Secy (Acquisition). Deputy Assistant Secretary.
ODAS Communications, Computers & Support Systems	Assoc Dep Asst Secy (Info & Support Syst).
ODAS Research & Engineering	Assoc Dep Asst Secy (Transportation). DAS (Research & Engineering).
ODAS Management Policy & Program Integration	Assoc Dep Asst Secy Magnt Pol & Prog Interagt.
ODAS Contracting	Assoc Dept Asst Secy (Contracting).
Air Force Program Executive Office	AF Program Exec Officer, Info Systems. Program Director, AMRAAM SPO. Air Force Prog Exec Ofcr, Conventional Strike.
Ofc of ASAF for Manpower, Reserve Affairs, Install & Env	Dep for Air Force Review Boards.
ODAS Installations	Dir Air Force Base Disposal Agency. Deputy for Installations Management.
Office of ASAF for Space	Deputy for Contracting.
Assistant Vice Chief of Staff	Air Force Historian.
Test and Evaluation	Deputy Director, Test & Evaluation. Deputy Dir Test & Evaluation.
Morale, Welfare, Recreation and Services	Dir of Res Mgmt & Dep Dir for Mwr & Services.
Asst Chief of Staff for C3 and Computers	Director of Resources.
Deputy Chief of Staff, Logistics	Assoc Dir for Logistics Plans & Programs. Chief Modification & O&M Programs Division. Chief Combat Support Programs Division. Assoc Dir of Maintenance Engineering & Supply.
Civil Engineer	Associate Civil Engineer.
Deputy Chief of Staff, Personnel	Dir of Civilian Personnel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dir Civil Personnel Policy & Personnel Plans.
	Deputy Director of Personnel Management.
	Deputy Director for Plans and Requirement.
	Dep Dir for Work Force Effectiveness.
	Spec Project Ofcr for Personnel Management.
	Chief Resources Division.
	Chief Air Force Personnel Operations Agency.
	Chf, Air Force Civilian Personnel Mgmt Center.
Assistant Chief of Staff, Intelligence	Assoc Dir, Strategy & Production.
Air Force Materiel Command	Chairman AF Logistics Command Procur Committ.
Personnel	Director, Personnel.
Contracting	Deputy Director Contracting.
	Dir Business Clearance.
Logistics	Deputy Director, Logistics.
Engineering & Technical Management	Director, Engineering & Technical Mgmt.
Financial Management & Comptroller	Dep Director, Financial Mgmt & Comptroller.
Corporate Information	Director, Communications-Computer Systems.
	Dir Corporate Information.
Plans & Programs	Deputy Director, Plans & Programs.
Science & Technology	Director, Plans and Programs.
Space and Missile Systems Center	Executive Director.
	Executive Director.
	Director, Plans & Advanced Programs.
Phillips Laboratory	Deputy Director.
	Deputy Advanced Weapons & Surveillance.
Geophysics Directorate	Ch, Atmospheric Structure Br.
	Dir, Space Physics Division.
Propulsion Directorate	Director, Propulsion Directorate.
Electronic Systems Center	Executive Director.
	Executive Director.
	Asst Dep for Contracting & Manufacturing.
	Prog Dir for Air Base Decision Systems.
	Director, Engineering & Program Management.
	Chief Engineer.
	Director, Plans & Advanced Programs.
	Prog Dir Electronic Combat & Reconnaissance.
	Executive Director.
Rome Laboratory	Technical Director (Command & Control).
	Dir Plans & Programs.
Standard Systems Center	Director Standard Systems Center.
	Director, Standard Systems Center.
Aeronautical Systems Center	Executive Director.
	Dep Dir Financial Magnt & Comptroller.
	Executive Director.
Development Planning	Dir Advanced Systems Analysis.
Contracting	Dep Dir Contracting.
Integrated Engineering & Tech Management	Dir Support Systems Engineering.
	Director Avionics Engineering.
	Director, Systems Engineering.
Directors of Engineering	Director of Engineering (F–16).
	Dir of Eng Reconnaissance & Elec Warfare Sys.
	Dir of Engineering (Advanced Technol Bomber).
	Dir of Eng, Advanced Tactical Fighter.
	Dir of Engineering C–17.
	Dir of Engineering Subsystems.
Systems Program Offices	Deputy Program Director ATF.
	Deputy Program Director C–17.
	Program Dir Subsystems.
Wright Laboratory	Dir Manufacturing Technology.
	Dir, Plans & Programs Directorate.
Materials Directorate	Dir, Metals & Ceramics Div.
Human Systems Center	Executive Director.
Armstrong Laboratory	Research Director (Crew Technology).
	Director, Plans and Programs.
Air Force Flight Test Center	Executive Director.
Air Force Development Test Center	Executive Director.
Joint Logistics Systems Center	Dir Depot Maintenance.
	Dir Corporate Integration.
Air Logistics Center, San Antonio	Executive Director.
	Director, Financial Management.
	Director, Propulsion Systems.
	Director, Contracting.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Air Logistics Center, Oklahoma City	Executive Director.
	Executive Director.
	Director, Financial Management.
	Director, Commodities Management.
	Director, Contracting.
Air Logistics Center, Warner Robins	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Logistics Center, Ogden	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Logistics Center, Sacramento	Executive Director.
	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
	Director, Contracting.
Air Force Audit Agency	Auditor General of the Air Force.
	Asst Aud Gen (Acquisition & Log Audits).
	Asst Aud Gen (Field Activities).
	Asst Aud Gen (Operations).
	Asst Aud Gen (Financial & Support Audits).
Air Force Intelligence Command	Technical Director (Aerospace Systems).
Air Mobility Command	Asst DCS/Plans and Programs.
U.S. Strategic Command	Assoc Dir For Strategic Planning.
Air Combat Command	Chief Scientist Tactical Air Warfare Ctr.
Pacific Air Forces	Chief, Operations Analysis.
U.S. Air Forces in Europe	Director of Civilian Personnel.
Shape Technical Centre	Deputy Director.
AF Space Command	Sr Scientist & Tech Advisor for AFSPACECOM.
AF Operational Test & Eval Ctr	Technical Director.
Air Education & Training Command	Provost, Air University.
Joint Electronic Warfare Center	Technical Director.
U.S. Central Command	Scientific Advisor.
Strategic Defense Initiative Organization	Spec Asst for GPALSP.
Department of the Army:	
Department of the Army	Deputy to the Commander.
Office of the Under Secretary	Operations Research Analyst.
	Special Asst for Forces & Program Evaluation.
	Operations Research Analyst for Systems.
	Opers Research Analyst for CMD, CONT, C & I.
	Special Asst to the Under Secretary.
Ofc of the Administrative Assistant	Adm Asst to the Secy of the Army.
	Dep Administrative Assistant.
Office of the General Counsel	Deputy General Counsel (Fiscal Law & Policy).
HQDA Army Acquisition Executive	Dep Prog Mgr, Light Helicopter Program.
	Deputy PEO, Close Combat Vehicles.
	Dep Prog Exec Ofcr, Command & Control Systems.
	Deputy Prog Executive Officer Comm Systems.
	Deputy PEO for Air Defense.
	Program Executive Officer Stamis.
	Program Executive Officer, Armaments.
	Program Manager Sustaining Base Automation.
	Dep Program Executive Officer for Aviation.
	Dep PEO, Intelligence & Electronic Warfare.
	Program Executive Officer, Combat Support.
	Program Executive Ofcr (Tactical Missiles).
Dir of Info Sys for Command, Control, Comms & Computers	Army Spectrum Manager.
	Dir Ofc US Army Info Syst SEL ACQ Agency.
	Dir of Army Information.
	Vice Director to the DISC4.
DASA Research Development and Acquisition	Dir for Prog & Vulnerability Assessment.
	Dep Dir US Contracting Support Agency.
	Chief, Policy & Procedures Division.
	Assistant Deputy for Plans & Programs.
	Director for Assessment & Evaluation.
ODASA Research and Development	DAS for Res & Tech/Chief Scientist.
	Dir for Program Review.
	Director for Space & Strategic Technology.
	Director of Research.
	Director for Technology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Director for Laboratory Management.
Organization Abolished	Dir Sys Mgt Integ & Coordination Ofc.
ODASA Procurement	Deputy Asst Secy of the Army (Procurement).
	Director for Procurement Policy.
ODASA Management and Programs	Dir for Program Evaluation.
	Dep Asst Secy for Plans & Programs.
Ofc of Asst Secretary (Installations, Logistics & Envmt)	Dep for Programs & Install Assistance.
	Dep Program Exec Officer for Chem/Demil.
Ofc of Asst Secy (Financial Mgmt)	Assistant Deputy ASA for Army Budget.
	Deputy for Cost Analysis.
	Dir of Investment.
	Dep Asst Secy for Army (Financial Operations).
	Spec Adv for Economic Pol & Productivity Prog.
	Dep for OPS, Support & Business Activities.
	Spec Asst to the Prin Dep Asst Secy of Army.
Off of Asst Secretary, Manpower & Reserve Affairs	DAS (DAR BDS & EEO C & C Review).
Ofc of Asst Secretary Civil Works	Deputy ASA (Policy & Evaluation).
	Deputy ASA (Management & Budget).
	Deputy ASA (Planning Policy & Legislation).
	Deputy ASA (Project Management).
Office, Director of Army Staff	Dep Dir of Management (Installation M&R).
	Dep Asst Chief of Staff for Installation Mgmt.
Office, Deputy Chief of Staff, Intelligence	Asst Dep Chief of Staff for Intelligence.
	Deputy Director, US Army Intelligence Agency.
USA Strategic Defense Command Huntsville AL OSCA FOA	Proj Mgr, Ground Based Interceptor Proj Ofc.
	Director, Directed Energy Weapons Directorate.
	Proj Mgr High Endo Atmos Def Int Proj.
	D/S Lethality & Key Technologies Directorate.
	Dir Kinetic Energy Weap Directorate.
	Chief, Battle Management Division.
	Prin Assistant Resp for Contracting.
	Chief, Passive Sensors Division.
	Chf, Active Sensors Div Sensors Directorate.
	Chf, Discrimination Div Sensors Directorate.
	Dir, Advanced Technology Directorate.
	Proj Mgr, G–B Surveillance & Tracking Syst.
Operational Test &-Evaluation Command	Dir, US Army Combat Dev Experimentation Center.
	Deputy to the Commander Technical Director.
Army Center of Military History	Chief, Historian, Army Ctr of Military History.
Test and Evaluation Management Agency	Dir, Test and Evaluation Management Agency.
Office, Dep Chief of Staff for Personnel	Director for Manprint.
	Director of Manpower.
Directorate of Civilian Personnel	Director of Civilian Personnel.
	Dep Director of Civilian Personnel.
	Chief Employment & Classification Division.
US Total Army Personnel Command	Director, Civilian Personnel Mgt.
Army Research Institute for Behavioral & Social Sciences	Dir, Trng Res Lab & Assoc Dir, ARI.
	Dir, Manp & Pers Res Lab & Assoc Dir, ARI.
	Dir, US Army Res I&C Psychologist, US Army.
Office, Deputy Chief of Staff for Logistics	Asst Director for Supply Mgmt.
	Asst Dir for Maintenance Mgmt.
	Asst Dir for Transportation.
	Asst Dir for Energy & Troop Support.
	Director for Security Assistance.
	Director for Resources and Management.
	Executive Director, Strategic Logistics Agcy.
Army Audit Agency	The Auditor General, U.S. Army.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Dir, Acquisition & Force Mgmt Directorate.
	Dir Audit Policy Plans and Resources.
	Regl Auditor General (Northeastern Region).
	Regl Auditor General (Southeastern Region).
Ofc Dep Chf of Staff for Operations & Plans	Tech Adv, DCSOPS.
	Technical Director, US Army Nuc & Chem Agency.
Concepts Analysis Agency (OCSA)	Assistant Dir for Res and Analysis Support.
Walter Reed Army Institute of Research	Chief Dept of Pharmacology.
Training and Doctrine Command (TRADOC)	Scientific Advisor to CG.
	Scientific Advisor.
	Asst Deputy COFS for Base Ops Spt.
	Asst Deputy Chief of Staff for Resources Mgmt.
	ADCOS for Training Policy Plans and Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
TRADOC Analysis Command	Deputy to the Commanding General.
	Asst Dep Chief of Staff for Base Ops Support.
	Director of Operations.
	Deputy Director, TRAC.
	Director of Operations.
National Simulations Center	Technical Director National Simulations Ctr.
Military Traffic Mgmt Commd	Deputy to the Commander.
	Special Asst for Transportation Engineering.
U.S. Army Forces Command	Civilian Personnel Director.
	Deputy Comptroller.
U.S. Army Corps of Engineers	Director of Human Resources.
	Director Resource Management.
	Dir, Engineering and Housing Support Center.
	Principal Asst Responsible for Contracting.
	Dep to the Commander for Prog & Techn Mgmt.
Directorate of Civil Works	Deputy Director, Civil Works.
	Chf, Ofc of Policy.
	Chf, Programs Div.
	Chf, Planning Division.
	Chief Engineering Division.
	Chf, Ops, Construction & Readiness Division.
Directorate of Engineering & Construction	Deputy Chief Construction Division.
	Chief, DAEB, Engineering Division.
Directorate of Military Programs	Chief Construction Division.
	Deputy Director, Military Programs.
	Chief, Environmental Restoration Division.
US Army COE Water Resources Ctr	Chief, Water Resources Support Center.
Planning Divisions, COE	Dir of Planning, Ohio River.
	Dir of Planning, No Pacific.
	Dir of Planning, South Atlantic.
	Dir of Planning, Lower Miss Valley.
	Dir of Planning, South Pacific.
	Dir of Planning, N. Atlantic.
	Dir of Planning, Southwestern.
Engineering Divisions, COE	Dir of Engineering, Ohio River.
	Dir of Engineering, Southwestern.
	Dir of Engineering, North Central.
	Dir of Engineering, S. Pacific.
	Dir of Engineering, N. Atlantic.
	Dir of Engineering, S. Atlantic.
	Dir of Engineering, Lower Miss.
	Dir of Engineering, Missouri River.
	Dir of Engineering, North Pacific.
	Dir of Engineering, Pacific Ocean.
	Dir of Engineering, Huntsville.
Construction Divs-COE	Dir of Construc OPS, S. Atlantic.
	Dir of Construc OPS, S. Western.
	Dir of Construc OPS, Ohio River.
	Dir of Construc OPS, LR MS Val.
	Dir of Construc OPS.
	Dir of Construc OPS.
	Dir of Construc OPS, N. Atlantic.
	Dir of Construc OPS, Pacific.
	Dir of Construc OPS. .
Engineer Waterways Experiment Station, COE	Dir Waterways Experiment Station.
Cold Regions Rsch & Engrg Lab Hanover, NH	Director.
Army Materiel Command (AMC)	Chief Scientist.
	Special Assistant for management of Change.
	Chief Special Analysis Office.
Office of DCS Supply Maintenance & Transportation	Asst DCS for Supply Maintenance & Trans.
	Asst Dep Chief of Staff for Logistics.
Ofc Dep Cmdg Gen Res, Development and Acquisition	Prin Asst Dep for Res Develop and Acquisition.
	Asst Dep Int'l Cooperative Programs.
DCS for Development Engineering & Acquisition	Asst Dep Chf of Staff Dev, E/A for ACQ P/R.
	Asst Dep Chief of Staff for ACQ Mgt.
Deputy Chief of Staff for Concurrent Engineering	ADCS for Res, D&E for Pol Integ & Analysis.
Ofc Deputy Commanding General for Matl Readiness	Principal Deputy for Logistics.
Dep Chf of Staff for Supply, Maintenance & Transp	Asst Dep Chf of Staff for Policy & Procedures.
Deputy of Staff for Ammunition	Asst Deputy Chief of Staff for Ammunition.
Office of DCS for Readiness	Asst DCS for Readiness.
	Exec Director, Logistics Support Activity.
Office of DCS for Procurement	Asst DCS for Procurement.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Executive Director, Test, Measurement & Diag EQ	Deputy Executive Director for TMDE.
Deputy Chief of Staff for Personnel	Dep Chief of Staff for Personnel.
Office of the Deputy Chief of Staff for Res Management	ADCS for Resource Mgmt.
	ADCS for Cost Analysis.
USA Security Affairs Command	Deputy.
U.S. Army Systems Integration & Management Activity	Dir, Syst Integration Mgmt Activity.
U.S. Army Armament, Munitions & Chemical Command (AMCCOM)	Deputy for Resources & Management.
	Dep for A&S Mgr for Conventl Ammun (SMCA).
	Deputy for Logistics Readiness.
	Dep for Product A&T & Industrial OPS Mgmt.
	Dep for Facilities, Ind Preparedness & Envmt.
	Dir, U.S. Army Def Ammunition Center & School.
AMCCOM. ARDEC	A/Tech/Dir (Systems Concepts & Technology).
	Technical Director for Armament.
	A/Tech/Dir/ (Sys Development & Engineering).
	Assoc Tech Dir (Producib & Process Technol).
Armament Engineering Directorate	Director, Armament Engineering Directorate.
	Chf, Energetics & Warheads Division
Fire Support Armaments Center	Chf Fire Control Division.
	Dep Director Fire Support Armaments Center.
	Chief Artillery Armaments Division.
Close Combat Armament Center	Deputy Director, Close Combat Armament Ctr.
	Chief, Light Armament Division.
Chemical Research, Development & Engineering Center	Dir Munitions Directorate.
	Director, Research Directorate.
	Technical Director, Chemical.
U.S. Army Aviation & Troop Command (ATCOM)	Tech Dir-U.S. Army Aviation Systems Command.
	Director of Engineering.
	Dir Aeroflight Dynamics/Directorate.
	Acquisition Director.
	Director of Advanced Systems.
	Assoc Tech Dir for Tech Appl/Dir of Spec Prog.
	Logistics Director.
	Director of Electronics & Weaponization.
Belvoir Research & Development Center	Technical Director.
	Dir. Combat Engineering Directorate.
Natick Research Development & Engineering Center	Techn Dir.
	Dir, Individual Protection Directorate.
	Director, Soldier Science Directorate.
Communications & Elect Comd (CECOM)	Comptroller.
	Dir Electronic Integration Directorate.
U.S. Army Communication Electronics Comm	Dir CECOM Ctr for Command, Contrl & Commun Sys.
	Director C3I Acquisition Center
	Dir, E/W. Reconnaissance, Surveillance, TAD.
	Dir Center for Signals Warfare.
	Director Concurrent Engineering.
	Tech Dir/Dir, RD&E Center.
	Assoc Techn Dir (Research & Technology).
	Dir, Comd, Control, C/I (C3I) L&R Center.
	Deputy to the Commander.
	Dir for C3/Intelligence C3I, Log & Readiness.
U.S. Army Depot Systems Command (DESCOM)	Deputy to the Commander.
	Executive Director for Materiel Readiness.
U.S. Army Research Laboratory	Technical Director.
	ADCS for Technology Planning & Management.
	Director U.S. Army Research Laboratory.
	Director, S3I Processing.
Operations	Dir Operations Directorate.
Advanced Concepts and Plans	Dir Advanced Concepts & Plans Directorate.
Sensors, Signatures, Signal & Info Processing	Director.
	Director, Sensors Division.
Electronics & Powers Sources	Director.
Battlefield Environment	Director.
Survivability/Lethality Analysis	Dir Ballistic Vulnerability Division.
	Director.
Vehicle Structures	Director.
Advanced Computing & Information Sciences	Director.
Vehicle Propulsion	Director.
U.S. Army Weapons Technology Director (ARL)	Director.
	Dir, Propulsion & Flight Division.
	Dir. Terminal Effects Division.
	Director Weapons Concepts Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Human Research and Engineering Directorate	Directorate Exec, Human R&E Directorate.
Army Research Office (AMC)	Director ARO.
	Dir Electronics Div.
	Director, Materials Science Division.
	Dir Physics Div.
	Dir, Mathematical & Computer Sciences Div.
	Dir, Eng & Environmental Sciences Division.
	Dir, Research & Technology Integration.
	Dir Chem & Bio Sci Div.
Organization Abolished	Dir-Human Engineering Laboratory.
U.S. Army Materials Directorate (ARL)	Dir Army Mtls & Tech Lab.
Organization Abolished	Chf-Launch and Flight Division.
U.S. Army Missile Command (MICOM)	Director Acquisitions Center.
	Dir, Integrated Material Mgt Ctr.
	Assoc Director for Product Assurance.
	Deputy for Procurement and Readiness.
	Director for Weapons Sciences.
Research Development & Engineering Center	Tech Dir from Micom & Dir.
	Dir for System Engineering & Production.
	Director for Advanced Sensors.
	Director for Propulsion Directorate.
	Dir for Systems Simulation & Development.
	Director for Research.
	Associate Director for Systems.
Organization Abolished	Deputy to the Commander.
Organization Abolished	Director, Logistics Equipment Directorate.
Tank-Automotive Comd (TACOM)	Director of Resource Mgt.
	Director of Acquisition Center.
	Technical Director.
	Director of Product Assurance & Test.
	Assistant Deputy for Systems & Logistics.
	Dep to the Commander for Res. Dev & Eng.
	Dep Dir for Engineering & Acquisition.
	Dir, Tank-Automotive Technology Directorate.
U.S. Army Test and Evaluation Command, (TECOM)	Scientific Director, Dugway Proving Ground.
	Dir, Redstone Technical Test Center.
	Technical Director Combat Syst Test Activity.
	Technical Director (Electronic Proving Ground).
	Technical Dir, National Range Operations.
	Tech Dir & Chf Sci.
	Technical Director, Yuma Proving Ground.
	Dir for Test and Assessment.
U.S. Army Material Systems Analysis Activity	Director.
	Chf Combat Support Div.
	Chf Air Warfare Div.
	Chf, Reliability, Availability & Maintainabil.
	Chf Ground Warfare Division—AMSAA.
	Chf, Logistics Readiness & Analysis Division.
Army Information Systems Command	Deputy Chief of Staff for Resource Management.
	Dir, Info Sytems Command Pentagon.
	Technical Director.
Headquarters, U.S. Army, Europe	Asst Dep Chf of Staff, Personnel (Civ Pers).
	Asst Dep Chief of Staff Eng for Eng & Housing.
	Asst Dep Chf of Staff, Resource Mgmt USAREUR.
	Asst Dep Chf Staff for Eng (Intl Affairs).
Army Intel and Security Command	Deputy & Technical Director, FSTC.
	Deputy for Policy & Development.
ACISA, NATO	Asst Dir, Command, Control and Comms Syst.
Joint Logistics	Principal Deputy to the Commander.
Organization Abolished	Deputy Commandant (Provost).
DOD Wage Fixing Authority	Director, Technical Staff.
National Defense University	Dir, Information Resources Management College.
U.S. Southern Command	Spec Asst for Technology & Requirements Integ.
Department of Navy:	
Office of the Secretary	Dep Dir, Naval Investigative Service.
Office of the Under Secretary of the Navy	Assistant for Administration.
Office of the Auditor General	Auditor General of the Navy.
Naval Audit Service	Director, Plans and Policy.
	Dir, Naval Audit Service Western Region.
	Dir, Naval Audit Service Capital Region.
	Director, Audit Operations.
Office of Civilian Personnel Management	Dir, Civilian Personnel Programs Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
OAS of the Navy (Research, Dev & Acquisition)	Dir, Ofc of Civilian Personnel Management. Associate Director (OCPM–30). Associate Director (OCPM–20). Associate Director (OCPM–10). Director, Procurement Policy. Director, Product Integrity. Head, Contract Policy. Dir, Intl Agreements, TTSARB & Special Proj. Director, Acquisition Career Management.
Program Executive Officers	Director for AAW & Strike Air Programs. Director for ASW, LASMAP. Dir, Navy International Programs Office. Director, Plans & Programs Division. HD, Guidance Section. Head Fire Control Section. Head Operations Engineering Section. Test & Instrumentation Branch Engineer. Branch Engr, Launcher Branch. HD, Navigation Equip Sect. Chf Engr, Missile Branch. Chf Engr. Br Engr Fire Control & Guidance Br. Branch Engr, Ship Installation & Design Br. Dep Prog Mgr, Seawolf Class Submrne Acq Prog. Asst Dep Comm ASW & Undersea Warfare Sys. Prog Mgr, MK–50 Torpedo Prog Ofc. Sect Head, Reentry Systems Sect. Missile Br. Deputy Logistics Support Coordinator. Dep P/E Officer for Unmanned Aerial Vehicles. Dep Prog Exec Ofcr, Space, Comms & Sensors. Deputy Director, Plans & Programs Division. Head, Resources Branch. Branch Engineer, Navigation Branch. Dep P/E Officer for Cruise Missiles Program. Prog Manager for Comm Satellite Programs. Dep Prog Officer Submarines. Program Executive Officer, Undersea Warfare. Asst for Systems Integration & Compatibility. Dep Prog Exec Ofcr for ASW, A/S Mission Prog. Dep Prog Exec Ofcr for Tactical Air Programs. Dep Prog Exec Officer Mine Warfare. Prog Exec Officer for Space Comms & Sensors. Aegis Deputy Program Manager. Prog Exec Officer ASW Assault & Spec Miss Pro. Asst Dep Comr & Dep Prog Mgr—Ship Self Def. Chief Engineer, PEO. SCS.
Naval Center for Cost Analysis	S/A for Cost A/T Dir, Naval Ctr for Cost Anal.
Office of the Comptroller of the Navy	Assoc Dir, Budget & Reports/Fiscal Manag Div. Asst General Counsel (Financial Management). Dir, Investment & Dev Div. Dir, Budget & Mgmt, Policy and Procedures Div. Dir, Ofc of Fin Mgt Syst. Dir, Budget Evaluation Group. Dir Resource Allocation & Analysis Division. Director, Civilian-Contractor Manpower Div.
Office of the Naval Inspector General	Deputy Naval Inspector General.
Office of the General Counsel	Asst Gen Coun (Res, Dev & Acquisition). Asst General Counsel (Install & Environment). Assist Gen Coun (Manpower & Reserve Affairs).
Naval Criminal Investigative Service	Dir Naval Criminal Invest Service. Asst Dir of Counterintelligence. Regional Director, NCIS Eastern Region. Regional Director, NCIS Western Region. Asst Dir of Criminal Investigation.
Chief of Naval Operations	Dir, Total Force Info Res & Sys Mgnt Div. Head, Studies & Analysis Branch. Associate Dir Spectrum Management & Policy. Asst Dir for Readiness Appraisal. Tech Dir, Submarine & SSBN Security Program. Technical Director. Technical Director. Advisor for Research & Development Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Deputy Director of Naval Intelligence.
	Spec Asst for Aviation Budget and Acquisition.
	Advanced Technology Advisor.
	Executive Assistant.
	Dep Dir, Supportability, M&M Division.
	Deputy Director for Programming.
	Assoc Dir, Expeditionary Warfare Division.
	Dir Naval History/Dir, Naval Historical Ctr.
	Director Resources Division.
	Special Asst for Technology and Analysis.
	D/Dir Joint Operatnl Logis Plans & Progs Div.
	Head, Logistics & Fleet Support Branch.
	Head Deep Submergence Systems Branch.
	Director, Advanced Tech Dev Branch.
	Director Strategic Sealift Division.
	Asst for Educational Resources.
	CNO Executive for Total Quality Management.
	Techn Dir, Naval Warfare Anal A/F Level Plans.
	Asst for World Navies and Analysis.
Bureau of Naval Personnel	ACNP for MPN Financial Management.
Organization Abolished	Technical Director, NPRDC.
Naval Observatory	Dir, Time Service Div.
Naval Data Automation Command Headquarters	Technical Director.
Naval Technical Intelligence Center	Technical Director.
	Director of Analysis.
Bureau of Medicine & Surgery	Dep Commander for Fin Mgmt & Comptroller.
	Career Reserved Positions.
Organization Abolished	Scientific Director.
Military Sealift Command	Counsel.
	Engineering Officer.
	Comptroller.
	Deputy Commander.
Naval Tactical Support Activity	Dir Navy Tactical Support Acty.
Naval Oceanography Command	Technical/Deputy Director.
Organization Abolished	Technical Director.
Ofc of Commander-In-Chf/Allied Forces/Southern Eur	Director, Tactical Development & Training.
Office of the Commander-In-Chief, U.S. Pacific Fleet	Deputy Fleet Inspector General.
	Shore Facilities Management Officer.
Ofc of the Commander-In-Chief, U.S. Pacific Command	Scientific Advisor.
	Chief, Research & Analysis.
Ofc of the Chief of Naval Education and Training	Comptroller.
	Director NROTC Selection and Placement.
Executive Development Cadre	Technology Assessment Consultant.
	Senior Quality Executive.
	Spec Asst to the Chf Engineer of the Navy.
Naval Air Systems Command Headquarters	Dep Dir, Fleet Support & Field Activity Mgmt.
	Executive Director, Management, Plans & Progr.
	Exec Dir Acquisition Mgt.
	Executive Director for Contracts.
	Deputy Comptroller.
	Counsel, Naval Air Systems Command.
	Assoc Director Weapons Sys Eng Division.
	Dir Prod Integrity & Production Eng Division.
	Tec Dir Avionics Systems Eng Division.
	Dir Weapons Advanced Technology.
	Dir, Evaluation Div.
	Techn Dir, Res & Techn.
	Technical Director Air Vehicle Division.
	Assoc Dir, Logistics Management Division.
	Combat Aircraft Contracts Director.
	Dir, Missile Weapons Systems Contracts Div.
	Dir, Systems Acquisition Directorate.
	Special Asst for Tom.
	Director Cost Analysis Division.
	Dir, Surveillance and Avionics Division.
	Dir for Systems Definition & Alternatives.
	Director, Aircraft Division.
	Associate Dir Propulsion & Power Division.
	Assoc Dir for Systems Engineering Management.
	Deputy Commander, Naval Air Sys Command.
	Dir Cruise Missile Contracts Division.
	Director, Procurement Budget Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Naval Air Warfare Center	Director Airborne Weapons Logistics Division.
	Deputy Counsel, Navair.
	Exec Director for Aviation Depots.
	Asst Commander for Corporate Operations
	Dir, Information Resources Mgmt Division.
	Dir, ASW/Support A/A Components Contracts Div
Naval Air Warfare Center Aircraft Division Warminster	Technical Director.
	Head, AVCSTD.
	Exec Director.
	Assoc Executive Director.
	Head, MATD
	Head, Syst & Software Technology Department.
	Head, Tectical Air Systems Department.
	Head, Warfare Systems Analysis Department.
	Assoc Dep Head A/W D/Head, ASW A/D Division.
Naval Air Warefare Center Aircraft Division Lakehurst	Executive Director.
	Chief Engineer.
Naval Air Warefare Center Aircraft Division	Executive Director.
	Director, Range Directorate.
	Dep Commander, NAWC-Aircraft Division.
Naval Air Warfare Center Aircraft Div Indianapolis	Executive Director.
	Dir of Avionic & Electronic Systems Design
	Director, AESAMT.
Naval Air Warfare Center Weapons Div, PT. MUGU, CA	Dir Sea Range Directorate.
	Director Weapons Systems Evaluation Direct.
	Head Electronic Warfare Dep.
	Dep Comr for Test & Eval, NAWC-Weapons Div.
	Dir, Threat Simulation Directorate.
Naval Air Warfare Center Weapons Div, China Lake, CA	Head, Attack Weapons Department.
	Head, Research Department.
	Director, Land Range Directorate.
	Head, Aircraft Weapons Integration Dept.
	Head, Engineering Department.
	Head, Intercept Weapons Department.
	Head, Range Department.
	Dir, Weapons Directorate.
	Dir, Aircraft Weapons Systems Directorate.
	Dep Commander for R&D, NAWC-Weapons Division.
	Head Weapons Planning Group.
Naval Training Systems Center	Dir, Services & Information Directorate.
	Executive Director.
	Dir of Research & Engineering.
	Dep Dir of Research & Engineering.
Space & Naval Warfare System Command	Exec Dir, Contracts
	Tech Dir, Ship & Shore Communications.
	Tech Dir, Navy Space Project Ofc.
	Deputy Comptroller.
	Counsel Space and Naval Warfare Systems Com.
	Executive Director, Contracts.
	Technical Director.
	Chief Eng Comms Sys Program Directorate.
	Exec Dir, Comm Syst Prog Directorate.
	Chief Engineer Command Sys Prog Directorate.
	Tech Dir, Submarine Commun Prog Ofc.
	Techn Dir, Surveillanc D/A Development Prog.
	Dep & Techn Dir, NCCS Afloat Prog Office.
	Assoc Tech Dir for Research & Technology.
	Exec Dir, Space Technology Directorate.
	Chief Eng Space Tech Directorate.
	Exec Dir/Communications Syst Prog Directorate.
	Exec Dir, Undersea Surveillance Prog Dir.
	Tech Dir, Warfare Systems Engineering.
	Chief Eng Undersea Surveillance Prog Direct.
	Dir of Tech Head Engineering Tech Group.
	Chief Logis/HD Acquisition & Logis Pol App Grp.
	Asst Commander for Talesd.
	Exec Dir Tech Acquist Logistics Eng Supp Dir.
	Chief Eng SPAWAR.
	Exec Dir, NWSAED
	Techn Dir, Satellite Communications Prog Ofc.
	Tech Dir, Technol A&A Program Directorate.
	Deputy Commander.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Naval Command Control & Ocean Surveillance Center	Technical Director.
Naval Command C&O Surveillance Ctr. RDT&E Division	Head, Surveillance Dept.
	Head, Engineering & Computer Sciences Dept.
	Executive Director.
	Dep Exec Director.
	Head, Marine Sciences & Technology Dept.
	Head, Navigation & Air C3 Department
	Head, Command and Control Department.
	Dir, Planning, I&A Office.
Nav Command Control & Ocean Surveil Comm West Cost Div	Executive Director West Coast ISE.
Naval Facilities Engineering Command	Counsel Naval Facilities Engineering Command.
	Deputy Comptroller.
	Director for Contracts Support.
	Chief Engineer.
	Dir of Real Estate Support.
	Asst Commander for Construction.
	Asst Commander for Engineering & Design.
	Senior Executive for Base Closure Office.
	Director for Environment.
	Director, Planning & Engineering Support.
	Spec Advisor for Res Dev, Test & Evaluation.
Naval Facilities Eng Command Western Div	Executive Director, Broadway Complex.
Naval Civil Engineering Lab	Technical Director.
Naval Sea Systems Command	Dir, Research Techn & Assessment Ofc.
	Counsel Naval Sea Systems Command.
	Asst Dep Commander for Contracts.
	Dep Prog Mgr & Tech Dir, PMS396B.
	Executive Director/Deputy Comptroller.
	Dir Ship Survivability Subgroup.
	Dir Preliminary Design Div Ast Deputy Dir SDG.
	Prog Mgr, Mine Warfare Ship Program.
	Dir, Submarine Systems (S5W & S8G) Division.
	Director, Reactor Materials Divisions.
	Director, Secondary Plant Components Division.
	Head, Advanced Reactor Branch.
	Dir, Structural Integrity Subgroup.
	Dir Naval Architecture Group.
	Deputy Director, Auxiliary Systems Subgroup.
	Deputy Director, Ship Design Group.
	Director, Hull Engineering Group.
	Director Cost Estimating & Analysis.
	Dir, Shipbuilding Contracts Division.
	Exec Dir, Industrial & Facility Mgmt Dir.
	Executive Director, Surface Ship Directorate.
	Exec Dir Submarine Directorate.
	Dep Prog Manager & Tech Dir Support Ship Boat.
	Dir, Reactor Plant Valve Division.
	Asst Dep Commander, ASW & Mine Warfare Syst.
	Director, Corporate Operations.
	Deputy Commander for Fleet Logistics Support.
	Dir, HRO–CC/Command Asst Human Res Programs.
	Deputy Director, Supship Management Division.
	Tech Dir Theater Nuclear Warfare Prog Office
	Dep Prog Manager Tech Dir Attack Subm Prog.
	Dep Program Mgr, Surface Ship Prog Mgmt Ofc.
	Dir, Nuclear Propulsion Logistics Division.
	Dep Prog Manager, Aircraft Carrier Prog Ofc.
	Dir, Special Systems Contracts Division.
	Dir, Product Integrity & Eng Support Group.
	Dir, Environmental Engineering Group.
	Director for Submarine Refuelings.
	Dir Surface Ship Systems Division.
	Deputy Director, Nuclear Components Div.
	Dir, Reactor Plant Safety & Analysis Division.
	Technical Assistant for Surface Ship Systems
	Dir, Ship Silencing Office.
	Dir, Ship S & S Integrity Group.
	Director, Propulsion Systems Group.
	Dir, Hull Systems Subgroup.
	Exec Dir, WCS Directorate.
	Director, Field Operations Subgroup.
	Director, Machinery Group.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Asst Deputy Commander for Combat Sys Eng.
	Director, Materials Engineering Office.
	D/D D/T Dir, AMPH & Combat S/S Logistic Div.
	Dir Electrical Engineering Group.
	Exec Dir, Anti-Air & Surface Warfare Systems.
	Exec Dir, Ship Design & Engrng Directorate.
	Prog Mgr, Amphibious W & S Sealift Program.
	Dir, Naval Shipyard Mgt Group.
	Dir, Surface Systems Contracts Division.
	Assoc Director for Regulatory Affairs.
	Asst Dep Commander, Surface & Area AAW Syst.
	Exec Dir, AMPH, Aux, Mine & Sealift Ships Dir.
	Dir, Reactor Refueling Division.
	Deputy Counsel, Naval Sea Systems Command.
	Dir, Environmental Protection Office.
	Director, Ship Signatures Group.
	Dep Comr, Weapons & Combat Syst Directorate.
	Director, Auxiliary Systems Group.
	Dir, Combat Systems Design & Eng Group
	Prog Mgr, Deep Submergence Syst Prog.
	Deputy Commander.
	Dir, Advanced Programs Office.
Naval Ordance Center	Deputy Commander, Naval Ordnance Center.
Norfolk Naval Shipyard	Naval Shipyard Nuclear Eng Manager.
	Naval Shipyard Nuclear Eng Mgr Puget Nal Ship.
Naval Surface Warfare Center	Technical Director.
Naval Undersea Warfare Center	Technical Director.
Naval Ship Systems Engineering Station	Dep Dir, Carderock Division/ Dir, NAVSSES.
Naval Surface Warfare Center, Crane Division	Executive Director.
Organization Abolished	Technical Director.
Naval Undersea Warfare Center Div, Keyport, WA	Executive Director.
	Chf Res Scientist (Arctic Submarine Tech)
Naval Surface Warfare Center, Pt. Hueneme Division	Executive Director.
Naval Surface Warfare Center, Indian Head Division	Technical Director.
Coastal Systems Station	Executive Director.
	Head, Coastal Technology Department.
	Head, Coastal Eng Test & Operations Depart.
	Head, Coastal Warfare Systems Department.
Naval Surface Warfare Center, Carderock Division	Assoc Dir for Syst Devel/Head, Syst Dept.
	Director.
	Assoc Dir for Structures/Head, SSPD.
	Assoc Dir/Head CMLD.
	Assoc Dir/Head Ship Acoustics Dept.
	Assoc Dir/Head PASD.
	Assoc Dir/Head Ship Hydromechanics Dept.
	Assoc Dir, Mst/Head, SMED.
	Assoc Dir/Head, Ship Electro Signatures Dept.
	Assoc Dir for Tech/Dir of Technology & Plans.
Naval Surface Warfare Center, Dahlgren Division	Exec Director.
	Head, Stagegic & Space Systems Department.
	Head, Weapons Systems Department.
	Head, Underwater Systems Department.
	Head, Combat Systems Department.
	Assoc Exec Dir for Evaluation.
	Head Eng & Info Syst Dept.
	Head, Ship Defense Systems Department.
	Deputy Executive Director/Business Manager.
	Head, Weapons Research & Technology Department.
	Head, Weapons Research & Technology Department.
	Head, Protective Systems Department.
	Head, Strike Systems Department.
	Head, Systems Res & Technology Department
	Head, Warfare Systems Department.
	Head, Warfare Analysis Department.
Naval Undersea Warfare Center Division, Newport, RI	Head, Submarine Sonar Department.
	Assoc Tech Dir for Technology.
	Tech Dir, Consultant
	Head, Coastal Res & Technology Department.
	Assoc Tech Dir for Submar Combat Control Acou.
	Assoc Techn Dir for Submarine Warfare Systs.
	A/T Dir for Surface Anti-Submarine Warfare ASW.
	Hd, Submarine Electromagnetic Sys Dept.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Naval Supply Systems Command Hdqtrs	Head Combat Control Systems Department.
	Head Combat Systems Analysis Staff.
	Counsel.
	Dir, Defense Printing Serv/Dep Comdr, NAVSUP.
	Asst Dep Cmdr for Fin Mgmt/Comp.
	Competition Advocate Gen/ADC, Contracting Mgr.
	Director of Contracting for Special Programs.
	Dep Commr for Info Resources Management.
	Dep Commander for Corporate Management.
	Dir, Advanced Logis Tech Div.
	Dir, Info Tech Initiatives Division.
	Executive Director.
Navy Ships Parts Control Center	Exec Dir, Acquisition & Logistics Plng & Suppt.
	Tech Dir for Acquisition Mgt & Planning.
Navy Aviation Supply Office	Executive Dir, Logistics Planning & Support.
	Exec Dir, Acquisition Mgmt & Planning.
Navy Fleet Material Support Office	Exec Dir, ADP System Planning and Development.
Naval Supply Center, Norfolk	Executive Director, Planning and Resources.
U.S. Marine Corps Headquarters Office	Fiscal Dir of the Marine Corps.
	Dir, Contracts Division.
	Counsel for the Commandant.
	Deputy Asst Chief of Staff Intelligence.
	Asst Dep Chf of Staff for Installations & Log.
	Asst Dep Chief of Staff for Manpower.
	Asst Dep Chf of Staff for Requirements & Prog.
Marine Corps Systems Command	Executive Director.
	Comptroller.
Organization Abolished	Executive Director, MAGTEC.
Marine Corps Logistics Base, Albany, GA	Executive Dir for Logistics Operations.
Office of Naval Research	Assoc Dir, ONR/Dir, Research Prog Dept.
	Dir Anti/Air Anti/Surf Warf & Aerospace Tec Dv.
	Dir, Fin Mgmt/Compt/Spec Asst (FM) to Asn (R,E&S.
	Director, Ofc of Naval Research.
	Dir of Planning and Assessment.
	Dep Dir for Technology Programs.
	Director, Computer Science Division.
	Dir, Ocean Biology/Optics/Chemistry Div.
	Dir, Office of Advanced Technology.
	Senior Advisor to the Navy Chair.
	Dep Chief, Nav Res & Tech Dir Ofc of Nav Res.
	Director, Technology Directorate.
	Dir, Industry Independent Res & Dev Direct.
	Dep Dir, Ont/Dir, Plng & Assess Directorate.
	Dir, Office of Naval Technology.
	Executive Dir for Acquisition Management.
	Deputy Counsel (Patents).
	Dir Ocean Eng Div.
	Dir, Industry Independent Res & Devel Dir.
	Counsel, Office of Naval Research.
	Director, Physics Division.
	Director, Chemistry Division.
	Director, Science Directorate.
	Dir, Support Technology Directorate.
	Dir, Cognitive & Neural Sciences Div.
	Director, Life Sciences Directorate.
	Director, Biological Sciences Division.
	Dir, Mathematical & Physical Sciences Dir.
	Dir, Mathematical Sciences Division.
	Dir, Engineering Sciences Directorate.
	Director, Electronics Division.
	Dir Geo-Acoustics/Arctic Sciences Div.
	Dir Ocean & Atmospheric Physics Div.
	Dir Ocean Science Directorate.
	Deputy Comptroller.
	Chief Scientist.
	Deputy Director, Technology Directorate.
	Dir Anti Submarine Warfare & Undersea Tech.
	Director, Materials Division.
	Dir, University Business Affairs.
	Dir, Operations Resources & Magnt Dir.
	Spec Asst to the Dir, ONR for Oceans Sciences.
Organization Abolished	Dir, Applied Physics Field Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Organization Abolished	Dir, Ofc of Naval Res Liaison Ofc, Far East
Naval Research Laboratory Stennis Space Center	Technical Director.
	Head, Ofc of Syst Support & Requirements.
	Superintendent, Marine Meteorology Division.
	Assoc Tech Dir&Dir, Ocean Science Directorate.
	Assoc Tech Dir&Dir Ocean Acoustics & Tech Dir.
NATO Saclant ASW Research Center	Director NATO Saclant ASW Research Center.
Naval Research Laboratory	Superintendent, Chemistry Division
	Superintendent, Optical Sciences Div.
	Supt Materials Sci and Tech Division.
	Superintendent, Plasma Physics Div.
	Supt Condensed Matter & Radiation Sci Div.
	Assoc Dir of Res for Matl Sci & Comp Technol.
	Superintendent, Info Technol Div.
	Dir, Navy Tech Ctr for Safety & Survivability.
	Chf Sci, Lab for Structure of Matter.
	Dir of Research.
	Superintendent Space Science Div.
	Supt, Radar Div.
	Assoc Dir of Res for Gen Sci & Technol.
	Supt, Acoustics Div.
	Superintendent Electronics Technology Div.
	Supt. Tactical Electronic Warfare Div.
	Supt Underwater Sound Reference Division.
	Chief Scientist Lab for Compt Phy Fluid Dynam.
	Chf Scientist & Head, Solar Physics Program.
	Superintendent, Remote Sensing Division.
	Assoc Dir of Res for Business Operations.
	Chief Sci & Head, Beam Physics Program.
	Mgr, Joint Space Systems Technology Programs.
	Assoc Dir Res for Ocean & Atmospheric Sci Tec.
	Superintendent, Space Syst Technology Dep.
	Head Elect Warfare Strategic Planning Org.
	Assoc Dir of Research for Strategic Planning.
	Assoc Dir of Res for Gen S&S Syst Technol.
	Assoc Dir of Res for Warfare Sys & Senors Res.
	Superintendent, Space Syst Development Dep.
	Superintendent, Spacecraft Engineering Dep.
	Dir, Naval Center for Space Technology.
	Chief Scientist for Telecom & Director.
Defense Nuclear Facilities Safety Board:	
	Asst Dir for Materials P&E Restoration Prog.
	Assistant Director for Engineering.
	Assistant Director for Weapons Programs.
	Assistant Director for Standards.
	Site Review Officer.
	Dep Gen Counsel for Pol & Litigation.
	Chief, Health Physics Branch.
	Deputy General Manager.
Department of Education:	
Chief Financial Officer	Director, Grants and Contracts Service.
	Deputy Director for Financial Management.
Office of Human Resources and Administration	Dir Admin Resource Management Service.
	Director Personnel Management Service.
	Chairperson, Education Appeal Board.
Inspector General	Assistant Inspector General for Audits.
	Asst Insp Gen for Policy Plng & Mgmt Serv.
	Asst Inspector General for Investigation.
	Dep Asst Insp Gen for Audit Operations.
	Dep Asst Inspector Gen for Techn Audit Svc.
	Associate Inspector General.
	Dep Asst Inspector General for Investigation.
General Counsel	Asst General Counsel for Educational Equity.
	Asst Gen Counsel for Regulations.
	Asst Gen Coun for Div of Legislative Counsel.
	Asst Gen Coun for Postsecondary Ed & Ed Res.
Educational Research and Improvement	Senior Advisor on Library Programs.
National Center for Education Statistics	Admr, Natl Center for Educational Statistics.
	Assoc Comr, Elem/Second Educ Stat Division.
	Assoc Comr, Data Collection & Dissemination.
	Assoc Comr for Stat Std & Methodology Div.
	Assoc Comm Education Assessment Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Department of Energy:	
Office of Economic Impact & Diversity	Dir of Sm and Disadv Bus Utilz.
Office of Hearings & Appeals	Dep Dir for Legal Analysis.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Associate Deputy Secretary for Field Management	Dir, Prog/Const Mgm, Proce & Operations Div.
	Director, Policy Development Division.
	Dir, Office of Contractor Employee Protection.
Albuquerque Operations Office	Dir, Weapons Quality Division.
	Dir Transportation Safeguards Div.
	Dir Budget & Resources Mgnt Div.
	Dir, Production Assurance & Ops Division.
	Dir, Weapons Programs Div.
	Project Manager, WIPP Project Site Office.
	Dir of Emergency Plans & Operations.
	Asst Manager.
	Dir Ofc Mgt Plan & Analysis.
	Dir, Waste Mgmt & Operational Surety Div.
	Carlsbad Area Office Manager.
Chicago Operations Office	Assist Manager for Administration.
	Area Manager Batavia Area Office.
Idaho Operations Office	Deputy Manager for Business Management.
	Chief Financial Officer.
Nevada Operations Office	Chief Counsel.
	Assistant Manager for Administration.
Oak Ridge Operations Office	Asst Manager for Administration.
	Chief Financial Officer.
Richland Operations Office	Asst Mgr for Admin.
	Assistant Manager for Operations.
	Assistant Manager for Technical Support.
	Assistant Manager for Projects.
San Francisco Operations Office	Asst Mgr for Admin.
Savannah River Operations Office	Asst Mgr for Admin.
	Asst Mgr for Site Safeguards & Security.
	Chief Financial Officer.
Office of Inspector General	Asst Inspector Gen for Inspections & Analysis.
	Asst Inspector General for Investigations.
	Manager, Western Regional Audit Office.
	Director Program Development Division.
	Manager, Eastern Regional Audit Office.
	Director Audit Management Division.
	Dir Capitol Regional Audit Office.
	Deputy Asst Inspector Gen for Investigations.
	Spec Asst for Policy and Planning.
	Counsel to the Inspector General.
	Asst Inspec Gen for Pol & Plng & Mgt.
Energy Information Administration	Director, EIA–ADP Services Staff.
	Dir, Ofc of Oil and Gas.
	Director Petroleum Supply Division.
	Dir Ofc of Coal Nucl Elec & Altern Fuels.
	Director, Ofc of Energy Markets & End Use.
	Director, Economics & Statistics Division.
	Dir Ofc of Statistical Standards.
	Director Quality Assurance Division.
	Dir Reserves and Natural Gas Division.
	Director Petroleum Marketing division.
	Dir, Ofc of Integration Nal & Forecasting.
	Dir, EEUISD.
	Dir Energy Supply & Conversion Div.
	Dir Analysis and Systems Div.
	Dir, Energy Demand & Integration Div.
	Dir, Survey Mgmt Div.
Asst Secretary Energy Efficiency & Renewable Energy	Dir, Geothermal Division.
	Dir, Wind/Hydro/Ocean Technology Division.
	Dir, Ofc Solar Energy Conversion.
	Assoc Dep Asst Secretary for Utility Tech.
	Dir Ofc of Waste Reduction Tech.
Asst Secretary Environment, Safety & Health	Director, Office of Environmental Audit.
	Dir Nuclear Safety Enforcement Division.
	Dep Dir Invest Nuclear Safety Enforcement Div.
	Dir Nuclear Operations & Analysis.
	Dir Office of Environmental Compliance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Assistant Secretary Defense Programs	Assoc Dep Asst Secy for Military Application.
	Director Ofc Mgmt Support.
	Dir Ofc of Program Analysis & Financial Mgmt.
	Dep Mgr Rocky Flats Office.
	Asst Mgr for Environmental Mgmt.
	Technical Director.
	Dir. Ofc of Environ Safety H & Q Assurance.
	Dir, Ofc of Res, Development & Testing Facil.
	Nuclear Weapons Complex Project Manager.
	Deputy Dir Ofc Self Assess & Emergency Mgmt.
	Dir Ofc of Field Security Oversight.
	Dir Office of Inspections.
Organization Abolished	Manager, Rocky Flats Office.
Office of Energy Research	Dir Engr Math and Geo Sci Div.
	Dir Chem Sci Div.
	Dir Mat Sci Div.
	Chf Processes and Tech Br.
	Dir High En Physics Div.
	Director for Management.
	Dir Health Effects Research Division.
	Assoc Dir, Ofc of Scientific Computing.
	Deputy Dir for Nuclear Safety Safeguard.
	Dir, International Programs Staff.
	Dir, Confinement Systems Div.
	Dir, Office of Assessment & Support.
	Assoc Dir for Superconducting Super Collide.
Assistant Secretary Fossil Energy	Director, Ofc of Resource Management.
Office of Nuclear Energy	Dir Surbmarine Systems Div.
	Dir Instrumentation & Control Div.
	Director Office of Resources Management.
	Dep Dir Kesseling/Windsor/Site/CGN/S6G REC SV
	Asst Program Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Sr. Naval Reactors Rep. (NWPT News).
	Prog Mgr for Prototypes & Sapso.
	Senior Naval Reactors Rep (Pearl Harbor).
	Asst Chief Physcist.
	Director Nuclear Technology Div.
	Dir Reactor Engineering Division.
	Head, Core Manufacturing Branch.
	Dep Director Reactor Materials Division.
	Director, Fiscal Division.
	Asst Manager for Operations.
	Program Manager for Shipyard Matters.
	Dir Nuclear Components Division.
	Senior Naval Reactors Representative.
	Manager, Idaho Branch Office.
	Prog Manager for Advanced Submarines.
	Dir Isotope Production & Distribution Prog.
	Head Advanced Concepts Branch.
	Asst Manager for Operations.
	Senior Naval Reactors Representative.
	Engel Walter P.
	Director Acquisition Division.
	Dep Program Manager for Shipyard Operations.
Assistant Secretary, Human Resources & Administration	Dir Ofc of Industrial Relations.
	Dir Management Sys Analysis Div.
	Director, Management Systems Division.
	Dir Ofc of Admin Svcs.
	Dep Dir Ofc of ADP Mgmt.
	Dir Ofc of Procurement Operations.
	Dir, Organization & Manpower Analysis Div.
	Dep Dir, Ofc of Procurement, A & P Management.
	Dir, Ofc of IRM Pol, Plans, & Oversight.
	Assoc Dir for Proseam/Proj Mgt & Ctrl.
	Dep Dir of Administrative Service (GTN).
	Assoc Dir, Ofc of Procurement, Asst & Property.
	Dep Dir of Administrative Services (Wash, DC).
	Dir of Personnel.
	Dir Ofc of Organization, Res & Facilities Mgt.
	Dep Dir of Personnel.
	Dir Ofc of Information Resources Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dir Ofc of Contractor Mgmt & Admin.
	Dir Ofc of Clearance & Support.
	Dir Ofc Policy.
	Dir Ofc of Magnt Review & Assistance.
Office of Civilian Radioactive Waste Management	Assoc Dir, Office of System & Compliance.
Office of New Production Reactors	Dir Ofc of Business Management.
	Deputy Dir Ofc of Business Management.
	Deputy Project Officer.
Asst Secretary Environmental Restoration & Waste Mgmt	Director, Office of Research & Development.
	Assoc DAS for Oversight & Self-Assessment
Office of Intelligence & National Security	Dir Ofc of Classification & Technology.
	Dir Ofc of Security Affairs.
	Dep Dir, Ofc of Security Affairs.
Office of Chief Financial Officer	Dir Ofc of Budget.
	Dep Dir Ofc of Budget.
	Dir Ofc of Headquarters Accounting Operations.
	Director, Budget Operations Division.
	Dir Ofc of Dep Accounting & Fin Sys Dev.
	Dir Ofc Compliance and Audit Liaison.
	Deputy Controller.
	Controller.
Office of Science Education & Technical Information	Dir for University & Science Ed Prog.
Western Area Power Administration	Asst Admr for Mgmt Svcs.
Environmental Protection Agency:	
Ofc of the Asst Admr for Admin & Resources Management	Dep Asst Admr for Mgt.
	Dep Asst Admr for Finance & Acquistion.
	Director, Environmental Equity Office.
Office of the Comptroller	Dir Ofc of the Comptroller.
	Dir, Financial Mgmt Div.
	Associate Comptroller.
	Director, Budget Division.
	Assoc Dir, Financial Management Division.
	Dir, Resource Management Division.
Office of Administration	Dir Ofc of Administration.
	Deputy Dir Ofc of Administration.
	Dir, Grants Admin Div.
	Dir, Facilities & Support Services Division.
	Director, Management & Organization Division.
	Dir, New Headquarters Project Staff.
	Dir, Safety, Health & Environmental Mgmt Div.
	Dir, Sfty, Health & Environmental Mgmt Div.
Office of Information Resources Management	Dir Ofc of Information Resources Management.
	Dep Dir Ofc of Information Resources Magnt.
	Dir, Administrative Systems Division.
	Dir, Information Management & Services Div.
	Director, Program Systems Division.
Ofc of Administration & Resources Mgmt—Cincinnati OH	Dir Ofc of Admin and Resources Management.
Office of Administration & Resources Mgmt—Rtp, NC	Dep Dir Ofc of Admin & Resources Mgt Rtp
	Director Office of Administration & Res Mgmt.
	Director, Office of Data Processing.
Office of Human Resource Management	Director, Office of Human Resource Mgmt.
	Special Assistant to Director, OHM.
	Dep Dir for Pol, Programs & Exec Resources.
	Dep Dir for Operations Comm & Client Services.
	Dir Exec Res & Spec Prog Div.
Office of Acquisition Management	Dir, Superfund/RCRA Procurement Ops Division.
	Director, Office of Acquisition Management.
	Dep Dir, Office of Acquisition Management.
Office of Grants and Debarment	Director, Office of Grants & Debarment.
National Enforcement Investigations Ctr—Denver	Dir Nat'l Enforcement Investigations Center.
	Special Asst to the Dir Neic.
Office of Criminal Enforcement	Director, Office of Criminal Enforcement.
Office of Compliance Analysis Program Operations	Dir Ofc Compliance Analysis Prog Operations.
	Dep Dir, Ofc of Compliance A & P Operations.
Office of Policy Analysis	Dir Water & Agriculture Policy Div.
	Dir Air & Energy Policy Division.
	Dir Waste & Chemical Policy Division.
Office of Regulatory Management and Evaluation	Dir, Science, Econ & Statistics Div.
Office of International Activities	Dir Multilaterial Staff.
Office of the Inspector General	Deputy Inspector General.
	Spec Asst to the Inspector General.
Office of Investigations	Assist Inspector Gen for Investigations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Office of Acquisition & Assistance Audits	Dep Asst Inspector General for Investigations. Asst Inspector General for Audits. Dep Asst Inspector General for Audits. Assoc Asst Inspect General for Aquist Asst.
Office of Management & Technical Assessment	Asst Inspector Gen for Mgmt & Tech Assessment.
Office of Wastewater Enforcement and Compliance	Director Enforcement Division. Director, Permits Division. Director, Municipal Support Division. Deputy Director, Municipal Support Division.
Office of Science and Technology	Senior Science Advisor. Dir, Standards & Applied Science Division. Director, Engineering & Analysis Division. Dir, Health & Ecological Criteria Division.
Office of Wetlands, Oceans and Watersheds	Dir, Assessment & Watershed Protection Div. Dir, Oceans & Coastal Protection Division.
Office of Ground Water & Drinking Water	Director, Office of Acquisition Management. Dir, E&P Implementation Division. Director, Drinking Water Standards Division. Director, Ground Water Protection Division.
Office of Waste Programs Enforcement	Dep Dir, Office of Waste Programs Enforcement. Dir, Cercla Enforcement Division. Director, RCRA Enforcement Division.
Office of Solid Waste	Dir, Characterization & Assessment Division. Director, Permits & State Programs Division. Dir, Municipal & Industrial Solid Waste Div.
Office of Emergency and Remedial Response	Director, Hazardous Site Evaluation Division. Dir, Emergency Response Div. Director, Hazardous Site Control Division.
Office of Air Quality Planning and Standards	Dir, Stationary Source Compliance Division. Dir, Emission Standards Division. Assoc Dir for Intermedia & Intgovt Prog. Director, Air Quality Management Division. Director, Technical Support Division. Deputy Dir Ofc of Air Quality Planning & Stds.
Office of Mobile Sources	Director, Emission Control Technology Div. Director, Certification Division. Dir Manufacturers Operations Division. Dir Field Operations & Support Division.
Office of Radiation & Indoor Air	Dir, Criteria & Standards Div. Director, Radon Division. Dir Radiation Studies Division.
Office of Atmospheric Programs	Dir Global Change Division. Director, Acid Rain Division.
Ofc of Asst Admr for Pesticides & Toxic Substances	Dir, Ofc of Program Management Operations.
Office of Pesticides Programs	Dir, Ofc of Pesticides Programs. Dir—Registration Division. Director—Program Support Division. Dir, Biological & Economic Analysis Division. Sr Science Advisor/Nat'l Laboratory Aud Prog. Senior Advisor. Dir, Spec Review & Reregistration Division. Dir Envir Fate and Effects Division. Dir Health Effects Division. Dir Policy & Special Projects Staff.
Office of Pollution Prevention and Toxics	Dir, Health & Environmental Rev Div. Director, Environmental Assistance Division. Dir, Economics Exposure and Technology Div. Director, Chemical Control Division. Director, Information Management Division. Dir. Pollution Prevention Div. Dir Chemical Screening & Risk Assessment Div. Dir, Chemical Management Division.
Office of Health and Environmental Assessment	Director Exposure Assessment Group. Director, Human Health Assessment Group.
Environmental Criteria & Assessment Ofc (RTP)	Dir Environmental Criteria & Asses Ofc RTP.
Environmental Criteria & Assessment Office (CN)	Dir, Environmental Criteria & Assessment Ofc.
Atmospheric Rsch & Exposure Assessment Lab, RTP	Dir, Atmospheric Res & Exp Assessment Lab.
Environmental Monitoring Systems Lab-Cincinnati	Dir Environment Monitoring Syst Lab.
Environmental Monitoring Systems Lab-Las Vegas	Dir, Env Monitoring Sys Lab, Las Vegas.
Air & Energy Engineering Research Laboratory-RTP	Dir Air & Energy Eng Res Lab.
Risk Reduction Engineering Laboratory-Cincinnati	Dir Risk Reduction Engineering Laboratory.
Environmental Research Laboratory-Corvallis	Dir, Env Research Laboratory Corvallis.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Environmental Research Laboratory-Athens	Dir Environmental Research Lab Athens GA.
Robert B Kerr Environmental Res Laboratory-ADA	Dir, Robert S Kerr Environmental Res Lab.
Environmental Research Laboratory-Duluth	Dir Environmental Research Lab-Duluth.
	Senior Science Advisor.
Environmental Research Laboratory-Narragansett	Dir, Environmental Res Lab, Narragansett.
Environmental Research Laboratory-Gulf Breeze	Dir Env Res Lab Gulf Breeze.
Health Effects Research Laboratory-RTP	Dir-Health Effects Research Lab-RTP.
	Dep Dir Health Effects Res Lab RTP.
Office of Research and Development	Dir, Ofc of Sci, Planning & Regulatory Eval.
Center for Environmental Research Information	Dir Center for Environmental Research Info.
Office of Exploratory Research	Dir, Ofc of Exploratory Research.
Region I—Boston	Director Water Management Division.
	Dir Waste Management Division.
	Regional Counsel.
	Asst Regl Admr for Planning & Management.
	Dir Air Pesticides & Toxics Management Div.
Region II—New York	Director, Environmental Services Division.
	Director, Water Management Division.
	Asst Regl Admr for Policy and Management.
	Dir Air & Waste Management Division.
	Regional Counsel, Region II, New York.
	Dir Office of Emergency & Remedial Response.
Region III—Philadelphia	Director, Water Management Division Reg III.
	Regional Counsel.
	Director, Hazardous Waste Mgmt Div.
	Director, Environmental Services Division.
	Asst Reg Admin for Policy & Management.
	Dir, Air Management Division.
	Dir Chesapeake Bay Program Office.
Region IV—Atlanta	Dir Water Management Division Region IV.
	Dir Environmental Services Division Region IV.
	Asst Regional Admin for Policy and Mgmt.
	Regional Counsel, Reg IV, Atlanta, Georgia.
	Director Waste Management Division.
Region V—Chicago	Dir Air Management Div Region V.
	Dir Envir Services Div Region V.
	Dir Water Management Div Region V.
	Asst Regional Admr for Policy & Management.
	Regional Counsel.
	Director, Waste Management Division.
	Associate Division Director for RCRA.
	Assoc Div Director for Superfund.
	Dir Great Lakes Natl Prog Ofc.
Region VI—Dallas	Dir Air & Waste Management Div.
	Dir Water Management Division.
	Director, Environmental Services Division.
	Asst Regional Admr for Management.
	Regional Counsel.
	Dir, Air, Pesticides & Toxic Division.
Region VII—Kansas City	Regional Counsel.
	Director, Waste Mgmt Division.
	Asst Reg Admin For Policy & Mgnt—Reg VII.
	Director, Air and Toxics Division.
Region VIII—Denver	Dir Water Management Division.
	Regional Counsel.
	Dir Air Toxics Division.
	Asst Regional Admr for Policy & Management.
	Dir, Environmental Services Division.
Region IX—San Francisco	Director, Water Management Division.
	Director, Air Management Division.
	Regional Counsel, Reg IX, San Fran, Cal.
	Dir, Toxics & Waste Management Div.
	Asst Regional Admr for Policy & Management.
Region X—Seattle	Dir—Water Div Reg X.
	Regional Counsel.
	Director Air and Toxics Division.
	Director, Hazardous Waste Division.
	Asst Regl Admr for Policy & Management.
Equal Employment Opportunity Commission:	
Office of the Chairman	Inspector General.
	Program Manager.
Office of Federal Operations	Dir, Office of Federal Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Field Management—East	Director Field Management Programs (East).
	Program Manager (Baltimore).
	Dist Dir (New York).
	Dist Dir (Atlanta).
	District Director (Detroit).
	Dist Dir (Miami).
	Dist Dir (Memphis).
	Dist Dir—(Birmingham).
	Dist Dir—(New Orleans).
	Dist Dir—(Charlotte).
	Program Manager.
	Dist Dir—(Philadelphia).
Field Management—West	Prog Manager (Dir Field Mgt Programs) (West).
	Dist Dir (Houston).
	Dist Dir (San Francisco).
	Dist Dir (Dallas).
	Dist Dir (Chicago).
	Dist Dir—(St Louis).
	Dist Dir—(Indianapolis).
	District Director (Los Angeles).
	Dist Dir—(Denver).
	Dist Dir—(Phoenix).
	District Dir—(San Antonio).
	Program Manager (Seattle).
	Program Manager (Milwaukee).
Federal Communications Commission:	
Office of Inspector General	Inspector General.
Office of the Managing Director	Assoc Managing Director/Human Resources Mgmt.
Mass Media Bureau	Chief Audio Services Division.
	Chief Video Services Division.
	Chf, Enforcement Div.
Private Radio Bureau	Chief Land Mobile & Microwave Division.
Field Operations Bureau	Chief Enforcement Division.
	Assistant Bureau Chief for Technology.
Common Carrier Bureau	Chief, Tariff Division.
	Asst Bureau Chief (International).
	Chief Domestic Facilities Division.
	Chief Accounting & Audits Division.
Ofc of Engineering Technology	Chief, Spectrum Engineering Division.
Federal Emergency Management Agency:	
Office of the Director	Chief Financial Officer.
	Deputy Chief Financial Officer.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
Office of Management Services	Director of Security.
	Dir. Office of Acquisition Management.
	Chief of Staff.
National Preparedness Directorate	Deputy Associate Director.
	Senior Policy Advisor.
Office of Mobilization Preparedness	Asst Assoc Dir Ofc of Mobilization Preparedness.
Office of Analysis & Support	Asst Assoc Dir Ofc of Analysis & Support.
Office of Facilities Management	Assistant Assoc Director.
Office of Systems Engineering	Special Asst for Architecture & Technology.
	Asst Assoc Dir Ofc of Systems Engineering.
Office of Operations	Asst Associate Director Ofc of Operations.
Federal Insurance Administration	Deputy Administrator.
Federal Energy Regulatory Commission (DOE):	
Ofc of Chief Accountant	Deputy Chief Accountant.
	Dir Division of Audits.
	Director, Division of Accounting Systems.
Ofc of Hydropower Licensing	Dir, Div of Inspection.
Federal Labor Relations Authority:	
Federal Labor Relations Authority	Asst General Counsel (Field Management).
Office of the Chairman	Solicitor.
	Chief Counsel.
	Asst to the Chm for Prog Dev & New Initiative.
Office of Member	Chief Counsel.
Federal Service Impasses Panel	Exec Director FSIP.
Ofc of the Executive Director	Executive Director.
	Dir, Information Resources & Research Serv.
Ofc of the General Counsel	Deputy General Counsel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Regional Offices	Assoc General Counsel. Asst General Counsel (Appeals). Regional Director—Los Angeles. Asst Gen Counsel, Legal Policy & Advice. Regional Director—Washington, DC. Regional Director—Boston. Regional Director—New York. Regional Director—Atlanta. Regional Director—Dallas. Regional Director, Chicago Illinois. Regional Director, San Francisco. Regional Director, Denver.
Federal Maritime Commission:	
Office of the Members	Secretary.
Office of the Managing Director	Dep. Managing Dir. Dir, Bureau of Administration. Prog Manager (Dir Bur of Trade M&A). Prog Mgr (Dir Bur of Tariffs C&L). Dir, Bureau of Investigations. Dir, Bureau of Hearing Counsel. Deputy Managing Director.
Federal Retirement Thrift Investment Board:	
	Assistant General Counsel (Admin). Assistant General Counsel (Programs). Director of Investments. Director of Contracts & Administration. Director of Automated Systems. Director of Benefits and Program Analysis. Director of Accounting. Director of Communications.
Federal Trade Commission:	
Office of the Inspector General	Inspector General.
Ofc of Executive Director	Deputy Exec Dir for Management. Dep Exec Dir for Planning & Information.
General Services Administration:	
Office of the Administrator	Dir, Ofc of Small & Disadvantaged Bus Utiliz.
Office of Associate Administrator for Administration	Director of Personnel. Dir of Administrative Programs & Support. Dir Total Quality Management & Training.
Organization Abolished	Director of Financial Management.
Office of FTS 2000	Dep Assoc Admr for Network Services.
Office of the Inspector General	Deputy Inspector General. Asst Inspector Gen for Auditing. Deputy Asst Inspector General for Auditing. Counsel to the Inspector General. Asst Inspector Gen for Investigations. Asst Inspector General for Quality Management.
Office of Acquisition Policy	Assoc Administrator for Acquisition Policy. Dir of Acquis Mgmt and Contract Clearance. Dir, Office of GSA Acquisition Policy. Dir of Multiple Award Schedule Prog Mgmt.
Office of the Chief Financial Officer	Director of Finance. Director of Budget. Exec Asst to the Chief Financial Officer. Deputy Director of Finance. Dir of Financial Management Systems.
Federal Property Resources Service	Asst Comm for Real Estate Policy/Sales (FPRS).
Public Buildings Service	Asst Comm for Real Prop Mgmt & Safety. Asst Comr for Physical Security & Law Enf. Asst Comr for Procurement. Asst Comr for Real Property Development. Dep Asst Comr for Real Property Development. Dep Asst Comm for Real Prop Mgmt & Safety. Assistant Commissioner for Planning. Asst Comm for Govt Wide Real Prop Relations. Spec Asst/Asst Comr for Real Property Dev.
Information Resources Management Service	Asst Comm for Info Resources Procurement. Dep Asst Comr for Info Res Mgmt Policy. Asst Comr for GSA Info Resources Management. Asst Commissioner for Technical Assistance. Dep Asst Comr for Regl Telecomm Services. Dir of Admin and Planning.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Federal Supply Service	Asst Commissioner for Customer Svc & Marketing.
	Asst Commr for Quality and Contract Admin.
	Asst Commissioner for Commodity Management.
	Asst Comr for Transportation Property Mgt.
	Director for Transportation Audits.
	Asst Commr for Strategic Business Planning.
	Asst Comm for Distribution Mgt.
	Dep Asst Commissioner for Commodity Mgr.
	Das for Transportation & Property Mgmt.
Region 2—New York	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply Service.
Region 3—Philadelphia	Asst Reg Admr for Public Blds Service
	Asst Reg Admr for Info Reso Mgmt Ser, NE Zone.
	Asst Regl Admr Federal Supply Service.
National Capital Region	Asst Regl Admr for Info Resources Mgmt.
	Asst Reg Admr for Public Bldgs Service, NCR.
	Dir of Fed Domes Asst Ctlg Staff (IRMS) NCR.
Region 4—Atlanta	Asst Reg Admr for Public Blds Service.
	Assistant Reg Admin for Inform Res Mgmt–R–4.
	Asst Reg Admr for Federal Supply & Services.
Region 5—Chicago	Asst Reg Admr for Public Blds Service.
Region 6—Kansas City	Asst Reg Admr for Public Blds Service.
Region 7—Fort Worth	Asst Reg Admr for Public Blds Service.
	Asst Regl Admr for Info Resources Mgmt R–7.
	Asst Reg Admr for Federal Supply Service.
Region 8—Denver	Asst Reg Admr for Public Blds Service.
Region 9—San Francisco	Asst Regl Admr for Buildings Services.
	Asst Reg Admr for Federal Supply Service.
	Asst Reg Admr for Information Res Management.
Region 10—Auburn, Washington	Asst Regional Administrator, PBS Region 10.
	Dep Asst Regl Administrator, PBS.
Department of Health and Human Services:	
ODAS for Budget	Dir Div of Integrity & Organ Review.
ODAS for Finance	Dep Asst Sec. Finance.
	Dir, Office of Financial Policy.
	Dir Ofc of Financial Operations.
ODAS for Grants & Acquistion Management	Dir Office of Gran & Mgmt.
	Dept Asst Secy, OGAM.
OAS for Planning and Evaluation	Dep to Asst Secry for Plann & Evaluat.
OAS for Personnel Administration	Asst Sec for Personnel Administration.
	Dir, Ofc of Human Relations.
	Dir, Center for Human Res Strategic P & P.
Associate General Counsel Divisions	Assoc Gen Coun, Business & Adm Law Division.
Office of the Inspector General	Principal Dep Inspector General.
	Asst Inspector Gen For Mgmt & Policy.
ODIG for Investigations	Dep Insp Gen for Investigations.
	Asst Insp General for Criminal Investigations.
	Asst Insp Gen for Civil & Adm Remedies.
	Asst Insp Gen for Investigation P & O.
ODIG for Audit Services	Dep Inspector General for Audit Services.
	Asst Inspector Gen for Social Security Audits.
	Asst Insp Gen for Adm of C/F & Agin Audits.
	Asst Inspector Gen for Health Care Fin Audits.
	Asst Inspector Gen for Audit Pol & Oversight.
	Asst Insp Gen for Public Health Serv Audits.
	Asst I.G. for Social Security Audits Ofc A/S.
ODIG for Evaluation & Inspections	Dep Insp Gen for Evaluation & Inspections.
	Asst Insp Gen for Analysis & Inspections.
Office of Program Support	Director, Ofc of Program Support.
	Dir Ofc of Financial Management.
	Dep Dir Ofc of Financial Management.
Ofc of Information Systems/Child Support Systems	Dir Ofc of Infor Systems/Child Support Sys.
OAA for Management	Dir, Office of Financial Management.
	Chief Actuary.
	Dir, Bureau of Data Management and Strategy.
	Dep Dir, Bureau of Data Management & Strategy.
	Dir, Office of Medicare & Medicaid Cost Est.
	Dir, Offico of Acquisitions and Grants.
	Deputy Dir, Office of Financial Management.
	Dep Director, Office of the Actuary.
OAA for Operations	Dir Ofc of Prog Adm, Bur of Prog Operations.
	Director, Office of Financial Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dir Ofc of Contracting & Financial Management.
	Dir Ofc of Medicare Benefits Admin.
OAA for Program Development	Dir Office of Demonstrations and Evaluations.
	Dir, Office of Research.
OAS for Health	Deputy Director, Office of Management.
	Director, Office of Resource Management.
	Dir, Div of Public Health Service Budget.
	Director, Office of Research Integrity.
	Deputy Director, Office of Research Integrity.
Regional Administrators	Regl Health Administrator.
Organization Abolished	Associate Dir for Special Program Operations.
Substance Abuse & Mental Health Services Administration	Assoc Director for Services Research.
	Assoc Admr for Extramural Programs.
Center for Substance Abuse Prevention	Dir Div of Comm Prevention & Training.
	Director, Division of Workplace Programs.
	Dir, Div of Demonstration for High Risk Pop.
Center for Mental Health Services	Chief Retrovirus Branch.
	Dir Div of Stste & Community Systems Develop.
Center for Substance Abuse Treatment	Dir, Ofc of Scientific Analysis & Evaluation.
Centers for Disease Control & Prevention	Senior Advisor for Public Health Management.
	Senior Advisor for Preventive Health Services.
	Director, Financial Management Office.
Center for Infectious Diesases	Asst Dir for Laboratory Science.
Natl Institute for Occupational Safety & Health	Assistant Director for Science.
	Executive Officer, NIOSH.
Center for Env Health & Injury Control	Dir Div of Environmental Health Lab Sciences.
Center for Prevention Services	Dir Div. of STD/HIV Prevention.
National Center for Health Statistics	Assoc Dir for Analysis & Epidemiology.
	Associate Dir, Ofc of P&E Programs.
	Assoc Dir for Research & Methodology.
	Assoc Dir, Ofc of Vital & Health Stats Syst.
	Assoc Dir for Internal Statistics.
Center for Biological Evaluation & Research	Dir, Div of Blood Collection & Processing.
	Dir, Office of Biologics Research.
	Dir, Div of Biochemistry & Biologics Research.
	Director, Division of Bacterial Products.
	Dep Dir, Ofc of Biological Product Review.
	Dir Div of Bind, Ofc of Biological Prod Rev.
	Dir, Div of Biostatistics & Epidemiology.
	Dir, Div of Allergenic Products/Parasitology.
	Dir, Ofc of Vaccines Research & Review.
	Dir Ofc of Therapeutics Research & Review.
Center for Drug Evaluation & Research	Director, Office of Management.
	Dir, Office of Drug Evaluation I.
	Dep Dir for Program Management.
	Dir, Div of Cardio-Renal Drug Products.
	Dir, Div of Neuropharmacological Drug Prod.
	Dir, Div of G&C Drug Products.
	Dir, Div of Ancology & Pulmonary Drug Prod.
	Director, Office of Drug Standards.
	Dep Dir, Office of Drug Standards.
	Dir. Division of OTC Drug Evaluation.
	Director, Office of Generic Drugs.
	Dep Dir, Office of Generic Drugs.
	Dir, Monograph Review Staff.
	Dir, Ofc of Over-The-Counter Drug Evaluation.
	Dep Dir, Ofc of Epidemiology & Biostatistics.
	Dir Div of Biometrics.
	Dir, Office of Drug Evaluation II.
	Dep Dir, Office of Drug Evaluation II.
	Dir, Div of M&E Drug Products.
	Dir, Div of Anti-Infective Drug Products.
	Dir, Div of Anti-Viral Drug Products.
	Director, Office of Compliance.
	Dir, Div of Scientific Investigations.
	Director, Office of Research Resources.
	Director, Division of Biopharmaceutics.
	Dep Dir, Office of Research Resources.
	Assoc Director for Science & Medical Affairs.
Center for Food Safety & Applied Nutrition	Director, Product Policy Staff.
	Director, Office of Seafood.
	Director, Office of Special Research Skills.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Center for Devices & Radiological Health	Director, Div of Toxicological Research. Director, Office of Physical Sciences. Dir, Office of Nutrition & Food Sciences. Director, Division of Nutrition. Director, Office of Compliance. Dir, Ofc of Plant & Dairy Foods & Beverages. Director, Office of Food Labeling. Dir. Ofc of Pol. P&S Initiatives. Dir, Office of Standards & Regulations. Dir, Div of Surgical & Rehabilitation Devices. Dir, Division of Cardiovascular Devices. Dir. Div of General & Restorative Devices. Dir, Office of Compliance and Surveillance. Dir, Office of Science and Technology.
Center for Veterinary Medicine	Dep Dir. Ofc of Science & Technology. Dep Dir, Ofc of Surveillance & Compliance. Director, Office of Science. Director, Office of Surveillance. Dir, Ofc of New Animal Drug Evaluation.
Office of Regulatory Affairs	Dep Dir for HFSCS. Dep Dir, Therapeutic & Production Drug Review. Dir, Div of Biometrics & Production Drugs. Assoc Comr for Regulatory Affairs. Dep Assoc Comr for Regulatory Affairs. Regl Food & Drug Director, NE Region. Regl Food & Drug Director Mid-Atlantic Region. Regl Food & Drug Director, Southeast Region. Regl Food & Drug Director, Midwest Region. Regl Food & Drug Director, Southwest Region. Regl Food & Drug Director, Pacific Region.
National Center for Toxicological Research	Director, Div of Biometry. Director, Office of Research.
Office of Health Affairs	Director Med Staff, Ofc of Health Affairs.
Office of Management	Dir, Parklawn Computer Center
Organization Abolished	Dir Ofc Device Evaluation.
Bureau of Health Resources Development	Dep Dir, Bureau of Health Resources Dev.
Office of the Director	Director, Div of Financial Management. Director, Division of Contracts & Grants. Associate Director for Extramural Affairs. Associate Director for Disease Prevention. Dir, Ofc of Medical Applications of Research. Dir, Office of Scientific Integrity. Deputy Director for Management, NIH. Dep Dir for Sci Pol & Technology Transfer. Assoc Dir for Information Resource Mgmt.
Nat'l Heart, Lung, & Blood Institute	Assoc Director for Review. Assoc Dir Epidemiology & Biometry Program. Chief, Sickle Cell Disease Br. Dir Div of Lung Diseases. Dir, Div of Blood Diseases & Resources. Dir, A/Sclerosis, Hypertension & Lip Met Prog. Dep Director Div of Extramural Affairs. Director, Division of Extramural Affairs. Assoc Dir for International Programs.
Intramural Research	Chief, Biostatistics Research Branch. Dir, Division of Intramural Research. Chf Lab of Biochemical Genetics. Chf Lab of Biochemistry. Chief Lab of Biophysical Chemistry. Chief, Laboratory of Chemical Pharmacology. Chief Macromolecules Section. Chf, Intermediary M&B Section. Chief, Laboratory of Cellular Metabolism. Chf, Lab of Kidney & Electrolyte Metabolism. Chief Lab of Cardiac Energetics.
Division of Cancer Biology, Diagnosis and Centers	Dir, Div of Cancer Biology Diagnosis & Ctrs. Dep Dir, Div of Cancer Biology Diag & Centers. Chf, Microbial G&B Section, Lab of Biochem. Chief, Lab of Biochem Intramural Res Prog. Assoc Dir, Extramural Research Program. Chief, Dermatology Br, Intramural Res Prog. Chief, Cell Mediated Immunity Section.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Division of Cancer Etiology	Chief, Lab of Tumor & Biol Immunology, IRP. Assoc Dir, Ctrs Training & Resources Prog. Chief, Laboratory of Molecular Biology. Dir, Div of Cancer Etiology. Chief Lab of Biology. Chief Clinical Epidemiology Branch. Chief Laboratory of Molecular Carcinogenesis. Chf Lab of Experimental Pathology. Head, Math Statistics & Applied Mathematics S. Head In Vitro Carcinogenesis Section.
Division of Cancer Prevention & Control	Dep Dir, Div of Cancer Prevention & Control. Associate Dir, Surveillance Program, DCPC. Assoc Dir, Cancer Control Sci Program, DCPC. Assoc Dir, Early D&C Oncology Program.
Division of Extramural Activities	Dir, Div of Extramural Activities. Deputy Dir, Div of Extramural Activities.
Division of Cancer Treatment	Assoc Dir Developmental Therapeutics Prog. Chf-Radiation Oncology BR. Assoc Dir Radiation Research Program.
Natl Institute of Diabetes & Digestive & Kidney Dis	Dir Div Kidney Urologic & Hematlogic Diseases. Dir Division of Extramural Activities. Assoc Director for Research & Assessment. Assoc Dir Disease Prevention Technol Transfer. Assoc Dir for Mgt & Operations.
Intramural Research	Chief Section on Biochemical Mechanisms. Chf Sect on Metabolic Enzymes. Chf Sect on Physical Chemistry. Chief, Section on Molecular Structure. Sr Res Physicist, Mathematical Research Br. Senior Research Chemist. Chief Theoretical Biophysics Section. Chief, Laboratory of Bio-Organic Chemistry. Chief, Oxidation Mechanisms Section LBC. Chief, Laboratory of Biochemistry & Metabolism. Chf, Sec on Nuclear Mag Res, Lab/Chem Physics. Clinical Dir & Chief, Kidney Disease Section. Chief, Section on Molecular Biophysics. Chf, Sec Carbohydrates Lab of Chemistry/NIDDK. Chief, Metabolic Diseases Branch. Chief, Laboratory of Neuroscience, NIDDK. Chief Epidemiology & Clinical Research Branch. Chf, Laboratory of Medicinal Chemistry.
Natl Inst of Arthr & Musculoskeletal & Skin Diseases	Chief, Morphogenesis Section. Chf, Lab of Physical Biology. Director, Extramural Program. Deputy Dir. Chief, Laboratory of Structural Biology Res. Chief, Laboratory of Skin Biology.
National Library of Medicine	Dep Dir, Natl Lib of Medicine. Dep Dir for Res and Education. Associate Director for Library Operations. Assoc Dir for Extramural Programs. Assoc Dir, Specialized Info Services. Dep Dir Lister Hill Natl Ctr for Biomed Comms. Director, Information Systems. Dir Natl Ctr for Biotech Info. Assoc Dir for Health & Info Prog Development.
Natl Inst of Allergy & Infectious Diseases	Dir, Div of Allergy/Immunology/Transplantatn. Chf, Lab of Parasitic Diseases. Dir, Div of Microbiology/Infectious Diseases. Chief, Lab of Immunogenetics. Dir, Div of Extramural Activities. Ch, Lab of Microbial Structure and Function. Chief Lab of Molecular Microbiology. Dir, Div Acquired Immunideficiency Syndrome. Assoc Dir for Administration & Operations. Deputy Dir, Division of Extramural Activities. Chief, Biological Resources Branch. Head, Lymphocyte Biology Section. Chief, Laboratory of Infectious Diseases. Head Experimental Pathology Section. Dep Dir Div of Acquired Immunodeficiency.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Natl Inst on Aging	Head Epidemiology Section. Chief, Laboratory of Malaria Research. Scientific Director Gerontology Rsch Cntr. Clin Director and Chief Clin Physiology Br. Chief Lab of Cellular & Molecular Biology. Associate Dir for Behavioral Sciences Res. Assoc Dir Biology of Aging Program. Assoc Dir, Office of Extramural Affairs. Assoc Dir, Epidemi, Demo, & Biometry Program. Assoc Dir, Ofc of Plnng, A & I Activities. Assoc Dir Neurosci & Neuropsych of Aging Prog.
Natl Inst of Child Health & Human Development	Chief, Laboratory of Molecular Genetics. Dep Dir Center for Population Res. Chf, Endocrinology & Reproduction Research Br. Director Ctr Forres for Mothers & Children. Director Cntr for Population Research. Chief, Section on Growth Factors. Assoc Dir for Prevention Research. Chief Laboratory of Mammalian Genes & Develop. Chief, Section on Molecular Endocrinology. Chief Section Neuroendocrinology. Chief Section on Microbial Genetics. Chief, Laboratory of Comparative Ethology. Associate Director for Administration. Dir, Natl Center for Medical Rehab Research.
Natl Inst of Dental Research	Chief, Laboratory of Immunology. Chf, Enzyme Chemistry Section. Dir, Extramural Program. Chief Neurobiology & Anesthesiology Branch.
Natl Inst of Environmental Health Sciences	Chf Lab of Pulmonary Pathobiology. Chief, Lab of Genetics. Head Mutagenesis Section. Head Mammalian Mutagenesis Section. Dir, Div of Biometry and Risk Assessment. Senior Scientific Advisor. Dir, Div of Toxicology Research & Testing. Associate Director for Management. Chief, Signal Transduction Section. Chief Lab of Molecular & Integrative Neurosci. Chief Lab of Molecular Carcinogenesis. Dir Natl Inst of Environmental Health Science.
Natl Inst of General Medical Sciences	Dep Dir Natl Institute of General Med Sci. Dir, Cell & Molec Basis of Disease Prog. Dir Genetics Program. Assoc Dir for Program Activities. Dir Pharmacology & Biorelated Chemistry Pr Br. Dir Bio Phys Sciences Program Branch.
Natl Inst of Neurological Disorders and Stroke	Dir, Div of Fundamental Neurosciences. Director, Division of Stroke & Trauma. Associate Director for Administration. Dir, Basic Neurosci Prog/Chf/Lab of Neurochem.
Intramural Research	Chf, Lab of Molecular & Cellular Neurobiology. Chief Lab of Central Nervous System Studies. Chf, Dev & Metabolic Neurology Branch. Deputy Chief, Lab of Central Nervous Sys Stud. Hd Cellular Neuropathology Section. Chief, Neuroimaging Branch. Chf, Lab of Neuropathology & Neuroanatomical S. Chf, Surgical Neurology Branch. Chief Biometry & Field Studies Branch. Chief, Laboratory & Nuerobiology. Chief, Laboratory of Neura Control. Chief Brain Structural Plaiticity Section. Chf, Lab of Viral & Molecular Pathogenesis. Chief Stroke Branch.
Natl Eye Institute	Chief Laboratory of Retinal Cell & Mol Biolog. Chief, Lab of Molecular Dev. Biology.
Natl Inst on Deafness & Other Communication Disorders	Chief, Laboratory of Sensorimotor Research. Chief, Laboratory of Molecular Biology. Dir, Div of Communication Sciences & Disorder. Dir, Div of Intra Res, Nid & Other Comm Disor Dir, Div of Extram Act, Nid & Other Comm Disco

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
NIH Clinical Center	Dep Dir, Nat. Inst on D & O Communications Dis
	Assoc Dir for Clinical Care/Dir, Clinical Ctr
	Health Systems Administrator.
	Associate Director for Planning.
	Assoc Chf, Position Emission T & R.
Division of Computer Research & Tech	Chief, Computer Center Branch.
	Chief, Physical Sciences Lab.
	Chief, Information Systems Branch.
	Deputy Director.
John E. Forgarty Intl Center	Assoc Dir for Intl Advanced Studies.
National Center for Research Resources	Dep Dir for Extramural Research Resources.
	Dir, Natl Center for Research Resources.
	Dir, Gen Clinical Res Ctr for Res Resources.
	Dir, Biomedical Engr & Instrumentation Branch.
Division of Research Grants	Associate Director for Referral and Review.
	Assoc Dir for Statistics & Analysis.
National Center for Nursing Research	Director National Cntr for Nursing Research.
National Center for Human Genome Research	Deputy Director.
	Dir Div of Intramural Res Natl Ctr H G R.
	Chief Diag Devel Br Natl Ctr Human Gen Res.
	Chf, Lab of Genetic Dis Res Natl Ctr for Hgr.
National Institute on Drug Abuse	Dir, Ofc of Sci Pol, Education & Legislation.
	Assoc Dir for Planning & Resources Management.
	Dir, Office of Extramural Program Review.
	Dir, Medications Development Division.
	Director, Addiction Research Center.
	Chief, Neuroscience Research Branch.
National Institute of Mental Health	Dep Dir, National Institute of Mental Health.
	Associate Director for Special Populations
	Associate Director for Prevention.
	Exec Ofcr, Natl Institute of Mental Health
	Dir, Ofc of Legislative Analysis & Coord.
	Dir, Div of Neuroscience & Behavioral Sci.
	Director, Division of Extramural Activities.
	Chief, Neuropsychiatry Branch.
	Chief, Child Psychiatry Branch.
	Chief, Biological Psychiatry Branch.
	Chief, Laboratory of Clinical Science.
	Chief, Section on Histopharmacology.
National Institute on Alcohol Abuse & Alcoholism	Dir, Natl Institute on Alcohol A&A.
	Director, Division of Basic Research.
	Dir, Div of Biometry & Epidemiology
Agency for Health Care Policy & Research	Dir Ctr for Medical Effectiveness Research.
	Dir, Ctr for Gen Health Serv Intramural Res.
	Dir, Ctr Gen Health Svce Extramural Research.
	Dir, Ofc of Sci & Data Dev/Agcy for Hcp & Res.
Ofc of Actuary	Chf Actuary.
	Dep Chief Actuary (Long-Range).
	Dep Chief Actuary Short Range SSA.
Office of Finance, Assessment and Management	Senior Financial Executive.
Ofc of Financial Policy & Operations	Assoc Comr. Office of Fin Policy & Operations.
	Dep Assoc Comm Financial Policy & Operations.
Office of Acquisition and Grants	Assoc Commissioner for Acquisition & Grants.
Department of Housing and Urban Development:	
Office of the General Counsel	Assoc Gen Coun for Program Enforcement.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Assistant Inspector General for Audit.
	Asst Inspector General for Management & Pol.
	Deputy Asst Inspector Gen for Audit Operation.
	Dept Asst Inspector Gen for P&O.
	Dep Assist Inspector General for Investigation.
	Deputy Inspector General for Operations.
Office of the Chief Financial Officer	Deputy Director Office of Finance & Accountg.
	Chief Financial Officer.
	Adm Comptroller-Dir. Ofc of Fin & Accounting.
	Dep Chief Financial Officer for Operations
	Dep Chief Financial Officer for Finance.
	Dir, Section 8 Systems Project Staff.
	Dep Chief Financial Ofc for Field Operations.
Assistant Secretary for Administration	Dept Dir Office of Personnel.
	Dir, Ofc of Budget.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Assistant Secy for Housing	Dep Dir, Ofc of Budget. Director Ofc of Procurements & Contracts. Dir, Mortgage Insurance Acctng & Serv Group. Dir, Office of Elderly & Assisted Housing. Housing/Fed Housing Adm Comptroller. Dir Ofc of Multifamily Housing Pres Prop Dis. Dir Ofc of Insured Multifamily Housing Devel. Housing-FHA Deputy Comptroller. Dir, Ofc of Pol, P & F Systems Enhancements. Director, Respa Enforcement Unit.
Asst Secy for Fair Housing and Equal Opportunity	Director, Office of Evaluation. Director, Office of Investigations. Dir Ofc of Fair Housing Asst & Voluntary Prog.
Asst Secy for Community Planning and Development	Dir Office of Environment and Energy. Dir Ofc of Block Grant Asst. Director, Office of Economic Development.
Government National Mortgage Association	Vice President for Asset Management. Vice President for Mortgage Backed Securities. Vice President for Finance.
Asst Secy for Public and Indian Housing	Gen Dep Asst Secy for Public & Indian Housing. Dir Rental Assistance Division. Public & Indian Housing-Comptroller Dir, Ofc of Construction, Reh & Maintenance. Dir Office of Assisted Housing. Deputy Public & Indian Housing Comptroller.
Region II New York	Manager Buffalo.
Region IV Atlanta	Manager Jacksonville.
Region V Chicago	Manager Columbus. Manager Detroit. Manager Indianapolis. Manager Mn/St Paul.
Region VI Fort Worth	Manager Oklahoma.
Region IX San Francisco	Manager Los Angeles.
Department of Interior:	
Ofc of the Inspector General	Assistant Inspector General for Auditing. Asst Inspector General for Investigations. Deputy Asst Inspector General for Audits.
Ofc of the Solicitor	Deputy Assoc Solicitor, General Law. Asst Solicitor Bureau of Parks and Recreation. Special Asst to the Assoc Solicitor—Gen Law. Dep Associate Solicitor—Energy & Resources. Dep Associate Solicitor—Indian Affairs.
Asst Secy for Policy, Budget & Administration	Asst Dir for Economics. Asst Dir, Program Analysis Staff. Chief, Division of Budget Execution. Chief, Div of Budget Operations (A). Asst Dir for Special Analysis. Dep Agcy Ethics & Audit Coordination Officer. Chief Division of Budget Operations (B). Chief Div of Budget Admin.
Nat'l Park Service	Park Manager (Superintendent). Senior Scientist. Science & Technology Advisor. Asst Dir, Design & Construction (Mgr, DSC).
US Fish & Wildlife Service	Dep Reg Dir Reg 8 Rsch & Dev. Dep Asst Dir—Pol, Budget, & Administration. Research Director Patuxent Research Center.
Bureau of Mines	Spec Asst to the Reg Dir Research & Develop. Resch Dir, Pittsburgh Research Center. Research Dir, Twin Cities Research Ctr. Research Director, Albany Research Ctr. Chief Div of Environmental Technology. Chief Division of Health Safety & Min Tech. Spec Asst to the Dir, Bureau of Mines. Senior Technical Advisor. Chief, Division of Resource Evaluation. Chief, Division of Policy Analysis. Chief Mineral Economist.
Bureau of Reclamation	Chief Div of Research & Lab Services. Dep Asst Commissioner—Engineering & Research. Director, Policy & Programs. Senior Scientist.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
U.S. Geological Survey	Deputy Asst Commissioner—Resources Management.
	Project Manager/Arizona Projects Office.
	Chief Div Prog Coordination & Finance.
	Deputy Ast Commissioner Administration.
	Staff Geologist for NPRA/Alaska Activities.
National Mapping Div	Chief, National Mapping Division.
	Associate Chief, National Mapping Division.
	Chief, EROS Data Center.
	Chief Western Mapping Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Asst Div Chief for Information & Data Svc.
	Chief Eastern Mapping Center.
	Asst Div Chf for Program, Budget & Adm.
	Asst Div Chf for Research.
	Asst Div Chf for Coordination & Requirements.
	Asst Div Chief for Production Management.
	Sr Staff Sci for Mapping & Geographic Data.
Water Resources Div	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Regl Hydrologist Central Reg Lakewood.
	Regl Hydrologist Southeastern Region.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
	Asst Chf Hydrologist for Operations.
	Asst Chief Hydrologist for Scien Info Mgmt.
	Asst Chf Hydrologist for Water A&D Coord.
	Asst Chf Hydro for Res & Extrnl Coordination.
	Chief, Natl Water Quality Assessment (NAWQA).
	Asst Chf Hydrologist/Prog Coord & Tech Supp.
	Chf, Ofc of Atmospheric Deposition Analysis.
	Chf, Ofc of Hydrologic Research.
	Chief, WRSIC Program.
	Chief Office of Water Quality.
	Chf, Br of Water Information Transfer.
	Chief, Office of Ground Water.
	Chief Office of Surface Water.
	Chf, National Water Data Exchange Program.
Geologic Div	Chief Geologist.
	Chief, Ofc of Earthquakes, Volcanoes & Engr.
	Chief, Ofc of Scientific Publications.
	Assoc Chf Geologist.
	Chf Ofc of Mineral Resources.
	Chief, Office of Energy & Marine Geology.
	Chief Office of International Geology.
	Chief, Office of Regional Geology.
	Asst Chief, Ofc of Energy and Marine Geology.
	Assistant Chief Geologist for Programs.
Bureau of Land Management	Deputy Asst Dir Management Services.
	Director, Boise Interagency Fire Center.
	Dep Asst Dir Lands & Renewable Resources.
	Dep Asst Dir Energy & Minerals Resources.
	Spec Asst to the Director/ FQI Representative.
Ofc of Surface Mining Reclam & Enforcement	Dep Asst Dir Eastern Fld Ops (Programs Ops).
	Asst Dir for Eastern Field Operator.
	Assistant Director, Western Field Operations.
Minerals Management Service	Regional Director, Gulf of Mexico OCS Region.
	Dep Associate Director for Offshore Leasing.
	Chief, Leasing Management Division.
	Regional Manager, Atlantic OCS Region.
	Regional Manager, Alaska OCS Region.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Regional Manager, Pacific OCS Region.
	Program Director for Indian Royalty Asst.
	Dept Associate Dir for Offshore Operations.
	Dep Assoc Dir for Collection & Disbursement.
	Prog Dir, Ofc of Strategic & Internatl Minls.
	Dep Assoc Dir for Audit.
	Dep Assoc Dir for Valuation & Audit.
	Deputy Assoc Dir for Compliance.
Asst Secy—Indian Affs	Spec Asst to the Asst Secy—Indian Affairs.
Bureau of Indian Affairs	Asst Dir of Administration (Financial Mgmt).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Special Assistant (Special Projects Officer).
	Dep to the Dir Indian Education Programs.
International Development Cooperation Agency:	
Ofc of the Administrator	Senior Advisor for Management Improvement.
Ofc of the General Counsel	Deputy General Counsel.
	Ethics Officer.
Office of the Inspector General	Asst Inspector General for Security.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
Office of Equal Opportunity Programs	Dir Ofc of Equal Opportunity Programs.
Directorate for Finance & Administration	Assoc Admin for Finance & Admin.
	Director Office of Financial Mgmt.
	Deputy Dir Ofc of Financial Management.
	Dir Office of Information Resource Management.
	Deputy Director Ofc of Procurement.
	Director Office of Procurement.
	Deputy Director Office of Infor Res Manag.
	Deputy Associate Administrator.
	Dep. Dir, Office of Hrdm.
	Dir, Ofc of Admin Services.
Interstate Commerce Commission:	
Office of the Managing Director	Assoc Managing Dir & Director of Personnel.
Office of the General Counsel	Assoc Gen Counsel—Litigation.
Organization Abolished	Deputy Director—Accounts.
Office of Proceedings	Deputy Director—Legal Analysis.
	Deputy Director—Legal Counsel.
	Assistant Deputy Director—Legal Counsel.
	Assistant to the Director.
Office of Compliance & Consumer Assistance	Assoc. Dir, Ofc of Compliance & Consumer Asst. Director.
	Dep Dir, Section of Operation & Enforcement.
	Associate Director Policy & Review.
Regional Offices	Regional Director (Philadelphia).
	Regional Director (Chicago).
	Regional Director (San Francisco).
Office of Tariffs	Director, Office of Tariffs.
Department of Justice:	
Office of the Attorney General	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Ofc of the Legal Counsel	Special Counsel.
	Special Counsel.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Inspections.
	Assistant Inspector General for Audit.
	Assistant Inspector General for Investigation.
	Asst Inspector Gen for Management & Planning.
	General Counsel.
	Dep Asst Inspector General for Investigations.
Office of the Deputy Attorney General	Dir Exec Ofc for Organ Crime Drug Enfor Task.
	Associate Deputy Attorney General.
Justice Management Division	Asst Attorney General for Administration.
	Deputy Asst Attorney General.
	Dep Asst Attorney Gen; Personnel Adm.
	Asst Attny Gen E&N Resources.
	Dir, Facilities and Administrative Svc Staff.
	Associate Asst Attorney General Legal Counsel.
	Associate Assistant Attorney General.
	Director Management and Planning Staff.
	Director, Budget Staff.
	Senior Management Counsel.
	Procurement Executive.
	Senior Policy Advisor.
	Dep Asst Attorney General, Info Res Mgt.
	Dir Procurement Services Staff.
Office of the Controller	Dep Asst Attorney General; Controller.
	Dir Finance Staff.
	Dep Asst Atty Gen for Debt Collection.
	Asst Dir, Management & Planning Staff.
Office of Personnel and Administration	Director Personnel Staff.
	Director, Ofc of Atty Pers Mgmt.
Office of Info & Admin Services	Director, Computer Services Staff.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Director, Systems, Policy Staff.
	Dir, Legal and Informations Systems Staff.
Executive Office for Immigration Review	Chief Immigration Judge.
	Assistant to the Director.
	Chief Admin Hearing Officer.
Office of Litigation	Dep Dir of Operations.
	Chief, Competition Policy Section.
Civil Division	Director of Management Programs.
Commercial Litigation Branch	Spec Litigation Counsel (Foreign Litigation).
	Spec Litigation Counsel.
	Deputy Branch Director/Commercial Litigation.
	Deputy Branch Dir Civil Frauds.
Federal Programs Branch	Special Litigation Counsel (Federal Programs).
	Deputy Branch Director (Federal Programs).
Torts Branch	Spec Litigation Counsel.
	Spec Litigation Counsel.
	Special Litigation Counsel (Tort Litigation).
	Deputy Branch Director.
	Deputy Branch Director.
	Deputy Branch Director.
	Director Office of Consumer Litigation.
Civil Rights Division	Special Litigation Counsel.
Office of Environmental Resources	Special Litigation Counsel.
	Dep Chf, Environmental Enforcement Section.
	Deputy Chief.
Deputy Assistant Attorney General-I	Special Litigation Counsel (Legislative).
	Sr Trial Attorney.
	Special Litigation Counsel.
	Spec Litigation Counsel.
Immigration and Naturalization Service	Associate Commissioner for Finance.
	Asst Commissioner for Detention & Deportation.
	Asst Commissioner for Adjudication & Natural.
	Assistant Commissioner for Border Patrol.
	Asst Comm for Employer & Labor Relations.
	Director of Internal Audit.
	Director of Security.
	Assoc Comr for Human Resources & Admin.
	Asst Comr, Budget.
Associate Commissioner for Information Systems	Assistant Commissioner for Records Systems.
Associate Commissioner for Examinations	Asst Comm for Inspections.
Associate Commissioner for Enforcement	Assistant Commissioner for Investigations.
Executive Associate Commissioner for Management	Asst Commissioner for Administration.
	Asst Commr for Personnel & Training.
Ofc of the Associate Attorney General	Deputy Associate Attorney General.
Executive Ofc for U.S. Attorneys	Dir Ofc of Mgnt Information Systems Support.
	Dir, Office of Administration & Review.
Criminal Division	Deputy Chief, Fraud Section.
	Dir Ofc of Asset Forfeiture.
	Special Coun for International Programs.
	Senior Counsel.
	Senior Appellate Counsel.
	Senior Counsel.
	Executive Officer.
Ofc of Senior Counsels	Sr Counsel for Litigation.
Ofc of Deputy Asst Attorney General I	Cnsl to the Ofc; Ofc of Spec Investigations.
	Counsel to the Office Fraud Section.
Ofc of Deputy Asst Attorney General II	Chf Public Integrity Section.
	Deputy Chief Public Integrity Section.
Federal Prison System	Asst Dir for Planning and Development.
	General Counsel.
	Assoc Commr, Fed Prisons Industries, UNICOR.
	Dep Assoc Comm for Fed Prison Industries.
	Warden Ft Worth Texas.
	Warden Marianna FL
	Cortl Prog Admr Asst Dir for Human Res Mgmt.
	Sen Dep Asst Dir Admin Div.
	Senior Deputy Asst Dir Health Services Div.
	Senior Deputy Assistant Director.
	Assistant Dir, Program Review Division.
	Sr Dep Asst Dir Federal Prison Industries.
	Regional Director Mid Atlantic Division.
	Chief of Staff to the Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Correctional Institution Administrator.
	Asst Dir., Community Corrections & Detention.
	Asst Dir, Infor, Pol, & Public Afrs Div.
	Warden Talladega Al.
	CIA (Warden) FCI, Texarkana, Texas.
	Sen Dep Asst Dir Health Services Division.
	Correctional Institution Admin (Warden).
	Sr Dep Regl Director, Mid-Atlantic Region.
	Gen Counsel, Fed Prison Industries (UNICOR).
	Warden, Allenwood, Pennsylvania.
	Chief Executive Officer (Warden).
	Senior Management Counsel.
	Correctl Instit Admr (Warden) FCC, -Floren, CO.
	Correctional Inst Admr (ARD) SCR, Dallas, TX.
	Corrl Inst Admr (SDAD), CC & D Div, Wash, DC.
	Warden, USP, Florence, CO.
Office of Correctional Programs	Asst Dir Correctional Programs Div.
Northeast Region	Regional Director.
	Warden, Lewisburg, PA.
	Warden, Danbury, Conn.
	Warden, McKean, PA.
	Senior Deputy Regional Director.
	Correctional Inst Admr (WArden), Oakdale, LA.
Southeast Region	Regional Director.
	Warden, Atlanta.
	Warden, Lexington, Kentucky.
	Warden, Butner, North Carolina.
North Central Region	Regional Director.
	Warden, Leavenworth, Kansas.
	Warden, Springfield, MO
	Warden, Marion, IL.
	Warden, Terre Haute, IN.
	Correctional Institution Admr.
	Warden, Fed Correctional Institution.
	Correctional Institution Admr (Warden).
South Central Region	Regional Director.
	Warden, El Reno, Okla.
	Warden, Memphis, TN.
Western Region	Regional Director.
	Warden, Terminal Island, CA.
	Warden, Lompoc, CA.
	Warden, Phoenix, AZ.
	Warden, Federal Correctional Institution.
Ofc of Justice Programs	Comptroller, Ofc of the Comptroller.
National Institute of Justice	Asst Dir, Ofc of Dev Testing & Dissemination.
Bureau of Justice Statistics	Deputy Dir, Bureau of Justice Statistics.
U.S. Marshals Service	Sr Mgt Counsel, (Federal Bureau of Prisons).
	Associate Director for Administration.
	Associate Director for Operations.
	Assistant Director for Human Resources.
	Special Projects Officer.
	Associate Director for Operations Support.
	Associate Director, for Administrative Serv.
	Asst Dir for Research & Development.
	Assoc Director for Operational Support.
Department of Labor:	
Ofc of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Asst Inspector Gen for Audit.
	Deputy Assistant Inspector General for Audit.
	Dir Ofc Resource Mgnt & Legislative Assmt.
	Asst Inspector Gen for Labor Racketeering.
	Counsel to the Inspector General.
Office of the Deputy Secretary	Director, DOL Academy.
Office of the Solicitor	Deputy Solicitor (Regional Operations).
	Associate Solicitor for Labor-Management Laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & HLT.
	Assoc Solicitor for Mine Safety & Health.
	Assoc Solicitor for Fair Labor Standards.
	Assoc Solicitor for Employee Benefits.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Regional Solicitors	Assoc Sol For Spec Appel & Sup Court Lit. Dep Solicitor for Planning and Coordination. Dir, Office of Management. Associate Solicitor for Black Lung Benefits. Regional Solicitor. Regional Solicitor Region IV–Atlanta. Regl Solicitor Boston. Regl Solicitor New York. Regional Solicitor Philadelphia. Regl Solicitor Dallas. Regl Solicitor Kansas City. Regl Solicitor San Francisco.
OAS for Administration and Management	Asst Sec'y for Admin & Mgmt. Dep Asst Sec for Adm and Mgmt. Director, Office of Budget. Dir of Management Policy and Systems. Comptroller for the Department. Dir of Personnel Management. Dep Dir of Personnel Management. Deputy Comptroller. Director, Directorate of Civil Rights. Dir Natl Capital Service Center. Director of Information Resources Management. Dir, Administrative & Procurement Programs. Director Office of Budget. Deputy Chief Financial Officer. Dir. Ofc of Fin Integrity.
Office of Management, Administration and Planning	Dir Ofc of Mgmt, Administration and Planning.
Ofc of Federal Contract Compliance Programs	Director Division of Programs Operations.
Wage and Hour Division	Asst Admin for Policy Planning & Review. Dep Wage & Hour Admin.
Ofc of Workers Compensation Programs	Dir Federal Employees Compensation. Dir Coal Mine Workers Compensation.
Office of Labor-Management Standards	Dir Ofc of Elect Trustshp/Intern'l Union Audt.
Pension & Welfare Benefits Administration	Director, Ofc of Policy & Program Support. Director of Enforcement. Dir of Regulations & Interpretations. Director of Program Services. Deputy Director of Program Services. Senior Dir of Policy & Legislative Analysis. Dep Asst Secy for Program Operations. Director of Exemption Determinations.
Bureau of Labor Statistics	Deputy Commissioner. Associate Commissioner for Field Operations.
Data Analysis	Assoc Commr for Publications & Spec Studies. Assoc Commr, Economic Growth. Assoc Comr for Prices and Living Conditions. Assoc Commr Productivity & Technology. Assoc Comr for Research & Evaluation. Assoc Comm for Employment & Unempl Statistics. Asst Commr for Consumer Prices & Price Indexes. Asst Commr for Indust Prices & Price Indexes. Assistant Commissioner for Economic Research. Asst Commissioner for Federal-State Programs. Asst Commissioner for Current Employ Analysis. Asst Comr for Compensation Levels & Trends. Asst Comr for Safety, H & W Conditions. Assoc Comr Compensation & Working Conditions. Asst Comm for Survey Methods Research. Asst Comm for International Prices.
Administrative and Internal Operations	Dep Comm for Adm and Internal Operations. Assistant Commissioner for Administration. Director of Survey Processing. Dir of Technology & Computing Svcs. Asst Comr for Technology & Survey Processing. Dir Quality & Info Management
Office of Work-Based Learning	Director, Ofc of Trade Adjustment Assistance.
Office of Financial & Administrative Management	Comptroller. Admr, Ofc of Financial & Administrative Mgmt. Dir, Ofc of Information Resources Management.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs	Dir Health Standards Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Safety Standards Programs	Director Safety Standards Programs.
Federal/State Operations	Director, Federal/State Operations.
Technical Support	Director, Technical Support.
Mine Safety and Health Administration	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
Merit Systems Protection Board:	
Office of the Board	Deputy General Counsel.
	Clerk of the Board.
Ofc of the Executive Director	Executive Director.
	Deputy Executive Director.
	Director, Office of Policy & Evaluation.
	Deputy Director Office of Appeals Counsel.
	Director, Office of Administration.
	Dir, Office of Management Analysis.
	Director, Office of Regional Operations.
Regional Offices	Regional Director, San Francisco.
	Regional Director, Chicago.
	Regional Director, Atlanta.
	Regional Director, Philadelphia.
	Regional Director, Dallas.
	Regional Director, Washington, D.C.
National Aeronautics and Space Administration:	
Ofc of the Administrator	Assoc Admr for S&D Business Utilization
	Dir, Benchmarking & External Programs Div.
	Director of Special Studies.
	Associate Deputy Administrator (Technical).
Office of the Comptroller	Assistant Comptroller for Systems Analysis.
	Deputy Chief Financial Officer.
	Asst Comptroller for Prog S&C Assessment.
Financial Management Division	Dep Dir, Financial Management Div.
Resources Analysis Division	Director, Resources Analysis Division.
Congressional Relations Office	Deputy Assistant Administrator.
	Dir, Congressional Liaison Division.
Ofc of Safety and Mission Quality	Director, Safety and Product Assurance Office.
	Dir, NASA Q&P Improvement Programs Division.
	Director, Safety Division.
	Dir, Software Independent V&V Facility.
	Dir, Reliability, M/Q Assurance Division.
	Dep Assoc Adm for Safety & Mission Quality.
	Dir Technical Standards Division.
	Director, Programs Assurance Division.
	Dir Systems Assessment Division.
Ofc of the Assoc Admr, Space Science and Applications	Special Ast to the Deputy Assoc Admin.
	Special Assistant to Associate Administrator.
	Asst Assoc Administrator (Institutions)
	Manager, Launch Vehicles Office.
Earth Science and Applications Division	Chief, Flight Programs Branch.
	Chf, Upper Atmospheric R/T Chemistry Branch.
	Chf, Atmospheric Dynamics and Radiation Br.
	Chief Land Processes Branch.
	Chf, Advanced M/I Science Research Branch.
	Spec Asst to the Dir, Earth Sci/Applications.
	Dir, Flight Syst and Instrument Development.
Communications Division	Chf, Information Systems Branch.
Life Sciences Division	Dep Dir, Life Sciences Division.
Administration and Resources Management Division	Dep Dir, Administration & Resources Mgmt Div.
Solar Systems Exploration Division	Dep Dir, Solar System Exploration Division.
	Manager, Cassini Program.
	Chief, Flight Programs Branch.
	Dep Dir, Solar System Exploration Division.
Flight Systems Division	Chf, Space Station Utilization Branch.
	Deputy Dir Flight Systems Division.
Astrophysics Division	Chf, High Energy Astrophysics Br.
	Chief, Astronomy/Relativity Branch.
	Chf, Ultraviolet/Visible Astrophysics Branch.
	Deputy Dir Astrophysics Division.
	Assistant Director for Strategic Planning.
	Chief, Observatories Development Branch.
Microgravity Sciences and Applications Div	Chief Envir Sys & Life Support Branch.
	Dir Life & Biomedical Science & Applics Div.
	Dep Dir Microgravity Science Applications Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Chief Mission Management Branch.
	Dir, Microgravity Sciences & Applications Div.
	Chief, Flight Programs Branch.
Space Physics Div	Chief, Solar Physics Branch.
	Dep Dir, Space Physics Division.
	Chief, Flight Programs Branch.
	Director, Space Physics Division.
Office of Procurement	Asst Admr for Procurement.
	Dir, Advanced Procurement Planning Division.
	Director, Program Operations Division.
	Director, Procurement Policy Division.
	Dir Procurement Management Division.
	Dep Assistant Administrator for Procurement.
	Dir Contract Pricing & Finance Office.
	Dir Contract Management Division.
Ofc of Asst Admr for Commercial Programs	Dir, Commercial Development Division.
	Deputy Assistant Administrator (Programs).
	Dir, Small Business Innovation Res Office.
	Special Asst for Industry Planning.
	Spec Asst to the Asst Admr.
Ofc of the Assoc Admr, External Relations	Director, Aircraft Management Office.
	Mgr, Institutional Planning & Operations.
Industry Relations Division	Dep Dir Industry Affairs Division.
International Relations Division	Dep Dir, International Relations Division.
Ofc of the Assoc Adm Space Flight	Chief Medical Officer.
	Dep Manager Space Shuttle Operations.
	Dep Assoc Admr for Space Flight (Russian AFS).
	Manager, Man-Tended Capability.
	Director, Mission Operations.
Resources Management	Manager, Program Control Office (Reston).
	Director, Resources Management Division.
	Chief Program Evaluation.
	Manager, Program Control (JSC).
Transportation Services	Manager, Flight Requirements & Analysis.
	Dep Dir Transportation Services Division.
	Dir Transportation Services Offices.
	Manager National Security & DOD Affairs.
	Chf, US Civil & Intl Payloads Branch.
Flight Systems Directorate	Director, Shuttle Carrier Systems Division.
	Manager, Heavy Lift Launch Vehicle.
	Manager, Orbital Maneuvering Vehicles.
Space Shuttle Directorate	Dir, Program Planning & Control Division.
	Director, Space Shuttle Operations.
	Special Asst to the Director.
Space Shuttle Program	Manager Natl Space Trans Syst Eng Integration.
	Manager, Management Integration.
	Deputy Manager for Integration.
	Mgr, Natl Space Trans Syst Integration & Ops.
	Program Manager Space Shuttle Program.
	Mgr, Assured Shuttle Availability.
	Manager, Shuttle Projects Office (MSFC).
	Manager Launch Integration (KSC) Space Shuttle.
Systems Engineering and Analysis Division	Chief, Shuttle Systems Branch.
	Dep Dir, Syst Eng & Analysis Division.
	Chief, Shuttle Propulsion.
	Chief, Shuttle Orbiter/GFE.
Operations Utilization Division	Chief, KSC Projects.
	Director, Operations Utilization Division.
Institutions Directorate	Dir Institutions.
Space Station Freedom Directorate	Special Assistant to the Director.
	Technical Assistant to the Director.
	Dep Assoc Adm for Space Station Freedom.
Space Station Engring Division	Dir Engineering Division.
Space Station Operations and Utilization Division	Dir Space Station Opns & Utilization Div.
	Chief Utilization.
Space Station Freedom Program and Operations.	
	Technical Assistant to the Deputy Director.
	Dep Mgr Space Station Freed Prog & Operations.
	Dep Dir, Space Station Freedom P & Ops.
Special Projects Office	Manager, Special Projects Office.
	Deputy Manager Special Projects Office.
Program Engineering Office	Deputy Manager Program Engineering Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Utilization and Operations Office	Manager Systems Engineering Office.
	Manager Avionics Systems.
	Manager, Utilization & Operations Office.
	Manager Space Operations Office.
	Dep Manager, Utilization & Operations Office.
	Manager Ground Operations and Logistics.
	Manager Mission Integration.
	Manager Payload Integration.
Management Integration Office	Dep Mgr Mgt Integration Office.
	Manager Tech Mgmt & Info System Office.
	Manager, Management Integration Office.
International Program Office	Deputy Manager, International Programs.
	Assistant Manager, International Program Ofc.
	Manager, International Program Office.
Integration Office	Manager System Integration.
	Manager for Integration.
Office of Management Systems and Facilities	Director, Management Operations.
Facilities Management	Dir, Fac Utilization, M&E Compliance Div.
	Dir Facilities Plan & Construction Division.
	Deputy Director, Facilities Engineering Div.
	Director, Facilities Engineering Division.
Logistics and Security	Spec Asst to the Dir Logis Aircraft Sec Ofc.
	Dir, Logistics & Security Division.
Information Systems Division	Director, Information Resources Mgmt Division.
	Dep Dir, Information Res Mgmt Division.
Automated Information Management Program Office	Director Automated Info Mgmt Prog Ofc.
Ofc of Exploration	Chief, Technology Utilization.
Headquarters Operations	Dir, Information Syst & Technology Division.
	Chief Engineer.
	Spec Asst for Space Station Freedom Utiliz.
	Director, Resources Analysis & Integration.
Ofc of Director for Aeronautics	Asst Dir for Aeronautics (H–S Aircraft).
	Deputy Director for Aeronautics.
	Asst Dir for Aeronautics Subsonic Aircraft.
Office of Space Exploration	Dep Assistant Administrator for Exploration.
	Asst Dir for Space Exploration (Prog Defin).
	Manager Space Exploration (Support Planning).
	Special Asst for Strategic Planning.
Ofc of Dir for Space	Deputy Director for Space Technology.
	Asst Dir for Space Technol (Prog Development).
	Asst Dir for Space (Spacecraft Technology).
	Director for Space Technology.
Ofc of Dir for Institutions	Asst Director for Institutions (Facilities)
	Asst Dir for Institution (Information Syst).
	Dir. Resources & Management Systems Office.
	Director for Institutions.
Aerodynamics Division	Deputy Dir Aerodynamics Division.
Materials & Structures Division	Director, materials and Structures.
Propulsion, Power, & Energy Division	Dir, Propulsion, Power and Energy Division.
National Aerospace Plans Office	NASA Dep Prog Mgr, Natl Aero-space Plane Prog.
	Dep Prog Manager Natl Aero-Space Plane.
	Dep Dir, National Aero-Space Plane Office.
	Director, National Aero-Space Plane.
	Director for Plans.
Office of Human Resources and Education	Associate Administrator for Human Resources.
	Director, Education Division.
	Director, Management Systems.
	Director, Personnel Division.
	Dep Assoc Adm for Human Res & Education.
Ofc of the Assoc Admr Space Operations	Assistant Associate Administrators (Plans).
	Special Asst (Operations).
Network System Division	Manager Space Network Operations.
	Dir, Ground Network Division.
	Dep Dir, Ground Network Division.
Communications and Data Systems Division	Dir, Communications & Data Systems Div.
	Chief, Communications Systems Branch.
Deep Space Network Operations Programs	Deputy Director Space Network Division.
Program Integration Division	Dir Program Integration Division.
TDRSS Division	Manager, White Sands Space Network Complex.
	Manager, TDRSS Continuation Program.
Ofc of Equal Opportunity Programs	Dir Minority Univ Res & Educ Prog Div.
	Director, Multicultural Prog & Support Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Discrimination Complaints Division	Director, Discrimination Complaints Division.
Office of the Inspector General	Assist Inspector General for Investigation.
	Assistant Inspector General for Auditing.
Ames Research Center	Asst to Center Dir for Advanced Sys Design.
Administration Directorate	Comptroller.
	Deputy Director of Administration.
Aerospace Systems Directorate	Chief, Aerodynamics Division.
	Chf Flight Systems & Simulation Rsch Div.
	Chief Aerospace Projects Office.
	Deputy Dir Aerospace Systems Directorate.
	Chief Aircraft Technology Division.
Space Research Directorate	Chief, Space Science Division.
	Chief, Earth Systems Science Division.
	Chief, Advanced Life Support Division.
	Deputy Director of Space Research.
Engineering and Technical Services Directorate	Dep Director Engineering & Tech Svcs.
Aerophysics Directorate	Chief, Computational Fluid Dynamics Branch
	Chf Systems Engineering Div.
	Chief Full Scale Aerodynamics Research Center.
	Chief, Fluid Dynamics Division.
	Chief, Computer Systems & Research Division.
	Chief, Thermoscience Division.
	Chief, Information Sciences Division.
Flight Operation and Research Directorate	Chief, Science & Applications Aircraft Div.
	Chf, Ames Research Aircraft Operations Div.
Dryden Flight Research Facility	Chf Engineer.
	Chf, Flight Operations Division.
	Assoc Dir, Dryden Flight Research Facility.
	Dep Dir, NASA Ames Res Center DFRF.
Goddard Space Flight Center	Comptroller.
	Director of Human Resources.
	Dir of University Programs.
Management Opers Directorate	Dep Dir of Management Operations.
	Associate Director for Acquisition.
Flight Assurance Directorate	Director of Flight Assurance.
	Dep Dir of Flight Assurance.
Flight Projects Directorate	Deputy Director of Flight Projects.
	Dep Assoc Dir of Flight Proj For EOS Res Mgt.
	Dep Assoc Dir of Flight Proj for H–S–T.
	(GOES) Project Manager.
	Dep Dir Flight Project for PLNG Business Mgmt.
	Assoc Dir of Flight Proj Flight Proj Dir.
	Mgr. Hubble Space Telescope Oper & Ground Syst.
	Assoc Dir of Flight Proj for Earth OBS Syst.
	Global Geospace Sciences (GGS) Project Mgr.
	Assoc Dir of Flt Proj Hubble Space Telescope.
	Proj Mgr, Intl Solar Terr Physics Proj (ISTP).
	Dir of Flight Projects.
	Proj Mgr Hubble Spc Telescope Syst & Serv.
	Associate Director of Flight Projects.
	Tracking & Data Relay Satellite TDRS Proj Mgr.
	Project Manager Meteorlogical (METSAT) Projec.
Mission Operations & Data Systems Directorate	Asst Director for Systems Engineering.
	Chief, NASA Communications Division.
	Assoc Dir of Mission Operations & Data Syst.
	Dep Dir of Mission Operations & Data Systems.
	Chief Networks Division.
	Chief, Flight Dynamics Division.
	Project Mgr, Earth Sci Data & Info System.
	Chief Mission Operations Division.
Space & Earth Sciences Directorate	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Assoc Dir for Projects Engineering.
	Chief Lab for Hydrospheric Processes.
	Associate Director.
	Chief, Space Data and Computing Division.
	Chf, Laboratory for Atmospheres.
	Director of Space Sciences.
	Deputy Director for Earth Sciences.
	Chief, Goddard institute for Space Studies.
	Chief Laboratory for High Energy Astrophysics.
	Deputy Director of Space Sciences.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Engineering Directorate	Director for Earth Sciences. Chief Laboratory for Terrestrial Physics. Dep Dir of Engineering. Chief, Instrument Division. Chf, Applied Engineering Div. Chief Engineer. Chief, Special Payloads Division. Asst Dir of Engineering for Development Proj. Chief, Space Technology Division. Associate Director of Engineering.
Mission to Planet Earth Office	Dir of Mission to Planet Earth. Dep Dir (Resources) Mission to Planet Earth.
Suborbital Projects and Operations Directorate	Chf, Operations Division.
Johnson Space Center	Comptroller. Assistant Director (Plans). Dir of Public Affairs. Spec Asst for Engineering Operations & Safety. Director of Procurement. Director of Human Resources.
New Initiatives Office	Manager Assured Crew Return Vehicle Project. Manager New Initiatives Office. Deputy Manager, New Initiatives Offices.
Center Support	Deputy Dir Center Operations. Dir Admin. Deputy Director, Administration. Dir Center Operations. Asst Dir Administration.
Space Operations	Assistant Director, Mission Operations. Director, Mission Operations. Deputy Asst Dir for Program Support. Chief, Aircraft Operations Division. Director Information Systems. Chief Flight Director Office. Assistant Director for Space Shuttle Program. Deputy Director, Mission Operations. Assistant Director for Program Support. Chief, Space Station Ground Systems Division. Dep Dir, Flight Crew Operations. Asst Dir for Space Shuttle Program. Chief, Space Shuttle Ground Syst Division. Deputy Director, Information Systems.
Research & Engineering	Deputy Director, Engineering. Chief, Propulsion & Power Division. Chief Structures and Mechanics Division. Chief, Medical Sciences Division. Chief, Crew & Thermal Systems Division. Chief, Automation and Robotics Division. Chief, Systems Engineering Division. Manager for Program Science. Associate Director, Engineering. Director, Engineering. Chief Engineer, New Initiatives. Manager, Orbiter Engineering Office. Deputy Director, Space and Life Sciences. Chief Flight Data Systems Division. Chief Tracking & Communications Division. Assistant to the Director. Chief, Navigation, Contrl & Aeronautics Div.
Natl Space Transp Sys Prog Ofc	Dep Manager, Orbiter & GFE Projects Office. Chf, Man-Systems Division. Manager, Orbiter and GFE Projects Office.
Space Station Project Office	Manager for Technical Projects. Manager for Development. Dep Mgr, Space Station Projects Office. Dep Mgr for Prog & Operations Integration. Deputy Manager for Project Control.
Safety, Reliability & Quality Assurance	Dir, Safety, Reliability, & Quality Assurance. Dep Dir, Safety, Reliability & Qual Assurance.
NASA White Sands Test Facility	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Dir, Exec Management Ofc. Spec Asst to the Center Director.
Comptroller	Deputy Controller.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Biomedical Office	Chf., Biomedical Office.
Procurement	Director, Procurement.
Public Affairs	Dir Public Affairs.
	Assistant Director for Systems Engineering.
Space Station and Advanced Projects Office	Manager Space Station Projects Office.
Safety, Reliability and Quality Assurance	Director, Safety and Reliability.
	Dir Mission Assurance.
	Director, Quality Assurance.
Shuttle Management Operations	Dir, Shuttle Logistics Project Management.
	Dir of Space Trans System Mgmt & Operations.
Center Support Operations	Director of Center Support Operations.
Engineering Development	Deputy Director of Engineering Development.
	Dir, Mechanical Engineering.
Project Management	Director, Facilities Engineering.
Electronic Engineering	Director, Electronic Engineering.
Cargo Management and Operations	Director, Expendable Vehicles.
Sts Cargo Operations	Director, Sts Payload Operations.
Shuttle Projects Office	Director, Shuttle Operations.
	Director, Ground Engineering.
Langley Research Center	Chief Scientist.
	Chief Engineer.
	Comptroller.
	Assistant Director.
Electronics Directorate	Chf., Analysis & Computation Division.
	Chief, Projects Division.
	Chief Flight Electronics Division.
	Chief Instrument Research Division.
Structures Directorate	Chf, Acoustics Division.
	Chief Materials Division.
	Chief, Structural Dynamics Division.
Aeronautics Directorate	Dir of Interagency Programs.
	Chief Applied Aerodynamics Division.
	Chief, Flight Applications Division.
	Dir, National Aero-Space Plane Office.
	Chief, Fluid Mechanics Division.
Space Directorate	Chief, Space Systems Division.
	Chief Atmospheric Sciences Division.
	Manager, Space Station Freedom Office.
	Manager, Human Exploration Initiative Office.
	Chief, Advanced Vehicles Division.
Systems Engineering and Operations Directorate	Dep Dir for Syst Engineering & Operations.
	Chief Systems Engineering Div.
	Chf, Syst Sfty, Quality, & Reliability Div.
	Chief Engineer SE&O.
	Chief Facilities Engineer Division.
Management Operations	Deputy Director for Management Operations.
	Dir of Education Programs.
Flight Systems Directorate	Chief Information Systems Division.
	Chf, Guidance and Control Division.
	Chief Flight Management Division.
Lewis Research Center	Director, External Programs.
	Chf, Ofc of Sfty, Reliability & Quality Assur.
	Director of Lewis Research Academy.
Administration & Computer Services	Chief, Computer Services Division.
	Dir, Adm & Computer Services Directorate.
Aeronautics Directorate	Manager, External Tank Project.
	Chf, Propulsion Systems Div.
	Chief, Instrumentation & Control Technol Div.
	Chf, Internal Fluid Mechanics Division.
	Chief Technologist.
	Chf, Aeropropulsion Analysis Office.
	Chf, Aeropropulsion Facilities & Exper Div.
Space Station Systems Directorate	Dep Dir of Space Station Systems.
	Chief Electrical Systems Division.
	Chief Engineer.
	Chief, Power Technology Division.
Aero Space Technology Directorate	Chief, Space Propulsion Technology Division.
	Chief, Structures Division.
	Chief, Interdisciplinary Technology Office.
Space Flight Systems Directorate	Chf, Advanced Space Analysis Office.
	Manager Launch Vehicle Project Office.
	Manager, Acts Project Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Engineering	Chief, Space Experiments Division. Chief, Space Communications Division. Chief, Structural Systems Division. Chf, Electronics & Control Systems Division. Director of Engineering. Deputy Director of Engineering. Chief, Propulsion & Fluid Systems Division.
Marshall Space Flight Center	Comptroller. Dir, Human Res & Administrative Support Ofc. Associate Director.
Office of Sfty, Rel & Quality Assurance	Dir, Systems Safety & Reliability Office. Director, Safety & Mission Assurance Office.
Heavy Lift Launch Vehicle Definition Office	Manager, Acquisition & Business Management. Manager Space Transportation Main Engine Sys.
Science and Engineering	Director, Space Sciences Lab. Director, Propulsion Laboratory. Director, Syst Anal & Integration Laboratory. Deputy Director, Space Science Laboratory. Dep Dir, Structures & Dynamics Laboratory. Deputy Dir, Materials & Processes Laboratory. Dep Dir, Mission Operations Laboratory. Dep Dir, Syst Anal & Integration Laboratory. Manager Space Shuttle Main Engine Projects. Manager, Adv X-Ray Astrophysics Facility–S. Deputy Director, Propulsion Laboratory. Dir Astrionics Laboratory. Deputy Director for Space Systems. Dir Structures Dynamics Laboratory. Chief Engineer Space Shuttle Main Engine Proj. Chief Engineer, Space Station Projects. Dir, Materials & Processes Laboratory. Dep Dir for Space Transportation Systems. Chief Engineer Heavy Lift Launch Vehicle. Dir, Research & Technology Office. Director, Mission Operations Laboratory.
Payload Projects Office	Mgr, Science & Applications Payload Projects. Dep Manager Payload Projects Office.
Space Station Projects Office	Manager, Space Station Projects Office. Deputy Manager for Advanced Launch System. Deputy Manager Space Station Projects Office.
Program Development	Deputy Director, Program Development. Director, Preliminary Design Office. Assoc Dir for Advanced Planning.
Shuttle Projects Office	Mgr Solid Rocket Booster Project. Mgr Redesign Solid Rocket Motor Project. Mgr, Advanced SRMP Space Shuttle Projects Ofc.
Spacecraft Office	Manager, Observatory Projects Office. Dep Mgr, Observatory Projects Office. Mgr, Advanced X-Ray Astrophysics Facility–I.
Administration and Program Support	Dir Info Systems Office. Dir, Institutional & Program Support. Director, Procurement Office. Dep Dir, Institutional & Program Support. Director, Facilities Office.
Stennis Space Center	Dir Sci & Tech Lab. Director, Center Operations. Deputy Director, NASA Stennis Space Center. Assoc Director for Institution. Dir, Propulsion Test Operations.
National Archives & Records Administration:	
National Archives & Records Administration	Deputy Archivist of the United States. Asst Archivist for the National Archives. Asst Archivist for Presidential Libraries. Asst Archivist for Federal Records Centers. Director of the Federal Register. Asst Archivist for Records Administration. Asst Archivist for Mgt and Administration. Director, Lyndon B. Johnson Library. Director, Harry S Truman Library. Asst Archivist for Spec & Regl Archives.
National Capital Planning Commission:	
National Capital Planning Commission Staff	Executive Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Assistant Executive Director for Operations.
	Dir of Intergovernmental & Public Affairs.
	General Counsel.
National Endowment for the Arts:	
National Endowment for the Arts	Director of Program Coordination.
	Director of Administration.
National Endowment for the Humanities:	
National Endowment for the Humanities	Dir, Office of Planning & Budget.
	Asst Chairman for Operations.
National Labor Relations Board:	
Ofc of the Board Members	Executive Secy.
	Deputy Executive Secretary.
	Inspector General.
Div of Enforcement Litigation	Deputy Assoc. Gen. Counsel Appellate Court Br.
	Director, Office of Appeals.
Div of Advice	Associate Gen Counsel, Div of Advice.
	Deputy Assoc Gen Counsel.
Div of Administration	Director of Administration.
	Deputy Director of Administration.
Div of Operations Management	Assoc General Counsel, Div of Operations-Mgmt.
	Dep Asso Gen Counsel, Div of Operations-Mgmt.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
Regional Offices	Regl Dir, Reg 1, Boston.
	Regional Director, Reg. 2, New York.
	Regional Director, Reg. 3, Buffalo.
	Regl Dir, Reg 4, Philadelphia.
	Regional Director, Reg. 5, Baltimore.
	Regional Director, Reg. 6, Pittsburgh.
	Regl Dir, Region 7, Detroit Mich.
	Regional Director, Reg. 8, Cleveland.
	Regional Director, Reg. 9, Cincinnati.
	Regl Dir, Reg 10, Atlanta.
	Regl Dir., Reg 11, Winston-Salem.
	Regional Director, Reg 12, Tampa.
	Regional Director, Reg 13, Chicago.
	Regl Dir, Reg 14, St Louis.
	Regl Dir, Reg 15, New Orleans.
	Regl Dir, Reg 16, Ft Worth.
	Regl Dir, Reg 17, Kansas City.
	Regl Dir, Reg 18, Minneapolis.
	Regl Dir, Reg 19, Seattle.
	Regional Dir, Reg 20, San Francisco.
	Regional Director, Reg. 21, Los Angeles.
	Regional Director Reg 22 Newark.
	Regional Director Reg 24 Hato Rey Puerto Rico.
	Regl Dir, Reg 25, Indianapolis.
	Regl Dir, Reg 26, Memphis.
	Regl Dir, Reg 27, Denver.
	Regl Dir, Reg 28, Phoenix.
	Regl Dir Reg 29 Brooklyn.
	Regl Dir Reg 30 Milwaukee.
	Regl Dir Reg 32 Oakland.
	Reg Dir, Reg. 33 Peoria, Ill.
	Regl Dir Reg 31 Los Angeles.
National Science Foundation:	
Office of the Director	Senior Science Advisor.
	Executive Asst & Special Counsel.
	Executive Asst & Special Counsel.
Office of the General Counsel	Deputy General Counsel.
Office of Planning and Assessment	Senior Staff Associate Program Evaluation.
	Senior Staff Associate Policy Analysis.
	Senior Advisor.
Office of Polar Programs	Manager Polar Ops Section.
	Head, Polar Coordination & Info Section.
	Deputy Office Director.
Office of the Inspector General	Inspector General.
	Counsel to the Inspector General.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Assistant Inspector General for Oversight.
	Dep Inspector Gen & Senior Legal Advisor.
	Asst Inspector General for Audit.
Directorate for Geosciences	Executive Officer.
	Senior Science Associate.
Division of Atmospheric Sciences	Head, NCAR Coordination Staff.
	Section Head, Upper Atmosphere Section.
	Head Lower Atmosphere Section.
Division of Earth Sciences	Section Head, Research Grants Section.
	Head Major Projects Section.
Division of Ocean Sciences	Section Head Ocean Sciences Research Section.
Directorate for Engineering	Senior Engineering Advisor.
Division of Engineering Education & Centers	Deputy Division Director (Education).
	Senior Staff Associate.
Div of Design and Manufacturing Systems	Deputy Division Director.
Division of Biological and Critical Systems	Head Hazard Mitigation Section.
Div of Electrical and Communications Systems	Deputy Division Director.
Division of Industrial Innovation Interface	Dep Dir Div of Industrial Innovation Interf.
Directorate for Biological Sciences	Executive Officer.
	Deputy Asst Director.
Division of Environmental Biology	Deputy Division Director.
Directorate for Mathematical and Physical Sciences	Executive Officer.
	Senior Staff Associate
Division of Physics	Deputy Division Director.
Division of Astronomical Sciences	Dep Dir, Division of Astronomical Sciences.
	Executive Officer.
Division of Mathematical Sciences	Deputy Division Director.
Division of Materials Research	Deputy Director.
	Head, Special Programs in Materials Office.
	Senior Staff Scientist.
Division of Chemistry	Dep Dir Division of Chemistry.
Directorate for Education & Human Resources	Deputy Asst Director.
	Senior Staff Associate.
	Senior Staff Associate.
Division of Human Resource Development	Deputy Director.
Office of Systemic Reform	Deputy Office Head.
Directorate for Social, Behavioral and Economic Sciences	Exe Officer Social Behavioral Econ Sciences.
	Senior Staff Associate.
Division of Science Resources Studies	Senior Staff for Human Res Studies & Assess.
Division of International Programs	Deputy Division Director.
	Senior Staff Associate.
	Senior Staff Associate.
	Senior Staff Associate.
Division of Social, Behavioral & Economic Research	Deputy Division Director.
	Deputy Director.
	Senior Science Associate.
	Senior Staff Associate.
Organization Abolished	Dep Div Dir Div of Behavioral & Conitive Sci.
Directorate for Computer & Info Science & Engineering	Executive Officer.
	Deputy Asst Dir.
Div of Computer and Computation Research	Deputy Division Director.
Div of Information, Robotics & Intelligent Systems	Deputy Division Director.
Division of Microelectronic Information Processing Sys	Deputy Division Director.
Div of Networking & Comm Res & Infrastructure	Deputy Division Director.
Office of Budget, Finance and Award Management	Director, Ofc of Budget, F&A Management.
	Dep Dir, Ofc of Budget, F&A Management.
Budget Division	Director, Budget Division.
Division of Financial Management	Division Director.
Division of Grants & Agreements	Director Division of Grants and Contracts.
	Director, Operations and Analysis.
	Division Director.
Division of Contracts, Policy & Oversight	Division Director.
Office of Information and Resource Management	Dep Dir, Ofc of Information & Resource Mgmt.
	Senior Staff Associate.
	Dir Planning & Evaluation.
Division of Information Systems	Dep Dir, Div of Information Systems.
Division of Human Resource Management	Div Dir, Div of Human Resource Management.
Division of Administrative Services	Dir, Division of Administrative Services.
National Transportation Safety Board:	
Office of the Managing Director	Dep Managing Dir for Mgmt & Policy.
	Chief, Technical Advisor.
Office of Administration	Dir Office of Administration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Office of Aviation Safety	Director Ofc of Aviation Safety.
	Deputy Director Ofc of Aviation Safety.
Office of Research & Engineering	Dir Ofc of Research and Engineering.
	Deputy Dir Ofc of Research and Engineering.
Office of Safety Recommendations	Director Ofc of Safety Recommendations.
Office of Surface Transportation Safety	Dir Ofc of Surface Transportation Safety.
	Deputy Director.
Nuclear Regulatory Commission:	
Atomic Safety and Licensing Brd Panel	Chairman ASLBP.
	Deputy Chief Administrative Judge Executive.
Office of the Inspector General	Dsst Inspector General for Investigations.
	Asst Inspector General for Audits.
Deputy GC for Licensing & Regulation	Deputy Assistant GC/Legislative Counsel.
Dep GC for Hearings, Enforcement & Administration.	Deputy Assistant GC for Administration.
Assistant GC for Hearings and Enforcement	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
Office of Commission Appellate Adjudication	Dir Ofc of Comm Appellate Adjudication
Division of Operational Assessment	Chief Incident Response Branch.
	Chf. Diagnostic Eval & Incident Invest Branch.
Division of Safety Programs	Chf, Reactor Operations Analysis Branch.
	Chf, Trends & Patterns Analysis Branch.
Office of Administration	Dir Div of Contracts & Property Management
	Director, Div of Security.
Office of Information Resources Management	Dep Dir/LSS Admr, Ofc of Info Res Mgmt.
Office of the Controller	Dep Chief Financial Officer/Controller.
	Deputy Controller.
	Dir Division of Budget and Analysis.
	Dir Division of Accounting and Finance.
	Special Assistant for Internal Controls.
Ofs of Small and Disadv Bus Utilization/Civil Rights	Director.
Program Management, Policy Development & Analysis Staff	Dir, Prog Mgmt, Pol Dev & Analysis Staff
	Chief, Plng, Programs & Mgmt Support Branch.
	Chf. Pol Dev & Tech Support Branch.
Assistant Director for Region I Reactors	Project Dir, Project Directorate I–1.
	Project Director, Project Directorate I–2.
	Project Director, Project Directorate I–3.
	Project Director, Project Directorate I–4.
Assistant Director for Region II Reactors	Proj Dir Project Directorate II 1.
	Proj Dir Project Directorate II 2.
	Proj Dir Project Directorate II 3.
	Project Dir Project Directorate II–4.
Assistant Director for Region III Reactors	Proj Dir Project Directorate III 1.
	Proj Dir Project Directorate III 2.
	Proj Director Project Directorate III 3.
Assistant Director for Region IV and V Reactors	Proj Dir Project Directorate V.
	Proj Dir, Project Directorate IV–1.
	Project Dir, Proj Directorate IV–2.
Division of Operating Reactor Support	Chief, Generic Communications Branch.
	Chf, Technical Specification Branch.
	Chief, Events Assessment Branch.
	Project Dir, Standardization Proj Directorate.
	Proj Dir, N–P Reactor, D&E Proj Directorate.
Division of Engineering	Chief, Materials & Chemical Engineering Br.
	Chf, Mechanical Engineering Branch.
	Chief Civil Eng & Geosciences Branch.
	Chief Electrical Engineering Branch.
Division of Systems Safety & Analysis	Chf, Plant Systems Branch.
	Chf, Reactor Systems Branch.
	Chief Probablistic Safety Assessment Branch.
	Chief Containment Sys & Severe Accident Brch.
Division of Reactor Inspection & License Performance	Chf, Vendor Inspection Branch.
	Chf, Special Inspections Branch.
Division of Radiation Safety and Safeguards	Chief Emergency Preparedess Branch.
	Chf, Safeguards Branch.
	Chf, Radiation Protection Branch.
	Dep Dir Div of Radiation Safety & Safeguards.
Division of Reactor Controls and Human Factors	Chf, Human Factors Assessment Branch.
	Chf Operator Licensing Branch.
	Chf, Instrumentation & Control Branch.
	Chf, Performance & Quality Evaluation Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Associate Dir for Advanced Reactors & License Renewal	Proj Dir License Renewal & Environmental Rev.
Division of Fuel Cycle Safety & Safeguards	Chief, Domestic Safeguards Branch.
	Chf, International Safeguards Branch.
	Chief, Operations Branch.
	Chief, Regl & Intl Safeguards Branch.
	Chief, Enrichment Branch.
	Chief, Licensing Branch.
Div of Industrial & Medical Nuclear Safety	Chief, Operations Branch.
	Chief, Medical, Acad & Com Use Sfty Branch.
	Chief, Storage & Transport Systems Branch.
	Chief Source Containment & Devices Br.
Division of High Level Waste Management	Chief, Geology & Engineering Branch.
	Proj Dir, Repository L & Q Assurance.
	Chief, Hydrology & Systems Performance Branch.
Div of Low Level Waste Management & Decommissioning	Chief, Fuel Cycle Safety Branch.
	Chief, Low-Level Waste Management Branch.
	Chief, Uranium Recovery Branch.
	Chf, Decommission & Regulatory Issues Br.
Ofc of Nuc Regulatory Research	Director: Fin Mgt, Procurement & Admin Staff.
Division of Engineering	Chief, Materials Engineering Branch.
	Chief Waste Management Branch.
	Chief, Electrical and Mechanical Engineer Brh.
	Chief, Structural and Seismic Engineering Brh.
Division of Safety Issue Resolution	Chief, Severe Accident Issues Branch.
	Chief, Engineeing Issues Branch.
	Chief Reactor and Plant Sfty Issues Branch.
Division of Regulatory Applications	Chief Regulation Development Branch.
	Chf, Radiation Protection & Health Effects Br.
	Chief, Adv Reactors and Generic Issues Branch.
Division of Systems Research	Chief Accident Evaluation Branch.
	Chf, Probabilistic Risk Analysis Branch.
	Chief, Reactor and Plant Systems Branch.
	Chief Human Factors Branch.
Region I	Deputy Regional Administrator.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
	Director Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director, Division of Reactor Projects.
Region II	Deputy Regional Administrator Region II.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
	Director, Division of Reactor Projects.
	Deputy Director, Division of Reactor Projects.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
Region III	Dep Regional Administrator Region III.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director Division of Reactor Projects.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
Region IV	Deputy Regional Administrator Region IV.
	Director Uranium Recovery Field Office.
	Director Div of Reactor Projects.
	Deputy Director, Div of Reactor Projects.
	Dir, Div of Radiation Safety & Safeguards.
	Dir, Division of Reactor Safety.
	Dep Dir, Div of Radiation Safety & Safeguards.
Region V	Deputy Regional Administrator Region V.
	Dir Div of Reactor Safety and Projects.
	Dep Dir Div of Reactor Safety and Projects.
	Dir, Div of Radiation Safety & Safeguards.
Office of Government Ethics:	
Office of Government Ethics	Deputy Director.
	Deputy General Counsel.
	Assoc Dir for Program Develop & Compliance.
Office of Management and Budget:	
Office of the Director	Assistant Director for Administration.
	Deputy Associate Dir for Economic Policy.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Assoc Dir for Legislative Ref & Adm.
	Dep Assistant Director for Administration.
Office of General Counsel	Dep Gen Counsel.
	Associate General Counsel for Budget.
Legislative Reference Division	Asst Dir Legislative Reference.
	Dep/Asst/Dir for Legislative Reference.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources-Defense-International Branch.
Office of Federal Procurement Policy	Assoc Admr for Procurement Law & Legislation.
	Assoc Administrator for Management Control.
Office of Information and Regulatory Affairs	Chief Information Policy Branch.
	Chief, Human Resources and Housing Branch.
	Chief, Commerce and Lands Branch.
	Chief Statistical Policy Branch.
	Chief, Natural Resources Branch.
	Chf, Info Technology Management Branch.
Associate Director for Management	Chief Management Integrity Branch.
	Chief Personnel & General Services Branch.
	Chief, Credit and Cash Management Branch.
	Assistant Director for General Management.
	Deputy Assistant for General Management.
	Branch Chief, Federal Personnel Policy Branch.
	Chief, Federal Services Branch.
	Branch Chief MBO Evaluation & Planning Branch.
	Chief Fin Standards of Reporting Branch.
	Chief Federal Financial Systems Branch.
	Senior Adviser.
Budget Review Division	Asst Dir for Budget Review.
	Dep Assistant Director for Budget Review.
	Chief Fiscal Analysis Branch.
	Dep Chief Fiscal Analysis Branch.
	Dep Asst Dir for Budget Review & Concepts.
	Chief, Resources Systems Branch.
	Chief, Central Budget Management Staff.
	Deputy Chief Budget Preparation Branch.
Assoc Dir for National Security and International Affs	Deputy Associate Director for Special Studies.
International Affairs Division	Dep Assoc Dir for Internatl Affairs.
	Chief, State-USIA Branch.
	Chief, Economic Affairs Branch.
	Chief International Security Affairs Branch.
National Security Division	Dep Assoc Dir for National Security.
	Chief, Command, Ctrl, Comms, & Intellig Branch.
	Chief, Navy Branch.
	Chief, Force Structure & Investment Branch.
	Chief, Oper & Support Branch.
Health and Income Maintenance Division	Dep Assoc Dir for Health & Income Maintenance.
	Chf, Income Maintenance Branch.
	Chief Health & Social Services Branch.
Labor, Veterans, and Education Division	Chief, Labor Branch.
	Chief, Education Branch.
	Chf Veteran Affairs Branch.
Associate Director for Economics and Government	Dep Assoc Dir for Special Studies.
	Adviser to the Assoc Dir for Economics & Gov.
Transportation, Commerce, and Justice Division	Dep Assoc Dir for Transp Commerce & Justice.
	Chief Commerce & Justice Branch.
	Chief Transport General Services Branch.
Housing, Treasury and Finance Division	Deputy Assoc Dir for Housing Treasury Finance.
	Chief, Treasury/Post Branch.
	Chief, Financial Institutions Branch.
	Chief, Housing Branch.
Assoc Dir for Natural Resources, Energy, and Science	Dep Assoc Dir for Spec Studies.
Natural Resources Division	Dep Associate Dir for Natural Resources.
	Chief, Water Resources Branch.
	Chief, Agricultural Branch.
	Chief, Environment Branch.
	Chief Interior Branch.
	Asst Division Chief NRD.
Energy and Science Division	Dep Assoc Dir for Energy & Science.
	Chief, Nuclear Energy Branch.
	Chief Science and Space Programs Branch.
	Chief Non-Nuclear Energy Branch.
Office of Personnel Management:	

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Office of the Chief Financial Officer	Chief Financial Officer.
Office of Inspector General	Deputy Inspector General.
	Asst Inspector General for Audits.
Office of Executive and Management Policy	Asst Dir for Executive & Management Policy.
Office of Information Management	Executive for ADP Operations.
Office of Actuaries	Director, Office of Actuaries.
Office of Insurance Programs	Asst Dir for Insurance Programs.
Office of Retirement Programs	Asst Dir For Retirement Programs.
Office of Personnel Research and Dev	Asst Dir for Personnel Research & Development.
Staffing Service Center	Assistant Director for Staffing Automation.
Office of Agency Compliance & Evaluation	Asst Dir for Agency Compliance & Evaluation.
Office of Classification	Asst Dir for Classification.
Office of Federal Investigations	Asst Dir for Federal Investigations.
Office of Washington Examining Services	Asst Dir for Wash Examining Services.
Office of Special Counsel:	
Headquarters, Office of Special Counsel	Assoc Spec Counsel (Investigation).
	Assoc Special Counsel (Prosecution).
	Deputy Associate Spec Counsel for Prosecution.
	Director for Management.
	Associate Special Counsel for Plan & Advice.
Railroad Retirement Board:	
Board Staff	Dir of Unemployment & Sickness Insurance.
	Director of Data Processing.
	Director of Administrative Services.
	Dir of Retirement & Survivor Programs.
	Chief Actuary.
	Director of Field Service.
	Director of Administration & Operations.
	Deputy General Counsel.
	Asst Inspector General for Investigations.
	Chief Financial Officer.
	Assistant Inspector General for Audit.
	Director of Systems Initiatives.
	Director of Taxation.
	General Counsel.
Securities and Exchange Commission:	
Office of the Chief Accountant	Dep Chf Accountant.
Office of Administrative and Personnel Management	Dep Exec Director.
	Assoc Exe Dir Human Resources Mgnt.
	Associate Executive Director (Finance).
	Associate Executive Director (Administration).
Div of Corporation Finance	Associate Director (Operations).
	Associate Director (Legal).
Selective Service System:	
Selective Service System	Assoc Dir Information Management.
Small Business Administration:	
Office of the Administrator	Chief Fin Ofc & Assoc Dep Adm for Mgt & Adm.
Ofc of the Inspector General	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
Office of the General Counsel	Associate General Counsel for General Law.
	Assoc Gen Counsel Litigation.
Office of Hearings & Appeals	Asst Administrator for Hearings and Appeals.
Office of Financial Assistance	Asst Administrator for Financial Assistance.
	Director of Portfolio Management.
Office of Procurement Assistance	Director of Prime Contracts.
Ofc of Minority Small Business & Capital Ownership Dev	Assoc Admr for MSB–COD.
	Dep Assoc Admr for Pol Coor, Prog C&E.
	Dep Assoc Admr for Programs (MSB & COD).
Office of Information Resources management	Asst Admin for Information Resources.
Office of Personnel	Director of Personnel.
Office of the Comptroller	Deputy Chief Financial Officer & Comptroller.
Office of Program Review	Director of Program Analysis and Review.
	Dep Dir of Prog Analysis & Quality Assurance.
	Dep Dir of Prog Analysis & Quality Assurance.
	Director of Program Review.
	Deputy Director of Program Review.
	Deputy Director of Program Review.
Office of EEO & Compliance	Dir of Equal Employment Opport & Compliance.
District Directors	District Director.
	District Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
	District Director.
Department of State:	
Bureau of Administration	Supervisory Structural Engineer.
Bureau of Economic & Business Affairs	Dir, Office of East-West Trade.
Bureau of Intelligence and Research	Dir Ofc of Intelligence Resources.
Office of the Inspector General	Assistant Inspector General for Audits.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Dep Asst Inspector General for Audits.
	Dep Asst Inspector Gen for Investigations.
	Asst Insp Gen for Policy, Plng and Management.
	Dep Asst Inspector Gen for Inspections.
	Dep Asst Insp Gen for Ofc of Secur Oversight.
Bureau of Personnel	Director, Ofc of Civil Service Personnel Mgmt.
International Boundary & Water Commission	Supervisory Civil Engineer, Operations.
Department of Transportation:	
Office of Inspector General	Asst Insp General for Auditing.
	Asst I/G for Policy, Planning and Resources.
	Asst Inspector General for Investigations.
	Dir Ofc of A&S Transportation Audits.
	Dir Ofc of Marine & Department Wide Audits.
	Dep Asst Inspector General for Auditing.
	Dir Ofc of Information Technol & Fin Audits.
	Dept Asst Inspector General for Investigations.
	Deputy Inspector General.
	Asst Inspector General for Inspections & Eval.
	Dep Asst Inspector Gen for Inspections & Eval.
Asst Sec for Public Affairs	Dir Office of Public Information.
Asst Sec for Administration	Asst Secy for Administration.
	Senior Procurement Advisor.
Office of Acquisition & Grant Management	Director Ofc of Acquisition & Grant Mgnt.
	Dep Dir Ofc of Acquisition & Grant Mgmt.
Assoc Adm'r for Safety	Assoc Admr for Safety.
	Director, Office of Safety Enforcement.
Associate Administration for Pipeline Safety	Assoc Admr for Pipeline Safety.
Ofc of Assoc Admr for Marketing	Associate Administrator for Marketing.
Office of Associate administrator for Maritime Aids	Associate Administrator for Maritime Aids.
Office of Accounting	Dir Office of Accounting.
Office of Airport Planning & Programming	Dir Office of Airport Planning & Program.
	Mgr Grants-in-aid Division.
Assistant Administrator for Civil Aviation Security	Dep Asst Admr for Civil Aviation Security.
Office of Civil Aviation Security Policy & Planning	Dir Ofc of Civil Avn Security Pol & Planning.
Office of Civil Aviation Security Operations	Dir Ofc of Civil Aviation Security Operations.
	Dep Dir Ofc of Civil Aviation Security Ops.
Office of Civil Aviation Security Intelligence	Dir Ofc Civil Aviation Security Intelligence.
Office Civil Aviation Security Program Management	Dir Ofc of Civil Aviation Security Prog Mgt.
Asst Admr for Policy, Planning & International aviation	Director Asia/Pacific Office.
Associate Administrator for Air Traffic	Assoc Administrator for Air Traffic.
	Dep Assoc Admin for Air Traffic.
Regional Air Traffic Divisions	Mgr Air Traffic Division.
	Mgr Air Traffic Division.
	Mgr Air Traffic Div.
	Manager, Air Traffic Division.
	Mgr Air Traffic Division.
	Mgr Air Traffic Division.
	Manager, Air Traffic Division.
	Manager, Air Traffic Division.
Air Traffic Rules & Procedures Service	Manager, Procedures Division.
	Mgr Airspace-Rules & Aeronautical Inf Div.
	Dir Air Traffic Rules & Procedures Service.
Office of Air Traffic System Management	Director, Air Traffic System Management.
Air Traffic Plans and Requirements Service	Dir, Air Traffic Plans & Requirements Serv.
	Manager System Plans & Programs Div.
	Manager Automation Software Division.
	Manager Advanced Syst & Facilities Div.
Office of Air Traffic System Effectiveness	Dir, Ofc of Air Traffic Syst Effectiveness.
Office of Air Traffic Program Management	Dir, Ofc of Air Traffic Program Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Associate Administrator for Aviation Standards	Assoc Administrator for Aviation Standards.
	Deputy Assoc Administrator Aviation Standards.
Office of Aviation Medicine	Fed Air Surgeon.
	Deputy Federal Air Surgeon.
	Mgr, Medical Specialties Division.
	Director Civil Aeromed Institute.
Office of Accident Investigation	Dir, Office of Accident Investigation.
Office of Aviation Systems Standards	Dir, Ofc of Aviation Systems Standards.
	Deputy Director.
Operational Support Service	Director Operational Support Service.
Associate Admr for Regulations & Certification	Assoc Admr for Regulations & Certification.
	Dept Assoc Admr for Regul & Certification.
Aircraft Certification Service	Dir, Aircraft Certification Service.
	Deputy Director Aircraft Certification Servic.
	Asst Dir, Aircraft Certification Service.
	Manager, Aircraft Engineering Division.
	Manager, Aircraft Manufacturing Division.
Regional Aircraft Certification Divisions	Mgr Transport Airplane Directorate.
	Mgr Engine & Propeller Directorate.
	Mgr Small Airplane Directorate.
	Manager Rotorcraft Directorate.
Flight Standards Service	Dir, Flight Standards Service.
	Dep Dir, Flight Standards Service.
	Mgr, General Aviation and Commercial Div.
	Manager, Air Transportation Division.
	Manager Aircraft Maintenance Division.
	Manager, Flight Standards Natl Field Office.
	Manager, Technical Programs Division.
Regional Flight Standards Divisions	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Division.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Division.
Assoc Administrator for Contracting & Quality Assurance	Mgr, Contracts Division.
	Associate Administrator.
	Dep Assoc Admr for Acquisition Support.
Program Manager for Advanced Automation	Program Mgr for Advanced Automation.
	Dep Program Mgr for Advanced Automation.
	Dep Prog Mgr for Voice S&C System.
Program Director for Automation	Program Director for Automation.
Program Director for Communications	Program Director for Communications.
Program Director for Navigation & Landing Aids	Program Dir for Navigation & Landing Aids.
Program Director for Surveillance	Program Director for Surveillance.
Program Director for Weather & Flight Service Systems	Prog Dir for Weather & Flight Services Syst.
Office Acquisition Policy & Oversight	Dir, Ofc of Acquisition Pol & Oversight.
Associate Administrator for Aviation Safety	Assoc Admin for Aviation Safety.
	Dep Assoc Admin for Aviation Safety.
Federal Highway Administration	Executive Director.
Assoc Admr for Admin	Director Office of Fiscal Services.
	Director Office of Contracts and Procurement.
Associate Administrator for Safety & System App	Assoc Admr for Safety & System Applications.
Office of Highway Safety	Dir, Office of Highway Safety.
Office of Motor Carrier Standards	Dir, Office of Motor Carrier Standards.
Office of Motor Carrier Safety Field Operations	Dir, Ofc of Motor Carrier S/F Operations.
Office of Environment & Planning	Chief Environmental Operations Division.
Office of Right of Way	Dir Ofc of Right of Way.
	Chief, Operations Division
Natl Center for Statistics and Analysis	Chf, Accident Investigation Div.
Assoc Admr for Enforcement	Assoc. Administrator for Enforcement.
Ofc of Defects Investigation	Dir, Ofc of Defects Investigation.
Ofc of Vehicle Safety Comp	Dir, Ofc of Vehicle Safety Compliance.
US Coast Guard	Chief, Procurement Management Division.
Department of Treasury:	
Deputy Assistant Secretary (Intl Monetary Policy)	Dir Ofc of Foreign Exchange Operations.
Fiscal Assistant Secretary	Fiscal Assistant Secretary.
	Assistant Fiscal Assistant Secretary.
Financial Management Service	Commr of Financial Management Service.
	Dep Com Financial Management Service.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dir, Regional Financial Center (Chicago).
	Director, Regl Fin Ctr (Philadelphia).
	Director, Regl Fin Ctr (San Francisco).
	Director, Regl Fin Ctr (Austin).
	Deputy Director, Operations Group.
	Comptroller
	Director, Systems Services Directorate.
	Assistant Commissioner, Information Systems.
	Assistant Commissioner, Federal Finance.
	Director Operations Group.
	Assistant Commissioner, Regional Operations.
	Asst Comr, Management (Chief Fin Ofr).
	Assistant Commissioner, Agency Services.
	Dir, Systems Development Directorate.
	Dir, Fin Information Management Directorate.
	Dir, Technology & Information Group.
	Director, Working Capital Directorate.
	Assistant Commissioner, Financial Information.
	Dir, Financial Accounting & Syst Directorate.
Bureau of the Public Debt	Commissioner.
	Dep commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Asst Commr (Financing).
	Asst Commr (Administration).
	Government Securities Act Program Director.
	Government Securities Policy Advisor.
	Asst Commr/Securities & Accounting Services.
	Asst Commissioner (Automated Info Systems).
	Asst Commissioner (Public Debt Accounting).
Assistant Secretary (Economic Policy)	Asst Dir for Economic Forecasting.
	Sr Economist.
Ofc of the Inspector General	Dep Asst Insp Gen for Audit (Audit Prog Serv).
	Dep Asst Inspector Gen for Audit (Audit Ops).
	Aig for Policy, Planning & Resources.
	Asst Insp Gen for Oversight & Quality Assur.
	Asst Inspector General for Audit.
	Asst Inspector General for Investigations.
Assistant Secretary (Tax Policy)	Dir (Economic Mod & Computer Applications).
Assistant Secretary (Management)	Dir, Management Programs Directorate.
	Director, Office of Procurement
Assistant Secretary (Enforcement)	Dir Fin Crimes Enforcement Network.
	Dep Dir, Financial Crimes Enforcement Network.
	Director, Office of Asset Forfeiture Policy.
	Director, Office of Law Enforcement.
Bureau of Alcohol, Tobacco, and Firearms	Assistant Director Internal Affairs
	Asst Dir, Congressional and Media Affairs.
	Director, Laboratory Services.
Office of Law Enforcement	Dep Dir/Assoc Dir (Law Enforcement).
	Chief, Spec Operations Division.
	Chief, Planning & Analysis Staff.
	Chief, Intelligence Division.
	Chief, Explosives Division.
	Deputy Assoc Dir (Law Enforcement).
	Chief, Firearms Division.
Field Operations	Special Agent in Charge (NY District Office).
	Special Agent in Charge (LA District Office).
	Special Agent in Charge (Miami District Ofc).
	Spec Agent in Charge (Washington Dist Office).
	Spec Agent in Charge (Detroit Dist Office).
Office of Compliance Operations	Dep Dir/Assoc Dir (Compliance Operations).
	Dep. Associate Dir. (Compliance Operations).
	Chief, Revenue Programs Division.
	Chief, Industry Compliance Division.
Field Operations	Regional Director (North Atlantic Region).
Chief Counsel	Assistant Chief Counsel (Chicago).
	Assistant Chief Counsel (New York).
	Staff Assistant to the Chief Counsel.
US Customs Service	Asst Commissioner for Internal Affairs.
	Deputy Asst Comr (International Affairs).
	Asst Commissioner (Ofc of Info Mgmt).
	Spec Asst to the Comm for International Affrs.
	Asst Commr (Inspection & control).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Comptroller.
	Deputy Asst Commr (Inspection & Control).
	Deputy Assistant Commissioner (Management).
	Director, Ofc of Automated Systems Operations.
	Dir Budget and Planning.
	Exec Dir the Interdiction Committee.
	Assistant Commissioner, Office of Management.
	Senior Adv for Auto Comm Sys Select Projects.
	Dep Assoc Comr for Organl Effectiveness.
	Dir Ofc of Human Resources.
	Director, Ofc of Automated Commercial Systems.
Office of Enforcement	Deputy Assistant Commissioner (Enforcement).
	Dir, Office of Investigative Programs.
	Dir, Office of Enforcement Support.
	Dir Ofc of Domestic Operations.
	Director Ofc of Foreign Operations.
	Dep Asst Comr, Ofc of A&M Interdiction.
Field Operations	Special Agent in Charge, Miami.
	Special Agent in Charge—New York.
	Special Agent in Charge.
	Special Agent in Charge (New Orleans).
	Special Agent in Charge.
	Special Agent in Charge (Houston).
	Special Agent-in-Charge (San Diego).
	Special Agent in Charge (Newark).
	Special Agent-in-Charge (Chicago).
Office of Commercial Operations	Deputy Asst Comm Ofc of Regul & Rulings.
	Dir, International Trade Compliance Division.
	Dir Ofc of Regulatory Audit.
	Dir, Office of Technical Services.
	Dep Asst Comm (Ofc of Trade Operations).
	Dep Asst Commissioner Commercial Operations.
	Dep Dir, Ofc of Regulatory Audit.
	Dir, Commercial Rulings Division.
Regional Commissioners	Regl Commr Reg 2 NY.
	Reg Commr, Reg 1, Boston.
	Asst Regn Commr Operations Reg II New York.
	Regl Commr, Reg 4, Miami.
	Reg Commr, Reg V, New Orleans.
	Regional Commissioner, Chicago.
	Asst Regional Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regional Commr (Operations).
	District Director, Miami.
	District Director, Laredo.
	Area Dir, Newark.
	Area Director, JFK Airport.
	Area Director, New York Seaport.
	Regional Commissioner.
	District Director, Los Angeles.
	Regional Dir of Internal Affairs.
Chief Counsel	Asst Chief Counsel (Customs Court Litigat).
	Miami Regl Counsel.
	Chicago Regl Counsel.
	New York Regl Counsel.
	Associate Chief Counsel Enforcement.
	Assoc Chief Counsel (Trade Tariff & Leg).
	Regional Counsel (Southwest Region).
	Regional Counsel (Pacific Region).
US Secret Service	Director of the Secret Service.
	Deputy Director U.S. Secret Service.
	Assistant Director, Administration.
	Assistant Director Inspection.
	Assistant Director—Training.
	Asst Director—Govt Liaison and Public Aff.
	Dep Asst Dir (Spec Agent Trng), Ofc of Trng.
	Director US Secret Service.
	DAD—Administration.
	DAD (Uniformed Forces, F&E Dev), Ofc Trng.
	Special Asst to the Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Office of Protective Operations	Deputy Asst Director Office of Inspection. Asst Dir (Protective Operations). Dep Asst Dir (Protective Operations). Spec Agent in Charge-Presidential Protective. Spec Agent in Charge-VP Protect Div. DASIC Presidental Protective Division. Spec Agent in Charge Dignitary Protective Div. Deputy Special Agent in Charge Pres Prot Div. Deputy Special Agent in Charge—VP Prot Div.
Office of Protective Research	Asst Dir (Protective Research). Dep. Asst. Dir. (Protective Research). Spec Agent in Charge-Tech Sec Div. Spec Agent in Charge-Intelligence Div. Dep Spec Agent in Charge, Intelligence Div.
Office of Investigations	Chf, Info Resources Management Division. Asst Director, Investigations. Dep Asst Dir—Investigations (Hdqrtrs Ops).
Field Operations	Special Agent in Charge, New York Office. Special Agent in Charge, Chicago. Special Agent in Charge, Los Angeles Office. Spec Agent in Charge-Washington Field Office. Spec Agent in Charge-Philadelphia Field Offic. Deputy Special Agent in Charge, New York. Spc Agent in Charge San Francisco Office. Special Agent in Charge, Detroit. Special Agent in Charge, Dallas Field Office. Dep Spec Agent in Charge, Washington Fld Ofc. Special Agent in Charge—Houston Field Ofc. Spec Agent in Charge—Miami Field Office. Special Agent in Charge—Boston Field Office. Spec Agent in Charge—Atlanta Field Office.
US Mint	Assoc Director, Chief Operating Officer. Dep Assoc Dir for Finance & Dep Chief Fin Ofc. Assoc Dir of Pol & Management. Associate Director for Marketing.
Internal Revenue Service	Regl Dir of Appeals-Central Region. Reg Dir of Appeals, Mid-Atlantic Region. Reg Dir of Appeals-Southwest Reg. Regional Dir of Appeals North Atlantic Region. Regional Director of Appeals-Western Region. Asst to the Commissioner (Equal Opportunity). Chief Appeals Office New York City. Deputy Commissioner. Regional Director of Appeals. Taxpayer Ombudsman. Asst to the Commissioner (Legis Affairs). Chief, Appeals Office, Long Island. Regional Director of Appeals. National Director of Appeals. Deputy National Dir of Appeals. Asst to the Commissioner (Quality). Asst to the Senior Dep Commissioner.
Chief Financial Officer	Chief Financial Officer. Dir Financial Management Division. Director, Budget Division. Deputy Assistant Commissioner (Procurement). Accounts Receivable Executive Officer. Dir Training & Development Division. Dir, Facilities & Info Mgmt Support Division. Director, Research Division. Director, Support & Services Division. Spec Asst to Dep Comr (P&R)/Chf Fin Officer. Project Dir, Diagnostic Serv Center Proj Ofc. A/C (Planning & Research). Director, Planning Division. Dir, Support & Services Division. Dep Asst Commissioner (Planning & Research). Director, Human Resources Division. Asst Commissioner (Finance)/Controller. Dep Asst Commissioner (Human Res & Support). Dir Accounting Standards & Systems Division. Assistant Commissioner (Human Res & Support).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Chief Operations Officer	Asst Comr (Procurement). Asst Comr (Employee P&E Organizations). Dir, Tax Forms & Publications Div. Special Asst for Exempt Organization Matters. Assistant Commissioner (Taxpayer Services). Program Manager (Tax Systems Modernization). Assistant Commissioner (Examination). Asst Commr (Criminal Investigation). Dir Exempt Organizations Technical Division. D/Employee Plans Tech & Actuarial Division. Director, Statistics of Income Division. Deputy Assistant Commissioner (Examination). Dep Asst Commr (Criminal Investigation). Director, Input Processing Division. Director, Ofc of Field Operations. Asst/Dir Employee Plans Techn & Acturial Div. Operations Dep Asst Comr (Returns Processing). Director, Coordinated Examination Program. Assistant Dir, Taxpayer Service Division. D/A Comr (Employee Plans & Exempt Orgs). Director, Case Processing Division. Compliance 2000 Executive. Business Integration DAC (Returns Processing). Chief Operations Officer. Asst Commissioner (Returns Processing). Dir Taxpayer Service Division. Dep Asst Commr (Collection). Assistant Commissioner (Collection). Assistant Commissioner (International). Dir Information Reporting Program. Dep Asst Comr (Taxpayer Services). Deputy Asst Commissioner (International). Director, Fed State Relations Division.
North Atlantic Region	Reg Commr. Asst Reg Commr (Exam) North Atlantic Reg. ARC (Criminal Investigation). ARC (Resources Mgmt). ARC (Collection) North Atlantic Region. Assistant Regional Commissioner (Data Proc). Service Center Director, Andover, Mass. Srvc Ctr Dir, Brookhaven. District Dir, Manhattan. District Dir, Brooklyn. District Dir, Boston. District Dir, Albany. Dist Dir (Hartford). District Dir, Buffalo. Asst Dist Dir, Brooklyn. Assistant District Director Manhattan. Asst District Dir, Boston. District Director, Providence. Dist Dir, Augusta. District Director, Portsmouth. District Director, Burlington. Asst Service Center Director, Andover.
Mid-Atlantic Region	Reg Commissioner. ARC (Examination) Mid-Atlantic. ARC (Criminal Investigation) Mid Atlantic Reg. Asst Reg Commr (Collection). Assistant Regional Commissioner (Data Proc). Service Center Dir, Philadelphia. District Dir, Newark. District Dir, Pittsburgh. District Director, Richmond District. Asst District Dir, Philadelphia. Asst District Director (Newark). Assistant District Director—Baltimore, Md. District Director, Wilmington. District Dir, Baltimore.
Southeast Region	District Director. Assist Reg'l Commissioner (Resources Mgmt). Reg Commr.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	ARC (Examination) Southeast Region.
	Asst Reg Commissioner, Criminal Investigation.
	Asst Reg'l Commr (Resources Management).
	Asst Reg (Collection) SE Reg Atlanta.
	Assistant Regional Commissioner (Data Proc).
	Service Center Director, Memphis.
	Srvc Ctr Dir, Atlanta.
	District Dir, Jacksonville.
	District Dir, Atlanta.
	District Director Greensboro.
	District Dir, Nashville.
	District Director Birmingham.
	District Dir, New Orleans.
	District Director, Columbia.
	District Director, Little Rock District.
	Dirtrict Director, Jackson, Miss.
	Asst District Director, Jacksonville.
	Assistant District Director, Atlanta.
	Assistant District Director.
	District Director.
Central Region	Regional Commr, Central.
	ARC (Examination) Central Region.
	Asst Regl Comr (Criminal Investigation).
	Asst Reg Comm (Resource Management).
	Assistant Regional Commissioner (Collection).
	Asst Regl Commissioner (Data Processing).
	Dir Service Ctr Cincinnati.
	District Dir (Cleveland).
	District Director Detroit.
	District Director (Parkersburg).
	District Director, Indianapolis.
	District Director, Louisville.
	District Dir, Cincinnati.
	Assistant District Director Detroit.
	Asst Service Center Director.
Midwest Region	Regional Commr, Midwest Region.
	Asst Reg Commr (Resources Mgmt).
	ARC (Criminal Investigation) Midwest Region.
	Assistant Regional Commissioner (Data Proc).
	ARC (Examination), Midwest Region.
	ARC (Collection) Midwest Region.
	SRVC Ctr Dir, Kansas City.
	District Dir, Chicago.
	District Director St Louis.
	District Dir, St Paul.
	District Dir, Omaha.
	District Dir, Springfield.
	District Dir, Milwaukee.
	Asst District Dir, Chicago.
	District Director, Fargo.
	District Director, Aberdeen.
	District Director, Helena.
	District Director.
	Assistant Service Center Director.
Southwest Region	Regional Commissioner.
	Asst Regl Commr (Examination).
	ARC (Criminal Investigation) SW Region.
	ARC (Resources Mgmt).
	Assistant Regional Commissioner (Collection).
	Assistant Regional Commissioner (Data Proc).
	Service Center Dir, Ogden.
	Service Center Director, Austin.
	District Dir, Austin.
	District Director, Dallas.
	District Director, Wichita.
	District Director, Oklahoma City.
	District Dir, Phoenix.
	District Dir, Denver.
	Assistant District Director Dallas.
	District Director, Albuquerque.
	District Director, Cheyenne.
	District Director, Salt Lake City.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Western Region	Compliance Center Director. Assistant District Director, Houston. District Director, Houston. Reg Commr. ARC (Criminal Investigation). Assistant Regional Commissioner (Data Proc). Asst Regional Commissioner (Examination). Asst Regl Commr (Collection). Asst Regl Commr/(Resources Management). Service Center Director, Fresno. District Dir, Los Angeles. District Dir, San Francisco. District Director Portland District. District Dir, Seattle. Asst District Dir, Los Angeles. Asst Dist Dir San Francisco. District Director, Honolulu. District Director, Anchorage. District Director, Boise. District Director, (Sacramento). District Director, (Las Vegas). District Director, San Jose. Assistant District Director, Laguna Niguel. Asst Service Center Director. District Director, Laguna Niguel. Assistant District Director
Chief Information Officer	Dir Martinsburg Computing Center. Dir, IRS Data Center Detroit. Director, Systems Design Division. Director Systems Acquisition Division. Dir Input Systems Division. Dep Asst Commissioner (Info Systems Mgmt). Dir Project Mgnt Division. Dir Systems Management & Oper Services Div. Asst Commissioner (Information Systems Dev). Privacy Advocate. Dir Case Systems Division. Director, Systems Integration Division. Dep Asst Chf Info Officer Info System Dev. Asst Dir Detroit Computing Ctr. Dir Telecommunications Division. Director, Quality Assurance Division. Chief Information Officer. Director, Corporate Systems Division. Asst Commissioner (Information Systems Mgmt).
Chief Inspector	Chief Inspector. Dep Chief Inspector. Assistant Chief Inspector (Int Audit). Assistant Director Internal Audit Division. Asst Chief Inspector (Internal Security). Asst Dir, Internal Security Division. Regional Inspector, Midwest Reg. Regional Inspector, North Atlantic. Regional Inspector Western Region. Regional Inspector, Southwest Reg. Regional Inspector, Mid-Atlantic Reg. Regional Inspector, Central. Regional Inspector Southeast.
Chief Counsel	Asst Chief Counsel (General Litigation). Asst Chief Counsel (Criminal Tax). Asst Chief Counsel (General Legal Services). Asst Chief Counsel (Disclosure Litigation). Assistant Chief Counsel (International). Assistant Chief Counsel (Corporate). Dep Asst Chf Coun (Income Tax & Accounting). Dep Asst Chf Coun (Passthroughs/Spec Indust). Asst to the Assoc Chf Coun (Fin & Mgmt). Asst Chief Counsel (Field Service). Asst Chf Coun (Passthroughs/Spec Industries). Deputy Asst Chief Counsel (Corporate). Dep Assoc Chief Counsel (Fin & Management). Special Appellate Counsel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
	Dep Asst Chief Counsel (Field Service).
	Dep Asst Chief Coun (Financial Inst & Prod).
	Dep Assoc Chf Coun (Enforcement Litigation).
	Dep Assoc Chief Counsel International.
	Asst Chf Coun (Fin Institutions & Products).
	Dep Asst Chief Coun (Income Tax & Accounting).
	Dep Assoc Chief Counsel (EBEO).
	Dep Asst Chf Coun (Income Tax & Accounting).
	Asst Chief Counsel (Income Tax & Accounting).
	Assoc Chief Counsel (Enforcement Litigation).
	Assoc Chief Counsel Emp Benefits Exempt Org.
	Special Counsel (Large Case).
	Special Litigation Counsel.
	Deputy Chief Counsel.
	Dep Assoc Chief Counsel (Domestic) (Technical).
	Associate Chief Counsel (International).
	Assoc Chf Counsel (Finance & Management).
	Dep Assoc Chief Coun (Domestic) (Field Serv).
	Assoc Chief Counsel (Domestic).
Regional Counsels	Regl Counsel, Central Reg.
	Regional Counsel, Mid-Atlantic Region.
	Regl Counsel Midwest Region.
	Regl Counsel, North Atlantic Region.
	Dep Regl Coun (Tax Litigat) N Atlantic Reg.
	Deputy Regional Counsel (General Litigation).
	Regional Counsel SE Region.
	Regl Counsel Southwest Region.
	Regional Counsel.
	District Counsel Boston.
	District Counsel Los Angeles.
	District Counsel Cincinnati.
	District Counsel, Philadelphia.
	District Counsel, Newark.
	District Counsel, Chicago.
	District Counsel, Manhattan.
	District Counsel, Dallas.
	District Counsel, San Francisco.
	Dep Regional Counsel (Tax Litigation).
	Dep Regional Counsel (Tax Litigation).
	District Counsel.
	District Counsel.
	Deputy Regional Counsel (Tax Litigation).
	District Counsel, Washington, DC.
	Deputy Regional Counsel (Tax Litigation).
	District Counsel, Brooklyn, New York.
	District Counsel, Houston Texas.
	District Counsel, Denver.
US Arms Control and Disarmament Agency:	
Verification and Implementation Bureau	Chief, Verification Division.
Ofc of Administration	Director of Administration.
Strategic and Nuclear Affairs Bureau	Chief, Defense & Space Division.
Theatre Affairs Division	Chief, Theater Affairs Division–A966.
Strategic Affairs Division	Chief, Strategic Affairs Division A–977.
Non-Proliferation Policy Bureau	Chief Scientist.
	Chf, Def Programs & Analysis Division.
	Chf, International Nuclear Affairs Divisions.
Multilateral Affairs Bureau	Chief Sci & Technological Division.
United States Information Agency:	
Ofc of the Director	Assistant Inspector General for Audits.
	Assistant Inspector General for Inspections.
Bureau of Management	Director, Office of Personnel.
	Director, Office of the Comptroller.
	Dir Off Security.
	Dir Ofc of Contracts.
	Director, Office of Technology.
Bureau of Broadcasting	Dir Engineering and Technical Operations.
	Deputy of Systems Engineering.
	Deputy for Projects Management.
	Deputy for Operations.
Ofc of the Gen Counsel	Deputy General Counsel.
US International Trade Commission:	
Office of Industries	Dir Ofc of Industries.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1993—Continued

Agency organization	Career reserved positions
Office of Investigations	Dir, Ofc of Investigations.
Department of Veterans Affairs:	
Office of the Inspector General	Dep Inspector General.
	Assistant Inspector General for auditing.
	Asst Inspector General for Investigations.
	Asst Insp Gen for Policy, Plan & Resources.
	Dep Asst Inspector General for Investigations.
	Counselor to the Inspector General.
	Asst Inspector General for Healthcare Inspect.
	Director for National Audits.
	Dep Asst Inspector General for Auditing.
Board of Veterans' Appeals	Vice Chairman.
	Deputy Vice Chairman.
	Deputy Vice Chairman.
Office of Financial Management	Dir, VA Automation Ctr, Austin, TX.
	Dep Asst Secy for Financial Management.
	Assoc Dep Asst Secy for Financial Operations.
	Assoc Dep Asst Secy for ADP Systems.
Office of Information Resources Management	Assoc Dep Asst Secy for Telecommunications.
	Assoc Das for Info Res Plans & Technology.
Office of Human Resources Management	Assoc Dep Asst Secy for Human Res Management.
	Assoc Dep Asst Secy for Human Res Management.
Ofc of the Asst Secretary for Acquisition and Facilities	Dir Canteen Service.
Office of Acquisition and Materiel Management	Dep Asst Sec for Acquisition & Materiel Mgmt.
	Assoc Dep Assistant Secy for Acquisitions.
	Associate Dep Asst Secy for Depots.
	Assoc Dep Asst Secy for Resources.
	Associate Deputy Asst Secretary for Materiel.
	Assoc Das for VA Natl ACQ Center Hines, IL.
Office of Security and Law Enforcement	Dep Asst Secy for Security & Law Enforcement.
Veterans Benefits Administration	Director, Budget & Finance Staff.
	Dep Dir Compensation & Pension Service.
	Dep Dir Loan Guaranty Svc.
	Dir Info Management & Tech Assessment Service.
Veterans Health Administration	Northeastern Area Project Manager.
	Southern Area Project Manager.
	Central Area Project Manager.
	Western Area Project Manager.
	Dep Dir, Mental H&B Sciences Service.
	Director, Budget Office.
	Deputy Director, Budget Office.
	Dir, Office of Project Management.
	Director Ofc of Architecture & Engineering.
	Dir, Office of Real Property Management.
	Dir Office of Medical Sharing.
	Dir, Medical Care Cost Recovery Office.
	Dir Emergency Medical Preparedness Office.
	Deputy Director Emergency Medical Prep Ofc.

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BILLING CODE 6325–01

Federal Register

Tuesday
March 15, 1994

Part III

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 1994 National Center on Child Abuse and Neglect Discretionary Funds Program; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Fiscal Year 1994 National Center on Child Abuse and Neglect Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCIES: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of the availability of funds and request for applications to conduct child abuse research or demonstration projects as authorized by the Child Abuse Prevention and Treatment Act, as amended.

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN), within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of funds for research on the causes, prevention, identification, treatment and cultural distinctions of child abuse and neglect; appropriate, effective and culturally sensitive investigative, administrative and judicial procedures with respect to cases of child abuse; and for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect. This announcement contains forms and instructions for submitting an application.

DATES: The closing date for submission of applications is May 31, 1994.

ADDRESSES: Applications receipt point: FY 1994 NCCAN Discretionary Funds Program, Department of Health and Human Services, ACF/Division of Discretionary Grants, 6th floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: NCCAN–94–1.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Administration on Children, Youth and Families, National Center on Child Abuse and Neglect, PO Box 1182, Washington, DC 20201. Telephone (202) 205–8586. To provide 24-hour coverage, calls to this number will be answered by an answering machine.

SUPPLEMENTARY INFORMATION: If you plan to submit an application, please send a post card with the following information: the name, address, and telephone number of the contact person; the name of the organization; and the priority area(s) in which you may submit an application, within two (2) weeks of the receipt of this announcement to: Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Blvd., suite 240, Arlington, VA 22201.

This information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom program announcements are sent.

This program announcement consists of three parts. Part I provides information on NCCAN; the statutory funding authority applicable to this announcement; and general information on the application procedures.

Part II describes the review process, additional requirements for NCCAN grant applicants, the criteria for the review and evaluation of applications, and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part III. Please copy and use these forms in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Part I—Introduction

In 1974, the Child Abuse Prevention and Treatment Act (the Act) established the NCCAN in the Department of Health and Human Services. It is located organizationally within the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF).

The National Center on Child Abuse and Neglect conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and providing grants to eligible States for developing, strengthening and carrying out child abuse and neglect prevention and treatment programs and programs relating to the investigation and prosecution of child abuse cases. In addition, the legislatively mandated Advisory Board on Child Abuse and Neglect and the Inter-Agency Task Force on Child Abuse and Neglect produce periodic reports regarding child abuse and neglect activities.

The Act has been amended several times, and was most recently reauthorized and otherwise amended by the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992 (Pub. L. 102–295, May 5, 1992) and by the Juvenile Justice and Delinquency Act Amendments of 1992 (Pub. L. 102–586, November 4, 1992). This announcement reflects research and demonstration priorities and solicits applications under the authority of the Act (42 USC 5101 *et seq.*) as amended.

In the past, ACF has issued a Coordinated Discretionary Funds Program (CDP) announcement combining the research, demonstration and training initiatives for several ACF programs. This announcement for fiscal year (FY) 1994, however, covers only those activities to be funded by NCCAN. The priority areas identified in this announcement derive from NCCAN's legislative mandates as well as agency and Departmental goals and initiatives. The priority areas have been developed as the result of literature reviews and findings from recently completed studies; information and suggestions received from the field including NCCAN-sponsored and co-sponsored symposia and workshops; NCCAN Research, Demonstration and State Grants program meetings; hearings convened by the Advisory Board on Child Abuse and Neglect, other Departmental organizations, and professional associations; and additional comments received in response to the proposed priority areas. The priority areas seek to focus attention on and to encourage research and demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular social problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priority areas.

On May 12, 1993, a notice soliciting comments on the National Center on Child Abuse and Neglect's (NCCAN) proposed priority areas for FY 1993 was published in the **Federal Register**. A 60-day period was provided to allow the public to comment on the proposed areas. After review and analyses of these comments, NCCAN is publishing its final priority areas.

At the close of the comment period, NCCAN had received 87 written responses from a variety of sources, including the following: The U.S. Advisory Board on Child Abuse and Neglect; a member of the House of Representatives; State and county departments of social welfare and human services; State, regional, and

local educational agencies; a State department of justice; children's trust and prevention funds programs; State protection and advocacy systems; community agencies for children and families; national, State, and local associations and non-profit organizations; universities; hospitals, medical centers, and a dental center; mental health services agencies and agencies serving children with disabilities; Federal Area and Regional Offices; a State Council on Domestic Violence; foundations; and national resource centers and clearinghouses. Additionally, the Panel on Research on Child Abuse and Neglect of the National Academy of Sciences released its prepublication copy of Understanding Child Abuse and Neglect (available for purchase in book form from the National Academy Press, 2101 Constitution Avenue, NW., Box 285, Washington, DC 20055. Telephone: 1–800–624–6242) at a Symposium on Research on Child Abuse and Neglect sponsored by the National Academy of Science and held on July 13 in Washington, DC.

The largest number of written responses came from national, State, and local associations and non-profit organizations, followed closely by the responses from State and county departments of social welfare and human services. A number of supportive and general comments were provided which emphasized the importance of a focus on cultural sensitivity and relevance in the design of research and demonstration projects on child maltreatment; prevention and parental and community empowerment programs; the relationships between child abuse and neglect, family violence and community violence; and sound and rigorous evaluation components as part of prevention and intervention studies. Other comments focused on the application and review process. Comments were also submitted on each of the seven research and demonstration priority areas, along with recommendations for symposia topics and additional priority areas.

The responses were generally supportive of the seven research and demonstration priority areas and the symposia topics included in the announcement. The largest group of written comments were in response to the two demonstration and service priority areas on model inter-agency collaborative approaches to prevent maltreatment of children with disabilities (25) and specialized joint training for State and local Child Protective Services (CPS) workers and providers of services to children with disabilities on the identification, intervention and/or treatment of maltreated children with disabilities (22). Some of this discussion described research which still needs to be carried out and this topic has been added to the priority area on Field Initiated Research on Child Abuse and Neglect. Based on the comments received in response to the priority area on Research on Risk Assessment Systems, one of the major areas of emphasis has been modified. To the extent feasible, NCCAN has addressed all public comments in preparing its final FY 1994 priority areas. Comments intended to further clarify and focus the priorities were incorporated into the revised descriptions. Additional resources brought to our attention have been cited in the priority descriptions.

The NCCAN has also reviewed the report of the Panel on Research on Child Abuse and Neglect of the National Academy of Sciences for issues that can be addressed both in the FY 1994 research and demonstration priorities and the FY 1994 procurement plan as well as in the development of a coordinated approach and conceptual framework for a long-term research agenda for the field. In its summary chapter on research priorities, the panel concluded that

"* * * a research agenda for child maltreatment studies should address four separate objectives. We need knowledge that can:

(1) Clarify the nature and scope of child maltreatment, guided by well-developed research definitions and instrumentation.

(2) Provide an understanding of the origins and consequences of child maltreatment in order to better inform theories regarding its etiology and to establish a foundation for improving the quality of future policy and program efforts to address this problem.

(3) Determine the strengths and limitations of existing approaches and interventions in preventing and treating child maltreatment to guide the development of new and more effective interventions; and

(4) Develop a science policy for child maltreatment research that recognizes the importance of developing national leadership, human resources, instrumentation, financial resources, and appropriate institutional arrangements for child maltreatment research."

The Panel acknowledged the complexity of child maltreatment, and presented

"* * * a child-oriented research agenda that emphasizes the importance of knowing more about the backgrounds and experiences of developing children and their families, with a broader social context that includes their friends, neighborhoods, and communities * * *. The Panel has adopted an ecological developmental perspective to examine the factors in the child, family, or society that can exacerbate or mitigate the incidence and destructive consequences of child maltreatment."

The Panel pointed to the need for more sophisticated models and suggests that research must use multivariate models and etiological theories to understand causes. Rigorous research and evaluation studies of the effectiveness of prevention, intervention and treatment programs are needed. The Panel stated that

"Our report extends beyond what is, to what could be, in a society that fosters healthy development in children and families. We cannot simply build a research agenda for the existing system; we need to develop one that independently challenges the system to adapt to new perspectives, new insights, and new discoveries." (Panel on Research on Child Abuse and Neglect, Commission on Behavioral and Social Sciences and Education, National Research Council. *Understanding Child Abuse and Neglect*. Washington DC: National Academy Press, 1993.)

The NCCAN has accepted that challenge and, to the extent feasible, has incorporated many of the issues identified in the report related to identification, etiology, and prevention into this announcement. The NCCAN also acknowledges those common themes in the written comments from the field and the report of the Panel. In addition, NCCAN will continue to consider the recommendations of the Panel in future announcements as well as in planning efforts with other Federal agencies through the Inter-Agency Task Force on Child Abuse and Neglect and in reaching out to other agencies, organizations and foundations for collaborative activities.

Information on prior research and demonstration projects supported by NCCAN as well as on other studies on child maltreatment are available through the Clearinghouse on Child Abuse and Neglect Information, PO Box 1182, Washington, DC 20013, (1–800–FYI–3366). The Clearinghouse is also a member of the Consortium of Clearinghouses and can provide information on the other Clearinghouses and Resource Centers referred to in this announcement.

Part II—The Review Process and Priority Areas

This Part describes the screening and review process, the criteria for the evaluation of applications, and the programmatic priorities under which applications are being solicited.

A. Eligible Applicants

Before applications are reviewed, each application will be screened to

determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Applications will be screened for categorical appropriateness. If NCCAN finds applications inappropriate for the priority area in which they were submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area. Redirection does not affect decision-making in the competitive process which follows initial screening.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that the "Eligible Applicants" section under each specific priority area be carefully considered.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the application must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors.

For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all of the priority areas.

Any non-profit agency applying for financial assistance under this announcement must submit proof of its non-profit status with its grant application. Failure to do so will result in rejection of the application. The non-profit agency can accomplish this either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). The ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Timely applications from eligible applicants will be accepted for screening and review. The formal review process will be established in accordance with section 105(e) of the Act and will be conducted in Washington, DC. Applications will be reviewed and scored competitively against the published evaluation criteria (see Part II C of this announcement) by experts in the field, generally persons from outside the Federal government. The results of this review are a primary factor in making funding decisions.

The NCCAN and ACYF reserve the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. The NCCAN or ACYF also may solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by NCCAN and ACYF in making funding decisions.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, NCCAN and ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

There are two sets of evaluation criteria: Research applications will be evaluated against one set; demonstration and training applications will be evaluated against another set. Using the appropriate evaluation criteria below (see sections C.1. and C.2.), a panel of at least three reviewers will evaluate each application. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the appropriate evaluation criteria listed below. Reviewers also will provide written comments and assign numerical scores for each application. The point value following each criterion heading indicates the maximum numerical score that each section may be given in the review process. These section scores are summed for each application to yield a total evaluation score for each application.

1. Criteria for Research Projects

Applications under research priority areas will be evaluated against the following criteria:

A. *Objectives (15 points).* The extent to which the application concisely states the specific objectives of the project and describes what the research project is intended to accomplish. The research issue(s) to be addressed or the specific theory driven question(s) to be answered and the hypothesis(es) to be tested are well formulated.

B. *Background and Significance (15 points).* The extent to which the application effectively discusses the current state of knowledge relative to the issue or area that is addressed, and provides a review of the literature, including previous work of the author(s) of the proposal. (A list of references must be included with the application.) The results of any pilot tests are described. The application indicates how the proposed research will build on the current knowledge base and contribute to policy, practice and future research.

C. *Approach (45 points).* The extent to which the application delineates how the terms used in the study will be defined and operationalized, identifies variables and data sources, and discusses the selection, adaptation or development of instruments to be used, including information on reliability and validity. The application outlines the experimental design features and the procedures for data collection, processing, analysis and interpretation. As applicable, it includes a sampling plan for the selection of site(s) and subjects. The sample sizes must be sufficiently large for both statistical power and significance.

The application describes the characteristics of the target population, and details recruitment procedures for the study subjects. It describes and addresses the rationale for the gender and ethnic composition and subject recruitment procedures of the proposed study sample. For intervention studies, the theory base, ecological setting, and level of intervention are described. The application discusses any potential difficulties in the proposed procedures, provides realistic estimates of attrition and discusses statistically appropriate ways of adjusting the sample.

The extent to which the application reflects sensitivity to ethical issues that may arise, such as potential deception, delayed or diminished treatment for control groups placed on waiting lists, provision for treatment and removal from the project if a potentially dangerous behavior is exhibited, plans for stopping an intervention that proves harmful or unsuccessful, or lag in debriefing the subject. The extent to which the applicant addresses procedures for the protection of human

subjects, confidentiality of data and consent procedures. A Protection of Human Subjects Assurance must be included with the application, in addition to the other required assurances.

The extent to which the application indicates that the data will be collected utilizing approaches, measures, and instruments that are culturally sensitive and/or presents thoughtful explanations for using those whose cultural sensitivity may not yet have been empirically determined.

The extent to which the application indicates that the data will be analyzed utilizing approaches that are appropriate to the scientific objectives of the study and how the proposed analyses reflect appropriate examinations of gender and ethnic issues.

The extent to which the application includes plans to prepare data sets according to sound data processing and documentation practices to ensure the potential of these data sets for subsequent use by other researchers. The application provides for these data sets to be made available at the conclusion of the project to the National Data Archive on Child Abuse and Neglect. The extent to which the application indicates that the final report will be prepared in an NCCAN-suggested format that ensures its ease for dissemination and utilization and proposes strategies for dissemination of findings in a manner that will be of use to researchers and practitioners in the field.

The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished. The activities to be carried out are listed in chronological order, showing a reasonable schedule of accomplishments and target dates. The application includes an adequate staffing plan that lists key staff and consultants along with their responsibilities on the project, and that allocates a sufficient amount of time for each person to these activities. The application delineates how the research team will be assembled and the use of any advisory panels. It also lists each organization, agency, or other key groups that will work on the project, along with a description of their activities and training plans. The application indicates the ability to gain access to necessary information, data and clients. A sound administrative framework for maintaining quality control over the implementation and operation of the study is detailed. The author(s) of the application and his/her role in the proposed project is/are identified. The proposed project costs are reasonable, and the funds are appropriately allocated across component areas and are sufficient to accomplish the objectives.

D. *Staff background and organization's experience (25 points).* The extent to which the application describes the background, experience, training and qualifications of the key staff and consultants, including work on related research and similar projects. It describes the personnel resources available for sampling, experimental design, statistical analysis and field work. Key personnel have a working knowledge of the proposed research and are geographically accessible. (The curriculum vitae for each key person must be included with the application.) The adequacy of the available facilities and organizational experience related to the tasks of the proposed project are detailed. (A two page organizational capability statement must be included with the application.) Any collaborative efforts with other organizations, including the nature of their contribution to the project, are described. (Letters of commitment for key staff and for collaborative efforts, where appropriate, must be included with the application.)

The extent to which the application demonstrates the ability of the staff and organization to effectively and efficiently administer a project of the size, complexity and scope proposed. It further reflects the capacity to coordinate activities with other agencies for the successful accomplishment of project objectives. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

2. Criteria for Demonstration and Training Projects

Applications under demonstration and training priority areas will be evaluated against the following criteria.

A. *Objectives and need for assistance (20 points).* The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

B. *Results or benefits expected (20 points).* The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

C. *Approach (35 points).* The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

The extent to which the application includes plans to prepare data sets according to sound data processing and documentation practices to ensure the potential of these data sets for subsequent use by other researchers. The application provides for these data sets to be made available at the conclusion of the project to the National Data Archive on Child Abuse and Neglect. The extent to which the application indicates that the final report will be prepared in an NCCAN-suggested format that ensures its ease for dissemination and utilization and proposes strategies for dissemination of findings in a manner that will be of use to researchers and practitioners in the field.

D. *Staff background and oganization's experience (25 points).* The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

- *Eligible applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF, NCCAN, and/or others, and State models are noted, where applicable. Some priority areas specify individuals to contact for more information.
- *Minimum requirements for project design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project duration*: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.
- *Federal share of project costs*: This section specifies the maximum amount of Federal support for the project.
- *Matching requirement*: This section specifies the minimum non-Federal contribution, where applicable, either through cash or in-kind match, that is required in relation to the maximum Federal funds requested for the project.
- *Anticipated number of projects to be funded*: This section specifies the number of projects that ACYF anticipates it will fund in the priority area.

Please note that applicants that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be included in the review process. Applicants should also note that non-responsiveness to the section "Minimum Requirements for Project Design" will result in a low evaluation score by the panel of expert reviewers.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

Approximately $4 million is available for grants for FY 1994. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, applicants should be cautious in proposing non-Federal share contributions in excess of the required match since failure to provide such match will result in a disallowance of unmatched Federal funds.

For multi-year projects, applications for continuation funding beyond the initial one-year budget period but within the approved project will be entertained in subsequent years on a noncompetitive basis subject to the availability of funds, satisfactory progress by the grantee and determination that continued funding would be in the best interest of the government.

F. Grantee Share of Project Costs

Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $75,000 in Federal funds (based on an award of $100,000), must include a match of at least $25,000 (25 percent total project cost). This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-Federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

The applicant contribution must always be secured from non-Federal sources, except for American Indian Tribes and Native American organizations. The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. The ACYF strongly encourages applicants to meet their match requirements through cash contributions, as opposed to in-kind contributions. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in Part IV.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25 percent (or other required portion) of the project costs. Therefore, an applicant should ensure the availability of any amount proposed as match prior to including it in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACYF will disallow any unmatched Federal funds.

G. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

H. Additional Requirements for NCCAN Grant Applications

All successful applicants for both research and demonstration will be expected to follow an NCCAN-suggested format in the preparation of final program reports in order to achieve broader dissemination and successful utilization of findings by policymakers, practitioners, and researchers. Applications that are submitted in response to the final announcement will be subject to the peer review process outlined in section 105 (e) of the Act which entails review of submissions by experts in the field of child abuse and neglect or related disciplines.

All applicants should include plans to prepare data sets according to sound data processing and documentation practices to ensure the potential of these data sets for subsequent use by other researchers. A manual describing such practices, The Preparation of Data Sets for Analysis and Dissemination: Technical Standards for Machine-Readable Data, can be obtained free of cost from the National Data Archive on Child Abuse and Neglect located at Cornell University, Family Life Development Center, G20 MVR Hall, Ithaca, New York 14853–4401 (telephone: 607/255–7794). The NCCAN also encourages the use of common data collection instruments across studies where applicable. The Consortium for Longitudinal Studies on Child Abuse and Neglect is developing common batteries of measures for use with children of different age groups. More information can be obtained through the Longitudinal Study Coordinating Center located at the University of North Carolina at Chapel Hill, Department of Social Medicine, CB# 7240, Wing D, Chapel Hill, North Carolina 27599–7240 (telephone: 919/962–1136). Information can also be obtained from the project on Measurement in Child Abuse and Neglect Research located at the Medical University of South Carolina, 171 Ashley Avenue, Charleston, South Carolina 29425–0742 (telephone: 803/792–2945).

All applicants for research priority areas, including those for Graduate Research and Medical Research Fellowships in Child Abuse and Neglect, must provide an Assurance of Human Subjects Protection as specified in the policy described on the HHS Form 596. All applications will be expected to address ethical issues pertaining to the proposed projects.

All applications for demonstration priority areas are expected to have an evaluation component, as required by the legislation in section 106 (a) of the Act. It is recommended that not less than 10 percent of the proposed budget be set aside for evaluation efforts. An external evaluator may be hired or an internal evaluation may be designed. As appropriate to the activities being proposed, either a process or outcome/impact evaluation may be designed. Goals and objectives should be stated in specific measurable form to document change, improvement, or effectiveness.

I. NCCAN Priority Areas

1. Research priorities.

1.01 Field Initiated Research on Child Abuse and Neglect.

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support new research designed to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect (NCCAN) by the Child Abuse Prevention and Treatment Act of 1988, as amended. These responsibilities include the conduct of research on the causes, prevention, identification, treatment and cultural distinctions of child abuse and neglect; and appropriate, effective, and culturally sensitive investigative, administrative and judicial procedures with respect to cases of child abuse and neglect, particularly child sexual abuse and exploitation.

Background information: The generation of new knowledge that promotes an understanding of critical issues in child abuse and neglect is essential in order to improve prevention, identification and treatment. Research areas to be addressed should expand the current knowledge base, build on prior research, contribute to practice and provide insights into new approaches to the prevention and treatment of child maltreatment. The areas include, but are not limited to, mediating factors and mechanisms in the intergenerational transmission of family processes that prevent as well as contribute to child maltreatment, including emotional maltreatment, and to other forms of family and interpersonal dysfunction; the relationship between child maltreatment and spousal abuse; the status of siblings of maltreated children; how interactions between fathers and children promote or buffer the risk of child maltreatment; the role of stress (such as stress in the workplace and stress in the public schools), poor parenting and family dysfunction in child maltreatment; how neighborhood conditions and factors affect family processes in general and child maltreatment in particular; poverty and child maltreatment; the role of neighborhood safety factors in the etiology and reporting of child abuse and neglect and the delivery of investigation and treatment services; cultural factors in maltreatment; how the adverse consequences of child maltreatment affect subsequent development; how children's perceptions of maltreatment and their cognitive styles mediate their responses to maltreatment; the development of problem behaviors among adolescents maltreated as children; and the relationship between maltreatment and specific attributes or disability characteristics and subsequent effects.

Also included are comparative studies on the cost benefits and cost effectiveness of home visitation, self-help and other innovative prevention and treatment programs for differing types of child maltreatment and on the roles and functions of professionals (paid or volunteer) and paraprofessionals (paid or volunteer).

Secondary analyses of existing databases and computer modeling strategies may be considered for these studies. Use of multiple measures, both quantitative and qualitative, should be considered. Studies should examine the relationship among multiple forms of maltreatment where such co-occurrences are found.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Describe how the proposed research addresses current and emerging issues that have direct application to the field of child abuse and neglect within the context of NCCAN's legislative responsibilities.
- Demonstrate an in-depth understanding of the issues and problems associated with child abuse and neglect, and provide an up-to-date review of the relevant literature.
- Propose an approach that is appropriate to the scientific objectives of the study, comprehensive, and culturally responsive to the populations included in the study.
- Describe the overall research design that would be employed, including as applicable: Sampling procedures, experimental design, the kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Demonstrate an ability to gain access to necessary information, data, and clients.

• Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.

• Provide all required assurances and certifications, including Certification of Protection of Human Subjects Assurances, as part of the application, as necessary.

• Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound data processing and documentation practices and be made available to the National Data Archive on Child Abuse and Neglect; and that the final report would be prepared in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of project costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period. Applications for lesser amounts, including those for small grants of $25,000 or less, will also be considered under this priority area.

Matching requirements: There is no matching requirement.

Anticipated number of projects to be funded: It is anticipated that ten projects will be funded at the maximum funding level or more than 12 if acceptable applications for lesser amounts are funded.

1.02 Graduate Research and Medical Research Fellowships in Child Abuse and Neglect.

Eligible applicants: Institutions of higher education, including Historically Black Colleges and Universities, Native American institutions of higher learning and other institutions of higher learning with a history of serving Hispanic and Asian populations, on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer such a grant on behalf of a student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secondary Accreditation, the Accreditation Council for Graduate Medical Education or the Liaison Committee for Medical Education, as applicable.

Purpose: To provide support for graduate students as well as medical students, residents, or fellows to conduct research on critical issues in child abuse and neglect.

Background information: The research community has highlighted the need to draw new researchers into the field of child abuse and neglect. During Fys 1991 and 1992, NCCAN funded a total of 17 graduate research fellowships for doctoral candidates to complete dissertations addressing critical issues in child abuse and neglect. The NCCAN is continuing to provide support for individual fellowships for doctoral candidates to complete dissertations addressing critical issues in child abuse and neglect as well as expanding the program to include graduate students at the pre-dissertation level, and medical students, residents, or fellows engaged in empirical research projects.

The ACYF seeks to expand the research capacity of the field by encouraging more students to seek careers in child abuse and neglect research through the granting of individual graduate research and medical research fellowships.

Examples of the proposed questions to be addressed and issues to be studied for Graduate and Medical Research Fellowships include, but are not limited to, the specific topics listed under the priority area on Field Initiated Research for Child Abuse and Neglect (see priority area #1.01), and research on new medical screening and diagnostic techniques or treatments for child abuse and neglect. Applicants may also propose secondary analyses of existing databases or conduct additional analyses of data within ongoing research programs to address new questions. When the proposed study is to be part of an ongoing research project at the institution, the study must be clearly distinguished from the other research.

The NCCAN and ACYF are interested in supporting doctoral-level candidates as well as medical students, residents or fellows, through their sponsoring institutions, who are now conducting or wish to conduct research on child abuse and neglect. While an individual is considered to be the beneficiary of the grant support, awards will be made to eligible institutions on behalf of qualified candidates. Doctoral-level candidates in interdisciplinary programs, social work programs, nursing schools and related programs, such as special education or early childhood education, are also encouraged to apply for support through their institutions as are medical students, residents or fellows participating in such programs.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

• Provide evidence that the candidate is enrolled as a doctoral candidate or medical student, resident or fellow in the sponsoring institution and include information on his/her current academic status.

• Provide a resume of the candidate including information on education, employment experiences, conference presentations, papers and other publications. A letter of support from a sponsoring faculty member must also be provided for each candidate seeking a fellowship.

• Propose one or more research questions to be addressed by the candidate which would contribute to the body of knowledge about child maltreatment.

• Demonstrate the candidate's in-depth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.

• Present specific results from any relevant planning studies, pilot studies or other preparatory work conducted by the candidate.

• Describe the overall research design which would be employed, including as applicable: Sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Indicate how the proposed study is distinguished from other ongoing research at the university of which it is a part, if applicable.

• Demonstrate the candidate's ability to gain access to necessary information, data, and clients. Identify any limitations in carrying out the research (e.g., obtaining the sample) or potential barriers to the completion of the study

• Provide assurances that the full grant amount would go directly to: The graduate or medical student, resident or fellow as a stipend; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel. No overhead costs (indirect costs) are allowed for this program.

• Provide all required assurances and certifications, including Certification of Protection of Human Subjects Assurances, as part of the application.

• Provide assurances that the candidate would attend a three-day annual spring meeting in Washington, DC, and would prepare quarterly progress reports and a final project report in an NCCAN-suggested format

ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 17 months.

Federal share of the project costs: The maximum Federal share of the project is not to exceed $10,000.

Matching requirement: There is no matching requirement.

Anticipated number of projects to be funded: It is anticipated that 20 projects will be funded. No more than two awards per institution will be made.

1.03 Research on Risk Assessment Systems

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support research studies on risk assessment systems.

Background information: Risk assessment systems have been in use by Child Protective Services (CPS) agencies for the past ten years. Several child welfare organizations and nearly all of the State CPS agencies have been involved in the development and/or implementation of such systems. A few States maintain administrative units that conduct research, evaluation and training on risk assessment. At least 14 States are using Child Abuse and Neglect Basic State Grant funds to implement or improve their use of risk assessment systems.

From 1986 to the present, NCCAN has funded eight studies on risk assessment related to such issues as the following: Screening decisions in CPS; development of a predictive screening model; improving cultural sensitivity in risk assessment; comparative analyses of risk assessment systems; the impact of investigations; and a study of high risk child abuse and neglect groups. In December 1991, NCCAN sponsored a Symposium on Risk Assessment in Child Protective Services to determine the state-of-the-field and highlight future directions. The extensive background papers and the proceedings are available from the Clearinghouse on Child Abuse and Neglect Information.

A recent NCCAN-sponsored analysis of State practices indicates that risk assessment is being used mainly as a tool for guiding casework practice, for collecting pertinent information about the child and family, for classifying existing risk factors, and for service planning. About one-third of the States reported that they use risk assessment as a predictive tool. The Children's Bureau and NCCAN are currently supporting a study on Child Welfare Decision Enhancement that is building on research on risk assessment focused primarily on decisions to investigate and to open cases for ongoing services, client outcomes research, operations research and related research.

Various risk assessment instruments are being used by CPS agencies across the country. Despite this widespread application of risk assessment in CPS practice and its potential for prediction of maltreatment, further research and development need to be conducted before risk assessment can be used with confidence as a comprehensive approach to effective CPS practice and administration. Under the pressure of high staff turnover, excessive caseloads, and increased reporting of more complex types of maltreatment, some agencies have sought to use these instruments and systems without the adequate preparatory training of staff. Sound protocols and operational procedures will help to address these practice problems. Concerns have also been expressed over the need for culturally sensitive risk assessment systems and the need to include strengths or positive case factors in models. Research on risk assessment should also address such areas as the validation of variables and outcome measures.

In this priority area, NCCAN seeks to build upon the current knowledge base on decision-making processes and the use of risk assessment systems to address the need for practice improvements by conducting studies in two areas:

(1) A study of the effectiveness of the decision-making processes and criteria used in CPS operations to determine level of severity of single or multiple types of maltreatment and the risk of re-occurrence of maltreatment. This study should also address the implications of these processes as used by CPS workers for case management, workload management and resource allocation, supervision and training, program evaluation and use of automation.

(2) A comparative study of the use and effectiveness of different risk assessment models in the decision-making processes of CPS operations to determine the level of severity of single and multiple types of maltreatment and predict the risk of re-occurrence of maltreatment and the implications for practice. This study should also examine the reliability and validity of these models with different populations across different jurisdictions, the extent to which these models are sensitive to family strengths, children with disabilities, and cultural differences. Additionally, the study should take into consideration the background of and training provided to staff in the use of the risk assessment tools for decision-making.

For this particular priority area, an applicant may apply for a grant to conduct either study or apply for two grants to respectively address each study.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Demonstrate an in-depth understanding of the issues and methodological problems, including definitions, associated with conducting multi-site and comparative studies of decision-making processes and risk assessment systems.
- Provide an up-to-date review of the relevant literature.
- Provide for an 18-month follow-up after the decisions on level of severity and risk of re-occurrence have been made.
- Provide an approach that is appropriate to the scientific objectives of the study, comprehensive, and culturally responsive to the populations included in the study.
- Describe the overall research design that would be employed, including as applicable: Sampling procedures, experimental design, the kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Demonstrate an ability to gain access to the necessary information, data, and clients.
- Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide all required assurances and certifications, including Certification of Protection of Human Subjects Assurances, as part of the application, as necessary.
- Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound data processing and documentation practices and be made available to the National Data Archive on Child Abuse and Neglect; and that the final report would be prepared in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of the project costs: The maximum Federal share of the project is

not to exceed $200,000 per 12-month budget period.

Matching requirement: There is no matching requirement.

Anticipated number of projects to be funded: It is anticipated that two projects will be funded.

2. Demonstration Priorities

2.01 Innovative Approaches To Expand the Use of Volunteers in Child Abuse and Neglect Prevention, Intervention and Treatment Programs

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support the development of innovative approaches to expand the use of volunteers in child abuse and neglect prevention, intervention and treatment programs.

Background information: Volunteers continue to be a vital community resource for the prevention and treatment of child abuse and neglect. They have been used extensively in child protection in such support activities as the provision of transportation, clerical assistance, and arranging for food and clothing donations. They have also worked effectively in public awareness programs, respite care, and substance abuse prevention and treatment programs. Several approaches for the utilization of volunteers, including those supported by NCCAN, have been piloted and fully implemented by the field. Examples include the use of volunteers in the now established roles of the court-appointed special advocate, guardian ad litem, and parent aide. More recent examples of new uses include the Family Mentor Program initiated in 1991 using Foster Grandparents in family preservation programs through a collaborative arrangement between the New York City Department of Aging and the Child Welfare Administration; a program sponsored by the American Association of Retired Persons using retired teachers and administrators to go into the schools to teach peer mediation for conflict resolution; and the involvement of Volunteers in Service to America (VISTA) in child abuse prevention programs as initiated by the Missouri Children's Trust Fund.

Given the problem of scarce resources facing all levels of government and the non-profit sector and the increasing needs of the field, NCCAN is interested in promoting the expansion of volunteer opportunities to augment and improve prevention, intervention and treatment services. The NCCAN intends to support this expansion through the development of innovative models which utilize volunteers in settings and activities where they have not previously been used and the development of new roles for populations who have not previously served as volunteers.

Collaborative and multidisciplinary approaches are encouraged and may include public-private partnerships. Examples include collaborations with ACTION's Foster Grandparent Program, the Retired Senior Volunteer Program, the National Service Corporation's program for youth in public service, and businesses' volunteer programs for their workers.

There is also a need to identify, document and disseminate information on the most effective practices for the recruitment, training, supervision and retention of volunteers in these new settings in order to enhance the capacity of other communities to successfully develop this valuable resource. The roles, responsibilities, and functions of the volunteers should clearly be delineated and distinguished from those of paid staff. Volunteers, however, may receive some minimal payment or reimbursement for their expenses. Proposed demonstration projects should include an evaluation component and plans for the dissemination and utilization of these findings through new networks, and manuals for the replication of effective approaches in new locations.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Describe how the project builds on the existing knowledge base and capacity of public and private agencies to collaborate in using volunteers.
- Describe the design of the project to be developed and implemented including the nature of any collaborative efforts and the geographical area to be targeted in terms of its distinctive features and the population to be recruited and served.
- Propose an approach that is comprehensive and culturally responsive to the populations included in the demonstration.
- Describe how the evaluation would be carried out, including the design, kinds of data to be collected on clients and services provided, and the outcomes that would be measured.
- Provide a plan for the dissemination of the manual(s) through new networks of potential users; and
- Provide assurances that at least one key staff person would attend an annual meeting in Washington, DC., and would prepare quarterly progress reports and a final project report in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of the project costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period or a maximum of $450,000 for a 3-year project period.

Matching requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $450,000 in Federal funds (based on an award of $150,000 per budget period), must include a match of at least $150,000 (25 percent total project cost).

Anticipated number of projects to be funded: It is anticipated that two projects will be funded.

2.02 Model Inter-Agency Collaborative Approaches To Prevent Maltreatment of Children With Disabilities

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support the development of model inter-agency collaborative approaches to prevent maltreatment of children with disabilities.

Background information: A number of studies have found that children with mental and physical disabilities are overly-represented in maltreated samples, and preliminary studies have found a high incidence of maltreatment among children with disabilities (Ammerman et al., 1988 & 1991). Studies also suggest that many children with disabilities exhibit behaviors that are similar to those of maltreated children who do not have disabilities, indicating that some children with disabilities may be at high risk for child abuse and neglect.

There is a need to identify, develop or adapt model approaches to the prevention of maltreatment of children with disabilities. These approaches should address the unique needs of children with various types of disabilities and their families. Specifically, the approaches should be sensitive to the severe behavioral problems that some children with

disabilities may exhibit. They should also be sensitive to the risk factors for potential medical neglect of infants with disabilities and life-threatening conditions as well as other factors of risk for maltreatment such as disruption in the formation of parent-child attachments, stress and frustration associated with the raising of children with disabilities, and the increased vulnerability of many of these children due to communication difficulties in revealing their possible maltreatment to others.

In this priority area, NCCAN intends to support collaborative efforts for developing and implementing model programs for the prevention of maltreatment of children with disabilities. This would include collaboration with the Education and Training component of the State Protection and Advocacy System created by the Developmental Disabilities Assistance and Bill of Rights Act of 1990, as amended, and the State Interagency Coordinating Council for the early intervention program under Part H of the Individuals with Disabilities Education Act. Examples of products available for use include a training guide for Preventing Maltreatment of Children with Handicaps and Programs to Support Families of Children with Special Needs for Use in Head Start and Public School developed in 1985 and 1986 as a result of an Interagency Agreement between the Department of Education's Special Education Programs, the Administration on Children, Youth and Families and the Administration on Developmental Disabilities. These demonstration programs may build on such materials developed or adapted from or linked with other community-based programs run by Head Start programs, school systems, University Affiliated Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 1990, as amended, Title V funded programs for children with special health care needs and Supplemental Security Income outreach efforts, private agencies, hospitals, mental health centers, crisis nurseries and respite care programs or Child Protective Services agencies.

An evaluation component should be included and the program must be designed, as appropriate, to:

- Create community awareness and sensitivity to the prevention and intervention needs of children with disabilities who are maltreated through the use of brochures, oral presentations, and the media, including television, radio and newspapers; such community education programs should be designed to reach all families by using closed captioning, large print, audio-tape, and easy reading materials and related efforts to ensure access and understanding;
- Mobilize local public and private agencies and resources to make provision for the prevention of child maltreatment as part of the systematic screening, early identification and referral of children with single and/or multiple disabilities and their families for appropriate prevention and intervention services;
- Make use of self-instructional training materials for the prevention of child maltreatment for use by families and community service agencies in the provision of early screening, identification, and referral of children with disabilities;
- Adopt a comprehensive and individualized approach to prevention in the assessment and a multi-component intervention strategy;
- Target various intervention strategies to remediate the high risk factors for maltreatment of children with various types of disabilities and parental/family stress and need for supportive services;
- Network with social, medical, mental health, and legal consultants and advocacy groups including State Protection and Advocacy Systems;
- Coordinate maltreatment prevention and intervention services among community-based agencies to meet the needs of children with disabilities and their families including safe and appropriate recreational services;
- Recognize the unique transportation needs of children with disabilities and ensure their accessibility to sites where preventive services are being delivered;
- Recognize the unique needs children with disabilities have for access to and accommodation by the legal system;
- Build on the strengths and community-based support system networks of the individual child and family (e.g., churches, service clubs, extended families, support groups, day programs, respite care, and social and recreation facilities); and
- Screen, recruit, train and use volunteers and paraprofessionals for home visitation and provision of home-based support services.

These services may be implemented on a multi-county, State or regional basis. The proposed demonstrations should include plans for the dissemination and utilization of report findings and how-to manuals for the replication of effective approaches in other locations through the State and local CPS agencies, the State Protection and Advocacy Systems and related networks.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Describe the design of the project to be developed and implemented.
- Propose an approach that is comprehensive and culturally responsive to the populations included in the demonstration.
- Recommend a detailed plan and strategy for further dissemination of the products or publications developed in the course of this work.
- Describe the evaluation that would be carried out, including the kinds of data that would be collected on participants, programs, and communities; the outcomes that would be measured; the evaluation design that would be employed; and how the data would be analyzed.
- Provide assurances that at least one key staff person would attend an annual meeting in Washington, DC, and would prepare quarterly progress reports and a final project report in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of the project costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period or $600,000 for a 3-year project period.

Matching requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $600,000 in Federal funds (based on an award of $200,000 per budget period), must include a match of at least $200,000 (25 percent total project cost).

Anticipated number of projects to be funded: It is anticipated that two projects will be funded.

2.03 Specialized Joint Training for State and Local Child Protective Services Workers and Providers of Services to Children With Disabilities on the Identification, Intervention and/or Treatment of Maltreated Children With Disabilities

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts

and interdisciplinary approaches are encouraged. A joint application by the collaborating entities is required; one of the entities must be a Child Protective Service (CPS) agency.

Purpose: To support the development of specialized joint training for State and local Child Protective Services workers and providers of services to children with disabilities on the identification, intervention and/or treatment of maltreated children with disabilities.

Background information: Infants and children with disabilities are particularly vulnerable to abuse and neglect, and many children develop disabilities because of abuse and neglect. The quality of program development, screening and assessment, diagnosis and referral, interagency case management, and services provided to meet the special needs of abused and neglected infants and children with disabilities and their families depends heavily on collaboration and coordination between State and local Child Protective Services (CPS) agencies and State and local agencies that primarily serve children with disabilities.

There is a need to increase the knowledge and expertise of CPS workers and providers of services to children with disabilities for meeting the needs of maltreated infants and children with disabilities. The NCCAN is interested in supporting joint training programs in order to develop such competence and coordination between agencies in addressing the unique needs of this population. The development of these training programs requires collaboration by State and local agencies in the field of child protection and services to children with disabilities. This includes collaboration with the State Protection and Advocacy System authorized by the Developmental Disabilities Assistance and Bill of Rights Act of 1990, as amended; the State Title V Block Grant Program of the Maternal and Child Health Bureau; and related networks. Resources also include the National Information Clearinghouse for Infants with Disabilities and Life-Threatening Disabilities; the National Maternal and Child Health Clearinghouse; and the National Resource Center for Crises Nurseries and Respite Care Services. The training should focus on techniques for the identification, intervention and/or treatment of abuse and neglect, including medical neglect of infants and children with disabilities and their families. Techniques should include diverse methods of communication and the need for the availability of these tools for communication (such as TDD phones, sign language, electronic communication boards, and facilitated communication) at the time of investigation. The training program should also be designed to improve coordination between State or local CPS agencies and State agencies and local agencies serving children with disabilities and improve the delivery of services to infants and children with disabilities and their families as a result of this coordination.

The development of such training programs should be documented and include a strong evaluation component. Plans should be included for the dissemination and utilization of report findings, training materials, and how-to-manuals for the replication of effective training approaches through the State and local CPS agencies, the State Protection and Advocacy Systems and related networks.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Describe the design of the project to be developed and implemented including the nature of collaborative efforts between CPS agencies and agencies serving children with disabilities.
- Propose an approach that is comprehensive and culturally responsive to the populations being addressed and those being trained.
- Describe the specific content areas to be addressed in training, show how these areas are related to the objective of improving coordination between State or local CPS agencies and State and local agencies serving children with disabilities, and indicate how such coordinated training would improve the delivery of services to infants and children with disabilities and their families.
- Describe the evaluation that would be carried out, including the kinds of data that would be collected on participants and the training provided; the outcomes that would be measured; the evaluation design that would be employed; and how the data would be analyzed.
- Provide assurances that at least one key staff person would attend an annual meeting in Washington, DC., and would prepare quarterly progress reports and a final project report in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of the project costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period or a maximum of $450,000 for a three year period.

Matching requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $450,000 in Federal funds (based on an award of $150,000 per budget period), must include a match of at least $150,000 (25 percent total project cost).

Anticipated number of projects to be funded: It is anticipated that two projects will be funded.

2.04 Model Approaches to Training Professionals on Child Fatality Review Teams

Eligible applicants: State or local, Tribal, public or private non-profit agencies, organizations, and institutions of higher learning. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: To support the development of model approaches to training professionals on child fatality review teams.

Background information: According to the 1992 Annual Fifty State Survey conducted by the National Committee to Prevent Child Abuse (NCPCA), 1,261 children were registered as fatal victims of child maltreatment. The actual annual national total may be much higher. A large number of child fatalities are classified as accidents or unexplained deaths, rather than as deaths resulting from maltreatment. Undercounting and lack of knowledge about the circumstances of these deaths misrepresented the relationship between many child fatalities and maltreatment. This lack of information also thwarts efforts to develop comprehensive training and targeted prevention plans.

Many agencies are charged with the investigation of a child's death and may not recognize the case as suspicious if sufficient information is unavailable. If medical personnel are unfamiliar with signs of child abuse and neglect, the death may be attributed to natural causes. In the absence of an autopsy or an examination by a coroner or medical examiner who is trained in forensic techniques, evidence of maltreatment may go undetected. Further, lack of coordination and sharing of information among agencies and across multiple jurisdictions as well as concerns over issues of confidentiality often impede

the process of correct identification of the causes of child fatalities. A growing number of localities and States have begun to take action to develop strategies for reviewing child deaths in order to more effectively respond to and ultimately prevent child maltreatment fatalities. Currently there are State and/or local multi-agency child fatality review teams in 34 States and the majority of the remaining States have plans underway to establish State or local teams.

The importance of child fatality review is emphasized in the 1992 reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA). Within two years of enactment of the legislation, the Advisory Board on Child Abuse and Neglect must provide a report to Congress with recommendations for a national policy designed to reduce and prevent child maltreatment-related deaths. The Advisory Board has highlighted the importance of this issue in recent reports and is holding public hearings nationwide on child fatalities. The law also requires that NCCAN include information on the number of deaths due to child abuse and neglect in its national incidence study and that States, under the Basic State Grant Program, include information on special interagency child fatality review panels in their State program plans. In addition, the purpose of the Children's Justice Act program has been expanded to require that State task forces address the handling of cases of suspected child maltreatment-related fatalities. Some of the Children's Trust Funds and prevention programs are also working collaboratively with these child fatality review teams in order to develop public awareness and education programs for the prevention of child fatalities.

The Department has initiated other efforts in support of the establishment of child fatality review panels. Leadership has been provided by the Maternal and Child Health Bureau (MCHB) and many of the efforts currently in place at State and local levels are led and carried out by Title V programs; some of these efforts are supported through the use of State Title V Block Grant funds or through MCHB Special Programs of Regional and National Significance (SPRANS) discretionary grants. One of the Healthy People 2000 National Health Promotion and Disease Prevention Objectives is "to extend to at least 45 States implementation of unexplained child death review systems."

Findings from the Child Maltreatment Fatalities Project, a collaborative effort of the American Bar Association (ABA) and the American Academy of Pediatrics (AAP), funded by the Robert Wood Johnson Foundation, identified two major models of fatality review committees: Intra-agency committees, which may be interdisciplinary, often formed for internal review purposes to identify problems and propose solutions within a single agency; and inter-agency, multidisciplinary review committees with a broader structure and purpose. Reports from the project are available from the ABA. The National Center for Prosecution of Child Abuse sponsors national conferences, provides basic training, and publishes materials on child maltreatment fatalities. In a recent issue of *Update* published by that Center, Dr. Michael Durfee, an advocate for multi-agency coordination on suspicious child deaths, reports that the core team members should include a prosecuting attorney, a coroner or medical examiner, and representatives of law enforcement, health and child protective services. Additional members may be from a school, preschool, probation, parole, mental health, fire department, emergency room, an emergency medical technician and a child advocate.

In this priority area, NCCAN seeks to encourage efficient and effective child fatality reviews at the community, county and State levels by supporting the development of model approaches to the training of professionals who are members of interagency, multi-disciplinary child fatality review teams. Such training programs should include, but not be limited to, the development of curriculum on the roles and responsibilities of team members; guidelines and procedures for conducting comprehensive investigations, including internal requirements and interagency protocols for medical examiners and coroners, law enforcement personnel, child protective services workers, health and mental health care providers, school and early childhood program personnel, and other professionals involved with child fatality reviews; case management reviews; use of uniform protocols and data collection forms and procedures for appropriate sharing of information; and team self-evaluation. These programs should also include a resource manual on relevant forensic issues.

The development of these model approaches should be based on and include:

- A review of existing child fatality review training programs nationwide and an analysis of the strengths and weaknesses of these approaches;
- A review and synthesis of materials and reports from existing child fatality review team programs and preparation of an annotated bibliography;
- A survey and assessment of training needs nationwide for community, county and State child fatality review teams;
- Development or adaptation and pilot testing of selected approaches to child fatality review teams at each of these levels; and
- Evaluation of the effectiveness of these training approaches and identification of program strengths and barriers to implementation of these programs.

Minimum requirements for project design: In order to compete successfully under this priority area, the applicant should:

- Describe the design of the project to be developed and implemented.
- Propose an approach that is comprehensive and culturally responsive to the populations being addressed and those being trained.
- Propose and describe the specific content areas to be addressed in the training.
- Describe the evaluation that would be carried out, including the kinds of data that would be collected on participants and the training provided; the outcomes that would be measured; the evaluation design that would be employed; and how the data would be analyzed.
- Provide assurances that at least one key staff member would attend an annual meeting in Washington, DC, and would prepare quarterly progress reports and a final project report in an NCCAN-suggested format ensuring its ease for dissemination and utilization.

Project duration: The length of the project must not exceed 36 months.

Federal share of the project costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period or a maximum of $600,000 for a 3-year period.

Matching requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $600,000 in Federal funds (based on an award of $200,000 per budget period), must include a match of at least $200,000 (25 percent total project cost).

Anticipated number of projects to be funded: It is anticipated that one project will be funded.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required notification of the State single point of contact

All applications for research or demonstration projects submitted to NCCAN are covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and title 45 Code of Federal Regulations (CFR) part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her State Single Point of Contact (SPOC) directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this Part.

All States and territories, except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Pennsylvania, Oregon, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these 17 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

It is imperative that the applicant submit all required materials to the SPOC as soon as possible and indicate the date of this submittal (or the date of contact, if no submittal is required) on the Standard Form (SF) 424, item 16a. Under 45 CFR 100.8(a)(2), SPOCs have 60 days from the grant application deadline to comment on applications for financial assistance under this program. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACF, they should be addressed to the application mailing address located in the front section of this announcement.

B. Deadline for submittal of applications

Closing date: The closing date for submission of applications is May 31, 1994.

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the place specified in this program announcement, or

2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the above criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for preparing the application and completing application forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, a sample of completed forms has been included at the end of Part III of this announcement. This sample is to be used only as a guide for submitting your application.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1.
"Type of Submission"—Preprinted on the form.

Item 2.
"Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3.
"Date Received By State"—State use only (if applicable).

Item 4.
"Date Received by Federal Agency"—Leave blank.

Item 5.
"Applicant Information"
"Legal Name"—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.
"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.
"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O.

box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6.

"Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7.

"Type of Applicant"—Self-explanatory.

Item 8.

"Type of Application"—Preprinted on the form.

Item 9.

"Name of Federal Agency"—Preprinted on the form.

Item 10.

"Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number 93.670 which is assigned to the program under which assistance is requested and its title, Child Abuse, Prevention and Treatment Act, as amended.

Item 11.

"Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12.

"Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13.

"Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14.

"Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Items 15.

Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a.

Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e

Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see part II, sections E and F, and the specific priority area description.

Item 15f.

Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g.

Enter the sum of items 15a–15e.

Item 16a.

"Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 10, 1994.

Item 16b.

"Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17.

"Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18.

"To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c.

"Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d.

"Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e.

"Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program

income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section 8, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $25,000 and are requesting an award without competition should include sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price. (Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "None." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal

reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in 45 CFR Part 74.51 and 45 CFR Part 92.3, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos. (Please note that audiovisuals should be closed captioned.) The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. The key words are to be selected from the list provided at the end of Part III of this announcement. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria (see Part II, Section C) using the appropriate headings for research or demonstration and training applications.

Research applications should use the following headings:

(a) *Objectives;*

(b) *Background and Significance;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

Demonstration and Training applications should use the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results or Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Part II, Section C. Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½"×11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives" or "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects on child abuse and neglect, a Protection of Human Subjects Assurance is required. If there is a question regarding the applicability

of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

The length of the application, including the application forms and items specified as part of a complete application in Section D below except for any appendices/attachments, should not exceed 60 pages. Staff vita, letters of agreement from participating agencies, questionnaires may be attached as appendices and are not included in the page limitations, although they should be numbered sequentially. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process, though they will be kept on file.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

____ One original, signed and dated application, plus two copies.
Applications for different priority areas should be packaged separately;
____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
____ Application length does not exceed 60 pages, not including any appendices/attachments as described above.

A complete application consists of the following items in this order:

____ Application for Federal Assistance (SF 424, REV 4–88);
____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
____ Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
____ Budget justification for Section B—Budget Categories;
____ Table of Contents;
____ Letter from the Internal Revenue Service to prove non-profit status, if necessary;
____ Copy of the applicant's approved indirect cost rate agreement, if appropriate;
____ Project summary description and listing of key words;
____ Program Narrative Statement (See Part III, Section C.4);
____ Organizational capability statement, including an organization chart;
____ Any appendices/attachments;
____ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
____ Certification Regarding Lobbying; and
____ Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in all subsequent communication with NCCAN and ACF concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACF–DPE by telephone at (202) 205–8297.

(Catalog of Federal Domestic Assistance Number 93.670, Child Abuse and Neglect Prevention and Treatment)

Dated: March 2, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

EXECUTIVE ORDER 12372—STATE SINGLE POINTS OF CONTACT

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th floor, Phoenix, Arizona 85012, telephone (602) 280–1315.

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, telephone (501) 682–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, telephone (303) 866–2156.

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, telephone (302) 736–3326.

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., suite 500, Washington, DC 20005, telephone (202) 727–6551.

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, telephone (904) 488–8441.

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, telephone (404) 656–3855.

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, telephone (217) 782–1671.

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, telephone (317) 232–5610.

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515) 281–3725.

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, telephone (502) 564–2382.

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, telephone (207) 289–3261.

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, telephone (301) 225–4490.

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, telephone (617) 727–7001.

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, telephone (517) 373–7356.

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, telephone (601) 960–2174.

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, telephone (314) 751–4834.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator.

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, telephone (603) 271–2155.

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, telephone (609) 292–6613.

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0803, telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, telephone (505) 827–3640, FAX (505) 827–3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, telephone (919) 733–7232.

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th floor, Columbus, Ohio 43266–0411, telephone (614) 466–0698.

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, telephone (401) 277–2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, telephone (803) 734–0494.

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, telephone (605) 773–3212.

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, telephone (615) 741–1676.

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463–1778.

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, room 116 State Capitol, Salt Lake City, Utah 84114, telephone (801) 538–1535.

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, telephone (802) 828–3326.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, telephone (304) 348–4010.

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, telephone (608) 266–0267.

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, telephone (307) 777–7574.

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985 telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second floor, Saint Thomas, Virgin Islands 00802.
Please direct correspondence to: Linda Clarke telephone (809) 774–0750.

List of Key Words

Abandoned infants/children
Abuse
Abused children/spouse
Abusive children/parents
Accreditation
Achievement
Adjudication
Addicted infants/mothers/fathers
Administration
Adolescent abuse
Adolescent parents
Adolescent perpetrator
Adoption
Adults
Advocacy
Affective behavior
African Americans
Alcohol abuse
Anatomical dolls
Archive
Art therapy
Assessment
Asians
Attitudes
At-risk youth
Audio-visual
Autism
Autopsies
Background investigations
Barrier-free design
Behavior
Behavior therapy
Blacks
Bonding
Caregivers
Caretakers
Case management
Central Registries
Child abuse and neglect
Child abuse reporting
Child advocacy centers
Child care
Child care centers
Child care workers
Child development
Child fatalities
Child fatality review
Child health
Child pornography
Child prostitution
Child protective services
Child rearing
Child welfare
Child witness
Children
Children's Trust Fund
Clearinghouse
Client outcome measures
Clergy
Communication
Coalitions
Cognitive styles
Collaboration
Colleges
Communication
Community
Community-based child abuse and neglect prevention grants
Community college
Comprehensive care
Computer networks
Computers
Conferences
Confidentiality
Conflict
Consumer education
Continuing education
Contracting
Co-occurrence
Cooperative agreement
Coordination
Coordinated services
Coroners and medical examiners
Corporeal punishment
Correctional institutions
Cost benefit
Cost effective
Counseling
Courts
Court appointed special advocates (CASAs)
Crisis intervention
Crisis nurseries
Cross-cultural
Cultural activities
Cultural competency
Cultural factors
Cultural sensitivity
Curricula
Curriculum development
Custody
Cycle of violence
Data collection
Day care programs
Deafness
Decategorization
Decision making
Definitions
Delinquency
Dental clinics
Depression
Developmental disabilities
Diagnosis
Disabilities
Discipline
Dissemination
District attorneys
Doctoral dissertations
Dropouts
Dysfunctional families
Drug abuse
Drug-exposed infants
Economic factors
Education and training
Educational neglect
Effectiveness measures
Elementary school
Emergency services
Emergency shelters
Emotional abuse
Emotional development
Emotional/behavioral disorder
Employer-sponsored programs
Employment
Empowerment
Etiology
Environment
Evaluation
Exploited youth
Families
Families-at-risk
Family counseling
Family day care
Family needs assessment
Family preservation
Family strengths
Family support
Family violence
Fellowships
Fetal Alcohol Syndrome
Field initiated
Films
Fiscal management
Follow-up
Food and nutrition
Forensic
Foster care
Foster grandparents
Foundations
Group homes
Group therapy
Guardianship
Guardian-ad-litem
Handbooks
Head Start
Health
Health impairment
Hearing impairment
High risk groups
Higher education
Hispanics
Historically Black Colleges and Universities (use HBCU)
Home-based services
Home visitors
Homeless
Hospitals
Housing
Human services
Identification
Immigrants and refugees
Immunization
Incidence
Income generation
Independent living
Indians
Indian Reservations
Infant care review committees
Infants and toddlers
Information centers
Information and referral
Information transfer
Injuries
Institutional abuse and neglect
Instruments
Intake

Interagency cooperation
Interdisciplinary
Intergenerational
International
Interstate agreements
Intervention
Interviews
Intrafamilial
Investigations
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Learning disability
Legal
Legal counseling
Legislation and model codes
Liability and legal issues
Linkages
Literacy
Local government
Longitudinal studies
Low-cost alternatives
Low-income
Males
Mainstreaming
Management
Management information systems
Management training
Manuals
Marketing
Materials
Meals
Mediation
Media
Medical
Medical neglect
Medical schools
Mental health
Mental retardation
Mentors
Migrants
Military
Minorities
Missing children
Models
Multiple personality disorder
Multidisciplinary teams
Multiproblem family
National
Native Alaskans
Native Americans
Native Hawaiians
Needs assessment
Neglect
Neighborhood
Networking
Newsletters
Newspapers
Non-offending parent
Nurses
Nutrition counseling
On-the-job training
Orthopedic impairment
Outreach
Pacific Islanders
Paraprofessional training
Parent
Parent aides
Parent-child relations
Parent involvement
Parent education
Parental abduction
Parenting skills
Pediatric AIDS
Peer counseling
Peer relations
Perception
Perpetrator
Permanency planning
Personal safety
Placement prevention
Physical abuse
Physical development
Physical therapy
Physician
Planning
Play therapy
Police
Post-Traumatic Stress Disorder
Poverty
Prenatal substance abuse
Preschools
Prevalence
Prevention
Primary schools
Private sector
Probation
Professional education
Prosecution
Prostitution
Protective services
Protocols
Psychopathology
Public awareness
Public/private partnership
Public schools
Radio
Rating scales
Readiness skills
Recidivism
Recovered memory
Recreation
Recruitment
Referral
Refugees
Relative foster care
Religious institution(s)
Replication
Reporting
Research
Research center
Residential care
Resource allocation
Resource center
Respite care
Retention
Revictimization
Risk
Risk assessment
Ritual abuse
Runaway and homeless youth
Rural
Safety factors
School-age children
Screening
Secondary analyses
Secondary schools
Self-care
Self esteem
Self-help
Self-sufficiency
Seminars
Service integration
Severity
Sexual abuse
Sexual exploitation
Shaken baby
Sibling abuse
Sibling relations
Single parents
Social isolation
Social skills
Social services
Social work
Special education
Special needs adoption
Speech or language impairment
Staff
Standards
States
State laws
Statistical analysis
Status offenders
Stipends
Stress
Substance abuse
Substantiation
Sudden infant death syndrome
Supervision
Support groups
Synthesis
Systems
Target populations
Teachers
Technical assistance
Technology
Technology transfer
Teenage parents
Teenage pregnancy
Telecommunications
Television
Temporary child care
Testimony
Theoretical models
Therapeutic day care
Therapy
Throwaway children
Toddlers
Training
Training of trainers
Transitional Living
Transitioning
Transportation
Traumatic brain injury
Treatment
Tribally Controlled Community Colleges
Unemployed
University
Unsubstantiated
Urban
Urban Indian Centers
Veterans
Victimization
Video
Violence
Visual impairment

Volunteers
Vouchers
Welfare
Witness
Women
Workplace
Workshops
Youth

BILLING CODE 4184-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

——"New" means a new assistance award.

——"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

——"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplication, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans, and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No 0148 0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1		$	$	$	$	$
2						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary
Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions, of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard are to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184-01-P

Priority Area Number 1.16

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: 05/08/92	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Children's Center

Organizational Unit:

Address (give city, county, state, and zip code):
3242 Montgomery Street
Trenton, NJ 08650

Name and telephone number of the person to be contacted on matters involving this application (give area code):
Harriet Thomas
(609) 555-8237

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 0 8 — 7 6 5 4 3 2 1

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — X. Other (Specify): Nonprofit Org.

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
Administration for Children and Families

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 0 8
TITLE: Child Welfare R&D

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Specialized Family Foster Care

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):
Mercer County, N.J.

13. PROPOSED PROJECT:

Start Date	Ending Date
01/01/92	09/30/95

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
5	5

15. ESTIMATED FUNDING:

a. Federal	$ 75,000 .00
b. Applicant	$ 25,000 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 100,000 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE: 05/01/92
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
Alice Farber	Executive Director	609/555-8235

d. Signature of Authorized Representative: Alice Farber
e. Date Signed: 05/08/92

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Child Welfare	93.608	$	$	$ 75,000	$ 25,000	$ 100,000
2.						
3.						
4.						
5. TOTALS		$	$	$ 75,000	$ 25,000	$ 100,000

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ NA	$ NA	$ NA	$ NA	$ 60,000
b. Fringe Benefits	NA	NA	NA	NA	9,000
c. Travel	NA	NA	NA	NA	2,000
d. Equipment	NA	NA	NA	NA	5,000
e. Supplies	NA	NA	NA	NA	3,500
f. Contractual	NA	NA	NA	NA	15,500
g. Construction	NA	NA	NA	NA	NA
h. Other	NA	NA	NA	NA	5,000
i. Total Direct Charges (sum of 6a - 6h)	NA	NA	NA	NA	100,000
j. Indirect Charges	NA	NA	NA	NA	0
k. TOTALS (sum of 6i and 6j)	$ NA	$ NA	$ NA	$ NA	$ 100,000
7. Program Income	$ NA	$ NA	$ NA	$ NA	$ 0

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$ NA	$ NA	$ NA	$ NA
9.	NA	NA	NA	NA
10.	NA	NA	NA	NA
11.	NA	NA	NA	NA
12. TOTALS (sum of lines 8 and 11)	$ 25,000	$ 0	$ 0	$ 25,000

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ NA	$ NA	$ NA	$ NA	$ NA
14. NonFederal	NA	NA	NA	NA	NA
15. TOTAL (sum of lines 13 and 14)	$ NA	$ NA	$ N A	$ NA	$ NA

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$ NA	$ NA	$ NA	$ NA
17.	NA	NA	NA	NA
18.	NA	NA	NA	NA
19.	NA	NA	NA	NA
20. TOTALS (sum of lines 16 -19)	$ 70,000	$ 60,000	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
NA	NA

23. Remarks

Non-Federal Share of Project Cost: $23,333 (2nd year); $20,000 (3rd year)

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U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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Standard Form - LLL

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ REVISION

☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER

☐ NEW ☐ RENEWAL ☐ CONTINUATION

APPLICATION IDENTIFICATION NUMBER *(If known)*

STATEMENT OF POLICY: Safeguarding the rights and welfare of subjects at risk in activities supported under grants and contracts from DHHS is primarily the responsibility of the institution which receives or is accountable to DHHS for the funds awarded for the support of the activity. In order to provide for the adequate discharge of this institutional responsibility, it is the policy of DHHS that no activity involving human subjects to be supported by DHHS grants or contracts shall be undertaken unless the Institutional Review Board has reviewed and approved such activity, and the institution has submitted to DHHS a certification of such review and approval, in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, (45 CFR 46). Administration of the DHHS policy and regulation is the responsibility of the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20205.

1. TITLE OF PROPOSAL OR ACTIVITY

2. PRINCIPAL INVESTIGATOR/ACTIVITY DIRECTOR/FELLOW

3. DECLARATION THAT HUMAN SUBJECTS EITHER WOULD OR WOULD NOT BE INVOLVED

☐ A. NO INDIVIDUALS WHO MIGHT BE CONSIDERED HUMAN SUBJECTS, INCLUDING THOSE FROM WHOM ORGANS, TISSUES, FLUIDS, OR OTHER MATERIALS WOULD BE DERIVED, OR WHO COULD BE IDENTIFIED BY PERSONAL DATA, WOULD BE INVOLVED IN THE PROPOSED ACTIVITY. (IF NO HUMAN SUBJECTS WOULD BE INVOLVED, CHECK THIS BOX AND PROCEED TO ITEM 7. PROPOSALS DETERMINED BY THE AGENCY TO INVOLVE HUMAN SUBJECTS WILL BE RETURNED.)

☐ B. HUMAN SUBJECTS WOULD BE INVOLVED IN THE PROPOSED ACTIVITY AS EITHER: ☐ NONE OF THE FOLLOWING, OR INCLUDING: ☐ MINORS, ☐ FETUSES, ☐ ABORTUSES, ☐ PREGNANT WOMEN, ☐ PRISONERS, ☐ MENTALLY RETARDED, ☐ MENTALLY DISABLED. UNDER SECTION 6. COOPERATING INSTITUTIONS, ON REVERSE OF THIS FORM, GIVE NAME OF INSTITUTION AND NAME AND ADDRESS OF OFFICIAL(S) AUTHORIZING ACCESS TO ANY SUBJECTS IN FACILITIES NOT UNDER DIRECT CONTROL OF THE APPLICANT OR OFFERING INSTITUTION.

4. DECLARATION OF ASSURANCE STATUS/CERTIFICATION OF REVIEW

☐ A. THIS INSTITUTION HAS NOT PREVIOUSLY FILED AN ASSURANCE AND ASSURANCE IMPLEMENTING PROCEDURES FOR THE PROTECTION OF HUMAN SUBJECTS WITH THE DHHS THAT APPLIES TO THIS APPLICATION OR ACTIVITY. ASSURANCE IS HEREBY GIVEN THAT THIS INSTITUTION WILL COMPLY WITH REQUIREMENTS OF *DHHS Regulation 45 CFR 46*, THAT IT HAS ESTABLISHED AN INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS AND, WHEN REQUESTED, WILL SUBMIT TO DHHS DOCUMENTATION AND CERTIFICATION OF SUCH REVIEWS AND PROCEDURES AS MAY BE REQUIRED FOR IMPLEMENTATION OF THIS ASSURANCE FOR THE PROPOSED PROJECT OR ACTIVITY.

☐ B. THIS INSTITUTION HAS AN APPROVED GENERAL ASSURANCE (DHHS ASSURANCE NUMBER _____) OR AN ACTIVE SPECIAL ASSURANCE FOR THIS ONGOING ACTIVITY, ON FILE WITH DHHS. THE SIGNER CERTIFIES THAT ALL ACTIVITIES IN THIS APPLICATION PROPOSING TO INVOLVE HUMAN SUBJECTS HAVE BEEN REVIEWED AND APPROVED BY THIS INSTITUTION'S INSTITUTIONAL REVIEW BOARD IN A CONVENED MEETING ON THE DATE OF _____ IN ACCORDANCE WITH THE REQUIREMENTS OF THE *Code of Federal Regulations on Protection of Human Subjects (45 CFR 46)*. THIS CERTIFICATION INCLUDES, WHEN APPLICABLE, REQUIREMENTS FOR CERTIFYING FDA STATUS FOR EACH INVESTIGATIONAL NEW DRUG TO BE USED (SEE REVERSE SIDE OF THIS FORM).

THE INSTITUTIONAL REVIEW BOARD HAS DETERMINED, AND THE INSTITUTIONAL OFFICIAL SIGNING BELOW CONCURS THAT:

EITHER ☐ HUMAN SUBJECTS WILL NOT BE AT RISK; OR ☐ HUMAN SUBJECTS WILL BE AT RISK.

5. AND 6. SEE REVERSE SIDE

7. NAME AND ADDRESS OF INSTITUTION

8. TITLE OF INSTITUTIONAL OFFICIAL	TELEPHONE NUMBER
SIGNATURE OF INSTITUTIONAL OFFICIAL	DATE

HHS-596 (Rev. 5-80)

ENCLOSE THIS FORM WITH THE PROPOSAL OR RETURN IT TO REQUESTING AGENCY.

5. INVESTIGATIONAL NEW DRUGS - ADDITIONAL CERTIFICATION REQUIREMENT

SECTION 46.17 OF TITLE 45 OF THE Code of Federal Regulations states, "Where an organization is required to prepare or to submit a certification . . . and the proposal involves an investigational new drug within the meaning of The Food, Drug, and Cosmetic Act, the drug shall be identified in the certification together with a statement that the 30-day delay required by 21 CFR 130.3(a)(2) has elapsed and the Food and Drug Administration has not, prior to expiration of such 30-day interval, requested that the sponsor continue to withhold or to restrict use of the drug in human subjects; or that the Food and Drug Administration has waived the 30-day delay requirement; provided, however, that in those cases in which the 30-day delay interval has neither expired nor been waived, a statement shall be forwarded to DHHS upon such expiration or upon receipt of a waiver. No certification shall be considered acceptable until such statement has been received."

INVESTIGATIONAL NEW DRUG CERTIFICATION

TO CERTIFY COMPLIANCE WITH FDA REQUIREMENTS FOR PROPOSED USE OF INVESTIGATIONAL NEW DRUGS IN ADDITION TO CERTIFICATION OF INSTITUTIONAL REVIEW BOARD APPROVAL, THE FOLLOWING REPORT FORMAT SHOULD BE USED FOR EACH IND: (ATTACH ADDITIONAL IND CERTIFICATIONS AS NECESSARY).

— IND FORMS FILED: ☐ FDA 1571, ☐ FDA 1572, ☐ FDA 1573

— NAME OF IND AND SPONSOR _____

— DATE OF 30-DAY EXPIRATION OR FDA WAIVER
(FUTURE DATE REQUIRES FOLLOWUP REPORT TO AGENCY) _____

— FDA RESTRICTION _____

— SIGNATURE OF INVESTIGATOR _____ DATE _____

6. COOPERATING INSTITUTIONS - ADDITIONAL REPORTING REQUIREMENT

SECTION 46.16 OF TITLE 45 OF THE *Code of Federal Regulations* IMPOSES SPECIAL REQUIREMENTS ON THE CONDUCT OF STUDIES OR ACTIVITIES IN WHICH THE GRANTEE OR PRIME CONTRACTOR OBTAINS ACCESS TO ALL OR SOME OF THE SUBJECTS THROUGH COOPERATING INSTITUTIONS NOT UNDER ITS CONTROL. IN ORDER THAT THE DHHS BE FULLY INFORMED, THE FOLLOWING REPORT IS REQUESTED WHEN APPLICABLE.

USE FOLLOWING REPORT FORMAT FOR EACH INSTITUTION OTHER THAN GRANTEE OR CONTRACTING INSTITUTION WITH RESPONSIBILITY FOR HUMAN SUBJECTS PARTICIPATING IN THIS ACTIVITY: (ATTACH ADDITIONAL REPORT SHEETS AS NECESSARY).

INSTITUTIONAL AUTHORIZATION FOR ACCESS TO SUBJECTS

— SUBJECTS: STATUS (WARDS, RESIDENTS, EMPLOYEES, PATIENTS, ETC.) _____

NUMBER _____ AGE RANGE _____

NAME OF OFFICIAL (PLEASE PRINT) _____

TITLE _____ TELEPHONE _____

NAME AND ADDRESS OF COOPERATING INSTITUTION _____

— OFFICIAL SIGNATURE _____

NOTES: *(e.g., report of modification in proposal as submitted to agency affecting human subjects involvement)*

HHS-596 (Rev. 5-80) (Back)

[FR Doc. 94-5822 Filed 3-14-94; 8:45 am]
BILLING CODE 4184-01-C

federal register

Tuesday
March 15, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Final Determination That the Mohegan Indian Tribe of Connecticut, Inc., Does Exist as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Mohegan Indian Tribe of Connecticut, Inc., Does Exist as an Indian Tribe

March 7, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary—Indian Affairs has determined that the Mohegan Indian Tribe of Connecticut, Inc., (Mohegan) 27 Church Lane, Uncasville, Connecticut 06382 does exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination, following a review of public comments on the proposed finding, that the Mohegan satisfies all of the criteria set forth in 25 CFR 83.7, and, therefore, meets the requirements for a government-to-government relationship with the United States.

DATES: This notice is final and will become effective 60 days after the date on which this notice appears in the **Federal Register** unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a)–(c).

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Notice of the proposed finding to decline to acknowledge the tribe was published in Vol. 54, No. 216, pages 47136–47137, of the **Federal Register** on November 9, 1989. This finding was based on a determination that the tribe met criteria a, d, e, f, and g, but did not meet criteria b and c of part 83.7 of the Acknowledgment regulations (25 CFR Part 83). In accordance with 25 CFR 83.9(g), interested parties were given 120 days in which to submit factual or legal arguments and evidence to rebut or support the evidence relied upon in the finding. Pursuant to a request by the Mohegan and the Connecticut Attorney General's Office (CTAG), the Department of the Interior (Department) extended the comment period from March 9, 1990, until October 30, 1990.

During the comment period, a rebuttal containing substantive new evidence and arguments challenging the proposed finding was submitted by the Mohegan and another was submitted on behalf of the Mohegan by Mr. Robert B. Cohen. Comments were also received from June Hatstat, also known as "Princess Chikara," of the Mohegan Tribe and Nation; Laurie Weinstein-Farson, Ph.D., Assistant Professor of Anthropology at Western Connecticut State University, Danbury, Connecticut; and Ann McMullen, Department of Anthropology, Brown University, Providence, Rhode Island. The comments of Weinstein-Farson and McMullen were critical of the proposed finding from an anthropological and historical standpoint.

Short comments were submitted by Kevin A. McBride, Assistant Professor, Department of Anthropology, University of Connecticut, Storrs, Connecticut; Trudie Lamb Richmond, Director of Education, American Indian Archaeological Institute, Washington, Connecticut; James D. Wherry, Socio-Economic Development, Mashantucket Pequot Tribe; and Joan Lester, Chief Curator, Boston Children's Museum, Boston, Massachusetts. The CTAG submitted extensive evidence opposing the Mohegan's response, and the Mohegan submitted a final reply.

All submissions were carefully considered, the new evidence was evaluated, and data and conclusions in both the tribe's original petition and the proposed finding were reconsidered in light of the arguments presented. The tribe's response and the response submitted by Mr. Cohen presented substantive new evidence and arguments which served to greatly strengthen the petition. It has been found that this evidence, when considered along with the arguments and observations presented by the other interested parties and a reconsideration of the evidence presented in the proposed finding, warrants a final determination that the tribe does meet criteria § 83.7 (b) and (c) of the Acknowledgment regulations.

The proposed finding concluded that the Mohegan did not meet criterion 83.7(b) because the presence of extensive social contact within the extended Mohegan community since 1941 had not been documented. The finding noted that a substantial portion of the Mohegan did live within an area that comprised the Mohegan aboriginal territory, that they are descendants of an Indian tribe which historically inhabited the area, and that they had retained a minimal cultural distinction from the surrounding population. Yet, at the time the finding was being prepared, evidence to support a positive determination for social interaction and social cohesion was insufficient.

The Mohegan's response to the proposed finding, along with responses received from other interested parties, has provided information previously lacking and documentation demonstrating social interaction and social cohesion, as well as political communication, linking the major family lines and the tribal officers.

Extensive new information was supplied about the importance of the Mohegan Congregational Church as a focus of tribal activity and community in the modern period. This evidence demonstrated that the period when the church was closed was much shorter than assumed in the proposed finding, that some activities had continued during the period when the building itself was not usable, and that the restoration and reopening had the support of the wider Mohegan community, including members who belonged to other religious faiths.

The Mohegan also supplied additional information about the tribe's interaction at such significant events as funerals, focusing particularly upon the continued usage, until the present day, of the traditional burial ground at Fort Shantok by all but one of the major family lines. The proposed finding concluded that interaction at such times had not been documented, but the new evidence submitted demonstrates that it was substantial.

These new data, when taken collectively and conjoined with those originally provided by the Mohegan and those obtained by the Acknowledgment staff in the course of their research, are deemed sufficient to conclude that the Mohegan maintain the requisite degree of social interaction to meet criterion (b).

The proposed finding concluded that the tribe did not meet criterion 83.7(c) because it could not demonstrate that it had maintained political influence or other authority over all of its members since 1941. The proposed finding concentrated on the role of those men identified as "chiefs" in the documentation. New evidence submitted in response to the proposed finding indicated that the Mohegan leadership structure was much more complex. The office of chief, while largely representational, was supported by various working officials such as the president of the League of the Descendants and the president of the Mohegan Ladies Sewing Society. The proposed finding also focused upon the formal, male, leadership of the tribe, and ignored the traditional importance of its informal, female, leadership.

Additionally, analysis of the new evidence submitted indicated that the influence of the chief could be exerted without the formality of holding

meetings at which a vote was taken. This was particularly demonstrated by the fact that the tribe undertook no claims activity from 1952 to 1966 because Harold Tantaquidgeon, the chief recognized by most Mohegan, opposed it. Under the leadership of John E. Hamilton, who returned from the west in 1966, the majority of Mohegan adults from all of the major family groups became involved with land claims once again. The lack of claims activities from 1952 to 1966 is a demonstration of the exercise of political authority by Tantaquidgeon from 1952 to 1966, since the other two most influential leaders of the tribe during this period were interested in pursuing claims. The focus of the group on non-land claims activity under Tantaquidgeon was a purposeful action taken by a widely respected leader and supported by the membership.

After the Mohegan's repudiation of Hamilton and election of Courtland Fowler to replace him in 1970, Fowler continued to defer to Tantaquidgeon on the claims issue. No claims work was undertaken by the tribal leadership until a 97% favorable membership vote required it in 1980. Therefore, land claims as a political issue also demonstrates there is a bilateral relationship between the Mohegan tribe and their leaders.

The Mohegan's response to the proposed finding presented convincing new evidence that the Council of the Descendants did not die for lack of interest in 1970. Rather, it was dissolved after a leadership dispute. Until 1970, both John Hamilton and Harold Tantaquidgeon were supported by the Mohegan in their roles as land claims representative and chief, respectively. In 1970, there was a dispute over the leadership of the Council of the Descendants which resulted in the repudiation of John Hamilton as a Mohegan leader and the election of Courtland E. Fowler as council president and chief by the Mohegan majority. The Council of the Descendants was dissolved soon thereafter and Hamilton started a new organization, which only a very small minority of the Mohegan followed. By 1973, Native Mohegans, Inc. began functioning as a tribal council for the majority of the Mohegan. Native Mohegans, Inc. continued in this capacity until the incorporation of the Mohegan Tribe of Connecticut in 1980.

We find the contention of the CTAG, that the Mohegan do not qualify for Federal recognition under 25 CFR Part 83 on the grounds that the Mohegan were subject to the Pequot for a period prior to the year 1650, is not grounds for rejection within the meaning of the regulations. Therefore, we conclude that the tribe has maintained political influence or other authority over its members, independent of the control of any other Indian governing body, throughout history until the present.

There was a fluctuation in social and political activity among the Mohegan from 1941 to 1966, compared to the eras before 1941 and after 1966. The Mohegan response to the proposed finding provided more data on the exercise of political authority from the late 1930's to the present. The level of data submitted on social community, political process, the exercise of leadership, and the bilateral political relationship during the late 1930's and from 1966 to the present was high. The evidence for the period from 1941 to 1966 remains thin and uneven. We find that two factors caused the fluctuation from 1941 to 1966: A temporary migration from Mohegan Hill to perform military service, and the dying out of three family lines that had been central to Mohegan social and political life through the 1940's and 1950's. Even during the fluctuation period there is evidence for some social and political activities and exercise of authority by individual leaders. With a better understanding of the causes of the fluctuation, and the strengthening of evidence for the period before 1941 and after 1966, we conclude that the Mohegan Tribe of Connecticut meets criteria b and c of 83.7 of the Acknowledgment regulations. Consequently, the petitioner satisfied all of the mandatory criteria for Federal acknowledgment and, therefore, meets all of the requirements for a government-to-government relationship with the United States.

A report summarizing the Department's response to the evidence and arguments submitted to refute the proposed finding is available to interested parties upon request. Requests for copies of this supplement report or the proposed finding published earlier should be addressed to the Assistant Secretary—Indian Affairs.

Requests to the Secretary for reconsideration may be made by any party and must be received within 60 days of the publication of this notice. Requests should be accompanied by a detailed statement of the grounds for the request and should include any new evidence to be considered. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 90 days from the receipt of a request in which to review and act, on any requests.

Under the regulations, the Secretary may request reconsideration of any decision but shall request reconsideration of any decision which in his opinion meets the requirements of 25 CFR 83.10(c)(1–3). If the Secretary receives a request for reconsideration, the Assistant Secretary—Indian Affairs will recommend that such a request be referred to the Interior Board of Indian Appeals (IBIA) and that the IBIA be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is merited on the grounds stated in 83.10(c)(1–3) of the Acknowledgment regulations (25 CFR 83). The IBIA will be further authorized to either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. The IBIA will be authorized to request comments or technical assistance from the Assistant Secretary concerning the final determination and may, at its discretion, require a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the IBIA determines that further inquiry is necessary to resolve a genuine issue of material fact concerning the final determination.

This determination will become final and effective upon receipt by the Assistant Secretary—Indian Affairs of a decision by the IBIA to affirm the determination unless the Secretary in his discretion has otherwise requested reconsideration. If the determination is vacated by IBIA and returned to the Assistant Secretary for reconsideration and/or if the Secretary has requested reconsideration, the Assistant Secretary shall, in accord with 83.10(a), issue a reconsidered determination within 60 days of receipt of the IBIA's decision or the Secretary's request, whichever is later. The reconsidered determination shall be final and effective upon publication in the **Federal Register**.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–5901 Filed 3–14–94; 8:45 am]

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H.R. 2339/P.L. 103–218

Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Mar. 9, 1994; 108 Stat. 50; 48 pages)

H.R. 3617/P.L. 103–219

To amend the Everglades National Park Protection and Expansion Act of 1989, and for other purposes. (Mar. 9, 1994; 108 Stat. 98; 2 pages)

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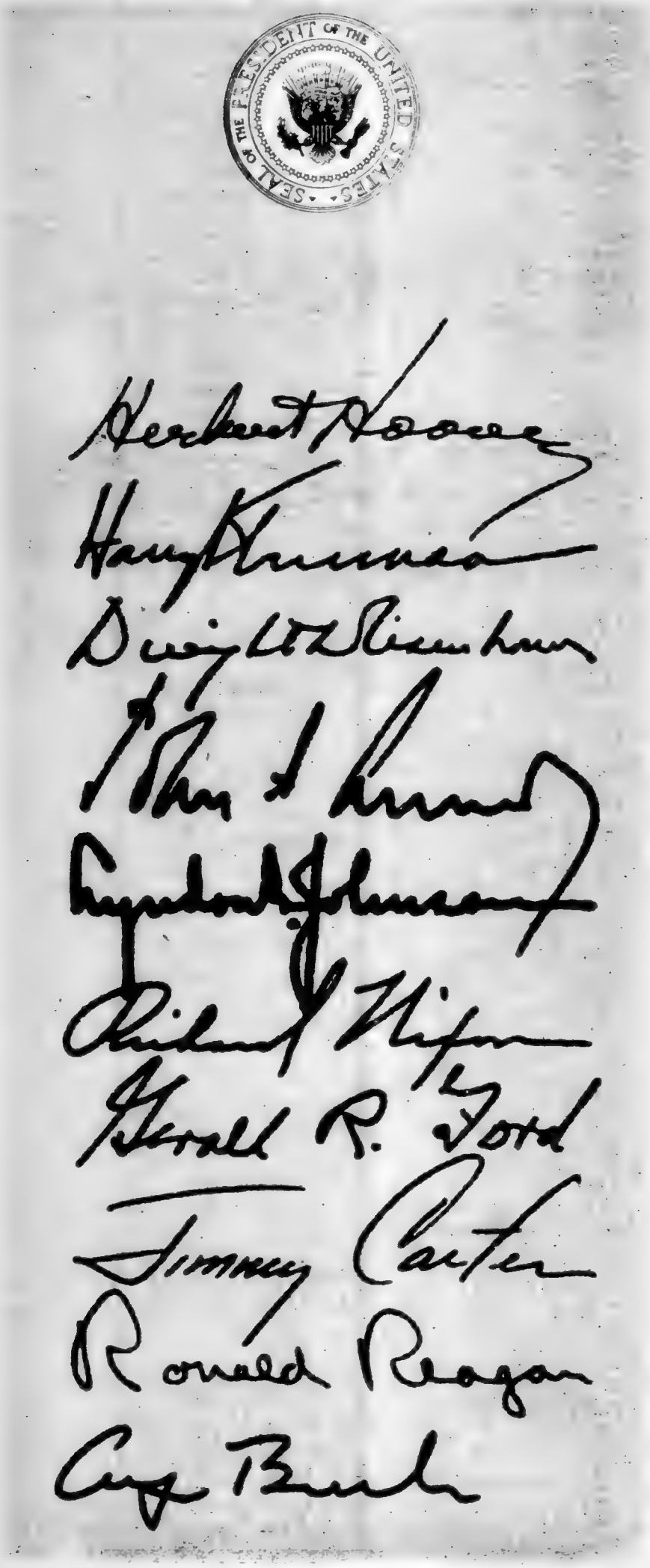

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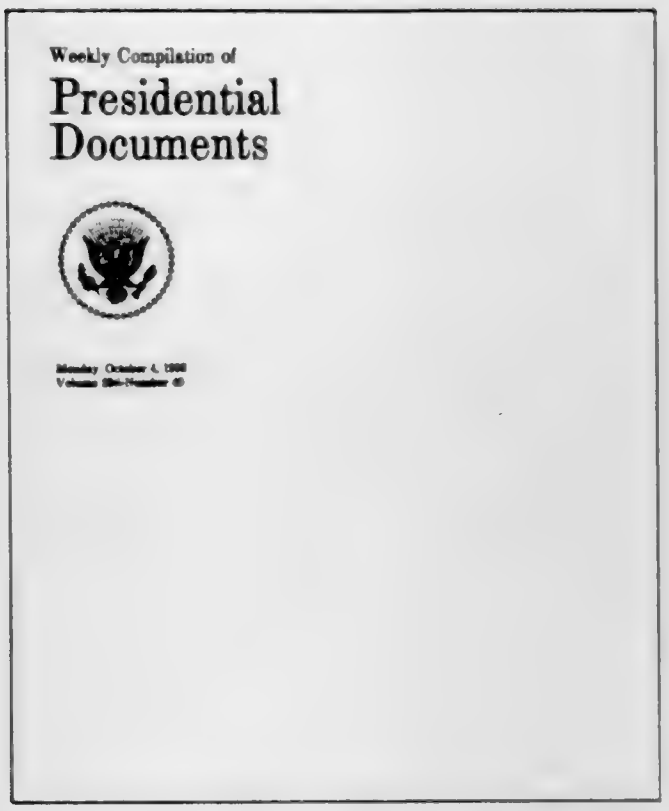

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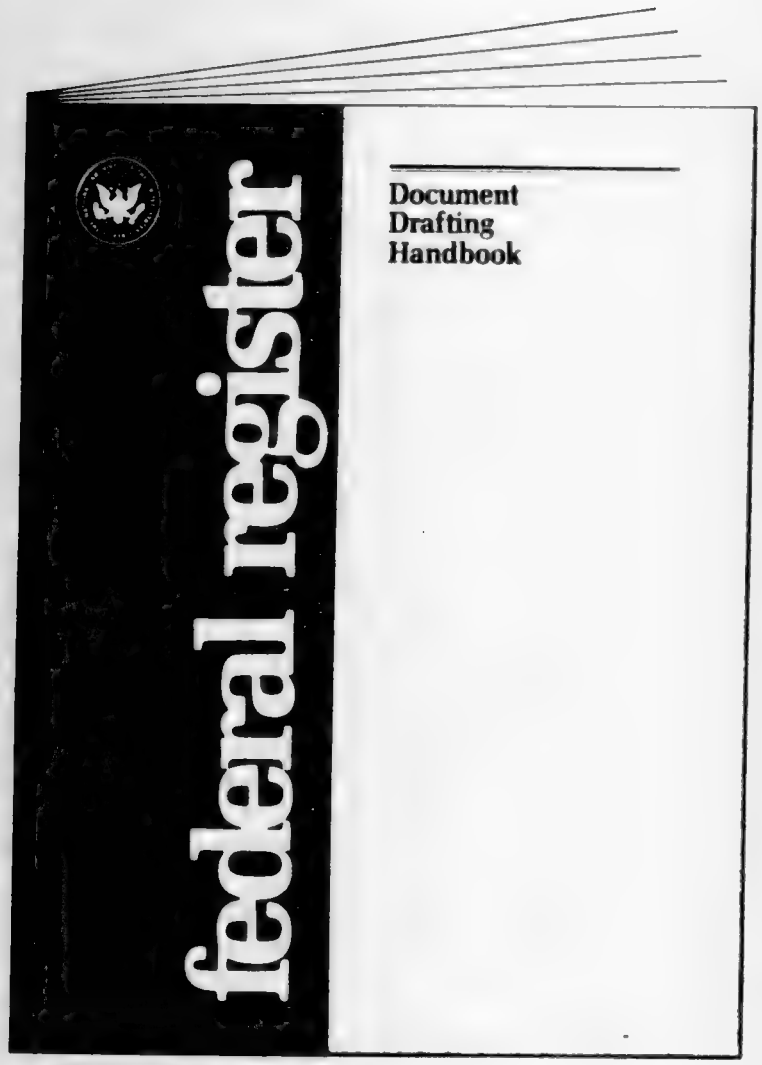

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 59, No. 51
Wednesday, March 16, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 842, and 890

RIN 3206–AF66

Payment of Survivor Deposits by Actuarial Reduction

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its interim regulations to implement section 11004 of the Omnibus Budget Reconciliation Act of 1993 as final. The Act requires OPM to reduce a retiree's annuity instead of collecting a deposit when the retiree marries during retirement and elects to provide a survivor annuity for the new spouse. These regulations comply with the requirement that OPM establish, by regulation, the method for computing the reduction on an actuarial basis. These regulations also reorganize OPM's survivor elections and survivor annuity regulations for the Civil Service Retirement System to group together sections on similar subjects and provide a more detailed table of contents to make the regulations easier to use.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On October 13, 1993, we published (at 58 FR 56877) interim regulations concerning survivor elections under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) and survivor annuities under CSRS. The interim regulations implemented the statutory change in the way we collect survivor election deposits for post-retirement marriage. The interim regulations also reorganized subpart F of our CSRS regulations to make it easier to use. We also requested comments on the interim regulations. We received no comments.

Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM will no longer collect these deposits in either a lump sum or by installments. Instead, OPM is now required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under sections 8343a and 8420a of title 5, United States Code.

The following three charts contain the present value factors that will apply beginning on the first day of the month beginning on or after the effective date of the final regulations. These present value factors have been revised to reflect the new economic assumption adopted by the Board of Actuaries of the Civil Service Retirement and Disability Fund. On September 21, 1993, we published (at 58 FR 49066) the new economic assumption as part of the notice of change in FERS normal cost percentage effective at the beginning of fiscal year 1995.

CSRS PRESENT VALUE FACTORS

Age	Reduction factor
40	294.4
41	290.0
42	285.5
43	280.8
44	276.2
45	270.4
46	264.7
47	259.2
48	253.5
49	247.2
50	240.4
51	235.0
52	229.8
53	224.4
54	218.6
55	212.6
56	207.5
57	202.4
58	197.0
59	192.3
60	188.3
61	182.9
62	177.0
63	171.9

CSRS PRESENT VALUE FACTORS—Continued

Age	Reduction factor
64	166.5
65	161.1
66	156.0
67	150.7
68	145.4
69	140.2
70	134.7
71	129.4
72	124.0
73	118.8
74	113.6
75	108.5
76	103.5
77	98.7
78	93.9
79	89.4
80	84.9
81	80.5
82	76.3
83	72.3
84	68.4
85	64.7
86	61.2
87	57.9
88	54.7
89	51.8
90	48.9

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES

Age	Reduction factor
40	169.2
41	168.8
42	168.4
43	168.1
44	167.7
45	166.9
46	166.1
47	165.4
48	164.7
49	163.7
50	162.4
51	161.9
52	161.6
53	161.2
54	160.6
55	160.0
56	160.0
57	160.2
58	160.4
59	161.2
60	162.7
61	163.5
62	161.3
63	157.1
64	152.5
65	148.0
66	143.6
67	139.1

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES—Continued

Age	Reduction factor
68	134.6
69	130.1
70	125.4
71	120.7
72	116.0
73	111.4
74	106.8
75	102.2
76	97.8
77	93.5
78	89.2
79	85.0
80	80.9
81	77.0
82	73.1
83	69.4
84	65.8
85	62.4
86	59.1
87	56.0
88	53.0
89	50.2
90	47.5

FERS PRESENT VALUE FACTORS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AIR TRAFFIC CONTROLLERS, AND MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(c) BY REASON OF DISABILITY

Age	Reduction factor
40	245.2
41	241.9
42	238.5
43	235.0
44	231.5
45	227.9
46	224.2
47	220.3
48	216.5
49	212.6
50	208.6
51	204.5
52	200.3
53	196.1
54	191.8
55	187.4
56	183.1
57	178.6
58	174.2
59	169.7
60	165.1
61	160.4

(Age 62 and over, see table for regular employees.)

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, under authority of 5 U.S.C. 8347, 8461, and 8913, OPM is adopting its interim rules amending 5 CFR parts 831, 838, 842, and 890 published on October 13, 1993, at 58 FR 56877, as final rules without change.

[FR Doc. 94–6046 Filed 3–15–94; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 890

RIN 3206–AF17

Federal Employees Health Benefits Program: Coverage of Temporary Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations clarifying the eligibility of temporary employees to continue their Federal Employees Health Benefits (FEHB) coverage when they become compensationers. These regulations also allow temporary employees an opportunity to change health plans if their salary is insufficient to pay the premium withholdings, show the effective date of such an enrollment change, and provide for the termination of these employees' enrollment if they do not change health plans.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0191.

SUPPLEMENTARY INFORMATION: On September 13, 1993, OPM issued interim regulations (58 FR 47823) concerning health benefits for temporary employees. These regulations clarified when a temporary employee's eligibility under 5 U.S.C. 8906a is considered his or her first opportunity to enroll. Many eligible temporary employees do not enroll in the FEHB Program, since there is no Government contribution and they must pay the full cost of the premium. In implementing 5 U.S.C. 8906a, OPM believed it would be unfair to consider eligibility under this section to be an employee's first opportunity to enroll for purposes of continuing health benefits into retirement, since temporary employees are precluded from participating in a retirement system. This may have inadvertently appeared to deny temporary employees eligibility for continued health benefits while receiving compensation from the Office of Workers' Compensation (OWCP), since for the purposes of chapter 89 of title 5 U.S.C., compensationers are considered to be annuitants.

The interim regulations clarified that for the purpose of continuing health benefits as a compensationer, a temporary employee's first opportunity to enroll is when he or she first becomes eligible under 5 U.S.C. 8906a. The regulations also granted temporary employees an opportunity to change health plans if their pay is insufficient to make premium withholdings for the plan in which they are enrolled, specified the effective date of such a change, and provided for the termination of enrollment of temporary employees in this situation who do not, or cannot, choose a lower cost health plan.

OPM received one comment from a Federal agency; this comment concurred with our interim regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only temporary Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, under authority of 5 U.S.C. 8913, OPM is adopting its interim regulations under 5 CFR part 890 as published on September 13, 1993, (58 FR 47823) as final rules without change.

[FR Doc. 94-6045 Filed 3-15-94; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule amendments with request for comments.

SUMMARY: This interim rule amends the OGE executive branch-wide regulation on "Executive Agency Ethics Training Programs." In response to agency concerns, the interim regulation grants executive branch agencies greater flexibility in administering their ethics training programs, enabling them to more efficiently use available resources to provide their employees with effective ethics training. Under the interim regulation, executive agencies will be able to provide their employees with summaries of the branch-wide regulations governing employee conduct in place of the actual text of those provisions as part of the employees' initial ethics orientation. Agencies are also able to make use of communications and electronic technologies in providing annual ethics training to covered employees. Written materials may be used to meet the annual training requirement for certain categories of employees; the requirement that employees in these categories receive a minimum of one hour of official duty time for annual ethics training is removed. The interim regulation clarifies that employees who fulfill the confidential financial disclosure requirements through an alternate procedure or an OGE-approved substitute affirmative disclosure system are required to receive annual ethics training. Minor changes have also been made to delete out-of-date language associated with the initiation of the training requirements in calendar years 1992 and 1993 and to add an appropriate cross-reference to the detailed training provisions.

DATES: Interim regulation amendments effective January 1, 1994. Comments by agencies and the public are invited and are due on or before May 16, 1994.

ADDRESSES: Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: John C. Condray.

FOR FURTHER INFORMATION CONTACT: John C. Condray, Office of the General Counsel and Legal Policy, Office of Government Ethics, telephone: 202-523-5757; FAX: 202-523-6325.

SUPPLEMENTARY INFORMATION:

A. Synopsis of Changes

In accordance with section 301 of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) (hereinafter Executive Order 12674), and consistent with its authority under the Ethics in Government Act (as amended), the Office of Government Ethics published subpart G of 5 CFR part 2638 as a final rule on April 7, 1992 at 57 FR 11886-11891, as corrected at 57 FR 15219 (April 29, 1992). On December 10, 1992, OGE published as a final rule certain amendments to the training regulation not directly related to this proposed amendment (see 57 FR 58399-58400, as corrected at 57 FR 61612 (December 28, 1992)). Based on concerns that agencies expressed to OGE, this interim rule further amends subpart G to provide agencies with greater flexibility in providing ethics training to their employees. The substantive amendments made by this interim regulation concern two sections of subpart G, §§ 2638.703 and 2638.704. The amendments to § 2638.703 revise the format of the requirement that agencies provide all of their employees with an initial ethics orientation. The amendments to § 2638.704 revise the format of the annual ethics training that agencies must provide to certain covered employees. These amendments are described in greater detail below. Section 2638.702(a) has been amended to correspond to the amendments made to § 2638.704. Minor changes have also been made throughout subpart G to delete language associated with the initiation of the training requirements in calendar years 1992 and 1993.

Section 2638.703 Initial Agency Ethics Orientation

The key change for the initial ethics orientation requirement is found at interim 5 CFR 2638.703(b)(2). This provision permits agencies to substitute a summary of part I of Executive Order 12674 and the Standards of Ethical Conduct in the place of the actual text of the Standards. This was done in response to agency concerns that their employees may not be able to adequately assimilate the information contained in the actual text of the Standards and part I of Executive Order 12674 in the amount of time set aside for the initial agency ethics orientation, a minimum of one hour of official duty time. In the original training regulation as published in April 1992, OGE required the full text of these materials to be distributed to employees receiving the initial ethics orientation. This was based upon section 301(b) of Executive Order 12674, which requires that agencies ensure review by all employees of the Executive order and any regulations promulgated thereunder. The principle of that section is to ensure that employees understand the ethical expectations and responsibilities that they are required to meet. After careful consideration, OGE has determined that this requirement is more effectively met by allowing agencies the freedom to develop a summary that conveys the substance of the Executive order and the Standards of Ethical Conduct in a form that their employees will be better able to assimilate. Of course, executive branch employees remain subject to the requirements of part 2635. To make certain that employees have access to all of the information contained in part I of Executive Order 12674 and part 2635, § 2638.703(b)(2) requires agencies using summary materials in lieu of part 2635 for an employees' initial ethics orientation to ensure that copies of the complete text of part 2635 are retained and readily accessible in the employee's immediate office area.

For those agencies that do decide to continue to provide the full text of the Standards for review instead of summary materials, § 2638.703(a) has been amended to delete the requirement that agencies also provide their employees with a copy of part I of Executive Order 12674 as part of the initial agency ethics orientation. The revised § 2638.703(a) only requires agencies to provide a copy of the Standards of Ethical Conduct for Employees of the Executive Branch, together with the names, titles, office addresses and telephone numbers of ethics officials available to answer employee questions (this is also required in the case of provision of summary materials). The Office of Government Ethics has deleted the requirement that agencies provide their employees with a copy of part I of Executive Order 12674 because the requirement was redundant. The

Standards, which were published in the **Federal Register** four months after subpart G was originally published, restate the 14 principles of ethical conduct contained in part I of Executive Order 12674 virtually verbatim. 5 CFR 2635.101(b). Agencies should note that OGE has retained part I of Executive Order 12674 as one of the subjects that must be included in any summary provided to agency employees in accordance with new § 2638.703(b)(2). This was done to ensure that the 14 principles, which are fundamental to employee conduct, are included in any summary used thereunder.

Section 2638.704 Annual Agency Ethics Training

Annual Training for Alternate Confidential Filers

The interim regulation clarifies that employees exempted from confidential financial disclosure reporting pursuant to OGE-approved alternative procedures in accordance with 5 CFR 2634.905(c) must also receive annual ethics training from their agencies pursuant to § 2638.704(b)(4). That section requires agencies to provide annual ethics training to all employees required to file confidential (nonpublic) financial disclosure reports under subpart I of 5 CFR part 2634 as well as any supplemental regulation or addendum thereto of the concerned agency. This is based in turn upon section 301(c) of Executive Order 12674, which explicitly includes confidential filers among those categories of employees for whom agencies must provide annual ethics briefings. Under another OGE executive branch regulation, § 2634.905(c) of this chapter, an individual employee or class of employees (including special Government employees) who are otherwise subject to the confidential reporting requirements of 5 CFR part 2634 may be excluded from all or a portion of the confidential reporting requirements if they are subject to an agency alternative procedure approved by OGE under § 2634.905(c). The Office of Government Ethics believes that agencies should still provide annual ethics training to such employees in accordance with § 2638.704. Because of concern over the potential for a conflict of interest in their official positions, these employees are still obligated by their agency to fulfill an alternate procedure for the prevention of any conflicts. They are therefore the type of employees meant to be covered by the annual training requirement contained in section 301(c) of Executive Order 12674 and this regulation. Based upon these considerations, OGE is therefore amending § 2638.704(b)(4) to explicitly include such employees among those who must receive annual ethics training from their agency. The amendment to that section also changes the "and" to an "or" in the main clause referring to confidential filing under agency supplemental regulations as well as 5 CFR part 2634 itself to clarify that any employees subject to confidential reporting pursuant to OGE-approved agency substitute affirmative disclosure systems are to be included in annual training.

Course Content

Another change made by the interim regulation concerns the course content requirements for annual agency ethics training, contained in the training regulation at § 2638.704(c). Some agencies had read the former course content requirements as requiring all executive branch agencies to provide repetitive training year after year on the same material. As OGE indicated in the preamble to the training regulation when it was published in April of 1992, this view is based on a misunderstanding of the nature of the requirement. Section 2638.704(c) as now amended retains language from its predecessor that states "* * * the emphasis and course content of annual agency ethics training courses may change from year to year * * *." The former section then went on to state the minimum requirements, that of a review of employee's responsibilities under part I of Executive Order 12674, as modified, and the Standards of Ethical Conduct (and any agency supplemental regulation) as well as a review of employees' responsibility under the conflict of interest statutes contained in 18 U.S.C. chapter 11. The preamble to the April 1992 final rule stated that, after the first session of annual training, this requirement could be met with a brief overview of the basic principles. Such an overview, given to employees who are familiar with their responsibilities under the statutes and the regulations, need serve only as a reminder of the basic principles, and could be accomplished in a very short period of time. The content of the rest of the training is entirely at agency discretion.

The structure of the annual ethics training is intended to allow agencies to vary their approach from year to year to keep the program interesting and also to best meet the needs of their employees. The Office of Government Ethics encourages innovation by agencies in providing training to their employees. Some agencies have been very active in following up on the flexibility provided to them for annual training. The Department of Justice, for example, is developing an interactive ethics computer game for use in its training. Several agencies, such as the Department of Defense and the U.S. Forest Service, are developing videotapes to supplement the OGE ethics training videotapes or to target the information provided to their employees. The Office of Government Ethics has consistently maintained that the minimum course content requirement contained in the regulation is intended to be a starting point from which agencies design and conduct their training, not a rigid requirement. However, because of continued confusion regarding the nature of this requirement, the interim regulation amends the language contained in § 2638.704(c) to state that a "reminder" of employees' responsibilities under the conflicts' statutes and the regulations will suffice to meet this requirement.

Presence of a Qualified Individual

The interim rule amendment deletes the general requirement, formerly contained in § 2638.704(d)(1), that annual training be presented with a qualified individual physically present during and immediately following the presentation. While the former § 2638.704(d)(1) used the term "available," both the text of the regulation and the preamble at the time of publication made it clear that OGE expected the qualified individual to be present at the training. 57 FR 11886, 11889 (April 7, 1992). The reason for this requirement, as explained in the preamble to the final rule, was to provide the best means for addressing employee questions and concerns raised by the training. Some agencies, particularly those whose duty sites are widely scattered, have voiced concern over their ability to meet this requirement. The former training regulation provided an exception, at § 2638.704(d)(2)(i), that allowed agencies to train covered employees without a qualified individual present under limited circumstances. This exception, however, was narrow in scope. Other limited exceptions were made for training provided to special Government employees and reserve officers.

Agency concern with this requirement, spurred on by legitimate concerns over the best use of limited agency resources, has caused OGE to move away from a strict presence requirement for the annual ethics training over the past year, so long as the employee retains some form of access to a qualified individual during

and immediately following the training. During the course of reviewing agency written plans for annual ethics training, OGE has approved certain agency procedures that, while they did not provide for actual physical presence of the qualified individual, did meet the goal of giving employees immediate and easy access to the qualified individual. For example, OGE approved an agency's training plan that called for the use of a video conferencing arrangement where the qualified individual could respond to employee questions directly as part of the training even though the qualified individual was not going to be physically present where the training was to be given. In another OGE-approved arrangement, an agency plan called for training to be provided through a satellite video broadcast, with a qualified individual on standby at the time of the training to answer questions over the telephone. These plans were approved because of the evolution of OGE's opinion on the desirability of a strict interpretation of the training regulation as it existed. The Office of Government Ethics has come to conclude that, while in-person training is often the most effective means of providing training, providing the "best" means of training may not be a realistic standard for all agencies in these times of fiscal restraints. The question therefore becomes one of setting a standard that agencies are able to meet while simultaneously meeting the goals of the ethics training program.

This interim regulation meets this standard by deleting the general requirement that a qualified individual be physically present during and following annual ethics training. The interim regulation retains the requirement that the annual training generally be provided verbally, which now can be done either in person or by recorded means. Written materials, standing alone, generally will not meet this requirement. This is necessary to comply with section 301(c) of Executive Order 12674, as modified by Executive Order 12731, which requires agencies to provide covered employees with an annual ethics "briefing." The interim regulation thus permits and encourages agencies to take advantage of technology in meeting this requirement. This could include, but is not limited to, use of video conferencing, telephone conferencing, audio or video cassettes, or computer-based training. Agencies will be required to have "qualified individuals," as defined in subpart G, develop any materials or lessons used in the training. Agencies will also be required to remind employees receiving annual ethics training of the names and phone numbers of ethics officials at their agency. This will provide employees with a point of contact should they need to seek clarification of issues raised in the course of the training or in their day-to-day work. Thus the interim regulation provides a standard that both encourages agencies to be creative in the means that they choose to provide the required training and is a realistic means of providing covered employees with the information that they need concerning the ethics and conflict of interest rules that govern their conduct.

The interim regulation retains the exception, at § 2638.704(d)(2)(i), permitting agencies to provide annual ethics training to a particular employee or group of employees by means of written materials when the Designated Agency Ethics Official, or his or her designee, makes a written determination that circumstances make it impractical to provide training to the employee or group of employees in accordance with § 2638.704(d)(1). This section has been slightly reworded to reflect the changes made to § 2638.704(d)(1). Because § 2638.704(d)(1) now permits agencies to provide annual ethics training without the presence of a qualified individual, language referring to such training has been deleted from § 2638.704(d)(2)(i). Like it predecessor, this exception is limited. Mere inconvenience to the agency, standing alone, will not justify a written determination under this section. As a practical matter, OGE does not expect this exception to be widely used because of the many options now available to agencies in providing annual ethics training to their employees. Section 2638.702(a)(ii), which requires agencies to include the number of employees to be trained under this exception in the agencies' written plan for annual ethics training, has also been reworded somewhat to reflect the changes made in § 2638.704(d)(2)(i).

The interim regulation also preserves the two exceptions, at 5 CFR 2638.704(d)(2)(ii) and 2638.704(d)(2)(iii), permitting agencies to use written materials in providing annual ethics training to special Government employees and to officers in the uniformed services who serve on active duty for 30 or fewer consecutive days. As with § 2638.704(d)(2)(i), discussed above, these sections have been slightly rewritten to reflect the changes made in § 2638.704(d)(1). Corresponding changes have been made to § 2638.704(a)(3)(iii), which requires agencies to include an estimate of the number of employees to be provided annual ethics training in accordance with these exceptions with their written plan for annual ethics training.

The interim regulation also expressly states two limited exceptions to the requirement that agencies provide covered employees with a minimum of one hour of official duty time for annual ethics training. These exceptions, found at §§ 2638.704(d)(2)(ii) and 2638.704(d)(2)(iii), waive the official duty hour requirement only for training provided to covered employees who are either: Special Government employees who are expected to work fewer than 60 days in a calendar year; or officers in the uniformed services who serve on active duty for 30 or fewer consecutive days. Thus, agencies may send a written summary of the ethics restrictions applicable to a special Government employee who will serve for a limited time on an advisory committee prior to the employee's actual dates of service. This avoids a rigid requirement that agencies provide training for a predefined period of time. This should enable agencies to communicate the ethics restrictions applicable to these employees while giving agencies flexibility in how they apply the limited number of hours that these employees actually serve.

The interim regulation also deletes obsolete language throughout the training regulation. This language generally pertained to the start-up phase of the requirements imposed by subpart G, and is no longer necessary. For example, the language at former § 2638.702(a)(3) stating that the first agency written plans for annual ethics training were due by August 1992, has been deleted. Finally, OGE is adding a cross-reference to the detailed subpart G ethics training requirements in § 2638.203(b)(6). Section 2638.203(b) lists the duties of the Designated Agency Ethics Officials; the responsibility to ensure that their agency has an education program for agency employees on ethics and standards of conduct matters has always been listed at § 2638.203(b)(6). The interim regulation rewords the language of this subsection to explicitly state that the education program for agency employees must be developed and conducted in accordance with subpart G of 5 CFR part 2638.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553 (b) and (d) of title 5 of the United States Code, I find good cause for waiving the general notice of proposed rulemaking and 30-

day delay in effectiveness. Because the changes made by this interim regulation will enable agencies to more efficiently use their resources to provide required Government ethics orientation and training to their employees, it is essential to the administration of the executive branch ethics program that the changes made by this interim regulation become effective as soon as possible. Making the rule retroactive to January 1, 1994, enables agencies to complete all required ethics training for calendar year 1994 under one set of procedures. For these reasons, the notice and delay in effectiveness are being waived as impracticable, unnecessary, and contrary to the public interest. However, this is an interim rule with provision for a 60-day comment period. The Office of Government Ethics will review any comments received during the comment period, and consider any modifications to this rule which appear warranted.

Executive Order 12866

In promulgating this interim rule amending the executive branch-wide Government ethics training regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These interim rule amendments have not been reviewed by the Office of Management and Budget under that Executive order, as they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small businesses because it affects only Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this interim rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: March 9, 1994.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2638—[AMENDED]

1. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Designated Agency Ethics Official

2. Section 2638.203 is amended by revising paragraph (b)(6) to read as follows:

§ 2638.203 Duties of the designated agency ethics official.

* * * * *

(b) * * *

(6) An education program for agency employees concerning all ethics and standards of conduct matters is developed and conducted in accordance with subpart G, Executive Agency Ethics Training Programs, of this part.

* * * * *

Subpart G—Executive Agency Ethics Training Programs

3. Section 2638.702 is amended by revising the introductory texts of paragraphs (a)(2) and (a)(3) as well as paragraphs (a)(3)(ii) and (a)(3)(iii) to read as follows:

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

(a) * * *

(2) Ensure the availability of qualified individuals to meet the annual ethics training requirements of § 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

* * * * *

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. Each training plan shall include:

* * * * *

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be provided by means of written materials under the exception provided at § 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;

(iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented by means of written materials under the exceptions provided at § 2638.704(d)(2)(ii) and (iii) of this subpart;

* * * * *

4. Section 2638.703 is revised to read as follows:

§ 2638.703 Initial agency ethics orientation.

(a) Each new agency employee who enters on duty shall, within 90 days of the date of his or her entrance on duty, be given:

(1) Except as provided in paragraph (b) of this section, a copy of part 2635 of this chapter, Standards of Ethical Conduct for Employees of the Executive Branch, and any supplemental regulation of the concerned agency;

(2) The names, titles, office addresses, and telephone numbers of the Designated Agency Ethics Official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. If the agency provides an ethics training course during official duty time, including annual ethics training provided under § 2638.704, or a nominee or other new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in training.

(b) An agency may meet the requirement of paragraph (a)(1) of this section by:

(1) Furnishing each employee a copy of part 2635 of this chapter for the purposes of review only, provided that copies of the complete text of part 2635 are retained and readily accessible in the employee's immediate office for use by several employees; or

(2) Providing employees with materials that summarize part I of Executive Order 12674, as modified by Executive Order 12731, 3 CFR, 1990 Comp., p. 306, and part 2635 of this chapter. In order to ensure that employees have access to all of the information contained in part I of Executive Order 12674, as modified, and part 2635, an agency using this alternative must ensure that copies of

the complete text of part 2635 are retained and readily accessible in the employees' immediate office area.

5. Section 2638.704 is amended by revising paragraphs (a), (b)(4), (c) and (d) to read as follows:

§ 2638.704 Annual agency ethics training.

(a) *Annual ethics training.* Executive branch agencies must provide each employee identified in paragraph (b) of this section with ethics training every calendar year. This training must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section. Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, employees must be provided a minimum of one hour of official duty time for this training.

(b) * * *

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter or any supplemental regulation or addendum of the concerned agency (agency employees who are excluded from the confidential financial disclosure requirements through the use of an alternative procedure approved by the Office of Government Ethics pursuant to § 2634.905(c) of this chapter must also receive annual ethics training from their agency pursuant to this paragraph);

* * * * *

(c) *Course content.* Agencies are encouraged to vary the emphasis and course content of annual agency ethics training courses from year to year as necessary within the context of their ethics programs. However, each training course must include, as a minimum:

(1) A reminder of the employees' responsibilities under part I of Executive Order 12674, as modified, the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, and any supplemental regulation thereto by the concerned agency;

(2) A reminder of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11; and

(3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employees' ethical responsibilities.

(d) *Course presentation.* The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by telecommunications, computer-based methods or recorded means. A qualified individual, as defined in § 2638.702(a)(2) of this subpart, shall:

(i) Present the training, if the training is presented in person; or

(ii) Prepare the recorded materials or presentation, if the training is presented by telecommunication, computer-based methods or recorded means.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be provided by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For special Government employees who are expected to work fewer than 60 days in a calendar year, the requirement that the employee be provided with one hour of official duty time for annual ethics training is waived; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For these officers, the requirement that the officer be provided with one hour of official duty time for annual ethics training is waived.

[FR Doc. 94–6006 Filed 3–15–94; 8:45 am]

BILLING CODE 6345–01–U–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV93–959–1FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1993–94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 97 producers of South Texas onions under this marketing order, and approximately 38 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote completed August 4, 1993. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule September 28, 1993 (58 FR 50509). That interim final rule added § 959.234, authorizing expenses for the Committee, and provided that interested persons could file comments through October 28, 1993. No comments were filed.

The Committee subsequently met on November 9, 1993, and unanimously recommended increases of $2,500 for personnel expenses and $125,000 for compliance activities in the recently approved 1993–94 budget. The compliance increase will provide for funds to operate road guard stations surrounding the production area. The Committee also unanimously recommended $210,000 in market development activities and $105,600 in production research. These expenditures represent increases over last year's budget of $65,000 for market development and $11,412 for production research. Under this amended budget, expense items for the 1993–94 fiscal period are as follows: $37,472 for personnel, $29,028 for office expenses, $141,000 for compliance activities, $210,000 for market development, and $105,600 for production research.

The initial 1993–94 budget, published on September 28, 1993, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.03 more than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $500,000 in assessment income, which, along with $23,100 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1993, were $346,415, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 11, 1994 (59 FR 1452). That interim final rule amended § 959.234 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through February 10, 1994. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 fiscal period began on August 1, 1993. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Accordingly, the amended interim final rule revising § 959.234 which was

published at 59 FR 1452 on January 11, 1994, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6139 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 985

[FV93–985–2FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. These quantities are established in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127 or Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which begins on June 1, 1994. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately eight spearmint oil handlers subject to regulation under the order and approximately 259 producers of spearmint oil in the regulated production area. Of the 259 producers, 157 producers hold "Class 1" (Scotch) oil allotment base, and 144 producers hold "Class 3" (Native) oil allotment base. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1994–95 marketing year at its October 6, 1993, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 spearmint oil in a vote of 6 in favor and 2 opposed. The members voting in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 spearmint oil in an unanimous vote.

This final rule establishes a salable quantity of 723,326 pounds and an allotment percentage of 41 percent for Scotch oil, and a salable quantity of 897,388 pounds and an allotment percentage of 46 percent for Native oil. This action limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which begins on June 1, 1994. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The salable quantity and allotment percentage for each class of spearmint oil for the 1994–95 marketing year are based upon the Committee's recommendation and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—122,187 pounds. This number is

derived by subtracting the estimated 1993–94 marketing year trade demand of 814,589 pounds from the 1993–94 marketing year total available supply of 936,776 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—830,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 regulated production—707,813 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Scotch oil for the 1994–95 marketing year—1,764,209 pounds.

(E) Computed allotment percentage—40.12 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—41 percent.

(G) The Committee's recommended salable quantity—723,326 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—0 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 914,715 pounds from the 1993–94 marketing year total available supply of 914,715 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—944,513 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 production—944,513 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Native oil—1,950,843 pounds.

(E) Computed allotment percentage—48.42 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity—897,388 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantity of 723,326 pounds and allotment percentage of 41 percent for Class 1 spearmint oil is based on anticipated 1994–95 marketing year supply and trade demand.

The Committee's recommended salable quantity of 897,388 pounds and allotment percentage of 46 percent for Class 3 spearmint oil is less than the Committee's estimated 1994–95 marketing year trade demand of 944,513 pounds and computed allotment percentage of 48.42 percent. The 1994–95 marketing year estimated trade demand represents an average of the trade demand over the last 13 years. During the past several years, sales of Native spearmint oil have fluctuated. The Committee reduced the salable quantity and allotment percentage to allow for the possibility of below average sales during the 1994–95 marketing year. This action was taken to prevent wide fluctuations in salable quantities and allotment percentages established in subsequent years. Wide fluctuations in yearly established salable quantities and allotment percentages could make it difficult for producers to plan farming operations.

The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity. Alternatively, the Committee may offer to sell spearmint oil from the Class 1 and Class 3 reserve pools to meet any increased market demand. The estimated reserve pools for Class 1 and Class 3 spearmint oil currently stand at 950,000 pounds and 1,400,000 pounds, respectively. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1993–94 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. This final rule will provide spearmint oil producers with information on the amount of oil which should be produced for next season.

A proposed rule on this issue was published in the **Federal Register** on December 21, 1993 [58 FR 67378]. That proposed rule provided a 30-day comment period which ended January 20, 1994. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the Committee's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 985.213 is added to read as follows: Section 985.213 Salable quantities and allotment percentages—1994–95 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1994, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 723,326 pounds and an allotment percentage of 41 percent.

(b) "Class 3" (Native) oil—a salable quantity of 897,388 pounds and an allotment percentage of 46 percent.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6138 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[Docket No. FV93-989-4FIR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenditures and established an assessment rate under Marketing Order No. 989 for the 1993–94 fiscal period. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1993–94 crop year, from August 1, 1993, through July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of California raisins under this marketing order, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California raisin producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met October 5, 1993, and unanimously recommended a 1993–94 budget of $579,060, which is $11,940 less than the previous year. Increases of $9,200 for executive salaries, $1,100 for fieldman salaries, $2,500 for payroll taxes, $200 for group retirement, $4,000 for group medical insurance, $1,900 for rent, $100 for audit fees, $800 for objective measurement survey, $9,760 in reserve for contingencies, and the addition of a $2,500 category for Valley weather service will be offset by decreases of $5,000 for office salaries, $2,000 for general insurance, $2,000 for Committee meeting expenses, and $30,000 for research and study for which no funding was recommended this year, and an increase of $5,000 in the amount of income paid to the Committee by the California Raisin Advisory Board (Board).

The Board is the administrative agency for the State marketing order under which the California raisin industry conducts its marketing promotion and paid advertising. Some of the Committee's employees also perform services for the Board. Pursuant to an agreement between the Committee and Board, the Board reimburses the Committee for the services Committee employees perform for the Board.

Major expense items include $230,000 for executive salaries, $90,000 for office salaries, $42,600 for fieldmen salaries, and $75,000 for Committee travel. Also, $55,810 is budgeted for contingencies.

The Committee also unanimously recommended an assessment rate of $1.80 per ton, which is $0.20 less than last year. This rate, when applied to anticipated acquisitions of 321,700 tons, will yield $579,060 in assessment income, which will be adequate to cover anticipated expenses. Any unexpended funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule was published in the **Federal Register** on December 6, 1993 (58 FR 64107). That interim final rule added § 989.344 which authorized expenses and established the assessment rate for the Committee. That rule provided that interested persons could file comments through January 5, 1994. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year began on August 1, 1993. The marketing order requires that the rate of assessment for the crop year apply to assessable raisins handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

Accordingly, the interim rule adding § 989.344 which was published at 58 FR 64107 on December 6, 1993, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6137 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1250

[Docket No. PY–93–004]

RIN 0581–AA87

Amendment to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Egg Research and Promotion Rules and Regulations by changing the State composition of the six geographic areas and reapportioning the membership on the American Egg Board. The Board approved these changes and requested that the Secretary amend the Rules and Regulations accordingly. These adjustments are based on changing geographic trends in egg production.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

Background

The Egg Research and Promotion Order (7 CFR 1250.301–1250.363) established pursuant to the Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701 *et seq.*), provides in § 1250.328(d) that any changes in representation on the American Egg Board be determined by the percentage of total U.S. egg production in each of the six geographic areas. The Board is authorized 18 members, and representation in each of the 6 areas is based on egg production in the area. The Order further provides in § 1250.328(e) that the Board or designated person or agency shall conduct periodic reviews of production by geographic area at any time, not to exceed 5 years, to assure that representation on the Board, insofar as is practicable, is fair and equal.

During the development process of the Order in 1975, the 48 contiguous States of the United States and the District of Columbia were divided into 6 geographic areas for purposes of determining proportionate representation on the Board. The areas corresponded with those used by the National Agricultural Statistics Service, USDA, for some egg industry statistics.

The Order provides in § 1250.328(d) that Board membership in each area be determined by calculating the percentage of U.S. egg production in the area, multiplying that total by 18 (total Board membership), and rounding to the nearest whole number.

In 1984, a review of 1983 production statistics revealed that production trends had changed, and area membership was adjusted accordingly.

For the 1993 review, the American Egg Board's 1992 production data were reconciled with 1992 data from USDA to verify the shifts in production trends. The review showed that the West North Central and Western areas are no longer proportionately represented on the Board. However, due to rounding off, using the formula in the Order resulted in 19 members, exceeding the Order's 18-member limit.

Because of this incongruity, the Board submitted a recommendation to the Secretary in accordance with§ 1250.328(e) of the Order to redistrict the six areas and reapportion the members and alternates. The

following changes are made accordingly:

Area	State composition		Membership	
	Current	Revisions	Current	Revisions
I—North Atlantic	Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, District of Columbia.	Add Virginia, West Virginia	3	None.
II—South Atlantic	Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia.	Add Alabama, Kentucky, Tennessee; Lose Virginia, West Virginia.	3	None.
III—East North Central	Illinois, Indiana, Michigan, Ohio, Wisconsin	Lose Illinois, Wisconsin	3	None.
IV—West North Central	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.	Add Illinois, Wisconsin; Lose Kansas, Missouri.	2	Increase to 3.
V—South Central	Alabama, Arkansas, Kentucky, Lousiana, Mississippi, Oklahoma, Tennessee, Texas.	Add Colorado, Kansas, Missouri, New Mexico; Lose Alabama, Kentucky, Tennessee.	3	None.
VI—Western	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.	Lose Colorado, New Mexico	4	Decrease to 3.

The change in membership is based on production in the newly formed areas and application of the formula in § 1250.328(d) of the Order, as follows:

Redistricted area	Reported cases	Percent of total production	Percent of total production times 18	Revised board membership[1]
I—North Atlantic	39,052,000	17.21	3.09	3
II—South Atlantic	38,118,000	16.79	3.02	3
III—East North Central	41,201,000	18.15	3.27	3
IV—West North Central	36,508,000	16.06	2.90	3
V—South Central	36,083,000	15.89	2.86	3
VI—Western	36,011,000	15.87	2.86	3
Total U.S. production	226,973,000	99.99	18.00	18

[1] Based on rounding to the nearest whole number [§ 1250.328(d)].

Comments

A proposed rule was published in the **Federal Register** (58 FR 65939) on December 17, 1993. Comments on the proposed rule were solicited from interested parties until January 18, 1994. No comments were received.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7, CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. Section 1250.510 is revised to read as follows:

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; Area 2 (South Atlantic States)—Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee; Area 3 (East North Central States)—Indiana, Michigan, and Ohio; Area 4 (West North Central States)—Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin; Area 5 (South Central States)—Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas; Area 6 (Western States)—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, beginning with the 1995–96 term, are: Area 1—3, Area 2—3, Area 3—3, Area 4—3, Area 5—3, Area 6—3. Each member will have an alternate appointed from the same area.

Dated: March 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6144 Filed 3–15–94; 8:45 am]

BILLING CODE 3410-02-P

Farmers Home Administration

7 CFR Part 1942

RIN 0575–AB68

Community Facility Loans and Grants

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations that are utilized by the Rural Development Administration (RDA) in

administering Community Facility Loans and Grants. This action is necessary to implement provisions of the Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the fiscal year ending September 30, 1994 (the Act). The Act provides up to $15 million in RDA grant funds for water and waste disposal (WWD) facilities in rural Alaskan villages. The WWD grant funds authorized by the Act are to be made available to remedy the dire sanitation conditions that exist in rural Alaskan villages.

DATES: This final rule is effective on March 16, 1994. Written comments must be received on or before May 16, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations and Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th St. and Independence Ave., SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

We are issuing this rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information complied by the Department, we have determined that this rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR 1942–A. The assigned OMB control number is 0575–0015. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are merely following the specific directions of the Act and no discretion is left with the agency as to how to use the funds appropriated for this purpose.

The Act provides up to $15,000,000 of the amount appropriated for WWD grants for projects to remedy the dire sanitation conditions that exist in rural Alaskan villages. RDA grants are directed to Alaskan villages that have a median household income that does not exceed 110 percent of the statewide nonmetropolitan median household income. The statewide nonmetropolitan median household income for Alaska is $39,804. The Act further provides that the grants are limited to 50 percent of the development cost of a project. The other 50 percent must be from a State or local contribution. The RDA grant funds can be used by rural Alaskan villages to construct or improve water or waste disposal facilities to serve the residents of these villages. New or improved water or waste disposal systems would solve a major health problem that has burdened the rural parts of Alaska, inhabited primarily Alaskan Natives. The lack of clean, running water and sanitary facilities have led to severe health problems for many of the villages residents.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.386 is added to read as follows:

§ 1942.386 Rural Alaskan villages.

(a) *General.*

(1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions.* (1) *Dire sanitation condition.* For the purpose of this section, a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease have been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural Alaskan village.* A rural Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility.* (1) The applicant must be a rural Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under subpart A of this part.

(d) *Grant amount.* Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds.* Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural Alaskan villages.

(f) *Construction.* (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with subpart A of this part for part of the local contribution, all of the requirements of that subpart apply

Dated: February 24, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-6024 Filed 3-15-94; 8:45 am]

BILLING CODE 3410-07-U

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-006F-TA]

RIN 0583-AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Confirmation of interim rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is confirming interim regulations amending its final nutrition labeling regulations. FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the maximum extent possible, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were unclear, contained technical, unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. Those portions included provisions related to: (a) Providing nutrition labeling by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches; (b) the saturated fat criterion for the "lean" definition; and (c) the use of nutrient content claims on infant and toddler foods.

After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS believed that its final regulations were inconsistent with FDA's regulations in certain areas where uniformity should exist. FSIS also determined that several provisions were inadvertently omitted in its final regulations.

Accordingly, FSIS issued an interim final rule in the **Federal Register** on September 10, 1993. The interim final rule set forth technical amendments (58 FR 47624) to the FSIS nutrition labeling regulations to provide more well-defined regulations that reflect accuracy and clarity regarding the nutrition labeling of meat and poultry products. The amendments consisted of clarifications that are essential to understanding and complying with published provisions, changes that are necessary to avoid technical, unintentional consequences in specific provisions, and additional provisions that were inadvertently omitted. FSIS announced in the interim final rule that there would be a 30-day comment period, and that the Agency would carefully consider all comments received before finalizing the interim rule.

Interim Final Rule

In its interim final rule, FSIS allowed for nutrition labeling to be provided by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches. Accordingly, FSIS added provisions at 9 CFR 317.400(d) and 381.500(d) to permit manufacturers to provide an address or telephone number on the package for consumers to write or call for nutrition information, provided that the labels for these products bear no nutrition claims or nutrition information. These provisions do not affect the exemption for individually wrapped packages of less than ½ ounce net weight.

Also, in its interim final rule, FSIS added a small business exemption provision that was inadvertently omitted from its final nutrition labeling regulations. The provision at 9 CFR 317.400(a) and 381.500(a) states that the calculation of poundage shall be based on the most recent 2-year average of business activity.

FSIS defined "insignificant amount" in the final nutrition labeling regulations as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it is an amount less than 1 gram. In its interim final rule, FSIS revised the definition of "insignificant amount" at 9 CFR 317.309(g)(1) and 381.409(g)(1) to include sugars as an amount less than 1 gram. FSIS determined that sugars is another nutrient with a caloric contribution that is consistent with that for total carbohydrate, dietary fiber, and protein. Therefore, when used in reference to the simplified format, an insignificant amount of sugars is that amount which is less than 1 gram.

FSIS made reference in the final nutrition labeling regulations to a retailer providing nutrition information on the label of single-ingredient, raw products without referring to a manufacturer. In the preamble to its final regulations, FSIS made no distinction between products packaged in official establishments and those packaged at retail level. However, to clarify any misunderstanding regarding these provisions, in its interim final rule, FSIS modified 9 CFR 317.345(a)(1)

and 381.445(a)(1) to include reference to a manufacturer.

In its interim final rule, FSIS also amended table 1 of 9 CFR 317.312(b) and 381.412(b) to include product categories for plain meats and meat sticks and plain poultry and poultry sticks with reference amounts of "55 g." These product categories were inadvertently omitted from the final rule.

Also, for purposes of clarification and to more fully harmonize with FDA requirements, FSIS, in its interim final rule, amended table 2 at 9 CFR 317.312(b) and 381.412(b) by moving the lasagna examples to the category of mixed dishes measurable with a cup and also adding meat and poultry filled pasta as further examples of products in this category. FSIS also revised footnote 4 to table 2 at 9 CFR 317.312(b) and 381.412(b) by adding the following words at the end: "except for products in which both the solids and liquids are customarily consumed."

In its interim final rule, FSIS modified the "lean" definition to reflect the change in the saturated fat definition. The final regulations defined saturated fat as the sum of all fatty acids containing no double bonds. Inclusion of all fatty acids with no double bonds in the definition of saturated fat can inflate the level of saturated fat by approximately 15 percent. To offset this unintended effect, FSIS increased the saturated fat criterion for the "lean" definition from less than 4 grams to 4.5 or less grams.

In addition, in its interim final rule, FSIS clarified the provisions concerning nutrient content claims on foods for infants and children under 2 years of age by removing the language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age" from 9 CFR 317.313(a) and 381.413(a). FDS believes that the complete prohibition of nutrient content claims on foods for infants and children under 2 years of age may have been overly broad. FSIS agrees with this position.

It was FSIS's intent to allow percentage labeling of vitamins and minerals on foods intended for use by infants and children less than 2 years of age, as provided for by FDA at 21 CFR 101.13(q)(3). Therefore, in its interim final rule, FSIS amended 9 CFR 317.313(q)(3) and 381.413(q)(3) to allow percentage labeling of vitamin and minerals on such foods.

In cross-referencing FDA's final regulations, FSIS inadvertently omitted paragraphs (e) and (f) as contained in 21 CFR 101.66, Label statements relating to usefulness in reducing or maintaining body weight. Generally, for meat and poultry products, "sugar free" claims are not particularly relevant. However, to harmonize with FDA regulations, FSIS, in its interim final rule, added provisions regarding the labeling of products as "sugar free" and "no added sugar," and the use of label terms suggesting low calorie or reduced calorie foods. FSIS amended 9 CFR 317.380 and 281.480 to incorporate the provisions of 21 CFR 101.66(e) and (f).

Discussion of Comments

FSIS received no comments in response to the interim final rule. Therefore, FSIS is adopting the interim final rule as published in the **Federal Register** on September 10, 1993 (58 FR 47624).

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble:

§ 317.309, 317.312, 317.313, 317.345, 317.362, 317.380, 317.400 [Amended]

1. In part 317, the amendments to § 317.309(g)(1); Table 1 and 2 in § 317.312(b); § 317.313 (a) and (q)(3); § 317.345(a)(1); § 317.362(c)(1); § 317.380; and § 317.400 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

§ 381.409, 381.412, 381.413, 381.445, 381.426, 381.480, 381.500 [Amended]

2. In part 381, the amendments to § 381.409(g)(1); Tables 1 and 2 in § 381.412(b); § 381.413 (a) and (q)(3); § 381.445(a)(1); § 381.462(c)(1); § 381.480; and § 381.500 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6013 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–163–AD; Amendment 39–8857; AD 94–06–10]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8 series airplanes, that currently requires the incorporation of specific maximum brake wear limits into the maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by that AD are intended to prevent loss of braking effectiveness during a high energy RTO. This amendment requires that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

DATES: Effective April 15, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–09–10, Amendment 39–8576 (58 FR 29347, May 20, 1993), which is applicable to all McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on December 22, 1993 (58 FR 67723). That action proposed to require that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 337 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry were affected by AD 93–09–10, and would continue to be affected by this supersedure of that AD. It takes approximately 80 work hours per airplane to accomplish the actions currently required by AD 93–09–10, and the average labor rate is $55 per work hour. (There are 8 brakes per airplane.) The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is approximately $5,600 per airplane. Based on these figures, the current cost impact of the AD 93–09–10 on U.S. operators is estimated to be $2,220,000, or $10,000 per airplane.

The total cost figure indicated above is presented as if no operator has yet accomplished the requirements of AD 93–09–10 (or this supersedure of that AD). However, because AD 93–09–10 was effective on June 21, 1993, and operators were given 180 days to comply with it, the FAA assumes that the majority of affected operators have already accomplished the requirements of that AD.

The only foreseeable additional costs that may be imposed by this supersedure of AD 93–09–10 would be the cost of reidentifying (permanently marking) any modified brakes that were previously marked by a color code marking. The costs associated with that procedure are expected to be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8576 (58 FR 29347, May 20, 1993), and by adding a new airworthiness directive (AD), amendment 39–8857, to read as follows:

94–06–10 McDonnell Douglas: Amendment 39–8857. Docket 93–NM–163–AD. Supersedes AD 93–09–10, Amendment 39–8576.

Applicability: All Model DC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after June 21, 1993 (the effective date of AD 93–09–10, Amendment 39–8576), inspect the main landing gear brakes having the part numbers indicated below to determine wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake that is within this limit.

Douglas brake part No.	Bendix part No.	Maximum wear limit (inches)
5610206–5001	150787–1	0.7
	150787–2	0.7
5713612–5001	151882–1	0.7
	151882–2	0.7
5773335–5001	154252–1	0.5
5773335–5501	154252–2	0.5
5759262–5001	2601412–1	0.5
	*2601412–2	0.75

*Brakes having this part number include part number 2601412–1 brakes that have been modified and permanently marked in accordance with McDonnell Douglas Service Bulletin 32–181, Revision 2, dated August 25, 1993.

(b) Within 180 days after June 21, 1993, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on April 15, 1994.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6069 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–AWP–21]

Modification of Class D Airspace; Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Mojave, CA. This Class D airspace reconfiguration accommodates the safe and efficient handling of various types of aircraft operating at Mojave Airport, CA, and provides a corridor of airspace for the north-south transit of visual flight rules (VFR) aircraft between the Mojave Class D airspace and Restricted Area R–2515.

EFFECTIVE DATE: 0901 U.T.C., July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530,

Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace at Mojave, California. The FAA proposed that the vertical limits of the airspace be raised from 4,300 feet mean sea level (MSL) to 4,800 feet MSL and the lateral limits be increased from a 3-mile radius to a 4.3-mile radius. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the Department of the Air Force commented that a ½-mile corridor should be established between R–2515 and the Mojave Class D airspace to allow for transit of VFR aircraft north and southbound along U.S. Highway 58. These aircraft would not be required to communicate with the Mojave tower. Further study revealed that, by letter of agreement between the Air Force and Mojave Tower, the ½ mile corridor has existed in practice and serves the VFR pilot well. Therefore, the FAA is further modifying the Mojave Class D airspace by excluding airspace ½-mile wide between the Class D airspace and R–2515. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; June 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class D airspace at Mojave, California, to provide controlled airspace from the surface up to and including 4,800 feet MSL within a 4.3-mile radius of the Mojave, CA Airport, excluding that airspace east of a line ½-mile west of and parallel to the R–2515 boundary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

AWP CA D Mojave, California [Revised]

Mojave Airport, CA
(lat. 35°03'30" N, long. 118°90'03" W)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 4.3-mile radius of Mojave Airport, excluding that airspace east of a line ½-mile west of and parallel to Restricted Area R–2515. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 14, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–6101 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

30 CFR Part 250

RIN 1010–AB66

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on September 24, 1993 (58 FR 49924). The regulations related to the new Outer Continental Shelf (OCS) reporting forms used for collecting information related to oil and gas and sulphur drilling and production in the OCS.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Jo Ann Lauterbach, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published by MMS on August 25, 1993 (58 FR 44762), which addressed data and information to be made available to the public. This rule ensured that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate (MER); MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report, were made available for public inspection and clearly identified in the regulations.

Another final rule was published by MMS on September 24, 1993 (58 FR 49924), which amended the regulations governing the OCS reporting forms to reflect new form numbers and a change in the reporting interval for well tests of oil-well completions. This rule also amended § 250.18(d) which was published on August 25, 1993, to include the items identified on the new OCS reporting forms that would not be available for public inspection. However, the amendments to § 250.18(d) made on September 24, 1993, did not agree with the changes made in the August 25, 1993, final rule. Therefore, this rule corrects § 250.18(d) so there is no confusion as to the time periods involved or the items identified on the forms that are not to be released to the public.

Need for Correction

As published, the final regulations at § 250.18(d) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.18, paragraph (d) is revised to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified on Forms MMS–123 through MMS–128 are protected as follows:

(1) On Form MMS–123, Application for Permit to Drill, the following items of data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier:

(i) Item 17, Well Location at Total Depth (Estimated);

(ii) Item 24, Total Depth (Proposed), MD and TVD;

(iii) Item 25, Attachments.

(2) On Form MMS–124, Sundry Notices and Reports on Wells, Item 36, Describe Proposed or Completed Operations, shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier.

(3) On Form MMS–125, Well Summary Report, the following data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that Item 78, Summary of Porous Zones, and Item 85, Geologic Markers, shall not be released when the well goes on production unless the period of time specified in paragraph (b) of this section has expired.

(i) Item 17, Well Location at Total Depth (Surveyed);

(ii) Item 24, Total Depth (Surveyed), MD and TVD;

(iii) Item 34, Well Status/Type Code;

(iv) Item 37, Well Location at the Producing Zone (Surveyed);

(v) Item 46, Top (MD);

(vi) Item 47, Bottom (MD);

(vii) Item 48, Top (TVD);

(viii) Item 49, Bottom (TVD);

(ix) Item 50, Reservoir Name;

(x) Item 51, Name(s) of Producing Formation(s) This Completion;

(xi) Item 52, Hole Size;

(xii) Item 53, Casing Size;

(xiii) Item 54, Casing Weight;

(xiv) Item 55, Grade;

(xv) Item 56, Setting Depth (MD);

(xvi) Item 57, Cement Type;

(xvii) Item 58, Quantity of Cement (FT^3);

(xviii) Item 59, Hole Size;

(xix) Item 60, Tubing Size;

(xx) Item 61, Tubing Weight;

(xxi) Item 62, Grade;

(xxii) Item 63, Setting Depth (MD);

(xxiii) Item 64, Packer Setting Depth (MD);

(xxiv) Item 65, Hole Size;

(xxv) Item 66, Liner Size;

(xxvi) Item 67, Liner Wt.;

(xxvii) Item 68, Grade;

(xxviii) Item 69, Top (MD);

(xxix) Item 70, Bottom (MD);

(xxx) Item 71, Cement Type;

(xxxi) Item 72, Cement Quantity (Ft^3);

(xxxii) Item 73, Top (MD);

(xxxiii) Item 74, Bottom (MD);

(xxxiv) Item 75, Type of Material;

(xxxv) Item 76, Material Quantity;

(xxxvi) Item 77, List of Electric and Other Logs Runs, Directional Surveys, Velocity Surveys, and Core Analysis;

(xxxvii) Item 78, Summary of Porous Zones: Show all zones containing hydrocarbons; all cored intervals; and attach all drill stem and well potential tests;

(xxxviii) Item 79, Formation;

(xxxix) Item 80, Top MD;

(xl) Item 81, Top TVD;

(xli) Item 82, Bottom MD;

(xlii) Item 83, Bottom TVD;

(xliii) Item 84, Description, Contents, Etc.;

(xliv) Item 85, Geologic Markers;

(xlv) Item 86, Top MD;

(xlvi) Item 87, Top TVD.

(4) On Form MMS–126, Well Potential Test Report and Request for Maximum Production Rate (MPR), Item 101, Static Bottomhole Pressure, is not available to the public until 2 years after submittal. All other data and information on Form MMS–126 are available to the public upon commencement of production.

(5) On Form MMS–127, Request for Reservoir Maximum Efficient Rate (MER), the following data and information are not available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

(i) Item 124, Upper ϕ Cut Off;

(ii) Item 125, Lower ϕ Cut Off;

(iii) Item 126, Upper k Cut Off;

(iv) Item 127, Lower k Cut Off;

(v) Item 128, G/O Interface;

(vi) Item 129, W/O Interface;

(vii) Item 130, G/W Interface;

(viii) Item 131, A_g;

(ix) Item 132, A_o;

(x) Item 133, V_o;

(xi) Item 134, V_g;

(xii) Item 135, H_o;

(xiii) Item 136, h_o;

(xiv) Item 137, H_g;

(xv) Item 138, H_g;

(xvi) Item 139, ϕ_c;

(xvii) Item 140, S_w;

(xviii) Item 141, S_g;

(xix) Item 142, S_o;

(xx) Item 143, B_{oi};

(xxi) Item 144, B_{gi};

(xxii) Item 145, N;

(xxiii) Item 146, G;

(xxiv) Item 147, K_h;

(xxv) Item 148, K_v;

(xxvi) Item 149, Avg Well Depth;

(xxvii) Item 150, R_{io};

(xxviii) Item 151, R_{ig};

(xxix) Item 152, $R_{io}N$;

(xxx) Item 153, $R_{ig}G$;

(xxxi) Item 154, $N_p(2)/N$;

(xxxii) Item 155, $G_p(2)/G$;

(xxxiii) Item 156, Degrees API @ 60°F;

(xxxiv) Item 157, SG;

(xxxv) Item 158, R_{si};

(xxxvi) Item 159, μ_{oi};

(xxxvii) Item 160, μ_o;

(xxxviii) Item 161, T_{avg};

(xxxix) Item 162, P_i;

(xl) Item 163, P_iDATE;

(xli) Item 164, P_{ws};

(xlii) Item 165, P_{ws}DATE;

(xliii) Item 166; P_b;

(xliv) Item 167; P_d;

(xlv) Item 168, Datum Depth.

(6) All data and information on Form MMS–128 are available for public inspection.

* * * * *

Dated: February 1, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–6041 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–MR–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93–13A]

Procedures for Copyright Restoration of Certain Motion Pictures and Their Contents in Accordance With the North American Free Trade Agreement

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement (NAFTA) and the statute implementing it. The NAFTA Implementation Act authorizes the Copyright Office to establish procedures whereby potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, will have copyright protection restored effective January 1, 1995.

DATES: These interim regulations are effective March 16, 1994. Comments should be in writing and received on or before May 16, 1994.

ADDRESSES: If sent by mail, fifteen copies of written comments should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, fifteen copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue SE., Washington, DC 20024. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the Copyright Office notified the public of the provisions in NAFTA with regard to the restoration of copyright protection for certain works, 59 FR 1408 (1994). To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed in Mexico or Canada and entered the public domain in the United States because of first publication anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

These interim regulations set out the procedures that potential copyright owners must follow if they wish to have copyright protection for their works restored in the United States. To restore copyright, potential copyright owners must file Statements of Intent with the Copyright Office on or before December 31, 1994, and these Statements must contain the information set out in these regulations. The regulations also detail the procedures the Copyright Office will use to process Statements of Intent and create a record for the public.

I. Background

The North American Free Trade Agreement entered into force on January 1, 1994. The NAFTA Agreement and the NAFTA Implementation Act (Pub. L. 103–182) provide for the restoration of copyright for certain works that are currently in the public domain in the United States. New section 104 sets out the conditions for restoring protection:

Classes of works eligible. Two types of works are eligible for copyright restoration: (1) Motion pictures; and (2) works included in motion pictures (such as an underlying work—a novel or play on which a motion picture was based—or the original screenplay or original musical score of a motion picture).

Dates of publication and public domain status. To be eligible for restoration, the motion picture, or the work included in a motion picture, must meet two criteria: (1) The work must have been first published on or after January 1, 1978, and before March 1, 1989; and (2) the work must have fallen into the public domain in the United States because, at the time of its first publication, it failed to meet the requirements of the U.S. copyright law for publication with notice of copyright (17 U.S.C. 401, 402, 403, 405) as they existed at that time.

Place of first fixation or publication. Assuming they meet the other criteria, the following two kinds of works are eligible for copyright restoration: (1) Published works that were first fixed in Canada or Mexico, regardless of where they were first published; and (2) works first published in Mexico or Canada, regardless of where they were first fixed. A motion picture, or a work included in a motion picture, meeting these requirements is entitled to receive copyright protection under title 17 for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with the required notice. 17 U.S.C. 104A(a)(1993).

Potential copyright owners of qualifying works must file a Statement of Intent with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force), and December 31, 1994, to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office will publish in the **Federal Register** a list of the works which are determined to be properly qualified for protection and for which complete Statements of Intent have been filed. The restoration of copyright protection for eligible works will be effective on January 1, 1995.

The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of works for which Statements of Intent have been received.

The copyright restoration provisions apply to a "motion picture" or any work included in a motion picture. Section 101 of title 17 defines motion pictures to include audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Thus, for example, the restoration provisions apply to feature films, short films, documentaries, silent films, television films, television series, and television programs, as well as works contained in these "motion pictures."

To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed [1] in Mexico or Canada and entered the public domain in the United States because of first publication [2] anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

Although the Copyright Office has authority to charge a fee for the processing of NAFTA Statements of Intent under 17 U.S.C. 708, it has decided not to do so at this time. However, it reserves the right to charge a fee in the future if the Office's duties are broadened under the NAFTA or a similar agreement.

The filing of an effective Statement of Intent will not give any of the legal benefits or presumptions that a voluntary copyright registration now provides under U.S. copyright law. The Statement of Intent is submitted only for the purposes of the NAFTA copyright restoration provisions. Any work for which copyright is restored may be registered on and after January 1, 1995, in accordance with title 17, upon the submission of the proper copyright application, filing fee, and an appropriate deposit of the work. The Copyright Office will not accept applications for copyright registration for these works before January 1, 1995; only Statements of Intent may be filed before then.

After January 1, 1995, the Copyright Office encourages potential copyright owners to make a voluntary copyright registration to obtain the legal and commercial advantages made available by registration. These include certain evidentiary benefits; availability of statutory damages; and the creation of a complete registration record in the Copyright Office's online database.

[1] See 17 U.S.C. 101. For example, a "fixed" motion picture would be completed and embodied in a copy, such as on film stock or videotape. Also see the definitions provided in these interim regulations.

[2] See 17 U.S.C. 101. The place of first publication would be the place where copies were first sold, leased, loaned or offered for sale, by for example, the distribution of videotape copies or film prints. Also, see the definitions provided in these interim regulations.

Also, see Article 3(4) of the Berne Convention for the Protection of Literary and Artistic Works which permits simultaneous publication, that is, within 30 days of its first publication if published in two or more countries. For example, if a motion picture was first published (between January 1, 1978 and March 1, 1989) within 30 days in two countries, and one of these countries is Mexico or Canada, it would be eligible for the NAFTA copyright restoration.

II. Explanation of Interim Regulations

Procedures for Filing an Effective Statement of Intent

Potential copyright owners or their agents must file Statements of Intent with the Copyright Office on or before December 31, 1994, in order for a Statement to be effective. No fee is required. The Statement of Intent must be in English and should be typed or clearly printed by hand on 8½-inch by 11-inch white paper. To be complete, a Statement of Intent must contain all of the information required in items 1 through 6 below, including the entire "certification statement" and the signature of the potential copyright owner or authorized agent.

A complete Statement should clearly indicate at the top of the first page that the potential copyright owner is submitting: A Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement (NAFTA). All statements must be mailed to the Copyright Office at: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

All of the information required in items 1 through 6 below must be contained in a Statement of Intent. Otherwise the Copyright Office will correspond with the party submitting the Statement to correct omissions. Should that party continue to fail to include any of the required items (1 through 6), copyright restoration cannot be effected for that particular work. In addition to the required information, the Office encourages the potential copyright owner to provide other "optional" information that should be useful in providing information to the public about any work for which copyright is restored.

The required and optional information for a Statement of Intent is:

(1) *Title* (Required Information)

The title of the work or works for which copyright restoration is sought. If multiple works are listed in a single Statement of Intent, each individual work must be clearly and separately identified in items 1 through 6 of the Statement. For series and episodes, these titles must be clearly identified by a title or number.

Explanation of item #1: Only motion pictures and their contents (as defined in 17 U.S.C. 104A and 101) are eligible for copyright restoration. Potential copyright owners can submit the titles of any number of works for which they are seeking restoration on a single Statement of Intent. Assuming that the exploitation of the contents in a motion picture was legally authorized at the time the motion picture was made, submission of the title of the motion picture will suffice for the restoration of copyright protection for the works included in it.

Optional information for item #1 includes alternative titles (for example, the American release title of a motion picture if different from the foreign title); the original producer and/or director of the motion picture; and the format or physical description of the work as first published (for example, running time, number of reels, and whether the work is on film, videotape, videodisc, or another medium). This descriptive material will help identify similarly titled films or rereleases.

(2) *Nation of First Fixation* (Required Information)

Explanation of item #2: To be eligible for copyright restoration a work must have been first fixed in Mexico or Canada, or, if first fixed in any other nation, it must have been first published in Mexico or Canada. For example, a work may be eligible for restoration if it was first fixed before 1978 in the United States but later published in Mexico or Canada between January 1, 1978, and March 1, 1989.

Optional information for item #2 would include the year date of first fixation.

(3) *Nation of First Publication* (Required Information)

Explanation of item #3: To be eligible for copyright restoration the work must have been first published in Mexico or Canada if it was first fixed in a nation other than Mexico or Canada. If a work remains unpublished in 1994, the NAFTA copyright restoration provisions are not applicable because the work is already protected under the copyright law of the United States regardless of the nationality or domicile of its author. The duration of unpublished works is governed by 17 U.S.C. 302 and 303.

(4) *Date of First Publication* (Required Information)

Explanation of item #4: To be eligible for copyright restoration a work must have been first published on or after January 1, 1978, and before March 1, 1989, and must have entered the public domain in the United States for failure to comply with the copyright notice

requirements of the U.S. Copyright Code. For example, the date of first publication would be the date of a film's release, or the date of its first offering for rental or sale.

(5) *Name and Address* (Required Information)

The name and mailing address of the potential copyright owner of work, and a telephone and telefax number, if available.

Explanation of item #5: The name and mailing address (the telephone and telefax numbers, if available) of the potential copyright owner will be used to create a readily available public record at the Library of Congress. This information will serve to identify the copyright owner of works for which copyright has been restored, to provide notice to the public that these works will have copyright protection for the remainder of their term, and to facilitate licensing and other uses of these works by the general public.

Optional information for item #5 would include the name of the original copyright owner of the work, if it is different from the potential copyright owner; and for works contained in motion pictures, the potential owner or owners of those works, if different from the potential copyright owner submitting a Statement of Intent. Separate Statements of Intent may be submitted by the potential copyright owner(s) of the underlying works, if different from the owner of the motion picture.

(6) *Certification Statement and Signature* (Required Information)

The following dated certification statement must be included in its entirety along with the signature of the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Explanation of item #6: The entire certification statement must be reproduced on each Statement of Intent to attest that the person signing the statement understands the copyright restoration provisions and the consequences of false statements of material facts. A complete Statement of Intent must be signed and dated by the potential copyright owner or an authorized agent.

III. Sample Statement of Intent

As an Appendix, the Copyright Office provides a sample Statement of Intent which may be used by potential copyright owners or their authorized agents. This Appendix will not appear in the Code of Federal Regulations. The sample Statement includes both the required information that must be provided for the Statement of Intent to be effective and the additional optional information which is not required. If provided, the optional information, clearly identified in this sample, will greatly enhance the Copyright Office records. The Office encourages potential copyright owners to use this suggested format for their submissions to ensure that all necessary information is provided and to avoid correspondence.

IV. Copyright Office Procedures for Handling Statements of Intent

A timely Statement of Intent will be reviewed by the Copyright Office for the required information listed in items 1 through 6. If the Statement does not give the required information, the Copyright Office will ask the potential copyright owner or authorized agent to submit the missing information. Complete and timely Statements of Intent will be entered into the Copyright Office's records and will be readily accessible to the public. The Copyright Office will publish a list of all the titles of eligible works for which effective Statements of Intent have been made in the **Federal Register** as soon as possible after January 1, 1995, and will make it available to the public after that date. Statements of Intent submitted after December 31, 1994, will not be accepted for inclusion in the Copyright Office's database or for the **Federal Register** notice in 1995. Copyright restoration is automatic and requires no further action by the Copyright Office.

Appendix

Statement of Intent To Restore Copyright Protection in the United States in Accordance With the North American Free Trade Agreement (NAFTA)

1. Title of work(s): _____
(For multiple works complete items 1 through 6 for each separate work.)

1a. Include series and episode title(s)/number(s), if any _____

1b. If this Statement does not cover the entire motion picture, specify the underlying work covered, e.g., screenplay, music, etc.

1c. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title) _____

1d. (Optional) Original producer and/or director _____

1e. (Optional) Format or physical description of work as first published (running time, reels, etc.)_____
Film_____ Videotape_____
Videodisc_____ Other (describe)

2. Nation of first fixation—Mexico ( )
Canada ( ) Other nation (specify):_____

2a. (Optional) Year of first fixation:_____

3. Nation of first publication—Mexico ( )
Canada ( ) Other nation (specify):_____

4. Date of first publication: _____
(month/day/year)

5. Name and mailing address of potential copyright owner of work:
Name: _____
Address: _____
(Street or Post Office Box, City/State, Country)
Telephone_____ Telefax_____

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.
Signature: _____ Date: _____
(Potential copyright owner or authorized agent)

List of Subjects in 37 CFR Part 201

Copyright, Restoration of copyright for certain works in accordance with the North American Free Trade Agreement

Interim Regulations

For the reasons set out in the Preamble, section 37 CFR chapter II is amended in the manner set forth below

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; § 201.31 is also issued under Public Law 103–182, 107 Stat. 2115.

2. A new § 201.31 is added to read as follows:

§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required in 17 U.S.C. 104A(a). On or after January 3, 1995, the Copyright Office will publish in the **Federal Register** a list of works for which

potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) *Forms.* The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) *Requirements for effective Statements of Intent.* (1) The document should be clearly designated as a "Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement".

(2) Statements of Intent must include: (i) The title(s) of the work(s) for which copyright restoration is sought; (ii) nation of first fixation; (iii) nation of first publication; (iv) date of first publication; (v) name and mailing address (and telephone and telefax, if available) of the potential copyright owner of the work; (vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

> I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

(3) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.

(4) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) *Fee.* The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) *Effective date of restoration of copyright protection.* (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

(2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) *Registration of works whose copyright has been restored.* After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

Dated: March 8, 1994.

Barbara Ringer,

Acting Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–6122 Filed 3–15–94; 8:45 am]

BILLING CODE 1410-07-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN18–1–5906 FRL–4830–3]

Approval and Promulgation, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State Implementation Plan (SIP) revision submitted by the State of Minnesota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program). The implementation plan was submitted by the State to satisfy the mandate of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this action; additional information is available at the address indicated.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments can be mailed to William L. MacDowell, Air and Radiation Division, (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency (AE–17J), Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–7548 and Mr. Leo Raudys,

Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 LaFayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, U.S. Environmental Protection Agency (AE–17J), Region 5, Air Enforcement Branch 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, telephone (312) 353–3849.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program), and submit this program as a revision to the federally approved SIP. In addition, the CAA directs the United States Environmental Protection (USEPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a program are set out in section 507 of the CAA. In February 1992, USEPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments," in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The Minnesota Pollution Control Agency (MPCA), on November 9, 1992, submitted a SIP revision to USEPA. To gain full approval, the MPCA's submittal must provide for each of the following program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of the State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

The Minnesota legislation charged the Commissioner of the MPCA to establish a SBAP to provide direct and timely technical assistance to small businesses. The SBAP plan was submitted to the USEPA as a SIP revision on November 9, 1992. Full implementation of the SBAP begins in November 1994. However, elements of the program are being implemented earlier. For example, the Compliance Advisory Council which is established by legislation, and has program oversight responsibilities, held its first meeting in September 1993. An ombudsman was hired in August 1993, and the SBAP has a total of 3 full-time employees currently assisting small businesses. The Minnesota Technical Assistance Program (MnTAP), established in 1984 at the University of Minnesota, while not yet available for air pollution control purposes, will provide non-regulatory assistance and act as an information clearinghouse, on an as needed basis, to help the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to evaluate air pollution control regulations and source control procedures affecting small sources.

Section 507(a) sets forth six requirements [1] that States must meet to have an approvable Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The first requirement in the CAA is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and activities to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The MPCA has met this requirement by providing that the SBAP, develop and prepare information packets which describe in layperson's terms the compliance and technical information relevant to a small business stationary source's obligation under the Act; identify appropriate information dissemination and outreach mechanisms, and help to disseminate technical and compliance information to small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The MPCA has met the requirement by requiring the SBAP to identify and develop needed and appropriate printed resources to provide information on pollution prevention opportunities for specific small business source categories or processes which have proposed standards; and identify appropriate mechanisms to disseminate the above information to small businesses, including news letters, trade associations, Small Business Development Centers, Chambers of Commerce, pollution prevention conference, and cooperative extension. The SBAP has planned workshops scheduled for early 1994, as one of the mechanisms for informing small businesses of the need for pollution prevention and emissions control.

The third requirement is to develop a compliance assistance program, for small business stationary sources, which assists small businesses in determining applicable requirements and in receiving permits in a timely and efficient manner. The MPCA's SBAP plan includes a procedure to refer businesses to appropriate air quality staff for cases of rule identification, understanding, interpretation, permit needs, and permit procedures; and provides a procedure to require the MPCA staff to assist the SBAP with emission control or emission prevention information needed by small businesses

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard The Minnesota SBAP plan is designed to meet this requirement by providing direct access of the small business owner or operator with the SBAP staff and making available information applicable to control technologies and legal rights. The plan includes opportunities for small businesses to attend workshops focused on selected source categories, and will include pre-printed source material and forms to optimize the technical and compliance assistance services provided by the SBAP staff.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act,

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The MPCA SIP meets this requirement by: holding information workshops requiring the SBAP to develop and maintain a list of qualified auditors, based upon criteria established by the SBAP in coordination with MPCA Air Quality Division technical staff and MnTAP.

The sixth requirement is to develop procedures for consideration of requests for a small business stationary source for modification of any work practice or technological method of compliance, or the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The MPCA addresses this requirement by committing the SBAP to develop administrative procedures, by November 15, 1994, to handle requests of this nature. Existing Minnesota statutes require the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses: the establishment of performance standards required in the rule, and exempting small businesses from any or all requirements of the State rule. The USEPA believes this responds to the spirit of the guidance yet any such streamlining of existing rules or development of new rules affecting compliance to avoid unreasonable burden on small businesses will be required to go through the public processes. An adequate opportunity will exist for comment by the public and by USEPA.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The Minnesota legislation: requires the MPCA Commissioner to appoint an ombudsman, specifies the duties of the office, insures independence of action, and details the candidates qualifications. In this case, the Commissioner, MPCA, placed the ombudsman in the Environmental Analysis Office (EAO) of the MPCA. The MPCA SIP states that the ombudsman, hired in August 1993, has authority, under section 8, subdivision (3) of the Small Business Air Quality Compliance Assistance Act, to act independently of the MPCA. The EAO is responsible for implementing the Minnesota Environmental Review Program (MERP). The function of MERP is to avoid and minimize damage to Minnesota's environmental resources caused by public and private development by requiring that proposed actions which have the potential for significant environmental effects undergo special review procedures in addition to any other required approvals and permits. The USEPA believes that the ombudsman has sufficient authority, and is adequately located for technical and program support purposes, to monitor the small business stationary source technical and environmental compliance assistance program.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Minnesota legislation is consistent with these guidelines and satisfies the requirement by establishing the Minnesota Small Business Air Quality Compliance Assistance Advisory Council, referred to in the plan as the Compliance Advisory Council. The requirements for the council are listed in the State legislation of April 29, 1992. The legislature however, increased the membership of the Council by requiring the participation of two additional state agencies: the Director of the Minnesota Office of Waste Management or the Director's designee, and the Commissioner of Department of Trade and Economic Development or the Commissioner's designee. The legislature's action to increase the size of the Council is considered to be within the scope of the CAA and is satisfactory to the USEPA because the CAA requires the size of the CAP to be not less than 7 individuals, specifying the minimum number rather than the maximum.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to USEPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The Minnesota legislation and plan charge the council with carrying out all but the last of these responsibilities. The last of these responsibilities is found in the plan as a responsibility of the SBAP program staff to carry out. Since the SBAP staff will be supervised by the ombudsman, the USEPA believes this is sufficient to satisfy this requirement.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Minnesota has established a mechanism in the SBAP plan for ascertaining the eligibility of a source to receive assistance under the program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The USEPA believes this mechanism, which includes the criteria noted above, corresponds with the Acts' requirements and the Agency's guidelines.

The State of Minnesota has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Minnesota has provided for exclusion from the small business stationary source definition, after consultation with the USEPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, USEPA believes that the State program must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes

III. The USEPA's Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. For each of the three essential elements of the Program: the Small Business Assistance Program, the element is currently operational or the State has submitted a schedule for that element indicating implementation by November 15, 1994. The USEPA is therefore approving this submittal. This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 6 of Executive Order 12866 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request.

Because USEPA considers this action noncontroversial and routine, we are approving it without proposal. The action will become effective on May 16, 1994. However, if the USEPA receives notice April 15, 1994 that someone wishes to submit substantive and critical comments, then USEPA will publish: (1) A document that withdraws this action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, USEPA is approving in final a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Dated: January 14, 1994.

William E. Muno,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(28) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(28) On November 9, 1992, the State of Minnesota submitted the Small Business Stationary Source Technical and Environmental Compliance Assistance plan. This submittal satisfies the requirements of section 507 of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 546, sections 5 through 9 enacted by the Legislature, and signed into Law on April 29, 1992.

* * * * *

[FR Doc. 94–5907 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IN36–1–6182; FRL–4849–3]

Approval and Promulgation of a State Implementation Plan for Photochemical Assessment Monitoring; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements for enhanced ozone monitoring in the Clean Air Act (Act) and regulations promulgated pursuant to the Act. These regulations require the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mark Palermo at (312) 886–6082, before visiting the Region 5 Office.) US Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark Palermo, Regulation Development Section (AR–18J), Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(1) of the Act, as amended in 1990, requires that the USEPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_x), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the 1990 Amendments. In addition, the Act requires that following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, including a revision to each SIP affecting areas classified serious and above for ozone. See also the April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), 57 FR 13498, 13515.

On February 12, 1993, USEPA promulgated regulations providing for the establishment and maintenance of the PAMS program (58 FR 8452). Section 58.40(a) of 40 CFR part 58

requires the State to submit a photochemical assessment monitoring network description, including a schedule for implementation, to the Administrator within 6 months after promulgation, or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within 9 months after promulgation of the final rule or November 12, 1993.

On August 12, 1993 the Lake Michigan Air Directors Consortium submitted a regional PAMS network description, including a schedule for implementation, under the signature of the State Air Directors for the four States of Illinois, Indiana, Michigan and Wisconsin (the States). This submittal is currently being reviewed by the USEPA and is intended to satisfy the requirements of § 58.40(a).

On November 15, 1993 Indiana submitted to the USEPA a revision to the Indiana ozone SIP providing for the establishment and maintenance of the PAMS network and requested its approval. A letter finding the submittal complete was sent to the State on January 19, 1994. The November 15, 1993, Indiana PAMS SIP revision request is intended to meet the requirements of Section 182(c)(1) of the Act and effect compliance with 40 CFR part 58 by implementing the rules for PAMS. The Indiana Department of Environmental Management (IDEM) held a public hearing on the Indiana PAMS SIP revision request on December 14, 1993. IDEM submitted the transcript of the hearing on January 19, 1994.

II. Analysis of State Submittal

The November 15, 1993 Indiana PAMS SIP revision request would incorporate PAMS into the ambient air quality monitoring network of State and Local Ambient Monitoring Stations/ National Ambient Monitoring Stations (SLAMS/NAMS). The State will establish and maintain PAMS as part of the overall ambient air quality monitoring network.

The criteria used to review the Indiana PAMS SIP revision request are derived from section 182 (c)(1) of the Act, 40 CFR part 58 (as promulgated on February 12, 1993 (58 FR 8452)), the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58* (EPA–450/4–78–038, OAQPS, November 1979), the September 2, 1993 memorandum from G.T. Helmes of the U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), entitled *Final Boilerplate Language for the PAMS SIP Submittal*, and the April 16, 1992 General Preamble.

The regional PAMS network submitted by the States on August 12, 1993 is currently being reviewed by USEPA. A joint network description and implementation schedule is permitted and encouraged by 40 CFR 58.40(a)(3) for States where a State's PAMS network requires monitoring stations in different States and/or Regions.

Since network descriptions may change annually, they are not part of the SIP, as recommended by the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR 58*. However, the network description is negotiated and approved during the annual review via the grant process under section 105 of the Act, as required by 40 CFR 58.20(d), 58.25, 58.36 and 58.46.

The November 15, 1993 submittal would incorporate PAMS into the overall ambient air quality monitoring network. It would provide Indiana with the authority to establish and operate the PAMS sites, secure funds for PAMS and provide the USEPA with authority to enforce the implementation of PAMS (under the section 105 grant process), since their implementation is required by the Act.

The September 2, 1993 memorandum from OAQPS entitled *Final Boilerplate Language for the PAMS SIP Submittal* provides that the PAMS SIP revision request, at a minimum, should provide for the monitoring of criteria and non-criteria pollutants, as well as meteorological parameters; provide that a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, be made available for public inspection during the public notice and/or comment period for the SIP revision request or, alternatively, provide that, on request, information concerning the State's plans for implementing the rules be made publicly available; make reference to the fact that PAMS will become a part of the State and local air monitoring stations (SLAMS) network; and, allow for sampling via methods approved by USEPA which are not Federal Reference Methods or equivalent.

The Indiana PAMS SIP revision request provides that the network will measure ambient levels of ozone, NO_x, speciated VOC, including hydrocarbons and carbonyls and meteorological data. During the public comment period and hearing, Indiana provided a copy of the proposed alternative regional PAMS network description, including a schedule, to the public. The Indiana PAMS SIP revision request provides that each station in the air quality surveillance network provided for and described in the network description will be termed a SLAMS. Finally, the Indiana PAMS SIP revision request provides that the methods used in PAMS will meet the criteria established by 40 CFR 58.41, the quality assurance requirements as contained in 40 CFR part 58, appendix A, and the monitoring methodology requirements contained in appendix C.

III. Final Rulemaking Action

The USEPA approves the Indiana rule revision for PAMS as part of the Indiana SIP for ozone.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on May 16, 1994. However, if we receive notice by April 15, 1994 that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period. This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. Under the revised tables this action remains classified as a Table 3. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 On September 30, 1993.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities

include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This SIP approval involves a monitoring network that will be operated by the IDEM and does not impose any new regulatory requirements on small businesses. Therefore, I certify that it does not have a significant economic impact on any small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 1, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (e) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(e) Approval—The Administrator approves the incorporation of the photochemical assessment ambient monitoring system submitted by Indiana on November 15, 1993 into the Indiana State Implementation Plan. This submittal satisfies 40 CFR 58.20(f), which requires the State to provide for the establishment and maintenance of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

[FR Doc. 94–5905 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[NM–19–1–6069; FRL–4847–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Permitting Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) which includes Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, and the Supplement pertaining to general new source review (NSR) in Albuquerque/Bernalillo County, New Mexico. This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction moratorium for nonattainment areas in Albuquerque/Bernalillo County. This construction moratorium was put in place by the Governor of New Mexico on May 20, 1980.

DATES: This final rule will become effective on May 16, 1994, unless notice is received by April 15, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

Albuquerque/Bernalillo County Regulation 20, a portion of Albuquerque's complete NSR permitting program, was initially approved by the EPA on April 10, 1980, at 45 FR 24460, as a part of the 1979 New Mexico SIP submittal to the EPA. A construction moratorium for nonattainment areas was put in place by the Governor of New Mexico on May 20, 1980. On this date, the Governor committed the State of New Mexico to not issue permits to stationary sources located in nonattainment areas. This construction ban has continued in Albuquerque/Bernalillo County as outlined in 40 CFR 52.1627(a) and 52.1628, in reference to the carbon monoxide nonattainment status of Bernalillo County, and in reference to the County not having a complete federally approved NSR permitting program.

The EPA in this action can now revoke the construction ban for Albuquerque/Bernalillo County because of two developments. The first development focuses on the FR notice of January 25, 1991 (56 FR 2852). This notice announced that the 1990 Clean Air Act Amendments (CAAA) repealed the provisions of section 110(a)(2)(I) of the Clean Air Act as amended in 1977. The 1977 provisions had required the EPA to impose a construction moratorium in nonattainment areas that failed to submit plans meeting all of the requirements of part D of the 1977 Clean Air Act (CAA). The 1990 CAAA, however, contained a savings clause, new CAA section 110(n)(3), that preserved certain existing construction moratoriums (i.e., relating to the establishment of a permit program and relating to sulfur dioxide (SO_2) attainment status). Therefore, the EPA interpreted the provisions of the 1990 CAAA as repealing by operation of law, as of the date of enactment of the 1990 CAAA (November 15, 1990), all construction moratoriums that the EPA had imposed under the 1977 CAA (section 110(a)(2)(I)) for any reason other than failure to submit an approvable NSR program or failure to demonstrate timely attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). Albuquerque/Bernalillo County is currently classified attainment for the SO_2 NAAQS, and with the approval of revised Regulation 20, along with Regulations 29 and 32 (i.e., the Prevention of Significant Deterioration (29) and Nonattainment NSR (32) permitting regulations approved in separate FR actions at 58 FR 67330 and 58 FR 67326 (December

21, 1993), respectively), the Albuquerque/Bernalillo County NSR permitting program has now been brought up to date and found to be approvable by the EPA. Thus, the construction ban can be revoked for Albuquerque/Bernalillo County.

Analysis of City/County Submission

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing (see also section 110(l) of the CAA). Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the City of Albuquerque held public hearings on February 10, 1993, and on May 12, 1993, to entertain public comment on proposed revisions to Regulation 20 and its narrative supplement, respectively. No public comments were received. Following the public hearings, Regulation 20 and its narrative supplement were adopted by the Albuquerque/Bernalillo County Air Quality Control Board and submitted as a SIP revision to the EPA by cover letter from the Governor dated July 22, 1993.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedSeptember 10, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Review of Revisions to Regulation 20

Albuquerque/Bernalillo County filed revisions to Regulation 20 with the State of New Mexico Records and Archives Center on February 26, 1993. The revisions to Regulation 20 were adopted in order to update the currently approved Albuquerque/Bernalillo County permit program, and to allow for revoking the construction ban referenced in 40 CFR 52.1627(a) and 52.1628. Regulation 20 sets forth certain emissions thresholds requiring a pre-construction permit (e.g., 10 pounds per hour or 25 tons per year), stipulates required contents of permit applications, outlines public participation requirements, and addresses performance testing procedures. It is important to note that the revisions to Regulation 20 are minor and noncontroversial, resulting in a clarification of nonattainment area permit requirements, a re-defining of "potential emission rate" as "pre-controlled emission rate," and other minor clarifications. For further details on both the requirements and the revisions of Regulation 20, please reference the Technical Support Document (TSD). Copies of the TSD can be obtained from the EPA Region 6 office listed above.

Final Action

The EPA is approving a revision to the New Mexico SIP to include revisions to Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, as filed with the State Records and Archives Center on February 26, 1993. The EPA is also approving the SIP narrative entitled *Supplement Pertaining to General New Source Review; Albuquerque/Bernalillo County, New Mexico; May 12, 1993.* This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction ban codified at 40 CFR 52.1627(a) and 52.1628.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 16, 1994, unless, by April 15, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective [Insert date 60 days from date of publication].

With respect to all of the statutory changes discussed in this action, the EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its permitting regulations. Upon final adoption of those regulations, the EPA will call upon States with approved permitting programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA is approving the revised Albuquerque/Bernalillo County Regulation 20 and its narrative Supplement as a strengthening of the New Mexico (Albuquerque/Bernalillo County) SIP.

Miscellaneous

Under the Regulatory Flexibility Act,5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

This action has been classified as a table three action by the Regional

Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 onSeptember 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 28, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(54) A revision to the New Mexico SIP addressing the Albuquerque/Bernalillo County Permitting Program was submitted by the Governor of New Mexico by cover letter dated July 22, 1993.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation Number 20–Authority-to-Construct Permits, Section 20.00, "Purpose;" Section 20.01, "Applicability;" Section 20.02, "Fees for Permit Application Review;" Section 20.03, "Contents of Applications;" Section 20.04, "Public Notice and Participation;" Section 20.05, "Permit Decisions and Appeals;" Section 20.06, "Basis for Permit Denial;" Section 20.07, "Additional Legal Responsibilities on Applicants;" Section 20.08, "Permit Conditions;" Section 20.09, "Permit Cancellation;" Section 20.10, "Permittee's Notification Obligations to the Department;" Section 20.11, "Performance Testing Following Startup;" Section 20.12, "Emergency Permits;" Section 20.13, "Nonattainment Area Requirements;" Section 20.14, "Definitions Specific to Authority-to-Construct Permit Regulations;" and Table One, "Significant Ambient Concentrations," as filed with the State Records and Archives Center on February 26, 1993.

(ii) Additional material.

(A) The Supplement Pertaining to General New Source Review in Albuquerque/Bernalillo County, New Mexico, as approved by the Albuquerque/Bernalillo County Air Quality Control Board onMay 12, 1993.

3. Section 52.1627 is revised to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

Part D disapproval. The Bernalillo County carbon monoxide plan is disapproved for failure to meet the resource requirements of section 172 of the Clean Air Act.

§ 52.1628 [Removed and Reserved]

4. Section 52.1628 is removed and reserved.

[FR Doc. 94–5906 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, and 473

[BPD–694–F]

RIN 0938–AE93

Medicare Program; Aggregation of Medicare Claims for Administrative Appeals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: Medicare beneficiaries and, under certain circumstances, providers, physicians and other entities furnishing health care services may appeal adverse determinations regarding certain claims for benefits payable under part A and part B of Medicare. For administrative appeals at the carrier or intermediary hearing level or administrative law judge (ALJ) level and for any subsequent judicial review, the amount remaining in dispute must meet or exceed threshold amounts set by statute. Section 1869(b)(2) of the Social Security Act permits claims to be aggregated to reach the ALJ hearing threshold amounts. This final rule establishes a system of aggregation under which individual appellants have one set of requirements for aggregating claims and two or more appellants have a different set of requirements for aggregating claims.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (410) 966–4472.

SUPPLEMENTARY INFORMATION:

Background

Statutory Basis

Section 1869(b) of the Social Security Act (the Act) grants Medicare beneficiaries who are dissatisfied with certain Medicare determinations the right to a hearing before an administrative law judge (ALJ) and the right to judicial review. The Social Security Administration (SSA) makes determinations concerning entitlement to Medicare. Other determinations concerning payment are made initially by Medicare contractors. Fiscal intermediaries make most part A and some part B determinations; carriers make most part B determinations. Our regulations generally address appeals of claims arising under part A at 42 CFR part 405, subpart G, and appeals of claims under part B at 42 CFR part 405, subpart H.

Utilization and quality control peer review organizations (PROs) also make certain types of part A and part B determinations. Section 1155 of the Act establishes beneficiary rights to hearings and judicial review of certain Medicare issues (mostly inpatient hospital service denials) adjudicated initially by PROs. Our regulations address this subject at 42 CFR part 473, subpart B.

For enrollees of health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), the HMO, CMP or HCPP is responsible for making initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of enrollees of HMOs, CMPs or HCPPs. Our regulations address this subject at 42 CFR 417.600 to 417.638.

For the following discussion, the term "provider" refers to a hospital, skilled nursing facility, home health agency, hospice program or comprehensive outpatient rehabilitation facility that has in effect an agreement to participate in Medicare. See section 1861(u) of the Act and 42 CFR 400.202.

The term "supplier" is defined in 42 CFR 400.202 and means a physician or other practitioner, or an entity other than a provider, who furnishes health care services under Medicare. Although "supplier" encompasses physicians, our usual phraseology is "physician or supplier."

Under section 1879(d) of the Act, a physician or supplier who accepted assignment or a provider of services has the same appeal rights as that of an individual beneficiary under certain limited circumstances when the issue in dispute involves medical necessity, custodial care, or home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements. Moreover, by regulation, we have provided that a physician or supplier that has taken assignment of a Medicare claim under part B has the same appeal rights as the beneficiary.

Under section 1842(l) of the Act, a physician who does not accept assignment must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary. A refund is not required if the physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services, or if the beneficiary was appropriately informed in advance that Medicare would not pay for the services and agreed to pay for them. With respect to a physician who is subject to the refund requirement, our regulations at 42 CFR 411.408 provide that if payment is denied for unassigned claims because the services are found to be not reasonable and necessary, the physician who does not accept assignment has the same appeal rights as the physician who submits claims on an assignment-related basis, as detailed in subpart H of part 405 and subpart B of part 473. (See 55 FR 24561, June 18, 1990.)

Omnibus Budget Reconciliation Act of 1986

Before the enactment of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Public L. 99–509), section 1869 of the Act provided for ALJ hearings and judicial review of claims for entitlement to Medicare parts A and B and of disputes over claims for benefits under part A. There was no provision for ALJ hearings or judicial review for disputes over the amount of part B benefits, except under section 1876 of the Act pertaining to HMO, CMP and HCPP denials, and concerning certain PRO matters as authorized by section 1155 of the Act. Instead, as specified in section 1842(b)(3)(C) of the Act, Medicare carriers (or, if appropriate, intermediaries) provided fair hearings on claims for part B benefits when the amount remaining in controversy was $100 or more. (Before receiving a fair hearing, beneficiaries must receive an initial determination and review of their claims. Carriers perform initial determinations and reviews of claims for part B benefits in accordance with 42 CFR part 405, subpart H.)

Section 9341 of OBRA '86 amended section 1869 of the Act to permit hearings before ALJs and judicial review of claims for benefits under part B. The law provided that, for a part B ALJ hearing, the amount in controversy must be at least $500 and, for judicial review, the amount in controversy must be at least $1000. It did not change the existing amount in controversy requirements ($100 and $1000, respectively, under the Medicare part A provisions and $200 and $2000, respectively, under the PRO provisions) for ALJ hearings and judicial review.

Section 9341 of OBRA '86 further provided that in determining the amount in controversy, the Secretary, by regulations, must permit claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. This aggregation provision applies to requests for ALJ hearings of both part A and part B claims brought under section 1869 of the Act.

Under OBRA '86, the right to an ALJ hearing and judicial review for part B claims as well as the right to aggregate under section 1869(b)(2) of the Act apply to claims for items and services furnished on or after January 1, 1987.

The Omnibus Budget Reconciliation Act of 1990

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public L. 101–508) provided that the Secretary would carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). The study would be conducted in at least four carrier areas. The Secretary would report on the results of the study and any recommendations to the Senate Finance Committee and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

Aggregation Before OBRA '86

Before OBRA '86, the statute was silent on the issue of aggregating claims to meet the threshold amounts to establish a right to part A or part B hearings. We had, however, provided for beneficiaries to aggregate certain part A claims in our regulations at 42 CFR 405.740 and 405.745. Our regulations at 42 CFR 405.741 also provide that the presiding officer at the hearing (that is, the ALJ) determines whether the $100 threshold is met. The current regulations for part A claims do not allow a provider to aggregate claims involving more than one beneficiary.

Before OBRA '86, we had also provided for the aggregation of part B claims to reach the amount in controversy required for a hearing before a carrier hearing officer. In 42 CFR 405.820(b) (redesignated as § 405.817 in this rule), we permit a beneficiary to aggregate any and all part B claims for treatment or medical equipment or supplies (or both) furnished to him or her. A physician or supplier may aggregate any and all claims accepted on an assignment-related basis for services or supplies he or she provided to one or more beneficiaries. Each such claim must have completed all prior levels of appeal and the request for subsequent appeal of each such claim must be timely filed. The regulations do not address whether claims may be aggregated together by two or more appellants to meet the minimum amount in controversy needed for appeal.

Proposed Rule

On June 20, 1991, we published a proposed rule that described how we would implement the OBRA '86 provision amending section 1869(b)(2) of the Act concerning aggregation of claims (56 FR 28353). In the absence of specific legislative history, we concluded at that time that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims to meet the threshold amount in controversy for administrative or judicial appeal. We based our conclusion, in part, on our assessment that section 1869 of the Act in all respects applies to claims filed by individuals. Because the OBRA '86 aggregation provision amended section

1869 of the Act, it was our view that individual appeals alone were affected. Therefore, we proposed that only an individual appellant could aggregate his or her own claims to reach the jurisdictional minimums for appeal. Moreover, in our view, the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation of claims by two or more appellants, suggested that the Congress had not yet decided to provide for aggregation of claims by multiple appellants.

The specific statutory language of the OBRA '86 aggregation provision directs the Secretary to issue regulations to permit aggregation under the limited circumstances specified (that is, if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals) to reach the threshold amounts in controversy for ALJ hearings. Upon initial consideration of this provision, we believed it would be appropriate to have a uniform aggregation policy for all levels of administrative appeal. Therefore, we proposed to rescind our current regulations governing carrier hearings under part B to conform them with the more narrow aggregation rules contained in OBRA '86. We also proposed minor revisions to our current part A aggregation rules, to make them consistent with the OBRA '86 aggregation requirements. We devised procedural rules to be followed for determining the amount in controversy and we described what actions were required of individuals and providers to aggregate claims to meet the amount in controversy threshold. We also proposed definitions of: "Delivery of similar or related services," "services," "common issues of law and fact," "common issues of law," "common issues of fact," and "mutually exclusive bases for appeal."

Comments and Responses

We received comments from 21 commenters on our proposed rule. The commenters included an intermediary/carrier association, a carrier, seven provider associations or their legal counsel, five medical associations or their legal counsel, five beneficiary advocacy organizations, one PRO and one provider. Below we discuss the comments and our responses.

Comment: A number of commenters expressed direct opposition to our assertion that the Congress did not intend for more than one appellant to aggregate their claims. The commenters presented various reasons why they believed that the Congress intended to permit aggregation by groups of individuals and providers.

Response: We reexamined our proposed aggregation policy in light of the public comments submitted in response to the proposed rule and are revising our position to take the comments into account. Our revised position also takes into account a February 5, 1992, district court decision in favor of a group of anesthesiologists who contended that they should be able to aggregate their claims on the basis of "common issues of law and fact arising from services furnished to two or more individuals" (*Moore* v. *Sullivan*, 785 F. Supp. 44 (S.D.N.Y. 1992)).

Section 1869(b)(2) of the Act states, in pertinent part, that "(i)n determining the amount in controversy, the Secretary, under regulations, *shall allow* * * *" claims to be aggregated under the criteria outlined in that section (emphasis added). Thus, although the plain wording of the statute makes it clear that the Secretary will provide for aggregation of claims in the situations provided in the statute, it does not limit the Secretary's authority to allow aggregation in additional, unspecified circumstances as well. Thus, we believe that the statute affords the Secretary considerable discretion in devising an aggregation policy, as long as she allows aggregation in the circumstances outlined in the statute.

Consistent with this interpretation, we have concluded that in drafting section 1869(b)(2) of the Act, the Congress did not necessarily mean to overhaul the current aggregation system for appeals raised by individual beneficiaries and providers. Rather, we believe that the Congress intended to provide an additional avenue for reaching the amount in controversy to provide for group adjudication of issues arising from claims that, because they involve fairly small amounts, may never be adjudicated beyond the intermediary or carrier level. However, in providing for this additional access to the appeals process by two or more appellants, the Congress recognized that such appeals would only be an efficient use of the administrative and judicial appeals process if the underlying claims presented common issues that, if resolved, would be decisive for all the claims included in the appeal. Therefore, the Congress required that such appeals involve "similar or related services" or "common issues of law and fact."

As a result of our reexamination of this issue, we have decided to permit aggregation of claims by two or more appellants at the ALJ level. In order for two or more appellants to aggregate their claims, the claims must involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. Although the Congress expanded the part B appeals process to also include judicial review of part B claims, the statute does not require the courts to follow the administrative aggregation rules established by the Secretary for determining the amount in controversy. However, the courts may wish to use the administrative rules as a reference point for determining the amount in controversy at the judicial level. Therefore, we are providing in our regulations that, when a civil action is filed, the Secretary may assert that the aggregation provisions contained in 42 CFR part 405, subparts G and H, may be applied to determine the amount in controversy for judicial review.

(We note that under our interpretation of section 1869(b)(2) of the Act, two or more beneficiaries will not be able to aggregate their claims under the criterion involving "delivery of similar or related services to the same individual," because the provision describes services to only one individual. Moreover, two or more providers/suppliers may avail themselves of this provision only if they are providing similar or related services to the same patient. However, this limitation is of little practical consequence, since, under the first prong of the bifurcated system of aggregation we are establishing with this regulation, an individual appellant (either a beneficiary or a provider/supplier) may aggregate all claims relating to the same patient without having to demonstrate that the services provided are either similar or related.)

In order to effectuate this interpretation we are establishing one set of requirements for aggregating claims for individual appellants and another set of requirements for aggregating claims when two or more appellants together seek to aggregate their claims. The system will work as follows:

Individual Appellants

Our approach for individual part A appellants (including individual HMO, CMP, HCPP or PRO appellants (hereafter, references to HMOs will include CMPs and HCPPs)) will permit an individual who files an appeal to aggregate two or more part A claims (in a specified time period), regardless of issue, to meet the requisite

jurisdictional minimum for an ALJ hearing. Also, an individual who files a part B appeal will be permitted to aggregate two or more part B claims (in a specified time period), regardless of issue, to meet the jurisdictional minimums for a carrier hearing and ALJ hearing.

This approach expands the existing aggregation policy currently applied to part A appellants. (Existing aggregation policy for individual part A appellants is limited to the following circumstances: Items or services furnished to a patient of a provider arising from a single continuous period of treatment and any series of posthospital home health visits.) It is also consistent with the aggregation policy currently existing for part B appellants in that it allows appellants to aggregate two or more claims regardless of issue. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Two or More Appellants

Two or more part A appellants will be permitted to aggregate their part A claims together (in a specified time period) to meet the requisite jurisdictional minimum for an ALJ hearing. Similarly, two or more part B appellants will be permitted to aggregate their part B claims together (in a specified time period) to meet the jurisdictional minimum for an ALJ hearing. However, two or more appellants may aggregate their claims only if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals.

To reflect these changes, we are revising the text of §§ 405.740, 405.742, 405.820 (redesignated as § 405.815), and 405.827 that we proposed in our June 20, 1991 rule. Sections 405.740 and 405.817 contain our procedures for determining the amount in controversy and for aggregating claims. We are not making final §§ 405.742 and 405.827 that we included in the proposed rule (the relevant contents have been incorporated elsewhere) and we are removing current § 405.741.

Comment: Because section 1869(b)(2) of the Act applies only to aggregation for ALJ hearings, the current liberal rules for individual appellants to aggregate claims at carrier fair hearings should be retained.

Response: As stated in our previous response, we will permit individual part A or part B appellants to aggregate their claims regardless of issue to reach the minimum amounts in controversy needed for a carrier hearing or ALJ hearing. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Although we are essentially retaining the current aggregation rules for individual part B appellants, we are not allowing two or more appellants to aggregate their claims together at the carrier hearing level. Rather, we are providing in the final rule that two or more appellants may aggregate their claims together beginning at the ALJ hearing level. We are adopting this approach because, as noted by the commenters, the statute does not require that proceedings conducted under section 1842(b)(3)(C) of the Act (carrier hearings) utilize the aggregation provisions in section 1869(b)(2) of the Act. For this reason, we are also not making final the provision in § 405.832(d) of the proposed regulation text. That provision would have authorized an ALJ to review a carrier hearing officer's dismissal of a hearing request based on the section 1869(b)(2) aggregation criteria to determine whether those criteria had been properly applied.

Comment: The definitions of "common issues of law and fact" and "delivery of similar or related services" are inconsistent with the statute and unnecessarily restrictive and burdensome.

Response: We have reevaluated the definitions of "common issues of law and fact" and "delivery of similar or related services" in light of the comments received and the general lack of practical experience in applying these criteria.

Many of the public comments received on this issue persuasively demonstrated that the proposed definitions were too narrow to encompass many case scenarios that present common decisional issues. For example, one of the commenters noted that the requirement that similar services may only be those "with the same procedural terminology and code" is excessively strict. For instance, claims for echocardiography services such as standard echocardiography (CPT 93307), doppler echocardiography (CPT 93320) and doppler color-flow echocardiography (CPT 93321) may be "similar or related services" that could be aggregated under the statute. This same commenter believed that "common issues of law and fact" should be defined to permit aggregation on the basis of broad categorical issues such as level of care, the type of action taken by the contractor (for example, downcoding), or the involvement of one or more physicians in the patient's care even though CPT codes, sites of service, and diagnoses may differ. While we agree that the definition of common issues of law and fact published in our proposed rule was overly restrictive, we do not agree with this suggestion.

Aggregation on the basis of broad categorical issues would render the aggregation requirements virtually meaningless in many instances. We believe that the key concept in determining "common issues of law and fact" is the materiality of the alleged common facts. For example, a group of claims denied under section 1862(a)(1) of the Act as not medically reasonable and necessary because a certain procedure is considered experimental would present "common issues of law and fact" if the procedure had been performed for the same reason for each patient but not if it had been performed for different purposes. A procedure may be considered experimental for purposes of treating one particular condition or diagnosis but not for the treatment of a second condition or diagnosis. Facts establishing medical necessity in the first instance would not establish medical necessity in the second instance. Consequently, although the situation might present common issues of law, common issues of fact would not be present.

In our view, both "similar or related services" and "common issues of law and fact" require that the appeal present common issues, which when resolved will have some decisional impact on the aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide more general definitions for these terms, which are as follows: "Delivery of similar or related services," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants. "Common issues of law and fact," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occur when the claims sought to be aggregated arise from a similar fact pattern material to the reason the claims are denied and the

claims are denied or reduced for similar reasons.

This approach will provide adjudicators with more flexibility and discretion to decide if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case. (Some commenters suggested that the proposed regulations did not give adjudicators enough discretion in applying the statutory terms.) In any event, we intend to monitor in the future the application of these definitions by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: The procedural rules for aggregating claims, requiring appellants to identify claims by type of item or service and to explain the basis for the aggregation, go beyond the capacity of the average appellant and represent an impediment to appeal.

Response: We agree that the documentation requirements should be modified. Sections 405.742(a) and 405.827(a) of the proposed rule imposed strict documentation requirements on an appellant seeking to aggregate claims. For instance, we proposed to require an appellant to identify each claim by the type of item or service, the person or entity that furnished the item or service and the amount being contested. Also, we proposed to require the appellant to describe why claims are either "similar or related" or involve "common issues of law and fact." In light of the comments received, we are not making final the stringent documentation requirements and are establishing the following standard procedural requirements:

- The appellant(s) must specify the claims that he or she seeks to aggregate. The burden is clearly on the appellant in this situation to identify the claims sought for aggregation. Otherwise, the appellant risks having his case dismissed for failure to meet the amount in controversy. In other words, in considering a request for hearing or review, carrier hearing officers, ALJs and the Appeals Council must consider claims identified by the appellant to determine whether the requisite amount in controversy is met, but they need not aggregate other pending cases not included in the appellant's request for hearing. In addition, although we are not requiring that appellants describe in their requests for hearing why the claims they seek to aggregate involve "similar or related services" or "common issues of law and fact," we note that it is in the appellant's interest to address these issues in the appeal, as well as any other aspects of the case he or she believes were decided incorrectly.
- In order for all claims to be aggregated, the request for appeal must be timely filed with respect to all claims included in the appeal. For example, a carrier hearing officer issues an adverse hearing decision that is received by the beneficiary on June 5. As a result of this decision, $300 remains in controversy. On a separate matter, the hearing officer issues an adverse decision, which is received by a different beneficiary on July 10. As a result of the July decision, $400 remains in controversy. The beneficiaries believe that their decisions involve common issues and because, individually, neither of their cases meet the $500 minimum required for an ALJ hearing, they seek to aggregate their claims together ($300+$400=$700) to obtain jurisdiction before an ALJ. In this hypothetical situation, a request for an ALJ hearing that includes these two claims may be made no later than August 4. A request for ALJ hearing filed, for example, on September 1, would fail because the 60-day appeal period for the June 5 decision would have lapsed and there would only be $400 remaining in controversy. Therefore, when individual appellants seek to aggregate their claims under § 405.740(a) or § 405.817(a), or when two or more appellants seek to aggregate their claims together under section 1869(b)(2) of the Act, they must be aware of the appropriate timeframe for appealing to an ALJ (60 days from the previous administrative determination) and proceed accordingly.
- In order for claims to be aggregated at a carrier hearing or an ALJ hearing, the claims must have completed all prior levels of appeal. For example, two beneficiaries seek to aggregate their part B claims in a request for ALJ hearing under section 1869(b)(2) of the Act. The ALJ may aggregate only those claims for which a beneficiary or other party has received an initial determination, a review determination and a carrier hearing decision. This requirement is consistent with the general rule contained throughout subparts G and H of part 405 that appellants must complete all prior steps in the appeals process before proceeding to the next level.
- In general, an appellant may not aggregate part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. Section 1869(b)(2) of the Act recognizes a distinct appeals process for part A and for part B and provides different rules for each. Part A and part B claims are processed independently of one another and follow different appeals processes. As such, we think it is clearly impermissible for an appellant to aggregate part A and part B claims together.

There is one notable exception to the general rule described above. HMO determinations may involve a combination of part A and part B services; the part A and part B claims involved in such determinations are not processed independently of one another. Therefore, an HMO appellant is permitted to aggregate part A and part B claims together. We are revising § 417.630 of the regulations to provide that HMO appellants may combine both part A and part B services in their appeals to reach the amount in controversy. (This provision was previously codified at § 417.260(b)(4), a regulation that was obsoleted on October 17, 1991 (56 FR 51985).)

Comment: The proposed rule implements a statutory change to section 1869 of the Act and, as such, should not apply to: (1) The separate and distinct appeals process for HMOs under section 1876 of the Act, or (2) the appeals process involving PRO determinations under section 1155 of the Act.

Response: We agree with this comment to the extent that the aggregation criteria under section 1869(b)(2) of the Act should not apply to the HMO appeals process. For enrollees of HMOs, the HMO is responsible for making the initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of HMO enrollees. HCFA regulations address this subject at 42 CFR 417.600 to 417.638.

The Congress specifically amended section 1869 of the Act to provide for the aggregation of claims by two or more appellants in very specific circumstances; that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact. The Congress did not similarly amend section 1876 of the Act to provide for such aggregation in the HMO setting. Accordingly, we do not believe that HMO appellants should be afforded the aggregation rights specified in section 1869 of the Act. We are modifying the regulation text in § 417.630(b) to state specifically that the aggregation provisions contained in section 1869(b)(2) do not apply to HMO appeals.

On the other hand, we believe that the aggregation criteria under section 1869(b)(2) of the Act should apply to the

PRO appeals process. PROs issue determinations under title XI of the Act relating to quality of care, medical necessity and appropriateness of setting and the appeals process for these determinations is governed by section 1155 of the Act. The PROs also issue limitation of liability determinations under section 1879 of the Act and the appeals process for such determinations is governed by section 1869(b) of the Act. Given this policy, a case decided by a PRO may involve, in essence, two separate determinations, one for the substantive coverage issue under section 1155 of the Act and the other for the limitation of liability issue under section 1869(b) of the Act. Having an adjudicator apply different aggregation rules to each issue in a case would make the situation unnecessarily complex. Therefore, we are revising the regulation to allow multiple appellants to aggregate claims decided by PROs under the criteria in section 1869(b)(2), regardless of whether the claim is decided under title XI or title XVIII. However, we also note that PRO appellants may only aggregate those claims under section 1869(b)(2) that they have standing to appeal under the rules provided in part 473.

In the HMO regulations at 42 CFR 417.630 and in the PRO regulations at § 473.44, we are also specifying in the final rule (by cross-reference to the appropriate provisions in part 405, subparts G and H) that individual HMO and PRO appellants (as opposed to group appellants) are permitted to aggregate their claims in the same manner provided to individual appellants who appeal claims under section 1869 of the Act. Thus, an individual appellant challenging a determination by an HMO or a PRO may aggregate two or more claims regardless of the issues involved. We are making these changes to provide a consistent, across-the-board procedure for an individual appellant seeking to aggregate his or her claims to reach the minimum amount in controversy needed for an ALJ hearing. Because this is a liberalization of the current rules, we do not anticipate any objections from any members of the beneficiary/provider community concerning this policy.

Comment: Section 9341 of OBRA '86 does not provide that a carrier hearing must always precede an ALJ hearing. Section 1842(b)(3)(C) of the Act was amended to provide for carrier hearings when the amount in controversy is "at least $100, but less than $500." Therefore, for amounts in controversy of $500 or more following a carrier's review determination, a claimant should be able to appeal directly to an ALJ.

Response: As we announced in the preamble to the proposed rule (56 FR 28354 (June 20, 1991)), this rule was intended to establish criteria for determining the amount in controversy thresholds for both Part A and B ALJ hearings. Although we captioned § 405.820 (now redesignated § 405.815) as "Right to hearing," we did not intend for this regulation to provide all of the procedural requirements necessary to establish the right to an ALJ hearing. Those requirements will be addressed in a separate regulation document. In the meantime, to the extent not superseded by this or other regulations, Part B ALJ hearings and Appeals Council review are conducted pursuant to the procedures outlined in HCFA and SSA's **Federal Register** notice of June 1, 1988 (53 FR 20023).

In order to clarify the scope of § 405.815, we have revised the caption to read "Amount in controversy for carrier hearing, ALJ hearing and judicial review" and have made other clarifying changes to the regulation text. However, because, under current procedures, we continue to require that appellants complete the carrier fair hearing process before proceeding to an ALJ hearing, we briefly address the commenters' concerns about the legality of this requirement.

We disagree with the commenters' conclusion concerning the requirements of the statute. We believe that the Secretary has the authority under the Medicare statute to require that claimants whose claims exceed $500 complete all prior stages of the administrative appeals process, including a carrier fair hearing, before obtaining an ALJ hearing.

We note that the Secretary's position on this point is supported by the decision of the U.S. Court of Appeals for the Second Circuit in *Isaacs* v. *Bowen*, 865 F.2d 468 (2nd Cir. 1989), which considered the effect of the statutory provision cited by the commenters. In 1987, HCFA amended its Medicare Carriers Manual to require that a carrier fair hearing must precede an ALJ hearing regardless of the amount in controversy. Following this revision, the Congress held hearings concerning the Medicare appeals process and enacted the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, which addressed the carrier fair hearing procedures in two respects. First, the language of section 1842(b)(3)(C) of the Act describing the monetary amounts for a carrier fair hearing was changed by substituting the phrase "less than $500" for the phrase "not more than $500." Second, the Congress authorized the General Accounting Office to conduct a cost-effectiveness study of the Secretary's requirement for carrier hearings before proceeding to an ALJ hearing. In light of these provisions, which were enacted after the Congress had heard testimony concerning HCFA's decision to require carrier hearings in all circumstances, the Court of Appeals for the Second Circuit found that the Congress by its actions had ratified the manual provision.

Comment: A single overpayment determination may involve a large number of claims and several different issues. The overpayment in its entirety should be considered as a "common issue of law and fact" and therefore all claims contained therein should be aggregable.

Response: An overpayment determination made to an individual person or entity will fall under the first prong of our bifurcated approach. That is, an individual appellant may aggregate all appealable claims included in a single overpayment determination regardless of the issues involved. (However, the appellant may only aggregate those claims included in the overpayment determination that the appellant has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) Thus, the section 1869(b)(2) criterion of "common issues of law and fact," applicable to two or more appellants who seek to aggregate their claims together, does not apply in this situation.

Comment: Physicians in a multi-specialty group practice would be prohibited from aggregating claims together. An exception to the proposed rule should be made for physicians in the same group practice whose claims are billed and paid in the name of the group.

Response: In light of the approach we are taking in the final rule, we believe the concerns raised by the commenter no longer apply. Physicians in a multi-specialty group practice would not be prohibited from aggregating their claims together as long as those claims involve "similar or related services" or "common issues of law and fact."

As previously stated, the proposed rule did not permit two or more appellants to aggregate their claims together and limited the rights of individual appellants to aggregate their claims on the basis of "similar or related services" or "common issues of law and fact." The final rule establishes a bifurcated system of aggregation whereby: (1) Individual appellants may aggregate two or more claims regardless

of issue and (2) two or more appellants may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

If a multi-specialty group of physicians: (1) Has one billing number, (2) bills Medicare under that number, (3) uses a uniform charge structure and (4) typically appeals as a single entity (rather than having its physicians appeal individually), we believe that the aggregation rules pertaining to individual appellants should apply. Therefore, in this situation, the multi-specialty group would be able to submit claims from two or more of its physicians in a single appeal request (the filing time limit would have to be met for the particular level of appeal) without having to demonstrate that the claims involve common issues.

Comment: A non-participating physician may accept or reject assignment on claims at his or her discretion. Because the proposed rule permits a non-participating physician under section 1842(l) of the Act to aggregate unassigned claims for appeal purposes, the non-participating physician should be able to aggregate assigned claims with his or her unassigned claims if "common issues of law and fact" or "delivery of similar or related services" are involved.

Response: We agree with this comment. The determining factor in the situation posed is not whether a non-participating physician's claims are assigned or unassigned, but whether the claims are appealable. Under the first prong of our bifurcated approach, an individual appellant may aggregate all appealable claims regardless of issue. Therefore, a non-participating physician may aggregate assigned claims with unassigned claims providing that he or she has standing to appeal the claims under the rules in part 405, subpart H, part 417 or part 473, as applicable. The section 1869(b)(2) criteria of "common issues of law and fact" and "delivery of similar or related services," applicable to two or more appellants who seek to aggregate their claims together, do not apply in this situation.

Comment: One commenter suggested that the regulations should afford adjudicators more discretion to determine whether "common issues of law and fact" exist based upon evidence presented by the entity seeking a hearing.

On the other hand, another commenter believed that giving the carrier hearing officer the power to determine the criteria for aggregation gives too much discretion to these officials.

Response: As stated in a previous response, we have reevaluated the definition of "common issues of law and fact" in light of the comments received and the general lack of practical experience in applying this criterion. In our view, the statute requires commonality of law and fact so that the appeal will present common issues, which, when resolved, will have some decisional impact on aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to determine if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case.

The concern raised by the second commenter is no longer an issue because carrier hearing officers will not be applying the criteria in section 1869(b)(2) of the Act to determine whether the bases for aggregation have been met.

Comment: If the hearing officer dismisses the request to aggregate claims to meet the $100 requirement, then certainly the $500 requirement would not be met for a Part B ALJ appeal. A dismissal by a carrier hearing officer should not be subject to further appeal rights.

Response: Under the proposed rule, the only issue in a carrier hearing officer dismissal that the ALJ could review was the applicability of the criteria in section 1869(b)(2) of the Act; that is, "delivery of similar or related services" and "common issues of law and fact." In light of the approach to aggregation that we are taking in the final rule, carrier hearing officers will not be considering section 1869(b)(2) criteria. Therefore, we are not making final the proposed regulation text that would have allowed ALJ review of a carrier hearing officer's dismissal of a hearing request.

Comment: One commenter believes the requirement that "at each review level the filing time limit must be met for all claims to be aggregated" creates a chilling effect on the ability of home health agencies (HHAs) to aggregate claims.

Response: As stated in previous responses, the proposed rule provided for aggregation only by individual appellants and only under the circumstances described in section 1869(b)(2) of the Act, that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals. Accordingly, the proposed rule might have significantly limited an HHA's ability to aggregate claims. However, the final rule permits an individual appellant, such as an HHA, to aggregate two or more claims regardless of issue. (However, the HHA, like all appellants, may only aggregate those claims that it has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) As a result, the effect of the new bifurcated approach should be to facilitate aggregation of claims by HHAs such that the time limits for appeal will not be significant barriers.

Section 1869(b)(1) of the Act incorporates by reference the provisions of section 205(b) of the Act relating to hearings under the Medicare program. Section 205(b)(1) of the Act mandates that an individual must request an ALJ hearing within 60 days after receipt of the previous decision. Therefore, Part A and Part B Medicare appellants are obliged to appeal claims within this timeframe. We believe that allowing appellants to aggregate claims beyond this timeframe would dilute this requirement.

Comment: Three commenters had concerns about our proposed requirement that claims with mutually exclusive bases for appeal could not be aggregated. One thought that this requirement could prohibit a supplier from aggregating claims denied or only partially paid because of carrier error; another thought that "mutually exclusive" means incompatible and that our examples do not show incompatibility. The latter commenter also thought the definition to be unclear, invalid and unnecessary because of our definition of "common issues of law." The third commenter thought the requirement should be relaxed if not eliminated and that at the very least physicians should not be prohibited from appealing claims denied for more than one reason.

Response: We agree with the commenters that the definition for "mutually exclusive bases for appeal" is overly restrictive and difficult to apply. Upon further review, we have decided to eliminate this term to provide more flexibility to an ALJ in applying the criteria for multiple appellant aggregation under section 1869(b)(2) of the Act.

Comment: The proposed rule sets forth a definition of "delivery of similar or related services" to mean, among other things, services provided to a

single beneficiary during the same continuous course of treatment or continuous period of medical care. One commenter believes we should develop more precise definitions of "continuous course of treatment" and "continuous period of medical care" to avoid inconsistent carrier application of the aggregation rule.

Response: In light of the comments received questioning the definition of "delivery of similar or related services" and our lack of practical experience in applying it (and other terms), we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to decide if this criterion for aggregation by multiple appellants under section 1869(b)(2) of the Act has been met in a particular case. As stated previously, we intend to monitor in the future the application of this definition by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: As recommended by the House Budget Committee in its Report accompanying OBRA '86 (H.R. Rep. No. 727, 99th Cong., 2nd Sess., 95–96 (1986)), ALJs with specific knowledge of the Medicare program should be assigned to review carrier hearing decisions. Also, HCFA should issue a new set of aggregation rules to enhance physician access to appropriate due process through fair hearings and administrative appeals.

Response: The portion of this comment that addresses who will hear Medicare cases is beyond the scope of this regulation. With respect to the second portion of the comment, the commenter believes that the proposed rule places undue burdens on physicians who want to appeal Medicare claims and suggests generally that physicians are being placed at a disadvantage under the aggregation rules. Although we disagree with the commenter's assessment of the proposed rule, in light of the bifurcated approach to aggregation that we are taking in the final rule, we believe the commenter no longer should have any concerns in this regard. An individual physician who accepts assignment has the same appeal rights as a beneficiary; he or she is able to aggregate two or more assigned claims from one or more beneficiaries without having to demonstrate that the claims involve common issues. Moreover, two or more physicians may aggregate their claims together to meet the minimum amount needed for appeal if the claims involve "common issues of law and fact" or, if the claims involve services to a single beneficiary, they involve "similar or related services."

Comment: Section 4113 of OBRA '90 directed the Secretary to conduct a study of the "effects of permitting the aggregation of claims that involve common issues of law and fact furnished * * * to two or more individuals by two or more physicians within the same 12-month period." The proposed rule stated that the study mandated by the Congress confirms, for the present, that the Congress did not require the Secretary to provide for aggregation by two or more appellants. One commenter believed that the Congress had already accepted the premise that two or more appellants could aggregate their claims together and the study was merely a response to a proposed House bill that would have extended the period in which claims could be aggregated from 60 days to 12 months.

Response: In the absence of specific legislative history, we took the position in the proposed rule that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims together to meet the minimum amount in controversy needed for a particular level of appeal. It was our view that the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation by two or more appellants, suggested that the OBRA '86 aggregation provision should apply only to individual appellants.

As discussed previously, we have changed our position from the proposed rule to provide for aggregation by two or more appellants under the statutory criteria for aggregation specified in section 1869(b)(2) of the Act. The study itself has been completed and a report is being prepared.

Comment: The proposed rule provides that a single provider may combine claims from several different beneficiaries if common issues of law and fact are involved. The commenter, a PRO, is concerned that this could place an added and unnecessary burden on the PRO appeals system.

Response: As we stated in a previous response, we are applying the section 1869(b)(2) aggregation provision to the PRO appeals process. Therefore, two or more PRO appellants will be permitted to aggregate their appealable claims together on the basis of "similar or related services" or "common issues of law and fact." However, any aggregation under section 1869(b)(2) will take place in connection with a request for an ALJ hearing or judicial review and, consequently, should not result in any significant burden on PROs.

In the final rule we are expanding the aggregation rights for individual appellants under part A. As a result, an individual provider appellant would be able to aggregate two or more claims of one or more beneficiaries. However, it has been our experience that the amount in controversy ($200) for an ALJ hearing has not been a particular obstacle in PRO appeals even when a single claim is being adjudicated.

Comment: One commenter noted that the proposed rule did not address whether claims of several different beneficiaries, each meeting the minimum amount in controversy needed for appeal, could be consolidated into a single hearing for reasons of economy and efficiency.

Response: This comment is beyond the announced scope of this regulation. In the second full paragraph on p. 28357 of the preamble to the proposed rule, we state that "We emphasize that the purpose of these regulations is to provide criteria for aggregation of claims in order to meet the amount in controversy requirements (that is, the jurisdictional threshold) for appealing Medicare claims. These rules are not meant to address procedures (or alter existing provisions) concerning the conduct of hearings once the required amount in controversy is established or to address the *discretion of the presiding officer to join claims in a single hearing for administrative purposes*" (emphasis supplied).

Summary of Revisions

Below we describe changes we are making, as discussed above in the responses to comments, to both the regulations as they currently appear in the Code of Federal Regulations and to the rules we proposed on June 20, 1991.

A. Definitions (§§ 405.701 and 405.802)

1. We are adding a definition of "appellant", to designate the beneficiary, provider or other person or entity appealing a determination of benefits under part A (§ 405.701) or part B (§ 405.802), to facilitate the implementation of our bifurcated system of aggregation by providing a single, consistent term identifying the person or entity that has filed the appeal in a part A or part B claim. The term merely identifies the individual that filed the appeal; designation as an "appellant" does not convey the right to appeal the issue in question.

2. We are not making final the proposed definitions of "common issues of * * * fact" and "common issues of law" because they are overly restrictive

and difficult to apply. We are revising the proposed definition of "common issues of law and fact" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

3. We are revising the proposed definition of "delivery of similar or related services" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

4. We are not making final the proposed definition of "mutually exclusive bases of appeal" because it is overly restrictive and difficult to apply.

5. We are not making final the proposed definition of "services" because we believe that the definition of services in § 400.202 is sufficient.

B. Principles for Determining the Amount in Controversy (§ 405.740)

We are modifying the proposed principles for determining the amount in controversy and revising the current rules to say specifically that two or more appellants may aggregate their claims together to meet the amount in controversy requirements if the claims at issue are appealed on time and involve common issues of law and fact. Further, two or more providers may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual. We are also providing that individual appellants may aggregate their claims without having to demonstrate that the claims involve common issues.

C. Determinations of Amount in Controversy (§ 405.741)

We are not making final the proposed section. The proposed provisions are no longer relevant because of our revised policy, and we have incorporated the current provision—that the presiding officer will determine whether the amount in controversy is $100 or more—into § 405.740.

D. Procedural Rules for Aggregating Claims (Proposed § 405.742)

This section is not included in the final rule as the now relevant portions are in § 405.740. The provision at proposed § 405.742(c), which would have required a reconsideration by the appropriate entity before a hearing, is not included because the concept is repeated elsewhere in the subpart.

E. Definitions (§ 405.802)

1. We are adding the definition of "appellant" for the reasons explained above under the discussion of § 405.701.

2. The definition of "carrier" is revised to include intermediaries authorized to make determinations with respect to part B provider services, obviating our need to add the phrase "intermediaries where appropriate" everywhere we proposed.

F. Notice of Review Determination and Effect of Review Determination (§§ 405.811 and 405.812)

We are revising these sections to update the cross-references. We are also specifying that the hearing referred to is a carrier hearing and changing the tense of the sentences to present tense in accordance with our current style.

G. Amount in Controversy for Carrier Hearing, ALJ Hearing and Judicial Review (Proposed § 405.820)

We are revising the proposed § 405.820 by redesignating it as § 405.815, changing its heading, and moving the contents of paragraphs (b) and (d) with appropriate changes to §§ 405.820 and 405.821, respectively. Paragraph (c) of the current § 405.820 will be § 405.821(b).

H. Principles for Determining the Amount in Controversy (§ 405.817)

We are adding this new section. It contains, as does § 405.740, our procedures and policies for determining the amount in controversy and for aggregating claims. Most of this section was derived from proposed § 405.827, which is not included in this final rule.

I. Request for a Carrier Hearing (§ 405.821)

We are revising the current contents of this section to include those portions of proposed § 405.827 that remain relevant; that is, § 405.827 (c) and (d).

J. Procedural Rules for Aggregating Claims (Proposed § 405.827)

We are not including this section in the final rule as we have revised our policy and placed that policy as well as unrevised procedures in other sections, as explained above. Paragraph (d), concerning exhaustion of administrative remedies, is covered elsewhere in the subpart.

K. Dismissal of Request for Carrier Hearing (§ 405.832)

We are not revising paragraph (d) as proposed because carrier hearing officers will not be making determinations concerning aggregation on the basis of "delivery of similar or related services or "common issues of law and fact."

L. Right to a Hearing (§ 417.630)

We are revising the cross-references in this section because of changes in this final rule. We are also adding a provision that members of HMOs who are appellants may combine both part A and part B services in their appeals. We are also specifying in a new paragraph (b) that the criteria for aggregating claims under section 1869(b)(2) of the Act do not apply to appeals under part 417.

M. Determining the Amount in Controversy (§ 473.44)

We are updating cross-references in this section. We are also specifying that the criteria for aggregating claims under section 1869(b)(2) of the Act, as implemented at §§ 405.740(b) and 405.817(b), apply to appeals under part 473.

N. We Are Revising the Headings of the Following Sections To Include the Word "Carrier"

§§ 405.822, 405.823, 405.824, 405.825, 405.830, 405.831, 405.832, 405.833, 405.834, 405.835, 405.841 and 405.860.

Paperwork Burden

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, providers, and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule establishes in Medicare regulations an approach for aggregating Medicare claims by two or more

appellants to obtain the right to an ALJ hearing. It also provides easier access to the appeals process for an individual part A appellant, by providing these individuals with essentially the same aggregation rights that an individual part B appellant now has.

We believe that the system for aggregating claims by two or more appellants will provide for easier access to hearings but we do not expect it to be widely used. This is because an individual appellant (who is permitted to combine claims without having to demonstrate a basis for the aggregation) should usually be able to meet the appropriate jurisdictional thresholds on his or her own behalf without having to combine the claims of other appellants. We also believe that individuals concerned with privacy of their records or proceedings, or individuals not inclined to locate other potential appellants might choose not to avail themselves of this opportunity. For whatever reasons, only a few requests for hearing involving the aggregation of claims by multiple appellants have been submitted in response to the decision in *Moore* vs. *Sullivan*. Nor do we expect that the changes to the aggregation rules for individual part A appellants will significantly increase the volume of part A hearings. The Secretary certifies that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. This regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Subpart G is amended as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

a. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii and 1395pp).

b. In § 405.701, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 405.701 Basis, purpose and definitions.

* * * * *

(d) *Definitions.* As used in subpart G of this part, the term—

Appellant designates the beneficiary, provider or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part A. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for a hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more provider appellants to meet the minimum amount in controversy needed for a hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

c. Section 405.740 is revised to read as follows:

§ 405.740 Principles for determining the amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a hearing ($100), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more providers to meet the $100 hearing threshold and a single provider may aggregate claims for services provided to one or more beneficiaries to meet the $100 hearing threshold.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s).

(4) When requesting a hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified below, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for a hearing ($100). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different provider(s) if the claims involve common issues of law and fact;

(ii) Two or more providers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary; or

(iii) Two or more providers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s). Moreover, in the request for hearing, the

appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the administrative law judge (ALJ).

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ also makes the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 411.400 of this chapter or had such liability not been limited pursuant to § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amounts in controversy for a hearing.

§ 405.741 [Removed]

d. Section 405.741 is removed.

2. Subpart H is amended as follows:

Subpart H—Appeals Under the Medicare Part B Program

a. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

b. The heading for subpart H is revised as set forth above.

c. Section 405.802 is revised to read as follows:

§ 405.802 Definitions.

As used in subpart H of this part, the term—

Appellant designates the beneficiary, assignee or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part B. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Assignee means a physician or supplier who furnishes services to a beneficiary under Medicare part B and who has accepted a valid assignment executed by the beneficiary.

Assignment means the transfer by the assignor of his or her claim for payment to the assignee in return for the latter's promise not to charge more for his or her services than the carrier finds to be the reasonable charge or other approved amount.

Assignor means a beneficiary under Medicare part B whose physician or supplier has taken assignment of a claim.

Carrier means an organization which has entered into a contract with the Secretary pursuant to section 1842 of the Act and which is authorized to make determinations with respect to part B of title XVIII of the Act. For purposes of this subpart, the term carrier also refers to an intermediary that has entered into a contract with the Secretary under section 1816 of the Act and is authorized to make determinations with respect to part B provider services, as specified in § 421.5(c) of this chapter.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more physician/supplier appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

Representative means an individual meeting the conditions described in §§ 405.870 through 405.871.

d. Section 405.811 is revised to read as follows:

§ 405.811 Notice of review determination.

Written notice of the review determination is mailed to a party at his or her last known address. The review determination states the basis of the determination and advises the party of his or her right to a carrier hearing when the amount in controversy is $100 or more as determined in accordance with § 405.817. The notice states the place and manner of requesting a carrier hearing as well as the time limit under which a hearing must be requested (see § 405.821).

e. Section 405.812 is revised to read as follows:

§ 405.812 Effect of review determination

The review determination is final and binding upon all parties to the review unless a carrier hearing decision is issued pursuant to a request for hearing made in accordance with § 405.821 or is revised as a result of reopening in accordance with § 405.841.

f. Section 405.820 is redesignated as § 405.815 and is revised to read as follows:

§ 405.815 Amount in controversy for carrier hearing, ALJ hearing and judicial review.

Any party designated in § 405 822 is entitled to a carrier hearing after a review determination has been made by the carrier if the amount remaining in controversy is $100 or more and the party meets the requirements of § 405.821 of this subpart. To be entitled to a hearing before an ALJ following the carrier hearing, the amount remaining in controversy must be $500 or more, and for judicial review following the ALJ hearing and Appeals Council Review, the amount remaining in controversy must be $1000 or more.

g. A new § 405.817 is added as follows:

§ 405.817 Principles for determining amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a carrier hearing ($100) or ALJ hearing ($500), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more physicians/suppliers to meet the $100 or $500 thresholds. A single physician/supplier may aggregate claims from two or more beneficiaries to meet the $100 or $500 threshold levels of appeal.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for a carrier hearing only if the claims have previously been reviewed and a request for hearing has been made within six

months after the date of the review determination(s).

(4) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for an ALJ hearing only if the claims have previously been decided by a carrier hearing officer and a request for an ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s).

(5) When requesting a carrier hearing or an ALJ hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified in this paragraph, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for an ALJ hearing ($500). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different physician(s) or supplier(s) if the claims involve common issues of law and fact;

(ii) Two or more physicians/suppliers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary;

(iii) Two or more physicians/suppliers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been decided by a carrier hearing officer(s) and a request for ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s). Moreover, in a request for ALJ hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the carrier hearing officer. The determination as to whether the amount in controversy is $500 or more is made by the ALJ.

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ will also make the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid under § 411.400 of this chapter or had such liability not been limited under § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amount in controversy for a hearing.

h. Section 405.821 is revised to read as follows:

§ 405.821 Request for carrier hearing.

(a) A request for a carrier hearing is any clear expression in writing by a claimant asking for a hearing to adjudicate a claim when not acted upon with reasonable promptness or by a party to a review determination who states, in effect, that he or she is dissatisfied with the carrier's review determination and wants further opportunity to appeal the matter to the carrier.

(b) The hearing request must be filed at an office of the carrier or at an office of SSA or HCFA.

(c) Except when a carrier hearing is held because the carrier did not act upon a claim with reasonable promptness (see § 405.801), a party to the review determination may request a carrier hearing within six months after the date of the notice of the review determination. The carrier may, upon request by the party affected, extend the period for filing the request for hearing.

§§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 [Amended]

i. The headings of §§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 are amended by adding the word "carrier" before the word "hearing".

B. Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874 and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99–509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

(a) Any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing if the amount in controversy is $100 or more. The amount in controversy for an individual claimant, which can include any combination of part A and part B services, is computed in accordance with § 405.740(a) of this chapter for part A services and § 405.817(a) of this chapter for part B services. When the basis for the appeal is the refusal of services, the projected value of those services must be used in computing the amount in controversy.

(b) The criteria for aggregating claims available to two or more appellants under section 1869(b)(2) of the Act do not apply to appeals under this part.

PART 473—RECONSIDERATIONS AND APPEALS

C. Part 473 is amended to read as follows:

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.44, paragraph (a) is revised to read as follows:

§ 473.44 Determining the amount in controversy for a hearing.

(a) After an individual appellant has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740(a) of this chapter for Part A services or § 405.817(a) of this chapter for Part B services. When two or more appellants submit a request for hearing, the ALJ determines the amount in controversy in accordance with § 405.740(b) of this chapter for Part A services and § 405.817(b) of this chapter for Part B services.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–5791 Filed 3–15–94; 8.45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Deputy Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7076).	City of San Diego	September 2, 1993, September 9, 1993, San Diego Daily Transcript.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, Eleventh Floor, San Diego, California 92101.	August 18, 1993.	060295
California: Stanislaus (FEMA Docket No. 7076).	Unincorporated areas .	September 10, 1993, September 17, 1993, Modesto Bee.	Mr. Nick Blom, Chairman, Stanislaus County, Board of Supervisors, 1100 H Street, Modesto, California 95354.	August 27, 1993.	060384
Kansas: Sedgwick (FEMA Docket No. 7080).	Unincorporated areas .	October 22, 1993, October 29, 1993, The Wichita Eagle.	The Honorable Mark F. Schroeder, Chairperson, County Commissioners, Sedgwick County, 1250 South Seneca Street, Wichita, Kansas 67213.	October 8, 1993.	200321
Kansas: Sedgwick (FEMA Docket No. 7080).	City of Wichita	October 22, 1993, October 29, 1993, The Wichita Eagle.	The Honorable Frank Ojile, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202.	October 8, 1993.	200328
Louisiana: East Baton Rouge Parish (FEMA Docket No. 7080).	East Baton Rouge Parish.	October 8, 1993, October 14, 1993, The Advocate.	The Honorable Tom Ed McHugh, Mayor, City of Baton Rouge, East Baton Rouge Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.	September 16, 1993.	220058
Texas: Collin (FEMA Docket No. 7080).	City of Plano	October 22, 1993, October 29, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	October 1, 1993.	480140
Texas: Denton (FEMA Docket No. 7080).	City of Denton	September 9, 1993, September 16, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney, Denton, Texas 76201.	September 2, 1993.	480194
Texas: Tarrant (FEMA Docket No. 7080).	City of Arlington	September 10, 1993, September 16, 1993, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, 101 West Abram Street, Box 231, Arlington, Texas 76004.	August 27, 1993.	485454
Texas: Tarrant (FEMA Docket No. 7080).	City of Bedford	September 2, 1993, September 9, 1993, Mid-Cities News.	The Honorable Rick Barton, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095–0157.	August 11, 1993.	480585
Texas: Tarrant (FEMA Docket No. 7080).	City of Fort Worth	October 1, 1993, October 7, 1993, Fort Worth Star Telegram.	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	September 16, 1993.	480596
Texas: Tarrant (FEMA Docket No. 7080).	City of Grapevine	September 24, 1993, September 30, 1993, Fort Worth Star Telegram.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76051.	August 20, 1993.	480598

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6080 Filed 3–15–94; 8:45 am]

BILLING CODE 6718-03-F

44 CFR Part 65

[Docket No. FEMA–7085]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a

newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Deputy Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Windham County.	Town of Plainfield	December 30, 1993, January 6, 1994, The Norwich Bulletin.	Mr. Paul Sweet, First Selectman for the Town of Plainfield, 8 Community Avenue, Plainfield, Connecticut 06374–1299.	December 22, 1993.	090116B
North Carolina: Dare County.	Unincorporated Areas of Dare County.	January 6, 1994, January 13, 1994, The Coastland Times.	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	December 28, 1993.	375348D
Ohio: Franklin and Delaware.	City of Westerville	December 23, 1993, December 30, 1993, The Public Opinion.	Mr. David Lindimore, Manager of the City of Westerville, 21 South State Street, Westerville, Ohio 43081.	December 15, 1993.	390179F

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6077 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7087]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect

prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Deputy Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma.	City of Oklahoma	December 10, 1993, December 17, 1993, The Daily Oklahoman.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 18, 1993.	405378
Texas: Collin	City of Plano	December 24, 1993, December 31, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	December 13, 1993.	480140
Texas: Tarrant.	City of North Richland Hills.	December 2, 1993, December 9, 1993, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	November 19, 1993.	480607
Texas: Wichita.	City of Wichita Falls	January 19, 1994, January 26, 1994, Wichita Falls Times Record News.	The Honorable Mike Lam, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	December 20, 1993.	480662

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6078 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
ARKANSAS	
Conway (city), Faulkner County (FEMA Docket No. 7075)	
Little Creek:	
Approximately 2,300 feet downstream of U.S. Highway 286	*272
Approximately 200 feet upstream of East German Lane	*279
Just upstream of Mockingbird Lane	*285
Approximately 250 feet upstream of U.S. Highway 64	*296
Approximately 200 feet upstream of Siebenmorgen Road	*304
Gold Creek (East):	
At the confluence with Little Creek	*276
Approximately 500 feet upstream of Middle Road, at a private low water crossing	*278
Approximately 500 feet upstream of Wiggle Worm Road	*282
Just upstream of U.S. Highway 64	*292
Approximately 900 feet upstream of Runker Road	*301
Maps are available for review at City Hall, City of Conway, 1201 Oak Street, Conway, Arkansas.	
Faulkner County (unincorporated areas) (FEMA docket No. 7075)	
Little Creek:	
Approximately 2,300 feet downstream of U.S. Highway 286	*272
Approximately 200 feet upstream of East German Lane	*279
Just upstream of Mockingbird Lane	*285
Approximately 250 feet upstream of U.S. Highway 64	*296
Approximately 200 feet upstream of Siebenmorgen Road	*304
Gold Creek (East):	
At the confluence with Little Creek	*276
Approximately 500 feet upstream of Middle Road, at a private low water crossing	*278
Approximately 500 feet upstream of Wiggle Worm Road	*282
Just upstream of U.S. Highway 64	*292
Approximately 900 feet upstream of Runker Road	*301
Maps are available for review at Faulkner County Tax Assessor's Office, 806 Locust Street, Conway, Arkansas.	
HAWAII	
Hawaii County (unincorporated areas) (FEMA docket No. 7073)	
Keopu Drainageway:	
Approximately 525 feet upstream of Hualalai Road	*60
Approximately 1,110 feet upstream of Hualalai Road	*114
Approximately 1,150 feet downstream of Hawaii Belt Road	*135
Approximately 450 feet downstream of Hawaii Belt Road	*203

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
Waiaha Drainageway:	
Just downstream of Kuakini Highway	*164
Just upstream of Kuakini Highway	*170
Just downstream of Hawaii Belt Road	*357
Waiaha Drainageway Splitflow No. 2:	
Approximately 600 feet upstream of Keaubou-Kailua Middle Road	*254
Approximately 260 feet downstream of Hawaii Belt Road	*296
Just downstream of Hawaii Belt Road	*310
Maps are available for review at the Hawaii County Department of Public Works, Division of Engineering, 25 Aupuni Street, Hilo, Hawaii.	
IOWA	
New Vienna (city), Dubuque County (FEMA docket No. 7075)	
North Fork Maquoketa River:	
Approximately 1,900 feet downstream of the confluence of Coffee Creek	*988
At the confluence of Coffee Creek	*990
Approximately 200 feet upstream of State Highway 136	*995
At Maquoketa Street	*998
Approximately 1,300 feet upstream of Maquoketa Street	*999
Maps are available for review at City Hall, City of New Vienna, 7271 Columbus Street, New Vienna, Iowa.	
TEXAS	
Hardin County (unincorporated areas) (FEMA docket No. 7077)	
Gustan Street Ditch:	
Approximately 1,000 feet upstream of South Fannin Street	*43
Immediately upstream of South Ann Street	*44
Maps are available for review at Hardin County Floodplain, 300 Monroe Street, Kountze, Texas.	
Sourlake (city), Hardin County (FEMA docket No. 7077)	
Gustan Street Ditch:	
Approximately 1,000 feet upstream of South Fannin Street	*43
At Elm Street	*44
Approximately 200 feet upstream of Hartel Street	*47
Maps are available for review at 121 West Barkley Street, Sourlake, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94-6082 Filed 3-15-94; 8:45 am]

BILLING CODE 6718-03-P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. * Elevation in feet (NGVD)
GEORGIA	
DeKalb County (unincorporated areas) (FEMA docket No. 7063)	
Peavine Creek:	
Approximately 1,800 feet upstream of Old Briarcliff Road	*846
Approximately 400 feet downstream of Oxford Road	*856
Approximately 1,025 feet upstream of Vickers Drive	*892
Approximately 100 feet downstream of Durand Falls Drive	*924
Maps available for inspection at the DeKalb County Courthouse, Drainage Division, Room 309, 120 West Trinity Place, Decatur, Georgia.	
MARYLAND	
Princess Anne (town), Somerset County (FEMA docket No. 7070)	
Manokin River	
Approximately 1.2 miles downstream of U.S. Route 13	*6
Approximately 0.7 mile upstream of State Route 675 (Somerset Avenue)	*6
Manokin Branch:	
At confluence with Manokin River	*6
Approximately 720 feet upstream of West Broad Street	*6
Wesley Branch:	
At State Route 363	*6
Approximately 1,660 feet upstream of State Route 363	*6
Maps available for inspection at the Municipal Building, 11786 Beckford Avenue, Princess Anne, Maryland.	
MICHIGAN	
Baldwin (township), Iosco County (FEMA docket No. 7073)	
Lake Huron/Tawas Bay:	
Along Tawas Bay shoreline, around Tawas Point, and north along Lake Huron shoreline, to approximately 4,800 feet due east of intersection of Baldwin Resort Road and Tawas Beach Road	*584
Lake Huron:	
Shoreline along Lake Huron from approximately 0.9 mile northeast of intersection of Scott Road and Forest Street, to approximately 1,900 feet southwest of intersection of Scott Road and Forest Street	*589
Shoreline 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23	*587
Shoreline at Point au Sable	*584
Shoreline along Lake Huron from Tawas Point State Park to a point approximately 2.2 miles northeast along shoreline	*584
Shallow Flooding from Lake Huron:	
Approximately 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23	#1
Approximately 3,800 feet northeast of intersection of U.S. Route 23 and Birchcrest Drive, approximately 190 feet northwest of Lake Huron shoreline	#2
Tawas River:	
At confluence with Tawas Lake	*588
At downstream corporate limits	*588
Tawas Lake:	
Entire shoreline	*588
Maps available for inspection at Township Hall, 1119 Monument Road, Tawas City, Michigan.	
Tawas City (city), Iosco County (FEMA docket No. 7073)	
Tawas Bay:	
From Town Line Road to a point approximately 3,200 feet north along Tawas Bay shoreline	*586
Shoreline 200 feet south of intersection of Hale Street and Lake Street	*587
Shoreline 650 feet north of intersection of Hale Street and Lake Street to the intersection of Fourth Avenue and Lake Street	*587
Shoreline between intersection of Wheeler Street and Lake Street and corporate limits with East Tawas	*587
Shallow flooding from Tawas Bay (Lake Huron):	
Area along Tawas Bay shoreline from intersection of Fourth Avenue and Lake Street to a point approximately 1,000 feet southwest	#1
Maps available for inspection at the City Manager's Office, City Hall, 815 Lake Street, Tawas City, Michigan.	
NEW YORK	
Dexter (village), Jefferson County (FEMA docket No. 7071)	
Black River.	
Approximately 0.6 mile downstream of State Route 180	*250
Approximately 0.4 mile upstream of Dexter Hydroelectric Dams	*266
Maps available for inspection at the Dexter Village Office, Lock Street, Dexter, New York.	
New York (city), Bronx, Queens, Kings, New York, and Richmond Counties (FEMA docket No. 7073)	
Sweet Brook:	
At confluence of Colon Tributary	*14
Approximately 1,000 feet downstream of Delmar Avenue	*95
Eltingville Tributary:	
At confluence with Sweet Brook	*39
From center of structure approximately 180 feet upstream of Wilson Avenue	*52
Arbutus Creek:	
At confluence with Arbutus Lake	*10
Approximately 780 feet upstream of Amboy Road	*56
Jansen Tributary:	
At confluence with Arbutus Creek	*25
Approximately 1,340 feet upstream of confluence with Arbutus Creek	*37
Demse Tributary:	
At confluence with Arbutus Creek	*15
Approximately 1,400 feet upstream of Jansen Street	*51
Lemon Creek:	
Approximately 100 feet downstream of Amboy Road	*13
Approximately 350 feet upstream of Rossville Avenue	*102
Sandy Brook:	
Approximately 360 feet upstream of Richmond Parkway	*42
Approximately 1,100 feet upstream of Bloomingdale Road	*85
Maps available for inspection at the New York Commission—Department of Environmental Protection, 59–17 Junction Boulevard, Elmhurst, New York, and the City Planning Office, Waterfront Division, 22 Reed Street, New York, New York.	
PENNSYLVANIA	
Texas (township), Wayne County (FEMA docket No. 7073)	
Lackawaxen River:	
Approximately 1,000 feet downstream of Park Street Bridge	*925
Approximately 1.1 mile upstream of Bear Swamp Road Bridge (upstream corporate limit)	*1,079
Maps available for inspection at the Texas Township Building, Bear Swamp Road, Honesdale, Pennsylvania.	
SOUTH CAROLINA	
Horry County (unincorporated areas) (FEMA docket No. 7073)	
Waccamaw River:	
Approximately 0.6 mile downstream of U.S. Route 501	*10
Approximately 2.2 miles upstream of the confluence of Stanley Creek	*17
Maps available for inspection at the Horry County Building Inspection Department, 801 Main Street, Room 121, Burroughs Complex, Conway, South Carolina.	
TENNESSEE	
Murfreesboro (city), Rutherford County (FEMA docket No. 7058)	
Bear Branch:	
At DeJarnett Lane (previously Oakland School Road)	*580
At Wenlon Road	*609
Maps available for inspection at the City Hall, 111 West Vine Street, Murfreesboro, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6079 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–376]

Radio Broadcast Service; AM Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; notification of compliance.

SUMMARY: Through this Public Notice, the Commission reminds AM radio licensees that effective June 30, 1994, the Commission will no longer employ a "presumptive compliance" policy whereby stations employing the NRSC audio reemphasis standard are presumed to comply with the NRSC–2 emission standard adopted in the First Report and Order in this proceeding (cited below). This document serves to remind licensees operating pursuant to the "presumptive compliance" provision that the temporary waiver period is coming to an end and that they must therefore resume an annual schedule of measuring their emitted spectra before June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McNally, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Deadline Nears for Determining Compliance With AM Emission Limits

In the First Report and Order in MM Docket No. 88–376, 54 FR 19572 (May 8, 1989), the Commission adopted a new emission standard for AM broadcast stations that was intended to reduce second adjacent channel interference and to improve reception quality in the AM service. However, the Commission noted concerns about the implementation and compliance costs associated with the new standard. While the Commission expressed doubts about such costs, it nevertheless adopted a temporary "presumptive compliance" policy by which stations employing the NRSC–1 audio reemphasis standard would be presumed to comply with the NRSC–2 emission standard until June 30, 1994. (Because the two standards were developed by the National Radio Systems Committee, they came to be known as NRSC–1 and NRSC–2.)

Licensees of AM broadcast stations operating pursuant to the "presumptive compliance" provision contained in § 73.44(e) of the Commission's Rules are reminded that they must resume an annual schedule of measuring their emitted spectra before June 30, 1994. As result of the § 73.44(e) temporary waiver period coming to an end, each station that has not been making measurements must do so by June 30, 1994 to comply with § 73.1590(a)(6). The procedure for measuring emissions is explained in § 73.44(a) and the emission limits are contained in § 73.44(b). No extension of the "presumptive compliance" policy is contemplated.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6060 Filed 3–13–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

Defense Federal Acquisition Regulation Supplement; Preference for Local and Small Business

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with respect for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to ensure that businesses located in the vicinity of a military installation that is being closed or realigned have the maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.

DATES: Effective Date: March 8, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before May 16, 1994 to be considered in the formulation of a final rule. Please cite DFARS Case 93–D324 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, Attn: Mrs. Alyce Sullivan, OUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2912 of the Fiscal Year 1994 Defense Authorization Act, Public Law 103–160, requires that qualified businesses located in the vicinity of a military installation, that is being closed or realigned under a base closure law, and small and small disadvantaged businesses (SDBs) be provided a preference, to the greatest extent practicable, in contracts that support the closure or realignment. This includes contracts awarded to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

The Director, Defense Procurement, issued Departmental Letter 94–004, March 8, 1994, to implement section 2912.

B. Regulatory Flexibility Act

The interim rule may have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule revises the current set aside order of precedence for the Department of Defense to ensure that businesses located in the vicinity of a military installation that is being closed or realigned have maximum practicable opportunity to participate in acquisitions that support the closure or realignment. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerned the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 94–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because section 2912 became effective upon enactment of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160), on November 30, 1993. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 226

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

1. The authority for 48 CFR parts 219 and 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.504(b) introductory text is revised to read as follows:

219.504 Set-aside order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c) and 226.71)—

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

3. A new subpart 226.71 is added to read as follows:

Subpart 226.71—Preference for Local and Small Businesses

Sec.

226.7100 Scope of subpart.
226.7101 Definition.
226.7102 Policy.
226.7103 Procedure.

226.7100 Scope of subpart.

This subpart implements section 1912 of the fiscal year 1994 Defense Authorization Act, Public Law 103–160.

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties.

226.7102 Policy.

Businesses located in the vicinity of a military installation that is being closed or realigned under a base closure law, including 10 U.S.C. 2687, and small and small disadvantaged businesses shall be provided maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.

226.7103 Procedure.

In making set-aside decisions under subpart 219.5 and FAR Subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(2) Set aside the acquisition for small business only if one of the expected offers is from a small located in the vicinity.

[FR Doc. 94–5818 Filed 3–15–94; 8:45 am]

BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870

[NASA FAR Supplement Directive 89–14]

RIN 2700–AB35

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; and Reviewing the Reasonableness of Contractor and Subcontractor Compensation

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as removal of NASA internal reporting requirements. This rule also sets forth the policies for reviewing the reasonableness of contractor and subcontractor compensation for service contracts, as well as the solicitation provision for obtaining such information. It also sets forth the requirement for the prenegotiation position memorandum to discuss excessive wages, if any are found.

EFFECTIVE DATE: This regulation will be effective March 31, 1994, except that the amendments to sections 1801.602–3, 1814.406–3, 1814.406–4, and 1816.603–3 are effective March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Removal of Requirement To Report Ratification Actions to Headquarters

As a result of a NASA Procurement Officers Conference in November 1993, this final rule removes the requirement in section 1801.602–3(b)(2) that NASA officials provide to NASA Headquarters a copy of each ratification of an unauthorized commitment along with documentation supporting the ratification. Ratifications at NASA have been reduced from 89 ratifications totalling $1.5 million in FY 90 to 27 ratifications totalling $114,000 in FY 93. On September 30, 1993, additional procedures to control ratifications were required in 48 CFR 1801.602–3(b)(1) (58 FR 51136 and 51137). Consequently, the reporting requirement in paragraph (b)(2) is no longer needed and will be eliminated.

Removal of Requirement To Report Certain Mistakes in Bids to NASA Headquarters

Sections 1814.406–3 and 1814.406–4 are revised to eliminate the requirement to forward to NASA Headquarters copies of determinations made under (FAR) 48 CFR 14.406–3(c) and 14.406–4(d), respectively.

Removal of Requirement To Report Certain Letter Contracts to NASA Headquarters

Section 1816.603–3(a) requires that letter contracts below the Master Buy Plan threshold (generally $25 million) be approved by the NASA Procurement Officer at each installation and that a copy of the approval and other information be provided to NASA Headquarters. This policy was established years ago to eliminate contractual problems and to reduce the large number of letter contracts prepared by NASA Centers. Based on data from our letter contracts status reports, the Centers are now writing very few letter contracts and the contractual problems have been eradicated.

With removal of paragraphs (a) (2) and (3), NASA installations will no longer need to report this information to NASA Headquarters for letter contracts under $25 million ($10 million in the case of some smaller installations).

Removal of Requirement for Contract Funding Report

Section 18–32.702–70(d) requires procurement officers to report by October 31 to the NASA Headquarters Financial Management Division (Code BFC) on the incremental funding waivers approved during the prior fiscal year. This final rule eliminates this internal NASA reporting requirement at the request of the NASA Center Procurement Officers in order to streamline operations. Procurement Officers will still maintain records of the waivers that they approve for incremental funding.

Addition of Coverage to NASA FAR Supplement on the Review of Contractor and Subcontractor Compensation for Reasonableness

On September 8, 1993, a proposed rule to amend the NFS to add policies for reviewing the reasonableness of contractor and subcontractor compensation was published in the **Federal Register** (58 FR 47244) for comment. All comments were reviewed. No changes have been made with the exception of deleting the word "support" in each case where it was used with "service contract," "service subcontracts," "service subcontractors," or "services." The Office of Management and Budget has approved this information collection (OMB Number 2700–0077) through November 30, 1996, under the Paperwork Reduction Act.

Miscellaneous Changes

This rule revises the list of contacts in section 1801.370. Subpart 4.6 is amended in order to revise the instructions to NASA contracting officers for completing NASA Form 507, Individual Procurement Action Report. A typographical correction is made in section 1817.504. Section 1832.402–1 is revised to correct the name of the SBIR program. Section 1832.705–2 is removed and 1832.705–270 is amended to require the contracting officer to place the Contract Funding clause in Section B of solicitations and contracts without modifying the FAR clause on Limitation of Funds. The following sections are amended in order to revise references to NASA Management Instructions and NASA Handbooks: 1804.402; 1804.404–70; 1808.802; 1808.1100; 1809.200; 1810.002; 1814.406–3; 1815.406–5; 1815.570; 1824.102; 1824.202; 1825.604; 1835.003; 1837.200; 1842.173; 1842.202–72; 1845.302–70; 1846.270; 1847.200–70; 1870.103, Appendix I, paragraphs 101.4. and 302.2.; and 1870.303, Appendix I, paragraphs 404.2.1., 602.2., 603.5.b., and 603.5.c. Paragraph (c) of the contract clause at 1852.237–71, Pension Portability, is amended to add, in place of the asterisk, a note that was inadvertently omitted. The note explains to NASA contracting officers the information that contracting officers may insert in paragraph (c).

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1804, 1808, 1809, 1810, 1814, 1815, 1816, 1817, 1824, 1825, 1831, 1832, 1835, 1837, 1842, 1845, 1846, 1847, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—PURPOSE, AUTHORITY, ISSUANCE

2. Section 1801.105 is amended in paragraph (a) by adding the following entry in numerical order in the table as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

(a) * * *

NASA FAR supplement segment	OMB control No.
. . . . .	
18–31	2700–0077
. . . . .	

3. Section 1801.370 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2)(i), (a)(2)(iv), (a)(5), and (b) to read as follows:

1801.370 Points of contact.

* * * * *

(a) * * *

(1) * * *

(i) FAR Council—Eichenlaub

(ii) FAR and NFS Substantive areas—

Area	Analyst(s)
Part 1:	
1.602–3	Whelan.
Balance of 1.6	Pesnell.
1.7	Pesnell.
All other subparts	Eichenlaub
Part 2	Beck.
Part 3	Muzio.
Part 4:	
4.1	Deback.
4.2	Beck.
4.4	Childs.
4.6	King/Beck.
4.7	Beck.
4.8	Childs.
4.9	Beck.
4.70	Whelan
4.71	Beck.
4.72	Deback.
4.73	Pesnell
Part 5	Muzio.
Part 6:	
6.5	LaBeau/Pesnell.
All other subparts	Pesnell.
Part 7	O'Neill.
Part 8:	
8.3	Whelan.
All other subparts	Childs.
Part 9:	
9.5	Muzio.
All other subparts	Whelan.
Part 10	Sudduth.
Part 11	Sudduth.
Part 12:	
12.1	Sudduth.
12.2	Whelan.
12.3	Muzio.
12.5	Whelan.
Part 13	O'Neill.
Part 14	O'Neill.
Part 15:	
15.1	Whelan.
15.4	Whelan.
15.5	Sudduth.
15.6	O'Toole.
15.7	Childs.
15.8	Walker/Eichenlaub.
15.9	Walker/Eichenlaub.
15.10	Brundage.
Part 16	Whelan.
Part 17	Sudduth.
Part 19	O'Neill.
Part 20	Muzio.
Part 22	Childs/Harding.
Part 23	Sudduth.
Part 24	Whelan.
Part 25:	
25.6	Sudduth.
All other subparts	Childs.
Part 27	Childs.
Part 28	Childs.
Part 29	Childs.
Part 30	Guenther/Eichenlaub.
Part 31	LeCren/Eichenlaub.
Part 32	Childs.
Part 33	Brundage.
Part 34	Whelan.

Area	Analyst(s)
Part 35	O'Neill.
Part 36	Pesnell/Stamper.
Part 37	Pesnell/Harding.
Part 39	O'Toole.
Part 42:	
42.7	Balinskas/Eichenlaub.
42.8	Balinskas/Eichenlaub.
42.10	Guenther/Eichenlaub.
42.12	King/Childs.
All other subparts	Pendleton/Childs.
Part 43	Pendleton/Pesnell.
Part 44	Jeshow/Childs.
Part 45	Whelan/Pendleton/ Wilchek.
Part 46	Childs/Jeshow.
Part 47	Childs/Brunner
Part 48	Wilson/Whelan.
Part 49	Whelan.
Part 50	Muzio.
Part 51	Childs.
Part 52	Childs/All analysts in assigned areas.
Part 53	Beck.
Part 70:	
70.1	Deback.
70.2	Deback.
70.3	O'Toole.
70.4	Sudduth.

(iii) Publication matters—Beck

* * * * *

(2) Grants and cooperative agreements

(i) All areas, including Federal Demonstration Project—Deback

* * * * *

(iv) Intellectual Property—Mannix

* * * * *

(5) Guidelines for Acquisition of Investigations (NHB 8030.6)—Deback

* * * * *

(b) Consolidated Contact List.

Name (code)	(202)
Balinskas, James A. (HC)	358–0445
Beck, David K. (HP)	358–0482
Brundage, Paul D. (HP)	358–0481
Brunner, Peter E. (JIB)	358–2289
Childs, William T. (HP)	358–0454
Deback, Thomas L. (HP)	358–0431
Eichenlaub, Carl E. (HP)	358–0483
Guenther, Anne C. (HC)	358–0003
Harding, Allan D. (JL)	358–2274
Jeshow, J. Ronald (HK)	(703) 274–4127
King, Bruce C. (HM)	358–0461
LaBeau, Michael D. (HS)	358–0433
LeCren, Joseph F. (HC)	358–0444
Mannix, John G. (GP)	358–2424
Muzio, David L. (HP)	358–0432
O'Bryant, Cynthia B. (HP)	358–2105
O'Neill, Deborah A. (HP)	358–0440
O'Toole, Thomas J. (HP)	358–0478
Pendleton, Larry G. (HK)	358–0487
Pesnell, James A. (HP)	358–0484
Rosen, Eugene D. (K)	358–2088
Smith, Phillip T. (BFC)	358–1026
Stamper, William C. (JXF)	358–1133
Sudduth, David S. (HP)	358–0485
Walker, Reginald W. (HC)	358–0443
Whelan, Thomas J. (HP)	358–0475
Wilchek, Billie E. (JLE)	358–2301
Wilson, Roger P. (HK)	358–0486

1301.602–3 [Amended]

4. Paragraph (b) of section 1801.602–3 is amended by removing paragraph (b)(2), removing the paragraph designation "(1)" from paragraph (b)(1) following "(b) Limitations.", and redesignating paragraphs (i) through (iv) as paragraphs (b) (1) through (4).

PART 1804—CONTRACT REPORTING

5. Section 1804.402 is amended by revising the first sentence to read as follows:

1804.402 General.

NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. * * *

6. Section 1804.404–70 is amended by revising the third sentence to read as follows:

1804.404–70 Contract clause.

* * * Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1600.2. * * *

7. Section 1804.671–3 is amended by revising the first sentence to read as follows:

1804.671–3 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the fifth work day following each month being reported. * * *

8. Section 1804.671–4 is amended by revising the seventh sentence of the introductory text to read as follows:

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

* * * Item numbers 2 through 7, 9, 15a, 20a, 51 through 61, and 66 are for Acquisition Management Subsystem (AMS) reporting at the installation level only. * * *

* * * * *

1804.671–4 [Amended]

9. Section 1804.671–4 is amended in paragraph (k) by republishing the paragraph heading and revising the first sentence to read as follows:

* * * * *

(k) *Item 8—Contractor identification code (CIC) number* (7 positions). This code is obtained from the publication "NASA Contractor Identification Codes," managed by the Headquarters Procurement Systems Division (Code HM). * * *

* * * * *

10. Section 1804.671–4 is amended in paragraph (n) by revising the entry for Code 24 and adding the following entry in numerical order to the table to read as follows:

* * * * *

(n) * * *

Code	Installation
.	. . . . .
24	Dryden Flight Research Center.
.	. . . . .
73	Space Station Program Office.
.	. . . . .

11. Section 1804.671–4 is amended in paragraph (r) by revising the last sentence to read as follows:

* * * * *

(r) * * * These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, QF, RS, RE, RF, UX, UF, TX, TE, TF, XX, XE, XD, ZX, ZE, or ZD.

* * * * *

12. Section 1804.671–4 is amended in paragraph (s) by removing "(other than reporting center's)" in both places (i.e., for Codes 25 and 26).

13. Section 1804.671–4 is amended in paragraph (u) by revising the entry for Code 08 and by adding the following entry in numerical order to the table to read as follows:

* * * * *

(u) * * *

Code	Contractor
.	. . . . .
08	Other nonprofit (Non-Minority). A non-minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
.	. . . . .
18	Other nonprofit (Minority). A minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
.	. . . . .

14. Section 1804.671–4 is amended by redesignating paragraphs (z) through (ttt) as paragraphs (bb) through (vvv), by redesignating paragraphs (v) through (y)

as paragraphs (w) through (z), by adding paragraphs (v) and (aa), by redesignating newly designated paragraph (oo)(7) as paragraph (oo)(8), by adding paragraph (oo)(7), and by revising newly designated paragraph (vv) to read as follows:

* * * * *

(v) *Item 16a—Women-owned business* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a women-owned business. A women-owned business is one that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

* * * * *

(aa) *Item 20a—Contract/grant proposal number* (18 positions). Enter the contract/grant proposal number in this field. This field is optional and not reported to Headquarters.

* * * * *

(oo) * * *

* * * * *

(7) *Code G—Designated entities set-aside.* Report this code for awards set-aside for disadvantaged business, women-owned business, HBCU's, and other minority institutions. (This covers the 26 procurements authorized by the D&F signed by the Administrator on December 1, 1992.)

* * * * *

(vv) *Item 41—Reserved* (1 position).

* * * * *

15. Table 1804–1 is removed following section 1804.676, and a new table is added at the end of subpart 1804.6 reading as follows:

BILLING CODE 7510-01-P

TABLE 1804-1
POST-CICA PROCUREMENT PLACEMENT CODE MATRIX

TYPE OF PROCUREMENT REPORTING 6 LEVELS (PAR REQUIRED (NF-507)		SOLICITATION PROCESS																
$1 AND OVER: ALL CONTRACTS, GRANTS, AGREEMENTS AND CONSULTANT SERVICE PURCHASE ORDERS. OVER $25K: AWARDS TO OTHER GOVERNMENT AGENCIES AND DELIVERY ORDERS FOR ORDERING SUPPLIES AND SERVICES. MODIFICATIONS TO CONTRACTS.			COMPETITION AFTER EXCLUSION OF SOURCES		OTHER THAN FULL AND OPEN COMPETITION 10 U.S.C. 2304(c)													
		FULL AND OPEN COMPETITION	ALTERNATIVE SOURCE	SET-ASIDES	(1) ONLY ONE RESP. SOURCE	(2) URGENCY	(3) MOBILIZATION OR R&D	(4) INTERNATIONAL AGREEMENT	(5) AUTHORIZED BY STATUTE	(6) NATIONAL SECURITY	(7) PUBLIC INTEREST	GRANTS	SPACE ACT AGREEMENTS	COOPERATIVE AGREEMENTS	INTRAGOVERNMENTAL	SMALL PURCHASES OF $2500 OR LESS	SMALL PURCHASES MORE THAN $2500	MISCELLANEOUS
EXTENT OF COMPETITION	LARGE BUSINESS																	
	Sealed Bid—Non FSS	AX	AE	AF	AL	AO	AP	AQ	AU	AV	AZ							
	Sealed Bid—FSS	AY																
	Neg. Competitive—Non FSS	BX	BE	BF	BL	BO	BP	BQ	BU	BV	BZ	BT	BH	BR		CC	BC	
	Neg. Competitive—FSS	BY																
	Neg. Noncompetitive				DL	DO	DP	DQ	DU	DV	DZ	DT	DH	DR		EC	DC	
	SMALL BUSINESS																	
	Sealed Bid—Non FSS	FX	FE	FF	FL	FO	FP	FQ	FU	FV	FZ							
	Sealed Bid—FSS	FY																
	Set-Asides —Negotiated			GF														
	SBIR			HS														
	Neg. Competitive—Non FSS	KX	KE		KL	KO	KP	KQ	KU	KV	KZ	KT	KH	KR		HC	KC	
	Neg. Competitive—FSS	KY																
	Neg. Noncompetitive				NL	NO	NP	NQ	NU	NV	NZ	NT	NH	NR		IC	NC	
	SBA 8(a)								PS									
	UNIVERSITIES																	
	Sealed Bid	QX		QF	QL	QO	QP	QQ	QU	QV	QZ							
	Neg. Competitive	RS	RE	RF	RL	RO	RP	RQ	RU	RV	RZ	RT	RH	RR		LC	RC	
	Neg. Noncompetitive				SL	SO	SP	SQ	SU	SV	SZ	ST	SW	SX		MC	SC	
	OTHER NON-PROFIT																	
	Sealed Bid	UX		UF	UL	UO	UP	UQ	UU	UV	UZ							
	Neg. Competitive	TX	TE	TF	TL	TO	TP	TO	TU	TV	TZ	TT	TH	TR		OC	TC	
	Neg. Noncompetitive				WL	WO	WP	WQ	WU	WV	WZ	WT	WW	WX		PC	WC	
	WORK OUTSIDE U.S.																	
	Sealed Bid	ZX	ZE	ZD	ZL	ZO	ZP	ZO	ZU	ZV	ZZ							
	Neg. Competitive	XX	XE	XD	XL	XO	XP	XO	XU	XV	XZ	XT	XH	XR		VC	XC	
	Neg. Noncompetitive				YL	YO	YP	YO	YU	YV	YZ	YT	YH	YR		ZC	YC	
	INTRAGOVERNMENTAL														98			
	MISCELLANEOUS		(Reserved for Accounting Transactions—Do Not Cite on Proc. Documents)															99

All small purchase order awards of $2,500 or less (No NF-507 required) shall cite one of the codes listed under "Small Purchases of $2,500 or less" on copy submitted to Accounting.

All small purchase order awards more than $2,500 but less than or equal to $25,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases More Than $2,500" on copy submitted to Accounting.

All small purchase order awards less than or equal to $25,000 (No NF-507 required) to "Disadvantaged Business Firms—Direct" shall cite PPC with second letter "M" on copy submitted to Accounting.

All small purchase order awards less than or equal to $25,000 (No NF-507 required) to "Women-owned Firms" shall cite PPC with second letter "W" on copy submitted to Accounting.

BILLING CODE 7510-01-C

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

16. Section 1808.802 is amended by revising the second sentence to read as follows:

1808.802 Policy.

* * * Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing, Duplicating, and Copying Management Program. * * *

17. Section 1808.1100 is revised to read as follows:

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6000.5, Transportation Management.

PART 1809—CONTRACTOR QUALIFICATIONS

18. Section 1809.200 is revised to read as follows:

1809.200 Scope of subpart.

This subpart prescribes policies and procedures that, like those of (FAR) 48 CFR part 9, subpart 9.2, are to be followed in the use of qualified products lists for procurement of microcircuits as authorized by NMI 5320.5, Basic Policy for NASA Space Flight Program Electrical, Electronic, and Electromechanical (EEE) Parts, and NMI 5320.6, Implementation of NASA Standard Electrical, Electronic, and Electromechanical (EEE) Parts Program.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

19. In section 1810.002, the first sentence is revised to read as follows:

1810.002 Policy.

Implementation of the Metric Conversion Act of 1975, as amended, and (FAR) 48 CFR 10.002(c), shall be in accordance with the policy section of NMI 8010.2, Use of the Metric System of Measurements in NASA Programs.
* * *

PART 1814—SEALED BIDDING

20. Paragraph (a) of section 1814.406–3 is revised to read as follows:

1814.406–3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority To Take Actions in Procurement and Related Matters, the Associate Administrator for Procurement is authorized to permit the correction of bids under (FAR) 48 CFR 14.406–3 (a) and (b) and the award of a contract under (FAR) 48 CFR 14.406–3(d) (see (FAR) 48 CFR 14.406–3(e)). The Associate Administrator for Procurement has authorized procurement officers to permit withdrawal of bids when the conditions in (FAR) 48 CFR 14.406–3(c) are met.
* * * * *

1814.406–4 [Amended]

21. Section 1814.406–4 is amended by removing paragraph (b) and by removing the paragraph designation from paragraph (a).

PART 1815—CONTRACTING BY NEGOTIATION

22. Paragraph (b)(1) of section 1815.406–5 is revised to read as follows:

1815.406–5 Part IV—Representations and instructions.

* * * * *

(b) * * *

(1) State if the selected contractor will require access to classified information (see NHB 1620.3, NASA Security Handbook).

* * * * *

23. Section 1815.570 is revised to read as follows:

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

24. In section 1815.807–70, paragraph (d)(1) is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(d) *Cost analysis.* (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. For each element of cost, compare the contractor's proposal and each Government position, explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution (see 1831.205–670). Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

* * * * *

PART 1816—TYPES OF CONTRACTS

1816.603–3 [Amended]

25. Section 1816.603–3 is amended by removing paragraphs (a) (2) and (3), removing the paragraph designation from paragraph (a)(1) (making that paragraph and paragraph (a) introductory text one paragraph), and redesignating paragraphs (a)(1) (i) through (xi) as paragraphs (a) (1) through (11).

PART 1817—SPECIAL CONTRACTING METHODS

26. In section 1817.504, the second sentence of paragraph (a) is revised to read as follows:

1817.504 Ordering procedures.

(a) * * * Before offers are solicited from commercial sources, the field installation's Director or a designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) must determine whether to obtain the supplies or services from another Government agency. * * *
* * * * *

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

27. Section 1824.102 is revised to read as follows:

1824.102 General.

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17, Privacy Act—NASA Regulations (14 CFR part 1212).

28. Paragraph (a) of section 1824.202 is revised to read as follows:

1824.202 Policy.

(a) NASA implementation of the Freedom of Information Act is found in NMI 1382.2, Availability of Agency Records to Members of the Public (14 CFR part 1206).

* * * * *

PART 1825—FOREIGN ACQUISITION

29. In section 1825.604, the second sentence of paragraph (e) is revised to read as follows:

1825.604 Exempted supplies.

* * * * *

(e) * * * The contracting officer shall consult 14 CFR 1214.15 (NMI 8610.18, Duty-Free Entry of Space Articles) for procedures for obtaining the required Headquarters certificates for the duty-free entry of these articles.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

30. Sections 1831.205–670 and 1831.205–671 are added to read as follows:

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000, and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b)(1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

1831.205–671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

PART 1832—CONTRACT FINANCING

31. The title and first sentence of section 1832.402–1 are revised to read as follows:

1832.402–1 Small Business Innovation Research contracts

Advance payments for all Small Business Innovation Research (SBIR) Phase I contracts have been authorized through a class deviation. * * *

32. Paragraph (d) of section 18.32.702–70 is amended by revising the third and four sentences to read as follows:

1832.702–70 [Amended]

* * * * *

(d) * * * The procurement officer shall maintain a record of all such approvals during the fiscal year. At a minimum, the record will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

* * * * *

1832.705–2 [Removed]

33. Section 1832.705–2 is removed.

34. Section 1832.705–270 is amended by revising the first sentence of paragraph (b) as follows:

1832.705–270 Additional clauses for limitation of cost or funds.

(a) * * *

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in Section B of solicitations and contracts containing the clause at (FAR) 48 CFR 52.232–22, Limitation of Funds. * * *

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

35. In section 1835.003, paragraph (c) is revised to read as follows:

1835.003 Policy.

* * * * *

(c) See NMI 5109.13, Recoupment Policy for the Sale, Use, Lease, or Other Transfer of NASA-Developed Technologies, for NASA policy regarding recoupment.

PART 1837—SERVICE CONTRACTING

36. Section 1837.200 is revised to read as follows:

1837.200 Scope of subpart.

This subpart implements and supplements (FAR) 48 CFR part 37, subpart 37.2 and NMI 5104.5, Guidelines for the Use and Approval of Advisory and Assistance Services Obtained by Contract, and establishes procedures to be followed in contracting for advisory and assistance services.

PART 1842—CONTRACT ADMINISTRATION

37. In section 1842.173, the second sentence is revised to read as follows:

1842.173 Reimbursement for contract administration services.

* * * Budgeting, funding, and payment for these services shall be accomplished in accordance with NMI 7410.1, Management, Funding, and Payment for Contract and Grant Administration and Audit Services Obtained from Other Federal Agencies. * * *

38. In section 1842.202–72, the first sentence is revised to read as follows:

1842.202–72 Delegations to security offices.

NASA's policies and procedures on security are set forth in NMI 1600.2, NASA Security Program. * * *

PART 1845—GOVERNMENT PROPERTY

39. Paragraph (a) of section 1845.302–70 is revised to read as follows:

1845.302–70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

* * * * *

PART 1846—QUALITY ASSURANCE

40. In section 1846.270, the second sentence of paragraph (a) is revised to read as follows:

1846.270 Contract clauses for space flight-related operations.

(a) * * * The clause, however, shall not be used in procurements for flight

crew members or payload specialists when these individuals are covered by other NASA Management Instructions that have screening requirements equivalent to those in NMI 8610.13, Mission Critical Space Systems Personnel Reliability Program (for example, NMI 7100.16, Payload Specialists for Space Transportation System (STS) Missions).

* * * * *

PART 1847—TRANSPORTATION

41. Section 1847.200–70 is revised to read as follows:

1847.200–70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NHB 7900.3, Aircraft Operations Management Manual.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

42. Section 1852.231–71 is added to read as follows:

1852.231–71 Determination of Compensation Reasonableness.

As prescribed at 1831.205–671, insert the following provision.

Determination of Compensation Reasonableness

(March 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at (FAR) 48 CFR 52.222–46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used for those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

1852.237–71 [Amended]

43. Paragraph (c) of the clause in section 1852.237–71 is amended by removing the footnote "*" and adding in its place "_____ [In accordance with 1837.170(a)(2), a period of time (e.g., one year) may be inserted.]" and the footnote "*" to paragraph (c) is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

44. In Appendix I to section 1870.103, paragraph 101.4. and the second sentence of paragraph 302.2. are revised to read as follows:

Appendix I to 1870.103: Guidelines for Acquisition of Investigations

* * * * *

Chapter 1—The Investigation Acquisition System

* * * * *

101 Key Features of the System

* * * * *

4. When the need is determined by the Program Associate Administrator, payload specialists will be selected in accordance with NMI 7100.16, Payload Specialists for Space Transportation System (STS) Missions.

* * * * *

Chapter 3—The Announcement of Opportunity

* * * * *

302 Responsibilities

* * * * *

2. * * * Attention is directed to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

* * * * *

45. In Appendix I to section 1870.303, the first sentence of paragraph 404.2.l, the second sentence of paragraph 602.2, paragraph 603.5.b, and the first sentence of paragraph 603.5.c. are revised to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

* * * * *

Chapter 4—SEB Operating Procedures for Solicitation and Evaluation

* * * * *

404 Request for Proposals (RFP's)—Review and Approval

* * * * *

2. * * *

* * * * *

l. When the procurement involves a major system under NMI 7120.4, Management of Major System Programs and Projects, and NHB 7120.5, Management of Major System Programs and Projects Handbook, the SEB will ensure that the RFP is prepared in terms of mission need so each offeror can respond with an alternative system design concept proposal to satisfy the mission need and can propose a technical approach, design features, and alternatives to schedule, cost, and capability goals consistent with that concept. * * *

* * * * *

Chapter 6—Source Selection

* * * * *

602 Notice and Debriefing for Unsuccessful Offerors

* * * * *

2. * * * This debriefing should normally take place prior to contract award and be conducted in accordance with 15.1003. * * *

* * * * *

603 Source Selection Statement

* * * * *

5. * * *

b. Accordingly, unless prior approval is obtained through the Headquarters Procurement Operations Division (Code HS) with the concurrence of the Office of General Counsel, Source Selection Statements for the selection of alternative system design concepts subject to NMI 7120.4, Management of Major System Programs and Projects, and NHB 7120.5, Management of Major System Programs and Projects Handbook, are not to be released to competing offerors or the general public, if requested, prior to the release of the Source Selection Statement for full-scale development.

c. A similar problem may occur in other procurements where competition continues but is not covered under NMI 7120.4 or NHB 7120.5. * * *

* * * * *

[FR Doc. 94–5144 Filed 3–15–94; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 59, No. 51
Wednesday, March 16, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period relating to a proposed rule that would establish regulations governing the donation of agricultural commodities by Commodity Credit Corporation for distribution in foreign countries pursuant to Section 416(b) of the Agriculture Act of 1949, or the Food for Progress Act of 1985.

DATES: Consideration will be given to written comments submitted on or before April 15, 1994.

ADDRESSES: Comments should be submitted to: Director/PAD, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Ave., SW., room 4079–S, Washington, DC 20250–1000.

SUPPLEMENTARY INFORMATION: On February 14, 1994, we published in the **Federal Register** (59 FR 6916) a proposed rule to establish regulations governing the donation of agricultural commodities by the Commodity Credit Corporation for distribution in foreign countries pursuant to section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985.

Comments on the proposed rule were required to be submitted by March 16, 1994. However, in response to requests received, we are extending this comment period to April 15, 1994. This extension will allow interested persons additional time in which to prepare comments on the proposed rule.

Signed this March 10, 1994, in Washington, DC.

Philip Mackie,

Acting General Sales Manager, FAS, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 94–6035 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–10–M

Farmers Home Administration

7 CFR Parts 1942 and 1980

RIN 0575–AB53

Rural Business Enterprise Grants and Television Demonstration Grants; Technical Assistance and Training Grants; Nonprofit National Corporations Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the FmHA policies and procedures governing the administration of programs which authorize technical assistance as an eligible grant purpose. This action is necessary to implement legislation that prohibits duplication of technical assistance grant funding provided by the Forest Service (FS). The intended effect of this action is to require that grant funds may not be used to pay for technical assistance which duplicates assistance provided under an action plan funded by the FS under the National Forest-Department Rural Communities Economic Diversification Act during 5 continuous years from the date of grant approval by the FS.

DATES: Comments must be submitted on or before April 15, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Rural Development Administration, U.S. Department of Agriculture, room 6314, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Environmental Impact

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, Subpart B, must be exhausted prior to filing suit.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 1.5 hours per response, with an average of 1 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Background

FmHA proposes this action to implement section 2375(e) of Public Law 101–624, which requires the Secretary of Agriculture to ensure that no substantially similar geographical or defined local area in a State receives a grant for technical assistance to an economically disadvantaged community from the FS and a grant for technical assistance under a designated rural development program as defined in section 365(b)(2) of the Consolidated Farm and Rural Development Act, during any continuous 5-year period.

Programs Affected

The programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.424, Rural Development Grants; 10.434, Nonprofit National Corporations Loans and Grant Program; and 10.436, Technical Assistance and Training Grants. The 10.424 and 10.434 programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The 10.436 program is exempt from the provisions of Executive Order 12372. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

List of Subjects in 7 CFR Parts 1942 and 1980

Business and industry; Community development; Community facilities; Economics development, Grant programs—housing and community development, Grant programs—nonprofit corporations, Industrial park, Loan programs—nonprofit corporations, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Section 1942.307 is amended by adding a new paragraph (a)(6) as follows:

§ 1942.307 Limitations on use of grant funds.

(a) * * *

(6) To pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide documentations to FS and FmHA regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

* * * * *

Subpart J—Technical Assistance and Training Grants

3. Section 1942.460 is amended by adding paragraph (g) to read as follows:

§ 1942.460 Limitations.

* * * * *

(g) Pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with the FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above programs. The grantee will provide documentation to FS and FmHA regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Nonprofit National Corporations Loan and Grant Program

5. Section 1980.613 is amended by redesignating the existing paragraph as paragraph (a) and adding subparagraph (b) to read as follows:

§ 1980.613 Technical assistance.

* * * * *

(b) Grant funds for technical assistance which duplicates assistance provided under an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Economic Diversification Act provided for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the NNC shall coordinate with the FS and FmHA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The NNC will provide documentation to FS and FmHA regarding the contact with each agency.

Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

Dated: March 1, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-6023 Filed 3-15-94; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0832]

Revisions Regarding Tie-in Prohibitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is seeking public comment on proposed amendments to Regulation Y that would permit bank holding companies to offer discounts on brokerage commissions if the customer obtains a traditional bank product (a loan, discount, deposit, or trust service) from any affiliate. The Board recently approved an exemption permitting discounts on brokerage commissions for First Union Corporation, Charlotte, North Carolina (First Union), and the proposed rule would make it available to bank holding companies generally, thus avoiding the need for action on individual requests.

The proposal also seeks comment on whether the Board should adopt an exception to the antitying prohibitions to permit a bank to discount a traditional bank product if the customer obtains another traditional bank product from an affiliate of the bank. This exemption extends to affiliates the statutory exemption that permits a bank to offer discounts on packages of traditional bank products. The Board has received several requests for exemptions involving individual traditional bank products and believes that such an exemption is more appropriately addressed in rulemaking.

DATES: Comments must be submitted on or before April 14, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0832, may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Managing Senior Counsel (202/452-3711); Laurie S. Schaffer, Senior Attorney (202/452-2246), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.) (Section 106) generally prohibits banks from tying a product or service to another offered by the bank or any of its affiliates. A prohibited tie-in occurs if a bank: (1) varies the consideration for credit or other service on the condition that the customer obtain some additional service from the bank or any of its affiliates; or (2) actually requires the customer to purchase another product or service from the bank or any of its affiliates as a condition for providing the customer the first product or service. In 1971, the Board applied these antitying prohibitions to bank holding companies and their nonbank subsidiaries as if they were banks.

The statute provides an exemption permitting a bank to tie a product with a traditional bank product[1] offered from that bank, but not from any of its affiliates. Thus, Section 106 permits a bank to discount the consideration paid for credit if a customer also obtains a traditional banking product from that bank (but not an affiliate of that bank).

Section 106 provides that the Board may, by regulation or order, permit exceptions from the antitying prohibition where the Board determines that an exception will not be contrary to the purposes of the section.

[1] These products are defined for purposes of tie-in prohibitions as "a loan, discount, deposit, or trust service." 12 U.S.C. 1972(1)(A).

Analysis of Proposed Amendments

Discounts on Brokerage Services. The Board recently approved an exemption for a brokerage subsidiary of a First Union bank to offer discounts on commissions for brokerage services to customers who maintain a minimum balance in accounts at any First Union bank.[2] The Board found that the market for retail brokerage services is national in scope and highly competitive therefore making it unlikely that First Union—or any other provider of brokerage services—could exercise sufficient market power to impair competition in the market for traditional banking services. The Board also noted that, under antitrust precedent, concerns over these types of arrangements were substantially reduced where the buyer is free to take either product by itself even though the seller also may offer the two items as a unit at a single price.[3] Under these circumstances, the Board concluded that the requested exemption was consistent with the legislative purpose of the statute (to prevent banks from using their economic power to lessen competition or engage in anticompetitive practices) and the legislative purpose of the Board's exemptive authority (to allow appropriate traditional banking practices based on sound economic analysis).

The Board believes that this exemption should be available to all bank holding companies, and the proposed rule implements this exemption by permitting a bank to offer a discount on brokerage services if the customer obtains a traditional banking product from that bank or any affiliate. The brokerage services and traditional banking products offered in the arrangement, however, could be separately purchased by the customer.

Traditional Bank Products. As noted, Section 106 contains an exemption that permits a bank to tie a product to a traditional bank product so long as both products are offered by the bank itself. The statute does not permit a bank to tie its products to a traditional bank product offered by an affiliate bank or nonbank, however. The Board has received several requests for exemptions involving proposed discounts on individual traditional bank products offered by a bank and its affiliates.[4] The

[2] *First Union Corporation*, 80 Federal Reserve Bulletin 166 (1994) ("First Union Order").

[3] *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 6, n.4 (1958).

[4] A request by First Union, which would permit any First Union bank to vary the consideration on traditional bank products to customers who

proposal seeks comment on adopting an exception to the antitying restrictions of Section 106 to permit a bank to offer a discount on a traditional bank product it offers if the customer obtains another traditional bank product from an affiliate of the bank, provided that all the products are available for separate purchase by the customer.

The Board believes that such an exemption is consistent with the purposes of the statute, and the Congressional intent not to affect traditional banking relationships. In this regard, the Senate Report states that the traditional bank products exemption was intended to preserve a customer's ability to negotiate the price of multiple banking services with the bank on the basis of the customer's entire relationship.[5] The Senate Report also suggests that the Board could use its exemptive authority to continue to allow appropriate traditional banking practices.[6]

Banks organized in a bank holding company structure currently are subject to regulatory burdens not imposed on single banks offering discounts on traditional bank products. Moreover, it does not appear to further the purpose of the statute to allow a bank to discount a product it offers if the customer has purchased a traditional bank product from the bank, but not to allow the discount when the customer has purchased the very same traditional bank product from an affiliate bank or nonbank. By removing this regulatory burden, the Board believes that consumers would benefit from costs savings realized through more efficient operations.

The same efficiencies and costs savings to consumers would be realized by permitting discounts on traditional bank products offered by nonbank affiliates in a package arrangement with an affiliate bank. In this regard, the legislative history for provisions involving tying prohibitions enacted after Section 106 support these types of package arrangements for traditional bank products offered in combination with nonbanking affiliates.[7]

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule.

Regulatory Flexibility Act

It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.4, new paragraphs (d)(3) and (d)(4) are added to read as follows:

§ 225.4 Corporate practices.

* * * * *

(d)(1)

* * * * *

(3) *Exemption for brokerage services.* A bank may vary the consideration charged for brokerage services on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from that bank or any affiliate, if the brokerage services and the loan, discount, deposit, or trust service offered in the arrangement also are separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

(4) *Exemption for traditional bank products.* A bank may vary the consideration charged for a loan, discount, deposit, or trust service (but no other products) on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from an affiliate of that bank, if all these products are separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6050 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

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maintain a minimum balance in accounts at any bank affiliate, was published and received 10 comments. All the commenters favored the proposal, and several commenters requested the Board to broaden the exemption to include all traditional bank products through rulemaking.

[5] S. Rep. No. 1084, 91st Cong., 2d Sess., 16-17 (1970) ("Senate Report"). The Senate Report cites the following application of the exemption: "where the customer uses multiple banking services such as deposit, loan, fiduciary, and commercial accounts or facilities, the parties may be free to fix or vary the consideration for any services upon the existence or extent of utilization of such banking services." Senate Report at 17. Senator Bennett noted when introducing the tie-in amendment that "[c]learly, neither a bank nor its customer should be attacked under [Section 106] for taking advantage of the economies and efficiencies of full-service banking." 116 Cong. Rec. S15708 (1970).

[6] Senate Report at 46.

[7] In the Competitive Equality Banking Act of 1987 (Pub. L. 100-86), which applied the tie-in restrictions to nonbank banks, Congress indicated that "the anti-tying restrictions [of Section 106] would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank bank to another traditional banking service offered by an affiliate." H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 128-29 (1987). While this excerpt does not accurately reflect the literal terms of Section 106, it lends support for the proposed extension of an exemption for tie-in arrangements for traditional banking services offered by a bank and its nonbanking affiliates or parent holding company.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-01-AD]

Airworthiness Directives; Nordskog Water Heaters and Coffee Makers as Installed in Various Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Nordskog water heaters and coffee makers. This proposal would require an inspection to determine whether certain discrepant pressure relief valves have been installed in certain galley water heaters and coffee makers; and either replacement of the discrepant valves, or discontinued use and installation of placards. This proposal is prompted by reports of injuries to cabin crew members that resulted from explosions of galley water heaters. The actions specified by the proposed AD are intended to prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–01–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aircraft Products Company, 12807 Lake Drive, P.O. Box 130, Delray Beach, Florida 33447–0130. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 15, 1993, the FAA issued AD 93–23–01, Amendment 39–8735 (58 FR 61618, November 22, 1993), applicable to certain Nordskog water heaters and coffee makers installed in various airplanes, to require an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers. That AD also requires either replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves, or discontinued use of certain Nordskog galley water heaters and coffee makers and installation of placards stating, "Not to be used." That action was prompted by reports of injuries to cabin crew members that resulted from explosions of galley water heaters. The requirements of that AD are intended to prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members.

The incident reports that prompted AD 93–23–01 involved units with an integral check valve; AD 93–23–01 applies only to units with the integral check valve. In the preamble to that AD, the FAA indicated that it was evaluating the need for additional AD action to address other installations that incorporate the same pressure relief valve design. The FAA now finds that Nordskog water heaters and coffee makers without the integral check valve also use the same pressure relief valve. Therefore, these units could also be subject to the same unsafe condition as addressed by AD 93–23–01.

The FAA has reviewed and approved Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993, that describes procedures for an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers; and replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves. The manufacturer has advised that the discrepant pressure relief valve has been installed in certain Nordskog galley water heaters and coffee makers that either were manufactured between January 1990 and July 1991, or have been serviced since January 1990. The manufacturer has also advised the FAA that this problem has been corrected on the new model number pressure relief valves installed by Nordskog since July 1991. The effectivity listing of this service bulletin includes the model numbers of Nordskog galley water heaters and coffee makers on which the discrepant relief valves may be installed.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers. This proposed AD would also require either replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves, or discontinued use of certain Nordskog galley water heaters and coffee makers and installation of placards stating, "Not to be used." The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA is aware that the subject water heaters and coffee makers are installed in various airplanes. There are approximately 300 of these airplanes in the worldwide fleet; the FAA estimates that 200 airplanes are of U.S. registry It would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour (There are approximately 4 water heaters and/or coffee makers installed on each airplane.) The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,000, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Nordskog Industries, Inc.: Docket 94–NM–01–AD.

Applicability: Nordskog water heaters and coffee makers, as listed in Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993; as installed in, but not limited to Boeing Model 727, 737, 747, 757, and 767 series airplanes; McDonnell Douglas Model DC–9, DC–9–80, and DC–10 series airplanes, and MD–11 airplanes; Lockheed Model L–1011 series airplanes; Airbus Industrie Model A300, A310, and A320 series airplanes; Gulfstream Model G–1159 series airplanes and Model G–IV airplanes; de Havilland, Inc., Model DHC–8 series airplanes; Dassault-Aviation Model Mystere-Falcon 50, 200, and 900 series airplanes; Canadair Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) and CL–600–2B19 series airplanes; and Fokker Model F27 and F28 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time inspection to determine whether a NUPRO pressure relief valve having part number (P/N) SS–2C4–65 has been installed, in accordance with Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993. If any NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, prior to further flight, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the NUPRO pressure relief valve having P/N SS–2C4–65 and install a new, improved NUPRO pressure relief valve having P/N SS–CHF2–65, in accordance with the service bulletin. Or

(2) Deactivate any Nordskog water heater or coffee maker listed in the service bulletin on which a NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, and install a placard stating, "Not to be used."

(b) As of the effective date of this AD, no person shall install a NUPRO pressure relief valve having P/N SS–2C4–65 on any airplane

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6067 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–76–AD]

Airworthiness Directives: Beech Aircraft Corp. Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 91–20–14, which currently requires incorporating revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (AFM/POH) on Beech Aircraft Corporation (Beech) Models B300 and B300C airplanes. Beech has started incorporating these takeoff and climb requirements into the AFM/POH of airplanes manufactured since issuance of AD 91–20–14. The proposed action would limit the applicability to only those airplanes without these takeoff and climb requirements incorporated into the AFM/POH at production. The actions specified by the proposed AD are intended to ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature.

DATES: Comments must be received on or before May 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Copies of the AFM/POH revision that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Flight Test Pilot, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–20–14, Amendment 39–8168 (January 30, 1992, 57 FR 3516), currently requires incorporating revised takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the AFM/POH on Beech Models B300 and B300C airplanes. Beech has started incorporating these takeoff and climb requirements into the AFM/POH of Models B300 and B300C airplanes manufactured since issuance of AD 91–20–14.

After examining the circumstances and reviewing all available information related to the action described above, the FAA has determined that (1) the applicability of AD 91–20–14 should exclude those airplanes incorporating the takeoff and climb requirements in the AFM/POH at manufacture; and (2) AD action should remain for all other Models B300 and B300C airplanes in order to continue to ensure that these airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models B300 and B300C airplanes of the same type design, the proposed AD would revise AD 91–20–14 to continue to require incorporating revised takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the AFM/POH, but would exclude those airplanes incorporating the takeoff and climb requirements at manufacture.

The FAA estimates that 118 airplanes in the U.S. registry would be affected by the proposed AD, and that it would take approximately 1 workhour to incorporate the charts into the POH. Since an owner/operator who holds a private pilot certificate as authorized by 14 CFR 43.7 and 14 CFR 43.11 of the Federal Aviation Regulations is allowed to accomplish the proposed inspection, the only cost impact upon the public would be the time it takes to incorporate these charts.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–20–14, Amendment 39–8168 (January 30, 1992, 57 FR 3516), and by adding the following new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 91–CE–76–AD; Revises AD 91–20–14, Amendment 39–8168.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
B300	FL–1 through FL–110.
B300C	FM–1 through FM–8.

Compliance: Required within 10 hours time-in-service after February 20, 1992 (the effective date of AD 91–20–14), unless already accomplished.

To ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Incorporate the takeoff and climb performance charts, B2 revision, part number (P/N) 130–590031–1, dated September 1991, into the Model B300 and B300C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (AFM/POH).

Note 1: The charts sent in the priority letter AD 91–20–14 package and B2 revision, P/N 130–590031–1, dated September 1991, are the same.

(b) Incorporating the climb and takeoff charts as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by 14 CFR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.11.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the AFM/POH revision referred to herein upon request to Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment revises AD 91–20–14, Amendment 39–8168.

Issued in Kansas City, Missouri, on March 10, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6042 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–V

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14 CFR Part 39

[Docket No. 94–NM–13–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6–80A or Pratt & Whitney JT9D–7R4 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. This proposal is prompted by reports of piston seal leakage found during actuator overhaul on certain Model 767 series airplanes. The actions specified by the proposed AD are intended to prevent possible deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2683; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of piston seal leakage found during actuator overhaul on Model 767 series airplanes equipped with General Electric CF6–80A and Pratt & Whitney JT9D–7R4 engines. There have been no reports of thrust reverser sleeve deployment due to this leakage; however, testing accomplished by the airplane manufacturer suggests that if sufficient seal leakage occurs in the locking actuator on a single thrust reverser sleeve, that sleeve could possibly deploy.

The deploy and stow sides of the thrust reverser actuator are separated by a piston seal. During reverser stow, or during an occurrence of auto-restow, leakage of this seal can allow hydraulic fluid to pass from the stow side of the actuator to its deploy side. If this leakage is sufficient, a flow control/restrictor device in the hydraulic line can subsequently cause back pressure to build up in the deploy side of the actuator. In such cases, the sleeve could possibly unlock and deploy. This condition, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletins 767–78A0064 (for Model 767 series airplanes equipped with General Electric CF6–80A engines) and 767–78A0065 (for Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines), both dated July 16, 1992, that describe procedures for replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. Accomplishment of this replacement will prevent the possibility of uncommanded deployment of a single thrust reverser sleeve ("half") caused by leakage of the piston seals in the thrust reverser sleeve actuators.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the thrust reverser flow restrictor devices with one-way (check) valve restrictors. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

There are approximately 119 Model 767 series airplanes equipped with General Electric CF6–80A engines of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with General Electric CF6–80A engines is estimated to be $121,440, or $1,760 per airplane.

There are approximately 95 Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these

figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines is estimated to be $49,500, or $1,650 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $170,940.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–13–AD.

Applicability: Model 767 series airplanes equipped with General Electric CF6–80A or Pratt & Whitney JT9D–7R4 engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the thrust reverser flow restrictor devices with one-way (check) valve restrictors in accordance with Boeing Alert Service Bulletin 767–78–0064 (for Model 767 series airplanes equipped with General Electric CF6–80A engines) or 767–78–0065 (for Model 767 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines), both dated July 16, 1992, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6066 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–ANM–11]

Proposed Amendment to Class D Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Grand Junction, Colorado, Class D airspace. This action is necessary to correct an error in the airspace description inadvertently omitted during the airspace reclassification process. This action would amend the Grand Junction, Colorado, Class D airspace from full-time to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace."

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report

summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Grand Junction, Colorado, to correct an error in the Class D airspace description. During the airspace reclassification process (57 FR 38962; August 27, 1992) the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Grand Junction, CO [Amended]

Grand Junction, Walker field, CO
(lat. 39°07′21″N, long. 108°31′36″W)

That airspace extending upward from the surface to and including 7,400 feet MSL within a 4.7-mile radius of Walker Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 3, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–6102 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AAL–1]

Proposed Extension of Jet Route J–179 and Establishment of Jet Route J–510; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Jet Route J–179 between the Middleton Island, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK, VOR/DME and from the St. Mary's, AK, Nondirectional Radio Beacon (NDB) to the Emmonak, AK, VOR/DME. Also, this proposed rule would establish Jet Route J–510 between the Galena, AK, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Emmonak, AK, VOR/DME. This action would enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. This action would also reduce pilot and air traffic controller workload.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 94–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–

AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–179 by extending J–179 from Middleton Island, AK, VOR/DME to Emmonak, AK, VOR/DME, and to establish Jet Route J–510 from Galena, AK, (VORTAC) to Emmonak, AK, VOR/DME. This action would enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–179 [Revised]

From Middleton Island, AK; Kenai, AK; Sparrevohn, AK; Aniak, AK, NDB; St. Mary's, AK, NDB: to Emmonak, AK.

* * * * *

J–510 [New]

From Galena, AK; Unalakleet, AK; to Emmonak, AK.

* * * * *

Issued in Washington, DC, on March 9, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–6103 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

March 10, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of filing and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received filings relating to the use of a standardized ASCII format for downloading capacity release data sets, including proposed ASCII file formats, and the requirement to post operationally available capacity. The Commission is affording interested persons an opportunity to file comments on this filing.

DATES: Comments due by March 17, 1994.

ADDRESSES: Comments should be filed at: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington DC 20426.

Notice of Filing

March 10, 1994.

Take notice that on March 9, 1994, Working Groups 1 & 2 submitted filings relating to the use of a standardized ASCII format for downloading capacity release data sets, including proposed ASCII file formats. On March 3, 1994, Working Groups 1 & 2 also forwarded an additional comment on the requirement to post operationally available capacity.

Any person desiring to submit comments on these filings should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 on or before March 17, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6054 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 096–AD45

Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers To Deny a Request for Appeals Council Review; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the preamble to the proposed rule published Monday, January 10, 1994 (59 FR 1363). The proposed rule would amend 20 CFR 422.205, which describes the organization and procedures of the Appeals Council, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ).

DATES: To be sure that your comments are considered, we must receive them no later than March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections would amend the regulation concerning the organization and procedures of the Appeals Council, 20 CFR 422.205, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an ALJ.

Need for Correction

As published, the preamble to the proposed rule contains the following errors. One paragraph was inadvertently omitted, and parts of two other paragraphs were shown twice. In addition, a paragraph which references those Catalog of Federal Domestic Assistance Programs affected by the proposed rule contained a phrase which should have appeared in another paragraph of the preamble and incomplete program designations.

Correction of Publication

Accordingly, the publication on January 10, 1994 of the proposed rule, which was the subject of FR Doc. 94–481, is corrected as follows:

1. On page 1364, in the second column, delete the last four lines of the second paragraph under Regulatory Provisions beginning with the word "Judges". Insert the following as the third paragraph:

> The terms "member" and "members" of the Appeals Council are used throughout § 422.205 and in several other sections of 20 CFR, Chapter III (see, for example §§ 404.2, 404.950, 404.1785, 410.110, 410.639, 410.658, 410.692, 410.696, 416.120, 416.1450, and 416.1585). The substantive provisions of the regulations with respect to the authority of the Appeals Council are not changed by our decision to designate the "members" as "Administrative Appeals Judges," or by the proposed change to expand the authority of the Appeals Officers, who organizationally are part of the Council.

2. On page 1364, in the third column, delete the first full paragraph which begins with the word "Inasmuch".

3. On page 1364, in the third column, in the Catalog of Federal Domestic Assistance Program references: remove the phrase "Reporting and recordkeeping requirements;"; add after the word "Security;" in the second to last line "93.806 Special Benefits for Disabled Coal Miners;"; and add immediately after the word "Security" in the last line the word "Income".

4. On page 1364, in the third column, in the paragraph which follows "List of Subjects in 20 CFR Part 422," add ", Reporting and recordkeeping requirements" immediately after "security".

Dated: March 10, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–6071 Filed 3–15–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment repeals Maryland's Code of Maryland Regulations (COMAR) 08.13.02 (Deep-Mining of Coal). Regulations that existed in the repealed Chapter 02 and are still necessary to regulate deep-mining are moved to COMAR 08.20 (Surface Coal Mining and Reclamation Under Federally Approved Program). This proposed amendment facilitates the codification of Maryland's approved program and is intended to revise the Maryland program to be consistent with the corresponding Federal regulations. Minor changes were made to certain provisions transferred to COMAR 08.20

This document sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the dates and times of the comment period during which interested persons may submit written comments on the amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., [e.s.t.] on April 15, 1994. If requested, a public hearing on the amendment will be held at 9 a.m., [e.s.t.] on April 11, 1994.

Requests to speak at the hearing must be received on or before 4 p.m., [e.s.t.] on March 31, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Acting Director, Harrisburg Field Office, at the first address listed below.

Copies of the Maryland program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contracting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of the Proposed Amendment

The Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM on February 25, 1994. The amendment (Administrative Record Number MD–566.00) repeals Maryland's COMAR 08.13.02 (Deep-Mining of Coal). Regulations that existed in the repealed Chapter 02 and are still necessary to regulate deep-mining are moved to COMAR 08.20 (Surface Coal Mining and Reclamation Under Federally Approved Program). These regulations include: COMAR 08.20.02.18 (Deep-Mine Applications), 08.20.13 (Surface Effects of Deep Mines), 08.20.14.13 (Deep-Mine Bonding Requirements). COMAR 08.20 is a new subtitle that Maryland developed to streamline the codification of Federally approved program rules by grouping the provisions by chapter instead of by regulation. COMAR 08.13.09 (Surface Coal Mining and Reclamation under Federally Approved Program) or Chapter 09 of Subtitle 13 was transferred by COMAR Supplement No. 15 to this new Subtitle 20 in May of 1993. Minor editorial changes were made to certain provisions transferred to COMAR 08.20. Other changes are listed below.

COMAR 08.20.13.04D (Face-Up Areas) is amended to prevent gravity discharge of water from surface openings of underground coal mines.

COMAR 08.20.13.10D (Subsidence Control: Buffer Zone) is amended to delete the subsidence control waiver option for public bridges subject to subsidence.

COMAR 08.20.02.18A(4) (Deep Mine Applications) is amended to require the map scale for the underground workings to be 1 inch equal to 500 feet or a different scale if clarity is preserved and the alternate scale is approved by the Bureau.

COMAR 08.20.13.12A (Projection Maps) is revised to require the projected mining to be submitted at the same scale as the map submitted under COMAR 08.20.13.18A(4).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [e.s.t] on March 31, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of

SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–6084 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7086]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Jasper (City) DuBois County.	Jahn Creek	0.62 river mile upstream of confluence	*456	*455
			1,375 feet upstream of Maplecrest Boulevard.	None	*483
		Mill Creek	0.4 river mile downstream of confluence of Ackerman Branch.	None	*452
			0.85 river mile upstream of confluence of Grist Run.	None	*481
		Ackerman Branch	Confluence with Mill Creek	None	*453
			Approximately 1,300 feet upstream of North 400 Road.	None	*469
		Grist Run	Confluence with Mill Creek	None	*468
			Approximately 500 feet upstream of West 350 Road.	None	*472
		Crooked Creek	Approximately 375 feet downstream of West 450 Road.	None	*448
			Confluence of Crooked Creek Tributary	None	*466
		Crooked Creek Tributary	Confluence with Crooked Creek	None	*466
			Approximately 50 feet upstream of North 200 Road.	None	*469
		Jasper Drain	Confluence with Crooked Creek	None	*464
			Approximately 50 feet upstream of St. Charles Street.	None	*472

Maps available for inspection at the Jasper City Hall, 610 Main Street, Jasper, Indiana.

Send comments to the Honorable William Schmitt, Mayor of the City of Jasper, P.O. Box 29, Jasper, Indiana 47546.

Maryland	Oakland (Town) Garrett County.	Little Youghiogheny River	Approximately 100 feet upstream of confluence with the Youghiogheny River.	*2,367	*2,366
			Approximately 0.4 mile upstream of confluence of Unnamed Tributary.	None	*2,386
		Bradley Run	At the confluence with Little Youghiogheny River.	*2,370	*2,371
			At the downstream side of CSX Transportation.	*2,370	*2,371

Maps available for inspection at the Town Hall, Oakland, Maryland.

Send comments to the Honorable Asa McCain, Mayor of the Town of Oakland, Garrett County, 109 South 3rd Street, Oakland, Maryland 21550.

Minnesota	Argyle (City) Marshall County.	Middle River	Approximately 0.64 mile downstream of Pacific Avenue.	*841	*840
			Approximately 1.6 miles upstream of County Highway 4.	*850	*851

Maps available for inspection at the City Office, 701 Pacific Avenue, Argyle, Minnesota.

Send comments to the Honorable Bruce C. Anderson, Mayor of the City of Argyle, Marshall County, Box 288, Argyle, Minnesota 56713.

Minnesota	Preston, City (Fillmore County).	South Branch Root River	Approximately 1,900 feet downstream of U.S. Route 16 and 52.	None	*927
			Approximately 400 feet upstream of corporate limits.	*955	*954

Maps available for inspection at the City Hall, 109 St. Paul 2 South Weston, Preston, Minnesota.

Send comments to the Honorable Earl Huff, Mayor of the City of Preston, Fillmore County, P.O. Box 657, Preston, Minnesota 55965.

North Carolina	Washington County (Unincorporated Areas).	Roanoke River	At North Carolina Highway 45	None	*8
			At upstream Town of Plymouth extraterritorial limits.	None	*8
		Welch Creek	At downstream Town of Plymouth extraterritorial limits.	*7	*9
			Approximately 0.2 mile upstream of confluence of Welch Creek Tributary.	*8	*9
		Welch Creek Tributary	At confluence with Welch Creek	*8	*9
			Approximately 0.4 mile upstream of confluence with Welch Creek.	*8	*9

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Washington County Permits, Inspections, and Emergency Management Office, 120 Adams Street, Plymouth, North Carolina.					
Send comments to Mr. Lee Smith, Washington County Manager, P.O. Box 1007, Plymouth, North Carolina 27962.					
South Carolina	City of Columbia ...	Tributary K–2	Approximately 285 feet upstream of the unnamed road.	None	*243
	Lexington and Richland Counties.		Approximately 510 feet upstream of the unnamed road.	None	*248
Maps available for inspection at the City Hall, Public Information Office, 1737 Main Street, Columbia, South Carolina.					
Send comments to the Honorable Robert D. Coble, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29217.					
Wisconsin	Dane County (Unincorporated Areas).	Sugar River	Approximately 1.0 mile downstream of State Highway 69 bridge.	*911	*912
			Approximately 1.0 mile upstream of State Highway 69 bridge.	*916	*917
Maps available for inspection at the City/County Building, 210 Martin Luther King Boulevard, Room 116, Madison, Wisconsin.					
Send comments to Mr. Richard Phelps, Dane County Executive, 210 Martin Luther King Jr. Boulevard, Room 419, Madison, Wisconsin 53709.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–6081 Filed 3–15–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

[Docket No. FEMA–7088]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

These proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding location	# Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
North Lake (town), Denton County	
Denton Creek:	
Approximately 3,800 feet downstream of Cleveland Gibbs Road	*570
Just upstream of Interstate Highway 35	*582
At the confluence of Trail Creek	*596
Just upstream of FM 407	*610
Approximately 100 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*682
Maps are available for review at City Hall, 105 West 4th Street, Justin, Texas.	
Send comments to The Honorable Carla Hardeman, Mayor, Town of North Lake, P.O. Box 158, Justin, Texas 76247.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Maumelle (City), Pulaski County.	Arkansas River	Approximately 0.9 mile upstream of the I–430 bridge and approximately 1,300 feet east and 400 feet south of the intersection of Crystal Hill Road and Counts Massie Road.	None	*263
			Approximately 4,900 feet west of the intersection of Orchid Drive and Masters Place Cove.	None	*266
			Approximately 4,200 feet west of the intersection of Odom Boulevard (south) and Naylor Drive.	None	*268
		White Oak Bayou	Approximately 2,700 feet east of the intersection of Maumelle Boulevard and Palmer Drive.	None	*262
			Approximately 2,000 feet east of the intersection of Murphy Drive and Human Drive.	None	*262
Maps are available for review at City Hall, 550 Edgewood Drive, Maumelle, Arkansas.					
Send comments to the Honorable Glenn DeHan Jr., Mayor, City of Maumelle, P.O. Box 8100, Maumelle, Arkansas 72118.					
Colorado	Frisco (town) Summit County.	No Name Creek	Approximately 565 feet downstream of Seventh Avenue.	None	*9,058
			Approximately 10 feet upstream of Seventh Avenue.	None	*9,062
			Approximately 570 feet upstream of Seventh Avenue.	None	*9,067
			Approximately 1,340 feet upstream of Seventh Avenue.	None	*9,082
		Jug Creek	Approximately 1,000 feet downstream of Belford Street.	None	*9,039
			Approximately 200 feet downstream of Belford Street.	None	*9,053
			Approximately 300 feet upstream of Belford Street.	None	*9,057
			Approximately 1,100 feet upstream of Belford Street.	None	*9,071
		Meadow Creek	Approximately 360 feet downstream of Meadow Creek Drive.	*9,029	*9,029
			Just upstream of Tenmile Drive	*9,051	*9,049
			Approximately 140 feet downstream of Meadow Drive.	*9,055	*9,052
			Approximately 1,660 feet upstream of Meadow Drive.	*9,067	*9,067

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tenmile Creek	Approximately 170 feet downstream of Summit Boulevard.	None	*9,019
			Approximately 390 feet upstream of Summit Boulevard.	*9,031	*9,026
			Approximately 1,210 feet upstream of Summit Boulevard.	*9,042	*9,040
			Approximately 2,050 feet upstream of Summit Boulevard.	*9,052	*9,051
			Approximately 360 feet downstream of the Main Street Bridge.	*9,100	*9,099
			Approximately 400 feet upstream of the Main Street Bridge.	None	*9,109
			Approximately 1,440 feet upstream of the Main Street Bridge.	None	*9,122
			Approximately 1,565 feet upstream of the Main Street Bridge.	None	*9,124
			Approximately 700 feet north of the intersection of Main Street and Sixth Avenue.	None	#1
		Miners Creek	Approximately 1,130 feet downstream of Colorado State Highway 9.	None	*9,019
			Approximately 270 feet downstream of Colorado State Highway 9.	None	*9,027
			Approximately 290 feet upstream of Colorado State Highway 9.	None	*9,039
			Approximately 1,390 feet upstream of Colorado State Highway 9.	None	*9,059

Maps are available for review at Town Hall, Town of Frisco, #1 Main Street, Frisco, Colorado,
Send comments to The Honorable Jim Spenst, Mayor, Town of Frisco, P.O. Box 370, Frisco, Colorado 80443.

Colorado	Summit	Blue River	Approximately 880 feet downstream of Swan Mountain Road.	None	*9,020
	Unincorporated Areas.		Approximately 2,090 feet upstream of Swan Mountain Road.	None	*9,058
			Approximately 5,080 feet upstream of Swan Mountain Road.	None	*9,093
			Approximately 6,920 feet upstream of Swan Mountain Road.	None	*9,115
			Approximately 8,740 feet upstream of Swan Mountain Road.	None	*9,136
			Approximately 7,200 feet downstream of Colorado State Highway 9.	None	*9,633
			Approximately 5,080 feet downstream of Colorado State Highway 9.	None	*9,677
			Approximately 2,860 feet downstream of Colorado State Highway 9.	None	*9,720
			Approximately 340 feet downstream of Colorado State Highway 9.	None	*9,780
			Approximately 1,940 feet upstream of Colorado State Highway 9.	None	*9,813
		Snake River	Approximately 4,780 feet downstream of East Keystone Road.	*9,252	*9,252
			Approximately 2,840 feet downstream of East Keystone Road.	*9,270	*9,271
			Approximately 460 feet downstream of East Keystone Road.	*9,296	*9,295
			Approximately 2,560 feet upstream of East Keystone Road.	*9,331	*9,330
			Approximately 4,400 feet upstream of East Keystone Road.	*9,350	*9,350
		Meadow Creek	Approximately 980 feet upstream of Dillion Reservoir.	*9,024	*9,020
			Approximately 1,600 feet upstream of Dillon Reservoir.	*9,027	*9,023
			Approximately 2,180 feet upstream of Dillon Reservoir.	*9,030	*2,025
			Approximately 2,580 feet upstream of Colorado State Highway 9.	None	*9,069
			Approximately 3,420 feet upstream of Colorado State Highway 9.	None	*9,085

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		French Gulch	Approximately 70 feet upstream of Colorado State Highway 9.	None	*9,490
			Approximately 710 feet upstream of Colorado State Highway 9.	None	*9,500
			Approximately 3,370 feet upstream of Colorado State Highway 9.	None	*9,606
			Approximately 4,750 feet upstream of Colorado State Highway 9.	None	*9,662
		North Fork Snake River	Approximately 990 feet downstream of Montezuma Road.	None	*9,326
			Approximately 620 feet upstream of Montezuma Road.	None	*9,384
			Approximately 1,660 feet upstream of Montezuma Road.	None	*9,438
		South Barton Gulch	Approximately 2,780 feet downstream of American Road.	None	*9,392
			Approximately 580 feet downstream of American Road.	None	*9,460
			Approximately 220 feet upstream of American Road.	None	*9,492
			Approximately 1,820 feet upstream of American Road.	None	*9,590
			Approximately 3,240 feet upstream of American Road.	None	*9,719
		Swan River	Approximately 40 feet upstream of the confluence with Blue River.	None	*9,138
			Approximately 2,140 feet upstream of the confluence with Blue River.	None	*9,169
			Approximately 3,600 feet upstream of the confluence with Blue River.	None	*9,190
			Approximately 5,300 feet upstream of the confluence with Blue River.	None	*9,215
			Approximately 6,280 feet upstream of the confluence with Blue River.	None	*9,229
		Tenmile Creek (Above 4th Avenue).	Approximately 560 feet upstream of U.S. Route 6.	None	*9,110
			Approximately 1,500 feet upstream of U.S. Route 6.	None	*9,123
		Miners Creek	Approximately 160 feet downstream of Pitkin Street.	None	*9,040
			Approximately 1,300 feet upstream of Pitkin Street.	None	*9,068
			Approximately 2,430 feet upstream of Pitkin Street.	None	*9,111
		Jug Creek	Approximately 300 feet upstream of the confluence with Miners Creek.	None	*9,046
			Approximately 1,810 feet upstream of the confluence with Miners Creek.	None	*9,059
			Approximately 2,070 feet upstream of the confluence with Miners Creek.	None	*9,068
		No Name Creek	Approximately 1,960 feet upstream of the confluence with Jug Creek.	None	*9,080

Maps are available for review at the Community Development Division, Summit County, 120 Lincoln Street, Breckenridge, Colorado.

Send comments to The Honorable Joe Sands, Chairman, Summit County Board of Supervisors, P.O. Box 68, Breckenridge, Colorado 80424.

Iowa	Fairfield (city) Jefferson County.	Crow Creek	Approximately 900 feet upstream of the confluence of Kaghaghee Creek.	None	*693
			Approximately 1,950 feet upstream of the confluence of Kaghaghee Creek.	None	*695

Maps are available for review at the City Hall, City of Fairfield, 118 South Main Street, Fairfield, Iowa.

Send comments to The Honorable Robert Rasmussen, Mayor, City of Fairfield, 118 South Main Street, Fairfield, Iowa 52556.

Montana	Powell County (Unincorporated Areas).	Little Blackfoot River-Garrison Reach.	At the downstream Limit of Detailed Study at the Burlington Northern Railroad.	N/A	*4,345
			Just downstream of U.S. Highway 10	N/A	*4,347
			Just upstream of U.S. Highway 10	N/A	*4,353

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream Limit of Detailed Study approximately 2,500 feet upstream of U.S. Highway 10.	N/A	*4,360
		Little Blackfoot River-Avon Reach.	At downstream Limit of Detailed Study approximately 1,950 feet downstream of U.S. Highway 12.	N/A	*4,656
			Just upstream of downstream crossing of U.S. Highway 12.	N/A	*4,669
			Approximately 175 feet downstream of upstream crossing of U.S. Highway 12.	N/A	*4,710
			Just upstream of Burlington Northern Railroad.	N/A	*4,716
			Detailed Study approximately 3,250 feet upstream of U.S. Highway 12.	N/A	*4,725
		Little Blackfoot River-Elliston Reach.	At downstream Limit of Detailed Study approximately 6,150 feet below confluence of Elliston Creek.	N/A	*4,979
			Approximately 4,250 feet above downstream Limit of Detailed Study.	N/A	*5,008
			Approximately 1,750 feet below confluence of Elliston Creek.	N/A	*5,009
			Approximately 2,500 feet upstream of confluence of Elliston Creek.	N/A	*5,040
			Approximately 4,800 feet downstream of Burlington Northern Railroad.	N/A	*5,042
			Just upstream of U.S. Highway 12	N/A	*5,081
			At the confluence of Telegraph Creek	N/A	*5,184
			At the upstream Limit of Detailed Study approximately 11,800 feet above confluence of Telegraph Creek.	N/A	*5,318
		Telegraph Creek	At confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,184
			Approximately 10,650 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,342
			Approximately 12,650 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,390
			At Limit of Detailed Study approximately 16,640 feet above the confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,520
		Elliston Creek	At confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,024
			Approximately 1,000 feet upstream of confluence with Little Blackfoot River—Elliston Reach.	N/A	*5,042
			Just downstream of the Burlington Northern Railroad.	N/A	*5,044
			At Limit of Detailed Study approximately 2,825 feet upstream of U.S. Highway 12.	N/A	*5,134

Maps are available for review at the Department of Natural Resources and Conservation Floodplain Management Section, 1520 East Sixth Avenue, Helena, Montana 59620.

Send comments to the Honorable Kenneth Fleming, Chairman, Powell County Board of Commissioners, Courthouse, 409 Missouri Avenue, Deer Lodge, Montana 59722.

Nebraska	Bellevue (City) Sarpy County.	Big Papillion—Papillion Creek.	At the southern extraterritorial limits, approximately 2,300 feet downstream of Burlington Northern Railroad.	*973	*973
			Approximately 100 feet upstream of Wagon Trail Road.	*979	*978
			Just upstream of Kennedy Expressway ...	*983	*982
			Just upstream of State Highway 370	*990	*989
			Just downstream of Cornhusker Drive	*998	*993
			At Sarpy-Douglas County Boundary	*1,001	*998
		West Papillion Creek	At the confluence with Big Papillion Creek	*991	*990
			Approximately 100 feet upstream of 36th Street.	*993	*991

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At the extraterritorial limits located approximately 2,800 feet upstream of 48th Street.	*1,001	*1,002
		Betz Road Ditch	Approximately 600 feet downstream of U.S. Highway 73–75.	*990	*988
			Approximately 150 feet upstream of Highway 370.	*1,001	*1,003
			Approximately 100 feet upstream of Twin Ridge Drive.	*1,033	*1,028
			Just upstream of Fairfax Drive	*1,057	*1,057
			Approximately 250 feet upstream of Lincoln Road.	*1,073	*1,073

Maps are available for review at the Planning Department, City of Bellevue, 210 West Mission Street, Bellevue, Nebraska.

Send comments to The Honorable Inez Boyd, Mayor, City of Bellevue, City Hall, 210 West Mission Street, Bellevue, Nebraska 68005.

Nebraska	La Vista (City) Sarpy County.	Big Papillion—Papillion Creek.	Approximately 6,370 feet upstream of Cornhusker Drive.	*998	*994
			At the Sarpy-Douglas County Boundary ..	*1,001	*998
		West Papillion Creek	Approximately 2,700 feet downstream of Giles Road.	*1,028	*1,026
			Approximately 1,500 feet downstream of Giles Road at the extraterritorial limits.	*1,029	*1,027
			Just downstream of Giles Road	*1,033	*1,029
			Approximately 400 feet downstream of Harrison Road.	*1,041	*1,040
			Approximately 950 feet upstream of Interstate Highway 80 at the Sarpy-Douglas County Boundary.	*1,044	*1,044

Maps are available for review at City Hall, City of La Vista, 8116 Vista, 8116 Parkview Boulevard, La Vista, Nebraska.

Send comments to The Honorable Harold Anderson, Mayor, City of La Vista, 8116 Parkview Boulevard, La Vista, Nebraska 68128.

Nebraska	Papillion (City) Sarpy County.	Big Papillion Creek	At the intersection of the floodway boundary and the east extraterritorial limits, at a point located approximately 1,600 feet north of Cornhusker Drive.	*998	*993
			Approximately 6,370 feet upstream of Cornhusker Drive.	*998	*994
		West Papillion Creek	At the east extraterritorial limits located approximately 2,800 feet upstream of 48th Street.	*1,001	*1,002
			Just upstream of 66th Street	*1,006	*1,006
			Just downstream of Washington Street (84th Street).	*1,013	*1,012
			Approximately 1,500 feet downstream of Giles Road at the extraterritorial limits.	*1,030	*1,027
		West Midland Creek	Approximately 1,040 feet upstream of Chicago Rock Island and Pacific Railroad.	*1,060	*1,060
			Approximately 2,040 feet upstream of Chicago Rock Island and Pacific Railroad.	None	*1,069

Maps are available for review at City Hall, City of Papillion, 122 East Third Street, Papillion, Nebraska.

Send comments to The Honorable Pete Goodman, Mayor, City of Papillion, City Hall, 122 East Third Street, Papillion, Nebraska 68046.

Texas	Jacksonville (City) Cherokee County.	Keys Creek	Approximately 350 feet downstream of U.S. Highway 79.	None	*364
			Approximately 175 feet downstream of U.S. Highway 79.	None	*367

Maps are available for review at Jacksonville Development Center, 307 East Commerce Street, Jacksonville, Texas.

Send comments to The Honorable Larry Durrett, P.O. Box 1390, Jacksonville, Texas 75766.

Texas	Van Horn (City) Culberson County.	Drain 1	Approximately 2,750 feet downstream from U.S. Route 90.	None	*4,009
			Approximately 80 feet upstream of U.S. Route 90.	None	*4,032

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 350 feet upstream of Elm Street.	None	*4,060
		Drain 2	Approximately 200 feet downstream of Jones Street.	None	*4,021
			Approximately 1,100 feet upstream of Jones Street.	None	*4,029
		Drain 3	Approximately 700 feet downstream of U.S. Route 90.	None	*4,015
			Approximately 900 feet upstream of U.S. Route 90.	None	*4,032

Maps are available for review at City Hall, 1801 West Broadway, Van Horn, Texas.

Send comments to The Honorable Okey Lucas, Mayor, City of Van Horn, P.O. Box 517, Van Horn, Texas 78955.

Utah	Bluffdale (City) Salt Lake County.	Jordan River	Approximately 9,100 feet downstream of 14600 South Street.	None	*4,355
			At 14600 South Street	None	*4,383
			At Denver and Rio Grande Western Railroad.	None	*4,430
			At Joint Diversion Structure	None	*4,435
			At Turner Dam Diversion Structure	None	*4,484
			Approximately 900 feet upstream of the Turner Dam Diversion Structure.	None	*4,488

Maps are available for review at the City Clerk's Office, City of Bluffdale, 14175 South Redwood Road, Bluffdale, Utah.

Send comments to The Honorable Lee Wanlass, Mayor, City of Bluffdale, 14212 South, 3600 West Street, Bluffdale, Utah 84065.

Utah	Draper (City) Salt Lake County.	Jordan River	Approximately 7,800 feet downstream of 12300 South Street.	None	*4,321
			At 12300 South Street	None	*4,331
			At 12600 South Street	None	*4,335
			At confluence of Corner Canyon Creek	None	*4,346
			Approximately 4,050 feet upstream of confluence of Corner Canyon Creek	None	*4,355

Maps are available for review at the City Engineer's Office, City of Draper, 12441 South, 900 East Street, Draper, Utah.

Send comments to The Honorable Dave Campbell, Mayor, City of Draper, 12441 South, 900 East Street, Draper, Utah 84020.

Utah	Midvale (City) Salt Lake County.	Jordan River	Approximately 6,900 feet downstream of West Center Street.	None	*4,276
			At West Center Street	None	*4,286
			Approximately 1,350 feet upstream of West Center Street.	None	*4,288

Maps are available for review at the City of Midvale, Engineering Department, 80 East Center Street, Midvale, Utah.

Send comments to The Honorable Don Poulsen, Mayor Elect, City of Midvale, 80 East Center Street, Midvale, Utah 84047.

Utah	Murray (City) Salt Lake County.	Jordan River	Approximately 3,600 feet downstream of 4500 South Street.	None	*4,242
			At Brighton Canal Diversion	None	*4,246
			At Bullion Street	None	*4,262
			At 6400 South Street	None	*4,273
			Approximately 1,100 feet upstream of 6400 South Street.	None	*4,276
		Big Cottonwood Creek	Approximately 80 feet upstream of the confluence with the Jordan River.	*4,239	*4,243
			Approximately 800 feet upstream of the confluence with the Jordan River.	*4,243	*4,243
			At 500 West Street	*4,245	*4,245
			Approximately 130 feet upstream of 500 West Street.	*4,246	*4,246

Maps are available for review at the City of Murray, Public Works Office, 5025 South State Street, Room 200, Murray, Utah.

Send comments to The Honorable Lynn Pett, Mayor, City of Murray, 5025 South State Street, Room 200, Utah 84157.

Utah	Riverton (City) Salt Lake County.	Jordan River	Approximately 4,650 feet downstream of 12400 South Street.	None	*4,324
			At 12400 South Street	None	*4,331
			At 12600 South Street	None	*4,335
			At confluence of Corner Canyon Creek	None	*4,346
			Approximately 4,100 feet upstream of confluence of Corner Canyon Creek.	None	*4,355

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the City Engineering Department, City of Riverton, 949 East, 12400 South Street, Riverton, Utah.					
Send comments to The Honorable Jim Warr, Mayor, City of Riverton, 12765 South, 1400 West Street, Riverton, Utah 84065.					
Utah	Salt Lake City (City) Salt Lake County.	Jordan River	At Surplus Canal Diversion Structure	*4,229	*4,232
			Approximately 25 feet upstream of 21st South Street.	*4,229	*4,232
Maps are available for review at the Public Utilities Department, City of Salt Lake City, 1530 South, West Temple Street, Salt Lake City, Utah.					
Send comments to The Honorable Deedee Corridini, Mayor, City of Salt Lake City, 1530 South, West Temple Street, Salt Lake City, Utah 84115.					
Utah	Salt Lake County (Unincorporated Areas).	Jordan River	At 2100 South Street	None	*4,232
			At 3300 South Street	None	*4,236
			At 3900 South Street	None	*4,239
			At Taylorsville Expressway	None	*4,245
			At the Brighton Canal Diversion Structure	None	*4,246
			At the confluence with Little Cottonwood Creek.	None	*4,249
			At Salt Lake County—City of Murray boundary.	None	*4,256
			Approximately 300 feet downstream of 7800 South Street.	None	*4,285
			Approximately 1,300 feet upstream of 7800 South Street.	None	*4,288
			At 9000 South Street	None	*4,297
			Approximately 2,700 feet upstream of 9000 South Street.	None	*4,300
			Approximately 3,200 feet upstream of 9000 South Street.	None	*4,301
Maps are available for review at the Development Services Division, Salt Lake County, 2001 South State, No. N–3600, Salt Lake, Utah.					
Send comments to The Honorable James Bradley, Chairperson, Salt Lake County Commissioner, 2001 South State Street, Salt Lake City, Utah 84190–4600.					
Utah	Sandy City (City) Salt Lake County.	Jordan River	At 9000 South Street	None	*4,297
			At North Jordan Canal Diversion	None	*4,302
			Approximately 3,125 feet above the North Jordan Canal Diversion.	None	*4,305
Maps are available for review at the City Engineering Department, City of Sandy City, 10000 Centennial Parkway, Sandy City, Utah.					
Send comments to The Honorable Tom Odom, Mayor Elect, City of Sandy City, 10000 Centennial Parkway, Sandy City, Utah 84070.					
Utah	South Jordan (City) Salt Lake County.	Jordan River	Approximately 350 feet downstream of the North Jordan Canal Diversion.	None	*4,301
			At 10600 South Street	None	*4,313
			Approximately 6,500 feet upstream of the confluence of Willow Creek.	None	*4,324
			At the confluence with the Jordan River	None	*4,317
			Approximately 400 feet upstream of the confluence with the Jordan River.	*4,314	*4,317
			Approximately 1,000 feet upstream of the confluence with the Jordan River.	*4,318	*4,318
			Approximately 2,560 feet upstream of the confluence with the Jordan River.	*4,344	*4,344
Maps are available for review at the Planning Department, City of South Jordan, 111755 Redwood Road, South Jordan, Utah.					
Send comments to The Honorable Theron Hutchings, Mayor, City of South Jordan, 111755 Redwood Road, South Jordan, Utah 84095.					
Utah	South Salt Lake (City) Salt Lake County.	Jordan River	Approximately 100 feet downstream of 2100 South Street.	None	*4,233
			At the confluence of Mill Creek	None	*4,234
			At 3300 South Street	None	*4,235

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the City Engineering Department, South Salt Lake City, 220 East Morris Avenue, South Salt Lake, Utah. Send comments to The Honorable Eldon Farnsworth, Mayor, City of South Lake, 220 East Morris Avenue, South Salt Lake, Utah 84155.					
Utah	West Jordan (City) Salt Lake County.	Jordan River	At 6400 South Street	None	*4,273
			At 7800 South Street	None	*4,286
			At 9000 South Street	None	*4,297
			At confluence of Dry Creek	None	*4,300
Maps are available for review at the City Engineer's Office, City of West Jordan , 8000 South Redwood Road, Draper, Utah. Send comments to The Honorable Dan Dahlgren, Mayor, City of West Jordan, 8000 South Redwood Road, Draper, Utah 84020.					
Utah	West Valley City (City) Salt Lake County.	Jordan River	At 2100 South Street	None	*4,232
			At confluence of Mill Creek	None	*4,233
			At 3300 South Street	None	*4,236
			At 3900 South Street	None	*4,240
Maps are available for review at the City of West Valley City, Public Works Department, Engineering Division, 3600 Constitution Boulevard, West Valley City, Utah. Send comments to The Honorable Brent Anderson, Mayor, City of West Valley, 3600 Constitution Street, Draper, Utah 84020.					
Washington	Burien (City) King County.	Miller Creek	Approximately 1,770 feet downstream of First Avenue South.	None	*137
			Just upstream of First Avenue South	None	*187
			Just upstream of Ambaum Boulevard	None	*192
			At the culvert outlet, approximately 400 feet downstream of Des Moines Way.	None	*200
Maps are available for review at City Hall, City of Burien, 13838 First Avenue South, Burien, Washington. Send comments to The Honorable Arun Jhaveri, Mayor, City of Burien, City Hall, 13838 First Avenue South, Burien, Washington 98168.					
Washington	King County Unincorporated Areas.	Richards Creek	South of Southeast Allen Road at intersection of 138th Avenue SE.	None	*329
Maps are available for review at Building and Land Development Division, 3600 13th Place, Bellevue, Washington. Send comments to The Honorable Tim Hill, County Executive, 516 Third Avenue, Seattle, Washington 98104.					
Washington	Normandy Park (City) King County.	Miller Creek	At the private drive located approximately 260 feet above mouth.	*9	*9
			At SW. 175th Place	*17	*16
			Approximately 120 feet downstream of the Sewage Plant North Access Road.	*47	*44
Maps are available for review at the Department of Planning, 801 Southwest 174th Street, Normandy Park, Washington. Send comments to The Honorable Stuart Creighton, Mayor, City of Normandy Park, 801 Southwest 174th Street, Normandy Park, Washington 98166.					
Washington	Seatac (City) King County.	Miller Creek	At the culvert inlet just upstream of Des Moines Way.	None	*204
			Just upstream of South 160th Street	None	*247
			At 12th Avenue South extended, at Lake Reba Detention Pond Outlet.	None	*265
			At Lake Reba Detention Pond	None	*274
Maps are available for review at the Department of Public Works, 19215 28th Avenue South, Seatac, Washington. Send comments to The Honorable Frank Hansen, Mayor, City of Seatac, City Hall, 19215 28th Avenue South, Seatac, Washington 98188.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 8, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94-6083 Filed 3-15-94; 8:45 am]

BILLING CODE 6718-03-P-M

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to cover control of Munitions List items (MLI) and Strategic List items

(SLI) and demilitarization of excess property.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before May 16, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to Defense Acquisition Regulations Directorate, Attn: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301–3062. FAX (703) 697–9845. Please cite DFARS Case 92–D024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green; (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS by adding a subsection at 245.604–70 and a clause at 252.245–7XXX, and by revising 245.601, 245.604, 245.610–4, and 245.7310–1 to improve control of Munitions List items (MLI) and Strategic List items (SLI) and demilitarization of excess contractor inventory. The proposed rule will require the Military Departments to determine whether Government property qualifies as MLI or SLI, to identify it as such in contracts and purchase orders, and to include specific demilitarization instructions in the contracts. The rule also specifies contractor responsibilities for demilitarizing or applying security trade controls over such property when applicable and requires contractors to include a demilitarization code with the item description on inventory schedules generated to report excess Government property. Furthermore, contractors are required to include such provisions in any subcontract that furnishes or supplies MLI or SLI to subcontractors, or that requires subcontractors to manufacture or produce MLI or SLI.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies, but the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of property to be demilitarized, including MLI and SLI, is in the custody of large contractors. An initial Regulatory Flexibility Analysis (IRFA) has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite DAR Case 92–D024 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the proposed rule imposes reporting and recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for clearance of the information collection has been submitted to OMB.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

Therefore it is proposed that 48 CFR parts 245 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 245 and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and (FAR) 48 CFR part 1, subpart 1.3.

2. Section 245.601 is amended by revising paragraph (2) to read as follows:

245.601 Definitions

* * * * *

2. *Demilitarization* is defined in the clause at 252.245–7XXX, Demilitarization and Security Trade Controls.

* * * * *

245.604 [Amended]

3. Section 245.604 is amended by removing paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

4. Section 245.604–70 is added to read as follows:

245.604–70 Demilitarization and security trade controls.

(a) Contracting officers shall ensure that purchase requests include—

(1) A statement that each item of Government property assigned a national stock number or nonstandard stock number to be furnished to a contractor under the resultant contract has been reviewed to determine whether it—

(i) Appears on the U.S. Munitions List (DoD 4160.21–M–1, Appendix 1); and/or

(ii) Meets the criteria for a Munitions List item or Strategic List item; and

(iii) Requires demilitarization and/or security trade controls.

(2) Specific demilitarization instructions, if required, in accordance with Appendices 4 and 5 of DoD 4160.21–M–1, Defense Militarization Manual.

(b) *Contract clause.* Use the clause at 252.245–7XXX, Demilitarization and Security Trade Controls, in solicitations and contracts for items that, if disposed of, would require demilitarization and/or security trade controls.

5. Section 245.7310–1 is amended by revising paragraph (a) to read as follows:

245.7310–1 Demilitarization.

* * * * *

(a) *Demilitarization.*

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth in the Defense Demilitarization Manual, DoD 4160.21–M–1.

* * * * *

6. Section 252.245–7XXX is added to read as follows:

252.245–7XXX Demilitarization and Security Trade Controls.

As prescribed in 245.604–70(b), use the following clause:

Demilitarization and Security Trade Controls (XXX 1994)

(a) *Definitions.*

Demilitarization means the act of destroying the military offensive or defensive advantage inherent in certain types of equipment or material. The term includes mutilation, dumping at sea, cutting, crushing, scrapping, melting, burning or alteration designed to prevent the further use of this equipment and material for its originally intended military or lethal purpose and applies equally to material in unserviceable or serviceable condition, that has been screened through the Inventory Control Point (ICP) and declared surplus or foreign excess

Munitions List item means any item contained in the U.S. Munitions list (22 CFR part 121).

Security trade controls means control procedures designed to preclude the sale or shipment of Munitions List or Strategic List property to any entity whose interests are inimical to those of the United States. These controls are also applicable to such other selected property as may be designated by the Deputy Under Secretary of Defense (Trade Security Policy).

Strategic List item means an item assigned a code letter "A" or "B" following the export control classification number (ECCN) on the Commerce Control List, Supplement No. 1 to § 799.1 of the Export Administration Regulations, Department of Commerce.

(b) This contract requires the manufacture, assembly, test, maintenance, repair, and delivery of items that are, or include, Munitions List items or Strategic List items. The contract may also require the manufacture, assembly, test, maintenance, repair, delivery or use of special tooling, special test equipment, or plant equipment that is a Munitions List item or Strategic List item. When such items become excess to the needs of the Contractor in performing this contract, the Contractor shall—

(1) Ensure a demilitarization code is included in the item description on

inventory schedules generated to report the excess Government property, utilizing the guidelines provided in the Defense Demilitarization Manual, DoD 4160.21–M–1;

(2) Demilitarize the items, as required; and

(3) Apply security trade controls as required by the Arms Export Control Act and Export Administration Act of 1979.

(c) The Contractor also shall include this clause, including this paragraph (c) in any subcontract issued under this contract that provides Munitions List items or Strategic List items to the subcontractor or requires the subcontractor to manufacture, assemble, test, maintain, repair, or deliver items that are or include Munitions List items or Strategic List items.

(End of clause)

[FR Doc. 94–5819 Filed 3–15–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 35]

RIN 2127–AF02

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document addresses the possible need to add a greater array of test dummies to Standard 213 for use in compliance tests. It is the second of two proposals on child booster seat safety resulting from the Intermodal Surface Transportation Efficiency Act of 1991. That Act directed NHTSA to initiate rulemaking on child booster seat safety. The first NPRM proposed to amend Standard 213's requirements for child booster seats designed for use with a vehicle's lap and shoulder belts. Today's NPRM is intended to improve the safety of booster seats and other types of child restraint systems by providing for their more thorough compliance testing.

DATES: Comments on this document must be received by the agency no later than May 16, 1994. The proposed effective date is 180 days after the date of publication of a final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

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I. Introduction

This document follows an advance notice of proposed rulemaking (ANPRM) published on May 29, 1992 about child booster seat safety (57 FR 22682). The ANPRM was issued in response to the National Highway Traffic Safety Administration Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")). That Act directed the agency to initiate rulemaking on child booster seat safety and other issues.

The legislative history of the ISTEA directive on booster seats sheds light on the source of Congress's concerns about booster seats. That history, and Congress's concerns, were discussed in detail in the May 1992 ANPRM, and are briefly summarized below.

The ISTEA directive originated in S. 1012, a bill reported by the Senate Committee on Commerce, Science, and Transportation and added verbatim to the Senate's surface transportation bill (S. 1204). The Senate Commerce Committee report on S. 1012 expressed concern about suggestions that booster seats, "depending on their design, can be easily misused or are otherwise harmful," and that some child seat boosters "may not restrain adequately a child in a crash."

The committee's concerns about the possible inability of a booster seat to restrain some children adequately stemmed from a study[1] performed by Calspan Corporation. Calspan found that when the then-manufactured booster seats were tested with test dummies representing the range of children for whom the seats were recommended, the booster seats did not appear to be able to adequately restrain all of those test dummies. When tested to the requirements of Standard 213, however, the booster seat passed the requirements because the standard specifies the use of only one dummy, a dummy representing a 3-year-old (33 pound) child, for testing a booster seat. (See S7.2 of Standard 213.) The implication of these test results was that test dummies representative of a wide range of child sizes were needed in Standard 213 to more effectively test the performance of booster seats and other child restraint systems. What seemed especially needed was an array of dummies representing children at or near the extremes of the weight ranges identified by a manufacturer as being suitable for any type of child restraint.

a. Purpose of Today's NPRM

This document proposes to add additional sizes of child compliance test dummies to Standard 213, consistent with ISTEA's mandate and the potential safety problems shown in the Calspan study. NHTSA's efforts to address those safety problems, including the possibility of new test dummies, were begun prior to ISTEA. Amending Standard 213 to incorporate additional test dummies for use in compliance tests has been one of NHTSA's main initiatives for upgrading Standard 213, as stated in NHTSA's "Planning Document on the Potential Standard 213 Upgrade," July 1991 (docket 74–09–N21). To that end, NHTSA developed specifications for three new test dummies and completed rulemaking in 1991 and 1993 incorporating those specifications into part 572, the agency's regulation on anthropomorphic test dummies. This step facilitated the use of those dummies in the development of improved child restraints.

Today's document, together with a companion NPRM published on September 1, 1993 (discussed in the next section), responds to ISTEA as well as follows up on the agency's 1991 planning document regarding possible ways of upgrading Standard 213. As explained in the "Other Issues" section of this document, some of the ways of upgrading Standard 213 will be addressed over the course of several

[1] "Evaluation of the Performance of Child Restraint Systems" (DOT HS 807 297, May 1988).

rulemakings. As to the other ways, some are being further evaluated; the remaining ones do not appear viable candidates for rulemaking. The agency notes that, in accordance with its plan to convert to the metric system pursuant to the Omnibus Trade and Competiveness Act and E.O. 12770, today's proposal uses metric units. Thus, English units that are in sections of Standard 213 affected by this NPRM would be converted to metric units. For example, "nine kilograms (kg)" would replace references in the standard to "20 pounds."

b. Previous NPRM

The companion NPRM to this document was published on September 3, 1993 (58 FR 46928). The NPRM, which also resulted from the May 1992 ANPRM, proposed to amend Standard 213 to permit the manufacturer and sale of belt-positioning booster child seats (child seat boosters designed for use with a vehicle's lap/shoulder belt system). NHTSA said it believes that facilitating the manufacture of belt-positioning booster seat could improve booster seat safety because belt-positioning seats appear to be capable of accommodating a wider range of child sizes than currently manufactured shield-type boosters. Also, NHTSA stated that it believes there is a possibility that belt-positioning booster seats used with vehicle lap/shoulder belts would perform better than shield booster seats. NHTSA proposed amending Standard 213's compliance test procedures to specify that belt-positioning booster seats would be dynamically tested when restrained to the test apparatus with a lap/shoulder belt. NHTSA also proposed labeling and informational requirements to decrease the possibility that booster seats would be misused.

II. Specific Proposals in Today's NPRM

a. Child Dummies

Three new child dummies have been tentatively selected to be added to Standard 213 for use in the compliance testing of child restraints.These dummies are the newborn infant dummy described in subpart K of 49 CFR part 572, the 9-month-old dummy in subpart J, and the instrumented 6-year-old dummy in subpart I. The biofidelity, reliability and repeatability of the test dummies were discussed in the documents incorporating the dummies into part 572 for the purpose of facilitating child restraint development. See, final rule for newborn dummy (January 8, 1993, 58 FR 3229); 9-month-old dummy (August 19, 1991; 56 FR 41077); 6-year-old dummy (November 14, 1991; 56 FR 57830).

This document proposes detailed descriptions of the clothing, conditioning and positioning procedures for the dummies to ensure that the test conditions are carefully controlled. The clothing that would be specified is the same, except for size, as that used for the 3-year-old dummy. The conditioning specifications are the same as those currently used for the 3-year-old dummy.

With the addition of the three new dummies, there would be four child test dummies used for Standard 213 compliance testing. The fourth dummy would be the existing 3-year-old dummy (subpart C) for Standard 213 testing. As to the other existing dummy, the 6-month-old, 17 pound (8 kg) dummy (subpart D), the agency has tentatively decided that it would no longer use that dummy to test child restraints. The agency has tentatively decided that testing child restraints with that dummy is unnecessary since the newborn and 9-month-old dummies appear sufficient to evaluate the performance of a child restraint recommended for infants. Comments are requested on whether the 6-month-old, subpart D dummy would still be needed to test child restraints, and if so, which restraints should be tested with that dummy.

In its comment on the ANPRM, General Motors (GM) expressed concern about the 6-year-old and the 3-year-old dummies. GM asked NHTSA to refer to GM's comments on the agency's earlier rulemaking proposals to incorporate these dummies in part 572 to aid in child restraint development. According to GM, those comments "detail (GM's) concerns regarding limitations of these test devices * * *." While the comment is unclear as to what GM means by "limitations," NHTSA assumes the commenter is referring to the biofidelity and suitability of the dummies as test devices, or the ability of the dummies to measure various crash forces imposed on them. NHTSA responded to issues about the biofidelity and suitability of the dummies in the previous rulemakings on part 572. The agency is not aware of any information, submitted by GM or arising elsewhere, indicating that these dummies have "limitations" warranting their exclusion from use in Standard 213 testing. Moreover, information on the performance of the dummies in tests conducted subsequent to their incorporation into part 572 does not indicate any problems with their performance. Recently, these dummies were used along with the part 572 three-year-old in a large number of sled tests that NHTSA conducted as part of its child safety research program that was described in the agency's 1991 planning document to upgrade Standard 213. These dummies appeared to perform satisfactorily, without any problem that would prevent their incorporation into FMVSS 213. The findings of this research program were summarized in a series of reports that were published in October 1992, under project VRTC–82–0236 "Child Restraint Testing (Rulemaking Support)." These reports are available from the National Technical Information Service, Springfield, Virginia, 22161.

GM suggested in its ANPRM comments that the child test dummies should provide a "more complete set of measurements" than currently provided by the three-year-old dummy. GM suggested including the additional measurement of forces imposed on the dummy's neck, abdomen, and femur areas. GM stated that injuries to children's neck, abdomen, and hip, thigh and knee areas can be serious, and that performance criteria for these injuries should be developed. GM said that these criteria can be measured and the neck and femur load cells are currently available for most child dummies. The commenter also said that the development of a device to measure abdominal injury is both possible and essential.

NHTSA responded to an identical comment from GM on this issue in the rulemaking adopting the 6-year-old dummy specifications into part 572. The part 572 6-year-old dummy, referred to as SA106C, can provide measurements of crash forces imposed on the dummy's femurs, in addition to measurements of head and chest accelerations. In the rulemaking adopting the SA106C dummy (the same dummy being considered today) into part 572, GM suggested that NHTSA adopt a 6-year-old dummy based on the 50th percentile male Hybrid-III dummy instead of the SA106C 6-year-old dummy, because the Hybrid-III child dummy was superior in its instrumentation.

NHTSA responded: Ford and GM might be correct that the Hybrid-III type 6-year-old dummy (which has yet to be completed and evaluated) might eventually have potential advantages over the NHTSA/Humanoid dummy in the number of parameters the dummies can measure. However, NHTSA does not believe that this rulemaking should be delayed to further consider the potential advantages of future dummies. The SA106C dummy's ability to measure HIC, chest acceleration and femur loads, and its ability to replicate

the motions and excursions of a child in a crash are sufficient to provide valid assessment of the injury potential of child restraint systems in a reliable manner. Since the SA106C dummy is ready now, and a final rule specifying the dummy will help improve safety, the agency believes it is appropriate to proceed with adding the dummy to part 572. NHTSA intends to evaluate the Hybrid-III type 6-year-old dummy after the dummy's design and development are completed and the dummy is commercially available.

NHTSA is not aware of any information showing that an alternate child test dummy, such as the Hybrid-III 6-year-old dummy, instead of the part 572 dummy, should be incorporated into Standard 213. Accordingly, NHTSA has decided to proceed with this proposal to incorporate the part 572 6-year-old dummy.

1. Dummy Selection Based on Recommended Weight of Restraint Users

NHTSA proposes amending the provisions is S7 of Standard 213 that specify the child dummy or dummies to be used in testing a particular child restraint system. Currently, S7 specifies that the 6-month-old dummy is used for testing a child restraint system that is recommended by its manufacturer for children weighing up to 20 pounds, and the 3-year-old dummy is used for testing a child restraint that is recommended for children weighing more than 20 pounds. If a child restraint system is recommended for use by children in a weight range that includes some children below 20 pounds and others above 20 pounds, the both dummies are to be used.

The ANPRM discussed how the agency might determine which new test dummies might be used under Standard 213 in the compliance testing of a particular child restraint system: S7.2 of the standard could be amended in the following manner. A restraint that is recommended for use by children in a weight range that includes children weighing not more than 7.5 pounds would be tested with the newborn dummy; from 7.5 to 20 pounds, with both the newborn and the nine-month-old dummy; from 20 to 33 pounds, with both the nine-month-old and three-year-old dummy; from 33 to 40 pounds, with the three-year-old dummy; and 40 pounds and above, with the six-year-old dummy. The agency anticipates proposing these, or similar, weight ranges in the near future.

The commenters generally supported using the newborn, 9-month-old, 3-year-old and 6-year-old dummies for Standard 213 compliance testing. Gerry, Cosco, Century Products and New York State supported using the 3-year-old and 6-year-old dummies to test booster seats recommended for children weighing more than 35 pounds.

However, commenters also had suggestions for revising the weight ranges discussed in the ANPRM. Advocates believed that the weight ranges were deficient because only two of the ranges (7.5 to 20 pounds and 20 to 33 pounds) would have two test dummies, one for the lower weight limit and another for the upper weight limit. SafetyBeltSafe believed the 3-year-old (33 pound) dummy should be used to test booster seats recommended for children weighing more than 40 pounds, to address the possibility that parents might "rush" a child into a booster seat when a second child needs to use the toddler restraint. Cosco believed that any child seat recommended for children weighing over 40 pounds should be tested with both the 3-year-old and the 6-year-old dummies, so that dummies at the extreme weight ranges are used.

NHTSA generally agrees with these comments. The agency proposes to amend the weight specifications in S7 of Standard 213 so that to the extent possible, each child restraint system would be subject to being tested using at least two test dummies. To ensure that all children recommended for a restraint are adequately restrained, the dummies used to test a restraint would represent a wide range of child sizes.

However, NHTSA has not proposed to combine the 20 to 33 pound and the 33 to 40 pound ranges into a 20 to 40 pound range, as Cosco suggested. Cosco stated that it believes that the weight ranges should be combined so that child restraints in the 20 to 40 pound range are tested with the 9-month-old and 3-year-old dummies. NHTSA has tentatively determined that booster seats (typically recommended for children 30 pounds and above) need not be tested with the 9-month-old (20 pound) dummy. This is because the September 1993 NPRM on child booster seat safety included a proposal that booster seats must be labeled for children weighing not less than 30 pounds. If that proposal is adopted, the label would likely reduce the chances that a booster seat would be used with children weighing in the 20 pound range. Comments are requested on this issue.

NHTSA proposes the following provisions for determining which dummy or dummies are to be used for testing child restraints, based on child mass:

- A child restraint that is recommended by its manufacturer for children in a specified weight range that includes any children having a mass less than 4 kilograms (i.e., 9 pounds or less) is tested with a newborn test dummy conforming to part 572 subpart K.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses from 4 to not more than 9 kilograms (weights of 9 to 20 pounds) is tested with a newborn test dummy and a 9-month-old test dummy conforming to part 572 subpart J.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses from 9 to not more than 13.5 kilograms (weights of 20 to 30 pounds) is tested with a 9-month-old test dummy and a 3-year-old test dummy conforming to part 572 subpart C.
- A child restraint that is recommended for children in a specified weight range that includes any children having masses equal to or greater than 13.5 kilograms (30 pounds and above) is tested with a 3-year-old test dummy and a 6-year-old test dummy conforming to part 572 subpart I.

If a child restraint is recommended for a weight range of children that overlaps, in whole or in part, two or more of the weight ranges set out above, the restraint would be tested with the dummies specified for each of those ranges. Thus, for example, if a child restraint were recommended for children having masses greater than 13 kilograms, it would be tested with the 9-month-old dummy, the 3-year-old dummy and the 6-year-old dummy.

2. Dummy Selection Based on Recommended Sitting Height of Restraint Users

The fundamental purpose of today's proposal is to ensure that each child restraint performs as intended in restraining the range of children recommended for it. Thus, in addition to the above specifications for selecting test dummies based on recommended weight ranges, the agency proposes to supplement those specifications with provisions for selecting test dummies based on recommended sitting height ranges. More specifically, NHTSA would establish supplementary provisions specifying the use of a particular test dummy based on the child restraint manufacturer's recommendations regarding the sitting height of the children for whom the restraint is intended. The effect of those

provisions might in some cases be to increase the number and variety of dummies with which a child restraint would otherwise have been tested based solely on the manufacturer's recommendations regarding the weight of children for whom it's restraint is suitable. Since the Standard currently requires manufacturers to provide recommendations concerning (standing) height, this document proposes to change the Standard to require recommendations regarding sitting height instead of standing height. The sitting height of a seated child is measured from the seating surface to the top of the child's head. Comments are requested on the merits of using a sitting height criterion.

This issue relating to the height of the restrained child was addressed by some commenters. Advocates commented that ". . . child restraints must be compliance tested for specific ranges of child occupant sizes that appropriately match the restraint use recommendations to the size, weight, and height, of the intended child occupants." Cosco stated that as children get older, it is the height, instead of the weight, that becomes more of a determining factor in correct car seat use.

The agency tentatively agrees that a manufacturer's recommendations about the suitability of the restraint for children of a particular height should be a factor in determining the size of the dummy or dummies to be used to test the restraint. NHTSA is concerned that if height were not a factor, it might be possible for a restraint to be tested with a dummy or dummies insufficiently representative of the range of children recommended for the restraint. This could occur if a manufacturer were to recommend inconsistent mass and height ranges. A manufacturer could create an inconsistency by recommending a height range that corresponds to children who are of greater mass (weight) than the masses expressly recommended by the manufacturer for the restraint.

For instance, suppose an infant restraint were recommended for children with masses not more than 4 kilograms (approximately 9 pounds) and a sitting height of up to 475 mm. Although the use of both the newborn and 9-month-old dummies would be more representative of the users of the restraint, only the newborn dummy would be used if dummy selection were based solely on the mass recommendation. However, according to a report by the University of Michigan on "Physical Characteristics of Children as Related to Death and Injury for Consumer Product Safety Design," Report No. PB–242–221, of children with masses of 4 kilograms, those in the 95th percentile have a sitting height of approximately 450 mm. Since the restraint is recommended for children with heights greater than the 95th percentile child, NHTSA has tentatively determined that it would be appropriate to test the infant restraint not only with the infant dummy, but also with a test dummy representative of a taller child (i.e., with the 9-month-old dummy).

NHTSA proposes the following provisions for determining which dummy or dummies to use for testing child restraints, based on child sitting height.

- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is not more than 450 mm (450 mm is approximately the sitting height for a 95th percentile newborn male child), is tested with a newborn test dummy conforming to part 572, subpart K.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is between 451 mm and 500 mm (500 mm is approximately the sitting height for a 95th percentile nine-month-old male child whose mass is 9 kilograms), is tested with a newborn test dummy and a 9-month-old test dummy conforming to part 572, subpart J.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is between 501 mm and 600 mm (600 mm is approximately the sitting height for a 95th percentile three-year-old male child whose mass is 13.5 kilograms), is tested with a 9-month-old test dummy and a 3-year-old test dummy conforming to part 572, subpart C.
- A child restraint that is recommended for children in a specified sitting height range that includes any children whose sitting height is equal to or greater than 600 mm is tested with a 3-year-old test dummy and a 6-year-old test dummy conforming to part 572, subpart I.

If a child restraint is recommended for a sitting height range of children that overlaps, in whole or in part, two or more of the height ranges set out above, the restraint would be tested with the dummies specified for each of those ranges. Thus, for example, if a child restraint were recommended for children having sitting heights greater than 480 mm, it would be tested with the 9-month-old dummy, the 3-year-old dummy and the 6-year-old dummy.

b. Performance Criteria

The performance criteria which a child restraint must meet when restraining a dummy would generally be unchanged, except as described later in this section. Thus, the requirements regarding dynamic performance (including the head and chest injury criteria and excursion), force distribution, installation, child restraint belts and buckles and flammability would generally be uniform for all restraints, regardless of the size of the dummy used. For example, Standard 213 currently requires a child restraint to limit forces on the head and chest of the 3-year-old test dummy, to 1000 HIC (head) and 60 g's (chest). These criteria would be unchanged for testing done with the 6-year-old dummy.

GM commented on the general appropriateness of the existing injury criteria for children. The HIC and chest g's injury criteria are the same as those specified in Standard 208, Occupant Crash Protection (49 CFR 571.208) for motor vehicles when they are tested with the 50th percentile adult male dummy. GM stated that it believes the values for the child dummies should be separately scaled from the adult dummy "to reflect anatomical differences and differing injury tolerance of children."

NHTSA does not agree. As to specifying different HIC values for each child dummy, the agency does not believe that a consensus exists on values for such limits. No person commenting on the agency's rulemaking proposals for child restraint systems, or otherwise providing information to the agency, has been able to provide actual data on head injury of children of various ages to support any suggested value for HIC other than 1000 HIC. Moreover, comments on NHTSA's planning document agreed that the limits of 1000 HIC and 60g chest are acceptable for the three- and six-year-old dummies. The commenters believed that those limits are not appropriate for smaller sized dummies, which is an issue not addressed by this NPRM. Based on this information, NHTSA is proposing to use the 1000 HIC and 60g chest acceleration limits of Standard 213 for the six-year-old dummy.

Some requirements in Standard 213 would differ depending on the child test dummy used. As noted above, a child restraint might be tested with multiple dummies under this proposal. In that event, the largest of the dummies used in the testing would also be used for determining the applicability of the seat

back requirement and for determining compliance with that requirement.

However, the 6-year-old dummy would not be used to determine either whether a seat back is needed on a child restraint or whether a required seat back is high enough although that restraint had been tested for compliance with the dynamic performance requirements using a 6-year-old dummy. Standard 213 currently requires certain child seats to have a seat back to provide restraint against rearward movement of the child's head (rearward in relation to the child). (S5.2.1) The determination of whether a seat back is required on a child restraint is based on the dummy used in the compliance testing of the restraint. A child restraint need not have a seat back if a specified point on the dummy's head (approximately located at the top of the dummy's ears) is below the top of the standard seat assembly to which the restraint is attached for compliance testing. (S5.2.1.2) Booster seats are currently tested with the 3-year-old dummy, which sits low enough on the standard seat assembly that the point on the dummy's head is not above the top of the seat assembly. Since that dummy is used, booster seats need not have seat backs. If the 6-year-old dummy were to be incorporated into Standard 213 and if S5.2.1 were to remain unchanged, the impact on booster seats could be substantial. Most, if not all, booster seats (and perhaps other types of child seats) might have to be redesigned to have a seat back. This is because the sitting height of the 6-year-old dummy is higher than that of the 3-year-old. As a result, the critical point on the head of the 6-year-old dummy is likely to be above the top of the seat assembly. There may be additional costs associated with such redesign.

NHTSA does not know of real world crash data that indicate a problem with head or neck injuries in rear impact crashes. (See also, denial of petition for rulemaking to require a special warning on child seats addressing possible whiplash injuries due to lack of head restraint. 56 FR 3064, January 28, 1991.) In view of the possible redesign costs and the apparent lack of a safety need for a seat back on boosters, NHTSA has tentatively determined that S5.2.1.1 should provide that the 6-year-old dummy is not used to determine the applicability of or compliance with the seat back requirements. Comments are requested on this issue. NHTSA is particularly interested in crash data indicating a need for a requirement for a seat back on booster seats. Comments are also requested on any additional costs that might result from redesigning child restraints to provide a seat back.

A requirement that currently differs accordingly to the test dummy or dummies used in testing a child restraint, and would continue to do so under this proposal, is that regarding post-impact buckle force release (S5.4.3.5(b)). Currently, S5.4.3.5(b) requires each child seat belt buckle to release when a force of not more than 16 pounds is applied, while tension (simulating a child restrained in the child seat) is applied to the buckle. Tension is applied because a child in the seat could impose a load on the belt buckle which increases the difficulty of releasing it. The test procedures for this requirement (S6.2) specify that the applied tension is 20 pounds in the case of a system tested with a 6-month-old dummy and 45 pounds in the case of a system tested with a 3-year-old dummy. In both cases, the force level is based on the heaviest children who are likely to use the restraint. NHTSA proposes to amend S6.2 so that the tension would be 50 Newtons when the system is tested with a newborn dummy, 90 Newtons for tests with a 9-month-old dummy, 200 Newtons for tests with a 3-year-old dummy, and 270 Newtons for tests with a 6-year-old dummy.

c. Clarifying Amendments

NHTSA is also proposing three clarifying amendments unrelated to the addition of new sizes of dummies to Standard 213. Two of the amendments would clarify the standard's excursion requirements. The excursion requirement for built-in child restraints (S5.1.3.1(b)) prohibits the dummy's knee pivot from passing through a plane that is specified distance "forward of the hinge point of the specific vehicle seat into which the system is built." Chrysler suggested (docket 74–09–N24–001) that NHTSA amend the reference point because the "hinge point of the specific vehicle seat" cannot be readily defined for most vehicle seats. This is because most vehicle seats into which a built-in child restraint is fabricated do not have hinges for their backs, or are configured so that the hinge is not easily seen during dynamic testing.

NHTSA is addressing this concern by proposing to reference the H-point on the seat, which is a reference point used in S11 of Standard 208, "Occupant Crash Protection," and in S4.3 of Standard 210, "Seat Belt Assembly Anchorages." The H-point of a specific vehicle seating position is determined by using equipment and procedures specified in the Society of Automotive Engineers (SAE) recommended practice SAE J826 (May 1987), "Devices for Use in Defining and Measuring Vehicle Seating Accommodation." The H-point is identified either during the seat's design by means of a two-dimensional drafting template, or after the vehicle is completely manufactured, by means of a three-dimensional device. The H-point is located at approximately the same location as the "hinge point" on a vehicle seat. However, since the H-point already must be identified by the vehicle manufacturer for purposes of Standards 208 and 210, it appears using the H-point for Standard 213 would be expedient.

The other clarifying amendment relates to the excursion requirement for rear-facing child restraints (S5.1.3.2). S5.1.3.2 currently states that "no portion of the target point on either side of the dummy's head" shall pass through an area on the child restraint. The quoted language would be revised to remove the reference to a "portion" of the target point. The use of "portion" is incorrect since the target point is dimensionless.

The third clarifying amendment relates to the requirement in the standard that limits the force that may be imposed on a child from the vehicle belt used to anchor the child seat to the vehicle (S5.4.3.2). S5.4.3.2 currently limits the force that is imposed by "each belt that is part of a child restrain system and that is designed to restrain a child using the system and to attach the system to the vehicle." NHTSA proposes to also limit the force imposed by each Type 1 and the lap portion of a Type 2 vehicle belt that is used to attach the child seat to the vehicle. These belts, which anchor the child seat to the vehicle, function to absorb the forces of the crash into the frame of the vehicle. NHTSA is thus proposing that these belts not transfer those crash forces to the occupant child.

d. Other Issues

The July 1991 planning document identified several possible ways in which Standard 213 could be upgraded. These were incorporating the newborn, 9-month-old and 6-year-old dummies, changing aspects of Standard 213's test procedure (e.g., the characteristics of the seat assembly used to test child seats and the severity of the dynamic test); changing the injury criteria (HIC, chest g's); reducing allowable head excursion; facilitating the manufacture of belt-positioning child seats; and addressing the interaction of air bags and infant seats. Since issuance of the planning document, some of these issues have been addressed through the issuance of rulemaking notices, such as today's NPRM and the September 1993 NPRM

on belt-positioning child seats. NHTSA has also issued an NPRM on the interaction of airbags and infant seats (NPRM at 58 FR 19792; April 16, 1993).

All of the issues identified in the 1991 planning document as subjects of possible rulemaking have been explored in research projects. In some instances, research has shown that rulemaking does not appear warranted. For example, NHTSA determined that the configuration of today's vehicle interiors does not appear to pose a safety need to reduce allowable head excursion. This is based on a survey of late model vehicles that NHTSA conducted to assess vehicle interior dimensions and the fit of the three-year-old and six-year-old dummies, as well as on the fact that child restraints provide about 70 percent effectiveness in reducing serious injuries and fatalities when used in today's vehicle interiors. The findings of the research were summarized in a report titled, "Assessment of Vehicle Interior Dimensions and Lap/Shoulder Belt Fit," October 1992 (VRTC–82–0236, "Child Restraint Testing (Rulemaking Support)"). Another example where the agency's research has shown that rulemaking is not warranted was research addressing whether flexibility of the back of the test seat assembly affects that test dummy's performance during compliance testing of shield-type booster seats. The findings of this research were summarized in a report titled, "Evaluation of Effects of FMVSS 213 Seat Back's Flexibility on Booster Seat Responses," October 1992, (VRTC–82–0236, *id.*)

In other instances, more information on the issue is needed. For instance, as mentioned in section IIb ("Performance criteria") of this preamble, information is generally unavailable on new, possibly more appropriate injury criteria for children. Relatedly, new, more sophisticated child test dummies are being developed, but more must be known about their performance, reliability and availability as possible Standard 213 test devices.

NHTSA also seeks to learn more about a particular type of child restraining device that appears to be proliferating. These devices are designed to be attached to a vehicle Type II belt system to improve the fit of the system on children, and in some cases, on small adults. The agency seeks information on whether Standard 213 should be applied to these devices, and if so, which of the standard's requirements would be appropriate for those devices.

The agency notes that the regulatory text proposed in this notice includes language that was proposed in the September 1993 NPRM on child booster seat safety. In some instances, comments were received on aspects of the September 1993 NPRM that are included in today's NPRM. For example, this notice includes text proposing specifications for the seat belt anchorage points on the standard seat assembly used to test belt-positioning booster seats. See proposed S6.1.1(c) of this notice. The agency is including the text that was proposed in the earlier notice simply to illustrate the complete appearance of the affected section. The agency is fully aware of the issues raised by commenters to various aspects of the September 1993 NPRM; it is not necessary for commenters to resubmit views on today's notice that were expressed in previous comments on the earlier NPRM. NHTSA emphasizes that inclusion of text from the September 1993 notice does not imply that such text will necessarily be adopted as proposed.

III. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a preliminary regulatory evaluation for this action which discusses its potential costs, benefits and other impacts. A copy of that evaluation has been placed on the docket for this rulemaking action. Interested persons may obtain copies of the evaluation by writing to the docket section at the address provided at the beginning of this notice.

To briefly summarize the evaluation, cost estimates from NHTSA contractor tests indicate that if two dummies were used to test each adjustable position of each restraint, the cost per position would be approximately $1,500. There are approximately 47 different models of child restraints on the market, with an estimated total of 185 adjustable positions. The total cost for all manufacturers of testing child restraints with two dummies instead of one would result in an incremental increase of $138,750 ($750×185 adjustable positions).

Redesign costs are unknown, and have not been estimated. It appears this rulemaking would affect shield-type boosters. Tests of some of these boosters indicated that they generally could not adequately restrain the nine-month-old and six-year-old test dummies, even though they were recommended for children weighing the same as those dummies. NHTSA believes that some manufacturers might cease producing shield boosters that could not be certified as meeting Standard 213 when tested with an additional dummy, rather than redesign the shield boosters. The shield booster could be replaced with belt-positioning boosters, which are relatively easy to design. Some manufacturers might also relabel their restraints as being suitable for a narrower weight range of children, to avoid having their restraints tested with a particular test dummy (i.e., one representing a size of child that the restraint cannot restrain). The cost impact of the rule on child restraints other than shield boosters is unknown.

NHTSA cannot quantify the benefits of this rulemaking. However, the agency believes this rulemaking would improve the safety of child restraint systems by providing for their more thorough compliance testing. The result of the rule would be to better ensure that each child restraint safely restrains the children for whom the restraint is recommended.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The agency knows of fourteen manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business). A rule adopting today's proposals would increase the testing that NHTSA conducts of child restraints, which in turn would increase the certification responsibilities of manufacturers. However, the agency does not believe such an increase would constitute a significant economic impact on small entities, because these businesses currently must certify their products to the dynamic test of Standard 213. That is, the products of these manufacturers already are subject to dynamic testing using child test dummies. The effect of this rule on most child seats is to subject them to testing with an additional dummy. Assuming there are shield boosters that could not be certified as meeting Standard 213 when tested with an additional dummy, small manufacturers producing those boosters would have to redesign those restraints systems to meet the standard.

However, those manufacturers could decide to replace nonconforming shield boosters with belt-positioning boosters, which are relatively easy to design. NHTSA expects that all manufacturers will enter the belt-positioning booster market. Some manufacturers might also relabel their restraints as being suitable for a smaller weight range of children, to avoid having their restraints tested with a particular test dummy (i.e., one representing a size of child that the restraint cannot restrain).

Small organizations and governmental jurisdictions might be affected by a rule if these entities procure child restraint systems for programs such as loaner programs. However, available information indicates that only a small percentage of loaner programs carry booster seats. Further, while the cost of child restraints could increase, the agency believes the cost increase would be minimal. Thus, loaner program procurements would not be significantly affected by a final rule.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IV. Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by—

a. revising S5, S5.1.3.1 (a) and (b), S5.1.3.2, the introductory paragraph of S5.2.1.2, S5.4.3.2, the introductory text of S5.4.3.5, S5.4.3.5 (a) and (b), S5.5.2(f), S5.5.5(f), S6 through S6.1.2, S6.2.2, S6.2.3, S7 through S7.2, S8.2.1, S8.2.3, and S8.2.4,

b. removing S6.1.2.1 through S6.1.2.6 and S7.2.1 through S7.3, and

c. adding S9 and S10, to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5. *Requirements.* (a) Each motor vehicle with a built-in child restraint system shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph.

(b) Each child restraint system manufactured for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph. Each add-on system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

(c) Each child restraint system manufactured for use in aircraft shall meet the requirements in this section and the additional requirements in S8.

* * * * *

S5.1.3.1 * * *

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 813 millimeters forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plane that is 914 millimeters forward of point Z on the standard seat assembly, measured along the center SORL.

(b) In the case of a built-in child restraint system, neither knee pivot shall pass through a vertical, transverse plane that is 686 millimeters forward of the H-Point as described in the Society of Automotive Engineers Recommended

Practice "Devices for Use in Defining and Measuring Vehicle Seating Accommodation," SAE J826, May 1987 (specified in "S4.3.2, Seat Belt Anchorages for the Upper Torso Portion of Type 2 Seat Belt Assemblies," of 49 CFR (§ 571.210), Seat Belt Assembly Anchorages) of the specific passenger car seat into which the system is built, measured along a horizontal line passing through the H-Point and parallel to the vehicle's longitudinal center plane.

S5.1.3.2 *Rear-facing child restraint systems.* In the case of each rear-facing child restraint system, all portions of the test dummy's torso shall be retained within the system and neither of the target points on either side of the dummy's head and on the transverse axis passing through the center of gravity of the dummy's head and perpendicular to the head's midsagittal plane, shall pass through the transverse orthogonal planes whose intersection contains the forward-most and top-most points on the child restraint system surfaces (illustrated in Figure 1C).

* * * * *

S5.2.1.2 The applicability of the requirements of S5.2.1.1 to a front-facing child restraint, and the conformance of any child restraint other than a car bed to those requirements is determined using the largest of the test dummies specified in S7.1 for use in testing that restraint; provided, that the 6-year-old dummy described in subpart I of part 572 of this title is not used to determine the applicability of or compliance with S5.2.1.1. A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

* * * * *

S5.4.3.2 *Direct restraint.* Each belt that is part of a child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle, and each Type 1 and lap portion of a Type 2 vehicle belt that is used to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system, or

(a) In the case of an add-on child restraint system, from the mass of the seat back of the standard seat assembly specified in S6.1, or

(b) In the case of a built-in child restraint system, from the mass of any part of the vehicle into which the child restraint system is built.

* * * * *

S5.4.3.5 *Buckle release.* Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 40 Newtons is applied and shall release when a force of not more than 62 Newtons is applied;

(b) After the dynamic test of S6.1, when tested in accordance with the appropriate sections of S6.2, release when a force of not more than 71 Newtons is applied;

* * * * *

S5.5.2 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and sitting height of children who can safely occupy the system:

(1) This infant restraint is designed for use by children who weigh _____ pounds or less and whose sitting height is _____ inches or less (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(2) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is _____ inches or less and who are capable of sitting upright alone (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is between _____ and _____ inches (the sitting height of a seated child is measured from the seating surface to the top of the child's head).

* * * * *

S5.5.5 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and sitting height of children who can safely occupy the system:

(1) This infant restraint is designed for use by children who weigh _____ pounds or less and whose sitting height is _____ inches or less (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(2) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is _____ inches or less and who are capable of sitting upright alone (the sitting height of a seated child is measured from the seating surface to the top of the child's head); or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds and whose sitting height is between _____ and _____ inches (the sitting height of a seated child is measured from the seating surface to the top of the child's head).

* * * * *

S6. *Test conditions and procedures.*

S6.1 *Dynamic systems test for child restraint systems.*

The test conditions described in S6.1.1 apply to the dynamic systems test. The test procedure for the dynamic systems test is specified in S6.1.2. The test dummy specified in S7 is placed in the test specimen (child restraint), clothed as described in S9 and positioned according to S10.

6.1.1 *Test conditions.* (a) Test devices. (1) The test device for add-on restraint systems is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000, addendum A (dated July 1, 1993) (consisting of drawings and a bill of materials). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

(2) The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle.

(i) *Specific vehicle shell.* (A) The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement between the base of the shell and the platform is prevented. Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost position, the closest adjustment position to the rear of the midpoint is used. Adjustable seat backs are in the manufacturer's nominal design riding position. If such a position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an instrumented test dummy is used, the accelerometer surfaces in the dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle seat is equipped with adjustable head

restraints, each is adjusted to its highest adjustment position.

(B) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in Society of Automotive Engineers Recommended Practice J211 JUN80 "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel.

(ii) *Specific vehicle.* For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. The following test conditions apply to this alternate test device.

(A) The vehicle is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the appropriate child test dummy and, at the vehicle manufacturer's option, an anthropomorphic test dummy which conforms to the requirements of subpart B or subpart E of part 572 of this title for a 50th percentile adult male dummy placed in the front outboard seating position. If the built-in child restraint system is installed at one of the seating positions otherwise requiring the placement of a part 572 test dummy, then in the frontal barrier crash specified in (c), the appropriate child test dummy shall be substituted for the part 572 adult dummy, but only at that seating position. The fuel tank is filled to any level from 90 to 95 percent of capacity.

(B) Adjustable seats are in the adjustment position midway between the forward-most and rearmost positions, and if separately adjustable in a vehicle direction, are at the lowest position. If an adjustment position does not exist midway between the forward-most and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

(C) Adjustable seat backs are in the manufacturer's nominal design riding position. If a nominal position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an anthropomorphic test dummy is used. the accelerometer surfaces in the test dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(D) Movable vehicle windows and vents are, at the manufacturer's option placed in the fully closed position.

(E) Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

(F) Doors are fully closed and latched but not locked.

(G) All instrumentation and data reduction is in conformance with SAE J211 JUN80.

(b) the tests are frontal barrier impact simulations of the test platform or frontal barrier crashes of the specific vehicles as specified in S5.1 (§ 571.208) and for:

(1) Test Configuration I, are at a velocity change of 30 mph with the acceleration of the test platform entirely within the curve shown in Figure 2, or for the specific vehicle test with the deceleration produced in a 30 mph frontal barrier crash.

(2) Test Configuration II, are set at a velocity change of 20 mph with the acceleration of the test platform entirely within the curve shown in Figure 3, or for the specific vehicle test, with the deceleration produced in a 20 mph frontal barrier crash.

(c) Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B) are Type 1 seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type 2 seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

(d) Performance tests under S6.1 are conducted at any ambient temperature from 19° to 26° F and at any relative humidity from 10 percent to 70 percent.

(e) In the case of add-on child restraint systems, the restraint shall meet the requirements of S5 at each of its seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (e.g., forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

S6.1.2 *Dynamic test procedure.*

(a) Activate the built-in child restraint or attach the add-on child restraint to the seat assembly as described below:

(1) *Test configuration I.* (i) In the case of each add-on child restraint system other than a belt-positioning seat, child harness, a booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children, install a new add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a booster seat (other than a belt positioning seat) with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. A belt-positioning seat shall be installed at either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

(ii) In the case of each built-in child restraint system, activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(2) *Test configuration II.* (i) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a booster seat with a top anchorage strap, install a new add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

(ii) In the case of each built-in child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a built-in booster seat with a top anchorage strap, activate the system in the specific vehicle shell or the specific vehicle in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(b) Tighten all belts used to attach the add-on child restraint system to the standard seat assembly to a tension of not less than 53.5 Newtons and not more than 67 Newtons, as measured by a load cell used on the webbing portion of the belt.

(c) Place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.6.

(d) Assemble, clothe, prepare and position the dummy as specified in S7 through S10 and part 572 of this chapter, as appropriate.

(e) If provided, shoulder and pelvic belts that directly restrain the dummy in add-on and built-in systems shall be adjusted as follows:

Tighten the belts until a 9-Newton force applied (as illustrated in figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 millimeters on either side of the torso midsagittal plane pulls the webbing 7 millimeters from the dummy.

(f) Accelerate the test platform to simulate frontal impact in accordance with Test Configuration I or II, as appropriate.

(g) Determine conformance with the requirements in S5.1, as appropriate.

* * * * *

S6.2.2 After completion of the testing specified in S6.1 and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4, without disturbing the belted dummy and the child restraint system.

S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply a force whose magnitude is: 50 Newtons for a system tested with a newborn dummy; 90 Newtons for a system tested with a 9-month-old dummy; 200 Newtons for a system tested with a 3-year-old dummy; or 270 Newtons for a system tested with a 6-year-old dummy. The force is applied in the manner illustrated in Figure 4 and as follows:

(a) *Add-on Child Restraints.* For an add-on child restraint other than a car bed, apply the specified force by pulling the sling horizontally and parallel to the SORL of the standard seat assembly. For a car bed, apply the force by pulling the sling vertically.

(b) *Built-in Child Restraints.* For a built-in child restraint other than a car bed, apply the force by pulling the sling parallel to the longitudinal center line of the specific vehicle shell or the specific vehicle. In the case of a car bed, apply the force by pulling the sling vertically.

* * * * *

S7. *Test dummies.* (Subparts referenced in this section are of part 572 of this chapter.) S7.1 *Dummy selection.* (a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass less than 4 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is equal to or less than 450 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass equal to or greater than 4 but less than 9 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 450 mm but not greater than 500 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 9-month-old test dummy conforming to part 572 subpart J.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass equal to or greater than 9 but not greater than 13.5 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 500 mm but not greater than 600 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 13.5 kilograms, or by children in a specified sitting height range that includes any children whose sitting height is greater than 600 mm, is tested with a 3-year-old test dummy conforming to part 572 subpart C and S7.2, and a 6-year-old test dummy conforming to part 572 subpart I.

(e) A child restraint that meets the criteria in two or more of the preceding paragraphs in S7.1 is tested with each of the test dummies specified in those paragraphs.

S7.2 *Three-year-old dummy head.* Effective September 1, 1993, this dummy is assembled with the head assembly specified in § 572.16(a)(1) of this chapter.

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S8.2.1 A standard seat assembly consisting of a representative aircraft passenger seat shall be positioned and adjusted so that its horizontal and vertical orientation and its seat back angle are the same as shown in Figure 6.

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S8.2.3 In accordance with S10, place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.5 and S8.1.

S8.2.4 If provided, shoulder and pelvic belts that directly restrain the dummy shall be adjusted in accordance with S6.1.2.

* * * * *

S9 *Dummy clothing and preparation.* S9.1 *Type of clothing.* (a) *Newborn dummy.* When used in testing under this standard, the dummy is unclothed.

(b) *Nine-month-old dummy.* When used in testing under this standard, the dummy is clothed in terry cloth polyester and cotton size 1 long sleeve shirt and size 1 long pants, with a total mass of 0.136 kilograms.

(c) *Three-year-old and six-year-old dummies.* When used in testing under this standard, the dummy is clothed in thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 4 long-sleeved shirt (3-year-old dummy) or a size 5 long-sleeved shirt (6-year-old dummy) having a mass of 0.090 kilograms, a size 4 pair of long pants having a mass of 0.090 kilograms and cut off just far enough above the knee to allow the knee target to be visible, and size 7M sneakers (3-year-old dummy) or size 12½ sneakers (6-year-old dummy) with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kilograms.

S9.2 *Preparing clothing.* Clothing other than the shoes is machine-washed in 71° C to 82° C and machine-dried at 49° C to 60° C for 30 minutes.

S9.3 *Preparing dummies.* Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 19° C to 25.5° C and at any relative humidity from 10 percent to 70 percent for at least 4 hours.

S10. *Positioning the dummy and attaching the system belts.* S10.1 *Car beds.* Place the test dummy in the car bed in the supine position with its midsagittal plane perpendicular to the center SORL of the standard seat assembly, in the case of an add-on car bed, or perpendicular to the longitudinal axis of the specific vehicle shell or the specific vehicle, in the case of a built-in car bed. Position the dummy within the car bed in accordance with the instructions for child positioning that the bed manufacturer provided with the bed in accordance with S5.6.

S10.2 *Restraints other than car beds.* S10.2.1 *Newborn dummy and nine-month-old dummy.* Position the test dummy according to the instructions for child positioning that the manufacturer provided with the system under S5.6.1 or S5.6.2, while conforming to the following: (a) Prior to placing the 9-month-old test dummy in the child restraint system, place the dummy in the supine position on a horizontal surface. While placing a hand on the center of the torso to prevent movement of the dummy torso, rotate the dummy

legs upward by lifting the feet 90 degrees. Slowly release the legs but do not return them to the flat surface.

(b)(1) When testing forward-facing child restraint systems, holding the 9-month-old test dummy torso upright until it contacts the system's design seating surface, place the 9-month-old test dummy in the seated position within the system with the mid-sagittal plane of the dummy head—

(i) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(ii) Vertical and parallel to the longitudinal center line of the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system.

(2) When testing rear-facing child restraint systems, place the newborn or 9-month old dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, it shall be taped against the front of the seat back surface of the system by means of a single thickness of ¼-inch-wide paper masking tape placed across the center of the dummy's face.

(c)(1) When testing forward-facing child restraint systems, extend the arms of the 9-month-old test dummy as far as possible in the upward vertical direction. Extend the legs of the 9-month-old dummy a far as possible in the forward horizontal direction, with the dummy feet perpendicular to the centerline of the lower legs.

Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 Newtons, perpendicular to:

(i) The plane of the back of the standard seat assembly, in the case of an add-on system, or

(ii) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

(2) When testing rear-facing child restraints, position the newborn and 9-month-old dummy arms and legs vertically upwards and then rotate each arm and leg downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

S10.2.2 *Three-year-old and six-year-old test dummy.* Position the test dummy according to the instructions for child positioning that the restraint manufacturer provided with the system in accordance with S5.6.1 or S5.6.2, while conforming to the following:

(a) Holding the test dummy torso upright until it contacts the system's design seating surface, place the test dummy in the seated position within the system with the midsagittal plane of the test dummy head—

(1) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(2) Vertical and parallel to the longitudinal center line of the specific vehicle, in the case of a built-in child restraint system.

(b) Extend the arms of the test dummy as far as possible in the upward vertical direction. Extend the legs of the dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the center line of the lower legs.

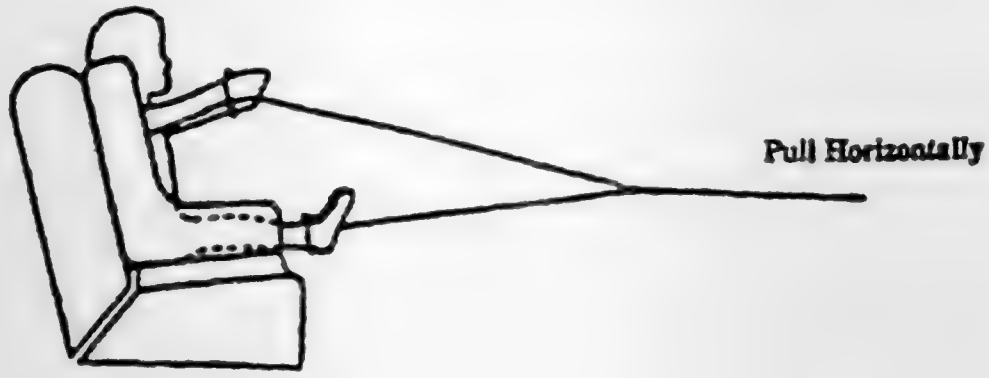
(c) Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 Newtons, perpendicular to:

(1) The plane of the back of the standard seat assembly, in the case of an add-on system, or

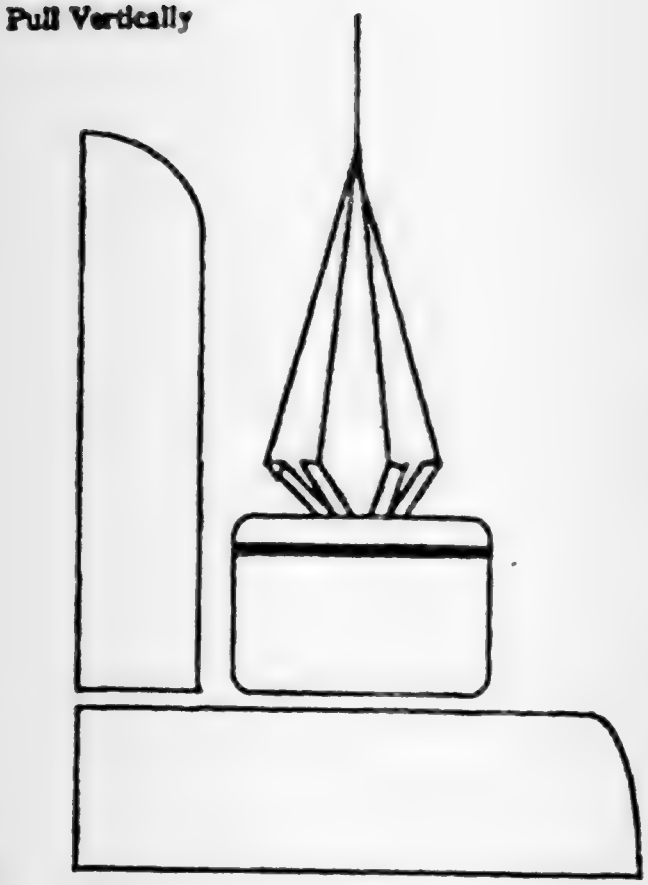
(2) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

3. Figure 4 of § 571.213 would be removed and Figures 4A and 4B would be inserted in its place to read as follows:

BILLING CODE 4910-59-M



a)



b)

FIGURE 4 -- Buckle Release Test

BILLING CODE 4910-59-C

Issued on March 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-5768 Filed 3-15-94; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 59, No. 51

Wednesday, March 16, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration and Committee on Rulemaking; Public Meetings

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Administration and the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Administration

Date: Friday, March 25, 1994, 10:00 a.m.

Address: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

For Further Information: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Committee on Rulemaking

Date: Monday, April 4, 1994, from 2:00 p.m. to 4:00 p.m.

Address: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

For Further Information: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Supplementary Information: The Committee on Administration will discuss Professor Kratzke's report which examines the basis for each of the major exemptions to governmental liability under the Federal Tort Claims Act and urges repeal or modification of most of the exemptions.

The Committee on Rulemaking will meet to continue discussion of Professor Roy A. Schotland's report on Exemption 8 of the Freedom of Information Act, which covers certain bank information. The issue is whether recommendations should be made that the exemption be modified or eliminated.

Attendance at the meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least two days prior to the meeting. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: March 10, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–6188 Filed 3–15–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–94–001]

Beef Promotion and Research: Recertification, Certification, and Nomination Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producer and general farm organizations as well as beef importers who desire to be certified to nominate cattle producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. With regard to previously certified organizations, a review will be conducted to ascertain whether organizations may remain certified as eligible to make nominations. Such organizations will be provided an official application form by AMS. Only those organizations which are newly certified or recertified will be eligible to nominate cattle producers or beef importers to the Board. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by April 15, 1994.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, room 2624–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp at 202/720–1115 (FTS 720–1115).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), approved December 23, 1985, authorizes the implementation of a national Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 101 cattle producers and 6 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets.

Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557). Since an organization's membership may change over time and since many organizations were certified in 1986, AMS will conduct a review to ascertain whether an organization may remain certified as eligible to make nominations. Previously certified organizations must be recertified to nominate producers and importers for upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of three (3) years. The Order also requires the Department to announce when a Board vacancy does or will exist. The following States or units have one or more members whose terms will expire in 1994:

State or unit	Number of vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	2
New Mexico	1
North Carolina	1
Oklahoma	1
South Carolina	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	2
Mid-Atlantic	1
Northeast Unit	1
Importers	2

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Noncertified and existing certified eligible producer-organizations in all States that are interested in being certified or recertified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by April 15, 1994. Noncertified and existing certified eligible importer organizations that are interested in being certified or recertified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received by April 15, 1994 will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 as published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Department may review any certified organization's books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine the organization's eligibility for certification. In addition, the information submitted on the application must be timely, complete, and correct to the best of one's knowledge.

All organizations and associations, newly certified and recertified in the States or units having vacant positions on the Board will be notified in writing of the beginning and ending dates of the nomination period and will be provided nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: March 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6140 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Establishment of Gold Basin Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Gold Basin Purchase Unit.

SUMMARY: On February 23, 1994, the Deputy Assistant Secretary, Natural Resources and Environment, created the Gold Basin Purchase Unit. This purchase unit comprises approximately 80 acres within Snohomish County, Washington. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Creation of this purchase unit was effective February 23, 1994.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; telephone: (202) 205–1248.

Dated: March 9, 1994.

Gordon H. Small,

Acting Deputy Chief.

Pursuant to the Secretary of Agriculture's authority under Section 17, Public Law 94–588 (90 Stat. 2949), the Gold Basin Purchase Unit is being created in Snohomish, Washington. The lands within the purchase unit are described as follows:

Snohomish County, Washington, Willamette Meridian

T. 30 N., R. 8 E.

Sec. 14: E½SW¼.

The area described contains 80 acres, more or less, and is adjacent to the Mt. Baker-Snoqualmie National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: February 23, 1994.

Adela Backiel,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 94–6123 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

Animal and Plant Health Inspection Service

[Docket No. 94–010–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the months of December 1993 and January 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the months of December 1993 and January 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 10th day of March 1994.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–6036 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

All-Terrain Vehicle & Motorcycle Trail, Salem and Potosi Ranger Districts, Mark Twain National Forest; Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On September 16, 1991, a notice was published in the **Federal Register** (56 FR 46764) stating that an environmental impact statement would be prepared for an all-terrain vehicle and motorcycle trail on the Salem and Potosi Ranger Districts, Mark Twain National Forest, Missouri.

That notice is hereby canceled.

DATES: This Action is effective March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Darsan Wang, Recreation Specialist, 314–364–4621.

SUPPLEMENTARY INFORMATION: This environmental impact statement process was initiated in September, 1991. Since that time the interdisciplinary team has been pursuing the development of a draft environmental impact statement in accord with the NEPA process. Public involvement has been promoted throughout the process. On December 23, 1993, a notice of DEIS availability was published in the **Federal Register** (58 FR 68143). The public review period ends as of this notice.

I am withdrawing this DEIS at this time because upon my review of the document, I have found that certain issues were not adequately analyzed and the public comments revealed overwhelming opposition to the scope of the ATV proposal.

Dated: March 11, 1994.

B. Eric Morse,

Forest Supervisor.

[FR Doc. 94–6061 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

Newberry National Volcanic Monument Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on April 8, 1994 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: Reviewing the Draft

Environmental Impact Statement for the Monument, staff reports on recreation and other issues, public comments on the draft plan for the Monument, and a discussion of vegetation management in the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct question regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: February 28, 1994.

Ranotta K. McNair,

Acting Deputy.

[FR Doc. 94–5926 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: User Satisfaction Surveys.

Form Numbers: Agency—ITA–4015P, ITA–4099P–1, ITA–4103P, ITA–4106P, ITA–4107P, ITA–4108P–A1, ITA–4108P–A2, ITA–4108P–C1, ITA–4108P–C2, ITA–4108P–E, ITA–4108P–I, ITA.–4108P–T, ITA–4108P–W, ITA–4110P, ITA–4117P, ITA–4120P, ITA–4121P, ITA–4122P, ITA–4123P, ITA–4124P, ITA–4125P, ITA–4126P, ITA–4129, ITA–4130P, ITA–4131P, ITA–735P and ITA–4132P, OMB–0625–0217.

Type of Request: Revision of a currently approved collection.

Burden: 27,195 respondents; 4,698 reporting hours.

Average Hour per Response: Range from six to 60 minutes.

Needs and Uses: The International Trade Administration (ITA) provides information and counseling products and services that help give U.S. exporters a leading edge in world markets. There is a continuous need to assess user satisfaction with these products and services. The proposed survey instruments will provide ITA offices with flexible information collection forms to send out to customers following any transaction. This information will be used by individual offices within ITA to improve their ability to deliver services or enhance products. In addition, the information will enable staff to set priorities, maximize resources, develop base performance measures, and establish indicators for use with other available benchmarks.

Affected Public: Businesses or other for profit organizations; state or local governments; small businesses or organizations; non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: March 10, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–6002 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Amendment to notice of opportunity to request administrative review of a suspended investigation.

BACKGROUND: On March 4, 1994, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of an antidumping or countervailing duty order, finding, or suspended investigation. The Department inadvertently omitted Noncontinuous Noncellulosic Yarns from Thailand under the heading Suspension Agreements. The amended change should be added as follows:

Suspension agreements	Period
Thailand:	
Noncontinuous Noncellulosic Yarns (C–549–401)	01/01/93–12/31/93

In accordance with § 355.22(a) of the Commerce regulations, each year during the anniversary month of the publication of a suspension of investigation, an interested party as defined in § 355.2(i) may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. In accordance with § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping and Countervailing Duty Administrative Reviews" for requests received by March 31, 1994.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 10, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–6126 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–702]

Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 6, 1994, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan (59 FR 740). The review covers one manufacturer/exporter, Benkan Corporation (Benkan), and the period March 1, 1992, through February 28, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce,

Washington, DC 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1993, the petitioner, Flowline Division of Markovitz Enterprises, Inc. (Flowline), requested that the Department conduct an administrative review of the antidumping duty order on SSPFs from Japan for Benkan. The Department initiated the review on May 6, 1993 (58 FR 26960), covering the period March 1, 1992, through February 28, 1993. On January 6, 1994, the Department published the preliminary results of review of the antidumping duty order on SSPFs from Japan (59 FR 740). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item number 7307.23.0000. The HTS item number is provided for convenience and Customs purposes. The written product description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, Flowline.

Comment 1: Flowline argues that Benkan's date of sale methodology, which is based on the invoice date, does not provide an accurate, reasonable method for determining the date that price and quantity are set. Petitioner contends that since prices are agreed to over the telephone prior to the order being placed, the date of sale should be the date that a customer places an order (*i.e.*, the date that the order receipt slip is generated), rather than the invoice date, which is also the shipment date.

Department's Position: We disagree with Flowline. The Department has used the invoice date provided by Benkan as the date of sale because the invoice represents the first document which systematically records agreement as to prices and quantities. Order receipt slips are neither systematically generated nor comprehensive enough for these purposes. Thus, the invoice date represents an accurate, reasonable, verifiable, consistent methodology to determine the date of sale.

Moreover, this is consistent with the position that we have taken in past cases where determination of the date of sale methodology was at issue (see Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, *et al.* (*AFBs*) (58 FR 39729, 39783; July 26, 1993)).

Comment 2: Flowline asserts that Benkan should be required to provide level-of-trade (LOT) information since Benkan sells to different categories of customers in the home market and in the U.S. market. Flowline refers to the Department's Policy Bulletin (92/1, July 29, 1992) to argue that Benkan has failed to demonstrate that no correlation exists between prices and LOT. Additionally, Flowline claims that Benkan has only shown that there is no significant correlation between selling expenses and LOT, as opposed to no correlation between prices and LOT.

Department's Position: The Department disagrees with Flowline. There is no evidence on the record to suggest that Benkan's prices vary based on the customer category. Moreover, Flowline has misinterpreted Department policy by improperly assuming that Benkan has the burden of demonstrating that prices are not affected by LOT; Flowline has provided no evidence to contradict Benkan's assertion that prices are not affected by LOT.

Final Results of Review

Based on our analysis of the comments received we have not changed the final results from those presented in the preliminary results of review. Accordingly, we have determined that a final margin of 8.06 percent exists for Benkan for the period March 1, 1992 through February 28, 1993.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Benkan will be 8.06 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate will be 49.31 percent, as explained below.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "all others" rate established in the original LTFB investigation, which is 49.31 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of

APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 9, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6125 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 14, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The review covers 85 exporters, and the period April 1, 1992, through March 31, 1993. We have now completed the review and determine that margins exist for the period.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On December 14, 1993, the Department of Commerce published the preliminary results of its administrative review (58 FR 65333) of 85 exporters, listed below, subject to the antidumping duty order on fresh and chilled Atlantic salmon from Norway (56 FR 14920) for the period April 1, 1992, through March 31, 1993. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.03. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

We determine that the following margins exist for the period April 1, 1992, through March 31, 1993:

	Percent
Adeco A/S	31.81
Arne Lund & Sonner A/S	31.81
Aalesundfisk A/S	**23.80
Aqua Star A/S	31.81
Austevoll Fiskeindustri A/S	**23.80
Atlantic Salmon A/S	31.81
Brodrene Reme	**23.80
Brodrene Sirevag A/S	**23.80
Chr. Bjelland Seafoods A/S	31.81
Domstein Salmon A/S	*31.81
Edal Laks A/S	31.81
Edda Seafood A/S	31.81
Fjord Aqua Group A/S	**23.80
Flatanger Laks A.S. K.S	31.81
Fonn Rogaland A/S	31.81
Fossen Senter—Valestrand A/S	**23.80
Fremco Fresh Marine A/S	31.81
Fremstad Group A/S	31.81
Fresh Marine Co. Ltd	31.81
Frionor Norsk Frossenfisk A/S	**23.80
Halco Norway A/S	31.81
Hallvard Leroy A/S	*31.81
Handels-Huset Nord A/S	**23.80
Heroyfisk A/S	31.81
Iglo Aqua Group A/S	31.81
Janas A/S	31.81
Janas Rokeri A/S	31.81
J.H. Fremstad A/S	31.81
Johan J. Helland A/S	**23.80
Kaldfjord Handel & Fiskeforr	31.81
Karl Abrahamsens Rokeeri A/S	31.81
Karsten J. Ellingsen A/S	**23.80
King of Norway A/S	31.81
Konrad Sekkingstand A/S	31.81
Knut Nero Exp	31.81
Kr. Kleiven & Co. A/S	31.81
Kvalos Trading A/S	31.81
Leica Fiskeprodukter	31.81
Manger Seafood A/S	31.81
Marinor Edelfisk A/S	31.81
Marinus A/S	**23.80
Misundfisk A/S	**23.80
M. Loining & Sonner A/S	31.81
More Seafood A/S	31.81
Noa Gourmet Seafood A/S	31.81
Nordic Group Inc	31.81
Norfood Group A/S	31.81
Norfra A/S	**23.80
Norsk Akvakultur A/S	**23.80
Nor-Star Seafood A/S	31.81
Northern Seafood A/S	**23.80
Norwegian Seadeli A/S	31.81
Norwegian Salmon A/S	31.81
Norwegian Seafood A/S	**23.80
Nova Sea A/S	31.81
Oddvin Bjorge A/S	**23.80
Prima Seafood	31.81
R. Domstein & Co	31.81
Reinhertsen & Co	31.81
Saga A/S	*26.55
Salmar A/S	**23.80
Salmonex A/S	**23.80
Salmonor A/S	31.81
Seanor A/S	**23.80
Scandinavian Seafood Ltd	31.81
Scandinavian Superior Seafood	31.81
Scanfarm A/S	31.81
Sea Eagle Group A/S	**23.80
Sea Star International A/S	31.81
Smefa A/S	**23.80
Sotra Smoked Fish A/S	31.81
Stabburet A/S	**23.80
Stabburet Marine Produkter A/S	31.81
Stavanger Rokeri & Fisk A/S	**23.80
Sunnmorsfisk A/S	31.81
Terra Seafood A/S	31.81
Troll Salmon A/S	**23.80
Tromsfisk A/S	31.81
Uniprawns A/S	**23.80
Vikenco A/S	**23.80
Vikin A/S	31.81
West Fish Norwegian Salmon A/S	**23.80
Westfood A/S	31.81

*No shipments during the period; margin from original investigation.

**No shipments during the period; margin for "all others" from the original investigation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided for by section

751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be each firm's rate as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 23.80 percent, the all other rate from the less-than-fair-value investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversation to judicial protective order is hereby requested. Failure to comply with regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6003 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 20, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (58 FR 54,112). We have now completed that review and determine the total subsidy to be Can$0.0295 per kilogram for all live swine.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Stephanie Moore, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 54,112) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32,880; August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Case briefs were submitted by the National Pork Producers' Council, Petitioner, the Government of Canada (GOC), the Gouvernement du Québec (GOQ), the Canadian Pork Council (CPC), Pryme Pork, Ltd. (Pryme), P. Quintaine & Son (Quintaine), and Earle Baxter Trucking LQ (Baxter). Rebuttal Briefs were submitted by Petitioner, the GOC, the GOQ, and the CPC. On December 1, 1993 the Department held a public hearing at the request of Petitioner and the GOQ.

In response to the comments made by the parties, the Department has recalculated benefits under the Alberta Crow Benefit Offset Program, the Feed Freight Assistance Program, and the Saskatchewan Hog Assured Returns Program. The total subsidy determined in the preliminary results of review, Can$0.0289/kg, has been recalculated. The Department now determines the total subsidy to be Can$0.0295/kilogram.

Scope of Review

The merchandise covered by this review is all live swine, except breeding swine, from Canada. Such merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period April 1, 1990 through March 31, 1991 and the following programs: (1) Feed Freight Assistance Program; (2) National Tripartite Stabilization Scheme for Hogs (Tripartite); (3) Québec Farm Income Stabilization Insurance Program (FISI); (4) Saskatchewan Hog Assured Returns Program (SHARP); (5) Alberta Crow Benefit Offset Program (ACBOP); (6) Alberta Livestock and Beeyard Compensation Program (Livestock Predator Sub-Program); (7) Ontario Farm Tax Rebate Program; (8) Livestock Improvement Program for Northern Ontario; (9) Ontario Pork Industry Improvement Plan (OPIIP); (10) Ontario Rabies Indemnification Program; (11) Saskatchewan Livestock Investment Tax Credit; (12) Saskatchewan Livestock Facilities Tax Credit Program; (13) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement; (14) Canada/Québec Subsidiary Agreement of Agri-food Development; (15) Canada/Manitoba Agri-Food Development Agreement; (16) Western Diversification Program; (17) Agricultural Products Board Program; (18) Canada/Alberta Swine Improvement Programs Study; (19) Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (20) British Columbia Swine Herd Improvement Program; (21) Ontario Export Sales Aid; (22) Ontario Bear Damage to Livestock Program; (23) Ontario Dog Licensing and Livestock and Poultry Compensation Program; (24) New Brunswick Agriculture Development Act—Swine Assistance Program; (25) New Brunswick Swine Industry Financial Restructuring Program; (26) British Columbia Farm Income Insurance Program; (27) New Brunswick Livestock Incentives Program; (28) New Brunswick Hog Marketing Program; (29) New Brunswick Hog Price Stabilization Program; (30) New Brunswick Swine Assistance Policy on Boars; (31) Prince Edward Island Hog Price Stabilization Program; (32) Prince Edward Island Swine Development Program; (33) Prince Edward Island Interest Payment on Assembly Yard Program; (34) Nova Scotia Swine Herd Health Policy; (35) Nova Scotia Improved Sire Policy; (36) Newfoundland Farm Products Corporation Hog Price Support Program; (37) Newfoundland Weanling Bonus Incentive Policy; (38) Canada-Saskatchewan Agri-Food Development Agreement; (39) British Columbia Feed

Grain Market Development Program; (40) Ontario Soil Conservation and Environmental Assistance Program; (41) Ontario Weaner Pig Stabilization Plan; (42) Nova Scotia Natural Products Act—Pork Price Stabilization Program; and, (43) Québec Productivity and Consolidation of Livestock Production Program. Of the above-listed programs, we found subsidies were provided to live swine producers during the review period under 12 programs. See *Final Results of Review* section below.

Analysis of Comments

Comment 1: Petitioner urges the Department to reexamine its practice of not finding a program *de jure* specific based on its availability only to the agricultural sector. Petitioner argues that the Department's practice with respect to agricultural subsidies is inconsistent with its treatment of subsidies bestowed upon other sectors of the economy, and is reminiscent of the discarded "general availability test," presuming that a program available to all of agriculture is somehow "generally available." Petitioner cites both Federal Circuit and Court of International Trade opinions in advancing the argument that the Department has considerable discretion in determining when a subsidy program is *de jure* specific and what practices are countervailable. Petitioner argues that the Department should exercise its discretion, and focus on factors such as the size of the agricultural sector relative to the economy as a whole, and therefore conclude that Tripartite is *de jure* specific because it is limited, by law, to an enterprise or industry or group of enterprises or industries.

Both the GOC and the CPC argue that it would be inappropriate for the Department to now reverse a longstanding practice with regard to agricultural programs, and to do so would be tantamount to rulemaking. The GOC states that "[b]y any standard, the agricultural sector is too broad to constitute a 'specific * * * group of enterprises or industries' as required by the statute." The CPC states that what Petitioner refers to as "misguided policy" has been upheld by the Court of International Trade as a reasonable exercise of the Department's discretion. See *Roses Inc.* v. *United States*, 774 F. Supp. 1376, 1383 (CIT 1991).

Department's Position: The Department's policy with respect to agricultural programs has been incorporated into the proposed regulations, which provide that the Department "will not regard a program as being [*de jure*] specific * * * solely because the program is limited to the agricultural sector." Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23,366, 23,380; May 31, 1989) (Proposed Regulations), at section 355.43(b)(8). See, e.g., *Fuel Ethanol from Brazil* (51 FR 3361; 1986). Although these proposed regulations are not final, we have determined that, for the present, it is appropriate to maintain the current policy with respect to subsidies provided to the industries within the agricultural sector. We recognize, however, that certain policies such as this one may warrant reconsideration in the future, and we agree with Petitioner that the Department's discretion permits it the authority to reverse such policies by way of the proper procedure, depending upon the policy in question.

We note, in addition, that, as with other subsidy programs, in publishing the proposed regulation relating to the current agricultural sector exception, the Department emphasized in its commentary that "an agricultural program may be deemed specific if, for example, benefits under the program are limited to, or provided disproportionately to, producers of particular agricultural products." 54 FR at 23,368 (emphasis added). The use of the disjunctive "or" demonstrates the Department's recognition that an affirmative finding based upon a single factor could reasonably support a determination of *de facto* specificity within the meaning of section 771(5) of the Act.

Comment 2: Petitioner argues that the Department should conduct its *de jure* specificity analysis of the Tripartite program by focusing on the individual Tripartite plans and their implementing subsidiary agreements, rather than on the implementing legislation, Canada's Agricultural Stabilization Act (ASA), as amended by Bill C–25 to provide for Tripartite agreements. Petitioner argues that this approach is appropriate because the Tripartite Agreement for Hogs is not integrally linked with any of the other Tripartite agreements. Contrary to the Department's determination in the fourth review of this order, Petitioner argues that all Tripartite schemes were not part of one program because they are "structured pursuant to the enabling legislation and basic principles in Bill C–25 * * *" *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada* (56 FR 28,531; June 21, 1991) (*Fourth Review Final*).

According to Petitioner, the basis of the Department's determination appears to have been its consideration of only one factor, the purpose of the program as stated in the enabling legislation. Petitioner argues, however, that there is no evidence of a government policy to treat industries equally under the agreements because each individual agreement specifies the manner in which benefits are calculated and paid, thereby describing the class of eligible producers. Petitioner cites *Certain Fresh Atlantic Groundfish from Canada; Final Affirmative Countervailing Duty Determination* (51 FR 10,041, 10,049; March 24, 1986) (*Groundfish*), *aff'd*, *Comeau Seafoods* v. *United States*, 13 CIT 923, 724 F. Supp. 1407, 1416 (1989), in which the Court of International Trade (CIT) affirmed the Department's determination to examine the specificity of the Canadian Economic and Regional Development Agreements by focusing on the terms of the individual ERDA subsidiary agreements.

Petitioner also argues that even if the Department examines the Tripartite schemes collectively, they are *de jure* limited to a specific group of industries, namely the eleven commodities covered by Tripartite agreements during this review period.

Respondents counter that it is appropriate for the Department to employ an integral linkage analysis when the Department is determining whether to examine two or more programs as one. Applying the integral linkage policy here shows that the Tripartite agreements meet all of the integral linkage criteria and should therefore be considered as one program, consistent with the Department's practice in reviewing this program. According to the GOC and the CPC, the analogy which Petitioner draws between Tripartite and the regional development agreements in *Groundfish* provides no support for the approach endorsed by Petitioner. The GOC and the CPC also object to Petitioner's arguments on the basis that the Department has already determined Tripartite to be *de jure* not specific in earlier reviews of this order, and Petitioner has presented no new facts or evidence of changed circumstances which would justify reconsideration of this determination. Therefore, the Department should not revisit the question of *de jure* specificity.

Department's Position: For purposes of the Department's *de jure* specificity analysis, we have continued to treat Tripartite as a single subsidy program providing benefits to several identifiable beneficiaries through individual agreements reached between the federal government, the provincial governments and the various agricultural commodity producers.

Petitioner's reliance on *Groundfish* and *Comeau Seafoods* is misplaced. In

upholding the Department's determination in *Comeau Seafoods*, the CIT correctly identified the determinative issue as being "*at what level* Commerce may apply the specificity test." *Comeau Seafoods*, 724 F. Supp. at 1416 (emphasis in original). As the CIT found, the individual Economic and Regional Development Agreements (ERDAs) at issue there were "designed to 'establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.'" *Id.* at 1415 (quoting *Groundfish From Canada*, 51 FR at 10,049). In addition, the ERDAs were designed to provide only a procedure for "the establishment of economic development programs with stated general economic development goals." *Id.* at 1415 n. 13. For these reasons, the "agreements" in *Groundfish* were effectively separate subsidy programs, making the proper level of specificity analysis the agreements themselves.

By contrast, as the Department found in the fourth administrative review, Tripartite's enabling legislation, Canada's ASA, as amended by Bill C–25, provides for established administrative procedures and funding commitments. *Fourth Review Final*, 56 FR at 28,532. Moreover, Tripartite's enabling legislation creates a framework for providing only one type of assistance, income stabilization to producers of agricultural commodities which establish agreements. See *id.* Therefore, although the record is not clear as to whether the Government of Canada retains discretion regarding when to enter into particular agreements, it is clear that Tripartite is a single program, of which the Tripartite agreements, or product-specific schemes, are "integral parts." Accordingly, the appropriate level for the Department's specificity analysis is not the individual agreements but the Tripartite program itself. In reaching this determination, we note that, contrary to the arguments of Respondents, the Department did not conduct an integral linkage analysis of Tripartite in the fourth administrative review or at any other time. See *id.*

Finally, as we found in the preliminary results, Petitioner has not presented any new facts or evidence of changed circumstances during the present review which would warrant reconsideration of the issue of whether the Tripartite is *de jure* specific. *Preliminary Results* at 54,116. Therefore, we have declined to reconsider the Department's determination that Tripartite is not *de jure* specific.

Comment 3: The GOC disagrees with the Department's preliminary determination that Tripartite is not integrally linked to the other provisions of the Agricultural Stabilization Act (ASA), in accordance with the Department's proposed regulations, and that the programs examined together are not *de facto* specific. Furthermore, the GOC considers unreasonable the Department's reliance on non-regulatory factors such as "a documentary statement of an overall government policy to treat industries equally" and the expectation of identical treatment and benefits among the different programs at the operational level. In relying on these factors, the Department is introducing a more stringent standard than is required by the proposed regulations and is, therefore, acting contrary to law.

More specifically, the GOC argues that the relationship between Tripartite and the named and designated commodity provisions of the ASA satisfies all of the Department's regulatory factors for finding integral linkage. According to the GOC, there is one statute which provides the same benefits, for the same purpose, under a centralized administration "to the producers of all agricultural commodities in Canada." The GOC further states that the Department errs by equating a policy to treat industries equally with a requirement that benefits, purposes, and administration be identical; a policy to treat industries equally is evident under the ASA, the GOC argues, because it provides every Canadian agricultural producer access to stabilization payments, when needed, in the amounts required, without regard to regional differences in a complementary fashion.

The GOC further argues that, because identicality should not be expected or required, the Department's conclusion is unwarranted that the existence of Tripartite Stabilization Committees indicates that the programs are not administered in common. Equally unwarranted is the Department's distinction between Tripartite (which requires producer contributions) on the one hand, and named and designated commodities on the other (which require no producer contributions). According to the GOC, the Tripartite producer contribution requirement does not disadvantage producers because producers enter Tripartite agreements only if the benefits, such as flexibility in negotiating a payment schedule, outweigh the drawbacks.

Petitioner agrees with the Department's finding that Tripartite is not integrally linked to any other support program. Citing *Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Reviews* (57 FR 8303; March 9, 1992), Petitioner argues that the GOC has failed to demonstrate that the factors considered by the Department are outside the Department's scope of authority under its proposed regulations, or otherwise not in keeping with earlier determinations. Petitioner argues that, unless the Department interprets the integral linkage standard in a strict fashion, despite the GOC's claim that the Department's interpretation is "more stringent" than that which is required by the proposed regulations, any government would be able to immunize its support programs against findings of specificity by merely articulating a very broad purpose which encompasses all programs.

Petitioner also argues that the analysis of equal treatment applied by the Department is neither extraregulatory nor unreasonable. Contrary to the GOC's allegations, neither the Department's analysis in this case, nor the linkage test in general, requires identical treatment, but rather equality in receipt of benefits.

Department's Position: We disagree with Respondents and affirm our preliminary determination that the "named" and "designated" provisions of the ASA are not integrally linked to the Tripartite provision of the ASA. Contrary to the contention of Respondents, the Department's interpretation of the integral linkage policy, and the Department's integral linkage analysis in this case, are not more stringent than permitted by the Department's authority. The integral linkage policy is only an exception to the normal application of the specificity test. As the drafting of the integral linkage provision in the proposed regulations indicates, the policy was created to permit evaluating whether, in particular circumstances, the Department should deviate from its normal approach to analyzing *de facto* specificity in order to consider the coverage of two or more programs together instead of just one. See Proposed Regulations at § 355.43(b)(6). Considering the purpose of the specificity test as a whole, we have interpreted the standard narrowly for granting an affirmative integral linkage determination.

The specificity test was designed to avoid carrying the countervailing duty law to absurd results by countervailing government actions or programs such as public highways and bridges which clearly benefit the economy at large, as opposed to identifiable and specific segments of the economy. *See, e.g.,*

Carlisle Tire & Rubber Co. v. *United States*, 564 F. Supp. 834, 838 (CIT 1983). In implementing the appropriate standard to determine whether to permit a particular exception to the specificity test, however, such as an affirmative integral linkage finding, the Department cannot create a loophole which would allow *de facto* specific subsidy programs benefiting only particular segments of the economy—or particular segments of the agricultural sector—to escape the imposition of countervailing duties.

Permitting respondent governments to loosely connect two or more programs which are otherwise designed to serve different purposes would create just the type of loophole the Department seeks to avoid. Besides being contrary to the Department's specificity practice, doing so would also be contrary to Congress' express requirement in the legislative history that Commerce avoid taking an "overly narrow" or "overly restrictive" view of its authority to determine specificity. S. Rep. No. 71, 100th Cong., 1st Sess. 123 (June 12, 1987). This statement, implies that Congress intended the Department to view its authority to find specificity broadly and its authority to create exceptions to its normal approach narrowly. The very fact that the programs at issue must be found to be "integrally linked" rather than merely "linked" demonstrates the limited circumstances which would warrant an affirmative finding.

The evidentiary standard for establishing that two or more programs are integrally linked is two-fold. First, as we explained in the preliminary results, the government must point to an express statement in the statute or elsewhere, either at the time the first program was created or later when the additional programs were added, which reasonably documents the government's underlying intent to develop two or more programs designed as "complementary parts of an overarching governmental policy directive." *Integral Linkage Analysis Memorandum*, October 13, 1993 (on file in Room B-099, Department of Commerce) (quoting *Carbon Steel Wire Rod From Saudi Arabia*, 57 FR at 8303) (*Integral Linkage Memo*). The need to provide this type of objective legal evidence relates to all of the integral linkage factors set forth in the proposed regulations. The government must also provide factual evidence documenting that its original intent has been implemented, and that the programs are actually functioning in a complementary manner. This type of evidence also relates to each of the proposed factors and other relevant evidence.

Contrary to the claim of the GOC, the Department does not require that the programs be "identical" in order to prevail on a claim of integral linkage. As petitioner correctly notes, however, the supporting evidence must go beyond simply identifying a broad underlying purpose encompassing several otherwise distinct programs which provide access to benefits to all or most eligible industries. For instance, in this case, the Department's linkage standard requires more than the GOC's broad statement that Tripartite and the other ASA provisions are each designed to provide income stabilization to all agricultural industries. *See* Integral Linkage Memo at 4.

As stated above, the respondent government must demonstrate through objective record evidence that, due to an "overall policy or national development plan," it created two or more programs with the express purpose that they complement one another, not only in terms of breadth of availability and coverage, but in similarity of intent, purpose, and administration as well. *Preliminary Results* at 54,115 (quoting *Carbon Steel Wire Rod from Saudi Arabia*). Furthermore, the evidence must establish that any differences between the nature and administration of the programs are necessary because of differences in the nature of the industries being offered benefits; and despite these differences, the recipient industries are actually treated equally in terms of availability, type, and receipt of benefits.

As the Department indicated in the preliminary results, the GOC was unable to point to the necessary documentation demonstrating the existence of an overall policy or development plan to create two or more complementary programs. That fact alone renders a claim of integral linkage insupportable. See *id.*; *Integral Linkage Memo* at 3–4. The Department also found that the information in the record does not establish that the named, designated, and Tripartite provisions of the ASA are administered in an equal or complementary manner. *Id.*

In light of these basic, essential requirements, the Department's interpretation of the integral linkage policy in the preliminary results, is fully consistent with the Department's practice, proposed regulations and the legislative guidance regarding the appropriate approach to specificity analysis in general. See, *e.g.*, *Groundfish*.

Comment 4: The GOC and the CPC disagree with the Department's determination that Tripartite is *de facto* specific. They argue that the Department's reliance on its finding that there are "too few users" of Tripartite is legally insufficient. According to Respondents, the statute and proposed regulations require consideration of all four factors enumerated in the proposed regulations at section 355.43(b)(2) before the Department can determine whether benefits under this program are provided to a specific enterprise or industry or group of enterprises or industries. The GOC argues that in reaching its preliminary results, the Department misinterpreted and misapplied *Final Results of Review: Carbon Black from Mexico*, 51 FR 30,385 (1986) and *Cabot Corp.* v. *United States*, 620 F. Supp. 722 (CIT 1985) (*Cabot*). According to the GOC, *Cabot* does not stand for the proposition that the Department may halt its specificity analysis upon finding "too few users" without consideration of the other regulatory factors and relevant evidence. As support, Respondents argue that a single-factor specificity test has been consistently rejected by the CIT, the Court of Appeals for the Federal Circuit, and several United States Canada Free Trade Agreement (FTA) binational panels. See *Live Swine from Canada*, USA–91–1904–03, at 25 (October 30, 1992) (*Second Swine IV Panel Decision*); *In the Matter of Softwood Lumber from Canada*, USA–92–1904–01 (May 6, 1993); see also *Roses, Inc.* v. *United States* 774 F. Supp. 1376 (CIT 1991) (*Roses II*); and *Roses, Inc.* v. *United States*, 743 F. Supp. 870 (CIT 1990) (*Roses I*).

Respondents point out that although the binational panel reviewing the fifth administrative review of live swine from Canada upheld the Department's specificity finding with regard to Tripartite, it did not uphold the use of a single-factor specificity test. In fact, the panel rejected the Department's finding that Québec's Farm Income Stabilization Insurance scheme is specific based upon only one factor.

Petitioner argues that the sequential application of the specificity test is not inconsistent with U.S. law and has been held repeatedly to be a reasonable interpretation of the statute. Furthermore, according to Petitioner, *Cabot* supports a *de facto* specificity finding based solely on the existence of too few users, with no inquiry into policy or discretion. On the other hand, the binational panel decisions on which the GOC relies have no precedential value, and are only to be considered if they are "intrinsically persuasive." Accordingly, they do not supersede the binding case law which uniformly supports the Department's sequential application of the specificity test.

Petitioner also notes that binational panel decisions on this issue directly contradict one another. *Compare Second Swine IV Panel Decision; In the Matter of Live Swine from Canada*, USA–91–1904–04 (August 26, 1992) (*Swine V Panel Decision*); and *In the Matter of Pure and Alloy Magnesium from Canada*, USA–92–1904–03 (August 16, 1993) (*Magnesium*). Petitioner also disagrees with the claim of the GOC and the CPC that the Department did not consider all factors in its analysis.

Department's Position: The test for determining *de facto* specificity requires that the Department "consider, among other things," several particular factors. *Proposed Regulations* at section 355.43(b)(2). Respondents misinterpret the purpose of the Department's inquiry, as set forth in the proposed regulations, when they incorrectly argue that the Department's practice "plainly calls for a finding on all four factors." As the Department has stated previously, and as the Court of Appeals for the Federal Circuit has agreed, we "must consider all of these factors in light of the evidence on the record in determining specificity in a given case." *PPG Indus. v. United States*, 928 F.2d 1568, 1577 (Fed. Cir. 1991) (*PPG I*). Moreover, while decisions of binational panels may be considered intrinsically persuasive, they are not binding on the Department. We have carefully reviewed the panel decisions cited by the GOC and do not consider them intrinsically persuasive for the reasons set forth below. See also the Department's response to Comment 12, below, regarding the specificity of Québec's FISI program.

The GOC's reliance on the CIT's two *Roses* decisions is misplaced as well. In *Roses*, the CIT did not reject an affirmative *de facto* specificity determination based upon evidence relating to only one factor. Instead, the CIT rejected a finding of *non*-specificity which was reached without considering evidence relating to all four factors. It was in this context, after examining the Department's determination that a program was *not* specific based on the large number of users, that the Court properly held that the Department "does not perform a proper *de facto* specificity analysis if it merely looks at the number of companies that receive benefits under a program; the discretionary aspects of the program must be considered from the outset." *Roses II*, 774 F. Supp. at 1380. Although the CIT did not rule on the question of whether the Department could properly base an affirmative specificity determination on evidence related to only one factor, the context of the two decisions supports the Department's interpretation. See *id.*; see also *Magnesium* at 35 (cited in the *Preliminary Results* at 54,116).

In this review, the Department determined that Tripartite provided *de facto* specific benefits to swine producers based upon its examination of evidence related to the first factor, the number of actual users or beneficiaries. We considered the evidence in the record regarding dominant users and disproportionate use, and the exercise of government discretion. We determined that this evidence did not detract from an affirmative *de facto* specificity determination on the basis of too few users. *Preliminary Results* at 54,116–17. Accordingly, the Department's determination is based upon substantial evidence and is otherwise in accordance with law.

Comment 5: The GOC contests the Department's failure to specifically identify, and reach a finding regarding, "a discrete, selective, targeted" class, industry or group of industries benefitting from Tripartite. The GOC cites *PPG I*, 928 F.2d at 1577 and *PPG Indus., Inc. v. U.S.*, 978 F.2d 1232, 1240 (Fed. Cir. 1992) (*PPG II*), in support of its claim that the Department must identify a beneficiary class or industry which includes live swine producers before concluding that Tripartite is specific.

Petitioner argues that neither the statute nor the regulations require governmental targeting or intent as a precondition for determining de facto specificity; the fact that the Department declined to make this finding is reasonable and in accordance with law.

Department's Position: We disagree with the GOC's contention that absent a finding that a bestowing government intended to benefit a "discrete, selective or targeted class," we may not properly find a program *de facto* specific regardless of how few users there are or other relevant evidence. The statute does not require and the Department's policy has not established that the Department must ascertain, or base its specificity determinations upon, the intent of the bestowing government. *See* 19 U.S.C. § 1677(5)(B); *Proposed Regulations* at section 355.43(b)(2). The Department's interpretation of the statute has been expressly upheld by the CIT. *Saudi Iron and Steel Co. (Hadeed) v. United States*, 675 F. Supp. 1362, 1367 (1987), *appeal after remand*, 686 F. Supp. 914 (CIT 1988); see also *Cabot*, 620 F. Supp. at 732. Moreover, a binational panel in an earlier review of this order cited the legislative history underlying section 771(5)(B) of the Act to reject the GOC's same basic argument: "Under the statutory scheme, the pertinent inquiry is not whether Canada has intentionally targeted benefits to swine producers, but rather whether it has done something, intentionally or otherwise, that confers a benefit upon a 'specific enterprise or industry or group of enterprises or industries.'" *In the Matter of Live Swine From Canada*, USA–91–1904–03, at 19–20 (May 19, 1992) (*First Swine IV Panel Decision*).

Similarly, the Court of Appeals for the Federal Circuit did not hold, in either *PPG I* or *PPG II*, that the Department must find intent. The court recognized that the statute provides a two-part test for specificity and that the *de facto* aspect is purely an inquiry into the factual question of whether, "'*in its application*, the program results in a subsidy only to an enterprise or industry or specific group of enterprise or industries.'" *PPG II*, 978 F.2d at 1239 (quoting *PPG I*, 928 F.2d at 1576) (emphasis in original). While the court certainly did not attempt to foreclose the possibility that intent might be shown, see *PPG II* at 1240 n. 12, nowhere did the court indicate that the statute requires an express finding of intent in order to support an affirmative *de facto* specificity determination. In both decisions, the court merely used the phrase "discrete, selective, or targeted industry" to describe the industry, enterprise or group thereof that, as a factual matter, was eligible for (or should have been eligible for) or had actually received a benefit under the programs at issue. *PPG II* at 1240; *PPG I* at 1577.

In this regard, we note the decision of yet another binational panel which rejected the GOC's argument by finding that the authorities cited by the GOC "generally use the term 'targeting' as a synonym for 'specific' or 'exercise of discretion.'" *Swine V Panel Decision* at 16 n. 17. Similarly, we have interpreted the Court of Appeals' use of the same term in *PPG* as a synonym for "specific" or the "exercise of discretion." Therefore, no further findings are required by law to determine specificity in this review.

Comment 6: Petitioner argues that the Department's determination that there are "over 80 agricultural commodities" produced in both Canada and Québec understates the actual number of agricultural commodities which are eligible for benefits under the Tripartite and FISI programs, respectively. Petitioner states that the *1991 Agricultural Profile of Canada*, provided to the Department by the GOC, represents the best quantification of agricultural commodities produced in Canada. It lists 131 commodities and

supports the Department's determination in previous reviews that there are over 100 agricultural commodities produced in Canada.

Petitioner further argues that the Department found in its memorandum on *The Universe of Agriculture in Canada and Québec*, Memorandum from Dana Mermelstein to Barbara Tillman, dated October 12, 1993 (*Agricultural Universe Memo*), that "the GOC has provided no indication of the criteria it applies to determine how and when a product should be listed in the [Farm Cash Receipts]," and "it is not possible to determine * * * how the GOC would reasonably and objectively determine which of the 131 commodities listed in the *Profile* meet these criteria."

According to Petitioner, this uncertainty is a result of the failure by the GOC to provide information regarding Tripartite eligibility criteria. Therefore, Petitioner argues, the Department should draw an adverse inference and base its determination of the extent of the agricultural universe for purposes of the *de facto* specificity analysis on the *1991 Profile*.

Petitioner makes the same argument with regard to Québec's FISI program, alleging that the Government of Québec's failure to provide information about FISI eligibility requires the Department to rely on the *Profile*, and to make adverse inferences in determining the number of agricultural commodities produced in Québec.

The GOC counters that Petitioner's criticisms of the Department's reasoning are invalid especially in light of the Petitioner's failure to provide substitute criteria for determining which products to include in the universe, a substitute list of products, or a definite final tally. The GOC and the CPC argue that the shortcomings in the explanation of how the *Profile* and the FCRs are compiled do not relate to Tripartite eligibility, nor would the law allow the Department to make the adverse assumptions Petitioner urges.

The GOQ responds with three points: first, there is ample record evidence explaining and illustrating the "reasonable limitations" on FISI eligibility; second, adverse inferences are unwarranted in light of Québec's responsiveness to the Department's inquiries; and third, the *Profile* lists products at a level of aggregation which is not appropriate for defining the universe of products eligible for FISI.

Department's Position: We agree with the GOC, GOQ and CPC that Respondents' failure to provide information regarding the eligibility requirements for Tripartite and FISI is not a basis for the Department to draw an adverse inference with regard to the number of agricultural commodities produced in Canada and Québec, which are eligible for coverage. As the Department stated in the preliminary results, the goal of determining the number of commodities produced in Canada and Québec is to approximate the extent of the relevant agricultural universes and thus evaluate the coverage of the programs under consideration for the purpose of performing the *de facto* specificity analysis. We fully explained in the *Agricultural Universe Memo* how we evaluated the various sources of information in reaching the determination that there are over 80 agricultural commodities produced in both Canada and Québec.

Comment 7: The GOC argues that substantial record evidence does not support a finding that there are "too few users" of Tripartite; therefore, Tripartite is *de facto* non-specific. According to the GOC, benefits under Tripartite were provided during the review period to a "sizeable portion of the agricultural universe."

With regard to the number of Tripartite users, the GOC argues that the Department's counting of the products shows that at least 9 industries or groups thereof, or 11 percent of the universe by number of products is covered by Tripartite. The GOC avers that a program need not reach all eligible users to be found not specific. The GOC points out that the binational panel ruling on the final results in the fourth review refused to sustain the Department's finding that Tripartite was specific based upon "too few users." In this review period, the Department's determination of specificity on the same grounds is all the more inappropriate because there are two more Tripartite agreements covering two additional commodities.

Because Tripartite reaches more than a "trivial" number of users but less than the entire agricultural universe, the GOC claims that the Department's inquiry should extend into non-statistical factors, such as the availability of other stabilization options, and the length and complexity of the Tripartite negotiating process, to understand the reason for the limited number of Tripartite agreements. The GOC also reiterates its argument that Tripartite is an expanding program; products were added through the fifth review period, and enrollees were added in the current (sixth) review period.

In addition, the CPC argues that in analyzing whether Tripartite is *de facto* specific, the Department must also consider the fact that commodities participating in Tripartite accounted for 33 percent of the total value of Canadian agricultural production during the review period. The Department asked for this information and, according to the CPC, cannot now simply ignore it.

Petitioner rebuts that Respondents are attempting to inject into the specificity analysis several criteria that do not exist. Petitioner claims that the Department has consistently used statistical analyses in determining whether a program is *de facto* specific by virtue of the number of program users; in fact, the regulations require the Department to consider the number of users. Moreover, Petitioner, citing the Department's redetermination in the fifth review of this order, notes that the Department correctly does not consider that a program covering a variety of industries is necessarily *de facto* not specific. Petitioner further agrees with the Department's redetermination regarding the number of industries currently using Tripartite: it does not represent a variety of different types of agricultural commodities.

Department's Position: We disagree with the GOC. As we explained in the preliminary results, the Department determined that there were 11 beneficiaries of Tripartite during the review period (which the GOC now disaggregates into 13 beneficiaries), covered by eight agreements. *Preliminary Results* at 54,116. Tripartite's enabling legislation, Bill C–25, an amendment to the ASA, states that Tripartite benefits are available to "all natural or processed products of agriculture," thus requiring a determination that the program is not *de jure* specific under the Department's current policy toward agricultural subsidy programs. For purposes of its *de facto* specificity analysis, the Department has determined the appropriate universe of potential users in Canada against which to evaluate the number of actual users of Tripartite. That universe was comprised of over 80 agricultural commodities during the period of review. See Agricultural Universe Memorandum. Based on the Department's comparison of this evidence, we have reasonably determined that only 11 (or 13) out of over 80 is a sufficiently small number of actual beneficiaries so as to warrant a determination that Tripartite benefits a "specific enterprise or industry or group thereof" within the meaning of section 771(5)(B) of the Act.

The Department disagrees with the GOC's claim that comparing the number of users to the number of potential users of a subsidy program is not probative of

de facto specificity. This analysis is more than mere counting, as asserted by the GOC. The proposed regulations correctly provide that the Department will examine the *number* of enterprises or industries actually benefitting from a program in determining *de facto* specificity. See Proposed Regulations at section 355.43(b)(2). That is what the Department did here. In addition, the GOC itself acknowledges that, based upon the number of agricultural commodities, only 11 percent of the agricultural universe in Canada is covered by Tripartite. Such a finding would certainly not detract from a determination that Tripartite is *de facto* specific based upon the small number of users.

In this same regard, we have considered the CPC's argument that the agricultural commodities participating in Tripartite accounted for 33 percent of the total value of Canadian agricultural production during the review period based on FCRs. This evidence also does not detract from a determination that Tripartite is *de facto* specific based upon the small number of only 11 (or 13) actual users. The statute states that a domestic subsidy is countervailable if it is limited to a specific enterprise or industry or group thereof, and the Department's proposed regulations provide that the Department will examine the number of actual beneficiaries, whether industries or enterprises, in determining *de facto* specificity. The Department has previously not engaged in an analysis of the percentage of production value covered by a program in making specificity determinations. However, because the CPC has raised this issue and because the proposed regulations provide that other factors may be considered, we have now considered this information in our specificity analysis. As discussed below, the Department determines that in the context of Tripartite this information has little, if any significance, in light of the relatively small number of actual beneficiaries compared to the relatively large number of eligible beneficiaries.

The Department found that several of the relatively few commodities benefiting from Tripartite were produced in very small quantities during the review period. Thus, each accounted for a relatively small percentage of the total value of Canadian agricultural production. At the same time, certain Tripartite beneficiaries (*e.g.*, swine and cattle) accounted for relatively large percentages of total agricultural production. Similarly, of the relatively large number of remaining commodities in the agricultural universe which did not receive Tripartite, some accounted for a small percentage of production value while others accounted for a large percentage. Because the relative value of agricultural production accounted for by a particular commodity is apparently, and properly, not determinative of whether it may receive Tripartite benefits, it follows that each of these non-covered commodities, whether large or small, must be equally eligible for Tripartite benefits. Accordingly, the fact that the relatively small number of commodities receiving Tripartite benefits happened to account for 33 percent of the total agricultural production value during the review period is of little, if any, significance when viewed alongside the fact that a far greater number of both large and small commodities in Canada did not receive Tripartite benefits. Finally, we note that 33 percent of production value, viewed alone, still represents only a small percentage of the eligible universe, and if that were the sole factor that we had considered, the Department would find Tripartite *de facto* specific.

In addition, we have determined that Tripartite is not integrally linked to other income stabilization programs in Canada. Therefore, the Department is precluded from examining evidence such as that regarding the availability of other stabilization programs, which may or may not explain why there were a small number of Tripartite agreements during the review period.

Similarly, we do not consider the growth of the Tripartite program during past review periods to be relevant to an analysis of whether Tripartite is *de facto* specific during this review period. We acknowledge that commodities were added during the fifth review period. The Department found that Tripartite was *de facto* specific during that review, however, based upon evidence related to the small number of users, among other things. That determination was upheld by the binational panel reviewing the Department's findings following remand. *Swine V Panel Decision* at 17–19. Had additional agricultural commodities been added to Tripartite's coverage during this review period, the Department would have considered that evidence and reevaluated the determination that there are too few users of Tripartite to find it not *de facto* specific. Furthermore, although Tripartite may have added enrollees during this review period, this evidence does not detract from the Department's finding, which properly focused upon the industries, or agricultural commodities, receiving benefits. The additional enrollees produce the same 11 (or 13) commodities that we have determined comprise a specific group of enterprises or industries.

Based upon this analysis, we determine that substantial evidence supports the Department's determination that there were too few beneficiaries of Tripartite during the review period to warrant finding the program not *de facto* specific.

Comment 8: The GOC argues that the Department's determination that live swine producers benefit disproportionately from Tripartite improperly ignores the nature of payments under the program. The GOC claims that dollar payout levels do not show dominant or disproportionate use. First, because payouts are determined by market forces, there will always be variations in the amount of payouts to different commodities and even to the same commodity at different times. Second, the percentage of payouts received by hog producers declined substantially during the review period, suggesting that over time, the percentage of Tripartite benefits received by hog producers will return to relatively low levels. In addition, the GOC questions the value of the dominant or disproportionate use criteria in evaluating Tripartite. Because the benefits are determined by market forces, the dominant use test yields inconsistent findings regarding Tripartite's specificity.

Petitioner argues that the Department's analysis of dominant or disproportionate use is supported by substantial evidence in the record, and is otherwise in accordance with law. The GOC's argument, on the other hand, is unsupported by law. Petitioner contends that the Department has previously considered arguments regarding the role of market forces in triggering payments and has concluded that these effects relate to whether a particular industry receives benefits rather than the *de facto* specificity of a program.

Department's Position: We disagree with the GOC. First, we note that in the preliminary results, the Department determined that Tripartite was *de facto* specific solely on the basis of the small number of actual beneficiaries during the review period in relation to the large universe of eligible beneficiaries. *Preliminary Results* at 54,116. We also found that swine producers were dominant users of Tripartite based upon the fact that they have received 70 percent of the benefits over the history of the program. In making this dominant use finding, the Department intended to demonstrate only that, assuming the

Department had made no finding regarding the number of users, Tripartite could still have been found *de facto* specific. *Id.* at 54,117. Therefore, because we reasonably determined that the number of actual Tripartite users was small, no dominant use finding was required by the statute. Accordingly, inasmuch as the Department's dominant use finding was not necessary in order to support our affirmative *de facto* specificity finding on the basis of the small number of users, we have considered the parties' dominant use arguments only to determine whether they identify evidence in the record which would somehow detract from the Department's affirmative determination. We have determined that no such evidence has been identified.

Contrary to the argument of the GOC, a dominant or disproportionate use finding could well be relevant to an income stabilization program such as Tripartite if we were unable to make a specificity finding based upon the small number of users. However, the question of whether the subject merchandise happens to constitute a large or small industry (agricultural commodity) is immaterial to the Department's specificity analysis when the Department has already determined that a program is *de facto* specific based on the small number of users. Assuming the number of users in a case was not small, which is not the situation here, the Department could very well determine that the subject merchandise was a dominant user regardless of its relative size.

Similarly, the fact that Tripartite payments are triggered by market forces cannot be considered in determining whether the program is *de facto* specific. It may be that swine producers consistently receive a disproportionate share of benefits because they happen to experience consistently bad years which trigger higher payouts. Subsidies are often provided when companies or industries experience downturns in their markets, and it would be unreasonable for the Department to find that such market forces render subsidies not specific and thus not countervailable. Neither the statute nor the proposed regulations permit the Department to alter its specificity analysis on this basis.

Comment 9: The GOC also takes issue with the Department's findings that the "government of Canada may exercise discretion in the administration of" Tripartite, and that this evidence does "not detract from [our] finding of specificity" based on evidence relating to the small number of users. The GOC argues first that in relying on the legislative history of the Tripartite program to show that the Minister of Agriculture has a great amount of discretion, the Department has improperly relied on non-record evidence. According to the GOC, documents submitted by Petitioner as Tripartite legislative history were stricken from the record, and may not be considered in the Final Results.

The GOC argues that, as a matter of law, the Department's proposed regulations require the Department to consider "the extent to which a government exercises discretion in conferring benefits under a program." The Department's consistent practice has been to look for the actual exercise of discretion, and the *Swine V* panel specifically declined to sustain the Department's approach to the contrary. Therefore, according to the GOC, the Department's finding that the government "may retain" discretion is erroneous.

The GOC claims that the record on Tripartite fails to show that the GOC has ever exercised the relevant discretion, and the verification report establishes that there have been no actions limiting the availability of Tripartite agreements. Moreover, the Department persists in overlooking the extensive criteria provided in the ASA for evaluating Tripartite agreement requests. The GOC urges the Department to consider the nature of the program, which in the case of Tripartite precludes government manipulation. The government cannot control the market factors which dictate when payouts are made. Neither can the government control which producer groups will seek Tripartite agreements, and which producers will enroll once an agreement is reached. Therefore, there is no opportunity for the GOC to influence, or use its discretion in, the granting of benefits under Tripartite. The absence of evidence of government discretion must weigh against a *de facto* specificity determination.

Petitioner claims that it is not improper for the Department to rely on the legislative history of the ASA in analyzing whether the government retains discretion. Petitioner cites the CIT decision in *Central Soya Co.* v. *United States*, 15 CIT 35, 13 ITRD 1085, 1087 (1991), which held that "the court has broad power or discretion to take judicial notice of legislative facts."

Moreover, Petitioner argues that record evidence indicates that Tripartite benefits may be awarded in a discretionary manner; the negotiating process is discretionary in and of itself. The government does not automatically establish a Tripartite agreement for any producer group interested in obtaining one. Therefore, Petitioner argues that the Department's finding with regard to discretion is supported by substantial evidence in this review. Petitioner concludes that, regardless, a flawed discretion finding does not nullify the Department's specificity determination since the Department stated in the preliminary results that it "historically has not placed great emphasis on this factor."

Department's Position: We disagree with the GOC regarding the Department's approach to the evidence relating to the exercise of government discretion during this review. The Department found that the Government of Canada "may exercise discretion" in the administration of Tripartite. The Department did not base its determination of specificity on this evidence, however. As explained in the previous comments, the Department determined that Tripartite was *de facto* specific solely on the basis of the small number of only 11 (or 13) actual beneficiaries during the review period in relation to the universe of eligible beneficiaries. Preliminary Results at 54,116. At the same time, after reviewing all the information in the record, we were not able to identify an established, publicized and consistent review process leading to Tripartite agreements. The fact that negotiations are involved appears to indicate that the outcome may be unpredictable and inconsistent from one agreement to another. Thus, the resulting Tripartite agreements do not necessarily reflect identical terms or conditions. Preliminary Results at 54,117.

We also disagree with the GOC that the Department may not rely upon the Canadian legislative history relating to the Tripartite program. First, the legislative history is arguably publicly available, published information and it may be relied on at any time during the proceeding. We determined earlier in the review, however, that it was not appropriate to permit Petitioner to add this information to the record after the deadline provided for in the Department's regulations for submitting factual information. See 19 CFR 355.31(a)(1)(ii). Regardless, the Department's regulations do not preclude the Department from adding factual information to the record at any time during a proceeding, *id.* at § 355.31(b)(1), especially prior to the preliminary results.

Therefore, the fact that the Department did not permit Petitioner to add this information to the record did not preclude the Department from adding it to the record itself and relying upon the same information in reaching

its determination. Because it was plain that the Department had indeed relied upon this information, the parties had an adequate opportunity to comment upon it substantively.

Comment 10: The GOQ argues that the Department's reexamination of the FISI program, notwithstanding the decisions of two binational panels, is inconsistent with administrative practice and with the international obligations of the United States. According to the GOQ, the panels reviewing the fourth and fifth administrative reviews held that the evidence on the record did not support a determination of countervailability. By reinvestigating FISI, the Department is departing from its administrative practice not to revisit a decision absent new evidence or facts which indicate a change in the program. There is no new evidence regarding FISI; the program has remained essentially unchanged from prior reviews. The GOQ also maintains that the Department is reexamining FISI because it has never managed to compile a record sufficient to find FISI countervailable. This continuous and unjustifiable examination of FISI constitutes a restraint of international trade in violation of U.S. obligations under the General Agreements on Tariff and Trade and the FTA.

Petitioner responds that the countervailability of FISI has neither been explicitly affirmed by a reviewing binational panel, nor explicitly rejected. The panel in *Fresh, Chilled and Frozen Pork from Canada*, USA–89–1904–06, at 19 (March 8, 1991), and *Fresh, Chilled and Frozen Pork*, USA–89–1904–06, at 2 (June 3, 1991) (collectively *Pork*), concluded that the evidence on the record was insufficient to sustain the Department's countervailability determination regarding FISI. The binational panel in the fifth review of the order on live swine ordered the Department to remove FISI benefits from its calculation for the review period because of defects in the supporting record. Thus, by examining FISI in this review, the Department has not violated its own practice of not reinvestigating a program previously found not countervailable.

Department's Position: The Department's practice is not to reexamine a specificity finding made in the investigation or in a subsequent review absent new facts or evidence of changed circumstances. In this review, however, as we explained in the preliminary results, the Department's determination to reexamine FISI is reasonable in light of new evidence compiled by the Department regarding the number of potential beneficiaries of the program and other evidence. *Preliminary Results* at 54,117–18. In each proceeding reviewed by a binational panel, the panel highlighted what it considered to be deficiencies either in the supporting evidence or in the Department's analysis. For instance, the *Swine V* panel found that the Department had failed to provide a "properly articulated rationale for determining that FISI was countervailable" based on record evidence, and ordered the Department "to remove FISI benefits from its duty calculations for that review period." The *Pork* panel's holding was the same. Therefore, in this review, as explained above and in the preliminary results, we have compiled new evidence.

Comment 11: If the Department does not rescind its investigation of FISI, the GOQ urges the Department not to consider FISI in isolation but together with two other Québec programs: Crop Insurance and Supply Management. According to the GOQ, these programs serve jointly to meet the province-wide objective of stabilizing farm income. Taken together they cover 81.2 percent of the value of Québec's agricultural production; they also meet the differing needs of the agricultural sector, covering each farmer's most significant risk. Furthermore, this common purpose is best demonstrated by the administrative overlap between FISI and Crop Insurance, which are both administered by the Régie des Assurances Agricoles du Québec (the Régie). These facts illustrate a unified provincial objective, fulfilled through complementary activities which reflect the diverse production and market risks faced by Québec's farmers. On this basis, the Department must conclude that FISI benefits are not *de facto* specific.

Petitioner counters that the GOQ is really arguing that these various programs are integrally linked. Therefore, Petitioner argues, the Department should reject this argument because, having been raised only at the briefing stage of the administrative review, it is untimely. Should the Department entertain the GOQ's argument, Petitioner argues that there is insufficient record evidence to support a claim that the programs should be considered together. At the very least, the GOQ's arguments fail to address two of the factors the Department must consider when examining an integral linkage argument: funding and equality of treatment.

Department's Position: Although the GOQ did provide timely information about the programs which it now appears to contend are integrally linked to FISI, the GOQ did not present a timely allegation that these programs were integrally linked. Without a timely allegation during the investigation or administrative review that a program is integrally linked to other programs, the Department is unable to solicit and consider evidence relating to this question, and other parties are unable to comment on any determination the Department might reach. Therefore, for purposes of the Department's *de facto* specificity analysis, we have continued to base our determination of the specificity of FISI on the availability and use of that program standing alone. See Proposed Regulations at section 355.43(b)(6).

Comment 12: Like the GOC, the GOQ takes issue with the Department's interpretation of the statute that a *de facto* specificity determination may be based on only one of the factors listed in the proposed regulations. Consequently, the GOQ contests the Department's determination that FISI is *de facto* specific based only upon the small number of users participating in the program. It is the GOQ's view that the Department only briefly mentioned the other factors in its preliminary results, determining summarily that no other factors detracted from the specificity finding.

The GOQ maintains that the Department must collect and fully evaluate all reasonably available evidence, and that it "may not rely on isolated tidbits of data which suggest a result contrary to the clear weight of the evidence." *USX Corporation* v. *United States*, 655 F. Supp. 487, 489 (CIT 1987). See also *Universal Camera Corp.* v. *United States*, 340 U.S. 474 (1950). In addition, the GOQ states that every binational panel, except one, which has examined this issue has agreed that the Department cannot find specificity after examining only a single factor. The GOQ argues that the *Magnesium* panel, which held that the Department may find specificity after examining only one of the *de facto* specificity criteria, did not face this issue squarely because it found that the Department had considered three of the four specificity criteria, and there was evidence in the record indicating specificity under the fourth. The GOQ also argues that because there are different bases for analyzing *de jure* and *de facto* specificity, the Department may not properly rely upon its practice of basing a specificity finding on the single *de jure* factor as a justification for relying upon a single factor to determine *de facto* specificity.

In rebuttal, Petitioner cites *Alberta Pork* v. *United States*, 669 F. Supp. 445,

451–52 (CIT 1987), the CIT decision which held that FISI is countervailable expressly because of the limited number of program users.

Department's Position: We disagree with the GOQ's interpretation of the Department's statutory and regulatory requirements as well as the GOQ's assessment of how the Department conducted its analysis of FISI. Under *Universal Camera* (and *USX Corp.*), the Department and other administrative agencies are required to base determinations upon substantial evidence "when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [agency's] view." *Universal Camera*, 340 U.S. at 488.

Like the GOC, the GOQ implies that in a situation like the present one, in which the Department considers evidence regarding several evidentiary factors in reaching a determination, we are somehow required to reach affirmative findings on two or more of those factors in order to support an affirmative determination.

This reading of the statute and applicable case law is mistaken. The holding of the Supreme Court in *Universal Camera* and other cases requires only that the Department *consider* all evidence.

In addition, the statute does not draw a distinction between consideration of *de jure* and *de facto* evidence, as the GOQ claims. As with *de facto* specificity, when determining whether a program is *de jure* specific, the Department will consider any evidence in the record which fairly detracts from an affirmative determination. As a matter of practice and logic, however, once the Department determines that a program is *de jure* specific on the basis of a finding relating to certain evidence, the Department is not required to reinforce that finding with additional findings supporting an affirmative determination. Similarly, when the Department determines that a program is *de facto* specific based upon too few users (or evidence relating to a different factor), that finding alone warrants an affirmative specificity determination, provided the Department views the evidence "in the light that the record in its entirety furnishes, including the body of evidence opposed to the [Department's] view." *Universal Camera*, 340 U.S. at 488.

In the present review, the Department correctly applied this standard. As the preliminary results demonstrate, we considered evidence related to all four factors outlined in the proposed regulations. As with Tripartite, we concluded that FISI was *defacto* specific during the review period based upon the small number of actual beneficiaries in relation to the very large number of eligible beneficiaries. *Preliminary Results* at 54,117–18. No evidence in the record fairly detracts from this determination. Thus, it is clear that the Department properly examined and considered all relevant evidence in the record, and its determination that FISI was *de facto* specific based upon the small number of users is supported by substantial evidence and is otherwise in accordance with law.

Comment 13: The GOQ challenges the Department's determination that FISI is *de facto* specific based upon what the Department found to be the small number of users. According to the Department's findings, FISI covered 15 products out of an eligible universe of over 80 during the review period. The GOQ states that this conclusion is flawed.

First, the Department's finding that there are "over 80 agricultural commodities produced in Québec" is based on incorrect assumptions and is not consistent with other information in the record. While the Department defined Québec's agricultural universe with reference to the combined product listings applicable to both FISI and Crop Insurance, the Department never determined whether products covered by Crop Insurance are defined at the same level of aggregation as those covered by FISI.

Further, the list provided by the Department in its November 4, 1993 memorandum includes 66 products and appears to have aggregated some products listed in the original documents but not others. This list includes certain products which were not produced in Québec during the review period, while not providing an accounting of this aggregation or the basis for combining various products. It also includes certain other products on the basis that they were produced in quantities and values similar to other livestock covered by FISI. However, there is no information about the value of production in the *1991 Agricultural Profile*, and the fact that certain livestock were produced in similar quantities is not relevant to whether the products were produced at commercially comparable levels. In addition, in at least two instances, the Department double-counted: the Department should not have listed ewes and wethers separately because the *Profile* doesn't indicate whether both were produced in Québec; and the Department should not have listed bee colonies because it already counted honey (and bee colonies are not a commercial product).

According to the GOQ, the 29-product listing which it provided defines the agricultural universe at the same level of aggregation as the FISI-covered products. Based on this list, FISI covered 15 out of the 29 products produced in Québec, which would render the program not specific based on the number of users.

In addition, this simple comparison is an inadequate evidentiary basis for finding *de facto* specificity. The Department must examine the program coverage in terms of other factors such as the percentage of the total farm production. Agricultural commodities covered by FISI in this review accounted for 38.6 percent of the total value of agricultural production. The GOQ maintains that coverage of over a third of Québec's farm sector contradicts the Department's conclusion that FISI covered too few users.

Petitioner responds that the assumptions the Department made with regard to Québec's agricultural universe are based on record evidence, and that in assessing the number of FISI-eligible products, the Department conducted extensive analysis, consulting three different alternative sources in addition to examining the undocumented list provided by the GOQ. Petitioner asserts that the GOQ's claim that the Department's classification methodology is imprecise is without merit, because the GOQ itself neglected to provide adequate guidelines to the Department. Finally, Petitioner states that the GOQ's suggested product aggregations themselves demonstrate the absurdity of their complaints.

Department's Position: We disagree with the GOQ. It is undisputed that during the period of review, FISI covered only 15 agricultural commodities under 11 schemes. As the Department explained at length in the preliminary results, in order to estimate the universe of eligible agricultural commodities in Québec, we examined the two different lists provided by the GOC (Farm Cash Receipts (FCRs)) and the GOQ, both of which listed 29 commodities. We determined that these estimates were not sufficiently reasonable because they disaggregated commodities much too broadly and contained unexplained inconsistencies. For instance, while listing "all vegetables for processing" as one category, the GOQ listed feeder hogs and piglets as two categories. By contrast, the actual coverage of FISI is disaggregated on a much more reasonable and consistent individual commodity basis, providing FISI

schemes for such narrowly defined commodities as grain corn, sugar beets and silage wheat. See *Agricultural Universe Memorandum.*

Therefore, as Petitioner notes, the Department relied upon several independent sources of information, including the 1990–91 Annual Report of the Régie des Assurances Agricoles du Québec (Régie Report) and the *1991 Agricultural Profile of Canada*, and found that there are over 80 agricultural commodities in Québec which should reasonably be eligible for FISI schemes. We determined that compared to this relatively large number of eligible recipients, the 15 agricultural commodities actually receiving FISI benefits was a small number of recipients.

In this regard, we noted that the Department considers FISI *de jure* not specific because, according to the FISI Act, it is supposed to be available to all "farm products" in Québec. The GOQ's arguments above demonstrate the difficulty of agreeing on what is the appropriate definition of "farm products" (or "agricultural commodities") for the purpose of assessing which farm products reasonably should be eligible for FISI. For instance, the GOQ appears to argue in its brief that a commodity's level of "commercial significance" bears on whether it should be eligible for FISI. However, record evidence indicates that although sugar beets remained covered by a FISI scheme during the review period, none were actually produced in the province. Similarly, the GOQ's arguments regarding wethers and ewes and bee colonies are largely unsupported in the record. Even if the GOQ is correct, the Department stressed that its estimate of the agricultural universe in Québec (and Canada) could not be expected to be an exact count. We also stressed, however, that the Department's estimate was conservative.

Agricultural Universe Memorandum

Finally, we have considered the GOQ's argument that commodities covered by FISI accounted for 38.6 percent of the total agricultural production value in Québec during the review period. We determine that this evidence does not detract from a determination that FISI is *de facto* specific based upon the small number of only 15 actual users. The statute provides that a domestic subsidy is countervailable if it is provided to a specific enterprise or industry or group thereof, 19 U.S.C. 1677(5)(B), and the Department's proposed regulations provide that the Department will examine the number of actual beneficiaries, whether industries or enterprises, in determining *de facto* specificity. Thus, although the Department has not previously engaged in an analysis of the percentage of production value covered by a program, as we explained in Comment 7 above with regard to Tripartite, we have done so here pursuant to the GOQ's argument. As discussed below, the Department has determined that, in the context of FISI, as with Tripartite, it has little, if any, significance in light of the relatively small number of actual beneficiaries compared to the relatively large number of eligible beneficiaries.

Like Tripartite, FISI benefits are apparently granted and administered on an equal basis, without consideration of the commodity's relative production value. The production value of some commodities receiving FISI is small, while that of others is large. The same holds for commodities not receiving FISI. Therefore, it is reasonable to assign roughly equal significance to each beneficiary for the purpose of determining whether the actual coverage of FISI is small. Accordingly, the fact that the relatively small number of commodities receiving FISI benefits happened to account for 38.6 percent of the total agricultural production value during the review period is of little, if any, significance when viewed alongside the fact that a far greater number of both large and small commodities in Québec did not receive FISI benefits. Finally, we note that 38.6 percent of production value, viewed alone, still represents a small percentage of the eligible universe, and if that were the sole factor that we had considered, the Department would find FISI *de facto* specific.

In conclusion, the Department has determined that Québec's arguments are unpersuasive. Accordingly, the Department determines that the relatively small number of 15 actual FISI users out of over 80 eligible agricultural commodities is small and, on that basis, FISI is *de facto* specific within the meaning of section 771(5)(B).

Comment 14: The GOQ argues that live swine producers are not dominant users of the FISI program, nor did they receive disproportionate benefits. The Department used "insured value" as the measure of dominant use when, in fact, this data provides no measure of the benefits which FISI participants actually receive. According to the GOQ, the fact that the insured value of live swine is greater than the insured value of other FISI-covered products does not indicate anything more than that the actual value of live swine is greater than the value of other relevant products. The actual benefit is the provincial government's share of the payouts, not the relative insured values of the products. The Régie Report shows that live swine received less than 20 percent of the payouts made under FISI during the review period; thus, according to the GOQ, live swine producers are clearly not dominant users of FISI.

The GOQ further argues that swine producers did not receive disproportionate FISI benefits during the review period. Although the Department did not address the issue of disproportionality in its preliminary results, the GOQ asserts that it must do so now, assuming the Department finds that swine producers are not dominant users of FISI. Having received less than 20 percent of total FISI payouts during the review period, the GOQ claims that swine producers received far less than their proportional share of the payouts.

Department's Position: We agree with the GOQ that the insured value of a product is not an appropriate measure of whether a particular beneficiary is a dominant or disproportionate user of the program in question. Contrary to the assertion of the GOQ, however, it would be equally inappropriate to compare the percentage of FISI benefits received by swine producers during the review period (approximately 20 percent) to the total FISI-insured production value of live swine (approximately 51 percent) in an effort to determine whether swine producers received a disproportionate share of benefits. Most importantly, this is because FISI only benefited a small segment of the relevant universe, rendering it unnecessary to also determine whether live swine or any other beneficiary was a dominant user or received a disproportionate share of benefits. If live swine were one of two actual beneficiaries, the Department would not need to determine that one of the two was a dominant or disproportionate user in order to reasonably determine that the program provided *de facto* specific benefits. Similarly, even in light of all of the other evidence in the record, the fact that swine producers are one of only fifteen actual beneficiaries out of a much larger universe of over 80 eligible beneficiaries warrants a determination that FISI is *de facto* specific. Accordingly, inasmuch as no dominant use finding was necessary in order to support our affirmative *de facto* specificity finding on the basis of the small number of users, we have considered the GOQ's dominant use arguments only to determine whether they identify evidence in the record which would somehow detract from the Department's affirmative determination.

We have determined that no such evidence has been identified.

Only if the number of beneficiaries of a program is sufficiently large so as to call into question a determination of *de facto* specificity based upon the number of users would it be necessary to determine whether one or more of the beneficiaries was a dominant or disproportionate user. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 58 FR 37,295, 37,299 (1993). In other words, a comparison similar to that advocated by the GOQ could be meaningful in the context of "a program in which virtually every segment of the economy [or the agricultural sector] in the market naturally participates to some extent." *Final Affirmative Countervailing Duty Determinations and Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37,338, 37,343 (1993). That is not the case here, and it would not be meaningful to compare swine producers' share of FISI benefits to their proportionate share of FISI production coverage because FISI covered so few industries.

Comment 15: The GOQ argues that there is no evidence that the government exercised discretion in administering FISI: each of the propositions on which the Department relied in concluding that the FISI Act "appears to allow the GOQ considerable discretion in determining which products receive schemes" is taken out of context, inaccurate and must be reexamined.

As for the Department's conclusion that discretion is evident because "schemes are established for any product * * * which the Gouvernement 'indicates,'" the GOQ argues that the producers themselves request the Régie to create a FISI scheme. Moreover, the GOQ claims that the Department's determination that the FISI Act contains no explicit criteria for the establishment of a scheme is clearly erroneous. For one, only farm products which are marketed under a joint plan created at the producers' discretion, and products derived from the participant's own operations are eligible for FISI.

The GOQ also argues that in citing the possibility of regional FISI schemes as evidence of possible government discretion, the Department overlooked the fact that the producers themselves, not the GOQ, determine the geographic scope of a FISI scheme. Moreover, the fact that the FISI Act permits the establishment of regional FISI schemes merely ensures that all joint plans created under the Farm Products Marketing Act, even plans reflecting a collection of producers grouped by region, are eligible for FISI if the producers so desire. Finally, the record demonstrates that no regional FISI scheme has ever been created.

The GOQ also contests the Department's finding of discretion on the basis that the FISI hog scheme was the only scheme during the review period which did not set a limit on the maximum level of insurance available. The GOQ contends that the ceilings were administratively burdensome and had virtually no economic impact, and that it eliminated the ceiling for the hog scheme in August 1988. Ceilings under other FISI schemes were deemed burdensome as well, and by 1992 most of them had been eliminated. Thus, the absence of a ceiling for the hog scheme during the review period, which the Department deemed to be evidence of discretion, was merely an administrative matter; its elimination cannot be cited as evidence of discretion.

Finally, the GOQ argues that differences among FISI schemes in the method of computing net annual income and stabilized net annual income, and differences in eligibility and participation requirements are not evidence of discretion. The GOQ argues that these differences are necessitated because each FISI scheme experiences a unique cycle of income fluctuation, and each scheme must be self-sustaining over the life of the program. In addition, the self-sustaining level which must be achieved reflects the same income level for all of Québec's farmers as reflected in the average farm worker's salary in Québec. The GOQ argues that this is not evidence of discretion, but illustrates the non-discriminatory provision that, over the long term, all schemes will render the same degree of protection.

Department's Position: Like the GOC, the GOQ mischaracterizes the Department's findings in the preliminary results with regard to government discretion in the administration of FISI. The Department found that the FISI Act "appears to allow the GOQ considerable discretion in determining which products receive schemes." *Preliminary Results* at 54,118. We did not base our determination that FISI is *de facto* specific on this evidence, however. As explained in the previous comments, the Department determined that FISI was *de facto* specific solely on the basis of the small number of only 15 actual beneficiaries during the review period in relation to the universe of over 80 eligible beneficiaries. *Id.* At the same time, after reviewing all the information in the record, we were not able to identify an established, publicized and consistent review process leading to FISI schemes. Thus, the resulting FISI schemes do not necessarily reflect identical terms or conditions. *Id.*

Comment 16: The GOQ argues that the Department has incorrectly calculated FISI benefits by aggregating FISI payments paid to hog producers with those paid to piglet producers. The GOQ points out that during the review period, Québec exported no piglets to the United States. In addition, there is no evidence in the record which indicates that benefits paid to piglet producers are passed on to hog producers. Citing the upstream subsidies test provided for in section 771A of the Act (19 U.S.C. 1677–1(a)), the GOQ argues that the majority of piglets raised in Québec are sold to hog producers at arm's-length market prices. There is no evidence to support the assertion that payments received by piglet producers under the FISI piglet scheme have any effect on the price at which these piglets are sold. Therefore, the piglet payments provide no "competitive benefit" to the exported hogs, as required by 19 U.S.C. 1677–1(a), and this analysis fails on the second and third prongs of the upstream subsidies test. Should the Department determine in the final results that FISI bestows countervailable benefits on live swine, the Department should eliminate the payments under the piglet scheme and only countervail the payments under the hog scheme.

Petitioner counters that payments under the piglet scheme are not upstream subsidies, but rather payments which directly benefit producers of market hogs, the merchandise which is subsequently exported. Because payments under the piglet scheme reduce the production costs in farrowing operations, the costs of producing market hogs are thus reduced. Furthermore, Petitioner rejects the GOQ's argument that "arm's-length, market price" transactions negate the benefits to hog producers from the piglet scheme: If there were no subsidies to piglets, fewer would be produced, driving up the price and therefore increasing the cost of hog production. Therefore, the Department has correctly countervailed payments to hog producers at all phases of production regardless of whether pigs are exported in all phases of development.

Department's Position: We disagree with the GOQ. Both piglets and market hogs are included within the class or kind of merchandise subject to the order on live swine from Canada. When calculating the benefits attributable to

the FISI program, the Department has consistently aggregated the benefits provided under the scheme for piglets and the scheme for hogs. In this regard, the *Swine IV* binational panel correctly stated that "[a]n upstream subsidy inquiry is only required when benefits are provided to an input producer that does not produce the product under investigation." *Swine IV Panel Decision* at 73.

The GOQ's argument that benefits provided by the piglet scheme should be analyzed under the statute's upstream subsidy provision is misplaced. An upstream subsidy analysis is concerned with determining the effect of benefits received by producers of a product which itself is not subject to a countervailing duty investigation or order, but which is an input into the subject merchandise. 19 U.S.C. § 1677–1(a). For instance, in Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil (54 FR 15,523, 15,525–28; April 18, 1989), the Department examined whether subsidies provided to the Brazilian steel industry constituted upstream subsidies within the meaning of section 771A. The steel was an input product; it was not included in the class or kind of merchandise being investigated.

As noted, piglets are subject to the countervailing duty order on live swine. Therefore, they cannot be considered recipients of an "upstream subsidy" and section 771A does not apply. Because FISI is a domestic subsidy program, because the class or kind of merchandise includes all live swine, and because live swine were exported to the United States during the review period, the fact that Québec did not export piglets during the review period is not relevant to the Department's analysis. Whether or not benefits to piglets benefited market hogs, domestic subsidies conferred on the class or kind of merchandise are countervailable. The benefits bestowed on the entire class or kind of merchandise, including piglets, are appropriately included in the Department's calculations.

Comment 17: The CPC, Quintaine, and Baxter argue that sows and boars are a lawful subclass, and based upon its own practice and its statutory authority, the Department should reconsider its preliminary determination to eliminate the sows and boars subclass. According to these respondents, in the first review of this order, the Department's decision to calculate a separate rate for sows and boars was compelled by what the Department referred to as "exceptional circumstances" and the "considerable" differences between sows and boars and market hogs. The Department also found that the "distinction between slaughter sows and boars and other live swine cannot be used as a means to circumvent the countervailing duty order." Furthermore, Petitioner did not object to the Department's decision. These circumstances and differences still exist, as do the Department's statutory authority and considerable discretion to establish a subclass. In the absence of a change in circumstances, Respondents argue that the Department must carefully consider whether such a change should be made *sua sponte*.

Respondents acknowledge the Department's determination that the criteria adopted in *Diversified Products* v. *United States*, 572 F. Supp. 883 (CIT 1983), should only be used to distinguish between, not within, a class or kind of merchandise. Respondents argue, however, that the original sows and boars subclass determination was also based upon the Department's comparative analysis of the amount of subsidies applicable to sows and boars and the amount of subsidies applicable to the other products within the class or kind. While the Department explained its recent rejection of the *Diversified Products* criteria for distinguishing among products within a class or kind, the Department failed to explain its apparent repudiation of the second part of the test, which the statute clearly supports. According to the CPC, although the statute "creates a presumption in favor of a country-wide rate," it does provide for separate rates whenever a state-owned enterprise is involved or when there are substantial differences between companies in terms of subsidies received. Therefore, the law requires the Department to take into account extreme differences in subsidies received, and when necessary, to overcome the presumption in favor of a country-wide rate.

Respondents cite section 355.47(a) of the proposed regulations to argue that the Department's statutory responsibility requires it to ensure that there is a rational connection between the countervailable benefits received by a product, and the calculation of a countervailing duty for that product. Quintaine and Baxter also cite *U.S.* v. *Zenith Radio Corp.*, 562 F. 2d 1209 (1977), *affirmed* 437 U.S. 443 (1978), in which the Court of Customs and Patent Appeals held that "countervailing duties should equate to the true bounty actually conferred."

Finally, the CPC argues that the Department's subclass methodology has been contemplated in at least two previous investigations, *Certain Steel Products from the United Kingdom* (47 FR 35,668; August 16, 1982) (*UK Steel*), and *Fresh Chilled and Frozen Pork from Canada* (54 FR 30,774, 30,787; July 24, 1989) (*Pork*). Moreover, the binational panel reviewing the Department's fourth administrative review of this order determined that the Department's initial subclass analysis was reasonable. The binational panel reviewing the fifth administrative review of this order upheld the Department's determination that information about the existence and value of benefits is necessary for the agency to make a subclass determination.

Petitioner acknowledges that the Department's reconsideration of the sows and boars subclass decision is consistent with the statute and the regulations, which create the presumption in favor of country-wide countervailing duty rates.

Department's Position: We disagree with Respondents. As we explained in the preliminary results, the Department has determined that the methodology relied upon to separate the class or kind of merchandise into "subclasses" was inappropriate, and we will no longer calculate a separate rate for sows and boars or any other product on this basis. See *Preliminary Results* at 54,113; *Memorandum on Product-Specific Rates in Countervailing Duty Administrative Reviews*, from Barbara Tillman to Joseph Spetrini, July 19, 1993 (*Subclass Memorandum*).

The decision during the first administrative review to grant sows and boars a separate countervailing duty rate based upon the subclass determination represented an exception to the Department's normal practice of calculating one rate for the entire class or kind of merchandise subject to a countervailing duty order. See 19 U.S.C. § 1677e(a). The Department based its finding of a subclass exception upon a test consisting of two parts, each of which we considered necessary to warrant granting the separate rate. See *Preliminary Results of Countervailing Duty Administrative Review; Live Swine From Canada* (53 FR 22,189; June 14, 1989); *Preliminary Results* at 54,113. However, during the present review, we determined that the *Diversified Products* criteria, the first part of the test, "were designed to differentiate between classes or kinds of merchandise, not among products within a class or kind." *Preliminary Results* at 54,113. On this basis, we determined "that it was inappropriate to grant the slaughter sows and boars 'subclass' exception on the basis of a *Diversified Products* criteria analysis." *Id.* Because the reversal of the subclass exception was premised upon the Department's

decision that the *Diversified Products* criteria were not appropriate for this purpose, it was not necessary to attempt to repudiate the second part of the subclass test, *i.e.*, the comparative analysis of the difference in benefits granted to the producers of slaughter sows and boars vis-a-vis those granted to the producers of other products within the class or kind of merchandise. See id.

The CPC's reliance on *UK Steel* is misplaced. That investigation was terminated when the petition was withdrawn. Therefore, the Department never reached a final determination nor did it issue an order. Accordingly, the Department neither reached a final determination regarding the scope of that investigation nor fully considered the scope issues referred to by the CPC.

Further, the fact that the statute provides exceptions to the presumption in favor of country-wide rates does not imply that the subclass exception should be continued simply because sows and boars receive a different amount of subsidies. As we stated in the preliminary results, the express exceptions under the statute recognize differences between individual companies (and government ownership), not between products within the class or kind of merchandise covered by the order. See 19 U.S.C. 1671e(a)(c). Therefore, the Department is only required to examine the possibility of a significant differential when the producer or exporter is government-owned. Beyond government-owned companies, the Department may examine, to the extent practicable, other producers or exporters whose benefits differ significantly from the country-wide rate. See *id.*; 19 CFR 355.22(d)(1).

Finally, Respondents misinterpret the Department's proposed regulations with regard to the requirement that the countervailing duty rate accurately reflect the benefits bestowed on the merchandise under review. Section 355.47 of the proposed regulations only draws a distinction between subject merchandise and non-subject merchandise, and precludes the Department from countervailing benefits tied to non-subject merchandise. Sows and boars are clearly merchandise subject to the countervailing duty order on live swine from Canada.

Comment 18: Quintaine argues that the Department cannot discontinue its recognition of the sows and boars subclass and its practice of calculating a separate rate for the subclass for the following reasons. First, because the Department specifically sought information in its questionnaire with which to calculate a separate rate for the sows and boars subclass, and this information was provided by the GOC, the Department must use the information to calculate a separate rate. Second, nothing in the proceeding prior to the preliminary results indicated the Department's intention to abandon its established practice of recognizing sows and boars as a subclass and granting them a separate rate of duty on that basis. Third, the Department's methodology for calculating the *de minimis* threshold specifically contemplates the differences between sows and boars and the rest of the class of live swine and uses sales data specifically pertaining to sows and boars as the basis for achieving a weighted-average price for all live swine.

Quintaine and Baxter also argue that in abandoning its subclass practice, the Department has acted without notice and created an *ex post facto* burden on trade not contemplated by the parties at the time of export. Sows and boars which entered during the review period were subject to a product-specific deposit rate substantially lower than the rate for other live swine. The producers and exporters did not contemplate that these entries would be liquidated at the much higher live swine rate determined in the preliminary results in light of the Department's recognition of the sows and boars subclass since the first administrative review of the order. Therefore, Respondents claim that the Department's abandonment of its subclass practice is unfair, inequitable, unprecedented, and an arbitrary abuse of the Department's discretion.

Quintaine, Baxter, and Pryme add that the implication in the Department's *Subclass Memorandum*, that it may further analyze the use of product-specific rates in future cases, will likely result in a product-specific application of the countervailing duty law. Thus, although sows and boars will no longer be entitled to subclass treatment, other products may enjoy such treatment in the future.

Department's Position: We disagree with Respondents. Although the Department collected the information necessary to calculate a separate rate for sows and boars, we subsequently determined that doing so was not appropriate for the reasons articulated in the *Subclass Memorandum*, the preliminary results and the above comment. After the preliminary results, all parties had ample opportunity to comment on the Department's decision. Respondents provided comments, which we have fully considered.

Respondents are also mistaken in claiming that the Department is precluded from changing its policy in this area. "The mere fact that an agency reverses a policy, or a statutory or regulatory interpretation, does not indicate the agency's decision is unreasonable, arbitrary, or capricious." *Mantex, Inc.* v. *United States*, Slip Op. 93–242 at 27 (CIT December 22, 1993) (citing *Rust* v. *Sullivan*, ——— U.S. ———, 111 S. Ct. 1759, 1769 (1991)). The courts have long recognized that agency policies must be permitted to evolve under judicial supervision. See, *e.g.*, *Motor Vehicle Mfrs. Assn. of United States* v. *State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). An agency "is not required to 'establish rules of conduct to last forever,'" *Rust* v. *Sullivan*, 111 S.Ct. at 1769 (citations omitted), but rather "must be given ample latitude to adapt [its] rules and policies to the demands of changing circumstances." *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 42. The Supreme Court has repeatedly upheld the fundamental principle that an agency's "revised interpretation deserves deference because '[a]n initial agency interpretation is not instantly carved in stone' and the 'agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.'" *Rust* v. *Sullivan*, 111 S.Ct. at 1769 (citations omitted).

It is clear that this necessary decision-making process may be accomplished on a case-by-case basis, permitting the Department to adapt its policy during successive reviews, with the only limitation being that it "justi[fy a] change of interpretation with a 'reasoned analysis.'" *Id.* (citations omitted). As explained by the Department in the previous comment and elsewhere, the record in this proceeding reflects the Department's "reasoned" analysis and the justification for its change of interpretation. See, *e.g.*, *Subclass Memorandum*.

Furthermore, contrary to Respondents' claims, the Department's change in policy does not create an unjustified *ex post facto* burden for exporters and importers of slaughter sows and boars. It is not uncommon for a product covered by an order to enter with a low (or zero) cash deposit rate and to ultimately be assessed a much higher rate as a result of an administrative review covering those entries. Such entries are also routinely assessed interest as required by the regulations. See 19 CFR 355.24. This is a reasonable contingency of which importers and exporters are well aware

when entering merchandise under an order and making deposits of estimated duties.

Moreover, the Department's statement in the *Subclass Memorandum* that we "may further analyze the issue of granting product-specific rates in future cases" in no way qualified the Department's rejection of the subclass policy. With this statement, the Department indicated that it had not determined whether to consider product-specific rates on some other basis, outside the framework of the rejected subclass analysis. Therefore, we affirm our determination in the preliminary results that one country-wide rate will be assessed on all subject merchandise.

Finally, we also disagree with Quintaine regarding the *de minimis* calculation methodology. Because countervailing duties on live swine are calculated on a per-kilogram basis, rather than *ad valorem*, we must determine what *de minimis* is on a per-kilogram basis. Our methodology for determining this merely accounts for the *price* differences between sows and boars and the rest of the class or kind of merchandise within the order on live swine. We must recognize this difference, just as we recognize and account for the difference in provincial prices of other live swine, in order to establish an overall weighted-average price per kilogram for the subject merchandise, from which we then determine the *de minimis* value, in Canadian dollars (*i.e.*, 0.5 percent of the weighted average price per kilogram). The subject merchandise includes slaughter sows and boars. Therefore price data for sows and boars must be factored into that calculation. However, mere recognition that sows and boars sell at a different price level for purposes of this calculation does not require the Department to calculate a separate rate for sows and boars, as Quintaine would suggest.

Comment 19: For many of the same reasons given above, Pryme argues that the Department must recognize a subclass for weanlings. First, the recognition of subclasses has been an established and consistent expression of the Department's analysis since the determination in the first administrative review to calculate a separate countervailing duty rate for sows and boars. In the case of weanlings, in the fourth and fifth reviews of this order, the Department concluded that it lacked sufficient information in the record to calculate a subclass rate. See *Fourth Review Final* at 28536; *see also Final Results of Countervailing Duty Administrative Review; Live Swine from Canada* (56 FR 50,560, 50,564; October 7, 1991) *(Fifth Review Final)*. Pryme argues that the Department's statement in the Final Results of the fifth review that "[t]he Department has considered Pryme's request, but determines that further information would be required to reach a determination, and that it would be inappropriate to delay the processing of the review to solicit such information," indicates that a timely request and the proper information could have resulted in the finding of a weanling subclass in the fifth review. By virtue of Pryme's timely request in this review, the Department solicited and Pryme and the GOC provided information in order to establish a subclass for weanlings. Therefore, provided the established subclass criteria are met, Pryme argues that the weanling subclass should be granted.

Department's Position: As we determined in our preliminary results, and as explained in Comments 17 and 18 above, we have determined that it is inappropriate to establish subclasses within the class or kind of merchandise covered by an order, as the Department previously did with regard to sows and boars. The fact that the Department denied Pryme's requests to establish a subclass for weanlings in two earlier reviews, based on the untimeliness of the requests and insufficient information with which to conduct the two-part analysis, is not relevant to the issue of whether to grant weanlings a subclass in this review. The Department may alter its practice provided it gives a reasoned analysis for doing so, as explained above. Furthermore, as discussed in Comment 18 above, the Department is not required to establish a subclass for weanlings merely because Pryme made a timely request and responded to the Department's requests for information in this review.

Comment 20: Pryme argues that the Department's failure to recognize the weanlings subclass results in an inaccurate assessment of countervailing duties in contradiction of the purposes of the countervailing duty law. Citing *Zenith*, Pryme argues that countervailing duties must be equivalent to the benefits conferred. Pryme argues that weanlings qualify for substantially different benefits than the other live swine covered by this order because it falls within the company-specific exception to the presumption in favor of country-wide rates provided for in the statute. See 19 U.S.C. 1671e(a)(2). Pryme argues that benefits received by weanling exporting companies as compared with those received by other exporters of live swine demonstrate the significant difference in the subsidies received by the companies.

Department's Position: We disagree with Pryme that the statute requires the Department to calculate a separate rate for weanlings. Pryme's reliance on the statute's language allowing the Department to determine "that there is a significant difference between companies receiving subsidy benefits" to support this argument is misplaced. This provision requires the Department to consider whether to distinguish among *companies* receiving different subsidies, not among different products included in the class or kind of merchandise covered by an order. Pryme's request for a weanling subclass is not premised upon its status as a company, but upon its status as a weanling exporter. See *Department's Position* at *Comment 18*, above.

Comment 21: Pryme argues that it has met all of the Department's requirements for a company-specific rate. Pryme made a timely request for an individual review, and provided the Department with information with which to calculate a company-specific rate. Record evidence indicates that Pryme received no benefits on its exports of live swine during the review period, and any benefits which Pryme did receive during the review period were *de minimis*. According to Pryme, in its preliminary results, the Department improperly declined to calculate a company-specific rate for Pryme based on what the Department referred to as an "incomplete" or "incorrect" certification. Pryme argues that this finding ignores the fact that there is no prescribed form of certification in the statute or the regulations. See 19 CFR 355.22(a). The Department's verification report states that the certifications were accurate as presented with regard to weanlings, but notes that the Department found that, during the review period, Pryme had received Tripartite benefits on market hogs sold in the quarter prior to the review period. Pryme argues that these benefits were *de minimis*; therefore, the certifications were neither incorrect nor incomplete, since Pryme received no cognizable benefits.

In addition, Pryme argues that the Department should not be concerned with the Tripartite payment received by Pryme during the review period because it was made on merchandise sold prior to the review period. As support, Pryme cites the Department's regulations, which provide that an "administrative review * * * normally will cover entries or exports of the merchandise during the most recently completed

reporting year of the government of the affected country." 19 CFR 355.22(b).

Department's Position: We disagree with Pryme. In addition to the subclass request addressed above, Pryme made two other requests. First, Pryme requested what it referred to as a "company-specific rate," *i.e.*, "individual rate" in accordance with section 706(a)(2)(A) of the Act and § 355.22(d) of the Department's regulations. As we explained to Pryme after receiving its request, because of the very large number of exporters of live swine, the Department conducts reviews of this order on an aggregate basis and does not collect individual sales and export data. Therefore, we have determined that it is not practicable to examine whether a significant differential exists between the country-wide rate and the net subsidies received by individual producers. See 19 CFR 355.22(d); 53 FR at 52,325–26 (December 27, 1988) (commentary to the proposed regulations).

In addition, Pryme requested an *individual review*, in accordance with § 355.22(a)(2) of the Department's regulations, which requires that several conditions be met before the Department may review an individual producer or exporter. First, a person requesting an individual review must provide the Department with a certification that the person did not apply for or receive benefits on the subject merchandise from any programs which the Department had previously found countervailable, and that the person will not do so in the future. The person must also provide certifications from the government of the affected country stating that no benefits were provided to the person requesting the review or to any of the person's suppliers. Finally, the person must provide the certifications of its suppliers of the subject merchandise, and of the government regarding those suppliers, stating that they did not apply for or receive benefits under the countervailable programs, and that they will not do so in the future. 19 CFR 355.22(a)(2).

The Department must then verify that all certifications "are complete and accurate." *Id.* at § 355.22(f)(2). If the Department determines that the certifications are complete and accurate, that is, there was no net subsidy received on the merchandise covered by the request, as provided for in § 355.22(f)(1), that person is assessed a zero rate and a corresponding zero cash deposit rate.

Pending the verification required pursuant to § 355.22(f)(1) of the Department's regulations, we accepted Pryme's timely filed certifications which stated that Pryme "did not apply for or receive any net subsidy on the merchandise, i.e., Weanlings, swine weighing less than 40 kg., under the National Tripartite Scheme" during the review period. Although weanlings are part of, but not the entire class or kind of merchandise, the Department accepted the certifications, pending verification, based on the assumption that during the review period, Pryme produced and sold only weanlings and had not received any subsidies on any of the subject merchandise during the review period. However, at verification, we found that during the review period, Pryme had sold market hogs and had received benefits under the Tripartite program, based on market hog sales prior to the review period. See *Verification Report* at 4.

Pryme argues that because the Tripartite payments it received during the review period were based on sales prior to the review period, it is inappropriate for the Department to examine these Tripartite payments. We disagree. The Department's standard practice is to countervail benefits when they affect the cash flow of the company. See Proposed Regulations at § 355.48(a). In all reviews of this order since the inception of the Tripartite program, the Department has requested, and the GOC has provided information regarding Tripartite payments made during the review period. The record shows that quarterly payments are made based on hog sales and hog prices in the prior quarter. Therefore, the payments made in the first quarter of the review period regularly reflect sales and prices in the quarter prior to the review period. Under the Department's methodology the benefits associated with these payments are countervailed during this review period. Similarly, Tripartite payments for hog sales in the fourth quarter of a particular review period are made in the following quarter, outside the review period. They are not examined by the Department until the next review period. Accordingly, we properly accounted for Tripartite payments Pryme received during this review period and determined that Pryme's certifications were not complete and accurate with regard to the subject merchandise.

In a memorandum on Pryme Pork's request for an individual review, dated April 7, 1993 (on file in Room B–099, Department of Commerce), we stated that "although Pryme's certifications were accurate with regard to weanlings [*i.e.*, Pryme received no benefits on its sales of weanlings], the discovery that Pryme did receive benefits on sales of market hogs, other subject merchandise, rendered Pryme's certifications * * * incomplete." In the preliminary results, we stated that Pryme's certification was incorrect, effectively terminating the individual review of Pryme. *Preliminary Results* at 54,113. In addition, although we stated in the preliminary results that "we found that, during the review period, Pryme sold only weanlings" (*Preliminary Results* at 54,113), we have reexamined the record evidence, and it shows that weanlings were the subject merchandise exported by Pryme during the review period, but that Pryme also sold market hogs in April, June and November, 1990, and January and March, 1991 (*Verification Report* at 7). The Department therefore concluded that Pryme's certifications did not cover Pryme's sale of market hogs during the review period, or Pryme's receipt of benefits on the sale of market hogs during the review period.

Although Pryme argues that there is "no prescribed form of certification," the regulations clearly provide that the certifications must state that the "person did not apply for or receive any net subsidy *on the merchandise*." 19 CFR 355.22(a)(2) (emphasis added). Pryme's certifications, inasmuch as they only applied to weanlings, when in fact, Pryme also sold market hogs, were incomplete.

Furthermore, in reexamining the record pursuant to Pryme's arguments after the preliminary results, we have determined that ManitobaPork, est., which administers Tripartite in Manitoba, declined to certify that Pryme had not received Tripartite payments during the review period. Therefore, Pryme's request for an individual review was not properly accompanied by the government certifications required under § 355.22(a)(ii) of the Department's regulations.

In the case of incomplete or inaccurate certifications, the regulations make no provision for further examination of existing benefits, thus precluding the Department from reaching the issue of whether the benefits received by Pryme are *de minimis*. In objecting to the Department's preliminary determination, which effectively terminated the individual review of Pryme, Pryme contends that although its certifications were not complete and accurate, they were close. Therefore, in Pryme's view, the Department should have accepted them. We disagree. The Department addressed this issue when promulgating the regulations, and stressed that "we must be reasonably satisfied that the producer or exporter is entitled to a zero rate. Thus, we require

the requester's and the government's certifications that the requester is so entitled." 53 FR at 52,328. As described above, the certifications provided by Pryme were not complete and accurate, as required by the regulations. On that basis, the Department should not have initiated an individual review. Once it did, and once the Department determined that Pryme's certifications were not complete and accurate, we properly terminated, in effect, the individual review.

Comment 22: The CPC argues that the Department should reconsider its determination that the Ontario Rabies Indemnification Program is specific to livestock producers and therefore countervailable. The benefits provided under this program reimburse livestock producers for the value of animals which a federal inspector requires to be destroyed because they are determined to be rabid. The CPC argues that such rabid animals are destroyed in the interest of public health and safety; the loss which livestock producers incur is in the interest of a larger, more general good. The CPC cites the General Agreement on Tariffs and Trade to support its proposition that this type of government action is an exception to the countervailing duty laws of member countries: "Nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: * * * necessary to protect human, animal or plant life or health * * *." General Agreements on Tariff and Trade, 1947, Art. XX, T.I.A.S. 1700.

Department's Position: We disagree. The reimbursements provided under the Ontario Rabies Indemnification Program are limited by law to livestock producers, and therefore, contrary to the CPC's argument, this is a *de jure* specific program.

Once an animal is determined to have rabies, the producer has a clear incentive to destroy the animal in order to protect the remaining livestock. It is also in the interest of the public to have the animal destroyed. However, it is unclear to the Department how the fact that the government then compensates the producer could be viewed as also in the interest of the public health and safety. Because the government payment does not create an incentive to destroy the animal that is not already present (*i.e.*, since the payment is not necessary to ensure destruction of the animal), we determine that the payment serves no preventive health or safety purpose whatsoever. Payments for the value of the animal cannot be construed to be "necessary to protect human, animal or plant life and health." The payment is, instead, a countervailable benefit under U.S. law and GATT.

Comment 23: Petitioner argues that the Department should revise its calculation methodology for the Alberta Crow Benefit Offset Program (ACBOP) to account more accurately for grain consumed by swine in Alberta. Specifically, Petitioner argues that the Department's current methodology does not accurately account for grain eaten by breeding sows and boars. The sows and boars adjustment which the Department currently uses to determine the grain eaten by hogs only accounts for an additional weight gain by a sow or boar of 2.1 kilograms; according to Petitioner, this adjustment is insufficient to reflect the grain eaten daily by sows and boars as an integral part of swine production.

Petitioner argues that the Department has the discretion to revise its ACBOP calculations, and should do so using another Alberta Agriculture study provided by the GOC in the questionnaire response. Petitioner maintains that this study is a reliable source for feed and grain consumption information because it is recent, comprehensive, and published by Alberta Agriculture.

Petitioner has provided an alternative methodology using information in this study, which Petitioner argues more accurately accounts for grain consumed in the production of swine in Alberta. Petitioner also argues that its methodology simplifies the Department's attempt to account for the difference in weight between market hogs and slaughter sows and boars by recognizing that the grain fed to sows and boars to bring them up to market weight (which they surpass during their breeding careers), as well as the grain they consume during their breeding careers are inputs into the production of live swine.

The CPC counters that Petitioner's proposal is an unsupported and illogical attempt to increase the ACBOP benefit by double-counting the grain consumed by sows and boars. The CPC maintains that the production figures used by the Department already account for grain consumed by sows and boars. Petitioner's methodology also ignores the fact that the Department has carefully examined the issue of average weights for market hogs versus sows and boars in the first review of this order. Those averages accurately reflect the much higher weights and much lower production of sows and boars vis-a-vis market hogs.

The CPC also takes issue with Petitioner's proposal that ACBOP benefits should be allocated on the basis of hog production rather than hog marketings. The CPC argues that such a change in the Department's calculation methodology requires the Department to examine the census of the entire Canadian hog population during the review period rather than relying on a simple accounting of all hogs marketed, as it did in the calculations for the preliminary results and all other reviews. The CPC further argues that Petitioner's proposed methodology misuses data from two entirely different sources and is flawed by an inaccurate conversion from pounds to kilograms. Finally, the CPC notes that the ACBOP methodology has evolved over time; its present incarnation has been upheld by the binational panel reviewing the fifth review of this order and Petitioner has not advanced any evidence which warrants the Department's reconsideration of the ACBOP methodology.

Department's Position: We agree with the CPC regarding the alternative methodology Petitioner proposes. The Department fully analyzed the record document relied upon by Petitioner before rejecting it in favor of the source document which the Department has relied upon in the past. We determine that the study relied upon by Petitioner is not comprehensive, as Petitioner asserts, and therefore the Department chose not to use it in the ACBOP calculation. Petitioner acknowledged that its proposed alternative study does not include information about the composition of "starter" diets, which is necessary to the ACBOP calculation. The study on which the Department did rely, "Diets for Swine," includes complete information about hog diets at all stages of growth. Moreover, we agree with the CPC that it is inappropriate to "mix and match" information from these two distinct sources, because they are based on different underlying assumptions regarding the composition of hog diets.

We also disagree with Petitioner regarding the manner in which the ACBOP methodology accounts for all grain consumed in the production of live swine in Alberta. The sow and boar weight adjustment, while seemingly small, provides an average weight which accurately reflects the much higher weight of sows and boars but the much lower production level. This adjustment enables the Department to accurately account for the additional grain consumed by sows and boars during their breeding careers, and the Department's ACBOP methodology overall reasonably and accurately accounts for grain consumed in the production of swine in Alberta. In addition, we agree with the CPC that

Petitioner's reliance on production rather than marketings represents too great a departure from the Department's methodology in this case for us to consider it at this late stage in the review. Moreover, Petitioner's failure to illustrate that the Department's methodology is flawed or unreasonable further supports the Department's decision not to change its methodology.

Comment 24: The CPC alleges that the Department's preliminary ACBOP calculations contain significant clerical errors which must be corrected: the Department must use the correct figures for the number of live swine produced and for the amount of barley, wheat, and oats grown in Alberta. The correct figures were reported in the questionnaire response, and must be used.

Department's Position: After examining the CPC's allegation, we found minor clerical errors, and have corrected our calculations accordingly. We now determine that the ACBOP benefit is Can$0.0027 per kilogram for all live swine.

Comment *25:* Petitioner argues that the Department should adjust its calculations for the Saskatchewan Hog Assured Returns Program (SHARP) to account for the deficit in the stabilization fund accrued over the life of the program. Petitioner maintains that because SHARP was terminated during this review period, with a large cumulative deficit, the Department must address additional benefits which should have been accounted for in earlier reviews. The size of the deficit indicates that in every year in which the program was operational, payouts to hog producers exceeded contributions by the hog producers and the Province of Saskatchewan. This deficit was financed by loans from the provincial government to the stabilization fund; no repayments appear to have been made. Petitioner argues that, in prior reviews of this order, the Department should have countervailed total payouts to producers, net of any producer contributions into the fund. Thus, the remainder of the fund deficit (the total fund deficit minus the amount of the deficit countervailed in this review) constitutes a subsidy that has never been countervailed. Because the program has been terminated, there is now no hope that the deficit will be repaid with future contributions. Petitioner argues that the record shows that the Government of Saskatchewan has decided to write off this deficit, and forgive the loans which financed it.

Petitioner now urges the Department to treat the deficit amount, less any amounts previously countervailed, as a grant to Saskatchewan swine producers during the review period. Petitioner further argues that this grant does not constitute the full benefit realized by swine producers. The Department must also calculate the benefit attributable to the apparently interest-free nature of this loan since October 31, 1989, the date of an Order-in-Council which provided that no interest will accrue on the loans.

The CPC, in rebuttal, submits that there is no basis for the Department to countervail the entire SHARP deficit. While the SHARP account remains in deficit, without a final decision about the resolution of the fund, there is clearly no benefit to any party, including Saskatchewan live swine producers. The CPC further argues that in its preliminary results, the Department has incorrectly calculated SHARP benefits, by adopting a methodology, without explanation, which is a departure from that established in earlier reviews. The CPC argues that the facts support the Department's use of the earlier established methodology: the Department countervailed one-half of the total stabilization payments made to live swine producers, which accurately reflected the equal contributions made by the provincial government and the live swine producers into the SHARP fund.

Department's Position: Prior to its termination, SHARP provided stabilization payments to hog producers in Saskatchewan at times when market prices fell below a designated "floor price." Hog producers provided one-half of the funds for the SHARP program and the provincial government provided the remaining one-half. Therefore, the Department's practice, in past reviews, has been to countervail one-half of all SHARP payouts to hog producers. In accordance with the establishment of the Tripartite Scheme for Hogs, SHARP was terminated on March 31, 1991, during the review period.

Whenever the balance in the SHARP account was insufficient to cover stabilization payments to participants, the provincial government loaned the needed funds to the program at terms consistent with commercial considerations. As of its termination date, the SHARP fund had a sizeable deficit, representing the cumulation over the operating years by which SHARP payouts were greater than the producers' and government's contribution to the SHARP fund. Therefore, the SHARP deficit represents payments already made to hog producers, half of which the Department has already countervailed in prior reviews.

The Department has reconsidered the calculation methodology used in the preliminary results, and has determined that we will countervail one-half of the SHARP payouts for the current review period, as in previous reviews. While the SHARP account remains in deficit, however, without a final decision on the resolution of the deficit, there is no benefit to Saskatchewan live swine producers beyond the interest not accruing on the deficit. Thus, there is no reason for the Department to conduct a benefit analysis of the deficit as Petitioner suggests. If the Department learns in a later review that the deficit has been forgiven by the Government of Saskatchewan, it will at that time determine whether the loan forgiveness constitutes a countervailable benefit and apply the appropriate methodology to measure it.

However, we have information on the record indicating that effective October 31, 1989, interest stopped accruing on this deficit. We determine that interest not accrued constitutes a benefit to live swine producers. To measure that benefit, we are treating the deficit as a short-term loan. See *Memorandum on SHARP Calculation Methodology*, from Swine Team to Barbara Tillman, on file in Room B–099, Department of Commerce.

To determine the benefit, we first calculated the average amount of the deficit during the review period by taking a simple average of the balance of the deficit at the beginning and the end of the review period. We then multiplied the benchmark interest rate by half of the average deficit. We used as our benchmark interest rate the simple average of the monthly rates (for the review period) reported as "Typical Short-Term Interest Rates" in the *Financial Statistics Monthly, Section 2, Domestic Markets—Interest Rates*, published by the Organization for Economic Cooperation and Development, February, 1991, and January 1992. We then added this interest-related benefit to the payout-related benefit (one-half of the SHARP payments to live swine producers during the review period, consistent with our methodology in previous reviews). We divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit from SHARP to be Can$0.0022 per kilogram for all live swine during the review period.

Comment 26: The GOQ and the CPC allege that the Department incorrectly allocated the benefits attributable to the Feed Freight Assistance (FFA) program. According to Respondents, the Department recognized, in the first part of its calculations, that not all swine production in the provinces covered by FFA is eligible to receive benefits under this program. However, when the Department weight-averaged the per-kilogram benefit by the respective provinces' share of total Canadian exports of live swine, the Department erroneously assumed that all exports of swine from the FFA-eligible provinces were eligible for assistance. To correct this error, Respondents urge the Department to apply the same ratio it uses to determine FFA-eligible production for the purpose of determining FFA-eligible exports. The Department should then weight-average the per kilogram benefit by the share of total Canadian exports accounted for by this adjusted export figure.

Petitioner argues that the Department's calculation methodology correctly translated the FFA benefits provided on a per-kilo basis of hog production to the applicable proportion of exports of live swine to the United States. Petitioner argues that following the Respondents' methodology, which requires adjusting provincial exports downward, results in the "double-subtraction" of the exports used to weight-average the benefit.

Department's Position: We agree with Respondents that the methodology used to calculate FFA benefits was flawed. However, we are correcting the flaw using a different approach. Although we recognize that FFA availability is limited to certain areas within the participating provinces, we determine it is not appropriate to adjust provincial production downward, as we did in the past. This adjustment is not required because the appropriate denominator for this federal program available in only some provinces is the total production in the provinces in which FFA operates. We determine that adjusting the denominator as we did in the past results in overstating the FFA benefit.

To determine the FFA-benefit per kilo of live swine we first divided the amount of feed transportation assistance to all live swine producers by the weight of all live swine produced in all FFA-eligible provinces. We then used the ratio of the total amount of exports from the provinces in which the FFA is available to total Canadian exports of live swine in order to calculate the weighted benefit. The result is accurate because in doing the calculations we weight-averaged all the benefits for each province by the total amount of exports from that province. We then summed the resulting weighted benefits to determine the country-wide rate. Having discontinued the adjustment in production, there is no need to adjust the exports in the manner Respondents suggest. Using this methodology, we have calculated the FFA benefit to be Can$0.00018 per kilogram for all live swine.

Comment 27: The CPC argues that two provincial programs, the New Brunswick Hog Price Stabilization Program, and the Prince Edward Island Hog Price Stabilization Program should be added to the Department's list of terminated programs. Proper documentation of these programs' terminations was provided in the questionnaire response.

Department's Position: We agree with the CPC regarding the Prince Edward Island Hog Price Stabilization Program. The GOC provided documentation that this program was terminated, and that documentation indicates that no residual benefits will accrue to hog producers. Therefore, we will include this program in our list of terminated programs and will no longer examine it.

However, we disagree with the CPC regarding the New Brunswick Price Stabilization Program. While the New Brunswick provincial government stated that the program was terminated, the GOC has provided neither adequate documentation of the program's termination, nor information regarding residual benefits. Therefore, we will continue to list this program as "not used" until such evidence is provided in a future review.

Comment 28: The CPC argues that the Department should issue a final determination which, as in past reviews, directs Customs to use the exchange rate in effect on the date of entry of the subject merchandise for both deposit rates and final assessments. In the preliminary results, the Department proposed using two different exchange rate methodologies: for the cash deposit rate, Customs will convert the assessment amount in Canadian dollars using the exchange rate in effect on the date of entry; for the final assessment of entries made during the period of review, Customs will convert using a simple annual average exchange rate. To institute two different methodologies for these calculations which have always shared the same methodology would constitute a retroactive change in prior agency practice.

Petitioner argues that the use of a simple average exchange rate by the Department is not contrary to its regulations. Petitioner claims that pursuant to 19 CFR 353.60 there was no "sustained change" in the prevailing exchange rate during the review period that would materially distort the value of the Customs assessment. Consequently, the Department's method is acceptable under the regulations and should be retained in its final determination.

Department's Position: After consideration of the CPC's argument, we will instruct Customs to assess duties on live swine during the review using the appropriate exchange rate in accordance with Customs' regulations. Petitioner has misapplied section 353.60(b) of the Department's regulations, which guides the Department's use of exchange rates in antidumping proceedings.

Final Results of Review

As a result of our review, we determine the net subsidy to be Can$0.0295 per kilogram for the period April 1, 1990 through March 31, 1991. The net subsidy determined for each program is as follows:

Program	Rate per kilo
(1) Feed Freight Assistance Program	$0.00018
(2) National Tripartite Stabilization Scheme for Hogs	0.01910
(3) Quebec Farm Income Stabilization Insurance Program	0.00420
(4) Saskatchewan Hog Assured Returns Program	0.00221
(5) Alberta Crow Benefit Offset Program	0.00268
(6) Alberta Livestock and Beefyard Compensation Program (Livestock Predator Sub-Program)	0.00000
(7) Ontario Farm Tax Rebate Program	0.00000
(8) Livestock Improvement Program for Northern Ontario	0.00000
(9) Ontario Pork Industry Improvement Plan	0.00043
(10) Ontario Rabies Indemnification Program	0.00000
(11) Saskatchewan Livestock Investment Tax Credit	0.00045
(12) Saskatchewan Livestock Facilities Tax Credit	0.00028
Total	0.0295

Therefore, the Department will instruct the Customs Service to assess countervailing duties of $Can0.0295 per kilogram on all shipments from Canada of the subject merchandise exported on or after April 1, 1990 and on or before March 31, 1991.

Further, as provided for by section 751(a)(1) of the Act, the Department will collect cash deposits of estimated countervailing duties of $Can0.0295 per

kilogram on all shipments of the subject merchandise from Canada, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 9, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6001 Filed 3–15–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 931090–4048]

RIN 0625–AA06

Allocation of Duty-Exemptions for Calendar Year 1994 Among Watch Producers Located in the Virgin Islands

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1994 duty-exemptions for watch producers located in the Virgin Islands pursuant to Public Law 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1994 at 5,100,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. Of this amount, 3,600,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (59 FR 8847).

The criteria for the calculation of the 1994 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1993 the Virgin Islands watch assembly firms shipped 2,105,139 watches and watch movements into the customs territory of the United States under Public Law 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1993 plus the creditable wages paid by the industry during calendar year 1993 to residents of the territory totalled $4,837,811.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1994 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification; and reallocation of the duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1994 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	250,000
Progress Watch Co., Inc	600,000
Unitime Industries, Inc	500,000
Tropex, Inc	400,000
Timex V.I., Inc	780,000

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 94–6124 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–DS–P and 4310–93–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931112–3312]

Physics Laboratory 1994 Summer Undergraduate Research Fellowships—Partnerships in Atomic, Molecular and Optical (AMO) Physics

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NAME AND NUMBER: 11.609—Measurement and Engineering Research and Standards.

SUMMARY: Through Summer Undergraduate Research Fellowships, "SURFing the Physics Lab: A Partnership for AMO Physics" will provide an opportunity for the Physics Laboratory of the National Institute of Standard and Technology and the National Science Foundation to join in partnership with American colleges and universities, stimulating outstanding physics students to pursue scientific careers by exposing them to the world class atomic, molecular, optical and radiation physicists and facilities in the NIST Physics Laboratory, and strengthening undergraduate AMO physics curricula by forming the basis for ongoing collaborations. The NIST program director will work with physics department chairs and directors of multi-disciplinary centers of excellence to identify two outstanding undergraduates (plus one alternate) from each institution who would benefit from off-campus summer research in an honors academy environment. The selected group of twenty (20) sophomores/juniors will spend twelve (12) weeks at the Physics Laboratory's Gaithersburg, MD campus, working one-on-one with NIST staff physicists; actively engaged in projects that combine the quest for fundamental knowledge and direct applications to problems of national importance; learning about non-academic alternatives for research careers; living science and seeing how they can make a difference. Students and NIST research advisors will be paired based on the student's background and interests in the early spring, to allow for adequate dialogue between the student, the student's physics professors and NIST advisor about the intended project, to ensure that the student arrives at NIST ready to contribute, and to prepare the student's physics professor for follow-up in the fall. Good overlap of research interest will

facilitate collaborations between NIST and the participating academic partners. The students will collectively live in a nearby furnished apartment complex and participate in the many NIST seminars and in a weekly SURFing the Physics Lab Summer Seminar Series. The students will all present a research seminar at NIST and be encouraged to participate in a local or national scientific conference during the following academic year. Given the significant lack of diversity in the present physics work force, we will aggressively seek out competitive students from underrepresented groups or persons with disabilities. Costs for this program (stipend, travel and housing) will be shared by NIST, NSF and the participating schools.

DATES: Proposals must be received no later than the close of business April 20, 1994.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 (Rev. 4/88) to: Physics Laboratory, Attn: Dr. David S. King, National Institute of Standards and Technology, Building 221, room B268, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Dr. David S. King, (301) 975–2369.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is authorized to fund, as the Director deems appropriate and within funds available, research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Fellowships are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development.

This new partnership will build upon a 1993 summer pilot program funded by NIST as a proof of concept. Twenty students from 10 undergraduate institutions spent the summer pursuing research projects sponsored by the Physics Laboratory. Of these 20 students; 8 were Hispanic Americans, 7 were African Americans, and 1 was legally blind. Between 20 to 50% of the associated student stipends, travel and housing was provided in cost sharing by the participating institutions.

NIST is the nation's premiere institute for the physical sciences and, as the lead agency for technology transfer, is providing a strong interface between government, industry, and academia; on-site researchers at NIST come from a broad range of colleges and industries. Owing to its unique mission to support the U.S. economy by working with industry, NIST embodies a special science culture, developed from a large and well equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the Physics Laboratory to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment, to scientists at work and to professional contacts that represent future employment possibilities.

Attending to the long term needs of many U.S. high-technology industries, NIST's Physics Lab conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics. This is complemented by applied research devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of electronic and optical devices. To achieve these goals, staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-ray and synchrotron radiation sources. Research projects can be theoretical or experimental, and will range in focus from quantum electrodynamics, through trapping atoms and choreographing molecular collisions, to ionizing radiation. SURFers will work one-on-one with our nation's top physical scientists both from NIST and from some of our nation's leading, high tech industries. It is anticipated that successful SURFers will move from a position of reliance on guidance from their research advisors to one of research independence during the twelve week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world class scientific research at NIST, especially in ground breaking areas of emerging technologies. This carries with it the hope of motivating these individuals to pursue a Ph.D. in physics, and to consider alternative research careers. SURFing the Physics Lab will attempt to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities and students with disabilities. This program will be open to all U.S. citizens interested in AMO physics.

Eligibility

Colleges and universities with degree granting programs in areas of AMO physics.

Funding Availability

Funds in the range of $100,000 to $155,000 are anticipated to be available for this partnership program. In addition, the Applicant Institution is expected to cost share (see Section entitled, "Evaluation of Applicant Institution's Cost Sharing"). The actual number of awards will depend on available funding.

Proposal Review Process

All proposals will be reviewed by a panel of three NIST scientists appointed by the Program Director. Proposals should include the following:

(A) Student Information: (1) official transcript for each student nominated with a minimum 3.0 G.P.A.; (2) a letter of commitment to attend SURF, including a description of the student's prioritized research interests; (3) a resume for each student; and (4) two letters of recommendation for each student. All references to student include the proposed alternate.

(B) Information About the Applicant Institution: (1) Description of the applicant's education and research philosophy, faculty interests, on-campus research program(s) and opportunities, and overlapping research interests of NIST and the institution; and (2) a statement addressing issues of academic credit and commitment to cost sharing.

Selection Criteria

Evaluation of Student's Academic Ability and Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: completed course work; expressed research interest; prior research experience; grade point average in courses relevant to program; career plans; honors and activities.

Evaluation of Applicant Institution's Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: institution's focus on AMO physics; overlap between research interests of the institution and NIST; emphasis on undergraduate hands-on research; undergraduate participation in research conferences/programs; on-campus research facilities;

involvement in systemic reform at the undergraduate level; past participation by students/institution in such programs; and commitment to educate women/minorities, and persons with disabilities.

Evaluation of Applicant Institution's Cost Sharing (30%)

In the spirit of a true partnership, successful applicants will be required to contribute matching funds. An appropriate minimum participation would be to directly cover student travel (one round trip by common carrier) and housing costs (approximately $1200); a higher level of participation, such as partial payment of the student's stipend, stated intent to support the participating students at a research conference, and/or awarding of academic credit, will be given extra merit in the evaluation process.

Award decisions shall be based upon total evaluation score.

Project Period

The 1994 Physics Laboratory SURFing Partnership is anticipated to run between May 30 through August 19, 1994; adjustments may be made to accommodate specific academic schedules.

Paperwork Reduction Act

The Standard Form 424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All primary applicants must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations must be provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

5. Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document. Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,
2. A negotiated repayment schedule is established and at least one payment is received, or
3. Other arrangements satisfactory to DoC are made.

Awards under the Physics Laboratory Program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: March 10, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–6121 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Environmental Assessment on Reducing California Sea Lion Predation on Wild Winter-Run Steelhead in the Lake Washington Ship Canal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of an Environmental Assessment (EA) that was prepared jointly by NMFS and the Washington State Department of Wildlife (WDW). The EA examines the environmental consequences of using non-lethal measures to reduce predation by sea lions on a depressed winter-run of wild steelhead in the Lake Washington drainage system in Washington State. California sea lions have consumed over 50 percent of the entire wild steelhead run in Lake Washington in recent years reducing the spawning escapement by as much as 60 to 70 percent. The proposed action is to implement several

complementary non-lethal measures to deter and remove California sea lions from the area adjacent to the fish ladder below the Ballard Locks where migrating wild steelhead are vulnerable to excessive sea lion predation. Based on the information in the EA, NOAA has made a finding of no significant impact and determined that an environmental impact statement need not be prepared in accordance with the National Environmental Policy Act (NEPA) and implementing regulations.

DATES: Comments on the EA must be submitted by March 22, 1994.

ADDRESSES: Send comments to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Copies of the EA are available at this address or can be requested by mail.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NEPA requires that federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS jointly prepared with WDW an EA that explores the environmental consequences of deterring California sea lions (*Zalophus californianus*) from the entrance to the Lake Washington Ship Canal fish ladder to protect a winter-run of wild steelhead (*Oncorhynchus mykiss*).

The proposed action is to implement several complementary non-lethal measures to deter and remove California sea lions from the area adjacent to the fish ladder below the Ballard Locks where migrating wild steelhead are vulnerable to excessive sea lion predation. The non-lethal measures will be implemented on a phased approach starting with use of an acoustical "barrier" downstream of the fish ladder to prevent sea lion access to the area where steelhead are most vulnerable to predation. The acoustic barrier will be implemented downstream of the fish ladder in the Lake Washington Ship Canal by deploying an array of underwater sound transducer equipment. These acoustic devices operate sequentially at a sound pressure level intended to be sufficiently high enough to elicit and maintain an avoidance response by California sea lions attempting to enter the spillway/fish ladder area to forage on steelhead. Additional non-lethal measures will be applied to sea lions that penetrate the barrier or continue to prey on steelhead in the Ship Canal beyond the effective range of the devices. The additional measures include harassment and potential capture and relocation to distant areas within their normal range such as their breeding area in the Channel Islands off Southern California. The no action alternative is not preferred because of the negative impacts it will have on the wild steelhead run over the long term. Capture and captive holding was considered but found to be not feasible due to lack of holding facilities and the logistics/costs of constructing such facilities. Lethal removal is not an option because of the lack of clear legal authority under Section 109(h) of the Marine Protection Act.

NOAA has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and therefore has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in the NOAA Directives Manual; Chapter 2, Section 10, "Environmental Review Procedures" (49 FR 29644–29657; July 23, 1984). In addition, in accordance with Washington State Environmental Policy Act, WDW has made a final determination of non-significance pursuant to Chapter 232–19 of the Washington Administrative Code.

Further details or a copy of the EA and FONSI may be obtained from the address above.

Dated: March 4, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–6047 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 030494A]

New England Fishery Management Council; Meeting

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council will hold a public meeting on Thursday, March 17, 1994, to consider actions affecting the New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Thursday, March 17, 1994, at 9 a.m. and will not adjourn until business for the day is completed.

ADDRESSES: The meeting will take place at the Holiday Inn, Rt. 1 and Rt. I–95, Peabody, MA 01906; telephone: 508–535–4600.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: 617–231–0422.

SUPPLEMENTARY INFORMATION: The Council meeting will begin with a report from the Groundfish Committee. Recommendations scheduled for consideration include adjustments to the Northeast Multispecies (Groundfish) Fishery Management Plan (FMP) under the framework for abbreviated rulemaking contained in Amendment 5 to the FMP (50 CFR 651.40). The Marine Mammal Committee will discuss and ask for Council approval of time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery. The meeting will conclude with consideration of final action on adjustments to the Sea Scallop FMP under the framework for abbreviated rulemaking contained in Amendment 4 to the FMP (59 FR 2757, January 19, 1994).

Abbreviated Rulemaking Actions—Northeast Multispecies

The Council will discuss and listen to public comments on two measures. One measure is a proposed adjustment that would result in a 10-day time-out from groundfishing in May, 1994, for vessels in the effort-reduction program. Under the current implementation of the FMP, a vessel participating in either the individual days-at-sea program or the fleet days-at-sea program must declare a 20-day time-out in May, 1994, when it will be out of the groundfish fishery. The Council's original proposal required a 20-day time-out from groundfishing during March, April or May, but since the effort-reduction program will not be implemented until May, this first-year requirement falls within a single month instead of within a 3-month span.

Another measure is a proposed adjustment to limit groundfish allowed on board vessels fishing with mesh smaller than the regulated size to 100 pounds (45.4 kg) per day. In other words, if a vessel is on a 4-day small-mesh trip, it may have on board a maximum of 400 pounds (181.4 kg) of groundfish. Under Amendment 5, vessels not in the days-at-sea program and vessels fishing with mesh smaller than the regulated minimum size may possess up to 500 pounds (226.8 kg) combined weight of the large-mesh groundfish species. This provision was intended to allow vessels in the small-

mesh fisheries to retain some groundfish bycatch; however, the Council has since learned that a number of vessels intend to use small-mesh gear to direct their fishing on groundfish stocks to land up to 500 pounds (226.8 kg) per day.

Abbreviated Rulemaking Actions—Atlantic Sea Scallops

The Council will consider public comments and final action on several measures. A framework measure is proposed that would reduce the maximum crew limit aboard scallop vessels from nine to seven persons and is intended to protect small scallops. If approved, this measure would be implemented as soon as possible and last through December, 1994. Also, a framework measure is proposed to implement the reductions in days-at-sea on an annual basis, starting with the period March 1, 1994, through February 28, 1995. For example, this measure would allow full-time scallop vessels to fish for scallops 204 days during this period. Under the current regulation, they are allowed to fish 204 days from March 1, 1994, to December 31, 1994, and may be able to increase their fishing effort. Also, a framework measure to adjust gear restrictions, including triple linking in the dredge bottom, rules for allowing vessels to carry a spare dredge onboard, and clarification of rules governing the configuration of rings in the dredge, is proposed.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at 617–213–0422 at least 5 days prior to the meeting date.

Dated: March 11, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–6183 Filed 3–14–94; 2:54 pm]

BILLING CODE 3510–22–P

[I.D. 030794D]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1994 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments for the public hearings must be received by March 30, 1994. Hearings and meetings will be held from March to May 1994. (See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings). All public hearings begin at 7 p.m. on the dates and at the locations specified below.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352. Hearings will take place in Washington, Oregon and California. (See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of hearings).

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR; telephone: 503–326–6352.

SUPPLEMENTARY INFORMATION: As part of the annual Council process of developing seasons and other management measures for the upcoming fishery, beginning on or about May 1 of each year, the Council makes scientific documents available to the public and conducts field hearings to receive public testimony. A listing of those documents and hearings follows.

March 1, 1994: Council reports that summarize the 1993 salmon season and project the expected salmon stock abundance for 1994 are available to the public from the Council office.

March 7–11, 1994: Council and advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to adopt 1994 regulatory options for public review.

March 18, 1994: Newsletter with proposed management options and public hearing schedule is mailed to the public (includes options, rationale, and condensed summary of biological and economic impacts).

March 28–30, 1994: Public hearings are held to receive comments on the proposed 1994 ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

March 28, 1994: PreMarq Centre, 2065 Highway 101, Warrenton, OR.

March 29, 1994: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 29, 1994: Red Lion Inn, Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR.

March 30, 1994: Humboldt State University, Goodwin Forum, Arcata, CA.

April 4–8, 1994: Council and its advisory entities meet at the Holiday Inn Crowne Plaza, Burlingame, CA, to adopt final 1994 regulatory measures. "Preseason Report II Analysis of Proposed Regulatory Options for 1994 Ocean Salmon Fisheries" will be available to the public at the meeting.

April 14, 1994: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 8–22, 1994: Salmon Technical Team completes "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1994 Ocean Salmon Fisheries."

May 1, 1994: Federal regulations expected to be implemented and preseason report III made available for distribution to the public. These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 10, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–6039 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D.021894B]

Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 887 (P79H).

SUMMARY: Notice is hereby given that the Institute of Marine Sciences, University of California, Santa Cruz, California 95064 (Principal Investigator: Dr. Ronald J. Schusterman) has been issued a permit to take northern elephant seals (*Mirounga angustirostris*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West

Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: On December 28, 1993, notice was published in the **Federal Register** (58 FR 68633) that the above-named organization had submitted a request for a scientific research permit to conduct auditory experiments on one elephant seal obtained from beached/stranded stock or collected from the wild. It was noted that if collection is from the wild, up to three animals may be collected in order to determine trainability; two subsequently being released back into the wild within one to two weeks after capture. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 *et seq.*) and, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: March 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6063 Filed 03–15–94; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration (NOAA)

[I.D. 022394B]

Marine Mammals

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 889 (P772#64).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, California 92038–0271, has been issued a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of enhancing the survival of the species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: On December 22, 1993, notice was published in the **Federal Register** (58 FR 67776) that a request for an enhancement permit to take Hawaiian monk seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: March 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6064 Filed 3–15–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 30–31 March 1994.

Time of Meeting: 0800–1730 (30 March 94) 0800–1200 (31 March 94)

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study Panel on "Capabilities Needed to Counter Current and Evolving Threats" will meet to hear briefings on and discuss advanced and novel technology forecasts, operational, analytical models and methodologies, strategic mobility/deployment, operational enhancements of digitization, and future force structure concepts. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting.

The ASB Administrative Officer Sally Warner, may contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–6202 Filed 3–15–94; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 23, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *North Penn Water Authority D–92–44 CP.* An application for approval of a ground water withdrawal project to supply up to 0.864 million gallons (mg)/30 days of water to the applicant's distribution system in East Rockhill Township from new Well No. ER–74, and to retain the existing withdrawal limit from all wells of 280 mg/30 days. The project is located in East Rockhill Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Limerick Township Municipal Authority D–93–42 CP.* A sewage treatment plant (STP) expansion project that entails increasing the rating of an existing 1.0 million gallons per day (mgd) STP to 1.6 mgd, after minor modifications. The STP will continue to provide secondary biological treatment via extended aeration package plants and discharge to the Schuylkill River. The STP will continue to serve only Limerick Township and is located just off King Road in Limerick Township, Montgomery County, Pennsylvania.

3. *Blue Ridge Real Estate Company D–93–57.* A proposal to increase the applicant's withdrawal from Tobyhanna Creek from 1.67 mgd 3.33 mgd for use in snowmaking at the applicant's Jack Frost Ski Area. The project intake is located in Tobyhanna Creek near its confluence with the Lehigh River in Kidder Township, Carbon County, Pennsylvania.

4. *Lower Bucks County Joint Municipal Authority D–93–68 CP.* A project to modify and improve the efficiency and reliability of the applicant's existing 10 mgd STP. The STP will continue to serve the communities of Levittown in portions of Bristol, Falls and Middletown Townships, and the Borough of Tullytown, all in Bucks County, Pennsylvania. The STP is located between the Penn-Central Railroad and Route 13 just east of Haines Road in Bristol Township and will continue to discharge to Water Quality Zone 2 of the Delaware River at the same permitted flow.

5. *Jersey Central Power & Light Company D–93–71.* An electric power generation project that will entail expansion of the applicant's existing 533 megawatt (MW) Gilbert Station power generator capability to 621 MW. The project entails construction of a new simple cycle Combustion Turbine (CT Unit No. 9) with a 133 MW capacity along with decommissioning of existing steam boiler generator Unit Nos. 1 and 2 which have a combined generating capacity of 45 MW. The new CT Unit No. 9 will entail a new maximum month consumptive use of approximately 0.12 mgd, while decommissioning Unit Nos. 1 and 2 will reduce once-through cooling water withdrawal and thermal loading to the Delaware River. The project is located at Gilbert Generating Station which is situated on the east bank of the Delaware River in Holland Township, Hunterdon County, New Jersey at River Mile 171.3, Water Quality Zone 1E.

6. *Shoemakersville Municipal Authority D–93–74 CP.* A project to modify and expand the applicant's existing STP from a 0.35 mgd average capacity to 0.60 mgd. The STP will continue to serve the Borough of Shoemakersville and portions of Perry Township. It is located at the end of Second Street in the Borough of Shoemakersville, Berks County, Pennsylvania and will continue to discharge to the Schuylkill River.

7. *Pennsgrove Water Supply Company D–93–77 CP.* An application for approval of a ground water withdrawal project to supply water to the applicant's distribution system from Well Nos. RF1A, RF2B and RF3A, and to retain the existing withdrawal limit from all wells of 58.9 mg/30 days. The project is located in Carneys Point Township, Salem County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 8, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–6096 Filed 3–15–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Applications for a New Award Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1994

Purpose: On October 19, 1993, the National Institute on Disability and Rehabilitation Research published a notice in the **Federal Register** at 58 FR 54006 inviting applications for a new award under the RRTC program for fiscal year 1994 on Rehabilitation in the Pacific Basin. Satisfactory applications were not received for the RRTC, but there is a continuing need for the research. The purpose of this notice is to reinvite applications for an RRTC on Rehabilitation in the Pacific Basin for fiscal year 1994. This notice announces a new deadline date for applications. Any applicant wishing to apply or reapply should request a new application package.

The Rehabilitation Act Amendments of 1992 require that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. For purposes of this competition, applications proposing to address the needs of Pacific Islanders with disabilities will be judged to have satisfied this requirement.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: May 18, 1994.

Applications Available: March 18, 1994.

Available Funds: $650,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 months.

Priority: The priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004 on Rehabilitation in the Pacific Basin applies to this competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; (b) The regulations for this program in 34 CFR parts 350 and 352; and (c) the notice of final priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information and an application package, contact Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: March 10, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–6005 Filed 3–15–94; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Bio-Process Innovation, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15594 to Bio-Process Innovation, Inc. The proposed grant will provide funding in the amount of $92,022 by the Department of Energy for purposes of saving energy through development of a low-energy continuous reactor for the production of ethanol.

The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the application submitted by Bio-Process Innovation, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent,

or planned solicitation. Dr. M. Clark Dale, the inventor and president of Bio-Process Innovation, Inc., was awarded a patent for the design of the type of bio-reactor which will be developed with the grant, and has recently applied for a patent for this specific system which is expected to reduce cost per unit of product by about 80 percent. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, DC on March 8, 1994.

Scott Sheffield,

Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–6118 Filed 3–15–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Magnetic Seal Corporation

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15585 to Magnetic Seal Corporation, Inc. The proposed grant will provide funding in the amount of $90,050 by the Department of Energy for purposes of saving energy through development of an interior insulating window using double magnet sealing design.

The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the application submitted by Magnetic Seal Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The principal investigator, Mr. Boomershine, has received U.S. and Canadian patents on his invention and has experience in developing the new energy saving technology. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, DC, on March 4, 1994.

Scott Scheffield,

Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–6119 Filed 3–15–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration; Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by April 15, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Department of Commerce/Bureau of Economic Analysis (BOC/BEA); Department of Energy/Fossil Energy (DOE/FE); Department of Energy/Domestic and International Energy Policy (DOE/PO); and the Environmental Protection Agency (EPA)
2. EIA–767
3. 0608–0054 (DOC/BEA), 1901–0298 (DOE/FE), 1901–0267 (DOE/PO), and 2080–0018 (EPA)
4. Steam-Electric Plant Operation and Design Report
5. Revision—The proposed changes are (1) page 4, restructure operation/maintenance questions and add new elements; (2) page 6, add carbon content question; (3) page 7, expand air emission strategy with new data element; (4) page 8, add boiler retirement date question.
6. Annually
7. Mandatory

8. State or local governments, Businesses or other for-profit, and Federal agencies or employees
9. 893 respondents
10. 1 response
11. 67.69 hours per response
12. 60,452 hours
13. The EIA–767 collects data on steam-electric generating plants and related environmental data. Data are used by the BEA, EPA, DOE/PO, DOE/FE in models and to evaluate compliance with the Clean Air Act. Steam-electric plants of 100 MW or more complete the entire form. Power plants between 10 MW and 100 MW report on page 1, Plant Information; page 6, Boiler Information; and pages 13 and 14, Flue Gas Desulfurization Unit Information.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, March 9, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–6100 Filed 3–15–94;8:45am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP88–105–000]

Yukon Pacific Company L.P.; Meeting on Environmental Issues

March 10, 1994.

On March 15, 1994, Office of Pipeline and Producer Regulation environmental staff will attend a meeting with other agencies sponsored by the U.S. Environmental Protection Agency (EPA), Region 10, to discuss with representatives of Yukon Pacific Company L.P. its proposed activities under the Clean Air Act and the Clean Water Act. The meeting will be at the offices of EPA, Region 10 in Seattle, Washington. For further information contact Chris Zerby at (202) 208–0111.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6026 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

March 10, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Applications:* Requests for Extension of Time to Commence and Complete Construction.

b. *Project Nos:* 4586–018 and 4587–032.

c. *Date Filed:* February 14, 1994.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* 4586–018—Swamp Creek; 4587–032—Ruth Creek.

f. *Location:* 4586–018—Swamp Creek Project, located on Swamp Creek in Whatcom County, Washington; 4587–032—Ruth Creek Project, located on Ruth Creek in Whatcom County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and Public law No. 101–155, 103 Stat. 935 (1989).

h. *Applicant Contact:* Tacoma Public Utilities Light Division, Attn: George Whitener, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411–0007, (206) 502–8294.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* April 8, 1994.

k. *Description of Request:* The licensee for the subject projects has requested that the deadlines for commencement of construction at FERC Project Nos. 4586 and 4587 be extended for an additional two-year period pursuant to Public Law No. 101–155, 103 Stat. 935 (1989). The licensee shall develop the subject projects in conjunction with two other projects (Project Nos. 4738 and 4628) and shall coordinate the planning, design, and construction schedules for all four projects.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. *Agency Comments*—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6027 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST94–2029–000, et al.]

Pacific Gas Transmission Co.; Notice of Self-Implementing Transactions

March 10, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2029	Pacific Gas Transmission Co.	Northwest Natural Gas Co.	12–01–93	G–S	3,616	N	F	11–01–93	Indef.
ST94–2030	Pacific Gas Transmission Co.	North Canadian Oils Limited.	12–01–93	G–S	39,185	N	F	11–01–93	Indef.
ST94–2031	Pacific Gas Transmission Co.	Inverness Petroleum Ltd.	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2032	Pacific Gas Transmission Co.	North Canadian Marketing Corp.	12–01–93	G–S	19,593	N	F	11–01–93	Indef.
ST94–2033	Pacific Gas Transmission Co.	Dekalb Energy Co.	12–01–93	G–S	11,755	N	F	11–01–93	Indef.
ST94–2034	Pacific Gas Transmission Co.	City of Glendale	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2035	Pacific Gas Transmission Co.	Pan-Alberta Gas (U.S.) Inc.	12–01–93	G–S	58,777	N	F	11–01–93	Indef.
ST94–2036	Pacific Gas Transmission Co.	Suncor Inc	12–01–93	G–S	40,361	N	F	11–01–93	Indef.
ST94–2037	Pacific Gas Transmission Co.	WP Natural Gas Co.	12–01–93	G–S	7,140	N	F	11–01–93	Indef.
ST94–2038	Pacific Gas Transmission Co.	WP Natural Gas Co.	12–01–93	G–S	6,620	N	F	11–08–93	Indef.
ST94–2039	Pacific Gas Transmission Co.	Washington Energy Marketing, Inc.	12–01–93	G–S	65,278	N	F	11–01–93	Indef.
ST94–2040	Pacific Gas Transmission Co.	Northwest Natural Gas Co.	12–01–93	G–S	46,549	N	F	11–01–93	Indef.
ST94–2041	Pacific Gas Transmission Co.	IGI Resources, Inc.	12–01–93	G–S	7,158	N	F	11–01–93	Indef.
ST94–2042	Pacific Gas Transmission Co.	City of Pasadena	12–01–93	G–S	4,034	N	F	11–01–93	Indef.
ST94–2043	Pacific Gas Transmission Co.	Salmon Resources Ltd.	12–01–93	G–S	27,434	N	F	11–01–93	Indef.
ST94–2044	Pacific Gas Transmission Co.	Canwest Gas Supply U.S.A., Inc.	12–01–93	G–S	62,429	N	F	11–01–93	Indef.
ST94–2045	Equitrans, Inc	Latrobe Steel Co	12–01–93	G–S	273,000	N	I	10–01–93	03–31–94.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2046	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2047	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2048	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2049	Texas Gas Transmission Corp.	Union Light, Heat & Power Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2050	Texas Gas Transmission Corp.	City of Drakesboro.	12–01–93	G–S	1,058	N	F	11–01–93	Indef.
ST94–2051	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2052	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	1,218	N	F	11–01–93	Indef.
ST94–2053	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2054	Texas Gas Transmission Corp.	Dayton Power & Light Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2055	Texas Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2056	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2057	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	12–01–93	G–S	810	N	F	11–01–93	Indef.
ST94–2058	Williston Basin Inter. P/L Co.	Farmers Union Central Exchange, Inc.	12–01–93	G–S	3,180	N	F	11–01–93	03–31–94.
ST94–2059	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	12–01–93	G–S	228,000	N	F	11–01–93	06–30–97.
ST94–2060	Williston Basin Inter. P/L Co.	Frannie Deaver Utilities.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2061	Williston Basin Inter. P/L Co.	Wyoming Gas Co.	12–01–93	G–S	10,000	N	I	11–01–93	06–30–97.
ST94–2062	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	12–01–93	G–S	115,665	N	F	11–01–93	06–30–97.
ST94–2063	Panhandle Easter Pipe Line Co.	Direct Gas Supply Corp.	12–01–93	G–S	10,000	N	I	11–03–93	04–30–98.
ST94–2064	Panhandle Easter Pipe Line Co.	Margasco Partnership.	12–01–93	G–S	5,000	N	F	11–01–93	03–31–94.
ST94–2065	Transwestern Pipeline Co.	Lone Star Gas Co.	12–01–93	[illegible]	20,000	N	I	11–01–93	Indef.
ST94–2066	Transwestern Pipeline Co.	Hadson Gas Systems, Inc.	12–01–93	G–S	25,000	N	I	11–01–93	Indef.
ST94–2067	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	12–01–93	G–S	3,280	N	F	11–01–93	11–30–93
ST94–2068	Black Marlin Pipeline Co.	MG Natural Gas Corp.	12–01–93	G–S	6,292	N	F	11–03–93	11–30–93.
ST94–2069	Black Marlin Pipeline Co.	Enron Industrial Natural Gas Co.	12–01–93	G–S	68,708	A	F	11–03–93	11–30–93.
ST94–2070	Columbia Gas Transmission Corp.	Columbus Southern Power Co.	12–01–93	G–S	147,000	N	I	11–01–93	Indef.
ST94–2071	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–S	4,000	N	I	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2072	Columbia Gas Transmission Corp.	M&B Industrial Gas Development Co.	12–01–93	G–S	10,200	N	I	11–01–93	Indef.
ST94–2073	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	G–S	25,000	Y	I	11–01–93	Indef.
ST94–2074	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	B	10,000	Y	I	11–01–93	Indef.
ST94–2075	Columbia Gas Transmission Corp.	Endevco Oil & Gas Co.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2076	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–S	800	N	I	11–01–93	Indef.
ST94–2077	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–01–93	G–S	205,019	N	F	11–01–93	Indef.
ST94–2078	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	12–01–93	G–S	10,110	N	F	11–01–93	Indef.
ST94–2079	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2080	Columbia Gas Transmission Corp.	Pedrickcity Cogeneration, Ltd.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2081	Columbia Gas Transmission Corp.	Domino Sugar Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2082	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2083	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2084	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2085	Columbia Gas Transmission Corp.	AGF Direct Gas Sales.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2086	Columbia Gas Transmission Corp.	Narragansett Electric Co.	12–01–93	G–S	90,000	N	I	11–01–93	Indef.
ST94–2087	Columbia Gas Transmission Corp.	Howard Energy Co., Inc.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2088	Columbia Gas Transmission Corp.	Vesta Energy Corp.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2089	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	69,000	Y	I	11–01–93	Indef.
ST94–2090	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2091	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–01–93	G–S	100	N	F	11–01–93	Indef.
ST94–2092	Columbia Gas Transmission Corp.	CNG Transmission Corp.	12–01–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–2093	Columbia Gas Transmission Corp.	U.S. Energy Development.	12–01–93	G–S	50	N	I	11–01–93	Indef.
ST94–2094	Columbia Gas Transmission Corp.	Midland Marketing Corp.	12–01–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–2095	Columbia Gas Transmission Corp.	Texaco Gas Marketing, Inc.	12–01–93	G–S	200,000	N	I	11–01–93	Indef.

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ST94–2096	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	B	1,000	N	I	11–01–93	Indef.
ST94–2097	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12–01–93	G–S	16,517	N	F	11–01–93	Indef.
ST94–2098	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–01–93	G–S	5,199	N	F	11–01–93	Indef.
ST94–2099	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–S	500	N	I	11–01–93	Indef.
ST94–2100	Columbia Gas Transmission Corp.	Vineland Cogeneration L.P.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2101	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–01–93	G–S	1,000	Y	I	11–01–93	Indef.
ST94–2102	Columbia Gas Transmission Corp.	City of Richmond	12–01–93	G–S	15,000	N	I	11–01–93	Indef.
ST94–2103	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–01–93	G–S	63,000	N	I	11–01–93	Indef.
ST94–2104	Columbia Gas Transmission Corp.	City of Augusta .	12–01–93	G–S	1,300	N	I	11–01–93	Indef.
ST94–2105	Columbia Gas Transmission Corp.	Cameron Gas Co.	12–01–93	G–S	1,140	N	I	11–01–93	Indef.
ST94–2106	Columbia Gas Transmission Corp.	Delta NaturaL Gas Co., Inc.	12–01–93	G–S	5,400	N	I	11–01–93	Indef.
ST94–2107	Columbia Gas Transmission Corp.	Delta Natural Gas Co., Inc.	12–01–93	G–S	2,530	N	I	11–01–93	Indef.
ST94–2108	Columbia Gas Transmission Corp.	Delta Natural Gas Co., Inc.	12–01–93	G–S	4,140	N	I	11–01–93	Indef.
ST94–2109	Columbia Gas Transmission Corp.	Zebulon Gas Association, Inc.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2110	Columbia Gas Transmission Corp.	Mt. Olivet Natural Gas Co.	12–01–93	G–S	500	N	I	11–01–93	Indef.
ST94–2111	Columbia Gas Transmission Corp.	Murphy Gas, Inc	12–01–93	G–S	180	N	I	11–01–93	Indef.
ST94–2112	Columbia Gas Transmission Corp.	Power Gas Marketing & Transmission.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2113	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–01–93	G–S	190,880	Y	F	11–01–93	Indef.
ST94–2114	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12–01–93	G–S	68,514	N	F	11–01–93	Indef.
ST94–2115	Columbia Gas Transmission Corp.	Shipper Entity Type.	12–01–93	G–S	456,776	N	F	11–01–93	Indef.
ST94–2116	Columbia Gas Transmission Corp.	Providence Gas Co.	12–01–93	G–S	2,545	N	F	11–01–93	Indef.
ST94–2117	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12–01–93	G–S	10,715	N	F	11–01–93	Indef.
ST94–2118	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–01–93	G–S	500	N	F	11–01–93	Indef.
ST94–2119	Columbia Gas Transmission Corp.	Elizabethtown Gas Co.	12–01–93	G–S	3,644	N	F	11–01–93	Indef.

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ST94–2120	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–01–93	G–S	10,893	N	F	11–01–93	Indef.
ST94–2121	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–01–93	G–S	103,059	N	F	11–01–93	Indef.
ST94–2122	Columbia Gas Transmission Corp.	Bluefield Gas Co	12–01–93	G–S	8,682	N	F	11–01–93	Indef.
ST94–2123	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–01–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–2124	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric Corp.	12–01–93	G–S	8,985	N	F	11–01–93	Indef.
ST94–2125	Columbia Gas Transmission Corp.	Waterville Gas & Oil Co.	12–01–93	G–S	3,100	N	I	11–01–93	Indef.
ST94–2126	Columbia Gas Transmission Corp.	Verona Natural Gas Co.	12–01–93	G–S	800	N	I	11–01–93	Indef.
ST94–2127	Columbia Gas Transmission Corp.	Vanceburg Electric Light Heat & Pwr.	12–01–93	G–S	1,230	N	I	11–01–93	Indef.
ST94–2128	Columbia Gas Transmission Corp.	Claysville Natural Gas Co..	12–01–93	G–S	2,270	N	I	11–01–93	Indef.
ST94–2129	Columbia Gas Transmission Corp.	City of North Middletown.	12–01–93	G–S	310	N	I	11–01–93	Indef.
ST94–2130	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc..	12–01–93	G–S	32,521	Y	F	11–01–93	Indef.
ST94–2131	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–01–93	G–S	60,944	N	F	11–01–93	Indef.
ST94–2132	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12–01–93	G–S	49,030	N	F	11–01–93	Indef.
ST94–2133	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–01–93	G–S	222	N	F	11–01–93	Indef.
ST94–2134	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–01–93	G–S	65,359	N	F	11–01–93	Indef.
ST94–2135	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–01–93	G–S	37,000	N	F	11–01–93	Indef.
ST94–2136	Columbia Gas Transmission Corp.	Elam Utility Co ..	12–01–93	G–S	960	N	I	11–01–93	Indef.
ST94–2137	Columbia Gas Transmission Corp.	Gasco Distribution Systems, Inc.	12–01–93	G–S	300	N	I	11–01–93	Indef.
ST94–2138	Columbia Gas Transmission Corp.	Enron Access Corp..	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2139	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2140	Columbia Gas Transmission Corp.	USS Kobe Steel Co.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2141	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12–01–93	G–ST	N	I	F	11–01–93	Indef.
ST94–2142	Columbia Gas Transmission Corp.	Vesta Energy Co	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2143	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.

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ST94–2144	Columbia Gas Transmission Corp.	Southern Tier Transmission Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2145	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2146	Columbia Gas Transmission Corp.	Bethlehem Steel	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2147	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12–01–93	G–S	1,407,930	Y	I	11–01–93	Indef.
ST94–2148	Columbia Gas Transmission Corp.	Pike Natural Gas Co.	12–01–93	G–S	4,910	N	I	11–01–93	Indef.
ST94–2149	Columbia Gas Transmission Corp.	Richmond Utilities Board.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2150	Columbia Gas Transmission Corp.	Sheldon Gas Co	12–01–93	G–S	1,910	N	I	11–01–93	Indef.
ST94–2151	Columbia Gas Transmission Corp.	Swickard Gas Co.	12–01–93	G–S	1,050	N	I	11–01–93	Indef.
ST94–2152	Columbia Gas Transmission Corp.	Paramount Natural Gas Co.	12–01–93	G–S	310	N	I	11–01–93	Indef.
ST94–2153	Columbia Gas Transmission Corp.	Belfry Gas Co ...	12–01–93	G–S	420	N	I	11–01–93	Indef.
ST94–2154	Columbia Gas Transmission Corp.	Blacksville Oil and Gas.	12–01–93	G–S	320	N	I	11–01–93	Indef.
ST94–2155	Columbia Gas Transmission Corp.	Lakeside Gas Co.	12–01–93	G–S	210	N	I	11–01–93	Indef.
ST94–2156	Columbia Gas Transmission Corp.	City of Flemingsburg.	12–01–93	G–S	1,900	N	I	11–01–93	Indef.
ST94–2157	Columbia Gas Transmission Corp.	City of Carlisle ...	12–01–93	G–S	2,300	N	I	11–01–93	Indef.
ST94–2158	Columbia Gas Transmission Corp.	City of Brooksville.	12–01–93	G–S	530	N	I	11–01–93	Indef.
ST94–2159	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2160	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–01–93	G–S	141,937	N	I	11–01–93	Indef.
ST94–2161	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–01–93	G–S	231,893	N	I	11–01–93	Indef.
ST94–2162	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–01–93	G–S	354,000	N	I	11–01–93	Indef.
ST94–2163	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	G–S	20,500	N	F	11–01–93	Indef.
ST94–2164	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–01–93	G–S	51,186	N	F	11–01–93	Indef.
ST94–2165	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–S	242,984	N	F	11–01–93	Indef.
ST94–2166	Columbia Gas Transmission Corp.	West Millgrove Gas Co.	12–01–93	G–S	80	N	I	11–01–93	Indef.
ST94–2167	Columbia Gas Transmission Corp.	Waterville Gas Co.	12–01–93	G–S	5,000	N	I	11–01–93	Indef.

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ST94–2168	Columbia Gas Transmission Corp.	City of Richmond	12–01–93	G–S	41,913	N	F	11–01–93	Indef.
ST94–2169	Columbia Gas Transmission Corp.	City of Lancaster	12–01–93	G–S	19,353	N	F	11–01–93	Indef.
ST94–2170	Columbia Gas Transmission Corp.	City of Charlottesville.	12–01–93	G–S	17,049	N	F	11–01–93	Indef.
ST94–2171	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12–01–93	G–S	3,366	N	F	11–01–93	Indef.
ST94–2172	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–01–93	G–S	19,475	N	F	11–01–93	Indef.
ST94–2173	Columbia Gas Transmission Corp.	Meridian Marketing & Transportation.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2174	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	12–01–93	G–S	2,545	N	I	11–01–93	Indef.
ST94–2175	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–01–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2176	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–01–93	G–S	22,511	N	I	11–01–93	Indef.
ST94–2177	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–01–93	G–S	19,520	N	I	11–01–93	Indef.
ST94–2178	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp..	12–01–93	G–S	18,417	N	F	11–01–93	Indef.
ST94–2179	Columbia Gas Transmission Corp.	T.W. Phillips Gas and Oil Co.	12–01–93	G–S	4,918	N	F	11–01–93	Indef.
ST94–2180	Columbia Gas Transmission Corp.	Interstate Utilities Co.	12–01–93	G–S	840	N	I	11–01–93	Indef.
ST94–2181	Columbia Gas Transmission Corp.	Kane Gas Light & Heating Co.	12–01–93	G–S	1,000	N	I	11–01–93	Indef.
ST94–2182	Columbia Gas Transmission Corp.	Arlington Natural Gas Co.	12–01–93	G–S	2,770	N	I	11–01–93	Indef.
ST94–2183	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2184	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2185	Columbia Gas Transmission Corp.	National Gas & Oil Corp.	12–01–93	G–S	3,830	N	I	11–01–93	Indef.
ST94–2186	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas.	12–01–93	G–S	600	N	I	11–01–93	Indef.
ST94–2187	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–01–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–2188	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–01–93	G–S	250	N	I	11–01–93	Indef.
ST94–2189	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–01–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2190	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–01–93	G–ST	N/A	N	I	11–01–93	03–31–94.
ST94–2191	Columbia Gas Transmission Corp.	Coastal Gas Marketing Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.

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ST94–2192	Columbia Gas Transmission Corp.	Ashland Exploration, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2193	Columbia Gas Transmission Corp.	NGO Development Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2194	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2195	Columbia Gas Transmission Corp.	Columbia Natural Resources, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2196	Columbia Gas Transmission Corp.	Dome Energyicorp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2197	Columbia Gas Transmission Corp.	Enron Access Corp..	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2198	Columbia Gas Transmission Corp.	Atlas Gas Marketing.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2199	Columbia Gas Transmission Corp.	O&R Energy, Inc	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2200	Columbia Gas Transmission Corp.	Midcon Gas Services Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2201	Columbia Gas Transmission Corp.	Polaris Pipeline Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2202	Columbia Gas Transmission Corp.	Consolidated Fuel Corp.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2203	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2204	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2205	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–01–93	G–ST	N/A	Y	I	11–01–93	Indef.
ST94–2206	Columbia Gas Transmission Corp.	Eastern Marketing Corp.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2207	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2208	Columbia Gas Transmission Corp.	Binghamton Cogeneration L.P.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2209	Columbia Gas Transmission Corp.	CMS Gas Marketing.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2210	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2211	Columbia Gas Transmission Corp.	Gaslantic Corp ..	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2212	Columbia Gas Transmission Corp.	Timken Co	12–01–93	G–ST	N/A	N	I	11–01–93	Indef.
ST94–2213	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2214	Columbia Gas Transmission Corp.	Tenneco Gas Marketing Co.	12–01–93	G–S	700,000	N	I	11–01–93	Indef.
ST94–2215	Columbia Gas Transmission Corp.	Stand Energy	12–01–93	G–S	1,420	N	I	11–01–93	Indef.

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ST94–2216	Columbia Gas Transmission Corp.	Ohio Cumberland Gas Co.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2217	Columbia Gas Transmission Corp.	Orwell Natural Gas Co.	12–01–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–2218	Columbia Gas Transmission Corp.	Kentucky Ohio Gas Co.	12–01–93	G–S	200	N	I	11–01–93	Indef.
ST94–2219	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	12–01–93	G–ST	N/A	N	N/A	11–01–93	Indef.
ST94–2220	Columbia Gas Transmission Corp.	Western Lewis - Rectorville.	12–01–93	G–S	700	N	I	11–01–93	Indef.
ST94–2221	Columbia Gas Transmission Corp.	Village of Williamsport.	12–01–93	G–S	620	N	I	11–01–93	Indef.
ST94–2222	Tennessee Gas Pipeline Co.	United Cities Gas Co.	12–01–93	G–S	50,000	N	I	11–03–93	Indef.
ST94–2223	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	12–01–93	G–S	375	N	F	11–09–93	Indef.
ST94–2224	Tennessee Gas Pipeline Co.	Brooklyn Union Gas Co.	12–01–93	G–S	10,260	N	F	11–09–93	Indef.
ST94–2225	Tennessee Gas Pipeline Co.	Clinton Gas Marketing Inc.	12–01–93	G–S	50	N	F	11–23–93	Indef.
ST94–2226	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Corp.	12–01–93	G–S	500	N	I	09–14–93	Indef.
ST94–2227	Tennessee Gas Pipeline Co.	Energy North Natural Gas Inc.	12–01–93	G–S	4,799	N	F	11–10–93	Indef.
ST94–2228	Midwestern Gas Transmission Co.	Eastex Hydrocarbons Inc.	12–01–93	G–S	60,000	N	I	11–01–93	Indef.
ST94–2229	Natural Gas P/L Co. of America.	Tauber Oil Co ...	12–01–93	G–S	50,000	N	I	11–04–93	Indef.
ST94–2230	Ozark Gas Transmission System.	Helmerich & Payne Energy Service.	12–01–93	G–S	10,000	N	F/I	11–01–93	Indef.
ST94–2231	Sabine Pipe Line Co.	Texaco Gas Marketing Inc.	12–01–93	G–S	50,000	A	F	11–01–93	Indef.
ST94–2232	Sabine Pipe Line Co.	NGC Transportation Inc.	12–01–93	G–S	60,000	N	F	11–01–93	Indef.
ST94–2234	Sabine Pipe Line Co.	Cypress Gas Pipeline Co.	12–01–93	G–S	40,000	N	I	11–02–93	Indef.
ST94–2235	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co.	12–01–93	C	250,000	N	I	11–01–93	Indef.
ST94–2236	Delhi Gas Pipeline Corp.	Nat. Gas P/L Co. of America, et al.	12–01–93	C	4,000	N	I	11–01–93	Indef.
ST94–2237	Seagull Shoreline System.	Texas Eastern Transmission Corp.	12–01–93	C	20,000	N	I	11–01–93	Indef.
ST94–2238	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	12–01–93	B	28,768	Y	F	11–01–93	10–31–00.
ST94–2239	Granite State Gas Trans., Inc.	Bay State Gas Co.	12–01–93	B	34,092	Y	F	11–01–93	10–31–00.
ST94–2240	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	12–01–93	B	3,603	Y	F	11–01–93	10–31–00.
ST94–2241	Granite State Gas Trans., Inc.	Bay State Gas Co.	12–01–93	B	126,279	Y	F	11–01–93	10–31–00.
ST94–2242	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	12–02–93	C	5,000	N	I	11–01–93	Indef.

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ST94–2243	Arkansas Western Pipeline Co.	Viskase Corp	12–02–93	G–S	1,600	N	I	10–01–93	12–31–94.
ST94–2244	Columbia Gas Transmission Corp.	Entity Type	12–02–93	G–S	19,353	N	I	11–01–93	Indef.
ST94–2245	Columbia Gas Transmission Corp.	City of Charlottesville.	12–02–93	G–S	17,049	N	I	11–01–93	Indef.
ST94–2246	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	4,918	N	I	11–01–93	Indef.
ST94–2247	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12–02–93	G–S	32,521	Y	I	11–01–93	Indef.
ST94–2248	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–02–93	G–S	190,880	Y	I	11–01–93	Indef.
ST94–2249	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	500	N	I	11–01–93	Indef.
ST94–2250	Columbia Gas Transmission Corp.	Nashville Gas Co.	12–02–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2251	Columbia Gas Transmission Corp.	Providence Gas Co.	12–02–93	G–S	2,545	N	I	11–01–93	Indef.
ST94–2252	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12–02–93	G–S	3,000,000	Y	I	11–01–93	Indef.
ST94–2253	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.
ST94–2254	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.
ST94–2255	Columbia Gas Transmission Corp.	Clinton Gas Marketing, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2256	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2257	Columbia Gas Transmission Corp.	Equitable Gas Co.	12–02–93	G–S	72,056	N	F	11–01–93	11–30–93.
ST94–2258	Columbia Gas Transmission Corp.	Cabot Corp	12–02–93	B	15,000	N	I	11–01–93	Indef.
ST94–2259	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2260	Columbia Gas Transmission Corp.	United States Gypsum Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2261	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2262	Columbia Gas Transmission Corp.	East Tennessee Natural Gas.	12–02–93	G–S	5,000	N	F	11–01–93	Indef.
ST94–2263	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	120	N	F	11–01–93	03–31–94.
ST94–2264	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	205	N	F	11–01–93	03–31–94.
ST94–2265	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12–02–93	G–S	615	N	F	11–01–93	Indef.
ST94–2266	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	266	N	F	11–01–93	03–31–94.

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ST94–2267	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	1,465	N	F	11–01–93	05–31–94.
ST94–2268	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	10	N	F	11–01–93	03–31–94.
ST94–2269	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	166	N	F	11–01–93	03–31–94.
ST94–2270	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	67	N	F	11–01–93	09–30–94.
ST94–2271	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	2,572	N	F	11–01–93	03–31–94.
ST94–2272	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	240	N	F	11–01–93	03–31–94.
ST94–2273	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	37,000	N	I	11–01–93	Indef.
ST94–2274	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	12–02–93	G–S	222	N	I	11–01–93	Indef.
ST94–2275	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–02–93	G–S	19,475	N	I	11–01–93	Indef.
ST94–2276	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–02–93	G–S	20,500	N	I	11–01–93	Indef.
ST94–2277	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–02–93	G–S	231,893	N	I	11–01–93	Indef.
ST94–2278	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12–02–93	G–S	49,030	N	I	11–01–93	Indef.
ST94–2279	Columbia Gas Transmission Corp.	Washington Gas Light Co.	12–02–93	G–S	354,000	N	I	11–01–93	Indef.
ST94–2280	Columbia Gas Transmission Corp.	Eastern Natural Gas Co.	12–02–93	G–S	1,465	N	F	11–01–93	Indef.
ST94–2281	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–02–93	G–S	1,533	N	F	11–01–93	Indef.
ST94–2282	Columbia Gas Transmission Corp.	South Jersey Gas Co.	12–02–93	B	10,222	N	F	11–01–93	Indef.
ST94–2283	Columbia Gas Transmission Corp.	Lancaster Glass	12–02–93	G–S	500	N	F	11–01–93	ndef.
ST94–2284	Columbia Gas Transmission Corp.	Toyota Motor Manufacturing USA, Inc.	12–02–93	G–S	6,064	N	F	11–01–93	Indef.
ST94–2285	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	210	N	F	11–01–93	03–31–94.
ST94–2286	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	58	N	F	11–01–93	03–31–94.
ST94–2287	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–02–93	G–S	9,801	N	F	11–01–93	Indef.
ST94–2288	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2289	Columbia Gas Transmission Corp.	Richmond Power Enterprise, L.P..	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2290	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	N/A	Y	I	11–01–93	Indef.

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ST94–2291	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–02–93	G–S	10,600	N	F	11–01–93	03–31–94.
ST94–2292	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	10,000	N	F	11–01–93	03–31–94.
ST94–2293	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	50	N	F	11–01–93	03–31–94.
ST94–2294	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	122	N	F	11–01–93	03–31–94.
ST94–2295	Columbia Gas Transmission Corp.	Elizabethcity Gas Co.	12–02–93	G–S	3,644	N	I	11–01–93	Indef.
ST94–2296	Columbia Gas Transmission Corp.	Bluefield Gas Co	12–02–93	G–S	8,682	N	I	11–01–93	Indef.
ST94–2297	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–02–93	G–S	18,417	N	I	11–01–93	Indef.
ST94–2298	Columbia Gas Transmission Corp.	North Carolina Natural Gas Corp.	12–02–93	G–S	5,199	N	I	11–01–93	Indef.
ST94–2299	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–02–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–2300	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	12–02–93	G–S	10,893	N	I	11–01–93	Indef.
ST94–2301	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–02–93	G–S	100	N	I	11–01–93	Indef.
ST94–2302	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	B	32,651	N	F	11–01–93	Indef.
ST94–2303	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–02–93	G–S	200	N	F	11–01–93	Indef.
ST94–2304	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	12–02–93	G–S	186	N	F	11–01–93	03–31–94.
ST94–2305	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	12–02–93	G–S	2,650	N	F	11–01–93	Indef.
ST94–2306	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12–02–93	G–S	215	N	F	11–01–93	03–31–94.
ST94–2307	Columbia Gas Transmission Corp.	Piedmont Natural Gas Co.	12–02–93	G–S	23,000	N	F	11–01–93	Indef.
ST94–2308	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	12–02–93	G–S	3,050	N	F	11–01–93	Indef.
ST94–2309	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	6,350	N	F	11–01–93	Indef.
ST94–2310	Columbia Gas Transmission Corp.	Empire Detroit Steel.	12–02–93	G–S	2,942	N	F	11–01–93	03–31–94.
ST94–2311	Columbia Gas Transmission Corp.	New England Power.	12–02–93	G–S	60,790	N	F	11–01–93	10–31–14.
ST94–2312	Columbia Gas Transmission Corp.	Georgecity Cogeneration, L.P..	12–02–93	G–S	6,700	N	F	11–01–93	Indef.
ST94–2313	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	150	N	F	11–01–93	03–31–94.
ST94–2314	Columbia Gas Transmission Corp.	PPG Industries ..	12–02–93	G–S	104	N	F	11–01–93	03–31–94.

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ST94–2315	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	G–S	60,944	N	I	11–01–93	Indef.
ST94–2316	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12–02–93	G–S	16,517	N	I	11–01–93	Indef.
ST94–2317	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12–02–93	G–S	10,715	N	I	11–01–93	Indef.
ST94–2318	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric Corp.	12–02–93	G–S	8,985	N	I	11–01–93	Indef.
ST94–2319	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12–02–93	G–S	3,366	N	I	11–01–93	Indef.
ST94–2320	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–02–93	G–S	141,937	N	I	11–01–93	Indef.
ST94–2321	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	12–02–93	G–S	7,455	N	F	11–01–93	Indef.
ST94–2322	Columbia Gas Transmission Corp.	Columbia Gas of Ohio.	12–02–93	G–S	1,407,930	A	I	11–01–93	Indef.
ST94–2323	Columbia Gas Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	12–02–93	G–S	456,776	A	I	11–01–93	Indef.
ST94–2324	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–02–93	G–S	242,984	N	I	11–01–93	Indef.
ST94–2325	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12–02–93	G–S	68,514	N	I	11–01–93	Indef.
ST94–2326	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–02–93	G–S	51,186	N	I	11–01–93	Indef.
ST94–2327	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	12–02–93	G–S	10,110	N	I	11–01–93	Indef.
ST94–2328	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12–02–93	G–S	205,019	N	I	11–01–93	Indef.
ST94–2329	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–02–93	G–S	65,359	N	I	11–01–93	Indef.
ST94–2330	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	103,059	A	I	11–01–93	Indef.
ST94–2331	Columbia Gas Transmission Corp.	Ashland Petroleum Co.	12–02–93	G–S	3,500	N	F	11–01–93	Indef.
ST94–2332	Columbia Gas Transmission Corp.	Westvaco Corp .	12–02–93	G–S	4,186	N	F	11–01–93	10–31–08.
ST94–2333	Columbia Gas Transmission Corp.	Mark Resources Corp.	12–02–93	G–S	900	N	F	11–01–93	Indef.
ST94–2334	Columbia Gas Transmission Corp.	West Ohio Gas Co.	12–02–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2335	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	4,000	N	F	11–01–93	Indef.
ST94–2336	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–02–93	G–S	3,257	N	F	11–01–93	Indef.
ST94–2337	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	12–02–93	G–S	22,340	N	F	11–01–93	Indef.
ST94–2338	Columbia Gas Transmission Corp.	Equitable Resources Marketing Co.	12–02–93	G–S	9,400	N	F	11–01–93	03–31–94.

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ST94–2339	Columbia Gas Transmission Corp.	Stand Energy	12–02–93	G–S	325	N	F	11–01–93	Indef.
ST94–2340	Columbia Gas Transmission Corp.	Krupp Energy Engineering, Inc.	12–02–93	G–S	750	N	F	11–01–93	Indef.
ST94–2341	Columbia Gas Transmission Corp.	City of Richmond	12–02–93	G–S	41,913	N	I	11–01–93	Indef.
ST94–2342	Columbia Gas Transmission Corp.	Panhandle Trading Co.	12–02–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2343	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12–02–93	G–S	61,252	A	F	11–01–93	Indef.
ST94–2344	Columbia Gas Transmission Corp.	Gas Transport, Inc.	12–02–93	G–S	1,650	N	F	11–01–93	Indef.
ST94–2345	Columbia Gas Transmission Corp.	Eastern Marketing Corp.	12–02–93	G–S	5,500	N	F	11–01–93	Indef.
ST94–2346	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12–02–93	G–S	95	A	F	11–01–93	03–31–94.
ST94–2347	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	7,166	N	F	11–01–93	03–31–94.
ST94–2348	Columbia Gas Transmission Corp.	Latrobe Steel Co	12–02–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2349	Columbia Gas Transmission CORP..	Interstate Gas Supply, Inc.	12–02–93	G–S	1,000	N	F	11–01–93	03–31–94.
ST94–2350	Columbia Gas Transmission Corp.	Enron Access Corp.	12–02–93	G–S	165	N	F	11–01–93	03–31–94.
ST94–2351	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	12–02–93	G–S	117,680	N	F	11–01–93	Indef.
ST94–2352	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	12–02–93	B	67,100	N	F	11–01–93	Indef.
ST94–2353	Columbia Gas Transmission Corp.	Columbia Gas of Ohio.	12–02–93	B	2,500	A	F	11–01–93	Indef.
ST94–2354	Columbia Gas Transmission Corp.	National Fuel Gas Supply.	12–02–93	G–S	10	N	F	11–01–93	Indef.
ST94–2355	Columbia Gas Transmission Corp.	National Fuel Gas Distribution Corp.	12–02–93	G–S	7,748	N	F	11–01–93	Indef.
ST94–2356	Columbia Gas Transmission Corp.	Honda of America Manufacturing, Inc.	12–02–93	G–S	4,000	N	F	11–01–93	03–31–94.
ST94–2357	Columbia Gas Transmission Corp.	UGI Utilities, Inc	12–02–93	B	50,412	N	F	11–01–93	Indef.
ST94–2358	Columbia Gas Transmission Corp.	Public Service Electric & Gas.	12–02–93	B	55,000	N	F	11–01–93	Indef.
ST94–2359	Columbia Gas Transmission Corp.	Baltimore Gas & Electric Co.	12–02–93	B	123,396	N	F	11–01–93	Indef.
ST94–2360	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12–02–93	B	3,500	N	F	11–01–93	Indef.
ST94–2361	Transcontinental Gas P/L Corp.	Pennsylvania Fuel Gas Co.	12–02–93	G–S	4,412	A	F	11–06–93	10–31–12.
ST94–2362	Transcontinental Gas P/L Corp.	City of Richmond	12–02–93	G–S	366	N	F	11–06–93	03–31–17.
ST94–2363	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	12–02–93	G–S	10,327	N	F	11–06–93	10–31–12.

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ST94–2364	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	12–02–93	G–S	251,719	A	I	11–02–93	09–30–94.
ST94–2365	Natural Gas P/L Co. of America.	U.S. Gas Transportation, Inc.	12–02–93	G–S	30,000	N	I	11–10–93	Indef.
ST94–2366	Kern River Gas Transmission Co.	Southwest Gas Corp.	12–02–93	B	14,000	N	F	11–03–93	Indef.
ST94–2367	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	12–02–93	B	5,089	N	F	11–01–93	Indef.
ST94–2368	Pacific Gas Transmission Co.	Chevron U.S.A., Inc.	12–02–93	G–S	31,348	N	F	11–01–93	Indef.
ST94–2369	Pacific Gas Transmission Co.	Petro-Canada Hydrocarbons, Inc.	12–02–93	G–S	27,658	N	F	11–01–93	Indef.
ST94–2370	Pacific Gas Transmission Co.	Cascade Natural Gas Corp.	12–02–93	G–S	31,335	N	F	11–01–93	Indef.
ST94–2371	Pacific Gas Transmission Co.	Washington Water Power Co.	12–02–93	G–S	54,841	N	F	11–01–93	Indef.
ST94–2372	Pacific Gas Transmission Co.	Washington Water Power Co.	12–02–93	G–S	20,782	N	F	11–01–93	Indef.
ST94–2373	Texas Gas Transmission Corp.	Elizabeth Natural Gas, Inc.	12–03–93	G–S	50	N	F	11–01–93	Indef.
ST94–2374	Texas Gas Transmission Corp.	City of Basile	12–03–93	G–S	900	N	F	11–01–93	Indef.
ST94–2375	Texas Gas Transmission Corp.	Evangeline Gas Co., Inc.	12–03–93	G–S	2,600	N	F	11–01–93	Indef.
ST94–2376	Texas Gas Transmission Corp.	Entex	12–03–93	G–S	250	N	F	11–01–93	Indef.
ST94–2377	Texas Gas Transmission Corp.	Lafourche Gas Corp.	12–03–93	G–S	1,300	N	F	11–01–93	Indef.
ST94–2378	Texas Gas Transmission Corp.	Jennings Gas, Inc.	12–03–93	G–S	35	N	F	11–01–93	Indef.
ST94–2379	Texas Gas Transmission Corp.	Farmers Gas Service, Inc.	12–03–93	G–S	200	N	F	11–01–93	Indef.
ST94–2380	Texas Gas Transmission Corp.	City of Mamou ...	12–03–93	G–S	2,100	N	F	11–01–93	Indef.
ST94–2381	Texas Gas Transmission Corp.	Mowata Gas Co	12–03–93	G–S	200	N	F	11–01–93	Indef.
ST94–2382	Texas Gas Transmission Corp.	City of Morgan ..	12–03–93	G–S	6,284	N	F	11–01–93	Indef.
ST94–2383	Texas Gas Transmission Corp.	Nezpique Gas System, Inc.	12–03–93	G–S	250	N	F	11–01–93	Indef.
ST94–2384	Texas Gas Transmission Corp.	Richie Gas System, Inc.	12–03–93	G–S	50	N	F	11–01–93	Indef.
ST94–2385	Transok, Inc	ANR Pipeline Co., et al.	12–03–93	C	5,000	N	I	11–06–93	Indef.
ST94–2386	Sabine Pipe Line Co.	LL&E Gas Marketing, Inc.	12–03–93	G–S	250,000	N	I	11–01–93	Indef.
ST94–2387	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–03–93	B	5,690	N	F	11–10–93	Indef.
ST94–2388	Algonquin Gas Transmission Co.	Boston Edison Co.	12–03–93	G–S	250,000	N	I	11–12–93	Indef.

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ST94–2389	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	12–03–93	B	4,207	N	F	11–07–93	Indef.
ST94–2391	Gulf Energy Pipeline Co.	Natural Gas Pipeline Co. of America.	12–03–93	C	10,000	N	I	11–02–93	Indef.
ST94–2392	Gulf Energy Pipeline Co.	Trunkline Gas Co.	12–03–93	C	25,000	N	I	11–01–93	11–01–98.
ST94–2393	Southern Natural Gas Co.	City of Havana ..	12–03–93	G–S	201	N	F	11–05–93	09–30–06.
ST94–2394	Natural Gas P/L Co. of America.	O&R Energy, Inc	12–03–93	G–S	10,000	N	F	11–09–93	11–30–93.
ST94–2395	El Paso Natural Gas Co.	ONG Western, Inc.	12–03–93	B	51,500	N	I	11–08–93	Indef.
ST94–2396	Williams Natural Gas Co.	Marathon Oil Co	12–03–93	G–S	300	N	I	10–22–93	10–01–94.
ST94–2397	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–30–93	09–30–94.
ST94–2398	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–01–93	09–30–94.
ST94–2399	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–03–93	G–S	10,000	N	I	10–22–93	09–30–94.
ST94–2400	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	2,000	N	I	10–12–93	09–30–98.
ST94–2401	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	2,000	N	I	10–01–93	09–30–95.
ST94–2402	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–03–93	G–S	5,000	N	I	10–22–93	09–30–95.
ST94–2403	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2404	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2405	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2406	Williams Natural Gas Co.	Vesta Energy Co	12–03–93	G–S	20,000	N	I	10–28–93	09–30–98.
ST94–2407	Williams Natural Gas Co.	Cabot Oil & Gas Marketing Corp.	12–03–93	G–S	20,000	N	I	10–23–93	09–30–98.
ST94–2408	Williams Natural Gas Co.	PG&E Resources Co.	12–03–93	G–S	20,000	N	I	10–01–93	11–01–95.
ST94–2409	Williams Natural Gas Co.	Associated Natural Gas, Inc.	12–03–93	G–S	50,000	N	I	10–01–93	09–30–98.
ST94–2410	Williams Natural Gas Co.	Amoco Energy Trading Corp.	12–03–93	G–S	2,000,000	N	I	10–22–93	09–30–03.
ST94–2411	Williams Natural Gas Co.	Marathon Oil Co	12–03–93	G–S	200	N	I	10–30–93	10–01–94.
ST94–2412	Williams Natural Gas Co.	Industrial Gas Services, Inc.	12–03–93	G–S	1,500	N	I	10–22–93	09–30–94.
ST94–2413	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2414	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2415	Williams Natural Gas Co.	Cibola Corp	12–03–93	G–S	5,000	N	I	10–22–93	09–30–98.
ST94–2416	Williams Natural Gas Co.	Mobil Natural Gas, Inc.	12–03–93	G–S	20,000	N	I	10–07–93	09–30–94.
ST94–2417	Natural Gas P/L Co. of America.	City of Salem	12–06–93	G–S	5,000	N	I	11–12–93	Indef.
ST94–2418	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	12–06–93	G–S	30,000	N	F	11–30–93	11–30–98.
ST94–2419	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	12–06–93	G–S	25,000	N	F	11–19–93	11–30–98.
ST94–2420	K N Interstate Gas Trans. Co.	NGC Transportation, Inc.	12–06–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–2421	K N Interstate Gas Trans. Co.	Utilicorp United, Inc.	12–06–93	G–S	43,500	N	I	10–01–93	Indef.
ST94–2422	K N Interstate Gas Trans. Co.	NGC Transportation, Inc.	12–06–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–2423	K N Interstate Gas Trans. Co.	Amoco Energy Trading Corp.	12–06–93	G–S	35,000	N	I	10–01–93	Indef.

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ST94–2424	K N Interstate Gas Trans. Co.	Quivira Gas Co .	12–06–93	G–S	35,000	N	I	10–01–93	Indef.
ST94–2425	K N Interstate Gas Trans. Co.	Williston Basin Interstate P/L Co.	12–06–93	G	10,500	N	I	10–01–93	Indef.
ST94–2426	K N Interstate Gas Trans. Co.	Western Resources, Inc.	12–06–93	G–S	10,403	N	F	10–01–93	04–30–95.
ST94–2427	K N Interstate Gas Trans. Co.	Tristar Gas Co ..	12–06–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–2428	ANR Pipeline Co	Natural Gas Pipeline Co. of America.	12–06–93	G	N/A	N	I	11–01–93	Indef.
ST94–2429	ANR Pipeline Co	Texaco Exploration & Production Inc.	12–06–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2430	Colorado Interstate Gas Co.	Continental Natural Gas Inc.	12–06–93	G–S	10,400	N	I	11–15–93	Indef.
ST94–2431	Colorado Interstate Gas Co.	City of Colorado Springs.	12–06–93	G–S	9,398	N	I	11–25–93	Indef.
ST94–2432	Colorado Interstate Gas Co.	Montana Power Co.	12–06–93	B	5,471	N	I	11–23–93	Indef.
ST94–2433	Koch Gateway Pipeline Co.	Entex	12–07–93	G–S	91,000	N	F	11–22–93	03–22–94.
ST94–2434	Koch Gateway Pipeline Co.	Prior Intrastate Corp.	12–07–93	G–S	126	N	F	11–15–93	03–15–94.
ST94–2435	Koch Gateway Pipeline Co.	Boston Gas Co .	12–07–93	G–S	57,220	N	F	11–15–93	03–15–94.
ST94–2436	Koch Gateway Pipeline Co.	Exxon Corp	12–07–93	G–S	14,406	N	F	11–15–93	03–15–94.
ST94–2437	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–07–93	G–S	11,677	A	F	11–15–93	03–15–94.
ST94–2438	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–07–93	G–S	1,750	A	F	11–15–93	03–15–94.
ST94–2439	Koch Gateway Pipeline Co.	Williamsville Water Co., Inc.	12–07–93	G–S	321	N	I	11–10–93	04–01–97.
ST94–2440	Koch Gateway Pipeline Co.	Arco Natural Gas Marketing, Inc.	12–07–93	G–S	20,000	N	F	11–15–93	03–15–94.
ST94–2441	Tennessee Gas Pipeline Co.	Samedan Oil Corp.	12–07–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2442	Tennessee Gas Pipeline Co.	Phibro Energy, Inc.	12–07–93	G–S	6,800	N	F	12–01–93	Indef.
ST94–2443	Tennessee Gas Pipeline Co.	Bay State Gas Co.	12–07–93	G–S	768	N	F	12–01–93	Indef.
ST94–2444	Tennessee Gas Pipeline Co.	Western Gas Resources, Inc.	12–07–93	G–S	10,000	N	F	12–01–93	Indef.
ST94–2445	Tennessee Gas Pipeline Co.	Virginia Natural Gas, Inc.	12–07–93	G–S	2,914	N	F	12–01–93	Indef.
ST94–2446	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–07–93	C	75,000	N	I	11–09–93	Indef.
ST94–2447	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–07–93	C	75,000	N	I	11–11–93	Indef.
ST94–2448	Texas Gas Transmission Corp.	Mayor & Alderman of Halls.	12–07–93	G–S	2,100	N	F	11–01–93	Indef.
ST94–2449	Texas Gas Transmission Corp.	Poplar Grove Utility District.	12–07–93	G–S	1,463	N	F	11–01–93	Indef.
ST94–2450	Texas Gas Transmission Corp.	City of Clarendon.	12–07–93	G–S	1,958	N	F	11–01–93	Indef.
ST94–2451	Texas Gas Transmission Corp.	City of Brownsville Utility Board.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2452	Texas Gas Transmission Corp.	City of Humboldt	12–07–93	G–S	7,000	N	F	11–01–93	Indef.
ST94–2453	Texas Gas Transmission Corp.	First Utility District of Tipton.	12–07–93	G–S	1,500	N	F	11–01–93	Indef.

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ST94–2454	Texas Gas Transmission Corp.	City of Faiars Point.	12–07–93	G–S	850	N	F	11–01–93	Indef.
ST94–2455	Texas Gas Transmission Corp.	Board & Aldermen of Covington.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2456	Texas Gas Transmission Corp.	Crockett Public Utility District.	12–07–93	G–S	1,700	N	F	11–01–93	Indef.
ST94–2457	Texas Gas Transmission Corp.	City of Gallaway	12–07–93	G–S	204	N	F	11–01–93	Indef.
ST94–2458	Texas Gas Transmission Corp.	Gas Utility Dist. #3 of Grant Parish.	12–07–93	G–S	558	N	F	11–01–93	Indef.
ST94–2459	Texas Gas Transmission Corp.	Colvin Gas Co ...	12–07–93	G–S	20	N	F	11–01–93	Indef.
ST94–2460	Texas Gas Transmission Corp.	Evangeline Gas Co., Inc.	12–07–93	G–S	27	N	F	11–01–93	Indef.
ST94–2461	Texas Gas Transmission Corp.	Mayor & Aldermen of Bells.	12–07–93	G–S	1,221	N	F	11–01–93	Indef.
ST94–2462	Texas Gas Transmission Corp.	Ranoke Farm Gas Co., Inc.	12–07–93	G–S	125	N	F	11–01–93	Indef.
ST94–2463	Texas Gas Transmission Corp.	City of Holly Grove.	12–07–93	G–S	651	N	F	11–01–93	Indef.
ST94–2464	Texas Gas Transmission Corp.	City of Jenea	12–07–93	G–S	1,700	N	F	11–01–93	Indef.
ST94–2465	Texas Gas Transmission Corp.	City of Henning .	12–07–93	G–S	457	N	F	11–01–93	Indef.
ST94–2466	Texas Gas Transmission Corp.	City of Olive Branch.	12–07–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2467	Texas Gas Transmission Corp.	City of Munford .	12–07–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2468	Texas Gas Transmission Corp.	City of Metcalfe .	12–07–93	G–S	352	N	F	11–01–93	Indef.
ST94–2469	Texas Gas Transmission Corp.	Jones Gas Co ...	12–07–93	G–S	150	N	F	11–01–93	Indef.
ST94–2470	Texas Gas Transmission Corp.	City of Maury City.	12–07–93	G–S	700	N	F	11–01–93	Indef.
ST94–2471	Texas Gas Transmission Corp.	City of Marvell ...	12–07–93	G–S	1,812	N	F	11–01–93	Indef.
ST94–2472	Texas Gas Transmission Corp.	Louisians Gas Service Co.	12–07–93	G–S	1,259	N	F	11–01–93	Indef.
ST94–2473	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	12–07–93	G–S	206,123	N	F	11–01–93	Indef.
ST94–2474	Northwest Pipeline Corp.	Washington Energy Marketing, Inc.	12–07–93	G–S	616	N	F	11–01–93	Indef.
ST94–2475	Northwest Pipeline Corp.	Washington Natural Gas Co.	12–07–93	G–S	306,733	N	F	11–01–93	Indef.
ST94–2476	Northwest Pipeline Corp.	Washington Water Power Co.	12–07–93	G–S	164,141	N	F	11–01–93	Indef.
ST94–2477	Northwest Pipeline Corp.	James River Corp. of Nevada.	12–07–93	G–S	7,000	N	F	10–08–93	Indef.
ST94–2478	Northwest Pipeline Corp.	James River Corp.	12–07–93	G–S	2,341	N	F	10–07–93	Indef.

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ST94–2479	Northwest Pipeline Corp.	James River Corp.	12–07–93	G–S	8,000	N	F	10–08–93	Indef.
ST94–2480	Northwest Pipeline Corp.	Grand Valley Gas Co.	12–07–93	G–S	7,250	N	F	06–01–93	Indef.
ST94–2481	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,449	A	F	02–01–93	03–21–98.
ST94–2482	Northwest Pipeline Corp.	Greeley Gas Co	12–07–93	G–S	3,816	N	F	11–01–93	Indef.
ST94–2483	Northwest Pipeline Corp.	City of Buckley ..	12–07–93	G–S	2,469	N	F	11–01–93	Indef.
ST94–2484	Northwest Pipeline Corp.	Northwest Natural Gas Co.	12–07–93	G–S	246,044	N	F	11–01–93	Indef.
ST94–2485	Northwest Pipeline Corp.	Boeing Co	12–07–93	G–S	10,000	N	F	11–02–93	Indef.
ST94–2486	Northwest Pipeline Corp.	Coastal Gas Marketing Co.	12–07–93	G–S	75,000	N	F	11–01–93	10–31–94.
ST94–2487	Transcontinental Gas P/L Corp.	Scana Hydrocarbons, Inc.	12–07–93	G–S	400,000	N	I	11–18–93	Indef.
ST94–2488	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,811	A	F	02–01–93	03–21–98.
ST94–2489	Transcontinental Gas P/L Corp.	Enmark Gas Corp.	12–07–93	G–S	3,937	A	F	02–01–93	03–21–98.
ST94–2490	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	4,075	A	F	02–01–93	03–21–98.
ST94–2491	Transcontinental Gas P/L Corp.	Enmark Gas Corp.	12–07–93	G–S	3,865	N	F	02–01–93	03–21–98.
ST94–2492	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	1,449	N	F	02–01–93	03–21–98.
ST94–2493	Transcontinental Gas P/L Corp.	City of Elberton .	12–07–93	G–S	500	N	F	11–23–93	11–22–13.
ST94–2494	Transcontinental Gas P/L Corp.	City of Royston .	12–07–93	G–S	250	N	F	11–23–93	11–22–13.
ST94–2495	Transcontinental Gas P/L Corp.	Mapleville Water & Gas Board.	12–07–93	G–S	379	N	F	11–23–93	11–22–13.
ST94–2496	Transcontinental Gas P/L Corp.	City of Bowman .	12–07–93	G–S	55	N	F	11–23–93	11–22–13.
ST94–2497	Transcontinental Gas P/L Corp.	Corning Natural Gas Corp.	12–07–93	G–S	868	N	F	11–10–93	10–31–12.
ST94–2498	Transcontinental Gas P/L Corp.	Conoco, Inc	12–07–93	G–S	3,324	A	F	02–01–93	03–21–98.
ST94–2499	Williams Natural Gas Co.	Amoco Production Co.	12–07–93	G–S	2,000,000	N	I	10–31–93	Indef.
ST94–2500	Williams Natural Gas Co.	Plains Petroleum Operating Co.	12–07–93	G–S	2,500	N	I	10–05–93	10–01–94.
ST94–2501	Williams Natural Gas Co.	Vesta Energy Co	12–07–93	G–S	20,000	N	I	10–05–93	Indef.
ST94–2502	Williams Natural Gas Co.	Mountain Iron & Supply Co.	12–07–93	G–S	2,000	N	I	10–01–93	10–01–95.
ST94–2503	Williams Natural Gas Co.	Consolidated Fuel Corp.	12–07–93	G–S	40,000	N	I	10–02–93	10–01–94.
ST94–2504	Williams Natural Gas Co.	K N Energy, Inc	12–07–93	G–S	15,000	N	I	10–08–93	10–01–94.
ST94–2505	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–01–93	10–01–94.
ST94–2506	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	12–07–93	G–S	25,000	N	I	10–14–93	Indef.
ST94–2507	Williams Natural Gas Co.	Mid Continental Energy Co.	12–07–93	G–S	250	N	I	10–21–93	10–01–94.
ST94–2508	Williams Natural Gas Co.	Premier Gas Co	12–07–93	G–S	250	N	I	10–01–93	09–30–98.
ST94–2509	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–22–93	09–30–94.
ST94–2510	Williams Natural Gas Co.	Mobil Natural Gas, Inc.	12–07–93	G–S	40,000	N	I	10–01–93	10–01–94.
ST94–2511	Williams Natural Gas Co.	Williams Gas Marketing Co.	12–07–93	G–S	450,000	A	I	10–05–93	10–01–94.
ST94–2512	Williams Natural Gas Co.	Rangeline Corp .	12–07–93	G–S	50,000	N	I	10–05–93	Indef.
ST94–2513	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	12–07–93	G–S	50,000	N	I	10–22–93	Indef.

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ST94–2514	Williams Natural Gas Co.	Energy Dynamics, Inc.	12–07–93	G–S	10,000	N	I	10–22–93	Indef.
ST94–2515	Williams Natural Gas Co.	Post Rock Gas, Inc.	12–07–93	G–S	150	N	I	10–02–93	Indef.
ST94–2516	Williams Natural Gas Co.	Tenaska Marketing Venture.	12–07–93	G–S	100,000	N	I	10–20–93	Indef.
ST94–2517	Williams Natural Gas Co.	Mesa Operating L.P.	12–07–93	G–S	55,000	N	I	10–01–93	Indef.
ST94–2518	Williams Natural Gas Co.	Cibola Corp	12–07–93	G–S	5,000	N	I	10–01–93	Indef.
ST94–2519	Williams Natural Gas Co.	Associated Natural Gas, Inc.	12–07–93	G–S	50,000	N	I	10–07–93	10–01–94.
ST94–2520	Williams Natural Gas Co.	Osy USA, Inc	12–07–93	G–S	5,000	N	I	10–23–93	09–30–94.
ST94–2521	Williams Natural Gas Co.	Oxy USA, Inc	12–07–93	G–S	5,000	N	I	10–22–93	09–30–94.
ST94–2522	Williams Natural Gas Co.	Texaco Exploration & Production.	12–07–93	G–S	5,000	N	I	10–06–93	09–30–98.
ST94–2523	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–07–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2524	Williams Natural Gas Co.	Parker & Parsley Development Co.	12–07–93	G–S	5,000	N	I	10–01–93	10–01–94.
ST94–2525	Williams Natural Gas Co.	Natural Gas Pipeline Co. of America.	12–07–93	G–S	10,000	N	I	10–23–93	10–01–94.
ST94–2526	Williams Natural Gas Co.	Gedi, Inc	12–07–93	G–S	5,000	N	I	10–01–93	09–30–98.
ST94–2527	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	12–07–93	G–S	25,000	N	I	10–22–93	09–30–13.
ST94–2528	Williams Natural Gas Co.	Amoco Production Co.	12–07–93	G–S	5,000	N	I	10–05–93	09–30–13.
ST94–2529	Williams Natural Gas Co.	Amoco Energy Trading Co.	12–07–93	G–S	5,000	N	I	10–05–93	09–30–03.
ST94–2530	Williams Natural Gas Co.	Hugton Energy Corp.	12–07–93	G–S	1,000	N	I	10–09–93	09–30–98.
ST94–2531	Williams Natural Gas Co.	Anadarko Trading Co.	12–07–93	G–S	10,000	N	I	10–01–93	10–01–94.
ST94–2532	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America.	12–07–93	C	250,000	N	I	11–10–93	Indef.
ST94–2533	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	12–07–93	C	5,000	N	I	11–08–93	Indef.
ST94–2534	Columbia Gas Transmission Corp.	Tenneco Gas Marketing.	12–07–93	G–S	500	N	F	11–01–93	Indef.
ST94–2535	Columbia Gas Transmission Corp.	Constitution Gas Transport, Inc.	12–07–93	B	2,000	N	I	11–01–93	Indef.
ST94–2536	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	12–07–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–2537	Columbia Gas Transmission Corp.	AGF Direct Gas Sales.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2538	Columbia Gas Transmission Corp.	Roanoke Gas Co.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2539	Columbia Gas Transmission Corp.	Western Gas Resources, Inc.	12–07–93	G–S	N/A	N	I	11–01–93	Indef.
ST94–2540	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	12–07–93	B	N/A	N	I	11–01–93	Indef.
ST94–2541	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–08–93	B	1,254	N	F	11–10–93	Indef.
ST94–2542	Texas Gas Transmission Corp.	Mayor & Aldermen of Ripley.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.

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ST94–2543	Texas Gas Transmission Corp.	City of Winstonville.	12–08–93	G–S	185	N	F	11–01–93	Indef.
ST94–2544	Texas Gas Transmission Corp.	City of Benton ...	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2545	Texas Gas Transmission Corp.	City of Friendship.	12–08–93	G–S	358	N	F	11–01–93	Indef.
ST94–2546	Texas Gas Transmission Corp.	City of Fulton	12–08–93	G–S	2,624	N	F	11–01–93	Indef.
ST94–2547	Texas Gas Transmission Corp.	Gibson County Utility District.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2548	Texas Gas Transmission Corp.	City of Hardin	12–08–93	G–S	1,250	N	F	11–01–93	Indef.
ST94–2549	Texas Gas Transmission Corp.	City of Kuttawa ..	12–08–93	G–S	1,118	N	F	11–01–93	Indef.
ST94–2550	Texas Gas Transmission Corp.	City of Martin	12–08–93	G–S	5,000	N	F	11–01–93	Indef.
ST94–2551	Texas Gas Transmission Corp.	City of Murray ...	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2552	Texas Gas Transmission Corp.	City of South Fulton.	12–08–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2553	Texas Gas Transmission Corp.	United Cities Gas Co.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2554	Texas Gas Transmission Corp.	Boonville Natural Gas Corp.	12–08–93	G–S	5,695	N	F	11–01–93	Indef.
ST94–2555	Williams Natural Gas Co.	Missouri Public Service.	12–08–93	G–S	20,000	N	I	10–31–93	10–01–96.
ST94–2556	Williams Natural Gas Co.	Phillips Petroleum Co.	12–08–93	G–S	20,000	N	I	10–31–93	10–01–94.
ST94–2557	Arkla Energy Resources Co.	City Utilities of Springfield.	12–08–93	G–S	20,000	N	F	12–01–93	03–31–94.
ST94–2558	Arkla Energy Resources Co.	Nucor-Yamoto Steel Co.	12–08–93	G–S	9,000	N	I	12–01–93	Indef.
ST94–2559	Arkla Energy Resources Co.	Wickford Energy	12–08–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–2560	Arkla Energy Resources Co.	Associated Natural Gas, Inc.	12–08–93	G–S	7,500	N	F	12–01–93	11–30–94.
ST94–2561	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	141,000	Y	I	09–01–92	Indef.
ST94–2562	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	731,200	N	I	10–01–93	Indef.
ST94–2563	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	12–08–93	C	30,000	N	I	11–01–93	Indef.
ST94–2564	Northern Illinois Gas Co.	Brooklyn Union Interstate Nat. Gas.	12–08–93	C	20,000	N	I	11–15–93	11–30–93.
ST94–2565	Northern Illinois Gas Co.	Enron Gas	12–08–93	C	200	N	I	11–15–93	11–30–93.
ST94–2566	Northern Illinois Gas Co.	Texpar Energy, Inc.	12–08–93	C	1,200	N	I	11–15–93	11–30–93.
ST94–2567	Texas Gas Transmission Corp.	City of Jasonville	12–08–93	G–S	1,850	N	F	11–01–93	Indef.
ST94–2568	Texas Gas Transmission Corp.	Indiana Natural Gas Corp.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.

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ST94–2569	Texas Gas Transmission Corp.	Village of Flat Rock.	12–08–93	G–S	500	N	F	11–01–93	Indef.
ST94–2570	Texas Gas Transmission Corp.	Dome Gas Co., Inc.	12–08–93	G–S	5,185	N	F	11–01–93	Indef.
ST94–2571	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–08–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2572	Texas Gas Transmission Corp.	City of Morganfield.	12–08–93	G–S	7,450	N	F	11–01–93	Indef.
ST94–2573	Texas Gas Transmission Corp.	City of Livermore	12–08–93	G–S	5,500	N	F	11–01–93	Indef.
ST94–2574	Texas Gas Transmission Corp.	City of Linton	12–08–93	G–S	5,100	N	F	11–01–93	Indef.
ST94–2575	Texas Gas Transmission Corp.	City of Lewisport	12–08–93	G–S	2,925	N	F	11–01–93	Indef.
ST94–2576	Texas Gas Transmission Corp.	City of Clay	12–08–93	G–S	1,250	N	F	11–01–93	Indef.
ST94–2577	Texas Gas Transmission Corp.	Community Natural Gas Co., Inc.	12–08–93	G–S	3,600	N	F	11–01–93	Indef.
ST94–2578	Texas Gas Transmission Corp.	Chandler Natural Gas Corp.	12–08–93	G–S	1,850	N	F	11–01–93	Indef.
ST94–2579	Pacific Gas Transmission Co.	Pancanadian Petroleum Co.	12–09–93	G–S	40,338	N	F	11–01–93	Indef.
ST94–2580	Pacific Gas Transmission Co.	Pacific Gas & Electric Co.	12–09–93	G–S	1,081,990	N	F	11–01–93	Indef.
ST94–2581	Northern Natural Gas Co.	Northwestern Public Service Co.	12–09–93	B	2,382	N	F/I	11–03–93	Indef.
ST94–2582	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	183,399	N	I	11–06–93	Indef.
ST94–2583	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	4,333	N	I	09–01–93	Indef.
ST94–2584	Equitrans, Inc	Equitable Gas Co.	12–09–93	G–S	25,654	N	I	09–01–93	Indef.
ST94–2585	Trunkline Gas Co.	Illinois Power Co	12–09–93	G–S	60,000	N	F	12–01–93	Indef.
ST94–2585	Trunkline Gas Co.	Memphis Light, Gas & Electric.	12–10–93	C–S	10,000	N	F	12–01–93	Indef.
ST94–2587	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	2,000	N	F	11–01–93	10–31–95.
ST94–2588	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	194	N	F	11–01–93	12–31–05.
ST94–2589	Southern Natural Gas Co.	City of Cordova .	12–09–93	G–S	397	N	F	11–01–93	10–31–03.
ST94–2590	Southern Natural Gas Co.	City of Quitman .	12–09–93	G–S	778	N	F	11–01–93	10–31–96.
ST94–2591	Southern Natural Gas Co.	City of Quincy ...	12–09–93	G–S	1,507	N	F	11–01–93	10–31–96.
ST94–2592	Southern Natural Gas Co.	City of Tallassee	12–09–93	G–S	1,587	N	F	11–01–93	10–31–03.
ST94–2593	Southern Natural Gas Co.	City of Gordo	12–09–93	G–S	605	N	F	11–01–93	10–31–03.
ST94–2594	Southern Natural Gas Co.	City of Tallapossa.	12–09–93	G–S	935	N	F	11–01–93	10–31–94.
ST94–2595	Southern Natural Gas Co.	City of Grantville	12–09–93	G–S	284	N	F	11–01–93	10–31–96.
ST94–2596	Southern Natural Gas Co.	City of Summerville.	12–09–93	G–S	2,000	N	F	11–01–93	10–31–95.
ST94–2597	Southern Natural Gas Co	Northwest Alabama Gas District.	12–09–93	G–S	2,125	N	F	11–01–93	04–30–96.

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ST94–2598	Southern Natural Gas Co.	Pickens County Gas District.	12–09–93	G–S	1,069	N	F	11–01–93	10–31–03.
ST94–2599	Southern Natural Gas Co.	Polaris Corp	12–09–93	G–S	160	N	F	11–01–93	10–31–96.
ST94–2600	Southern Natural Gas Co.	City of Eatonton	12–09–93	G–S	1,936	N	F	11–01–93	10–31–96.
ST94–2601	Southern Natural Gas Co.	City of Pelham ..	12–09–93	G–S	13	N	F	11–01–93	10–31–97.
ST94–2602	Southern Natural Gas Co.	City of Pelham ..	12–09–93	G–S	452	N	F	11–01–93	10–31–97.
ST94–2603	Southern Natural Gas Co.	Mississippi Valley Gas Co.	12–09–93	G–S	20,000	N	F	11–01–93	09–30–96.
ST94–2604	Southern Natural Gas Co.	City of Statesboro.	12–09–93	G–S	797	N	F	11–01–93	12–31–05.
ST94–2605	Southern Natural Gas Co.	City of Brookside	12–09–93	G–S	353	N	F	11–01–93	10–31–03.
ST94–2606	Southern Natural Gas Co.	City of Lanett	12–09–93	G–S	1,700	N	F	11–01–93	03–31–95.
ST94–2607	Southern Natural Gas Co.	City of Havana ..	12–09–93	G–S	450	N	F	11–01–93	10–31–95.
ST94–2608	Southern Natural Gas Co.	City of Calera	12–09–93	G–S	850	N	F	11–01–93	10–31–03.
ST94–2609	Southern Natural Gas Co.	City of Waynesboro.	12–09–93	G–S	1,226	N	F	11–01–93	10–31–95.
ST94–2610	Southern Natural Gas Co.	City of Fort Valley.	12–09–93	G–S	2,273	N	F	11–01–93	10–31–94.
ST94–2611	Southern Natural Gas Co.	City of Jasper	12–09–93	G–S	266	N	F	11–01–93	10–31–95.
ST94–2612	Southern Natural Gas Co.	City of Jasper	12–09–93	G–S	74	N	F	11–01–93	09–30–06.
ST94–2613	Southern Natural Gas Co.	City of West Jefferson.	12–09–93	G–S	373	N	F	11–01–93	10–31–03.
ST94–2614	Southern Natural Gas Co.	City of Andersonville.	12–09–93	G–S	35	N	F	11–01–93	10–31–95.
ST94–2615	Southern Natural Gas Co.	City of Mulga	12–09–93	G–S	958	N	F	11–01–93	10–31–03.
ST94–2616	Southern Natural Gas Co.	City of Edison	12–09–93	G–S	160	N	F	11–01–93	10–31–96.
ST94–2617	Iroquois Gas Trans. System, L.P.	Consolidated Edison Co. of NY, Inc.	12–09–93	G–S	20,000	N	F	09–01–93	01–01–12.
ST94–2618	Iroquois Gas Trans. System, L.P.	Colonial Gas Co	12–09–93	G–S	2,000	N	F	09–01–93	12–01–11.
ST94–2619	Iroquois Gas Trans. System, L.P.	Selkirk Cogen Partners, L.P.	12–09–93	G–S	21,000	N	F	09–01–93	12–01–11.
ST94–2620	Iroquois Gas Trans. System, L.P.	Energynorth Natural Gas, Inc.	12–09–93	G–S	4,000	N	F	09–01–93	12–01–11.
ST94–2621	Iroquois Gas Trans. System, L.P.	Masspower and Granite State Gas Tr.	12–09–93	G–S	25,000	N	F	09–01–93	11–01–12.
ST94–2622	Iroquois Gas Trans. System, L.P.	Valley Gas Co ...	12–09–93	G–S	1,000	N	F	09–01–93	12–01–11.
ST94–2623	Iroquois Gas Trans. System, L.P.	Southern Connecticut Gas Co.	12–09–93	G–S	35,000	N	F	09–01–93	01–01–12.
ST94–2624	Iroquois Gas Trans. System, L.P.	Yankee Gas Services Co.	12–09–93	G–S	9,000	N	F	09–01–93	12–01–11.
ST94–2625	Iroquois Gas Trans. System, L.P.	Pawtucket Power Associates.	12–09–93	G–S	12,000	N	F	09–01–93	11–01–12.
ST94–2626	Iroquois Gas Trans. System, L.P.	Brooklyn Union Gas Co.	12–09–93	G–S	70,000	N	F	09–01–93	01–01–12.
ST94–2627	Iroquois Gas Trans. System, L.P.	Long Island Lighting Co.	12–09–93	G–S	65,000	N	F	09–01–93	01–01–12.

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ST94–2628	Iroquois Gas Trans. System, L.P.	New York State Electric & Gas Corp.	12–09–93	G–S	11,000	N	F	09–01–93	12–01–11.
ST94–2629	Iroquois Gas Trans. System, L.P.	Granite State Gas Transmission, Inc.	12–09–93	G	35,000	N	F	09–01–93	12–01–12.
ST94–2630	Iroquois Gas Trans. System, L.P.	Central Hudson Gas & Electric Corp.	12–09–93	G–S	20,000	N	F	09–01–93	01–01–12.
ST94–2631	Iroquois Gas Trans. System, L.P.	Essex County Gas Co.	12–09–93	G–S	2,000	N	F	09–01–93	12–01–11.
ST94–2632	Iroquois Gas Trans. System, L.P.	Connecticut Natural Gas Corp.	12–09–93	G–S	25,000	N	F	09–01–93	01–01–12.
ST94–2633	Iroquois Gas Trans. System, L.P.	Boston Gas Co .	12–09–93	G–S	43,600	N	F	09–01–93	12–01–11.
ST94–2634	Iroquois Gas Trans. System, L.P.	New Jersey Natural Gas Co.	12–09–93	G–S	40,000	N	F	09–01–93	01–01–12.
ST94–2635	Iroquois Gas Trans. System, L.P.	Public Service Electric & Gas Co.	12–09–93	G–S	10,000	N	F	09–01–93	01–01–12.
ST94–2636	Southern Natural Gas Co.	City of Lafayette	12–09–93	G–S	878	N	F	11–01–93	03–31–95.
ST94–2637	Southern Natural Gas Co.	Alabaster Water & Gas Board.	12–09–93	G–S	1,397	N	F	11–01–93	03–31–95.
ST94–2638	Southern Natural Gas Co.	Alabaster Water & Gas Board.	12–09–93	G–S	2,054	N	F	11–01–93	03–31–95.
ST94–2639	Southern Natural Gas Co.	City of Dora	12–09–93	G–S	300	N	F	11–01–93	10–31–98.
ST94–2640	Southern Natural Gas Co.	City of Sparta	12–09–93	G–S	525	N	F	11–01–93	10–31–95.
ST94–2641	Southern Natural Gas Co.	City of Woodland	12–09–93	G–S	102	N	F	11–01–93	10–31–96.
ST94–2642	Southern Natural Gas Co.	City of Talbotton	12–09–93	G–S	156	N	F	11–01–93	10–31–95.
ST94–2643	Southern Natural Gas Co.	City of Fayette ...	12–09–93	G–S	1,133	N	F	11–01–93	10–31–96.
ST94–2644	Southern Natural Gas Co.	City of Artesia ...	12–09–93	G–S	120	N	F	11–01–93	10–31–94.
ST94–2645	Southern Natural Gas Co.	City of Cuthbert .	12–09–93	G–S	503	N	F	11–01–93	10–31–94.
ST94–2646	Southern Natural Gas Co.	City of Roxie	12–09–93	G–S	238	N	F	11–01–93	10–31–96.
ST94–2647	Southern Natural Gas Co.	City of West Point.	12–09–93	G–S	1,277	N	F	11–01–93	10–31–96.
ST94–2648	Southern Natural Gas Co.	West Lincoln Natural Gas District.	12–09–93	G–S	267	N	F	11–01–93	10–31–94.
ST94–2649	Southern Natural Gas Co.	City of Tchula	12–09–93	G–S	517	N	F	11–01–93	10–31–96.
ST94–2650	Southern Natural Gas Co.	City of Fultondale.	12–09–93	G–S	939	N	F	11–01–93	03–31–95.
ST94–2651	Southern Natural Gas Co.	City of Ragland .	12–09–93	G–S	318	N	F	11–01–93	03–31–95.
ST94–2652	Southern Natural Gas Co.	City of Sumiton .	12–09–93	G–S	500	N	F	11–01–93	03–31–98.
ST94–2653	Southern Natural Gas Co.	City of Dadeville	12–09–93	G–S	691	N	F	11–01–93	03–31–95.
ST94–2654	Southern Natural Gas Co.	City of Camp Hill	12–09–93	G–S	265	N	F	11–01–93	03–31–95.
ST94–2655	Southern Natural Gas Co.	Atlanta Gas Light Co.	12–09–93	G–S	6,764	N	F	11–01–93	02–28–94.
ST94–2656	Southern Natural Gas Co.	City of Jacksonville.	12–09–93	G–S	1,616	N	F	11–01–93	03–31–95.
ST94–2657	Southern Natural Gas Co.	City of Colquitt ..	12–09–93	G–S	114	N	F	11–01–93	10–31–95.
ST94–2658	Southern Natural Gas Co.	City of Fort Gaines.	12–09–93	G–S	142	N	F	11–01–93	10–31–95.

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ST94–2659	Southern Natural Gas Co.	City of Shellman	12–09–93	G–S	105	N	F	11–01–93	10–31–95.
ST94–2660	Southern Natural Gas Co.	City of Richland .	12–09–93	G–S	142	N	F	11–01–93	10–31–95.
ST94–2661	Southern Natural Gas Co.	City of Lumpkin .	12–09–93	G–S	202	N	F	11–01–93	10–31–96.
ST94–2662	Southern Natural Gas Co.	City of Wilton	12–09–93	G–S	117	N	F	11–01–93	10–31–95.
ST94–2663	Southern Natural Gas Co.	Chilton County Gas District.	12–09–93	G–S	755	N	F	11–01–93	10–31–98.
ST94–2664	Southern Natural Gas Co.	City of York	12–09–93	G–S	544	N	F	11–01–93	10–31–03.
ST94–2665	Southern Natural Gas Co.	United Cities Gas Co.	12–09–93	G–S	21,556	N	F	11–01–93	10–31–98.
ST94–2666	Southern Natural Gas Co.	City of Livingston	12–09–93	G–S	850	N	F	11–01–93	10–31–03.
ST94–2667	Southern Natural Gas Co.	Wilcox County Gas District.	12–09–93	G–S	572	N	F	11–01–93	10–31–96.
ST94–2668	Southern Natural Gas Co.	City of Manchester.	12–09–93	G–S	878	N	F	11–01–93	10–31–94.
ST94–2669	Southern Natural Gas Co.	Washington Parish.	12–09–93	G–S	510	N	F	11–01–93	10–31–95.
ST94–2670	Southern Natural Gas Co.	City of Millen	12–09–93	G–S	766	N	F	11–01–93	10–31–95.
ST94–2671	Southern Natural Gas Co.	City of Hogansville.	12–09–93	G–S	1,022	N	F	11–01–93	10–31–95.
ST94–2672	Columbia Gas Transmission Corp.	Stand Energy	12–09–93	G–S	190	N	F	11–01–93	10–31–94.
ST94–2673	Natural Gas P/L Co. of America.	Illinois Power Co	12–09–93	G–S	89,454	N	F	11–13–93	11–13–96.
ST94–2674	Texas Gas Transmission Corp.	Valley Gas, Inc ..	12–10–93	G–S	789	N	F	11–01–93	Indef.
ST94–2675	Texas Gas Transmission Corp.	Peoples Gas & Power Co., Inc.	12–10–93	G–S	3,100	N	F	11–01–93	Indef.
ST94–2676	Texas Gas Transmission Corp.	Ohio Valley Gas, Inc.	12–10–93	G–S	4,399	N	F	11–01–93	Indef.
ST94–2677	Texas Gas Transmission Corp.	City of Elizabethcity.	12–10–93	G–S	6,495	N	F	11–01–93	Indef.
ST94–2678	Texas Gas Transmission Corp.	City of Carrollton	12–10–93	G–S	7,495	N	F	11–01–93	Indef.
ST94–2679	Texas Gas Transmission Corp.	City of Providence.	12–10–93	G–S	4,950	N	F	11–01–93	Indef.
ST94–2680	Texas Gas Transmission Corp.	City of Sturgis ...	12–10–93	G–S	1,958	N	F	11–01–93	Indef.
ST94–2681	Texas Gas Transmission Corp.	City of Leitchfield	12–10–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2682	Texas Gas Transmission Corp.	Lawrenceburg Gas Co.	12–10–93	G–S	7,490	N	F	11–01–93	Indef.
ST94–2683	Texas Gas Transmission Corp.	Indiana Utilities Corp.	12–10–93	G–S	3,200	N	F	11–01–93	Indef.
ST94–2684	Texas Gas Transmission Corp.	South Eastern Indiana Nat. Gas Co.	12–10–93	G–S	2,469	N	F	11–01–93	Indef.
ST94–2685	Texas Gas Transmission Corp.	Switzerland County Nat. Gas Co.	12–10–93	G–S	1,158	N	F	11–01–93	Indef.
ST94–2686	Tejas Gas Pipeline Co.	Mobil Natural Gas Inc.	12–10–93	C	30,000	N	I	11–01–93	Indef.
ST94–2687	Tejas Gas Pipeline Co.	Seagull Marketing Services, Inc.	12–09–93	C	5,000	N	I	10–01–93	Indef.

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ST94–2688	Channel Industries Gas Co.	Trunkline Gas Co., et al.	12–10–93	C	100,000	N	I	11–10–93	Indef.
ST94–2689	Texas Gas Transmission Corp.	Ford Motor Co ...	12–10–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2690	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et at.	12–10–93	G–HT	1,585	N	I	04–28–93	Indef.
ST94–2691	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–10–93	G–HT	1,250	N	I	04–28–93	Indef.
ST94–2692	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–10–93	G–HT	3,670	N	I	04–28–93	Indef.
ST94–2693	K N Interstate Gas Trans. Co.	Post Rock Gas, Inc.	12–10–93	G–S	80	N	F	12–01–93	03–31–94.
ST94–2694	K N Interstate Gas Trans. Co.	Maxus Gas Marketing Co.	12–10–93	G–S	50,000	N	I	11–09–93	Indef.
ST94–2695	Koch Gateway Pipeline Co.	Public Service Electric & Gas Co.	12–10–93	G–S	74,000	N	F	11–01–93	11–14–03.
ST94–2696	Koch Gateway Pipeline.	New York State Electric & Gas.	12–10–93	G–S	1,076	N	F	11–01–93	Indef.
ST94–2697	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–10–93	G–S	21,000	A	F	11–01–93	Indef.
ST94–2698	Koch Gateway Pipeline Co.	Penn Fuel Gas ..	12–10–93	G–S	508	N	F	11–01–93	Indef.
ST94–2699	Koch Gateway Pipeline Co.	Midcon Gas Services Corp.	12–10–93	G–S	10,000	N	F	11–01–93	Indef.
ST94–2700	Koch Gateway Pipeline Co.	Associated Natural Gas, Inc.	12–10–93	G–S	12,000	N	F	11–01–93	Indef.
ST94–2701	Koch Gateway Pipeline Co.	Equitrans, Inc	12–10–93	G–S	15,500	N	F	11–01–93	Indef.
ST94–2702	Koch Gateway Pipeline Co.	Koch Gas Services Co.	12–10–93	G–S	2,085	A	F	11–01–93	04–15–94.
ST94–2703	Koch Gateway Pipeline Co.	Columbia Gas of Pennsylvania.	12–10–93	G–S	8,683	N	F	11–01–93	Indef.
ST94–2704	Koch Gateway Pipeline Co.	National Fuel	12–10–93	G–S	303	N	F	11–01–93	Indef.
ST94–2705	Koch Gateway Pipeline Co.	Entex	12–10–93	G–S	150,000	N	F	11–01–93	Indef.
ST94–2706	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–10–93	G–S	30,000	N	F	12–01–93	12–01–95.
ST94–2707	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12–10–93	G–S	15,000	N	F	12–01–93	12–01–95.
ST94–2708	Southern Natural Gas Co.	City of Cartersville.	12–10–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–2709	Southern Natural Gas Co.	Oryx Gas Marketing, L.P.	12–10–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2710	Southern Natural Gas Co.	Gulf States Paper Corp.	12–10–93	G–S	2,404	N	I	12–01–93	Indef.
ST94–2711	Southern Natural Gas Co.	City of Lagrange	12–10–93	G–S	1,892	N	I	12–01–93	Indef.
ST94–2712	Southern Natural Gas Co.	Trans Louisiana Gas Co.	12–10–93	G–S	96	N	F	11–01–93	10–31–98.
ST94–2713	Southern Natural Gas Co.	Texican Natural Gas.	12–10–93	G–S	330	N	F	12–01–93	03–31–94.
ST94–2714	Southern Natural Gas Co.	Decatur County .	12–10–93	G–S	382	N	I	11–05–93	Indef.
ST94–2715	Southern Natural Gas Co.	Trans Louisiana Gas Co.	12–10–93	G–S	104	N	F	12–02–93	10–31–98.
ST94–2716	Southern Natural Gas Co.	Southeast Paper Manufacturing Co.	12–10–93	G–S	15,000	N	I	11–24–93	Indef.
ST94–2717	Southern Natural Gas Co.	United Cities Gas Co.	12–10–93	G–S	7,185	N	I	11–28–93	Indef.
ST94–2718	Southern Natural Gas Co.	City of Scottsboro.	12–10–93	G–S	1,101	N	I	11–28–93	Indef.
ST94–2719	Southern Natural Gas Co.	Washington Parish.	12–10–93	G–S	390	N	F	11–09–93	10–31–95.

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ST94-2720	Southern Natural Gas Co.	National Gas Resources, L.P.	12-10-93	G-S	185,000	N	I	11-11-93	Indef.
ST94-2721	Southern Natural Gas Co.	City of Havana ..	12-10-93	G-S	53	N	F	12-01-93	10-31-95.
ST94-2722	Southern Natural Gas Co.	South Carolina Pipeline Co.	12-10-93	G-S	50,321	N	I	11-26-93	Indef.
ST94-2723	Southern Natural Gas Co.	City of Calera	12-10-93	G-S	709	N	I	11-28-93	Indef.
ST94-2724	Southern Natural Gas Co.	City of Fort Valley.	12-10-93	G-S	51	N	F	12-01-93	10-31-98
ST94-2725	Trunkline Gas Co.	Tylex, Inc	12-13-93	G-S	1,000	N	F	12-01-93	Indef.
ST94-2726	Trunkline Gas Co.	Inland Steel Co .	12-13-93	G-S	20,000	N	F	12-01-93	Indef
ST94-2727	Trunkline Gas Co.	Stolle Corp	12-13-93	G-S	2,527	N	F	12-01-93	Indef.
ST94-2728	Trunkline Gas Co.	Peoples Gas Light and Coke Co.	12-13-93	G-S	60,000	N	F	12-01-93	Indef.
ST94-2729	Lone Star Gas Co.	El Paso Natural Gas Co., et al.	12-13-93	C	30,000	N	I	11-18-93	Indef.
ST94-2730	ONG Transmission Co.	Panhandle Eastern Pipeline Co.	12-13-93	C	50,000	N	I	11-19-93	Indef.
ST94-2731	ONG Transmission Co.	ANR Pipeline Co	12-13-93	C	10,000	N	I	11-25-93	Indef.
ST94-2732	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12-13-93	B	1,450	Y	I	12-01-93	Indef.
ST94-2733	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12-13-93	B	1,400	Y	I	12-01-93	Indef.
ST94-2734	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12-13-93	G-S	30,000	N	F	12-01-93	12-01-95.
ST94-2735	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12-13-93	G-S	20,000	N	F	12-01-93	12-01-95.
ST94-2736	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	12-13-93	G-S	30,000	N	F	12-01-93	12-01-95.
ST94-2737	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	12-14-93	G-S	1,000	N	F	12-01-93	11-30-00.
ST94-2738	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	12-14-93	G-S	1,000	N	F	12-01-93	11-30-94.
ST94-2739	Natural Gas P/L Co. of America.	Wisconsin Southern Gas Co., Inc.	12-14-93	G-S	4,000	N	F	12-01-93	11-30-95.
ST94-2740	K N Interstate Gas Trans. Co.	Farmers Union Central Exchange.	12-14-93	G-S	2,500	N	I	12-05-93	Indef.
ST94-2741	Texas Gas Transmission Corp.	Westvaco Corp .	12-14-93	G-S	6,300	N	F	11-01-93	Indef.
ST94-2742	Texas Gas Transmission Corp.	City of Murray ...	12-14-93	G-S	2,500	N	F	11-01-93	Indef.
ST94-2743	Texas Gas Transmission Corp.	Peoples Gas & Power Co., Inc.	12-14-93	G-S	400	N	F	11-04-93	Indef.
ST94-2744	Texas Gas Transmission Corp.	Midwest Natural Gas Corp.	12-14-93	G-S	1,500	N	F	11-01-93	Indef.
ST94-2745	Texas Gas Transmission Corp.	Logan Aluminum, Inc.	12-14-93	G-S	2,035	N	F	11-01-93	Indef.
ST94-2746	Texas Gas Transmission Corp.	City of Linton	12-14-93	G-S	400	N	F	11-01-93	Indef.
ST94-2747	Texas Gas Transmission Corp.	Illinois Gas Co ...	12-14-93	G-S	2,200	N	F	11-04-93	Indef.

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ST94–2748	Texas Gas Transmission Corp.	City of Henderson.	12–14–93	G–S	3,150	N	F	11–01–93	Indef.
ST94–2749	Texas Gas Transmission Corp.	Community Natural Gas Co., Inc.	12–14–93	G–S	400	N	F	11–04–93	Indef.
ST94–2750	Texas Gas Transmission Corp.	Boonville Natural Gas Corp.	12–14–93	G–S	1,800	N	F	11–01–93	Indef.
ST94–2751	Texas Gas Transmission Corp.	Chandler Natural Gas Corp.	12–14–93	G–S	450	N	F	11–01–93	Indef.
ST94–2752	Texas Gas Transmission Corp.	South Eastern Indiana Nat. Gas Co.	12–14–93	G–S	75	N	F	11–01–93	Indef.
ST94–2753	Texas Gas Transmission Corp.	City of Hamilton	12–14–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–2754	Texas Gas Transmission Corp.	Public Service Co. of North Carolina.	12–14–93	G–S	2,650	N	F	11–01–93	Indef.
ST94–2755	Texas Gas Transmission Corp.	Indiana Utilities Corp.	12–14–93	G–S	1,800	N	F	11–01–93	Indef.
ST94–2756	Texas Gas Transmission Corp.	Gibson County Utility District.	12–14–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2757	Texas Gas Transmission Corp.	Northern Utilities, Inc.	12–14–93	G–S	987	N	F	11–19–93	Indef.
ST94–2758	Texas Gas Transmission Corp.	Bay State Gas Co.	12–14–93	G–S	4,336	N	F	11–19–93	Indef.
ST94–2759	Texas Eastern Transmission Corp.	Stolle Corp	12–14–93	G–S	2,500	N	F	12–01–93	10–31–95.
ST94–2760	Texas Eastern Transmission Corp.	Stolle Corp	12–14–93	G–S	4,000	N	I	12–01–93	10–31–95.
ST94–2761	Texas Eastern Transmission Corp.	Connecticut Natural Gas Corp.	12–14–93	G–S	16,970	N	F	12–01–93	10–31–00.
ST94–2762	Texas Eastern Transmission Corp.	Connecticut Natural Gas Corp.	12–14–93	G–S	30,000	N	I	12–01–93	10–31–00.
ST94–2763	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	12–14–93	G–S	30,000	N	I	11–17–93	03–30–94.
ST94–2764	Texas Eastern Transmission Corp.	Chesapeake Energy Corp.	12–14–93	G–S	50,000	N	I	12–01–93	11–30–94.
ST94–2765	Texas Eastern Transmission Corp.	City of Smyrna ..	12–14–93	G–S	58,000	N	I	11–16–93	07–31–94.
ST94–2766	Texas Eastern Transmission Corp.	City of Smyrna ..	12–14–93	G–S	58,000	N	I	11–16–93	07–31–94.
ST94–2767	Texas Eastern Transmission Corp.	Samedan Oil Corp.	12–14–93	G–S	300,000	N	I	12–01–93	03–31–94.
ST94–2768	Texas Eastern Transmission Corp.	North Canadian Marketing Corp.	12–14–93	G–S	100,000	N	I	11–17–93	03–31–94.
ST94–2769	Texas Eastern Transmission Corp.	Amerada Hess Corp.	12–14–93	G–S	100,000	N	I	11–17–93	03–31–94.
ST94–2770	Texas Eastern Transmission Corp.	Yuma Gas Corp	12–14–93	G–S	25,000	N	I	12–01–93	03–31–94.
ST94–2771	Texas Eastern Transmission Corp.	Central Hudson Gas & Electric Corp.	12–14–93	G–S	14	N	I	12–05–93	03–31–06.

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ST94–2772	Sea Robin Pipeline Co.	Yuma Gas Corp	12–14–93	G–S	10,000	N	F	12–04–93	03–31–94.
ST94–2773	Sea Robin Pipeline Co.	Sonat Marketing Co.	12–14–93	G–S	9,804	N	F	12–01–93	12–31–93.
ST94–2774	Southern Natural Gas Co.	U.S.S., Div. USX Corp.	12–14–93	G–S	24,501	N	I	11–03–93	Indef.
ST94–2775	Southern Natural Gas Co.	Cullman-Jefferson Counties Gas Dist.	12–14–93	G–S	1,816	N	I	11–01–93	Indef.
ST94–2776	Southern Natural Gas Co.	Engelhard Corp .	12–14–93	G–S	5,034	N	I	11–04–93	Indef.
ST94–2777	Southern Natural Gas Co.	Graysville Municipal Gas System.	12–14–93	G–S	3,750	N	F	11–01–93	03–23–01.
ST94–2778	K N Interstate Gas Trans. Co.	Kanco Gathering Co.	12–15–93	G–S	70,000	N	I	10–01–93	Indef.
ST94–2779	Texas Gas Transmission Corp.	Eagle Natural Gas Co.	12–15–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–2780	Texas Gas Transmission Corp.	UCG Energy Corp.	12–15–93	G–S	10,000	N	I	11–15–93	Indef.
ST94–2781	Texas Gas Transmission Corp.	TXG Gas Marketing Co.	12–15–93	G–S	20,000	A	I	12–01–93	Indef.
ST94–2782	Texas Gas Transmission Corp.	Westvaco Corp .	12–15–93	G–S	3,700	N	F	11–01–93	Indef.
ST94–2783	Texas Gas Transmission Corp.	Lawrenceburg Gas Co.	12–15–93	G–S	2,500	N	F	11–01–93	Indef.
ST94–2784	Texas Gas Transmission Corp.	DOW Corning Corp.	12–15–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2785	Panhandle Eastern Pipe Line Co.	Trident NGL, Inc	12–15–93	G–S	25,000	N	I	11–01–93	04–30–98.
ST94–2786	Panhandle Eastern Pipe Line Co.	United Cities Gas Co.	12–15–93	G–S	1,500	N	I	11–01–93	03–31–96.
ST94–2787	Panhandle Eastern Pipe Line Co.	Polaris Pipeline Corp.	12–15–93	G–S	71,000	N	I	09–30–93	03–31–98.
ST94–2788	Panhandle Eastern Pipe Line Co.	Interstate Gas Supply, Inc.	12–15–93	G–S	2,074	N	F	10–29–93	04–30–94
ST94–2789	Bridgeline Gas Distribution Co.	Texas Eastern Transmission Corp.	12–15–93	C	2,074	N	I	11–20–93	Indef.
ST94–2790	Northern Natural Gas Co.	Brooklyn Interstate Nat. Gas Corp.	12–15–93	G–S	100,000	N	F/I	06–21–93	Indef.
ST94–2791	Northern Natural Gas Co.	Chevron U.S.A., Inc.	12–15–93	G–S	20,000	N	F/I	06–25–93	Indef.
ST94–2792	Northern Natural Gas Co.	Gas Energy Development Co.	12–15–93	G–S	50,000	N	F/I	06–27–93	Indef.
ST94–2793	Northern Natural Gas Co.	Archer Daniels Midland Co.	12–15–93	G–S	10,000	N	F/I	12–01–93	04–30–94.
ST94–2794	Northern Natural Gas Co.	Midwest Gas, Midwest Power Systems.	12–15–93	G–S	21,200	N	F/I	11–16–93	11–16–98.
ST94–2795	Northern Natural Gas Co.	Iowa-Illinois Gas & Elect. Co.	12–15–93	G–S	30,000	N	F	12–01–93	11–30–95.
ST94–2796	Northern Natural Gas Co.	Northern States Power Co.	12–15–93	G–S	8,400	N	F	11–15–93	10–31–97.
ST94–2797	Northern Natural Gas Co.	Phillips Natural Gas Co.	12–15–93	G–S	120,000	N	F	11–15–93	10–31–97.
ST94–2798	Transwestern Pipeline Co.	Richardson Products Co.	12–15–93	G–S	42,220	N	F	12–01–93	12–31–93.
ST94–2799	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	12–15–93	G–S	5,625	N	F	12–01–93	12–31–93.

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ST94-2800	Transwestern Pipeline Co.	Arco Natural Gas Marketing, Inc.	12-15-93	G-S	10,000	N	I	11-16-93	Indef.
ST94-2801	Transwestern Pipeline Co.	Westar Transmission Co.	12-15-93	B	10,000	N	I	11-24-93	Indef.
ST94-2802	Transwestern Pipeline Co.	US Gas Transportation, Inc.	12-15-93	G-S	4,000	N	F	11-06-93	11-30-93.
ST94-2803	Transwestern Pipeline Co.	Clayton Williams Energy Inc.	12-15-93	G-S	2,350	N	F	12-01-93	12-31-93.
ST94-2804	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	12-15-93	G-S	1,000	N	I	12-01-93	12-01-96.
ST94-2805	Northwest Pipeline Corp.	Washington Water Power Co.	12-15-93	G-S	14,860	N	I	11-11-93	Indef.
ST94-2806	Transcontinental Gas P/L Corp.	City of Madison	12-15-93	G-S	105	N	F	11-23-93	11-22-13.
ST94-2807	Transcontinental Gas P/L Corp.	City of Rockford	12-15-93	G-S	101	N	F	11-27-93	11-26-13
ST94-2808	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12-15-93	G-S	N/A	Y	I	12-01-93	Indef.
ST94-2809	Columbia Gas Transmission Corp.	Vesta Energy Co	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2810	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2811	Columbia Gas Transmission Corp.	Panhandle Trading Co.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2812	Columbia Gas Transmission Corp.	Clinton Gas Marketing, Inc.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2813	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2814	Columbia Gas Transmission Corp.	Penn Virginia Res. Marketing Co.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2815	Columbia Gas Transmission Corp.	Koch Gas Services.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2816	Columbia Gas Transmission Corp.	Brooklyn Interstate Natural Gas.	12-15-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2817	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12-15-93	G-S	N/A	N	I	12-04-93	Indef.
ST94-2818	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	12-15-93	G-S	N/A	N	I	12-01-93	02-28-94.
ST94-2819	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	12-15-93	G-S	31	N	F	12-01-93	Indef.
ST94-2820	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12-15-93	B	1,000	Y	F	12-01-93	Indef.
ST94-2821	Algonquin Gas Transmission Co.	Bay State Gas Co.	12-16-93	B	18,198	N	F	11-21-93	Indef.
ST94-2822	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	12-16-93	B	23,712	N	F	11-25-93	Indef.
ST94-2823	Algonquin Gas Transmission Co.	Colonial Gas Co	12-16-93	B	4,886	N	F	11-25-93	Indef.
ST94-2824	Algonquin Gas Transmission Co.	Fall River Gas Co.	12-16-93	G-S	130	N	I	11-18-93	Indef.
ST94-2825	Algonquin Gas Transmission Co	Fall River Gas Co.	12-16-93	G-S	950	N	I	11-18-93	Indef.

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ST94–2826	Algonquin Gas Transmission Co.	Darthmouth Power Associates, L.P.	12–16–93	G–S	4,400,000	N	I	11–21–93	Indef.
ST94–2827	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–16–93	G–S	433	N	I	11–30–93	Indef.
ST94–2828	Algonquin Gas Transmission Co.	Fall River Gas Co.	12–16–93	B	7,124	N	F	11–25–93	Indef.
ST94–2829	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	12–16–93	B	15,700	N	F	11–18–93	Indef.
ST94–2830	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	12–16–93	B	4,922	N	F	11–30–93	Indef.
ST94–2831	Algonquin Gas Transmission Co.	Boston Gas Co .	12–16–93	B	6,335	N	F	11–30–93	Indef.
ST94–2832	Algonquin Gas Transmission Co.	Boston Gas Co .	12–16–93	B	29,750	N	F	11–30–93	Indef.
ST94–2833	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–16–93	B	3,073	N	F	11–30–93	Indef.
ST94–2834	Stingray Pipeline Co.	Union Oil Co. of California.	12–16–93	K-S	34,000	N	F	11–24–93	11–23–03.
ST94–2835	Stingray Pipeline Co.	Chevron U.S.A. Production Co.	12–16–93	K-S	34,000	N	F	11–30–93	11–30–03.
ST94–2836	Natural Gas P/L Co. of American.	Midwest Gas	12–16–93	G–S	10,385	N	F	12–01–93	12–01–95.
ST94–2837	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	12–16–93	C	35,385	N	I	10–01–93	Indef.
ST94–2838	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	12–17–93	G–S	25,385	N	I	12–01–93	Indef.
ST94–2839	Tennessee Gas Pipeline Co.	City of Cookeville Gas Department.	12–17–93	G–S	6,059	N	F	12–01–93	Indef.
ST94–2840	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Co.	12–17–93	G–S	1,200	N	F	12–09–93	Indef.
ST94–2841	Tennessee Gas Pipeline Co.	Monteagle Public Utility Board.	12–17–93	G–S	492	N	F	11–18–93	Indef.
ST94–2842	Williston Basin Inter. P/O Co.	Koch Hydrocarbon Co.	12–17–93	G–S	387,362	Y	I	11–19–93	04–30–95.
ST94–2843	Florida Gas Transmission Co.	United Technologies Corp.	12–17–93	G–S	1,364	N	F	11–01–93	Indef.
ST94–2844	Florida Gas Transmission Co.	City of Jay	12–17–93	G–S	558	N	F	11–01–93	Indef.
ST94–2845	Florida Gas Transmission Co.	St. of Florida, Dept. of Corrections.	12–17–93	G–S	822	N	F	11–01–93	Indef.
ST94–2846	Florida Gas Transmission Co.	Florida Global Citrus Limited.	12–17–93	G–S	1,874	N	I	12–01–93	Indef.
ST94–2847	Florida Gas Transmission Co.	City of Marianna	12–17–93	G–S	3,550	N	F	11–01–93	Indef.
ST94–2848	Florida Gas Transmission Co.	City of Lake City	12–17–93	G–S	4,790	N	F	11–01–93	Indef.
ST94–2849	Florida Gas Transmission Co.	Gulfside Industries, Ltd.	12–17–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2850	Florida Gas Transmission Co.	Georgia Pacific Corp.	12–17–93	G–S	2,000	N	F	11–01–93	Indef.

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ST94–2851	Florida Gas Transmission Co.	Fort Pierce Utilities Authority.	12–17–93	G–S	2,110	N	I	11–05–93	Indef.
ST94–2852	Florida Gas Transmission Co.	City of Fort Meade.	12–17–93	G–S	650	N	F	11–01–93	Indef.
ST94–2853	Florida Gas Transmission Co.	ENTEX	12–17–93	G–S	1,500	N	F	11–01–93	Indef.
ST94–2854	Florida Gas Transmission Co.	Consolidated Minerals, Inc.	12–17–93	G–S	2,192	N	F	11–01–93	Indef.
ST94–2855	Florida Gas Transmission Co.	City of Chipley ...	12–17–93	G–S	1,281	N	F	11–01–93	Indef.
ST94–2856	Florida Gas Transmission Co.	City of Blounts City.	12–17–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2857	Florida Gas Transmission Co.	Aluminum Co. of America.	12–17–93	G–S	578	N	F	11–01–93	Indef.
ST94–2858	Koch Gateway Pipeline Co.	Cytec Industries	12–17–93	G–S	N/A	N	I	11–20–93	Indef.
ST94–2859	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P.	12–17–93	G–S	4,500	N	F	11–01–93	03–31–94.
ST94–2860	Natural Gas P/L Co. of America.	Union Electric Co.	12–17–93	G–S	5,000	N	F	11–01–93	10–31–98.
ST94–2861	Stingray Pipeline Co.	O & R Energy, Inc.	12–17–93	K–S	20,000	N	I	12–01–93	Indef.
ST94–2862	Texas Eastern Transmission Corp.	Colonial Gas Co	12–20–93	G–S	2,222	N	F	06–01–93	10–31–12.
ST94–2863	Trunkline Gas Co.	Stolle Corp	12–20–93	G–S	4,100	N	I	12–01–93	Indef.
ST94–2864	Trunkline Gas Co.	Murphy Exploration & Production Co.	12–20–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–2865	Trunkline Gas Co.	Anadarko Trading Co.	12–20–93	G–S	20,000	N	I	12–03–93	Indef.
ST94–2866	Trunkline Gas Co.	National Steel Corp.	12–20–93	G–S	4,000	N	I	12–01–93	Indef.
ST94–2867	Florida Gas Transmission Co.	City of Williston .	12–20–93	G–S	943	N	F	11–01–93	Indef.
ST94–2868	Florida Gas Transmission Co.	Muncipal Gas Authority of Florida.	12–20–93	G–S	69,309	N	F	11–01–93	Indef.
ST94–2869	Tejas Gas Pipeline Co.	Valero Industrial Gas, L.P.	12–20–93	C	30,000	N	I	11–20–93	11–30–93.
ST94–2870	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co., et al.	12–20–93	C	11,000	N	I	12–01–93	Indef.
ST94–2871	Delhi Gas Pipeline Corp.	Koch Gas Pipeline Co., et al.	12–20–93	C	30,000	N	I	12–04–93	Indef.
ST94–2872	Valero Transmission, L.P.	Transcontinental Gas P/L Corp.	12–20–93	C	13,800	N	I	12–01–93	Indef.
ST94–2873	Enron Storage Co.	Natural Gas P/L Co. of Amer., et al.	12–20–93	C/G–ST	20,000	N	I	11–18–93	03–31–94.
ST94–2874	Enron Storage Co.	Koch Gateway Pipeline Co.	12–20–93	C/G–ST	100,000	N	I	11–18–93	03–31–94.
ST94–2875	Enogex Inc	Arkla Energy Resources Co.	12–20–93	C	10,000	N	I	12–01–93	Indef.
ST94–2876	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	4,921	N	I	12–01–93	01–01–94.
ST94–2877	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	6,971	N	I	12–01–93	01–01–94.
ST94–2878	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	9,449	N	I	12–01–93	01–01–94.

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ST94–2879	Iroquois Gas Trans. System, L.P.	Continental Energy Marketing, Inc.	12–20–93	G–S	6,372	N	I	12–02–93	01–01–94
ST94–2880	Iroquois Gas Trans. System, L.P.	Direct Gas Supply/IESCO, Inc.	12–20–93	G–S	5,000	N	I	12–01–93	01–01–94.
ST94–2881	Iroquois Gas Trans. System, L.P.	Enron Gas Marketing, Inc.	12–20–93	G–S	10,000	N	I	12–02–93	01–01–94.
ST94–2882	Columbia Gas Transmission Corp.	United States Gypsum Co.	12–20–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–2883	Columbia Gas Transmission Corp.	Enron Access Corp.	12–20–93	G–S	126	N	F	12–01–93	03–31–93
ST94–2884	Columbia Gas Transmission Corp.	Conoco, Inc	12–20–93	G–S	N/A	N	I	12–13–93	Indef.
ST94–2885	Columbia Gas Transmission Corp.	Atlas Gas Marketing.	12–20–93	G–S	N/A	N	I	12–13–93	Indef.
ST94–2886	Columbia Gas Transmission Corp.	General Motors Corp.	12–20–93	G–S	N/A	N	I	12–07–93	Indef.
ST94–2887	Columbia Gas Transmission Corp.	Coastal Gas Marketing.	12–20–93	G–S	N/A	N	I	12–14–93	Indef.
ST94–2888	Transcontinental Gas P/L Corp.	Bay State Gas Co.	12–20–93	G–S	1,212	N	F	12–01–93	06–01–08.
ST94–2889	Transcontinental Gas P/L Corp.	Commonwealth Gas Co.	12–20–93	G–S	2,969	N	F	12–01–93	06–01–08.
ST94–2890	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	12–20–93	G–S	48,240	N	I	12–01–93	10–31–06.
ST94–2891	Transcontinental Gas P/L Corp.	Northern Utilities, Inc.	12–20–93	G–S	276	N	F	12–01–93	06–01–08.
ST94–2892	Texas Gas Transmission Corp.	Brooklyn Union Gas Co.	12–21–93	G–S	3,737	N	F	11–06–93	Indef.
ST94–2893	Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	12–21–93	G–S	25,000	N	F	11–01–93	Indef.
ST94–2894	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	15,000	N	F	11–01–93	Indef.
ST94–2895	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12–21–93	G–S	3,000	N	F	11–01–93	Indef.
ST94–2896	Texas Gas Transmission Corp.	Cincinnati Gas and Electric Co.	12–21–93	G–S	41,000	N	F	11–01–93	Indef.
ST94–2897	Texas Gas Transmission Corp.	Union Light, Heat and Power Co.	12–21–93	G–S	9,000	N	F	11–01–93	Indef.
ST94–2898	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12–21–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–2899	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	12–21–93	G–S	27,000	N	F	11–01–93	Indef.
ST94–2900	Texas Gas Transmission Corp.	Central Illinois Public Service Co.	12–21–93	G–S	12,500	N	F	11–01–93	Indef.
ST94–2901	Texas Gas Transmission Corp.	Dayton Power and Light Co.	12–21–93	G–S	25,000	N	F	11–01–93	Indef.
ST94–2902	Texas Gas Transmission Corp.	United Cities Gas Co.	12–21–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–2903	Texas Gas Transmission Corp.	East Ohio Gas Co.	12–21–93	G–S	73,763	N	F	11–01–93	Indef

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ST94-2904	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12-21-93	G-S	3,500	N	F	11-01-93	Indef.
ST94-2905	Texas Gas Transmission Corp.	Ohio Valley Gas Corp.	12-21-93	G-S	500	N	F	11-01-93	Indef.
ST94-2906	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	12-21-93	G-S	2,500	N	F	11-01-93	Indef.
ST94-2907	Texas Gas Transmission Corp.	Southern Indiana Gas and Elect. Co.	12-21-93	G-S	22,600	N	F	11-01-93	Indef.
ST94-2908	Texas Gas Transmission Corp.	Southern Indiana Gas and Elect. Co.	12-21-93	G-S	5,700	N	F	11-01-93	Indef.
ST94-2909	Mobile Bay Pipeline Co.	Boston Gas Co .	12-21-93	G-S	27,439	N	F	12-01-93	Indef.
ST94-2910	Mobile Bay Pipeline Co.	Arco Natural Gas Marketing.	12-21-93	G-S	20,202	N	F	12-01-93	Indef.
ST94-2911	Koch Gateway Pipeline Co.	Lafayette Gas Intrastate.	12-21-93	G-S	N/A	N	I	11-26-93	Indef.
ST94-2912	Koch Gateway Pipeline Co.	Monsanto Co	12-21-93	G-S	N/A	N	I	11-26-93	Indef.
ST94-2913	Koch Gateway Pipeline Co.	Gulf Coast Energy, Inc.	12-21-93	G-S	N/A	N	I	11-26-93	Indef.
ST94-2914	Koch Gateway Pipeline Co.	Red River Gas Co.	12-21-93	G-S	N/A	N	I	11-26-93	Indef.
ST94-2915	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12-21-93	G-S	N/A	N	I	12-14-93	Indef.
ST94-2916	Columbia Gas Transmission Corp.	Gas Marketing, Inc.	12-21-93	G-S	N/A	N	I	12-01-93	Indef.
ST94-2917	Columbia Gas Transmission Corp.	Delmarva Power and Light Co.	12-21-93	G-S	20,000	N	F	12-01-93	Indef.
ST94-2918	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	12-21-93	G-S	41,532	N	F	12-01-93	Indef.
ST94-2919	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	12-21-93	G-S	750,000	Y	I	12-01-93	Indef.
ST94-2920	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	12-21-93	B	11,346	N	F	12-01-93	Indef.
ST94-2921	Columbia Gas Transmission Corp.	Penn Fuel Gas, Inc.	12-21-93	B	14,250	N	F	12-01-93	Indef.
ST94-2922	Columbia Gas Transmission Corp.	Providence Gas Co.	12-21-93	B	47,455	N	F	12-01-93	Indef.
ST94-2923	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	12-21-93	B	5,134	N	F	12-01-93	Indef.
ST94-2924	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	12-21-93	B	36,794	N	F	12-01-93	Indef.
ST94-2925	Columbia Gas Transmission Corp.	Bluefield Gas Co	12-21-93	B	2,058	N	F	12-01-93	Indef.
ST94-2926	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	12-21-93	B	502,717	N	F	12-01-93	Indef.
ST94-2927	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	12-21-93	B	71,107	N	F	12-01-93	Indef.
ST94-2928	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc.	12-21-93	B	57,970	N	F	12-01-93	Indef.
ST94-2929	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	12-21-93	B	15,012	Y	F	12-01-93	Indef.

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ST94–2930	Columbia Gas Transmission Corp.	City of Lancaster	12–21–93	B	5,285	N	F	12–01–93	Indef.
ST94–2931	Columbia Gas Transmission Corp.	City of Charlottesville.	12–21–93	B	7,500	N	F	12–01–93	Indef.
ST94–2932	Columbia Gas Transmission Corp.	Central Hudson Gas & Electric.	12–21–93	B	10,415	N	F	12–01–93	Indef.
ST94–2933	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	12–21–93	B	28,252	N	F	12–01–93	Indef.
ST94–2934	Tennessee Gas Pipeline Co.	City of Pulaski ...	12–21–93	G–S	405	N	F	12–01–93	Indef.
ST94–2935	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	4,699	N	F	12–01–93	Indef.
ST94–2936	Tennessee Gas Pipeline Co.	Long Island Lighting Co.	12–21–93	G–S	2,587	N	F	12–01–93	Indef.
ST94–2937	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	4,699	N	F	12–01–93	Indef.
ST94–2938	Tennessee Gas Pipeline Co.	Bay State Gas Co.	12–21–93	G–S	511	N	F	12–01–93	Indef.
ST94–2939	Tennessee Gas Pipeline Co.	NGC Transportation, Inc.	12–21–93	G–S	1,000	N	F	12–01–93	Indef.
ST94–2940	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	12–21–93	G–S	3,000	N	F	12–01–93	Indef.
ST94–2941	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	12–21–93	G–S	5,400	N	F	12–01–93	Indef.
ST94–2942	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	12–21–93	G–S	1,882	N	F	12–01–93	Indef.
ST94–2943	Colorado Interstate Gas Co.	Aurora Natural Gas.	12–21–93	G–S	400	N	I	12–05–93	Indef.
ST94–2944	Colorado Interstate Gas Co.	Public Service of Colorado.	12–21–93	G–S	13,000	N	I	12–01–93	Indef.
ST94–2945	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	12–21–93	G–S	2,000	N	F	12–01–93	03–31–94.
ST94–2946	Colorado Interstate Gas Co.	Greeley Gas Co	12–21–93	G–S	1,750	N	I	12–01–93	Indef.
ST94–2947	Colorado Interstate Gas Co.	Oryx Gas Marketing.	12–21–93	G–S	800	N	12–	12–93	Indef.
ST94–2948	Northern Natural Gas Co.	Winn Exploration Co., Inc.	12–21–93	G–S	2,000	N	I	11–03–93	Indef.
ST94–2949	Northern Natural Gas Co.	Westar Transmission Co.	12–21–93	G–S	1,000	N	I	11–03–93	Indef.
ST94–2950	Northern Natural Gas Co.	Seagull Marketing Services, Inc.	12–21–93	G–S	3,300	N	F	12–01–93	Indef.
ST94–2951	Northern Natural Gas Co.	Nebraska Public Gas Agency.	12–21–93	G–S	450	N	F	12–01–93	12–01–97.
ST94–2952	Northern Natural Gas Co.	Northern States Power Co.	12–21–93	G–S	20,000	N	I	11–11–93	Indef.
ST94–2953	Northern Natural Gas Co.	Peoples Natural Gas Co—Utilicorp.	12–21–93	G–S	71,222	N	I	12–01–93	02–28–94.
ST94–2954	Northern Natural Gas Co.	Excel Gas Marketing, Inc.	12–21–93	G–S	20,000	N	I	12–01–93	Indef.
ST94–2955	Northern Natural Gas Co.	National Gas Resources L.P.	12–21–93	G–S	50,000	N	I	12–02–93	Indef.
ST94–2956	Northern Natural Gas Co.	Anthem Energy Co, L.P.	12–21–93	G–S	30,000	N	I	11–06–93	Indef.
ST94–2957	Northern Natural Gas Co.	Panda Resources, Inc.	12–21–93	G–S	15,000	N	I	11–04–93	Indef.
ST94–2958	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	12–22–93	B	15,672	N	F	12–01–93	Indef.
ST94–2959	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	12–22–93	B	35,620	N	F	12–01–93	Indef.
ST94–2960	Algonquin Gas Transmission Co.	Providence Gas Co.	12–22–93	B	6,812	N	F	12–12–93	Indef.

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ST94–2961	Algonquin Gas Transmission Co.	Northern Utilities Inc.	12–22–93	B	965	N	F	12–01–93	Indef.
ST94–2962	Algonquin Gas Transmission Co.	Central Hudson Gas & Elect. Corp.	12–22–93	G–S	26	N	I	12–05–93	Indef.
ST94–2963	Algonquin Gas Transmission Co.	Connecticut Natural Gas Co.	12–22–93	G–S	7,053	N	I	12–10–93	Indef.
ST94–2964	Algonquin Gas Transmission Co.	Northern Utilities Inc.	12–22–93	B	286	N	F	12–01–93	Indef.
ST94–2965	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–22–93	B	4,235	N	F	12–01–93	Indef.
ST94–2966	Florida Gas Transmission Co.	ARCO Natural Gas Marketing, Inc.	12–22–93	G–S	200,000	N	I	11–01–93	Indef.
ST94–2967	Florida Gas Transmission Co.	Citrus Trading Corp.	12–22–93	G–S	800,000	Y	I	11–01–93	Indef.
ST94–2968	Florida Gas Transmission Co.	Enron Gas Marketing Inc.	12–22–93	G–S	500,000	A	I	11–01–93	Indef.
ST94–2969	Florida Gas Transmission Co.	BP Gas, Inc	12–22–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2970	Florida Gas Transmission Co.	Citrus Marketing, Inc.	12–22–93	G–S	100,000	A	I	12–01–93	Indef.
ST94–2971	Florida Gas Transmission Co.	Associated Natural Gas, Inc.	12–22–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–2972	Florida Gas Transmission Co.	Amco Energy Trading Corp.	12–22–93	G–S	250,000	N	I	11–01–93	Indef.
ST94–2973	Arkla Energy Resources Co.	Koch Gas Services Co.	12–22–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–2974	Black Marlin Pipeline Co.	Enron Industrial Natural Gas Co.	12–22–93	G–S	75,000	Y	F	12–01–93	01–01–99
ST94–2975	Tennessee Gas Pipeline Co.	Transco Gas Marketing Co.	12–22–93	G–S	2,087	N	F	12–02–93	Indef.
ST94–2976	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	12–22–93	G–S	4,500	N	F	12–17–93	Indef.
ST94–2977	Tennessee Gas Pipeline Co.	Northern Utilities Inc.	12–22–93	G–S	117	N	F	12–01–93	Indef.
ST94–2978	Natural Gas P/L Co. of America.	Iowa Electric Light & Power Co.	12–22–93	G–S	10,000	N	F	12–01–93	11–30–95.
ST94–2979	Natural Gas P/L Co. of America.	Iowa Electric Light & Power Co.	12–22–93	G–S	28,605	N	F	12–01–93	11–30–00.
ST94–2980	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co, et al.	12–22–93	C	70,000	N	I	12–01–93	Indef.
ST94–2981	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co., et al.	12–22–93	C	50,000	N	I	12–08–93	Indef.
ST94–2982	Lone Star Gas Co.	Transwestern Pipeline Co, et al.	12–22–93	C	100,000	N	I	11–29–93	Indef.
ST94–2983	Gulf Coast Natural Gas Co.	Koch Gateway P/L Co., et al.	12–22–93	C	30,000	Y	I	12–01–93	Indef.
ST94–2984	Gulf Coast Natural Gas Co.	Trunkline Gas Co.	12–22–93	C	30,000	Y	I	12–01–93	Indef.
ST94–2985	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	12–23–93	G–HT	400	N	I	12–15–93	Indef.
ST94–2986	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	12–23–93	C	75,000	N	I	11–25–93	Indef.

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ST94–2987	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	12–23–93	C	50,000	N	I	11–19–93	Indef.
ST94–2988	Tennessee Gas Pipeline Co.	Catex Energy Inc.	12–23–93	G–S	8,300	N	F	12–01–93	Indef.
ST94–2989	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc.	12–23–93	G–S	20,800	N	F	12–01–93	Indef
ST94–2990	Tennessee Gas Pipeline Co.	Yuma Gas Corp	12–23–93	G–S	16,200	N	F	12–01–93	Indef
ST94–2991	Columbia Gas Transmission Corp.	Entity Type	12–23–93	G–S	11,000	N	I	12–01–93	Indef.
ST94–2992	Sabine Pipe Line Co.	Koch Gas Services Co.	12–23–93	G–S	100,000	N	I	12–01–93	Indef
ST94–2993	Sabine Pipe Line Co.	Valero Gas Marketing, L.P	12–23–93	G–S	200,000	N	I	11–24–93	Indef
ST94–2994	Sabine Pipe Line Co.	Hardy Oil & Gas USA, Inc.	12–23–93	G–S	15,000	N	I	12–03–93	Indef
ST94–2995	Sabine Pipe Line Co.	Enron Gas Marketing, Inc.	12–23–93	G–S	200,000	N	I	12–01–93	Indef
ST94–2996	Sabine Pipe Line Co.	Koch Gas Services Co.	12–23–93	G–S	70,000	N	I	12–01–93	Indef
ST94–2997	Ozark Gas Transmission System.	Arkansas Oklahoma Gas Corp.	12–23–93	B	15,000	N	I	12–01–93	Indef
ST94–2998	Williams Natural Gas Co.	Continental Natural Gas, Inc.	12–23–93	G–S	10,000	N	I	12–01–93	10–01–94
94–2999	Williams Natural Gas Co.	Coastal Gas Marketing Co.	12–23–93	G–S	50,000	N	I	11–02–93	10–01–98.
ST94–3000	Williams Natural Gas Co.	Transok Gas Co	12–23–93	G–S	50,000	N	I	11–02–93	11–01–98.
ST94–3001	Williams Natural Gas Co.	City of Burlingame.	12–23–93	G–S	254	N	F	11–13–93	Indef.
ST94–3002	Williams Natural Gas Co.	City of Cassoday	12–23–93	G–S	120	N	F	11–18–93	Indef.
ST94–3003	Williams Natural Gas Co.	Eckert Gas Co ..	12–23–93	G–S	45	N	I	11–09–93	Indef
ST94–3004	Williams Natural Gas Co.	Flint Hills Gas Co., Inc.	12–23–93	G–S	48	N	I	12–01–93	Indef.
ST94–3005	Williams Natural Gas Co.	Greeley Gas Co	12–23–93	G–S	13,873	N	F	11–01–93	Indef.
ST94–3006	Williams Natural Gas Co.	City of Olivet	12–23–93	G–S	38	N	I	12–01–93	Indef.
ST94–3007	Williams Natural Gas Co.	City of Reading .	12–23–93	G–S	136	N	I	11–18–93	Indef.
ST94–3008	Williams Natural Gas Co.	Western Resources, Inc.	12–23–93	G–S	18,816	N	F	11–01–93	10–01–94.
ST94–3009	Williams Natural Gas Co.	Western Resources, Inc.	12–23–93	G–S	27,071	N	F	11–01–93	10–01–94.
ST94–3010	Williams Natural Gas Co.	Armco, Inc	12–23–93	G–S	15,000	N	I	11–01–93	10–01–94.
ST94–3011	Williams Natural Gas Co.	Ford Motor Co ...	12–23–93	G–S	14,000	N	I	11–01–93	Indef.
ST94–3012	Williams Natural Gas Co.	KN Gas Marketing Co.	12–23–93	G–S	100,000	N	I	11–01–93	10–01–94
ST94–3013	Williams Natural Gas Co.	Missouri Public Service.	12–23–93	G–S	61,250	N	I	11–01–93	10–01–96
ST94–3014	Williams Natural Gas Co.	Texarkoma Transportation Co.	12–23–93	G–S	25,000	N	I	11–11–93	Indef.
ST94–3015	Williams Natural Gas Co.	Transok Gas Co	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3016	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	8,173	N	F	11–01–93	11–01–94.
ST94–3017	Williams Natural Gas Co.	Colorado Interstate Gas Co.	12–23–93	G–S	4,000	N	I	11–10–93	11–01–94.
ST94–3018	Williams Natural Gas Co.	City Utilities of Springfield.	12–23–93	G–S	12,880	N	F	12–01–93	03–01–94.
ST94–3019	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	2,575	N	F	12–02–93	04–01–94.

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ST94–3020	Williams Natural Gas Co.	Colorado Interstate Gas Co.	12–23–93	G–S	1,000	N	I	12–15–93	12–01–94.
ST94–3021	Williams Natural Gas Co.	Universal Resources Corp.	12–23–93	G–S	4,955	N	F	12–02–93	04–01–94.
ST94–3022	Williams Natural Gas Co.	Utilicorp Energy Services, Inc.	12–23–93	G–S	50,000	N	I	12–01–93	Indef.
ST94–3023	Williams Natural Gas Co.	Vesta Energy Co	12–23–93	G–S	5,115	N	F	12–18–93	01–01–94.
ST94–3024	Williams Natural Gas Co.	Rangeline Corp .	12–23–93	G–S	1,200	N	F	12–02–93	03–01–94.
ST94–3025	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	12–23–93	G–S	276,135	Y	F	11–24–93	08–31–95.
ST94–3026	Questar Pipeline Co.	Grand Valley Gas Co.	12–23–93	G–S	1,000	N	F	12–01–93	12–31–94.
ST94–3027	Questar Pipeline Co.	Pacificorp	12–23–93	G–S	4,802	N	I	12–01–93	11–30–94.
ST94–3028	Questar Pipeline Co.	Snyder Oil Co ...	12–23–93	G–S	2,069	N	I	12–01–93	11–30–95.
ST94–3029	Florida Gas Transmission Co.	Union Oil Co of California.	12–23–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–3030	Florida Gas Transmission Co.	Texas-Ohio Gas, Inc.	12–23–93	G–S	15,000	N	I	12–01–93	Indef.
ST94–3031	Florida Gas Transmission Co.	Oryx USA Inc	12–23–93	G–S	35,000	N	I	11–01–93	Indef.
ST94–3032	Florida Gas Transmission Co.	Oryx Gas Marketing, L.P.	12–23–93	G–S	103,333	N	I	11–01–93	Indef.
ST94–3033	Florida Gas Transmission Co.	NGC Transportation, Inc.	12–23–93	G–S	500,000	N	I	12–02–93	Indef.
ST94–3034	Florida Gas Transmission Co.	Midcon Gas Services Corp.	12–23–93	G–S	800,000	N	I	11–16–93	Indef.
ST94–3035	Florida Gas Transmission Co.	MG Natural Gas Corp.	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3036	Florida Gas Transmission Co.	Koch Gas Services Corp.	12–23–93	G–S	200,000	N	I	11–02–93	Indef.
ST94–3037	Florida Gas Transmission Co.	Hadson Gas Systems, Inc.	12–23–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–3038	Florida Gas Transmission Co.	Fina Natural Gas Co.	12–23–93	G–S	175,000	N	I	11–01–93	Indef.
ST94–3039	Northern Natural Gas Co.	GPM Gas Corp .	12–23–93	G–S	12,000	N	I	12–01–93	Indef.
ST94–3040	Koch Gateway Pipeline Co.	Oxy USA Inc	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3041	Koch Gateway Pipeline Co.	Mid Louisiana Marketing Co.	12–23–93	G–S	10,480	N	F	11–01–93	Indef.
ST94–3042	Koch Gateway Pipeline Co.	Westvaco Corp .	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3043	Koch Gateway Pipeline Co.	Vista Chemical Co.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3044	Koch Gateway Pipeline Co.	Sonat Marketing Co.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3045	Koch Gateway Pipeline Co.	Vesta Energy Co	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3046	Koch Gateway Pipeline Co.	Polaris Pipeline Corp.	12–23–93	G–S	0	N	I	11–26–93	Indef.
ST94–3047	Koch Gateway Pipeline Co.	Monsanto Co	12–23–93	G–S	31,000	N	I	11–01–93	Indef.
ST94–3048	Koch Gateway Pipeline Co.	Cytec Industries	12–23–93	G–S	7,000	N	F	11–01–93	Indef.
ST94–3049	Koch Gateway Pipeline Co.	Nerco Oil Gas, Inc.	12–23–93	G–S	35,000	N	F	11–01–93	Indef.

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ST94–3050	Algonquin Gas Transmission Co.	Bay State Gas Co.	12–27–93	B	18,490	N	F	12–01–93	Indef.
ST94–3051	Algonquin Gas Transmission Co.	Northern Utilities, Inc.	12–27–93	B	4,211	N	F	12–01–93	Indef.
ST94–3052	Florida Gas Transmission Co.	Mobil Natural Gas, Inc..	12–27–93	G–S	200,000	N	I	12–01–93	Indef.
ST94–3053	Florida Gas Transmission Co.	Sonat Marketing Co.	12–27–93	G–S	10,000	Y	I	11–01–93	Indef.
ST94–3054	Florida Gas Transmission Co.	Union Carbide Corp.	12–27–93	G–S	200	N	I	11–01–93	Indef.
ST94–3055	Florida Gas Transmission Co.	Tenneco Gas Marketing Co.	12–27–93	G–S	200,000	N	I	12–15–93	Indef.
ST94–3056	Williston Basin Inter P/L Co.	NGC Transportation, Inc.	12–27–93	G–S	100,000	Y	I	11–27–93	10–31–95.
ST94–3057	Sabine Pipe Line Co.	Midcoast Energy Resources Inc.	12–27–93	B	25,000	N	I	11–16–93	Indef.
ST94–3058	Tejas Gas Pipeline Co.	Texas Gas Transmission Corp.	12–27–93	C	40,700	N	I	11–19–93	Indef.
ST94–3059	Northern Illinois Gas Co.	Tenneco Gas Marketing.	12–28–93	C	2,000	N	I	12–01–93	Indef.
ST94–3060	Midwestern Gas Transmission Co.	Hadson Gas Systems Inc.	12–28–93	G–S	7,000	N	I	12–01–93	Indef.
ST94–3061	Arkla Energy Resources Co.	Wickford Energy	12–28–93	G–S	5,000	N	I	12–01–93	Indef.
ST94–3062	Arkla Energy Resources Co.	Arkla Energy Marketing Co.	12–28–93	G–S	30,000	N	I	12–01–93	07–31–94.
ST94–3063	Arkla Energy Resources Co.	Pavers, Inc	12–28–93	G–S	500	N	I	11–01–93	Indef.
ST94–3064	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	12–28–93	G–S	21,080	N	F	11–01–93	Indef.
ST94–3065	Trunkline Gas Co.	Murphy Exploration and Production.	12–29–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–3066	Trunkline Gas Co.	Shell Offshore, Inc.	12–29–93	G–S	31,050	N	I	12–01–93	Indef.
ST94–3067	Panhandle Eastern Pipe Line Co.	Amgas, Inc	12–29–93	G–S	4,000	N	I	12–01–93	03–31–94.
ST94–3068	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	12–29–93	G–S	7,000	N	F	12–01–93	02–28–94.
ST94–3069	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	12–29–93	G–S	1,376	N	F	12–01–93	03–31–94.
ST94–3070	Panhandle Eastern Pipe Line Co.	MG Natural Gas Corp.	12–29–93	G–S	3,000	N	F	12–01–93	03–31–94.
ST94–3071	Panhandle Eastern Pipe Line Co.	Stolle Corp	12–29–93	G–S	4,020	N	I	12–01–93	10–31–95.
ST94–3072	Panhandle Eastern Pipe Line Co.	Stolle Corp	12–29–93	G–S	2,505	N	F	12–01–93	10–31–95.
ST94–3073	Panhandle Eastern Pipe Line Co.	Tri-Power Fuels, Inc.	12–29–93	G–S	10,000	N	I	12–01–93	09–30–98.
ST94–3074	Panhandle Eastern Pipe Line Co.	Enogex Service Corp.	12–29–93	G–S	100,000	N	I	12–01–93	06–30–98.
ST94–3075	Panhandle Eastern Pipe Line Co.	Energy Transportation Mgmt., Inc.	12–29–93	G–S	1,200	N	I	12–01–93	03–31–98.

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ST94–3076	Panhandle Eastern Pipe Line Co.	Premier Enterprises, Inc.	12–29–93	G–S	8,000	N	I	12–01–93	04–30–98.
ST94–3077	Black Marlin Pipeline Co.	Houston Pipeline Co.	12–29–93	B	15,000	N	I	12–01–93	Indef.
ST94–3078	Northern Natural Gas Co.	Producers Utilities Corp.	12–29–93	G–S	1,000	N	I	11–01–93	Indef.
ST94–3079	Florida Gas Transmission Co.	Yuma Gas Corp	12–29–93	G–S	10,000	N	F	11–26–93	Indef.
ST94–3080	Natural Gas P/L Co. of America.	City of Montezuma.	12–29–93	G–S	1,743	N	F	12–01–93	11–30–96.
ST94–3081	Natural Gas P/L Co. of America.	Nichols-Homeshield.	12–29–93	G–S	2,300	N	F	12–01–93	12–31–93.
ST94–3082	Natural Gas P/L Co. of America.	Arcadian Corp ...	12–29–93	G–S	21,000	N	F	12–01–93	12–31–97
ST94–3083	Natural Gas P/L Co. of America.	City of Wellman	12–29–93	G–S	828	N	F	12–01–93	11–30–96
ST94–3084	Transok, Inc	ANR Pipeline Co, et al.	12–29–93	C	30,000	N	F	12–01–93	12–01–95
ST94–3085	Columbia Gas Transmission Corp.	Libbey Glass, Inc.	12–29–93	G–S	10,000	N	I	12–01–93	Indef.
ST94–3086	Columbia Gas Transmission Corp.	Riley Natural Gas Co.	12–29–93	G–S	20,000	N	I	12–15–93	Indef.
ST94–3087	Columbia Gas Transmission Corp.	Ashland Exploration, Inc.	12–29–93	G–S	20,000	N	I	12–21–93	Indef.
ST94–3088	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–S	40	N	F	11–01–93	Indef.
ST94–3089	Mississippi River Trans. Corp.	Arkansas Western Gas Co.	12–29–93	G–S	3,060	N	F	11–01–93	Indef.
ST94–3090	Mississippi River Trans. Corp.	City of Bismarck	12–29–93	G–S	909	N	F	11–01–93	Indef.
ST94–3091	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–S	740	N	F	11–01–93	Indef.
ST94–3092	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–S	1,326	N	F	11–01–93	Indef.
ST94–3093	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–S	3,372	N	F	11–01–93	Indef.
ST94–3094	Mississippi River Trans. Corp.	Illinois Power Co	12–29–93	G–S	102,000	N	F	11–01–93	Indef.
ST94–3095	Mississippi River Trans. Corp.	General Chemical Corp.	12–29–93	G–S	74	N	F	11–01–93	Indef.
ST94–3096	Mississippi River Trans. Corp.	Arnold Muffler Co.	12–29–93	G–S	20	N	F	11–01–93	Indef.
ST94–3097	Mississippi River Trans. Corp.	Natural Gas Improvement, Ashley Cty.	12–29–93	G–S	663	N	F	11–01–93	Indef.
ST94–3098	Mississippi River Trans. Corp.	City of Potosi	12–29–93	G–S	2,965	N	F	11–01–93	Indef.
ST94–3099	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–S	1,485	N	F	11–01–93	Indef.
ST94–3100	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–S	25	N	F	11–01–93	Indef.
ST94–3101	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–S	5,184	Y	F	11–01–93	11–15–94
ST94–3102	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–S	133	N	F	11–01–93	11–15–94.
ST94–3103	Mississippi River Trans. Corp.	City of Dupo	12–29–93	G–S	264	N	F	11–01–93	11–15–94.
ST94–3104	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–S	129	N	F	11–01–93	11–15–94.
ST94–3105	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–S	7	N	F	11–01–93	11–15–94.
ST94–3106	Mississippi River Trans. Corp.	City of Bismarck	12–29–93	G–S	159	N	F	11–01–93	11–15–94.
ST94–3107	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–S	586	N	F	11–01–93	11–15–94.
ST94–3108	Mississippi River Trans. Corp.	Maxus Gas Marketing Co.	12–29–93	G–S	50,000	N	F	12–01–93	Indef.

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ST94–3109	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–S	765	N	F	11–01–93	Indef.
ST94–3110	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–S	80	N	F	11–01–93	Indef.
ST94–3111	Mississippi River Trans Corp.	Mississippi Lime Co.	12–29–93	G–S	696	N	F	11–01–93	11–15–94.
ST94–3112	Mississippi River Trans. Corp.	Spectrulite Consortium, Inc.	12–29–93	G–S	478	N	F	11–01–93	11–15–94.
ST94–3113	Mississippi River Trans Corp.	Union Gas Co. of Arkansas.	12–29–93	G–S	87	N	F	11–01–93	11–15–94.
ST94–3114	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–S	2,893	N	F	11–01–93	Indef.
ST94–3115	Mississippi River Trans. Corp.	Union Gas Co. of Arkansas.	12–29–93	G–S	500	N	F	11–01–93	Indef.
ST94–3116	Mississippi River Trans. Corp..	Arnold Muffler Co.	12–29–93	G–S	4	N	F	11–01–93	11–15–94.
ST94–3117	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–S	3,553	N	F	11–01–93	11–15–94.
ST94–3118	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–S	29,810	A	F	11–01–93	Indef.
ST94–3119	Mississippi River Trans. Corp.	Nesco Steel Barrel Co.	12–29–93	G–S	25	N	F	11–01–93	11–15–94.
ST94–3120	Mississippi River Trans. Corp.	Rhoex, Inc	12–29–93	G–S	78	N	F	11–01–93	11–15–94
ST94–3121	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–S	4	N	F	11–01–93	11–15–94
ST94–3122	Mississippi River Trans. Corp.	Associated Natural Gas Co.	12–29–93	G–S	532	N	F	11–01–93	11–15–94.
ST94–3123	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–S	20,400	N	F	11–01–93	Indef.
ST94–3124	Mississippi River Trans. Corp.	American Steel Foundries.	12–29–93	G–S	174	N	F	11–01–93	11–15–94.
ST94–3125	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–S	918	N	F	11–01–93	Indef.
ST94–3126	Mississippi River Trans. Corp.	City of Potosi	12–29–93	G–S	516	N	F	11–01–93	11–15–94.
ST94–3127	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–S	3,549	N	F	11–01–93	11–15–94.
ST94–3128	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–S	14	N	F	11–01–93	11–15–94.
ST94–3129	Mississippi River Trans. Corp.	Village of Dupo .	12–29–93	G–S	1,523	N	F	11–01–93	Indef.
ST94–3130	Mississippi River Trans. Corp.	Harcros Pigments, Inc.	12–29–93	G–S	165	N	F	11–01–93	11–15–94.
ST94–3131	Mississippi River Trans. Corp.	Jefferson Smurfit Corp.	12–29–93	G–S	13	N	F	11–01–93	11–15–94.
ST94–3132	Mississippi River Trans. Corp.	Laroache Industries, Inc.	12–29–93	G–S	141	N	F	11–01–93	Indef.
ST94–3133	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	655,160	N	F	11–01–93	Indef.
ST94–3134	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–S	230	N	F	11–01–93	11–15–94.
ST94–3135	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	2,400	N	F	11–01–93	11–15–94.
ST94–3136	Mississippi River Trans. Corp.	Cerro Copper Products Co.	12–29–93	G–S	522	N	F	11–01–93	11–15–94.
ST94–3137	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–S	154	N	F	12–01–93	Indef.
ST94–3138	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–S	504	N	F	11–01–93	11–15–94.
ST94–3139	Mississippi River Trans. Corp.	Big River Zinc Co.	12–29–93	G–S	124	N	F	11–01–93	11–15–94.
ST94–3140	Mississippi River Trans. Corp.	Natural Gas Improvement Dist. No 2.	12–29–93	G–S	115	N	F	11–01–93	11–15–94.
ST94–3141	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–S	160	N	F	11–01–93	11–15–94.
ST94–3142	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–S	258	N	F	11–01–93	11–15–94.
ST94–3143	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–S	113,955	N	F	11–01–93	Indef.

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ST94–3144	Mississippi River Trans. Corp.	Doe Run Co	12–29–93	G–S	391	N	F	11–01–93	11–15–94.
ST94–3145	Mississippi River Trans. Corp.	Associated Natural Gas Co.	12–29–93	G–ST	1,916	N	F	11–01–93	Indef.
ST94–3146	Mississippi River Trans. Corp.	American Steel Foundries.	12–29–93	G–ST	626	N	F	11–01–93	Indef.
ST94–3147	Mississippi River Trans. Corp.	Cerro Copper Products Co.	12–29–93	G–ST	1,878	N	F	11–01–93	Indef.
ST94–3148	Mississippi River Trans. Corp.	Brouk Co	12–29–93	G–ST	447	N	F	11–01–93	Indef.
ST94–3149	Mississippi River Trans. Corp.	City of Bismark ..	12–29–93	G–ST	569	N	F	11–01–93	Indef.
ST94–3150	Mississippi River Trans. Corp.	Big River Zinc Co.	12–29–93	G–ST	447	N	F	11–01–93	Indef.
ST94–3151	Mississippi River Trans. Corp.	Mississippi Lime Co.	12–29–93	G–ST	2,504	N	F	11–01–93	Indef.
ST94–3152	Mississippi River Trans. Corp.	Laroche Industries, Inc.	12–29–93	G–ST	511	N	F	11–01–93	Indef.
ST94–3153	Mississippi River Trans. Corp.	City of Waterloo	12–29–93	G–ST	1,812	N	F	11–01–93	Indef.
ST94–3154	Mississippi River Trans. Corp.	National Steel Corp.	12–29–93	G–ST	12,792	N	F	11–01–93	Indef.
ST94–3155	Mississippi River Trans. Corp.	Laclede Steel Co	12–29–93	G–ST	8,766	N	F	11–01–93	Indef.
ST94–3156	Mississippi River Trans. Corp.	Natural Gas Improvement Dist. No. 2.	12–29–93	G–ST	415	N	F	11–01–93	Indef.
ST94–3157	Mississippi River Trans. Corp.	Spectrulite Consortium, Inc.	12–29–93	G–ST	1,722	N	F	11–01–93	Indef.
ST94–3158	Mississippi River Trans. Corp.	City of Hazen	12–29–93	G–ST	575	N	F	11–01–93	Indef.
ST94–3159	Mississippi River Trans. Corp.	Illinois Power Co	12–29–93	G–ST	63,867	N	F	11–01–93	Indef.
ST94–3160	Mississippi River Trans. Corp.	Jefferson Smurfit Corp.	12–29–93	G–ST	47	N	F	11–01–93	Indef.
ST94–3161	Mississippi River Trans. Corp.	Arkansas Louisiana Gas Co.	12–29–93	G–ST	18,666	N	F	11–01–93	Indef.
ST94–3162	Mississippi River Trans. Corp.	Harcros Pigments, Inc.	12–29–93	G–ST	595	N	F	11–01–93	Indef.
ST94–3163	Mississippi River Trans. Corp.	General Chemical Corp.	12–29–93	G–ST	266	N	F	11–01–93	Indef.
ST94–3164	Mississippi River Trans. Corp.	Union Electric Co.	12–29–93	G–ST	12,774	N	F	11–01–93	Indef.
ST94–3165	Mississippi River Trans. Corp.	United Cities Gas Co.	12–29–93	G–ST	479	N	F	11–01–93	Indef.
ST94–3166	Mississippi River Trans. Corp.	Sterling Steel Foundry.	12–29–93	G–ST	50	N	F	11–01–93	Indef.
ST94–3167	Mississippi River Trans. Corp.	Union Pacific Corp.	12–29–93	G–ST	15	N	F	11–01–93	Indef.
ST94–3168	Mississippi River Trans. Corp.	Union Gas Co. of Arkansas.	12–29–93	G–ST	313	N	F	11–01–93	Indef.
ST94–3169	Mississippi River Trans. Corp.	Union Rheox, Inc..	12–29–93	G–ST	282	N	F	11–01–93	Indef.
ST94–3170	Mississippi River Trans. Corp.	Doe Run Co	12–29–93	G–ST	1,409	N	F	11–01–93	Indef.
ST94–3171	Mississippi River Trans. Corp.	Laclede Gas Co	12–29–93	G–ST	410,231	N	F	11–01–93	Indef.
ST94–3172	Mississippi River Trans. Corp.	City of Augusta .	12–29–93	G–ST	830	N	F	11–01–93	Indef.
ST94–3173	Mississippi River Trans. Corp.	Arnold Muffler Co.	12–29–93	G–ST	13	N	F	11–01–93	Indef.
ST94–3174	Mississippi River Trans. Corp.	City of Dupo	12–29–93	G–ST	930	N	F	11–01–93	Indef.
ST94–3175	Mississippi River Trans. Corp.	City of Des Arc ..	12–29–93	G–ST	463	N	F	11–01–93	Indef.
ST94–3176	Mississippi River Trans. Corp.	City of Chester ..	12–29–93	G–ST	2,111	N	F	11–01–93	Indef.
ST94–3177	Mississippi River Trans. Corp.	City of Red Bud	12–29–93	G–ST	930	N	F	11–01–93	Indef.
ST94–3178	Mississippi River Trans. Corp.	City of Postosi ...	12–29–93	G–ST	1,857	N	F	11–01–93	Indef.

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ST94–3179	Mississippi River Trans. Corp.	Nesco Steel Barrel Co.	12–29–93	G–ST	91	N	F	11–01–93	Indef.
ST94–3180	Panhandle Eastern Pipe Line Co.	American Cyanamid Co.	12–30–93	G–S	2,500	N	F	12–01–93	02–28–95.
ST94–3181	East Tennessee Natural Gas Co.	Powell-Clinch Utility Dist.	12–30–93	G–S	17	N	F	12–01–93	Indef.
ST94–3182	Canyon Creek Compression Co.	Natural Gas P/L Co. of America.	12–30–93	G	124,000	N	F	12–01–93	11–16–02.
ST94–3183	Stingray Pipeline Co.	Natural Gas P/L Co. of America.	12–30–93	K	388,000	N	F	12–01–93	12–01–94.
ST94–3184	Natural Gas P/L Co. of America.	Wisconsin Natural Gas Co.	12–30–93	B	50,000	N	I	08–01–92	Indef.
ST94–3185	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	12–30–93	G–S	175	N	F	12–01–93	Indef.
ST94–3186	Tennessee Gas Pipeline Co.	Xenergy, Inc	12–30–93	G–S	1,457	N	F	12–01–93	Indef.
ST94–3187	Tennessee Gas PipelinE Co.	Global Petroleum.	12–30–93	G–S	282	N	F	12–01–93	Indef.
ST94–3188	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	12–30–93	G–S	655	N	F	12–01–93	Indef.
ST94–3189	Tennessee Gas Pipeline Co.	Long Island Light Co.	12–30–93	G–S	4,598	N	F	12–01–93	Indef.
ST94–3190	Tennessee Gas Pipeline Co.	Roanoke Gas Co.	12–30–93	G–S	9,326	N	F	12–01–93	Indef.
ST94–3191	Tennessee Gas Pipeline Co.	City of Florence Gas Dept.	12–30–93	G–S	10,000	N	I	12–16–93	Indef.
ST94–3192	Tennessee Gas Pipeline Co.	City of Scottsville	12–30–93	G–S	3,133	N	F	12–01–93	Indef.
ST94–3193	Tennessee Gas Pipeline Co.	O & R Energy, Inc.	12–30–93	G–S	9,402	N	F	12–01–93	Indef.
ST94–3194	Williston Basin Inter. P/L Co.	Cenex	12–30–93	G–S	10,188	A	I	11–30–93	12–31–93.
ST94–3195	Williston Basin Inter. P/L Co.	Exxon Corp	12–30–93	G–S	310	A	F	12–01–93	02–28–94.
ST94–3196	Williston Basin Inter. P/L Co.	Exxon Corp	12–30–93	G–S	100	A	F	12–01–93	02–28–94.
ST94–3197	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	12–30–93	G–S	100,000	A	I	12–01–93	11–30–94.
ST94–3198	El Paso Natural Gas Co.	Texaco Gas Marketing Inc.	12–30–93	G–S	51,000	N	I	12–01–93	Indef.
ST94–3199	El Paso Natural Gas Co.	Anthem Energy Co., L.P.	12–30–93	G–S	75,000	N	I	12–05–93	Indef.
ST94–3200	Anr Pipeline Co .	Chesapeake Energy Corp.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3201	Anr Pipeline Co .	Paris-Henry County Public Utility.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3202	Anr Pipeline Co .	West Tennessee Public Utility.	12–30–93	G–S	N/A	N	I	12–01–93	Indef.
ST94–3203	Florida Gas Transmission Co.	Kogas, Inc	12–30–93	G–S	250,000	N	I	12–18–93	Indef.
ST94–3204	Florida Gas Transmission Co.	Associated Natural Gas, Inc.	12–30–93	G–S	100,000	N	I	12–01–93	Indef.
ST94–3205	Florida Gas Transmission Co.	Florida Power Corp.	12–30–93	G–S	8,800	N	F	12–15–93	Indef.
ST94–3206	Florida Gas Transmission Co.	Coastal Gas Marketing Co.	12–30–93	G–S	100,000	N	I	12–24–93	Indef.
ST94–3207	Florida Gas Transmission Co.	Aristech Chemical Corp.	12–30–93	G–S	216	N	F	11–01–93	Indef.
ST94–3208	Great Lakes Gas Trans., L.P.	AIG Trading Corp.	12–30–93	G–S	30,000	N	F	12–11–93	01–31–94.

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ST94–3209	Great Lakes Gas Trans., L.P.	AIG Trading Corp.	12–30–93	G–S	50,000	N	F	12–01–93	11–30–94.
ST94–3210	Great Lakes Gas Trans., L.P.	Union Gas Limited.	12–30–93	G–S	100,000	N	F	12–01–93	02–28–94.
ST94–3211	Delhi Gas Pipeline Corp.	Transwestern P/L Corp, et al.	12–30–93	C	8,000	N	I	12–01–93	Indef.
ST94–3212	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Corp., et al.	12–30–93	C	2,000	N	I	12–07–93	Indef.
ST94–3213	Westar Transmission Co.	El Paso Natural Gas Co.	12–30–93	C	50,000	N	I	10–01–93	Indef.
ST94–3214	Channel Industries Gas Co.	Cargill, Inc	12–30–93	C	100,000	N	I	12–03–93	Indef.
ST94–3215	Channel Industries Gas Co.	Arco Natural Gas Marketing, Inc.	12–30–93	C	25,000	N	I	12–04–93	Indef.
ST94–3216	Viking Gas Transmission Co.	City of Hawley ...	12–30–93	G–S	96	N	F	12–01–93	02–28–94.
ST94–3217	Viking Gas Transmission Co.	Peoples Natural Gas Co.	12–30–93	G–S	1,098	N	F	12–01–93	02–28–94.
ST94–3218	Viking Gas Transmission Co.	Northern States Power Co.	12–30–93	G–S	23,700	Y	I	11–01–93	10–31–08.
ST94–3219	Viking Gas Transmission Co.	Utilicorp. United Inc.	12–30–93	G–S	1,300	N	F	12–01–93	02–28–94.
ST94–3220	Mojave Pipeline Co.	Southern California Edison Co.	12–30–93	G–S	60,000	N	F	11–06–93	11–30–93.
ST94–3221	Northern Natural Gas Co.	Twister Transmission Co.	01–03–94	G–S	25,000	N	I	12–04–93	Indef.
ST94–3222	ANR Pipeline Co	Associated Natural Gas Co.	12–30–93	G–S	3,150	N	I	11–01–93	10–31–08.
ST94–3223	ANR Pipeline Co	Associated Natural Gas Co.	12–30–93	G–S	1,100	N	I	11–01–93	10–31–08.
ST94–3224	ANR Pipeline Co	Illinois Power Co	12–30–93	G–S	5,684	N	I	11–01–93	10–31–96.
ST94–3225	ANR Pipeline Co	Illinois Power Co	12–30–93	G–S	631	N	I	11–01–93	10–31–03.
ST94–3226	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	65,267	N	I	11–01–93	10–31–03.
ST94–3227	ANR Pipeline Co	Ohio Gas Co	12–30–93	G–S	1,500	N	I	11–01–93	10–31–03.
ST94–3228	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	21,618	N	I	11–01–93	10–31–03.
ST94–3229	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	37,532	N	I	11–01–93	10–31–03.
ST94–3230	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	23,400	N	I	11–01–93	10–31–03.
ST94–3231	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	39,600	N	I	11–01–93	10–31–03.
ST94–3232	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12–30–93	G–S	10,800	N	I	11–01–93	10–31–03.
ST94–3233	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12–30–93	G–S	39,600	N	I	11–01–93	10–31–03.
ST94–3234	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	1,854	N	I	11–01–93	10–31–03.
ST94–3235	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	2,264	N	I	11–01–93	10–31–03.
ST94–3236	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	25,239	N	I	11–01–93	10–31–03.
ST94–3237	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	44,779	N	I	11–01–93	10–31–03.
ST94–3238	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	3,000	N	I	11–01–93	10–31–03.
ST94–3239	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	1,143	N	I	11–01–93	10–31–03.
ST94–3240	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	5,518	N	I	11–01–93	10–31–03.
ST94–3241	ANR Pipeline Co	Northern Indiana Fuel Light Co.	12–30–93	G–S	6,743	N	I	11–01–93	10–31–03.
ST94–3242	ANR Pipeline Co	Natural Gas Marketers, Inc.	12–30–93	G–S	3,000	N	I	11–01–93	10–31–06.
ST94–3243	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	177,115	N	I	11–01–93	10–31–03.

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ST94–3244	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	302,454	N	I	11–01–93	10–31–03.
ST94–3245	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–08.
ST94–3246	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	79,980	N	I	11–01–93	10–31–03.
ST94–3247	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	70,000	N	I	11–01–93	10–31–03.
ST94–3248	ANR Pipeline Co	Wisconsin Natural Gas Co.	12–30–93	G–S	71,900	N	I	11–01–93	10–31–03.
ST94–3249	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	82,558	N	I	11–01–93	10–31–03.
ST94–3250	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	82,558	N	I	11–01–93	10–31–03.
ST94–3251	ANR Pipeline Co	Wisconsin Public Service Corp.	12–30–93	G–S	66,472	N	I	11–01–93	10–31–03.
ST94–3252	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	3,375	N	I	11–01–93	10–31–08.
ST94–3253	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	4,125	N	I	11–01–93	10–31–08.
ST94–3254	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	216,500	N	I	11–01–93	10–31–08.
ST94–3255	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	19,180	N	I	11–01–93	12–31–08.
ST94–3256	ANR Pipeline Co	Iowa Southern Utilities Co.	12–30–93	G–S	1,000	N	I	11–01–93	10–31–03.
ST94–3257	ANR Pipeline Co	Natural Gas Marketers, Inc.	12–30–93	G–S	2,000	N	I	11–01–93	05–31–06.
ST94–3258	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–03.
ST94–3258	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	I	11–01–93	10–31–03.
ST94–3259	ANR Pipeline Co	Madison Gas & Electric Co.	12–30–93	G–S	12,000	N	I	11–01–93	10–31–03.
ST94–3260	ANR Pipeline Co	Michigan Gas Co.	12–30–93	G–S	8,014	N	I	11–01–93	04–30–10.
ST94–3261	ANR Pipeline Co	Michigan Gas Co.	12–30–93	G–S	70,982	N	I	11–01–93	10–31–03
ST94–3262	ANR Pipeline Co	Michigan Gas Utilities Co.	12–30–93	G–S	610	N	I	11–01–93	10–31–98
ST94–3263	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	5,000	Y	I	11–01–93	10–31–98.
ST94–3264	ANR Pipeline Co	Utilicorp United Inc.	12–30–93	G–S	7,000	N	I	11–01–93	10–31–98
ST94–3265	ANR Pipeline Co	Michigan Gas Utilities.	12–30–93	G–S	90,000	N	I	11–01–93	03–31–02
ST94–3266	ANR Pipeline Co	United Cities Co	12–30–93	G–S	3,960	N	F	11–01–93	10–31–03.
ST94–3267	ANR Pipeline Co	United Cities Co	12–30–93	G–S	4,840	N	F	11–01–93	10–31–03.
ST94–3268	ANR Pipeline Co	Michigan Consolidated Gas Co.	12–30–93	G–S	100,000	N	F	11–01–93	10–31–03.
ST94–3269	ANR Pipeline Co	Gen Corp. Polmer Products.	12–30–93	G–S	333	N	F	11–01–93	10–31–94.
ST94–3270	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	1,310	N	F	11–01–93	10–31–99.
ST94–3271	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	150	N	F	11–01–93	10–31–94.
ST94–3272	ANR Pipeline Co	Union Gas Ltd ...	12–30–93	G–S	15,266	N	F	11–01–93	10–31–94.
ST94–3273	ANR Pipeline Co	Kamine Besicorp (Syracuse).	12–30–93	G–S	16,335	N	F	11–01–93	12–31–93.
ST94–3274	ANR Pipeline Co	Philadelphia Gas Works.	12–30–93	G–S	9,551	N	F	11–07–93	03–31–13.
ST94–3275	ANR Pipeline Co	Trunkline Gas Co.	12–30–93	G	2,000	N	F	11–01–93	06–21–94.
ST94–3276	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	15,923	N	F	11–01–93	10–31–03.
ST94–3277	ANR Pipeline Co	Appleton Papers Inc.	12–30–93	G–S	3,000	N	F	11–01–93	10–31–98.

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ST94–3278	ANR Pipeline Co	City of Hamilton	12–30–93	G–S	1,200	N	F	11–01–93	10–31–03.
ST94–3279	ANR Pipeline Co	Wisconsin Gas Co.	12–30–93	G–S	18,411	Y	F	11–01–93	10–31–03.
ST94–3280	ANR Pipeline Co	Toyota Motor Manufacutring, Inc.	12–30–93	G–S	1,476	N	F	11–01–93	10–31–94.
ST94–3281	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	4,950	N	F	11–01–93	10–31–08.
ST94–3282	ANR Pipeline Co	Ohio Valley Gas Corp.	12–30–93	G–S	6,050	N	F	11–01–93	10–31–08.
ST94–3283	ANR Pipeline Co	Staten Island Cogeneration.	12–30–93	G–S	11,750	N	F	11–01–93	10–31–13.
ST94–3284	ANR Pipeline Co	Metropolitan Utilities District.	12–30–93	G–S	12,614	Y	F	11–01–93	03–31–95.
ST94–3285	ANR Pipeline Co	Iowa Illinois Gas & Electric.	12–30–93	G–S	2,610	Y	F	11–01–93	03–31–95.
ST94–3286	ANR Pipeline Co	Interstate Power	12–30–93	G–S	7,029	Y	F	11–01–93	03–31–95.
ST94–3287	ANR Pipeline Co	Peoples Natural Gas.	12–30–93	G–S	18,156	Y	F	11–01–93	03–31–95.
ST94–3288	ANR Pipeline Co	NI-Gas	12–30–93	G–S	14,830	Y	F	11–01–93	03–31–95.
ST94–3289	ANR Pipeline Co	Midwest Gas	12–30–93	G–S	13,811	Y	F	11–01–93	03–31–95.
ST94–3290	ANR Pipeline Co	Consumers Power Co.	12–30–93	B	40,000	N	F	11–01–93	10–31–99.
ST94–3291	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	3,015	N	F	11–01–93	10–31–95.
ST94–3292	ANR Pipeline Co	Scott Paper Co .	12–30–93	G–S	6,500	N	F	11–01–93	10–31–04.
ST94–3293	ANR Pipeline Co	Miller Brewing Co.	12–30–93	G–S	1,700	N	F	11–01–93	09–30–98.
ST94–3294	ANR Pipeline Co	Citizens Gas Fuel Co.	12–30–93	B	25,000	N	F	11–01–93	10–31–98.
ST94–3295	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	16,000	N	F	11–01–93	10–31–95.
ST94–3296	ANR Pipeline Co	Kazex Energy Management.	12–30–93	G–S	2,119	N	F	11–01–93	03–31–95.
ST94–3297	ANR Pipeline Co	Oryx Gas Ltd	12–30–93	G–S	5,000	N	F	11–01–93	10–31–94.
ST94–3298	ANR Pipeline Co	Plastics Engineering.	12–30–93	G–S	500	N	F	11–01–93	10–31–96.
ST94–3299	ANR Pipeline Co	CMS Gas Marketing.	12–30–93	G–S	500	N	F	11–01–93	03–31–94.
ST94–3300	ANR Pipeline Co	Banta Co	12–30–93	G–S	225	N	F	11–01–93	03–31–94.
ST94–3301	ANR Pipeline Co	Wisconsin Power & Light Co.	12–30–93	G–S	16,500	N	F	11–01–93	10–31–95.
ST94–3302	ANR Pipeline Co	Shell Gas Trading.	12–30–93	G–S	55,000	N	F	11–01–93	10–31–05.
ST94–3303	ANR Pipeline Co	City Gas Co	12–30–93	G–S	400	N	F	11–01–93	10–31–03.
ST94–3304	ANR Pipeline Co	Tinken Co	12–30–93	G–S	2,500	N	F	11–01–93	10–31–94.
ST94–3305	ANR Pipeline Co	Knauf Fiber Glass.	12–30–93	G–S	250	N	F	11–01–93	11–31–94.
ST94–3306	ANR Pipeline Co	Semco Energy Co. Dunn Seco.	12–30–93	G–S	3,500	N	F	11–01–93	09–30–94.
ST94–3307	ANR Pipeline Co	Kerr-McGee Corp.	12–30–93	G–S	3,700	N	F	11–01–93	10–31–94.
ST94–3308	ANR Pipeline Co	New England Power Co.	12–30–93	G–S	16,000	N	F	11–01–93	12–31–14.
ST94–3309	ANR Pipeline Co	Interstate Gas Marketing.	12–30–93	G–S	200	N	F	11–01–93	12–31–99.
ST94–3310	ANR Pipeline Co	Detroit Steel Products., Inc.	12–30–93	G–S	700	N	F	11–01–93	11–30–94.
ST94–3311	ANR Pipeline Co	Kamine Besicorp (Allegany L.P.).	12–30–93	G–S	17,800	N	F	11–01–93	10–31–08.
ST94–3312	ANR Pipeline Co	Altresco Lynn Inc.	12–30–93	G–S	41,500	N	F	11–01–93	12–31–14.
ST94–3313	ANR Pipeline Co	Anderman/Smith Operating.	12–30–93	G–S	8,000	N	F	11–01–93	07–31–02.
ST94–3314	ANR Pipeline Co	ANR Production Co.	12–30–93	G–S	7,500	N	F	11–01–93	05–31–94.
ST94–3315	ANR Pipeline Co	Blodgett Memorial.	12–30–93	G–S	615	N	F	11–01–93	06–30–95.
ST94–3316	ANR Pipeline Co	Grand Rapids Public.	12–30–93	G–S	750	N	F	11–01–93	03–31–94.

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ST94-3317	ANR Pipeline Co	Mid Louisiana Marketing Co.	12-30-93	G-S	12,000	N	F	11-01-93	12-31-98.
ST94-3318	ANR Pipeline Co	Southern Natural Gas Co.	12-30-93	G	1,400	N	F	11-01-93	03-12-97.
ST94-3319	ANR Pipeline Co	Tennessee Gas Pipeline Co.	12-30-93	G	18,750	N	F	11-01-93	10-31-00.
ST94-3320	ANR Pipeline Co	Allerton Gas Co	12-30-93	G-S	750	N	F	11-01-93	11-01-03.
ST94-3321	ANR Pipeline Co	Northern Natural Gas Co.	12-30-93	G-S	14,800	N	F	11-01-93	03-31-94.
ST94-3322	ANR Pipeline Co	SEMCO Energy Services.	12-30-93	G-S	3,200	N	F	11-01-93	02-28-94.
ST94-3323	ANR Pipeline Co	Dayton Power & Light Co.	12-30-93	G-S	24,200	N	F	11-01-93	03-31-94.
ST94-3324	ANR Pipeline Co	Madison Gas & Electric Co.	12-30-93	G-S	N/A	N	I	11-01-93	10-31-96.
ST94-3325	ANR Pipeline Co	Scot Forge Co ...	12-30-93	G-S	N/A	N	I	11-01-93	12-31-96.
ST94-3326	ANR Pipeline Co	International Specialist Products.	12-30-93	G-S	N/A	N	I	11-01-93	12-31-93.
ST94-3327	ANR Pipeline Co	Triumph Gas Marketing.	12-30-93	G-S	N/A	N	I	11-01-93	10-31-94.
ST94-3328	ANR Pipeline Co	Associated Natural Gas Co.	12-30-93	G-S	1,500	N	I	11-01-93	10-31-98.
ST94-3329	ANR Pipeline Co	Illinois Power Co	12-30-93	G-S	631	N	I	11-01-93	10-31-03.
ST94-3330	ANR Pipeline Co	Iowa Southern Utilities Co.	12-30-93	G-S	5,000	N	I	11-01-93	10-31-03.
ST94-3331	ANR Pipeline Co	Ohio Gas Co	12-30-93	G-S	1,500	N	I	11-01-93	10-31-01.
ST94-3332	ANR Pipeline Co	Madison Gas & Electric Co.	12-30-93	G-S	5,915	N	I	11-01-93	10-31-08.
ST94-3333	ANR Pipeline Co	Michigan Gas Co.	12-30-93	G-S	2,500	N	I	11-01-93	10-31-03.
ST94-3334	ANR Pipeline Co	Utilicorp United Inc.	12-30-93	G-S	8,400	N	I	11-01-93	10-31-03.
ST94-3335	ANR Pipeline Co	Wisconsin Fuel & Light Co.	12-30-93	G-S	7,200	N	I	11-01-93	10-31-08.
ST94-3336	ANR Pipeline Co	Midwest Gas	12-30-93	G-S	500	N	I	11-01-93	10-31-08.
ST94-3337	ANR Pipeline Co	Wisconsin Power & Light Co.	12-30-93	G-S	5,000	N	I	11-01-93	10-31-03.
ST94-3338	ANR Pipeline Co	Northern Indiana Fuel & Light Co.	12-30-93	G-S	700	N	I	11-01-93	10-31-03.
ST94-3339	ANR Pipeline Co	Northern Indiana Public Service Co.	12-30-93	G-S	1,226	N	I	11-01-93	10-31-03.
ST94-3340	ANR Pipeline Co	Ohio Valley Gas Corp.	12-30-93	G-S	1,500	N	I	11-01-93	10-31-08.
ST94-3341	ANR Pipeline Co	Wisconsin Gas Co.	12-30-93	G-S	67,670	N	I	11-01-93	10-31-03.
ST94-3342	ANR Pipeline Co	Wisconsin Natural Gas Co.	12-30-93	G-S	25,800	N	I	11-01-93	10-31-96.
ST94-3343	ANR Pipeline Co	Wisconsin Public Service Corp.	12-30-93	G-S	26,631	N	I	11-01-93	10-31-03.
ST94-3344	ANR Pipeline Co	United Cities Gas Co.	12-30-93	G-S	880	N	I	11-01-93	10-31-03.
ST94-3345	ANR Pipeline Co	Ohio Valley Gas Corp.	12-30-93	G-S	1,500	N	I	11-01-93	10-31-08.
ST94-3346	ANR Pipeline Co	City of Albany	12-30-93	G-S	1,550	N	I	11-01-93	10-31-03.
ST94-3347	ANR Pipeline Co	City of Aledo	12-30-93	G-S	3,550	A	I	11-01-93	10-31-03.
ST94-3348	ANR Pipeline Co	City of Allerton ..	12-30-93	G-S	1,340	N	I	11-01-93	10-31-03.
ST94-3349	ANR Pipeline Co	City of Alta Vista	12-30-93	G-S	602	A	I	11-01-93	10-31-03.
ST94-3350	ANR Pipeline Co	City of Bethany .	12-30-93	G-S	2,600	N	I	11-01-93	10-31-03.
ST94-3351	ANR Pipeline Co	City of Bloomfield.	12-30-93	G-S	2,134	A	I	11-01-93	10-31-03.
ST94-3352	ANR Pipeline Co	City of Chrisney	12-30-93	G-S	410	N	I	11-01-93	10-31-03.
ST94-3353	ANR Pipeline Co	City Gas Co	12-30-93	G-S	6,138	N	I	11-01-93	10-31-03.
ST94-3354	ANR Pipeline Co	Community Natural Gas Co., Inc.	12-30-93	G-S	3,000	N	I	11-01-93	10-31-03.
ST94-3355	ANR Pipeline Co	Fountaintown Gas Co., Inc.	12-30-93	G-S	5,504	A	I	11-01-93	10-31-03.
ST94-3356	ANR Pipeline Co	City of Grant	12-30-93	G-S	678	A	I	11-01-93	10-31-03.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284, subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–3357	ANR Pipeline Co	City of Havensville.	12–30–93	G–S	100	A	I	11–01–93	10–31–03.
ST94–3358	ANR Pipeline Co	Indiana Natural Gas Corp.	12–30–93	G–S	500	A	I	11–01–93	10–31–03.
ST94–3359	ANR Pipeline Co	Lamoni Municipal Utilities.	12–30–93	G–S	1,831	N	I	11–01–93	10–31–03.
ST94–3360	ANR Pipeline Co	Lincoln Natural Gas.	12–30–93	G–S	2,200	N	I	12–01–93	10–31–03.
ST94–3361	ANR Pipeline Co	City of Lineville ..	12–30–93	G–S	226	N	I	11–01–93	10–31–03.
ST94–3362	ANR Pipeline Co	City of Milan	12–30–93	G–S	2,920	N	I	11–01–93	10–31–03.
ST94–3363	ANR Pipeline Co	City of Morning Sun.	12–30–93	G–S	629	A	I	11–01–93	10–31–03.
ST94–3364	ANR Pipeline Co	City of Moulton ..	12–30–93	G–S	492	A	I	11–01–93	10–31–03.
ST94–3365	ANR Pipeline Co	City of New Boston.	12–30–93	G–S	439	A	I	11–01–93	10–31–03.
ST94–3366	ANR Pipeline Co	Paris-Henry County Public Utility.	12–30–93	G–S	6,338	N	I	11–01–93	10–31–03.
ST94–3367	ANR Pipeline Co	City of Princeton	12–30–93	G–S	1,150	N	I	11–01–93	10–31–03.
ST94–3368	ANR Pipeline Co	St. Joseph Light & Power.	12–30–93	G–S	7,600	N	I	11–01–93	10–31–03.
ST94–3369	ANR Pipeline Co	St. Joseph Light & Power.	12–30–93	G–S	6,138	N	I	11–01–93	10–31–03.
ST94–3370	ANR Pipeline Co	City of Stanberry	12–30–93	G–S	1,164	A	I	11–01–93	10–31–03.
ST94–3371	ANR Pipeline Co	City of Unionville	12–30–93	G–S	1,800	N	I	11–01–93	10–31–03.
ST94–3372	ANR Pipeline Co	City of Wayland .	12–30–93	G–S	900	A	I	11–01–93	10–31–03.
ST94–3373	ANR Pipeline Co	West Tennessee Pub. Utility District.	12–30–93	G–S	6,138	N	I	11–01–93	10–31–03.
ST94–3374	ANR Pipeline Co	City of Westmore.	12–30–93	G–S	296	A	I	11–01–93	10–31–03.
ST94–3375	ANR Pipeline Co	City of Winfield ..	12–30–93	G–S	800	Y	I	11–01–93	10–31–03.
ST94–3376	ANR Pipeline Co	Wisconsin Southern Gas Co.	12–30–93	G–S	4,000	Y	I	11–01–93	10–31–03.

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–6055 Filed 3–15–94; 8:45 am]
BILLING CODE 6717–01–P

[Project No. 2376–001 Virginia]

Appalachian Power Co.; Availability of Environmental Assessment[1]

March 10, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Reusens Hydroelectric Project located on the James River in Amherst and Bedford Counties, Virginia, near the city of Lynchburg, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project, with appropriate environmental protection measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–6056 Filed 3–15–94; 8:45 am]
BILLING CODE 6717–01–M

[1] This notice supersedes the notice issued on March 2, 1994.

[Docket No. MG91–4–002]

East Tennessee Natural Gas Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, East Tennessee Natural Gas Company (East Tennessee) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

East Tennessee states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

East Tennessee states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to

[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

intervene or protest should be filed on or before March 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6028 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–30–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

March 10, 1994.

Take notice that on March 3, 1994, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, proposed to become effective as of April 4, 1994:

Fortieth Revised Sheet No. 1
Third Revised Sheet No. 47
Seventh Revised Sheet No. 69
Second Revised Sheet No. 859
Third Revised Sheet No. 898
First Revised Sheet No. 1001

Great Lakes states that the above-described tariff sheets were filed to reflect the cancellation of Rate Schedules T–4, T–5, T–17, T–28 and T–31, pertaining to firm transportation service for TransCanada PipeLines Limited, Northern Natural Gas Company, Peoples Natural Gas Company, Midland Cogeneration Venture Limited Partnership and Southeastern Michigan Gas Company, respectively, pursuant to the Commission's authorization granted in Docket No. RS92–63–000 on July 2, 1993 to abandon these services under section 7(b). The conversion of these services from case-specific section 7 to part 284 service agreements, pursuant to the implementation of Order 636, was complete and thus Great Lakes made the present filing.

Great Lakes states that the comparative revenue statement as required under § 154.63(b)(2) of the Commission's Regulations was not included herewith as the capacity which became available due to the abandonment of transportation services attributable to TransCanada, Northern, Peoples, Midland and Southeastern is to be utilized by the same customers due to their conversion to firm transportation service agreements reflected in a concurrent filing of Great Lakes. Therefore, no material change in revenues received by Great Lakes occurred as a result of the revised transportation levels.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6029 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG90–4–004]

Midwestern Gas Transmission Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, Midwestern Gas Transmission Company (Midwestern) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

Midwestern states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

Midwestern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding.

[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993).

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6030 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–173–000]

Southern Natural Gas Co.; Refund Report

March 10, 1994.

Take notice that on March 7, 1994, Southern Natural Gas Company (Southern) tendered for filing a refund report pursuant to section 35 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

Pursuant to the letter order issued in Docket No. RP94–124–000 by the Office of Pipeline and Producer Regulation on February 23, 1994, Southern resubmits herewith for filing a summary refund report and Original Tariff Sheet No. 34A on the termination of its purchased gas adjustment provision.

By this initial filing, Southern proposes to refund the credit balance in its Account 191 attributable to gas purchases made prior to November 1, 1993, in connection with the provision of its former bundled merchant service. Southern is proposing to refund to its customers a total balance of $1,114,434, comprised of a credit balance of $1,456,431 in the commodity subaccount and a debt balance in the demand subaccount of $341,997 which arose during the deferral period of December 1, 1992 through October 31, 1993.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214 and 385.211). All such petitions or protests should be filed on or before March 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6031 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–19–006]

Tennessee Gas Pipeline Co.; Filing

March 10, 1994.

Take notice that on March 4, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

Tennessee states that the purpose of the filing is to reflect (1) certain changes mandated in Order No. 497–E, (2) certain organizational changes at Tenneco Gas, and (3) certain changes necessitated by the restructuring of services under Order No. 636.

Tennessee states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6032 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–119–001]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

March 10, 1994

Take notice that on March 7, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Fourth Revised Sheet No. 12
First Revised Sheet No. 229

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued February 25, 1994, in Docket No. RP94–119, which requires Texas Gas to reflect a change in its IT rates applicable to 10 percent of its GSR costs.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6033 Filed 3–15–94; 8:45 am]

BILLING CODE 6717–01–M

OFFICE OF ENERGY RESEARCH

Call for Expressions of Interest for the On-Site Utilization of Major Assets Developed for the Superconducting Super Collider

AGENCY: U.S. Department of Energy.

ACTION: Call for expressions of interest.

SUMMARY: The U.S. Department of Energy (DOE) and the Texas National Research Laboratory Commission (TNRLC) request from interested parties the submission of Expressions of Interest for the utilization of major assets and facilities developed by the DOE and TNRLC as part of the Superconducting Super Collider (SSC) project. This project was recently terminated by the U.S. Congress.

The SSC was to have been an accelerator complex and laboratory for basic research, providing access to particle collision energies 20 times greater than available at existing facilities. The project was under construction in Ellis County, Texas, about 30 miles south of Dallas.

Existing facilities and equipment include: (1) The N15 site which houses extensive cryogenic facilities and superconducting magnet tooling and test equipment in the Magnet Development Laboratory, the Magnet Test Laboratory, and the Accelerator System String Test; (2) the Central Facility, a 550,000 sq. ft. building including 200,000 sq. ft. of office/training space; 160,000 sq. ft. of shop/lab space, serviced with low conductivity water and compressed air systems, and some crane coverage; a well-equipped machine shop; a 550 watt liquid helium refrigerator (in partially assembled condition); and warehouse space; (3) buildings for the linear accelerator (linac) as well as its negative hydrogen ion source and 2.5–MeV radiofrequency quadrupole (the higher energy sections are not complete); (4) nearly 15 miles of unfinished tunnel, 14 feet in diameter, at a depth of typically 150 feet, connected to the surface by several vertical shafts; and (5) an integrated network of distributed workstations.

DATES AND ADDRESSES: One easily reproducible master and five copies of each Expression of Interest (on 8½ by 11 inch paper) should be received by Dr. Robert E. Diebold, GTN, ER–912, U.S. Department of Energy, Washington, DC 20585, no later than 5 p.m. local time, April 15, 1994. For hand delivery, the address is 19901 Germantown Road, Germantown, MD 20874.

A meeting of interested parties will be held at 9 a.m. on March 22, 1994, in the auditorium of the Central Facility (just north of Waxahachie). Following brief presentations of the facilities, questions will be taken and tours of the facilities will be provided. Please contact Dr. Haas, not later than March 18, 1994, for a reservation to attend this meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory Haas, DOE SSC Project Office, 2550 Beckleymeade, Mail Stop 1020, Dallas, TX 75237. Telephone (214) 708–2414.

SUPPLEMENTARY INFORMATION: This call for Expressions of Interest (EOIs) is an important part of the process of determining the best way to maximize the value of the investment made in the project and minimize the loss to the United States, Texas, and individuals. For this step in the process, only the on-site use of major systems and facilities will be considered.

The EOIs should be concise, covering the following topics:

I. Summary

A one-page summary suitable for incorporation into a booklet of summaries. It should have sufficient information to stand alone and should

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[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

include a descriptive title, a point of contact, a list of the authors/institutions expressing interest, and brief summaries of the following topics.

II. Motivation

Benefits to be expected from the suggested use of the facilities, a comparison with the capabilities of other similar facilities, and reasons why the suggested facility might be considered the best utilization of the assets.

III. Description

A brief, but complete description of the facility or use being suggested. It should explicitly describe the existing facilities to be used (as-is and/or modified) and identify any additional facilities that would be required.

IV. Cost and Schedule

Tables and a brief discussion justifying the estimated costs and schedules required to bring the suggested facility into operation. Give costs in present-day (FY 1994) dollars and include an amount for contingency, as appropriate.

V. Annual Costs

List and discuss the expected annual costs required for operation of the suggested facility.

VI. Funding/Business Plan

Present a plan to meet the costs identified in IV and V above. This plan should identify the specific funding sources expected and the amount expected from each source. Note that there are no federal funds appropriated for the construction or operation of any facility at the SSC site.

While limited technical consultations may be available from SSC Laboratory staff to assist in the development of the Expressions of Interest, the Department of Energy will not reimburse any costs associated with the preparation or submission of an Expression of Interest in response to this call.

The EOIs will be evaluated by expert teams assembled by the DOE, other federal agencies as appropriate, and TNRLC. The EOIs will be evaluated on: The merit of the suggested use; match of the assets to the purpose advocated; and credibility of viable funding and other required resources.

Once the EOIs are evaluated and the range of potentially viable best uses of the assets are identified, DOE expects to issue a notice of availability for grant applications, to those parties having submitted an EOI by the above deadline, for project definition studies with detailed analysis of the benefits and costs for the use of specific facilities.

This call for Expressions of Interest is not a commitment by the Government in any way to make available such assets or facilities.

Issued in Washington, DC, on March 11, 1994.

Martha A. Krebs,

Director, Office of Energy Research.

[FR Doc. 94-6215 Filed 3-15-94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180926; FRL 4765-4]

Receipt of Application for Emergency Exemption to use Avermectin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Idaho, Oregon and Washington Departments of Agriculture (hereafter referred to as the "Applicants") for use of the pesticide Avermectin (EPA Reg. No. 618-98) to control Tetranychus urticae (Two-spotted spider mite) on up to 42,000 acres of Hops. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 31, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180926," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lawrence Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308-8328.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of the miticide/insecticide, avermectin, available as Agrimek 0.15EC (EPA Reg. No. 618-98) from Merck and Company, Incorporated, to control the Two-spotted spider mite (TSSM), in Idaho, Oregon and Washington. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, the TSSM is a serious pest problem in hop yards. The TSSM's rapid reproduction cycle results in a significant expansion of their population size. With such a high fecundity rate stimulated by extended hot, dry weather conditions, it takes only a short period of time for mites to reach injurious densities resulting in reduced plant vigor, yields and the discoloration of hop cones which decreases product quality. This reduction in quality can result in rejection by brewers, the major buyers of hops, and severely impacts hop growers economically. The Applicants claim that none of the registered pesticides are effective against the TSSM and that, without an effective control, growers will incur significant economic losses during the 1994 growing season.

Under the proposed exemption a maximum of 10,500 gallons of formulated product could be used if conditions conducive to mite propagation occur during the growing season. A 14-day pre-harvest interval will be observed. In addition, livestock would not be grazed in treated hop yards. Applications would be made between April 15 and September 20, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section

18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of avermectin on hops have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Idaho, Oregon and Washington Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 4, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5998 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4849–6]

Clean Water Act (CWA) 304(l): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of lists submitted to USEPA pursuant to section 304(l)(1)(C) of the Clean Water Act ("CWA") as well as USEPA's proposed approval decisions, and requests for public comment.

DATES: Comments must be submitted to USEPA on or before April 15, 1994.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, USEPA—Region 5, 304(l) Coordinator, U.S. Environmental Protection Agency—Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, telephone: (312) 353–2310. Comments on these items should be sent to Howard Pham, USEPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: Section 304(l) of the CWA, 33 U.S.C. 1314(l), required each state, within two years after February 4, 1987, to submit to the U.S. Environmental Protection Agency, three lists of waters, including a list of those waters that the state does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources (the "B List" or "Short List"). 33 U.S.C. 1314(l)(1)(B). The second, or "Mini" list consists of waters that are not meeting the new water quality standards developed under section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources. 33 U.S.C. 1314(l)(1)(A)(i). The third, or "Long" list includes all waters on the other two lists, plus any waters which, after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the state was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. 33 U.S.C. 1314(l)(1)(C); see *Natural Resources Defense Council* v. *USEPA*, 915 F.2d 1313, 1323–24 (9th Cir. 1990); 57 FR 33040, 33050 (July 24, 1992) (amending USEPA's section 304(l) regulations to require point sources to be identified for each listed water segment). For each point source identified on the state's C list as discharging toxic pollutants into a water segment on the state's B list, the state was further required to submit to USEPA an individual control strategy that the state determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within three years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

[1]USEPA initially interpreted the statute to require states to identify on the C list only those facilities that discharge toxic pollutants believed to be impairing waters listed on the B list. In *Natural Resources Defense Council* v. *USEPA*, the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed USEPA to amend the regulation to require the states to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharges by each source. USEPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with USEPA's amended regulation, the States of Indiana, Michigan, Minnesota and Ohio have submitted to USEPA, for approval, their listing decisions under section 304(l)(1)(C). The following table indicates the decisions made by three Region 5 states, Michigan, Minnesota and Ohio. Indiana indicated that it does not have any additional point sources to add to this list. USEPA today proposes to approve Indiana's, Michigan's, Minnesota's, and Ohio's lists. USEPA solicits public comment on the approval decisions and on the state lists.

Dated: March 3, 1994.

Valdas V. Adamkus,

Regional Administrator.

U.S. EPA Region 5 Section 304(l) Additional Listings/Revisions

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MI	River Rouge, Middle Branch	MI0024287	Oakland C. Walled Lk./ Novi WWTP	PCBs.
MI	Grand River	MI0023027	Grandville WWTP	Hg.
MI	(Same as above)	MI0023400	Lansing WWTP	Hg.
MI	Kalamazoo River	MI0023299	Kalamazoo WWTP	PCB.
MI	(Same as above)	MI0000779	Allied Paper Company	PCB.
MI	Saginaw River	MI0001121	GM-Engine Division-Bay City	PCB.
MN	Mississippi River	MN0000256	Ashland Oil Incorporated	PCB, Hg.
MN	(Same as above)	MN0001449	3M-Chemolite	Hg.
MN	Minnesota River	MN0030007	MWCC/MC-Senenca (Dewatering)	Hg.
MN	Minnesota River	MN0029963	MWCC/MC Chaska	PCB.
MN	St. Croix River	MN0029998	MWCC/MC Stillwater	Hg.

U.S. EPA REGION 5 SECTION 304(l) ADDITIONAL LISTINGS/REVISIONS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MN	Mississippi	MN0029955	MWCC/MC-Hastings	Hg.
MN	Shell Rock River	MN0041092	Albert Lea	Cu.
MN	Kawaishiwi River	MN0046981	Cyprus Northshore Mining Babbitt	Cu, Zn.
MN	69–0003 Birch Lake	MN0002208	LTV Steel/Erie Corp	Cu, Zn.
OH	Mahoning River (Yellow Cr. to Mill Cr.)	OH0011207	Copperweld Steel	Cd, CN, Cu, Pb, Zn.
OH	(Same as above)	OH0024325	Campbell WWTP	Cd, Cu, Cr, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0028221	Youngstown WWTP	Cd, Cu, Cr, Pb, Ni, Zn, Hg, Phenolics.
OH	Mill Cr	OH0037249	Mahoning County-Boardman WWTP	CN, Cd, Cr, Cu, Pb, Zn, Hg.
OH	Mahoning River (Mill Cr. to Meander Cr.)	OH0011533	Ohio Edison-Niles Plant	Cu.
OH	(Same as above)	OH0025364	Girard WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	(Same as above)	OH0026743	Niles WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Endosulfan sulfate.
OH	Meander Cr	OH0045721	Mahoning County-Meander Cr	Cd, Cr, Cu, Pb, Tl, Ni, Zn, Hg.
OH	Mosquito Cr. (Mosquito Cr. Reservoir to Mahoning River).	OH0043401	Trumbull County Mosquito Cr. WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011274	LTV Steel—Warren	Cr, Phenolics, Bis(2-ethylhexyl)phthalate.
OH	(Same as above)	OH0027987	City of Warren	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Yankee Run	OH0036285	Brookfield WWTP	Cd, Cu, Ni, Zn.
OH	Leslie Run	OH0021784	East Palestine WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	Tuscarawas River (Pigeon Run to Sandy Cr.).	OH0020036	Navarre WWTP	Cd, Cr, Cu, Pb, Zn, Hg.
OH	Tuscarawas River (Newman Cr. to Pigeon Run).	OH0092444	Mercury Stainless Steel	Cr, Ni.
OH	(Same as above)	OH0020516	Massillon WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	River Styx	OH0027936	Medina County Wadsworth WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Chippewa Cr	OH0020371	Orrville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics, Ag.
OH	Pigeon Cr	OH0088072	Polysar Resins	Organics.
OH	Tuscarawas River (Headwaters to Wolf Cr.).	OH0008010	Wright Tool and Forge	Cr, Ni.
OH	Sugar Cr. (South Fork Sugar Cr. to Tuscarawas River).	OH0007269	Dover Chemical	Organics, Cd, Pb, CN, Cr, Cu, Ni, Zn.
OH	Lower Tuscarawas River	OH0004235	Stone Container	Tl.
OH	Tuscarawas River (Sugar Cr. To Stillwater Cr.).	OH0007196	Union Camp Corporation	Organics, Ni, Cu, Hg.
OH	(Same as above)	OH0026727	New Philadelphia WWTP	Cd, Cr, Cu, Ni, Zn.
OH	Tuscarawas River (Conotton Cr. to Sugar Cr.).	OH0005606	Greer Steel	Pb, Zn.
OH	(Same as above)	OH0041572	General Electric/Dover Wire	Cu, Ni.
OH	Black Fork Mohican River (Rocky Fork to Clear Fork).	OH0008338	Copperweld Corporation	Pb, Zn.
OH	Rocky Fork Mohican River	OH0005649	Stone Container Corp	Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0006840	Cyclops Industries	Cr, Pb, Ni, Cu, Phenolics, Organics.
OH	Black Fork Mohican River (Headwaters to Leatherwood Cr.).	OH0023540	Shelby WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Jerome Fork Mohican River (Lang Cr. to Lake Fork).	OH0023906	Ashland WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics
OH	Beaver Run	OH0021539	Hebron WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Muskingum River (Salt Cr. to Millers Run).	OH0048372	Galcier Clevite/McConnelsville	Organics, Cd, Cr, Cu, Pb, Ni, Zn, CN.
OH	(Same as above)	OH0048364	Gould/McConnelsville	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Meadow Run	OH0023507	Wellston North	Cd, Cu, Pb, Ni, Zn, Hg, 2,2,7,8–TCDD.
OH	Little Scioto River (Rock Fork to Scioto River).	OH0026352	Marion WWTP	Cd, Cu, Pb, Ni, Zn, Hg, phenolics.
OH	Mill Creek	OH0020630	Marysville WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Phelps Run	OH0007455	BMY Wheeled Vehicle (Rockwell International).	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Olentangy River (Headwaters to Mud Run).	OH0025313	Galion WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.

U.S. EPA REGION 5 SECTION 304(l) ADDITIONAL LISTINGS/REVISIONS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Tussing Ditch	OH0034240	Canal Wire (Nestaway)	Cu, Pb, Zn, Ag.
OH	Scioto River (Big Darby to Scippo Cr.)	OH0005681	Container Corporation	Cu.
OH	(Same as above)	OH0006327	DuPont/Circleville	Organics.
OH	(Same as above)	OH0024465	Circleville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Paint Cr. (Jeffersonville to East Fork Paint Cr.).	OH0028002	Washington Court House WWTP	Cd, Cu, Pb, Zn, Hg, Cr.
OH	Little Salt Cr. (Headwaters to Buckeye Cr.).	OH0020834	Jackson WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Beaver Cr	OH0026590	Montgomery County Eastern Regional WWTP.	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Second Cr	OH0021733	Blanchester WWTP	Cu, Pb, Ni, Zn.
OH	Lytle Cr	OH0028134	Wilmington WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Bluejacket Cr	OH0024066	Bellefontaine WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mad River (Donnels Cr. to Mud Run)	OH0049794	Clark County Southwest Regional WWTP	Hg.
OH	Great Miami River (Dicks Cr. to Fourmile Cr.).	OH0010413	Armco Steel/New Miami	CN, phenolics.
OH	Great Miami River (Twin Cr. to Dicks Cr.)	OH0009997	Armco Steel/Middletown	Pb, Zn, CN, phenolics.
OH	Great Miami River (Wolf Cr. to Bear Run)	OH0009377	Appleton Paper	2,3,7,8–TCDD.
OH	(Same as above)	OH0020133	West Carrollton WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0024881	Dayton WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026638	Montgomery County Western Regional WWTP.	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Great Miami River (Taylor Cr. to Ohio River).	OH0009318	B.F. Goodrich	Cr.
OH	(Same as above)	OH0027758	Troy WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Wabash River (Headwaters to Stony Cr.)	OH0010138	Fort Recovery Industries	CN, Cr, Cu, Ni, Zn.
OH	John Lattaner Ditch	OH0002941	Chase Brass and Copper	Cr, Cu, Pb, Ni, Zn.
OH	Blanchard (Eagle Cr. to Ottawa River)	OH0025135	Findlay WWTP	Cu, Pb, Zn, Hg.
OH	Ottawa River (Hog Cr. to Little Ottawa River).	OH0002615	Sohio Chemical	CN, Acrylonitrile.
OH	(Same as above)	OH0026069	Lima WWTP	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Town Cr	OH0027910	Van Wert WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Evans Ditch	OH0003697	Ohio Electropolishing	Cd, Cr, Cu, Zn.
OH	Jennings Cr	OH0024929	Delphos WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Prairie Cr	OH0020532	Bryan WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Maumee River (Auglaize River to Wade Cr.).	OH0002666	GMC/Defiance	Cu, Pb, Zn, Phenolics.
OH	(Same as above)	OH0024899	Defiance WWTP	Cd, Cu, Zn, Hg.
OH	Maumee River (Waterville to Swan Cr.)	OH0021008	Perrysburg WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0034223	Lucas County Maumee River WWTP	Cd, Cu, Ni, Zn.
OH	Otter Cr	OH0002763	Sun Oil Refinery	Cr, Phenolics.
OH	(Same as above)	OH0002445	Libbey-Owens-Ford	Pb, As.
OH	East Branch Portage River	OH0052744	Fostoria WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mills Cr	OH0000264	GMC/Sandusky	Cr, CN, Cu, Pb, Phenolics, Ni, Zn.
OH	(Same as above)	OH0001201	Ford Motor Company	Cr, Pb, Zn.
OH	Snyders Ditch	OH0020672	Bellevue WWTP	Cd, Cr, Pb, Ni, Zn, Hg, Cu.
OH	Raccoon Cr	OH0024686	Clyde WWTP	Cd, Cu, Pb, Zn, Hg.
OH	Black River	OH0001652	USX-Lorain	Cd, Cu, Pb, Hg, CN, Zn, Napthalene, Phenolics.
OH	(Same as above)	OH0026093	Lorain WWTP	CN, Cd, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Rocky River	OH0026778	North Olmsted WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026018	Lakewood WWTP	Cd, Cu, Pb, Ni, Zn
OH	Cuyahoga River (Congress Lake Out. to Lower Cuyahoga).	OH0000213	Ohio Edison Gorge Plant	Cu.
OH	(Same as above)	OH0025917	Kent WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0064009	Summit County Fish Creek WWTP	Cd, Cu, Pb, Ni, Zn, Hg.

U.S. EPA Region 5 Section 304(l) Additional Listings/Revisions—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Cuyahoga River (Big Cr. to Lake Erie)	OH0000957	LTV Steel Cleveland East Side	Pb, Zn, CN. Phenolics, Napthalene.
OH	(Same as above)	OH0000850	LTV Steel Cleveland West Side	CN, Zn, Pb, Phenolics.
OH	(Same as above)	OH0000990	DuPont/Cleveland	Cd, Cr, Pb, Zn.
OH	Cuyahoga River (Tinkers Cr. to Big Cr.)	OH0000655	Harshaw Chemical	Ni, Cu.
OH	(Same as above)	OH0024651	NEORSD Southerly WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Tinkers Cr. (Pond Brook to Cuyahoga River).	OH0024058	Bedford Heights WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0027863	Twinsburg WWTP	Cu, Pb, Ni, Zn, Hg.
OH	Beaver Meadow Cr	OH0027430	Solon Central WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Euclid Cr	OH0000281	Argo-Tech (TRW)	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Grand River (Paine Cr. to Lake Erie)	OH0026948	Painesville WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Fields Brook	OH0000442	RMI Extrusion Plant	Cd, Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0003205	RMI Titanium Metals Plant	Cr, Cu, Pb, Mo, Zn.
OH	(Same as above)	OH0029149	Occidental Electrochemical	Organics, CN, Cr.
OH	(Same as above)	OH0001872	Detrex Chemical	Cd, Cu, Zn.
WI	Lower Fox River	W10001848	Fort Howard Paper Co	PCBs.

U.S. EPA Region 5, Section 304(l) Revisions to Original Listings

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
MI	Saginaw River	MI0000868	Dow Chemical U.S.A.—Midland	2,3,7,8–TCDD.
MN	Mississippi River	MN0000418	Koch Refinery	Hg.
MN	Mississippi River	MN0029815	MWCC/MC Metro	PCB, Hg.
MN	St. Louis Bay	MN0049786	Western Lake Superior SD	PCB, Hg, Pb.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011363	Thomas Steel Strip	Cr, Cu, Pb, Ni, Zn, CN, Tetrachloroethylene.
OH	Red Run	OH0083852	Sharon Steel	CN, Cr, Zn, Cd, Cu, Pb, Ni.
OH	Big Darby Cr. (Buck Run to Sugar Run)	OH0004502	Ranco/Plain City	CN, Cd, Cr, Cu, Ni, Zn.
OH	Cuyahoga River (Little Cuyahoga Rv. to Yellow Cr.).	OH0023833	Akron WWTP	Cd, Cu, Pb, Ni, Hg, Phenolics, Zn.
OH	Lytle Cr	OH0028134	Wilmington WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Bluejacket Cr	OH0024066	Bellefontaine WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mad River (Donnels Cr. to Mud Run)	OH0049794	Clark County Southwest Regional WWTP	Hg.
OH	Great Miami River (Dicks Cr. to Fourmile Cr.).	OH0010413	Armco Steel/New Miami	CN, Phenolics.
OH	Great Miami River (Twin Cr. to Dicks Cr.)	OH0009997	Armco Steel/Middletown	Pb, Zn, CN, Phenolics.
OH	Great Miami River (Wolf Cr. to Bear Run)	OH0009377	Appleton Paper	2,3,7,8–TCDD
OH	(Same as above)	OH0020133	West Carrollton WWTP	CN, Cd, Cr, CU, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0024881	Dayton WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026638	Montgomery County Western Regional WWTP.	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Great Miami River (Taylor Cr. to Ohio River).	OH0009318	B.F. Goodrich	Cr.
OH	(Same as above)	OH0027758	Troy WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Wabash River (Headwaters to Stony Cr.)	OH0010138	Fort Recovery Industries	CN, Cr, Cu, Ni, Zn.
OH	John Lattaner Ditch	OH0002941	Chase Brass and Copper	Cr, Cu, Pb, Ni, Zn.
OH	Blanchard (Eagle Cr. to Ottawa River)	OH0025135	Findlay WWTP	Cu, Pb, Zn, Hg.
OH	Ottawa River (Hog Cr. to Little Ottawa River).	OH0002615	Sohio Chemical	CN, Acrylonitrile.
OH	(Same as above)	OH0026069	Lima WWTP	Cr, Cu, Pb, Ni, Zn, Hg.
OH	Town Cr	OH0027910	Van Wert WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Evans Ditch	OH0003697	Ohio Electropolishing	Cd, Cr, Cu, Zn.
OH	Jennings Cr	OH0024929	Delphos WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Prairie Cr	OH0020532	Bryan WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Maumee River (Auglaize River to Wade Cr.).	OH0002666	GMC/Defiance	Cu, Pb, Zn, Phenolics.
OH	(Same as above)	OH0024899	Defiance WWTP	Cd, Cu, Zn, Hg.

U.S. EPA REGION 5, SECTION 304(l) REVISIONS TO ORIGINAL LISTINGS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Maumee River (Waterville to Swan Cr.)	OH0021008	Perrysburg WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0034223	Lucas County Maumee River WWTP	Cd, Cu, Ni, Zn.
OH	Otter Cr	OH0002763	Sun Oil Refinery	Cr, Phenolics.
OH	(Same as above)	OH0002445	Libbey-Owens-Ford	Pb, As.
OH	East Branch Portage River	OH0052744	Fostoria WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Mills Cr	OH0000264	GMC/Sandusky	Cr, CN, Cu, Pb, Phenolics, Ni, Zn.
OH	(Same as above)	OH0001201	Ford Motor Company	Cr, Pb, Zn.
OH	Snyders Ditch	OH0020672	Bellevue WWTP	Cd, Cr, Pb, Ni, Zn, Hg, Cu.
OH	Raccoon Cr	OH0024686	Clyde WWTP	Cd, Cu, Pb, Zn, Hg.
OH	Black River	OH0001652	USX-Lorain	Cd, Cu, Pb, Hg, CN, Zn, Napthalene, Phenolics.
OH	(Same as above)	OH0026093	Lorain WWTP	CN, Cd, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Rocky River	OH0026778	North Olmsted WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0026018	Lakewood WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Tuscarawas River (Pigeon Run to Sandy Cr.).	OH0020036	Navarre WWTP	Cd, Cr, Cu, Pb, Zn, Hg
OH	Tuscarawas River (Newman Cr. to Pigeon Run).	OH0092444	Mercury Stainless Steel	Cr, Ni.
OH	(Same as above)	OH0020516	Massillon WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	River Styx	OH0027936	Medina County Wadsworth WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Chippewa Cr	OH0020371	Orrville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics, Ag.
OH	Pigeon Cr	OH0088072	Polysar Resins	Organics.
OH	Tuscarawas River (Headwaters to Wolf Cr.).	OH0008010	Wright Tool and Forge	Cr, Ni.
OH	Sugar Cr. (South Fork Sugar Cr. to Tuscarawas River).	OH0007269	Dover Chemical	Organics, Cd, Pb, CN, Cr, Cu, Ni, Zn.
OH	Lower Tuscarawas River	OH0004235	Stone Container	Tl.
OH	Tuscarawas River (Sugar Cr. to Stillwater Cr.).	OH0007196	Union Camp Corporation	Organics, Ni, Cu, Hg.
OH	(Same as above)	OH0026727	New Philadelphia WWTP	Cd, Cr, Cu, Ni, Zn.
OH	Tuscarawas River (Conotton Cr. to Sugar Cr.).	OH0005606	Greer Steel	Pb, Zn.
OH	(Same as above)	OH0041572	General Electric/Dover Wire	Cu, Ni.
OH	Black Fork Mohican River (Rocky Fork to Clear Fork).	OH0008338	Copperweld Corporation	Pb, Zn.
OH	Rocky Fork Mohican River	OH0005649	Stone Container Corp.	Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0006840	Cyclops Industries	Cr, Pb, Ni, Cu, Phenolics, Organics.
OH	Black Fork Mohican River (Headwaters to Leatherwood Cr.).	OH0023540	Shelby WWTP	Cd, Cu, Pb, Ni, Zn, Hg.
OH	Jerome Fork Mohican River (Lang Cr. to Lake Fork).	OH0023906	Ashland WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Beaver Run	OH0021539	Hebron WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Muskingum River (Salt Cr. to Millers Run).	OH0048372	Galcier Clevite/McConnelsville	Organics, Cd, Cr, Cu, Pb, Ni, Zn, CN.
OH	(Same as above)	OH0048364	Gould/McConnelsville	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Meadow Run	OH0023507	Wellston North	Cd, Cu, Pb, Ni, Zn, Hg, 2,2,7,8–TCDD.
OH	Little Scioto River (Rock Fork to Scioto River).	OH0026352	Marion WWTP	Cd, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Mill Creek	OH0020630	Marysville WWTP	Cd, Cu, Pb, Ni, Zn.
OH	Phelps Run	OH0007455	BMY Wheeled Vehicle (Rockwell International).	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Olentangy River (Headwaters to Mud Run).	OH0025313	Galion WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Tussing Ditch	OH0034240	Canal Wire (Nestaway)	Cu, Pb, Zn, Ag.
OH	Scioto River (Big Darby to Scippo Cr.)	OH0005681	Container Corporation	Cu.
OH	(Same as above)	OH0006327	DuPont/Circleville	Organics.

U.S. EPA REGION 5, SECTION 304(l) REVISIONS TO ORIGINAL LISTINGS—Continued

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	(Same as above)	OH0024465	Circleville WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Paint Cr. (Jeffersonville to East Fork Paint Cr.).	OH0028002	Washington Court House WWTP	Cd, Cu, Pb, Zn, Hg, Cr.
OH	Little Salt Cr. (Headwaters to Buckeye Cr.).	OH0020834	Jackson WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Little Beaver Cr	OH0026590	Montgomery County Eastern Regional WWTP.	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Ag.
OH	Second Cr	OH0021733	Blanchester WWTP	Cu, Pb, Ni, Zn.

[FR Doc. 94–6052 Filed 3–15–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 10, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0041.

Title: Application for Authority to Operate a Broadcast Station by Remote Control.

Form Number: FCC Form 301–A.

Action: Extension of currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 80 responses; 0.5 hours average burden per response; 40 hours total annual burden.

Needs and Uses: FCC Form 301–A is required to be filed by AM licensees or permittees with directional antennas when requesting authority to operate a station by remote control. In this submission, the form has been revised to eliminate all references to miles. In addition, we are changing the reference to kilometers from 11 to 16 (16 kilometers is the equivalent of 10 miles). The data is used by FCC staff to assure that the directional antenna system is stable.

OMB Number: 3060–0282.

Title: Section 94.17, Shared use of radio stations and the offering of private carrier communications service.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 300 recordkeeper; .333 hours average burden per recordkeeper; 100 hours total annual burden.

Needs and Uses: Licensees are allowed to share use of their microwave radio facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the condition that all sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records. The licensee of the station must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under part 94. This information is required to be retained in order to assure that the rules on shared use of microwave radio stations and the offering of private carrier microwave communications service are complied with.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6059 Filed 3–15–94; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1999]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 11, 1994.

The petition for reconsideration published on February 22, 1994, 59 FR 8475, is withdrawn because of an incorrect subject matter and is replaced with the following.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed March 31, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz. (PR Docket No. 93–35)

Petition for Reconsideration

Number of Petitions Filed: 7

Request for Waiver

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6058 Filed 3–15–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Citizens Development Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 8, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Development Company, Billings, Montana, to acquire 80.98 percent of the voting shares of Western Bank, N.A., Chinook, Montana, 100 percent of the voting shares of Citizens State Bank, Hamilton, Montana and 99.75 percent of the voting shares of First National Bank of Lewistown, Lewistown, Montana.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Cardinal Bancshares, Inc., Lexington, Kentucky, to acquire 100 percent of the voting shares of CNB Bank of Kentucky, Louisville, Kentucky.

Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6048 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

Robert Scott Taylor; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Robert Scott Taylor, Cleveland, Tennessee, to acquire an additional 7.5 percent, for a total of 25.9 percent of the voting shares of Bradley County Financial Corporation, Cleveland, Tennessee, and thereby indirectly acquire Bank of Cleveland, Cleveland, Tennessee.

Board of Governors of the Federal Reserve System, March 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-6049 Filed 3-15-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0012]

Uniform Labeling of Drugs for Dairy and Beef Cattle; Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle" prepared by the Center for Veterinary Medicine (CVM). This guideline was formulated to promote uniform labeling of drug products for cattle by recommending use of geometric symbols on labels to identify certain target animals and certain categories of drug products. Using the recommendations within the guideline should promote correct use of animal drugs and, thus, reduce drug residues in milk and meat products. The guideline was made available in a draft form (58 FR 8054) and this notice summarizes the received comments.

DATES: Written comments may be submitted at any time. Received comments will be considered to determine if further revision of the guideline is necessary.

ADDRESSES: Submit written requests for single copies of the guideline to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with dockets number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1642.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle." The guideline is based on a draft guideline for which a notice of availability was published in the **Federal Register** of February 11, 1993 (58 FR 8054).

This guideline was developed as a part of the agency's ongoing efforts to protect the public health from harmful residues in food resulting from improper use of animal drugs. The agency continues to strive to ensure that the directions for use and other information in animal drug labeling is clear and followed in practice. The agency's efforts in this regard resulted in changes to provisions regarding proper labeling and storage of drugs on dairy farms in the Grade A Pasteurized Milk Ordinance (PMO) which specifies standards, requirements, and procedures that must be followed to ensure the safety of milk. Implementation of the PMO changes revealed, however, that many of the labels for animal drugs approved for use in cattle are confusing to both veterinarians and lay persons. For example, drug users were confused regarding whether products were for lactating dairy cattle or other classes of cattle. Furthermore, these individuals had difficulty distinguishing between prescription and over-the-counter drugs.

As a result of these findings, the agency developed the system of symbolic representations set out in this guideline. The system is designed to assist users of animal drugs by making the labeling information more understandable. The system was tested and evaluated, on a limited basis, in

workshops, training sessions, and meetings with dairy producers, veterinarians, State regulatory personnel and dairy sanitarians. The labeling features provided in this guideline were developed in conjunction with this testing. The agency is making the symbolic system available in this guideline, for use on a voluntary basis, to further evaluate the effectiveness of this type of system. In this regard, the agency intends to distribute the symbolic system to producers and veterinarians for their use and feedback. The agency will subsequently evaluate use of the symbolic system set out in the guideline to determine whether the system or some variation of the system is useful as well as whether a symbolic system or some other type of labeling changes should be incorporated into the agency's regulations.

Two comments were received in response to the notice published in the **Federal Register**, one from a drug manufacturer, the other from a manufacturer's association. The drug manufacturer's main concern was size and prominence of the proposed symbols, and the lack of an exemption for use on small volume parenterals. The manufacturer also mentioned the emphasis on cattle without considering any approved use in other species; whether the colors are appropriate and legible; whether inclusion of a narrative description of the symbol is needed; and the excessive size of some symbols. The manufacturer's association stated that the guideline did not clearly state the problem and thus failed to provide a case for a change in the labeling scheme. The association noted that the original coverage was expanded from dairy cows to beef cattle, calves, and veal; that use of the human Rx symbol would be misleading; that the new symbols can be confusing; and that the current voluntary symbols are adequate.

CVM has considered these comments and concluded that use of the guideline, though voluntary, would promote a more uniform and clearer labeling, would more clearly indicate the drug category, should result in more uniform use, and should aid in the reduction of illegal residues in milk and meat.

The guideline recommends use of certain symbols to designate the drug's OTC or Rx status, class of target animal, milk discard time, and slaughter withholding times. The guideline represents a cooperative effort with the animal drug industry to promote labeled use of certain drugs and to reduce drug residues in meat and milk products.

The guideline summarizes the codified labeling requirements for over-the-counter (OTC) and Rx animal drugs and prior CVM labeling recommendations. It has been prepared for voluntary use by the animal drug industry to promote the uniform labeling of animal drug products, primarily for that used in cattle. The guideline recommends that labels of drugs include easily interpreted geometric symbols to indicate the category of drug product and animal for treatment. Use of the guideline would promote proper animal drug use and thus reduce drug residues in milk and meat products.

Labeling revised in conformance with this guideline must be the subject of an approved supplemental new animal drug application prior to its use.

Guidelines state practices or procedures that may be useful but are not legal requirements. The guideline represents the agency's position at the time of its issuance. A person may follow the guideline or may choose to follow alternate practices or procedures. If a person chooses to use an alternate practice or procedure, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable. The guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may submit further comments at any time. Submit written comments on the guideline to the Dockets Management Branch (address above) or to the contact person (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 10, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-6007 Filed 3-15-94; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Reorganization of the Health Care Financing Administration

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 FR 3547, September 6, 1984, as amended most recently at 58 FR 42079, August 6, 1993) is amended to reflect a major reorganization of HCFA. The Administration's "reinventing government" initiative has been considered in developing this reorganization. In addition, the reorganization is also designed to improve the efficiency of HCFA's total operation and to provide increased responsiveness to the needs of the Administration, beneficiaries, the States, and the health care industry.

The specific amendments to Part F are:

- Section F.10., Health Care Financing Administration (Organization) is amended to read as follows:

Section F.10., Health Care Financing Administration (Organization)

The Health Care Financing Administration (HCFA) is an Operating Division of the Department. It is headed by an Administrator, HCFA, who is appointed by the President and reports to the Secretary. It consists of the following organizational elements:

A. Office of the Administrator (FA).
   1. Provider Reimbursement Review Board (FA–1).
   2. Equal Employment Opportunity Staff (FA–3).
   3. Executive Secretariat (FA–4).
   4. Office of Legislative and Inter-Governmental Affairs (FAA).
   5. Medicaid Bureau (FAB).
   6. Office of Managed Care (FAC).

B. Office of the Associate Administrator for Customer Relations and Communications (FF).
   1. Office of Beneficiary Services (FFA).
   2. Office of Public Affairs (FFB).
   3. Office of Public Liaison (FFC).

C. Office of the Associate Administrator for Policy (FK).
   1. Special Analysis Staff (FK–1).
   2. Bureau of Policy Development (FKA).
   3. Office of Research and Demonstrations (FKB).
   4. Office of the Actuary (FKC).

D. Office of the Associate Administrator for Operations and Resource Management (FL).
1. Office of the Attorney Advisor (FL–1).
2. Office of Financial & Human Resources (FLA).
3. Bureau of Program Operations (FLB).
4. Bureau of Data Management and Strategy (FLC).
5. Office of the Regional Administrators (FLD(1–X)).
6. Health Standards and Quality Bureau (FLE).

• Section F.20., Health Care Financing Administration (Functions) is amended by deleting the statement in its entirety and replacing it with the following statements. The statements that follow provide the organizational structure of the Health Care Financing Administration to the Bureau and Primary Office level. The remainder of the organizational substructure will be published at a later date. The new HCFA organizational structure is described as follows:

A. Office of the Administrator (FA)

The Administrator, Health Care Financing Administration, directs the planning, coordination and implementation of the programs under titles XI, VIII, and XIX of the Social Security Act, and related statutes, as amended, and directs the development of effective relationships between these programs and private and federally supported health-related programs. The Administrator works with the States, other Federal agencies and other concerned nongovernmental organizations in administering health care financing programs.

1. Provider Reimbursement Review Board (FA–1)

The Provider Reimbursement Review Board (Board) is organizationally assigned to the HCFA for administrative support. The Board, after determining that it has jurisdiction, conducts hearings to resolve disputes on cost and prospective payment submitted by Medicare providers under Section 1878 of the Social Security Act. Upon the completion of these hearings, the Board renders impartial decisions on these appeals. This is the initial step in the judicial review process. Provides staff support to the Medicare Geographic Classification Review Board (MGCRB) and conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administrations' Office of Hearings and Appeals, or the States.

2. Equal Employment Opportunity Staff (FA–3)

Provides principal advisory services to the Administrator concerning equal employment opportunity (EEO) and civil rights policies and programs. Develops EEO and voluntary civil rights compliance policy for HCFA and assesses the Agency's compliance with applicable equal opportunity statutes, executive orders, regulations and policies. Identifies policy and operational issues and proposes solutions for resolving these issues. Serves as the central liaison point with the Department on EEO and civil rights issues. Coordinates the development of HCFA affirmative EEO plans and evaluates their implementation by HCFA components. Promotes EEO special emphasis programs and activities affecting the concerns of minority groups, women and individuals with disabilities. Provides for conciliation and adjudication of informal and formal discrimination complaints by means of EEO counseling, formal hearings, issuance of final decisions, etc. Manages, coordinates and monitors HCFA's equal employment opportunity activities working directly with bureau and office personnel.

3. Executive Secretariat (FA–4)

Assists the HCFA Administrator in the resolution of agency program and administrative policy matters through memoranda, actions documents, or correspondence. Monitors HCFA performance in developing necessary documents for the Administrator's review. Manages the clearance system and reviews documents for consistency with the Administrator's and Secretary's assignments, previous decisions on related matters, and editorial standards. Facilitates the resolution of issues connected with matters forwarded to the Administrator. Operates the agency-wide correspondence tracking and control system, and provides guidance and technical assistance on standards for content of correspondence and memoranda. Serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary on HCFA correspondence and special administrative matters.

4. Office of Legislative and Inter-Governmental Affairs (FAA)

The Office of Legislative and Inter-Governmental Affairs provides leadership and executive direction within HCFA for legislative planning and congressional and intergovernmental affairs. Develops and evaluates recommendations concerning legislative proposals for changes in health care financing. Develops the long-range HCFA legislative plans. Coordinates activities with the Office of the Assistant Secretary for Legislation (ASL) and serves as the ASL's principal contact point on legislative and congressional relations, and intergovernmental affairs. Manages HCFA involvement in congressional hearings. Provides technical, analytical, and advisory services to HCFA components, to the Department, to other elements of the Executive Branch, and other government agencies interested in health care financing legislation, congressional relations, and intergovernmental affairs. In conjunction with the ASL, provides information services to congressional committees, individual Congressmen, and private organizations on health care financing legislation. Provides leadership for HCFA in the area of intergovernmental affairs. Advises the Administrator on program matters which affect other units and levels of government. In coordination with the Department's Inter-Governmental Affairs office, the Regional Directors, and other HCFA offices, meets with key State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues. Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances. Assists States and localities in requesting and obtaining technical materials, assistance, and support for appropriate HCFA components. Upon State requests, coordinates the exchange of HCFA staff with State and local agencies. Develops and provides briefings on intergovernmental affairs issues for HCFA staff. Briefs State and local agencies on HCFA's mission, organization, and functions.

5. Medicaid Bureau (FAB)

Directs the planning, coordination, and implementation of the Medicaid program under title XIX of the Social Security Act and related statutes, as amended, except for Medicaid managed health care. Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints and procedures related to Medicaid eligibility, coverage, and payment activities; makes recommendations for legislative changes; and, reviews State plan amendments and make recommendations on approvals/

disapprovals. Oversees, coordinates, processes and assesses the operation of State Medicaid Home and Community-Based Services Waivers. Administers the State grants process for administrative and program payments, including budget preparation by States. Provides Medicaid payment policy for administrative costs, availability of Federal Financial Participation (FFP) and designation of appropriate FFP rates. Develops and monitors planning, development and implementation of Medicaid program operations in regional offices and State Medicaid agencies. Develops and promulgates policies and procedures for the proper maintenance, review, and approval of State plans and their amendments. Monitors State compliance with State plan and oversees the compliance process. Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of State agencies' automated systems. Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agents. Implements Medicaid maternal and infant health initiative and the Early and Periodic Screening, Diagnostic, and Treatment program through coordination of HCFA resources and activities with those of the Public Health Service and other national organizations, monitoring program performance, effective interagency and interprogram liaison, guidance, and technical assistance. Provides technical assistance to States, regional offices, and other interested groups in all special Medicaid initiatives. Coordinates with HCFA's Office of Legislative and Inter-Governmental Affairs on all issues that affect States. Coordinates with the Office of Research and Demonstrations HCFA review and management of State waiver requests and projects.

6. Office of Managed Care (FAC)

Provides national direction and executive leadership for managed health care operations, including health maintenance organizations (HMOs), prepaid health plans (PHPs), primary care case management programs, competitive medical plans (CMPs), and other capitated health organizations. Serves as the departmental focal point in the areas of managed health care plan qualification, including quality assurance, ongoing regulation, State and employer compliance efforts, Medicare and Medicaid HMO, Medicare CMP contracting and Medicaid freedom of choice waivers. Develops national managed care policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints, and procedures related to managed health care. Makes recommendations for legislative changes to improve managed health care program policy.

B. Office of the Associate Administrator for Customer Relations and Communications (FF)

The Associate Administrator for Customer Relations and Communications is responsible for the effective direction and implementation of HCFA policies, rules, and procedures in the areas of: advising the Administrator, HCFA, and HCFA components concerning the services, requirements, and initiatives relating to HCFA beneficiaries; liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and academic institutions responsible for the education of health care professionals; and directing the public affairs activities of HCFA.

1. Office of Beneficiary Services (FFA)

Provides advisory services to the Associate Administrator for Customer Relations and Communications and HCFA components concerning the services for, needs of, and initiatives relating to HCFA beneficiaries. Promotes an awareness of the concerns of children, the elderly, and needy among the HCFA components responsible for developing program policies, regulations, and legislative proposals. Analyzes the impact of proposed HCFA policies, regulations, and instructions on beneficiaries. Maintains close working relationships with HCFA central and regional components, the Social Security Administration District Offices, the Public Health Service, other Federal agencies, State agencies, and beneficiary consumer groups to identify and assess the need for information, benefits and services; the impact of proposed HCFA actions; and the effects that operating systems and programs have on the health care system programs and current and future beneficiaries. Presents the overall HCFA mission and promotes its acceptance by beneficiaries and representatives of the constituent organizations. Participates with other HCFA components in the development and implementation of program objectives and strategies pertaining to beneficiary services. Through direct contact with children, the elderly, the needy and/or their representative groups determines their understanding of HCFA's programs and services and conveys this information to HCFA components. Responds to beneficiary referrals concerning accessing and utilizing the Agency's health care financing programs. Plans, directs, and coordinates the production of radio, television, and film products, and the preparation of general-purpose publications. Reviews and clears all print, audiovisual, and exhibit plans and material intended for external dissemination and serves as clearance liaison with the Office of the Secretary, Office of the Assistant Secretary for Public Affairs.

2. Office of Public Affairs (FFB)

Plans, directs and coordinates the public affairs activities of HCFA including: Speech writing, public appearances, Administrator's meetings, special Associate Administrator for Customer Relations and Communications (AACR&C) projects as well as conducting evaluations and analyses. Provides advice and counsel from a public affairs perspective to the AACR&C and all HCFA components. Administers the Freedom of Information Act and Privacy Act responsibilities for HCFA.

3. Office of Public Liaison (FFC)

Directs and implements HCFA policies, rules, and procedures in the areas of liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and business and academic institutions responsible for the education of health care professionals. Also, plans, directs and coordinates media relations.

C. Office of the Associate Administrator for Policy (FK)

The Associate Administrator for Policy is responsible for the effective direction and implementation of the development and review of policies and regulations pertaining to all HCFA programs including HCFA's research and demonstrations activities. Conducts research and develops legislative proposals designed to make improvements in the health care delivery system and develops the technical specifications for such legislation. Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law.

1. Special Analysis Staff (FK–1)

Conducts legislative, economic and policy analyses related to the private health insurance industry and the overall structure of health care financing and reform. Analyzes and reviews current literature regarding the state of the Nation's health policy in order to develop national trend analyses for future HCFA program directions. Plans and develops future HCFA program policy in order to assist in the development of legislative strategies that will enhance the Department's legislative program. Coordinates policy development and research relating to legislative proposals designed to reform and make improvements in the health care delivery system including the technical specifications for such legislation.

2. Bureau of Policy Development (FKA)

Establishes national program policy on all issues of Medicare payment including provider payment policy, provider accounting and audit policy, and physician and medical services payment policy. Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the Medicare program provided by hospitals, long-term care facilities, hospices, End Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health practitioners, clinics, laboratories, and other health care providers and suppliers. Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare coverage issues and for developing provider conditions of participation. Develops, evaluates, and reviews national Medicare and Medicaid coverage issues concerning reasonableness and necessity for medical and related services. Develops, interprets, and evaluates program policies pertaining to Medicare eligibility, Medicare secondary payer policies and other technical issues. Develops regulations for the Medicare and Medicaid programs. Manages the HCFA system for developing regulations, setting regulations priorities, and corresponding work agenda. In cooperation with the Office of the General Counsel, coordinates litigation affecting the Medicare program.

3. Office of Research and Demonstrations (FKB)

Provides leadership and executive direction within HCFA for a wide range of health care financing research and demonstration activities. Develops, tests and evaluates new payment methods, coverage policies and delivery mechanisms in Medicare, Medicaid and other health care programs. Has primary responsibility for managing HCFA's Medicare and Medicaid demonstration waiver authorities including the Federal review, approval, and oversight of State health reform waivers. Develops new and innovative ways to reform the quality, efficiency, and cost effectiveness of Federal, State and private health care financing programs. Works closely with the Associate Administrator for Policy, other Bureau/Office Directors, and high level staff outside HCFA to insure that the Agency's objectives and long range planning in these areas are accomplished. Participates with departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, payment, and data collection for demonstration projects. Undertakes research to facilitate informed program and policy decisions designed to make improvements in the health care delivery system.

4. Office of the Actuary (FKC)

Conducts and directs the actuarial program for HCFA and directs the development of and methodologies for macroeconomic analysis of health care financing issues. Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law. Provides program estimates for use in the President's budget and for reports required by Congress. Studies questions concerned with financing present and future health programs, evaluates operations of the Federal Hospital Insurance Trust Fund and Supplementary Medical Insurance Trust Fund and performs macroanalyses for the purpose of assessing the impact of various health care financing factors upon the costs of Federal programs. Develops and conducts studies to estimate and project national and area health expenditures. Analyzes trend data sources such as the Consumer Price Index to develop projections of health care costs. Analyzes data on physicians' costs and charges to develop payment indices and monitors expansion of service and inflation of costs in the health care sector. Publishes cost projections and economic analyses, and provides actuarial, technical advice and consultation to HCFA components, governmental components, Congress and outside organizations.

D. Office of the Associate Administrator for Operations and Resource Management (FL)

The Associate Administrator for Operations and Resource Management (AAORM) is responsible for the effective direction, coordination and implementation of all aspects of headquarters and regional program operations and resource management activities. The program operational functions include the Medicare financial management systems; the development, negotiation, execution and management of contracts with Medicare contractors; enforcement of health quality and safety standards for providers and suppliers of health care services; the administration of professional review and other medical review programs; the evaluation of contractors and State agencies against performance standards; and the statistically based quality control programs which measure the financial integrity of Medicare. The 10 Regional Administrators report to the AAORM through the Deputy Associate Administrator for Operations and Resource Management. The resource management responsibilities include developing and implementing HCFA's policies, rules and procedures in the areas of financial, personnel and contracts management, project grant administration, management evaluation and analysis and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; developing and coordinating information and statistical plans and policies; and maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, Congress, and the public.

1. Office of the Attorney Advisor (FL–1)

The Office of the Attorney Advisor is attached to AAORM for administrative issues but continues to report to the Administrator, HCFA, for substantive issues. The Supervisory Attorney Advisor recommends initiation of "own motion review" of Provider Reimbursement Review Board decisions and of Medicare Geographical Classification Review Board (MGCRB) decisions. Evaluates cases under "own motion review" and recommends the

disposition of such cases by the Administrator. Evaluates and makes recommendations for disposition of MGCRB decisions appealed to the Administrator.

2. Office of Financial and Human Resources (FLA)

Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, audit resolution, and workplanning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA; also assures consistency with departmental policy. Designs systems support for personnel management, financial management, procurement, and facilities management programs within HCFA. The Director serves as the Chief Financial Officer and the Deputy Ethics Counselor for the Agency.

3. Bureau of Program Operations (FLB)

Provides direction and technical guidance for the nationwide administration of the Medicare health care financing programs. Develops, negotiates, executes, and manages contracts with Medicare contractors. Manages the Medicare financial management system and national budgets for Medicare contractors. Establishes national policies and procedures for the procurement of claims processing and related services from the private sector. Defines the relative responsibilities of all parties in the health care financing operations and designs the operational systems which link these parties. Directs the establishment of standards of performance for contractors. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Prepares recommendations regarding terminations, awards, penalties, non-renewals, or other appropriate contract actions. Establishes national policy and procedures for the recovery of overpayments. Directs the processing of Part A beneficiary appeals and issues instructions and guidance for resolving beneficiary overpayments. Following coordination with pertinent HCFA components, notifies carriers and fiscal intermediaries of findings resulting from quality control programs.

Makes recommendations to the Associate Administrator for Operations and Resource Management regarding financial penalties authorized and determined appropriate under regulations. Assists Medicare contractors in improving the management of Federally required quality control programs. Identifies significant trends and priority problems through comprehensive analyses and program operations and performance and evaluates findings surfaced through various assessment programs. Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness, or other impact resulting from the implementation of law, regulations, policies or operational procedures and systems. Develops recommendations for specific policy or operational improvements based on assessment findings. Coordinates, monitors, and evaluates all corrective action initiatives resulting from program assessment findings. Develops programwide policies, regulations, procedures, guidelines, and studies dealing with program oversight and improvement. Coordinates the preparation of manuals and other policy issuances required to meet the instructional and informational needs of providers, contractors, State Agencies, Regional Offices, Peer Review Organizations, the Social Security Administration, and other audiences directly involved in the administration of HCFA programs.

4. Bureau of Data Management and Strategy (FLC)

Serves as the focal point for the management of HCFA's information resources. Provides Agency-wide information management, decision support, automated data processing (ADP), and data communication services essential to the management and administration of HCFA programs. Provides technical information planning and developmental review of HCFA data collection initiatives. Collects, analyzes, and disseminates data on beneficiary eligibility, enrollment entitlement, and medical utilization. Collects and maintains data on Medicare contractor claims processing workloads and maintains contractor quality assurance and performance evaluation systems. Manages statistical data systems on HCFA programs to support policy and program decisions. Coordinates the development of special purpose statistical data bases and tabulations required for assessing (1) the impact of proposals which change health care financing programs, (2) the characteristics of HCFA beneficiaries and (3) the utilization and cost of program benefits. Provides applications software support to HCFA headquarters and Regional Offices in administrative/program management systems.

The Director serves as HCFA's Principal Information and Resource Management (IRM) Official and is responsible for overseeing the Agency's IRM programs including those of the Medicare contractors, Peer Review Organizations, and End Stage Renal Disease Networks. Directs the HCFA ADP systems security program including its application to Medicare contractors. Develops common coding standards and quality assurance monitoring mechanisms. Negotiates and administers agreements and provides ADP liaison between HCFA users and other external organizations for the provisions of ADP capacity and support services. Provides support and data handling capability to control/examine, audit, investigate, and process/release a variety of provider billing, query, enrollment, and premium billing correspondence and transactions.

5. Office of the Regional Administrators (FLD (I–X))

The Office of the Regional Administrator manages regional operation in each of the Health Care Financing Administration's 10 regions. The Regional Administrators provide executive leadership and guidance on behalf of the Associate Administrator for Operations and Resource Management to HCFA components at the regional level. Implements national policy at the regional level. Assures the effective administration of HCFA programs including Medicare, Medicaid, Peer Review Organizations (PROs), HMOs/CMPs, quality control, and certification of institutional providers in a major geographical area. Participates in the formulation of new policy and recommends changes in existing national policy for HCFA programs. Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact for all professional organizations such as hospital and medical associations. At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other departmental components and Federal agencies. Coordinates with the Department's Regional Director to assure effective relationships with State and local governments. Manages all administrative activities for HCFA components and coordinates such activities with the Regional Administrative Support Center. Initiates and directs the implementation of

special regional and headquarters projects affecting HCFA programs. Directs regional responsibilities relating to experimental and demonstration projects. Oversees a beneficiary services program within the region for HCFA programs. Provides regional perspective to the Administrator, Associate Administrators, Bureau Directors, and Staff Office Directors in the development of HCFA policies, programs and objectives.

6. Health Standards and Quality Bureau (FLE)

Provides leadership and overall programmatic direction for implementation and enforcement of health quality and safety standards for providers and suppliers of health care services and evaluates their impact on the utilization, quality and cost of health care services. Plans, develops and establishes procedures and guidelines for administering and evaluating the nationwide Medicare and Medicaid survey and certification program. Monitors and validates the process for certifying that participating providers and suppliers are in compliance with established conditions and standards. Responsible for implementation and operation of professional review and other medical review programs. Administers a comprehensive system for assessment of individual professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities. Establishes specifications for information and data reporting, collection and systems requirements for the survey and certification, professional review and other medical review activities.

Dated: March 8, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 94–6008 Filed 3–15–94; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards

AGENCY: Office of the Assistant Secretary for Health, PHS.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health is announcing a training course entitled "Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards" which will be presented 12 times at locations around the country between April 1994 and march 1995. Complete information as to locations and dates is provided below under **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Course Title

"Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards."

Note: This is not a course on grantwriting. Rather, it is designed to provide a broad overview of PHS and how it uses the grant and contract mechanisms.

Course Description

This is a 2-day course which is designed to provide applicants for and recipients of PHS grants and contracts a better understanding of the procedures and expectations in applying for funding and administering an award from PHS. Day one and roughly 25% of day two of the course concentrate on the grants process; the remainder of day two is devoted to contracting. Students will be provided with a broad overview of PHS including how it is organized, when the grant or contract mechanism is used, how the PHS contracts and grants processes are structured, how to identify grants and contract funding opportunities, how to submit effective proposals, and how to properly administer a contract or grant once it has been awarded. This is not, however, a course on "grantsmanship" or writing technical proposals.

Target Population

Grant and contract staff of organizations which are presently receiving funding from PHS or which plan to submit applications for grants or proposals for contracts. The course is intended for staff who are inexperienced with PHS grant and contract mechanisms.

COURSE DATES AND LOCATIONS

Date	Location
April 21–22, 1994	Washington, DC.
May 12–13, 1994	Boston, Mass.
June 30–July 1, 1994.	Denver, Colo.
August 8–9, 1994	Kansas City, Mo.
August 25–26, 1994 ..	Chicago, Ill.
September 26–27, 1994.	San Francisco, Cal.
September 29–30, 1994.	Seattle, Wash.
November 9–10, 1994	Washington, DC.
December 12–13, 1994.	San Diego, Cal.
January 17–18, 1995.	Dallas, Tex.
February 21–22, 1995	Atlanta, Ga.
March 6–7, 1995	Washington, DC.

All sessions will be held from 8:30 a.m. to 4:30 p.m. both days.

Early registration is encouraged, since past offerings of this course have filled rapidly.

Course Outline

Day 1

Introduction to PHS Assistance (grants/cooperative agreements) and Acquisition (contracts): PHS Mission and Organizational Structure; Assistance vs. Acquisition (The Federal Grant and Cooperative Agreement Act); PHS Grant and Contract Expenditures and Recipients; Introduction to Types and Purposes of PHS Grants; Roles of PHS Grants and Program Management Staff.

Seeking and applying for PHS Grants/ Cooperative Agreements: Sources of Information; Understanding Program Announcements; The Application Package; The Complete, Effective Application; Competition and Objective Review.

Negotiation and award process for Grants/Cooperative Agreements: Cost Analysis and Preaward Review; Negotiation—Clarifying and Revising Proposed Activities; Funding Outcomes; Contents of a Grant Award Document; General and Special Conditions.

Day 2

Grant/Cooperative Agreement Post-Award Issues and Concerns: Monitoring; Audit; Appeals; Progress Reports; Drawdowns; Financial Status Reports; Grant Budget Control; Cost Principles and Unallowable Costs; Purchasing; Property Management.

Seeking PHS Contracts: Identifying PHS Contracting Opportunities; The Legal Framework of PHS Contracting; Small Business Contracting Programs; Roles of PHS Contracting and Project Staff.

Responding to Contract Solicitations: Small Purchases—$25,000 or Less; Purchases Greater Than $25,000; Preparing the Technical Proposal; Preparing the Business Proposal.

Proposal Submission, Contract Negotiation, and Award: Submitting the Proposal; Evaluation of the Proposal; Negotiation; Award of Contract.

Contract administration: Initial Contract Administration Steps; Significant Contract Administration Concerns.

Class size: Limited to *30* participants per session to maximize interaction.

Attendance: Students are encouraged to attend *both* full days of the course. A Certificate of Attendance will be issued to those who complete the course.

Cost: Tuition is $295 per session. Travel and accommodations are the responsibility of participants.

Information Contact: For information on how to register and to receive a copy of the course brochure, contact: John Laffey, Management Concepts Incorporated, 8230 Leesburg Pike, suite 800, Vienna, VA 22182, Phone: 703–790–9595, extension 140, FAX: 703–790–1371.

Dated: February 28, 1994.

Wilford J. Forbush,

Director, Office of Management, OASH.

[FR Doc. 94–6070 Filed 3–15–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Substance Abuse and Mental Health Services Administration (SAMHSA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (57 FR 53907, November 13, 1992) is amended to reflect changes within the Center for Mental Health Services (CMHS). These changes involve the transfer of evaluation functions from the Office of Evaluation, Extramural Policy, and Review to the Division of Demonstration Programs.

Section HM–B, Organization and Functions, Substance Abuse and Mental Health Services Administration (HM) is amended as follows:

Delete the title and functional statement for the *Office of Evaluation, Extramural Policy, and Review (HMS12)* and substitute the following title and functional statement:

Office of Extramural Policy and Review (HMS12): (1) Administers the Center's peer and objective review of grants and contracts; (2) in consultation with the Director, establishes extramural policy for the Center; (3) coordinates with Center programs to ensure program announcements are in compliance with policy and provides guidance for clearance through SAMHSA and Office of Management and Budget channels; and (4) provides committee management and support for the CMHS Advisory Council.

Under the heading *Division of Demonstration Programs (HMSB),* following the semicolon after item (4), delete all remaining words and add the following words: (5) Coordinates Center-wide evaluation of programs; (6) develops evaluation policy for the Center designed to generate new knowledge on mental health treatment and services; (7) works with division and office programs to refine and develop methods for evaluation; (8) provides policy and oversight for data activities related to the evaluation of Center programs, working with the Office of Applied Studies; and (9) evaluates programs to generate new knowledge on treatment and services.

Dated March 7, 1994.

Elaine M. Johnson,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–6051 Filed 3–15–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing systems of records managed by the Office of Administrative Services. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register.** The two notices being revised, which are published in their entirety below, are:

1. "Privacy Act Files—Interior, DOI–57," previously published on August 8, 1986 (51 FR 28627) as "Privacy Act Files—Interior, Office of the Secretary-57."

2. "Freedom of Information Act Appeal Files—Interior, OS–69," previously published on August 8, 1986 (51 FR 28629) as "Freedom of Information Appeal Files—Interior, Office of the Secretary-69."

In notice DOI–57, the existing system name has been revised to more adequately convey the Departmentwide extent of the scope-of-system coverage. In both notices, the existing categories of records in the system statement is revised to more clearly identify the types of records maintained in the system; the existing retrievability statement is revised to add the current method of accessing records; the existing retention and disposal statement is revised to reflect the current length of, and/or authority for, record retention; and the existing system location statement and existing system manager(s) and address statements are revised to reflect changes in addresses of system managers.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on March 16, 1994.

Additional information regarding these actions may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, (PMO) 1849 C Street NW., Mail Stop 5412–MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: March 8, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/DOI–57

SYSTEM NAME:

Privacy Act Files—Interior, DOI–57.

SYSTEM LOCATION:

1. U.S. Department of the Interior, Office of Administrative Services, m.s. 5412–MIB, 1849 C Street, NW., Washington, DC 20240.

2. Offices of Privacy Act Officers for each of the Department's bureaus. (Consult the Appendix for addresses of bureau headquarters offices.)

3. Offices of System Managers and other officials authorized to receive requests for notification of, access to, and petitions for amendment of records. (Consult system notices for addresses of System Managers.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for notification of, access to, and petitions for amendment of records maintained as systems of records under the Privacy Act. Individuals who have filed Privacy Act appeals with the Assistant Secretary—Policy, Management and Budget under Departmental appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, appeals, and decisions on requests and appeals; accounting of disclosure files; reports and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To support action on Privacy Act requests and appeals; and (b) To gather information for management and reporting purposes.

Disclosure outside the Department of the Interior may be made: (1) To other

Federal agencies having a subject matter interest in a request or an appeal or a decision thereon; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and automated form.

RETRIEVABILITY:

Records are indexed by name or personal identifier.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 14, Items 21–26.

SYSTEM MANAGER(S) AND ADDRESS:

1. Departmental Privacy Act Officer, U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

2. Bureau Privacy Act Officers. (Consult the Appendix for addresses of bureau headquarters offices.)

3. System Managers. (Consult system notices for addresses of System Managers.)

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the pertinent System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals filing requests and appeals; Departmental officials acting on requests and appeals.

INTERIOR/OS–69

SYSTEM NAME:

Freedom of Information Act Appeal Files—Interior, OS–69.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed appeals under Department of the Interior Freedom of Information Act (FOIA) appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA appeals, initial requests and decisions on requests issued by bureaus and offices, recommendations of the Office of the Solicitor and of other Departmental officials, final decisions on appeals, extension of time and related records, and records to track the processing of appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To support review and decision-making for FOIA appeals; and (b) To prepare an annual report to Congress.

Disclosure outside the Department of the Interior may be made: (1) To other Federal agencies having a subject matter interest in an appeal or bureau or office decision; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records where compiled; (3) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal records are maintained in manual form in file folders. Appeal tracking information is maintained in computerized form on magnetic media.

RETRIEVABILITY:

Manual records are indexed by appeal number. A cross-reference list permits retrieval of records by appellant's name. Computer records are indexed by name of appellant, appeal number, date and subject of appeal.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are destroyed six years after final determination by agency, or three years after final adjudication by courts, in accordance with General Records Schedule No. 14, Item 12.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act Appeals Officer, U.S. Department of the Interior, Office of Administrative Services, m.s.5412–MIB, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Appellants; bureau, office and Departmental officials.

[FR Doc. 94–6095 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–WA–M

Bureau of Land Management

[UTU–64463]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–64463 for lands in Utah County, Utah, was timely filed and required rentals accruing from November 1, 1993, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–64463 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–64463, effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 94–6091 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–920–41–5700; WYW–117799]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW117799 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW117799 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–6090 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–22–M

[AK–040–04–5700–10; AA–65151–P]

Realty Action; Sale of Reversionary Interest

AGENCY: Bureau of Land Management, Anchorage District.

ACTION: Notice of realty action, sale of reversionary interest in public land—Seward, Alaska

SUMMARY: Reversionary interest held by the United States in the following lands has been determined suitable for direct sale to the City of Seward, Alaska, under the authority of section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713). The lands are described as Seward Meridian, T. 1 S., R. 1 W., USS 1117, Block 5, Lots 1, 2, 17, 18, 19, 20, 21 and 22 and contain .83 acre. The lands are currently owned by the City of Seward, but the purposes for which the lands can be used are restricted by a reversionary clause in the patent under which the lands were conveyed. The lands are not needed for federal purposes and the United States has no present interest in the property. It is in the public interest to allow the City of Seward to purchase the reversionary rights. The property may then be used for whatever purposes are determined to be of most benefit to the city.

FOR FURTHER INFORMATION CONTACT: Lorri Denton, Anchorage District, 6881 Abbott Loop, Anchorage, Alaska 99507, 907–267–1244.

SUPPLEMENTARY INFORMATION: The purpose of the sale of the reversionary interests in this land is so the land, currently owned by the City of Seward, can be used for the purposes which will be the best and highest uses of the lands and best meet the needs of the City of Seward. The land is not required for any federal purpose. This action is consistent with federal, state and local planning and zoning.

The reversionary interest in this land will be offered by direct sale to the City of Seward for Fair Market Value which is $10,800. The reversionary interest in these lands will not be offered for sale until 60 days after this notice.

The patent, when issued, will be for the reversionary interest only. All other terms and conditions of Patent No. 1137469 will continue to apply to the lands involved. For a period of 45 days following the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Anchorage District, at the above address. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 94–6073 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–JA–P

[CO–010–4210–05; COC14445, COC24135; 4210–C010]

Realty Action: Recreation and Public Purposes (R & PP) Act Classification in Grand County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: In response to an application from Grand County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Grand County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands are currently leased to Grand County for landfill purposes under Recreation and Public Purposes Lease C–14445, Kremmling Landfill, and Lease C–24135, Granby Landfill, and would continue to be used for landfill purposes. The mineral interests will be included in the conveyance of the property to Grand County, with the exception of the Oil and Gas estate for the Granby Landfill.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 1 N., R. 80 W.,
Sec. 9, N½N½NW¼

The lands described above are contained in Lease C–14445 for the Kremmling Landfill and contain 40 acres.

Sixth Principal Meridian, Colorado

T. 2 N., R. 77 W.,
Sec. 23, Lot 7

The lands described above are contained in Lease C–24135 for the Granby Landfill and contain 40.36 acres.

FOR FURTHER INFORMATION CONTACT: The environmental assessments, Landfill Transfer Audits and other information concerning this proposed conveyance is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459, (303) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws, including the mining laws, except for conveyance under the Recreation and Public Purposes Act and conveyance of the mineral estate under section 209 of the Federal land Policy and Management Act, for a period of two years from the date of publication of this notice. The segregative effect shall terminate upon issuance of a patent, upon rejection of the application, or two years from the date of publication of this notice.

The following reservations, terms and conditions will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for buried telephone line purposes as have been granted to US West Communications, Inc., its successors and assigns, by right-of-way Colorado 22642 under the Act of February 15, 1901, as amended (43 U.S.C. 959 (1988)). (This applies to the Kremmling Landfill only.)

3. The provisions of the Recreation and Public Purpose Act amended and to all applicable regulations of the Secretary of the Interior.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement or release of hazardous substances (substance as defined in 40 CFR part 302).

5. The lands have been utilized for solid waste disposal and that any proposed future uses of the land should take into account that a solid waste disposal facility was located on the lands.

6. No portion of the land covered by such patent shall under any circumstance revert to the United States.

7. Grand County, its assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States, its officers, agents, representatives and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, and personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the N½N½NW¼ of section 9, T. 1 N., R. 80 W., Sixth Principal Meridian, Colorado, and Lot 7 of section 23, T. 2 N., R. 77 W., Sixth Principal Meridian, Colorado, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Interested parties should indicate which landfill they are commenting on. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: March 3, 1994.

William J. Pulford,

District Manager.

[FR Doc. 94–6093 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–84–M

[OR134–4210–08; GP4–095]

Notice of Intent To Prepare a Planning Analysis for Palmer Mountain Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning analysis for Palmer Mountain-Snohomish County Land Exchange.

SUMMARY: The Bureau of Land Management is initiating a planning analysis pursuant to section 43 CFR 1610.8 of the planning regulations for the exchange of 40 acres of public land located in Snohomish County, Washington for 1356.03 acres in Okanogan County, Washington.

Selected Federal Lands: T31N, R6E, WM, Snohomish County, Washington, Section 27, NE¼NW¼ (40 acres). Title will be conveyed subject to the following reservation: A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

Offered non-Federal lands: (T38N, R26E, WM, Section 5: Lots 1–4, S½NE¼ (228.36 acres), Section 6: Lots 1–5, S½NE¼, SE¼NW¼, NE¼SE¼, (327.67 acres); T39N, R26E, WM. Section 31: E½NE¼, SW¼NE¼, E½SW¼, SE¼ (360 acres), Section 32: E½, W½NW¼, SE¼NW¼, SW¼, (600 acres).

The purpose of this planning analysis and associated environmental assessment will be used to assess the impacts of the proposal and to provide a basis for BLM to make an informed decision.

The proposed exchange would result in the acquisition of subject private lands, which are within the Okanogan Management Area on Palmer Mountain by trading an isolated tract of public land in Snohomish County. The private lands have important wildlife and recreation values. The acquisition of these lands will consolidate the existing public ownership pattern in the Okanogan Management Area and it will significantly improve access to adjacent public lands.

As indicated in the Spokane District Resource Management Plan Record of Decision of 1987, and as amended in 1982, it is anticipated that the acquired lands would be managed under existing BLM Resource Management Plan guidelines for the Okanogan Management Unit (i.e. Recreation, Wildlife Habitat, and Grazing Management).

The public land to be traded has no public access and is considered by BLM to be difficult and uneconomical to manage. The transfer of this land from public ownership would not significantly affect endangered or threatened species or their habitat that has been determined to be critical under the Endangered Species Act of 1973.

SUPPLEMENTARY INFORMATION: The interdisciplinary team which will prepare the planning analysis includes BLM resource specialists in botany, wildlife biology, access, recreation, geology and minerals, archaeology, forestry, and range. All persons with an interest in management of these two

areas and resources are requested to submit comments on this proposal within 30 days of the date on this **Federal Register** notice. Comments and requests for further information or requests to be placed on a mailing list should be addressed to Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane Washington 99202, (509) 353–2570 or James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, Washington 98801, (509) 662–4223. No public meetings are anticipated, but may be scheduled if there is a strong public interest. Copies of the planning document will be available for public review at the above offices of the BLM and at public libraries in Snohomish and Okanogan Counties. The draft analysis is expected to be available in May and final in June 1994.

The date of this notice initiates the 30 day scoping period.

ADDRESSES: Spokane District, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202.

Authority: (43 CFR 1610.8)

Dated: March 8, 1994.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–5842 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–33–M

[OR–014–6350–02; G4–098]

Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement; Availability

ACTION: Notice of Availability, Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement.

SUMMARY: The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of the availability of the Draft Upper Klamath Basin Resource Management Plan and Environmental Impact Statement (EIS) for review and public comment. The EIS was prepared pursuant to section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, section 202(f) of the Federal Land Policy and Management Act of 1976, and the BLM's planning procedures (43 CFR 1610). The RMP/EIS analyzes the effects of converting land of the newly acquired Wood River property, approximately 3,220 acres in Klamath County, Oregon, into a functioning wetland community.

Preparation of the Upper Klamath Basin Resource Management Plan and Environmental Impact Statement (RMP/EIS) is a separate process from the on-going Klamath Falls Resource Area Resource Management Plan and Environmental Impact Statement process. Although both plans will be comparable (that is, guiding future management actions in specified areas), they are being prepared separately due to the geographical distance between the Wood River property and the rest of the BLM-administered lands in the Resource Area.

Copies of the draft RMP/EIS may be obtained from the Klamath Falls Resource Area office, 2795 Anderson Ave. Bldg. 25, Klamath Falls, Oregon. Copies will also be available at the following locations:

BLM Lakeview District office, 1000 South 9th St., Lakeview, OR 97630

BLM Office of Public Affairs, Main Interior Building, room 5600, 18th and C Street NE., Washington DC 20240

BLM Oregon State office, 1300 N.E. 44th Avenue, Portland, OR 97213

Klamath County Public Library, 126 South 3rd St., Klamath Falls, OR 97601

Oregon Institute of Technology Library, 3201 Campus Drive, Klamath Falls, OR 97601

Public meetings on the draft plan will be announced in the local print media. Information on the public meetings can also be obtained by calling Cathy Humphrey at (503) 885–4110.

DATES: The public comment period on the RMP/EIS will be 90 days. Written comments on the draft must be submitted or postmarked no later than May 31, 1994.

ADDRESSES: Written comments should be addressed to A. Barron Bail, Area Manager, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Ave. Bldg 25, Klamath Falls, Oregon 97603.

CONTACT FOR FURTHER INFORMATION : Write to the above address or call Cathy Humphrey at (503) 885–4110.

SUPPLEMENTARY INFORMATION: The RMP/EIS describes and analyzes four alternatives for BLM-administered lands in the Upper Klamath Basin to address the goal of wetland restoration. The alternatives include a No Action alternative (continuation of current management) which does not include wetland restoration, and three alternatives that do include wetland restoration. In all four alternatives the following issues were addressed: fish and wildlife habitat, special status species habitat, recreation opportunities, access, water resources, wetland restoration, livestock grazing, and public involvement.

The No Action Alternative would maintain the current use of the property as predominantly for livestock grazing in an irrigated pasture. Livestock grazing would remain at current levels. Water would be pumped off in the spring at current schedules. The amounts of upland, wet meadow, and marsh habitat would remain constant. Recreation facilities would not be developed. Recreation use, limited to day use only, would neither be encouraged nor restrained and the area would remain closed to motorized vehicles.

Alternative B would restore the Wood River Property to a functioning wetland with diverse plant communities and healthy, productive vegetation. Initial management actions could require highly engineered techniques, such as restoring the Wood River and Sevenmile Creek to their historic meandering channels; however, in the long term, wetland restoration systems and methods would be designed for minimum maintenance using the existing landscape features. The minimum maintenance methods used would vary, but could include such tools as grazing, prescribed fire, and mechanical vegetation manipulation. Some recreation facilities would be developed. Recreation use and some motorized access would be allowed, but would be limited to certain areas and times of day.

Alternative C would also restore the Wood River property to a functioning wetland with diverse plant communities and healthy, productive vegetation. However, initial and long-term restoration actions could involve highly engineered techniques. The methods used for wetland restoration could include experimental techniques, such as artificial water circulation, or other constructed wetlands. General design principles could be complex. The research would encompass both the methods used for wetland restoration and the examination of the effects of restoration on water quality and quality and quantity, fish and wildlife habitat, etc. Recreation would be limited to day use only. Development of recreation facilities would emphasize wetland restoration education. Various tools, such as grazing, prescribed fire, and mechanical manipulation of vegetation, could be used to meet the goals of this alternative.

A Preferred Alternative was chosen, Alternative D, which would restore the Wood River property to its previous form and function as a wetland community, within unalterable constraints (such as existing dikes, water rights, land ownership patterns,

and funds). Labor-intensive, highly engineered wetland restoration methods using complex designs would be allowed; however, the preference would be to use wetland restoration systems and methods that were designed with less labor-intensive practices using the existing landscape features. Long-term improvements in water quality entering Agency Lake would be a goal. Adaptive management, the process of changing land management as a result of monitoring or research, would be used.

The Preferred Alternative would emphasize improving an increasing wetland habitat for federally listed fish species. It would also protect habitats of federally listed or proposed threatened or endangered species to avoid contributing to the need to list category 1 and 2 federal candidate, state listed, and Bureau sensitive species. This alternative would emphasize management of special status species, including a complete inventory for these species, and maintain a diversity of habitats to meet or exceed viable population levels. Other wildlife species would have habitat improved within the constraints of other resource objections.

Recreation would be managed for moderate use levels, with roaded natural recreation experiences provided. Off-highway vehicles would be limited to designated, signed roads. The area would be identified as a Watchable Wildlife site. The Wood River property would be designated an Area of Critical Environmental Concern to protect the area's relevant and important values (cultural, fish, and wildlife values, and natural processes and systems). Neither the Wood River nor Sevenmile Creek were found eligible or suitable for designation under the Wild and Scenic Rivers Act under any of the alternatives.

A. Barron Bail,

Area Manager, Klamath Falls Resource Area.

[FR Doc. 94-6094 Filed 3-15-94; 8:45 am]

BILLING CODE 4310-33-M

[WY-030-4210-05; WYW-124767]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public land in Carbon County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for direct sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713; 1719).

Sixth Principal Meridian,

T. 21 N., R. 88 W.,

Sec. 24, Lot 53.

The above contains approximately 4.82 acres.

FOR FURTHER INFORMATION CONTACT: Chuck Reed, Acting Area Manager, Bureau of Land Management, Great Divide Resource Area, P.O. Box 670, Rawlins, Wyoming 82301, 307-324-4841.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and mineral estates to Mr. Tom Lankford, under section 203 and 209 of the Federal Land Policy and Management Act of 1976 43 U.S.C. 1713 and 1719. Mr Lankford currently operates Butane Power and Equipment Company adjacent to the subject lands. Mr. Lankford's business is being impacted through a Federal Highway Administration action and must be relocated. Mr. Lankford has requested a sale of the public lands as a result of the Federal Highway Administration action.

The proposed direct sale to Mr. Lankford would be made at fair market value.

Additionally, Mr. Lankford will be required to submit the non-refundable application fee of $50.00 dollars in accordance with 43 CFR part 2720 for conveyance of all unreserved mineral interests in the lands.

The proposed sale is consistent with the Great Divide Resource Management Plan. The planning document and environmental assessment covering the proposed sale are available for review at the Great Divide Resource Area Office, Rawlins, Wyoming.

Conveyance of the above public lands will be subject to: Reservations to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945 and those rights for a road and public utility easement being 30 wide feet along the west boundary of Lot 53. There will be no cancellation of grazing rights. A grazing waiver will be obtained for the subject parcel.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or 270 days from the date of publication of this notice whichever occurs first.

For a period of forty-five (45) days from the issuance of this notice, interested parties may submit comments to the District Manager, Rawlins District, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of timely objections, this proposed realty action will become final.

Dated: March 11, 1994.

Charles E. Reed,

Supervisory Range Conservationist.

[FR Doc. 94-6222 Filed 3-15-94; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF INTERIOR

Bureau of Reclamation

Draft Interim Guidelines for the Implementation of the Interim Renewal Contract Provisions Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of workshops.

SUMMARY: The Department of the Interior, through the Bureau of Reclamation (Reclamation), has developed draft interim guidelines for implementation of the interim renewal contracts pursuant to the provisions of the Central Valley Project Improvement Act (CVPIA). To facilitate an understanding of the draft interim guidelines on interim renewal contracts, there will be a series of five workshop sessions at which the guidelines will be explained in detail. There will be an opportunity to ask questions. The sessions are open to the general public and are to promote an exchange of ideas and to answer questions prior to the finalization of the interim guidelines.

DATES AND ADDRESSES: The proposed draft interim guidelines for the interim renewal contracts dated March 10, 1994, may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, (MP-440), 2800 Cottage Way, Sacramento CA 95825. Reclamation is encouraging written comments. Please provide all written comments to the above address.

All written comments must be received by April 22, 1994.

All workshops will be conducted as follows:

- Monday, March 28, 1994, 7-9 p.m., Convention Center, Sand Room, 303 E. Acequia, Visalia, California
- Tuesday, March 29, 1994, 7-9 p.m., Tracy Inn Restaurant, 30 W. Eleventh Street, Tracy, California
- Wednesday, March 30, 1994, 1:30-3:30 p.m., Franco's Restaurant, 610 Tehama Street, Willows, California
- Thursday, March 31, 1994, 7-9 p.m., Parc Oakland, California Room, 1001 Broadway, Oakland, California

• Friday, April 1, 1994, 8:30 a.m.–12 p.m., Sacramento Hilton, Ballroom, 2200 Harvard Street, Sacramento, California

FOR FURTHER INFORMATION CONTACT: Questions by telephone should be directed to Betty Riley at (916) 978–5036 (TDD) (916) 978–4417.

SUPPLEMENTARY INFORMATION: Section 3404(c) of the CVPIA provides that no long-term repayment or water service contract will be renewed until appropriate environmental review, including the programmatic environmental impact statement (PEIS) on the Central Valley Project (CVP) required under Section 3409 has been completed. The Section further provides that the United States and the CVP Contractors may enter into interim renewal contracts during the period between expiration of their long-term contracts and completion of appropriate environmental documentation including the PEIS required under CVPIA. The objective of the interim renewal contracts is to provide existing CVP Contractors water deliveries during the period from expiration of the original contract until the environmental documentation is complete in accordance with Section 3404(c) of Public Law 102–575. The interim renewal contracts are also intended to provide a means of carrying out the goals and requirements of the CVPIA and other provisions of Federal and state law.

To implement these provisions, Reclamation intends to execute an initial interim renewal contract with each contractor for a term of up to 3 years. Subsequent interim renewal contracts may be provided subject to the requirements of these guidelines and applicable law for terms of up to 2 years.

The CVP was originally authorized as an Army Corps of Engineers project by the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1038). Congressional reauthorization of the project under Reclamation law was provided in Section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 844), as amended by the CVPIA and by the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1198). Congress further reauthorized the project by the Act of October 14, 1949 (663 Stat. 852) and the Act of September 26, 1950 (64 Stat. 1036). Additional units were authorized by the Congress as integral parts of the project by the Acts of August 12, 1955 (69 Stat. 719); June 3, 1960 (74 Stat. 156); October 23, 1962 (76 Stat. 1191 and 1192); September 2, 1965 (79 Stat. 615); August 19, 1967 (81 Stat. 167); August 27, 1967 (81 Stat. 173); October 23, 1970 (84 Stat. 1097); and September 28, 1976 (90 Stat. 1328).

The authority for the interim renewal contracts includes the Acts of August 4, 1939, July 2, 1956, June 21, 1963, and October 30, 1992.

Draft interim guidelines for interim renewal contracts were previously made available for review and comment to interested parties on February 12, 1993 and July 17, 1993. Reclamation met with interested parties to discuss their comments on the previous draft interim guidelines. All written comments and comments from the workshop will be considered prior to finalizing the draft interim guidelines. The final interim guidelines will establish Reclamation's position on issues included in the negotiations of all interim renewal contracts.

Significant issues addressed in the draft interim guidelines include the following: The process used to determine water quantities; water transfers; water shortages, water quality, water measurement, payments and surcharges, and water conservation.

Dated: March 11, 1994.

James O. Malila,

Acting Deputy Commissioner.

[FR Doc. 94–6199 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Sacramento Prickly-Poppy for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Sacramento prickly-poppy (*Argemone pleiacantha* ssp. *pinnatisecta*). This plant is known only from the Sacramento Mountains in Otero County, south-central New Mexico. Approximately 80 percent of the known population occurs on the Lincoln National Forest. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 16, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, suite D, Albuquerque, New Mexico 87107 (505) 883–7877. Written comments and materials regarding the plan should be addressed to the State Supervisor. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Sacramento prickly-poppy (*Argemone pleiacantha* ssp. *pinnatisecta*) was listed as endangered on August 24, 1989 (54 FR 35305). Major threats to this species include surface-disturbing activities from water pipeline projects, road construction and maintenance, flash floods, trampling and grazing from livestock, and off road vehicle use. The draft recovery plan specifies management procedures for protecting habitat and expanding the species range and abundance.

The objectives of the Draft Sacramento prickly-poppy recovery plan are to maintain extant populations

in place and ensure the species is safe from extinction. Further, that at least 10 geographically distinct, self-sustaining natural populations be protected before the species is considered for downlisting.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The Authority fopr this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 9, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–6062 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Decisions on Routine Appeal Cases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Royalty Management Program (RMP) of the Minerals Management Service (MMS) has been delegated authority to render decisions on routine appeals from orders and decisions issued by RMP regarding Federal leases. The authority was transferred from the Appeals and Litigation Support Division (ALSD) at MMS.

EFFECTIVE DATE: The effective date of this delegation is March 15, 1994, based on direction from the Deputy Director for MMS to realize the benefits of more timely agency decisions for the appellant.

FOR FURTHER INFORMATION CONTACT: Platte Clark, Chief, Appeals and Litigation Support Division, Minerals Management Service (Mail Stop 9110), Parkway Atrium Building, 381 Elden Street, Herndon, Virginia 22070–4817. Telephone (703) 787–1275.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR 290, Appeals Procedures, provides rules and procedures on appeals to the Director, MMS (and the Bureau of Indian Affairs when Indian lands are involved) from final orders or decisions of officers of the MMS, issued under authority of the regulations. On routine appeals to the Director, the final agency decision was delegated to the Chief, ALSD, MMS, in June 1993. To further streamline the appeals process and reduce the time for a final agency decision, routine appeals on orders or decisions issued by RMP have been re-delegated through the Associate Director for Royalty Management to the Chief of the applicable RMP Office from the Deputy Director of MMS.

Routine appeals are defined by the delegation as follows:

(a) Appeals not timely filed as required by 30 CFR 290.

(b) Appeals from an assessment for a required report filed late (30 CFR 216.40 and 218.40).

(c) Appeals from an assessment for failure to file a required report (30 CFR 216.40 and 218.40).

(d) Appeals from an assessment for an incorrectly completed report (30 CFR 216.40 and 218.40).

(e) Appeals from an assessment of interest for unpaid and underpaid amounts due (30 CFR 218.54, 218.102, 218.150, 218.202 and 218.302). This category is limited to factual issues involving the time value of money and non-precedent-setting appeals. Appeals with complex issues will be referred to the Director of MMS for a decision.

(f) Appeals in which the appellant neglects to file a statement of reasons to justify modification of the RMP order or decision.

(g) Appeals in which the order or decision is being rescinded.

The decision process to be used by RMP involves a procedure whereby: (1) The RMP office responsible for the original order or decision will examine the appeal and any statement of reasons provided by the appellant to modify the RMP directive; (2) the RMP office will issue a report to the appellant for comment back to RMP within 21 days of receipt; and (3) following the comment period, the Chief of the RMP office will render the final agency decision.

MMS believes that routine appeal cases have similar issues that have been decided in prior cases by either the Director or the Interior Board of Land Appeals (IBLA). The fact that the final agency decision is at the RMP level should greatly enhance the timeliness of the decision for the appellant and reduce the workload at ALSD to focus on complex cases. The benefits for the appellant and MMS are significant.

The authority to render decisions on routine appeals that pertain to royalty issues for mineral leases on Indian lands is carried out by the Deputy Commissioner of Indian Affairs or designee. This authority has not been delegated.

This delegation does not affect the right of a party to further appeal a final MMS decision to the IBLA after the RMP has rendered a final MMS decision.

Dated: March 10, 1994.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 94–6000 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee, Correction.

This Notice corrects the Notice published in the **Federal Register** on March 7, 1994. The place of the May 12th, 13th and 14th, 1994 Meeting of the Native American Graves Protection and Repatriation Act Review Committee will be the Rushmore Civic Center, 444 Mount Rushmore Road, Rapid City, SD 57701, in meeting room Rushmore E, not the Rapid City Hilton Inn as previously stated.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, D.C. 20013–7127, telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: March 9, 1994.

Francis P. McManamon,

Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 94–6057; Filed 3–15–94; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 5, 1994. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 31, 1994.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Spalding County

St. George's Episcopal Church, 132 N. Tenth St., Griffin, 94000284.

KENTUCKY

Floyd County

DeRossett—Johns Site, Address Restricted, Prestonsburg vicinity, 94000304.

Madison County

Fort Boonesborough Townsite Historic District, 4375 Old Boonesborough Rd., Richmond vicinity, 94000303.

MASSACHUSETTS

Essex County

Fort Lee, Address Restricted, Salem vicinity, 94000285.

MISSOURI

Franklin County

International Shoe Company Building, 160 N. Main St., St. Clair, 94000287.

Jackson County

Hughes, Mollie and Josephine, House, 801 S. Main St., Independence, 94000289.
Kansas City Water Department Building, 201 Main St., Kansas City, 94000290.
Townley Metal & Hardware Company Building, 200–210 Walnut St., Kansas City, 94000286.

Johnson County

Johnson County Courthouse, Courthouse Sq., Warrensburg, 94000288.

OKLAHOMA

Carter County

Healdton Armory, Jct. of Fourth and Franklin Sts., Healdton, 94000280.

Custer County

Clinton Armory, 723 S. Thirteenth St., Clinton, 94000281.

Greer County

Mangum Armory, 115 E. Lincoln St., Mangum, 94000278.

Kingfisher County

Kingfisher Armory, 301 N. 6th St., Kingfisher, 94000279.

Stephens County

Marlow Armory, 702 W. Main St., Marlow, 94000282.

SOUTH CAROLINA

Greenville County

Greenville County Courthouse, 130 S. Main St., Greenville, 94000300.

TENNESSEE

Gibson County

Freed, Julius, House, Eaton St. W of Gibson Co. Courthouse, Trenton, 94000301.

Moore County

Bobo Hotel, Main St., Lynchburg, 94000283.

UTAH

Iron County

Meeks—Green Farmstead, Approximately 40 N. 400 West., Parowan, 94000295.

Plute County

Morrill, John and Ella, House, 95 N. Main St., Junction, 94000294.

Salt Lake County

Hollywood Apartments (Salt Lake City MPS), 234 E. 100 South, Salt Lake City, 94000302.
Midvale City Hall (Public Works Buildings TR), 12 E. Center St., Midvale, 94000293.
Smith, Joseph M. and Celestia, House, 12357 S. Relation St. (1565 East), Draper, 94000291.
Smith, Mary, House, 12544 S. Relation St. (1565 East), Draper, 94000292.

Utah County

American Fork City Hall, 31 Church St., American Fork, 94000298.
Beers House—Hotel, 65 N. 100 East, Pleasant Grove, 94000296.
Fugal Blacksmith Shop, Approximately 680 N. 400 East, Pleasant Grove, 94000297.
Legion Memorial Building, 48 N. Merchant's St., American Fork, 94000299.

[FR Doc. 94–6034 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater DRAMs, Components Thereof, and Products Containing Such DRAMs; Commission Determination Not To Review Initial Determination Granting Jointing Motion To Terminate the Investigation of the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the investigation on the basis of a settlement agreement between complainant Micron Semiconductor, Inc., and the only remaining respondents in the investigation, Hyundai Electronics Industries, Co. Ltd. and Hyundai Electronics America, Inc.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3093. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 1992, based on a complaint alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs, allegedly manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584.

On February 4, 1994, complainant Micron Semiconductor, Inc. and respondents Hyundai Electronics Industries, Co. Ltd. and Hyundai Electronics America, Inc. (the "Hyundai respondents") filed a joint motion to terminate the investigation with prejudice on the basis of a settlement and license agreement. On February 9, 1994, complainant and the Hyundai respondents filed an amended motion, superseding the first motion, and clarifying that the license agreement covers the patent and products at issue in the investigation. On February 9, 1994, the Commission investigative attorney filed a response in support of the joint motion.

On February 14, 1994, the ALJ granted the amended motion, issuing an ID terminating the investigation. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this

investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

Issued: March 9, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6128 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P–M

[Investigation No. 337–TA–347]

Commission Determination Not To Review An Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

In the Matter of Certain Anti-theft Deactivatable Resonant Tags and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID found no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On March 10, 1993, the Commission instituted an investigation of a complaint filed by Checkpoint Systems Inc. (Checkpoint) under section 337 of the Tariff Act of 1930. The complaint, as amended, alleged that six respondents imported, sold for importation, or sold in the United States after importation certain anti-theft deactivatable resonant tags and components thereof that infringed claims 1, 2, 4, 6, 9, 10, 20, 21, 23, and 25 of U.S. Letters Patent 4,498,076 (the '076 patent) and claims 1, 2, 4, 6, 9, 10, 19, 20, 22, 24, 25, 26, and 27 of U.S. Letters Patent 4,567,473 (the '473 patent). On March 10, 1993, the Commission instituted an investigation of Checkpoint's complaint.

The Commission's notice of investigation named six respondents, each of whom was alleged to have committed one or more unfair acts in the importation or sale of components or finished tags that infringe the asserted patent claims. Those respondents are: (1) Actron AG (Actron); (2) Tokai Denshi Co., Ltd. (Tokai); (3) ADT, Limited (ADT); (4) All Tag Security AG (All Tag); (5) Toyo Aluminum Co., Ltd. (Toyo); and (6) Custom Security Industries, Inc. (CSI). Respondent CSI was found to be in default and to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. See 58 FR 52523 (Oct. 17, 1993).

On December 1, 1993, the Commission issued notice that it would follow a modified procedure for considering the final ID in this investigation. 58 FR 63391. The notice set out a schedule for the parties to file petitions for review of the ID, responses to the petitions for review, and replies to the responses. The notice also indicated that the Commission might later issue a notice requesting written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding, and/or requiring the parties to file supplemental briefs on violation issues selected by the Commission.

The ALJ conducted an evidentiary hearing in August and September, 1994, and issued his final ID on December 9, 1993. He found that: (1) There is a domestic industry involving each of the asserted claims of the '076 and '473 patents; (2) none of the asserted claims of these patents are infringed by respondents' tags; (3) the asserted claims are invalid under 35 U.S.C. 102(g); and (4) the asserted claims are not invalid under 35 U.S.C. 102, 103, or 112. Based upon his findings of invalidity and non-infringement, the ALJ concluded that there was no violation of section 337.

Complainant Checkpoint filed a petition for review of the ALJ's findings on both infringement and validity; respondents and the Commission investigative attorney (IA) filed responses to the petition for review, and all parties filed reply submissions.

On January 21, 1994, the Commission issued a notice requesting the parties, interested government agencies, and other interested persons to file submissions addressing the issues of remedy, the public interest, and bonding. 59 FR 3867 (January 27, 1994). The Commission noted that it had not yet completed its review of the record in the investigation and had made no determinations with respect to the ID or complainant's petition for review, but that it was requesting submissions on the issues of remedy, the public interest, and bonding for use in the event that it ultimately determined that a violation of section 337 had been established. All parties filed submissions on these issues, but no agency or public submissions were received.

Having considered the record in this investigation, including the ID and all submissions filed on review, the Commission determined not to review any portion of the ID. The Commission also determined that issuance of a remedy as to defaulting respondent CSI is precluded by public interest factors.

This action constitutes the Commission's final disposition of this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the non-confidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6133 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–364]

Investigation

In the Matter of Certain Curable Fluoroelastomer Compositions and Precursors Thereof.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. The complaint, as amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation,

and the sale within the United States after importation of certain curable fluoroelastomer compositions and precursors thereof, by reason of alleged induced and contributory infringement of claims 1–2, 4–6, 11–12, and 14–15 of U.S. Letters Patent 4,287,320, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 8, 1994, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B)(i) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain curable fluoroelastomer compositions, by reason of alleged infringement of claims 1–2, 4–6, 11–12, and 14–15 of U.S. Letters Patent 4,287,320, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ausimont U.S.A., Inc., 44 Whippany Road, Post Office Box 1838, Morristown, New Jersey 07962–1838.

Ausimont, S.p.A., Foro Buonaparte, 31, 20121 Milano, Italy.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6132 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Decision Not To Review An Initial Determination Granting a Joint Motion To Terminate the Investigation With Respect To Respondent Microcomputer Cable Co. on the Basis of a License Agreement

In the Matter of Certain Devices for Connecting Computers Via Telephone Lines.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued on February 8, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent MicroComputer Cable Co. ("MCC") to terminate the investigation as to MCC on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On January 25, 1994, Farallon and MCC filed a joint motion to terminate the investigation with respect to MCC on the basis of a licensing agreement. The Commission investigative attorney supported the motion. The ALJ issued an ID granting the joint motion and terminating the investigation as to MCC. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the

Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6130 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–349]

Effects of the Arab League Boycott of Israel on U.S. Businesses

AGENCY: International Trade Commission.

ACTION: Cancellation of hearing.

SUMMARY: As of the March 9, 1994, deadline for filing notices of appearances, the Commission had not received any requests to appear at its public hearing scheduled for March 17, 1994 in this matter. Therefore, the hearing in connection with this investigation scheduled for March 17, 1994 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, has been cancelled.

Notice of institution of the investigation and the scheduling of the hearing was published in the **Federal Register** of December 8, 1993, (58 FR 234).

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Peg O'Laughlin (202–205–1819), Office of Public Affairs, U.S. International Trade Commission. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202–205–1810).

By order of the Commission.

Issued: March 11, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6145 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–351]

Certain Removable Hard Disk Cartridges and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on March 17, 1994, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: March 11, 1994

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 94–6135 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–351]

Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

In the Matter of Certain Removable Hard Disk Cartridges and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a consent order agreement: Kevin Scheier.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 7, 1994.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: March 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6129 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 22–54]

Wheat, Wheat Flour, and Semolina

AGENCY: International Trade Commission.

ACTION: Scheduling of additional public hearings.

SUMMARY: The Commission will hold additional hearings in connection with this investigation beginning at 9:30 a.m. on April 7, 1994, in Bismarck, ND and at 10 a.m. on April 8, 1994, in Shelby, MT. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before March 25, 1994. Requestors will be notified by the Commission of the location of the public hearings, as well as any time limitations to be imposed on testimony. Oral testimony and written materials to be submitted at the public hearings are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: For further information concerning the scope of investigations and the conduct of this investigation and rules of general application, see the Commission's notice of institution (59 FR 3736,

January 26, 1994) and consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204 (19 CFR part 204).

Written submissions.—Each person or group of persons filing a request to appear at these hearings is encouraged to submit a written copy of testimony/information pertinent to the subject of the investigation on or before March 30, 1994. A signed original and fourteen (14) copies of each submission must be filed with the Secretary in accordance with the provisions of section 201.8 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules.

All written submissions except for confidential business information will be available for public inspection during regular business hours, 8:45 a.m. to 5:15 p.m. in the Office of the Secretary.

Any information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

As stated in the Commission's **Federal Register** notice of January 26, 1994, the Commission has also scheduled a hearing in this matter for Washington, DC, on May 12, 1994. The overall deadline for written submissions in this investigation, including post-hearing briefs, is May 19, 1994.

This notice is published pursuant to section 204.4 of the Commissions rules (19 CFR 204.4).

By order of the Commission.

Issued: March 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6131 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–644 (Final)]

Welded Stainless Steel Pipe From Malaysia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Malaysia of welded austenitic stainless steel pipe, provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 1, 1993, following a preliminary determination by the Department of Commerce that imports of welded stainless steel pipe from Malaysia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 22, 1993 (58 FR 49317). The hearing was held in Washington, DC, on January 27, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 7, 1994. The views of the Commission are contained in USITC Publication 2744 (March 1994), entitled "Welded Stainless Steel Pipe from Malaysia: Investigation No. 731–TA–644 (Final)."

Issued: March 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–6134 Filed 3–15–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Newquist and Commissioner Rohr dissenting.

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (Sub-No. 478X), CSX Transportation, Inc. abandonment in Bell County, Kentucky and Claiborne County, Tennessee and,

AB–290 (Sub-No. 138X), Norfolk Southern Railway Company discontinuance of trackage rights in Bell County, Kentucky and Clairborne County, Tennessee. Ea available 3/11/94.

AB–400 (Sub-No. 2X), Seminole Gulf Railway, Inc., as general partner of Seminole Gulf Railway, L.P.—Abandonment exemption—portion of Baker Spur Line in Lee County, Florida. Ea available 3/8/94.

AB–156 (Sub-No. 19X), Delaware and Hudson Railway Company, Inc.—Abandonment exemption—in Saratoga and Warren Counties, New York. Ea available 3/8/94.

AB–167 (Sub-No. 1129X) Consolidated Rail Corp.—Abandonment Exemption—in Chester County, PA. Ea available 3/11/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–406 (Sub-No. 2X), Central Kansas Railway, Inc.—Abandonment Exemption—in Barber and Kiowa Counties, KS. Ea available 3/10/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–6089 Filed 3–15–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1658–94]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and Time: March 30, 1994, at 9:30 a.m.

Place: The Third Floor Assembly Room at Baltimore-Washington International Airport, Baltimore, Maryland, telephone number: (410) 962–3610.

Status: Open. Tenth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public Participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the contact person will be considered for discussion at the meeting.

Contact Person: Elaine Schaming, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 7223, 425 I Street, NW., Washington, DC 20536, telephone number (202) 514–9587 or fax number 202–514–8345.

Dated: March 10, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–6040 Filed 3–15–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,253]

Plains Petroleum Operating Co., Lakewood, CO; Affirmative Determination Regarding Application for Reconsideration

On February 16, 1994, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on February 4, 1994 and was published in the **Federal Register** on February 23, 1994 (59 FR 8662).

The petitioners, all involved in exploration, state that they are a separate appropriate subdivision from the Plains Operating Company and that their petition should be evaluated on the basis of the criteria relevant to the Exploration Group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–6016 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 28, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 28, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Armco Stainless and Products (USWA).	Bridgeville, PA	02/24/94	02/24/94	NAFTA–00035	Stainless steel products.
Key Tronic Corporation (Co)	Cheney, WA	03/01/94	02/25/94	NAFTA–00036	Keyboards.
True Temper Hardware Company (USWA).	Harrisburg, PA	03/01/94	02/28/94	NAFTA–00037	Workmate tables.
Heater Wire (Co)	El Paso, TX	03/02/94	02/28/94	NAFTA–00038	Foil heater, pet heater.
J.C. Penney Inc. (wkrs)	Newark, DE	03/04/94	02/28/94	NAFTA–00039	Window coverings.
Peterson Shake Co. Inc. (wkrs)	Amanda Park, WA	03/04/94	03/03/94	NAFTA–00040	Wood shingles and ridges.

[FR Doc. 94-6017 Field 3-15-94; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D–9601, et al.]

Proposed Exemptions; Genelabs Technologies, Inc.; Section 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Genelabs Technologies, Inc. Section 401(k) Plan (the Plan) Located in Redwood City, CA

[Application No. D–9601]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of Group Annuity Contract Number 7410 (GA–7410) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey to Genelabs Technologies, Inc., located in Redwood City, California (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that: (1) The Sale is a one-time transaction for cash; (2) the plan does not experience any loss nor incur any expenses from the transaction; (3) the Plan receives no less than the fair market value of GA–7410 as determined at the time of the Sale; and (4) the independent trustee for the Plan determines the fair market value of GA–7410 and also determines that the Sale is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Employer, a California corporation, was incorporated in 1984, and its securities are publicly traded on NASDAQ. The Employer is engaged primarily in the research and development of human health care products for the diagnosis, prevention, and treatment of viral diseases and cancer. Currently, the Employer is conducting research on therapeutics for

AIDS, hepatitis, herpes, and drug resistant cancer.

2. The Plan is a defined contribution plan, with individual accounts for the participants, which is intended to meet the qualification requirements of sections 401(a) and 401(k) of the Code. Also, the Plan intends to comply with section 404(c) of the Act and the regulations thereunder whereby the participants of the Plan self-direct the investments of their respective accounts in the Plan.

As of December 31, 1992, the Plan had 148 participants and total assets of $966,657. Approximately 35 percent of the total assets, valued at $343,108, were invested under GA–7410 in three different guaranteed investment certificates (GCs) on behalf of 54 participants in the Plan.

The Plan is administered by a committee of at least three individuals (the Committee) that is appointed by the President or The Board of Directors of the Employer.[1] Among other things, the Committee has the responsibility for selecting the optional investment vehicles that are used by the participants when self-directing the investments of their individual accounts in the Plan. Also, the Committee appoints legal counsel, accountants, investment advisers, and the trustee for the Plan.

The current investment adviser for the Plan is Retirement Benefits Planning (RBP), a California partnership, located in San Ramon, California. RBP is registered under the Investment Advisers Act of 1940 and is retained by the Committee to advise the Committee on funding policies; to monitor the quarterly performance of investments by the Plan; and, based on the funding policy of the Plan, to advise the Committee on new fund managers.

On September 26, 1991, the Bank of America National Trust and Savings Association (Bank of America), located in San Francisco, California, was appointed trustee (the Trustee) for the Plan. The applicant represents that the Trustee, as the custodian of the assets of the Plan, is to ensure that assets of the Plan are properly and legally held in trust as required by the Act, and is to oversee the establishment and maintenance of the investment and disbursement accounts of the Plan.

[1] The current Committee consists of four employees of the Employer: Kenneth P. McCarthy, Vice President, Human Resources; Robert Benson, Vice President and General Counsel; Michael Anderson, Controller; LaVonne Young, Associate Scientist. (Mr. Michael Anderson is represented by the applicant to be resigning his position with the Employer and the Committee.)

3. The Plan authorizes the Employer to appoint the named fiduciaries who are to select the optional investment vehicles offered to participants of the Plan. After the named fiduciaries make a selection of the investment vehicles, the Plan participants make their own decisions as to which investment vehicles to invest the assets of their individual accounts. At the selection and direction of previous fiduciaries,[2] from September 1, 1988, the effective date of the Plan, until October 30, 1991, all assets in the Plan were invested in GA–7410.[3] The Mutual Benefit investment vehicles under GA–7410 included the GCs, providing for yields at a fixed rate of interest to be paid at stated maturity periods, and two different variable annuity accounts ("separate accounts"), designated as the Equity Growth Account and the Aggressive Equity Account.

4. On July 16, 1991, the Commissioner of Insurance for the State of New Jersey (the Insurance Commissioner) placed Mutual Benefit in conservatorship and rehabilitation, causing Mutual Benefit to suspend all payments on Mutual Benefit accounts, including the GCs. On August 7, 1991, the Superior Court of New Jersey removed restrictions on withdrawals of assets from Mutual Benefit which were maintained in "separate accounts." This court order of August 7, 1991, enabled the Plan to withdraw all its investment in GA–7410, except for the portion invested in the GCs.

On September 27, 1991, the Employer requested that Mutual Benefit transfer the assets of the Plan freed by the Order of the Superior Court of New Jersey to the Bank of America as Trustee for the Plan. On October 30, 1991, and November 14, 1991, Mutual Benefit transferred the total sum of $414,262.92, which consisted of the value of the Plan assets invested in the "separate accounts" under GA–7410. The transfer of Plan assets to the Bank of America did not include the remaining assets invested in Mutual Benefit GCs under GA–7410, which are valued at $343,108 and make up approximately 35 percent of the total assets of the Plan.

5. On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit. The terms of the rehabilitation plan provided that either the Mutual Benefit GCs would be paid in full with a reduced rate of interest over an extended period of time; or alternatively, the investors in the GCs could choose not to participate in the rehabilitation plan but instead, could choose to receive 45 percent of the value of their respective investment in the GCs.

In lieu of subjecting participants of the Plan to either of these choices under the rehabilitation plan of the court, the Employer proposes to purchase for cash the Mutual Benefit GA–7410. In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, the face value of the GCs. No expenses will be incurred by the Plan from the proposed transaction. The payment to be made by the Employer to the Plan will be the total amount paid by the Plan for the GCs (less any withdrawals previously made under the GCs) plus accrued interest. The amount of interest accrued to each GC to December 31, 1991, will be calculated by using the rates guaranteed under the terms of each GC.[4] Interest accrued on all three GCs after December 31, 1991, to the date of the Sale will be calculated at the rate of 4 percent for the period from January 1, 1992, through December 31, 1992, and at the rate of 3½ percent for the period from January 1, 1993, to the date of the proposed Sale. The 4 percent interest rate to be used to calculate the amount of interest accumulated by the GCs for 1992, and the 3½ percent interest rate to be used to calculate the amount of interest accumulated by the GCs for 1993 to the date of the proposed Sale are rates of interest that were determined under the rehabilitation plan ordered by the New Jersey Superior Court on November 13, 1993.

The applicant represents that the amount of the payment for GA–7410 will be determined on the date of the proposed Sale by the Bank of America, as the independent trustee of the Plan.

6. The applicant represents that the proposed transaction will relieve the Plan and its participants of any risk associated with retaining the GCs and

[2] The original fiduciaries, who were employees of the Employer, have since left their employment and resigned as fiduciaries of the Plan.

[3] The Department notes that the decision by the named fiduciaries to offer GA–7410 as an investment vehicle is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not proposing relief herein for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding by the Plan of GA–7410 issued by Mutual Benefit.

[4] Certificate No. 0001: 8.90 percent for the period September 1, 1988, to August 31, 1989, and 8.40 percent from September 1, 1989 to December 31, 1991.

Certificate No. 0002: 7.60 percent for the period September 1, 1989, to August 31, 1990, and 7.10 percent from September 1, 1990, to December 31, 1991.

Certificate No. 0003: 7.75 percent for the period September 1, 1990, to August 31, 1991, and 7.25 percent from September 1, 1991, to December 31, 1991.

will permit the participants to redirect the funds invested in the GCs to safer investments without any loss to the individual accounts of the participants in the Plan. Furthermore, the applicant represents that the proposed transaction will enable the Plan to resume paying distributions out of the funds that were invested in the GCs and due to participants under the terms of the Plan.

7. The Bank of America as the independent fiduciary of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries, and is protective of the rights of the participants and beneficiaries. The Bank of America represents that the proceeds from the Sale will enable the Plan and its participants and beneficiaries to avoid the continued risk associated with holding the GCs under GA–7410. Also, the Bank of America represents that the proposed transaction will permit the participants to direct the proceeds from the Sale into safer investments and remove their funds in the Plan from an illiquid investment.

In addition, the Bank of America represents that in its capacity of independent fiduciary for the Plan it will calculate the value of GA–7410, as stated above, on the date of the Sale to determine the price that the Employer will pay for its purchase of GA–7410.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Plan will receive in a one-time transaction cash for the Mutual Benefit GCs, an amount equal to their face value plus accrued interest as of the date of Sale, which a qualified, independent fiduciary has determined to be not less than the fair market value of the Mutual Benefit GCs; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk that would be associated with the continued holding of the Mutual Benefit GCs, and will permit the directing of assets to safer investments; (c) the Plan will not incur any expenses with respect to the proposed transaction; and (d) the Trustee has determined that the Sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Southern Union Company, Southern Union Savings Plan (the Plan) Located in Austin, TX

[Application No. D–9594]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The past acquisition by the Plan of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Southern Union Company (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The Plan's acquisition and holding of the Rights resulted from an independent act of the Employer as a corporate entity, and all holders of the common stock of the Employer, including the Plan, were treated in the same manner with respect to the Offering; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

EFFECTIVE DATE: This exemption, if granted, will be effective as of November 30, 1993.

Summary of Facts and Representations

1. The Employer, a natural gas company, is a Delaware Corporation with corporate headquarters in Austin, Texas. As of November 30, 1993, there were issued and outstanding 5,252,110 shares of Employer common stock (the Common Stock), of which 54,463 shares, or about 1.04 percent, were held by the Plan. The Plan is a defined contribution employee benefit plan intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among four investment funds, one of which invests exclusively in the Common Stock (the Stock Fund). Participants can also choose to invest in an equity fund, a balanced portfolio fund and a fixed income fund.[5] Each participant may have as many as four Accounts under the Plan, including a tax-deferred personal contributions account, a rollover account, a post-tax personal contributions account and an employer contributions account. As of November 30, 1993, there were 810 participants in the Plan, of which 773 had at least one Account with an investment in the Stock Fund. As of that same date, the Plan held total assets of approximately $6,047,003. The trustee of the Plan is Merrill Lynch Trust Company of Texas (the Trustee).

2. The Employer represents that it decided to commence the Offering as a means of raising equity capital in connection with the anticipated purchase of certain natural gas operations located in Missouri. The Employer represents that this decision was reached after consultation with the Employer's financial advisors and that the Offering was extended to all holders of the Common Stock.

3. On November 30, 1993 (the Record Date), the Employer commenced the Offering by issuing to all record holders of the Common Stock .38 Rights[6] for each share of Common Stock held.

The number of Rights actually distributed to each shareholder was rounded up to the nearest whole Right. Each Right entitled its holder to purchase one share of Common Stock (the Basic Subscription Privilege) at an exercise price of $25.00 per share. Each Right also included the right to subscribe (the Additional Subscription Privilege), at the exercise price of $25.00 per share, for an additional, unlimited number of shares of Common Stock (Additional Shares) remaining after satisfaction of subscriptions pursuant to the Basic Subscription Privilege. Only

[5] The Department expresses no opinion as to whether the Plan provisions satisfy the requirements of section 404(c) of the Act and the regulations promulgated thereunder.

[6] The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

owners of the Common Stock who exercised the Basic Subscription Privilege in full were entitled to exercise the Additional Subscription Privilege. All funds submitted in exercise of Additional Subscription Privileges were deposited in escrow with Chemical Bank pending satisfaction of all Basic Subscription Privilege subscriptions. If the number of Additional Shares available to satisfy Additional Subscription Privilege requests were insufficient to meet all such requests, the available Additional Shares were to be allocated pro rata among all Additional Subscription Privilege subscribers in proportion to the number of shares purchased by them through exercise of the Basic Subscription Privilege. The Employer authorized the issuance of up to 2,000,000 Additional Shares through the Offering, which also featured a standby purchase agreement which is not involved in the exemption proposed herein. Under the standby purchase agreement certain individuals agreed to purchase any shares not purchased by holders of the Rights.

The Employer represents that the Offering did not involve any guarantee or other assurance that any market for the Rights would develop or remain available during the Offering. However, the Rights traded on the American Stock Exchange through December 22, 1993.[7] The Offering expired at 5 p.m. on December 23, 1993, at which time no further exercising of Rights occurred.

4. In anticipation of the Offering, the Plan and its related trust agreement (the Trust Agreement) were amended to establish procedures which would permit each Plan participant with an Account balance invested in the Stock Fund (collectively, the Invested Participants) as of November 30, 1993 to elect to either exercise or sell the Rights attributable to his Account. The Employer represents that on December 3, 1993, all Invested Participants were sent, by first class United States mail, a copy of the prospectus relating to the Offering published by the Employer, a letter from the Trustee providing information about the Offering and describing the procedures for participant elections with respect to the Offering, and an election form. The election forms sent to Invested Participants enabled each of them to direct the Plan's third party administrator to instruct the Plan's broker to exercise the Rights allocable to the Invested Participant's Accounts or to sell such Rights on the open market. Invested Participants' instructions to sell Rights were executed as they were received. As provided in the Plan and Trust Agreement, as amended, the Rights of any Invested Participant[8] who failed to submit an election form by the due date, or submitted an invalid election form, were sold on the open market on December 22, 1993. The Employer represents that such required sales were disclosed to the Invested Participants in the informational documents sent on December 3, 1993.

5. Rights were exercisable and Additional Shares could be subscribed for under the Additional Subscription Privilege by an Invested Participant only to the extent of non-Stock Fund investments available in his or her Accounts. If such investments in an Invested Participant's Accounts were insufficient to pay the exercise price for all the Rights that the Invested Participant instructed should be exercised, any Rights that could not be exercised were sold on the open market on December 22, 1993. The Employer represents that such required sales were disclosed in the informational documents sent to Invested Participants on December 3, 1993. For each Invested Participant who directed the exercise of Rights attributable to his or her Accounts, the funds needed to pay the exercise price were obtained by liquidating the non-Stock Fund investments in the Invested Participant's Accounts based upon the values of such investments as of the close of the market on December 20, 1993. The Employer represents that the actual liquidations of non-Stock investments took place on December 21, 1993.

Because the per unit selling prices of the non-Stock Fund investments on December 21, 1993 were generally less than the market values of such units at the close of the market on December 20, 1993, a shortfall of funds occurred. To the extent this shortfall caused an Invested Participant to have insufficient funds available to exercise all of the Rights the Invested Participant had elected to exercise, the excess Rights were sold on the open Market on December 22, 1993 and the proceeds were allocated to the Accounts of the Participants whose Rights were sold.

6. In the event that the market price for the Common Stock, including any applicable brokerage commissions and other expenses, at 10 a.m. C.S.T. on December 23, 1993 was less than $25.00 per share (the exercise price under the Offering), the Plan and Trust Agreement, as amended, provided that Rights would not be exercised. However, in the above situation, an Invested Participant was permitted to: (a) Elect in anticipation of such circumstances that the proceeds otherwise available to fund the exercise of Rights and the purchase of Additional Shares under the Additional Subscription privilege be used instead to purchase shares of the Common Stock on the open market, or (b) in the absence of such an election, refrain from purchasing any Common Stock, either through exercise of the Rights or on the open market. The Employer represents that at 10 a.m. C.S.T. on December 23, 1993, the exercise price of a Right was less than the market price for a share of the Common Stock on the American Stock Exchange, after giving effect to any applicable brokerage commissions and other expenses. Accordingly, the Plan's broker exercised all Rights for which directions to exercise were submitted by the Invested Participants.

7. The Employer represents that in order to allow sufficient time to perform the administrative procedures required to review participant election forms and implement elections, including, as required, the liquidation of non-Stock Fund investments, the procedure for participant elections with respect to the Offering included timing deadlines for the filing of instructions in advance of the expiration of the Offering. Accordingly, Invested Participants were required to return the election forms by 11 a.m. C.S.T. on December 20, 1993.

8. The Employer represents that the following is a summary of the Offering:

(a) The Plan received a total of 20,682 Rights in connection with the Offering.

(b) A total of 1,653,001 Rights were exercised on December 23, 1993. Eighty-four of the 773 Invested Participants directed the exercise of Rights, resulting in the exercise of 3,715 Rights, or about .23 percent of the total number of Rights exercised.

(c) Fifty-eight Invested Participants directed the exercise of a number of Rights the exercise price of which exceeded their non-Stock investments available for liquidation. In accordance with the Plan and Trust Agreement, as amended, in such instances, any Rights that could not be exercised were sold, resulting in the sale of 262 Rights.

[7] The common stock of the Employer is also traded on the American Stock Exchange.

[8] The Employer represents that no Rights attributable to the Accounts of Invested Participants subject to the provisions of section 16(b) of the Securities Exchange Act of 1934 (collectively, the section 16(b) Participants) were sold. Section 16(b) Participants were allowed to exercise Rights and subscribe for Additional Shares under the Additional Subscription Privilege on the same basis as other Invested Participants. Persons subject to section 16(b) are officers, directors, and 10% or more shareholders of the Employer. The Employer represents that there were six section 16(b) Participants.

(d) Among the Invested Participants, 101 affirmatively directed that the Rights allocated to their Accounts be sold, resulting in the sale of 3,413 Rights.

(e) Among the Invested Participants, 594 did not respond.[9] In accordance with the Plan and Trust Agreement as amended, the Rights allocated to the Accounts of these Invested Participants (who were not section 16(b) Participants) were sold, resulting in the sale of 12,182 Rights; and the Rights allocated to the Accounts of these Invested Participants who were section 16(b) Participants were allowed to lapse, resulting in the lapse of 1,110 Rights.

(f) A total of 346,999 Additional Shares were issued through the Additional Subscription Privilege, including 800 shares, or about .2305 percent of the total, acquired by the Plan on behalf of 24 Invested Participants who elected to exercise the Additional Subscription Privilege.

(g) An additional 313,528 Additional Shares had been requested, but were not acquired, through the Additional Subscription Privilege, requiring the return of $7,838,200 to oversubscribing shareholders. The Plan subscribed for 800 Additional Shares under the Additional Subscription Privilege and received all 800 Additional Shares. Therefore, no amounts were required to be returned to the Plan.

(h) The Employer represents that all elections filed by Invested Participants with respect to the Offering were observed by Coopers & Lybrand, the Plan's third party administrator, and executed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, the Plan's broker, and that all Invested Participants were notified adequately in advance of the termination date of the Offering of the procedure for making elections with respect to Rights attributable to their Accounts. Accordingly, the Employer represents that all actions taken on behalf of the Plan relating to the Offering, with respect to the Accounts, were pursuant to express participant directions or express default provisions of the Plan and Trust Agreement. The Employer represents that the procedures for default were fully disclosed in the election form and explanatory materials sent to Invested Participants, and were consistent with the participant directed nature of investments under the Plan.

[9] The results reported above indicate a total of 779 Invested Participants, although there were only 773 Invested Participants as of the Record Date of the Offering. Because certain Invested Participants directed that some of their Rights be exercised and that some be sold, those Invested Participants were counted twice.

9. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (b) With respect to all aspects of the Offering, all holders of the Common Stock were treated in the same manner, including the Plan; (c) All decisions with respect to the Plan's acquisition, holding and control of the Rights were made by the individual Invested Participants whose Accounts held interests in the Stock Fund, except for those Participants who failed to file timely and valid election forms, in which case the Rights were sold; and (d) The acquisition and holding of Rights by the Plan affected 773 of the Plan's 810 participants whose Accounts held only about 1.04% of the Common Stock outstanding as of the Record Date of the Offering.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Meridian Trust Company Employee Benefit Equity Fund and Fixed Income Fund (the Funds) Located in Malvern, PA

[Application Nos. D–9447 and D–9448]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, effective April 30, 1992, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale for cash of certain notes (the Notes) from the Funds to Meridian Asset Management, Inc. (Meridian), a party in interest with respect to the Funds, provided that the following conditions were met at the time of the sale:

1. The terms of the sale were at least as favorable as those the Funds could have obtained in an arm's-length transaction with an unrelated party;

2. Meridian paid the unpaid principal balance plus accrued interest on the Notes as of the time of sale;

3. The fair market value of the Notes was determined by a qualified independent appraiser to be less than the unpaid principal balance plus accrued interest;

4. The Funds received all cash as a result of the transaction; and

5. The Funds paid no fees or commissions in regard to the sale.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 30, 1992.

Summary of Facts and Representations

1. Meridian provides investment management and trust services to individuals, corporations and institutions. The sponsor of the Funds is Meridian Trust Company, a wholly-owned subsidiary of Meridian, which is a bank with trust powers organized under the laws of the Commonwealth of Pennsylvania. The Funds are collective trust funds in which pension plans invest. The Pennsylvania Department of Banking requires Pennsylvania banking institutions which maintain common and collective trust funds to administer such funds in accordance with regulations issued by the Office of the Comptroller of the Currency. However, the applicant represents that Meridian, the purchaser of the Notes, is not a bank and is not subject to regulation by the Office of the Comptroller of the Currency. As of December 31, 1991, the Equity Fund had total net assets of $218,891,767 while those of the Fixed Income Fund equaled $127,863,109.

2. On September 13, 1989, the Funds purchased the Notes for a total of $3,959,100 on the recommendation of K. Lawrence Neill (Neill), an employee at that time of Meridian Investment Company, a wholly-owned subsidiary of Meridian, and a fiduciary with respect to the Funds. The Notes consist of two notes issued by Safe Harbor Marina, Inc. (Safe Harbor) in the principal amounts of $2,300,000 placed with the Equity Fund and $1,659,100 placed with the Fixed Income Fund. The Notes provided for payment of principal and interest twice yearly for a term of 10 years at an interest rate of 12 percent per annum. The proceeds of the Notes were to be used to help fund the construction of a marina and related facilities on Lake Erie in Erie County, Pennsylvania.[10] The applicant represents that there is no relationship between Meridian (or any of its affiliates) and Safe Harbor.

3. The Safe Harbor project did not meet its original opening date for a number of reasons. A payment due on the Notes in October 1990 was not made

[10] The Department expresses no opinion as to whether fiduciaries with respect to the Funds violated any of the fiduciary responsibility provisions of part 4 of title I of the Act in investing in the Notes. Section 404(a)(1) of the Act requires, among other things, that fiduciaries must act prudently and solely in the interest of plan participants and beneficiaries.

and, under their terms, the Notes then went into default. Meridian subsequently arranged for an independent inspection of the Safe Harbor project in order to determine what actions, if any, it should take to protect the principal and interest due on the Notes. Eventually a payment of $50,000 from Safe Harbor to Neill (presumably in exchange for his recommendation of the investment) and the existence of fiscal irregularities were discovered. In April 1993 Neill pleaded guilty to one count of receiving money to influence the business of a financial institution.

4. The Notes are unrated and, according to the applicant, no market exists for them. No principal or interest payments have been made on the Notes since 1990. The Notes have been restructured several times and the issuer remains financially troubled. On April 30, 1992, Meridian purchased the Notes from the Funds for the total purchase price of $4,794,184 in cash, consisting of the then unpaid principal amount of the Notes plus the accrued but unpaid interest at the rate specified in the Notes. Of the total purchase price, $2,785,134 was paid to the Equity Fund and $2,009,050 was paid to the Fixed Income Fund. The applicant states that the Notes were in default at the time of purchase. The Funds paid no fees in connection with the sale of the Notes to Meridian.

5. The applicant obtained a statement dated August 16, 1993, from Gabriel F. Nagy (Nagy) of Keeley Management Company (Keeley) located in Radnor, Pennsylvania, concerning the sale of the Notes by the Funds to Meridian. Nagy stated that Keeley is an investment banking firm regularly engaged in the valuation of businesses and significant interests therein. According to Nagy, Keeley is not in any way connected with Meridian or any of its affiliates. Keeley analyzed the prices at which defaulted corporate debt securities were trading on or around April 30, 1992. Sixteen publicly traded bond issues were identified with a maturity date of 1998 or 1999, approximately the same as that of the Notes.

Placing emphasis on bonds which were in default but where bankruptcy proceedings were not noted, Keeley concluded that the Notes had a fair market value of no more than 50 percent of their aggregate outstanding principal value as of the time of purchase of the Notes by Meridian. In a letter dated November 11, 1993, Keeley indicated that the fair market value of notes of this kind, which have been in default for some time with no reasonable prospect of cure, is always less than the unpaid principal balance plus accrued unpaid interest on the notes.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (1) Meridian paid the unpaid principal amount plus accrued interest for the Notes; (2) an appraiser independent of Meridian and its affiliates has determined that this amount was well in excess of the fair market value of the Notes; (3) the Notes were in default at the time of purchase by Meridian; (4) the purchase removed from the Funds debt obligations on which no principal or interest has been paid since 1990; and (5) the Funds received all cash as a result of the transaction.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of March 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–6014 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–24; Exemption Application No. D–9561, et al.]

Grant of Individual Exemptions; Jacobs Corporation Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Jacobs Corporation Profit Sharing Plan and Trust (the Plan) Located in Harlan, IA

[Prohibited Transaction Exemption No. 94–24; Application No. D–9561]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of certain assets of the Plan (the Assets), to occur over two (2) consecutive years, by the Plan to the Jacobs Corporation (the Employer), a party in interest with respect to the Plan; provided that: (1) The aggregate purchase price paid by the Employer for all of the Assets is no less than $683,384; (2) the purchase price paid by the Employer in each of the two consecutive years will be at least $341,692; (3) the purchase price paid by the Employer in each of the two consecutive years upon execution of the sale of such Assets is not less than the fair market value of such Assets on the date of each sale; (4) the terms of each of the sales are no less favorable to the Plan than those negotiated in similar circumstances with unrelated third parties; and (5) the Plan will incur no fees, commissions, or expenses as a result of either of the sales.

Temporary Nature of Exemption

The exemption is temporary and is effective on the date of publication of the grant of this exemption in the **Federal Register** and will expire upon the earlier to occur of the date which is two years from the grant of this exemption or the date when the Plan no longer owns any of the Assets which are the subject of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 18, 1994, at 59 FR 2625.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Bangs, McCullen, Butler, Foye & Simmons Employees' Retirement Plan (the Plan) Located in Rapid City, SD

[Prohibited Transaction Exemption 94–25; Exemption Application No. D–9598]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1994, to the lease by the Plan (the Lease) of certain improved real property located in Rapid City, South Dakota (the Property) to Bangs, McCullen, Butler, Foye & Simmons (the Employer), the sponsor of the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, related to the Property;

(C) The interests of the Plan for all purposes under the Lease are represented by an independent fiduciary, Norwest Bank South Dakota, N.A.; and

(D) The rent paid by the Employer under the Lease is no less than the fair market rental value of the Property.

EFFECTIVE DATE: This exemption is effective as of January 1, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1994 at 59 FR 2627.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Donohoe Restated Profit Sharing Plan and Trust (the Plan) Located in Washington, DC

[Prohibited Transaction Exemption 94–26; Exemption Application No. D–9442]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, effective December 28, 1993, shall not apply to the cash sale by the Plan of shares of common stock (the Shares) of the Federal Center Plaza Corporation (FCPC) to FCPC; provided that: (1) As the result of the sale, the Plan received in cash the greater of $25.00 per share or the fair market value of the Shares of FCPC, as determined by an independent, qualified appraiser, as of December 28, 1993, the date of the sale; (2) the Plan paid no commissions or fees in regard to the transaction; and (3) the terms of the sale were no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

EFFECTIVE DATE: This exemption is effective on December 28, 1993.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register**. All comments and requests for hearing were due by December 27, 1993.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the applicant, dated December 27, 1993. In its letter the applicant informed the Department that prior to receiving a granted exemption, the trustees of the Plan (the Trustees) intended on December 28, 1993, to sell to FCPC the Shares owned by the Plan. It was represented that the Trustees proposed to enter the transaction on that date, because FCPC planned to elect on January 1, 1994, to become a subchapter S Corporation under section 1361 of the Code. It was represented that FCPC will elect subchapter S Corporation status in order to reduce its administrative expenses, in the hope that by doing so

it can continue in business without taking the step of discharging employees.

In its December 27 letter the applicant represented that the Plan would receive from the sale of the Shares to FCPC sales proceeds in cash in an amount equal to the greater of $25.00 per share or the fair market value of the Shares, as of the date of the sale, as determined by an independent appraiser. In this regard, an independent, qualified appraiser, Arthur Andersen & Co. SC (Arthur Andersen), prepared an appraisal report, dated February 9, 1994. In its report Arthur Andersen estimated that, as of December 28, 1993, the fair market value of the Shares of FCPC was $19.00 per share.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption retroactively. In this regard, the comment by the applicant and the appraisal report of Arthur Andersen submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1993, at 58 FR 62142.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Linton Industries, Inc. Retirement Plan (the Plan) Located in Edmonds, WA

[Prohibited Transaction Exemption 94–27; Exemption Application No. D–9496]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan (the New Loan) of $485,000 from the Plan to Linton Industries, Inc. (the Employer), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the New Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the New Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the New Loan; (c) the New Loan is secured by a first lien interest on certain equipment (the Equipment), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Equipment is at least 200 percent of the amount of the New Loan; (d) the fair market value of the Equipment remains at least equal to 200 percent of the outstanding balance of the New Loan throughout the duration of the New Loan; (e) an independent, qualified fiduciary determines on behalf of the Plan that the New Loan is in the best interests of the Plan and protective of the Plan and its participants and beneficiaries; and (f) the independent, qualified fiduciary monitors compliance by the Employer with the terms and conditions of the New Loan and the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Equipment in the event of default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1994 at 59 FR 2624.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations; Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–6015 Filed 3–15–94; 8:45 am]

BILLING CODE 4510–29–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 18, 1994, through March 4, 1994. The last

biweekly notice was published on March 2, 1994 (59 FR 9999).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: January 20, 1994

Description of amendment requests: The proposed amendment would change the departure from nucleate boiling ratio (DNBR) in Safety Limits, Section 2.1.1.1, and the associated Bases, as well as the DNBR - Low Trip Setpoint in Table 2.2-1, and the associated Bases, from a value of 1.24 to 1.30. In addition, the amendment would add a methodology supplement entitled,≥System 80$^{GTIT™}$Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed TS amendment is to provide a revised DNBR Safety Limit and Low DNBR Trip Setpoint to ensure that no anticipated operational occurrence or postulated accident will result in core conditions exceeding DNBR Safety Limit.

The change in the DNBR Safety Limit from 1.24 to 1.30 can be accommodated directly by increasing the limit (including the DNBR Trip Setpoint) or by an increase in the DNBR overall uncertainty factors for core operating limit supervisory system (COLSS) (EPOL2 and EPOL4) and core protection calculator (CPC) (BERR1). Using the 1.24 DNBR Safety Limit will result in larger uncertainty factors, and conversely using the increased DNBR Safety Limit of 1.30 will result in lower uncertainty factors. Therefore, plant operation for COLSS and CPC are not significantly affected by the choice of the DNBR Safety Limit and the Trip Setpoint as long as the corresponding overall uncertainty factors are calculated and implemented. PVNGS will implement the 1.30 DNBR Safety Limit and its corresponding overall uncertainty factors in the reload safety analysis for Unit 3 Cycle 5 and in subsequent reload safety analyses for Units 1 and 2.

The proposed amendment changes only the DNBR Safety Limit and associated Trip Setpoint, and does not in any way impact the operation of the plant. Safety and setpoint analyses will be performed consistent with the increased DNBR limit of 1.30. The core power distribution during all phases of normal and anticipated operational occurrences will remain bounded by the initial conditions assumed in Chapter 15 of the PVNGS Updated Safety Analysis Report (UFSAR). Furthermore, the UFSAR Chapter 15 analysis remains bounding because the margins of safety will be maintained. Therefore, the proposed change to Sections 2.1.1.1 and 2.2.1 (Table 2.2-1) will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Section 6.9.1.10 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed change does not alter the conditions or assumptions in any of the UFSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is limited to changing the DNBR Safety Limit and Low DNBR Trip Setpoint and does not involve any physical change to plant systems or to the COLSS and the CPC algorithms. These changes will not affect any safety-related equipment used in the mitigation of anticipated operational occurrences or design basis accidents. Therefore, this change to Section 2.1.1.1 and 2.2.1 (Table 2.2-1) will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Section 6.9.1.10 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of safety.

The DNBR Safety Limit specified in TS 2.1.1.1 and the Low DNBR Trip Setpoint specified in TS 2.2.1 (Table 2.2-1) ensure that operation of the reactor is prevented from exceeding the DNBR Safety Limit during normal operation and design basis anticipated operational occurrences. Therefore, operating within the increased DNBR Safety Limit will ensure that no anticipated operational occurrence or postulated accident will result in core conditions exceeding the specified DNBR Safety Limit. The UFSAR Chapter 15 analysis remains bounding because the margins of safety will be maintained. Additionally, the COLSS and the CPC overall uncertainty factors will be calculated and implemented consistent with the increased DNBR Safety Limit of 1.30. Therefore, this change to Section 2.1.1.1 and 2.2.1 (Table 2.2-1) will not result in a significant reduction in a margin of safety.

The proposed change to Section 6.9.1.10 does not involve a significant reduction in a margin of safety. The proposed change is administrative in nature and does not adversely impact the plant's ability to meet applicable regulatory requirements. Therefore, it can be concluded that the proposed change to Section 6.9.1.10 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 9, 1994

Description of amendment request: The proposed amendment would make changes to the Technical Specifications and License. These changes consist of revised wording for the license, clarify wording to aid operators in selecting the correct pressure/temperature curve during startup and shutdown operations, and removal of certain obsolete mechanical snubber acceptance criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The first proposed change will modify License DPR-35 to eliminate the need to issue a new page 3 to identify the latest amendment number. The second change will provide the correction of an error of omitting the reference to the subcritical mode of operation, in relation to the pressure/temperature curves. The third change will remove the unnecessary mechanical snubber functional test acceptance criterion to determine if drag force has increased more than 50% since the last functional test.

Modification of License DPR-35 for Pilgrim Nuclear Power Station to remove the need to update page 3 whenever a new amendment is approved will reduce an administrative burden. This license change also precludes a possible administrative error if the correct reference is somehow missed. This change does not affect plant operation or design and is considered an administrative change and as such does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second change corrects an error of omission made in an earlier amendment by inserting a reference to the subcritical reactor operation phase. This proposal will enhance the procedure changes and training already accomplished as short term corrective actions. This change does not affect plant operation or design and is considered an administrative change and therefore does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The third change removes an acceptance criterion for mechanical snubber testing not required by the ASME Boiler and Pressure Vessel Code, Section XI, Subsection IWF nor recommended by the vendor for mechanical snubbers in use at Pilgrim.

This change will not result in any physical modification to Pilgrim. The mechanical snubbers will continue to be tested in accordance with existing plant procedures which reference the ASME Code Section XI, Subsection IWF. Therefore, this is considered an administrative change and as such, operation of Pilgrim will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident than previously evaluated because they are administrative in nature and require no physical alterations of plant configuration or changes to setpoints or operating parameters.

3. The operation of Pilgrim in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Because these changes do not alter plant operation or design and are considered administrative in nature, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 13, 1993

Description of amendments request: The proposed amendments would revise design features information pertaining to the elevation at which the spent fuel pool is designed to prevent inadvertent draining. The proposed amendment would revise this elevation from 116 feet 4 inches to 115 feet 11 inches based on the actual spent fuel pool design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current value in Specification 5.6.2 is incorrect. No basis can be determined for including this value in Specification 5.6.2 other than incorrectly characterizing the normal fuel pool water level as the design level to be maintained to prevent inadvertent draining of the fuel pool. This value was incorrectly incorporated into the initial standard Brunswick Technical Specifications, Water Level- Spent Fuel Storage Pool.

The 115' 11" elevation is equal to 20' 10-7/8" above the top of the spent fuel rods seated in the storage racks. This level is still in excess of the minimum level required (20' 6") by Technical Specification 3.9.9.

The accident discussed in UFSAR [Updated Final Safety Analysis Report] Section 9.1.2.3.2.4.2, Loss of Spent Fuel Pool Cooling, is not impacted by this change since the spent fuel pool safety functions are not impacted and Technical Specification minimum fuel pool levels (Specification 3.9.9) are not changed. As such, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated.

The radiological consequences of this accident are discussed in UFSAR Section 9.1.2.3.2.5. This analysis assumes spent fuel pool boiling. In addition, the facilities description of the spent fuel storage pool (Section 9.1.2.2.1), states that the surface of the water will be maintained at Elevation 116.3 ft, which is the normal water level of the pool. Therefore, the (lower) designed level to prevent inadvertent pool draining is not relevant within this analysis. As such, the proposed amendments do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request corrects a mischaracterization of the design features and does not involve a change in fuel pool operations. Specification 5.6.2 states that the fuel pool is designed to prevent inadvertent draining of the pool below elevation 116'4". However, it is possible that the pool could drain below this level by draining through piping connected to the pool coupled with no flow into the pool. It is not possible, however, with the fuel pool gates installed, that the fuel pool could be inadvertently drained below the bottom of the pool overflows to the skimmer surge tanks. The elevation at the bottom of the overflows to the skimmer surge tanks is 115'11". Therefore, this is the correct value to cite in

the design features section of Technical Specifications.

The proposed 115'11" elevation will not result in new drain pathways, nor will the minimum fuel pool water level required by the Technical Specifications be impacted by this change. Therefore, the proposed amendments do not create the possibility of a new or different type of accident from any accident previously evaluated.

3 The proposed amendments do not involve a significant reduction in the margin of safety

The proposed amendments do not change safety limits, setpoints, or plant operations. The plant is actually designed to prevent inadvertent draining of the fuel pool below elevation 115'11" as discussed above. This change is not an actual design change; it is a design clarification correcting the level at which inadvertent draining of the spent fuel pool is prevented. As such, the proposed amendments do not involve a significant reduction in the margin of safety at Brunswick.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: S. Singh Bajwa

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 14, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) in response to Generic Letter 93-08 issued by the NRC and dated December 29, 1993, by relocating the reactor trip system (RTS) and engineered safety feature activation system (EFAS) response time limits to the updated Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident.

The proposed changes do not alter the conditions or assumptions in any accident previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. No new accident initiators or failure modes are created by relocating the RTS and ESFAS instrumentation response time limits.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and will in no way affect the TS adequacy in ensuring the response times for the RTS and ESFAS instrumentation do not exceed the limits assumed in the accident analyses. The proposed changes will have no impact on the protective boundaries, safety limits, or margin of safety.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: July 22, 1993, as supplemented February 4, 1994

Description of amendment request: The proposed amendment would modify the Facility Operating License (OL) and Technical Specifications (TSs) to permit uprated power operation. The plant is currently licensed for operation at 3323 megawatts thermal (MWt), although many of the original analyses were performed at a design power level of 3467 MWt. The proposed changes would redefine rated thermal power to be 3467 MWt, which represents an approximately 4.3 percent increase over the currently licensed power level. Implementation of the power uprate would require minor modifications, such as, resetting of the low set safety relief setpoints, as well as the recalibration of plant instrumentation to reflect the uprated power. The proposed changes follow the generic guidelines for boiling water reactor power uprate described in General Electric Topical Report, NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

• OL2C(1), TS 1.34 - Increase in Rated Thermal Power to 3467 MWt.

The changes in the OL and TS were evaluated and it was determined that the probability (frequency) of a DBA [design-basis accident] or other licensing event occurring is not a significant function of the power level because the design and regulatory criteria originally established for plant equipment (ASME [American Society of Mechanical Engineers] code, IEEE [Institute of Electrical and Electronics Engineers] standards, NEMA [National Electrical Manufacturers Association] standards, Regulatory Guide criteria, etc.) are still imposed for the uprated power level. Scram setpoints are established such that there will be no significant increase in scram frequency due to power uprate.

The consequences of hypothetical accidents which would occur from 102% of the uprated power, as opposed to that previously evaluated from ≤102% of the original power, are in all cases insignificant, since the accident evaluations from 102% of uprated power do not result in exceeding the NRC-approved acceptance limits. A spectrum of hypothetical accidents and transients has been investigated for uprated conditions and the bounding events have been shown to meet the same regulatory criteria to which they are currently licensed. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Criteria Power Ratio (SLMCPR) are still met at the uprated power level.

The analysis of all limiting events (Section 9) [of General Electric Topical Report, NEDC-31994P, "Power Uprate Licensing Evaluation for Nine Mile Point Nuclear Power Station Unit 2," Revision 1, May 1993] and cycle specific reload analyses will show plant transients meet the criteria accepted by the NRC as specified in NEDO-24011, GESTAR II. Challenges to fuel or ECCS [emergency core cooling system] performance have been evaluated (Section 9.2) [of NEDC-31994P] and shown to still meet the criteria of 10CFR50.46 using the methodology defined by Appendix K (Regulatory Guide 1.70, USAR [Updated Safety Analysis Report] Section 6.3). Challenges to the containment have been evaluated for uprated power

(Section 4.1) [of NEDC-31994P] and still meet 10CFR[Part]50 Appendix A Criterion 38, Long Term Cooling and Criterion 50, Containment. Radiological Release events have been evaluated [Sections 8.4 and 8.5] [of NEDC-31994P] and shown to be a small fraction of the criteria of 10CFR[Part]100 (Regulatory Guide 1.70 USAR Chapter 15).

The results of these analyses as discussed above demonstrate that operation of [at] the power uprate level does not significantly increase the probability or consequences of any accident previously evaluated.

• OL2C(7) - Change in Allowable Feedwater Temperature

This change is made to maintain an equivalent 20°F allowable operating range of final feedwater temperature for uprated power (405 to 425°F) as compared to the presently licensed range (400 to 420°F). No change is made to the current method and criteria for operation of the feedwater heating systems. The limiting transient (Feedwater Controller Failure - Maximum Demand) has been evaluated at a feedwater temperature of 405°F (Section 9.1.3) [of NEDC-31994P] to demonstrate compliance with all current thermal limits criteria. Previous feedwater nozzle evaluations have shown that operation with the proposed feedwater temperature operating range is acceptable. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Table 2.2.1-1 - Reactor Protection System Instrument Setpoints

The increases in steam dome high pressure scram instrument setpoints are made to ensure that there is no significant increase in the frequency of scrams due to operation at the higher pressure. The increase of the high pressure scram setpoint by the same amount as the increase in the planned operating pressure maintains the same level of trip avoidance for scram as originally provided. The high pressure scram is used as a backup to other scram signals. It has been shown that this role is still adequate for uprated operation with the revised setpoints (e.g., vessel overpressure protection). Since the backup protectionfunctions and the current margins to trip avoidance are maintained with the revised setpoints. there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases Table B2.1.2-2 - Add footnote to applicability of table to uprated operation.

The parameters listed in TS Bases Table B2.1.2-1 come from the original statistical analysis performed for BWR4/5 core designs (including NMP2) [Nine Mile Point Nuclear Station, Unit 2]. As discussed in Section 3.2 of LTR2 (Reference 11-1) [General Electric Topical Report NEDC-31984P, "Generic Evaluation of General Electric Boiling Water Reactor Power Uprate," July 1991], the uprated average bundle power is used to determine the applicability of the generic Safety Limit Minimum Critical Power Ratio (SLMCPR) basis for each plant. The average bundle power for NMP2 after power uprate is 4.538 MWt per bundle. This value is acceptable for application of the generic SLMCR statistical analysis to uprated NMP2. The generic analysis is documented through NEDC-24011-P-A (GESTAR II) and NEDC-31152P (GE Fuel Bundle Design). Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS 4.1.5.c and TS 4.1.5.d2 - Increases in SLCS [standby liquid control system] Surveillance Test Pressure and SLCS pump discharge relief valve setpoint.

The standby liquid control system test pressure increase ensures continued ability of the system to pump the required amount of sodium pentaborate at the higher operating pressure associated with power uprate. This test pressure increase is consistent with the ATWS [anticipated transient without scram] analysis provided in Section 9.3 [of NEDC-31994P]. The higher pressure setpoint for the SLCS relief valve does not exceed the design capability of the SLCS components. Surveillance testing at the increased pressure will maintain the system's design capability for operation at uprated conditions. These changes therefore do not increase the probability or consequences of a previously evaluated accident.

• TS Table 3.3.1-1 - Note (i), footnote (**), Action 6 footnote (*), and Table 3.3.4.2-1 - footnote (**)

The setpoints for the bypass of T/G [turbine generator] trip scram and RPT [recirculation pump trip] at 30% of rated power are changed to 125.8 psig and 136.4 psig to be consistent with uprated power.

These changes reflect the redefinition of rated conditions. They are consistent with the approach discussed in Section F.4.2(c) of LTR1 (Reference 11-2) [General Electric Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991]. There is no significant impact on the transient safety analyses which establish core thermal operating limit since T/G trips at this partial power setpoint are not limiting. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Table 3.3.2-2 Item 1.C.3 - Increase in main steamline high flow isolation differential pressure setpoint and allowable value.

The main steamline high flow trip TS changes reflect the redefinition of rated steam flow during uprated power operation and the application of GE [General Electric Company] setpoint methodology. The current analytical basis of 140% of rated steam flow is maintained for uprated operation to ensure that an adequate trip avoidance margin is maintained (e.g., for disturbances caused by full closure testing of MSIVs [main steam isolation valves] or turbine inlet valves). The revised setpoints ensure that there is no effect on the probability of inadvertent isolation; they have no effect on the probability of occurrence of a main steamline break. The same isolation initiation function for the main steam line break accident is maintained (Section 5.1.2.5) [of NEDC-31994P]. Therefore these setpoint changes do not significantly increase the consequence of the main steamline break accident.

• TS Table 3.3.2-2 Item 1d - Increase the main steamline tunnel temperature setpoints.

These isolation setpoints are changed to reflect the slight increase (about 1°F) in the operating temperature expected for uprated operation. Margins between trip setpoints and operating temperature are maintained. The increases will avoid unnecessary trips. The revised trip setpoints were derived using the GE setpoint methodology (documented in NEDC-31336). The setpoints still perform their isolation function equivalent to current operation.

Therefore no significant increase in the probability or consequences of an accident previously evaluated results from these changes.

• TS Table 3.3.4.1-2 - Increases in the ATWS RPT reactor vessel high pressure trip and allowable setpoint.

The ATWS RPT high pressure setpoints are increased to correspond to the increase in the steam dome operating pressure due to power uprate. This increase maintains the current margin between the operating condition and the trip setpoint to avoid unnecessary trips. The capability of the system to adequately perform its ATWS function with the new setpoints is shown in Section 9.3 [of NEDC-31994P]. Therefore the change does not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Figure 3.4.1.1-1 - The figure is revised to reflect new definition of rated thermal power in terms of megawatts thermal.

This change is made to be consistent with the new definition of rated thermal power. The current restrictions on operation within the restricted power/flow zone are unchanged. The basis for this change is described in Section 3.2 of LTR2 (Reference 11-1) [NEDC-31984P]. There is no significant change in the previously evaluated potential for initiation of core thermal hydraulic instability. Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability of [or] consequences of an accident previously evaluated.

• TS 3.4.2 - Increase of spring setpoints for the two lowest set SRVs [safety relief valves]

The two low set SRV setpoints are increased to accommodate the change in operating pressure after power uprate. This increase in the SRV setpoints ensures that approximately the same difference is maintained between the RPV [reactor pressure vessel] pressure and the lowest SRV setpoint such that there is no increase in the number of unnecessary SRV actuations. The increase in the spring setpoints by the same amount as the increase planned for normal operation also maintains acceptable simmer margin for the SRVs. The SRVs are capable of operating at uprated temperatures and pressures as evaluated generically in Section 4.6 of LTR2 [NEDC-31984P]. As described in Sections 3.2 and 9.3.1 [of NEDC-31994P] a higher RPV peak pressure results due to uprate conditions but it is maintained well within the ASME Code allowable peak pressure of 1375 psig.

Therefore, no significant increase in the probability or consequences of an accident previously evaluated is caused by this change.

• TS 4.4.6.1.3-1 - Revision to the neutron fluence lead factor.

The increase in the lead factor from 0.41 to 0.46 reflects updated calculations for the

higher power level and projected fluence distributions. This calculation accounted for the locations of the NMP2 specimen capsules (at three locations on the vessel wall around the core beltline region), and the projected uprated equilibrium cycle spatial power distributions. Since the revised lead factor is consistent with the requirements for vessel surveillance, the change causes no significant increase in the probability or consequences or [of] an accident previously evaluated.

• TS 3.4.6.2 and TS 4.4.6.2 - Increase of reactor steam dome operating pressure limit.

This change to the dome operating pressure limit is consistent with and meets the current design criteria used for evaluation of steady state operating conditions and for the most limiting transient and accident events, i.e., vessel overpressure protection and a loss-of-coolant accident (Sections 3.2 and 4.3) [of NEDC-31994P]. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS 4.7.4b - Increase in RCIC [reactor core isolation cooling] Surveillance Test Pressure.

The increase in the RCIC surveillance test pressure requires system testing at the higher operating pressure with power uprate. The RCIC system has been evaluated and demonstrated to be capable of injecting its design flow rate at the higher reactor pressure associated with power uprate as discussed in Section 4.2 of LTR2 (Reference 1) [NEDC-31984P]. This evaluation applies to NMP2 as described in Section 3.8 [of NEDC-31994P]. Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases 3/4.2 (References), and TS 6.9.1.9.b(1) (Administrative Control) - Revised the reference for the LOCA [loss-of-coolant accident] analysis methodology to the SAFER/GESTR-LOCA methodology report.

These changes are made to incorporate the power uprate LOCA licensing basis. Reference 1 of TS Bases 3/4.2 (References) and the report noted in TS 6.9.1.9.b(1) are changed to reflect the improved SAFER/GESTR-LOCA methodology used for the NMP2 loss-of-coolant accident analysis for power uprate. This methodology has been previously approved by the NRC. These changes are made for documentation consistency and there is no significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases Table B3.2.1-1 - Significant input parameters used in the LOCA analysis.

The changes in the plant parameters used in the uprated LOCA analysis are provided from the power uprate analysis (Reference 4-15, Section 4) [General Electric Report NEDC-31830P, "NMP2 SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis," Revision 1, November 1990]. The power and steam flow values are consistent with Regulatory Guide 1.49. The new analysis parameters will also be included in USAR Table 6.3-1 as uprate is implemented. Detailed information about application of the SAFER/GESTR methodology is provided in Reference 1 of TS Bases 3/4.2 (Reference 4-14, Section 4) [General Electric Report NEDE-23785-1-PA, "The GESTR/LOCA and SAFER Models for the Evaluation of the Loss of Coolant Accident," Revision 1, October 1984]. The LOCA analysis (Section 4.3) [of NEDC-31994P] shows that all required criteria are met for operation with the uprated parameters.

Footnote (*) is revised to provide the correct reference for the LOCA analysis parameters for NMP2 power uprate. Since the LOCA analysis for uprated operation meets all required criteria, these TS changes do not cause an increase in the probability or consequences of an accident previously evaluated.

• TS Bases B3/4.5.1 and B3/4.5.2 - Increase in required capability of the HPCS [high pressure core spray] pump and the corresponding differential pressure.

The increase in the differential pressure for HPCS pump flow accommodates the increase in SRV setpoint valves as discussed for changes to TS 3.4.2 earlier. This change maintains the currently designed functional capability of the HPCS system to provide coolant inventory during isolation conditions after a loss of feedwater flow transient (backup to RCIC) and during a main steam line break (outside containment) accident.

The small change in the HPCS pump flow (517 versus 516) [gpm] is made to be consistent with the value used in the NMP2 SAFER/GESTR analysis for a loss of coolant accident. This small change corrects the Technical Specification bases for this parameter.

Therefore, this TS change ensures that power uprate operation will not cause a significant increase in the probability or consequences of an accident previously evaluated.

• TS Bases B3/4.6.1.2, B3/4.6.1.5, and B3/4.6.2 - Maximum containment pressure for leakage testing.

The bases for the value currently in the TS for the maximum containment pressure are reworded to clarify that the maximum containment pressure after power uprate will be maintained below the current value used for containment leak rate testing. Section 4.1 [of NEDC-31994P] documents the containment analysis for power uprate and shows a peak DBA-LOCA calculated pressure of 36.8 psig (less than the current testing requirement of 39.75 psig). There is no impact on currently approved requirements and test procedures. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The Operating License changes in power level and allowable feedwater temperature, and the associated Technical Specification changes (all listed in Table 11-1) [of NEDC-31994P] will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Equipment that could be impacted by power uprate has been evaluated. No new operating mode, equipment lineup, accident scenario, or equipment failure mode has been identified. The full spectrum of accident considerations defined in Regulatory Guide 1.70 have been reviewed and no new or different kind of accident has been identified. Power uprate uses already developed technology and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria to include NRC approved codes, standards, and methods. GE has designed BWRs of higher power levels than the uprated power of any of the currently operating BWR fleet and no new power dependent accidents have been identified.

The Technical Specifications changes required to implement power uprate require minor changes to the configuration of the plant, and all the Technical Specification changes have been evaluated and are acceptable.

Will the change involve a significant reduction in a margin of safety?

• OL2C(1), TS 1.34 - Increase in Rated Thermal Power to 3467 MWt.

Power uprate will not involve a significant reduction in a margin of safety, since the licensing evaluations were performed either at plant conditions higher than the proposed uprate conditions, or used approved methodologies which incorporate appropriate allowances for uncertainties. As discussed throughout this report (e.g., Section 11.1) [of NEDC-31994P] and in Section 5 of Reference 11-2 [NEDC-31897P-1], the safety margins prescribed by the Code of Federal Regulations have been maintained by meeting the appropriate regulatory criteria. Similarly, the margins provided by the application of the American Society of Mechanical Engineers (ASME) design acceptance criteria where applicable have been maintained (e.g., see Section 3.2) [of NEDC-31994P]. Other margin-assuring acceptance criteria have also been maintained.

All limiting accident and transient analyses have been reperformed at uprated power operating conditions consistent with the requested Technical Specification changes. The NRC-approved SAFER/GESTR-LOCA methodology was used in the LOCA analysis. Additionally, Reference 11-2 [NEDC-31897P-1] addresses the BWR generic acceptability of analytical evaluations for the loss of feedwater transient, stability, core spray distribution, safety limit minimum critical power ratio, containment atmosphere combustibility, materials and coolant chemistry, and anticipated transients without scram (ATWS).

As discussed in Section 5.2.3 of Reference 11-2 [NEDC-31897P-1], offsite doses for the DBA/LOCA will increase proportionally to reactor power and can be compared on a consistent basis.

As evaluated in Sections 8.5 and 9.2 [of NEDC-31994P], the results remain a small fraction of the acceptance criteria of 10CFR[Part]100.

The radiological doses resulting from the DBA/LOCA and MSLB [main steam line break] accidents were initially analyzed at 3489 MWt (105% of 3323 MWt). For the power uprate program, the increase in the analyzed power level is only 1.3% (from 3489 to 3536 MWt) which provides the uncertainty factor (2%) required by Regulatory Guide 1.49.

It is concluded that there is no significant decrease in a margin of safety.

• OL2C(7) - Change in Allowable Feedwater Temperature

The increase in the lower limit of the allowable operating range of the final feedwater temperature for uprate power was evaluated by reanalyzing the Feedwater Controller Failure - Maximum Demand transient at a feedwater temperature of 405°F (Section 9.1.3) [of NEDC-31994P]. In addition, the reactor pressure vessel feedwater nozzle has been evaluated for the 20°F range of feedwater temperature. The results of these evaluations demonstrate that current fuel thermal limits criteria and ASME Code criteria are met. Therefore, there is no significant decrease in a margin of safety.

• TS Table 2.2.1-1 - Reactor Protection System Instrument Setpoints

The increases in the steam dome high pressure scram instrument setpoints for uprated power were evaluated by determining if the high pressure scram, which is used as a backup to other scram signals, provides adequate overpressure protection. The evaluation demonstrates that the backup protection function, with the revised setpoints, continues to provide adequate overpressure protection at uprated power conditions by meeting the applicable ASME Code criteria. It is concluded that there is no significant decrease in a margin of safety.

• TS Bases Table B2.1.2-2 - Add footnote to applicability of table to uprated operation

The nominal values of parameters used in the statistical analyses of the fuel cladding integrity safety limit were re-evaluated at power uprate conditions. This evaluation demonstrates that the average bundle power at uprated conditions for NMP2 is acceptable for application of the generic safety limit minimum critical power ratio statistical analysis. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 4.1.5.c and TS 4.1.5.d2 - Increase in SLCS Surveillance Test Pressure and SLCS pump discharge relief valve setpoint.

The SLCS surveillance test pressure was increased to provide periodic demonstration of the ability of the SLCS to provide the required amount of sodium pentaborate solution at the higher pressure associated with an ATWS event postulated to occur at power uprate conditions. At this increased SLCS discharge pressure, the system provides an adequate shutdown backup capability by having the ability to bring the isolated reactor from full power to a cold, Xenon-free shutdown condition, assuming that the withdrawn control rods remain fixed in the uprated power pattern.

For power uprate, the capability of the SLCS to respond with adequate margin to a postulated ATWS event was confirmed. The most limiting ATWS events evaluated for peak vessel pressure and peak suppression pool temperature were: (1) closure of all MSIVs and (2) inadvertent opening of a relief valve. The peak pressure for the MSIV closure event which included simulation of the higher relief setpoints and two relief valves out of service, demonstrates that the peak pressure, 1325 psig, remains below the ASME emergency overpressure protection criteria of approximately 1500 psig, which is applicable to an ATWS event. The reactor pressure is controlled by the relief valves (after the initial peak) within the pressure specified in this revised Technical Specification. SLCS injection takes place during this period with the relief valves controlling pressure.

The peak suppression pool temperature for the inadvertent opening of a relief valve was demonstrated to remain below the ATWS peak pool temperature criteria of 190° for a Mark II containment design, which is applicable to NMP2. Peak containment pressure was well below the 45 psig containment design pressure. For this event, SLCS injection will be at vessel pressures bounded by the revised Technical Specification. The higher pressure setpoint of the SLCS pump discharge relief valve provides adequate overpressure protection of the SLCS pressure boundary by meeting the applicable ASME Code criteria (equal to or less than the system piping design pressure).

In summary, peak vessel pressure is below ASME code criteria, and suppression pool temperature is below the ATWS peak pool temperature criterion for Mark II containment design, peak containment pressure is well below the containment design pressure, the SLCS injection pressure during the bounding events is within the new Technical Specification testing requirement, and the SLCS pressure boundary is maintained in compliance with ASME Code criteria. Therefore, it is concluded that there is no significant decrease in a margin to safety.

• TS Table 3.3.1-1 - Note (i), footnote (**), Action 6, footnote (*), and Table 3.3.4.2-1 footnote (**)

The increase in the setpoints for the bypass of T/G trip scram and RPT at 30% power are made to be consistent with uprated power. These increased setpoints do not significantly reduce a margin of safety since the T/G trips at this partial power setpoint continue to be non-limiting events.

• TS Table 3.3.2-2 Item 1.c.3 - Increase in main steam line high flow differential pressure setpoint and allowable valve.

The increase in the main steam line high flow differential pressure setpoint and allowable value reflect the redefinition of rated conditions. The increased setpoint will maintain the same inadvertent trip avoidance margin, thereby avoiding any increase in the frequency of occurrence of isolation events. The closure of the MSIV remains assured during the limiting event (the steam line break accident). The break flow rate (controlled by the flow restrictor) will be about 190% (Section 3.5) [of NEDC-31994P], so the setpoint at less than 140% will sense the accident as effectively as for current operation. It is concluded that this change does not result in a significant decrease in a margin of safety.

TS• Table 3.3.2-2 Item 1.d - Increase in main steam line tunnel temperature setpoints.

These isolation setpoints are changed to reflect the slight increase (about 1°F) in the steam tunnel operating temperature expected for uprated operation. The increase in these setpoints ensures adequate inadvertent trip avoidance. The analytical upper limits for these setpoints are not changed so that their safety functions are not impacted by the Technical Specification changes. For example, the instruments will act at the same setpoints assumed in previous analysis for a main steamline break, ensuring that offsite radiological doses remain a small fraction of 10CFR[Part]100 criteria and within GDC19 criteria for control room doses. Therefore, there is no significant decrease in a margin of safety.

• TS Table 3.3.4.1-2 - Increases in the ATWS RPT reactor vessel high pressure trip and allowable setpoints

The purpose of the high pressure RPT is to reduce reactor power level during a postulated pressurization transient with scram assumed to fail (ATWS). The physical phenomenon involved is that the void reactivity feedback from a pressurization transient adds positive reactivity to the reactor system. However, the high pressure RPT system trips both recirculation pumps to the low speed condition, thereby increasing core void fraction and creating negative reactivity to reduce the power transient. This enables the safety/relief valves to maintain peak pressure within the ASME overpressure emergency limit for the bounding ATWS case (Section 9.3.1) [of NEDC-31994P].

For power uprate, the capability of the SLCS to respond to a postulated ATWS event with adequate margin was confirmed (Section 9.3.1) [of NEDC-31994P]. By reducing reactor power until the SLCS can be injected to achieve full shutdown, the RPT also reduces suppression pool temperature for isolation cases (also shown to be acceptable for power uprate conditions in Section 9.3.1) [of NEDC-31994P]. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS Figure 3.4.1.1-1 - The figure is revised to reflect the new definition of rated thermal power in terms of megawatts thermal.

This change is made to be consistent with the new definition of rated thermal power. As described in Section 3.2 of LTR2 (Reference 11-1) [NEDC-31984], the change to the power flow restricted zone is made to maintain the same operating constraints and stability margin that were established for the current power level. This change avoids any increase in the possibility of occurrence or any increase in the potential effects of power oscillations. Therefore, there is no significant decrease in a margin of safety.

• TS 3.4.2 - Increase of spring setpoints for the two lowest set SRVs.

The two low set SRV setpoints are increased to accommodate the change in operating pressure after power uprate. This change maintains a simmer margin of greater than 120 psig. Power uprate analysis shows that the revised SRVs still maintain the peak RPV pressure within the ASME Code Upset limit of 1375 psig for the limiting pressurization event (MSIV closure when credit is only taken for the backup high neutron flux scram) and provide adequate protection for postulated ATWS events. See Sections 3.2 and 9.3.1 [of NEDC-31994P] for further discussion. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 4.4.6.1.3-1 - Revision of the neutron fluence lead factor.

The increase in the lead factor includes consideration of the higher power level and projected spatial power distributions for an uprated equilibrium cycle. The evaluation at uprated conditions utilized the same calculational approach as performed for the current neutron fluence lead factor, but using more precise input parameters for uprated conditions. Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS 3.4.6.2 and TS 4.4.6.2 - Increase of reactor steam dome operating pressure limit.

The change to the dome operating pressure limit is made to be consistent with the new operating pressure for uprated thermal power. This change is used as a direct initial condition analysis input or sensitivity study parameter in the evaluation of steady state operating conditions and for the most limiting transients and accident events, i.e., vessel overpressure protection and LOCA. With this revised limit, peak vessel pressure remains below ASME Code criteria, and LOCA fuel performance satisfies the requirements of 10CFR50.46 and 10CFR[Part]50 Appendix K. Therefore, there is no significant decrease in a margin of safety.

• TS 4.7.4b - Increase in RCIC Surveillance Test Pressure.

The RCIC surveillance test pressure was increased to provide periodic demonstration of the ability of RCIC system to perform consistent with the requirements of the analyses at the higher operating pressure associated with power uprate conditions. An evaluation of the RCIC system confirmed its ability to operate at slightly higher turbine speed and provide its design flow rate at power uprate conditions. RCIC system performance will be confirmed during the initial power ascension to uprated conditions (and periodically thereafter per the Technical Specification). Therefore, it is concluded that there is no significant decrease in a margin of safety.

• TS Bases 3/4.2 (References) and TS 6.9.1.9.b (1) (Administrative Control) - Revised the references for the LOCA analysis methodology to the SAFER/GESTR-LOCA methodology report.

These changes are made to incorporate the power uprate LOCA licensing basis. Since SAFER/GESTR-LOCA methodology has been previously approved by the NRC and is acceptable for use for NMP2, it is concluded this change does not significantly decrease a margin of safety.

• TS Bases Table B3.2.1-1 - Significant input parameters used in the LOCA analyses.

The changes in the plant parameters reflect the power uprate condition. These changes have been reflected as input parameters in the LOCA analyses consistent with Regulatory Guide 1.49. Since the LOCA analysis demonstrates that 10CFR50.46 and 10CFR[Part]50 Appendix K criteria are met for operation with the uprated parameters, it is concluded that there is no significant decrease in a margin of safety.

• TS Bases B3/4.5.1 and B3/4.5.2 - Increase in required capability of the HPCS pump and the corresponding differential pressure.

The increase in differential pressure accommodates the increase in SRV setpoint values previously discussed to TS 3.4.2. The increased differential pressure ensures there is sufficient HPCS flow, assuming the two lowest setpoint SRVs are out of service, and the commencement of flow as reflected in the analysis of isolation events. The increase in HPCS pump flow is reflected in the LOCA analyses (516 to 517 gpm). This small change corrects the Technical Specification bases for this parameter. The revised parameters for the HPCS pump differential pressure and flow are reflected as inputs to the LOCA analyses and analyses of isolation events. Since the LOCA analysis meets 10CFR50.46 criteria and 10CFR[Part]50 Appendix K criteria, and the isolation events meet all required criteria (e.g. top of fuel remains covered for the loss of feedwater transient) it is concluded that there is no significant decrease in a margin of safety.

• TS Bases B3/4.6.1.2, B3/4 6.1.5 and B3/4.6.2 - Maximum containment pressure for leakage testing.

The bases for the value currently in the TS for the maximum containment pressure are reworded to clarify that the maximum containment pressure for power uprate has been calculated to remain below the current value used for containment leak rate testing. Therefore, it is concluded that there is no significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would relocate the seismic monitoring instrumentation Limiting Condition for Operation, Surveillance Requirements and associated tables and Bases contained in TS sections 3.3.7.2 and 4.3.7.2 to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the seismic monitoring instrumentation system is to monitor the magnitude and effect of a seismic event only, and can not initiate or mitigate an accident previously evaluated. Furthermore, the proposed TS changes to relocate the seismic monitoring instrumentation requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in its final policy statement, "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," dated July 22, 1993. The seismic monitoring instrumentation LCO, SRs, and associated tables and Bases proposed for relocation from TS to the LGS UFSAR will continue to be implemented by administrative controls that will satisfy the applicable requirements of TS section 6 "Administrative Controls." Those requirements include a review of changes to plant systems and equipment and to the applicable administrative controls in accordance with the provisions of 10CFR50.59.

Criterion 2 of the July 22, 1993 NRC final policy statement states, "A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient Analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The seismic monitoring instrumentation system is not a system that monitors a process variable that is an initial condition for accident or transient analyses. The seismic monitoring instrumentation is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or transient analyses since it only provides information regarding the magnitude of and the plant equipment response to a Design Basis earthquake. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 2 of the July 22, 1993 NRC final policy statement.

Criterion 3 of the July 22, 1993 NRC final policy statement states, "A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The LGS seismic monitoring instrumentation system does not provide a function or actuate in order to mitigate the consequences of a Design Basis Accident or transient. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 3 of the July 22, 1993 NRC final policy statement.

Criterion 4 of the July 22, 1993 NRC final policy statement states, "A structure, system or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety." Operating experience has shown that the LGS seismic monitoring instrumentation system

has no impact on public health and safety as defined by the NRC final policy statement. Furthermore, LGS specific probabilistic risk assessment (PRA) does not credit the seismic monitoring instrumentation system as a significant factor in the plant response to an accident. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 4 of the July 22, 1993 NRC final policy statement for determining those requirements that should remain in TS. This conclusion is consistent with the function of the seismic monitoring instrumentation system stated above.

These proposed TS changes will maintain the current operation, maintenance, testing, and system operability controls of the seismic monitoring instrumentation system. Furthermore, any further changes to the seismic monitoring instrumentation system will be evaluated for the effect of the those changes on system reliability as required by 10CFR50.59. The seismic monitoring instrumentation system performance will not decrease due to these proposed TS changes and the system will continue to be administratively controlled in accordance with TS Section 6, including the requirements of 10CFR50.59, thereby precluding a future decrease in its performance.

In accordance with the current TS Section 3.3.7.2, with the seismic monitoring instrumentation inoperable, the plant would not be required to shut down and the provisions of TS Section 3.0.3 (i.e., plant shutdown) would not be applicable. Therefore, the inoperability of this system and therefore the consequences of an accident while this system is inoperable, was previously evaluated as not significant enough to require a change to the plant operating condition.

Since the seismic monitoring instrumentation system does not monitor a process variable that is an initial condition for an accident or transient analyses, or actuates any accident mitigation feature, and since the operation, maintenance, testing, and modification of the seismic monitoring instrumentation system will continue to be administratively controlled, including the requirements of 10CFR50.59; therefore, maintaining the reliability of the system, the proposed TS changes will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the seismic monitoring instrumentation system is to monitor the magnitude and effect of a seismic event only. The proposed TS changes to relocate the seismic monitoring instruments requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in its final policy statement, dated July 22, 1993. The seismic monitoring instrumentation system does not monitor a process variable that is an initial condition for an accident or transient analyses.

The seismic monitoring instrumentation is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or transient analyses since it only provides information regarding the magnitude of and the plant equipment response to a Design Basis earthquake.

These proposed TS changes to relocate the TS requirements to the UFSAR will not alter the operation of the plant, or the manner in which the seismic monitoring instrumentation system will perform its function, and any future changes will continue to be administratively controlled in accordance with TS

Section 6, including the requirements of 10CFR50.59.

These proposed TS changes will not impose new conditions nor result in new types of equipment which will result in different types of malfunctions of equipment important to safety than any type previously evaluated.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

These proposed TS changes to relocate the seismic monitoring instrumentation requirements from TS to the UFSAR are in accordance with the criteria for determining those requirements that should remain in the TS as defined by the NRC in final policy statement, dated July 22, 1993.

Criterion 1 of the NRC final policy statement states,≥Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." The NRC final policy statement explains that "...This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g., loose parts monitor, seismic instrumentation, valve position indicators)." Based on the above NRC guidance, the LGS UFSAR, and TS Bases 3.3.7.2, the seismic monitoring instumentation does not detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. Therefore, the current LGS seismic monitoring instrumentation TS requirements do not meet Criterion 1. Furthermore, operating experience has shown that the LGS seismic instrumentation system has no impact on public health and safety as defined by the NRC final policy statement. In addition, the LGS specific PRA does not credit the seismic monitoring instrumentation system as a significant factor in the plant response to accidents.

The seismic monitoring instrumentation LCO, SRs, and associated tables and Bases proposed for relocation to the LGS UFSAR will continue to be implemented by administrative controls that will satisfy the applicable requirements of TS section 6 "Administrative Controls." Those requirements include a review of future changes to the system and applicable administrative controls in accordance with the provisions of 10CFR50.59.

Accordingly, based on the above discussion of NRC specific guidance, operating experience, and continued imposition of administrative controls, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

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NRC Project Director: Charles L. Miller

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority; Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: December 13, 1993, as supplemented February 2, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to allow for the use and subsequent storage of fuel with an initial enrichment of 5.0 w/o [weight percent] Uranium 235. The TS currently allow the use of fuel with a maximum enrichment of 4.25 w/o Uranium 235. The proposed amendment would also revise the restrictions on fuel storage in regions 1 and 2 of the spent fuel pool to ensure that the design basis for preventing criticality is maintained in the event of absorber panel shrinkage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no increase in the probability of an accident because the physical characteristics of a fuel assembly are not changed when fuel enrichment is increased. Fuel assembly movement will continue to be controlled by approved fuel handling procedures.

There is no increase in the consequences of an accident because fuel cycle designs will

continue to be analyzed with NRC-approved codes and methods to ensure the design bases for VCSNS [Virgil C. Summer Nuclear Station] are satisfied. The double contingency principle of ANSI/ANS 8.1-1983 can be applied to any postulated accident in the spent fuel pool which could cause reactivity to increase beyond the analyzed conditions. As shown in Attachment IV, the level of boron in the VCSNS spent fuel pool is sufficient to maintain Keff [effective neutron multiplication factor] less than or equal to 0.95. There is no postulated accident which could cause reactivity to increase beyond the analyzed conditions in the new fuel rack.

The radiological consequence analyses [...] performed to support the installation of replacement steam generators at VCSNS included the development of source terms which bound fuel enrichments up to 5.0 w/o U235 [Uranium 235] and average discharge burnups up to 65,730 MWD/MTU [megawatt days per metric ton uranium], which bounds the currently licensed burnup for fuel at VCSNS. These source terms were used to calculate offsite doses for accidents that are postulated to result in the release of fission products to the environment, including the fuel handling accident. In all cases, the dose results are within 10CFR100 limits.

2. The change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes do not involve any physical changes to the plant or any changes to the method in which the plant is operated. They do not affect the performance or qualification of safety related equipment. Therefore the possibility of a different type of accident or malfunction than previously considered is not created.

3. The change does not involve a significant reduction in a margin of safety.

Criticality analyses [...] have been performed for the spent fuel pool to allow for storage of fuel assemblies with enrichments up to 5.0 without U-235. The proposed Technical specification changes include those necessary to maintain Keff less than or equal to 0.95, including conservative allowances for uncertainties and biases, when the pool is flooded with unborated water.

The new fuel racks have been previously analyzed [...] for storage of fuel assemblies with enrichments up to 5.0 w/o U-235. For the flooded condition Keff does not exceed 0.95 including conservative allowances for uncertainties and biases. For the normally dry condition Keff does not exceed 0.98 for the low density optimum moderation condition. However, the proposed Technical Specification changes require fuel assemblies with enrichment above 4.0 w/o U-235 to contain integral fuel burnable absorbers such that the maximum reference fuel [infinite neutron multiplication factor] is less than or equal to 1.460 in unborated water at 68°F due to restrictions on spent fuel storage.

Since the proposed changes ensure that the design basis for preventing criticality in the fuel storage areas is preserved and since fuel cycle designs will continue to be analyzed with NRC-approved codes and methods to ensure the design bases for VCSNS are satisfied, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: S. Singh Bajwa

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 16, 1994

Description of amendments request: The proposed amendment will change the Technical Specifications to modify the description of fuel and control rod assemblies in TS 5.3.1, Fuel Assemblies. The change to the fuel assembly description will permit the limited substitution of zirconium alloy, zircaloy-4, ZIRLO™, or stainless steel filler rods for fuel rods in accordance with the NRC-approved applications of fuel rod configurations that have been analyzed with NRC-approved methods. This change will allow timely removal of fuel rods that are found to be a probable source of future leakage. The change will make provisions for the loading of lead test assemblies into the reactor without requiring a specific TS change. This amendment also allows the use of ZIRLO™ clad fuel as lead test assemblies. The specific descriptions of the fuel and control rod assemblies contained in the TS which are restrictive due to the unnecessary details are being deleted. The change will also make line item improvements in the Technical Specifications in accordance with Generic Letter 90-02, Supplement 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Technical Specifications allowing reconstitution will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident or affect the radiological release for an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this Technical Specification change. The consequences of an accident previously evaluated will not be increased because the safety analysis to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases. The ability to remove potentially leaking fuel rods should result in a reduction in the radiological consequences of any transients or accidents.

The probability or consequences of an accident previously evaluated are not significantly increased with the use of ZIRLO™ cladding. The VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods meet the same fuel assembly and fuel rod design bases as other VANTAGE 5 fuel assemblies. In addition, the 10 CFR 50.46 criteria will be applied to the ZIRLO™ clad fuel rods. The use of these fuel assemblies will not result in a change to the proposed Farley VANTAGE 5 reload design and safety analysis limits. Since the original design criteria are being met, the ZIRLO™ clad fuel rods will not be an initiator for any new accident. The ZIRLO™ clad material is similar in chemical composition and has similar physical and mechanical properties as that of zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. The ZIRLO™ clad fuel rod improves corrosion performance and dimensional stability. No concerns have been identified with respect to the use of an assembly containing a combination of both zircaloy-4 and selected ZIRLO™ clad fuel rods. Since the dose predications in the Farley safety analyses are not sensitive to the fuel rod cladding material used, the radiological consequences of accidents previously evaluated in the Farley safety analysis remain valid. Therefore the probability or consequences of an accident previously evaluated are not significantly increased.

The proposed removal of detailed descriptions of fuel and control rod assemblies will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. The consequences of an accident previously evaluated will not be increased because the safety analyses to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases.

2. This change to the Technical Specifications allowing reconstitution will not create the possibility of a new or different kind of accident from any accident

previously evaluated because it will only affect the assembly configuration and will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.

The possibility for a new or different kind of accident from any accident previously evaluated is not created by the use of ZIRLO™ cladding since the VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods will satisfy the same design bases as that used for other VANTAGE 5 fuel assemblies. All design and performance criteria will continue to be met and no new single failure mechanisms have been defined. In addition, the use of these fuel assemblies does not involve any alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident previously evaluated is not created.

The removal of detailed descriptions of fuel and control rod assemblies will not create the possibility of a new or different kind of accident from any accident previously evaluated because they will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.

3. The use of zirconium alloy, zircaloy-4, ZIRLO™, or stainless steel filler rods in fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The margin of safety is not significantly reduced by the use of ZIRLO™ clad [sic] since the VANTAGE 5 fuel assemblies containing ZIRLO™ clad fuel rods do not change the proposed Farley VANTAGE 5 reload design and safety analysis limits. The use of these fuel assemblies will take into consideration the normal core operating conditions allowed for in the Technical Specifications. For each cycle reload core, the fuel assemblies will be evaluated using NRC Staff-approved reload design methods. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. Therefore, the margin of safety as defined in the bases to the Farley Technical Specifications and VANTAGE 5 Licensing Amendment Request is not significantly reduced.

The removal of detailed descriptions of fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 7, 1994 TS 93-19

Description of amendment request: The proposed change would revise Technical Specification 5.3.1 to allow the substitution of filler rods for fuel rods in fuel assemblies. This would permit the timely removal of fuel rods that are found to be leaking or are determined to be the probable source of future leaks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The substitution of filler rods will be justified using NRC-approved methodology. This methodology will demonstrate that the existing design limits and safety analyses criteria are met. Therefore, the proposed change does not increase the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change involves the substitution of filler rods for fuel rods. This substitution requires the utilization of NRC-approved methodology. This methodology will ensure that the specific analyses will not cause any new or different kind of accident from that previously analyzed.

3. Involve a significant reduction in a margin of safety.

The substitution of filler rods for fuel rods would result in less active fuel in the core. Therefore, the amounts of radiological effluents that may be released offsite would not increase. The NRC-approved methodology by which any reanalyses would be performed already accounts for the affects on grid strength or the mass, stiffness, and fundamental frequency of the fuel assembly during seismic and loss-of-cooling accident conditions. Thus, the margin of safety is not reduced when substituting filler rods for fuel rods.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

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NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah NuclearPlant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 7, 1994 TS 93-11

Description of amendment request: The proposed change would revise Surveillance Requirement (SR) 4.7.9.i, "Snubber Service Life Program," to replace the present wording that describes the service life hydraulic snubber monitoring and evaluation program with that from the Westinghouse Electric Corporation Standard Technical Specifications, Revision 4a. This would eliminate the need to perform an engineering evaluation for drag-force increases of 50 percent or greater of the previously measured value and substitute a requirement to establish a monitoring program. This program would require that a maximum service life for the snubber components be determined and the monitoring program be established to ensure that the maximum service life is not exceeded based on test results and failure history. A proposed change to SR 4.7.9.c would remove the wording that is inconsistent with Generic Letter 90-09 by removing the term "if applicable" for performance of an as-found functional test and the requirement related to tests of hydraulic snubbers that have uncovered fluid ports.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA proposes to delete the current TS requirements to perform an evaluation of snubber test data when there is a greater than 50 percent increase in drag force for mechanical snubbers. The 50 percent evaluation requirement is considered unnecessary where snubbers have small drag forces during their previous test. During subsequent testing, small increases in drag forces (when compared with the rated load of the snubber) may exceed 50 percent of the previous test value. The relative change in drag force is small when compared with the overall rating of the snubber; however, under the current TS, an engineering evaluation for impending failure will still be required. Eliminating the current evaluation requirement from SQN's TSs will reduce the burden associated with performing unnecessary evaluations. The proposed change is consistent with the standard TS (Revision 4a), and a Snubber Service Life Program continues to exist at SQN. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

In addition, the testing language associated with Visual Inspection Performance and Evaluation has been deleted to provide consistency with Generic Letter 90-09. It should be noted that SQN tests its hydraulic snubbers in either direction as necessary. This is more conservative than the present TS requirement; therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The two proposed changes involve deleting a requirement to perform unnecessary analyses and a potentially nonconservative testing requirement. These changes do not alter any plant operation, maintenance requirements, or system design or function. Therefore, a new or different kind of accident is not created by this proposed change.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the visual inspection and the service life section will not modify the plant or revise its mode of operation or the present safety analysis. The trending criteria to be utilized provide adequate assurance that snubber impending failure will be predicted in a timely manner. The deleted sections will not change the requirement to test and trend data for snubbers to predict failure; therefore, there is not a reduction in any margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 8, 1994 TS 93-14

Description of amendment request: The proposed change would revise the setpoints in Technical Specification Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation," for the pressure switches used to control switchover of the motor-driven Auxiliary Feedwater pump suction from the normal condensate storage tank supply to the essential raw cooling water supply. The setpoints would be changed from the present trip setpoint of 2 psig and allowable value of 1 psig, to new values of 3.21 psig and 2.44 psig, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary feedwater (AFW) system is designed to mitigate the effects of the design basis accidents and anticipated operational transients listed below:

A. Loss of normal feedwater

B. Loss of offsite power to station auxiliaries

C. Accidental depressurization in the main steam system

D. Rupture of a main steam line

E. Major rupture of a main feedwater pipe

F. Steam generator tube rupture

G. Small break loss of coolant accident

The AFW system only provides mitigation of the events listed above and cannot initiate design-basis accident. Therefore, the proposed change in the low-pressure setpoint of the motor-driven AFW pump supply line will not result in an increase in the probability of a previously analyzed accident. In addition, the proposed change does not affect the overall water supply to the AFW system. Instead, the proposed change results in a transfer from the condensate storage tanks (CST) to the essential raw cooling water system at a slightly higher CST water level, thus enhancing the continuous supply of water. Therefore, this change will not result in an increase in the consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed previously, the AFW system provides only mitigation functions. In addition, the proposed change does not affect the overall function and operation of the AFW system or its associated water supplies. Instead, this change will provide additional assurance of the proper operation of the AFW system. Therefore, the proposed revision of the low-pressure setpoint of the motor-driven AFW pump supply line will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The TS bases for the AFW system require that AFW be available to ensure that the reactor coolant system (RCS) can be cooled down to less than 350 degrees Fahrenheit from normal operating conditions in the event of a total loss of offsite power. In addition, the TS bases for the CST require that a minimum water volume be available to maintain the RCS at hot standby condition for two hours with steam discharge to the atmosphere concurrent with a total loss of offsite power.

The proposed TS revision does not affect the overall operation of either the AFW system or the CST. The proposed setpoint revision does slightly reduce the usable volume of water in the CST. However, sufficient margin remains to ensure compliance with the bases of the SQN TSs.

Therefore, the proposed changes to the SQN TSs do not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 8, 1994 TS 93-14

Description of amendment request: The proposed change would revise the

setpoints in Technical Specification Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation," for the pressure switches used to control switchover of the motor-driven Auxiliary Feedwater pump suction from the normal condensate storage tank supply to the essential raw cooling water supply. The setpoints would be changed from the present trip setpoint of 2 psig and allowable value of 1 psig, to new values of 3.21 psig and 2.44 psig, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary feedwater (AFW) system is designed to mitigate the effects of the design basis accidents and anticipated operational transients listed below:

A. Loss of normal feedwater

B. Loss of offsite power to station auxiliaries

C. Accidental depressurization in the main steam system

D. Rupture of a main steam line

E. Major rupture of a main feedwater pipe

F. Steam generator tube rupture

G. Small break loss of coolant accident

The AFW system only provides mitigation of the events listed above and cannot initiate design-basis accident. Therefore, the proposed change in the low pressure setpoint of the motor-driven AFW pump supply line will not result in an increase in the probability of a previously analyzed accident. In addition, the proposed change does not affect the overall water supply to the AFW system. Instead, the proposed change results in a transfer from the condensate storage tanks (CST) to the essential raw cooling water system at a slightly higher CST water level, thus enhancing the continuous supply of water. Therefore, this change will not result in an increase in the consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed previously, the AFW system provides only mitigation functions. In addition, the proposed change does not affect the overall function and operation of the AFW system or its associated water supplies. Instead, this change will provide additional assurance of the proper operation of the AFW system. Therefore, the proposed revision of the low-pressure setpoint of the motor-driven AFW pump supply line will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The TS bases for the AFW system require that AFW be available to ensure that the reactor coolant system (RCS) can be cooled down to less than 350 degrees Fahrenheit from normal operating conditions in the event of a total loss of offsite power. In addition, the TS bases for the CST require that a minimum water volume be available to maintain the RCS at hot standby condition for two hours with steam discharge to the atmosphere concurrent with a total loss of offsite power.

The proposed TS revision does not affect the overall operation of either the AFW system or the CST. The proposed setpoint revision does slightly reduce the usable volume of water in the CST. However, sufficient margin remains to ensure compliance with the bases of the SQN TSs.

Therefore, the proposed changes to the SQN TSs do not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 9, 1994 TS 93-21

Description of amendment request: The proposed change would revise Technical Specification Table 3.3-11, "Fire Detection Instruments," by adding one detector to Fire Zones 184, 185, 186, and 187 for each Unit. These fire zones are located in the 6.9 kv shutdown board room corridors in the auxiliary building.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). The operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the fire detection instrumentation adds two additional cross-zone detectors in each of the Units 1 and 2 6900-volt shutdown board room corridors on Elevation 734 of the auxiliary building. The additional fire detection instrumentation provides additional assurance that the fire

1detection instrumentation will operate as required in the event of a fire. However, neither the fire detection instrumentation nor the equipment associated with this instrumentation is considered to be the source of an accident. In addition, this equipment is not taken credit for in the safety analysis. Therefore, there is no increase in the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The fire detection and/or suppression functions affected by this change enhance fire mitigation functions only and do not result in a change in plant functions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any preciously analyzed.

3. Involve a significant reduction in a margin of safety.

The equipment functions affected by the proposed changes are not assumed for any accident in the SQN safety analysis and are not an input to the TS margin of safety. Therefore, the proposed change will not result in a reduction in the margin of safety

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 31, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.1.1.2 to permit the reduction of boron concentration of water within the reactor coolant system (RCS), subject to certain restrictions, when the reactor is in Mode 5 and RCS flow is less than

2800 gpm. The proposed amendment is related to Amendment No. 176, which was issued by the NRC on December 8, 1992, and incorporated a similar revision for Mode 6 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:The Nuclear Regulatory Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists due to a proposed amendment to an Operating License for a facility. A proposed amendment involves no significant hazards if operation of the facility in accordance with the proposed changes would: (1) Not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Not create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Not involve a significant reduction in a margin of safety. Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are significantly affected by the proposed changes. The proposed change to Technical Specification (TS) 3/4.1.1.2 would revise an exception to make it applicable in Mode 5 as well as Mode 6. The revised exception would allow water of a lower boron concentration than the Reactor Coolant System (RCS) to be added to the RCS, with the flowrate of reactor coolant through the RCS less than 2800 gpm, provided that the water to be added meets the requirements of TS 3.1.1.1 (Mode 5) or TS 3.9.1 (Mode 6). TS 3.1.1.1 requires that in Mode 5, the boron concentration of the RCS be maintained such that the Shutdown Margin shall be less than or equal to one percent delta k/k. TS 3.9.1 requires that in Mode 6, the boron concentration of all filled portions of the RCS and the refueling canal shall be maintained uniform and sufficient to ensure that the more restrictive of two reactivity conditions is met. If the RCS meets these reactivity condition requirements, and water is added to the RCS that also meets the reactivity condition requirements of TS 3.1.1.1 or TS 3.9.1, then the RCS is assured to remain in compliance with the reactivity condition requirements. The possibility that the added water may be of lower boron concentration than the RCS, therefore, does not significantly increase the probability of an accident previously evaluated.

The proposed change to TS 3/4.9.8.1 makes TS 3/4.9.8.1 and TS 3/4.9.8.2 consistent with the current TS 3/4.1.1.2, and is considered to be administrative in nature.

The proposed changes to TS Bases 3/4.1.1.2 and TS Bases 3/4.9.8 are considered to be administrative in nature.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1, as applicable. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident. As also discussed in item 1a. above, the proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3.4.9.8 are considered to be administrative in nature.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators or assumption are introduced by the proposed changes. The proposed changes do not alter any accident scenarios. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3/4.9.8 are considered to be administrative in nature. None of the proposed changes creates the possibility of a new kind of accident.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not alter any accident scenarios. As discussed in item 1a. above, the proposed revision of the exception to TS 3/4.1.1.2 will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1, and TS Bases 3/4.9.8 are considered to be administrative in nature. None of the proposed changes creates the possibility of a different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in the margin of safety because the proposed change to TS 3/4.1.1.2, as described above, will not cause a condition that would result in the RCS not meeting the requirements of TS 3.1.1.1 or TS 3.9.1. The margin of safety will be maintained by adhering to the limits specified in these TSs. The proposed changes to TS Bases 3/4.1.1.2, TS 3/4.9.8.1 and TS Bases 3/4.9.8 are considered to be administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 14, 1993

Description of amendment request: The proposed amendment would modify Sections 3.6 and 4.6 of the Technical Specifications to add Reactor Coolant System leakage detection requirements to address Generic Letter 88-01, "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would add a more conservative requirement into the plant Technical Specifications, in addition to those that presently exist. Hence, approval of this change will have no affect on any previously evaluated accident scenario.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes are being made to the plant and now new operating techniques or procedures are being proposed. The proposed amendment would add an additional Limiting Condition for Operation and an increased Surveillance

Requirement to plant Technical Specifications. Hence, approval of this change will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change adds more restrictive requirements into the Technical Specifications. Hence, approval of this change would not reduce the margin of safety.GI21The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51FR7751). An example of an amendment that is considered not likely to involve a significant hazards consideration is Example (ii) which is an additional limitation, restriction or control not presently included in the Technical Specifications. This proposed amendment provides for an additional

Limiting Condition of Operation and an increased Surveillance Requirement in the plant Technical Specifications. Therefore, based on the above, it is determined this change does not constitute a significant hazards consideration as defined in 10CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia

Date of amendment request: December 27, 1993

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the Surry Power Station, Units No. 1 and No. 2 (SPS-1&2). The proposed changes revise the review responsibilities of the Station Nuclear Safety and Operating Committee (SNSOC) and the Management Safety Review Committee (MSRC).

The SPS-1&2 TS address the organization and responsibilities of both the onsite and offsite review groups: SNSOC and MSRC, respectively. The responsibilities of the SNSOC include the review of new procedures and changes to procedures that affect nuclear safety. The MSRC review responsibilities include the review of safety evaluations and SNSOC meeting minutes and reports. The extent of these review activities would be revised by the proposed changes to ensure the two review groups are focusing on nuclear safety issues and not spending an unnecessary amount of time on activities of minimal safety significance. Specifically, the proposed changes would revise the review responsibilities of SNSOC regarding procedure changes. Rather than reviewing all procedure changes, SNSOC would only review procedure changes that require a safety evaluation. The proposed changes also would revise the review responsibilities of the MSRC. Rather than reviewing all of the safety evaluations and SNSOC meeting minutes and reports as presently required by the TS, the MSRC would only review a representative sample of these documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[T]he elimination of the SNSOC review of procedure changes that do not require a safety evaluation, revising the wording for approval of procedure changes, and the modification of the MSRC's duties regarding their review of safety evaluations and SNSOC meeting minutes and reports will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. As administrative changes, the proposed Technical Specifications changes have no direct or indirect effect on accident precursors. No plant modifications are being implemented and operation of the plant is unchanged. SNSOC review of new procedures and procedure changes that require a safety evaluation ensures that activities that could affect nuclear safety are being properly reviewed. The MSRC's overview of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance ensures these programs are being properly implemented and nuclear safety is not being compromised; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated since physical modifications are not involved and systems and components will be operated as before the change. The proposed changes are wholly administrative in nature and have no impact on plant operations or accident considerations. These changes modify the scope of SNSOC review of procedure changes and MSRC's review functions concerning safety evaluations and SNSOC meeting minutes and reports. Procedure changes will continue to receive management review in accordance with administrative procedures, however, only changes that require a safety evaluation will require SNSOC approval. MSRC review of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance will continue to provide adequate assurance that nuclear safety is being properly considered; or

3. Involve a significant reduction in a margin of safety as defined in the basis of any Technical Specification since the responsibilities of the SNSOC and MSRC are not addressed by the existing Technical Specification Bases, nor are review requirements for procedures. The proposed changes are administrative in nature and have no impact on, nor were they considered in, existing UFSAR accident analyses. Safety significant procedure changes, i.e., changes that require a safety evaluation to be prepared, will continue to be reviewed by SNSOC, as will new procedures. Procedure changes still require cognizant management approval and preparation of an activity screening to determine whether or not the change impacts nuclear safety. This ensures activities important to nuclear safety are being appropriately reviewed. The effectiveness of the safety evaluation program, and the thoroughness of SNSOC meetings and reports will be assured through the MSRC's plant overview function which is based on observed performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: December 6, 1993

Description of amendment request: The proposed amendment would modify the testing requirements for the Main Steam Relief Valves (MSRVs) in the Technical Specifications (TS). Specifically, the proposed amendment would allow deferral of MSRV Position Indication Channel Calibration, including the Channel Functional Test that is the focus of the request, for 24 hours after the plant reaches conditions that would allow the Channel Functional Test to be conducted under operating conditions (above 10% rated reactor power). In addition, the proposed change would extend the current deferral for two related TS, one for MSRVs and the other for Automatic Depressurization System (ADS) valves, from 12 hours to the proposed 24 hours after reaching conditions that would allow the Channel Functional Test to be conducted under operating conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis of the change that would defer Safety/Relief Valve Position Indicators Channel Calibration, specifically the Channel Functional Test, is presented below:

1. Does the amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

No credit is taken for the MSRV position indication in the initiation or mitigation of any analyzed accident. The inoperability of valve position indication does not affect the manual or automatic actuation of the MSRVs. The analysis for inadvertent opening of an MSRV (FSAR Section 15.1.4) assumes that the alarm function of the MSRV discharge line temperature sensors and Reactor Pressure Vessel (RPV) level control systems provide the signals for manual and automatic system actuation, respectively. Therefore, because previously analyzed accidents are mitigated without the use of the MSRV position indication, this change that would allow temporary plant operation in modes 1 and 2 with inoperable MSRV position indication to allow testing does not increase the probability or consequences of a previously analyzed accident.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new mode of operation of any equipment results from the delay of the Channel Functional surveillance. The valve position indication provides information for operator response to previously evaluated accidents, and does not provide any automatic system actuations that could initiate an accident or abnormal operating occurrence sequence. This change would not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The margin of safety involved in this amendment is the time it takes to identify inadvertent MSRV operation to initiate either automatic or manual plant response. Since no credit is taken for MSRV position indication in the WNP-2 safety analyses for initiation of automatic or operator manual response, the lack of MSRV position indication for a 24 hour time period will not affect the analyzed time to identify inadvertent MSRV operation. The proposed change does not, therefore, affect the margin of safety.

The staff's evaluation of the licensee's analysis of the change that would allow an increase in the current deferral of Safety/Relief Valve and Automatic Depressurization System (ADS) valve testing of 12 hours to the proposed 24 hours is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change represents an additional 12 hours in which the operability of the MSRV position indication would not be verified, and could be inoperable. No credit is taken for the MSRV position indication in the initiation or mitigation of any analyzed accident. The inoperability of valve position indication does not affect the manual or automatic actuation of the MSRVs as discussed in the following: The analysis for inadvertent opening of an MSRV (FSAR Section 15.1.4) assumes the alarm function of the MSRV discharge line temperature sensors and RPV level control systems for manual and automatic system actuation, respectively. Thus, the inoperability of the MRSV position indication for an additional 12 hours would not affect the probability or consequences of an accident previously evaluated.

The proposed change represents an additional 12 hours in which the operability of the ADS valves, which are also the MSRVs, would not be verified, and could be inoperable. The cause of any potential inoperability would also be undetermined, and any unidentified failure mode affects the uncertainties assumed in the probability of inadvertent MSRV opening, which is an analyzed accident (FSAR Section 15.1.4). In the worst case, the probability of inadvertent MSRV opening would be increased due to an unidentified problem with the MSRVs. The additional 12 hours, considering plant operation for approximately 5800 hours of power operation each year (assuming 60 day annual refueling outage and 80% capacity factor for the remaining time), represents only an estimated 0.2% increase in time at power without verifying operability of the ADS valves, which contributes a very small increase in the probability of an inadvertent MSRV opening due to an undiscovered fault condition. Performing the surveillance testing using other possible methods, either removal of the MSRV position indication from the valve and testing separately, or testing in modes 3, 4, or 5 such that adequate steam back pressure does not exist, introduce other uncertainties and potential for valve damage that would, using engineering judgement, create a greater increase in probability of an inadvertent MSRV opening than the additional 12 hours would contribute. The proposed change would not, therefore, significantly increase the probability of an accident previously evaluated.

Regarding the potential effect on the consequences of an inadvertent MSRV opening, the accident analysis in FSAR Section 15.1.4 analyzes consequences assuming an MSRV sticks open. Thus, increasing the time that a potential malfunction of a valve may go undetected does not affect the consequences of an MSRV that is already considered open as assumed in the accident analysis. Consequently, the increase in time allowed for conducting the surveillance testing, and therefore the time that the operability of the ADS-related MSRV is not verified does not affect the consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new or modified mode of operation of any structure, system, or component results from delaying verification of the status of operability of the MSRVs for an additional 12 hours. The proposed change does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The margin of safety involved in this proposed amendment is the time, established by the current TS, that operation in modes 1 and 2 is allowed with the operability of the MSRVs and associated ADS valves undetermined. The current TS allow 12 hours to conduct testing to verify operability of these valves. The proposed TS would extend that time to 24 hours. The additional 12 hours, considering plant operation for approximately 5800 hours of power operation each year (assuming 60-day annual refueling outage and 80% capacity factor for the remaining time), represents only an estimated 0.2% increase in time at power without verifying operability of the ADS valves, which the staff considers, by engineering judgement, as a very small reduction in the margin to safety affected by the proposed change. This change would, therefore, not involve a significant reduction in the margin of safety provided by the current TS.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 26, 1994

Description of amendment request: The proposed amendments would change Technical Specification Section 15.3.0, "General Considerations." This section specifies the actions which should be taken for conditions not directly addressed in the action statements of the Technical Specifications. The changes would provide more operational flexibility. Changes to the applicable bases and editorial changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added. However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Standard Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added.

However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the existing specifications and will add some additional requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change will incorporate requirements contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Standard Technical Specifications," into the Point Beach Technical Specifications Section 15.3.0, "General Considerations." The proposed revisions will not remove any existing requirements. Several new requirements will be added.

However, the proposed revisions will allow a longer period of time for the affected unit(s) to be placed in hot shutdown should one of the applicable Limiting Conditions for Operation not be met. This longer time limit is identical to the time limit specified in NUREG 1431, Revision 0, and permits the shutdown to proceed in a controlled and orderly manner that is well within the capabilities of the unit(s), assuming that only the minimum required equipment is operable. This reduces thermal stresses on components of the Reactor Coolant System and the potential for a plant transient that could challenge plant safety systems. The amount of time to reach cold shutdown would decrease from 48 hours to 37 hours. The slightly longer time to reach hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the total amount of time a unit may be operated in a condition in which a system or component required to mitigate the consequences of an accident is unavailable, or that is otherwise prohibited by the specifications.

Should a shutdown of both units be required, 15.3.0.A and 15.3.0.B allow an orderly and sequential shutdown of each unit to take place. This ensures that the plant operators are not overloaded during the shutdown process and allows the units shutdowns to proceed in a controlled and orderly manner. The revised specifications will clarify the existing specifications and will add some additional requirements, enhancing the effectiveness of the Point Beach Technical Specifications. There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual

notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 4, 1993

Description of amendments request: The proposed amendments would allow the removal of an orifice plate in the containment vent/purge line to allow greater flow through the line. The restoration of full flow capability will result in less time required to vent the containment. A reanalysis of the maximum hypothetical accident, as currently described in the Updated Final Safety Analysis Report, was performed to support the requested amendments. The results of the reanalysis indicate that the consequences of the accident previously analyzed would be increased. Although the consequences result in an increase in the fission product release, the total doses are well within the limits of 10 CFR Part 100, "Factors to be considered when evaluating sites."Date of Publication of Individual Notice in **Federal Register:** February 25, 1994 (59 FR 9254)

Expiration date of individual notice: March 28, 1994

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket No. 50-414, Catawba Nuclear Station, Unit No. 2, York County, South Carolina

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would change the method of measuring the reactor coolant system flow rate (Technical Specification 2.0 and 3/4.2) during the 18-month surveillance for Catawba, Unit 2. Date of publication of individual notice in Federal Register: March 1, 1994 (59 FR 9785)

Expiration date of individual notice: March 31, 1994

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: February 7, 1994

Brief description of amendment request: The proposed amendment would allow an increase in reactor coolant temperature in order to support operation at the rated thermal power of 3565 megawatts thermal (MWt). The proposed amendment would change reactor protection system setpoints by increasing the nominal reactor coolant average temperature from 581.2°F to 586.5°F, changing the axial flux difference penalties and setpoint uncertainty allowances. The proposed amendment also increases the maximum indicated reactor coolant system average temperature from 585.0°F to 590.5°F.

Date of individual notice in **Federal Register:** February 15, 1994 (59 FR 7269)

Expiration date of individual notice: March 17, 1994

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 1, 1993, as supplemented on February 1, 1994

Brief description of amendment: The amendment revises the heatup and cooldown curves which will allow operation beyond the current 12 effective full-power years (EFPY) to approximately 13.8 EFPY. The increase in this EFPY will allow Unit 2 to operate until its next refueling outage (RFO-10) in accordance with the requirements of 10 CFR Part 50, Appendix G.

Date of issuance: March 1, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 162

Facility Operating License No. DPR-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62150)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 27, 1993, as supplemented November 10, 1993 and February 1, 1994

Brief description of amendment: The amendment revises the Technical Specifications and allows elimination of the existing reactor coolant's resistance temperature detector (RTD) bypass manifold system and the substitution of a new design with RTDs mounted in thermowells that extend directly into the flow stream of the reactor coolant system.

Date of issuance: February 18, 1994

Effective date: February 18, 1994

Amendment No. 43

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48379)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 16, 1993, as supplemented February 17, 1994

Brief description of amendment: The amendment revises the Technical Specifications (TS) 3/4.2.1, Axial Flux Difference, 3/4.2.2, Heat Flux Hot Channel Factor (F_Q), deletes surveillance requirement 4.2.2.2 and 4.2.2.3, and changes 6.9.1.6, Core Operating Limit Report, and associated Bases related to the transition from nuclear fuel supplied by Westinghouse to nuclear fuel supplied by Siemens Power Corporation (SPC) beginning with Cycle No. 6.

Date of issuance: March 1, 1994

Effective date: March 1, 1994

Amendment No. 44

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41500)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 15, 1993, as supplemented February 17 and February 25, 1994

Brief description of amendment: The amendment modifies the SHNPP Operating License to provide for a one-time exemption from compliance with License Condition 2.C.(8) which requires periodic emergency diesel generator engine teardowns for component inspections.

Date of issuance: March 3, 1994

Effective date: March 3, 1994

Amendment No. 45

Facility Operating License No. NPF-63. Amendment revises the Operating License Condition 2.C.(8) as defined in Attachment 1 to Operating License NPF-63.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32378) The February 17, 1994, letter provided supplemental information and the February 25, 1994, letter modified the May 15, 1993, letter and requested a one-time exemption. Neither supplemental letter changed the initial proposed determination of no significant hazards consideration as published in the **Federal Register.**The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 16, 1993, as supplemented February 17, 1994

Brief description of amendment: The amendment revises the SHNPP Technical Specification to incorporate changes to reactor core safety limits, reactor trip system instrumentation setpoints, power distribution limits, and shutdown boron concentration control in support of the transition from nuclear fuel supplied by Westinghouse Electric Corporation to nuclear fuel supplied by Siemens Power Corporation and a reactor core safety average temperature reduction effort.

Date of issuance: March 3, 1994

Effective date: March 3, 1994

Amendment No. 46

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50966) The February 17, 1994, letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the FEDERAL REGISTER.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 13, 1993, as supplemented by letters dated September 15, 1993, September 16, 1993, December 17, 1993, January 19, 1994, February 11, 1994, and February 24, 1994.

Brief description of amendments: These amendments revise Technical Specification 3/4.4.5, "Steam Generators," to allow sleeving of defective steam generator tubes as an alternative to tube plugging. Two different methods of sleeving are approved for Byron and Braidwood stations: Westinghouse laser-welded tube sleeving and Babcock and Wilcox (B&W) kinetic-welded tube sleeving.

Date of issuance: March 4, 1994

Effective date: March 4, 1994

Amendment Nos.: 47, 47, 59, and 59

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57846) The additional information contained in the supplemental letters dated September 15, 1993, September 16, 1993, December 17, 1993, January 19, 1994, February 11, 1994, and February 24, 1994, served to clarify the amendments, were within the scope of the initial notice, and did not affect the

Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 2, 1993, as supplemented by letters dated January 7, 1994, and February 10, 1994.

Brief description of amendments: The amendments revise the Byron and Braidwood Technical Specifications (TS) to allow replacement of the 125 volt DC Gould batteries with new 125 volt DC AT&T batteries and rephrase the specification for their design duty cycle. In addition, the amendments revise the crosstie loading limitations and crosstie breaker limitations. The associated TS Bases are also revised to include the purpose for the crosstie limitations and a discussion of the design duty cycle requirements.

Date of issuance: March 4, 1994

Effective date: March 4, 1994

Amendment Nos.: 59, 59, 47, and 47

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4936) The February 10, 1994, supplemental submittal did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 15, 1989, as supplemented September 16, 1992.

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3.0.4, 4.0.3, and 4.0.4 to incorporate guidance provided by the NRC in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Date of issuance: February 24, 1994

Effective date: February 24, 1994

Amendment Nos.: 94 and 78

Amendment Nos.: 94 and 78

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53785)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 28, 1994

Brief description of amendments: The amendments minimize unnecessary testing for certain instruments in the Reactor Protection System and the End-of Cycle Recirculation Pump Trip system for LaSalle County Station, Units 1 and 2 technical specifications.

Date of issuance: February 25, 1994

Effective date: February 25, 1994

Amendment Nos.: 95 and 79

Amendment Nos.: 95 and 79

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No (59 FR 6062 dated February 9, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 11, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated February 25, 1994.

Attorney to licensee: Michael I. Miller, Esquire; Sidley & Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 4, 1993

Brief description of amendments: The amendment revises the Technical Specifications surveillance frequency and acceptance criteria requirements for the steam generator safety valves.

Date of issuance: March 2, 1994

Effective date: March 2, 1994

Amendment Nos.: 154 and 142

Amendment Nos.: 154 and 142

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64605)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 24, 1993

Brief description of amendment: The amendment revises Technical Specification 4.6.2.1 to allow a one-time relief from the requirement to perform accelerated Type A integrated leak rate tests (ILRT) after two consecutive tests fail to meet the acceptance criteria. Concurrently, the Commission granted a one-time exemption from the requirement in 10 CFR Part 50, Appendix J, III.A.6.(b) to perform the Type A containment ILRTs on an accelerated frequency following failure of two previous Type A tests.

Date of issuance: February 22, 1994

Effective date: February 22, 1994, with full implementation within 45 days.

Amendment No.: 97

Amendment No.: 97

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43925)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1994 No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 19, 1993

Brief description of amendments: The amendments revise both the surveillance requirements of the Unit 1 Technical Specification (TS) 3.9.D and Unit 2 TS 3/4.8.2, "Electrical Power Monitoring for Reactor Protection System," to add time delays to the reactor protection system electrical power monitoring trips.

Date of issuance: February 24, 1994

Effective date: To be implemented within 60 days from the date of issuance.

Amendment Nos.: 191 and 130

Amendment Nos.: 191 and 130

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67846)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: November 9, 1993

Brief description of amendments: The amendments revise the Surveillance Requirements of Hatch Unit 1 Technical Specification (TS) Section 4.9, "Auxiliary Electrical Systems," and Hatch Unit 2 TS Section 4.8, "AC Sources - Operating," to change the requirements for diesel generator testing under hot initial conditions.

Date of issuance: February 24, 1994

Effective date: To be implemented within 60 days from the date of issuance.

Amendment Nos.: 192 and 131

Amendment Nos.: 192 and 131

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67846)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Energy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 1993, as supplemented by letter dated February 3, 1994.

Brief description of amendment: The amendment revises the River Bend Station, Unit 1 technical specifications to permit extending certain surveillance intervals so that testing can be performed during the refueling outage scheduled to start April 16, 1994, rather than requiring an earlier shutdown solely to perform the testing.

Date of issuance: February 18, 1994

Effective date: February 18, 1994

Amendment No.: Amendment No. 72

Amendment No.: Amendment No. 72

Facility Operating License No. NPF-47: The amendment revised the technical specifications.

Date of initial notice in **Federal Register:** January 18, 1994 (59 FR 2630) The February 3, 1994, letter provided clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 1, 1990, as supplemented by letters dated November 27, 1990, June 5, 1991, November 3, 1992, November 11, 1992, August 16, 1993, October 22, 1993, November 5, 1993 (two letters), and November 29, 1993.

Brief description of amendments: The amendments consist of changes to the technical specifications (TS) to change the allowed outage times (AOTs) and/or surveillance test intervals (STIs) as a result of the South Texas probabilistic safety assessment (PSA) considered in conjunction with other information. Ten of the TS changes were based on changes to the core damage frequency as calculated using the PSA. Five additional TS changes to the AOTs and STIs were not specifically modeled in the PSA, but had little or no impact on risk.

Date of issuance: February 17, 1994

Effective date: February 17, 1994, to be implemented within 45 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 59; Unit 2 - Amendment No. 47

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10535) The supplemental letters provided additional clarifying information, were within the scope of the original application and did not change the original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 14, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.8.2, "DC Sources," to delete two notes which

indicated that two 125-volt full capacity battery chargers were required when the Uninterruptible Power Supply was powered by its backup DC power supply. These notes applied to the Divisions I and II DC sources during operating and shutdown conditions. The amendment also revises TS 3/4.8.2 to increase the minimum allowable electrolyte temperature for the 125-volt batteries from 60 °F to 65 °F. In addition, the amendment makes administrative changes to TS 4/3.8.4, "Electrical Equipment Protective Devices," and the TS Bases.

Date of issuance: March 2, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 55

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2868) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 14, 1993

Brief description of amendment: The amendment modifies the Technical Specifications relating to the spent fuel pool (SFP) by removal of the cell blockers in Region C, thus increasing by 234 fuel assemblies the storage capacity of the SFP. To accommodate the reactivity requirements, the required burnup of fuel in Region C has been increased and neutron absorbing (poison) rodlets (pins) are required to be introduced in fuel assemblies not meeting the maximum burnup requirements for fuel assemblies without rodlets.

Date of issuance: March 1, 1994

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 172

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1993 (58 FR 42581) The submittals of November 30, 1993, December 1, 1993, and January 27, 1994, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-313, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 22, 1992 (Reference LAR 92-09)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2. Specifically, TS Section 2.2, "Reactor Trip System InstrumentationSetpoints," would be revised to change the Overtemperature Delta-R reactor trip setpoint as a result of a non-conservativsm in the Westinghouse methodology used to calculate the f(delta I) penalty function.

Date of issuance: February 24, 1994

Effective date: During 6th refueling outage for Units 1 and 2, March andSeptember 1994, respectively

Amendment Nos.: 88 and 87

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7003)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1974.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: January 10, 1994, as supplemented February 3, 1994 (Reference LAR 94-01)

Brief description of amendments: The proposed amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," and TS 3/4.6.2.3, "Containment Cooling System." Specifically, TS 3/4.3.2, Table 3.3-3, "Engineered Safety Features Actuation System Instrumentation," and Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," are revised to include Mode 4 applicability requirements for the high-high containment pressure signal. In addition, TS 3/4.6.2.3 is revised to clarify acceptable containment fan cooling unit (CFCU) configurations that satisfy the safety analysis requirements and to clarify the minimum required component cooling water flow supplied to the CFCU cooling coils.

Date of issuance: March 2, 1994

Effective date: March 2, 1993

Amendment Nos.: 89 and 88

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1994 (59 FR 4121)The February 3, 1994 **Federal Register** submittal provided clarifying information and did not affect the no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 21, 1993

Brief description of amendment: The amendment revises the TS Surveillance Requirements and associated Bases for the emergency diesel generator (EDG) fuel oil transfer system and the EDG air starting compressors to clarify that testing of these systems/components can be conducted either concurrently or independently of the monthly EDG tests. The changes would also clarify the Bases for EDG fuel quality testing and make an editorial change.

Date of issuance: February 23, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 205

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36443)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 22, 1993

Brief description of amendment: The amendment adds Limiting Conditions for Operation and Surveillance Requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas," and 4.12.1, "Water Spray/Sprinkler System Tests," and clarifies the associated Bases to reflect the installation of a new full-area fire suppression system in the east and west cable tunnels. This new full-area fire suppression system was installed because the previous sprinkler system did not provide coverage to some cable trays and the sprinkler head orientation did not provide full coverage of the cable trays where it was installed. The amendment also corrects other portions of Tables 3.12.1 and 4.12.1 to ensure consistency with changes made to reflect the east and west cable tunnel modification.

Date of issuance: February 28, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 206

Amendment No.: 206

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1994 (59 FR 2634) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 30, 1993

Brief description of amendment: The amendment made the following changes:1. Revised Technical Specification (TS) TS Table 3.8.4.1-1 to delete Breaker No. 52-263022 which was disconnected and converted to spare status by a plant design change, and 2. Revised TS 3.11.2.7 to change radioactivity rate units and associated action statement reference from HOT STANDBY to read HOT SHUTDOWN, and changed the reference name of the Offgas Radioactivity Monitor.

Date of issuance: February 28, 1994

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 66

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50974)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: January 25, 1993

Brief description of amendment: The amendment revised the pressure-temperature limit curves for heatup, cooldown, hydrostatic tests and criticality from 10 effective full power years to 15 effective full power years.

Date of issuance: February 22, 1994

Effective date: February 22, 1994

Amendment No.: 129

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2871)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 19, 1993, and supplemented May 14, and December 22, 1993. The supplemental information submitted May 14, and December 22, 1993, did not affect the proposed no significant hazards consideration determination.

Brief description of amendment: This amendment modifies the nuclear organization of the Sacramento Municipal Utility District (SMUD) that will oversee the operation of Rancho Seco at least through the Custodial SAFSTOR phase of the decommissioning of Rancho Seco.

Date of issuance: February 23, 1994

Effective date: February 23, 1994

3Amendment No.: 121Facility Operating License (Possession Only) No. DPR-54: This amendment modifies the nuclear organization of SMUD that will oversee the operation at Rancho Seco at least through the Custodial SAFSTOR phase of decommissioning.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34092). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: Central Library, Government Documents 828 I Street, Sacramento, California 95814.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: September 19, 1990 as supplemented on February 26, 1993

Brief description of amendment: The amendment revised Technical Specification (TS) 3.6.1.3 to specify actions in the event a containment air lock interlock mechanism becomes inoperable and to clarify the limitations on the use of an inoperable air lock. The associated bases were also revised per telecon of February 2, 1994.

Date of issuance: February 23, 1994

Effective date: February 23, 1994

Amendment No.: 56

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22479) The application for amendment was renoticed on April 14, 1993 (58 FR 19473). The telecon of February 2, 1994, just changed the Bases section of the TS and did not affect the initial proposed finding of no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 16, 1993, as supplemented November 15, 1993

Brief description of amendments: These amendments implement the revised 10 CFR Part 20, Standards for Protection Against Radiation

Date of issuance: February 17, 1994

Effective date: February 17, 1994

Amendment Nos.: 178 and 159

Amendment Nos.: 178 and 159

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43937)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1994 No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 18, 1993 and December 9, 1993

Brief description of amendments: The amendments revise the NA-1&2 TS which will allow plant personnel to effect repairs to the Rod Control System in an orderly manner while continuing to ensure that the control and shutdown banks are capable of performing their designed safety function.

Date of issuance: March 1, 1994

Effective date: March 1, 1994

Amendment Nos.: 79 and 160

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19492)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 2, 1993, as supplemented December 10, 1993. The December 10, 1993 letter provided clarifying information within the scope of the original amendment application and did not change the staff's no significant hazards consideration determination.

Brief description of amendments: These amendments update the augmented inspection program for sensitized stainless steel to the newer Code requirements.

Date of issuance: February 18, 1994

Effective date: February 18, 1994

Amendment Nos.: 187 and 187

Amendment Nos.: 187 and 187

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46241) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf CreekGenerating Station, Coffey County, Kansas

Date of amendment request: February 7, 1994

Brief description of amendment: The changes allow an increase in reactor coolant temperature in order to support operation at the rated thermal power of 3565 megawatts thermal (MWt). The amendment changes reactor protection system overtemperature and overpower delta-temperature setpoints by increasing the nominal reactor coolant temperature from 581.2°F to 586.5°F, changing the axial flux difference penalties, and changing the setpoint uncertainty allowances. The amendment also increases the maximum indicated reactor coolant system average temperature of Technical Specification 3/4.2.5, DNB Parameters, from 585.°F to 590.5°F.

*Date of issuance:*March 3, 1994

Effective date: March 3, 1994, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 72

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 7269 dated February 15, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 17, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated March 3, 1994.Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 7th day March 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director of Reactor Projects - I/II

[Doc. 94-5971 Filed 03-15-94; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee) for operation of the River Bend Station, Unit 1, (RBS) located in West Feliciana Parish, Louisiana.

The proposed amendment would revise the technical specifications in

accordance with the guidance provided by Generic Letter 93–08, "Relocation of Technical Specification Tables of instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various technical specification tables which denote instrument and system response time limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes and subsequently relocates the details of Technical Specification Table 3.3.1–2, "Reactor Protection System Response Times," Table 3.3.2–3, "Isolation System Instrumentation Response Time," and Table 3.3.3–3, "Emergency Core Cooling System Response Times" consistent with the guidance provided by Generic Letter 93–08, dated December 29, 1993, entitled "Relocation of Technical Specification Tables of Instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various Technical Specification tables which denote instrument and system response time limits. The response time limits and associated footnotes are proposed to be relocated to the RBS Updated Safety Analysis Report (USAR). This allows RBS to administratively control subsequent changes to the response time limits in accordance with 10 CFR 50.59. The procedures which contain the various response time limits are also subject to the change control provisions in the Administrative Controls section of the Technical Specifications. The proposed change only relocates the existing response time limits. The surveillance requirements and associated Actions are not affected and remain in the Technical Specifications. Relocating this information does not affect the initial conditions of a design basis accident or transient analysis. Since any subsequent changes to the USAR or procedures are evaluated in accordance with 10 CFR 50.59, no increase in the probability or consequences of an accident previously evaluated is allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any different operational or surveillance requirements. The change proposes to relocate these requirements to other plant documents whereby adequate control of information is maintained. No new failure modes are introduced. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change would not involve a reduction in the margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing, nor does the proposed change affect any instrument setpoints or equipment safety functions. In addition, the values to be transposed from the Technical Specifications to the USAR are the same as the existing Technical Specifications. Since any future changes to these requirements in the USAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety is allowed. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conferences scheduled in the proceeding, but such an amended petition may satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 3, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 10th day of March 1994.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6074 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, to the Power Authority of the State of New York (the licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated January 11, 1994, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, appendix J, section III.D.3. Specifically, the licensee requested one-time relief from the requirement to perform Type C tests (local leak-rate tests (LLRT)) at intervals of no greater than 2 years for the shutdown cooling isolation valves (10MOV–17 and 10MOV–18). This one-time only delay,

until the next refueling outage currently scheduled to begin in November 1994, was requested for the performance of these leakage tests. The licensee's request was necessitated by the extended 1991–1993 refueling outage and the length of the current operating cycle.

The Need for the Proposed Action

The schedular exemption is required to permit the licensee to operate the plant until the next refueling outage (Reload 11/Cycle 12), currently scheduled to begin in November 1994.

The shutdown cooling valves were previously tested during the last refueling outage (Reload 10/Cycle 11). This was an extended outage that began in November 1991 and ended in January 1993. The Type C tests on the subject valves were performed on May 30, 1992, for the outboard isolation valve (10MOV–17), and June 5, 1992, for the inboard isolation valve (10MOV–18). Subsequent delays in the outage resulted in these tests being performed significantly in advance of the start of the operating cycle (more than 7 months prior to the end of the outage). As a result, the 2 year test interval will be reached for these valves (May 30, 1994/ June 5, 1994) 6 to 7 months prior to the next scheduled refueling outage. The exemption would permit a deferral in the performance of Type C testing of the shutdown cooling isolation valves beyond the 2-year limiting interval until the next refueling outage.

The most effective means of removing reactor core decay heat is with the shutdown cooling mode of the residual heat removal (RHR) system. This requires both of the stated isolation valves to be in the open position. The shutdown cooling mode of the RHR system must be removed from service for approximately 24 hours to perform an LLRT (Type C) of its isolation valves. This is the time required to tag-out the system, drain the line, perform the test, refill the line, and return the system to service. To avoid overheating the reactor coolant system with the shutdown cooling mode inoperable, one of the following two conditions must exist:

1. The reactor needs to be shutdown for several months to permit sufficient reduction in decay heat levels for use of an alternate shutdown cooling method. The alternate cooling method with the highest heat removal capacity is the Reactor Water Cleanup system in the blowdown mode. However, the reactor must be shutdown for more than 3 months before this method can handle the decay heat load.

2. The plant needs to be in the refueling condition; i.e., reactor head removed, reactor cavity flooded up and connected to the spent fuel pool. This permits the removal of the normal shutdown cooling system from operation and testing of these valves.

A 3-week surveillance/maintenance outage is planned for spring 1994. However, the decay heat levels present during any outage less than several months precludes the use of the alternate cooling method without placing the plant in the refueling configuration. The exemption would preclude the need to place the plant in the refueling configuration prior to the next scheduled refueling outage. Without the exemption, the licensee would be required to remove the drywell and reactor heads and connect the reactor cavity to the spent fuel pool solely for the purpose of testing the shutdown cooling isolation valves. Placing the plant in the refueling configuration would significantly lengthen the spring 1994 outage and would require significant resources. Furthermore, placing the plant in the refueling configuration to accommodate testing of the isolation valves would increase occupational radiation exposures. For these reasons, the licensee has determined that compliance with the regulation would result in undue hardship and costs.

Environmental Impacts of the Proposed Action

The proposed schedular exemption would allow the licensee to continue to operate the plant from May 30, 1994, until the next refueling outage which is scheduled for November 1994. During that refueling outage, the Type C test on shutdown cooling system valves 10MOV–17 and 10MOV–18 would be performed in accordance with the requirements of 10 CFR part 50, appendix J. The remaining Type B penetrations and Type C tested valves have been or will be leak rate tested such that they will not exceed the 24-month frequency prior to the November 1994 refueling outage.

The operating configuration of the shutdown cooling isolation valves and the RHR system when the reactor coolant system is pressurized (greater than 75 psig) substantially minimizes the possibility of gross leakage through these valves. A high reactor pressure interlock, as well as plant operating procedures, assures that these isolation valves are closed whenever reactor pressure is above 75 psig. This protects the low pressure RHR system from overpressurization. The RHR system suction piping is designed for 450 psig. Gross leakage while the reactor is pressurized would be detected by high pressure on the RHR suction piping or an increase in suppression pool inventory. Consequently, the maintenance of normal operating status of the RHR system assures the absence of gross leakage through these valves.

These valves also receive an isolation signal in the event of a plant accident (reactor vessel low water level or high drywell pressure). This assures isolation of a potential leakage path from the reactor coolant system to the reactor building. For this path to exist, leakage through both isolation valves, and a breach of the RHR system piping would need to occur simultaneously. Since the isolation valves are maintained closed with the reactor pressurized, it is improbable the leakage through the valves will increase while the plant is operating. The redundant isolation valves provide two leakage barriers which limit the pathway leakage rate to that experienced by the valve with smallest leakage rate. For these reasons, the potential for significant leakage to the reactor building by way of the shutdown cooling line is minimal.

The penetration included in the licensee's schedular exemption request represents only 6.4 percent of the total "as left" leakage at the beginning of the current operating cycle. The total "as left" minimum path leakage for all penetrations was only 0.073 La and the total "as left" minimum path leakage for the penetration addressed in the proposed exemption was only 0.0046 La. The replacement of both isolation valves with valves of improved design provides added confidence that excessive leakage will not be experienced. The inboard valve 10MOV–18 was replaced during the 1985 refueling outage and has successfully passed three out of four Type C tests performed during refueling outages since its replacement. The outboard isolation valve 10MOV–17 was replaced with a similarly designed new valve during the last refueling outage (1992). The limited number of valve strokes these valves are subject to over any one operating cycle minimizes valve degradation due to wear. This provides reasonable assurance that the requested surveillance interval expansion will not result in the Type B and C leakage rate total exceeding the 0.6 La limit of 10 CFR part 50, appendix J. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

With regard to potential nonradiological impacts, the proposed schedular exemption only involves LLRT on containment isolation valves. The exemption does not affect

nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed schedular exemption.

Altenatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed schedular exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request. Such action would not reduce environmental impacts of the James A. FitzPatrick Nuclear Power Plant and would result in undue hardship on the licensee possibly including an unwarranted shutdown of the plant.

Alternative Use of Resources

The actions associated with the granting of the proposed schedular exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed schedular exemption discussed above. The NRC staff contacted the State of New York Energy Office regarding the environmental impact of this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed schedular exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for the schedular exemption dated January 11, 1994. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 9th day of March 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6075 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

[Docket No. 50–354]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric and Gas Company (the licensee) for operation of the Hope Creek Generating Station located in Salem County, New Jersey.

The proposed amendment would add a new section, 3/4.10.8, "Inservice Leak and Hydrostatic Testing," and the Bases. The new section would allow Hope Creek to remain in OPERATIONAL CONDITION 4 with reactor coolant temperatures up to 212 °F to facilitate inservice leak and hydrostatic testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is present below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing with the reactor in OPERATIONAL CONDITION 4 and the average reactor coolant temperature up to 212 °F. The change to allow inservice leak and hydrostatic testing in OPERATIONAL CONDITION 4 will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in OPERATIONAL CONDITION 4. The hydrostatic or inservice leak test is performed water solid or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leak testing. Requiring secondary containment to be operable will conservatively ensure that potential airborne radiation from leaks will be filtered through the Filtration, Recirculation and Ventilation System (FRVS), thereby limiting radiation releases to the environment. Therefore, the changes will not significantly increase the consequences of an accident.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure ECCS subsystems to operate. The capability of the subsystems that are required for OPERATIONAL CONDITION 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic testing program. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in OPERATIONAL CONDITION 4 during inservice leak or hydrostatic testing, with reactor coolant temperature up to 212 °F, essentially provides an exception to OPERATIONAL CONDITION 3 requirements, including operability of primary containment and the full complement of redundant Emergency Core Cooling Systems. The hydrostatic or inservice leak test is performed water solid, or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity or leaks that could occur.

The inservice leak or hydrostatic test conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500 °F with similar pressures. There are no alterations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized for accident mitigation from those of OPERATIONAL CONDITION 3. Therefore, this will not create the possibility of a new

or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes allow inservice leak and hydrostatic testing to be performed with reactor coolant temperature up to 212 °F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity will be maintained and all systems required in OPERATIONAL CONDITION 4 will be operable in accordance with the Technical Specifications, the proposed changes will not have any significant impact on any design bases accident or safety limit. They hydrostatic or inservice leak testing is performed water solid, or near water solid, all rods in, and temperatures ≤212 °F. The stored energy in the core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. The RPV would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally operable in OPERATIONAL CONDITION 4 would be adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200 °F peak clad temperature limit.

Moreover, requiring secondary containment, including isolation capability, to be operable will assure that potential airborne radiation can be filtered through the FRVS. This will assure that doses remain well within the limits of 10CFR100 guidelines. Small systems leaks would be detected by inspection before significant inventory loss has occurred. Therefore, this special test exception will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to reply in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final

determination on the issue of no significant hazards consideration The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 4, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pennsville Public Library, 190 S Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 10th day of March 1994.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6076 Filed 3–15–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Extension of SF 85, SF 85P, and SF 86; Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of the three information collections described below for a period of one year, and solicits comments on them.

Standard Form 85, Questionnaire for Non-Sensitive Positions, is completed by appointees to Non-Sensitive duties with the Federal government. Information collected on this form is used by the Office of Personnel Management to initiate the background investigation required to determine basic suitability for Federal employment in accordance with 5 U.S.C. 3301, 3302, and E.O. 10577 (5 CFR Rule V). The number of respondents annually who are not Federal appointees is expected to be 10 with total reporting hours of 4.2.

Standard Form 85P, Questionnaire for Public Trust Positions, is completed by persons seeking placement in positions currently labeled "public trust" positions because of their enhanced responsibilities. Information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine suitability for placement in public trust positions in accordance with 5 U.S.C. 3301, 3302, E.O. 10577 (5 CFR Rule V), and Office of Management and Budget Circular A–130, Management of Federal Information Resources, revised June 25, 1993, and its Appendix III, Security of Federal Automated Computer Systems, issued December 12, 1985. The number of respondents annually who are not Federal employees is expected to be 1500 with total reporting hours of 1500.

Standard Form 86, Questionnaire for Sensitive Positions (For National Security), is completed by persons performing, or seeking to perform, national security duties for the Federal government. This information collection also includes Standard Form 86A, Continuation Sheet for Questionnaires SF 86, SF 85P, and SF 85, which is used to provide formatted space to continue answers to questions. Information collected is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine placement in national security positions in accordance with 42 U.S.C. 2165, 22 U.S.C. 2585, and E.O. 10450, Security Requirements for Government Employment, issued April 27, 1953. The number of respondents annually who are not Federal employees is expected to be 24,800 with total reporting hours of 37,200.

For copies of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received by April 15, 1994.

ADDRESSES: Send or deliver comments to—Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

Copies of comments sent to OMB may also be sent to: John J. Lafferty, Associate Director for Investigations, Office of Personnel Management, 1900 E Street, NW, room 5478, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, 202–376–3800.

James B. King,

Director, U.S. Office of Personnel Management.

[FR Doc. 94–6044 Filed 3–15–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33750; File No. SR-Amex-94–02.]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Rescission of Rules 560 and 570 and Amendment of Rule 550, Commentary .02

March 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1994, the American Stock Exchange, Inc.

("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to rescind Rule 560 which regulates special offerings and bids, rescind Rule 570 which regulates Exchange distributions and acquisitions and amend Commentary .02 to Rule 550 to delete its reference to Rules 560 and 570.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 1993, the Commission rescinded its Rule 10b–2, an early anti-fraud rule dating from 1937.[1] The rule's purpose was to prevent persons participating in the distribution of a security from stimulating the purchase of the security on an exchange by paying compensation to any person for soliciting such purchases. The rule permitted an exemption for "special offerings" with a "plan" filed with the Commission by an exchange.[2] The Exchange's plan is found in Amex Rules 560 and 570, which are on-Floor procedures for distributing or acquiring blocks of stock when the regular market cannot absorb or supply the selling or buying interest within a reasonable time and at a reasonable price.[3].

In rescinding Rule 10b–2, the Commission indicated that the Rule was no longer necessary, given the current capacity of the markets and the existence of other anti-fraud provisions of the federal securities laws (e.g., Rules 10b–5 and 10b–6);[4] and in fact, Amex Rules 560 and 570 have not been utilized for more than eleven years.[5] With the rescission of Commission Rule 10b–2, Amex Rules 560 and 570 have become obsolete. Further, the Securities Industry Automation Corporation ("SIAC") still reserves two "condition codes" to identify exchange acquisitions and exchange distributions on its high speed vendor line and low speed ticker, which it would like to utilize for other conditions. Accordingly, the Exchange is proposing to rescind Amex Rules 560 and 570 and amend Rule 550, Commentary .02 to delete its reference to these rules.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–02 and should be submitted by April 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6116 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993) (File No. S7–37–92) ("Rule 10b–2 Rescission Order").

[2] The Commission amended Rule 10b–2 in 1942 to permit an exemption for special offerings under a plan filed with the Commission by an exchange. See Securities Exchange Act Release No. 3146 (February 6, 1942).

[3] The Commission notes that Amex Rule 560 specifies a minimum share size of 1,000 with a value of $25,000. In today's market, 1,000 shares with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. In addition, Rule 560 predates Amex block trading rules, such as Amex Rule 24, which defines a block of stock as 10,000 shares or more.

[4] 17 CFR 240.10b–5 and 240.10b–6 (1993).

[5] The Commission stated in its order rescinding Rule 10b–2 that Rule 10b–2 was obsolete and that the activities with which the Rule was concerned were sufficiently addressed by the general antifraud and anti-manipulation provisions of the federal securities laws. See Rule 10b–2 Rescission Order, *supra* note 1, at 18146. In addition, the Commission noted that there have been no special offerings and exchange distributions of the Amex since 1982. *Id.* at 18145.

[6] The New York Stock Exchange has made similar changes to its analogous rules. See Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993).

[Release No. 34–33745; File No SR–CBOE–94–03]

Self-Regu'·tory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading Floor Booth Policy and Fee Changes

March 9, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to set forth formally the Exchange's current policy regarding the rental of booths on the CBOE trading floor ("Policy"). The CBOE has included with the filing, for informational purposes, a copy of the CBOE Trading Floor Booth Rental Agreement ("Agreement"), which has been reformulated in conjunction with the formalization of this Policy. That Agreement sets forth the contractual terms, conditions, and restrictions governing rental and use of the booths. As part of its filing, the CBOE also proposes amending its current Fee Schedule as such pertains to Facility Fees for rental of Exchange trading floor booths.

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to memorialize for distribution to the CBOE membership the Exchange's policy regarding the rental and use of booth space on the CBOE trading floor by member organizations. The rule change also is intended to amend the existing fee structure with respect to the rental of trading floor booths to reflect the Exchange's elimination of a practice called "joint leasing." The elimination of this practice is the only major change in current policy with respect to booth rental.

The CBOE currently has certain space located on its trading floor which it makes available for rental to qualified member organizations. These "booths" are located at various points on the floor adjacent to the trading "pits" or "crowds" where the actual CBOE trading activity takes place. They generally are used by member organizations to perform various functions in support of their CBOE trading activities. Over the years, the CBOE has developed certain policies and practices with regard to the rental and use of these trading floor booths by member organizations. The Exchange has determined that it would benefit both the CBOE and their membership to memorialize the Exchange's current policies for distribution to the members.

Although the Policy itself addresses several issues pertaining to booth rental, it deals primarily with eligibility. Specifically, it sets forth the four broad categories of member organizations that, in accordance with current policy, may rent booth space on the floor. These categories were formulated so as to accommodate member organizations having the greatest need of working space in close proximity to CBOE trading activity, and they encompass almost all major types of CBOE member organizations. Market-maker organizations, the only major category that would not obtain a booth under the Policy, customarily obtain boot space through their clearing firms. The Exchange's experience confirms that this practice has worked well.

The Policy also addresses the potential future need for the adoption of allocation and assignment guidelines with respect to booth space. The CBOE has no such guidelines in effect today and currently does not envision implementing any in the foreseeable future. In the event that demand for booth space at some point exceeds availability, the CBOE would establish allocation guidelines.[1] The CBOE thought it advisable to inform the membership of the possibility and to identify the general nature of the criteria upon which such guidelines would be based.

Finally, the Policy sets forth the requirement that all member organizations renting booths execute a "Trading Floor Booth Rental Agreement" which sets forth the contractual terms governing the rental and use of the booths by the member organization. Although the Exchange in the past has used a standard form agreement regarding booth rental, that agreement is brief and contains little detail regarding the nature of the contractual relationship between the parties. The revised Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the booths as they have been established by custom and usage in the past. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the member organization and the Exchange and establishes a formal procedure for adding booths to and deleting booths from the Agreement. Such booth changes, which are common, previously have been handled informally, ad hoc. The Agreement also imposes an obligation on the member to indemnify the Exchange for any claims, liabilities, or other losses the Exchange may incur as a result of the use of the booth by the member, and it spells out requirements respecting the member's use of the booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the booths.

Apart from the addition of detail to the Agreement, the only principal change in current Exchange practice embodied in the Policy and the Agreement is the elimination of a practice called "joint leasing." Previously, the Exchange has permitted two different member organizations to occupy jointly a single trading floor booth and to share the costs associated therewith. The Exchange believed that joint leasing would make it easier (*i.e.*, less costly) for smaller member organizations to have access to multiple locations adjacent to the trading floor. In practice, however, joint leasing has been used by non-transaction producing members solely to reduce their booth fees and not to facilitate trading activity.

[1] Such guidelines would have to be filed with the Commission as a rule change and approved pursuant to section 19(b) of the Act.

Therefore, the Exchange has determined that joint leasing should be eliminated and replaced with a variable fee arrangement that will soften the economic impact on small member organizations that the elimination of joint leasing might otherwise have. Under the proposed fee change included in this filing, current booth fees have been reduced in two respects: First, the $1,250 per booth variable monthly fee has been eliminated for the second booth leased by a member organization. Second, the $1,250 per booth variable monthly fee on a member firm's third booth has been reduced by fifty percent (50%) to $625. The full variable fee will continue to be applicable to any booths leased by the firm beyond the third booth.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to codify Exchange policy and procedures with respect to the rental of trading floor booths by CBOE members in a manner that promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities, and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–03 and should be submitted by April 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6037 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33749; File No. SR–Phlx–92–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Clearing Agents' Responsibility for Ensuring That Good Faith Margin Treatment Is Properly Granted

March 10, 1994.

I. Introduction

On December 21, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Options Floor Procedure Advice ("Advice") F–19 and new Commentary .14 to Phlx Rule 722 ("Commentary") to require that Phlx Clearing Members take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions account of a specialist or registered options trader/market maker ("ROT").[3] Notice of the proposal, including Amendment No. 1, appeared in the **Federal Register** on July 7, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The Phlx proposes to adopt new Advice F–19 and new Commentary .14 to Phlx Rule 722 to require that Phlx Clearing Members take reasonable steps to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions accounts of specialists and ROTs. For purposes of the Advice and Commentary, "positions in Phlx-listed options" includes positions originating on another options exchange in an option that is also listed on the Phlx. The proposal provides that "reasonable steps" include the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in the specialist's or ROT's market functions account. The purpose of the proposed rule change is to ensure that good faith margin treatment is granted to positions held in a specialist's or ROT's market functions accounts only where appropriate.

The Phlx believes that these requirements should help ensure that

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[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] On March 25, 1993 the Phlx amended the rule change proposal to provide that the "reasonable steps" to ensure that only positions in Phlx-listed options that qualify for good faith margin treatment are carried in the market functions account of a specialist or market maker include "the adoption and implementation of procedures designed to detect any pattern of activity that results in options that do not qualify for good faith margin treatment being carried in a specialist's or market maker's market functions account." See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated March 25, 1993 ("Amendment No. 1"). On March 4, 1994 the Phlx amended the proposal to (1) clarify that the proposed rule change applies to [applicable persons] for any transaction on another exchange in an option that is also listed on the Phlx; (2) redefine the term "Clearing Agent" as "clearing member of the Exchange"; and (3) redefine the term "market maker account" as "market functions account." See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx to Sharon Lawson, Branch Chief, Options and Derivatives Branch, Division of Market Regulation, SEC, dated March 4, 1994 ("Amendment No. 2").

[4] See Securities Exchange Act Release No. 32557 (June 30, 1993), 58 FR 36495.

only specialists and ROTs who are registered to trade in such capacity in options listed for trading on the Phlx are afforded specialist/market maker margin treatment with respect to those options. The Phlx also believes that, in order to ensure compliance with Regulation T by its Clearing Members, a policy clearly stating the Clearing Members' responsibility is necessary.

The Phlx notes that the proposed Advice would only be applicable to the equity options floor. Thus, the Phlx has placed the notation "(O)" after the Advice. In addition, the Phlx proposal has also incorporated the Advice into the Phlx's minor rule plan[5] and has set forth a fine schedule for violation of the Advice.[6]

The Exchange believes the proposal is consistent with Regulation T of the Federal Reserve Board ("Regulation T").[7] Regulation T grants good faith margin treatment in the market functions accounts of specialists and ROTs only to qualified or offsetting positions. "Customer" margin is to be applied to all other positions. Accordingly, because the purpose of the proposal is to reserve good faith margin treatment for bona fide specialist or market maker trades, the Phlx believes that the proposal is consistent with Regulation T.

III. Commission Findings and Conclusions

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) in that the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, as well as to protect investors and the public interest.

Specifically, the proposal, by imposing an Exchange requirement for Phlx Clearing Members to take reasonable steps to ensure that such Members only provide exempt credit treatment for positions taken in Phlx-listed options when properly eligible, helps to provide the Phlx the ability to police an important margin policy. The Phlx proposed rule change is consistent with Regulation T by expressly requiring Phlx Clearing Members to undertake certain reasonable steps to ensure compliance with Regulation T in Phlx-listed options transactions. The Commission believes that the Phlx proposed rule change imposes requirements that Phlx Clearing Members should already be undertaking in order to ensure their compliance with Regulation T. Accordingly, the Commission does not believe that the proposed rule change unfairly burdens Phlx Clearing Members. In addition, the Commission also believes that the fine schedule for proposed Advice F–19 is appropriate.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating the amendment will allow the proposal to be enacted without delay. Further, the amendment merely clarifies the meaning of certain language contained in the original filing and redefines several terms in order to strengthen the proposed rule change's consistency with certain other Exchange rules and Regulation T. The Commission also notes that the proposal, including Amendment No. 1, was published for the full 21 day comment period and no comments were received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–92–30 and should be submitted by April 6, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–92–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6117 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20128; 812–8744; International Series Release No. 640]

Barclays Bank PLC; Notice of Application

March 10, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Barclays Bank PLC.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Applicant seeks a conditional order to permit registered management investment companies for which it acts as foreign custodian or subcustodian (other than investment companies registered under section 7(d)) ("Investment Companies") to maintain their foreign securities and other assets in the custody of certain foreign banks (the "Foreign Subsidiaries") each of which is a direct subsidiary of or associated with applicant.

FILING DATE: The application was filed on January 3, 1994, and amended on February 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

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[5] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated March 7, 1994.

[6] The fine schedule for Advice F–19 provides that a fine of $500 will be imposed for the first violation and a fine of $1,000 will be imposed for the second violation. The sanction for the third violation is discretionary with the Phlx Business Conduct Committee. In addition, under a rolling three-year cycle, if three years elapse between the first and second violation, the second violation would be treated as a first violation. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second violation would be treated as a "third violation," even though more than three years may have elapsed after the first violation.

[7] Regulation T is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Act. Its principal purpose is to regulate extensions of credit by and to brokers and dealers. It also covers related transactions within the Board's authority under the Act and imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

April 4, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 54 Lombard Street, London EC3P 3AH, England, or c/o Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a wholly-owned subsidiary of Barclays PLC, an English public limited company (collectively, with its subsidiaries, the "Barclays Group"). The Barclays Group is one of the largest financial services groups in the United Kingdom, and is engaged in a broad range of banking and financial services for both individual and corporate customers.

2. As part of the international services it offers, the Barclays Group provides a network of custody and subcustody services for Investment Companies and their custodians at various locations throughout the world, and it wishes to include in its network the Foreign Subsidiaries to which this application relates.

3. Applicant seeks an order to permit it, as the custodian or subcustodian of foreign securities, cash, and cash equivalents of Investment Companies, to maintain such assets in the custody of the following Foreign Subsidiaries: Barclays Bank of Botswana Limited, Banque du Caire Barclays International S.A.E. ("Banque du Caire"), Barclays Bank of Ghana Limited, Barclays Bank of Kenya Limited, Barclays Bank of Swaziland Limited, Barclays Bank of Zambia Limited, Barclays Bank of Zimbabwe Limited. With the exception of Banque du Caire, which is 49%-owned by applicant, each of the Foreign Subsidiaries is a majority-owned or wholly-owned direct subsidiary of applicant.

Applicant's Legal Analysis

1. Section 17(f) requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including banks having an aggregate capital, surplus, and undivided profits of at least $500,000. As defined in section 2(a)(5), "bank" includes (a) a banking institution organized under the laws of the United States, (b) a member bank of the Federal Reserve System, and (c) any other banking institution or trust company doing business under the laws of any state or of the United States, (i) a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, (ii) which is supervised and examined by state or federal authorities having supervision over banks, and (iii) which is not operated for the purpose of evading the Act. Therefore, the only foreign entities that are permitted by section 17(f) to serve as custodians for registered management investment companies are the overseas branches of U.S. banks.

2. Rule 17f–5 under the Act expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200,000,000.

3. Applicant is an eligible foreign custodian in the United Kingdom under the requirements of rule 17f–5, since it has shareholders' equity well in excess of the pound sterling equivalent of $200,000,000,[1] is organized and existing under the laws of England and Wales, and is authorized and regulated in the United Kingdom as a bank by the Bank of England.

4. Each of the Foreign Subsidiaries satisfies all but one of the requirements of rule 17f–5, as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States, and is regulated as such by such country's government or an agency thereof. None of the Foreign Subsidiaries, however, meets the shareholders' equity requirement of the rule. Accordingly, the Foreign Subsidiaries are not eligible foreign custodians under the rule. Absent exemptive relief, none of the Foreign Subsidiaries could serve as custodians for Investment Company assets.

5. Applicant believes that the protection of investors would be maintained under the proposed custody arrangements, which are similar to those employed by other foreign subsidiaries of applicant that have custody of Investment Company assets.[2] Under these arrangements, applicant would remain liable for the performance of custody services by the Foreign Subsidiaries, including any losses that may result from the insolvency of a Foreign Subsidiary.

6. Applicant submits that the requested relief is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements regarding the Foreign Subsidiaries will satisfy the requirements of rule 17f–5 in all respects other than the Foreign Subsidiaries' level of shareholders' equity.

2. Applicant will deposit the assets of an Investment Company with a Foreign Subsidiary only in accordance with an agreement required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5. Each agreement will be a three-party agreement among applicant, the Foreign Subsidiary, and the Investment Company (or its custodian) under which applicant will undertake to provide specified custody or subcustody services for an Investment Company or its custodian, and will delegate to the Foreign Subsidiary such of applicant's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold the assets of the Investment Company in custody in the relevant country. The agreement will further provide that applicant will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance

[1] At December 31, 1992, applicant had shareholders' equity of approximately 5.8 billion pounds sterling (approximately $8.7 billion).

[2] The relief requested is similar to that previously granted with regard to certain of applicant's other subsidiaries. See Investment Company Act Release Nos. 17231 (Nov. 20, 1989) (notice) and 17268 (Dec. 19, 1989) (order), and 16508 (July 29, 1988) (notice) and 16536 (Aug. 24, 1988) (order).

by the Foreign Subsidiary or its responsibilities under the agreement to the same extent as if applicant had been required to provide custody services under such agreement.

3. Applicant currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6113 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20125; No. 812–8766]

Fortis Benefits Insurance Company, et al.

March 9, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Fortis Benefits Insurance Company ("Fortis"), Variable Account D of Fortis Benefits Insurance Company ("Account D"), First Fortis Life Insurance Company ("First Fortis"), Variable Account A of First Fortis Life Insurance Company ("Account A"), any other Separate Accounts established by Fortis or First Fortis in the future to support certain variable annuity contracts issued by Fortis or First Fortis ("Other Accounts"), and Fortis Investors, Inc. (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account A, Account D and the Other Accounts of mortality and expense risk charges in connection with the offer and sale of certain flexible premium deferred combination fixed and variable annuity contracts.

FILING DATE: The application was filed on January 11, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 4, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Fortis, Account D, and Other Accounts of Fortis, and Fortis Investors: c/o David A. Peterson, Esq., Fortis Benefits Insurance Company, 500 Bielenberg Drive, Woodbury, Minnesota 55125. First Fortis, Account A and Other Accounts of First Fortis: 220 Salina Meadows Parkway, suite 255, Syracuse, New York 13220.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Fortis and First Fortis (together, the "Companies") are stock life insurance companies that are affiliated by reason of being under common control through their direct and indirect parent companies. Fortis is wholly-owned by Time Insurance Company, a wholly-owned subsidiary of Fortis, Inc. Fortis, Inc. is a wholly-owned subsidiary of Fortis International, Inc., a wholly-owned subsidiary of AMEV/VSB 1990 N.V., which is, in turn, 50% owned by NV AMEV and 50% owned, through certain subsidiaries, by Group AG. First Fortis is wholly-owned by N.V. AMEV.

2. Fortis and First Fortis are the depositors, respectively, of Account D and Account A. Accounts D and A are segregated investment accounts registered as unit investment trusts under the 1940 Act. The Companies each may establish one or more Other Accounts in the future (Account D, Account A and Other Accounts collectively known as the "Accounts").

3. Account A has six investment subaccounts which invest solely in six corresponding portfolios of the Fortis Series Funds, Inc. ("Fortis Fund"). Account D is subdivided into ten subaccounts, seven of which initially will be available under the Contracts ("Available Subaccounts") The seven Available Subaccounts will invest solely in shares of: (a) three corresponding portfolios of the Fortis Fund, (b) three corresponding portfolios of Norwest Select Funds ("Norwest Fund"), and (c) one corresponding Portfolio of the Scudder Variable Life Investment Fund ("Scudder Fund").

4. The Fortis Fund and the Scudder Fund are open-end management investment companies registered under the Securities Act of 1933 ("1933 Act"). Fortis Advisers, Inc., an affiliate of the Companies, is the investment manager for each Fortis Fund portfolio. Scudder, Stevens & Clark, Inc., which is not an affiliate of the Companies, is the investment adviser for the Scudder portfolios.

5. The Norwest Fund will file with the Commission a notice of registration on Form N–8A and a registration statement on Form N–1A. Norwest Bank Minnesota, N.A., which is not an affiliate of the Companies, will be the investment adviser for each of the three Norwest portfolios.

6. The Companies may create additional subaccounts of the Accounts to invest in any additional portfolios of the Fortis Fund, the Norwest Fund, the Scudder Fund, or any other fund that may now or in the future be available. Similarly, subaccounts and/or portfolios may be eliminated from time-to-time.

7. Accounts D and A are used to fund flexible premium deferred combination fixed and variable annuity contracts ("Contracts") to be issued by the Companies on a group or individual basis. The Contracts will be offered in connection with certain retirement plans that receive special federal income tax treatment and to persons that do not qualify for such tax treatment. The Contracts require certain minimum initial payments and permit certain additional payments. A registration statement on Form N–4 has been filed with the Commission under the 1933 Act in connection with the Contracts.

8. Fortis Investors, an affiliate of the Companies, will distribute the Contracts. Fortis Investors is wholly-owned by Fortis Advisers, Inc., a wholly-owned subsidiary of Fortis, Inc. Fortis Investors is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

9. Various fees and expenses are deducted from each Contract. A deduction for state premium taxes, if assessed, in the amount of up to 3.5% of purchase payments or the amount annuitized will be made from the Contracts account value either at the time of annuitization, surrender, or

payment of a death benefit. Applicable rates are subject to change by legislation, administrative interpretation or judicial acts.

10. Currently, there is no charge for transfers among the subaccounts or the general accounts. The Companies, however, reserve the right to charge up to $25 per transfer out of a subaccount prior to annuitization. The charge will be designed to recover not more than the average administrative expenses of effecting such transfers. Not more than four such transfers per year may be made after annuitization. An annual Administrative Charge of $30 will be assessed against each Contract, subject to certain exceptions and waivers. The Administrative Charge will be deducted from each subaccount and from the fixed account in the same proportion as the then-current Contract values in each subaccount or fixed account. The Administrative Charge will reimburse the Companies for expenses incurred in maintaining records relating to the Contracts. This charge currently does not apply during the accumulation period if the Contract value at the end of the Contract Year is $25,000 or more. The charge also is being waived during the annuity period, subject to the Companies' right to reinstate the charge at any time. Additionally, a daily asset charge at an effective rate of 0.15% per annum will be assessed both before and after annuitization under all Contracts for administrative expenses.

None of the administrative charges may be raised during the life of the Contracts, except as specified. Total revenues from all administrative charges under the Contracts are not expected to exceed the Companies' expected costs of administering the Contracts, on average, excluding distribution expenses.

11. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") in the amount of 5% is deducted from purchase payments for certain surrenders which occur within five years from the date such payments were credited under the Contract. The CDSC will be used to pay certain Contract distribution expenses. No CDSC is assessed for: (a) withdrawals of any earnings that have not been previously surrendered; (b) purchase payments that have not been previously surrendered and were received at least five years prior to the surrender date; and (c) payment of the death benefit. Additionally, up to 10% of purchase payments will not be subject to the CDSC. The Companies' current administrative policy is to waive the CDSC for full surrenders of Contracts that have been in force for at least 10 years, subject to certain conditions, although this policy may be changed or terminated at any time.

12. Each subaccount will be assessed, both before and after annuitization, an annual charge of 1.25% of their assets for mortality and expense risks assumed by the Companies. Of the 1.25% amount, approximately .80% is for mortality risks and .45% for expense risks. The 1.25% rate is guaranteed not to increase for the duration of the Contracts. The charge may be a source of profit for the Companies which will be added to their respective surplus and may be used for, among other things, the payment of distribution, sales and other expenses. The Companies currently anticipate a profit from this charge.

13. The Companies will assume certain mortality and expense risks under the Contracts. The Companies will assume a mortality risk by their contractual obligation to pay a death benefit in a lump sum (which may also be taken in the form of an annuity option) upon the death of an annuitant or Contractowner prior to the annuity commencement date. The lump sum death benefit payable will be the greater of (1) the sum of all net purchase payments made, less all prior surrenders, and less all previously-imposed surrender charges, (2) a Contract's account value, or (3) a Contract's account value as of the Contract's 5-year anniversary immediately preceding the date that the annuitant or owner dies or reaches his or her 75th birthday, less the amount of any subsequent surrenders and surrender charges.

No contingent deferred sales charge will be imposed upon the payment of the death benefit, which will place a further mortality risk on the Companies.

The Companies will assume an additional mortality risk by their contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity options which involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under the Contract. This relieves the annuitant from the risk of "outliving" the amounts accumulated for retirement. The payment option tables contained in the Contracts will be based on the anmuity mortality 1983 Tables. These Tables are guaranteed for the life of the Contracts.

14. The expense risk assumed by the Companies is that the actual expenses involved in administering the Contracts and the Accounts in connection with the Contracts will exceed the amounts recovered from the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act."

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Accounts of the 1.25% charge for the assumption of mortality and expense risks. Applicants believe that the terms of the relief requested with respect to any Other Contracts that may in the future be funded by Account A, Account D or the Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief in connection with Other Contracts to the extent required. Any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicant's ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Investors might be disadvantaged as a result of Applicants' increased overhead expenses.

Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represents that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels, death benefit guarantees, guaranteed annuity rates, and other contract charges and options. The Applicants will maintain at their respective principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Companies' comparative review.

5. Applicants acknowledge that the surrender charge is not expected to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. The Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by the Companies at their respective administrative offices and made available to the Commission upon request.

6. The Accounts will only invest in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons," formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6112 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25999]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 9, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 4, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–8361)

Notice of Proposal to Issue, Sell and Acquire Common Stock in Connection with Dividend Reinvestment and Stock Purchase Plan and Proposed Performance Share Incentive Plan; Exception from Competitive Bidding; Order Authorizing Proxy Solicitation

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and Rules 42, 50(a)(5), 62 and 65 under the Act.

Pursuant to orders dated March 21, 1977 (HCAR No. 19949) and April 19, 1977 (HCAR No. 19992), AEP's shareholders approved a Dividend Reinvestment and Stock Purchase Plan ("Dividend Reinvestment Plan") at the 1977 Annual Meeting of Shareholders to provide that participants could purchase new shares of AEP common stock ("Common Stock") under the Dividend Reinvestment Plan with optional cash payments not more frequently than once in each calendar month at the current market price average on each investment date as provided in the Dividend Reinvestment Plan, subject to a limit of $3,000 (or such other amount not greater than $5,000 as the Board of Directors should approve) per participant per quarter. By subsequent order dated March 29, 1979 (HCAR No. 20979) AEP's Board of Directors was authorized to adopt a resolution on September 26, 1978, that increased the Dividend Reinvestment Plan's quarterly limitation on optional cash payments from $3,000 to $5,000.

Finally, pursuant to a series of orders, the last dated December 1, 1993 (HCAR No. 25936) ("1993 Order"), AEP was authorized to issue and sell, from time-to-time through December 31, 1996, up to 44 million shares of Common Stock, $6.50 par value, pursuant to the Dividend Reinvestment Plan. Through December 31, 1993, a total of 40,938,533 shares had been issued and sold, leaving a balance of 3,061,467 shares currently available for issuance and sale.

AEP now proposes to issue and sell, through December 31, 1996, shares of its authorized and unissued Common Stock, $6.50 par value, as provided in the 1993 Order, to the agent for the participants in its Dividend Reinvestment Plan, without limitations on, among other things, the maximum dollar amount of optional cash payments which may be made by participants in the Dividend

Reinvestment Plan to purchase such shares of Common Stock, except as may be imposed by the proper AEP System officers as part of the terms of the Dividend Reinvestment Plan.

AEP also requests authority to distribute up to one million shares of Common Stock, to be acquired on the open market, to implement the AEP Performance Share Incentive Plan ("PSI Plan"). The PSI Plan provides that senior officers of AEP System companies will be eligible to receive awards of Common Stock and/or cash based on the achievement of financial objectives over a performance period. A committee designated by AEP's Board of Directors will determine whether payments of awards are made in shares of Common Stock and/or in cash. Initially, 50% of the payment will be made in Common Stock and 50% in cash.

AEP anticipates that the PSI Plan will be fully funded by income provided from operating activities and that external borrowing will not be used to meet the requirements of the PSI Plan. The costs of the PSI Plan awards will be paid directly by the AEP System company that pays each participant's base salary during the performance period. AEP plans to make open market purchases to meet the requirements of the PSI Plan because of the relatively small size of the stock purchases and the negligible impact the market purchases of Common Stock will have on AEP's trading volume, price per share, and capital structure.

The affirmative vote of holders of a majority of the shares of Common Stock outstanding on March 9, 1994 is required to authorize: (1) AEP to issue Common Stock to the Dividend Reinvestment Plan without limitations on the maximum dollar amount of optional cash purchases of Common Stock by participants; and (2) the PSI Plan. AEP intends to submit the proposals to its shareholders for their approval at the annual meeting of shareholders to be held on April 27, 1994. In connection therewith, AEP proposes to solicit proxies from the holders of its outstanding Common Stock to be voted at the meeting. AEP further requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62(d).

It appearing to the Commission that AEP's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-6114 Filed 3-15-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20127; International Series Release No. 639; 812-8792]

Westpac Banking Corp.; Application

March 10, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Westpac Banking Corporation (the "Bank").

RELEVANT ACT SECTION: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: The Bank seeks an order to permit the maintenance of foreign securities and other assets of registered investment companies other than investment companies registered under section 7(d) (an "Investment Company") with Westpac Custodian Nominees Limited ("Westpac Custodian"), an indirect, wholly-owned subsidiary of the Bank.

FILING DATE: The application was filed on January 25, 1994. By supplemental letter dated March 9, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 4, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Westpac Banking Corporation, 60 Martin Place, Sydney NSW 2000, Australia.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504-2259, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Bank, together with its subsidiaries (the "Westpac Group"), is one of four major banking organizations in Australia. The Bank is a corporation organized under the laws of New South Wales, Australia, and regulated by the Reserve Bank of Australia, which is responsible for the supervision and regulation of the Australian banking system. As of September 30, 1993, the Bank had shareholders' equity of A$7.1 billion (approximately U.S.$4.58 billion, based on the then-current exchange rate).

2. Westpac Custodian, an indirect, wholly-owned subsidiary of the Bank, was incorporated in New South Wales in 1984 to provide a wide range of custody related services, including reporting, reconciliation, settlement, safekeeping of physical securities, payment of taxes, income collection, proxy voting, and valuation. It is one of the largest providers of custodian services in Australia, with custody of over A$36.6 billion in assets as of September 30, 1993 (approximately U.S.$23.1 billion). Westpac Custodian is an authorized trustee corporation and is regulated by the Australian Securities Commission.

3. Westpac Group desires, as part of the global custody services it offers, to provide a network of custodial and sub-custodial services for Investment Companies and their custodians through the Bank and Westpac Custodian.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires that every registered management investment company place and maintain its securities and similar investments in the custody of certain enumerated entities, including "banks" having at all times aggregate capital, surplus, and undivided profits of at least $500,000. "Bank," as defined in section 2(a)(5) of the Act, includes (i) a banking institution organized under the laws of the United States, (ii) a member

bank of the Federal Reserve System, and (iii) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provision of the Act. Section 17(f) therefore restricts those entitles located outside the United States that are permitted to serve as custodian for Investment Companies to overseas branches of domestic banks.

2. Rule 17f–5 expanded the group of entities that are permitted under section 17(f) of the Act to serve as foreign custodians. The rule defines an "Eligible Foreign Custodian" to mean, among other things, "a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000."

3. The Bank meets the requirements of rule 17f–5 for an Eligible Foreign Custodian since it has shareholders' equity in the Australian dollar equivalent of approximately U.S.$4.4 billion, is organized under the laws of Australia and is authorized and regulated there as a bank by the Reserve Bank of Australia. Except with respect to the minimum shareholders' equity requirement, Westpac Custodian also satisfies the requirements under rule 17f–5. Because Westpac Custodian does not satisfy the minimum shareholders' equity requirement, it will not, absent exemptive relief, qualify as an Eligible Foreign Custodian.

4. The Bank requests an order under section 6(c) of the Act exempting (i) the Bank and Westpac Custodian, (ii) any Investment Company, and (iii) any custodian for an Investment Company from the provisions of section 17(f) of the Act to the extent necessary to permit the Bank, any such Investment Company, and any such custodian, to maintain foreign securities, as defined in rule 17f–5, cash, and cash equivalents in the custody of Westpac Custodian. The Bank proposes to offer and provide custodial services through Westpac Custodian to Investment Companies that wish to hold securities of Australian or New Zealand issuers as part of their global portfolios.

5. Westpac Custodian is experienced in providing custodial services and is capable and well-qualified to provide custodial and sub-custodial services to Investment Companies and, under the foreign custody arrangements proposed, the protection of investors would not be diminished.

Applicant's Conditions

The Bank agrees that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to Westpac Custodian will satisfy the requirements of rule 17f–5 in all respects other than with regard to the minimum shareholders' equity requirement for an eligible foreign custodian.

2. The Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. The Bank will deposit securities in Australia or New Zealand with Westpac Custodian only in accordance with a three-party contractual agreement, which will remain in effect at all times during which Westpac Custodian fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity, among (a) the Investment Company or a custodian of the securities of the Investment Company for which the Bank acts as sub-custodian, (b) the Bank, and (c) Westpac Custodian. Pursuant to the terms of this agreement, the Bank will provide specified custodial or sub-custodial services for the Investment Company or the custodian, as the case may be, and will delegate to Westpac Custodian such of its duties and obligations as will be necessary to permit Westpac Custodian to hold the securities in custody in Australia or New Zealand. The agreement will further provide that the Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Westpac Custodian of its responsibilities under the agreement to the same extent as if the Bank had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6115 Filed 3–15–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1967]

Defense Trade Advisory Group Reestablishment

The Department of State is reestablishing the Defense Trade Advisory Group (DTAG) to provide a formal channel for regular consultation and coordination with U.S. defense exporters on issues involving defense trade and the U.S. laws and regulations governing munitions exports. The Under Secretary for Management has determined that the committee is necessary and in the public interest. It is the only State Department advisory committee providing advice on defense trade issues to the Department.

Members of the committee will be appointed by the Assistant Secretary of State for Political-Military Affairs. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

In the **Federal Register** of February 18, 1994, Vol. 59, No. 34, it was announced that the DTAG will hold a plenary meeting on March 17. The information contained in that notice is repeated here:

Pursuant to Section 10(a)(1) of the Federal Advisory Committee Act (FACA), notice was given of a meeting of the Defense Trade Advisory Group (DTAG). The DTAG, established in February 1992 pursuant to the FACA (Pub. L. 92–463); 5 U.S.C. app. I), and hereby re-established, is an advisory committee consisting of private sector defense trade specialists. They advise the Department on policies, regulations, and technical issues affecting defense trade.

The meeting will include speakers from the Bureau of Political-Military Affairs; reports on DTAG Working Group progress, accomplishments, and future projects; and unclassified briefings on topics of interest to defense exporters.

DATES: The open session will take place on Thursday, March 17, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday February 25, 1994. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 or fax number (202) 647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C Street diplomatic entrance (21st and C Streets NW), where Department personnel will direct them to the Loy Henderson auditorium.

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232.

Dated: March 11, 1994.

William Pope,

Acting Deputy Assistant Secretary for Export Controls.

[FR Doc. 94–6239 Filed 3–14–94; 12:55 pm]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 140-xx; Guide For Developing And Evaluating a Special Federal Aviation Regulation (SFAR) 36 Engineering Procedures Manual

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for public comment proposed Advisory Circular (AC) 140-xx, Guide For Developing And Evaluation An SFAR 36 Engineering Procedures Manual. The proposed AC 140-xx provides information and guidance to the aviation community for developing and evaluating an SFAR 36 engineering procedures manual.

DATES: Comments submitted must identify the proposed AC 140-xx and be received by May 2, 1994.

ADDRESSES: Copies of the proposed AC 140-xx can be obtained from and comments may be returned to the following: Federal Aviation Administration, Continued Airworthiness Staff, AIR–100, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Federal Aviation Administration, Continued Airworthiness Staff, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington DC 20591, (202) 267-7218.

SUPPLEMENTARY INFORMATION:

Background

The development of an SFAR 36 engineering procedures manual that adequately covers all pertinent regulations and engineering procedures has proven to be a time-consuming task for the applicant and the Federal Aviation Administration. As a result, the proposed AC was drafted to provide information and guidance on the creation and evaluation of an SFAR 36 procedures manual.

Comments Invited

Interested persons are invited to comment on the proposed AC 140-xx listed in this notice by submitting such written data, views or arguments as they desire to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 140-xx may be examined before and after the comment closing date at the Federal Aviation Administration Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays between 8:30 a.m. and 4:30 p.m.

Issued in Washington, on March 10, 1994.

Mark R. Schilling,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–6104 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–06]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to the docket number for the disposition summary described for Lockheed Aircraft Service Company, Docket No. 25501, Exemption Number 3612A, in a notice of petitions for exemption published on February 11, 1994, (59 FR 6671). This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

SUPPLEMENTARY INFORMATION: The document was published February 11, 1994.

Explanation of Correction To Be Made

The docket number published for Lockheed Aircraft Service Company, Exemption Number 3612A should read 22998 in lieu of 25501.

Issued in Washington, DC on March 8, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 94–6105 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal

Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 10, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 13199.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 4652D

Docket No.: 23713.
Petitioner: SimuFlite Training International.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 3931I

Docket No.: 23921.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 5317D

Docket No.: 26577.
Petitioner: Jet Tech, Inc..
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2) and (3); 61.65(c), (e)(2), (e)(3) and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61.

Grant, February 28, 1994, Exemption No. 5377A

Docket No.: 26582.
Petitioner: Air Transport Association of America (ATA).
Sections of the FAR Affected: 14 CFR 61.3(a) and (c), 61.29(c), 61.3(a), 63.16(d), and 121.383(a)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5487 and amend the conditions/ limitations contained therein to continue to allow ATA member air carriers, and similarly situated part 121 air carriers, to establish special procedures that enable an operator to issue temporary confirmation of any required crewmember certificate, to its flight crewmember, based upon information contained in the operator's approved record system.

Grant, February 28, 1994, Exemption No. 5487A

Docket No.: 26646.
Petitioner: North American Airline Training Group (NAATG).
Sections of the FAR Affected: 14 CFR 63, appendix A, paragraph (a)(3)(iv)(a).
Description of Relief Sought: To allow NATTG's non-pilot flight engineer applicants enrolled in NAATG's flight engineer flight training course of instruction to reduce the required 5 hours of flight training in an airplane to not less than 2 hours of intensive flight training in an airplane, subject to certain provisions.

Grant, March 8, 1994, Exemption No. 5852

Docket No.: 27388.
Petitioner: North American Aircraft-Rockwell International Corporation.
Sections of the FAR Affected: 14 CFR 21.195(a).
Description of Relief Sought/ Disposition. To permit the petitioner to obtain experimental certificate for two prototype model DASA FR–06, Ranger airplanes for the purpose of conducting a market survey for the U.S. Air Force.

Grant, March 2, 1994, Exemption 5849

Docket No.. 27626.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow the petitioner to continue operating until November 30, 1994, six B727 aircraft that are not expected to be fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5853

Docket No.: 27587.
Petitioner: USAir.
Section of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow the petitioner to continue operating until February 26, 1995, 25 737–300/400 aircraft that are not expected to be fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5841

Docket No.: 27588.
Petitioner: Corporate Air.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought/ Disposition: To allow the petitioner to continue operating until November 30, 1994, Fokker F–27 600 aircraft that are owned by Federal Express and that are not expected to be fitted by May 26, 1994, with digital flight data recorders capable of simultaneously recording at least 11 flight parameters.

Denial, February 28, 1994, Exemption No. 5850

[FR Doc. 94–6106 Filed 3–15–94; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–94–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 25886, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 11, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 25886.

Petitioner: Washoe County Sheriff's Office.

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought/ Disposition: To Extend Exemption No. 5119 to continue to permit the petitioner to reimburse members of the Sheriff's Air Squadron for fuel, oil and maintenance costs that occur during official search missions.

[FR Doc. 94–6107 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 177 Ninth Meeting; Test Criteria and Guidance Relative to Portable Electronic Devices Carried On-Board Aircraft

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held April 7–8, starting at 9 a.m. The meeting will be held at the FAA Technical Center, Atlantic City, NJ. Assemble in the auditorium located adjacent to the lobby of the main Technical Center and Administration Building.

FAA contacts: Buzz Cerino (P) (609) 485–5640, James Aviles (P) (609) 485–5911.

The agenda for this meeting is as follows: (1) Observe a demonstration of the in-aircraft test procedures. Assemble in the main Technical Center and Administration Building auditorium; (2) Chairman's remarks; (3) Approval of the summary of the eighth meeting; (4) Presentations of subcommittees: (a) PED testing update (Cerino) (b) Susceptibility analysis and testing (Covell) (c) Aircraft testing logistics (Lloyd) (d) In-aircraft testing results (Waltho) (e) Report structure and assignments (Chairman); (5) Discussion of test results; (6) Work group break-out sessions, as needed; (7) New/other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 10, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–6108 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 172 Tenth Meeting; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHZ)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 172 meeting to be held May 10–13, starting at 9:30 a.m. (first day only). The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) WG1, VHF Communications System Recommendations, meets 1½ days. (Final WG meeting); (3) Plenary Convenes: (a) Approval of Summary of ninth meeting (b) Working Group 1 Report (c) Review of WG2's VHF Data Radio Signal-in-Space MASPS. Final Draft for full committee acceptance of the document (d) Task Assignments; (4) Other business; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Note: Specific Schedule

Tuesday, May 10 WGI (1½ Days)
Wednesday, May 11 (1300) Plenary*
Thursday, May 12 & 13 (0900) Plenary*

*Note Change from Previous Meeting Schedules.

Issued in Washington, DC, on March 10, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–6109 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application To Impose a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Cumberland, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Cumberland, Maryland.

SUMMARY: This correction amends information which was included in the previously published notice.

In notice document 94–2053 beginning on page 4311 in the **Federal Register** issue of Monday, January 31, 1994, under "supplemental information" the last sentence of the second paragraph should read "The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1994". The fourth paragraph should read "Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA form 1800–31".

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

Issued in Jamaica, New York on March 9, 1994.

Thomas Felix,

Grant-In-Aids Program Manager, Eastern Region.

[FR Doc. 94–6110 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Busch, Finance Manager, Metropolitan Airports Commission, at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Minneapolis-St. Paul Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 25, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Minneapolis-St. Paul Metropolitan Airports Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: August 1, 1994

Proposed charge expiration date: May 31, 1998

Total estimated PFC revenue: $113,408,100

Brief description of proposed project(s):

1. Airport Noise and Operations Monitoring System (ANOMS)
2. School Noise Abatement
3. Airside Electrical Modifications
4. Airfield Drainage Adjustments
5. HHH (International Terminal) Apron Blast Fence
6. Home Insulation/Home Buyouts—Part 150 Sound Insulation
7. Airfield Guidance Signage
8. Airside Bituminous
9. New Ford Town/Rich Acres Acquisition
10. Airport Security System Modifications
11. Apron Lighting Upgrade
12. Security Checkpoints Relocation (Lindbergh Terminal)
13. Pavement Rehabilitation
14. Lindbergh Terminal Chiller Replacement

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Minneapolis-St. Paul Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on March 8, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–6111 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. T84–01; Notice 32]

Final Passenger Motor Vehicle Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final theft data notice.

SUMMARY: This document publishes the final data on passenger motor vehicle thefts that occurred in calendar years 1990–1991. As provided in the Anti Car Theft Act of 1992, these data were used to determine the theft rates for existing passenger motor vehicle lines manufactured in model years 1990 and 1991 and to determine the median theft rate for all those lines. Vehicle lines with theft rates exceeding the median theft rate of 3.5826 per thousand vehicles produced, are subject to selection for coverage under the Theft Prevention Standard.

The purpose of this notice is to correct an error in the final passenger motor vehicle theft data for model years (MYs) 1990/1991 that were published on January 6, 1994 (59 FR 796) and to determine the new median theft rate effected by that correction.

EFFECTIVE DATE: These data apply to the 1990–1991 calendar years. The amendment made by this document is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street.

SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard. Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603 of the Cost Savings Act, as originally enacted, specified three categories of car lines that were high-theft lines within the meaning of Title VI. These three types were: existing lines that had a theft rate exceeding the median theft rate for calendar years (CYs) 1983–1984 (section 603(a)(1)(A)); new lines that were likely to have a theft rate exceeding that median theft rate (section 603(a)(1)(B)); and lines with theft rates below the median theft rate, but which had a majority of major parts interchangeable with lines whose theft rate exceeded or was likely to exceed the median theft rate (section 603(a)(1)(C)).

Section 603(b) of the Cost Savings Act provided that the median theft rate was the combined rate determined for CYs 1983–1984. Section 603(b) also set forth the equation NHTSA must use to determine the theft rates for each of the vehicle lines. After applying this equation to each existing line, NHTSA was directed by section 603(b) to rank the lines by theft rates to calculate the median theft rate.

In a **Federal Register** document of November 12, 1985 (50 FR 46666), NHTSA published the final theft data reflecting passenger motor vehicle thefts in CYs 1983–1984. In that document, NHTSA also explained how it decided on the data source to be used and how it calculated the final theft rates. Based on its calculations, NHTSA determined that the median theft rate for CYs 1983 and 1984 was 3.2712 thefts per thousand vehicles.

In calculating the final CY 1990–1991 theft rates, NHTSA followed the same procedures it used in calculating the 1983–1984 theft rates. In Table I of this document, the agency lists each of the 231 vehicle lines manufactured in model years 1990 and 1991 in descending order according to theft rate.

Suzuki notified the agency that it had inadvertently overlooked an additional 16,000 units produced for the Geo Metro for MY 1991. This notification was a result of Suzuki's request for reconsideration of a vehicle under the provisions of 49 CFR Part 542. By adding the missing 16,000 units for MY 1991 to the already reported production numbers, the theft rate for the Geo Metro changes from 3.7445 to 3.3979, shifting the position of the vehicle from number 108 of 231 vehicles to number 119.

Based on the data set forth in Table I, NHTSA has determined that the final median theft rate for MYs 1990 and 1991 be changed from 3.5866 to 3.5826 thefts per 1,000 vehicles produced. The final median is the theft rate ranked 116th (3.5826 thefts per thousand) in the table, according to the instructions in section 603(b)(2) of the Cost Savings Act.

If NHTSA has not previously determined the line to be high theft, each line shown in positions 1 through 115, inclusive, in Table I, will be subject to selection as a high-theft line. In selecting high-theft lines based on the 1990/91 median theft rate, NHTSA will follow the procedures it established in 49 CFR Part 542, Procedures for Selecting Lines To Be Covered By The Theft Prevention Standard, and provide affected manufacturers an opportunity to comment on NHTSA's preliminary determination that a line is high theft. Final selection by NHTSA will mean that the vehicles in these lines and their major replacement parts will have to be marked as specified in 49 CFR Part 541, The Federal Motor Vehicle Theft Prevention Standard, beginning with Model Year 1996.

Table III lists lines that have theft rates above the median theft rate of 3.5826 and have major parts interchangeable with those of lines that have theft rates below the median theft rate. The Geo Metro, Suzuki Swift, Ford Tempo and Mercury Topaz car lines have been deleted from Table III, reflecting a shift in vehicle positions caused by adding the missing production units of the Geo Metro car line. Additionally, the Chevrolet Lumina APV, Pontiac Transport APV and the Oldsmobile Silhouette APV which were inadvertently omitted from Table III have been added.

The following corrected list represents NHTSA's recalculation of theft rates for all 1990/1991 passenger motor vehicle lines. This list is only intended to inform the public of 1990/1991 motor vehicle theft experience and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2021 and 2023; delegation of authority at 49 CFR 1.50.

Issued on March 11, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
1 Ford Motor Co	Ford Mustang	1,545	2,085	115,821	91,479	17.5109
2 General Motors	GMC Jimmy S–15	276	1,048	18,257	61,794	16.5395
3 Honda	Prelude	379	555	29,708	29,785	15.6993
4 General Motors	Chevrolet Blazer S–10	946	2,825	56,080	192,680	15.1592
5 Nissan	Pathfinder	357	579	29,525	38,215	13.8175
6 Hyundai	Sonata	336	281	25,021	24,542	12.4488
7 Toyota	Supra	65	61	6,287	4,055	12.1833
8 General Motors	Oldsmobile Bravada	[illegible]	134	[illegible]	11,139	12.0298
9 Nissan	300ZX	449	229	38,882	18,502	11.8151
10 Volkswagen	Cabriolet	116	35	8,673	4,138	11.7867
11 Chrysler Corp	Jeep Cherokee	1,837	924	135,416	105,463	11.4622
12 Mazda	RX–7	107	77	10,560	7,800	10.0218
13 Alfa Romeo	164	0	19	0	1,947	9.7586

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
14 General Motors	Cadillac Brougham	295	257	32,052	25,731	9.5530
15 Mitsubishi	Mirage	448	364	60,150	30,019	9.0053
16 Chrysler Corp	Dodge Monaco	23	153	7,154	12,433	8.9856
17 Volkswagen	Golf/GTI	76	186	13,696	15,965	8.8331
18 General Motors	Cadillac Seville	305	206	32,346	25,916	8.7707
19 Chrysler Corp	Jeep Wrangler	397	392	46,874	44,891	8.5980
20 Porsche	911	31	48	4,609	4,818	8.3802
21 General Motors	Pontiac Grand AM	1,596	1,381	189,150	171,582	8.2527
22 Chrysler Corp	Lebaron Coupe/Convertible	469	341	58,837	39,749	8.2162
23 General Motors	Chevrolet Camaro	288	759	33,200	97,290	8.0236
24 Mitsubishi	Montero	144	108	16,403	15,959	7.7869
25 Ford Motor Co	Ford Probe	755	654	110,201	73,522	7.6692
26 Chrysler Corp	Town & County MPV	32	10	3,238	2,244	7.6614
27 General Motors	Chevrolet Corvette	168	139	22,034	18,510	7.5720
28 Toyota	4–Runner	521	340	72,138	46,263	7.2719
29 General Motors	Pontiac Bonneville	494	345	75,655	42,919	7.0758
30 Volkswagen	Jetta	337	329	47,731	48,091	6.9504
31 Volvo	780	7	2	945	363	6.8807
32 Suzuki	Sidekick	59	80	7,162	13,052	6.8764
33 General Motors	Pontiac Firebird	154	288	19,157	45,234	6.8643
34 Chrysler Corp	Dodge Shadow	537	500	71,088	81,211	6.8090
35 Mitsubishi	Pickup Truck	194	132	24,976	23,928	6.6661
36 Ford Motor Co	Lincoln Continental	396	368	62,657	52,103	6.6574
37 Suzuki	Samurai	42	31	5,782	5,417	6.5184
38 General Motors	Pontiac 6000	293	223	52,352	27,940	6.4265
39 General Motors	GEO Tracker	232	195	34,948	31,498	6.4263
40 Porsche	928	4	1	414	369	6.3857
41 Ford Motor Co	Lincoln Mark VII	120	71	21,658	8,898	6.2508
42 General Motors	Buick Skylark	509	482	83,666	75,811	6.2141
43 Chrysler Corp	Dodge Dynasty	500	768	94,510	112,320	6.1306
44 General Motors	Chevrolet C–1500	1,639	1,105	267,411	168,497	6.0884
45 Mitsubishi	Galant/Sigma	301	212	45,397	39,562	6.0382
46 Toyota	MR2	0	129	[D]	22,080	5.8424
47 BMW	3	143	138	21,556	26,839	5.8064
48 Chrysler Corp	Plymouth Acclaim	538	671	95,142	114,510	5.7667
49 General Motors	Buick Reatta	55	2	8,431	1,491	5.7448
50 Chrysler Corp	Dodge Spirit	415	584	79,054	94,895	5.7431
51 General Motors	GMC Sierra C–1500	531	273	89,021	52,079	5.6981
52 Chrysler Corp	Plymouth Sundance	432	236	60,517	56,820	5.6930
53 General Motors	GEO Prizm	1,021	489	170,272	95,000	5.6923
54 General Motors	Oldsmobile Cutlass Calais	494	417	88,229	74,045	5.6140
55 General Motors	Pontiac Sunbird	519	731	106,960	115,721	5.6134
56 Ford Motor Co	Ford Thunderbird	593	427	104,847	78,133	5.5744
57 BMW	5	126	101	23,871	17,016	5.5519
58 Chrysler Corp	New Yorker 5th Ave/Imperial	461	405	93,538	63,375	5.5190
59 Chrysler Corp	Plymouth Laser	257	141	45,141	30,720	5.2464
60 Nissan	240SX	301	190	60,582	34,534	5.1621
61 Mitsubishi	3000GT	0	51	[D]	9,903	5.1500
62 General Motors	Oldsmobile Cutlass Ciera	584	604	126,321	107,028	5.0911
63 Isuzu	Amigo	61	28	11,622	6,030	5.0419
64 General Motors	Pontiac Lemans	148	172	34,351	29,500	5.0117
65 Mazda	626/MX–6	530	448	96,966	100,436	4.9544
66 Nissan	Maxima	528	482	110,685	94,646	4.9189
67 General Motors	Buick Estate Wagon	37	0	7,524	0	4.9176
68 General Motors	Buick Century	497	649	123,893	110,767	4.8837
69 Chrysler Corp	Eagle Premier	55	71	14,277	11,630	4.8636
70 Ford Motor Co	Lincoln Town Car	602	666	142,648	119,046	4.8454
71 Alfa Romeo	Spider	2	8	915	1,154	4.8333
72 Chrysler Corp	Dodge Stealth	0	96	[D]	19,907	4.8224
73 Hyundai	Scoupe	[D]	165	[D]	34,305	4.8098
74 Mitsubishi	Eclipse	383	211	67,658	56,058	4.8013
75 Honda	Accord	1,833	2,151	410,915	425,360	4.7640
76 Ford Motor Co	Ford Escort	1,030	1,545	188,146	355,642	4.7353
77 General Motors	Chevrolet Cavalier	1,482	1,127	263,204	293,995	4.6823
78 Volkswagen	Corrado	49	12	11,041	2,072	4.6519
79 Nissan	Sentra	885	547	163,355	144,748	4.6478

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
80 Chrysler Corp	Dodge Daytona	186	69	37,884	17,286	4.6221
81 Honda/Acura	Legend	336	282	66,611	68,274	4.5817
82 Mercedes-Benz	129	19	50	5,413	9,797	4.5365
83 BMW	7	43	33	10,717	6,056	4.5311
84 Ford Motor Co	Mercury Cougar	335	280	76,580	60,669	4.4809
85 Hyundai	Excel	403	346	92,106	78,529	4.3895
86 General Motors	GEO Storm	370	343	73,376	89,996	4.3643
87 Mazda	B Series Pickup	323	269	70,866	65,585	4.3386
88 Toyota	Corolla/Corolla Sport	1,073	781	219,738	208,743	4.3269
89 Chrysler Corp	Jeep Wagoneer	53	10	10,928	3,702	4.3062
90 General Motors	Oldsmobile Delta 88 Royale	451	214	105,508	50,451	4.2639
91 Isuzu	Rodeo	[redacted]	123	[redacted]	28,953	4.2483
92 Ford Motor Co	Ford Tempo	999	734	218,976	189,747	4.2400
93 Chrysler Corp	Dodge Omni	69	[redacted]	16,481	0	4.1866
94 General Motors	Chevrolet Beretta	384	261	90,981	64,022	4.1612
95 General Motors	Buick Lesabre	593	387	152,967	83,677	4.1412
96 Nissan	Stanza	305	296	79,356	67,583	4.0901
97 Audi	Coupe Quattro	6	1	1,348	377	4.0580
98 Subaru	XT	0	7	12	1,725	4.0299
99 Chrysler Corp	Eagle Talon	117	125	28,064	32,096	4.0226
100 General Motors	Chevrolet Corsica	605	754	168,855	169,460	4.0170
101 Isuzu	Trooper/Trooper II	167	120	37,448	34,502	3.9889
102 Chrysler Corp	Lebaron Sedan	145	33	27,304	17,741	3.9516
103 General Motors	Cadillac Fleetwood/Deville	656	573	170,517	140,992	3.9453
104 Honda/Acura	Integra	479	267	109,321	80,333	3.9335
105 Toyota	Tercel	406	382	88,482	112,032	3.9299
106 Chrysler Corp	Plymouth Horizon	60	0	15,884	[redacted]	3.7774
107 General Motors	Chevrolet S–10 Pickup	349	1,271	72,784	358,397	3.7571
108 Ford Motor Co	Mercury Tracer	[redacted]	260	[redacted]	70,172	3.7052
109 Toyota	Camry	1,052	909	270,029	259,414	3.7039
110 Ford Motor Co	E150 Van	37	28	10,102	7,516	3.6894
111 General Motors	GMC Sonoma	101	306	21,165	90,222	3.6539
112 General Motors	Chevrolet Caprice	361	413	55,528	156,822	3.6449
113 General Motors	Chevrolet Lumina APV	223	180	72,089	38,551	3.6424
114 Chrysler Corp	Keep Comanche	45	19	10,681	7,063	3.6069
115 Ford Motor Co	Mercury Topaz	277	187	73,207	56,165	3.5866
116 General Motors	Oldsmobile 98/Touring	318	72	58,444	50,417	3.5826
117 Toyota	Celica	315	201	82,740	61,482	3.5778
118 Isuzu	Impulse	22	10	4,772	4,287	3.5324
119 General Motors	GEO Metro	250	337	74,557	98,197	3.3979
120 Mitsubishi	Wagon	6	[redacted]	1,791	[redacted]	3.3501
121 Nissan	Pickup Truck	460	408	129,951	131,144	3.3245
122 BMW	8	0	8	[redacted]	2,411	3.3181
123 Rover Group	Range Rover MPV	14	11	4,862	2,681	3.3143
124 Mercedes-Benz	201	42	45	9,247	17,033	3.3105
125 Mazda	323/Protege	297	212	74,316	79,948	3.2995
126 Isuzu	Stylus	0	49	[redacted]	14,919	3.2844
127 General Motors	Cadillac Allante	11	7	3,076	2,485	3.2368
128 Rover Group	Sterling 827	6	5	1,200	2,216	3.2201
129 Mitsubishi	Van	3	0	934	0	3.2120
130 General Motors	Pontiac Grand Prix	363	277	110,549	91,646	3.1653
131 Mazda	Navajo	0	38	[redacted]	12,080	3.1457
132 General Motors	Chevrolet Astro	290	429	123,394	105,795	3.1371
133 Mercedez-Benz	124	81	59	21,870	22,771	3.1361
134 General Motors	Oldsmobile Cutlass Supreme	361	267	109,288	91,770	3.1235
135 Daihatsu	Rocky MPV	24	5	7,514	1,883	3.0861
136 Ford Motor Co	Bronco II	166	0	54,988	[redacted]	3.0188
137 General Motors	Oldsmobile Toronado/Trofeo	38	29	14,480	7,831	3.0030
138 Chrysler Corp	Eagle Summit	40	41	9,595	17,626	2.9756
139 Ford Motor Co	Mercury Sable	278	264	93,126	89,349	2.9703
140 Suzuki	Swift	19	22	7,671	6,227	2.9501
141 Ferrari	Testarossa	1	1	426	255	2.9369
142 Toyota	Cressida	33	36	12,456	11,039	2.9368
143 Chrysler Corp	Dodge Caravan/Grant	709	506	234,609	182,675	2.9117
144 Jaguar	XJS	13	9	5,213	2,371	2.9608
145 General Motors	Pontiac Trans Sport APV	88	60	33,424	18,418	2.3548

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
146 Porsche	944	6	2	1,990	850	2.8169
147 General Motors	Oldsmobile Silhouette APV	57	68	28,103	16,322	2.8137
148 Mazda	MX–5 Miata	157	97	52,247	38,868	2.7877
149 General Motors	Oldsmobile Custom Cruiser	18	13	3,573	7,660	2.7597
150 Nissan	Infiniti M30	20	19	7,466	6,718	2.7496
151 Mercedes-Benz	126	64	60	21,030	24,128	2.7459
152 Honda	Civic	737	759	277,631	269,947	2.7320
153 Mazda	929	36	47	18,090	12,449	2.7178
154 Chrysler Corp	Chrysler's TC	11	3	3,536	1,636	2.7069
155 General Motors	Chevrolet Celebrity	79	0	29,271	0	2.6989
156 Toyota	Pickup Truck	437	457	159,842	178,940	2.6389
157 Ford Motor Co	Ford Crown Victoria	148	133	57,680	49,213	2.6288
158 General Motors	Cadillac Eldorado	53	45	21,764	15,895	2.6023
159 Chrysler Corp	Dodge Ramcharger	30	13	12,311	4,483	2.5604
160 Ford Motor Co	Ford Festiva	140	95	47,449	44,544	2.5545
161 Volvo	740	147	58	54,036	29,343	2.4587
162 Nissan	Axxess	44	0	17,994	182	2.4208
163 Ford Motor Co	Mercury Grand Marquis	160	193	70,633	75,861	2.4097
164 General Motors	Chevrolet Lumina	763	422	296,720	196,473	2.4027
165 General Motors	Chevrolet Sprint	1	0	233	187	2.3810
166 Chrysler Corp	Plymouth Voyager/Grand	513	301	197,977	144,534	2.3766
167 Chrysler Corp	Dodge Ram Wagon/Van B150	24	18	13,706	3,969	2.3762
168 Isuzu	Pickup	106	94	50,214	34,635	2.3571
169 General Motors	Buick Regal	148	274	53,561	126,701	2.3410
170 Chrysler Corp	Plymouth Colt/Colt Vista	26	50	12,183	20,681	2.3126
171 Ford Motor Co	Ford Taurus	716	635	309,211	278,485	2.2988
172 Volkswagen	Passat	42	36	17,426	16,567	2.2946
173 General Motors	GMC Safari	88	99	43,263	38,453	2.2884
174 Ford Motor Co	Ranger Pickup	566	599	217,160	243,697	2.2628
175 Ford Motor Co	Explorer	0	711	0	323,551	2.1975
176 Chrysler Corp	Dodge Colt/Colt Vista	23	58	13,743	23,813	2.1568
177 Nissan	Infiniti Q45	20	40	11,615	16,264	2.1522
178 General Motors	Buick Electra Park Avenue	184	131	46,360	100,702	2.1420
179 Volkswagen	Fox	58	15	24,714	10,425	2.0775
180 Volvo	240	80	45	35,580	25,561	2.0445
181 Volvo	940	0	29	0	14,249	2.0352
182 Ford Motor Co	F150 Pickup Truck	298	215	138,657	114,669	2.0251
183 Audi	80/90	24	1	9,168	3,224	2.0174
184 Toyota	Lexus ES250	32	43	19,561	17,643	2.0159
185 Ford Motor Co	Mercury Capri	0	70	0	35,407	1.9770
186 Jaguar	XJ6	24	23	15,172	8,995	1.9448
187 Chrysler Corp	Dodge Dakota Pickup	154	112	66,459	71,490	1.9282
188 Subaru	Legacy	154	141	88,873	64,200	1.9272
189 Honda/Acura	NSX	0	6	0	3,139	1.9114
190 Toyota	Lexus LS400	77	82	42,227	41,559	1.8977
191 Saab	900	32	23	14,574	15,437	1.8327
192 Ford Motor Co	Aerostar	303	279	169,574	150,579	1.8179
193 General Motors	Oldsmobile Cutlass Cruiser	16	13	8,891	7,163	1.8064
194 Volvo	760	17	0	9,515	0	1.7867
195 Mitsubishi	Precis	17	3	3,210	8,000	1.7841
196 Subaru	Loyale	68	36	32,994	25,904	1.7658
197 Nissan	Pulsar NX	2	0	1,168	0	1.7123
198 Daihatsu	Charade	23	4	12,447	3,732	1.6688
199 Toyota	Land Cruiser	3	0	1,921	0	1.5617
200 Nissan	Infiniti G20	0	25	0	16,132	1.5497
201 Toyota	Previa	0	126	0	81,426	1.5474
202 General Motors	Buick Riviera	29	25	21,982	12,956	1.5456
203 Mazda	MPV Wagon	57	82	47,852	47,107	1.4638
204 Audi	100/200	15	12	10,869	9,036	1.3564
205 Volkswagen	Vanagon	9	6	7,363	4,729	1.2405
206 General Motors	Saturn SL	0	49	0	39,867	1.2291
207 Peugeot	405	0	4	700	2,557	1.2281
208 Audi	V8 Quattro Sedan	4	0	2,911	542	1.1584
209 Subaru	Justy	10	10	9,552	8,999	1.0781
210 General Motors	Chevrolet Sportvan G–10	0	15	8,715	5,804	1.0331
211 General Motors	Buick Roadmaster	0	6	0	6,729	0.8917

TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
212 Nissan	NX Coupe	0	7	[illegible]	8,705	0.8041
213 Chrysler Corp	Dodge Ram Pickup	24	19	42,251	21,763	0.6717
214 General Motors	Saturn SC	0	6	0	10,298	0.5826
215 Saab	9000	10	13	20,675	24,195	0.5126
216 General Motors	GMC Rally Sportvan	0	2	3,092	1,620	0.4244
217 Yugo	GV/GVL/GVX/GVS	1	1	1,323	8,250	0.2089
218 Peugeot	505	0	[illegible]	2	654	0.0000
219 Lamborghini	Diablo	0	0	[illegible]	110	0.0000
220 Ferrari	F40	0	[illegible]	90	60	0.0000
221 Ferrari	348	0	0	377	240	0.0000
222 Rolls-Royce	SIL Spirit/Spur/Mulsa/Eight	0	[illegible]	399	505	0.0000
223 Nissan	Van	0	0	292	[illegible]	0.0000
224 Rolls-Royce	Corniche/Continental	0	0	162	141	0.0000
225 Aston Martin	Saloon/Vantage/Volante	0	0	2	40	0.0000
226 Rolls-Royce	Turbo R	0	0	340	207	0.0000
227 Lotus	Elan	0	0	[illegible]	159	0.0000
228 Lotus	Esprit	0	0	102	28	0.0000
229 Ferrari	Mondial	0	0	98	49	0.0000
230 Maserati	Spyder	0	0	31	4	0.0000
231 Maserati	430/228	0	0	31	[illegible]	0.0000

TABLE II—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.5826

Manufacturer	Make/model
BMW	8
Chrysler	Chrysler's TC
Ferrari	Mondial
Ford Mercury	Capri
General Motors:	
Buick	Riviera, Electra, Park Avenue, Regal
Cadillac	Eldorado, Allante
Chevrolet	Lumina
Oldsmobile	Cutlass Supreme, 98/Touring
Pontiac	Grand Prix
Saturn	Sports Coupe (SC)
Honda Acura	NSX
Isuzu	Impulse, Stylus
Jaguar	XJ6, XJS
Lotus	Elan
Mazda	MX–5 Miata, 929
Mercedes-Benz	124, 126, 201
Nissan Infiniti	M30, Q45
Peugeot	405
Rover Group	Sterling
Saab	900, 9000
Toyota	Cressida, Celica
Lexus	ES250, LS400
Volkswagen, Audi	100/200/S4

TABLE III.—VEHICLES THAT FELL BELOW THE MEDIAN THEFT RATE AND ARE INTERCHANGEABLE WITH LINES THAT FELL ABOVE THE MEDIAN THEFT RATE

Manufacturer	Theft rate
Chrysler:	
Chrysler Town and Country (MPV)	7.6614
Dodge Caravan/Grand (MPV)	2.9117
Plymouth Voyager/Grand (MPV) (Interchangeable with Chrysler Town and Country MPV)	2.3766
General Motors:	
Chevrolet Caprice	3.6449
Chevrolet Lumina APV (Interchangeable with Pontiac Transport APV and Oldsmobile Silhouette APV)	3.6424
Pontiac Transport APV	2.8548
Oldsmobile Silhouette APV	2.8137
Buick Roadmaster (Interchangeable with Chevrolet Caprice)	0.8917
Nissan:	
Pathfinder (MPV)	13.8175
Pickup Truck (LDT) (Interchangeable with Pathfinder MPV)	3.3245
Toyota:	
4-Runner (MPV)	7.2719
Pickup Truck (LDT) (Interchangeable with 4-Runner MPV)	2.6389

[FR Doc. 94–6097 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorization by 38 U.S.C. 3121, will be held on April 17, 18, and 19, 1994 in Washington, DC. The committee will meet from 10 a.m. to 3 p.m. on April 17, from 9 a.m. to 4 p.m. on April 18, and from 9 a.m. to 12 noon on April 19, 1994. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public to the seating capacity of the meeting room. Due to changes in the location of the meeting area each day, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to April 14, 1994. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3 p.m. on April 18, 1994.

Dated: March 7, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–6120 Filed 3–15–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 51

Wednesday, March 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, March 24, 1994, 9 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, N.W., Washington, DC.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-third Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of Solicited Grants, and Selection of the 1994–1995 Jennings Randolph Fellows.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: March 14, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94–6247 Filed 3–14–94; 2:28 pm]

BILLING CODE 3155–01–M

federal register

Wednesday
March 16, 1994

Part II

Environmental Protection Agency

40 CFR Part 60 et al.
National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–4846–7]

RIN 2060–AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 11, 1993, the EPA proposed General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). This action announces the EPA's final decisions on the General Provisions.

The General Provisions, located in subpart A of part 63, codify general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the Act. Standards for individual source categories are being developed separately, and they will be codified in other subparts of part 63. When sources become subject to standards established for individual source categories in other subparts of part 63, these sources also must comply with the requirements of the General Provisions, except when specific General Provisions are overridden by the standards.

This action also amends subpart A of parts 60 and 61 to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: *Effective Date.* March 16, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these General Provisions is approved by the Director of the Office of the Federal Register as of March 16, 1994.

ADDRESSES: *Docket.* Docket No. A–91–09, containing information considered by the EPA in developing the promulgated General Provisions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated General Provisions may be obtained from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650. Please refer to "General Provisions for 40 CFR Part 63, Background Information for Promulgated Regulation" (EPA–450/3–91–019b). The BID contains: (1) a summary of the public comments made on the proposed General Provisions and responses to the comments and (2) a summary of the changes made to the General Provisions as a result of the Agency's responses to comments that are not addressed in this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5256.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
II. Summary of Major Changes Since Proposal
III. Public Participation
IV. Significant Comments and Changes to the Proposed General Provisions
  A. Applicability Determinations
  B. Potential to Emit
  C. Relationship of General Provisions to Other Clean Air Act Requirements
  D. Monitoring and Performance Testing Requirements
  E. Construction and Reconstruction
  F. Operation and Maintenance Requirements: Startup, Shutdown, and Malfunction Plans
  G. Recordkeeping and Reporting Requirements
V. Administrative Requirements

I. Background

Section 301 of title III of the Clean Air Act Amendments of 1990, Public Law 101–549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 HAP listed in or pursuant to section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of part 63. In order to eliminate the repetition of general information and requirements within these subparts, General Provisions that are applicable to all sources regulated by subsequent standards in part 63 have been developed. The General Provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The General Provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Finally, the EPA is promulgating amendments to the General Provisions for parts 60 and 61 to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the part 63 General Provisions.

Owners or operators who are subject to a subpart promulgated for a specific source category under sections 112(d), 112(f), or 112(h) of the Act are also subject to the requirements of the General Provisions. The General Provisions also will be incorporated, as appropriate, into requirements established under other section 112 authorities (e.g., the early reduction program and case-by-case control technology determinations). Nevertheless, in the development of a part 63 emission standard applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the General Provisions. When this occurs, the EPA will describe in the subpart exactly

which requirements of the General Provisions are applicable to the specific source category and which requirements have been overridden. If there is a conflict between a specific requirement in the General Provisions and a specific requirement of another subpart in part 63, the specific requirement of the subpart will supersede the General Provisions.

II. Summary of Major Changes Since Proposal

In response to comments received on the proposed General Provisions, numerous changes have been made in the final rule. A significant number of these are clarifying changes, designed to make the Agency's intent clearer as requested by commenters. In addition, many changes have been made in the final rule wherever reasonable to reduce the paperwork burden on sources affected by part 63 NESHAP and on State agencies that will implement part 63 NESHAP once they have been delegated the authority to do so.

Substantive changes made since proposal which have a broad impact on the regulated community that will be subject to the General Provisions are summarized in this section of the preamble. These, and other substantive changes made since proposal, are described in more detail in the following sections. The Agency's responses to public comments that are not addressed in this preamble and a summary of resulting changes in the final rule are contained in the BID for this final rulemaking (see **ADDRESSES** section of this notice).

Many comments were received on the timing and content of notifications and other reports required by the General Provisions and on recordkeeping requirements. Comments from owners or operators of facilities potentially subject to part 63 standards (and the General Provisions) generally asked for more time to prepare submittals than allowed in the proposed rule and for a reduction in the amount of information that must be recorded or submitted. State and local agencies that will be implementing the rule expressed concern about the timing and volume of information that would be submitted to them and about their ability to respond to these submittals. These agencies also requested flexibility in implementing requirements of the General Provisions.

The Agency made significant changes in the final rule from the proposed rule in response to these comments. These changes significantly reduce the burden on owners and operators but also recognize the need that enforcement agencies have for timely and adequate information to assess compliance with emission standards and other requirements established under section 112 of the Act. These significant changes are discussed below.

Initial Notification

Under § 63.9(b) of the General Provisions, when a relevant part 63 standard is promulgated for a source category, owners or operators of sources that are subject to the standard must submit a notification. In the final rule, the time period allowed for submission of the initial notification has been extended from 45 days to 120 days. Also, the information required to be submitted with the initial notification has been reduced greatly.

Requests for Compliance Extensions

Changes were made from proposal to § 63.6(i), which deals with compliance extension requests, to increase the allowable times for Agency review and for owners or operators to provide additional information. The EPA also added provisions to the final rule, pursuant to section 112(i)(6) of the Act, that establish procedures for a source to request a compliance extension if that source has installed best available control technology (BACT) or technology to meet a lowest achievable emission rate (LAER).

Excess Emission Reports

A major change was made in the recordkeeping and reporting requirements concerning the need for, and frequency of, quarterly excess emissions reports. In the proposed rule, if continuous monitoring systems (CMS) data were to be used for direct compliance determinations, a quarterly report on excess emissions or parameter monitoring exceedances was required in § 63.10(e)(3), even if there were no occurrences of excess emissions or exceedances during that reporting period ("negative reporting"). In the final rule, as long as there are no occurrences of excess emissions or parameter monitoring exceedances, semiannual reporting is sufficient. In addition, the procedures for an affected source to reduce the frequency of required reports have been clarified in the final rule.

Performance Tests and Performance Evaluations

The performance test deadline specified under § 63.7(a)(2) was extended from 120 days to 180 days after a source's compliance date. Similarly, the § 63.7(b) requirement to provide notice of the date of the performance test was reduced from 75 days to 60 days before the test. Observation of the test by the EPA (or the delegated State agency) is intended to be optional, and this section was revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS), to allow a 60-day notification period rather than a 75-day period. Also, § 63.7(g) was revised to allow sources 60 days, instead of 45 days, to submit the required performance test results to the enforcing agency.

A major comment related to performance tests concerned the proposed requirement that sources submit site-specific performance test plans to the Administrator for review and approval before a required performance test is conducted. This requirement has been changed in the final rule such that the test plan must be developed and made available for review, but it does not need to be submitted for approval prior to a required performance test unless it is requested by the EPA or delegated State agency. A similar change has been made in the final rule regarding the development and submittal of site-specific performance evaluation test plans under § 63.8(d).

Some commenters expressed confusion regarding the distinction between performance tests and performance evaluations, and the EPA has added definitions of "performance test" and "performance evaluation" to the final rule to respond to this confusion. In addition, the Agency has defined the phrase "representative performance" in the final rule for the purpose of clarifying the conditions for conducting performance tests.

Finally, the EPA clarified the situation when a final standard is more stringent than a proposed standard and when a source would be allowed to (1) conduct an initial performance test to demonstrate compliance with the proposed standard and a second test to demonstrate compliance with the final standard or (2) conduct an initial performance test to demonstrate compliance with the final standard.

Startup, Shutdown, and Malfunction Plan

Commenters generally objected to the level of detail they perceived to be required in the startup, shutdown, and malfunction plan (§ 63.6(e)). The intent and purpose of the plan is explained further in section IV.F.1 of this preamble and clarifying changes have been made in the rule. Specifically, the rule has been revised to delete the requirement for "step-by-step" procedures. Numerous comments were

received relating to the timing and circumstances of reports of deviations from a source's plan. In response to the commenters' concerns, the EPA has revised the rule to require reporting of actions that are "not consistent" (rather than "not completely consistent") with the plan. The Agency also has increased the time period for sources to provide "immediate" reports of these actions from 24 hours to 2 working days. The follow-up report is required within 7 working days.

Other Changes to Reporting and Recordkeeping Requirements

The final rule includes provisions for EPA Regional Offices to waive the duplicate submittal of notifications and reports at their discretion. Also, the requirements relating to negotiated schedules (i.e., "mutual agreement provisions") were revised from proposal to more clearly reflect implementing agencies' prerogatives to comply with the schedules outlined in the General Provisions. Finally, a recordkeeping requirement has been added (in § 63.10(b)(3)) for owners and operators of area sources to maintain a record of the determination of their area source status when this determination is necessary to demonstrate that a relevant standard for major sources does not apply to them.

There were also significant changes in other areas of the rule from proposal. These are summarized below.

Monitoring

Several comments concerned the relevance and applicability of the part 63 monitoring provisions to related monitoring provisions contained in other parts (e.g., parts 60, 61, 64, and 70), as well as the relationship between monitoring provisions in the General Provisions and those in other subparts of part 63. The EPA has provided additional clarification and made changes to specific provisions as a result of these comments.

Repair Period for Continuous Monitoring Systems (CMS)

The Agency also received many comments on the proposed 7-day repair period for CMS. After consideration of these comments, the EPA revised § 63.8(c)(1) of the rule to distinguish between routine and nonroutine CMS malfunctions. The final rule requires the immediate repair of "routine" CMS failures. In addition, the owner or operator will be required to identify these routine malfunctions in the source's startup, shutdown, and malfunction plan. Nonroutine failures of the CMS must be reported and repaired within 2 weeks after commencing actions inconsistent with the plan unless circumstances beyond the owner or operator's control prevent the timely repair or replacement of the CMS.

Construction and Reconstruction

Many comments were received regarding the administrative procedures for reviewing and approving plans for construction or reconstruction, and several changes were made to the rule in response to these comments. At the request of State and local agencies, the EPA has deleted the provision in § 63.5(c) that allowed an owner or operator to request that the implementing agency prereview construction or reconstruction plans. In addition, the final rule has been revised to allow owners and operators of new or reconstructed major affected sources greater discretion in the timing of submitting applications for approval of construction or reconstruction. The final rule requires that these applications be submitted "as soon as practicable" before the construction or reconstruction is planned to commence, rather than 180 days in advance, as was proposed. The Agency also revised the definition of reconstruction and the ensuing requirements for a reconstructed source to clarify their applicability. The Agency received several comments regarding reconstruction determinations, especially where a source has installed control devices to meet emission standards established for existing sources. In response, the Agency has explained its policy on these issues and clarified that it is not the Agency's intent to penalize sources that make changes to comply with existing source maximum achievable control technology (MACT) requirements by subjecting them to new source MACT requirements to which they otherwise would not be subject.

Applicability

The rule has been revised in several places to clarify the applicability of the General Provisions. Revisions were made to § 63.1 of the rule to clarify that a source that is subject to any part 63 standard or requirement is also subject to the requirements of the General Provisions unless otherwise specified in the General Provisions or the relevant standard. Provisions have been added to address two situations related to major and area source determinations. As noted earlier, the Agency added a recordkeeping requirement in the final rule to require sources that determine they are not subject to a relevant standard to keep a record of their applicability determination. The EPA also added provisions in the final rule to address compliance dates for unaffected area sources that increase their emissions such that they become major sources that are subject to part 63 NESHAP.

Separate Rulemaking on Potential to Emit

Under section 112, the determination of whether a facility is a major source or an area source is made on the basis of the facility's "potential to emit" HAP, "considering controls." This is an important determination, because different requirements may be established in a part 63 standard for major and area sources, and area sources in a source category may not be regulated by some standards. The EPA's intended policy for implementing "potential to emit considering controls" was reflected in the definition proposed in § 63.2 of the General Provisions for the term "potential to emit." The proposed definition included the requirement that, for a physical or operational limitation on HAP emissions (including air pollution control devices) to be considered to limit a source's potential to emit for the purposes of part 63, the limitation or the effect it would have on emissions must be federally enforceable. A definition of "federally enforceable" was also proposed.

Many comments were received on the topic of potential to emit. As discussed later in this preamble, consistent with past Agency policies on potential to emit, the EPA has retained in today's final rule the same definition of potential to emit that was proposed. However, substantive issues were raised by commenters on the mechanisms and timeframe available for establishing the Federal enforceability of potential to emit limitations that went beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions.

Because of this, and because of the importance of potential to emit to determining the applicability of part 63 standards and other requirements, the Agency is planning to propose a separate rulemaking to address several specific potential to emit issues. This separate notice of proposed rulemaking, which will appear in the near future in the **Federal Register**, would amend the General Provisions to provide mechanisms for validating limits on sources' potential to emit HAP until permanent mechanisms for creating HAP potential to emit limits are in place in States. In addition, this separate rulemaking would specify deadlines by

which major sources of HAP would be required to establish the Federal enforceability of limitations on their potential to emit in order to avoid compliance with otherwise applicable emission standards or other requirements established in or under part 63.

The EPA will take final action on this separate proposal after receiving and considering public comments. Until the Agency takes final action on the proposal, any determination of potential to emit made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions promulgated today.

Cross Referencing in the Rule

Cross-references to other parts (e.g., regulations in part 71 establishing a Federal operating permit program) or subparts (e.g., subpart C, the list of hazardous air pollutants) were included in the proposed General Provisions as a convenience to inform readers where they may locate other general information. At present, no rules have been proposed or promulgated in either subpart C or in part 71. Consequently, these cross-references have been removed from the General Provisions.

III. Public Participation

Prior to proposal of the General Provisions, interested parties were advised by public notice in the **Federal Register** (56 FR 54576, October 22, 1991) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the draft General Provisions. That meeting was held on November 19–21, 1991. In addition, a status report on the General Provisions was presented to the NAPCTAC during the Committee's November 17–18, 1992 meeting. Both meetings were open to the public and each attendee was given an opportunity to comment on the draft General Provisions. In addition, numerous meetings and correspondence occurred between the Agency and representatives from affected industries, environmental groups, and State and local agencies during the process of drafting the proposed General Provisions. Documentation of these interactions can be found in docket A–91–09.

The proposed General Provisions were published in the **Federal Register** on August 11, 1993 (58 FR 42760). The preamble to the proposed General Provisions discussed the availability of the proposal BID ("General Provisions for 40 CFR part 63, Background Information for Proposed Regulation" (EPA–450/3–91–019)), which provides an historical perspective on precedents set by the EPA in implementing similar General Provisions under the pre-1990 Act. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The public comment period officially ended on October 12, 1993. A public hearing was not requested; however, seventy-one comment letters were received. The comments were carefully considered, and where determined to be appropriate by the Administrator, changes were made in the final General Provisions.

IV. Significant Comments and Changes to the Proposed General Provisions

Comments on the proposed General Provisions were received from industry, State and local air pollution control agencies, Federal agencies, trade associations, and environmental groups. A detailed discussion of comments and the EPA's responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The major comments and responses are summarized in this preamble.

A. Applicability Determinations

1. Overview

Sections 112 (c) and (d) of the amended Act require the EPA to list and establish emission standards for major and area sources of the HAP that are listed in or pursuant to section 112(b). A list of categories of sources emitting listed HAP was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Each standard developed by the EPA for a source category (referred to as a "relevant standard" or a "source category-specific standard") will be proposed for public comment in the **Federal Register** and when it is finalized, it will be codified in a subpart (or multiple subparts) of part 63.

Each standard promulgated for a source category will apply to major sources of HAP that contain equipment or processes that are defined and regulated by that standard. Area sources of HAP also may be subject to the standard if an area source category has been listed and the standard specifies that it applies to area sources. Each standard will include requirements for new and existing sources.

The determination of whether a source is a major source or an area source is made on the basis of its "potential to emit" HAP. In general, sources with a potential to emit, considering controls, 10 tons per year or more of any one listed HAP or 25 tons per year or more of any combination of listed HAP are major sources. For the purposes of implementing section 112, the major/area source determination is made on a plant-wide basis; that is, HAP emissions from all sources located within a contiguous area and under common control are considered in the determination, unless specific provisions elsewhere in section 112 (e.g., for oil and gas wells under section 112(n)(4)) override this general rule.

More than one source category on the EPA's source category list may be represented within a plant that is a major source of HAP. This will be the case, for example, at a large chemical manufacturing complex. The major source determination will be made on the basis of HAP emissions from all emission sources within the complex. However, there could be many operational units within the complex, with each unit producing a different petroleum or chemical product or intermediate. The EPA source category list defines many categories on the basis of product produced (e.g., polyether polyols production, chlorine production). Standards for each of these categories will be developed in separate rulemakings. The EPA believes that Congress intended that all portions of a major source be subject to MACT regardless of the number of source categories into which the facility is divided. Thus, the EPA will set one or more MACT standards for a major source, and sources within that major source will be covered by the standard(s), regardless of whether, when standing alone, each one of those regulated sources would be major.

As described earlier (as well as in the preamble to the proposed General Provisions), the General Provisions promulgated with this rulemaking are intended to bring together in one place (subpart A of part 63) those general requirements applicable to all owners and operators who must comply with standards established for the listed source categories. The General Provisions for part 63 contain provisions that are common to relevant standards such as definitions, and requirements for initial notifications, performance testing, monitoring, and reporting and recordkeeping. The establishment of General Provisions for part 63 standards eliminates the need to repeat common elements in each source category-specific standard. It is also consistent with the approach taken previously by the EPA in developing and implementing new source performance standards (NSPS) under section 111 of the Act and NESHAP

under section 112 of the Act before the 1990 Clean Air Act Amendments. General Provisions for these programs are contained in subpart A of part 60 and subpart A of part 61, respectively.

The basic approach in the General Provisions promulgated today for determining applicability (i.e., who is subject to these requirements) is the same as was proposed. That is, applicability of the General Provisions is determined by the applicability of relevant source category-specific standards promulgated in other subparts of part 63. Each owner or operator who is subject to a relevant source category-specific standard in part 63 is also subject to the General Provisions, except when the standard specifically overrides a specific General Provisions requirement. Section 63.1(b) of the final General Provisions, addressing initial applicability determinations for part 63, has been revised to clarify this approach for determining applicability. Section 63.1(b)(1) of the proposed rule stated that the owner or operator of any stationary source that is included in the most up-to-date source category list and that emits or has the potential to emit any HAP is subject to the provisions of part 63. The reference to the source category list has been removed from the final rule, and a paragraph has been added specifying that part 63 provisions apply to any stationary source that "emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act and is subject to any standard, limitation, prohibition or other federally enforceable requirement established pursuant to [part 63]." This clarifies that belonging to a listed category of sources alone does not render a source subject to the provisions of part 63; rather, the source must be subject to a part 63 standard or other requirement.

The term "affected source" is established and used in the General Provisions to designate the specific "source," or group of "sources," that is subject to a particular standard. This term is analogous to the term "affected facility" used in NSPS. Affected sources will be defined explicitly in each part 63 standard promulgated for a source category or established for a source on a case-by-case basis. The individual pieces of equipment, processes, production units, or emission points that will be defined as affected sources subject to emission limits or other requirements under that relevant standard will be determined in the development of the standard for the source category or the source. An affected source within a source category could be defined, for example, as a storage tank with greater than a specified capacity and containing organic liquids with greater than a specified vapor pressure. Within a major source, any individual "source" or group of "sources" that meets the definition of affected source in a relevant standard would be subject to the requirements in the standard for major sources.

In general, the timing of applicability (i.e., when does an owner or operator become subject to the General Provisions) is determined by when a relevant source category-specific standard is promulgated. The effective date for standards promulgated under sections 112(d), 112(h), and 112(f) of the Act is the date of promulgation. On the date of promulgation of a relevant source category-specific standard, the General Provisions also become applicable to owners or operators subject to the standard for the source category.

The EPA received numerous comments relating to various definitions of "source," how these definitions relate to one another, and how they determine which portions of a HAP-emitting industrial (or commercial) facility will be regulated by emission standards or other requirements under amended section 112. Some of these comments agreed with the EPA's proposed approach to defining these terms, some suggested alternative approaches, and many requested clarification on these topics. Major comments and the EPA's responses on the definitions of "major source" and "area source," and on the definition of "affected source," are discussed below. Comments on the relationship of the General Provisions to relevant source category-specific standards are discussed in section IV.C.1. Additional responses to comments relating to applicability of the General Provisions are included in the promulgation BID.

2. Definitions of Major Source and Area Source

Several commenters noted that the discussion in the proposal preamble on "major source," as defined in the proposed rule, suggests inclusion of all stationary sources located on contiguous or adjacent property. These commenters argue that the EPA's interpretation goes beyond the statutory definition of major source in section 112(a)(1), which does not use the term "adjacent." Another commenter stated that adding "adjacent" to the definition adds uncertainty to applicability determinations.

The EPA disagrees with these commenters. First, the use of the term "adjacent" is consistent with the language of the statute. The common dictionary definition of "contiguous" consists, in part, of "nearby, neighboring, adjacent." On this basis, the EPA has historically interpreted "contiguous property" to mean the same as "contiguous or adjacent property" in the development of numerous regulations to implement the Act. Under this approach, the physical relationship of emission units to production processes is irrelevant if the units are adjacent geographically and under common ownership or control.

This approach clarifies, that as a practical matter, the fact that all property at a plant site may not be physically touching does not mean that separate plant sites exist. For example, it is common for a railroad right-of-way or highway to cut across a plant site. However, this does not create two separate plant sites. To claim that it does would be an artificial distinction, and it is contrary to the intent of the statutory definition of major source.

Many commenters asserted that the definition of "major source" in the General Provisions should include reference to standard industrial classification (SIC) codes as was done in the part 70 permit program regulations implementing title V of the Act. However, other comments were received that supported the proposed definition of "major source" and expressed concern that the EPA might adopt the title V approach to defining "major source" which, according to one commenter, would be inconsistent with the definition in section 112(a)(1) of the Act.

The EPA believes that, because Congress included a definition for "major source" in section 112 that does not include reference to SIC codes, Congress intended that major sources of HAP would encompass entire contiguous (or adjacent) plant sites without being subdivided according to industrial classifications. The separation of HAP emission sources by SIC code would be an artificial division of sources that, in reality, all contribute to public exposure around a plant site.

Furthermore, because of the different objectives of section 112 and title V of the Act, and because section 112 contains its own definition, the definition for "major source" in part 63 need not be identical to the definition for "major source" currently promulgated in part 70. The EPA believes that the definition for major source adopted in the General Provisions is appropriate for implementing section 112. The EPA will consider whether changes to the

definition of major source in part 70, as it relates to section 112, are appropriate. If the EPA concludes that such changes are needed, the EPA will propose changes to part 70 and take comment before reaching a final decision in the **Federal Register**.

Comments were received that the definition of "area source" should be changed to "affected area source." Also, commenters suggested that the definitions of "major source" and "area source" should be revised to refer to emission units or groups of similar emission units that are in a specific category of major sources located within a contiguous area under common control and to clarify that area sources are not affected by NESHAP established for major sources.

The EPA believes that it is more appropriate and less confusing to define "major source" and "area source" consistent with the definitions in section 112(a) of the Act. Nonetheless, for the purposes of implementing section 112, consistent with the applicability discussion above, "area sources" may be further divided into affected area sources and unaffected area sources. An affected area source would be a plant site that is not a major source but is subject to a relevant part 63 emission standard that regulates area sources in that source category.

One commenter requested that the EPA address the issue of a compliance date for area sources that increase their emissions (or potential emissions) such that they become major sources and therefore subject to a relevant standard. The commenter said that this was a particular concern in situations where the area source has not obtained a construction permit.

The commenter is correct that the proposed General Provisions did not address area sources that subsequently become major sources and therefore subject to a relevant standard. Sections 63.6(b)(7) and (c)(5) have been added to the final rule to address this situation.

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. An unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources. These compliance periods apply to area sources that become affected major sources regardless of whether the new or existing area source was previously affected by that standard.

3. Definition of Affected Source

The EPA received numerous comments on the usefulness of the term "affected source," in response to the Agency's specific request for comments on this term in the proposal preamble. Comments were received that supported the Agency's proposed use of "affected source," and others offered suggestions for changes or clarifications.

Some commenters stated that it is not clear how inclusive "affected source" is meant to be. For example, does it collectively cover all equipment associated with the source category?

Some commenters argued that the definition of "affected source" in the General Provisions should be narrow, encompassing as few emission points as possible. Others argued for a broad definition consistent with the EPA's policy on defining the "affected source" during the development of specific NESHAP.

Several commenters suggested terms as alternatives to "affected source." Terms suggested included "part 63 source" and "regulated source." Commenters claimed that alternative terms would be more appropriate and would reduce confusion about the applicability of a variety of EPA regulations including NESHAP under part 61 and the title IV acid rain regulations.

After a review of the suggestions made by commenters, the EPA decided to retain the term "affected source" in the final rule. No comments were received that disputed the need for a separate term to designate the units that are subject to requirements in a source category-specific standard. Further, the EPA did not find any of the arguments for alternative terms compelling. For example, commenters did not make it clear how the use of a term such as "regulated source" would be more descriptive and less confusing than "affected source."

Nevertheless, the EPA has endeavored to address any confusion that might arise on a case-by-case basis. For example, the EPA has revised the definition for the term "affected source" in part 63 to note that it should not be confused with the same term used in title IV of the Act and the rules developed to implement title IV, the acid rain provisions. Despite this revision, the Agency believes States may wish to draw a distinction in their regulations to implement the title V permit program and in individual sources' title V permits in order to avoid the possibility of confusion between the term affected source as used in part 63 and the term affected source as used in the title IV regulations. For example, the Agency believes it may be appropriate in some instances for State permitting authorities, when dealing with sources affected by both title IV and part 63 requirements, to refer to sources affected by part 63 as "part 63 affected sources."

With regard to those comments that requested narrow or broad definitions of the term "affected source," the EPA believes these comments would be addressed more appropriately in the context of rulemakings that will establish standards for individual source categories. The General Provisions merely define a term, "affected source," that refers to the collection of processes, equipment, or groups of equipment that will be defined in each relevant standard under part 63 (including case-by-case MACT standards or "equivalent emission limitations") for the purposes of defining the scope of applicability of that standard. Consistent with the approach of using the nonspecific term "affected source," the EPA believes it is inappropriate for the General Provisions rule to restrict in advance the definition of the affected source that may be developed for the purposes of regulation by a particular standard established under part 63.

B. Potential to Emit

The EPA received many comments on the definition of potential to emit that appeared in the proposed General Provisions. Many of these comments questioned the appropriateness of considering only federally enforceable controls or limitations in determining a source's potential to emit. The commenters suggested that all operational controls or limitations or, alternatively, all legally enforceable controls or limitations, should be considered in determining potential to emit, not just federally enforceable ones. One commenter further suggested that all physical or operational limitations that keep a source below the major source threshold are effectively federally enforceable, as any operation with HAP emissions above the threshold values would violate the title V permit and MACT standard

compliance requirements for major sources.

The Agency believes that these comments are similar in all relevant respects to arguments the Agency already has considered and responded to in a previous rulemaking that dealt with the Federal enforceability of emissions controls and limitations at a source. For a thorough discussion on this topic, see "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules" that appeared in the **Federal Register** on June 28, 1989 (54 FR 27274). (A copy of this notice has been included in the docket for this rulemaking.) After careful consideration during that rulemaking, the EPA decided to retain the requirement for Federal enforceability. At this time, the Agency sees no reason to rescind its decisions described in the June 28, 1989 **Federal Register** notice. On the contrary, the Agency here is affirming the relevance of the Federal enforceability requirements set forth in the June 28, 1989 notice in the context of determinations of major source status under the new Federal air toxics program.

In the context of implementing the air toxics program under amended section 112, the purposes of the Federal enforceability requirements are as follows: (1) To make certain that limits on a source's capacity are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability (i.e., the Federal government) has legal and practical means to make sure that such commitments are actually carried out; and (3) to support the goal of the Act that the EPA should be able to enforce all relevant features of the air toxics program as developed pursuant to section 112. The Agency continues to believe that, if sources may avoid the requirements of a Federal air pollution control program by relying on State or local limitations, it is essential to the integrity of the National air toxics program that such limitations be actually and effectively implemented. Thus, Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice. Further, Federal enforceability is needed to back up State and local enforcement efforts and to provide incentive to source operators to ensure adequate compliance. Federal enforceability also enables citizen enforcement under section 304 of the Act.

Thus, in the final General Provisions rulemaking, the Agency is retaining the existing Federal enforceability requirement in the definition of potential to emit for the purposes of implementing section 112 of the Act as amended in 1990.

In the June 28, 1989 **Federal Register** notice, the EPA established that, to be federally enforceable, emission limitations established for a source must be practicably enforceable. To be practicably enforceable, the limitations or conditions must ensure adequate testing, monitoring, recordkeeping, and reporting to demonstrate compliance with the limitations and conditions. Restrictions on operation, production, or emissions must reflect the shortest practicable time period (generally one month). "Blanket" emission limitations such as calendar year limits (e.g., tons per year) are not considered practicably enforceable. In contrast, hourly, daily, weekly, or monthly rolling averages generally are considered acceptable.

Many of the comments requesting that the EPA credit controls that are not federally enforceable in the potential to emit determination were based on a concern over the limited mechanisms available by which emission controls can qualify as federally enforceable. For example, although the EPA will consider terms and conditions in a permit issued under title V of the Act to be federally enforceable, approved State title V permit programs are not yet in place. This effectively limits the mechanisms available to sources subject to early MACT standards. Comments were also received requesting further clarification on how the Agency's potential to emit policy would be implemented, and on how this policy could be implemented with the least burden on both States and affected sources.

As noted earlier in this preamble, the EPA is preparing a separate notice of proposed rulemaking to address potential to emit issues. This notice will propose for public comment a thorough discussion on the Agency's policy with regard to implementing potential to emit in the air toxics program. Among other actions, this rulemaking would amend the General Provisions to provide an interim mechanism for controls to qualify as federally enforceable for HAP until permanent mechanisms are in place. The Agency will consider comments on this proposal and take final action on an expedited schedule.

C. Relationship of General Provisions to Other Clean Air Act Requirements.

1. Relationship to Individual NESHAP.

The promulgated General Provisions to part 63 are applicable to all source categories that will be regulated by part 63 NESHAP. Emissions of HAP from all listed source categories eventually will be regulated by NESHAP pursuant to section 112 of the Clean Air Act Amendments of 1990. The General Provisions provide basic, common requirements for all sources subject to applicable standards, and they are intended to avoid unnecessary duplication of information in all subsequent subparts. All parts of the General Provisions apply to an affected source regulated by an applicable standard, unless otherwise specified by the particular standard.

The EPA recognizes that in the development of a standard applicable to a specific source category, the Agency may determine that certain General Provisions of subpart A may not be appropriate. Consequently, as mentioned earlier, subpart A allows individual subparts to supersede some of the requirements of subpart A. Should there be a conflict between the requirements in the General Provisions and specific requirements of another subpart in part 63, whether or not the subpart explicitly overrides the General Provisions, the requirements of the other subpart will prevail.

The Agency received many comments regarding the proposed relationship between the General Provisions and part 63 standards for specific source categories. A substantial number of commenters expressed the opinion that the EPA should reverse the presumptive relationship that the General Provisions apply unless specifically overridden in a source category-specific standard. These commenters argued that the General Provisions should not be applicable until specifically incorporated by an applicable standard. Thus, instead of automatic applicability to any regulated source, the General Provisions would have no regulatory force until specifically incorporated by individual subparts. Specific reasons cited by commenters for advocating this approach focused on minimizing the potential for conflict between the General Provisions and individual subparts and reducing confusion on the part of owners or operators who must establish which provisions are applicable. Some commenters also stated that only generic requirements should be included in the General Provisions, and more specific

requirements should be left to individual NESHAP.

The Agency believes that the alternative approach suggested by these commenters is not appropriate. Consequently, the proposed approach has been retained in the final rule. The Agency's concern is that minimum regulatory requirements be established for the control of HAP emissions from source categories. The General Provisions as promulgated ensure an appropriate baseline level of requirements for all sources, and they provide guidance at an early stage to sources regarding the types of requirements that will ensue upon promulgation of an applicable standard. The EPA believes that the provisions of subpart A are the minimum generic requirements necessary for the implementation of NESHAP. The EPA's experience with existing General Provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

Despite the preceding discussion, the EPA does recognize the potentially confusing task faced by owners and operators who must determine which provisions of the General Provisions apply to them, which are explicitly superseded by an applicable subpart, and which are superseded because they conflict with a requirement in an individual standard. Many commenters are concerned about the potential for confusion regarding their compliance responsibilities. By establishing a mechanism whereby all the provisions of subpart A are applicable to an affected source unless otherwise specified, the EPA believes some source responsibilities are directly clarified.

Furthermore, as the Agency continues to develop emission standards for specific source categories, the EPA intends to indicate clearly in these subsequent rulemakings which requirements of subpart A sources in the category are subject to and which requirements are superseded by the individual subpart. The public will have the opportunity to review and comment on Agency decisions on which requirements of the General Provisions are overridden in a source category-specific standard when that standard is proposed in the **Federal Register**.

Other issues were raised by commenters pertaining to general features of the relationship between the General Provisions and individual MACT standards. Several commenters expressed concern with the potential for a situation where there are conflicting provisions between the individual subpart and subpart A, and the individual subpart does not specifically supersede the General Provisions requirement. Proposed § 63.1(a)(13) stated that individual subparts will specify which General Provisions are superseded. Certain commenters believe that provisions in individual subparts should prevail, even if they do not explicitly state that they supersede General Provisions.

The EPA agrees with these commenters. It is the Agency's intent that when there are conflicting requirements in the General Provisions and a source category-specific standard, the requirements of the standard will supersede the General Provisions. If a specific standard does not address a requirement within the General Provisions, then the General Provisions must be followed by the owner or operator. The Agency intends to review thoroughly the appropriateness of applying the General Provisions when developing each source category-specific standard and to indicate clearly in the standard any requirements of the General Provisions that are overridden. However, the Agency appreciates the concerns of the commenters that a conflicting requirement may be overlooked and not explicitly identified in the standard. Therefore, to avoid confusion should a conflicting requirement not be explicitly identified in the standard, the EPA has deleted the statement in § 63.1(a)(13) that individual subparts always will specify which provisions of subpart A are superseded.

2. Relationship to Section 112(g), Section 112(j), and Section 112(i)(5) of the Act

Several comments were received on the relationship of the General Provisions for part 63 to requirements under sections 112(g) and 112(j) of the Act. Regulations to implement section 112(g) and section 112(j) are being developed by the EPA in separate rulemakings. Section 112(g) addresses the modification, construction, and reconstruction of major sources after the effective date of title V permit programs and primarily before source category-specific standards are promulgated. Section 112(j) addresses equivalent emission limitations to be established by the States through title V permits if the EPA fails to promulgate a standard for a category of sources on the schedule established under section 112(e).

Under both of these sections, States may be required to make case-by-case MACT determinations for sources if the EPA has not yet established an applicable emission limitation under section 112. For example, under section 112(g)(2), after the effective date of a title V permit program in any State, no person may modify a major source of HAP in the State, unless the Administrator (or the State) determines that the MACT emission limitation under section 112 for existing sources will be met. This determination must be made on a case-by-case basis where an applicable emission limitation has not been established by the EPA. A similar determination involving new source MACT must be made before a major source is constructed or reconstructed.

Several commenters stated that it was unclear if the General Provisions are intended to be minimum requirements that would apply to sources subject to case-by-case MACT standards established under sections 112 (g) and (j).

The EPA is still considering the most appropriate way to link the General Provisions to the case-by-case MACT standards established under sections 112 (g) and (j). While the EPA believes that some requirements of the General Provisions should apply to any MACT standard established under section 112 (including case-by-case MACT standards), the Agency also recognizes that there may be situations where blanket application of the General Provisions to a particular source or source category may not be appropriate. As discussed elsewhere in this preamble and as stated in the applicability section of the final rule, an emission standard established for a particular source category can override some provisions of the General Provisions, as appropriate. The EPA is reviewing whether it is appropriate to provide similar authority to States with approved title V permit programs to override the General Provisions in case-by-case MACT standards established under sections 112(g) and 112(j) and how such authority should be implemented. In general, the EPA believes that the General Provisions provide an appropriate framework for many aspects of demonstrating compliance with case-by-case MACT determinations. The issue of the relationship of the General Provisions to section 112(g) and section 112(j) will be addressed in the rulemakings implementing these subsections or in future EPA guidance material.

One commenter wanted the EPA to clarify that the General Provisions are superseded by forthcoming subpart B regulations to implement section 112(g).

The EPA disagrees with this commenter. From a general perspective,

it cannot be stated that the General Provisions would be superseded by regulations established under section 112(g). Many definitions and requirements of the General Provisions will be appropriate for standards established under section 112(g) (e.g., definitions of key terms such as "major source" and "HAP"). However, as discussed in the response to the previous comment, the EPA is reviewing whether it is appropriate to allow case-by-case MACT standards developed under section 112(g) to override individual requirements of the General Provisions.

A commenter stated that the definition of "federally enforceable" in the proposed General Provisions was different from the definition proposed in regulations to implement section 112(j) (58 FR 37778, July 13, 1993). This commenter further stated that only one definition should appear, and that it should be in subpart A.

The EPA agrees with the commenter and intends that the definition of federally enforceable in the General Provisions should apply to all requirements developed pursuant to section 112 including standards developed under section 112(j) and section 112(g). A definition of "federally enforceable" was included in the proposed regulations to implement section 112(j) because those regulations were published before the proposal date of the General Provisions. The final regulations implementing section 112(j) of the Act and forthcoming regulations implementing section 112(g) will defer to the definition of federally enforceable that is included in the General Provisions.

One commenter argued that the issue of preconstruction review should be left to the rule that will implement section 112(g) of the Act. Further, the commenter stated that if the proposed preconstruction review requirements in the General Provisions are adopted, they should be consistent with procedures in the section 112(g) rule.

The EPA disagrees with these comments. The requirements for preconstruction review included in the General Provisions are intended to implement the preconstruction review requirements of section 112(i)(1) of the Act, which the EPA views as inherently different from the preconstruction review requirements of section 112(g). Section 112(i)(1) requires review by the EPA (or a State with delegated authority) prior to the construction or reconstruction of a major source of HAP in cases where there is an applicable emission limitation that has been promulgated by the EPA under sections 112 (d), (f), or (h); that is, a national emission standard has been promulgated. The requirements of a national emission standard undergo public review and comment during development of the rule.

In contrast, requirements in section 112(g) for review prior to construction, reconstruction, or modification of a major source address situations where a national emission standard has not been promulgated and MACT must be determined on a case-by-case basis. In this situation, there has been no prior opportunity for public review of and comment on applicable requirements.

This basic difference makes it appropriate to have separate provisions implementing the preconstruction review requirements of sections 112(i)(1) and 112(g) of the Act. In addition, section 112(g) does not apply before the effective date of the title V permit program in each State, whereas section 112(d) or 112(h) standards may go into effect before the permit program and thus need independent regulatory provisions governing preconstruction review.

One commenter said that the EPA should state that after the effective date of a MACT standard established by the EPA, compliance with that standard by a source would also constitute compliance with section 112(g).

The EPA generally agrees that compliance with an applicable MACT standard promulgated by the EPA under section 112(d) or section 112(h) also would constitute compliance with section 112(g). Although section 112(g) requires an administrative determination that MACT will be met whenever a major source is constructed, reconstructed, or modified, a case-by-case MACT determination is required under section 112(g) only when no applicable emission limitations have been established by the EPA. The forthcoming rulemaking for section 112(g) will clarify the streamlined nature of the section 112(g) administrative requirements for major sources subject to already promulgated standards.

Several commenters were confused by the last sentence in proposed § 63.5(b)(6) that "this paragraph is not intended to implement the modification provisions of section 112(g) of the Act." One commenter asked what this paragraph was intended to implement if not section 112(g).

Section 63.5(b) is intended to clarify the general compliance requirements imposed by section 112 for sources subject to a relevant emission standard that has been promulgated in part 63 (which may be major or area sources). The emission units or emission points that are subject to a NESHAP in a part 63 subpart applicable to a specific source category are defined in each subpart and are designated as the affected source. The intent of § 63.5(b)(6) is simply to emphasize that changes to an affected source (e.g., process changes or equipment additions) that are within the definition of affected source in the applicable subpart are considered to be part of that affected source and, therefore, they also are subject to the standard. In the final rule, additional language was added to § 63.5(b)(6) to further clarify that if the change consists of the addition of a new affected source, the new affected source would be subject to requirements established in the standard for new sources.

Section 112(g) requirements are much broader and different in that they address changes to a major source, regardless of whether a relevant emission limitation has been promulgated by the EPA. These broader requirements are being addressed in the separate rulemaking to implement section 112(g).

Upon review of the wording of the proposed General Provisions, the EPA has concluded that the statement in proposed § 63.5(b)(6) indicating that this paragraph is not intended to implement section 112(g) creates confusion rather than clarifying the Agency's intent. Therefore, it has been removed in the final rule.

The relationship between the General Provisions and section 112(i)(5) of the Act also has been clarified in the final rule. Section 112(i)(5) of the Act outlines provisions for extensions of compliance for sources that achieve early reductions in HAP emissions. Under these provisions, an existing source may comply with an emission limitation promulgated pursuant to section 112(d) 6 years after the compliance date, provided that the source achieves a 90 percent (95 percent, in the case of particulates) reduction in emissions before the otherwise applicable standard is first proposed. Regulations implementing section 112(i)(5) are contained in subpart D of part 63.

Section 63.1(c)(4) of the General Provisions addresses the applicability of the General Provisions to such sources, and it has been revised in the final rule. The revision to this section reflects the fact that the General Provisions are applicable to other requirements established pursuant to section 112 of the Act, except when overridden. The proposed language required that an owner or operator comply with the

requirements of subpart A that are specifically addressed in the extension of compliance. In the final rule, § 63.1(c)(4) has been revised to state that an owner or operator who has received an extension of compliance under the early reduction program in subpart D shall comply with all requirements in the General Provisions except those requirements that are specifically overridden in the extension of compliance. This revision to the rule clarifies the Agency's intended relationship between these two subparts of part 63.

3. State Options Under Section 112(l) of the Act

Several comments were received that States should be allowed flexibility in implementing the requirements of the General Provisions. General flexibility was requested as well as flexibility in implementing specific aspects such as frequency of source reporting and action timelines that may be impractical for some States. One commenter stated that incorporation of the General Provisions into an existing State or local program will interfere with the existing program. Another commenter stated that existing State procedures and timelines for preconstruction review should supersede the General Provisions.

The EPA believes that the opportunity for States to have flexibility in implementing the General Provisions is provided through the rulemaking that implements section 112(l) of the Act (see subpart E of part 63). Under subpart E of part 63, each State may develop and submit to the EPA for approval a program for the implementation and enforcement of emission standards and other requirements promulgated under section 112. The EPA may approve alternative requirements or programs submitted by States as long as the State's alternatives are at least as stringent as the Federal programs they replace. Thus, States have the opportunity to propose to the EPA, through the subpart E process, alternative requirements to the General Provisions. Alternative requirements that could be proposed by a State include those items (e.g., timelines and provisions for preconstruction review) cited by commenters on the proposed General Provisions.

An alternative requirement to a General Provisions requirement that is proposed by a State will be reviewed by the EPA to determine if it would accomplish the same objective(s) as the comparable General Provisions requirement and not compromise implementation and enforcement of part 63 emission standards.

Subpart E of part 63 was promulgated in the **Federal Register** on November 26, 1993 (58 FR 62262). This final rulemaking describes in detail the process for a State to receive approval for alternative requirements to those promulgated at the Federal level. Additional guidance on this process is available, and information on how to obtain it is discussed in section V of the subpart E proposal preamble (58 FR 29296, May 19, 1993).

Section 112(d)(7) of the Act and paragraph 63.1(a)(3) of the applicability section of the General Provisions clearly indicate that an emission limit or other applicable requirement more stringent than the General Provisions may be issued under State authority. The EPA believes that this, along with the opportunity provided through subpart E for a State to propose alternative requirements, provides the flexibility that the commenters are seeking without further revision to the General Provisions. The EPA plans to supplement the guidance developed thus far for implementing section 112(l) with additional material to address approval criteria for alternative procedures that may be proposed by a State in place of the General Provisions.

The EPA disagrees with the commenter who stated that existing procedures and timelines for preconstruction review in a State should automatically supersede the General Provisions. States seeking to implement and enforce any provisions of their own programs in lieu of regulations established by the EPA under section 112 must receive approval under section 112(l).

4. Permitting of Section 112 Sources Under Title V

Title V of the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies if they qualify. Owners or operators are required to obtain a permit when a State's operating permit program becomes effective. Furthermore, when sources become subject to part 63 regulations, these regulations must be incorporated into the permits for these sources. Permit requirements will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the General Provisions in this part will form the basis for specific permit conditions, as they form the basis for specific requirements under subsequent part 63 rulemakings. The part 70 regulations implementing the title V permit program, promulgated at 57 FR 32250 (July 21, 1992), identify when a source of HAP is required to obtain a permit. The promulgated General Provisions contain language that informs owners or operators of some of the situations in which a source of HAP would be required to apply for a permit.

Section 70.3(a) allows States to defer temporarily the requirement to obtain a permit for any sources that are not major sources but would otherwise be subject to title V. If the EPA approves a State program with such a deferral provision, the EPA will complete a future rulemaking to consider the appropriateness of any permanent exemption for categories of nonmajor sources. Nonmajor sources subject to a section 112 standard are addressed in § 70.3(b), which states that the EPA has authority to allow States to exempt or defer these nonmajor sources from permitting requirements, and that the EPA will exercise this authority, if at all, at the time of promulgation of a section 112 standard. Consistent with this provision, the EPA will determine in each future rulemaking under part 63 that establishes an emission standard that affects area sources whether to: (1) Give States the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., by exempting the category of area sources altogether from the permitting requirement); (2) give States the option to defer permitting of area sources in that category until the EPA takes a rulemaking action to determine applicability of the permitting requirements; or (3) confirm that area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

Although the EPA will decide whether and when to permit regulated area sources in each applicable part 63 rulemaking, the Agency believes, in general, that it is appropriate for all sources regulated under part 63 to undergo the title V permitting process, as this will enhance effective implementation and enforcement of the requirements of section 112 of the Act. Unless a determination by the EPA is made by rule that compliance with permitting requirements by regulated area sources would be "impractical, infeasible, or unnecessarily burdensome" and thus an exemption is appropriate or the EPA allows States to exercise their option to defer permitting of area sources, all affected sources under part 63, including area sources, will be required to obtain a permit. Thus, affected area sources will be immediately subject to part 70 when they become subject to a part 63 emission standard. (When area sources

become subject to part 70 they will have up to 12 months to apply for a permit.) Section 63.1(c)(2) of the final General Provisions has been revised to clarify that emission standards established in part 63 will specify what the permitting requirements will be for area sources affected by those standards, and that if a standard remains silent on these matters, then nonmajor sources that are subject to the standard are also subject to the requirement to obtain a title V permit without deferral.

D. Monitoring and Performance Testing Requirements

1. Monitoring

a. *Relationship to part 64.* Some commenters said that the part 63 monitoring requirements are duplicative of the part 64 enhanced monitoring program. Alternatively, other commenters claimed that all of the monitoring requirements should be included in each part 63 subpart.

The proposed part 64 enhanced monitoring program (58 FR 54648, October 22, 1993) applies only to existing regulations and does not apply to new regulations being developed under part 63. Furthermore, the proposed part 64 provisions only apply to major sources, while the General Provisions can apply to area sources as well. The EPA will incorporate the concept of enhanced monitoring directly into all new rules under part 63. This approach is consistent with the statement in the preamble to the part 70 operating permits program (July 21, 1992, 57 FR 32250) that all future rulemakings will have no gaps in their monitoring provisions. The General Provisions include generic requirements that apply to all affected sources, while individual subparts under part 63 will include additional monitoring provisions specific to each source category.

b. *Definition of "continuous monitoring system."* Commenters said that the definitions for CMS and continuous emission monitoring systems (CEMS) are very broad and appear to include total equipment. For example, sample systems may be used to serve several analyzers, all of which are considered one CMS. If one analyzer fails, the proposed rule appears to assume that the entire CMS has failed, and data from properly functioning analyzers may not be used because one analyzer has failed to function properly.

Some commenters said that § 63.8(c)(6) should be revised to clearly distinguish between CEMS, continuous opacity monitoring systems (COMS), and continuous parameter monitors. In particular, the measurement devices used to monitor parameters such as temperature, flow, and pressure are very stable and do not require frequent or ongoing calibration error determinations. One commenter said that language should be added that states: "Continuous parameter monitoring systems (CPMS's) must be calibrated prior to installation and checked daily for indication that the system is responding. If the CPMS includes an internal system check, results must be recorded and checked daily for proper operation."

One commenter said that the EPA should review § 63.8 to amend references to "continuous monitoring systems" whenever a requirement should not apply to continuous parameter monitoring systems.

Another commenter said that the EPA should differentiate between CMS and continuous parameter monitoring systems when setting calibration drift provisions in § 63.8(c)(1).

After review of these comments, the Administrator determined that the definition of "continuous monitoring system" should be clarified. The definition of CMS has been clarified to include any system used to demonstrate compliance with the applicable regulation on a continuous basis in accordance with the specifications for that regulation. The definition has been changed as follows:

> Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

This definition is intended to apply to the CMS required by the regulation for a regulated pollutant or process parameter. If any portion of such a CMS fails (e.g., flow analyzer), the CMS data cannot be used for compliance determination and the entire CMS is out of control. The repair of the faulty portion of the CMS and a subsequent successful performance check of that portion would bring the entire CMS back into operation.

If, for example, the regulation requires a CEMS for each of two pollutants (e.g., SO_2 and NO_x) and the two CEMS share diluent analyzers, failure of one of the pollutant analyzers (e.g., the SO_2 analyzer) would not necessarily put the NO_x CEMS into an out-of-control situation. The distinction is that these are two CEMS, not one. On the other hand, if the diluent analyzer serving both CEMS fails, both CEMS are out of control.

The definition of CMS was revised to include continuous parameter monitoring system with the intent that basic performance requirements that appear in the General Provisions would apply to all CMS including continuous parameter monitoring systems. Responses to other comments and subsequent revisions to the regulation further clarify that performance specifications relevant to certain types of CMS would be proposed and promulgated with accompanying new regulations, and would indicate precisely what performance requirements apply and the frequency of checks, and other requirements, beyond those in the General Provisions.

The general CMS performance requirements outlined in the General Provisions apply to any type of CMS, including continuous parameter monitoring systems. The General Provisions sections that define daily and other periodic performance checks and requirements for CMS consistently refer to applicable performance specifications and individual regulations for procedures and other specific requirements. Individual regulations may include more or less restrictive performance requirements, as appropriate.

c. *Relevance of part 60 performance specifications.* According to some commenters, §§ 63.8(c)(2), (c)(3), and (e)(4) of the proposed General Provisions require continuous monitoring systems to meet existing part 60 performance specifications, which were written for criteria pollutant measurement and contain many items that are not applicable to HAP. New methods, specific to HAP, should be proposed for public comment.

The EPA agrees with the commenters. Therefore, all references to part 60 CEMS performance specifications have been deleted. Specific methods to evaluate CEMS performance will be included within the individual subparts of part 63. It should be noted that, if appropriate, these subparts may refer to Appendix B of part 60. However, in all instances, the required performance specifications for an individual subpart will be subject to public comment upon proposal.

d. *Repair period for continuous monitoring systems.* According to some commenters, the proposed 7-day period for the repair of CMS in § 63.8(c)(1) is too restrictive, for example, in cases where a major component has failed and replacement parts may not be available within 7 days. In addition, when a critical component fails and is replaced,

the entire monitoring system may have to undergo another performance specification test and/or extensive recalibration. These requirements may take up to 14 days to perform. The EPA should clarify that there is no violation in situations where the repairs or adjustments require more than 7 days, so long as the owner or operator responds with reasonable promptness. The adoption of the part 64 approach, which requires the submittal of a corrective action plan and schedule in the event of a monitor failure, would be more reasonable than specifying a specific time period and would increase the consistency between the two rules. Alternatively, a longer time period for repair of systems should be allowed either in the General Provisions or in each individual standard. One commenter said that § 63.8(c) should be revised to allow up to 10 days of downtime per quarter. Finally, the EPA could establish a minimum level of acceptable data collection frequency (e.g., 75 to 95 percent monthly), which would provide up-front time flexibility for repairs and adjustments without compromising environmental benefit.

One commenter said that the EPA must provide downtime for routine maintenance because proper maintenance of the equipment will extend the life of the equipment as well as ensure the quality of data collected by the CMS. Section 63.8(c)(4) should be revised to add the exclusion of maintenance periods from the operation requirements. Another commenter said that the owner or operator should not be required to conduct sampling or daily zero and high-level checks if the manufacturing process is not in operation, and that process shutdowns should be included in the list of "exempted" periods under § 63.8(c)(4). Finally, one commenter said that § 63.8(c)(4) should be revised to include performance evaluations and other quality assurance/quality control activities as exceptions to the downtime reporting requirements.

After consideration of these comments, the EPA has revised § 63.8(c)(1) to require "immediate" repair or replacement of CMS parts that are considered "routine" or otherwise predictable. The startup, shutdown, and malfunction plan required by § 63.6(e)(3) will identify those CMS malfunctions that fall into the "routine" category, and the owner or operator is required to keep the necessary parts for repair of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action can be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

For those events that affect the CMS and are considered atypical (i.e., not addressed by the startup, shutdown, and malfunction plan), the owner or operator must report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator must send a follow-up report within 2 weeks after commencing inconsistent actions that either certifies that corrections have been made or includes a corrective action plan and schedule. This approach is similar to the approach in 40 CFR part 64 regarding monitor failures. The owner or operator should be able to provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control. Otherwise, it would cause enforcement difficulties to decide when a delay is caused in spite of best efforts and when the delay is caused by less than best efforts. Therefore, all delays beyond the 2-week period may be considered violations. As discussed in section 2.4.8 of the promulgation BID, if the delay is caused by a malfunction and the source follows its malfunction plan, that is not considered a violation.

The Agency agrees with the commenter that routine maintenance of all CMS is necessary and has revised § 63.8(c)(4) to include maintenance periods in the list of periods when CMS are excepted from the monitoring requirements.

2. Performance Testing

a. *Relationship to other testing requirements.* Several commenters had concerns regarding the relationship between the requirements in § 63.7, Performance testing requirements, and the testing requirements that will be contained in other subparts of part 63. One commenter noted a discrepancy between proposed § 63.7(e), which requires performance testing under representative conditions, and § 63.103(b)(3) of the proposed Hazardous Organic NESHAP (HON) (December 31, 1992, 57 FR 62690), which requires performance testing at "maximum" representative operating conditions, and the commenter asked that the EPA either make the performance test requirements consistent for all part 63 subparts or allow sources to defer to the HON requirement. Another commenter indicated that performance tests may not always be meaningful, particularly in situations where the applicable subpart requires the elimination of the use of HAP in the process.

Other commenters stated that methods for performance testing should be defined in each individual NESHAP under part 63 and that methods under analysis by the EPA should be subject to comment by the regulated community. Others objected to reference to methods contained in the appendices of part 60 because they are for measuring criteria pollutants and not HAP.

The testing requirements contained in § 63.7 are general and represent an infrastructure for performance testing as required by the individual standards developed under part 63. The general testing requirements contained in § 63.7 specify when the initial performance test must be conducted, under what operating conditions the test must be conducted, the content of the site-specific test plan, how long the Agency has to review the test plan (if review is required—see next comment), how many runs are needed, procedures for applying for the use of an alternative test method, procedures to request a waiver of the performance test, and other general requirements. Each subpart will include specific testing requirements, such as the test method that must be used to determine compliance, the required duration and frequency of testing, and any other testing requirements unique to that standard.

As described in § 63.7(a)(4), subparts may contain testing provisions that supersede portions of § 63.7. The example in the proposed HON (subpart F) cited by the commenter is a prime illustration of this situation. Section 63.103(b)(3) of the proposed subpart F states that "Performance tests shall be conducted according to the provisions of § 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process * * *." (December 31, 1992, 57 FR 62690). This section clearly states that all of the requirements of § 63.7(e) apply, except that the test must be conducted at maximum operating conditions, instead of at representative conditions, as required by § 63.7(e). It is also possible that the EPA could waive all performance testing requirements for a particular standard if it is determined that performance tests could not be used for determining compliance with the standard, and other procedures, in lieu of performance testing, would be specified for the determination of compliance.

For each subpart, the EPA will evaluate the possibility of using existing test methods that are contained in parts

51, 60, and 61. However, if a previously promulgated method is not appropriate, the EPA will propose a new test method. Any requirement to test for HAP in part 63, other than the requirements in § 63.7, and any new test method(s), will be subject to public comment at the time the standard and method are proposed.

b. *Definition of "representative performance."* Several commenters had concerns regarding the lack of a definition of "representative performance" required for performance test conditions. One commenter said that § 63.7(e) should be revised to reflect maximum design operating conditions that the source or control device will normally experience. Several commenters stated that the source should be allowed to determine representative operating conditions for a performance test. One commenter thought that the source should determine representative operating conditions, subject to EPA approval. Another commenter stated that § 63.7(e)(1) is acceptable as proposed.

The term "representative performance" used in § 63.7(e) means performance of the source that represents "normal operating conditions." At some facilities, normal operating conditions may represent maximum design operating conditions. In any event, representative performance or conditions under which the source will normally operate are established during the initial performance test and will serve as the basis for comparison of representative performance during future performance tests. To clarify this intent, a phrase has been added in § 63.7(e) to indicate that representative performance is that based on normal operating conditions for the source.

c. *Two performance tests.* Commenters said that, for sources constructed with the proposed rule in mind, the EPA should not require two performance tests under § 63.7(a)(2)(ix) if one will suffice. As proposed, § 63.7(a)(2)(ix) requires that, if the owner or operator commences construction or reconstruction after proposal and before promulgation of a part 63 standard and if the promulgated standard is more stringent than the proposed standard, the owner or operator must conduct a performance test to demonstrate compliance with the proposed standard within 120 days of the promulgation (i.e., effective) date and a second performance test within 3 years and 120 days from the effective date of the standard to demonstrate compliance with the promulgated standard. The commenter said that if the source can comply with the more stringent promulgated standard within 120 days of the effective date, it should only be required to perform one test.

The EPA does not believe that an additional performance test is an unreasonable burden, given that the source is allowed an additional 3 years to come into compliance with the promulgated part 63 standard. However, the EPA agrees with the commenter that if the source chooses to comply with the promulgated standard within 180 days (changed from 120 days per the discussion in section IV.G.2.b of this preamble) of the effective date, then a second performance test should not be required. While this was always the intent of this section, the EPA also agrees that this section of the proposed rule could have been interpreted to require two source tests in all situations. Therefore, § 63.7(a)(2)(ix) has been revised to allow owners or operators of new or reconstructed sources the option to comply with the promulgated standards within 180 days after the standard's effective date.

d. *Review of site-specific test plans.* The provisions pertaining to site-specific test plans contained in § 63.7(c)(2) received a great deal of attention from commenters. Several commenters indicated that the level of detail required in the site-specific test plan would create an unreasonable burden. One commenter estimated that it could take up to 2 years to prepare a test plan with the level of detail required in § 63.7(c)(2). Many suggested that site-specific test plans should be required only when there is a deviation from the reference methods.

A number of commenters believe the proposed requirements that every site-specific test plan be submitted to the Agency, and then approved by the Agency within 15 days, would be extremely burdensome for both the owners and operators and regulatory agencies.

As a result of these comments, significant changes have been made to § 63.7(c). Owners or operators still must prepare site-specific test plans, and the required elements of such plans are the same as those proposed. The EPA believes the requirements of the test plan are basic and necessary to ensure that the test will be conducted properly. However, the requirement that all site-specific test plans be submitted to, and approved by, the Administrator has been deleted. The rationale for these decisions is discussed in the following paragraphs.

The Agency believes that test plans should be prepared for all performance tests. The test plan assures that all involved parties understand the objectives and details of the test program. A well-planned test program is vital to ensure that the source is in compliance with the standard. The EPA does not believe that the preparation of site-specific test plans is overly burdensome to facilities. In fact, experienced testing professionals routinely prepare site-specific test plans (including quality assurance programs) that would meet the performance test requirements of § 63.7(c)(2).

In addition, the EPA has created a guideline document, "Preparation and Review of Site-Specific Test Plans" (December 1991) to assist owners, operators, and testing professionals in the preparation of complete site-specific test plans. This guidance can be downloaded from the EPA Office of Air Quality Planning and Standards bulletin board, the Technology Transfer Network (TTN).

Upon review of the comments, particularly those from State and local agencies, the EPA decided that it was appropriate to make significant changes in the provisions requiring submittal and approval of site-specific test plans. As noted above, each affected source owner or operator must prepare a site-specific test plan. However, owners or operators are only required to submit this plan to the Agency for review and approval upon request from the Administrator (or delegated State). In addition, the provisions relating to the approval of site-specific test plans have been modified to allow greater flexibility; that is, the timelines have been modified to allow more time for interim activities performed by both the Administrator and the owner or operator.

In order to be consistent with the changes made regarding performance test plans, the EPA has also revised § 63.8(d)(2) of the General Provisions, and the submittal of a site-specific performance evaluation test plan for the evaluation of CMS performance is also optional at the Administrator's request.

E. Construction and Reconstruction

1. Definition of Reconstruction

In response to comments, the EPA has revised the definition of reconstruction to make it clearer and easier to understand. The revised definition clarifies that reconstruction may refer to an affected or a previously unaffected source that becomes an affected source upon reconstruction. This definition also clarifies that the source must be able to meet the relevant standards established by the Administrator or by a State. Major affected sources, or

previously unaffected major sources that reconstruct to become major affected sources, must undergo preconstruction review in accordance with procedures described in §§ 63.5 (b)(3) and (d). Affected sources that are nonmajor or previously unaffected nonmajor sources that reconstruct must submit a notification in accordance with § 63.5(b)(4), but they are not required to undergo preconstruction review.

2. Construction/Reconstruction Plan Review

Comments also were received on the need for procedures governing the review of construction and reconstruction plans under proposed § 63.5(c). State and local agencies commented that they do not have the resources to conduct optional plan reviews at the source's request, nor did they feel that this is an appropriate requirement for the General Provisions.

Upon review of these comments, the Agency has decided to delete § 63.5(c) from the final rule. While the Agency encourages communication between delegated authorities and owners or operators of new or reconstructed sources that may be affected by a part 63 standard during the preparation of construction/reconstruction applications, the Agency has decided to reduce the burden on State and local agencies by not mandating the informal review of plans in the General Provisions.

One State agency indicated that the General Provisions should allow existing State construction permit programs to be used as the administrative mechanism for performing preconstruction reviews for sources subject to part 63 standards. As discussed in greater detail in section IV.C.3 of this preamble, States can use existing construction permit programs to implement the provisions in § 63.5 if the programs are approved under the section 112(l) approval process developed in subpart E of part 63.

3. Determination of Reconstruction

Several commenters had concerns about the manner in which reconstruction determinations would be made. One commenter indicated that replacements "in-kind" and retrofitting should be exempt from a reconstruction determination. Other commenters felt that the cost of control devices to comply with existing source MACT, reasonably available control technology, or any other emissions standard should not be included.

The reconstruction determination formula is based upon factors outlined in the rule, including a fixed capital cost comparison between a replacement project and a comparable new source. This cost comparison may include the cost of control equipment, consistent with the EPA's existing policy as stated in the December 16, 1975 **Federal Register** notice (see 40 FR 58416) that deals with modification, notification, and reconstruction requirements under 40 CFR part 60. The preamble to that regulation states that:

> The term "fixed capital cost" is defined as the capital needed to provide all the depreciable components and is intended to include such things as the costs of engineering, purchase, and installation of major process equipment, contractors' fees, instrumentation, auxiliary facilities, buildings, and structures. Costs associated with the purchase and installation of air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, etc.) are not considered in estimating the fixed capital cost of a comparable entirely new facility unless that control equipment is required as part of the process (e.g., product recovery).

Retrofitting and replacements are the type of activities to which the reconstruction provisions are intended to apply. In those instances where changes are instigated specifically to comply with a relevant part 63 standard, and the changes are integral to the process, it is not the EPA's intent to penalize existing sources by subjecting them to new source MACT requirements.

4. Application for Approval of Construction or Reconstruction

Several commenters objected to the requirement that new major affected sources submit an application for approval of construction or reconstruction 180 days before construction or reconstruction is planned to commence.

Although the EPA does not agree with the commenters' contention that the 180-day time period is overly burdensome, § 63.5(d)(1)(i) of the final rule has been revised to allow owners and operators of new major affected sources greater discretion in the timing of submitting applications. The final rule requires owners or operators to submit the application "as soon as practicable" before the construction or reconstruction is planned to commence. The burden is on the owner or operator to ensure that the application is submitted in a timely fashion, so that adequate review may take place under the procedures specified in § 63.5(e) and commencement of construction or reconstruction will not be delayed. The EPA believes it is in owners' and operators' best interests to submit preconstruction review applications as early as is feasible. The requirements in § 63.9(b)(4)(i) and § 63.9(b)(5) for a notification of intention to construct or reconstruct a new major affected source or a new affected source have also been revised to reflect this change in the final rule.

F. Operation and Maintenance Requirements: Startup, Shutdown, and Malfunction Plans

1. Content of Plans

Several commenters complained that the § 63.6(e)(3)(i) requirement that the startup, shutdown, and malfunction plan contain detailed "step-by-step" procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction" was overly burdensome and did not allow the facility to devise maintenance actions that would ensure compliance with the relevant emission limitation. In addition, commenters said that the overall level of detail required in the startup, shutdown, and malfunction plan was excessive.

Commenters said that the plan should focus only on equipment that is actually used to achieve and maintain compliance with a relevant standard such as pollution abatement equipment, process equipment used as the last piece of recovery equipment if not followed by emission control equipment, emission or parameter monitoring equipment, and recordkeeping equipment. Also, § 63.6(e)(3)(i) should be revised to clarify that the plan requirements apply to: "malfunctioning process and air pollution equipment used to comply with the relevant standard." Another commenter said that process equipment should not be included in the plan because companies already have adequate incentives to maintain their process equipment.

Another comment concerned the timeframe under which the plan must be developed and implemented. The commenter noted that § 63.6(e)(3)(i) implies that the source might have to develop the plan before the compliance date for the relevant standard or startup.

The EPA intends the startup, shutdown, and malfunction plans to be thorough. On the other hand, the EPA expects these plans to be based on reasonable evaluations by the owner or operator, and the plans are intended to provide flexibility to the owner or operator to act appropriately at all times to reduce emissions during these events. The requirement for "step-by-step" procedures has been deleted because it conveys a level of detail that is not always needed. In addition, the suggestion to limit the requirements to

that equipment that can have an effect on compliance with the relevant standard has been adopted as well. Process equipment may be included, however, because process equipment can affect emissions.

In general, the level of detail is left to the discretion of the owner or operator who must decide how much detail plant personnel need in order to ensure proper operation and maintenance of equipment during startup, shutdown, and malfunction events. Excess emissions occur during these events when air pollution is emitted in quantities greater than anticipated by the applicable standard. Excess emissions are often determined by compliance monitoring required by the applicable standard. If excess emissions are not reasonably anticipated during these events, the plans could be very simple. Alternatively, if excess emissions are expected to occur during startup, shutdown, or malfunction events, the plan needs to be correspondingly detailed to ensure that appropriate actions are taken to control the emissions.

Excess emissions are typically direct indications of noncompliance with the emission standard and, therefore, are directly enforceable. Without demonstrating that a startup, shutdown, or malfunction event caused the excess emissions, the owner or operator cannot certify compliance. In such instances where the excess emissions occurred during a startup, shutdown, or malfunction, the owner or operator must also have followed the plan to certify compliance. If the owner or operator prepares a deficient plan, the EPA can request that the plan be upgraded and may consider enforcement actions.

Section 63.6(e)(3)(i) has been revised to clarify that the plan must be developed before and implemented by the compliance date for the source.

2. Option to Use Standard Operating Procedures

Commenters supported the use of standard operating procedures (SOP) as a surrogate for the development of a separate startup, shutdown, and malfunction plan. However, they pointed out two concerns with the use of SOP. The first potential problem is that SOP generally are very complex (at least at chemical plants), and they are developed to allow the operator to respond to a wide variety of process conditions. Commenters were concerned that an excessive amount of time could be spent in educating permitting agencies regarding the contents of the SOP. A second concern is that SOP may contain confidential business information. Commenters said that the rules should provide that such information will be kept confidential by the Agency.

One commenter noted that facilities covered by Occupational Health and Safety Administration (OSHA) operating requirements should be allowed to use the OSHA plan to meet the intent of § 63.6(e), Operation and maintenance requirements, and file a notification that they are covered by OSHA in place of submitting a startup, shutdown, and malfunction plan. Other plans such as hazardous waste emergency response plans should be accepted as alternatives, too.

A few commenters also asked whether it is necessary to maintain a separate plan if the startup, shutdown, and malfunction plan becomes part of the operating permit. If SOP are used, they could simply be referenced in the operating permit. Alternatively, commenters said that SOP used for startup, shutdown, and malfunction plans should not be required in permits and are not enforceable under part 70.

The intent of allowing the use of SOP is to provide the owner or operator an option of complying with these requirements that may result in reduced recordkeeping burden. If the owner or operator determines that use of SOP is too cumbersome, he or she should develop a specific startup, shutdown, and malfunction plan.

Because the need for startup, shutdown, and malfunction plans is determined by Federal requirements, each plan would be incorporated by reference into the source's part 70 operating permit. As such, the plans would be considered public information; however, confidential business information can be protected according to the procedures in part 70 and § 63.15 of the General Provisions. The EPA believes that, while an owner or operator should not include confidential information in the plan, if certain confidential information is necessary for the plan to be used properly, the owner or operator should discuss the situation with the enforcing agency.

Facilities would be allowed to use an OSHA or other plan (or any portion thereof) in lieu of a startup, shutdown, and malfunction plan only if it meets the requirements in § 63.6(e). The burden is on the source owner or operator to demonstrate that any plan not specifically developed to comply with the requirements in § 63.6(e) meets the intent and all applicable requirements in that section.

3. Reporting Requirements

Some commenters said that startup, shutdown, and malfunction reports should only be required (at least in the case of area sources) when excess/reportable emissions to the atmosphere occurred as a direct result. Commenters requested that the EPA should encourage sources to discover ways not to emit amounts of pollutants in excess of applicable standards, or not to exceed established parametric limits, during periods of startup, shutdown, and malfunctions by inserting the concept of "emissions in excess of an otherwise applicable standard or operation outside of established parametric requirements" into the definitions of startup, shutdown, and malfunction situations. If a source does not experience a period where some emission or parameter requirement is exceeded, no records or reports should be required, according to commenters. In addition, commenters stated that the requirement that a responsible corporate official certify a report of action taken under a startup, shutdown, and malfunction plan is well beyond statutory authority and should be withdrawn.

As discussed below, the EPA has changed the General Provisions to clarify that startup, shutdown, and malfunction reports need only address events that cause emissions in excess of an otherwise applicable standard or operation outside of an established parametric requirement. This change will encourage owners and operators to maintain emissions at all times to the levels required by the standard. When no excess emissions occur under this approach, no records or reports are required. On the other hand, if an owner or operator fails to record the necessary information when excess emissions do occur, they cannot certify compliance with the startup, shutdown, and malfunction plan.

Section 63.10(d)(5) has been revised to allow the reports to be signed by the owner or operator or other responsible official. In some cases, "corporate" officials may not be located at the plant site. Also, smaller companies may not be incorporated and may only have a few employees. For example, dry cleaning facilities are generally small businesses, in which case the owner must sign the report.

Commenters also said that the EPA should provide flexibility to owners and operators in correcting malfunctions rather than requiring that actions be "completely" consistent with the source's startup, shutdown, and malfunction plan. It is impossible for owners and operators to develop plans

that address every conceivable malfunction. Instead, the EPA should require that actions be "materially" consistent with the plan.

One purpose of the startup, shutdown, and malfunction reports is to provide an explanation of why the plan was not followed during a startup, shutdown, or malfunction. Presumably, an owner or operator cannot certify compliance with the standards for such events. In the event of a startup, shutdown, or malfunction, the Agency believes there is value in receiving these reports for actions that are not consistent with the plan. These reports establish an historical record for review by the enforcing agency. However, in order to respond to commenters' concerns, the regulation has been revised to remove the word "completely" from the phrase "completely consistent" in §§ 63.6(e)(3)(iii) and (iv) and § 63.10(b)(2)(v). This revision still satisfies the Agency's intent to receive reports for actions that are not consistent with the plan.

Commenters complained that immediate startup, shutdown, and malfunction reports required under § 63.10(d)(5)(ii) should not be required because they are redundant with respect to reporting requirements found in the Superfund Amendments and Reauthorization Act (section 304) and the Comprehensive Environmental Response, Compensation, and Liability Act (section 103), in the permit rules, and in the individual standards themselves.

The alternate notification systems referred to by the commenter generally are concerned with releases in quantities and under conditions that may not be consistent with the reporting and compliance needs of the authorities delegated the authority to enforce part 63 requirements. To the extent that other reporting mechanisms provide duplicate information, they can be used to satisfy the part 63 requirements. This information would then be compiled in the source's part 70 operating permit.

4. Reporting Timelines

Several commenters suggested changes to the required timelines in § 63.6(e)(3)(iv). In the case of reporting any actions taken that are not "completely consistent with the procedures in the affected source's startup, shutdown, and malfunction plan" within 24 hours, commenters suggested that this requirement should be changed to be "the next working day." Alternatively, the requirement could be changed to be consistent with the title V emergency provisions that require reporting within 2 working days.

Commenters suggested that because an event can last for several days, the requirement to submit a follow-up report should be revised to state that the report is due 7 days "after the end of the event." Other commenters said that only deviations that are significant (e.g., last more than 24 hours) and which fail to correct or which prolong the malfunction should be reportable in writing, and then only within 14 days of the occurrence. Other commenters said that quarterly reports should be sufficient or that no reports should be required if the events are recorded in the source's operating log.

Upon review and consideration of the comments, §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) have been revised to require reporting of actions that are not consistent with the plan within 2 working days instead of within 24 hours. This allows the General Provisions and the operating permits program established under title V to be consistent. In addition, the regulation has been revised to require that follow-up reports for deviations are due "7 working days after the end of the event."

5. Compliance With Emission Limits

According to some commenters, the EPA should require that affected sources meet otherwise applicable emission limits during startups, shutdowns, and malfunctions. Commenters saw the assumption that emissions can and will occur as inconsistent with the Agency's approach in the part 61 NESHAP, which requires that sources comply with emission limitations at all times. Also, some commenters stated that the EPA has not shown that exceedance of standards is always necessary during these periods or that malfunctions are not avoidable. These commenters believed that difficulties in determining violations do not justify relaxing standards.

Other commenters said that sources should take steps to minimize emissions during startup, shutdown, and malfunction periods. For example, a time limitation on the length of a startup or shutdown could be established. Alternatively, the EPA should exempt facilities from the requirements associated with the startup, shutdown, and malfunction plans if they can comply with the standards during these events. A simple notification that the source intends to comply at all times rather than develop and implement the provisions of § 63.6(e) (i.e., a startup, shutdown, and malfunction plan) should be added to recognize this condition.

In contrast, other commenters wanted to strengthen the assumption that excess emissions during these events is not a violation unless specified in the relevant standard or a determination is made under § 63.6(e)(2) that acceptable operation and maintenance procedures are not being followed.

The EPA believes, as it did at proposal, that the requirement for a startup, shutdown, and malfunction plan is a reasonable bridge between the difficulty associated with determining compliance with an emission standard during these events and a blanket exemption from emission limits. The purpose of the plan is for the source to demonstrate how it will do its reasonable best to maintain compliance with the standards, even during startups, shutdowns, and malfunctions. In addition, individual standards may override these requirements in cases where it is possible to hold sources to stricter standards. In some cases it may be reasonable to require certain source categories to meet the emission standards at all times.

Another point to consider is the beneficial effect of enhanced monitoring. Once enhanced monitoring requirements are effective through the individual standards, owners and operators will be required to pay extremely close attention to the performance of their process and emission control systems. If the enhanced monitoring requirements are generated reflecting normal operational variations, the number of potential noncomplying emissions should be minimized and only truly significant malfunctions will need to be addressed in the plan. Enhanced monitoring should drive sources to continuous good performance that minimizes emissions and, thus, startup, shutdown, and malfunction plans can focus on the less common events. In this way, concerns regarding excess emissions during startups, shutdowns, or malfunctions should lessen.

The EPA agrees that sources that can demonstrate that compliance with the emission standards is not in question during periods of startup, shutdown, and malfunctions should not be required to develop and implement full-blown startup, shutdown, and malfunction plans. Instead, these sources should demonstrate in their startup, shutdown, and malfunction plan why standards cannot be exceeded during periods of startup, shutdown, and malfunction.

In a related matter, the EPA has also clarified § 63.6(e)(1)(i) to state that sources must minimize emissions "at least to the levels required by all

relevant standards" to respond to a commenter's concern that the original language to "minimize emissions" could exceed the requirements of the Act.

G. Recordkeeping and Reporting Requirements

1. Notification Requirements

a. *Applicability.* A significant number of commenters supported the proposed requirement that only affected major and area sources within a category of sources for which a part 63 standard is promulgated be required to submit an initial notification. On the other hand, four commenters believe that all sources, affected and unaffected, should be required to submit an initial notification to identify sources that may be subject to a part 63 standard or other requirement. One of these commenters stated that sources claiming that they are below the major source threshold should notify both the EPA and the State and should submit documentation of their claim (e.g., a copy of the permit showing control requirements). One commenter suggested that delegated agencies should be responsible for identifying affected sources, rather than requiring initial notifications.

In addition, many commenters complained that the initial notification requirement for affected sources was too detailed and suggested a few ways to simplify the initial notification: (1) Include only notification of name and address of owner or operator, address of affected source, and compliance date; or (2) require only a letter of notification identifying subject sources.

The EPA requested comments on the proposed requirement for initial notification by only affected sources within a category of sources, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. The EPA has evaluated the comments received and has decided that the final General Provisions will require initial notification by only affected sources within a category of sources, the same as proposed. This would reduce the burden on area sources, many of which are small businesses. The implementation of the parts 70 and 71 permit programs will be the process to bring overlooked or noncomplying sources into the regulatory program. In addition, the MACT technical support documents defining the source categories and well-designed toxics emission inventories also will help agencies to identify affected sources. The EPA believes that these mechanisms are sufficient for the EPA or delegated agencies to identify additional sources that may be subject to a part 63 standard or other requirement.

Although only affected sources will be required to submit an initial notification, the EPA has added a requirement for the owner or operator of an unregulated source to keep a record of the applicability determination made for his or her source. Section 63.10(b)(3) requires that an owner or operator who determines that his or her stationary source is not subject to a relevant standard or other provision of part 63 keep a record of this applicability determination. This record must include an analysis demonstrating why the source is unaffected. This information must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with respect to the relevant part 63 standard or requirement.

In response to the comments requesting simplification of the initial notification requirements for affected sources, the final rule provides that some of the information that the proposed rule would have required in the initial notification be provided later in the notification of compliance status [§ 63.9(h)]. The initial notification will include only the following information: (1) The name and address of the owner or operator; (2) the address (i.e., physical location) of the affected source; (3) an identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; (4) a brief description of the nature, size, design and method of operation of the source, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP; and (5) a statement of whether the affected source is a major source or an area source.

In addition, § 63.9(h), Notification of compliance status, has been revised to include the information formerly required in the proposed initial notification under § 63.9(b)(2) (v) through (viii).

b. *Duplicate notification submittal.* Some commenters said that the § 63.9(a)(4)(ii) requirement that sources in a State with an approved permit program submit notifications to both the part 70 permitting authority and the relevant EPA Regional Office is unnecessary. A similar requirement is found in § 63.10(a)(4)(ii) regarding report submittal. According to these commenters, once a State has permitting authority, it should have the full authority to receive all notifications and reports.

The rule has been amended to allow EPA Regional Offices the option of waiving the requirement for the source to provide a duplicate copy of notifications and reports. The EPA has tried to limit the amount of duplicate reporting a source is required to do under part 63. However, in some cases it is necessary for both the permitting authority and the Regional Office to receive notifications and reports. Even when the EPA has delegated a program to a permitting authority, the Regional Offices must receive some baseline information to track implementation of the programs and provide guidance for national and regional consistency.

c. *Negotiated schedules.* Section 63.9(i)(2) of the proposed General Provisions, which requires delegated agencies to request in writing a source's permission to take additional time to review information, is inappropriate according to some commenters. Agencies should not have to request additional time to review information.

Upon review and consideration of this comment, the Administrator determined that this proposed provision is in conflict with the Administrator's authority to gather and consider information granted under section 114 of the Act. As a result, this aspect of the negotiated schedule provision has been deleted from the final rule. However, the Administrator also believes that reasonable accommodations regarding schedule negotiations can and should be made between administering agencies and affected sources so long as overall environmental goals are achieved. Language has been added to § 63.9(i)(4) to require agencies to notify sources of delays in schedules and to inform the sources of amended schedules to facilitate communication between the two parties.

2. Timeline Issues

As part of the Agency's evaluation process in developing the final rule, timing issues in general were considered, along with individual comments from industry, State and local agencies, trade associations, and other parties. A summary of the General Provisions as they relate to timelines of the individual requirements is presented in Appendix A of the promulgation BID for the General Provisions. (This summary is too lengthy to include in this preamble.)

The Agency considers these provisions to be significant because they represent the critical path timing constraints to be met by all affected sources.

a. *Compliance extension requests.* Because § 63.6(i)(12)(ii) as proposed only allows a source 15 days to respond to an EPA request for additional information on a compliance extension request, commenters said that the EPA should provide additional time to account for times when additional testing is needed or there are other circumstances that require additional time to prepare a response. Similarly, a 7-day deadline for a source to respond to a notice of an intent to deny a request for extension (§ 63.6(i)(12)(iii)(B)) or a notice that an application is incomplete (§ 63.6(i)(13)(iii)(B)) is insufficient, according to commenters. One commenter said that the time periods should be mutually agreed upon by the owner or operator and the permitting authority. Another commenter said that a simple mechanism for States to alter the timeframes of these and other notification, reporting, and recordkeeping provisions should be added.

Other commenters said that the deadlines for Agency review and responses should be increased.

The majority of the deadlines in §§ 63.6(i)(12) and (i)(13) have been increased to allow additional time for Agency review and for owners or operators to provide additional information. In particular, § 63.6(i)(13)(i) has been changed to allow the Administrator 30 days to notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance. Sections 63.6(i)(12)(i) and (i)(13)(i) have been changed to allow the Administrator 30 days and 15 days, respectively, to notify the owner or operator of the status of his/her application. Sections 63.6(i)(12)(ii) and (i)(13)(ii) have been changed to allow the owner or operator 30 days and 15 days, respectively, to provide additional information after receiving notice of an incomplete application. Sections 63.6(i)(12)(iii)(B) and (i)(13)(iii)(B) have been changed to allow the owner or operator 15 days to provide additional information after receiving notice of an intended denial. Finally, § 63.6(i)(13)(iv) has been revised to allow the Administrator 30 days to issue a final determination.

The increased time periods for review and response may result in some instances where a request for an extension could be denied, leaving the source with very little time to demonstrate compliance under the existing schedule. This may be an issue for sources subject to the section 112(f) residual risk standards, which are to be promulgated 8 years after the section 112(d) MACT standards. However, the EPA believes that the likelihood of this scenario occurring is relatively remote and would only occur under a worst-case situation of one or more requests for additional information and both parties using the full time period allotted for their individual actions. In addition, other changes made to performance test requirements (e.g., a decrease in the performance test notification period and the change to make submission of site-specific test plans for approval at the Agency's discretion) will decrease the lead time required for a source to demonstrate compliance, thus limiting the impacts of a "late" denial of an extension request.

Furthermore, as part of the section 112(l) approval process, State agencies may establish different timelines to allow better coordination with existing State programs, with some exceptions such as compliance dates. Also, as discussed in § 63.9(i), an owner or operator and the permitting agency may mutually agree to schedule changes.

Commenters also stated that the General Provisions should include provisions for a 5-year extension of compliance for installation of BACT or technology to attain LAER pursuant to section 112(i)(6) of the Act.

In response to these comments, the EPA has revised the regulation to incorporate these compliance extensions. Provisions implementing extensions of compliance for installation of BACT or technology to meet LAER are included in the final rule in § 63.6(i)(5).

b. *Performance test deadlines.* Many commenters said that sources should be allowed more than 120 days from startup or other triggering milestones to conduct a performance test. Most suggested 180 days as a more appropriate time period. Hazardous air pollutant performance testing is perceived to be more complicated than performance testing for criteria pollutants. An additional argument is that the part 60 general provisions (§ 60.8(a)) provide 180 days in which to conduct performance tests after startup and that the part 63 requirements should be consistent.

The Agency agrees that, in many cases, 180 days to conduct performance tests may be necessary, and there is also some merit in having the performance testing deadlines in parts 60 and 63 be consistent. Therefore, the EPA has modified § 63.7(a)(2) to set performance test deadlines within 180 days of the effective date of the relevant standards, the initial startup date, or the compliance date, as applicable.

c. *Notification of performance test.* Many commenters felt that the § 63.7(b) requirement that owners or operators submit a notification of a performance test 75 days before the test is scheduled to begin was an excessive period of time. Commenters also said that the observation of the test by the EPA should be optional.

Section 63.7(b) has been revised to reduce the notification period to 60 days. This time period should provide sufficient notice given that the requirement to submit these plans for review and approval is now at the Administrator's discretion (see section IV.D.2.c of this preamble). Observation of the test by the EPA is intended to be optional, and the section has been revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS) to allow a 60-day period rather than a 75-day period.

In the same general vein of allowing additional time to comply with the performance testing requirements, the times allowed for an owner or operator to respond to the Administrator's request to review a site-specific test plan under § 63.7(c) and for the Administrator to provide a decision have been changed to allow both parties more time to conduct these activities. The same changes were also made to similar requirements related to site-specific performance evaluation plans under §§ 63.8(d) and (e).

d. *Test results.* Commenters said that § 63.7(g) should be revised to allow more than 45 days for sources to submit the results of performance tests to the appropriate agencies.

Section 63.7(g) has been revised to allow sources 60 days to submit the required performance test results to the enforcing agency.

e. *Initial notification.* Several commenters said that affected sources should be given more than 45 days under § 63.9(b) to provide an initial notification. In many cases, 45 days will not be enough time to learn of the adoption of an emission standard, determine whether the standard is applicable to the source, and file the initial notification. Many commenters suggested 120 days as a more appropriate period. Some noted that the EPA already has proposed under the HON to require the initial notification up to 120 days after the effective date of that rule.

The Agency agrees that many sources will require more time than allowed at proposal to determine whether they are

affected by individual standards and to file the initial notification required by § 63.9(b). Therefore, the initial notification period in the final rule has been increased from 45 days to 120 days after the effective date of standards (or after a source becomes subject to a standard). For most sources, this change will enhance their ability to meet the initial notification requirements and will not affect their ability to meet other milestones, such as conducting any required performance testing and ensuring that the source is in compliance with the standard by the compliance date, which in many cases will be 3 years from the effective date. However, in cases where the existing source compliance date is considerably shorter than the 3-year maximum allowed period or the source in question is a new source that must comply within 180 days of the effective date (or startup), a shorter initial notification period may be set in the individual standards to accommodate those cases where an earlier notification would be desirable from both the source's and the permitting agency's perspective. As discussed in section IV.G.1.a of this preamble, the requirement to submit several pieces of information was removed from the initial notification and added to the compliance status report, which decreases the burden and time required to develop the initial notification. Therefore, the Agency believes that 120 days is adequate for submitting the initial notification.

3. Recordkeeping and Reporting

a. Records retention—length. Several comments were received on § 63.10(b)(1) related to the 5-year record retention period. Some commenters argued that: (1) The EPA has not established a need for a 5-year period, (2) there is no statutory requirement for 5 years of records retention, and consistency with the part 70 provisions is not an adequate basis, and (3) the 5-year records retention requirement is in conflict with EPA policy and the Paperwork Reduction Act. Some commenters suggested that a 2- or 3-year period would be preferable.

In contrast, some commenters supported the 5-year period because it is consistent with the part 70 provisions.

The EPA believes that the 5-year records retention requirement is reasonable and needed for consistency with the part 70 permit program and the 5-year statute of limitations, on which the permit program based its requirement. The retention of records for 5 years would allow the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. The EPA believes, based on prior enforcement history, that the most flagrant violators frequently have violations extending beyond the 5-year statute of limitations. Therefore, the EPA should not be artificially foreclosed, by allowing the destruction of potential evidence of violations, from pursuing the worst violators to the fullest extent of the law because of nonexistent records.

b. *Quarterly reports.* Some commenters opposed the requirement that excess emissions and continuous monitoring systems reports must be submitted quarterly when the CMS data are to be used directly for compliance determination (§ 63.10(e)(3)(i)(B)). Commenters especially objected to this provision when "negative" reports (that show the source is in compliance) would be submitted. Instead, commenters believed that the reports should be submitted semiannually, which is consistent with the requirements of title V. In cases where reporting less frequently than semiannually will not compromise enforcement of a relevant emissions standard, commenters said that the EPA should allow even less frequent reporting.

Other commenters suggested that all sources should be required to report quarterly. According to these commenters, allowing sources to report quarterly at first and later switch to a semiannual or quarterly schedule, depending on compliance status and history, would be confusing and difficult for States to administer. Furthermore, the commenters suggested that only sources that have demonstrated compliance with all requirements of the Act should be allowed to reduce their reporting frequency.

Some commenters stated that if the Agency's current approach is adopted, any request to reduce the frequency of reporting should be deemed approved unless expressly denied within 30 days. Other commenters said that the § 63.10(e)(3)(iii) requirement that the source provide written notification of a reduction in reporting frequency is unwarranted and should be eliminated. Instead, these commenters suggested that the reduction should automatically occur after a year of compliance.

One commenter said that 1 year of data is insufficient to use as a basis for reducing the frequency of reports, while another said that it is inappropriate to use more than the previous year of data collected.

In consideration of these comments, § 63.10(e)(3)(i) has been revised to allow semiannual reports for sources that are using CMS data for compliance but have no excess emissions to report. Quarterly reports still are required when excess emissions occur at sources that use CMS data for compliance, and the frequency of reporting may be reduced only through the procedures described in § 63.10(e)(3)(ii). The Administrator believes that this change will reduce the number of reports and the burden on sources.

Section 63.10(e)(3)(iii) has been revised to clarify that, in the absence of a notice of disapproval of a request to reduce the frequency of excess emissions and continuous monitoring systems reports within 45 days, approval is granted. However, the Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool and that any reductions in their frequency should be considered carefully by the implementing agency.

As for the comment that 1 year of data may be inappropriate to use in evaluating a request for a reduction in frequency, the 1-year period is the minimum required for a source to submit a request. Up to 5 years of data may be considered, at the Administrator's discretion. Because of the potential variability among sources and the possible issues associated with an individual source's compliance status (e.g., a history of noncompliance), it is important to preserve the Administrator's discretion in reviewing more extensive data to make a determination.

The EPA is committed to identifying ways to increase industry's flexibility to comply with the part 63 General Provisions where it does not impair achieving environmental objectives. As such, the provisions that allow for a reduction in reporting burden are appropriate. (The part 70 operating permit provisions preclude the EPA from allowing sources to report less frequently than semiannually.) However, the EPA believes that the burden should be on sources to demonstrate ongoing compliance with applicable standards prior to considering a request to reduce the reporting frequency. While the EPA is sensitive to the possible difficulty that sources and States might face in tracking varying reporting schedules, the specific conditions in title V operating permits are intended, in part, to help address the variability among sources.

V. Administrative Requirements

A. Docket

The docket for this rulemaking is A–91–09. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from the OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, (6102), ATTN: Docket No. A–91–09, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. Approval of an information collection request is not required for this rulemaking because, for sources affected by section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

§ 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

3. Section 60.2 is amended by revising the definitions of "Act" and "Malfunction" and by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," "Stationary source," and "Title V permit" to read as follows:

§ 60.2 Definitions.

* * * * *

Act means the Clean Air Act (42 U.S.C. 7401 et seq.)

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the

requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

* * * * *

4. In § 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

§ 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such

time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

§ 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," and "Title V permit" to read as follows:

§ 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

* * * * *

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:

(1) The provisions of this part; and/or

(2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by

a State permitting authority is called a part 70 permit in this part.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

§ 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

10. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub. L. 101–549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A—General Provisions

Sec.
- 63.1 Applicability.
- 63.2 Definitions.
- 63.3 Units and abbreviations.
- 63.4 Prohibited activities and circumvention.
- 63.5 Construction and reconstruction.
- 63.6 Compliance with standards and maintenance requirements.
- 63.7 Performance testing requirements.
- 63.8 Monitoring requirements.
- 63.9 Notification requirements.
- 63.10 Recordkeeping and reporting requirements.
- 63.11 Control device requirements.
- 63.12 State authority and delegations.
- 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.
- 63.14 Incorporations by reference.
- 63.15 Availability of information and confidentiality.

Subpart A—General Provisions

§ 63.1 Applicability.

(a) *General.* (1) Terms used throughout this part are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more

hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) The provisions of this subpart (i.e., subpart A of this part) apply to owners or operators who are subject to subsequent subparts of this part, except when otherwise specified in a particular subpart or in a relevant standard. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by this part. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part or in a relevant standard established under this part shall supersede any conflicting provisions of this subpart.

(14) Any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part (including, but not limited to, equivalent emission limitations established pursuant to section 112(g) of the Act) shall have the force and effect of requirements promulgated in this part and shall be subject to the provisions of this subpart, except when explicitly specified otherwise.

(b) *Initial applicability determination for this part.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

(ii) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661). For more information about obtaining an operating permit, see part 70 of this chapter.

(3) An owner or operator of a stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants who determines that the source is not subject to a relevant standard or other requirement established under this part, shall keep a record of the applicability determination as specified in § 63.10(b)(3) of this subpart.

(c) *Applicability of this part after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart or that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from the permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources will specify whether—

(i) States will have the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., the standard will exempt the category of area sources altogether from the permitting requirement);

(ii) States will have the option to defer permitting of area sources in that category until the Administrator takes rulemaking action to determine applicability of the permitting requirements; or

(iii) Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with part 70 of this chapter and applicable State regulations, or in accordance with the regulations contained in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart except those requirements that are specifically overridden in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a title V permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or the regulations codified in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

§ 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the "affected source" for the purposes of that standard. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Sources regulated under part 60 or part 61 of this chapter are not affected sources for the purposes of part 63.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows: (i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the on-site fabrication, erection, or installation of an affected source.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the Federal Register of such standard; or

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program established under title V of the Act (42 U.S.C. 7661) is determined according to the regulations in this chapter establishing such programs.

Emission standard means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) All terms and conditions in a title V permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(4) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(5) Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(6) Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into a SIP as meeting the EPA's minimum criteria for Federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability;

(7) Limitations and conditions in a State rule or program that has been approved by the EPA under subpart E of this part for the purposes of implementing and enforcing section 112; and

(8) Individual consent agreements that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and

under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit modification means a change to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S C. 7661).

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permit revision means any permit modification or administrative permit amendment to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the **Federal Register**.

Relevant standard means:

(1) An emission standard;

(2) An alternative emission standard;

(3) An alternative emission limitation; or

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation.

A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of Appendix A of this part.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) *System International (SI) units of measure:*

A = ampere
g = gram
Hz = hertz
J = joule
°K = degree Kelvin
kg = kilogram
l = liter
m = meter
m^3 = cubic meter
mg = milligram = 10^{-3} gram
ml = milliliter = 10^{-3} liter
mm = millimeter = 10^{-3} meter
Mg = megagram = 10^6 gram = metric ton
MJ = megajoule
mol = mole
N = newton
ng = nanogram = 10^{-9} gram
nm = nanometer = 10^{-9} meter
Pa = pascal
s = second
V = volt
W = watt
Ω = ohm
µg = microgram = 10^{-6} gram
µl = microliter = 10^{-6} liter

(b) *Other units of measure:*

Btu = British thermal unit
°C = degree Celsius (centigrade)
cal = calorie
cfm = cubic feet per minute
cc = cubic centimeter
cu ft = cubic feet
d = day
dcf = dry cubic feet
dcm = dry cubic meter
dscf = dry cubic feet at standard conditions
dscm = dry cubic meter at standard conditions
eq = equivalent
°F = degree Fahrenheit
ft = feet
ft^2 = square feet
ft^3 = cubic feet
gal = gallon
gr = grain
g-eq = gram equivalent
g-mole = gram mole
hr = hour
in. = inch
in. H_2O = inches of water
K = 1,000
kcal = kilocalorie
lb = pound
lpm = liter per minute
meq = milliequivalent
min = minute
MW = molecular weight
oz = ounces
ppb = parts per billion
ppbw = parts per billion by weight
ppbv = parts per billion by volume
ppm = parts per million
ppmw = parts per million by weight
ppmv = parts per million by volume
psia = pounds per square inch absolute
psig = pounds per square inch gage
°R = degree Rankine
scf = cubic feet at standard conditions
scfh = cubic feet at standard conditions per hour
scm = cubic meter at standard conditions
sec = second
sq ft = square feet
std = at standard conditions
v/v = volume per volume
yd^2 = square yards
yr = year

(c) *Miscellaneous:*

act = actual
avg = average
I.D. = inside diameter
M = molar
N = normal
O.D. = outside diameter
% = percent

§ 63.4 Prohibited activities and circumvention.

(a) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under—

(i) An extension of compliance granted by the Administrator under this part; or

(ii) An extension of compliance granted under this part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether—

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) *Circumvention.* No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to—

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;

(2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and

(3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V

permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 63.5 Construction and reconstruction.

(a) *Applicability.* (1) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. In addition, this section includes other requirements for constructed and reconstructed stationary sources that are or become subject to a relevant promulgated emission standard.

(2) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(b) *Requirements for existing, newly constructed, and reconstructed sources.* (1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major affected source or reconstruct a major affected source subject to such standard, or reconstruct a major source such that the source becomes a major affected source subject to the standard, without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that the source becomes an affected source subject to the standard, without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section. For major sources, the application for approval of construction or reconstruction may be used to fulfill the notification requirements of this paragraph.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard unless that person has received an extension of compliance or an exemption from compliance under § 63.6(i) or § 63.6(j) of this subpart.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. If a new affected source is added to the facility, the new affected source shall be subject to all the provisions of the relevant standard that are established for new sources including compliance dates.

(c) [Reserved]

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

(1) *General application requirements.* (i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Administrator an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the standard. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The application shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5) of this subpart. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(E) The expected commencement date of the construction or reconstruction;

(F) The expected completion date of the construction or reconstruction;

(G) The anticipated date of (initial) startup of the source;

(H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified in the relevant standard. The owner or operator may submit percent reduction information if a relevant standard is established in terms of percent reduction. However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance; and

(I) [Reserved]

(J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(2) of this section shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in § 63.9(h) [see § 63.9(h)(5)].

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations. An owner or operator who submits approximations of control efficiencies under this subparagraph shall submit the actual control efficiencies as specified in paragraph (d)(1)(iii) of this section.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section—

(i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Administrator's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in subparagraphs (d)(3) (iii) through (v) of this section, above.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) *Approval of construction or reconstruction.* (1)(i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall—

(i) Relieve an owner or operator of legal responsibility for compliance with

any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(f) *Approval of construction or reconstruction based on prior State preconstruction review.* (1) The Administrator may approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(i) The owner or operator of the new or reconstructed source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the promulgation date of the relevant standard and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant emission standard as proposed, if the source is properly built and operated;

(ii) In making its finding, the State has considered factors substantially equivalent to those specified in paragraph (e)(1) of this section; and either

(iii) The promulgated standard is no more stringent than the proposed standard in any relevant aspect that would affect the Administrator's decision to approve or disapprove an application for approval of construction or reconstruction under this section; or

(iv) The promulgated standard is more stringent than the proposed standard but the owner or operator will comply with the standard as proposed during the 3-year period immediately following the effective date of the standard as allowed for in § 63.6(b)(3) of this subpart.

(2) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph no later than the application deadline specified in paragraph (d)(1) of this section [see also § 63.9(b)(2) of this subpart]. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph.

§ 63.6 Compliance with standards and maintenance requirements.

(a) *Applicability.* (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless—

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard in accordance with section 112(i)(4) of the Act.

(2) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

(b) *Compliance dates for new and reconstructed sources.* (1) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard upon startup of the source.

(3) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if:

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1) and (b)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d) of this subpart.

(6) [Reserved]

(7) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected new area source (i.e., an area source for which construction or reconstruction was commenced after the proposal date of the standard) that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard, shall comply with the relevant emission standard immediately upon becoming a major source. This compliance date shall apply to new area sources that become affected major sources regardless of whether the new area source previously was affected by that standard. The new affected major source shall comply with all requirements of that standard that affect new sources.

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard

not later than 90 days after the standard's effective date unless the Administrator has granted an extension to the source under paragraph (i)(4)(ii) of this section.

(3)–(4) [Reserved]

(5) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected existing area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard shall comply by the date specified in the standard for existing area sources that become major sources. If no such compliance date is specified in the standard, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in that standard for other existing sources. This compliance period shall apply to existing area sources that become affected major sources regardless of whether the existing area source previously was affected by that standard. Notwithstanding the previous two sentences, however, if the existing area source becomes a major source by the addition of a new affected source or by reconstructing, the portion of the existing facility that is a new affected source or a reconstructed source shall comply with all requirements of that standard that affect new sources, including the compliance date for new sources.

(d) [Reserved]

(e) *Operation and maintenance requirements.* (1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures [including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section], review of operation and maintenance records, and inspection of the source.

(3) *Startup, Shutdown, and Malfunction Plan.* (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. As required under § 63.8(c)(1)(i), the plan shall identify all routine or otherwise predictable CMS malfunctions. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The plan shall be incorporated by reference into the source's title V permit. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in § 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator [see § 63.10(d)(5)(ii)].

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans

meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with nonopacity emission standards*—(1) *Applicability.* The nonopacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with nonopacity emission standards in this part based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) The Administrator will determine compliance with nonopacity emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in § 63.6(e) and applicable subparts of this part.

(iii) If an affected source conducts performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c) of this subpart.

(iv) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a nonopacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative nonopacity emission standard.* (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. Any **Federal Register** notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative nonopacity emission standard shall be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards*—(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with opacity and visible emission standards in this part based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission

standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) [Reserved]

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The opacity or visible emission test was appropriately quality-assured, as specified in § 63.7(c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in § 63.7 unless one of the following conditions applies:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in Appendix A of part 60 of this chapter.

(ii) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (30 6-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

(iii) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation of emissions, and report to the Administrator the opacity or visible emission results in accordance with the provisions of § 63.10(d).

(iv) [Reserved]

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.*

(i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see Appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality-assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in Appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.*

(i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that—

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the **Federal Register**.

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.* (1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reductions and other reductions*—(i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) [as defined in section 169(3) of the Act] or technology required to meet a lowest achievable emission rate (LAER) [as defined in section 171 of the Act] prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part [except requests for an extension of compliance under paragraph (i)(2)(i) of this section will be handled through procedures specified in subpart D of this part].

(4)(i)(A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of

requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (i)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6)(i) The request for a compliance extension under paragraph (i)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*1*) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(*2*) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*4*) The date by which final compliance is to be achieved;

(C) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment; and

(D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (i)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)(A) Under paragraph (i)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (i)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing,

within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

§ 63.7 Performance testing requirements.

(a) *Applicability and performance test dates.* (1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows—

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in an applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act, or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(i); or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) [see § 63.6(b)(4)]; or

(vii) [Reserved]; or

(viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed [see § 63.6(b)(3)], the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(b) *Notification of performance test.* (1) The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test. Observation of the

performance test by the Administrator is optional.

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond his or her control, the owner or operator shall notify the Administrator within 5 days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(c) *Quality assurance program.* (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved [see paragraph (f) of this section]. If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4)(i) *Performance test method audit program.* The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD–77B), Atmospheric Research and Exposure Assessment Laboratory (AREAL), U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing

source, shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.* (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator—

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that—

(i) A sample is accidentally lost after the testing team leaves the site; or

(ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(iii) Extreme meteorological conditions occur; or

(iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

(f) *Use of an alternative test method*—(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator—

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submittal of the site-specific test plan (if requested by the Administrator) or at least 60 days before the performance test is scheduled to begin if a site-specific test plan is not submitted;

(ii) Uses Method 301 in Appendix A of this part to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under § 63.7(f).

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.* (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions, and raw data. A performance test is "completed" when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator [see § 63.9(i)]. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a title V permit has

been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority.

(2) [Reserved]

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.* (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report [such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's title V permit], but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under paragraph (c) of this section is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she—

(i) Approves or denies an extension of compliance under § 63.6(i)(8); or

(ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3); or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.8 Monitoring requirements.

(a) *Applicability.* (1)(i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems (CMS) under a relevant standard.

(2) For the purposes of this part, all CMS required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS as specified in the relevant standard or otherwise by the Administrator.

(3) [Reserved]

(4) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in § 63.11.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator—

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(iii) Owners or operators with flares subject to § 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.

(2)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable CMS on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is—

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one CMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CMS. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of this part. If both such CMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the relevant compliance period.

(c) *Operation and maintenance of continuous monitoring systems.* (1) The owner or operator of an affected source shall maintain and operate each CMS as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of an affected source shall ensure the immediate repair or replacement of CMS parts to correct "routine" or otherwise predictable CMS malfunctions as defined in the source's startup, shutdown, and malfunction

plan required by § 63.6(e)(3). The owner or operator shall keep the necessary parts for routine repairs of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

(ii) For those malfunctions or other events that affect the CMS and are not addressed by the startup, shutdown, and malfunction plan, the owner or operator shall report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator shall send a follow-up report within 2 weeks after commencing actions inconsistent with the plan that either certifies that corrections have been made or includes a corrective action plan and schedule. The owner or operator shall provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the CMS. Operation and maintenance procedures written by the CMS manufacturer and other guidance also can be used to maintain and operate each CMS.

(2) All CMS shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, CEMS shall be located according to procedures contained in the applicable performance specification(s).

(3) All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including COMS and CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for COMS shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a CMS installed in accordance with the provisions of this part and the applicable CMS performance specification(s) shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7)(i) A CMS is out of control if—

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the CMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS is out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a CMS that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.* (1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a CMS and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e). In addition, each quality control program shall include, at a minimum, a written protocol that describes procedures for each of the following operations:

(i) Initial and any subsequent calibration of the CMS;

(ii) Determination and adjustment of the calibration drift of the CMS;

(iii) Preventive maintenance of the CMS, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems*—(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(3)(i) *Submission of site-specific performance evaluation test plan.* Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator' failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required CMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit COMS data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in the relevant standard, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.* (i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a COMS to

determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method*—(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) above to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed

to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) *Reduction of monitoring data.* (1) The owner or operator of each CMS shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each COMS shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from CEMS for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of this part are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O_2 or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

§ 63.9 Notification requirements.

(a) *Applicability and general information.* (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any notifications at its discretion.

(b) *Initial notifications.* (1)(i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section.

(iii) Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under § 63.5(d) of this subpart, if relevant, to fulfill the initial notification requirements of this paragraph.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant

standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant; and

(v) A statement of whether the affected source is a major source or an area source.

(3) The owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d), shall notify the Administrator in writing that the source is subject to the relevant standard no later than 120 days after initial startup. The notification shall provide all the information required in paragraphs (b)(2)(i) through (b)(2)(v) of this section, delivered or postmarked with the notification required in paragraph (b)(5).

(4) The owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a major source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i);

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the source, delivered or postmarked not more than 60 days nor less than 30 days before such date; and

(v) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that it becomes an affected source subject to such standard, shall notify the Administrator, in writing, of the intended construction or reconstruction. The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The notification shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of this subpart, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c), if requested by the Administrator, and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a CMS by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under § 63.7(b). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation

at least 60 calendar days before the evaluation is scheduled to begin;

(2) A notification that COMS data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted at least 60 calendar days before the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be delivered or postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.* (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted;

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

(E) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data generated for this notification);

(F) A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

(G) A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

(ii) The notification shall be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60th (or other required) day following completion of the initial performance test and again before the close of business on the 60th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this part. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in the relevant standard.

(4) [Reserved]

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data or control efficiencies required in paragraphs (d)(1)(ii)(H) and (d)(2) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.* (1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

§ 63.10 Recordkeeping and reporting requirements.

(a) *Applicability and general information.* (1) The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4)(i) Before a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at its discretion.

(5) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(b) *General recordkeeping requirements.* (1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain relevant records for such source of—

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)];

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)] when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a CMS is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(viii) All results of performance tests, CMS performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All CMS calibration checks;

(xi) All adjustments and maintenance performed on CMS;

(xii) Any information demonstrating whether a source is meeting the requirements for a waiver of

recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

(3) Recordkeeping requirement for applicability determinations. If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for such source of—

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)–(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7);

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) [Reserved]

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

(d) *General reporting requirements.* (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)], the owner or operator shall state such information in a startup, shutdown, and malfunction report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day

following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph shall consist of a telephone call (or facsimile [FAX] transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) *Additional reporting requirements for sources with continuous monitoring systems*—(1) *General.* When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) *Reporting results of continuous monitoring system performance evaluations.* (i) The owner or operator of an affected source required to install a CMS by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.* (i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when—

(A) More frequent reporting is specifically required by a relevant standard;

(B) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source; or

(C) The CMS data are to be used directly for compliance determination and the source experienced excess emissions, in which case quarterly reports shall be submitted. Once a source reports excess emissions, the source shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (e)(3)(ii) of this section is approved.

(ii) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the

absence of a notice of disapproval within 45 days, approval is automatically granted.

(iv) As soon as CMS data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report for the noncomplying emission points at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be delivered or postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report—Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

(A) The company name and address of the affected source;

(B) An identification of each hazardous air pollutant monitored at the affected source;

(C) The beginning and ending dates of the reporting period;

(D) A brief description of the process units;

(E) The emission and operating parameter limitations specified in the relevant standard(s);

(F) The monitoring equipment manufacturer(s) and model number(s);

(G) The date of the latest CMS certification or audit;

(H) The total operating time of the affected source during the reporting period;

(I) An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

(J) A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

(K) A description of any changes in CMS, processes, or controls since the last reporting period;

(L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted

(4) *Reporting continuous opacity monitoring system data produced during a performance test.* The owner or operator of an affected source required to use a COMS shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part [such as under § 63.6(i) and § 63.9(h)] or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.11 Control device requirements.

(a) *Applicability.* This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) *Flares.* (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in Appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is 2 hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant =

$$1.740\times10^{-7}\left(\frac{1}{\text{ppmv}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

(7)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section. The actual exit velocity of a flare shall be determined by dividing by the volumetric flow rate of gas being combusted (in units of emission standard temperature and pressure), as determined by Test Methods 2, 2A, 2C, or 2D in Appendix A to 40 CFR part 60 of this chapter, as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, less than the velocity V_{max}, as determined by the method specified in this paragraph, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity, V_{max}, for flares complying with this paragraph shall be determined by the following equation:

$Log_{10}(V_{max})=(H_T+28.8)/31.7$

Where:

V_{max}=Maximum permitted velocity, m/sec.

28.8=Constant.

31.7=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$V_{max}=8.706+0.7084(H_T)$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.706=Constant.

0.7084=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

§ 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part;

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and

other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency.

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the following list of EPA Regional Offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air, Pesticides and Toxics Division, J.F.K. Federal Building, Boston, MA 02203–2211.

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, 26 Federal Plaza, New York, NY 10278.

EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air, Radiation and Toxics Division, 841 Chestnut Street, Philadelphia, PA 19107.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics, Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Director, Air, Pesticides and Toxics, 1445 Ross Avenue, Dallas, TX 75202–2733.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Toxics Division, 999 18th Street, 1 Denver Place, Suite 500, Denver, CO 80202–2405.

EPA Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Director, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.

(b) All information required to be submitted to the Administrator under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The owner or operator of an affected source may contact the appropriate EPA Regional Office for the mailing addresses for those States whose delegation requests have been approved.

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW, suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b)(6).

(2) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for § 63.11(b)(6).

§ 63.15 Availability of information and confidentiality.

(a) *Availability of information.* (1) With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

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Federal Register

Wednesday
March 16, 1994

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–020P]

RIN 0583–AB72

Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by defining the information panel on the labeling of meat and poultry products; allowing mandatory labeling information to be shown in the information panel, in addition to the principal display panel; allowing nutrition information to be shown on other than the principal display panel or the informational panel of meat and poultry products; and allowing final labeling bearing nutrition information, which has been approved by FSIS in sketch form, to be generically approved. This action would provide increased flexibility in the placement of nutrition information and other mandatory information on the labeling of meat and poultry products and streamline the nutrition labeling approval process. Portions of this proposal parallel a Food and Drug Administration (FDA) proposal concerning placement of the nutrition information on food packages.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Written comments to: Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles Edwards at (202) 254–2565. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would provide official establishments with additional flexibility in placing nutrition labeling and other mandatory information on the labeling of meat and poultry products. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or nutrition information. Therefore, most small establishments would not be affected by the portion of this proposed rule pertaining to the placement of nutrition information on the labeling.

The other portion of this proposed rule would provide regulatory flexibility in placing other mandatory information, such as the ingredients statement or the name of the company, on the labeling. Such flexibility is already provided to all establishments under current labeling regulations and policy. Therefore, small establishments would see minimal, if any, impact from this portion of the proposed rule.

Small businesses referred to as label expeditors, however, would be affected by the portion of the proposed rule pertaining to the generic approval of nutrition labeling which has been approved in sketch form. While such entities would be affected because the number of labels requiring the existing expediting service would decrease, the number of firms expediting label approvals is not substantial. Moreover, the Agency believes that since the proposed rule would only affect that category of labeling bearing nutrition information, the economic impact on the expediting service may not be significant because many of the existing label expeditors are likely to modify the services they offer and provide consulting services to their existing clients. This portion of the proposed rule would have a positive, but not significant, impact on a large number of small meat and poultry processors because it would reduce their direct labeling application costs.

Paperwork Requirements

This proposed rule would require the category of labels addressed in this rule to be approved only once by FSIS's Food Labeling Division (FLD) in sketch, and if no changes are made, no additional approval would be necessary (generic approval). Therefore, to receive final approval, establishments would not have to complete FSIS Form 7234, "Application for Approval of Labels, Marking or Device," which transmits labels to FLD for review and approval. This would eliminate duplication in the labeling approval system and reduce the number of labels reviewed and processed by FLD. Therefore, this proposal would expedite the labeling approval process for the specific category of labeling addressed in this rule and would also reduce official establishments' paperwork burden.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 93–020P. Any person desiring an opportunity for an oral presentation of views, as provided by

the Poultry Products Inspection Act, should make such a request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection at the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

FSIS published its final nutrition labeling regulations in the **Federal Register** on January 6, 1993 (58 FR 632). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787) and September 10, 1993 (58 FR 47624), respectively. The final rule permits voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and establishes mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. The rule also specifies a new format for nutrition information and the location of nutrition information on the label of packaged products. Nutrition information on a label of packaged meat or poultry products must appear on the label's principal display panel or on the information panel, except for gift packs. Nutrition information for gift packs may be displayed at a location other than on the product label, such as label inserts.

Recognizing label space constraints, FSIS included provisions in the final rule that allow a modified nutrition label on products in packages that have a total surface area available to bear labeling of 40 or less square inches, so that the required nutrition information could be presented on any label panel. The flexibility provided by these provisions reflects FSIS's recognition that is more important that the nutrition information be presented on the immediate package than in any particular place. In addition, FSIS, stated in the preamble to the final rule that it will consider, on a case-by-case basis, allowing the modified nutrition label for packages larger than 40 square inches that have a surface area which precludes the presentation of the full nutrition label. Such determinations are made by FSIS at the time meat and poultry manufacturers obtain prior approval for the content and design if labeling for their products before the products may be marketed.

Following publication of its final rule on nutrition labeling, FSIS received many comments from the meat and poultry industry requesting greater flexibility in the placement of nutrition information on the product label. The commenters stated that the type size and spacing requirements for the display of the nutrition information prevented its placement in compliance with current labeling regulations and policy. FSIS agrees that new nutrition information displays often require more space on the label than current nutrition information displays, and that it is sometimes difficult to fit all required information on the information panel. FSIS has concluded that increased flexibility in regard to the placement of nutrition information is necessary to ensure that mandatory information on labels is readable and not overcrowded. FSIS believes this flexibility can be achieved without hindering consumer use of labeling information. FDA reached similar conclusions based on its review of layouts to implement its nutrition labeling regulations, as well as its review of comments received after publication of its final rule. Based on its conclusion that greater flexibility in the placement of nutrition information is needed, FDA published a proposed rule in the **Federal Register** on August 18, 1993 (58 (FR 44091), to permit such flexibility.

Under the nutrition labeling regulations, most meat and poultry product labels, with certain exceptions, must be revised and resubmitted for review and approval by FSIS. FSIS anticipates that approximately 120,000 labels would require nutrition labeling under the final nutrition labeling regulations. FSIS has acknowledged the extensive economic impact of the nutrition labeling requirements, as well as the need for substantive Agency resources to review all such revised labels. The volume of labels bearing nutrition labeling, compounded by the routine submittal of labels requiring approval, is expected to place a tremendous burden upon the current prior label approval system. FSIS believes this burden would be reduced without loss of information to consumers by allowing the labeling to be generically approved once it has been approved by FSIS in sketch form.

Current Regulations and Agency Policy

Currently, 9 CFR 317.2(d) and 381.116(b) define the "principal display panel" as the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale. Under 9 CFR 317.2(c), 381.117, 381.118, 381.121, 381.121a, 381.122, and 381.123, this panel must include the name of the product; the ingredients statement, if the product is fabricated from two or more ingredients; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; an official inspection legend and the number of the official establishment; and any other information required by the regulations.

Section 381.116(a) of the poultry products inspection regulations (9 CFR 381.116(a)) prescribes that information required to appear on the principal display panel, except as otherwise permitted in the regulations, shall be in distinctly legible form, read in the same general direction, generally parallel to each other, and appear in the English language, except that Spanish may be substituted for English, under certain cases, for all information except the inspection legend. The Federal meat inspection regulations contain similar provisions, except that mandatory information on the principal display panel is not required to read in the same general direction and be generally parallel to each other.

In August 1980, the Food Labeling Division of FSIS issued Policy Memo 7, Information Panel, which permits the use of an information panel, in addition to the principal display panel, for providing mandatory labeling information on meat and poultry products.[1] This policy memo was issued because establishments were experiencing difficulty in providing all required information on the principal display panel. Policy Memo 7 provides that the mandatory information that may appear on an information panel includes nutrition information, an ingredients statement, and the firm's name and address. The inspection legend and number on cylindrical cans may also appear on the information panel, but must be placed on the 20 percent area immediately to the right of the principal display panel.

Policy Memo 7 also defines an information panel as the first usable surface to the right of the principal display panel. Usable surfaces exclude those having folded flaps, tear strips, opening flaps, heat-sealed type flaps, or less than adequate space to accommodate the mandatory information. Surfaces having information, such as vignettes, UPC codes, preparation instructions, and serving suggestions are considered usable and such information should be displaced if an information panel is used. The policy memo specifies that where a surface is larger than needed to accommodate the mandatory information, the information panel is a

[1] A copy of this policy memo is available for public inspection in the office of the FSIS Hearing Clerk.

section of that surface and must contain all mandatory information in one place without intervening nonmandatory information. The information panel must be located on the left side of any such large surface.

Sections 317.4, 327.14, 327.15, 381.132, and 381.205 of the regulations describes FSIS's prior label approval program. Under this program, official establishments may submit labeling in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) to the Food Labeling Division for approval. After official establishments print final labels based on approved sketches, the final labeling must be resubmitted for approval by either the Food Labeling Division or an inspector-in-charge, depending on the modification made to the final labeling. In addition, §§ 317.5 and 381.134 of the regulations provide that labeling can be generically approved for use without additional authorization, provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular.

The Proposal

FSIS is proposing to amend the Federal meat and poultry products inspection regulations by allowing mandatory labeling information to be placed on the information panel and by defining "information panel." This action is necessary to specify in the regulations the location of mandatory information which cannot be accommodated on the principal display panel due to insufficient space. These new provisions would replace current directions on use of the information panel and would rescind Policy Memo 7. Accordingly, FSIS proposes to add a new paragraph (m) to 9 CFR 317.2 and a new paragraph (c) to 9 CFR 381.116 to define the information panel as the first usable surface to the right of the principal display panel or alternate principal display panel that can be readily seen by consumers. These added provisions would also require that all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining whether sufficient space is available, any vignettes, designs, and other nonmandatory information shall not be considered. If either panel cannot accommodate all mandatory information, the information may be divided between the principal display panel or the information panel. However, information required by any single regulation, such as the ingredients statement, must appear complete on a single panel. All information on the information panel shall appear in one place without intervening material, such as vignettes. FSIS proposes to add the information panel as a location for the ingredients statement and the name and place of business of the manufacturer, packer, or distributor, except as otherwise specified in the regulations, by amending 9 CFR 317.2(f), 317.2(g)(2), 381.118, and 381.122 to this effect.

FSIS is aware that, in certain instances, such as when only a principal display panel is used on a package with no other surface area to place a label, it is not always possible for all mandatory information to fit and read in the same direction on the principal display panel. In such cases, it is necessary to provide some information perpendicular to the other mandatory information on the panel to fit all information on the panel. Therefore, FSIS proposes to delete the wording from 9 CFR 381.116 that requires all mandatory information on the principal display panel to read in the same general direction for the reasons discussed in the preceding section of the preamble.

FSIS is proposing to allow the nutrition information to be placed on any panel that can be readily seen by consumers when a package has a total surface area available to bear labeling of greater than 40 square inches, but its principal display and information panels cannot accommodate all mandatory information. Thus, if the first panel to the right of the principal display panel, such as the right side of a box, can accommodate all mandatory information other than the nutrition information, the nutrition information may be placed on any other panel, such as the left side or the top of the box. The establishment would also have the option of placing all mandatory information, including the nutrition information, on the next usable right panel big enough to accommodate all information, such as the back of the box. This action would provide increased flexibility by allowing establishments to position the nutrition information to reduce crowding of mandatory information. FSIS believes that providing this flexibility would not produce any loss of comprehensibility, understandability, or information for consumers.

Current rules for determining the space available to bear mandatory labeling information in 9 CFR 317.2(d) and 381.116(b) are that the principal display panel be large enough to accommodate all mandatory information with clarity and conspicuousness without it being obscured by nonmandatory label information or crowding. Thus, nonmandatory labeling information on the principal display panel must be counted as usable space for mandatory information in determining sufficiency of space. The purpose of these provisions is to ensure that mandatory labeling information is prominently displayed on meat or poultry product labels, so that consumers can easily locate such information. FSIS believes that a different treatment of nonmandatory information on the principal display panel is appropriate in deciding where nutrition information is to be presented because the graphic requirements for nutrition information required by 9 CFR 317.309(e) and 381.409(e) result in a "Nutrition Facts" panel that is easy to locate regardless of its placement on the label. Given the demand for labeling space made by nutrition information, FSIS is proposing to exclude designs, vignettes, and other nonmandatory information on the principal display panel in calculating the amount of available space for determining the panel on which nutrition information should appear. To displace these items could significantly affect the appearance of many packages with little gain in comprehensibility for consumers. In addition, current industry practice almost never places the nutrition information on the principal display panel unless there is no alternative panel on the package.

These proposed actions would require an accompanying modification to the nutrition labeling regulations pertaining to relative nutrient content claims. The specific provisions to be modified would be provisions of FDA's final nutrition labeling regulations of January 6, 1993 (58 FR 2302) (as corrected at 58 FR 17341, April 2, 1993, and adopted by FSIS at 58 FR 43787, August 18, 1993), that FSIS cross-referenced in its codified language. To incorporate the modifications into its codified language, FSIS would subdivide existing paragraphs and add new paragraphs. The existing portions of text are included only to define the subdivisions, place the proposed requirements in the framework of existing provisions, and make the revised sections easier to interpret.

In its final rule, FSIS cross-referenced 21 CFR 101.13(j)(2)(iv)(B), which requires that when a relative nutrient content claim is made, clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food shall appear adjacent

to the most prominent claim or on the information panel. FDA repeated this requirement in each regulation in 21 CFR part 101 pertaining to relative claims (i.e., claims about "more," "light," calories, sodium, and fat, fatty acids, and cholesterol) and FSIS cross-referenced most of these provisions. FSIS is proposing to amend these provisions to require that the comparative quantitative information be placed adjacent to the most prominent claim or to the nutrition information. Likewise, FSIS is proposing to modify the provision that pertains to the placement of the statement "not a sodium free food" on products that are not sodium free and yet whose label bears a claim of "unsalted." FSIS is proposing to require that the statement be placed adjacent to the nutrition information.

FSIS finds that these comparative statements and the statements about the sodium content of products provide information about the nutritional content of the product. They are of the greatest value to consumers when presented in conjunction with other nutrition information about the product. Because nutrition information may or may not appear on the principal display panel or the information panel, FSIS believes that the location of the comparative statements and the statement on sodium content should be tied to the placement of the nutrition information rather than placed on the principal display panel or the information panel.

The nutrition labeling regulations require extensive revision of existing meat and poultry product labels. All labels modified to meet the nutrition labeling regulations must be submitted to FSIS for review and approval prior to use. FSIS anticipates that approximately 120,000 labels would require nutrition labeling under the final nutrition labeling regulations. Since publication of the nutrition labeling regulations on January 6, 1993, only about 5,000 labels designed to implement the nutrition labeling regulations have been approved by FSIS. The projected increase in the volume and complexity of labeling applications submitted to FSIS for approval from companies seeking to comply with the nutrition labeling regulations, compounded by the routine submittal of labels requiring approval, but exempt from nutrition labeling, is expected to place a tremendous burden on the current prior labeling approval system.

On November 23, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 62014) which proposes to change the prior labeling approval system, in part, by allowing final labeling, which was approved by FSIS in sketch form, to be used without further FSIS authorization. However, because the prior labeling approval proposal encompasses various labeling issues, a final rule may not be issued in a timely manner to alleviate the anticipated burden on the prior labeling approval system resulting from nutrition labeling applications. Therefore, FSIS is proposing to allow final labeling bearing nutrition information to be generically approved.

Under the proposed system, official establishments would be permitted to use final labeling bearing nutrition information, which has been approved by FSIS in sketch form, without additional authorization, provided the final labeling has been prepared without modifications or with modifications permitted in 9 CFR 317.5(b) and 381.134(b), and the final labeling is not false or misleading. Such labeling must be designed in accordance with 9 CFR part 317, subpart B, and 381, subpart Y. FSIS believes it is an unnecessary burden on industry to require the submission of final labeling when the sketch has been previously approved. Because the labeling would have been reviewed and approved by FSIS in the sketch form, the proposed action would not compromise the truthfulness and accuracy of the meat and poultry product labeling.

The proposal would eliminate unnecessary duplication in the labeling approval system and reduce the number of labels reviewed and processed by FSIS. Consequently, the proposal would improve the efficiency of FSIS by expediting the label approval process for a specific category of labeling, and would also reduce the paperwork burden on official establishments. Since only 5,000 labeling applications have been approved during the first 11 months of the 18-month implementation period for the nutrition labeling regulations, the majority of meat and poultry product manufacturers would benefit from timely implementation of measures to ease compliance with the regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 would be amended by adding paragraphs (f)(4), (g)(2)(iv), and (m), and revising paragraph (g)(2)(iii) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(4) The ingredient statement may be placed on the information panel, except as otherwise permitted in the subchapter.

(g) * * *

(2) * * *

(iii) On the front riser panel of frozen food cartons, or

(iv) On the information panel.

* * * * *

(m)(1) The information panel is that part of a label that is the first surface to the right of the principal display panel as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2)(i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the

information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

3. Section 317.5 would be amended by adding paragraph (c) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC, in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

4. Section 317.302 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 317.302 Location of nutrition information.

(a) Nutrition information on a label of a packaged meat product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

(b) * * *

(c) Meat products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

5. Section 317.313 would be amended by revising paragraph (j) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(j)(1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

6. Section 317.354 would be revised to read as follows:

§ 317.354 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

7. Section 317.356 would be amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 317.356 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

8. Section 317.360 would be revised to read as follows:

§ 317.360 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label on in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information

(e.g., "calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

9. Section 317.361 would be revised to read as follows:

§ 317.361 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61(b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

10. Section 317.362 would be amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d) through (f) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except: (i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B), and

(ii) The meal products definition shall be as prescribed in § 317.313(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c)(4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 317.313(l), and there will be no provision for main dish products;

(4) * * *

(5) 21 CFR 101.62(d)(1)(i)(A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

(12) * * *

(13) 21 CFR 101.62(d)(4)(i)(A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i)(A) through (C), except the placement of the comparison statement at 21 CFR 101.62(d)(5)(1)(C)(*2*).

* * * * *

(d)(1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e)(1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f)(1) Quantitative information for claims of cholesterol free, low cholesterol or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholesterol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

12. Section 381.116 would be amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 381.116 Wording on labels of immediate containers.

(a) * * *. Such items of information shall be in distinctly legible form and shall be generally parallel to each other.* * *

(b) * * *

(c)(1) The information panel is that part of a label that is the first surface to the right of the principal display panel as observed by an individual facing the principal display panel, with the following exceptions:

(i) If the first surface to the right of the principal display panel is too small to accommodate the required information or is otherwise unusable label space, e.g., folded flaps, tear strips, opening flaps, heat-sealed flaps, the next panel to the right of this part of the label may be used.

(ii) If the package has one or more alternate principal display panels, the

information panel is to the right of any principal display panel.

(iii) If the top of the container is the principal display panel and the package has no alternate principal display panel, the information panel is any panel adjacent to the principal display panel.

(2)(i) Except as otherwise permitted in this part, all information required to appear on the principal display panel or permitted to appear on the information panel shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as otherwise prescribed in this part, any vignettes, designs, and any other nonmandatory information shall not be considered. If there is insufficient space for all required information to appear on a single panel, it may be divided between the principal display panel and the information panel, provided that the information required by any given provision of this part, such as the ingredients statement, is not divided and appears on the same panel.

(ii) All information appearing on the information panel pursuant to this section shall appear in one place without intervening material, such as designs or vignettes.

13. Section 381.118 would be amended by adding a new paragraph (e) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(e) The ingredients statement may be placed on the information panel, except as otherwise permitted in this subchapter.

14. Section 381.122 would be amended by revising the last sentence of the paragraph to read as follows:

§ 381.122 Identification of manufacturer, packer, or distributor.

* * *. The name and place of business of the manufacturer, packer, or distributor may be shown on the principal display panel, on the 20-percent panel of the principal display panel reserved for required information, on the front riser panel of frozen food cartons, or on the information panel.

15. Section 381.134 would be amended by adding paragraph (c) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(c) Labeling bearing nutrition information which has been approved by the Food Labeling Division, Washington, DC, in sketch form (i.e., printer's proof or other version that clearly shows all required features, size, location, and indication of final color) is approved for use without additional authorization by the Administrator: *Provided,*

(1) That the final label has not been modified, except as permitted in paragraph (b) of this section; and

(2) That the final label is not false or misleading.

16. Section 381.402 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 381.402 Location of nutrition information.

(a) Nutrition information on a label of a packaged poultry product shall appear on the label's principal display panel or on the information panel, except as provided in paragraphs (b) and (c) of this section.

(b) * * *

(c) Poultry products in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition information. In determining the sufficiency of available space for the nutrition information, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

17. Section 381.413 would be amended by revising paragraph (j) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(j)(1) Products may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference food in accordance with 21 CFR 101.13(j), except:

(i) Comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B); and

(ii) The placement of the comparison statement on the product label at 21 CFR 101.13(j)(2)(iv)(B).

(2) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

* * * * *

18. Section 381.454 would be revised to read as follows:

§ 381.454 Nutrient content claims for "good source," "high," and "more."

(a) Nutrient content claims about a nutrient in a product in relation to the Reference Daily Intake (RDI) established for that nutrient in 21 CFR 101.9(c)(8)(iv) or Daily Reference Value (DRV) established for that nutrient in 21 CFR 101.9(c)(9), excluding total carbohydrate, may be used on the label or in labeling, in accordance with 21 CFR 101.54, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the nutrient in the individual food product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference food' is 1 g per serving; 'this product' contains 4 g per serving").

(c) Quantitative information comparing the level of the nutrient in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz").

19. Section 381.456 would be amended by revising paragraph (a) and adding paragraphs (c), (d), and (e) to read as follows:

§ 381.456 Nutrient content claims for "light" or "lite."

(a) *General requirements.* The following nutrient content claims using the term "light" or "lite" to describe a product may be used on the label and in labeling, provided that the product is labeled in compliance with 21 CFR 101.56, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.56 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) * * *

(c) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—200 calories, 4 g fat; regular 'reference product'—300 calories, 8 g fat per serving"); and

(d) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces, regardless of

the level of calories and fat content in the reference food, is declared adjacent to the most prominent claim or to the nutrition information (e.g., "lite 'this product'—500 mg sodium per serving; regular 'reference product'—1,000 mg per serving"; or "lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving").

(e) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in 21 CFR 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in 21 CFR 101.61(b)(4), the statement "not a low sodium food" shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in 21 CFR 101.13(j)(2).

20. Section 381.460 would be revised to read as follows:

§ 381.460 Nutrient content claims for calorie content.

(a) Nutrient content claims about the calorie content of a product may be used on the label or in labeling in accordance with 21 CFR 101.60, except:

(1) The placement of the comparison statement at 21 CFR 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of calories and sugars in the individual food product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g.,"calorie content has been reduced from 150 to 100 calories per serving"; or "sugar content has been lowered from 8 g to 6 g per serving").

(c) Quantitative information comparing the level of calories and sugars in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz"; or "sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz").

21. Section 381.461 would be revised to read as follows:

§ 381.461 Nutrient content claims for the sodium content.

(a) Nutrient content claims about the sodium content of a product may be used on the label and in labeling in accordance with 21 CFR 101.61, except:

(1) The placement of the comparison statement on the product label at 21 CFR 101.61(b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii); and

(2) The meal products definition shall be as prescribed in § 381.413(l), and there shall be no provision for main dish products.

(b) Quantitative information comparing the level of the sodium in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

(c) Quantitative information comparing the level of sodium in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "sodium content has been reduced form 220 mg per 3 oz to 150 mg per 3 oz").

(d) If the product is not sodium free, the statement "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition information of the product bearing the claim.

22. Section 381.462 would be amended by revising paragraphs (a)(2), (a)(3), (a)(5), (a)(11), (a)(13), and (a)(16), and adding paragraphs (d) through (f) to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) * * *

(2) 21 CFR 101.62(b), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(b)(4)(ii)(B) and (5)(ii)(B); and

(ii) The meal products definition shall be as prescribed in § 381.413(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "_____ percent fat free" is "_____ percent lean";

(3) 21 CFR 101.62(c), except:

(i) The placement of the comparison statement on the product label at 21 CFR 101.62(c)(4)(ii)(B) and (5)(ii)(B); and

(ii) There will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 381.413(l), and there will be no provision for main dish products;

(4) * * *

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(1)(ii)(F)(*2*), and there will be no provision for main dish products;

* * * * *

(11) 21 CFR 101.62(d)(2)(iii)(E), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(2)(iii)(E)(*2*);

(12) * * *

(13) 21 CFR 101.62(d)(4)(i) (A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(4)(i)(C)(*2*);

* * * * *

(16) 21 CFR 101.62(d)(5)(i) (A) through (C), except the placement of the comparison statement on the product label at 21 CFR 101.62(d)(5)(i)(C)(*2*).

* * * * *

(d)(1) Quantitative information comparing the level of fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "fat content has been reduced from 8 g to 4 g per serving").

(2) Quantitative information comparing the level of fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., "fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz").

(e)(1) Quantitative information comparing the level of saturated fat in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

(2) Quantitative information comparing the level of saturated fat in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz").

(f)(1) Quantitative information for claims of cholesterol free, low cholesterol, or reduced cholesterol comparing the level of cholesterol in the individual food product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "contains no cholesterol compared with 30 mg in one

serving of 'reference food'; contains 11 g of fat per serving"; or "cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving").

(2) Quantitative information comparing the level of cholestrol in the meal product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., "cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz").

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

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Part IV

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381
Nutrition Labeling of Meat and Poultry Products; Technical Amendments; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–022P]

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its final nutrition labeling regulations, which permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products and establish mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. FSIS is taking this action to address inconsistencies in the regulations, improve their accuracy, and correct unintended technical consequences of the regulations, in order to provide consumers with the most informative labeling system possible. Most of the changes FSIS is proposing are designed to parallel technical amendments the Food and Drug Administration (FDA) made to its regulations that require nutrition labeling on most foods under its jurisdiction.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Written comments to: Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles Edwards at (202) 254–2565. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry in the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule will not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would clarify and improve understanding of certain provisions of the nutrition labeling regulations. The Administrator finds that this proposed rule would result in positive benefits because it would enable official establishments to more easily comprehend the regulations and facilitate their implementation. The proposal would not impose any new requirements on the affected establishments. Small meat and poultry establishments are exempt from nutrition labeling, provided the labels of their products bear no nutrition claims or information. Therefore, most small establishments would not be affected by this proposed rule.

Comments

Interested persons are invited to submit comments concerning this proposed rule. Written comments should be sent to the Policy Office and refer to Docket No. 93–022P. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such a request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposed rule will be available for public inspection at the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On January 6, 1993, FSIS published in the **Federal Register** final regulations on nutrition labeling for meat and poultry products (58 FR 632). FSIS's nutrition labeling regulations are designed to parallel, to the extent possible, FDA's final regulations on nutrition labeling. FDA's regulations were published in the **Federal Register** simultaneously with FSIS's publication.

Following publication of its final regulations, FSIS received comments from various interested parties contending that portions of its regulations were unclear, contained technical unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS issued technical amendments to its final regulations in an interim final rule published on September 10, 1993 (58 FR 47624).

On August 18, 1993, FDA published corrections and technical amendments (58 FR 44020, 44039, and 44063) to its final regulations in response to comments received on its final rule. Many of the provisions amended in the August 18, 1993, publication were cross-referenced by FSIS in its final nutrition labeling regulations. The provisions related to nutrient declarations, label format, serving sizes, equivalent metric quantity, servings per container, reference amounts, nutrient content claims, saturated fat free claims, foods for infants and children under 4 years of age, and packages with less than 12 square inches of space. FSIS conducted a thorough review of FDA's amendments and comments received and concluded that additional amendments to the FSIS nutrition labeling regulations were necessary to provide greater clarity, accuracy, and consistency with FDA's regulations, and to satisfy concerns of commenters.

Accordingly, FSIS is proposing to amend its final nutrition labeling regulations by adopting certain changes made by FDA in cross-referenced provisions and amending certain of its own provisions to be consistent with those changes. In addition, FSIS is proposing to correct the terminology for extra lean ground beef in a provision of the final nutrition labeling regulations and to correct an oversight in the Federal poultry products inspection regulations related to product analyses.

Elements of Proposed Rule

Serving Sizes

FSIS acknowledges that the variety of specifications for products in discrete units which is contained in a single paragraph at 9 CFR 317.309(a)(3) and 381.409(a)(3) may be confusing. For this reason, FSIS is proposing to subdivide the single paragraphs of 9 CFR 317.309(a)(3) and 381.409(a)(3) into 9 CFR 317.309(a)(3)(i) through (iv) and 381.409(a)(3)(i) through (iv), reorder some of the information, and make minor editorial changes to improve clarity. For example, the proposed revisions at 9 CFR 317.309(a)(3)(ii) and 381.409(a)(3)(ii) make it explicit that for products in discrete units that contain between 50 and 67 percent of the reference amount, the manufacturer may declare the serving size as either one or two units.

In its final nutrition labeling rule, FSIS inadvertently omitted provisions on how to declare serving sizes for products made up of distinct and separate foods packaged together in the same container and intended to be consumed together when the manufacturer chooses to list the nutrition information separately for each component. These products include "complete" products, such as chow mein components in multiple cans and pizza mix with a prepared crust, and mixes and kits with separate packets that require the addition of water or other ingredients, such as soups and stir-fry kits. Also included are products that are distinct and separate foods packaged together in the same container and intended to be consumed together, e.g., chicken wings with a dipping sauce, turkey with gravy packet, and ham with glaze packet.

For a number of these products, the serving size can be expressed as the amount of the main ingredient plus proportioned minor ingredients based on the "reference amount for the combined product." An example of the "reference amount for the combined product" calculated for a package of six chicken nuggets weighing 170 grams (g) and barbecue sauce weighing 100 grams is 135 grams; i.e., 85 grams for nuggets and 50 grams for sauce. The serving size for the composite product could be expressed as "3 chicken nuggets with sauce (135g)," and the serving size for each component could be expressed as "3 nuggets (85g)" and either "barbecue sauce for 3 nuggets (50g)" or "3 tbsp sauce (50g)," if 50 grams of sauce makes 3 tablespoons. The number of servings for this package would be two. FSIS is proposing to add new paragraphs at 9 CFR 317.309(a)(3)(vi) and 381.409(a)(3)(vi) to provide the option described above for serving sizes for products that consist of two or more foods that are packaged and presented to be consumed together. FDA amended provisions at 21 CFR 101.9(b)(2) (ii) and (iii) to provide the same option for products in large discrete units usually divided for consumption and nondiscrete bulk products, respectively. In order to accommodate this option in 21 CFR 101.9(b)(5), as well as other changes, FDA revised the section considerably. For clarity, FSIS is proposing to delete its cross-reference to 21 CFR 101.9(b)(5) at 9 CFR 317.309(a)(1) and 381.409(a)(1) and incorporate the pertinent provisions into 9 CFR 317.309(a)(6) and 381.409(a)(6). The option to specifically allow proportioning of minor ingredients to the major ingredients appears at 9 CFR 317.309(a)(6)(vi) and 381.409(a)(6)(vi). Also, FSIS is proposing to delete reference to the term "portion" at 9 CFR 317.309(a)(1), 381.409(a)(1), 317.312(a), and 381.412(a) because it is no longer defined in the nutrition labeling regulations.

At 9 CFR 317.309(a) and 381.409(a), FSIS cross-referenced provisions pertaining to serving sizes at 21 CFR 101.9(b) (1) and (2) except (2)(i), and 21 CFR 101.9(b) (5) through (9) except (b)(5)(iii). By cross-referencing 21 CFR 101.9(b)(6), FSIS provided that single-serving containers of products with large reference amounts, i.e., equal to or greater than 100 grams or milliliters, may declare one or two servings per container if they contain more than 150 percent but less than 200 percent of the reference amount. This provision applies to products that are "packaged and sold individually." Similar provisions at 9 CFR 317.309(a)(3) and 381.409(a)(3) for products within multi-serving packages were inadvertently omitted. This unintended inconsistency would allow individual units packaged and sold separately to be labeled as one or two servings while not permitting the same label declaration on the same product when sold as part of a multi-serving package. To correct this oversight FSIS is proposing to add a new paragraph at 9 CFR 317.309(a)(3)(v) and 381.409(a)(3)(v) to permit products within multi-serving packages to be declared as one or two servings if they meet the criteria described above.

FSIS also realizes that the provisions for single-serving containers at 21 CFR 101.9(b)(6) and the provisions for individually packaged products within multi-serving containers at 9 CFR 317.309(a)(3) and 381.409(a)(3) could produce inconsistent labeling on the inner and outer packaging of these products. For example, if labeled and sold individually, mini pizzas weighing 50 grams could be considered single-serving packages, and the serving size would be one mini pizza. However, if several mini pizzas were packaged within a multi-serving package, the serving size, when determined in accordance with 9 CFR 317.309(a)(3) and 381.409(a)(3), is the number of whole units that most closely approximates the reference amount for the product category, which is 140 grams. Therefore, the serving size for a multi-serving package would be three mini pizzas, and a box containing 15 mini pizzas would be labeled with five servings per container. If each of the mini pizzas in the multi-serving package is labeled as a single serving, the outer and inner labeling would have inconsistent nutrient values on a per serving basis. To prevent this ambiguity, FSIS is proposing to add a new paragraph at 9 CFR 317.309(a)(3)(vii) and 381.409(a)(3)(vii) to provide for a serving size declaration of one unit for products containing several individual single-serving containers that are fully labeled, and to adopt the change to 21 CFR 101.9(b)(8)(iv) on the number of servings when a product contains such individually labeled containers. All of these provisions require that each of the individual units bears all required labeling information, including nutrition labeling.

FSIS and FDA also determined that for products requiring further preparation, where the entire contents of the package, e.g., a pizza kit, are used to prepare a large discrete unit usually divided into fractional slices for consumption, e.g., a pizza, the most appropriate household measure for the serving size is the fraction of the box that makes the "reference amount for the unprepared product." The provision at 21 CFR 101.9(b)(2)(ii) has been amended to incorporate this change. FSIS is proposing to cross-reference this provision, as amended. FSIS is also proposing to add new paragraphs at 9 CFR 317.309(a)(6)(v) and

381.409(a)(6)(v) to provide that, in these circumstances, the fraction of the package is to be used to express the serving size.

FSIS acknowledges that allowing for only whole numbers of tablespoons poses a significant problem for concentrated products that require further preparation, especially those reconstituted with water. Consideration of the 1 to 2 tablespoon range was inadvertently omitted in the final rule and FSIS is correcting this omission. FSIS is proposing to amend 9 CFR 317.309(a)(6) and 381.409(a)(6) to allow use of the fractions ⅓, ½, and ⅔ tablespoons between 1 and 2 tablespoons. This action is consistent with an FDA amendment to make the same allowance.

FSIS is proposing to add new paragraphs at 9 CFR 317.309(a)(6)(iv) and 381.409(a)(6)(iv) which state that household units for serving sizes of single-serving containers, meal-type products, and individually packaged products within multi-serving containers must be stated using a description of the container, e.g., can, box, package, meal, or dinner, and that the serving sizes of other discrete units must be stated using a description of the individual unit; e.g., wing, slice, link, or patty. These provisions would alleviate any ambiguity between 9 CFR 317.309(a)(3) and 381.409(a)(3) and 9 CFR 317.309(a)(6) and 381.409(a)(6), and add requirements that were inadvertently omitted from the final rule.

Equivalent Metric Quantity

FSIS noted in its final rule that two different values for the gram equivalent weight of a product could appear on labels of single-serving containers and meal-type products when the net quantity of contents statement bearing the metric equivalent and the serving size refer to the same amount of product in the containers. For example, the net quantity of contents for a 5-ounce burrito would be 142 grams, which is obtained by multiplying 28.35 grams by 5, while the serving size declaration for the same burrito would be expressed as "1 burrito (140g)," which is obtained by multiplying 28 grams by 5. If a manufacturer chose to declare the metric equivalent weight for this single serving of burrito, the two discrepant values could potentially cause consumer confusion. A manufacturer is not required to declare the metric equivalent weight on single-serving containers and meal-type products if it appears in the net quantity of contents statement, but FSIS has determined that, if a manufacturer optionally declares the metric equivalent, the serving size declaration should agree with the net contents declaration. FDA created a new provision at 21 CFR 101.9(b)(7)(i) that ensures agreement between serving size and net quantity values. FSIS is proposing to adopt this new provision.

To achieve greater consistency with FDA provisions, FSIS is proposing to adopt the change made at 21 CFR 101.9(b)(7)(ii), to correct for the omission of rounding rules for milliliters for liquids. The proposal would require that, when it is necessary to round the parenthetical milliliter equivalent of the household measure, the equivalent should be rounded to the nearest whole number, except for quantities that are less than 5 milliliters. Milliliter amounts between 2 and 5 should be rounded to the nearest 0.5 milliliter, and amounts less than 2 should be expressed in 0.1-milliliter increments.

Also, FDA divided 21 CFR 101.9(b)(7) into subparagraphs and made minor editorial changes to improve clarity. FSIS agrees with the changes made at 21 CFR 101.9(b)(7) and is proposing to cross-reference 21 CFR 101.9(b)(7), except the new provision at (b)(7)(v) which pertains to additional descriptive information.

Servings Per Container

To improve the clarity of the provisions on servings per container, FDA divided 21 CFR 101.9(b)(8) into subparagraphs and made minor editorial changes. FSIS agrees with these changes and is proposing to cross-reference this section, as amended.

FSIS noted a problem in the provisions of its final regulations for declaring the number of servings per container for some individually packaged products containing at least 200 percent of the reference amount and packaged within multi-serving packages. For example, if a bulk package of sausage contains three inner packages, each of which makes 5.2 servings, each inner package label would have to declare the servings per container as "about 5." That declaration implies the total package contains 15 servings (5 times 3). However, if the amount of sausage in all three packages were counted, the total package actually contains 15.6 servings (5.2 times 3), and its label would declare the servings per container as "about 16."

To correct this problem and avoid consumer confusion, FSIS is proposing to cross-reference a new provision at 21 CFR 101.9(b)(8)(v) which provides that the number of servings be determined by multiplying the number of servings per individual inner unit by the total number of inner units. In the sausage example, the serving size would be approximately 1/5 of an individual unit, and each unit would carry a servings-per-container statement of "about 5." The number of servings in the entire package would be "about 15" (3 packages times "about 5" servings per package).

Nutrient Declarations

At 9 CFR 317.309(b) and 381.409(b), FSIS cross-referenced provisions pertaining to nutrient declarations at 21 CFR 101.9(c)(1) through (c)(9), except (c)(1)(i)(E), bomb calorimetry, and (c)(7)(ii), use of nitrogen conversion factors other than 6.25. At 21 CFR 101.9(c)(1), requirements were included for calorie content calculations using general or specific factors without specifying whether only the final calorie determination should be rounded, or whether the actual quantitative values for protein, total carbohydrate, total fat, and ingredients with specific food factors should be rounded before the calculation is performed. FSIS and FDA concluded that calorie declaration should be calculated with as much precision as possible up to the point of final rounding. FDA amended 21 CFR 101.9(c)(1) to state that where specific or general food factors are used, the factors should be applied to the unrounded amounts of the food components. FSIS is proposing to cross-reference this provision, as amended.

Both FSIS and FDA received comments concerning the definition of "lean" that convinced them to change the saturated fat criterion in the definition of this term to a maximum of 4.5 grams or less of saturated fat. FSIS included this change in its interim rule on technical amendments published on September 10, 1993, and FDA included the same change in its rule on August 18, 1993. As a consequence of the change, both agencies believe it is necessary to require that levels of fat, saturated fat, and poly- and monounsaturated fat below 5 grams per serving be declared in half-gram increments rather than below 3 grams. This action would prevent consumer confusion because the declared values on labels would be consistent with the definitions of nutrient content claims. Provisions at 21 CFR 101.9(c)(2)(i), (ii), and (iii) have been amended to require half-gram reporting increments below 5 grams for the four nutrients. FSIS is proposing to cross-reference these provisions, as amended. In addition, FSIS is proposing to amend 9 CFR 317.309(d) and 381.409(d) to provide the same consistency in declared values for stearic acid, a component of

saturated fat. The proposal would require that stearic acid content below 5 grams per serving be declared in half-gram increments.

FSIS believes that the required disclosure of poly- and monounsaturated fat in the nutrition labeling of a "fat free" food serves no useful purpose because no additional information would be provided to consumers. FDA has revised 21 CFR 101.9(c)(2) (ii) and (iii) to remove the required disclosure of poly- and monounsaturated fat when fatty acid or cholesterol claims are made on products that meet the criteria for a "fat free" claim. FSIS is proposing to cross-reference these provisions, as amended.

To provide consistency with the incremental rounding at 2, 5, and 10-percent increments required for vitamins and minerals, 21 CFR 101.9(c)(8)(vi) has been revised to require that the vitamin A that is present as *beta*-carotene is to be declared in the same increments as provided for vitamins and minerals instead of to the nearest 10-percent increment. FSIS believes this change will provide more precise information about *beta*-carotene contents, and compatible declaration of vitamin A and *beta*-carotene would assist consumers to understand the nutrition labeling. FSIS is proposing to cross-reference this provision, as amended.

Inadvertently, this provision failed to provide expressly how the declaration of *beta*-carotene is to be presented. FSIS and FDA believe it is necessary to require that information on *beta*-carotene be formatted to convey to the consumer that it is a subcomponent of vitamin A. FDA has amended 21 CFR 101.9(c)(8)(vi) to include this requirement. FSIS is proposing to cross-reference this provision, as amended, to require that, when vitamins and minerals are arranged in a single column, the information on *beta*-carotene is to be indented under the information on vitamin A, and, when vitamins and minerals are arrayed horizontally, the declaration of *beta*-carotene is to be placed in parenthesis after the declaration of vitamin A.

Format

At 9 CFR 317.309(e) and 381.409(e), FSIS cross-referenced format elements as provided at 21 CFR 101.9(d). Section 101.9(d)(1)(ii)(D) of FDA's regulations limited the proximity of one letter to another with a numeric kerning value of −4 setting, which was intended to apply to all type systems. However, there is no single numeric kerning value applicable to all type systems. For this reason FDA has replaced the requirement to state instead that "Letters should never touch." FSIS is proposing to cross-reference this provision, as amended.

Type size specifications at 21 CFR 101.9(d)(1)(iii) did not address several statements that may be declared within the display of nutrition information, such as the declaration of percent of vitamin A present as *beta*-carotene and the statement "Not a significant source of _____." In apparent conflict, the last sentence of 21 CFR 101.9(c)(8)(iii), which pertained to vitamin and mineral declarations, required that the "Not a significant source of _____." Statement be in the same type size as nutrients that are indented; i.e., in 8-point type, while FDA's sample labels showed the statement in 6-point type. The provision at 21 CFR 101.9(d)(1)(iii) has been amended to correct this technical error. The corrected provision specifies that 6-point type shall be used for all information contained within the nutrition information display, except for the heading "Nutrition Facts" which must be set in a type that is larger than all other print in the display, and for the information required at 21 CFR 101.9(d)(3), (5), (7), and (8) which must be no smaller than 8-point type. FSIS is proposing to cross-reference this provision, as amended. FSIS is also proposing to adopt the change made to 21 CFR 101.9(c)(8)(iii) that removes the conflicting sentence.

FSIS agrees with FDA that 21 CFR 101.9(d)(7) needed to be corrected to be inclusive of all nutrients that can be declared in the nutrition information display, not only those that are required. The wording of the provision has been changed from "nutrients required by paragraph (c) of this section" to "nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label." FSIS is proposing to cross-reference the provision, as amended, which clarifies that the listing of some nutrients is required, and the listing of others is voluntary by inserting the word "as" before "specified."

FSIS and FDA received comments concerning inconsistences between quantitative amounts and percent Daily Values (DV) caused by dividing the actual amount of a nutrient before rounding, as required, by the Daily Reference Value (DRV) for the nutrient. For example, saturated fat in an amount of 0.4 gram would be declared as 0 gram, but its percent DV would be declared as 2 percent. FSIS acknowledges this apparent discrepancy while recognizing there are legitimate advantages and disadvantages for using either rounded or unrounded values. FSIS is proposing to adopt 21 CFR 101.9(d)(7)(ii) which has been amended to correct this technical inconsistency. FSIS would require that the percent DV for all nutrients, other than protein, be calculated by dividing either the rounded amount of the nutrient declared on the label or the actual, unrounded amount of the nutrient by the DRV for that nutrient. Manufacturers should use whichever value will provide the greatest consistency on the product labeling. Where quantitative amounts must be declared as zero, the rounded values should be used to calculate percent DV. When unrounded values support the basis for nutrient content claims, they should be used.

FSIS believes the footnote required by 21 CFR 101.9(d)(10) stating that fat, carbohydrate, and protein furnish 9, 4, and 4 calories per gram, respectively, can create consumer confusion because the regulations allow for different methods of calculating calorie content. Although FSIS believes the public can benefit from having the caloric conversion factors, the Agency is convinced that there is no real need to make the information mandatory because consumers do not have to calculate calories. The regulations require that declarations of calories and calories from fat be stated on the labeling. The provision at 21 CFR 101.9(d)(10) has been amended to make use of the footnote voluntary and 21 CFR 101.9(d)(1) (iii) and (11)(i) has been amended to delete the reference to the footnote with caloric conversion information as a requirement. For consistency, FSIS is proposing to cross-reference these provisions, as amended, and adopt changes to 21 CFR 101.9(d)(11)(ii) which allow for the presentation of the information described above. FSIS is also proposing to amend 9 CFR 317.309(f)(3) and 381.409(f)(3) to delete reference to the footnote as required information.

In response to many requests for greater flexibility in presenting required nutrition information, especially for the display on packages that have more than 40 square inches of space available to bear labeling but do not have sufficient space to place the full vertical format, 21 CFR 101.9(d)(11) has been modified as follows. The provision has been redesignated as 21 CFR 101.9(d)(11)(i) and a new provision has been added at 21 CFR 101.9(d)(11)(iii) to state that when there is insufficient continuous vertical label space, i.e., approximately 3 inches, to accommodate the required components of the nutrition information up to and including the mandatory

declaration of iron, the nutrition information may be presented in a tabular display. In this display, the footnote listing DRV's for 2,000 and 2,500 calorie diets is given to the far right of the display, and additional vitamins and minerals beyond vitamin A, vitamin C, calcium, and iron are arrayed horizontally following the required vitamin and mineral declarations. A new provision has been added at 21 CFR 101.9(d)(11)(ii) that provides for an additional break to allow the continuation of the list of vitamins and minerals beyond the declaration of iron to be moved to the right, just above the footnote listing the DRV's. FSIS is proposing to adopt these changes and cross-reference the amended provisions discussed above.

Because the format requirements in its final rule did not provide for listing of nutrition information within a single nutrition display for packages containing more than one food product, FSIS is proposing to correct this oversight by providing for the use of an aggregate display of nutrition information in new provisions at 9 CFR 317.309(e)(2) and 381.409(e)(2). This aggregate display is the same as that shown by FDA at 21 CFR 101.9(d)(13)(ii). A new provision has been added at 21 CFR 101.9(d)(14) to provide for the inclusion and display of two languages under a single "Nutrition Facts" heading. FSIS agrees with the change and is proposing to adopt the new provision.

Modified Format

Both FSIS and FDA allowed format modifications for products in packages that have a surface area available to bear labeling of 40 or less square inches to include tabular and linear displays of information. At 9 CFR 317.309(f)(1) and and 381.409(f)(1), FSIS permitted nutrition information to be given in a linear fashion only when the tabular display could not be accommodated. FSIS inadvertently used the term "label" as the basis for determining whether the accommodation could be made. FSIS intended for package shape or size to be the determining factor. Therefore, FSIS is proposing to amend these provisions to clarify this fact and to maintain consistency with FDA's requirements for use of a linear display. The proposal would add new paragraphs at 9 CFR 317.309(f)(1)(ii) and 381.409(f)(1)(ii) to define the linear display and would remove the former direction that any subcomponents declared may be listed parenthetically after principal components. Many commenters requested that FSIS and FDA provide examples of linear displays. Both agencies worked together to develop such examples.

In its final rule, FSIS provided for abbreviations for mandatory nutrients whose name exceeds 10 characters. FSIS believes it should also allow abbreviations for voluntary nutrients because they become mandatory if claims are made. FSIS is proposing to amend 9 CFR 317.309(f)(2) and 381.409(f)(2) to include new abbreviations as follows: Calories from saturated fat—Sat fat cal; Monounsaturated fat—Monounsat fat; Polyunsaturated fat—Polyunsat fat; Soluble fiber—Sol fiber; Insoluble fiber—Insol fiber; Sugar alcohol—Sugar alc; and Other carbohydrate—Other carb. This action parallels an identical FDA allowance.

Reference Amounts

In its final rule, FSIS cross-referenced 21 CFR 101.12(c) pertaining to reference amounts for products requiring further preparation. FDA changed the terms used in this section to improve clarity and require manufacturers to use reference amounts for unprepared forms of products, if those reference amounts are contained in the tables at 21 CFR 101.12(b). The FSIS tables of reference amounts are contained at 9 CFR 317.312(b) and 381.412(b). These sections contain reference amounts for ready-to-cook forms of bacon-type products, sausages, and raw cuts of meat and poultry. FSIS never intended to limit manufacturers to those amounts and allows them to use product-specific yields, such as their own or the extensive listings in USDA's Agriculture Handbook No. 8, when determining the "reference amount for the unprepared product." Therefore, FSIS is proposing to cross-reference 21 CFR 101.12(c), as amended, to improve clarity, except for the words "but not the unprepared" referring to the form of a reference amount.

At 9 CFR 317.312(b) and 381.412(b), Table 2.—Reference Amounts Customarily Consumed—General Food Supply, FSIS erred by listing bagel dogs and poultry bagel dogs as examples under the product category of entrees without sauce, and at 9 CFR 317.312(b), erred by listing freeze dry, dehydrated, concentrated soup mixes as an example under the product category of seasoning mixes dry. FSIS is proposing to remove these examples because the products are not deemed amenable to FSIS inspection.

FSIS found that, when products are used to make foods that are consumed in small discrete units, the prescribed approach to determining a "reference amount for the unprepared product" results in discrepancies between the number of servings declared per package, e.g., "about 5," and the number of discrete units prepared in accordance with package directions, e.g., "makes 8 patties." Also, for products that prepare large discrete units, discrepancies can occur between the number of servings declared per package, e.g., "about 9," and the declaration of a fraction of a large discrete unit, e.g., "⅛ pizza," for use in an optional second column for the prepared form of the product.

When a product, such as a pizza kit, is used to prepare a large discrete unit, FSIS determined that the discrepancies can be remedied by providing for a reference amount for the unprepared product that reflects the fraction of the prepared product closest to the reference amount for the prepared product for the specific product category. For example, the reference amount for the unprepared product would be the amount of the pizza kit needed to make ⅛ pizza, the optional second column could provide nutrition information for ⅛ pizza, and the number of servings would be listed as 8. This approach is consistent with that for arriving at the serving size for ready-to-serve products; that is, the fraction of a large discrete unit that comes closest to the reference amount for the prepared product for the specific product category. FSIS is proposing to cross-reference a new provision at 21 CFR 101.12(c)(2) that allows for this approach.

To ensure that the serving size declaration will not be improperly influenced by minor dense ingredients, and that the number of servings will be consistent for all ingredients, FSIS is proposing to amend 9 CFR 317.312(c) and 381.412(c) by adding new paragraphs at (c)(1) and (c)(2) for bulk products and discrete units, respectively. The proposed paragraphs would clarify that a "reference amount for the combined product" that consists of two or more distinct foods packaged separately within the same container, intended to be consumed together, and without established reference amounts, be derived based on the reference amount of the ingredient that is represented as the main ingredient. Other ingredients within the container are proportioned to fit the serving size of the main ingredient.

FSIS noted that a procedure for determining reference amounts for products packaged and presented to be consumed together and for which there is no established reference amount was not adequately provided for in the final rule. FSIS is proposing to amend 9 CFR 317.312(c) and 381.412(c) to provide for

this procedure. This modification affects only products intended to be combined and consumed together and for which the combination is not listed as a reference amount at 9 CFR 317.312(b) and 381.412(b). For products with reference amounts in compatible units, the units can be directly summed. For products with incompatible units that cannot be directly summed, i.e., grams and milliliters, FSIS is proposing to add a new paragraph at 9 CFR 317.312(c)(3) and 381.412(c)(3) to incorporate the approach of summing the weights of the relevant amounts of the foods that are combined to make the "reference amount for the combined product." This approach has been selected because amounts that are provided as volume measures can easily be expressed as weights and summed. However, the opposite is not the case because weights cannot be readily expressed as volumes.

Nutrient Content Claims; General Principles

At 9 CFR 317.313(b) and 381.413(b), FSIS cross-referenced 21 CFR 101.13(b) in its final rule. Both FSIS and FDA later determined that reasonable alternate spellings of various descriptive terms defined by regulations are reasonable and may be used. This allowance, however, was not incorporated into 21 CFR 101.13(b). The provision at 21 CFR 101.13(b) has been amended to include a new paragraph at (b)(4), which states that the use of reasonable variations in the spelling of the various descriptive terms and their synonyms, such as "hi" and "lo," are permitted provided that these variations are not misleading. FSIS is proposing to cross-reference 21 CFR 101.13(b), as amended.

In its final rule, FSIS provided that a nutrient content claim be in type size and style no larger than two times that of the statement of identity in 9 CFR 317.313(b) and 381.413(b) by cross-referencing 21 CFR 101.13(f). FDA clarified these provisions in 21 CFR 101.13(f) to require that a nutrient content claim be in type size no larger than two times the statement of identity and not be unduly prominent in type style compared to the statement of identity. FSIS is proposing to cross-reference 21 CFR 101.13(f), as amended.

In its final rule, FSIS prescribed minimum type size requirements for nutrient content claims at 9 CFR 317.313 and 381.413 by cross-referencing various provisions in 21 CFR 101.13 that included these requirements. However, minimum type sizes were not specified for all the accompanying information for relative claims; e.g., in cross-referenced provisions at 21 CFR 101.13(j)(2)(iv). To correct this oversight, FDA amended 21 CFR 101.2(b) to include the nutrient content claims sections in its scope so that all information appearing on the principal display panel or the information panel will appear in letters and/or numbers not less than 1/16 inch minimum height unless otherwise specified in the nutrient content claims regulations. FSIS is proposing to amend 9 CFR 317.313 and 381.413 by adding a new paragraph (g) to include the same requirement in its regulations.

As discussed in this document under the section on nutrient declarations, FSIS determined that when unrounded values support the basis for nutrient content claims, they should be used in labeling. Requirements for comparative claims other than "light" are contained at 9 CFR 317.313(j) and 381.413(j) that cross-references 21 CFR 101.13(j), except comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B). The cross-referenced section states that when comparing a single manufacturer's product to the labeled product, the nutrient value for the single manufacturer's product shall be the value declared in the nutrition labeling of the product. The provision at 21 CFR 101.13(j) has been amended to permit comparisons to a single manufacturer's product using either the values declared in the nutrition labeling or the actual nutrient values, provided that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause confusion when compared, and that the actual modification is at least equal to the percentage specified in the definition of the claim. FSIS is proposing to cross-reference 21 CFR 101.13(j)(1)(ii)(B), as amended, except comparison to product of another manufacturer at 21 CFR 101.13(j)(1)(ii)(B). FSIS is also clarifying that its restriction on comparison to the product of another manufacturer is to the use of the name of the competitor as opposed to a complete restriction on comparison to product of another manufacturer.

Extra Lean Ground Beef

FSIS identified 35 major cuts of meat products at 9 CFR 317.344 that would be used in evaluating significant participation for voluntary nutrition labeling of single-ingredient, raw meat products. The cuts included extra lean ground beef, which, according to USDA's Agriculture Handbook No. 8, is a product averaging approximately 17 percent fat by weight on an uncooked basis as it is currently marketed. The final rule allows the term "extra lean" to be used on individual food products containing, among other criteria, less than 5 grams of fat per reference amount customarily consumed and per 100 grams. Effective July 6, 1994, the term "extra lean" will no longer be applicable to the product listed at 9 CFR 317.344. For this reason, FSIS is proposing to amend this section by changing the name "ground beef extra lean without added seasoning" to "ground beef about 17% fat without added seasoning."

Nutrient Content Claims About Sugars and Salt

In its final nutrition labeling regulations, FSIS specified requirements for nutrient content claims for calories and sugars at 9 CFR 317.360 and 381.460, which cross-references 21 CFR 101.60 for the requirements, and for sodium and salt at 9 CFR 317.361 and 381.461, which cross-references 21 CFR 101.61 for the requirements. The requirement that sugars and salt defined in these sections meet the general requirements for nutrient content claims was inadvertently omitted from 21 CFR 101.61 and 101.62. FDA has added explicit mention of sugars at 21 CFR 101.60(a) and salt at 21 CFR 101.61(a) to clarify that the general requirements also apply to sugars and salt. FSIS agrees with these modifications and is proposing to cross-reference 21 CFR 101.60 and 101.61, as amended.

Criteria for Free Claims

The FSIS provisions on nutrient content claims contained in its final nutrition labeling regulations at 9 CFR 317.360, 317.361, 317.362, 381.460, 381.461, and 381.462 cross-reference the following provisions for the definition of "free": 21 CFR 101.60 for calories and sugars; 21 CFR 101.61 for sodium; and 21 CFR 101.62 for fat, fatty acids, and cholesterol. The criterion for "free" claims was based on the amount of nutrient per reference amount customarily consumed. FDA amended this criterion to include a per-labeled-serving basis. This amendment avoids the confusion that may be created should products bear "free" claims when the nutrition labeling could contain a nutrient value other than zero, which is the amount considered to be nutritionally trivial and is the basis for the term "free." Provisions at 21 CFR 101.60, 101.61, and 101.62 have been amended to restrict the amount of nutrient per labeled serving, as well as per reference amount customarily consumed. The specific modifications

appear at 21 CFR 101.60 (b)(1)(i) and (c)(1)(i); 101.61(b)(1)(i); and 101.62 (b)(1)(i), (c)(1)(i), (d)(1)(i)(A), and (d)(1)(ii)(A). FSIS agrees with these changes and is proposing to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended, for the definition of "free" for calories, sugars, sodium, fat, fatty acids, and cholesterol.

Criterion for Saturated Fat Free Claims

In its final nutrition labeling regulations, FSIS defined the term "saturated fat free" at 9 CFR 317.362 and 381.462 by cross-referencing 21 CFR 101.62(c)(1). A criterion for the definition of the term is that the level of trans fatty acids in the product not exceed 1 percent of the total fat. FDA changed the criterion at 21 CFR 101.62(c)(1) to require that the product contain less than 0.5 grams trans fatty acids, because this is an amount that can be analyzed and is consistent with the definition of "free" for fat and saturated fat. FSIS agrees with this change and is proposing to cross-reference 21 CFR 101.62(c), as amended.

Nutrient Content Claims for Rehydrated Products

The nutrient content claim requirements in FSIS's final nutrition labeling regulations specify that for products that have a reference amount customarily consumed of 30 grams or less or 2 tablespoons or less, the criteria for claims are based on 50 grams of product, as well as per reference amount. For dehydrated products that typically must be rehydrated with water before consumption, FSIS at 9 CFR 317.360, 317.361, 317.362, 381.460, 381.461, and 381.462 provides that the 50-gram criterion be based on the "as prepared" form by cross-referencing applicable provisions in 21 CFR 101.60, 101.61, and 101.62. FDA amended its regulations to extend to rehydration with diluents, such as vinegar, that have insignificant amounts of all nutrients per reference amount. The specific FDA provisions which have been amended to this effect are the following: 21 CFR 101.60(b)(2)(i)(B); 101.61(b) (2)(i)(B) and (4)(i)(B); and 101.62 (b)(2)(i)(B) and (d)(2)(ii)(A). FSIS is proposing to cross-reference 21 CFR 101.60, 101.61, and 101.62, as amended.

Foods for Infants and Children Under 4 Years of Age

To address a conflict in nutrition labeling rules for foods intended for infants and children less than 4 years of age, FSIS is proposing to amend 9 CFR 317.400(c) and 381.500(c) to state that foods represented or purported to be specifically for infants and children less than 4 years of age shall not include declarations of percent Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber. The percent Daily Values for protein, vitamins, and minerals are to be declared in accordance with the applicable cross-referenced provisions of 21 CFR 101.9(c). FSIS is proposing additional format specifications in the amended provisions. These changes are consistent with FDA's amendments to its provision governing nutrition labeling of products intended for these age groups.

Packages With Less Than 12 Square Inches of Space

In its interim final rule published on September 10, 1993, FSIS added provisions at 9 CFR 317.400(d) and 381.500(d) to permit product manufacturers of packages that have a total surface area available to bear labeling of less than 12 square inches to provide an address or telephone number for consumers to write or call for nutrition information, provided that the labeling for these products bear no nutrition claims or information. FSIS and FDA concluded that a greater selection of type sizes for use on these packages is warranted. Such options would benefit consumers by allowing nutrition information to be presented on more packages and would provide manufacturers flexibility when provision of nutrition information becomes mandatory. FSIS is proposing to redesignate 9 CFR 317.400(d) and 381.500(d) as 9 CFR 317.400(d)(1) and 381.500(d)(1), respectively, and add new paragraphs at 9 CFR 317.400(d)(2) and 381.500(d)(2) to provide for the optional use of 6-point type or all uppercase type of $\frac{1}{16}$ inch minimum height for packages with less than 12 square inches available to bear labeling and to permit a type size of $\frac{1}{32}$ inch minimum height when packages have a total surface area to bear labeling of 3 square inches or less.

Product Analyses

FSIS is proposing to remove 9 CFR 381.133(b) of the poultry products inspection regulations to correct an oversight relating to product analyses. Generally, 9 CFR 381.133(b) provides that when labels for poultry products bear a chemical analysis, such products must be analyzed on a lot basis by an impartial laboratory to determine whether the products conform to the analysis shown. Under the nutrition labeling regulations, companies are required to maintain records that support nutrient information. Companies may base nutrient information on data bases and on recipe analysis using data bases, as well as on laboratory analyses. FSIS will, in turn, use specific methods to analyze samples for enforcement purposes. Thus, 9 CFR 381.133(b) should have been removed as part of the nutrition labeling rulemaking. There is no similar provision in the Federal meat inspection regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.309 would be amended by revising paragraphs (a) (1), (3), (6), (d), (e), and (f) (1), (2), and (3) to read as follows:

§ 317.309 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b) (1) and (2), except (b)(2)(i), and 21 CFR 101.9(b) (6) through (9), except (b)(7)(v).

(2) * * *

(3) For products in discrete units (e.g., hot dogs, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category;

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size;

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit;

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 317.312(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 317.309 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6) (iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., chop, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 317.309(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., ham with a glaze packet), the nutrition information may be declared for each component or as a composite.The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2) (ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 317.312(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A Statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9 (d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of meat products that contain two or more meat products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., meat salad containers) may use an aggregate display

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size.
Servings per container	Servings.
Calories from fat	Fat cal.
Calories from saturated fat.	Sat fat cal.
Saturated fat	Sat fat.
Monounsaturated fat	Monounsat fat.
Polyunsaturated fat	Polyunsat fat.
Cholesterol	Cholest.
Total carbohydrate	Total carb.
Dietary fiber	Fiber.
Soluble fiber	Sol fiber.
Insoluble fiber	Insol fiber.
Sugar alcohol	Sugar alc.
Other carbohydrate	Other carb.

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

3. Section 317.312 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 317.312 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12(a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

(b) * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., lunch meat or cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

§ 317.312 [Amended]

4. Table 2 in § 317.312(b) would be amended by removing the words "bagel dog" from the Product Category "Entrees without sauce" and by removing the words "freeze dry," dehydrated," and "concentrated soup mixes" from the Product Category "Seasoning mixes dry."

5. Section 317.313 would be amended by adding paragraph (g) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 317.313, 317.354, 317.356, 317.360, 317.361, 317.362, and 317.380, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

§ 317.344 [Amended]

6. Section 317.344 would be amended by removing the words "ground beef extra lean without added seasoning" and adding the words "ground beef about 17% fat without added seasoning."

7. Section 317.400 would be amended by revising paragraph (c), redesignating paragraph (d) as (d)(1) and by revising the newly designated paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

§ 317.400 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 317.309(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labeling for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of 1/16 inch minimum height, except that individual serving-size packages of meat products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than 1/32 inch minimum height.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

8. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55

§ 381.133 [Amended]

9. Section 381.133 would be amended by revising the section title to read "Requirement of formulas," by removing the paragraph (a) designation of the first paragraph, and by removing paragraph (b).

10. Section 381.409 would be amended by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 381.409 Nutrition label content.

(a)(1) All nutrient and product component quantities shall be declared in relation to a serving as defined at 21 CFR 101.9(b) (1) and (2), except (b)(2)(i), and 21 CFR 101.9(b) (6) through (9), except (b)(7)(v).

(2) * * *

(3) For products in discrete units (e.g., chicken wings, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the

Reference Amount for the product category;

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size;

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit;

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 381.412(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 381.409 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

* * * * *

(6) For labeling purposes, the term "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (a)(6)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term "about" (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., wing, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) As provided for in § 381.409(c)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., chicken wings and barbecue sauce), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraph (a)(3) of this section and 21 CFR 101.9(b)(2) (ii) and (iii).

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 g.

(viii) When a serving size, determined from the Reference Amount in § 381.412(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving up to the next incremental size.

* * * * *

(d) "Stearic Acid" (VOLUNTARY): A statement of the number of grams of stearic acid may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(e)(1) Formats for nutrition labeling shall be in accordance with 21 CFR 101.9 (d) and (e), except for (d)(13) and references to (f), (j)(5), and (j)(13), or in accordance with paragraph (g)(1) of this section.

(2)(i) Nutrition labeling on the outer labeling of packages of poultry products that contain two or more poultry products in the same package (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., poultry salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph (e)(1) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(f) * * *

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns, if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitive amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

(2) Using any of the following abbreviations:

Serving size	Serv size.
Servings per container	Servings.
Calories from fat	Fat cal.
Calories from saturated fat.	Sat fat cal.
Saturated fat	Sat fat.
Monounsaturated fat	Monounsat fat.

Polyunsaturated fat	Polyunsat fat.
Cholesterol	Cholest.
Total carbohydrate	Total carb.
Dietary fiber	Fiber.
Soluble fiber	Sol fiber.
Insoluble fiber	Insol fiber.
Sugar alcohol	Sugar alc.
Other carbohydrate	Other carb.

(3) Omitting the footnote required in 21 CFR 101.9(d)(9) and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

11. Section 381.412 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 381.412 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the Reference Amounts for serving sizes set forth in paragraph (b) of this section are found in 21 CFR 101.12 (a), (c), except for reference to the unprepared form in the first paragraph, (d), and (g).

(b) * * *

(c) For products that have no Reference Amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., poultry lunch meat or cheese and crackers), the Reference Amount for the combined product shall be determined using the following rules:

(1) For bulk products, the Reference Amount for the combined product shall be the Reference Amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units, the Reference Amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the Reference Amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the Reference Amounts are in compatible units, they shall be summed (e.g., ingredients in equal volumes such as tablespoons). If the Reference Amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., grams of one ingredient plus gram weight of tablespoons of a second ingredient).

§ 381.412 [Amended]

12. Table 2 in § 381.412(b) would be amended by removing the words "poultry bagel dogs" from the Product Category "Entrees without sauce."

13. Section 381.413 would be amended by adding paragraph (g) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(g) Labeling information required in §§ 381.413, 381.454, 381.456, 381.460, 381.461, 381.462, and 381.480, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height.

* * * * *

14. Section 381.500 would be amended by revising paragraph (c), redesignating paragraph (d) as (d)(1) and by revising the newly designated paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

§ 381.500 Exemption from nutrition labeling.

* * * * *

(c)(1) Foods represented to be specifically for infants and children less than 2 years of age shall bear nutrition labeling as provided in paragraph (c)(2) of this section, except such labeling shall not include calories from fat, calories from saturated fat, saturated fat, stearic acid, polyunsaturated fat, monounsaturated fat, and cholesterol.

(2) Foods represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling except that:

(i) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(ii) Nutrient names and quantitative amounts by weight shall be presented in two separate columns;

(iii) The heading "Percent Daily Value" required in § 381.409(e) shall be placed immediately below the quantitative information by weight for protein;

(iv) The percent of the Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(v) Such labeling shall not include the footnote specified at 21 CFR 101.9(d)(9).

(d)(1) Products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

(2) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in a type size no smaller than 6 point or all upper case type of 1/16 inch minimum height, except that individual serving-size packages of poultry products that have a total area available to bear labeling of 3 square inches or less may provide all required information in a type size no smaller than 1/32 inch minimum height.

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 94–6012 Filed 3–15–94; 8:45 am]

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Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN: 1840–AB97

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992.

DATES: Comments must be received on or before April 15, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Patricia Beavan, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.; Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR part 682 of the FFEL Program regulations, published in the Federal Register on December 18, 1992, to implement changes made to the HEA by the Higher Education Amendments of 1992 (Pub. L. 102–325) (the Amendments), enacted July 23, 1992. These regulations would affect the implementation of the program for all participants. The regulations would improve the efficiency of the Federal student aid programs, and by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Summary of Comments From Regional Meetings

In compliance with section 492(a) of the HEA, the Secretary convened regional meetings during September 1992 to obtain public involvement in the development of proposed regulations. The purpose of the meetings was to "provide for a comprehensive discussion and exchange of information concerning the implementation" of certain parts of the HEA, as amended by Public Law 102–325. In addition, attendees of the regional meetings were asked to nominate individuals to act as negotiators in the negotiated rulemaking process required by section 492(b) of the HEA.

The regional meetings were conducted for two days each in San Francisco, California; New York, New York; Atlanta, Georgia; and Kansas City, Missouri. Each participant at the regional meetings was assigned to one of six groups that were asked to discuss particular issue areas identified by the Department. Each group at the regional meetings prepared a report of its discussion and recommendations and those reports were presented to the Department for consideration during the preparation of the proposed regulations.

Below is a summary of the information received and the proposals made to the Secretary during the regional meetings relating to these proposed regulations:

1. *Guaranty agency limitation of a school's participation*—The attendees of the regional meetings in San Francisco, New York and Atlanta discussed this issue. Attendees at the San Francisco meeting recommended that guaranty agencies be allowed to set limits on loan volume for schools but that a review process should be provided by the guarantor. The attendees at the New York and Atlanta meetings recommended that the guaranty agencies be allowed to set limits for schools that are newly participating with the agency. Attendees at the New York meeting recommended certain criteria that an agency could use to limit a school's participation and recommended that all guarantors be required to comply with the restrictions placed by any agency. Attendees at the Atlanta meeting recommended that an agency's decision on loan limits should be subject to appeal but that the limit should remain in place during the appeal.

2. *Lender-of-last-resort services*—The attendees of the regional meeting in San Francisco recommended that, for schools with default rates exceeding 25 percent, "exceptional mitigating circumstances" for a school's appeal of denial for lender-of-last-resort (LLR) services should be defined to include program completion and job placement rates, if available; default rates; loan volume as a proportion of a school's student population; and other pertinent factors. The attendees also recommended that for a school subject to a limitation, suspension or termination (LST) action, exceptional mitigating circumstances should consider the above factors and the nature of the LST action. The majority of the Kansas City meeting attendees supported use of the definition of "exceptional mitigating circumstances" provided in the cohort default rate regulations published in the Federal Register on July 19, 1991 and the required default management plan to determine if a guaranty agency must offer LLR services to students attending a school with a cohort default rate greater than 25 percent. The minority view at the Kansas City meeting was that the regulatory criteria are too restrictive. Attendees at the New York meeting recommended that other factors be considered in addition to current law to define exceptional mitigating circumstances i.e., two-thirds of registered students actually begin class and the percentage of students receiving loans at schools with 15 percent to 25 percent cohort default rates. The attendees also expressed concern about

the timeliness of the appeal process and their desire that students should not be penalized. The attendees at the New York meeting supported the regulatory definition of exceptional mitigating circumstances with the inclusion of a comparison of student costs of education to post-graduation earnings and consideration of personal mitigating circumstances of students.

3. *Income-contingent repayment*—The attendees at the regional meetings in San Francisco, New York, and Kansas City made recommendations for the Secretary to consider in developing regulations to allow certain defaulted borrowers a repayment schedule that assesses a borrower's debt-to-income ratio and that provides the borrower up to 25 years to repay a loan. The attendees at the San Francisco meeting recommended that consideration be given to the amount of the borrower's educational loan scheduled repayment in relation to his or her anticipated income. They indicated that they believed that a smaller percent of income should probably be expected in loan repayment from low income borrowers. Attendees at the San Francisco meeting also recommended that educational debt should include all educational loans, not just Title IV student loans and that the term (borrower's) "income" needed to be defined for this purpose. They suggested that if "income" includes the borrower's spouse's income, the spouse's educational debts should also be included. Attendees at the New York meeting recommended that guaranty agencies be permitted to exempt loans from mandatory assignment and instead be able to offer their borrowers income-contingent repayment. The attendees at the New York meeting also recommended that income-contingent repayment should take into consideration the impact of negative amortization and the overall cost of repayment, include a requirement for annual review, and allow guaranty agencies to determine the interest rate. Attendees at the Kansas City meeting recommended that factors for the Secretary's evaluation should include whether collection of the note would be enhanced, costs associated with income-contingent collection vs. existing repayment structures, and the cost effectiveness of Federal collection. The Kansas City meeting attendees also recommended that longer repayment periods be allowed. However, they expressed concern that such repayment periods could result in an incentive to default.

4. *Federal Stafford and Federal SLS loan limits*—The attendees at the regional meetings in San Francisco, New York and Atlanta discussed the issue of reduced loan limits for programs of less than an academic year and recommended that if the definition of "less than an academic year" would include students who are in a second or subsequent year of a program of study for a period of enrollment of less than a year, that a technical amendment should be sought to clarify Congress' intent as to which borrowers were covered by the provision.

5. *Federal PLUS loans—determination of adverse credit*—The attendees at the San Francisco, Kansas City and Atlanta meetings generally recommended that adverse credit history should include outstanding tax liens, unpaid judgments, bankruptcy, default on or failure to pay Federal debts or obligations, charge offs, collection accounts, foreclosures and repossessions. The San Francisco meeting attendees also recommended the regulations specify that the lack of a credit history should not be considered adverse credit. The attendees at the San Francisco meeting expressed concern about PLUS borrowers' ability to repay loans given the repeal of the PLUS annual and aggregate loan limits. The attendees recommended that the lender and or guaranty agency counsel borrowers with regard to debt load, repayment obligations, etc. Attendees at the San Francisco meeting also recommended that the lender be allowed to establish additional eligibility criteria, including reviewing situations where potential borrowers are currently 60 days or more delinquent on other consumer accounts. The attendees at the San Francisco and Kansas City meetings recommended that lenders should also exercise discretion in allowing borrowers to provide explanations regarding circumstances that resulted in a determination of adverse credit. Attendees at the San Francisco and Kansas City meetings also recommended that the lender be required to obtain a credit report from a nationally recognized credit reporting agency. The San Francisco, Atlanta, and Kansas City attendees also recommended that in disbursing a PLUS loan the school require one authorization per loan (not disbursement) and allow parents to authorize electronic fund transmission. The attendees at the Kansas City meeting recommended that amounts of less than $100 in charge off or collection accounts not be held against a PLUS applicant when determining adverse credit. The New York meeting attendees recommended that the regulations require credit decisions by the lender using the applicant's credit report.

6. *Default reduction program*—Attendees at the Kansas City meeting recommended that the determination that post-default payments are "reasonable and affordable based upon the borrower's total financial circumstances" be made on a case-by-case basis based on a debt-to-income analysis (including family size) by the guaranty agency. The attendees recommended that payments be at least $5.00 and be voluntary consecutive payments. However, the attendees also expressed concern about accepting less than interest payments. The Kansas City meeting attendees discussed the distinction between the Title IV renewal of eligibility provision in the law that requires six reasonable and affordable consecutive payments and the rehabilitation program that requires 12 reasonable and affordable payments. They recommended that guaranty agencies be given wide discretion to evaluate the defaulter's personal circumstances and history to determine what constitutes reasonable and affordable payments so that if a loan is repurchased under the rehabilitation program, the borrower will be able to meet the lender's repayment terms and not fall into default again. Attendees at the Kansas City meeting also recommended that the guaranty agency be allowed to determine the documentation required to establish the reasonable and affordable payment amounts and that a review of the borrower's circumstances be required semi-annually. The attendees at the San Francisco, New York and Atlanta meetings recommended that guaranty agencies be allowed flexibility in determining if the payment amount is reasonable and affordable by taking into account the borrower's family circumstances, income, size, and by giving special consideration to borrowers receiving public assistance. The San Francisco attendees also recommended that the guaranty agency be required to notify the school in writing when a borrower has regained Title IV eligibility.

7. *Mandatory assignment of loans to the Secretary*—Attendees at the meetings in New York, San Francisco and Kansas City discussed the issue of mandatory assignment. The Kansas City meeting recommended that the Secretary determine the criteria for assignment on a case-by-case basis and recommended consideration of several issues by the Secretary. Attendees at the New York meeting recommended that the Secretary establish a simple set of general rules under which mandatory

assignment would apply to loans on which payments had not been received for a certain period of time. Attendees at the San Francisco meeting recommended that the criteria for mandatory assignment be determined by regulation and not by individual negotiations with each agency and proposed certain specific criteria for the assignment.

8. *Restrictions on guaranty agency incentive payments*—The participants in the New York meeting asked that the regulations clearly define "premium" and "inducement" for purposes of this provision. Attendees at the San Francisco regional meeting concluded that the statute was intended to prohibit cash payments by a guaranty agency to a lender but that agency activities to encourage participation or provide state-of-the-art processing in the loans programs were acceptable. In Kansas City, participants concluded that regulations must ensure that services provided by guarantors which improve a lender's ability to meet the needs of students, schools and the Secretary should not be considered inducements. In addition, the Kansas City participants recommended that services permitted under existing guarantor and lender relationships not be prohibited but that direct fee payments from a guarantor to a lender be prohibited. The attendees to the Atlanta meeting recommended that the regulations define "inducement" as something of value (such as cash, premiums based on loan volume, or gifts) that is given by the guarantor with the intent of causing the lender to choose the guarantor. In addition, the attendees at the Atlanta meeting recommended that computer system connections that allow a lender to utilize a guarantor's procedures not be considered an inducement.

9. *Guaranty reserve level*—Attendees at all of the regional meetings recommended that uniform definitions be developed for determining the required reserve level for each of the guaranty agencies. However, participants at each of the meetings suggested different formulas for the determination of whether a guaranty agency satisfied its minimum requirement. Attendees at all of the regional meetings also recommended that, if a management plan is required because a guaranty agency drops below the minimum reserve level, the guaranty agency, rather than the Secretary, should be responsible for preparing the plan. Finally, the participants at all the meetings recommended that, if a guaranty agency becomes insolvent, the Secretary should first consider a solution in which other agencies assume the insolvent agency's responsibilities rather than have the Secretary take over the agency's role.

10. *Restriction on lender interest subsidy*—Attendees at all of the regional meetings rejected the suggestion that a lender could charge a borrower for the interest not paid by the Secretary because of the restriction on the interest subsidy added to the law. The Atlanta attendees objected to the suggestion that the term "disbursement" in section 428(a)(3) of the HEA meant the delivery of funds to the student and instead asked that the industry's traditional definition of the term as referring to when the funds are available to the school be maintained. The Atlanta attendees also disagreed with the idea of a standardized schedule for the interest billing. The Kansas City attendees recommended that the term "disbursement" be defined as the date the borrower negotiates the loan check or the funds are transferred to the borrower's account. The Kansas City attendees also recommended the adoption of a standardized schedule for interest billings. The San Francisco attendees recommended that the Secretary seek a statutory change that would prohibit schools from requesting funds prior to the deadlines established for interest payment. The New York attendees also recommended that a restriction be placed on the school's authority to request funds and suggested that a standardized schedule for interest billing be developed.

11. *Loans that have not been consummated*—The Amendments prohibit a lender from receiving interest and special allowance payments on loans for which the disbursement checks have not been cashed or the electronic funds transaction is not completed. The Atlanta meeting recommended that this restriction apply to loans when the check is returned or has not been negotiated within 120 days or when the school notifies the lender that the transaction is cancelled. Attendees at the Kansas City meeting concluded that the statute clearly defined the loans on which interest would be restricted but recommended that lenders should be allowed to bill for interest and special allowance until they learn that the loan was not consummated and then adjust future billings. The San Francisco attendees simply expressed their objection to the law.

12. *Prohibition on the sale of loans prior to disbursement*—The Amendments changed section 428G(g) to limit the ability of a lender to sell a loan prior to full disbursement of the loan proceeds. The attendees at the Kansas City meeting recommended that the restriction should not apply as long as the address to which payments are made does not change and the change is "transparent" to the borrower. Attendees at the San Francisco meeting recommended that transfer (which it defined as a sale) of a loan be prohibited until after all disbursements are made. Attendees at the New York meeting recommended that the restriction apply only when the ownership of the loan note is transferred and that the restriction should not apply when a lender is ending its participation in the FFEL Program. The attendees at the Atlanta meeting concluded that the restriction on transfers should not apply if the transfer does not change the borrower's perception of where to send payments.

The Department considered all of the comments received during the regional meetings in preparing draft proposed regulations.

Negotiated Rulemaking

After completion of the regional meetings, the Department prepared draft proposed regulations to implement the provisions of Public Law 102–325 relating to the FFEL Program. In accordance with the requirements of section 492(b) of the HEA, those regulations were submitted to a negotiated rulemaking process. During the weeks of January 4–8 and February 1–5, 1993, the Department met with negotiators selected from among individuals nominated by attendees at the regional meetings.

The discussion below of the proposed regulations reflects those areas where the negotiators reached a consensus and the proposed regulations reflect that agreement. The discussion below also indicates where consensus was not reached during the negotiations. However, the negotiators did not choose to discuss every part of the proposed regulations. Accordingly, the discussion below of those issues not discussed during the negotiations reflects only the views of the Secretary.

Proposed Regulatory Changes

Section 682.100 The Federal Family Education Loan Programs

Section 682.100(a)(3)—The Secretary proposes to amend the regulations to reflect the statutory change that parent PLUS borrowers may no longer borrow on behalf of dependent graduate students.

Section 682.100(a)(4)—The Secretary proposes to amend the regulations to reflect the statutory change that a Consolidation Loan may include Higher

Education Assistant Loan (HEAL) Program loans authorized by Subpart I of Part A of Public Title VII of the Health Services Act, and parent PLUS borrowers whose loans were made on or after October 17, 1986.

Section 682.101(c)—The NPRM is revised to include the statutory change that HEAL loans and parent PLUS borrowers whose loans were made on or after October 17, 1986 may be included in a Consolidation Loan and married couples who have a combined indebtedness of at least $7,500 in eligible loans may borrow under the Consolidation Loan Program.

Section 682.200 Definitions

This section of the regulations is being amended to reflect changes made to various definitions by Public Law 102–325. The Secretary also proposes to change other definitions to ensure clarity and consistency within the FFEL Program. During the negotiations, the following definitions were discussed and changes were made to address the negotiators' concerns.

Co-maker—The Secretary proposes to revise the definition of co-maker in the proposed regulations to include its use in the Consolidation Loan Program. The current regulatory definition only references the PLUS loan program. The Secretary proposes to revise the definition to also describe the status of a married couple who are joint borrowers on a Consolidation loan. The Secretary wishes to point out that a co-maker on a PLUS or Consolidation loan must be an eligible borrower.

Disposable income—The Secretary proposes to revise this section by adding a definition of the term "disposable income." The proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes disposable income in determining a reasonable and affordable payment based on the borrower's total financial circumstances for purposes of reinstatement of borrower eligibility (§ 682.401) and rehabilitating a borrower's defaulted loan (§ 682.405).

Estimated Financial Assistance—During the negotiated rulemaking sessions, discussion ensued regarding the definition of "estimated financial assistance." The definition of estimated financial assistance reiterates the language in the December 18, 1992 regulations that requires a school to include, as estimated financial assistance, Federal Perkins loan or Federal Work-Study awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The negotiators expressed concern that the requirement that aid officers must certify estimated eligibility for these programs regardless of whether (1) the student applies for the aid, (2) the student meets established institutional deadlines for consideration, or (3) the student applies, but funds are not available, is not reasonable or practicable given the deadline that schools have for packaging their campus-based financial aid programs.

The Secretary is concerned that students be considered for more desirable campus-based aid, if available, before they turn to FFELP loans. However, at the request of the negotiators, the Secretary proposes to clarify that a school would be expected to include Federal Perkins Loan or Federal Work-Study award estimates for a student only to the extent funding is available. The Secretary intends that a school need not include hypothetical campus-based awards if those funds are no longer available or cannot be expected to become available at that school. Also, a campus-based award declined by the student would not need to be considered as estimated financial assistance if the institution's packaging policy would not normally make certain types of awards to a particular category of students. For example, if the institution's packaging policy would not normally award a Perkins loan to a freshman student, that aid would not need to be included as part of "estimated financial assistance" when certifying a FFEL Program loan application for the student.

The negotiators also recommended that the definition of estimated financial assistance should be revised to provide a different definition of estimated financial assistance for PLUS loans. They believed a school should be able to certify a PLUS application without taking into consideration the dependent student's eligibility for other Title IV student loan assistance if the parent wishes to take on a loan obligation in lieu of the student becoming obligated. The Secretary strongly encourages students to utilize all financial aid available to them. However, the Secretary recognizes that the statute provides authority for PLUS parent borrowers to borrow up to the cost of education. Given the fact that schools will be participating in both the Federal Direct Loan and FFEL programs, the Secretary believes that the treatment of PLUS loans needs to be consistent across the loan programs. Therefore, the Secretary proposes to revise the definition of estimated financial assistance in the FFEL Program to be consistent with the same definition in the Federal Direct Student Loan Program and to permit a PLUS parent borrower the option of borrowing to cover both parental contribution and the amount of the student's eligibility for Federal loans up to the cost of attendance.

Grace period—The Secretary proposes to revise the definition of grace period to reflect the change in the HEA that allows an SLS borrower who also has a Stafford loan to delay beginning repayment on the SLS loan for a period of time concurrent with the borrower's grace period on the Stafford loan so that repayment begins on the two loans at the same time.

Repayment period—The Secretary proposes to revise the definition of repayment period to reflect section 428H of the HEA, which provides that the repayment period for an Unsubsidized Stafford Loan begins on the day after the grace period expires. The NPRM reflects that payments of interest on an Unsubsidized Stafford Loan during the in-school and grace period are the responsibility of the borrower.

Satisfactory repayment arrangement—The Secretary proposes to revise this section by adding a definition for the term "satisfactory repayment arrangement." Consistent with the effort to standardize and simplify the FFEL Program and the requirements of section 428F of the HEA, the proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes a "satisfactory repayment arrangement" by a defaulted borrower. A borrower would be required to have made satisfactory repayment arrangements on a defaulted loan prior to regaining eligibility for further Title IV assistance or including a defaulted loan in a Consolidation loan. The negotiators expressed concern about the effects of applying the same definition to other aspects of the FFEL Program that they believe go beyond the reinstatement of a defaulted borrower's eligibility for Title IV assistance. For example, a borrower who wishes to consolidate a defaulted loan is required to make a satisfactory repayment arrangement on the defaulted loan and provide evidence of the arrangement to the consolidating lender. The negotiators believed that guaranty agencies should have the discretion to implement a stricter standard for satisfactory repayment arrangements for differing circumstances. The Secretary believes, however, that the Congress intended one uniform standard for satisfactory repayment arrangements to be used nationwide for all FFEL Program purposes.

Stafford Loan Program—The negotiators indicated that the different names used in the Federal Stafford Loan Program confuse borrowers and other program participants. The Secretary is proposing to define the different types of loans involved. The term "Stafford Loan Program" refers to the program authorized by Title IV-B of the HEA, which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. The term "Stafford Loan Program" will serve as the umbrella term for all Stafford loans, subsidized, unsubsidized, and nonsubsidized.

Write-off—The Secretary proposes to revise this section by adding a definition for the term "write-off." The proposed regulations would provide a uniform standard for guaranty agencies to use in determining what constitutes a "write-off" for purposes of determining whether a borrower is considered to have an adverse credit history if a credit report reflects that a borrower has been the subject of a write-off.

Section 682.201 Eligible borrowers

Section 682.201(a)(2)—The NPRM proposes to establish a sequence in certification of borrower eligibility in the FFEL Program in response to the negotiators' request that clarification be provided in the regulations. Consistent with the requirements of sections 428H(b)(2) and 484(b)(2) of the HEA, a borrower must first receive a determination of need for a subsidized Stafford loan and, if determined to have need in excess of $200, have submitted an application to a lender. The borrower must next receive a determination of need for an unsubsidized Stafford loan regardless of whether the amount of the need is less than $200. Finally, an eligible borrower may have an SLS loan application certified which contains, under "estimated financial assistance", the full amount of the borrower's Stafford Loan (subsidized and unsubsidized) eligibility. The Secretary notes that the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), enacted on August 10, 1993, provides that no new Federal SLS Loans may be made for a period of enrollment beginning on or after July 1, 1994. The Federal SLS Program will be replaced with increased annual loan amounts available under the unsubsidized component of the Federal Stafford Loan Program.

Section 682.201(b)—The NPRM proposes to reflect the change in the HEA that provides that graduate or professional students are considered independent students, thereby restricting PLUS loan eligibility to parents of dependent undergraduate students.

Section 682.201(b)(7)—The proposed regulations implement section 428B(a) of the HEA that provides the eligibility requirements for the PLUS program. Specifically, in order for a parent to be eligible to borrow a PLUS loan on behalf of a dependent student, the parent must be determined not to have an "adverse credit history." During the negotiations some lenders expressed the need for flexibility to exercise individual judgment in determining adverse credit. The Secretary accepted the negotiators' recommendation that the proposed rules should not preclude a lender from requiring a PLUS applicant to meet more stringent credit criteria. However, the Secretary did not accept other lenders' recommendations that, in exercising this judgment, the lender should be allowed to use more lenient standards on an exceptional basis.

Lenders expressed concern about parent borrowers' ability to repay the loans given the repeal of the PLUS annual and aggregate loan limits. Some lenders recommended that the proposed regulations used to determine borrower eligibility for PLUS loans go beyond a standard to determine adverse credit history to also include a determination of a borrower's ability to repay the debt. Although the Secretary shares the lenders' concerns, he declined to accept the negotiators' recommendation because there is no statutory authority for including such an additional eligibility criterion. However, the Secretary notes that a lender is not prohibited from maintaining a lending policy that would examine parental ability to repay the PLUS loan.

The draft NPRM discussed at the negotiated rulemaking sessions would have required a lender to obtain a credit report on the PLUS applicant from at least one national credit bureau organization not more than 60 days before the first day of the period of enrollment for which the loan was intended. The negotiators believed the time frame for obtaining the credit report was too restrictive. The Secretary, therefore, has removed the proposed time frame and is proposing that the lender determine adverse credit history based on the examination of the required credit report.

The Department also proposed in the draft NPRM that the PLUS applicant would be considered to have an adverse credit history if the borrower is more than 90 days delinquent on a repayment of any debt, 60 or more days delinquent on the repayment of each of two or more debts, or has been, during the five years preceding the date of the credit report, the subject of a default determination, bankruptcy filing, foreclosure, repossession, tax lien, wage garnishment, write-off, or any Federal or state government action to collect a debt. The lender could not consider insufficient or lack of a credit history for the parent borrower to be an adverse credit history. Some negotiators objected to the proposal that a borrower would be considered to have an adverse credit history if the borrower is more than 90-days delinquent on a repayment of any debt or 60 or more days delinquent on the repayment of each of two or more debts because they believed the proposal was overly complicated and too stringent. The Secretary removed the 60-day restriction to simplify the standard; however, the Secretary indicated that the 90-day delinquency requirement would be retained because he believed this to be an appropriate threshold of delinquency for this purpose.

The negotiators believed that the proposed draft regulations also did not provide the lender with enough flexibility to consider extenuating circumstances, such as delinquency on small dollar debts that may have been beyond the control of the borrower. They recommended that lenders be able to apply a tolerance for small dollar debts. The negotiators indicated that delinquent debts of less than $500 are an industry-wide acceptable tolerance. The Department agreed to propose to allow the lender the flexibility in determining adverse credit if the lender retains documentation supporting its basis for determining that extenuating circumstances existed. The documentation may include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or an acceptable statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

Student advocates requested that the Department clarify that a borrower who has a loan discharged under section 437(b) of the HEA would not be considered to have an adverse credit history. The Department agreed to clarify in the preamble to the regulations that a borrower would not be considered to have an adverse credit history based solely on a loan discharged under this provision appearing on the borrower's credit history.

Section 682.201(c)—The Secretary proposes to amend the regulations to

reflect the new statutory changes to Consolidation loan eligibility. The NPRM would provide that the following borrowers are now eligible for a Consolidation loan: A borrower who has a minimum debt under the eligible loan programs of at least $7,500; a defaulted borrower who will reenter repayment through loan consolidation; a parent PLUS borrower who has loans made after October 17, 1986; and a married couple who will jointly consolidate their individual loans. The NPRM also reflects the statutory provision allowing a borrower to add loans received prior to the date of the consolidation during the 180-day period after the lender has made the Consolidation loan.

The proposed regulations also provide that a borrower who is currently in default on a FFEL loan must, to make the defaulted loan an eligible loan to be consolidated, have made satisfactory repayment arrangements with the holder of the defaulted loan. The negotiators held an in-depth discussion as to whether there should be a separate, stricter criterion for "satisfactory repayment arrangements" for the inclusion of a defaulted loan in a Consolidation loan as provided in the NPRM. The Secretary strongly believes that a single, standard definition of this term, as provided in § 682.200, should be applied consistently throughout FFEL Program regulations. Therefore a borrower would be required to make six consecutive reasonable and affordable monthly payments on the defaulted loan before it was eligible for inclusion in the Consolidation loan.

Section 682.204 Maximum Loan Amounts

The Secretary has proposed to amend the regulations by inserting the new statutory loan limits for the FFEL Program loans that became effective on or after July 1, 1993. Changes in loan limits made by the Amendments that became effective earlier were included in the FFEL regulations that were published in the December 18, 1992 **Federal Register**. The negotiators indicated that they believe that the NPRM does not reflect the intent of the HEA in regard to the limits for programs of less than one academic year. The Secretary recognizes that the language in the HEA is defective and has recommended to the Congress a technical change to address Stafford loan limits for programs of less than one year when the student is beyond the first year of undergraduate education.

The negotiators believed the Department should provide guidance for schools in certifying a Stafford or SLS loan amount for a borrower enrolled in a program of study of less than an academic year. The Secretary has proposed in § 682.603(f)(3) a formula for the school to use in determining the borrower's annual loan limit based on whether the school meets the academic year standards specified in section 481(d)(2) of the HEA.

The negotiators requested that the Department define "course of study" so that students enrolled in multi-year programs be exempted from prorated loan limits. The Secretary believes, however, that, as the statute is currently written, a borrower enrolled for a period of enrollment that is less than an academic year in length necessary to complete a program of study is subject to reduced annual loan limits for any loan made for that period of enrollment. For term-based schools, this approach applies only if the period of enrollment that is less than an academic year is beyond the normal time frame for completion of the program as determined by the school.

Section 682.207 Due Diligence in Disbursing a Loan

This section of the regulations is being amended to provide that a PLUS loan check from a lender that is co-payable to the institution and the parent borrower must be sent directly to the eligible institution. Some negotiators favored mailing the check to the PLUS borrower for endorsement first and directing the borrower to then forward the check to the school. These negotiators believe that the co-payable check format provides sufficient protection to the Federal government against the misuse of PLUS funds. However, the Department's experience in the PLUS loan program has shown that sending the check directly to the borrower contributes to confusion in the program and may result in funds being made available to PLUS borrowers on behalf of students who are no longer enrolled. The Secretary has proposed that the check be mailed to the school first to verify student eligibility prior to forwarding it to the parent for endorsement.

Section 628.300 Payment of Interest Benefits on Federal Stafford Loans

The HEA provides that a lender may not receive interest on loans for periods earlier than either 10 days prior to the date the proceeds of the loan disbursed by check are delivered to the borrower by the school or 3 days prior to the date the proceeds of the disbursement made by electronic funds transfer are released from the restricted account maintained by the school. The major point of disagreement during the negotiations regarding this provision of the statute was the Department's interpretation of Congress' use of the word "disbursement", as used in section 428(a)(3)(A)(v) of the HEA, to mean "delivery" of loan proceeds to the borrower by the school. The Secretary believes this is the only viable interpretation of the statute as the use of the term disbursement would result in an expansion rather than restriction on interest billed the Secretary.

Considerable discussion occurred during the negotiation sessions regarding the 3-day/10-day interest limitation. The Department pointed out that Congress clearly intended to limit the lender's ability to bill the Department for interest to the period after funds are delivered to the student. The legislative history of this provision indicates that Congress intended to achieve significant savings by this change. The negotiators argued that in developing the regulations, the Department should consider that lenders do not consistently track a student's period of enrollment or the date of delivery of proceeds to the borrower. The negotiators believed the regulations should be written based on a formula driven by the date of disbursement to the school.

The negotiators ultimately recommended that interest be limited to 10 days prior to the first day of the period of enrollment for which the loan check is intended or, if the loan is disbursed after the start of the period of enrollment, 3 days after the disbursement date of the check. For a loan disbursed by electronic funds transfer, interest will be limited to 3 days prior to the first day of the period of enrollment or if the loan is disbursed after the start of the period of enrollment, 3 days after disbursement. To achieve Congress' intent to limit unnecessary interest payments using the date of loan disbursement to the school rather than delivery date to the borrower, the Secretary also believes it is necessary in § 682.603(h) to limit the period during which the school may request the disbursement of loan proceeds for a new borrower who is enrolled in his or her first year of undergraduate study.

The Secretary also proposes to amend the regulations to reflect the provision in section 428(a)(7) in the HEA under which a lender may not receive interest benefits for any disbursement of a loan for which checks have not been cashed or for which electronic funds transfer has not been completed.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

This section of the regulations is being amended to reflect the statutory change that provides that a Consolidation loan borrower whose application was received by the lender on or after January 1, 1993 qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans.

Section 682.302 Payment of Special Allowance on FFEL Loans

The Secretary proposes to amend the regulations to reflect the provision in section 428(a)(7) of the HEA under which a lender may not receive special allowance payments for loans for which checks have not been cashed or for which electronic funds transfers have not been completed.

The Secretary also proposes to amend this section to reflect other changes made by the Amendments. The proposed regulations reflect the change under section 438(b)(2)(C) that special allowance is not paid unless the new variable interest rate calculations produce an interest rate that is greater than the statutory standard interest rate (10 percent for PLUS, 11 percent for SLS). The proposed regulations also reflect the new statutory special allowance formula and a new special allowance "floor" for tax-exempt loans, both of which are effective for loans made on or after October 1, 1992. In addition, the proposed regulations would provide, in accordance with the Amendments, that unsubsidized Federal Stafford loans made pursuant to section 428H of the Act are now eligible for special allowance payments.

Section 682.400 Agreements Between a Guaranty Agency and the Secretary

The Secretary proposes to revise this section of the regulations to implement section 428F of the HEA that requires all guaranty agencies to participate in the loan rehabilitation program.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)—The proposed regulations implement the requirements of section 428F of the HEA that require a guaranty agency to permit a defaulted borrower to regain eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as defined in § 682.200. The HEA provides that a guaranty agency may not demand that a borrower make monthly payments that exceed an amount that is "reasonable and affordable" based upon the borrower's total financial circumstances. In developing criteria to be used by guaranty agencies in determining what constitutes a reasonable and affordable payment amount, the Secretary proposes to require the agency to require income and expense documentation from the borrower to make a determination of a reasonable and affordable amount. The guaranty agency must also document the basis for the determination if it determines that a defaulted borrower cannot make a monthly payment of at least $50 or the monthly accrued interest on the loan, whichever is greater, based on the borrower's total financial circumstances. Several negotiators expressed their belief that the documentation requirement for borrower payments that are less than $50 would be construed as a minimum monthly payment requirement resulting in an adverse impact on low-income borrowers who have defaulted and request reinstatement of eligibility for additional Title IV assistance.

The Secretary does not intend the requirement that the agency document the basis for payments of under $50 to harm defaulted low-income borrowers. The proposed regulations clearly provide that payments of less than $50 are permissible. The proposed regulations merely require the guaranty agency to assess the borrower's disposable income and necessary expenses to determine a reasonable and affordable payment, and to document the borrower's file to substantiate the fact that the borrower's financial circumstances support a smaller payment than is generally required of other FFEL borrowers. The Secretary notes that a borrower's objection to the "affordable and reasonable payment" amount determined by the guaranty agency based on its assessment of the borrower's disposable income and necessary expenses should be made to officials of the guaranty agency. However, if the guaranty agency and the borrower are unable to come to an agreement on the amount identified by the agency following this assessment, the borrower may contact the Department for assistance.

Section 682.401(b)(6)—The proposed regulations implement the requirements of section 428(b)(1)(T) of the HEA that provide a guaranty agency the authority to limit the total number of loans or the volume of loans made to students attending a particular school. During the regional meetings, many commenters expressed the opinion that the limitation should only apply to a school that is a first-time applicant to participate in the guaranty agency's program. However, the Secretary also believes that this new provision should be applicable to schools that are applying to renew their participation in the guaranty agency's program, as well as schools that are applying to participate in the agency's program for the first time. The Secretary believes it is reasonable to treat renewal applicants in the same manner as first-time applicants for purposes of determining a school's eligibility to participate in a guaranty agency program. The application process provides the guaranty agency with an opportunity to review a school's capability in its administration of the FFEL Program. The Secretary proposes that a guaranty agency may establish reasonable criteria approved by the Secretary to implement this authority.

Section 682.401(b)(14)—The Secretary proposes to include § 682.401(b)(14), as published in the July 19, 1991 Student Assistance General Provisions and Guaranteed Student Loan Programs final regulations, which requires a guaranty agency to provide the Secretary's designated Department official a copy of its response to the institution's request for verification of its cohort default rate data. This provision was inadvertently not included in the final FFEL regulations published on December 18, 1992.

Section 682.401(b)(16)—The Secretary proposes to amend this section to prohibit a lender from selling or transferring a promissory note for any FFEL Program until the final disbursement of the loan has been made, unless the sale or transaction does not result in the change in the identity of the party to whom payment on the loan will be made.

Section 682.401(b)(24)—The Secretary proposes to amend the NPRM to reflect the HEA requirement that the guaranty agency must, upon the request of the eligible school, notify the last institution the student attended of any sale, transfer, or assignment of the loan to another holder and the address and telephone number by which contact may be made with the new loan holder concerning repayment of the loan.

Section 682.401(b)(25)—The Secretary proposes to amend this section of the regulations to establish a time frame for a guaranty agency to send the Secretary information on program participants requesting designation as exceptional performers. The Secretary also proposes to amend this section to reflect the statutory requirement that a guaranty agency provide a school with information on any sale or transfer of a loan that results in payments being sent to a different place. This information

will assist the school's efforts to help its students avoid defaulting on their loans.

Section 682.401(c)(1)—The proposed regulations implement the new statutory provisions allowing guaranty agencies to limit access to lender-of-last-resort in certain circumstances and allows a mechanism for the school to appeal to the Secretary if lender-of-last-resort services are to be denied by the designated guaranty agency required to provide those services on this basis. The proposed regulations would require a guaranty agency to ensure that lender-of-last-resort loans are available for attendance at a school with a default rate over 25 percent; has not been eligible for and has not participated in the Federal Stafford Loan Program during the prior 18 months; or is the subject of an emergency action or limitation, suspension, or termination proceeding, if there are exceptional mitigating circumstances that would make the new statutory limitations on the agency's lender-of-last-resort program inequitable. The Secretary proposes to use the definition of exceptional mitigating circumstances in 34 CFR 668.15(g) to evaluate appeals filed by schools under this provision. The public, at the regional meetings, expressed its belief that the current regulatory criteria for exceptional mitigating circumstances were too stringent. However, the Secretary notes that Congress was aware of the Department's interpretation of the term "exceptional mitigating circumstances" in 34 CFR 668.15(g) and used the same term in the amendments to the lender-of-last-resort provision in section 428(j) of the HEA. Therefore, the Secretary believes that it is appropriate to use the existing regulatory definition of "exceptional mitigating circumstances" for appeals of denials of lender-of-last-resort services.

Section 682.401(e)—The Amendments expanded the prohibited inducement provisions relating to guaranty agencies. The Secretary has proposed to modify the regulations to reflect this amendment and include examples of the prohibited inducements. The list of examples is not all-inclusive. For example, offering computer support that it does not make available to all lenders in its program as part of a marketing appeal to a lender with whom an agency does not do business in order to secure that lender's loans would constitute an inducement. Also, any cash payment from a guaranty agency to a lender on a per application basis is strictly prohibited, except as necessary to secure lenders to participate in the agency's lender-of-last-resort program. The Secretary proposes to amend the regulations to reflect that inducements are only those things that are not available to all lenders in the guaranty agency's program or will not be available to all lenders after new enhancements or products have been tested.

Section 682.405 Loan Rehabilitation Agreement

The proposed regulations implement the amendments to the loan rehabilitation provision in section 428F of the HEA, under which guaranty agencies are required to enter into a loan rehabilitation agreement with the Secretary. Previously, the loan rehabilitation program was voluntary for guaranty agencies. The statute provides that, as part of a loan rehabilitation, the Secretary or a guaranty agency may not demand from a defaulted borrower a monthly payment amount more than is "reasonable and affordable" based upon the borrower's total financial circumstances. The Secretary notes that a borrower's objection to the "affordable and reasonable payment" amount determined by the guaranty agency based on its assessment of the borrower's disposable income and necessary expenses should be made to officials of the guaranty agency. However, if the guaranty agency and the borrower are unable to come to an agreement on the amount identified by the agency following this assessment, the borrower may contact the Department for assistance. Some attendees at the regional meetings indicated that they believed that each guaranty agency should be permitted to develop its own criteria for determining a payment amount that is reasonable and affordable. The Secretary disagrees and has proposed regulations that would standardize this requirement for all guaranty agencies to ensure that a defaulted borrower in one state is provided with the same opportunity to rehabilitate his or her defaulted loan as a borrower in another state.

Section 682.406 Conditions of Reinsurance Coverage

The proposed regulations implement the requirement in section 428(c)(2)(G) of the HEA that provides that a guaranty agency may not receive reinsurance unless it demonstrates to the Secretary that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques. The Secretary believes that it is primarily a lender responsibility in the due diligence process to locate the borrower through the use of reasonable skip-tracing techniques. However, the Secretary will not reimburse a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time of filing a claim, demonstrates that diligent attempts have been made by either the lender or the agency to locate the borrower.

Section 682.407 Administrative Cost Allowance for Guaranty Agencies

The Secretary proposes to implement the provision in section 428(f)(1) of the HEA that provides that administrative cost allowance payments may not be made to a guaranty agency for a loan for which the disbursement check has not been cashed or for which an electronic funds transfer has not been completed.

Section 682.409 Mandatory Assignment By Guaranty Agencies of Defaulted Loans to the Secretary

In a decision memo dated March 14, 1991, the Secretary stated that the Department would require the assignment of certain defaulted FFEL Program loans by guaranty agencies to the Department for collection in two phases. The age-based phase of the assignment policy, Phase I, began in July 1991. This preamble clarifies Phase I and outlines Phase II of the policy—guaranty agency default collection performance standards. The Phase II standards for assignment were developed in accordance with the purposes of section 428(c)(8) of the HEA, as amended by the 1992 Amendments, and are designed to give the Secretary flexibility in resolving existing defaulted FFEL Program loans to maximize collection revenues from the entire defaulted student loan portfolio. Because successful collection of defaulted student loans depends on a number of factors, including the nature, quality and timing of collection efforts and the resources of debtors, the adequacy of collection efforts must be evaluated in terms of process as well as outcomes. Section 682.410 contains the process requirements.

Under these proposed standards, guaranty agencies with recovery rates equal to or higher than the regulatory recovery rate standards will continue collecting all defaulted student loans which have been in their portfolios less than four years. Guaranty agencies with recovery rates lower than the regulatory recovery rate standards will continue collecting defaulted student loans, but their workloads would be reduced to better allow them to collect the loans they retain. These guaranty agencies would be required to assign additional loans to the Department, as well as loans required to be assigned under Phase I of the policy. Any additional

loans required to be assigned in a given fiscal year will be in proportion to the difference between the guaranty agency's actual recovery rate and the regulatory recovery rate standards. Guaranty agencies demonstrating marked improvement in collections by achieving regulatory recovery rate standards the following fiscal year after being required to assign additional loans, will not be required to assign any loan which they have held less than four years.

The performance standards for each separate FFEL Program (i.e. Stafford, SLS, PLUS, Consolidation) will be 80 percent of the average annual recovery rate for that program for all guaranty agencies for the first two years. For subsequent years, the performance standard for each program will increase to 90 percent of the average annual recovery rate for all guaranty agencies. At the same time, the age-based assignment requirement will change from four to five years. Guaranty agencies not meeting these goals will have their defaulted student loan portfolios reduced to levels which will be more conducive to achieving higher recovery rates. The reductions will be in amounts sufficient to cause the affected guaranty agency's recovery rates by loan type to equal the average guaranty agency recovery rate for that loan type when the amount assigned to the Secretary is subtracted from the amount of loans outstanding—the denominator in the recovery rate calculation. This policy will give the Secretary the flexibility to curtail assignments, or select the types of accounts to be assigned if the solvency of a guarantor is threatened. The Secretary will review this standard annually and make adjustments, as appropriate.

In determining the basis for this policy, the Secretary considered the annual defaulted student loan recovery rates of all guaranty agencies over the last five years. The standards for assignment of loans were generally agreed to by the negotiators with only a few objections. The Secretary notes, however, that changes to section 428(c)(8) of the HEA were made by the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Pub. L. 103–66) subsequent to the development and negotiation of the proposed regulations governing mandatory assignment of guaranty agency loans. Specifically, the HEA has been amended to give the Secretary authority to direct a guaranty agency to promptly assign loans to the Secretary if the Secretary determines that action to be necessary for an orderly transition from the FFEL Program to the Federal Direct Student Loan Program. Therefore, the Secretary specifically solicits comments on the proposed standards for assignment in light of the additional changes made to this section of the law. Further, the Secretary reserves the right during the development of the final regulations to make whatever changes he deems necessary to implement the requirements of the OBRA in this area.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The statute now requires the guaranty agency to maintain a minimum reserve fund level as a percentage of the amount of all outstanding loans guaranteed by the agency. The proposed regulations define the reserve fund level as total sources less total uses of the reserve fund, and defines in detail the amount of outstanding loans guaranteed.

The Secretary notes that the Omnibus Reconciliation Act of 1993 made additional changes to section 428(c) of the HEA. Those changes will be addressed in separate regulations that are currently being developed under negotiated rulemaking.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a) of the proposed regulations would provide that an institution may be an eligible lender only if its cohort default rate does not exceed 15 percent. Further, the institution may only use special allowance payments and interest payments received on loans that it originated for need-based grant programs for its students or for reasonable administrative expenses directly related to the FFEL Program. These proposed changes reflect changes made to the HEA in section 435(d)(2)(E).

Section 682.603 Certification By a Participating School in Connection With a Loan Application

Proposed § 682.603(f)(3) provides a formula for a school to use in determining the annual loan amount for a borrower enrolled in a program of study of less than an academic year that meets the standards specified in section 481(d) of the HEA. This change is needed to implement the restriction on the annual limit provided by sections 428(b)(1)(A) and 428A(b)(1) of the HEA.

The Secretary also proposes to amend the NPRM by adding a new paragraph (h) to achieve, in the case of new borrowers subject to delayed delivery of loan proceeds, the appropriate interest limitation Congress intended in § 682.300 using a formula based on the date of loan disbursement. The Secretary believes that restricting the school's request for disbursement of the borrower's loan proceeds to seven days prior to the 31st day of the student's period of enrollment will still provide the school sufficent time to process the new borrower's loan proceeds while ensuring the required interest limitation.

Section 682.604 Processing the Borrower's Loans Proceeds and Counseling Borrowers

Section 682.604(g). Section 485(b) of the Act was amended to delete the requirement that a school counsel borrowers concerning the average indebtedness of FFEL borrowers. The Secretary proposes to remove the previous regulatory requirement. The school must now review with the borrower all conditions under which the borrower may defer repayment. The proposed regulations would simply revise the previous requirement that the school provide information only about three specific deferments. The proposed regulations also list other items that must be updated by the borrower during exit counseling.

Section 682.604(h). Discussion occurred during the negotiated rulemaking sessions regarding the school's treatment of an overaward when proceeds which have not been delivered to a student exceed that amount of assistance for which the student is eligible. Section 428G(d) of the HEA requires the school to return the amount of the overaward to the lender. An overaward can result from aid received from any form of assistance defined as estimated financial assistance pursuant to 34 CFR 682.200 or a recalculation by the institution of a family's Expected Family Contribution (EFC) based on information not considered in the original EFC calculation. The negotiators expressed concern that one of the most time-consuming and frustrating parts of financial aid work, for both aid administrators and students, is resolving small $50 to $200 overawards. The negotiators suggested a tolerance of $500 to relieve some administrative burden. The Department indicated that the treatment of an overaward is a current statutory requirement, not subject to negotiated rulemaking, and that the statute does not provide tolerance language. Therefore, the Secretary cannot arbitrarily insert this provision in the regulations.

The Secretary proposes to revise the NPRM to include the change in the HEA that provides that funds obtained from any need-based employment is not considered an overaward, provided the

amount of the funds does not exceed $300.

Income contingent repayment—The statute provides that the Secretary may issue regulations allowing certain defaulted borrowers a repayment schedule that assesses the borrower's income and provides up to 25 years to repay the loan. The Secretary is to contract with private firms or other government agencies to perform the collection activities on these loans. The Secretary must publish a finding that the collection mechanism selected will provide a high degree of certainty of collection on the defaulted loans and that the use of the repayment option and collection mechanism will result in an increase in the net amount of collections. To be eligible, the borrower's note must provide for this type of repayment option and the note must be assigned to the Secretary following default. The Secretary is currently reviewing the options regarding the establishment of the collection mechanism mandated prior to issuing proposed regulations on this repayment option.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

While the statute requires that the Secretary regulate certain actions that must be taken by various program participants, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal additional requirements to protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

Paperwork Reduction Act of 1980

Sections 682.401, 682.405 and 682.409 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Under § 682.401, a guaranty agency would be required to permit defaulted borrowers to regain eligibility for Title IV assistance. In doing so, a guaranty agency would be required to collect data to substantiate its determination of a borrower's total financial circumstances. Based on an estimated 4000 applicants, at .08 hours per response, this would result in 320 burden hours.

Under § 682.405, a guaranty agency is required to participate in a loan rehabilitation loan program for the purpose of rehabilitating a defaulted loan so that the loan may be purchased by an eligible lender and removed from default status. In rehabilitating a loan, a guaranty agency would be required to collect data to substantiate its determination of a borrower's total financial circumstances. Based on an estimated 4800 applicants, at .08 hours per response, this would result in 384 burden hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB–3, room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: March 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.100 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 682.100 The Federal Family Education Loan programs.

(a) * * *

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), Perkins Loan programs, Health Professions Student Loan (HPSL) Program authorized by Subpart II of part C of Title VII of the Public Health Service Act, and the Higher Education Assistance Loan (HEAL) Program authorized by Subpart I of part A of Public Title VII of the Health Services Act, and for parent PLUS borrowers whose loans were made on or after October 17, 1986.

* * * * *

3. Section 682.101 is amended by revising paragraph (c) to read as follows:

§ 682.101 Participation in the FFEL programs.

* * * * *

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Student borrowers who have at least $7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, student PLUS loans or married couples who have a combined indebtedness of at least $7,500 under these programs or Parent PLUS loans made on or after October 17, 1986 may borrow under the Consolidation Loan Program.

* * * * *

4. Section 682.102 is amended by adding a new sentence at the end of the second sentence in paragraph (d); by adding a new sentence at the end of paragraph (e)(1); and by revising the last

sentence in paragraph (e)(4) to read as follows:

§ 682.102 Obtaining and repaying a loan.

* * * * *

(d) *Consolidation loan application.* * * * In the case of a married couple seeking a Consolidation loan, only the holder for one of the applicants must be contacted for consolidation. * * *

(e) *Repaying a loan.* (1) * * * The borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's obligation to repay all or a portion of his or her loan may be cancelled if the borrower is unable to complete his or her program of study because the school closed or the borrower's eligibility to borrow was falsely certified by the school. The obligation to repay may be forgiven for borrowers who enter certain areas of the teaching or nursing professions or perform certain kinds of national or community service.

* * * * *

(4) *PLUS loan repayment.* * * * The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is disbursed.

5. Section 682.200 is amended by redesignating (a)(1)(i) and (a)(1)(ii) as (a)(1) and (a)(2) respectively; removing "Eligible institution" from redesignated paragraph (a)(2); revising the definition of "Co-maker"; revising the introductory text of the definition of "Default"; revising paragraph (1) of the definition of "Estimated financial assistance"; adding a new sentence at the end of the definition of "Grace period"; revising paragraph (2), and redesignating paragraphs (3) and (4) as paragraphs (4) and (5) respectively, and adding a new paragraph (3), in the definition of "Lender"; revising the definitions of "Repayment period" and "Stafford Loan Program"; adding, in alphabetical order, new definitions of "Disposable income", "Nonsubsidized Stafford loan", "Satisfactory repayment arrangement", "Subsidized Stafford loan", "Unsubsidized Stafford loan", and "Write-off" in paragraph (b) to read as follows:

§ 682.200 Definitions.

* * * * *

Co-maker. One of two parents who are joint borrowers on a PLUS loan or one of two individuals who are joint borrowers on a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS or Consolidation loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

* * * * *

Disposable income. That part of a borrower's compensation from an employer or other income from any source that remains after the deduction of any amounts required by law to be withheld.

* * * * *

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded for a period of enrollment, beginning on or after July 1, 1993, for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of Title 10 and Chapter 2 of Title 37 of the United States Code;

(iv) Benefits paid under Pub. L. 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Pub. L. 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan, Pell Grant and, to the extent funding is available and according to the school's award packaging policy, campus-based aid the student would be expected to receive if the student applied, whether or not the student has applied for that aid;

(viii) In the case of a PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Stafford loan, Pell Grant and campus-based aid that the student has been or will be awarded.

* * * * *

Grace period. * * * For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an eligible institution.

* * * * *

Lender. * * *

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer-credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

* * * * *

Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under § 682.301(b).

* * * * *

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Federal Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For Federal SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date

the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. The making of six (6) consecutive voluntary on-time full monthly payments on a defaulted loan to regain further eligibility for FFEL Program loans. The required full monthly payment amount may not be no more than is reasonable and affordable based on the borrower's total financial circumstances. On-time means a payment made within 15 days of the scheduled due date and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution.

* * * * *

Stafford Loan Program. The loan program authorized by Title IV–B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

* * * * *

Subsidized Stafford loan. A loan authorized under section 428(b) of the Act for borrowers who qualify for interest benefits under § 682.301(b).

* * * * *

Unsubsidized Stafford loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b).

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

6. Section 682.201 is amended by revising paragraph (a)(2); revising paragraphs (b) introductory text and (b)(1); removing "and" at the end of paragraph (b)(5); removing the period at the end of paragraph (b)(6), and adding in its place, "; and"; adding a new paragraph (b)(7); revising paragraph (c); and adding a new paragraph (d) to read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must have—

(i) Received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

(ii) Filed an application with a lender for an unsubsidized Stafford loan up to the Stafford loan annual maximum unless the school declines to certify such an application under section 428(a)(2)(F) of the HEA; and

(iii) Received a certification of graduation from a school providing secondary education or the recognized equivalent;

* * * * *

(b) *Parent borrower.* A parent borrower, and if applicable a parent co-maker, is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

* * * * *

(7)(i) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history.

(ii) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau.

(iii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt;

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title-IV debt, during the five years preceding the date of the credit report.

(iv) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(v) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(vi) The lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed. This documentation may include an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than $7,500 on loans the individual is consolidating that are eligible for consolidation under § 682.100;

(ii)(A) Has ceased, or in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing, has ceased at least half-time enrollment at a school;

(B) Is, on the loans being consolidated—

(*1*) In a grace period preceding repayment on the loans being consolidated;

(*2*) Is in repayment status; or

(*3*)(*i*) Is delinquent or has made satisfactory repayment arrangements with the holder on a defaulted loan being consolidated;

(*ii*) Will reenter repayment through consolidation;

(*iii*) Certifies that no other application for a Consolidation loan is pending;

(*iv*) Agrees to notify the holder of any changes in address; and

(*v*) Certifies that he or she has a loan with the consolidating lender or has sought a loan from his or her holder and was unable to secure a Consolidation loan from the holder.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, except that their combined indebtedness may not be less than $7,500 on loans eligible for consolidation under § 682.100 and only one must have met the requirements of paragraph (c)(1)(v) of this section.

(3) Eligibility for consolidation terminates upon receipt of a Consolidation loan except—

(i) With respect to student loans received after the date the Consolidation loan is made; or

(ii) Loans received prior to the date the Consolidation loan was made can be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

(d) *Defaulted FFEL borrower.* In the case of a student, parent, or Consolidation loan borrower who is currently in default on an FFEL Program loan, the borrower has made satisfactory repayment arrangements.

7. Section 682.204 is amended by adding new paragraphs (a)(3), (a)(4), and (a)(5); revising paragraphs (b), (c) and (d); revising paragraph (e)(1) introductory text; redesignating paragraph (e)(2) as paragraph (e)(3); adding a new paragraph (e)(2); and revising paragraph (f) to read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(3) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the remainder of an undergraduate program, the total amount the student may borrow may not exceed—

(i) $3,500 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,325 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,175 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(4) In the case of a student who has successfully completed the first and second year of a program of study of undergraduate education but not successfully completed the remainder of the program, the total amount the student may borrow may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length;

(iii) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length; and

(iv) $4,000 for a loan for which the first disbursement is made on or before July 1, 1993.

(5) In the case of a graduate or professional student, the total amount the student may borrow may not exceed—

(i) $7,500 per academic year; or

(ii) $8,500 for loans to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1993.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) For loans for which the first disbursement is made prior to July 1, 1993—

(i) $17,250, in the case of an undergraduate student for programs of study at the undergraduate level; and

(ii) $54,750 in the case of a graduate or professional student, including loans for undergraduate study.

(2) For loans for which the first disbursement is made on or after July 1, 1993—

(i) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(ii) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that a parent may borrow on behalf of each dependent student for any academic year of study may not exceed—

(1) Except as provided in paragraph (c)(2) of this section, $4,000;

(2) In the case of a loan made on or after July 1, 1993, the cost of education for the student minus other estimated financial assistance.

(d) *PLUS Program aggregate limit.* (1) Except as provided in paragraph (d)(2) of this section, the total guaranteed unpaid principal amount of PLUS program loans that a parent may borrow on behalf of each dependent student may not exceed $20,000.

(2) In the case of loans made on or after July 1, 1993, the total guaranteed unpaid principal amount of PLUS Program loans that a parent may borrow on behalf of each dependent student is unlimited subject to the annual limit in paragraph (c)(2) of this section.

(e) *SLS Program annual limit.* (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

* * * * *

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year of study under the SLS program—

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(A) $4,000 for enrollment in a program of study of at least a full academic year in length;

(B) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(ii) In the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(A) $5,000 for enrollment in a program of study of at least a full academic year;

(B) $3,325 for enrollment in a program of study of at least two-thirds of an academic year but less than a full academic year in length; and

(C) $1,675 for enrollment in a program of study of at least one-third of an academic year but less than two-thirds of an academic year.

(iii) In the case of a graduate or professional student, may not exceed $10,000.

* * * * *

(f) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to—

(1) An undergraduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993, or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed—

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993, or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

* * * * *

8. Section 682.206 is amended by revising the introductory text in paragraph (c)(2); and revising paragraph (e)(2) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, the lender must review the data on the student's cost of attendance and

estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

* * * * *

(e) * * *

(2) A Federal PLUS Program loan and Federal Consolidation Program Loan may be made to two eligible borrowers who agree to be jointly and severally liable for repayment of the loan as co-makers.

* * * * *

9. Section 682.207 is amended by revising paragraph (b)(1)(v)(B) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(v) * * *

(B) In the case of a Federal PLUS loan—

(*1*) By electronic funds transfer from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender; or

(*2*) By a check from the lender that is made co-payable to the institution and the parent borrower directly to the eligible institution.

* * * * *

10. Section 682.209 is amended by revising paragraph (c)(2) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(c) * * *

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance, as described in § 682.211 or deferment described in § 682.210, has been approved.

* * * * *

11. Section 682.300 is amended by revising the section heading; paragraph (a); paragraph (b)(1)(i); and paragraph (c) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan and, except for that portion of the loan that represents HEAL loans, on a Consolidation loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) * * *

(1) * * *

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

* * * * *

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable;

(2) Interest paid on behalf of the borrower by a guaranty agency;

(3) Interest that accrues on the first disbursement of a loan for any period that is earlier than—

(i) In the case of a subsidized Stafford loan disbursed by a check, 10 days prior to the first day of the period of enrollment for which the loan is intended or, if the loan is disbursed after the first day of the period of enrollment, 3 days after the disbursement date on the check; or

(ii) In the case of a loan disbursed by electronic funds transfer, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) In the case of a loan disbursed on or after October 1, 1992, interest on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(5) Interest on the portion of a Consolidation loan that represents HEAL loans that have been consolidated.

* * * * *

12. Section 682.301 is amended by revising the section heading; revising paragraph (a)(1); adding a new paragraph (a)(3); and revising paragraph (b) introductory text to read as follows:

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

* * * * *

(3) A Consolidation loan borrower whose loan application was received by the lender on or after January 1, 1993 qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a loan application to the lender. The application must include a certification from the student's school of the following information:

* * * * *

13. Section 682.302 is amended by revising paragraphs (b), (c)(1)(iii), (c)(2) introductory text, (c)(3)(i) introductory text, (c)(3)(ii) introductory text, and adding paragraph (c)(3)(iii) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 or under § 682.209(e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992; or

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer has not been released from the restricted account maintained by the school before that date.

(c) * * *

(1) * * *

(iii) Adding—

(A) 3.1 percent to the resulting percentage for a loan made on or after October 1, 1992;

(B) 3.25 percent to the resulting percentage, for a loan made on or after

November 16, 1986, but before October 1, 1992;

(C) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(D) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(E) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

* * * * *

(2) The special allowance rate determined under paragraph (c)(1)(iii)(D) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

* * * * *

(3)(i) Subject to paragraphs (c)(3)(ii) and (iii) of this section, the special allowance rate is one-half of the rate calculated under paragraph (c)(1)(iii)(D) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

* * * * *

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

* * * * *

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9½ percent minus the applicable interest rate.

* * * * *

14. Section 682.400 is amended by revising paragraph (b) introductory text; revising paragraph (b)(1)(i); and adding a new paragraph (b)(4) to read as follows:

§ 682.400 Agreements between a guaranty agency and the Secretary.

* * * * *

(b) There are four agreements:

(1) * * *

(i) Borrowers whose Stafford and Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

* * * * *

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

* * * * *

15. Section 682.401 is amended by redesignating paragraphs (b)(4) through (b)(22) as paragraphs (b)(5) through (b)(23), respectively; adding a new paragraph (b)(4); revising redesignated paragraph (b)(6); revising redesignated paragraph (b)(14); revising redesignated paragraph (b)(16)(i) introductory text; adding a new paragraph (b)(16)(iii); adding new paragraphs (b)(24) and (b)(25); revising paragraph (c); redesignating paragraphs (e)(2) and (e)(3) as (e)(3) and (e)(4) respectively; and adding a new paragraph (e)(2) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(4) *Reinstatement of borrower eligibility.* For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as that term is defined in § 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, food, medical costs, dependent care costs and other Title IV repayment;

(B) Include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(*1*) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all defaulted FFEL loans.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to such terms.

* * * * *

(6) *School eligibility*—(i) *General.* A school that has a program participation agreement in effect with the Secretary under § 682.600 is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends such sanction to all guaranty agency programs under section 432(h)(3) of the Act or § 682.713;

(C) The school is ineligible under sections 428A(a)(2) or 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668;

(G) The school fails to make timely refunds to students as required in § 682.607(c);

(H) The school has not satisfied within 30 days of issuance a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.13; or

(B) The standards of administrative capability defined in 34 CFR 668.14 and 34 CFR 668.15.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

* * * * *

(14) *Guaranty agency verification of default data.* A guaranty agency must respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

* * * * *

(16) * * *

(i) Except as provided in paragraph (b)(16)(iii), the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

* * * * *

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(16)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

* * * * *

(24) *Information on loan sales or transfers.* The guaranty agency must, upon the request of an eligible school, furnish to the school last attended by the borrower, information with respect to the sale or transfer of a student's loan prior to the beginning of the repayment period, including—

(i) Notice of the assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee.

(25) *Information on designation for exceptional performance.* A guaranty agency must provide the Secretary with any information in its possession regarding an eligible lender or servicer applying for designation for exceptional performance within 30 days following the agency's receipt of a copy of the lender's or servicer's request for designation under 34 CFR 682.415(a)(2). The information provided by the guaranty agency must include, but is not limited to, records relating to the lender's or servicer's compliance with FFEL Program regulations and any information suggesting that the lender or servicer does not meet the requirements for designation for exceptional performance.

* * * * *

(c)(1) *Lender-of-last-resort.* The guaranty agency must ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender-of-last-resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender-of-last-resort must make a subsidized Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(1) of this section to be made by another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that—

(i) The program establishes operating hours and methods of application designed to facilitate application by students; and

(ii) Information about the availability of loans under the program is made available to schools in the State; and

(iii) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation.

(5) *Limitations on lender-of-last-resort services.* Except as provided in paragraphs (c)(6) and (c)(10) of this section, the lender-of-last-resort is not required to make a subsidized Stafford loan to a student for attendance at a school that—

(i) Has a cohort default rate, as defined in section 435(m) of the Act, that exceeds 25 percent for the most recent year for which a rate has been calculated by the Secretary;

(ii) Has not been eligible for and has not participated in, the FFEL Program during the most recent 18 months; or

(iii) Is currently subject to emergency action or limitation, suspension, or termination by the Secretary under 34 CFR Part 668 or by any guaranty agency.

(6) Notwithstanding paragraph (c)(5)(i) of this section, the Secretary requires a guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act to make a subsidized Stafford loan for attendance at a school if there are, in the judgment of the Secretary, "exceptional mitigating circumstances", as defined in 34 CFR 668.15(g)(1)(iii), that would make the application of the limitations inequitable.

(7) A guaranty agency must provide a school and the Secretary with written notification of the agency's intent to deny lender-of-last-resort services to the school's students.

(8) The school may submit to the Secretary, with a copy to the guaranty agency, a complete appeal with supporting documentation that is based on the mitigating circumstances of paragraph (c)(6) of this section. Such appeal must be submitted no later than 30 days after the date of the guaranty agency's notice to the school. If the school submits such a complete appeal, the guaranty agency must provide lender-of-last-resort services to students attending the school until the date on which the Secretary rejects the appeal, if it is rejected.

(9) The Secretary makes a case-by-case determination on each appeal by a school that has been notified that lender-of-last-resort services will not be provided to the school's students, and takes action on the school's appeal no later than 45 days after receipt of the school's complete appeal with supporting documentation.

(10) The provisions of paragraph (c)(5) of this section do not apply to institutions that have been designated as historically black colleges and universities, tribally-controlled community colleges, or Navajo community colleges until July 1, 1994.

* * * * *

(e) * * *

(2)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; or

(D) Offering to pay a lender, that does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee.

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

* * * * *

16. A new § 682.405 is added to read as follows:

§ 682.405 Loan Rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans so that the loan may be purchased by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times—

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one voluntary on-time full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, *on-time* means a payment made within 15 days of the scheduled due date and "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-) month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, food, medical costs, dependent care costs and other Title IV repayment.

(B) Include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable.

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(*1*) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all defaulted FFEL loans.

(ii) The agency must include any payment made under § 682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement of the terms of the rehabilitation of the borrower's defaulted loan and provide the borrower with an opportunity to object to such terms.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the 10-year maximum.

(Authority: 20 U.S.C. 1078–6)

17. Section 682.406 is amended by removing "and" at the end of paragraph (a)(12); removing the period at the end of paragraph (a)(13) and adding in its place, "; and" and adding a new paragraph (a)(14) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(14) The guaranty agency assures the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(g) to locate the borrower through the use of reasonable skip-tracing techniques.

* * * * *

18. Section 682.407 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 682.407 Administrative cost allowance for guaranty agencies.

* * * * *

(e) The Secretary does not pay an administrative cost allowance to a guaranty agency based on loans for which the disbursement check has not been cashed or for which an electronic funds transfer has not been completed.

(f) An administrative cost allowance improperly paid on a loan to a guaranty agency must be deducted by the agency from the amount reflected in the following quarter's ED form 1189 when it is submitted to the Department for payment.

* * * * *

19. Section 682.409 is amended by revising paragraph (a); revising paragraph (c)(1); and adding a new paragraph (c)(6) to read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty agency to assign to the Secretary any loan held by the agency on which the agency has received payment under § 682.402(d), 682.402(i), or 682.404 that meets the following criteria as of April 15 of each year—

(i) The unpaid principal balance is at least $100;

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years;

(iii) A payment has not been received on the loan in the last year; and

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under § 682.401(b)(4) and § 682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.* (A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing such rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of such loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(*1*) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies;

(*2*) The fiscal year loan type recovery rate for loans for the agency and for all agencies divided by age of the loans as the Secretary may determine;

(*3*) The performance of the agency, and all agencies, in default aversion;

(*4*) The agency's performance on judgment enforcement;

(*5*) The existence and use of any state or guaranty agency-specific collection tools;

(*6*) The agency's level of compliance with §§ 682.409 and 682.410(b)(6); and

(*7*) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

* * * * *

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

* * * * *

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

* * * * *

20. Section 682.410 is amended by revising paragraphs (a)(1) through (a)(3)(i); and adding paragraphs (a)(6) through (a)(8) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(1) *Reserve fund assets.* The guaranty agency must establish and maintain a reserve fund to be used solely for the FFEL Program to which the guaranty agency must credit—

(i) The total amount of insurance premiums collected;

(ii) Funds appropriated by a State for the agency's loan guaranty program, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death and disability, closed schools and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Administrative cost allowance payments received under § 682.407;

(vii) Funds collected by the guaranty agency;

(viii) Investment earnings on the reserve fund; and

(ix) Funds received by the guaranty agency from any other source for the agency's loan guaranty program.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3) through (a)(5) of this section, a guaranty agency may *only* use the assets of the reserve fund established under paragraph (a)(1) of this section to pay—

(i) Insurance claims;

(ii) Operating costs, including payments necessary in administering loan collections, preclaims assistance, monitoring enrollment and repayment status and any other activities under this part;

(iii) Lenders that participate in a loan referral service under section 428(e) of the Act;

(iv) The Secretary's equitable share of collections;

(v) Federal advances and other funds owed to the Secretary;

(vi) Reinsurance fees;

(vii) Insurance premiums related to cancelled loans; and

(viii) Any other amounts authorized or directed by the Secretary.

(3) *Special rule for use of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

* * * * *

(6) *Minimum reserve fund level.* The guaranty agency must maintain a current minimum reserve fund level of not less than—

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(7) For purposes of this section, *reserve fund level* means—

(i) The total of the reserve fund assets as defined in paragraph (a)(1) of this section, minus

(ii) The total of the amount of the reserve fund assets used in accordance with paragraphs (a) (2) and (3) of this section.

(8) For purposes of this section, *amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to the agency pursuant to a plan of the Secretary in response to the insolvency of the transferring guaranty agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims, excluding the amount of those claims—

(*1*) Paid under § 682.412(e);

(*2*) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) Paid at the direction of the Secretary.

* * * * *

21. Section 682.507 is amended by revising paragraph (a)(2) to read as follows:

§ 682.507 Due diligence in collecting a loan.

(a) * * *

(2) If two borrowers are liable for repayment of a Federal PLUS or Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

* * * * *

22. Section 682.511 is amended by revising paragraph (a)(2) to read as follows:

§ 682.511 Procedures for filing a claim.

(a) * * *

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, or a Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants.

* * * * *

23. Section 682.601 is amended by removing "and" at the end of paragraph (a)(4); removing the period at the end of paragraph (a)(5) and adding in its place, "; and"; and adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(6) The school's cohort default rate as calculated under § 668.15 may not exceed 15 percent; and

(7) Except for reasonable administrative expenses directly related to the FFEL Program, the school must use payments received under § 682.300 and § 682.302 for need-based grant programs for its students.

* * * * *

24. Section 682.603 is amended by adding new paragraphs (f)(3), (f)(4) and (h) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f) * * *

(3) In certifying a Stafford or SLS loan amount in accordance with § 682.204 (a) and (e) for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be at least 30 weeks in length), the school must determine the annual FFEL loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

(i) Number of clock-hours in program—

900 hours; or

(ii) Credit hours in program

24 semester or trimester hours or 36 quarter hours.

(4) In certifying a Stafford or SLS loan amount in accordance with § 682.204(a) and (e) for a borrower enrolled in a program of study of at least 900 clock hours, 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be less than 30 weeks in length), the school must determine the annual FFEL loan limit for the borrower by determining what portion of the academic year the program represents by calculating—

Number of weeks in program

30 weeks.

* * * * *

(h) Pursuant to paragraph (b)(5) of this section, a school may not request the disbursement of loan proceeds for a borrower who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan earlier than 7 days prior to the 31st day of the student's period of enrollment.

25. Section 682.604 is amended by revising paragraph (c)(3) introductory text; removing paragraph (g)(2)(i); redesignating paragraphs (g)(2)(ii) through (g)(2)(vi), as paragraphs (g)(2)(i) through (g)(2)(v) respectively; removing "and" at the end of redesignated (g)(2)(iv); revising redesignated paragraph (g)(2)(v); adding a new paragraph (g)(2)(vi); revising the introductory text of paragraph (h); and adding a new paragraph (h)(4) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school must, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

(g) * * *

(2) * * *

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan; and

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that will then be provided within 60 days to the guaranty agency listed in the borrower's records.

* * * * *

(h) * * * Except as provided under paragraph (h)(ii) of this section, or in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

* * * * *

(4) For purposes of this section, funds obtained from any need-based employment that does not exceed $300 shall not be considered as excess loan proceeds.

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Part VI

Department of Labor

Office of the Secretary

29 CFR Part 24

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 24

RIN 1215–AA83

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Department of Labor (Department or DOL) proposes to amend the regulations governing the employee "whistleblower" protection provisions of Section 211 (formerly Section 210) of the Energy Reorganization Act of 1974, as amended, to implement the statutory changes enacted into law on October 24, 1992, as part of the Energy Policy Act of 1992. The Department proposes to establish separate procedures and time frames for the handling of ERA complaints under 29 CFR part 24 to implement the statutory amendments. In addition, a revised procedure for review by the Secretary of Labor of recommended decisions of administrative law judges is proposed.

DATES: Comments are due on or before May 16, 1994.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

II. Background

The Department of Labor, through the Employment Standards Administration's Wage and Hour Division (WHD), is responsible under 29 CFR part 24 for investigating complaints under several Federal laws enacted to protect the environment containing employee whistleblower provisions that prohibit discriminatory action by employers when employees report unsafe or unlawful practices of their employers that adversely affect the environment. These whistleblower protections prohibit an employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions or privileges of employment because the employee engages in any of the activities specified in the particular statute as a protected activity. WHD administers seven employee whistleblower protection statutes under 29 CFR part 24, as follows: (1) Safe Drinking Water Act, 42 U.S.C. 300j–9(i); (2) Water Pollution Control Act, 33 U.S.C. 1367; (3) Toxic Substances Control Act, 15 U.S.C. 2622; (4) Solid Waste Disposal Act, 42 U.S.C. 6971; (5) Clean Air Act, 42 U.S.C. 7622; (6) Energy Reorganization Act of 1974, 42 U.S.C. 5851; and (7) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

.The Energy Policy Act of 1992, Public Law 102–486, was enacted on October 24, 1992. Among other provisions, this new law significantly amended the employee protection provisions for nuclear whistleblowers under former § 210 (now § 211) of the ERA; the amendments affect only ERA whistleblower complaints and do not extend to the procedures established in 29 CFR part 24 for handling employee whistlblower complaints under the Federal statutory employee protection provisions other than the ERA. The legislative amendments to ERA apply to whistleblower claims filed under § 211(b)(1) of the ERA as amended (42 U.S.C. 5851(b)(1)) on or after October 24, 1992, the date of enactment of § 2902 of the Energy Policy Act of 1992 (§ 2902, Pub. L. 102–486; 106 Stat. 2776).

Before the Energy Policy Act of 1992 was enacted, DOL did not have jurisdiction under former § 210 of the ERA over reprisal complaints by employees of Department of Energy (DOE) contractors or their subcontractors. See *Adams* v. *Dole*, 927 F.2d 771 (4th Cir. 1991), *cert. denied*, 112 S. Ct. 122. The DOE, however, established administrative procedures for handling complaints of reprisal by such employees not covered by DOL's procedures (see 10 CFR part 708). As a result of the statutory amendments to the ERA made by the Energy Policy Act of 1992, contractors and subcontractors of DOE, except those involved in naval nuclear propulsion work, are now expressly included within the statutory definition of a covered "employer" and are, therefore, subject to DOL jurisdiction for complaints filed by their employees of employer-reprisal for engaging in protected activities under the ERA.

III. Summary of Statutory Changes to ERA Whistleblower Provisions

Section 2902 of Public Law 102–486 (106 Stat. 2776) amended former Section 210 of the ERA, 42 U.S.C. 5851, by renumbering it as Section 211 of ERA and making the additional changes described below.

Prohibited Acts. Former Section 210 of the ERA protected an employee against discrimination from an employer because the employee: (1) Commenced, caused to be commenced, or was about to commence or cause to be commenced a proceeding under the ERA or the Atomic Energy Act of 1954 (AEA); (2) testified or was about to testify in any such proceeding; or (3) assisted or participated or was about to assist or participate in any manner in such a proceeding "* * * or in any other action to carry out the purposes of (the ERA or the AEA)." The Department's interpretation, under ERA as well as the other environmental whistleblower laws which DOL administers, is that employees who file complaints internally with an employer are protected from employer reprisals. An employee is protected under 29 CFR 24.2(b)(3) if an employee assists or participates in "* * * any other action to carry out the purposes of such Federal (environmental protection) statute," which would encompass such internal complaints. This conclusion, that whistleblower protections extend to internal safety and quality control complaints, has been sustained by a number of courts of appeals. See, e.g., *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159, 1163 (9th Cir. 1984); *Kansas Gas & Elec. Co.* v. *Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 478 U.S. 1011 (1986); *Passaic Valley Sewerage Commissioner* v. *Department of Labor*, 992 F.2d 474 (3rd Cir. 1993), *cert. denied*, 62 U.S. L.W. 3334 (1993). *Contra, Brown & Root, Inc.* v. *Donovan*, 747 F.2d 1029 (5th Cir. 1984). Under the Energy Policy Act of 1992, ERA's statutory definition of protected whistleblower activity was

expanded to expressly include employees who file internal complaints with employers, employees who oppose any unlawful practice under the ERA or the AEA, and employees who testify before Congress or in any other Federal or State proceeding regarding the ERA or AEA—thereby overriding the decision of the Fifth Circuit in *Brown & Root*.

Revised Definition of "Employer". Former § 210 of the ERA included within the definition of a covered "employer" licensees of the Nuclear Regulatory Commission (NRC), applicants for such licenses, and their contractors and subcontractors. The statutory amendments revised the definition of "employer" to extend coverage to employees of contractors or subcontractors of the Department of Energy, except those involved in naval nuclear propulsion work under E.O. 12344, licensees of an agreement State under § 274 of the Atomic Energy Act of 1954, applicants for such licenses, and their contractors and subcontractors.

Time Period for Filing Complaints. The time period for filing ERA whistleblower complaints has been expanded from 30 days to 180 days from the date the violation occurs. Investigations of complaints, however, will still be conducted under the statute within 30 days of receipt of the complaint. The ERA amendments apply to all complaints filed on or after the date of enactment. Thus, complaints previously filed that were deemed untimely and were therefore dismissed before the 1992 statutory amendments were enacted may be considered timely under the amended law if the complaint was refiled after October 24, 1992, and within the new 180-day time frame.

Interim Relief. The Secretary is required under the amended ERA to order interim relief upon the conclusion of an administrative hearing and the issuance of a recommended decision that the complaint has merit. Such interim relief may include all relief that would be included in a final order of the Secretary except compensatory damages.

Burdens of Proof; Avoidance of Frivolous Complaints. The 1992 Amendments revise the burdens of proof in ERA cases by establishing statutory burdens of proof and a standard for the dismissal of complaints which do not present a *prima facie* case. Before the 1992 Amendments, the ERA itself contained no statutory rules on burdens of proof—the burdens of proof were based on precedential cases derived from other discrimination law (*see*, e.g., *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977); *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981); *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984); and *Dartey* v. *Zack Company of Chicago*, Case No. 82–ERA (Decision of the Secretary, April 25, 1983).

Under the former lines of analysis for the ERA and continuing for whistleblower complaints under the other six environmental statutes, once a complainant employee presents evidence sufficient to raise an inference that protected conduct likely was a "motivating" factor in an adverse action taken by an employer against the employee, it is necessary for the employer to present evidence that the alleged adverse treatment was motivated by legitimate, nondiscriminatory reasons. If the employer presents such evidence, the employee still may succeed by showing that the proffered reason was not the true reason for the employment decision; the employee may succeed in this regard by showing that a discriminatory reason more likely motivated the employer, or by showing that the employer's proffered explanation is not believable ("pretext" cases). In certain cases, the trier of fact may conclude that the employer was motivated by both prohibited and legitimate reasons ("dual motive" cases). In such dual motive cases, the employer may prevail by showing by a *preponderance of the evidence* that it would have reached the same decision *even in the absence of the protected conduct*. In pretext cases, rejection of the employer's proffered reasons, together with the elements of the *prima facie* case, may be sufficient to show discrimination. See *Dartey* v. *Zack*, *supra*, pp. 6–9.

The 1992 amendments added new statutory burdens of proof to the ERA. The changes have been described on the one hand as a lowering of the burden on complainants in order to facilitate relief for employees who have been retaliated against for exercising their statutory rights, and, on the other hand, as a limitation on the investigative authority of the Secretary of Labor when the burden is not met.

Under the ERA as amended, a complainant must make a "*prima facie*" showing that protected conduct or activity was "a contributing factor" in the unfavorable personnel action alleged in the complaint, i.e., that the whistleblowing activity, alone or in combination with other factors, affected in some way the outcome of the employer's personnel decision (Section 211(b)(3)(A)). If the complainant does not make the *prima facie* showing, the complaint must be dismissed and the investigation discontinued.

Even in cases where the complaint meets the initial burdens of a *prima facie* showing, the investigation must be discontinued if the employer "demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action" in the absence of the protected conduct (Section 211(b)(3)(B)). The complainant is free, as under prior law, to pursue the case before the administrative law judge (ALJ) if the Secretary dismisses the complaint.

The "clear and convincing evidence" standard is a higher degree of proof burden on employers than the former "preponderance of the evidence" standard. In the words of Representative George Miller, Chairman of the House Committee on Interior and Insular Affairs, "[t]he conferees intend to replace the burden of proof enunciated in *Mt. Healthy* v. *Doyle*, 429 U.S. 274 (1977), with this lower burden in order to facilitate relief for employees who have been retaliated against for exercising their rights under section 210. * * *" 138 Cong. Rec. H 11409 (October 5, 1992).

Thus, under the amendments to ERA, the Secretary must dismiss the complaint and not investigate (or cease investigating) if either: (1) The complainant fails to meet the *prima facie* showing that protected activity was a contributing factor in the unfavorable personnel action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same unfavorable personnel action absent the protected conduct.

These new burdens of proof limitations also apply to the determination as to whether an employer has violated the Act and relief should be ordered. Thus, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint (Section 211(b)(3)(C)). Even if the complainant makes this showing, relief may not be ordered if the employer satisfies the statutory requirement to demonstrate by "clear and convincing evidence" that it would have taken the same personnel action in the absence of the protected activity (Section 211(b)(3)(D)).

Other Changes. The ERA whistleblower provisions must be prominently posted in any place of employment to which the Act applies The amendments also include an

express provision that the ERA whistleblower provisions may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee—codifying and broadening the Supreme Court decision in *English* v. *General Electric Co.*, 496 U.S. 72 (1990). Finally, the amendments direct the Nuclear Regulatory Commission (NRC) and DOE not to delay addressing any "substantial safety hazard" during the pendency of a whistleblower proceeding, and provide that a determination by the Secretary of Labor that a whistleblower violation has not occurred "shall not be considered" by the NRC and DOE in determining whether a substantial safety hazard exists.

IV. Summary of Proposed Rule

Section 24.1(a), which lists the Federal statutes providing employee protections for whistleblowing activities for which the Department of Labor is responsible for enforcement under this part, is updated to add the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

Section 24.2, describing obligations and prohibited acts, is revised to reflect the statutory amendments to the protected activities covered under the ERA, and to state that the Secretary interprets all of the whistleblower statutes to apply to such internal whistleblowing activities. The requirements for posting of notices of the employee protection provisions of the ERA are also added, together with a provision that failure to post the required notice shall make the requirement that a complaint be filed with the Administrator within 180 days inoperative, unless the respondent is able to establish that the employee had actual notice of the provisions. This explicit recognition that the statute of limitations may be equitably tolled is based on case law under analogous statutes. See, for example, *Kephart* v. *Institute of Gas Technology*, 581 F.2d 1287, 1289 (7th Cir. 1978), *cert. denied*, 450 U.S. 959 (1981), and *Bonham* v. *Dresser Industries, Inc.*, 569 F.2d 187 (3rd Cir. 1977), *cert. denied*, 439 U.S. 821 (1978), arising under the Age Discrimination in Employment Act, and *Kamens* v. *Summit Stainless, Inc.*, 586 F. Supp. 324 (E.D. Pa. 1984), arising under the Fair Labor Standards Act.

Section 24.3, concerning complaints, is revised to reflect the 180-day filing period for complaints under the ERA.

Section 24.4, concerning investigations, is revised to provide for filing of hearing requests by facsimile (fax), telegram, hand-delivery, or next-day delivery service (e.g., overnight couriers), to conform the regulations to current business practices. In addition, the regulation has been revised to provide that the request for a hearing must be received within five business days, rather than five calendar days, from receipt of the Administrator's determination. The regulation has also been revised to make it clear that the complainant may appeal from a finding that a violation has occurred where the determination or order is partially adverse (e.g., where a complaint was only partially substantiated or the order did not grant all of the requested relief).

A new § 24.5, concerning investigations under the Energy Reorganization Act, details operation of the new provisions under the ERA for dismissal of complaints where the employee has not alleged a *prima facie* case, or the employer has submitted clear and convincing evidence that it would have taken the same personnel action in the absence of the protected activity.

Section 24.6 (formerly § 24.5) makes it clear that the Wage-Hour Administrator may participate in proceedings as a party or as *amicus curiae*. In addition, at the request of the Nuclear Regulatory Commission, a provision has been added to expressly permit Federal agencies to participate as *amicus curiae*, and to receive copies of pleadings on request.

Section 24.7 (formerly § 24.6), concerning recommended decisions and orders, is revised to add the statutory requirement that interim relief be ordered in ERA cases once an administrative law judge issues a recommended decision that the complaint is meritorious. Section 24.7 is also amended with respect to all whistleblower cases to provide that the recommended decision of the administrative law judge becomes the final order of the Secretary if no petition for review is filed.

A new § 24.8 details the procedure for seeking review by the Secretary of a decision of an Administrative Law Judge.

Former § 24.7, concerning judicial review, and former § 24.8, concerning enforcement of decisions of the Secretary, have been removed. These provisions vary from statute to statute among the whistleblower programs. Furthermore, the types of judicial review or enforcement actions which are available does not need to be the subject of rulemaking since it is prescribed by statute and concerns judicial remedies.

Executive Order 12866

The Department believes that this proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866, in that it is not likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that the proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposal implements regulatory revisions necessitated by statutory amendments enacted by the Congress which are largely procedural in nature, or which narrowly extend the scope of the law to include employees of contractors or subcontractors of the Department of Energy (except those involved in naval nuclear propulsion work under E.O. 12344), licensees of an agreement State under the Atomic Energy Act, applicants for such licenses, and their contractors and subcontractors. The Department of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 24

Employment, Environmental protection.

Accordingly, for the reasons set out in the preamble, 29 CFR part 24 is proposed to be amended as set forth below.

Signed at Washington, DC, on March 10, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

1. and 2. The authority citation for part 24 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 300j–9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851; 42 U.S.C. 9610.

3. Section 24.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 24.1 Purpose and scope.

(a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following Federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

* * * * *

4. Section 24.2 is proposed to be amended by revising paragraph (a) and paragraph (b) introductory text, and by adding paragraphs (c) and (d) to read as follows:

§ 24.2 Obligations and prohibited acts.

(a) No employer subject to the provisions of the Federal statute of which these protective provisions are a part, or to the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et. seq.*, may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) Any employer is deemed to have violated the particular Federal law, including the Atomic Energy Act of 1954, and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has:

* * * * *

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in § 24.1 of this part, any employer is deemed to have violated the particular Federal law, including the Atomic Energy Act of 1954, and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has:

(1) Notified the employer of an alleged violation of such Federal statute;

(2) Refused to engage in any practice made unlawful by such Federal statute, if the employee has identified the alleged illegality to the employer; or

(3) Testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Federal statute.

(d) (1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act applies a notice prepared or approved by the Department of Labor that explains the employee protection provisions of the Act and the regulations in this part. Copies of such notice may be obtained from the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in § 24.3(b)(2) that a complaint be filed with the Administrator within 180 days of an alleged violation shall be inoperative unless the respondent establishes that the complainant had notice of that requirement. If it is established that the notice was posted after the alleged discriminatory action occurred or that the complainant later obtained actual notice, the 180 days shall run from that date.

5. Section 24.3 is proposed to be amended by revising paragraphs (b) and (d) to read as follows:

§ 24.3 Complaint.

* * * * *

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.

(2) Under the Energy Reorganization Act of 1974, any complaint shall be filed within 180 days after the occurrence of the alleged violation.

* * * * *

(d) *Place of filing.* A complaint may be filed in person or by mail at the nearest local office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage-Hour Division. A complaint may also be filed with the Office of the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

6. Section 24.4 is proposed to be amended by revising paragraph (d)(2) and (d)(3) and by adding a new paragraph (d)(4) to read as follows:

§ 24.4 Investigations.

* * * * *

(d) (1) * * *

(2) If on the basis of the investigation the Administrator determines that the complaint is without merit, the notice of determination shall include or be accompanied by notice to the complainant that the notice of determination shall become the final order of the Secretary denying the complaint unless within five business days of its receipt the Chief Administrative Law Judge receives from the complainant a request for a hearing filed by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of any request for a hearing shall be sent by the complainant to the respondent (employer) on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service.

(3) If on the basis of the investigation the Administrator determines that a violation has occurred, the notice of the determination shall include an appropriate order to abate the violation, and notice to the respondent and complainant that the order shall become the final order of the Secretary unless within five business days of its receipt the Chief Administrative Law Judge receives from the respondent or from complainant (where the determination or order is partially adverse) a request for a hearing filed by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of any request for a hearing shall be sent to the complainant or respondent, as appropriate, on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service.

(4) Copies of any requests for a hearing shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, on the same day that the hearing is requested by facsimile (fax), telegram,

hand delivery, or next-day delivery service.

7. Section 24.7 is proposed to be removed, § 24.6 is proposed to be redesignated as § 24.7; and § 24.5 is proposed to be redesignated as § 24.6 and amended by adding new paragraphs (f) and (g) as follows:

§ 24.6 Hearings.

* * * * *

(f) (1) At the Administrator's discretion, the Administrator may participate as a party or participate as *amicus curiae* at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a recommended decision of an administrative law judge, including a decision, based on a settlement agreement between complainant and respondent, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(g) (1) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion.

(2) At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

8. A new § 24.5 is proposed to be added to read as follows:

§ 24.5 Investigations under the Energy Reorganization Act.

(a) In addition to the procedures set forth in § 24.4 of this part, this section sets forth special procedures applicable only to investigations under the Energy Reorganization Act.

(b) (1) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct as provided in paragraph (b) of § 24.2 was a contributing factor in the unfavorable personnel action alleged in the complaint.

(2) The complaint, supplemented as appropriated by interviews of the complainant, must allege the existence of facts and evidence to meet the required elements of a *prima facie* case, as follows:

(i) The employee engaged in a protected activity or conduct, as set forth in § 24.2;

(ii) The respondent knew that the employee engaged in the protected activity; and

(iii) The employee has suffered an unfavorable personnel action under circumstances sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required elements of a *prima facie* case, *i.e.*, to give rise to an inference that the respondent knew that the employee engaged in protected activity, and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if it is shown that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If these elements are not substantiated in the investigation, the investigation will cease.

(c) (1) Notwithstanding a finding that a complainant has made a *prima facie* showing required by this section with respect to complaints filed under the Energy Reorganization Act, an investigation of the complainant's complaint under that Act shall be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct.

(2) Upon receipt of a complaint under the Energy Reorganization Act, the respondent shall be advised that any evidence it may wish to submit to rebut the allegations in the complaint must be received within five (5) business days from receipt of notification of the complainant. If the respondent fails to make a timely response or if the response does not demonstrate by clear and convincing evidence that the unfavorable action would have occurred absent the protected conduct, the investigation shall proceed. The investigation shall proceed whenever it is necessary or appropriate to confirm or verify the information provided by respondent.

(d) (1) Whenever the Administrator dismisses a complaint pursuant to this section without completion of an investigation, the Administrator shall give notice of the dismissal, which shall contain a statement of reasons therefor, by certified mail to the complainant, the respondent, and their representatives. At the same time the Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and a copy of the notice of dismissal. The notice of dismissal shall include notice that the dismissal shall become the final order of the Secretary denying the complaint unless within five business days of its receipt the complainant files with the Chief Administrative Law Judge by facsimile (fax), telegram, hand delivery, or next-day delivery service, a request for a hearing on the complaint.

(2) Copies of any request for a hearing shall be sent by the complainant to the respondent and to the Administrator, Wage and Hour Division, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, on the same day that the hearing is requested, the facsimile (fax), telegram, hand delivery, or next-day delivery service.

9. Newly designated § 24.7 is proposed to be revised to read as follows:

§ 24.7 Recommended decision and order.

(a) The administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions, and a recommended order and be served upon all parties to the proceeding.

(b) In cases under the Energy Reorganization Act, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. The proceeding before the administrative law judge shall be a proceeding on the merits of the complaint. Neither the Administrator's determination to dismiss a complaint pursuant to § 24.5 of this part without completing an investigation nor the Administrator's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that such a determination to dismiss was made in error.

(c) (1) Upon the conclusion of the hearing and the issuance of a recommended decision that the complaint has merit, the administrative law judge shall issue a recommended order that the respondent take appropriate affirmative action to abate the violation, including reinstatement of the complainant to the respondent's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when the administrative law judge deems if appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit, the judge shall also issue a preliminary order providing the relief specified in § 24.7(c)(1) of this part with the exception of compensatory damages. This preliminary order shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Secretary. Any award of compensatory damages shall not be effective until the completion of any review by the Secretary.

(d) The recommended decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to § 24.8 of this part, a petition for review is timely filed with Secretary.

10. and 11. Section 24.8 is proposed to be revised to read as follows:

§ 24.8 Review by the Secretary.

(a) Any party desiring review of a recommended decision of the administrative law judge shall file a petition for review with the Secretary. To be effective, such a petition for review must be received within ten business days of the date of the decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge.

(b) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(c) The Secretary's final decision shall be issued within 90 days of the receipt of the complaint and shall be served upon all parties and the Chief Administrative Law Judge by mail to the last known address.

(d) (1) If the Secretary concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) If such a final order is issued, the Secretary, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Secretary, for, or in connection with, the bringing of the complaint upon which the order was issued.

(e) If the Secretary determines that the party charged has not violated the law, an order shall be issued denying the complaint.

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March 16, 1994

Part VII

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB90

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing student eligibility under the Higher Education Act of 1965, as amended (HEA). The regulations implement certain new provisions of the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993 that pertain to student eligibility. The regulations also make technical corrections to the final regulations published in the **Federal Register** on June 8, 1993 with regard to the applicability of § 668.7(a)(1) to specific programs set forth in title IV of the HEA (title IV, HEA). The purpose of the regulations is to reduce the potential for abuse in the programs authorized under the title IV, HEA programs by improving the accuracy of the information used to assess a student's eligibility for these programs. The regulations also clarify the Secretary's policy with regard to the eligibility of incarcerated students, students studying abroad, and students enrolled in telecommunications or correspondence courses.

EFFECTIVE DATE: Subject to meeting the requirements of section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)), these regulations take effect on July 1, 1994. When these regulations become effective, they govern student eligibility for any title IV, HEA program assistance that may be awarded to any student for award years beginning with 1994–95.

FOR FURTHER INFORMATION CONTACT: Claude Denton, Program Specialist, Student Eligibility and Verification Section, General Provisions Branch, Division of Policy Development, U.S. Department of Education, 400 Maryland Avenue SW., (ROB–3, Room 4318), Washington, DC 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that apply to all institutions that participate in the title IV, HEA student financial assistance programs. The title IV, HEA student financial assistance programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan (Direct Loans), State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. The last three programs are known collectively as the "campus-based programs."

These regulations implement portions of the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992. Regulatory implementation of this statute revises the Student Assistance General Provisions (34 CFR part 668), which apply to all students seeking assistance under the title IV, HEA programs. These revisions seek to improve the efficiency of the title IV, HEA programs and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

Waiver of Rulemaking

On June 8, 1993, the Secretary published final regulations in the **Federal Register**, 58 FR 32188, that implement statutory changes, make technical modifications, and enhance program integrity in the title IV, HEA programs. As published, § 668.7(a)(1) of those regulations incorrectly states that an otherwise eligible student who is enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program is eligible to receive assistance under the Stafford Loan, PLUS, SLS, FWS, Federal Perkins Loan, or FDSL programs. Under section 484(b)(3) of the HEA, as amended by the Higher Education Technical Amendments of 1993 (Technical Amendments)(Pub. L. 103–208, enacted December 20, 1993), this student would be eligible to receive assistance under the Stafford Loan, PLUS, SLS or FDSL programs only.

In addition, the Higher Education Amendments of 1992 amended section 484(b)(4) of the HEA to provide that an otherwise eligible student, who is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, is now eligible to receive assistance under the FWS, Federal Perkins Loan, or FDSL programs in addition to funds under the Stafford Loan, PLUS, or SLS programs. Section 668.7(a)(1) has been corrected to reflect the applicable statutory requirements. Until the effective date of these regulations, the statutory requirements of section 484(b) (3) and (4) of the HEA supersede § 668.7(a)(1) as published in the June 8, 1993 final regulations.

For purposes of this rulemaking, the Technical Amendments also exempt students from three Pacific Island republics from the requirement of providing social security numbers as a condition of eligibility for title IV, HEA assistance. In addition, the Technical Amendments provide for institutional authority to determine that a social security number is correct without the need for a subsequent review by the Secretary. In accordance with these statutory changes, §§ 668.7(a)(16) and 668.7(i) have been revised, respectively.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory requirements into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Major Issues

On October 4, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 51712). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Amendment to General Definitions contained in § 668.2 to add a definition of the term "output document" to ensure consistent use of the term throughout part 668 (page 51713);

Addition of provisions for a data match with the Selective Service System and providing that a confirmation of Selective Service registration on the student's application output document that is submitted to the institution fulfills the Selective Service registration requirement (page 51713);

Addition of a provision making incarcerated students ineligible to receive assistance under the Federal Family Education Loan, Federal Direct Student Loan, and Federal Perkins Loan programs (page 51713);

Addition of a provision requiring a student, as a condition of eligibility for title IV, HEA assistance, to provide a social security number (page 51714);

Addition of provisions for a data match with the Social Security Administration to verify the accuracy of social security numbers provided by students and institutional requirements related to this verification (pages 51714–51715);

Addition of a provision making a student ineligible to receive title IV, HEA assistance for a correspondence course unless the course is part of a program leading to an associate, bachelor's, or graduate degree (page 51715);

Addition of a provision establishing a methodology for calculating the percentage of telecommunications and correspondence courses delivered by the institution for the purpose of determining whether the total number of telecommunications and correspondence courses exceeds 50 percent of all courses offered (page 51715); and

Addition of a provision clarifying that if a program of study abroad is approved for credit by the home institution at which a student is enrolled, the otherwise eligible student is eligible to receive title IV, HEA assistance without regard to whether the study abroad program is required as part of the student's degree program (pages 51715–51716).

Section 668.7(i) has been revised, in response to public comments, to provide for institutional verification of a student's social security number if the institution has information that conflicts with the Secretary's initial determination that the student's social security number is accurate.

The Technical Amendments redesignated several provisions of HEA section 484 and, accordingly, several references to that statutory provision in these regulations have been revised.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 31 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Section 668.7 Eligible Student

Selective Service Registration Status

Comments: Several commenters supported the provision for a data match with the Selective Service System and the provision that a confirmation of Selective Service registration on the student's output document that is submitted to the institution fulfills the requirement to file a separate statement of compliance. One commenter recommended a waiver of the Statement of Registration Status when a student presents other documentation from the Selective Service System proving registration. One commenter questioned the need for a 30-day period for the student to collect and submit documentation to the institution to support his claim of registration or exemption from registration, and suggested that a statement from the student or a telephone call to the Selective Service System would be equally effective and less burdensome to the institution. One commenter requested that the Secretary address the issues regarding students who failed to register with Selective Service and are currently beyond the age of registration, veterans of the Armed Forces who never registered, and aliens who missed the opportunity to register. One commenter suggested that the data match with the Selective Service System eliminates the need for a Statement of Registration Status and recommended deletion of the Statement of Registration Status from the student's output document. Another commenter noted that section 484(n) of the HEA provides that an institution may use data or documents to support the student's registration, or exemption from registration, as a substitute for a separate statement of compliance, but the commenter suggested that no regulatory provisions exist, or are proposed, for waiver of the Statement of Registration Status if the student submits documentation proving that he is registered. Concern was also expressed by a commenter that the 30-day minimum period allowed for the student to submit a Statement of Registration Status imposes Selective Service enforcement responsibilities on institutions. Another commenter suggested that the Secretary stress in the preamble to these regulations that the 30-day provision is a minimum requirement and that institutions have the option of a later deadline. One commenter was concerned about whether an institution can allow exceptions to the 30-day deadline if an output document is submitted close to the end of an award year and the 30-day period would extend beyond the end of the award year, thereby precluding the student's eligibility for programs without late disbursement provisions. Another commenter questioned whether the 30-day period should begin at the time the institution receives the student's output document, given the fact that many institutions using electronic output documents receive the output documents before the student receives them. One commenter requested specific examples of what the Secretary would describe as clear and unambiguous evidence of compliance with Selective Service registration requirements, and suggested that the examples should include returned Postal Service receipts from the Selective Service System. Another commenter suggested that the Secretary add a provision to § 668.7(a)(13) to provide that if a student submits a Statement of Registration Status claiming to be registered with Selective Service and that claim is not confirmed by the data match, the student should be required to present evidence from the Selective Service System to resolve these conflicting sources of information. Several commenters suggested that if the data match is out of service, the Secretary should delay processing the student's application for title IV, HEA assistance until the data match is again operational.

Discussion: Section 484(n) of the HEA requires the Secretary to conduct a data base match with the Selective Service System for the purpose of enforcing the Selective Service registration provisions of section 113 of Public Law 97–252. Since the Secretary's participation in this data match is mandatory, the institution's compliance with section 2 of the Computer Matching and Privacy Protection Act of 1988 is also mandatory with respect to providing the student a minimum of 30 days to provide a Statement of Registration Status, or clear and convincing evidence to the institution to support the student's claim to have registered, or to be exempt from, Selective Service registration. If the data match does not confirm that the student is registered with Selective Service, the Secretary does not consider the student's statement to be "clear and convincing" evidence, but considers the institution's documented statement based on a telephone conversation with an employee of the Selective Service System to meet the "clear and convincing" standard. Returned Postal

Service receipts from the Selective Service System are also acceptable forms of documentation. Regarding the recommendation for a waiver of the Statement of Registration Status if evidence of registration is submitted by the student, the Secretary notes that provisions for such a waiver already exist in § 668.33. However, the Secretary believes that a revision to § 668.7(a)(13)(ii) is needed to clarify that § 668.33 may require the student to file a Statement of Registration Status or other evidence. With regard to veterans of the U.S. Armed Forces who failed to register with the Selective Service System, the Secretary recently issued final regulations (58 FR 32188, June 8, 1993) that address this issue. Section 668.33(b) of the Student Assistance General Provisions now provides that the student is not required to be registered with the Selective Service System if the student "served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard." Section 668.33(b) also provides that a student who was required to be registered with the Selective Service System prior to age 26, is now at least 26 years old or older, and claims to have unknowingly failed to register with the Selective Service System must demonstrate to the institution that he did not knowingly and willfully fail to register with Selective Service. This requirement is satisfied if the student obtains and presents to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register. Section 668.33, as revised by the June 8, 1993 final regulations, also provides for a waiver of the Statement of Registration Status if the student submits to the institution documentation proving that he is registered. With regard to the comment suggesting removal of the Statement of Registration Status, the statute provides for use of documentation as a substitute for the Statement of Registration Status only if the student is able to submit such documentation. If the student claims to have registered with Selective Service, or claims to be exempt from registration, and does not have evidence to support such claims, the Statement of Registration Status is an effective means of communicating these claims to the institution. With regard to the comment that the 30-day period for the student to submit a Statement of Registration Status forces institutions into an "enforcement" position of denying title IV, HEA assistance based on institutionally-set deadlines, the Secretary wishes to emphasize that the 30-day requirement is mandated by the Computer Matching and Privacy Protection Act of 1988 and that the provision establishes a minimum length of time, giving institutions the option of setting a later deadline. Furthermore, the 30-day period is intended to provide due process protection to an individual who may be adversely affected by the results of a data match, and is not intended to force the institution into denying title IV, HEA assistance to students before the institution would otherwise be prepared to do so. The Secretary also realizes that strict adherence to the 30-day minimum period may create difficulties when the student's application is being processed near the end of the award year, and supports the use of institutional discretion in setting deadlines that conform to existing statutory requirements and practical considerations regarding the time needed to process title IV, HEA applications. With regard to the comment concerning the beginning of the 30-day period for institutions with electronic access to output documents, the 30-day period should not begin until the student acknowledges to the institution receipt of the output document containing information relating to the results of the data match.

Changes: Section 668.7(a)(13)(ii) is revised to clarify that if the student's Selective Service System status is not confirmed by the data match, the student may be required to file a Statement of Registration Status or other evidence as required by § 668.33.

Incarcerated Students

Comments: One commenter requested clarification with respect to whether a student meets the Secretary's definition of "incarcerated" if the student is furloughed during the day for the purpose of attending classes and returns to confinement in a correctional institution at night. Other commenters questioned whether an incarcerated student should be allowed to receive his or her loan for a period of attendance completed before the incarceration begins. One commenter requested that the Secretary describe or reference calculation and disbursement procedures for borrowers who have reduced eligibility due to incarceration. Another commenter questioned whether a student who is incarcerated at the beginning of an enrollment or payment period and is subsequently released prior to the end of that period should be considered eligible for the entire period.

Discussion: The Secretary is considering the definition of an "incarcerated student" in a separate proposed rulemaking published in the **Federal Register** on February 10, 1994 (59 FR 6446–6465). Until that rulemaking is effective, institutions are advised to seek the advice of their own legal counsel with regard to compliance with section 484(b)(5) of the HEA, which makes incarcerated students ineligible to receive assistance under the title IV, HEA loan programs. This comment will be considered along with any others received during the comment period applicable to that rulemaking. With regard to whether an incarcerated student can receive a loan disbursement for a period of attendance completed before incarceration, section 484(b)(5) of the HEA precludes an incarcerated student from receiving a loan disbursement, even if the disbursement would have applied toward a period of attendance already completed. Calculations of eligibility for students who become incarcerated during a payment period should be similar to the calculations made with regard to cost of attendance for a borrower who withdraws from the institution during the period. A student who is incarcerated at the beginning of a payment period and is subsequently released before the end of the payment period is eligible for disbursement of loan funds provided that the disbursement is made after release from incarceration and the student maintains an eligible student status as provided in § 668.7.

Changes: None.

Social Security Number

Comments: One commenter questioned the need for a social security number data match, suggesting that institutions should be allowed to maintain evidence of a correct social security number on file. Several commenters expressed concern that title IV, HEA assistance may be delayed to a student if the data match with the Social Security Administration is out of service at the time the student's application for title IV, HEA assistance is processed and the student is unable to promptly provide evidence of a correct social security number. One commenter suggested the use of several data elements as matching criteria, including proper names, nicknames, abbreviated names, and married names. One commenter questioned the Secretary's

proposal to resubmit the student's social security number for a final determination if there is a possibility the data match could again be nonoperational. Title IV, HEA assistance may be delayed, according to other commenters, when institutions choose not to incur liability if a student provides evidence of a correct social security number that differs from the social security number originally submitted to the Secretary. Several commenters suggested that the Secretary should issue a rejected output document if the student's social security number is not confirmed, and that responsibility for reconciliation of the nonconfirmed match should be placed on the student and the Social Security Administration. Several commenters suggested that, if the accuracy of a student's social security number is not confirmed because the data match is not in operation, the institution should assume that the social security number provided by the student is correct until a subsequent data match indicates that the social security number is incorrect, and that the student should not be required to present evidence to prove the accuracy of his or her social security number. One commenter asked the Secretary for specific guidance on how to assist the student in providing evidence and obtaining a final determination from the Secretary with regard to the accuracy of the student's social security number, and several commenters urged the Secretary to allow the institutions to make this final determination. Another commenter requested the opportunity to make a first disbursement without liability if the student can provide evidence of an accurate social security number. One commenter suggested that, once verification confirms that the student's social security number is accurate and such verification is documented in the student's file, no subsequent verification of the student's social security number be required in subsequent years. One commenter questioned whether corrections to the student's social security number will cause a permanent change to the student's record identification number, and whether the default data match will be initiated based on the corrected social security number. Several commenters suggested that a maximum turnaround time be allowed for institutions to await a final determination from the Secretary with regard to the accuracy of a student's social security number and that, if a final determination is not received by the due date, that the institution be allowed to disburse title IV, HEA funds. Several commenters requested a thorough test of the matching data base to prevent nonconfirmations of social security numbers because of name changes, misspellings, and other typographical errors. One commenter suggested that the institution should be allowed to require evidence of an accurate social security number if the institution has information that conflicts with the Secretary's confirmation that the student's social security number is correct. One commenter recommended the deletion of § 668.7(i)(1), contending that there are no circumstances in which the institution would be required to comply with this provision. One commenter objected to any assignment of liability to the institution in light of section 484(p)(4) of the HEA, which prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. One commenter suggested that students who do not meet the institutional deadline as proposed in § 668.7(i)(3)(i) should be ineligible for the period of enrollment during which they applied for title IV, HEA assistance, not for the entire award year.

Discussion: With regard to the comment concerning the need for a data match with the Social Security Administration, section 484(p) of the HEA requires the Secretary, in cooperation with the Commissioner of the Social Security Administration, to verify any social security number provided by a student applying for title IV, HEA assistance. The Secretary believes that a data match is the most efficient method of accomplishing this task. The Secretary understands that a student with a social security number that is not confirmed by the Secretary because the data match is out of service may experience delays in title IV, HEA assistance if he or she cannot promptly provide evidence of a correct social security number. As a possible solution to this problem and to reduce administrative burden on institutions, the Secretary considered carefully the possibility of delaying the processing of applications when the data match is out of service. Such delays would back up entire batches of applications on subsequent processing days, however, and would seriously compromise the efficiency of the processing system during peak volume periods. The Secretary is confident that interruptions in data match operations will be rare, that the data match will provide virtually trouble-free, continuous service and that the institution will very infrequently need to resubmit a social security number because the data match is out of service. If the match is out of service, however, the Secretary believes that the institution should require documented evidence from the student of a correct social security number and should make a determination that the student's social security number is correct before disbursing title IV, HEA assistance. With regard to the comment favoring the use of proper names, nicknames, abbreviated names and married names as matching criteria, the Secretary, in cooperation with staff at the Social Security Administration, considered a number of possible data items that are normally collected by the Social Security Administration, and has determined that the student's name, date of birth, and social security number are the three most useful matching elements. With regard to the commenter who suggests that title IV, HEA assistance will be delayed if the student's institution chooses not to incur liability if the student provides evidence of a social security number that differs from the social security number originally submitted to the Secretary, section 484(p)(2) has been revised by the Higher Education Technical Amendments of 1993 to accommodate this concern. According to this revised statutory provision, if a student's social security number is determined by the Secretary to be incorrect, the institution must deny the student's eligibility for title IV, HEA assistance until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct. The Secretary will not impose any liability on the institution making this determination if the student's social security number is subsequently found to be incorrect, provided that the institution has not committed fraud and the institution's determination is based on clear and convincing evidence. The institution may make a determination that a social security number is correct and disburse title IV, HEA assistance to an otherwise eligible student even if the student is submitting a social security number that differs from the social security number originally submitted to the Secretary. If such a determination is made, the institution will be required to report the new social security number to the Secretary, and the Secretary will accept the new social security number as accurate. This statutory change addresses the concerns of commenters seeking guidance on how to provide evidence and obtain a final

determination from the Secretary with regard to a student's social security number that has not been confirmed as accurate by the data match. The institution has the authority to make a determination with regard to the accuracy of a student's social security number. Commenters urging the Secretary to allow the institution to make a final determination, commenters seeking to make disbursements without liability if the student can provide evidence of an accurate social security number, and commenters suggesting a maximum turnaround time for the Secretary's final determination have also had their concerns addressed by this change. The Secretary agrees in principle with the commenter who suggests that the Secretary should issue a rejected output document if the student's social security number is not confirmed. Rejected output documents are planned for applications in which the social security number does not correspond with a valid social security number in the Social Security Administration data base. However, the Secretary plans to use the output document to alert the institution to particular matching criteria, such as the date of birth, that do not match corresponding data in the Social Security Administration data base, rather than rejecting the application for minor discrepancies. The Secretary is interested in minimizing the burden on institutions wherever possible in this process of reconciling nonconfirmed matches and solicits comments from institutions at any time with regard to the technical aspects of data match operations. However, the Secretary disagrees with the commenter who would place responsibility for reconciliation of nonconfirmed matches on the student and the Social Security Administration. The institution retains primary responsibility for ensuring that all students receiving title IV, HEA assistance are eligible students in accordance with this section of the regulations. The Secretary agrees with the commenter's suggestion that a verified social security number should not need verification in subsequent years, and will include the social security number as part of the renewal application data items that are transferred from year to year. With regard to the comment regarding use of the student's corrected social security number as the student's record identification number and for purposes of the default match, the Secretary will maintain both social security numbers in the processing system but will automatically rerun the default match for any corrected social security number. The Secretary agrees with the commenter who suggests that the Social Security Administration data base be tested to prevent nonconfirmations due to name changes, misspellings, and other typographical errors, and has begun such testing. However, the Secretary recognizes that the data base is only as accurate as the data that is made available to it and kept updated by individuals. The Secretary also agrees with the commenter who suggests that the institution be allowed to require evidence of an accurate social security number from the student if the institution has information which conflicts with the Secretary's determination from the data match that the student's social security number is accurate. The Secretary does not agree with the commenter who proposes the deletion of § 668.7(i)(1), which prohibits an institution from denying, delaying, reducing, or terminating a student's eligibility for title IV, HEA assistance because social security number verification is pending. This provision, also found in section 484(p)(1) of the HEA, prevents delays in disbursements of title IV, HEA assistance to students attending institutions that would otherwise not disburse title IV, HEA assistance on the basis of their own determinations that the student's social security number is correct. For students whose social security numbers are not confirmed as correct by the data match, section 484(p)(2) mandates a delay in title IV, HEA disbursements until documented evidence of a correct social security number is provided to the institution. However, once this evidence is provided and the institution determines that the social security number is correct, section 484(p)(1) prohibits any further delays in title IV, HEA disbursements to otherwise eligible students. The Secretary disagrees with the commenter who argues that the Secretary cannot assign liability to an institution failing to comply with the requirements of this section, on the basis that section 484(p)(4) of the HEA prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. The Secretary, in accordance with this provision, will not take any of the administrative actions mentioned in HEA section 484(p)(4) against an institution that, notwithstanding compliance with this section, makes a title IV, HEA disbursement to a student using an incorrect social security number. However, section 484(p) does not prevent the Secretary from holding an institution liable for any title IV, HEA disbursements made in error to a student if the erroneous disbursements were caused by the institution's failure to comply with the provisions of this section.

Changes: If there is a determination by the Secretary that the social security number provided by a student to an institution is incorrect, § 668.7(i) is revised to allow an institution to determine that a student's social security number is correct based on documented evidence. If the institution verifies the accuracy of a social security number that differs from the social security number originally provided to the Secretary, the institution is required to report the correct social security number to the Secretary. Section 668.7(i)(2) is also revised to require an institution to collect evidence of a correct social security number if the institution has information that conflicts with the Secretary's determination that the student's social security number is correct.

Enrollment in Correspondence or Telecommunications Courses

Comments: One commenter suggested that the Secretary clarify that a student's ineligibility for title IV, HEA assistance because of the student's enrollment in a correspondence course not leading to a degree extends only to that course, and that the same student may be eligible for title IV, HEA assistance if he or she is enrolled in degree program courses. The same commenter inquired as to whether a student enrolled in a telecommunications course that is being categorized as a correspondence course for purposes of HEA section 484(l)(1) is also counted as a correspondence student for purposes of HEA section 481(a)(3).

One commenter questioned whether a course taught through live, interactive telephone transmission qualifies as a telecommunications course. One commenter requested clarification with regard to whether the Secretary's use of the phrase "part of an educational program" in § 668.7(a)(15) refers to part of the student's academic program or part of the curriculum of the institution. One commenter questioned whether students enrolled in residential degree programs who enroll in additional correspondence courses for purposes of certification or licensure would be eligible for title IV, HEA assistance. The same commenter inquired as to whether an aid officer can deny funding applicable to correspondence programs

provided at another institution with which a consortium agreement exists. One commenter suggested that the Secretary should institute a waiver procedure which would allow certain institutions to waive the 50 percent standard provided in § 668.7(j). One commenter requested that the Secretary define the term "correspondence."

Discussion: The Secretary agrees with the commenter's presumption that a student enrolled in a telecommunications or correspondence course that is not part of a degree program is ineligible for title IV, HEA assistance only to the extent that he or she is enrolled in ineligible courses. An otherwise eligible student who is enrolled in both degree program coursework and non-degree correspondence courses continues to be eligible for title IV, HEA assistance to offset the costs of the degree program courses. With regard to the applicability of the 50 percent standard to HEA section 481(a)(3), the Secretary wishes to emphasize that the calculation of the percentage of telecommunications and correspondence courses provided for in § 668.7(j) is applicable only to § 668.7(j), and does not apply to the standard set for percentage of students enrolled in correspondence courses in HEA section 481(a)(3). With regard to the question concerning use of the phrase "part of a program" in § 668.7(a)(15), the phrase refers to the student's academic program, which must lead to an associate, bachelor's, or graduate degree. A student enrolled in correspondence courses for the purpose of attaining certification or licensure is not eligible for title IV, HEA assistance for those courses, but may be eligible to receive title IV, HEA assistance for other correspondence courses in a degree program. With regard to the comment concerning consortium agreements, the aid officer may deny title IV, HEA assistance to a student for any correspondence courses that do not meet degree-seeking requirements, including correspondence courses taken by consortium agreement at another institution. With regard to whether a course taught through live, interactive telephone transmission is a telecommunications course, the Secretary notes that HEA section 484(m)(4) defines "telecommunications" as "the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution." Since the definition encompasses audio or computer conferencing, a course taught through interactive telephone transmissions must be considered a telecommunications course. With regard to the comment requesting a waiver procedure, the Secretary has no authority to prescribe procedures for waiving any of the provisions in HEA section 484. With regard to a definition of "correspondence," the Secretary is considering a definition of "correspondence course" in a separate proposed rulemaking published in the Federal Register on February 10, 1994 (59 FR 6446–6465). Until that separate rulemaking is published as final regulations, the commenter may refer to § 600.2 of the Institutional Eligibility regulations, which defines a "program of study by correspondence" as "an educational program offered principally by mail by an institution. Under this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training."

Changes: None.

Program of Study Abroad

Comments: One commenter questioned whether the Secretary intends to limit the eligibility of permanent resident aliens and other noncitizen students seeking assistance under the Federal Family Education Loan Program for the purpose of enrolling in study abroad programs. One commenter asked for clarification concerning the circumstances under which an aid officer could approve a study abroad course that is not part of the student's degree program.

Discussion: Permanent resident aliens and other noncitizens who are determined to be eligible students for purposes of § 668.7(a)(4)(ii) and part 668, Subpart I, and are otherwise eligible, are not prohibited from enrolling in study abroad programs. With regard to the approval of a study abroad course that is not part of a degree program, this provision ensures that an eligible student may receive title IV, HEA assistance for any study abroad course that is approved for credit at an eligible institution, and that the course need not be required for completion of a specific degree. For example, an otherwise eligible student pursuing a degree in mathematics may receive title IV, HEA assistance for an elective course in art history taken abroad, provided that the art history course is approved for credit by the eligible institution toward the student's graduation.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Student aid.

Dated: February 2, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Opportunity

Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Early Intervention Scholarship Program, 84.272)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.2, paragraph (b) is amended by adding in alphabetical order a new definition for "Output document" to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document or automated data generated by the Department of Education's central processing system as the result of processing the data provided in a Free Application for Federal Student Aid (FAFSA) or multiple data entry application.

* * * * *

3. Section 668.7 is amended by revising paragraph (a)(1)(ii) and adding a new paragraph (a)(1)(iii); revising paragraph (a)(8); removing the word "and" at the end of paragraph (a)(11)(vii); removing the period at the end of paragraph (a)(12), and adding, in its place, a semicolon; and by adding new paragraphs (a)(13), (a)(14), (a)(15), (a)(16), (i), (j), and (k) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(1) * * *

(ii) For purposes of the Stafford Loan, PLUS, SLS, or Federal Direct Student Loan Program, enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Stafford Loan, PLUS, SLS, CWS, Perkins Loan, or Federal Direct Student Loan Program, enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

* * * * *

(8) In accordance with the requirements of § 668.32, has filed a Statement of Educational Purpose;

* * * * *

(13) Has filed—

(i) An output document confirming registration with Selective Service by providing the results of a data match with the Selective Service System; or

(ii) In the absence of confirmation as provided in paragraph (a)(13)(i) of this section and within a deadline to be set by the institution of no less than 30 days from the date the institution receives the output document, a Statement of Registration Status or other evidence in accordance with § 668.33;

(14) For purposes of the FFEL, Federal Direct Student Loan, and Federal Perkins Loan programs, is not an incarcerated student at the time funds are delivered or disbursed;

(15) Is, if enrolled in a telecommunications or correspondence course, enrolled in a telecommunications or correspondence course that is part of an educational program leading to an associate, bachelor's, or graduate degree; and

(16) Except for residents of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau, has a correct social security number that has been verified in accordance with the requirements of paragraph (i) of this section;

* * * * *

(i) *Social security number* The Secretary verifies a social security number provided by a student to an eligible institution and shall enforce the following conditions:

(1) An institution shall not deny, reduce, delay or terminate a student's eligibility for assistance under the title IV, HEA programs because social security number verification is pending;

(2) If the institution receives an output document from a student indicating that the Secretary has determined that the student's social security number is correct, the institution shall not require the student to produce other evidence to confirm that the student's social security number is correct, unless the institution—

(i) Has documentation that conflicts with the social security number status reported on the output document; or

(ii) Has reason to believe the output document is incorrect.

(3) If the institution receives an output document from a student indicating that the Secretary has determined that the social security number provided to the institution by the student is incorrect, or that the Secretary was unable to confirm that the social security number provided to the institution by the student is correct, the institution—

(i) Shall provide the student an opportunity, within a deadline of at least 30 days from the date the institution receives the output document, to provide clear and convincing evidence to verify that the student has a correct social security number; and

(ii) May disburse any combination of title IV, HEA program funds, employ the student under the Federal Work-Study Program, or certify a Federal Stafford, Federal PLUS, Federal SLS, or Federal Direct Student loan application for the student upon making, based on the evidence provided for in paragraph (i)(3)(i) of this section, a determination that the social security number provided by the otherwise eligible student to the institution is correct; and

(iii) Shall report the student's correct social security number to the Secretary if the correct social security number differs from the social security number previously reported by the student to the Secretary

(4) If a student fails to submit the documentation by the deadline established in accordance with paragraph (i)(3)(i) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; or certify a Federal Stafford, Federal PLUS, Federal Direct Student Loan, or Federal SLS loan application for the student for that period of enrollment.

(5) If the Secretary determines that the social security number provided to an eligible institution by a student is incorrect, and the institution has not made a determination under paragraph (i)(3) of this section, and a loan has been guaranteed for the student under the Federal Family Education Loan Program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty shall not be voided or otherwise nullified with respect to disbursements made before the date that the lender and the guaranty agency receive the notice.

(6) Nothing in this section shall permit the Secretary to take any

compliance, disallowance, penalty or other regulatory action against—

(i) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(ii) Any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.

(j) *Special provisions regarding telecommunications and correspondence courses.* (1) A student enrolled in an educational program at an eligible institution (other than an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor's, or graduate degree conferred by the institution is not enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of all courses delivered at that institution.

(2) The percentage provided in paragraph (j)(1) of this section is calculated by comparing the total number of correspondence and telecommunications courses delivered during the preceding award year with the total number of all courses delivered during that award year. If an institution delivers the same course in person, by telecommunications, or by correspondence, the Secretary considers each delivery of the course by the institution to be a separate course for purposes of this calculation.

(3) A student is subject to reduced eligibility for title IV, HEA assistance if the financial aid administrator determines under the discretionary authority provided in section 479A of the HEA that the student's telecommunications instruction results in a substantially reduced cost of attendance to the student.

(k) *Program of study abroad.* (1) An otherwise eligible student who is engaged in a program of study abroad is eligible to receive title IV, HEA assistance if—

(i) The student maintains enrollment in an eligible institution during his or her program of study abroad; and

(ii) The eligible institution approves the program of study abroad for academic credit at the eligible institution.

(2) The study abroad program need not be required as part of the student's degree program.

§ 668.131 [Amended]

4. Section 668.131 is amended by removing the definition of *Output document.*

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Wednesday, March 16, 1994

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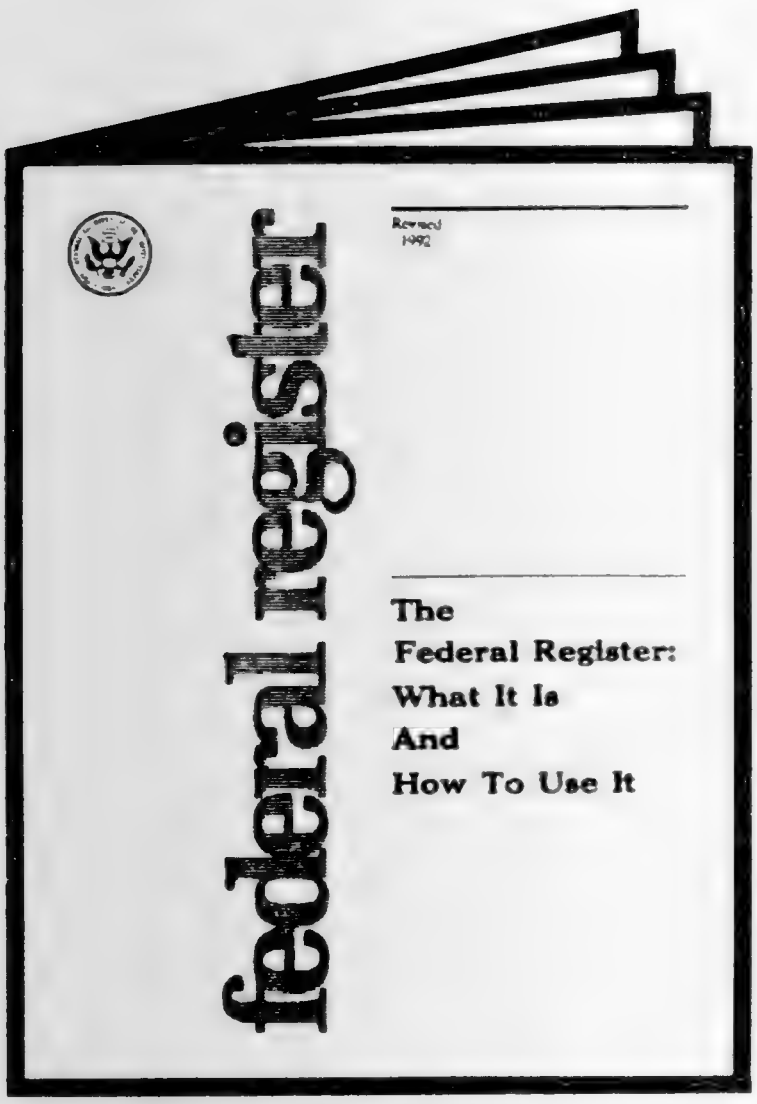

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Thursday, March 17, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket Nos. FV93–905–3–FIR and FV93–944–2–FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that relaxed the minimum size requirement to 3$^{5}/_{16}$ inches in diameter (size 56) for domestic shipments of Florida red seedless grapefruit and for red seedless grapefruit imported into the United States. This rule enables handlers in Florida and importers to continue to ship size 56 red seedless grapefruit for the entire 1993–94 season.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 [7 CFR part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,000 producers of these citrus fruits in Florida. There are approximately 25 importers of grapefruit subject to the grapefruit import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and importers may be classified as small entities.

This rule finalizes an interim final rule that relaxed the minimum size requirement for domestic shipments of Florida red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) through November 6, 1994. This rule will enable handlers to continue to ship size 56 red seedless grapefruit for the entire 1993–94 season. The interim final rule was published in the November 12, 1993, **Federal Register** [58 FR 59931], and provided 30 days for interested persons to file comments. No comments were received.

Section 905.306 [7 CFR 905.306] specifies minimum grade and size requirements for different varieties of

fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Export requirements were not changed by the interim final rule for Florida grapefruit.

The Citrus Administrative Committee (committee) met September 28, 1993, and unanimously recommended that the minimum size requirement for domestic shipments of fresh red seedless grapefruit be relaxed. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The committee reports that it expects that the fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1993–94 season. The committee also expects that the overall external quality of the fruit will be good. The committee also expects that more Florida red seedless grapefruit will be shipped fresh this season than last season.

This rule is designed to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market consistent with current and anticipated strong demand in those markets during the entire 1993–94 season, and to maximize shipments to fresh market channels. This rule is based on the committee's assessment of the maturity, flavor level, and size composition of this season's Florida red seedless grapefruit crop. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

Minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida grapefruit. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida grapefruit growers.

Under the order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule also finalizes an interim final rule that relaxed the minimum size requirement for imported shipments of red seedless grapefruit. The interim final rule was published in the November 12, 1993, **Federal Register** [58 FR 59933], and provided 30 days for interested persons to file comments. No comments were received.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for grapefruit under a domestic marketing order, imported grapefruit must meet the same or comparable requirements. The interim final rule for Florida grapefruit relaxed the minimum size requirements for Florida red seedless grapefruit. Therefore a corresponding change was needed in the grapefruit import regulation.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106], as reinstated on July 26, 1993 [58 FR 39428, July 23, 1993]. The interim final rule for imported grapefruit relaxed the minimum size requirements for imported red seedless grapefruit to 3 5/16 inches in diameter (size 56) for the period November 8, 1993, through November 6, 1994.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this final rule as it pertains to imported grapefruit.

This rule reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for red seedless grapefruit, as specified. The Department's view is that this rule will have a beneficial impact on producers, handlers, and importers since it will permit Florida grapefruit handlers to continue to make available those sizes of fruit needed to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the finalization set forth below will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR part 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the November 12, 1993, **Federal Register** [58 FR 59931], is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 944.106, which was published in the November 12, 1993, **Federal Register** [58 FR 59933], is adopted as a final rule without change.

Dated: March 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6149 Filed 3–16–94; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 927

[Docket No. FV93–927–1FR; Amendment 1]

Increase in Expenses; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This document amends a final rule to authorize an increase in expenses for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1993–94 fiscal year. This final rule amendment will enable the Committee to incur increased expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule amendment is issued under Marketing Agreement and Order No. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon and Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule amendment has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable pears handled during the 1993–94 fiscal year, which began July 1, 1993, through June 30, 1994. This final rule amendment will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rates for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committee are derived by dividing the anticipated expenses by expected shipments of pears. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the Committee's expected expenses.

The Winter Pear Control Committee met on June 4, and June 24, 1993, and unanimously recommended total expenses of $6,933,615 for the 1993–94 fiscal year. In comparison, the 1992–93 fiscal year expense amount was $6,716,983, which is $216,632 less than the recommended amount for this fiscal year.

The Committee also unanimously recommended an assessment rate of $0.45 per standard box, or equivalent and a supplemental assessment rate of $0.04 per standard box, or equivalent for Anjou variety pears. In comparison, the 1992–93 pear assessment rate was $0.43 per standard box, or equivalent and $0.09 for the supplemental assessment rate on Anjou variety pears. This represents a $0.02 increase and $0.05 decrease, respectively, in the assessment rates recommended for this fiscal year because the current rates should generate sufficient income to cover the increased expenses.

Major expense categories for the 1993–94 fiscal year include $4,937,803 for advertising, $566,433 for contingency, $422,826 for Ethoxyquin data research, and $174,775 for salaries and benefits. Comparable 1992–93 budgeted expenses are $4,562,500, $490,578, $855,000, and $160,905, respectively.

The Committee's approved 1993–94 fiscal year expenses and assessment rates were adopted in a final rule and published in the **Federal Register** (58 FR 54926, October 25, 1993).

On December 1, 1993, the Committee conducted a mail ballot and on a vote of 13 in favor and 1 opposed, recommended to increase expenses to $7,931,925. This is a $998,310 increase in expenses from the previously approved 1993–94 budget. No changes in the approved assessment rates were recommended because the current rates should generate sufficient income to cover the increased expenses.

The increase is deemed necessary by the Committee because the crop estimate, which is now approximated at 15,250,000 standard boxes of winter pears was underestimated by nearly 2 million boxes. Due to the larger crop, additional funding in major categories is needed. This includes a total of $639,322 for contingency, $5,718,750 for paid advertising, $305,000 for winter pear improvement, $305,000 for SOPP, and $484,000 for Ethoxyquin data research which represent increases of $72,889, $780,947, $41,650; $41,650, and $61,174 respectively, from the previously approved budget.

This action will not impose additional costs on handlers because the previously established assessment rates are not being changed. Further, the increased expenses should benefit the industry by assisting in marketing a record-large crop. Therefore, the Administrator of the AMS has

determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that the specified expenses for the marketing order covered in this final rule amendment are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to conduct a more aggressive advertising and promotional program to market the largest crop in the industry's history; (2) the marketing season is well underway and further delays in authorizing this increase in expenditures would reduce the program's effectiveness; (3) handlers are aware of this action and need no additional time to comply because the assessment rates are not being changed; (4) no comments were received during the rulemaking proceeding to establish the assessment rates for the current fiscal year which remain unchanged by this action; and (5) no useful purpose would be served by delaying this action.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.233 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.233 Expenses and assessment rates.

Expenses of $7,931,925 by the Winter Pear Control Committee are authorized and an assessment of $0.45 per standard box, or equivalent, on assessable winter pears and a supplemental assessment of $0.04 per standard box, or equivalent, on assessable Anjou variety pears are established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: March 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6146 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV93–932–4 IFR]

Olives Grown in California; Expenses and Assessment Rate for 1994 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the California Olive Committee (Committee) under M.O. No. 932 for the 1994 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning January 1, 1994, through December 31, 1994. Comments received by April 18, 1994 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 [7 CFR part 932], as amended, regulating the handling of olives grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable olives handled during the 1994 fiscal year, beginning January 1, 1994, through December 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of olives regulated under the marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. None of the handlers may be classified as small entities. The majority of the producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California olives. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of olives. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The California Olive Committee met on December 14, 1993, and unanimously recommended a total expense amount of $3,748,290, for its 1994 budget. This is $928,530 more in expenses than the previous year. The increase is primarily due to additional funding for market development.

The Committee also unanimously recommended an assessment rate of $27.21 per ton for the 1994 fiscal year, which is $1.46 more in the assessment rate from the 1993 fiscal year. The assessment rate, when applied to anticipated shipments of 101,000 tons, would yield $2,748,210 in assessment income. This, along with approximately $1,000,000 from the Committee's authorized reserves will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include $1,150,000 for the market expansion program, $990,860 for consumer affairs, and $173,730 for salaries. Funds in the reserve at the end of the fiscal year, estimated at $300,000 will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee began January 1, 1994, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable olives handled during the fiscal year;

(3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 932.227 is added to read as follows:

§ 932.227 Expenses and assessment rate.

Expenses of $3,748,290 by the California Olive Committee are authorized and an assessment rate of $27.21 per ton of assessable olives is established for the fiscal year ending December 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: March 11, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6151 Filed 03–16–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 955

[Docket No. FV94–955–1FR]

Vidalia Onions Grown in Georgia; Increased Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This final rule increases the level of authorized expenses under Marketing Order No. 955 for the 1993–94 fiscal period. Authorization of these increased expenses is needed to cover marketing expenditures in excess of those authorized in the Vidalia Onion Committee's (Committee) 1993–94 budget.

EFFECTIVE DATE: September 16, 1993, through September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This rule increases the level of authorized expenditures for the 1993–94 fiscal period which began September 16, 1993, and ends September 15, 1994. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of increased expenses for the 1993–94 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The Committee met July 22, 1993, and unanimously recommended a 1993–94 budget of $262,950, which included $82,500 for marketing. An interim final rule implementing that recommendation was published in the **Federal Register** on September 7, 1993 (58 FR 47023) and finalized on December 6, 1993 (58 FR 64103).

The Committee subsequently met on February 17, 1994, and unanimously recommended an increase of $18,000 in its 1993–94 budget for the construction and purchase of a new trade show booth. The trade show booth is expected to cost $27,000 and will be used in conjunction with the Committee's Vidalia onion promotional efforts. The Committee recommended that $9,000 of current budget money be used and that the remaining $18,000 be taken from the authorized reserve, increasing marketing expenses from $82,500 to $100,500, and increasing the total budget from $262,950 to $280,950. The reserve, which currently totals $187,766, is within the maximum permitted by the order of three fiscal periods' expenses. There are adequate funds to cover this new expenditure, so no increase in the assessment rate was recommended.

Since no increase in the assessment rate is being recommended, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal period began on September 16, 1993, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (3) no increase in the assessment rate is being recommended so no additional funds will need to be collected from handlers.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

§ 955.20 [Amended]

2. Section 955.206 is amended by revising "$262,950" to read "$280,950".

Dated: March 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6152 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[FV94–989–1IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1993–94 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for 1993 crop Natural (sun-dried) Seedless raisins. The percentages are 74 percent free and 26 percent reserve. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing

the raisin industry. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective March 17, 1994, and applies to all Natural (sun-dried) Seedless raisins acquired from the beginning of the 1993–94 crop year. Comments which are received by April 18, 1994 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901 or Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural (sun-dried) Seedless raisins for the 1993–94 crop year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Natural (sun-dried) Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee which is responsible for local administration of the order, met on August 16, 1993, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in § 989.154, the desirable

carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1993–94 trade demand of 282,909 tons for Natural (sun-dried) Seedless raisins.

As required under § 989.54(b) of the order, the Committee met on October 5, 1993, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 85 percent of the trade demand since field prices had been established. The preliminary crop estimate and preliminary free and reserve percentages were as follows: 387,947 tons, and 62 percent free and 38 percent reserve. Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins. On November 15, 1993, the Committee decided that volume control percentages only were warranted for Natural (sun-dried) Seedless raisins, which would remain at 62 percent free and 38 percent reserve. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals or could be substituted to relieve anticipated shortages in some size ranges of Natural (sun-dried) Seedless raisins used for baking. In view of these factors, volume control percentages would not be necessary to maintain market stability.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 73.75 percent free and 26.25 percent reserve were computed and announced on January 13, 1994. That action released most, but not all the computed trade demand for Natural (sun-dried) Seedless raisins.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1993–94 production of Natural (sun-dried) Seedless raisins is 384,501 tons. Dividing the computed trade demand of 282,909 tons by the final estimate of production results in a final free percentage of 74 percent and a final reserve percentage of 26 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1993–94 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1993–94 crop raisins of the Natural (sun-dried) Seedless varietal type and this action should be taken promptly to achieve the intended purpose of making the full trade demand quantity computed by the Committee available to handlers; (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.246 is added to Subpart-Supplementary Regulations to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations].

§ 989.246 Final free and reserve percentages for the 1993–94 crop year.

The final percentages for standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning on August 1, 1993, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	74	26

Dated: March 11, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6147 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 51 and 78

[Docket No. 94–007–1]

Swine Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis indemnity regulations to provide for payment at fair market value for whole herds of swine depopulated because of brucellosis. This action is necessary to eliminate in an expeditious manner all swine herds known to be affected with brucellosis. This action will also help ensure that swine brucellosis is eradicated in the United States within the next 5 years, thus saving the Federal government millions of dollars in program costs. This action will also help eliminate the human health risk associated with swine brucellosis. We are also amending the regulations concerning interstate movement of swine to require that all brucellosis-exposed swine from herds known to be affected with the disease be identified with an eartag before being moved interstate from the herd. This action will allow all handlers of swine to take precautions in handling swine potentially infected with brucellosis.

DATES: Interim rule effective March 17, 1994. Consideration will be given only to comments received on or before May 16, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–007–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph F. Annelli, National Swine Epidemiologist, Swine Health Staff, Veterinary Services, APHIS, USDA, suite 204, Presidential Building, 6565 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of swine, cattle, bison, and other species, including humans, caused by bacteria of the genus *Brucella*. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. To help prevent the spread of the disease, and to further its eradication, the regulations in 9 CFR part 51 provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. The payment of indemnity is intended to provide owners with a financial incentive for promptly destroying animals infected with or exposed to brucellosis. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and possibly other herds, the prompt destruction of brucellosis-affected swine is critical if brucellosis eradication efforts in the United States are to succeed.

Under the regulations in § 51.3(b)(2) prior to the effective date of this interim rule, indemnity payments for herd depopulation were made only for breeding swine destroyed because of brucellosis, and were based on a maximum "per head" rate of $150 per head for registered, inbred, or hybrid swine, and $65 per head for all other breeding swine. In this interim rule, we are amending the regulations to provide that in the case of whole herd depopulation of swine, indemnity payments shall be paid for all swine in the herd, not just for breeding swine, and at a fair market value determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS), based on an appraisal conducted by an independent appraiser assigned by the Administrator, except that indemnity payments, plus any salvage, must not exceed the appraised value of each animal.

Because brucellosis is primarily transmitted through sexual contact, swine other than breeding swine have not been considered to be significantly at risk for transmitting brucellosis to other swine. Consequently, indemnity has not been paid for "feeder" or "finishing" pigs. Recently, however, the infection of 30 humans with brucellosis through the handling of swine other than breeding swine at a packing plant in North Carolina has indicated that such swine do pose a significant risk of transmitting brucellosis to swine and humans.

In response to the occurrence of brucellosis among workers at the packing plant, the State of North Carolina has ordered that the plant may obtain swine only from validated brucellosis-free States, or from validated brucellosis-free herds in States other than validated brucellosis-free States. Although, at this time, the infection of humans and the North Carolina order involve only one packing plant, if the problem were to broaden and occur at other packing plants in North Carolina, or to occur in additional States, additional individuals could suffer significant hardship from brucellosis infections, and packing plants and owners of herds other than validated brucellosis-free herds could experience severe economic disruption.

The United States Animal Health Association (USAHA), a nationwide association of State veterinarians and industry members, recently passed a resolution requesting that the Department establish the goal of the complete eradication of swine brucellosis in the United States by the end of 1996. This resolution was supported by the National Pork Producers Council (NPPC) and the American Meat Institute (AMI). Additionally, the USAHA passed a second resolution, supported by NPPC and AMI, requesting that the Department move to depopulate immediately all herds of swine known to be affected with brucellosis by paying fair market value for all swine in the affected herds. (Under § 51.1, a herd known to be affected is defined as any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine.)

We compared the probable outcome of following the USAHA resolutions with that of continuing the existing eradication program, and concluded that eradication of swine brucellosis can be accomplished more quickly, with significantly less expense, by beginning now to pay fair market value for whole herd depopulation.

This change in the indemnity regulations is warranted now due to the success of the existing swine brucellosis eradication program. During the life of the program, the prevalence of swine brucellosis has been reduced from 15 percent of the nation's swine herds to 0.014 percent. Currently, only 34 herds nationwide are known to be affected with brucellosis. Because the number of herds known to be affected is small, paying fair market value for whole herd depopulation is feasible.

When undertaking whole herd depopulation, herd owners, where it is possible, will be required either to dispose of the swine through means other than slaughter (e.g., through burial, incineration, rendering, etc.) on the premises where the animals are held or penned at the time the indemnity is approved, or to move their swine for disposal to another location when movement to the location is approved, in advance, by an APHIS representative. Paying fair market value for whole herd depopulation, as provided for in this interim rule, will enable herd owners to dispose of swine through means other than slaughter (e.g., through burial, incineration, rendering, etc.). (The flat rates provided for under the existing regulations assume that the herd owner will also receive salvage value at slaughter.) Disposing of swine through such alternate means will help eliminate the danger of spreading brucellosis to swine, as well as help protect packing plant workers from the danger posed by brucellosis-infected swine.

Prior to the effective date of this interim rule, § 51.6 of the regulations required that swine for which indemnity was paid under the regulations be slaughtered at a slaughtering establishment. In order to allow for alternative means of destruction, we are amending § 51.6(c) in this interim rule to provide that in the case of indemnity paid for whole herd depopulation, swine may be destroyed on the premises where the animals are held or penned at the time the indemnity is approved, or may be moved for destruction to another location when movement to the location is approved in advance by an APHIS

representative. We are also providing that in cases where the swine are destroyed other than at a slaughtering establishment, the carcasses of the swine shall be disposed of by burial, incineration, or other disposal means authorized by applicable State law, and are requiring that destruction and disposition of animals destroyed other than at a slaughtering establishment be performed in the presence of an APHIS representative.

As noted above, in paying fair market value for whole herd indemnity, every effort will be made to dispose of swine by means other than slaughter. In some cases, however, when a packing plant is willing to handle swine from herds known to be affected, when it has been notified of the arrival of the swine, and when appropriate precautions are taken to protect the plant's workers, slaughter may be a feasible means of disposing of the animals. As noted above, in such cases, the indemnity paid, plus any salvage, must not exceed the appraised value of the swine.

Although, under the provisions of this interim rule, average indemnity costs for the Federal government will increase from $1,760 per herd to $9,030 per herd, the total cost for indemnity is expected to increase only slightly over the life of the program, and total program costs are expected to decrease substantially. According to APHIS projections, the eradication program as provided for prior to this interim rule would have required over 30 more years to accomplish total eradication, with projected costs of almost $600,000 for indemnity and $18 million for surveillance. In contrast, because the provisions of this interim rule will allow for the quick depopulation of herds known to be affected with brucellosis, and therefore increase program effectiveness, total eradication is expected to be accomplished in 5 years, with projected costs of $850,000 for indemnity and $10.5 million for surveillance. Thus, the total cost of eradication will be reduced from $18.6 million to $11.35 million, and the time necessary to achieve eradication shortened by more than 25 years.

Identification of Exposed Swine From Herds Affected With Brucellosis

The regulations in 9 CFR part 78 govern, among other things, the interstate movement of swine affected with brucellosis. Under these regulations, the interstate movement of brucellosis reactor swine and exposed swine is subject to certain restrictions. Among the restrictions on the movement of reactor swine is the requirement that such swine be individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors.

Although part 78 does require that exposed swine moved interstate be accompanied by a permit, it does not require that exposed swine from a herd known to be affected with brucellosis be identified with a metal eartag. However, because some swine originating in a herd known to be affected are likely to be the offspring of infected sows, and because the swine in the herd may be in extended contact with infected swine, they are at increased risk of being infected with brucellosis. Because of this increased risk, we consider it necessary to provide that such swine can be readily identified prior to slaughter. In order to better monitor the movement of exposed swine to ensure that they are destroyed and are not diverted into herds not affected with brucellosis, we are amending § 78.32 to require that exposed swine from a herd known to be affected with brucellosis may be moved interstate from the herd only if identified in the same manner as reactor swine. This identification will facilitate the monitoring of such swine until they are slaughtered, thus protecting against the spread of brucellosis by such animals. An additional benefit of such identification is that it will alert packing plants to the arrival of reactor swine, allowing them to take appropriate handling precautions.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to eliminate a public health risk, avert a potentially serious economic impact on swine marketing, reduce government expenses, and significantly shorten the time necessary for the eradication of swine brucellosis.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

The Department has reviewed this rule under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This interim rule provides for indemnity payment for whole herd depopulation of swine herds known to be affected with brucellosis. Prior to the effective date of this interim rule, indemnity for herd depopulation was paid only for breeding swine infected with or exposed to the disease, and was based on a maximum "per head" rate of $150 per head for registered, inbred, or hybrid swine, and $65 per head for all other breeding swine.

At present 34 swine herds in the United States are known to be affected with brucellosis. This number represents 0.014 percent of the 235,840 swine herds in this country. Of the 34 herds, 18 are in Florida and 12 are in Texas. Louisiana, Mississippi, South Carolina, and Oklahoma have 1 each. The 34 herds known to be affected are all independently owned, and all of the farmers are considered "small entities" (annual gross receipts of $0.5 million or less, according to Small Business Administration size standards).

APHIS cannot require that farmers depopulate their herds, so it is impossible to determine exactly how many owners will accept indemnity for whole herd depopulation. Because several herds are in the final stages of brucellosis "cleanup," these farmers may not choose to depopulate their entire herds.

At the time of this writing, current market values for the different classes of swine are:[1] Sows, $160; boars, $150; gilts, $160; feeder pigs, $100; and suckling pigs, $20.

If owners choose to depopulate their entire herds, under the regulations they could start new operations with a more productive swine herd after a standard minimum of 30 days of "downtime" for elimination of the *Brucella* bacteria from the premises through cleaning and disinfecting. Noninfected sows tend to produce more piglets than do infected sows.

This interim rule also requires that all exposed swine in a herd known to be affected with brucellosis must be

[1] These values do not include potential salvage values received at the time of slaughter.

identified with a metal eartag before being moved interstate from the herd known to be affected. We estimate that the cost of applying eartags to exposed swine in the average herd known to be affected will be less than $50.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the information collection or recordkeeping requirements included in this interim rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 51 and 78 are amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.3, paragraph (b)(2), the first sentence is amended by adding the words "or whose whole herd" immediately after the word "swine", revising the second sentence, and adding a new sentence after the second sentence to read as follows:

* * * * *

§ 51.3 Payment to owners for animals destroyed.

* * * * *

(b) * * *

(2) * * *

The indemnity shall not exceed $150 per head for registered, inbred, or hybrid breeding swine, and $65 per head for all other breeding swine, except that in the case of whole herd depopulation, indemnity payments shall be paid on all swine in the herd at fair market value, as determined by the Administrator, based on an appraisal conducted by an independent appraiser assigned by the Administrator. In cases where indemnity is paid for whole herd depopulation, indemnity payments, plus any salvage, must not exceed the appraised value of each animal. * * *

3. In § 51.6, paragraph (c) is revised to read as follows:

§ 51.6 Destruction of animals; time limit for destruction of animals.

* * * * *

(c) *Swine.* The claimant shall be responsible for insuring that swine subject to this part shall be sold under permit to a slaughtering establishment where State or Federal Meat inspection is available, or to a market approved by the State Animal Health Official, or to a market approved by the Administrator, for sale to such slaughtering establishment;[5] except that in the case of indemnity for whole herd depopulation, as provided for in § 51.3, swine shall be destroyed, if possible, on the premises where the animals are held or penned at the time the indemnity is approved, or may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative. In cases where the swine are destroyed other than at a slaughtering establishment, the carcasses of the swine shall be disposed of by burial, incineration, or other disposal means authorized by applicable State law. The destruction and disposition of animals destroyed in accordance with this section other than at a slaughtering establishment shall be performed in the presence of an APHIS representative.

* * * * *

[5] Markets are approved by the Administrator in accordance with § 76.18 of this chapter.

PART 78—BRUCELLOSIS

4. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

5. Section 78.32 is revised to read as follows:

§ 78.32 Brucellosis exposed swine.

(a) Brucellosis exposed swine may be moved interstate only if accompanied by a permit and only for immediate slaughter as follows:

(1) Directly to a recognized slaughtering establishment; or

(2) Directly to a stockyard posted under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*), or directly to a market agency or dealer registered under the Packers and Stockyards Act, for sale to a recognized slaughtering establishment.

(b) Brucellosis exposed swine from a herd known to be affected with brucellosis may be moved interstate from the herd known to be affected only if such swine are individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors.

(Approved by the Office of Management and Budget under control number 0579–0047)

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6180 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 93–127–2]

Change in Disease Status of the Republic of Korea Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring the Republic of Korea free of rinderpest and foot-and-mouth disease. There have been no outbreaks of foot-and-mouth disease in the Republic of Korea since 1934, and we have determined that rinderpest has never existed there. We are also adding the Republic of Korea to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This revision will remove the prohibition on the importation into the United States, from the Republic of Korea, of live ruminants and fresh, chilled, and frozen meat from ruminants, and will relieve restrictions on the importation, from the Republic of Korea, of milk and milk products from ruminants.

The Republic of Korea is not declared to be free of hog cholera and swine vesicular disease. Therefore, the importation from the Republic of Korea of swine and fresh, chilled, and frozen meat from swine will continue to be restricted because of these diseases.

We are also adding the Republic of Korea to the list of countries whose importation into the United States of llamas and alpacas is restricted.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of these diseases.

On November 30, 1993, we published in the **Federal Register** (58 FR 63122–63123, Docket No. 93–127–1) a proposal to add the Republic of Korea [1] to the list in § 94.1(a)(2) of countries declared to be free of rinderpest and FMD.

We also proposed to add the Republic of Korea to the list in § 94.11(a) of countries declared free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States.

Additionally, we proposed to add the Republic of Korea to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. The importation or entry of llamas and alpacas into the United States from countries on this list is prohibited, unless the llamas or alpacas are imported through the Harry S Truman Animal Import Center in accordance with 9 CFR 92.435.

We solicited comments concerning our proposal for a 60-day comment period ending January 31, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

EFFECTIVE DATE: This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from the Republic of Korea, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from the Republic of Korea, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule adds the Republic of Korea to the list in part 94 of countries declared to be free of rinderpest and foot-and-mouth disease. This action relieves restrictions imposed on the importation of live ruminants and fresh, chilled, and frozen meat of ruminants from the Republic of Korea into the United States. This action does not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine because the Republic of Korea is still considered to be affected with hog cholera and swine vesicular disease.

Based on available information, the Department does not anticipate a major increase in exports of fresh, chilled, or frozen meat of ruminants from the Republic of Korea into the United States as a result of this rule. In 1992, the United States did not import any live ruminants or swine from the Republic of Korea. Additionally, only 2 metric tons of meat and meat products were shipped from the Republic of Korea to the United States. This accounted for less than one-tenth of one percent of total 1992 meat imports. The Republic of Korea is currently an importer of beef and lamb and does not produce enough ruminant meat to be self-sufficient. Therefore, any effect on domestic prices or supplies will be insignificant. Increases in imports of live ruminants from the Republic of Korea are also unlikely because there is no demand in the United States for live ruminants from the Republic of Korea and because of high transportation costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

[1] The Republic of Korea was incorrectly referred to in the proposed rule as South Korea.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Republic of Korea," immediately after "Poland,".

3. In § 94.1, paragraph (d)(1) is amended by adding "Republic of Korea," immediately after "Poland,".

§ 94.11 [Amended]

4. In § 94.11, the first sentence in paragraph (a) is amended by adding "Republic of Korea," immediately after "Republic of Ireland,".

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6182 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 93–102–2]

Importation of Pork and Pork Products From Countries Where Swine Vesicular Disease Is Known To Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning importation of certain cured and dried pork and pork products from countries where swine vesicular disease is known to exist, to allow the bones to be removed in the country where the pork or pork products are processed. Prior to the effective date of this final rule, the regulations required that bones be removed in the country where the swine are raised and slaughtered. This action will give processors an option as to where bones are removed, while continuing to prevent the introduction of swine vesicular disease into the United States.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

Regulations in 9 CFR part 94 regulate, among other things, the importation of certain animals, meat, and animal products into the United States. These regulations are designed to prevent the introduction into the United States of certain diseases of livestock and poultry. Section 94.12 restricts the importation of pork and pork products into the United States from countries where swine vesicular disease (SVD) is known to exist. In order to prevent the introduction of this disease into the United States, only pork and pork products that meet conditions detailed in the regulations are eligible for entry into the United States.

Prior to the effective date of this final rule, the regulations allowed swine to be raised and slaughtered in an SVD-free country and the meat shipped to an SVD-infected country for curing and drying. However, if the resulting cured and dried pork or pork products were to be imported into the United States, all bones had to be removed in the country of origin, that is, the country where the swine were raised and slaughtered. The bones could not be removed in the country where the pork or pork products were cured and dried. (See § 94.12(b)(1)(iv)(A).)

On November 15, 1993, we published in the **Federal Register** (58 FR 60146–60147, Docket No. 93–102–1) a proposal to amend § 94.12(b)(1)(iv)(A) of the regulations to allow the option of removing the bones in the country where the pork and pork products are cured and dried.

We solicited comments concerning our proposal for a 60-day comment period ending January 14, 1994. We received one comment by that date. It was from a veterinary medical association, and was in favor of the proposed changes.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

At present, Germany is the only country where SVD is considered to exist that exports these cured and dried pork and pork products to the United States. During 1989, approximately 17,987 kilograms of cured and dried pork and pork products were exported from Germany to the United States. The value of these imports totaled $113,000.

Three facilities in Germany currently process cured and dried pork and pork products for the United States market. The regulatory amendments made final in this document will allow these processing facilities to purchase pork from SVD-free countries with the bones in, and remove the bones at the processing facilities in Germany. The amendments will not have any impact on the domestic pork industry, which is valued in excess of $4 billion.

We have been unable to identify any domestic entities that will be affected by the rule. We therefore estimate that the rule will have a negligible impact on the domestic market for cured and dried pork and pork products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended to read as follows:

PART 94–RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.12, paragraph (b)(1)(iv)(A) is revised to read as follows:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) All bones have been completely removed, either in the country of origin or in the country where the pork or pork products are processed; and

* * * * *

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6184 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 317 and 318

[Docket No. 89–022F]

RIN 0583–AB15

Ascorbic Acid, Erythorbic Acid, Citric Acid, Sodium Ascorbate, and Sodium Citrate on Beef, Lamb, and Pork Cuts

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the application of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to the surface of fresh beef cuts or fresh lamb cuts to delay discoloration of such cuts. Use of these substances will result in the preservation of a fresh color and appearance throughout the product's microbiological shelf life. This action is in response to petitions submitted by Wilson Foods Corporation. In addition, FSIS is amending the regulations to clarify the permitted use and levels of such substances on fresh pork cuts, and revise the purpose of these substances from "to maintain color" to "to delay discoloration" for clarification. Preserving the fresh color and appearance of beef and lamb cuts increases the marketability of such products; therefore, losses to manufacturers due to color deterioration will be reduced. In addition, FSIS is removing and reserving 9 CFR 317.8(b)(37), which requires qualifying statements on fresh pork cuts.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packing, or ingredient requirement on federally inspected meat products that are in addition to, or different than, those imposed under FMIA. States and local jurisdictions may, however, exercise concurrent jurisdictions over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule allows the application of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to the surface of fresh beef cuts or fresh lamb cuts to delay discoloration. This final rule will impose no new requirements on small entities. Current regulations already allow these substances to be applied to the surface of fresh pork cuts. Currently, approximately 20 percent to 25 percent of meat packaging companies are producing red meat cuts. FSIS estimates that less than 3 percent of these companies will be affected by this final rule. Also, the Agency estimates the cost of applying these substances to the surface of fresh beef cuts or fresh lamb cuts is between $.03 and $.04 per pound. However, if production of fresh beef cuts or fresh lamb cuts treated in this manner increases and a sustained market develops for these products, the cost will decrease.

The meat industry will benefit from this final action because the preservation of the fresh color and appearance of beef cuts and lamb cuts for a longer period of time should increase the marketability of these products, thereby reducing the losses to manufacturers due to color deterioration of beef cuts and lamb cuts. Manufacturers, both large and small, opting to use such substances will be required to revise the ingredients statement on product labels to show the presence of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and/

or sodium citrate. However, the use of these substances will be voluntary, and any costs associated with new label applications will be covered under existing approved paperwork requirements of FSIS's prior label approval system.

Manufacturers choosing to apply ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to fresh beef cuts and fresh lamb cuts will be required to develop and maintain an approved partial quality control (PQC) program, and would thus incur expenses associated with maintaining the PQC program. Decisions by individual manufacturers on whether to use such substances on the surface of fresh beef and fresh lamb cuts will be based on their conclusions that the benefits will outweigh the costs of maintaining the required PQC program. Current regulations already require manufacturers of fresh pork cuts using those substances to develop and maintain an approved PQC program.

Paperwork Requirements

Manufacturers opting to apply ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, or sodium citrate to fresh beef and lamb cuts will be required to develop and maintain a partial quality control (PQC) program. FSIS will receive, evaluate, and either approve or disapprove requests for such PQC programs. The PQC program will be placed on file in the establishment, and be available to any duly authorized representative of the Secretary. The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under approval number 0583–0087.

Background

Wilson Foods Petitions

On December 13, 1988, and October 24, 1991, Wilson Foods Corporation, Oklahoma City, Oklahoma, submitted petitions, along with supporting technical data, to FSIS to permit the application of ascorbic acid, erythorbic acid, sodium ascorbate, citric acid and sodium citrate, singly or in combination, to fresh beef cuts and fresh lamb cuts to delay discoloration of the meat cuts.[1] The intended effect of ascorbic acid, erythorbic acid, and sodium ascorbate is to serve as antioxidants; the intended effect of citric acid and sodium citrate is to serve as sequestrants. The petitioner's data demonstrate that the required amount to accomplish the intended effects, singly or in combination, would be at levels not to exceed 500 ppm or 1.8 milligrams (mg) per square inch of the product's surface of ascorbic acid, erythorbic acid, or sodium ascorbate, and/or not to exceed 250 ppm or 0.9 mg per square inch of the product's surface of citric acid or sodium citrate. The data submitted by the petitioner were the results of experiments on products which were packaged in a modified atmosphere of carbon dioxide, oxygen, and nitrogen. It is the Agency's understanding that the benefits provided by the addition of these substances occur regardless of packaging conditions. However, this rulemaking concerns the addition of substances, rather than packaging gases, which are not a part of this rule.

The petitioner's data further demonstrate that such treatments result in delaying undesirable discoloration of the product for a period of time that does not exceed the product's microbiological shelf life. Fresh beef cuts and fresh lamb cuts treated with the substances mentioned above and stored at refrigerator temperature will remain wholesome for up to 21 days. Loss of the "fresh" color and marketability of beef cuts and lamb cuts occurs before the product becomes microbiologically unsafe. Some consumers are reluctant to purchase fresh beef or lamb cuts because of the change to a darker color of the product before spoilage.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) allows the use of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate on fresh pork cuts to maintain color at levels not to exceed either 500 ppm or 1.8 mg/sq inch of surface of ascorbic acid, erythorbic acid or sodium ascorbate, singly or in combination, and/or not to exceed either 250 ppm or 0.9 mg/sq inch of surface of citric acid or sodium citrate, singly or in combination. In addition, 9 CFR 318.7(c)(4) requires the use of such substances under an approved PQC program under 9 CFR 318.4(d) and (e). Section 317.8(b)(37) of the Federal meat inspection regulations (9 CFR 317.8(b)(37)) requires that when ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, are added to fresh pork cuts, there shall appear on the label of that product, in letters of the same style and type and not less than one-fourth the size of letters in the product name, contiguous to the name of the product, a statement identifying the specific approved substance(s) by its common name and the purpose for which it is added such as "Sprayed with a solution of water, ascorbic acid and citric acid to maintain color."

The Food and Drug Administration (FDA) lists ascorbic acid in 21 CFR 182.3013, erythorbic acid in 21 CFR 182.3041, and sodium ascorbate in 21 CFR 182.3731 as generally recognized as safe (GRAS) when used in accordance with good manufacturing practices for use as preservatives. FDA lists citric acid in 21 CFR 182.6033 and sodium citrate in 21 CFR 182.6751 as GRAS when used in accordance with good manufacturing practices for use as sequestrants.

Proposed Rule

On October 4, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 51581) to permit the application of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination, to the surface of fresh beef cuts or fresh lamb cuts to delay discoloration of such meat cuts. The proposed rule would allow these substances to be used, singly or in combination, at levels of not more than 500 ppm or 1.8 milligrams per square inch of product surface area for ascorbic acid, erythorbic acid or sodium ascorbate, and/or not more than 250 ppm or 0.9 milligrams per square inch of surface area for citric acid or sodium citrate to achieve the intended technical effects.

FSIS also proposed that processors who apply these substances to cuts of fresh beef and lamb be required to follow an approved PQC program as set forth in 9 CFR 318.4(d). Neither processing of such products nor distribution of such products in commerce would be permitted until such PQC programs are approved and utilized according to the requirements set forth in 9 CFR 318.4(e). All such PQC programs would cover certain critical control points, including: (1) The condition of the meat before treatment (it must be fresh or previously frozen and maintained in a wholesome condition, evidenced by time and temperature records from the point of slaughter), (2) solution formulation control, (3) single application control, (4) finished product ingredient analysis monitoring, and (5) integrity of the packaging during storage, transportation, and distribution. This would ensure that these substances applied to the surface of the meat cuts to delay discoloration would not be applied in excessive amounts: therefore,

[1] Copies of the petitions and supporting technical data are available for review in the FSIS Hearing Clerk's office.

the discoloration of the cuts would occur before the onset of microbiological spoilage.

Cuts of fresh pork treated with ascorbic acid, erythorbic acid, sodium ascorbate, sodium citrate, and citric acid are currently required by 9 CFR 317.8(b)(37) to be labeled with a statement identifying these substances by their common and usual name and the purpose for which they are used; e.g., "Sprayed with a solution of water, ascorbic acid and citric acid to maintain color." This statement is required to be shown on the label in a prominent manner, contiguous to the product name, in letters of the same style and type and not less than one-fourth the size of the largest letter in the product name. After reassessing its overall policy regarding prominent labeling, FSIS set forth in the proposed rule that 9 CFR 317.8(b)(37) requiring qualifying statements on fresh pork cuts would be removed and reserved.

In addition, on November 4, 1992, the Agency published in the **Federal Register** a proposed rule (57 FR 52596) to eliminate those prominent disclosure requirements for product name qualifiers where the inclusion of a substance does not significantly alter the basic identity of the finished product or where the prominently disclosed information can be found in the ingredients statement. Such rule, in part, would eliminate product name qualifiers on fresh pork cuts treated with ascorbic acid, erythorbic acid, sodium ascorbate, sodium citrate, and citric acid. FSIS is considering the publication of a final rule on prominent labeling which would become effective in the near future. FSIS believes that such action would not deprive consumers of informative labeling because all substances used in the preparation of a product are required to be listed in the ingredients statement (9 CFR 317.2(f)(1)). However, as indicated in the proposed rule on ascorbic acid and other substances, FSIS is removing and reserving 9 CFR 318.7(b)(37). Therefore, as of the effective date of this final rule, qualifying statements, which identify the presence of ascorbic acid, erythorbic acid, sodium ascorbate, sodium citrate, and citric acid on fresh port cuts, are no longer required on the labeling of fresh pork cuts which contain such substances.

FSIS also stated in the preamble to the proposed rule that 9 CFR 317.8(b)(6) prohibits the word "fresh" on labels to designate product which has been salted for preservation. Therefore, FSIS would not allow the word "fresh" to be used on the labels of products treated with ascorbic acid, erythorbic acid, sodium ascorbate, sodium citrate, and citric acid.

FSIS proposed to amend the table of approved substances in 9 CFR 318.7 by revising the current entry for the Class of substance titled "Miscellaneous," under the Substance column for "Ascorbic, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate" to include such use on fresh beef and lamb cuts, along with the existing use on fresh pork cuts. In addition, FSIS proposed that the entry be revised to clarify the permitted use and levels of such substances on fresh pork cuts. The Agency also proposed to revise the purpose of these substances from "to maintain color" to "to delay discoloration" for clarification.

Discussion of Comments

FSIS received three comments in response to the proposed rule. The comments were submitted by a consultant and two food manufacturers. The commenters fully supported the proposed rule.

After review of the comments and other information, the Administrator has determined that the application of ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate to the surface of fresh beef and lamb cuts, as permitted in the rule, will not render the products in which they are used adulterated or misbranded or otherwise not in compliance with the Federal Meat Inspection Act. The Administrator has further determined that these substances will be functional and suitable for the products and will be permitted for use on the surface of fresh beef and lamb cuts as the lowest level necessary to accomplish the stated technical effect.

List of Subjects

9 CFR Part 317

Meat inspection, Food labeling.

9 CFR Part 318

Meat inspection, Food additives.

Final Rule

For reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 318 of the Federal meat inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.8 is amended by removing and reserving paragraph (b)(37).

PART 318—ENTRY OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. In the table in § 318.7(c)(4) under the Class of substance "Miscellaneous," the entry under the Substance "Ascorbic Acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate" is revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Product	Amount
•	•	•	•	• • •
Miscellaneous	Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination, under an approved partial quality control (PQC) program (9 CFR 318.4 (d) & (e)).	To delay discoloration.	Fresh beef cuts, fresh lamb cuts, and fresh pork cuts.	Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041), or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751).

Class of substance	Substance	Purpose	Product	Amount		
.	.	.	.	.	.	.

Done at Washington, DC, on: March 11, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 94–6242 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AE83

Restoration of the Generic Exemption From Annual Fees for Nonprofit Educational Institutions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: On September 29, 1993 (58 FR 50859), the Nuclear Regulatory Commission ("NRC" or "Commission") published a proposed rule granting a petition for rulemaking submitted by a number of colleges and universities possessing NRC licenses. The petition requested that the NRC reinstate the exemption from annual fees previously given nonprofit educational licensees. The proposed rule requested public comment solely on that issue. The exemption had been eliminated in a final rule published in the **Federal Register** on July 20, 1993. After careful consideration, the Commission has decided to reinstate the annual fee exemption for nonprofit educational institutions.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–1974.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to comments.
III. Final action—changes included in final rule.
IV. Section-by-section analysis.
V Environmental impact: categorical exclusion.
VI. Paperwork reduction act statement.
VII. Regulatory analysis.
VIII. Regulatory flexibility certification.
IX. Backfit analysis.

I. Background

Soon after publishing its final rule establishing the NRC's FY 1993 fee schedules (58 FR 38666; July 20, 1993), which included for the first time annual fees for previously exempt nonprofit educational institutions [1], the Commission received a petition for reconsideration of that rule. The petition, filed by a number of colleges and universities affected by the policy change, requested that the NRC reconsider its decision to charge annual fees to such institutions. The petition asserted that the externalized benefits and public good resulting from use of university research reactors in various fields of education would be lost if these fees were imposed upon college and university licensees. (See Petition for Reconsideration of Final Rule (July 30, 1993) (appended to the Proposed Rule for the Restoration of the Annual Fee Exemption to Nonprofit Educational Institutions, 58 FR 50859; September 29, 1993.)) The petition pointed to research in such fields as nuclear safety, medicine, archaeology, food science and textiles, education of the public in nuclear matters, and to various benefits of education.

The petition relied upon a letter from economist Alfred Kahn to counsel for Cornell University, a petition signatory. The Kahn letter referred to "pure knowledge," especially nonproprietary university research made accessible to the public free of charge, as "the archetypical 'public good,' in economic terms, the essential characteristic of which is that, once produced, it can be made available more and more widely at zero economic cost."

While considering whether to grant the petition for reconsideration, or in the alternative to grant some nonprofit educational institutions individual "public interest" exemptions from the new annual fees, the NRC sent staff members to a number of colleges and universities to learn more about the use of nuclear materials in educational programs and the benefits that resulted from those materials' use. The Commission concluded, on the basis of these visits and the arguments made in the petition for reconsideration, that it should propose to retract the new annual fees ($62,100 per research reactor license; lesser amounts for each materials license). Accordingly, on September 29, 1993 (58 FR 50859), the Commission published in the **Federal Register** a notice granting the petition and proposing to restore the annual fee exemption for nonprofit educational institutions.

The Commission received over 200 comments on the proposed rule, with the vast majority in favor of restoring the annual fee exemption. (This number includes comments on the educational exemption provided to the Commission in response to its Congressionally-mandated study of overall agency fee policy, see 58 FR 21116; April 14, 1993). After careful review of the comments, and after studying the views of a professional economist engaged to assist in analyzing the comments (see note 2 infra), the Commission has decided to make final its proposed reinstatement of the exemption from annual fees for nonprofit educational institutions.

As the Commission made clear in the proposed rule, it will not charge other licensees retroactively for the monetary shortfall produced by the Commission's change in policy on the educational exemption. Therefore, for FY 1993 no licensees will be charged additional fees to compensate for the restored exemption. In addition, because the educational exemption is being restored for FYs 1991–92, there will be no refunds to power reactor licensees who paid increased annual fees in those years due to the exemption of nonprofit educational institutions (a point also detailed in the proposed rule).

II. Responses to Comments

Although the comment period expired on October 29, 1993, the NRC reviewed all comments received prior to November 13, 1993. The Commission received over 200 comments in response to the proposed rule. Copies of all comment letters received are available for inspection in the NRC Public Document Room ("PDR"), 2120 L Street, NW. (Lower Level), Washington, DC 20555.

1. *Comment.* Most commenters were educational institutions, who argued that their educational and research activities with licensed nuclear materials will have to be severely curtailed or halted altogether if the

[1] The NRC's elimination of the exemption was prompted in part by a court decision questioning the exemption's lawfulness. *Allied-Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

annual fee exemption is not restored. They claimed that the annual fees would, in many cases, entirely subsume the budget for operation of the research reactor or use of nuclear material. Many commenters also stated that there was no possibility of obtaining more money for their operating budgets, and that the inevitable result of annual fees would therefore be an across-the-board reduction in nuclear-related studies.

Response. The Commission is aware of the effect annual fees could have on nonprofit educational institutions, not only from their comments but also from its own site visits. The Commission believes that much of the work done by these institutions with nuclear materials, in both nuclear and non-nuclear fields of study, is extremely valuable and should not be impeded or halted due to the new annual fees. Further, for reasons discussed later, subsidies for such activities are both necessary and desirable.

2. *Comment.* A number of comments received from nonprofit educational institutions stated that their work produced externalized benefits to society, in the words used in the DC Circuit's Allied-Signal decision, "not captured in tuition or other market prices." Among the benefits cited were research in fields such as nuclear safety, neutron activation analysis, neutron radiography, archaeology, art history and biology. Much of this research, some commenters claimed, was basic research done to advance science, not for profit or commercial use (although such an outcome might occur). One commenter noted that it does not accept research grants and contracts without making them public, and publishes virtually all its findings. The commenters asserted that this research, if halted due to new fees, would not likely be duplicated or replaced by the private sector.

Response. The Commission agrees with commenters that much of the work done with nuclear materials in academia, if halted, would simply not be continued in the private sector. In particular, the Commission was impressed by the arguments made regarding basic research. The Commission believes that such research, done in the spirit of academic inquiry, is an integral part of the programs run by educational institutions with NRC licenses.

The Commission agrees with commenters' arguments that educational institutions' commitment to basic research is largely unique, as it is not driven by the need to develop commercial uses. While there is undoubtedly much basic research performed outside educational institutions, the Commission does not believe that it is an adequate substitute for academic research.

In the Commission's view, a major benefit resulting from educational institutions' use of nuclear reactors and materials is the production of new knowledge through research, which the Commission would term a "public good," as defined in economic theory.[2] Two characteristics of a public good like pure knowledge are its nondepletability and nonexcludability. That is, one person's acquisition of knowledge does not reduce the amount available to others; further, it is not efficient—and often is impossible, as a practical matter—to prevent others from acquiring it. These characteristics make it difficult to recoup the costs of producing pure knowledge. Because the value of a public good may be very great, but the costs of producing it impossible to recapture, it may be necessary to subsidize that good's production for production to occur at all. In the Commission's view, that is true of the pure knowledge produced by nonprofit educational institutions, and the Commission has therefore decided to exempt them from fees.

Restoring the educational exemption will have additional beneficial consequences. Colleges and universities not only produce research results and pure knowledge (what we have termed "public goods"), but also other benefits of great value to both the nuclear community and society as a whole. For instance, many of the students trained on research reactors will likely become the next generation of nuclear reactor operators and engineers. The knowledge they gain from their education in these fields will allow them to operate reactors and other nuclear facilities safely and effectively. Knowledge attained through education will also be of value to those companies or Government agencies, including the armed forces, who hire these students to perform nuclear-related work, which often cannot be done without extensive education in the area.

3. *Comment.* A number of commenters argued, for a variety of reasons, that the educational exemption should not be restored. Some commenters stated that each licensee should pay its fair share. Others believed that for-profit entities benefit the public as well and should not be penalized because they generate profits. Certain nonprofit commenters and medical licensees argued that if the exemption were retained, it should be expanded to include nonprofit institutions and medical licensees that are not now exempted from fees. A few commenters stated that in certain fields of study, schools and university hospitals compete with private research laboratories and nonprofit hospitals, respectively, and thus would receive an unfair subsidy from an annual fee exemption. One commenter went on to argue that such a subsidy amounted to an unlawful promotion of atomic energy by the NRC. Another commenter requested that the proposed rule be changed to exempt it from the annual fee, noting that it was the only Federally-owned research reactor not so exempted, due to the level of its power output.

A number of other commenters supported restoration of the educational exemption, but believed it should be funded in a different manner. The two alternatives most popular with commenters were funding the exemption out of general revenues, which would mean removing it from the fee base, or funding it via a surcharge on all licensees, not just power reactor licensees. Those commenters favoring removal of the educational exemption from the fee base acknowledged that such an outcome would require Congressional legislation.

Response. After deliberating over whether the educational exemption should be restored, the Commission believes the wisest policy decision is to exempt nonprofit educational licensees once again. Since the Commission published its final rule in July 1993 abolishing the educational exemption, it has devoted an extraordinary amount of time and attention to the question of whether to reverse that decision. It has reviewed hundreds of letters on the issue, fielded numerous phone comments and inquiries, and sent staff members to study the issue by visiting college and university licensees. In the Commission's view, the evidence taken as a whole leans strongly in favor of restoring that exemption, for the reasons described above: that many educational licensees would be forced to halt their research and educational activities due to lack of funds if NRC fee subsidies were withdrawn; that those activities would often not be continued in the private sector, resulting in a serious loss of basic research in numerous areas of study; and that the public good inherent

[2] The Commission's analysis of this concept was aided by a memorandum prepared by an NRC consultant on the issues of external benefits and public goods. The memorandum has been placed in the NRC PDR and may be examined by any interested member of the public. See Memorandum to NRC Staff from Stephen J.K. Walters, Professor of Economics, Loyola College (Md.), dated January 4, 1994.

in the production of knowledge made available to all is worthy of Government support. Such support would not therefore constitute an unlawful subsidy or promotion of atomic energy.

The Commission has received anecdotal information from some commenters indicating that certain nonprofit research institutions (which do not fall within the definition of nonprofit educational institution as provided in 10 CFR 171.5) and Federally-owned research reactors should receive the same treatment as educational institutions.[3] However, the Commission does not believe it has sufficient information on which to base a generic exemption for such research institutions and reactors. Because the proposed rule did not suggest that the educational exemption be expanded in this way, the Commission received a smaller number of comments than are needed to make an informed decision on this issue. For that reason, the current policy of charging such entities annual and user fees remains in effect. Those nonprofit research institutions and Federally-owned research reactors who believe that they qualify for an exemption from the annual fee based on the public good concept are, of course, free to request one from the Commission. See 10 CFR 171.11. Depending on the outcome of any such requests, the Commission may need to revisit the question of whether to make nonprofit research institutions generically exempt from fees in a future rulemaking.

The Commission also believes that medical licensees should continue to pay annual fees. This is consistent with past Commission practice. Contrary to some commenters' assertions, the Commission's fee policy does not result in a competitive advantage for university medical licensees over nonprofit hospitals. Both are charged fees for licenses authorizing medical treatment using licensed nuclear material.[4] The Commission does not believe that medical licensees are analogous to nonprofit educational institutions. Their function is not pure research and education, but primarily to provide services to paying customers.

While the Commission does not dispute that medicine provides significant benefits to patients, such treatment is both depletable and excludable. The benefits of medicine are therefore a private rather than a public good. By contrast, an educational institution generally disseminates the results of its basic research to all who want it, even going beyond the confines of the university itself, without receiving compensation from any of those benefitting from that knowledge. The key to nonprofit educational licensees' singular treatment is not merely that they provide valuable social benefits; rather, it is the existence of certain market failure considerations (discussed above) that apply to producers of pure knowledge through basic research, but not to medical practitioners. The distinction between educational and medical licensees is addressed at greater length in the Commission's **Federal Register** notice discussing the petition filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine seeking a fee exemption for medical licensees (published in the Proposed Rule Section of this issue of the **Federal Register**).

The Commission does not plan to adopt the suggestion of some commenters that most or all other licensees should contribute something toward the costs of exempting nonprofit educational licensees. The agency, in any event, is not recouping these costs for FY 1993, as it is legally precluded from retroactively collecting those costs from licensees. The Commission in its Energy Policy Act-mandated review of fee policy has concluded that the costs of exempting nonprofit educational institutions should be excluded from the fee base through legislation modifying OBRA–90. In its study, the Commission concluded that if legislation to accomplish this is not enacted, these costs should continue to be recovered through fees assessed to power reactor licensees.

4. *Comment.* A number of commenters have argued that the Atomic Energy Act of 1954, as amended ("AEA"), mandates NRC support of education, and that accordingly the NRC must restore the educational exemption to conform to that mandate. In this regard, some commenters made the point that their facilities were originally funded or provided to them by the AEC or other Federal agencies.

Response. The Commission acknowledges its longstanding policy of supporting education, and believes that such support has been vital to the success of nuclear and nuclear-related education. That notwithstanding, the Commission does not view its education policy, or the exhortatory language of the AEA, as mandating that colleges and universities be exempt from NRC fees. The Commission has decided to restore the fee exemption as a policy matter, not a matter of legal compulsion.

5. *Comment.* Many educational institutions commented that it made little sense to charge them annual fees when much of their nuclear-education funding was derived from Federal agencies such as the Department of Energy and the National Science Foundation. Another commenter argued that State agencies were nonprofit in nature and should be exempted in the same manner as colleges and universities.

Response. The Commission for reasons discussed above decided to reinstate the exemption for nonprofit educational institutions. The fact that a number of these institutions received funding from Federal agencies was not a factor in the final decision. The Commission's decision was based primarily on who received the benefits of the services rendered, rather than who funded the underlying activities.

The Commission also notes that it charges fees to other governmental licensees, including both Federal and State agencies. (Virtually no Federal agencies are charged user fees under part 170 due to a prohibition against such fees in the Independent Offices Appropriation Act, see 31 U.S.C. 9701.) It finds no basis for changing its historical policy with respect to these entities in this rulemaking. This issue is addressed in the Commission's Report to Congress on fee policy, cited earlier in this rulemaking.

6. *Comment.* Some educational commenters stated that they should fall under the category of small entities, and asked whether the definition of "small entity" could be broadened to include a greater number of institutions than currently fall within the definition.

Response. The Commission intends to re-examine the size standards it uses to define small entities within the context of compliance with the Regulatory Flexibility Act. The Commission will conduct this review within the context of the proposed revisions of small business size standards proposed by the Small Business Administration ("SBA") (58 FR 46573; September 2, 1993). The Commission will not complete its review until the SBA promulgates a final rule containing the revised size standards. Until these activities are

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[3] Most Federally-owned research reactors were exempted from fees by Congress in earlier legislation. See section 6101(c)(4) of OBRA–90, 42 U.S.C. 2214(c), as amended by the Energy Policy Act of 1992. However, the reactor in question operates at a power level greater than that specified in the legislation for exempt facilities, and therefore does not meet the definition of a "research reactor" for purposes of the statutory exemption.

[4] Similarly, materials licenses held by nonprofit educational institutions which authorize remunerated services or services performed under a Government contract are also subject to fees. See 10 CFR 170.11(a)(4) and 171.11(a)(1) (1993).

completed, it would be premature to address this comment.

III. Final Action—Changes Included in Final Rule

The Commission has made only one change to its FY 1993 final rule establishing annual and user fee schedules for that fiscal year. As it proposed, the Commission has amended § 171.11 to exempt nonprofit educational institutions from annual fees. The new exemption provision is identical to that contained in the FY 1991 and 1992 final fee rules. Because the final fee schedule for FY 1993 has already been issued, the Commission will not be charging any other licensees for the fees that would have been paid for FY 1993 by the newly exempt group of licensees. For that reason, no new fee schedule is being published at this time. A revised NRC fee schedule incorporating these changes and billing other licensees for the FY 1994 exemption's costs will be included in the FY 1994 proposed fee rule.

Because the Commission has decided in this final rule to reinstate the annual fee exemption for nonprofit educational institutions, the NRC will cancel the FY 1993 annual fee invoices for those licensed activities exempt under this final rule. Accordingly, refunds will be made to those licensees who paid the FY 1993 annual fees and are now exempt under this final rule. Additionally, no further action will be taken on nonprofit educational institutions' exemption requests, which had been held in abeyance pending this final rule.

Some nonprofit educational institutions filed applications requesting termination, downgraded, possession-only or combined licenses to avoid the FY 1993 annual fee. If those applications are still pending, the licensees should notify the NRC within 30 calendar days from the effective date of this rule if they wish to rescind their applications due to the exemption's reinstatement. Absent such notification, the NRC will process the applications as filed. There are instances where the NRC has already completed final action on some of the applications in question. The affected nonprofit educational institutions are advised that if they wish to reinstate their previous license authority, they must file an application to do so with the NRC. Such applications for reinstatement of previous license authority are exempted from fees under 10 CFR 170.11(a)(4) as appropriate.

IV. Section-by-Section Analysis

Section 171.11 Exemptions

Paragraph (a) of this section is amended by adding nonprofit educational institutions, as defined in § 171.5, to the list of those entities exempted from annual fees by the Commission. A discussion of this change in fee policy is found in Sections I and II of this final rule.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 171, on November 5, 1990 the Congress passed Public Law No. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). OBRA–90, as amended, requires that for FYs 1991 through 1998 approximately 100 percent of the NRC's budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, on July 20, 1993 (58 FR 38666), the NRC, in accordance with § 171.13, published in the **Federal Register** the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. Consistent with OBRA–90 and its Conference Committee Report, the Commission has ensured that—

(1) The annual fees are based on the Commission's FY 1993 budget of $540 million less the amounts collected from part 170 fees and the funds directly appropriated from the Nuclear Waste Fund to cover the NRC's high level waste program;

(2) The annual fees, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) Annual fees are assessed to those licensees which the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors, the NRC continues to consider the various reactor vendors, the types of containment, and the location of those reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (DC Cir. 1988), *cert denied*, 490 U.S. 1045 (1989).

10 CFR part 171, which established fees based on the FY 1989 budget, was also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S.Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the DC Circuit Court of Appeals in *Allied-Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule as adopted does not have a significant economic impact on a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, and approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC hereby adopts the following amendments to 10 CFR part 171.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

1. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2214 note).

2. In § 171.11, paragraph (a) is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for:

(1) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(i) Human use;

(ii) Remunerated services to other persons;

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or

(iv) Activities performed under a Government contract.

(2) Federally-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

Dated at Rockville, MD this 11th day of March, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94–6233 Filed 3–16–94; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–33573A]

Regional Office Reorganization; Correction

ACTION: Correction to final rule amendments.

SUMMARY: This document contains corrections to final rule amendments which were published February 9, 1994 [59 FR 5942]. The amendments pertain to the organization and operation of the Commission's regional offices.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: James Clarkson, Director, Regional Office Operations, (202) 272–3090; Anne Sullivan, Office of General Counsel, (202) 272–7525.

SUPPLEMENTARY INFORMATION: The regulations which are the subject of these corrections are contained in 17 CFR 200 and were amended by release effective February 9, 1994.

Need for Correction

As published, certain addresses contained in the final rule amendments are incorrect or incomplete.

Correction of Publication

Accordingly, the publication on February 9, 1994 of the final rule amendments in Commission Release No. 34–33573 which were the subject of FR Doc. No. 94–2826 is corrected as follows:

§ 200.11 [Corrected]

1. On page 5943, in the first column, in Section 200.11(b), line twelve, remove the words "Sixth Floor," as they appear after "73 Tremont Street".

2. On page 5943, in the first column, in Section 200.11(b), line 28, add "Minnesota," between "Michigan," and "Missouri,".

3. On page 5943, in the first column, in Section 200.11(b), beginning in line 30, revise the phrase "Administrator, Northwestern Atrium Center," to read "Director,".

4. On page 5943, in the first column, in Section 200.11(b), line 30, the zip code "60611" is corrected to read "60661".

5. On page 5943, in the first column, in Section 200.11(b), line 37, remove the word "Administrator" and add, in its place, the word "Director".

6. On page 5943, in the second column, in Section 200.11(b), line eleven, add the words "Suite 1100," before the words "San Francisco,".

§ 200.80 [Corrected]

7. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line one, add the number "3475" before the words "Lenox Road,".

8. On page 5944, in the third column, in Section 200.80(c)(1)(iii), lines four and five, remove the words "Northwestern Atrium Center,".

9. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line six, the zip code "60611" is corrected to read "60661".

10. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line 23, add the words "Suite 1100," before the words "San Francisco,".

§ 200.303 [Corrected]

11. On page 5945, in the first column, in Section 200.303(a)(2), line 15, add the number "3475" before the words "Lenox Road,".

12. On page 5945, in the first column, in Section 200.303(a)(2), beginning on line 18, remove the words "Northwestern Atrium Center,".

13. On page 5945, in the first column, in Section 200.303(a)(2), line 20, the zip code "60611" is corrected to read "60661".

14. On page 5945, in the first column, in Section 200.303(a)(2), line 37, insert the words "Suite 1100," before the words "San Francisco,".

Dated: March 11, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6176 Filed 3–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD85.

Supplemental Security Income for the Aged, Blind, and Disabled; Replacement of Lost, Damaged, or Stolen Excluded Resources (Hurricane Andrew)

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules with request for comments.

SUMMARY: Some supplemental security income (SSI) recipients who were victims of Hurricane Andrew in south Florida have not been able to replace or repair their damaged homes due to circumstances beyond their control. This means that some SSI recipients will have resources (insurance money) in amounts that will disqualify them for SSI benefits if held for periods exceeding the maximum 18-month period provided in regulations at § 416.1232. Since Hurricane Andrew occurred in August 1992, some SSI recipients could become ineligible as early as March 1994. We are codifying in regulations, interim final rules which provide additional time for victims of Hurricane Andrew to make arrangements to effect repair or replacement of excluded property without interruption of their SSI benefits.

DATES: Effective Date: This rule is effective March 17, 1994.

Comments

To be sure that your comments are considered, we must receive them no later than May 16, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Alternately, you may submit comments by telefax to (410) 966–0869.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: In August 1992, Hurricane Andrew devastated south Florida causing damage estimated in excess of $18 billion. According to published reports, of the 47,000 homes destroyed, 32,000 are still uninhabitable. Only 10 percent of 140,000 damaged homes have been rebuilt or repaired because the number of contractors available to rebuild homes is steadily decreasing.

We estimate that approximately 450 SSI recipients, who were victims of Hurricane Andrew, have received payments from private insurance companies for the repair or replacement of their property, but because of the extent of the devastation, they have not yet been able to repair or replace their homes and property.

The regulations at § 416.1205(c) provide that SSI recipients can have no more than $2,000 in countable resources and SSI couples can have no more than $3,000. The regulations at § 416.1237 provide that assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States or comparable assistance received from a State or local government, or from a disaster assistance organization, is excluded permanently under § 416.1210 in determining countable resources.

The regulations at § 416.1232 complement the disaster assistance exclusion by providing that cash or in-kind items for the repair or replacement of lost, stolen, or damaged excluded resources are not treated as resources for 9 months, plus one extension for a reasonable period up to an additional 9 months for good cause if circumstances do not permit repair or replacement within the initial 9-month period and the individual intends to use the funds for repair or replacement.

Excluded resources generally include the individual's home, household goods and personal effects, and the automobile, as are described in §§ 416.1212, 416.1216 and 416.1218 respectively.

Private insurance payments do not qualify as disaster assistance and, therefore, cannot be permanently excluded. For some of these SSI recipients, the maximum period of 18 months during which monies to repair or replace excluded resources are not treated as resources is about to expire. Because of the vast devastation caused by Hurricane Andrew, these individuals have not been able to rebuild or repair their homes. We estimate that, as early as March 1994, some of these individuals will begin to lose SSI eligibility.

We propose interim final regulations to amend § 416.1232(b) for victims of Hurricane Andrew only, to extend the maximum 18-month period during which cash or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource is not treated as a resource:

- For an additional 12 months as long as the individual intends to repair or replace the property and good cause still exists for not yet having done so.

Existing regulations for the exclusion of monies to repair or replace an excluded resource have been adequate to cover past situations, including other disasters. However, the damage caused by Hurricane Andrew was so extensive and destroyed so much of the existing infrastructure (e.g., governmental and public services and utilities, construction and repair industry and equipment, etc.) that the current maximum 18-month period, in this context, is not adequate. Many SSI recipients hurt by Hurricane Andrew who have received insurance settlements have not been able to rebuild or repair their homes or even contract for those services. Through this regulatory change, we are providing additional time for victims of this extraordinary disaster to make arrangements to effect repair or replacement without interruption in their SSI benefits.

During the extension period, we will make periodic contacts with each individual to determine whether the individual still intends to repair or replace the property and, if so, whether good cause for not yet having done so still exists. We will obtain evidence to make these determinations.

Regulatory Procedures

We are publishing these new SSI resource counting rules as interim final rules with a request for comments instead of as proposed rules. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. After due consideration, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking on

these regulations because such procedures would be contrary to the public interest. The process of notice and comment rulemaking generally requires many months before culminating in a final rule. If SSI recipients who are victims of Hurricane Andrew do not receive the beneficial effect of this rule by March 1994, some will lose their SSI eligibility. Since it is in the public interest that these individuals continue to receive SSI benefits while they make arrangements to repair or replace their excluded resources that have been damaged or destroyed by Hurricane Andrew, we believe that the public interest warrants immediate promulgation of these rules. Accordingly, promulgation of these rules pursuant to notice and comment rulemaking would be contrary to the public interest and thus may be dispensed with pursuant to 5 U.S.C. 553(b)(B). However, we are asking the public to comment on these interim final rules and will determine if these regulations need revision on consideration of any comments received.

Executive Order 12866

These interim final regulations do not meet the criteria for a significant regulatory action under section 3(f) of E.O. 12866 and, thus, are not subject to Office of Management and Budget (OMB) review under E.O. 12866.

Paperwork Reduction Act of 1980

These interim final regulations do not contain reporting requirements. However, they extend the initial regulation that did. Inadvertently, we did not publish a narrative for that regulation concerning the need for clearance by the Office of Management and Budget (OMB). We would normally seek approval of the reporting requirements contained in the initial regulation (under the Paperwork Reduction Act) from OMB. We are not doing so in this situation because we already have their clearance to collect this kind of information using the SSA–795 (Statement of Claimant or Other Person), OMB Control Number 0960–0045.

We expect that approximately 450 SSI recipients will be involved, and that it will take them an estimated five minutes each to provide this information. The annual burden for this reporting requirement is estimated at 37.5 hours. The respondents are SSI recipients who have excess countable resources as a result of the damage caused by Hurricane Andrew.

Regulatory Flexibility Act

We certify that these interim final regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplementary Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplementary Security Income.

Dated: February 16, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: March 10, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1232 is amended by revising paragraph (b) to read as follows:

§ 416.1232 Replacement of lost, damaged, or stolen excluded resources.

* * * * *

(b) The initial 9-month time period will be extended for a reasonable period up to an additional 9 months where we find the individual had good cause for not replacing or repairing the resource. An individual will be found to have good cause when circumstances beyond his or her control prevented the repair or replacement or the contracting for the repair or replacement of the resource. If good cause is found for an individual, any unused cash (and interest) is counted as a resource beginning with the month after the good cause extension period expires. *Exception: For victims of Hurricane Andrew only,* the extension period for good cause may be extended for up to an additional 12 months beyond the 9-month extension when we find that the individual had good cause for not replacing or repairing an excluded resource within the 9-month extension.

* * * * *

[FR Doc. 94–6158 Filed 3–16–94; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 442

[Docket No. 93N–0431]

Antibiotic Drugs; Cefmetazole and Cefmetazole Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new bulk form of cefmetazole and for its use in a new dosage form of cefmetazole sodium, cefmetazole sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective April 18, 1994; written comments, notice of participation, and requests for a hearing by April 18, 1994; data, information, and analyses to justify a hearing by May 16, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of (1) a new bulk form of cefmetazole, and (2) for its use in a new dosage form of cefmetazole sodium, cefmetazole sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 442 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a

type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective April 18, 1994. However, interested persons may, on or before April 18, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before April 18, 1994, a written notice of participation and request for a hearing, and (2) on or before May 16, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.69 is added to subpart A to read as follows:

§ 442.69 Cefmetazole.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefmetazole is (6*R*,7*S*)-7-[2-[(cyanomethyl)thio]acetamido]-7-methoxy-3-[[(1-methyl-1*H*-tetrazol-5-yl)thio]methyl]-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid. It is so purified and dried that:

(i) Its potency is not less than 970 micrograms of cefmetazole activity per milligram.

(ii) Its moisture content is not more than 0.5 percent.

(iii) It gives a positive identity test for cefmetazole.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.70a(b)(1).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Identity.* Proceed as directed in § 436.211 of this chapter using a mineral oil mull prepared as described in paragraph (b)(2) of that section.

3. New § 442.270 is added to subpart C to read as follows:

§ 442.270 Cefmetazole injectable dosage forms.

4. New § 442.270b is added to subpart C to read as follows:

§ 442.270b Cefmetazole sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefmetazole sodium injection is a frozen, aqueous, iso-osmotic solution of cefmetazole and sodium citrate. It contains one or more suitable and harmless buffer substances and a tonicity adjusting agent. Each milliliter contains cefmetazole sodium equivalent to 20 milligrams or 40 milligrams of cefmetazole per milliliter. Its cefmetazole content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefmetazole that it is represented to contain. It is sterile. It contains not more than 0.2 endotoxin units per milligram. Its pH is not less than 4.2 and not more than 6.2. It passes the identity test. The cefmetazole used conforms to the standards prescribed by § 442.69(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefmetazole used in making the batch for potency, moisture, and identity.

(B) The batch for potency, sterility, bacterial endotoxins, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefmetazole used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 12 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Cefmetazole potency.* Proceed as directed in § 442.70a(b)(1), except prepare the sample solution and calculate the cefmetazole content as follows:

(i) *Preparation of sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured portion from each container

immediately after thawing and reaching room temperature and dilute with mobile phase to obtain a solution containing 500 micrograms of cefmetazole per milliliter (estimated). Prepare the sample solution just prior to its introduction into the chromatograph.

(ii) *Calculation.* Calculate the milligrams of cefmetazole per milliliter of sample as follows:

$$\text{Milligrams of cefmetazole per milliliter} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:

A_U = Area of the cefmetazole peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the cefmetazole peak in the chromatogram of the cefmetazole working standard;

P_S = Cefmetazole activity in the cefmetazole working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Bacterial endotoxins.* Proceed as directed in the United States Pharmacopeia bacterial endotoxins test.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefmetazole working standard.

Dated: March 9, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaulation and Research.

[FR Doc. 94–6224 Filed 3–16–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Hoechst-Roussel Agri-Vet Co. The ANADA provides for making a Type A medicated article containing salinomycin used to make a Type C medicated broiler feed for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., P.O. Box 2500, Somerville, NJ 08876–1258, filed ANADA 200–075 which provides for making a 30 grams (g) per pound salinomycin Type A medicated article used to make a Type C medicated broiler feed containing 40 to 60 g of salinomycin per ton. The feed is used for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati, E. necatrix,* and *E. tenella* in broiler chickens.

ANADA 200–075 for Hoechst-Roussel's salinomycin Type A article is as a generic copy of Agri-Bio Corp.'s Bio-Cox (salinomycin Type A article) in a new animal drug application (NADA 128–686). The ANADA is approved as of February 23, 1994, and the regulations are amended in 21 CFR 558.550(a) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.550 is amended by revising paragraph (a) to read as follows:

§ 558.550 Salinomycin.

(a) *Approvals.* Type A medicated article with 30 grams of activity per pound from salinomycin sodium biomass: To 012799 in § 510.600(c) of this chapter for use as in paragraph (b)(1)(i) of this section; to 042835 in § 510.600(c) of this chapter for use as in paragraph (b) of this section.

* * * * *

Dated: March 10, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–6225 Filed 3–16–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8533]

RIN 1545–AS58

Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. These regulations affect all persons that file returns of income tax and provide guidance necessary to comply with these changes. These regulations are necessary to effect changes to the accuracy-related penalty made by the Omnibus Budget Reconciliation Act of 1993.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations set forth certain changes made to the accuracy-related penalty in section 6662 of the Internal Revenue Code (Code) by section 13251 of the Omnibus Budget

Reconciliation Act of 1993 (OBRA 1993). These changes eliminated the disclosure exception for the negligence penalty (section 6662(b)(1) of the Code) and raised the disclosure standard for purposes of the penalties for disregarding rules or regulations (section 6662(b)(1) of the Code) and a substantial understatement of income tax (section 6662(b)(2) of the Code) from "not frivolous" to "reasonable basis." See section 13251 of OBRA 1993 and H. Rep. No. 213, 103rd Cong., 1st Sess. 669 (1993) (the Conference Report).

The legislative history to OBRA 1993 indicates that this "reasonable basis" standard is a relatively high standard of tax reporting that is significantly higher than the "not frivolous" disclosure standard previously applicable to taxpayers under section 6662 of the Code and currently applicable to preparers under section 6694 of the Code. See Conference Report, at p.669. A position is not frivolous if it is not "patently improper." See § 1.6694–2(c)(2) of the Income Tax Regulations and current § 1.6662–3(b)(3). The legislative history to OBRA 1993 also provides that the reasonable basis standard is not satisfied by a position that is merely arguable or merely a colorable claim. See Conference Report, at p.669.

In addition to adopting the new reasonable basis standard as the standard that a disclosed return position must satisfy to avoid the disregard and substantial understatement penalties, Congress adopted the new reasonable basis standard as the standard that a return position must satisfy to avoid the negligence penalty. See Conference Report at p.669.

Treasury requests comments on how the new reasonable basis standard should be defined for purposes of the negligence, disregard, and substantial understatement penalties.

Explanation of Changes

Section 1.6662–3(a) of the regulations generally provides that if any portion of an underpayment, as defined in section 6664(a) of the Code and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. Section 1.6662–3(b)(1) defines "negligence" to include any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. Currently, § 1.6662–3(c) generally provides that no penalty under section 6662(b)(1) may be imposed on any portion of any underpayment that is attributable to negligence or a position contrary to a rule or regulation if the position is adequately disclosed and is not frivolous, if the requirements of that section are met.

Section 1.6662–4(a) of the regulations generally provides that if any portion of an underpayment of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Section 1.6662–4(a) further provides that, except in the case of any item attributable to a tax shelter, an understatement is reduced by the portion of the understatement that is attributable to positions for which there was substantial authority or adequate disclosure. Currently, under § 1.6662–4(e)(2), this adequate disclosure exception will not apply if the position on the return is frivolous.

As a result of OBRA 1993, the minimum standard that a disclosed return position must satisfy to avoid either the penalty for disregarding rules or regulations or for a substantial understatement of income tax has been raised from "not frivolous" to "reasonable basis." In addition, there is no longer a disclosure exception for the negligence penalty and, to avoid that penalty, the return position generally must satisfy the new reasonable basis standard.

These rules generally apply to returns that are due (without regard to extensions for filing) after December 31, 1993. However, the rules relating to changes to the penalties for negligence or disregard of rules or regulations will not apply to returns, including qualified amended returns, filed on or before March 14, 1994.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6662–0 is amended by revising the introductory language and adding an entry for § 1.6662–7T to read as follows:

§ 1.6662–0 Table of contents.

This section lists the captions that appear in §§ 1.6662–1 through 1.6662–7T.

* * * * *

§ 1.6662–7T Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty (temporary).

(a) In general.
(1) Scope.
(2) Effective date.
(b) No disclosure exception for negligence penalty.
(c) Disclosure standard for other penalties is reasonable basis.
(d) Definition of reasonable basis.
(1) In general. [Reserved].
(2) Relationship to other standards.

Par. 3. Section 1.6662–7T is added to read as follows:

§ 1.6662–7T Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty (temporary).

(a) *In general*—(1) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(2) *Effective date.* This section applies to returns that are due (without regard to extensions of time for filing) after December 31, 1993. However, the provisions of these regulations relating to the penalties for negligence or disregard of rules or regulations will not apply to returns (including qualified

amended returns) that are filed on or before March 14, 1994.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See §§ 1.6662–3(c) and 1.6662–4(e) and (f) for other applicable disclosure rules.

(d) *Definition of reasonable basis*—(1) *In general.* [Reserved].

(2) *Relationship to other standards.* The reasonable basis standard is significantly higher than the not frivolous standard applicable to preparers under section 6694 and defined in § 1.6694–2(c)(2).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–6236 Filed 3–14–94; 12:20 pm]

BILLING CODE 4830–01–U

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26 CFR Part 43

[T.D. 8496]

RIN 1545–AS13

Diesel Fuel Excise Tax; Registration Requirements Relating to Gasoline and Diesel Fuel Excise Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations relating to the tax on diesel fuel and registration requirements for the gasoline and diesel fuel excise taxes. This document was published in the **Federal Register** on Tuesday, November 30, 1993, (58 FR 63069).

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations provide rules under sections 6011(a), 4081, 4082, 4101(a) and (b), 4101(d), and 6427(n) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8496 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8496), which was the subject of FR Doc. 93–28647 is corrected as follows:

On page 63076, column 1, § 48.4101–3T (d)(3), line 1, the language "(3) A throughputter, as defined" is corrected to read "(3) A throughputter, as defined in".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–6238 Filed 3–16–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 92–066]

RIN 2115–AE32

Recreational Vessel Fees

AGENCY: Coast Guard, DOT.

ACTION: Technical amendment.

SUMMARY: This document contains corrections to regulations published on February 17, 1993 (58 FR 8884). That Interim Final Rule changed the length categories of recreational vessels subject to the recreational vessel fee (RVF) for calendar years 1993 and 1994, as required by Section 501 of the High Seas Driftnet Fisheries Enforcement Act of 1992.

EFFECTIVE DATE: October 1, 1992.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0979. A copy of this technical amendment may be obtained by calling the Coast Guard's toll-free Boating Safety Hotline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Background

The Interim Final Rule, as published in the **Federal Register** (58 FR 8884; February 17, 1993), provided amendatory language revising the categories of vessels, by length, that were subject to the Recreational Vessel Fee for calendar years 1993 and 1994. However, the Interim Final Rule also contained incorrect amendatory language revising section 1.30–1 which caused the text of former paragraph (c) and the introductory text of paragraph (d) of that section to be mistakenly deleted. Since the purpose of the rulemaking was only to implement Section 501 of the High Seas Driftnet Fisheries Enforcement Act of 1992, Public Law 102–587, the amendatory language should have redesignated paragraphs (c) and (d) of § 1.30–1 as paragraphs (d) and (e), respectively, rather than causing them to be deleted. This document revises 33 CFR 1.30–1 to redesignate and restore the deleted text as it formerly appeared in the CFR.

Need for Correction

As published, the Interim Final Rule omitted information on applicability of the fees to vessels operated on navigable waters of the United States.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties, Fees.

Subpart 1.30—Recreational Vessel Fees

Accordingly, 33 CFR supart 1.30 is corrected by making the following correcting amendments.

1. The authority citation for subpart 1.30 continues to read as follows:

Authority: 46 U.S.C. 2110; 49 CFR 1.46.

2. Section 1.30–1 is revised to read as follows:

§ 1.30–1 Applicability.

(a) This subpart establishes annual fees for recreational vessels, effective for calendar years 1993 and 1994.

(b) The fees established under this subpart for calendar year 1993 do not apply to recreational vessels 21 feet in length and under, public vessels, and vessels deemed public vessels under 14 U.S.C. 827.

(c) The fees established under this subpart for calendar year 1994 do not apply to recreational vessels under 37 feet in length, public vessels, and vessels deemed public vessels under 14 U.S.C. 827.

(d) The fees established under this subpart apply to recreational vessels operated on:

(1) Territorial Seas of the United States;

(2) Internal navigable waters of the United States subject to tidal influence;

(3) Internal navigable waters of the United States, not subject to tidal influence, from which, during most of the boating season, a 16 foot long powered vessel with a displacement-type hull can navigate to waters subject to tidal influence; and

(4) Waters listed in paragraph (e) of this section.

(e) The fees established under this subpart also apply to the following waters.

(1) Colorado River, between Headgate Rock Dam and Davis Dam, including Lake Havasu and the Parker Strip (AZ, CA);

(2) Lake of the Woods (MN);

(3) Lake Roosevelt (WA); and

(4) Lake Tahoe (CA, NV).

Dated: March 2, 1994.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–6269 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–14–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income. Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines.

Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Community Services Administration to the Department of Health and Human Services. The revised figures for 1994 set out below are equivalent to 125% of the current official Poverty Guidelines as set out at 58 FR 6277 (Feb. 10, 1994).

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1994 POVERTY GUIDELINES*

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,200	$11,500	$10,588
2	12,300	15,375	14,150
3	15,400	19,250	17,713
4	18,500	23,125	21,275
5	21,600	27,000	24,838
6	24,700	30,875	28,400
7	27,800	34,750	31,963
8	30,900	38,625	35,525

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,100 for each additional member in a family.

[2] For family units with more than eight members, add $3,875 for each additional member in a family.

[3] For family units with more than eight members, add $3,563 for each additional member in a family.

Dated: March 8, 1994

Victor M. Fortuno,

General Counsel.

[FR Doc. 94–6223 Filed 3–16–94; 8:45 am]

BILLING CODE 7050–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–313; RM–8140]

Radio Broadcasting Services; Central, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mel-Mike Enterprises, Inc., substitutes Channel 237C1 for Channel 237C2 at Central, Mew Mexico, and modifies the license of Station KNUW to specify operation on the higher class channel. See 58 FR 5322, January 21, 1993. Channel 237C1 can be allotted to Central in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.6 kilometers (11.6 miles) northwest, at coordinates North Latitude 32–52–15 and West Longitude 108–18–57, to accommodate petitioner's desired transmitter site and avoid short-spacings to Stations KKRK, Channel 237A, Douglas, Arizona, and KLAQ, Channel 238C, El Paso, Texas. Mexican concurrence has been received since Central is located within 320 kilometers (199 miles) of the U.S.-Mexican border With this action, this proceeding is terminated.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–313, adopted March 7, 1994, and released March 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 237C2 and adding Channel 237C1 at Central.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-6227 Filed 3-16-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199-4042; I.D. 031194A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Atka mackerel in the Western Regulatory Area of the Gulf of Alaska (GOA) to allow a 48-hour directed fishery. This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in that area.

EFFECTIVE DATE: From 12 noon, Alaska local time (A.l.t.), March 14, 1994, through 12 noon, A.l.t., March 16, 1994, the closure to directed fishing for Atka mackerel in the Western Regulatory Area of the GOA is rescinded; and effective 12 noon A.l.t. March 16, 1994, through 12 midnight, A.l.t. December 31, 1994, directed fishing for Atka mackerel in the Western Regulatory Area of the GOA is closed.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA Exclusive Economic Zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Atka mackerel in the Western Regulatory Area of the GOA, was established by the final 1994 groundfish specifications (59 FR 7647, February 16, 1994), as 2,500 metric tons (mt). The final 1994 groundfish specifications also closed the directed fishery for Atka mackerel in the Western Regulatory Area of the GOA under § 672.20(c)(2).

The Regional Director, Alaska Region, NMFS, in accordance with § 672.20(c)(2)(ii), has determined that the TAC of Atka mackerel in the Western Regulatory Area of the GOA is sufficient to allow a 48-hour directed fishery. Therefore, NMFS is rescinding the closure to directed fishing for Atka mackerel in the Western Regulatory Area of the GOA as of 12 noon A.l.t., March 14, 1994.

In accordance with § 672.20(c)(2)(ii), the Regional Director has established a directed fishing allowance of 2,300 mt, with the remaining 200 mt to be taken as incidental catch in directed fishing for other species in the area. The Regional Director has determined that the directed fishing allowance will be attained by a 48-hour directed fishery for Atka mackerel. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Regulatory Area of the GOA, effective from 12 noon, A.l.t., March 16, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under § 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 11, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-6229 Filed 3-14-94; 2:54 pm]

BILLING CODE 3510-22-P

50 CFR Part 672

[Docket No. 931199-4042; I.D. 031494A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 16, 1994, through 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod for the inshore component in the Central Regulatory Area, GOA, was established by the final 1994 groundfish specifications (59 FR 7647, February 16, 1994), as 28,125 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the inshore component in the Central Regulatory Area, GOA, soon will be reached. The Regional Director established a directed fishing allowance of 23,625 mt, with consideration that 4,500 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area, effective from 12 noon, A.l.t., March 16, 1994, through 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–6262 Filed 3–14–94; 2:54 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 52
Thursday, March 17, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–153–1]

Citrus Canker Regulations; Quarantined Areas and Survey Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the citrus canker regulations by removing the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas and by removing the area in Hillsborough County, FL, from the list of survey areas. No evidence of citrus canker has been found in these areas for at least 2 years. This action appears necessary to relieve regulatory restrictions which are no longer necessary.

DATES: Consideration will be given only to comments received on or before April 18, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–153–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri*. The disease is known to affect plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. The Asiatic strains of *Xanthomonas campestris* pv. *citri* (A strains) are aggressive strains.

In the United States, Florida is the only State where citrus canker has been present in recent years. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75–1 through 301.75–14, "Subpart—Citrus Canker" (referred to below as "the regulations").

The regulations designate certain areas in Florida as quarantined areas and impose restrictions on the interstate movement of regulated articles from and through quarantined areas. The regulations also designate survey areas, which surround the quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors.

The regulations currently designate certain areas in Highlands and Manatee Counties as quarantined for citrus canker. An area in Hillsborough County is also currently designated in the regulations as a survey area.

The quarantined area in Highlands County was established in response to the detection of citrus canker caused by the A strains in a commercial grove in October 1990. The area in Manatee County has been quarantined since June 1986 because of the detection of citrus canker caused by the A strains. All the quarantined areas and all the survey areas have been surveyed for citrus canker on a regular basis since the initial detections. No evidence of citrus canker has been observed in the Highlands County quarantined area since June 19, 1991. No citrus canker has been found in the Manatee County quarantined area since January 19, 1992, and no evidence of citrus canker has been observed in the Hillsborough County survey area at any time. APHIS believes, therefore, that it is safe to conclude that citrus canker is not present in any of these areas, and that it is no longer necessary to require any special requirements to be met within these areas or to limit the interstate movement from or through these areas of regulated articles.

Based on these facts, we are proposing to remove the areas in Highlands and Manatee Counties from the list of quarantined areas (§ 301.75–4(a)) and to remove the area in Hillsborough County from the list of survey areas (§ 301.75–4(d)(1)). The removal of these areas will remove all quarantined areas and survey areas for citrus canker in the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

If this proposed rule is adopted, all areas in Highlands and Manatee Counties would be released from their classification as quarantined areas, and the area in Hillsborough County would be released from its classification as a survey area. If the proposed rule is adopted, citrus plants, plant parts, citrus fruit, and other regulated articles from currently quarantined areas would be allowed to be moved interstate to other areas in the United States, including commercial citrus-producing areas, and regulated articles would be allowed to be moved interstate through quarantined areas. Requirements which apply to survey areas would also be removed.

We have determined that 237 individuals and businesses would be economically affected by the proposed changes. These individuals and businesses include: Lawn care companies (82), grove owners (74 persons who own 2,177 acres), retail nursery outlets (21), fruit processors (15), fruit harvesting contractors (12), fruit shippers (12), fresh fruit packing houses (11), nurseries (9), and seed extractors (1). APHIS believes that virtually all of these individuals and businesses are small entities.

These individuals and businesses are all currently required to comply with the regulations. This results in inconvenience and in some cases

expenses that are not encountered by similar individuals and businesses in other parts of the United States.

It should be noted that the costs of compliance are, in many cases, minimal, and that the individuals and businesses affected by the regulations represent less than one percent of all similar individuals and businesses in Florida.

One of the largest groups of affected individuals and business is grove owners. We estimate that this rule change would save each affected grove owner approximately $25 per acre, per year, by removing requirements for cleaning and disinfecting vehicles, equipment, and personnel leaving their groves. These costs represent a small percentage of the owners' overall production costs.

In addition, this proposed rule would allow grove owners to expand the areas into which their fruit could be moved interstate, in that they would be allowed to move fruit interstate to commercial citrus-producing areas. We anticipate that any impact from this rule change would be negligible, as approximately 90 percent of all of Florida's citrus production is for the juice market, and only about 10 percent is for the fresh fruit market.

In addition to grove owners in the quarantined areas, truckers, packing and processing plants, and lawn services within the currently quarantined areas would no longer be subject to inspection and would no longer need to carry out activities now required by the regulations. This would result in financial savings to these entities. This also means that groves producing regulated fruit for interstate movement, regulated trees, and regulated plants in the current survey area would no longer be subject to regular inspections for citrus canker. This change would reduce the burden on APHIS and State agencies, which currently provide inspectors to perform regular inspections in the survey area.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75–4, paragraphs (a) and (d)(1) would be revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas: Citrus canker is not known to exist in the United States.

* * * * *

(d) * * *

(1) *Survey area.* In the following area, inspections are conducted as required by paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section: Citrus canker is not known to exist in the United States.

* * * * *

Done in Washington, DC, this 11th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6181 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV93–955–3PR]

Vidalia Onions Grown in Georgia; Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes to revise the administrative rules and regulations established under the Federal marketing order for Vidalia onions grown in Georgia. This proposal would allow the Vidalia Onion Committee (Committee) to impose interest charges on handler assessments that are paid late. This proposal would encourage handlers to pay assessments in a timely manner. This proposal is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

DATES: Comments which are received by April 1, 1994 will be considered prior to any finalization of this proposed rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX number (202) 720–5698. Comments should reference this docket number, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–3610, or FAX (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770, or FAX (813) 299–5169.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The U.S. Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposal will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of Vidalia onions that are subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the Vidalia onion handlers and producers may be classified as small entities.

This rule proposes adding a new § 955.142 to Subpart— Administrative Rules and Regulations and is based on a unanimous recommendation of the Committee and other available information.

Section 955.42(f), of the marketing order provides authority for the Committee to impose a late payment or an interest charge or both, on any handlers who fail to pay assessments in a timely manner.

On November 18, 1993, the Committee met to discuss, among other things, the difficulty it has experienced in collecting assessments from some handlers. It reported that during the past season approximately 20 handlers paid assessments late. When this occurred, handlers who paid their assessments on time were placed in an unfair situation compared to those handlers who failed to do so. The delinquent handlers were able to use the money which was due the Committee for other financial obligations and thus eliminate interest charges on money that they might otherwise have had to borrow to pay those other financial obligations. This money could also have been invested to earn interest for the delinquent handlers.

At the meeting, the Committee determined that it was important to encourage all handlers to pay their assessments promptly, thereby eliminating these inequities and avoiding additional and unnecessary collection costs. The Committee recommended the following proposal. If a handler does not pay all of the handler's assessments 30 days after the date of billing, the unpaid portion of the account would be considered delinquent and subject to interest charges at the rate of one percent per month. Handlers would be charged interest charges on unpaid assessments and interest charges on any unpaid interest charges until the late obligation is paid in full. The Committee assesses handlers on a monthly basis.

The Committee believes that the proposed interest charge is high enough to discourage handlers from delaying assessment payments. Thus, this proposal is expected to encourage all handlers to pay their assessments in a timely manner, and facilitate the collection of funds to pay expenses necessary for the maintenance and functioning of the Committee.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A period of fifteen days is provided for all interested persons to submit written comments. The Committee would like the proposal to be effective as soon as possible so that efforts to encourage timely payments can be implemented early in 1994. All comments timely received will be considered before issuing a final decision on this proposal.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is proposed to be amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.142 is proposed to be added to read as follows:

§ 955.142 Delinquent assessments.

Each handler shall pay interest of one percent per month on any unpaid assessments levied pursuant to section 955.42 and any accrued unpaid interest beginning 30 days after date of billing, until the delinquent handler's assessment plus applicable interest has been paid in full.

Dated: March 11, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6150 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[Docket No. PRM–170–3]

American College of Nuclear Physicians and the Society of Nuclear Medicine; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission ("NRC" or "Commission") received a petition for rulemaking submitted by the American College of Nuclear Physicians ("ACNP") and the Society of Nuclear Medicine ("SNM") ("petitioners"). The petitioners requested that the Commission amend

its regulations governing the user and annual fees charged to their members due to increases in those fees. Among the specific requests contained in the petition were to establish a generic exemption for medical licensees who provide services in nonprofit institutions and to allow NRC licensees a greater voice in the development of new regulations by the NRC. After careful consideration, the Commission has decided not to adopt the proposals made in the petition.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–1974.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to comments

I. Background

On February 18, 1992, the NRC received a petition for rulemaking submitted by petitioners ACNP and SNM. The petitioners requested that the NRC amend 10 CFR parts 170 and 171 which govern the annual and user fees imposed on most NRC materials licensees by the Commission since the advent of 100 percent fee recovery in FY 1991. The petitioners requested these amendments because of the substantial adverse impacts experienced by their members following increases in the NRC's user and annual fees.

On May 12, 1992 (57 FR 20211), the NRC published a notice in the **Federal Register** announcing receipt of the petition. In that notice, the NRC stated that it would consider the issues raised by petitioners within the context of the review and evaluation of the fee program for FY 1993 conducted as part of the NRC's continued implementation of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90). On October 13, 1992 (57 FR 46818), the NRC published a notice requesting public comment on the issues raised in the petition.

The NRC received nearly 100 comments in response to this request, with the vast majority in favor of granting the petition. After careful consideration of the comments, the Commission has decided to deny the petition for rulemaking, for reasons stated below.

II. Responses to Comments

1. *Comment.* The majority of commenters simply restated their support for some or all of the requested changes in NRC policy detailed in the petition. In their petition, ACNP and SNM stated that NRC fee increases under the 100 percent recovery regime were adversely affecting their members' practice of nuclear medicine, in the process harming the societal benefits which stem from that field of medicine. The petitioners claimed that they could not recoup the costs of NRC fees because Medicare reimbursement levels are inadequate and because competing nuclear medicine alternatives are not regulated (or charged fees) by the NRC. Petitioners then compared their treatment under the NRC's fee rules to that of nonprofit educational institutions, power reactors and small entities, all of whom petitioners claimed receive special treatment by the NRC, and argued that for exemption purposes medical licensees should not be lumped together with all other materials licensees.

For these reasons, ACNP and SNM requested that the Commission take the following policy actions:

(1) Grant a generic exemption for medical services provided in nonprofit institutions, such as hospitals, similar to that granted to nonprofit educational institutions;

(2) Provide individualized exemption criteria for medical licensees, by means of a "simple template for structuring exemption requests;"

(3) Adopt a sliding scale of minimum fees that grants nuclear physicians more relief than the current small entity classification (which grants relief to physicians in private practice with less than $1,000,000 in gross receipts); and

(4) Give NRC licensees a greater voice in the NRC's decisionmaking process for developing new regulatory programs.

In that regard, petitioners suggested that the criteria contained in the NRC's backfit rule be applied to the development of all new regulatory programs. That is, if a regulation is not necessary for the adequate protection of the public health and safety, the NRC would be required to show that the rule would substantially increase safety and that its benefits outweigh its costs.

Response. The Commission does not believe that the analogy between colleges and universities and medical services provided in a nonprofit institution is a valid one. The Commission recently decided to reinstate a longstanding (but temporarily withdrawn) fee exemption for nonprofit educational institutions. The key to educational institutions' singular treatment, however, is not their nonprofit status, nor the fact that they provide valuable social benefits; rather, it is the existence of certain structural market failures in educational institutions' production of new knowledge. In other words, colleges and universities produce new knowledge primarily through basic research, and disseminate it (essentially for free) to all who want it, without receiving compensation from those benefitting. In economic terms, this new knowledge is often termed a "public good."[1]

Two defining characteristics of a public good are its nondepletability and nonexcludability. That is, one person's acquisition of knowledge does not reduce the amount available to others; further, it is not efficient—and often is impossible, as a practical matter—to prevent others from acquiring it at a zero price. These characteristics make it difficult to recoup the costs of producing new knowledge. Because the value of a public good may be very great, but the costs of producing it impossible to recapture, public subsidies may be necessary for production to occur at all. The Commission has decided to exempt nonprofit educational institutions from annual fees to advance continued production of new knowledge.

By contrast, medical practitioners have the capability of obtaining compensation for the benefits they provide. Unlike new knowledge, medical services are both depletable and excludable. The benefits of medicine, while unquestionably significant, are therefore a private rather than a public good, in economic terms. The Commission believes, in sum, that the market failure considerations that apply to educational institutions' attempts to produce new knowledge simply do not apply to medical practitioners. There is no structural barrier to the recovery of costs incurred in producing the benefits of medicine. The situation of the medical practitioners is not fundamentally different from that of the for-profit licensees whose claims for exemption on grounds of inability to pass through costs the Commission has rejected in the past. (See 58 FR 38666–68; July 20, 1993.)

[1] The Commission's analysis of this aspect of the petition is based in part on a memorandum prepared by an NRC consultant on the topic of externalized benefits and public goods. This memorandum has been placed in the NRC Public Document Room for examination by any interested persons. See Memorandum to NRC Staff from Stephen J.K. Walters, Professor of Economics, Loyola College (Md.), dated January 4, 1994.

In this regard, the Commission notes petitioners' claim that Medicare may not account for NRC fees when reimbursing physicians and hospitals. The Commission is also aware of pricing pressures caused by competing nuclear medicine modalities not regulated (or charged fees) by the NRC. However, as the Commission explained in its FY 1993 fee rule, it is impracticable for this agency to evaluate the merits of such empirical claims regarding the ability of licensees to pass through fee costs to their customers. (See 58 FR 38666, 38667–68; July 20, 1993.) The Commission "does not believe it has the expertise or information needed to undertake the subtle and complex inquiry whether in a market economy particular licensees can or cannot easily recapture the costs of annual fees from their customers." (58 FR 38667; July 20, 1993.) This statement applies equally to medical licensees as it does to all others whose products cannot be characterized as a "public good."

Addressing the petition's second major point, the Commission disagrees with those commenters who call for new individualized exemption criteria for medical licensees. The Commission believes that the current exemption process for materials licensees, as codified in 10 CFR 171.11(d), provides medical licensees with the opportunity to request an exemption by means of detailing their particularized circumstances.

Both exemption procedures (power reactor and materials licensee) contained in § 171.11 allow the requester to inform the Commission of "[a]ny * * * relevant matter that the licensee believes" should impact on the exemption decision. This allows the Commission flexibility to consider each situation on its own merits. Were the Commission to attempt to establish specific criteria for each type of materials licensee, itself a daunting task, it might then be prevented from considering factors which did not fall precisely within those enumerated. And if the Commission retained the open-ended provision quoted above, it would have expended considerable time and resources to little purpose, as licensees could make the same claims under new criteria that they can at this time.

Petitioners also complained that the NRC had established a high threshold for granting materials exemption requests. In this regard, the Commission explained in the first 100 percent fee recovery rule, in FY 1991, that because it was statutorily required to collect 100 percent, it could not easily exempt licensees from fees. If one licensee or class of licensees is exempted, those fees must then be placed on other licensees, increasing their fee burden. It is for that reason that the Commission only grants exemptions in exceptional circumstances. (See 56 FR 31472, 31485; July 10, 1991.)

Petitioners' third request, that the Commission establish a sliding scale of minimum fees based on the size of the licensee, which "reflects the unique constraints on physicians", also is denied. In its FY 1991 fee rule, the Commission explained in great detail why it devised its fee schedules in the manner it did, basing fees on classes of licensees rather than licensee-by-licensee. (See FY 1991 Final Rule, 56 FR 31472, and Appendix A to the Final Rule; July 10, 1991.) There is no information contained in either the petition or comments on the petition which would lead the Commission to reconsider this approach, and therefore the Commission must deny this aspect of the petition as well.

However, the Commission intends to re-examine the size standards it uses to define small entities within the context of compliance with the Regulatory Flexibility Act. The Commission will conduct this review within the context of revision of the small business size standards proposed by the Small Business Administration ("SBA") (58 FR 46573; September 2, 1993). The Commission will not complete this review until the SBA promulgates its final rule on this matter. These activities may result in a revised definition of "small entity" more favorable to petitioners.

Finally, the Commission denies petitioners' request that licensees be provided more power over the development of NRC regulations, and that a new backfit rule incorporating cost-benefit analysis be instituted to evaluate the agency's regulatory programs. The Commission denied similar requests in its FY 1991 fee rule, explaining that the NRC is not exempt "from the normal Government review and budgetmaking process." The Commission at that time pointed out that "the Government is not subject to audit by outside parties," and that "[a]udits are performed by the General Accounting Office or the agency's Inspector General, as appropriate." (56 FR 31472, 31482; July 10, 1991.) Additionally, the NRC complies with Federal regulations such as the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that require agency analysis of the economic effects of new regulations on licensees. The NRC Staff also prepares detailed cost-benefit analyses to justify any new regulatory requirements; these analyses are carefully reviewed by the Commission. The Commission has seen nothing either in the petition or comments on the petition that would lead it to change its approach in this area. The Commission would like to emphasize, however, that licensees are always welcome and expected to comment on proposed rulemakings, including the accompanying cost-benefit analyses, and that such comments, along with petitions such as the present one, workshops, meetings of the Advisory Committee on the Medical Use of Isotopes, and the day-to-day interaction between licensees and the agency, in the Commission's view provide an adequate and successful method of keeping each group apprised of the other's concerns.

2. *Comment.* The Commission received a potpourri of comments on other aspects of the petition. A number of commenters disagreed with the petition, arguing that medical licensees should not receive an exemption, as the costs of such an exemption would be borne by other licensees to whom the additional fees would have no relation, and that every licensee should pay its fair share. Other commenters stated that the fees should be abolished entirely, which would remove the dilemma over granting exemptions. One commenter argued for basing an exemption on the function for which the license is utilized, not the function of the licensed organization. Some commenters argued that fees should be based on factors such as the amount of radioactive sources possessed, the number of procedures performed or the size of the nuclear department within a hospital. Certain commenters suggested expanding the number of exemptions to include Government agencies, along with those licensees which provide products and services to medical and educational entities. One commenter requested that the NRC take Agreement State schedules into account when setting its own fee schedule. Another commenter raised concerns as to the expense of NRC contractors and the quality of NRC regulation. And a few commenters urged the NRC to reevaluate or abolish its then-recently instituted Quality Management (QM) Program.

Response. As the Commission stated above, it is denying this petition for rulemaking, and therefore not exempting medical licensees for services provided in a nonprofit institution.

The Commission cannot abolish its fees unilaterally, as the requirement to collect 100 percent of the agency's

annual budget authority through user and annual fees is statutorily mandated by Congress, see section 6101 of OBRA–90.

The Commission has explained in the past why it did not believe that basing fees on factors such as number of sources or the size of the facility would result in a fairer allocation of the 100 percent recovery requirement. (See FY 1991 Final Rule, 56 FR 31472; July 10, 1991, and Appendix A to that Final Rule; and Limited Revision of Fee Schedules, 57 FR 13625; April 17, 1992.) The Commission has seen no evidence in the petition or comments on the petition which would lead it to change its current approach of charging fees by class of licensee. For reasons similar to those stated in the earlier rules cited above, the Commission does not believe it would be feasible to base an exemption on the function for which a license is utilized rather than on the function of the licensed organization.

The Commission has also explained in prior rulemakings why it has decided to charge Federal agencies annual fees, and has seen nothing in comments on the petition which would cause it to change its position on this policy matter. (See FY 1991 Final Rule, 56 FR 31472, 31474–45; July 10, 1991.) The Commission also does not believe that the exemption for nonprofit educational institutions should be expanded to cover those private companies supplying services and products to medical or educational licensees. The fact that the cost of these services and products impacts upon exempt licensees is not sufficient reason to exempt private for-profit licensees. By exempting nonprofit educational institutions from fees, the Commission has addressed the direct impact of its fees on those institutions. Additionally, the Commission has discussed in both prior and current rulemakings the necessity of a high threshold for exemption requests and the overarching requirement to collect as close to 100 percent of its annual budget authority as possible; these factors remain valid here.

While the Commission acknowledges that in many cases Agreement States base their fee schedules in some measure on the NRC's fee schedule, the NRC cannot do the reverse. The NRC must conform its fees to the 100 percent recovery requirements mandated by OBRA–90, independent of Agreement State fee schedules over which the agency has no control.

Finally, the Commission believes that comments on the agency's QM program, NRC contracting practices and the overall quality of NRC regulation are beyond the scope of this notice. However, the Commission notes that the agency's regulation codifying its QM program was challenged and ultimately upheld in court. See *American College of Nuclear Physicians and Society of Nuclear Medicine* v. *United States Nuclear Regulatory Commission and United States of America*, No. 91–1431, slip op. at 2 (DC Cir. May 22, 1992) (per curiam).

Because each of the issues raised in the petition has been substantively resolved, the NRC has denied this petition.

Dated at Rockville, Maryland this 11th day of March, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94–6232 Filed 3–16–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–216–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts in the aft end of the center pylon thrust link, and repair, if necessary. That AD also provides an optional terminating action, which, if accomplished, would terminate the repetitive inspections. That AD was prompted by a report that both shear pins that attach the aft end of the center engine pylon thrust link to the tail pylon were missing. This action would add inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; and a terminating modification for those inspections. This action would also remove the optional terminating action, and expand the applicability of the rule to include additional airplanes. The actions specified by the proposed AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

DATES: Comments must be received by May 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–216–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 14, 1992, the FAA issued AD 92–23–03, Amendment 39–8403 (57 FR 47991, October 21, 1992), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require repetitive visual inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts at the aft end of the center engine (No. 2) pylon thrust link; repair of any discrepancy found; and submission of a report of inspection findings to the FAA. That AD also provides an optional terminating action for the repetitive inspections. That AD was prompted by a report that both shear pins that attach the aft end of the center engine pylon thrust link to the tail pylon were missing. The requirements of that AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

Since the issuance of AD 92–23–03, one operator has reported that, during the initial visual inspection conducted in accordance with that AD, all bolts and nuts were found installed; however, during a subsequent repetitive inspection, one nut and one bolt that attach the retainer were missing. If the retainers are missing, the shear pins may also be missing and the engine thrust loads will be improperly distributed to the airplane structure. This condition, if not corrected, could result in structural damage to the engine mount structure, which could lead to loss of airplane components.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. This service bulletin revision adds procedures for performing repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specific limits. This service bulletin revision also describes procedures for replacement of the existing retainer and attaching parts with a new retainer and attaching parts. Incorporation of this replacement eliminates the need for repetitive visual inspections and repetitive tightness verifications. The effectivity listing of this service bulletin revision includes 34 additional airplanes identified as being subject to the addressed unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–23–03 to continue to require repetitive visual inspections to verify the installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in the aft end of the center engine (No. 2) pylon thrust link. The proposed AD would add repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specified limits. If any shear pin, shear pin retainer, or shear pin retainer attaching part is missing during any inspection, this proposal would continue to require repair in accordance with a method approved by the FAA. The "optional terminating action" provided by AD 92–23–03, which consists of a one-time verification for tightness of the nuts of the four shear pin retainer attaching bolts, would no longer be provided in the proposed rule.

The proposed AD would also require eventual replacement of the existing retainer and attaching parts with a new retainer and attaching parts. When accomplished, this replacement would be considered terminating action for the currently required repetitive visual inspections and the proposed repetitive verifications of tightness. The actions would be required to be accomplished in accordance with the revised alert service bulletin described previously.

This proposal would also require that operators submit a report to the FAA of any discrepancy found during any inspection.

Additionally, this proposal would expand the applicability of the rule to include additional airplanes that have been identified as being subject to the addressed unsafe condition.

There are approximately 94 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,960, or $880 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8403 (57 FR 47991, October 21, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–216–AD. Supersedes AD 92–23–03, Amendment 39–8403.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, and McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount structure, which could lead to loss of airplane components, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992: Within 15 days after November 5, 1992 (the effective date of AD 92–23–03, Amendment 39–8403), unless previously accomplished within the last 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, or Revision 1, dated June 3, 1993.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days in accordance with the service bulletin until accomplishment of paragraph (d) of this AD.

(2) If any shear pin, shear pin retainer, or shear pin retainer attaching part is missing, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days in accordance with the service bulletin until accomplishment of paragraph (d) of this AD.

(b) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, and not subject to the requirements of paragraph (a) of this AD: Within 15 days after the effective date of this AD, unless previously accomplished within the last 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 60 days in accordance with the service bulletin until accomplishment of paragraph (d) of this AD.

(2) If any shear pin, shear pin retainer, or shear pin retainer attaching part is missing, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 60 days in accordance with the service bulletin until accomplishment of paragraph (d) of this AD.

(c) Within 18 months after the effective date of this AD, verify that the tightness of the shear pin retainer attaching parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat the verification required by paragraphs (c) of this AD thereafter at intervals not to exceed 18 months in accordance with the service bulletin until accomplishment of paragraph (d) of this AD.

(d) Within 3 years after the effective date of this AD, replace the existing retainer and bolts with safety wire with a new retainer and new bolts with safety wire in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31 Revision 1, dated June 3, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive actions required by paragraphs (a), (b) and (c) of this AD.

(e) Within 15 days after detecting any discrepancy during any inspection or verification action required by this AD, submit a report of the inspection results to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6209 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–05–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–3 or JT9D–7 Series Engines, Excluding JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections of the inboard and outboard strut chords, stiffeners, and web to detect cracks and loose fasteners; repair of the chords, stiffeners, or web, if necessary; and replacement of any loose fastener. This proposal is prompted by reports of fatigue cracks and loose fasteners found in the forward lower spar web of the inboard strut on Model 747 series airplanes equipped with Pratt & Whitney JT9D–3 and JT9D–7 series engines. The actions specified by the proposed AD are intended to prevent separation of the strut from the wing of the airplane due to fatigue cracking.

DATES: Comments must be received by May 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received six reports of fatigue cracks and one report of loose fasteners found in the forward lower spar web of the inboard strut on Model 747 series airplanes equipped with Pratt & Whitney JT9D–3 and JT9D–7 series engines. The cracks were found in the area under the stiffeners and baffle and along the web chord. The airplanes on which these cracks were found had accumulated between 6,451 and 18,350 flight cycles and between 17,797 and 83,960 flight hours. All cracks reported have been found on the web of the inboard strut.

During investigation of a recent in-flight engine loss, a similar crack of approximately two inches in length was found on the forward lower spar web. Although the in-inflight engine loss incident is still under investigation, the crack in the web was determined to be a contributing cause of the accident.

Cracking in the forward lower spar web of the inboard strut could reduce the lateral strength of the strut. This condition, if not detected and corrected in a timely manner, could result in separation of the strut from the wing of the airplane due to fatigue cracking.

Although all cracks reported were found on the web of the inboard strut, given standard design tolerances, little difference exists between the thickness of the web of the inboard strut (0.025 inch) and that of the outboard strut (0.032 inch). Additionally, the inboard and outboard webs are similar in configuration and loading environments. For these reasons, the FAA finds that the outboard strut web is subject to the same unsafe condition as the inboard strut web.

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2160, dated September 9, 1993, that describes procedures for repetitive detailed visual inspections of the inboard strut chords, stiffeners, and web to detect cracks and loose fasteners; repair of the chords, stiffeners, or web, if necessary; and replacement of any loose fastener found. These same procedures are effective for inspecting the outboard strut chord.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive detailed visual inspections of the inboard and outboard strut chords, stiffeners, and web to detect cracks and loose fasteners; repair of the chords, stiffeners, or web, if necessary; and replacement of any loose fastener. The actions would be required to be accomplished in accordance with the procedures specified in the service bulletin described previously.

This is considered to be interim action. The manufacturer has advised that it is currently developing a modification program for the engine strut that will positively address the unsafe condition addressed by this AD. Once this modification program is developed, approved, and available, the FAA may consider additional rulemaking.

There are approximately 380 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $169,400, or $1,210 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–05–AD.

Applicability: Model 747 series airplanes equipped with Pratt & Whitney JT9D–3 or JT9D–7 series engines, excluding JT9D–70 series engines; line numbers 001 through 510 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the strut from the wing of the airplane due to fatigue cracking, accomplish the following:

(a) Perform a detailed visual inspection of the inboard and outboard strut forward lower spar chords, stiffeners, and web to detect cracks and loose fasteners, in accordance with the procedures described in Boeing Service Bulletin 747–54–2160, dated September 9, 1993, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Repeat this inspection thereafter at intervals not to exceed 2,000 landings or 8,000 hours time-in-service, whichever occurs first.

(1) For airplanes that have accumulated less than 6,000 total landings as of the effective date of this AD: Perform the initial inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total landings on the strut. Or

(ii) Within 8 months after the effective date of this AD.

(2) For airplanes that have accumulated 6,000 or more total landings, but less than 15,000 total landings, as of the effective date of this AD: Perform the initial inspection within 6 months after the effective date of this AD.

(3) For airplanes that have accumulated 15,000 or more total landings as of the effective date of this AD: Perform the initial inspection within 4 months after the effective date of this AD.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with procedures specified in Chapter 54–10–03 of the 747 Structural Repair Manual.

(c) If any loose fastener is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace the fastener in accordance with procedures specified in Chapter 51–30–02 of the 747 Structural Repair Manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6210 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Elimination of Threshold for Ephedrine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: The DEA proposes to eliminate the threshold for ephedrine under provisions of the Chemical Diversion and Trafficking Act of 1988 (CDTA) in order to reduce the diversion of ephedrine to clandestine laboratory operators. This would subject all transactions involving bulk ephedrine and single entity ephedrine drug products to the applicable provisions of the Controlled Substances Act (CSA).

DATES: Written comments and objections must be received on or before May 2, 1994.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: Ephedrine is the primary precursor utilized in the clandestine synthesis of methamphetamine and methcathinone, both potent central nervous system (CNS) stimulants controlled under the CSA. The public health risks from the abuse of these drugs are well known and documented.

Ephedrine is a listed chemical under the Chemical Diversion and Trafficking Act of 1988 (CDTA) (Pub. L. 100–690). Under provisions of the CDTA (21 U.S.C. 802(34)(c)), thresholds were originally assigned to each listed chemical. The CDTA imposes reporting and recordkeeping requirements for regulated transactions which meet or exceed these threshold amounts of a listed chemical.

The Domestic Chemical Diversion Control Act (DCDCA) of 1993 (Pub. L. 103–200) was recently enacted and will become effective on April 16, 1994. This Act amends the CSA to permit that no threshold be established for a listed chemical via modification of 21 U.S.C. 802(39)(A) by redefining the term "regulated transaction" as a "distribution, receipt, sale, importation, or exportation, or an international transaction involving shipment of a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions" of a listed chemical. By not establishing a threshold for a listed chemical, all regulated transactions regardless of size are subject to CDTA reporting and recordkeeping requirements.

In addition, the DCDCA further modifies the definition of a "regulated transaction" by removing the exemption of those transactions involving products which are marketed or distributed lawfully in the U.S. under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), if these products contain ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contain ephedrine in combination with therapeutically insignificant quantities of another active medicinal ingredient (21 U.S.C. 802(39)(A)(iv)). The DCDCA also provides that the Attorney General shall by regulation remove this exemption for drug products that the Attorney General finds are being diverted in order to obtain a listed chemical for use in the illicit production of a controlled substance.

The threshold for ephedrine was originally established as 1.0 kilogram for domestic and import/export transactions, after internal study and industry consultation (54 FR 31657). The threshold of 1.0 kilogram of ephedrine base is equivalent to greater than 48,000 ephedrine 25 mg tablets or capsules.

Thresholds are continuously reviewed by DEA to determine if they are satisfactory to prevent diversion without overburdening industry. Current evidence indicates that the threshold for ephedrine of 1.0 kilogram is not adequate to prevent the diversion of ephedrine to clandestine laboratory operators. Clandestine laboratory operators are obtaining and utilizing ephedrine in quantities much less than the current 1.0 kilogram threshold in the illicit production of methamphetamine and methcathinone. The DEA has determined that in order to ensure the maximum effectiveness of the CDTA in curtailing the diversion of ephedrine, there should be no threshold for ephedrine. Subsequently, all regulated transactions of ephedrine are subject to reporting and recordkeeping requirements of the CDTA regardless of size.

While seizures of clandestine methamphetamine laboratories have decreased significantly since the

passage of the CDTA, more than 1200 methamphetaime laboratories have been seized in the United States since 1990. The majority of these laboratories utilized ephedrine as the precursor. In 1992, greater than 68 percent of the methamphetamine laboratories seized utilized ephedrine. A preliminary review of 1993 methamphetamine laboratory seizure data indicates that ephedrine was the precursor utilized in approximately 75 percent of these laboratories.

In addition to its use as the preferred precursor for the production of methamphetamine, ephedrine is also utilized in the synthesis of methcathinone. The clandestine manufacture of methcathinone, a methamphetamine analogue known on the street as "Cat", has been identified in the U.S. since 1991, when five laboratories were seized. Methcathinone was temporarily placed in Schedule I on May 1, 1992, pursuant to the emergency scheduling provisions of the CSA (21 U.S.C. 811(h)). Effective October 15, 1993, methcathinone was permanently controlled in Schedule I (58 FR 53404).

Methcathinone (N-methylcathinone) is manufactured in clandestine laboratories via the oxidation of ephedrine. Since June of 1991, all clandestine methcathinone laboratories seized utilized ephedrine as the precursor. These laboratories were located in Indiana, Illinois, Michigan, Washington and Wisconsin. The number of methcathinone laboratory seizures continues to grow from six in 1992 to 21 laboratories in 1993.

Methcathinone is usually produced in small batches. Seizures of illicit methcathinone laboratories indicate that batch sizes routinely utilize less than 20 grams of ephedrine. The vast majority of this ephedrine is obtained via the purchase of over-the-counter (OTC) ephedrine 25 mg tablets sold in bottles of 1000 dosage units or less.

Batch sizes of methamphetamine produced at clandestine labs can vary greatly. Recent information indicates that methamphetamine is also produced in small batches via a procedure known as the "cold process." This procedure has utilized quantities of 40 grams or less of ephedrine.

The smuggling of bulk ephedrine and the purchase of OTC ephedrine tablets are the primary sources of ephedrine utilized at these clandestine laboratories. Ephedrine tablets make up a significant portion of the more than 10 metric tons of ephedrine reportedly seized at clandestine laboratories between 1990 and 1992. This material may be purchased from several different sources at below threshold quantities. The purchase of regulated chemicals from several suppliers in quantities below established thresholds is a common method of diversion and continues to occur with ephedrine.

A comparison of U.S. hospital/pharmacy purchase data with the quantities of ephedrine seized at clandestine laboratories indicates that the use of ephedrine for clandestine laboratories is much greater than amounts purchased by these types of distribution outlets.

Drug products containing ephedrine are used legitimately to treat asthma and other conditions. They are available as OTC products from pharmacies, hospitals and other distribution outlets. Ephedrine products, which are lawfully marketed and distributed under the Federal Food Drug and Cosmetic Act and contain other active medicinal ingredients in therapeutically significant concentrations, are currently exempt from the reporting and recordkeeping requirements imposed under the CDTA. Of the oral OTC products available for medicinal treatment of chronic asthma, these ephedrine combination products are the products more frequently dispensed by pharmacies and hospitals. The elimination of a threshold for ephedrine does not impose any additional requirements on pharmacies, hospitals or points of distribution which distribute only those ephedrine products which are exempted.

The Acting Administrator, Drug Enforcement Administration, hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule only eliminates the existing threshold for which ephedrine transactions must be reported and records maintained. It only impacts firms involved with small bulk transfers of ephedrine or distribution of single entity ephedrine tablets/capsules. This proposed rule is not a significant regulatory action and therefore need not be reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons as set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.04 is proposed to be amended by revising the introductory text to paragraph (f); removing paragraph (f)(1)(iii); redesignating paragraphs (f)(1)(iv) through (f)(1)(xxiv) as (f)(1)(iii) through (f)(1)(xxiii) respectively; and adding a new paragraph (g) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) For those listed chemicals for which thresholds have been established, the quantitative threshold or the cumulative amount for multiple transactions within a calendar month, to be utilized in determining whether a receipt, sale, importation or exportation is a regulated transaction is as follows:

* * * * *

(g) For listed chemicals for which no thresholds have been established, the size of the transaction is not a factor in determining whether the transaction meets the definition of a *regulated transaction* as set forth in § 1310.01(f). All such transactions, regardless of size, are subject to recordkeeping and reporting requirements as set forth in part 1310.

(1) Listed Chemicals For Which No Thresholds Have Been Established:

(i) Ephedrine, its salts, optical isomers, and salts of optical isomers

(ii) [Reserved]

(2) [Reserved]

Dated: February 28, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–6234 Filed 3–16–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–78–93]

RIN 1545–AS58

Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations amend the accuracy-related penalty

regulations under chapter 1 of the Internal Revenue Code. These amendments are necessary to effect changes to the accuracy-related penalty made by the Omnibus Budget Reconciliation Act of 1993. This document also provides notice of a public hearing on the proposed amendments.

DATES: Written comments must be received by June 21, 1994. The IRS intends to hold a public hearing on these proposed regulations on July 12, 1994, beginning at 10 a.m. Persons wishing to speak at the hearing must submit outlines of their comments by June 21, 1994.

ADDRESSES: Send submissions to: Internal Revenue Service, Attn: CC:DOM:CORP:T:R (IA–78–93), room 5228, POB 7604, Ben Franklin Station, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David L. Meyer, 202–622–6232; concerning submissions, Michael Slaughter, 202–622–7180. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Temporary Regulations and 26 U.S.C. 7805(e)(1)

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations (Treasury Decision 8533) to implement certain changes made to the accuracy-related penalty in section 6662 of the Internal Revenue Code (Code) by section 13251 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). Section 7805(e)(1) of the Code (26 U.S.C. 7805(e)(1)) requires the publication of a notice of proposed rulemaking whenever the Secretary issues temporary regulations to allow an opportunity for public comment. The substance of T.D. 8533 is reflected in the proposed amendments to sections 1.6662–1 through 1.6662–4. The Internal Revenue Service presently intends to revise §§ 1.6662–1 through 1.6662–4 in response to taxpayers' comments on the proposed regulations and does not presently intend to finalize § 1.6662–7T.

Background

These proposed regulations set forth certain changes made to the accuracy-related penalty in section 6662 of the Code by section 13251 of OBRA 1993. These changes eliminated the disclosure exception for the negligence penalty (section 6662(b)(1) of the Code) and raised the disclosure standard for purposes of the penalties for disregarding rules or regulations (section 6662(b)(1) of the Code) and a substantial understatement of income tax (section 6662(b)(2) of the Code) from "not frivolous" to "reasonable basis." See section 13251 of OBRA 1993 and H. Rep. No. 213, 103rd Cong., 1st Sess. 669 (1993) (the Conference Report).

The legislative history to OBRA 1993 indicates that this "reasonable basis" standard is a relatively high standard of tax reporting that is significantly higher than the "not frivolous" disclosure standard previously applicable to taxpayers under section 6662 of the Code and currently applicable to preparers under section 6694 of the Code. See Conference Report, at p. 669. A position is not frivolous if it is not "patently improper." See § 1.6694–2(c)(2) of the Income Tax Regulations and current § 1.6662–3(b)(3). The legislative history to OBRA 1993 also provides that the reasonable basis standard is not satisfied by a position that is merely arguable or merely a colorable claim. See Conference Report, at p.669.

In addition to adopting the new reasonable basis standard as the standard that a disclosed return position must satisfy to avoid the disregard and substantial understatement penalties, Congress adopted the new reasonable basis standard as the standard that a return position must satisfy to avoid the negligence penalty. See Conference Report at p.669.

Treasury requests comments on how the new reasonable basis standard should be defined for purposes of the negligence, disregard, and substantial understatement penalties.

Explanation of Changes

Section 1.6662–3(a) of the regulations generally provides that if any portion of an underpayment, as defined in section 6664(a) of the Code and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. Section 1.6662–3(b)(1) defines "negligence" to include any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. Currently, § 1.6662–3(c) generally provides that no penalty under section 6662(b)(1) may be imposed on any portion of any underpayment that is attributable to negligence or a position contrary to a rule or regulation if the position is adequately disclosed and is not frivolous, if the requirements of that section are met.

Section 1.6662–4(a) of the regulations generally provides that if any portion of an underpayment of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Section 1.6662–4(a) further provides that, except in the case of any item attributable to a tax shelter, an understatement is reduced by the portion of the understatement that is attributable to positions for which there was substantial authority or adequate disclosure. Currently, under § 1.6662–4(e)(2), this adequate disclosure exception will not apply if the position on the return is frivolous.

As a result of OBRA 1993, the minimum standard that a disclosed return position must satisfy to avoid either the penalty for disregarding rules or regulations or for a substantial understatement of income tax has been raised from "not frivolous" to "reasonable basis." In addition, there is no longer a disclosure exception for the negligence penalty and, to avoid that penalty, the return position generally must satisfy the new reasonable basis standard.

These rules generally apply to returns that are due (without regard to extensions for filing) after December 31, 1993. However, the rules relating to changes to the penalties for negligence or disregard of rules or regulations will not apply to returns, including qualified amended returns, filed on or before March 14, 1994.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing will be held on July 12, 1994, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments, an outline of the topics to be discussed, and the time to be devoted to each topic by June 21, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6662–0 is amended by:

1. Revising the introductory language,
2. Adding entries for § 1.6662–2 (d)(1) and (d)(2),
3. Revising the entry for paragraph (b)(3) under § 1.6662–3, and
4. Adding an entry for § 1.6662–7.
5. The revised and added provisions read as follows:

§ 1.6662–0 Table of contents.

This section lists the captions that appear in §§ 1.6662–1 through 1.6662–7.

* * * * *

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * *

(1) Returns due before January 1, 1994.

(2) Returns due after December 31, 1993.

§ 1.6662–3 Negligence or disregard of rules or regulations.

* * * * *

(b) * * *

(3) Reasonable basis.

(i) In general [Reserved].

(ii) Relationship to other standards.

* * * * *

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) In general.

(1) Scope.

(2) Effective date.

(b) No disclosure exception for negligence penalty.

(c) Disclosure standard for other penalties is reasonable basis.

(d) Definition of reasonable basis.

(1) In general [Reserved].

(2) Relationship to other standards.

Par. 3. In § 1.6662–1, the second and third sentences of the concluding text are revised to read as follows:

§ 1.6662–1 Overview of the accuracy-related penalty.

* * * * *

* * * The penalties for disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662–3(c) and § 1.6662–4 (e) and (f), respectively. The penalties for negligence and for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure.* * *

Par. 4. Section 1.6662–2 is amended by:

1. Redesignating the text of paragraph (d) as (d)(1) and adding a heading,
2. Revising the first and second sentences of newly designated paragraph (d)(1), and
3. Adding paragraph (d)(2).
4. The revised and added provisions read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) *Effective date*—(1) *Returns due before January 1, 1994.* Section 1.6662–3(c) and § 1.6662–4 (e) and (f) (relating to methods of making adequate disclosure) as codified in 26 CFR revised April 1, 1993, apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1991, but before January 1, 1994. Except as provided in the preceding sentence, §§ 1.6662–1 through 1.6662–5 as codified in 26 CFR revised April 1, 1993, apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1989, but before January 1, 1994. * * *

(2) *Returns due after December 31, 1993.* Except as provided in the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 reflecting the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993 apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1993. These changes include raising the disclosure standard for the penalties for disregarding rules or regulations and for a substantial understatement of income tax from not frivolous to reasonable basis, eliminating the disclosure exception for the negligence penalty, and providing guidance on the meaning of reasonable basis. The Omnibus Budget Reconciliation Act of 1993 changes relating to the penalties for negligence or disregard of rules or regulations will not apply to returns (including qualified amended returns) that are filed on or before March 14, 1994.

Par. 5. Section 1.6662–3 is amended by:

1. Revising the second sentence of paragraph (a),
2. Revising paragraph (b)(3), and
3. Revising paragraphs (c) (1) and (2).
4. The revisions read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) * * * The penalty for disregarding rules or regulations does not apply, however, if the requirements of § 1.6662–3(c)(1) are satisfied and the position in question is adequately disclosed as provided in § 1.6662–3(c)(2), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. * * *

(b) * * *

(3) *Reasonable basis*—(i) *In general.* [Reserved].

(ii) *Relationship to other standards* The reasonable basis standard is significantly higher than the not frivolous standard applicable to preparers under section 6694 and defined in § 1.6694–2(c)(2).

* * * * *

(c) * * *

(1) *In general.* No penalty under section 6662(b)(1) may be imposed on

any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. This disclosure exception does not apply, however, in the case of a position that does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of the penalty for disregarding rules or regulations if made in accordance with the provisions of §§ 1.6662–4(f)(1), (3), (4), and (5), which permit disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate. In addition, the statutory or regulatory provision or ruling in question must be adequately identified on the Form 8275 or 8275–R, as appropriate. The provisions of § 1.6662–4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of this section.

Par. 6. Section 1.6662–4 is amended by:

1. Removing the third sentence in paragraph (d)(2), and

2. Revising paragraph (e)(2) to read as follows:

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(e) * * *

(2) *Circumstances where disclosure will not have an effect.* The rules of paragraph (e)(1) of this section do not apply where the item or position on the return—

(i) Does not have a reasonable basis (as defined in § 1.6662–3(b)(3));

(ii) Is attributable to a tax shelter (as defined in section 6662(d)(2)(C)(ii) and paragraph (g)(2) of this section); or

(iii) Is not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

Par. 7. Section 1.6662–7 is added to read as follows:

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) *In general*—(1) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(2) *Effective date.* This section applies to returns that are due (without regard to extensions of time for filing) after December 31, 1993. However, the provisions of these regulations relating to the penalties for negligence or disregard of rules or regulations will not apply to returns (including qualified amended returns) that are filed on or before March 14, 1994.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See §§ 1.6662–3(c) and 1.6662–4(e) and (f) for other applicable disclosure rules.

(d) *Definition of reasonable basis*—(1) *In general.* [Reserved].

(2) *Relationship to other standards.* The reasonable basis standard is significantly higher than the not frivolous standard applicable to preparers under section 6694 and defined in § 1.6694–2(c)(2).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–6237 Filed 3–14–94; 12:20 pm]

BILLING CODE 4830–01–U

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27 CFR Part 4

[Notice No. 792]

RIN 1512–AB25

Use of the Term "Reserve" on Wine Labels (93F–033P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering amending the regulations to include a definition for the term "reserve" when used on wine labels. Based on a petition it has received, the Bureau wishes to gather information by inviting comments from the public and industry as to whether the regulations should be amended to provide for a definition of this term.

DATES: Written comments must be received on or before June 15, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; Attn: Notice No. 792.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in Title 27, Code of Federal Regulations (CFR), part 4.

Petition

ATF has received a petition, dated June 4, 1993, filed on behalf of the Wine Institute, a trade association of California wineries which represents approximately 80 percent of the total U.S. wine production. According to the petitioner, a regulatory definition of "reserve" is necessary to permit U.S. "reserve"—designated wines to be sold for export in European Communities (EC) countries.

Specifically, Council Regulation (EEC) No. 2392/89 of July 24, 1989, Article 26(2)(c) allows for supplemental information on imported wine labels, subject to certain restrictions. Details "regarding superior quality" are allowed on the label "in so far as they are prescribed by the national provisions of the third country in which the wine originates for the domestic market of that country and are recognized by the Community."

ATF has been informed that the EC considers that the term "reserve" is a term which refers to "superior quality." In the absence of a regulatory definition of the term "reserve" in the U.S., which would apply to wines produced for domestic consumption, products bearing this term can be prohibited from being sold in EC member countries. The petitioner states that Germany, for example, prohibits the importation of U.S. wines that bear the term "reserve" on the label. The petition does not state whether other EC member nations have taken this position.

The petitioner also believes that defining the term in the regulations would provide for uniform meaning and, consequently, be of benefit to consumers. They contend that the use of

the term "reserve" is so prolific in the marketplace that its meaning has been lost, resulting in consumer confusion.

In analyzing attempts by foreign countries at defining the term the petitioner has concluded that, although many foreign countries generally provide for rather broad, subjective tests to determine the "reserve" character of table wine, there is no consistent international standard for use of the term.

Although not defined in the regulations, ATF has permitted the use of such terms as "reserve," "vintner's select," "barrel select," "premium," etc. on wine labels. The Bureau considers these terms to be mere "puffery." It has been ATF's position that consumers recognize these terms as expressing the proprietor's subjective evaluation of the wine, rather than as terms denoting any objective standards.

Wine Institute Proposal

Based on the reasons mentioned above, the Wine Institute has proposed the following definition for the term "reserve" when used on wine labels:

> For U.S. appellations, any table wine which is a vintage dated grape table wine that is either varietal, or which contains multiple varieties where each of the varieties is listed by percentage of total content, may be designated "reserve" wine.
>
> However, a state, county, or viticultural area may establish more stringent regulations governing the designation of "reserve" under rules and regulations to be established by individual states or local agencies.

Although the Wine Institute's proposed definition applies to domestic wines only, ATF notes that any amendment of the regulations to provide for a definition of the term "reserve" would apply to domestic wine, as well as to foreign wine imported into the U.S. ATF believes that for purposes of consistency a uniform meaning of the term is necessary.

ATF would also point out that the proposed definition applies to grape table wine only, i.e., grape wine having an alcoholic content of between 7 and 14 percent by volume. Consequently, if the petitioner's proposed definition is adopted into the regulations the term could not be used on labels of any other type of wine, such as sparkling wine (e.g., champagne).

Discussion

ATF is requesting information from consumers and industry members on the desirability of amending the regulations to provide for a definition of the term "reserve" when used on wine labels. While ATF has traditionally taken the position that the use of subjective puffery on the label does not result in consumer confusion, ATF wishes to solicit comments from both consumers and industry members on whether the term "reserve" is being used in a confusing or misleading fashion on labels. Although ATF is soliciting comments on the following specific questions, the Bureau is also requesting any relevant information on the subject.

1. What does the term "reserve" mean to consumers?
2. What does the term mean to members of the wine industry?
3. Should the term be defined in the wine regulations? If so, should there be a different standard for still wines and sparkling wines?
4. Do other similar terms such as "vintner's select," "barrel select," "premium," etc., mean anything to consumers? What about to members of the industry?
5. Should these terms be defined in the regulations?
6. The term "reserve" also appears on labels of malt beverages and distilled spirits. What does it mean to consumers when it appears on these products? What does it mean to members of the malt beverage and distilled spirits industries who label their products with this term?
7. Should the term be defined in the regulations for malt beverages and distilled spirits?
8. How much American wine labeled with the "reserve" designation is exported into EC member nations? Have exporters of American wine encountered problems in Germany or any other EC member nations concerning wine which is labeled with the term "reserve?"
9. ATF has observed that the term "reserve" often appears on labels of foreign wines imported into the U.S. Do the countries where these wines originate have any laws or regulations governing the use of this term?

Executive Order 12866

It has been determined that this advance notice is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this advance notice is not subject to the analysis required by this Executive Order.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Disclosure

Copies of the petition, this notice, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

This advance notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Dated: January 21, 1994.

Daniel R. Black,

Acting Director.

Dated: February 9, 1994.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–6159 Filed 3–16–94; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 430

[FRL–4850–9]

RIN 2060–AD03 and RIN 2040–AB53

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Correction and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; correction and extension of comment period.

SUMMARY: EPA is correcting minor errors in the preamble and effluent limitations guidelines and standards and the national emission standards for hazardous air pollutants for the pulp, paper, and paperboard production category, which appeared in the **Federal Register** on December 17, 1993 (58 FR 66078). EPA is also extending the comment period for an additional 30 days.

DATES: Comments on the proposed rules must be received by April 18, 1994 at the following address.

ADDRESSES: Send comments in triplicate on the proposed rules to Ms. Marion Thompson, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Nicoll at (202) 260–5386.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking on December 17, 1993 (58 FR 66078), EPA proposed effluent limitations guidelines and standards for the control of wastewater pollutants and also proposed national emission standards for hazardous air pollutants. The notice contained some minor errors that are discussed briefly below and are corrected by this notice.

In addition, EPA recognizes that the record supporting the proposed rulemaking is large and complex. To better facilitate informed comment, the Agency is extending the comment period by 30 days for a new deadline of April 18, 1994.

Dated: March 8, 1994.

Mary Nichols,

Assistant Administrator for Air and Radiation.

Dated: March 4, 1994.

Robert Perciasepe,

Assistant Administrator for Water.

The following corrections are made in FRL–4802–4, effluent limitations guidelines, pretreatment standards, and new source performance standards: pulp, paper, and paperboard category and national emission standards for hazardous air pollutants for source category: pulp and paper production, which was published in the **Federal Register** on December 17, 1993 (58 FR 66078).

1. On page 66086, third column, fifth paragraph, the first sentence should read "All emission points within the pulping component are required to be controlled by the proposed standards, unless the mill can show one of the following conditions exists:"

2. On page 66086, third column, the following paragraph is inserted immediately after the fifth paragraph:

"• The emission point is at a decker or screen at an existing source;"

3. On page 66138, Table X–2, second column, the percent controlled for Foam Breaker Tank or Filtrate Tanks should read "11." The percent controlled for Weak Black Liquor Storage should read "11."

4. On page 66144, first column, fourth paragraph, line 11, the words "or bleaching" should be removed.

5. On page 66146, in the first column, five lines from the bottom, the word "kilopascals (kPa)" is corrected to read "kilograms (kg)". In the second column, in the second new paragraph, the fourth line, the abbreviation "kPa" is corrected to read "kg". In the second bullet under the second column, in the second line, "kPa" is corrected to read "kg", and in the last line of the bullet, kilograms is corrected to read "kPa".

6. On page 66153, Table XI.A–1, Column 5, the words in parentheses should read "(except deckers and screens at existing sources)"

7. On page 66166, third column, Solicitation No. 6, Alternative Limits for TCF Processes, the second sentence should read "EPA solicits comments and data on whether these alternative limits provide meaningful incentives, whether such incentives are appropriate, and recommendations for any additional or different incentives."

8. On page 66170, third column, Solicitation No. 28, Limitation Based on Minimum Levels, the first sentence should read "EPA has proposed some BAT, PSES, PSNS, and NSPS limitations for the Bleached Papergrade Kraft and Soda, Dissolving Kraft, and Dissolving Sulfite subcategories based upon the current minimum levels of the analytical methods."

9. On page 66172, second column, under Solicitation No. 33, second paragraph, the second line should cite section X.D.1.

10. On page 66178, § 63.446(e)(1) introductory text, the last two lines of the first sentence should cite "(e)(1)(i) through (e)(1)(ii) of this section".

11. On page 66178, § 63.446(f)(2), the last four lines of the second sentence should read: ". . . materials containing less than 500 parts per million of total HAP by weight is not allowed for the purposes of complying with this requirement; or"

12. On page 66178, second column, in paragraph (f)(4)(ii) the term "kilopascals" is corrected to read "kilograms" and "kilograms" is corrected to read "kilopascals".

13. On page 66178, § 63.450(a) introductory text, the second citation in the second line should be "§ 63.445(b)".

14. On page 66179, § 63.451(c) introductory text, the third and fourth lines of the first sentence should read: ". . . rates for emission point flow rate, mass flow rate, vent stream concentration, or percent reduction required in . . ."

15. On page 66179, § 63.451(c)(1)(i), the first citation in the third line should be "§ 63.444(a)(2)(i)"; the first citation in the sixth line should be "§ 63.444(a)(ii) and (a)(iii)".

16. On page 66179, § 63.451(c)(1)(ii), the first citation in the fifth line should be "§ 63.444(a)(3)".

17. On page 66179, § 63.451(d)(5), the first citation in the fourth line should be "§ 63.444(a)(2)(iii)".

18. On page 66180, § 63.451(g) introductory text, the citation on line 4 should be "§ 63.446(a)(3) and (h)".

19. On pages 66180 and 66181, the first two lines of § 63.451(h) introductory text, § 63.451(i) introductory text, and § 63.451(j) introductory text should read: "The owner or operator shall use the following procedures when conducting a performance test to demonstrate . . ."

20. On page 66182, § 63.451(m) introductory text, the citation on line 3 should be "§ 63.444(a)(3)".

21. On page 66182, § 63.453(f)(3), the fourth line should cite "paragraph (f)(1) of this section".

22. On page 66183 § 63.455(a)(4)(ii), the citation on the third line should be "§ 63.450(a)(1)".

23 and 24. On page 66189, § 430.02 includes a table of monitoring requirements. The table is corrected to read as follows:

CAS No.	Pollutant	Monitoring frequency	
		BPE	FE
1198556	Tetrachlorocatechol	Monthly	None.
2539175	Tetrachloroguaiacol	Monthly	None.
2539266	Trichlorosynngol	Monthly	None.

CAS No.	Pollutant	Monitoring frequency	
		BPE	FE
2668248	4,5,6-trichloroguaiacol	Monthly	None.
32139723	3,4,6-trichlorocatechol	Monthly	None.
56961207	3,4,5-trichlorocatechol	Monthly	None.
57057837	3,4,5-trichloroguaiacol	Monthly	None.
58902	2,3,4,6-tetrachlorophenol	Monthly	None.
60712449	3,4,6-trichloroguaiacol	Monthly	None.
87865	pentachlorophenol	Monthly	None.
88062	2,4,6-trichlorophenol	Monthly	None.
95954	2,4,5-trichlorophenol	Monthly	None.
1746016	2,3,7,8-TCDD	Monthly	None.
51207319	2,3,7,8-TCDF	Monthly	None.
67641	2-propanone. (acetone)	Monthly	None.
67663	chloroform	Weekly	None.
75092	methylene chloride	Weekly	None.
78933	2-butanone. (MEK)	Weekly	None.
59473040	AOX	Weekly	None.
Color	Color	None	Daily.
1004	COD	None	Daily.
1002	BOD	None	Daily.
1009	TSS	None	Daily.
		None	Daily.

BPE—Bleach Plant Effluent.
FE—Final Effluent.

25. On page 66192, § 430.14(b) includes a table of end-of-pipe effluent limitations, where the table entries are correct, but the column headings were printed incorrectly. The table is corrected to read as follows:

Pollutant or pollutant property	BAT effluent limitations			
	Continuous dischargers; kg/kkg (or pounds per 1,000 lb) of product		Non-continuous dischargers; kg/kkg (or pounds per 1,000 lb) of product	
	Maximum for any 1 day	Monthly Average	Maximum for any 1 day	Annual average
AOX	1.67	0.650	N/A	0.553
COD	118	84.1	N/A	70.3

26. On page 66204, § 430.45(c) includes a table of end-of-pipe effluent standards where the table entries are correct, but one column heading was printed incorrectly. The table is corrected to read as follows:

Pollutant or pollutant property	New source performance standards			
	Continuous dischargers		Non-continuous dischargers	
	Maximum for any 1 day (kg/kkg)	Monthly Average (kg/kkg)	Maximum for any 1 day	Annual average (kg/kkg)
AOX	3.13	1.39	N/A	1.22

27. On page 66206, § 430.55 includes a table of end-of-pipe effluent standards where the table entries are correct, but one column heading was printed incorrectly. The table is corrected to read as follows:

Pollutant or pollutant property	New source performance standards		
	Continuous dischargers; kg/kkg (or pounds per 1,000 lb) of product		Non-continuous dischargers; kg/kkg (or pounds per 1,000 lb) of product
	Maximum for any 1 day	Monthly Average	Annual average
BOD_5	4.90	2.57	1.98
TSS	7.81	3.22	2.42

[FR Doc. 94–6053 Filed 3–16–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN: 1004–AB22

[WO–610–4111–02–24 1A]

Onshore Oil and Gas Order No. 5: Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: A proposed rule to revise existing Onshore Oil and Gas Order No. 5, Measurement of Gas, was published in the **Federal Register** on January 6, 1994 (59 FR 718), with a 60-day comment period expiring March 7, 1994. The comment period is being reopened for 30 days in response to public request.

DATES: The period for the submission of comments is hereby reopened until April 18, 1994. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final Order.

ADDRESSES: Comments should be sent to Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lonny Bagley at (406) 255–2847.

Dated: March 11, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–6268 Filed 3–16–94; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 94–19; FCC 94–46]

Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission begins implementation of section 9 of the Communications Act of 1934 to assess and collect regulatory fees. The Commission's objective is to assure that the fee collection process does not have an adverse impact on its regulatory activities; that fees are collected and deposited in the most cost effective manner possible; and that fees impose little or no additional paperwork burden on the public. Further, the Commission proposes to amend certain of its rules governing the collection of fees for applications and other filings under Section 8 of the Communications Act. We note that the implementation of regulatory fees will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comment date: April 7, 1994. Reply comment date: April 18, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Room 222, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: H. Walker Feaster or Peter Herrick, Office of Managing Director, at (202) 632–0923.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking in MD Docket No. 94–19, adopted March 4, 1994 and released March 11, 1994. The full text of this document is available for inspection and copying Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Reference Center (room 239), 1919 M St., NW., Washington, DC 20554. Copies of this document may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

1. Section 9 of the Communications Act, was added by section 6003(a) of the Omnibus Budget Reconciliation Act of 1993.[1] Section 9(a) authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities. Section 9(f)(1) provides that "[t]he Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section." The purpose of this Notice is to set forth proposed rules as provided for in section 9(f)(1). In this Notice, we also propose several conforming and clarifying amendments to our rules concerning application filing fees, which are assessed and collected pursuant to section 8 of the Communications Act ("Section 8 fees"). See 47 U.S.C. 158.

Establishment, Adjustment and Amendment of Regulatory Fees

2. Section 9(b)(1)(C) of the Communications Act, 47 U.S.C. 159(b)(1)(C), requires the Commission to collect the fees established by the Schedule of Regulatory Fees in section 9(g), "until adjusted or amended by the Commission pursuant to paragraph (2) or (3)" of section 9(b). The statutory schedule in section 9(g) lists various regulatory fee categories under the Commission's Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau, and it specifies an annual fee amount for each category. See 47 U.S.C. 159(g); see also Appendix below.

3. The statute requires the Commission, in certain circumstances, to make adjustments or amendments to the Schedule of Regulatory Fees. First, since regulatory fees must result in collections of amounts that can reasonably be expected to equal amounts appropriated by Congress, for any fiscal year after fiscal year 1994,[2] paragraph (2) of section 9(b) requires the Commission to revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect changes in the amount appropriated for that fiscal year for the performance of the Commission's enforcement, policy and rulemaking, information services, and international activities. Such increases or decreases shall also reflect unexpected increases or decreases in the number of licensees or units subject to regulatory fees.[3] Second, amendments to the schedule may also be made to reflect other changes and factors. Paragraph (3) of section 9(b) provides that, "[i]n addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the schedule requires amendment to comply with the requirements of paragraph (1)(A) [of section 9(b)]."

4. For fiscal year 1994, we propose to adopt the fee amounts established by the Schedule of Regulatory Fees as approved by Congress. Adjustments to the statutory schedule required under paragraph (b)(2) may not take place until after the 1994 fiscal year, and thus we do not have authority during the

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[1] Pub. L. No. 103–66, Title VI, Section 6002(a), 107 Stat. 397 (approved August 10, 1993). The new Section 9 of the Communications Act is codified at 47 U.S.C. 159.

[2] 47 U.S.C. 159(b)(1)(B). The government's 1994 fiscal year ("FY 1994") commenced on October 1, 1993, and ends September 30, 1994.

[3] 47 U.S.C. 159(b)(2)(A).

current fiscal year to revise the schedule for purposes of matching the amounts actually appropriated for the current fiscal year. With regard to amendments under paragraph (3) of subsection (b), we similarly believe that the statutory scheme does not envision that the Commission would exercise its authority to amend the fee amounts in the schedule until at least after FY 1994. Interested parties are invited to comment on a proposal to adopt the fee amounts set forth in the statutory Schedule of Regulatory Fees.

Exemptions From Regulatory Fees

1. Governmental Entities

5. Section 9(h) establishes an exemption from fees for "governmental entities." For purposes of the similar exemption in section 8, we have defined a governmental entity as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs. We propose to apply the definition contained in our application fee rules to governmental entities exempt from regulatory fees. See 47 CFR 1.1112(f). The exemptions under section 9 apply to all FCC-regulated services in which governmental entities operate. Therefore our proposed regulatory fee exemption would apply to applicants, permittees, licensees, as well as any other regulatees who qualify as governmental entities.

6. We must also adopt procedures for identifying regulatees that are governmental entities exempt from regulatory fees under section 9. Commenters should address the option of requiring entities, in lieu of the required fee, to file certifications (or other relevant information) as to their exempt status. Alternatively, for those governmental entities that have already established their governmental status for purposes of section 8 filing fees, we may determine, to the extent possible, that no additional filings are necessary.

2. Nonprofit Entities

7. Section 9(h) also establishes an exemption from regulatory fees for all "nonprofit entities." In contrast, section 8(d)(1)(A), governing exemptions from application fees, exempts from application fees only those nonprofit entities licensed in Special Emergency Radio or Public Safety Radio services. Further, the statutory exemption of "nonprofit entities" is clearly broader than the current exemption in the mass media services covering noncommercial, educational broadcast stations and limited categories of other facilities. See 47 CFR 1.1112.

8. In applying the exemption for these nonprofit entities under section 8, we have interpreted the term "nonprofit entities" to mean entities that receive nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501. We propose, therefore, to interpret the term "nonprofit entities" to include all nonprofit organizations exempt under section 501.

9. Under our section 8 fee rules, an applicant claiming nonprofit status must include a current IRS Determination Letter documenting its nonprofit status. We seek to avoid unnecessary paperwork, to the extent possible, by relying on existing information in Bureau files to identify regulatees that are nonprofit entities exempt from regulatory fees under section 9. However, since the exemption under section 8(d) only applies to nonprofit entities licensed in the Special Emergency Radio or Public Safety Radio services, we propose to require any other regulatee seeking an exemption as nonprofit entity to file, in lieu of the required fee, a current IRS Determination Letter documenting its nonprofit status.[4]

3. Amateur Licensees

10. Section 9(h) also provides a specific statutory exemption for "amateur radio operation licenses under part 97 of the Commission's regulations." 47 U.S.C. 159(h)(2). The Schedule of Regulatory Fees does establish a fee category for "Amateur vanity call-signs." We have proposed new rules in PR Docket No. 93–305 that would allow vanity call-signs. See Notice of Proposed Rule Making, 9 FCC Rcd 105, 59 FR 558 (Jan. 5, 1994). After those rules (if adopted) become effective, amateur licensees requesting vanity call-signs will be required to pay the statutory fee under section 9.

4. Noncommercial Educational Broadcasters

11. The Schedule of Regulatory Fees in section 9(g) specifies that fees shall be collected from "VHF *Commercial*" television and "UHF *Commercial*" television licensees and permittees. 47 U.S.C. 159(g) (emphasis added). However, the schedule does not specifically provide that regulatory fees apply only to "commercial" AM and FM radio licensees and permittees.[5–6] Nevertheless, based on the legislative history, we believe that Congress intended to exempt all noncommercial educational FM and AM radio licensees and permittees from regulatory fees.

12. Similarly, we believe that Congress intended to exempt noncommercial secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations. This interpretation is consistent with our interpretation of the application fee provisions in section 8. Accordingly, we propose to utilize our current noncommercial exemption for LPTV and translator stations for regulatory fees. We also propose to utilize this fee exemption for boosters, auxiliary broadcast services, and other Mass Media, Common Carrier or Private Radio authorizations used in conjunction with qualifying noncommercial educational radio, television, or instructional services.[7]

13. Finally, it does not appear that Congress intended that a noncommercial exemption for regulatory fees be available to international short-wave broadcast stations. As was the case when we were implementing section 8, we do not intend to provide a noncommercial exemption for international broadcast licensees.[8]

14. As with the exemption for governmental and nonprofit entities, to avoid unnecessary paperwork and to the extent possible, we propose to rely on information currently in Bureau files to identify most noncommercial licensees and permittees. However, where necessary, we reserve the option of requiring such entities, in lieu of paying the required fee, to file certifications (and other relevant information) as to their noncommercial status.[9] If additional information beyond a certification is requested, it would be

[4] Such documentation would be filed on or before the payment due date for the relevant regulatory fee category. If proper documentation is not received or a claimed exemption is otherwise rejected, an entity failing to pay the proper fee on time may be subject to a 25 percent late-payment penalty.

[5–6] We also note that the schedule includes Class D FM radio stations which are, by definition, noncommercial stations. See 47 CFR part 73, subpart C.

[7] We thus propose to extend the exemption to noncommercial services used in conjunction with ITFS facilities, which are exempted. 47 CFR 1.1112(e)(4).

[8] See Memorandum Opinion and Order, GN Docket No. 86–285, 6 FCC Rcd 5919, 5925, 56 FR 56599 (Nov. 6, 1991).

[9] Entities claiming an exemption would be required to file this information on or before the payment due date for the relevant regulatory fee category. If a showing is not properly documented or a claimed exemption is otherwise rejected, an entity failing to pay the proper fee on time may be subject to a 25 percent late-payment penalty.

done in a case-by-base basis and such information would have to show that the entity qualifies under our rules for the noncommercial exemption.

5. Public Safety Services

15. The Schedule of Regulatory Fees does not list specific Private Radio services under the category of "Shared use services." See 47 U.S.C. 159(g). In this regard, however, the legislative history clearly states that Congress intended to exempt public safety licensees from regulatory fees. Accordingly, we propose to exempt all licensees in the Public Safety Radio and Special Emergency Radio Services from regulatory fees, but we also seek comment on whether the exemption should be limited to governmental and nonprofit entities, which are explicitly mentioned in the statute's exemptions.

Waivers, Reductions and Deferments of Regulatory Fees

16. Section 9(d) states that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 15(d). This provision is similar to section 8(d)(2), which we have interpreted narrowly. Specifically, we stated that, under section 8(d)(2), we would permit waivers or deferments on a case-by-case basis in extraordinary and compelling circumstances upon a showing that a waiver or deferment would override the public interest in reimbursing the Commission for its regulatory costs. We propose to apply this same narrow interpretation to our implementation of section 9(d) and thus propose to grant waivers, reductions or deferments of regulatory fees only in such unusual circumstances.

17. As discussed below, small regulatory fees generally must be paid at the time applications are filed. When regulatory fees are due at the same time an application is filed, we propose, when processing requests for regulatory fee waivers, reductions or deferments, to use procedures similar to those now used for application fee waiver requests. See 47 CFR 1.1115(e). Applicants seeking application fee waivers must submit both the request for waiver and the required fee, accompanied by the required form(s). Applications that do not include these materials are dismissed in accordance with section 1.1107 of the rules. For regulatory fees that are supposed to accompany applications, we would also require regulatees seeking a waiver or reduction to submit their regulatory fee payment with their waiver request. Similarly, for standard regulatory fees that are due on a certain date, we propose to require that the appropriate regulatory fee accompany any waiver or reduction request. The regulatory fees submitted would be refunded later if a waiver or reduction were granted. Requests for deferment would have to be filed and approved before the payment due date in order to avoid late payment penalties.

Procedures for Payment of Regulatory Fees

1. Timing of Payments

18. Section 9(f) of the Communications Act provides that the Commission's regulations implementing regulatory fees must "permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor." 47 U.S.C. 159(f)(1). We propose to establish three classes of regulatory fees, each of which would be based on the size of the annual fee amount. The three classes of regulatory fees are standard fees, small fees and large fees. The class of the fee would determine the timing of the regulatory fee payment. Pursuant to section 9(f), our regulations will permit regulatees subject to "large" fees to make two installment payments in FY 1994 (rather than single payment). Regulatees subject to "small" fees will have to pay their fees for each year of their license term in advance at the beginning of the license term. Regulatees subject to standard fees would pay their regulatory fee, in full, on an annual basis.

a. Annual Payments for Standard Fees

19. We propose to classify most of the fee amounts which will be paid under section 9 as standard fees. Standard regulatory fees would be those that are neither "large" nor "small." (The proposed definitions of these terms are discussed below.) As noted above, standard fees are to be paid in full on an annual basis. We propose further that each licensee or regulatee required to pay a standard fee must pay the full amount specified for each relevant fee category by a date certain each year. The specific payment due dates for each regulatory fee category for the 1994 fiscal year will be announced in the Report and Order in this proceeding or in a Public Notice published in the **Federal Register** to be released well before the first payment due date. We anticipate that all regulatory fees will be collected as early as possible before the end of the fiscal year. In subsequent fiscal years, we intend to establish regular, fixed payment due dates for regulatory fees.

b. Installment Payments for Large Fees

20. Section 9(f) states that the Commission's regulations shall permit payment by installments for regulatory fees in "large amounts." However, nowhere in the statute or the legislative history did Congress define the term "large." For purposes of establishing eligibility criteria for FY 1994 for regulatory fee installment payments, we propose generally to classify a fee amount as "large" if it greatly exceeds the average annual fee for regulatees in a particular category. Specifically, for some regulatory fee categories, we propose to establish a fixed annual amount which is based on the relative payment obligations of regulatees within that regulatory fee category. Those fees which are significantly higher than all others would be deemed large and entities who are required to pay significantly more than most other regulatees may elect to make two payments in FY 1994 instead of paying the entire amount all at once. For future years, we seek comment on whether large fee payors should be permitted to pay their annual regulatory fee in four or more installments.

21. We propose that an entity's installment payment eligibility should not be based on its total regulatory fee payments because it happens to hold multiple licenses or authorizations or serve multiple areas. Instead, a regulatory fee would be deemed large based on the fee for each individual license, authorization or authorized service area. If, for example, the regulatory fee is large (as defined herein) for one or more of a regulatee's licenses and not for other licenses, the regulatee will be eligible for installment payments only for those large fee licenses and must pay the entire regulatory fee for all of the other licenses. We invite specific comment on whether, for purposes of determining whether fees are large, telephone local exchange carriers should be assessed fees on an operating company or holding company level.

22. In applying the method described above, we propose several "large" fee amounts that would be eligible for installment payments. In sum, for the 1994 fiscal year we have identified the following fee amounts as large:

Regulatory fee category	Large fee
VHF and UHF commercial television station.	Above $12,000.
Cable television system	Above $18,500

Regulatory fee category	Large fee
Inter-exchange carrier ...	Above $500,000.
Local exchange carrier holding co.	Above $700,000.

When compared with the amounts to be paid by the average regulatee in these categories, these regulatory fee amounts appear significantly higher.

23. If a regulatee finds it necessary to pay its large regulatory fee by installments, we propose to establish fixed dates on which installment payments will be due. For the 1994 fiscal year, any eligible regulatee that elects to pay a large fee in installments shall make half of its payment on a date to be specified. We also shall specify the date for the second and final installment. Payments in their entirety will be due prior to the end of this fiscal year. As with standard fees, the payment due dates for each large fee category for the 1994 fiscal year will be announced in the Report and Order in this proceeding or in a **Public Notice** published in the **Federal Register** to be released well before the first installment payment due date.

24. To recover the additional costs of maintaining installment payment plans, we propose that each installment payment would be subject to an additional processing charge to cover administrative costs. We tentatively propose that these fees will be $50.00 per payment. Installment payments received after the due date for standard regulatory fees would be subject to interest payments.[10] Further, as discussed below, late installment payments would be subject to a 25 percent late fee and applications filed by delinquent payers would be subject to dismissal. We would also reserve the right to require a regulatee to pay its regulatory fees in a single, full payment if one or more installment payments has not been received in a timely manner.

c. Advance Payments for Small Fees

25. Section 9(f) states that the Commission's regulations shall require the payment of "small" regulatory fees "in advance for a number of years not to exceed the term of the license held by the payor." 47 U.S.C. 159(f)(1). Based on the legislative history, for the 1994 fiscal year we propose to require advance payment for regulatory fees in Private Radio services. Due to the large volume of Private Radio licensees and other authorizations, we believe that assessment and collection of these small regulatory fees on an annual basis would be very costly and would likely result in a larger number of delinquent payments unless such payments coincide with the beginning of the license term.

26. We propose to require those who are assessed a small regulatory fee to pay their annual fee for their entire license or authorization term. These regulatory fees would generally be paid concurrently with an applicant's new, renewal or reinstatement application. We propose to require persons holding lifetime restricted radiotelephone and radio operator licenses or permits for commercial use to pay a one-time regulatory fee of $105.00 to cover the entire lifetime license or permit term. If the fee amount is adjusted subsequent to a regulatee's advance payment, the regulatee would not be subject to the new fee amount until its next renewal application and regulatory fee is due. Regulatees thus would only be subject to the fee amounts in effect for the fiscal year in which their application is filed. Finally, for the first round of fee payments for regulatees in the private radio service, we may require payments subsequent to the time when the application is actually filed.[11]

2. Method of Payment and Payment Location

27. We propose to use the same general requirements and procedures for the payment of both application fees and regulatory fees. First, in addition to the payment methods in section 1.1108(a) of our Rules, we propose to allow the filing of fee payments by electronic means. We will first allow electronic fee payments only on a limited, experimental basis. We also propose to allow payment by credit card in some circumstances. The credit cards which will be accepted are VISA and Mastercard. When a credit card is employed for a fee payment, the entire fee payment must be made by a single credit card transaction.

28. Second, we propose to allow the use of one payment instrument to cover multiple standard regulatory fee payments and, where applicable, multiple installments.[12] Our new remittance form and payment procedures would allow individual entities to use a single payment method or instrument to pay the standard regulatory fees for each Mass Media and Common Carrier license or authorization it holds. Each individual regulatee will be solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, antennas, access lines, or other relevant units, and for paying the proper cumulative amount by the single instrument.

29. Finally, in order to efficiently process Mass Media and Common Carrier regulatory fee payments, we propose to set up a single lockbox at the lockbox bank, separate from the lockboxes established for applications and application fees. Regulatory fee payments for both services are to be submitted to this lockbox. This will allow regulatees in the Mass Media and Common Carrier services to combine payments for different fee categories. However, since regulatory fees for Private Radio services will be due at the same time as applications and application fees, these regulatory fees, must be paid to the same lockbox as the application fees. Because they are paid to different lockboxes, Private Radio fees may not be combined with Mass Media and Common Carrier regulatory fees. We request comments on the above proposals.

Enforcement of Regulatory Fees Statute and Regulations

30. Section 9(c) of the Communication Act provides the Commission with three methods of enforcing the statute: monetary penalties for late payment, dismissal of applications, and revocation. 47 U.S.C. 159(c). In order to ensure an effective regulatory fee collection program, we intend to use these enforcement mechanisms to the fullest extent possible. In addition, the Commission will pursue all available remedies against delinquent payers under the Debt Collection Act, 31 U.S.C. 3711 *et seq.*, and related statutory provisions. We invite comment on the proposals which follow.

1. Penalties for Late Payment

31. We propose to incorporate section 9(c)(1) into our rules. Thus, we will charge a 25 percent penalty to any regulatee that fails to pay its regulatory fee (or installment) in a timely manner. We intend to consider a payment to be late, or "not paid in a timely manner," if the full regulatory fee amount or the

[10] See 4 CFR part 102; 47 CFR 1.1940(c).

[11] We note that some existing private radio licensees will be reclassified as Commercial Mobile Radio Service (CMRS) providers pursuant to section 332 of the Communications Act. 47 U.S.C. 332(c), (d). To the extent that private radio licensees will have paid their "small" fees in advance for the term of their licenses, we would apply the advanced payment toward any new regulatory fee requirement imposed upon such licensees as a result of being reclassified as CMRS.

[12] Since small regulatory fees will be paid at the same time as application fees, our current application fee-filing procedures requiring one instrument per application would apply. However, we are proposing below to modify the one-instrument/one-application rule to allow one payment instrument to cover multiple applications filed in the same bank lockbox.

entire installment payment is not received at the lockbox bank by the due date specified by the Commission. A payment would also be considered late if the payment (check, bank draft or other means) is not collectible.[13]

32. If a regulatory fee is not paid in a timely manner, we will make every effort to identify delinquent payors and to notify them of their delinquency as soon as possible. This notice will, pursuant to the statute, automatically assess the 25 percent penalty and, as proposed below will require the delinquent payor to pay the fee and penalty, may subject the delinquent payors' pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to revocation.

2. Dismissal of Application

33. Section 9(c)(2) authorizes the Commission to dismiss any application, group of applications or other filings for failure to pay in a timely manner any fee or penalty under section 9. 47 U.S.C. 159(c)(2). Because application and regulatory fees may be combined, we propose that, where a regulatory fee is required to accompany a regulatee's new or renewal application (as is the case with the small fees), the application will be returned if the regulatory fee is not included. If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline (or any other application that must be filed by a date certain), we also propose to dismiss the application if not accompanied by the regulatory fee.

3. Revocation

34. Section 9(c)(3) provides that, '[i]n addition to or in lieu of" the 25 percent penalty required by section 9(c)(1) and the application(s) dismissal authorized by section 9(c)(2), "the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section." 47 U.S.C. 159(c)(3). The statute specifies that the Commission must provide notice to the licensee of the Commission's intent to take such action and must allow the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this revocation provision unless the licensee's response presents a "substantial and material question of fact." In any case where a hearing is conducted, it shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee.

35. While we do not foresee that revocation will be necessary except in egregious circumstances, we reserve the right to invoke these abbreviated revocation proceedings against any delinquent regulatee. We note that this provision requires only that a regulatee "has failed to make *payment of a regulatory fee." Id.* (emphasis added). It does not require "willful or repeated" failure to pay. Compare 47 U.S.C. 312(a)(3), (4) and (7). Therefore, if we deem it appropriate, our notification to a regulatee that is delinquent with its regulatory fee payment will take the form of an "Order to Show Cause," allowing the regulatee to either pay the fee or show cause why the fee does not apply or should otherwise be waived or payment deferred. We propose to provide a 60 day period for a reply by the subject regulatee in order to afford an adequate opportunity for the regulatee to obtain any necessary financing of its fee payment and to otherwise prepare its response.

4. Debt Collection Act Remedies

36. In addition to the above-described remedies under section 9(c), we intend to invoke our authority under the Debt Collection Act against any person or entity failing to meet its regulatory fee payment obligations. See 31 U.S.C. 3711 *et seq.* In accordance with part 1, subpart 0 of our rules (47 CFR §§ 1.1901–1.1952), we intend to pursue the collection of outstanding debts arising from regulatory fee payment failures at the same time we proceed against the debtor with the other sanctions authorized by section 9(c). Moreover, where circumstances require, we will refer outstanding debts to the Internal Revenue Service. See 31 U.S.C. § 3720A.

Included in the recovery of the unpaid fee will be the assessment of interest on the debt due, penalty for nonpayment and the full cost incurred by the Federal government in the collection process. See 31 U.S.C. 3717.

Explanation of Regulatory Fee Categories

37. An explanation of regulatory fee categories is contained in the Commission's Notice of Proposed Rulemaking and is based on the categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. 159(g). Where regulatory fee categories from the schedule need additional interpretation or clarification, we have relied on the legislative history of section 9 and our own experience in establishing and regulating the various services.

1. Private Radio Bureau

38. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. In addition, as noted above, because of the relatively small annual fee amounts in the Private Radio Services, applicants for a new license, reinstatement and renewal will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate lockbox addresses for these applications.

2. Mass Media Bureau

39. Television stations. As discussed above, we propose to allow installment payments for regulatory fees if a television licensee's annual fee exceeds $12,000. We propose that this amount be deemed large because it greatly exceeds the estimated average regulatory fee obligations to be incurred by most other television licensees. Specifically, according to our estimates, the 551 commercial VHF television licensees will pay an average fee of $8,826. Most VHF licensees (379, or 69 percent) will pay $8,000 or under in fiscal year 1994 and only 18.5 percent of VHF licensees will be asked to pay over $12,000. Similarly, under the statutory schedule 561 commercial UHF television licensees will pay an average fee of $8,294. The vast majority of UHF licensees (406, or 72 percent) will pay under $10,000 in fiscal year 1994 and only 27.63 percent of UHF licensees will be asked to pay over $12,000. Thus, we tentatively conclude that television licensees subject to a regulatory fee above $12,000 will be automatically eligible to make two equal installment payments, subject to additional administrative and interest charges.

[13] We will also continue our policy of not accepting instruments other than cashier's checks for payers who are notified that other payment methods are unacceptable.

40. In determining a TV station's market rank, the Commission has traditionally relied on the Arbitron Company's publication "Television Markets and Ranking Guide." See, *e.g.*, 47 CFR §§ 73.658(k) note 1 (prime-time access rule). We note, however, that Arbitron has recently announced that it will no longer provide television ratings services. See Cooper, Arbitron Drops Local TV and Cable Ratings, Broadcasting & Cable, Oct. 25, 1993, at 45. Thus, we seek comment on whether we should rely on the latest Arbitron publication's rankings which would be placed in our rules (see, *e.g.*, 47 CFR 76.51 (major television markets)), or should we use some other source (such a A.C. Nielsen) to determine a television station's market ranking reach year for purposes of assessing regulatory fees. In this regard, we tentatively conclude that we will need to rely on the most recent market rankings to assess fees each fiscal year because a static list in our rules may become outdated after a few years. Thus, any changes in market rankings may affect regulatory fee amounts for the following fiscal year.

3. Cable Services Bureau

41. Cable television systems. We seek comment on how to verify a cable television operator's regulatory fee obligation, which, as noted is based on its total number of subscribers. We propose to initially rely on a cable operator's good faith representation on its fee remittance form as to the number of subscribers it has as of the date of its annual regulatory fee payment. We also intend to perform random audits to determine whether individual cable systems have based their fee payments on the correct number of subscribers. Commenters are invited to suggest other alternatives.

42. As indicated above, we propose to allow installment payments for these regulatory fees if a cable television system's annual fee exceed $18,500.00 (*i.e.*, systems with more than 50,000 subscribers).[14] We propose that this amount be considered large in this context in part because it significantly exceeds the estimated average fee that will be paid by most cable systems. Specifically, according to our estimates, the average fee in this category will be approximately $1,914.00 in FY 1994. However, a relatively few systems (approximately 2 percent of all systems) will be subject to fees over $18,500.00 and significantly above the $1,914.00 average. These systems will pay, on average, a fee of approximately $36,000. Thus, we believe that $18,500 is a reasonable cut-off. Therefore, pursuant to the statute, we propose to permit cable systems whose regulatory fee for FY 1994 exceeds $18,500 to pay in two equal installments on the dates later specified by the Commission, subject to additional administrative and interest charges. We invite comment on this proposal.

4. Common Carrier Bureau

43. Most common carrier regulatory fees are based on the size of a regulatee's communication operation as determined by number of stations, subscribers, access lines, or antennas. We intend to rely on the Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers, to the extent possible. However, where the Commission does not have information on hand to verify a regulatory fee multiplier (*e.g.* number of subscribers), we intend to rely on the good faith representations made on a regulatee's fee remittance form. We also intend to perform random audits to determine whether individual regulatees have reported the correct multiplier. Additionally, we request comment with respect to how well the specific regulatory fee multiplier set forth in the statutory schedule are "reasonable related to the benefits provided" to regulatees.[15] Commenters should proposed specific alternatives, which we may either recommend to Congress as technical amendments to the statutory schedule or incorporate into our own schedule of regulatory fees.

44. Mobile services. Licensed personal communications services ("PCS") will consist of a wide variety of commercial or private mobile communications services, including advanced paging, microcellular telephone communications, portable facsimile and other video and data transmission services. See generally, First Report and Order, Gen. Docket No. 90–314 and ET Docket No. 92–100, 8 FCC Rcd 7162, 58 FR 42681 (August 11, 1993) *on recon.*, FCC 94–30 (released March 4, 1994) (narrowband PCS); Second Report and Order, Gen. Docket No. 90–314, 8 FCC Rcd 7700, 58 FR 59174 (Nov. 8, 1993) *recon.* pending (broadband PCS). The statutory Schedule of Regulatory Fees enacted in the 1993 Budget Act established an annual fee of $60.00 per 1000 subscribers for PCS licensees. At the same time, the 1993 Budget Act recognized that PCS licenses have not yet been issued. In particular, Congress directed the Commission to conclude its PCS rulemaking proceedings (Gen. Docket No. 90–314 and ET Docket No. 92–100) by February 6, 1994, and to commence the PCS licensing process by May 7, 1994.[16] In addition, our new PCS service rules provide licensees five years to meet minimum construction requirements. Accordingly, since it is unlikely that may PCS licensee will have a significant number of subscribers in the immediate future, we tentatively conclude that no regulatory fees will be collected from PCS licensees during the 1994 fiscal year. We intend to begin assessing and collecting regulatory fees for PCS in the 1995 fiscal year.

45. Space stations. Domestic and international non-geostationary satellites, positioned in a low-earth orbit ("LEO"), may be authorized to transmit to satellites and fixed or mobile earth stations. These services include the new non-vioice, non-geostationary mobile-satellite service in bands below 1 GHz, see Report and Order, CC Docket No. 92–76, 8 FCC Rcd 8450, 58 FR 68053 (Dec. 23, 1993) and Mobile Satellite Services in bands above 1 Ghz, see Notice of Proposed Rulemaking, CC Docket No. 92–166, FCC 94–11 (released Feb. 18, 1994). Entities authorized to operate LEO systems will be assessed an annual regulatory fee of $90,000.00 for each such system. We note that the Commission's new rules do not define how many space stations in low-earth orbit would constitute a "system." See Below 1 GHZ Report and Order at para. 3. Although no LEO systems are currently operational, for purposes of assessing regulatory fees, we propose to require a LEO operator to begin paying annual regulatory fees in the fiscal year in which they launch the first satellite in their system even though all the space stations specified in its application or instrument of authorization have not become operational. We request comment on this proposal. While it appears unlikely that a LEO system will be launched in the 1994 fiscal year, should be LEO system be launched during that period, we tentatively propose to collect a regulatory fee for such launched systems and request comment on whether the entire annual fee amount should be required or if the fee should be assessed on a pro-rata basis.

46. Interexchange and local exchange carriers. For FY 1994, interexchange carriers (long distance telephone companies) ("IXCs") will be assessed an annual regulatory fee of $60.00 per 1,000 presubscribed access lines. Similarly, local exchange carriers (local telephone operating companies)

[14] The term "subscriber" is defined in section 76.5 of the Commission's Rules. 47 CFR 76.5.

[15] See 47 U.S.C. 159(b)(1)(A).

[16] Section 6002(d)(2), 1993 Budget Act.

("LECs") will be assessed an annual regulatory fee of $60.00 per 1,000 access lines. As noted above, for IXCs, we have identified regulatory fee payment amounts greater than $500,000.00 as large. For LEC holding companies, we have identified $700,000.00 as a large amount. Thus, we propose to permit IXCs whose annual regulatory fee exceed $500,000.00 and LEC holding companies whose fee payments exceed $700,000 to make installment payments. A relatively small number of companies will incur annual fees in excess of these amounts compared with many other entities who are subject to much lower fees. Specifically, we have estimated that the average fee for all interexchange carriers will be approximately $20,000. However, the top three carriers will be paying from $530,000 to $6 million dollars per year in regulatory fees. The estimated average fee for only the top 20 local exchange carriers is approximately $417,000. We have tentatively chosen as a logical cut-off point $700,000 because only a few carriers will pay this above-average fee and the vast majority of carriers will pay a fee that is significantly below the top 20 average fee. In fiscal year 1994, large fees may be paid in two installments. Given the higher annual operating revenues of these types of companies, we also believe that the proposed amounts for "large" fees are appropriate in this context.

Conforming and Clarifying Amendments to Application Fee Rules

47. In addition to the new rules for regulatory fees, we are proposing to revise several sections of our rules governing the payment and collection of fees associated with applications and other filings. As noted above, these fees are assessed and collected pursuant to section 8 of the Communications Act and are separate and apart from the regulatory fees authorized under section 9. However where appropriate, our section 7 and section 9 fee collection procedures will be integrated. For the most part, the proposed modifications related to our filing fees are ministerial in nature to conform our application fee and regulatory fee regulations or will clarify existing fee payment requirements.

48. *Fees for resubmitted applications.* First, we propose to amend section 1.1107(d) of the rules, which governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. Ordinarily, no additional fee payment is required for resubmitted applications and other filings. However, the rules do require a supplemental fee payment whenever the revised information causes a change in the category of the filing with the result that a higher fee payment is now due under the fee schedule. Our rules provide that the additional fee payment, *i.e.*, the difference between the fee initially submitted and the correct fee payment now due, must be submitted with the revised application or other filing.

49. In order to clarify our rule governing those procedures applicable when an additional fee is due, we propose to amend § 1.1107(d) to require persons submitting revised applications and other filings to submit any fee payment balance due when the revised application or other filing is submitted. Such applications and fees must be filed at the lockbox bank. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained but a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application or other filing involved.

50. *Stale checks.* The Commission's correspondent bank for fee collections will not process a personal or business check dated more than six months prior to its submission. Therefore, we propose to revise § 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, and consistent with the Uniform Commercial Code, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument.

51. *Receipts.* Next, with regard to receipts requested for application fee payments, the Commission's practice is to furnish receipts only upon specific requests of the submitter rather than to provide receipts automatically for all fee payments received. We propose to clarify these procedures by amending § 1.1108 of the rules. In order to obtain a receipt for a fee payment, we propose to require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. We do not intend to provide receipts for regulatory fee payments.

52. *Electronic payment.* In addition, pursuant to our proposal above regarding the submission of regulatory fee payments by electronic means, we propose to amend §§ 1.1107 and 1.1108 of the rules to allow the payment of application and other filing fees by electronic means. Although such a system for electronic payment is not yet in place, we believe that it is appropriate in this proceeding, and in conjunction with the development of our pilot project, to propose changing these rules at this time and to seek comment on one particular aspect of this payment method as it specifically applies to applications and other filings. Specifically, we are concerned about matching electronically paid fees with submitted hard-copy applications. If a party chooses to pay its application filing fee electronically, we believe that it should follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice (FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. We tentatively conclude that in such situations the electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request would be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our authorization before making electronic fee payments.

53. *One-check/one-application rule.* We propose to modify our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different

applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159–S, FCC Supplemental Remittance Advice.[17]

54. *Payment by cashier's check required.* Section 1.1108(d)(1)(i) of the Commission's Rules provides that payment of fees by cashier's check may be required when a person or organization has, on two or more occasions, made payment with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error. 47 CFR 1.1108(d)(1)(i); see also *id.* § 1.1110(a). Under these circumstances, the Commission will send a letter detailing the terms and conditions of future payments, including a requirement that no form of payment, other than a cashier's check is acceptable. Despite this apparently strict response to "bounced" checks and other insufficient payment instruments, we continue to receive numerous checks that are not drawn on sufficient funds for payment. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, we propose that, when a person or organization has, on a single occasion, submitted a payment instrument on which final payment is not received (and not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check. If, subsequent to such notice, payment is not made by a cashier's check, that party's other payment instrument will not be accepted and its application or other filing will be returned.

55. *Filing locations for petitions, waivers, and deferrals.* Finally, we will be making a few ministerial changes to the rules. Specifically, we will revise §§ 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to the lockbox bank. If no fee payment is required and the matter is within the scope of the fee rules, the petition or application for review should be filed with the Secretary and clearly marked to the attention of the Managing Director. Petitions for deferral or waiver for which no fee payment is required should also be directed to the attention of the Managing Director.

[17] All non-private radio section 9 regulatory fee payers must use FCC Form 159/159S when submitting single or multiple regulatory fees. Under current application fee rules, applicants are required to submit one check and one application. However, effective April 1, 1994, applicants will also be allowed to pay for multiple filings in the same lockbox with a single payment instrument. These applicants must also use FCC Form 159/159S for multiple filings.

Comment Period and Procedures

56. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 7, 1994, and reply comments on or before April 18, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting material. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ex Parte Rules

57. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. See 47 CFR 1.1202, 1.1203 and 1.1206(a).

Initial Regulatory Flexibility Analysis

58. As required by section 603 of the Regulatory Flexibility Act (Pub. L. No 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading, designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding the Commission's proposed implementation of newly enacted Section 9 of the Communications Act in which Congress directed the Commission to establish rules for the collection of regulatory fees.

Objectives

The Commission seeks to implement the collection of regulatory fees, as contained in Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

Legal Basis

The proposed action is authorized under sections (4)(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 158, 159, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

The Commission is developing an FCC Remittance Advice form (FCC Form 159) for submission to the Commission with single regulatory fee payments and an FCC Supplemental Remittance Advice Form (FCC Form 159S) for submission with multiple regulatory fee payments.

Federal Rules That Overlap, Duplicate or Conflict With Proposed Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

This proposed implementation of the collection of regulatory fees will affect permittees, licensees and other regulates in the cable, common carrier, mass media and private radio services. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comments on a variety of alternatives.

Authority

59. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 158, 159, and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix—Statutory Schedule of Regulatory Fees

Bureau/Category	Annual regulatory fees
Private Radio Bureau:	
Exclusive use services (per license):	
Land mobile (above 470 MHz, base station and SMRS) (47 CFR Part 90) ..	$16
Microwave (47 CFR Part 94)	16
Interactive video data service (47 CFR Part 16)	16
Shared use services (per license unless otherwise noted)	7
Amateur vanity call-signs	7
Mass Media Bureau (per license):	
AM radio (47 CFR Part 73):	
Class D fulltime	250
Class A fulltime	900
Class B fulltime	500
Class C fulltime	200
Construction permits	100
FM radio (47 CFR Part 73):	
Classes C, C1, C2, B	900
Classes A, B1, C3	600
Construction permits	500
TV (47 CFR Part 73):	
VHF commercial:	
Markets 1 thru 10	18,000
Markets 11 thru 25	16,000
Markets 26 thru 50	12,000
Markets 51 thru 100	8,000
Remaining markets	5,000
Construction permits	4,000
UHF commercial:	
Markets 1 thru 10	14,400
Markets 11 thru 25	12,800
Markets 26 thru 50	9,600
Markets 51 thru 100	6,400
Remaining markets	4,000
Construction permits	3,200
Low power TV, TV translator, and TV booster (47 CFR Part 74) ...	135
Broadcast auxiliary (47 CFR Part 74)	25
International (HF) broadcast (47 CFR Part 73)	200
Cable antenna relay service (47 CFR Part 78)	220
Cable television system (per 1,000 subscribers) (47 CFR Part 76)	370
Common Carrier Bureau:	
Radio Facilities:	
Cellular Radio (per 1,000 subscribers) (47 CFR Part 22)	60
Personal Communications (per 1,000 subscribers) (47 CFR)	60
Space Station (per operational station in geo-synchronous orbit) (47 CFR Part 25)	65,000
Space Station (per system in low-earth orbit) (47 CFR Part 25)	90,000
Public Mobile (per 1,000 subscribers) (47 CFR Part 22)	60
Domestic Public Fixed (per call sign) (47 CFR Part 21)	55
International Public Fixed (per call sign) (47 CFR Part 23)	110
Earth stations (47 CFR Part 25):	
VSAT and equivalent C-Band antennas (per 100 antennas)	6
Mobile satellite earth stations (per 100 antennas)	6
Earth station antennas:	
Less than 9 meters (per 100 antennas)	6
9 Meters or more:	
Transmit/Receive and Transmit Only (per meter)	85
Receive only (per meter)	55
Carriers:	
Inter-exchange carrier (per 1,000 presubscribed access lines)	60
Local exchange carrier (per 1,000 access lines)	60
Competitive access provider (per 1,000 subscribers)	60
International circuits (per 100 active 64KB circuit or equivalent)	220

[FR Doc. 94-6246 Filed 3-16-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to make a technical amendment to regulations published on June 17, 1992, pertaining to the humane and healthful transport of wild mammals and birds to the United States. This proposed technical amendment updates the edition of the Live Animals Regulations published by the International Air Transport Association that is incorporated by reference. This proposal to incorporate by reference the 20th edition of the International Air Transport Association Live Animals Regulations is for the convenience of the public and in order to facilitate consistency and enforceability.

DATES: The Service will consider comments received by April 1, 1994 in formulating a final rule.

ADDRESSES: Comments and information should be sent to Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, room 420C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., room 432, Arlington, VA 22203, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION: On June 17, 1992, the U.S. Fish and Wildlife Service (Service) published a final rule (57 FR 27094) amending regulations pertaining to the humane and healthful transport of wild mammals and birds to the United States. That rule became effective September 15, 1992. That rule, 50 CFR part 14 subpart J, incorporates by reference the 18th edition of the Live Animal Regulations (LAR) of the International Air Transport Association, such that all primary enclosures used to transport live wild mammals or birds to the United States are required to comply with the Container Requirements of the 18th LAR. Since the publication of the final rule, IATA has published the 20th edition of the LAR, effective October 1, 1993. The 20th LAR contains no major substantive differences from the 18th LAR, but does clarify some of the Container Requirements. When the public orders the LAR from IATA, they can only obtain the 20th edition. If the public complies with the 20th LAR, they will satisfy all of the requirements of the final rule for the Humane and Healthful Transport of Wild Mammals and Birds (50 CFR part 14). This proposal to incorporate by reference the 20th edition of the LAR is therefore for the convenience of the public and in order to facilitate consistency and enforceability.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This document is not subject to Office of Management and Budget review under Executive Order 12866. This proposed revision is a technical amendment that allows the regulation to conform with the current edition of a publication that has been incorporated by reference, which will make compliance and enforcement more practical and efficient. Also, this current action is not expected to have significant taking implications, as per Executive Order 12630, since compliance with the revised regulations will have neither greater nor lesser effect on constitutionally protected individual property rights. The revision to Part 14 certified not to have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Small entities are already required to comply with the current regulations and the 18th edition of the IATA Live Animals Regulations. It is expected that the revisions would reduce the burden on small entities by adopting the current edition of the industry guidelines rather than imposing a requirement for an outdated version. Since the rule applies to importations of live wildlife into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Author

The author of this proposed rule is Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2095).

List of Subjects in 50 CFR Part 14

Exports, Imports, Incorporation by Reference, Labeling, Reporting requirements, Transportation and Wildlife.

Proposed Regulation Promulgation

Accordingly, it is proposed to amend part 14 of chapter I of title 50 of the Code of Federal Regulations as follows:

PART 14—[AMENDED]

1. The authority citation for part 14 continues to read as follows:

Authority: 18 U.S.C. 42(c); 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 705, 712; 31 U.S.C. 483(a).

2. Section 14.106 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 14.106 Primary enclosures.

* * * * *

(a) The Container Requirements of the Live Animal Regulations (LAR), 20th edition, October 1, 1993, published by the International Air Transport Association (IATA) shall be complied with by all parties transporting wild mammals or birds to the United States. * * *

* * * * * *

Dated: February 26, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–5950 Filed 3–16–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 52
Thursday, March 17, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 11, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Farmers Home Administration.

7 CFR 1980–J, Agricultural Resource Conservation Demonstration Program.
FmHA 1980–74, 75, 76, 78.
Recordkeeping; On occasion; Annually.
State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 323 responses; 1,354 hours.
Jack Holston, (202) 720–9736.

Extension

- Agricultural Marketing Service.

Irish Potatoes Grown in Washington, Marketing Order No. 946.
Recordkeeping; On occasion; Monthly; Annually; Every three years Farms; Businesses or other for-profit; 1,451 responses; 241 hours.
Jim Wendland, (202) 720–2170.

- Agricultural Marketing Service.

Sweet Cherries Grown in Designated Counties in Washington-Marketing Order No. 923.
On occasion.
Farms: Businesses or other for-profit; 241 responses; 68 hours.
Mark J. Kreagor, (202) 720–1755.

- Office of Personnel.

USDA Applicant Supplemental Sheet.
AD–1086.
On occasion.
Individuals or households; Federal agencies or employees; 60,000 responses; 9,600 hours.
Mary Ann Jenkins, (202) 720–6905.

Reinstatement

- Rural Electrification Administration

Deferments of REA Loan Payments for Rural Development Projects
Recordkeeping; On occasion.
Small businesses or organizations; 108 responses; 421 hours.
Walt Petty (202) 690–0419.

- Farmers Home Administration.

7 CFR 1901–E, Civil Rights Compliance Requirements.
FmHA 400–1, 4, 6, 7, 8, HUD 935–2, CC–257.
Recordkeeping; On occasion.
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 50,985 responses; 532,764 hours.
Jack Holston, (202) 720–9736.

- Food and Nutrition Service.

Civil Rights Title VI Collection Reports.
FNS–191 and FNS–101.
Annually.
State or local governments; 2,982 responses; 6,710 hours.
Laurie Hickerson, (703) 305–2715.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 94–6179 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of publication of list of warehouses licensed under the U.S. Warehouse Act and availability of list of cancellations and/or terminations occurring during calendar year 1993.

SUMMARY: Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1993, as required by section 26 of that Act (7 U.S.C. 266). Also, a list of cancellations and/or terminations that occurred during calendar year 1993 is available. Interested parties may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Fry, Agricultural Stabilization and Conservation Service, Licensing Authority Division, U.S. Department of Agriculture, P.O. Box 2415, room 5962, South Agriculture Building, Washington, DC 20013–2415, telephone: 202–720–6004.

Signed at Washington, DC, on March 14, 1994.

Bruce R. Weber,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–6243 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Vail Category III Ski Area Development; White River National Forest; Eagle County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA will prepare an Environmental Impact Statement (EIS) to disclose the effects of alternative plans for developing the Category III portion of Vail Ski Area. Vail Ski Area is located on the Holy Cross Ranger District of the White River National Forest and operates under a Forest Service special use permit.

DATES: Written comments concerning the preliminary assessment of the scope of the analysis, the issues, or the alternatives, should be received on or before April 1, 1994.

ADDRESSES: Send written comments to William A. Wood, District Ranger, P.O. Box 190, Minturn, CO 81645.

FOR FURTHER INFORMATION CONTACT: Loren Kroenke, Project Manager, Holy Cross Ranger District. Ph. (303) 827–5715.

Responsible official: Veto J. LaSalle, Forest Supervior, White River National Forest.

SUPPLEMENTARY INFORMATION: Vail Ski Area operates on the White River National Forest, Holy Cross Ranger District, and is located about 100 miles west of Denver, Colorado. The Category III area encompasses the upper (eastern) portion of the Two Elk Creek watershed and comprises the southern extent of the special use permit boundary. It is approximately 4,000 acres in size.

The proposal consists of two parts. The first includes a request to construct 3 ski lifts, one restaurant, 2 picnic facilities, and provide about 1,000 acres of lift-accessed ski terrain. The ski terrain would be composed of about equal portions of existing open bowls, gladed trails through trees, and traditional runs cut in more dense, forested areas. A system of service road/ski-ways would be constructed to circulate skiers and provide construction and maintenance access. The area is currently closed to public motorized use and would remain so.

In the second part of the proposal, Vail Associates, Inc. has proposed construction of lift in a mostly developed portion of the ski area called Tea Cup Bowl. Construction of several ski trails and a short section of road would also be associated with the Tea Cup lift. For both the Category III and Tea Cup projects, implementation is proposed to begin 1995 and would span several summers.

The proposed project is consistent with prior agency decisions and plans. The area is included in the Rocky Mountain Regional Guide (1983, Revised May 1992) as a Category 1 priority for future ski area development study. The 1984 White River National Forest Land and Resource Management Plan EIS and Record of Decision allocated this area to management emphasizing developed alpine skiing. Finally, an Environmental Assessment prepared in 1986 examined a proposed Master Development Plan for the entire Vail Ski Area. In the Decision Notice approving this Master Development Plan, the Forest Service authorized additions to the permit boundary and provided site-specific approval for construction of developments on much of the special use permit area. However, the Decision Notice required further environmental analysis for the Category III area following submission of a detailed development plan.

The proposed action is intended to improve existing ski conditions at Vail Ski Area, address skier preferences for bowl and gladed skiing opportunities, and better distribute skiers, particularly during the critical Christmas to New Year's Day period and when unfavorable weather or snow conditions prevail in the existing Back Bowls. As well, action is needed to respond to a request which would implement previous land allocation decisions.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process during which the Forest Service will seek information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by this action. This information will be used in preparation of the EIS. Scoping includes inviting participation, determining the project's scope, and identifying potential issues. The public will also be invited to participate in developing the alternatives and identifying and reviewing the potential environmental effects of the proposed action and its alternatives.

Preliminary issues associated with this proposal include effects relating to elk habitat, habitat for North American lynx, biological diversity, non-motorized recreation, wetlands, water quality, maintaining quality skiing opportunities, and the demand for additional skiing opportunities. As well, there are concerns regarding parking and transportation in the Town of Vail. The process will examine these and other issues. This analysis will focus on key issues and eliminate from detailed study insignificant issues or those which have been addressed in previous environmental review.

Alternatives will be developed and examined which respond to the significant issues and which are consistent with the purpose and need for the action. Tentatively, the alternatives include the applicant's proposal (described above) and No Action, which assumes that no development will be allowed. Additional preliminary alternatives include: the proposal outlined in Vail's 1985 Master Development Plan, which included additional trail development and a modified version of Vail's current proposal which would include less trail development. These alternatives will be modified as a result of public scoping. In the EIS, the direct and indirect effects of each of the alternatives, together with effects of past, present, and reasonably foreseeable future actions will be evaluated.

The lead Agency in the preparation of the EIS is the Forest Service. The process will also include consideration of designating cooperating agencies. Among those who may become cooperating agencies are the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. Implementation of this proposal may require a permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act.

The Forest Service anticipates the Draft EIS will be filed in the Fall of 1994, and the Final EIS in the Spring of 1995. The comment period on the Draft EIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the

alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 25, 1994.

Veto J. Lasalle,

Forest Supervisor.

[FR Doc. 94–6203 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–11–M

Food Safety and Inspection Service

[Docket No. 93–019N]

Update on Livestock and Poultry Connected With Biotechnology Research

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice (1) reaffirms an earlier policy statement, published on June 26, 1986, concluding that livestock and poultry involved in biotechnology experiments are subject to current regulations relating to eligibility for slaughter at official establishments, (2) reaffirms an earlier policy statement, published on December 27, 1991, concluding that livestock and poultry involved in biotechnology experiments are transgenic research animals and, therefore, are subject to existing regulations for livestock and poultry used for research, (3) advises that the Food Safety and Inspection Service (FSIS) will inspect for human food use livestock and poultry which were involved in biotechnology experiments, and (4) announces the availability of a document prepared by FSIS entitled "Points to Consider for the Evaluation of Transgenic Animals from Transgenic Animal Research" (Points to Consider).[1]

FOR FURTHER INFORMATION CONTACT: Dr. Pat Basu, Director, Technology Transfer and Coordination Staff, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–8623.

SUPPLEMENTARY INFORMATION: FSIS is responsible for ensuring the safety, wholesomeness, and accurate labeling of all meat, meat food products, and poultry products under the Federal Meat Inspection Act (FMIA), 21 U.S.C. 601 *et seq.*, and the Poultry Products Inspection Act (PPIA), 21 U.S.C. 451 *et seq.* Livestock and poultry involved in biotechnology experiments to introduce genetic improvements by transgenesis, i.e., transgenic research animals, may be offered for slaughter for food purposes in official establishments. Agency review and approval in accordance with 9 CFR 309.17 and 381.75 are required before these transgenic research animals may be slaughtered for human food use at official establishments. In addition, persons who intend to slaughter transgenic research animals or their progeny for human food use at official establishments may obtain a copy of the Points to Consider document, and follow the voluntary guidelines set forth in that document. Persons who follow both the applicable regulations cited above and the Points to Consider document should note that the inspector in charge (IIC) may still deny or withdraw the approval to slaughter transgenic research animals for human food use when the IIC deems it necessary to assure that products prepared at the official establishment are not adulterated, in accordance with the FMIA and the PPIA. The approval to slaughter commercially produced, nonresearch transgenic animals will be handled separately at a later date.

Currently, trangenesis is usually conducted by injecting deoxyribonucleic acid (DNA) into fertilized eggs to achieve desired genetic and/or physical changes. This procedure results in only a small proportion of animals being born with genetic changes. Animals born without genetic change may be used for human food under current policies set forth in the U.S. Department of Agriculture's (USDA's) June 26, 1986, policy statement published in the **Federal Register** (51 FR 23336) which states that existing regulations would be applied to food animals involved in biotechnology experiments. Also, USDA's policy for the inspection for human food use of livestock and poultry which are involved in biotechnology research but which are not genetically modified products of biotechnology, published in the **Federal Register** (56 FR 67054) on December 27, 1991, concerns transgenic research livestock and poultry in which genetic change has not occurred. Due to the small number of transgenic research animals produced in biotechnology experiments, such transgenic research animals have not been presented for slaughter in the past. However, FSIS anticipates that production of such transgenic animals will increase. This notice reaffirms USDA's June 26, 1986, and December 27, 1991, notices, specifically with regard to animals involved in biotechnology experiments.

Because of the high level of public and Congressional interest in biotechnology, FSIS is advising in this notice the actions it will take to ensure that meat, meat food products, and poultry products derived from livestock and poultry involved in biotechnology experiments are safe, wholesome, and accurately labeled. This document also provides guidance to those using biotechnology to produce genetic changes in livestock and poultry and offering the same for slaughter at official establishments.

This notice announces the availability of the Points to Consider document, which discusses FSIS policy for the food safety assessment of transgenic animals and their progeny and sets forth voluntary guidelines regarding the presentation of transgenic research animals and their progeny for slaughter for human food use at official establishments. For the purpose of this Points to Consider document, which may be updated as needed, without notice, transgenic animals are animals whose genetic composition has been changed by introducing selective genes (e.g., recombinant DNA), whether or not the change physically manifests itself. This definition includes animals developed by antisense, amplification, and deletion technologies. Individuals interested in performing transgenic animal research and presenting such animals for slaughter may obtain the most recent copy of the Points to Consider document from the address identified in footnote 1 in this notice prior to starting his or her research.

Under 9 CFR 309.17 and 9 CFR 381.75, an investigator interested in presenting transgenic research animals for slaughter should submit data or a summary evaluation of the data to FSIS. When assessing the human food safety of meat, meat food products, and poultry products from transgenic research animals. FSIS may utilize the recommendations adopted by the Transgenic Animal Working Group of the USDA's Agricultural Biotechnology Research Advisory Committee. These recommendations are described in the Points to Consider document.

Upon receipt of all the data or the summary evaluation of data, FSIS will review and assess the data or summary evaluation of the data. The data or summary of the data must demonstrate that the research conducted on the transgenic research animals will not result in the products of the transgenic research animals or their progeny being adulterated. Further, the Administrator

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[1] Copies of this document may be obtained from Dr. Pat Basu, Director, Technology Transfer and Coordination Staff, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–8623.

of FSIS, or the Administrator's designee, must approve the slaughter of transgenic research animals at official establishments prior to slaughter. Transgenic research animals approved for slaughter at an official establishment are subject to the same inspection procedures as other animals offered for slaughter at official establishments.

Done at Washington, DC on: March 11, 1994.

Terry L. Medley,

Acting Administrator, Food Safety & Inspection Service.

[FR Doc. 94–6240 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–DM–M

[Docket No. 94–004N]

Exemption for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the dollar limitations currently in effect on the annual sales of meat and poultry products that can be sold by retail stores exempt from Federal inspection requirements to consumers other than household consumers, such as hotels, restaurants and similar institutions, have been adjusted to conform with price changes for meat and poultry products as indicated by the Consumer Price Index. The dollar limitation for meat products increases from $37,800 to $38,900 for calendar year 1994 and the dollar limitation for poultry products increases from $33,100 to $34,500 for calendar year 1994.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Judith A. Segal, Director, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7773.

Background

Federal inspection of meat and poultry products prepared for sale or distribution in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection ". . . shall not apply to operations of types traditionally and usually conducted at retail stores . . . when conducted at any retail store . . . for sale in normal retail quantities . . . to consumers. . . ."

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under the FMIA or PPIA. Under the regulations, for an establishment to be an exempt retail establishment depends, in part, upon the percentage and volume of its trade with consumers other than household consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. During calendar year 1993, the maximum amount for meat products was $37,800; for poultry products, the amount was $33,100.

The Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) further provide that the dollar limitation on product sales by retail stores to consumers other than household consumers will be automatically adjusted during the first quarter of each calendar year whenever the Consumer Price Index, published by the Bureau of Labor Statistics (BLS), Department of Labor, indicates a change during the previous year in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation be published in the **Federal Register**.

The BLS Consumer Price Index for 1993 indicates an average annual price increase in meat products of 3.0 percent and an average annual price increase in poultry products of 4.2 percent. When rounded off to the nearest $100, the price increase for meat products amounts to $1,100 and the price increase for poultry products amounts to $1,400. As a percentage of the existing dollar limitation, change in excess of $500 is indicated for both meat and poultry products.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, has automatically raised the dollar limitation of permitted sales of meat products from $37,800 to $38,900 and raised the dollar limitation of permitted sales for poultry products from $33,100 to $34,500.

Done at Washington, DC on: March 11, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–6241 Filed 3–16–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire for Building Permit Official.

Form Number(s): SOC–903.

Agency Approval Number: 0607–0125.

Type of Request: Revision of a currently approved collection.

Burden: 209 hours.

Number of Respondents: 835.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census uses the Questionnaire for Building Permit Official in conjunction with the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110). Data collected in the Survey of Housing Starts are used to produce statistics on residential construction and are needed by economic policymakers to monitor this sector of the economy. Census field interviewers use the Questionnaire for Building Permit Official to obtain information on the operating procedures of a sample of the building permit issuing offices in the United States in order to locate, classify, list, and sample building permits for residential construction. This information is used to carry out the sampling for the Survey of Housing Starts and to verify and update the geographic coverage of permit offices. In calendar years 1995–96, we plan to automate the data collection by replacing the paper questionnaire with laptop computers.

Affected Public: State or local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–6271 Filed 3–16–94; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

[Docket Number 940369–4069]

Annual Capital Expenditures Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is considering a proposal to conduct the Annual Capital Expenditures Survey for the years 1993, 1994, and 1995 under the authority of Title 13, United States Code, Sections 182, 224, and 225. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental sources.

DATES: Any suggestions or recommendations concerning the proposed survey should be submitted in writing by April 18, 1994, to receive consideration.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Elinor Champion on (301) 763–7161.

SUPPLEMENTARY INFORMATION: The primary users of these data will be numerous Government agencies, including the Bureau of the Census, Bureau of Economic Analysis, Bureau of Labor Statistics, and the Treasury Department. Other users include Government agencies, business firms, academics, and research and consulting organizations. The data will be used for calculation of the National Income and Product Accounts and to measure and analyze fixed capital stocks and capital formation. Companies in the survey represent private nonfarm businesses. The information to be developed from this survey is necessary for comprehensive and detailed measurement of capital investment. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

This survey has been submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. Copies of the proposed form are made available on request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: February 8, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–6157 Filed 3–16–94; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[C–122–816]

Court Decision and Suspension of Liquidation on Certain Softwood Lumber Products From Canada

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision and suspension of liquidation.

SUMMARY: On March 7, 1994, the U.S.-Canada Free Trade Agreement (FTA) binational panel (the Panel) affirmed the U.S. Department of Commerce's (the Department) determination on remand that no subsidies were provided on U.S. imports of softwood lumber products from Canada. Article 1904.13 of the FTA provides that a government may request a review of a Panel decision by an Extraordinary Challenge Committee (ECC).

The Office of the United States Trade Representative (USTR) has announced that it will file for an ECC review of the Panel's decision. The Department will implement the decision of the ECC.

In accordance with the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Timken Company* v. *United* this proceeding.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Kaesshaefer or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1992, the Department determined that U.S. imports of Canadian softwood lumber products are subsidized (57 FR 22570). The Commerce decision was appealed under Chapter 19 of the FTA. The Panel issued an adverse decision on May 6, 1993, finding that the Department had not demonstrated that countervailable subsidies existed, and remanded the case to the Department for further deliberations. The Department completed a redetermination and on December 17, 1993, the Panel issued a second adverse decision, finding that the Department still had not supported its determination that countervailable subsidies existed. It ordered a second remand, requiring the Department to find that there were no subsidies. The Department complied with this order, and filed its second redetermination, on January 6, 1994. The Panel affirmed this redetermination on February 23, 1994 and issued a Notice of Final Panel Action on March 7, 1994. USTR has until April 6, 1994 to file a request for an ECC review.

Suspension of Liquidation

In accordance with the *Timken* decision, the Department must publish notice of a decision of the Panel which is not "in harmony" with the Department's final determination. The Panel's March 7, 1994 decision constitutes a decision not in harmony with the Department's affirmative subsidy determination. Accordingly, the Department is publishing this notice. The *Timken* decision also held that the Department must suspend liquidation pending a "conclusive" court decision in the action. Therefore, the Department will continue the suspension of liquidation of the subject merchandise until the ECC issues a conclusive decision in this action. The Department will implement the decision of the ECC.

Dated: March 15, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–6433 Filed 3–16–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 030394A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a public display permit (P462G).

SUMMARY: Notice is hereby given that Ervin and Sonja Strong, dba/The Dolphin Connection, 215 Bridgeport Avenue, Suite 4, Corpus Christi, TX

78402, have applied in due form for a permit to take marine mammals.

DATES: Written comments must be received on or before April 18, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, room 206, St. Petersburg, FL 33702 (813/893–3141).

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicants request authorization to approach, harass, observe, and feed Atlantic bottlenose dolphin (*Tursiops truncatus*) in the wild in Corpus Christi Bay, for purposes of public display. It should be noted that on October 14, 1993, the NMFS published in the **Federal Register** (58 FR 53320) a Proposed Rule to Revise Regulations for Public Display, Scientific Research and Enhancement Permits which would clarify that public display activities may occur in captive settings only. Thus, if this rule becomes final as proposed, it will not provide for conduct of the type of activity being requested by the applicants.

In addition, NMFS regulations define the term "take" as including feeding wild populations of marine mammals due to increased incidental interactions with commercial fishing vessels, alterations in feeding behaviors and migratory patterns, and vulnerability to disease transmission. [See Final Rule published in the **Federal Register** March 20, 1991 (56 FR 11693–97).]

Dated: March 10, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6211 Filed 3–16–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: April 22, 1994, 9 a.m. to 4:30 p.m. and April 23, 1994, 9 a.m. to 2 p.m.

ADDRESSES: April 22, The Pentagon, room 3E869, Washington, DC; April 23, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn, Witcher, Public Affairs Officer, DoD Dependents Schools, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4236.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b) (3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, multicultural diversity and awareness, education of handicapped dependents, communications throughout the system, increased parental involvement, drawdown planning, educational technologies, and responses to the recommendations made by the Council during its October 1993 meeting.

Dated: March 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–6244 Filed 3–16–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92—463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 11 April 1994.

Time of Meeting: 0900–1700.

Place: Vienna, Va.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Science and Engineering Requirements for Military Officers and Civilian Personnel in the High Tech Army of Today and Tomorrow" will meet to discuss the Terms of Reference and outline the Study. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–6205 Filed 3–16–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 5 April 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–6206 Filed 3–16–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 19 April 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–6207 Filed 3–16–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Dates: April 5, 1994.

Time: 11 a.m.–12:30 p.m. est.

Location: 800 North Capitol Street NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet April 5, 1994 from 11 a.m. until 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The agenda includes four topics: (1) Proposed competition for alternative designs for establishing achievement levels; (2) Update on the reauthorization legislation; (3) Briefing on assessment framework development; and (4) Presentation of the NAEP schedule.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Date: March 11, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–6148 Filed 3–16–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–067]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–067) granting a Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Goodman Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GMN series central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Goodman has been granted a Waiver for its GMN series central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, March 11, 1994.

Frank M. Stewart, Jr.,

Chief of Staff, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Goodman Manufacturing Company. (Case No. F–067)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy

Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its applicance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Goodman filed a "Petition for Waiver," dated November 29, 1993, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on February 23, 1994, Goodman's petition and solicited comments, data and information respecting the petition. 58 FR 8608. Goodman also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on February 10, 1994. 58 FR 8608, February 23, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with the Federal Trade Commission (FTC) concerning the Goodman Petition. The FTC did not have any objections to the issuance of the waiver to Goodman.

Assertions and Determinations

Goodman's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Goodman requests the allowance to test using a 40-second blower time delay when testing its GMN series central furnaces. Goodman states that since the 40-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of 0.6 to 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Goodman indicates that it is unable to take advantage of any of these exceptions for its GMN series central furnaces.

Since the blower controls incorporated on the Goodman furnaces are designed to impose a 40-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 40-second blower time delay when testing the Goodman GMN series central furnaces. Accordingly, with regard to testing the GMN series central furnaces, today's Decision and Order exempts Goodman from the existing provisions regarding blower controls and allows testing with the 40-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Goodman Manufacturing Company (Case No. F–067) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Goodman Manufacturing Company, shall be permitted to test its GMN series central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below.

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Goodman Manufacturing Company shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GMN

series central furnaces manufactured by Goodman Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective March 11, 1994, this Waiver supersedes the Interim Waiver granted the Goodman Manufacturing Company on February 10, 1994. 58 FR 8608, February 23, 1994 (Case No. F–066).

Issued in Washington, DC, March 11, 1994.

Frank M. Stewart, Jr.,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–6260 Filed 3–16–94; 8:45 am]

BILLING CODE 6450–01–P–M

Intent To Prepare an Environmental Impact Statement for the Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.). DOE proposes to evaluate nuclear materials currently stored at the Savannah River Site (SRS) and determine what materials can safely remain in their current form for an interim period (approximately 5 years) until disposition decisions can be made. DOE will also determine what materials are at risk and therefore require near-term stabilization to assure continued safe management. DOE will evaluate the nuclear materials using a proposed set of criteria to determine materials which require near-term stabilization to help maintain the health and safety of workers and the public and to maintain environmental quality. DOE would then stabilize the materials determined to be of concern.

DOE also proposes that some nuclear materials at the SRS should be converted, or should be considered for conversion, to a useable form. Plutonium-242 is used for research and development programs and the SRS inventory of this material is needed for this programmatic purpose. As a result, DOE proposes to convert the SRS inventory of plutonium-242 solution to an oxide. Additionally, DOE is in the process of determining whether a programmatic need exists for americium-243, curium-244, and neptunium-237. If it is determined that a need for this material exists, the EIS will also evaluate its conversion to a useable form. Any conversion of this material would be for purposes other than the production of nuclear weapons.

The nuclear materials to be evaluated will be those which have historically been either the feed materials for, or the in-process material of, SRS production and reprocessing programs.[1] The need for the EIS is driven by the evolving requirements associated with the defense programs of the United States and the resultant requirement to manage the materials in the interim pending disposition decisions.

DOE plans to address waste management activities at SRS in a separate EIS. The waste management EIS for SRS will be announced shortly, by a separate Notice of Intent.

INVITATION TO COMMENT: To ensure the EIS addresses the full range of issues and alternatives related to this proposal, DOE invites comments on the proposed scope of the EIS from all interested parties. Please direct written comments to assist DOE in identifying significant environmental issues and defining the appropriate scope of the EIS to Mr. Stephen R. Wright at the address indicated below. DOE also invites agencies, organizations, and the general public to present oral comments pertinent to the preparation of this EIS at the public scoping meetings on the dates indicated below. In addition, DOE will accept comments electronically via voice mail or facsimile transmission by calling 1–800–242–8269. DOE will give equal consideration to all comments.

After the completion of the public scoping process, DOE will prepare an EIS Implementation Plan and make it available to the public upon request. The Implementation Plan will record the results of the scoping process and define the alternatives and issues that DOE will evaluate in the EIS. DOE intends to complete the Draft EIS in late 1994, and will announce its availability in the **Federal Register**. DOE will solicit comments from the public, organizations, and other agencies on the Draft EIS, and will consider all comments in its preparation of the Final EIS.

DATES: The public scoping period will continue until May 31, 1994. DOE will consider all written comments postmarked by May 31, 1994, and will consider comments postmarked after that date to the extent practicable.

ADDRESSES: Please direct written comments or suggestions on the scope of the EIS and questions concerning the project to: Mr. Stephen R. Wright, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (803) 725–3957.

Mark the envelopes: "Nuclear Materials Interim Management EIS."

For general information on the DOE NEPA review process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

PUBLIC SCOPING PROCESS: DOE will host a series of informal sessions to provide the public with additional information on the materials to be evaluated and the proposed action and alternatives discussed in this NOI. These sessions are intended to be interactive and DOE representatives will be available to answer questions. These informal sessions are scheduled at the following times and locations: 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., April 12, 1994, North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina; 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., April 19, 1994, DeSoto Hilton Hotel, 15 Liberty Street, Savannah, Georgia; 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., April 21, 1994, Holiday Inn Coliseum at USC, 630 Assembly Street, Columbia, South Carolina.

DOE will then conduct public scoping meetings to assist in defining the appropriate scope of the EIS and identifying significant environmental issues to be addressed. DOE representatives will be available at the meetings to discuss, in informal conversations, SRS nuclear materials programs. These meetings are scheduled at the following times and locations: 1 p.m. to 4 p.m and 6 p.m. to 9 p.m., May 12, 1994, Coastal Georgia Center for Continuing Education, 305 Martin Luther King Boulevard (Battlefield Park), Savannah, Georgia; 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., May 17, 1994, North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina; 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., May 19, 1994, Holiday Inn Coliseum at USC, 630 Assembly Street, Columbia, South Carolina.

DOE will publish additional notices on the dates and locations of the information sessions and scoping meetings in local newspapers well in

[1] This material does not include that associated with the plutonium-238 production mission in HB-Line. The purpose of that mission is to support the National Aeronautics Space Administration deep space probe program. This effort is the subject of separate NEPA documentation.

advance of the scheduled dates. DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities.

The public, organizations, and agencies are invited to present oral and written comments concerning (1) the scope of the EIS, (2) the issues the EIS should address, and (3) the alternatives the EIS should analyze. Please address written comments to Mr. Wright at the address indicated above. These comments should be postmarked by May 31, 1994, to ensure full consideration.

Organizations and individuals wishing to participate in the public meetings can call 1–800–242–8269 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday, or submit their requests to Mr. Wright at the address indicated above. DOE requests that anyone who wishes to speak at one of the scoping meetings pre-register by contacting Mr. Wright, either by phone or in writing. Pre-registration should occur at least two days before the designated meeting. Persons who have not pre-registered to speak may register at the meeting and will be called to speak as time permits.

DOE will document comments received during the public scoping process. Copies will be available for inspection at these locations during regular business hours, Monday through Friday:

The DOE Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020; and

The DOE Public Document Room, University of South Carolina, Aiken Campus, University Library, 2nd Floor, 171 University Parkway, Aiken, South Carolina 29801, (803) 648–6851.

Additional locations may be selected through the scoping process.

SUPPLEMENTARY INFORMATION: The Savannah River Site is an 800 square-kilometer (300 square-mile), controlled area in southwestern South Carolina. The Site is approximately 25 miles southeast of Augusta, Georgia and 20 miles south of Aiken, South Carolina. Since its establishment, the mission of the SRS has been to produce nuclear materials that support the defense, research, and medical programs of the United States.

Historically, reactor fuel or target assemblies were chemically dissolved into aqueous solutions in the F- or H-Canyon chemical separations facilities. Various processes were performed to separate the useful isotopes (uranium-235, uranium-238, neptunium-237, plutonium-238, americium-243, curium-244, and plutonium-239) from the rest of the fuel and target material. The uranium-235 solutions were shipped off the site for conversion to a solid form and the uranium-238 in solution was converted to an oxide using the FA-Line facility at SRS. The neptunium-237 was recovered, and when required, converted to a solid and fashioned into new targets. The plutonium was recovered and converted to metal or oxide products using the FB- and HB-Line facilities. Most converted materials were shipped to other DOE sites. Any product materials stored onsite were placed in "vaults" designed for storage.

In March 1992, chemical processing operations were suspended in the canyons to address a potential safety concern. The concern was subsequently addressed, but prior to resumption of processing, the Secretary of Energy directed that defense-related chemical separations activities (i.e., reprocessing) be phased out at SRS. Since this decision, the Department has determined that further action related to the disposition of nuclear material is subject to the NEPA process. Non-safety related facility operations have remained shut down, with the exception of plutonium-238 processing associated with the support of NASA missions.

As a result of these shutdowns, the canyons and the reactor fuel and target storage basins[2] have a large inventory of in-process solutions, fuel assemblies, and targets. This inventory includes materials containing a wide variety of special isotopes (plutonium-239, uranium-235, plutonium-242, americium-243, curium-244, neptunium-237, etc.). There are approximately 100,000 gallons of in-process solutions in storage and approximately 200 metric tons of spent fuel and targets in storage.

In addition to the above solutions and targets, there are over 90,000 gallons of uranyl nitrate hexahydrate (UNH) stored in tanks outside the facility. The UNH contains the uranium-235 recovered from the processing of fuel from SRS production reactors, and DOE, domestic, and foreign research reactors.

There are also approximately 35,000 55-gallon drums of uranium-238 (known as "depleted uranium") oxide stored on the site. This material is the product of processing the targets from which plutonium-239 is recovered.

For some solutions (e.g., enriched uranium and americium/curium) no conversion capability exists. Conversion, stabilization, or disposition options must be developed for such solutions.

DOE has established a Secretarial task force to evaluate disposition of surplus nuclear materials stored at various locations within the weapons complex. Until disposition decisions are made (approximately 5 years), some of the materials at SRS, due to their form or to the condition in which they are currently maintained, could represent an unreasonable risk to public and worker health and safety or an unreasonable risk to the environment. For example, the aluminum cladding on some of the targets is deteriorating due to corrosion. As the cladding corrodes, highly radioactive material is exposed to the water in the storage basin. Some of this material is released into the water, which can result in increased worker exposures and environmental releases. Another example of material that could present an unreasonable risk is stored solutions containing plutonium, other transuranic elements, and uranium. These solutions require continuing vigilance to assure their continued safe storage and to avoid potentially severe radiological impacts should an accident occur.

Additionally, DOE wants to reduce the cost of maintaining and storing these nuclear materials. The cost to maintain just the SRS canyons, with their current inventory of material, is about $300 million a year. These costs could be reduced through consolidation, conversion, and stabilization.

Proposed Action

The Department proposes to stabilize nuclear materials currently stored at the SRS that are in a condition that may not be safe over the time that is necessary to make decisions regarding their long-term disposition (approximately 5 years). The EIS will evaluate and identify which nuclear materials should be stabilized because of a health, safety, or environmental concern related to the condition of the material.[3]

The Department also proposes to convert to a useable form those

[2] There are several storage basins currently in use. These are the K-, L-, and P-Reactor basins, the Receiving Basin for Off-site Fuels (RBOF) located in H-Area, and the Canyon receiving basins.

[3] If at any time during the course of preparing the environmental impact statement the Department were to determine that an emergency condition such as unreasonable risk to public or worker health and safety or the environment exists with respect to any of the unstable materials, the Department would take action to respond immediately to the situation and consult with the Council on Environmental Quality regarding alternative arragements for compliance with NEPA

materials for which a programmatic need exists. These materials are used in research and development programs. Specifically, DOE has identified a need for additional plutonium-242, and proposes to convert the existing inventory of that material at SRS from a solution to an oxide. In addition, if during the development of this EIS, a programmatic need is identified for neptunium-237, americium-243, or curium-244, this material will also be proposed for conversion to a useable form. Any programmatic need for americium-243 and curium-244 could not be satisfied until conversion technology is developed.

Alternatives Proposed for Consideration

DOE will examine various methods to accomplish stabilization. Based on current information, the preferred alternative for some of these materials, (e.g., in-process liquids) would be to operate the canyon facilities (including FB-Line and HB-Line, Phases I and II) only as may be necessary for stabilization, and then to place the facilities in a standby condition. For some materials, (e.g., americium and curium solutions) the Department currently has no preferred alternative, and the EIS will assist the Department in identifying a preferred alternative. The Department solicits public participation in identifying and evaluating alternatives. Alternatives could include dry storage, new wet storage, and processing for vitrification without chemical separation. Alternatives to the conversion of material required for programmatic needs have not been identified. Consistent with NEPA's requirement that the "no action" alternative be considered, DOE will evaluate the environmental impacts of continuing to manage all materials in their current form until decisions regarding disposition are made.

Material Inventory Evaluation Criteria

DOE proposes to evaluate the inventory of nuclear materials at the SRS and place the material into one of three categories. These categories are: (1) Materials that may warrant near-term stabilization in order to maintain the health and safety of workers and the public and to maintain environmental quality; (2) material for which there is still a programmatic need; and (3) materials for which there is currently no designated programmatic need and which are already in a stable form. DOE proposes to use the following criteria to categorize material that warrants near-term stabilization and solicits public comments on how these criteria may be further refined:

1. Materials which, without stabilization, would present a near-term (i.e., approximately 5 years) risk of increasing worker radiation exposure or exposure to hazardous materials by an amount that is not insignificant.

2. Materials which, without stabilization, would present a near-term risk of a release of radioactive or hazardous material to the public or the environment that is not insignificant.

3. Materials for which stabilization or use of an alternative storage method will, in the near-term, reduce the degree of hazard presented by the material in its current form by an amount that is not insignificant.

4. Material for which stabilization in the near-term would reduce the generation of radioactive waste by an amount that is not insignificant.

DOE intends that decisions regarding which materials merit near-term stabilization will be based exclusively on the risk they pose to the safety and health of workers or the public, or to the environment. Although DOE expects to realize some maintenance related cost savings by stabilizing at-risk materials, DOE does not intend to consider economics as a criterion in the categorization process. That is, DOE does not propose to process materials that DOE determines, after public input, will remain stable until decisions regarding disposition can be made, even if it were judged to be cost effective to process them in conjunction with materials to be stabilized.

DOE solicits public comments on the criteria and approach described above.

Identification of Environmental and Other Issues

DOE has identified the following issues for analysis for proposed and alternative actions in the EIS.

Environmental Issues

1. Public and Worker Safety, Health Risk Assessment—Radiological and nonradiological impacts, including projected effects on workers and the public from normal operations and potential accidents.

2. Waste Management—The impact on the generation, treatment, storage, and disposal of high-level radioactive waste, low-level radioactive waste, transuranic (TRU) waste, hazardous waste, and mixed waste on new and existing onsite waste management and storage facilities. The EIS will describe the types and quantities of waste that would be generated by implementation. It will not consider specific waste disposal alternatives (e.g., a comparison of the impacts caused by the treatment and interim storage of vitrified reprocessing waste with those caused by the treatment and interim storage of unprocessed forms). These will be evaluated in the SRS waste management EIS.

3. Regulatory Compliance—A determination of the status of compliance with all applicable Federal, state, and local statutes and regulations; required Federal and state environmental consultations and notifications; and

DOE Orders on waste management, including waste minimization initiatives, and environmental protection.

4. Air Quality—Potential effects on air quality from radiological and nonradiological emissions.

5. Water Resources—Effects on the quality and the quantity of ground- and surface-water resources, including wetlands, and on downstream water users.

6. Onsite Transportation—Impacts on the onsite workers and transportation systems resulting from transportation of raw materials, supplies, equipment, products, and wastes for both routine transportation and accident scenarios.

7. Socioeconomic—Socioeconomic impacts in the SRS area.

Related NEPA Reviews

The following is a list of existing or forthcoming NEPA documentation related to materials or activities at SRS.

Savannah River Site Waste Management EIS

DOE will shortly announce its intent to prepare an EIS on waste management activities at the SRS. The purpose of the EIS is to provide a basis for DOE to select a sitewide strategic approach to managing present and future SRS waste generated as a result of ongoing operations, environmental restoration activities, transition, and decontamination and decommissioning activities. The EIS will address, at a minimum, the generation, minimization, treatment, storage, and disposal of low-level waste, liquid high-level waste, nonradioactive hazardous waste, mixed waste, and transuranic waste.

PEIS for Waste Management

DOE has published a Notice of Intent (NOI) to prepare a Programmatic EIS on Environmental Restoration and Waste Management (EM PEIS) (55 FR 42633, October 22, 1990). An Implementation Plan for this PEIS was published in February 1994. A draft PEIS is currently

expected to be issued by September 1994.

EIS for Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory (INEL) Environmental Restoration and Waste Management

This EIS is currently in preparation and will include, among other issues, a programmatic analysis for the transportation, receipt, processing and storage of spent nuclear fuel, including consideration of sites other than INEL. SRS is one of the alternative sites being evaluated.

Environmental Assessment (EA) for HB-Line Operation

HB-Line is currently operating to provide plutonium-238 for future space missions. In July 1991, DOE issued an Environmental Assessment for Radioisotope Heat Source Fuel Processing and Fabrication, DOE/EA–0534. Based on the analysis in the EA, DOE determined that the proposed action, which included operation of HB-Line Phases I and III, does not significantly affect the quality of the human environment. DOE issued a Finding of No Significant Impact (FONSI) on July 21, 1991; the FONSI was published in the **Federal Register** on July 25, 1991 (56 FR 34057). As part of a negotiated court settlement, DOE is preparing an additional EA that will examine impacts of operating HB-Line Phases I and III beyond those activities currently underway. The cumulative impacts of operation of HB-Line Phases I and III in conjunction with the proposed action and alternatives will be addressed in this nuclear materials interim management EIS.

EA and EIS for Foreign Research Reactor Spent Fuel

DOE is preparing an EIS on the proposed adoption and implementation of a policy for the acceptance of up to 15,000 spent nuclear fuel elements from foreign research reactors. This EIS is scheduled to be completed by the end of June 1995. In the interim, to meet the needs of certain foreign research reactor operators and to avoid failure of a key United States nuclear nonproliferation objective, DOE proposes to accept a small number of foreign research reactor spent fuel elements for storage at an existing SRS wet storage facility. DOE has prepared and has issued for public comment, a draft EA (February 1994) to evaluate the environmental impact of this proposed interim action.

Canyon Ventilation Upgrade EIS

On March 20, 1992, DOE published an NOI to prepare an EIS for the upgrade of canyon exhaust systems at SRS (57 FR 9693). An Implementation Plan was issued in January 1993. The scope of the upgrade is being substantially reduced and DOE is presently evaluating what level of analysis is required under NEPA, as a result of the change in scope.

EA for Plutonium Storage in Building 247–F Vault

DOE is preparing an environmental assessment to evaluate the impacts of consolidating certain stable plutonium materials for interim storage into an existing vault located in Building 247–F at the SRS. The EA will evaluate the consolidated storage of plutonium materials currently stored at several locations on the SRS.

EISs for Reactor Operation

DOE has published two Final EISs on nuclear reactor operation at SRS: L-Reactor Operation, DOE/EIS–0108, 1984, and Continued Operation of K-, L-, and P-Reactors (ROEIS), DOE/EIS–0147, 1990. DOE stated in the Final ROEIS that it will prepare an EIS "that includes more detail on the environmental impacts of support facilities." The EIS addressed by this NOI partially fulfills that commitment.

Reconfiguration PEIS

On July 23, 1993, DOE published a revised Notice of Intent to prepare a PEIS for reconfiguration of its nuclear weapons complex (56 FR 39528) due to nuclear weapons stockpile reductions. The Department is reviewing the reconfiguration alternatives based on scoping comments resulting from public review of the revised Notice of Intent and budget projections. The results of this review will be presented in a revised Implementation Plan that will replace the earlier (February 1992) Implementation Plan. The SRS will be analyzed as a candidate site.

Related Publications

The following recent publications are available in the public reading rooms listed at the end of the Public Scoping Meetings section of this NOI. These publications deal with nuclear material management issues and provide current information on the environmental impact of SRS operations:

Office of Technology Assessment, 1993. Dismantling the Bomb and Managing the Nuclear Materials. OTA–0–572. Washington, DC U.S. Government Printing Office.

National Academy of Sciences, 1994. Management and Disposition of Excess Weapons Plutonium. National Academy Press, Washington, DC.

Spent Fuel Working Group, 1993. Inventory and Storage of the Department's Spent Nuclear Fuel and Other Reactor Irradiated Nuclear Materials and Their Environmental, Safety, and Health Vulnerabilities. U.S. Department of Energy, Washington, DC.

Westinghouse Savannah River Company, 1993. Savannah River Site Environmental Report for 1992, WSRC-TR–93–075, Savannah River Site, Aiken, South Carolina.

Issued in Washington, DC, this 11th day of March 1994.

Tara O'Toole, M.D., M.P.H.,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–6258 Filed 3–16–94; 8:45 am]

BILLING CODE 6450–01–P

Alaska Power Administration

Snettisham Surplus Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Final surplus power marketing plan and call for application for power.

SUMMARY: The final marketing plan for the sale of surplus energy from the Snettisham Project is published herein together with a discussion of the issues raised during the public comment process. Alaska Power Administration (APA) published the Draft Surplus Power Marketing Plan on January 7, 1994 (59 FR 1013), to start the process to establish allocations of surplus energy and surplus energy sales contracts for the Snettisham Project. The Marketing Plan is fully compatible with the Department of Energy's legislative proposal for APA divestiture which is currently undergoing Congressional consideration.

DATES: Applications for an allocation of surplus energy must be received in APA's Headquarters Office by the close of business on May 6, 1994. See section II for further details.

ADDRESSES: Applications for an allocation of surplus energy should be submitted to Mr. Michael Deihl, Alaska Power Administration, 2770 Sherwood Lane, Suite #2B, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Willis, Alaska Power Administration, P.O. Box 020889, Juneau, AK 99802–0889, (907) 586–6963.

SUPPLEMENTARY INFORMATION:

Draft Surplus Marketing Plan—Snettisham Project

I. Background

APA published the Draft Surplus Power Marketing Plan in the **Federal Register** on January 7, 1994 (FR 59 1013). A public information and comment forum was held January 18, 1994. Written comments were accepted until February 7, 1994. Two written comments were received. A discussion of the comments is presented in section III.

APA has considered the comments received and is publishing herein the Final Surplus Power Marketing Plan. This **Federal Register** notice also formally invites requests for allocation of surplus energy in accordance with the plan. Based on the provisions of the Plan, APA will then allocate surplus energy and sign contracts with customers receiving allocations.

An Environmental Assessment was prepared for these power marketing activities and a Finding of No Significant Impact was issued by the Department of Energy.

II. Application Procedures

APA formally invites requests for allocations of surplus energy from the Snettisham Project from qualified applicants. Applicants should advise APA's Administrator in writing of their requests. Written requests must be received at the APA Headquarters Office at 2770 Sherwood Lane, Suite #2B, Juneau, AK 99801, by the close of business on May 6, 1994. Applicants must identify the amount of energy desired.

III. Discussion of Public Comments and Summary of Revisions

APA received two written comments on the Draft Surplus Power Marketing Plan. The points raised in the comments are discussed below.

1. *Comment:* As originally proposed, a "major industrial load" would have been one which was not currently a firm customer of AEL&P, does not conduct utility type operations, and which has the capability to meet its own energy requirement in the absence of Snettisham energy.

Both commentators objected to the definition excluding a potential major industrial load, such as a mine, simply because it is presently a firm customer of AEL&P for a small amount of firm energy used at an office facility. They proposed that the definition be changed so as not to preclude such loads.

One commentator suggested that the definition be strengthened as to the requirement for being able to meet its own energy requirement. They pointed out that a qualified load should be able to meet its own baseload energy requirement rather than its peak requirements or its requirement during intermittent curtailment of Snettisham energy.

Discussion: APA believes these suggestions clarify the intent of the marketing plan. As revised, a major industrial load is one which does not conduct utility-type operations and whose major load is not currently served as a firm load by AEL&P. The major industrial load must also have the capability to meet its own baseload energy requirement in the long-term absence of Snettisham energy.

2. *Comment:* One commentator felt that there was apparently a conflict between the provision in section C that "entities receiving an allocation of Snettisham resources will be offered an electric service contract . . ." and the provision in section B.3. that "allocations will be made to AEL&P." They asked for clarification as to whether a major industrial load would enter into a contract with APA, with AEL&P, or with both.

Discussion: Potential surplus energy customers are encouraged to work directly with AEL&P. In this case, AEL&P will make the request, the allocation will be to AEL&P, and the contract will be between APA and AEL&P. The major industrial customer and AEL&P will presumably have their own contractual arrangements. As indicated in the plan, if service through AEL&P is demonstrated to be infeasible, then APA will consider an allocation and contract directly with the major industrial customer.

3. *Comment:* The contracts for surplus energy should not only include assurance that the allocation will continue after divestiture with APA, but that the rates charged for energy will continue also.

Discussion: The contracts will contain language to assure that the allocation continues, but will not contain language which binds the new owner to a given rate structure. The existing purchase agreement for Snettisham was negotiated to assure only that allocations would continue, but that the new owner would set their own rates. The contracts will not "guarantee" rates for APA, but will allow APA to adjust rates within its own procedures and guidelines. This has been clarified in the final plan.

4. *Comment:* The allocation reservation fee should be refundable to the extent that allocated energy is not made available for taking during the year.

Discussion: This has been clarified in the final plan.

5. *Comment:* APA should not allocate energy among competing applicants by dividing it equally, but should be made some other way, such as proportionate to the size of the requests, or by benefit to the local economy, etc.

Discussion: There are any number of ways to allocate a limited resource. APA expects that if there are competing requests for allocation, they will all be in excess of the resource available and they will all be based on estimates of future loads rather than historic use. For this reason APA will divide the resource equally as explained in the plan.

IV. Final Surplus Power Marketing Plan

A. Conditions for Allocation

Allocations of surplus energy will be made in accordance with the provisions of the Marketing Plan. These provisions include:

1. No energy will be allocated for export outside the Juneau market area (that is, the AEL&P service territory) without firm plans and commitment to finance and build the necessary transmission facilities.

2. In allocating surplus energy, APA will give preference to public bodies and cooperatives who conduct utility-type operations.

3. Surplus energy not allocated to preference customers may be available to serve major industrial loads. For this marketing plan, a major industrial load is one which does not conduct utility-type operations and whose major load is not currently served as a firm load by AEL&P. The major industrial load must also have the capability to meet its own baseload energy requirement in the long-term absence of Snettisham energy. Major industrial loads are encouraged to work directly with AEL&P so that AEL&P can request an allocation to serve their needs. In this case, allocations will be made to AEL&P. APA will consider requests for direct service of major industrial loads only if it is demonstrated that service through the utility is infeasible.

B. Contract Provisions

Entities receiving an allocation of Snettisham resources will be offered an electric service contract which will include the following provisions:

1. Contracts will be for a period of 20 years or less beginning at contract execution. Contracts for less than 20 years may include an option to extend the period up to a total length of 20 years. Contracts will be compatible with

the proposed APA divestiture. Contracts will contain language guaranteeing the continuation of the allocation after divestiture.

2. Surplus energy will be marketed at the Snettisham firm rate. The rate is presently 3.21 cents/kwh and is subject to periodic review and adjustment.

3. The contractor will be required to sign a contract within 270 days of APA's letter granting an allocation.

4. In order to reserve the allocation, the contractor will be required to deposit 10% of the expected cost of the following year's energy with APA. If the allocated energy is taken during the year, the deposit will be credited toward the cost of the energy. To the extent that energy is available for delivery, if the allocation is not completely taken the deposit is non-refundable. In any year, energy reserved in this way but not taken by the contractor may be marketed by APA. In any case, an applicant must be ready, willing, and able to take initial delivery of power by January 1, 1997 or the allocation will be withdrawn and the energy reallocated.

5. If the contractor has not committed to a 20-year contract, the contractor will be required to pay a one-time, non-refundable payment within 30 days after contract execution. This payment will be based on 3% of the average estimated annual energy delivery during the years between the end of the contract period and the 20-year period times each year less than 20 years.

C. Amount Available for Allocation

Firm energy output (energy available 9 years out of 10) from the Snettisham Project is estimated at 275 gwh/year. Secondary energy is estimated to vary from 0 to 100 gwh/year and average around 50 gwh/year. This invitation is for requests for allocation for energy that is surplus to the needs of the Juneau community. An estimate of that need is shown in the table below. Applicants must be aware that these are only estimates and that the amount of energy required by the community may vary from these projections. In the event that there are competing requests from qualified applicants, the surplus energy will be divided equally among the applicants up to their maximum request.

Water community energy surplus: year	Estimated requirement	Estimated available
1994	232	93
1995	242	83
1996	250	75
1997	255	70
1998	258	67
1999	259	66
2000	260	65
2001	263	62
2002	264	61
2003	266	59
2004	267	58
2005	270	55
2006	271	54
2007	274	51
2008	275	50
2009	277	48
2010	278	47
2011	281	44
2012	282	43
2013	285	40

Issued at Juneau, Alaska; February 24, 1994.

Lloyd A. Linke,

Director, Power Division.

[FR Doc. 94–6259 Filed 03–16–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP93–99–000]

Colorado Interstate Gas Co.; Informal Settlement Conference

March 11, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 23, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6195 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR94–5–000]

Gaviota Terminal Co.; Complaint

March 11, 1994.

Take notice that on February 28, 1994, The Producer Group filed a complaint with the Commission concerning the February 4, 1994 tariff filing made by Gaviota Terminal Co. (Gaviota), with a proposed effective date of February 14, 1994. The Producer Group complains that the failure of Gaviota to file a tariff prior to February 4, 1994 was in violation of the Interstate Commerce Act for which appropriate sanctions should be provided.

The Producer Group states that Gaviota has been operating since June 1991, and had not submitted a tariff to the Commission until it made its February 4, 1994 filing, notwithstanding that it is an interstate oil transportation company subject to the terms of the Interstate Commerce Act. The Producer Group states that oil pipelines, such as Gaviota, are obligated to file their jurisdictional rates for the Commission's examination, and that Gaviota, for almost three years, provided oil transportation service without a tariff being on file.

The Producer Group requests the Commission to establish a reasonable rate for the period during which Gaviota operated without a tariff and to order refunds for any past payments in excess of that rate.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before April 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before April 11, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6192 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–17–003]

Tennessee Gas Pipeline Co.; Report of Refunds

March 11, 1994.

Take notice that on March 3, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a refund report with the Federal Energy Regulatory Commission (Commission) which Tennessee states is in accordance with its Stipulation and Agreement (Agreement) filed on October 15, 1993, and approved by Commission order issued December 3, 1993.

Tennessee states that on March 3, 1994, it paid Equitable Gas Company (Equitable) a refund of $2,087,859, including interest computed according to § 154.67(c) of the Commission's regulations, pursuant to Article II of the Agreement. Tennessee states that the refund reflects the adjusted balance for Equitable in Schedule 1 of Tennessee's Workpapers in Tennessee's June 29, 1992 Amended Cosmic Settlement compliance filing, plus interest.

Tennessee further states that a copy of the refund report was sent to Equitable and the state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 18, 1994. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6194 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–106–000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

March 11, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on March 16, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Arnold H. Meltz, (202) 208–2161.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6196 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–125–001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 11, 1994.

Take notice that on March 9, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute First Revised Sheet No. 224
Substitute First Revised Sheet No. 225
Substitute First Revised Sheet No. 226
Original Sheet No. 226A
Original Sheet No. 226B
Original Sheet No. 226C

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued March 1, 1994, in Docket No. RP94–125, which requires Texas Gas to refile tariff sheets, working papers, and other information within 15 days of the order. Texas Gas also states that the revised tariff sheets reflect direct billing of Account No. 191 costs on a demand and commodity basis consistent with the Commission's February 10, 1994 order in Texas Gas's restructuring proceeding.

Texas Gas further states that copies of the revised tariff sheets are being mailed to Texas Gas's affected former jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6197 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. MT88–3–010]

March 11, 1994.

Take notice that on March 8, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 344, proposed to be effective March 8, 1994.

TGPL states that the referenced tariff sheet has been revised to reflect changes in the list of affiliated marketing companies as a result of the sale and reorganization of certain assets by Transco Energy Company as well as a change in the list of directors shared by TGPL and Transco Gas Marketing Company. TGPL states that the tariff sheet has been revised to reflect the fact that TGPL no longer shares any building or building services with any of its affiliated marketing companies.

TGPL states that it has also revised its corporate code of conduct to reflect the changes outlined above. In addition, TGPL states that the requirement for the contemporaneous disclosure of gas sales and gas marketing information if such information is provided to an affiliate was eliminated from TGPL's corporate code of conduct in accordance with Order No. 497–E.

TGPL states that it is serving copies of the filing on its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6189 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–51–007]

Transcontinental Gas Pipe Line Corp.; Filing

[Docket No. MG88–51–007]

March 11, 1994.

Take notice that on March 8, 1994, Transcontinental Gas Pipe Line Company (Transco) filed a revised Code of Conduct pursuant to Order No. 497–E.[1]

Transco states that the purpose of the filing is to reflect certain changes in

[1] Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993).

accordance with Order No. 497–E and certain organizational and personnel changes at Transco.

Transco states that copies of this filing have been mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before (15 days after issuance). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6190 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–023]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

March 11, 1994.

Take notice that on March 8, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) submitted for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. The tariff sheets are proposed to be effective as set forth in Appendix A to the filing.

TGPL states that on May 3, 1993 it submitted a Settlement in the referenced proceeding which, among other things, resolved cost-of-service, cost allocation, rate design and throughput mix for the period September 1, 1992 (the effective date of Docket No. RP92–137) through October 31, 1993 (the date immediately preceding the November 1, 1993 effective date of TGPL's Order No. 636 restructuring). On November 4, 1993 the Commission issued an order approving the Settlement (November 4 Order).

TGPL states that the tariff sheets submitted in the instant filing reflect the settlement rates approved by the November 4 Order updated to incorporate tracker filings made subsequent to the date the Settlement was filed (i.e. subsequent to May 3, 1993). The purpose of those filings was to track, under certain TGPL rate schedules, rate changes made effective by upstream providers of storage and transportation services. TGPL states that Appendix B to the filing includes workpapers which support the derivation of TGPL's settlement rates for those services affected by the aforementioned tracker filings. Also, TGPL has revised its historical imbalance tariff provisions (section 5.8 of Rate Schedules FT and IT) consistent with the directives set forth in the November 4 Order.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–6193 Filed 3–16–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement", under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–73 for the transfer of 69.510 kilograms of uranium containing 7.401 kilograms of the isotope uranium–235 (10.65 percent average enrichment) from the Federal Republic of Germany to Japan for fabrication of fuel elements for the High Temperature Reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on March 11, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–6257 Filed 3–16–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4851–2]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between February 1, 1993 and January 31, 1994, the United States Environmental Protection Agency (EPA) Region II Office, issued 2 final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued 5 final determinations, and the New Jersey Department of Environmental Protection and Energy (NJDEPE) issued 2 final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Maria N. Stanco of the Permitting and Toxics Support Section, Air Compliance Branch, Division of Air And Waste Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264–4726.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEPE have made final PSD determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
Mayflower Energy Partners, L.P.	Islip, New York .	340 MW combined cycle gas turbine cogeneration project firing natural gas with # 2 oil as backup fuel.	NYSDEC ..	PSD Permit	Feb. 17, 1993.
Abbott Puerto Rico Operations.	Barceloneta, Puerto Rico.	Addition of two oil-fired boilers, increased utilization at three existing boilers and other process/manufacturing changes.	EPA	Nonapplicability	Apr. 1, 1993.
Brooklyn Navy Yard Cogeneration.	Brooklyn, New York.	286 MW combined cycle gas turbine cogeneration project firing natural gas with #1 oil as backup fuel.	NYSDEC ..	Nonapplicability	Apr. 21, 1993.
Wallkill Generating	Wallkill, New York.	150 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC ..	Nonapplicability	May 12, 1993.
Newark Bay Cogeneration, L.P.	Newark, New Jersey.	Increased annual fuel use limit, and hourly kerosene use limit, eliminate duct burners and vent auxiliary fuel gases to turbine stack.	NJDEPE ...	PSD Permit Modification.	June 9, 1993.
Saranac Power Partners	Plattsburgh, New York.	240 MW combined cycle gas turbine cogeneration project firing natural gas.	NYSDEC ..	PSD Permit Modification.	June 16, 1993.
Virgin Islands Water and Power Authority Unit 19.	St. Croix, Virgin Islands.	20 W oil-fired gas turbine	EPA	PSD Permit	Sept. 3, 1993.
Fulton Cogeneration	Fulton, New York.	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC ..	PSD Permit Modification.	Oct. 13, 1993.
Crown Vista Energy Project	West Deptford, New Jersey.	Two 1789 MMBTU/HR pulverized coal boilers and 25 additional minor sources consisting of auxiliary boiler, material handling equipment, silos, cooling equipment and other equipment.	NJDEPE ...	PSD Permit	Jan. 5, 1994.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Air Compliance Branch—Room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: March 3, 1994.

William J. Muszynski, P.E.,

Acting Regional Administrator.

[FR Doc. 94–6154 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4851–7]

Prevention of Significant Deterioration of Air Quality (PSD); SEI Birchwood, Inc., King George County, VA

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this Notice is to announce the final Agency action regarding the Prevention of Significant Deterioration (PSD) permit issued by the Virginia Department of Environmental Quality on August 23, 1993 to SEI Birchwood, Inc. in King George County, Virginia, This determination was appealed to the Environmental Protection Agency (EPA).

DATES: The Environmental Appeals Board of the EPA issued an Order Denying Review on January 27, 1994.

FOR FURTHER INFORMATION CONTACT:

Ms. Eileen M. Glen, Chief, New Source Review Section, Air Enforcement Branch, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, Mail Code 3AT22, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–8379.

SUPPLEMENTARY INFORMATION: On September 24, 1993 and September 29, 1993, petitions were submitted to the Environmental Appeals Board requesting review of a PSD permit issued to SEI Birchwood, Inc. (SEI) for construction of a 220-megawatt coal-fired electric generating facility in King George County, Virginia. These petitions were submitted by Sarah Nasta and Citizens for Sensible Power (CSP), respectively. The PSD permit was issued by the Virginia Department of Environmental Quality (VDEQ) on August 23, 1993, pursuant to a delegation of authority from the EPA, Region III, Philadelphia, Pennsylvania. Because of the delegation, any PSD permit issued by the VDEQ is an EPA-issued permit for purposes of federal law (40 CFR 124.41; 45 FR 33413 (May 19, 1980)), and is subject to review by the Agency under 40 CFR 124.19 before becoming final.

The Environmental Appeals Board issued an Order Denying Review of the permit on January 27, 1994, concluding that review of VDEQ'S permit

determination was not warranted and that it met all necessary requirements of federal law.

Anyone wishing to review the final permit, petitions, Order Denying Review, or related materials should contact one of the following offices:

U.S. Environmental Protection Agency,
Region III,
Air Enforcement Branch,
New Source Review Section (3AT22),
841 Chestnut Building,
Philadelphia, Pennsylvania 19107.
Virginia Department of Environmental Quality,
P.O. Box 10089,
Richmond, Virginia 23240.

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, final Agency action occurs when a final PSD permit is issued and Agency review procedures are exhausted. This Notice, being published today in the **Federal Register,** constitutes notice of the final Agency action denying review of the PSD permit. If available, judicial review of these determinations under section 307(b)(1) of the Clean Air Act (Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this determination is published in the **Federal Register.** Under section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: March 4, 1994.

Elaine B. Wright,

Acting Regional Administrator.

[FR Doc. 94–6155 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100135; FRL–4763–2]

Oakridge National Laboratory and Martin Marietta Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Food, Drug, and Cosmetic Act (FFDCA). The Oak Ridge National Laboratory (ORNL) and Martin Marietta Inc., under an Interagency Agreement (IAG) will perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ORNL and Martin Marietta Inc. consistent with the requirements of 40 CFR 2.209(c) and 2.308(i)(2), and will enable ORNL and Martin Marietta Inc. to fulfill the obligations of the agreement.

DATES: ORNL and Martin Marietta Inc. will be given access to this information no sooner than March 28, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234 Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259

SUPPLEMENTARY INFORMATION: Prior to the registration or reregistration of a pesticide, the Office of Pesticide Programs (OPP), must determine whether the chemical will cause unreasonable adverse effects on humans and the environment under FIFRA. In the process of making the determination, OPP reviews all data submitted by the registrant to support the effectiveness and safety of the chemical, published reports or studies from the open literature unpublished reports or studies which bear on the issues at hand, and the chemical's general and environmental chemistry relationship to possible human and domestic animal exposure. In some instances, OPP requests the registrant to conduct additional studies, or directly funds research to complete the registration.

OPP, under IAG DW89936171–01, is contracting with ORNL and Martin Marietta Inc. for specialized technical assistance in the identification of information shortfalls dealing with the registration of pesticides. This research effort will concentrate on systematically identifying, analyzing, and evaluating data associated with pesticide registrations. The intent is to catalog data gaps from the registrant to fully characterize the safe manufacture, application, re-entry, and residue issues prior to a decision to issue a registration under FIFRA.

OPP has determined that the IAG herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirement of 40 CFR 2.209(c), 2.307(h), and 2.308(h)(2), this IAG with ORNL and Martin Marietta Inc. prohibits use of the information for any purpose other than the purposes specified in this IAG; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition ORNL and Martin Marietta Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided until the above requirements have been fully satisfied. Records of information provided under this IAG will be maintained by the Project Officer for this contract in OPP.

All information supplied to ORNL and Martin Marietta Inc. by EPA for use in connection with this IAG will be returned to EPA when ORNL and Martin Marietta Inc. have completed their work.

List of Subjects

Environmental protection, Transfer of data.

Dated: March 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–6166 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100136; FRL–4763–3]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the Environmental Criteria and Assessment Office, and will be provided access to certain information submitted

to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable SRC to fulfill the obligations of the contract.

DATES: SRC will be given access to this information no sooner than March 22, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under contract number 68–C3–0369, SRC will provide technical support to EPA's Environmental Criteria and Assessment Office (ECAO) in the evaluation of health environmental effects including aquatic toxicity and environmental fate studies on the chemicals boron, methyl mercury and ziram. Other chemicals may be included in SRC's work later in the contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than boron, methyl mercury and ziram will be involved in this contract. This contract involves no subcontractors.

ECAO and the Office of Pesticide Programs have jointly determined that contract number 68–C3–0369, involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, 7, and 17 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with SRC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in ECAO. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: March 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–6167 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00373; FRL 4758–5]

Reregistration Eligibility Decision Documents for Boric Acid and Its Sodium Salts, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the following active ingredients from List A, List C and List D, and this notice also starts a 60–day public comment period. The REDs for the chemicals listed are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the REDs must be submitted by May 16, 1994.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00373" and the case number should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Technical questions on the listed RED documents should be directed to the appropriate Chemical Review Managers:

Boric Acid and Its Sodium Salts - Mario Fiol - (703) 308–8049

Butylate - Judy Loranger - (703) 308–8056

Daminozide - Andrew Ertman - (703) 308–8063

Eugenol - Ruby Whiters - (703) 308–8079

Glyphosate - Eric Feris - (703) 308–8049 (TDD)

Inorganic Halides - Mark Wilhite - (703) 308–8586

Lauryl Sulfate Salts - Ron Kendall - (703) 308–8068

Phenyl-Ethyl-Propionate - Virginia Dietrich - (703) 308–8157

Sulfuryl Fluoride - Robert Richards- (703) 308–8057

Thymol - Kathleen Depukat - (703) 308–8587

Tris (Hydroxymethyl) Nitromethane - Ernestine Dobbins - (703) 308–8071

Wood Oils and Gums - Virginia Dietrich - (703) 308–8157.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed below. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

List A -

Case 0024 Boric Acid, Sodium Tetraborate Decahydrate (Borax Decahydrate), Sodium Tetraborate Pentahydrate (Borax Pentahydrate), Sodium Tetraborate (Anhydrous Borax), Disodium Octaborate Tetrahydrate, Disodium

Octaborate (Anhydrous), and Sodium Metaborate
Case 0071 Butylate;
Case 0032 Daminozide;
Case 0178 Glyphosate
Case 0172 Sulfuryl Fluoride;
List C -
Case 3110 Phenyl-Ethyl-Propionate;
Case 3143 Thymol;
Case 3149 Tris (Hydroxymethyl) Nitromethane;
Case 3150 Wood Oils and Gums;
List D -
Case 4038 Eugenol;
Case 4051 Inorganic Halides (Sodium Bromide and Sodium Chloride);
Case 4061 Lauryl Sulfate Salts

To request a copy of any of the listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm 1132 at the address given above or call (703) 305–5805.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt, with the exception of eugenol and phenyl-ethyl-propionate. Products containing the other active ingredients will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

For products containing eugenol and phenyl-ethyl-propionate, the Agency is considering these products for exemption from registration under Section 25(b) of the Federal Insecticide and Rodenticide Act. Therefore, no product specific labeling or data are being required at this time.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affect a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: March 8, 1994.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 94–6169 Filed 3–16–94; 8:45 am]
BILLING CODE 6560–50–F

[OPP–66190; FRL 4764–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 15, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 27 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000352–00376	Dupont Krenite Brush Control Agent	Ammonium ethyl carbamoylphosphonate
000352 PA–91–0004	Du Pont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000524–00400	Partner WDG	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide) Avermectin B1
000524–00408	MON-9850 Herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide) 2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-3-
000769–00746	Trac Anticoagulant Tracking Powder Kills Rats & Mice	2-Isovaleryl-1,3-indandione, calcium salt
000769–00763	AFC General Purpose Spray Type III	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00766	Kleen-Out Total Release Aerosol Insecticide	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00771	P.C.E. Industrial Aerosol	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00812	Omnicide Pet Special	Isopropanol Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% 1,2-Propanediol Pyrethrins Triethylene glycol
000769–00814	Superior Beer Case Concentrate	2-Hydroxyethyl octyl sulfide *N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00858	Pratt Wasp and Hornet Spray for Outdoor Use Only	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000769–00878	Pratt Turf Fungicide 50% Wettable Powder	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
000935–00061	Convert-A-Clor 56 Granules	Sodium dichloroisocyanurate dihydrate
000935–00062	Convert-A-Clor 90 One Inch Tablets	Trichloro-*s*-triazinetrione
000935–00063	Convert-A-Clor 60 Granules	Sodium dichloro-*s*-triazinetrione
000935–00065	Towerbrom 90 Tablets, One Inch Tablets	Trichloro-*s*-triazinetrione
000935–00066	Towerbrom 56 Granules	Sodium dichloroisocyanurate dihydrate
000935–00077	Tower Brom 90, Three Inch Tablets	Trichloro-*s*-triazinetrione
010163–00022	Prokil Cryolite 50 Dust	Cryolite
010163–00040	Prokil Cryolite 75 Dust	Cryolite
033660–00001	Atrazine Technical	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
033660–00035	Atrazine Technical III	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
042052–00001	Buckman's Sodium Hypochlorite Solution	Sodium hypochlorite
052466–00007	Blue Death Sugar Bait Fly Killer	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
059639–00045	Isotox Seed Treater (75)	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
062719–00104	Paarlan E.C.	2,6-Dinitro-*N*,*N*-dipropylcumidene
064380 NJ–90–0001	Ethylene Oxide 100%	Ethylene oxide

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000524	Monsanto Co., 700 14th St, N.W., Suite 1100, Washington, DC 20005.
000769	Sureco, Inc., c/o H.R. McLane, Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.
000935	Occidental Chemical Corp., Development Center, V-81, Box 344, Niagara Falls, NY 14302.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
033660	Industrial Prodotti Chimici S., c/o Pazianos Assoc., 1338 G St., SE, Washington, DC 20003.
042052	Buckmans Pool & Ski Shop Inc., Rt. 29, Rd 2, Box 101, Perkiomenville, PA 18074.
052466	Horse Health Products Inc., Director of Regulatory Affairs, 421 E. Hawley St, Mundelein, IL 60060.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
059639	Valent U.S.A. Corp., 1333 N. California Blvd., Box 8025, Walnut Creek, CA 94596.
062719	DowElanco, 9330 Zionsville Rd, Indianapolis, IN 46268.
064380	New Jersey Department of Agriculture, Division of Plant Industry, CN 330, Trenton, NJ 08625.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 15, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–6170 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–60–F

[OPP–64019; FRL 4759–8]

Union Carbide Chemicals and Plastics Co., Inc.; Notice of Receipt of Request To Voluntarily Cancel Certain Pesticides Registrations; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Union Carbide Chemicals and Plastics Company, Inc., has voluntarily requested that EPA cancel the registrations of *PIROR P-15* Paper Slimicide, and Water Treatment Microbiocide (EPA Reg. No. 10352–36) and *PIROR P-05* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–42) and that EPA has granted this request. The cancellation became effective on November 1, 1993. Union Carbide, its distributors and supplemental registrants may not sell, distribute or use these products after November 1, 1993, except in accordance with provisions regarding unregistered pesticide products. Any other person holding stocks of the affected products may sell, distribute, and use their stocks until exhausted.

DATES: The cancellation order became effective on November 1, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Kathleen Depukat, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Office location and telephone number: Accelerated Reregistration Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8587.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136 et seq. It announces the Agency's decision on a request for cancellation of the registrations of *PIROR P-15* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–36) and *PIROR P-05* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–42).

I. Request for Voluntary Cancellation

In a letter dated October 15, 1993, Union Carbide requested voluntary cancellation of *PIROR P-15* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–36), and *PIROR P-05* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–42) waived any comment period associated with the request, and waived any requirement for **Federal Register** publication of a notice announcing Agency receipt of this request in advance of Agency acceptance of this request.

II. Existing Stocks Determination

Union Carbide's October 15, 1993, request for voluntary cancellation expressly stated that, if EPA accepted the request, there would be no sale or distribution of the *PIROR* products after November 1, 1993, except for export in accordance with the provisions of FIFRA which address export of unregistered products. Therefore, after November 1, 1993, Union Carbide, its distributors and supplemental registrants may not sell, distribute or use these products after November 1, 1993. Other persons (people other than Union Carbide, its distributors, or its supplemental registrants) holding stocks of the affected products may sell, distribute, and use their stocks until exhausted.

For the purposes of this order, existing stocks are defined as those

stocks of the affected products which are in the U.S. and were not in the custody or control of Union Carbide, its distributors or supplemental registrants after November 1, 1993, the requested effective date of the cancellation.

III. EPA's Decision on the Request for Voluntary Cancellation and Cancellation Order

On November 1, 1993, EPA granted Union Carbide's request that the registration(s) of the following products containing Paraclox be voluntarily cancelled: *PIROR P-15* Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–36), and PIROR P05 Paper Slimicide and Water Treatment Microbiocide (EPA Reg. No. 10352–42). Concurrently, EPA is issuing a Cancellation Order for these products. This notice contains the terms and conditions of the Cancellation Order for these products.

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request allowing public comment before granting the request unless either the registrant requests a waiver of the notice or the Administrator determines that the continued use of the pesticide would pose unreasonable adverse effects on the environment. Union Carbide expressly requested that the cancellation of its products be effective as of November 1, 1993. Union Carbide also waived any comment period and the requirement for publication of a notice in the **Federal Register** announcing the Agency's receipt of the request for voluntary cancellation prior to the Agency's acceptance of Union Carbide's request.

Accordingly, this Cancellation Order became effective on November 1, 1993. Therefore, as of November 1, 1993, no person may distribute, sell, or use these product, except as described below. Union Carbide, its distributors and supplemental registrants may not sell, distribute or use these products except in accordance with provisions concerning export of unregistered pesticide products. Any other person holding stocks of the affected products may sell, distribute and use such stocks until exhausted. Any sale, distribution or other disposition of existing stocks that is not consistent with the terms of this Order will be considered a violation of FIFRA section 12(a)(2)(K) and/or section 12(a)(1)(A), as appropriate.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–6168 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4851–8]

Environmental Technology; U.S. EPA Technology Innovation Strategy—Extension of Public Comment Period; Announcement of Public Meetings To Comment on the Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability, extension of comment period, schedule of upcoming public meetings.

SUMMARY: On January 28, 1994, the U.S. Environmental Protection Agency (EPA) announced the availability of the Agency's draft Technology Innovation Strategy (S/N 055–000–00466–8) and the Environmental Technology Initiative: FY 1994 Program Plan (S/N 055–000–00465–8) (59 FR 4067) and requested public comments on the Strategy by March 14, 1994. Copies of the draft Strategy were not available for public distribution until the beginning of March. As a result, EPA is extending the comment period to April 15, 1994. Internal Agency deadlines for considering comments in planning and budgeting environmental technology projects for Fiscal Year 1995 are imminent, interested parties are encouraged to submit comments as soon as possible. Comments will continue to be accepted and reviewed after April 15, 1994 in planning projects for FY1996 and future years. Copies of the Strategy and the FY1994 Program Plan are available through the U.S. Government Printing Office.

EPA is also inviting technology developers, vendors, services providers, exporters, the users of environmental technology and services, the investment community, governmental and non-governmental organizations and the general public to discuss the Agency's Strategy in three public meetings:

1. Friday, March 25, 1994. San Francisco, California. Address: Hyatt Regency San Francisco Airport, 1333 Bayshore Highway, Burlingame, CA 94010. Telephone: (415) 347–1234. 9 a.m.–4 p.m.

2. Wednesday, April 6, 1994. Chicago, Illinois. Sheraton Gateway Suites, 6501 North Manheim Road, Chicago, Illinois 60018. Telephone: (708) 699–6300. 9 a.m.–4 p.m.

3. Tuesday, April 12, 1994. Washington, D.C. Ramada Renaissance Hotel, 13869 Park Center Road, Herndon, VA 22071. Telephone: (703) 478–2900. 9 a.m.–4 p.m.

Airport hotels have been selected for the convenience of those traveling by air to the meetings.

ADDRESSES: Copies of the Technology Innovation Strategy (S/N 055–000–00466–8) or Environmental Technology Initiative: FY 1994 Program Plan (S/N 055–000–00465–8) are available from the nearest government bookstore, the Government Printing Office phone order information desk (202/783–3238) or by requesting an order form by FAX (202/512–2250). Mail orders may be addressed to the: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954. When ordering, please identify the document's title and indicate the Government Printing Office publication number.

Written comments are requested. Comments on the Technology Innovation Strategy should be mailed to: Strategy Committee, Innovative Technology Council, Mail Code 2111, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Members of the public wishing to make comments at any of the meetings are invited to identify themselves in writing to Mr. Brendan Doyle, by March 22, 1994, for the San Francisco meeting; by April 1, 1994, for the Chicago meeting; and, April 8, 1994, for the Washington, DC meeting. Those interested in making comments are asked to limit their presentations to no more than five minutes. It is requested that commenters provide a summary of their commentaries by the appropriate date and a complete text, if possible. Please send requests to make comments to: Mr. Brendan Doyle, Office of Policy, Planning and Evaluation (2127), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by telefax to: 202/260–2685.

EPA's Technology Innovation Strategy

The Environmental Protection Agency's (EPA) Innovative Technology Council, comprised of EPA management and staff from across the Agency, has drafted a strategy to focus and target its efforts to accelerate environmental technology development, commercialization and use. The Council recognizes a need to accelerate the development, commercialization, and use of innovative environmental

technologies to maintain and improve environmental quality at home and abroad into the 21st century. Environmental quality would deteriorate, given foreseeable population growth and industrialization, unless technology is developed and more broadly applied, that is more effective in preventing and reducing pollution levels, less costly than existing technology and supportive of sustainable development. EPA, state and local agencies are in a unique position to influence the rate and focus of environmental technology innovation and use because of their legislative and programmatic mandates and regulatory responsibilities (which often influence the demand for environmental technologies, goods and services).

In funding the President's Environmental Technology Initiative, the House Committee on Appropriations directed EPA, "* * * to develop a comprehensive environmental technology strategy characterized by innovation and a nonbureaucratic approach."[1]

EPA's draft *Strategy* provides a plan to directly and indirectly support private sector innovation and diffusion activities sponsored by the public and private sector and close coordination among Federal agencies. It focuses on creating incentives for the development and use of innovative technologies in federal and state environmental regulations, reducing barriers to technology innovation and use, and improving the competitiveness of the environmental technology industry in domestic and international markets. EPA and other Federal, state and local agencies, universities, trade associations and consortia, and numerous private companies are already working in many of the areas identified in the *Strategy*. EPA is seeking public comment on the *Strategy* to focus and target efforts to accelerate environmental technology development, commercialization and use. The Agency's Innovative Technology Council plans to revise and update the *Strategy* based on the comments received.

The definition of "environmental technologies" being addressed in the *Strategy* varies widely for a number of reasons. The "environmental technology industry" has only recently become a focal point for market analysts and policy-makers, and it is highly diversified in terms of the current demand for and supply of technologies, goods and services. Demand often varies based on local environmental conditions. "Environmental technologies" include technologies, goods, and services whose development is triggered primarily by environmental improvement objectives. Sometimes referred to as "dark green" technologies, these include: products and services to monitor and assess pollutant releases and exposure levels; innovative technologies which prevent pollution, control air and water pollution levels, safely manage waste and remediate contaminated soil and groundwater; and, manage environmental data. EPA's *Strategy* also addresses "light green" technologies that are developed primarily for non-environmental reasons; those technologies can have indirect, but important consequences for improving environmental quality. An example, would be local area computer networks designed to enhance office communication, but which also reduce paper use.

EPA is interested in promoting all phases of technological change such as: the research and development of new concepts; preliminary design testing and pilot applications of evolving technologies; performance demonstrations and testing; evaluations of early commercial applications; and diffusion into domestic and international markets.

The draft "*Technology Innovation Strategy*" outlines the general principles that guide EPA in its efforts to foster innovation in its existing programs and new projects being initiated under the President's Environmental Technology Initiative in FY1994 and FY1995 to foster the development and use of environmental technologies in solving the nation's environmental problems. It outlines four objectives:

1. Adapt EPA's policy, regulatory, and compliance framework to promote innovation;
2. Strengthen the capacity of technology developers and users to succeed in environmental technology innovation;
3. Strategically invest EPA funds in the development and commercialization of promising new technologies; and
4. Accelerate diffusion of innovative technologies at home and abroad.

EPA invites comments on the draft *Strategy* and the following questions:

(1) What roles are appropriate for EPA to play in stimulating the development and use of innovative technological solutions to environmental problems?

(2) Do you agree with the *Strategy's* objectives and with EPA's approaches to achieving them? Which objectives should receive the highest priority for action?

(3) Are there additional areas of emphasis that EPA should address in planning and funding its technology development, commercialization, and diffusion activities?

(4) Are there particular environmental technology needs or impediments to development on which you feel the Agency should focus more of its attention?

(5) How can EPA measure the success of its efforts?

(6) Which environmental problems need better, faster, cheaper technological solutions?

(7) Do you have any suggestions for ways for EPA to develop, collect and/or disseminate information on the performance of environmental technologies?

(8) Can you identify specific federal or state environmental regulations, permitting programs or enforcement activities where technology innovation is being impeded?

(9) Are there specific industries or businesses whose environmental problems are not being addressed in the *Strategy*?

Answers to these questions and comments received on the *Strategy* will be considered in EPA's planning and budgeting for technology development and promotion projects in FY 1995 and future years.

FOR FURTHER INFORMATION CONTACT: Mr. Brendan Doyle (see address above), or one of the EPA regional office contacts listed below:

Barbara Brown, U.S. EPA Region 1, One Congress Street—RAA, Boston, MA 02203–2211, Tel #: 617–565–3397

Pat Lafornara, U.S. EPA Region 2, 2890 Woodbridge Avenue, Raritan Depot Building 10—MS 100, Edison, NJ 08837–3679, Tel #: 908–906–6988

Norm Kulujian, U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, Tel #: 215–597–1113

Bob Jourdan, U.S. EPA Region 4, 345 Courtland Street, NE—4WNSRB, Atlanta, GA 30365, Tel #: 404–347–7791

Mike Lin, U.S. EPA Region 5, 77 West Jackson Boulevard—WQ–16J, Chicago, IL 60604–3590, Tel #: 312–886–6104

Norman Dyer, U.S. EPA Region 6, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202–2733, Tel #: 214–655–8349

Jody Hudson, U.S. EPA Region 7, 25 Funston Road, Kansas City, KS 66115, Tel #: 913–551–5064

Dave Smith, U.S. EPA Region 8, 999 18th Street, suite 500, Denver, CO 80202–2466, Tel #: 303–293–1475

[1] House of Representatives, 103rd Congress, Committee on Appropriations report, June 22, 1993, Report 103–150, p.47.

Winona Victery, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Tel #: 415–744–1021
John Barich, U.S. EPA Region 10, 1200 6th Avenue—ES–098, Seattle, WA 98101, Tel #: 206–553–8562

Dated: March 11, 1994.

David M. Gardiner,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 94–6261 Filed 03–16–94; 8:45 am]
BILLING CODE 6560–50–P

[OPPTS–59977; FRL–4762–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 12 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–34, 94–35, January 11, 1994.
Y 94–38, February 10, 1994.
Y 94–39, February 15, 1994.
Y 94–40, February 16, 1994.
Y 94–41, February 21, 1994.
Y 94–42, February 22, 1994.
Y 94–45, 94–46, 94–47, 94–48, 94–49, February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–38

Manufacturer. C.J. Osborn, Div. of Suvar Corporation.
Chemical. (S) Polymer of safflower oil; 1,2,3 propane triol; 2,5 furandione; 4,7-methanedisobenzofluran-1,3-dione;4.5.6.7.8.8-hexachloro-3a, 4,7,7a-tetrahydro, and stanna, dibut loxo.
Use/Production. (S) Pigmented coatings. Prod. range: 10,000–21,000 kg/yr.

Y 94–39

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 94–40

Manufacturer. Confidential.
Chemical. (G) Vinyl/acrylic copolymer.
Use/Production. (G) Fiber binder and coating additive. Prod. range: Confidential.

Y 94–41

Manufacturer. Bostik, Inc.
Chemical. (G) Cycloaliphatic polyester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–42

Manufacturer. Confidential.
Chemical. (G) Water-reducible alkyd resin.
Use/Production. (S) Printing inks. Prod. range: Confidential.

Y 94–43

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

Y 94–44

Manufacturer. Confidential.
Chemical. (G) Acrylic acid copolymer salt.
Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

Y 94–45

Manufacturer. Confidential.
Chemical. (G) Water borne polyurethane dispersions.
Use/Production. (S) Flexible substrate, wood industrial, printing inks and glass fiber sizing. Prod. range: 340,000–1.5m kg/yr.

Y 94–46

Manufacturer. Confidential.
Chemical. (G) Water borne polyurethane dispersions.
Use/Production. (S) Flexible substrate, wood industrial, printing inks and glass fiber sizing. Prod. range: 340,000–680,000 kg/yr.

Y 94–47

Manufacturer. Confidential.
Chemical. (G) Water borne polyurethane dispersions.
Use/Production. (S) Flexible substrate, wood industrial, printing inks and glass fiber sizing. Prod. range: 340,000–680,000 kg/yr.

Y 94–48

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Used as an additive in plastics. Prod. range: Confidential.

Y 94–49

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Used as an additive in plastics. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: March 4, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–6171 Filed 3–16–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59976; FRL–4762–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within

21 days of receipt. This notice announces receipt of 23 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–15, 94–16, 94–17, 94–18, 94–19, 94–20, 94–21, 94–22, 94–23, 94–24, December 28, 1993.

Y 94–25, December 28, 1993.

Y 94–26, December 29, 1993.

Y 94–27, January 1, 1994.

Y 94–28, January 2, 1994.

Y 94–29, January 3, 1994.

Y 94–30, January 5, 1994.

Y 94–31, January 5, 1994.

Y 94–32, January 11, 1994.

Y 94–33, January 23, 1994.

Y 94–34, January 24, 1994.

Y 94–35, January 25, 1994.

Y 94–36, January 25, 1994.

Y 94–37, February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–15

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–16

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–17

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–18

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–19

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–20

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–21

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–22

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–23

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Modified polyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

Y 94–24

Manufacturer. Confidential.

Chemical. (G) Saturated polyester.

Use/Production. (G) Printing ink. Prod. range: Confidential.

Y 94–25

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Electrostatic power coatings. Prod. range: Confidential.

Y 94–26

Importer. Lenzing AG.

Chemical. (G) Polyamide.

Use/Import. (S) Wire coating, grinding wheels reinforcement polymer, membranes and moulding parts. Import range: Confidential.

Y 94–27

Importer. DSM Copolymer, Inc.

Chemical. (S) (Biscyclo(2,2,1)-hept-2-ene, 5-ethylidene-,)(4,7-methano-1*H*-indene, 3a,4,7a,-tetrahydro) polymer with ethene and 1-propene.

Use/Import. (S) Adhesive for general purpose glue, energy absorbing material, hoses, belts, and sporting good items. Import range: 2,727,272–2,836,363 kg/yr.

Y 94–28

Importer. Lenzing AG.

Chemical. (G) Polyamideimide.

Use/Import. (S) Molding parts. Import range: Confidential.

Y 94–29

Importer. Confidential.

Chemical. (G) Polymeric modified rosin ester.

Use/Import. (G) An open, non-dispersive use. Import range: Confidential.

Y 94–30

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted polyvinyl acetal.

Use/Import. (G) Contained use in an article. Prod. range: 1,500–4,000 kg/yr.

Y 94–31

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Unsaturated polyester resin.

Use/Import. (S) Molding resin. Prod. range: Confidential.

Y 94–32

Manufacturer. Surface Coatings, Inc.

Chemical. (G) Aliphatic polyether urethane.

Use/Production. (G) Used in coatings for textiles applied by industrial manufacturers. Prod. range: Confidential.

Y 94–33

Manufacturer. Inx International Ink Company.

Chemical. (G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-, polymer with 5-amino-1,3,-trimethylcycloxhexamethane, trimethylhexamethylenediamine, alkanediol, hexanedioic acid, dimethylalkanediol and polypropyleneglycol.

Use/Import. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–34

Importer. Confidential

Chemical. (G) Substituted pyridine polymer.

Use/Import. (G) Component of consumer products. Confidential.

Y 94–35

Importer. Confidential.

Chemical. (G) Substituted pyridine polymer.

Use/Import. (G) Component of consumer products. Confidential.

Y 94–36

Importer. Confidential.

Chemical. (G) Saturated copolyester resin.

Use/Import. (G) Binder resin. Import range: Confidential.

Y 94–37

Importer. EniChem America, Inc.

Chemical. (S) Carbonic acid, dimethyl ester, polymer with 1,6-hexanediol.

Use/Import. (S) Component for polyurethane manufacture. Import range: 20,000–100,00 kg/yr.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: March 4, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–6172 Filed 3–16–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[FCC 94–27]

EEO Policy Statement

AGENCY: Federal Communications Commission (FCC).

ACTION: Policy statement.

SUMMARY: This Policy Statement establishes non-binding guidelines for assessing forfeitures for violations of the Federal Communications Commission's (FCC's) broadcast Equal Employment Opportunity (EEO) rule. The EEO rule prohibits discrimination and requires affirmative action by broadcast stations in hiring. The new guidelines provide greater guidance to stations and the public about what sanction may result from different types of EEO violations.

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Roderick K. Porter at 202–632–6460.

SUPPLEMENTARY INFORMATION:

Adopted: January 31, 1994; Released: February 1, 1994.

By the Commission: Commissioner Quello issuing a statement.

I. Introduction

1. In this Policy Statement, we establish non-binding guidelines for assessing forfeitures for violations of the Commission's broadcast Equal Employment Opportunity (EEO) rules.[1]

2. The Commission's broadcast EEO rules and other policies which promote participation by minorities and women in the broadcast industry are vitally important. They further the Commission's goals of promoting diversity of programming on broadcast stations. See *NAACP* v. *FPC*, 425 U.S. 662, 670 n. 7 (1975); *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547 (1990) (*Metro*). And, as the Supreme Court has noted, "[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is * * * an integral component of the FCC's mission." *Metro*, 497 U.S. at 548. We reaffirm our commitment to this bedrock goal underlying our broadcast EEO rules and believe that the Policy Statement we adopt here will further achievement of that goal.

3. In addition to promoting program diversity, our broadcast EEO rules enhance access by minorities and women to increased employment opportunities. Increased employment opportunities are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including participation in ownership.[2] Those who have access to employment opportunities are able to develop experience and expertise that can be put to beneficial use in a variety of communications enterprises, in a variety of ways. Thus, by combating discrimination and other arbitrary barriers to employment, we contribute to the development of the broadcast industry and ultimately promote the further development of the broader communications infrastructure.[3]

II. Background

4. In 1989, Congress amended the Communications Act of 1934 to increase substantially the maximum dollar amounts of forfeitures the Commission could impose on broadcasters under Section 503(b) of the Act.[4] The Commission's forfeiture rule has been amended to reflect the higher forfeiture amounts. 47 CFR 1.80(b)(1).

5. On August 1, 1991, in order to assist both the Commission and licensees in adjusting to the statutory increases, the Commission released its Policy Statement, Standards for Assessing Forfeitures (1991 Policy Statement).[5] The 1991 Policy Statement provided general, non-binding guidance regarding the assessment of forfeitures. It established base forfeiture amounts for a wide range of violations. For violations of broadcast EEO rules, the Commission set a base amount of $12,500. The 1991 Policy Statement also provided that the base forfeiture amount for any violation could be increased or decreased by applying adjustments to the base amount as relevant to the facts in any particular case. On August 12, 1993, the Commission released its most recent forfeiture guidelines.[6] Among other actions, the 1993 Policy Statement deleted the broadcast EEO violation category and indicated that the Commission would issue a further policy statement on broadcast EEO forfeiture matters at a later date.[7]

III. Discussion

6. The Policy Statement we adopt here, as set forth in the Appendix, re-establishes the base forfeiture amount for violations of the broadcast EEO rules at $12,500. It also provides guidance on what situations may generally lead to such a forfeiture. In addition, it describes upward and downward adjustment criteria that may be used to adjust the forfeiture in particular cases. The adjustment guidelines reflect the factors set forth in Section 503(b) of the Act, § 1.80 of our rules and case precedent. See 47 U.S.C. 503(b)(2)(D); 47 CFR 1.80(b)(4). All of these factors will not necessarily be relevant in each individual case and other adjustments may also be made as appropriate in particular cases. The Appendix also provides guidance regarding when short-term renewals may be appropriate in particular cases. We believe that these guidelines will assist the Commission and its staff in determining broadcast EEO forfeitures in a generally consistent manner that furthers the public interest while nevertheless ensuring that the Commission and the staff retain the discretion to decide each case based on the specific facts and circumstances at issue. At the same time, we believe these guidelines will

[1] See 47 C.F.R. 73.2080.

[2] The Commission seeks to promote minority ownership of broadcasting facilities. See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

[3] We note, in this regard, that Section 309(j)(4)(C) of the Communications Act of 1934, as amended, directs the Commission to promote economic opportunity in competitive bidding among applicants proposing to use the spectrum "by disseminating licenses among a wide variety of applicants * * * including businesses owned by members of minority groups and women."

[4] Pub. L. No. 239, 101st Cong., 1st Sess. 103 Stat. 2131 (1989) (amending, among other sections, 47 U.S.C. 503(b)). Amended Section 503(b) provides the Commission with authority to assess forfeitures of up to $25,000 for each violation or each day of a continuing violation against broadcasters, with a limit on forfeitures for continuing violations involving a single act or failure to act of $250,000 for broadcasters.

[5] 6 FCC Rcd 4695 (1991), *modified in part on recon.*, 7 FCC Rcd 5339 (1992), *petition for review pending sub nom. USTA* v. *FCC*, No. 92–1321 (DC Cir. filed July 30, 1992).

[6] 8 FCC Rcd 6215 (1993) *petition for review pending sub nom. USTA* v. *FCC*, No. 93–1526 (DC Cir. filed August 23, 1993) (*1993 Policy Statement*).

[7] *Id.* at n.1. The forfeiture amount for violations of the Commission's cable EEO rules is set at $500 per day by section 634 of the Act and is addressed in the 1993 Policy Statement.

give licensees and the public greater guidance regarding which types of forfeitures may result from particular types of EEO violations.

7. Finally, we stress that we do not intend this Policy Statement to limit our flexibility. In particular cases, forfeitures that are higher or lower than those reflected by the guidelines may be imposed. In this regard, what we have said in connection with our prior forfeiture policy statements applies here as well:

> [T]he Policy Statement simply describes the general approach the Commission may take in forfeiture cases and is not binding on any licensees or the Commission. The Policy Statement does not impose any obligations on [licensees] or require the Commission to issue a forfeiture of any particular magnitude—or any forfeiture at all * * *.
>
> * * * * *
>
> [W]e reiterate that while the Policy Statement may guide us and the staff in particular cases, we do not intend for the Commission or the staff to be bound by it. In addition, both the Commission and the staff intend to apply these guidelines flexibly. In particular, we and the staff remain committed to deciding every forfeiture case on the basis of the specific facts and equities presented in the record of that case.

7 FCC Rcd at 5339 (internal citations omitted).

IV. Conclusion

8. Accordingly, *it is ordered that* this Policy Statement is adopted, to the effective upon adoption.

9. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. 553(b)(A), (d)(2).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix

Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 66% of all vacancies during the license term being reviewed (Evidence of this violation will include (1) inadequate record-keeping and/or (2) inadequate self-assessment throughout the license term).	$12,500 base forfeiture (accompanied by reporting conditions)
UPWARD ADJUSTMENT CRITERIA	
I. Egregious Misconduct	
A. Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 33% of all vacancies reported for the license term being reviewed. Efforts are evaluated both for the station's staff overall and for upper four job categories. (EEO programs achieving only this level of compliance will warrant a short-term renewal, irrespective of whether other upward adjustments for "egregiousness" factors are present, if the percentage of vacancies for which the licensee failed to recruit, or the percentage of pools containing minorities, falls below 33% and other factors—e.g., use and productivity of recruiting sources, use and productivity of minority-specific sources; evidence of self-assessment—are absent or particularly inadequate)	$6,250 upward adjustment.
B. Large number of hiring opportunities that did not translate into an adequate pool of minority/female applicants or employees hired.	
—"Large number" means hiring opportunities equal to at least the average number of employees on the full-time staff, with a minimum of 25 hiring opportunities	$6,250 upward adjustment (Base plus 50%)
—"Substantial number" means hiring opportunities equal to three times the number of full-time staff, with a minimum of 25 hiring opportunities.	Additional upward adjustment of 50-90% of base.
C. Large pool of minorities/women in the relevant labor force did not translate into an adequate pool of applicants minority/women or employees hired	
Analysis will focus on (1) the overall percentage of minorities in the relevant labor force and (2) the presence of a single minority group constituting a significant percentage of that labor force.	
—If a licensee has a relevant labor pool of at least 20 percent minorities or a single minority group constitutes at least 10 percent of the labor force.	$6,250 to $11,250 upward adjustment (base plus 50-90%)

SHORT TERM RENEWALS: Short term renewals will be assessed if (A), (B) or (C) are applied in any combination of two or more upward adjustments. In addition, short term renewals also will be warranted where the specific criteria set forth in (A) above are present. The presence of the mitigating factors described in Section II below are grounds for not issuing short term renewals.

D. Prior EEO violations that resulted in previous sanction or remedy	—If reporting conditions were previously imposed, the licensee receives reporting conditions and the base forfeiture plus a 90% upward adjustment in addition to any other upward adjustments warranted by these guidelines (including short-term renewal) —If reporting conditions plus a forfeiture were previously imposed, the licensee receives reporting conditions, the base forfeiture plus a 90% upward adjustment, any other upward adjustments warranted by these guidelines, and a short-term renewal.

	—If previous sanction and remedies included a short-term renewal, the renewal will be designated for hearing and possible forfeiture of $250,000.
E. EEO violations with respect to both minorities and women	$11,250 upward adjustment and a short-term renewal.
DOWNWARD ADJUSTMENT CRITERIA	
II. Actual Hiring Experience	
A. Minority hiring represents 50% of the minority profile of the relevant labor force *for both overall employment and upper four employment* or	$6,250 downward adjustment.
B. Minority hiring represents 100% of the minority profile of the relevant labor force *for both overall employment and upper four employment.*	$6,250 downward adjustment and presumptive removal of short-term renewal. Evidence indicating the substantial absence of an EEO program will rebut the presumption of removal.
III. Employment Profile	
C. Minority employment represents 50% of the minority profile of the relevant labor force *for both overall employment and upper four employment* or	$6,250 downward adjustment.
D. Minority employment represents 100% of the minority profile of the relevant labor force *for both overall employment and upper four employment.*	$6,250 downward adjustment and presumptive non-issuance of short-term renewal. Evidence indicating the complete absence of an EEO program will rebut the presumption of removal.
III(C) and III(D) apply if the employment profile meets the guidelines in 4 of 5 years for a television renewal and 6 of 7 years for a radio renewal. Where less than a full term exists, the employment profile must meet the guidelines for a majority of the years reported	
IV. Employment Profile *and* Hiring Experience	If II(B) *and* III(D) apply, a short-term renewal would not be imposed.
V. Few Hiring Opportunities	
A. 5 or fewer hiring opportunities across the entire license term	$6,250 downward adjustment.
B. 10 or fewer hiring opportunities across the entire license term if the average full-time staff during the entire term exceeds 50 employees.	$6,250 downward adjustment (Either (A) or (B) will apply, but not both)
VI. Low Percentage of Minorities in Relevant Population	
Minorities constitute less than 6% of the relevant labor force	$6,250 downward adjustment and possible non-issuance of short-term renewal depending upon staff balancing of factors (number and productivity of sources contacted, number and productivity of minority-specific sources, extent to which licensee demonstrated severe shortfall in recruitment).
VII. Inability to Pay (if raised and demonstrated by the licensee)	Varies.
VIII. Stand-alone station in markets 200 and above as reflected in the annual Abitron population rankings.	$6,250 downward adjustment.

Separate Statement of Commissioner James H. Quello

In the Matter of Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules

The Commission today has voted an item that will prove to be a turning point in the enforcement of our EEO rules. This *Policy Statement* sets forth guidelines for assessing forfeitures for violations of the Commission's EEO rules. 47 CFR 73.2080. As reflected in the statement, the base amount for a forfeiture will be $12,500, an amount that can be increased or decreased depending on the facts of a given case. These higher forfeitures are a direct result of the increases in forfeiture amounts imposed by Congress. The guidelines are designed to ensure that these new, higher forfeitures are assessed in a reasoned, consistent manner. For this reason, and because I strongly support vigorous enforcement of our EEO rules, I have voted in favor of this item.

However, at the same time, I am concerned that the Commission may be entering the era of the telecommunications superhighway wielding a club, rather than offering a hand, to broadcasters making their way down the road. At the dawn of this new era, we are imposing fines against 22 of 24 radio stations whose EEO records were reviewed, in amounts ranging from $18,750 to $37,500. Short term renewals are assessed against 21 of the 22 stations receiving forfeitures. Radio broadcasters will be "contributing" a total of $325,000 to the Federal Treasury as a result of our actions today. I am troubled by the amount of these forfeitures and the increased use of the short term renewal as a sanction. Yet, I recognize that, at least with respect to the increased forfeiture amounts, Congress increased our forfeiture authority.

I would have much preferred an approach that would have served three compelling goals: (1) Ensuring compliance with our EEO rules by imposing meaningful sanctions; (2) imposing these sanctions in such a way so as not to cripple broadcasters in their travels along the information superhighway; and (3) directly furthering the underlying public interest purpose of the EEO rule—the increased hiring and promotion of minorities and women in the broadcast industry. Specifically, if we had the legal authority to do so, I would have voted for a program that would have allowed monies received as a result of violations or alleged violations of our EEO or other rules to be placed into a fund and not into the Federal Treasury. Funds received for EEO violations would be used for training, educating, and providing placement services for minorities and women interested in a career in broadcast. What better use for the $325,000 in forfeitures imposed for violations of the EEO rules today than for the very purpose underlying the rule?

[FR Doc. 94–6228 Filed 3–16–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, Columbus, Ohio; Request for an Exemption From Tying Provisions

Banc One Corporation, Columbus, Ohio (Banc One), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) (Section 106(b)), that the Board grant an exemption to permit Banc One's subsidiary banks to vary the consideration on a loan, deposit, discount, or trust service ("traditional banking products") for customers that receive first lien mortgage loans on 1-4

family residential real estate (mortgage loans) from Banc One's mortgage subsidiary, Banc One Mortgage Corporation, Indianapolis, Indiana (BOMC). Banc One also has requested an exemption to permit BOMC to vary the consideration on mortgage loans for customers who have obtained or will obtain a traditional banking product from any of Banc One's subsidiary banks. BOMC originates and refinances mortgage loans, primarily for sale into the secondary market.

In 1994, Banc One intends to reorganize BOMC as an operating subsidiary of Bank One, Indianapolis, N.A., Indianapolis, Indiana. In this connection, Banc One also has requested an exemption to permit its banks and BOMC to continue to offer customers the price reductions described above after the reorganization.

Section 106(b) permits a bank to fix or vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking product from that bank. However, Section 106(b) prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any affiliate. The Board may grant an exception that is not contrary to the purposes of this provision.[1]

Banc One contends that its proposal is consistent with the purposes of Section 106(b) because the proposal is not anticompetitive. Banc One argues that the market for mortgage loans and for traditional banking products is highly competitive, and that BOMC does not have sufficient market share on a local, nationwide, or other basis to adversely affect competition. Banc One also argues that the proposal will promote competition and will not limit the availability of products to consumers because the traditional banking products offered by Banc One's subsidiary banks and mortgage loans from BOMC will be separately available to customers.

Notice of Banc One's request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106(b). The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 15, 1994.

[1] *See, e.g.*, 12 U.S.C. 1972(1).

Board of Governors of the Federal Reserve System, March 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6219 Filed 3–16–94; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

Depository Library Council To the Public Printer; Meeting

The Depository Library Council to the Public Printer (DCL) will hold its Spring 1994 meeting on Monday, April 25, 1994, through Wednesday, April 27, 1994, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 12 p.m. on Wednesday. The sessions will be held at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Rosslyn Westpark for anyone needing hotel accommodations. Telephone: 800–368–3408 or 703–527–4814; fax: 703–522–8864. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $82.

Michael F. DiMario,

Public Printer.

[FR Doc. 94–6250 Filed 3–16–94; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

White House Conference on Aging; Recognition of Activities

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice.

SUMMARY: The 1995 White House Conference on Aging (WHCOA) intends to recognize local and regional activities, events and programs developed by outside organizations during 1994. Recognition implies the WHCOA's acknowledgement of the relevancy of the activity to the goals of the WHCOA. Interested organizations must adhere to the guidelines listed below to have an event officially recognized by the White House Conference on Aging.

ADDRESSES: Forms should be sent to the WHCOA, 501 School St. SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Judy Satine, White House Conference on Aging, 202–245–7826. See address above.

SUPPLEMENTARY INFORMATION: A White House Conference on Aging is intended to produce policy recommendations to guide national aging policy over the next decade. In Public Law 102–375, the Older Americans Act Amendments of 1992, Congress specifically identified six primary purposes for the White House Conference on Aging. They are:

(1) To increase public awareness of the interdependence of generations and the essential contributions of older individuals to society for the well-being of all generations;

(2) To identify the problems facing older individuals and the commonalities of the problems with problems of younger generations;

(3) To examine the well-being of older individuals, including the impact the wellness of older individuals has on our aging society;

(4) To develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and improving the well-being of the aging;

(5) To develop recommendations for the coordination of Federal policy with State and local needs and the implementation of such recommendations; and

(6) To review the status and multigenerational value of recommendations adopted at previous White House Conferences on Aging.

It should be noted that particular emphasis should be directed to purposes 1 and 5 listed above.

Guidelines

In order for the White House Conference on Aging to consider recognizing a local activity, event or program, it must meet the following basic criteria:

(A) It must be a policy-oriented event; the focus must be on one or more Federal policy issues affecting the elderly or the near-elderly;

(B) It must guarantee the participation of older persons;

(C) It must produce a written report within 30–45 days summarizing major issues discussed and recommendations proposed that can be utilized by the White House Conference on Aging;

(D) It must not be a profit-making or fundraising event although it is permissible to charge a fee to recover the costs of the event; and

(E) It must be approved by the Executive Director. If the White House Conference on Aging agrees to recognize the event, an official letter will be provided that could be presented at the activity, event or program. In certain limited instances, the White House Conference on Aging may also be able to participate. A White House Conference on Aging recognition allows the activity, event or program to publicize that it has been recognized by the WHCOA and that it will be listed in the final report of the Conference. However, recognition does not imply that the WHCOA endorses the recommendations.

Interested organizations should respond to the questions set out in the appended form and send the information to the above address as soon as possible. It will be reviewed and a response sent as expeditiously as possible.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

Appendix—Form

Request for WHCOA Project Recognition

Name of Organization _____
Address _____
City _____
State _____
ZIP _____
FOR PROFIT ( ) NON-PROFIT ( )
Title of Proposed Activity _____
Date/s _____
Location _____
City/ies 1. _____
2. _____
3. _____
4. _____

Please briefly describe your proposed activity, event, or program.

_____
_____
_____
_____

What specific Federal aging policy issue do you intend to address: Please describe:

_____
_____

Will older people be invited to and be involved in your proposed activity, event, or program? Can you indicate the size of the target audience and what percentage might be seniors?

_____
_____

Can you provide to the WHCOA within 30 to 45 days of your activity, event, or program, a written summary report on issues discussed and recommendations proposed?
YES ( ) NO ( )
Do you plan to charge a fee for your activity?
YES ( ) NO ( )
Contact Person _____
Telephone _____
Date of Request _____

[FR Doc. 94–6165 filed 3–16–94; 8:45 am]
BILLING CODE 4130–02–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. Chapter 35), the National Center on Child Abuse and Neglect (NCCAN) of the Administration for Children and Families (ACF) is requesting clearance from the Office of Management and Budget (OMB) for instruments to be used for the Site Visit Interview Component of the National Evaluation of Emergency Child Abuse and Neglect Prevention Services Demonstration Projects. The Emergency Services Demonstration projects were designed to address services to families experiencing the coexisting problems of substance abuse and child maltreatment.

ADDRESSES: Copies of the information collection may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Evaluation of the Emergency Child Abuse and Neglect Prevention Services Demonstration.

OMB No.: New Request.

Description: The Emergency Child Abuse and Neglect Prevention Services Demonstration projects, funded by the National Center on Child Abuse and Neglect of the Administration for Children and Families (ACF), were designed to address services to families experiencing the coexisting problems of substance abuse and child maltreatment.

The national evaluation is comprised of two primary components—the Site Visit Interview Component and the Document Review Component. The site visit data, in conjunction with information obtained from reviews of program reports and third-party evaluation documents (obtained from the Document Review component) will be used to assess the extent to which demonstration programs have met the goals of (1) developing emergency service delivery models to provide crisis intervention for children and adolescents at risk for maltreatment from substance-abusing family members; and (2) removing barriers to treatment for substance-abusing parents or family members in order to prevent maltreatment of children in these at-risk households. The Site Visit Interview Component will be conducted through visits to 49 projects and interviews with key members at the project site. The information obtained by the Site Visit Interview Component will be used by NCCAN in decision-making regarding policy and programs pertaining to services to children and families experiencing the coexisting problems of substance abuse and child maltreatment. The information also will provide the fields of substance abuse and child abuse prevention and intervention with new models for working together and for serving families from a holistic perspective.

Annual Number of Respondents: 188.

Frequency: 1.

Average Burden Hours Per Response: 2.02.

Total Burden Hours: 379.75.

Dated: March 10, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–6204 Filed 3–16–94; 8:45 am]
BILLING CODE 4184–01–M

Health Care Financing Administration

[OIS–024–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Fourth Quarter 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during October, November, and December of 1993 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

We are also providing the content of revisions to the Medicare Coverage Issues Manual published between October 1 and December 31, 1993. On

August 21, 1989 (54 FR 34555), we published the content of the Manual and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:
Margaret Cotton, (410) 966–5260 (For Medicare instruction information)
Walter Rutemueller, (410) 966–5395 (For Medicare coverage information)
Pat Prete, (410) 965–3246 (For Medicaid instruction information)
Jacqueline Kidd, (410) 966–4682 (For all other information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 36 million Medicare beneficiaries and 33 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from October 1 through December 30, 1993.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989, publication.

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of March 31, 1993. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

Addendum V sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any

manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles are current as of the September 1, 1992, update of the Compilation of the Social Security Laws and the regulations are those in effect as of October 1, 1993.

The CD–ROM disk does not contain Appendices M (Interpretative Guidelines for Hospices) and R (Resident Assessment for Long Term Care Facilities) of the State Operations Manual. Copies of these appendices may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD-ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 2—Program Administration (HCFA–Pub. 14–2) transmittal entitled "The Contractor Performance Evaluation Program—FY 1993," use the Superintendent of Documents No. HE 22.8/7–3, and the HCFA transmittal number 123.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 965–3246.

Questions concerning items in Addenda V may be addressed to Walter Rutemueller, Office of Coverage and Eligibility Policy, Health Care Financing Administration, Room 401 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5395.

Questions concerning all other information may be addressed to Jacqueline Kidd, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4682.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 7, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.

March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16, 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)
July 9, 1993 (58 FR 36967)
September 1, 1993 (58 FR 46200)
December 22, 1993 (58 FR 67796)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A

brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993

Trans. No.	Manual/subject/publication number
Intermediary Manual, Part 2 - Audits, Reimbursement Program Administration (HCFA-Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)	
384	° Completion of the Form HCFA–1885A. The Contractor Performance Evaluation Program—FY 1993. Bill Processing and Service Criterion. Payment Safeguards Criterion. Service Criterion. The RHHI Performance Evaluation Program - FY 1993. Regional Home Health Intermediary Criterion.
Intermediary Manual, Part 3 - Claims Process (HCFA-Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)	
1606	° Electronic Media Claims. File Specifications, Record Specifications, and Data Element Definitions for EMC Bills. National Standard Electronic Remittance Advice. Medicare Standard Electronic PC-Print Software.
1607	° Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers. Hospital Outpatient Partial Hospitalization Services. Provider Electronic Billing File and Record Formats HCFA–485 Home Health Certification and Plan of Treatment.
1608	° PPS PRICER Program.
1609	° Review of Form HCFA–1450 for Inpatient and Outpatient Bills. Billing Procedures for Where Medicare Benefits are Secondary to Group Health Plans for Employed Beneficianes/Spouses and the Disabled. Coding Structures. MSP Outpatient Claims Involving Lab Charges Paid By Fee Schedule.
1610	° Rules Governing Charges to Beneficiaries. The Intermediary Workload Report, Form HCFA–1566.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
1611	° Claims Processing Timeliness.
Intermediary Manual, Part 4 - Audit Procedures (HCFA-Pub. 13–3) (Superintendent of Documents No. HE 22.8/6–4)	
31	° Introduction to the Home Health Agency Uniform Desk Review. Instructions for Performing Desk Reviews.
32	° General. Revised Medicare Audit Process.
Carriers Manual, Part 2 - Program Administration (HCFA-Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)	
123	° The Contractor Performance Evaluation Program - FY 1993. Claims Processing Criterion. Payment Safeguards Criterion. Service Criterion. CWF Host Performance Evaluation Program - FY 1993.
124	° Functional Standards for Claims Processing Operations.
Carriers Manual, Part 3 - Claims Process (HCFA-Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)	
1465	° List of Covered Surgical Procedures.
1466	° Requirement for Processing Electronic Media Claims. The System for Processing Electronic Media Claims. EMC Testing and Verification. Technical Requirements. Data Sets and Formats for Electronic Media Claims and Electronic Remittance Advice.
1467	° Bills Involving Medical Assistance Recipients. Processing Claims for Services of Participating Physicians or Suppliers. Physician and Supplier Billing Requirements for Services Furnished on or After September 1, 1990. Participation Program.
1468	° Psychological Tests.
1469	° The Carrier Performance Report, HCFA–1565.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
1470	° Nonparticipating Physicians to Provide Notices for Elective Surgery. Handling Beneficiary Complaints.
1471	° Technical Specifications of the EOMB.
1472	° Epoetin Furnished to ESRD Home Patients.
1473	° Introduction. Definition of a Global Surgical Package. Billing Requirements for Global Surgeries. Claims Review for Global Surgeries. Adjudication of Claims for Global Surgeries. Postpayment Issues. Claims for Multiple Surgeries. Claims for Bilateral Surgenes. Procedures Billed With Two or More Surgical Modifiers. Claims for Anesthesia Services Performed On or After January 1, 1992. Billing for Portable X-Ray Set-Up Services. Claims Processing System Requirements.
1474	° Routine Services and Appliances. Foot Care and Supportive Devices for the Feet.
Program Memorandum, Intermedianes (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)	
A–93–4	° Change in Hospice Payment Rates.
A–93–5	° Health Care Financing Administration's Audit and Cost Report Settlement Expectations.
A–93–6	° FY 1994 Prospective Payment System and Other Bill Processing Changes.
Program Memorandum, Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)	
B–93–5	° 1994 Physician, Practitioner and Supplier Participation Enrollment and Fee Schedule Disclosure.
Program Memorandum, Intermediaries/Carriers (HCFA-Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6–5)	
AB–93–5	° Q Code for New Chemotherapy Drug, Paclitaxel.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
AB–93–6	° Current Status of Medicare Program Memorandums and Letters Issued Before Calendar Year 1993.
AB–93–7	° Use of New Code, G0001, for Billing of Routine Venipuncture.
Program Memorandum, Medicaid State Agencies (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/6–5)	
93–7	° Current Status of Medicaid Program Memorandums and Action Transmittals Issued Before Calendar Year 1993.
93–8	° Title XIX, Social Security Act, Medicaid Coverage and Payment.
State Operations Manual, Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)	
261	° Life Safety Code Surveys. Conducting Initial Surveys and Scheduled Resurveys.
Hospital Manual, (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)	
655	° Billing for Hospital Outpatient Partial Hospitalization Services. Coding Structures. Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing.
656	° Focused Medical Review. Billing for Part B Outpatient Physical Therapy Services. Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing. Medicare Benefits and Secondary to EGHPs for Employed Beneficiaries/ Spouses and the Disabled. Coding Structures. MSP Outpatient Claims Involving Lab Charges Paid by Fee Schedule.
657	° Claims Processing Timeliness.
Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)	
263	° Billing for Part B Outpatient Physical Therapy Services. Focused Medical Review.
264	° Claims Processing Timeliness.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)	
323	° Focused Medical Review. Billing for Part B Intermediary OPT Bills.
324	° Rules Governing Charges to Beneficiaries.
325	° Claims Processing Timeliness.
Rural Health Clinic and Federally Qualified Health Center Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)	
5	° Claims Processing Timeliness.
Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)	
63	° Claims Processing Timeliness.
Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)	
38	° Focused Medical Review.
39	° Claims Processing Timeliness.
Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)	
112	° Focused Medical Review. Medical Review of Part B OPT Intermediary Bills.
113	° Claims Processing Timeliness.
Coverage Issues Manual (HCFA-Pub. 6) (Superintendent of Documents No. HE 22.8/14)	
65	° Artificial Hearts and Related Devices.
66	° Medical Documentation. Laboratory Evidence.
Provider Reimbursement Manual, Part 1 (HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)	
373	° Regional Medicare Swing-Bed SNF Rates.
374	° Elimination of Payment for Return of Equity.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
375	° Costs Not Related to Patient Care. Political Contribution and Lobbying Activities. Purpose.
Provider Reimbursement Manual, Part 1 - Chapter 27 Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15–1–27) (Superintendent of Documents No. HE 22.8/4)	
24	° Items and Services Furnished to Direct Dealing Home Dialysis Beneficiaries.
25	° Epoetin. Infacility Patients. Home Patients.
Provider Reimbursement Manual, Part II - Provider Cost Reporting Forms and Instructions (Chapter 1) (HCFA-Pub. 15–II) (Superintendent of Documents No. HE 22.8/4)	
16	° Submission of Cost Report.
Provider Reimbursement Manual, Part II - Provider Cost Reporting Forms and Instructions (Chapter 28) (HCFA-Pub. 15–II-AB) (Superintendent of Documents No. HE 22.8/4)	
3	° Form HCFA–2552–92 Worksheets. Electronic Reporting Specifications for Form HCFA 2552–92. Cost Center Coding.
Peer Review Organization Manual (HCFA-Pub. 19) (Superintendent of Documents No. HE 8/8–15)	
25	° Health Care Financing Administration's Role. Health Care Quality Improvement Initiative. Generic Quality Screens - Outpatient Surgery. Rereview of Quality Concerns. Scope of PRO Fraud and Abuse Review Activities. Review Responsibility. Evaluation Report. Availability of Expert Witness. Reopening of Cases.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
26	° Citations and Authority. Issuances of Hospital Notices of Noncoverage. Content of Hospital-Issued Notice of Noncoverage. Beneficiary Request for PRO Review. Solicitation of Views. Monitoring Hospital-Issued Notices of Noncoverage. Beneficiary Liability. Right to a Reconsideration. Model Notices of Noncoverage. Model Hospital Notice Issued to Beneficiary of Pro Review of Need for Continued Hospitalization.
27	° Monthly Files. Review for Approval of Use of an Assistant at Cataract Surgery.
28	° Background. Purpose. Report of Findings. Performance Improvement Plan.
State Medicaid Manual, Part 2 - State Organization and General Administration (HCFA-Pub. 45–2) (Superintendent of Documents No. HE 22.8/10)	
84	° Early and Periodic Screening, Diagnostic and Treatment Report (Form HCFA–416)

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
State Medicaid Manual, Part 4 - Services (HCFA-Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)	
63	° Authority to Grant Life Safety Code Waivers for Medicaid Only Certified NFs.
State Medicaid Manual, Part 5 - Early and Periodic Screening, Diagnosis, and Treatment (HCFA-Pub. 45–5) (Superintendent of Documents No. HE 22.8/10)	
6	° Screening Service Content.
7	° Records or Information on Services and Recipients Annual Participation Goals.
State Medicaid Manual, Part 6 - Payment for Services (HCFA-Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)	
24	° Federal Upper Limit Payments for Multiple Source Drugs.
State Medicaid Manual, Part 7 - Quality Control (HCFA-Pub. 45–7) (Superintendent of Documents No. HE 22.8/10)	

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS OCTOBER THROUGH DECEMBER 1993—Continued

Trans. No.	Manual/subject/publication number
49	° Definitions of Key Terms. Medicaid Eligibility Quality Control Review. MEQC State and Regional Cycles. Cases Which Are Not Reviewed. Review of AFDC Cash Cases/Individuals. In-Person Interview. Mandatory Use of IEVS Information. Verification Standards. Verification Guide. Administrative Period. Technical Errors. Review Month Income Projected Forward Throughout Spenddown Period.
Medicare/Medicaid, Sanction—Reinstatement Report (HCFA-Pub. 69)	
93–10	° Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–11	° Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–12	° Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–13	° Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.

ADDENDUM IV.—REGULATIONS AND NOTICES PUBLISHED JULY THROUGH SEPTEMBER 1993

Publication date/citation	42 CFR part	Title
		Final Rules
10/01/93 (58 FR 51408)	435, 436, 440	Medicaid Program; Eligibility and Coverage Requirements.
10/20/93 (58 FR 54045)	403	Medicare Program; Demonstration Project to Develop a Uniform Cost Reporting System for Hospitals.
11/02/93 (58 FR 58502)	405, 406, 409, 410, 411, 412, 413, 418, 489	Medicare Program; Self-Implementing Coverage and Payments Provisions: 1990 Legislation (Confirmation of Final Rule).
11/18/93 (58 FR 60789)	421	Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).
11/23/93 (58 FR 61816)	401, 488, 489	Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations.
12/02/93 (58 FR 63533)	491	Medicare Program Required Laboratory Procedures for Rural Health Clinics.
12/02/93 (58 FR 63626)	405, 414	Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994.
12/13/93 (58 FR 65126)	424	Medicare Program; Intermediary and Carrier Checks That are Lost, Stolen, Defaced, Mutilated, Destroyed or Paid on Forged Endorsements.

ADDENDUM IV.—REGULATIONS AND NOTICES PUBLISHED JULY THROUGH SEPTEMBER 1993—Continued

Publication date/citation	42 CFR part	Title
		Proposed Rules
10/01/93 (58 FR 51288)	440, 441	Medicaid Program; Early and Periodic Screening, Diagnosis, and Treatment Services Defined.
10/15/93 (58 FR 53481)	431, 440, 441, 447	Medicaid Program; Case Management.
11/26/93 (58 FR 62312)	410, 411	Medicare Program; Medicare Coverage of Screening Pap Smears for Early Detection of Cervical Cancer.
12/13/93 (58 FR 65150)	413	Medicare Program; Reporting of Interest From Zero Coupon Bonds.
12/14/93 (58 FR 65312)	435, 436, 440, 447	Medicaid Program; Extended Medicaid for Certain Families Who Lose AFDC Eligibility Because of Earned Income; Work Supplementation Participants; Residency of Minor Parents and Pregnant Individuals.
12/27/93 (58 FR 68366)	417	Medicare Program; Retroactive Enrollment and Disenrollment in Risk Health Maintenance Organizations and Competitive Medical Plans.
12/29/93 (58 FR 68829)	410, 417, 424	Medicare Program; Medicare Coverage and Payment of Clinical Psychologist, Other Psychologist, and Clinical Social Worker Services.

NOTICES

Publication date/citation	Title
10/01/93 (58 FR 51355)	Medicare Program; Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers.
10/04/93 (58 FR 51632)	HMOs; Exclusion of Gamete Intrafallopian Transfer and Zygote Intrafallopian Transfer as Basic Health Services
10/05/93 (58 FR 51827)	Medicare Program; Data, Standards and Methodology Used to Establish Fiscal Year 1994 Budgets for Fiscal Intermediaries and Carriers.
10/05/93 (58 FR 51833)	HMOs; Qualification Determinations and Compliance Actions During the Period April 1, 1993, through June 30, 1993.
10/06/93 (58 FR 52112)	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Licensed by the State of Washington.
11/02/93 (58 FR 58553)	Medicare Programs; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1994.
11/02/93 (58 FR 58555)	Medicare Program; Part A Premium for 1994 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.
11/08/93 (58 FR 59271)	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1994.
11/16/93 (58 FR 60458)	Medicare Program; Withdrawal of the Provider Reimbursement Review Board Hearing Manual.
11/22/93 (58 FR 61692)	Medicaid Program; Revised Medicaid Management Information Systems (MMIS) Functional Requirements.
11/24/93 (58 FR 62128)	Medicare Program; Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers (extension of comment period).
11/26/93 (58 FR 62357)	Medicare Program; Meeting of the Practicing Physicians Advisory Council.
12/02/93 (58 FR 63856)	Physician Performance Standard Rates of Increase for Federal Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994.
12/13/93 (58 FR 65186)	Medicare Program; Peer Review Organization, General Criteria and Standards for Evaluating Performance of Contract Obligations.
12/14/93 (58 FR 65357)	Medicare Program; Proposed Additions to and Deletions From the Current List of Covered Procedures for Ambulatory Surgical Centers.
12/21/93 (58 FR 67350)	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates; (Correction).
12/22/93 (58 FR 67796)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1993.
12/23/93 (58 FR 68148)	Approval of the Commission on Office Laboratory Accreditation.

Addendum V—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 65; section 65–15, Artificial Hearts and Related Devices—Not Covered. CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE; Services Furnished on or After 10/18/93.

Section 65–15, Artificial Hearts and Related Devices, is revised to provide coverage of the FDA-approved ventricular assist device (known as the BVS 5000) when used only in patients suffering from postcardiotomy ventricular dysfunction. The device is intended for short term use and is not covered when used as a bridge to cardiac transplantation.

65–15 ARTIFICIAL HEARTS AND RELATED DEVICES—NOT COVERED

There are several devices either in use or under development which replace all or part of the human heart or assist the heart in performing its pumping function. Artificial hearts are considered investigational and not covered under Medicare either when used as a

permanent replacement for a human heart or when used as temporary life-support systems (i.e., until a human heart becomes available for transplant).

The FDA-approved ventricular assist device (known as the BVS 5000) is covered when it is used in accordance with its FDA-approved labeled uses for postcardiotomy ventricular dysfunction. The device is intended for short term use and is not covered when used as a bridge to cardiac transplantation. Other ventricular assist devices used as temporary life-support systems are still considered investigational and not covered under the Medicare program.

Transmittal No. 66; section 60–4.B, Medical Documentation. CHANGED PROCEDURES—EFFECTIVE DATE: Services furnished on or after 01/01/9.

Section 60–4.B, Medical Documentation, is revised to reflect changes mandated by § 4152 of OBRA 1990, effective for services rendered on or after January 1, 1991. Implementing changes were published in the Medicare Carriers Manual in July 1991 (transmittal 1399). Transmittal No. 66; section 60–4.C, Laboratory Evidence. CHANGED PROCEDURES—EFFECTIVE DATE: 10/27/93.

Section 60–4.C, Laboratory Evidence, is revised to indicate that in situations where the arterial blood gas and the oximetry studies are both used to document the need for oxygen therapy and the results are conflicting, the arterial blood gas study is the preferred service of documenting medical need because the results of such studies are considered the best evidence of hypoxemia. In addition, these instructions also clarify that the prohibition against the use of results of tests performed by a durable medical equipment (DME) supplier to qualify patients for home oxygen service *does not extend* to the results of an arterial blood gas text by a hospital certified to conduct such tests.

60–4 HOME USE OF OXYGEN

B. *Medical Documentation.—Initial* claims for oxygen services must include a completed Form HCFA–484 (Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy) to establish whether coverage criteria are met and to ensure that the oxygen services provided are consistent with the physician's prescription or other medical documentation. The attending physician's prescription or other medical documentation must indicate that the other forms of treatment (e.g., medical and physical therapy directed at secretions, bronchospasm and infection) have been tried, have not been sufficiently successful, and oxygen therapy is still required. While there is no substitute for oxygen therapy, each patient must receive optimum therapy before long-term home oxygen therapy is ordered. Use Form HCFA–484 for recertifications. (See Medicare Carriers Manual § 3312 for completion of Form HCFA–484.)

The medical and prescription information on Form HCFA–484 can be completed only by the attending physician or entered on the form from information in the patient's records by an employee of the physician for the physician's review and signature. Although hospital discharge coordinators, nurses, and medical social workers may assist in arranging for physician-prescribed home oxygen, they have no authority to prescribe the services or to enter medical or prescription information in items 1 through 6 of Form HCFA–484. Suppliers may not enter this information either.

Unlike other types of DME, a physician's certification of medical necessity for oxygen equipment must include the results of specific testing before coverage can be determined.

Initial claims for oxygen must also be supported by medical documentation. Separate documentation is used with electronic billing. (See Medicare Carriers Manual, Part 3, § 4105.6.) This documentation may be in the form of a prescription written by the patient's attending physician who has recently examined the patient (normally within a month of the start of therapy) and must specify:

- A diagnosis of the disease requiring home use of oxygen;
- The oxygen flow rate; and
- An estimate of the frequency, duration of use (e.g., 2 liters per minute, 10 minutes per hour, 12 hours per day), and duration of need (e.g., 6 months or lifetime).

Note: A prescription for "Oxygen PRN" or "Oxygen as needed" does not meet this last requirement. Neither provides any basis for determining if the amount of oxygen is reasonable and necessary for the patient.

All claims with oxygen flow rates of more than 2 liters per minute must be reviewed by a carrier's medical staff before payment can be made. The attending physician may also specify the type of oxygen delivery system to be used (i.e., gas, liquid, or concentrator). If the type of system is specified, then the medical reasons for selecting that system over the alternative systems must also be specified.

New medical documentation written by the patient's attending physician must be submitted to the carrier in support of revised oxygen requirements when there has been a change in the patient's condition and need for oxygen therapy.

Carriers are required to conduct periodic, continuing medical necessity reviews on patients whose conditions warrant these reviews and on patients with indefinite or extended periods of necessity as described in Medicare Carriers Manual, Part 3, § 4105.6.C. When indicated, carriers may also request documentation of the results of a repeat arterial blood gas or oximetry study.

Note: *Section 4152 of OBRA 1990 requires earlier recertification and retesting of oxygen patients who begin coverage with an arterial blood gas result at or above a partial pressure of 55 or an arterial oxygen saturation percentage at or above 89. (See Medicare Carriers Manual § 4105.6 for certifications and retesting schedules.)*

C. Laboratory Evidence.—Initial claims for oxygen therapy must also include the results of a blood gas study that has been ordered and evaluated by the attending physician. This is usually in the form of a measurement of the partial pressure of oxygen (PO_2) in arterial blood. (See Medicare Carriers Manual, Part 3, § 2070.1 for instructions on clinical laboratory tests.) A measurement of arterial oxygen saturation obtained by ear or pulse oximetry, however, is also acceptable when ordered and evaluated by the attending physician and performed under his or her supervision or when performed by a qualified provider or supplier of laboratory services. *In situations when the arterial blood gas and the oximetry studies are both used to document the need for home oxygen therapy and the results are conflicting, the arterial blood gas study is the preferred source of documenting medical need. A DME supplier is not considered a qualified provider or supplier of laboratory services for purposes of these guidelines. This prohibition does not extend to the results of an arterial blood gas test conducted by a hospital certified to do such tests.* The conditions under which the laboratory tests are performed must be specified in writing and submitted with the initial claim, i.e., at rest, while sleeping, while exercising, on room air, or if while on oxygen, the amount, body position during testing, and similar information necessary for interpreting the evidence as specified by the carrier.

The preferred sources of laboratory evidence are existing physician and/or hospital records that reflect the patient's medical condition. Since it is expected that virtually all patients who qualify for home oxygen coverage for the first

time under these guidelines have recently been discharged from a hospital where they submitted to arterial blood gas tests, the carrier needs to request that such test results be submitted in support of their initial claims for home oxygen. If more than one arterial blood gas test is performed during the patient's hospital stay, the test result obtained closest to the hospital discharge date is the best evidence of the need for home oxygen therapy.

Carriers may accept an attending physician's statement of recent hospital test results for a particular patient, when appropriate, in lieu of copies of actual hospital records. Subsequent blood gas tests that appear to duplicate the hospital test (e.g., when there is no reason to believe the patient's condition may have changed) are denied as not medically reasonable and necessary.

A repeat arterial blood gas or oximetry study is normally necessary only when evidence indicates that an oxygen recipient has undergone a major change relevant to home use of oxygen. For example, if the carrier has reason to believe that there has been a major change in the patient's physical condition (e.g., when there has been a significant increase in the amount of oxygen billed on a monthly basis), it may ask for documentation of the results of another blood gas or oximetry study

[FR Doc. 94-6153 Filed 3-16-94; 8:45 am]
BILLING CODE 4120-01-P

Health Resources and Services Administration

Final Strategic Directions for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program for Fiscal Year 1994

The Health Resources and Services Administration (HRSA), announces the final strategic directions to continue the development of the AIDS Regional Education and Training Centers (AETCs) program for one year. This program is authorized under Section 776(a), (previously section 788A), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

Eligibility and Purpose

Awards are made to accredited public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

1. To train the faculty of schools and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, mental health practice (clinical psychology, clinical social work and marriage and family therapy), and allied health, to teach health professions students to provide for the health care needs of individuals with HIV disease;

2. To train practitioners to provide for the health care needs of such individuals;

3. With respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

4. To develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease.

Project Requirements

The following project requirements, which were published in the **Federal Register** in FY 1989, after public comment dated September 8, 1989, 54 FR 37378, will be continued in FY 1994.

The project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus in FY 1994 will continue to be on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the Federal funds provided must be expended to provide education to primary care providers (i.e., physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists). In addition, at least 50 percent of project funds must be expended for training activities in high AIDS incidence Metropolitan Statistical Areas identified prior to the competitive awards of high AIDS incidence MSAs identified for funding through the "Ryan White" CARE ACT program.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists;
- Training of other health professionals such as mental health care providers and case managers;
- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary care linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkages to "Ryan White" CARE ACT, titles I, II, III, and IV funded health services programs and the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs;
- Linkage to PHS funded migrant (Sec. 329(a)(1)) and community health (Sec. 330(a)) centers, health care for the homeless programs (Sec. 340) State and local health agencies and health care facilities involved in providing care for HIV infected individuals;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

Collaboration

The AETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, "Ryan White" CARE ACT funded health services programs, the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs, Health Care for the Homeless programs, community and migrant health centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

AETC projects also are encouraged to collaborate with the national network of AIDS Clinical Trial Units (ACTUs) and the Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the

Robert Wood Johnson Foundation or the American Foundation for AIDS Research. It is also suggested that projects collaborate with the NIAID Pediatric Clinical Trials Centers.

Degree of Federal Involvement Agreement

Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key AETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

Review Criteria

The review criteria stated below, which were established in the **Federal Register** in FY 1989, dated September 8, 1989, 54 FR 37378, after public comment, will be continued in FY 1994.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;
2. The degree to which the project plan adequately provides for meeting the project requirements;
3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;
4. The soundness of the fiscal plan for assuring effective utilization of funds; and
5. The potential of the project to continue on a self-sustaining basis after the period of support.

Final Strategic Directions for AETC Program

The AIDS Education Training Centers program was initially designed to provide information on the prevalence of AIDS and identification of groups at increased risk of HIV infection. As the HIV/AIDS epidemic matured, it became apparent that the AETCs had to shift their priorities from HIV/AIDS information transfer to more intensive clinical training. This shift was necessitated by the introduction of new therapeutic interventions, such as antiretroviral therapies, which offered the promise of delaying the onset of opportunistic infections associated with AIDS. The mission of the AETCs is to address the ever increasing issues surfacing because of the changes in the HIV epidemic by constantly adding new priorities to address new issues. The Bureau of Health Professions and the Division of Medicine have developed new strategic directions which will have to be more fully incorporated into the priorities of the AETC program. These strategic directions were published for public comment in the **Federal Register** on November 18, 1993, 58 FR 60860. No comments were received during the 30-day comment period. These strategic directions will include an emphasis on generalism, a continued emphasis on minorities and the underserved and an emphasis on interdisciplinary training. The AETCs will continue to provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Additional Information

Requests for technical or programmatic information should be directed to: Elaine Daniels, M.D.,Ph.D, Chief, Health Professions HIV Education Branch, AIDS Regional Education and Training, Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

This program is listed at 93.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: March 11, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–6226 Filed 3–16–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Special Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee (APAC)

Pursuant to Public Law 92–463, notice is hereby given of a special meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee on March 31, 1994, at the National Institutes of Health (NIH), Bethesda, Maryland. The meeting will take place from 10 a.m. until 3 p.m. in Building 31, C Wing, Conference Room 9 to review human subjects protections under parallel track proposals. The meeting will be open to the public from 10 a.m. until 10:30 a.m. for a staff orientation on the parallel track initiative and the review of human subjects protections. Attendance by the public will be limited to space available. Please contact Rita Gant in the Office of AIDS Research at 301–496–0358, if you are planning to attend or if you need special assistance, such as sign language interpretation or other reasonable accommodations.

In accordance with the provisions set forth in section 552b(c)(4), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 10:30 a.m. until adjournment for the mandated annual review, discussion, and evaluation of an individual proposal for expanded availability of an investigational new AIDS drug through the parallel track mechanism. This proposal and subsequent discussion could reveal confidential trade secrets or commercial property such as patentable material.

Linda Reck, Senior Program Analyst, Office of AIDS Research, National Institutes of Health, Building 31, room 5C02, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–0358, will provide a summary of the meeting, a roster of committee members, and substantive program information upon request.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: March 10, 1994.

Susan K. Feldman

Committee Management Officer, NIH.

[FR Doc. 94–6252 Filed 3–16–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of Subcommittee A of the Cancer Biology-Immunology Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of Subcommittee A of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, on May 12–13, 1994, at the Executive Plaza North Building, Conference Room C and D, 6130 Executive Boulevard, Rockville Maryland 20892.

This meeting will be open to the public on May 12 from 8:30 am to 9:30 am to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 12 from 9:30 a.m. to recess and on May 13 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9003, (301) 496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, Executive Plaza North, room 609, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9003, (301) 496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6253; Filed 3–16–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, April 7–8, 1994, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public from 9 a.m. to 10 a.m. on April 7 to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on April 7 from 10 a.m. to recess and on April 8 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9903, Tel. (301) 496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Contracts Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 601C, 9000 Rockville Pike, Bethesda, Maryland 20892–9903, Tel. (301) 496–7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter on (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6254 Filed 3–16–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Clinical Centers and Clinical Coordinating Center for a Clinical Network for the Treatment of Adult Respiratory Distress Syndrome (ARDS).

Dates of Meeting: April 6–8, 1994.

Time of Meeting: 8 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review contract proposals.

Contact Person: Dr. Lynn M. Amende, 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

Name of Panel: NHLBI SEP on HIV and Cellular Infiltrative Disease in the Lung.

Dates of Meeting: April 25–26, 1994.

Time of Meeting: 8 p.m.

Place of Meeting: Holiday Inn, Chevy Chase, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Mrs. Betty H. Masket, 5333 Westbard Avenue, room 5A10, Bethesda, Maryland 20892, (301) 594–7480.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: March 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6255 Filed 3–16–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth

in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications:

Scientific Review Administrator: Dr. Herman Teitelbaum (301) 594–7245.
Date of Meeting: March 16, 1994.
Place of Meeting: Ramada Inn, Rockville, MD.
Time of Meeting: 8:30 am.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6256 Filed 3–16–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–787347

Applicant: Deborah Kalenak, Saginaw, MI 48609

The applicant request a permit to import two pair of captive-hatched Cabot's tragopan (*Tragopan caboti*) from Glen Howe, Aylmer, Ontario, Canada, for breeding to enhance the propagation and survival of the species.

PRT–787716

Applicant: Scott Tremor, Santee, CA 92071

The applicant request a permit to take Pacific little pocket mouse (*Perognathus longimembris pacificus*) for presence and absence surveys in San Diego county, California, to enhance the survival of the species.

PRT–787041

Applicant: Phillip Brylski, Irvine, CA 92715

The applicant requests a permit to live-trap/release the Pacific little pocket mouse for presence and absence surveys (*Perognathus longimembris pacificus*) in Los Angeles and San Diego counties, California, to enhance the survival of the species.

PRT–785959

Applicant: Jack Donaldson, Findlay, OH 45840

The applicant requests a permit to import one captive-hatched female Blyth's tragopan (*Tragopan blythii*) from Glenn Howe, Aylmer, Ontario, Canada, for breeding to enhance the propagation and survival of the species.

PRT–785960

Applicant: Jack Donaldson, Findlay, OH 45840

The applicant requests a permit to import one captive-hatched male Blyth's tragopan (*Tragopan blythii*) from H.J. Hardy, South View Aviaries, Burnaby, British Columbia, Canada, for breeding to enhance the propagation and survival of the species.

PRT–786058

Applicant: Fort Worth Zoological Park, Fort Worth, TX 76110

The applicant requests a permit to import 5.5 captive-hatched Manchurian cranes (*Grus japonensis*) from the Shenyang Zoo, Shenyang, Liaoning, China, for breeding to enhance the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 11, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–6177 Filed 3–16–94; 8:45 am]

BILLING CODE 4310–55–P

Notice of Availability of a Draft Recovery Plan for the Alamosa and Socorro Springsnails for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Alamosa springsnail (*Tryonia alamosae*) and the Socorro springsnail (*Pyrgulopsis noemexicana*) which the Service listed as endangered species on September 30, 1991 (56 FR 43649). These two species occur in slow-velocity water near thermal springheads and/or associated springruns in Socorro County, New Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 16, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107. Written comments and materials regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald L. Burton, U.S. Fish and Wildlife Service Biologist; telephone (505) 883–7877 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species

program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Alamosa springsnail and Socorro springsnail were listed as endangered on October 30, 1991. The draft recovery plan includes new scientific information about the two species gathered since 1991 and provides management procedures for protecting their habitat and expanding their range and abundance to the extent that no natural or human-caused disturbance will result in irrevocable losses.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: March 10, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–6212 Filed 3–16–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice and Public Comment on Sample Prospectus and Related Guidelines

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that Chapters 6, 7, 8 and 11 of NPS–48 ("The Concessions Guideline") have been rescinded effective as of the date of this publication. In addition, any portions of NPS–48 or other NPS policies which are inconsistent with recently amended National Park Service regulations for concession contracting and its new standard language concession contract are hereby rescinded. Matters previously addressed by Chapters 6, 7, 8 and 11 of NPS–48 are now addressed to the extent necessary by a new National Park Service internal staff manual entitled "Sample Prospectus and Related Guidelines" effective as of the date of this publication. The Sample Prospectus and Related Guidelines is incorporated by reference in this public notice. The document includes, among other matters, a sample prospectus for solicitation of offers for National Park Service concession contracts and permits, related evaluation guidelines, and application information and criteria. It is noted, however, that notwithstanding these actions, any solicitations for concession contracts and permits issued before the date of this publication will continue to be processed in accordance with applicable provisions of NPS–48.

As an internal staff manual, notice of the Sample Prospectus and Related Guidelines is not required to be published in the **Federal Register** nor is public comment on it required to be sought. However, in order to assure that the views of all interested parties are considered, the National Park Service is seeking public comment on its Sample Prospectus and Related Guidelines document and will consider all comments received and amend the document appropriately if public comments so warrant. Delaying the effective date of this document until after consideration of public comments is not in the public interest as there exists a large backlog of NPS concession contract renewals which are necessary to complete to allow the commencement of major renovation and construction programs in areas of the national park system, including improvements necessary to protect the health and safety of park visitors and NPS and concessioner employees. In addition, many concessioners are now operating under the terms of expired contracts and are, accordingly, in need of contract renewal actions as soon as possible to permit business planning, actions and investments which require the existence of a new contract for implementation. It is also noted that the Sample Prospectus and Related Guidelines document is intended to provide guidance to NPS personnel concerning possible means to implement new policies and procedures adopted in the new NPS concession contracting regulations and new standard language concession contract, both of which were adopted after extensive public comment periods and consideration by NPS of all comments received. Further public comment in advance of implementation of this internal staff manual is therefore not considered necessary and is impracticable if the contract renewal process is to commence in a timely manner.

The Sample Prospectus and Related Guidelines document is intended to be only a sample document. It is not meant to be a document which must be used as written in every instance. It may be modified as appropriate to fit the needs of individual situations. Further, this document is expected to be modified and refined over time as experience indicates that changes are needed and to meet the changing needs of the concession contracting program.

DATES: Comments on the Sample Prospectus and Related Guidelines must be submitted on or before the sixtieth day following publication of this notice.

ADDRESSES: Copies of the Sample Prospectus and Related Guidelines may be obtained by writing the Director, National Park Service, Washington, DC 20240 and written comments should be sent to this same address.

FOR FURTHER INFORMATION CONTACT: Wendy Mann of the National Park Service Concessions Division at the address given above; telephone (202) 343–1561.

Dated: March 1, 1994.

Don H. Castleberry,

Acting Associate Director, Operations, National Park Service.

[FR Doc. 94–6272 Filed 3–16–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub–No. 112)]

Missouri Pacific Railroad Company; Abandonment; in Woodson County, KS (Piqua Industrial Lead)

The Commission has issued a certificate authorizing the Missouri Pacific Railroad Company to abandon its 8.5-mile rail line known as the Piqua Industrial Lead, from milepost 382.5 near Durand to the end of the track at milepost 374.0 near Piqua, in Woodson County, KS. The abandonment certificate will be effective April 16, 1994, unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable

rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant by March 28, 1994.

Any financial assistance offer must be filed with the Commission and applicant no later than March 27, 1994. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: March 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–6235 Filed 3–16–94; 8:45 am]

BILLING CODE 7035–01–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Faculty Representative Appointment Information Collection

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Request for information.

SUMMARY: The information sought on these proposed forms will help implement the James Madison Memorial Fellowship Act of 1986. The information gathered will enable the Foundation to distribute fellowship application forms and other information to those individuals who are appointed as Faculty Representatives on individual college and university campuses throughout the country.

DATES: Comments must be submitted in writing on or before March 31, 1994 in the **Federal Register.**

ADDRESSES: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653–8700.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of the proposed forms to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 5 minutes per response for an anticipated 1,000 Faculty Representatives.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., the following information will be solicited on forms from Faculty Representatives of the James Madison Memorial Fellowship Program: Questions requiring factual information only:

Faculty Representative's Legal Name
Faculty Representative's Title
Faculty Representative's Institution
Faculty Representative's Address
Faculty Representative's City, State, and Zip Code
Faculty Representative's Telephone Number and Extension
Faculty Representative's Fax Number
Faculty Representative's Internet or Bitnet E-Mail Address
Name of authorizing official appointing/reappointing Faculty Representative
Title of authorizing official appointing/reappointing Faculty Representative
Date of Appointment

Paul A. Yost, Jr.,

President.

[FR Doc. 94–6388 Filed 3–16–94; 8:45 am]

BILLING CODE 6820–05–M

Fellowship

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Request for information.

SUMMARY: The information sought on these proposed forms will help implement the James Madison Memorial Fellowship Act of 1986. The information gathered will enable the Foundation to select James Madison Fellows from among applicants in an annual national competition for fellowships. The information provided by applicants on application forms, by those whom they ask to evaluate their candidacies on evaluation forms, and by educational institutions on transcript request forms will be used by an independent review committee to select those candidates whom the committee will recommend for fellowships to the Foundation. The forms (except the voluntary survey form) will be used for no other purposes; the voluntary survey form will be used for statistical analysis only and will not be seen by the independent review committee nor used for selecting fellows.

DATES: Comments must be submitted in writing on or before March 31, 1994 in the **Federal Register**.

ADDRESS: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653–8700.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of the proposed forms to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 6 hours per response for an anticipated 1,000 applicants.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., the following information will be solicited annually on application and related forms from fellowship applicants to the James Madison Memorial Fellowship Program. Applicants will be both experienced high school teachers of American history, American government, and social studies (senior fellow applicants) and graduating college seniors and recent college graduates who wish to become secondary school teachers of the same subjects (junior fellow applicants). To avoid duplication in the text below, unless otherwise indicated, the information is solicited from both senior and junior fellows. That information solicited only from applicants for senior fellowships is preceded by "SR:" (SR: thus); that information solicited only from applicants for junior fellowships is preceded by "JR:" (JR: thus).

Application Forms:

Questions Requiring Factual Information Only

Affirmation of wish to be considered for a James Madison Fellowship and agreement to abide by Foundation regulations governing a fellowship: signature and date;

Type of fellowship for which you are applying;

Legal name and residence;
Home telephone number;
Work or campus telephone number;
Current [JR: campus] address;
How legal residence is established: place of registration to vote, in-state tuition eligibility, other;
Congressional district of legal residence;
Whether or not applicant is a U.S. citizen or U.S. national Yes or No;
Date of birth;
Sex;
Social Security Number (optional);
SR: School name;
SR: Name of school principal or head;
SR: School address;
SR: School type (check one): public, private, parochial;
SR: School location (check one): urban, suburban, rural;
JR: Name of the institution from which you will receive or did receive your baccalaureate degree;
JR: Institution president's name;
JR: Institution address;
JR: College type (check one): public, private;
JR: College type (check one): college, university;
JR: Cumulative grade point average as of January or upon graduation;
JR: Date degree expected or received (month/year);
Name of baccalaureate degree sought or held.

Questions Requiring Factual and Explanatory Information

Beginning with secondary school from which you graduated, list in chronological order all secondary schools and colleges you attended, including academic summer or special schools and courses. If more than four months elapsed between any phase of your education or between your education and your initial full-time teaching position, indicate your main activities during that period.

If you are a teacher, beginning with your first full-time teaching position, list in chronological order all full-time teaching positions you have held, including summer or special positions. List your current position and responsibilities. If more than three months elapsed between any phase of your professional career, explain the reasons for those breaks.

Why did you choose to become a secondary school teacher of American history, American government, or social studies? What do you hope to achieve as a secondary school teacher? How does secondary school teaching fit into your long-term career plans?

List and briefly describe the school, college, and community activities in which you have participated without compensation that may have influenced your decision to become a teacher, that may have contributed to your preparation for teaching, or that may relate to your responsibilities as a teacher. Indicate the dates, and degree of your involvement and explain the significance of these activities to your personal and professional aspirations.

List any awards, scholarships, fellowships, and appointments you have received in recognition of your achievements, activities, and leadership.

If you are a teacher, briefly describe and provide examples of your methods and approaches to classroom instruction. Be specific.

If you are a teacher, briefly describe your school and/or school district. Explain any particular circumstances about your school or district that affect your teaching.

What strengths of character, intelligence, personality, and ability do you have that contribute toward your success as a secondary school teacher of American history, American government, or social studies?

What limitations of character, intelligence, personality, and ability must you work to overcome in order to perform successfully as a secondary school teacher of American history, American government, or social studies?

Describe the course of graduate study you will pursue. Indicate the university you plan to attend, the specific degree you will seek, the subject of the degree, and the school of the university in which you will be enrolled. Include a list of courses related to the history, principles, and interpretation of the Constitution you plan to take; additional electives that you may be permitted to take; and which electives you plan to take. Place an asterisk next to those courses you will take during your first year of study. The Foundation expects that your graduate education will closely approximate the course of study you describe here and that you will notify the Foundation and explain changes in this course of study that may be necessary or desirable.

Describe how the educational plans outlined above will enhance your career as a teacher of American history, American government, or social studies and how they relate to your professional plans.

Briefly describe one or two books that you have read in the last year that have most affected you and explain why. These books do not need to be related to the Constitution or to your professional plans.

What interesting, unusual, or significant information about you, your family, your beliefs, or your interests do you wish to bring to the attention of the fellowship review committee?

Applicant's Essay Form

In an essay of no more than 600 words, present and justify your views about the importance of the study of the Constitution to young students and to their future lives and communities, to your own career aspirations, to your contributions to public and professional service, and to citizenship in a constitutional republic.

Applicant's Signature and Date

Request for Evaluation Form

Applicant's name:
I hereby _____ waive _____ do not waive my right of future access to the contents of this evaluation: signature and date.

Applicant's Signature and Date

This evaluator is (check one):
SR: A school superintendent, principal/head, department chair, or other supervisor who can evaluate the applicant's qualities as a teacher of American history, American government, or social studies and attest to the applicant's potential for graduate study;
SR: A colleague or supervisor who can attest to the applicant's depth of interest in those subjects;
SR: A person other than a supervisor or colleague who can attest to the applicant's commitment to civic, professional, and collegial activities;
JR: A dean, faculty member, or other college official who can attest to the applicant's potential for and commitment to a career of teaching American history, American government, or social studies in the secondary schools, and the applicant's potential for graduate studies;
JR: A faculty member who has taught the applicant in his or her major field of undergraduate study who can attest to the applicant's preparation and depth of interest in these studies and to the applicant's quality as a student;
JR: A person other than a dean, faculty member, or other college official who can evaluate the applicant's personal strengths and personal limitations (i.e., of character, intelligence, personality, and ability) and the applicant's commitment to civic activities and public service.

Evaluator should discuss the applicant's strengths and weaknesses, as well as knowledge of and efforts to overcome those weaknesses, in the following areas: intellect, character, and vision; academic abilities and completion of a graduate school

program; abilities and commitment as a secondary school teacher of American history, American government, or social studies; ability to work with others.

How long and in what capacity have you known the applicant?

Please rate the applicant in relation to other individuals you have known under similar circumstances (approximately ____ individuals over approximately ____ years) on the following grounds—historical knowledge, intellectual curiosity, independence of thought, involvement in civic activities, oral and written communication skills, motivation and energy, interpersonal skills—and on the following scale: outstanding (top 5%), unusual (top 10%), very good (top 25%), above average (top 40%), average (middle 20%), below average (lowest 40%), no knowledge.

Evaluator's name, title, affiliation, address, signature and date:

Voluntary Survey Form

Check one box beside the category providing descriptions of the race or national origin with which you most closely identify yourself: America Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; Hispanic; White, not of Hispanic origin; other (please specify).

Source(s) from which you learned about the James Madison Memorial Fellowship Program (check one): Faculty Representative; Career Counseling Office; Financial Aid Office; Department Chair in History, Political Science, or Education; School Social Studies Coordinator; a James Madison Fellow; colleague; periodical or newsletter; campus newspaper advertisements; other (please specify).

Fellowship applied for (check one): Senior, Junior.

Name:

Paul A. Yost, Jr.,

President.

[FR Doc. 94–6387 Filed 3–16–93; 8:45 am]

BILLING CODE 6820–05–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Friday, April 8, 1994, in suite N–3437 AB, U.S. Department of Labor Building, third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the April 8 meeting is to take testimony regarding five areas of defined contribution plans, i.e., the role of the trend toward participant self-directed investments in determining benefit levels; the impact of the current regulatory scheme on benefit levels for defined contribution plans in general and 401(k) plans in particular; from a retirement policy perspective, the level of benefits provided by defined contribution plans in general and 401(k) plans in particular; mandatory employer contributions to defined contribution plans as a possible source of increase in the overall retirement income for most employees; the impact of increased educational efforts on benefit levels; and the impact of increased disclosure on benefit levels. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before April 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 4, 1994.

Signed at Washington, DC, this 11th day of March, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–6160 Filed 3–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, April 7, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the April 7 meeting is to receive testimony from interested persons on the impact of proposed federal healthcare reform legislation on self-insured, ERISA-covered employee welfare benefit plans as well as participating employees and their families. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before April 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 4, 1994.

Signed at Washington, DC, this 11th day of March, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–6161 Filed 3–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Thursday, April 7, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee benefit plans covered by ERISA.

The purpose of the April 7 meeting is to hear testimony on the disclosure of plan information to participants and beneficiaries as identified in the Department of Labor's Disclosure Request For Information which appeared in the Monday, December 27, 1993 edition of the **Federal Register**, page 68339. The principal sources of information for such disclosure include summary plan descriptions, summary annual reports and individual benefit statements. The work group is interested in identifying statements. The work group is interested in identifying information that is useful to and used by participants as well as the costs and benefits of any proposed changes. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before April 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 4, 1994.

Signed at Washington, DC this 11th day of March, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–6162 Filed 3–16–94; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 94 Funds for Financial Assistance (Grants) To Support Research at Educational Institutions and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 94 funds to support a limited number of research grants to educational institutions. These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 94 ceiling for research grants to educational institutions is approximately $1,218,000.00. Of this amount, approximately $817,000.00 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a two-year period. Proposals for new FY 94 research grants should be submitted between the date of this Notice and May 20, 1994. Proposals received after May 20, 1994 will be considered for FY 94 funding to the extent practicable.

ADDRESSES: Nuclear Regulatory Commission, ATTN: Grants Officer, Mail Stop P–841, Division of Contracts and Property Management, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Leslie Mills or Dennis Tarner on (301) 492–7054.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1993, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice that announced the proposed availability of FY 93 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 94.

Scope and Purpose of This Announcement

Pursuant to Section 31.a and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 94 ceiling for these grants is approximately $1,218,000.00 with approximately $871,000.00 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, e.g., graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Experiments and predictive modeling for thermal stratification, thermal stripping and flow-induced vibration in plant fluid systems.

2. Evaluation and modeling of phenomena associated with the addition of cooling water to a degraded core during various stages of a severe accident.

3. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems. Experiments in modeling of passive heat transfer in natural circulation systems.

4. Development of condensation models for thermal-hydraulic systems codes with and without condensible gases.

5. Conduct experimentation and model development of the boron in reactor coolant systems under natural circulation conditions.

6. Development and validation of a standard model of human performance

in (a) nuclear power plant operations and maintenance, (b) medical uses of by-product materials, and (c) industrial uses of by-product materials.

7. Develop and codify pragmatic, statistically valid methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental and calculation data.

8. Develop methods and comparison of probabilistic risk assessment (PRA) results with operational data and experience.

9. Studies of corrosion processes that lead to degradation of materials in light-water reactor components such as piping, reactor internals, and steam generators.

10. Development of nondestructive testing methods for in-situ evaluation of material properties and property degradation due to aging, such as fracture toughness, fatigue, residual life, and radiation effects.

11. Development of and/or validation of models to predict the propagation of seismic ground motion in Central and Eastern United States including the effects of ground motions on the response of NPPs and their site characteristics.

12. Development and/or validation of models to explain the quaternary tectonics and seismicity of the Central and Eastern United States (East of 105 degrees W).

13. Development of techniques and QA and QC procedures necessary for rapid bioassay analysis in the event of accidental internal exposure.

14. Studies of volcanism or other disruptive processes or events in the Basin and Range.

15. Development of improved instrumentation or techniques for measuring activity, radiation dose, and dose rates, especially from small radioactive particles.

16. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.

17. Investigation of radiation induced effects at the cellular/molecular levels and repairs thereof emphasizing the reduction of uncertainties in risk of deleterious health effects from low-level radiation.

18. Validation of approaches to quantitatively assess human health effects of radiation, including new approaches to analyses of human epidemiological studies and experimental animal studies.

19. Analysis of the effectiveness of decontamination technologies for land, structures, recycled materials and equipment and estimation of individual comparative costs.

20. Investigations, including natural analogue studies for long-term analyses, of coupling between hydrologic, thermal, chemical, and/or mechanical processes as they affect the simulation of high-level waste repository performance.

21. Development of methods to apply safety goal philosophy, including risk-based regulation.

Eligible Applicants

Educational institutions, nonprofit entities, State and Local governments, and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.

3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A-102 (Revised), Paragraph 6.c). Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A-110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* the Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of proposal. - To include the term "research," "study," "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates for Conferences, Symposium, Workshop, etc.;

Names of Principal Researchers or Participants;

Total cost of Proposal; (Identify Cost by fiscal Year)

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants

Name: _____

Date: _____

Address: _____

_____

Telephone No.: _____

Required Organization Approval

Name: _____

Date: _____

Address: _____

_____

Telephone No.: _____

Organization Financial Officer

Name: _____

Date: _____

Address: _____

_____

Telephone No.: _____

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organization shall adhere to the cost principles set forth in OMB Circular A–122. Educational institutions shall adhere to the cost principles set forth in OMB Circular A–21, and state and local government shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

(1) *Salaries*—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attached negotiated agreement/cost allocation plan); and

(7) *Supporting Documentation.* The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 94 (October 1, 1998 to September 30, 1994). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received after May 20, 1994, will be considered for FY94 funding to the extent practicable.

Funds

For Fiscal Year 94, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately $1,218,000.00 available for funding research grants to educational institutions. Of this amount, approximately $817,000.00 will be available for new research grants in FY94. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a period of two years.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design,
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc., will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing): U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Mail Stop P–841, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop P–841, 7920 Norfolk Avenue, Bethesda, MD 20814.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 27054) for pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 11th day of March, 1994.

For the U.S. Nuclear Regulatory Commission.

Dennis Tarner,

Grants Officer, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 94–6267 Filed 3–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8905]

Quivira Mining Co.; Ambrosia Lake Mill

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA–1473 to modify the erosion protection design of the plan for reclamation of the Ambrosia Lake Mill disposal area, and Notice of Opportunity to request a hearing.

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1. Proposed Action

By letter dated January 7, 1994, Quivira Mining Company (QMC), holder of Source Material License SUA–1473 for the Ambrosia Lake Mill, requested an amendment to License Condition No. 37 to; (1) Eliminate having to open a new rock quarry and its related surface disturbance; (2) improve the erosion protection for the tailings impoundments; and (3) reduce the volume of waste rock generated at the crusher and thereby reduce the disturbance in that area.

2. Reason for Request To Amend License

License Condition No. 37 describes requirements that the licensee must comply with in reclaiming the site. As discussed, below, QMC is requesting modifications to this license condition.

The Nuclear Regulatory Commission (NRC) requires that rock used for erosion protection have the ability to withstand the forces of weathering for long periods of time. In accordance with this requirement, in the approved reclamation plan, QMC provided evidence that rock from an area known as La Chuchilla Ridge would meet the NRC criteria. To assure that this rock source is actually used to obtain rock for erosion protection, License Condition No. 37(J) specifically mentions that erosion protection materials must be obtained from La Chuchilla Ridge. QMC is requesting that License Condition 37(J) be revised to allow them to obtain rock from an existing quarry near the Homestake Mill in order to prevent having to disturb the La Chuchilla Ridge area. The durability of rock at the Homestake Quarry has been shown to be equivalent to the rock from La Chuchilla Ridge.

License Condition No. 37(K) specifies the gradation and sizing requirements of the rock to be used for erosion protection. For the outslopes of Ponds 1 and 2, four sizes of rock are required depending on where the rock is to be placed. In order not to have to process four different gradation sizes, QMC proposes to use larger rock than required in two areas of the outslopes. This would not only improve the erosion protection design, but would also reduce the disturbance in the area.

The approved reclamation plans does not require rock for erosion protection of the top surfaces of Ponds 1 and 2 as the surfaces are sufficiently flat to be stable under extreme flood conditions. QMC proposes to be allowed to place rock on the top surfaces of the two ponds if they so desire. This request would also improve the erosion protection design.

Paragraph 10 CFR 51.22 (c)(11), categorically excludes the requirement for an environmental assessment for this licensing action. That paragraph states that the categorical exclusion applies to the issuance of amendments to licenses for uranium mills provided that (1) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (2) there is no significant increase in individual or cumulative occupational radiation exposure, (3) there is no significant construction impact, and (4) there is no significant increase in the potential for or consequences from radiological accidents.

The licensing action discussed in this memorandum meets these criteria as the proposed amendment involves only changes in the erosion protection design. The proposed changes will provide larger rock than required in some areas, and will eliminate disturbing a new area for obtaining rock by using an existing quarry. Neither of these changes will result in adverse environmental impacts. An environmental report is not required from the licensee since the amendment does not meet the criteria of 10 CFR 51.60 (b)(2).

3. Notice of Opportunity To Request Hearing

In accordance with title 10, Code of Federal Regulations, part 2 (10 CFR part 2), paragraph 2.1205(c)(1), interested parties are hereby notified that they may request a hearing pursuant to the procedures set forth in 10 CFR 2.1205 within thirty (30) days of the publication of this notice.

Signed in Denver, Colorado this 4th day of March 1994.

Raymond O. Gonzales,

Acting Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 94–6265 Filed 3–16–94; 8:45 am]

BILLING CODE 7579–01–M

[Docket No. 50–139]

The University of Washington; Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–73, as a possession only license from the present operating license, issued to the University of Washington for the Argonaut reactor located on the campus of the University in Seattle, Washington.

The renewal would extend the expiration date of Facility License No. R–73 to February 14, 1999, in accordance with the licensee's timely application for renewal as a possession only license by letter dated August 3, 23 and 31, 1989 and as modified on February 14, 1994. The operating license was modified by Amendment No. 15 to the license on May 7, 1990, to not permit possession of fuel on the site since all fuel had been removed from the facility and returned to its owner, the Department of Energy. The licensee is developing a plan to decommission the facility, and it is anticipated that the term of renewal will be sufficient to complete decommissioning and terminate the license.

Prior to a decision to renew the license as a possession only license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 18, 1994, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; The University of Washington; and publication date and page number of this **Federal Register** notice. A copy of that petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ms. Christine Hughes, Division Chief and Special Assistant to the Attorney General, University of Washington, 101 Administration, MS: AF–50, Seattle, Washington 98195, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated August 3, 23 and 31, 1989, and as modified on February 14, 1994, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 11th day of March 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6266 Filed 3–16–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33752; File No. SR–NSCC–94–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fee Structure for the Mutual Fund Networking Service

March 10, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish a revised fee for providing the Mutual Fund Services Networking position files. The proposed fee change will provide for a more equitable allocation of fees among members of NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In mid 1993, NSCC determined that the initially established fee structure for providing Mutual Fund Services Networking position files was no longer appropriate. On August 18, 1993, NSCC filed a rule change[2] which consisted of a waiver of $99 of the $100 fee charged to members for excess Networking position files. That filing indicated that the waiver would continue while NSCC determined a more appropriate fee. The purpose of the proposed rule change is to establish a revised fee for the Networking position records. The new fee structure is based on the number of records received by a participating broker and the number of subaccounts the broker maintains on the system. Effective January 1, 1994, for billing in February 1994, the new fee is $1.50 per thousand records received by a broker in excess of the number of subaccounts the broker maintains on Networking. NSCC will not assess a charge when the difference between these numbers is 5000 records or less in a month.

The proposed fee change will provide for a more equitable allocation of fees among members, so the proposed rule change is consistent with the requirements of Section 17A of the

[2] Securities Exchange Act Release No. 32912 (September 16, 1993), 58 FR 49536 [File No. SR–NSCC–93–12].

Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and subparagraph (e) of Rule 19b–4 thereunder [4] because it involves the changing of a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] 17 CFR 240.19b–4(e) (1993).

All submissions should refer to File No. SR–NSCC–94–01 and should be submitted by April 7, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6173 Filed 3–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33751; File No. SR–PSE–93–36]

Self-Regulatory Organizations; Pacific Stock Exchange; Notice of Proposed Rule Change Relating to Chinese Wall Procedures for Specialists and Specialist Firms

March 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to adopt a set of Chinese Wall procedures relating to Exchange specialists and specialist firms. The test of the proposed rule change is as follows:

Rule 4.19(a). A functional separation must be established (1) between a specialist firm and any associated approved person; and (2) between a specialist and any associated integrated member organization. The approved person or integrated member organization (collectively referred to as an "affiliated upstairs firm") must establish functional separation (a "Chinese Wall") as appropriate to its operation and further establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorization and documentation of procedures, substantive supervision of interdepartmental communications by the Exchange specialist firm's Compliance Department and procedures concerning proprietary trading when the firm is in possession of material, non-public information. The Exchange specialist firm or associated integrated member organization must obtain the prior written approval of the Exchange that it has complied with the requirements above in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation. A copy of these Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange's Financial Compliance Department.

(b) The following are the minimum procedural and maintenance requirements:

(1) The specialist's book must be kept confidential in accordance with Rule 5.29(d).

(2) The affiliated upstairs firm can have no influence on specific specialist trading decisions.

(3) Material, non-public corporate or market information obtained by the affiliated upstairs firm from the issuer may not be made available to the specialist.

(4) Clearing and margin financing information regarding the specialist may be routed only to employees engaged in such work and managerial employees engaged in overseeing operations of the affiliated upstairs firm and specialist entities.

(c) Information that may be made available to others.

(1) A broker associated with an affiliated upstairs firm may make available to the specialist only the market information that he or she would make available to an unaffiliated specialist in the normal course of his or her trading and "market probing" activity.

(2) A specialist may make known to a broker associated with an affiliated upstairs firm only has the information about market conditions in specialty stocks that he or she would make available in the normal course of specializing to any other broker and in the same manner as it would make such information available to any other broker. The specialist may make such market information available only upon request of the broker of the affiliated upstairs firm and may not provide such information on its own initiative.

(3) An affiliated upstairs firm can popularize a specialty stock provided it makes adequate disclosure about the existence of possible conflicts of interest.

(d) A specialist who becomes privy to material, non-public information must communicate that fact promptly to his or her firm's compliance officer or other designated official. The specialist shall seek guidance from the compliance officer or other designated official as to what procedures the specialist should follow after receipt of such information or such other action that should be taken. Appropriate records shall be maintained by the compliance officer or other designated official. The record should include a summary of the information received by the specialist and a description of the action taken by the compliance officer or other designated official. If the "book" is given up to another member of the specialist firm who is not in possession of the information or an independent specialist firm, the book must be transferred in a neutral fashion to ensure that the transfer itself does not disclose the material, non-

[5] 17 CFR 200.30–3(a)(12) (1993).

public information and the Exchange must be immediately informed and a record kept of the time the specialist reacquired the book reflecting acknowledgement by the compliance officer that the reacquisition was appropriate.

(e) The Exchange has established the following procedures to monitor compliance with this rule:

(1) Examination of the Chinese Wall procedures established by Exchange specialist firms.

(2) Surveillance of proprietary trades effected by an affiliated upstairs firm and its affiliated specialist or specialist firm.

Accordingly, the Exchange will conduct periodic examinations of the specialist firm's Chinese Wall procedures to ensure that a functional separation between the affiliated upstairs firm and the specialist or specialist firm has been created and thereafter maintained. The Exchange will also monitor the trading activities of affiliated upstairs firms and affiliated specialists in the firms' specialty stock in order to monitor the possible trading while in possession of material, non-public information through the periodic review of trade and comparison reports generated by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth is Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require approved persons or integrated member organizations to establish functional separation as appropriate to their operations and further establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information. The proposed rule further requires that a copy of such procedures be provided to the Exchange for review and approval, and sets forth specific guidelines for member firms to follow in adopting, maintaining and enforcing Chinese Wall procedures.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–36 and should be submitted by April 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6245 Filed 3–16–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Little Rock District Advisory Council; Public Meeting

The U.S. Small Business Administration Little Rock District Advisory Council will hold a public meeting at 9 a.m. on Monday, April 25, 1994, at the U.S. Small Business Administration, 2120 Riverfront Drive, suite 100, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph T. Foglia, District Director, U.S. Small Business Administration, 2120 Riverfront Drive, suite 100, Little Rock, Arkansas 72202, (501) 324–5871.

Dated: March 10, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–6208 Filed 3–16–94; 8:45 am]

BILLING CODE 8025–01–M

Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 10 a.m. on Thursday, April 28, 1994 at the Marine Midland Bank, One Marine Midland Plaza, 20th floor board room, Rochester, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Franklin J. Sciortino, District Director, U.S. Small Business Administration, room 1311, 111 West Huron Street, Buffalo, New York 14202, (716) 846–4301.

Dated: March 10, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–6201 Filed 3–16–94; 8:45 am]

BILLING CODE 8025–01–M

Regulatory Reform Project

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) and the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget have commenced a project to identify, recommend and help implement specific reforms of the regulatory process in order to ease the impact of government regulations on small businesses. Six Federal agencies are participating in the initial phase of the project: The Department of Labor, the Department of Justice, the Department of Transportation, the Environmental Protection Agency, the Internal Revenue Service, and the Food and Drug Administration. The project will begin with a Small Business Forum on Regulatory Reform to be held on March 17, 1994 in Washington, DC. This Forum will consist of a panel of senior representatives from the six agencies, chaired by Erskine B. Bowles, Administrator of the SBA, and Sally Katzen, Administrator of OIRA. They will listen to oral presentations from several members of the small business community and from SBA's Acting Chief Counsel for Advocacy. They also will be reviewing written statements submitted by other business owners who were unable to present their remarks to the Forum panel in person.

The Forum will be followed by an examination of the cumulative impact of regulations on five designated industries, representatives from various Federal regulatory agencies, with specific direction from those agencies participating on the Forum panel. By this Notice, SBA and OIRA announce that they are seeking written comments from interested members of the public to assist in successful completion of this project. These written comments will be considered by the five industry working groups in preparing reports to be presented at a second Small Business Forum, to be held in late June 1994.

DATES: Written comments must be received by May 2, 1994. The second Forum will be held in late June 1994.

ADDRESSES: Written comments should be mailed to Doris Freedman, Acting Chief Counsel for Advocacy, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Doris Freedman, 202/205–6533.

SUPPLEMENTARY INFORMATION: Executive Order 12866, issued on September 30, 1993, announces a government-wide commitment to regulatory reform and meaningful public participation in the regulatory process and directs the development of "streamlined regulatory approaches for small businesses and other entities." To this end, SBA and OIRA have initiated a project to bring together representatives of six Federal agencies for the purpose of identifying burdens imposed by present regulatory procedures and the means by which the regulatory process can be altered to facilitate participation by small businesses.

Initially, the regulatory impact on small business of six Federal agencies will be examined: The Department of Labor, the Department of Justice, the Department of Transportation, the Environmental Protection Agency, the Internal Revenue Service, and the Food and Drug Administration. The burden of compliance with each agency's regulations will be evaluated in terms of their individual and cumulative impact on small businesses in five discrete industry groups: (1) Processing of food and related products; (2) trucking and transportation; (3) restaurants; (4) environmental recycling and waste disposal; and (5) chemicals and metals.

A working group will be established for each of the five industry groups, composed of representatives from the six participating agencies, as well as representatives from SBA, OIRA and other Federal agencies. Each working group will meet over a ten-week period and will solicit the input and meaningful participation of small business owners, small business trade associations, State and local governments, and other interested parties, via oral presentations and written comments received during the initial 45 days of the ten-week period. Each working group will prepare a report with specific recommendations for improvements in the regulatory process and in any specific regulations which appear to affect the particular industry in an unduly burdensome way.

Extensive public participation is essential to this evaluative process. This participation will occur at the public Forum on March 17, 1994, and the second Forum in June of 1994. Each Forum will hear from representatives selected from various sectors of the small business community and will be attended by senior representatives from the six participating agencies. These agencies have stated publicly their commitment to working with each other and with members of the small business community toward the goal of regulatory reform.

Broader public participation in the form of written comments is also essential to this process and is being solicited through this Notice. Comments received by May 2, 1994 will be considered by the five industry working groups in preparing the reports which then will be presented by SBA at the second Forum. Public comments should be as specific as possible and should focus on possible constructive solutions to any problems presented. Each submission should identify the industry affected, so as to facilitate a referral to the appropriate industry working group. SBA, OIRA and the participating agencies are particularly interested in comments concerning the following:

—Specific ways in which existing regulatory programs and the regulatory process can be made more "user-friendly" to small businesses.

—Constructive suggestions for reducing forms and paperwork, particularly where they are duplicative, overly complicated or otherwise burdensome for small businesses.

—Effective ways to communicate with small business owners and to assist them in their understanding and implementation of complex regulations.

—Non-punitive methods for ensuring compliance with regulatory objectives or requirements, including preinspection programs, advisory services, greater reliance on communication and dissemination of information, and industry self-regulation.

—More effective ways to elicit participation from the private sector in efforts to simplify and clarify regulations so that they are not overly complex or unduly difficult to interpret or implement.

—Systematic ways to identify proposed regulations which are inconsistent with or duplicative of other regulations of the issuing agency or other Federal agencies.

—Suggestions for involving small business owners and their representatives in the rulemaking process in a more meaningful way.

Written comments must be received no later than May 2, 1994, in order to be incorporated into the industry working group reports to be presented at the second Small Business Forum on Regulatory Reform to be held in late June 1994. Comments which are received thereafter will be reviewed by SBA's Office of Advocacy and, to the extent feasible, will be transmitted to the affected agencies for their review as well.

Dated: March 10, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–6198 Filed 3–16–94; 8:45 am]

BILLING CODE 8025–01–M

Pacific Capital, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

[Application No. 99000104]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) by Pacific Capital, L.P., 109 Westpark Drive, suite 260, Brentwood, Tennessee 37027, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and partners of the Applicant will be as follows:

Name	Title or position	Percent of ownership
General Partner:		
Pacific Corporation, 109 Westpark Drive, Suite 260, Brentwood, TN 37027.	General Partner	1.00
Stephen F. Wood, 6001 Sherwood Drive, Nashville, TN 37215.	President/Director of Corporate General Partner	00.00
Siji Suzuki, 6 Dunsinane Lane, Bannockburn, IL 60015	Chairman of the Board, Executive Vice President and sole shareholder of the Corporate General Partner.	100.00
James L. Williams, 6011 Hillsboro Pike, Nashville, TN 37215.	Vice President/Secretary and Treasurer of the Corporate General Partner.	00.00
Oliver Huang, 4/F, 6, Alley Z, Lane 120, Shiang-Yang Road, Nankang District, Taipei, Taiwan, R.O.C.	Director	00.00
Limited Partner:		
Jung-Sheng Cheng, 4 Fl. 198 Nanking E. Road, Sec 5., Taipei, Taiwan, R.O.C.	Limited Partner	99.00

Jung-Sheng Cheng, will own 100 percent of the Limited Partnership interest.

The Applicant, a Tennessee limited partnership, is expected to begin operations with $10,000,000 of private capital and will be an exclusive source (100 percent portfolio concentration) of equity capital and long-term loan funds for individual owner/operators of qualified nursing homes, that meet the criteria as small business concerns. The Applicant intends to conduct its business activities primarily in the Southeast and Midwestern sections of the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the State of Tennessee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 9, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–6200 Filed 3–16–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–014]

Marine Safety Issues Related to Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On March 2, 1994, the Coast Guard published, under this docket number, a notice of meeting and of availability of a study on the safety of towing vessels. Now the Coast Guard has added topics to the agenda of that meeting: (1) Radar-observer training for operators of uninspected towing vessels; (2) Coast Guard inspection of towing vessels; (3) manning of towing vessels; (4) pilotage requirement for operators of towing vessels; (5) and evaluation of regulations on retesting mariners. The Coast Guard is seeking public comment on the new topics as well as on the original agenda.

DATES: (1) The meeting will still take place on Monday, April 4, 1994, from 9 a.m. to 5 p.m. (2) Public comments on the agenda as enlarged will still be accepted until May 4, 1994.

ADDRESSES: (1) The meeting will be held at the Coast Guard Headquarters Building, room 2415, 2100 Second Street SW., Washington, DC. (2) Two copies of public comments should be forwarded to: Executive Secretary, Marine Safety Council, CGD 94–014, U.S. Coast Guard Headquarters (G–LRA. 3406), 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Walker, Project Manager, G–MVP–5, (202) 267–2705, Division of Merchant Vessel Personnel, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard. Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: The Coast Guard will hold a public meeting on April 4, 1994, to consider the study, "Review of Marine Safety Issues Related to Uninspected Towing Vessels" conducted by the Coast Guard, and will seek public comment on the recommendations identified in the study. The Coast Guard may use the study, along with public comment, to develop rules. Of particular interest, and likely to be the subject of expedited rulemaking, are measures that could

provide the necessary means to, and improve the navigational ability of, the operator; these measures include requiring the carriage of charts, publications, and radar, and requiring the operator to be qualified as a radar observer.

The Coast Guard recognizes that there are insufficient facilities for radar-observer training immediately available to accommodate all currently licensed operators of uninspected towing vessels (OUTVs). Therefore, the Coast Guard is contemplating for these OUTVs: (a) An interim, short-term, training program, required soon, followed by (b) a more extensive program leading to an endorsement as radar observer, required on or before the scheduled license renewal. The Coast Guard is contemplating for new applicants, only the more extensive program.

Comments on the practicality and utility of these requirements, their costs, the content of both interim and extensive courses, the length of time appropriate for implementation, and the administrative burden would be especially helpful.

Four of the topics that the Coast Guard has added—inspection, manning, pilotage of towing vessels, and evaluation of retesting regulations—it added because of Congressional interest. This arose during the Secretary of Transportation's testimony before the Subcommittee on Coast Guard and Navigation, House of Representatives, on March 3, 1994.

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should provide two copies, include their names and addresses, identify the study by docket number CGD 94–014, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Dated: March 10, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–6270 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 94–3; Notice 2]

Ford Motor Company; Grant of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, MI, determined that some of its replacement windshields failed to comply with the labeling requirements of 49 CFR 571.205, Motor Vehicle Safety Standard No. 205, "Glazing Materials," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Ford also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 13, 1994, and an opportunity afforded for comment (59 FR 1989).

Standard No. 205, which incorporates, by reference, the American National Standards Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1), specifies that, with certain exceptions, glazing materials for use in motor vehicles shall conform with Paragraphs S5, "Requirements," S6, "Certification and Marking," and ANS Z26.1.6, "Marking of Safety Glazing Materials." Specifically, section 6 of ANSI Z26.1 states "[G]lazing materials, which in a single sheet of material are intentionally made with an area having a luminous transmittance of not less than 70 percent (Test No. 2), adjoining an area that has less than 70 percent luminous transmittance, shall be permanently marked at the edge of the sheet to show the limits of the area that is intended to comply with Test No. 2. The markings shall be A↓S1 or A↑S2 etc. * * *"

Approximately 98,000 W1099V windshields manufactured from June 1992 through October 1993 and 14,800 W911V windshields manufactured from August 1992 to June 1993 are missing the A↓S1 marking at the bottom edge of the shade band. The subject windshields are manufactured as replacements for windshields in 1980 through 1994 model year Ford F-Series and Bronco vehicles.

Ford supported its petition for inconsequential noncompliance with the following:

> The affected windshields were produced by a Ford supplier without A↓S1 markings at the bottom edge of the shade band, but meet all other marking and performance requirements of Standard No. 205 and ANSI Z26.1 including the appropriate AS1 marking in the area of the trademark identifying the type of construction of the glazing material.
>
> [Ford believes that t]he omission of the marking presents no risk of accident or injury. Consequently in Ford's judgment, the omission is inconsequential as it relates to motor vehicle safety. The stated purposes of [Federal Motor Vehicle Safety Standard] FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. As previously noted, the affected windshields fully comply with the performance requirements of FMVSS No. 205 and although missing the A↓S1 marking at the bottom of the shade band, they do have the correct AS1 marking to indicate the type of construction of the glazing material. Because all performance requirements are met, the omission of the marking at the shade band has no effect upon the ability of the glazing to perform in the manner intended by the standard. Ford is not aware of any complaints, accidents, or injuries related to this condition.

No comments were received on the petition.

The noncompliance reported does not affect the performance characteristics of the glazing, and, hence, the noncompliance has no direct effect upon motor vehicle safety. Although the markings have been omitted in one area of the windshield, the correct designation, AS1, appears in the area of the trademark identifying the type of construction of the glazing material. Thus, the omission at the shade band will not prevent correct identification of the glazing by personnel conducting periodic motor vehicle inspections, or when it is necessary to replace the windshield. There is no need in either instance for knowledge of where the area of 70 percent or greater light transmittance begins.

In consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 11, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–6163 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–16; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1978 Through 1981 Bristol VRT Buses Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that

nonconforming 1978 through 1981 Bristol VRT buses are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1978 through 1981 Bristol VRT buses that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The closing date for comments on the petition is April 18, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).]

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397 (c)(3)(A)(i)(II), permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Double Decker Bus Company of Denver, Colorado (Registered Importer No. R–93–015) has petitioned NHTSA to determine whether 1978 through 1981 Bristol VRT buses are eligible for importation into the United States. The petitioner contends that these vehicles are eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 US.C. 1397(c)(3)(A)(i)(II), because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that 1978 through 1981 Bristol VRT buses have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .* (based on schematic diagram indicating starter interlock protection and photograph showing shift lever positions), 103 *Defrosting and Defogging Systems* (based on schematic diagram indicative starter interlock protection and photograph showing shift lever positions), 103 *Defrosting and Defogging Systems* (based on statement and photograph indicating that system incorporates electrically heated elements and heated air blowers), 104 *Windshield Wiping and Washing Systems* (based on statement and photographs indicating that system is pneumatically driven and offers full coverage of windshield at two set speeds and intermittently), 107 *Reflecting Surfaces* (based on statement and photographs indicating that reflective glare is kept to a minimum in the driver's cab through the use of matt black paint on the windshield wipers, the rearview mirror frame, the dash, and the cab walls), 120 *Tire Selection and Rims for Motor Vehicles other than Passenger cars* (based on statement and photographs showing certification markings on tires supplied by vehicle purchaser and rims selected by petitioner, and describing contents of tire information placard), 121 *Air Brake Systems* (based on statement, photographs, and specifications indicating that vehicles are equipped with an air compressors and associated equipment that provides greater cut-in pressure than 85 p.s.i.), 124 *Accelerator Control Systems* (based on statement and photographs indicating that throttle return is provided by pneumatic valve, supplemented by a spring loaded foot pedal and photographs showing pneumatic accelerator resetting is less than one second), 205 *Glazing Materials* (based on statement and photographs showing that glazing materials bear DOT certification markings), 207 *Seating Systems*, (based on statement and photographs indicating that seats are securely mounted to vehicle floor and photographs showing forces applied to driver's seat), 217 *Bus Window Retention and Release* (based on statement describing window retention test results, calculations indicating size and distribution of emergency exits, and photographs showing emergency exit markings), and 302 *Flammability of Interior Materials* (based on statements and photographs indicating composition of upholstery, and test results).

The petitioner also contends that 1978 through 1981 Bristol VRT buses are capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Installation of a potentiometer wired in series to provide variation in panel lighting; (b) installation of dash-mounted high beam telltale; (c) installation of U.S.-model license plate lamp.

Standard No. 106 *Brake Hoses*: replacement of flexible brake hoses on front wheels with U.S.-model parts.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*: installation of the following equipment bearing DOT certification markings: (a) Two sealed beam headlamps, three amber identification lamp clusters, two amber clearance lamps, and two amber length and height markers at the front end of the vehicle; (b) two tail lamp assemblies, three red identification lamp clusters, two red clearance lamps, two red length and height markers, two red side marker/reflectors, and one license plate illumination lamp at the rear end of the vehicle; (c) two amber reflectors at the midsection of the vehicle's right side; (d) two amber reflectors at the midsection of the vehicle's left side.

Standard No. 111 *Rearview Mirrors*: replacement of the rearview mirrors with U.S.-model parts.

Standard No. 125 *Warning Devices:* procurement of three U.S.-model reflective warning triangles to be carried on vehicle.

Standard No. 208 *Occupant Crash Protection:* installation of a U.S.-model Type 2 seat belt at the driver's position.

Standard No. 209 *Seat Belt Assemblies:* installation of a U.S.-model Type 2 seat belt at the driver's position.

Standard No. 210 *Seat Belt Assembly Anchorages:* use of 16–20UNF–2A hardened bolts, flat washers, lock washers, and nuts as anchorage hardware.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 10, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–6164 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–14; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 300SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 300SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 300SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because: (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 18, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency than publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 300SE (Model ID 126.024) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 300SE that Daimler Benz A.G. manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 300SE to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified 300SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 model 300SE is identical to the U.S.-certified 1990 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*,116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 219 *Windshield Zone Intrusion.*

Petitioner also contends that the non-U.S.-certified 1990 model 300SE is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in

the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* Modification of the rear door locks to conform to the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors; (c) installation of knee bolsters to augment the vehicle's airbag-based automatic restraint system.

Standards No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Standard No. 302 *Flammability of Interior Materials:* Treatment of interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1990 model 300SE must be reinforced to comply with the Bumper Standard found in 49 CFT part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (c)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–6175 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–15; Notice 1]

Receipt of Petition for Determination That Nonconforming 1993 Mercedes-Benz 300SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1993 Mercedes-Benz 300SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1993 Mercedes-Benz 300SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because; (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 18, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1993 Mercedes-Benz 300SE (Model ID 140.032) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1993 Mercedes Benz 300SE that Daimler Benz A.G. manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 300SE to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified 300SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 model 300SE is identical to the U.S.-certified 1993 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106, Brake Hoses, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201*Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*,

207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S.-certified 1993 model 300SE is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp asemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* Modification of the rear door locks to comply with the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors; (c) replacement of the existing air bag with a U.S.-model component. The petitioner claims that the vehicle is equipped with knee bolsters as part of its existing automatic restraint system.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1993 model 300SE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397 (c) (3) (A) (i) (I) and (C) (ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–6174 Filed 3–16–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 10, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0013.
Form Number: Thrift Bulletin 23–2.
Type of Review: Revision.
Title: Request of Service Corporation Activity.

Description: 12 CFR 545.74 requires federal associations to obtain approval or notify the OTS prior to engaging in activities through a service corporation that are not preapproved by regulation. The regulation also contains a recordkeeping requirement for securities brokerage services. These requirements allow the OTS to review service corporation activities and to ensure that they will not adversely affect an institution's safety and soundness.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 152.

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours.

Frequency of Response: Other (submission required for all non-preapproved service corporation activity requests).

Estimated Total Reporting/Recordkeeping Burden: 469 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–6230 Filed 3–16–94; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

March 10, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0089.
Form Number: None.
Type of Review: Extension.
Title: Implementing Regulations: Government Securities Act of 1986.

Description: The regulations require government securities brokers and

dealers to make and keep records concerning their business activities and their holdings of securities, to submit financial reports, and to make certain disclosures to investors. The regulations require depository institutions to keep records concerning non-fiduciary holdings of government securities. The goal is investor protection.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,800.

Estimated Burden Hours Per Response/Recordkeeper: 210 hrs., 8 mins.

Frequency of Response: Monthly, Quarterly, Annually, Other (one-time filing).

Estimated Total Reporting/Recordkeeping Burden: 432,915 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–6231 Filed 3–16–94; 8:45 am]

BILLING CODE 4810–40–P

UNITED STATES INFORMATION AGENCY

Enrichment Programs for Self-Sponsored International Students and U.S. Government-Sponsored International Grantees in the Washington, DC, Metropolitan Area

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations in the Washington, DC metropolitan area to coordinate and implement programs which enhance the experience of international students attending colleges and universities in the Washington, DC area. The recipient will develop programs which serve to familiarize international students with Washington's complex cultural, political, and ethnic structures and provide a bridge between the campus environment and the community. It will also provide off-campus services to international students visiting Washington, DC.

The recipient will also provide support for Fulbright enrichment programs for foreign grantees in the Washington, DC area. Enrichment programs should be designed primarily for Fulbright students, but may include teachers, senior scholars, and other participants in programs supported by USIA. USIA anticipates awarding up to $70,000 for the implementation and coordination of both these programs. This support is not intended to replace private efforts in this field but rather to supplement such efforts with financial assistance.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–94–01.

DATES: Deadline for proposals: All proposals must be received at the U.S. Information Agency by close of business (5 p.m., Eastern Standard Time) Friday, April 22, 1994. Faxed documents will not be accepted, nor will documents postmarked on April 22, 1994, but received at a later date.

DURATION: The duration of the grant should be from July 1, 1994 through June 30, 1995. Programs may begin no earlier than July 1, 1994. No funds may be expended until the grant agreement is signed.

ADDRESSES: A total of fifteen copies of the application should be submitted to the office below. Three copies (one a signed original) should include the completed application, including tabs A–U; the other 12 copies should include tabs A–D. U.S. Information Agency, Reference number: E/ASA–94–01, Grants Management Division, E/XE, 301 4th Street SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Suzanne Dawkins at the U.S. Information Agency, 301 4th Street SW., Advising and Student Services Branch (E/ASA), room 349, Washington, DC 20547, 202–619–5594 or 202–619–5434 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright Hays Act). The purpose of the Act is to "enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Overview

An ideal program would include the following elements: Direct services, community outreach programs, and workshops that provide international students with an opportunity to experience the United States—its history, culture, values, policies, and life-styles. Programs should support self-sponsored international students as well as Fulbright students, teachers, senior scholars, and other participants in programs supported by USIA.

Guidelines

General/Organizational

The recipient will provide programs which enhance the experiences of self-sponsored and U.S. Government-sponsored international students either attending colleges and universities in the Washington, D.C. area or visiting the area. Government-sponsored grantees include Fulbright students, teachers, seniors scholars, and other participants in programs supported by USIA.

Proposals should include a listing of names and titles of the executive officer(s) of the applicant and of the person(s) directly responsible for the project. Resumes or vitae of key personnel should be provided. USIA recommends the inclusion of brochures and general information concerning the applicant and evidence of previous experience with international students in the proposal package.

Applicants should demonstrate the ability to recruit and maintain the necessary cadre of volunteers required to participate in program events.

Direct Services

Proposals should demonstrate the applicant's ability to provide a variety of direct services to international students which may include: The operation and maintenance of a housing referral service; the publication of a newsletter; student orientation and re-entry programs; and the organization of social

and cultural events. Applicants should also demonstrate a willingness to provide services to traveling foreign students from outside the metropolitan area and show flexibility in accommodating their requests.

Community Outreach

USIA seeks to enhance the experiences of international students through contact with the greater community and to provide the residents of Washington at-large an opportunity to participate in a mutually enriching experience. The Agency encourages the inclusion of home hospitality and community education programs in proposals.

Workshops

Another goal of this project is the identification of international graduate students who have leadership potential and whose participation in specially tailored programs may make a substantial contribution to mutual understanding and communication between the U.S. and their home country in the future. International leadership workshops are considered integral to the accomplishment of this goal.

Therefore, proposals should include specifics concerning the design and implementation of workshops capable of accommodating at least twenty (20) international student participants each. Workshops should address such topics as: foreign policy, international trade and business, mass media, and other issues relevant to potential international leaders.

An outline of proposed workshop activities should be included in proposals. The outline should demonstrate the recipient's ability to enlist the participation of informed lecturers, keynote speakers, and/or presenters whose credentials and experience are evidence of in-depth knowledge of workshop topics. Invited speakers should provide international students with access to expertise and insights not otherwise available to them.

The recipient will also be responsible for soliciting nominations of workshop participants from colleges and universities in the Washington, DC metropolitan area.

Proposed Budget

Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The budget award should not exceed $70,000: $20,000 for Fulbright enrichment programs and $50,000 for the activities of self-sponsored students. The applicant should submit separate line-item budges for (1) Fulbright enrichment (not to exceed $20,000); and (2) self-sponsored foreign grantees (not to exceed $50,000). Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost-sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Applicants should refer to the application package for a list of allowable costs.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Proposals should exhibit a through knowledge and understanding of the needs of students living in the Washington metropolitan area, and exhibit originality, substance, and rigor.

b. Program Planning

Proposals must include a detailed agenda and relevant workplan of program activities. The agenda should adhere to the program overview and guidelines described above.

c. Ability To Achieve Program Objectives/Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and adhere to the guidelines described above. The applicant should demonstrate an ability to recruit and maintain a volunteer cadre and a relationship with colleges and universities in the Washington metropolitan area to successfully accomplish the goals of the program.

d. Multiplier Effect/Impact

Program activities should be designed to foster long-term mutual understanding between citizens of the United States and other countries.

e. Institution's Track Record/Ability

Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for Agency grants. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

f. Evaluation Plan:

Proposals should provide a plan for evaluation by the grantee institution, including periodic progress reports.

g. Cost-Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as

possible. All other items should be necessary and appropriate.

h. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct-funding contributions. Evidence of such cost sharing should be detailed in the proposal.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1994. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: March 12, 1994.

Barry Fulton,

Associate Director, Acting Bureau of Educational and Cultural Affairs.

[FR Doc. 94–6263 Filed 3–16–94; 8.45 am]

BILLING CODE 8230–01–M

American Institute at the Institute of Foreign Languages at Nizhniy Novgorod (IFLNN)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for the establishment of an American Institute at the Institute of Foreign Languages in Nizhniy Novgorod (IFLNN) in Russia. The purpose of this program is to significantly improve the Russian Federation's teaching capabilities in English language and American business practices/culture. The IFLNN is a recognized leader throughout the New Independent States in producing language specialists and providing in-service teacher training for students and specialists from throughout the former Soviet Union. The IFLNN is working to develop interdisciplinary specialization in international business and American studies to train a cadre of language-qualified business professionals. The IFLNN seeks an American partner to assist them in this endeavor.

DATES: Deadline for proposals: Proposals must be received at the United States Information Agency by 5 p.m. Washington, DC time on May 6, 1994. Proposals received after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked on May 6, 1994 but received at a later date. It is the responsibility of grant applicants to ensure that their proposal is received by the above deadline.

ADDRESSES: Three originals, containing Tabs A–U (see "Application Checklist" in program guidelines packet), and 12 copies, containing Tabs A–D of the proposal, are to be submitted by the deadline to: U.S. Information Agency, Ref.: USIA IFLNN Program, Office of Grants Management, E/XE, room 357, 301 4th Street SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, interested institutions should contact Ms. Robin Kline or Ms. Deborah Trent at (202) 619–5289, or write to the following address: Specialized Programs Unit (E/ASU), Office of Academic Programs, rm. 349, U.S. Information Agency, 301 4th Street SW, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The IFLNN program is authorized by the Freedom Support Act of 1992 and funded under the Foreign Appropriations Bill of 1994.

Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The American Institute at the IFLNN will expand the pool of Russians qualified in English and familiar with Western business practices, finance, management, commercial transactions, and the American political and economic system as an environment for business. This program will provide up to $500,000 to support an institutional linkage with the IFLNN for three (3) years; start date for the program should be September, 1994, with faculty in place in Nizhniy Novgorod not later than October 1, 1994. The U.S. partner institution will assist with the development of faculty and curriculum in the fields of English as a Foreign Language (EFL), business, and American studies. Program activities will include faculty and post-graduate student exchanges (post-graduates must be on a "faculty track," involved with teaching at participating institutions), and some outreach to the U.S./Russian business communities to involve them in developing appropriate business curricula. The U.S. partner must dedicate significant staff and faculty time to the project. The program will be implemented primarily through a grant to an accredited four-year U.S. post-secondary institution or consortium of accredited institutions and scholarly/professional associations.

Nizhniy Novgorod has been the setting for key economic and democratic reform in Russia. U.S. presence in the area is growing, including Peace Corps volunteers, U.S. business interests, and visiting USG officials. The focus of the U.S. effort has been to build a "critical mass" for reform among regional and local government officials, business leaders and educators. One element of this critical mass includes English language training for Russians which can be used in their professional fields. To this end, the IFLNN program will help train a pool of language-qualified professionals, enabling them to take advantage of expanded opportunities for technical assistance, bilateral exchanges, other government and private sector training programs, and commercial relations.

Program Objectives

The IFLNN program has three principal objectives: (1) To focus additional resources in support of democratic and market reform in Nizhniy Novgorod. English language teaching and American studies will be used as vehicles to teach business English and American business practices, and American forms of government.

(2) To establish a training center for faculty from other institutes of higher education. IFLNN's program will "train the trainers," emphasizing curriculum development, teacher training, and educational testing.

(3) To facilitate the creation of a linkage between IFLNN and U.S. institutions of higher learning that will continue to flourish after U.S. Government funding has ceased to be available.

Grant Activities

To achieve program objectives, the grantee institution/consortium will: (1) Help develop a structure for interdisciplinary training programs in

English as a Foreign Language (EFL), business and management practices, and American studies at the IFLNN.

(2) Conduct faculty and post-graduate student* exchanges in EFL, business, and American studies. Each exchange of persons must be a minimum of one month; however, longer visits, especially those involving faculty, are encouraged and are an important competitive factor. (*Post-graduate students must be on a faculty track and must not exceed 25% of all participants).

(3) Provide for a U.S. faculty member who must be in residence in Nizhniy Novgorod for the duration of the program as program director to ensure everyday oversight of program details.

(4) Arrange exchanges of other university personnel, including library and administrative officials.

(5) Implement exchanges of library materials.

(6) Develop new curricula and teaching materials, emphasizing content-area language instruction and EFL methodology developments.

(7) Develop testing methods.

(8) Advise IFLNN administrators on management, budget, fundraising skills, and other areas needed to operate in a decentralized environment.

(9) Undertake the translation and publication of texts, as well as the distribution of relevant publications.

Under Separate Funding, USIA Will Supplement Activities Conducted by the Grantee Institution and IFLNN With

(1) An English Foreign Language Fellow (EFLF), assigned by the USIA office in Moscow, who will serve for two years as coordinator of U.S. Government-funded programs at IFLNN, including general oversight and monitoring. The EFLF will serve as the U.S. Information Agency presence at, and liaison between departments within, the IFLNN. University representatives must regularly consult with the EFLF regarding IFLNN activities.

(2) Fulbright lecturers, academic specialists, and other support for the IFLNN.

(3) The rights to Western texts which could be published locally.

(4) Support for a student advising office, to provide interested students with information about admissions, courses of study, and other data regarding possible study in the United States, as well as information about other USG-funded exchanges and training programs.

(5) An information center, which the USIA office in Moscow is in the process of establishing.

Guidelines

Eligibility

In the U.S., participation in the program is open to accredited four-year colleges and universities with established American studies and business programs. Consortia of four-year colleges and universities are also eligible. Colleges/universities applying under this program may collaborate with U.S. scholarly, professional, or international educational associations and organizations. Proposals from institutions with experience working in Russia will receive preference. Proposals from a consortium must be submitted by a single member institution with authority to represent the consortium. The Agency encourages proposals from, and consortia including, eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. U.S. institutions are responsible for the submission of proposals and must collaborate with the IFLNN in planning and preparing proposals. U.S. and Russian institutions are encouraged to consult about the proposed project with U.S. Information Service (USIS) offices in Moscow.

Institution Representatives

Participants representing U.S. institutions and traveling under USIA grant support must be U.S. citizens. Participants representing the IFLNN must be citizens, nationals, or permanent residents of Russia. Projects must comply with J–1 visa regulations and must refer to this requirement in the proposal narative.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the application packet, including budgetary requirements.

(2) The U.S. applicant is not an accredited four-year college or university.

(3) The project includes profits or fees.

(4) The project does not constitute a direct partnership with the IFLNN.

(5) The project does not provide for in-country presence of American faculty.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. Funds requested from the Agency must not exceed $500,000 for a program not less than three years in duration. The Agency reserves the right to reduce, increase, or otherwise modify proposal budgets in accordance with the needs of the program. Specific guidelines for budget preparation are available in the application packet.

Allowable Costs

Program Costs

—Travel: International and domestic (via American flag carriers). May include one planning trip with one American and one IFLNN participant.
—Per diem and maintenance (one month minimum): Including lodging, meals and incidental expenses.
—Salaries and benefits for U.S. participant(s) while in residence in Nizhniy Novgorod.
—Honoraria or compensation for in-country work, not to exceed $100 per day per person.
—Student exchanges (not to exceed 25% of all exchanges): Travel, per diem/maintenance, memberships and conferences (IFLNN students only), educational materials, medical insurance, and other direct program costs for post-graduate faculty-track student exchanges.

Tuition fees are not an eligible cost under this program.

—Membership in U.S. professional associations and fees for attendance at professional conferences in the U.S. for foreign participants.
—Educational materials, including but not limited to: Translation and publication of instructional materials; collections to be placed in the IFLNN information center; electronic communications; other equipment as needed. These costs may not exceed 25% of the total requested grant amount.
—Medical insurance for foreign participants during U.S. visits. Medical insurance is mandatory for all participants in J–1 visa exchange programs.

Administrative Costs (Not to Exceed 20% of Requested Budget)

—Salaries and benefits.
—Communications (telephone, facsimile, postage, etc.)
—Office supplies.
—Other direct costs.

Indirect costs or overhead costs are not eligible for funding under this program.

Special Note on Cost-Sharing

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost

participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the USIA contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: 1. Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

2. complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and.

3. includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed. The audit costs shall be identified separately for:

1. preparation of basic financial statements and other accounting services; and.

2. preparation of the supplemental reports and schedules required by OMB Circular A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Application Requirements

Proposals must be submitted by the deadline and must conform to the eligibility requirements identified in this announcement and in the application packet.

1. A proposal cover sheet (in addition to the Bureau cover sheet) with names of institutions, project directors, their addresses, telephone and fax numbers. A sample cover sheet format is included in the application packet.

2. A comprehensive line item budget outlining specific expenditures and anticipated funding sources. Detailed information concerning eligible and ineligible items and required budget format is available in the application packet. The proposed budget must conform with the allowable costs described in this document and the guidelines found in the application packet. Budget items requiring additional explanation should be contained in a brief budget narrative.

3. Documentation of institutional support for the proposed program, including signed letters of endorsement from the president, chancellor, or director of the U.S. institution(s) and the IFLNN, making specific reference to the IFLNN program. The letter from the IFLNN must include a commitment by the IFLNN to maintain their faculty/staff exchange participants on salary and benefits during the exchange. A general letter of support or an agreement between the participating institutions without reference to the IFLNN program will not fulfill this requirement. This document must be received at USIA by 5 p.m. Washington, DC, time on May 20, 1994. A sample letter of endorsement and commitment is included in the application packet.

Review Process

The IFLNN program review process will be comprised of technical and Agency reviews. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Technically eligible proposals will be reviewed by the Office of Academic Programs, appropriate geographic area offices, and budget and contract offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria: 1. Soundness of proposal indicating academic and professional quality, as reflected by a clear statement of program goals and means to accomplish the goals, and detailed description of project with statement on how the proposed project will be implemented and evaluated.

2. Probable impact of the proposed partnership in achieving the goal of reforming educational administration and curricula at the foreign partner institution.

3. Feasibility of the program plan as it relates to stated goals and activities of the RFP.

4. Quality of scholarly and professional credentials/experience of participants in relation to the goals of the proposed exchange plan, including language proficiency.

5. Appropriateness of length of exchange visits, given project goals.

6. Evidence of strong institutional commitment by participating institutions, demonstrated in part by cost-sharing and letters of institutional support.

7. Evidence of mutual advancement of cultural and political understanding of Russia and the U.S. through development of individual and institutional ties.

8. Evidence from U.S. institutions of prior experience in the region.

9. Promise of long-term impact in achieving Agency/legislative objectives.

10. USIA overseas post assessment of feasibility.

11. Cost-effectiveness.

12. Sustainability of project/follow-on activities subsequent to Agency funding.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: March 12, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–6264 Filed 3–16–94; 8:45 am]

BILLING CODE 8230–01–M

Enrichment Programs for International Students in the New York City Metropolitan Area

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency seeks applications from non-profit organizations in the New York metropolitan area to coordinate and implement programs which enhance the experience of self-sponsored international students attending colleges and universities in the New York City area. The organization will develop programs that serve to familiarize international students with New York City's complex cultural, political, and ethnic structures, and provide a bridge between the campus environment and American communities.

USIA anticipates awarding up to $35,000 for the implementation and coordination of these programs. This

amount may augment functions currently provided to international students by educational and other institutions.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 15, 1994.

Faxed documents will not be accepted, nor will documents postmarked on April 15, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadlines.

The duration of the grant will be July 1, 1994 through June 30, 1995. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: E/ASA–92–02, Office of Grants Management, E/XE, 301 4th Street SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact Shirley Graham at the U.S. Information Agency, Advising and Student Services Branch (E/ASA), Room 349, 301 4th Street, SW., Washington, DC 20547; telephone: (202) 619–5435 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life. Overall authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Overview

Through a grant to a non-profit organization in the New York city metropolitan area, USIA seeks programs that would enable self-sponsored international students to experience the United States: Its history, culture, values, policies and lifestyles. Self-sponsored international students should be provided an opportunity to utilize the city's resources productively; and to take an active role in city life. To understand more fully American life and culture, students must be provided the opportunity to become personally involved with and understand "typical" American activities such as volunteerism, observance of national and religious holidays, and cultural and sports events. In addition, self-sponsored international students should be encouraged to share their culture and knowledge with American students at all levels. Also important are programs which introduce foreign students to the U.S. government structure, the electoral process, the U.S. economy, business culture and trade issues, environmental protection, the arts and American cultural heritage. A variety of approaches such as workshops, home hospitability, and community outreach programs may be utilized.

Enrichment programs should be designed not only to enhance international students' understanding of America's cultural and ethnic diversity, but they should also enable the students to teach Americans their own cultural, ethnic, political, and social diversity, thereby promoting mutual understanding and long-term friendships. This multicultural component can be met by emphasizing interaction—interpersonal, intercultural communication—between students and American citizens.

Another focus of this program could be to identify international students having leadership potential whose experience in this program could make a substantial contribution to mutual understanding and communication between the U.S. and their home countries in the future. In this regard, workshops to develop such leadership skills as public speaking and conflict resolution for future international leaders should be included in the program. Organizations must provide a program outline demonstrating their ability to enlist the participation of informed lecturers, keynote speakers, and/or recognized experts whose credentials and experience are evidence of in-depth knowledge of workshop topics.

Guidelines

Proposals should include a listing of names and titles, of the executive officer(s) of the organization and of the person(s) directly responsible for the project. Resumes or curriculum vitae of key personnel should be provided.

Organizations should demonstrate the ability to recruit and maintain the necessary cadre of volunteers required to participate in program events.

Proposed Budget

Organizations must submit a comprehensive line-item budget for which specific details are available in the application packet. Budget will not exceed $35,000.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133 AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. *Quality of program plan:* Proposals should exhibit a thorough knowledge and understanding of the needs of self-sponsored students living in the New York metropolitan area, as well as the Agency's mission to promote mutual social, cultural, and political understanding between the people of the United States and the people of other countries.

b. *Program planning:* Proposal must include a detailed agenda of program activities and demonstrate their potential effectiveness in promoting mutual understanding. Agenda should adhere to the program overview and guidelines described above. Program activities should emphasize cross-cultural sensitivity, i.e. demonstrate knowledge of specific cultures and customs, and include workshops/seminars on interpersonal/intercultural communication.

c. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and adhere to the guidelines described above.

d. *Multiplier effect/impact:* Program activities should be designed to foster long-term mutual understanding between citizens of the United States and other countries, as well as the establishment of long-term individual and consequentially institutional linkages—for example, by identifying international students having leadership potential as described in the program overview above.

e. *Institution's track record/ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants, if any, as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

f. *Evaluation plan:* Proposals should provide a plan for evaluation by the grantee institution, and periodic progress reports.

g. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Details on budget preparation are included with application package.

h. *Cost-sharing:* The Agency encourages cost-sharing through other private sector support as well as institutional direct-funding contributions. Evidence of such cost sharing should be detailed in proposal.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 15, 1994. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: March 10, 1994.

Barry Fulton,

Associate Director, Acting Bureau of Educational and Cultural Affairs.

[FR Doc. 94–6038 Filed 3–16–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 52

Thursday, March 17, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 22, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbrtration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, March 23, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Internal Personnel Rules and Procedures or matters affecting a particular employee
Audits conducted pursuant to Title 26, U.S.C.

DATE AND TIME: Thursday, March 24, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Petition for Rulemaking Filed by the Center for Responsive Politics
Legislative Recommendations, 1994 (continued from meeting of March 10, 1994)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–6466 Filed 3–15–94; 3:08 am]

BILLING CODE 6715–01–M

Corrections

Federal Register

Vol. 59, No. 52

Thursday, March 17, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7029

[OR-943-4210-06; GP4-038; OR-19014, OR-19115]

Partial Revocation of Executive Order Dated December 12, 1917, and Secretarial Order Dated December 12, 1917; Oregon

Correction

In rule document 94-4094 appearing on page 8868 in the issue of Thursday, February 24, 1994, make the following corrections:

1. In the first column, under **SUMMARY**, in the tenth line, "Grand" should read "Grant".

2. In the same column, in paragraph 1., in the fifth line, "Waterproof" should read 'Waterpower".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. CO-050-4210-04; COC54886]

Notice of Realty Action; Colorado

Correction

In notice document 94-2632 beginning on page 5610 in the issue of Monday, February 7, 1994, under **DATES**, in the second line, "March 9, 1994" should read "May 8, 1994".

BILLING CODE 1505-01-D

Thursday
March 17, 1994

Part II

Department of Defense

Department of the Army

32 CFR Part 536
The Army Claims System; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

The Army Claims System

AGENCY: Department of the Army, DOD

ACTION: Proposed Rule.

SUMMARY: The Department of the Army announces a revision and consolidation of 32 CFR parts 536, Claims Against the United States and 537, Claims on Behalf of the United States in order to bring them in line with new policies and procedures being promulgated in Army Regulation 27–20, Claims. This revision retains part 536 as The Army Claims System. Part 537 will be removed and held in reserve for future use. This part prescribes the policies, procedures, and responsibilities for investigating, processing, and settling claims against and in favor of the United States under the authority conferred by certain statutes, regulations, international and interdepartmental agreements, and Department of Defense directives. It is intended to ensure that claims are properly investigated, adjudicated objectively and fairly, and either paid or collection action initiated. Because of the complexity and length of changes and consolidation of parts 536 and 537, a breakout of the scope or responsibilities of each subpart to this whole part is listed in the Supplemental Information part of this submission. JAG offices, individuals and/or organizations currently using Army Regulation 27–20 or the current issue of 32 CFR part 536 and 537, dated 1 July 1993, should review this revision against the current versions in order to determine the additions, deletions or other changes being made. By reviewing the supplemental information portion, reading of the complete part becomes necessary in order to understand the entire part.

DATES: Comments must be received by the Army Claims Service not later than April 18, 1994.

ADDRESSES: Director, U.S. Army Claims Service, Building 4411, Llewellyn Ave., Fort Meade, Maryland 20755–5360.

FOR FURTHER INFORMATION CONTACT: LTC Cashiola, (301) 677–7622 or 7960.

SUPPLEMENTARY INFORMATION: (Subpart A). Subpart A is the introduction of part 536. (Subpart B). Subpart B describes the investigation and processing of claims investigation and the importance of claims investigation. (Subpart C). This subpart is applicable in all locations and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death; personal injury; or damage, loss, or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment and incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or civilian officer or employee whose injury or death is incident to service. (Subpart D). This subpart prescribes the substantive bases and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property that accrues on or after 18 January 1967. (Subpart E). This subpart prescribes the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage or loss of property, or for personal injury or death caused by a member or employee of the DA incident to the use of a U.S. vehicle at any location or incident to the use of other U.S. property on a Government installation. (Subpart F). This subpart is applicable in all places and sets forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage, loss, or destruction of property caused by members or employees of the Army National Guard; noncombat activities of the Army National Guard when engaged in training or duty under 32 U.S.C. provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard and an employee whose injury or death is incident to service. (Subpart G). This subpart provides procedures and defines responsibilities for the investigation, processing, and settlement of claims arising out of acts or omissions of members of a foreign military force or civilian component present in the United States, or a territory, commonwealth, or possession thereof under the provisions of reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States such as Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty. (Subpart H). This subpart deals with claims against the United States. Title 10, U.S.C., section 4802, provides for the settlement or compromise of claims for damage caused by a vessel of, or in the service of, the Department of the Army (DA) or by other property under the jurisdiction of the DA; compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or other property under the jurisdiction of the DA or damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA. (Subpart I). This subpart sets for the standards to be applied and the procedures to be followed in the processing of claims for damage, loss, or destruction of property owned by or in the lawful possession of an individual whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. (Subpart J). This subpart implements the Foreign Claims Act (FCA) and authorizes the administrative settlement of claims of inhabitants of a foreign country, or by a foreign country or a political subdivision thereof, against the United States for personal injury or death or property damages caused outside the United States, its territories, commonwealths, or possessions by military personnel or civilian employees of the DA, or claims which arise incident to noncombat activities of the Army. (Subpart K). This subpart deals with personal claims and related recovery actions, delegation of authority and prescribes the substantive bases and special procedural rules for the administrative settlement of claims against the United States submitted by the Active Army, Army National Guard and U.S. Army Reserve personnel, and civilian employees of DOD and DA for damage to or loss of personal property incident to their service. (Subpart L). This subpart sets forth procedures to be followed in the settlement and payment of claims by employees of nonappropriated fund activities for the loss of or damage to personal property incident to their employment, and for claims generated by the acts or omissions of the employees of such funds. (Subpart M). This subpart establishes the authority and responsibility for affirmative claims. This subpart prescribes procedures for the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the United States for damage to, loss, or destruction of Army property, and for the recovery of the reasonable value of medical care furnished or to be furnished by the

United States under the statutes cited in section 536.213. (Subpart N). This subpart sets forth procedures for all aspects of records management to include, arrangement of files, file management, maintenance of and retrieval of files, files disposition, etc., and monthly claims reporting system as pertains to Claims Office Administration.

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291. The effect of this proposed rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of the Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 536

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32 CFR part 536 is proposed to be revised to read as follows:

PART 536—THE ARMY CLAIMS SYSTEM

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Appendix A to Part 536—References

Appendix B to Part 536—Glossary

Authority: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715.

Subpart A—The Army Claims System

General

§ 536.1 Purpose.

This part prescribes the policies, procedures, and responsibilities for investigating, processing, and settling claims against and in favor of the United States under the authority conferred by certain statutes, regulations, international and interdepartmental agreements, and Department of Defense (DOD) directives. It is intended to ensure that claims are properly investigated, adjudicated objectively and fairly, and either paid or collection action initiated.

§ 536.2 References.

Required and related publications and prescribed and referenced forms are listed in appendix A to this part.

§ 536.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in appendix B to this part.

§ 536.4 Types of claims.

(a) This regulation covers the following type of claims:

(1) Claims cognizable under the following claims settlement authorizations:

(i) The Military Claims Act (MCA), 10 U.S.C. 2733. (See subpart C.)

(ii) The Federal Tort Claims Act (FTCA), 28 U.S.C. 2671–2680. (See subpart D.)

(iii) The Act of 9 October 1962, 10 U.S.C. 2737. (See subpart E.)

(iv) The National Guard Claims Act (NGCA), 32 U.S.C. 715. (See subpart F.)

(v) Title 10, United States Code (U.S.C.), section 2734a and 2734b. (See subpart G.)

(vi) The Maritime Claims Settlement Act, 10 U.S.C. 4801–4804, 4806. (See subpart H.)

(vii) Article 139, Uniform Code of Military Justice (UCMJ), 10 U.S.C. 939. (See subpart I.)

(viii) The Foreign Claims Act (FCA), 10 U.S.C. 2734. (See subpart J.)

(ix) Title 31, U.S.C., section 3721. (See subpart K.)

(x) Federal Claims Collection Act, 31 U.S.C. 3711. (See subpart M.)

(xi) Federal Medical Care Recovery Act, 42 U.S.C. 2651–53. (See subpart M.)

(2) Claims against nonappropriated fund activities and the risk management program (RIMP). (See subpart L.)

(3) Claims under industrial security regulations (DOD Directive (DODD) 5220.6) and claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 U.S.C 411 and DOD Manual 4525.6–M). (See DA Pam 27–162, chap 5, sec XI.)

(b) DA Pam 27–162, chapter 8 lists other laws and regulations under which claims not covered by this regulation may be cognizable.

(c) Where a conflict exists between a general provision of this part and a specific provision found in subparts implementing a specific claims statute, the specific provision will control.

§ 536.5 Command and organizational relationships.

(a) The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, U.S. Army Claims Service (USARCS), to carry out responsibilities assigned in § 536.7(b).

(b) USARCS, a field operating agency of the Office of TJAG, is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for the administrative settlement of claims worldwide. (See AR 10–72.) The proper mailing address of USARCS is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(c) Command claims services. (1) Command claims services exercise general supervisory authority over claims matters arising within their assigned areas of operation. Command claims services will provide—

(i) Effective control and supervision of the investigation of incidents occurring within the geographic area of the command, occurring in other areas for which the command is assigned claims responsibility or occurring in the course of the command's operations.

(ii) Services for the processing and settlement of claims for and against the United States.

(2) The commander of a major overseas command or other commands that include areas outside the United States, its territories, and possessions, and report directly to the Department of the Army (DA) may be designated by TJAG to establish, a command claims service.

(3) A command claims service may be a separate organization with a designated commander or chief. If it is part of the Office of the Staff Judge Advocate (SJA) of the command, the SJA will also be the chief of the command claims service.

(d) The following may be designated as area claims offices:

(1) An office under the supervision of the senior judge advocate (JA) of each command or organization so designated by the Commander, USARCS. The senior JA is the head of the area claims office.

(2) An office under the supervision of the senior JA of each command in the area of operations of a command claims service so designated by the chief of that service after coordination with the Commander, USARCS (see § 536.7(c)(2)). The senior JA in the office is the head of the area claims office.

(3) The legal office of each engineer district within the United States and such other engineer commands or agencies as designated by the Commander, USARCS with concurrence of the Chief of Engineers (COE) for all claims generated by such districts, commands, or agencies. The district counsel or the attorney in charge of the legal office of the command or agency is the head of the area claims office.

(e) Claims processing offices are normally small legal offices or subordinate elements of area claims offices, which are designated by the Commander, USARCS; a command claims service; or an area claims office. These offices are established for the investigation of all potential and actual claims arising within their jurisdiction, either on an area basis or on a command or agency basis. A claims officer (see appendix B to this part) will not be a claims processing office; his or her role is limited to claims investigation. There are four types of claims processing offices as follows (§ 536.8(c)):

(1) Claims processing offices without approval authority.

(2) Claims processing offices with approval authority.

(3) Medical claims processing offices.

(4) Special claims processing offices.

(f) The chief of a command claims service and the head of an area claims office or a claims processing office with approval authority may delegate, in writing, any portion or all of his or her monetary approval authority to a subordinate JA or claims attorney in his or her service or office. The authority to act upon appeals or requests for reconsideration, to disapprove claims (including disapprovals based on substantial fraud), or to make final offers will not be delegated. Copies of delegations within claims processing offices will be provided to the area claims office and, if so directed, to command claims services.

§ 536.6 Designation of claims attorneys.

(a) The Commander, USARCS, the senior JA of a command having a command claims service or the Commander, USAREUR Claims Service, the head of an area claims office, or the Chief Counsel, COE may designate a qualified attorney other than a Judge Advocate as a claims attorney. The head of an area claims office may designate a claims attorney to act as a claims processing office with approval authority.

(b) To be eligible as a claims attorney; an individual must be a civilian employee of the DA or DOD, in grade GS–11 or above; a member of the bar of a State, the District of Columbia, or a jurisdiction where U.S. Federal law applies; and be performing primary duties as a legal adviser. These requirements can be waived by the

Commander, USARCS, in appropriate cases.

Responsibilities, Operations, Policies, and Guidance

§ 536.7 Responsibilities.

(a) *The Judge Advocate General.* TJAG has Army Staff responsibility for administrative settlement of claims worldwide by and against the U.S. Government, generated by employees of the U.S. Army and, DOD components other than the Departments of the Air Force and Navy (see DODD 5515.9). Certain claims responsibilities of TJAG are exercised by The Assistant Judge Advocate General (TAJAG), as set forth in this regulation.

(b) *Commander, USARCS.* Commander, USARCS will—

(1) Supervise and inspect U.S. Army claims activities worldwide.

(2) Formulate and implement claims policies and uniform standards for claims office operations.

(3) Supervise the investigation, processing, and settlement of claims against and on behalf of the United States under the statutes and regulations listed in paragraph 1–4.

(4) Designate area claims offices, claims processing offices, and claims attorneys within DA and DOD components other than the Departments of the Navy and Air Force.

(5) Designate Continental United States (CONUS) geographic areas of claims responsibility.

(6) Recommend action to be taken by the Secretary of the Army or the Attorney General of the United States as appropriate, regarding claims in excess of $100,000 under the FCA, the MCA, and the NGCA and other claims that have been appealed to the Secretary of the Army, or are in excess of $25,000 under the FTCA.

(7) Operate the "receiving State office" for claims cognizable under Article VIII of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), as implemented by 10 U.S.C 2743b (Subpart G).

(8) Settle claims of the U.S. Postal Service for reimbursement under 39 U.S.C 411 (see DOD Manual 4525.6–M) and of DOD under industrial security regulations (DODD 5220.6).

(9) Settle claims against carriers, warehouse firms, insurers, and other third parties for loss of, or damage to, personal property of service members incurred while in storage or in transit at Government expense (subpart K).

(10) Formulate and recommend proposed legislation for Congressional enactment of new statutes and the amendment of existing statutes considered essential for orderly and expeditious administrative settlement of noncontractual claims.

(11) Perform post settlement review of claims.

(12) Prepare, justify, and defend estimates of budgetary requirements and administer the Army claims budget.

(13) Maintain permanent records of claims for which TJAG is responsible.

(14) Assist in developing disaster and maneuver claims plans designed to implement responsibilities set forth in paragraphs (d)(11) of this section and § 536.15(c).

(15) Develop and maintain plans for a disaster or civil disturbance for geographic areas not under the jurisdiction of an area claims authority and in which the Army has single service responsibility or in which the Army is likely to be the predominant Armed Force.

(16) Take initial action on claims arising in emergency situations as outlined in § 536.15(c).

(17) Provide assistance as available or take appropriate action to ensure that command claims services and area claims offices are carrying out their responsibilities as set forth in paragraphs (c) and (d) of this section.

(18) Serve as proponent for Claims Legal Automated Information Management System (CLAIMS) and provide standard automated claims data management programs for use worldwide.

(19) Ensure proper training of claims personnel.

(20) Coordinate claims activities with the Air Force, Navy, Marine Corps, and other DOD agencies to ensure a consistent DOD claims program.

(21) Supervise the investigation and processing of medical malpractice claims arising in Army medical centers within the United States. Provide medical claims JAs, medical claims attorneys and medical claims investigators assigned to such medical centers with technical guidance and direction on such claims.

(22) Coordinate support with the Office of The Surgeon General on matters relating to medical malpractice claims.

(23) Issue an accounting classification to all properly designated claims settlement and approval authorities.

(24) Perform the investigation, processing, and settlement of claims arising in areas not within the areas of operation of command claims services unless specifically delegated to a SJA of a command or designee.

(c) *Chiefs of command claims services.* Chiefs of command claims services will—

(1) Exercise claims settlement authority as specified in this regulation, to include appellate authority where so delegated.

(2) Designate area claims offices and grant claims settlement authority thereto. A grant of such authority will not be effective until coordinated with the Commander, USARCS and an office code assigned. However, the chief of a command claims service may redesignate a claims processing office already having an assigned office code as an area claims office without coordination with the Commander, USARCS. The Commander, USARCS will be informed of such a designation.

(3) Designate claims processing offices and grant claims approval authority thereto. Only claims processing offices staffed with a JA or claims attorney may be granted approval authority. A grant of such authority will not be effective until coordinated with the Commander, USARCS and an office code assigned.

(4) Train claims personnel and monitor their activities.

(5) Implement pertinent claims policies.

(6) Prepare and publish command claims directives.

(7) Administer the command claims expenditure allowance, providing necessary data, estimates, and reports to USARCS.

(8) Perform the responsibilities of an area claims office (see paragraph (d) of this section), as applicable.

(9) Serve as the U.S. sending State office, if so designated, when operating in an area covered by a status of forces agreement.

(d) *Heads of area claims offices.* Heads of area claims offices will—

(1) Ensure that claims in their area of responsibility are promptly investigated according to this regulation.

(2) Ensure that each organization or activity (for example, U.S. Army Reserve (USAR) or Army National Guard (ARNG) unit, Reserve Officers' Training Corps (ROTC) detachment, recruiting company or station, and DOD agency) within the area appoints a claims officer to investigate claims incidents not requiring investigation by a JA (§ 536.16(c)(2)) and ensure that this officer is adequately trained.

(3) Act as a claims settlement authority on claims within the monetary jurisdictions set forth in this regulation and forward claims beyond such jurisdictions to the Commander, USARCS or to the chief of a command claims service, as appropriate, for action.

(4) Designate claims processing offices and request the Commander, USARCS or the chief of a command claims

service, as appropriate, to grant claims approval authority to a claims processing office with respect to claims within that office's jurisdiction, as specified under paragraphs (b)(4) and (c)(2), of this section.

(5) Prepare and publish a claims directive concerning the investigation and processing of claims matters for the guidance of all claims processing offices within their area.

(6) Implement claims policies and guidance furnished by TAJAG or Commander, USARCS through policy directives or the Claims Manual and establish and implement necessary claims policies and procedures not contrary to the foregoing.

(7) Ensure that there are an adequate number of qualified JAs or claims attorneys, claims examiners, claims adjudicators and claims clerks in all claims offices within their area to take prompt action on claims and that they are adequately trained.

(8) Budget and fund for claims investigations and activities to include per diem and transportation of claims personnel, claimants and witnesses, independent medical examinations, appraisals, independent expert opinions, long distance phone calls, recording and photographic equipment, use of express mail or couriers, and other necessary expenses.

(9) Within continental United States (CONUS), procure and disseminate adequate legal publications on local law and verdicts relating to tort claims within the area of jurisdiction.

(10) Notify Commander, USARCS of all claims and claims incidents as required by § 536.17 and § 536.21(b)(2).

(11) Develop and maintain written plans for a disaster or civil disturbance. The plan should include a requirement for an advance party to assess the need for the presence of a special claims processing office. The plans may be internal Office of the SJA plans or an annex to an installation/organizational plan. (See also § 536.8(c)(4)(iii).)

(12) Implement the Army's Article 139 claims program. (See § 536.142.)

(e) *Heads of claims processing offices.* Heads of claims processing offices will—

(1) Investigate all potential and actual claims arising within its assigned jurisdiction, either on an area basis or on a command or agency basis. Only a claims processing office with approval authority can adjudicate and pay all presented claims within its monetary jurisdiction.

(2) Ensure that units and organizations within its jurisdiction have appointed claims officers for the investigation of claims not requiring investigation by a JA. (See § 536.16.)

(3) Budget and fund for claims investigations and activities to include per diem and transportation of claims personnel, claimants and witnesses, independent medical examinations, appraisals, independent expert opinions, long distance phone calls, recording and photographic equipment, use of express mail or couriers, and other necessary expenses.

(4) Within CONUS, procure and maintain legal publications on local law and verdicts relating to tort claims within their jurisdiction.

(5) Notify the Commander, USARCS of all claims and claims incidents as required by § 536.17 and § 536.21(b)(2).

(6) Implement the Army's Article 139 claims program. (See § 536.142.)

(f) *Chief of Engineers.* The COE, through the Chief Counsel, will—

(1) Provide general supervision of the claims activities of engineer area claims offices.

(2) Ensure that each engineer area claims office has a claims attorney designated by the Commander, USARCS, as prescribed in § 536.6.

(3) Ensure the training of claims personnel and the continuing inspection of their activities.

(4) Provide for implementation of pertinent claims policies.

(5) Provide for budgeting in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance phone calls, recording equipment, cameras, and other expenses for investigation and processing of claims.

(6) Take action to procure and have available adequate legal publications on local law relating to claims arising within the United States, its territories, and possessions.

(g) *Commanding General, U.S. Army Health Services Command (CG, HSC).* The CG, HSC will, through his SJA, ensure that adequate and qualified medical claims JAs and medical claims investigators are assigned for the investigation and processing of medical malpractice claims arising at Army medical centers under his or her control. In accordance with an agreement between TJAG and The Surgeon General, such personnel will be used primarily in investigating and processing of medical malpractice claims and provided with the necessary funding and research materials to carry out this function.

(h) *Chief, National Guard Bureau (NGB).* The Chief, NGB will—

(1) Ensure that a point of contact for claims matters is designated in each adjutant general office.

(2) Provide the name, address, and telephone number of the point of contact to the Commander, USARCS.

(3) Designate claims officers to investigate claims generated by ARNG personnel and forward investigations to the active Army area claims office having jurisdiction over the area in which the claims incident occurred.

(4) Publish a regulation to carry out these responsibilities.

(i) *Commanders of major Army commands (MACOMs).* Commanders of MACOMs through their SJAs will—

(1) Assist USARCS in monitoring area claims offices and claims processing offices under their respective command control for compliance with responsibilities assigned in paragraphs (d) and (e) of this section.

(2) Assist claims personnel in obtaining qualified expert and technical advice from units and organizations under their respective command control on a nonreimbursable basis except that the requesting office may be required to provide TDY funding.

(3) Assist TJAG, through the Commander, USARCS, in the implementation of the functions set forth in paragraph (b) of this section.

(4) Coordinate with the area claims office within whose jurisdiction a maneuver will occur to ensure the prompt investigation and settlement of claims arising from the maneuver.

§ 536.8 Operations of claims components.

(a) *Command claims services.* A command claims service will be supervised by the SJA of the command. If the command claims service is a separate organization, the command SJA will designate a JA as the chief of the service. Otherwise, the SJA will be the chief of the service. Adequate, qualified claims personnel will be assigned to ensure that claims are promptly investigated and acted upon. With the concurrence of the service may designate area claims offices within its area of operations to carry out claims responsibilities within specified geographic areas.

(b) *Area claims offices.* (1) The area claims office is the principal office for the investigation and adjudication or settlement of claims, and will be staffed with qualified legal personnel under the supervision of the SJA or command JA or Corps of Engineer district or command legal counsel.

(2) The full-time responsibility for claims investigations and processing in a portion of the area or for claims related to the activities of a unit or organization within the area may be delegated to another command, unit, or activity by the establishment of a claims

processing office at the command, unit or authority. (See § 536.7 (d)(4) and (e).) Normally, all claims processing offices will operate under the supervision of the area claims office in whose area the claims processing office is located. Where a proposed claims processing office is not under the command of the parent organization of the area claims office, this designation may be effected by a support agreement or memorandum of understanding between the affected commands.

(3) Normally, claims that cannot be settled by an engineer area claims office will be forwarded directly to the Commander, USARCS with notice to the Chief Counsel, COE of such referral. However, the Chief Counsel, as part of his or her responsibility for litigation of suits involving civil works and military construction activities, may require that an engineer area claims office forward claims through engineer channels provided that such requirement does not preclude final action by Commander, USARCS within the time limitations set forth in subparts D and H.

(c) *Claims processing offices.* For a chapter 11 claim, if the adjudicated amount of a claim is in excess of the monetary jurisdiction of the head of the claims processing authority, the claim will be approved and paid up to the delegated authority of that office and immediately forwarded to the next higher claims authority for additional payment. (See § 536.161(e).)

(1) Claims processing offices without approval authority. A claims processing office that has not been granted claims approval authority will provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, either on an area basis or on a command or agency basis. Once the investigation is completed, the claims file will be forwarded to the appropriate area claims office for action. Alternatively, an area claims office may direct that a claims investigation made by a claims processing office without approval authority be forwarded to another claims processing office within the area that has approval authority if the claim is within the jurisdiction of the latter.

(2) Claims processing office with approval authority. A claims processing office that has been granted approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, either on an area basis or on a command or agency basis, and for the adjudication and payment of all presented claims within its monetary jurisdiction. If the estimated value of a claim, after investigation, is beyond the payment authority of the claims processing office or if disapproval is the appropriate action, the claim file will be forwarded to the area claims office unless otherwise specified in this regulation, or forwarded to USARCS or the command claims service, as appropriate, if directed by such service.

(3) Medical claims processing offices. The medical claims JAs at Army medical centers, other than Fitzsimons Army Medical Center and Walter Reed Army Medical Center, may be designated by the SJA/head of area claims office for the installation on which the center is located as claims processing offices with approval authority for medical malpractice claims only. Claims beyond their approval authority will be investigated and forwarded to the Commander, USARCS. The SJA, Health Services Command, Quality Assurance Division, OTSG (DASG–PSQ) and the Consultation Case Review Branch, Clinical Policy and Consultants Division, Office of the Surgeon General (CCRB), will be advised by USARCS of all referrals, provided a copy of all claims, and informed of their disposition.

(4) Special claims processing offices. (i) The Commander, USARCS, the chief of a command claims service or the head of an area claims office may designate special claims processing offices within his or her command for specific, short-term purposes (for example, maneuvers, civil disturbances, and emergencies). These special claims processing offices may be delegated approval authority necessary to effect the purpose of their creation, but in no case will this delegation exceed the approval authority maximums set forth in other chapters of this regulation for regular claims processing offices. All claims will be processed under the claims expenditure allowance and claims command and office code of the authority who established the office or a code assigned by USARCS. The existence of any special claims processing office must be reported to the Commander, USARCS.

(ii) A special claims processing office is the proper organization to process and approve, as appropriate, maneuver damage claims, except where a foreign government is responsible for adjudication under an international agreement (see subpart G). Personnel from the maneuvering command should be used in the investigation of claims and, at the discretion of the area claims office, may be assigned to the special claims processing office. Claims filed after the termination of the maneuver will be processed by the area claims office. Claims arising within the jurisdiction of other area claims offices, while units are traveling to or from the maneuver, will be investigated by the special claims processing office and forwarded for action to the area claims office in whose area the claims arose. Claims for damage to real or personal property arising on private land being used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405–15.

(iii) A special claims processing office provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, to include damage assessment and finance and accounting support. It should not be dispatched prior to notification of Commander, USARCS. The concurrence of Commander, USARCS must be obtained prior to the payment of the first claim.

(5) Claims processing offices discussed in paragraphs (c) (2) through (4) of this section must be supervised by an assigned JA or claims attorney in order to exercise delegated approval authority.

§ 536.9 Claims policies.

(a) *General.* (1) Claims investigation and adjudication should be accomplished at the lowest level possible, that is, by the claims processing office or area claims office with monetary authority over the estimated total value of all claims arising from the incident in question. The expeditious investigation and settlement of claims is essential to the successful fulfillment of the Army's responsibilities under the claims statutes implemented by this regulation.

(2) Where technical errors exist in the filing of a claim or in its format, claimants should be advised of such errors and the need for corrective action. If the errors concern a jurisdictional matter, advice should be given expeditiously and a record should be maintained. The advice should include a warning that the error must be corrected prior to the expiration of the statute of limitations.

(b) *Investigative environment.* In the investigation of claims, every effort should be made to create a cooperative environment engendering the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is frequently essential to clarify the issues both during investigation and prior to adjudication.

Where settlement is not feasible, issues of disagreement or dispute should be clearly identified and spelled out to facilitate the resolution of any reconsideration, appeal, or in appropriate cases, litigation.

(c) *Claims directives and plans.* (1) Two copies of command claims directives will be furnished to the Commander, USARCS. Area claims office directives will be distributed to all DA and DOD commands, installations, and activities within the area of responsibility with an information copy to Commander, USARCS.

(2) One copy of all area claims offices' disaster/civil disturbance plan or annex will be furnished to the Commander, USARCS.

(d) *Interpretations.* The Commander, USARCS will publish written interpretations of the provisions of this regulation and establish and publish policy as to those matters that are within agency discretion. Interpretations and policies that reference this provision will have the same force and effect as this regulation.

(e) *Exceptions.* If it is considered to be in the best interest of the Government, the Commander, USARCS may grant authority to deviate from the specific requirements contained in this regulation in a particular instance except as to matters that are based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or otherwise have the force and effect of law.

(f) *Guidance.* The Commander, USARCS may publish bulletins, manuals, handbooks, notes, and a DA Pamphlet to provide claims authorities with guidance on administrative and procedural matters related to the implementation of this regulation. These will be binding on all Army claims personnel.

(g) *Communication.* All claims personnel are authorized to communicate directly with personnel of the USARCS for guidance on matters of policy or relating to the implementation of this regulation.

(h) *Private relief bills.* There is no established procedure under which DA sponsors private relief legislation; this is a matter between an individual and his or her Congressman. Claims personnel will remain neutral in private relief matters. No statement should be made that purports to reflect a DA position on a private relief bill.

§ 536.10 Guidance concerning disclosure of information and assistance.

(a) *Conflict of interest.* Government personnel are forbidden to represent any claimant or to receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, and 205).

(b) *Release of information.* (1) Government personnel are prohibited from disclosing information that may be the basis of a claim or any evidence of record in any claims matter except as authorized by statutory of regulatory authority. Certain documents which would normally be privileged or exempt from release, such as unclassified statements, documents containing opinions, conclusions, or findings, may be released to a claimant or his or her attorney, whenever release may help settle a claim or avoid unnecessary litigation, unless such release is barred by statute.

(2) All requests for records and information made pursuant to the Freedom of Information Act (FOIA) or the Privacy Act (PA) will be processed in accordance with the procedures set forth in AR 25–55 or AR 340–21. Requests submitted by a claimant or his or her attorney, which cite only the FOIA, will be processed under the time limits of the FOIA and the exceptions and fees of the PA and FOIA, as required by AR 25–55, paragraph 1–512c. Except for medical quality assurance records exempt from disclosure by 10 U.S.C. records protected by the Privacy Act of 1974, records within a category for which withholding of the record is discretionary (AR 25–55, paragraph 3–101) may be released to a claimant or his or her attorney, if no legitimate purpose exists for withholding it.

(3) When it is determined that exempt information should not be released, the request will be forwarded to USARCS. For requests processed only under the FOIA, the commander, USARCS, may deny release of the records, acting on behalf of TJAG, the initial denial authority. The commander, USARCS will forward to TJAG all requests processed under the FOIA and PA. TJAG is the initial denial authority for PA requests (AR 340–21, paragraph 1–7i).

(c) *Claims assistance.* The foregoing prohibitions do not apply to information and assistance provided in the performance of official duty. Any person who indicates a desire to file a claim against the United States cognizable under one of the chapters of this regulation will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, will be assisted in completing claim forms and assembling evidence. He or she will not be assisted in determining what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and location of claims officers and engineer repair teams. When the government of a foreign country in which U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.11 Single-service claims responsibility (DODD 5515.8).

(a) *Statutes and agreements.* DOD has assigned single-service responsibility for the settlement of claims in certain countries under the following statutes and agreements:

(1) FCA (10 U.S.C. 2734); DODD 5515.3, Settlement of Claims under 10 U.S.C. 2733 and 2734.

(2) MCA (10 U.S.C. 2733); DODD 5515.3, Settlement of Claims under 10 U.S.C. 2733 and 2734.

(3) 10 U.S.C. 2734a and 2734b, pro rata cost-sharing of claims pursuant to international agreements.

(4) NATO SOFA (4 UST 1792, TIAS 2846) and other similar agreements.

(5) Act of September 25, 1962 (42 U.S.C. 2651–2653), Claims for Reimbursement for Medical Care Furnished by the United States.

(6) 10 U.S.C. 2737, claims not cognizable under any other provision of law.

(7) The Federal Claims Collection Act (31 U.S.C. 3711–3719), as implemented by DODD 7045.13; the Act of June 10, 1921 (31 U.S.C. 71), claims and demands by the Government of the United States.

(8) 10 U.S.C. 2736, Advance Payments.

(b) *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above in the following countries has been assigned to military departments as indicated below:

(1) Department of the Army: Austria, Belgium, El Salvador, France, Federal Republic of Germany, Grenada, Honduras, and Korea, the Marshall Islands and Switzerland.

(2) Department of the Navy: Bahrain, Iceland, Israel, Italy, Portugal, and Tunisia.

(3) Department of the Air Force: Australia, Azores, Canada, Cyprus, Denmark, Egypt, Greece, India, Israel, Japan, Luxembourg, Morocco, Nepal, The Netherlands, Norway, Oman, Pakistan, Saudi Arabia, Spain, Turkey, United Kingdom.

(4) Except when they arise in countries for which single-service responsibility is assigned in paragraphs (b) (1), (2), and (3) of this section, single-service claims responsibility for claims involving, or generated by the U.S. Central Command or units assigned or attached thereto, is assigned to the Department of the Air Force. The addresses of United States sending State offices and single-service offices are contained in DA Pam 27–162, figure 7–1.

(c) *When claims responsibility has not been assigned.* On an interim basis prior to receiving confirmation and approval from the appropriate office in DOD, the appropriate unified commander may, when necessary to implement contingency plans, assign single-service responsibility for processing claims in countries where such assignment has not already been made.

§ 536.12 Cross-servicing of claims (DODD 5515.3).

(a) *Where another military department has single-service claims responsibility.* Claims, claims by and against the United States resulting from Army activities or caused by members or employees of the DA in a country where another department has been assigned single-service claims responsibility will be investigated by the Army and referred to that department for settlement.

(b) *Where claims responsibility has not been assigned.* Claims, claims cognizable under the FCA or the MCA generated by another military department in a foreign country where single-service claims responsibility has not been assigned may, upon request of the department concerned, be settled by the Army. Conversely, Army claims may, in appropriate cases, be referred to another department for settlement.

(c) *Claims generated by the Coast Guard.* Claims resulting from activities, or generated by members or employees, of the Coast Guard while operating as a service of the Department of Transportation may, upon request, be settled under this regulation by a foreign claims commission appointed as authorized herein, but will be paid from appropriations of the Coast Guard (10 U.S.C. 2734(g) and 2734a(c)).

Subpart B—Investigation and Processing of Claims

Investigation

§ 536.13 Importance of the claims investigation.

Because evidence developed during an investigation provides the basis for every subsequent step in the administrative settlement of a claim or the defense of a lawsuit, a prompt and thorough investigation will be conducted on all potential and actual claims for or against the government. Adverse as well as favorable information must be collected and recorded and the legal and factual findings of the claims JA/attorney must be preserved in the format specified in § 536.22.

§ 536.14 Reasons for investigation.

(a) The investigation is performed to ascertain the facts of an incident. Which facts are relevant will often depend on the law and regulations applicable to the conduct of the parties involved, but as general guidance, the investigation should develop definitive answers to such questions as "When," "Where," "Who," "What," and "How." Generally, the time, place, persons, and circumstances involved in an incident may be established by a simple report, but the cause and the resulting damage may require extensive effort to obtain all the pertinent facts.

(b) The object of the investigation is to gather, with the least possible delay, the best available evidence without accumulating excessive evidence concerning any particular fact. The claimant is often an excellent source of such information and should be contacted early in the investigation. The investigative file should include medical records, witness interviews, photographs, and expert opinions.

§ 536.15 Immediate investigation requirement.

(a) Immediate investigation of an incident is required when—

(1) Property other than Government property is damaged, lost, or destroyed. Damage resulting directly or indirectly from combat need only be investigated to the extent necessary to confirm that the combat exclusion of the appropriate statute is applicable.

(2) Government property is damaged, lost, or destroyed under circumstances that may give rise to a claim in favor of the Government under subpart N.

(3) The incident results in injury to or death of, any civilian other than to a civilian of the Army while in performance of duty, an employee of the United States or its instrumentalities while acting within the scope of their employment. For deaths or injuries resulting directly or indirectly from combat activities of our forces, the investigation merely has to develop sufficient information to verify that the combat exception of the appropriate claims statute is applicable.

(4) A claim is made.

(5) Investigation is requested by another armed service of the United States.

(6) A member of the uniformed services, a dependent, or any other person who is eligible for medical care at Army medical treatment facilities is injured under circumstances that permit recovery of the cost of hospital and medical care under subpart N.

(7) An incident occurs in CONUS involving foreign nationals who are members of a foreign military force or civilian components of parties to the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, resulting in personal injury, death, or property damage (subpart G).

(8) A patient, other than potential claimants excluded by § 536.51(j), § 536.75 (r) through (t) and § 536.95, while under treatment by the Army Medical Service, dies, is injured, or otherwise disabled physically, mentally, or emotionally due to—

(i) A medical or surgical accident; or

(ii) Care that does not meet standards for non-Government facilities similar to the Army facility providing the care; or

(iii) An incident that could give rise to a claim against the United States under this regulation; or

(9) Competent authority so directs.

(b) Investigation by a claims officer is required when the situation or consequences described in paragraphs (a) (1) through (4), and (a)(9) of this section arise from activities of the ARNG or its personnel.

(c) Claims arising out of situations that may be expected to generate a substantial number of claims in a short period of time and are properly cognizable for settlement under this regulation (such as maneuvers or other special operations, emergencies, civil disturbances, aircraft and missile accidents, or disasters) will be investigated in accordance with procedures set forth herein by the claims office responsible for the area in which the incident occurred. No claim arising out of such an emergency situation will be paid until the concurrence of the Commander, USARCS has been obtained. (See § 536.8(c)(4)(iii).

(d) Where an accident occurs that could only result in a claim against the United States that is not payable

because of the incident to service rule, for example, barred by the Feres Doctrine, or the Federal Employees' Compensation Act (FECA), or the Longshoremen's and Harborworkers Compensation Act (LHWCA), the investigation may be limited to that necessary to make such a determination. However, claims officials will ensure that the appropriate commander or organization safety office is aware of the incident so that measures to avoid a recurrence can be pursued.

§ 536.16 Unit claims officers.

(a) Commanders' responsibility. Commanders and heads of DA and DOD components whose personnel, equipment or operations are involved in an incident giving rise to a potential or actual claim for or against the government (see § 536.15(a), will appoint a commissioned officer, a warrant officer or a qualified civilian employee to conduct an initial factual investigation of the incident.

(1) Installation commanders, brigade commanders, commanders of separate battalions, state ARNG Adjutant Generals and other commanders whose operations may generate a significant number of claims should consider appointing a claims officer on standing orders to facilitate training and coordination with the claims JA/attorney supporting the unit.

(2) Senior noncommissioned officers (E6 thru E9) may be appointed as assistant claims officers to perform duties under the supervision of a claims officer.

(3) Claims officer appointment orders should designate the claims JA/attorney who supports the unit as the claims officer's legal advisor. The orders will direct the claims officer to seek guidance from the claims JA/attorney at the outset of the investigation and before completion of the investigation whenever the potential value of the claim is in excess of $15,000 or an actual claim in excess of that amount has been filed.

(4) The scope and duration of the investigation will depend on the severity and complexity of the incident and may range from merely obtaining investigation reports already prepared by police and other investigators to a formal investigation by a board of officers under the provisions of chapter 5, AR 15–6. In addition to the provisions of this chapter, claims officers will follow the guidance in Chapter 5, DA PAM 27–162 and the advice of the claims JA/attorney listed as their advisor.

(5) Unit claims officers, in addition to making a report of investigation as specified in § 536.16(c), will account for and preserve all available evidence for use in future litigation. Evidence will be retained until released by the claims JA/attorney. Therefore, the claims officer will consult with the claims JA/attorney before disposal, destruction or repair of damaged property or other evidence. The claims officer will also act as the claims JA/attorney's point of contact for support and assistance from the unit.

(6) Claims officers must coordinate their work with concurrent criminal and safety investigations, which have priority within DA for access to accident sites and witnesses (see paragraph 1–4d, AR 15–6 and paragraphs 4–8a(2), 5–1a(1) and 5–4 AR 385–40). To the greatest extent possible claims officers should take advantage of the work already done on these other investigations (see § 536.19 of this part). Although there are limits on the information safety personnel can release to claims officers, some of the information in safety reports can be released (see paragraphs 1–10 and 5–6, AR 385–40).

(b) Report of claims officer—(1) Format. The claims officer will prepare a written report of investigation on DA Form 1208 (Report of Claims Officer), except that no recommendation on disposition of prospective claims will be entered in block 11. Where a formal investigation is conducted in accordance with the procedures in chapter 5, AR 15–6, the report may be submitted on DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers). If the claims officer does not feel either form is appropriate, the claims JA/attorney advising the claims officer will be consulted for guidance.

(2) Processing. The report should normally be completed and submitted to the appointing authority within 60 days of the accident/incident. If a final report will not be completed within that time one or more interim reports may be required by the commander or claims JA/attorney. The appointing authority will either return the report for further investigation or, if satisfied that it is as complete as possible given the information available, forward one copy of the report to the appropriate claims office with or without comment.

(3) Content. The report will contain findings of fact concerning the incident, to include the circumstances leading to the incident (e.g. training and experience of Army personnel involved) and the resulting property damage and/or injuries. These findings should be based on the evidence reasonably available within the time available for completion of the report. See chapter 5, DA PAM 27–162 for guidance on the information needed in the most common types of claims incidents.

(4) Limits on findings. The unit claims officers will not make findings concerning questions of liability or attempt to assess a dollar value on personal injuries. The findings should merely state the facts (who, what, where, when, and how). While a clear and complete statement of the facts will often make it clear who is responsible for the damage or injury, the determination of legal liability and the appropriate amount of compensation is the responsibility of the claims JA/attorney or the courts.

(5) Use and release of information. The report of this initial investigation may be used in conjunction with any administrative or legal action within DOD, such as line of duty investigations, reports of surveys, disciplinary actions under the Uniform Code of Military Justice or civilian personnel regulations, contract actions, or the collateral investigation of an Army accident required by paragraph 1–7c, AR 385–40. It may also be used by the commander or the unit's safety officers as the basis for their safety report (DA Form 285 and 285–1) when a centralized accident investigation or separate safety investigation is not conducted. It may be released to the public, to law enforcement personnel, state and federal regulatory agencies and other non-DOD entities subject to the provisions of the Freedom of Information Act and the Privacy Act.

(6) Disposition of reports. The claims processing office or area claims office having jurisdiction the type of claim involved will retain the claims officer's report until a claim is received or until six months after the time for filing a claim is past. If no claim is filed within the statutory limit, the report will be disposed of as an organizational record in accordance with AR 25–400–2.

(c) If an incident occurs, or a claim is filed, in a foreign country where no appropriate commander is located, investigative assistance may be sought from the Defense Attache or the Military Assistance and Advisory Group (MAAG). Incidents involving Attache or MAAG personnel, and claims arising from their activities, will be investigated in accordance with DIAM 100–1B, volume 1, section T, chapter 1, or AR 175, chapter 6, as appropriate.

(d) Under the provisions of DODD 5515.9 the Commander, USARCS, or designee, may request assistance from DOD components whose personnel are involved in incidents generating claims in the investigation of such claims, and may appoint DOD personnel as claims

officers for the purpose of conducting such investigations.

§ 536.17 Claims office responsibility.

(a) The claims JA/attorney receiving notice of an incident requiring investigation will immediately refer it to the appropriate claims officer and will notify, the Commander, USARCS of all major incidents involving serious injury or death, or where non Federal property damage exceeds $25,000. In some cases the claims JA/attorney assigned to the case may decide that a unit claims officer investigation is not necessary and waive the requirement.

(b) The heads of area claims offices and the chiefs of command claims services are responsible for ensuring that a prompt and thorough claims investigation is conducted of all claims for or against the Army arising in their area before they take or recommend final action on a claim. The investigation of incidents and claims arising out of the activities of the Corps of Engineers (COE) is the responsibility of the appropriate COE district or division Counsel. On claims in excess of $25,000, the claims JA/attorney assigned to the case should consult with the action officer at USARCS on the extent of the investigation (see § 536.21).

(c) The initial investigation by the unit claims officer is supposed to be completed promptly after the accident and may not be sufficient for final resolution of the claim. The unit's investigation will often be completed before a formal claim is filed and before all information about the full extent of the damages is available. An interview of the claimant may not have been possible or advisable. New information submitted with the claim may require further investigation. The more extensive investigation usually required for final action on a claims will often require the use of not just unit claims officers but also claims JA's/attorneys and investigators within the area claims office, experts within and from outside DOD and personnel from USARCS.

§ 536.19 Transfer of responsibility.

(a) Transfer of responsibility is authorized when the investigation may be more practicably conducted or completed by the claims officer of another installation or unit. When two or more commands are involved, the common superior commander or the Commander, USARCS will decide who will conduct the investigation. The commanding officer whose personnel or equipment is involved will furnish to the authority responsible for conducting the investigation all available information concerning the incident.

(b) Transfer will be accomplished by direct transmittal of a report of the incident in writing, with all available evidence (or orally, later confirmed in writing).

(c) When more than one Federal agency is or may be involved, the claims office receiving the claim will contact, at the field level, all other affected agencies in order to obtain the designation of a single agency to investigate and determine the merits of the claim. If such a designation cannot be agreed upon, USARCS will be notified in order to attempt to resolve the matter at agency level or to request the Department of Justice to make a designation. If the DA is the designated agency, the claimant will be notified to correspond only with the DA. This is not to be construed to preclude assistance in the investigation from other Federal agencies.

(d) If a claim is received that arises solely out of the activities of another Federal agency, the claim will be transferred to such agency and the claimant notified of such transfer. If the appropriate agency cannot be identified, the claim will be returned to the claimant informing him or her of this fact.

(e) When an incident occurs where the Army has no unit or installation conveniently located for conducting an investigation, but another U.S. military department does have an installation or unit in the vicinity, the responsible officer may request the commanding officer or commander of any organization of another U.S. military department to conduct or assist in the investigation. Similar requests from another military department will be honored if possible.

§ 536.19 Investigative procedures.

(a) *General.* A claims investigator will be guided by policies, procedures, and guidance set forth in DA Pam 27–162 or furnished by the Commander, USARCS. For other than routine incidents, guidance should be obtained from the claims approval or settlement authority who will have jurisdiction based on the probable value of the largest single claim arising from the incident. The extent and nature of the investigation should be guided by the specific requirement of the situation. If it is considered in the best interest of the Government, the Commander, USARCS, or the chief of a command claims service, may grant authority to deviate from the specific requirements contained in this regulation in a particular investigation, except as to procedures that are based on statute or have the force of law.

(b) *Information from other investigations.* (1) The investigator should obtain a copy of the report of any prior investigation that was made for purposes other than claims; for example—

(i) Police reports.
(ii) Line of duty reports.
(iii) AR 15–6 investigations.
(iv) Reports of survey.
(v) IG investigations.
(vi) Safety investigations.
(vii) Government contractor investigations.
(viii) Investigations by other governmental agencies such as National Transportation Safety Board; Food and Drug Administration; Center for Disease Control; Bureau of Alcohol, Tobacco, and Firearms; and Consumer Product Safety Commission.

(2) While such an investigation may not be adequate for claims and litigation purposes, it may contain evidence and leads of value to the investigator. If the report of the prior investigation contains diagrams, photographs, or witness statements, it is not necessary for the investigator to cover the same ground. Copies of such items may be made and included in the claims investigation. Generally, however, it will be necessary for the investigator to obtain more complete statements from witnesses. This is especially true for statements in medical quality assurance reports and reports of Army accidents prepared by Army safety personnel, as there are regulatory restrictions on the use of these statements in connection with claims and litigation.

(3) When military records fail to confirm the occurrence of a traffic accident upon which a claim is based, or substantial doubt arises regarding the nature or extent of the actual damages or injuries allegedly sustained, claims authorities should contact the Bureau of Motor Vehicles of the appropriate State or municipality to ascertain whether an accident report of the incident is a matter of record and, if so, a copy of such report should be obtained.

(c) *Statements of witnesses.* Perhaps the most important phase of an investigation is the securing of statements from available witnesses, including the claimant and persons associated with him or her, for example, persons riding in the vehicle. The claims investigator may take the unsworn statements of a witness or may, if the statement is satisfactory for claims purposes, use a statement secured by another investigator.

(d) *Photographs and diagrams.* Claims investigators should have cameras and obtain photographs and diagrams to describe the scene of incidents that they

investigate. Photographs and drawings should indicate when taken or made and by whom.

(e) *Claims requiring information of a specialized nature.* Depending on the nature of the incident, the investigator must decide on the specialized nature of evidence that will be required. In this regard, reference should be made to DA Pam 27–162 wherein specific items of information and documentation required for various categories of incidents are listed. Sufficient documentation of property losses or damages and personal injury or death should be obtained. Technical advice and assistance will be furnished by other DA agencies such as the Tank and Automotive Command or the Army Safety Center for vehicular accidents, or the Army Aviation Reserve Board and the Corpus Christi Army Depot for aircraft accidents.

(f) *Completion of investigation.* Upon completion of the investigation, the investigator must carefully review the report to ascertain whether all pertinent information has been included and inconsistencies reconciled. The review should take into consideration the following questions: Is the report of investigation complete enough to enable the approving authority to decide how the incident occurred? On whom does the responsibility for the incident rest? What is the extent of any loss or damage suffered? In the ordinary case, if the investigator has included in the report all information pertaining to the "what," "who," "where," "when," and "how" of the occurrence, the information needed by those who must decide the claim will be satisfied.

Claims Receipt and Disposition

§ 536.20 Presentation.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in the owner's name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) For real property. The mortgagor, or the mortgagee, if he or she can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) For personal property. A bailee, leasee, mortgagee, and conditional vendor, or others having title for purposes of security only, are not proper claimants unless specifically authorized in the chapter in question. If more than one party has an interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or by a duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has, in fact, incurred the expenses for which the claim is made. For claims cognizable under the provisions of the FTCA, see subpart D. (See § 536.86 for restrictions on damages allowable in claims involving death or personal injury under the Act of 9 October 1962 (10 U.S.C. 2737).)

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing his or her title or capacity. Where a claim is presented by an agent or legal representative—

(i) Written evidence of the authority of the agent or legal representative to act, such as a power of attorney, is required, or

(ii) Where the authority is conferred by State statute, a citation to that statute is required. (See DA Pam 27–162, app H, section I, paragraph 14–2; see also § 536.21 for additional requirements relating to settlements.)

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has both a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part of a single claim or cause of action. Under subparts C through J of this part, a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the portion of this regulation applicable to the type of claim involved.

(1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though he or she has been compensated for the repairs by his or her insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check that will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his or her undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished and where it is not, the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party and no settlement should be reached without approval by the carrier where required by local law (19 American Law Reports (ALR) 766, supplemented by 27 ALR 493, 37 ALR 838, 67 ALR 249, 88 ALR 665, and 106 ALR 1040). Also, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be used.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results

of said research. Such claims, where prohibited by State law, will also be barred by the Antiassignment Act. (See paragraph (c) of this section.)

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of the claim, make a written disclosure concerning insurance coverage as to—

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and if so, the amount of such claim; and

(v) Whether the insurer has paid the claim in whole or has indicated payment will be made.

(vi) Each subrogee must substantiate his or her interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(vii) Subrogated claims are not cognizable under subparts E, J or K.

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (31 U.S.C 3727 and AR 37–107), the following are null and void:

(i) Every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Antiassignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workmen's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by State statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant*—(1) Form of claim. (i) The claimant will submit his or her claim using authorized official forms whenever practicable. A claim is filed only when the vital elements (see Appendix B to this part) have been supplied in writing by a person authorized to present a claim (paragraph (a) of this section) unless the claim is cognizable under a chapter that specifies otherwise.

(ii) A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) Signatures. (i) The claim and all other papers should be signed in ink by the claimant or his or her duly authorized agent. Such signatures will include the first name, middle initial, and surname. A married woman should sign her claim in her given name; for example, "Mary A. Doe."

(ii) Where the claimant is represented, the supporting evidence required by paragraph (a)(5) will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) Presentation. The claim be presented to the commanding officer of the unit involved; the legal office of the nearest Army post, camp, or station; or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim may be submitted to any attache of the U.S. Armed Forces. (See AR 1–75.) Claims arising overseas which are cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Treaty of Mutual Cooperation and Security Between the United States of America and Japan Regarding Facilities and Areas and the Status of United States Armed Forces in Japan or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his or her claim. It is essential that independent evidence be submitted that will substantiate the correctness of the amount claimed.

(f) *Statute of limitations*—(1) *General.* Each statute available to the DA for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing chapter of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his or her decedent. Exceptions to this general rule may exist where the claimant does not know of the injury or damage, or does not know the cause of injury or damage. In those cases, the claim accrues when the injured party, or someone acting on his or her behalf, knows or should know about both the existence and cause of the injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See United States v. Kubrick, 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of payment for which indemnity is

sought or on which contribution is based.

(3) *Effect of infancy, incompetency, or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties. (For the effect of filing an administrative claim with an agency other than the Army, see § 536.53(b), § 536.77 (b) and (c) and § 536.102)

(4) *Amendment of claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially as in paragraph (a)(1) of this section. If the additional party had a separate cause of action, his or her claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of his or her property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing the time to determine whether the period of limitation has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

§ 536.21 Disposition of claims.

(a) *General.* When a claim is received, the date and the designation of the receiving command or office will be stamped or otherwise noted on all copies. If the receiving command or office is not responsible for the investigation, the claim will be transmitted to the claims office of the command or installation concerned.

(b) *By the command concerned.* Following completion of the claims investigation, the command claims service or claims office responsible for the claim may take the following actions on all claims other than those on for which USARCS has exclusive jurisdiction (see § 536.21(c)).

(1) If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid.

(2) If a claim in an amount in excess of the monetary jurisdiction of the claims office is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim.

(3) If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher claims authority. Any personnel claim forwarded to a higher authority for settlement will be accompanied by a memorandum of opinion. Prior to forwarding any tort claim, the USARCS AAO must be consulted and a joint decision reached on whether a memorandum of opinion must be submitted.

(4) If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. If the type and amount of the claim requires denial by a higher authority, the claim will be forwarded through claims channels to the appropriate authority accompanied by a claims memorandum of opinion recommending denial. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(c) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the type of claims listed below has not been delegated below USARCS. Command claims services or area claims offices receiving these types of claims will investigate them in accordance with this regulation and guidance from USARCS. Regardless of the amount claimed, a mirror copy of the claims will be sent to Tort Claims Division, USARCS immediately on receipt. Once the investigation is complete, the files on these claims should be forwarded directly to USARCS with a memorandum of opinion recommending disposition.

(1) Claims arising in the United States out of the actions of members of the force or civilian component of a NATO nation or headquarters (subpart G, statutory authority).

(2) Maritime claims for or against the Army other than those arising overseas within the jurisdiction of a command claims service or those within the jurisdiction of Corps of Engineers and other specially designated claims offices (See subpart H).

(3) Claims based on the denial of a security clearance by the government to civilian employee of defense contractors (DODD 5220.6, section 10, paragraph C).

(4) Claims by the U.S. Postal Service against the Military Postal Service Agency.

(5) In areas where the FTCA is applicable, any claim except those under chapter 11, arising out of an accident involving a POV driven by a member of the Army, or by ARNG personnel as defined in chapter 6, based on an allegation that the POV travel was within the scope of employment. On these claims the memorandum of opinion will include a specific discussion on the issue of scope of employment under applicable law (See chapters 4 and 5, AR 27–40).

(d) *Mirror file requirement.* In addition to the claims listed in § 536.21, USARCS is responsible for monitoring the investigation and settling the following claims. A copy of these claims and of any claims listed in paragraph (c) of this section, will be forwarded immediately on receipt to the Commander, USARCS, ATTN: JACS-TCD .

(1) A case that must be brought to the attention of the Department of Justice in accordance with The Attorney General's Regulations (DA Pam 27–162, appendix H).

(2) Any FTCA, MCA, or other tort claim in which the amount claimed exceeds $25,000.

(3) FTCA, MCA or other tort claims arising out of an incident if the combined amounts of the claims exceed $25,000.

(4) A claim within the exclusive jurisdiction of USARCS (see paragraph (c) of this section). The field claims office will provide USARCS duplicates of all correspondence, records and documents relevant to the investigation and processing of the claim as they are added to the file. Direct liaison and correspondence between USARCS and the field claims authority is authorized and encouraged on these and all claims.

In addition, heads of area claims offices in CONUS will advise the action officer at Tort Claims Division, USARCS who is responsible for their geographic area of all potential claims likely to meet the criteria in this paragraph or in paragraph (c) of this section, and will forward a copy of the investigation file to USARCS on request.

(e) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

(f) *Claims not cognizable under subparts C through L.* If a claim is determined not to be cognizable under this regulation, reference to DA Pam 27–162, chapter 8 may reveal a basis for compensation or consideration by another agency. If so, the claimant will be so advised. If, after investigation, it appears that the claim may not be settled under any law or regulation, the claim, the related file, and a memorandum of opinion will be forwarded through claim channels to the Commander, USARCS.

(g) *Blast damage claims.* All claims cognizable under subparts C, D and F which are based on damage to or loss of property due to explosions (for example, artillery firing, aerial bombing, or demolition of explosives) will be sent through USARCS to U.S. Army Ballistic Research Laboratories (USABRL), Aberdeen Proving Grounds, MD 21005–5055, for a technical opinion prior to settlement. See DA Pam 27–162, chap 5, sec IX.

§ 536.22 Claims memorandum of opinion.

(a) *Tort Claims Memorandum.* Unless otherwise agreed between the USARCS AAO and the area claims office (see section 536.21(b)(1)), the contents and arrangement of the Tort Claims memorandum will be as follows:

(1) *Part I. Identifying Data.* (i) Name, address, and social security number of all claimants/plaintiffs.

(ii) Name, address, and telephone number of attorney.

(iii) Date and place of incident.

(iv) Date and amount of claim/ad damnum of complaint.

(v) Brief (one sentence) description of claim/case.

(vi) Actual or potential companion claims (nature and status).

(2) *Part II. Jurisdiction.* Discuss applicable statute(s), whether the claim was timely and properly filed, and other jurisdictional matters.

(3) *Part III. Facts.* Provide a complete statement of the facts upon which the claim and any defense thereto are predicated. In each instance in which a fact is supported by documents or witness statements in the file, appropriate parenthetical references will be inserted into the statement of facts. Subparagraphs with descriptive headings will be used if appropriate, for example, background facts or facts about the incident.

(4) *Part IV. Legal Analysis.* List issues related to liability and the controlling law with applicable citations. Subparagraphs with descriptive headings will be used as appropriate and necessary, for example, law controlling factual issues, factual bases for claim as related to issues (duty, proximate cause), defenses, existence of joint tortfeasors. If the claim is barred by a jurisdictional defense, for example, Feres, Federal Employees Compensation Act, statute of limitations, this matter will be discussed separately. The position on liability will be stated at the end of the section.

(5) *Part V. Damages.* Discuss the following in the order listed under appropriate subheadings as necessary: Who can claim under applicable law, for example, wrongful death; description of injuries and treatment; description of property loss and proof thereof; types of special damages (such as, loss of earnings, loss of services, past and future care); type and nature of non-economic or general damages (use a summary in tabular form, as necessary, for special and general damages); effect of diminished liability on the value of the claim; effect of subrogation.

(6) *Part VI. Proposed Settlement or Action.* Discuss any proposed structured settlement. Discuss any prior offers, or negotiations and status. If a denial or final offer is indicated, so state.

(7) *Part VII. Recommendation.*

(8) *Part VIII. Document and Witness List.* (i) The witness list will include the name, SSAN, telephone number, and present and permanent address for each witness or medical reviewer.

(ii) Identify each document in the file.

(iii) For all medical malpractice claims, attach DD Form 2526 (Case Abstract for Malpractice Claims) as an enclosure. (See paragraph (c) of this section for additional instructions.)

(9) *Part IX. Responses to Pleadings* (for claims in litigation only)

(i) Proposed answer.

(ii) Defenses.

(iii) Counterclaims.

(iv) Crossclaims.

(v) Dispositive motions (identify and list).

(b) *Personnel Claims memorandum.* See section 536.168 for instructions on preparing a Personnel Claims memorandum.

(c) *Case Abstract for Malpractice Claims.* On all dental and medical malpractice claims, claims JAs will attach DD Form 2526 (Case Abstract for Malpractice Claims) to all memoranda prepared under paragraph (a) of this section, and forward to USARCS. Claims JAs will also submit this form to USARCS on all dental and medical malpractice claims settled or denied within their local authority. When a claim is transferred to USARCS without a forwarding memorandum prepared under paragraph (a) of this section, DD Form 2526 must still be completed and forwarded within 60 days after the medical records are available for review by the MTF/DTF risk manager (RM).

(1) Claims JAs/MCJAs will coordinate the completion of the form pertaining to the Standard of Care, Diagnoses, and Procedures with the MTF/DTF RM or the RM's designee. If the RM does not provide this information, claims JAs/MCJAs will note the reason and submit the form to USARCS. The sections pertaining to Provider Information and Type of Provider and Specialty of DD Form 2526 will not be completed on the form submitted to USARCS. OTSG will task subordinate commands to forward provider information on settled claims.

(2) Claims JAs are required to submit one DD Form 2526 for each incident (course of treatment or nontreatment that results in an injury) for which a claim has been filed. Derivative claims do not require a separate report. However, separate reports are required when claimants allege physical injury to more than one claimant (for example, an infant's claim for brain damage as a result of birth trauma and a mother's claim for physical injury caused by the delivery would require two reports). When a claimant alleges negligent medical care at more than one MTF/DTF, USARCS will designate the claims JA who will complete the DD Form 2526.

(d) *Subsequent action.* It is not necessary for each claims authority who considers the claim to write a separate memorandum. If a claims approval or settlement authority agrees with the memorandum of opinion written by another authority, he or she can adopt the earlier memorandum by merely stating that he or she concurs in the adopted memorandum and stating the nature of the action. If there is disagreement, in whole or in part, with the earlier memorandum, such disagreement should be stated and reasons therefor set forth in a separate

memorandum or in an addendum. The approval or settlement authority will personally sign the action, indicating position title.

§ 536.23 Actions.

The following actions may be taken as appropriate:

(a) Transmittal of the claim to the appropriate claims office for proposed disposition.

(b) Disapproval of the claim provided the person signing the action is a settlement authority. (See appendix B to this part).

(c) Final offer. (See appendix B to this part).

(d) Approval and certification of the claim for payment.

(1) SF 1034 (Public Voucher for Purchases and Services Other Than Personal) will be used on all claims settled under this regulation except claims settled under subpart D which will be paid utilizing an SF 1145 (Voucher for Payment Under the Federal Tort Claims Act). (See § 536.35(a)(1) for exceptions.)

(2) When an SF 1034 is to be paid by the GAO, the certification block of the SF 1034 will not be signed by Army Officials. GAO officials will certify any payment made by that agency. (See § 536.35(a)(1) for exceptions.)

(3) Payment of a claim under subpart D in excess of $2,500 is obtained by forwarding necessary documentation to the GAO. Complete information on the requirements to effect such payments are set forth in § 536.35(b). Note that the approval or settlement authority signs only the approval block (lower left) of the SF 1145 before submitting a claim to the GAO for payment.

(e) Subsequent action. See § 536.22(d).

Liability and Quantum Determinations

§ 536.24 General considerations.

(a) *Liability.* In the adjudication of tort claims arising in the United States, the liability of the United States generally is determined in accordance with the law of the state or country where the act or omission occurred, except that any conflict between local law and an applicable United States statute will be resolved in favor of the latter. However, in claims arising in foreign countries, liability may be based in whole or in part on local law or as otherwise provided in subpart C for settlements of claims of United States inhabitants arising overseas under the Military Claims Act. (See § 536.55(c). Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) *Quantum exclusion.* The costs of filing a claim and similar costs (for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim) are not proper quantum elements and will not be allowed.

(c) *Property damage.* Property damage compensable under the tort claims provisions of this regulation means damage to tangible real or personal property (see glossary). It does not include mere diminution of value of real property unless there is some corresponding physical damage to the property, nor does it include damage to reputation, employment rights or constitutional rights. Other remedies may be available for such injuries but they are generally not cognizable under the FTCA, MCA, FCA or the Maritime Claims Settlement Act.

§ 536.25 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the armed forces of the United States or a civilian employee of the United States that accrued incident to his or her service is not payable under this regulation. A property damage claim that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 (subpart K) or the MCA (subpart C), depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants listed in § 536.163, which is otherwise cognizable under § 536.164, must first be considered thereunder. If a claim is not clearly compensable under subpart K, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of DOD, it may be cognizable under either the MCA or the FTCA. The claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury has been determined to have not been incurred incident to the member's service should subparts C and D be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in U.S. v. Brooks, 176 F.2d 482 (4th Cir. 1949) requiring setoff of amounts obtained though military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits funded by general Treasury revenues, not by the claimant's contributions, may also be used as a setoff against the settlement, for example, *Overton* v. *United States*, 619 F.2d 1299 (8th Cir. 1980).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion and this defense could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be forwarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

§ 536.26 Property damage appraisers.

(a) Appraisers will be used as follows:

(1) Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the administrative settlement of the claim. Appraisals may not be economically feasible in some cases involving property damage of less than $100 per item and the extent of damage may be determined by personal inspection and agreement with the claimant.

(2) Where an appraisal is considered necessary, the claims officer and claimant should mutually agree, whenever possible, upon a disinterested appraiser after determining the approximate cost of the appraisal. The method of payment should be agreed upon in advance.

(i) If the claimant pays for the appraisal and can substantiate payment thereof by a paid bill or cancelled check, such cost is a reimbursable element of damage.

(ii) If the DA is absorbing the cost of the appraisal, payment is made from Appropriations, Operation and Maintenance, Army (AR 37–108, paragraph 3–74).

(3) If a single appraiser cannot be agreed upon, a joint appraisal can be

conducted (that is one in which an appraiser chosen by claimant and an appraiser chosen by the Government both examine the property and submit their respective appraisals). Joint appraisals should be coordinated and monitored by the claims officer. The cost of a single or joint appraisal should be commensurate with the amount of damage allegedly sustained and the fee charged by other appraisers for similar work.

(b) Appraisals by other organizations within the DA, the other Armed Services, or other Federal agencies may be used in addition to or in lieu of independent appraisal when obtainable. Other organizations within DA may be called upon to furnish such appraisals; for example, engineer districts will furnish an appraiser, if available, in regard to damage to buildings or diminution in value of real property, provided the requesting office defrays travel expenses for the individual's TDY.

§ 536.27 Independent medical examinations.

(a) In claims involving serious personal injuries, for example, cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The necessity for, and the cost of, the examination should be commensurate with the severity of the injuries allegedly sustained and the fee charged by other examiners for similar work. To preclude duplication of effort and expense, both claimant and the claims officer must agree, in advance, upon the following:

(1) The examiner chosen to conduct the examination and the location of the medical facility (whether governmental or civilian).

(2) That the examiner's report constitutes the best evidence of the nature and extent of claimant's injuries.

(3) The method of paying for the examination.

(b) The necessity for conducting the medical examination must be approved by the claims office having monetary jurisdiction over the largest claim or potential claim arising out of the incident. If a medical report is submitted in conjunction with the filing of a claim, such report should be included in the file.

(c) Payment of a civilian examiner's fee can be accomplished in either of the following two ways:

(1) The claimant can incur the cost of the examination and submit a paid receipt or cancelled check, which constitutes a reimbursable element of damage in evaluating the claim.

(2) The DA can absorb the cost of the examination (payment is made from Appropriations, Operation and Maintenance, Army (AR 37–108, paragraph 3–74)) by the claims office having responsibility for investigating the claim.

(d) As to an examination costing in excess of $750 or when local funds are exhausted, a request for funding may be directed to Commander, USARCS with appropriate justification.

(e) If the parties cannot agree upon an independent examiner, and if either the examiner chosen by the claimant or the results of the examination are not acceptable, the Government may demand that the claimant be examined by an examiner acceptable to the Government.

(f) Examinations of claimants at Army medical treatment facilities are authorized by AR 40–3. Such examinations may be used in addition to or in lieu of the foregoing where indicated.

§ 536.28 Effect on award of other payments to claimant.

The total award to which the claimant (and subrogees) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tortfeasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to the section entitled "advance payments" of this subpart.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States, including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth and so forth) whose employee or ARNG member (32 U.S.C. section 101(3) caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Department of Veterans Affairs (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a nonservice connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410b for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410b has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) The value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriations.

(12) From collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his or her insurers or other subrogee, or under workmen's compensation insurance coverage if subrogated interests are allowable, the award based on total damages will be

apportioned in relation to their separate interests (§ 536.20).

(e) After deduction of permissible collateral and noncollateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

§ 536.29 Claims with more than one potential source of recovery.

(a) The Government seeks to avoid multiple recovery (that is, claimants seeking recovery from more than one potential source) and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources (§ 536.28), which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(b) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, where it appears that the responsible Army employee may have applicable insurance coverage, the employee should be queried as to whether he or she has liability insurance.

(1) If so, determine if his or her insurer has made or will make any payment to claimant. Under applicable State laws, the United States may also be an insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; United States v. State Farm Mutual Ins. Co., 245 F. Supp. 58 (D. Ore. 1965.)) Therefore, where there may be applicable insurance coverage, the policy language should be reviewed, together with the rules and regulations of the State insurance regulatory body, or determine whether—

(i) The United States comes within the definition of "insured".

(ii) The exclusion of the United States from policy coverage conforms with state laws and policy.

(iii) Appropriate consideration has been given for a policy where the United States has been excluded from coverage.

(2) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier to contact the claims officer or attorney. The case should be followed to ascertain whether the employee's insurer has made or will make any payment to the claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee's insurance carrier.

(c) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the employee should be required to notify his or her insurance carrier according to the policy and inform Army claims authorities of the name of the insurance carrier and details of the coverage. Except when the driver's statute is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(d) Where the responsible Army employee is "on loan" to another employer other than the United States (for example, an ROTC instructor at a civilian institution or performing duties for a foreign government), it should be determined whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and appropriate contribution or indemnification should be sought. In the case of foreign governments, applicable treaties or agreements are controlling.

(e) A great many claims cognizable under the FTCA are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to claimants by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, indemnity, and contribution may permit shared financial responsibility, but even in jurisdictions that do not permit contribution, a compromise settlement can be reached with the other tortfeasor's insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasers involved and the status of any claims made, and to demand contribution or indemnity where substantial reason exists to believe that liability for the loss or damage should be shared.

(f) When a claim is filed against the Government under a chapter that does not permit the payment of a subrogated interest (subparts E, J, K), it is important to ensure that full information is obtained from the claimant regarding insurance coverage since it is the legislative intent of the statutes upon which these chapters are based that insurance coverage be fully utilized before using appropriated funds to pay the claims.

Settlement Procedures

§ 536.30 Settlement.

(a) *General.* Settlement means denial or payment of a claim in full or in part. When an approval or settlement authority determines that a claim is meritorious in an amount within his or her monetary jurisdiction, the claim will be approved in that amount under the statute determined to be proper regardless of the statutory basis asserted by the claimant. Every effort will be made to settle claims at the lowest level possible commensurate with the actual value of the claim.

(b) *Award of full amount claimed.* If an approval or settlement authority approves a claim in full, the claim will be certified for payment to the appropriate disbursing officer. Enclosures listed in § 536.35 will be forwarded with the claim. The claimant will be notified of the action taken on the claim. A settlement agreement is required prior to payment.

(c) *Award of less than full amount.* When an approval or settlement authority determines that a claim is meritorious in part, he or she will—

(1) Notify the claimant in writing of his or her action.

(2) Request the execution of a settlement agreement (in triplicate) in final and complete settlement of the claim in the reduced amount.

(3) If an approval authority, inform the claimant that if he or she does not desire to accept the award, he or she should indicate in the reply the reasons for rejection. If a settlement authority, and the action is taken under subparts C or F, inform the claimant of the right to appeal. (See § 536.63 and § 536.103.) DA Pam 27–162 provides sample formats for letters notifying claimants of the actions taken on their claims. (Figure 5–10 is to be used by field approving and settlement authorities; figures 5–8 through 5–11 are to be used by claims authorities in conjunction with § 536.37 of this part.)

(d) *Nonacceptance of reduced award.* When a claimant rejects a partial award, the approval authority may reconsider the matter and, if justified, make further efforts to settle the claim. When further efforts to settle appear unwarranted, the claim and related file will be forwarded to the settlement authority having jurisdiction over the largest claim or potential claim arising out of the incident with a memorandum of opinion. The claimant should be advised of such referral.

(e) *Civil works claims.* Engineer civil works claims settled under the provisions of the FTCA in an amount of $2,500 or less normally are paid out of funds controlled by the COE rather than claims appropriations. Unsettled claims in this category should, therefore, be forwarded to the Commander, USARCS. An information copy will be sent to the COE, ATTN: Chief Counsel, unless the latter waives that requirement. Civil works claims received outside engineer channels should be forwarded without further action to the district or division engineer in whose area the incident occurred, or to the COE, ATTN: Chief Counsel.

(f) *Settlement of property damage claims.* All claims submitted for only property damage or for only personal injury should be evaluated for other potential claims. Under tort claims statutes, only one payment may be made to a claimant on all claims arising out of a single incident. Therefore, a property damage claim arising from an incident in which the claimant sustained injury should not be paid unless the claimant executes a release for any potential injury claim. Likewise, when a property damage claim is settled the claimant should be informed that subsequent claims for hidden damage or loss of use are precluded by the settlement.

§ 536.31 Claims forwarded without settlement.

(a) *Claims beyond monetary jurisdiction.* If the chief of a command claims service or the head of a claims office considers a claim meritorious in an amount exceeding their jurisdiction, they will forward the claim with a memorandum of opinion to the settlement authority having jurisdiction over the largest claim or potential claim arising out of the incident. The claimant should be informed of this referral. In most cases the claimant should not be informed of the amount of award recommended. However, for claims arising under the Foreign Claims Act notice of the amount recommended may be required in accordance with § 536.156.

(b) *Claims recommended for disapproval.* If a claim is forwarded to higher authority with a recommendation for denial, the claimant will be advised of this referral but not of the recommendation.

(c) *Companion claim.* When two or more claims arising from the same incident are by reason of differences in amounts within the monetary jurisdiction of different approval or settlement authorities, all such claims will be forwarded to the authority having jurisdiction over the claim presented in the greatest amount. This authority may either settle the claims or return the claim to the appropriate field claims office for settlement in accordance with his or her guidance.

(1) The same procedure will be followed when a potential claim exists in an amount estimated to be beyond the jurisdiction of the approval or settlement authority actually considering the matter. For example, the foregoing applies when a small subrogated property damage claim is received arising from an incident in which severe personal injury or death has occurred but to which no claim has yet been filed. In a case of clear liability, authorization to settle the claim within the monetary jurisdiction of the requesting officer may be obtained telephonically or by other expeditious means.

(2) Similarly, where there is a claim for property damage and no evidence (for example, police report, report of survey, collateral accident investigation, and witness interviews) of personal injury, the property damage claim may be settled by the authority having jurisdiction. However, where there is evidence of personal injury, the foregoing caveat regarding settlement and payment of lesser claims will apply. In such instances the claimant will be informed that settlement of a property damage claim will preclude settlement of a subsequently filed personal injury claim and vice versa. (See § 536.176 on personnel claims and § 537.32 on companion claims in litigation.)

(d) *Property claim of a claims authority or superior.* A claim arising from loss or damage to the property of an approval or settlement authority or his or her superior officer in the chain of command will be forwarded without recommendation to the next higher settlement authority (in the case of a division, this would be a corps level settlement authority; in an overseas area, this includes a command claims service) or to USARCS.

§ 536.32 Settlement agreement.

(a) *General.* (1) Except under subpart K, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. A settlement agreement may be required in other instances when, in the opinion of the adjudicating authority, good legal practice so dictates; for example, where family or other multiple interests may be involved.

(2) A DA Form 1666 may be used for settlement of claims under the FTCA for less than $2,500 and for all other claims payable from Army funds. Claims payable in excess of $2500 under the FTCA will be settled using Standard Form 1145, Voucher for Payment Under the Federal Tort Claims Act. In some cases a special settlement agreement may be necessary to reflect the full understanding of the parties. However, all such special agreements should incorporate the language of the acceptance block on the Standard Form 1145.

(3) Acceptance by a claimant of an award under subparts C and K constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim. The claimant should be so advised prior to the initiation of negotiations. Where this is done orally and the claimant is unrepresented, a memorandum of the conversation should be placed in the file and a copy furnished to the claimant. Also, settlement negotiations with unrepresented claimants should also be preserved in the form of

memoranda retained in the file with a copy furnished to the claimant. While a settlement agreement is not required in claims adjudicated under subpart K, the settlement authority approving payment may require one at his or her discretion.

(b) *Claims involving minors.* (1) Generally, only a court-appointed guardian of the estate of a minor, or a person performing a similar function under the supervision of a court, can execute a binding settlement agreement relative to a minor's claim. Therefore, a guardian of the estate of the minor or similar functionary must be appointed by a court of competent jurisdiction and must execute a settlement agreement before a claim is approved and paid. (See § 536.35.) However, this requirement can be eliminated and the settlement agreement can be signed by a parent, next-of-kin, or a friend if the contemplated payment is small and the cost of obtaining a court-appointed guardian would materially deplete the award.

(2) In foreign countries where the amount agreed to does not exceed $2,500.00, the requirement for obtaining a guardian may be eliminated. However, in areas where the FTCA (subpart D) applies, local law should be consulted as a basis for determining whether a court appointed guardian should be required. The requirement to appoint a guardian should not be imposed until a particular claim is determined to be meritorious in an amount that would require the appointment of a guardian. The claimant should be advised of this requirement well in advance of settlement negotiations so that the cost of establishing guardianship can be considered by the claimant as a factor in evaluating the claim. This requirement also can be eliminated if local law authorizes or requires a claim such as for the death of a parent of the minor, to be presented on behalf of the estate of the decedent by an administrator, administratrix, or the like. In such cases, a settlement agreement signed by the administrator, administratrix, or the like will suffice if, under local law, such action is binding on the minor.

(3) The above provisions are in addition to, not in lieu of, the requirements of § 536.20(a)(5).

(c) *Claims involving incompetents.* The above stated principles may also be applied in appropriate cases involving incompetents. Authority to waive the foregoing requirements in appropriate cases is delegated to the Commander, USARCS. If it is felt that the foregoing requirements are materially impeding settlement of the claim, the matter should be brought to the attention of the Commander, USARCS for appropriate resolution.

(d) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

§ 536.33 Vouchers.

Vouchers are prepared in an original and three copies. The original and two copies (one marked as comeback copy) will be transmitted to the disbursing office and one copy retained as a suspense copy. Upon payment of the claim, the disbursing office will return the comeback copy, which will be included in the file when it is transmitted to the Commander, USARCS for post settlement review.

§ 536.34 Accounting codes.

(a) Certifying an approved claim for payment creates an obligation against the claims appropriation for the fiscal year then in progress. Accordingly, the voucher will bear the appropriate accounting code for both the appropriation charged and the current fiscal year, irrespective of the date the claim accrued or was filed. Confusion sometimes arises at the end of a fiscal year; for example, an approved claim is certified for payment on 28 September (the last business day of a fiscal year), but it is obvious that it will not be actually paid (i.e., a check issued by the disbursing activity) until on or after 1 October (the first day of the following fiscal year). At the time the check is issued, the accounting code will not be advanced to the next fiscal year. Claims checks are issued using the accounting code of the fiscal year in which the claim was certified for payment (i.e., the fiscal year in which the voucher was signed).

(b) The accounting code for each type of claim remains constant, except for the third digit of the code which is the second digit of the fiscal year (e.g., "0" for "FY 90"). The accounting codes for claims appropriations are published each fiscal year in the AR 37–100 series. Accounting codes used in the payment of claims and refunds, and their references, are listed below; the "X" denotes the space where the second digit of the fiscal year appears.

TABLE B–1.—FREQUENTLY USED CLAIMS ACCOUNTING CODES

Accounting code: 21X2020 22–0205 P202097.23–4230 FAJA S99999, 21X2020 22–0305 P202097.23–4230 FAJA S99999.
Reference: Subpart C (Military Claims Act).

Accounting code: 21X2020 22–0203 P202097.21–4230 FAJA S99999, 21X2020 22–0303 P202097.21–4230 FAJA S99999.
Reference: Subpart C (Military Claims Act).
Use symbol only if claim approved for $2,500 or less—if approved for more than $2,500, allotment symbol will be filled in by GAO.

Accounting code: 21X2020 22–0208 P202097.26–4230 FAJA S99999, 21X2020 22–0308 P202097.26–4230 FAJA S99999.
Reference: Subpart E (Nonscope Claims).

Accounting code: 21X2020 22–0206 P202097.24–4230 FAJA S99999, 21X2020 22–0306 P202097.24–4230 FAJA S99999.
Reference: Subpart F (National Guard Claims Act).

Accounting code: 21X2020 22–0207 P202097.25–4230 FAJA S99999, 21X2020 22–0307 P202097.25–4230 FAJA S99999.
Reference: Subpart H (Maritime Claims).

Accounting code: 21X2020 22–0204 P202097.26–4230 FAJA S99999, 21X2020 22–0304 P202097.26–4230 FAJA S99999
Reference: Subpart J (Foreign Claims Act).

Accounting code: 21X2020 22–0201 P202097.11–4230 FAJA S99999, 21X2020 22–0301 P202097.11–4230 FAJA S99999.
Reference: Subpart K (Personnel Claims Act).

§ 536.35 Payment.

(a) *General.* Except as provided in § 536.35(a)(1), when a claim has been determined to be payable, the approval or settlement authority will transmit the following to the appropriate disbursing office:

(1) The voucher (SF 1034 or SF 1145 as appropriate) in triplicate, with a request that one copy be returned with voucher number and date of payment noted thereon.

(2) Two copies of—

(i) The claim. (Under subpart K this means DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service).)

(ii) The settlement agreement, as required.

(iii) Actions and other documents as required; for example, DA Form 1668 signed by the approving or settlement authority (as the substitute for action in small claims under subparts C, D, E, F, H or J) attorney general approval and court approval on claims for minors and incompetents.

(iv) Original power of attorney, where appropriate.

(b) *Electronic payment procedures.* At installations where electronic payment procedures have been implemented, the approving or settlement authority will electronically transmit payment information to the servicing finance and accounting office. The claim, the settlement agreement, any actions or other required documents, and the original power of attorney will not be transmitted to the finance and accounting office, but will be retained in the claims file. Instead, a "payment report" produced by the claims automation program provided such offices by USARCS, which evidences or supports the fact that a claims official has approved a claim payment, will be transmitted to the disbursing activity in accordance with locally established procedures. The method of transmission used should not result in avoidable or significant delay in the issuance of checks for claims payments. The payment report includes—

(1) The name of the payee.

(2) The payee's social security number (if available).

(3) The payee's address.

(4) The date the claim was filed.

(5) The claim number.

(6) The amount claimed.

(7) The amount of the approved payment.

(8) The date the payment was recorded in claims records.

(9) The claims office identification.

(10) The claims office's office code.

(c) *Payments in excess of $2,500 under the FTCA (§ 536.78).* Claims paid in excess of $2,500 under the FTCA will be submitted to the GAO with the same documentation as indicated in (a) above but with the following exceptions:

(1) Standard Form 1145 will be signed by the settlement authority on the lower left side only. The space on the right side for the authorized certifying officer will not be signed.

(i) Where a minor is payee, the full legal name of the individual should be listed on the voucher; for example, "John Doe, Sr., as guardian of John Doe, Jr." Descriptive words such as "Mrs. John Doe and her three minor children" should not be used.

(ii) The accounting classification will not be placed on the voucher. This is accomplished by the GAO as the payment is made from Treasury funds.

(2) The letter of transmittal to the GAO will include a statement that the individual whose signature appears on the voucher as certifying authority is the person having authority to act under the provisions of the FTCA and § 536.80.

(3) The Attorney General will approve payments in excess of $25,000 in lieu of action of the approval or settlement authority.

(d) *Advance payment.* When it has been determined that an advance payment will be made, the approval or settlement authority will transmit to the appropriate disbursing officer—

(1) SF 1034 (in triplicate) with a request that one copy be returned with voucher number and date of payment.

(2) The original copy and one copy of the action by the approval or settlement authority authorizing advance payment and the Advance Payment Acceptance Agreement. (See § 536.47)

(e) *Payment involving minors.* Payment will be made to the individual who executed the settlement agreement on behalf of the minor.

(f) *Lost, stolen, forged, destroyed, or undeliverable Government checks.* Army disbursing officers have the authority to issue substitute checks for checks that have been issued by the Army and that are subsequently lost, destroyed, or rendered undeliverable. (See AR 37103, chap. 4, secs. VII through X.) Some Federal agencies do not yet have this authority. Inquiries from payee or endorsees of Army-issued checks should be referred to an Army comptroller; inquiries regarding other agencies should be referred to the specific agency involved. For claims paid by the GAO, if the Treasury check is lost or stolen, the payee or endorsee should be referred to the Check Forgery Insurance Fund, Department of the Treasury (31 U.S.C 3343, 31 CFR 235.1 through 235.6). The Fund can reimburse such losses provided the specific requirements of the Statute are met. The Fund is administered by the Commissioner, Financial Management Service, Department of the Treasury, 3700 East-West Highway, Hyattsville, MD 20782.

§ 536.36 Effect of payment.

Acceptance of an award by the claimant, except for advance payment, constitutes for the United States, military personnel, or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant, based on the act or omission. However, on tort claims only one payment may be made for all damages a claimant sustains from an incident. Therefore, a signed unconditional settlement agreement is needed to ensure that the claimant understands the finality of accepting payment.

§ 536.37 Notification as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his or her claim should be based on whether the claimant has a judicial remedy following denial or an administrative recourse to appeal.

(b) *Final actions under subpart D.* If the settlement authority has information that could be a persuasive factor for the claimant as to whether to resort to litigation, such information may be orally transmitted to the claimant and, in appropriate cases, released under normal procedures in accordance with AR 340–17 or AR 340–21. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his or her right to bring an action in the appropriate U.S. District Court not later than 6 months after the date of mailing of the notification. See DA Pam 27–162, figures 5–8 and 5–9.

(c) *Final actions under subparts C, F and J.* Final agency actions under subparts C, F or J are subject to appeal and the claimant will be so informed. Also, the notice of final action will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for denial. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him or her is asserted as a basis for denying the appeal (see DA Pam 27–162, figs 5–8 and 5–9).

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim or the statute under which it may be considered, claims denied on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim is conducted) should contain in the denial letter a statement that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on

the merits of the claim, liability may be expressly denied.

(e) *Claims that may be considered under more than one chapter.* In doubtful cases as to whether subparts C, D and F are the appropriate chapters to consider the claim, the claimant will be advised of the alternatives; for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his or her alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

(f) *Denial after litigation.* On those claims cognizable under the FTCA in which the claimant files suit after six months without agency action, a formal denial will be sent to the claimant unless the Assistant United States Attorney responsible for the litigation of the suit expressly directs otherwise. The denial will be on the basis that the claim is no longer amenable to administrative settlement. Other reasons for denial may also be given.

Small Claims

§ 536.38 General.

This section provides an expeditious procedure for the investigation and payment of claims (regardless of the amount claimed) that may be without extensive investigation. If it appears that a claim should be denied or cannot be settled within the limits specified in this section, it will be fully investigated under normal procedures. The use of small claims procedures is not mandatory; however, these procedures should be used whenever considered appropriate in the judgment of the claims approval or settlement authority, as considerable processing time and expense is usually saved thereby. If a fully investigated claim is received by an approval or settlement authority, which in his or her opinion could properly have been processed under small claims procedures, the claim will be settled in accordance with normal procedures. Appropriate corrective action will be taken to ensure the use of small claims procedures in similar future cases.

§ 536.39 Investigation.

The investigation will be made so as to develop most expeditiously the facts necessary to determine whether the claim is meritorious and in what amount. The evidence required may be obtained by telephone, from incident reports, and other forms of hearsay evidence. Written statements of witnesses, written estimates of repairs, and the like are not required. The approving authority must be convinced and state on DA Form 1668 that—

(a) The United States is liable for the damage or injury incurred.

(b) The claimant is a proper claimant.

(c) The amount approved, as claimed or agreed upon, is reasonably substantiated.

§ 536.40 Report of investigation.

When it appears that a small claim may arise, the report of investigation will be prepared on DA Form 1668. The investigator will append a brief summary of the evidence developed. The summary may be used as a basis for completion of the investigation after a claim has been filed. This report is exempted from control in accordance with AR 335–15, paragraph 7–2t.

§ 536.41 Processing.

(a) If the amount claimed under chapter 11 is not more than $1,000, or in the case of a tort claim is not more than $2500, and is considered meritorious in full, the claims JA/attorney will complete DD Form 1842 or DA Form 1668 and pay the claim.

(b) A claim under subpart K is meritorious in an amount of $1,000 or less, or if a tort claim is meritorious in the amount of $2500 or less, the claim JA/attorney may settle the claim.

(c) After coordination with the responsible approving or settlement authority, unit claims officers may be authorized to attempt to procure a settlement agreement. If a settlement agreement is obtained, the claims officer will complete the small claims certificate for amount of recommended payment and transmit it, in triplicate, with the claim and settlement agreement, to the approval or settlement authority.

(d) If a claimant refuses to accept a sum offered under this section or if it appears that a claim should be disapproved, the small claims procedures will not be employed; the claim will be fully investigated and processed.

(e) Nonappropriated fund claims will be forwarded by the approval or settlement authority for payment as prescribed in subpart L.

(f) Claims under chapter 11. DA Form 1668 will not be employed in the settlement of small claims under chapter 11. Such a claim will be submitted on DD Form 1842. Procedures in subpart K will be used.

§ 536.42 Settlement agreement.

When a claimant is available and agrees to accept a sum less than originally claimed, he or she will be requested to sign, in ink, a statement to that effect on any open space on each copy of the claim form (SF 95 (Claim for Damage, Injury, or Death)). If not readily available, the claimant will be requested to sign and return in triplicate a DA Form 1666 or Standard Form 1145, which will be attached to the claim form.

§ 536.43 Payment.

(a) If a small claim is payable under any chapter except subparts G and I, the approval or settlement authority will allow the procedures of either § 536.35(a) and § 536.35(a)(1).

(b) [Reserved]

(c) Except for claims cognizable under subpart K and personnel claims cognizable under subpart L an approval authority who has been appointed an agent officer under AR 37–103, chapter 15, may pay the claim, and will require the claimant to sign, in triplicate, a receipt in the following language:

_____

(Date)

I hereby acknowledge receipt of _____ in full satisfaction and final settlement of the within claim.

_____

(Signature)

_____

(Name printed)

(d) This above receipt may be printed, stamped, typed, or written in ink in any available space on the front or back of the signed claim form. If not on the claim form, the receipt will be modified to identify and will be firmly affixed to the appropriate claim.

Advance Payments

§ 536.44 Authority.

This section implements the act of 8 September 1961 (75 Stat. 488, 10 U.S.C 2736) as amended by Public Law 90–521 (82 Stat. 874), Public Law 98–564, and Public Law 100–456. No new liability is created by 10 U.S.C 2736, which merely permits partial advance payments on meritorious claims as specified above. (See § 536.178 for emergency partial payments in personnel claims, which are not governed by 10 U.S.C 2736.)

§ 536.45 Conditions for advance payment.

(a) An advance payment not in excess of $100,000 is authorized in the limited category of claims resulting in immediate hardship arising from incidents that are payable under subparts C, F or J. An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of subparts C, F or J.

(2) There exists an immediate need of the person who suffered an injury, damage, or loss, or of the family of a

person who was killed for food, clothing, shelter, medical, burial expenses, other necessities, or other resources for such expenses that are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

§ 536.46 Authorization.

The authorities listed below are authorized to make advance payments as follows:

(a) Under subparts C and F of this part, TJAG and TAJAG may make advance payments in amounts not exceeding $100,000; the Commander, USARCS, in amounts not exceeding $25,000; and the authorities designated in § 536.61(a) (4) and (5) and § 536.103(c)(3), in amounts not exceeding $10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of $10,000 will be forwarded to USARCS for processing.

(b) Under subpart J of this part, three-member claims commissions may make advance payments under the Foreign Claims Act in amounts not exceeding $10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

§ 536.47 Advance payment acceptance agreement.

Prior to making any advance payment, the authority approving such payment will obtain an executed acceptance agreement from the claimants.

Subpart C—Claims Cognizable Under the Military Claims Act

§ 536.48 Statutory authority.

The statutory authority for this chapter is contained in the act of 10 August 1956 (70A Stat. 153, 10 U.S.C. 2733), commonly referred to as the "Military Claims Act," as amended by Public Law 90–522, 26 September 1968 (82 Stat. 875), Public Law 90–525, 26 September 1968 (82 Stat. 877), Public Law 93–336, 8 July 1974; the act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90–521, 26 September 1968 (82 Stat. 874); and the act of 30 October 1984, Public Law 98–564.

§ 536.49 Scope.

This subpart is applicable in all locations and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death; personal injury; or damage, loss, or destruction of property—

(a) Caused by military personnel or civilian employees of the DA acting within the scope of their employment.

(b) Incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or civilian officer or employee whose injury or death is incident to service.

§ 536.50 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under this chapter when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the DA acting within the scope of their employment, including certain Red Cross volunteers meeting the criteria in AR 40–3, paragraph 2–42, or

(2) Incident to the noncombat activities of the DA.

(b) *Property.* The loss or damage to property that may be the subject of claims under this chapter includes—

(1) Real property used and occupied under lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent. (See DA PAM 27–162, paragraph 8–46.)

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. (See DA Pam 27–162, paragraph 8–41.) Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under subpart K.

(3) Registered or insured mail in the possession of the DA, even though the loss was caused by a criminal act. (See DA Pam 27–162, paragraph 8–61 for settlement of claims by the U.S. Postal Service.)

(c) *Effect of FTCA.* A claim may be settled in the United States only if the FTCA has been judicially determined not to be applicable to claims of this nature or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments (10 U.S.C. 2736, as amended) in partial payment of meritorious claims to alleviate immediate hardship are authorized as provided in subpart B.

§ 536.51 Claims not payable.

A claim is not payable that—

(a) Results wholly from the negligent or wrongful act of the claimant or agent. (See section 536.55(b) on comparative negligence.)

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.50(b). Real estate claims founded upon contract are generally processed under AR 405–15. (See DA Pam 27–162, paragraph 8–46.)

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee that is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) Is listed in section 536.75, except for claims listed in section 536.75(n) and (r).

§ 536.52 Claims having multiple remedies.

(a) *Claims cognizable under other chapters.* (1) Claims based upon a single act or incident cognizable under this subpart and subparts H or K will be first considered under the latter chapters; if not payable under any of those chapters, the claim will be considered under this chapter.

(2) A claim may not be paid under this chapter if it is covered by the Federal Tort Claims Act (subpart E) or the Foreign Claims Act (subpart J). (See 10 U.S.C. 2733(b)(2)).

(3) Where a Status of Forces Agreement or other agreement provides for host country adjudication of a claim, the treaty process may be the claimants exclusive remedy (see subpart G). Where a foreign country is responsible for adjudication of the claim under the terms of such an agreement, it may not be paid under the provisions of this chapter. If the foreign country refuses to recognize legal responsibility for the claim, or to consider it under applicable treaty provisions, the chief of a command claims service or, where the estimated value of the claim is within USARCS authority, the Commander, USARCS may authorize adjudication of the claim under this chapter. The mere fact a foreign country fails to pay the claims on its merits is not sufficient basis for invoking this authority.

(b) *Claims based upon multiple acts or theories of liability.* Where claims cognizable under this chapter are based upon more than one act or injury and where one or more of the acts or injuries are also cognizable under the FTCA (subpart D) (for example, claims alleging acts of medical malpractice both in a foreign country and in the United States or claims alleging negligence in the conduct of a noncombat activity), the claims will be processed as follows:

(1) *Meritorious claims.* (i) If the primary cognizable act or incident upon which the claim is based is not cognizable under subpart D, the claim may be considered and paid under this chapter. However, the settlement agreement must expressly release the United States from any further liability under the FTCA or any other statute or regulation for all acts or incidents upon which the claim was based. If the claim is over $25,000, any proposed settlement will be coordinated with USARCS prior to final action.

(ii) If the primary cognizable act or incident upon which the claim is based is cognizable under subpart D, the claim will be first considered under subpart D. If the claim is determined by proper authority to be nonmeritorious under subpart D but meritorious under this subpart (for example, negligence occurred overseas but none occurred in the United States or there is no negligence in the conduct of a noncombat activity), it may be considered and paid under this subpart. However, an agreed settlement must be reached that expressly releases the United States from further liability under the FTCA or any other statute or regulation for all acts or incidents upon which the claim was based. If the claim was presented in an amount over $25,000, any proposed settlement will be coordinated with USARCS.

(2) *Nonmeritorious claims.* Where claims are based upon multiple acts or incidents, some or all of which may be cognizable under subpart D (FTCA), extreme care will be taken prior to any disapproval based upon this chapter. Whether a claim is covered by Cognizability under the FTCA is a litigable issue. Such claims will be disapproved under this chapter only as follows:

(i) A claim presented in an amount not over $25,000, may be disapproved by an office with settlement authority having jurisdiction over the claim only if the claim is determined to be nonmeritorious under both this subpart and subpart D; however the disapproval procedures established in subpart D must be fully satisfied. In such cases, the disapproval notification will advise the claimant of his or her concurrent rights to appeal the disapproval under this subpart or to institute suit under the FTCA. (See § 536.63.) In case of doubt concerning the applicability of this paragraph, the question will be referred to USARCS.

(ii) Claims of the type covered by this paragraph, which are presented in an amount over $25,000, will be disapproved only by the USARCS.

(c) *Claims in litigation.* Disposition under this chapter of any claim of the type covered by this paragraph that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation, and the claim file will be forwarded to USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under this chapter during pendency of the litigation is in the best interests of the United States. This paragraph will also apply to any litigation brought against any agent of the United States in his or her individual capacity that is based upon the same acts or incidents upon which a claim under the chapter is based.

§ 536.53 Presentation of claim.

(a) *When claim must be presented.* A claim may be settled under this chapter only if presented in writing within 2 years after it accrues. If a claim accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this paragraph, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another Government agency and forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement authority under this chapter, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an office.

§ 536.54 Procedures.

So far as not inconsistent with this chapter, the claims procedures set forth in subpart B will be followed. Subrogated claims will be processed as prescribed in § 536.20(b).

§ 536.55 Law applicable to liability.

(a) *Claims arising within the United States, and its territories, commonwealths and possessions.* As to claims arising in the United States, its

territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on the claimant's right to recover damages. However, theories of strict or absolute liability will not be applicable to claims under this subpart.

(b) *Claims arising within foreign countries.* (1) For claims arising in a foreign country, liability of the United States will be assessed by reference to the law of the District of Columbia applicable to torts committed in and having their operative effect in the District (i.e. District of Columbia choice of law rules will not be applicable). The United States shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that theories of absolute or strict liability may not be applied under this chapter. Damages will be determined under the provisions of §§ 536.56 through 536.59.

(2) The law of the place in which the alleged negligent act occurred will be applied to determine the effect of the claimant's own negligence on the merits of the claim. Where there is no law on this issue, the MCA requires application of traditional rules of contributory negligence.

(3) In traffic accident cases, questions of negligence, and the degree of the claimant's comparative negligence, will be evaluated based on the traffic and vehicle safety laws and regulations of the country in which the accident occurred, but only to the extent they are not specifically superseded or preempted by U.S. military traffic regulations. Likewise, where a claim is based on the failure to comply with some safety or regulatory standard, the standard applicable at time and in the place where the claim arose will be used, rather than any comparable standard in the District of Columbia.

§ 536.56 Measure of damages for property claims.

(a) *General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with the law of the District of Columbia (see § 536.55(a). However, punitive or exemplary damages, including damages considered punitive in nature under 28 U.S.C. 2674, and interest on any settlement are not payable.

(b) *Proof of damage.* The information listed below (similar to that required by 28 CFR 14.4(c) (DA Pam 27–162, appendix H)) will be submitted by a claimant to substantiate a claim.

(1) Proof of ownership.

(2) Detailed statement of amount claimed for each item of property.

(3) Itemized receipt or estimate for all repairs.

(4) Statement giving date of purchase, price and, where not economically repairable, the salvage value.

(c) *Appraisals.* The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in effectuating administrative settlement of claims. (See § 536.26 for procedures on appraisals.)

§ 536.57 Measure of damages in injury or death claims arising in the United States or its possessions.

Measure of damages in injury or death claims arising in the United States or its possessions will be assessed as follows:

(a) Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or possession wherein the injury arises. However, punitive or exemplary damages, including damages considered punitive in nature under 28 U.S.C. 2674, and interest on any settlement are not payable.

(b) The information listed below (similar to that required by 28 CFR 14.4(a) (DA Pam 27–162, appendix H)) will be submitted by a claimant to substantiate a wrongful death claim:

(1) Authenticated death certificate or other competent evidence showing date and cause of death and age of decedent.

(2) Decedent's employment and occupation at time of death, including salary or earnings and duration of last employment or occupation.

(3) Names, addresses, birth dates, kinship, and marital status of survivors.

(4) Identification of persons dependent on decedent for support at time of death and the degree of support provided.

(5) Decedent's general physical and mental condition at time of death.

(6) Itemized bills or receipts for medical and burial expenses.

(7) If damages for pain and suffering are claimed, a physician's statement specifying the injuries suffered, duration of pain and suffering, drugs administered, and decedent's physical condition between time of injury and time of death.

(c) The information listed below (similar to that required by 28 CFR 14.4(b) (DA Pam 27–162, appendix H)) will be submitted by a claimant to substantiate a personal injury claim:

(1) Written report by the attending physician or dentist setting forth the—

(i) Nature and extent of injury.

(ii) Nature and extent of treatment.

(iii) Degree of temporary or permanent disability.

(iv) Prognosis.

(v) Period of hospitalization.

(vi) Diminished earning capacity.

(2) Itemized bills or receipts for medical, dental, and hospital expenses.

(3) If the prognosis includes future treatment, a statement of expected expenses for such treatment.

(4) If the claim includes lost time from employment, a statement by the employer showing the actual time lost and wages and/or salary lost.

(5) If the claim includes lost income by a self-employed claimant, documentary evidence of such loss.

§ 536.58 Measure of damages in injury or death claims arising in foreign countries.

(a) Where a claim for an injury, or injury resulting in death, arises outside of the United States or its possessions, the elements of damages payable under this subpart will be the same as those payable in a similar claim arising under the law of the District of Columbia applicable to torts committed in and having their operative effect in the District of Columbia. The amount paid will be based on generally accepted economic principles. All awards for future payments of economic damages will be discounted to present value. Awards under this chapter will be reduced by any benefits which have been or are reasonably likely to be paid, if the benefit or payment is from the general revenues of the United States and the claimant did not contribute to or purchase the benefit. In death cases, taxes and personal consumption will be deducted from any award for lost economic contribution or lost earnings. Punitive or exemplary damages, including damages considered punitive in nature under 28 U.S.C. 2674, and interest on any settlement are not payable.

(b) The information listed in § 536.57 (b) or (c), as appropriate, will be submitted by the claimant to substantiate a claim.

(c) A claimant who alleges a serious personal injury resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist. The purpose of the examination is not just to confirm the impairment but also to help assess its extent, prognosis and treatment. See § 536.27 for independent medical examination procedures.

§ 536.59 Failure to substantiate a claim.

(a) The Government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records, or witness statements. As the burden of proof is on the claimant, the failure to substantiate a claim within a reasonable time can be the basis for denial of the claim. Upon request, the claimant must—

(1) Provide the documentation required by sections §§ 536.56 through 536.58.

(2) Undergo necessary medical examinations.

(3) Permit questioning of the claimant, his or her witnesses, and treating medical personnel.

(4) Submit an expert opinion in a professional negligence action.

(b) Failure to comply with these requirements may provide a basis for denial of a claim, in full or in part.

§ 536.60 Structured settlement.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—

(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.61 Settlement authority.

(a) The Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or other designee of the Secretary of the Army must approve settlements in excess of $100,000.

(b) Delegations of authority. (1) Disapprovals and final offers in claims acted on under the delegations set forth herein are subject to appeal to the authorities specified in paragraph (d) of this section.

(2) The TJAG and TAJAG are delegated authority to pay up to $100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed. The Commander, USARCS will process such claims as prescribed in § 536.62.

(3) The Commander, USARCS, or designees, are delegated authority to pay up to $25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) The SJA and, subject to limitations imposed by him or her, the chief of the command claims service of the commands listed below are delegated authority to pay up to $25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $25,000:

(i) USAREUR.

(ii) Eighth U.S. Army, Korea.

(iii) USARSO.

(5) Area claims offices are delegated authority to pay up to $15,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $15,000.

(6) Claims processing offices with approval authority are delegated authority to approve, in full or in part, claims presented for $5,000 or less, and to pay claims regardless of the amount claimed provided an award of $5,000 or less is accepted in full satisfaction of the claim.

(c) Settlement of multiple claims arising from a single incident. (1) Where a single act or incident gives rise to multiple claims cognizable under this chapter, and where one or more of these claims apparently cannot be settled within the jurisdiction of the authority initially acting on the claims, no final offer will be made and all claims will be forwarded with recommendation as to disposition to the authority having jurisdiction over the largest claim for a determination of liability.

(2) If such authority determines that liability of the United States is established, he or she may return claims of lesser value to the field office for settlement within that office's jurisdiction. Care will be exercised by the field office to avoid compromising the discretion of the higher authority by conceding liability in claims of lesser amount.

(d) Appeals. Denials or final offers on claims described as allows may be appealed to the official designated:

(1) For claims presented in an amount over $100,000, final decisions on appeals will be made by The Secretary of the Army or designee.

(2) For claims presented for $100,000 or less and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident to service bar (FERES), on exclusionary language in a federal statute governing compensation of federal employees for job related injuries (see, for example, § 536.75(s) and (t)) or upon the lack of timely filing, final decisions on appeals will be made by TJAG or TAJAG, except that claims presented for $25,000 or less and not acted on by the Commander, USARCS are governed by paragraph (d)(3) of this section.

(3) For claims presented for $25,000 or less, final decisions on appeals will be made by the (Commander, USARCS, or his designee or the chief of a command claims service for claims acted on by an area claims office under such service's jurisdiction). See §§ 536.63 and 536.64 for rules relating to the notification of appeal rights and processing.

(e) Delegated authority. Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code.

§ 536.62 Claims over $100,000.

(a) Claims cognizable under 10 U.S.C. 2733 and this chapter, which are meritorious in amounts over $100,000, will be forwarded to the Commander, USARCS, who will negotiate a settlement subject to approval by the Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or designee, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS, constitutes an action subject to appeal. The Commander, USARCS, will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army, or designee, for final action. The Secretary, or designee, will either disapprove the claim or approve it in whole or in part.

(b) If one or more claims arising from an incident are approved in an amount over $100,000, only $100,000 will be paid from the Claims Appropriation, after the execution of a settlement agreement. The excess will be reported to the Claims Division, GAO, 441 G Street, NW, Washington, DC 20548, together with documents listed in § 536.35(a).

§ 536.63 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in subpart B in paying, denying, or making final offers

on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt requested) of a denial or final offer and the reason therefor as set forth in § 536.37. The letter of notification will inform claimants of the following:

(1) They must accept or appeal as provided in paragraph (b) of this section.

(2) The official who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) No form is prescribed for the appeal but claimants must fully set forth the grounds for appeal, or state that they appeal on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than six months after the date of mailing of the notice of action on the claim. If the last day of the appeal period falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period.

(b) *Acceptance and appeal.* For final offers, a settlement agreement releasing the government from all liability will be mailed along with the final offer notice. Claimants will be advised that they must either submit an appeal or accept the offer within 180 days of the date of mailing of the final offer notice. If they fail to do either, the offer will be withdrawn, the claim will be denied and the file will be closed without further recourse.

(c) *Companion FTCA claims.* Where a claim for the same injury has been filed under subpart D, and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim filed under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal under this subpart will be held in abeyance pending final determination of such suit.

§ 536.64 Action on appeal.

(a) The appeal will be examined by the settlement authority who last acted on the claim or his or her successor, to determine if the appeal complies with the requirements of this regulation. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented in the file; and ensure that all pertinent evidence is included in the file. If the claimant states that he or she appeals, but does not submit supporting materials within the 180 day appeal period, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b) of this section is taken, the claim and complete investigative file, including any additional investigation required, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(b) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If a settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (a) of this section.

(c) As to an appeal that requires action by TJAG, TAJAG, or the Secretary of the Army or designee, the Commander, USARCS may take the action in paragraph (b) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(d) Since an appeal under this chapter is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

(e) If the appeal authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that they must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied and the file will be closed without further recourse.

§ 536.65 Cross-servicing of claims.

(a) *Single-service claims responsibility.* Per DODD 5515.8, the DOD has assigned single-service responsibility to the various military departments for the settlement of claims in specified countries.

(b) *Claims settlement procedures.* Per DODD 5515.3, the DOD has directed that where a single Service has been assigned a country or area claims responsibility, that Service will settle claims cognizable under 10 U.S.C. 2733 in accordance with the departmental regulations of that Service.

§ 536.66 Attorney fees.

In the settlement of any claim pursuant to 10 U.S.C. 2733 and this chapter, attorney fees will not exceed 20 percent of the final cost to the United States of the award. On structured settlements, the cash payment due immediately upon final approved must be sufficient to allow payment of attorneys fees equal to 20% of the total cost of the settlement.

§ 536.67 Payment of costs, settlements, and judgments related to certain medical malpractice claims.

(a) *General.* Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers meeting the criteria in AR 40–3, paragraph 2–42) of DA will be paid provided—

(1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested; and cooperate in the defense of the action on its merits.

(b) Requests for indemnification. All requests for indemnification under this paragraph should be forwarded to the Commander, USARCS, for action using procedures contained in this chapter. (See DODD 6000.6.)

§ 536.68 Payment of costs, settlements, and judgments related to certain legal malpractice claims.

(a) *General.* Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury of loss of property caused by any attorney, paralegal, or other member of a legal staff within DA will be paid provided that—

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of duties or employment,

(2) Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance

as requested; and cooperate in the defense of the action on the merits.

(b) *Requests for indemnification.* All requests for indemnification under this paragraph should be forwarded to the Commander, USARCS, for action utilizing the procedures contained in this subpart.

Subpart D—Claims Cognizable Under the Federal Tort Claims Act

§ 536.69 Authority.

The statutory authority for this subpart is the FTCA (60 Stat. 842), (28 U.S.C. 2671–2680), as amended by the Act of 18 July 1966 (Public Law 89–506; 80 Stat. 306), Public Law 93–253, 16 March 1974 (88 Stat. 50), and Public Law 97–124, 29 December 1981, and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

§ 536.70 Scope.

(a) This subpart prescribes the substantive bases and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations (DA Pam 27–162, appendix H) based on death, personal injury, or damage to or loss of property that accrues on or after 18 January 1967. If a conflict exists between this regulation and the Attorney General's Regulations, the latter governs.

(b) Citations to cases interpreting and applying the FTCA are contained in the Federal Tort Claims Handbook provided by USARCS. That handbook should be used in conjunction with this subpart.

§ 536.71 Claims payable.

(a) Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this subpart the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or DOD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution that would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(b) An *employee of the Government* (28 U.S.C. 2671) includes the following categories of tortfeasors for which the Army is responsible:

(1) Military personnel (members of the Army), including but not limited to—

(i) Members on full-time active duty in a pay status, including members—

(A) Assigned to units performing active service.

(B) Serving as ROTC instructors. (Excludes Junior ROTC instructor unless on active duty.)

(C) Serving as NG instructors or advisors.

(D) On duty or training with other Federal agencies, for example, National Aeronautics and Space Administration, DOD, State, Navy, or Air Force.

(E) Assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. (This does not include members on excess leave.)

(F) On full-time duty at nonappropriated fund activities.

(G) Of the USAR and ARNG on active duty under Title 10.

(ii) Members of Reserve Units (other than members of the ARNG under subpart F) during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under Title 32 U.S.C. sections 316, 502, 503, 504, or 505 for claims arising on or after 29 December 1981.

(2) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both the DOD and DA paid from appropriated funds.

(ii) Contract surgeons (10 U.S.C. 1091 4022; AR 40–1, paragraph 4–2) and consultants (10 U.S.C. 1091; AR 40–1, paragraph 4–3; CPR A–9; FPM chapter 304) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the Army charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees; the same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property, or the acts or omissions of family child care providers, may be payable from such funds under subpart L as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any of the other authorizations in this regulation.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(viii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after 1 January 1969 (Public Law 90–486, 13 Aug. 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards, or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." Title 5, United States Code, section 3111(c) specifically provides that student volunteers employed thereunder will be considered Federal employees for purposes of the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum and family support program volunteers. The Army is permitted to accept and use certain volunteer services in Army family support programs as authorized by Public Law 98–94, September 24, 1983. Red Cross volunteers meeting the criteria set forth in AR 40–3, paragraph 2–42, are also considered to be employees of the United States for claims purposes.

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, control and direct the employee, and decide how he or she will perform the tasks. Whoever has retained those

powers is liable for the employee's torts under the principle of respondent superior. Where those elements of direction and control have been found, the United States has been liable; for example, for the torts of Government employees loaned for medical training and emergency assistance and county and state employees discharging Federal programs.

(c) *Scope of employment* means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondent superior under the law of the jurisdiction in which that act or omission occurred. Determination as to whether a person is within a category listed in (b)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(d) "Line of duty" determinations under AR 600–8–1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity; for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency.

Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent; for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See subpart E for the handling of certain claims arising out of nonscope activities of members of the Army.)

§ 536.72 Law applicable.

The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determining liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

§ 536.73 Subrogation.

Claims involving subrogation will be processed as prescribed in § 536.20(b) except where that section is inconsistent with the provisions of this chapter or the Attorney General's regulations.

§ 536.74 Indemnity or contribution.

(a) *Sought by the United States.* It is the policy of the Department of Justice that, if the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim and will be requested to honor its obligation to the United States or to accept its share of joint liability. (See §§ 536.28 and 536.29.) If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in § 536.75(s).

(b) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this chapter, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this chapter. As to such claims where the exclusivity provisions of the FECA may be applicable, see § 536.75(s).

(c) *ARNG vehicular claims.* (1) When a vehicle used by the ARNG, or a POV operated by a member or employee of the ARNG, is involved in an incident under circumstances that make this chapter applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State, or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer.

(2) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims and, whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (d) of this section is worked out.

(3) Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(d) *Claims arising out of training activities of NG personnel.* Contribution may be sought from the State involved where it has waived sovereign immunity or has private insurance that would cover the incident giving rise to the particular claim. Where the State involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

§ 536.75 Claims not payable.

Exclusions listed in paragraphs (a) through (l) of this section are based upon the wording of 28 U.S.C. 2680. The remainder are based either on statute or court decisions. The interpretation of these exclusions is a Federal question to be decided under Federal law; for example, the tort of assault and battery listed in 28 U.S.C. 2680(h) should be interpreted in accordance with Federal common law principles, and where State law differs, the former will prevail. Where a claim is considered not payable under this paragraph, consult DA Pam 27–162, chapter 8 for other methods of handling. A claim is not payable under this chapter if it—

(a) Is based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid (28 U.S.C. 2680(a)). Where no negligence on the part of any Government employee is shown, and the only ground for the claim is the contention that the same conduct by a private individual would be tortious, or that the statute or regulation authorizing the project was invalid, the sole question is the existence of the statute or regulation, not its validity. However, a claim should not be denied based solely on this exception without the prior approval of the Commander, USARCS.

(b) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved is abused (28 U.S.C. 2680(a)). A claim should not be denied solely because of this exception without the prior approval of the Commander, USARCS.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter (28 U.S.C. 2680(b)). It should be noted that administrative settlement and payment of certain mail claims is authorized under subparts C and F. Further, a limited indemnity may be obtained through other channels for the loss or damage to registered,

insured, and C.O.D. mail (39 U.S.C. 5001, et. seq.) (See DA Pam 27–162, paragraph 8–61.) The exclusion may not be applicable where State law recognizes a cause of action for invasion of privacy.

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law-enforcement officer (28 U.S.C. 2680(c)). Adequate remedies are available to anyone aggrieved by the application of the tax or customs laws of the United States (26 U.S.C. 6213), or the claimant may pay the tax and sue in the U.S. Claims Court or the appropriate U.S. District Court for a refund (28 U.S.C. 1491 and 1346(a)(1)). Other remedies are also available for the loss or detention of goods or merchandise; for example, Tucker Act, bailment provisions of the MCA (chap 3), or destruction of evidence for scientific analysis (AR 190–22, paragraph 3–8). With respect to the detention of goods by a law enforcement officer, this exception may apply to seizures in connection with an arrest.

(e) Is cognizable under the Suits in Admiralty Act (46 U.S.C. 740–752) or under the Public Vessels Act (46 U.S.C. 781–790). To be cognizable under this exclusion, the tort must have both a maritime situs and a maritime nexus, otherwise the tort is cognizable under the FTCA. Maritime claims may be considered under The Army Maritime Claims Settlement Act (10 U.S.C. 4801, et. seq.) and subpart H, and they must be settled or suit filed within 2 years of accrual of claim.

(f) Arises out of an act or omission of any employee of the Government in administering the provisions of the Trading With the Enemy Act (50 U.S.C. appendix 1–31; 28 U.S.C. 2680(e)). That Act provides that the sole remedy of any person claiming money or other property held by the Alien Property Custodian is as provided by that Act. This exception should be broadly construed.

(g) Is for damages caused by the imposition or establishment of a quarantine by the United States (28 U.S.C. 2680(f)). Claims for failure to impose a quarantine or delay in enforcing a quarantine come within the discretionary function exclusion discussed in paragraph (b) of this section.

(h) Arises out of an assault or battery (28 U.S.C. 2680(h)).

(1) Often artful pleading is employed to create a cause of action in negligence, such as alleging negligent supervision; such does not create a separate cause of action as the exception bars a claim arising out of an assault and battery even though there may have been negligent supervision. Under the 1974 amendment to 28 U.S.C. 2680(h), the activities of law enforcement officers that result in an assault or battery are removed from this exception and can create a cause of action. Such activities have accounted for most of the past claims and litigation involving the assault and battery exception.

(2) Therefore, any claim alleging use of threatening or deadly force, especially by a law enforcement officer, must be thoroughly investigated to determine whether the nature, amount, and use of such force was justified under the circumstances. (See paragraph (i) of this section for definition of investigative or law enforcement officer). Also, section 2680(h) does not apply to a claim arising out of performance of medical, dental or related health care functions (10 U.S.C. 1089(e)).

(i) Arises out of false imprisonment, false arrest, malicious prosecution or abuse of process (28 U.S.C. 2680(h)). This exception has universal applicability to all acts of false imprisonment, false arrest, malicious prosecution, or abuse of process when committed by an employee of the United States in the scope of employment. However, by amendment to 28 U.S.C. 2680(h), this exception is not applicable on or after 16 March 1974 to such actions when committed by an investigative or law enforcement officer of the United States who is empowered by law to execute searches, seize evidence, or make arrests for violations of Federal law (88 Stat. 50). Such employees are considered to include military police, but not post exchange detectives. Whether or not a Federal law enforcement officer is involved, the defense of probable cause, reasonableness, and good faith are available, provided the arrest is otherwise lawful under State law. DA Pam 27–162, paragraph 8–8c, refers to certain claims based on unjust convictions.

(j) Arises out of libel, slander, misrepresentation, or deceit (28 U.S.C. 2680(h)). The misrepresentation exception has been broadly construed to include negligent as well as intentional misrepresentation. It has not been applied in situations involving negligent failure to perform some operational task or to convey information related to public safety independent of any secondary misstatement. Where an erroneous medical diagnosis is made, the exception does not apply because malpractice is the gravamen of the action and the misrepresentation incidental. Similarly, the misrepresentation exception was held not applicable where the United States sold bomb casings to a scrap dealer expressly warranting that they were safe and fit for scrap metal processing, and one of the castings exploded. Before this exception can be applied in the determination of an administrative tort claim, the claims investigation must consider the nature of the Government's acts or omissions, as well as the information upon which the claimant may have relied to his or her detriment.

(k) Arises out of interference with contract rights (28 U.S.C. 2680(h)). This exception includes both interference with existing contract rights and interference with prospective or executed contract rights or economic advantage.

(l) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system (28 U.S.C. 2680(i)). This exception includes all disbursing operations of the DA or other military services. However, such claims may be forwarded through Army finance channels for consideration.

(m) Arises out of the combat activities of the military or naval forces, or the Coast Guard, during time of war (28 U.S.C. 2680(j)). "Combat activities" is defined in the glossary.

(n) Arises in a foreign country (28 U.S.C. 2680(k)). There is no clear delineation of what constitutes a foreign country. However, the exception has been held applicable to claims arising in a leased military base in Newfoundland; in the American Embassy in Bangkok, Thailand; on Okinawa under the de facto sovereignty of the United States; on Kwajalein under the trusteeship of the United States; and to various occupied countries. (See subpart J and DA Pam 27–162, paragraph 821, for handling of certain claims arising in a foreign country.) Where the actionable negligence has occurred in the United States and only the consequences occurred in a foreign country, this exception has not been applied.

(o) Arises from the activities of the Tennessee Valley Authority (28 U.S.C. 2680(i) and 16 U.S.C. 831 et. seq.).

(p) Arises from the activities of the Panama Canal Commission (28 U.S.C. 2680(m)). (See 76A Stat. 22 through 25, and 22 U.S.C. 3761.) Claims accruing after the effective date of the Panama Canal Treaty (1 October 1979) may be cognizable under either the FCA or the MCA.

(q) Arises from the activities of a Federal land bank, a Federal intermediate credit bank, or bank for cooperatives (28 U.S.C. 2680(n)).

(r) Is for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service (*Feres v. United States*, 340 U.S. 135 (1950)). (See § 536.25 and DA Pam 27–162, paragraphs 8–26 through 8–28.) Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are the service member's duty status, location, and receipt of military benefits at the time of the incident.

(1) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, on convalescent leave, and on the extended enlistment program; to service academy cadets; and to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty or similar international agreements.

(2) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(s) Is for the personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101- 8150). (See DA Pam 27–162, paragraph 8–25.) Who is a Government employee under the Act is defined in the Act itself (5 U.S.C. 8101), but the term is not limited to Federal Civil Service employees. The term "Government employee" can include certain ROTC cadets (5 U.S.C. 8140) and State or local law enforcement officers engaged in apprehending a person for committing a crime against the United States (5 U.S.C. 8191), certain nurses, interns, or other health care personnel, for example, student nurses, (5 U.S.C. 5351, 8144), and certain Army Community Service Volunteers (10 U.S C. 1588; AR 608–1).

(1) This Act provides that benefits paid under this Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, subsequent malpractice for treatment of a covered injury, injuries for which there is no scheduled compensation, and employee harassment claims for which other remedies are available (42 U.S.C. 2000e).

(2) Is from a federal civilian employee based on a allegation of a violation of some employment right or is otherwise one for which the rules governing federal civilian employment provide a comprehensive remedy. Such claims often allege emotional distress or psychological injury as a result of the alleged misconduct. Administrative remedies under the civil service regulations are the employee's exclusive remedy. Bush v. Lucas 462 U.S. 367 (1983). This exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims channels to the Commander, USARCS, for an opinion.

(t) Is for the personal injury or death of an employee including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950). An employee of a nonappropriated fund instrumentality is covered by the Act (5 U.S.C. 8171). This is exclusive for covered employees, similar to that under the FECA.

(u) Is for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. (See § 536.28 and DA Pam 27–162, paragraph 8–25.) If, in the opinion of an approval or settlement authority the claim should be considered payable (for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws), the file will be forwarded with recommendations through claims channels to the Commander, USARCS who may authorize payment of an appropriate award.

(v) Is for taking of property as by technical trespass or overflight of aircraft and of a type contemplated by the Fifth Amendment to the U.S. Constitution, or otherwise constitutes attacking. (See paragraph 2c of AR 405–15 and DA Pam 27–162, paragraphs 8–46, 8–74, and 8–75.)

(1) The Fifth Amendment to the U.S. Constitution provides in part "* * * nor shall private property be taken for public use, without just compensation."

(2) Claims for takings without just compensation are actionable under the Tucker Act (28 U.S.C. 1346(a)(2) and 1491, Appendix A., 24 Stat. 505 (1887)). Prior to referring a claimant to a Tucker Act remedy, the applicability of the procedures under AR 405–15 should be considered by referral to appropriate Corps of Engineers authorities. (See DA Pam 27–162, paragraph 8–75.)

(w) Is for damage from or by flood or flood waters at any place (33 U.S.C. 702c). This exception is broadly construed and includes multipurpose projects and all phases of construction and operation.

(x) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise of performance of, or failure to exercise or perform, any function or duty by any Federal agency or employee of the Government to carry out the provisions of the Federal Civil Defense Act of 1950 during the existence of a civil defense emergency (50 U.S.C. Appendix 2291–2297).

(y) Is based solely upon a theory of absolute liability or liability without fault. Either a negligent or wrongful act is required by the FTCA, and some type of malfeasance or nonfeasance is required (Dalehite v. United States, 346 U.S. 15 (1953); Laird v. Nelms, 406 U.S. 797 (1972)). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(z) Is for patent or copyright infringement. (See AR 27–60.)

(aa) Claims for damage to property of a State, commonwealth, territory, or the District of Columbia caused by ARNG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that State, commonwealth, territory, or the District of Columbia will not be paid without the express approval of the Commander, USARCS.

(bb) Is for damage to property or for any death or personal injury arising out of the activities of any Federal agency or employee of the Government in carrying out the provisions of the Federal Disaster Relief Act of 1954 (Public Law 93–288, Sec. 403, 88 Stat. 143). The Act requires the local beneficiary (State or local government) to hold the Government harmless and to assume the defense of all claims arising from the removal of debris and wreckage from public or private property.

(cc) Arises from activities that present a nonjusticiable political question. The courts search for six factors, as follows, any one of which is grounds for dismissal:

(1) A commitment of the issue to a coordinate branch of Government by the text of the Constitution.

(2) A lack of judicially discoverable and manageable standards for resolving it.

(3) The impossibility of deciding without a policy determination calling for non-judicial discretion.

(4) The impossibility of undertaking independent resolution without expressing lack of respect for coordinate branches of Government.

(5) An unusual need for unquestioning adherence to a political decision already made.

(6) The potential for embarrassment from multiple pronouncements by various departments on one question.

§ 536.76 Claims under other laws and regulations.

Any claim that may be settled under any exclusive or specific authorization discussed in DA Pam 27–162, chapter 8, will be settled under such authority in preference to settlement under this chapter. Guidance concerning application of this policy will be obtained from USARCS.

§ 536.77 Procedures.

(a) General. Unless inconsistent with the provisions of this chapter, the procedures for the investigation and processing of claims set forth in subpart B will be followed.

(b) Claims arising out of tortious conduct by ARNG personnel defined in § 536.71(b)(1)(iii).

(1) Notification and investigation. The procedures in §§ 536.97 and 536.98 will be followed in NG claims arising under the FTCA.

(2) Claims against the U.S. Government received by agencies of the State. These claims will be expeditiously forwarded through the State adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(c) Statute of limitations. (1) To be settled under this chapter, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(2) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency (as defined in the glossary) receives from a claimant or his or her duly authorized agent or legal representative, an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the NG, receipt of a written claim by any full time officer or employee of the NG will be considered proper receipt.

(3) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal Agency will be referred to USARCS for resolution.

(d) Claims within settlement authority of USARCS or the Attorney General. (1) A copy of each of the type of claims described below will be forwarded immediately to the Commander, USARCS. (Subsequent documents should be forwarded or added in accordance with § 536.22(b)(2)).

(i) Claims that appear to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6).

(ii) A claim in which the demand exceeds $25,000 or the total amount of all claims, actual or potential, from a single incident exceeds $25,000 $50,000.

(2) USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between USARCS and the field claims authority or investigator is authorized on all claims matters and assistance will be furnished as required.

(e) Non-Army claims. Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees of nonappropriated fund activities of the DA will be transmitted forthwith to the nearest official of the employing agency; the claimant will be advised of the referral. (See § 536.18 (c) and (d) for further guidance when more than one Federal agency is involved.)

(f) Acknowledgment of claim. (1) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding $15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(2) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder; for example, it is a maritime claim under chapter 8, or it falls under subparts C or F, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which subpart applies, a statement to that effect will be made and the claimant will be promptly advised when a decision is made. However all potential maritime claims will be handled in accordance with § 536.21(b)(5).

(3) When a claim has been amended as set forth in § 536.20(f)(4), the amendment will be acknowledged in all cases. Also, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of the amendment.

(4) When a claim is improperly presented, is incomplete, or otherwise does not meet the requirements set forth in § 536.20(d), the claimant or his or her representative will be promptly informed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(g) Investigation. Claims cognizable under this regulation will be investigated and processed on a priority basis in order that settlement if indicated may be accomplished within the 6 months prescribed by statute.

(h) Advice to claimant. (1) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(2) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familiarized with all aspects of administrative settlement procedures including the administrative channels through which the claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(3) If appropriate, the claimant may be informed that a tentative settlement can be reached for any amount, but that awards in excess of $200,000 are subject to approval by the Attorney General. The claimant should be advised that administrative filing of the claim protects him or her under the statute of limitations for purpose of litigation and

that a suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefinitely. An attorney representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 percent) and litigation (25 percent) and that there is no jury trial under the FTCA.

(i) *Notification to claimant of action on claim.* (1) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(2) Upon final denial of a claim, or upon rejection by claimant of a partial allowance, if further efforts to reach a settlement are not considered feasible (§ 536.21(b)(1)), the settlement authority will inform the claimant of the action on his or her claim by certified or registered mail. Notification will be made as set forth in § 536.37(b). A copy of this notification will be furnished to Litigation Division, OTJAG, and the Commander, USARCS. In all medical malpractice cases, a copy will be furnished to the Consultation Case Review Branch (CCRB), Office of the Surgeon Command and the SJA, Health Services Command.

(3) If a claim has been presented to the DA and, also, to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agencies unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b) unless suit has been filed. (See § 536.82.) The foregoing applies likewise to Army claims in which another Federal Agency has taken final action.

(4) If, after final denial by another agency, a claim is filed with the Army, the new submission will not toll the 6 months limitation for filing suit unless the DA treats the second submission as a request for reconsideration under § 536.82.

(5) In those cases where claimants exercise their option under 28 U.S.C. 2675(a) and file suit after six months but before final agency action, a formal denial notice will be sent to the claimant promptly upon notification of the suit unless the Assistant United States Attorney responsible for litigation of the suit expressly requests that such action not be taken.

§ 536.78 Payment of claims.

(a) *Awards of $2,500 or less.* Awards of $2,500 or less are paid from the claims appropriation. For procedures, see sections 536.32 through 536.35. An explanation of various claims appropriations to be used is in section 536.34.

(b) *Awards in excess of $2,500.* Payment of awards in excess of $2,500 will be accomplished by forwarding the documents listed in § 536.35(b) to the Claims Division, GAO, 441 G Street, NW., Washington, DC 20548. When an award is in excess of $25,000, evidence that the award has been approved by the Attorney General or designee is also required. (For procedures, see §§ 536.32 through 536.35.)

(c) *Attorney as payee.* If a claimant is represented by an attorney, both the claimant and the attorney will be designated as "payees" on the voucher (SF 1145) and the check will be delivered to the attorney whose address appears on the voucher.

(d) *Broker as payee.* If the settlement requires the purchase of an annuity and establishment of a reversionary trust, the broker may be named as payee and required to dispose of the amount paid as set forth in the settlement agreement.

(e) *Attorneys fees.* Attorneys' fees are limited by 28 U.S.C. 2678 to not more than 20 percent of any award, compromise, or settlement.

§ 536.79 Acceptance of award.

The acceptance by the claimant of an award, compromise, or settlement made pursuant to this chapter will be final and conclusive for all purposes and will constitute a complete release of any claim against the United States and against the military or civilian personnel of the DA, or civilian employees of the DOD whose act or omission gave rise to the claim by reasons of the same subject matter. (See § 536.32 on preparing a settlement agreement.)

§ 536.80 Delegation of authority.

(a) Settlement authority. (1) Subject to the approval of the Attorney General for payments in excess of $200,000 in a single claim or where the total value of all claims and potential claims arising out of a single incident exceeds $200,000 or as otherwise required (see § 536.81), the following are delegated authority to settle (i.e. pay in full, pay in part or deny) and make final offers on claims under this chapter:

(i) TJAG.

(ii) TAJAG.

(iii) The Commander, USARCS or designees.

(2) Unless the Commander, USARCS alters the delegation, heads of area claims offices or their designated claims Judge Advocates/claims attorneys are delegated authority to approve and pay in full or in part, to disapprove, and to make final offers on claims presented for $25,000 or less. These offices are also authorized to approve and pay, regardless of the amount claimed, an agreed award of $25,000 or less, provided that the total value of all claims and potential claims arising out of a single incident does not exceed $50,000.

(3) Notice of disapproval or final offer issued by an authority listed in paragraphs (a)(1) and (a)(2) of this section will be in accordance with §§ 536.5(f) and 536.37 and must be accompanied by an explanation that the claimant may submit a written request for reconsideration (§ 536.82), in lieu of filing suit, to the Commander, USARCS (through the office issuing the disapproval or final offer) provided that the request is received prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Once received, the claimant will be advised in writing that the request will suspend the option to bring suit under 28 U.S.C. 2675(a) for 6 months from the date the request was received.

(4) Heads of claims processing offices with approval authority are delegated authority to approve and pay, in full or in part, claims presented for $5,000 or less and to compromise and pay, regardless of the amount claimed, an agreed award of $5,000 or less, provided that the total value of all claims and potential claims arising out of a single incident does not exceed $25,000 and that the claimant agrees to accept the award in full satisfaction of the claim.

(b) Office code. Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code.

§ 536.81 Consultation with the Department of Justice.

(a) Consultation with the Department of Justice is required when, in the opinion of the Federal agency—

(1) A new precedent or a new point of law is involved;

(2) A question of policy is or may be involved;

(3) The United States is or may be entitled to indemnity or contribution from a third party, and the agency is unable to adjust the third party claim;

(4) The total amount to be paid in all claims or potential claims arising out of the same transaction will or may exceed $200,000;

(5) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of actual or potential claims arising out of a single incident in which the amount to be paid may exceed $25,000 $200,000; or

(6) Where the United States, an employee, agent, or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(b) Claims requiring consultation with, or approval by the Department of Justice will be forwarded to the Commander, USARCS. The Commander will refer such claims to the Assistant Attorney General, Civil Division, Department of Justice in accordance with Section 14.7, Attorney General Regulations. (See DA Pam 27–162, appendix H.)

§ 536.82 Reconsideration.

(a) Original approval or settlement authority.

(1) Reconsideration. An original approval or settlement authority may reconsider the denial of or final offer on a claim under the FTCA upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative.

(2) Settlement correction. An original approval or settlement authority may reopen and correct his or her action on a claim that was previously settled in whole or in part (even where a settlement agreement has been executed) when an error contrary to the mutual understanding of the parties is discovered in the original action (e.g., a claim is settled for $15,000 but the settlement agreement was typed to read $1500 and the error is not discovered until the file is being prepared for payment). If appropriate, a corrected payment will be made. The approval or settlement authority will reopen his or her action on a claim when he or she has reason to believe that a settlement was obtained by means of fraud by the claimant (or claimant's authorized agent or legal representative) and, if substantiated, will correct his or her action. The basis for any correction of an action will be stated in a memorandum which will be included in the file.

(b) A successor approval or settlement authority. (1) Reconsideration. A successor approval or settlement authority may reconsider the denial of or final offer in a claim under the FTCA upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative, only on the basis of fraud, substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(2) Settlement correction. A successor approval or settlement authority may reopen and correct a predecessor's action on a claim which was previously settled in whole or in part for the same reasons as an original authority, as stated above.

(c) All requests for reconsideration of a denial or final offer by a command claims service or area claims office in which full relief is not granted will be forwarded to the Commander, USARCS for action, with any additional investigative material and legal analysis generated by the request.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels as outlined in § 536.31. If a higher claims authority is unable to grant the relief requested, he or she will forward the claim with the recommendation to the Commander, USARCS, and inform the claimant of such reference.

(e) A request for reconsideration must be filed prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority will have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) will not accrue until 6 months after the filing of the request. The action on the request will be effected as set forth in § 536.77(i).

(f) Action upon a request for reconsideration by the appropriate authority (either affirming the prior action or granting full or partial relief) constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the 6-month period provided in 28 U.S.C. 2401(b).

Subpart E—Claims Involving Government Vehicles and Property Not Cognizable Under Other Law

§ 536.83 Statutory authority.

The statutory authority for this subpart is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of this subpart, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C 4).

§ 536.84 Scope.

(a) This subpart prescribes the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage or loss of property, or for personal injury or death caused by a member or employee of the DA incident to the use of a U.S. vehicle at any location or incident to the use of other U.S. property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under subparts C, D, and F of this part. Only when all parties, to include an insurer, agree that there is no "in scope" issue will this chapter be used.

§ 536.85 Claims payable.

(a) General. A claim for personal injury, death, or damage or loss of property, real or personal, is payable under this chapter when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault of a member of the DA or the ARNG, or a civilian employee of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a

settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) Personal injury or death. A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) Property loss or damage. A claim for damage or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.86 Claims not payable.

(a) A claim is not allowable under this chapter that—

(1) Results wholly or partly from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence is not applicable.

(2) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(3) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.85(b). All other items of damage; for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering are not payable.

(4) Is for loss of use of property or for the cost of a substitute property; for example, a rental.

(5) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(6) Is a subrogated claim.

(b) Examples of claims not allowable under this chapter are as follows:

(1) The claimant has collision insurance covering his or her automobile with a deductible amount of $100. While the claimant is sitting in the vehicle, which is properly parked, it is struck from the rear by an Army truck operated by a DA civilian who had misappropriated the Government vehicle. The claimant sustains personal injuries requiring hospitalization for 6 weeks during which actual medical and hospital expenses are incurred in the amount of $1,200. He or she has no medical or hospitalization insurance. The damage to the vehicle totals $300. The claimant's insurance carrier reimburses him or her $200 for the vehicle damage and becomes subrogated in that amount under the policy terms. The claimant files a claim in the amount of $1,500, alleging $300 for property damage to the automobile and $1,200 for medical and hospital expenses. The claim is allowable in the total amount of $1,000, consisting of $100, the insurance deductible for property damage, and $900 of the medical and hospital expenses. The amount claimed for medical and hospital expenses and for property damage merely constitutes separable interests in a single claim that may not be allowed in an amount in excess of $1,000 under this chapter. The claimant's insurer is not a proper party claimant, and no payment is allowable for the insurer's subrogated interest.

(2) Claimant has medical and hospitalization insurance that entitles him or her to reimbursement of up to $500 for the reasonable cost of medical and hospital expenses incurred for personal injuries. While visiting at an Army installation the claimant is wounded by the negligent discharge of a Government issue caliber .45 pistol by a soldier who had stolen the weapon. The claimant is hospitalized at a civilian hospital and has incurred medical and hospital expenses of $750. The claimant may be paid $250, the amount allowable for reasonable medical and hospital expenses actually incurred after deduction of $500 legally recoverable by him or her under the insurance policy.

§ 536.87 When claim must be presented.

A claim may be settled under this regulation only if it is presented in writing within 2 years after it accrues.

§ 536.88 Procedures.

So far as not inconsistent with this part, the procedures for the investigation and processing of claims contained in subpart B will be followed.

§ 536.89 Settlement agreement.

A claim may not be paid under this part unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement is required before payment. (See sections 536.32)

§ 536.90 Delegation of authority.

(a) *Settlement authority.* The following are delegated authority to pay up to $1,000 in settlement of claims and to disapprove claims presented in any amount under this chapter:

(1) TJAG.

(2) TAJAG.

(3) The Commander, USARCS, or his designees.

(4) The SJA or chief of the command claims service of the following commands:

(i) USAREUR.

(ii) Eighth U.S. Army, Korea.

(iii) WESTCOM.

(iv) USARSO.

(5) Area claims offices.

(b) *Approval authority.* Claims processing offices with approval authority are delegated authority to approve and pay, in full or in part, claims presented for $1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of $1,000 or less.

(c) *Exercise of authority.* Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code.

§ 536.91 Reconsideration.

(a) An original approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his or her own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim that was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of this chapter to a claim upon request of the claimant or someone acting in his behalf, or on his or her own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.84 when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable chapter of this regulation. If he or she determines the agreement to have been correct, that is, that this subpart is applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the chapter which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim

under a or b above, but only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

Subpart F—Claims Arising From Activities of the Army National Guard

§ 536.92 Statutory authority.

(a) The statutory authority for this subpart is contained in the Act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the "National Guard Claims Act" as amended by Public Law 90–486, 13 August 1968, (82 Stat. 756), Public Law 90–525, 26 September 1968 (82 Stat. 877), Public Law 901–312, 8 July 1970 (84 Stat. 412), and Public Law 93–336, 8 July 1974, and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Public Law 90–521, 26 September 1968 (82 Stat. 874) and as amended by Public Law 98564, 20 October 1984.

(b) For purposes of this subpart, the following terminology applies:

(1) ARNG personnel. A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(2) Claimant. An individual, partnership, association, corporation, country, State, commonwealth, territory, or a political subdivision thereof, or the District of Columbia presenting a claim and meeting the conditions set forth in section 536.20. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, commonwealth, territory, or the District of Columbia, which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government that does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, commonwealth, or territory will be entertained unless the item claimed to be damaged or lost was procured or maintained by State, commonwealth, or territorial funds.

(3) State. As used in this subpart the term "state" includes self-governing commonwealths and territories of the United States; for example, Puerto Rico and the Virgin Islands.

§ 536.93 Scope.

(a) This subpart is applicable in all places and sets forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage, loss, or destruction of property caused by—

(1) Members or employees of the ARNG.

(2) Noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard.

(3) An employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under this subpart as the result of activities of the NG of a State, Commonwealth, or Territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under this chapter or any other law, regulation, or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State, for whatever action they choose to take and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit; members at the time the claims incident occurred, particularly in civil emergencies as units called by the governor, are sometimes "federalized" during the call-up. If the unit was federalized at the time the claims incident occurred, the claim will be cognizable under subparts C, D and F or other subparts pertaining to the Active Army.

§ 536.93 Claims payable.

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after 29 December 1981 based on negligent or wrongful acts or omissions, of ARNG personnel activity within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA (subpart D). Such claims arising before 29 December 1981 will, except as modified herein, be processed and settled in accordance with the provisions of subpart C.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under this subpart.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.20(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in subpart B, small claims.

§ 536.95 Claims not payable.

The type of claims listed in § 536.51, as not payable are also not payable under this chapter.

§ 536.96 Claims under other subparts.

(a) Claims within the scope of this subpart that are also cognizable under subparts D, H, J or K will be considered initially under the latter.

(b) This chapter does not apply to any claim that may be settled under an exclusive or specific authorization listed in DA Pam 27–162, chapter 8 (see § 536.76).

§ 536.97 Notification of incident.

Except where claims are regularly paid from State sources; for example, insurance, court of claims, and legislative committee, the appropriate adjutant general will ensure that each incident of the type enumerated in § 536.15 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of ARNG personnel involved.

(e) Names of potential claimants.

(f) A brief description of any damage, loss, or destruction of private property and any injuries or death of potential claimants.

§ 536.98 Investigation.

(a) *When required.* An investigation is required as indicated in § 536.15 except when claims are regularly paid by local sources.

(b) *By whom made.* Area offices, or claims processing offices designated by them, are responsible for the investigation of claims occurring within their assigned geographic areas. The state adjutant general will designate an official or office as point of contact for Army claims personnel and will furnish necessary personnel to conduct or assist in investigations subject to the availability of funds and personnel. (See § 536.7(h). The use of ARNG personnel when available, is authorized. Attention is directed to § 536.19(b) that requires

the use of information from other investigations made previously, particularly military and civilian police reports, reports of survey, line of duty investigations, and collateral air crash investigations.

(c) *Conduct of investigation.* The investigation will be conducted in accordance with subpart B, except that a sample scope of employment format will be added, together with a copy of the orders authorizing the performance of duty by the tortfeasor. Also, where a State has waived immunity or has some other means for paying claims, as through legislative committee or insurance, the claims officer's report will contain a statement as to the nature of the remedy against the State, the extent of insurance coverage, and the status of any claim made. If there is no remedy against the State and no insurance coverage, the claims officer's report will so indicate. If a regular procedure has been established for the processing of claims for a particular jurisdiction as by agreement between local authorities and an appropriate Army headquarters or USARCS, this requirement is waived. Finally, inquiry should be made as to any existing or anticipated claim or lawsuit against or by the driver of the ARNG vehicle or insurer. If a claim or lawsuit has been filed, further inquiry should be made as to probable outcome. This could be accomplished by discussion with the driver and an examination of the driver's insurance policy, which, if obtained, should be included in the file.

§ 536.99 Claims in which there is a State source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible, and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable and the settlement normally will be deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with Tort Claim memorandum to the Commander, USARCS; include information on the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS will determine whether the claimant will be required to exhaust his or her remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USARCS, determines to follow the latter course of action, he or she will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

§ 536.100 Claims against the ARNG tortfeasor individually.

The procedures set forth in § 536.29 are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.94(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)); the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is doubtful validity, final actions will be withheld pending resolution of the demand against the NG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States as in § 536.99(b). Any settlement will not include amounts recovered or recoverable as in § 536.28. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.101 When claims must be presented.

A claim may be settled under this subpart only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this paragraph, war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

§ 536.102 Where claims must be presented.

A claim must be presented to the appropriate Federal agency. Presentment of a written claim to any full time officer or employee of the NG will be considered a receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning the claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority under this regulation, the claim will be transmitted without delay to the nearest approval or settlement authority.

§ 536.103 Procedures.

(a) The form of a claim under this Act will be as described in § 536.20 (d) and (e).

(b) So far as they are not inconsistent with this subpart, the procedures set forth in subpart B, settlement procedures, will be followed in processing a claim under this subpart.

(c) The following provisions of subpart C are applicable to claims under this subpart and are hereby incorporated by the following references:

(1) Applicable law (§ 536.55).

(2) Determination of quantum (§ 536.56 through section 536.59).

(3) Delegation of authority (§ 536.61).

(4) Claims over $100,000 (§ 536.62).

(5) Settlement procedures (§ 537.63).

(6) Action on appeal (§ 536.64).

(7) Attorney fees (§ 536.66).

§ 536.104. Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.32, except that the agreement will be modified to include a State and its NG in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

Subpart G—Claims Under Status of Forces and Other International Agreements

General

§ 536.105 Statutory Authority.

The authority for this subpart is contained in the following:

(a) 10 U.S.C. 2734a as amended, concerning claims arising overseas under international agreements.

(b) 10 U.S.C. 2734b, as amended, concerning claims arising under international agreements in this country.

(c) 10 U.S.C. 2735

(d) 10 U.S.C. 2736, as amended, providing for advance payment of certain claims.

Claims Arising in the United States

§ 536.106 Scope.

(a) This subpart provides procedures and defines responsibilities for the investigation, processing, and settlement of claims arising out of acts or omissions of members of a foreign military force or civilian component present in the United States, or a territory, commonwealth, or possession thereof under the provisions of reciprocal international agreements, which contain claims settlement provisions applicable to claims arising in the United States, such as Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty (DA Pam 27–162, appendix L).

(b) The Sending States under current international reciprocal agreements include Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Turkey, the United Kingdom, Spain, and SHAPE.

(c) Reference should be made to DA Pam 27–162, appendix L for delineation of what constitutes a foreign military force, a foreign civilian component, and a foreign dependent.

(d) Whenever claims arise involving foreign soldiers training or otherwise stationed in the United States pursuant to bilateral agreements or other arrangements, such as foreign military sales agreements, which contain specific claims provisions, the claims office receiving the claim will report such claims to the Commander, USARCS, for guidance as to the resolution and, if necessary, payment of such claims.

(e) The United States, as a Receiving State, is responsible under some Status of Forces Agreements, for the investigation of incidents, and for the processing of claims, arising from acts or omissions of members or civilian employees of an armed force of a sending state present in the United States. The United States may be liable for partial payment of such claims if they arise incident to the official duties of the sending state's soldier or employee. Article VIII of the NATO SOFA is the most commonly invoked agreement of this sort. It applies to torts committed within the North Atlantic Treaty Area, which includes the continental United States and island possessions north of the Tropic of Cancer (i.e. excludes Puerto Rico, Hawaii and American Samoa). It also applies to claims arising out of acts by military or civilian personnel, regardless of nationality, who are assigned, attached to, or employed by an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty dated August 28, 1952 (e.g. Supreme Allied Command, Atlantic).

(f) Single service responsibility for the processing and settlement of claims cognizable under this section is assigned to DA by DODD 5515.8. The Secretary of the Army hereby designates the USARCS as the Receiving State Office for claims cognizable under this section with authority to settle such claims in accordance with 10 U.S.C. 2734b. (See DA Pam 27–162, appendix L.)

(g) As Sending State forces are considered assimilated into the armed forces of the United States for purposes of the SOFAs, their members are also barred from being compensated by the United States when they are injured incident to their service, *Daberkow* v. *United States*, 581 F.2d 785 (9th Cir. 1978). (See also DA Pam 27–162, appendix L for an example of a government-to-government claim bar in these circumstances.)

§ 536.107 Notification of incidents.

In order for the United States to properly discharge its claims responsibilities under international agreements, it is essential that the responsible military authorities be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any installation that learns of an incident involving a member of a foreign military force or civilian component which results in personal injury, death, or property damage will notify immediately by the most expeditious means the installation to which such person is assigned or attached. An information copy of such notification will be furnished to the Commander, USARCS. In the event the member is not assigned or attached to any installation within the United States, the Commander, USARCS will be notified. The notification (exempt report, AR 335–15, para 720) will contain so much of the following information as is readily available:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organization of foreign personnel involved.

(e) Name of potential claimants.

(f) A brief description of any damage, loss, or destruction of property, and personal injuries or death.

§ 536.108 Liaison with sending State representatives.

The Commander, USARCS is responsible for maintaining liaison with designated representatives of Sending States as to claims matters under this section, and establishing internal operating procedures.

§ 536.109 Investigations.

(a) Immediate investigation of each incident involving a member of a foreign force or civilian component is required in order to ensure that all necessary information, including necessary statements and depositions, is obtained before the foreign personnel involved, either principals or witnesses, depart the United States.

(b) Responsibility for the investigation of an incident rests upon the

commander of the installation to which the member of a foreign force or civilian component is assigned or attached, or if not assigned or attached within the United States upon the Commander, USARCS. He or she is authorized to designate an appropriate agency of the Armed Services for this purpose.

(c) The installation responsible for the investigation will be free to request appropriate assistance from any other installation within the DOD to the end that a reliable and complete investigation of the incident will be accomplished most economically. Such requested assistance may be for an investigation of the entire incident, or it may cover only part of the investigation; for example, it may be a statement from one witness. Normally such requests will be made of an installation having claims responsibility under the appropriate departmental regulation and nearest the place of the occurrence. In a case involving an aircraft, such request will normally be made of an installation that also has the capability of investigating air accidents giving due regard to the type of aircraft.

(d) The investigation will be made in accordance with the regulations of the department of which the installation is a part. Also, information will be obtained as to whether the claimant is a member of a foreign force or civilian component, or dependent of such a member or employee. If so, the following will be listed: (1) Any benefits the claimant may be entitled to from his or her own government whether he or she has applied, or intends to apply, for such benefits.

(2) The value of any benefits to which the claimant may be entitled, which he or she may have received, or both.

(e) The investigating officer will arrange with the commanding officer of the foreign unit to which a member of a foreign force or civilian component is assigned, or the immediate superior of such member, to obtain from such member the pertinent information and required reports. If the member is assigned or attached to a United States organization or installation, information and reports will be obtained in accordance with the procedure applicable to United States personnel.

(f) Notwithstanding the provisions of department regulations, a copy of the report of investigation will be forwarded to the Commander, USARCS immediately upon completion.

§ 536.110 Claims procedures.

(a) *Place and time of filing.* A claim should be filed with the commanding officer of the United States military installation nearest the place where the incident occurred, but may be filed at any other such installation, within two years of its accrual. Immediately upon receipt, a copy will be forwarded to Commander, USARCS. The claim and supporting documents will conform to the regulations of the department of which the place of filing is a part. Claims filed with a sending State official within 2 years of their accrual will be accepted as timely if received by a U.S. claims office (§ 536.5) before the passage of a total of 2½ years from the date of accrual.

(b) *Processing of claims.* A claim normally will be processed by the installation that first investigated the incident from which it arose in accordance with the pertinent departmental regulations. The commanding officer of an installation with which a claim is filed may by direct communication ascertain whether the incident from which it arose was investigated by another installation, and, if so, may transmit the claim for further processing to that installation. Upon completion of investigation, the claim file will be forwarded to the Commander, USARCS.

(c) *Official duty claims.* Pursuant to 10 U.S.C. 2734b, claims generated by the sending State personnel, while engaged in the performance of official duties, are settled by a person designated in § 536.111 in the manner provided for claims generated by personnel of the armed forces of the United States, that is, under the MCA (subpart C), the FTCA (subpart D) or the Army Maritime Claims Settlement Act (subpart H). The Commander, USARCS, will obtain scope of employment determinations from sending State officials under the conditions set forth in Article VIII, NATO SOFA. Payments made are subject to pro rata reimbursement by the sending State (paragraph 5, Article VIII, NATO SOFA (DA Pam 27–162, appendix L)).

(d) *Exgratia claims.* Claims arising from off-duty activities of sending State personnel are, after investigation, processing, and evaluation, referred by the Commander, USARCS to sending State officials for a determination as to whether an exgratia payment will be offered (paragraph 6, Article VIII, NATO SOFA (DA Pam 27–162, appendix L)).

§ 536.111 Settlement authority.

The Commander, USARCS, or designees, are delegated sole authority to settle claims under this subpart.

§ 536.112 Advance payments.

Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in subpart B of this part, advanced payments.

§ 536.113 Litigation.

Officials designated by departmental regulations as responsible for reporting the initiation of legal proceedings involving their department will take the following action upon the commencement of legal proceedings:

(a) Report the initiation of the proceeding by electrical message to the Litigation Division, Office of TJAG, submitting the information required by departmental regulation for reports of commencement of proceedings, with a copy to Commander, USARCS.

(b) Notify the proper United States Attorney and furnish him or her with copies of all process and pleadings.

(c) Forward by fastest means available to the Litigation Division, Office of TJAG, three copies of all process, pleadings, and related papers.

(d) Unless otherwise directed by TJAG, prepare an investigative (litigation) report in the manner prescribed by departmental regulations and submit three copies to Litigation Division, Office of the TJAG, AR 27–40; AFR 110–3; Navy JAG Manual, chapter 13.

§ 536.114 Assistance to foreign forces.

(a) In order that claims cognizable under this section will be treated as nearly as possible as if they arose from activities of United States personnel, all possible assistance will be provided to commanding officers of foreign units and to members thereof.

(b) The commanding officer of an installation at which a foreign unit is stationed will furnish to the commanding officer of the foreign unit copies of regulations and forms relating to claims, and, when applicable, will provide instructions for the members of the unit with respect to the pertinent State laws and reporting of accidents.

(c) The commanding officer of an installation to whom a request for information or assistance is made by foreign personnel or to whom a report of an incident is made will provide, to the extent permitted by security regulations, the requested information or assistance.

(d) When circumstances permit, assistance in meeting local requirements will be rendered to the foreign personnel involved at the scene of an incident by the commanding officer of the installation to which the incident was reported. The commanding officer of an installation at which a foreign unit is stationed should request that local law enforcement agencies follow procedures applicable to incidents

involving military personnel of the United States in any incident involving foreign personnel.

Claims Against the United States Arising Overseas

§ 536.115 Scope.

(a) This section provides guidance on claims against the United States which are based on acts of our soldiers or employees within the scope of their employment and which arise in countries for which there is an international agreement requiring a foreign government (i.e., receiving state) to adjudicate and pay the claims subject to partial reimbursement by the United States.

(b) Claims by foreign inhabitants based on acts of members of our forces which are outside the scope of their official duties may be payable under the Foreign Claims Act (chapter 10) but are usually not adjudicated by receiving states under most international agreements. These non-scope claims will be processed under the provisions of subpart J.

§ 536.116 Claims procedures.

(a) Claims provisions in Status of Forces Agreements providing for receiving state adjudication have been held to be the exclusive remedy for claims against the United States, preempting any remedy that would otherwise be available under other United States claims statutes, such as the Foreign Claims Act or the Public Vessels Act (*Aaskov* v. *Aldridge*, 695 F. Supp. 595 (D.D.C. 1988)).

(b) SOFA provisions for receiving state adjudication of claims against the United States usually refer to claims by "third parties" against members of the force or civilian component. This clearly includes claims by tourists or business travelers from the United States as well as inhabitants of foreign countries. Depending on how the receiving state interprets the class of proper claimants under the SOFA claims provisions, the receiving state may also adjudicate claims by dependents of our forces. Chiefs of command claims services responsible for claims arising in countries with SOFA or other treaty provisions requiring adjudication of claims against the United States by a receiving state will ensure their tort claims personnel are aware of the receiving state's policy on the issue of who are proper claimants under the treaty provisions.

(c) Where SOFA provisions provide for receiving state adjudication of claims, the time limit for filing such claims is often substantially less than the two years that would otherwise be allowed under the FCA or MCA. For example, the Defense Cost Office in Germany requires that a claim be filed within 90 days of the date it accrues. Command claims services will ensure that all claims personnel in their area of responsibility: (1) Receive annual training on the receiving state's claims procedures, to include the applicable time limits, procedures and location of the appropriate receiving state claims office or agency;

(2) Screen all new claims and inquiries about claims to identify claimants who must file with the receiving state;

(3) Ensure that all such claimants are informed of this requirement and the applicable time limit.

(d) All foreign inhabitants who have claims against the United States which are the responsibility of the receiving state (i.e., based on acts within scope of duties of employees or members of U.S. forces and not otherwise excluded by the treaty) will be required to file the claim with the appropriate receiving state office. Those U. S. inhabitants whose claims would otherwise be cognizable under the Military Claims Act (chapter 3) and who are deemed by the receiving state to be proper claimants under the SOFA claims provisions must also file with the receiving state. However, if they fail to do so, their claim may be considered under subpart C, for good cause, with the permission of the Commander, USARCS. Claims for which a foreign country is responsible under a SOFA or similar agreement will not be paid under subpart J or subpart C without prior approval of the Commander, USARCS or the senior JA in country (§ 536.52(a)(3) and 536.152(c)).

(e) A claim filed and adjudicated by a receiving state under a SOFA or other international agreement claims provision may be considered under other claims provisions of this regulation only if the receiving state denied the claim on the basis that it was not cognizable under the treaty or agreement provisions. Where a claimant has filed a claim with a receiving state and received payment, such payment will be the claimant's final and exclusive remedy against the United States. If the claim is denied on the merits by the receiving state, that action will also be the claimant's final and conclusive remedy against the United States.

§ 536.117 Responsibilities.

(a) The Commander, USARCS, is responsible for—

(1) Providing policy guidance to command claims services concerning SOFA or other treaty reimbursement programs implementing 10 U.S.C. 2734a.

(2) Monitoring the reimbursement system to ensure that programs are in place for the proper verification and certification of reimbursement claims.

(3) Monitoring funds expended for reimbursements to foreign governments.

(b) Command claims services within whose jurisdiction SOFA or other treaty provisions providing for a claims reimbursement system are in force and where DA has been assigned single-service responsibility for the foreign country seeking reimbursement (see § 536.159) are responsible for—

(1) Establishing a program for the verification, certification, and reimbursement of claims. A copy of the procedures implementing the program will be provided to the Commander, USARCS.

(2) Providing the Commander, USARCS, with budget estimates or reimbursements in addition to the reports required by § 536.242.

(3) Providing the Commander, USARCS, with statistical information each month in which payments are made as to the number of individual claims reimbursed, the total amount paid by the foreign government, and the total amount reimbursed by the United States.

(4) Providing the Commander, USARCS, with a quarterly report showing total reimbursements paid during the quarter for maneuver damage and tort claims (broken out by major categories of damage as determined by the Commander, USARCS) and an update on major issues or activities that could impact on the operation or funding of the reimbursement system.

§ 536.118 Reimbursements for nonappropriated funds.

(a) Reimbursements for claims generated by the operations of nonappropriated fund activities will be paid using nonappropriated funds (NAF) (see subpart L).

(b) Command claims services will provide the Commander, USARCS, with statistical information each month, if appropriate, as to the number of NAF claims processed and the amounts to be reimbursed by NAFs.

§ 536.119 Reimbursement for Coast Guard activities.

Upon request of the Secretary of Transportation, or designee, any payments made relating to Coast Guard-generated claims covered by 10 U.S.C. 2734a(c) may be reimbursed or paid to the foreign government concerned by a command claims service out of its

reimbursement expenditure allowance, subject to reimbursement from the Department of Transportation (10 U.S.C. 1734a(d)).

Subpart H—Maritime Claims

General

§ 536.120 Statutory authority.

Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army, or designee, is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

§ 536.121 Related statutes.

The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: The Suits in Admiralty Act (46 U.S.C. 741–752); the Public Vessels Act (46 U.S.C. 781–790); an act Extending the Admiralty and Maritime Jurisdiction (46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365 and 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–04 and 9806.

Claims Against the United States

§ 536.122 Scope.

Title 10, United States Code, section 4802, provides for the settlement or compromise of claims for—

(a) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(b) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(c) Damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA.

§ 536.123 Claims exceeding $500,000.

Claims against the United States settled or compromised in a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under this section and, if approved by the Secretary of the Army, will be certified to Congress.

§ 536.124 Claims not payable.

A claim is not allowable under this section that—

(a) Is for damage to, or loss or destruction of property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict.

(b) Is for the personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his or her service.

(c) Is for the personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(d) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901).

(e) Has been made the subject of a suit by or against the United States, except as provided in § 536.127(b).

(f) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO SOFA, Article XVIII of the Japanese Administrative Agreement, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(g) Is based upon the exercise or performance or the failure to exercise or to perform a discretionary function or duty whether or not the discretion is abused, provided that the United States Court of Appeals for the jurisdiction in which the claim arises has not specifically refused to incorporate the discretionary function exception into the Suits in Admiralty Act (e.g. United States Court of Appeals for the Fourth Circuit).

(h) Is presented by a citizen or government agency, or a corporation controlled by a citizen or government agency, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and, at the time of the incident, was friendly to the United States.

§ 536.125 Claims under other laws and regulations.

(a) Claims of DA personnel and civilian employees of DOD including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of subpart K.

(b) Claims that are within the scope of this section and also within the scope of subpart J may be processed under subpart J when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigating Officer, or other claims investigator.

§ 536.126 Subrogation.

(a) An insurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An insurer and its assured may file a claim either jointly or separately. Joint claims will be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(b) For the purpose of determining authority to settle or compromise a claim, the payable interests of an insurer (or assurers) and the assured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(c) The policies set forth in paragraphs (a) and (b) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

§ 536.127 Limitation of settlement.

(a) The period of effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act; that is, a 2-year period from the date the cause of the action accrued. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army, or other approval authority, prior to the end of such period. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period and the claimant should be so informed in accordance with paragraph (c), of this section.

(b) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the complaint.

(c) When a claim under this section, notice of damage, invitation to a damage survey, or other written document

indicating an intention to hold the United States liable is received, the receiving installation, office, or person, will immediately forward such document to the Commander, USARCS. The USARCS claims office receiving notice of the claim will promptly advise the claimant or potential claimant in writing of the comprehensive application of the time limit.

(d) Where a claim under this section for $25,000 or less is presented to a Corps of Engineers or other designated area claims office (see §§ 536.128(c)) and 536.132(c) and thus may be appropriate for action by that office pursuant to the delegation of authority set forth in § 536.128, the receiving Corps of Engineer office will promptly advise the claimant in writing of the comprehensive application of the time limit on the Army's authority to settle the claim as well as the fact that the claim does not toll the statute of limitations for filing suit. (See § 536.21(b).)

(e) Claimants are not required to file an administrative claim six months prior to filing suit except for those claims where maritime jurisdiction is based on the Act Extending the Admiralty and Maritime Jurisdiction (46 U.S.C. 740) (i.e. damage or injury on land resulting from an act on navigable waters). However, even in those cases, the filing of an administrative claim does not toll the two year statutory limit for filing suit nor extend the authority of the Army to settle a claim. Any such claim filed within six months of the running of the statute of limitations should be brought to the attention of USARCS immediately and every reasonable effort should be made to complete final agency action before the running of the two year limit.

(f) *Limitation of liability.* Under the provisions of the Limitation of Shipowners' Liability Act, 46 U.S.C. 181–188, the United States may be able, in cases alleging injury or loss due to negligent operation of a vessel, to limit our liability to the value of the vessel after the accident. To take advantage of this law, the United States must file an action in federal district court within six months of receiving written notice of a claim. Therefore, USARCS must be notified within 10 workdays of the receipt of any maritime claim arising in the United States or on the high seas out of the operation of an Army vessel, to include pleasure craft owned by the United States. The Claims Service will coordinate with Litigation Division, OTJAG or the Chief Counsel, COE and the Department of Justice on whether a limitation of liability action will be filed.

§ 536.128 Approval authority.

(a) The Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or the designee of the Secretary may approve any settlement or compromise of a claim under this chapter subject only to the statutory limits (presently $500,000).

(b) TJAG, TAJAG and the Commander, USARCS or his designee within USARCS are delegated authority to settle (i.e. deny or approve payment in full or in part) any claim under this chapter regardless of the amount claimed, provided that any amount awarded does not exceed $100,000 and that the claimant signs an appropriate settlement agreement.

(c) Chiefs of command claims services, heads of Corps of Engineers area claims offices and heads of other area claims offices designated by the Commander, USARCS, are delegated authority to deny claims under this chapter presented in an amount not exceeding $25,000. They may also pay in full or compromise any claim where the amount to be paid does not exceed $25,000, provided the claimant is willing to accept the payment and executes an appropriate settlement agreement.

(d) Only the authorities designated in paragraph a, above may deny or make a final offer on a claim demanding more than $25,000. If a claim cannot be settled within the authority of the head of an area claims office or the chief of a command claims service responsible for investigating a claim, it will be forwarded to USARCS through appropriate channels with a claims memorandum of opinion recommending disposition.

(e) Meritorious claims arising from civil works activities of the Corps of Engineers will be paid from Corps of Engineers funds.

Claims in Favor of the United States

§ 536.129 Scope.

(a) Title 10, United States Code, section 4803, provides for agency settlement or compromise of claims for damage to—

(1) DA accountable properties of a kind that are within the admiralty jurisdiction of a district court of the United States.

(2) Claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the DA has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed $500,000.

(b) Title 10, United States Code, section 4804, provides for the settlement of compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA. Claims for salvage services are based upon labor costs, per diem rates for the use of salvage vessels and other equipment, and upon repair or replacement costs of materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis in accordance with commercial practice, in appropriate cases.

(c) The United States has three years from the date a maritime claim accrues under this section to file suit against the responsible parties. The Army's authority to settle or compromise a suit under this section terminates when the statute of limitations has run. Efforts to compromise a claim under this section should not extend more than two years past the date the claim accrues unless it is clear that an administrative settlement is likely. As a general rule, affirmative claims which are likely to be resolved through litigation should be referred to the Department of Justice within two years of the date the claims accrue.

§ 536.130 Claims exceeding $500,000.

Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding $500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated in accordance with the procedures in subpart B and reported to the Commander, USARCS. The Commander, USARCS will forward the claim to the Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or other designee of the Secretary who will then certify it to Congress.

§ 536.131 Civil works activities.

Rights of the United States to fines, penalties forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities are not dealt with in this section. However, claims for money damages that are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which

an adequate remedy is not available to the COE, may be processed under this section.

§ 536.132 Delegation of authority.

(a) The Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or other designee of the Secretary may compromise an affirmative claim by the United States under this subpart subject only to the statutory limit (presently $500,000) on the amount to be received (10 U.S.C. 4803(a)(2)).

(b) TJAG, TAJAG and the Commander, USARCS or his designee within USARCS may settle, or compromise, and receive payment on a claim by the United States under this subpart if the amount to be received does not exceed $100,000. They may also terminate collection of claims for the convenience of the government in accordance with the standards specified by the Department of Justice (see 4 CFR parts 103 and 104), regardless of the amount claimed.

(c) Chiefs of command claims services, the Chief Counsel, Corps of Engineers, heads of Corps of Engineers area claims offices, and heads of other area claims offices designated by the Commander, USARCS may receive payment in full or compromise any claim by the United States under this subpart provided: (1) The amount of the government's claim does not exceed $100,000, and

(2) The amount to be received does not exceed $25,000. The authority delegated in this paragraph to Corps of Engineers claims offices is subject to such limitations as may be imposed by the Chief Counsel, Corps of Engineers.

(d) The head of any claim office may assert and receive payment for the full amount of a claim not exceeding $100,000 by the United States under this subpart.

§ 536.133 Demands.

(a) It is essential that demands for payment or notice of intention to make such demands be made as soon as possible following receipt of information of damage to Army property where legal liability to respond is present or possibly present. Except in cases falling under § 536.132(b), copies of the initial demand/notice of intention to make demand letters, as well as copies of subsequent correspondence will be promptly provided to the Commander, USARCS, who will monitor the progress of such claims.

(b) Where, in response to any demand made by a field claims office, a respondent denies liability, fails to respond within a reasonable period, or offers a compromise settlement, the file will be promptly forwarded to the Commander, USARCS, except in cases where proposed compromise settlement is deemed acceptable and the claim is otherwise within the authority delegated in § 536.132(b).

Investigations and Reports

§ 536.134 Procedure.

Claims under this subpart will be investigated and reported in accordance with subpart B of this part, AR 55–19 or other applicable regulations.

§ 536.135 Reports.

A copy of the report of a marine casualty investigation disclosing the basis for a claim under section II or III of this chapter will be furnished to the Commander, USARCS within 60 days after the day on which the marine casualty occurred or after notice of such casualty. An interim report will be forwarded if the investigation has not been completed within the 60-day period. The report will contain original signed statements of all witnesses and other original documentary evidence to the extent practicable.

§ 536.136 Form of claim.

(a) A demand letter may initiate a claim. Formalization of a claim may be accomplished at any time before consummation of the settlement or compromise. It is preferable that claims under section II of this chapter be submitted on SF 95; however, the submission of a special form, in view of commercial practice, is not required. The reporting of a maritime casualty under § 536.135 will not be deferred in anticipation of the receipt of a claim.

(b) Claims of foreign nationals will be stated in the currency of the country in which the casualty occurred, or in the currency of the nationality of the claimant if other than the country of the casualty.

Subpart I—Claims Under Article 139, Uniform Code of Military Justice

§ 536.137 Statutory authority.

The authority for this subpart is Article 139, UCMJ (10 U.S.C. 939), which provides for redress for property willfully damaged or destroyed, or wrongfully taken, by members of the armed forces of the United States.

§ 536.138 Purpose.

This subpart sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss, or destruction of property owned by or in the lawful possession of an individual whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this subpart.

§ 536.139 Effect of disciplinary action.

Administrative action under Article 139 and this subpart is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under Article 139 and this chapter requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

§ 536.140 Claims cognizable.

Claims cognizable under Article 139, UCMJ, are limited to—

(a) Claims for property willfully damaged. Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(b) Claims for property wrongfully taken. A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement fraud, misappropriation, or similar offense may be considered wrongful taking.

§ 536.141 Claims not cognizable.

Claims not cognizable under this subpart and Article 139 include—

(a) Claims resulting from negligent acts.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(d) Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense.

(e) Subrogated claims, including claims by insurers.

§ 536.142 Limitations on assessments.

(a) Time Limitations. To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(b) *Limitations on amount.* If the General Court-Martial Convening Authority (GCMCA), or designee, acting on the claim determines that an assessment against a soldier in excess of $10,000 for a single incident is meritorious, he or she will assess the pay of that soldier in the amount of $10,000 and forward the claim to the Commander, USARCS with his or her recommendation as to the additional amount that should be assessed.

(1) A SPCMCA has authority to approve a pay assessment not to exceed $5,000 on a single incident and deny a claim in any amount.

(2) A GCMCA, or designee, has authority to approve a pay assessment in an amount not to exceed $10,000 on a single incident.

(3) Only the Commander, USARCS, or designee, has authority to approve a pay assessment in an amount greater than $10,000 on a single incident.

(c) *Direct damages.* Assessments are limited to direct damages for the loss or damage to property. Indirect, remote, or consequential damages may not be considered under this chapter.

§ 536.143 Procedure.

Area claims offices and claims processing offices with approval authority are responsible for publicizing the Article 139 program and maintaining a log for Article 139 claims presented in their areas (see DA Pam 27–162, paragraph 10–6). Area claims offices and claims processing offices with approval authority are required to monitor action taken on Article 139 claims and ensure that time requirements are met. If assessment action on a particular claim will be unduly delayed, the office may consider the claim under 31 U.S.C. 3721 and chapter 11 of this regulation if it is otherwise cognizable under that authority. The office will counsel the claimant to repay any overpayment if the Article 139 claim is later successful (see § 516.163(d)(1).

(a) *Form of a claim and presentment.* A claim must be presented by the claimant or his or her authorized agent orally or in writing. The claim must be reduced to writing, signed, and for a definite sum in U.S. dollars within 10 days after oral presentment. (See § 536.20(d)(1)(i))

(b) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one such convening authority who are under the same general court-martial convening authority, the claim will be forwarded to that general court-martial convening authority, who will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same general court-martial convening authority, the claim will be forwarded to the SPCMCA whose headquarters is closest to the situs of the incident, who will investigate and act on the claim as to all soldiers involved. If a claim is made against a member of one of the other Military Services, the claim will be forwarded to the commander of the nearest MACOM of that Service.

(c) *Action by the SPCMCA.* (1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer within 4 working days of receipt of a claim. The investigator will use the procedures of this chapter supplemented by the procedures of AR 15–6, chapter 4, applicable to informal investigations. The claims officer of a command, if he or she is a commissioned officer, may be appointed as the investigating officer.

(2) If the claim is not made against a person who is a member of the armed forces of the United States at the time the claim is received, or if the claim otherwise does not appear to be cognizable under Article 139, the SPCMCA may refer it for legal review (see paragraph (e) of this section) within 4 working days of receipt. If, after legal review, the SPCMCA determines that the claim is not cognizable, he or she may take final action disapproving the claim (see paragraph (f)) without appointing an investigating officer.

(d) *Action by the investigating officer.* The investigating officer will provide notification to the soldier against whom the claim is made.

(1) If the soldier indicates a desire to make voluntary restitution, the investigating officer may, with the convening authority's concurrence, delay proceedings until the end of the next pay period to accomplish this. If the soldier makes payment to the claimant's full satisfaction, the claim will be dismissed.

(2) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139 and this chapter and the amount to be assessed each offender. This amount will be reduced by any restitution accepted by the claimant from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may provide, the investigating officer will make findings and recommendations and submit these to the SPCMCA.

(3) If the soldier is absent without leave so that he or she cannot be provided with notification, the Article 139 claim may be processed in the soldier's absence. If an assessment is approved, a copy of the claim and memorandum authorizing pay assessment will be forwarded by transmittal letter to the servicing finance and accounting office (FAO) for offset input against the soldier's pay account. In the event the soldier is dropped from the rolls, the servicing FAO will forward the assessment documents to Commander, Defense Finance and Accounting Services, ATTN: Military Pay Operations, Indianapolis, Indiana 46249.

(e) *Legal review.* The SPCMCA will refer the claim to the area claims office or claims processing office servicing his or her command to review for legal sufficiency and advice. This will be either after completion of the investigating officer's report or subsequent to the SPCMCA's decision that the claim is clearly not cognizable (§ 536.143(c)(2)). That office will furnish within 5 working days or such time as the SPCMCA will provide a written opinion as to—

(1) Whether the claim is cognizable under the provisions of Article 139 and this subpart.

(2) Whether the findings and recommendations are supported by evidence.

(3) Whether there has been substantial compliance with the procedural requirements of Article 139, this subpart, and AR 15–6.

(4) Whether the claim is clearly not cognizable (see section 536–143(c)(2)) and final denial action can be taken without appointing an investigating officer.

(5) If the investigator recommends an assessment more than $5,000, the Judge Advocate/claims attorney will forward the packet to the head of the area claims office for the legal review. Within 5 working days, the head of the area claims office will forward the packet, with recommendations, to the GCMCA for approval of an assessment not to exceed $10,000. If the recommended assessment is over $10,000, the head of the area claims office will then forward

the packet to the Commander, USARCS for final approval of the assessment.

(f) *Final action.* After considering the advice of the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to or less than the amount recommended by the investigating officer up to $10,000. The approval authority will notify the claimant, and any soldier subject to his or her jurisdiction, of the determination and the right to request reconsideration. (See § 536.144.) A copy of the investigating officer's findings and recommendations will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless he or she determines that this delay will result in substantial injustice. The approval authority will direct the servicing finance officer for the soldier against whom assessments are approved to withhold such amount from the soldier not to exceed $10,000. (See § 536.142(b)). For any soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to that commander who does exercise special court-martial jurisdiction over the soldier for collection action.

(g) *Assessment.* Subject to any limitations provided in appropriate regulations, the servicing finance officer will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is conclusive on any finance officer. If the servicing finance officer finds that the required amount cannot be withheld because he or she does not have custody of the soldier's pay record or because the soldier is in a no pay due status, the servicing finance officer will promptly notify the approval authority of this in writing.

(h) *Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will retain the original claim file and forward a complete copy of the claim file to the SPCMCA. The article 139 claim will be filed locally, IAW the Modern Army Record Keeping System (MARKS). If a claim for the same incident is filed UP AR 27–20, chapter 11, a copy of the article 139 claim will be incorporated into the chapter 11 claim file.

(i) *Remission of indebtedness.* Title 10, United States Code, section 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139.

§ 536.144 Reconsideration.

(a) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the factual or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(b) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he or she occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. The original SPCMCA may modify it if he or she determines that the action was incorrect, subject to paragraph (d) of this section. However, the SPCMCA should only modify the action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law.

(c) *Reconsideration by a successor in command.* Subject to paragraph (d) of this section, a successor in command may only modify an action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

(d) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and fully explain the basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

(e) *Disposition of files.* After completing action on reconsideration, the SPCMCA will forward the reconsideration action to the claims office who will then file the action in accordance with § 536.143(h).

Subpart J—Claims Cognizable Under the Foreign Claims Act

General

§ 536.145 Statutory authority.

The authority for this subpart is contained in the following statutes:

(a) 10 U.S.C. 2734 as amended, commonly referred to as "The Foreign Claims Act."

(b) 10 U.S.C. 2734a as amended, commonly referred to as "The International Agreement Claims Act."

(c) The Act of 8 September 1961 (10 U.S.C. 2736), as amended.

(d) Act of 4 March 1923 (36 U.S.C. 121, 138b).

§ 536.146 Scope.

(a) This subpart implements the FCA and authorizes the administrative settlement of claims of inhabitants of a foreign country, or by a foreign country or a political subdivision thereof, against the United States for personal injury or death or property damages caused outside the United States, its territories, commonwealths, or possessions by military personnel or civilian employees of the DA, or claims which arise incident to noncombat activities of the Army.

(b) Claims resulting from the activities, or caused by personnel of another military department, service, or agency of the United States may also be settled by Army foreign claims commissions as authorized by this subpart.

(c) Claims arising from acts or omissions of employees of nonappropriated fund activities may also be settled by Army foreign claims commissions pursuant to this subpart if otherwise applicable, but are payable from nonappropriated funds (subpart L).

§ 536.147 Claims cognizable under other subparts.

(a) *Subparts C and E.* Claims within the scope of the FCA, which otherwise would be cognizable under subpart E will be considered first under this subpart. Claims by foreign inhabitants covered by the FCA may not be paid under the provisions of subpart C (see 10 U.S.C. 2733(b)(2)).

(b) *Subpart I.* Consideration may be given to first settling under subpart I, any claim which is also within the scope of the FCA. However, if the settlement of the claim under subpart I will cause identifiable hardship to the claimant, procedures of this subpart will be used.

(c) *Subpart K.* Claims cognizable under this chapter, which are also cognizable under subpart K, will be considered first under the latter subpart.

(d) *Subpart H.* Claims that may be settled under chapter 8 may be settled under this chapter only when specifically authorized by the Commander, USARCS. (See § 536.125(b).)

§ 536.148 Claims provisions of treaties and agreements.

When a foreign government has assumed responsibility for settling claims against the United States pursuant to Article VIII, NATO—SOFA, or other similar treaty or agreement, any claim presented to U.S. authorities will

be forwarded to the appropriate United States sending State Office, or similar office, for referral to the foreign government. The investigation by U.S. authorities of claims cognizable under a SOFA will normally be limited to securing evidence from U.S. sources.

§ 536.149 Presentation of claims.

A claim may not be allowed under this subpart unless it is presented within 2 years after it accrues. Such presentation may be made to United States authorities or to a foreign government in accordance with Article VIII, NATO—SOFA or other applicable treaty or agreement.

§ 536.150 Form of claims.

(a) A claim normally will be presented in writing. A report of the incident to the authorities stated in § 536.149 by the claimant or agent requesting compensation is an adequate presentation. Under unusual circumstances, a claim presented orally by the claimant to U.S. authorities may be considered acceptable. An oral claim must be reduced to writing, however, not more than 3 years after the date on which it accrues. The written claim must state the time, place, and nature of the incident; the nature and extent of damage, loss, or injury; and the amount of compensation claimed.

(b) A claim will be stated in the currency of the country where the incident occurred, or the country where the claimant was an inhabitant at the time of the incident. The U.S. dollar equivalent of a foreign currency, computed at the time the claim is filed and based on the annual Foreign Currency Fluctuation Account exchange rate (where applicable), will determine whether a foreign claims commission has monetary jurisdiction to settle the claim. (See § 536.149.)

(c) Claims commissions and command claims service will coordinate informally with the Chief, Special Claims Branch, USARCS to determine whether it is necessary to comply with the mirror file requirements of § 536.21 (c) and (d), for any claim cognizable under this subpart in which the amount claimed is greater than $50,000 and a foreign government is not responsible for adjudication under a SOFA or other agreement.

§ 536.151 Claimants.

(a) *General.* (1) In personal injury or property damage cases, a claimant must have been an inhabitant of a foreign country at the time of the incident and not otherwise excluded as a claimant. In a wrongful death case, the proper claimants are those who are entitled by the law of the country where the incident occurred to bring a claim for the decedent's death, and the decedent must have been an inhabitant of a foreign country at the time of the incident and not otherwise excluded as a claimant. However, it is not necessary that the claimant in personal injury and property damage cases, or the decedent in a death case, be a citizen of, or have legal domicile in the foreign country, to establish that he or she is an inhabitant thereof.

(2) A corporation or other organization doing business in a foreign country on a permanent basis may qualify as a proper claimant although organized under U.S. law.

(3) United States citizens residing overseas may be proper claimants provided it is established that they actually are inhabitants of a foreign country (see paragraph 7–4c(1)(a), DA Pam 27–162) and are not otherwise excluded.

(4) The government of a foreign country and political subdivisions thereof are proper claimants unless waiver provisions of applicable international agreements exclude such claims.

(b) *Claimants excluded.* (1) A national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States or of any country allied with such enemy country, is excluded as a claimant, unless the appropriate foreign claims mission considering the claim or the responsible military commander, determines that the claimant is, and at the time of the incident was, friendly to the United States.

(2) United States military personnel and civilian employees of the U.S. Government or its agencies and instrumentalities and their dependents, who are normally residents of the United states and who, at the time of the incident giving rise to the claim, are residing in a foreign country primarily because of their own or their sponsor's duty or employment status, are not foreign inhabitants and are excluded from coverage under the Foreign Claims Act.

(i) Foreign born spouses, children and other dependent family members of such military personnel and United States employees are also deemed to be inhabitants of the United States and excluded from coverage under this chapter if they have resided with their sponsor in the United States and are now overseas primarily because of their sponsor's duty assignment.

(ii) Children born to or adopted by a member of the force or civilian component who has not been reassigned to the United States since the date of the birth or adoption, are deemed to be inhabitants of the United States and excluded from coverage under this chapter from the time they are born or adopted. However, children born or adopted overseas will be deemed to be foreign inhabitants if there is clear evidence that they are not a member of the sponsor's household and are not residing overseas primarily because of the sponsors duty assignment. For example, a child born or adopted overseas would be deemed to be a foreign inhabitant if the child continued to reside overseas with the other parent after their military or civilian employee sponsor returns to the United States or is transferred to another foreign country on permanent change of station orders. (See paragraph 7–4c, DA Pam 27–162.

(iii) In the case of a spouse married overseas to a member of the armed forces or a U.S. civilian employee, the spouse continues to be a foreign inhabitant until he or she moves with the sponsor to another foreign country or to the United States.

(iv) Parents or other relatives who are financially dependent on a member of the military or civilian employee, but are not members of the household, continue to be foreign inhabitants. If they are members of the sponsor's household they lose foreign inhabitant status once they have resided in the United States or another foreign country with the sponsor.

(3) Other residents of the United States, or its territories, commonwealths, or possessions who are visiting, touring, or employed overseas, but not inhabitants of a foreign country, are excluded.

(c) *Insurers or other subrogees.* (1) Under this subpart the property claim of an insured, but not that of a subrogee, may be considered. This precludes consideration of the claim of an insurer subrogated by operation of law or the terms of a policy of insurance for payments made by it to or for its insured. However, an insured party will not be required to exhaust a remedy against an insurer, which the insured obtained by payment of a premium to that insurer, prior to payment of a property damage-claim under this chapter.

(2) Further, no claim or any part thereof, the amount of which has been recovered or is reasonably recoverable from workmen's compensation, health insurance, social security, or any indemnifying law or indemnity contract, may be paid.

(3) Provisions of paragraphs (c) (1) and (2) of this section are intended to

preclude any payment that does not go to and remain with the injured party claimant.

(4) If the application of paragraph (c)(2) of this section would impose severe hardship upon an individual, the claim should be forwarded to Commander, USARCS, who is authorized to make exceptions in individual cases upon presentation of adequate justification.

§ 536.152 Claims payable.

(a) A claim for death, personal injury, or loss or damage to property may be allowed under this chapter if it resulted from a negligent or wrongful act or omission of any of the following categories of personnel regardless of whether the act or omission was within the scope of their employment—

(1) Military personnel of the United States.

(2) Civilian employees of a military department or the Department of Defense who are U.S. citizens. Claims generated by U.S. citizens who are employees of a nonappropriated fund activity who are paid with non-appropriated funds will be paid in accordance with the provisions of this subpart and subpart L from nonappropriated funds.

(3) Other civilian employees who are not U.S. citizens and were recruited or transferred from a country other than the one in which they are employed and where the incident occurred.

(b) Claims based on the negligent or wrongful acts of the following categories of employees will be paid under this subpart only if the act was within the scope of their employment—

(1) Civilian employees who are not U.S. citizens, who were recruited in the country in which they are employed, and where the incident occurred. Claims arising from the operation of U.S. Armed Forces vehicles or other equipment by the employees described in the preceding sentence, however, may be paid, even though the employees are not acting within the scope of their employment, provided the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

(2) Officers or civilian employees of the American Battle Monuments Commission, acting within the scope of employment. Claims generated by such personnel will be paid from American Battle Monuments Commission appropriations.

(3) Certain Red Cross volunteers meeting the criteria set forth in AR 40–3, paragraph 2–42.

(c) A claim may be settled under this subpart if it arises from non-combat activities (see glossary). Activities incident to combat, whether in time of war or not, are excluded.

(d) Property for the loss or damage of which claims may be settled under this subpart includes—

(1) Real property used and occupied in connection with training, field exercises, or maneuvers. An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent. Real estate claims founded upon contracts are processed under the provisions of AR 405–15.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss.

§ 536.153 Claims not payable.

A claim may not be allowed under this subpart that—

(a) Results from action by an enemy or results directly or indirectly from an act of the armed forces of the United States in combat, except if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(b) Is purely contractual in nature.

(c) Is one for which a foreign country is responsible under Article VIII NATO—SOFA, or other similar treaty or agreement. (See § 536.148). However, if a foreign country refuses to recognize legal responsibility for the claim, or to consider it under applicable treaty provisions, the senior Army JA in country or, where the estimated value of the claim is within USARCS authority, the Commander, USARCS, may authorize a foreign claims commission to consider the claim.

(d) Arises from private or domestic obligations as distinguished from Government transactions.

(e) Is based solely on compassionate grounds. (See DA Pam 27–162, paragraph 8–4.)

(f) Is a bastardy claim.

(g) Arises from the operations of a nonappropriated fund activity, unless generated by military personnel performing assigned duties (subpart L).

(h) Is for the personal injury or death of a member of the armed forces of the United States incurred incident to service. (See § 536.25.)

(i) Is for the personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(j) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et. seq.).

(k) Is for the personal injury or death of any employee for whom benefits are provided under workmen's compensation type laws or regulations, including local law or custom, in cases where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee. If, in the opinion of a foreign claims commission the claim should be considered payable; (e.g. injuries did not result from the normal risk of employment or adequate compensation is not payable under workmen's compensation laws,) the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award. The Commander, USARCS, also may specify that all or any part of any compensation received by the claimant from workmen's compensation sources, as above, will be deducted from the award to claimant. The claim of an insurance carrier subrogee who has received premiums paid directly or indirectly by the United States on behalf of the injured employee, however, is not payable.

(l) Is for taking of property by technical trespass, such as the overflight of aircraft or a taking contemplated by the Fifth Amendment to the U.S. Constitution, as distinguished from common law trespass. (See AR 405–15, para 2c, and DA Pam 27–162, paragraphs 8–46 and 8–75).

(m) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(n) Is for patent or copyright infringement. (See AR 27–60.)

(o) Is for war trophies, or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or for precious jewels and other articles of extraordinary value voluntarily bailed to the DA. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(p) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by section

536.152(c)(1). Real estate claims founded upon contract are generally processed under AR 405–15. (See DA Pam 27–162, paragraph 8–46.)

(q) Is not in the best interests of the United States or is contrary to public policy, general principles of equity, or the basic intent of the FCA. Examples are claims by inhabitants of unfriendly countries, claims by or based on injury or death of individuals considered to be unfriendly to the United States, or claims for property losses resulting directly or indirectly from illegal activities of the claimant, such as drug dealing, black marketing, or illegal loan sharking. When a claim is considered to be not payable for the reasons stated in this paragraph, the issue will be presented to the Commander, USARCS for determination of the applicability of this exclusion.

(r) Arises from the activities of the Panama Canal Commission.

(s) Is based upon an act or omission of a member or employee of the Army, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. However, this exception should not be used without prior approval of the Commander, USARCS.

(t) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency, or a member or employee of the Army, whether or not the discretion involved is abused. However, this exception should not be used without prior approval of the Commander, USARCS.

(u) Arises in respect to the assessment or collection of any tax or custom duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer.

(v) Is a claim for which a remedy is provided by the Suits in Admiralty Act (46 U.S.C. 741–752) or the Public Vessels Act (46 U.S.C. 781790), or cognizable under subpart H, unless specifically authorized by the Commander, USARCS. (See § 536.147(d).)

(w) Is a claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading With the Enemy Act (50 U.S.C. App. sections 1–31). (See DA Pam 27–162, paragraph 8–8d.)

(x) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(y) Results wholly from the negligent or wrongful act of the claimant or his or her agent. Claims involving comparative negligence are not barred by this provision.

(z) Arises out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(aa) Is for damages caused by the fiscal operations of the DA, the Treasury, or by regulation of the monetary system.

§ 536.154 Compensation.

(a) In determining an appropriate award, the law and custom of the country where the incident occurred will be used to determine what elements of damages are payable and which individuals are entitled to receive compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily in the country where the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Punitive damages and interest will not be allowed. Court costs, attorney fees, bail, costs of filing a claim, and similar charges also are not allowed.

(b) Local law or custom pertaining to contributory or comparative negligence and to joint tortfeasors will be applied.

§ 536.155 Computation of amount.

(a) The amount allowed will, to the extent possible, be apportioned among claimants as prescribed by local law.

(b) After appropriate compensation for the total damages suffered has been computed, any payment claimant has received from the tortfeasor, or any joint tortfeasor, will be deducted. This includes amounts collectible from a tortfeasor's or joint tortfeasor's insurance company or amounts paid by any other third party.

(c) *Deductions for insurance.* (1) Normally there will be deducted from any award the amount of any applicable insurance coverage recovered or an amount that can be reasonably expected to be recovered and which has been or will be paid to the claimant. In this regard, every effort will be made to monitor the insurance aspect of the case and encourage direct settlement between the claimant and the insurer. (See § 536.151(c)(1).)

(2) When efforts under paragraph (c)(1) of this section are of no avail or it otherwise is determined that an insurance settlement will not be reasonably available for application to the award, settlement may be accomplished without making a deduction. In such cases, an assignment of the insured's rights against the insurer will be obtained and, in appropriate cases, reimbursement action will be instituted against the insurer under applicable procedures.

(3) If the reason that an insurance settlement is not available is due to insolvency or bankruptcy of the insurer, no award will be made until prior consent has been obtained from the Commander, USARCS. In this event, a report on a bankruptcy will be forwarded without delay setting forth all pertinent information including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

(d) Settlements will be stated in the appropriate foreign currency. To determine the proper approval authority, the settlement or the claimed amount (in claims where a settlement cannot be reached) will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable) on the date of the commission's action.

(e) Payment will be made in the currency of the country in which the incident occurred or where the claimant resided at the time of the incident. However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country.

(f) No more than 20% of the total cost of an award to the United States may be paid as attorney fees or as a fee by any representative. This fee limitation should be made a part of all settlement agreements.

(g) In appropriate cases, a commission or other approval authority can require a structured settlement with periodic or deferred payments if it is feasible to make such arrangements in the country where the claimants reside. Such settlements are especially appropriate on claims of minors. In cases where the time, duration, amount or need for any element of future damages is uncertain, the part of the award for such damages may be paid into a reversionary trust with the reversion to the United States.

Foreign Claims Commissions

§ 536.156 Appointment and functions.

(a) Claims cognizable under this section will be referred to a foreign claims commission for processing regardless of the amount claimed. The commander senior Judge Advocate of a command having a command claims service will appoint necessary foreign

claims commissions to action claims arising within his or her geographic area jurisdiction, and on claims arising in another geographic area jurisdiction that are transferred by agreement between the commanders involved. The senior Judge Advocate may delegate this authority to commander or chief of the command claims service.

(b) All other commissions will be appointed by the Commander, USARCS, to act on any claims referred to the commission regardless of where the claim arose. Commissions appointed by the Commander, USARCS, for units based in CONUS may act on any claim arising out of the operations of their unit. Any claims commission operating in or adjudicating claims arising out of an area within the jurisdiction of a command claims service will comply with the legal and procedural guidance of that service.

(c) A commission may operate as an integral part of a command claims service that will determine the cases to be assigned to it, furnish necessary administrative services, and establish and maintain its records. Where a commission does not operate as a part of a command claims service, it may operate as a part of the office of a division, corps or higher command SJA, who will perform the foregoing functions.

(d) Any appointing authority may relieve a commission appointed by him or her. One copy of each order concerning appointment, relief, or change of responsibility of a commission will be forwarded without delay to the Commander, USARCS.

(e) Normally, the claims commission is responsible for the investigation of all claims referred to it, using the procedures in subpart B, Investigation, and any local procedures established by the appointing authority or command claims service responsible for the area in which the claim arose. The chief of a command claims service can request assistance on claims investigation in their geographical areas from units or organizations other than the claims commission. The Commander, USARCS can do likewise for any claim referred to a commission appointed under his authority.

(f) When a foreign claims commission intends to deny a claim, award less than the amount claimed, or recommend an award less that the amount claimed but in excess of its authority, it will notify the claimant, the claimant's authorized agent, or the claimant's legal representative, in writing by the means most likely to ensure receipt by the claimant, of its intended action on the claim and the legal and factual basis for that action. The purpose of this notice is to give the claimant an opportunity to object to the commission's action and state the reasons for the objection before final action on the claim. Where the commission intends to award the amount claimed or to recommend to higher authority an award equal to the amount claimed, this procedure is not necessary.

(1) This notice should be given at least 30 days prior to final action by the commission, except for small claims processed under the provisions of subpart B, Small Claims.

(2) If the commission proposes to make a partial award or to recommend a partial award to higher authority, a settlement agreement should be enclosed with the notice. If the commission is recommending an award in excess of its authority, the agreement should indicate that the recommendation is contingent upon approval by higher authority. Claimants will be advised they may either accept the commission's action by returning the signed settlement agreement or, if they are dissatisfied with the commission's action or recommendation, they may submit a response in writing stating the factual or legal reasons why they believe the commissions proposed action is incorrect.

(3) A commission may alter its initial decision based on the claimant's response or proceed with its intended action. If the claimant's response raises a general policy issue, the commission may request an advisory opinion from the Commander, USARCS while retaining the claim for final action at its level.

(4) Upon completion of its evaluation of the claimant's response, the commission will notify the claimant of its final decision and advise the claimant that its action is final and conclusive by law (10 U.S.C. 2735), unless the final decision is a recommendation for payment above its authority. In that case, the commission will forward any response submitted by the claimant along with the commission's claims memorandum of opinion to the approval authority and will notify the claimant accordingly.

(5) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims. When an agreement can be reached, the notice and response provisions above are not necessary. If the commission recommends an award in excess of its authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

§ 536.157 Composition.

A foreign claims commission normally will be composed of either one or three members. Alternate members of three-member commissions may be appointed where circumstances require and be substituted for regular members for specific cases by order of the appointing authority. The appointing orders will clearly state who is designated the president of a three-member commission. Two members of a three-member commission will constitute a quorum, and the commission decision will be determined by majority vote.

§ 536.158 Qualification of members.

A member of a foreign claims commission normally will be either a commissioned officer or a claims attorney. At least two members of a three-member commission must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the armed forces may be appointed to a foreign claims commission subject to prior approval by the Commander, USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification of the need for such appointment (for example, lack of legally qualified personnel). The commission will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another armed force will be appointed a member of an Army foreign claims commission only if approved by the Commander, USARCS.

§ 536.159 Delegation of authority.

(a) One-member commission. Unless otherwise restricted by the appointing authority, a one-member foreign claims commission that is a JA or a claims attorney may consider and pay appropriate claims presented in any amount provided a mutually agreed settlement can be reached in an amount not over $15,000 or disapprove any claim presented in an amount not over $15,000. In no case will the jurisdictional limit of $15,000 be used to unfairly reduce payment of a claim meritorious in an amount over $15,000. Any other one-member foreign claims commission may consider and pay, in full or in part, claims presented in an amount not exceeding $2,500 that it considers meritorious.

(b) Three-member commission. A three-member commission may take the following actions on a claim properly before the commission, unless otherwise restricted by the appointing authority.

(1) Disapprove a claim presented in any amount. Where a claim presented in

any amount over $50,000 is disapproved, the commission, after final action has been taken, will forward to the appointing authority the written notice to the claimant required by § 536.157(f), any response by the claimant and its notice of final action on the claim.

(2) Approve and pay, in full or in part, a claim filed in any amount which is adjudicated by the commission as meritorious in an amount not exceeding $50,000. For claims in excess of $50,000 in which the commission approves payment of an award for $50,000 or less, the commission, after taking final action, will forward to the appointing authority the written notice to the claimant required by § 536.157(f), any response by the claimant and its notice of final action.

(3) Recommend an award in excess of $50,000. The commission will comply with the notice and comment provisions of § 536.157(f), and forward the claim to the approval authority under cover of a claims memorandum of opinion. Recommendations for awards in excess of the commissions authority will be sent through any command claims service responsible for the area in which the claim arose and, in the case of recommendations for awards in excess of $100,000, through the Commander, USARCS.

(4) In any case where no claim exceeds $50,000 but the total amount to be awarded on all claims arising out of the same incident exceeds $100,000, no action will be taken to make payment until a claims memorandum of opinion (see section 536.22) on the incident has been forwarded and reviewed by the Commander, USARCS or his designee.

(c) TJAG, TAJAG and the Commander, USARCS or his designee at USARCS may approve and pay, in whole or in part, any claims so long as the amount of the award does not exceed $100,000; may disapprove any claims, regardless of either the amount claimed or the recommendation of the commission forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of $50,000, may refer the claim back to the commission or to another commission for further action.

(d) Payments in excess of $100,000 will be approved by the Secretary of the Army, the Assistant Secretary of the Army (Financial Management) as designee of the Secretary or other designee.

(e) Following approval, where required, and receipt of an agreement by the claimant accepting the specific sum awarded by the commission, the claim will be processed for payment in the appropriate currency. The first $100,000 of any award will be paid from Army claims funds. The excess will be reported to the Claims Division, GAO, 441 G Street, NW., Washington, DC 20548–9100, together with the documents listed in § 536.35(b).

(f) The chief of an overseas command claims service may delegate to a one-member commission the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving state office for adjudication under the provisions of a treaty concerning the status of our forces in the country where the claim arose. If, after investigation, it appears that action by a three-member commission is appropriate, the one-member commission should send the claim to the three-member commission with a complete investigation report to include a discussion of the applicable local law and a recommendation for disposition.

§ 536.160 Advance payments.

(a) Advance payments pursuant to 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate hardship are authorized under the conditions and procedures provided in subpart B, advance payments. However, no advance payment is authorized if the incident occurs in a foreign country which, pursuant to the NATO-SOFA or other similar treaty or agreement, is responsible for the settlement of claims arising therein. An advance payment may be made in a nonscope claim.

(b) The SJA of a command having a command claims service, or chief of a command claims service, is authorized to approve an advance payment under this section.

Subpart K—Personnel Claims and Related Recovery Actions

General

§ 536.161 Authority.

31 U.S.C. 3721, formerly 31 U.S.C. 240–243, as amended by PL 97–226, 28 July 1982 (the Act); DODD 5515.10, 17 June 1965, with C 1, 6 July 1965 destruction of personal property of military personnel or civilian employees incident to their service, and recovery from carriers, warehouse firms, and other third parties responsible for such loss, damage, or destruction.

§ 536.162 Delegation of authority.

(a) Settlement authority. (1) The statutory limit of $40,000 in settlement of claims and to disapprove claims regardless of the amount claimed:

(i) TJAG.

(ii) TAJAG.

(iii) The Commander, USARCS, or the Chief, Personnel Claims and Recovery Division.

(2) The following area delegated authority to pay up to $25,000 in settlement of claims and to disapprove claims regardless of the amount claimed:

(i) The SJA and, subject to limitations imposed by him or her, the chief of the command claims service of the following commands:

(A) USAREUR.

(B) Eighth U.S. Army, Korea.

(C) USARSO.

(ii) Heads of area claims offices designated under section 536.5(b)(1) and (2), (subject to the provisions of section 536.5(f).

(b) Approval authority. Heads of claims processing offices with approval authority are delegated authority to pay up to $10,000 in settlement of claims.

(c) Office code. Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code.

(d) Engineer area claims offices are not delegated approval or settlement authority under this subpart and will forward any such claims to the area claims office for the geographic area in which the engineer office is located.

(e) If a claims adjudicated amount is in excess of the monetary jurisdiction of the claims office, the JA/claims attorney will approve and pay the claim up to the delegated authority of that office. Mark the outside of the file "PRIORITY" and forward it with all documentation (to include computer disk, paper screen and memorandum of opinion) to the next higher claims authority for additional payment.

§ 536.163 Scope.

(a) This subpart prescribes the substantive bases and special procedural rules for the administrative settlement of claims against the United States submitted by the Active Army, ARNG, and USAR personnel, and civilian employees of DOD and DA for damage to or loss of personal property incident to their service. This subpart also sets forth procedures for the administrative recovery from responsible third parties for loss, damage, or destruction of such personal property. The underlying Act is a gratuitous payment statute; claims thereunder do not sound in tort even though some tort concepts are used in the adjudication of claims under this subpart. Further, the Act is not designed to make the United States a total insurer of the personal property of proper claimants.

(b) The maximum amount that may be paid for any loss or damage arising from a single incident is limited by the Act as amended by Public Law 100–565, 31 October 1988, to $40,000. The maximum limit of $40,000 is specifically limited to losses of personal property occurring after 31 October 1988, and to losses resulting from evacuations or from hostile acts directed against the United States or its officers and employees. A maximum limit of $25,000 is applicable to losses of personnel property occurring after 28 July 1982 and before 1 November 1988.

(c) Any claim within the scope of this subpart, which otherwise would be cognizable under the MCA and subpart C; the FTCA and subpart E; the Act of 9 October 1962 (10 U.S.C. 2737) and subpart E; the NGCA and subpart F; the Maritime Claims Settlement Act and subpart H; or the FCA and subpart J will first be considered under this subpart.

(1) If not payable under this subpart, the claim will be considered under the other chapters prior to any disapproval. Particular attention should be given to the nature of the claim; many alleged "unusual occurrences" are actually torts, either by employees or by individuals in their private capacities. While some incidents may not seem common to those experiencing them, an "unusual occurrence" is defined as an occurrence beyond the normal risk associated with day-to-day living and working. An unusual occurrence does not involve a reasonably foreseeable consequence of normal human activity. For example, having a vehicle hit by a golf ball while driving by a golf course or struck by an unknown vehicle in a parking lot is a reasonably foreseeable consequence of driving a vehicle.

(2) If a claim cognizable under this subpart arises from an incident resulting in personal injury, no payment or emergency partial payment will be made under this chapter until an investigation completed in accordance with §§ 536.19 and 536.20 has been conducted. The Commander, USARCS, Chief, Personnel Claims and Recovery Division, or the chief of a command claims service may waive this requirement. Prior to payment the investigation must establish that the incident was not caused by the negligence of the claimant or an agent of the claimant. An example of such an incident would be a fire in quarters that results in an injury to a soldier's family member and was presumably caused by faulty wiring, but might have been caused by the claimant's negligence.

(3) Any claim within the scope of this subpart which is also cognizable under Article 139 will first be considered under subpart I. If settlement of the Article 139 claim will be unduly protracted, the claim may be settled under this chapter and the claimant counseled to repay any overpayment if payment is later received under the provisions of subpart I.

(d) Any claim cognizable under this subpart that is primarily the result of fault or negligence of a Government contractor other than a common carrier or warehouse firm will first be referred to the contractor or his or her insurer for settlement in accordance with DA Pam 27–162, paragraph 2–6.

§ 536.163 Claimants.

(a) A claim may be presented under this subpart only by—

(1) A member of the Active Army.

(2) A member of the USAR or the ARNG who is engaged in inactive duty for training or in active duty training.

(3) A civilian employee of DA; a civilian employee of the ARNG funded under 32 U.S.C. 709; a civilian employee of the DOD who is not an employee of the Department of the Navy or the Department of the Air Force; or a continental wage scale, local wage scale, and other foreign national local civilian employees. (See DODD 5515.10.) However, the claims of a DOD dependent school teachers and Defense Commissary Agency civilian employees will be settled by the Service operating the installation where that school teacher/Commissary Agency employee is employed.

(4) The authorized agent or legal representative of paragraphs (a) (1) through (3) of this section. However, any claim presented by a claims preparation service or other hired agent must be signed and ratified by the proper claimant to preclude assignment of claims, regardless of whether the claimant has executed a power of attorney.

(5) The survivors of paragraphs (a) (1) through (3) of this section in the following order of precedence:

(i) Spouse.

(ii) Child or children.

(iii) Father or mother, or both.

(iv) Brothers or sisters, or both.

(b) A member of another U.S. Armed Force may present a claim to an Army claims office for loss of or damage to personal property incident to his or her service. Any such claim will be investigated and processed short of adjudication under the provisions of this chapter. The completed file will contain all required supporting documents, including evidence in support of the amount claimed and documents facilitating recovery from a carrier, insurer, or other third party. Such claims will be forwarded direct to the nearest legal office of the service concerned for settlement. However, Marine personnel claims should be forwarded directly to the Commandant of the Marine Corps (MHP–40), Headquarters, United States Marine Corps, Washington, DC 20380–0001.

(c) Claims of civilian employees of nonappropriated fund activities for damage to or loss of personal property incident to their service will be processed in accordance with this chapter and subpart L, with payment made only from nonappropriated funds.

(d) Subrogees, assignees, conditional vendors, and similar third parties are not proper claimants under this chapter, and their claims are barred from payment. Further, claims for losses of subrogees and similar third parties are barred from consideration or payment under other chapters when the property owner could have presented a cognizable claim for loss under the provisions of this chapter.

(e) Personnel who do not fall within one of the categories listed in a above (such as Red Cross employees, foreign military personnel, United Services Organization personnel, or employees of Government contractors, including technical representatives) are not proper claimants under this chapter, and their claims are barred.

(f) Claimants who are absent without leave (AWOL) will have any pending claim denied once they are dropped from the rolls (DFR). The denial letter will be mailed to the claimant's last known civilian address.

§ 536.165 Claims cognizable.

The following are nonexclusive examples of categories of damage to or loss of property that may be considered by claims approval and settlement authorities as having been sustained incident to service. Note that a loss unconnected with the performance of duty, particularly a loss occurring outside of normal duty hours, would often not be deemed incident to a civilian employee's service, even though the same loss might be deemed incident to a soldier's service. This is particularly true if the civilian employee is a local foreign national employee. A claims approval or settlement authority will ask the Chief, Personnel Claims and Recovery Division, USARCS for an advance opinion prior to adjudicating a claim that is deemed incident to service but does not fall within one of the following categories:

(a) Losses in quarters or other authorized places. Damage to or loss of property by fire, flood, hurricane, or other unusual occurrence, or by theft or

vandalism may be considered, while located at—

(1) Quarters, wherever situated, which are assigned to the claimant or otherwise provided in kind by the Government.

(2) Quarters outside the United States, which are occupied authority but are neither assigned to the claimant nor otherwise provided in kind by the Government. However, a claim is not cognizable when the claimant is—

(i) A civilian employee who is a local inhabitant.

(ii) A U.S. citizen hired as a civilian employee while residing abroad or after moving to a foreign country as part of the household of a person who is not a proper party claimant.

(iii) A family member residing outside the United States while the soldier is stationed in a different country.

(iv) A local inhabitant of a U.S. territory who is in that territory at the time of a loss when he or she is in the ARNG either Full Time-National Guard Duty (AGR) or on active duty under title 10, or in the USAR on active duty for any reason.

(3) Any place of lodging wherever situated, such as a hotel, motel, guest house, transit billet or other place, when occupied by claimant while in the performance of temporary duty or similar authorized military assignment of a temporary nature.

(4) Any warehouse, office, hospital, baggage holding area, or other place authorized or apparently authorized by the government for the reception or storage of personal property.

(b) Transportation losses. Damage to or loss of property incident to transportation or storage pursuant to orders or in connection with travel under orders or in performance of military duty may be considered, if not the result of a mechanical or structural defect. This includes property in the custody of—

(1) A common or contract carrier or any other commercial concern, either pursuant to a Government Bill of Lading (GBL), Government contract, or the commuted rate method (Joint Travel Regulation (JTR) Vol II, paragraph C8001(4)). With respect to mobile homes, it is the owner's responsibility to place the mobile home and its tires, tubes, frame, and other parts in fit condition and to load the mobile home to withstand the stress of normal transportation, at his or her own expense, prior to shipment.

(2) An agent or agency of the Government, to include property mailed at Government expense in the custody of the U.S. Postal Service.

(3) The claimant or appropriate personnel while the claimant is traveling in a private or public vessel, vehicle, aircraft, or other conveyance in performance of military duty.

(4) The claimant or appropriate personnel while the claimant is traveling aboard a military vessel, aircraft, or vehicle in performance of military duty or pursuant to orders authorizing travel, including travel pursuant to leave orders on a space available basis.

(c) Losses due to enemy action, evacuation, hostile acts, or public service. Damage to or loss of property may be considered which is a direct result of—

(1) Enemy action, or threat thereof; combat, guerrilla, or other belligerent activities, whether or not the United States was involved; or unjust confiscation by a foreign power or its nationals of property belonging to soldiers or U.S. national civilian employees.

(2) Acts of mob violence, terrorist attacks, or other hostile acts directed against the United States or its officers and employees.

(3) Action by the claimant in an attempt to quiet a civil disturbance or alleviate a public disaster.

(4) Efforts by the claimant to save a human life or Government property.

(5) Evacuation from a foreign country on the recommendation or order of competent authority. This subsection provides payment for property belonging to soldiers and civilian employees and their command-sponsored dependents, with entitlement to shipment at Government expense, which is abandoned during an evacuation and not recovered, or damaged by an incident of political unrest or hostile act prompting or following such evacuation.

(d) Loss of money delivered to a Government agent. Loss of funds neither applied as directed by the owner nor returned may be considered when the funds were delivered to and accepted by Government personnel authorized or apparently authorized to receive them for such purposes as safekeeping; deposit in savings deposit program; transmission by personal transfer account; purchase of U.S. bonds or postal money orders; or conversion into military payment orders, Government checks, or into another kind of currency.

(e) Vehicle losses. Vehicles are defined to include automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks with mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft. Mobile homes and other property used as dwelling places are not considered vehicles. Damage to or loss of vehicles and property properly stored or contained therein may be considered when—

(1) Used in the performance of military duty, if such use was authorized or directed for the convenience of the Government and provided—

(i) The travel did not include commuting to or from the permanent place of duty and,

(ii) The loss or damage did not arise as a result of a mechanical or structural failure of the vehicle during such usage.

(2) Shipped to, from, or between an overseas area or areas at Government expense in accordance with paragraph (b) of this section, provided the loss or damage did not arise as a result of mechanical or structural failure of the vehicle during such shipment.

(3) Located at quarters or place of lodging as defined in paragraphs (a)(1), (2), and (3) of this section, which for the purposes of this paragraph includes garages, carports, driveways, assigned parking spaces, and lots specifically provided and used for the purpose of parking at one's quarters, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism. There is a presumption that vehicle theft or vandalism occurs off the military installation and is generally not compensable. Claims for theft or vandalism to vehicles (including property stored inside a vehicle) are only payable when a claimant proves that the theft or vandalism occurred while the vehicle was located at his or her authorized or assigned quarters (for example, a military police report indicates broken glass from the window is on the driveway).

(4) Located other than at quarters on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence. The term "military installation" is used broadly to describe any fixed land area, wherever situated, controlled, and used by military activities or the DOD. A vehicle that is properly on the installation should be presumed to be incident to the claimant's service unless the application of such a presumption would be unreasonable under the particular circumstances, such as visiting a fellow soldier on another military installation while on leave.

(f) Clothing and articles being worn. Damage to or loss of clothing and articles being worn while on a military installation or in the performance of military duty may be considered, provided such loss was caused by fire,

flood, hurricane, or other unusual occurrence, or by theft. Spilling battery acid, paint or similar substances on clothing, or breaking eyeglasses during physical training is not an unusual occurrence.

(g) Personal property held as evidence. Deprivation of property held as evidence may be considered when, after taking all circumstances into consideration, the temporary loss of the property will work a grave hardship on the claimant who is a victim of a crime.

(h) On-post robberies. Claims for losses due to theft from the person on a military installation by the use of force, violence, or threat to do bodily harm may be considered. If cognizable under Article 139, the claims should be considered under subpart I.

§ 536.166 Claims not cognizable.

The following are examples of types and categories of property losses for which compensation will not be allowed:

(a) Property lost or damaged as a result of claimant's negligence. Property damaged or lost, in whole or in part, as a result of any negligence or wrongful act of the claimant, the claimant's spouse or family member, or any agent or employee of the claimant acting in the scope of employment, is not compensable. Negligence may be defined as failure to exercise the degree of care that a reasonable and prudent person would have exercised under the same circumstances.

(b) Property damaged or lost while located at quarters within the United States that were occupied by the claimant but were neither assigned nor otherwise provided in kind by the Government.

(c) Intangible property. Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Similarly, a claimant may not be compensated for the inability to use non-refundable tickets or recover lease or utility deposits. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses incurred by the claimant in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time spent by the claimant in its preparation or for supposed literary value.

(d) Incidental expenses and consequential damages. The Act and this chapter authorize payment for loss of or damage to personal property only. Except as provided in § 536.165, consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(e) Real property. Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(f) Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(g) Enemy property or war trophies.

(h) Property acquired, possessed, or transported unlawfully or in violation of local law or competent regulations or directives. This includes loss or damage to vehicles not properly registered or insured in compliance with local law or competent regulations or directives.

(i) Loss of money in any amount during shipment or storage with baggage or household goods. This includes coin collections.

(j) Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) Substantial fraud. The head of an area claims office may completely deny a claim that he determines to be substantially tainted by fraud.

(l) Not a proper claimant. See §§ 536.164 and 536.165(a)(2).

§ 536.167 Time prescribed for filing.

(a) No claim may be paid under this subpart unless it is presented in writing within 2 years after it accrues. A claim is presented when it is received at a U.S. military establishment, not when it enters the mails. For purposes of this chapter, a claim accrues at the time of the incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant through the exercise of due diligence. In the case of multiple deliveries on the same Government Bill of Lading, the claim accrues for those later received items when they are delivered. The claim filed for the initial damage will be amended to reflect the subsequently claimed items. If personal property remains in storage after the expiration date of legal entitlement to storage at Governmental expense, a claim normally accrues on such expiration date.

(b) If a claim accrues in time of war or armed conflict in which the Armed Forces of the United States are engaged, or if such a war or armed conflict intervenes within 2 years after the claim accrues, and if good cause is shown, then the claim may be presented not later than 2 years after the war or armed conflict is terminated. A claims office may telephonically obtain the authority to grant additional time to file a claim, from the Chief, Personnel Claims and Recovery Division. If good cause for delay in filing is not established, the intervention of war or armed conflict, in itself, will not permit payment of a claim presented later than 2 years after accrual. Pursuant to the provisions of Public Law 96–446 (94 Stat 1967), periods of captivity are excluded in computing the 2-year statute of limitations.

(c) If a proper party claimant is notified that his or her personal property in non-temporary storage has sustained partial damage, the statute of limitations does not begin to run until the claimant has an opportunity to ascertain the extent of the loss, or the claimant's entitlement to Government shipment or storage expires, whichever occurs sooner. However, the claimant is expected to exercise due diligence in attempting to ascertain the extent of the loss. Moreover, when a proper party claimant is notified that his or her personal property in non-temporary storage at government expense has sustained complete destruction or loss, the statute of limitations begins to run when this notification is received.

§ 536.168 Form of claim.

Claims personnel will date-stamp, log in and consider as a personnel claim any writing received at a U.S. military establishment if it constitutes a demand for compensation for loss of or damage to personal property. Claims personnel will not return such writing to the claimant without action as "lacking documentation" and may only consider it abandoned in accordance with § 536.234(a). For claims cognizable under this chapter, a demand need not be for a specified sum of money. However, the claimant must complete and submit DD Form 1842 and DD Form 1844 (List of Property and Claim Analysis Chart) as a condition precedent to payment of the claim. Claimants will be required to complete only one DD Form 1842 and DD Form 1844 and to provide only one copy of supporting documentation. A demand on carrier, warehouse firm, insurer, or other third party is not considered a claim against

the United States. Submission of DD Form 1840R (Notice of Loss or Damage) to the claims office does not constitute presentment of a claim. If, however, a claimant alleges that he or she filed a claim, and the evidence shows that within the 2-year period the claimant visited a claims office of one of the Armed Forces with an apparent desire to obtain compensation, it may be presumed in absence of evidence to the contrary, that the claimant, in fact, submitted a claim.

§ 536.169 Presentation.

(a) A claim should, if practicable, be submitted in writing to the claims office serving the Active Army installation where the claimant is stationed, or nearest to the point where the loss or damage occurred, or where investigation of the facts and circumstances can most conveniently be made. ARNG and USAR personnel will not file claims with their unit but with the nearest Active Army installation. If submission in accordance with the foregoing is impracticable under the circumstances, the claim may be submitted in writing to the commander of any installation or establishment of the Armed Forces who will forward the claim to the appropriate Army claims office for processing. To constitute a filing under this regulation, a claim must be presented in writing to an agency of one of the military departments other than the National Guard or a Reserve Component.

(b) The claimant is responsible for substantiating ownership or possession, the fact of loss or damage, and the value of property, especially for expensive items. The claimant is also responsible for promptly discovering and reporting loss whenever failure to do so would prejudice either effective investigation of the claim or effective recovery action from a third party. Failure to do so may result in reduction of the amount allowable or denial of the claim in accordance with § 536.181(a).

Evaluation, Adjudication, and Settlement of Claims

§ 536.170 Policy.

(a) The prompt, fair disposition of claims of soldiers and civilians, consistent with the protection of the interests of the Government, is necessary to maintain morale and to prevent financial hardship. Claims approval and settlement authorities should exercise reasonable discretion in the consideration of claims to achieve this goal.

(b) The small claims procedures (subpart B of this part, small claims) applicable to claims that may be settled by payment of $1,000 or less without extensive investigation should be used to the maximum extent feasible. When this procedure is used, every reasonable effort should be made to settle the claim within the shortest possible period, usually one working day. However, the small claims procedure should not be used when additional investigation is necessary to develop the facts required for an informed disposition of the claim regardless of the amount claimed.

(c) Within the DA, personnel claims will not be transferred except as authorized by the USARCS or a command claims service. (See DA Pam 27–162, paragraph 2–55.)

(d) When it is necessary to disapprove a claim or to allow a sum less than the amount claimed, the claimant must be informed either orally or in writing of the factual or legal basis for the decision. The file must reflect that this explanation was provided to the claimant.

(e) When a claimant refuses to provide information concerning private insurance coverage, the JA may assume, in the absence of evidence to the contrary, that the claimant had private insurance covering the entire loss and disapprove the claim.

§ 536.171 Preliminary findings required.

Prior to allowing or recommending the allowance of compensation for the loss, damage, or destruction of property, the approval or settlement authority will make the following findings:

(a) The claimant is a proper party claimant.

(b) The evidence substantiates the fact of ownership or possession of the personal property involved and the fact of loss, damage, or destruction as alleged.

(c) The loss, damage, or destruction of the property involved was sustained incident to the claimant's military service or employment.

(d) The type of property claimed and the amount or quantity claimed was reasonable or useful under the attendant circumstances for the claimant to have used or possessed incident to military service or employment.

(e) There is no bar to the allowance of compensation for the type of property involved, or for the type of loss, damage, or destruction providing the basis of the claim.

(f) The claimant certified that no part of the loss is covered by insurance. If private insurance covers any part of the loss, the claimant must first settle with the insurance company. See § 536.181(b)(5). (Coverage under most personal property insurance carried by service personnel includes items lost or missing, destroyed, or damaged by water while in custody of a public carrier.)

§ 536.172 Guides for computing amounts allowable.

(a) For claims of losses incident to service processed under this subpart or subpart L, the Commander, USARCS, will periodically publish an Allowance List—Depreciation Guide specifying rates of depreciation and maximum payments applicable to categories of property. The Allowance List—Depreciation Guide will be binding on all Army claims personnel. (See § 536.9(f).) For claims for losses incident to service processed under this subpart or subpart L, no payment will be made on an item or category of items in excess of the maximum payment in effect at the time the claim arose, except as provided in § 536.174(b).

(b) The Commander, USARCS will promulgate additional guides, references, and tables to assist in computing allowable compensation under this chapter. (See DA Pam 27–162, chapter 2.)

§ 536.173 Ownership or custody of property.

Compensation may be allowed even though the property was not in the actual possession of the claimant at the time of the damage or loss. Compensation may also be allowed even though the property was not owned by the claimant, provided it was lawfully under his or her dominion and control. However, compensation will not be allowed for damage or loss to personal property transported to accommodate another, other than the claimant's family members, nor will compensation for damage or loss to a vehicle loaned to a claimant be allowed unless both the claimant and the owner are proper party claimants. A vehicle registered in the name of the claimant or a spouse is not deemed, as between them, to be loaned. When a vehicle is subject to a lien, the vehicle is not deemed to be loaned merely because the title is in the name of the lien-holder.

§ 536.174 Determination of compensation.

(a) A claim may be allowed only for the amount and quantity of personal property considered reasonable or useful for the claimant to have used or possessed under the attendant circumstances, incident to his or her service or employment. In determining the reasonableness or utility of types and quantities of property included in a claim cognizable under this chapter, an approval or settlement authority will give consideration to the claimant's

living conditions, family size, social obligations, and need to have more than average quantities, as well as the circumstances attending acquisition or possession of the property and the manner of damage or loss.

(b) The maximum amounts allowable for specific types and categories of personal property listed in The Allowance List—Depreciation Guide constitute a determination of amount of quantity deemed reasonable or useful. A maximum allowance per item indicates that the allowance for a single item of the type or category of property involved will not exceed that amount. A maximum allowance per claim indicates that the total allowance for all items of the listed type or category is limited to that amount. Where both a maximum amount per item and per claim are applicable, the total allowance for all items will be limited to the maximum per claim, which will reflect the allowance of not more than the maximum per item for any individual item. To avoid application of these maximum allowances, a soldier or civilian employee may obtain additional protection on shipments by requesting full replacement protection or increased value protection. The Chief, Personnel Claims and Recovery Division, USARCS may waive the maximum in a particular case for good cause shown.

(c) Compensation allowable for an item of personal property will not exceed the actual value of the item at the time of its loss, damage, or destruction. Guidance on determining the base figure for actual value, using replacement costs, estimates, or the Table of Adjusted Dollar Value, is provided in DA Pam 27–162, chapter 2. Because soldiers are permitted to replace items missing or destroyed during PCS moves from the Overseas Post Exchange Catalog, even when ordering from this catalog is not otherwise permitted, such items may be valued using this catalog.

(d) In adjusting a base figure to determine actual value, standard yearly rates of depreciation have been established for the types and categories of items that have generally recognized periods of useful life; standard flat rates of depreciation have been established for certain kinds of items that decrease in value primarily as the result of the fact they are no longer new and unused, but which do not continue to depreciate on a yearly basis since they are not subject to fixed periods of useful life. (See Allowance List—Depreciation Guide.) However, if personal inspection of damaged property indicates that it was in better than average condition prior to damage, a lesser rate of depreciation should be applied. Similarly, if the evidence indicates that an item was in poor condition at time of damage, a higher rate of depreciation is appropriate. Variations from the established rates of depreciation will be fully explained. The following rules are to be observed in computing the depreciation applicable to any item:

(1) Normally no depreciation is to be charged against goods during periods of storage. However, this does not mean that deductions cannot be taken for other reasons, such as a reduction in the market value of an item because of changes in style or obsolescence.

(2) Do not depreciate an item which is less than six months old (including an item subject to flat rate depreciation) except clothing and other rapidly depreciating articles which may be subject to considerable use in such a short period of time. Calculate yearly depreciation from the date an item is originally acquired to either the date of pickup (for shipment or storage claims), or to the date the property was lost or damaged (for other personnel claims). If the claimant acquired a used item, then the claimant should use either the date the original owner acquired the item and the original purchase price, or the claimant's purchase price and date he or she purchased the item. In accordance with the Allowance List—Depreciation Guide, compute yearly depreciation in 12 month increments (e.g., 6–17 months equals one year), excluding the month the property was acquired and the month that the property was picked up, lost or damaged.

(3) No item will be depreciated by more than 75 percent.

(4) No depreciation is charged against genuine antiques, objects of art, and collector's items, except for repair of portions thereof, such as upholstery, which requires periodic replacement or repair. For the purpose of this rule, a "souvenir" is not considered a collector's item.

(e) Compensation normally allowed for an item damaged beyond economic repair is the actual value at the time of destruction. However, if an item has not been totally destroyed and any part remains useful and has a salvage value, and that part is to be retained by the claimant, the allowance will be the value at time of destruction less the ascertained value of the salvageable part. If the claimant does not wish to retain any salvageable part of a destroyed item, he or she may be allowed the full value at the time of the destruction with no deduction for salvage value, provided the claimant turns in the salvageable part to the Defense Reutilization and Marketing Office prior to payment of the claim or holds the item for turn-in to the carrier (see DA Pam 27–162, paragraph 2–44). If the item is turned in to the Defense Reutilization and Marketing Office, a receipt for the property, DD Form 1348–1 (DOD Single Line Item Release/Receipt Document), will be included in the file of the paid claim. If the staff or command JA determines that salvageable items are valued at $25.00 or less, he or she may advise the claimant to dispose of them other than by turn-in and this decision will be noted on the chronology sheet. In certain situations it may be necessary for the claims office to assist the claimant to arrange for disposition of the property.

(f) If, after payment of a claim, an approving or settlement authority discovers that the payment was erroneous because the claimant misrepresented the quality, quantity, age, condition, or replacement or repair cost of items, or other facts necessary to the adjudication of the claim, the approval or settlement authority may recalculate the amount allowed and arrange for recoupment of the erroneous amount paid. However, this procedure should be used sparingly, with doubts resolved in favor of the claimant. The procedure is independent of any other action taken against the claimant.

(g) In determining allowable amounts, cents will be rounded off to the nearest whole dollar on each line item. Drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. Thus, $1.49 becomes $1.00 and $2.50 becomes $3.00.

§ 536.175 Cognizable incidental expenses.

(a) *Expenses incident to repair or replacement.* In addition to actual value, the cost of obtaining estimates of repair necessary to substantiate amounts claimed for damaged property may be considered, provided the action of the claimant in contracting for the estimates appears reasonable under the circumstances or was specifically directed by the approval or settlement authority. However, when the cost of an estimate can be applied toward the bill due upon completion of repairs, the cost of the estimate will not be allowed, whether or not the claimant chooses to have the repair done.

(b) *Replacement of certain documents.* The fee charged for replacing certain necessary documents such as marriage licenses, driver's licenses, passports, or birth certificates may be allowed when these documents are lost or destroyed.

(c) *Sales tax and drayage.* Sales tax and drayage (including postage or

handling charges to mail an item or replacement part) can be allowed up to $50 per claim prior to the actual cost being incurred. However, payment in excess of $50 will require the claimant to substantiate that the cost has been incurred.

§ 536.176 Property recovered.

(a) *Before approval.* Do not pay claims for missing property if the missing property is located before the claim is approved. Only the transit related damage will be cognizable. As an exception to this rule, compensation may be allowed for necessary items that were missing for an unreasonable time after the expected arrival date and were replaced by claimant prior to the items being located. Necessary items are those that are basic to the operation of a household. If compensation is allowed under the above exception, the claimant will disclaim in writing further interest and ownership in such items in accordance with paragraph (b)(2) of this section.

(b) *After approval.* If missing property is located after the claim is approved for payment, the claimant will normally be advised of his or her option to—

(1) Accept any or all of the items located and remit the amount already allowed for such items to the United States. In certain circumstances, the claimant will not have an option: The Chief, Personnel Claims and Recovery Division, USARCS or his designee can require the claimant to accept any or all of the items and remit the amount allowed; or

(2) Disclaim in writing further interest and ownership in the property and retain the amount approved for payment. If, however, the approval or settlement authority determines that any of the recovered property is substantially different in quality, price, or value from the property claimed, the approval or settlement authority may require the claimant to return the amount allowed for such property and accept the property.

§ 536.177 Companion claims.

When two or more claims arising from the same incident are, by reason of differences in amounts within the jurisdiction of different approval or settlement authorities, action will be withheld on these claims until the authority having jurisdiction over the largest claim has determined that the claims arising out of the incident are cognizable, unless the claims lesser in amount are clearly cognizable and meritorious.

§ 536.178 Emergency partial payments.

(a) Frequently a claimant is in immediate need of funds to replace damaged or destroyed property. An emergency partial payment up to $2,000 is authorized under the following circumstances: (1) A hardship situation exists that can be alleviated by providing immediate funds for the repair or replacement of certain property lost or damaged; and

(2) A claim has been presented.

(3) The approval or settlement authority determines that the claim is clearly payable under this chapter, in an amount exceeding the amount of the proposed emergency payment.

(b) The approval or settlement authority can approve an emergency partial payment on any claim that meets the above criteria. If the adjudicated amount exceeds the approval or settlement authority's delegated monetary amount, pay up to the delegated amount (less the emergency payment), mark the outside of the file "PRIORITY" and transfer it with all documentation (to include computer disk, paper screen and memorandum of opinion) to the next higher claims authority for additional payment.

(c) Prior to making any emergency payment, the authority approving such payment normally will obtain an executed partial acceptance agreement from the claimant or his or her representative. Only the Chief, Personnel Claims and Recovery Division, USARCS or his designee can authorize emergency partial payments above $2,000. The authority requesting an emergency partial payment above $2,000 can coordinate telephonically with USARCS.

§ 536.179 Personnel claims memorandum.

(a) A personnel claims memorandum of opinion will be included in the file of each personnel claim disapproved; forwarded for adjudication, disapproval, or reconsideration; or forwarded with a recommendation that there be a deviation from the Allowance List or other established policy.

(b) A personnel claims memorandum of opinion will be signed by the Claims JA. It will be routed through any intervening settlement authority, addressed to the settlement authority who will take final action (for example, a disapproval would be addressed to the SJA of an area claims office, and a reconsideration would be addressed to the Commander, USARCS). The memorandum will be sufficiently detailed to explain fully and support the action taken or recommended. (See DA Pam 27–162, paragraph 2–551 for further instructions.) It will be arranged as follows: (1) Claimant's name and address.

(2) Date and place the incident occurred giving rise to the claim.

(3) Amount of claim, the date it was filed, and the date reconsideration was requested.

(4) Subparts the claims were considered under, and a brief description of the incident or of the issues raised by the claimant on reconsideration.

(5) Facts.

(6) Opinion.

(7) Recommended action.

§ 536.180 Reconsideration.

A claim will be reconsidered under the conditions listed below. Reconsiderations normally require additional investigation and review. This additional information will be documented in the file. An approval or settlement authority—

(a) May always reconsider his or her action if the original action was in error or is incorrect based on new facts. This may be pursuant to either a claimant's oral request for reconsideration or as a result of any post-settlement review conducted on the claims file. Note that while the original approving or settlement authority may consider a claimant's "oral" request for reconsideration, claims personnel should advise claimants that a higher settlement authority will not act on an oral request until the claimant presents it in writing in accordance with paragraph (b) of this section. The basis for any change will be reflected in the file.

(b) Must reconsider a claim upon the written request of the claimant or someone acting on his or her behalf. The claimant must clearly state the factual or legal basis for relief. However, the reconsideration process must be considered not as an adversarial process, but rather as an opportunity for the approval or settlement authority to continue a dialogue with the claimant. Every effort should be made to develop the claimant's version of the facts. A claim will be reconsidered even if a settlement agreement has been executed.

(1) The original approval or settlement authority will modify the original action if he or she determines that the original action was incorrect or is incorrect based on new evidence. The basis for any change will clearly be reflected in the file.

(2) A successor or higher approval or settlement authority will only modify the original action on the basis of fraud, substantial new evidence, mistake (misinterpretation) of law or regulation,

or an error in calculation. The basis for any change will clearly be reflected in the file.

(3) An approval or settlement authority can take final action on a request for reconsideration if he or she informs the claimant in writing that the claimant—

(i) Is aware of the right to have the file reviewed by USARCS; and

(ii) Will accept the additional payment as full relief on the claim; and

(iii) Knows that if the offer is not satisfactory, the check will still be issued (and can be cashed without prejudicing his or her right to reconsideration); and

(iv) The file will be forwarded to USARCS for final review.

(4) If the approval or settlement authority does not grant additional relief, or the claimant does not wish to accept an additional payment as full relief, or the claimant does not respond by the suspense date, the JA/claims attorney will issue any offered payment and will forward the claim through any intervening area claims office or command claims service to USARCS for final action. As an exception, the Commander U.S. Army Claims Service, Europe (USACSEUR), can take final action on any reconsideration request forwarded there by a subordinate office so long as it does not involve approving a waiver of a maximum allowance. The Commander, USACSEUR, will include a complete copy of the final action and will forward the file to the Commander, USARCS.

(c) The approval or settlement authority should consider 60 days from the settlement date a reasonable time to either submit a written request for reconsideration or provide an intent to file a reconsideration request. The claimant will receive written notification of this time limit. Any reconsideration where denial is recommended because it was not timely filed will be forwarded according to paragraph (b)(4) of this section. The Chief, Personnel Claims and Recovery Division may grant relief on untimely requests for reconsideration on the basis of substantial new evidence, fraud, mistake of law, or mathematical miscalculation. In appropriate situations, he may deny relief if the filing delay precluded acquiring additional facts.

§ 536.181 Judge advocate procedures responsibilities.

(a) *Reductions for inaction.* (1) The JA will ensure that, when a demand on a carrier or other third party (other than a private insurer (see paragraph (a)(2) of this section) is required (see recovery from third party) and the claimant's failure, absent good cause, to provide notice or perform other required actions materially prejudices effective recovery action with respect to all or part of the loss, the amount otherwise allowable under this chapter will be reduced by the amount of the anticipated recovery so affected on an item-by-item basis.

(2) When a claimant fails to provide timely notice to perfect a claim against his or her private insurer, the amount allowed, absent good cause, the claim will be denied. In determining whether a claimant has good cause for failing to provide timely notice to a private insurer, the JA will, in addition to the considerations in paragraph (a)(3) of this section, determine whether the claimant (or agent) had knowledge of the requirement and willfully neglected to provide notice. See § 536.170(f) for cases where a claimant refuses to provide information concerning private insurance.

(3) Good cause is determined as follows:

(i) When a claimant fails to provide timely notice to a carrier, warehouse firm, or private insurer, settlement and approval authorities may waive reduction action for good cause only when one of the following circumstances directly contributed to the claimant's failure to give timely notice:

(A) Officially recognized absence (for example TDY and off post training exercises) resulting in claimant's absence from official duty station for a significant portion of the notice period;

(B) Hospitalization of claimant for a significant portion of the notice period; or

(C) Substantiated misinformation concerning notice requirements given to the claimant by government personnel.

(ii) Requests for good cause waivers under circumstances other than those in paragraph (a) of this section may be granted only by the Commander, USARCS, or designee.

(4) Prior to taking reduction action, the JA will ensure the claimant is provided an opportunity to explain the circumstances of his or her failure to take appropriate action, and that the claim file is documented to show the claimant was afforded this opportunity and the result provided. The chronology sheet in the file will contain an explanation of the JA's decision regarding reduction or the lack thereof.

(b) *Information and assistance to claimants.* Claims personnel will—

(1) Furnish the necessary claims forms (DD Form 1842 and DD Form 1844) to any individual who indicates, in person or by letter, that he or she desires to be compensated for loss or damage to personal property incident to service.

(2) Furnish instructions and advice as to the evidence required to substantiate the claim, assist in the completion of claim forms, and help with the procurement of evidence in support of the loss and the amount claimed.

(3) Assure that the description of the items and the damage shown on DD Form 1844 are sufficiently detailed to permit verification of the purchase price and replacement price or repair cost of the item claimed.

(4) Inform a claimant of the time limits within which a claim must be filed in order to be considered.

(5) Inform all claimants that they must file and settle with their private insurance companies before the JA/claims attorney will approve a claim for payment under this chapter. Claimants who state they have no insurance will be asked to certify that fact and the written statement will be included in the claim file. The claimant will be required to submit proof of final action by the insurer. Claims personnel will examine each claim after an insurance settlement and determine if prior settlement by the insurer (including excess valuation coverage) is more advantageous to the claimant. A claims JA/attorney may decide to approve a claim for payment under this subpart without a claimant first settling with his or her insurance in exceptional cases where an insurance company improperly refuses to pay a claim or the JA determines the claimant has good cause (see § 536.181(a) (2) and (3).

(6) Advise a claimant to notify the JA of any offer of settlement or denial of liability by any third party, and to secure the JA's written consent before executing a release or acceptance of any such offer.

(7) Take an active and continuing role in publicizing claims information to soldiers and their families.

(c) *Other actions.* The JA will ensure that—

(1) DD Form 1840R is dispatched to the appropriate third party within 75 days of delivery of goods, that a copy of the DD Form 1840 and 1840R is dispatched to the destination transportation office, in appropriate cases, and that a signed and dated copy is maintained and incorporated into any claim filed. (See DA Pam 27–162, paragraph 2–55.)

(2) The servicing transportation office is directed to inspect damaged property in appropriate cases. (See DA Pam 27–162, paragraph 2–41.)

(3) The DD Form 1844 is completed (amount allowed column, remarks

column, and where appropriate, either or both columns for exceptions) prior to settling the claim.

(4) All documents written in a foreign language are translated into English, either verbatim or in summarized form.

(5) Unearned freight charges are deducted for property which carriers lose or irreparably damage. (See DA Pam 27–162, paragraph 3–27.)

(6) A claims office representative will periodically attend local transportation office outbound briefings to ensure that appropriate information is being disseminated to soldiers.

(7) Inspections by claims office personnel are conducted in appropriate cases (large claim, reconsideration, fraudulent claim) and incorporated into the file.

(d) *Financial.* The JA will properly manage claims funds. This includes—

(1) On a monthly basis, reconcile recovery accounts with the servicing finance and accounting office (FAO) to ensure moneys are being properly deposited into the correct account;

(2) On a monthly basis, reconcile expenditure accounts with the servicing FAO to ensure that FAO expenditures match claims office expenditures; and

(3) Ensuring expenditures are from current fiscal year accounts.

§ 536.182 Finality of settlement.

Except as provided in § 536.180(b), the settlement of a claim is final and conclusive for all purposes (31 U.S.C. 3721(k)).

Recovery From Third Party

§ 536.183 Scope.

(a) The Army Carrier Recovery Program involves the supervising and pursuing of administrative settlements of all claims in favor of the Government against third parties arising from claims settled under the preceding sections of this chapter. The Program includes making and issuing policies, procedures, and instructions pertaining to recovery action.

(b) The term third parties as used in this section, refers to all types of contractors, carriers, and insurers of personal property.

§ 536.184 Duties and responsibilities.

(a) Field claims approval and settlement authorities are responsible for local implementation of the Army Carrier Recovery Program and will ensure that—

(1) Proper notice is provided to third parties (see DA Pam 27162, paragraph 2–55).

(2) Claims are processed so that relevant time limitations on pursuing recovery demands are met, particularly the 6-year statute of limitations set forth in 28 U.S.C. 2415(a). In overseas areas, statute of limitations relevant to locally procured tenders and contracts will be observed.

(3) Servicing transportation offices provide supporting documentation and perform necessary inspections in a timely manner.

(4) Claims files include complete, legible documentation needed to support recovery action, including a copy of the itemized breakdown prepared by the claimant's insurer when appropriate.

(5) Third party liability is correctly calculated in accordance with DA Pam 27–162, chapter 3, and is reflected on all copies of the DD Form 1844.

(6) Written demands for reimbursement are prepared against appropriate third parties, and demands are dispatched locally or forwarded for centralized recovery within 30 days of settlement (see § 536.196). If this 30-day standard is not met or no demand is prepared because liability will not be pursued, claims personnel will explain the basis for this on the claims chronology sheet. Note, however, that files will not be forwarded for centralized recovery prior to the 21st day after settlement in order to afford the claimant an opportunity to request reconsideration.

(7) Unearned freight letters are prepared when required by DA Pam 27–162, paragraph 3–27, and are either included in files forwarded for centralized recovery or are dispatched locally after settlement with the carrier.

(8) Settlement offers from third parties are accepted or rejected within 30 days of receipt.

(9) Checks received are kept in a locked container in accordance with AR 37–103, and are hand-carried to the servicing finance and accounting office within 24 hours of acceptance.

(10) Claims files for which a third party fails to satisfy its liability are forwarded to USARCS or to contracting officers for offset as appropriate (see DA Pam 27–162, paragraph 3–26).

(11) Include demand packets for all claim files forwarded to USARCS due to incidents of bankruptcies.

(b) The Commander, USARCS, is responsible for the general administration of the Army Carrier Recovery Program and for the Army Centralized Recovery Program. The Commander, USARCS, will ensure that field claims offices comply with paragraph (a) of this section, and will also ensure that—

(1) Demands for reimbursement received for centralized recovery are reviewed for correctness and dispatched within 7 days of receipt.

(2) Within 30 days of receipt, checks matched to files are accepted and hand-carried to the servicing finance and accounting office (within 24 hours of acceptance) or are rejected and returned to the third party.

(3) Checks which cannot be matched to files are recorded and kept in a locked cabinet in accordance with AR 37–103.

(4) Unearned freight letters are dispatched after settlement with the carrier.

(5) Offset action, or other collection action as appropriate, is initiated against any carrier or other third party that fails to satisfy its liability.

(6) Field claims offices are promptly directed to forward files of bankrupt third parties to USARCS to protect the Government's interests.

(7) Records are maintained of non-temporary storage contractors who default on their contractual obligations, and of incidents that occur in non-temporary storage warehouses, in order to pursue liability as appropriate.

(c) The Chief, U.S. Army Claims Service, Europe, and the Chief, U.S. Armed Forces Claims Service, Korea, will—

(1) Assume the responsibilities outlined in paragraphs (b)(1) through (b)(5) of this section on claims forwarded for European or Korean centralized recovery (see DA Pam 27–162, paragraph 3–22), except that offset actions requiring action by DFAS will be forwarded to USARCS.

(2) Review each POV shipment file forwarded for recovery action against the European inland carrier for potential liability within 45 days of receipt. If negotiations with a POV contractor result in an impasse, USACSEUR will arrange for dispatch of a contracting officer's final decision within 30 days.

§ 536.185 Determination of liability.

A prima facie case against a third party is established when evidence shows delivery of an item in good condition to the third party, return of the items in a damaged condition or non-return, and the amount of damage or loss.

§ 536.186 Exclusions of liability.

The third party is not always held responsible even though a prima facie case is established. The burden of proof will be on the third party to show that loss or damage was caused by one of the excepted conditions that relieves it of liability. The following exceptions emphasize or add to conditions stated in the various third party rate tenders:

(a) Inherent vice of the article. To be used as an exclusion of liability, the third party must establish not just the general tendency of an item to be damaged in transit, but that the damage was due solely to that propensity.

(b) Infestations by mollusks, arachnids, crustaceans, parasites, or other types of pests, fumigation, or decontamination when not the fault of the third party.

(c) Pre-existing damage indicated on the inventory.

(d) Mechanical failure of an appliance unless there is evidence of external damage or unless it can be clearly shown that the mechanical failure was caused by the third party.

(e) Loss or damage that occurs while the shipment was in the custody and/or control of the Government.

(f) Any item for which timely notice has not been provided to the third party.

(g) Any loss or damage not presented to the third party within the 6-year statute of limitations for filing claims.

§ 536.187 Limits of liability.

(a) *Carriers.* (1) Liability of Through Government Bill of Lading (TGBL) or International Through Government Bill of Lading (ITGBL) carriers for household goods shipments is as stated on the GBL. The TGBL carrier may be liable for the full depreciated value of the claim or the current replacement cost of items, without application of depreciation, if the owner purchased replacement cost protection (RCP), also known as "full replacement protection". (See DA Pam 27–162, paragraph 2–51.) For the purpose of computing weight, each piece or package shipped constitutes one article. Any article taken apart or "knocked down" for handling constitutes one article. Individual article weights are listed in the Joint Military—Industry Table of Weights in DA Pam 27–162, Table G–1.

(2) Liability of ITGBL carriers for hold baggage shipments (Codes 7, 8, and J) is normally 60 cents per pound times the gross weight per container (or current contract liability). Excess valuation or RCP is not available on such shipments. (See DA Pam 27–162, paragraph 3–11.)

(3) Liability of domestic freight carriers of household goods shipments is generally stated to be 10 cents per pound per article on the GBL. Excess valuation or RCP is not available on such shipments. For the purpose of computing weight under this type of shipment, each packed item (such as a dish) constitutes one item or article. (Also see DA Pam 27–162, paragraph 3–15.)

(4) Liability of commercial airlines is stated on the GBL. Excess valuation or RCP is not available on such shipments. (See DA Pam 27–162, paragraph 3–17.)

(b) *Non-temporary storage (NTS) contractors.* The contract for storage of household goods is the Basic Ordering Agreement, which is governed by DOD 4500.34–R, chapter 2–I. Under this agreement (DOD 4500.34–R, app H), an NTS contractor is liable for a maximum of $50.00 per inventory line item. (As an exception to this rule, regardless of the way a rank is listed on the inventory, only one charge of $50.00 can be applied when liability is calculated.) The contractor may be liable to the full extent of the declared value if the owner purchased an insurance policy from the warehouse firm. No liability can be pursued against the NTS contractor when goods are given out to a carrier unless an exception sheet was prepared by the carrier showing any differences as to shortages or overages or the condition of items.The exception sheet must be signed and dated by a representative of the warehouse to be valid.

(c) *Packing and containerization contractors.* A local contractor is liable for loss or damage in the amount of 60 cents per pound (or current contract liability) times the weight per article as stated in the liability clause of the contract. Each shipping piece or package constitutes one article. Excess valuation or RCP is not available on such shipments.

(d) *Mobile home carriers.* Liability is governed by the applicable rate tariff, rate tender, declared valuation, or personal property government bill of lading (PPGBL) as stated in DOD 4500.34–R, appendix E, and generally is the full cost of repairs for damage incurred during transit. In addition to the exclusions listed in paragraph 11–26, a mobile home carrier is excused from liability when the carrier has introduced substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

(e) *Liability limit.* Except for claims involving mobile home carriers, excess valuation or RCP, the liability of any third party is limited to the least amount of the following:

(1) Weight liability or NTS inventory line item maximum.

(2) Amount paid by DA.

(3) Depreciated value of an item (if the third party bases an offer of settlement on the Joint Military/Industry Depreciation Guide in DA Pam 27–162, app G, Table G–2.)

§ 536.188 Settlement procedures in recovery actions.

(a) *Offers of settlement.* An offer of settlement or tender of payment from a third party should be carefully examined giving due regard to all factors involved. When such consideration shows the offer or tender to be appropriate, it may be accepted. When the offer or tender does not appear appropriate, further correspondence should be initiated with the third party to clarify the issues.

(b) *Prior acceptance of settlement by owner.* DA is not bound by the owner's acceptance of a settlement from a third party where the acceptance was procured through fraud, duress, collusion, mistake of fact, or misrepresentation. In such circumstances, when a claim is filed, all correspondence with the third party must be included in the file and further recovery action should be taken where the prior settlement is inadequate.

(c) *Establishment of timely notice.* (1) *Handled by one third party only.* Where one third party had responsibility for the shipment from pickup to delivery, written exceptions on DD Form 1840 (Notice of Loss or Damage) is evidence that items in the shipment were lost or damaged when delivered. However, a clear delivery receipt (DD Form 1840) is only prima facie evidence of a good delivery and may be rebutted by submission of DD Form 1840R, listing all later discovered loss or damage. The DD Form 1840R must be dispatched within 75 days of delivery; the date of dispatch is the controlling date. However, the normal 75-day limit for reporting additional damage on DD Form 1840R may be extended by the claimant's hospitalization or officially recognized absence under the Joint Military-Industry Agreement on Loss and Damage Rules (DA Pam 27–162, appendix E, sec II). Implementation dates for the use of this form and details regarding its use are found in DA Pam 27–162, paragraph 3–4. On claims for household goods delivered prior to these implementation dates, timely notice is established by exceptions noted at delivery on DD Form 619–1 (Statement of Accessorial Services Performed), or on the inventory if dated and signed by a representative of the third party. Timely notice also includes DD Form 1840, or a letter or other document noting loss or damage dispatched to the third party within 45 days of delivery.

(2) *Handled by two or more third parties.* Each time custody of the property changes hands, the inventory will be annotated to show any overage, shortage, and damage found. In the case

of pickup by a carrier from a NTS contractor, an exception sheet must be prepared and be acknowledged by the warehouse firm to reflect any changes in the condition of the goods.

§ 536.189 Payment to the claimant beyond the statutory limit.

When payment of the statutory limit is made on a claim determined to be meritorious in a greater amount after the application of individual and category maximum allowances, USARCS will apply amounts recovered from a carrier or contractor to compensate the claimant to the extent of the difference between the statutory limit and the amount that would have been paid but for the statutory limit. However, when an insurer has paid any portion of the value of the items involved, USARCS will apply the procedure in section § 536.190(b). Any additional recovery monies available will be paid out under § 536.190(b), if applicable.

§ 536.190 Reimbursements to claimants and insurers from money received.

USARCS is responsible for pursuing recovery on all claims paid under this subpart that involve payment of the statutory limit, increased released valuation purchased by the member, replacement cost protection, and/or private insurance. When forwarding these files to USARCS, the field office should identify them by writing in red on the front upper left corner of the file, "IRV," "RCP," or "STATUTORY LIMIT."

(a) *Reimbursement to a claimant.* Only USARCS may reimburse claimants on files which are required to be forwarded to USARCS for centralized recovery. In cases where a JA/claims attorney allowed payment of a claim before settling with private insurance, a command claims service, area claims office, or claims processing office with approval authority may always make a supplemental payment to a claimant when the claimant's private insurer paid more on an item than did the Government. If a claimant has not been fully compensated, he or she can receive a supplemental payment up to the adjudicated value of the claimant's loss under the following circumstances: (1) When the adjudicated value of the loss on an item exceeds an item or category maximum and the amount collected exceeds the amount paid on the claim, the claimant will be paid the adjudicated value to the extent that the amount recovered exceeds the amount paid.

(2) When the adjudicated value of the loss on an item exceeds an item or category maximum and the claimant has purchased increased valuation protection or other depreciated value coverage, the claimant will be paid up to the amount of the additional coverage to the extent that this does not exceed the adjudicated value on that item or category.

(3) When the value of the loss on an item exceeds DA's payment and the claimant has purchased RCP, the claimant will be paid up to the amount of the additional coverage to the extent that this does not exceed the value determined for that item.

(b) *Reimbursement to insurers by USARCS only.* When a claimant has purchased an insurance policy covering the shipment or storage of property and the insurance company pays any portion of the value of items lost or damaged, the insurance company is entitled, to the extent of its payment, to reimbursement of a pro rata share of the amount recovered on such items.

(c) *Reimbursement of recovery money to a carrier, warehouse or contractor.* If a claims office or contracting office determines that recovery or offset against a carrier, contractor or warehouse was improper, the claims office will forward a request (with appropriate justification) to the Chief, Personnel Claims and Recovery Division, USARCS, who will authorize a refund as necessary.

§ 536.191 Recovery action against a claimant.

A claimant is entitled to the benefit of any additional coverage purchased (such as private insurance, excess valuation, or RCP) on an item-by-item basis as described in DA Pam 27–162, paragraph 2–50. If a claimant is compensated by a third party on an item and is also compensated by DA pursuant to this subpart, the claimant is entitled to retain only the portion of the payment that represents the total adjudicated value of the item, without regard to a limitation on payment due to application of a maximum allowance. If a claimant is compensated twice and the total exceeds the amount the claimant is entitled to retain, prompt action to recover the excess will be taken in accordance with DA Pam 27–162, paragraph 2–55m.

§ 536.192 Claims arising from packing and containerization contract shipments.

Field claims offices will process to completion recovery actions on all packing and containerization contract shipments against the delivering contractor unless private insurance is involved. (See § 536.190.)

§ 536.193 Claims caused by stevedoring contractors.

(a) The "Liability and Insurance" clause used in stevedoring and related services contracts provides in pertinent part that the contractor is liable to the Government for loss or damage to personal property (including POV's), caused in whole or in part, by his or her negligence or fault and that the amount determined by the contracting officer will be withheld from payments otherwise due the contractor.

(b) Claims offices processing claims against the Government under this paragraph for loss, damage, or destruction of personal property of any kind (including POV's) caused in whole or in part by the negligence of a contractor will, when final recovery action is complete, forward the claim file directly to the Commander, USARCS. Claims offices processing a claim involving a POV will obtain an affirmative statement from the claimant as to whether settlement is also being processed directly with the contractor or has already been received from the contractor. Normally, a settlement with the contractor bars further claim against the Government. (But see § 536.186(b).) The procedures for processing POV recovery actions against stevedores are in § 536.195.

§ 536.194 Claims arising from intra-theater shipments.

Unless private insurance or payment of the statutory limit is involved (see § 536.190)—

(a) Recovery action under a European intra-theater tender or a delivering direct procurement method contract will be assembled and forwarded to U.S. Army Claims Service, Europe, APO AE 09166–5346.

(b) Recovery action under a Korean intra-theater tender or a delivering direct procurement method contract will be assembled and forwarded to U.S Armed Forces Claims Service, Korea, APO SF 96301 AP 96205–0084.

(c) Other recovery action against a delivering third party not involving shipment under a Through Government Bill of Lading will be processed by the field claims office to completion in accordance with DA Pam 27–162, chapter 3.

§ 536.195 Claims against ocean carriers.

No demand will be made directly on an ocean carrier operating under a Military Sealift Command contract by individual claimants or by field claims offices.

(a) *POVs*—(1) *Payment less than $100.* A POV shipment file will be closed and no recovery action taken when the

amount paid for the damage is less than $100. However any file involving loss of items from vehicles will continue to be processed regardless of the amount paid.

(2) *Payment from $100–1,999.* For POV claims paid for any amount between $100 and $1,999, and if there is evidence of ocean carrier liability, the entire claim file will be forwarded to Military Sealift Command, Atlantic, by transmittal letter prepared in the format shown in DA Pam 27–162, figure 3–18. However, if there is evidence of liability attributable to the inland shipment of POVs in Europe, the entire claim file will instead be forwarded to the U.S. Army Claims Service, Europe, ATTN: AEUTN–PCR, APO AE 09166–5346.

(3) *Payment $2,000 or more*—(i) *Non-European claims offices.* If the amount paid on a POV shipment claim is $2,000 or more, or if it appears that the POV was dropped or was mishandled severely in shipment, claims personnel will prioritize recovery action and handle the larger claims first. Claims personnel will—

(A) Assert a demand against the responsible contractor if an outport contractor, stevedore, or inland transporter damaged the vehicle; or

(B) Forward the claim to USACSEUR for recovery if the damage occurred while the POV was in the custody of a European outport, stevedore, or inland shipment contractor; or

(C) Close the file and forward it for retirement if the POV was damaged while in the custody of government personnel; or

(D) Forward the claim to the Military Sealift Command if the damage occurred while the vehicle was in the custody of the ocean carrier (ship) or if claims personnel cannot determine where the damage occurred.

(ii) *European claims offices.* If the amount paid on a POV shipment claim is $2,000 or more, claims personnel will prioritize assembly of the file and will forward it to USACSEUR for recovery action 21 days after the claim is paid.

(b) *Personal property other than vehicles (for example, household goods).* After payment of a claim involving personal property other than POV's, the entire claim file will be forwarded, in duplicate, directly to the Commander, USARCS, for recovery action as appropriate.

§ 536.196 Centralized recovery program procedures.

After settlement of a claim under this chapter (including direct procurement method (DPM) or intra-theater shipments (only if private insurance is involved), and all mobile home claims), requiring centralized recovery processing as determined by the Commander, USARCS, the office paying the claim will forward the file to USARCS within 30 days. (See also § 536.184(a)(6).) All such claims where recovery action is anticipated will include legible documentation and will be assembled as described below.

(a) The following documents will be affixed to the left inside cover (opposite the side bearing complete name and file number of claimant) in descending order:

(1) *First.* An unsealed envelope addressed to the appropriate third party along with the demand packet which should include the following documents: (i) Original DD Form 1843 (Demand on Carrier/Contractor). (See DA Pam 27–162, paragraph 3–20.)

(ii) Copy of DD Form 1164 (Service Order for Personal Property) if applicable.

(iii) Copy of DD Form 1844. (See DA Pam 27–162, paragraph 3–19.)

(iv) Copy of DD Form 1841 (Government Inspection Report) if available.

(v) Copies of all repair estimates.

(vi) Copies of all other supporting documents deemed appropriate.

(vii) Copy of DD Form 1840/1840R.

(2) *Second.* If applicable, an unearned freight packet consisting of the original letter requesting deduction of unearned freight charges with a copy of the GBL, DD Form 1843, and DD Form 1844 attached thereto.

(3) *Third.* Copy of DD Form 1843.

(4) *Fourth.* If applicable, GBL and/or DD Form 1164.

(5) *Fifth.* Documents of timely notice as described in section 536.188(c).

(6) *Sixth.* DD Form 1844.

(7) *Seventh.* If applicable, DD Form 1841.

(8) *Eighth.* Repair estimates, paid bills, replacement costs, appraisals, and so forth.

(9) *Ninth.* Any other documents appropriate to support the claim against the third party.

(10) *Tenth.* Locally approved or adopted chronology sheets will be the last document attached to the left inside cover of the file.

(b) The following documents will be affixed to the right inside cover in descending order:

(1) *First.* All remaining copies of the DA Form 3 (Individual Claims Data Report) (except the organizational file copy retained by the forwarding claims office), or a print-out of the automated Individual Claims Report, as applicable.

(2) *Second.* A copy of the letter to USAFAC requesting deduction of unearned freight charges, if applicable.

(3) *Third.* Certified copy of the voucher from the servicing finance and accounting office, showing the amount paid the claimant.

(4) *Fourth.* DD Form 1842.

(5) *Fifth.* If applicable, paperwork regarding private insurance settlements.

(6) *Sixth.* All inventories.

(7) *Seventh.* All other documents, such as request for exception sheet, orders, turn-in slips, witness statements, and correspondence.

(c) See DA Pam 27–162, paragraph 3–21, for further guidance.

§ 536.197 Offset actions.

(a) *Offset actions against GBL carriers.* Only USARCS may process offset actions against GBL carriers. (See DA Pam 27–162, paragraph 3–26.)

(b) *Offset actions against NTS contractors.* When an NTS contractor is liable and a satisfactory settlement cannot be reached, the claims office will forward the file to the Regional Storage Management Office (RSMO) responsible for administering the Basic Ordering Agreements for storage in that geographic area. (See DA Pam 27–162, paragraph 3–26.).

(c) *Offset against packing and containerization contractors.* When any claims office determines that a packing and crating contractor is liable and a satisfactory settlement cannot be made, a copy of the complete claim file will be forwarded by letter to the local contracting office administering the contract, requesting offset action. The contracting officer will conduct a careful review of the claim file and will make a determination on the issue of contractual liability on the information contained in the file and on personal findings of fact in accordance with the contract involved. (Also see DA Pam 27–162, paragraph 3–26.)

(d) Title 4 CFR 102.3(b)(2) affords a carrier or contractor certain procedural rights prior to offset. A JA/claims attorney will certify to the contracting office that the Army has complied with 4 CFR 102.3 if requested to do so. The JA/claims attorney will give the carrier/contractor: (1) written notice of the nature and amount of the debt, and the agency's intention to collect by offset if the debt isn't paid. The DD Form 1843 or demand letter provides this notice.

(2) the opportunity to inspect and copy agency records pertaining to the debt if requested.

(3) the opportunity to obtain review within the agency if the carrier/contractor requests this. If requested, the JA/claims attorney will review the file prior to offset. No oral hearing is required.

(4) the opportunity to enter into a written agreement with the agency to repay the debt. A carrier/contractor will normally be allowed 45 days to follow up a settlement offer with a check. If a satisfactory check is not received within the 45 days, the JA/claims attorney should offset the carrier/contractor without delay.

(e) In accordance with 4 CFR 102.3(b)(5), the head of an area claims office or claims processing office may effect offset prior to completion of any or all of the procedures in paragraph d above if failure to promptly offset would substantially prejudice the Government's ability to collect the debt.

§ 536.198 Compromise or termination of recovery actions.

Subject to the limitations contained in this chapter, the Commander, USARCS, is delegated authority to compromise or determine collection action on claims against third parties in accordance with the provisions of 31 U.S.C. 3711.

§ 536.199 Terms and abbreviations.

Definitions of terms and a glossary of abbreviations frequently used in recovery actions are in DOD 4500.34–R, in the definitions section, beginning at page XXXIV.

§ 536.200 Required references.

Each claim office will maintain copies of the following references for recovery purposes:

(a) DA Pam 27–162.

(b) Personal Property Traffic Management Regulation (DOD 4500.34–R).

(c) Domestic and mobile home personal property carrier approvals.

(d) ITGBL personal property carrier approvals by area/code.

(e) Local packing and containerization contracts.

Subpart L—Nonappropriated Fund (NAF) Claims

Claims Against NAF Activities

§ 536.201 General.

This subpart sets forth the procedures to be followed in the settlement and payment of claims by employees of nonappropriated fund activities for the loss of or damage to personal property incident to their employment, and for claims generated by the acts or omissions of the employees of such funds.

§ 536.202 Claims by employees for losses incident to employment.

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by subpart K and will be paid from nonappropriated funds in accordance with § 536.207.

§ 536.203 Claims generated by the acts or omissions of employees.

(a) *Processing.* Claims arising out of acts or omissions of employees of nonappropriated fund activities will be processed and settled in the manner specified for similar claims against the United States except that payment will be made from nonappropriated funds in accordance with AR 215–1, and section § 536.207. Relevant procedural requirements of pertinent subparts of this part, as stated below, will be followed except as provided in §§ 536.206 and 536.207. However, when the NAFI is protected by a commercial insurer, for example, flying and parachute clubs, the claim will be referred to the insurer as outlined in paragraph (e) of this section.

(1) Claims arising within the United States, its territories, commonwealths, or possessions. Such claims will be processed in the manner prescribed by subparts C, D or E as appropriate.

(2) Claims arising outside the United States, its territories, commonwealths, or possessions. Such claims will be processed in accordance with the provisions of applicable SOFA or in the manner prescribed by subparts C, D or E as appropriate.

(b) *Reporting and investigation.* Such claims will be investigated in accordance with subpart B of this part and AR 215–1.

(1) *Reporting.* All incidents involving personal injury, death, or property damage resulting from falls, falling objects, or accidents of like nature, occurring in post exchanges, bowling lanes, officers and noncommissioned officers open messes, or other facilities located on land or situated in a building used by an activity of the DA that employs personnel compensated from nonappropriated funds, should be reported immediately to the officer in charge of the nonappropriated fund activity concerned. The report should be made by the employee who initially received notice of the incident, regardless of the fact that the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the officer in charge of the nonappropriated fund activity concerned will transmit the report to the installation or other appropriate claims officer for investigation.

(2) *Investigation.* (i) As soon as practicable in the investigation of a claim generated by a nonappropriated fund activity, a determination will be made as to whether the claim is cognizable under this section.

(ii) Claim files that relate to claims determined to be cognizable under this section will be marked with the symbol "NAF" immediately following the claimant's name to preclude erroneous payment from appropriated funds. This symbol will also be included in the subject line of all correspondence.

(iii) *Claims exceeding $15,000.* When a claims approval or settlement authority receives a claim against a nonappropriated fund activity, other than the Army and Air Force Exchange Service (AAFES), that exceeds $15,000, he or she will forward a copy to both USARCS and the Army Central Insurance Fund, HQDA, ATTN: CFSC-RM-I, room 1240, 2461 Eisenhower Avenue, Alexandria, VA 22331–0508. A copy of all tort claims against AAFES will be forwarded to Headquarters, AAFES, ATTN: General Counsel, P.O. Box 660202, Dallas, TX 75266–0202.

(iv) *Customer complaints.* Customer complaints other than at AAFES activities will be settled under the provisions of AR 215–1 rather than under the provisions of this section. AAFES generated complaints will be handled in accordance with Exchange Service Manual 57–2.

(v) *Commercial insurance.* (A) Normally a claims investigation under subpart B will not be conducted but the claims officer will refer the claim to the insurer and furnish copies as indicated in paragraph (c) of this section. Assistance will be furnished to the insurer as needed. Copies of any other required investigations may be furnished to the insurer.

(B) The status of the claim will be ascertained at key intervals to ensure that progress is being made, negotiations are proper, and to close the file. The Commander, USARCS will be advised of any problems.

(C) If requested by either insurer or NAFI officials, the appropriate claims authority will assist in or conduct negotiations.

(D) Where NAFI vehicles are required to be covered by insurance in foreign countries, the insurer will process the claim. However, if the insurer refuses to settle the claim in timely manner or is insolvent, the claim may be processed under subpart J procedures where applicable.

§ 536.204 Persons generating liability.

Claims resulting from the acts or omissions of the following classes of persons are cognizable under this section: (a) Civilian employees of nonappropriated fund activities whose

salaries are paid from nonappropriated funds.

(b) Active duty military personnel while performing off-duty part-time work and for which they are compensated from nonappropriated funds.

(c) A claims approval or settlement authority will ask the Commander, USARCS for an advisory opinion prior to settling any claim where the person whose conduct generated the claim does not clearly fall within the above listed categories.

§ 536.205 Claims payable from appropriated funds.

Claims payable from appropriated funds will not be considered under this section or paid from nonappropriated funds. Such claims include those resulting from—

(a) Acts or omissions of military personnel while performing assigned military duties in connection with nonappropriated activities.

(b) Acts or omissions of civilian employees paid from appropriated funds in connection with nonappropriated activities.

(c) Negligent maintenance of a facility used by a nonappropriated fund activity but for which the command concerned is responsible.

(d) Temporary use of a nonappropriated fund facility by an appropriated fund activity.

(e) Operation of Government vehicles dispatched from motor pools on authorized missions for nonappropriated fund activities when the driver is a member or civilian employee of the DA.

§ 536.206 Settlement.

(a) *Settlement.* Claims cognizable under this section and processed under subparts C, D, E, J or K will be settled by claims authorities authorized to settle claims under those chapters subject to the same monetary limitations and limitations on denial authority, except that TJAG, TAJAG, and the Commander, USARCS, or designee, may settle such claims without regard to monetary limitations.

(b) *Finality of settlement.* The determination of a claims settlement authority on a claim cognizable under this section is final and conclusive. However, a claim processed under subpart C may be appealed in accordance with § 536.51(d), and claims processed under subparts D, E, J or K may be reconsidered in accordance with the paragraphs concerning reconsideration in those subparts.

§ 536.207 Payment.

(a) *Transmission for payment.* When a claim for loss of or damage to household goods or hold baggage shipped or stored by an AAFES or NAFI employee is considered under this section and determined to be meritorious in whole or in part, the approval or settlement authority will transmit the entire claims file to the appropriate disbursing office (see paragraph (b) of this section) for payment. When any other claim is considered under this section and determined to be meritorious in whole or in part, the approval or settlement authority will transmit to the appropriate disbursing office the original and one copy of—

(1) The claim form.

(2) The action by the approval or settlement authority.

(3) The settlement agreement, if required by subpart B.

(b) *Disbursing offices.* Normally, claims settled under this section will be transmitted for payment as indicated below.

(1) Claims over $2,500 generated by AAFES activities will be transmitted to Headquarters, Army and Air Force Exchange Service, ATTN: Comptroller Division, Insurance Branch, P.O. Box 660202, Dallas, TX 75266–0202.

(2) Claims not over $2,500 generated by AAFES activities will be transmitted to the Army-Air Force Exchange Service, OSC-FA-CLAIMS, P.O. Box 650405, Dallas, TX 76265–0405.

(3) Claims over $100 generated by other nonappropriated fund activities will be transmitted to The Army Central Insurance Fund, ATTN: CFSC-RM-I, Room 1240, 2461 Eisenhower Avenue, Alexandria, VA 22331–0508. When transmitting household goods or hold baggage shipment claims for payment, forward the entire claims file so ACIF can pursue carrier recovery. Use the "NF" claims database transaction code.

(4) Claims not over $100 generated by other nonappropriated fund activities will be transmitted to that nonappropriated fund activity responsible for payment from its funds. (See AR 215–1, paragraph 13–24a.)

(c) *Reimbursement to foreign countries.* Reimbursement to a foreign country of the United States pro rata share of a claim paid under an international agreement will be made from nonappropriated funds.

(d) *Evidence of payment.* When a claim settled under this section is transmitted to a disbursing office for payment, the approving or settlement authority will request the appropriate disbursing office to return evidence of the date and amount of payment.

Claims Involving Persons Other Than NAF Employees

§ 536.208 Claims arising from activities of nonappropriated fund contractors.

These claims should be disposed of in a manner similar to that set forth in DA Pam 27–162, paragraphs 8–42, 8–43, and 8–47. Post exchange concessionaires are independent contractors and are required to obtain workmen's compensation coverage under local law for their employees and public liability insurance governing their operations. If a dispute arises as to whether such insurance is available or applicable, the claim should be forwarded to Headquarters, AAFES, ATTN: General Counsel, P.O. Box 660202, Dallas, TX 75266–0202, prior to processing under the preceding chapters.

§ 536.209 Non-NAFI RIMP claims.

The RIMP is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215–1. Non-NAFI RIMP claims are not cognizable under any other provision of this regulation. However, except as otherwise provided in this section, Non-NAFI RIMP claims are subject to the same requirements that apply to other tort claims. USARCS carefully monitors all such claims to ensure proper investigation and resolution.

§ 536.210 Claims cognizable.

(a) Non-NAFI RIMP claims can arise from the activities of—

(1) Members of recreational NAFIs or authorized users of NAF recreational property, while using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity. This category of persons generally has been limited to members and users of recreational facilities such as flying clubs organized as NAFIs and craft shops. This category does not include customers of exchanges, snack bars, motion picture theaters, or similar facilities. Whether a claim based on an act or omission of a member or authorized user of other types of NAF activities, such as officers' messes, would be cognizable under this paragraph depends on the facts and circumstances involved, including the degree of participation by the member or authorized user in the activities of the fund. Claims arising from the use of NAF property, as defined in this paragraph, are not cognizable under the FTCA or MCA, since the use of such recreational property is by individuals not considered to be employees of the

Army or NAFI acting within the scope of their office or employment.

(2) Family child care (FCC) providers, authorized members of the provider's household, and approved substitute providers while care under the FCC program is being provided in the manner prescribed in AR 608–10, except as excluded below. Such claims are generally limited to injuries to or death of children receiving care under the FCC program which are caused by the negligence of such individuals. Claims arising from the transportation of such children in motor vehicles and claims involving loss or damage of property are not cognizable.

(b) Although Non-NAFI RIMP claims do not involve employees of the United States, a claim under this section that is listed in § 536.51 of this part is not payable. For example, a soldier injured on a post golf course when hit by a golf cart operated by an authorized user is barred by the incident-to-service exclusion from recovering under this section.

(c) A claims approval or settlement authority will ask the Commander, USARCS for an advisory opinion prior to settling any Non-NAFI RIMP claim where the person whose conduct generated liability does not clearly fall within the above listed categories. Such authorities may also ask, through the Commander, USARCS, for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under paragraph (a)(2) of this section, where it is not clear that the injured or deceased child was receiving care within the scope of the FCC program.

(d) The total payments for all claims (including derivative claims) arising as a result of injury to or death of any one person are limited to $500,000 for each incident. Continuous or repeated exposure to substantially the same or similar general harmful activity or conditions is treated as one incident for purposes of determining the limit of liability.

§ 536.211 Procedures.

(a) *Reporting.* All Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to Non-NAFI RIMP claims will be reported to USARCS and the ACIF immediately.

(b) *Investigation.* Field claims offices are responsible for the investigation of Non-NAFI RIMP claims. Such investigations will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is required, and USARCS will maintain mirror files of the investigation of all actual and potential claims.

(c) *Payment.* Non-NAFI RIMP claims will be transmitted to The Army Central Insurance Fund, ATTN: CFSC-RMB-I, Room 1240, 2461 Eisenhower Avenue, Alexandria, VA 22331–0508 for payment.

(d) *Commercial insurance.* The provisions of § 536.203(e) (1) through (3) are also applicable to claims arising under this section, except that in claims involving FCC providers, a claims investigation will be conducted regardless of the presence of commercial insurance.

§ 536.212 Delegation of authority.

(a) *Settlement authority.* TJAG, TAJAG, and the Commander, USARCS, or designees, are authorized to settle or deny Non-NAFI RIMP claims regardless of the amount claimed.

(b) *Approval authority.* (1) The SJA and, subject to limitations imposed by him or her, the chief of the command claims service of the commands listed below are delegated authority to approve, in full or in part, Non-NAFI RIMP claims presented in the amount of $25,000 or less, and to approve such claims regardless of the amount claimed provided an agreed settlement of $25,000 or less is accepted in full satisfaction of the claim, but only when the total value of all settlements, claims, and potential claims arising out of a single incident does not exceed $25,000.

(i) USAREUR.

(ii) Eighth U.S. Army, Korea.

(iii) USARSO.

(2) Area claims offices are delegated authority to approve, in full or in part, Non-NAFI RIMP claims presented in the amount of $15,000 or less, and to approve such claims regardless of the amount claimed provided an agreed settlement of $15,000 or less is accepted in full satisfaction of the claim, but only when the total value of all settlements, claims, and potential claims arising out of a single incident does not exceed $25,000.

(3) The above authorities are not delegated authority to deny or make a final offer on claims under this section. Claims requiring such action will be forwarded to the Commander, USARCS, with an appropriate recommendation.

(c) The decision of a settlement or approval authority on a Non-NAFI RIMP claim is final and conclusive and is not subject to reconsideration or appeal.

Subpart M—Affirmative Claims

General

§ 536.213 Authority.

(a) *Federal statutory authority.* (1) The Federal Claims Collection Act (31 U.S.C. 3711], as amended by the Debt Collection Act of 1982 and Public Law 101–552 (15 November 1990). The Federal Claims Collection Act states that Federal agencies will try to collect all claims of the United States for money or property. Among other things, it provides a basis for agencies to recover for damage to Government property.

(2) Federal Medical Care Recovery Act (42 U.S.C. 2651–53) (hereinafter "FMCRA"). The FMCRA provides for the recovery of the reasonable value of medical care furnished by the United States on account of injury or disease incurred under circumstances creating tort liability upon some third person. The FMCRA is implemented by Executive Order 11060 and 28 CFR part 43; the Federal Claims Collection Standards (DA Pam 27–162, appendix M) also apply, as appropriate. However, some procedures appropriate for liquidated debts may not be appropriate for unliquidated claims.

(3) 10 U.S.C. 1095. 10 U.S.C. 1095 provides authority for military health care facilities to collect the reasonable cost of health care from health insurance and medicare supplemental policies. As amended by Public Law 101–510 (5 November 1990), this statute provides claims offices with additional authority to assert claims against automobile insurers for care provided in an MTF on or after that date.

(b) *Other authority.* (1) State Workers' Compensation laws.

(2) State hospital lien laws.

(3) Contract rights under terms of insurance policies including medical payment coverage, uninsured and underinsured coverages, and no-fault.

(4) State automobile no-fault laws.

§ 536.214 Recovery judge advocate/attorney.

(a) *General.* A JA or claims attorney (designated per § 536.6) assigned responsibility for asserting affirmative claims may be designated as a recovery judge advocate (RJA) or recovery attorney, as appropriate. This designation may be in addition to or in lieu of designation as a claims JA or claims attorney, depending on the local command needs and available personnel. When assertion of affirmative claims is a full-time responsibility of an attorney or JA, the table of distribution and allowances (TDA) position title can also reflect the recovery function.

(b) *Designation.* (1) The chief of a command claims service, an area claims office, or a claims processing office with approval authority may designate an RJA or recovery attorney for all or part of the area of responsibility assigned to the service or office. All designations will be in writing. A command claims service may withhold designation authority within its area of operations or place reasonable restrictions on such designation by subordinate offices through appropriate command directives.

(2) The Commander, USARCS will designate RJAs and recovery attorneys for areas not within the responsibility of a command claims service or area claims office.

§ 536.215 Purpose and policy.

(a) This subpart prescribes procedures for the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the United States for damage to, loss, or destruction of Army property, and for the recovery of the reasonable value of medical care furnished or to be furnished by the United States, under the statutes cited in § 536.213. Sound governmental policy in the collection of claims of the United States for money or property requires aggressive agency collection action. Responsible officials within DA will ensure that personnel asserting claims are properly trained and supported to take timely and effective action.

(b) The chapter does not apply to the following:

(1) Claims between Federal agencies. If such a claim cannot be resolved by negotiation, it should be referred to GAO.

(2) Maritime claims under subpart H.

(3) Affirmative actions for nonmonetary relief (for example, evictions, specific performance, and injunctive relief).

(4) Claims arising out of tax aspects of a contract, or other transaction or activity involving either nonappropriated or appropriated funds.

(c) The senior Judge Advocate of a command having a command claims service, or the commander, USACSEUR, will prescribe procedures for implementing single service claims responsibility under DODD 5155.8 and for implementing any provision in a treaty or international agreement that limits or provides special methods for asserting claims in favor of the U.S. With the concurrence of the Commander, USARCS, the senior JA of a command having a command claims service, or the commander, USACSEUR, is authorized to modify the procedures in this chapter to accommodate special circumstances. The SJA will provide the Chief, Personnel Claims and Recovery Division, with a copy of all published guidance.

§ 536.216 Delegation of authority.

Claims offices may accept the full amount asserted on an affirmative claim. In addition—

(a) TJAG; TAJAG; the Commander, USARCS; and the Chief, Personnel Claims and Recovery Division, USARCS, may compromise or terminate collection action on a property damage claim asserted for $100,000 or less; and may compromise, waive or terminate collection action on a medical care claim asserted for $100,000 or less.

(b) The senior JA of a command having a command claims service, or the commander, USACSEUR, may compromise, waive or terminate collection action on a medical care or property damage claim asserted for $100,000 or less.

(c) Unless authority is withheld by the Commander, USARCS or the chief of a command claims service, the head of an area claims office may: (1) compromise up to $25,000 of the amount asserted on a property damage or medical care claim asserted for $40,000 or less (see § 536.229(b)).

(2) Terminate collection action on a property damage or medical care claim asserted for $25,000 or less when further collection efforts are not feasible (see paragraph 14–19c); or waive a medical care claim asserted for $25,000 or less when collection in any amount will result in undue hardship to the injured party (see § 536.229(d)).

(d) The head of an area claims office may delegate authority to a claims processing office to: (1) compromise up to $20,000 of the amount asserted on a property damage or medical care claim asserted for $40,000 or less (see § 536.229(d)).

(2) Terminate collection action on a property damage or medical care claim asserted for $20,000 or less when further collection efforts are not feasible (see paragraph 14–19c); or waive a medical care claim asserted for $20,000 or less when collection in any amount will result in undue hardship to the injured party (see § 536.229(d)).

(e) The head of an area claims office or a claims processing office, or the chief of a command claims service, may redelegate up to $20,000 of his or her authority to an RJA.

(f) In determining whether a settlement authority has authority to compromise, terminate, or waive a claim, consider the medical costs for all parties injured in a single incident as a single assertion; and consider the total value of Government property damaged or destroyed in a single incident as a single assertion.

(g) Only the Department of Justice (DOJ) may approve claims involving: (1) Compromise, termination, or waiver of a medical care or property damage claim asserted for more than $100,000.

(2) Settlement actions previously referred to DOJ.

(3) Settlement where a third party has filed suit against the United States or the injured party for the same incident which gave rise to the claim of the United States.

(h) The commander, USARCS, or the Chief, Personnel Claims and Recovery Division, in consultation with the Department of Justice, will approve all claims involving unusual circumstances, a new point of law which may serve as a precedent, or a question of policy.

§ 536.217 Basic considerations.

(a) The Federal Claims Collection Standards. The Federal Claims Collection Standards (4 CFR parts 103 and 104, reprinted in DA Pam 27–162, appendix M), prescribe standards for compromising and litigating property damage claims, and provide general guidance for compromising and litigating medical care claims.

(b) *Time limitations*—(1) *Property damage claims.* Claims asserted under the Federal Claims Collection Act for damage to Government property are founded in tort and must be brought within three years after the action "first accrues" (28 U.S.C. 2415b).

(2) *Medical care claims asserted under the FMCRA or 10 U.S.C. 1095.* Claims asserted under the FMCRA or against an automobile liability insurer under 10 U.S.C. 1095 are also founded in tort and must be brought within three years after the action "first accrues" (28 U.S.C. 2415b). Although no court has ruled on this issue, claims asserted under 10 U.S.C. 1095 against a no-fault or PIP insurer are presumably founded in a contract "implied in law"; if so, they must be brought within six years (28 U.S.C. 2415a).

(3) *Computing the statute of limitations.* Normally, a medical care claim "first accrues" on the initial date of treatment, and a property damage claim accrues on the date that the property was damaged. However, in computing the statute of limitations, 28 U.S.C. 2416(c) excludes the period of time before a U.S. official charged with the responsibility to act in the circumstances knows or should know that there is a basis for a claim. See *United States* v. *Hunter*, 645 F.Supp

758, 760 (N.D.N.Y. 1986). For example, the three year statute of limitations would not begin to run on most medical care claims paid by CHAMPUS at least until the date on which CHAMPUS received the bill from the provider.

(4) *Medical care claims asserted under state law.* Claims asserted against an insurer on a third party beneficiary theory or against a state workers' compensation fund must be brought within the applicable state statute of limitations which can range from one to six years. Normally, the statute of limitations would begin to run when the injury occurred, rather than the date of initial treatment.

(c) *Applicable law.* Federal law does not define what constitutes a tort. Unless the RJA can properly apply the law of another jurisdiction under conflict of law rules, the RJA will apply the law of the state or country where an incident occurred in determining whether the Government has a cause of action founded in tort.

(d) *Concurrent claims.* (1) Claims for damage to Army property and claims for medical care arising from the same incident will be processed under the section applicable to each. However, efforts should be made to include all medical care and property damage claims in a single demand against a third party or insurance company. Settlement agreements will be drafted so that settlement and release of one claim shall not prejudice settlement of the remaining claim.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim against the United States, the claim in favor of the Government will be asserted and processed only by a claims approval or settlement authority who has jurisdiction to take final action on the claim against the Government.

§ 536.218 Claims against certain prospective defendants.

(a) *U.S. Government agencies.* RJAs will not assert a claim against any department, agency or instrumentality of the United States. A self-insured NAFI, whether revenue producing, welfare or sundry, is considered an "agency or instrumentality of the United States"; a private association is not.

(b) *Property damage assertions against soldiers and employees.* The report of survey system (chapter 13, AR 735–5) is the primary mechanism for collecting from a civilian employee or a soldier (including an AR or NG soldier) for damage to government property. Report of survey procedures should normally be used whenever applicable. AR 735–5 requires claims offices to assert property damage claims against soldiers and employees in two instances: (1) *Damage caused by POV's.* Pursuant to paragraph 14–30, AR 735–5, if a report of survey approving authority assesses liability against a soldier or civilian employee for negligently damaging Government property using a POV, and the soldier or employee does not make restitution, the approving authority will forward the approved report of survey to the claims office. The RJA will assert a demand against the soldier or employee's liability insurance for the full value of the damage. If the soldier or employee does not have insurance, the RJA will return the action for the approving authority to withhold a month's pay from the soldier or employee.

(2) *Exhaustion of collection remedies.* Pursuant to paragraph 14–4b(7), AR 735–5, if an F&AO has exhausted all administrative mechanisms, including IRS offset, for collecting amounts assessed under a report of survey from a soldier, ROTC cadet or employee, the F&AO may refer the action to the servicing claims office for recovery action under the Federal Claims Collection Act. The RJA will assert such claims and initiate litigation if appropriate.

(c) *Medical care assertions against soldiers, employees, family members, and retirees*—(1) *Acting within scope of employment.* The RJA will not assert a medical care claim against a tortfeasor who is a civilian employee or service member (including a reserve component member) acting within scope of employment, whether or not the employee or member has private insurance (cf. *U.S.* v. *Gilman*, 347 U.S. 507 (1954)). "Scope of employment" is determined by the laws of the state where the injury occurred.

(2) *Persons not in scope who injure themselves.* An RJA will not assert a claim based on a tort liability theory against a tortfeasor who is a soldier, family member or retiree for the tortfeasor's own medical care; a person cannot create tort liability by injuring himself or herself. In such instances, however, the RJA may assert a claim under 10 U.S.C. 1095 against the injured tortfeasor's personal injury protection (PIP) or medical payments insurance coverage.

(3) *Persons not in scope with liability insurance.* An RJA may assert a medical care claim against the liability insurer of a service member, civilian employee, family member or retiree who injures some other person entitled to medical care. Interfamilial tort immunity would not preclude the RJA from asserting a medical care claim based on a tort liability theory for care furnished to a tortfeasor's family members (see, e.g., *U.S.* v. *Haynes*, 445 F.2d 907 (5th Cir. 1971); *U.S.* v. *Moore*, 469 F.2d 788 (3rd Cir. 1972).

(4) *Persons not in scope with no insurance.* An RJA may assert a medical care claim against a soldier, civilian employee, family member or retiree without insurance coverage with the approval of the Chief, Personnel Claims and Recovery Division, USARCS, or designee. Approval will be granted if there are aggravating circumstances, such as willful misconduct, and the tortfeasor has sufficient assets to satisfy both the injured victim and the Government's claim.

(d) *Government contractors.* Some contracts have "cost-plus" or reimbursement provisions which require the government to reimburse the contractor for many types of expenses. If it appears that the contract would require the government to reimburse a contractor for money recovered on an otherwise meritorious affirmative claim, the RJA will investigate the claim and forward a recommendation to USARCS, referencing the specific contract clauses involved. The RJA will assert other claims against government contractors after verifying that the contract does not contain a reimbursement provision.

(e) *NG organizations and members.* The RJA will investigate claims arising from the tortious conduct of NG members. The RJA will assert claims against NG members and their insurers in accordance with § 536.218 (b) and (c). If the NG members were acting within the scope of employment as State employees and an assertion against the NG organization's insurer appears appropriate, the RJA will forward a recommendation to USARCS.

Property Claims

§ 536.219 General.

(a) Other regulations establish systems of property accountability and responsibility; and provide for the administrative collection of charges from military and civilian personnel of the United States, and other individuals and legal entities from whom collection may be made without litigation. However, when the investigation results in a preliminary indication of pecuniary liability and no other method of collection is provided, the matter will be referred for action under this chapter. Assertions may be made under this section for the loss, damage, or destruction of—

(1) Property under DA control (AR 735–5).

(2) Property of the Defense Supply Agency in DA custody.

(3) Property of nonappropriated fund activities of the Army (except AAFES property unless a special agreement exists). (See AR 215–1 and AR 215–2.)

(4) Federal property made available to the ARNG (AR 735–5).

(b) This section does not apply to—

(1) Claims for damage to property funded by civil functions appropriations.

(2) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(3) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and states.

(4) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army or DOD for loss, damage, or destruction of personal property while in transit or storage at Government expense (chapter 11).

§ 536.220 Repayment in kind.

The RJA may accept the repair or replacement of the property in lieu of payment of the claim. The staff officer responsible for the property must certify accomplishment of the repair or replacement (such as is described for motor vehicles in AR 735–5) before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

§ 536.221 Property damage predemand procedures.

(a) *Identification of potential claims.* The RJA will ensure that installation motor pools, housing and engineering staff sections, unit property custodians, and similar persons apprise the claims office of damage to DA property. In addition, claims personnel will review MP blotters and reports, civilian news sources, reports of survey, magistrate court proceedings, line of duty and AR 15–6 investigations, and similar reports to identify additional property damage cases. A claims office designated as the NG point of contact for a state will coordinate with NG officials to ensure that NG units appoint unit claims officers and report potential claims.

(b) *Transfer of responsibility.* If another claims office is better situated to investigate and assert a property damage claim, the claims office will coordinate with that office. The Chief, Affirmative Claims Branch, USARCS, will resolve any disagreements. In addition, the office designated as the NG point of contact for a state will forward potential claims arising in another office's area of responsibility to that office.

(c) *Investigation.* Claims personnel will investigate potential incidents, question witnesses to determine the facts and circumstances, and identify all available insurance coverage. Claims personnel may directly request assistance from other DOD claims offices. Claims personnel may also request an investigation of an incident by a unit claims officer for the unit or organization responsible for the damaged or destroyed property, or, when the investigation may be more practically conducted by the claims officer of some other unit or organization, by another unit claims officer. If no other report has been prepared, the unit claims officer will prepare DA Form 1208. Claims personnel will obtain a breakdown of costs from the custodian of the property.

(d) *Closing potential claims without assertion.* If the RJA determines that there is no tort liability or that the potential recovery is too small to be worth pursuing, he or she will dispose of the notification without asserting a claim. If a potential claim file was opened, claims personnel will annotate the basis for closing the potential claim on the chronology sheet referencing the Federal Claims Collection Standards.

(e) *Asserting demands.* If there is a legal and factual basis for the Government to recover, claims personnel should notify both the tortfeasor and the tortfeasor's insurer. The assertion letter should outline the facts and cite the Federal Claims Collection Act as the basis for recovery. The claims office may also cite local law. The claims office should assert the claim for the full costs to the Government, if known, or state that the costs are still being ascertained. Where appropriate, the assertion letter should also provide the option to repair the damaged property or to replace it in kind.

Medical Care Claims

§ 536.222 General.

(a) Army claims offices assert claims against tortfeasors and insurers for medical and dental care which is furnished to a soldier, family member or retiree at Army expense to treat an injury or disease resulting from tortious conduct. In states that have modified traditional tort liability, Army claims offices also assert claims against insurers other than health benefits insurers, such as no-fault and medical payments automobile insurers, and workers' compensation funds. In doing so, claims offices coordinate their efforts with the injured party's efforts to recover other damages from tortfeasors and insurers.

(b) Claims offices will forward potential claims for medical care furnished to service members, family members or retirees of Air Force, Navy, Marine Corps or Coast Guard to the nearest installation or office of that service. As an exception to this rule, however, claims offices may assert and collect claims for medical care provided to retirees of another service and their dependents if:

(1) Medical care was furnished at the local Army MTF; and

(2) the incident giving rise to the claim occurred near the Army installation; or

(3) the retiree resides near the Army installation. In these exceptional situations, the claims office must ensure that the retiree is not receiving care at another service's MTF. The claims office must also notify USARCS as well as the nearest installation or office of the retiree's service that it is handling the claim.

(c) In some instances, the Army and the VA will both pay for care provided to a soldier or retiree. The VA, however, is precluded from asserting claims for "service-connected" injuries. *Accordingly:*

(1) If a soldier is injured and is discharged from the service, the claims office will assert claims for the reasonable value of medical care furnished at Army expense (including care furnished in a VA facility) prior to a soldier's discharge. Claims offices will not assert for the value of medical care furnished at VA expense, but the RJA will consider future care provided by VA in determining whether to approve a waiver or compromise.

(2) If a retiree is injured and receives some care paid for by the Army and other care in a VA facility, the claims office will coordinate with the nearest VA office and assert a claim for the full value of the care provided. The office will remit the amount recovered for care provided at VA expense to the VA.

§ 536.223 Recovery Rights under the FMCRA.

Pursuant to the Federal Medical Care Recovery Act the Government may pursue recovery of medical costs under any of the following tactics:

(a) *Subrogation.* The United States is subrogated to any rights or claims held by a person to whom the Government has provided medical care against the tortfeasor who caused him or her to be injured. As subrogee, the United States can recover from the wrongdoer the reasonable value of the medical care it

has furnished or will furnish the injured party.

(b) *Intervention.* The United States can intervene in an injured party's suit against a tortfeasor or bring suit as the assignee of an injured party's right of action.

(c) *Independent Action.* The United States can assert administratively and litigate a medical care claim in its own name.

(d) *Item of Special Damages.* The injured party's attorney can assert the Government's claim as an item of special damages in an injured party's suit against the tortfeasor.

§ 536.224 Identification of potential medical care recovery claims.

(a) *By MTF personnel.* (1) The MTF commander will ensure that the claims office is notified of instances where the MTF provides or is billed by a civilian facility for inpatient or outpatient care resulting from injuries such as broken bones or burns arising from automobile accidents, gas explosions, falls, civilian malpractice, and similar incidents which do not involve collections from a health benefits or medicare supplemental insurer. Claims personnel will coordinate with MTF personnel to ensure that inpatient and outpatient records, and emergency room and clinic logs are properly screened to identify potential cases.

(2) The MTF commander will also ensure that the MTF does not release billings or medical records, or respond to requests for assistance with worker's compensation forms, without coordinating with the RJA.

(b) *By CHAMPUS fiscal intermediaries.* The CHAMPUS fiscal intermediary is required to identify and to promptly mail claims involving certain diagnostic codes to the claims office designated as the state point of contact. The fiscal intermediary is required to provide the contact office with a personal injury questionnaire completed by the injured party and a copy of the CHAMPUS Explanation of Benefits showing the amount that CHAMPUS paid on the claim.

(1) In accordance with chapter 5 of the CHAMPUS Fiscal Intermediary Operations Manual (September 1991), a fiscal intermediary must suspend payment on a claim with possible medical care recovery until the injured party properly completes the personal injury questionnaire. Within 15 working days after receiving and evaluating the completed questionnaire, the fiscal intermediary is required to dispatch possible medical care recovery cases to the appropriate claims office. The contact office must work with the fiscal intermediary to ensure that claims are properly identified and forwarded in a timely manner. The claims office should document persistent problems and notify USARCS.

(2) Prior to settlement of a CHAMPUS claim, claims offices should recontact the fiscal intermediary to ensure that all amounts paid for by CHAMPUS are included in the Government's assertion.

(c) *By claims personnel.* The RJA will ensure that MTF comptroller, clinic, and Patient Administration Division records are screened to identify potential medical care recovery cases. The RJA will also coordinate with Navy and Air Force claims offices and MTFs to ensure that they identify potential claims involving treatment provided to Army personnel. To the extent possible claims personnel will review civilian police reports, military police blotters and reports, news reports, magistrate court proceedings, line of duty and AR 15–6 investigations, and similar sources to identify other potential medical care recovery claims.

§ 536.225 Medical care procedures following identification.

(a) *Opening potential claims.* Unless it is obvious from the notification documents that there is no potential recovery, claims personnel will open a potential claims file on each incident identified. Until the Affirmative Claims Management Program is revised to include a "potentials database," potential claims will be recorded in the Claims Journal (DD Form 1667).

(b) *Transfer of responsibility.* (1) Several claims offices may be notified of incidents involving more than one injured party or treatment at more than one facility. If an RJA has reason to believe that this has occurred, the RJA will contact the other offices to determine which office has the most significant contacts and should assert the claim. The office closest to where the injury occurred is not necessarily the office with the most significant contacts. In the event that offices cannot agree, they will refer the matter to the Chief, Affirmative Claims Branch, USARCS for a decision. The claims office will notify the MTF if it transfers responsibility for a claim that the MTF referred.

(2) The office designated as the CHAMPUS or NG point of contact for a state will forward potential claims arising in another office's area of responsibility to that office.

(c) *Investigation.* If MTF personnel have not already collected the necessary information, claims personnel will dispatch questionnaires to injured parties to determine the facts and circumstances and identify all available insurance coverage. Claims personnel will obtain medical records and billings to determine the value of the Government's claim, and will contact witnesses and consult with medical personnel as appropriate. RJAs may direct unit claims officers to investigate incidents and may request assistance from other DOD claims offices as needed.

(d) *Closing potential claims without assertion.* If the RJA determines that there is no tort liability or possible recovery from an insurer or workers' compensation fund, or that the potential recovery is too small to be worth pursuing, he or she will dispose of the notification without asserting a claim. If a potential claim file was opened, claims personnel will annotate the basis for closing the potential claim on the chronology sheet. If an MTF provided the notification, claims personnel will return the notification with a dated and signed notation, "Per RJA, no third party recovery."

(e) *Asserting demands.* If there is a legal and factual basis for the Government to recover, claims personnel will assert a demand against each tortfeasor and insurer. Claims personnel should place tortfeasors and insurers on written notice of the Government's right to recover even if the injured party's attorney enters into a representation agreement (see § 536.226(b)).

(1) *Automobile case—tort liability.* If care was wholly or partly provided in an MTF on or after 5 November 1990, the claims office will assert demands against the tortfeasor and his insurer citing both the FMCRA and 10 U.S.C. 1095. If care was provided in a civilian hospital or was provided before 5 November 1990, the office will only cite the FMCRA as a basis for recovery.

(2) *Automobile cases—no tort liability.* If care was wholly or partly provided in an MTF on or after 5 November 1990, the claims office will assert demands against the injured party's Personal Injury Protection (PIP), medical payments, or no-fault insurance citing 10 U.S.C. 1095. If care was provided in a civilian hospital or was provided before 5 November 1990, the office will cite applicable state insurance law recognizing the United States as a third party beneficiary of an injured party's automobile insurance.

(3) *Automobile cases—multiple sources of recovery.* If the claims office can recover from the tortfeasor's automobile liability and from the injured party's non-liability coverage, the claims office should put both insurers on notice of the claim and

should first attempt to collect from the no-fault insurer. If the tortfeasor is an uninsured motorist and the injured party has uninsured/underinsured motorists' coverage, the claims office should attempt to recover from the injured party's insurer while following the procedures in § 536.228(a). See § 536.227(e) if the injured party has health benefits insurance.

(4) *Special rules applicable to CHAMPUS "primary payers."* Pursuant to 10 U.S.C. 1079(j)(1) and 1086(g), workers' compensation and the injured party's no-fault, PIP, medical payments, and uninsured/underinsured motorist's coverage are considered "primary" to CHAMPUS. Before the fiscal intermediary pays the injured party's medical bills and notifies the claims office to assert a claim against the tortfeasor, the fiscal intermediary is required to verify that these "primary payers" have paid.

(i) If the fiscal intermediary overlooks such coverage, the claims office will immediately assert a demand against the injured party's insurer (or the workers' compensation fund) citing 10 U.S.C. 1079(j)(1) in addition to other sources of authority. If the insurer has already disbursed the policy limits to the injured party, the claims office will request repayment from the injured party. The claims office will return money recovered in this manner to CHAMPUS (see § 536.231(d)(3)).

(ii) If the injured party or the injured party's insurer decline to pay and the claims office does not recover the full amount asserted from the tortfeasor's liability insurer, the claims office will forward the file to USARCS, which will refer the matter to the OCHAMPUS General Counsel. In this instance, the claims office will not waive or compromise any portion of the Government's claim because of undue hardship to the injured party without the approval of Chief, Personnel Claims and Recovery Division, USARCS.

(5) *On-the-job injuries.* In states that recognize the United States as a beneficiary of state workers' compensation systems, the claims office will present a claim to the appropriate office.

(6) *Other injuries.* Other instances giving rise to third party liability include gas explosions, malpractice by civilian physicians, slip-and-fall incidents, and products liability cases. Claims offices will assert demands against the tortfeasor and his insurer citing the FMCRA.

(f) *Determination of the amount asserted*—(1) *MTF costs.* Recovery for MTF care is presently based upon multiple "clinical group" per diem inpatient rates and a single per visit outpatient rate established by the Office of Management and Budget (OMB). Claims personnel should obtain a billing from each MTF. The RJA should, however, obtain information from the MTF registrar and adjust the amount asserted if it appears that the billings include inpatient days where the injured party was retained in the MTF for administrative purposes rather than medical needs.

(2) *CHAMPUS costs.* Recovery for inpatient care provided in civilian hospitals and paid through CHAMPUS is based upon the CHAMPUS "Diagnosis Related Group" (DRG) rates, regardless of the "actual" costs. Rates for outpatient care are based on the CHAMPUS "allowable charge" for that medical service. Claims offices should assert for the amount that CHAMPUS paid even though this can sometimes exceed the amount that the civilian hospital billed.

(3) *Ambulance services.* Ambulance and air ambulance services provided to soldiers, family members and retirees are "medical costs" within the meaning of the FMCRA and 10 U.S.C. 1095, but they are not included in the OMB rates. Claims offices should try to obtain a specific breakdown of costs from the MTF or the unit providing the services and include these in the amount asserted.

(4) *Burial expenses.* If a soldier dies from injuries received and is buried at Government expense, the installation Mortuary Affairs Office completes DD Form 2063 and itemizes expense data on this form. While burial expenses are not "medical care" within the meaning of the FMCRA or 10 U.S.C. 1095, many insurance policies provide for the payment of such expenses. Claims offices may assert a demand for burial expenses incurred by the Government if the insurance contract provides for payment of such expenses and state law recognizes the United States as a third party beneficiary of the contract. Claims personnel should, however, be extra sensitive to the possibility that the insurance proceeds might be inadequate and should consider waiving or compromising the Government's claim in appropriate cases to avoid undue hardship to the deceased injured party's next of kin.

§ 536.226 Relations with the injured party.

(a) Claims personnel will advise the injured party and/or his attorney that—

(1) The United States has a right to recover the reasonable value of medical care that has been furnished or will be furnished in the future.

(2) The injured party is required to cooperate with the United States by providing a complete statement of the facts and circumstances surrounding the injury, information about any legal action brought against any prospective defendant, and information about and copies of any insurance policies.

(3) The injured party should not execute a release or settle any claims without notifying the RJA.

(4) The injured party may consult with a legal assistance attorney if he or she is otherwise entitled to legal assistance.

(b) Claims personnel should attempt to coordinate action to collect the claim of the United States with the injured party's action to collect his or her own claim against a tortfeasor or insurer.

(1) The RJA may enter into a written agreement with the injured party's attorney to assert the Government's claim and to include it as an item of special damages if the injured party sues. The agreement must state that the Government will not pay counsel fees, and that the attorney will not compute his fee based on the Government's portion of any recovery. The agreement must also state that the Government must be consulted regarding any potential compromise and must agree to any settlement.

(2) The RJA should coordinate with the injured party's attorney to ensure that any request for compromise or waiver of the Government's claim is considered as far in advance of settlement as is practical.

(3) The RJA may arrange to make local witnesses available for the injured party's attorney. With approval from USARCS, the RJA may arrange to make other Army witnesses available for the injured party's attorney if it is in the Government's best interests to do so. Any such request must be submitted as far in advance as practical. The appearance of present and former DA military and civilian personnel as witnesses is governed by AR 27–40, chapter 7.

(4) The RJA should immediately terminate a representation agreement and independently pursue the Government's right to recover if the injured party's interests conflict with the Government's interests, or if the injured party's attorney fails to keep the RJA informed of developments or otherwise acts in a manner inconsistent with representing the Government's interest.

(c) If the injured party or his attorney fails to cooperate with the claims office, the RJA is authorized to direct the MTF personnel to withhold billing information and should vigorously

pursue the Government's right to recover. In addition, as outlined in 32 CFR 537.23, the RJA is authorized to direct the MTF to withhold release of medical records until the injured party provides the statement and other information required by § 536.226(a)(2); the RJA may not, however, direct the MTF to withhold medical records if the injured party's attorney merely refuses to enter into a representation agreement. In appropriate cases, the claims office should intervene in pending litigation.

(d) If the injured party's attorney improperly withholds or disburses money collected on behalf of the Government, the RJA should immediately initiate action to recover the money owed through litigation or through State disciplinary proceedings after appropriate coordination in accordance with AR 27–40 and AR 27–1.

(e) Claims personnel may obtain an assignment from the injured party or his attorney for the reasonable value of the care that the United States provided if this will facilitate collection. The absence of an assignment does not affect the Government's independent right under the FMCRA, however, and an assignment is normally not necessary.

§ 536.227 The MTF Third Party Recovery Program (TPCP).

DOD Claims offices and MTFs manage complementary programs to recover for medical care furnished at DOD expense. Pursuant to a Memorandum of Agreement (MOA) between The Judge Advocate General and The Surgeon General and understandings with Navy and Air Force authorities, claims offices and MTFs support each other's recovery programs.

(a) As provided in the MOA, claims offices will recover from automobile insurers, while MTFs will recover from health benefits and medicare supplemental insurance.

(b) As provided in the MOA, MTFs will obtain insurance and other relevant information from persons receiving inpatient and outpatient treatment for injuries resulting from an accident. MTF personnel will also screen emergency room logs, clinic records, and patient admission information to identify accident cases. MTFs will refer these cases to claims offices in a timely manner, assist claims offices in obtaining medical records and cost computations, and route requests for medical records from injured parties and attorneys through the RJA.

(c) In return, claims offices will notify the MTFs of the final disposition of cases referred, deposit money recovered under 10 U.S.C. 1095 to the operations and maintenance account of the MTF that provided the care (see § 536.231(d)), and report the amounts deposited to an MTF's account on a monthly basis.

(d) As provided in the MOA, the head of each claims office may enter into a local Memorandum of Agreement with his or her supporting Army MTF commander. Such agreements should cover procedures, the degree of staffing each office will provide, and time frames for providing records or information. Such agreements may also provide for the MTF to assist the claims office's medical care recovery effort, either by giving back money deposited by the claims office into the MTF's Operations & Maintenance fund to the claims office, or by providing personnel or other support. Any personnel provided or money returned to the claims office under such an agreement will only be used to support affirmative claims collection efforts.

(e) If care was wholly or partly provided in an MTF on or after 5 November 1990 and recovery is possible from both a health benefits insurer and an automobile insurer, the MTF will first attempt to collect from the health insurer. If the MTF cannot recover the full value of the Government's claim from the health insurer, the MTF will forward the claim file to the installation claims office for collection from the automobile insurer.

Recovering and Depositing on Claims

§ 536.227 Post demand procedures.

(a) *Uninsured Motorists.* If the tortfeasor is an uninsured motorist, affirmative claims personnel will assert a demand against the tortfeasor, and will request suspension of the tortfeasor's driving and registration privileges under a State financial responsibility law if the tortfeasor does not pay promptly. If collection from the tortfeasor is not feasible, claims personnel will pursue recovery from any State uninsured motorist's fund or, on a medical care claim, from the injured party's uninsured motorist's coverage.

(b) *Periodic review of pending claims.* Whether or not the injured party's attorney has agreed to assert the Government's claim, claims personnel will review the status of pending claims every 60 days and take follow-up action as appropriate. Claims personnel should periodically contact the injured party's attorney to determine the status of pending cases, and should call or send follow-up letters to an insurer or tortfeasor who fails to respond to a demand or provides an unacceptable response. Follow-up action should be documented on the claims chronology sheet.

(c) *Adjusting the amount asserted.* The RJA should adjust the amount asserted on a claim as further treatment is provided. The RJA should delay settlement if it appears that extensive treatment is necessary or should consider this in negotiating a settlement.

(d) *Forwarding claims to higher authorities.* The RJA or head of a claims office will terminate action or will act on requests for waiver or offers to compromise that are within his or her settlement authority (see § 536.216). If a higher settlement authority must act on the claim, the RJA will forward a completed worksheet to the area claims office (if that office has authority to take action) or to USARCS as appropriate. When time is of the essence in securing a settlement, an RJA may contact USARCS telephonically for authorization to waive or compromise a claim. Prior to the expiration of the statute of limitations, the RJA should contact USARCS for guidance on disposing of any claim which cannot be recovered in full, compromised, terminated or litigated.

§ 536.229 Settling affirmative claims.

Claims personnel will reflect the basis for any settlements other than payment in full in the claims file. Note that under some circumstances, settlement authority may not waive or compromise a claim that he or she would normally have authority to act on (see § 536.216(g)).

(a) *Payment in full.* A settlement authority may settle a medical care or property damage claim by recovering the full amount the Government's claim as a lump sum, through installment payments, or as a repair in kind on a property damage claim. An offer for the full amount of available insurance would not "pay in full" a claim asserted for a greater amount, and the RJA would have to follow compromise procedures.

(b) *Compromise.* (1) If there are difficulties in recovering on a medical care or property damage claim (as defined by part 103 of the Federal Claims Collection Standards), a settlement authority may accept less than the amount asserted from a tortfeasor or insurer for the convenience of the government. Acceptable bases for compromise for the convenience of the government include inability of the tortfeasor to pay, insufficient insurance, probability that the government will be unable to prove its case, or collection costs which are not commensurate with the amount being compromised.

(2) If the injured party or the injured party's attorney requests waiver or

compromise of a medical care claim, a settlement authority may accept an amount less than the amount asserted to equitably apportion the available funds and avoid undue hardship to the injured party. To do so, the settlement authority must consider the fair value of the injured party's claim, the future value of care provided by the United States, and the potential recovery available. In evaluating a request, the settlement authority may consider an offer by the injured party's attorney to reduce his or her fee, but should not make this a condition for granting a request. Prior to approval of any compromise based on undue hardship, the injured party must provide the following information:

(i) Detailed information on what funds are available for recovery.

(ii) Reasonable value of the injured party's claim for permanent injury, pain and suffering, decreased earning power, and any other items of special damages.

(iii) Military, VA, and Social Security disability, and any other Government benefits accruing to the injured party.

(iv) Probability and amount of future medical expenses of the Government and the injured party.

(v) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(vi) A statement regarding the financial condition of the debtor.

(c) *Termination of collection action.* If there are difficulties in recovering on a medical care or property damage claim (as defined by 4 CFR part 104.3 of the Federal Claims Collection Standards), a settlement authority may close the claim without recovery for the convenience of the Government. Acceptable bases for terminating collection action include lack of legal merit to the claim, lack of evidence to substantiate the claim, costs of recovery which will exceed the amount recoverable, or inability to locate the debtor in instances where the likelihood of collection is too remote to justify retention of the file.

(d) *Waiver.* If the injured party or the injured party's attorney requests waiver or compromise of the government's claim, a settlement authority may close a medical care claim without recovery where collection of any part of the government's claim will result in undue hardship to the injured party. Prior to granting a request for waiver, the settlement authority will consider the factors outlined in § 536.229(b)(2) and require the injured party to provide the items listed in § 536.229(b)(2) (i) through (vii). Property damage claims cannot be "waived."

§ 536.230 Litigation.

If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the Government's interests are not adequately represented on a large claim.

(a) RJA's must maintain close contact with local U.S. Attorney's offices to ensure that these offices are willing to initiate litigation on cases. RJA's are encouraged to obtain appointments as Special Assistant U.S. Attorneys.

(b) In order to directly initiate or intervene in litigation, an RJA must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS and the Litigation Division, OTJAG (as required by AR 27–40, chapter 5) to the U.S. Attorney. While the RJA should attempt to initiate litigation well before the expiration of the statute of limitations, the RJA may contact USARCS telephonically if statute of limitations problems necessitate quick action on a case. The RJA should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the Government's interest in litigation without any special coordination.

(c) The Department of Justice requires all cases involving damage to government property of $200,000 and under to go through the Department of Justice Central Intake Facility in Silver Spring, Maryland, before going to a United States attorney for litigation. Forward the agency referral package cover sheet and all documentation normally provided to the U.S. Attorney on all such cases to USARCS, which in turn will forward them to the Central Intake Facility through the Litigation Division, Office of the Judge Advocate General, as appropriate.

§ 536.231 Administrative matters.

(a) *Receipts.* The RJA may provide a receipt for payment.

(b) *Releases.* The RJA may execute a release acknowledging that the Government has received payment in full of the amount asserted or compromise amount agreed upon, or the final installment payment; and should try to use a release similar to the release printed as Figure 9–1, DA Pam 27–162. The RJA may not, however, execute any kind of indemnity agreement, nor may the RJA execute a release which prejudices the Government's right to recover on other claims arising out of the same incident without the approval of the Chief, Personnel Claims and Recovery Division, USARCS. In addition, the RJA may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA will not execute a release if the Government's claim is waived or terminated.

(c) *Depositing property damage recovery*—(1) *For damage to appropriated fund property.* Monies recovered for damage to appropriated fund property will be deposited to Account 21R3019 (Recoveries for Government Property Lost or Damaged).

(2) *For damage to NAFI property.* Monies recovered for damage to NAFI property will be returned to the NAFI. If the NAFI no longer exists, forward the money to HQDA (DAAG-NAF), Alexandria, VA 22331–0321. Checks should be made out to the NAFI, or, if it no longer exists, to the Army Morale, Welfare, and Recreation Fund.

(3) *For damage to Army Stock Fund or Defense Business Operations Fund property.* Monies recovered for damage to property belonging to one of these funds will be returned to that fund unless the fund has charged the cost of repair or replacement to an appropriated fund account. The Defense Business Operations Fund replaced the Army Industrial Fund.

(d) *Depositing medical care recovery*—(1) *To an MTF account.* CONUS and OCONUS claims offices and command claims services will deposit money recovered from an automobile insurer for medical care provided in an MTF on or after 5 November 1990 in the Operations & Maintenance account of the Army, Navy or Air Force MTF that provided the care. Offices will deposit money recovered from all types of automobile insurance, including liability insurance, to MTF accounts.

(2) *To the General Treasury.* Money recovered directly from tortfeasors, from workers' compensation funds, from insurance other than automobile insurance (such as homeowner's insurance), from automobile insurers for care provided in an MTF prior to 5 November 1990, or from automobile insurers for care provided in a civilian hospital will be deposited in the Miscellaneous Receipts Account, 21R3210.

(3) *Apportioning medical care recovery between accounts.* Only money recovered under the provisions of 10 U.S.C. 1095 can be deposited into an MTF account. Claims offices will often have to apportion money recovered among different accounts.

(i) Apportioning money between MTF accounts and the General Treasury. Deposit money recovered from an automobile insurer for care provided prior to 5 November 1990 or provided in a civilian hospital to the General Treasury. Deposit money recovered for care provided in an MTF after that date to the MTF's account. If the amount recovered is less than the amount asserted, deposit money to the MTF's account first, and deposit any remaining money to the General Treasury.

(ii) Apportioning money between two or more MTF accounts. If care was provided by two or more MTF's on or after 5 November 1990 and the claims office recovers less than the amount asserted, the claims office should give each MTF a pro rata share of the money recovered. For example, if MTF1 provided $2,000 worth of care and MTF2 provided $1,000 worth of care, the claims office will deposit $800 of a $1,200 recovery to MTF1's account and the remaining $400 to MTF2's account.

(e) *Fiscal Integrity.* Field claims offices must reconcile the property damage and medical care recovery accounts with their servicing finance and accounting offices. Field claims offices must ensure that their deposits have been credited to the proper accounts at least on a quarterly basis, and all accounts must be reconciled at the end of the fiscal year.

Subpart N—Claims Office Administration

Records and File Management

§ 536.232 Records.

Unless otherwise required by this part, claims JAs and claims attorneys charged with the responsibility for claims administration will maintain only such current and temporary records as are required for the administration of claims activities and for the preparation of prescribed reports. Basic records for each claims office are—

(a) *DA Form 1667 (Claims Journal (Personnel) (Tort) (Affirmative) Claims).* Journals will be individually maintained for personnel claims, for affirmative claims, and for tort and special claims, corresponding to the automated claims data management programs for such claims, using the April 1988 version of this form. Each event requiring entry in the journal will be recorded immediately upon receipt of information as to its occurrence. Use of the journal for personnel claims is optional, although modified use is highly recommended.

(b) *Automated claims data base.* The automated claims data base will be used for all claims opened in fiscal year 1988 or later, and earlier year claims if they involve expenditures of funds in fiscal year 1988 or later, as follows:

(1) Tort and Special Claims Management data base (all offices);

(2) Personnel Claims Management data base (all offices except COE claims offices).

(3) Affirmative Claims Management data base (all offices except COE claims offices).

(c) *Investigative files.* A claims office will maintain separate investigative files on potentially compensable events (PCE) for every incident which it (or a unit claims officer) has investigated, or has received a copy of a report of incident or report of investigation from a unit claims officer or any other source. Similar files will be maintained for incidents investigated by a claims office or other Army official that might give rise to an affirmative claim in favor of the Army. The investigative file will be merged into a claims file when a claim is filed or asserted. Investigative files not otherwise merged into a claims file will be retained until transferred to another Army claims office or until the time for filing a claim has expired.

§ 536.233 Arrangement of claims files.

Instructions on the arrangement of claims files are found in § 536.196 and in DA Pam 27–162. Every file for a claim against the United States must ultimately contain the following:

(a) For files processed under the automated claims data management system. a printout (i.e., "paper screen") of the automated data pertaining to that claim.

(b) If the claim has been paid in whole or in part, a copy of the settlement agreement, if any, and the certified copy of the paid voucher (comeback copy from the finance and disbursing office).

(c) The action or recommendation.

(d) The claim (initial and any amendment).

(e) The report of claims officer, with exhibits.

§ 536.234 Disposition of claims files.

(a) The Commander, USARCS, is the proper authority for post settlement review of claims against the United States. Claims having the following file numbers under AR 25–400–2 will be forwarded to USARCS (subject to the provisions of b and c below) for disposition under that regulation: 27–20a, 27–20g, 27–20h, 27–20i, 27–20j, or 27–20q. Claims having other 27–20 file numbers will be disposed locally according to the instructions in AR 25–400–2.

(b) Files of completed tort claims will not be forwarded to the Commander, USARCS prior to the expiration of any appeal period or the 6-month period for filing suit, as applicable. The file of a tort claim in which an award that is final is not accepted by the claimant, within a reasonable time, will also be forwarded.

(c) For personnel claims involving recovery action, claims files will be assembled and processed for local recovery action or forwarded for centralized recovery action in accordance with DA Pam 27–162, chapter 3, and §§ 536.195 and 536.196. After completion of final recovery action by field claims offices or command claims services such files will be forwarded to USARCS for retirement.

(d) Files will be administratively closed as abandoned or withdrawn and forwarded to the Commander, USARCS, as provided herein.

(1) *Personnel claims.* Claims under subpart K will be administratively closed as abandoned in the following situations:

(i) The claimant affirmatively withdraws or abandons the claim prior to adjudication. Such files will contain evidence of the claimant's intention to do so, such as a letter from the claimant or a memorandum of a telephone conversation with the claimant.

(ii) The claimant cannot be located to be paid or, if the claim is not fully substantiated, to have his or her intentions with regard to the claim ascertained (but, see paragraph (d)(1)(iv) of this section).

(iii) For other reasons, final action on the claim cannot be taken.

(iv) When a claimant has neither affirmatively abandoned nor fully substantiated a claim cognizable under subpart K, he or she should be directed by certified mail to provide the required substantiation within a specified period, usually 30 days. If correspondence is returned as undeliverable, and the claimant is an active duty service member, a current military address can usually be obtained from the Commander, U.S. Army Enlisted Records and Evaluation Center, Army Worldwide Locator Service, ATTN: PCRE–RF, Fort Benjamin Harrison, IN 46249–5301. If the claimant fails to respond, to the extent that the claim is substantiated and meritorious it should be paid; otherwise, it should be disapproved.

(2) *Tort claims.* Each file will contain evidence of claimant's intention to withdraw or abandon the claim, such as a letter or a memorandum for record of a telephone conversation with claimant.

(i) Before apparently abandoned claims are forwarded to USARCS, a certified letter should be sent to the

claimant requesting his/her intentions within a specified period, usually 30 days. If no reply is received within a reasonable time, usually 30 days, the files may be closed and forwarded to USARCS, except as follows:

(ii) Tort claims under subparts D, E and F. Additionally, a paragraph of the letter should state that failure to respond will result in the presumption that the claim is abandoned. Further, it should be stated that if the claimant is dissatisfied with the action taken, the claimant may file suit in an appropriate United States District Court no later than six months from the date of mailing of the letter, or the claimant's remedy will be forever barred.

(iii) In tort claims under subpart C, the last paragraph should advise the claimant that failure to respond will result in the presumption that the claim is abandoned, and that if the claimant is dissatisfied with the action taken, the claimant has a right to appeal the action for a review and final decision. Further, it should be stated that the claimant only has 60 days to submit such an appeal.

(iv) Only after each of the above actions has been completed, may a tort claim be considered to be abandoned, and be forwarded to USARCS for retirement. If correspondence to a claimant is returned as undelivered, and the claimant is an active duty service member, a current military address can usually be obtained from the Commander, U.S. Army Enlisted Records and Evaluation Center, Army Worldwide Locator Service, ATTN: PCRE-RF, Fort Benjamin Harrison, IN 46249–5301.

§ 536.235 Retrieval of claims files.

(a) Field claims offices will occasionally have need of a file that has been sent to USARCS for centralized recovery or retirement (for example, action on a "late" reconsideration request). When requesting the return of a file from USARCS (either in writing or telephonically), the requesting office must provide—

(1) The claim number.

(2) The claimant's name.

(3) The date the file was forwarded to USARCS.

(4) The name of the TGBL carrier (if the claim was a household goods or hold baggage shipment claim).

(5) Whether the file was forwarded for retirement or centralized recovery.

(6) The reason the file is being requested.

(b) If USARCS has already acted on a request for reconsideration on a personnel claim, the file will not be returned to a field office for action on a second request for reconsideration. In such cases, the request will be sent to USARCS for action.

§ 536.236 Certified and registered mail.

Correspondence to claimants and/or their attorneys denying or making final offers in tort claims under subparts C, D, E, F, G, H, and L or the transmittal of an abandonment notice will be accomplished by certified or registered mail, return receipt requested. The return receipt (green card), upon its return to the claims office, will be retained as a part of the claims file as proof of receipt by the claimant or other addressee.

§ 536.237 Maintenance of claims files.

(a) The contents of each claim file for claims against the United States will be placed in a standard 9¼ inch by 11¾ inch manila folder . The name of the claimant, exactly as entered into the automated claims management data base, will be placed on the top-left portion of the file folder. The complete nine-digit computer-generated claim number displayed in the automated database will be placed on the extreme top right-hand side of the folder. The fiscal year, office code, and claim sequence number will be separated by a dash mark (example, "88–011–0079"). Both name and claim file number entries on the manila file folder will be printed legibly in blue-black ink. The claim file should be stapled together before inserting in the file folder; however, the file need only be placed in the folder without stapling to the file folder.

(b) Investigative files will also be maintained in manila folders. The date of the incident and general descriptive data (for example, "1 Jul 86/ auto accident (1st and Elm, Smallville)" or "24 Sep 86/ heart operation (Jones, John M.)") will be placed on the top-left portion of the file folder.

(c) AR 25–400–2 requires labeling of file folders and containers with specific information. In complying therewith, the following guidance is provided:

(1) Only the "dummy" or "lead" folder will contain the disposition instructions required by AR 25–400–2, for files that have a common disposition.

(2) When labeling individual file folders, only the information required by AR 25–400–2 will be typed on the label. The label will be placed on the top center portion of the folder. Under no circumstances will the information concerning the claim (see paragraph (a) of this section) be placed on this label.

Monthly Claims Reporting System

§ 536.238 General.

(a) The Personnel Claims Management Program, the Affirmative Claims Management Program, and the Tort and Special Claims Management Program are the automated programs which generate a monthly status report on claims against the United States and recovery actions. Specific instructions pertaining to the USARCS Claims Automation Program are contained in DA Pam 27–162, chapter 1 and in documentation provided with the automation software.

(b) The data contained in the USARCS Claims Automation Program and the monthly claims office status reports generated by the automation software provide the data necessary to make sound management decisions by claims officers, by heads of area claims offices, by SJAs responsible for OCONUS command claims services, and by the Commander, USARCS. The system provides a uniform method of assignment of claim file numbers to permit identification and retrieval of individual claim files, identifies delay in claims processing, and permits worldwide management control of all claims against the Government. The automated monthly reports forwarded to USARCS provide the data base used for the preparation of claims budgetary status reports and periodic budget estimates to the USAFAC as well as to the Office of the Assistant Secretary of the Army (Financial Management). It is the responsibility of all claims office personnel to ensure that automated claims records are complete and accurate.

(c) This section does not apply to the reporting of reimbursement obligations to foreign countries pursuant to the NATO-SOFA or other similar treaties or agreements.

(d) The Commander, USARCS, will furnish software and documentation for the Personnel Claims Management Program, the Affirmative Claims Management Program, and the Tort and Special Claims Management Program, with updated versions as required. These are the only programs authorized for recording and reporting claims in the Army Claims System. Local modification of these programs is not authorized.

§ 536.239 Reporting requirements.

The head of each area claims office and command claims service will ensure that a monthly computer-generated claims report is prepared for each claims office with an office code within his or her area of responsibility

and for each Foreign Claims Commission using the automation programs provided by USARCS. The report(s) (tort claims only) and diskettes containing current claims data base(s) (for all programs) will be posted to USARCS by the fifth calendar day of the month. In addition, a copy of any archive disk prepared during the reporting period will be forwarded for processing. Whenever possible, the data should be sent using a modem or other electronic data transfer system. Claims offices under the jurisdiction of a command claims service will forward their report(s) and diskettes through the command claims service and will comply with any additional reporting requirements of the command claims service. Diskettes must be marked with the office name, the office code, the type of claim record, the disk sequence number, the month and year, and the data base file name(s) contained in the diskette (for example, Fort Blank, 001, Tort Claims, 1 of 1, Mar 89, T9000103.1DB). Detailed instructions on the preparation of the monthly automated claims report and claims data diskettes are contained in DA Pam 27–162, chapter 12 and program documentation. If there are no changes from the previous month in the Affirmative Claims reports, the Personnel Claims report, or the Tort and Special Claims report, a negative report will be submitted within the stated time guidelines.

§ 536.240 Error reports.

USARCS will provide field claims offices with monthly error reports listing claims records that cannot be loaded into the USARCS data base due to data entry errors or omissions. Errors listed on the error reports must be corrected as soon as possible; resubmission of the corrected claims records will occur at the time of the next regular monthly reporting cycle.

§ 536.241 Preparation.

(a) *Reporting.* Quarterly, each command claims service or office authorized to assert affirmative claims will submit a copy of the "Previous Three Months" report generated by the Affirmative Claims Management Program to USARCS, ATTN: JACS-PCA. Command claims services and offices will identify these reports by quarter and fiscal year (i.e. "1st Qtr, FY 93") and forward them so that they arrive not later than the 7th calendar day of every quarter (i.e., 7 January, 7 April, 7 July, and 7 October each year). Offices authorized to assert affirmative claims which have no affirmative claims activity in a given quarter will forward negative reports.

(b) *Routing.* Area claims offices and claims processing offices will forward these reports directly to USARCS through the senior Judge Advocate in the office, for example, the SJA. Claims processing offices will forward an additional copy to their area claims offices.

(c) *Special preparation instructions.* Offices may manually correct any errors in the computer generated report using the following guidelines:

(1) Claims first asserted in an indefinite amount will be reported in the period in which a reasonably accurate figure can first be determined.

(2) When reporting the number of claims collected during the reporting period, only the first collection will be counted for claims in which payments are received in installments.

(3) When reporting the total dollar amount collected during the reporting period, include any installments. The dollar value of any replacement or property repair should be included in the total with the replacement or repair value portion noted.

Management of Claims Expenditure Allowance (CEA)

§ 536.242 General.

Each claims settlement or approval authority which is furnished a CEA by the USARCS budget office is responsible for managing that CEA. This includes knowing at all times how much of the CEA has been obligated, the remaining balance and a monthly assessment of whether the balance will cover claims obligation needs in the local office for the remainder of the current fiscal year.

§ 536.243 CEA reporting requirement.

(a) Each CONUS claims office having a CEA and command claims services will submit, to arrive not later than the 7th calendar day of every month, a report to USARCS, ATTN: JACS-BI, that includes the following:

(1) The office code of the reporting office.

(2) Dollars obligated for personnel and tort claims during the prior month and the number of personnel and tort claims paid.

(3) Dollars obligated for personnel and tort claims fiscal year to date (through the end of the prior month) and the total number of personnel and tort claims paid fiscal year to date.

(4) Dollars deposited during the prior month.

Note: Ensure that the report of dollars deposited for the month and year to date includes only funds deposited in one of the claims appropriation accounts. Do not include money recovered through the affirmative claims program and deposited with miscellaneous receipts of the U.S. Treasury.

(5) Dollars deposited year to date through prior month. (See note at paragraph (a) (4) of this section.)

(b) The report submitted at the beginning of August every year will also include the following:

(1) The total CEA furnished to that office up to that time (initial CEA plus or minus any changes).

(2) The CEA balance.

(3) The amount the office expects to be able to obligate in the remaining 2 months of the fiscal year if sufficient funds are available.

(4) The expected surplus or shortfall.

(5) A proposed CEA for the next fiscal year and the rationale for any unusual increases.

(c) Reports may be submitted telephonically or by facsimile.

§ 536.244 Solatia payment.

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in overseas commands (see DA Pam 27–162, chap 8). Such payments are not to be made from the claims CEA. These payments are made from local operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned. This applies even where a command claims service is directed to administer the command's solatia program.

Appendix A to Part 536—References

Publications and forms referenced in this appendix may be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Required Publications

A required publication is a publication that the reader must have to understand the subject.

AR 15–6
Procedures for Investigating Officers and Boards of Officers.

AR 27–40
Litigation.

DA Pam 27–162
Claims.

DOD 4500.34–R
Personal Property Traffic Management Regulation.

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AFARS
Army Federal Acquisition Regulation Supplement

AR 1–75

Administrative and Logistical Support of Oversea Security Assistance Organizations
AR 10–72
Field Operating Agencies of the Judge Advocate General
AR 25–400–2
The Modern Army Recordkeeping System (MARKS)
AR 27–3
Legal Assistance
AR 27–60
Patents, Inventions, and Copyrights
AR 37–100
Account/Code Structure
AR 37–103
Disbursing Operations for Finance and Accounting Offices
AR 37–104–3
Military Pay and Allowances Procedures: Joint Uniform Military Pay System Army (JUMP-ARMY)
AR 37–104–10
Military Pay and Allowance Procedures for Reserve Components of the Army
AR 37–107
Accounts Payable
AR 37–108
General Accounting and Reporting for Finance and Accounting Offices
AR 40–1
Composition, Mission, and Functions of the Army Medical Department
AR 40–3
Medical, Dental, and Veterinary Care
AR 40–16
Special Notification—Injury Cases
AR 40–66
Medical Record and Quality Assurance Administration
AR 40–121
Uniformed Services Health Benefits Program
AR 55–19
Marine Casualties
AR 55–80
Highways for National Defense
AR 60–20
Army and Air Force Exchange Service (AAFES) Operating Policies
AR 190–9
Military Absentee and Deserter Apprehension Program
AR 190–22
Searches, Seizures and Disposition of Property
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 335–15
Management Information Control System
AR 340–17
Release of Information and Records from Army Files
AR 340–21
The Army Privacy Program
AR 405–15
Real Estate Claims Founded Upon Contract
AR 600–8–1
Army Casualty and Memorial Affairs and Line of Duty Investigations
AR 608–10
Child Development Services
AR 735–5
Basic Policies and Procedures for Property Accounting
DODD 5220.6
Defense Industrial Personnel Security Clearance Review Program
DODD 5515.3
Settlement of Claims Under 10 U.S.C. 2733 and 2743, as amended
DODD 5515.8
Single Service Assignment of Responsibility for Processing of Claims
DODD 5515.10
Settlement and Payment of Claims Under the Military Personnel and Civilian Employee Claims Act of 1964.
DODD 6000.6
Medical Malpractice Claims Against Military and Civilian Personnel of the Armed Forces
DODD 7045.13
DOD Credit Management and Debt Collection Program
DOD Manual 4525.6–M
DOD Postal Manual
FAR
Federal Acquisition Regulation
JTR
Joint Travel Regulations

Prescribed Forms

DA Form 1208
Report Of Claims Officer.
DA Form 1666
Claims Settlement Agreement.
DA Form 1667
Claims Journal for (Personnel) (Tort) (Affirmative) Claims.
DA Form 1668
Small Claims Certificate.
DA Form 2938–R
Affirmative Claims Report.
DD Form 1840
Notice of Loss or Damage.
DD Form 1840R
Notice of Loss or Damage.
DD Form 1841
Government Inspection Report.
DD Form 1842
Claim for Loss of or Damage to Personal Property Incident to Service.
DD Form 1843
Demand on Carrier/Contractor.
DD Form 1844
List of Property and Claims Analysis Chart.
DD Form 2526
Case Abstract for Malpractice Claims.
Standard Form 95
Claims for Damage, Injury or Death.
Standard Form 1034
Public Voucher for Purchases and Services Other Than Personal.
Standard Form 1145
Voucher for Payment Under Federal Tort Claims Act.

Referenced Forms

DA Form 1863–1
Services and/or Supplies Provided by Civilian Hospitals
DA Form 2135–R
Receipt for Payment (LRA)
DA Form 2631–R
Medical Care-Third Party Liability Notification (LRA)
DA Form 2985
Admission and Coding Information
DA Form 3154
MSA Invoice and Receipt
DD Form 619–1
Statement of Accessorial Services Performed
DD Form 1164
Service Order for Personal Property
DD Form 1348–1
DOD Single Line Item Release/Receipt Document
Standard Form 1049
Public Voucher for Refunds

Appendix B to Part 536—Glossary

Abbreviations

AAFES
Army-Air Force Exchange Service
ADP
Automated data processing
AFARS
Army Federal Acquisition Regulation Supplement
ALR
American Law Reports
ARNG
Army National Guard
AWOL
Absent without leave
CHAMPUS
Civilian Health and Medical Program of the Uniform Services
CMCHS
Civilian-Military Contingency Hospital System
COE
Chief of Engineers
CONUS
Continental United States
DA
Department of Army
DOD
Department of Defense
FAR
Federal Acquisition Regulation
FCA
Foreign Claims Act
FCC
Family child care
FECA
Federal Employees Compensation Act
FTCA
Federal Tort Claims Act
GAO
Government Accounting Office
GBL
Government bill of lading
GSA
General Services Administration
ITGBL
International through Government bill of lading
JA
Judge advocate
JTR
Joint Travel Regulations
MAAG
Military Assistance and Advisory Group
MACOM
Major Army command
MCA
Military Claims Act
NATO

North Atlantic Treaty Organization
NG
National Guard
NGB
National Guard Bureau
NGCA
National Guard Claims Act
NTS
Nontemporary storage
POV
Privately owned vehicle
PPGBL
Personal property Government bill of lading
RCP
Replacement cost protection
RIMP
Risk management program
RJA
Recovery judge advocate
ROTC
Reserve Officers' Training Corps
SJA
Staff judge advocate
SOFA
Status of Forces Agreement
SPCMCA
Special court-martial convening authority
TAJAG
The Assistant Judge Advocate General
TDA
Table of distribution and allowances
TDY
Temporary duty
TGBL
Through Government bill of lading
TJAG
The Judge Advocate General
UCMJ
Uniform Code of Military Justice
USAFAC
U.S. Army Finance and Accounting Center
USAR
U.S. Army Reserve
USARCS
U.S. Army Claims Service
USAREUR
U.S. Army, Europe
USARSO
U.S. Army South
VA
Department of Veterans Affairs
WESTCOM
U.S. Army Western Command

Terms

Affirmative Claims

The Government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association, or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

Civilian Employee

A person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as the means used. This includes, but is not limited to, full-time Federal civilian officers and employees. This term should be distinguished from "independent contractor" for whose actions the Government generally is not liable. The decision as to who is a civilian employee is a Federal question determined under Federal, not under local law.

Claim

A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies, or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a properly designated representative.

Claim File

A file containing the report of the claims officer or other report of investigation, supporting documentations, and pertinent correspondence.

Claim Approval Authority

Except for claims under chapter 7, 9, and 11 and subject to any limitations found in specific provisions of this regulation, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. Under chapter 11, the authority of a designated Government agent to adjudicate and pay a claim in a meritorious amount within the monetary limits prescribed in that chapter. A person with approval authority may not disapprove a claim in its entirety or to make a final offer subject to any limitations found in specific provisions of this regulation.

Claim Settlement Authority

The authority to approve a claim, deny a claim in its entirety, or make a final offer subject to any limitations found in specific provisions of this regulation.

Claims Attorney

A DA or DOD civilian attorney assigned to a judge advocate or legal office who has been designated by the Commander, U.S. Army.

Claims Service

Claims Judge Advocate

An officer of the Judge Advocate General's Corp designated by a command or staff judge advocate to be in immediate charge of claims activities of the command.

Claims Officer

A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

Claimant

An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country. It does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

Combat Activities

Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.

Disaster

A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

Federal Agency

A Federal agency includes executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

Final Offer

An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under chapter 4 or filing an appeal under chapter 3 or 6, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

Government Vehicle

A vehicle owned or on loan to any agency of the U.S. Government, or privately owned and operated by a member or civilian employee of the Army in the scope of his or her office or employment with the U.S. Government, including vehicles being operated on joint operations of the U.S. Armed Forces.

Medical Claims Judge Advocate

A judge advocate assigned to an Army Medical Center, under an agreement between The Judge Advocate General and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

Medical Claims Investigator

A senior legal specialist or qualified civilian assigned to assist a medical claims judge advocate on a full-time basis. A medical claims investigator is authorized to administer oaths under the provisions of Article 136(b)(7), Uniform Code of Military Justice, when performing his or her investigative duties.

Medical Malpractice Claim

A claim arising out of substandard or inadequate care of an Army patient.

Military Personnel

Members of the Army on active duty for training or inactive duty training as defined in AR 310-25 and 10 U.S.C. 101(22), 101(23), and 101(30). This includes members of the District of Columbia Army National Guard while performing active duty or training under 32 U.S.C. 316, 502, 503, 504, or 505.

Noncombat Activities

Authorized activities essentially military in nature, having little parallel in civilian pursuits, and which historically have been considered as furnishing a proper basis for

payment of claims. Examples are practice firing of missiles and weapons, training and field exercises, and maneuvers which include the operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use.

Activities excluded are those incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances.

Personal Property

Property consisting solely of corporeal personal property, that is, tangible things.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

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Thursday
March 17, 1994

Part III

Department of Health and Human Services

Administration on Aging

45 CFR Part 1321

Grants for State and Community Programs on Aging; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

45 CFR Part 1321

RIN 0666–1212

Grants for State and Community Programs on Aging

AGENCY: Department of Health and Human Services (HHS), Administration on Aging (AoA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments from the public on proposed changes to rules concerning grants for State and community programs on aging. These changes are required to clarify and implement Older Americans Act (Act) Sections 305(a)(2)(C), 305(a)(2)(D), 307(b)(1), 307(c), 307(d), and 307(e) as amended by the 1992 amendments to the Act. The Act now requires the Commissioner on Aging to review and approve each State's intrastate formula for the distribution of funds under Title III of the Act, and requires the State to specify the bases and impact of its intrastate funding formula on each Planning and Service Area (PSA) in its State plan.

DATES: In order to be considered, comments on this proposed rule must be received on or before May 16, 1994.

ADDRESSES: Please address comments to: Edwin Walker, Associate Commissioner, Office of State and Community Programs, Administration on Aging, room 4737, 330 Independence Avenue SW., Washington, DC 20201.

Beginning 14 days after close of the comment period, comments will be available for public inspection in room 4740, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: David Bunoski, (202) 260–0669.

SUPPLEMENTARY INFORMATION:

I. Program Background and Purpose

The Older Americans Act was first enacted in 1965 and was amended eleven times between 1965 and 1992. The President signed the Older Americans Act Amendments of 1992 (Pub. L. 102–375) on September 30, 1992.

On February 23, 1993, the Secretary of the Department of Health and Human Services, Donna E. Shalala, pursuant to the authority permitted by section 2 of Reorganization Plan No. 1 of 1953, 42 U.S.C. 3501, and 5 U.S.C. 301, designated the position of Assistant Secretary for Aging to perform the duties and functions of the Commissioner of Aging. The term "Commissioner" will be used in these regulations, however, in order to comport with Public Law 102–375, which retains the title of Commissioner for the head of the Administration on Aging.

The 1992 amendments to the Older Americans Act reemphasize the intention of the Congress to target services and resources on the needs and problems of those older individuals identified as having the greatest economic need, the greatest social need, and those who are low-income minority. These amendments, for the first time, require that approval of the State plan be dependent on approval of the intrastate funding formula. The basis of these regulations are those provisions of the 1992 amendments to the Act that directly affect a State's intrastate funding formula and which:

- Require the Commissioner on Aging under section 304(c) of the Act to approve a State's intrastate funding formula prior to the release of Title III funds;
- Require State agencies under section 307(a)(33) of the Act to include descriptive statements about the intrastate funding formula's assumptions, goals, and outcomes based on the allocation of funds to each Planning and Service Area; and
- Require the Commissioner on Aging under section 305(a)(2)(C) to assist States in the development of their intrastate funding formulas by providing them with guidelines.

II. Purpose of the NPRM

The Administration on Aging (AoA) is proposing to revise the current rules governing the State agencies' development and submission of an intrastate funding formula by providing new guidance and to amend the current rules affecting State plans and State plan submissions. These revisions are designed to be consistent with those provisions in the 1992 amendments to the Act that require greater targeting on those older individuals in greatest economic need, greatest social need, and low-income minority older individuals.

The 1992 amendments to the Older Americans Act (Pub L. 102–375) now require States to submit their intrastate funding formulas to the Commissioner on Aging for approval, rather than only for review and comment, as was the case prior to the 1992 amendments. The amendments also require the Commissioner to provide guidance to States in the development of their intrastate funding formulas. AoA has interpreted the amendments to require that this guidance be in addition to the language contained in section 305(a)(2)(C) of the statute which requires State agencies to take into account the geographic distribution, greatest economic and greatest social need of older individuals in the development of their intrastate funding formulas. If the Commissioner does not approve the intrastate funding formula, a new requirement under section 304(c) requires the Commissioner to withhold the State's allotment of funds.

In order to comply with these new statutory requirements as well as address the intent of Congress that targeting services and resources on the needs and problems of those older individuals identified as having the greatest economic need, the greatest social need, and those who are low-income minority be accomplished through the intrastate funding formula, the Commissioner has developed standards for review and provided directions to a State agency on how to evaluate whether its formula meets those standards. The proposed regulations are designed to provide a State agency with flexibility to either maintain its current formula or, if necessary to allow for the development of a modified or new formula that addresses the requirements set out by Congress in section 305(a)(2)(C) of the Older Americans Act. These proposed regulations require that careful consideration be given to the geographic distribution of older individuals in the State, and the distribution among the planning and service areas of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority individuals.

Section 304(c) now requires the Commissioner to withhold funds if the Commissioner does not approve a State's intrastate funding formula. In the course of developing these intrastate funding formulas, States are now required, under sections 305(a)(2)(C) and 305(d), to publish their intrastate funding formulas for review and comment by the public. This publication for review and comment must include: "(1) A descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic or social need; (2) a numerical statement of the actual funding formula to be used; (3) a listing of the population, economic, and social data to be used for each planning and service area in the State;

and (4) a demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State." In addition, section 307(a)(33) now requires the State plan to include the statement and the demonstration required by paragraphs (2) and (4) of section 305(d), and provides that the Commissioner may not approve the State plan unless the Commissioner approves the statement and demonstration.

In light of these new requirements, AoA believes it is of critical importance that States have as much time as possible to review their current intrastate funding formulas, and, if necessary, modify them or develop new formulas; to consult with area agencies as required in section 305(a)(2)(C); to publish their plans for review and comment as required in section 305(d); and to seek and obtain legislation or legislative approval prior to submitting the formulas for approval, if necessary. To ensure that States have the time to accomplish these steps, AoA is publishing this NPRM separately from, and in advance of, its notice of other rules being developed in response to the 1992 amendments to the Act.

III. Summary of the Provisions of the NPRM

Section 1321—Grants to State and Community Programs on Aging

1321.3 Definitions—The term "low-income" is added in order to clarify its direct relationship to the new definition of poverty added to Title I by the 1992 amendments to the Act, and to assist State agencies in targeting resources when they develop their intrastate funding formulas.

The term "medically underserved areas," as used in § 1321.37(g) of this proposed rule, is added to clarify where funds should be targeted in developing a method to allocate funds provided under section 303(f) of the Act.

The term "minority" as defined in 28 CFR, subpart F, § 42.402 (e) is added in order to clarify who is a minority for the purposes of assisting States to determine who is a low-income minority older individual in developing their targeting strategies and activities as well as developing intrastate funding formulas.

The term "periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act and part 1321 with respect to evaluations of, reports on, and public hearings on, activities carried out under State and area plans, is added to clarify that the term means, at a minimum, once each fiscal year (annually).

The term "rural area" is defined as required by section 307(a)(37) of the Act, to clarify the definition of rural area within a planning and service area, and to assist States in identifying actual and projected additional costs of providing services in rural areas as required under section 307(a)(37) as well as in the development of their intrastate funding formulas.

1321.17 Content of State plan—this subjection is amended to reflect and clarify additional requirements in the 1992 amendments to the Act, to remove those sections and paragraphs that are now unnecessary because they are set forth in the Act under the 1992 amendments, and to assure that States provide adequate descriptions and exhibits in the State plan to assist the public in understanding changes required by the 1992 amendments. The NPRM proposes to remove the assurances now required under current § 1321.17(f)(1)–(3), (8)–(10), (13), and (15) as unnecessary because they are now reflected in the 1992 amendments to the Act. The following new requirements are proposed pursuant to the 1992 amendments:

(1) Section 1321.17(c)(1)–(4) is amended to require the State to show the distribution of Title III funds using the intrastate funding formula developed under section 305(a)(2)(C) of the Act, including—

- A description of how the State will meet the rural expenditure requirements under seciton 307(a)(3)(B) of the Act,
- An exhibit that details how the State meets the requirements of 307(a)(37) of the Act to identify total actual and projected costs of providing services in rural areas,
- A comparison between the current intrastate funding formula and the proposed one using the best available demographic data, the Commissioner's guidelines, the geographic distribution of older individuals, and of those older individuals in greatest economic and greatest social need with particular attention to low-income minority older individuals, as required by section 305(a)(2)(C) of the Act including:
- A numerical statement comparing the current intrastate funding formula to the proposed one under section 305(a)(2)(C);
- A comparison of the population, economic, and social data for each planning and service area used for the current and for the proposed formulas; and
- A comparison and demonstration of the allocation of Title III funds allocated to each planning and service area under the current intrastate funding formula and the one proposed;

(2) Section 1321.17(c)(5) is added to assist AoA in monitoring and assessing the State's progress in meeting the new requirements under section 307(a)(37) of the Act which require that State plans identify, for each fiscal year of the plan, the actual and projected additional costs for providing services to older individuals residing in rural areas. In addition, the information obtained under this section will assist AoA in carrying out the requirements of section 202(b)(27)(A) of the Act which requires the Commissioner to "conduct a study to determine ways in which Federal funds might be more effectively targeted to low-income minority older individuals, and older individuals residing in rural areas, to better meet the needs of States with a disproportionate number of older individuals with greatest economic need and older individuals with greatest social need." It is our expectation that providing this information in the State plan will greatly reduce the paperwork burden that would be incurred with a separate national study conducted solely for this purpose. Accordingly, using the definition of rural areas in § 1321.3 of this NPRM, we propose that each State plan include a table displaying planning and service areas (PSA's) ranked by the proportion of rural older individuals in each as a percentage of the rural population in the State; showing the distribution of Title III funds in each PSA under the current intrastate funding formula and under the proposed intrastate funding formula (IFF); and the source of the distribution information (which must by law be the best available data).

EXAMPLE

PSA's	PSA's ranked by percentage of rural population in the State		Distribution of title III allocation to rural areas under current IFF	Distribution of title III allocation to rural areas under proposed IFF (assume no change in allocation)
PSA–A	20%	#3	Placer County—$2 million; Census tracts 2 and 3—$1.5 million.	Placer County—$2 million; Census tracts 2 and 3—$1 million.
PSA–B	4%	#6	Rosemount City—$300,000; Census tract 7—$700,000	Rosemount City—$300,000; Census tract 7—$700,000.
PSA–C	30%	#1	Census tracts 11, 16, 19—$4 million; Auburn township—$2 million; Tuluga County—$3 million.	Census tracts 11, 16, 19—$4 million; Auburn township—$2 million; Tuluga County—$3 million.
PSA–D	6%	#5	Entire PSA—$1.5 million	Entire PSA—$1 million.
PSA–E	15%	#4	Empire County—$1.5 million; Census tracts 21, 32, 11, & 47—$1.5 million.	Empire County—$1.5 million; Census tracts 21, 32, 11, & 47—1.5 million.
PSA–F	25%	#2	Yolo County—$2 million; Lake County—$3 million; Census tracts 53, 44, 39—$2 million; Blythe County—$1 million.	Yolo County—$2 million; Lake County—$3 million; Census tracts 53, 44, 39—$2 million; Blythe County—$2 million.
Total	100%		$26 million	$26 million.

In the above hypothetical example, the table shows the effect on rural areas of a proposed intrastate funding formula which would reduce the funds allocated to PSA–A and PSA–D, and increase the funds allocated to PSA–F.

(3) Section 1321.17(f)(9)(i) (previously 1321.17(f)(14)(i)) is revised to clarify when a State agency may permit an area agency to use Title III service dollars to fund program development and coordination activities. Under current policy, AoA provides State and area agencies with the flexibility to explore new and alternative methods for providing supportive and nutrition services through a comprehensive and coordinated delivery system by permitting the expenditure of service dollars, under section 304(d)(1)(D), for that purpose. During the past five years, State and area agencies have raised issues about whether section 1321.17(c)(14)(i) of the current rule clearly establishes the threshold at which State agencies may allow area agencies to so use section 304(d)(1)(D) service funds is based on the total allotment of Title III dollars awarded a State, including State plan administration, or based on the total amount of Title III dollars awarded to area agencies for the provision of supportive and nutrition services under section 304(d)(1)(D) of the Act.

This regulation makes clear that a State agency may not fund program development and coordinated activities as a cost of supportive services until the State agency has funded area plan administration to a level of at least 10 percent of the Title III funds in section 304(d)(1)(D), with the exception of those funds provided for in section 303(b)(3) and section 303(f), which are not distributed through the State's IFF.

(4) Section 1321.17(f)(10) is added to require a new assurance that States provide the Commissioner with a periodic update of the plan to reflect the actual and projected additional costs of providing services in rural areas, as required by the new section 307(a)(37) of the Act;

(5) Section 1321.17(f)(11) is added to require a new assurance that the State agency, in consultation with each area agency, will set specific objectives for the provision of Title III funded services to low-income minority older individuals, and assure that such objectives are included in the area plan; and

(6) Section 1321.17(f)(12) is added to require a new assurance that the State will support area plan objectives by undertaking specific program development, advocacy, and outreach efforts focused on the needs of low-income minority older individuals and provide the Commissioner with a written description of its activities to be included in the Commissioner's annual report to the Congress.

(7) Section 1321.17(g) is added to clarify and set out those requirements that States which are designated Single Planning and Service Areas must meet to receive a grant under Title III of the Act.

1321.21 Submission of the State plan or plan amendments to the Commissioner for approval—this section is revised by requiring States to submit their State plans or plan amendments for approval at least 90 days prior to the effective date of the plan or plan amendment rather than the current 45 days. This change was made in order to facilitate simultaneous review and technical assistance, if needed, by the AoA Regional Office. The additional 45 days also provides the State agency with additional time to discuss any deficiencies the Regional Office may find in the State plan or the intrastate funding formula and for the State to correct them. It is AoA's intention that this additional time during the pre-approval period will assist States and AoA in assuring that State plans and intrastate funding formulas are approved in a timely manner.

1321.37 Intrastate funding formula—this section is revised to comply with the 1992 amendments to the Act that require the Commissioner to provide guidelines to State agencies in the development of their intrastate funding formulas, and to approve each State's intrastate funding formula as a condition of approving the State plan.

The Commissioner's guidelines are intended to provide State agencies with criteria for developing intrastate funding formulas that target the needs of those in greatest economic and social need, and low-income minorities within each PSA. The guidelines also provide area agencies, service providers, older individuals, units of general purpose local government, and the pubic with a method by which to assess the State's proposed intrastate funding formula impact in each planning and service area. We anticipate that the public hearing process at both the State and local levels will provide groups, organizations, and individuals that may be affected with as much information as possible about the actual impact the formula will have on current and projected plans and services within the PSA's.

AoA is aware that there may be changes in the allocation of Title III funds to PSA's if State agencies determine that it is necessary to modify current or develop new intrastate

funding formulas in response to changes in demographics, or in compliance with the Commissioner's guidelines in these regulations. Whether the formula remains the same, is modified or a new formula is developed, it is essential that the process of targeting older individuals in greatest economic and social need with particular emphasis on low-income minority individuals have a demonstrable outcome.

The 1992 Amendments strengthen the targeting provisions of the OAA through a number of requirements relating to State Units on Aging (SUAs), area agencies on aging (AAAs) and service providers. The Amendments require SUAs to set specific objectives and describe actions used to increase participation of low-income minority older individuals (Section 305(a)(2)(G)); require SUAs to provide technical assistance to minority service providers (Section 305(a)(1)(D)); require area plans to include specific service objectives for minority targeting (Section 306(a)(5)(A)(i)); provide assurances that providers serve low-income minority individuals in accordance with their need for services (Section 306(a)(5)(A)(ii)); and require that all AAA activities must include a focus on the needs of low-income minority older individuals (Section 306(a)(5)(C)).

In determining how funds available under Title III are to be distributed to implement these objectives, the 1992 Amendments make it clear that States must base the distribution of funds on an intrastate funding formula that takes into account the distribution of older individuals, and of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority older individuals. The Amendments also require that the SUA submit its formula to the Commissioner for approval.

The guidelines proposed here in accordance with section 305(c)(2)(C) having the following objectives:

- To provide flexibility for the States to develop a formula, based on the provisions of the Act, which is appropriate to the conditions in each State; and
- To provide criteria for approval by the Commissioner which are outcome rather than process oriented and meet a standard of administrative simplicity.

The criteria developed in these guidelines are based on the principle that funds and services should be targeted on older individuals in greatest economic need and older individuals in greatest social need, with particular attention to low-income minority older individuals.

There are two criteria for approval of the formula:

(1) to be approved, the formula may not allocate less funds to each PSA with a high concentration of low-income minority older individuals than would have been allocated to each of these PSA's by application of the current formula to the most recent decennial U.S. census data or the best available data.

In view of the provisions in the Act which require particular attention to low-income minority older individuals, this criterion is intended to ensure that the proposed formula will not divert funds from PSA's with the highest concentrations of such individuals, when applied to the same population data as the old formula.

(2) to be approved, the formula may not allocate less funds, from the total amount subject to allocation, to each PSA with a high concentration of low-income minority older individuals that would be allocated to each of these PSA's if the formula submitted for approval were based solely on the factors of age, i.e., 60+, and greatest economic need, i.e., the proportion of older individuals below the poverty line.

In view of the provisions in the Act which require particular attention to low-income minority older individuals, the introduction of social need factors in the formula should, if anything, increase funds distributed to PSA's with the highest concentrations of low-income minority older individuals to an amount no less than would go to the PSA based only on age and economic need. In no event may the introduction of social need factors decrease such funds.

A standard procedure is proposed for identifying the PSA's with the highest concentrations of low-income minority older individuals. After the State ranks the PSA's based on the proportion of low-income minority older individuals to all older individuals in the PSA, those PSA's with the highest proportion of low-income minority individuals which, taken together, contain 51 percent of all low-income minority older individuals in the State shall be, for the purposes of this rule, considered the PSA's with the highest concentrations of low-income minority older individuals.

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Example of Tests for Proposed Intrastate Funding Formulas for Hypothetical State with a 60+ Population of 100,000 and an Allotment of $1,000,000

	Population 60+					Cumulative percent distribution of low-income minority 60+ by PSA	Distribution by PSA of hypothetical $1,000,000 state allotment using:			Is column 9 greater than:	
			Low-income minority								
				Percent of all income levels**							
PSA*	Total (1)	Low-income (2)	Number (3)	Value (4)	Rank (5)	(6)	Current formula*** (7)	Two-factor formula**** (8)	Proposed formula***** (9)	column 7? (Y or N) (10)	column 8? (Y or N) (11)
PSA A	15,000	4,000	1,500	10.00	1	25.86	150,000	206,333	218,822	Y	Y
PSA B	30,000	5,400	2,900	9.67	2	75.86	300,000	330,000	377,500	Y	Y
PSA C	25,000	3,000	1,000	4.00	3	93.10	250,000	225,000	205,603	N	N
PSA D	10,000	1,600	300	3.00	4	98.28	100,000	103,333	89,598	N	N
PSA E	20,000	1,000	100	0.50	5	100.00	200,000	133,333	108,477	N	N
State total	100,000	15,000	5,800	5.80	(NA)	(NA)	1,000,000	1,000,000	1,000,000	(NA)	(NA)

(NA) Not applicable.

* PSA's are shown in rank order according to the ranks in column 5, a rank of 1 indicating the highest percentage of low-income minority 60+ and a rank of 5 indicating the lowest percentage.

** For this example, this percentage was computed by dividing column 3 by column 1. In real applications, the denominator should exclude persons in nursing homes and other institutions.

*** For this example, a hypothetical current formula was created which has one variable: population 60+ (data from column 1).

**** For this example, the factors for population (data from column 1) and low-income (data from column 2) were weighted equally.

***** For this example, a hypothetical proposed formula was created which has four equally weighted factors: (1) population 60+, (2) low-income population 60+, (3) low-income minority population 60+, and (4) population 60+ with mobility or self-care limitations. PSA-level data for the first three variables were taken from columns 1-3. Hypothetical values for the fourth variable are as follows: PSA A (4,000), PSA B (7,000), PSA C (4,000), PSA D (2,000), and PSA E (3,000).

NOTE: The shaded area identifies the PSA's which contain at least 51 percent of the state's low-income minority elderly population (see column 6). These PSA's must show a response of "Y" (for "yes") in columns 10 and 11 if the proposed formula is acceptable. The percentages in column 6 are derived by cumulating the numbers shown in column 3 from the top down after the PSAs are listed in rank order based on the percentages in column 4. For example, the second data value in column 6 (75.86%) was derived by adding the first two values in column 3 (1,500 + 2,900 = 4,400) and dividing the result by the state total on the last line (5,800). The result expressed as a percentage is 75.86%.

In the example above, PSA's A and B constitute the PSAs with the highest concentration of low-income minority older individuals (see column 4) and have a combined total of 76% of the State's total low-income minority elderly population (see column 6), which meets the 51% requirement.

This example represents a hypothetical State's proposed formula that meets the proposed criteria for approval in that PSA's A and B would not receive less funds under the proposed formula (col. 9) than either would have received by application of the current formula to the most recent decennial U.S. census data (col. 7), and neither PSA would receive less funds under the formula (col. 9) than it would if funds were distributed solely on the basis of age and greatest economic need (col. 8). Finally, this example shows that when more than one PSA is required to accumulate 51 percent of the low-income minority older individuals in the State, the distribution to each such PSA must satisfy both specified criteria.

AoA has developed the criteria for approval of an intrastate funding formula so as to ensure that social need factors do not result in decreased funding to PSA's with the highest concentration of low-income minority older individuals.

We note that the proposed guidelines do not speak to the distributional effects on PSA's which contain the other 49 percent of the low-income minority older individuals in the State (which may also contain a significant number of older individuals in greatest economic need, greatest social need, and low-income minority older individuals). However, it should be observed that the law requires that SUAs, area agencies on aging, and service providers utilize effective methods of targeting services to older individuals who are in the greatest economic need and the greatest social need, with particular attention to low-income minority older individuals *in all PSA's*. Thus, irrespective of the distribution of Title III funds, the SUA's, AAA's, and service providers are required to comply with the targeting requirements in the Act, using such Title III funds and other sources as are available to support services to individuals in targeted groups.

1321.76 Appeal process to the Commissioner—this subsection is added to Subpart E to reflect the Commissioner's new responsibilities under section 305(b)(5)(C)(i) of the 1992 amendments to the Act.

We anticipate that some Title III funds may shift among PSA's if intrastate funding formulas are modified or changed in accordance with these proposed regulations. Although the 1992 amendments to the Act and these proposed rules do not require a change in PSA boundaries, section 305(a)(1)(E) of the Act requires States to consider the total number of older individuals 60+, older individuals in greatest economic need, and older individuals in greatest social need, with particular attention to low-income minority older individuals residing in the State, in dividing the State into distinct PSA's. As a result of the 1990 census, States may elect to change some PSA boundaries in order to reflect changes in demographics and geographic locations of particular groups of older individuals based on the 1990 census. AoA is proposing this new rule to provide parties adversely affected by a State's decision to change PSA boundaries with an opportunity to appeal to the Commissioner, pursuant to section 305(b)(5)(C) of the Act.

1321.77 Scope—this subsection is revised to allow for alternative methods of dispute resolution, and to reflect the requirements of the 1992 amendments to the Act which allow an appeal to the Secretary of HHS after the Commissioner has disapproved a State's plan, plan amendment or intrastate funding formula. AoA includes these revisions in these proposed rules in order to clarify appeals procedures that are to apply when the Commissioner does not approve the intrastate funding formula under section 305(a)(2)(C) or otherwise finds that a State plan has failed to meet the requirements of Section 307.

1321.79 When a decision is effective—this subsection is revised to include a State's right to appeal to the Secretary.

1321.81 How the State may appeal—this subsection is revised to describe how a State may appeal to the Secretary.

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department of Health and Human Services has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of the regulations proposed in this NPRM is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public, and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Grants for State and Community Programs on Aging.

Description: The 1992 amendments to the Older Americans Act (Pub. L. 102–375) now require States to submit their intrastate funding formulas to the Commissioner on Aging for approval, rather than only for review and comment, as was the case prior to the 1992 amendments. The amendments also require the Commission to provide guidance to States in the development of their intrastate funding formulas. AoA has interpreted the amendments to require that this guidance be in addition to the language contained in section 305(a)(2)(C) of the statute which requires State agencies to take into account the geographic distribution,

greatest economic and greatest social need of older individuals, with particular attention to low-income minority individuals, in the development of their intrastate funding formulas. If the Commissioner does not approve the intrastate funding formula, a new requirement under section 304(c) requires the Commissioner to withhold the State's allotment of supportive and nutrition funds under Title III of the Act.

In order to comply with these new statutory requirements as well as address the intent of Congress, the Commissioner has developed regulatory standards, and provided directions for each State agency on how to evaluate whether its formula meets those standards. The proposed regulations are designed to provide a State agency with flexibility to either maintain its current formula or, if necessary, to allow for the development of a modified or new formula that addresses the requirements set out by Congress in section 305(a)(2)(C) of the Act. These proposed regulations require that careful consideration be given to the geographic distribution of older individuals in the State, and the distribution among the planning and service areas of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority individuals.

Because section 304(c) now requires the Commissioner to withhold funds if the Commissioner does not approve a State's intrastate funding formula, States cannot reasonably be expected to develop intrastate funding formulas that can be approved, unless they receive regulatory guidelines. Further, in the course of developing their intrastate funding formulas, States are required, under sections 305(a)(2)(C) and 305(d), to publish their intrastate funding formulas for review and comment by the public. This publication for review and comment must include: "(1) A descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic or social need; (2) a numerical statement of the actual funding formula to be used; (3) a listing of the population, economic, and social data to be used for each planning and service area in the State; and (4) a demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State." In addition, section 307(a)(33) now requires the State plan to include the statement and the demonstration required by paragraphs (2) and (4) of section 305(d) of the Act. The Commissioner may not approve the State plan unless the Commissioner approves the statement and demonstration. These proposed regulations provide States with guidelines on how to make an acceptable numerical statement and an acceptable demonstration of the allocation of funds.

Description of Respondents: State or local governments and non-profit institutions.

ESTIMATED ANNUALIZED BURDEN

[Reporting burden associated with the regulations]

Regulation section	Respondents per year	Responses per year	Total Respondents	Hours/Respondents	Total burden
1321.17(c)—Intrastate funding formula development	11	1	11	80	880
1321.17(d)—Intrastate funding formula approval	(11)	1	11	8	88
1321.17(e)—Intrastate formula publication for review and comment	(11)	1	11	30	330
1321.17(g)—Determination of medically under served and separate allocation	11	1	11	20	220
1321.17(h)—Demonstration of targeting by single planning and service areas	4	1	4	25	100

Total reporting burden 1618.

Basis for estimates: The statute allows States to submit their State plans every two, three, or four years. Our estimates are based on the average number of State plan submissions per year during the four year periods between Older Americans Act reauthorizations. We estimate that 11 State agencies will incur regulatory burdens in complying with the requirements under proposed sections 1321.17 (c), (d), and (e); 11 State agencies will incur regulatory burdens in complying with proposed section 1321.17(g); and 4 State agencies and trust territories will incur regulatory burdens in complying with proposed section 1321.17(h). Because some States have chosen two or three year State plans, they will either submit new plans or amend approved plans more than once during the four years between reauthorizations. The table above projects our estimate that on average 26 of the 57 State agencies and trust territories will incur burdens on complying with these proposed requirements once a year.

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Allison Eydt, HHS Desk Officer, Human Resources and Housing, OMB, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 45 CFR Part 1321

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant programs—Indians, Grant programs—social programs, Indians, Legal services, Nutrition, Reporting and recordkeeping requirements.

Dated: February 22, 1994.

Fernando M. Torres-Gil,

Commissioner on Aging, Assistant Secretary for Aging.

Approved:

Dated: March 2, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 1321 is proposed to be amended as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

1. The authority for part 1321 continues to read as follows:

Authority: 42 U.S.C. 3001 et seq.; title III of the Older Americans Act, as amended.

Subpart A—Introduction

2. Section 1321.3 is amended by revising the definition of "Periodic" and adding definitions in alphabetical order as follows:

§ 1321.3 Definitions.

* * * * *

Low-income means below the official poverty guidelines (as defined by the Office of Management and Budget, and adjusted by the Secretary (HHS) in accordance with subsection 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

* * * * *

Medically underserved areas, as used in § 1321.37(g), are those areas within planning and service areas which are identified by the State as having low ratios, relative to other areas in the State, of primary care physicians per 1,000 individuals age 60 and over.

Minority, as used in this Part, are confined to the following designations:

(1) Black, not of Hispanic Origin. A person having origins in any of the black racial groups of Africa.

(2) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

(3) Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

* * * * *

Periodic, as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, reports on, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year (annually).

Rural area, as used in this part, means any area that is not defined as urban. Urban areas comprise:

(1) Urbanized areas (incorporated places and adjacent densely settled territory with a combined minimum population of 50,000) and

(2) All other places with 2,500 or more inhabitants.

Subpart B—State Agency Responsibilities

3. Section 1321.17 is revised to read as follows:

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan which indicates the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area using the intrastate funding formula developed under section 305(a)(2)(C), and published in accordance with the requirements of section 305(d); contains a descriptive narrative explaining how the State will meet the requirements of section 307(a)(3)(B); and contains an exhibit that details how the State will meet the requirements of section 307(a)(37) of the Act, including:

(1) A descriptive statement and comparison of the current intrastate funding formula's assumptions and goals and those of the proposed formula developed as required under section 305(a)(2)(C) for the Commissioner's approval;

(2) A numerical statement of the current intrastate funding formula compared to the formula developed as required under section 305(a)(2)(C) for the Commissioner's approval;

(3) A listing of the population, economic, and social data to be used for each planning and service area in the State;

(4) A comparison and demonstration (i.e., statement) of the allocation of funds, pursuant to the current intrastate funding formula, applied to the best available data, for each planning and service area in the State compared to the allocation of funds for each planning and service area using the formula developed as required under section 305(a)(2)(C) for the Commissioner's approval; and

(5) In accordance with the definition of rural areas in § 1321.3, the State must submit the following supporting information displayed in one table:

(i) The Planning and Service Areas (PSA's) ranked from high to low based on the proportion of rural individuals age 60 years and over to the total population age 60 years and over in each PSA;

(ii) The distribution of funds to rural areas in each of the PSA's based on the current formula; and

(iii) The distribution of funds to rural areas in each of the PSA's using the formula developed under section 305(a)(2)(C) for the Commissioner's approval.

(d) Identification of the geographic boundaries of each planning and service area and of the area agency on aging designated for each planning and service area, if appropriate.

(e) For the preceding year, the number of low-income minority older individuals and older individuals residing in rural areas, and a description of the methods used to satisfy their service needs, as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under sections 1321.5 through 1321.83 of this part, and the following assurances as prescribed by the Commissioner:

(1) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(2) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(3) Older individuals are provided opportunities to voluntarily contribute to the cost of services;

(4) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(5) The State agency shall develop policies in consultation with the area agencies on aging governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies on aging where area agencies on aging have been designated;

(6) Area agencies on aging shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies on aging to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(7) Individuals with disabilities who reside in a non-institutional household with and are accompanied by an individual eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to subsection 307(a)(13)(I) of the Act.

(8) Individuals with disabilities who reside in a non-institutional household with an individual eligible for home

delivered meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to subpart 307(a)(13)(I) of this Act.

(9) (i) The State agency will not fund program development and coordination activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its funds allotted under section 304(d)(1)(D) for the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biennially, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency on aging will have a direct and positive impact on the enhancement of services for older individuals in the planning and service area.

(10) The State agency will update the plan periodically to reflect the actual and projected additional costs of providing services under this title as required in section 307(a)(37) of the Act.

(11) The State agency shall set specific objectives, in consultation with each of its area agencies on aging, for each planning and service area for providing services funded under Title III to low-income minority older individuals, and such objectives must be included in the area plan.

(12) The State, in support of area plan objectives developed under section 306(a)(1) of the Act, will undertake specific program development, advocacy, and outreach efforts focused on the needs of low-income minority older individuals and provide the Commissioner a written description of its activities and accomplishments in an annual report due not later than 60 days following the close of the fiscal year.

(g) To receive a grant under this part, a State that is designated a Single Planning and Service Area must have an approved State plan as prescribed in section 307 of the Act, with the exception of sections 307(a)(3)(B), 305(a)(2)(C) and 305(d) as cross referenced in section 307. The State plan must also meet the provisions of this rule as set out in:

(1) Section 1321.17(a);

(2) Section 1321.17(b);

(3) Section 1321.17(c) using other appropriate geographical designations as appropriate in place of planning and service areas, and excluding §§ 1321.17(c)(1) through 1321.17(c)(4);

(4) Section 1321.17(c)(5) using other appropriate geographical designations as appropriate in place of planning and service areas;

(5) Section 1321.17(e); and

(6) Section 1321.17(f) with the exception of those sections of the Act as noted in §§ 1321.17(c) and 1321.17(f)(9). States will use single planning and service area in place of area agency wherever it appears.

4. Section 1321.21 is revised to read as follows:

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan or plan amendment which requires approval of the Commissioner shall be signed by the Governor or the Governor's designee and submitted to the Commissioner for approval at least 90 calendar days before the proposed effective date of the plan or plan amendment.

5. Section 1321.37 is revised to read as follows:

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies on aging in the State, shall, based on the requirements of section 305(a)(2) (C) and (E) of the Act, with the exception of those funds provided for in section 303(b)(3) and section 303(f) of the Act, develop and use one intrastate funding formula for the allocation to all area agencies of all funds under section 304(d)(1)(D) of the Older Americans Act.

(b) In developing its intrastate formula, the State agency shall use the most current U.S. decennial census data or the best available data.

(c) The State agency shall submit its formula to the Commissioner for review and approval at least 90 days prior to the period for which it will apply in the State. The State agency shall also submit at the same time the following supporting information displayed in one table:

(1) The Planning and Service Areas (PSA's) ranked cumulatively from high to low based on the proportion of low-income minority individuals (as defined in § 1321.3) age 60 years and over (as defined in section 102(38) of the Act) to the total population age 60 years and over in the PSA;

(2) The distribution of funds to each of the PSA's as applied to the best available data under the current formula;

(3) The distribution of funds to each of the PSA's based on a formula with population age 60 and over and population age 60 and over in greatest economic need (as defined in section 102(29) of the Act) as the only factors and using the best available data; and

(4) The distribution of funds to each of the PSA's based on the intrastate funding formula submitted to the Commissioner for approval.

(d) The Commissioner shall approve the intrastate funding formula if the following criteria are satisfied when applied to each of the top ranked PSA's which cumulatively contain fifty one percent of all low-income minority older individuals in the State under paragraph (c)(1) of this section, rounded to the nearest integer:

(1) No less funds are allocated to each PSA in the top fifty one percent of all PSA's ranked cumulatively under paragraph (c)(1) of this section than would be allocated to each of those PSA's by application of the current formula to the most recent decennial census or the best available data; and

(2) Each PSA in the top fifty one percent of all PSA's ranked cumulatively under paragraph (c)(1) of this section is allotted no less funds, from the total amount subject to allocation in section 304(d)(1)(D), under the formula submitted for approval than each of these PSA's would have received under a formula with 60 years and over and greatest economic need as the only factors.

(e) The State agency shall publish the formula for review and comment by older individuals, other appropriate agencies and organizations, and the general public.

(f) At least every two years the State agency shall review the most recent U.S. decennial census or the best available data and shall, based on any changes, allocate funds under section 304(d)(1)(D) through its intrastate funding formula. The States shall submit a report to the Commissioner detailing any changes in the distribution of funds by PSA not later than 30 days after the allocation.

(g) The intrastate funding formula shall provide for a separate allocation of funds received under subsection 303(f) for disease prevention and health promotion. The State agency shall award such funds to priority planning and service areas which the State agency determines:

(1) Are medically underserved; and

(2) In which there are large numbers of individuals age 60 and older in greatest economic need.

(h) State agencies in those States which have been designated as single planning and service areas are not required to have an intrastate funding formula but shall demonstrate in their State plan as required in § 1321.17(g) that the funds received under the Older

Americans Act are used in a manner which targets services to older individuals in greatest economic need and older individuals in greatest social need, with particular attention to low-income minority older individuals.

Subpart E—Hearing Procedures for State Agencies, Area Agencies on Aging, and Other Adversely Affected Parties

6. Section 1321.76 is added to subpart E to read as follows:

§ 1321.76 Appeal Process—for Changes in Planning and Service Areas.

This section sets forth the procedures the Commissioner follows for providing hearings to adversely affected parties under section 305(b)(5)(C).

(a) Any adversely affected party who has been provided a hearing and a written decision by the State agency may appeal the decision to the Commissioner in writing no later than 30 days following receipt of the State's decision.

(b) The Commissioner, or the Commissioner's designee, will provide the opportunity for a hearing; if a hearing is requested, the Commissioner will issue a written decision within 60 days of the hearing; and if a hearing is not requested, the Commissioner will issue a written decision within 60 days of receipt of the items in paragraph (c) of this section.

(c) When the Commissioner receives an appeal, the Commissioner will request the State Agency to submit:

(1) A copy of the appellant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The Commissioner may:

(1) Deny the appeal and uphold the decision of the State agency;

(2) Grant the appeal and overturn the decision of the State agency; or

(3) Take other appropriate action, including facilitating an alternative method of dispute resolution such as mediation, or remanding the appeal to the State agency after initial findings.

7. Section 1321.77 is revised to read as follows:

§ 1321.77 Scope.

(a) This section governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet one or more requirements of section 307 of the Act, including the intrastate funding formula requirement under section 305 of the Act; and

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this rule.

(b) Hearing procedures for State plan disapproval, as provided for in section 307(c) and subsection 307(d) of the Act are subject to the provisions of 45 CFR part 213 with the following exceptions:

(1) Section 213.1(a); §§ 213.32(d); and 213.33 do not apply.

(2) Reference to "SRS Hearing Clerk" shall be understood to mean "HHS Hearing Clerk."

(3) References to "Administrator" shall be read to mean "Commissioner on Aging" or, on appeal from the Commissioner's final decision, "the Secretary."

8. Section 1321.79 is revised to read as follows:

§ 1321.79 When a decision is effective.

(a) The State may appeal the Commissioner's decision to the Secretary within 30 days of the date of the decision, as provided in § 1321.81. The Commissioner may set aside or otherwise modify the decision before the State files such an appeal.

(b) If the State appeals the Commissioner's decision to the Secretary, then the Commissioner's decision will not take effect. The State may appeal the Secretary's decision to the United States Court of Appeals for the Circuit in which the State is located not later than 30 days after such decision. The Secretary may set aside or modify the decision before the filing of the record in the Court. The Secretary's decision will become effective 31 days after the date of decision if the State does not appeal. If the State appeals the Secretary's decision, then it will become effective when the record is filed in the Court.

(c) In lieu of appealing the Commissioner's decision to the Secretary, the State may appeal directly to the United States Court of Appeals for the Circuit in which the State is located within 30 days of the Commissioner's decision. The Commissioner may set aside or otherwise modify the decision before the filing of the record in the Court.

(d) If the State appeals the Commissioner's decision to the United States Circuit Court of Appeals, then the Commissioner's decision will become effective on the date the appeal is filed. If the State does not appeal the Commissioner's decision, then the decision will become effective on the thirty-first day after the date of the decision.

9. Section 1321.81 is revised to read as follows:

§ 1321.81 How the State may appeal.

(a) A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding non-compliance, or finding that a State agency does not meet one or more requirements of sections 305 or 307 of the Act, to the Secretary, as follows:

(1) The State shall file the appeal to the Secretary, with a copy to the Commissioner, not later than 30 days after the Commissioner's final decision;

(2) The State's appeal shall include a copy of the Commissioner's final decision, and the reason why the State claims it is incorrect;

(3) Within 30 days of receipt of the appeal the Commissioner shall submit to the Secretary a copy of the record and a response to the State's claim;

(4) The Secretary shall issue a written decision within 60 days of receipt of the Commissioner's decision;

(5) The Secretary may:

(i) Deny the appeal and uphold the Commissioner's decision;

(ii) Grant the appeal and reverse the Commissioner's decision; or

(iii) Take other appropriate action, including, but not limited to, facilitating an alternative method of dispute resolution such as mediation, or remanding the case to the Commissioner for further development of the record;

(6) The Secretary may designate an appropriate Departmental employee to make a recommended decision before the Secretary issues a final written decision.

(b) A State may appeal the final decision of the Commissioner or the Secretary to the United States Court of Appeals for the Circuit in which the State is located as provided in section 307(e) of the Act.

10. Section 1321.83 is revised to read as follows:

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner will disburse funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which

contains an agreement to meet the non-Federal share requirements.

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federal register

Thursday
March 17, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Department of the Interior

National Park Service

36 CFR Part 1, et al.

Overflights of Units of the National Park System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 6 and 7

[Docket No. 27643; Notice No. 94–4]

Overflights of Units of the National Park System

AGENCY: National Park Service (NPS), DOI and Federal Aviation Administration (FAA), DOT.

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: This notice seeks public comment on general policy and specific recommendations for voluntary and regulatory actions to address the effects of aircraft overflights on national parks.

On December 22, 1993, Transportation Secretary Federico Peña and Interior Secretary Bruce Babbitt announced the formation of an interagency working group to explore ways to limit or reduce impacts from overflights on national parks. Secretary Babbitt and Secretary Peña concur that increased flight operations at the Grand Canyon and other national parks have significantly diminished the national park experience for park visitors, and that measures can and should be taken to preserve a quality park experience for visitors. The Secretaries see the formation of the working group, and the mutual commitment to addressing the impacts of park overflights, as the initial steps in a new spirit of cooperation between the two departments.

National parks are unique national resources that have been provided special protection by law. The National Park Service (NPS) and the Federal Aviation Administration (FAA) recognize that excessive noise from commercial air tours and other flights over units of the national parks system can interfere with NPS efforts to achieve a natural park experience for visitors and to preserve other park values. Through the interagency working group, the NPS and FAA will cooperate in developing measures to resolve current noise impacts and prevent potential future impacts from overflights at national parks. The purpose of this ANPRM is twofold. First, the ANPRM addresses overflights of Grand Canyon National Park and national parks in the State of Hawaii, with particular emphasis on overflights by commercial tour operators. Second, the ANPRM solicits policy views and recommendations on more general issues as part of an effort to form a comprehensive policy on preventing, minimizing, or eliminating impacts of aircraft overflights.

This notice presents options that may be considered as means to minimize the adverse effects of commercial air tour operations and other overflights on units of the national park system, and seeks public comments and suggestions on voluntary and regulatory actions to deal with noise and other overflight issues that may affect national parks.

DATES: Comments on this ANPRM must be received on or before June 15, 1994.

ADDRESSES: Comments on this advance notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27643, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27643. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Chief Counsel, AGC–600, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3473, or Michael M. Tiernan, Office of the Solicitor, Department of Interior (DOI), 18th and C Streets, NW., Washington, DC 20240, telephone (202) 208–7597.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this advance notice of proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the policy, environmental, energy, federalism, or economic impact that might result from considering the options in this advance notice are also invited. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by NPS and FAA before taking action on this advanced notice of proposed rulemaking. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA or NPS to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27643." The postcard will be date stamped and mailed to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this ANPRM.

Background

The management of the national park system is guided by the Constitution, public laws (Pub. L.), proclamations, executive orders, rules and regulations, and directives of the Secretary of the Interior and the Assistant Secretary for Fish and Wildlife and Parks. The Act of August 25, 1916, otherwise known as the NPS Organic Act, established the NPS and serves as the touchstone for national park system management philosophy and policy. The Act created the NPS to promote and regulate national parks, monuments, and reservations in accordance with the fundamental purpose of said parks, monuments, and reservations, which is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. 1). Subsequent legislation further states that any authorized activity "shall not be exercised in derogation of the values and purposes" of a park area or the national park system, except as may have been or shall be directly and specifically provided by Congress. (16 U.S.C. 1a–1).

Thus, "unimpairment" is joined by a responsibility to avoid derogation not only of the purposes of a park area but also the values for which the national park system and its individual units have been established.

In 1987, the Congress enacted the NPS Overflights Act because it recognized that aircraft overflights can adversely affect national parks. The Act specifically found that noise associated with aircraft overflight at the Grand Canyon National Park was causing "a significant adverse effect on the natural quiet and experience of the park and current operations at the Grand Canyon National Park have raised serious concerns regarding safety of park users." (Pub. L. 100–91, section 3(a)). The Act

mandated a number of studies related to the effects of overflights on parks. The studies have taken longer than was originally anticipated because many of the issues with which they deal are on the cutting edge of technical and scientific capability. Measuring degrees of quiet and perception of quiet is very different from measuring amounts of noise. Since the Overflights Act was passed, the adverse effects associated with the numbers and extent of commercial air sightseeing tours have continued to expand.

The general and over-arching responsibilities for park management by NPS may be modified by specific direction in individual enabling legislation and proclamations. The individual statutes and proclamations for some units of the national park system make it clear that the units were established to provide visitors with natural quiet, an opportunity for solitude, and other attributes that are not necessarily compatible with the noise of commercial air tour sightseeing flights. Some people simply find commercial sightseeing tours over parks inappropriate and incompatible with protection of certain park values and resources. On the other hand, a commercial air tour may provide an opportunity for people to see some park resources in ways not otherwise attainable.

As is pointed out in the Management Policies (NPS 1988):

> Over the years, legislative and administrative actions have been taking place that have brought some measure of change to these components of our national parks. Such actions impact park resources, yet they are not necessarily deemed to have impaired resources for the enjoyment of future generations. Whether an individual action is or is not an "impairment" is a management determination based on NPS policy. In reaching it, the manager should consider such factors as the spatial and temporal extent of the impacts, the resources being impacted and their ability to adjust to those impacts, the relation of the impacted resources to other park resources, and the cumulative as well as the individual effects.

Both physical resources, such as wildlife or geologic features or cultural resources, and intangible values, such as natural quiet solitude, and the experience of wilderness, can be impaired.

Impacts to Parks

In the case of commercial air tour sightseeing flights operating over and near units of the national park system, the NPS believes that significant park resources are being impaired in some units. Managers of almost one-third of national park system units perceive a problem with some aspect of already existing aircraft overflights. The sound of aircraft is regarded as the primary impact. A survey of park managers confirmed that mechanical noise is among the more serious problems in parks and aircraft noise is the most prominent among these. The perception of noise and adverse effects in units of the national park system may be related to the fact that parks tend to be quieter places in general and that typical sources of noise found in urban and suburban settings are absent in most parks. The potential exists for impairment of park resources and values by the noise and visual intrusion associated with commercial air tour/sightseeing operations in other units where the air tour sightseeing industry is not yet established or developed.

Given the changes in our population distribution, patterns of use of our national parks, and other factors related to transportation, it is no longer sufficient for park managers to consider strategies and actions solely within park boundaries to protect parks and their resources. Overflights are a case in point. Most overflights of units of the national park system begin and end at airports outside parks; the attractions the overflights offer are the resources of the parks themselves. Technically, the park overflight passenger is not a park visitor even though there may be significant adverse effects from noise on the park. In recognition of this fact, the FAA and the NPS are working more closely to use the FAA's plenary authority for regulation of aviation in support of NPS management objectives.

FAA Authorities

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace, and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (Federal Aviation Act of 1958, as amended (FAAct), Section 307(a) and (c); Title VI.) The FAAct provides guidance to the Administrator in carrying out this responsibility. Section 102 of the FAAct states that the Administrator will consider the public interest to include among other things, regulation for safety and efficiency of both civil and military operations, promotion of the development of civil aviation, fulfillment of the requirements of national defense, and operation of a common system of air traffic control for civil and military aircraft. Section 104 provides to each citizen of the United States a public right of transit through the navigable airspace of the United States. Section 305 directs and authorizes the Administrator to encourage and foster the development of civil aeronautics and air commerce. Section 306 requires the Administrator in exercising his authority, to give full consideration to the requirements of national defense, commercial and general aviation, and to the public right of freedom of transit through the navigable airspace.

The FAA's authority is not limited to regulation for aviation safety, efficiency, and development. Subsection 307(c) of the FAAct provides that FAA air traffic rules and flight regulations may be adopted "for the protection of persons and property on the ground." The FAA considers this protection to extend to environmental values on the surface as well as to the safety of persons and property. Section 611 of the FAAct, "in order to afford present and future relief to the public health and welfare from aircraft noise," directs the Administrator to adopt regulations "as the FAA may find necessary for the control and abatement of aircraft noise," including application of such regulations to any of the various certificates issued under Title VI. Finally, it is the general policy of the Federal government that the FAA, like other agencies, will exercise its authority in a manner that will enhance the environment, and that the FAA will make a special effort to preserve the natural beauty of public park and recreation lands, wilderness areas, and wildlife refuges. Section 101 of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321; Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303; and Executive Order 11514, as amended by Executive Order 11991. In addition, the DOT has further authority to regulate services by commercial operators.

Fees

The Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993) amended Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a) requiring the NPS to impose a commercial tour use fee on each vehicle entering a unit of the national park system, that presently charges an entrance fee, for the purpose of providing commercial tour services.

In addition to surface transportation, this commercial use fee applies to aircraft entering "the airspace of units of the National Park System" identified in sections 2(b) and 3 of Public Law 100.91 (Grand Canyon National Park and Haleakala National Park) as well as any other park areas where the level of commercial aircraft services are equal to

or greater than these two identified areas.

The actual fees established by the legislation are as follows:

- $25 per vehicle with a capacity of 25 people or less, and
- $50 per vehicle with a capacity greater than 25 people. The legislation also gives the Secretary the authority to make reasonable adjustments to these recommended commercial tour fees. Currently, there are no additional NPS areas that charge entrance fees, and also have a level of commercial aircraft services equal or greater to Grand Canyon or Haleakala National Parks. As a result of the legislation, the NPS will need to monitor the number of air tour operations over the affected parks.

Grand Canyon National Park

At Grand Canyon, 42 companies offer aerial tours operating from five states (Arizona, California, Nevada, Utah, and New Mexico). These companies provide air tours of the Grand Canyon to about 750,000 people and generate revenues in excess of $100 million. During peak summer months, the number of tours exceeds 10,000 each month. On June 5, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50–1 (52 FR 22734, June 15, 1987) which provided rules to enhance safety of overflight operations in the vicinity of the Grand Canyon National Park. Section 3 of Public Law 100–91 required the Secretary of the Department of the Interior (DOI) to submit to the FAA Administrator recommendations for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the Grand Canyon. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Public Law 100–91 further required the Secretary of the Interior to prepare and issue a final plan for the management of air traffic above the Grand Canyon. In December 1987, the DOI submitted recommendations to the FAA for an aircraft management plan at the Grand Canyon. The recommendations included both rulemaking and non-rulemaking actions. On May 27, 1988, the FAA issued SFAR No. 50–2 (53 FR 20264, June 2, 1988) which revises the procedures for operation of aircraft in the airspace above the Grand Canyon. The rule implements the preliminary recommendations of the Secretary of the Interior for an aircraft management plan at the Grand Canyon with some modifications that the FAA initiated in the interest of aviation safety. SFAR No. 50–2 establishes a Special Flight Rules Area from the surface to 14,500 feet above mean seal level (MSL) in the area of the Grand Canyon. The SFAR prohibits flight below a certain altitude in each of five sectors of this area with some exceptions. The SFAR also establishes flight free zones from the surface to 14,500 feet msl above large areas of the park. The "flight free zones" cover virtually all of the visitors to the North and South Rims and about 90 percent of backcountry users. The SFAR also provided special routes for commercial tour operators and transient operators through the canyon area. Commercial air tour operations are required to be conducted as air taxi and commercial operations under part 135 with stringent requirements including special operations specifications for Grand Canyon. The NPS believes the SFAR has been successful in limiting some noise-associated adverse impacts to the park but most, if not all, of the gain has been, or may be, lost as a result of the exponential growth in numbers of flights over the canyon.

Virtually every class of visitor activity at Grand Canyon National Park is limited or controlled in some way by the NPS to insure that there will be no derogation or impairment of resources and values. Each raft trip on the Colorado River through Grand Canyon National Park must have a permit and the number of permits is limited for both commercial and private rafters. For some private raft trips, a permit may take 4 or 5 years to obtain. Each overnight visitor in the backcountry must have a backcountry permit; the demand for such permits far exceeds the supply. The waiting list for trips by mule into the inner canyon runs into years for some times of the year. There are a limited number of hotel rooms in the park and there are a limited number of parking spaces. In contrast, the commercial air tour sector has experienced unlimited growth at Grand Canyon National Park in the last 10 years. This is so even though Congress found noise associated with overflights to be significantly and adversely affecting the park in the 1987 Overflights Act. In addition, the NPS believes there is ample evidence that the uncontrolled and unregulated growth in this sector is in derogation of the resources and values of the park. NPS studies to that effect will be published later this year.

Grand Canyon—Actions to Date

Public Law 100–91 directed the DOI to substantially restore "natural quiet" to the Grand Canyon National Park. Public Law 100–91 also required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. Public Law 100–91 also required the DOI to conduct a study, with the technical assistance of the Secretary of Transportation, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the national park system. The research was to include an evaluation of the noise levels associated with overflights. Before submission to Congress, the DOI is to provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations would have on the safety of aircraft operations. The FAA is to consult with the DOI to resolve these issues. The final report must include a finding by the FAA that implementation of the DOI recommendations will not have adverse effects on the safety of aircraft operations, or, in the alternative, a statement of the reasons why the recommendations will have an adverse effect. The DOI expects to complete the report by early summer, 1994.

Haleakala and Hawaii Volcanoes National Parks

The national parks in Hawaii—Hawaii Volcanoes and Haleakala—have similar problems with commercial air sightseeing tours, principally noise associated with helicopters. The FAA held a series of public hearings in January 1994 to elicit public comments and recommendations for regulatory or policy action related to overflights, including their effects on parks. There are 9 tour operators on the island of Hawaii, and there are approximately 60 commercial air tours a day over Hawaii Volcanoes National Park. At Haleakala, which was established to preserve resources in "natural condition," (39 Stat. 432, section 4), seven companies based on the island of Maui offer helicopter tours. On clear days, helicopters fly over the park during all hours of daylight so that helicopter noise is audible over 30 minutes of every daylight hour (personal communication, Haleakala National Park). Interpretive talks, wildlife observations and censuses, ceremonies,

and other normal activities are interrupted by air tour overflights. The NPS recognizes that the commercial air tour industry is important to the economy of Hawaii but also believes that the tourism industry benefits from the continued NPS protection of the superlative resources of its national parks, unimpaired.

Hawaii—Actions to Date

The majority of flights conducted by helicopter companies in Hawaii are commercial air tour/sightseeing operations. Both the NPS and FAA have received numerous complaints of commercial air sightseeing tour flights over residential communities, national parks, wildlife refuge areas, State natural reserve areas, sanctuaries and areas of significant historic or cultural value. Issues raised by the growth of air tour sightseeing activity and the associated increase in the number of flights conducted over a given area include aircraft noise, flight noise, flight safety, and airport site constraints near scenic areas. It may be necessary to determine if there are thresholds of adverse effects that have been met in terms of impacts to the parks.

The FAA has taken several steps to address the overflight issues in Hawaii. In 1986, the FAA conducted a study of helicopter sightseeing operations in Hawaii. As a result of that study, recommendations were made to the State and to operators in Hawaii to improve safety and community relations. Also in 1986, the FAA conducted a joint study with the State on heliport and airport access. A result of that study was a helicopter operating plan for Hawaii. Numerous meetings have since been held with NPS personnel, industry, and local communities, including four public meetings conducted in January 1994.

Impacts to Parks and Their Resources

At some parks, including Grand Canyon National Park, Hawaii Volcanoes National Park, and Haleakala National Park, the temporal and spatial extent of commercial air tours are, in the judgment of NPS managers, impairing park resources and visitor experience. While the NPS and FAA are interested in evaluating potential solutions to the problems at these parks, they are also seeking solutions that will make it possible to avert problems in the future throughout the national park system as have developed at these parks.

Cultural Resources

Very limited information is available on the response of structures to subsonic aircraft and helicopters. The greatest potential risk to historic structures and cultural resources in units of the national park system is from helicopters. The noise characteristics of helicopters are such that they tend to excite nearby structural elements at their resonance frequency, causing low frequency vibrations, rattle, and in some cases, damage. The sound pressure is greatest at structures in the plane of the main rotor, such as could be the case for a helicopter approaching cliff dwellings. When representative cultural resources were reviewed for probability of damage, most were found to be at some risk from commercial air sightseeing tours. Mesa Verde (Colorado) and Canyonlands National Parks (Utah), among others, protest fragile prehistoric stone and adobe structures, including granaries and cliff dwellings, as well as associated cultural materials that are susceptible to damage from helicopter-induced noise and rotor wash. The cultural and spiritual values commemorated in units of the national park system like San Antonio Missions National Historical Parks and the battlefields of the Civil War can be wholly lost by frequent and intrusive commercial air sightseeing tour overflights.

As further examples of areas impacted by aircraft overflights, Mount Rushmore National Memorial and the Statue of Liberty National Monument are cultural icons that can be adversely affected in significant ways be commercial air tour overflights. At the Statue of Liberty, an impending aircraft service would take off and land helicopters from a floating raft less than one-half mile from the statue. This service would be added to two existing commercial sightseeing helicopter operators that account for 115 flights per day and a service that operates four fixed-wing aircraft on air tours. Similarly, the experience of Mount Rushmore National Memorial for the visitors on the ground can be irretrievably lost as a consequence of the aircraft flights close to memorial.

Wildlife Effects

A comprehensive study of the adverse effects of commercial air sightseeing tours on wildlife in parks has yet to be concluded. Studies to date indicate that aircraft can be associated with stress responses on a number of animals, including migratory birds. Endangered species, like the grizzly bear in Glacier National Park, can be harassed by commercial air tour operators unaware of the potential adverse effects of flying too close to them. Other mammals like desert bighorn sheep, dear, and elk that have found refuge in parks can be panicked and stressed by low-flying aircraft, as well. No studies that evaluate long-term effects on wildlife, including population level impacts of commercial air sightseeing tours, have been conducted. As with any potential impact associated with activities in parks, the NPS policy is to err on the side of resource protection until conclusive information is available that would indicate otherwise.

Assessing Noise Impacts

The FAA is working with the NPS to define acceptable noise levels as the basis for any proposed limitations on aircraft overflights. This process involves identifying areas with the highest levels of noise sensitivity. Highly sensitive areas potentially would be subject to lower noise limits than would apply to other areas with higher ambient noise levels, based on resource values, types of use, or other factors. Depending on local conditions, alternative approaches may be employed in different areas to achieve the same noise goal.

Current FAA policy and guidelines designate the yearly day-night average sound level (DNL) as the single noise metric for measuring aviation impacts on people in and around airports. This traditional metric alone may not be appropriate for assessing aviation noise impacts in parks and wilderness areas. Three supplemental metrics other than DNL are proven and appear particularly suitable for site-specific assessments. These are Equivalent Sound Level (L_{eq}), Sound Exposure Level (SEL) and Time Above a dBA Threshold (TA). Additionally, defining a change of 5 dB as significant at any initial DNL level may be appropriate for specifying further noise analysis in parks and wilderness areas.

The ongoing NPS studies have identified two potential (dose-response relationships that also may be appropriate for assessing aircraft noise impacts. These are "Annoyance vs. Percent Time Heard" and "Interference with Quiet vs. Percent Time Heard." These relationships are preliminary and must be subjected to rigorous analysis for further determination of their potential application.

Policy Considerations

In reviewing potential alternatives for achieving NPS and FAA purposes, the FAA has considered a number of measures within its authority under the FAAct that would have the potential to address the problems identified by the NPS. In determining whether a particular action would be beneficial for this purpose and otherwise feasible, the FAA and NPS must take into account a

number of legal and policy considerations.

The action, if regulatory, must be consistent with Administration rulemaking principles as set forth in Executive Order 12866. These principles include requirements that regulations be drafted in the most cost-effective manner to achieve the objective; that regulations be based on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for and consequences of the action to be taken; and that regulations be tailored to impose the least burden on society, including individuals, businesses, and communities, consistent with obtaining the regulatory objective.

The action must have no adverse effect on aviation safety. The action should have the minimum possible adverse effect on the efficiency of air navigation, consistent with the regulatory objective, and should not unduly burden interstate commerce. It must also meet NPS requirements for protecting resources, assuring that there is no impairment, and that there is no derogation, to park resources and values.

The action should focus directly on the problem rather than indirectly. For example, if the issue is the adverse impacts of overflights of a unit of the national park system, then the agency action will address those overflights directly, rather than seek to influence them through regulation of takeoffs and landings at a nearby airport.

Options for Evaluation

The FAA and NPS believe that each of the following measures may have some utility, in certain circumstances, as a measure to mitigate the adverse effects of commercial air sightseeing tour overflights of units of the national park system. Inasmuch as some of the measures have not been used before, neither the FAA nor NPS has concluded that such actions would meet the legal and policy considerations summarized above, and specific comment is requested on the benefits, costs, and impacts of each.

Voluntary Measures

Voluntary, non-regulatory measures that mitigate noise impacts would impose the minimum burden on operators and can be effective. An example is the recommended minimum altitude of 2,000 feet above ground level described in FAA Advisory Circular 91–36C, which is honored by most transient operators. Another option would be expansion of the existing Interagency Agreement among the FAA, the NPS, the Fish and Wildlife Service, and the Bureau of Land Management. Through that agreement the proponents agree to assess severe situations where impact of aircraft operations upon human, cultural, or natural resources are sufficiently serious to warrant consideration of site-specific action by the FAA to minimize or eliminate the causes of such problems. Expansion of the Interagency Agreement could provide for additional non-regulatory actions by the agencies to mitigate overflight impacts. The agencies seek comments on the relative merits of voluntary measures generally, and specific suggestions for other voluntary measures not currently used by the FAA or NPS.

Grand Canyon Model

One option is to follow a model similar to that in use at Grand Canyon, with extensive regulation of airspace, routes, and minimum altitudes as discussed separately below. Such an approach may not adequately consider the fact that the total number and frequency of flights, and the steady growth in numbers of flights, are not currently addressed under that regulatory framework.

Prohibition of Flights During Flight-Free Time Periods

A prohibition could be established on use of some or all of the airspace above parks at certain times; e.g., 1 hour per day, 1 day per week, or 2–4 weeks per year. The "quiet times" would be published well in advance both for air tour operator scheduling and for planning by park visitors. In terms of noise mitigation, non-flying quiet periods would present an unusual approach to the balance between air access and the interest in restoring some degree of the natural quiet in Grand Canyon National Park. At some cost in inconvenience and lost business for air tour operators and temporarily reduced access to air tours for their passengers, the park would enjoy a virtual absence of aircraft noise in sensitive areas for specific periods. The agencies specifically request comment on the potential efficacy of these approaches in meeting FAA and NPS goals.

Altitude Restrictions

SFAR No. 50–2 at Grand Canyon currently specifies a minimum altitude for flight over the different areas of the park as high as 14,500 feet msl. It also specifies minimum altitudes for operation in the flight corridors between the flight-free zones. Different altitudes are specified for transient general aviation operations and for air tour operators, to separate high-frequency tour flights from one-time transient flights. Different altitudes are also specified for fixed-wing aircraft and helicopter tour flights, for safety and efficiency reasons. The tour operation altitudes are at canyon rim level or above (although some are slightly below the minimum altitude requested by NPS as "rim level" in 1987). A relatively high minimum altitude in a particular area limits access to the airspace over that area by many general aviation aircraft because of performance limitations. Generally, noise mitigation is achieved through higher minimum altitudes because the greater the slant-range distance from an aircraft to a point on the surface, the lower the sound level on the surface from aircraft noise. However, this mitigation can be offset or reversed based on attenuation factors such as hills, heavily wooded areas, and "soft ground" terrain.

Flight Free Zones/Flight Corridors

SFAR No. 50–2 at Grand Canyon now describes specific "flight-free" zones to an altitude of 14,500 feet msl above the park. The remaining airspace is defined as corridors for operations over the park by both general aviation and commercial air tour operators. Impact mitigation is achieved through specifying corridors for flight over the park that assure there are no overflights of large areas of the park below the current minimum altitude of 14,500 feet msl. The current corridors and flight-free zones could be amended to address concerns about effects on particular areas of the park.

Restrictions on Noise Through Allocation of Aircraft Noise Equivalencies

A noise budget is a mechanism for limiting total aircraft noise impact on the park by assigning each air tour operator an individual limit on noise impact. This would allow individual air tour operators the flexibility to decide what combination of equipment and flight frequency they will use to attain the target noise level. The noise budget would apply only to air tour sightseeing operators and not to transient general aviation operations. The noise budget concept assumes that the FAA and NPS could determine (1) the acceptable amount of aircraft noise exposure on the park surface, and (2) the number of aircraft operations under various mixes of aircraft types that could operate within the total noise budget.

While complex to develop and administer, the noise budget could achieve noise mitigation through directly addressing the issue of noise

impact but would not address the impacts other than noise. Once the "budget" is established based on target noise levels in various areas of the park, air tour operators would have substantial flexibility to adjust their business operations without exceeding those levels. The noise budget could act as a practical limit on the amount of aviation activity, but would not impose limits on the number of operations. A noise budget would also represent an incentive for operators to acquire relatively quiet aircraft to avoid a penalty on the number of operations that could be conducted within each operator's target noise level.

Individual allocations under a noise budget could be established by designating maximum noise levels for each operator. This could be done by "grandfathering" the current noise contribution by each air tour operator, or by some other administrative means.

Incentives To Encourage Use of Quiet Aircraft

Air tour operators could be encouraged to use relatively quiet aircraft on park overflights. For example, a flight corridor with a good scenic view of the canyon could be limited to aircraft meeting certain noise emission standards. An air tour operator could find it advantageous to convert its entire fleet to such quiet aircraft to incorporate that corridor in its tours. While there is no Federal requirement for aircraft to be manufactured to produce less noise than Stage 3 standards, some aircraft appropriate for air tour operations are quieter than Stage 3. Increased use of such aircraft in air tours would achieve noise mitigation through reducing noise levels on the surface of the park, although this option does not address issues other than noise.

Questions

The NPS and FAA also solicit comments on several questions related to air tour sightseeing operations in and adjacent to units of the national park system.

Policy

1. Should commercial sightseeing flights be prohibited over certain national parks? If so, what criteria should be used in determining which parks should not have such tours?

2. Should action pertaining to aircraft overflights in national parks be considered only for air tour/sightseeing operations? What circumstances would include other categories of overflights?

3. What factors should be considered by NPS and FAA in evaluating recommendations for addressing aircraft overflight issues?

Technical

1. Is the use of quiet technology aircraft a viable alternative for reducing noise from commercial air tour/sightseeing operations in national parks?

2. Should all commercial air tour/sightseeing operations be conducted under air carrier rules of FAR part 135 and/or 121?

3. Should air carrier operators be required to have special operations specifications for conducting sightseeing flights?

4. Should there be special airspace rules for identified units of the national park system?

5. Should the measures developed for Grand Canyon and Hawaii become models for more general use at parks with actual or potential overflight impacts?

Request for Comments

The FAA and NPS solicit comments and information from all segments of the public interested in aviation and national parks and their relationship. The primary focus of this advance notice is commercial air sightseeing tours, rather than military or general aviation operations. It is anticipated that any regulations eventually developed would be general in nature and applicable to the entire national park system. It is not the intent of the NPS or FAA to develop regulations specific to any one park at this time. However, examples of aviation activities observed in one park may be used to support an opinion on overall aviation management issues.

All comments received by FAA and NPS at the addresses and by the dates listed above will be reviewed and utilized in any development of proposed regulations. Comments received pursuant to this Advance Notice of Proposed Rulemaking will be analyzed and discussed in the preamble to the Proposed Rule. Any proposed rulemaking will also be made available for public review and comment.

Regulatory Process Matters

Economic Impact

The FAA and NPS are unable to determine at this point the likely costs of imposing regulations affecting overflights of national parks or the annual effect on the economy. Following a review of the comments submitted to this ANPRM, the FAA and NPS will determine what regulatory requirements will be proposed, if any, and will review the potential costs and benefits, as required by Executive Order 12866.

Significance

This anticipated rulemaking is not a "significant regulatory action" as defined in Executive Order 12866. The FAA has determined that the ANPRM is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 2, 1979).

Other Regulatory Matters

At this preliminary stage it is not yet possible to determine whether there will be a significant economic impact on a number of small entities or what the paperwork burden might be. These regulatory matters will be addressed at the time of publication of any NPRM on this subject.

List of Subjects

36 CFR Parts 1 through 7

Grand Canyon National Park, Haleakala National Park, Hawaii Volcanoes National Park.

14 CFR Parts 91 and 135

Aircraft, Airmen, Airports, Air taxis, Air traffic control, Aviation safety, Noise control.

Issued in Washington, DC on March 11, 1994.

Barry L. Valentine,

Assistant Administrator for Policy, Planning, & International Aviation.

George T. Frampton, Jr.,

Assistant Secretary of Interior, Fish and Wildlife and Parks.

[FR Doc. 94–6216 Filed 3–14–94; 12:28 pm]

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federal register

Thursday
March 17, 1994

Part V

Securities and Exchange Commission

17 CFR Parts 211, 231, and 241

Municipal Securities Issuers and Others; Statement of the Commission Regarding Disclosure Obligations; Final Rule

17 CFR Part 240

Municipal Securities Disclosure and Confirmation of Transactions; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release No. 33–7049; 34–33741; FR–42; FILE NO. S7–4–94]

Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; Solicitation of comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing its views with respect to the disclosure obligations of participants in the municipal securities markets under the antifraud provisions of the federal securities laws, both in connection with primary offerings and on a continuing basis with respect to the secondary market. This interpretive guidance is intended to assist municipal securities issuers, brokers, dealers and municipal securities dealers in meeting their obligations under the antifraud provisions. The Commission is seeking comment on issues discussed in this release and possible future agency action.

DATES: This Interpretation is effective March 9, 1994.

Comments should be received on or before July 15, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–4–94. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace ((202) 272–7282), Amy Meltzer Starr ((202) 272–3654), Vincent W. Mathis ((202) 272–3968), Division of Corporation Finance; Janet W. Russell-Hunter (with respect to Sections III.C.6. and V.) ((202) 504–2418), Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In a companion release, the Commission is proposing rule amendments that prohibit a broker, dealer or municipal securities dealer from underwriting a municipal issue unless the issuer agrees to disseminate information to the secondary market and from recommending the purchase of a municipal security without reviewing such information.

I. Executive Summary

The recent high volume of municipal securities offerings, as well as the growing ownership of municipal securities by individual investors, has highlighted the need for improved disclosure practices in the municipal securities market, particularly in the secondary market. To encourage and expedite the ongoing efforts by market participants to improve disclosure practices, and to assist market participants in meeting their obligations under the antifraud provisions, the Commission is publishing its views with respect to disclosures under the federal securities laws in the municipal market.

This interpretive release addresses the following:

(1) With respect to primary offering disclosure, despite the significant improvement in disclosure practices in recent years as a result of voluntary initiatives, increased attention needs to be directed at

- Disclosure of potential conflicts of interest and material financial relationships among issuers, advisers and underwriters, including those arising from political contributions;
- Disclosure regarding the terms and risks of securities being offered;
- Disclosure of the issuer's or obligor's financial condition, results of operations, and cash flows. This information should include audited financial statements (or disclosure that the financial statements were not subject to audit) and an explanation of the accounting principles followed in the preparation of the financial statements, unless the statements were prepared in accordance with generally accepted accounting principles ("GAAP") or accompanied by a quantified explanation of any deviation from GAAP;
- Disclosure of the issuer's plans regarding the provision of information to the secondary market; and
- Timely delivery of preliminary official statements to underwriters and potential investors.

(2) The Commission is renewing its recommendation for legislation to repeal the exemption for corporate obligations underlying certain conduit securities from the registration and reporting requirements of the federal securities laws.

(3) Particularly because of their public nature, issuers in the municipal market routinely make public statements and issue reports that can affect the market for their securities; without a mechanism for providing ongoing disclosures to investors, these disclosures may cause the issuer to violate the antifraud provisions.

Basic mechanisms to address potential antifraud liability include:

- Publication of financial information, including audited financial statements and other financial and operating information, on at least an annual basis;
- Timely reporting of material events reflecting upon the creditworthiness of the issuer or the obligor and the terms of its securities, including material defaults, draws on reserves, adverse rating changes and receipt of an adverse tax opinion; and
- Submission of such information to an information repository.

(4) Underwriters and municipal securities dealers are key players in maintaining the quality of disclosure in the municipal securities markets. The underwriter has a duty to review the issuer's disclosure documents before offering, selling or bidding for the securities and to have a reasonable basis for its belief as to the accuracy and completeness of the representations in the documents. Municipal dealers must have a reasonable basis for recommending the purchase of securities.

In a companion release,[1] the Commission is proposing for comment two related rule amendments, the first proposing to prohibit a broker, dealer or municipal securities dealer from underwriting a municipal issue unless the issuer makes a commitment to provide annual and event-related secondary market information to a designated repository; and the second proposing to prohibit a broker, dealer, or municipal securities dealer from recommending purchases of such issues in the secondary market if it does not review such information.

II. Introduction

A. The Municipal Securities Market

As detailed in the recent Staff Report on the Municipal Securities Market, the market for municipal securities is characterized by great diversity and high volume. Issuers, estimated to number approximately 50,000, include state governments, cities, towns, counties, and special subdivisions, such as special purpose districts and public authorities. It is estimated that there currently are 1.3 million municipal issues outstanding, representing approximately $1.2 trillion in securities.[2] In 1993, a record level of over $335 billion in municipal securities was sold, representing over 17,000 issues. This record financing was heavily influenced by refundings. Nevertheless, the level of long term new money financings, representing 49% of financings for the year, reflected continued growth. In 1993, there were $142 billion of new money long term

[1] Exchange Act Release No. 33742 (March 9, 1994) ("Companion Release").

[2] See Division of Market Regulation, Securities and Exchange Commission, *Staff Report on the Municipal Securities Market* ("Staff Report") (Sept. 1993) at 1.

financings, compared to $81 billion in 1988, a 75% increase.[3]

In recent years, the forms of securities used to meet the financing needs of these issuers have become increasingly diverse and complex. For example, conduit bonds, certificates of participation, and a variety of derivative products have joined traditional general obligation and revenue bonds as prevalent forms of municipal financing.[4]

In addition, there has been a change in the investor profile in the municipal securities market. By 1992, individual investors, including those holding through mutual funds, held 75% of the municipal debt outstanding, compared to 44% in 1983.[5]

Along with the changing investor profile, there has been a change in investor strategy. Traditionally, municipal bondholders have been buy and hold investors; however, this strategy has changed significantly with the growth and development of municipal bond funds. Many of these funds actively trade their portfolio securities to take advantage of market conditions or to meet redemption needs.

B. SEC Oversight of the Municipal Securities Market

As the agency charged with administering the federal securities laws and overseeing this nation's securities markets, the Commission has an obligation to protect investors in the municipal markets from fraud, including misleading disclosures. As the New York City report stated nearly two decades ago:

> By virtue of the large dollar volume of municipal securities issued and outstanding each year, such securities are a major factor in the Nation's economy and the national securities markets. In light of the national scope of the municipal securities markets, there is an overriding federal interest in assuring that there is adequate disclosure of all material information by issuers of municipal securities.
>
> Although municipalities have certain unique attributes by virtue of their political nature, insofar as they are issuers of securities, they are subject to the proscription against false and misleading disclosures.[6]

The burgeoning volume and complexity of municipal securities offerings, as well as the retail nature of the market, heighten the need for market participants to seek to prevent fraud through the timely provision of material information concerning municipal issuers and securities.

While Congress exempted offerings of municipal securities from the registration requirements and civil liability provisions of the Securities Act of 1933,[7] and a mandated system of periodic reporting under the Securities Exchange Act of 1934,[8] it did not exempt transactions in municipal securities from the coverage of the antifraud provisions of section 17(a) of the Securities Act,[9] section 10(b) of the Exchange Act, and Rule 10b–5 promulgated thereunder.[10] These antifraud provisions prohibit any person, including municipal issuers and brokers, dealers and municipal securities dealers, from making a false or misleading statement of material fact, or omitting any material facts necessary to make statements made by that person not misleading, in connection with the offer, purchase or sale of any security. In addition, brokers, dealers and municipal securities dealers are subject to regulations adopted by the Commission, including those regulations adopted to define and prevent fraud.[11] Municipal securities dealers are also subject to rules promulgated by the Municipal Securities Rulemaking Board ("MSRB").[12]

C. Disclosure Practices and Calls for Enhanced Disclosure

In the absence of a statutory scheme for municipal securities registration and reporting, disclosure by municipal issuers has been governed by the demands of market participants and antifraud strictures. Spurred by the New York City fiscal crisis in 1975 and the Washington Public Power Supply System defaults,[13] participants in the municipal securities market have developed extensive guidance to improve the level and quality of disclosure in primary offerings of municipal securities, and to a more limited extent, continuing disclosure in the secondary market.

In 1989, the Commission adopted Rule 15c2–12 under the Exchange Act[14] to enhance the quality and timeliness of disclosure to investors in municipal securities.[15] The rule requires that underwriters (both bank and non-bank) of primary offerings of municipal securities with an aggregate principal amount of $1,000,000 or more obtain and distribute to their customers the issuers' official statements for the offerings. This mechanism provides underwriters an opportunity to review the issuer's disclosure documents before commencing sales to investors.[16]

There is a consensus that, over the last two decades, these market and regulatory efforts have improved significantly the quality of primary offering disclosure in the municipal securities markets.[17] Nonetheless, there continue to be concerns with the adequacy of municipal offering disclosure, particularly with respect to offerings of non-general obligation bonds and smaller issues.[18]

Secondary market disclosure practices present greater concerns. Recent highly publicized defaults[19] and refundings,[20]

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[3] "A Decade of Municipal Finance," *The Bond Buyer* (Jan. 6, 1994) at 24.

[4] Staff Report at 1–2.

[5] *The Bond Buyer 1993 Yearbook* ("Bond Buyer 1993 Yearbook") at 61–63.

[6] *Staff Report on Transactions in Securities of the City of New York* ("NY City Report") (Aug. 1977) Chapter III, at 1–2.

[7] See section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)).

[8] See section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)).

[9] 15 U.S.C. 77q(a).

[10] 15 U.S.C. 78j(b); 17 CFR 240.10b–5.

[11] Sections 15(c) (1) and (2) of the Exchange Act (15 U.S.C. 78o(c) (1) and (2)).

[12] See *MSRB Manual* (CCH).

[13] See Securities and Exchange Commission, *Report of the Securities and Exchange Commission on Regulation of Municipal Securities* (1988); Securities and Exchange Commission, *Staff Report on the Investigation in the Matter of Transactions in the Washington Public Power Supply System Securities* (1988); Securities Act Release No. 6021, *Final Report in the Matter of Transactions in the Securities of the City of New York* (Feb. 5, 1979); NY City Report.

[14] 17 CFR 240.15c2–12; see Municipal Securities Disclosure, Securities Exchange Act Release No. 26100 (Sept. 28, 1988), 53 FR 37778 ("Proposing Release"); Municipal Securities Disclosure, Securities Exchange Act Release No. 26985 (July 10, 1989), 54 FR 28799 ("Adopting Release").

[15] Proposing Release, 53 FR at 37779–37782; Staff Report at 25.

[16] Adopting Release, 54 FR at 28800.

[17] National Federation of Municipal Analysts, *Membership Survey Results Fall 1992 Disclosure Survey* ("NFMA Survey"); Public Securities Association, Municipal Securities Disclosure Task Force, *Report: Initial Analysis of Current Disclosure Practices in the Municipal Securities Market* (June 1988) ("PSA Survey") (content and completeness of primary disclosure documents and sufficiency of financial information rated satisfactory to excellent by 94% and 93% of firms responding, respectively)

[18] See Letter to Chairman Levitt from Charles Mires, Allstate Insurance Company (Nov. 4, 1993, as updated Jan. 19, 1994) ("Allstate Letter") (primary market disclosure by conduits found inadequate in 43.8% of rated issues reviewed); NFMA Survey (local housing, special district, hospitals, long term healthcare and industrial development issues were found to provide the least disclosure); PSA Survey (small issue industrial development bonds received a low rating; issues of $10 million or less received a low rating).

[19] Examples include the defaults engendered by the failures of Mutual Benefit Life, Executive Life and Tucson Electric Power, and the bankruptcies arising out of the Colorado Special Districts. See, e.g., Hinden, "Mutual Benefit Life's Collapse Shows Fragility of Bond Guarantees," *The Washington Post* (Jul. 22, 1991) at F 27; Levinson, "No Coverage Against Junk," *Newsweek* (Apr. 22, 1991) at 46; Stamas, "Rep. Dingell Asks SEC to Investigate Defaults by Special Assessment Districts in Colorado," *The Bond Buyer* (Jan. 25, 1991) at 1.

[20] See Gasparino, "Balancing Budgets Through Lease Deals May Pose Credit Risks, Rating Agency Warns," *The Bond Buyer* (Jan. 25, 1993) at 1;

Continued

as well as the tremendous level of issuances during the past two years, have heightened interest in municipal secondary market disclosure.[21] The PSA has testified that today "secondary market information is difficult to come by even for professional municipal credit analysts, to say nothing of retail investors."[22] Substantial issuer information, in the form of official statements, state-required reports, and other public documents, is available from the approximately 20% of municipal issuers that come to market frequently, accounting for 80% of the dollar volume of municipal securities issued.[23] However, the remaining issuers, representing 20% in dollar volume but 80% in number, which come to the market much less frequently, provide substantially less continuing information. Many of these issues are health care issues, housing issues, industrial development bonds, and other conduit financings,[24] financing sectors which have had the greatest incidence of defaults, both monetary and technical.[25] In addition, information often is unavailable for smaller issues of securities of general purpose units of government and the securities of special purpose districts and authorities.[26]

In response to a request by Commission Chairman Arthur Levitt for a recommended "market-participant sponsored solution" to the disclosure issues in the municipal securities market, on December 20, 1993, 12 groups and associations representing a broad range of market participants submitted to the Commission a Joint Statement on Improvements in Municipal Securities Market Disclosure (the "Joint Statement").[27] The Joint Statement sets forth "a framework for improving the availability of information in the marketplace" that calls for both continued market initiatives to improve issuer disclosure and "support from the SEC and the Municipal Securities Rulemaking Board (MSRB)."[28] Among other things, its participants recommend the adoption of a rule or interpretive guidance restricting underwriting of municipal issues unless continuing information covenants are provided by the issuer.

III. Primary Offering Disclosure

A. Application of the Antifraud Provisions

The antifraud provisions of the federal securities laws prohibit fraudulent or deceptive practices in the offer and sale of municipal securities.[29] Disclosure documents used by municipal issuers, such as official statements, are subject to the prohibition against false or misleading statements of material facts, including the omission of material facts necessary to make the statements made, in light of the circumstances in which they are made, not misleading. The adequacy of the disclosure provided in municipal security offering materials is tested against an objective standard: an omitted fact is material if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable [investor]. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.[30]

B. Voluntary Guidelines

In the primary offering of municipal securities, the extensive voluntary guidelines issued by the Government Finance Officers Association ("GFOA") have received widespread acceptance and, among a number of larger issuers, have been viewed as "in essence obligatory rules."[31] Other groups, including the National Federation of Municipal Analysts ("NFMA"), have published voluntary disclosure guidelines covering industry specific sectors, including among others, housing, student loans, transportation and health care.[32] In connection with the offering of municipal securities, the GFOA Guidelines call for:[33]

Herman, "Municipal-Bond Holders: Watch Out for 'Call' Shock," *The Wall Street Journal* (Aug. 29, 1992) at C1; Hume, "Dealer Threatens Suit Over Proposed Call for Escrowed Bonds," *The Bond Buyer* (Nov. 8, 1993) at 4; Hume, "Issuer in Louisiana May Run Afoul of Law if Escrowed Bonds Are Called Next Month," *The Bond Buyer* (Apr. 22, 1993) at 1; Hume, "Rise in Re-Refundings of Escrowed Bonds Likely to Gain Attention at Treasury, SEC," *The Bond Buyer* (May 12, 1992) at 1.

[21] See generally, Testimony of Jeffrey S. Green, General Counsel, Port Authority of New York and New Jersey on behalf of Government Finance Officers Association, before the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, Oct. 7, 1993 ("GFOA Testimony") at 7–9; Remarks by C. Richard Lehmann, President, Bond Investors Association Before the U.S. House of Representatives Subcommittee on Telecommunications and Finance Concerning the Municipal Securities Market, Oct. 7, 1993 ("Lehmann Testimony") at 4–5; Testimony of Andrew R. Kintzinger, President-Elect, National Association of Bond Lawyers, Before the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, Oct. 7, 1993 ("NABL Testimony") at 8–23; Testimony of Harvey Eckert, Chairman of the Blue Ribbon Committee on Secondary Market Disclosure on Behalf of the National Association of State Auditors, Comptrollers and Treasurers Before the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, Oct. 7, 1993 ("NASACT Testimony") at 3–6; Testimony Relating to the Municipal Securities Market given by the National Federation of Municipal Analysts, Katherine Bateman, Chairperson, to the Subcommittee on Telecommunications and Finance, Oct. 7, 1993 ("NFMA Testimony") at 1–7; Statement of Gerald McBride, Chairman, Municipal Securities Division, Public Securities Association, Before the House Committee on Energy and Commerce, Telecommunications and Finance Subcommittee, Oct. 7, 1993 ("PSA Testimony") at 5–7; NASACT, *State and Local Government Securities Markets and Secondary Market Disclosure* (Oct. 1993) at 5; Stamas, "Issuers' Intentions on Secondary Market Disclosure are Starting to Appear in Official Statements," *The Bond Buyer* (Dec. 14, 1992) at 1; Standard & Poor's, "In Support of Secondary Market Disclosure," *CreditWeek Municipal* (Mar. 16, 1992).

[22] PSA Testimony at 5. See also Lehmann Testimony at 4; NASACT Testimony at 3; Nemes, "Investors' Service Steps in to Fill Void in Hospital Data Disclosure," *Modern Healthcare* (Feb. 3, 1992) at 46; Quint, "Credit Markets; Aiming for More Data About Municipal Bonds," *The New York Times* (June 28, 1993) at D5; Schifrin, "Hello, Sucker," *Forbes* (Feb. 1, 1993) at 40.

[23] NASACT, *Report of the Blue Ribbon Committee on Secondary Market Disclosure—Improving Secondary Market Disclosure* (Aug. 1993) ("NASACT Blue Ribbon Committee Report") at 1–2.

[24] See *id.* at 1. See also Allstate Letter.

[25] See Bond Buyer 1993 Yearbook at 3–5; *Municipal Bond Defaults—The 1980's; a Decade in Review* (J.J. Kenny Co., Inc. 1993)("Kenny Default Report"); Public Securities Association, *An Examination of Non-Rated Municipal Defaults 1986–1991* (Jan. 8, 1993)("PSA Default Report"); Staff Report, Appendix B.

[26] See NASACT Blue Ribbon Committee Report at 1–2.

[27] Joint Statement on Improvements in Municipal Securities Market Disclosure ("Joint Statement") (Dec. 20, 1993) at 1. The Joint Statement was submitted by the American Bankers Association's Corporate Trust Committee, American Public Power Association, Association of Local Housing Finance Agencies, Council of Infrastructure Financing Authorities, Government Finance Officers Association, National Association of Bond Lawyers, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National Council of State Housing Agencies, National Federation of Municipal Analysts, and Public Securities Association.

[28] Id.

[29] See *In re Washington Public Power Supply System Securities Litigation*, 623 F. Supp. 1466, 1478 (W.D. Wash. 1985). See also *Brown* v. *City of Covington*, 805 F.2d 1266, 1270 (6th Cir. 1986).

[30] *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976).

[31] Letter from Harlan E. Boyles, Treasurer of North Carolina to SEC Chairman Levitt, dated December 7, 1993. See Government Finance Officers Association, Disclosure Guidelines for State and Local Government Securities (Jan. 1991) ("GFOA Guidelines").

[32] See NFMA, *Disclosure Handbook for Municipal Securities 1992 Update* (Nov. 1992) ("NFMA Handbook"). See also Government Accounting Standards Board, *Codification of Government Accounting and Financial Reporting Standards* (2d ed. 1987); PSA, *Recommendations for a Consistent Presentation of Basic Bond Provisions in Official Statements* (Dec. 1989).

[33] GFOA Guidelines at xv–xix (summary).

- An introduction to serve as the guide to the official statement;
- A description of the securities being offered, including complete information regarding the purposes of the offering, the plan of financing, the security and sources of repayment, and the priority of the securities, as well as structural characteristics, such as call provisions, tender options, original issue or deep discount, variable rates, and lease purchase agreements;
- Information regarding the nature and extent of any credit enhancement and financial and business information about the issuer of the enhancement;
- A description of the government issuer or enterprise, including information about the issuer's range or level of service, capacity and demographic factors and, in the case of revenue supported offerings, information on the enterprise's organization, management, revenue structure, results of operations and operating plan;
- With respect to obligations of private profit making and nonprofit conduit issuers, information regarding the business or other activity, including the enterprise's form of organization and management, rate-making or pricing policies, and historical operations and plan of operation;
- A description of the issuer's outstanding debt, including the authority to incur debt, limitations on debt, and the prospective debt burden and rate of its retirement;
- A description of the basic documentation, such as indentures, trust agreements and resolutions authorizing the issuance and establishing the rights of the parties;
- Financial information, including summary information regarding the issuer's or obligor's financial practices and results of operations, and financial statements, prepared in conformity with generally accepted accounting principles and audited in accordance with generally accepted auditing standards;
- A discussion of legal matters, such as pending judicial, administrative, or regulatory proceedings that may significantly affect the securities offered, legal opinions, and tax considerations; and
- A discussion of miscellaneous matters, including ratings and their description and meanings, underwriting arrangements, arrangements with financial advisors, interests of named experts, pending legislation, and the availability of additional information and documentation.

The guidelines prepared by the GFOA and the NFMA provide a generally comprehensive roadmap for disclosure in offering statements for municipal securities offerings. There are, however, areas that need further improvement in both the context of negotiated and competitively bid underwritings. In addition, implementation of these guidelines needs to be extended to the whole market. For example, while large repeat general obligation issuers usually have comprehensive disclosure documents, small issuers and conduit issuers, particularly in the health care, housing and industrial development areas, do not always provide the same quality of disclosure.[34]

C. Areas Where Improvement Is Needed

1. Conflicts of Interest and Other Relationships or Practices

Information concerning financial and business relationships and arrangements among the parties involved in the issuance of municipal securities may be critical to an evaluation of an offering.[35] Recent revelations about practices used in the municipal securities offering process have highlighted the potential materiality of information concerning financial and business relationships, arrangements or practices, including political contributions, that could influence municipal securities offerings. For example, such information could indicate the existence of actual or potential conflicts of interest, breaches of duty, or less than arm's-length transactions. Similarly, these matters may reflect upon the qualifications, level of diligence, and disinterestedness of financial advisers, underwriters, experts and other participants in an offering. Failure to disclose material information concerning such relationships, arrangements or practices may render misleading statements made in connection with the process, including statements in the official statement about the use of proceeds, underwriters' compensation and other expenses of the offering. In addition, investors reasonably expect participants in municipal securities offerings to follow standards and procedures established by such participants, or other governing authorities, to safeguard the integrity of the offering process; accordingly, material deviations from those procedures warrant disclosure.

Existing rules and voluntary guidelines call for certain specific disclosures by offering participants. GFOA guidelines call for offering statement disclosure to investors of contingency fees to named experts, including counsel, and any other interest or connection those parties have with other transaction participants.[36] MSRB rules call for dealer disclosure to issuers and investors of any financial advisory relationship between an issuer and a broker, dealer, or municipal securities dealer, under certain circumstances.[37] MSRB rules also call for dealer disclosure to investors of, among other things, certain fees and expenses in negotiated transactions.[38]

Beyond existing specific disclosure requirements and guidelines, the range of financial and business relationships, arrangements and practices that need to be disclosed depends on the particular facts and circumstances of each case. If, for example, the issuer (or any person acting on its behalf) selects an underwriter, syndicate or selling group member, expert, counsel or other party who has a direct or indirect (for example, through a consultant) financial or business relationship or arrangement with persons connected with the offering process, that relationship or arrangement may be material.[39] Areas of particular concern are undisclosed payments to obtain underwriting assignments and undisclosed agreements or arrangements, including fee splitting, between financial advisers and underwriters.[40] If the adviser is hired to assist the issuer, such relationships, financial or otherwise, may divide loyalties. Similarly, affiliations between sellers of property to be used in a financed project and conduit borrowers raise questions regarding, among other things, the determination of fair market value of the property and self-dealing.

2. Terms and Risks of Securities

Evolution in the financial markets has led to increasingly complex and sophisticated derivative and other municipal products. While these new

[34] See NASACT Blue Ribbon Committee Report at 1–2; Staff Report at 26. Industry participants generally agreed in testimony before the House of Representatives Subcommittee on Telecommunications and Finance on October 7, 1993, that both the greatest disclosure problems and the greatest risk of default were with unrated hospital, housing, special district and industrial development revenue bonds.

[35] See *SEC* v. *Washington County Utility District*, 676 F.2d 218, 222 (6th Cir. 1982) ("Flagrant violations" of antifraud provisions arising from failure to disclose use of proceeds to purchase options on property held by issuer's manager and financial arrangements between the manager and the underwriter).

[36] Section XII.D. of the GFOA Guidelines.

[37] MSRB rule G–23.

[38] MSRB rule G–32. See Section 15B(c)(1) of the Exchange Act (15 U.S.C. 78o–4(c)(1)) (requiring compliance with MSRB rules); MSRB rule G–17.

[39] Gasparino, "The Trouble with Consultants", *The Bond Buyer* (Nov. 16, 1993) at 1. In his testimony before the Subcommittee on Telecommunications and Finance, Andrew Kintzinger, on behalf of the National Association of Bond Lawyers ("NABL"), stated: "[M]embers of the municipal finance bar should work with issuers to develop procurement procedures for state and local governments to ensure that all material financial arrangements between underwriters within the syndicate and between underwriters and financial advisors and possible conflicts of interest between issuers and members of the underwriting syndicate or other participants be accurately documented and disclosed or, if appropriate, prohibited." NABL Testimony at 28. See Joint Statement at 2.

[40] Gasparino, "Several Issuers Start to Scrutinize Ties Between Advisers, Bankers," *The Bond Buyer* (Dec. 27, 1993) at 1. See Section XII.C. of the GFOA Guidelines; rule G–23 of the MSRB.

products offer investors a wide range of investment alternatives, in choosing among the alternatives, investors need a clear understanding of the terms and the particular risks arising from the nature of the products.[41]

In particular, investors need to be informed about the nature and effects of each significant term of the debt, including credit enhancements and risk modifiers, such as inverse floaters and detachable call rights. Investors in these securities should be aware of their exposure to interest rate volatility, under all possible scenarios. In addition, any legal risk concerning the issuer's authority to issue securities with unconventional features needs to be disclosed. The PSA recently has identified disclosure that should be provided in connection with the offer of financial instruments that include such features as auction and swap-based inverse floaters and embedded cap bonds.[42]

Credit enhancements are used with increasing frequency in the municipal market. According to published information, over 37% of the dollar volume of new long term issues carry some form of credit enhancement.[43] The existence of bond insurance or other credit enhancement creates the need for disclosure concerning the provider of the credit enhancement and the terms of the enhancement[44] to avoid misleading investors concerning the value of the enhancements provided and the party's ability to fund the enhancement. The GFOA recommends that appropriate financial information about the assets, revenues, reserves and results of operations of credit enhancers be provided in the official statement. In determining the extent of disclosure, consideration should be given to the amount of the enhancement relative to the income and cash flows of the issuer or obligor, conditions precedent to application of the enhancement, duration of the enhancement, and other factors indicating a material relationship between the enhancement and the investor's anticipated return.

In a trend that has become increasingly common, municipal bond insurers are including in indentures provisions that appear to delegate to the bond insurer the ability to modify terms of the indenture, prior to default, without the consent of, or even prior notification to, bondholders.[45] There should be clear disclosure of any such provision that may have a material impact on the rights of bondholders or the obligations of the issuer, including the specific material rights of the bondholder that could be so altered.

3. Financial Information

a. *Financial Accounting.* Sound financial statements are critical to the integrity of the primary and secondary markets for municipal securities, just as they are for corporate securities.[46] The key to the reliability and relevancy of the information contained in the financial statements of a municipal issuer is the use of a comprehensive body of accounting principles consistently applied by the issuer.[47]

Although there continues to be some diversity in the financial reporting practices used in preparing financial statements of governmental issuers, practice in the municipal market is evolving rapidly to reliance on generally accepted accounting principles ("GAAP") as determined by the Government Accounting Standards Board ("GASB").[48] Only two years after GASB was founded in 1984, financial statements prepared in accordance with GAAP, as promulgated by GASB, were required by 75.2% of cities, 78.3% of counties and 69% of school districts responding to a research survey.[49] Forty-six states currently require, or are in the process of establishing a requirement, that state government financial statements be presented in accordance with GAAP.[50] In addition, local as well as state governments that receive significant amounts of federal aid must prepare financial statements in accordance with GAAP or provide information concerning variance from GAAP.[51]

The GFOA Guidelines call for financial statements that are either prepared in accordance with GAAP or accompanied by a quantified (if practicable) explanation of the differences.[52] To avoid misunderstanding, investors need to be informed of the basis for financial statement presentation. Accordingly, when a municipal issuer neither uses GAAP nor provides a quantified explanation of material deviations from GAAP, investors need a full explanation of the accounting principles followed.

b. *Audits.* Investors in the public securities markets have a reasonable expectation that annual financial statements contained in offering documents or periodic reports are subject to audit.[53] In the case of municipal issuers, these financial statement audits are typically conducted by either an independent certified public accountant or a state auditor. Although the frequency and timeliness of audits vary, every state requires some periodic audit verification of government financial statements.[54] A prudent investor needs to be able to evaluate the extent to which he or she can rely on the second look an auditor provides.

Accordingly, the offering statement should state whether the financial statements it contains were audited in accordance with generally accepted auditing standards ("GAAS"), as established by the American Institute of Certified Public Accountants.

c. *Other Financial and Operating Information.* Financial information beyond that contained in the financial statements—provided in tabular and

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[41] As the NABL Testimony indicates: "Derivatives are sophisticated securities products designed for sophisticated investors and should not be sold to retail investors generally and certainly not without comprehensive disclosure. If issuers choose to undertake the financial benefits of these sophisticated and complicated transactions, they can assume the financial costs of providing * * * information." NABL Testimony at 22.

[42] PSA, *Recommendation on Dissemination of Product—Specific Terms For Municipal Derivative Products* (1993).

[43] PSA, *Municipal Market Developments* (Aug. 1993) at 5.

[44] *See* Revisions to Rules Regulating Money Market Funds, Securities Act Rel. No. 7038, 58 FR 68585, 68588 (footnote omitted) ("Money Market Fund Release"); Securities and Exchange Commission, *Report by the United States Securities and Exchange Commission on the Financial Guarantee Market: The Use of the Exemption in Section 3(a)(2) of the Securities Act of 1933 for Securities Guaranteed by Banks and the Use of Insurance Policies to Guarantee Debt Securities* (Aug. 28, 1987) ("SEC Financial Guarantee Report") at 82; Adopting Release, 54 FR at 28812.

[45] See Allstate Letter

[46] See NY City Report at Ch. II p. 92.

[47] See GFOA Guidelines at 50.

[48] The financial statements of corporate obligors backing conduit securities should follow GAAP for such entities, as established by the Financial Accounting Standards Board and other bodies.

[49] Ingram & Robbins, *Financial Reporting Practices of Local Governments*, Government Accounting Standards Board (1987) at 12 (The survey results were based on information received from 567 respondents to a survey questionnaire mailed to 1161 government units).

[50] *State Comptrollers: Technical Activities and Functions* (1992 Edition).

[51] Where state and local governments programs that are subject to the federal "Single Audit Act of 1984," Public Law 98–502 *et seq.* prepare financial statements on a basis other than GAAP, "the audit report should state the nature of the variances therefrom and follow professional guidance for reporting on financial statements which have not been prepared in accordance with GAAP." Office of Management and Budget, "Questions and Answers on the Single Audit Process of OMB Circular A–128, 'Single Audits of State and Local Governments,' " 52 FR at 43716 (Nov. 13, 1987), question 35.

[52] GFOA Guidelines at 45.

[53] See Gauthier, *An Elected Official's Guide to Auditing* (1992) at vii and xi.

[54] State Comptrollers: Technical Activities and Functions; NASACT, *Municipal Task Force Report* (1990) ("NASACT 1990 Task Force Report") at 12.

narrative format, footnotes, supplemental tables, schedules and discussions of operations and financial position—is essential to the fair presentation of an issuer's financial performance and position. As reflected in industry guidelines,[55] the type of information needed (*e.g.*, tax revenue base, budget, demographics, project revenues and operations) varies depending on the type of issuer, the type of security sold, and the sources for repayment of the bond obligations.

There are a number of areas in which greater care needs to be taken to provide investors with adequate information. In a pooled financing structure, such as that used by bond banks, in addition to providing financial information concerning the issuing authority or program in the aggregate, it may be necessary to provide information on participating obligors. This will depend on diversification and risk concentration factors, such as the significance of any single obligor to the overall financing.

Conduit bond issuers need to provide operational information concerning the activities of the private enterprise that will provide the cash flows to service the debt—for example, financial reporting, legal proceedings, changes in indebtedness, defaults and other significant developments relating to the underlying corporate obligor. Where the issuing authority in a conduit financing has no remaining obligation for the repayment of the indebtedness, in providing financial information about the issuing entity (as compared to the obligor on the bonds), care must be taken to avoid misleading investors regarding the sources of repayment.[56]

Municipal issuers also must consider disclosure issues arising from their activities as end users of derivative products. For example, the use of non-exchange traded derivatives to alter interest rate risk exposes the issuer to counterparty credit risk. Disclosure documents need to discuss the market risks to which issuers are exposed, the strategies used to alter such risks and the exposure to both market risk and credit risk resulting from risk alteration strategies. The NFMA has published sector specific secondary market disclosure guidelines calling for a discussion of the issuer's use of derivative products, especially interest rate swaps.[57]

[55] See generally, GFOA Guidelines; NFMA Handbook. *See also infra* n. 84.

[56] See Letter of John Murphy, Executive Director of Association of Local Housing Finance Agencies to Chairman Levitt (Dec. 20, 1993).

[57] NFMA Handbook.

Moreover, in addition to financial and operating data, the official statement may need to include a narrative explanation to avoid misunderstanding and assist the reader in understanding the financial presentation. A numerical presentation alone may not be sufficient to permit an investor to judge financial and operating condition of the issuer or obligor.[58] For example, it may be necessary to explain the presentation of budget information and the relationship of the budget figures to the financial statements.

In addition, issuers must assess whether the future impact of currently known facts mandate disclosure. The GFOA Guidelines call for a description of known facts that would significantly affect the financial information presented or future financial operation of the issuer, as well as a discussion of its projected operations.[59] For example, in a hospital financing, a steadily declining population in the surrounding community that, in the future, would not support the size of facility to be built would be important to investors. Disclosure of such currently known conditions and their future impact is critical to informed decisionmaking.

d. *Timeliness of Financial Statements.* The timeliness of financial information is a major factor in its usefulness. To avoid providing investors with a stale, and therefore potentially misleading, picture of financial condition and results of operations, issuers and obligors need to release their annual financial statements as soon as practical. After extensive discussion with market participants, it appears that, for the most part, audited financial statements of municipal issuers for the most recently completed fiscal year are available within six months after fiscal year end. The six month time period is consistent with the recommendations of NASACT's Blué Ribbon Committee Report.[60] Unaudited financial statements should be provided when available prior to the completion of the audit.

[58] See Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Securities Act Release No. 6835 (May 24, 1989), 54 FR 22427; Securities Act Release No. 6711 (April 24, 1987), 52 FR 13715.

[59] GFOA Guidelines at 55.

[60] See NASACT Blue Ribbon Committee Report at 17. While due dates for audited financial statements of government units differ, a significant majority of states currently require audited financial statements for government units to be filed within six months after the fiscal year end. NASACT 1990 Task Force Report at 12–22.

4. Availability of Continuing Information

An investor's ability to monitor future developments affecting the issuer, as well as the likely liquidity of a security, are important to an investor's evaluation of an offering. The official statement should state clearly whether ongoing disclosure concerning the issuer or obligor will be provided, including the type, timing, and method of providing such information.[61] In deciding whether to purchase the securities or to continue to hold them, investors need to know whether the issuer has committed to provide information on an ongoing basis.[62] The absence of such a commitment can adversely affect the secondary market for the securities and increases the risks of the investment.

As discussed above, the Joint Statement recommends that the Commission adopt a rule prohibiting a municipal securities dealer from underwriting securities absent a commitment to provide ongoing information. In the Companion Release, the Commission is proposing such a rule for comment. In order to fully inform investors, an issuer needs to include in the official statement a description of the scope of its continuing disclosure commitment, the type of information that would be provided, the repositories to which the information would be sent, when annual and other periodic information would be available, and the consequences of the issuer's failure to abide by the requirements of the covenant.

5. Clarity and Conciseness

Like other disclosure documents, official statements need to be clear and concise to avoid misleading investors through confusion and obfuscation. The expanded level of disclosure in official statements and increased sophistication of municipal securities instruments have, in many cases, resulted in longer

[61] See Fall 1992 NFMA Survey. See also American Bankers Association, Corporate Trust Committee, Four Point Public 1991 Disclosure Guidelines for Corporate Trustees ("ABA 1991 Guidelines") at 2; Stamas, "Issuers' Intentions on Secondary Disclosure are Starting to Appear in Official Statements," *The Bond Buyer* (Dec. 14, 1992) at 1.

[62] See MSRB, *Report of the Municipal Securities Rulemaking Board on Regulation of the Municipal Securities Market* (Sept. 1993) at 6–7 (Board announced plan that would include requiring underwriters to recommend to issuers that they provide continuing disclosure to the market and requiring municipal securities dealers to disclose to their customers the negative impact that the lack of secondary market information may have on the value and liquidity of the securities and whether the issuer has agreed to voluntarily provide such disclosures).

and more complex disclosure documents, with the corresponding danger of overly detailed, legalistic, and possibly obtuse disclosure.[63]

The location, emphasis, and context of the disclosure can affect the ability of a reasonable investor to understand the relationship between, and cumulative effect of, the disclosure.[64] As the U.S. Court of Appeals for the Second Circuit has stated:

> [D]isclosures in a prospectus must steer a middle course, neither submerging a material fact in a flood of collateral data, nor slighting its importance through seemingly cavalier treatment. The import of the information conveyed must be neither oversubtle nor overplayed, its meaning accurate, yet accessible.[65]

Appropriate disclosure "is measured not by literal truth, but by the ability of the material to accurately inform rather than mislead" investors.[66] As the Commission has indicated in other contexts, legalistic, overly complex presentations and inattention to understandability can render the disclosure incomprehensible and consequently misleading.[67]

6. Delivery of Official Statements

One of the concerns leading to the adoption of Rule 15c2–12 was that underwriters were not receiving official statements within time periods that would allow them to examine the accuracy of the disclosure.[68] The Commission noted in proposing the rule that a thorough, professional review by underwriters of municipal offering documents could encourage appropriate disclosure of foreseeable risks and accurate descriptions of complex put and call features, as well as novel financing structures now employed in many municipal offerings. In addition, with the increase in novel or complex financings, there may be greater value in having investors receive disclosure documents describing fundamental aspects of their investment. Yet, underwriters are unable to perform this function effectively when offering statements are not provided to them on a timely basis.[69]

To address this concern, the rule requires any underwriter, including lead underwriters, syndicate members, and selling group members that receive in excess of the usual seller's commission, to obtain and review an official statement that is deemed final as of its date by the issuer, except for the omission of certain information, before bidding for, purchasing, offering, or selling municipal securities in a primary offering.

Since the adoption of Rule 15c2–12, however, there have been continued problems with the timeliness of receipt by underwriters of the "near final" official statement required by the Rule.[70] In addition to compromising the ability of an underwriter to make a reasonable investigation of the issuer, this problem also may limit the ability of potential customers to make informed investment decisions. In a recent NFMA survey, 59% of those responding rated the delivery of preliminary official statements in competitive sales as either not very good or poor, and 50% rated the delivery of preliminary official statements in negotiated sales as either not very good or poor.[71]

One cause of delay has been confusion as to the point at which the underwriter must have obtained and reviewed the near final official statement in a negotiated offering. The term "offer" traditionally has been defined broadly under the federal securities laws and, for purposes of Rule 15c2–12, encompasses the distribution of a preliminary official statement by the underwriter, as well as oral solicitations of indications of interest. Thus, prior to the time that the underwriter distributes the preliminary official statement to potential investors, or otherwise begins orally soliciting investors, the rule requires it to have obtained and reviewed a near final official statement. If no offers are made, the underwriter is required to obtain and review a near final official statement by the earlier of the time the underwriter agrees (whether in principle or by signing the bond purchase agreement) to purchase the bonds, or the first sale of bonds to investors.[72]

The Commission has acknowledged that the rule would require greater planning and discipline by some issuers.[73] The Commission anticipated that, in order to allow underwriters to meet their obligation to have a reasonable basis for recommending any municipal securities, issuers would have to begin drafting disclosure documents earlier, and perhaps with greater care than in the past.[74] This result enables underwriters to receive, and if necessary influence the content of, the final official statement before committing themselves to an offering.[75] Moreover, placing an obligation on the issuer to prepare the official statement at an earlier stage is appropriate, because it is the issuer's obligation to ensure that there is timely dissemination of disclosure documents in connection with the offer and sale of the issuer's securities.[76]

D. Conduit Financings

When financing involves a third party as the source of repayment, investors need information on that underlying borrower. The GFOA Guidelines call for description of conduit obligors, which are defined by the GFOA Guidelines to include both private profit-making and nonprofit entities.[77] The suggested

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[63] See GFOA Testimony at 6. *See also* Allstate Letter

[64] *Isquith* v. *Middle South Utilities*, 847 F.2d 186, 201 (5th Cir.), *cert. denied*, 488 U.S. 926 (1988); *Kas* v. *Financial General Bankshares, Inc., et al.*, 796 F.2d 508, 516 (D.C. Cir. 1986); *Kennedy* v. *Tallant*, 710 F.2d 711, 720 (11th Cir. 1983).

[65] *Isquith*, 847 F.2d at 202.

[66] *McMahan & Company, et. al.* v. *Wherehouse Entertainment, Inc.*, 900 F.2d 576, 579 (2d Cir. 1990)

[67] See, *e.g.*, Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests, Securities Act Release No. 6900 (June 25, 1991) 56 FR 28979, 28980 ("Limited Partnership Release").

[68] Proposing Release, 53 FR at 37781.

[69] Proposing Release, 53 FR at 37782.

[70] As a practical matter, near final official statements distributed to underwriters to satisfy Rule 15c2–12(b)(1) are often the same document as the preliminary official statement distributed to potential customers pursuant to Rule 15c2–12(b)(2). See Mudge Rose Guthrie Alexander & Ferndon (April 4, 1990) ("Mudge Rose") (rejecting the argument that in a negotiated offering, the identification of a credit enhancer and related information about the credit enhancer may be omitted on the assumption that the information depends on pricing). See also Fippinger & Pittman, *Disclosure Obligations of Underwriters of Municipal Securities*, 47 Business Lawyer 127, 140 (Nov. 1991). In addition, underwriters are required to deliver to potential customers, upon request, copies of the final official statement for a specified time period. Rule 15c2–12(b)(4).

[71] NFMA Survey. See also Letter from Jeffrey M. Baker, Chairperson, NFMA Industry Practices and Procedures Committee and Richard A. Ciccarone, Past Chairperson, NFMA Industry Practices and Procedures Committee to Arthur Levitt, Chairman, Securities and Exchange Commission, Christopher A. Taylor, Executive Director, MSRB and Joseph R. Hardiman, President and Chief Executive Officer, National Association of Securities Dealers, Inc. (Oct. 19, 1993) (regarding the timeliness of receipt of near final and preliminary official statements).

[72] See Mudge Rose.

[73] Adopting Release, 54 FR at 28804. The Commission also noted that the requirements of Rule 15c2–12(b)(1) could be met through the use of multiple documents. For example, a frequent issuer might be able to supply a recent official statement, together with supplementary information containing the terms of the current offering, as well as any material changes from the previous offering materials.

[74] Proposing Release, 53 FR at 37790.

[75] *Id.*

[76] See Adopting Release, 54 FR at 28811 N. 84 (official statement is issuer's document).

[77] GFOA Guidelines at 26. In a recent policy statement, the GFOA referred to "conduit bonds" as "municipal securities issued by a state or local government for the benefit of a private corporation or other entity that is ultimately obligated to pay such bonds * * *." GFOA, Committee on Governmental Debt and Fiscal Policy, Improvements in Municipal Securities' Market

information includes the nature and development of the business or other activity to be undertaken by the conduit obligor (including its form of organization and management), location of principal facilities and service area, ratemaking or pricing policies and historical operations and plan of operations.

To address disclosure issues involving conduit financings in a comprehensive fashion, however, legislation addressing the exempt status of conduit securities under the federal securities laws is necessary. Bonds used to finance a project to be used in the trade or business of a private corporation are, from an investment standpoint, equivalent to corporate debt securities issued directly by the underlying corporate obligor.[78] Payments on these types of conduit securities are derived solely from revenues received by the governmental entity under the terms of a contractual agreement, typically a lease or a note, from a private enterprise, rather than from the general credit and taxing power of the governmental issuer. The tax-exempt status of interest payments does not alter the fundamental analysis that these are private obligations, in which the investor looks, and can look, only to a private entity for repayment.

The private nature of many conduit enterprises distinguishes them from traditional municipal financings. The incidence of bond default appears to be inversely related to the degree a financed project represents an essential public service.[79] A study conducted by the PSA on non-rated issues that defaulted found that 75% were issued by local authorities in the areas of health care and industrial related sectors such as energy, chemical, pollution control and industrial development.[80]

Given the essentially private nature of non-governmental industrial development financings, investors need the same disclosure regarding the underlying non-municipal corporate obligor as they would receive regarding any corporate obligor, and the same regulatory and liability scheme should apply. Accordingly, the Commission has consistently supported legislative proposals to amend Section 3(a)(2) of the Securities Act[81] and Section 3(a)(29)[82] of the Exchange Act to remove the registration exemption for the corporate credit underlying municipal conduit securities involving non-governmental industrial development (private activity) financings.[83] The Commission today renews that legislative recommendation.

Pending amendment to the securities laws to eliminate the registration exemption, the disclosure provided by such non-governmental conduit borrowers should be substantially the same as if such conduit borrower were subject to the information requirements of the federal securities laws applicable to the particular conduit borrower. For example, financial statements prepared in accordance with generally accepted accounting principles prescribed by the Financial Accounting Standards Board should be provided.

IV. Disclosure in the Secondary Market for Municipal Securities

While significant progress has been made in primary market disclosure practices in recent years, the same development has not taken place with respect to secondary market disclosure. The GFOA issued separate secondary market disclosure guidelines in 1979, but they have not yet achieved the broad acceptance accorded its primary offering guidance. In the last five years, the NFMA, the National Council of State Housing Agencies, and the Association of Local Housing Authorities have published sector specific guidelines for secondary market disclosure; the National Advisory Council of the National Association of State Auditors, Comptrollers and Treasurers ("NASACT") is in the process of preparing such guidelines for adoption by the states.[84] The GFOA's longstanding Certificate of Achievement program recognizes issuers that have prepared comprehensive annual financial reports meeting its guidelines. The NFMA's Award of Recognition Program likewise recognizes issuers that have committed to provide continuous disclosure.

A. Application of Antifraud Provisions

Participants in the municipal securities market do not dispute the need for ongoing disclosure following an offering of securities, but municipal issuers reportedly resist developing a routine of ongoing disclosure to the investing market because of concerns about the costs of generating and disseminating that information and about potential liability relating to such disclosure. These issuers and obligors are at times advised by their professional advisors that there is no duty under the federal securities laws to make disclosure following the completion of the distribution.[85] At least some municipal issuers thus appear to believe that silence shields them from liability for what may later be found to be false or misleading information. As a practical matter, however, municipal issuers do not have the option of remaining silent. Given the wide range of information routinely released to the public, formally and informally, by these issuers in their day-to-day operations, the stream of information on which the market relies does not cease with the close of a municipal offering. In light of the public nature of these issuers and their accountability and

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Disclosure (Feb. 1, 1994) ("GFOA Disclosure Policy Statement").

[78] See Money Market Fund Release, 58 FR at 68588 (proposal to subject tax exempt money market fund investments in conduit securities to restrictions similar to those applicable to securities of comparable obligors offered to taxable funds).

[79] Kenny Default Report at 2.

[80] PSA Default Report at 12.

[81] 15 U.S.C. 77c(a)(2).

[82] 15 U.S.C. 78c(a)(29).

[83] See Remarks of David S. Ruder, Chairman, SEC, "Disclosure in the Municipal Securities Markets," Before the Public Securities Association (Oct. 23, 1987) at 17–18; Letter from John S.R. Shad, Chairman, SEC to Representative Timothy E. Wirth, Chairman, House Subcommittee on Telecommunications, Consumer Protection, and Finance (March 12, 1985); 124 Cong. Rec. 21, 639 (1978) (letter from SEC Chairman Harold M. Williams to Senator Harrison A. Williams). There were two bills introduced, one in 1975 and one in 1978, that would have repealed the exemption from the registration requirements of the Securities Act of 1933. The 1978 bill would have subjected certain industrial development bonds to the registration requirements of the Securities Act of 1933, the filing and qualification provisions of the Trust Indenture Act and the periodic reporting requirements of the Securities Exchange Act of 1934. Neither bill was enacted. *See also* "Municipal Securities Full Disclosure Act of 1976," S. 2969, 94th Cong., 2d. Sess. (Feb. 17, 1976).

Governmental industrial development financings, which would have retained their exempt status under prior proposals, include those financings in which the bonds are repaid from the general revenues of the governmental unit or the project or facility is a public facility (or part of a public facility) and owned and operated by or on behalf of the governmental unit. The prior proposals to register conduit financings would not have affected the separate exemption for securities issued by non-profit charitable organizations in Section 3(a)(4) of the Securities Act (15 U.S.C. 77c(a)(4)).

[84] See Association of Local Housing Finance Agencies, *Guidelines for Information Disclosure to the Secondary Market* (1992) ("Local Housing Guidelines"); National Council of State Housing Agencies, *Quarterly Reporting Format for State Housing Finance Agency Single Family Housing Bonds* (1989) and *Multi-family Disclosure Format* (1991) collectively ("State Housing Guidelines"); NFMA Handbook. *See also* Healthcare Financial Management Association, *Statement of Principles of Public Disclosure of Financial and Operating Information by Healthcare Providers* (Exposure Draft dated Aug. 1, 1993) ("Healthcare Disclosure Principles").

[85] See Stamas, "Issuers' Intentions on Secondary Market Disclosure Are Starting to Appear in Official Statements," *The Bond Buyer* (Dec. 14, 1992) at 1; Stamas, "Why the Issue of Secondary-Market Disclosure Remains on the Back Burner: It Can Be Risky," *The Bond Buyer* (Sept. 20, 1991) at 1; Stamas, "Analysts Warn Issuers About Some Lawyers' Disclosure Advice," *The Bond Buyer* (Jan. 15, 1991) at 1.

governmental functions, a variety of information about issuers of municipal securities is collected by state and local governmental bodies, and routinely made publicly available.[86] Municipal officials also make frequent public statements and issue press releases concerning the entity's fiscal affairs.

A municipal issuer may not be subject to the mandated continuous reporting requirements of the Exchange Act, but when it releases information to the public that is reasonably expected to reach investors and the trading markets, those disclosures are subject to the antifraud provisions.[87] The fact that they are not published for purposes of informing the securities markets does not alter the mandate that they not violate antifraud proscriptions.[88] Those statements are a principal source of significant, current information about the issuer of the security, and thus reasonably can be expected to reach investors and the trading market. As the U.S. Court of Appeals for the Second Circuit has said: "The securities markets are highly sensitive to press releases and to information contained in all sorts of publicly released . . . documents, and the investor is foolish who would ignore such releases."[89] Since investors obtain information concerning the fiscal health of a municipal issuer from its public statements concerning financial and other matters, "[t]he nature of these statements and the assumptions upon which they are based must be carefully and accurately communicated to the public, so that potential investors may be fully informed of all material facts relevant to their investment decision."[90]

The current process by which municipal issuers and their officials release information to market participants does not address the risk of misleading investors, because there is no mechanism for disseminating information about the municipal issuer to the market as a whole. To the contrary, in the municipal market, information released publicly frequently is disseminated only to a narrow segment of the marketplace. For example, market participants who request current information from indenture trustees are often turned away on the grounds that they are not current holders of the securities.[91] As a result, investors purchasing municipal securities in the secondary market risk doing so on the basis of incomplete and outdated information.

Since access by market participants to current and reliable information is uneven and inefficient, municipal issuers presently face a risk of misleading investors through public statements that may not be intended to be the basis of investment decisions, but nevertheless may reasonably be expected to reach the securities markets. As market participants have urged,[92] in order to minimize the risk of misleading investors, municipal issuers should establish practices and procedures to identify and timely disclose, in a manner designed to inform the trading market, material information reflecting on the creditworthiness of the issuer and obligor and the terms of the security.[93]

B. Secondary Market Disclosure

There is general recognition of the need for disseminating comprehensive information on an annual basis and, on a more timely basis, information about material events that reflect on the credit quality of the security.[94]

1. Annual Information

Investors need updated comprehensive information sufficient to enable them to evaluate the financial condition, results of operations and cash flows of the issuer or underlying borrower. Although the issuance of comprehensive annual information has not yet become prevailing practice, it is recommended by industry disclosure guidelines, including those published by the GFOA in connection with its Comprehensive Annual Financial Reports ("CAFRs") award program, NFMA, and the other industry specific guidelines,[95] and is an effective means of providing the market updated information about the issuer and the issue. The GFOA Guidelines for Continuing Disclosure call for, either in an official statement or comprehensive annual report, a description of:

- The issuer and its structure, management, assets and operations;
- The issuer's debt structure (including changes in indebtedness);
- The issuer's finances (including financial condition and results of operations and financial practices of the issuer or the enterprise);
- Legal matters affecting the issuer; including litigation and legislation;
- Ratings; and
- Interests of certain persons.

The GFOA Guidelines also specify additional information to be provided by conduit borrowers. The eligibility criteria for a Certificate of Achievement from GFOA include audited financial statements prepared in accordance with GAAP, reported upon by an independent public auditor. The guidelines for CAFRs include both a financial section and a statistical section.[96]

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[86] See NASACT Blue Ribbon Committee Report at 2, 24; NASACT 1990 Task Force Report at 21.

[87] See Public Statements by Corporate Representatives, Securities Act Release No. 6504 (Jan. 20, 1984) 49 FR 2468, 2469; *In re Ames Dept. Stores Inc. Stock Litigation*, 991 F.2d 953, 965–67 (2d Cir. 1993) (with respect to corporate information).

[88] See Fippinger, *The Securities Law of Public Finance* (2d ed. 1993) at 291 ("[P]ress releases, conversations with analysts, information meetings, official comments on budget negotiations, and even angry reactions by public officials to rating agency downgrades" are subject to antifraud provisions).

[89] *Ames*, 991 F.2d at 963 (corporate information).

[90] NY City Report at Ch. III at 2. The report found that public statements by City officials were misleading, since they were characterized by unwarranted reassurances as to the soundness and attractiveness of the City's securities, including statements that the City's budget problems, no matter how serious, had nothing to do with the City's ability to pay its debts. *Id.* at 110–111.

Municipal issuers should also be sensitive to whether their official statements contain forward-looking statements, such as projections of revenues, that remain alive in the market and may require updating in light of subsequent events. Guides for Disclosure of Projections of Future Economic Performance, Exchange Act Rel. No. 5992 (Nov. 7, 1978), 43 FR 53246. To the extent that the official statement in many cases remains the principal (or perhaps even the sole) source of information concerning an outstanding security, the potential for an obligation to update is of particular importance.

[91] Under notice provisions of indentures, the issuer and trustee generally are required to provide notice to existing bondholders of events of default and other significant matters, such as a draw on reserves, a failure to renew a letter of credit, or a substitution of collateral. ABA 1991 Guidelines at 10. Indeed, trustees often deny requests by market participants for information out of concern for liability arising from exceeding the authority set forth in the indenture. Fippinger at 325. This situation led the American Bankers Association Corporate Trust Committee, in cooperation with the National Association of Bond Lawyers, to develop agreed upon guidelines for indenture provisions permitting the trustee to provide public notice of specified events. See ABA 1991 Guidelines.

[92] See GFOA Guidelines at 91–97; Joint Statement.

[93] National Association of Bond Lawyers and Section of Urban, State and Local Government Law, American Bar Association, *Disclosure Roles of Counsel in State and Local Government Securities Offerings* at 135 (forthcoming 1994) (Pre-publication Draft) ("ABA Disclosure Roles") (noting that many municipal issuers have concluded that post-issuance disclosure in accordance with GFOA guidelines can be more efficient and expose them to less potential liability than ad hoc disclosures).

[94] See GFOA Testimony; Mires, "An Investor's Framework for Examining Disclosure Issues and Possible Solutions," *The Bond Buyer* (Feb. 7, 1994) at 24; NASACT Blue Ribbon Committee Report at 7. *See also* PSA Testimony at 6, supporting annual financial statement filing requirements and submission of information regarding any material fact for issuers who borrow $1 million or more annually.

[95] See ABA Disclosure Roles at 134–136; ABA 1991 Guidelines; Association of Local Housing Guidelines; Healthcare Disclosure Principles. The Disclosure Task Force of the National Council of State Housing Agencies is developing standards for the issuance of audited financial and annual reports.

[96] See GFOA Certificate of Achievement for Excellence in Financial Reporting Program; GFOA Guidelines at 64.

For frequent issuers, current information can be disseminated in official statements for new offerings, and thus is readily available without the preparation of a separate annual financial report. Regardless of the form of document relied upon to provide the marketplace with information concerning the financial condition of the issuer or obligor, to minimize risk of misleading investors, issuers or obligors should provide, as discussed above with respect to primary offerings:

- Financial statements that are audited in accordance with GAAS (or disclosure of the absence of such an audit) and that are either prepared in accordance with GAAP, or accompanied by a quantified explanation of material deviations from GAAP or a full explanation of the accounting principles used;
- Other pertinent financial and operating information (depending on the type of issuer and security sold), as well as the sources for repayment—of course, a variety of information may be appropriate for an issuer with a range of outstanding securities with differing characteristics, from general obligation to revenue and conduit bonds; and
- A narrative discussion that analyzes the issuer's or obligor's financial condition, and results of operations, as well as facts likely to have a material impact on the issuer or obligor.

Clarity and conciseness are equally relevant concerns with respect to ongoing disclosures, as with official statements.

As discussed above with respect to offering statements, as a general matter, the annual financial information may reasonably be expected to be made available within six months of the issuer's fiscal year end.[97] For some conduit entities, annual information may not be sufficient and investors may need more frequent periodic financial information. Under guidelines developed by the National Council of State Housing Agencies, for example, current information on loan portfolio status is compiled and disseminated to information repositories on a quarterly basis.[98] Similar ongoing disclosure on a periodic basis appears appropriate for analogous conduit municipal financings such as structured student loan programs, housing and health care financings.

2. Event Disclosure

In addition to periodic information, to assure that participants in the secondary market base their investment decisions on current information, commentators have called for timely disclosure of events that materially reflect on the creditworthiness of municipal securities issuers and obligors and the terms of their securities. There is a general consensus among participants in the municipal securities market that investors need information about the following events, among others, where material:[99]

a. Principal and interest payment delinquencies
b. Nonpayment-related defaults
c. Unscheduled draws on reserves
d. Unscheduled draws on credit enhancements
e. Substitution of credit or liquidity providers, or their failure to perform
f. Adverse tax opinions or events affecting the tax-exempt status of the security
g. Modifications to rights of security holders
h. Bond calls
i. Defeasances
j. Matters affecting collateral
k. Rating changes

3. Dissemination

As discussed above, the municipal market today lacks an effective mechanism for dissemination of material information to investors and the marketplace. To be effective in minimizing the issuer's risk under the antifraud provisions, the annual financial information and event disclosure should be disseminated in a manner reasonably designed to inform the holders of the issuer's securities and the market for those securities.

Trustees can serve as cost effective disseminators of information to the market due to the capacity and duties of trustees under the terms of the indentures, which positions them to have knowledge of the events requiring disclosure, and the ability and authority to communicate with bondholders.[100] The Commission encourages the inclusion of provisions in trust indentures that authorize trustees to transmit information to the market, particularly in structured financings where the issuer's obligations generally are delegated to various participants. Trustees also may provide a service to other small issuers, by enabling them to notify the market in a timely manner and at a lower cost.

The common denominator for current proposals to improve secondary market disclosure for municipal securities is the establishment and designation of one or more information repositories to serve as a collection and access point for annual and current information.[101] Such repositories would serve as predetermined sources for information concerning a particular issuer, allowing participants to verify that they have the latest available information concerning the issuer before recommending, purchasing, or bidding for a security. The repositories would supplement, not substitute for, the existing access bondholders may have to issuers to obtain current information.[102]

In the Companion Release, the Commission is proposing an amendment to Rule 15c2–12 to prohibit, as suggested by the Joint Statement, underwriting of a municipal securities issue unless the issuer of the municipal security has covenanted to provide annual and ongoing disclosure to a repository.

V. Interpretive Guidance With Respect to Obligations of Municipal Securities Dealers

In the Proposing and Adopting Releases for Rule 15c2–12, the

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[97] See Section III.C.3.d. above.

[98] State Housing Guidelines.

[99] In 1990, the American Bankers Association Corporate Trust Committee drafted a proposal identifying 16 factors that it believed were important for issuers to disclose to bondholders and the marketplace. American Bankers Association Corporate Trust Committee, *Proposed Disclosure Guidelines for Corporate Trustees* (ABA Draft for Discussion Purposes) (June 12, 1990) ("ABA 1990 Guidelines"). As published in final form in September of 1991 ("ABA 1991 Guidelines"), the Guidelines contained a nonexclusive list of five types of events that could be disclosed by notice to a repository. Numerous market participants have referenced the ABA draft proposal, or variations of that proposal, as a starting point for identifying straightforward, nonjudgmental, categories of events that call for prompt disclosure. An addendum to the Joint Statement provided four examples of "significant information" that the participants considered appropriate for disclosure. The nonexclusive examples were (1) nontechnical defaults, (2) draws from a debt service reserve fund, (3) failure to make a regularly scheduled payment, and (4) any draws on any credit enhancement. Joint Statement, Addendum. The list set forth above is drawn from these proposals.

[100] See ABA 1991 Guidelines at 3.

[101] Consistent with the recent recommendation of the Joint Statement, the GFOA Guidelines call for lodging secondary market disclosure with a repository, as did the ABA guidelines published in 1991. GFOA Guidelines, Procedural Statement No. 8; ABA 1991 Guidelines at 3.

[102] The American Bankers Association Corporate Trust Committee and the National Association of Bond Lawyers, as well as the Joint Statement, have expressed concern that securities depositories and their participants do not retransmit notices they receive from trustees and issuers to the beneficial owners of the issuer's securities. The ABA Corporate Trust Committee sought to address the problem by calling for simultaneous dissemination of the information to the marketplace through an information repository. The National Association of Bond Lawyers has suggested that the Commission promulgate a rule mandating that all depositories and their direct and indirect participants promptly retransmit notices received from the issuer or indenture trustee. While the establishment of information repositories may address the problem to some extent, the Commission staff intends to work with the relevant organizations to assure that steps are taken to provide for consistent retransmission of the information.

Commission set forth its interpretation of the obligation of municipal underwriters under the antifraud provisions of the federal securities laws. The interpretation discussed the duty of underwriters to the investing public to have a reasonable basis for recommending any municipal securities, and their responsibility, in fulfilling that obligation, to review in a professional manner the accuracy of statements made in connection with the offering. The interpretation was set out in the Proposing Release, and modified slightly in the Adopting Release. The Commission reaffirms its Interpretation with respect to underwriters' responsibilities under the antifraud provisions of the federal securities laws.[103]

Furthermore, the Commission believes that it is also appropriate to emphasize the responsibilities of brokers and dealers in trading municipal securities in the secondary market. The Commission historically has taken the position that a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation.[104] A dealer, unlike an underwriter, ordinarily is not obligated to contact the issuer to verify information. A dealer must, however, have a reasonable basis for its recommendation.[105] If, based on publicly available information, a dealer discovers any factors that indicate the disclosure is inaccurate or incomplete, or signal the need for further inquiry, a municipal securities dealer may need to obtain additional information, or seek to verify existing information.[106]

One of the rules proposed simultaneously with the issuance of this release would require a broker, dealer or municipal securities dealer to review current information provided by the issuer prior to recommending a transaction in a municipal security. In the absence of such current information, the dealer could not recommend a transaction in the issuer's securities. That rule, which would be applicable to municipal securities issued subsequent to the effective date of the proposed rule, would reinforce the obligations of dealers under the antifraud provisions of the federal securities laws to have a reasonable basis for recommendations of outstanding municipal securities.

The Joint Statement also called for a strengthening of the suitability rules to require disclosure of ratings and whether the issuer has committed to provide annual financial reports. Today, the Commission is proposing amendments to its confirmation rules to require disclosure of the absence of a rating in confirmations. The MSRB has indicated it has under consideration a plan requiring municipal securities dealers to disclose to their customers the importance of secondary market information and whether the issuer has agreed to voluntarily provide such disclosures.[107] The Commission will defer to the MSRB's reexamination of its suitability rules in implementing those aspects of the Joint Statement.

VI. Request for Comments

The Commission intends to continue to monitor developments in municipal securities disclosure practices. Comment is requested regarding the disclosure items discussed in this release, and in particular, items warranting event disclosure. Comment also is requested regarding additional action that should be taken with respect to disclosure in the municipal securities market by the Commission, the MSRB, or Congress.

List of Subjects in 17 CFR Parts 211, 231 and 241

Securities.

Amendment of the Code of Federal Regulations

For the reasons set out in the preamble, title 17 chapter II of the Code of Federal Regulations is amended as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

1. Part 211, Subpart A, is amended by adding Release No. FR–42 and the release date of March 9, 1994, to the list of interpretive releases.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 231 is amended by adding Release No. 33–7049 and the release date of March 9, 1994, to the list of interpretive releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 241 is amended by adding Release No. 34–33741 and the release date of March 9, 1994, to the list of interpretive releases.

By the Commission.

Dated: March 9, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5922 Filed 3–16–94; 8:45 am]

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[103] In light of the underwriter's obligation, as discussed in the prior releases, to review the official statement and to have a reasonable basis for its belief in the accuracy and completeness of the official statement's key representations, disclaimers by underwriters of responsibility for the information provided by the issuer or other parties, without further clarification regarding the underwriter's belief as to accuracy, and the basis therefor, are misleading and should not be included in official statements.

[104] See *Donald T. Sheldon*, Securities Exchange Act Release No. 31475 (Nov. 18, 1992); *Elizabeth Bamberg*, Securities Exchange Act Release No. 27672 (Feb. 5, 1990); *Feeney* v. *SEC*, 564 F.2d 260 (8th Cir. 1977); *Nassar & Co.*, Securities Exchange Act Release No. 15347 (Nov. 22, 1978). *See also* Proposing Release, 53 FR at 37787, n.72–73.

[105] *Richard J. Buck & Co.*, 43 SEC 998 (1968), *aff'd sub nom. Hanley* v. *SEC*, 416 F.2d 589 (2d Cir. 1969). *See also* The Obligations of Underwriters, Brokers and Dealers in Distributing and Trading Securities, Particularly of New High Risk Ventures, Securities Act Release No. 5275 (Aug. 9, 1972) 37 FR 16011, 16012–13; *In Re Blumenfeld*. Securities Exchange Act Release No. 16437 (Dec. 19, 1979) (broker-dealer charged unfair mark-ups and recommended transactions in municipal securities without a reasonable basis); *J.A. Winston & Co., Inc.*, 42 S.E.C. 62 (1964) (broker-dealer recommended transactions without a reasonable basis, and made representations that were false and misleading).

[106] *See Merrill, Lynch, Pierce, Fenner & Smith*, Securities Exchange Act Release No. 14149 (Nov. 9, 1977) ("A recommendation by a broker-dealer is perceived by a customer as (and in fact it should be) the product of an objective analysis [which] can only be achieved when the scope of an investigation is extended beyond the company's management); *John R. Brick*, Securities Exchange Act Release No. 11763 (Oct. 24, 1975) ("the professional...is not an issuer. But he is under a duty to investigate and see that his recommendations have a reasonable basis"); *M.G. Davis & Co.*, 44 SEC 153, 157–58 (1970) (broker-dealer registration revoked because "representations and predictions" made and market letter relied on by registrant "were without reasonable basis," and "registrant could not reasonably accept all of the statements in the [market letter] without further investigation"), *aff'd sub nom. Levine* v. *SEC*, 436 F.2d 88 (2d Cir. 1971). *See also Merrill, Lynch, Pierce, Fenner & Smith*, Securities Exchange Act Release No. 14149 (Nov. 9, 1977) (noting that if a broker-dealer lacks sufficient information to make a recommendation, the lack of information is material and should be disclosed).

[107] *See supra* n. 62.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

Release No. 34–33742; File No. S7–5–94]

RIN 3235–AG13

Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is publishing for comment proposed amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 ("Exchange Act"), which would make it unlawful for a broker, dealer, or municipal securities dealer to act as an underwriter of an issue of municipal securities unless the broker, dealer, or municipal securities dealer has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to a nationally recognized municipal securities information repository; or to recommend the purchase or sale of a municipal security, without having reviewed the information the issuer of the municipal security has undertaken to provide. The purpose of the proposed amendments is to further deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.

DATES: Comments must be received on or before July 15, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–5–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Esq., Chief Counsel, or Janet W. Russell-Hunter, Esq., Attorney, Office of Chief Counsel (concerning the rule and release generally), (202) 504–2418, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 7–10, 450 Fifth Street, NW., Washington, DC 20549; and Amy Meltzer Starr, Esq., Attorney, Division of Corporation Finance (concerning the definitions of "final official statement" and "significant obligor," and concerning annual financial information and material events generally), (202) 272–3654, Division of Corporation Finance, Securities and Exchange Commission, Mail Stop 7–6, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a recent report to Congress,[1] the staff of the Division of Market Regulation ("Staff") reviewed many aspects of the municipal securities market, including whether opportunities exist for overreaching and investor deception. The Staff found that investors need sufficient current information about issuers and significant obligors to better protect themselves from fraud and manipulation, to better evaluate offering prices, to decide which municipal securities to buy, and to decide when to sell.[2] Moreover, the Staff found that the growing participation of individuals as both direct and indirect purchasers of municipal securities underscores the need for sound recommendations by brokers, dealers, and municipal securities dealers.[3]

Based on these findings, the Staff recommended that the Commission use its interpretive authority to provide guidance regarding the disclosure required by the antifraud provisions of the federal securities laws.[4] Today, in a companion release,[5] the Commission is interpreting the disclosure obligations of municipal securities issuers. The Companion Release also addresses the obligations under the antifraud provisions of brokers, dealers, and municipal securities dealers who underwrite and sell municipal securities, and the information dissemination requirements of Rule 15c2–12.[6]

In addition, the Staff recommended in the *Staff Report* that Rule 15c2–12 be amended, or that similar rules be adopted, to prohibit municipal securities dealers from recommending outstanding municipal securities unless the issuer has committed to make available ongoing information regarding its financial condition.[7] This release proposes to implement the Staff's recommendation.

Section 15(c)(2) of the Exchange Act prohibits municipal securities dealers from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any municipal security by means of a "fraudulent, deceptive, or manipulative act or practice."[8] This section specifically authorizes the Commission to promulgate rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices. Pursuant to this authority, the Commission adopted Rule 15c2–12 in 1989 for the purpose of preventing fraud by enhancing the quality, timing, and

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[1] Securities and Exchange Commission, Division of Market Regulation, *Staff Report on the Municipal Securities Market* (Sept. 1993) ("*Staff Report*"). The *Staff Report* was prepared at the request of the Hon. John D. Dingell, Chairman, Committee on Energy and Commerce, United States House of Representatives, and the Hon. Edward Markey, Chairman, Subcommittee on Telecommunications and Finance, United States House of Representatives. Among the topics discussed in the *Staff Report* were political contributions, sales practices, transparency, audit trails, issuer disclosure, and the regulatory structure for municipal securities. *See* Letter from Hon. John D. Dingell, Chairman, Committee on Energy and Commerce, and Hon. Edward Markey, Chairman, Subcommittee on Telecommunications and Finance to: Mary L. Schapiro, Acting Chairman, SEC; Christopher A. Taylor, Executive Director, Municipal Securities Rulemaking Board ("MSRB"); and Joseph R. Hardiman, President and Chief Executive Officer, National Association of Securities Dealers, Inc. ("NASD") (May 24, 1993).

[2] *Staff Report*, *supra* note 1 at 38.

[3] *Id.* at 28.

[4] *Id.* at 40. Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Exchange Act and Rule 10b–5 promulgated thereunder, apply to "persons," including issuers of municipal securities.

[5] Securities Act Release No. 7049, Exchange Act Release No. 33741, FR–42 (March 9, 1994) ("Companion Release").

[6] 17 CFR 240.15c2–12. *See* Securities Exchange Act Release No. 26100 (Sept. 22, 1988), 53 FR 37778 ("Proposing Release"); Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 ("Adopting Release"). Rule 15c2–12 requires an underwriter of municipal securities (1) to obtain and review an issuer's official statement that, except for certain information, is "deemed final" by an issuer, prior to making a purchase, offer, or sale of municipal securities; (2) in negotiated sales, to provide the issuer's most recent preliminary official statement (if one exists) to potential customers; (3) to deliver to customers, upon request, copies of the final official statement for a specified period of time; and (4) to contract to receive, within a specified time, sufficient copies of the issuer's final official statement to comply with the rule's delivery requirement, and the requirements of MSRB rules. Rule 15c2–12 also contains specific exemptions for three types of municipal securities offerings.

[7] *Staff Report*, *supra* note 1 at 40. *See also* Testimony of Arthur Levitt, Chairman, SEC, Concerning the Municipal Securities Market, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives (Sept. 9, 1993) at 5–7; Remarks of Arthur Levitt, Chairman, SEC, The Bond Buyer Ethics in Public Finance Conference (Jan. 24, 1994) at 6; Remarks of Richard Y. Roberts, Commissioner, SEC, "Alternatives for Improving Municipal Secondary Market Disclosure," The Southern Municipal Finance Society 13th Annual Fall Conference (Sept. 15, 1993) at 9–12.

[8] Exchange Act Section 15(c)(2), 15 U.S.C. 78*o*(c)(2).

dissemination of disclosure in the municipal securities market.[9]

The Commission proposes to amend Rule 15c2–12 to further deter fraud and manipulation in the primary and secondary municipal securities markets by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.[10] For many years, the courts and the Commission have emphasized that, under the antifraud provisions, a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for making the recommendation.[11] In the Proposing Release and the Adopting Release, the Commission discussed broker-dealers' obligation to have a reasonable belief in the accuracy of statements made when underwriting securities.[12] When recommendations in the secondary market are made, they must be based on information that is up-to-date and accessible.

The proposed amendments to Rule 15c2–12 will assist brokers, dealers, and municipal securities dealers in satisfying their obligations under the antifraud provisions of the federal securities laws, and specifically under section 15(c)(2), by conditioning the underwriting and recommendation of municipal securities on the availability of current issuer information. By providing an efficient and timely means of access to disclosure, the proposed amendments will ensure that information will be available in the future regarding underwritten securities. As a result, brokers, dealers, and municipal securities dealers will be better able to recommend municipal securities in the secondary market based on current issuer information. Fraud and manipulation in both the primary and secondary markets for municipal securities thus will be deterred. Furthermore, the availability of secondary market disclosure to all municipal securities market participants will assist investors in protecting themselves from misrepresentation or other fraudulent activities by brokers, dealers, and municipal securities dealers.

For these reasons, the Commission proposes to amend Rule 15c2–12 to prohibit a broker, dealer, or municipal securities dealer ("Participating Underwriter")[13] from purchasing or selling municipal securities in connection with a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more ("Offering")[14] unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to a nationally recognized municipal securities information repository ("NRMSIR"). The prohibition would apply to underwriters that have committed contractually to act as an underwriter in an Offering on or after the effective date of the rule amendment. This proposal responds, in part, to a suggestion in the *Joint Statement on Improvements in Municipal Securities Market Disclosure*,[15] in which a broad spectrum of municipal securities market participants supported wider dissemination of issuer information and improved mechanisms for such dissemination, to assure that securities professionals have a sufficient factual basis on which to recommend secondary market transactions.

The Commission is proposing further to amend Rule 15c2–12 to require brokers, dealers, and municipal securities dealers, prior to recommending the purchase or sale of a municipal security, to review the information the issuer of the municipal security has undertaken to provide. This amendment would apply to municipal securities issued on or after the effective date of the proposed amendment discussed in the preceding paragraph.

Finally, the proposed amendments would define the term "significant obligor," and amend the definition of the term "final official statement" for purposes of Rule 15c2–12.

II. Description of the Proposed Amendments to Rule 15c2–12

A. Underwriting Requirement

One amendment proposed today would add paragraph (b)(5) to Rule 15c2–12. This paragraph would prohibit a Participating Underwriter from purchasing or selling municipal securities in connection with an Offering, unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of holders of such municipal securities to provide certain information to a NRMSIR. In using the terms "purchase" or "sale," the proposed amendment contemplates that, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriters, the issuer will have undertaken, in a written contract or agreement for the benefit of holders of the municipal securities, to provide information to a NRMSIR.[16]

With the exception of general obligation bonds, most offerings include a trust indenture which sets forth the undertakings between the issuer and the holders of municipal securities, and thus delineates the bondholders' rights. If there is no trust indenture, as in a general obligation bond offering, a bond resolution, ordinance, or written agreement or contract sets out the undertakings by the issuer for the benefit of the holders of the municipal securities. In order to satisfy its

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[9] *See* Adopting Release, *supra* note 6 at 54 FR 28800.

[10] Under the antifraud provisions of the federal securities laws, issuer disclosure not only must be accurate in all material respects, but also must not omit information necessary to make the statements made, in light of the circumstances, not misleading. The proposed amendment will assist issuers in satisfying their obligations under the antifraud provisions by creating a mechanism for the dissemination of primary and secondary market disclosure. *See* Companion Release, *supra* note 5 at Section III.A.

[11] *See e.g. Feeney v. SEC*, 564 F.2d 260 (8th Cir. 1977); *Cortlandt Investing Corporation*, 44 SEC 45 (1969); *Crow, Bourman & Chotkin, Inc.*, 42 SEC 938 (1966); *Shearson, Hammill & Co.*, 42 SEC 811 (1965).

[12] *See* Proposing Release, *supra* note 6 at 53 FR 37787; Adopting Release, *supra* note 6 at 54 FR 28811. *See also See Sanders v. John Nuveen & Co.*, 524 F.2d 1064, 1069–70 (7th Cir. 1973) (noting underwriter's heightened obligation when it has an opportunity to require disclosure from the issuer, and when there are special selling pressures involved in underwriting a security), *vacated and remanded on other grounds*, 425 U.S. 929 (1976), *on remand*, 554 F.2d 790 (7th Cir. 1977), *reh'g denied*, 619 F.2d 1222 (7th Cir. 1980), *cert. denied* 450 U.S. 1005 (1981); *Donaldson, Lufkin & Jenrette Securities Corp.*, Securities Exchange Act Release No. 31207 (Sept. 22, 1992); *Hamilton Grant & Co.*, Securities Exchange Act Release No. 24679 (July 7, 1987); *Walston & Co.*, Securities Exchange Act Release No. 8165 (Sept. 22, 1967) (stating that it is incumbent on dealers participating in offerings, as well as on dealers recommending municipal bonds, to make a diligent inquiry as to material facts relating to the issuer and bearing on the issuer's ability to service the bonds).

[13] *See* Rule 15c2–12(a).

[14] The proposed amendments also include an exemption for small and infrequent issuers. *See* Section II.D., *infra*.

[15] *Joint Statement on Improvements in Municipal Securities Market Disclosure* (Dec. 20, 1993) ("*Joint Statement*") at 2–3. The Joint Statement was issued by twelve groups representing participants in all aspects of the municipal securities market. The groups included were the American Bankers Association's Corporate Trust Committee; the American Public Power Association; the Association of Local Housing Finance Agencies; the Council of Infrastructure Financing Authorities; the Government Finance Officers Association; the National Association of Bond Lawyers; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Federation of Municipal Analysts; and the Public Securities Association.

[16] A Participating Underwriter would need to receive assurances from the issuer that such undertakings would be made before agreeing to act as an underwriter.

obligation under the rule, a Participating Underwriter would need to look to these documents for undertakings by the issuer to supply secondary market disclosure to a NRMSIR. A Participating Underwriter will have satisfied its obligation under proposed paragraph (b)(5), so long as it can conclude that all of the appropriate undertakings have been made. While the issuer's duty will be to its bondholders, all participants in the municipal securities market will benefit from having access to this information.

Comment is requested on the use of a written agreement or contract for the provision of secondary market information by issuers for the benefit of holders of municipal securities, particularly in light of the provisions of proposed paragraph (c) prohibiting the recommendation by brokers, dealers, and municipal securities dealers of municipal securities when issuer information is unavailable. Comments should address specifically the consequences of a failure by an issuer to comply with its secondary market disclosure undertakings after the initial issuance of municipal securities. Comment is requested on whether the use of the issuer's undertakings is a necessary or appropriate approach to implementing procedures for providing information to the municipal securities market. Comment also is requested on whether, as an alternative to written undertakings, a statement in the final official statement of the issuer of municipal securities that it will provide secondary market disclosure would be sufficient. In addition, commenters are requested to address whether the use of written undertakings provides sufficient flexibility for issuers that, in the future, wish to change the type, timing, or presentation of the information, or whether some alternative mechanism should be used.

1. Annual Information

Proposed paragraph (b)(5)(i)(A) would prohibit Participating Underwriters from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken to provide to a NRMSIR, at least annually, current financial information concerning the issuer of the municipal security and any significant obligors, including annual audited financial statements and pertinent operating information.

Current annual financial information is an important source of updated information for the market. The format for presenting such information is not specified in the proposed amendment, and may be accomplished through any disclosure document, whatever its form or principal purpose, that includes annual audited financial statements and pertinent operating information. The proposed amendment contemplates that sequential final official statements prepared by frequent issuers of municipal securities may meet the standards of the rule. Similarly, the audited financial statements should fairly present the current financial condition, the results of operations, and cash flows of the municipal issuer and any significant obligor. Proposed paragraph (b)(5) also does not dictate the content of the annual financial information, other than the audited financial statements. Rather, it provides discretion to offering participants.

The Commission recognizes that there is great diversity in the municipal marketplace, both in terms of the types of issuers and the types of issues of municipal securities. The proposed amendment is, therefore, intended to permit issuers the flexibility to address the needs of the market by specifying in the written agreement or contract the particular financial and operating information that is to be provided on an annual basis, in addition to the annual audited financial statements. The Commission anticipates that issuers and offering participants will look to various voluntary guidelines, as well as the guidance provided in the Companion Release, in establishing an appropriate level of disclosure for each municipal securities issue. Of course, additional information, such as unaudited quarterly information, also could be specified.

Under the proposed amendment, in paragraph (b)(5)(ii), the issuer of the municipal security also would be required to specify what accounting principles will be used in the preparation of the audited financial statements, the time within which the annual information for each year will be available, and the specific operating and financial information that will be provided on an annual basis, in addition to the audited financial statements. The covenant would not limit the issuer in its ability to supplement the specific information, where necessary or appropriate.

Proposed paragraph (b)(5)(ii) does not specify the timing of availability of the annual financial information in each year. Rather, any written contract or agreement would be required to specify the annual time frame in which the current financial information covering the previous fiscal year will be provided by the issuer of the municipal security and any significant obligors. As noted above, this permits issuers some flexibility in disseminating this information, and also allows investors and the marketplace to know when such information will be available.

Comment is requested on whether the rule should specify the minimum content of the information to be provided on an annual basis. Comment is requested on whether audited financial statements should be required, and whether they should be required to be audited using GAAS. Comment also is requested on whether the financial statements should be required to conform to generally accepted accounting principles ("GAAP") or should include discussions of material deviations from GAAP if prepared on some other basis. Further, comment is requested on whether the rule should specify the time frame, such as six months or nine months after the fiscal year end, in which the annual financial information should be made available in each year.

2. Material Events

Proposed paragraph (b)(5)(i)(B) requires that Participating Underwriters assure themselves that issuers have undertaken to provide, in a timely manner, notice of any of the following events, if material:

(*1*) Principal and interest payment delinquencies;

(*2*) Non-payment related defaults;

(*3*) Unscheduled draws on debt service reserves reflecting financial difficulties;

(*4*) Unscheduled draws on credit enhancements reflecting financial difficulties;

(*5*) Substitution of credit or liquidity providers, or their failure to perform;

(*6*) Adverse tax opinions or events affecting the tax-exempt status of the security;

(*7*) Modifications to rights of security holders;

(*8*) Bond calls;

(*9*) Defeasances;

(*10*) Matters affecting collateral; and

(*11*) Rating changes.

This portion of the proposed amendment, like that addressing annual financial information, is intended to provide guidance to issuers and other participants in the municipal securities market regarding the dissemination of notices of material events. As discussed in the Companion Release,[17] this list consists of recognized material events that reflect on the creditworthiness of the issuer of the municipal security or

[17] Companion Release, *supra* note 5, at Section IV.B.2.

any significant obligor, as well as on the terms of the securities they issue. The issuer must determine whether information needs to be disseminated about a listed event in any particular situation, and if so, when the information dissemination should occur in order to be "timely." For example, an issuer would be free to determine that a *de minimis* draw on a reserve fund by an issuer financing agency resulting from a delay by the obligor in transmitting a payment, where the draw is replaced immediately and is not the result of the obligor's financial difficulties, is not a material event requiring notice to the market.

Comment is requested as to whether the listed items of material events should be expanded. Comment also is requested on whether timing, for example, within a certain number of days, for the dissemination of notice of these events should be specified as part of the undertaking.

B. Recommendations Without Specified Information

As proposed, a new paragraph (c) would be added to the rule, which would prohibit any broker, dealer, or municipal securities dealer from recommending the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has reviewed the information the issuer of such municipal security has undertaken to provide pursuant to paragraph (b)(5).

As noted above, broker-dealers imply by recommending securities that they have a reasonable basis for making such recommendations. In the Commission's view, most situations in which a broker, dealer, or municipal securities dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer.

The proposed amendment neither specifies the form in which information must be reviewed, nor specifies which documents must be obtained.[18] Rather, it requires brokers, dealers, and municipal securities dealers to review the information that the issuer of the municipal security has agreed to provide. The proposed amendment is intended to allow this information to be obtained and reviewed through any means of dissemination used by participants in the municipal securities market.[19] While the information may be available from documents placed in a NRMSIR, this may not be the only source of information. Thus, to satisfy the requirements of the rule, brokers, dealers, and municipal securities dealers may obtain this information directly from the issuer, from professionals such as attorneys, accountants, or other municipal securities dealers, or from any other reliable source. If, in reviewing this information, they discover any factors that suggest that disclosure is inaccurate or incomplete, or that signal the need for additional investigation, brokers, dealers, and municipal securities dealers may need to obtain additional information, or seek to verify existing information.[20] If, however, the rating is known and information placed with a NRMSIR has been reviewed and raises no questions, a broker, dealer, or municipal securities dealer would need to look no further for information about the security recommended. Furthermore, a broker, dealer, or municipal securities dealer would not be prohibited from recommending the purchase or sale of a municipal security solely because of the existence of material events of which, after its review, it has no knowledge. This could occur if an issuer failed to disclose the occurrence of a material event to a NRMSIR or to disseminate notice of such an occurrence in any other manner. Under paragraph (c), if the specified information is not available, no recommendation may be made.

Comment is requested on the provisions of proposed paragraph (c). Specifically, comment is requested on the application of the term "recommend," and whether the requirement to review information is burdensome, or requires further clarification.

In view of the importance of ensuring the secondary market liquidity of municipal issues, comment also is requested on whether market participants believe that the proposed amendments would have a substantial or long-lasting effect on market liquidity. Questions have been raised about whether municipal securities dealers will be willing to effect secondary market transactions in a broad range of municipal securities in light of the specificity with which the requirement of paragraph (c) is articulated. The Commission is of the view that once the proposed amendments are in effect, and dissemination systems are operating, liquidity will not be affected, and that municipal securities dealers will be willing and able to purchase and sell as broad a range of securities as before. Commenters should consider this analysis and suggest any factors that may have effects on liquidity, and what operational changes or repository arrangements, or changes to the proposed amendment to the rule, would reduce these effects.

C. Definitions

1. Final Official Statement

Rule 15c2–12(e)(3) presently defines the term "final official statement" as a document or set of documents prepared by the issuer or its representatives setting forth information concerning the issuer and the securities to be issued that is complete as of the date the document is delivered to the Participating Underwriter. The definition does not prescribe the specific information required to be included in the documents. In order to ensure that the purposes of Rule 15c2–12 are met, and in light of the proposed amendment obligating Participating Underwriters to assure that issuers have undertaken to provide to a repository issuer-identified minimum annual financial information, as well as notices of material events, the Commission is proposing to amend the definition of final official statement to include an information requirement. The definition of final official statement also governs the items of information to be included in the near final official statement, subject to availability considerations.[21]

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[18] *C.f.* Rule 15c2–11, 17 CFR 270.15c2–11. Rule 15c2–11 requires that brokers and dealers, prior to entering quotations for securities in a "quotation medium", have in their records certain specific information, and, based on a review of this information, have a reasonable basis under the circumstances for believing that the information is accurate in all material respects, and that the sources of the information are reliable. Submissions of quotations respecting municipal securities are exempt from the application of Rule 15c2–11. Rule 15c2–11(f)(4).

[19] Therefore, brokers, dealers, and municipal securities dealers could review information received through electronic dissemination, in response to telephone inquiries, facsimile, by mail, or by messenger service, so long as the information is complete.

[20] *See M.G. Davis & Co.*, 44 SEC 153, 157–58 (1970)(broker-dealer registration revoked because "representations and predictions" made and, market letter relied on by registrant "were without reasonable basis," and "registrant could not reasonably accept all of the statements in the [market letter] without further investigation"), *aff'd sub nom. Levine v. SEC*, 436 F.2d 88 (2d Cir. 1971); *Merrill, Lynch, Pierce, Fenner & Smith*, Securities Exchange Act Release No. 14149 (Nov. 9, 1977) (noting that if a broker-dealer lacks sufficient information to make a recommendation, the lack of information is material and should be disclosed). *See also* Companion Release, *supra* note 5 at Section V (discussing the obligations of brokers, dealers, and municipal securities dealers to investigate information in order to have a reasonable basis for making a recommendation).

[21] *See Public Securities Association* (Aug. 24, 1992) (interpretation regarding the information to be contained in near final official statement obtained and reviewed by underwriters pursuant to Rule 15c2–12(b)(1)).

Having a standard with which to compare the contents of near final official statements should assist Participating Underwriters in satisfying their obligation to have a reasonable basis on which to recommend securities.[22]

The proposed amendment would define the final official statement to include information concerning the terms of the proposed issue of securities, and financial and operating information concerning the issuer that is adequate to provide a fair presentation of the issuer's current financial condition and results of operations and cash flows, including audited financial statements. Financial and operating information also would be required for any "significant obligor" with respect to the municipal security. The term "significant obligor" is defined in the proposed amendment, and is discussed below. As discussed in the Companion Release, reliable financial information, prepared on a consistent basis, that fairly presents the issuer's and any significant obligor's financial position, is an important component of a disclosure scheme designed to prevent fraud.

Comment is requested on whether an amendment to the definition of final official statement is necessary. If commenters consider amendment necessary, comment is requested on whether audited financial statements should be required, whether audited financial statements should be required to be audited using GAAS, the number of years of audited financial statements that should be included, if any, and if audited financial statements are included, whether unaudited financial statements covering interim periods also should be included. Comment also is requested on whether the definition should be amended to require that the financial statements conform to GAAP, or should include discussions of material deviations from GAAP if prepared on some other basis.

The final official statement can be composed of a set of documents. Comment is requested on whether a seasoned issuer should be permitted to incorporate previously prepared documents by reference into the final official statement and, if incorporation by reference is permitted, what limitations or requirements should be imposed. Comment is requested on whether seasoned issuers should be required to provide documents incorporated by reference upon request and at no charge, and on what definition should be used for "seasoned issuers." For example, seasoned issuers could be defined as repeat issuers having in excess of a specified dollar amount of outstanding securities.

2. Significant Obligors

Proposed paragraph (b)(5) of the amendment would require financial and operating information on "significant obligors" of an issuer of a municipal security to be provided in the final official statement and in annual financial information. The proposed amendments, in paragraph (f)(9), also would define the term "significant obligor."

An obligor is any person who, directly or indirectly, under a lease, loan, sale, or other agreement or arrangement, is obligated to make payments to the issuer, which cash payments are the source of the cash flow servicing the obligations on municipal securities. The term "obligor" is not limited to issuers of separate securities under Rule 3b–5 under the Exchange Act and Rule 131 under the Securities Act.[23] Under the proposed definition, an obligor would be viewed as "significant" if it is the source of 20 percent or more of the cash flow servicing the obligations on the municipal securities.

This definition is designed to make available to the municipal securities market, at the time of issuance and on an annual basis, information on persons who ultimately are responsible for the cash flow servicing the municipal securities. The proposed definition recognizes that, with portfolio and concentration risk diversification, the "significant obligor" of an issuer of a municipal security may not be constant, but may change from year to year.

Comment is requested on whether 20 percent is an appropriate threshold level of cash flow to require disclosure concerning a significant obligor, or whether a different threshold, such as 10, 15, or 30 percent, should be used. Comment also is requested on whether this standard should differ for a final official statement and annual financial information. Finally, comment is requested as to whether the issuer's obligation to provide information concerning significant obligors should be conditioned on a minimum threshold, for example, payment obligations in excess of $1,000,000, or some other dollar threshold.

D. Exemptions

Consistent with other provisions of Rule 15c2–12, the proposed amendments are limited in application to primary offerings of municipal securities with an aggregate principal amount of $1,000,000 or more.

The proposed amendments include a new exemption in paragraph (d)(2), applicable to paragraph (b)(5). This new exemption would provide that, in addition to the $1,000,000 threshold applicable to Rule 15c2–12 generally, Offerings would be exempt from the operation of paragraph (b)(5) if, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriter, the issuer: (a) will have less than $10,000,000 in aggregate amount of municipal securities outstanding, including the offered securities; and (b) the issuer will have issued less than $3,000,000 in aggregate amount of municipal securities in the most recent 48 months preceding the Offering. This exemption is designed to exclude from the application of paragraph (b)(5) small issuers that do not frequently issue municipal securities. Comment is requested on the use of these thresholds. Comment also is requested on whether a different or additional threshold should be applicable to paragraph (b)(5). Such a threshold could be based on the number of holders of municipal securities, or on the number of holders falling below a certain level at the end of a fiscal year, for example, 300 or 500 debt holders. Comment is requested on whether issuers of conduit securities that are non-governmental private activity bonds should be excepted from this exemption, or if lower or different thresholds should be used for such issuers. Comment also is requested on whether the exemption in proposed paragraph (d)(2) is appropriate for conduit financings, in light of the fact that, in many instances, issuing authorities are created for the sole purpose of issuing bonds to finance a particular facility.

The proposed amendments also include a new exemption in paragraph (d)(3), exempting from the application of paragraph (c) of the rule a primary offering of municipal securities (1) not sold in an Offering to which paragraph (b)(5) applied, or (2) sold in an Offering exempt under paragraph (d)(1) or paragraph (d)(2). The purpose of this exemption is to permit the recommendation in the secondary market of securities that were not subject to paragraph (b)(5), either

[22] For a discussion of the delivery requirement of a near final official statement pursuant to Rule 15c2–12(b)(1), *see* Companion Release, *supra* note 5, at Section III.E.6.

[23] An obligor is not only an industrial or commercial enterprise, but may include governmental and nonprofit entities as well. *See* the definition of issuer in Rule 15c2–12(e)(4), 17 CFR 240.15c2–12(e)(4); Rule 3b–5, 17 CFR 240.3b–5, and Rule 131, 17 CFR 230.131, under the Securities Act.

because they were sold in a primary offering of municipal securities with an aggregate principal amount of less than $1,000,000, or because they came within the existing exemptions under newly designated paragraph (d)(1) for limited placements, short-term securities, and securities with demand features, or within the exemption in new paragraph (d)(2) for small, infrequent issuers. Comment is requested on this exemption. Specifically, comment is requested on whether paragraph (c) of the proposed amendments should be made applicable to all outstanding issues of municipal securities. The existing transactional exemption in newly designated paragraph (d) would apply to the amendments.

E. Transitional Provision

Newly designated paragraph (g) of the rule would contain a transitional provision for the proposed amendments. The provisions of paragraph (b)(5) would apply to a Participating Underwriter that had contractually committed to act as an underwriter in an Offering on or after the effective date of the rule. Comment is requested on whether this transitional provision is appropriate, and on whether the effective date of the proposed amendments should be delayed.

III. Nationally Recognized Municipal Securities Information Repositories

While the term "NRMSIR" currently is used in paragraph (b)(4) of Rule 15c2–12, it is not defined in the rule. In proposing the rule, however, the Commission requested comment on the creation of one or more repositories for municipal securities disclosure documents.[24] At that time, the Commission strongly supported the development of one or more central repositories.[25] Of the more than sixty comment letters that the Commission received, forty-five expressed views regarding the concept of repositories. Forty of the forty-five commenters expressed support for some form of a central repository.[26]

NRMSIRs were discussed in the Adopting Release, where the Commission noted that in determining whether a particular entity is a NRMSIR, it would look, among other things, at whether the repository: (1) Is national in scope; (2) maintains current, accurate information about municipal offerings in the form of official statements; (3) has effective retrieval and dissemination systems; (4) places no limits on the issuers from which it will accept official statements or related information; (5) provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and (6) charges reasonable fees.[27] The *Joint Statement* has further refined the concept to suggest the designation of state-based repositories, and the creation of an index, maintained by the MSRB, for market participants to learn of the availability of information provided to the MSRB or to a NRMSIR.[28]

The proposed amendments do not define the term NRMSIR. The Commission requests comment on whether NRMSIR should be defined in the rule, with specific standards established for NRMSIRs. If standards were established, the Commission believes the following standards are appropriate. It requests comment on these standards.

NRMSIRs should maintain current, accurate information about municipal securities, including final official statements, the issuers' annual financial information, and issuers' notices of material events. Moreover, NRMSIRs should have effective systems for the timely collection, indexing, storage, and retrieval of these documents.

NRMSIRs should be capable of national dissemination of final official statements, annual financial information, and notices of material events through electronic dissemination systems, in response to telephone inquiries, and hard copy delivery via facsimile, by mail, and by messenger service. Specific dissemination systems and standards should be delineated in order to emphasize the importance of effective information dissemination. Timely public availability upon receipt of information by a NRMSIR also is important. For example, final official statements and annual financial information could be made available by the next business day after their receipt by a NRMSIR, and notices of material events could be made available within fifteen minutes of their receipt by a NRMSIR. Comment is requested on the provision by NRMSIRs of electronic dissemination of information, and on the suggested timing requirements for availability of documents for dissemination.

Repositories created and operated by states would be required to accept submissions from all issuers within their own states, and would not be permitted to accept documents from issuers in any other state. National dissemination requirements, however, would be applicable to single-state repositories. All other repositories would not be permitted to limit the issuers from which they will accept final official statements, annual financial information, and reports of material events. Comment is requested on whether state-based repositories can serve as an effective means to disseminate information to the market for a nationally traded security, so the issuer of that security can meet its disclosure obligations using a state-based repository. Comment also is requested on whether a significant number of states are willing to make the necessary financial commitment to create a state-based system. NRMSIRs would not be permitted to discriminate on the basis of the requestor in providing documents, and would be required to charge reasonable fees.

Finally, in order to implement the indexing system suggested by the *Joint*

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[24] Proposing Release, *supra* note 6 at 54 FR 37791.

[25] Adopting Release, *supra* note 6 at 54 FR 28807. The Commission recognized the benefits that would accrue from the creation of competing private repositories. *Id.*

In 1989, the MSRB announced its intention to establish and manage a central repository to provide for the collection and dissemination of official statements and refunding documents. Letter from John W. Rowe, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC (June 1, 1989). The MSRB developed its Municipal Securities Information Library ("MSIL") system, which presently collects information and disseminates it electronically to market participants and information vendors. Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194.

In January 1993, the MSRB began operating its Continuing Disclosure Information pilot system ("CDI System"), which is a central repository for voluntarily submitted official continuing disclosure documents relating to outstanding municipal securities issues. Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534. The CDI System operates as part of MSIL, and currently is capable of accepting documents of three or fewer pages in length.

Neither MSIL nor the CDI System is a NRMSIR. In considering the approval of MSRB rule G–36, which requires underwriters to provide the MSRB with copies of final official statements and certain other information prepared by issuers, the Commission noted that the MSRB did not intend to seek NRMSIR status. The Commission noted that if the MSRB sought NRMSIR status, it would consider the competitive implications of such a request. See Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333, 23337 n.26.

[26] *See* Adopting Release, *supra* note 6 at 54 FR 28807.

[27] *See* Adopting Release, *supra* note 6 at 54 FR 28808, n.65.

[28] The *Joint Statement* suggested that in order to be recognized as a NRMSIR, a repository should, among other things: (1) maintain current, accurate information about municipal securities in the form of annual financial reports, operating data, and other current information; (2) have an effective retrieval and dissemination system; (3) place no limits on the issuers from which it will accept information unless it is a single-state repository; (4) provide access to the documents to anyone willing and able to pay the applicable fee; (5) charge reasonable fees; (6) collect information on at least a state-wide basis; and (7) provide for timely notification to an MSRB index of names of issuers about which it is to receive information. *Joint Statement*, *supra* note 15 at Addendum.

Statement, a NRMSIR would be required to provide notice to the MSRB of its designation by an issuer as the repository for the issuer's final official statements, annual financial information, and notices of material events. This would allow the creation of an index by the MSRB for informing the municipal securities market of where an issuer is sending its secondary market disclosure. Comment is requested on the feasibility of expanding this provision to require a NRMSIR to inform the MSRB whenever it receives information from an issuer. Comment also is requested on whether documents should be required to be placed with the MSRB either in addition to or in lieu of a NRMSIR.[29]

The MSRB has expressed concern that permitting issuers to place documents with multiple NRMSIRs may result in repositories receiving information at different times. This raises the issue of when the information becomes "public," and thus when dealers are considered accountable for it.[30] Comment is requested on these issues, and, in particular, on how to assure that NRMSIRs simultaneously receive secondary market disclosure. Comment also is requested on whether any proposal should require that secondary market disclosure is deposited with *all* designated NRMSIRs. In addition, comment is requested on whether the proposal should designate specific methods for sending information to NRMSIRs.

Since the Commission adopted Rule 15c2–12, the Division of Market Regulation has issued three letters taking no-action positions recognizing national information vendors as NRMSIRS, based on the standards set out in the Adopting Release.[31] The Commission anticipates that if standards for NRMSIRs were adopted, these NRMSIRs, as well as new NRMSIRs, would be required to have their operations meet the new standards. Comment is requested on the ability and willingness of both potential NRMSIRs, and those presently operating under no-action letters, to meet the standards described. Furthermore, comment is requested as to whether designation by Commission order, pursuant to standards set out in Rule 15c2–12, is an appropriate method for recognizing NRMSIRs, or whether it is appropriate to continue the current no-action policies of the Division.

IV. Application of the Tower Amendment

With the passage of the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress provided for a limited regulatory scheme for municipal securities.[32] Prior to the passage of the 1975 Amendments, municipal issuers were exempt from the registration and continuous reporting provisions of both the Securities Act and the Exchange Act. While municipal issuers continued to be exempt from all but the antifraud provisions of the federal securities laws, the 1975 Amendments required the registration of municipal securities brokers and dealers,[33] and established the MSRB,[34] granting it the authority to promulgate rules governing the sale of municipal securities.

In so crafting the 1975 Amendments, Congress struck a balance between investor protection and intergovernmental comity. This concern is reflected in Section 15B(d)(1) of the Exchange Act, which prohibits the MSRB from requiring "any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document, in connection with the issuance, sale, or distribution of such securities."[35] While narrowly tailoring the authority of the MSRB to require that disclosure documents be provided to investors,[36] Congress was careful to preserve the authority of the Commission under Section 15(c)(2) of the Exchange Act.[37]

Moreover, Section 15B(d)(2) expressly indicates that "[n]othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title."[38] Thus, while prohibiting the Commission from requiring municipal issuers to file reports or documents prior to issuing securities in Section 15B(d)(1),[39] Congress expanded the Commission's authority to adopt rules reasonably designed to prevent fraud. The Commission believes that the proposed amendments to Rule 15c2–12 are consistent with its Congressional mandate to adopt rules reasonably designed to prevent fraud in the municipal securities market.[40]

V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act[41] requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to Rule 15c2–12 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from amendment of the rule. Moreover, while the amendments apply equally to all brokers, dealers, and municipal securities dealers, the Commission is interested in receiving comments on the extent to which the proposed dollar threshold in the new exemption in paragraph (e) would burden one segment of the industry more than another.

In addition, the Commission has prepared an initial regulatory flexibility analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act[42] regarding the proposed amendments to Rule 15c2–12. The IRFA indicates that the amendments to the rule could impose some additional costs on small broker-dealers and municipal issuers. Nonetheless, the Commission is of the view that many of the substantive requirements of the rule amendments already are observed by broker-dealers and issuers as a matter of business practice, or to fulfill their existing obligations under the general antifraud

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[29] *See supra* note 25 (regarding the competitive implications of the MSRB's seeking NRMSIR status).

[30] Letter from Christopher A. Taylor, Executive Director, MSRB, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC (December 20, 1993).

[31] Letters from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to: Joseph V. Riccobono, Executive Vice-President, American Banker-Bond Buyer (Jan. 4, 1990); J. Kevin Kenny, President, Chief Executive Officer, J.J. Kenny Co. (Jan. 4, 1990); and Michael R. Bloomberg, President, Bloomberg, L.P. (Jan. 11, 1990).

[32] The Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (June 4, 1975).

[33] 15 U.S.C. 78*o*–4(a)(1).

[34] 15 U.S.C. 78*o*–4(b)(1).

[35] 15 U.S.C. 78 *o*–4(d)(1).

[36] The so-called "Tower Amendment," adding section 15B(d)(2), 15 U.S.C. 78*o*–4(d)(2) to the Exchange Act, prohibits the MSRB from requiring municipal issuers, directly or indirectly, through municipal securities broker-dealers or otherwise, to furnish the MSRB or prospective investors with any documents, including official statements. The MSRB specifically is permitted, however, to require that official statements or other documents that are available from sources other than the issuer, such as the underwriter, be provided to investors.

[37] 15 U.S.C. 78*o*(c)(2).

[38] 15 U.S.C. 78*o*–4(d)(2).

[39] 15 U.S.C. 78*o*–4(d)(1).

[40] Rule 15c2–12 was adopted pursuant to the Commission's authority under Exchange Act Sections 2, 3, 10, 15, 15B, and 23; 15 U.S.C. 78b, 78c, 78j, 78*o*, 78*o*–4, 78q, and 78w.

[41] 15 U.S.C. 78w(a)(2).

[42] 5 U.S.C. 604.

provisions of the federal securities laws. The Commission requests comment on the extent to which current practice deviates from the requirements of the proposed amendments, and the extent to which additional costs may be imposed on small broker-dealers and municipal issuers if the amendments are adopted as proposed.

A copy of the IRFA may be obtained from Janet W. Russell-Hunter, Esq., Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549, (202) 504–2418.

List of Subjects in 17 CFR part 240

Reporting and recordkeeping requirements, Securities

Text of Proposed Amendments to Rule 15c2–12

In accordance with the foregoing, title 17, chapter II of title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c2–12 is amended by adding a Preliminary Note preceding paragraph (a); adding paragraph (b)(5); redesignating paragraph (c) through paragraph (f) as paragraph (d) through paragraph (g); adding paragraph (c); revising newly designated paragraph (d) and paragraph (f)(3); adding paragraph (f)(9); and adding one sentence to the end of newly designated paragraph (g) to read as follows:

§ 240.15c2–12 Municipal securities disclosure.

Preliminary Note: For a discussion of disclosure obligations relating to municipal securities, issuers, brokers, dealers, and municipal securities dealers should refer to Securities Act Release No. 7049, Exchange Act Release No. 33741, FR–42 (March 9, 1994). For a discussion of the obligations of underwriters to have a reasonable basis for recommendations of municipal securities, brokers, dealers, and municipal securities dealers should refer to Securities Exchange Act Release No. 26100 (Sept. 22, 1988) and Securities Exchange Act Release No. 26985 (June 28, 1989).

* * * * *

(b) *Requirements.* * * *

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of holders of such securities, to provide to a nationally recognized municipal securities information repository:

(A) At least annually, current financial information concerning the issuer of the municipal securities and any significant obligors, including annual audited financial statements and pertinent operating information; and

(B) In a timely manner, notice of any of the following events, if material:

(*1*) Principal and interest payment delinquencies;

(*2*) Non-payment related defaults;

(*3*) Unscheduled draws on debt service reserves reflecting financial difficulties;

(*4*) Unscheduled draws on credit enhancements reflecting financial difficulties;

(*5*) Substitution of credit or liquidity providers, or their failure to perform;

(*6*) Adverse tax opinions or events affecting the tax-exempt status of the security;

(*7*) Modifications to rights of security holders;

(*8*) Bond calls;

(*9*) Defeasances;

(*10*) Matters affecting collateral; and

(*11*) Rating changes.

(ii) Such written agreement or contract for the benefit of holders of such securities shall also specify:

(A) The accounting principles pursuant to which the audited financial statements will be prepared;

(B) The financial and pertinent operating information to be provided on an annual basis, in addition to audited financial statements; and

(C) The time within which the annual information for the preceding year will be provided to the repository.

(c) *Recommendations without specified information.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has reviewed the information the issuer of the municipal security has undertaken to provide pursuant to paragraph (b)(5) of this section.

(d) *Exemptions.* (1) This section shall not apply to a primary offering of municipal securities in authorized denominations of $100,000 or more, if such securities:

(i) Are sold to no more than thirty five persons each of whom the Participating Underwriter reasonably believes:

(A) Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and

(B) Is not purchasing for more than one account or with a view to distributing the securities; or

(ii) Have a maturity of nine months or less; or

(iii) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(2) Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriters:

(i) The issuer will have less than $10,000,000 in aggregate amount of municipal securities outstanding, including the offered securities; and

(ii) The issuer will have issued less than $3,000,000 in aggregate amount, in the 48 months preceding the Offering.

(3) The provisions of paragraph (c) of this section shall not apply to a primary offering of municipal securities:

(i) Not sold in an Offering to which paragraph (b)(5) of this section applied; or

(ii) Sold in an Offering exempt under paragraph (d)(1) or paragraph (d)(2) of this section.

* * * * *

(f) *Definitions.* * * *

(3) The term *final official statement* means a document or set of documents prepared by the issuer of municipal securities or its representatives setting forth, among other matters, information concerning the terms of the proposed issue of securities, and financial and operating information adequate to provide a fair presentation of the issuer's and any significant obligor's current financial condition and results of operations, and cash flows, including audited financial statements, that is complete as of the date delivered to the Participating Underwriter.

* * * * *

(9) The term *significant obligor* means any person who, directly or indirectly, is the source of 20 percent or more of the cash flow servicing the obligations on the municipal securities.

(g) *Transitional Provision.* * * * Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before [effective date of final rule].

By the Commission.

Dated: March 9, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5927 Filed 3–16–94; 8:45 am]

BILLING CODE 8010-01-P

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17 CFR Part 240

[Release No. 34–33743, File No. S7–6–94]

RIN 3235–AF84; 3235–AG12

Confirmation of Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to Rule 10b-10 and proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is publishing for comment amendments to Rule 10b-10 and proposed Rule 15c2–13 under the Securities Exchange Act of 1934. The proposed amendments to Rule 10b-10 are designed to clarify the operation of the Rule, particularly in light of changes in the securities markets and the development of new securities products. The amendments and new rule are designed to enhance the disclosure given to customers so that customers can better evaluate their securities transactions. The Commission is seeking comment on the function of the confirmation in the context of a three day settlement period, and the adequacy and readability of customer periodic statements.

DATES: Comments should be received on or before June 15, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–6–94. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert Colby, Deputy Director, (202/272–2790), Catherine McGuire, Chief Counsel, (202/272–2844), or C. Dirk Peterson, Attorney, (202/504–2418), Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("SEC" or "Commission") proposes to amend the confirmation requirements under Rule 10b-10 [1] of the Securities Exchange Act of 1934 ("Exchange Act") [2] to strengthen its investor protection function. Generally, Rule 10b-10 requires a broker-dealer that effects transactions for customers in securities, other than U.S. Savings Bonds or municipal securities, to provide a written notification to the customer, at or before completion of the transaction, that discloses information about the transaction.[3] Confirmation of a securities transaction provides basic customer protection, the importance of which was recognized by the Commission as early as 1937.[4]

The proposed amendments to Rule 10b-10 would: (1) Require confirmation disclosure of mark-ups and mark-downs for riskless principal transactions in debt securities; (2) require disclosure of the fact that a debt security is not rated by a nationally recognized statistical rating organization; (3) require confirmation disclosure of mark-ups and mark-downs in Nasdaq and exchange-listed securities; (4) require disclosure regarding whether broker-dealers are not members of the Securities Investor Protection Corporation; (5) modify the disclosure requirements with respect to certain collateralized debt securities; (6) add a preliminary note to the Rule indicating that the Rule's disclosure requirements do not limit disclosures necessary under the antifraud provisions of the federal securities laws; and (7) restructure the Rule.

Proposed Rule 15c2–13 would require brokers, dealers, and municipal securities dealers (1) to disclose mark-up information in riskless principal transactions in municipal securities; and (2) to disclose when a particular municipal security is not rated by a nationally recognized statistical rating organization.

The confirmation serves several functions: it acts as a customer invoice; informs investors of the details of a transaction, allowing the investor to check for errors or misunderstandings; provides consumer information, allowing investors to evaluate the cost and quality of the services provided by broker-dealers; discloses to investors possible conflicts of interest between them and the broker-dealer; and acts as a safeguard against fraud, by permitting the customer to detect problems associated with a transaction.

Implementation of a settlement period of three days ("T+3") may alter the confirmation's utility as a customer invoice because normal confirmation delivery and the transfer of customer funds and securities may not be possible within the three day settlement period. Under the previous settlement period of five days, confirmations generally reached customers in time for the customer to review them prior to transferring funds or securities to the transacting broker-dealer. Under T+3, the customer frequently will not receive the confirmation through the mails by day three; [5] thus, shortening the settlement period may require broker-dealers either to demand funds or securities from the customer earlier than at present or to cover the cost of the transaction for a longer period of time.

Although implementation of T+3 does not create compliance problems with regard to Rule 10b-10,[6] the Commission

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[1] 17 CFR 240.10b-10.

[2] 15 U.S.C. 78a *et seq.*

[3] A broker-dealer has an obligation under Rule 10b-10 to send its customers an immediate confirmation with respect to each transaction the broker-dealer effects. In the case of a customer account managed by a fiduciary of the customer, it is important to note that the account is the customer, rather than the fiduciary. *See generally Letter regarding Merrill Lynch, Broadcort Capital Corp. and Wagner Stott Clearing Corp.* (March 25, 1991)[available on LEXIS]. Accordingly, under Rule 10b-10, a broker-dealer must send an immediate confirmation to the account holder, in addition to any confirmation it may send to an account fiduciary. The Commission believes, however, that an account that has given discretionary authority in writing to its fiduciary may agree in writing with the broker-dealer effecting its trades to waive the receipt of an immediate confirmation required by Rule 10b-10 if: (1) The broker-dealer sends an immediate confirmation to the account's fiduciary, and (2) a broker-dealer sends the discretionary account a statement no less frequently than quarterly containing all the information required to be disclosed on the immediate confirmation. The customer may not waive this quarterly statement.

[4] Rule 15c1–4, 17 CFR 240.15c1–4, an earlier confirmation rule, was adopted by the Commission in 1937. Securities Exchange Act Release No. 1330 (Aug. 4, 1937). This rule, which solely applied to transactions in securities in the over-the-counter market, was replaced in 1978 by Rule 10b-10, which extended the Commission's confirmation requirements to trades conducted on a securities exchange. Securities Exchange Act Release No. 15219 (Oct. 6, 1978), 43 FR 47495. Rule 10b-10 initially was adopted in part in May 1977. Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 ("Adopting Release").

[5] Broker-dealers may alleviate the concerns of mail delay, for example, by sending confirmations by facsimile.

[6] Some commentators suggested that substantive changes to Rule 10b-10 will be necessary as a result of the adoption of Rule 15c6–1 of the Exchange Act, 17 CFR 240.15c6–1, which implemented T+3. Because Rule 10b-10 requires a broker-dealer to send a customer written confirmation "at or before completion of the transaction," some have argued that a T+3 settlement period will make compliance with Rule 10b-10 impossible. The Commission

Continued

requests comment on its effect on the confirmation's investor protection functions. If the confirmation is used less frequently as an invoice, should some of the confirmation's content be shifted to periodic account statements?[7]

In this connection, the Commission solicits comment on the adequacy and readability of periodic statements of account generally and whether these account statements are read and relied upon by investors in monitoring their accounts.

1. Disclosure of Mark-Ups in Riskless Principal Transactions in Debt Securities

Rule 10b-10 currently requires disclosures of broker-dealer compensation in agency and specified principal trades. In agency trades, the confirmation must disclose both the transaction price and the commission charged.[8] In principal trades involving "Reported Securities,"[9] the confirmation must disclose the trade price reported by the broker-dealer for that transaction and the mark-up calculated from the reported price.[10] In "riskless" principal trades in non-reported equity securities,[11] Rule 10b-10 requires brokers and dealers, other than market makers, to disclose the amount of any mark-up received.[12] The Commission is proposing to amend Rule 10b-10 to require the disclosure of mark-up information for riskless principal trades in debt securities, other than U.S. Savings Bonds and municipal securities. The Commission also is proposing Rule 15c2–13 to require disclosure of mark-up information in riskless principal trades in municipal securities. Rule 10b-10 currently requires confirmations for transactions in debt securities to disclose to the customer the net dollar price and yield, but not separate disclosure of compensation information.[13] The Commission believes that investors in debt securities, like investors in equity securities, should be informed of the costs in riskless principal trades because, despite the legal distinctions, these trades are the functional equivalent of transactions effected on an agency basis.

On three previous occasions, the Commission proposed amendments to Rule 10b–10 that would have required disclosure of mark-ups for riskless principal trades involving debt securities, including municipal securities.[14] Commentators argued against adoption of mark-up disclosure for riskless principal debt trades saying that: (1) The amount of a mark-up was not material to investors; (2) adoption of the proposal would have a detrimental, disproportionate effect on small broker-dealers; and (3) the amendment would present compliance and enforcement difficulties because of differences between the debt and equity markets.[15] The Commission withdrew the proposal in 1982,[16] and subsequently adopted amendments requiring that confirmations contain disclosures concerning the yield of debt securities.[17]

In light of the increasing size of the debt market,[18] together with experience with mark-up disclosure in riskless

notes, however, that broker-dealers can comply with Rule 10b-10 even under a T+3 settlement period. Rule 10b-10 requires only that the broker-dealer send written confirmation by settlement date, not that the customer actually receive it by settlement. In the current five days settlement period, broker-dealers typically send customer confirmations the day after trade date, which will satisfy Rule 10b-10 even under a T+3 settlement period.

[7] Six of the exchanges and the National Association of Securities Dealers, Inc. ("NASD") have rules requiring that such periodic statements be sent to customers. The Commission has proposed a rule requiring annual account statements in the payment for order flow context. See Securities Exchange Act Release No. 33026 (Oct. 7, 1993), 58 FR 52934 (Oct. 13, 1993).

[8] 17 CFR 240.10b-10(a)(2) and 17 CFR 240.10b-10(a)(7)(ii).

[9] Rule 11Aa3–1(a)(4), 17 CFR 240.11Aa3–1(a)(4), defines "Reported Security" as any exchange-listed equity security or Nasdaq security for which transaction reports are made available on a real-time basis pursuant to an effective transaction reporting plan. An "effective transaction reporting plan" refers to a transaction reporting plan that the Commission has approved pursuant to Rule 11Aa3–1. 17 CFR 240.11Aa3–1(a)(3).

Reported Securities presently include:

1. Nasdaq securities that meet standards set forth in the National Market System Securities Designation Plan ("Nasdaq/NMS securities").

2. Certain securities listed on a national securities exchange that meet standards of the transaction reporting plan known as the Restated Consolidated Tape Association Plan ("CTA Plan"). This would include securities that are registered or admitted to unlisted trading privileges on a national securities exchange, including securities listed on various regional exchanges, and that substantially meet New York Stock Exchange, Inc ("NYSE") or American Stock Exchange, Inc. ("Amex") original listing criteria.

A number of securities that are quoted on Nasdaq and listed on certain regional stock exchanges, however, are not subject to an effective transaction reporting plan. Approximately 1,600 securities traded on Nasdaq do not satisfy the criteria for designation as a Nasdaq/NMS security, and thus are not part of an effective transaction reporting plan. Similarly, a limited number of regional-exchange listed securities are not covered by the CTA Plan.

[10] 17 CFR 240.10b-10(a)(8)(i)(B).

[11] "Riskless" principal trades are transactions in which, after receiving an order to buy or sell from a customer, the broker-dealer purchases the security from another person to offset a contemporaneous purchase by the customer or sells the security to another person to offset a contemporaneous sale by the customer. Although these transactions are characterized as riskless, they still involve counterparty risk. See Exchange Act Rule 15c3–1(a)(2)(vi), 17 CFR 240.15c3–1(a)(2)(vi), (relating to net capital requirements).

Rule 10b-10 currently does not require that a broker-dealer acting as a principal, other than in a "riskless" principal capacity, disclose the amount of mark-up for transactions in non-reported securities. *But see, infra* Section 3 for a discussion of mark-up disclosure requirements for non-reported securities that are subject to last-sale reporting.

For purposes of clarity and to conform to Rule 15g-4, 17 CFR 240.15g-4 (requiring riskless principal disclosure for trades involving penny stocks), the Commission proposes to replace the term "amount of any mark-up, mark-down, or similar remuneration received," currently used in Rule 10b-10, with "difference between the price to the customer and such contemporaneous purchase or sale price."

[12] 17 CFR 240.10b-10(a)(8)(i)(A). For purposes of this release, references to mark-ups are equally applicable to mark-downs or commission equivalents.

In determining the broker-dealer's mark-ups for antifraud disclosure purposes, the Commission advises broker-dealers to note that the framework set forth in Alstead, Dempsey & Company, Inc., 47 S.E.C. 1034 (1984), governs the appropriate method for determining the prevailing market price in active or dominated and controlled markets. *See* Securities Exchange Act Release No. 29093 (Apr. 17, 1991), 56 FR 19165, for further discussion of *Alstead* in connection with proposed penny stock rules which are adopted in Securities Exchange Act Release No. 30608 (Apr. 20, 1992), 57 FR 18004. *See also* Meyer Blinder, Securities Exchange Act Release No. 31095, (Aug. 26, 1992), 52 SEC Doc. 1436, *appeal docketed sub. nom.* Gorden v. SEC, No. 92–1554 (D.C. Cir.) appeal dismissed per stipulation (applying the *Alstead* framework to case involving excessive mark-ups in a dominated and controlled market). See Securities Exchange Act Release No. 33083 (Oct. 21, 1993).

[13] 17 CFR 240.10b-10(a)(5).

[14] See Securities Exchange Act Release No. 15220 (Oct. 6, 1978), 43 FR 47538 (proposing mark-up disclosure for riskless principal trades in municipal securities) ("1978 Release"); Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities, but not municipal securities); and Securities Exchange Act Release No 12806 (Sept. 16, 1976), 41 FR 41432 (proposing mark-up disclosure by non-market makers in riskless principal transactions involving equity and debt securities).

[15] One commentator noted that determining whether a particular firm was a market maker in the debt context was difficult because the market maker definition contemplates an equity environment and does not account for the differences in the debt environment. See Letter from Sullivan & Cromwell to George A. Fitzsimmons, Secretary, SEC, dated January 15, 1979.

[16] Securities Exchange Act Release No. 18987 (Aug. 20, 1982), 47 FR 37919.

[17] Securities Exchange Act Release No. 18988 (Aug. 20, 1982), 47 FR 37920, *adopted in* Securities Exchange Act Release No. 19687 (Apr. 18, 1983), 48 FR 17583.

[18] The amount of outstanding debt in the U.S. is approximately $1.9 trillion in corporate debt, of which $298 billion is held by individual investors (households and mutual funds) in corporate and foreign debt securities (*See* Flow of Fund Accounts First Quarter, 1993), $4.8 trillion in U.S. government securities, and $1.2 trillion in municipal bonds. Securities Industry Fact Book, Securities Industry Association (1993), at 21. The municipal securities market comprises approximately 50,000 state and local issuers with an outstanding principal amount of securities in excess of $1.2 trillion. See SEC Report on the Municipal Securities Market (Sept. 1993), at 1. There are approximately 1.3 million classes of municipal securities spread across 150,000 different issuances. Public Securities Association.

principal trades for equities, the Commission believes that mark-up disclosure for riskless principal trades in debt securities should be revisited.[19] Confirmation disclosure of mark-ups in riskless principal transactions will aid investors by disclosing to them transaction costs. This will assist the client in monitoring brokerage expenses and detecting possible improper practices. For instance, the Commission understands that mark-ups charged in riskless principal trades in long-term securities are substantially greater than mark-ups charged in short-term securities, because the impact on disclosed yield is smaller in the long term trade. The Commission believes that customers should be given the ability to compare mark-ups in these trades.

In withdrawing the riskless principal mark-up disclosure proposal in the 1978 Release, the Commission stated that it would "maintain close scrutiny to prevent excessive mark-ups and take enforcement action where appropriate."[20] Since 1982, the Commission and NASD have undertaken a number of enforcement actions against broker-dealers involving undisclosed, excessive mark-ups in debt securities.[21] Requiring disclosure of mark-ups in riskless principal trades in debt securities would supplement the Commission's and self-regulatory organizations' enforcement programs, by giving investors greater ability to review the mark-ups on their transactions. As a practical matter, the proposed amendment also may permit broker-dealers that consistently observe the highest standards of practice to compete more effectively against broker-dealers that charge excessive mark-ups.[22]

Because riskless principal transactions do not involve holding securities in inventory for any appreciable length of time,[23] the broker-dealer's compensation easily can be calculated by comparing the order tickets for the purchase and sale involved. In addition, a broker-dealer must assess whether its mark-ups violate NASD or Commission mark-up policies. Accordingly, the Commission does not believe that the proposal would be overly burdensome for broker-dealers.

Unlike current disclosure requirements for riskless principal transactions in equity securities, the proposed amendment and Rule 15c2–13 do not include an exclusion for market makers. This exclusion is omitted because market makers have a much more limited function in the debt markets. Typically, dealers in these markets, especially the municipal market, do not display two-sided quotations nor carry inventories of debt securities, as is characteristic of a market maker in equity securities. Because of the tax implications, the lack of dealer inventory, and the relative illiquidity of the market for any particular municipal security, short positioning of municipal securities is difficult and imposes greater risk that a dealer will be unable to cover its short position.[24]

The Commission requests comment on the proposal to disclose mark-ups in riskless principal transactions in debt securities. In particular, the Commission requests comment concerning whether proposals requiring mark-up disclosure in riskless principal transactions in municipal securities should be incorporated in one rule under the authority of the Municipal Securities Rulemaking Board ("MSRB"), rather than the Commission. In addition, comment is sought concerning the proposed definition of riskless principal contained in sub-paragraphs (e)(10) and (b)(3) of Rule 10b-10 and Rule 15c2–13, respectively.[25] The Commission further requests comment concerning the extent to which broker-dealers act as market makers, as defined in Section 3(a)(38), in the debt market and the extent that broker-dealers currently calculate mark-ups in riskless principal debt transactions for business purposes, such as determining the compensation of sales personnel.[26] In addition, the Commission requests comment on whether the proposed requirements for mark-up disclosure in debt securities

[19] Mark-up disclosure requirements are applicable at present to trades in debt securities convertible into equity securities. Section 3(a)(11), 15 U.S.C. 78c(a)(11), and Rule 3a11–1 of the Exchange Act, 17 CFR 240.3a11–1, define equity security to include any security convertible into an equity security. Debt security is defined to include a convertible security for purposes of certain paragraphs of Rule 10b–10, but not for purposes of mark-up disclosure in riskless principal trades.

[20] Securities Exchange Release No. 18987 (Aug. 20, 1982), 47 FR 37919, at 37920.

[21] See, *e.g.*, F.B. Horner & Associates v. S.E.C., 994 F.2d 61 (2d Cir. 1993) (mark-ups charged of 5% for collateralized mortgage obligations held to be excessive); First Honolulu Securities Corp., mark-ups of 5% for municipal and corporate bonds held to be excessive); Investment Planning, Inc., Securities Exchange Act Release No. 32687 (July 28, 1993) (upholding NASD finding that mark-ups of 4% on certain corporate and municipal bonds were excessive); Lake Securities, Inc., (Securities Exchange Act Release No. 31283 (Oct. 2, 1992) (mark-down of 7.4% on FNMA mortgage-backed securities held to be fraudulent); Hamilton Bohner, 44 S.E.C. Doc. 1297 (1989) (mark-downs ranging from 5.3% to 10.2% in excess of permissible levels and NASD's findings of violations upheld); Donald T. Sheldon, Admin. Proc. File No. 3–6626 (December 2, 1988)(available on LEXIS)(undisclosed mark-ups of over 8% for municipal bonds and over 5% for government securities found to be excessive), appeal docketed, No. 93–4405 (11th Cir.); Alan Charles Refkin, Securities Exchange Act Release No. 26311 (Nov. 25, 1988), 42 S.E.C. Doc. 490 (consent decree included findings that certain registered representatives executed transactions involving mark-ups of between 10% and 34% in zero coupon bonds); PaineWebber, Inc., Securities Exchange Act Release No. 25418 (Mar. 4, 1988), 40 S.E.C. Doc. 693 (offer of settlement stated that registrant charged customers undisclosed, excessive mark-ups in transactions involving the sale and repurchase of stripped U.S. Treasury bond coupons); Nicholas A. Codispoti, 48 S.E.C. 842 (1987) (mark-ups of 6.1% to 32.7% on municipal bonds with inactive market found to be excessive); Sutro & Co., Securities Exchange Act Release No. 23663 (Sept. 30, 1986), 36 S.E.C. Docket 1199 (offer of settlement included finding that transactions were executed with mark-ups and mark-downs of between 10% and 34% on U.S. Treasury bonds); Hanauer, Stern & Co., Securities Exchange Act Release No. 21313 (Sept. 11, 1984), 31 S.E.C. Doc. 483 (consent decree included findings of excessive mark-ups on municipal securities transactions); S.E.C. v. MV Securities, Inc. (S.D.N.Y., No. Civ. 1164), Litigation Release No. 10289 (Feb. 21, 1984), 29 S.E.C. Doc. 1591, (defendants enjoined from, *inter alia*, paying or charging unfair prices to customers in municipal bond transactions).

The Commission brought an injunctive action against an unregistered broker-dealer for defrauding his customers by secretly interpositioning himself between customers and dealers in certain government and municipal securities, and appropriating for himself better market prices that should have been made available to his customers. SEC v. Ridenour, 913 F.2d 515 (8th Cir. 1990).

In addition, the Commission has submitted amicus briefs in cases alleging excessive mark-ups in debt securities. *See, e.g., Amicus Curiae* Brief of the SEC and Elysian Federal Savings Bank v. First Interregional Equity Corp., 713 F. Supp. 737 (D. N.J. 1989)(brief arguing that mark-ups ranging from 17.4% to 21.27% for principal only trust certificates were excessive and mark-ups ranging between 5.3% to 7.39% on collateral mortgage obligations were excessive).

[22] The Commission is aware of instances in which the customer, while being correctly informed that no "commission" is involved in a principal transaction in a debt security, has been given the impression that no transaction fee is being charged. *See* "Firms Must Accurately Disclose Bond Trading Charges," *NASD Regulatory & Compliance Alert* (June 1990). Irrespective of current or future Rule 10b-10 disclosure requirements, a misleading statement or a failure to disclose material facts about the compensation received by the broker-dealer constitutes an antifraud violation.

[23] The riskless principal disclosure requirements are intended to apply to offsetting transactions, regardless of the sequencing of the transaction. *See* Securities Exchange Act Release No. 15219 (Oct. 6, 1978), at n. 20; and *Letter regarding Buys-MacGregor, McNaughton-Greenwalt & Co.*, (Feb. 1, 1980), [1980] Fed. Sec. L. Rep. (CCH) ¶76,313.

[24] Short positioning municipal securities is rare because the Internal Revenue Service will not allow both a borrower and lender of a municipal security to claim a tax exemption. In effect, the lender of a municipal security would be trading tax exempt interest for taxable interest. In addition, to the extent that any short positioning occurs with respect to municipal securities, the IRS imposes additional reporting requirements on the participating parties. *See* Internal Revenue Code, § 6045(d).

[25] See, *supra*, note 10 for a discussion of riskless principal transactions.

[26] Salesperson compensation is often determined as a percentage of the gross mark-up charged on a principal transaction.

should cover securities transactions occurring on the same day rather than limiting the disclosure solely to riskless principal transactions.

2. Disclosure of Unrated Debt Securities

As proposed, both Rule 10b–10 and Rule 15c2–13 will require broker-dealers to disclose when a debt security, other than securities defined under Section 3(a)(42)(A) and (B) of the Exchange Act,[27] is not rated by a nationally recognized statistical rating organization. The Commission is not requiring the disclosure of the specific rating of a debt security because that information most likely will be disclosed to a customer when a broker-dealer sells such a security. Brokers are less likely to inform customers that a security is not rated. While the Commission recognizes that an unrated bond may not necessarily be unsound or speculative, this information will benefit investors by alerting them that they may want to make further inquiry of the broker-dealer. In the municipal securities market, this information is particularly useful because of the limited secondary market information in that market and the comparatively higher rates of issuer default for unrated municipal bonds.[28] The Commission requests comment whether securities other than U.S. Treasury securities should be excluded from this requirement. In addition, the Commission requests comment on whether this requirement as it relates to municipal securities should be incorporated in one rule under the authority of the MSRB.

3. Disclosure of Mark-Ups and Mark-downs in Certain Nasdaq and Exchange-Listed Securities

Since 1985, Rule 10b–10 has required broker-dealers acting as principals in transactions in Reported Securities[29] to disclose on customer confirmations the reported trade price, the price to the customer, and the difference between the two prices.[30] In response to the expansion of last sale reporting to additional securities, the Commission is now proposing to amend Rule 10b–10 to require similar disclosure in principal transactions in Nasdaq equity securities that are not Nasdaq/NMS securities ("Nasdaq Small Cap Securities") and certain exchange-listed securities. These securities are subject to last sale reporting, but are not included in the definition of "Reported Security," as provided in Rule 11Aa3–1 of the Exchange Act.

In April, 1992, the Commission approved a proposal by the NASD[31] to require last sale and volume reporting for all securities traded on Nasdaq.[32] Shortly afterwards, the NASD required its members to disclose to customers on written confirmations the reported trade price, the price to the customer, and the difference between the two prices in a particular Nasdaq Small Cap Securities transaction.[33] The NASD's rule provides customers who trade Nasdaq Small Cap Securities with the same compensation disclosure required under Rule 10b–10 for Nasdaq/NMS securities.

The proposed amendment would consolidate in Rule 10b–10 compensation disclosure applicable to all Nasdaq stocks. It also would extend this compensation disclosure to principal transactions in regional-exchange listed securities subject to last sale reporting.[34] Doing so would treat similar securities consistently and would provide benefits to customers with little additional burden on broker-dealers. Because securities traded through Nasdaq and regional exchanges are subject to last sale reporting requirements, and NASD members are required to disclose on confirmations the reported price, the customer's price, and the difference, capturing and disclosing the same information for purposes of complying with Rule 10b–10 would not appear to require systems changes or additional personnel.

4. Disclosure of Coverage by the Securities Investor Protection Corporation

The Commission is proposing to require that the confirmation contain a disclosure concerning coverage under the Securities Investor Protection Act of 1970 ("SIPA").[35] Under SIPA, all brokers or dealers registered with the Commission under Section 15(b) of the Exchange Act, with certain exceptions,[36] are members of the Securities Investor Protection Corporation ("SIPC"). In the event of the financial failure of a SIPC member broker-dealer, SIPC protects each customer up to $500,000 for claims for cash and securities, except that claims for cash are limited to $100,000.

A number of incidents involving the financial failure of registered broker-dealers, and their unregistered affiliates, have illustrated the potential for confusion about the application of SIPC coverage to customers' accounts. In one of these cases, a registered broker-dealer and its government securities affiliate were commonly owned, shared personnel and office facilities, and did not distinguish between the two entities in certain written and oral communications, leading to customer confusion concerning SIPC coverage.[37] Because government securities brokers and dealers registered under section 15C of the Exchange Act are not members of SIPC, their customer accounts are not protected by SIPC.[38]

In order to reduce the potential for confusion regarding whether SIPC coverage exists for accounts with government securities dealers, as well as other cases where an investor might mistakenly assume that SIPC coverage exists, the Commission is proposing to amend Rule 10b–10 to require broker-dealers that are not SIPC members to affirmatively state in the customer confirmation that they are not SIPC

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[27] 15 U.S.C. 78(c)(a)(42)(A) and (B).

[28] Statistics have shown that unrated municipal bonds, which make up approximately one-third of the market, in the aggregate have a higher default rate than do rated bonds. *See Municipal Bond Defaults—The 1980's a Decade in Review* 1–2, at 1, J.J. Kenny Co., Inc. 1993). According to this study on default rates between January 1, 1980 to December 31, 1991, 628 unrated issues defaulted compared with 98 rated issues. *See also*, Public Securities Association, *An Examination of Non-Rated Municipal Defaults 1986–1991* 4 (Jan. 8, 1993).

[29] *See, supra* note 8 for the definition of "Reported Securities."

[30] 17 CFR 240.10b–10(a)(8)(i)(B). The reported trade price is the price at which a broker-dealer reports a trade to NASDAQ or an exchange. Price to the customer means the ultimate price the customer pays or receives for a securities transaction, including any miscellaneous fees imposed by the broker-dealer. This would not include fees, such as taxes, SEC fees, or any other fees required by state or federal law. *See, e.g., Letter regarding Cities Securities Corp.* (Dec. 11, 1991) (available on LEXIS).

[31] Securities Exchange Act Release No. 30392 (Feb. 21, 1992), 57 FR 6880.

[32] Securities Exchange Act Release No. 30569 (Apr. 10, 1992), 57 FR 13396.

[33] NASD Schedule to By-Laws, Schedule D, pt. XI, § 3, NASD Manual (CCH) ¶1867D, *approved in* Securities Exchange Act Release No. 30871 (June 29, 1992), 57 FR 30261.

[34] Typically, these are securities of smaller companies that are listed and traded exclusively on one regional exchange.

[35] Securities Investor Protection Act of 1970. Pub. L. 91–598, 84 Stat. 1636, as amended (codified at 15 U.S.C. 78aaa *et seq.*).

[36] The following broker-dealers are excluded from SIPC membership: (1) Government securities broker-dealers registered under section 15C of the Exchange Act; (2) persons whose principal business in the determination of SIPC (and subject to Commission approval) is conducted outside the United States; and (3) persons whose business consists exclusively of (a) the distribution of shares of registered open-end investment companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts. SIPA secs. 3(a)(2)(A) and 16(12) 15 U.S.C. 78ccc(a)(2)(A) and 78lll(12).

[37] *See generally*, SEC v. Donald Sheldon Group, Inc. et al., Admin. Pro. File No. 3–6626 (Dec. 2, 1988).

[38] *See, supra* note 33.

members and to require disclosure if the account is carried by a broker or a dealer that is not a SIPC member. This disclosure requirement would be consistent with the authority granted to the Commission concerning SIPC disclosure under the Government Securities Acts Amendments of 1993.[39]

5. Disclosure for Certain Asset-Backed Securities

The Commission is proposing to amend the yield disclosure requirements with respect to asset-backed securities. The Rule currently requires broker-dealers that effect transactions in debt securities, other than U.S. Savings Bonds or municipal securities, to disclose: (1) The yield to maturity, if the transaction is effected on the basis of dollar price; (2) if the transaction is effected on a yield basis, then the dollar price calculated from that yield; and (3) if effected on a basis other than dollar price or yield to maturity, and the yield to maturity will be less than the represented yield, then both the yield to maturity and represented yield.

When these amendments were adopted, the Commission noted the importance of yield data to an investor in transactions in debt securities.[40] The yield, or dollar price, at which a transaction is effected in the secondary market will be directly related to the anticipated maturity. Thus, features that cause a debt security to pay sooner or later than expected will alter the actual yield that an investor receives.

In recognition of this effect, the Commission excluded from the actual yield disclosure requirements securities that represent an interest in notes secured by liens upon real estate continuously subject to prepayment.[41] The Commission noted that fluctuations in interest rates may cause mortgage notes underlying participation certificates to prepay at rates faster or slower than anticipated. At the time the Commission adopted the yield amendments, the primary application of the exception was to transactions in securities issued or guaranteed by the Government National Mortgage Association, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Since 1983, when the yield disclosure provisions were added to the rule, the "structured financing"[42] market has been dramatically increased to include securities backed by mortgage notes, automobile loans, computer leases, consumer debt, and other receivables. Also, broker-dealers now offer a variety of derivative mortgage instruments and structured financing vehicles in which payment to investors is related directly to payments of principal and interest on underlying debt instruments. In many cases, these various asset-based securities subject the investor to the same prepayment risks that are present in mortgage participation certificates. To reduce prepayment exposure from asset backed securities for some investors, collateralized mortgage obligations ("CMOs") have been developed.

CMOs are collateralized by pools of residential mortgage loans. Like other asset-backed securities, the rate of prepayment on the underlying collateral of CMOs is correlated inversely with interest rate changes in the general economy. The actual maturities of CMOs are dependent on these prepayment speeds. CMOs are priced on the basis of the estimated "weighted average life" ("WAL") of individual CMO tranches. As interest rates decline, prepayments increase, with a corresponding shortening of WALs. Conversely, an increase in interest rates results in a lengthening of maturity. Estimated yields cannot be established without some prepayment assumption underlying the WAL; for this reason, disclosure of accurate prepayment assumptions, and an appreciation of their implications, is essential to making a sound investment decision.

CMOs are offered in several tranches of varying maturity and yield that are intended to appeal to a broad spectrum of investors. One or more tranches typically are structured as a planned amortization class ("PAC"). PAC bonds, whose maturities are shielded from both WAL extension and contraction risk, have the maximum protection available in CMOs. Unlike PAC bonds, target amortization class ("TAC") bonds only provide protection against rapid prepayments, *i.e.*, against a shortening of maturity. In CMO offerings there also are "support classes," or "companion classes," of the PAC or TAC bond classes, which bear a disproportionate share of prepayment risk.[43]

In view of the changes in the structured financing market described above, the Commission proposes to revise the yield disclosure requirements for asset backed securities. On the one hand, the Commission proposes to expand the range of debt securities where yield need not be disclosed to include any asset backed security subject to continuous prepayment.[44] Broker-dealers must disclose yield information with respect to debt instruments that are insulated from prepayment risk, or where sufficient certainty exists to permit an accurate forecast of the yield that investors will receive.[45]

On the other hand, the Commission proposes to treat CMOs differently from other debt instruments under the proposed amendments. A broker-dealer effecting transactions in CMOs would be required to disclose, with respect to the security, (1) estimated yield, (2) the weighted average life, and (3) the prepayment assumptions underlying the yield.

The Commission emphasizes that the proposed amendments only would apply to yield disclosure on a confirmation and would not affect the broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose material information, apart from that required by Rule 10b–10, regarding the composition of mortgage pools or other factors that will affect yield.

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[39] 15 U.S.C. 78O–5(a)(4).

[40] Securities Exchange Act Release No. 19587 (April 18, 1983), 49 FR 17583.

[41] For purposes of paragraphs (a)(3) and (a)(4), the term "debt security" is defined in Rule 10b–10(e)(4), 17 CFR 240.10b–10(e)(4), to include a fractional or participation interest in notes. The Commission also excepted securities with a maturity date that may be extended by the issuer.

[42] "Structured financing" is a financing technique whereby a sponsor, which has originated or has purchased certain financial collateral, such as accounts receivable or mortgage loans, transfers such assets to a trust, a limited purpose entity organized solely for purposes of the offering. That entity then issues debt obligations or equity securities with debt-like characteristics. The process also has been termed "securitization."

[43] The PAC bond's cash flow stability is achieved by giving its principal payments a higher priority than those of the CMO "companion" tranches. While PAC bonds generally yield about 50 to 75 basis points above comparable Treasury bonds, companion tranches can yield as much as 150 to 175 basis points above comparable Treasury bonds, an attractive yield for investors seeking alternatives to money market funds and certificates of deposit. As a by-product of PAC or TAC bonds, however, "companion" bonds are more volatile than PAC or TAC bonds. According to Fitch Investors Service, Inc., "companion" bonds generally demonstrate "moderate-to-high volatility, with a very small percentage having low volatility." "CMO Tranche Risk Revealed," Fitch Investors Service, Inc. 3 (April 6, 1992).

[44] This amendment would codify a no-action response issued by the staff in 1988 with respect to mortgage-backed securities, and apply it to asset-backed securities generally. *Letter regarding Merrill Lynch Capital Markets* (Oct. 19, 1988) (available on LEXIS).

[45] For example, the Commission notes that mortgage loans on multi-family housing may contain substantial prepayment penalties, so that a security collateralized by or representing an interest in such notes would be expected to provide a predictable payment stream to investors. Similarly, automobile receivables may provide a predictable payment stream because automobile owners are less likely to prepay their automobile loans. By their nature, certain securities, such as most mortgage-backed bonds, also provide certainty of cash flow.

In this connection, the Commission requests comments concerning the manner in which yields are represented to investors in mortgage-backed securities; the assumptions made by broker-dealers concerning prepayment speed for mortgage pools; and how interest rate risk and foreclosure risk are disclosed to investors in mortgage-backed securities.

The Commission requests comment on the effect of the amendments on customer understanding of the return on their investments. In addition, the Commission requests comment on the advisability of requiring separate disclosure relating to the prepayment assumptions underlying a yield quotation in a CMO and on the written confirmation for a transaction in a CMO.

6. Preliminary Note to Rule 10b–10

The Commission proposes to add a preliminary note to Rule 10b–10 to clarify the relationship between the Rule's disclosure requirements and additional disclosures that may be required to satisfy antifraud provisions of the federal securities laws. In several cases over the years, broker-dealer defendants have argued that because Rule 10b–10 did not require disclosure of specific information on a confirmation, it was not material for purposes of the general antifraud provisions of the Exchange Act.[46] Although courts have given short shrift to these arguments, the Commission wishes to reiterate that Rule 10b–10 is not a safe harbor from the general antifraud provisions of the federal securities laws.[47] A broker-dealer has a duty established by federal common law theories[48] independent of the requirements of Rule 10b–10 to disclose material facts to an investor at the time of the investor's investment decision.[49]

In amending Rule 10b–10, the Commission must balance the increased cost to broker-dealers, and ultimately to investors, of compliance against the benefits that added disclosures will provide investors.[50] In some instances, the Commission has declined to adopt proposed amendments to its confirmation requirements because they were considered too costly, or would have been too difficult to apply on a uniform basis.[51] Even when the Commission has not required broker-dealers to disclose specific information to investors pursuant to Rule 10b–10, this information nonetheless may be material to an investor.[52]

Accordingly, the Commission is proposing to add a brief preliminary note to the Rule, expressing the long-standing position that Rule 10b–10 was not intended to codify the universe of disclosure necessary in a transaction.

7. Restructuring of the Rule

A variety of non-substantive changes have been made to the rule to enhance its clarity. Headings have been added to each paragraph. Paragraph (a) has been reordered to combine elements dependent on the capacity of the broker or dealer. Paragraphs (b) and (c) have been combined into a single paragraph (c), and one element of former paragraph (b) has been moved to the definition of "investment company plan" in paragraph (e). A definition of riskless principal transaction has been added, and references to broker or dealer have been made gender neutral.

8. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act[53] requires that the Commission, in adopting rules under the Act, consider the anti-competitive effects of such rules, if any, and balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is preliminarily of the view that the proposed amendments to Rule 10b–10 will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of the amendments or the new rule.

In addition, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[54] regarding the proposed amendments to Rule 10b–10. The IRFA may be obtained from C. Dirk Peterson, in the Office of Chief Counsel, Division of Market Regulation, (202) 504–2418.

In addition, the Commission has consulted with the Department of the Treasury pursuant to Section 15(c)(2) of the Exchange Act concerning the SIPC disclosure requirements.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, securities.

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[46] *See, e.g.*, Shivangi v. Dean Witter Reynolds, Inc., 637 F. Supp. 1001 (S.D. Miss. 1986), *aff'd*, 825 F.2d 885 (5th Cir. 1987); Krome v. Merrill Lynch, Pierce, Fenner & Smith Inc., 637 F. Supp. 910, 915–916 (S.D.N.Y. 1986); and Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Fed. Sec. L. Rep. (CCH) ¶93,102 (E.D. Pa. 1986), *rev'd*, 835 F.2d 1031 (3d Cir. 1987).

[47] In the adopting release to Rule 10b–10, the Commission explained that:

The rule does not attempt to set forth all possible categories of material information to be disclosed by broker-dealers in connection with a particular transaction in securities. Rule 10b–10 only mandates the disclosure of information which can generally be expected to be material. Of course, in particular circumstances, additional information may be material and disclosure may be required.

Securities Exchange Release No. 13508, (May 5, 1977), 42 FR 25318, at 25320 n.28.

See also Securities Exchange Act Release No. 22397 (Sept. 11, 1985), 50 FR 37648, 37653 n.53 (indicating that disclosure of a "mark-up" for national market system securities under Rule 10b–10 would not control traditional determinations of, among other things, whether the mark-ups are excessive for purposes of the antifraud provisions of the federal securities laws).

[48] Two theories, the fiduciary and shingle theory, establish an obligation on the part of a broker-dealer to deal with customers fairly. In cases where a broker-dealer has established a customer relationship based upon trust and confidence, and the customer depends upon and follows the broker-dealer's advice, a fiduciary relationship is established between the broker-dealer and customer. As a fiduciary, the broker-dealer also is obligated to disclose all the material facts of a customer's transaction. *See* In re Arleen W. Hughes, 27 S.E.C. 627 (1948), *aff'd*, 174 F.2d 969 (D.C. Cir. 1949).

Closely related to the fiduciary theory is a duty to the customer established by the "shingle theory." According to the shingle theory, a broker-dealer impliedly represents at the outset of a securities transaction that it will deal with its customers fairly and in accordance with the standards of the industry. Duker & Duker, 6 S.E.C. 386, 388–89 (1939).

[49] The fact that a broker-dealer has met the requirements of Rule 10b–10 should begin the analysis, not end it. The confirmation is delivered after the contract is created. Thus, irrespective of the content of the confirmation, specific terms of the transaction that may affect the customer's investment decision should be disclosed at the time of a purchase or sale of a security. *See, e.g.*, Norris & Hirshberg v. S.E.C., 177 F.2d 228 (D.C. Cir. 1949) (affirming a Commission decision holding that the failure of a broker-dealer to disclose its true capacity at the time of a transaction, as principal rather than as agent, was, among other things, a violation of Section 10(b) of the Exchange Act, notwithstanding the fact that the broker-dealer had disclosed that it was acting as principal in confirmations sent to investors).

[50] For example, the Commission noted in the release proposing Rule 10b–10 that:

Since the costs of regulation designed to promote investor protection are in the final analysis paid for in large part by the investor, the Commission is endeavoring to adjust regulatory requirements to eliminate those for which compliance costs appear to be disproportionate to the practical benefits of investor protection thereby obtained.

Securities Exchange Act Release No. 12806 (Sept. 16, 1976), 41 FR 41432.

[51] *See* Securities Exchange Act Release No. 18987 (Aug. 20, 1982), 47 FR 37919.

[52] The Commission reiterated this point in a release concerning disclosure of mark-ups in zero-coupon instruments. Securities Exchange Act Release No. 24368 (Apr. 21, 1987), 52 FR 15575. *See also Amicus Curiae* Brief of the SEC and Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 835 F.2d 1031 (3d Cir. 1987).

[53] 15 U.S.C. 78w(a)(2).

[54] 5 U.S.C. 603.

Text of Proposed Amendments

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78*o*–5, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2.240.1b Section 240.10b–10 is amended by adding a preliminary note prior to paragraph (a), revising paragraphs (a) and (b), removing paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (c) through (e), adding a heading to newly designated paragraph (d), revising the introductory text of paragraph (d) and the introductory text of paragraph (d)(6), and adding paragraphs (d)(9) and (d)(10) to read as follows:

§ 240.10b–10 Confirmation of transactions.

Preliminary Note. This section requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.

(a) *Disclosure requirement.* It shall be unlawful for any broker or dealer to effect for or with the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing:

(1) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request of such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(2) Whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and if the broker or dealer is acting as principal, whether it is a market maker in the security (other than by reason of acting as a block positioner); and:

(i) If the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person:

(A) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that such information will be furnished upon written request of such customer; and

(B) The amount of any remuneration received or to be received by the broker from such customer in connection with the transaction unless remuneration paid by such customer is determined, pursuant to a written agreement with such customer, otherwise than on a transaction basis; and

(C) The source and amount of any other remuneration received or to be received by the broker in connection with the transaction: *Provided, however,* That if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer; or

(ii) If the broker or dealer is acting as principal for its own account:

(A) In the case of a riskless principal transaction, except where the dealer is a market maker in an equity security, the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales); or

(B) In the case of any other transaction in a reported security, or an equity security that is quoted on Nasdaq or traded on a national securities exchange, and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer; and

(3) Whether any odd-lot differential or equivalent fee has been paid by such customer in connection with the execution of an order for an odd-lot number of shares or units (or principal amount) of a security and that the amount of any such differential or fee will be furnished upon oral or written request: *Provided, however,* That such disclosure need not be made if the differential or fee is included in the remuneration disclosure, or exempted from disclosure, pursuant to paragraph (a)(2)(ii)(B) of this section; and

(4) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request; and

(5) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price; *provided, however,* that this paragraph (a)(5)(ii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof; or

(B)(*1*) That represents an interest in, or is secured by, notes or other receivables continuously subject to prepayment, where payments to security holders are reasonably related to payments on such notes or receivables; and

(*2*) The written statement prominently indicates that the actual yield received by the customer may vary according to the rate at which the underlying notes or receivables are prepaid; and

(6) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (*e.g.*, current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield: *Provided,* however, that this paragraph (a)(6)(iii) shall not apply to a transaction in a debt security which either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B)(*1*) That represents an interest in, or is secured by notes or other receivables continuously subject to prepayment, where payments to security holders are reasonably related to payments on such notes or receivables; and

(*2*) The written statement prominently indicates that the actual yield received by the customer may vary according to the rate at which underlying notes or receivables are prepaid; and

(7) In the case of a debt security that is a collateralized mortgage obligation, the yield to maturity calculated on the basis of the "weighted average life" of the security; the weighted average life; and the prepayment assumption underlying this yield; and

(8) In the case of a transaction in a debt security, other than a security defined under section 3(a)(42) (A) and (B) of this Act (15 U.S.C. 78(c)(a)(42) (A) and (B)), that the security is unrated by a nationally recognized statistical rating organization, if such is the case; and

(9) That the broker or dealer is not a member of the Securities Investor Protection Corporation, or that the broker or dealer clearing or carrying the customer account is not a member of the Securities Investor Protection Corporation, if such is the case.

(b) *Alternative periodic reporting.* A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section if:

(1) Such transactions are effected pursuant to a periodic plan or an investment company plan, or are effected in shares of any no-load open-end investment company registered under the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share and that holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each *quarterly* period, for transactions involving investment company and periodic plans, and after the end of each *monthly* period, for other transactions described in paragraph (c)(1) of this section, a written statement disclosing each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of each such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided*, however, that the written statement may be delivered to some other person designated by the customer for distribution to the customer; and

(3) Such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in paragraph (c)(1) of this section in lieu of an immediate confirmation.

* * * * *

(d) *Definitions.* For the purposes of this section:

* * * * *

(6) *Investment company plan* means any plan under which securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 are purchased by a customer (the payments being made directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company), or sold by a customer pursuant to:

* * * * *

(9) *Collateralized mortgage obligation* means any debt security with two or more classes that:

(i) Requires payment to be made to holders of each class in accordance with a schedule specifying the relative priorities of payment to holders of all classes of the security;

(ii) Is secured by one or more mortgage notes or certificates of interest or participations in such notes; and (iii) By its terms provides for payments in relation to payments, or reasonable projections of payments, on such mortgage notes or certificates of interest or participations in such notes.

(10) *Riskless principal transaction* means a transaction in which a dealer, after having received a buy order from a customer, purchases the security as principal from another person to offset a contemporaneous sale to such customer, or after having received a sell order from a customer, sells the security as principal to another person to offset a contemporaneous purchase from such customer.

* * * * *

3. By adding § 240.15c2–13 to read as follows:

§ 240.15c2–13 Confirmation of municipal securities transaction.

(a) It shall be unlawful for any broker, dealer, or municipal securities dealer, acting as principal for its own account, to effect with the account of a customer any transaction in any municipal security unless the broker, dealer, or municipal securities dealer, at or before completion of the transaction, gives or sends to the customer written notification disclosing:

(1) In the case of a riskless principal transaction, the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales); and

(2) Whether the municipal security is unrated by a nationally recognized statistical rating organization.

(b) For purposes of this section:

(1) *Customer* shall not include a broker, dealer, or municipal securities dealer.

(2) *Completion of the transaction* shall have the meaning provided in § 240.15c1–1 of this section.

(3) *Riskless principal transaction* means a transaction in which a dealer, after having received a buy order from a customer, purchases the security as principal from another person to offset a contemporaneous sale to such customer, or after having received a sell order from a customer, sells the security as principal to another person to offset a contemporaneous purchase from such customer.

By the Commission.

Dated: March 9, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5928 Filed 3–16–94; 8:45 am]

BILLING CODE 8010–01–M

federal register

Thursday
March 17, 1994

Part VI

Department of Commerce

National Institute of Standards and Technology

Manufacturing Extension Partnership Program; Notice

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940247–4047]

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Technology Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding for projects that accomplish any one of the following objectives:

Program Planning: To support the creation of a program plan for a state-wide, coordinated technology extension system to enhance the competitiveness of small and medium-sized manufacturers through the application of technology.

Program Implementation: To support the initial implementation of a comprehensive state-wide industrial extension program or the pilot testing of new program and service concepts to help small and medium-sized manufacturers improve productivity and competitiveness.

Regional Linkages: To support inter-state or multi-state efforts to expand the scope and enhance the effectiveness of technical assistance services available regionally to small and medium-sized manufacturers.

Program Planning projects are open to all states, regardless of state size, industrial density/sparseness, or number of existing industrial assistance programs.

For Program Implementation and Regional Linkages projects, NIST plans to give priority consideration to projects having the best potential to benefit areas with relatively sparse distribution of industry, or low industry density areas that do not lend themselves to large extension centers as a method of service delivery.

DATES: Proposals will be accepted until 4 p.m. EDT on April 18, 1994. It is the responsibility of applicants to ensure that their proposals are received at the Manufacturing Extension Partnership office by the time and date stated. Proposals received after the closing time and date will be returned.

ADDRESSES: Applicants must submit one signed original plus two copies of the proposal along with Standard Form 424 and Form CD–511 to: Manufacturing Extension Partnership, Polymers Building (Bldg. 224), room B–115, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899–0001.

FOR FURTHER INFORMATION CONTACT: For clarification of the content of this notice telephone: Roger Kilmer at (301) 975–3423. Copies of SF–424 (Rev 4–88) Form CD–511, and other required forms may be obtained from the NIST Grants Office (301) 975–6394.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

The catalog number for the award of "State Technology Extension Program" funds in the Catalog of Federal Domestic Assistance is 11.613.

Program Description

In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. 2781), as amended, NIST will provide assistance in fiscal year 1994 to help States develop manufacturing assistance programs aimed at small and medium-sized manufacturers and help bring those State programs to a level of performance where they can provide the full range of manufacturing extension services required by their manufacturers. Under the NIST Manufacturing Extension Partnership (MEP), which includes the State Technology Extension Program (STEP), NIST will make merit-based awards to States to help improve their planning, coordination, and implementation of their technology extension activities. This funding will also be available to multi-state partnerships which seek to expand the scope of technology assistance related services regionally available to small- and medium-sized manufacturers. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology, and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

Funding Availability

Approximately, $2,500,000 will be available to support cooperative agreements on a matching funds basis under this program. Funding size will vary according to the project category and scope of work. For example, Program Planning projects have typically averaged less than $100,000 in past years. Program Planning projects that include pilot testing of the proposed extension plan or planning for multiple intrastate regions will be eligible for NIST funding up to $150,000. For Program Implementation projects and Regional Linkage projects, awards will also vary, but NIST funds may not exceed $250,000 per project. States will be able to submit proposals for each of the three project categories.

Award Period

The cooperative agreements entered into under this program will be available for one year. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Proposal Format

The Basic Proposal must not exceed 25 typewritten pages in length. The applicant may submit a separately bound document of appendices, containing letters of support or other information in support of the Basic Proposal. Appendices and other supplemental information must not exceed 20 pages. Excess pages in either the Basic Proposal (over the 25 page limit) or the supplemental appendices (over the 20 page limit) will not be considered in the evaluation.

Content of Basic Proposal

The Basic Proposal must, at a minimum, include the following:

A. An executive summary of not more than five (5) pages, summarizing the planned project consistent with the Evaluation Criteria stated in this notice.

B. A description of the planned project sufficient to permit evaluation of the proposal in accordance with the proposal Evaluation Criteria stated in this notice.

C. A budget for the project which identifies all sources of funds.

D. A description of the qualifications of key personnel who will be assigned to work on the proposed project.

E. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

F. For Program Planning and Program Implementation projects, letters from

the Governor's office (not considered part of the page count) indicating that the applicant is the lead organization for conducting the proposed activities. For Program Planning, the letter will also acknowledge that there is only one proposal from that state for Program Planning.

G. A Standard Form 424 (Rev 4–88) prescribed by OMB circular A–102, and Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. SF–424 (Rev.4–88) and Form CD–511 will not be considered part of the page count of the Basic Proposal.

Invitation for Proposals

Qualified organizations are invited to submit proposals in one or more of the projects stated in this notice. Each proposal should address only one project.

Program Planning Projects

Project objective

The purpose of Program Planning projects will be to create plans for state-wide, coordinated, technology extension programs in order to enhance the competitiveness of small- and medium-sized manufacturers. These projects will plan for the development and coordination of existing and/or newly formed services, such as state industrial assistance programs; workforce training; university-based industrial assistance programs; and management assistance programs; into a unified state-wide program. Plans will include providing access to a wide range of technology and services, such as technology deployment, workers skills development, technology transfer and commercialization, or export and market development.

Applicants may conduct planning activities on multiple intrastate region basis, when regions are defined by the state. Regions should be clearly defined by the proposing organizations and it must be clear why the program is regionally oriented, versus state-wide, and how the multiple intrastate regions will be integrated into a state-wide plan or interact such that state-wide coverage is achieved.

Applicants may include pilot testing activities as part of their planning process. If pilot testing of the proposed extension plan is included in the project, it should include methods of evaluating the pilot test's success in implementing the proposed extension plan. Any proposed pilot activity must be consistent with the program plan developed for the state.

Program Planning Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all five evaluation criteria and evaluation criteria 1–3 will be weighted more heavily than criteria 4–5. Selection will be based upon total evaluation score as well as geographic distribution.

1. *Target Population (25 points):* Potential applicants should specify a methodology for identifying a population of beneficiary companies (the target population) and their technology assistance-related needs. Factors that will be considered include:

(a) Methodology for defining the size and demographic characteristics of the target population to be served by the program plan.

(b) Methodology for determining the target population's assistance needs, eg. technology, training, information, quality improvement, management, etc.

(c) Methodology to ensure that the plan is appropriate for addressing identified industry needs.

2. *Resource Identification and Assessment (20 points):* Applicants should describe the methodology for collecting information about the number, size, technical sophistication, type, and relevance of industrial assistance activities that will be part of the coordination effort. Factors that will be considered include:

(a) Methodology for identifying relevant assistance programs and other sources of expertise outside applicant's organization.

(b) Methodology for assessing relevance and effectiveness of resources in addressing identified industry needs.

3. *Coordination with Existing Resources (25 points):* Applicants should set forth a plan for interacting or coordinating with appropriate existing and/or newly-formed state and local technology-industrial assistance services, potential industry partners, and appropriate federal services, to develop a coordinated state-wide delivery system. Factors that will be considered include:

(a) Methodology and adequacy of plans for forming effective linkages and partnerships necessary to plan for and provide a coordinated range of services to meet the needs of the target population.

(b) Safeguards to ensure that planned activity does not duplicate existing services or resources.

4. *Management (15 points):* Applicants should specify plans for proper organization, staffing, and management of the planning process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct a state-wide (or regional) planning process.

(b) Qualifications of the project team and its leadership to conduct a state-wide (or regional) planning process.

(c) Appropriateness of the organizational approach for carrying out the planning activity.

(d) Evidence of significant involvement and support by the state and by private industry.

5. *Financial Plan (15 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Cost effectiveness of the budget.

(b) Strength of commitment of proposer's cost share.

(c) Effectiveness of management plans for control of budget.

(d) Appropriateness of matching contribution.

(e) Plan for maintaining the program after the cooperative agreement has expired.

Eligibility Criteria

Eligible applicants for these projects are state technology extension programs operated by state governments, or on behalf of state governments by private or public non-profit organizations. All states will be eligible, regardless of state size, industrial density/sparseness, or number of existing industrial assistance programs. States that have received previous planning grants remain eligible for additional Program Planning projects. Applicants will be able to propose conducting the planning activities themselves or arranging for some or all of the planning activities to be carried out by a second party. One proposal for Program Planning will be accepted per state.

Matching Requirements

A matching contribution from each applicant is required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share may not exceed $150,000. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Required Letters

A letter will be required from the Governor indicating that the eligible applicant is the lead organization in that state for Program Planning activities, and acknowledging that there is only one proposal from that state for a Program Planning project. Where more than one such otherwise qualified Program Planning proposal per state is submitted, all such proposals from that state may be disqualified.

Program Implementation Projects

Project Objective

The purpose of Program Implementation projects is to support the implementation of comprehensive, state-wide industrial extension programs and/or pilot testing of new program and service concepts, such as pilot outreach centers and other extention activities, to help small and medium-sized manufacturers improve productivity and competitiveness.

For projects that support the implementation of a comprehensive state-wide industrial extension system, activities must build upon existing services and be consistent with comprehensive state plans, if such plans exist. Extension programs should provide access to a range of services, including but not limited to: technical extension, training, manager assistance, and quality improvement.

Pilot testing of new services and activities will be permitted on a limited scale where there is an intent to replicate these services on a larger scale or to move toward full-scale implementation. Accordingly, pilot testingmust include evaluation, analysis and documentation, and may include some planning activities as necessary.

NIST plans to give priority consideration to projects having the best potential to benefit areas with relatively sparse distribution of industry, or low density industry areas that do not lend themselves to large extension centers as a method of service delivery.

Program Implementation Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all six evaluation criteria and evaluation criteria 1–4 will be weighted more heavily than criteria 5–6. Selection will be based upon total evaluation score as well as geographic distribution.

1. *Target Population (20 points):* Potential applicants will be required to identify a population of beneficiary companies (the target population) and their technology-related assistance needs in the proposed service area. Factors that will be considered include:

(a) A clear definition of the target population, its size and demographic characteristics.

(b) Demonstrated understanding of the target population's assistance needs, e.g. technology, training, information, quality improvement, management, etc.

(c) Appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

2. *Delivery Mechanisms (20 points):* Applicants will need to specify the mechanism for delivery of services to the population of beneficiary companies (the target population). Factors that will be considered include:

(a) Appropriateness and effectiveness of proposed delivery mechanism for meeting the identified needs of the target population.

(b) Demonstration of capacity to form effective linkages and partnerships with other appropriate service providers.

(c) Technical quality of the proposed approach, including knowledge and use of best industrial modernization practices.

3. *Coordination with Existing Resources (20 points):* Applicants will need to describe how they will coordinate with existing or newly formed state or local technology/industrial assistance services, and federal services, to allow for increased economies of scale and to avoid duplication of services in providing assistance to small and medium-size manufacturers. For a comprehensive, state-wide industrial extension program, the applicant must show the degree to which activities integrate with and enhance existing or newly formed state, local, and appropriate federal technology assistance and industrial modernization activities to present a unified program of assistance. Factors that will be considered include:

(a) Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population.

(b) Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities.

(c) Proposed activity does not duplicate existing services or resources.

(d) Consistency with comprehensive state plans if such plans exist.

4. Program Evaluation (20 points): The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that will be considered include:

(a) Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for accessing outcomes of the activity, and "customer satisfaction" measures of performance.

(b) In the case of pilot projects, the proposer's plan must include documentation, analysis of the results, and must show how the results can be used in program development.

5. *Financial Plan (10 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Reasonableness of the budget, both in income and expenses.

(b) Strength of commitment of the proposer's cost share.

(c) Effectiveness of management plans for control of budget.

(d) Appropriateness of matching contributions.

(e) Plan for maintaining the program after the cooperative agreement has expired.

6. *Management (10 points):* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct the proposed activities.

(b) Qualifications of the project team and its leadership to conduct the proposed activity.

(c) Soundness of staffing plans, including recruitment, selection, training, and continuing professional development.

(d) Appropriateness of the organizational approach for carrying out the proposed activity.

(e) Evidence of significant involvement and support by private industry.

Eligibility Criteria

Eligible applicants for these projects are state technology extension programs operated by state governments, or on behalf of state governments by private or public non-profit organizations. All states will be eligible, regardless of state size, industrial density/sparseness, or number of existing industrial assistance programs. States that have received previous program development or

implementation grants remain eligible for additional Program Implementation projects. Applicants will be able to propose providing services themselves or arranging for some or all of the proposed services to be provided by a second party. More than one proposal for Program Implementation may be accepted from each state.

Matching Requirements

A matching contribution for each applicant will be required. NIST may provide financial support up to 50% of the total budget for the project; however, the federal share may not exceed $250,000. One half of the applicant's required match (i.e. 25% of the total) must be cash. Cash may include dollar contributions from state, county, industrial or other non-federal sources. The applicant's share of the budget may include in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Required Letters

All proposals for Program Implementation projects must contain a letter from the Governor indicating that the applicant is the lead organization in that state for conducting the proposed activities.

Where linkages to other organizations are proposed, applicants are advised to include a letter of support and commitment from the linking organization.

Regional Linkages Projects

Project Objective

The purpose of Regional Linkage projects is to support inter-state or multi-state partnerships that will expand the scope and enhance the effectiveness of technical assistance services regionally available to small and medium-sized manufacturers. Projects may be assistance service-led, or industry-led partnerships to provide assistance services that cross institutional and political boundaries. Assistance service-led partnerships, for example, can include shared assistance services that cross state boundaries, or electronic networking. Industry-led partnerships can include linkage activities between original equipment manufacturers (OEMs) and suppliers, creating a multi-state network of suppliers, program planning for multi-state assistance delivery, or other activities that improve the interactions between manufacturers.

Regional Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all six evaluation criteria and evaluation criteria 1–4 will be weighted more heavily than criteria 5–6. Selection will be based upon total evaluation score as well as geographic distribution.

1. *Target Population (20 points):* Potential applicants will be required to identify a population of beneficiary companies (the target population) and their technology-related assistance needs in the proposed service area. Factors that will be considered include:

(a) A clear definition of the target population, its size and demographic characteristics.

(b) Demonstrated understanding of the target population's assistance needs, eg. technology, training, information, quality improvement, management, etc.

(c) Appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

2. *Delivery Mechanisms (20 points):* Applicants will need to specify the mechanism for delivery of services to the population of beneficiary companies (the target population). Factors that will be considered include:

(a) Appropriateness and effectiveness of proposed delivery mechanism for meeting the identified needs of the target population.

(b) Demonstration of capacity to form effective linkages and partnerships with other appropriate service providers.

(c) Technical quality of the proposed approach, including knowledge and use of best industrial modernization practices.

3. *Coordination with Existing Resources (20 points):* Applicants will need to describe how they will coordinate with existing or newly-formed technology/industrial assistance services and resources that will allow for increased economies of scale and complementary capabilities, and will avoid duplication of efforts in providing assistance to small and medium-sized manufacturers. It will be important to show how the proposed approach can reach across political or institutional boundaries to provide access to services. Factors that will be considered include:

(a) Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population.

(b) Strength of plans to establish and maintain linkages and partnerships with existing organizations (particularly across state boundaries), and a clear definition of those organizations' roles in the proposed activities.

(c) Proposed activity does not duplicate existing services or resources.

(d) Consistency with comprehensive state plans if such plans exist.

4. *Program Evaluation (20 points):* The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that will be considered include:

(a) Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(b) Plans for the documentation, analysis of the results, and how the results can be used in program development.

5. *Financial Plan (10 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Reasonableness of the budget, both in income and expenses.

(b) Strength of commitment of the proposer's cost share.

(c) Effectiveness of management plans for control of the budget.

(d) Appropriateness of matching contributions.

(e) Plan for maintaining the program after the cooperative agreement has expired .

6. *Management (10 points):* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct the proposed interstate or multi-state activities.

(b) Qualifications of the project team and its leadership to conduct the proposed activity.

(c) Soundness of staffing plans, including recruitment, selection, training, and continuing professional development.

(d) Appropriateness of the organizational approach for carrying out the proposed activity.

(e) Evidence of significant involvement and support by private industry.

Eligibility Criteria

Eligible applicants for these projects will be state and local governments, representing either themselves or a consortium of states, and appropriate

private or public non-profit organizations, operating on behalf of a consortium of states or as a representative of states. Applicants will be able to propose providing services themselves or arranging for some or all of the proposed services to be provided by a second party. At least one state represented in the partnership or consortium must be characterized by relatively sparse distribution of industry or as having lower industrial densities.

Matching Requirements

A matching contribution from each applicant will be required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share may not exceed $250,000. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Proposal Section Process

The proposal evaluation and selection process with consist of three principal phases: Proposal qualification; Proposal review and selection of finalists; and Award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

b. Proposal Review and Selection of Finalists

NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review.

c. Award Determination

The Director of NIST, or her designee, shall select awardees based on the rank order of total evaluation scores, geographic distribution, and the availability of funds. Upon the final award decision, a notification will be made to each of the proposing organizations.

Additional Requirements

Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any written or verbal assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DOC are made.

Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided.

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should be transmitted to DOC. SF–LLL submitted by an tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Requirement to Buy American-Made Equipment or Products. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, section 606. (a) and (b). Adequate justifications will be required for any proposed purchases of equipment or products that are not American-made.

Intergovernmental Review. Applications under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification: The Manufacturing Extension Partnership is being carried out under the authority of the Omnibus Trade and Competitiveness Act of 1988, as amended 15 U.S.C. 2781. This notice relating to public property, loans, grants benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purposes of the Regulatory

Flexibility Act (5 U.S.C. 603 and 604). The program is not a major Federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0010). This document was not previously reviewed by OMB under Executive Order 12866.

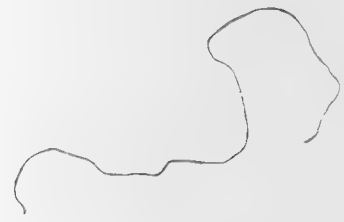
Dated: March 10, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–6217 Filed 3–16–94; 8:45 am]

BILLING CODE 3510–13–M



Federal Register

Thursday
March 17, 1994

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 15

Importation of Exotic Wild Birds to the United States; Proposed Rule Implementing the Wild Bird Conservation Act of 1992

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AC15

Importation of Exotic Wild Birds to the United States; Proposed Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This proposed rule would implement procedures for approval of foreign captive-breeding facilities and establishment of an approved list of species listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora that can be imported.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by April 16,1994 in formulating a final rule, except for subpart D, § 15.32, for which the Service will consider comments and information received by June 15, 1994 in formulating a final rule.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, 1849 C Street NW., 420 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This rule proposes regulations implementing aspects of the WBCA, which was signed into law on October 23, 1992. This is the second of two notices of proposed rulemaking under the WBCA; the first was published in the **Federal Register** on August 12, 1993 (58 FR 42926). The first final rulemaking under the WBCA was published in the **Federal Register** on November 16, 1993 (58 FR 60524). The WBCA limits or prohibits imports of exotic bird species to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all trade in such species involving the United States is biologically sustainable and is not detrimental to the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin. The final rule of November 16, 1993, summarized the effects of the WBCA and proposed procedures for obtaining import permits authorized by exemptions in the WBCA.

An immediate moratorium, effective October 23, 1992, was established on the importation of ten species of wild birds of particular concern that are listed in appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or Convention), two of which were moved to appendix I at the March 1992 CITES meeting. The prohibition on importation of those species was announced in the **Federal Register** of December 4, 1992 (57 FR 57510).

During the one-year delay period from October 23, 1992, to October 22, 1993, there was an import quota on CITES-listed bird species. That quota was announced in the **Federal Register** of December 4, 1992 (57 FR 57510). A notice published on March 30, 1993 (58 FR 16644), solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input from the public in the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting and submitted comments in writing; that input has been utilized in developing this proposed rule. A notice published on April 16, 1993 (58 FR 19840) announced species for which the quota had been met and no further individual birds could be imported.

With the publication of the final rule of November 16, 1993, imports of all CITES-listed birds (as defined in the final rule) are prohibited, except for species included in an approved list, or for which an import permit has been issued. The approved list, which will include species (by country) and/or specific captive-breeding facilities, is proposed herein. The Service also has the emergency authority to suspend imports of any CITES-listed bird species at any time based on a series of criteria.

This notice of proposed rulemaking proposes regulations called for in the WBCA that will accomplish the following: (1) For wild-caught CITES-listed birds to be on an approved list, the Service must determine that: CITES is being effectively implemented for the species for each country of origin from which imports will be allowed; CITES-recommended measures are implemented; there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in its ecosystem, and addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health.

(2) For captive-bred birds to be imported from other countries, in order to be listed in an approved list, the Service is required to determine either that the species is regularly bred in captivity and no wild-caught birds of the species are in trade, or that the species is bred in a qualifying facility.

The Service is also required to review trade in all non-CITES avian species, and establish a moratorium on the import of any species, by country of origin, if any of a series of findings cannot be made. The procedures for such findings will be proposed in a future notice of proposed rulemaking.

Section-by-Section Analysis

In the **Federal Register** notice of November 16, 1993, the Service included the regulations implementing the WBCA in 50 CFR part 15, subparts A–F. This proposed rulemaking proposes text for subparts D and E only, along with additional definitions for subpart A. A future notice of proposed rulemaking will propose regulations for subpart F.

Subpart D—Approved List of Species Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Section 15.31 Criteria for Including Species in the Approved List for Captive-Bred Species

Pursuant to Section 106 of the WBCA, the Secretary is required to publish a list of species of exotic birds that are listed in an appendix to the Convention and that are not subject to a prohibition or suspension of importation otherwise applicable under the WBCA. In order to list a species as exclusively captive-bred, the Service is required to determine that the species is regularly bred in captivity and no wild-caught birds of the species are in trade, legally

or illegally. These captive-bred species can be imported into the United States without meeting any additional requirements of the Wild Bird Conservation Act or this part 15; however, all of the existing requirements in parts 13 and 14, part 17 (species listed as endangered or threatened under the Endangered Species Act (ESA)), part 21 (Migratory Bird Treaty Act) and part 23 (species listed in the Appendices to the Convention, or CITES) must still be complied with.

This section establishes the criteria for the approval of the importation of captive-bred species. In the House of Representatives Committee Report for the WBCA, the Secretary was instructed "to use the standards adopted by the State of New York with respect to importation of captive-bred species, and include such species on the approved list under this section, as long as the Secretary believes that trade based on these standards will not result in harm to species in the wild." These standards direct the Secretary to include species of exotic birds in the approved list if the species is regularly bred in captivity and none are taken from the wild for the trade. In order to comply with such standards, the Service proposes the following criteria for the approval of the importation of foreign captive-bred species: (a) All specimens of the species known to be in trade (legal or illegal) must be captive-bred; (b) No specimens of the species can be known to be removed from the wild for the pet bird market; (c) Any importation of specimens of the species must not be detrimental to the survival of the species in the wild; and (d) Adequate enforcement controls must be in place in countries of export to ensure compliance with the aforementioned paragraphs.

If a species is bred in captivity in large numbers, but individual birds of that species are frequently, sometimes, or even rarely taken from the wild, or if there are enforcement concerns that illegal trade occurs in the species, that species cannot be included as a captive-bred species. Thus, that species would not be approved as a captive-bred species. However, individual captive-bred birds may still be imported into the United States under one of the following conditions: (1) The foreign breeding facility could be approved pursuant to subpart E of this part 15; or (2) a permit for an individual import could be obtained pursuant to subpart C, if the requirements of that subpart are met.

15.32 Criteria for Including Species in the Approved List for Non-Captive-Bred Species

Pursuant to Section 106 of the WBCA, the Secretary is required to publish a list of species of exotic birds that are listed in an Appendix to the Convention and that are not subject to a prohibition or suspension of importation otherwise applicable under the WBCA. For non-captive-bred (i.e., wild-caught) exotic birds to be imported from other countries, in order to be listed in an approved list, the Service is required by the WBCA to "use the best scientific information available, and to consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species, including such mechanisms for control of illegal trade." In developing criteria on which to base approval of sustainable use management plans, the Service reviewed information available on the sustainable use of exotic birds subject to international trade. Beissinger and Bucher (1992) proposed a model for sustainable use of parrot species when biological data are incomplete (Bioscience Vol. 42, No 3, March, 1992: Can Parrots be Conserved through Sustainable Harvesting?); the Service drew upon this model in developing the approval criteria for non-captive-bred species.

The WBCA requires the Service to "find that the Convention is being effectively implemented with respect to that species". The Service believes that it is conceivable, although extremely unlikely, that a country which is not a CITES Party might be complying with all relevant CITES requirements. However, a country that is not a CITES Party can be considered for approval of its sustainable use management plan under this rule. The Service does not wish to discourage the development of effective sustainable use management plans. The Service welcomes comment and input on these qualification requirements, in order to ensure that the final rule promotes conservation objectives and expands opportunities to implement scientifically-based management strategies.

The WBCA requires the Service to make the finding that the Convention is being effectively implemented, by making each of the following findings specified in section 106, paragraph (c) of the WBCA, each of which the Service has included in § 15.32(b):

(1) That the country of origin has established a Scientific Authority.

(2) That the requirements of Article IV of the Convention are implemented with respect to that species.

In addition, since the WBCA requires that each country be effectively implementing the Convention, the proposed approval criteria also require that countries demonstrate implementation of Article VIII of the Convention regarding establishment of implementing legislation and submission to the Convention's Secretariat of required annual reports.

(3) That remedial measures recommended by the Parties to the Convention with respect to that species are implemented. The House of Representatives Committee Report for the WBCA states that "The Committee expects that the Secretary will weigh heavily the willingness and commitment of an exporting country to implement remedial measures in deciding whether to include a species on the list of approved species." This factor is included in the criteria for approval of country management plans.

(4) "That a scientifically-based management plan has been developed for the species which provides for the conservation of the species and its habitat and includes incentives for conservation" (Section 106, paragraph (c)(2)(A) of the WBCA). The proposed approval criteria incorporate this consideration in a number of ways, including requiring: (a) Information on species conservation status and distribution; (b) habitat conservation information, including habitat requirements, habitat distribution and protection status, and habitat status and trends; and (c) information on population dynamics, including population assessments, reproductive success, and evidence of how the sustainable use management plan promotes the value of the species and its habitats. In the case of habitat information, several pieces of information are required, including management plans for habitats important to the species. They are only required, however, if they are available or applicable. For a species that breeds in the country of export, the Service has proposed a requirement of a description of nest sites and/or plant communities that are most frequently used for placement of nests and, if applicable, nesting habits. Nesting habit information may include clutch size, ability to renest, nesting season, and known nest competitors/predators.

(5) "That a scientifically-based management plan has been developed for the species which ensures that the use of the species is biologically sustainable and maintained throughout the range of the species in the country to which the plan applies at a level that is consistent with the role of the species

in the ecosystem and is well above the level at which the species might become threatened with extinction" (Section 106, paragraph (c)(2)(B) of the WBCA). The proposed criteria, in fulfilling this statutory requirement, require the following: (a) Information on the population of the species; and (b) information on the species' role in its ecosystem, including nest requirements and diet. The proposed rule requires information on any species or plant community that is dependent on the occurrence of the exotic bird species, in order to make the required finding that the proposed capture and export are at levels that are consistent with the role of the species in its ecosystem. The proposed rule requires recent population data of the population of the species in the country of export, as derived from indices of relative abundance (such as catch per unit effort or call count surveys) or population estimates (if available), along with documentation for each estimate. These population data or estimates should be based on studies conducted for at least three separate years, or data for one year can be provided, with a description of survey plans for future years. Population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted.

For long-lived, more "K-selected" species of birds (as listed in the proposed rule in § 15.32) the Service is proposing to require that the management plan (for species that breed in the country of export) include information on nesting ecology, and reproductive rates or mortality rates. Those species are defined as those not in one of 19 specified families of birds. The Service is proposing more rigorous standards for the sustainable utilization of "K-selected" species, based on an awareness that their sustainable utilization is very difficult, and that they are extremely sensitive to population depletion.

For species included in one of the 19 families of birds specified in the proposed rule in § 15.32 (more "r-selected" species), the Service is proposing that, instead of detailed demographic information, the management plan (for species that breed in the country of export) need only include an estimation of recent reproductive success. Reproductive success may be estimated using pre-breeding and post-breeding counts, wherever that is appropriate. For all birds, when the species occurs in the country of export only during the nonbreeding season, the Service proposes to require documentation or a letter from the Convention Scientific Authority that the species does not breed there.

The Service has proposed, for the purposes of the WBCA, to define sustainable use as "the use of a species in a manner and at a level such that populations of the species are maintained at optimal levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce and maintain itself." In order to determine that the management plan utilization of the species is sustainable, the Service proposes to require evidence of how levels of sustainable use were determined, including either (1) adequate long-term trends in relative abundance and take levels, or (2) population estimates, reproductive success, and estimation of the number exported from the country during the past 2 years, and the number of birds removed directly from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes. The information should include the estimated number of birds to be removed from the wild from each area or region of take each year for all purposes, including age-class information for "K-selected" species, and a description of future plans to monitor the species in each area of take and to determine whether the number of birds taken has been sustainable. Throughout the proposed rule, area or region of take refers to the area or region within the country of export where birds will be removed from the wild; the degree of specificity used will depend on the particular situation in the country of export. If the species is abundant throughout its range, the region of take could be the entire country; a species that is locally abundant but rare elsewhere might have a more restricted area of take.

The Service is aware that the criteria for approval of sustainable use management plans proposed herein may appear to be rigorous, and although desirable and scientifically valid, they may be difficult for many countries. The Service proposes to give particularly positive consideration to situations wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan (in effect, a "preliminary" approval). Thus, the more tentative the biological information is, the more conservative the capture and export quotas are expected to be; the closer the capture quotas are to the reproductive capacity of the species, the biological information is expected to be more rigorous.

(6) "That a scientifically-based management plan has been developed for the species which addresses factors relevant to the conservation of the species, including illegal trade, domestic trade, subsistence use, disease, and habitat loss" (Section 106, paragraph (c)(2)(C) of the WBCA). The proposed criteria, in fulfilling this statutory requirement, require the following information: estimation of annual mortality or loss, including natural mortality and take for subsistence use, export trade, and domestic trade (in each area or region of take); and the estimated number of birds that will be removed from the wild from each area or region of take each year for all purposes (export trade, domestic trade, illegal trade, and subsistence use), including information on the regulation of these factors within the country. When applicable, information on age-classes removed from the wild should be included. As in the previous paragraph, the Service will give particularly positive consideration to situations wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan (a sort of "preliminary" approval).

(7) That the management plan is implemented and enforced (Section 106, paragraph (c)(3) of the WBCA). The proposed criteria incorporate this finding in a number of ways, including requiring: (a) Certification from the country of export's Management Authority that the country has the legal means necessary to ensure enforcement of and compliance with the requirements of the management plan and to ensure that the number of birds removed from the wild or exported will be consistent with the management plan; (b) an explanation of infrastructure and law enforcement and monitoring mechanisms that will ensure compliance with methodology in the management plan; and (c) evidence of implementing legislation. The Service expects in this context not just a copy of a country's implementing legislation, but a summary of how that legislation and the management plan is or will be put into practice. Information provided could be varied, but might include how a country's wildlife department is organized, how the wildlife department will monitor implementation and enforcement of the management plan,

and evidence of prior enforcement actions.

(8) That the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health, including inhumane treatment (Section 106, paragraph (c)(4) of the WBCA). The proposed criteria incorporate this required finding in a number of ways, including requiring: (a) a description of the process of removing birds from the wild, including locations, time of year of removal, capture methods, means of transport, and pre-export conditioning; and (b) a description of the shipping methods and enclosures proposed to be used to transport the exotic birds, including but not limited to feeding and care during transport, and shipping densities. Since there is evidence that for some species and, in some cases, consignment size may increase the risk of mortality in transport, the Service has also proposed that estimated consignment sizes be included with the management plan. Although the proposed rule does not establish a maximum consignment size, the Service will take this factor into consideration in making the required finding. Consignment size in this context refers to the number of birds in a single shipment exported from the country of export.

The WBCA also requires that the Service "consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species, including such mechanisms for control of illegal trade" (WBCA § 106(a)(3)). Therefore, in the approval criteria, for species with a multi-national distribution, the Service proposes to make the following determinations (the information needed may need to come from sources other than the country requesting approval of its management plan): (a) whether populations of the species in other countries in which it occurs will be detrimentally affected by exports of the species from the country requesting approval (this information could be obtained from those governments and/or from other sources, and could include communication from the Scientific Authorities of other range states); (b) whether factors affecting conservation of the species, including export from other countries, illegal trade, domestic use, or subsistence use are regulated throughout the range of the species so that recruitment and/or breeding stocks of the species are not detrimentally affected by the proposed export; (c) whether the proposed take and export from the requesting country include enough demographic information to ensure they will not detrimentally affect breeding populations; and (d) whether the proposed take and export will not detrimentally affect any existing enhancement activities or conservation programs throughout the species' range.

The approved non-captive-bred (*i.e.*, wild-caught) species can be imported into the United States without meeting any additional requirements of the WBCA or this part 15; however, all of the existing requirements in parts 13 and 14, part 17, part 21, and part 23 must be complied with. Upon receipt of a completed sustainable use management plan for a country of export, the Director will publish a Notice in the **Federal Register** for public comment. Approval of species will be granted in accordance with the criteria proposed in § 15.32.

The Service proposes to consider only sustainable use management plans for appendix II species and appendix III species from the country for which they are listed, since trade for primarily commercial purposes is not permitted under the Convention for appendix I species. If specimens of an appendix I species are required for zoological, scientific, or breeding purposes, individuals desiring such import may apply for a permit under Subpart C of this Part 15.

Section 15.33 Species Included in the Approved List

(a) Captive-bred species. In order to establish a proposed list of approved captive-bred species, based on the criteria in proposed Section 15.31, the Service used the best information available, including import records of captive-bred species, law enforcement and intelligence data on the commercial trade in captive-bred species, and law enforcement and intelligence information on the illegal trade in exotic bird species. The proposed list of approved species includes 37 captive-bred exotic bird species that can be imported from any other country, with export permits required by CITES, other federal laws, and the exporting country. In addition, the Service has proposed to include in the approved list of captive-bred species several exotic bird species that are not listed in an appendix to the Convention but are regularly bred in captivity and are not taken from the wild. Although these species are not listed in an Appendix and thus are not presently prohibited under the WBCA, these species are included in the list for the convenience of the public. To ensure that there is no confusion, even if the species or higher taxon to which it belongs were subsequently listed in the Appendices to the Convention, the Service would still consider it to be an approved captive-bred species pursuant to this subpart D.

As established in the WBCA, the Service will periodically review the list of species that meet the approval criteria for the importation of captive-bred species. Any changes to this approved list will be proposed in the **Federal Register** for public comment. The Service is interested in receiving the comments, including documentation, of any interested individuals or organizations with information on the captive-bred status of any of the species in the list proposed in this subsection, or of any other exotic bird species that meet the criteria in § 15.31 for inclusion in this list.

(b) Non-captive-bred species. No species can be proposed for approval under this paragraph until the proposed regulations in Section 15.32 are finalized, and a completed sustainable use management plan for a country of export for that species has been received by the Director. Upon granting approval in accordance with the issuance criteria of this section, approved species and countries of export would be listed in this paragraph.

Subpart E—Qualifying Foreign Facilities Breeding Exotic Birds in Captivity

Section 15.41 General Application Procedures

Pursuant to Section 107 of the WBCA, any person may submit a petition to the Director to determine whether a foreign exotic bird breeding facility shall be designated as a qualifying facility. If a foreign facility is approved as a qualifying facility, species of exotic birds for which the facility is approved can be imported into the United States from that facility without import permits issued pursuant to subpart C of this part 15. In all cases, any additional requirements in 50 CFR parts 13, 14, 17, 21, and 23 must also be met. Applications for approval shall be submitted to the Service's Office of Management Authority. A separate application must be submitted for each species for which approval is requested.

Applications must contain information as required in paragraph (c) of this section, in order to make a series of findings required by the WBCA. The Service notes that the fundamental purposes of these findings is to ensure that the birds exported from these facilities are indeed bred in captivity, no illegal trade is involved, and wild populations are not harmed by either the breeding program or export from these facilities. The information required includes but is not limited to

the following: (1) Certification from the Management Authority of the country in which the facility is located that the facility is capable of breeding the species in the numbers to be traded, without detriment to the wild population of the species; (2) A summary of the legislation, and regulations where appropriate, implementing the Convention in the country in which the facility is located; (3) A detailed statement of the facility's capability of breeding the species in captivity in the numbers desired, including breeding methods, experience, and production levels; (4) A detailed statement demonstrating that the facility is operated in a manner not detrimental to the survival of the species, including details on the establishment of the parental stock; (5) A statement of any anticipated need for augmentation of breeding stock from other sources; (6) A detailed statement demonstrating that the facility is operated in a humane and healthful manner; (7) A description of the care and maintenance practices of the facility, including mortality and disease records and husbandry, veterinary, and hygienic practices; (8) A statement that all birds to be exported from the facility will be marked with closed leg bands or an electronic marking system; and (9) Details on the system of recordkeeping and tracking of birds and their progeny hatched at the facility would be required.

Section 15.42 Approval Criteria and Conditions

This section would establish the criteria for approval of foreign captive-breeding facilities by the Director, and approval conditions and duration. The approval conditions would include: (1) Whether the facility is located in a country that is Party to the Convention and is implementing the requirements of the Convention, including designation of functioning Scientific and Management Authorities, submission of annual reports, and establishment of implementing legislation; (2) Whether the facility is capable of producing captive-bred birds in the numbers to be exported; (3) Whether the parental breeding stock was acquired from legally obtained, exported, and/or imported birds; (4) Whether the facility is operated in a manner not detrimental to the survival of the species in the wild; (5) Whether adequate enforcement controls are in place; (6) Whether the breeding protocol of the facility is adequate; (7) Whether the facility is operated in a humane and healthful manner; (8) Whether the facility will provide for proper and healthful care and maintenance of the birds; and (9) Whether all birds are identifiable through closed leg bands or electronic marking. The Service welcomes comments on these criteria, including those related to the applicability of relevant international law.

The approval conditions established in this section require the submission of an annual report to the Service containing production and mortality records, including hatching records, numbers of birds exported, and their identification numbers. As established in the WBCA, approvals are to be effective for three years, provided that the facility continues to meet the requirements and approval conditions. Each application submitted for approval is proposed to be published in the **Federal Register** for public comment, and the Service will periodically publish in the **Federal Register** a list of all approved foreign breeding facilities and the effective dates of their approval.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of this proposal are hereby solicited.

Effects of the Rule

The Service has determined that this proposed rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). See 516 DM [Departmental Manual] 2, appendix 1 Paragraph 1.10. The proposed regulations are procedural in nature, and the environmental effects while crafted to carry out the benign purposes of the WBCA, are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. Future regulations implementing the WBCA may be subject to NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order No. 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction

This proposed rule does not contain information collection requirements for persons subject to the jurisdiction of the United States that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author

The primary authors of this proposed rule are Dr. Susan S. Lieberman, Office of Management Authority, and Dr. Rosemarie Gnam, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2093).

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation and Wildlife.

Proposed Regulation Promulgation

PART 15—[AMENDED] EXOTIC WILD BIRD CONSERVATION

Accordingly, 50 CFR part 15 is proposed to be amended as follows:

1. The authority citation for part 15 continues to read as follows:

Authority: Pub. L. 102–440, 16 U.S.C. 4901–4916.

2. Amend part 15 subpart A § 15.3 by adding the following definitions, in alphabetical order:

§ 15.3 Definitions.

* * * * *

Documentation means a description of how information was collected, including the methodologies used; names and institutions of individuals conducting the work; dates and locations of any study; and any published results or reports from the work.

* * * * *

Life cycle means the annual processes involved with breeding, migration, and all other non-breeding activities.

* * * * *

Status means a qualitative measure of the vulnerability to extinction or extirpation of a population at a given time (e.g., endangered, threatened, vulnerable, not threatened, non-threatened or insufficiently known).

Sustainable use means the use of a species in a manner and at a level such that populations of the species are maintained at optimal levels for the long term and involves a determination of

the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce and maintain itself.

Trend means a long-term projection of any change in the size of a species' population or habitat over time (e.g., increasing, decreasing, equilibrium, insufficiently known).

* * * * *

3. Subpart D is revised to read as follows:

Subpart D—Approved List of Species Listed in the Appendices to the Convention

15.31 Criteria for including species in the approved list for captive-bred species
15.32 Criteria for including species in the approved list for non-captive-bred species.
15.33 Species included in the approved list.

§ 15.31 Criteria for including species in the approved list for captive-bred species.

The Director will periodically review the list of captive-bred exotic bird species in § 15.33(a), for which importation into the United States is approved. Any exotic bird species listed in paragraph 15.33(a) pursuant to this section must meet all of the following criteria:

(a) All specimens of the species known to be in trade (legal or illegal) are captive-bred;

(b) No specimens of the species are known to be removed from the wild for the pet bird market;

(c) Any importation of specimens of the species would not be detrimental to the survival of the species in the wild; and

(d) Adequate enforcement controls are in place in countries of export to ensure compliance with paragraphs (a) through (c) of this section.

§ 15.32 Criteria for including species in the approved list for non-captive-bred species.

Upon receipt of a completed sustainable use management plan for a country of export, the Director may approve a species listed in Appendices II or III of the Convention for importation from that country. Such approval shall be granted in accordance with the issuance criteria of this section. All approved species and countries of export will be listed in section 15.33.

(a) Requirements for scientifically-based sustainable use management plans. Sustainable use management plans developed by the country of export shall include the following information, and any other information that may be appropriate:

(1) Background information, including the following:

(i) The scientific and common name of the species;

(ii) Letters from the country of export's Management and Scientific Authorities transmitting the management plan of this species;

(iii) A summary of the country of export's legislation related to this species and legislation implementing the Convention, and, where appropriate, a summary of implementing regulations;

(iv) A summary, from the country of export's Management Authority, of the country's infrastructure and law enforcement and monitoring mechanisms designed to ensure both enforcement of and compliance with the requirements of the management plan, and that the number of birds removed from the wild or exported will be consistent with the management plan;

(v) Recent information on the distribution of the species within the country of export, including scientific references and maps, and historical information on distributions, if relevant; and

(vi) The species' status and its current population trend in the country of export, including scientific references.

(2) Habitat information, including:

(i) A general description of habitats used by the species for each portion of the life cycle completed within the country of export;

(ii) Recent information on the size and distribution of these habitats throughout the country of export and in each area or region of take, including scientific references and maps. The approximate location of any reserves that provide protection for this species should be indicated on the accompanying map(s);

(iii) Status and trends of the important habitats used by the species in the country of export as a whole and within each area or region of take, whenever available, including scientific references;

(iv) Factors, including management activities, favoring or threatening the species' habitat in the foreseeable future throughout the country of export and within each area or region of take, whenever available, including scientific references; and

(v) A list of management plans that have been or are being planned, developed, or implemented for the species' important habitats, if any.

(3) Information on the role of the species in its ecosystem, including:

(i) A description of the part(s) of the species' life cycle completed within the country of export;

(ii) For a species that breeds in the country of export, a description of nest sites and/or plant communities that are most frequently used for placement of nests and, if applicable, nesting habits;

(iii) A general description of the species' diet, where the species forages (aerial feeder, tree canopy, tree trunk, midstory, understory, open water or other), and seasonal changes in foraging habits, including, when available, scientific references; and

(iv) Information on any species or plant community which is dependent on the occurrence of the exotic bird species.

(4) Population dynamics of the species, including:

(i) Recent population data of the population of the species in the country of export, as derived from indices of relative abundance or population estimates, along with documentation for each estimate;

(ii) Within each area or region of take, documentation for recent population data or estimates, conducted for at least three separate years or one year with a description of survey plans for future years. These population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted;

(iii) If a species belongs to the avian families Columbidae, Fringillidae, Ploceidae, Estrildidae, Sturnidae, Tinamidae, Podicepedidae, Burhinidae, Scolopacidae, Tyrannidae, Pittidae, Emberizidae, Zosteropidae, Vireonidae, Atrichornithidae, Sylviidae, Oriolidae, Meliphagidae, or Icteridae, the management plan shall include the following information:

(A) For a species that does not breed in the country of export, documentation or a letter from the Convention Scientific Authority that the species occurs in the country of export only during the nonbreeding season; and

(B) For a species that breeds in the country of export, estimation (with documentation) of recent reproductive success. Where apppropriate, this assessment could include number of young produced per egg-laying female per year, or pre-breeding and post-breeding surveys conducted within the same annual cycle; and

(C) Estimation (with documentation) of annual mortality or loss including natural mortality and take for subsistence use, export trade, and domestic trade in each area of take; or

(D) In lieu of paragraphs (a)(4)(iii) (A) and (C) of this section, documentation of long-term population and offtake trends based on indices of relative abundance, and measures of offtake and description of any long-term changes in other mortality factors (including

subsistence use, domestic trade, and capture or transport mortalities).

(iv) If a species belongs to an avian family other than those listed in paragraph (a)(4)(iii) of this section, the management plan shall include the following information:

(A) For a species that does not breed in the country of export, certification by the Scientific Authority of that country that the species occurs in the country of export only during the nonbreeding season;

(B) For a species that breeds in the country of export, scientific assessment (with documentation) of the nesting ecology of the species. Such an assessment may include the availability of active nest sites and the number of females or pairs that successfully produce young per year in each area or region of take; and

(C) For a species that breeds in the country of export, estimation (with documentation) of recent reproductive rates (number of young produced per egg-laying female or pair per year) or mortality rates; and

(v) Estimation (with documentation) of annual mortality or loss, including natural mortality and take for subsistence use, export trade, and domestic trade in each area of take.

(5) Determination of biologically sustainable use:

(i) Estimation of the number exported from the country during the past 2 years, and the number of birds removed from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes (specify) for the country of export during the past 2 years;

(ii) The estimated number of birds that will be removed from the wild from each area of take each year for all purposes (export trade, domestic trade, illegal trade, and subsistence use), including a description of age-classes (nestlings, fledglings, sub-adults, adults, all classes), when applicable;

(iii) For the projected take addressed in the management plan, a description of the removal process, including, but not limited to, locations, time of year, capture methods, means of transport, and pre-export conditioning;

(iv) Documentation of how each level of take was determined;

(v) Explanation of infrastructure and law enforcement and monitoring mechanisms that ensure compliance with the methodology in the management plan and that the species will be removed at a level that ensures sustainable use; and

(vi) Description of future plans to monitor the species in each area or region of take and to determine whether the number of birds taken has been sustainable.

(6) A description of incentives for conservation, including a description of how the sustainable use management plan promotes the value of the species and its habitats by means of environmental education, cooperative efforts or projects, development of cooperative management units, and/or activities involving local communities.

(7) Additional factors:

(i) Description of any captive-propagation programs (private and governmental) for the species carried out in the country of export;

(ii) Description of any existing enhancement activities developed for the species, including, but not limited to, annual banding programs, nest watching/guarding, and nest improvement; and

(iii) Description, including photographs or diagrams, of the shipping methods and enclosures proposed to be used to transport the exotic birds, including but not limited to feeding and care during transport, densities of birds in shipping enclosures, and estimated consignment sizes.

(b) Approval criteria. Upon receiving a sustainable use management plan in accordance with paragraph (a) of this section, the Director will decide whether or not an exotic bird species should be listed as an approved species for importation from the country of export, under § 15.33. In making this decision, the Director shall consider in addition to the general criteria in part 13 of this subchapter, all of the following factors for the species:

(1) Whether the country of export is effectively implementing the Convention, particularly with respect to:

(i) establishment of a functioning Scientific Authority;

(ii) the requirements of Article IV of the Convention;

(iii) remedial measures recommended by the Parties to the Convention with respect to the species, including recommendations of permanent committees of the Convention; and

(iv) Article VIII of the Convention, including but not limited to establishment of legislation and infrastructure necessary to enforce the Convention, and submission of annual reports to the Convention's Secretariat;

(2) Whether the country of export has developed a scientifically based management plan for the species that:

(i) provides for the conservation of the species and its habitat(s);

(ii) includes incentives for conservation;

(iii) is adequately implemented and enforced;

(iv) ensures that the use of the species is:

(A) sustainable;

(B) maintained throughout its range at a level that is consistent with the species' role in its ecosystem; and

(C) is well above the level at which the species might become threatened;

(v) addresses illegal trade, domestic trade, subsistence use, disease, and habitat loss; and

(vi) ensures that the methods of capture, transport, and maintenance of the species minimize the risk of injury, damage to health, or inhumane treatment; and

(3) If the species has a multi-national distribution:

(i) Whether populations of the species in other countries in which it occurs will not be detrimentally affected by exports of the species from the country requesting approval;

(ii) Whether factors affecting conservation of the species, including export from other countries, illegal trade, domestic use, or subsistence use are regulated throughout the range of the species so that recruitment and/or breeding stocks of the species will not be detrimentally affected by the proposed export;

(iii) If the species does not breed in the country of export, whether the projected take and export will not detrimentally affect breeding populations; and

(iv) Whether the projected take and export will not detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range.

(c) Publication in the **Federal Register**; The Director shall publish notice in the **Federal Register** of each complete sustainable use management plan under paragraph (a) of this section. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the proposed approval.

(d) Duration of approval. A species and country of export listed in § 15.33 as approved shall be approved for three years, at which time renewal of approval shall be considered by the Service.

§ 15.33 Species included in the approved list.

(a) Captive-bred species. The list in this paragraph includes species of captive-bred exotic birds for which importation into the United States is not prohibited by § 15.11. The species are grouped taxonomically by order.

Species	Common name
Order Columbiformes:	
Columba livia	Rock dove.
Order Psittaciformes:	
Agapornis roseicollis.	Peach-faced lovebird.
Barnardius barnardi	Mallee Ringneck parrot.
Barnardius zonarius	Port Lincoln parrot.
Lathamus discolor.	Swift parrot.
Melopsittacus undulatus.	Budgerigar.
Neophema bourkii.	Bourke's parrot.
Neophema pulchella.	Turquoise parrot.
Neophema splendida.	Scarlet-chested parrot.
Nymphicus hollandicus.	Cockatiel.
Platycercus adelaide.	Adelaide rosella.
Platycercus adscitus.	Pale-headed rosella.
Platycercus caledonicus.	Green rosella.
Platycercus elegans	Crimson rosella.
Platycercus eximius	Eastern rosella.
Platycercus flaveolus.	Yellow rosella.
Polytelis alexandrae	Princess parrot.
Polytelis anthopeplus.	Regent parrot.
Polytelis swainsonii	Superb parrot.
Psephotus haematogaster.	Blue-bonnet parakeet.
Psephotus haematonotus.	Red-rumped parakeet.
Psephotus varius ...	Mulga parakeet.
Psittacula cyanocephala.	Plum-headed parakeet.
Purpureicephalus spurius.	Red-capped parrot.
Order Passeriformes:.	
Chloebia gouldiae ..	Gouldian finch.
Emblema picta	Painted finch.
Lonchura castaneothorax.	Chestnut-breasted finch.
Lonchura domestica.	Society (=Bengalese) finch.
Lonchura pectoralis	Pictorella finch.
Neochmia ruficauda	Star finch.
Poephila acuticauda.	Long-tailed grassfinch.
Poephila bichenovii	Double-barred finch.
Poephila cincta	Parson finch.
Poephila guttata	Zebra finch.
Poephila personata	Masked finch.
Serinus canaria	Common Canary.

(b) Non-captive-bred species. The list in this paragraph includes species of non-captive-bred exotic birds and countries for which importation into the United States is not prohibited by § 15.11. The species are grouped taxonomically by order, and may only be imported from the approved country, except as provided under a permit issued pursuant to subpart C of this part.

Species	Common name	Country	Date approved

(To be determined at a later date)

4. Subpart E is revised to read as follows:

15.41 General application procedures.
15.42 Approval criteria and conditions.

Subpart E—Qualifying facilities breeding exotic birds in captivity

§ 15.41 General application procedures.

(a) Any person may petition the Director to determine whether a foreign exotic bird breeding facility may be designated as a qualifying facility. The Director may approve foreign breeding facilities to import exotic birds otherwise prohibited by § 15.11, in accordance with the approval criteria of this subpart. Approved species from qualifying facilities do not require permits issued under this part 15 and are not limited as to the number of birds that can be imported, for purposes of the WBCA.

(b) Applications for approval of foreign breeding facilities under this subpart shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203. Each application must be submitted on an official application (Form 3–200) provided by the Service and must contain all of the information specified in this section. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part. A separate petition must be submitted for each species for which the approval is requested.

(c) Upon receipt of a complete application, the Director may approve foreign breeding facilities, which will allow individuals to import exotic bird species otherwise prohibited by section 15.11, if they are captive-bred in the facility. Each application shall provide the following information and any such other information that the Director may require:

(1) A description of the exotic bird species to be imported, including the common and scientific name of the species;

(2) The name and address of the foreign breeding facility, and a statement of the reasons supporting approval;

(3) Certification in writing from the Management Authority of the country in which the facility is located that the facility has the capability of breeding the species in captivity in the numbers to be traded without detriment to the wild population, and that the operator of the facility has not been convicted of any violations of the country's laws governing trade and export of avian species;

(4) A summary of the legislation implementing the Convention in the country in which the facility is located;

(5) A statement of the facility's capability of producing captive-bred birds of the species and in the numbers they wish to export to the United States, including:

(i) Relevant experience of persons involved in the operation of the facility;

(ii) Current stock of the facility, including total number, ages, sexes, and numbers of breeding pairs;

(iii) Production levels that have been achieved at the facility, at least for the past two complete calendar years, including numbers of eggs produced, chicks hatched, and chicks reared to independence;

(iv) Anticipated future production;

(v) A breeding protocol, including a genetic management plan and a description of breeding methods. Breeding methods shall include whether breeding is continuous or seasonal (including descriptions of photoperiod manipulations used to stimulate or control breeding, if any) and whether breeding birds are induced to produce multiple clutches by the removal of eggs for artificial incubation; and

(vi) Descriptions of incubation and rearing methods, as well as any other methods used to enhance production, including artificial insemination when applicable;

(6) A statement demonstrating that the facility is operated in a manner that is not detrimental to the survival of the species in the wild, including:

(i) The number and origin of original breeding stock (founders);

(ii) A statement from the Scientific Authority of the country in which the facility is located attesting that the parental stock was established in a manner that was not detrimental to the survival of the species in the wild;

(iii) If any parental breeding stock was wild-caught, a statement as to the country of origin, date of acquisition, and certification by the Management Authority in the country in which the facility is located that the parental breeding stock was legally acquired; and

(iv) Certification from the Management Authority in the country in which the facility is located that adequate controls, including inspections, are in place to prevent the use of the facility for the export of wild-caught stock;

(7) A statement of any anticipated need for augmentation of breeding stock with specimens from other sources; if augmentation is to be from the wild, an explanation as to why the removal of additional specimens from the wild shall be included. This explanation must address whether other captive-bred stock is available and describe breeding strategies employed at the facility to avoid deleterious inbreeding so that the need for augmentation from the wild is minimized;

(8) A statement describing the facility and demonstrating that it is operated in a humane and healthful manner, including:

(i) Diagrams or photographs of the facility;

(ii) Descriptions of enclosures, including dimensions, construction materials, substrates, availability of water, lighting, ventilation, the need for supplemental heat or cooling and how these are provided, and shading (for outdoor enclosures);

(iii) Densities of birds in enclosures;

(iv) Internal features of enclosures, including perches, nest boxes, and plantings; and

(v) A description of any facility features designed to satisfy unique requirements of the particular species;

(9) A description of the care and maintenance practices of the facility, including:

(i) Husbandry practices, feeding regimes (number of feedings per day), and diet;

(ii) Hygienic practices, including methods and frequency of cleaning and disinfection of equipment and facilities;

(iii) A statement as to the availability of routine professional veterinary care, including annual flock inspection or examination, and medication/vaccination schedules;

(iv) Records of mortality and disease outbreaks for both adults and chicks for at least the past two years. Episodes of high mortality or disease should be explained, and measures taken to prevent similar mortality or disease outbreaks in the future should be described; and

(v) Qualifications and experience of the personnel who will be responsible for the care of the exotic birds;

(10) A statement that all birds exported or to be exported from the facility are bred at the facility and are marked with closed leg bands or an electronic marking system;

(11) Details on the system of recordkeeping and tracking of birds and their progeny hatched at the facility, including:

(i) Documentation that the facility maintains records of hatch dates and band numbers of all birds produced at the facility;

(ii) Documentation that the facility maintains records of all birds traded from the facility, including both within the country in which the facility is located and internationally; and

(iii) Copies of these production and trade data shall be included with the application for the past two calendar years; and

(12) A statement documenting that adequate enforcement controls are in place in the country and at the facility to prevent the use of the facility for the export or re-export of wild-caught stock, including a statement on security at the facility and any prior losses due to theft.

§ 15.42 Approval criteria and conditions.

(a) *Approval criteria.* Upon receiving an application completed in accordance with § 15.41 of this subpart, the Director will decide whether or not a breeding facility should be approved. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) The facility is located in a country that is:

(i) a Party to the Convention;

(ii) has domestic legislation that adequately implements the Convention;

(iii) has designated functioning Management and Scientific Authorities; and

(iv) is current in providing annual reports to the Convention Secretariat;

(2) The facility has demonstrated the capability of producing captive-bred birds of the species in the numbers to be imported into the United States from that facility;

(3) The facility is operated in a manner that is not detrimental to the survival of the species in the wild;

(4) The parental breeding stock was acquired from birds that were legally obtained, exported, and/or imported;

(5) Adequate enforcement controls are in place to prevent the use of the facility for the export or re-export of wild-caught stock;

(6) The breeding protocol of the facility is adequate to avoid deleterious inbreeding so that the need for augmentation from the wild is eliminated or minimized;

(7) The facility is operated in a humane and healthful manner;

(8) The facility has the expertise or other resources necessary for proper and healthful care and maintenance of the exotic birds, and the facility is operated according to professionally recognized standards; and

(9) All birds that are to be exported from the facility are bred at that facility, and are identifiable through either closed leg bands or electronic marking, and records kept are adequate to ensure identification, parentage, and disposition of individual birds.

(b) *Approval conditions.* In addition to the general conditions set forth in part 13 of this subchapter, qualifying facilities must submit a report to the Service within 12 months of approval, and annually thereafter. These reports shall contain production and mortality records of the facility, including hatching and banding records, and the numbers of birds exported to the United States during the reporting period and the numbers by which the birds were identified. All approvals shall be subject to other conditions as the Director may deem appropriate.

(c) *Duration of approval.* Approvals of foreign breeding facilities shall be effective for three years from the time a determination is made, provided that:

(1) The facility continues to meet the requirements of a qualifying facility for the entire time;

(2) The facility submits an annual report in order to remain designated as a qualifying facility; and

(3) If the Director finds that a facility no longer meets these requirements, its designation as a qualifying facility shall be terminated. A notice will be published in the **Federal Register** containing the date that the approval is terminated and the reason for the termination.

(d) *Publication in the* **Federal Register**. The Director shall publish a notice in the **Federal Register** of each application submitted for approval under this subpart. Each notice shall invite the submission of written data, views, or arguments with respect to the application from all interested parties. The Director shall publish notice periodically in the **Federal Register** listing the approved foreign breeding facilities and the effective dates of their approval.

Dated: October 19, 1993.

Bruce Blanchard,

Director.

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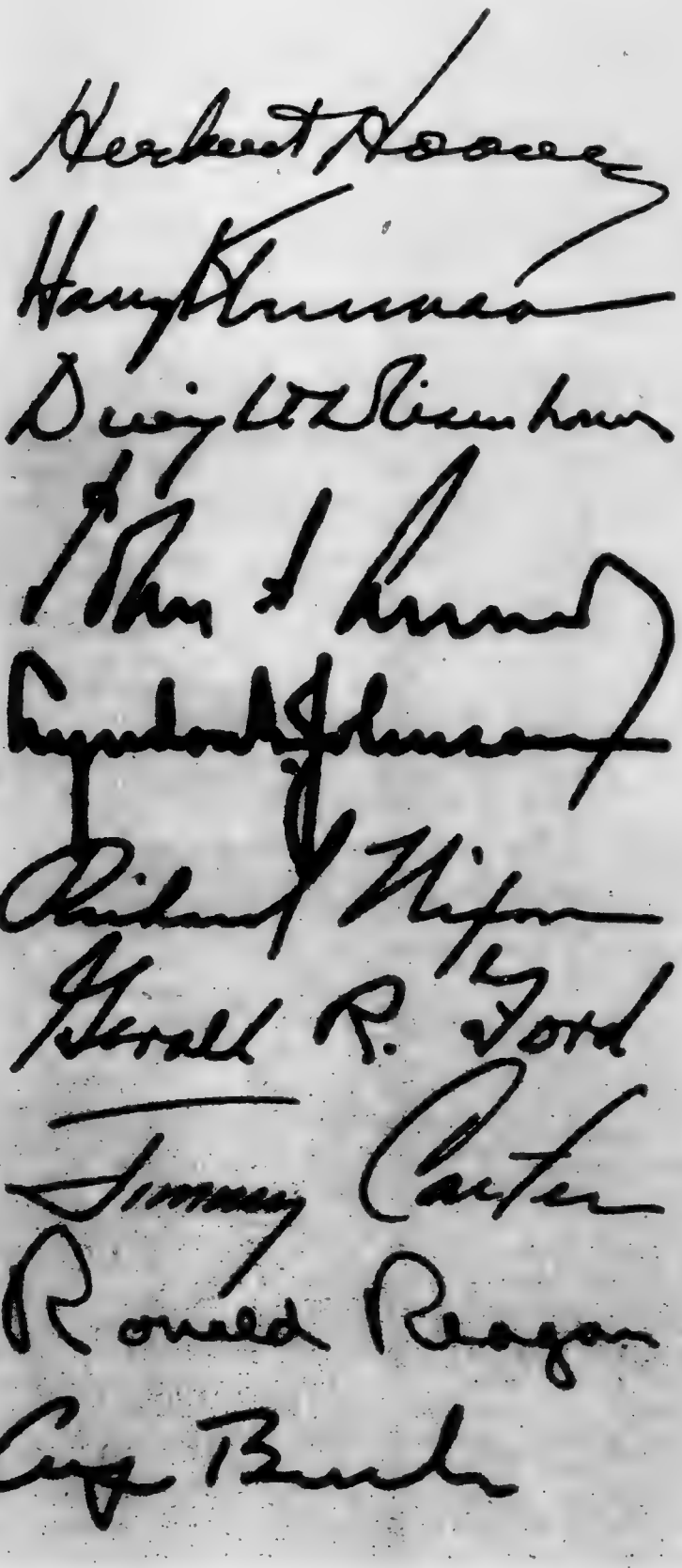

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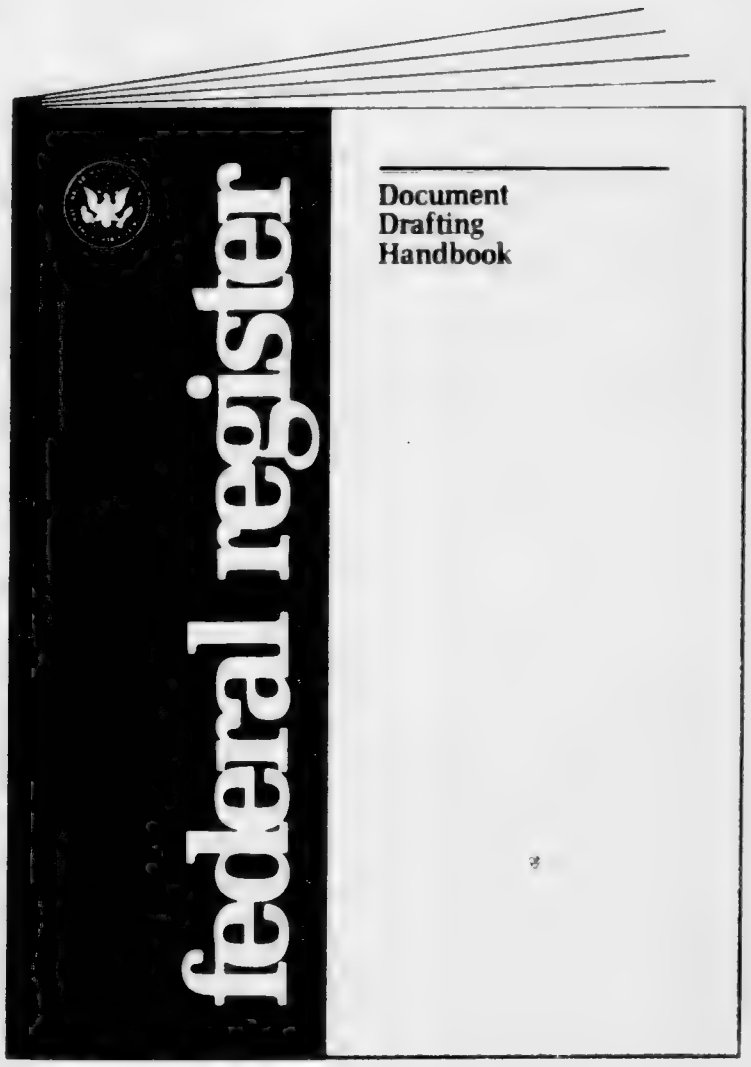

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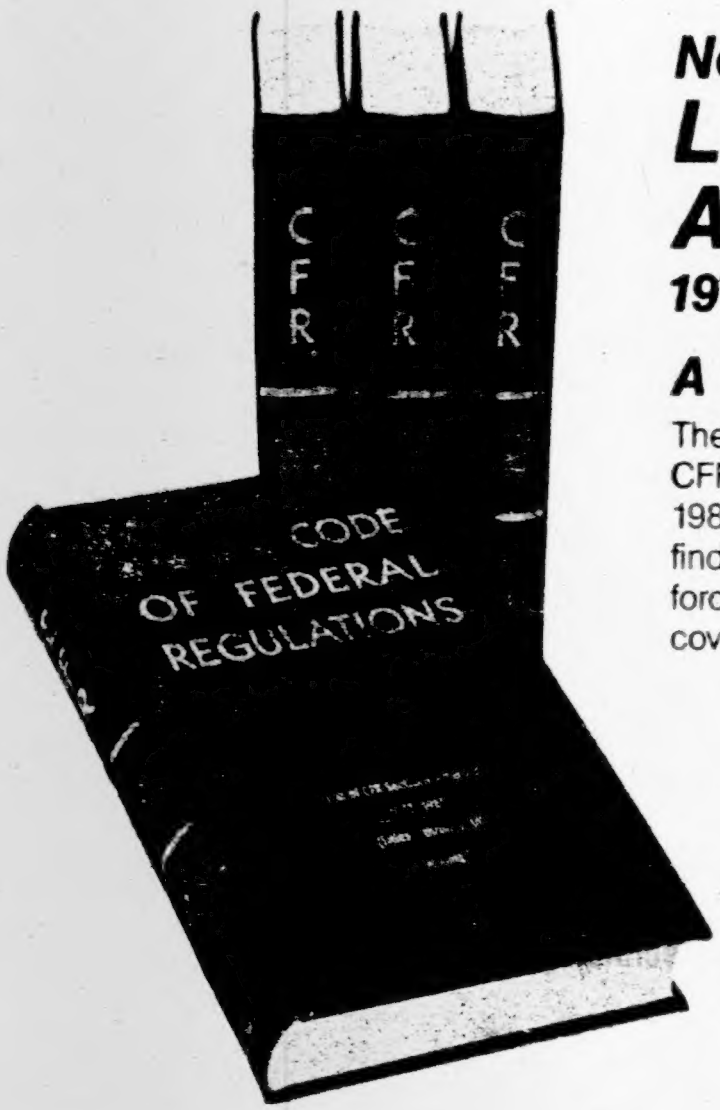

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